

MIAMI BEACH

City Commission Meeting

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. Granada

Visit us at www.miamibeachfl.gov for agendas and video "streaming" of City Commission Meetings.

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.

Special note: In order to ensure adequate public consideration, if necessary, the Mayor and City Commission may move any agenda item to the alternate meeting date, which will only be held if needed. In addition, the Mayor and City Commission may, at their discretion, adjourn the Commission Meeting without reaching all agenda items.

Meeting called to order at 9:50:49 a.m.

Inspirational Message given by Father Juan Sosa from St. Joseph's Catholic Church, 8670 Byron Avenue. Father Sosa invited the citizens, Mayor Bower and Commissioners to the St. Joseph's annual celebration this coming Sunday.

Pledge of Allegiance led by Krista Kelly and Andreas Schreine.

The City Commission will recess for lunch at approximately 1:00 p.m.

SUPPLEMENTAL AGENDA:

C7B Resolution

R7A Memorandum & Resolution

C7F	Resolution	R7I	Resolution
C7H	Resolution	R7K	Memorandum & Resolution
C7I	Resolution	R7L	Resolution
C7M	Memorandum & Resolution	R9I	Corrected Title
R5E	Revised Ordinance	1A	Resolution

SUPPLEMENTAL AGENDA 2:

R7A Palau Sunset Harbor, LLC's Response to Sunset Islands 3 & 4 Property Owners, Inc.'s and Olga Lens' Petition to Reverse Design Review Board Decision.)

SUPPLEMENTAL AGENDA 3:

R7A (Supplemental Appendix Petition to Reverse DRB Decision from W. Tucker Gibbs, P.A.) Reports and Informational Items (h.) Response To New Times Article Of February 7, 2013.

ADDENDUM AGENDA:

C4N, C4O, C4P, C4Q, C4R, C4S and C7O.

ADDENDUM AGENDA 2:

C4T, R9J and R9K

ADDENDUM AGENDA3:

R9L

ADDENDUM

Motion made by Commissioner Góngora to add items C4N, C4O, C4P, C4Q, C4R, C4S, C4T, C7O, R9J, R9K, and R9L to the Agenda as emergency items; seconded by Commissioner Exposito; Voice vote 7-0.

Presentations and Awards**10:25:27 a.m.**

PA1 Certificate Of Appreciation To Be Presented To Officer Thomas Fleischhauer, Miami Beach Police Department's Officer Of The Year, 2012.

(Requested by Commissioner Jorge R. Exposito)

ACTION: Item heard in conjunction with item PA2. Certificate presented to Officer Fleischhauer in recognition as Officer of the Year 2012, and for receiving the LEO Award from the Miami-Dade Association of Chiefs of Police for Specialized Services.

Commissioner Exposito introduced Officer of the Year Thomas Fleischhauer (not in the audience today), and Detention Officer Glen Smith, who is being honored as Officer of the Month for January 2013.

Officer Fleischhauer has been commended for numerous issues. He is responsible for saving lives during two incidents. During one of the incidents, he heard two individuals getting into an altercation; one pulled a revolver and started shooting into the air. Officer Fleischhauer took the situation under control, and was able to stop a potentially dangerous incident. Again due to his attentiveness, on a second occasion, he was listening to the police radio and heard there was a boat that had issued a "Mayday." The boat was drifting on the way to Bimini. After driving around,

he located the boat. The boat had capsized because of winds and waves. He was able to bring the passengers to safety. Officer Fleischhauer also recently received the Miami-Dade Police Chiefs Law Enforcement Award. The City of Miami Beach would like to acknowledge the Officers for their hard work during the year and congratulate them.

Officer Smith was responsible, because of his alert behavior and patrol, for identifying the man responsible for two murders. Detention Officer Smith is definitely someone who is very deserving of this award.

Chief Martinez thanked Commissioner Exposito on behalf of Officer Fleischhauer, who has been an incredible addition to the Marine Patrol Unit.

Commissioner Tobin added that data suggests that because police officers have to be in a sort of hyper state of vigilance for their own lives as well as their fellow officers, and the lives of the public, they do not live very long lives, and he thinks it is a testament to the Chiefs that have been in the business for as long as they are, and always in a hyper state of vigilance; therefore he hopes that the Police Department would accept a wellness or physical fitness program to really get officers into topnotch shape. **Chief Martinez to handle.**

PA2 Certificate Of Appreciation To Be Presented To The Miami Beach Police Department's Officer Of The Month For January 2013.

(Requested by Commissioner Jorge R. Exposito)

ACTION: Item heard in conjunction with PA1. See details with PA1.

9:53:30 a.m.

PA3 The Miami Beach Chamber Education Foundation Will Present \$10,000 To The City Of Miami Beach To Support Teacher Training In The International Baccalaureate (IB) Program.

(Requested by Commissioner Jerry Libbin)

ACTION: Check presented.

Commissioner Libbin called forward Alan Lips. Mr. Lips is the Miami Beach Chamber of Commerce Chairman and Chairman of the Miami Beach Education Foundation. Mr. Lips was joined by past Chair Aaron Perry and Michael Goldberg. The Chamber's Education Foundation has a long history of supporting education in Miami Beach. In partnership with the Boucher Brothers, they held the 7th Annual Golf Tournament in an effort to raise funds towards education. This year, thanks to the efforts of Josh Wallack of Mango's, a fishing tournament sports weekend was held and it was a huge success. Additionally they were able to bring 200 local schoolchildren athletes to Jerry's Deli, thanks to Jason Starkman, along with other sports celebrities. Because of these efforts, and on behalf of the Board of Governors of the Chamber and the Education Foundation, he presented a \$10,000 check to the City to support the International Baccalaureate program.

Mayor Bower thanked the Miami Beach Chamber of Commerce for their partnership, and for the moneys raised - to date over \$100,000. She gave a brief background on how the program was started, and how she fought along with other elected officials, parents and teachers, with the School Board, to include the entire Miami Beach feeder pattern into the IB program, and to make the program available to all children, so they would have equal opportunity to participate. The

distinguished IB program fees are paid out of moneys funded from the public and private partnership with great success. She recognized former City Manager Jorge Gonzalez for his hard work on achieving this as well.

City Clerk's Note: Needs Resolution for April. **Victoria Kroger to handle.**

11:21:27 a.m.

ANNOUNCEMENTS

PA4 Proclamation To Be Presented Declaring "Earth Hour Day" On March 23, 2013.
(Requested by Commissioner Michael Góngora & Mayor Matti Herrera Bower)

ACTION: Announcement made and proclamation presented.

Commissioner Góngora announced that the City of Miami Beach would participate in the Earth Day Celebration on April 22, 2013, but the City decided to observe this day on April 27, 2013. The main project is the Miami Beach Native Flag Participatory Eco Art Project, on Saturday April 27, at Lummus Park, 10th Street and Ocean Drive, from noon to 4 p.m. The project is designed by Xavier Cortada, and will give participants an opportunity to create a flag in support of the environment. This is intended to have a positive impact on the environment, and targets the three R's: "Reduce, Reuse and Recycle." Other initiative will include reforestation, water conservation, composting and community gardens. On behalf of the Mayor and the City Commission, April 27, 2013 is declared "Earth Hour Day" in the City of Miami Beach.

Commissioner Libbin added that for Earth Hour, the City will be shutting down all nonessential lights on City buildings on March 23 from 8:30 p.m. to 9:30 p.m., and is asking citizens to join in. The Sustainability Committee on March 12, 2013 passed a resolution asking the City Commission to endorse the Clean Air Act amendments currently discussed in Tallahassee, which prohibit smoking on the beaches and parks, with the proviso that the City must provide a smoking area in said locations.

PA5 Proclamation To Be Presented Declaring "Military Family And Community Covenant Day" On April 17, 2013.

(Requested by Mayor Matti Herrera Bower)

ACTION: Item deferred.

Handouts or Reference Materials:

1. Email from Wanda Geist dated March 12, 2013 RE: PA5

10:44:18 a.m.

PA6 Certificate Of Appreciation To Be Submitted To Joe Kaplan, For Years Of Service As A Special Master In The City Of Miami Beach.
(Requested by Mayor Matti Herrera Bower)

ACTION: Certificate presented.

Mayor Bower introduced the item.

Born and Raised in Chicago, Joseph Kaplan attended the University of Illinois and Chicago-Kent College of Law. During the Korean War, he served in the States as Special Agent in the United States Air Force Office of Special Investigation, specializing in counter intelligence work. After being discharged, he moved to Miami and graduated from the University of Miami, College of Law. He was admitted to practice before Florida Supreme Court and the United States Supreme Court. In Florida, Joseph practiced as trial attorney in the field of Workers' Compensation; represented a variety of Building and Construction Trades Unions, their members and their trust funds; represented Police and Firefighter Unions including the Firefighter and FOP local unions in Miami Beach; he also represented AFSCME, IATSE and Cesar Chavez and his United Farm Workers Union in California and Florida. He was also General Council for ABC Distributing and Books and Books, a Florida Supreme Court, Certified Mediator; a Special Master for the City of Miami Beach for six years; a member of the City of Miami Civil Service Board; a Trustee of the Miami Police Officers and Firefighters Retirement Fund; and a Hearing Officer at Miami Dade County Traffic Court. He served for two and one half years as Certified Miami Beach Reserve Police Officer. Married to Helen Sir Kaplan for sixty years, Father of Mitchell and Rochelle; Morey and Rob, Ross, Robert, Susan and David Friedson. Grandfather of Asher, Anya, Adina, Madelyne, Jonah, Daniel, Daniella, Noah, Ben, Maya, Aidan and Cara.

Joe Kaplan thanked the City Commission, the City Attorney, Special Master staff, Chief Special Master Abe Laeser and everyone who assured that the citizens of Miami Beach were served with justice. He is honored with this award bestowed upon him. He introduced his wife and family.

Commissioner Góngora had the privilege to appear in front of Special Master Kaplan a few times, and he was always courteous and professional; he thanked Special Master Kaplan for his service to Miami Beach.

Commissioner Tobin appreciates all the work he has done throughout the years and commended him for his wonderful family and two sons.

Vice-Mayor Wolfson complimented Special Master Kaplan in his courageous opinion on a ruling for single-family residential home, when the City went outside of its purview and legislated a new opinion, and under the circumstances, he did the right thing.

Commissioner Weithorn knows his family well, and the fact that the children are who they are, is a reflection of Special Master Kaplan, and she thinks that he can be proud of the work he did, and she is humbled and honored watching this.

Commissioner Libbin stated that Special Master Kaplan epitomizes what public services is all about and congratulated him on his excellent job.

Commissioner Exposito concurred, and wished him the best in future endeavors and commended him on his wonderful granddaughter.

10:11:31 a.m.

- PA7 Certificates Of Recognition To The 2012/2013 Miami Beach Senior High PTSA Board Members For Their Hard Work And Dedication To The School.
(Requested By Vice-Mayor Jonah Wolfson)

ACTION: Certificates presented.

Vice-Mayor Wolfson introduced the item and stated that the PTSA members do a lot for the school and students, it is a selfless volunteered effort not only for the school, but for the City at large, and they do it efficiently and well, and he wanted to honor the members.

Laurie K. Davis stated that the Parent Teacher Student Association, PTSA, has a mission to be a powerful voice for all children, a relevant resource for families and communities and a strong advocate for the educational well-being of every child, by engaging families and communities to advocate children. She thanked the City Commission, Saul Frances, Parking Department Director and the Police Department for their role during the success of the Boat Show. She explained what improvements were made with the monies raised.

Shannon Burns spoke.

Commissioner Exposito commended the association for an exceptional job, and recognized the Parking and Police Department for the organization during the Boat Show, who went out of their way to create a nice environment.

Mayor Bower stated that Elayne Weisburd started the Boat Show parking fundraising event and she herself was very active in PTA activities when her children were small.

10:59:29 a.m.

- PA8 Certificates Of Recognition To Be Presented To Luisa Castillo Echeverria Senior/Participant And Lincoln Marti And Its Director Ana Vazquez, Employer/Participant In UNIDAD's Senior Placement Program.
(Requested By Vice-Mayor Jonah Wolfson)

ACTION: Certificates presented.

Vice-Mayor Wolfson introduced the item and recognized UNIDAD and Lincoln Marti School for their partnership, which offered job placement to Ms. Castillo Echevarria.

Luisa Castillo Echeverria spoke in Spanish while Vice-Mayor Wolfson translated. She thanked the City Commission for the award and UNIDAD for refreshing her skills and for teaching her new skills in childcare, which is something she loves to do.

Lucrecia Imbert from the Lincoln-Marti School explained the program and thanked UNIDAD for the opportunity to serve seniors in the community with employment.

Margarita Cepeda, Executive Director from UNIDAD, announced that UNIDAD is recruiting and getting recommendations for seniors in need of meals, and hopes the Commission can refer seniors that UNIDAD can assist to provide warm meals. They also kicked off the Leadership

Miami Beach Institute, and will be graduating 58 young leaders from the County and they look forward to their participation. She thanked everyone for making possible the dream of 700 children in the December toy drive. This Commission is a passionate group of people leading the community.

10:37:53 a.m.

PA9 Proclamation To Be Presented To Pubblely Restaurants For Their Dedication And Commitment To Miami Beach.

(Requested By Commissioner Michael Góngora)

ACTION: Proclamation presented.

Commissioner Góngora is honoring Pubblely Restaurant in the Sunset Harbor Neighborhood and recognizing “the Pot Belly Boys” Andreas Schreiner, Managing Partner, and Chef/Partners Jose Mendin, and Sergio Navarro, for their extraordinary contribution to Miami Beach and the culinary world at large. Their vision, execution and determination resulted in the establishment of four acclaimed restaurants. They have helped revitalize the area with pubs such as Pot Belly Sushi, Barceloneta and recently the Puby Stake, which are nationally and internationally recognized, being named one of the “Most Visited Location,” and having received two nominations for James Beer Best Chef South Award. Commissioner Góngora commented on The New York Times Travel piece, which referred to them as pub heroes and credited them for having transformed the City’s pub landscape in just over two years. The Mayor and Commission proclaimed April 17, 2013 as “Pubblely Day” in the City of Miami Beach.

Andreas Schreiner, Managing Partner, thanked the City Commission for the award and the support.

10:02:12 a.m.

PA10 Certificates Of Recognition To Be Presented To The Principal, Vice Principals And Teachers Of South Pointe Elementary In Miami Beach.

(Requested By Commissioner Michael Góngora)

ACTION: Certificates presented.

Commissioner Góngora explained that since the incidents at Sandy Hook Elementary School, he wanted to bring recognition to the City’s school staff and students for their dedication. Today he recognizes South Pointe Elementary, established in 1991, where he had the chance of being “Principal for the Day.” The partnership between the parents, teachers and City officials is very special. He was impressed with the creation of Sustainability projects, such as a green garden and a green Committee. He introduced Principal Melanie B. Fishman, Art Teacher Ben Groff, Ms. Miriam Holstein; and thanked the entire team for their leadership and what they have done for students and parents.

Melanie B. Fishman, Principal, thanked Commissioner Góngora and the entire City Commission and explained the different programs offered to students. She is very proud of the students, staff and school in general. Additionally she stated that the Governor had selected the school for a visit on a very short notice, but they are ready at any time. Today is a special day.

Commissioner Tobin stated that Melanie is a special homegrown girl, passionate about her school and kids, and he congratulated them for the essential things they do for the children to make the community so much better.

10:38:21 a.m.

PA11 Certificates Of Recognition For Outstanding Police Work Resulting In Seizure Of Over 30 Firearms.

(Requested by Commissioner Jerry Libbin)

ACTION: Certificates presented.

Commissioner Libbin introduced the item. The following Officers and Probation Personnel receiving the Firearm Seizure Recognition are as follow: Miami Beach Police Officers Sgt. Jon Brudzinski, Detectives Leon Azicri, Wilson Romero and Jose Reina; and two Miami Probation personnel, Supervisor Latoya Warren and Probation Officer Corey Williams. He explained that the Crime Suppression Team was contacted to enter into an apartment due to suspicion of criminal activity. Their extraordinary police work lead to the seizure of over 30 dangerous firearms and he commended them. Commissioner Libbin also stated that the Police Department has organized a gun buyback program for March 30, 2013, and in trying to get guns off the street.

Chief Martinez recognized Beth Atchison, Regional Director, Florida Department of Parole and Probation, Thomas Sharrard, Regional Operations Manager and Maria DiBernardo, Circuit Administrator, and explained that this is a great case of two agencies working together.

11:10:55 a.m.**New Item:**

PA12 Proclamation/Declare May 26, 2017 World Out Games day in COMB
(Requested by Commissioner Michael Góngora)

ACTION: Proclamation presented.

Commissioner Góngora introduced the item and the names of the delegation members who recently travelled and competed with other cities across the world to host World Out Games, which will take place in Miami Beach in May 2017 into the month of June. The members include residents and activists, and this will be the first time that this event is hosted in the country. Among members are: Ivan Cano, Co-Chair, Executive Director of Miami Beach Gay Pride; Bruce Townsend, Co-Chair; Social Catering Sales Director, Centerplate at Miami Beach Convention Center, Jerry Torres; Treasurer-Secretary, GT Entertainment, Steve Adkins; President and CEO of the Miami-Dade Gay & Lesbian Chamber of Commerce, Bob Balsam; General Manager of Global Spectrum, Managing Company of the Miami Beach Convention Center, George Neary, Associate Vice President of Cultural Affairs, Greater Miami Convention & Visitors Bureau, Cindy Brown; Executive Director of the Miami Beach Botanical Gardens, Nick Tierno; General Manager of Centerplate at the Miami Beach Convention Center; Jose Sotolongo, Executive Director of the Miami-Dade Sports Commission; Keith Hart, Relationship Manager for GBPS-American Express and Richard Murry, president of The Murry Agency.

Mayor Bower recognized their efforts and accomplishments and asked the community to help the group raise funds.

Commissioner Exposito congratulated everyone and thanked them for their hard work; it is an

honor to bring this event for the first time in the country to Miami Beach.

Bob Balsam spoke.
George Neary spoke.

11:28:20 a.m.

Announcement:

Mayor Bower announced that March 2 was Commissioner Libbin's birthday, March 24 is Commissioner's Exposito birthday, March 27 is Commissioner Góngora's birthday, March 28 is Vice-Mayor Wolfson's birthday and April 1 is her birthday. She added that Commissioner Weithorn was recognized as a "Woman Worth Knowing" and this recognition was also bestowed upon Gabrielle Redfern, the Mayor's Aide, as well as Shelly Gruff and Judy Schecter.

CONSENT AGENDA

ACTION: Motion made by Commissioner Weithorn to approve the Consent Agenda; seconded by Commissioner Libbin; Voice-vote: 7-0.

C2 - Competitive Bid Reports

C2A Request For Approval To Purchase An Additional Sixteen (16), Honda Four Trax Rubicon All-Terrain Vehicles From G, J & L Inc., Pursuant To Invitation To Bid (ITB) No. 31-11/12, In The Amount Of \$124,128.00.

(Fleet Management/Procurement)

ACTION: Request authorized. Jay Fink and Alex Denis to handle.

- C2B Request For Approval To Award Contracts Pursuant To Invitation To Bid No. 66-11/12, For General Building And Specialty Trades Services, To Enterprise Electrical, Southern Comfort Solutions, Advanced Roofing, Team Contracting, FHP Tectronics Corp., Kearns Construction, Servpro Of Brickell, Triangle Fire, Delcons, AGC Electric, Haber & Sons Plumbing, Aaron Construction Group, A1 Fire & Security, Commercial Interior Contractors Corp., Full Cover Roofing, A&J Roofing, Comfort Tech, Coral Gables Glass & Mirror, Sanchez Arango Construction, Edd Helms Electric, FXP Corp., And S.A. Consultants LLC, On An As Needed Basis, Subject To Budgetary Approval At Time Of Need.
(Public Works/Procurement)

ACTION: Request authorized. Jay Fink and Alex Denis to handle.

C4 - Commission Committee Assignments

12:01:24 a.m.

- C4A Referral To The Finance And Citywide Projects Committee - Discussion Regarding The Issuance Of A Request For Qualifications For A Third Franchise Solid Waste Contractor For Residential And Commercial Solid Waste Collections And Disposal.
(Public Works)

ACTION: Item separated by Commissioner Tobin. **Referred.** Motion made by Commissioner Weithorn; seconded by Vice Mayor Wolfson; Voice vote: 5-0; Absent: Commissioners Libbin and Tobin. Patricia Walker to place on the committee agenda. **Jay Fink to handle.**

- C4B Referral To The Planning Board - Miami Beach United Resolutions To Address The Issue Of Compatibility Of Certain Uses And Development Projects In Proximity To Residential Uses.
(Planning Department)

ACTION: Referred. Richard Lorber to place on the committee agenda and to handle.

- C4C Referral To The Neighborhood/Community Affairs Committee A Discussion Regarding The City Of Miami Beach Fire Prevention Fines And Citations Related To Nightclubs And Other Assemblies.
(Fire Department)

ACTION: Referred. Barbara Hawayek to place on the committee agenda. **Chief Otero to handle.**

- C4D Referral To The Land Use Committee An Amendment To The Land Development Regulations To Regulate Temporary Business Signs On Public Property.
(City Manager's Office)

ACTION: Referred. Richard Lorber to place on the Committee agenda and to handle.

12:01:24 a.m.

- C4E Referral To Transportation And Parking Committee And Neighborhood/Community Affairs Committee For A Discussion Regarding Sightseeing And Tour Bus Industry Regulations.
(Parking Department)

ACTION: Item separated for discussion by Commissioner Tobin. Referred. Motion made by Commissioner Weithorn; seconded by Vice Mayor Wolfson Voice vote: 5-0; Absent: Commissioners Libbin and Tobin. Saul Frances and Barbara Hawayek to place on the committee agendas. **Saul Frances to handle.**

- C4F Referral To The Neighborhood/Community Affairs Committee Of A Discussion Regarding Possible Amendments To Chapter 70 Article III (Section 70-122-129), "Graffiti Ordinance."
(City Manager's Office)

ACTION: Referred. Barbara Hawayek to place on the committee agenda. **Stephen Scott and Debbie Turner to handle.**

- C4G Referral To The Finance And Citywide Projects Committee A Discussion Regarding Fine Schedules And Enforcement Of The City Of Miami Beach Code Provisions For Police And Fire False Alarms, Implementing Additional Fines For False Alarms, And Contracting With An Outside Entity For Billing And Collection Services For False Alarm Fees.
(Police Department)

ACTION: Referred. Patricia Walker to place on the committee agenda. **Chiefs Martinez and Otero to handle.**

- C4H Referral To The Finance And Citywide Projects Committee And The Committee For Quality Education In Miami Beach For Discussion Of The Florida's Safe Routes To School Program (FLSRTS).
(Requested By Commissioner Jorge R. Exposito)

ACTION: Referred. Patricia Walker to place on the committee agenda. **Jay Fink to handle.**

- C4I Referral To The Historic Preservation And Design Review Boards To Seek Their Direction As To What Type Of Directory Structures Are Most Appropriate For The Lincoln Road Corridor.
(Public Works)

ACTION: Referred. Richard Lorber to place on the board agendas. **Jay Fink to handle.**

12:11:06 a.m.

- C4J Referral To The Land Use And Development Committee An Amendment To Expand The Permitted Uses Of RM-2 Zone Properties.
(Requested by Commissioner Deede Weithorn)

ACTION: Item separated for discussion by Mayor Bower and Commissioner Tobin. Referred. Motion made by Commissioner Weithorn; seconded by Vice-Mayor Wolfson; Voice vote 4-1; Opposed; Mayor Bower; Absent: Commissioners Libbin and Tobin. **Richard Lorber to place on the committee agenda and to handle.**

Commissioner Weithorn explained that many of the hotels have backroom operations, and they want to move the backroom so they have more hotel use without adding density. They want the ability to move the backroom across the street. This is just a creative way of keeping old buildings.

Richard Lorber, Acting Planning Director, explained that there is more than one hotel requesting this.

C4K Referral To The Land Use And Development Committee To Discuss Status Update For The Beach Walk From Sunrise Plaza To Fifth Street.
(Requested By Commissioner Michael Góngora)

ACTION: Referred. Richard Lorber to place on the Committee agenda. **Jay Fink to handle.**

Clerk's Note:

As per Kathie G. Brooks, Interim City Manager, item C4K should be heard at the LUDC and NCAC joint Committee meeting of March 19, 2013. (Item C4O (related item) was referred to the NCAC on 1/16/13)

Handout or Reference Materials:

1. Email from Liliam Hatfield dated March 18, 2013 RE: C4K

C4L Referral To The Sustainability Committee To Discuss Green Building Incentives For Residential And Commercial Use.
(Requested By Commissioner Michael Góngora)

ACTION: Referred. Richard Lorber and Stephen Scott to place on the committee agenda and to handle.

C4M Referral To The Neighborhood/Community Affairs Committee - Discussion To Consider Hosting A Biannual Art Camp Held In Miami Beach In Cooperation With UNESCO.
(Requested by Commissioner Jerry Libbin)

ACTION: Referred. Barbara Hawayek to place on the committee agenda. **Max Sklar to handle.**

ADDENDUM

C4N Referral To The Land Use And Development Committee To Discuss An Ordinance Requiring An

Outside Firm Or The City Being The Entity That Mails Notice In Land Use Situations.
(Requested by Vice-Mayor Jonah Wolfson)

ACTION: Referred. Richard Lorber to place on the committee agenda and to handle.

