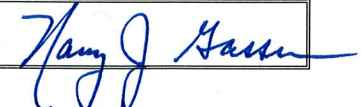


**REQUEST:** Amendment to the City's Unified Land Development Regulations ("ULDR"):

Proposed revision to Section 47-19.3 Boat slips, docks, boat davits, hoists and similar mooring structures to establish standards for seawall construction that contribute to coastal resilience and mitigate the effects of tidal flooding and sea level rise.

<b>Case Number</b>	T16001
<b>Applicant</b>	City of Fort Lauderdale
<b>ULDR Sections</b>	47-19.3 Boat slips, docks, boat davits, hoists and similar mooring structures.
<b>Notification Requirements</b>	10-day legal ad
<b>Action Required</b>	Recommend approval or denial to City Commission
<b>Authorized By</b>	Nancy J. Gassman, Ph.D. Assistant Public Works Director – Sustainability 

**BACKGROUND/DESCRIPTION:**

Under the City's existing ordinance, seawalls may be built to a maximum height (5.5 ft NGVD29<sup>1</sup> which is equivalent to 3.9 feet NAVD88<sup>2</sup>). In 2014, the Marine Advisory Board requested that this maximum be increased to allow for future sea level rise. The ordinance was reviewed and it was determined that seawalls built to the maximum allowable height were adequate to address average high tides plus King tides while still providing additional height above the water for future sea level rise expected to occur within the 30-50 year lifespan of a seawall constructed today. Since the majority of new seawalls were being constructed to the maximum allowable elevation, no change was made to the ordinance.

In late September and early October, 2015, the City experienced unprecedented flooding during the King tide. King tides generally occur in the fall when the alignment of the sun, moon and earth generate higher than average tides. Local weather conditions including onshore winds, rising sea levels, and extreme precipitation can combine to exacerbate flooding risks, especially in low-lying coastal areas. At the October 6, 2015 Conference meeting, the Commission discussed concerns with the flooding and its relationship to seawalls, noting that the extreme tides in September 2015 suggested that the maximum seawall elevation may not be adequate. Staff provided a review of the topic at the November 3, 2015 Conference meeting (Exhibit 1). At that time, the Commission requested that the City revise the seawall ordinance (ULDR Sec. 47-19.3) to set a minimum seawall elevation requirement.

In follow up to the November 2015 Conference Meeting, staff received input during the Marine Advisory Board on February 25, 2016 (Exhibit 2), the Council of Civic Associations meeting on March 8, 2016, and Board of Adjustment meeting March 9, 2016 (Exhibit 3). Feedback generally supported the need to modify the ordinance.

A team including Public Works, Sustainable Development, Parks and Recreation, and the City Attorney's Office reviewed the major issues surrounding seawalls. These included:

- Seawalls and similar structures contribute to coastal resilience when constructed in a manner that is substantially impermeable and meet a minimum height standard that effectively addresses existing tidal flooding and future sea level rise for the expected lifetime of the seawall or structure;
- Seawalls elevation requirements need to be set and the structures constructed in a manner that does not create drainage issues on the adjacent properties;
- Currently, major repairs of the seawall may result in a significant investment without a resulting elevation in height;

<sup>1</sup> National Geodetic Vertical Datum of 1929

<sup>2</sup> North American Vertical Datum of 1988

- The new standard minimum and maximum for seawall construction should be set to prevent a substantial visual discontinuity with their neighbors;
- Seawalls with defects need to be repaired in a timely manner to reduce tidal flooding impacts on adjacent properties and public Rights-of-Way; and
- Properties with low lying seawalls or lacking seawalls can be the source of tidal waters flooding adjacent properties or public Rights-of-Way.

A public discussion draft of the ordinance was reviewed by a variety of stakeholders including:

- Apr. 7 Marine Advisory Board
- Apr. 14 Idlewyld Board of Directors
- Apr. 17 Las Olas Isles Homeowners Association
- Apr. 21 River Oaks Homeowners Association
- Apr. 22 Riviera Isles Homeowners Association
- Apr. 25 Council of Civic Associations Executive Board
- Apr. 27 Marine Industries Association of South Florida

In addition to the stakeholder and public meetings, input was received by email and through a web-based comment board, the NextDoor forum. In response, comments were incorporated as revisions into the Commission Consideration Draft. To see a list of Frequently Asked Questions, please refer to Exhibit 4. The proposed ordinance (Exhibit 5) before the Planning and Zoning Board includes the following key modifications to address those issues:

1. Adds definitions for seawall and for North American Vertical Datum (NAVD88);
2. Sets a minimum seawall elevation at 3.9 feet NAVD88 (current allowable maximum);
3. Requires design of seawall for future height adjustment up to 5.0 feet NAVD88;
4. Sets an allowable maximum height of the seawall based on a property's base flood elevation;
5. Requires seawall reconstruction to the minimum elevation if the substantial repair threshold is triggered;
6. Requires maintaining seawalls in good repair and sets a timeline of 365 days for completion of repairs if cited;
7. Requires owners to prevent tidal waters entering their property from impacting others and sets a timeline of 365 days for remedy if cited;
8. Allows fixed docks to extend 10 inches above the adjacent seawall; and
9. Requires that floating docks be permitted and permanently attached.

Additional input on the Commission Consideration Draft of the ordinance has been received from the following stakeholders including:

- May 2 Rio Vista Civic Association
- May 3 Commission Conference Meeting (Exhibit 6)
- May 4 Harbor Beach Homeowners Association
- May 5 Marine Advisory Board
- May 9 District 1 Districtwide Meeting
- May 10 Council of Civic Associations Regular Meeting

At the May 3, 2016 Conference meeting, a presentation was provided to Commission to review the status of the process and highlight the key changes in the proposed ordinance.

As sea level continues to rise, higher seawalls have the potential to improve community resilience and substantially alleviate short term flooding caused by King tides and reduce impacts from storm surge. A minimum seawall elevation will support the resilient City vision described in Fast Forward Fort Lauderdale 2035.

**STRATEGIC AND VISION PLAN CONNECTIONS:**

This item is a *Commission Annual Action Plan* priority related to the Stormwater Management Plan.

This item is a *Press Play Fort Lauderdale Strategic Plan 2018* initiative, included within the Neighborhood Enhancement Cylinder of Excellence, specifically advancing:

- Goal 2: Be a sustainable and resilient community.
- Objective 2: Reduce flooding and adapt to sea level rise.

This item advances the *Fast Forward Fort Lauderdale 2035 Vision Plan: We Are Ready*.

**PLANNING & ZONING BOARD REVIEW OPTIONS:**

The Planning and Zoning Board, in its capacity as the Local Planning Agency, shall determine whether the proposed change is consistent with the City of Fort Lauderdale's Comprehensive Plan and whether the Planning and Zoning Board recommends approval of the proposed amendments to the City Commission.

**EXHIBITS:**

Exhibit 1 - November 3, 2015 Conference meeting - Commission Agenda Memo 15-1391

Exhibit 2 - February 25, 2016 Marine Advisory Board Synopsis of Significant Motions and Minutes

Exhibit 3 - March 9, 2016 Board of Adjustment Minutes

Exhibit 4 - Frequently Asked Questions

Exhibit 5 - Ordinance

Exhibit 6 - May 3, 2016 Conference meeting - Commission Agenda Memo 16-0515



**CITY OF FORT LAUDERDALE**  
**City Commission Agenda Memo**  
**CONFERENCE MEETING**

**#15-1391**

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**TO:** Honorable Mayor & Members of the  
Fort Lauderdale City Commission

**FROM:** Lee R. Feldman, ICMA-CM, City Manager

**DATE:** November 3, 2015

**TITLE:** The Status of Seawalls, Sea Level Rise and Regulations

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At the October 6, 2015 conference meeting, the Commission discussed concerns related to seawalls and King Tide impacts of late September and early October. At that time, staff was asked to bring back a presentation on the topic at the November 3, 2015 conference meeting.

This presentation explains the impacts of the September/October King Tide that was 12 inches over the predicted tide and a full 18 inches over the average high tide. While tidal valves worked as designed, once the tide was high enough to breach the seawalls, select locations flooded.

Under the City's existing seawall ordinance, new seawalls built to the maximum allowable height of 5.5 feet NGVD are currently high enough to address King Tides. However, seawalls are not required to be installed to that height. Seawater is overtopping some older seawalls and some newly constructed seawalls. Based on data collected by reviewing incoming building permits over the last four months, the majority of repaired or new seawalls are being built to the maximum height allowable.

To be effective in preventing neighborhood-specific flooding in lower lying coastal areas, all the public and private seawalls in a given location would need to be raised at substantial cost to both private property owners and the City. Tidal valves and higher seawalls provide a front line defense against extreme high tides and reduce the risk of tidal flooding where deployed. However, as sea levels continue to rise, these measures will not alleviate short term flooding caused as high tides permeate the porous limestone and temporarily raise the groundwater levels.

Staff's recommendation at this time is to initiate a project to study the recent and projected high tides and sea-level rise data and make recommendations to the Commission of minimum seawall heights for City owned seawalls and privately owned seawalls. The state and local requirements concerning fill of residential property will also be addressed.

### **Strategic Connections**

This item is a *Commission Annual Action Plan* priority related to the Stormwater Management Plan.

This item is a *Press Play Fort Lauderdale Strategic Plan 2018* initiative, included within the Neighborhood Enhancement Cylinder of Excellence, specifically advancing:

- Goal 2: Be a sustainable and resilient community.
- Objective 2: Reduce flooding and adapt to sea level rise.

This item advances the *Fast Forward Fort Lauderdale 2035 Vision Plan: We Are Ready*.

### **Attachment**

Exhibit 1 – The Status of Seawalls, Sea Level Rise and Regulations Presentation

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Prepared by: Annalise Mannix, P.E. Senior Project Manager, Public Works

Department Director: Paul Berg, Acting, Public Works

**SYNOPSIS OF SIGNIFICANT MOTIONS  
MARINE ADVISORY BOARD MEETING  
THURSDAY, FEBRUARY 25, 2016  
CITY HALL – 6:00 PM  
CONFERENCE ROOM – EIGHTH FLOOR  
100 NORTH ANDREWS AVENUE**

The following is a synopsis of the significant motions made at the Marine Advisory Board meeting of February 25, 2016, (minutes attached) that were specifically adopted as recommendations to the City Commission:

**Communications to City Commission**

**Motion** made by Mr. Dean, and duly seconded, for the following stipulations regarding approval of the project proposed by TRR Bahia Mar:

1. That the lease agreement between YPI, MIA SF, and TRR Bahia Mar must be contingent on a master lease agreement with the City;
2. That there is no selling of or docks as “dockominiums,” and that this be delineated in the master lease;
3. There should be a provision for dedicated day dockage included in the master lease;
4. Any dock development or kiosks should be minimized so as to not block the views of the marina or the fishing boats at A Dock;
5. The condo documents that are going to be created for the condominiums reflect the permanence of the Boat Show.

