

# MIAMI BEACH

## City Commission Meeting SUPPLEMENTAL MATERIAL 3

City Hall, Commission Chambers, 3rd Floor, 1700 Convention Center Drive  
March 13, 2013

Mayor Matti Herrera Bower  
Vice-Mayor Jonah Wolfson  
Commissioner Jorge R. Exposito  
Commissioner Michael Góngora  
Commissioner Jerry Libbin  
Commissioner Edward L. Tobin  
Commissioner Deede Weithorn

Interim City Manager Kathie G. Brooks  
City Attorney Jose Smith  
City Clerk Rafael E. Granado

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### ATTENTION ALL LOBBYISTS

Chapter 2, Article VII, Division 3 of the City Code of Miami Beach entitled "Lobbyists" requires the registration of all lobbyists with the City Clerk prior to engaging in any lobbying activity with the City Commission, any City Board or Committee, or any personnel as defined in the subject Code sections. Copies of the City Code sections on lobbyists laws are available in the City Clerk's office. Questions regarding the provisions of the Ordinance should be directed to the Office of the City Attorney.

### SUPPLEMENTAL AGENDA

#### R7 - Resolutions

R7A A Resolution [Granting Or Denying] An Appeal Request Filed By W. Tucker Gibbs, P.A., On Behalf Of Sunset Islands 3 And 4 Property Owners, Inc. And Olga Lens, Of The Design Review Board's Order Relative To DRB File No. 22889 For 1201-1237 20th Street, Palau At Sunset Harbor. **5:01 p.m. Public Hearing**

(Planning Department)

**(Supplemental Appendix Petition to Reverse DRB Decision from W. Tucker Gibbs, P.A.)**

#### Reports and Informational Items

1h Response To Miami New Times Article Of February 6, 2013.  
(LTC #073-2013)  
**(Memorandum)**

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**BEFORE THE MIAMI BEACH CITY COMMISSION  
DESIGN REVIEW BOARD FILE 22889**

**IN RE: PALAU SUNSET HARBOR**

All of Lots 22, 23, and 24, and the north 70 feet of Lots 25 and 26, Block 15A, Island View Addition According to the Plat Thereof as Recorded in Plat Book 9, Page 144 of the Public Records of Miami-Dade County 1201-1237 20<sup>th</sup> Street, Miami Beach, Florida

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**SUPPLEMENTAL APPENDIX  
PETITION TO REVERSE DESIGN REVIEW BOARD DECISION**

Respectfully Submitted,  
W. Tucker Gibbs, P.A.

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Coconut Grove, Florida 33133  
Tel (305) 448-8486  
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Agenda Item R7A  
Date 3-13-13

**BEFORE THE DESIGN REVIEW BOARD  
OF THE CITY OF MIAMI BEACH, FLORIDA  
FILE NO. 22889**

**IN RE: PALAU SUNSET HARBOR  
ALL OF LOTS 22, 23, AND 24, AND THE  
NORTH 70 FEET OF LOTS 25 AND 26, BLOCK  
15A, ISLAND VIEW ADDITION ACCORDING  
TO THE PLAT THEREOF AS RECORDED IN  
PLAT BOOK 9, PAGE 144 OF THE PUBLIC  
RECORDS OF MIAMI-DADE COUNTY.  
1201-1237 20<sup>TH</sup> STREET, MIAMI BEACH,  
FLORIDA 33139**

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**PETITION FOR REHEARING**

Petitioners, MAC SH, LLC, and the Sunset Islands 3 and 4 Property Owners, Inc. (collectively, "Petitioners" or "Neighbors"), pursuant to section 118-261, City of Miami Beach Land Development Regulations, petition the City of Miami Beach Design Review Board for a rehearing on its decision to grant the application for design review approval for the Palau Sunset Harbor development (DRB File No. 22889) and state as follows:

1. On August 7, and October 2, 2012, the City of Miami Beach Design Review Board ("Board") held publicly noticed, quasi-judicial hearings and reviewed the application for design review approval for the Palau Sunset Harbor project (DRB File No. 22889) ("Palau project").

2. One reason that the August 7, 2012 hearing was continued to October 2, 2012 was that the second issue that was to be decided by the Board, modifications to a previously approved site plan, had not been noticed. The related “unified development site” includes the South 130 feet of Lots 25 and 26 (1261 20<sup>th</sup> Street) which legal description and address were not included in the application or notices.

3. On October 8, 2012, the Board rendered its order granting design review approval to the Palau pursuant to design review criteria set forth in section 118-251 of the Miami Beach Land Development Code and subject to conditions set forth therein. The motion for approval did not reference the previously approved site plan nor did the order.

4. Section 118-261 (Rehearings), permits affected persons who have appeared before the Design Review Board on the matter or who own property within 375 feet of the applicant’s project to petition the Board for a rehearing.

5. Petitioner MAC SH LLC attended, was represented by counsel and participated in both hearings, owns property within 375 feet of the applicant’s project and is an “affected person” pursuant to section 118-261. Petitioner Sunset Islands 3 & 4 Property Owners, Inc. attended, was represented by counsel and participated in both hearings and is an “affected person” pursuant to section 118-261.

6. Petitioners seek a rehearing and request the Board to take additional testimony and to issue a new decision reversing or modifying its previous decision.

7. Petitioners assert that the Board has overlooked matters as set forth herein that render its decision erroneous or did not consider evidence that should have been considered at the hearing.

FAILURE TO EVALUATE THE ELIMINATION AND/OR DIMUNITION OF FOUR VIEW CORRIDORS PURSUANT TO SECTION 118-251(A) (12)

8. Section 118-251(a) requires design review to include the examination of architectural drawings for consistency with specific criteria with regard to the aesthetics, appearances, safety, and function of the proposed structure “and physical attributes of the project in relation to the site, adjacent structures and surrounding community.”

9. Section 118-251(a) (12) states: “The proposed structure has an orientation and massing which is sensitive to and compatible with the building site and surrounding area **and which creates or maintains important view corridor(s).**” Emphasis added.

10. While the staff report claims that this criteria is “Satisfied,” neither the staff recommendations nor the October 8, 2012 order of the Design Review Board identify any factual basis for concluding that the building in this project has an orientation and massing that “creates or maintains important view corridors.”

11. On the contrary, the orientation and massing of the building eliminates or substantially diminishes existing view corridors that were preserved under the

2004 site plan, which plan was modified by the new site plan and proposed building. Those view corridors include:

a. The existing West Avenue view corridor to the waterway that extends between the World Bank property and the Sunset Harbor Townhomes that was preserved under 2004 site plan was eliminated.

b. The existing view corridor to the waterway that extends between the World Savings building and the existing incomplete structure to its east that was preserved under the 2004 site plan was eliminated.

c. The existing view corridor to waterway from the World Savings building that was preserved under the 2004 site plan was eliminated.

12. Additionally, the view corridor running along Sunset Drive, from 20<sup>th</sup> Street to the historic Sunset Islands bridge, was substantially diminished.

13. No evidence was presented at the hearing to support the elimination and/or substantial reduction of these critical view corridors that had been preserved in the prior site plan nor to diminish the view corridor along Sunset Drive.

14. The failure to preserve the view corridors was addressed by Professor Lejeune in his report to the City of Miami Beach and provided to all parties and was either overlooked or not considered by the Board. See copy of report and email attached hereto as Composite Exhibit A.

15. The failure of the Board to apply correctly section 118-251(a) (12) which requires the orientation and massing of the structures to “create or maintain important view corridors”, warrants a rehearing.

16. The failure of the applicant to present evidence to the Board that it meets the specific requirements of section 118-251(a) (12) to show the Board that the orientation and massing of the structures creates or maintains important view corridors, warrants a rehearing

17. Although the Board found at paragraph 5(a) of the order that the northeast corner of the site impeded the visibility and functionality of the view corridor along Sunset Drive, the order unlawfully delegated its authority to the staff to evaluate revisions of the proposed site plan to increase visibility and functionality of that view corridor without specifying the criteria that would be applicable to create and maintain view corridors.

Moreover, the staff report failed to consider the effect of the modifications of the site plan and physical conditions of the prior approved development order; it failed to consider how the modification diminished or eliminated the view corridors and, therefore, overlooked the criteria mandated by Miami Beach Code Sec. 118-5.

**FAILURE TO EVALUATE THE APPLICATION CONSISTENT WITH THE  
HISTORIC DESIGNATION REPORT OF THE SUNSET ISLANDS BRIDGES  
PURSUANT TO SECTION 118-251(A) (6)**

18. Section 118-251(a) requires design review to include the examination of architectural drawings for consistency with specific criteria with regard to the aesthetics, appearances, safety, and function of the proposed structure “and physical attributes of the project in relation to the site, adjacent structures and surrounding community.”

19. Section 118-251(a) (6) states: “The proposed structure, and/or additions or modifications to an existing structure, indicates sensitivity to and **is compatible with the environment and adjacent structures, and enhances the appearance of the surrounding properties.**” Emphasis added.

20. The Historic Designation Report expressly explains the importance of “sensitive new construction” which allows a new structure to “blend with its surroundings and be compatible with the neighborhood.” In defining compatibility with the historic Sunset Islands neighborhood, that study addressed proportion and scale stating, “When there is a combination of structural building types surrounding a project site, scale and proportion of the buildings closest to the proposed construction should be observed.”

21. The failure of the Board to correctly apply section 118-251(a) (6) which requires the project to be compatible with its neighbors and “enhance the appearance of surrounding properties” including the adjacent single-family neighborhood including the historic bridge structures, warrants a rehearing.

22. The failure of the applicant to present evidence to the Board that it meets the specific requirements of section 118-251(a) (6) to show the Board that the project is compatible with the adjacent single-family neighborhood and historic bridge structures as defined by the Historic Designation Report, warrants a rehearing.

**FAILURE TO DISCLOSE EX-PARTE COMMUNICATIONS AS REQUIRED BY SECTIONS 2-511 THROUGH 513 OF THE CITY CODE**

23. Section 2-511 defines a prohibited ex-parte communication as any written or oral communication with any member [of a city quasi-judicial board], which may directly or indirectly influence the disposition of an application, other than those made on the record during a public hearing.

24. Section 2-512(a) establishes a procedure “for all ex-parte communication” with a board member of a quasi-judicial board such as the Design Review Board. Section 2-512(a)(1) requires that “[t]he subject matter of any ex-parte communication, together with the identity of the person, group or entity with whom the communication took place, shall be disclosed and made a part of the record on file with the City prior to final action on the matter.”

25. Section 2-512(a)(4) requires that “[a]ny ex-parte communication or activity regarding a pending quasi-judicial matter and not physically made a part of the record on file with the City and available for public inspection prior to the

public meeting on the matter shall be orally stated and disclosed on the record at the public meeting prior to the vote on the matter ...”

26. Prior to the Design Review Board’s hearings on the Palau matter, representatives of the applicant Palau Sunset Harbor, LLC, met with and communicated with a member or members of the Design Review Board regarding the disposition of the Palau application.

27. No disclosure has been made of the subject matter of this communication communication, or the identity of the person, group or entity with which the communication took place.

28. According to section 2-512(b), without such disclosure, a presumption of prejudice arising from that/those ex-parte communication(s) remains attached to that communication thereby warranting a rehearing.

29. The evidence of these ex-parte communications would establish the presumed prejudice of the Board. Without full disclosure of the ex-parte communications, the ultimate outcome of these proceedings would be affected because it will be presumed by the courts that prejudice has occurred, resulting in the reversing of the order.

