

MIAMI BEACH

Special City Commission Meeting

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

December 13, 2013

Mayor Philip Levine
Vice-Mayor Deede Weithorn
Commissioner Michael Grieco
Commissioner Joy Malakoff
Commissioner Micky Steinberg
Commissioner Edward L. Tobin
Commissioner Jonah Wolfson

City Manager Jimmy Morales
City Attorney Jose Smith
City Clerk Rafael E. Granado

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ATTENTION ALL LOBBYISTS

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Meeting called to order at 4:08:51 p.m.

C7 - Resolutions

C7AA Pursuant To Section 2.0 Of The City Charter, The City Manager Hereby Requests That A Special Meeting Of The City Commission Be Called For Friday, December 13, 2013 At 4:00 p.m. To Reconsider Item C7AA From The December 11, 2013 City Commission Agenda.

~~The Resolution Authorized The City Manager To Decline The Right Of First Offer Transaction, As Required Per The Terms The Ground Lease Between The City Of Miami Beach (Owner) And Pelican Investment Holdings, LLC (Tenant), Dated December 1, 1999, Involving Improvements At 1027-1041 Collins Avenue (Project); And Approved The Sale Of The Project, Subject To Satisfactory Completion By City Staff Of The City's Due Diligence, Payment By Tenant To City Of The City's Due Diligence Costs, And Payment Of The Settlement Offer The Resolution Further Authorized The City Manager And The City Clerk To Execute Any And All Closing Documents On Behalf Of The City.~~

Revised Title

The Resolution Authorized The City Manager To Decline, In Writing, The Right Of First Offer Transaction, As Required Pursuant To The Terms Of Section 36.2 Of The Agreement Of Lease ("Lease") Between The City ("Owner") And Pelican Investment Holdings, LLC ("Tenant"), Dated As Of December 1, 1999, Involving The Improvements To Property (The "Project") Located At

1027 Collins Avenue, Miami Beach, Florida, And 1041 Collins Avenue, Miami Beach, Florida; And Further Approving Tenant's Sale Of The Project To The Proposed Purchaser, LIPT Collins Avenue, LLC, A Delaware Limited Liability Corporation, Which Is A Wholly Owned Subsidiary Of Jones Lang Lasalle Income Property Trust, Inc., Subject To And Conditioned Upon City Staff's Successful Completion Of Its Evaluation Of The Proposed Purchaser In Accordance With Article 10 Of The Lease (The "City's Due Diligence"); Payment To The City Of Its Reasonable Costs Incurred In Connection With The Proposed Sale Including, Without Limitation, Reimbursement Of The City's Due Diligence Costs; And Payment To The City Of The "Settlement Offer" (As Such Term Is Hereinafter Defined In This Resolution); And Further Authorizing The City Manager And City Clerk To Execute Any And All Closing Documents On Behalf Of The City In Connection With The Proposed Sale.

(Tourism, Culture & Economic Development Department)

ACTION: Discussion held. No motion made.

Mayor Philip Levine opened the Special Commission Meeting at 4:08:51 p.m. Mayor Levine announced that this is a Special City Commission Meeting called by the City Manager pursuant to Section 2.0 of the City Charter, to reconsider Item C7AA from the December 11, 2013 City Commission Agenda.

City Manager Jimmy L. Morales explained the item. He stated that on Wednesday, December 11, 2013, with respect to item C7AA (the Pelican Garage), discussion was held regarding the issue where the City had, by the end of December 13, 2013, the right to exercise the right to first offer, with respect to an acquisition of the lease from one of the lessee in the building for a purchase price of approximately \$22.5 million. The Commission on December 11, 2013 voted to decline exercising the offer, based on a report that the Administration prepared where they indicated an analysis of the project, financial and otherwise, that took the assumption that this garage would be operated as done with other public garages if the City took control of it. The City operates its garages at \$1.00 per hour rate and a \$70.00 monthly rate. The City has historically not operated its garages on the premise of making money, but rather to provide affordable parking to the residents, employees and visitors to Miami Beach. When the Administration did its analyses, they did it with numbers that were based on those rates. After the end of the Commission Meeting on December 11, 2013, information was presented that said that if the Commission wanted to exercise a policy decision to acquire the garage and operate it on a commercial basis, using the assumptions made by the proposed buyer, then a different financial analysis would be reached. The City Manager; therefore, called this Special Meeting because in the spirit of transparency, he wanted to ensure that the Commission was aware that there are scenarios financially based on what rates could be charged where the financial picture is a positive one, as opposed to a negative one; and the Commission might want to engage in a different policy decision for pricing in this garage, as compared to other City garages. Therefore, City Manager Morales wanted to bring this matter before the City Commission in case any member of the City Commission wanted to reconsider their vote and open the discussion to whether or not to exercise that option.

Mayor Levine thanked the City Manager and all the Commissioners for coming to this meeting on a Friday afternoon. It is a great sign to the commitment and responsibility and proactiveness of this new body. He thanked especially Commissioner Tobin, who really delves, reads and finds opportunities, and is not shy to bring forward to the public and City Commission to make sure that they are always doing the right thing in a totally transparent manner.