In a roll call vote, the **motion** passed 9-0. (Mr. Batchelor and Mr. Walker recused themselves. A memorandum of voting conflict is attached to these minutes.) (Mr. Cable left the meeting prior to the vote.)

Pages 1 to 2.

**Motion** made by Chair Harrison, seconded by Mr. Dean, that the Marine Advisory Board supports the City of Fort Lauderdale’s efforts to update and revise its seawall regulations in response to sea level rise and the changing regulations for minimum floor elevations for buildings. The Board also urges the City Staff and the City Commission to prepare the revised regulations and to present those regulations to the Marine Advisory Board as soon as possible. Until the new regulations are adopted, the Board supports efforts to provide relief or variances for seawall heights for those projects that are currently in the permitting pipeline. In a voice vote, the **motion** passed unanimously

Page 2



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**Andrew Cuba, Manager of Marine Facilities**

**MINUTES OF THE MARINE ADVISORY BOARD  
100 NORTH ANDREWS AVENUE  
COMMISSION CONFERENCE ROOM – EIGHTH FLOOR  
FORT LAUDERDALE, FLORIDA  
THURSDAY, FEBRUARY 25, 2016 – 6:00 P.M.**

		<b>Cumulative Attendance May 2015 - April 2016</b>	
<b><u>Board Members</u></b>		<b><u>Present</u></b>	<b><u>Absent</u></b>
	Attendance		
James Harrison, Chair	P	7	3
F. St. George Guardabassi, Vice Chair	P	9	1
Jim Welch	P	9	1
Robert Dean	P	8	3
John Holmes	P	7	3
Joe Cain	A	7	3
George Cable	P	4	1
Jack Newton	P	6	4
Jimi Batchelor	P	8	2
Cliff Berry II	P	8	1
Grant Henderson	P	8	1
Bill Walker	P	7	0
Zane Brisson	A	7	3
Richard Graves	A	2	1
Chuck Black	P	2	0

As of this date, there are 15 appointed members to the Board, which means 8 would constitute a quorum.

**Staff**

Andrew Cuba, Manager of Marine Facilities  
Sgt. Todd Mills, Marine Police Staff  
Chief Tim Heiser, Fort Lauderdale Fire Department  
Jamie Opperee, Recording Secretary, Prototype, Inc.

**Communications to City Commission**

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#### **I. Call to Order / Roll Call**

Chair Harrison called the meeting to order at 6:02 p.m. and roll was called.

#### **II. Approval of Minutes – February 8, 2016**

Vice Chair Guardabassi noted the following corrections:

- P.3, paragraph 9: delete "two-story" from the description of the garage;
- P.4, paragraph 5: there will be two waterfront restaurants.

**Motion** made, and duly seconded, to approve [as amended]. In a voice vote, the **motion** passed unanimously.

#### **III. Statement of Quorum**

It was noted that a quorum was present at the meeting.

#### **IV. Waterway Crime & Boating Safety Report**

Sergeant Todd Mills of the Marine Unit reported that during the month of February, there have been two boating accidents, four vessel citations, 41 safety checks, and 39 warnings. Incidents included an abandoned vessel, two sinking vessels, a vehicle floating from a boat ramp into a canal, illegal dumping, two large vessels that broke free of their docks, and a wind incident involving two vessels, one of which sank.

Chair Harrison requested an update on legislation regarding anchoring on the Middle River, noting that a bill that would stop this practice has advanced to the State Senate.



Sgt. Mills advised that there are fewer boats anchored on the Middle River at present, although their presence is beginning to increase. He added that there is significant opposition to the bill.

## **V. Presentation – Bahia Mar Yachting Center Redevelopment**

Chair Harrison introduced Robert Lochrie, representing TRR Bahia Mar. Mr. Lochrie briefly reviewed major aspects of the presentation shown to the Board at their February 4, 2016 meeting. He clarified that the plans include three restaurants, two of which are planned for the waterfront. The new Dockmaster's office will be located on the second floor of the building on the southwest corner of the site. New Captain's Quarters and facilities for crew will also be located in this building.

Mr. Lochrie showed slides of the existing site as well as the Site Plan, which includes residential towers, restaurants, new Captain's Quarters and crew facilities, ground floor marine industry retail and office space, a large parking garage, and a fishing village. After the project was shown at a recent City Commission meeting, it was decided that the Site Plan design will undergo change. He advised that the Bahia Mar project will be presented at a special City Commission meeting in April so it can be discussed at length.

Mr. Dean requested more information regarding the status of the Fort Lauderdale International Boat Show in relation to the plans for Bahia Mar. Mr. Lochrie explained that the first step of the project is the site's design; the second step is acquiring a lease with the City, and the final step will be an agreement with the Boat Show. The City Commission has made it clear that any rezoning or lease of the property is contingent upon this agreement. In turn, the Boat Show will make sure the facilities will serve its purposes and is seeking a reduction in rent.

Mr. Dean explained that his primary concern was with the continued success of the Boat Show, as well as with the economic development associated with the marine industry in Broward County. Robert Christoff Jr., partner of TRR Bahia Mar, replied that he is working with representatives of the Marine Industries Association of South Florida (MIASF) on aspects of the site related to the Boat Show. He asserted that the intent is to provide a long-term home for the Boat Show.

Mr. Dean pointed out that the proposed lease is approximately 30 years, and expressed concern that the Boat Show would be "held hostage" to the resulting negotiations whenever a new lease or renewal is proposed. Mr. Christoff replied that a lease term longer than 30 years has not been discussed. Phil Purcell, Executive Director of MIASF, advised that the lease under discussion is for 30 years with 10-year renewal options.

Mr. Welch asked if there are proposed changes for the marina portion of the project. Mr. Lochrie replied that both marina and upland facilities will be upgraded as a result of the project. He added that zoning will not allow large vessel repairs to be made on-site.

Mr. Welch requested additional information on access to and from the site for large service vehicles. Mr. Lochrie advised that there are multiple staging areas around the site for maintenance and other work, as well as parking for service vehicles. Roadways throughout the site will consist of two lanes with parallel parking on either side. The walkway planned for the perimeter of the site is 18 ft. wide. Gates will be used to keep pedestrians away from the piers.

Chair Harrison stated that there are public concerns that the project's marina phase may not be accomplished. Mr. Lochrie addressed the phasing of the project, noting that the developer will not receive a certificate of occupancy (CO) on the first building until several public amenities have been constructed, including the improvements the City wishes to see made to the marina. The first floor of the parking garage is intended for use by the Boat Show.

Vice Chair Guardabassi asked if kiosks on the property would block the view of the fishing fleet. Mr. Lochrie replied that these are one-story structures with large gaps between them, which should not obstruct views. Mr. Batchelor expressed concern with the displacement of business boats during the project's construction. Mr. Christoff stated that there will be a designated area in which these boats may continue to operate.

Mr. Lochrie also further clarified the phasing of the project in relation to the leases, explaining that parcels of the property will be financed subject to their specific leases as well as a Master Declaration. Sub-leases will also be issued for properties within the project.

Mr. Lochrie continued that the marina will accommodate small boats at transient dockage, as required by the current draft of the lease. The marina is also connected to the project's Innovative Design (ID) zoning, which locks changes to the property in place, including the marina. The marina cannot be separated from the rest of the site, although it has its own lease. Chair Harrison recommended that the lease include a clause ensuring this cannot happen.

Mr. Dean asked if the footprint of the marina could be changed in the future to accommodate larger yachts and/or med mooring. Mr. Christoff replied that this would be dependent upon the marketplace and is not currently planned for the facility. He also noted that transient dockage would be limited to approximately four piers. There will be a fee for transient dockage. The marina's fuel dock will remain in its current location.

Chair Harrison recalled that there had been public discussion of upgrading the quality of the hotel at Bahia Mar. It was clarified that the contract with Doubletree, the current hotel client, will continue, although, the hotel itself will be improved. Jim Tate, partner of TRR Bahia Mar, advised that the star rating refers to the amenities offered by the facility

rather than its quality or level of service. Plans are to promote and operate the hotel at a four-star level although it will retain its three-star rating.

Mr. Newton observed that the rental fee for the Boat Show is currently \$5.5 million for 30 days' use of the facility, which is considerably higher than rates charged for similar events in Miami. He asked if the developer has reached an agreement with the Boat Show on its rates. Mr. Lochrie replied that the project's partners must first determine what they can develop on the site before they will know the type of rent reduction that may be offered to the Boat Show. Rent negotiations began approximately four to five months ago.

There being no other questions from the Board at this time, Chair McTigue opened the public hearing.

Matt Tolchak, owner of Charter One Yachts, expressed concern for the ability of vessels such as his charter boats to have access to dock space at the marina for various types events. Mr. Lochrie replied that the marina will continue to provide space for the *Jungle Queen*, a longtime tenant of the facility. He advised that the developers would be willing to discuss options further with various services, such as additional charter vessels and the Water Taxi.

Joe Maus, private citizen, emphasized that the proposed project is still in negotiation. He stated that the City should have the greatest leverage in this negotiation, as it is the owner of the property. He pointed out that when the development was proposed to the City, much was made of the connection to the Boat Show; however, the large buildings proposed by the developer are unrelated to the Boat Show, and the garage is not considered a necessity for the event.

Mr. Maus asserted that there is no reason the developer should not already have a financial agreement with the Boat Show in place, and that the residential buildings on the site are unrelated to the Boat Show and should have no effect on this contract. He felt the developer was using the Boat Show as a means to leverage an agreement for the development of the entire property.

He continued that while the lease is structured with a single master lease and three sub-leases, the City will become the landlord to the two condominium buildings and their associations. He also pointed out that the leases do not prohibit assignment of docks to other entities.

Mr. Maus noted that the proposed 10-year contract extensions for the Boat Show are not currently part of the contract. He concluded that the main focus of the project was the condominiums, and urged the Board to reject the proposed plan. He advised that the City could buy the developer out of part of the lease, allowing the developer to keep the property on which the condominiums would be built.