FAILURE TO CONSIDER THE EFFECTS OF MODIFICATIONS TO PREVIOUSLY APPROVED SITE PLAN PURSUANT TO MIAMI BEACH CODE 118-5.

30. In 2004, the Design Review Board approved a previous site plan for the subject property. The proposed project modifies this previously approved site plan.

31. According to the notice for the October 2, 2012 hearing, the Design Review Board was to consider the modifications to the previous site plan.

32. The Staff Report submitted to the Design Review Board did not consider the previous site plan for the subject property and the previous site plan was not presented to the Board at the hearing or discussed by the Board.

33. At no time did the City instruct the Board to consider the criteria under Miami Beach Code Sec. 118-5 and determine the effect of modifications to the property's use, operation, physical condition, or site plan.

34. Miami Beach Code § 118-5, the land development regulations for unified development sites, requires that:

proposed modifications to the property's use, operation, physical condition or site plan shall also be required to return to the appropriate development review board or boards for consideration of the effect on prior approvals and the affirmation, modification or release of previously issued approvals or imposed conditions.

Section 118-5, Miami Beach Code.

35. Palau's development includes substantial changes to the property's use, operation, physical condition and site plan.

36. The Project on the northeast parcel of the 2004 site plan was a 5 story mixed use structure containing 20 residential condominium units and approximately

3,600 square feet of retail space. In sharp contrast, the proposed project has 50 residential condominium units and 11,325 square feet of retail space. Among other things, the modified plan and project propose the following changes:

<b>Approval Plan</b>	<b>Proposed Plan</b>
20 residential condo units	50 residential condo units
3,600 square feet of retail	11,325 square feet of retail
40,280 square feet. (rev. 51,153) FAR	108,269 square feet FAR
1.16 FAR(rev. 1.42)	2.0 FAR
34 parking spaces (plus 9 shared)	144 parking spaces (plus 9 shared)
21 foot setback on west	0 foot setback on west
Northern 70 feet of lots 25 and 26: Surface parking spaces only	Northern 70 feet of lots 25 and 26: 5 story structure with 8 condo units
9 shared parking spaces to be used by customers of 3,600 square feet of retail	9 shared parking spaces to be used by customers of 11,325 square feet of retail

37. The staff report never considered the effect any of these changes on the previous approved plan and neither did the Board. None of the design review criteria was analyzed using this data and, therefore, that data was overlooked in the analysis. The order never made findings addressing the §118-5 criteria.

**FAILURE TO EVALUATE THE ADDITION ON THE BUILDING SITE PURSUANT TO §118-251 (A) (15)**

38. In addition to the criteria referenced in the first argument above, the staff report failed to consider the criteria specified in §118-251(15) which provides that:

An addition on a building site shall be designed, sited and massed in a manner which is sensitive to and compatible with the existing improvement(s).

39. The staff report explicitly found that said criteria was “Not Applicable” to the project.

40. Accordingly, by not considering the existing improvements, which was the existing World Bank Building that was part of the “unified development site”, the staff report did not consider the design, siting, and massing of the additional structures upon the existing World Bank Building, at 1261 20<sup>th</sup> Street, the south 130 feet of lots 24 and 25.

41. The staff report did not consider whether the modifications were sensitive to, and compatible with the World Bank Building.

42. While in the middle of his cross-examination, the staff member reversed the position of staff and said that the criteria was “Satisfied,” no facts were considered and no analysis was given to establish that the additional structures on the unified development site were compatible and sensitive to the World Bank Building.

43. The Board never considered the effect of the modifications of the site plan upon the existing building and, therefore, failed to consider the criteria under §118-5 nor under §118-251(15).

#### FAILURE TO CONSIDER SETBACKS AND OVERLOOKED EVIDENCE

44. At the time of the 2004 site plan approval, the approved buildings substantially complied with the setback requirements under the code.

45. The City staff analyzed the setbacks immediately prior to the October 2, 2012 Design Review Board meeting and provided a copy of that analysis to MAC SH, LLC, a copy of which is attached hereto as Exhibit B.

46. Unknown to MAC SH, LLC, this setback analysis was not considered by the Board because this analysis was not included in the package sent by the City to the Board for its consideration at the October hearing.

47. The setbacks were essential for the Board to determine the impact of the additions and modifications to the unified development site and to the existing World Bank Building.

48. The analysis shows that the modifications severely encroached on the setbacks that were respected in the 2004 approved site plan.

#### FAILURE TO CONSIDER MODIFICATION OF OPERATION AND USE

49. The Board failed to consider the effect of the increase in retail commercial space as a result of the proposed modification. The staff refused at the hearing to state whether the proposed modified site plan would be able to use the shared parking required under the original site plan.

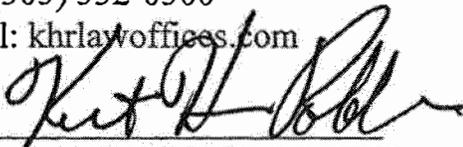
50. It failed to consider that the 9 shared parking spaces of the World Bank site were to be used by customers of 3,600 sq. ft. of retail space on the original project site and would be used by customers of 11,325 sq. ft. of retail space under the modified site.

51. At the hearing, the staff affirmatively refused to consider the impact on use and operation, as required by §118-5 and, therefore, the Board was unable to consider the function as required by §118-251.

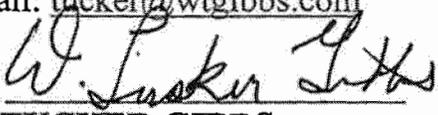
WHEREFORE, Petitioners request that the Design Review Board grant the rehearing, take additional testimony and issue a new decision reversing or modifying its previous decision regarding the Palau at Sunset Harbor project (DRB File No. 22889).

Respectfully Submitted,

KENT HARRISON ROBBINS, ESQ.  
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By:   
**KENT HARRISON ROBBINS**

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Email: tucker@wtgibbs.com

By:   
**W. TUCKER GIBBS**

**Application Project Palau  
20<sup>th</sup> Street & Sunset Drive, Miami Beach**

Jean-François Lejeune  
Professor, Director of Graduate Studies  
University of Miami School of Architecture

**Introduction**

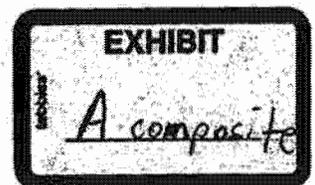
As a former resident of the Sunset Harbor Neighborhood and current resident of Belle Isle as well as a member of the Board of BIRA (which I am not representing today) I would like to stress the importance of resolving the entrance of Sunset Harbor Neighborhood at Sunset Drive and 20<sup>th</sup>. The now vacated property of Mark's and the abandoned shell of a housing project create eyesores that are potentially dangerous and are delaying the revitalization of the street. Moreover they are not conducive to increased pedestrian traffic, which is critical for the success of current and future businesses.

However, the project as presented today at the Planning Board does not fulfill important review criteria set forth in section 118-192(b) of the City Code regarding application for new structures 50,000 square feet and over. Please note that my comments mainly relate to the urban impact on both the Sunset Harbor Neighborhood as well as adjacent neighborhoods such as Sunset Islands.

**Development**

Within the section 118-192(b) of the City Code regarding the Planning Board's review criteria for new structures above 50,000 sq. ft., it is important to highlight points 3 & 10, which read respectively "Whether the scale of the proposed use is compatible with the urban character of the surrounding area and creates adverse impacts on the surrounding area, and how the adverse impacts are proposed to be addressed" and "Whether the proximity of the proposed structure to similar size structures and to residential uses created adverse impacts and how such impacts are mitigated." My opinion is that these two very important criteria, perhaps the most critical ones for the neighborhood and surrounding areas, are not met.

1. The overall mass of the proposed project, even in its new version, is very large. A comparison with Sunset Harbor shows the difference. As designed (and analyzed in roof plan format), the Palau project is about equivalent to one half of the overall gross mass of Sunset Harbor townhouses and apartments together (the two towers are excluded from this analysis). Specifically, the section of the Palau project along the canal has about the same length than each section of the existing Townhomes at Sunset Harbor, while the section along 20<sup>th</sup> Street is actually slightly longer. However the Palau complex is made up of one single mass, without the wide



and planted courtyard space that occupies the space between the street bar and the canal bar within the SH complex. This makes a significant difference and definitely increases the impression of mass. Moreover, the part of the project envisioned along the canal is not made up of individual townhouses but of continuous apartments with one single roofline, thus increasing the impression of one large and single mass.

2. This problem is compounded by the fact that the overall height of the proposed project, even in its new version, is higher than the townhouses at Sunset Harbor. Whereas those townhouses are 33' 2" feet high at the top of the ridge, and drop to 26' 8" feet at the lower profile of the roof line where the balconies are, the Palau canal apartments show a continuous roofline at a height of 43' 6" feet. This is significantly more. Its negative effect is increased by the fact that this part of the Palau project is not made up of individual townhouses with individual profiles, but rather a continuous line of apartments with a continuous and uninterrupted roofline. The setback now proposed above the second floor is certainly an improvement but it is not significant enough to alleviate the height issue. On the street side, the building shows a continuous roofline at 50 feet above grade but parapets and terraces accessories could make it appear higher.

The Planning Department report alludes to the fact that the difference in height between the two sides of the Sunset Harbor resulted from a conflict with residents across the waterway. The criteria for evaluating larger than 50,000 square foot criteria structures, adopted by the City Commission after the SH conflict was resolved, provides the Planning Board with the authority to address these issues and apply the lessons learned from the SH conflict.

3. It is important to state here that the perspective renderings presented by the developer and its architects are not correctly drawn and make the Palau project look smaller than it would be especially on the canal and Sunset Drive sides. Note that the somewhat fuzzy style of the canal side rendering makes it difficult to read as well. Moreover, the Planning Board should also realize that the proposed elevations do not follow the requirements for elevations as they are in fact renderings and show the buildings behind rows of trees. All of that seems to suggest that they intend to mask the real mass of the project.
4. The distance between the Sunset Harbor townhouses on the canal side and the new project is about 28 feet (more or less 40 feet at the terrace level). This is a significant problem, as the project establishes a continuous bar along the water, with no opening to the neighborhood. Seen from West Avenue, the "wrapping" section of the building will create a 46 to 50 foot high wall, which will block the current vista from West Avenue toward the canal and Sunset Island. I do believe that maintaining the current open vista is a very important element of planning this neighborhood that the Board has to weigh very strongly in their analysis of the project. This "vista" is equally important for some of the homeowners from the other side of the canal. Remember that Sunset Harbor Drive does have such a terminated vista on its north-south axis. It does not have it on east-west axis, which is unfortunate.