Commissioner Tobin thanked everyone for coming, and especially the City Manager. What Commissioner Tobin is asking for is that the City has an opportunity to take a free look at this deal, a nice calm free look during the City's right of first refusal. Commissioner Tobin is asking the Commission to exercise the free look that will not cost the City a nickel, so the City can get an opportunity to properly notice this and obtain public input. If the City does not buy this deal, the new owner of the garage will charge market rent; however, the new owner is going to keep the money. If the City buys the deal, and charges market, the City has an opportunity to take that money that the residents and visitors are paying and give that money back to them in the form of police protection, parking and infrastructure. If the City Commission passes on this deal, it cannot change the fact that the new owner of the property will charge market rate. If the Commission does not pass, and it charges the market rate, at least the City has an opportunity when the residents and visitors are taking money out of their pocket, and giving it to the Garage, at least the City will be able to give that money that the residents and visitors took out of their right pocket, and put it back into their left pocket in the form of essential services. (Commissioner Tobin then made a symbolic representation of his words by moving dollar bills from one side of his trouser pants' pocket to the other side). The City is in the business of providing parking in garages, and they have chosen to charge in City's garages a \$1.00 per hour. This private garage deal was done a little more than 10 years ago, and the City gave the ground and the City leased it to a parking operator and they are charging market rate. They have 36 to 38 years on the lease, and they want to sell it. Right now, effectively the City gets about \$73,000 from this garage a year, and the cash flow before debt service to the owner of the property, they get about \$1.6 million. On this 36 years of leasehold interest that they are going to sell, that they are selling to a real-estate investment trust, Jones Lang Lasalle. What Commissioner Tobin thought about was that a future Commission may or may not decide to recapture this property to the benefit of the public. Typically, what happens on these public deals is that somebody hires a good lobbyist on and they get extension on these deals. Right now, the City has been smart and they do not allow these types of long-term sweetheart deals without going to referendum. However, in the past they did allow them. They cannot assume that in the next 36 years this will come back to them. What typically occurs in these type of deals is that the owner will feel that there is a great deal of deferred maintenance on the property, and then they come back to the City Commission and state that the parking garage is an eyesore, and it looks terrible – therefore the City needs \$5 million to fix it, if the City wants to amortize it, over the course, they need another 15 to 20 year extension on the lease. As a result, Commissioner Tobin states that he never saw the opportunity for the City to recapture what belongs to it. That is an additional periphery consideration that Commissioner Tobin thought about. In addition, what is interesting is that when the City recaptures this property, Jones Lang Lasalle was going to make a tidy sum as a return, and on their Performa their cost are real estate taxes. Commissioner Tobin states that as a public garage, the City only pays taxes on the retail; the City will not pay taxes on the garage. Jones Lang Lasalle also pays for liability insurance, which the City will not pay for, as it is self-insured. There are; therefore, many scenarios the City can explore, and run the numbers during the free look back period. During this period the City can determine how much more profitable the deal will be than the deal that the private sector is already willing to pay. For sure it is a better deal for the City that for Jones Lang Lasalle.

Commissioner Tobin explained that the City could do the deal two ways. It can do the deal with cash on hand. The City has about \$20 to 22 million in the parking fund. If the City does the deal with money on hand, it will make \$1,075,000 the first year, \$1,398,000 the second year; \$1,468,000 the third year. If instead, the City decides to finance it, the financing will come through the enterprise fund, which has about \$100 million of debt that they can use the parking fund.

Commissioner Tobin added that the Commission has previously spoken about parking needs in the City, including the Zaha Hadid parking garage, and they will need to spend, depending on the appetite of this Commission, some \$20 to \$60 million in the future on parking garage. Commissioner Tobin states that he does not relish spending that money, but the City does barrow money and has a debt capacity, and this proposed purchase will not put a mild dent in the City's debt capacity. Commissioner Tobin points out that the numbers the Administration ran in the Argus spreadsheet, are very conservative numbers, with the cost of numbers at 4.5% and expenses were kept that the City will not incur.

To reiterate, Commissioner Tobin stated that it costs the City Commission nothing to give a look, it is a great deal in the private industry, it would be an even better deal for the City, and the beauty of it is that the City Commission is forced into this position, and rather let the public and visitors' money go out into the wind, the Commission can at least get to give them their money back.

Mayor Levine stated that they need to first discuss the public policy side of it. Mayor Levine then wants to understand the financial side of it from Commissioner Weithorn, i.e., does it make financial sense for the City to own it. Finally, from the City Manager he would like to know is the City using resources here and not providing a major public policy difference, where they may potentially want to use these resources somewhere else?

Commissioner Steinberg thanked the City Manager for bringing this item up, and commented that Commissioner Tobin made some great points. Commissioner Steinberg wants to make sure that they are not setting this Commission, or future Commissions, for a loss. She inquired what will happen when the local businesses, or local residents, come to the City Commission and ask to purchase a reduce monthly pass, or come to the City Commission and ask for a reduced hourly rate – what does the City Commission do in those circumstances? Commissioner Steinberg wants to ensure that the Commission is not setting itself for a loss down the line, because according to the memo it will take 14 years to recoup the City's investment. She wants to make sure the Commission addresses this issue.