Chair Harrison requested more information on the alternative plan and the income it would generate. Mr. Maus stated that if the City purchased a portion of the lease from the developer, it could use the revenue stream generated by the Boat Show to service debt over a long-term period. Revenue generated by the hotel could also be used for this purpose, and the marina could be leased to an operator for roughly \$2 million per year. The restaurants could also be leased at a profit.

Mr. Maus recalled that when the proposed plan was presented to the City Commission, petitions signed by 800 residents were submitted in opposition to the project. He concluded that the City must ask for a better plan.

Mr. Batchelor pointed out that the developer has already purchased a 47-year lease on the Bahia Mar property. Mr. Maus stated that he was in favor of the City purchasing the lease from the developer and negotiating a better deal for the use of the property. Mr. Batchelor observed that the developer will make a commitment to investing in the property and continuing to operate the marina. He characterized the proposal to seek a better plan as overly optimistic. Mr. Maus reiterated that the City is capable of negotiating a much better deal on the Bahia Mar property than what is proposed.

Mr. Lochrie stated that the revenue stream under the proposed lease would differ from the current revenue stream, as the proposed lease would generate significantly more revenue from the same marina. He added that the developer was in favor of a longer lease agreement with the Boat Show, as this would result in a larger revenue stream. Mr. Maus explained that the core of his argument was for the City to assume more control over the property instead of leasing it over a long term.

Mr. Lochrie advised that while there are several options for placing residential properties on the site, many of these proposals would limit the space available to the Boat Show. The concept for the Boat Show is not only for the proposed garage, but for a large non-residential space on the Intracoastal Waterway. Rather than spread residential density and hotel use throughout the site, the proposed plan would concentrate this density to the east, providing space for the Boat Show.

Brett Wood, private citizen, requested clarification of public and private space on the site, including the condominiums and proposed parking garage. It was explained that while the Boat Show may not need the garage to be constructed, it does need space. Phil Purcell of MIA SF stated that the Boat Show can use the garage space if that building is necessary to the project; if it is not necessary, the Boat Show can proceed without it.

Mr. Wood also expressed concern with the project's impact on traffic, including ingress/egress points for the public. He advised that he would prefer no residential development on the property, instead maintaining Bahia Mar as a resort.

Bill Cole, private citizen, stated that he was concerned with the shadows the project's tall buildings could cast over boats in the marina. He added that his greatest concern was with traffic, which causes A1A to operate at a grade F level of service on the weekends. Traffic would be concentrated in the subject area, which is served primarily by A1A. Mr. Cole noted that other projects are being built in the area and will also add to traffic issues. He concluded that the site in question is public property, and there should be greater public involvement, such as a referendum, in the decision process.

Kristin Maus, private citizen, advised that the Board should consider hurricane-related procedures associated with the site, including evacuation. She asserted that the only roadways leaving the area have been given an F rating, and asked that the Board not recommend the project without considering this aspect further.

Phil Purcell, Executive Director of the Marine Industries Association of South Florida (MIASF), and Andrew Doole, Chief Operations Officer for Fort Lauderdale International Boat Show promoter Show Management YPI, stated that they have met with the developers to discuss rent and other issues. Mr. Purcell emphasized the importance of establishing a permanent home for the Boat Show at Bahia Mar. He concluded that MIASF is contractually bound to support the Bahia Mar project, and must work with the City to come up with reasonable solutions that benefit the community as a whole.

Mr. Newton asked how the current rent compared to the rates offered at locations in Miami. Mr. Purcell replied that the Boat Show hopes to pay between \$4 million and \$4.5 million, and noted that Miami pays \$1.6 million for an event in Virginia Key. He asserted, however, that the current rate, with a reduction, would be very reasonable. It was reiterated, however, that the negotiating parties have not yet arrived at a deal.

Mr. Dean reiterated his concern that the Boat Show is being used as a lever in the negotiations for the project. Chair Harrison pointed out that if the project does not move forward, the Boat Show will still remain at the property. He acknowledged, however, that there is an escalating clause in the current agreement that would raise the rent to \$6.4 million by the year 2020. Mr. Christoff stated that the long-term goal is to keep the Boat Show at Bahia Mar.

Vice Chair Guardabassi commented that in addition to the four leases proposed for the property, a fifth lease could be arranged for the site of the Boat Show. He noted that the annual income stream from this event is roughly \$4.5 million to \$5 million.

Mr. Tate advised that when the leasehold interest was acquired from a previous owner, the income stream was purchased as well, and will be used to finance other aspects of the property. He stated that negotiations began in 2014, including discussions of the Boat Show's longevity, its rent, and how it could be improved. He asserted, however, that in order to create a facility for the Boat Show and reduce its rent at the same time, the revenue from the proposed condominiums and other development is necessary.

Mr. Tate declared that there was no ill intent in not coming before the Board until now, and emphasized the need to develop the entire site in order to finance debt service and meet the needs of the community by constructing public amenities. He concluded that the process begins with approval of the Site Plan: until the developers know what the City will approve, they cannot finalize the lease with the City, and until the lease from the City is finalized, negotiations with the Boat Show also cannot be finalized.

Mr. Tate also assured the Board that the development team is not planning to flip the property. He explained that separate leases are necessary in order for each of the condominium properties to acquire financing on their own. The hotel and marina each have separate leases as well due to their need for financing.

Mr. Newton commented that a \$1 million reduction in rent for the Boat Show seemed negligible when compared to the sale of several hundred condominium units at \$1 million each. Mr. Tate explained that most developers selling condominiums on the beach own this fee, while the Bahia Mar development team is attempting to sell condominiums on a land lease. He added that it will also be necessary to demobilize the construction site before the Boat Show each year, then remobilize and begin construction again, which means approximately three months of construction will be lost every year.

Mr. Black asked if the project would affect the staging of the Boat Show. Mr. Doole advised that it would have little effect on the staging. Mr. Purcell affirmed that the Boat Show could continue to work around everything that has been proposed for the project, stating that the second floor of the proposed garage is not necessary to the event. He emphasized the importance of the long-term agreement.

Chair Harrison asked if it would be possible to enter into an agreement with the leaseholder prior to City Commission approval of the project. Mr. Purcell confirmed this, stating that he felt an agreement could be reached within the next week.

Mr. Tate advised that it is necessary for the developers to understand what the Boat Show needs and what they can afford to provide for it. He again emphasized the need to collect revenue elsewhere in order to lower the rent for the Boat Show. He added that the event's need for lower rent changed the developers' financial calculations.

John Weaver, President of the Central Beach Alliance (CBA), agreed that residents' concerns regarding traffic and other effects on the beach are valid. He noted that the project was approved at a recent CBA meeting by a vote of 184-1. He stated that it is important for the Board to know the CBA is working with the development team on height and traffic issues, and acknowledged that some trade-offs are necessary in order to keep aspects that they like, such as the Boat Show and the proposed parking garage.

Fred Wood, private citizen, suggested it would be possible to relocate the Boat Show to the Convention Center. Mr. Purcell replied that the Boat Show promoters hope to have a predictable future for its exhibitors.

Norbert McLaughlin, private citizen, asked if the 100-year lease of the condominium parcels included the docks, or if the developers would be able to sell the docks. Mr. Lochrie replied that this could be done but was not planned. This issue could also be addressed as part of the lease.

As there were no other individuals wishing to speak on this Item, the Chair closed the public hearing and brought the discussion back to the Board.

The Board discussed the Item further, with Mr. Dean pointing out that the redevelopment of Bahia Mar is not optional; however, the key issue for the Board is the preservation of the Boat Show. He added that another concern is the evolution of marinas into larger facilities to accommodate very large boats, which provide more revenue; however, it is also important to maintain sufficient dockage for small boats.

Mr. Batchelor revisited the issue of kiosks in front of the fishing village, which could block the visibility of boats there. Chair Harrison agreed, continuing that the deal should include a lease for the Boat Show, prohibition of the sale of docks, and address of the kiosks.

Mr. Holmes asked if restaurants within the project would be allowed free dockage for patrons arriving in small boats. Chair Harrison advised that the developers have already stated there would be no free dockage, and the project is not located on public property. It was suggested that restaurants could provide validations for guests arriving by boat.

Mr. Lochrie advised that while the kiosks are not considered a major revenue stream, they are an important component of the project. He noted that it may be possible to redesign the structures to preserve greater visibility. There are presently seven kiosks planned for the area.

Mr. Newton asked for clarification of the capital improvements requested by the Boat Show. Mr. Lochrie replied that the status of these improvements is currently undetermined, as the Boat Show team has stated they do not want to make these changes. The Boat Show has asked for upgraded facilities, although Mr. Lochrie did not have details on these requests or their estimated costs.

It was decided that the Board would send a communication to the City Commission regarding the presentation.

**Motion** made by Mr. Dean, and duly seconded:

6. That the lease agreement between YPI, MIAF, and TRR Bahia Mar must be contingent on a master lease agreement with the City;

7. That there is no selling of “dockominiums,” or docks as dockominiums, and that should be delineated in the master lease;
8. There should be a provision for dedicated day dockage included in the master lease;
9. Any dock development or kiosks should [be minimized] or not block the views of the marina or the fishing boats at A Dock;
10. The condo [documents] that are going to be created for the condominiums reflect the permanence of the Boat Show.

In a roll call vote, the **motion** passed 9-0. (Mr. Batchelor and Mr. Walker recused themselves. A memorandum of voting conflict is attached to these minutes.) (Mr. Cable left the meeting prior to the vote.)

Chair Harrison introduced a walk-on Item at this time.

Steve Tilbrook, representing a client located at 321 North Birch Road, explained that the Item is the result of a “Code glitch” related to seawall heights, City seawall regulations, and the impact of sea level rise. He noted that information on the Item was emailed to Board members prior to the meeting.

Mr. Tilbrook advised that two years ago, Tyler Chappell of the Chappell Group made a presentation to the Board recommending that Fort Lauderdale’s seawall regulations be revised. These regulations are unique because the 5.5 NADD maximum height for seawalls and docks is low for most coastal cities. Many other cities have a minimum seawall height of 5.5.

Mr. Tilbrook recalled that in March 2014, the Board sent a communication to the City Commission recommending that these regulations be adjusted to accommodate sea level rise and plan for the future. Sea level is anticipated to rise up to 3 ft. over the next 80 years. The City Commission has directed Staff to review these regulations and consider changes.