5. It is interesting to note that the Planning Department report does not make reference to the existing and occupied building at 1261 20<sup>th</sup> Street. (I am not commenting here on the legal issues concerning the prior approved site plan which does not provide for a building on the site north of that existing building). The fact is the proposed Palau development, specifically on the property that sits between the 1261 20<sup>th</sup> Street property and the canal, does not from a design standpoint recognize the existing building and its specific condition. The proximity of the proposed Palau building with the structure standing at 1261 20<sup>th</sup> Street shows a complete lack of urban respect for a neighborly building and property. Indeed, it imposes the potential presence of tall wall (46 to 50 feet) at very close distance of the tall and transparent façades of the existing structure. Please note that the building in question was built by Mateu Arquitectos very soon after the opening of the Carlos Zapata-designed Publix, one of the very best Miami Beach buildings, in order to reflect and make a nice gesture to Zapata's work. It is also a very good building as well. This gives more weight to my previous argument that an open vista should be required, which would allow the developer to continue to build behind 1261 20<sup>th</sup> Street but with more consideration for the urban and neighborhood impact of the project.
6. Because it is in a CD-2 area, the project does not have requirements for an Open Space Ratio. However, the review criteria give the Planning Board the latitude to address this condition in relation to a very intense residential development. The Planning Department should study whether there are more equivalent situations within the city territory and evaluate other urban solutions for mitigating this over-intensive use of land, which, in its current configuration, does not provide adequate open space.

A last point that I would like to add before the conclusions is related to the use of a mechanical garage to support the density of the project. Considering the review criteria listed in section 130-38 of the City Code (regarding the use of mechanical parking systems), I believe that "a cumulative effect on adjacent and nearby structures" could arise and they would adversely impact immediately adjacent small businesses. First, because of the loss of some metered spaces on 20<sup>th</sup> Street due to the new valet entrance; secondly, because my experience makes me doubt that the proposed valet use of the commercial parking will make any sense for the type of retail that can be expected along 20<sup>th</sup> Street (based also upon the observation of the shops across the street). Moreover, even though the developer and its architects have included an alternative to the mechanical garage, the proposed solution that includes a full underground level is certainly an expensive one and makes me doubt that "the proposed use of mechanical parking does not result in an increase of density or intensity over what could be constructed with conventional parking" (point 3).

Overall, I would kindly but professionally suggest to the Planning Board not to approve this project.

My suggestions:

- Develop the waterside as townhouses in order to reduce mass and scale;
- Study another organization of the project and its garage in order to provide for more open space on the ground.

JFL/05.17.2012

## Geist, Wanda

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**From:** Peter Luria [peterpl@bellsouth.net]  
**Sent:** Tuesday, August 07, 2012 1:04 PM  
**To:** Geist, Wanda  
**Subject:** Fwd: PALAU PROJECT

Sent from my iPhone

Begin forwarded message:

**From:** "Lejeune, Jean-Francois" <flejeune@miami.edu>  
**Date:** August 7, 2012 12:54:02 PM EDT  
**To:** Peter Luria <peterpl@bellsouth.net>  
**Subject:** FW: PALAU PROJECT

On 8/7/12 12:52 PM, "Jean-Francois Lejeune" <jflejeune@earthlink.net> wrote:

PALAU PROJECT

PROFESSOR JEAN-FRANCOIS LEJEUNE

I was involved in this project as an expert witness for Michael Comras Company. However, following my appointment to the Planning Board, I have decided not to appear as lobbyist but send my comments as a private citizen of Miami Beach, living at 20 Island Ave # 302 and also as a concerned architect and urban designer.

Preamble with a quote from famous architect Rem Koolhaas: "Architects work in two ways. One is to respond precisely to a client's needs or demands. Another is to look at what the client asks and reinterpret it. You must make a judgment about whether the client's project will create value for society because you must answer that demand through your work. There is something in every project we do that goes beyond how it was initially defined."

1. Documents provided are incomplete and inconsistent, in particular in regard to the treatment, the elevation, and the section of the boardwalk as well as to the existing structure along 20th Street owned by Michael

Comras company. The structure designed by famed architect Roney Mateu has real architectural value and thus must be treated with respect. Provided documents do not show a section and make it difficult to evaluate how the relationship will be established.

2. The three computer renderings provided are inconsistent with the plans and elevations provided in the official file. I must say that those renderings are clearly a step forward in giving to this important and delicate site a solution that pleases and adds to the quality of the historic environment. Those renderings show a more articulate architecture with wood screens, deeper balconies, and could provide the direction of a good architecture.

3. I still consider the project to be excessively monolithic, both in mass, footprint and overall height. The relation to the existing building is weak and difficult to evaluate.

4. Proposal :

A. Reduce the height of the project by one floor in the northeast section, in the exact area facing the park on the bridge.

B. Maintain the current height for the rest of the project but open up the lower floor in the area adjacent to the existing Roney Mateu structure. This could be done by removing two apartments and placing the building on 15-18-foot pilotis that would create a view corridor to and from the island. Such a strategy would allow to articulate the building in two clearly identifiable sections, and reduce its overall impact and masses.

Thank you.

JFL.

Sent from my iPad



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# MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

## COMMISSION MEMORANDUM

**TO:** Mayor Matti Herrera Bower and Members of the City Commission

**FROM:** Kathie G. Brooks, Interim City Manager  
Jose Smith, City Attorney

**DATE:** March 13, 2013

**SUBJECT:** Response to Miami New Times Article Of February 6, 2013

A discussion item was placed on the February 6, 2013 City Commission meeting requesting the Administration to provide a point by point accounting at the March 13, 2013 City Commission meeting responding to the recent Miami New Times article, entitled *Miami Beach Fire Department is A Flame With Corruption and Abuse*.

Pursuant to the direction of the City Commission, the City's responses to the article are provided in the attached document containing the New Times article (City's responses are represented in **bold**). Reference documents will be made available upon request. For any such requests, please contact Carla Gomez, Human Resources Assistant Director for assistance.

Some of the information presented in the New Times article was not fully presented, inaccurate or was misleading. As detailed further in the attached response, it is important to note the following:

- Neither Edward Gonzalez nor David Weston was forced out from employment with the City.
  - Edward Gonzalez voluntarily resigned from employment on September 10, 2012.
  - David Weston was terminated from employment for violating provisions of the Miami Beach Code Article VII Standard of Conduct and several provisions of the Miami Dade County, Conflict of Interest and Code of Ethics ordinance.
- The investigation leading to the arrest and conviction of the City's former-Procurement Director was prompted by the City when staff discovered information that suggested criminal wrongdoing by the former Procurement Director and reported this information to Miami Beach Police Chief Raymond Martinez.
- Fire Chief Javier Otero, Assistant Fire Chief Jorge Sanabria, Fire Marshal Sonia Machen, and former Fire Chiefs Eric Yuhr, Ed Del Favero and Floyd Jordan have all stated that they are unaware of any instances where the former employees, Mr. Weston and/or Mr. Gonzalez, presented the allegations mentioned in the article that allegedly blew the whistle to the Fire Administration during their employment with the City.
- There is no evidence indicating that the Fire Department Administration was "warned" about inspectors taking any bribes from a South Beach hotel. Chief Otero, Assistant Chief

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Sanabria, Fire Marshal Machen, and former Fire Chiefs Yuhr, Del Favero and Jordan have all stated that they did not receive any information of this nature.

- The case regarding Brian Gentles was settled, without either side admitting wrongdoing, based solely on issues surrounding Mr. Gentles' termination as a probationary firefighter for alleged falsification of his application. Despite Mr. Gentles' demand for millions of dollars and full reinstatement as a firefighter, the settlement called for him to receive only lost wages, plus attorney fees, and offering him a position in the fire prevention bureau for a limited time (through May 2014) if he passed the final probationary exam. In exchange, Mr. Gentles gave up any claims to sue and withdrew all his charges of discrimination made only after his termination. Those allegations were conveyed to the State Attorney's Office. Additionally they were thoroughly investigated by an experienced employment attorney from outside the City. The outside investigator/attorney interviewed over 30 witnesses, including Mr. Gentles. A comprehensive 50 page report concluded that the accusations in Mr. Gentles' EEOC affidavit were not substantiated or credible.
- As early as 2006, the then-City Manager was apprised of concerns from Building Department Administration regarding the undervaluation of building construction projects and potential impacts to Building fees being collected. This information prompted an internal audit regarding Building permit fees to be conducted in 2007. Based on the findings of the internal audit on ongoing reviews as a result of the audit, the City recovered an additional \$12 million in permit fees including additional permit fees for the properties mentioned in the article.

The City has taken proactive measures to eliminate any possibility of corruption including:

- A Police Sergeant has been permanently assigned to the FBI Corruption Unit to investigate allegations of corruption at the City of Miami Beach.
- A senior level Police Commander, Hernan Cardeno, was reassigned to the Code Compliance Division for oversight, restructuring the chain-of-command.
- An external audit being conducted by Crowe Horwath for workflows and business processes for all of the City's regulatory divisions is underway and will be presented at the March 21, 2013, Finance and Citywide Projects Committee meeting.
- The City has partnered with the Miami-Dade Commission on Ethics and Public Trust to provide ethics training to all City employees who work in regulatory divisions within the City.
- The City has implemented a Zero Tolerance Gift Policy for all City employees excluding the City Attorney's Office and the Office of the Mayor and City Commission. The City is currently impact bargaining this policy with both the Fire and Police unions.
- The City Commission also approved entering into an interlocal agreement with the Miami-Dade County Inspector General's Office; however, the Inspector General's Office has advised the City that they are unable to enter into an Agreement with the City at this time due to workload and limited resources. Therefore, an additional

Police Sergeant has been assigned to the Internal Affairs Division to create a public corruption unit that will conduct investigations relating to Miami Beach employees citywide.

- The City has initiated an in-depth review of select personnel practices in the City's Fire, Police, Parks and Recreation, Parking and Public Works Departments including a review of recruitment, promotional appointments, assignments, and disciplinary processes.
- All security access levels for personnel to the automated databases for Permits Plus were reviewed and necessary restrictions in the system have been implemented. The replacement software for Permits Plus is in the testing phase and shall become operational in the spring.
- The Code Compliance Division no longer accepts any payment of violations or fines in any form or fashion.
- Assignment of Code Enforcement Officers are now continually rotated.
- Background investigations procedures conducted by the City's Human Resources Department were reviewed and changes have been implemented to the recruitment and background screening processes.
- The City has installed Automatic Vehicle Locator Systems (AVLS) in City vehicles, and a Citywide AVLS policy is being implemented which will require random checks to be instituted, where supervisors will compare location reports with daily activity worksheets, enforcement actions and radio transmissions/dispatched calls.

As public servants, we are expected to maintain the highest level of honesty, integrity, dedication and professionalism and we are continuously evaluating ways to improve internal controls, strengthen organizational ethics and identify any potential wrongdoing. The City of Miami Beach takes accusations of wrongdoing against its employees very seriously. If there is evidence of a crime or other impropriety, the City has and will always take all measures necessary to punish such employees, regardless of who they are.

KGB/JS/CMG

Some of the information presented in the New Times article found below was not fully presented, inaccurate or was misleading. Pursuant to the direction of the City Commission, the City's responses to the article are represented in **bold**. Reference documents will be made available upon request.

## **Miami Beach Fire Department Is Aflame With Corruption and Abuse**

Comments (0) By **Michael E. Miller** *Thursday, Feb 7, 2013*

Dawn was still streaking the sky over South Beach when FBI agents silently surrounded the art deco fire station on Jefferson Avenue. For months, they'd been watching a small, dapper firefighter named Chai Footman as he accepted more than \$7,500 in cash and free drinks to protect popular nightclub Dolce.

- **Chai Footman has been terminated as a result of conviction after his arrest in April 2012, (Reference Document 1).**

Now, as joggers from Flamingo Park stopped to gawk, the feds swarmed the station, grabbing Footman by his suspenders and throwing him into a squad car.