ADDENDUM

C4O Referral To The Finance And Citywide Projects Committee To Discuss Permit Expiration Courtesy Notices; Amnesty For Expired Permits; And Length Of Time For Building Permits.
(Requested by Commissioner Deede Weithorn)

ACTION: Referred. Patricia Walker to place on the committee agenda. **Stephen Scott to handle.**

ADDENDUM

C4P Referral To The Neighborhood/Community Affairs Committee To Discuss Unexpected Board Vacancies Requiring Commission Vote.
(Requested by Commissioner Deede Weithorn)

ACTION: Referred. Barbara Hawayek to place on the committee agenda. **Rafael E. Granado to handle.**

ADDENDUM

C4Q Referral To The Neighborhood/Community Affairs Committee To Discuss Bicyclist Safety Campaign With The Miami Beach Police Department, Deco Bikes And Local Bicycle Rental Companies.
(Requested by Commissioner Deede Weithorn)

ACTION: Referred. Barbara Hawayek to place on the committee agenda. **Jay Fink, Chief Martinez and Nannette Rodriguez to handle.**

ADDENDUM

C4R Referral To The Land Use And Development Committee To Discuss Chapter 30, Entitled "Code Enforcement," Article I, Entitled "In General," Article II, Entitled "Special Masters," And Article III, Entitled "Enforcement Procedure," Of The Code Of The City Of Miami Beach, Florida.
(Requested by Vice-Mayor Jonah Wolfson)

ACTION: Referred. Richard Lorber to place on the committee agenda. **Stephen Scott and Jorge Gomez to handle.**

ADDENDUM

C4S Referral To The Land Use And Development Committee To Discuss Chapter 46, Entitled

"Environment," Article IV, Entitled "Noise," Of The Code Of The City Of Miami Beach, Florida.
(Requested by Vice-Mayor Jonah Wolfson)

ACTION: Referred. Richard Lorber to place on the committee agenda. **Stephen Scott and Debbie Turner to handle.**

ADDENDUM 2:

C4T Referral To The Land Use And Development Committee An Amendment To The Land Development Regulations Which Would Address And Clarify The Eligibility For Contributing Buildings In Historic Districts To Be Converted To Bed & Breakfast Inns Within The City Of Miami Beach.

(Requested by Commissioner Michael Góngora)

ACTION: Referred. Richard Lorber to place on the committee agenda and to handle.

C6 - Commission Committee Reports

C6A Report Of The Neighborhood/Community Affairs Committee Of January 28, 2013: **1)** Discussion Concerning The Flamingo Park Neighborhood Becoming Florida's Most Pedestrian Friendly Neighborhood. **2)** Discussion Regarding Expanding The Ordinance (2012-3751) Amending Chapter 66, "Marine Structures, Facilities And Vehicles," Article IV, "Vessels," Section 66-151, "Launching And Hauling," To Prohibit Docking, Securing, Embarking Or Disembarking Vessels At Municipal Or Public Seawalls, Wharfs, Docks Or Bulkheads In Single Family Neighborhoods, Creating Exceptions, Providing For Repealer; Codification; Severability And An Effective Date To Make It More Comprehensive. **3)** Discussion Naming 8th Street After Tony Goldman. **4)** Discussion Regarding The City Of Miami Beach Centennial, Which Will Occur On March 26, 2015. **5)** Discussion Regarding The Placement Of A Fence Along The Perimeter Of The Scott Rakow Youth Center Playfield. **6)** Discussion Regarding Creating A Municipal Youth Council On Miami Beach.

Item No. 1: Flamingo Park Neighborhood/ Becoming Florida's Most Pedestrian Friendly Neighborhood.

ACTION: Discussion for this item was deferred for next meeting at the request of Fred Beckmann, Public Works Department Director

Item No. 2 Expanding The Ordinance (2012-3751) Amending Chapter 66, "Marine Structures, Facilities And Vehicles..."

ACTION: The Committee (Commissioner Tobin, Libbin and Exposito present) unanimously moved to forward to Commission.

City Clerk's Note: See Item R5F, First Reading, No Wake Ordinance

Item No. 3: Naming 8th Street After Tony Goldman.

ACTION: The Committee (Commissioner Tobin, Libbin and Exposito present) recommended administration to get in touch with Tony Goldman's family and Marlo to discuss options and location. Commissioner Libbin also offered to meet with the family to discuss the options further.

Item No. 4: City Of Miami Beach Centennial, Which Will Occur On March 26, 2015.

ACTION: The Committee (Commissioner Tobin, Libbin and Exposito present) unanimously moved to have the Miami Beach Visitor & Convention Authority to take this celebration as a project.

City Clerk's Note: See C7J Request Miami Beach VCA as Host Committee for City's Centennial.

Item No. 5: Placement Of A Fence Along The Perimeter Of Scott Rakow Youth Center Playfield.

ACTION: The Committee (Commissioner Tobin, Libbin and Exposito) unanimously moved for the project to go forward pending the administration find funds for the project and coordinate with CIP during their project.

City Clerk's Note: See Item C7E, Install Fence Around Perimeter of Scott Rakow Youth Center Playfield.

Item No. 6: Creating A Municipal Youth Council On Miami Beach.

ACTION: The Committee (Commissioner Tobin, Libbin and Exposito present) recommended administration to follow up if everybody agrees on having the kids enrolled in the next Leadership Academy, and report the outcome next month.

C6B Report Of The Neighborhood/Community Affairs Committee Of February 19, 2013: **1)** Discussion Regarding An Ordinance Amending Regulations Of Alcoholic Beverages In Public Places. **2)** Discussion Concerning The Flamingo Park Neighborhood Becoming Florida's Most Pedestrian Friendly Neighborhood. **3)** Discussion Regarding A Resolution To Establishing And Designating Tobacco-Free Zones In All City Parks And Outdoor Recreational Facilities. **4)** Discussion Regarding Building A Guardhouse At East Entrance Of Normandy Shores. **5)** Discussion Regarding An Update On Upper North Bay Road Drainage Project. **6A)** Discussion Regarding A Sanitation Plan During Spring Break 2013. **6B)** Discussion Regarding The Status Of The Major Event Plan For Spring Break. **7)** Discussion Regarding Items That Are Referred To Commission Committees To Be Reviewed If Not Heard By That Committee Within (6) Six Months Of Its Referral Dates. **8)** Discussion Regarding Considering The Removal Of The Four (4) Public Parking Spaces On Sunset Drive At The Entrance Of Sunset Harbor Island. **9)** Discussion Regarding Relocation Of The Maintenance Vehicles From The Sunset Harbor Neighborhood. **10)** Discussion Regarding Amending Procedures For Appeals To The Special Master For Certain Frequent Code Enforcement Violations.

Item No. 1: An Ordinance Amending Regulations Of Alcoholic Beverages In Public Places.

ACTION: The Committee (Commissioner Tobin, Libbin and Exposito present) unanimously moved to have this item discussed on the March Commission Meeting.

City Clerk's Note: See Item R7F – Provide Exemptions for Alcoholic Beverages in Beach Concessions.

Item No. 2 The Flamingo Park Neighborhood Becoming Florida's Most Pedestrian Friendly Neighborhood.

ACTION: The Committee (Commissioner Tobin, Libbin and Exposito present) unanimously recommended that the administration try the utilization of the garage at 6th street, as a trial period for six months at a further discounted rate, and then bring the item back to Commission Meeting.

Item No. 3: A Resolution To Establishing And Designating Tobacco-Free Zones In All City Parks And Outdoor Recreational Facilities.

ACTION: Item withdrawn by Commissioner Libbin.

Item No. 4: Building A Guardhouse At East Entrance Of Normandy Shores.

ACTION: The Committee (Commissioner Tobin, Libbin and Exposito present) recommend bringing back this item to the April NCAC meeting

Item No. 5: Update On Upper North Bay Road Drainage Project.

ACTION: The Committee (Commissioner Tobin, Libbin and Exposito present) directed administration to have in the DCP, as an alternative, the difference to go from Pump and Alpha system to an Injection well system.

Item No. 6A: Sanitation Plan During Spring Break 2013.**Item No. 6B: Status Of The Major Event Plan For Spring Break.**

ACTION: The Committee (Commissioner Tobin, Libbin and Exposito present) requested a Letter to Commission (LTC) regarding the GWA program for Spring Break.

Item No. 7: Items That Are Referred To Commission Committees To Be Reviewed If Not Heard By That Committee Within (6) Six Months Of Its Referral Dates.

ACTION: The Committee (Commissioner Tobin, Libbin and Exposito present) unanimously moved for the pending items to be removed after six months with a report of withdrawn items on the monthly City Commission agenda.

City Clerk's Note: See item C7B

Item No. 8: Removal Of The Four (4) Public Parking Spaces On Sunset Drive At The Entrance Of Sunset Harbor Island.

ACTION: No action was taken.

Item No. 9: Relocation Of The Maintenance Vehicles From The Sunset Harbor Neighborhood.

ACTION: The Committee (Commissioner Tobin, Exposito and Libbin present) referred the item to the next Commission Meeting, with a plan of utilization of vacant parking spaces at the Sheridan street garage and the 5th street garage.

Item No. 10: Amending Procedures For Appeals To The Special Master For Certain Frequent Code Enforcement Violations.

ACTION: Item was deferred to the March NCAC meeting.

C6C Report Of The Land Use And Development Committee Meeting Of February 13, 2013: **1)** Reduced Parking Rates For Hotel Employees. **2)** Discussion Of The Miami Beach Current City Code Chapter 6-4 (3) Relating To Alcoholic Beverage Sales That Requires A 300 Foot Distance Between Liquor Stores And Ask That The City Look Into Adopting The County Requirement Of 1500 Feet. **3)** Review Of Miami Beach Land Use Boards To Improve The City Of Miami Beach Building And Planning Department Processes. **4)** Discussion Regarding Food Trucks On Private Property. **5)** Discussion Pertaining To "Smarter Materials For Next Generation Infrastructure," Such As Eliminating The Disposal Of Tires In Global Landfills And Incinerators. **6)** Discussion Regarding An Amendment To The Land Development Regulations That Will Create Protection From Total Demolition Of Architecturally Significant Single Family Homes Built Prior To 1942. **7)** Discussion Concerning A Proposed Amendment Of The Charter To Prohibit The Involuntary Designation Of Single-Family Residences As Individual Historic Sites, Hereinafter Referred To As The Miami Beach Homeowner Protection Act. **8)** Discussion Regarding Restricted Wake Zones:

8a) An Ordinance Amending The Code Of The City Of Miami Beach, By Amending Chapter 66, Entitled "Marine Structures, Facilities And Vehicles," By Amending Article II, To Be Entitled "Restricted Wake Zones," To Create Regulations For Restricted Wake Zones; Providing For A Purpose; Providing For Definitions; Providing For Restricted Areas; Providing For Posting Of Regulatory Markers; Providing For Exemptions; Providing For Enforcement And Penalties; Providing For Repealer, Severability, Codification, And An Effective Date; **8b)** Discussion On Adding Surprise Lake To "No Wake Zones" On Miami Beach. **9)** Discussion Regarding The Development Of The West Lots Between 79th Street To 87th Street And Collins Avenue. **10)** Discussion Regarding Development Of The Parking Lot Between 72nd And 73rd Street And Collins Avenue. **11)** Zoning And Planning Initiatives For North Beach Including Ordinance Amendments For Parking Requirements And Development Regulations. **12)** Application Of Parking Impact Fees To Satisfy Hotel Parking Requirements Outside Of Historic Districts. **13)** Discussion Regarding The Current Sidewalk Café Ordinance; **13a)** Discussion Regarding The Lincoln Road Utilization Areas For Sidewalk Cafés. **13b)** Use Of Electricity By Sidewalk Cafés. **13c)** Discussion Regarding Restaurant Solicitation Of Pedestrians On City Sidewalks, Particularly Ocean Drive And Lincoln Road.

Item No.1 Reduced Parking Rates For Hotel Employees

ACTION: DEFERRED.

City Clerk's Note: See Item R5E, Second Reading, Hotel Parking Requirements.

Item No. 2 Miami Beach City Code Chapter 6-4 (3) Relating To Alcoholic Beverage Sales That Requires A 300 Foot Distance Between Liquor Stores And Ask That The City Look Into Adopting The County Requirement Of 1500 Feet.

ACTION: DEFERRED.

Item No. 3 Review Of Miami Beach Land Use Boards To Improve The City Of Miami Beach Building And Planning Department Processes.

ACTION: DEFERRED.

Item No. 4 Food Trucks On Private Property.

ACTION: Wolfson/Góngora: (2-0) Direct staff to prepare an Ordinance consistent with the discussion above, and bring back before the land Use Committee.

Item No. 5: "Smarter Materials For Next Generation Infrastructure," Such As Eliminating The Disposal Of Tires In Global Landfills And Incinerators.

ACTION: DEFERRED.

Item No. 6: An Amendment To The Land Development Regulations That Will Create Protection From Total Demolition Of Architecturally Significant Single Family Homes Built Prior To 1942.

ACTION: Libbin/Góngora: (3-0) Direct staff to come up with as many creative positive incentives that we can propose to encourage people to keep architecturally significant older homes.

Item No. 7: Proposed Charter Amendment To Prohibit The Involuntary Designation Of Single-Family Residences As Individual Historic Sites, Hereinafter Referred To As The Miami Beach Homeowner Protection Act.

ACTION: Continued.

Item No. 8: Restricted Wake Zones:

8a) An Ordinance Amending City Code Chapter 66, Entitled "Marine Structures, Facilities And Vehicles," By Amending Article II, To Be Entitled "Restricted Wake Zones..."

8b) Adding Surprise Lake To "No Wake Zones" On Miami Beach.

ACTION: Wolfson/Góngora: (2-0) Move proposal "A" forward to the full Commission.

City Clerk's Note: See Item R5F, First Reading, No Wake Ordinance. (Exposito)

Item No. 9: Development Of West Lots Between 79th Street To 87th Street And Collins Avenue.

ACTION: DEFERRED.

Item No. 10: Development Of Parking Lot Between 72nd And 73rd Street And Collins Avenue.

ACTION: DEFERRED.

Item No. 11: Zoning and Planning Initiatives for North Beach including Ordinance Requirements Amendments for Parking Requirements and Development Regulations.

ACTION: DEFERRED.

Item No. 12: Application Of Parking Impact Fees To Satisfy Hotel Parking Requirements Outside Of Historic Districts.

ACTION: DEFERRED.

Item No. 13: Current Sidewalk Café Ordinance;

13a) Lincoln Road Utilization Areas For Sidewalk Cafes.

ACTION: Libbin/Gongora: (3-0) Direct the Administration to advise the Committee on any suggested changes to the permitted signage for sidewalk cafes.

13b) Use Of Electricity By Sidewalk Cafés.

ACTION: Libbin/Gongora: (3-0) Direct the Administration to advise the Committee on any suggested changes to the issue of electricity usage.

13c) Restaurant Solicitation of Pedestrians on City Sidewalks, Particularly Ocean Drive and Lincoln Road.

ACTION: Libbin/Gongora: (3-0) Direct the Administration to draft an ordinance that would strengthen the prohibition of hawkers at sidewalk cafes including increased fines.

ACTION: Libbin/Gongora: (3-0) Direct the Administration to advise the Committee on any suggested changes to the issue of sofas and banquettes.

C6D Report Of The Finance And Citywide Projects Committee Meeting Of January 24, 2013: **Emergency Item: 1)** Discussion Regarding The Convention Center Catering Invitation To Negotiate. **2)** Discussion Regarding The BMG Loan Program. **Old Business: 1)** Discussion Regarding To Consider A Request For Rent Relief From Penn 17, LLC., Regarding The Retail Space At The Pennsylvania Avenue Parking Garage. **2)** Discussion Regarding A Recommendation By The GLBT Committee To Address The Issue Of Benefits Tax Inequality For City Employees With Registered Domestic Partners Versus Legally Married Spouses. **3A)** Discussion Regarding Water And Sewer Deposits; Implementing Rules And Regulations And Applications Of Rules Similar To Miami-Dade Water And Sewer Department. **3B)** Discussion Regarding Consideration Of New Policy Establishing Criteria For The Reimbursement Of Guarantee Deposits For Those Customers Who Have Established A Positive Payment History On

Their Water Bill. **3C)** Discussion Regarding The Creation Of Procedures To Provide A 24 To 48 Hour Notification To Homeowners Prior To Water Being Shut Off Due To Non-Payment. **4)** Discussion Regarding: Business Tax Receipt Renewal Notices; How We Handle Over Charges; Reasons For Miscalculations; And Corrective Action Plan. **5)** Discussion Regarding Police Athletic League (PAL) Lease. **6)** Discussion Regarding The Jewish Community Center's Request For Reimbursement, In The Amount Of \$241,000, For Costs Associated With Reconstructing The Seawall Along The City-Owned Property Located At 4221 Pine Tree Drive. **7)** Discussion Of A Lease Amendment With Damian J. Gallo & Associates (D/B/A Permit Doctor). **8)** Discussion Regarding Developing Parameters For The Gun Buyback Program. **9)** Discussion Concerning The Lease For The Miami-Dade Gay And Lesbian Chamber Of Commerce Foundation Located At Historic City Hall At 1130 Washington Avenue.

Emergency Item No. 1:

Convention Center Catering Invitation To Negotiate.

The Committee recommended that Acting Assistant City Manager Max Sklar write a Letter to Commission when the Invitation to Negotiate goes out and bring back to the Finance Committee in February or March.

Emergency Item No. 2:

BMG Loan Program.

ACTION: The members of the Finance and Citywide Projects Committee (FCWPC) recommended that the BMG Money Loans-At-Work program be extended on a month-month basis, with a discussion item to be referred to the FCWPC to explore what potential loan alternatives may be available. Commissioner Jerry Libbin moved the motion and it was second by Commissioner Exposito.

Old Business Item No. 1:

Consider A Request For Rent Relief From Penn 17, LLC., Regarding The Retail Space At The Pennsylvania Avenue Parking Garage.

ACTION: The Committee recommended granting application of 1/3 of the existing security deposit towards the November 2012 back-due rent, an abatement of 50% of the base rent and Common Area Maintenance (CAM) due for the six (6) month period commencing January 13, 2013 through July 12, 2013, granting a deferral of fifty percent (50%) of the Base Rent and CAM for the six (6) month period, commencing July 13, 2013 through January 14, 2014 ("Deferral Period"), to be repaid by the Tenant in twenty four (24) equal monthly installments, commencing in the sixth year of the Lease Term and ending on the last day of the seventh year of the Lease Term and repayment of 1/3 of the security deposit to commence on January 2014 with release language absolving the City of any liability be brought to the Commission.

New Business

Item No. 2: Recommendation By The GLBT Committee To Address The Issue Of Benefits Tax Inequality For City Employees With Registered Domestic Partners Versus Legally Married Spouses.

ACTION: Item Deferred.

Item No. 3a:

Water And Sewer Deposits; Implementing Rules And Regulations And Applications Of Rules Similar To Miami-Dade Water And Sewer Department.

Item No. 3b:

Consideration Of New Policy Establishing Criteria For The Reimbursement Of Guarantee Deposits For Those Customers Who Have Established A Positive Payment History On

Their Water Bill.**Item No. 3c:****Creation Of Procedures To Provide A 24 To 48 Hour Notification To Homeowners Prior To Water Being Shut Off Due To Non-Payment.**

ACTION: The Committee recommended that interest be paid on deposits, to keep commercial accounts with the requirement of a 3 month deposit that is not returned until the property is sold and accept the proposal for payment Arrangements over a 5 year period whether the property is residential or commercial.

Item No. 4: Business Tax Receipt Renewal Notices; How We Handle Over Charges; Reasons For Miscalculations; And Corrective Action Plan.

ACTION: Monitor this item and bring it back before the Committee in November to see how it worked.

Item No. 5: Police Athletic League (PAL) Lease.

ACTION: The Committee recommended going ahead and negotiating the current amount of the lease and bringing it back to the Finance Committee along with a list of measurable that are provided to the Community. Commissioner Exposito requested a Letter to Commission detailing dollar surcharge be brought back to the budget meeting.

Item No. 6: Jewish Community Center's Request For Reimbursement, In The Amount Of \$241,000, For Costs Associated With Reconstructing The Seawall Along The City-Owned Property Located At 4221 Pine Tree Drive.

ACTION: The Committee recommended putting the \$241,000 payment for the Seawall into the current or upcoming year's budget and spread the payments over one or two years.

Item No. 7: Lease Amendment With Damian J. Gallo & Associates (D/B/A Permit Doctor).

ACTION: The Committee recommended allowing Damian J. Gallo subject to regulatory approvals, to use the leased premises as requested for the dual purpose and additionally negotiate with legal to use the outside space.

City Clerk's Note: See Item C7H, Amendment To Lease Agreement with Damian J. Gallo & Associates.

Item No. 8: Developing Parameters For The Gun Buyback Program.

ACTION: The Committee recommended funding the \$10,000 for the City of Miami Beach Gun Buy-Back program to be held in March.

Item No.9: Lease For The Miami-Dade Gay And Lesbian Chamber Of Commerce Foundation Located At Historic City Hall At 1130 Washington Avenue.

ACTION: The Committee directed administration to provide a list of all the nonprofits with an outline of what they pay and any measureables that are required and to reduce the rent for MDGLCC from \$4,360 monthly to \$2,500 monthly, representing a reduction in rent from \$20.57/sf to \$11.80/sf.

12:07:59 a.m.

C6E Report Of The Finance And Citywide Projects Committee Meeting Of February 20, 2013: **1)** Discussion Regarding The Issuance Of Request For Proposals (RFP) For Catering And Concession Services For The Miami Beach Convention Center. **2)** Discussion Regarding Giving Guidance To The IT Steering Committee To Review The Pros And Cons Of Becoming A Paperless Environment And Create New Policies And Procedures To Be Implemented Within The

City Of Miami Beach. **3)** Discussion Regarding Renewal Of The Professional Services Agreement Between The City Of Miami Beach And The Superlative Group For Professional Services In Corporate Sponsorship Marketing Pursuant To Request For Proposals No. 06-04/05. **4)** Discussion To Consider Replacement Of The City's Public Safety Radio System With A New P25 Compliant System Before The Federally Mandated 2016 Timeframe. **5)** Discussion regarding the possible World Out Games Miami Beach 2017 Funding. **6)** Discussion Budget Advisory Committee's Proposed Policies And Guidelines For The City's Pension Plan. **7)** Discussion To Consider Additional Community Input For The Sunset Harbor Neighborhood Improvements Projects. **8)** Discussion Directing The Administration To Give The Commission An Analysis Of All The City Personnel Receiving Planning Day Pay And/Or Executive Work Days Pay, Details About Its Genesis, Aggregate Cost To The City, Intended Purpose And History. **9)** Discussion Regarding Advertising Panels On Lincoln Road.

COMMISSION ACTION ON ITEM 4:

Commissioner Exposito separated Item No. 4 for discussion. The Committee recommended sending this item straight to Commission with the criteria of issuing an RFP to secure the services of a Consultant, at a reasonable price, that can compile all the stakeholder's requirements and provide system specifications and recommend an option to move forward with implementing the P25 system. Motion made by Commissioner Exposito; seconded by Vice-Mayor Wolfson; Voice vote; 5-0; Absent: Commissioners Libbin and Tobin. **Trish Walker and Alex Denis to handle.**

Item No. 1: Issuance of RFP For Catering and Concession Services For The Miami Beach Convention Center.

ACTION: The Committee recommended moving forward with alternative 4 to continue working with Centerplate thru June to allow the City enough time to complete the ITN. Commissioner Libbin voiced his concern about the tight timeline.

Item No. 2: Guidance To The IT Steering Committee To Review The Pros And Cons Of Becoming A Paperless Environment.

ACTION: The Committee assigned the item to Commissioner Jorge Exposito who will meet with the IT Steering Committee to further discuss how to phase the project and what would be the best plan of action and what would be the timeframe to implement.

Item No. 3: Renewal of the Professional Services Agreement With The Superlative Group - RFP No. 06-04/05.

ACTION: The Committee recommended continuing the agreement with Superlative for one year and for Superlative to negotiate with staff on the 45% Commission being charged on license agreements.

Item No. 4: Consider Replacement of the City's Public Safety Radio System with a New P25 Compliant System Before The Federally Mandated 2016 Timeframe.

COMMISSION ACTION:

Item No. 4 separated for discussion by Commissioner Exposito.

Motion made by Commissioner Exposito; seconded by Vice-Mayor Wolfson; Voice vote; 5-0; Absent: Commissioners Libbin and Tobin. **Trish Walker and Alex Denis to handle.**

Commissioner Exposito wanted to understand the scope of the person being hired for this item.

Commissioner Weithorn explained that at the Committee meeting it was requested that they do not go forward until they receive more details.

Kathie G. Brooks, Interim City Manager, stated that this is an RFP that will come back to the City Commission for approval. She added that hiring the consultant would be by RFP also.

Commissioner Exposito stated that his understanding is that there are only two companies that do this. He asked why spend the money to hire a consultant when they can do an "ITB" invitation to bid and have the company do the consulting going forward and defray this cost?

Kathie G. Brooks, Interim City Manager, will find out from Trish Walker.

Commissioner Weithorn stated that the reason it was done this way is that they are looking at piggybacking the radios from Miami-Dade County. The consultant will help figure out what the needs are, and if they can do this in a different way. The consultant is looking at other options.

ACTION: The Committee recommended sending this item straight to Commission with the criteria of issuing an RFP to secure the services of a Consultant, at a reasonable price, that can compile all the stakeholder's requirements and provide system specifications and recommend an option to move forward with implementing the P25 system.

End of Commission Action

Item No. 5: World Out Games Miami Beach 2017 Funding.

ACTION: Item Deferred.

Item No. 6: Budget Advisory Committee's Proposed Policies And Guidelines

ACTION: The Committee assigned the item to Chairperson Deede Weithorn. The item was deferred to be further discussed at either an April or May Finance meeting with an LTC being issued on how this item will be handled to allow all Commissioners to participate.

Item No. 7: Consider Additional Community Input For The Sunset Harbor Neighborhood Improvements Projects.

ACTION: The Committee decided to discuss this item at the June or July budget meeting with the possibility of amending the budget for this item.

Item No. 8: Directing The Administration To Give The Commission An Analysis Of All The City Personnel Receiving Planning Day Pay And/Or Executive Work Days Pay.

ACTION: The Committee recommended that no new personnel shall receive Planning Days and/or Work Day Pay and for Interim City Manager Kathie G. Brooks to bring alternatives to the budget meeting for those employees currently receiving this pay.