Mr. Tilbrook advised that his client is developing a project on the barrier island which was approved by the City Commission in 2013. In 2014, Broward County revised minimum floor elevations throughout the County, which are tied to the Federal Emergency Management Administration (FEMA) flood elevation. This resulted in an 18 in. increase in minimum floor elevations for new buildings in Fort Lauderdale; however, because the City’s seawall regulations have not changed, the result is a conflict between the Fort Lauderdale Code requirement of 5.5 NADD maximum and the County’s requirement of 7.6 for floor elevation.

Mr. Tilbrook explained that in his client’s case, there is a slope in the rear of the building, which conflicts with the original Site Plan. In order to address this issue, he has met with the City’s Zoning Administrator, who recommended that the client seek a variance, as it is not known how long it may take the City to revise its seawall height

Exhibit 2

Page 11 of 13



requirement. The variance was applied for in November 2015 and was continued to the February 2016 hearing, where members of the Board of Adjustment (BOA) recommended that the Item be presented to the MAB.

Mr. Tilbrook requested that the Board consider sending a communication to the City Commission, asking that they proceed with revisions in the City's regulations due to the conflicts between City and County requirement. He also requested that the Board communicate to the City Commission regarding any other projects caught in this regulatory discrepancy and asking them to provide relief for these properties through variances.

Mr. Tilbrook advised that there have been extensive meetings between his client and neighbors, and both neighbors have expressed no opposition to the change in height. The project will have privacy walls on both sides of the property, with transitions at the end of the seawall down to neighboring properties. He recommended that the City consider how these transitions will take place when reconsidering regulations.

The Board discussed possible solutions to this issue, with Mr. Chappell clarifying that his client would install a new seawall, while another option could be adding a cap to raise the elevation. He agreed that 5.5 should be the minimum height rather than the maximum. Mr. Tilbrook suggested that the Board ask Staff to provide them with an update on the revision process when a draft update is available. Mr. Cuba advised that Staff plans to make a presentation to the MAB.

It was clarified that the MAB may not grant a variance on seawall height, which is why Mr. Tilbrook's client was directed to the BOA. He advised that he would present the Board's communication to the City Commission to the BOA.

**Motion** made by Chair Harrison, seconded by Mr. Dean, that the Marine Advisory Board supports the City of Fort Lauderdale's efforts to update and revise its seawall regulations in response to sea level rise and the changing regulations for minimum floor elevations for buildings. The Board also urges the City Staff and the City Commission to prepare the revised regulations and to present those regulations to the Marine Advisory Board as soon as possible. Until the new regulations are adopted, the Board supports efforts to provide relief or variances for seawall heights for those projects that are currently in the permitting pipeline. In a voice vote, the **motion** passed unanimously.

## **VI. Reports**

None.

## **VII. Old / New Business**

It was clarified that the next Board meeting will be held on the first Thursday in April.

Exhibit 2

Page 12 of 13

## **VIII. Adjournment**

There being no further business to come before the Board at this time, the meeting was adjourned at 9:06 p.m.

Any written public comments made 48 hours prior to the meeting regarding items discussed during the proceedings have been attached hereto.

[Minutes prepared by K. McGuire, Prototype, Inc.]

**BOARD OF ADJUSTMENT MEETING  
CITY OF FORT LAUDERDALE  
WEDNESDAY, MARCH 9, 2016 – 6:30 P.M.  
CITY HALL CITY COMMISSION CHAMBERS – 1ST FLOOR  
100 NORTH ANDREWS AVENUE  
FORT LAUDERDALE, FLORIDA**

<b>Board Members</b>	<b>Attendance</b>	<b>Cumulative Attendance 6/2015 through 5/2016</b>	
		<b>Present</b>	<b>Absent</b>
Karl Shallenberger, Chair	P	8	1
Roger Bond, Vice Chair	P	8	1
Eugenia Ellis	P	8	1
Andrew Gordon	P	9	0
Douglas Reynolds	P	5	1
Fred Stresau	A	7	2
S. Carey Villeneuve	A	7	2
<hr/>			
<b>Alternates</b>			
Birch Willey	A	6	3
Stacey Giuliani	P	2	1
Norman Ostrau	P	3	0

**Staff**

Anthony Fajardo, Zoning Administrator  
Robert Dunckel, Assistant City Attorney  
Mohammed Malik, Chief Zoning Examiner  
Lynda Crase, Board Liaison  
Brigitte Chiappetta, Recording Secretary, Prototype Inc.

**Communication to the City Commission**

None

**Purpose: Section 47-33.1.**

The Board of Adjustment shall receive and hear appeals in cases involving the ULDR, to hear applications for temporary nonconforming use permits, special exceptions and variances to the terms of the ULDR, and grant relief where authorized under the ULDR. The Board of Adjustment shall also hear, determine and decide appeals from reviewable interpretations, applications or determinations made by an administrative official in the enforcement of the ULDR, as provided herein.

**Index**

Exhibit 3  
Page 1 of 7

	<u>Case Number</u>	<u>Owner/Agent</u>	<u>District</u>	<u>Page</u>
1.	<b>B16002</b>	321 BIRCH LLC/Stephen Tilbrook	<b>2</b>	<b><u>2</u></b>
2.	<b>B16007</b>	300 SE 17, LLC/ Mathew Scott	<b>4</b>	<b><u>6</u></b>
3.	<b>B16008</b>	Q Fort Lauderdale, LLC/ Nick Lingle, Spring Engineering, Inc.	<b>2</b>	<b><u>8</u></b>
4.	<b>B16009</b>	Kevin & Tracy Koffman/Nectaria Chakas Other Items and Board Discussion For the Good of the City Communication to the City Commission	<b>1</b>	<b><u>9</u></b> <b><u>9</u></b> <b><u>9</u></b> <b><u>9</u></b>

Board members disclosed communications they had and site visits made regarding items on the agenda.

All individuals wishing to speak on the matters listed on tonight's agenda were sworn in.

### Call to Order

Chair Shallenberger called the meeting to order at 6:30 p.m. He introduced Board members and determined a quorum was present.

### Approval of Minutes – February 2016

**Motion** made by Mr. Bond, seconded by Ms. Ellis, to approve the minutes of the Board's February 2016 meeting. The Board approved the minutes.

1. Index  
**Case Number:** B16002  
**Owner:** 321 BIRCH LLC  
**Agent:** Stephen Tilbrook, Gray Robinson, P.A.  
**Legal:** LOTS 1,2,3 AND 4, BLOCK 9 LAUDER DEL MAR,  
 ACCORDING TO THE PLAT THEREOF, RECORDED IN  
 PLAT BOOK 7, PAGE 30, OF THE PUBLIC RECORDS OF  
 BROWARD COUNTY, FLORIDA. TOGETHER WITH:  
 A Parcel of Dry Land in New River Sound adjacent to Lots,  
 1, 2, 3 and 4, Block 9, LAUDER DEL MAR, according to the  
 Plat thereof, as recorded in Plat Book 7, Page 30, of the  
 Public Records of Broward County, Florida.  
**Zoning:** IOA (Intracoastal Overlook Area)  
**Address:** 321 N. Birch Road  
**Commission District:** 2  
**Appealing:** **Section 47-19.3.f. (Boat slips, docks, boat davits, hoists  
 and similar mooring structures.)** Requesting a variance to permit a seawall at a  
 height of seven (7) feet where the code states the top surface of a seawall shall not  
 Exhibit 3  
 Page 2 of 7



exceed five and one-half (5½) feet above NGVD 29, except when the adjacent property is height than five and one-half (5½) feet above NGVD 29 for an overall increase in seawall cap height of eighteen (18) inches).

(DEFERRED FROM FEBRUARY 10, 2016)

Stephen Tilbrook, representative of the applicant, recalled there had been questions at the last meeting regarding the City's legislative process to amend the code regarding minimum floor elevations to be consistent with Broward County requirements. Mr. Tilbrook would present emails from the City Manager indicating that the Board of Adjustment should base its decisions on evidence presented and existing code, not code that may exist in the future.

Dr. Nancy Gassman, Assistant Public Works Director in charge of Sustainability for the City, provided a Power Point presentation, a copy of which is attached to these minutes for the public record.

Chair Shallenberger asked about what other cities were doing and Dr. Gassman reported Miami Beach was considering a 5.7' NAVD 88 minimum for public sea walls and 4' NAVD 88 minimum for private sea walls. Mr. Gordon pointed out that the code now referred to a maximum and Dr. Gassman said the City intended to set both minimums and maximums. They wanted to make sure they considered a 50-year timeframe for an additional two feet of sea level rise.

Chair Shallenberger asked if the City would make recommendations for both new sea walls and existing ones and Dr. Gassman said staff conversations had been that all new construction should meet the minimum and whether significant repairs would be required to meet the new standard. They were also considering whether there should be a timeframe for bringing all sea walls to a certain height. Dr. Gassman stated setting a minimum standard for sea walls would allow them to provide a base level of resilience for entire neighborhoods to be protected from high tides and sea level rise. Lower sea walls would allow flooding to the adjacent and nearby properties. The only impact a higher seawall would have on adjacent properties with lower sea walls would be aesthetic.

Mr. Tilbrook displayed photos of the site and the site plan and said they were requesting an 18" increase in the maximum sea wall height. He pointed out that the City had no minimum height but its maximum of 5.5 NGVD was the same as the minimum in many cities. Mr. Tilbrook said the City's Marine Advisory Board (MAB) had opined that there was a problem with the City's code and the City Commission was in the process of amending the code. He said there was an issue with this property because the project had been approved by the City before Broward County changed the minimum floor elevations. Due to an 18" floor elevation increase per Broward County, an 18" increase to the sea wall was necessary to preserve a safe slope in the rear yard and to be consistent with the 2013 site plan approval.

Exhibit 3  
Page 3 of 7



Mr. Tilbrook reported they had been in the building permit process for nine months and they were concerned the site plan approval would expire if they waited for the code regarding sea walls to be amended.

Mr. Tilbrook said his client was experiencing a "regulatory conflict" because the City had approved the site plan with a building elevation of 6.0 feet based on a maximum sea wall height of 5.5 NGVD. In 2014, Broward County and FEMA had changed the minimum floor elevations for this section of the City to 7.6 feet but Fort Lauderdale code had not been amended to be consistent with the 18" increase in minimum floors; sea walls still had the same maximum height, resulting in a greater slope between the building and the sea wall. Without a variance, the site plan could not be built in its current condition; an amendment would be needed to include ramps and railings to account for the drop from the floor elevation to the sea wall. A site plan amendment could trigger a new City Commission approval and jeopardize the entitlements Mr. Tilbrook's clients relied upon when they purchased the property.