The strange scene repeated itself a half-dozen times that April 2012 morning, as the FBI arrested six other city employees ensnared in the nine-month anti-corruption sting. Also booked was another firefighter, Henry Bryant, who'd betrayed his badge by smuggling what he thought were kilos of cocaine for envelopes of cash.

- **Henry Bryant has been terminated as a result of conviction after his arrest in April 2012, (Reference Document 2).**

The chief target was Jose Alberto, the city's lead code compliance officer, who threatened hefty code violations to blackmail businesses out of tens of thousands of dollars. The feds nabbed four of Alberto's underlings too.

- **Five employees from the Code Compliance Division including, Jose Alberto, Orlando Gonzalez, Willie Grant, Vincente Santiesteban and Ramon Vasallo, were terminated as a result of conviction after their arrests in April 2012, (Reference Document 3).**

The arrests landed like a mortar in Miami Beach, a city already carpet-bombed by decades of corruption, and things have only gotten worse since City Manager Jorge Gonzalez resigned over the scandal. A bad cop was rehired despite beating up gay tourists.

- **The City terminated the above referenced employee on August 1, 2011. Pursuant to a ruling received from an outside arbitrator in a binding arbitration case, the officer referenced above was mandated by the arbitrator to be fully reinstated as a Police Officer with the City, (Reference Document 4).**

Miami Beach procurement director Gus Lopez was busted on 63 charges of demanding bribes for fixing contracts.

- **Gus Lopez resigned from the City in lieu of termination on March 30, 2012. The then-City Manager and the City's Chief Financial Officer provided critical information relating to what they believed to be criminal misconduct by Mr. Lopez to Miami Beach Police Chief Raymond Martinez prompting the investigation. Based on that information, the Miami Beach Police Department reached out to the State Attorney's Office Public Corruption Division and jointly conducted a formal investigation. Based on the results of the investigation by the State Attorney's Office, the Miami Beach Police Department arrested Mr. Lopez on October 22, 2012. The City Attorney's Office is assisting with the external investigation.**

Even Gonzalez's resignation was soured when taxpayers realized they owed him half a million dollars in severance.

By now, graft in this island city seems as endemic as sea oats. Brisk business, booming development, and a steady stream of tourism have so swollen the coffers that corruption appears almost inescapable.

But the reality is that the city has blown plenty of chances to clean up its act. Nowhere is this fact more obvious than in the Miami Beach Fire Rescue Department (MBFR), a force of 303 with a \$62 million budget, the second largest in the county. Years before Footman and Bryant went astray, two employees — fire captain Edward Gonzalez and fire inspector David C. Weston — blew the whistle on rampant wrongdoing, only to be ignored, ostracized, and forced out.

- **Ed Gonzalez was assigned to the Fire Prevention Division two separate times during his tenure with the City. As a Firefighter II, he was assigned to the Fire Prevention Division on October 30, 2006 and was transferred out of the Division on February 4, 2008. Mr. Gonzalez was transferred back into the Fire Prevention Division on September 21, 2010 as a Lieutenant and was later promoted to Captain on January 31, 2011. Mr. Gonzalez was not terminated. Mr. Gonzalez participated in the Deferred Retirement Option Plan (DROP). Employees who qualify to participate in the DROP are permitted to continue working for the City for a specified amount of time after they retire. During this period, the employee and the employer do not pay into the pension plan. Based upon Mr. Gonzalez' DROP contract, his formal date for separation of employment was January 31, 2014. Mr. Gonzalez voluntarily chose to resign on September 10, 2012, approximately one year prior to his formal separation date.**
- **David Weston worked in the Fire Prevention Division as a civilian inspector in the position of Fire Protection Analyst. He began his employment with the City on June 30, 2000 and was terminated in 2008.**

- To date, there has been no suggestion from any enforcement agencies to the City Administration confirming that any whistle was blown. Fire Chief Javier Otero, Assistant Fire Chief Jorge Sanabria, Fire Marshal Sonia Machen, and former Fire Chiefs Eric Yuhr, Ed Del Favero and Floyd Jordan have all stated that they are unaware of any instances where the former employees, Mr. Weston and/or Mr. Gonzalez, presented the allegations mentioned in the article that allegedly blew the whistle to the Fire Administration during their employment with the City.
- According to Internal Auditor James Sutter, on August 10, 2007, Mr. Sutter and the Assistant Internal Auditor, Laura Franco-Rubines, met with Mr. Weston who had expressed to them concerns regarding how fees were being incorrectly calculated. Mr. Sutter conveyed to him that they were in the process of conducting an internal audit; however, at no time did Mr. Sutter or Ms. Franco-Rubines provide any specific details to Mr. Weston regarding this matter. According to Mr. Sutter, Mr. Weston did not provide any new information during this conversation. Internal Audit was already aware of these issues having previously been alerted by the Building Department Administration which, in turn, triggered the audit.

A three-month *New Times* investigation has found strong evidence supporting the two whistleblowers' allegations. Dozens of interviews and hundreds of pages of documents reveal a department with suspect leadership, little oversight, and a playboy culture that has led to multiple lawsuits.

- Former Fire Chief Yuhr served as the Chief from March 2008 through March 31, 2012. Prior to his tenure, Interim Fire Chief Del Favero served in the interim capacity from November 2007 through March 2008. Prior to Chief Del Favero, Floyd Jordan served as the Fire Chief from October 23, 2002 until September 29, 2007. The current Fire Chief, Javier Otero assumed command of the Fire Department on April 1, 2012, eleven days before the arrests. The Fire Division Chiefs assigned to the Fire Rescue Division, Combat Division and Support Services Division were promoted into these positions in July 2012.

*New Times* has discovered the following:

Millions of dollars' worth of fire permit fees went missing or were written off by inspectors, including those now charged with taking roughly \$25,000 from club Dolce.

- The two Firefighters charged in the Club Dolce case (Chai Footman and Henry Bryant) were not associated with Fire permit fees. They were Firefighters assigned to the overtime night shift tasked with conducting night inspections of the City's nightclubs. These two Firefighters would not be able to "write off" Fire permit fees, as neither had access to the City's permitting software system during this time.

City officials ignored repeated, detailed warnings about those missing funds.

- **The article does not explain the nature of “missing funds” relating to the Fire Inspectors.**

Top fire officials were warned about inspectors taking bribes from a South Beach hotel to ignore thousands of dollars in code violations, but did nothing.

- **There is no evidence indicating that the Fire Department Administration was “warned” about inspectors taking any bribes from a South Beach hotel. Chief Otero, Assistant Chief Sanabria, Fire Marshal Machen, and former Fire Chiefs Yuhr, Del Favero and Jordan have all stated that they did not receive any information of this nature.**

One powerful fireman, union president Adonis Garcia, has been accused of three assaults, bilking the county out of \$76,000 in property taxes, and abusing his authority as a firefighter.

- **The State Attorney’s Office dispositions of the assault allegations against Mr. Garcia have resulted in no action taken and these cases have all been closed, (Reference Document 5).**
- **The property tax issue is currently an open private matter. Any follow-up action would be dependent on the outcome.**

A female firefighter successfully sued the department over repeated sexual harassment, including semen-stained clothing and death threats, winning \$700,000.

- **The City prevailed on Ms. Smart’s claim of retaliation. Additionally, the City has filed post-trial motions to set aside the verdict on harassment, requesting that the remainder of the case be dismissed, or that the City be granted a new trial. The Court has not ruled on these motions although it has already indicated that the amount of the verdict will be reduced under Federal law to \$300,000. The City will appeal the verdict if the post-trial motions are denied, and expects to prevail. Nothing has been paid to Ms. Smart.**

An African-American recruit was awarded \$100,000 after alleging racial abuse, including being teabagged and called racial epithets by fellow firemen.

- **The case was settled, without either side admitting wrongdoing, based solely on issues surrounding Mr. Gentles’ termination as a probationary firefighter for alleged falsification of his application. Despite Mr. Gentles’ demand for millions of dollars and full reinstatement as a firefighter, the settlement called for him to receive only lost wages, plus attorney fees, and offering him a position in the fire prevention bureau for a limited time (through May 2014) if he passed the final probationary exam. In exchange, Mr. Gentles gave up any claims to sue and**

**withdrew all his charges of discrimination made only after his termination. Those allegations were conveyed to the State Attorney's Office. Additionally they were thoroughly investigated by an experienced employment attorney from outside the City. The outside investigator/attorney interviewed over 30 witnesses, including Mr. Gentles. A comprehensive 50 page report concluded that the accusations in Mr. Gentles' EEOC affidavit were not substantiated or credible, (Reference Document 6).**

Taken as a whole, the facts paint the picture of a department wracked by corruption and racial and sexual abuse, 20 years after the Department of Justice sued to stop MBFR's discriminating ways. Amid these problems, Javier Otero, the department's chief, has continued to rely on bad apples like Garcia, a man who is now a captain and the department's spokesperson.

- **Promotions and assignments for Classified positions are both governed by the collective bargaining process that factors seniority and testing scores. Pursuant to the 2009 – 2012 International Association of Firefighters, Local 1510 (IAFF) Collective Bargaining Agreement, Mr. Garcia was promoted to the position of Fire Captain on September 30, 2012 due to a reorganization in the Fire Department.**
- **Upon direction of the former City Manager, then- Fire Chief Eric Yuhr assigned Mr. Garcia to serve as the Fire Department's Public Information Officer in midyear 2011 in order to mitigate additional overtime that would have been incurred based on this assignment.**

Otero disputes *New Times'* conclusions and says he takes seriously every complaint that reaches his office. "I don't have any reason to believe there is corruption in the department," Otero says. "These are nothing more than allegations from disgruntled employees."

Garcia also defends his record. "I've done nothing but try to do the right thing," he says. "At the end of the day, I've got nothing to hide."

But where there's smoke, there's fire, and thick plumes of scandal hang over MBFR. As Footman prepares to join Bryant in federal prison, the department's two whistleblowers are demanding to know why their supervisors aren't also behind bars, or at least out of jobs.

- **Fire Marshal Machen supervised Ed Gonzalez prior to his resignation and also managed David Weston through his immediate supervisor. The Fire Marshal has stated she was not advised of these allegations by either of the former employees nor has she been contacted by any enforcement agencies or been the subject of any investigations. The current Fire Chief had only been in his position for eleven days at the time of the arrests; he had no involvement with supervision, investigation or any other matters pertaining to Mr. Weston. The investigation of Mr. Weston relating to his termination was conducted by Fire Marshal Machen,**

reviewed by then-Assistant Chief Yuhr and approved by then-Fire Chief Ed Del Favero (Reference Document 7).

"There are so many lies and so much bullshit coming out of the department," says Gonzalez, the retired fire captain. "And it all starts at the top."

- **There is no factual basis provided in the article for this comment.**

Holding a clipboard, David Weston walked through the splendor of the Fontainebleau's foyer. Beneath his brown wingtips lay a small fortune of new Italian marble tiles. Above his head glimmered golden crystal chandeliers. And all around him swirled the buzz of the mind-boggling \$1 billion renovation.

But as the Miami Beach fire inspector roamed the palatial hotel, his thoughts were on the figures he couldn't see. Despite the historically expensive renovation, the city had valued the construction at just \$115.5 million. That meant the city was losing out on millions of dollars in permit fees, Weston realized.

"It was ludicrous," he says. "And suspicious."