Item No. 9: Advertising Panels On Lincoln Road.

ACTION: The Committee recommended going with Option 2 to go to the Historic Preservation and Design Review Boards to seek their direction as to what type of directory structures are most appropriate for the Lincoln Road Corridor. After this direction is obtained, the Administration recommends that a Request for Proposals be issued.

C6F Report Of The Special Land Use And Development Committee Meeting Of February 21, 2013: **1)** Discussion Regarding Miami Beach United Resolutions To Address The Issue Of Compatibility Of Certain Uses In Proximity To Residential Uses, To Create Safeguards While Still Allowing For Flexibility Of Development.

Item No. 1:**ACTION:** Libbin/Gongora: Refer an Ordinance Amendment to the Planning Board:

- For sidewalk cafes within a 100' radius of a residential district the following restrictions: No outdoor speakers and alcohol with food service only restriction on new applications. Applicability to allow existing cafes to continue under terms of current license, with Planning Board approval required to exceed thresholds for new establishments.
- Move hours of operation to reflect current license requirements (12:00 AM / 2:00 AM).

ACTION: Libbin/Gongora: (2-0) Adopt staff recommendation as an Ordinance referral to the Planning Board.**C7 - Resolutions**

C7A A Resolution Approving And Authorizing The City Manager Or Her Designee To Submit The Following Grant Applications: 1) Florida Inland Navigation District For Funding In The Approximate Amount Of \$280,000 For Shoreline Reconstruction Of Normandy Shores Park Seawall; 2) Florida Inland Navigation District For Funding In The Approximate Amount Of \$160,000 For Design Of Indian Creek Park Seawall; 3) Florida Inland Navigation District For Funding In The Approximate Amount Of \$40,000 For A Parks Blueways Plan; 4) The Florida Department Of Agriculture And Consumer Services, Urban Forestry Program, In The Approximate Amount Of \$10,000 For Tree Plantings; And, 5) State Of Florida, Department Of Health, For Funding In The Approximate Amount Of \$40,000 For Equipment Related To Pre-Hospital Emergency Services; Appropriating The Above Funds, If Approved And Accepted By The City, And Authorizing The Execution Of All Necessary Documents Related To These Applications.

(Budget & Performance Improvement)

ACTION: Resolution No. 2013-28146 adopted. Patricia Walker to appropriate the funds if approved and accepted. **Judy Hoanshelt to handle.****12:01:24 a.m.****SUPPLEMENTAL (Resolution)**

C7B A Resolution Accepting The Recommendation Of The Neighborhood/Community Affairs Committee Automatically Withdrawing Items Referred To City Commission Committees If Not Heard Within Six (6) Months From Its Referral Date And Recommending Inclusion Of A Report In City Commission Agenda Transmitting A List Of Withdrawn Items.

(City Manager's Office)

ACTION: Item separated for discussion by Commissioners Góngora and Tobin. **Resolution No. 2013-28147 adopted.** Motion made by Commissioner Weithorn; seconded by Vice Mayor Wolfson; Voice vote: 5-0; Absent: Commissioners Libbin and Tobin. **Patricia Walker, Richard Lorber and Barbara Hawayek to handle.****12:06:05 a.m.**

C7C A Resolution Accepting A Donation Of Surplus Funds From The Miami Beach Health Facilities Authority ("MBHFA") Account, Pursuant To A Resolution Of The MBHFA Adopted At Its February 20, 2013 Meeting, In The Amount Of \$715,331, For Appropriation And Disbursement By The City To Non-Profit Human Health Service Agencies, As Provided In Section 154.209(14), Florida

Statutes; Provided Further That The MBHFA Recommends That Such Surplus Funds Be Appropriated And Disbursed As Follows: \$150,000 To Provide Continued Support To Miami Beach Community Health Center, Inc.; And 2) \$565,331 To Mount Sinai Medical Center, To Be Used For Its Miami Beach Resident Indigent Care Program To Provide Treatment For Unfunded Residents Of The City Of Miami Beach.

(Finance Department)

ACTION: Item separated for discussion by Commissioner Weithorn. Resolution No. 2013-28148 adopted. Motion made by Commissioner Weithorn; seconded by Commissioner Góngora; Voice vote; 5-0; Absent: Commissioners Libbin and Tobin. **Patricia Walker to handle.**

Commissioner Weithorn stated that she was unhappy as to how this resolution was worded, and added that these are not surplus funds of the Miami Beach Health Facilities. This is the City's money from the Mount Sinai bonds, and they have not been paid for a number of years. The funds were going to Mount Sinai when traditionally this money has gone to the Community Health Center, which had significant fraud. Nowhere in the memo was it stated the steps that have been taken to deal with the fraud. She received a memo that details the steps taken, and she will share with the City Commission. She wanted to make sure that the proper safeguards were in place.

12:04:12 a.m.

C7D A Resolution Consenting To And Confirming The Appointment Of Jay Fink As The Acting Director Of The Public Works Department For The City Of Miami Beach.

(Human Resources)

ACTION: Item separated for discussion by Commissioner Weithorn. Resolution No. 2013-28149 adopted as amended. Motion made by Commissioner Weithorn; seconded by Vice-Mayor Wolfson; Voice vote; 5-0; Absent: Commissioners Libbin and Tobin. **Carla Gomez to handle.**

Amendment:

Jay Fink is to remain as the Assistant Director of Public Works Department, but assume the responsibilities of the Director, until such time as the new City Manager makes his assessment.

Commissioner Weithorn explained that this is just a clarification, and that she has no problem if Jay Fink assumes the duties of the Public Works Director. She added that naming a Director should be the decision of the new City Manager, and explained that he should stay as Assistant Director and assume the responsibilities of the Director until such time as the new City Manager makes his assessment. This is very similar to what was done with Police Chief Martinez.

C7E A Resolution Accepting The Recommendation Of The Neighborhood/Community Affairs Committee At Its January 28, 2013 Meeting To Install A Fence Around The Perimeter Of The Scott Rakow Youth Center Playfield.

(Parks & Recreation/Commissioner Deede Weithorn)

ACTION: Resolution No. 2013-28150 adopted. Kevin Smith to handle.

SUPPLEMENTAL (Resolution)

C7F A Resolution Approving, Pursuant To Section 2-367(d) Of The Miami Beach City Code, The Sole Source Purchase Of Beach Access Accessibility "Mobi-Mats" From Deschamps Mat Systems, Inc. (D.B.A. DMS), The Exclusive Distributor Of The Access Mats, In The Annual Estimated Amount Of \$86,731.68, For A Period Of (3) Three Years.
(Property Management/Procurement)

ACTION: Resolution No. 2013-28151 adopted. Jay Fink and Alex Denis to handle.

1:47:58 p.m.

C7G A Resolution Approving And Authorizing The Mayor And City Clerk To Execute An Amendment To The Joint Participation Agreement, Executed On October 17, 2012, With The State Of Florida Department Of Transportation, For The Construction Of Drainage Improvements On S.R. 907/Alton Road At 10th Street.
(Public Works)

ACTION: Item separated for discussion by Commissioner Libbin. See action with R9B1-5. **Resolution No. 2013-28152 adopted.** Motion made by Commissioner Libbin; seconded by Commissioner Weithorn; Voice vote: 6-0; Absent: Commissioner Tobin. **Jay Fink to handle.**

Commissioner Libbin separated this item because he had requested several months ago to include a chart of all the construction and timeframes on the website. There are two major arteries that will be part of upcoming FDOT projects, and he urges the Administration to prepare residents to understand how they are going to get around and survive. **Jay Fink to handle.**

Discussion held.

Vice-Mayor Wolfson added that when construction projects commence, the roads are tied up for two years or more; this has an impact, and they need to do everything possible to prepare residents and businesses in the area. The Administration should take any and all actions to find ways to help them in any way they can.

5:25:26 p.m.

SUPPLEMENTAL (Resolution)

C7H A Resolution To Accept The Recommendation Of The Finance And Citywide Projects Committee To Execute An Amendment To The Lease Agreement Between The City Of Miami Beach And Damian J. Gallo & Associates, Inc. D/B/A Permit Doctor, Dated July 30, 2003, Involving The Use Of Approximately 1,269 Square Feet Of Ground Floor Retail Space Located At 1701 Meridian Avenue, Unit 4 (A/K/A 775 17th Street), Miami Beach, Florida; Said Amendment Authorizing An Additional Use Of The Premises And Further Authorizing The City To Negotiate A Concession Agreement Allowing For An Outdoor Eating Area, Adjacent To The Leased Premises.
(Real Estate, Housing & Community Development)

ACTION: Item separated for discussion by Commissioner Tobin. **Resolution rejected.**

Anna Parekh, Real Estate, Housing & Community Development Department Director, explained that Damian J. Gallo & Associates approached the City about a year ago to change the use of their existing location at the 777-building corner to a café use. At Finance Committee, the recommendation was to proceed with an amendment to the lease to allow for this use within the leased space; and subject to regulatory approvals, to negotiate a contract for outdoor seating. They are proposing to place four tables and eight chairs in the space immediately east to the leased space, and therefore, this item is to request approval to accept the Finance and Citywide Projects Committee's recommendation, and then they will come back with a negotiated concession agreement for use of the outdoor space.

Commissioner Tobin stated that it is a fundamental principle of real estate, that when one owns real estate, one does allow the tenant to rent the real estate. No Real Estate landlord does that. He will vote no.

Discussion held.

Damian Gallo, from the Permit Doctor Consultant, stated that the space is an office now and in answering Commissioner Tobin's questions, he stated that he operated restaurants in Culver City, California and other outdoor cafés.

Discussion held. Commissioner Tobin suggested to start with the lease fresh, and if that new tenant wants to have a café on the property, where the fountain is and add table and chairs, that is great.

Ana Parekh explained that the lessee wants to split the use. The City's proposal or rent analysis is to keep the same rent for the leased space and charge for the outdoor use, where the restaurant revenue can be tracked and a percentage of that can be charged, but that has not been negotiated.

Discussion continued.

In answering Commissioner Exposito's question, the tenant pays \$49.23 per square foot for the space as it is now with maintenance and insurance; the other tenants are paying, including maintenance and insurance, between \$42 and \$50. Market research findings show that retail space cost is between \$40 and \$50.

Discussion continued and Commissioner Exposito stated that his concern is that it is a lot cleaner to do separate leases. Commissioner Exposito asked the Building Department if the initial plans

include separate bathroom facilities on the restaurant side from Permit Doctor to the restaurant. Is that permissible under the City Code?

Richard McConachie, Assistant Building Director, stated that as long as the restaurant users have access to the bathrooms in Permit Doctors, it is allowed.

Discussion continued.

Motion No. 1:

Motion made Commissioner Góngora to defer the item, refer the item back to the Finance and Citywide Projects Committee to discuss separate bathroom entrances, outdoor café, financial issues, rent, etc., and bring it back to Commission; seconded by Commissioner Tobin Voice vote; 3-4; Opposed: Vice-Mayor Wolfson and Commissioners Exposito, Libbin, and Weithorn. Motion rejected.

Damian Gallo spoke and discussion continued.

Motion No. 2:

Motion made by Commissioner Libbin to approve the subdivision and lease under the same terms for the remaining of his term, after which time there will be a re-negotiation.

Commissioner Exposito offered an amendment to approve in concept to come back with a proper lease and in the interim discuss at the Finance and Citywide Projects Committee.

Discussion continued.

Vice-Mayor Wolfson seconded Commissioner Libbin's motion.

Commissioner Exposito explained that his concern is with regards to Miami-Dade County's ability to grant a change of use, as the use is intensified by establishing a restaurant as opposed to the office. He does not think the County will allow for a change of use.

Commissioner Libbin accepted the amendment offered by Commissioner Exposito, subject to the County's approval.

Discussion continued.

Vote on Motion No. 2:

Voice vote; 3-4; Opposed: Mayor Bower and Commissioners Exposito, Góngora, and Tobin. Motion failed.

SUPPLEMENTAL (Resolution)

C7I A Resolution Accepting The Recommendation Of The Finance And Citywide Projects Committee And Approving And Authorizing The Mayor And City Clerk To Execute An Amendment To The Lease Agreement Between The City And MDGLCC Foundation, Inc., Dated March 10, 2010, Involving The Use Of Approximately 2,543 Square Feet Of Office Space Located At Historic City Hall, 1130 Washington Avenue, 1st Floor North, Miami Beach, Florida; Said Amendment Providing A Rent Reduction.

(Real Estate, Housing & Community Development)

ACTION: Resolution No. 2013-28153 adopted. Anna Parekh to handle.

12:15:06 a.m.

C7J A Resolution Accepting The Recommendation Of The Neighborhood/Community Affairs Committee Requesting The Miami Beach Visitor And Convention Authority To Serve As The Host Committee For The City Of Miami Beach Centennial, Which Will Occur On March 26, 2015.

(Tourism & Cultural Development)

ACTION: Item separated for discussion by Commissioner Libbin. Resolution No. 2013-28154 adopted. Motion made by Commissioner Weithorn seconded by Vice-Mayor Wolfson; Voice vote; 5-0; Absent: Commissioners Libbin and Tobin. **Max Sklar to handle.**

12:15:06 a.m.

C7K A Resolution Accepting The Recommendation Of The Interim City Manager Pertaining To The Ranking Of Firms, Pursuant To Request For Qualifications (RFQ) No. 56-11/12, For The Purpose Of Conducting And Documenting A Detailed Facilities Condition Assessment Of Various Buildings/Assets Owned By The City Of Miami Beach, And To Develop A Schedule For Assets And Equipment Replacement Within The Buildings/Assets To Include Current And Projected Future Replacement Costs; Authorizing The Administration To Enter Into Negotiations With All Three Proposers: Bermello Ajamil & Partners, Inc.; Nova Engineering And Environmental, LLC.; And VFA, Inc.; And Further Authorizing The Mayor And City Clerk To Execute Agreements Upon Conclusion Of Successful Negotiations By The Administration.

(Property Management/Procurement)

ACTION: Item separated for discussion by Commissioner Libbin. Resolution No. 2013-28155 adopted. Motion made by Commissioner Weithorn seconded by Vice-Mayor Wolfson; Voice vote; 5-0; Absent: Commissioners Libbin and Tobin. **Jay Fink to handle.**

11:45:43 p.m.

C7L A Resolution Accepting The Recommendation Of The City Manager Pertaining To The Ranking Of Proposals, Pursuant To Request For Proposals (RFP) No. 022-2013ME, For Call Center Services; Authorizing The Administration To Enter Into Negotiations With The Top-Ranked Proposers, 1-800 We Answer; And Should The Administration Not Be Successful In Negotiating An Agreement With The Top-Ranked Proposer, Authorizing Negotiations With The Second-Ranked Proposer, Inktel Government BPO Services; And Should The Administration Not Be Successful In Negotiating An Agreement With The Second-Ranked Proposer, Authorizing Negotiations With The Third-Ranked Proposer, IVOX Solutions, LLC.; Further Authorizing The Mayor And City Clerk To Execute An Agreement Upon Conclusion Of Successful Negotiations By The Administration.

(Finance/Parking/Fire/Procurement)

ACTION: Item separated for discussion by Vice-Mayor Wolfson and Commissioner Exposito. **Resolution No. 2013-28156 adopted as amended.** Motion made by Vice-Mayor Wolfson to award the contract to Inktel; seconded by Commissioner Exposito: Voice vote: 3-2; Opposed: Mayor Bower; and Commissioner Weithorn; Absent: Commissioners Libbin and Tobin. **Patricia Walker, Saul Frances, Chief Otero and Alex Denis to handle.**

Amendment:

Negotiate with the Second Ranked Proposer Inktel

Vice-Mayor Wolfson stated that he separated this item because in his opinion it is better to have a Call Center that is based in Miami-Dade County. He would like to award it to the second ranked proposer.

Patricia Walker, Chief Financial Officer, explained the item, referring to Page 235 of the City Commission Agenda.

Commissioner Exposito stated that in reviewing the item it seemed Inktel was given the highest point on everything with the exception of the survey and cost. He asked clarification in understanding the cost, because Inktel has an existing \$75,000 contract, and if they add another \$75,000 contract they need to meet the Living Wage Ordinance. He also inquired as to the alleged failure to submit the surveys.

Patricia Walker, Chief Financial Officer, explained that with regard to the survey, the letter received from Inktel on 3/13/13 indicate a clerical error. It was not the City's clerical error, but the proposer's clerical error, in that the City did not receive the surveys from the proposer's customers. With regard to the applicability of the Living Wage Ordinance, Inktel currently has a contract with the Building Department in the amount of \$92,000, which is not subject to the Living Wage Ordinance. There was a concern at the time that the Finance Department wanted to amend that contract including the current services (requested under the RFP).

Raul Aguila, Chief Deputy City Attorney, stated that the issue with the Living Wage Ordinance is that Inktel erroneously assumed that because it had a pre-existing contract with the Building Department, the service offered by this contract would be added to the existing contract, and therefore putting the total amount over \$100,000, triggering the Living Wage Ordinance. This is not correct. This is a separate contract under separate solicitation; therefore, this would be a new contract and the Living Wage Ordinance would not apply, unless services under the new contract were to exceed \$100,000, which they are not. The City issued Addendum No. 2 to the RFP, which answered this question (as to whether or not the Living Wage requirement applied to this

contract), and the City's answer was that the Living Wage requirement would only apply to this contract if the services provided under this contract, not including the existing Building Department contract, exceeded the \$100,000. Legal's position is that Inktel erroneously interpreted that the Living Wage would apply with the estimated project cost for this contract, which is an estimated \$75,000.

Discussion held.

Diana Mendez, from Alex Heckler's Office, explained that Mr. Heckler represents Inktel, and was unable to appear today. He is requesting a deferral of the item. Discussion continued regarding delays with this RFP and the urgency for a contract.

Patricia Walker, Chief Financial Officer, explained the cost difference between 1-800 ANSWER, at 70 cents per minute, or \$25 per hour for dedicated agents, and Inktel at 79 cents a minute, or \$28 an hour for dedicated agents. In addition, the proposal for 1-800 ANSWER also offered a maximum of \$99,000, including everything; the benefit is the savings, which is a considerable amount of money. Further, 1-800 ANSWER offered no project management charges, no script development charges, or curriculum development fees.

Discussion continued regarding Call Centers experience in the past.

Vice-Mayor Wolfson explained that he prefers to award the contract to a local company, the second ranked proposer (Inktel).

Diana Mendez spoke.

Motion #1:

Motion made by Vice-Mayor Wolfson to approve Inktel, the second proposer. No second offered at this time.

Raul Aguila, Deputy City Attorney, suggested that since Vice-Mayor Wolfson is awarding the contract to the second proposer, he needs to state for the record his reasons for doing so.

Vice-Mayor Wolfson stated that his reason for selecting the number two proposer is because they are a local company; they are very well situated; and the City has a recurring and good working relationship with them in the Building Department with good experience.

Commissioner Exposito stated that since they had a misunderstanding as far as what the pricing was, he requested that, as part of the negotiation, and since they no longer have to pay a Living Wage, that this be adjusted and hopefully it will be more in line with the first proposer.

Vice-Mayor Wolfson explained that this could not be done with these bids.

Discussion continued.

Commissioner Exposito seconded Vice-Mayor Wolfson's motion to select the second ranked proposer Inktel.

Discussion continued.

A Voice vote was taken: 3-2; Opposed: Mayor Bower and Commissioner Weithorn; Absent:

Commissioners Libbin and Tobin.

12:01:24 a.m.

SUPPLEMENTAL (Resolution)

C7M A Resolution Waiving By 5/7th Votes, The Competitive Bidding Requirement, Finding Such Waiver To Be In The Best Interest Of The City, And Authorizing The City Manager To Purchase Vehicles Pursuant To The Florida Sheriffs Association Contract No. 12-20-0905.
(Fleet Management)

(Memorandum & Resolution to be Submitted in Supplemental)

ACTION: Item separated for discussion by Commissioner Libbin. Resolution No. 2013-28157 adopted. Motion made by Commissioner Weithorn; seconded by Vice Mayor Wolfson
Voice vote: 5-0; Absent: Commissioners Libbin and Tobin. **Jay Fink to handle.**

12:01:24 a.m.

C7N A Resolution Accepting The Recommendation Of The Interim City Manager Pertaining To The Ranking Of Firms, Pursuant To Request For Qualifications (RFQ) No. 52-11/12, For Professional Construction Engineering And Inspection (CEI) Firms To Provide Various CEI Services On An "As Needed" Basis; Authorizing The Mayor And City Clerk To Execute Agreements Upon Completion Of Successful Negotiations With The Five Top-Ranked Proposers: Atkins North America, Inc., Bermello Ajamil & Partners, Inc., Chen Moore And Associates, Corzo Castella Carballo Thompson Salman, P.A. (C3TS), And Parson Brinckerhoff, Inc.
(Capital Improvement Projects/Procurement)

ACTION: Item separated for discussion by Commissioners Libbin and Tobin. Resolution No. 2013-28158 adopted. Motion made by Commissioner Weithorn; seconded by Vice Mayor Wolfson
Voice vote: 5-0; Absent: Commissioners Libbin and Tobin. **Fernando Vazquez and Jay Fink to handle.**

ADDENDUM

C7O A Resolution Rescinding Resolution No. 2013-28115 Which Created The Mayor's Ad Hoc Committee To Plan The 2013 Sustainable & Authentic Florida Conference And Dissolving Said Committee.

(Requested by Mayor Matti Herrera Bower)
(Legislative Tracking: City Attorney's Office)

ACTION: Resolution No. 2013-28159 adopted. Rafael E. Granado to handle.

End of Consent Agenda

REGULAR AGENDA

R5 - Ordinances

12:11:59 p.m.

R5A An Ordinance Amending The Miami Beach City Code By Amending Chapter 2, Entitled "Administration," By Amending Article III, Entitled "Agencies, Boards And Committees," By Creating Division 34, To Be Entitled "Bicycle-Pedestrian Facilities Advisory Committee," And

Sections 2-190.149 Through 2-190.153 Therein To Provide Provisions Establishing The Committee And Its Purpose, Powers And Duties, Composition, And Supporting Department; Providing For Repealer, Severability, Codification, And An Effective Date. **10:15 a.m. Second Reading Public Hearing**

(Requested by Neighborhood/Community Affairs Committee)
(Legislative Tracking: Public Works)
(First Reading on February 6, 2013)

ACTION. Title of the ordinance read into the record. Public Hearing held. **Ordinance No. 2013-3793 adopted.** Motion made by Commissioner Libbin to approve the ordinance; seconded by Commissioner Exposito; Ballot vote: 6-0; Absent: Commissioner Góngora. **Rafael E. Granado to handle.**

Handouts and Reference Materials:

1. Ad in The Miami Herald – Ad # 766

2:14:02 p.m.

R5B An Ordinance Amending Chapter 10 Of The Miami Beach City Code Entitled “Animals,” By Amending Section 10-11, Entitled “Running At Large Prohibited,” By Extending The Pilot Program Off-Leash Area For Dogs In South Pointe Park Through And Including June 30, 2013; Providing For Repealer; Severability; Codification; And An Effective Date. **10:30 a.m. Second Reading Public Hearing**

(Requested by the City Commission)
(Legislative Tracking: Parks & Recreation)
(First Reading on February 6, 2013)

ACTION. Title of the ordinance read into the record. Public Hearing held. The following additional items are to come back to the next Commission meeting, as per legal opinion, as a first reading Ordinance: the change of the location and hours of the off-leash area for dogs in South Pointe Park.

MOTION # 1:

Motion made by Commissioner Góngora directing the City Attorney’s Office to bring to the next City Commission meeting an Ordinance on first reading, to:

- 1) Change the location of the off-leash dog park to the lighthouse area;
- 2) Shifting evening hours to: 6 p.m. - 9 p.m.;
- 3) Keeping morning hours the same (as is);
- 4) Extend the off-leash pilot program to June 30, 2013.

Seconded by Commissioner Libbin; Ballot vote: 7-0. Lilia Cardillo to place on the Commission Agenda the first reading of the new Ordinance when received. **City Attorney’s Office to draft Ordinance.**

MOTION # 2:

Motion made by Vice-Mayor Wolfson to refer the issue of installing a native vegetation hedge to define the new area to the Design Review Board; seconded by Commissioner Weithorn; Ballot vote: 6-1; Opposed: Commissioner Góngora. **Richard Lorber to place on the DRB agenda. Kevin Smith to handle.**

Kevin Smith, Parks and Recreation Director, introduced the item and stated that the hedge issue was discussed at DRB as directed, and on March 5, 2013, authorization was given to place the

hedge up to 42 inches, and this item is here for second reading.

Discussion held.

Ronald Starkman, member of South of Fifth Neighborhood Association Board, stated that the Board passed a resolution on March 8, 2013, and their position is that the City should allow more time on this item for them to hold neighborhood meetings in order to obtain input from constituents. There have been talks between parents and K9 associations, and in general, there is a strong opposition to putting the off-leash dog area by the lighthouse, due to safety and sanitary reasons. He read the resolution into the record urging the proposal to be rejected and including residential input through community meetings.

Discussion held regarding off-leash dog area location.

Commissioner Góngora added that he thinks this is an issue that can be figured out as a community. When this pilot project began, it was by the lighthouse project. When the lighthouse project was brought at NCAC, he asked if the lighthouse project would affect the dog park, and at that time, there was no opposition. The area was moved when the lighthouse was being installed to the small area by the restaurant where the children play, and this is when the hedge discussions began. He supported the right of dog owners to have an area in the park and congregate, and after speaking to various groups and spending time at the park, he believes that once the lighthouse was installed, the pilot project should have been moved back to where it started, next to the lighthouse in a remote area of the park, and installing a hedge. He added that evening hours are too early, and impacts school activities; they should leave morning hours and push evening hours from 6 p.m. to 9 p.m. instead of what they are now, 4 to 7 pm, so as not to override what is going on in the park. Mayor Bower agreed with Commissioner Góngora.