Mr. Tilbrook said they were requesting the variance due to the regulatory conflict. He said it was a special and unique condition on this property; it was not self-imposed; it was not due to ignorance of or disregard of the code and it was the minimum needed to achieve reasonable use of the property and to be able to implement the approved site plan and the entitlements in place.

Mr. Tilbrook said both factual and procedural issues had been raised at the last hearing. Mr. Villeneuve had asked for a special analysis of the facts and why this was different from other sites. There had also been procedural issues raised related to the City's legislative process, the recommendations of other boards and City staff.

Mr. Tilbrook said there were three legal issues brought up regarding quasi-judicial procedures. The first was that the variance request hearing was quasi-judicial hearing. The second was that a variance was both site and fact specific; it did not set a legal precedent. The third was that a variance was not a legislative act. Mr. Tilbrook and Mr. Dunckel agreed on these issues. They had also agreed that sea level rise was a matter of common concern. To the extent that sea level rise was the main reason for this variance request, one could argue that it would set a precedent. Mr. Tilbrook stated that while sea level rise was a factor of this request, it was not the reason. The request was due to the code conflict.

Mr. Tilbrook said the change of code was one issue but the safety issue was another. There was a 24" drop between the 7'6" minimum floor elevation of the building and the 5'6" sea wall height. This project had a 20-foot rear-yard setback, creating an unsafe slope from the building to the water. This case was based upon the code conflict and correcting this unsafe condition. The City considered a safe slope to be approximately 4.9% and this was what they were seeking with the 18" variance.



Mr. Tilbrook recalled the Board had asked if the MAB should provide input regarding the application. He had provided the MAB a presentation on 2/25/16 regarding the City's progress on amending the code and also on the facts of this case. Their recommendation was that they supported the City's efforts to update and revise sea wall regulations in response to sea level rise and the changing regulations for minimum floor elevations for buildings. The board also urged City staff and the City Commission to present the revised regulations to the MAB as soon as possible and that until the new regulations were adopted, the board supported efforts to provide relief and variances for sea wall heights for those projects currently in the permitting pipeline. The MAB supported this unanimously.

Mr. Tilbrook referred to an email from the City Manager to Mr. Stresau suggesting the BOA base its decision on the current code and the projected sea level rise, not on a hypothetical ordinance in an uncertain timeframe.

Mr. Reynolds asked if Mr. Dunckel agreed with Mr. Tilbrook's legal conclusions expressed in his memo and Mr. Dunckel said he had spoken with Mr. Tilbrook and expressed a concern that this was an attempt to jumpstart the legislative process to establish the new sea wall height. Part of this was because it seemed they were emphasizing sea level rise. A variance relied on a peculiar feature of the property at issue. Since then, Mr. Tilbrook's presentation had been tailored to focus on the grade differential between the floor elevation and sea wall height, not sea level rise. Mr. Dunckel said he agreed with this new emphasis which took it out of the legislative realm.

Mr. Reynolds asked if Mr. Tilbrook had cited cases indicating that a conflict between two governmental entities' regulations constituted a unique circumstance. Mr. Tilbrook said he had not researched that particular question but he had handled cases where a code change had been a factor for the BOA to consider.

Chair Shallenberger opened the public hearing.

Mike Kelly, president of the Birch Point Condominium Association, the adjacent property, said this site would be two feet higher than their site but he was satisfied that the drainage plan was sufficient to protect their property. He was concerned about keeping water off of Birch Road, and showed photos of the nearby roads flooded after the king tides in August. He said the City had never maintained the nearby sea wall and water had breached it during the king tide. Chair Shallenberger asked Dr. Gassman to bring this up with the appropriate City staff.

There being no other members of the public wishing to address the Board on this item, Chair Shallenberger closed the public hearing and brought the discussion back to the Board.

Exhibit 3

Page 5 of 7

**Motion** made by Ms. Ellis, seconded by Mr. Gordon, to approve. In a roll call vote, motion passed 7-0.

2.

Index

**Case Number:** B16007  
**Owner:** 300 SE 17, LLC  
**Agent:** Mathew Scott, Tripp Scott, P.A.  
**Legal:** CROISSANT PARK 4-28 B LOT 4,5,6,7 N 40 BLK 43  
**Zoning:** RO (Residential Office)  
**Address:** 300 SE 17<sup>th</sup> Street  
**Commission District:** 4

**Appealing:** **Section 47-22.4.C.5.** Requesting a variance to construct a one-sided illuminated ground sign four (4) feet in width and six (6) feet two (2) inches in length at an overall height of five (5) feet above the ground where the code states in the RO district, each building site occupied by a permitted use may have one (1) ground sign not exceeding three (3) feet in width or five (5) feet in length, the top of which shall not be over five (5) feet above the ground resulting in an increase in width of one (1) foot and an increase in length of one (1) foot two (2) inches.

Mr. Reynolds declared a conflict and left the dais.

Mr. Dunkel reminded Matthew Scott, representative for the applicant, that a vote of 5 of the 6 remaining members was required for a motion to pass and Mr. Scott indicated they would continue.

Mr. Scott displayed older and recent photos of the property, including an aerial. He said his clients had made drastic improvements to the building. Mr. Scott pointed out where the sign would be located and described the additional size they were requesting. He noted that a pedestrian overpass nearby, coupled with a bus stop and other street signage, obstructed views of Mr. Scott's client's building, making it difficult for clients to find.

Mr. Scott discussed the variance criteria:

- a. That special conditions and circumstances affect the property at issue which prevent the reasonable use of such property

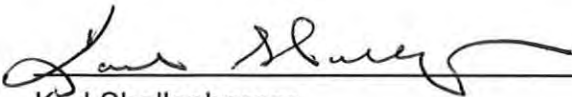
Mr. Scott said the visual obstructions were depriving his client of reasonable use of the property.

- b. That the circumstances which cause the special conditions are peculiar to the property at issue, or to such a small number of properties that they clearly constitute marked exceptions to other properties in the same zoning district




There being no further business to come before the Board, the meeting was adjourned at 8:16 pm.

Chair:

  
Karl Shallenberger

Attest:

  
ProtoType Inc.

Minutes prepared by: J. Opperee, Prototype Inc.

Any written public comments made 48 hours prior to the meeting regarding items discussed during the proceedings have been attached hereto.

**City of Fort Lauderdale  
Frequently Asked Questions  
Proposed Sea Wall Ordinance**

The City of Fort Lauderdale is considering amending the Unified Land Development Regulations of the City of Fort Lauderdale Section 47-19.3 Boat Slips, Docks, Boat Davits, Hoists, and Similar Mooring Structures. This amendment is intended to improve coastal resilience and mitigate the effects of tidal flooding and sea level rise.

**1. What are the major changes in the proposed seawall ordinance?**

The existing ordinance sets a maximum elevation for all new seawalls at five and one-half (5½) feet above NGVD29, except when the adjacent property is higher than five and one-half (5½) feet above the NGVD29 (3.90 feet NAVD88).

The Commission is considering the following changes in the proposed ordinance:

- Adds definitions for seawall and for North American Vertical Datum (NAVD88);
- Sets a minimum seawall elevation at 3.9 feet NAVD88;
- Requires design of seawall for future height adjustment up to 5.0 feet NAVD88;
- Sets an allowable maximum height of the seawall based on a property's base flood elevation;
- Requires seawall reconstruction to the minimum elevation if the substantial repair threshold is triggered;
- Requires maintaining seawalls in good repair and sets a timeline of 365 days for completion of repairs if cited;
- Requires owners to prevent tidal waters entering their property from impacting others and sets a timeline of 365 days for remedy if cited;
- Allows fixed docks to extend 10 inches above the adjacent seawall; and
- Addresses floating docks.

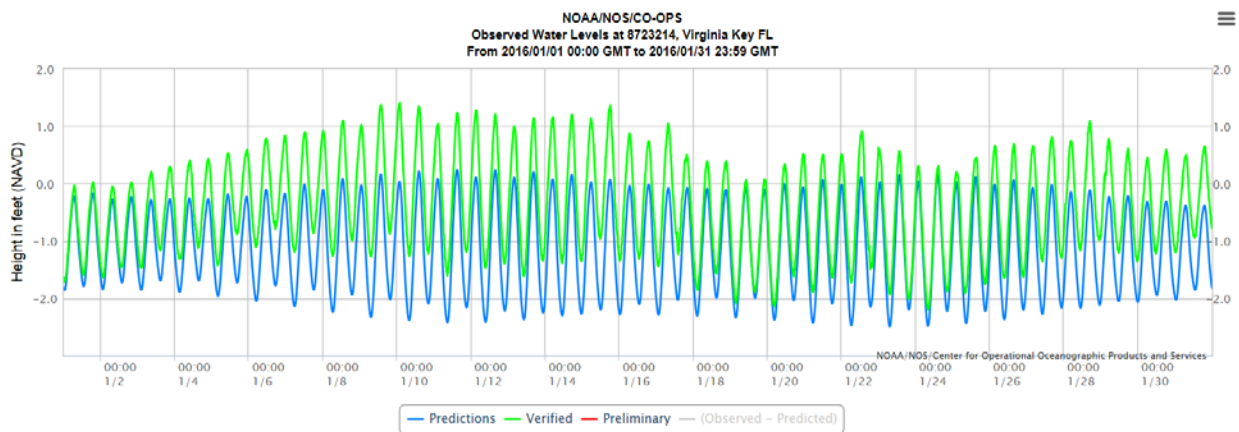
**2. Why are we changing the ordinance at this time?**

During September of 2015, the City of Fort Lauderdale experienced a King Tide that was predicted to be 8-10 inches above the average high tide but was observed to be 18-20 inches above the average high tide. The unprecedented flooding resulted in a presentation to the City Commission at the November 3, 2015 Commission Conference Meeting. At that time, the Commission requested that the City revise the seawall ordinance (ULDR Sec. 47-19.3) to set a minimum seawall elevation requirement.

### 3. Was the height of the September 2015 King Tide an anomaly? What causes the observed tide height to exceed the predicted tides?

As shown in the January 2016 graphic below from the Virginia Key Tide Gauge, the observed height of the tides continues to exceed the NOAA tide predictions (green line is higher than the blue line). While the difference between the predicted and observed tidal height varies, there is a continuing pattern that the observed heights are consistently higher by 6-12 inches. If this trend continues, King Tides this fall will again be in the 16-20 inches range above the average predicted high tide for the year.