- **As evidenced in the City's Internal Audit report dated July 3, 2008, (Reference Document 8), captions provided below, the City was made aware by the then-Building Director Thomas Velazquez, in early 2006, of concerns regarding the undervaluation of building construction projects and the potential impacts of Building fees being collected well before 2008. As a result, in 2007 the City conducted its own Internal Audit of Building Department fees and the City's findings resulted in the recovery of fees owed to the City. (Reference Document 9)**

**A new Building Director (Tom Velazquez) started his tenure in the City of Miami Beach on March 13, 2006. During the period between mid-March and May of 2006, Mr. Velazquez reported to the City Manager's office some of his findings regarding the general lack of accountability and internal controls in the Building Department. Of particular concern was the lack of oversight and procedures that addressed the proper verification, calculation and collection of permits fees/ revenue.**

**Late March 2007, at the request of the Department Director, a review of the permit fees for a multi-story new condominium and renovation project was performed by the new Assistant Director of Administration, Graciela Escalante. Because of the Department Director's concern regarding permit fee oversight and accountability in general he requested a project accounting review prior to approval of a refund request in the amount of \$256,730 by the Developers of this project for TCO charges. This review of the project accounting revealed that job values and square footage as submitted on permit applications by Owners/Developers/Contractors and/or Expeditors were never verified for accuracy by Building Department personnel. The result of the evaluation of the project disclosed that rather than the City owing a**

refund to the Developer/Owner, the Developer/Owner owed the City \$1,246,809 in permit fees.

As a result of the findings and process failures discovered by the current Administration, procedures were put in place to properly account for proper revenue collection and verification. Administration developed an Architect/Engineer (A/E) affidavit form, a three part form executed by the Architect, Owner and Contractor to certify job value and total gross square footage which are necessary values to determine the permit fees as required by ordinance. A directive to Building staff was issued on April 27, 2007, to implement the new plans review process and procedures which included the required submittal of the A/E affidavit form by the applicant. The Building Plan Examiners are made responsible to ascertain that the job values submitted reflect the current industry costs per square foot and that the gross square footages are reasonably accurate.

Permits are not issued unless the A/E affidavit is submitted and verified. In addition, the Building Director made the determination that CO's /CC's would not be approved without a permit review of the project.

- In May 2008, the then-City Manager also received authorization from the City Commission to pursue an operational audit through a qualified auditing firm to more closely examine Building Department processes and procedures. A portion of the scope of work for this company will be to examine the current structure of the Building Department and make recommendations for improvements. On 12/6/08 an outside consultant (Watson Rice) issued a report on the Review of the Building Department Organizational and Operational Processes (Reference Document 10). Similar issues were noted. Additional reports on the status of the findings of the Watson Rice report were subsequently presented to the Finance and Citywide Projects Committee.
- As a result of the Internal Audit findings, Internal Audit Division staff was temporarily reassigned to review all closed permits to ensure that the City was properly collecting revenue that was due to the City. In total, \$7.24 million was recovered for Building permit fees and related fees (including radon fees, zoning fees, fire fees, MDC compliance fees, training fees and sanitation fees) as a result of review by Internal Audit at permit closeout. The Building Department was tasked with the audit of all closed permits as of January 1, 2010, and additional fees owed to the City were recovered.
- A total of \$12 million has been recovered by the City since the A/E Affidavit process was implemented in 2007, by both Internal Audit and the ongoing Building Department closeout review process (Aforementioned Reference Document 9).

Weston soon began to notice other projects that seemed to be deliberately undervalued and fees left uncollected. But his complaints were ignored, and in 2008 he was suddenly axed. "They had something to hide," he says. "And they still do."

- Chief Otero, Assistant Chief Sanabria, Fire Marshal Machen, and former Fire Chiefs Yuhr, Del Favero and Jordan have all stated that they had no knowledge that David Weston reported any wrongdoing to law enforcement authorities.
- The developer or contractor provides the valuation of a project on the Building Permit application. The City does not determine the value of the construction.
- The Fire Permit fee was a small component of the Building Permit fees and followed the same formula as the Building Permit fee. Pursuant to the City Code in effect at the time, the fees for new construction were calculated on total square footage of the project (Reference Document 11). The fees for renovation of existing buildings were calculated on the valuation of the project. The Fire Department was not responsible for obtaining the valuation of projects. The Fire Permit fee was calculated automatically by the software utilized for permit fees after the Building Permit application was created in the system.
- Pursuant to the City Code in effect at the time, the Fire permit fee was calculated as follows:
  - New Construction:  
Fire Fee = \$1.10 for each 100 square feet or part of floor area.
  - Renovation or Alterations:  
Fire Fee = \$5.50 for the first \$1,000 of estimated cost plus \$1.10 for each additional \$1,000.
- The Building Department had always required an affidavit from the Owner and Contractor to confirm the valuation of the work. This affidavit was submitted at the time of application and again at completion of the job. In addition, the Building Plans Examiners were instructed to flag any projects that seemed to be undervalued based on their review of the plans and their experience and knowledge. This was done not only to ensure that proper fees were assessed, but also to make sure that the code requirements for renovation of existing buildings were met. If the building renovation exceeded 50% of the property appraised valued, then the code requirements for new construction must be imposed. The undervaluation of a project could be raised by any of the Building Plans Examiners or Inspectors in the field and was not solely the responsibility of one individual.
- Due to the permit audit closeout, the City was able to recover additional fees relating to the Fontainebleau Project, which included the renovation of two existing towers and the construction of two new towers.
- The original permit fees for B0700784 equaled \$4,084,148, however, after the audit; the valuation was revised to \$194,911,430, resulting in an additional \$2,053,013 in recovered fees for this project.

- The original permit fees for B0701610 equaled \$665,375, however, after the audit; the valuation was revised to \$31,297,332, resulting in an additional \$3,493 in recovered fees for this project.
- The original permit fees for B0800719 equaled \$191,832, however, after the audit; the valuation was revised to \$4,906,740 resulting in an additional \$121,381 in recovered fees for this project.
- The original permit fees for B0800986 equaled \$374,758, however, after the audit; the valuation was revised to \$15,733,417, resulting in an additional \$265,155 in recovered fees for this project.
- The valuation for the remaining Building Permits associated with the new construction totaled \$146,198,453. However, the permit fees were based on square footage and not valuation. The total fees paid for these Building permits totaled \$265,339.

Yet *New Times* found ample evidence — from permit records to audits, insider testimony to arrests — that bolster Weston's claims. "They fired me to silence me, and they timed it to embarrass me," he says.

- **As stated on page 5, David Weston was properly terminated following an investigation conducted by the Fire Department (See aforementioned Reference Document 7).**

David Weston was destined to be a pain in someone's ass. His ancestors fought in the American Revolution. His dad was a military intelligence officer during World War II. Young David, who was born in 1950, inherited his old man's intellect and single-mindedness. When legislators threatened to cut funding for the student radio program at his high school near Philadelphia, he wrote an angry letter demanding it remain on the air. It didn't hurt that he let politicians think he was another David Weston: the then-president of ABC.

Weston attended the University of Miami to study engineering. In 1999, he joined Miami Beach Fire Rescue as a fire protection analyst. The job suited his obsessiveness. Weston drove around the island inspecting construction and renovation projects to ensure the plans were followed and that alarm and sprinkler systems worked. When he discovered problems — such as faulty doors that could turn a building into a towering inferno — he issued violations and withheld permits.

Weston was one of only five full-time fire protection analysts. But there were also about 30 fire inspectors, many of them firefighters such as Chai Footman, who moonlighted by checking nightclubs for overcrowding. Altogether, the fire prevention bureau was responsible for inspecting Miami Beach's thousand buildings once per year and levying millions in annual permit fees and fines.

- **The annual Fire permit fees are charged to existing businesses for inspection services. This fee is based on the schedule adopted under Chapter 50 of the City**

**Code. The Fire permit fee is collected at the same time when fees are collected for Business Tax Receipt and Certificate of Use. During the last several years, the total annual Fire permit fees collected by the City ranged between \$300,000 and \$400,000. Based on the current fee schedule and inventory of buildings in the City, annual Fire permit fees collected by the City for inspection services could not amount to millions of dollars.**

In 2003, Sonia Machen was hired as the department's fire marshal in charge of inspections. She introduced computers equipped with a new, digital system called Permits Plus. It was designed so departments could share information and inspectors could raise permit costs as building costs increased.

- **Fire Marshal Machen was hired as the Fire Marshal on June 2, 2003. The Building Department was already using the Permits Plus software as early as July 1999.**
- **The Fire Department was using the software to track all Fire Inspections.**

The change came as Miami Beach enjoyed an unprecedented boom. Weston and his counterparts could hardly keep up with inspecting all the new high-rises pumping billions into the economy. "I started noticing that the building department wasn't doing a good job assessing fees on Permits Plus," he says. "Taxpayers were getting cheated out of millions."

Weston spent months inspecting renovations at the Fontainebleau, for instance. According to him, permit fees for the \$1 billion remodeling should have totaled \$25 million, or roughly 2.5 percent. Instead, contractors paid just under \$2 million.

There were other undervalued projects. Once, Weston took the ferry to exclusive Fisher Island to inspect a 16-story building on the north shore. But the permitted cost was only \$20 million. When he complained, his supervisors revalued it at \$58 million, raising fees three-fold. The developer warned Weston not to return to the über-rich isle.

- **The Fontainebleau project included renovation of existing buildings and construction of two new towers. As stated above and contained in Reference Document 12, this project was audited by the City to verify the valuation and corresponding fees, resulting in the collection of additional fees owed to the City.**
- **The Fisher Island project was a new construction of a residential building. The fees for this type of construction (new construction) were based on square footage and not on valuation of the job. Total fees collected for this project based on square footage would not have been impacted by any change in the valuation. (Reference Document 13).**

As with the Fontainebleau, the renovation of the Eden Roc hotel struck Weston as suspicious. Developers touted it as a \$240 million project, but Permits Plus records listed only \$51.56 million worth of construction between 2004 and 2010. That would have meant \$188 million was spent on furnishings — a ridiculous \$300,000 per room.

- The Eden Roc included the renovation of one tower and the construction of a new tower. See attached documents showing valuation and permit fees for the Eden Roc project (Reference Document 14).
- The valuation of the new tower (B0604657) was \$83,242,560. However, the permit fee for new construction was based on square footage not on the valuation. The permit fee calculated on square footage totaled \$108,957, which was accurately collected by the City.
- The valuation of the existing tower for Permit B0603261 and Permit B0704645 was \$6,436,407. The total original permit fees for these two permits equaled \$758,713. Based on the internal audit initiated by the City, the valuation was revised to \$26,107,163, resulting in an additional \$338,732 of recovered fees owed to the City that were assessed and paid.

Weston suspected that someone with access to Permits Plus had deliberately undervalued each of those projects to save the developers millions in permit fees, perhaps in exchange for kickbacks.

- Fire Marshal Machen stated that David Weston never alleged to her that the valuation was deliberately changed by City employees and that he never suggested that employees were taking kickbacks. Fire Marshal Machen does confirm that David Weston was complaining about Fire Department fees being too low compared to the Building Department. Fire Marshal Machen stated that she asked David Weston to provide information to support any potential amendments to the fee schedule, if warranted. Fee Schedules cannot be changed by the Fire Marshal. Any changes in permit fees codified in City ordinance require approval by the City Commission.
- A new permit fee structure was adopted by the City Commission and became effective on February 1, 2010. The new fees are based on the level of effort required to do inspections and plan review for the type of work. It is based on the type of occupancy and the square footage of the work to be performed. The valuation for renovation is no longer required for the fee calculations.
- There is no evidence of any “kickbacks”.