Commissioner Libbin asked for caution, and would hope to extend the off-leash program. He also met with responsible dog owners, and the City should have the courtesy of public input of all the residents, and today they should approve the three-month extension in his opinion, but quickly meet with residents and decide the location where there is consensus and bring back the item.

Mayor Bower suggested extending the program for three-months, moving the location back to the lighthouse area, and then revisit the hedge issue after community meetings.

Commissioner Góngora motioned to extend the program for three months, obtain public input and revisit the issue of the hedge, in addition to shifting the hour back slightly. Mayor Bower was in agreement.

Commissioner Weithorn has been very critical, and she is a park user. The current area is too large and too incompatible. She does not have a problem with the original location, but does have a problem where it has been; and with some of the behavior of some of the dog owners, who seem to think that those hours are only "dogs hours", but they are hours for all users of the park. She is happy the location is being moved back, but that area did not work for many reasons. She suggested adding more benches for dog owners. This is a park for people, and urged that the site be moved; she is happy with this compromise and asked Administration if the location can be moved back.

Discussion continued.

Jose Smith, City Attorney, stated that since the City Commission is changing the location, the

hours, and extending the program until June, a first reading ordinance has to be brought back at the next Commission meeting.

Discussion continued regarding the process and the impact with Spring Break.

Vice-Mayor Wolfson expressed his concerns regarding the children's safety, and thinks they have to be cognizant of the fact that dogs are animals, and believes the solution is to move it back to the area where the lighthouse is, and close it in for safety purposes and this is the motion he would make. Jose Smith, City Attorney, explained that since this motion changes the design of the area by adding a hedge, the item has to go in front of the DRB.

The following individuals from the public spoke in support of relocating the program to the triangle and changing the hours:

Katherine Prescott, SOFNA parent
Britney Hansen, SOFNA parent
Frank Del Vecchio

Max Sklar, Interim Assistant City Manager, explained that by moving the area to the lighthouse location, and if after public meetings there is consensus to go with a hedge, the item will need to go back to the Design Review Board, come back with a first reading and he recommended extending the June day another sixty days out to go through the process.

Discussion continued.

Commissioner Tobin was going to vote against the program today, but he will go along and he will vote for the extension for three months. Discussion continued.

The following individuals spoke:

Kelin Brenan
Gene Kulick
Jackie Lalonde

MOTION # 1:

Motion made by Commissioner Góngora directing the City Attorney's Office to bring to the next City Commission meeting an Ordinance on first reading, to:

- 1) Change the location of the off-leash dog park to the lighthouse area;
- 2) Shifting evening hours to: 6 p.m. - 9 p.m.;
- 3) Keeping morning hours the same (as is);
- 4) Extend the off-leash pilot program to June 30, 2013. In addition, direction was given for the Administration to take immediate action to relocate the dog park.

Seconded by Commissioner Libbin; Ballot vote: 7-0. Lilia Cardillo to place on the Commission Agenda the first reading of the new Ordinance when received. **City Attorney's Office to draft Ordinance.**

MOTION # 2:

Motion made by Vice-Mayor Wolfson to refer the issue of installing a hedge of native vegetation to define the new area to the Design Review Board; seconded by Commissioner Weithorn; Ballot vote: 6-1; Opposed: Commissioner Góngora. **Richard Lorber to place on the DRB agenda. Kevin Smith to handle.**

Handouts and Reference Materials:

1. Ad in The Miami Herald – Ad # 766
2. Resolution from SOFNA Association
3. South Pointe Park Off-Leash Area Proposed Hedge Landscape Plan

12:49:59 p.m.

R5C CD-2 Self Storage

An Ordinance Amending The Code Of The City Of Miami Beach, Florida, Chapter 142, "Zoning Districts And Regulations," Article II, "District Regulations," Division 5, CD-2 "Commercial, Medium Intensity District," By Permitting "Self-Storage Warehouses" As A Conditional Use In This Zoning District; Providing For Repealer, Severability, Codification And An Effective Date.

10:45 a.m. Second Reading Public Hearing

(Requested by Commissioner Jerry Libbin)

(Legislative Tracking: Planning Department)

(First Reading on February 6, 2013/Referred to LUDC)

ACTION. Title of the ordinance read into the record. Motion made by Commissioner Góngora to; open and continue the item to the April 17, 2013 meeting at 10:45 a.m.; seconded by Commissioner Libbin; Voice vote 5-0; Commissioners Weithorn and Tobin absent.

Handouts and Reference Materials:

1. Ad in The Miami Herald – Ad # 766

12:51:17 p.m.

R5D An Ordinance Amending The Miami Beach City Code By Amending Chapter 2, Entitled "Administration," By Amending Article III, Entitled "Agencies, Boards And Committees," By Amending Division 29, Entitled "Debarment Committee," By Amending The Purpose, Powers, And Duties Of The Committee To Include Authority To Consider The Suspension Of Contractors In Addition To Debarments; Providing For Repealer, Severability, Codification, And An Effective Date. **11:00 a.m. Second Reading Public Hearing**

(Requested by Mayor Matti Herrera Bower)

(Legislative Tracking: City Attorney's Office)

(First Reading on February 6, 2013/Referred to NCAC)

ACTION. Title of the ordinance read into the record. Public Hearing held. **Ordinance No. 2013-3794 adopted.** Motion made by Commissioner Góngora to approve the ordinance; seconded by Commissioner Libbin; Ballot vote: 5-0; Absent: Commissioners Tobin and Weithorn. **City Attorney's Office to handle.**

Handouts and Reference Materials:

1. Ad in The Miami Herald – Ad # 766

9:30:53 p.m.**9:31 second vote****SUPPLEMENTAL (Ordinance: Revised Version Based Upon Discussion at First Reading)**

R5E Hotel Parking Requirements

A Ordinance Amending The Code Of The City Of Miami Beach, Florida, By Amending Chapter 130 "Off-Street Parking," Article II, "Districts; Requirements," By Amending The Off-Street Parking Requirements For Hotels In All Districts; Providing For Repealer, Severability, Codification And An Effective Date. **5:15 p.m. Second Reading Public Hearing**

(Requested by Land Use & Development Committee)

(Legislative Tracking: Planning Department)

(First Reading on February 6, 2013)

ACTION. Title of the ordinance read into the record. Public Hearing held. **Ordinance No. 2013-3795 adopted as amended.** Motion made by Commissioner Weithorn to approve the ordinance; seconded by Vice-Mayor Wolfson; Ballot vote: 6-1; Opposed: Mayor Bower. **Richard Lorber to handle.**

Motion to include:

- 0.5 spaces per unit, up to a maximum of 100 units;
- One space per unit for all units in excess of 100 units, up to a cap of 150 total hotel rooms; for properties outside Historic Districts or National Register Districts;
- South of Fifth and West Avenue should not have a parking reduction, and
- Include a hotel guest shuttle service in addition to hotel employee parking plan.

Richard Lorber, Acting Planning Director, introduced the item and presented a chart, Page 26 of Supplemental Material, and spoke about the revised ordinance version. He explained the new proposal, and stated that it took into consideration the direction given by the Commission at the last Commission meeting regarding historic districts.

Jorge Gomez, Assistant City Manager, explained how the parking requirements are activated with the new proposed ordinance.

Discussion held regarding impact fees and parking requirements. Chart presentation continued.

Jorge Gomez, Assistant City Manager, clarified that 17th to 5th in the historic district, along Washington, Collins Avenues or Ocean Drive include the corridor that have FAR and hotel parking requirements as proposed. Discussion continued.

Commissioner Libbin stated that categories should be consistent all across.

Commissioner Góngora explained that the hotel size needs to be limited, and this would encourage hotel development. Discussion held regarding cap.

Jorge Gomez, referring to Page 343, stated that they would add language to keep the consistency.

Commissioner Tobin proposed 0.5 for North Beach, and in the historic district where there are buildings that have no parking, he would keep it one for one.

Commissioner Weithorn provided an alternative to provide and build parking spaces, if they are paying one to one.

Commissioner Tobin is in support of the Planning Board's recommendation for 0.5 up to 100 rooms, and then one to one thereafter.

Commissioner Góngora suggested that there should be a cap at 120 or 150 if approving Planning's recommendation.

Richard Lorber, Acting Department Director, added that in order for any hotel to receive the reduced rate of 0.5 space per unit, a hotel employee parking plan is required, which shall be subject to the review and approval of the Planning Department, and such parking plan shall include mandatory measures to address employee parking, not limited to the provision of transit passes, car pool or van pool programs, off-site parking when available, monthly city parking passes or other measures to limiting employees from parking on surrounding neighborhood.

Discussion continued. Commissioner Tobin asked about tram services for visitors.

Scott Diffenderfer, Transportation and Parking Committee member, stated that this item has not been heard at his Committee, and this should have been brought up for review. He added that residents are upset and on 17th Street and Alton Road, the City does not have good record with managing traffic, ingress and egress, and it is frustrating for them to wedge a hotel into a piece of property that the developer does not own yet, and he is adamantly opposed to it. Discussion continued. He suggested that logic should be allowed to prevail, and let it go through the process.

Mayor Bower stated she opposes this item very strongly.

Nancy Liebman, former Miami Beach Commissioner, explained that historic districts deserve a 0.5. It is the reduced and no parking that has saved the historic districts. Why should the incentives be the same for other hotels outside the historic district, when they can demolish and do what they want? They should be different. What is the benefit of this new incentive outside the historic district, what is it saving and what is it preserving? These hoteliers are happy with 0.75.

Discussion held, and Vice-Mayor Wolfson added that residents are not being affected and they

are dealing with an ordinance that on policy basis will encourage the rebirth of hotel rooms on the beach.

Discussion continued.

The following individuals spoke:

Harold Rosen

Bill Honing, Parking and Transportation member, urged to defer item

Michael Larkin, Esq., representing Richard and Ronnie Finvarb, stated that they would agree with lifting the cap to 150, and regarding technical language when the ordinance addresses retaining, preserving and restoring the building, and trying to define the maximum percentage of demolition, he is asking that they be consistent with the rest of the section, and add language "or as approved by the Historic Preservation Board, pursuant to Section 118-395 (b)(2)(d)(2)." They have done neighborhood outreach to Venetian Homeowners and West Avenue Neighborhood Associations and there is time to present and discuss issues with the residents, such as traffic. No one has seen their presentation on traffic, and he reiterated that this is a commercial use zone. He is in support of lifting the cap to 150.

Discussion continued.

Jorge Gomez, Assistant City Manager, stated that these hotels have that operational restriction, they cannot have the restaurants or night bars, and so they are incentivizing those types of hotels.

David Leez, member of the Belle Island Residents Association, asked that this item be deferred and have residents input from all the islands.

Discussion continued.

The following individuals spoke:

John Leibas, Belle Isle resident

Nancy Beckham, 20 Island Avenue resident

Marsha Orovitz, Belle Isle resident

Russ Ruth, Belle Isle resident

Mayor Bower stated that this ordinance is being done for one developer. Discussion held.

David Phillips spoke in support of the hotel-parking requirement.

Final Motion

10:37:54 p.m.

Commissioner Weithorn explained that this item is not about the hotel, and added that actually she is happy that this item came up here in order to take an objective look in concept to try to see if it works in reality; but this is not about the hotel, and the fact that we have objective data only allows them to craft a better ordinance. She made a motion to approve the item; seconded by Vice-Mayor Wolfson to include:

Motion to include:

- 0.5 spaces per unit, up to a maximum of 100 units;
- One space per unit for all units in excess of 100 units, up to a cap of 150 total hotel rooms; for

- properties outside Historic Districts or National Register Districts;
- South of Fifth and West Avenue should not have a parking reduction, and Include a hotel guest shuttle service in addition to hotel employee parking plan

Discussion continued.

Ballot-vote: 6-1; Opposed: Mayor Bower. Motion carries.

Handouts and Reference Materials:

1. Ad in The Miami Herald – Ad # 766
2. Email from Michael Larkin to Mickey Marrero dated March 12, 2013 RE: Meeting w Belle Isle

09:27:18 p.m.

R5F No Wake Ordinance

An Ordinance Amending The Code Of The City Of Miami Beach, By Amending Chapter 66, Entitled "Marine Structures, Facilities And Vehicles," By Amending Article II, To Be Entitled "Restricted Wake Zones," To Create Regulations For Restricted Wake Zones; Providing For A Purpose; Providing For Definitions; Providing For Restricted Areas; Providing For Posting Of Regulatory Markers; Providing For Exemptions; Providing For Enforcement And Penalties; Providing For Repealer, Severability, Codification, And An Effective Date. **First Reading**

(Requested by Commissioner Jorge R. Exposito)

(Legislative Tracking: City Attorney's Office)

(No Action Taken on December 12, 2012/Referred to LUDC)

ACTION: Title of the ordinance read into the record. Public Hearing held. **Ordinance approved on first reading. Sunset Lake item referred to LUDC.** Motion made by Mayor Bower to approve the ordinance; seconded by Commissioner Weithorn; Ballot vote: 6-0; Absent: Vice-Mayor Wolfson. Second reading and Public Hearing scheduled for April 17, 2013. Rafael E. Granado to notice. Lilia Cardillo to place on the Commission Agenda when received. **City Attorney's Office to handle.**

Referral

Land Use and Development Committee, the discussion of Surprise Lake

Motion made by Commissioner Weithorn; seconded by Commissioner Exposito, to refer item to the Land Use and Development Committee. Ballot vote: 6-0; Absent: Vice-Mayor Wolfson.

R7 - Resolutions

5:53:51 p.m.

SUPPLEMENTAL AGENDA: (Memorandum & Resolution)**SUPPLEMENTAL AGENDA 2: Palau Sunset Harbor, LLC's Response to Sunset Islands 3 & 4 Property Owners, Inc.'s and Olga Lens' Petition to Reverse Design Review Board Decision.)****SUPPLEMENTAL AGENDA 3: (Supplemental Appendix Petition to Reverse DRB Decision from W. Tucker Gibbs, P.A.)**

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)

ACTION: Public Hearing held. Resolution approved. Appeal granted. Resolution 2013-28160 adopted. Motion made by Commissioner Góngora to remand to the DRB for the limited purpose of allowing the Board Members to discuss and identify the view corridors, and to allow the Board Members to make their required disclosure of ex-parte communications, pursuant to Section 2-512 of the Miami Beach Code, if any; seconded by Vice-Mayor Wolfson; Voice vote 6-1; Opposed Commissioner Libbin. **Richard Lorber and City Attorney's Office to handle.**

Gary Held, First Assistant City Attorney, introduced the item and explained the procedure. Mr. Gibbs is here representing the appellant, and he suggested that the Commission sets time aside about 15 to 20 minutes for both parties. He stated that this is an appeal of a Design Review Board (DRB) Order on project known as the Palau in Sunset Harbor, pursuant to Section 118-262 of the Code; the Review is not a de novo hearing; it is an appeal based upon the record before the DRB, in order to reverse, remand for amendment, modification or rehearing any decision of the DRB.

Mr. Held explained that the City Commission could find that the DRB did not do one of the followings:

- 1) Provide procedural due process,
- 2) Observe the essential requirements of law, or
- 3) Based its decision upon substantial competent evidence.

In order for the Commission to reverse or remand, a 5/7 vote is required.

Commissioner Libbin disclosed, for the record, that he met with Terry Bienstock on site, and met separately on site with Mickey Minagorri, Design Review Board member.

Commissioner Tobin disclosed that he met with Jackie Lalonde. Discussion held.

Wayne Pathman, Esq., stated, just as a point of reference, he has a few preliminary motions that he would like to get on the record of things that are not properly before the Commission today.

Jose Smith, City Attorney, explained that Mr. Pathman can state any objections, thereby reserving them for appeal on the record, and he believes it is appropriate to state his objections at this point.

Mr. Pathman, on behalf of the applicant, Palau Project, stated that the two items he wants to bring to the attention is that: first it is required under the City Code that the request, which is the preliminary request for filing of the Appeal before the Commission, must state with clarity the

arguments that are going to be made by the appellant in this case. Two weeks ago approximately, the appellant filed their petition, and in that petition they included an additional argument that was not raised in the request, and is not a matter of record. This is a non de novo hearing, and therefore, that matter should not be heard before this Commission today; secondly, there was an affidavit submitted by Terry Bienstock through his attorney Mr. Gibbs, which is not properly before this Commission. It is not part of the record and it is replete with hearsay and it is sworn to, not personally as required by law, but to the best of his knowledge, which is not the proper standard for an affidavit to be submitted before the Commission. He asked that the Commission not consider these two things. He read from Code Section 118-262(a) "the request shall state the factual basis and legal argument in support of the appeal." Recently they added something in their petition that was not part of the record and was not properly before this Commission because it was not stated in the request.

Tucker Gibbs, Esq., stated that under the City Code, there is a requirement or a right for the neighbors to file a petition for rehearing, and the rehearing, one of the standards for rehearing, is that *there is error below*. In that petition for rehearing, every issue that is before this Commission today was presented in that petition for rehearing. The DRB declined to hear, but a petition was filed with the DRB, and there was a motion made to allow for the rehearing and the motion was made to deny (2-2), but the fact is that the City Code provides an avenue by which parties may go before the DRB after the hearing, and say "you have made a mistake," and "here are the mistakes you made. They follow the law and everything before this Commission was part of that rehearing motion, which in his opinion, was part of the record.

Wayne Pathman, Esq., stated that the argument is totally irrelevant; the Code states that "the request shall state the arguments." The petition was filed after the fact, and what is before the Commission is what is in the Code, which states that the request shall state the argument and this is not in the request and it should not be allowed in the petition. The affidavit submitted does not say personal knowledge.

Mayor Bower asked for a Legal opinion.

Jose Smith, City Attorney, stated that having written portions of this Code section, he would opine that the Section that Mr. Pathman is referring to has always been very liberally construed, so you should not technically dismiss an argument because it was not specifically set forth in the notice of appeal, which technically, even in Circuit Court and Appellate Courts, do not set forth the specific arguments that they would have on appeal. The reason the City requires a brief to be filed, is because it is at that point that the Commission gets an opportunity to see what the arguments are on both sides of the issue. In his opinion, Mr. Gibbs is correct.

Discussion held.

Jose Smith, City Attorney, added that on the issue of the affidavit, the affidavits typically have to be based on personal knowledge and not on hearsay, so to the extent that the affidavit talks about personal conversations from other people, that is hearsay, and those portions of the affidavit should not be considered. Mr. Gibbs is correct as to those statements in the affidavit and that he heard or that is personal knowledge, he will have to testify, or the record will have to reflect personal information from Mr. Bienstock, and not what someone told him.

Mr. Pathman added that this affidavit, according to Mr. Bienstock, was prepared on behalf of Mr. Bienstock, because he said that he had spoken with the City Attorney and was told to file an affidavit.

Jose Smith, City Attorney, clarified that he spoke to Mr. Bienstock on personal knowledge, not on hearsay.

Mr. Gibbs asked Mr. Smith, for clarification, if he is saying that argument No 5, which is the delegation of the authority from the Board to staff, is on the record.

Mr. Smith stated that it is part on the rehearing petition and on the transcript.

Discussion held.

Gary Held, First Assistant City Attorney, explained that his recollection is that there was no delegation made below as to the delegation issue.

Mr. Gibbs stated that included below is the motion for rehearing.

Discussion continued.

Jose Smith, City Attorney, stated that since Mr. Gibbs supplemented the record by filing the petition for re-hearing, he considers it part of the record.

Mr. Pathman stated, for the record, that this was not raised in the record and the petition that the City Attorney is referring to was filed on 3/12/2013 by 5:00 p.m., but two weeks after the time to file the petition. The record he is speaking from is the record from the DRB on October 2nd, and the first time they make this argument No. 5 was at the rehearing, which is not before the Commission today.

Jose Smith, City Attorney, recommended to the Commission that they hear the argument on the unlawfully delegation of legislative authority, and he thinks it us a proper argument to make to this Commission and his record is protected.

Commissioner Tobin wanted to know if what Mr. Pathman is saying is that this Commission is reviewing the proceedings below, and that the motion for rehearing is not part of the proceedings below, but a motion for rehearing.

Mr. Pathman explained that the proper standard before the Commission today is that they are receiving a petition filed by the appellant on the October 2nd hearing where the DRB unanimously approved the Palau project. Subsequent to that, there was a filing for a rehearing which was not granted, and that is not in front of the Commission today. It is not an appellant issue, there is no record as to argument No. 5 and the rehearing was denied altogether.

Discussion continued.

Commissioner Tobin stated that one of your issues on appeal is the improper delegation of the Board's authority, and Mr. Pathman's argument is that this was not argued in the lower court below, so how can it be reviewed today as an appellant body when it was never made in the lower courts?

Tucker Gibbs, Esq., explained that the City Code in Section 118-261 specifically provides an avenue by which somebody who has been at the hearing after the order has been issued has a right to look at that order, which is the appeal issue, and say there is an error, the Board has

overlooked or fail to consider something which renders the decision erroneous, and that is what they did, and it is an unlawfully delegation, because the order is what they are appealing. The order was not written until October 4th, which was after the hearing was over.

Discussion continued.

Vice-Mayor Wolfson asked that there are 20 days from the date the order is rendered to appeal, and Mr. Gibbs submitted an appeal within 20 days of the rendering of the Board's order. In that appeal, did Mr. Gibbs raise all the issues?

Tucker Gibbs, Esq., stated that he did not, and stated that it was his fault. He explained that his reading of the language in the City Code does not say that it is to be all. As the City Attorney stated it is to be liberally construed, and the fact is that it was brought up below in the petition for rehearing, it is a valid issue and this Commission will decide one way or another, but at least it should be heard.

Jose Smith, City Attorney, stated that this issue can be heard and considered, but the City Commission will have to rule on the merits if it is a valid argument or not.

Discussion continued. Commissioner Góngora clarified that both parties have to show that the DRB 1) did not provide procedural due process, 2) did not observe the essential requirements of law, or 3) did not based its decision upon substantial competent evidence; and if one of those three things occurred, it will take a 5/7 vote to reverse it.

Tucker Gibbs, Esq., representing Sunset Islands 3 & 4 Property Owner's, Inc., and Olga Lens, and his clients are appealing the order of the DRB of October 4, 2012, based on the following: 1) the petitioners were denied procedural due process because the DRB members failed to disclose ex-parte communications with the applicant; 2) the DRB failed to follow the essential requirements of law, when they did not evaluate the diminution of the Sunset Drive View Corridor from 20th Street to the bridge at Sunset Island; and 3) the DRB decision was not supported by substantial competent evidence to show that important identified view corridors were maintained, pursuant to the DRB criteria. Finally, the DRB failed to follow the correct law when it delegated to staff its authority to evaluate and approve plans pursuant to the Review criteria. No. 1, Procedural due process in the quasi-judicial proceeding, like the DRB requires notice and opportunity to be heard, and also requires that parties are informed of all the facts upon which the Boards acts, and that is critical for evaluation of due process in the context of ex-partaking communications. No. 2, the essential requirements of law require that the Board follow the applicable law, and in this case is the Review Criteria in the City's Land Development Regulations. No. 3 is substantial competent evidence, is evidence that a reasonable mind would accept as adequate to support the conclusion, and it must be fact based, there has to be facts behind it, not just unsubstantiated opinions. This is a about a project that the community wants, a development that will improve the neighborhood and be a gateway to this part of Miami Beach, and what his clients want is a project that respects its neighbors, one that reflects that it is adjacent to single family homes, a historic bridge, and an important view corridor along Sunset Drive from 20th Street to the bridge. In two hearings, the DRB neighbors and developer guided by staff worked to try to make this happen. They were moving toward a compromise, but unfortunately, the process broke down as the DRB members met with the applicant and failed to disclose their meetings. The applicant staff ignored the elements of critical Design Review material, designed to protect adjacent neighborhood, and that is criteria number 12, and the DRB gave final review and approval authority of this project to the staff. Therefore, the culmination of this failure of process was the DRB hearing and their petition for re-hearing. He wants the Commission to understand that a four person DRB, only four

people were present and voted 2-2 in a motion to hear the petition for re-hearing and the City Attorney ruled that the petition was therefore denied; all this was done with no argument, no presentation and this appeal followed. In looking at procedural due process, neighbors were denied procedural due process because of the failure of the DRB members to go out and disclose ex parte communications with representatives of the applicant. In quasi-judicial zoning proceeding, such as the DRB, the parties must be able to present evidence, cross examine witnesses and being informed of all facts on which the Board acts and this comes from the Jennings case. The Jennings case says that there is a presumption of prejudice where such ex-parte communications occur and the burden is on the person who laid the ex-parte communication to show that it was not prejudicial, and here are the neighbors to the re-hearing process sit out in the Land Development Regulations and ask the DRB to consider this issue. Staff and the applicant claim that the Chairman's offhand comment at the August 7th meeting cures any prejudice, because that statement meets the requirements of Code Section 2-512 paragraph 1, and that section is the section of the City Code that says the 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 part of the record. It also states that if you cannot put it in the record, you have to state it on the record at the meeting.* What the chairperson said at that meeting on August 7th was that "we have met, with most of us have met (with the Palau team) to go over the project. We have heard everything. Everybody has to stay here." That is what he said; no other member made any disclosure of any ex-parte communication, and that is a problem, because the statement by the Chair did not identify the person, group or entity with whom he or other Board members met. The statement did not disclose the subject matter of the meeting, the statement, as it applies to other members, because he said "we;" he implies that the other members had meetings; and either he found out by meeting with other members, which is a Sunshine Law violation, or he found out from someone at Palau, which is also a Sunshine Law violation, so this is a problem.

Commissioner Tobin disclosed before the meeting began that Jacqueline Lalonde come into his office and met with him. He did not disclose this subject matter of their discussion, which is this Palau project. So in essence, Mr. Gibbs would argue that his disclosure since he spoke to Ms. Lalonde, who actually got Terry Bienstock on the phone to explain to him something about the project; his disclosure is ineffective, as this is quasi-judicial setting?