Higher than predicted tides can be the result of a number of phenomena including, but not limited to, easterly winds, the passage of tropic storms and the slowing of the Gulf Stream Current.



### 4. How did the City determine the minimum seawall elevation of 3.9 feet NAVD88?

The proposed minimum elevation requirement (3.9 feet NAVD88) is equal to the previous maximum allowable seawall elevation in the existing ordinance. This proposed minimum elevation is adequate to address today's average high tide plus extreme height tides while still providing additional freeboard for future sea level rise expected to occur within the 30-50 year lifespan of a seawall constructed today.

### 5. Where do I find the supporting science for the sea wall height increase?

Extreme high tides occur every year in the fall. The tide elevation is an observed measurement. The sea level rise projection (see graphic) was updated in 2015 by a working group of scientists and sea level rise experts convened by the Southeast Florida Regional Climate Change Compact. The science of the projection can be found on the Compact website at <http://www.southeastfloridacclimatecompact.org/wp-content/uploads/2015/10/2015-Compact-Unified-Sea-Level-Rise-Projection.pdf>. The City Commission accepted the Updated Unified Regional Sea Level Rise Projection of the Southeast Florida Regional Climate Change Compact for purposes of sea level rise adaptation planning activities in December 15, 2015.

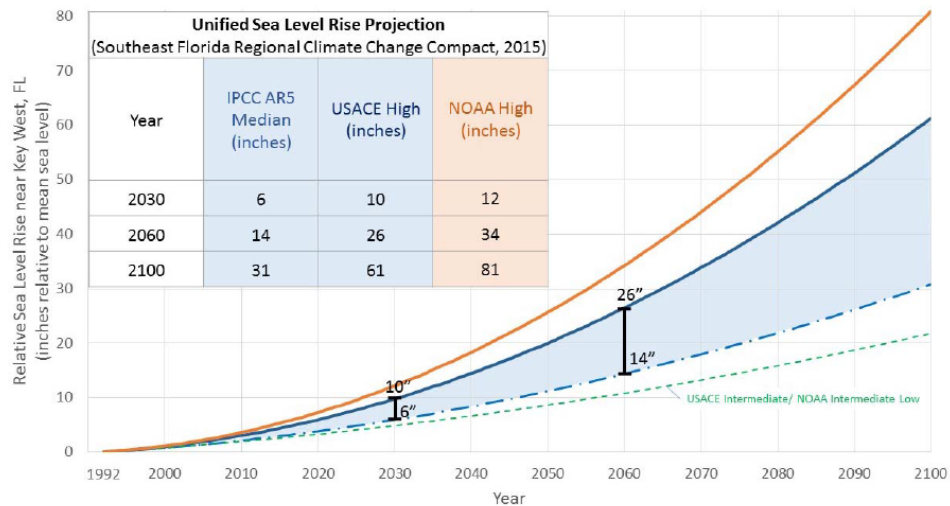


Figure 1: Unified Sea Level Rise Projection. These projections are referenced to mean sea level at the Key West tide gauge. The projection includes three global curves adapted for regional application: the median of the IPCC AR5 RCP8.5 scenario as the lowest boundary (blue dashed curve), the USACE High curve as the upper boundary for the short term for use until 2060 (solid blue line), and the NOAA High curve as the uppermost boundary for medium and long term use (orange solid curve). The incorporated table lists the projection values at years 2030, 2060 and 2100. The USACE Intermediate or NOAA Intermediate Low curve is displayed on the figure for reference (green dashed curve). This scenario would require significant reductions in greenhouse gas emissions in order to be plausible and does not reflect current emissions trends.

## 6. What guidance for seawalls are other nearby municipalities using?

Lighthouse Point- sets a maximum cap elevation of 6.5 ft NGVD (4.9 NAVD88)

Sea Ranch Lakes – No height adjustment allowed

Lauderdale by the Sea – Does not address height

Pompano - Seawalls will be erected to be consistent with the elevation of adjacent seawalls. No seawall will exceed 5 feet 10 inches NAVD88.

Hallandale – Does not set criteria for height

Miami Beach - 5.7 feet NAVD88 for all public seawalls and only those private seawalls which are part of a right-of-way project. The minimum for all other private seawalls is 4.0 feet NAVD designed to accommodate a future retrofit for a seawall height extension up to a minimum elevation of 5.7 NAVD.

Hillsborough Beach - Does not set criteria for height

## 7. Why are we allowing a variety of seawall heights by setting a maximum and minimum?

The City previously set a maximum elevation which also allowed for varying heights. In the last few years, most new seawalls have been built to the previous maximum allowable elevation (3.9 feet NAVD88). Moving forward, new seawalls will be built to this same level reducing the

amount of variability among seawalls. The minimum seawall elevation is based on the level of the sea and is set to address impacts coming from the ocean. The maximum elevation is based on the elevation of the property and is set to prevent rain water runoff from impacting the house.

Properties at different elevation require seawalls at different elevation to prevent erosion and address drainage issues. Individuals with marine interests also consider seawall height in the context of access to their boats.

**8. What counts as a seawall? Are rip rap and coral rock seawalls included in the ordinance?**

The ordinance defines a seawall as a vertical or near vertical structures placed between an upland area and a waterway. The seawall may be made of any material as long as it is substantially impermeable. For the purposes of Section 47-19.3(f), rip rap is not consider a seawall but traditional coral rock seawalls (coral boulders cemented into a solid wall) meet the definition.

The intent of adding the phrase “substantially impermeable” is to convey that water should not be able to move unimpeded through a seawall. This would include features such as open scuppers, cracks, seams, expansion joints, and poor mortar joints. Water will find its own level and penetrate under and through features until it reaches equilibrium. Seawalls shall be constructed so that water should not “flow” inland through the above grade section of seawall.

**9. Does the proposed ordinance address tidal flooding caused by a low seawall in the neighborhood?**

Yes. The proposed ordinance restricts property owners with seawalls below the minimum elevation from allowing tidal waters entering their property from impacting adjacent properties or public Rights-of-Way. If cited, those property owners have to pursue a remedy which may include installing a new seawall, raising the existing seawalls, or other solution.

**10. What happens if a property does not have a seawall and is causing neighborhood flooding?**

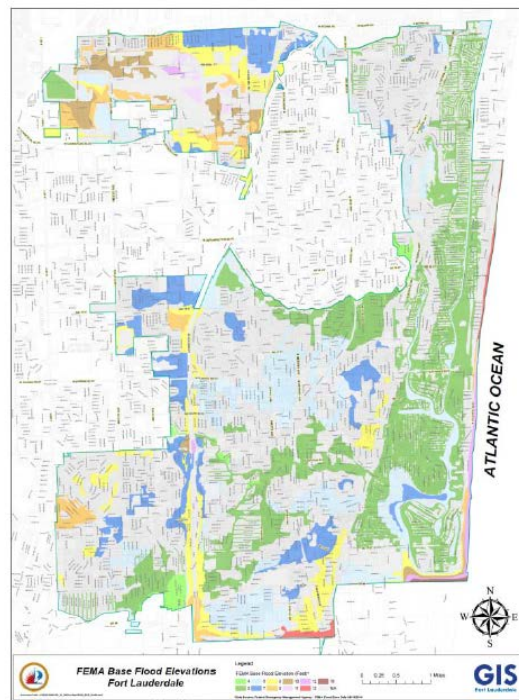
The proposed ordinance addresses waterway properties that may have permeable erosion barriers such as rip rap or a land/water interface of another nature which are allowing tidal waters entering their property to impact adjacent properties or public Rights-of-Way. If cited, those property owners have to pursue a remedy to prevent the tidal waters from leaving their properties which may include installing a new seawall, raising the existing seawalls, or other solution.

**11. Why is the Base Flood Elevation used to set the maximum elevation of the seawall?**

Base Flood Elevations are provided in the Federal Emergency Management Agency Flood Insurance Rate Maps (FEMA FIRM) as whole numbers (e.g. 4, 5, 6). This value was used to set a maximum to ensure that the new seawalls was lower than the finished flood elevation and would not result in grading of the property in a manner that would cause flooding into the home.

<u>Property's FEMA Flood Insurance Rate Map Location</u>	<u>Minimum Allowable Seawall Elevation</u>	<u>Maximum Allowable Seawall Elevation</u>
<u>In a floodplain with a base flood elevation greater than or equal to 5.0 feet NAVD88</u>	<u>3.9 feet NAVD88</u>	<u>Base Flood elevation of the property</u>
<u>In a floodplain with a base flood elevation equal to 4.0 feet NAVD88</u>	<u>3.9 feet NAVD88</u>	<u>5 feet NAVD88</u>
<u>In an X zone, not in a floodplain</u>	<u>3.9 feet NAVD88</u>	<u>Meet the definition of grade as determined by Section 47-2.2 (g)(1)(a)</u>

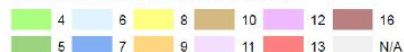
**12. What is my Base Flood Elevation and what are the applicable minimum and maximum seawall elevation?**



**Seawall Elevation Based on Base Flood Elevation (BFE)**

- **BFE = 4 or 5 ft NAVD88**
  - **Min 3.9 ft - Max 5.0 ft**
- **BFE= 6 ft NAVD88**
  - **Min 3.9 ft - Max 6 ft**
- **Not in a flood plain**
  - **Min 3.9 ft**
  - **Max Grade**

FEMA Base Flood Elevation (Feet)\*



**13. Will raising the seawalls worsen flooding caused by stormwater events?**

The elevated seawalls could prevent overland flow of stormwater. Generally speaking, the City's stormwater management system (drainage infrastructure) is designed to prevent overland flow. One way valves incorporated into the seawall itself is one potential solution to concerns of water pooling on the upland side of a seawall.

Please note that this proposed seawall ordinance is one component of an overarching strategy to improve the resiliency of our community to stormwater and tidal flooding. Other efforts being implemented through the City's Stormwater Master Plan, Seawall Master Plan, and Canal



Dredging Master Plan will further reduce flooding and complement the seawall ordinance implementation. While elevation of the roadways is another potential tool to address flooding, finished floor elevations for the existing buildings need to be considered which limits the locations where street elevations could be applied.

**14. Will the City canal dredging project impact the soundness of existing seawalls?  
Should the ordinance indicate building seawalls deeper?**

The City only dredges the center third of a canal, ensuring it does not dredge within 10 feet of a seawall to ensure it does not negatively impact seawalls. City canal dredging projects will not impact the foundation of existing seawalls. The City canal dredging criteria requires the contractor(s) to maintain all dredging operations 10 feet away from any seawall to prevent any impact to the soils surrounding the seawalls. Dredging activities would not warrant setting seawalls deeper.