But whenever Weston complained to Machen or her assistant Steve Phillips, they told him things were under control. Finally, in 2007, Weston broke the chain of command by going to Miami Beach internal auditor James Sutter and laying out his suspicions. "You know you'll probably be fired for this," Sutter said, according to Weston. (Sutter did not respond to requests for comment.)

- As stated on page 3, at the time Mr. Weston met with Internal Audit, they were already in the process of conducting an internal audit regarding the collection of these fees.
- Mr. Sutter has stated that he did not tell Mr. Weston that he would probably be fired for complaining about the issue.

By February 2008, Weston was so fed up he went directly to then-Chief Edward Del Favero and threatened to alert the cops.

- **The then-Chief Del Favero has stated that David Weston never presented the allegations mentioned in the article. Fire Marshal stated that she has no knowledge of David Weston meeting with then-Chief Del Favero regarding this matter.**

Before he had a chance, though, Miami Beach police arrested three building department employees on corruption charges. Planner Henry Johnson, plans examiner Mohammed Partovi, and inspector Andres Villarreal were caught accepting bribes stuffed inside toilet-paper rolls in return for fast-tracking a developer's plans.

Two days following the arrests, Weston was fired after an anonymous letter arrived claiming he'd started a company with a permit consultant named Damian Gallo against city policy.

Weston had indeed bought a 17 percent stake in a marina venture in which Gallo was also an investor. But Weston had asked the Miami-Dade Ethics Commission if the investment was OK and insists he also notified his superiors. Yet Machen wrote that the deal was "unacceptable" in Weston's termination letter.

"That wasn't really the reason why they fired me," Weston maintains. "They wanted me to look guilty, like I was part of the group [with Johnson, Partovi, and Villarreal]."

- **The Fire Department received a written complaint on February 25, 2008, alleging that David Weston was involved in an unethical business relationship with one of the City's customers, a permit expediter. Fire Marshal Machen submitted an investigation report dated March 5, 2008 (see Aforementioned Reference Document 7) to the Fire Chief Ed Del Favero. It was determined that David Weston violated several provisions of the Miami Beach City Code Article VII Standard of Conduct and violated several provisions of the Miami Dade County, Conflict of Interest and Code of Ethics ordinance. As a result of these substantiated violations, David Weston was terminated.**

(Machen admits to *New Times* that soon after Weston left, Permits Plus was changed to standardize permit fee procedure.)

- **Fire Marshal Machen stated that a new fee schedule was adopted by the City Commission and not that the software was changed. The new fee schedule became effective on February 1, 2010, after a deliberate process of developing an amended fee structure with an outside consultant. The amended fee schedule was based on level of effort for each type of job and determining the level of effort based on occupancy and square footage. The recommendation of the Internal Audit report dated July 3, 2008, as well as the Watson Rice report dated December 16, 2008, included replacement of the Permits Plus software system. In 2011, the**

**City entered into a contract with Accela, Inc. to replace the Permits Plus system. The new software is currently in the acceptance testing phase.**

Weston had good reason to suspect that inspectors were taking cash to ignore permit fees. Two years earlier, electrical inspector Thomas Ratner had been busted for corruption. Then there were the arrests of Johnson, Partovi, and Villarreal.

In a memo, then-City Manager Jorge Gonzalez partially blamed the arrests on Permits Plus, which, he wrote, "does not contain an 'audit trail' function. This meant that job value... could be changed... by a single individual without the system recording."

The scandal vindicated Weston. "I think the city has become a racketeering-based, corrupt organization," he says.

As for the missing millions in permit fees, "there are three possibilities as to what was going on," Weston says. "First, that contractors lied about the values and that clerks were too stupid to know. Second, they were scriveners' errors. Or third, there was fraud going on."

Weston has met with officials from the FBI and the Miami-Dade Police Department's Public Corruption Investigations Bureau to discuss his complaints. It is unclear if either agency is investigating. Miami-Dade Police did not return calls from *New Times*. The FBI declined to comment.

Mid-interview, Weston rummages through his bag and pulls out something shiny: a 1944 Canadian victory nickel. Like corruption, coins are an obsession of his.

"Cities are like money," he says, holding up the coin to show the Morse code embedded in its edge. "They are full of hidden things."

- **As previously mentioned on page 3, a total of \$12 million has been recovered by the City since the A/E Affidavit process was implemented in 2007, by both Internal Audit and the ongoing Building Department closeout review process.**

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Captain Ed Gonzalez sat in front of his home computer. His stocky firefighter's frame perched precariously above a keyboard as his thick fingers pecked words of outrage. It was just before midnight September 10, 2012.

"Accept this as my official forced letter of resignation," he typed.

At the time of his resignation, Gonzalez was the fourth highest-ranking member of the department. But he'd had enough.

- **Ed Gonzalez was not the fourth highest ranking member of the Fire Department. The Fire Chief, Assistant Fire Chief and seven Division Chiefs ranked higher than Mr. Gonzalez during his tenure as a Fire Captain.**

The details of Gonzalez's allegations — which, like Weston's, have never been reported before — suggest that fire officials ignored evidence of bribery. Gonzalez had witnessed a hotel manager in South Beach detail his entanglement with a bribery scheme, and then watched in dismay as nothing was done about it. Meanwhile, Gonzalez's own job was brought to a screeching halt as he tried to blow the whistle.

"One hell of a way to end a career," he wrote in his resignation letter.

Gonzalez had joined the department the same day Otero, the future chief, had arrived: January 16, 1989. Gonzalez was born in Key West and still bears the laid-back attitude of a Conch. His dad was a doctor who insisted his kids get a good education in Miami, so Ed studied accounting at St. Thomas University. He became a sales rep at AT&T but grew bored. He saw an ad for the fire department. At 40 years old, he arrived at training a decade older and a few pounds heavier than the other recruits.

Otero, on the other hand, was a lean and handsome Colombian-American. Just out of the Army, Otero made no effort to hide his ambition. "He came in with the full intention of becoming the fire chief one day," Gonzalez says. "He said as much. All the time."

The two became friends while serving on the same rescue teams. They trained together, put out fires together, even lived together in an apartment near South Shore. "I introduced him to his second wife," Gonzalez says of Otero. When Gonzalez and his wife celebrated their tenth wedding anniversary, the Oteros attended.

But the friendship began to fall apart in February 2011. That's when a routine inspection pulled back the veil on widespread bribe-taking, Gonzalez says.

It started with a routine call to a construction site at 34th Street and Collins Avenue. He was met there by Armando Perez-Roura Jr., the son of the powerful Radio Mambí talk-show host of the same name. Junior had been busted in 1984 for importing cocaine from Colombia, but served just two years after becoming a government informant, according to a 2004 *New Times* report. Now he was trying to go legit as the manager of the Versailles Hotel Condominium.

"He just opened up," Gonzalez remembers. Perez-Roura Jr. told the fire captain that he and other condo board members had paid thousands in bribes to fire inspectors and other city officials to expedite renovations. But the bribes hadn't worked.

"It was like, *Oh crap. What do I do now?*" Gonzalez remembers thinking. "I didn't want to walk away, but also I couldn't go to my supervisors."

Instead, Gonzalez called the Miami Beach Police Department's Strategic Investigations Unit — the unit that had busted corruption within the building department three years earlier. On February 28, 2011, Gonzalez accompanied Dets. Rosa Redruello, Alkareem Azim, and Debra Travis to the Versailles.

(*New Times* obtained a redacted copy of the intelligence report on that meeting. Asked for an unredacted copy, the Miami Beach PD refused on the basis that the information could expose an undercover officer. The details below come from the redacted report, except for Perez-Roura Jr.'s identity, which he confirmed in an interview with *New Times*.)

- **Chief Raymond Martinez has confirmed that Mr. Gonzalez went to the Police Department in February of 2011 and communicated third party information given to him by a building manager alleging bribes to an architect and a City employee who was not employed in the Fire Department. Mr. Gonzalez advised the police detectives that he had no personal knowledge of the allegations and was simply passing on the information and wished to remain anonymous. Fire Marshal Machen and Chief Otero both stated that Mr. Gonzalez never reported any of these allegations to them. The allegations made by the building manager did not pertain to the Fire Department and had no link to the recent arrests from the night inspections. The case was referred to the State Attorney's Office and was closed due to the absence of substantiating evidence and lack of cooperation by the building manager complainant.**

Here's what Perez-Roura Jr. told detectives: A fire had damaged the building in 2005, so inspectors informed the Versailles owner he'd have to hire an architect. The condo board hired Reymundo Miranda of UCI Engineering to do the job.

Miranda soon approached the wife of the condo's board president and told her he needed \$15,000 to "pay off city officials," according to the report. "Perez-Roura Jr. said he personally delivered \$15,000 cash to Miranda, who told him that the money would insure that the City would 'leave them alone.'"

Perez-Roura Jr. also told detectives that he had met Miranda on several other occasions at the Latin American restaurant on 41st Street and paid him \$2,000 and \$3,000 to bribe city officials. The Versailles received various violations while Miranda was the engineer of record, Perez-Roura Jr. told detectives. But each time, they were dropped.

Then, in 2009, Miranda insisted the building needed a new fire alarm system. He arranged for another company to do the work for \$70,000.

But after the system was installed, another inspector put the Versailles on fire watch because no permit had been issued for the work. The fire inspector — whose name was

blacked out in the report — later took Versailles off that watch list, even though there still was no permit, presumably because he too had received money, Perez-Roura Jr. told detectives. The same inspector had also "signed a form stating the alarm installation job cost \$1,000 (instead of \$70,000)."

The Versailles was in shambles, but under protection thanks to the bribes. When another analyst found holes knocked clean through walls, hotel management simply said Miranda already knew about it, and no citation was given.

- **Mr. Perez-Roura and the reporter did not accurately reflect the City's inspection process. See attached timeline of Fire Inspections for the Versailles Condominium 3425 Collins Avenue (Reference Document 15) and the Fire alarm permit pertaining to this matter (Reference Document 16).**
  - **It is proper procedure for one Fire Inspector to initiate a violation and for another Fire Inspector to close it out. This is normal process due to workload, days off, or assignments on a daily basis. All Fire Inspectors are certified by the State Fire Marshal's Office and must follow the standard guidelines, rules and regulations in the performance of their duties as stated in Florida Statute and in the City of Miami Beach.**
  - **At the Versailles, there was a problem with the fire alarm panel. A Fire Inspector placed the building on Fire Watch on August 18, 2009. A Fire Alarm permit to repair the fire alarm panel was approved and issued the next day on August 19, 2009. This permit was not for the purpose of installing a new fire alarm system, rather just to repair/replace the existing panel. Therefore, the valuation of the work submitted on the permit application of \$1,000 is plausible. In any event, the permit fee for this permit was not based on valuation of the work.**
  - **A different Fire Inspector terminated the fire watch on September 1, 2009, after the fire alarm permitted work was tested and approved. The fire alarm system was operational and the fire watch was no longer required.**

When the Versailles finally fired Miranda in 2009, the city issued a stop order on all construction until the hotel hired another architect. But when the new architect resubmitted the plans that Miranda had already had approved, they were rejected. The fire department suddenly found no less than 67 violations. Perez-Roura Jr. tried to speak with officials in the fire and building departments but was told "someone" had put a hold on the project.