Tucker Gibbs, Esq., explained that Commissioner Tobin is not taking testimony or getting cross-examination and he might dispute the characterization of this proceeding as quasi-judicial, but he understands that.

Commissioner Tobin wants to make sure that his disclosure is satisfactory to Mr. Gibbs and Mr. Pathman. Discussion held. Commissioner Tobin disclosed that Jacqueline Lalonde came in and he told her that Wayne had a very good brief, and he has to hear what has to be said, but he thought they had an uphill battle.

Jose Smith, City Attorney, stated that two people disclosed, and if you have met with other parties, state it for the record. Discussion continued. There is no requirement that the City Commission discloses here, it is up to the City Commission. The requirement of disclosure is in the DRB.

Commissioner Tobin disclosed that Jacqueline Lalonde and he met, they were in disagreement over the law, and at one point, she asked for a legal opinion and got Terry Bienstock on the phone to explain, and he told him about his view of substantial competent evidence and due process on the issue.

Mr. Gibbs continued stating that their position is that DRB members need to disclose under the City Code, but to top this off, staff and applicant argued that the August 7th statement of the Chairman applies post effectively, into the future, into October 2nd; so theoretically that disclosure takes care of any discussions that were had occurred between the Palau and members of the Board after August 7th, but before October 2nd, and that is problematic, and that is what the affidavit, as per Mr. Bienstock's affidavit is, and his affidavit specifically deals with that issue and who he spoke with and what they told him. So based on the information and belief based on that affidavit, they were ex-parte communications between Palau and members of the DRB, and their motion for re-hearing, had they gotten that rehearing, they would have been able to ask the members of the Board if they had those discussions, because they did not find out until afterwards, and that is the problem with ex-parte communications, that you do not know generally until afterwards.

Discussion held.

Mr. Gibbs explained that the Jennings case does not call for disclosures, but any ex-parte communication is anathema, and to that point, the fact is that it is an original action. He can challenge this in court and get depositions, but here we are. The City has a Code provision that requires the disclosure of the subject matter and whom you spoke with, and under Jennings that is the issue, ex-parte communications. There are two separate issues, the Code issue and Jennings. Discussion held.

Mr. Gibbs stated that the DRB failed to follow the essential requirements of law when it ignored the fundamental review criteria under Criteria 12, which states, "the proposed structure has orientation and massing, which is sensitive to and/or compatible with the building site and surrounding area, and which creates or maintains important view corridors. The applicant under law, has the initial burden to prove that it complies with the law, which is the DRB standards, and the applicant failed to show that it met each of the criteria, specifically the applicant failed to address how the plans met each of the elements of Criteria 12. The applicant never identified any view corridor; never identified any important view corridor, never defined view corridor; never explained how these buildings orientation and massing maintained important view corridors. Staff says that the applicant never burden us by providing plans "that show which view corridors and to what extent." A review of the submitted plans does not define or identify any view corridors, important view corridors, or new view corridors, view corridors does not show up. The applicant says they followed the exceptional requirements of law because it presented "mountains" of competent substantial evidence to meet Criteria 12, but that mountain is really a molehill. The applicant cites to one statement by its architect that a notch in the northeast corner of the building created "vistas and view corridors," without defining the view corridors or identifying them on the plans.

Page 8 -1.05 of the plans does not identify those view corridors, although are referenced by the architect. Furthermore, neither the applicant nor the staff, provided an explanation of how a five-story building replacing a one story building, improves, creates or maintains an existing view corridor, and no explanation from staff or the applicant how Sunset Drive view corridor is being maintained, or how the elimination of the view corridor east of the World's Savings Building creates or maintains important view corridor. City staff failed to address these criteria as well. The staff report did not identify any view corridors that would be created or maintained. Staff mentioned view corridor in its presentation one time, and that was in the context of the Planning Board's decision that the view corridors along West Avenue to the water was inappropriate. There was no reference to the DRB Criteria 12, no reference to the Sunset Drive view corridor from 20th

to the bridge. The essential requirements of law require the DRB to correctly apply those review criteria. To ignore the review standards is a violation of a clearly established principle of law, a principle that this Commission and your predecessors in the City Commission adopted as a requirement of DRB review and approval of an application. The applicant, the staff and the DRB failed to address the masking orientation and how it creates or maintain these view corridors. This is a fundamental error. It is a failure to follow the essential requirements of law and it warrants granting an appeal. The DRB failed to base its decision to approve the application on competent and substantial evidence. Competent substantial evidence must be evidence based on fact, whether the evidence comes from an expert or a layperson. The staff claims that its report itself is competent substantial evidence, and that you must give a difference, and they cite numerous cases for this point, and all these cases talk about fact-based opinion. If those are based on facts, here the staff report said one thing about Criteria 12; one word, the word "satisfies." That is all said. Nowhere in the staff report does it talk about view corridors, staff testimony does not mention view corridors, except to say the Planning Board eliminated one. Staff says that is ok, because the papers and documents and other materials that are filed in the record are competent substantial evidence to support the approval according to case law, and they are kind of half right about that; because if those documents are contained in relevant and valid evidence which support the decision, yes, it's important, and it is competent, but the mere presence in the case of Jesus fellowship versus Miami-Dade County, and that is case Third DCA Case, states the mere presence in the record of these items is not however sufficient for approval or denial of an application by itself. They must contain relevant, valid evidence, which supports the decision. However, none of the documents defines or identifies important view corridors; a critical point when evaluating Criteria 12. In addition, none of the documents shows the orientation of the massing creates or maintains important view corridors. These documents; therefore, are not competent substantial evidence showing compliance with Criteria 12 and the applicant says the testimony of the architect is competent substantial evidence showing compliance with Criteria 12, but that testimony fails to identify the corridors and show how they are maintained. There is no discussion on how a five-story building replacing a one-story building on Sunset Drive maintains that view corridor. And then they talk about the statement of an individual Board member' the laws says that the statement of an individual member of the Board does not and cannot reflect the decision of the Board. Why? Because the DRB, just like this Commission, speaks as an official body through its order or resolution. One member of the Board does not speak for everyone, unless the entire Commission has decided to make someone a spokesperson on a particular issue. The DRB is an official body through its order. The Florida Supreme Court says "the law does not take cognizant and individual expression of a single member of a public body," and that is a Florida Supreme Court case. Both the staff and the applicant failed to present any facts to the DRB that define view corridor, identify view corridors in the area, "identify what an important view corridor is," show how the important view corridors were being maintained, which is a requirement, and show that they create an important view corridor. They talked about important view corridors, they talked about vistas and view corridors, by never identified where they were, if they were important or not, and never spoke as to how that goes to the application and how it fails the criteria, because the criteria says to show how the orientation maintains the existing view corridor. If Sunset Drive, there is an issue, because there is a five-story building replacing a one-story building, and that is what the testimony is all about; how they notched out the northeast corner, but that does not deal with the entire view corridor, only with the area closest to the bridge and closest to the water. It does not deal with the entire view corridor down Sunset Drive from 20th to the bridge, and that is the concern.

Commissioner Libbin asked if plans were ever shown.

Mr. Gibbs answered that plans were presented and showed the notch-out, but view corridors were never defined. It did not say view corridor on the plan, it did not say this is a view corridor, and this is how we are maintaining it. The architect just said this is being improved and will add view corridors, never saying where the corridors were and how they were doing this. Because of that notch, they were improving and creating view corridors, but they did not say where.

In answering Commissioner Tobin's question, he stated that in his position the Code requires to create or maintain important view corridors. If you just say, "I'm improving a view corridors" what does it mean? Is that competent and substantial evidence? Is it fact based? Is not fact-based because there is no fact behind it. If they say, this is how we define a view corridor and this is a view corridor, but it is not an important view corridor, but this other one is an important view corridor, and here is what we are doing to maintain it that is fact-based testimony. That did not happen. So all the record does show is a conclusive staff report with no discussions of view corridors, staff comments limited to the elimination of a view corridor by the Planning Board, which has nothing to do with the DRB standards or criteria. Architectural plans that do not identify view corridors; the architect's testimony that failed to address how existing view corridors are being maintained. None of this is fact-based; and therefore, it is not competent substantial evidence showing the requirement of Criteria 12. The DRB failed to follow the correct law by improperly delegating its authority to evaluate and approve development applications pursuant to the design review criteria. Discussion held.

Mr. Gibbs continued explaining that their position is that the DRB improperly delegated its authority to evaluate and approve the development applications pursuant to the criteria, which is in Section 118-251 through 265. Florida law is clear that a City Commission may not delegate the power to make law or exercise unrestrictive discretion when applying the law. This means that this Commission has the power to create Boards. The charter says you have the power to create Boards, you define those Boards and give those Boards power. Why? Because you have the power. If you have to do everything that all your Boards do, you will be here 24/7. So you have the power to delegate your authority, but that power means that when delegating authority you do it by ordinance or law, you create the DRB, and in that law you create the criteria that applies, but that does not mean that the DRB can turn around and give the power to staff. In the order they created several conditions of approval. They said they were approving the application and they said "but we have some conditions" and here are the conditions we have exception to. Condition 4B, it says revise the elevation site plan and floor plan drawings shall be submitted to and approved by staff. That means the elevation site plan and floor plan drawings shall be submitted to and approved by staff at a minimum such drawing shall incorporate the following. Under 4B, it says the final design and details including materials, finishes, glazing, railings and any architectural projections and features shall be provided in a manner to be reviewed and approved by staff. That means that staff is approving a site plan. This Commission did not give them the authority to do; this Commission can create a law to do that. That is condition D4B Page 208 on the Order. In addition, in revised elevation site plans shall be approved by staff under 4; under 4D, the final design and details again, included landscaping, walkways, fences and architectural treatment of west elevation facing the former bank and shopping provided in the manner to be approved and reviewed by staff. Again, they are telling staff, people we are punting, we have given the general approval you deal with the other approvals. It would be nice if it was allowed in the Code, but it is not. There is a provision in the section dealing with DRB that actually states staff can do approvals, when talking about additions and improvements of certain buildings. The Commission can do that.

Commissioner Tobin explained that his position is that the DRB cannot delegate any of these details. It should say subject to the Board's final approval.

Discussion continued.

Mr. Gibbs stated that an easy thing to resolve; all the DRB has to do is approve these plans, bring back for approval and that is the end of that. This could have been said at rehearing. This is not rocket science. The project may have been completed and they may have been very well on their way to getting their building permits, if this had gone to the rehearing process, and those issues had been dealt with. However, they choose not to deal with that and turn them over to the Commission. Therefore, the DRB order is clear the conditions of approval. The bottom line to Commissioner Tobin's question, is if staff was given final approval to a site plan and staff has no such authority in the Code; so in conclusion, this is a process that while lengthy, is incomplete because of the Board's failure to correct basic problems at re-hearing level. These are all issues that we asked the DRB to review and correct, and it chose not to, at least a 2-2 vote.

These are the issues we asked for them to review and they chose not to. All we ask if that you look at the record, grant the appeal to either quash the order, or remand it back with instructions to the DRB to review this application correctly; apply Criteria 12, protect the view corridor by requiring step backs that were requested back in October.

Discussion held.

Mr. Gibbs explained that the Commission could say that the DRB needs to protect that view corridor, as they have that power. Discussion held. He stated that his professional staff failed to provide and say which the view corridors are.

Discussion continued.

Jose Smith, City Attorney, stated that the appellant has presented his argument, and suggested to hear the appellee's argument, and then staff presentation.

Commissioner Góngora stated that going back to his first argument in regards to the ex parte communications being prejudicial and not adequately disclosed, what would have been needed to be done, for the ex parte communication to be adequately disclosed, from his perspective.

Mr. Gibbs stated that each members of the Board in most municipality and counties disclosed whom they have met with, and what the conversation was about, he listens to them and then can make an unbiased vote on that determination.

Discussion continued.

Mr. Gibbs added that when the Chair made his comments, it was not in terms of making a disclosure but in response to something that was going on. This is in the transcripts. Mr. Bienstock will be making a statement based on the record, because he saw a notice in the newspaper that parties were invited.

Jose Smith, City Attorney, stated that Mr. Bienstock, he is a party and is allowed to speak only on matters on the record.

Wayne Pathman, Esq., stated that first, the party is the association, which is an incorporation, which is represented by counsel who has already spoken. Secondly, it is clearly prejudicial to us for the first time to hear from someone that has not filed any pleadings and they have not had an

opportunity to review or respond to, and now they hear for the first time, that is clearly prejudicial, and he does now know any quasi-judicial or judicial body that will allow that. That is very unfair to them.

Jose Smith, City Attorney, stated that as a party he is allowed to speak on matters that are part of the record. Whatever is in the transcript, he can testify to, or argue as to anything that is the transcript.

Discussion held.

Commissioner Libbin stated that each side was to file a brief, which is a summary of what they are to present; he assumes that the reason they do that and they exchange it, is as Mr. Pathman saying, that each side knows what the other is going to say. Discussion continued.

Terry Bienstock, President of Sunset Islands 3 & 4 Association, is here to say a few things and to talk about their association, why they are here and what this is about. He is a lawyer but is not here as a lawyer but as president of his association. All we have ever asked is that a project that is not just adjacent to single-family homes, but surrounded on all four sides by no more than two story structures, respect the scale and mass of the neighborhood in which it is contained. They are in favor of Palau and in favor of the project, they want it built, but they want to respect the neighborhood. This is not just about Palau or Sunset Islands 3 & 4. This area is the entrance to the entire Sunset Harbor neighborhood and that neighborhood has made dramatic improvements over the last several years, and that is the first thing people see. When you go down 20th to the bridge, you see between the buildings from 20th to the bay and to waterway and the Sunset Islands, all which is going away with this project; it is going to be one solid building. It is all one-design issue. I have talked to some of you and we presented. There are many hard decisions we are going to have to make in our career. Respectfully, we do not understand why this one has been so hard. You folks approved less than a year ago a half a million dollars to renovate their front entrance, to put in a new guardhouses, to landscape and do the roads, and the justification for that, as you recall, was that this is not just about Sunset Islands 3 & 4, this is the entrance to the neighborhood.

Mr. Pathman stated that this is not on the record, this is off the record, and that is why I suggesting that he not be allowed to speak because he is not sticking to the record. There is nothing about the front entrance and money that the City gave for the front entrance on the record; it was never even an issue.

Mr. Bienstock continued saying that he testified to this below, he read the record. The irony of this whole thing is that when we designed the guardhouse for our front entrance and they submitted to the DRB just a year ago, it was rejected because it was not consistent with the design of the historic district.

Mr. Pathman objected again.

Commissioner Góngora suggested that they note on the record that is a standing objection to his testimony and Mr. Pathman will rebut when Mr. Bienstock is finished.

Mr. Bienstock continued saying that when they tried to design the building, just a foot away from Palau, they were told they had to respect the historic nature of the bridges, and they did that. The irony is that less than a few months later, the DRB to approve this project, which not only is five stories higher than the guardhouse that was approved, there is no similarity to the historic nature

of the bridges, and towers over the entire entrance and puts us in perpetual darkness, they do not want this project to be stopped, what they ask for is that there be some modest scaling back on Sunset Drive; this is a design issue; and he would appreciate if counsel does not stand here over him the whole time, it is inappropriate. This is a design issue, and the reason he says that is because this could be easily avoided; they created this interior space in the master design, with what they called a secret garden, and so they took the view corridors that Tucker talked about, and eliminated them, and instead put it into the interior space. What they did can be undone. What the DRB did, the Commission can undo. All they are asking is to do the right thing, and the right thing for the neighborhood. This building is going to be here for 50 years. Every time someone drives by and instead of looking from the street to the water they see a building, and every time they drive by and look up to see the stars, and every time they drive by and just see darkness in the whole neighborhood, they would know whether any common sense was applied to this process. We have the legal basis to reverse, we are asking to reverse and make modest changes on Sunset Drive to scale back the building 10 feet on the first floor, five feet on the second and third floors, and five extra feet on the third and fourth floors.

Discussion continued.

Wayne Pathman, Esq., Law Office of Pathman & Lewis, representing respondent Palau, stated that he has heard a lot of testimony, but thinks they have not heard everything that is accurate, and have not heard what is really on the record, and he hopes to be able to straighten that out and give them all the information that is necessary to make a proper decision today and deny the request for the appeal. The subject of today's appeal, which is filed by Sunset Islands Homeowners Association, is requesting reversal of the DRB finding. DRB members are members that you appointed to the Board; architects, landscape architects, land planners and other professionals in the community. They unanimously, not 4 to 3, but unanimously approved the project. Not after one hour of presentation; if you thought where we are today right now is long, we were in front of the DRB for over eight hours over two hearings; we were in front of the Planning Board on four hearings over 16 hours. You want to know what that looks like. Let me show. This is the transcript. This represents over 20 hours of presentation before your respective Boards, before the Board and the people you appointed, and before your Boards that your staff that you rely upon from meeting to meeting, month to month, weigh in on. That staff unanimously approved this project and recommended approval to both Boards. In fact, in his 25 years of presenting before this City, he has never seen a more growing staff recommendation than the one from staff to the DRB. Every condition that you typically see, every single one (which is a matter or record) was satisfied. There is not one that says unsatisfied. Why is that? Well, you've heard that we did not do anything, we did not listed, nobody listen, but today before he started, you have a recommendation from your Interim City Manager, your Planning Director and your City Attorney recommending denial on all counts; why is that? He will tell you why. This matter was vetted out for over 20 hours between two Boards, but more specifically the DRB, which is the Board that they had taken the appeal from, heard argument, heard presentation about the plans, the design; to think that what Mr. Gibbs has said earlier that we never discussed about view corridors is ridiculous. How can that be? Look at the transcripts. Commissioner Tobin asked that question, if this is the first time you are bringing it up. Of course not, this was always their concern, but you have a standard that you must employ today, and respectfully it is not about your opinion, is about what the record says and the law that applies.

Discussion held.

Mr. Pathman continued stating that the appeal is from the DRB hearing on October 7th, with six members, one absent; it was a unanimous approval by six. What Vice-Mayor Wolfson is talking

about is not properly before this Commission today, but the motion for re-hearing. The motion for re-hearing, there was a short, majority 4. At that time, their motion prevailed for rehearing, but that is not properly before you. The hearing should not be considered. It is a different hearing and not part of the appeal.

Discussion held.

Mr. Pathman explained that this project was vetted out between two Boards, two of the Boards that you give the authority to review plans and projects that come before the City; people you selected. They did it unanimously. If you count the vote, we really had 13-0, and on top of that all the staff supporting it and the City Attorney. He wants them to understand the gravity of what happened at these Boards. There was continuous discussion over many hearings and many hours, and on top of that there was probably more than 20 hours of meeting with staff on both sides. Therefore, to hear from the other side that we did not vet out the view corridor and other issues, is ridiculous. The Planning Board members, the DRB staff and DRB members, as well as the neighbors, have been supportive of this project. They want to give you the impression that there are no neighbors that support this project. We had over 25 letters submitted from the neighbors, some on Sunset 3 & 4, some from Bay Road and some from other areas surrounding the project. The other thing that is important to understand this property is property is commercially zoned. Someone could build up to 50 feet as a matter of right only having to go to the DRB for review of the design. We are proposing a lesser use on the project on site, which is multifamily mixed use, with about 11,500 square feet of retail, so we meet all the requirements of your comprehensive plan, of your LDR and all your Code requirements. This was all vetted out by your staff, your City Attorney and the Boards. There was a time when in the Planning Board level and also the DRB level, when we were discussing conditions and issues that staff had raised, as well as the Board, and the neighbors, and he wants you to understand that we made over 20 concessions in the design of this project, and he will read a couple as part of the record. They moved the egress from Sunset Drive to 20th Street, and who requested that? Sunset Islands 3 and 4; so they moved it. Increased landscaping. They increased the landscaping. The landscaping is greater than what is required under the Code. They removed the rooftop trellis from the original decide, and who requested that? Sunset Islands 3 and 4. They relocated the pool to the 20th Street area on the roof, as supposed to near the bay, and who requested that? Sunset Islands 3 and 4. They incorporated valet parking for both the residents and visitors internally, inside the building, not exterior, so there is no noise and there is no back up or anything concerning waiting for or dropping off their cars. Who requested that? Sunset Islands 3 and 4. We increased the stacking of our cars internally, so there is no stacking on the street, so everybody pulls into the building, there is the ability to stack up to more than 20 cars, and that was requested also by the Island Association and other associations like Sunset Tower. We reduced the number of units in the building from 70 to less than 50; who requested that? Sunset Islands. We did not utilize the nine parking spaces that we have the right to on Mr. Comrad's property. He was protesting the site but is no longer is, we have come to an agreement with him, and he supports the project and realizes is a good project for the neighborhood and something that is good to continue the improvement of the West Avenue Boulevard area. We agreed to not use (and this is important) an existing high variance that was granted to the prior owner of the property; a three foot high variance; we said we are not going to use it, and so the question is where were they when that happened seven years ago, when another building, which is that ugly building that is half built of 1/3 built, they got a three foot high variance, but they never protested that. However, we, to be good neighbors, said, are not going to use that. Therefore, we did not use the three-foot high variance. Again, we are entitled to 50 feet, but we are below 50 feet on the waterside, which is what they asked us to reduce. In addition, when you hear from staff, from Mr. Cary or Mr. Lorber, you will hear about how we stepped that side and how we changed it, to

create corridors, to create vistas, and you have that on the record. So we reduced our site water work to the street side, which is 20 Street, it is about 50 feet, but is about 46 feet 4 inches on the waterside (we could be 50 feet, but we are not). We added, at the request of Sunset Island again, benches and bike racks on Sunset Drive, so it looks like a very nice double-wide sidewalks pedestrian walkway, with more landscaping included with benches and bike racks. We agreed at their request not to have commercial boat slips. Therefore, we have no commercial boat slips; that is a condition of approval. We also agreed to try to, as best as possible, have the commercial deliveries for small retail internally, so they created an internal area for trucks say the size of Fed-Ex trucks, and for larger trucks we agreed that we would reduce the time of their delivery and only have a loading zone on 20th Street, not on Sunset Drive, for those larger trucks. Again, as I said earlier, we agreed about the valet parking. Originally, we did not have valet for residents, but to appease the residents we said we would bring all the cars inside, so they would not worry about traffic and noise. They asked us to have a lobby location for the residence on the Sunset Drive area and they asked us to move it; we did. We moved it to 20th Street, there is no lobby area on Sunset Drive. Trash rooms, there was some concern about trash rooms and making them both suitable for residential and commercial and they did that; they expanded it and put it inside. So, what he is trying to tell you, that was about 20 things he is mentioned, he thinks it is very generous on their part, staff did, the Boards did, and we gave them these concessions, they are happy to work with them and do these things, and we did them; and they are part of their conditions from both the Planning Board and DRB. As I mentioned earlier, we had a number of support from various people, both on the islands and surrounding neighborhood, but he think it is all summed up and important for you to see is that sometimes, the people who are not a part of an appeal, speak louder than those who are. In this case, neither the Sunset Towers, nor the Sunset Townhomes, nor North Bay Road and few other residential areas are part of this appeal. They all have not signed on the petition and they are not part of the petition.

Discussion held.