**15. Will the ordinance make permitting easier?**

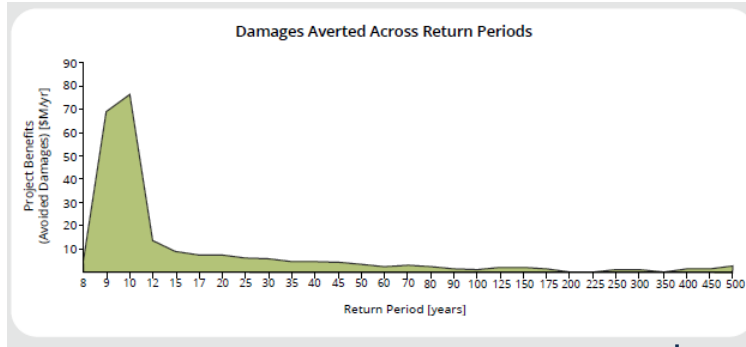
The ordinance does not change the current permitting process. However, the City is currently considering creating standard seawall designs that may be expedited through permitting.

**16. What evidence is there to support raising seawalls will reduce the risk of flooding?**

In neighborhoods where tidal flooding into the roadway is observed to be caused by ocean water flowing over a low lying seawall, common sense dictates that raising that seawall can be one tool in reducing local flooding.

The Rockefeller Foundation partnered with the re-insurance industry to conduct a study to determine the benefits of investing in resilience. The report entitled "[Leveraging Catastrophe Bonds as a Mechanism for Resilient Infrastructure Project Finance](#)" was released in December 2015. One of the case studies reviewed was the impact of raising seawalls on Miami Beach. The study concluded "Preliminary results on risk reductions indicate that seawall upgrades that raise the seawall cap minimum elevation from 3.2 feet NAVD88 to 5.7 feet NAVD88 can provide significant benefits, particularly in reducing loss from frequent, low intensity surge events."

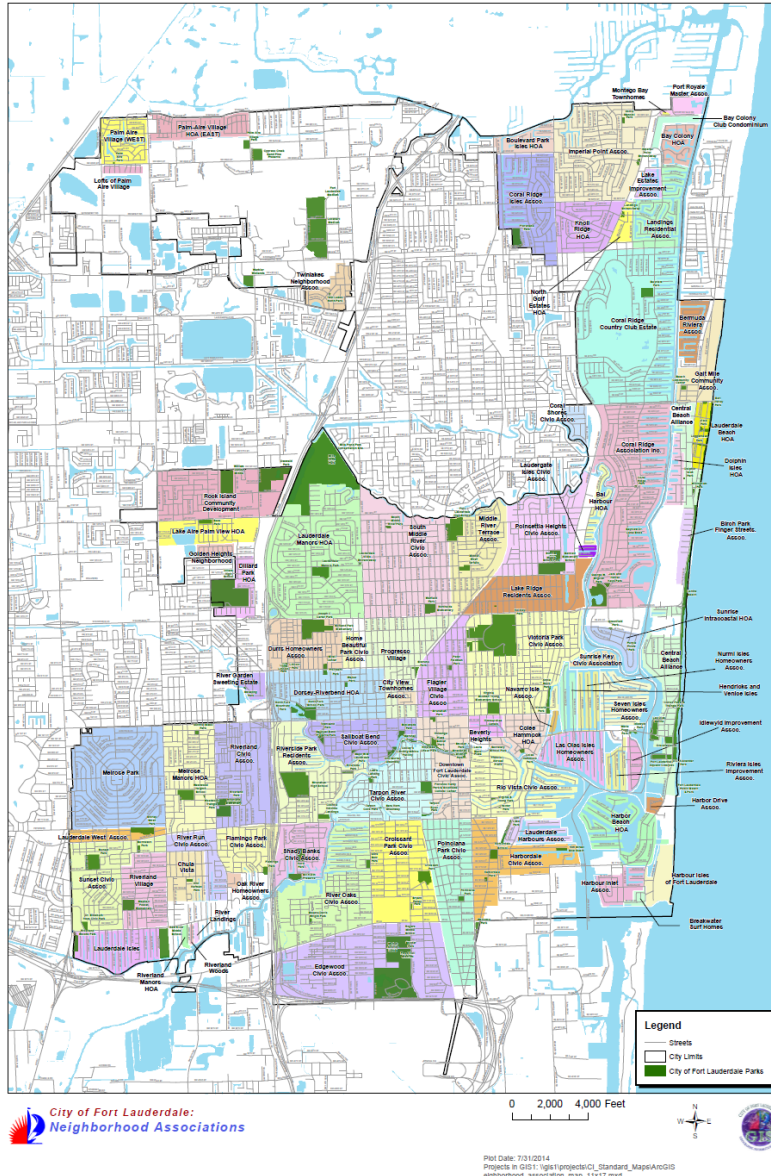
The graphic below shows that investing in resilient infrastructure, such as the seawalls in Miami Beach, can dramatically reduce economic losses.



## 17. What neighborhoods have seawalls?

As the Venice of America, Fort Lauderdale has waterside communities throughout the city, not just on the ocean and the Intracoastal Waterway. Nearly every canal, river and water body that runs through the City (Intracoastal Waterway, New River, Tarpon River, Middle River) is connected directly to the oceans and therefore impacted by sea level rise and potentially by seasonal extreme high tides. Neighborhoods as far west as Lauderdale Isles, in the center of the City like Sail Boat Bend, and to the north like Coral Ridge Isles have seawalls. The number of recognized Neighborhood Associations that are not on a water body is dwarfed by the number of Association that border one (see the map).





# **18. Where are the funds going to come from to address repairs of the City owned seawalls? How many linear feet of seawall does the City own?**

Should the proposed ordinance be adopted, the City will need to address our own seawalls in a phased manner as flooding conditions change with time and sea level rise. To incrementally address funding, design and construction of publically-owned seawalls, a variety of funding options could be considered including existing community investment plan funding, special assessments, a community development district, a seawall utility, future FEMA mitigation funds, a bond measure or increased millage rate on ad valorem property tax.

We estimate that the City owns four (4) miles of seawall (~21,000 linear feet). Depending on whether the seawall needs to be raised or replaced the cost in today's dollars could range from

\$2M-\$26M.

**19. What is the cost of seawall replacement or repair?**

Seawall contractors were contacted to better understand the range of charges for installing a seawall. They quoted \$650-\$2000 per linear foot depending on the depth of the waterway and location of the seawall. Engineering and permitting services were \$2000-\$5000 per job. Repair of broken/spalled concrete areas in the cap \$60 per cubic foot of epoxy mortar. To add a 12" cap to an existing seawall is estimated at \$75 - \$125 per linear foot.

Most homeowners have an expectation that they will need to maintain and, at some point, replace their roof. Maintaining and, when appropriate, replacing their seawall should be a consideration for all waterfront property owners as well. The City is currently investing substantial dollars to reduce tidal and stormwater flooding. Homeowner, likewise, need to invest in their own property improvements to address these same concerns.

**20. I just put in a new seawall at the current maximum elevation of 3.9 NAVD88 (5.5 NGVD29). Do I need to do anything related to the proposed requirement to design with a stronger foundation?**

No. Your seawall met the requirement when it was installed.

**21. Does the city, county, state or federal government offer funding for private property owners to repair their seawalls?**

Not currently. The Federal Emergency Management Agency is considering funding raising seawalls as a form of hazard mitigation.

**22. How do we find out what height our sea walls are at and how we would be affected?**

If the sea wall was recently built, you may be able to request property records in person at the Department of Sustainable Development at 700 NW 19th Avenue, 33311. The elevation of the seawall will be on the plan. If it is an older existing seawall, you would need a property survey to determine the height of your seawall. If you have a survey of your property, the height of the sea wall is likely to appear on the survey. Look at the units on the survey. The proposed minimum seawall elevation requirements are: 3.9 ft NAVD88 (5.5 ft NGVD29).

The current height of the seawall, its condition, and its structural design will determine how this proposed ordinance will affected any given property.

**23. How will the city code officers enforce the requirement to keep seawalls in good repair?**

In many ways, a seawall is not different than any other structural component of a property like the roof or a fence. It requires maintenance and eventual replacement. The proposed ordinance requires that seawalls are maintained in good repair. A seawall is presumed to be in disrepair if it

allows for upland erosion, transfer of material through the seawall or allows tidal waters to flow unimpeded through the seawall to adjacent properties or public Right-of-Ways such as roads. The “good repair” criterion does not apply to the height of existing seawalls.

Most of the City’s code enforcement is complaint driven, a direct result of the observation of one of our code enforcement officers, or associated with targeted sweeps for specific concerns. Areas known for tidal flooding are likely locations for initial enforcement of the “maintained in good repair” criterion.

**24. What are the consequences for not complying following citation for a seawall in disrepair?**

If the property owner maintained contact with the code officer, the code officer often provides the property owner with reasonable extension of time to comply. However, if the property owner still does not cure the violation, then the cases are taken to the special magistrate for adjudication. The special magistrate order will grant the property owner the numbers of days to comply and a daily fine if compliance is not achieved within the ordered timeframe. If the property owner meets the compliance timeframe, then the case is presented to the special magistrate to either abate any fines that may have accrued before the imposition hearing. A lien is placed on the property if the property continues to remain out of compliance. The City cannot foreclose on a lien on homesteaded property.

The City may in the public interest complete the work when the property owner does not comply with the order. In those cases the property owner would be “liened” for those costs and the costs may be placed as a non-ad valorem assessment in the property tax roll.

**24. Can I just add a cap to my existing seawall to meet the elevation requirement when the time comes?**

That will depend on if the seawall is structurally sound and can bare the additional weight of the cap.

**25. What is the substantial repair threshold?**

If more than percent (50%) of a seawall or more than fifty percent (50%) of its replacement value is damaged, destroyed or removed for any reason, the entire seawall shall be required to meet the new elevation requirement.

**27. Does the City assume any responsibility for seawall maintenance/repairs when public infrastructure (such as an outfall pipe) passes through a privately owned wall?**

City infrastructure penetrating a private seawall serves a public benefit usually tied directly to the neighborhood in which the property is located. The City is responsible for maintaining its

infrastructure. On a case by case basis, property owners should work with the City if there are concerns with the repair or maintenance of City assets that may have an impact on the private seawall.