- **Every job must have an active architect or engineer of record. When the engineer of record, Mr. Miranda, P.E., removed himself from the Building permit, the permit had to be placed on hold until another engineer was hired for this project.**
- **Every time there was a change of architect or change of engineer and the new engineer submitted the plans for reinstatement of the permit, the plans were reviewed de novo to ensure that the new engineer had not changed anything.**

(Rey Miranda adamantly denies ever paying a bribe. "That is a total lie," he says of Perez-Roura Jr.'s claims. "Anyone can accuse anyone of anything. Talk is very cheap. You have to ask yourself: How does someone benefit by throwing an accusation of that nature out there?")

Listening to this story, Gonzalez was aghast. "It just stank to high heaven," he says. "It sounded like someone was writing these [violations] off in order to get a payoff or at the orders of someone higher up."

- **Ed Gonzalez has not provided the City with any documentation to demonstrate that violations were "written" off by Fire Inspectors. The violations were initiated and closed out properly by licensed Fire Inspectors (See aforementioned timeline Reference Document 15).**
- **The City does not have any knowledge of Perez-Roura mentioning bribes to any Miami Beach Fire Inspectors. In fact, when asked if any other City officials had been paid off, he named only one former city employee who was not employed in the Fire Department. According to Fire Marshal Machen, the only allegation about a Fire Inspector was that allegedly, one of the Fire Inspector's father owned the fire alarm company that was hired to install the fire alarm, which is not factual.**

On March 16, 2011, Dets. Azim and Travis met with then-Assistant State Attorney Joe Centorino to discuss the bribery accusations. Centorino told them that "no criminal activity [was] evident," according to the Special Investigations Unit report.

Perez-Roura Jr. also claims to have corresponded via email with Otero and Fire Marshal Sonia Machen regarding the corruption.

(After initially saying Perez-Roura Jr.'s name "did not ring a bell," Machen later emailed *New Times* to say that she did, in fact, remember Perez-Roura Jr. and that his allegations were "totally false" and "an attempt to discredit [her] so that the condo association would not have to incur the cost it would have taken to correct the fire code violations.")

"You know what I really don't understand?" Perez-Roura Jr. says. "I believe they have enough to do a real investigation, but I haven't seen them do anything."

- **Chief Otero and Fire Marshal Machen have stated that Mr. Perez-Roura did raised concerns to them regarding a separate matter that was not related to corruption. Mr. Perez-Roura submitted a written report with pictures of alleged building violations for a property located at 1688 West Avenue (Reference Document 17). The report was a complaint against the building management and the engineer that they hired to resolve the problems. The management has created openings in a shaft located in the corridors. They attempted to locate a water leak and in doing so, they created a fire safety hazard in the building. The Fire Marshal was**

contacted on a Friday, June 29, 2012 that there was a vertical opening unprotected in this building. Fire Marshal Machen immediately dispatched a fire inspector to investigate. A fire watch was implemented on the same day at 1:30pm. The engineer contacted the Fire Marshal to see if he, a licensed engineer and a licensed contractor could seal the openings and get a building permit on Monday. Since this is an occupied high-rise building, the priority for the Fire Marshal was to eliminate the life safety problem as soon as possible and to avoid the cost and relocation of residents. The Fire Marshal directed the engineer that the holes had to be sealed immediately in order to protect the residents over the weekend. A Building permit was obtained the following week and finalized by the building inspector.

- According to Chief Otero, Mr. Perez-Roura called him in late July or early August 2012, to complain about the open shaft and water damage at 1688 West Avenue and that the Fire Marshal was allowing work to proceed without a permit. Chief Otero contacted Mr. Perez-Roura and advised that the work allowed over the weekend was for protection and remediation and would be reopened and inspected after the permits were issued. On August 12, 2012, Mr. Perez-Roura dropped off a package of pictures and emails with the reception clerk at the Fire Chief's office. The pictures and narrative were pertaining to the 1688 West Avenue, but also included emails pertaining to the payment demanded by Rey Miranda.
- According to the Miami Beach Police Strategic Investigations Unit Intelligence Report, the case was referred to the State Attorney's Office who closed the case due to the lack of substantiating documentation and the lack of cooperation from the complainant (Reference Document 18).

Gonzalez was also stunned by the inaction. "I kept waiting to hear back about the case, but there was nothing." It didn't help that the new police chief, Ray Martinez, disbanded the Special Investigations Unit when he took over in March.

- The Special Investigations Unit was not disbanded. The Division was decentralized to address street-level vice and narcotics. The Special Investigations Unit is not the only Division tasked with investigating allegations of public corruption. Assignment of an investigation is dependent on the circumstances surrounding the allegations.

Even though no one was ever charged, Gonzalez believes his career was wrecked by taking the allegations to the cops. His performance evaluations plummeted, and his health began failing. "My life became miserable," he says.

- As stated on page 3, the Fire Chief and the Fire Marshal have stated that they were not aware of any allegations by Ed Gonzalez which would have prompted an investigation.

Gonzalez finally quit after getting into a tit-for-tat September 5 with an assistant fire chief who suspected Gonzalez and another firefighter of tape-recording a meeting with him. Furious over the inaction and the hostile treatment, Gonzalez went home and typed up his resignation letter. He estimates he gave up \$200,000 by leaving early.

- **This is a subject of an ongoing investigation.**

"I couldn't take that type of harassment anymore," he says. "I was going to end up having a heart attack with all the games they were playing."

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Yuri Moros's running shoes slapped the Venetian Causeway concrete. It was a blazing-hot August afternoon in 2005, and the Venezuelan professional trainer was staying in shape. Life was good. Business was taking off. Pop star Ricky Martin had endorsed his workout regimen. And Moros had recently gotten married.

Suddenly, Moros heard a screech. A silver Hummer had pulled a U-turn and was slowly following him. When he glanced over his shoulder, he saw a familiar figure shouting angrily — his wife's ex-husband, Adonis Garcia.

Moros was all too familiar with the six-foot-three firefighter who seemed to relish opportunities to intimidate his replacement, so he turned up the volume on his iPod and tried to ignore him. Instead, Garcia reached into his glove compartment and pulled out a handgun, according to a police report. Then he aimed it at Moros, who fled down a side street. Garcia was charged with aggravated assault, though prosecutors later declined to pursue the case.

In the years since, Garcia has risen from rank-and-file firefighter to one of the most powerful members of Miami Beach Fire Rescue: a captain, a union president, and even the department's official spokesperson.

But Garcia's personal travails echo the problems that have multiplied under his and Otero's leadership, as the department has been rocked by scandals, firefighter arrests, and two lawsuits over sexual and racial harassment.

"Adonis is politically savvy and powerful," says city Commissioner Ed Tobin. But he is also, Tobin adds, one of the reasons the department has "been flushed down the toilet."

Garcia defends his record, and Otero sticks up for his employee. "I know there have been several accusations about Adonis... but they have been properly looked into and investigated," Otero says.

Garcia, like Gonzalez a Key West native, joined the department in 1994. Ten years later, on August 1, 2004, the then-38-year-old firefighter was at the popular South Beach nightclub Mynt when he got into an argument with Santiago Contreras. Garcia slugged

the businessman in the mouth, leaving a gash that required seven stitches, according to a police report. Garcia was arrested, but the charges were dropped days later.

Four months later, Garcia was busted again, in Monroe County. This time, he was accused of assaulting a law enforcement officer. Yet those charges were dropped six months later.

Finally, there was Garcia's arrest August 23, 2005, for allegedly brandishing a gun at Moros. The trainer had recently married Sabrina Moore, Garcia's ex-wife. The two men even looked alike: dark-haired, handsome, and ripped. Garcia disputes the claim. "I would never do that," he says. "I don't even own a gun. Obviously, nothing really happened."

The assault charge was quashed.

- **The dispositions of the assault accusations against Mr. Garcia have resulted in no action taken by the State Attorney's Office. These cases have all been closed.**

Eventually, though, Garcia's problems caught up with him at work. On February 3, 2007, the firefighter was hired as a paramedic for a Volleypalooza tournament on the beach at Eighth Street. Garcia misrepresented himself as the "fire marshal," according to a letter that event organizer Lana Bernstein sent to the city's special events coordinator. Instead of working, Garcia got busy "bringing his guests onto [the] event stage." When staff asked him to stop, he demanded that the event be shut down. Garcia seemed "pumped up" and "hard-line," Bernstein wrote.

The next night, he again "was bullying and assaulting [the] staff," the organizer wrote. Finally, Bernstein claimed, "Garcia was seen in the party acting as a guest and enjoying himself, as opposed to supervising and assisting any city staff."

Garcia says the event got "out of control" and he had to forcefully intervene, but calls the other allegations "absolutely false."

- **Garcia was the subject of a complaint that occurred on February 3, 2007, where he used his position to allow friends or City officials to enter an event without paying. The complaint was investigated. The allegations of misrepresenting himself as the Fire Marshal were not substantiated; however, he was disciplined for his actions to solicit wristbands. (Reference Document 19).**

Garcia has also been accused of defrauding the tax system. This past December, Miami-Dade County filed a lien against his house after determining he'd claimed \$76,000 in homestead exemptions on his \$600,000 Normandy Shores Golf Course Club property despite renting it out and living in a SoBe condo.

The firefighter says he was "shocked" at the penalty. He admits he doesn't live at the Normandy Shores home but says the lien is a misunderstanding he's working to fix.

- **As previously stated, the property tax issue is currently an open private matter. Any follow-up action would be dependent on the outcome.**

Garcia certainly isn't short of cash. As union president and department spokesman — jobs that make him the face of MBFR everywhere from MTV segments to local TV reports — he pulls in significantly more than his \$95,000 annual base salary (plus tens of thousands of dollars in benefits). It's unclear exactly how much Garcia really makes. He declined to say.

As union chief, he helped engineer last year's \$60 million pension bill — a deal that paid him handsomely. On September 1, the then-second-level firefighter was promoted to lieutenant, receiving a \$4,200 raise in yearly salary. Less than a month later, he was promoted to captain, receiving another \$4,600 pay bump. When he retires, the deal guarantees he'll receive at least 65 percent of his salary as pension for the rest of his life.

He was one of six firefighters to get a double-jump when the city signed a new contract, which critics, such as Commissioner Tobin, say will cost the city millions in the long run in new pension obligations. "The presentation of the [contract] was designed to fool some commissioners and the public into thinking this was paid for," Tobin says.

Otero and Garcia have also been criticized for the culture of their department, as multiple complaints of sexual and racial harassment have arisen.

Last year, an African-American fire recruit named Brian Gentles claimed to *New Times* that a white colleague repeatedly called him "nigger" and put his testicles on Gentles's face. Gentles had met with Otero in December 2011 to discuss the alleged abuse. The then-assistant fire chief acknowledged that several other recruits confirmed the complaints, Gentles says. But when Gentles began to give a recorded statement a few days later, Garcia allegedly stopped the tape, took him outside the room, and told him not to "snitch" or he would be fired.

Indeed, Gentles was eventually axed. He filed a complaint with the Equal Employment Opportunity Commission and eventually accepted a \$100,000 settlement to return to the department as a fire inspector. (A city investigation, meanwhile, determined his claims were "not credible.")