Mr. Pathman continued stating that the legal standards, as discussed briefly earlier, indicates that pursuant to the City Code 118-262(b); opponents cannot prevail unless the City Commission finds that the DRB did not do one of the following: a) provide procedural due process; b) observe essential requirement of law, or c) base its decision on substantial competent evidence. Provide procedural due process essentially means a right and notice to be heard, and a right to have notice of a particular hearing, and have an opportunity to express yourself at a hearing. Clearly, they had that. One important thing I want you to remember, is Mr. Gibbs said that as far as the due process is concerned, only the Chairman made a comment with regards to ex parte communications, and he is about to read to you that that is not the case. To observe essential requirements of law, the required departure from essential requirements of law means something far beyond legal area, and this is something that I hope your City Attorney will weigh in on. It means an inherent illegality or irregularity and abuse of judicial power, an act of tyranny perpetrated with disregard to procedural requirements resulting in a gross miscarriage of justice. That is the standard that you have to find, if you find that we did not observe, or the Board rather, did not observe the essential requirements of law, and that is from the Sam versus St. John's County Code Enforcement Board Case, which is a 50-CA case, which I am sure your counsel is familiar with. You must base your decision on competent substantial evidence. The definition of competent substantial evidence, is evidence establishing a substantial basis from which fact and issue can be easily inferred, DeGroot v. Sheffield, also Florida case. Such relevant evidence, as a reasonable mind would accept as adequate to support a conclusion, i.e., what is competent substantial evidence? Site plans, staff reports, expert testimony, fact-based comments from staff and Board members. Some of you may remember not too long ago the Euro American case, and you relied upon the competent substantial evidence of your staff. You might remember that. That

is exactly what you did and ultimately you won the appeal. Evidence contrary to DRB decision is outside the scope of the inquiry at the point for the Commission above all cannot reweigh the pros and cons of conflicting evidence. So what does that mean? That means that the competent substantial evidence, even if there was conflicting evidence, is the one that you must evaluate, the one we put forth that the Board voted on. You are not here to substitute, with all due respect, your opinion for theirs; you are here to find errors if there was any, not about your opinion. The Commission cannot set aside the decision merely because it may have reached a different conclusion. If you reach a different conclusion as to what you think the project should be, that is not what you are here to decide today, and that is not something that is before you; that is the County of Juno Beach versus McCloud, it is a Fourth DCA Case. You must look at the DRB and respect their decisions. Their decision is paramount to yours. If there was competent substantial evidence presented, then their decision should stand. As long as the record contains competent substantial evidence, which I am sure you are familiar with, to support the agency's decision, the decision is presumed lawful, and the Commission's job is ended. The first argument that the appellant raises is that the parties started to disclose ex-parte communications, the due process argument; but he did not explain to you what their job is. The ex-parte communications were disclosed on the record. First and foremost, my partner David Sacks, at the August 7th DRB hearing clearly states on the record "we would like to thank some of the members of the Board who have met with us regarding this project over the last few months since May 22" transcript page 38, lines 23-25, page 391, lines and 2. August 7th meeting, DRB member, Mr. Saba: "Good afternoon, I'm just going to make a few quick comments about my initial impressions, before I do that I want should disclose I met with the applicant last week" August 7, 2012, DRB Hearing transcript page 162, line 15-19. August 7, 2013, Ms. Housen: "I'm sure it is not in any package and I never met with anyone before today, but I did have the project downloaded so I have been reading it for a month." What is important about that is that there is another member coming out saying "I didn't meet with them" by it's on the record. August 7 DRB meeting, at the beginning of the Board discussion, the Chairman of the Board indicated that most of us have met with your team to go over the project. Why did he save that one for last? Because Mr. Sacks laid the groundwork when he said we met with most of you. The only thing that the Chairman was doing was reiterating what Mr. Sacks had said that he met with everybody. There is no Sunshine violation for saying that he knows most people met or went out to the project; it is ridiculous. That does not set a Sunshine violation. All he was doing was repeating what Mr. Sacks put on the record. The statement by the DRB members alone satisfies disclosure of Code Section 2-512 about ex-parte communication. They never said a word. The appellant and all the people who spoke on their behalf never once question one member saying, "What else did you say?" "What was the meeting about?" Your attorney will tell you, and it is in his report to you, that is called a waiver. You waive your right to request or argue about ex parte communications. More importantly for those of you that are lawyers and I will try to explain for those of you who are not, you cannot argue by information and belief on an appeal, you have to argue facts. Their section that they are arguing in their petition is on information and belief. They do not stress any facts from the case, it is improper. You cannot have any appeal ever based on information and belief. That is not what the proper argument. Therefore, their whole argument on ex parte should be stricken. In addition, it says on the petition by information and belief; they do not have any knowledge. As your attorney has opined in your recommendation and signed by your City Manager, it says, "They have waived their argument." I am going to go into that briefly. We concur with the City Attorney's assessment that disclosure of ex-parte communications was properly made. If a party wanted reasonable opportunity to refute or respond to the communication, as provided if Section 2-12 (a)(4) they should have taken this opportunity at the hearing. Further, if they thought ex parte contacts had occurred, that have not been disclosed, they should have raised the possibility and objected at the hearing. You just heard testimony from their lawyer and then again from Mr. Bienstock, and they didn't tell you about this other ex parte consumption that

was on the record, and that was the Chairman, Mr. Sack, Mr. Saba and Ms. Housen, but they didn't tell you that, but I'm telling you, it's on the record. I agree with the City Attorney that the objection should be waived, 100%. Opponents only identify on the record the Chairman's disclosure, they are there on the record. We the attorneys said it, we said we met with them. He did not raise the issue; he failed to raise the issue. It was said repeatedly over eight hours of presentation. The opponents submit other references, such as ex parte communications, on page 15 of the petition, argue that based upon information on believe; again an unsatisfactory statement on an appeal. Must be based on fact, as it is a non de novo appeal. The hearing by this Commission is pursuant to Section 118-262; it is not a de novo hearing; it must come from the record. External arguments based on information and believe do not meet these standards. The Commission is not permitted to consider any arguments or evidence that is not already contained in the record, which you have to some degree as Mr. Bienstock affidavit. Very important. Mr. Bienstock's affidavit, paragraph 17 says, "Appellant declares that he has examined this affidavit and to the best of his knowledge and belief it is true, correct and complete. You cannot submit an affidavit like that. (Exhibit K) It has to say based on personal knowledge. Then it's replete, paragraph after paragraph, with hearsay of what people said on the Board, but he does not cite the record. You should not consider this affidavit; it is not even worth the paper it was written on.

Vice-Mayor Wolfson asked what date the ex-parte communications were disclosed and when did the Chair of the Board disclosed. He asked to cover in detail.

Mr. Pathman answered that Mr. Sacks on August 7, (page 38 of the transcript, lines 22-25 and Page 39) states: "we would like to thank some of the members of the Board who have met with us regarding this project." Mr. Saba said: "good afternoon, I'm just going to make a few quick comments about my initial impressions, before I do that, I should disclose I met with the applicant last week." Page 162, lines 15-19; then Ms. Housen said, "I've never met with anyone." Finally, the Chairman stated "most of us have met with your team to go over the project" and that was after Mr. Sacks said, "we met with most of the members."

Discussion held. Mr. Pathman explained that three Board members disclosing. In answering Vice-Mayor Wolfson's question, he stated that the order was entered on October 8. What it is important to understand is that the requirement for ex-parte communication, if someone makes a statement like the one members of the Board did, as we did as the representing attorneys, it is up to them to ask or inquire about it; otherwise, you waive the argument.

Commissioner Tobin asked if at the October 2 hearing, did there have to be disclosures again for any meetings that happened between the August 7 hearing and the October 2 hearing.

Mr. Pathman said no; the issue is that at the first hearing, discussion was made about ex-parte, but they never raised, not even at the Planning Board, did they raise the standard that they are not suggesting to you, not even after 20 hours of presentations. The appellants had ex-parte communications with the Board members and they did not disclose. Under the law, you cannot claim the other party breached when you breached yourself, and you cannot argue by information and belief. One thing I want to read into the record, lawyers have a Black's Law dictionary, which we turn to define terms. It defines a continuance as connecting the parts of the record, so as to make one continuous whole, and that is all that happened here; it was one hearing continued. However, the burden for them to have raise and inquire about ex parte communications came at the August 7 hearing.

Vice-Mayor Wolfson asked if they met with anyone between the August 7th and the October meeting.

Mr. Pathman stated they probably met, maybe Kobi and him met, but it is not in the record.

Jose Smith, City Attorney, stated that if it is not of the record it is irrelevant. Discussion continued.

Mr. Pathman added that he does not have his calendar in front of him, he cannot say but he satisfied the requirement of ex parte but they never raised it. They have to raise it. He was on vacation but that is not the issue. The issue is that they did not raise at the first hearing any objection to any of the ex parte communications and they waived it.

Commissioner Góngora stated that what Mr. Pathman does not know if there were ex parte communications after the August hearing and before the October hearing. From what I am hearing, there was no subsequent disclosure by ex parte communication in October.

Mr. Pathman stated that 1) it has to be on the record, and it is not 2) by information belief, which is not the standard; 3) we have said that on the record, which they did not disclose, there were four statements concerning ex parte confirmation. They did not raise any issues as to those communications.

Discussion continued.

Mayor Bower asked how important is this to us, please. They debated many things that are not important and she does not know if this is important.

Jose Smith, City Attorney, explained that it is important; however, if it turns out that there were ex parte communications between the first and second meeting, the residents have a remedy, they can go to court and get a judge to order that there be another hearing because there was a violation of the Jennings Case in our Code. It should not be considered at this point, as it is not on the record.

Jose Smith, City Attorney, stated that if it turns out that they were ex parte communications, that is a basis for them to court and get a DRB order and your order set aside, if they can prove it.

Commissioner Tobin stated that there were obviously disclosures on the August 7 date, and then the hearing was continued, you would argue that whatever ex parte communications were had, whether prior to the August 7 date or after, there was a continuance, so it is one big hearing and a bunch of disclosures were made on August 7; if we're concerned with essential appearance of fairness and process, you're arguing it. If you are worried about sneaky ex parte communications, do not worry about it.

Discussion continued regarding the objection being considered waived and Commissioner Tobin discussed disclosure process.

Gary Held, First Assistant City Attorney, stated that his analysis is that there is no justification to reverse the DRB. The first issue deals with failure to disclose ex parte communications, as required by the relevant Code Section 2-51. This is not about Jennings. Jennings adopted the rule that said ex parte communications are presumably a violation of due process. Then the Florida Legislator adopted a statute that says local governments can adopt ordinances that provide the process to allow ex parte contacts. The Code Sections 2-512 reads the standard is subject matter of an ex parte communication together with the identity of the person, shall be disclosed and made a part of the record prior to final action. Subsection 4 of 2-512(a) says: "any

ex parte communication or activity regarding a pending quasi-judicial matter, and not physically made a part of record on the file with the city, and available for public inspection prior to the meeting on the matter, shall be overly stated and disclosed on the record at the public hearing prior to the vote on the matter. The Code specifically says so that persons who have contrary opinions to those expressed in the ex parte communications are given a reasonable opportunity to refute or respond to the communications.

Discussion continued.

Mr. Held stated that his opinion is that puts the objector on notice that they have to inquire further. All you have to do is say that you met and with whom. If the person wants to know what was the other person said there is no reason to go into the disclosure.

Discussion continued regarding disclosure.

Mr. Held stated that Mr. Gibbs suggested that this was a re-hearing issue that they did not know until after hearing what this was about. They were unnoticed as of the August DRB meeting that there were communications.

Discussion continued regarding contrary opinion, how to refute, and regarding written disclosure process or verbal.

Commissioner Tobin, referring to Bienstock's affidavit, it says we were not allowed to meet with DRB members prior to the August 7 hearing. How do you feel about that in regard to due process.

William Cary, Assistant Planning Director, spoke.

Richard Lorber, Acting Department Director, stated that they have always discouraged Board members from undertaking ex-parte communication; when they first are appointed to the Board, they tell them what the law states.

Discussion continued.

Tucker Gibbs, Esq., responded for rebuttal. Mr. Pathman spoke about the legal standard on legal error, far beyond legal error, and he wanted to quote what the courts have said on specific cases for standard of review; the district courts should exercise this discretion only when there has a violation completely established a principle of law resulting in a miscarriage of justice; the standard of review that Mr. Pathman wants you to apply is a standard of review that is the Fourth District Court of Appeal, it is not a standard of review before a Circuit Court, and no court has said that you have this standard of review. Despite the fact that they have not identified the view corridors and defined what a view corridor is, we are dealing with these issues. They have ignored Criteria 12 as it applies to view corridors. He read into the record comments made by Ms. Lilian Medina, and which is part of Mr. Pathman's transcripts. She was talking about what Palau offered at the October 7 meeting, I should say staff recommended it, and Palau agreed; that is what happened and it does not address or identify view corridors as important. In turns of substantial competent evidence, they have to be fact based documents in the record. The record will show that there is no competent substantial evidence regarding the view corridors. August 7 was never the issue for his client; his issue was October 2, there were some kinds of disclosure on August 7th, but what happened between August 7 and October 2. No one has referred to any comments on October 2 as to any ex parte contacts. His clients, as entitled to do under the code,

file a petition for re-hearing alleging error, because it was an error for your DRB members who met and talked with Palau between August 7 and October 2 they have an obligation to put it on the record and they did not.

Discussion held.

Mr. Gibbs explained that this is an appellant argument, he makes his final rebuttal and then is over, and the Commission makes the decision. Mr. Pathman does not have the right to make objections. The record includes a motion for re-hearing.

Discussion held with Commissioner Tobin regarding motion for rehearing and the rights to appeal. His argument is procedural problems. At that time, he had an affidavit from Mr. Bienstock; he wants to make the argument as an appellant matter. Mr. Pathman said we waived the right on the issue of due process and to strike the entire section on due process and he respectfully disagrees. On the criteria, the statement of Mr. Cary, Mr. Karp and Ms. Medina.

Discussion held regarding definition of view corridors and what Mr. Karp spoke about, and Mr. Gibbs explained that DRB October 2 transcript page 231, line 16-24, and page 233, lines 4-18; in that section there is no definition of view corridor.

Commissioner Libbin asked if it is required that someone explains what a view corridor is or if it is an important view corridor.

Gary Held, First Assistant City Attorney, stated that the view corridors were discussed and is on the record.

Mr. Gibbs stated that when Dr. Le Jeune spoke, he was focusing on the view corridors and the issues around 1261, which is the World Bank building, not near the sunset Harbor, and he said his analysis is the way the building is developing is massing and wrapping around the bank building, which is an adverse impact on the Sunset neighborhood, not the residential neighborhood (refer to Dr. Le Jeune's testimony before the Planning Board and included by reference into the record). It did not address view corridors on Sunset. He read what the order stated, which is in the record. In plain language, the order says that they will approve the corresponding site plan that is not a ministerial act; this is quasi-judicial. He is asking the Commission to look at the record and make one determination, whether or not there is competent substantial evidence in the record that supports the decision of the DRB.

Discussion continued.

Mr. Gibbs added that staff was nothing but cooperative with them, their position is that the issue of the view corridor is an error, and they ask to quash the order below and remanded with instruction for them to look at the view corridor and expand that view corridor to protect the neighborhood.

Mayor Bower asked what the procedure is now.

Jose Smith, City Attorney, explained that the appellant has replied and that the case is over. The City Commission has to deliberate, and they can ask questions if they do not understand an issue.

Gary Held, First Assistant City Attorney, read from the October 2 transcript, Page 278, line 5, Carol Housen's comments regarding the view corridors; Leslie Tobin's comments on page 286, line 18, Page 290, line 13, from Mr. Saba.

Discussion continued.

Vice-Mayor Wolfson stated that Mr. Held is drawing conclusions. Discussion continued.

Commissioner Góngora expressed his frustration and it shows to him that no matter what happens tonight, these people need to meet because it is not over and there is no consensus in the community for this project, and all lawyers have done a great job. This is a very difficult item to consider the DRB appeal, we have to consider 1) were they afforded procedural due process; 2) did the DRB observe essential requirements of law and 3) was the decision supported by competent substantial evidence.

MOTION:

Motion made by Commissioner Góngora to support the appeal, and his reasoning as requested by the attorneys for the project is:

1) He has a concern as to whether everyone was afforded procedural due process, notice and opportunity to be heard. All sides admit that there was ex parte communications and ex parte actions disclosed at the August meeting by the Chair only, not by other Board members. More ex parte communications happened between August and October, which causes him to have a concern with the due process.

2) With regard to Section 118-251(a)(12) it seems the proposed structure has an orientation and massing, which is sensitive to and compatible with the building site and surrounding areas, and creates or maintains important view corridors emphasis. Notwithstanding the references in the transcript, that was not supportive by competent and substantial evidence, and as such the DRB did not observe the essential requirements of all. He moved to remand the appeal in accordance with this. Motion seconded by Vice-Mayor Góngora.

Motion made by Commissioner Góngora to remand the appeal; seconded by Vice-Mayor Wolfson.

Vice-Mayor Wolfson stated that he concurs with the reasoning and he thinks that there was no finding supported by any factual basis that the view corridors were dealt with. What was in the report is not competent substantial evidence to support that.

Commissioner Libbin asked the City Attorney what he thinks, and if anything that he heard changed his opinion. He will be guided by what the City Attorney says.

Jose Smith, City Attorney, stated that both attorneys did a fine job. The discussion was superb and very professional, and it is a close call. His opinion, having reviewed the transcripts and heard from the parties, being familiar with the Code, is that they met the three tasks, and the decision of the DRB should be affirmed. He thinks procedural due process was afforded; the essential requirements of law were met, and he believes there is substantial competent evidence presented. He would fine in favor of the DRB order, but this Commission ultimately has to live with the decision and decide whether they are convinced that the appellant prevailed.

Discussion continued.

Commissioner Libbin stated that staff says that they did what they were supposed to do; the City Attorney says they did what they were supposed to do; the Boards unanimously agreed, but what happens from there.

Jose Smith, City Attorney, explained that the losing side has the right to appeal to the Appellate Division of the Circuit Court; it is a case heard by three judges and they rehear what happened here today. If that Court finds that this Commission abused its discretion or that it acted arbitrarily and capricious, they will remand back to the Commission to approve the DRB order. His concern is that if they make that finding, is that they could be exposed to damages, and he cannot tell what damages at this time.

Discussion continued.

Commissioner Exposito stated that they have to weigh the facts, and he cannot vote in favor of allowing it to continue. He agrees with his colleagues, Commissioner Góngora and Vice-Mayor Wolfson, that as it relates to due process, specifically to October 2, it was not satisfied. With regards to the substantial and competent evidence, there were comments and statements made with regard to view corridors, but he thinks it was not properly done and did not meet the criteria. His understanding of remanding the order is to send it back for reconsideration based on the facts in review of the Commission's concern.

Discussion held.

Jose Smith, City Attorney, explained that he does not believe that a court would find that the Commission is abusive their discretion or acting arbitrarily if you ask them to take another look at it; if you believe that it would resolve in a better solution. He thinks this is an option on the table to send it back and look at it one more time.

Discussion continued regarding the motion to remand.

Commissioner Góngora clarified that the view corridor, specifically the one along Sunset Drive from 20 Street to the historic Sunset islands, he did not find on the record that they were reviewed, that issue was supported by competent substantial evidence, so his motion is to remand to the DRB and see if that changes their opinion. In addition, he wants the DRB to look at the ex parte communications. Mayor Bower added that the DRB make their disclosures on the record.

Discussion continued regarding remand for the particular issue of view corridors and the issue of ex parte communications, then it comes back to the City Commission.

William Cary, Assistant Planning Director, explained that there is a 30-day notice requirement, so the earliest DRB meeting would be July. Discussion continued.

Commissioner Góngora suggested that they meet and work out minor difference among them.

Mayor Bower asked them to expedite what they need to do and be clear on all the issues.

Rafael E. Granado, City Clerk, read the motion: to remand the view corridors and the ex parte communications. Discussion continued.

Commissioner Tobin congratulated both attorneys for the fine job done.

VOTE:

Voice vote: 6-1; Opposed: Commissioner Libbin.

12:52:35 p.m.

R7B A Resolution Approving And Authorizing The Mayor And City Clerk To Execute A Guaranteed Maximum Price (GMP) Amendment No. 1, To The Pre-Construction Services Agreement With Thornton Construction Company, Inc., For The Construction Of The 6th Street Restrooms In The Amount Of \$614,322; 53rd Street Restrooms And Ocean Rescue Building In The Amount Of \$586,171, And The Provision Of A Temporary Office Trailer For Ocean Rescue In The Amount Of \$24,704, For A Subtotal Project Cost In The Amount Of \$1,225,197, Plus An Owner's Project Contingency Of \$110,268, For A Grand Total Of \$1,335,465; With Previously Appropriated Funding In The Amount Of \$568,439 From SP Post RDA CDT And Municipal Resort Tax Fund 388, \$101,172 From SB Quality Of Life Resort Tax Fund 305, \$665,854 From Capital Projects Not Financed By Bonds Fund 301.

(Capital Improvement Projects)

ACTION: Resolution not adopted. Vice-Mayor Wolfson made a motion to have the following two processes occur simultaneously: 1) first process is to have Commissioner Tobin sit down with the numbers (the cost of the project), study them, come back next month, and report to the Commission, and 2) the second process will be immediately to start the Invitation to Bid process for the two bathrooms; seconded by Commissioner Exposito; Voice-vote: 7-0. **Fernando Vazquez and Alex Denis to handle.**

Correction:

Page 372, add footnote 7. To read: "includes construction fence, signage, barricades, dumpsters, tools, temporary toilets, storage containers."

Kathie G. Brooks, Interim City Manager, introduced the item.

Fernando Vazquez, CIP Director, explained the item, which had been discussed at Land Use and Development Committee, and the original price was about \$600 per square foot, which was a mistake in the memorandum; the rest of the facility comes out to \$268.29 per square foot for the 6th Street Restroom and for the 53rd Street restroom alone is around \$299 per square foot.

Discussion held.

Commissioner Góngora explained that the item was discussed at length at Committee, and he feels comfortable that this is probably the best they are going to get, and he is prepared to move it forward.

Commissioner Tobin stated that he will be voting "no" on this item and suggested that the City gets somebody that works here that understands vertical construction so if a contractor gives us a price, the Administration says it is a good price and the administration justifies the price. He explained the issue for the benefit of the members of the public. He added that if there is anybody out there that understands vertical construction and will like to help him he will supply all the information necessary and also provided his e-mail address.

Discussion continued.

Commissioner Libbin stated that he would feel more comfortable, if Commissioner Tobin is given the opportunity to get another opinion, since he will not be voting in favor of this item.

Commissioner Weithorn stated that these bathrooms are beyond deplorable and an embarrassment for a first class City to have them. She is ready to vote on this item. She is placing the needs of the residents and tourists ahead of a few dollars, because she is afraid of what can happen in those bathrooms.

Vice-Mayor Wolfson stated that he rather do the basic, change tiles, fixtures, etc. because he is totally confused with the calculations. He has seen several calculations on the cost per square foot.

Emmanuel Sebag, Operations Officer for Grand Beach Hotel, spoke.

Discussion continued.

Motion No. 1:

Motion made by Commissioner Góngora to accept the resolution, seconded by Commissioner Weithorn, Voice-vote: 2-5; Opposed: Mayor Bower, Vice-Mayor Wolfson and Commissioners Exposito, Libbin and Tobin.

Discussion continued.

Motion No. 2:

Motion by Vice-Mayor Wolfson to reject the item and issue an Invitation to Bid, in the meantime clean up, do tiles, paint, etc. to make them presentable, and have Public Works do it thru work orders.

A voice vote was taken on accepting motion No.1; 2-5; Opposed: Mayor Bower, Vice-Mayor Wolfson and Commissioners Exposito, Libbin and Tobin. Motion No. 1 failed.

Discussion continued.

Commissioner Tobin stated that he would be meeting with Mr. Sebag in the next seven days.

Discussion continued.

Vice-Mayor Wolfson restated Motion No.2:

Motion made by Vice-Mayor Wolfson to reject the item and issue an invitation to bid; seconded by Commissioner Exposito. No vote taken at this time.'

Discussion continued.

Commissioner Tobin requested an opportunity to discuss the details of this project with Mr. Sebag and if there is a reduction, he will report back at the next meeting.

Discussion continued.

Mayor Bower asked for a Legal opinion and Jose Smith, City Attorney, explained that if they issue an Invitation for Bid and someone comes in with a price and the City rejects it arbitrarily, it could

be a legal challenge. If the decision is to let Commissioner Tobin review the number, then you can cancel the invitation to bid.

Discussion continued.

Final Motion

Vice-Mayor Wolfson withdrew his previous motion and made a new motion to have the following two processes occur simultaneously: first process is to have Commissioner Tobin sit down with the numbers (the cost of the project), study them and come back next month and report to the Commission, and the second process will be immediately to start the Invitation to Bid process for the two bathrooms; seconded by Commissioner Exposito; Voice-vote: 7-0.

5:04:18 p.m.

R7C A Resolution Approving And Authorizing The Mayor And City Clerk To Execute Amendment No. 13, To The Existing Professional Services Agreement Between The City And Chen Moore & Associates, Inc., Dated September 8, 2004, For The City Center Right-Of-Way Neighborhood Improvement Project Bid Packages 9A And 9B; In The Negotiated Not-To-Exceed Amount Of \$145,044, Plus An Additional Amount Of \$2,000 For Approved Reimbursable Expenses, For A Grand Total Of \$147,044; To Provide Extended Construction Administration And Resident Project Representative Services Until Project Completion; With Previously Appropriated Funding From The City Center RDA Fund 365.

(Capital Improvement Projects)

ACTION: Resolution No. 2013-28161 adopted. Motion made by Commissioner Tobin to approve the resolution; seconded by Commissioner Góngora; Voice vote 6-0; Absent: Vice-Mayor Wolfson. **Fernando Vazquez to handle.**

Kathie G. Brooks, Interim City Manager, introduced the item.

Maria Hernandez, Senior Project Coordinator for CIP, explained the item.

Discussion held.

Jorge Gomez, Assistant City Manager, spoke.

Discussion continued.

10:56:45 p.m.

R7D A Resolution Authorizing The Mayor And City Clerk To Execute Amendment No. 2 To The Construction Contract Between The City And Lanzo Construction Co., Florida, For The Construction Of The City Of Miami Beach Right Of Way Infrastructure Improvement Program, Neighborhood No. 8 Central Bayshore (Package A) And Lake Pancoast (Package C); Dated April 8, 2011; Said Amendment In The Not-To-Exceed Amount Of \$3,385,441, For The Construction Of The Additional Scope Of Work Approved Under Resolution No. 2012-27972, Which Includes The Homeowner Association (HOA) Requested Roadway Width And Landscape Items, Providing Additional Stormwater Upgrades To The Area Known As Zone 4 In The Basis Of Design Report (BODR), And Providing Milling And Re-Surfacing Of The Roadway (In Lieu Of Asphalt Overlay) For The Remaining Areas Within Package A; With Previously Appropriated Funding In The FY

2012/13 Capital Budget, In The Amount Of \$3,385,441 For Construction, And \$338,545 For Contingency, For A Grand Total Of \$3,723,986.

(Capital Improvement Projects)

ACTION: Resolution No. 2013-28162 adopted. Motion made by Commissioner Weithorn to approve the resolution and refer to the Finance and Citywide Projects Committee for discussion the bike lanes for the meeting next week; seconded by Commissioner Exposito; Voice vote 7-0. **Patricia Walker to place on the Committee Agenda. Fernando Vazquez to handle.**

To Do:

If the Finance and Citywide Projects Committee recommends any changes, bring the item back to the April 17, 2013 City Commission meeting.

Kathie G. Brooks, Interim City Manager, introduced the item.

Fernando Vazquez, CIP Director, explained the item.

Mihaly Lenart spoke.

Discussion held.

Jelena Demiatrix spoke.

Jorge Gomez stated that it is the desire of the neighborhood to move the bicycle lane from Prairie altogether, and to designate Royal Palm as the alternative. Significant changes will have to happen. By removing the bicycle lane from Prairie, Prairie will be reduced and the design or Royal Palm will be affected.

Fernando Vazquez, CIP Director, explained this is a very sensitive item and they need the approval.

Commissioner Tobin asked if this could be approved and address Mr. Lenart's issues at a later time.

Fernando Vazquez, CIP Director, indicated that it is conflicting.

Jelena Demiatrix spoke.

Discussion continued.

Vice-Mayor Wolfson stated that there comes a time when we have to say no, and respectfully disagree.

Jelena Demiatrix spoke.

Discussion continued.

Commissioner Exposito suggested approving it as is, and send to the Finance and Citywide Projects Committee the component of the bicycle lane for discussion.

Discussion continued.

Commissioner Weithorn suggested approving the financial portion of the item and the details of how to enact that money to go to the Finance and Citywide Projects Committee, and not bring it back to City Commission.