**28. Property owners have received special permission to place a dock or other amenity to a public seawall. What happens to that amenity when the City raises the seawall elevation?**

Section 8-144 of the Unified Land Development Code gives the City Commission the ability to permit private use of public property abutting a waterway by resolution. However, this is just for the use of the public waterway. The specific resolution (permit) and the general provisions in this section define the relationship between the City and private property owner. These permits are generally temporary in nature. Those that include a fixed period of time may require that the permit holder repair, replace or maintain the adjacent seawall during the term of the permit. Should the City elevate a seawall, the permit holder would be required to remove any nonfixture improvements placed by him upon public lands and make the necessary repairs to the city property to place the same in good condition.

**29. How are fixed and floating docks impacted by the ordinance?**

The proposed ordinance allows fixed docks to be built lower than the adjacent seawall. There is no minimum height for a dock. Docks tied to a seawall have a maximum height of no more than ten inches higher than the seawall to which they are attached.

Floating docks must be permitted and must be permanently attached to a marginal dock, finger pier, mooring pilings, or seawall.

**30. When are the scheduled public meetings on the proposed ordinance?**

April 7	Marine Advisory Board ( <b>Complete</b> )
April 25	Council of Civic Association Executive Board ( <b>Complete</b> )
May 3	City Commission Conference
May 5	Marine Advisory Board
May 9	District 1 District wide meeting on the Proposed Seawall Ordinance
May 10	Council of Civic Association Regular Meeting
May 18	Planning and Zoning Board – Public Hearing
May 23	Sustainability Advisory Board
June 7	First Public Reading – City Commission
June 21	Second Public Reading – City Commission

ORDINANCE NO. C-16-

AN ORDINANCE AMENDING THE UNIFIED LAND DEVELOPMENT REGULATIONS OF THE CITY OF FORT LAUDERDALE, FLORIDA, AMENDING SECTION 47-19.3, "BOAT SLIPS, DOCKS, BOAT DAVITS, HOISTS AND SIMILAR MOORING STRUCTURES" TO ESTABLISH CONSTRUCTION STANDARDS THAT ENSURE THAT SEAWALL AND SIMILAR STRUCTURES CONTRIBUTE TO COASTAL RESILIENCE AND MITIGATE THE EFFECTS OF TIDAL FLOODING AND SEA LEVEL RISE; PROVIDING FOR SEVERABILITY; REPEAL OF CONFLICTING ORDINANCE PROVISIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

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WHEREAS, Fort Lauderdale is located between two National Oceanographic and Atmospheric Administration (NOAA) tide gauges; one at Virginia Key and another at Lake Worth; and

WHEREAS, during the fall of 2015, southeast Florida experienced extreme high tides (King Tides) that substantially exceeded the predicted high tides; and

WHEREAS, during the September 2015 King Tide, the peak high tide elevation recorded at the Lake Worth station was 2.615 feet NAVD88 emphasizing the increasing risk of tidal flooding from seasonal high tides; and

WHEREAS, the City's Unified Land Development Regulations (ULDR), prior to adoption of this Ordinance set a maximum elevation limitation for seawalls or similar structures at 5.5 feet NGVD29 which equals 3.9 feet NAVD88; and

WHEREAS, a minimum seawall elevation will support the resilient City vision described in Fast Forward Fort Lauderdale 2035; and

WHEREAS, City staff has recommended that the current maximum allowable seawall elevation of 3.9 feet NAVD88 would provide significant protection from the predicted height of seasonal high tides and address projected sea level rise expected to occur within the 30-50 year lifespan of a seawall constructed after adoption of this Ordinance; and

WHEREAS, seawalls and similar structures contribute to coastal resilience when constructed in a manner that is substantially impermeable and meet a minimum height

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standard that effectively addresses existing tidal flooding and future sea level rise for the expected lifetime of the seawall or structure; and

WHEREAS, seawalls elevation requirements need to be set and the structures constructed in a manner that does not create drainage issues on the adjacent properties; and

WHEREAS, a minimum and maximum elevation standard for seawall construction should be set to reduce the potential for a substantial visual discontinuity with their neighbors; and

WHEREAS, currently, major repairs of the seawall may result in a significant investment without a resulting elevation in height; and

WHEREAS, seawalls with defects need to be repaired in a timely manner to reduce tidal flooding impacts on adjacent properties and public Rights-of-Way; and

WHEREAS, properties with low lying seawalls or lacking seawalls can be the source of tidal waters flooding adjacent properties or public Rights-of-Way; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA:

SECTION 1. That Section 47-19.3, Boat slips, docks, boat davits, hoists and similar mooring structures, of the Unified Land Development Regulations (hereinafter referred to as "ULDR") of the City of Fort Lauderdale, Florida, to read as follows:

Sec. 47-19.3. - Boat slips, docks, boat davits, hoists and similar mooring structures.

(a) The following words when used in this section shall, for the purposes of this section, have the following meaning:

(1) Mooring device means a subset of mooring structures as defined herein including boat davits, hoists, boat lifts and similar devices that are erected on or adjacent to a seawall or dock and upon which a vessel can be moored. A mooring device does not include docks, slips, seawall or mooring pile.

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(2) Mooring structure means a dock, slip, seawall, boat davit, hoist, boat lift, mooring pile or a similar structure attached to land more or less permanently to which a vessel can be moored.

(3) NGVD 29 or the National Geodetic Vertical Datum of 1929 means the vertical control datum established for vertical control surveying in the United States of America by the General Adjustment of 1929. The datum is used to measure elevation or altitude above, and depression or depth below, mean sea level (MSL).

(4) NAVD88 or the North American Vertical Datum means the vertical control datum of orthometric height established for vertical control surveying in the United States of America based upon the General Adjustment of the North American Datum of 1988.

(5) Seawall means vertical or near vertical structures placed between an upland area and a waterway. For the purposes of Section 47-19.3(f), rip rap is not considered a seawall.

(6) Rip rap means a foundation of unconsolidated boulders, stone, concrete or similar materials placed on or near a shoreline to mitigate wave impacts and prevent erosion.

...

(f) The top surface of a boat slip, seawall or dock shall not exceed five and one half (5½) feet above NGVD 29, except when the adjacent property is higher than five and one half (5½) feet above the NGVD 29. When above NGVD 29, the top surface may be of the same elevation as the average grade of the upland property abutting the seawall or dock and properties abutting either side of the upland property. have a minimum elevation of 3.9 feet NAVD88 (see table). The elevation shall not exceed a maximum of the base flood elevation (BFE) as identified in the corresponding FEMA Flood Insurance Rate Map (FIRM) for the property, except as specifically set forth herein. For properties with a BFE of 4.0 feet NAVD88, the minimum seawall elevation shall meet 3.9 feet NAVD88 and the maximum seawall elevation shall be 5.0 feet NAVD88. For waterfront properties with a habitable finished floor elevation of less than 3.9 feet NAVD88, a seawall may be constructed at less than the stated minimum elevation if a waiver is granted by the City Engineer. For properties within an X zone, the minimum seawall elevation shall meet 3.9 feet NAVD88 and the maximum shall meet the definition of grade as determined by Section 47-2.2 (g)(1)(a). Property owners choosing to construct seawalls at less than 5.0 feet NAVD88 are strongly encouraged to have the foundation designed to accommodate a future seawall height extension up to a minimum elevation of 5.0 feet NAVD88.

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<u>Property's FEMA Flood Insurance Rate Map Location</u>	<u>Minimum Allowable Seawall Elevation</u>	<u>Maximum Allowable Seawall Elevation</u>
<u>In a floodplain with a base flood elevation greater than or equal to 5.0 feet NAVD88</u>	<u>3.9 feet NAVD88</u>	<u>Base Flood elevation of the property</u>
<u>In a floodplain with a base flood elevation equal to 4.0 feet NAVD88</u>	<u>3.9 feet NAVD88</u>	<u>5 feet NAVD88</u>
<u>In an X zone, not in a floodplain</u>	<u>3.9 feet NAVD88</u>	<u>Meet the definition of grade as determined by Section 47-2.2 (g)(1)(a)</u>

(1) Seawalls must be designed and built in a substantially impermeable manner to prevent tidal waters from flowing through the seawall while still allowing for the release of hydrostatic pressure from the upland direction.

(2) Fixed docks may be constructed at an elevation less than the elevation of the adjacent seawall to which it is attached but shall not be constructed at an elevation more than 10 inches above the adjacent seawall's elevation. Floating docks shall be allowed and must be permitted and permanently attached to a marginal dock, finger pier, mooring pilings, or seawall.

(3) Seawalls improvements constituting substantial repair at the time of permit application shall meet the minimum elevation and consider the design recommendations (see 47-19.3 (f)) of this section for the continuous seawall for the length of the property. For the purposes of this section, substantial repair threshold shall mean any improvement to a structure as defined in Section 47-3.6.B.3.

(4) All property owners must maintain their seawalls in good repair. A seawall is presumed to be in disrepair if it allows for upland erosion, transfer of material through the seawall or allows tidal waters to flow unimpeded through the seawall to adjacent properties or public Right-of-Way. Property owners failing to maintain their seawalls may be cited. The owner of the property on which the seawall is constructed is required to initiate a process, including but not limited to hiring a contractor or submitting a building permit, and be able to demonstrate progress toward repairing the cited defect within 60 days of receiving notice from the City and complete the repair within 365 days of citation. If the required repair meets the substantial

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repair threshold, the property owner shall design, permit, and construct the seawall to meet the minimum elevation requirement and design requirement (see 47-19.3 (f)) within 365 days of citation.

(5) Property owners with seawalls below the minimum elevation, or permeable erosion barriers such as rip rap, or a land/water interface of another nature shall not allow tidal waters entering their property to impact adjacent properties or public Rights-of-Way. Property owners failing to prevent tidal waters from flowing overland and leaving their property may be cited. The owner of the property is required to initiate a process, including but not limited to, hiring a contractor or submitting a building permit, and be able to demonstrate progress toward addressing the cited concern within 60 days of receiving notice from the City and complete the proposed remedy within 365 days of citation.

SECTION 2. That if any clause, section or other part of this Ordinance shall be held invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby, but shall remain in full force and effect.

SECTION 3. That all ordinances or parts of ordinances in conflict herewith, be and the same are hereby repealed.

SECTION 4. That this Ordinance shall be in full force and effect ten days from the date of final passage.

PASSED FIRST READING this the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

PASSED SECOND READING this the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

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Mayor  
JOHN P. "JACK" SEILER

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ATTEST:

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City Clerk  
JEFFREY A. MODARELLI

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