"It seems like it's the Wild Wild West," Gentles says of the department. "You can do whatever you want — the taxpayers are just going to pick up the tab. Be racist, be sexist, no one is going to say anything."

Marlenis Smart echoes that sentiment. Smart says she was sexually harassed from her first day on the job as a firefighter in 2005. In her suit, she claimed male firefighters told her "women belong in the kitchen," accused her of being a slut, and walked in on her in the shower. Smart, who is married with four children, says Otero once even called her

"promiscuous." One time, her underwear was stolen from her locker. When she found it, it was covered in semen, she says. Her bra was hung from the rafters.

She also says she received death threats. When Smart pulled her bag out of her locker one day, out fell a photo of her with the eyes crossed out. "Liar," was written under her face, along with a warning: "Next fire last fire."

Smart filed her lawsuit in federal court in 2010.

Asked about Gentles and Smart, however, Otero declined to comment to *New Times*. "My interest is in moving forward, not continually rehashing things."

"His theory was that none of this crap happened," Smart counters. "He told me that I lied in court, when he's not even supposed to be discussing the trial." She claims Otero also sent her "really nasty emails," including one that accused her of "playing games."

"Can you believe this is the fire chief?" she says.

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Ed Gonzalez was apoplectic when then-City Manager Jorge Gonzalez appeared at David's Café in South Beach before a crowd of residents and claimed he had nothing to do with last April's corruption arrests. Like many residents, he was furious when the city manager walked off with a half-million-dollar severance package a few weeks later.

But the firefighter knew the real damage had already been done. Because Otero and other fire officials had ignored his and David Weston's complaints, city employees had continued to extort tens of thousands of dollars from business owners for years until the federal arrests. Millions in permit fees potentially went uncollected.

- **As previously stated on page 3, a total of \$12 million has been recovered since the A/E Affidavit process was implemented in 2007, by both Internal Audit and the ongoing Building Department closeout review process.**

Worst of all, those responsible for the corruption might never be punished. First, there is Jorge Gonzalez. After the 2008 building department arrests, he insisted the Permits Plus system had no audit function. But several reports showed it did. He also promised to crack down on employees abusing the system. He didn't.

- **The Permits Plus software system does provide certain audit functions that could record field changes and identify the user; however, the City has not been able to implement this function successfully due to software issues that the vendor has been unable to resolve. As previously stated, the Internal Audit report dated July 3, 2008 and the Watson Rice report dated December 16, 2008, both made recommendations for the City to replace the Permits Plus software. Based on**

**these recommendations, the City is implementing a new software system (Accela), which is currently in the acceptance testing phase.**

An audit released earlier this month shows that years after the arrests — and half a decade after Weston first raised concerns about the system — employees danced around the Permits Plus controls with ease. For instance, the database failed to red-flag the fact that Chai Footman and Henry Bryant had issued just one violation in their last 1,423 inspections — an obvious sign they were looking the other way.

- **The internal audit report referenced above was an analysis conducted by the City's Internal Audit Division as the result of the City Administration's request, following the arrests in April 2012, of the Code Compliance and Fire Prevention Divisions' processes as well as a review of sampled complaints, cases and adjustments recorded in the Permits Plus and Eden Systems between January 1, 2010 and April 30, 2012 (Reference Document 20).**
- **The Fire Marshal has stated that she did raise concerns about the lack of violations being issued by the Fire Inspectors. However, it was more to improve quality of the inspections and not that it was an obvious sign that the Fire Inspectors were looking the other way.**
- **The Fire Marshal has implemented a number of measures to improve quality and increase accountability to the night inspection program including:**
  - **Nighttime Fire Inspections Assignments are now based on randomly generated lists.**
  - **Lead Night Inspector trainings have been conducted.**
  - **All correlating documentation for Nighttime Fire Inspections is now reviewed by the Fire Marshal to ensure Quality Assurance.**
  - **The City has distributed correspondence to all City of Miami Beach nightclub owners advising of the City's Ethics Policy.**
  - **Nighttime Inspection Checklists have been revised.**
  - **Communication protocols have been implemented and for all Nighttime Fire Inspectors ensuring that dispatch records are consistent with the Fire Inspector's arrival times for each inspection.**

More than \$184,000 in fines were removed from accounts without proper documentation, the audit continues. Half were removed at the whim of one person without supervision, the other half by the city's lead code administrator, Jose Alberto.

But what really rankles Weston is that the abuse is exactly what he warned about back in 2007. In fact, the author of the recent report, internal auditor James Sutter, was the very person to tell him he would "probably be fired" for raising concerns. The alleged corruption also mimics the information Ed Gonzalez took to police in 2011.

- **As stated on page 11, Jim Sutter has stated that he did not tell David Weston that he would probably be fired for raising concerns.**

Jorge Gonzalez, though, deflects any blame for the corruption crisis on the Beach.

"Me not being city manager today has nothing to do with corruption. I'm no longer city manager because of politics," he says. "I'm an easy target [because] I left. They feel like they have to blame somebody. People can accuse me of being corrupt, but there hasn't been one lick of evidence, because it isn't there."

Both whistleblowers also partially blame Otero for the ongoing corruption scandal. "As assistant chief back then, Otero would have been the person doing the investigations, so he bears the responsibility," Ed Gonzalez says.

But Otero says he never spoke to Ed Gonzalez about his meeting with police and learned of it only after Gonzalez quit. The fire chief also refused to sit down with *New Times* to go over police reports about the Versailles bribes. Likewise, Otero claims to have no knowledge of Weston's complaints about missing permit fees.

"I have no indications that there is corruption within the fire prevention bureau," Otero says. "The FBI did a very thorough investigation, and they arrested the only two that were stupid enough to bite the hook," referring to Footman and Bryant.

Otero says that if his department has a reputation, it is for being "hard-asses, by the book, who don't know how to interpret code to help businesses."

Weston and Gonzalez say they won't believe the department is clean until Otero, Machen, and others are gone. The two would like to see a serious investigation into Jorge Gonzalez, whom they suspect knew about their complaints but quashed them.

"They had a chance to put a stop to criminal activity," Weston says. "Why didn't they? I don't know if I'll ever get an answer to that question."

Each whistleblower is now weighing his future. Ed Gonzalez is preparing a lawsuit over his forced resignation. Weston, meanwhile, would like a chance to clear his name and scrub the city clean. He says he has been in discussions with Miami Beach city manager candidate Jimmy Morales about being appointed to a special anti-corruption post. "I'm going to go in there and tell them who the skunks still left are."

As part of his settlement agreement, Brian Gentles is now working as a fire inspector. But his job will last only 17 more months, and he is considering further litigation. Marlenis Smart, meanwhile, was awarded \$700,000 by a federal judge last March. However, the city is demanding a new trial, and she has yet to see any of the money.

Miami Beach residents better hope that Otero is right and that the graft in his department has been nipped in the bud. Because the boom years are coming back to SoBe: Luxury condos are setting sales records, and new buildings are again sprouting all over town, particularly around Sunset Harbour. If he's wrong, the Beach could soon be a corruption free-for-all.

It might already be, if one particularly knowledgeable source is to be believed.

"There's a lot more to it than what's been said," Chai Footman confessed to *New Times* a few weeks before beginning his eight-month sentence in March for accepting bribes. (Henry Bryant, who smuggled the fake cocaine, is serving 20 years in federal prison.)

Asked if corruption extends beyond those arrested, Footman answered, "That's a pretty good assumption.

"All you have to do is be out there at the clubs at night," he added. "Watch the fire inspectors as they go through and do their stuff. Whatever you are looking for, you'll find it."

- **The City has taken proactive measures to eliminate any possibility for corruption including:**
  - **A Police Sergeant has been permanently assigned to the FBI Corruption Unit to investigate allegations of corruption at the City of Miami Beach.**
  - **A senior level Police Commander, Hernan Cardeno, was reassigned to the Code Compliance Division for oversight, restructuring the chain-of-command.**
  - **An external audit being conducted by Crowe Horwath for workflows and business processes for all of the City's regulatory divisions is underway and will be presented at the March 21, 2013, Finance and Citywide Projects Committee meeting.**
  - **The City has partnered with the Miami-Dade Commission on Ethics and Public Trust to provide ethics training to all City employees who work in regulatory divisions within the City.**
  - **The City has implemented a Zero Tolerance Gift Policy for all City employees excluding the City Attorney's Office and the Office of the Mayor and City Commission. The City is currently impact bargaining this policy with both the Fire and Police unions.**
  - **The City Commission also approved entering into an interlocal agreement with the Miami-Dade County Inspector General's Office; however, the Inspector General's Office has advised the City that they are unable to enter into an Agreement with the City at this time due to workload and limited resources. Therefore, an additional Police Sergeant has been assigned to the Internal Affairs Division to create a public corruption unit that will conduct investigations relating to Miami Beach employees citywide.**
  - **The City has initiated an in-depth review of select personnel practices in the City's Fire, Police, Parks and Recreation, Parking and Public Works Departments including a review of recruitment, promotional appointments, assignments, and disciplinary processes.**
  - **All security access levels for personnel to the automated databases for Permits Plus were reviewed and necessary restrictions in the system have been implemented. The replacement software for Permits Plus is in the testing**

- phase and shall become operational in the spring.**
  - **The Code Compliance Division no longer accepts any payment of violations or fines in any form or fashion.**
  - **Assignment of Code Enforcement Officers are now continually rotated.**
  - **Background investigations procedures conducted by the City's Human Resources Department were reviewed and changes have been implemented to the recruitment and background screening processes.**
  - **The City has installed Automatic Vehicle Locator Systems (AVLS) in City vehicles, and a Citywide AVLS policy is being implemented which will require random checks to be instituted, where supervisors will compare location reports with daily activity worksheets, enforcement actions and radio transmissions/dispatched calls.**
- **As public servants, we are expected to maintain the highest level of honesty, integrity, dedication and professionalism. The City of Miami Beach takes accusations of wrongdoing against its employees very seriously. If there is evidence of a crime or other impropriety, the City has and will always take all measures necessary to punish such employees, regardless of who they are. The City of Miami Beach takes accusations of wrongdoing against its employees very seriously. If there is evidence of a crime or other impropriety, the City has and will always take all measures necessary to punish such employees, regardless of who they are.**

City's Response to the New Times Article dated February 6, 2013  
Listing of Reference Documents (Available upon request).

1. Termination Documentation Chai Footman
2. Termination Documentation Henry Bryant
3. Termination Documentation: Jose Alberto, Orlando Gonzalez, Willie Grant, Vincente Santiesteban and Ramon Vasallo
4. Arbitrator's Decision, Eluit Hazzi, FMCS Case No. 12-58882
5. Adonis Garcia legal dispositions
6. Independent Investigation Report of Affidavit Submitted by Brian Gentiles
7. Termination Documentation David Weston
8. Internal Audit Building Department Fees dated July 8, 2008
9. Summary of Building Fee Closeout Recovery
10. Watson Rice Study dated December 16, 2008
11. Building and Fire Permit Fees in effect in 2008
12. Fontainebleau Permit Fees
13. Fisher Island Permit Fees
14. Eden Roc Permit Fees
15. Versailles Timeline and Permit Fees
16. Versailles Fire Alarm Permit
17. 1688 West Avenue Permit Fees
18. Miami Beach Strategic Investigations Unit Investigation Summary Report
19. Adonis Garcia Discipline
20. Internal Audit Analysis of Code Compliance and Fire Prevention Complaints and Cases November 30, 2012