Discussion continued.

Motion made by Commissioner Weithorn to approve what is on the agenda, and to send to the Finance and Citywide Projects Committee meeting, next week, the discussion of the bike lanes.

Discussion continued.

Commissioner Tobin stated that if the Finance and Citywide Projects Committee makes any changes this item needs to come back to City Commission.

1:52:50 p.m.

R7E A Resolution Approving A Contract Award, Pursuant To Invitation To Bid No. 49-11/12, For The Right-Of-Way Infrastructure Improvement Program - Venetian Islands Bid Package 13C; Authorizing The Mayor And City Clerk To Award A Construction Contract To Lanzo Construction Co. Florida, In The Amount Of \$9,699,509 Base Bid Plus \$640,028 For Selected Alternates And A Project Contingency In The Amount Of \$1,033,954; For A Total Construction Cost Of \$11,373,491 From Previously Appropriated Funding In The Capital Budget From The Following Funds: \$2,842,713 From Fund 384 - 2003 Go Bonds - Neighborhood Improvements; \$2,336,942 From Fund 420 - W&S GBL Series 2010; \$130,484 From Fund 423 - Gulf Breeze 2006; \$450,275 From Fund 425 - Water & Sewer Enterprise Fund; \$1,357,846 From Fund 427 - Stormwater Enterprise Fund; And \$2,254,223 From Fund 431 - Stormwater Bond Fund 2011; And An Additional \$1,003,062 In Water & Sewer Funds And \$977,946 In Stormwater Funds Subject To The 2nd Amendment To The Capital Budget For Fiscal Year 2012/13; And Further Authorizing The Administration To Engage In Value Engineering To Further Reduce The Cost And Time For Completion Of Said Project.

(Capital Improvement Projects/Procurement)

ACTION: Resolution No. 2013-28163 adopted. Motion made by Commissioner Tobin to approve the resolution, subject to approval of budget in R7I; seconded by Vice-Mayor Wolfson; Voice vote 7-0. **Fernando Vazquez and Alex Denis to handle.**

Clerk's Note: See also Item R7I, which was approved.

Fernando Vazquez, CIP Director, introduced the item and explained that the overall price index for construction has increased 10% since the first two quarters. They are requesting an award of the overall project for a total of \$11,373,491. They have also allocated an additional \$300,000 for the reconstruction of the road in the interest of moving the construction forward and funds to realign and reinforce the sewers before breaking ground. The overall totality of increase is over \$2 million in addition to the original price.

Motion made by Commissioner Tobin; seconded by Vice-Mayor Wolfson. Voice vote taken.

Commissioner Tobin asked Mr. Tello if everything is ok with these proceedings.

Alfonso Tello, from Schenker, stated that they have learned tremendous amount of lessons on Sunset Islands 1 and 2, which they have incorporated into the Venetian Isles and explained the reason for the delay of the investigation of the utilities on the islands; they are learning through the process, and are taking tremendous precautions so the residents can have much easier better time during the construction of the project, and the project will come in at the contract price.

Commissioner Tobin asked Mr. Tello if they run into trouble in the future with this contractor, can we call on him and Mr. Tello answered "yes the buck stops here."

Fernando Vazquez, CIP Director, added, for the record, that they put a lot of burden on the contractor to relocate the utilities, which is to the detriment of the City. The City needs to be more proactive and start to coordinate the utilities before the contract breaks ground, so they can rehabilitate the site and allow the contract to move forward. This is a combination effort between CIP and Schenker.

Juergen Brendel asked if it is possible to adhere to the timeline of 14 months.

Kathie G. Brooks, Interim City Manager stated that the additional funding for the project is subject to the capital amendment, Item R7I, which needs to be approved and is related to this item.

Clerk's Note: Item R7I was approved.

R7F A Resolution Accepting The Recommendation Of The Neighborhood/Community Affairs Committee To Amend Section 70-87(a)(1) Of The City Code To Provide An Exemption Allowing For The Sale, Service, Possession And Consumption Of Alcoholic Beverages Within Designated Approved Beach Concession Areas, Subject To The Approval Of Amendments To The City's Amended And Restated Rules And Regulations For Beachfront Concession Operations To Allow For Such Exemption.

(City Manager's Office)

ACTION: Item deferred.

Handouts and Reference Materials:

1. Letter (requesting to defer the item from the March 12, 2013 Agenda) from the Greater Miami & the Beaches Hotel Association- dated March 12, 2013.
2. E-mail from Wendy Kallergis to Kathie Brooks, Interim City Manager.
3. E-mail from Kathie Brooks, Interim City Manager to Rafael Granado, City Clerk, deferring the item.
4. E-mail from qualityoflife@the-beach-net dated March 11, 2013 RE: Item R7F
5. E-mail from sofna@sofna.net dated March 11, 2013 RE: Item R7F

R7G A Resolution Approving In Substance The Terms Of A Professional Services Agreement With The International City/County Management Association ("ICMA") For Review And Recommendations For Efficiencies For The Fire Department; Authorizing The City Manager And City Attorney's Office To Negotiate And Draft The Agreement Based Upon The Approved Terms; And Authorizing The Mayor And City Clerk To Execute The Final Agreement In An Amount Not To Exceed \$70,000.

(City Manager's Office)

ACTION: Item not reached.

City Clerk's Note: Place on the April 17, 2013 Agenda.

5:09:10 p.m.

R7H A Resolution Approving And Authorizing The Mayor And City Clerk To Execute An Amendment To The Professional Services Agreement Between The City Of Miami Beach And Strategic Advisory Group Dated October 19, 2011 For Consulting Services Relative To The Expansion And Enhancement Of The Miami Beach Convention Center Campus/District In An Amount Not To Exceed \$240,945, Including All Reimbursable Expenses, With Previously Appropriated Funds From FY 2012/2013 Operating Budget Fund 168 RDA City Center Operations.
(City Manager's Office)

ACTION: Resolution No. 2013-28164 adopted. Motion made by Commissioner Tobin to approve the resolution; seconded by Commissioner Exposito; Voice vote 6-0; Absent; Vice-Mayor Wolfson. **Max Sklar to handle.**

Kathie G. Brooks, Interim City Manager, explained the item is an amendment to the agreement with Strategic Advisory Group in the amount of \$132,567,000 for the period through June 2013, when the Commission will select one of the two proposers, and an additional \$108,000 for the entirety of the Miami Beach Convention Center project or through June 2014, whichever occurs first.

5:10:29 p.m.**SUPPLEMENTAL (Resolution)**

R7I A Resolution Adopting The Second Amendment To The Capital Budget For Fiscal Year 2012/13.
(Budget & Performance Improvement)

ACTION: Resolution No. 2013-28165 adopted. Motion made by Commissioner Exposito to approve the resolution; seconded by Commissioner Góngora; Voice vote 6-0; Absent: Vice-Mayor Wolfson. **Victoria Kroger to handle.**

Kathie G. Brooks, Interim City Manager, explained the item and it is for three projects the Venetian Islands, the Property Management Facility in the amount of \$600,000 and South Pointe Park mediation fees in the amount of \$800,000. With regards to the Property Management Facility, the additional \$600,000 in funds are needed to address increased construction costs, and these funds are from Capital Reserves to avoid delay. \$800,000 for South Pointe Park mediation includes legal fees and professional services needed by the Legal Department.

Commissioner Weithorn asked if the funds can be recuperated at a later time.

Kathie G. Brooks, Interim City Manager, explained the funding for stormwater, water and sewer funds for the Venetian Islands and portion of it is to be funded from the stormwater line of credit and other projects coming up from bonds, some appropriated and others that have not been allocated.

5:14:02 p.m.

R7J A Resolution Opposing The Expenditure Of Any Public Funds For Renovations To Dolphin Stadium.

(Requested by Commissioner Edward L. Tobin)
(Legislative Tracking: City Attorney's Office)

ACTION: Resolution No. 2013-28166 adopted. Motion made by Commissioner Tobin to approve the resolution; seconded by Commissioner Góngora; Voice vote 6-0; Absent: Vice-Mayor Wolfson. **Legal Department to handle.**

Commissioner Tobin introduced the item and reiterated the fact that he does not want public funds spent for any renovations of the Dolphin Stadium. He thought that he had made his position clear but apparently, there was some mix-up in Tallahassee when he spoke to Representative Richardson. He explained that Representative Richardson was under the impression that the City's did not take a position for this latest specific gambit for tax dollars for the stadium. He wants to reaffirm the City's position that we do not want any tax dollars going to support the stadium.

Discussion held.

Jose Smith, City Attorney, stated that page 609 of the agenda shows the 2010 Resolution, which states no public funds to go to the Dolphin Stadium. Renovation to the Dolphin Stadium should be funded solely from private sources.

Motion made by Commissioner Tobin to adopt the resolution; seconded by Commissioner Góngora.; Voice vote 6-0; Absent: Vice-Mayor Wolfson.

Discussion continued.

Commissioner Libbin suggested notifying our lobbyists in writing of our position this issue. **City Manager's Office to handle.**

Commissioner Tobin asked if this includes rebates.

Jose Smith, City Attorney, stated that rebates falls under the prior resolution, which says public funding for renovations, are opposed. He read the language on the resolution "that the use of any public funding for renovations of the Dolphin Stadium is hereby opposed and that any renovations to the Dolphin Stadium shall be funded solely from the private sector."

Commissioner Tobin stated that this is an older resolution that there is a newer one that is much broader on page 608 of the agenda.

Jose Smith, City Attorney, stated that resolution has the history of what happened.

Commissioner Tobin stated that the one on page 608 of the agenda it also says, which Commissioner Exposito caught, "are seeking public funding through increases hotel tax rates and state sales tax rebates to fund improvements and renovations to the Dolphin Stadium." This makes it clear the City does not want any sales tax rebates either. It is more comprehensive.

Motion made by Commissioner Tobin to approve the resolution on page 608 of the agenda; seconded by Commissioners Góngora and Libbin; Ballot vote; 6-0; Absent: Vice-

Mayor Wolfson.**11:27:37 p.m.****SUPPLEMENTAL MATERIAL (Memorandum & Resolution)**

R7K A Resolution Accepting The Neighborhood/Community Affairs Committee Recommendation Regarding The Relocation Of The Property Management Facility From The Sunset Harbour Neighborhood.

(Public Works)

(Memorandum & Resolution to be Submitted in Supplemental)

ACTION: Resolution rejected. Motion made by Vice-Mayor Wolfson to reaffirm the original agreement keeping the garage at Sunset Harbor; seconded by Commissioner Exposito; Voice vote 5-1; Opposed: Commissioner Tobin; Absent: Commissioner Libbin. **Fernando Vazquez to handle.**

Kathie G. Brooks, Interim City Manager, introduced the item and added that the discussion at Neighborhood/Community Affairs Committee was whether or not there was sufficient space in the facility to move Property Management facility into the Public Works Yard. There were some concerns raised at that Committee meeting regarding two ongoing projects, the Property Management Facility in the Sunset Harbor area, and the Public Works Operation Yard renovation, both of which are in design stages.

An aerial map of the projects was shown. Discussion held.

Commissioner Weithorn is concerned with the number of trucks in an area between two schools and the safety of the children.

Vice-Mayor Wolfson explained that the yard is at 90% in design and is going in the only industrial district, and he thinks it is proper. Discussion continued.

Commissioner Tobin asked if there are many trucks coming out of Property Management at 7:30 a.m., and Mr. Fink answered that in Property Management Operations there are large utility vans, not construction trucks.

Commissioner Weithorn explained the reasons why she will not vote in favor of the item, as she promised the residents that the trucks would move out of the Flamingo Park.

The following individuals spoke:

Tammy R. Tibbles

Elena Demitriatis

Motion made by Vice-Mayor Wolfson to reaffirm the original agreement to keep the garage at Sunset Harbor; seconded by Commissioner Exposito; Voice vote 5-1; Opposed: Commissioner Tobin; Absent: Commissioner Libbin.

Handouts and Reference Materials:

1. Potential Garaged Vehicles statistics – Public Works Operations & Property Management

05:05:07 p.m.**SUPPLEMENTAL (Resolution)**

R7L A Resolution Accepting The Recommendation Of The Finance And Citywide Projects Committee Pertaining To A Proposed Amendment No. 3 To That Certain Retail Lease Agreement By And Between The City Of Miami Beach, The Miami Beach Redevelopment Agency (Collectively,

Lessor) And Penn 17, LLC (Lessee), Dated September 16, 2011, Involving The Lease Of Approximately 7,655 Square Feet Of Ground Floor Retail Space At The Pennsylvania Avenue Garage, 1661 Pennsylvania Avenue, Miami Beach, Florida; Recommending That, As Part Of Said Amendment, The Mayor And City Commission Approve The Following Amended Schedule Of Rent: 1) Applying One Third (1/3) Of The Lessee’s Existing Security Deposit, Representing \$47,844, Toward Base Rent Owed For The Month Of November 2012; 2) Deferring \$8,474 For Common Area Maintenance (CAM) For November 2012, And Base Rent, Plus CAM, For December 2012, In The Total Amount Of \$64,792 (Hereinafter Referred To As The Back-Due Rent); 3) Approving An Abatement Of Fifty Percent (50%) Of The Base Rent And CAM Due For The Six (6) Month Period Commencing January 13, 2013 Through July 12, 2013; 4) Deferring Fifty Percent (50%) Of The Base Rent And CAM For The Six (6) Month Period Commencing July 13, 2013 Through January 12, 2014; And, 5) Providing For Re-Payment By Lessee Of The One Third Security Deposit And Re-Payment Of The Back-Due Rent For November And December, 2012; All In Accordance With The Payment Schedule Attached As Exhibit “A” Hereto; Further Setting Of A Public Hearing By The City For April 17, 2013, Regarding Lessee’s Proposal To Add An Entertainment Component As A New Proposed Use On The Lease Premises (And As Part Of Lessee’s Proposal To “Re-Brand” And Re-Open The Premises), And As Required By Section 142-362 Of The City Code. **Joint City Commission and Redevelopment Agency**
 (Real Estate, Housing & Community Development)

ACTION: Resolution No. 2013-28167 adopted. Item heard in conjunction with RDA 1A. Motion made by Commissioner Weithorn to approve the resolution; seconded by Commissioner Góngora; Voice vote 5-1; Opposed: Commissioner Libbin; Absent: Vice-Mayor Wolfson. **Anna Parekh to handle.**

R9A Board And Committee Appointments.
 (City Clerk’s Office)
 (Requested by Mayor Matti Herrera Bower)

ACTION: The following appointments were made:

BEAUTIFICATION COMMITTEE:

Silvia Rotbart	Term ending 12/31/14	Appointed by Mayor Bower	TL 12/31/2014
----------------	----------------------	--------------------------	---------------

COMMITTEE FOR QUALITY EDUCATION COMMITTEE IN MB:

Beverly Heller	Term ending 12/31/14	Appointed by Mayor Bower	TL 12/31/2016
----------------	----------------------	--------------------------	---------------

COMMUNITY DEVELOPMENT ADVISORY COMMITTEE:

Dorian A. Nicholson	Term ending 12/31/14	Appointed by Commissioner Weithorn	TL 12/31/2020
Dona Zemo	Term ending 12/31/14	Appointed by Mayor Bower	TL 12/31/2017

Convention Center Advisory Board:

Elizabeth Resnick	Term ending 12/31/13	Appointed by Commissioner Wolfson	TL12/31/20
-------------------	----------------------	-----------------------------------	------------

CHARTER REVIEW BOARD:

Steven Zack Esq.		Appointed by Mayor Bower	TL 01/01/14
------------------	--	--------------------------	-------------

DISABILITY ACCESS COMMITTEE:

David McCauley	Term ending 12/31/14	Appointed by Commissioner Góngora	TL 12/31/2020
Wendy Unger	Term ending 12/31/14	Appointed by Mayor Bower	TL 12/31/2016

HEALTH ADVISORY COMMITTEE:

After-action

March 13, 2013

City of Miami Beach

Jacobs Baruch MD Removed due to absences
Harold Foster Removed due to absences

HISPANIC AFFAIRS COMMITTEE:

Luz Rojas Term ending 12/31/14 Appointed by Mayor Bower TL 12/31/2019

MARINE AUTHORITY:

Joel Aberbach Term ending 12/31/14 Appointed by Mayor Bower TL 12/31/2020
Stephen Bernstein Term ending 12/31/14 Appointed by Commissioner Weithorn TL 12/31/2018

MIAMI BEACH COMMISSION FOR WOMEN:

Regina Berman Term ending 12/31/14 Appointed by Mayor Bower TL 12/31/2017
Claudia Moncarz Term ending 12/31/14 Appointed by Mayor Bower TL 12/31/2017

SAFETY COMMITTEE:

Jerry Marsch **(TL12/31/13)** Term ending 12/31/14 Appointed by Mayor Bower TL 12/31/2013
Baruch Sandhaus Removed due to absences

TRANSPORTATION AND PARKING COMMITTEE:

Maria Mayer Term ending 12/31/13 Appointed by Commissioner Tobin TL 12/31/2016
Josephine Pampanas Term ending 12/31/14 Appointed by Mayor Bower TL 12/31/2014

YOUTH CENTER ADVISORY BOARD:

Paul Stein Term ending 12/31/14 Appointed by Mayor Bower TL 12/31/2016

WATERFRONT PROTECTION COMMITTEE:

William Cahill Term ending 12/31/13 Appointed by Commissioner Tobin TL 12/31/2020
Paul Friedman Resigned 2/19/2013

R9A1 Board And Committee Appointments – City Commission Appointments.
(City Clerk's Office)

ACTION: No appointments were made.

1:27:37 p.m.

R9B1 Dr. Stanley Sutnick Citizen's Forum. (12:30 p.m.)

ACTION: The following individuals spoke:

1. Edward Oberle explained that he produces the Miami Beauty Show, and on May 18th they hold a fundraiser; he has been doing this for 26 years to raise millions for charity. He complained that the Miami Beauty Show was moved from the Convention Center. He met with representatives of the Management of the Convention Center Sales, entered into an agreement, and yet the General Manager signed it, and nine months later never heard from them.

Mayor Bower asked if there was a letter for the record.

Bob Balsam stated that they do not have a letter of cancellation from the client; he has a binding agreement with them, the dates have not been released and are still on the books.

Mayor Bower suggested meeting and working together to resolve the issue.

Max Sklar, Acting Assistant City Manager, stated that a meeting has been scheduled for tomorrow to meet with them. **Max Sklar to handle.**

Handout or Reference Materials:

1. Document submitted by Mr. Overle

2. Dave Crystal, candidate for Commissioner Group I, congratulated the City Commission on their decision to select Jimmy Morales as new City Manager, and also congratulated Mr. Morales. He has spoken from 2005 to 2012 suggesting systemic corruption in the business of Miami Beach. He commended Kathie G. Brooks, Interim City Manager, for reaching out to the Inspector General, but it underscores the fact that the City needs its own Inspector General Office to help fight the corruption prevalent for some time.

Kathie G. Brooks, Interim City Manager, stated for the record, that the outreach to the Inspector General was made at the direction of the City Commission.

3. Paul Jonas stated that during the awards, Vice-Mayor Wolfson had made a comment about Social Security and not having a cost of living increase in the past two years, and he stated that this is incorrect. For the record, in January 2012, there was a 3.6% increase and in January 2013 an additional 1.7% increase. Secondly, he stated that meetings are starting very late and time certain items are also late. Lastly, regarding the bathrooms, he thinks it would be more efficient if new fixture and tiles are installed and general cleanliness is maintained.
4. Fausto Quince spoke in Spanish and Commissioner Exposito translated. He has lived in Miami Beach for the past ten years and he thanked Mayor Bower for her leadership and accomplishments during her tenure. He is disabled and lives under Section 8 program; he has been applying along with other 10,000 applicants and has not been selected for affordable housing since 2010. He wants alternate housing with handicap accessibility.

Mayor Bower asked Wanda Geitz to assist him personally and he will be referred, but it is hard to find an empty apartment in Miami Beach.

5. Christine Florez, Co-Chair of the West Avenue Corridor Neighborhood Association stated that while growing up she saw the trials and tribulations of her parents in trying to run a successful small business; she mentions this because there is an FDOT project coming up on Alton Road, and business owners have not been informed on how to deal with this. She has found contact information from organizations to help businesses prepare for road construction on the Internet and there are organizations that provide services and help with marketing. At times during road construction, businesses lose money, and she hopes that before FDOT meets with the City during the construction, businesses do not get lost in the shuffle and end up closing because of improper preparations. She urged for an effort in keeping businesses prepared.

Commissioner Libbin stated that he pulled item C7G for that reason, because it had the FDOT construction. He requested several months ago that the City Commission should have a chart of all the projects coming up for Alton Road and Collins Avenue. These are two major arteries that will be under construction for over four to five years. The City needs to prepare residents to understand how to get around, tourists, businesses on how to survive, and he thanked Ms. Florez for her input. **See Item C7G. Jay Fink to handle.**

Commissioner Weithorn stated that construction was delayed in North Beach due and signs are still up for No Parking during the delay although construction is not done, and the rules of the game do not change, so she wants to bring this up.

Kathie G. Brooks, Interim City Manager, stated that CIP is working on this issue and the item will be referred to the Neighborhood/Community Affairs Committee.

Motion by Commissioner Libbin to approve C7G; seconded by Commissioner Weithorn; Voice vote 7-0.

6. Vice-Mayor Wolfson read an e-mail from Bonnie Stewart, who wrote that a bathroom in Flamingo Park is in terrible condition, windows are missing, there is stagnant water, and he requested that Public Works look into it. **Jay Fink to handle.**

5:52:18 p.m.

R9B2 Dr. Stanley Sutnick Citizen's Forum. (5:30 p.m.)

ACTION: Robert Sutnick stated that it is an honor that this City Commission continues with his father's tradition and in his name.

11:56:11 a.m.R9C Update On The Miami Beach Convention Center Project.
(City Manager's Office)**ACTION:** Discussion held.

Kathie G. Brooks, Interim City Manager, explained that they had two meetings; on February, on 27th there was a community meeting where approximately 250 and 300 people attended, and teams presented their preliminary Master Plan and received public comment; on February 28th, there was a Commission Workshop with approximately 150 people in attendance. Again, preliminary plans were provided and public and Commission input was obtained. In terms of the presentations, there were some similarities between the proposals in terms of civic plaza connectivity to the Botanical Garden, Holocaust Memorial and Soundscape. Both had the required ballroom and expanded meeting space, as well as the hotel of at least 800 rooms. Portman had 800 to 1,000 rooms and the height was somewhat taller than Tishman, and the location were different with Tishman being on top of the Convention Center and Portman was on the Gleason side. Both teams have a residential component similar in size, with Portman being between 350 and 500 units and Tishman between 350 and 400 units. The biggest difference was in the size of the retail space, where Tishman was about 60 to 80,000 square feet and Portman was about 200,000 square feet. It is important that these were preliminary proposals, and with the input from this Commission and the community, the teams are going back to work on the plans. The next meeting is a joint community meeting and Commission Workshop on March 27, to be held in Hall C of the Convention Center, first floor Ballroom 4, and at that time the teams will present plans that are more refined and at that stage they will reveal the plans in three-dimensional form and integrate comments received.

Commissioner Libbin asked if both presenters can sell the residential units since this is public land and he wants to make sure that they are forecasting properly with whatever their projections are.

Kathie G. Brooks, Interim City Manager, explained that the Tishman proposal was forecasting sales and Portman was forecasting rental units, and that would require a referendum if it was for sale.

Commissioner Tobin stated that he is concerned with traffic and that it would have a detrimental impact on Lincoln Road.

Mayor Bower asked the City Manager to take a holistic approach at the issue of traffic and congestion on South Beach, probably where the Convention Center is to see what can be done. This can also help with traffic issues on the MacArthur Causeway. Ms. Brooks will look for funding for the study and the item will be added to the next meeting. Commissioner Tobin agreed.

Commissioner Exposito requested, in addition to the traffic congestion study, a detailed discussion on the cost. They need to understand how much it will cost to build a world-class A Convention Center and the process.

Mayor Bower stated when The Loews Hotel was developed, Tishman was the developer on board, and added that the City should have a top-notch developer that knows the ins and out on numbers. She has a name, although she has not contacted the person, and will share with the rest of the Commission; she suggested the individual not be connected to the Beach.

Commissioner Libbin stated that the presentations to date have focused mostly on everything but the Convention Center, and he understands that this was done to hear from the public, but this Commission is trying to build a Convention Center, and whatever they want to make sure that what is built is not "what's leftover," but to ensure that it is a first class, world-class Convention Center. They have not presented to date the great ballroom or the great meeting space or discuss the technological update, but building a beautiful public place does not bring business.

Mayor Bower added that Stu Bloomberg had suggested and she agreed that there should be a presentation for the users of the Convention Center.

Kathie G. Brooks, Interim City Manager, stated that they have been meeting with the Convention Center Advisory Board and Global Spectrum and are working on those specific components and will continue to do so, and agreed that it would be good to involve the hotel industry.

Commissioner Libbin stated that he has had conversations with people that have said that some of the project development is not including the core needs, and he thinks they need to do a complete study, in and out. **Max Sklar to handle.**

Mayor Bower agreed with Commissioner Libbin and added that they are concerned with the resident's input, but this a Convention Center and they must ensure that this is the most important part of the budget. The Convention Center must be the best.

Handout or Reference Materials:

1. Email from Kathie Brooks dated March 12, 2013 RE: Time Certain for MBCC Update

9:24:26 p.m.

R9D Discussion Of Providing Reserved Parking For Monthly Permit Holders On Lower Floors In Our Garages To Alleviate Inconvenience Experienced By Permit Holders During Major Events Such As The Boat Show.

(Requested by Commissioner Jerry Libbin)

ACTION: Item referred to Neighborhood/Community Affairs Committee. Motion made by Commissioner Libbin to refer item; seconded by Commissioner Exposito; Voice-vote: 7-0. Barbara Hawayek to place on the Committee agenda. **Saul Frances to handle.**

R9E Discuss Putting Out To Bid The Commercial Waste Hauling Franchises As There Has Been Further Consolidation.

(Requested by Vice-Mayor Jonah Wolfson)

ACTION: Withdrawn.

R9F Discussion Item - The Office Of The City Clerk Is Seeking Direction As To The Usage Of Pre-Paid Return Postage Or Regular Envelopes, Where Voters Must Provide Their Own Postage, To Return Absentee Ballots In The Upcoming November 2013 City Elections.

(City Clerk's Office)

ACTION: Discussion held. Motion by Commissioner Libbin to approve the usage of pre-paid return postage to return absentee ballots in the upcoming November 2013 City Elections;

Seconded by Vice Mayor Wolfson. Approved 7-0.

Rafael E. Granado, City Clerk, presented the item. The Miami-Dade County Board of County Commissioners passed a resolution on September 18, 2012, to provide pre-paid return postage envelopes for absentee ballots in all countywide elections. Municipalities conducting stand-alone elections, such as Miami Beach in November 2013, are afforded the choice of using pre-paid return postage envelopes, or regular envelopes, where voters must provide their own postage, to return the absentee ballots.

The Miami-Dade County Elections Department is in the process of ordering absentee ballot envelopes. Therefore, we are seeking direction as to how to proceed. As of today, Miami Beach has 5,003 permanent absentee ballot requests. The additional cost of pre-paid return envelopes for Miami Beach, based on 100% return of the 5,003 absentee ballot requests on file as of today, would be approximately \$2,501.50

- R9G Discussion Regarding Prohibiting Capital Improvement Projects Or County Capital Improvement Projects During The Miami International Boat Show And Art Basel.
(Requested By Commissioner Michael Góngora)

ACTION: Deferred.

12:16:21 a.m.

- R9H Discussion To Withdraw From The Planning Board's Consideration The Proposed Ordinance "Revising The Year Of Review For Architectural Significance Of Single Family Homes From The Current 1942 To The Year 1966, And By Modifying The Procedures For The Review And Approval Of Demolition Requests For Single Family Homes Determined To Be Architecturally Significant And Not Located Within A Designated Historic District" (Planning Board File No. 2098), And To Refer The Matter Back To The Land Use And Development Committee For Further Discussion And Evaluation.
(Requested by Vice-Mayor Jonah Wolfson)

ACTION: Discussion held. Item referred to LUDC. Motion made by Vice-Mayor Wolfson to withdraw the proposed ordinance from the Planning Board consideration; seconded by Commissioner Weithorn; Voice-vote: 4-1; Opposed: Mayor Bower; Absent: Commissioners Libbin and Tobin. **Richard Lorber to place on the Committee agenda and to handle.**

Referral

Land Use and Development Committee

Vice-Mayor Wolfson explained that he asked to place on the agenda for discussion to withdraw from the Planning Board's consideration the ordinance "Revising The Year Of Review For Architectural Significance Of Single Family Homes From The Current 1942 To The Year 1966." The ordinance was referred at Land Use and Development Committee and was not properly noticed and therefore delayed. He feels that there are potentially some solid policy arguments on the side of the preservationists behind pre-1942 homes; there is a current process for it and he disagrees with the involuntary designation of any home, but can see the argument behind 1942. Once you dwell into 1966 homes, it is excessive and unnecessary.

Commissioner Góngora suggested referring the item to Land Use and Development Committee

for discussion and the maker of the motion was in agreement.

Handout or Reference Materials:

1. Email from Kathie Brooks dated March 12, 2013 RE: Item R9H/Withdrawing from Planning Board Ordinance.
2. Email from Kathie Brooks dated March 12, 2013 RE: Time Certains

11:35:58 a.m.

SUPPLEMENTAL (Corrected Title)

R9I Discuss Selecting The City Manager.

(Requested by Mayor Matti Herrera Bower)

ACTION: Discussion held. Jimmy Morales appointed City Manager by unanimous vote of the City Commission.

Mayor Bower asked Jose Smith, City Attorney, if the background checks were completed. She then asked Commissioner Tobin if he was satisfied with the background checks, and the answer was "yes" to both questions.

Motion made by Commissioner Libbin to nominate Jimmy Morales; seconded by Commissioner Góngora.

Motion made by Commissioner Exposito to appoint Mr. Morales by acclamation. The motion passed unanimously.

Motion made by acclamation to nominate Commissioner Tobin to assist the City Attorney's Office in negotiating a contract for the new City Manager. Commissioner Tobin accepted the task.

Mayor Bower stated that she would like a contract in place as soon as possible, and stated that she is willing to have a Special Commission meeting to approve the Manager's contract.

Commissioner Tobin suggested input at the Committee of the Whole in order to develop benchmarks to be included in the contract.

Mayor Bower agreed that this should be done at a Committee of the Whole, where the discussion should focus on the new Manager's proposed contract, including the length of the contract.

Vice-Mayor Wolfson stated that they should enjoy the moment and do business later.

Commissioner Weithorn congratulated Kathie G. Brooks on a job well done. She received a standing ovation.

Mayor Bower stated that Kathie G. Brooks inherited a very difficult job at a very hard time, and filled shoes that were very hard to fill. Ms. Brooks has done it with very little staff, since she has not been able to hire. Kathie has done a great job, and is a very straightforward person with a great follow-through quality. Mayor Bower reiterated that Ms. Brooks has done an excellent job, and commended her for the time and effort she has put to this task.

Kathie G. Brooks, Interim City Manager, thanked everyone, but stated that this was not her moment in the limelight, that the moment belonged to Mr. Morales.

Commissioner Góngora stated that Kathie has done a great job and congratulated Jimmy Morales

Jimmy Morales spoke. He thanked the City Commission for the opportunity. Mr. Morales acknowledged the work Ms. Brooks has performed during her tenure as Interim City Manager, and stated that he will keep Ms. Brooks very close.

Mr. Morales acknowledged the other candidates that had been competing for the job, especially Mr. Rollason, whom he has known for many years. He stated that Miami Beach is very special to him. Mr. Morales recounted that his father came to live in Miami Beach in 1947. He recalled growing up on Miami Beach, and lamented that his dad is not around to see him become the City's top administrator.

Mr. Morales stated that when he put his name forward in November of 2012, he was not looking for a job in another city, he was instead trying to "come back home." "This place is very special to me." Mr. Morales looks forward to bringing forth the Commission's vision; and wants to ensure that Miami Beach is the finest City in the land. Mr. Morales stated that he would challenge and empower the employees. "I'm not here as a politician. I hope to be a very solid administrator," Morales told Commissioners.

Vice-Mayor Wolfson asked what the next step is.

Jose Smith, City Attorney, stated that the first thing is to have a contract, and then ratify Mr. Morales' appointment, and have an effective date of employment. Thereafter, once a contract is ratified, Ms. Morales will be sworn in.

Mayor Bower asked for a Committee of the Whole meeting today.

Vice-Mayor Wolfson stated that it should be discussed at the dais.

Mayor Bower asked if there was a consensus as to the length of the contract.

Commissioner Weithorn stated that it should be done at the Committee of the Whole, and then report what was discussed.

By a show of hands, Vice-Mayor Wolfson and Commissioner Tobin wanted to know who would like to discuss the contract at the dais. Showing no consensus for this, it was agreed to be discussed at the Committee of the Whole.

TO DO: Negotiate a contract: Legal Department and Commissioner Tobin to handle.

5:46:14 p.m.

Vice-Mayor Wolfson announced that after negotiating with Mr. Morales, they had agreed in principle to the following:

Salary:	\$255,000, subject to annual review (Same as the City Attorney)
Insurance:	Paid by the City (same as City Attorney)
Bonus:	Up to 10% of salary
Term:	2 Years

Move in Allowance:	One-time non-pensionable allowance if applicable
Car:	Car allowance
Technology:	Computer, Telephone, etc.
Fees & Subscription:	Will be a line item on the City Manager's budget and not compensation
Severance:	20 weeks as per State Statutes, and if law changes, Commission will review.
Expiration:	Minimum 90-day notice of non-renewal, and if not renewed and separates with the City, 12-week pay which would terminate earlier upon other employment.
Start Date:	April 1, 2013

Vice Mayor Wolfson announced that the only difference from the mandate that the Commission had given him to negotiate during Committee of the Whole was: 1) The salary was increased to \$255,000, to be in par with the City Attorney; 2) Pay 100% of health insurance, same as the City Attorney; 3) Mr. Morales had requested an expiration clause; and 4) and the review of the 20-week severance pay if State law changed.

Motion made by Commissioner Libbin to approve the employment offer made to and accepted by Mr. Morales (subject to entering into a written agreement); seconded by Vice Mayor Wolfson. Approved 7-0. **City Attorney's Office to handle.**

Handouts or Reference Materials:

1. Memorandum from Rafael E. Granado, City Clerk, dated February 22, 2013 to Mayor Matti Herrera Bower and Members of the City Commission, RE: Initial Background Checks of the Three Finalists for the City Manager Position.
2. Moore & Plasencia Investigations LLC RE: Background Investigation Report, Phase 1, dated March 4, 2013

ADDENDUM 2:**5:21:14 p.m.**

R9J Discuss Resolution Urging The Florida Legislature To Grant Sales Tax Rebates To Benefit The Proposed Redevelopment Of The Miami Beach Convention Center In The Event That SB 306 Is Adopted By The Florida Legislature And Miami-Dade County Voters Approve A Referendum Allowing Sales Tax Rebates To Benefit Dolphin Stadium.

(Requested by Commissioner Deede Weithorn)

ACTION: Discussion held. **Resolution 2013-28168 adopted.** Motion made by Commissioner Weithorn to adopt the resolution; seconded by Commissioner Exposito; Voice vote: 6-0; Absent: Vice-Mayor Wolfson.

Commissioner Weithorn introduced the item and stated that in the event this passes and the voters embrace this concept, this resolution states that if they get a sales tax rebate, so does Miami Beach. She calls this “me too clause.”

ADDENDUM 2:**12:18:45 a.m.**

R9K Discuss Resolution Urging The Miami-Dade County Board Of Commissioners And County Mayor To Oppose Contracting The “Airport City” Project To A Company That Violates The Intent Of CS/CS/HB 959 Prohibiting The State And Local Governments From Entering Into Contracts With Companies Engaged In Business Operations In Cuba Or Syria.

(Requested by Vice-Mayor Jonah Wolfson)

ACTION: Discussion held. **Resolution 2013-28169 adopted.** Motion made by Vice-Mayor Wolfson; seconded by Commissioner Góngora; Voice-vote: 5-0; Absent: Commissioners Libbin and Tobin.

Vice-Mayor Wolfson introduced the item and explained that a company is up for a bid with the Airport-City being considered, and this company is currently building major installation for the Cuban military in connection with Fidel’s government. This resolution is to support the State and the County Commission in their efforts to keep that company from doing business with the County.

Handout or Reference Materials:

1. Email from Rafael Granado dated March 12, 2013 RE: Discussion Memo Anti-Odebrecht Resolution

12:20:55 a.m.

ADDENDUM 3:

R9L Discussion about the “Real Housewives” producers wanting to use drone copter to film in Miami Beach.

(Requested by Vice-Mayor Jonah Wolfson)

ACTION: Discussion held.

Vice-Mayor Wolfson explained that “Real Housewives of Miami” have a company that does aerial shots and they use a drone. The drone is a 14-pound helicopter that flies in the air and apparently is guaranteed never to fall from the sky, which he doubts. He understands that that FAA says it is illegal.

Max Sklar, Acting Assistant City Manager, stated that they have asked the company for a great deal of information, and the City is still researching this request.

Commissioner Góngora requested to defer this item for the next month meeting. **Max Sklar and Debbie Turner to handle.**

Commissioner Weithorn stated not to approve this item permit until it is brought back to the City Commission for discussion. **Max Sklar to handle.**

Handout or Reference Materials:

1. Memorandum to Kathie G. Brooks, Interim City Manager, from Jonah Wolfson, Vice-Mayor, dated March 13, 2012³ RE: Commission Agenda Emergency Discussion Item, R9L

5:46:14 p.m.

2:05:18 p.m.

Jose Smith announced Committee of the Whole meeting at 2:15 to 3:45 p.m., to discuss the City Manager’s contract.

Vice-Mayor Wolfson recapped what was agreed for the contract;

1. Salary \$255,000
2. Insurance the same as the city attorney
3. Bonus 10%
4. Term 2 year
5. One time pensionable allowance for moving
6. Technology
7. Subscriptions
8. 20 weeks as per state law, and if state law changes commission will review.
9. Expiration 90 days’ notice for non-renewal. If the city does not give notice and then parts, he gets 12 weeks of pay while not working to find another job.
10. Starting date April 1, 2013

Motion made by Vice-Mayor Wolfson to approve the contract; seconded by Commissioner Libbin; voice vote; 7-0. City Attorney’s office to handle.

New Item**2:30 p.m.****Committee of the Whole Announcement:**

Jose Smith, City Attorney, announced that the Committee of the Whole Meeting for item R9M would take place during lunch recess in the City Manager's Large Conference Room.

R9M The Committee Of The Whole Will Meet During Lunch Recess Of The March 13, 2013 City Commission Meeting At The City Manager's Office Large Conference Room To Discuss A Proposed Contract For Jimmy Morales, the newly appointed City Manager.

ACTION: Discussion held. The Committee of the Whole meeting commenced at 2:30 p.m.

Commissioner Tobin stated that the contract should have performance-based components.

Commissioner Tobin suggested performance measures such as reduction in crime, traffic congestion, lowering the millage, etc.

Commissioner Libbin responded that there is always an out.

Vice-Mayor Wolfson suggested that each Commissioner fill out an evaluation, at the end of the year, to measure the performance of the Manager.

Mayor Bower suggested discussing the expectations for the City Manager at the upcoming retreat. What we agree as the goals in the retreat, can be reference in the contract, and that is what the Manager will be evaluated on.

Commissioner Tobin suggested term limits for the City Manager.

Commissioner Weithorn stated that Manager's contract should never go beyond two years, as any longer would bind a future Commission.

Commissioner Góngora stated that he was not opposed to a one-year contract. Commissioner Libbin stated that a one-year contract sent the wrong message.

Vice-Mayor Wolfson suggested a contract of no more than two years.

Thereafter discussion was held regarding Florida Statutes limiting severance to only 20 weeks. Jose Smith, City Attorney, explained the Statute.

Commissioner Weithorn stated that the contract is a sign of goodwill. The term is a goodwill gesture. Commissioner Weithorn expressed that it is a new day, and we are trying to move forward.

A consensus of the Commission agreed that the term of the proposed contract with Mr. Morales should be two (2) years.

Commissioner Libbin expressed his opposition to a housing allowance. Commissioner Tobin stated that he supports incentivizing all employees to live on Miami Beach.

Vice-Mayor Wolfson also opposes a housing allowance.

Commissioner Weithorn suggested a compromise; a one-time non-pensionable relocation payment to pay moving costs, if necessary.

Vice-Mayor Wolfson suggested a base salary of up to \$250,000.

Commissioner Weithorn wants the City Manager to get the same City benefit package as all other employees.

Wolfson suggested a base salary from \$220,000 to \$250,000.

Discussion was thereafter had on deferred compensation, and whether the City should match any contributions made by the manager up to \$15,000.

Commissioner Libbin suggested allowing the manager to be in a deferred compensation plan for the first 5 years, and thereafter allow him the opportunity to switch to the pension system, and if he chose to switch the Manager must return the appointed provided by the City as deferred compensation.

Commissioner Weithorn stated that we must offer the Manager the same retirement benefit we provide to general employees.

Commissioner Tobin suggested a hybrid retirement plan for the City Manager: 90% defined benefit and 10% defined contribution.

Vice-Mayor Wolfson suggested matching up to \$15,000 contributions made by the City Manager into a deferred compensation plan.

Commissioner Góngora suggested that they should come up with a total value that will be offered to the City Manager and thereafter determine what goes into each slot. Vice-Mayor Wolfson concurred.

Commissioner Exposito stated that he does not mind paying dues and subscriptions for the Manager. Commissioner Weithorn suggested that this be a line item in the Manager's Office Budget. The City has available memberships, which the City Manager is the City's designee.

Commissioner Weithorn suggested a technology benefits. Example a laptop, phone, etc. However, these items remain the property of the City.

Commissioner Libbin suggested that the vacation and sick leave for the Manager should be: vacation – 3 weeks and 2 days; sick - 3 weeks and 2 days; 3 floating holidays; and birthday leave.

Commissioner Weithorn suggested a bonus clause that reads, if he exceeds expectation have up to (blank) percent of base salary.

Commissioner Tobin suggested tying the bonus to lowering the millage. A bonus based on savings, without decreasing services or increases user fees.

Commissioner Weithorn stated that she likes the concept, but is concerned with user fees and non-controllable expenses. Commissioner Tobin suggested carving out those exceptions.

Commissioner Exposito also stated that he likes this concept.

Commissioner Libbin stated that there are many ways the manager can show reduction in expenditures, which are not true reduction.

Commissioner Weithorn reiterated that the Manager should not be treated different that other employees. Commissioner Tobin stated that the CEO of a major corporation should be treated differently.

Commissioner Tobin stated that CEO's work best when given specific performance criteria.

Mayor Bower suggested giving the Manager a learning curve for the first year, for example.

Commissioner Weithorn suggested a 50% objective and a 50% subjective standard upon which to base any bonus.

Vice-Mayor Wolfson reminded his colleagues that the City Manager is limited as to what he can do by the Commission.

Mayor Bowers stated that at the retreat the Commission could set the goals, which he will then be evaluated against.

Commissioner Tobin suggested that Vice Mayor Wolfson should negotiate the Contract. Vice Mayor Wolfson accepted the task. The offer to be made is:

Salary:	\$250,000,
Insurance:	Same as for all employees.
Bonus:	Up to 10% of salary
Term:	2 Years
Move in Allowance:	One-time non-pensionable allowance if applicable
Car:	Car allowance
Technology:	Computer, Telephone, etc.
Fees & Subscription:	Will be a line item on the City Manager's budget and not compensation
Severance:	20 weeks as per State Statutes, and if law changes, Commission will review.

R10 - City Attorney Reports

R10A City Attorney's Status Report.

(City Attorney Office)

ACTION: Report given.

Reports and Informational Items

1. Reports and Informational Items (see LTC No. 073-2013)
2. List of Projects Covered by the Cone of Silence Ordinance - LTC No. 064-2013.
(Procurement)

SUPPLEMENTAL AGENDA 3:
(LTC #073-2013) **(Memorandum)**

- h. Response To New Times Article Of February 7, 2013.

End of Regular Agenda

Miami Beach Redevelopment Agency

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

March 13, 2013

Chairperson of the Board Matti Herrera Bower

Member of the Board Jorge Exposito

Member of the Board Michael Góngora

Member of the Board Jerry Libbin

Member of the Board Edward L. Tobin

Member of the Board Deede Weithorn

Member of the Board Jonah Wolfson

Interim Executive Director Kathie G. Brooks

Assistant Director Jorge Gomez

General Counsel Jose Smith

Secretary Rafael E. Granado

AGENDA**4:22:37 p.m.**

1. NEW BUSINESS

- A A Resolution Of The Of The Chairperson And Members Of The Miami Beach Redevelopment Agency (RDA), Accepting The Recommendation Of The City's Finance And Citywide Projects Committee Pertaining To A Proposed Amendment No. 3 To That Certain Retail Lease Agreement By And Between The City Of Miami Beach, The Miami Beach Redevelopment Agency, (Collectively, Lessor) And Penn 17, LLC (Lessee), Dated September 16, 2011, Involving The Lease Of Approximately 7,655 Square Feet Of Ground Floor Retail Space At The Pennsylvania Avenue Garage, 1661 Pennsylvania Avenue, Miami Beach, Florida; Recommending That, As Part Of Said Amendment, The Chairperson And Members Of The RDA Approve The Following Amended Schedule Of Rent: 1) Applying One Third (1/3) Of The Lessee's Existing Security Deposit, Representing \$47,844, Toward Base Rent Owed For The Month Of November 2012; 2) Deferring \$8,474 For Common Area Maintenance (CAM) For November 2012, And Base Rent, Plus CAM, For December 2012, In The Total Amount Of \$64,792 (Hereinafter Referred To As The Back-Due Rent); 3) Approving An Abatement Of Fifty Percent (50%) Of The Base Rent And CAM Due For The Six (6) Month Period Commencing January 13, 2013 Through July 12, 2013; 4) Deferring Fifty Percent (50%) Of The Base Rent And Cam For The Six (6) Month Period Commencing July 13, 2013 Through January 12, 2014; And, 5) Providing For Re-Payment By Lessee Of The One Third Security Deposit And Re-Payment Of The Back-Due Rent For November And December, 2012; All In Accordance With The Payment Schedule Attached As Exhibit "A" Hereto; Further Ratifying The Setting Of A Public Hearing By The City For April 17, 2013, Regarding Lessee's Proposal To Add An Entertainment Component As A New Proposed Use On The Lease Premises (And As Part Of Lessee's Proposal To "Re-Brand" And Re-Open The Premises), And As Required By Section 142-362 Of The City Code. **Joint City Commission and Redevelopment Agency**

(Real Estate, Housing & Community Development)

ACTION: Item heard in conjunction with Item R7L. **Resolution 592-2013 adopted as amended.** Motion made by Board Member Wolfson; seconded by Board Member

Góngora; Voice vote: 5-1; Opposed: Commissioner Libbin; Absent: Vice-Mayor Wolfson.
Anna Parekh to handle.

Amendment

- Include general release for tenant to waive any claims against the City in regards to the ventilation and to the relocation of air conditioning.
- Add language to the waiver of “any and all defenses.”
- Add clause that tenant admits and acknowledge tenant is in default in third amendment.
- Add an “*expedited*” eviction procedure.
- Personal guarantee from tenant that he will pay dues and not litigate with the City, or include financial penalty.
- Requesting release whether the third amendment is approved or not, which is Phase II, in regards to the ventilation and AC.

Kathie G. Brooks, Interim City Manager, introduced the item.

Anna Parekh explained the negotiations with the tenant and Finance approve that six months from January through June half of the rent be abated, and starting July through December, half of the rent be deferred to a later date. This is what is in front of the Commission for approval.

Discussion held regarding the relocation of the exhaust pipe.

Max Sklar, Acting Assistant City Manager, added that the issue of the exhaust is independent of what is in front of the Commission today. Discussion continued.

Jose Smith, City Attorney, explained that one of the conditions the Committee felt necessary to protect the City from potential exposure in the event the deal collapsed, is for the tenant to give the City a release to the fact that they will not take action against the City due to air conditioning issues.

Discussion continued.

Commissioner Libbin stated that because it is a restaurant, the City is redoing the exhaust system at a cost of \$250,000; in addition, the Air Conditioning problem, which is \$50 to \$60,000, and over above that, a variety of things being asked, security deposit, abatement of rent, or deferral of additional rent, if added all up, and if there was not a struggling restaurant there, it's a deal that has not been negotiated properly for whatever reason, it is a bad deal, they should part ways and release the space. He does not see this as a proper use of taxpayer's money.

Commissioner Weithorn stated that this is a better deal for taxpayers to do what they are doing. The restaurants cut their losses and allow negotiating and cutting the City's losses. For the record, the best chance to recuperate the money is the deal in front of them. Discussion continued.

Amir Ben-Zion spoke and discussion continued.

Commissioner Exposito asked in regards of a DJ, as to what area it was being set up, and if they set up a DJ, what kind of sound mitigation are there on the premises; as he is

concerned with vibrations from parking.

Raul Aguila, Chief Deputy City Attorney, answered the question. First part of the process is what Commissioners Exposito and Weithorn have negotiated which are the rent abatement and rent deferral. If this is not approved, the rest will not be approved. The second part is to set a public hearing for the entertainment use. According to the business plan, is not just a DJ, part of the space is going to be an entertainment featuring live entertainment, and according to the City Code, that needs approval before a public hearing of the City Commission. This was discussed with Administration and what is going to come back in April to the Commission is the third amendment to the lease, which is not only going to memorialize the rent abatement, but whatever restrictions and controls this Commission wants to place on the entertainment use, such as noise vibrations not disruptive to the New World Symphony and others. The reason they need approval pursuant to the Public Hearing, is that they have to amend the lease to include that now. Former uses were for restaurant, bakery and gift shop.

Discussion continued.

Mayor Bower requested the Administration to reach out to the New World Symphony to let them know what is going on.

Discussion continued.

Raul Aguila, Chief Deputy City Attorney, spoke.
Amir Ben-Zion spoke.

Motion made by Vice-Mayor Wolfson to approve the Finance and Citywide Projects Committee recommendation; seconded by Commissioner Góngora. No vote taken.

Discussion continued.

Commissioner Tobin asked Legal what is being waived regarding the air conditioning.

Raul Aguila, Chief Deputy City Attorney, stated that as part of the third amendment, the City is obtaining a general release where tenant waives any claims to be had against the City having to do with the ventilation and/or regard or relocation of the air conditioning system.

Commissioner Tobin added that it should be a waiver of "any and all." In addition to his waiver, they need to admit and acknowledge that they are in default. **Raul Aguila to handle.**

Discussion continued regarding termination of lease, default notice of 15-day cure period and notice to evict. Discussion continued.

Commissioner Tobin suggested negotiating now, instead of spending six months or a year in court over an eviction that they get them out quick.

Commissioner Exposito asked if tenants are willing to sign a release of any and all claims now before going into Phase II as far as ventilation and the rent not subject to approval of the third amendment.

Jose Smith, City Attorney, explained that anything that has happened up to now, the City gets a release before going to Phase II, and whether or not they are allowed to have a DJ.

Raul Aguila, Chief Deputy City Attorney, clarified that Commissioner Exposito is requesting a release whether the third amendment is approved or not, which is Phase II.

Voice-vote: 5-1; Opposed: Commissioner Libbin; Absent: Vice-Mayor Wolfson.

Meeting adjourned at 12:22:02 a.m.