Mayor Levine commented that Commissioner Steinberg had a great point. He reiterated her comments that once the City owns the Garage members of the public may come to the Commission and say, we know you are trying to charge market rate, but we really do not like it, you are the government and you should be charging \$1.00 an hour.

Discussion continued.

Mayor Levine stated that the Commission may decide, if it were to go through with this, that it is going to charge \$1.00 as they are not a for profit center; that is a public policy decision that the Commission needs to make. The City may not have to look at the economics as drastically.

Commissioner Wolfson commented that his concerns are several fold. As far as looking at it as a real estate deal, it is a 36-year land lease (an automatic 10-year renewal.) There are 36 years left on it, it is not a deal for a fee simple absolute. In buying it, the City will be paying \$240,000 a year in rent. The question is, on top of everything else, it is at the end of it until you have something. The Commission must look at it as if it was leasing property to enter into a business venture. In doing so, entering into that business venture what is the City's goal. Any business that one enters is to make money, so the City puts itself in a position as to whether the City is

going to aggressively try to squeeze every dollar that is the business of the parking garage, or is the City, as a government should, provide a service for the cheapest possible rate that it can, given the circumstances. Commissioner Wolfson thinks it is the latter; government should operate as a business, be efficient, not expend too much money, but when it comes to the services it provides, they are enterprise funds, they should be trying to do it as efficient and as well as it can, but save the people's money. The City should not be putting itself in a situation where the City has to be a cutthroat business entity.

Commissioner Wolfson stated that the one thing he disagrees with is on page 2, which says, "at a later time the purchase price may likely go up, and it would not be as affordable as it is at this time." Commissioner Wolfson believes that every year that goes by it has less value, because you go from a 36-year lease to 35, and 34, etc. As every year that passes there are fewer years on the lease, its value becomes less and less.

Mayor Levine asked the City Attorney, if the City has in fact a first right of refusal. City Attorney Jose Smith stated that the City does have a free look, and he has been able to have conversation with Alexander I. Tachmes late last night, and he has given the City an opportunity to extend the time in which to exercise the right of first refusal for an additional seven days.

Mayor Levine asked City Attorney Jose Smith, what is the City's obligation to close in the event that the City Commission takes the option. Jose Smith explained that his reading of the land lease and also the documents that pertain to this deal give the City an opportunity for a limited period of time within which to negotiate a contract, and then a another period to come up with a deposit that becomes a non-refundable deposit after 21 days, although the City Attorney cannot at this time recall the exact total number of days. What Commissioner Tobin is saying is correct, the City has a limited time within which to do its due diligence and then walk away if the City does not believe it is a good deal.

Mayor Levine inquired of the City Attorney whether there is any liability if the City does not close. City Attorney Smith stated that subject to the term that is provided for in the Letter of Intent (LOI). Mr. Smith stated that he believes at a certain point, the City has to put \$1.2 million or \$1.7 million (Commissioner Tobin stated that the amount was \$1,750,000), and then there is an additional deposit after that.

Alexander I. Tachmes, representing the holder of the lease, explained that if the City wanted to exercise the option to its right, it would have to meet the terms of the LOI that has already been executed between his client and Lasalle. Just to give the City Commission a quick synopsis of the schedule, the City Commission, if it exercised its right, would go immediately to the LOI, which he is assuming that the City would execute very rapidly with the same terms as it is before the City Commission today; then within 10 days of execution of the LOI, there would be a deadline to sign a purchase of sale agreement; 10 days after then deadline to execute the LOI there would be a deadline to enter a purchase of sale agreement and posting a refundable deposit of \$750,000; then within 21 days from signing the LOI will be the due diligence period. If the City did not terminate before that, at the expiration of the 21 days, the City would have to put \$1.5 million, then the full \$1.5 million and the \$750,000 becomes nonrefundable.

In response to a question raised by Mayor Levine, Mr. Tachmes responded that at 21 days after signing the LOI, the deposit by the City becomes nonrefundable. Mr. Tachmes added that the LOI would be expected to be completed within the next two or three-business day.

Mayor Levine asked Mr. Tachmes to confirm that his clients have a deal in place. Mr. Tachmes stated that they have the LOI, and they are currently negotiating the final agreement of the purchase and sale agreement, which will be signed very soon.

Mr. Tachmes stated that once the City is done with its due diligence period, that is when the City's money becomes nonrefundable, which is "\$2 million and change." Then 15 days after the end of the due diligence expiration, the City would be closing all cash.

Commissioner Tobin inquired of Mr. Tachmes if he was reading and obtaining the previously stated information from the City's right of first refusal. Mr. Tachmes stated that he was referring to the information found in the LOI that was signed. Commissioner Tobin stated that what controls is the City's right of first refusal that is in the contract, which is different. He stated that he rather not rely on the other side's attorney for the terms and conditions of the deal.

City Attorney Jose Smith commented that Commissioner Tobin and Mr. Tachmes were not referring to the same issue. As per Mr. Smith, what Mr. Tachmes is saying is that the City would have to stand in the shoes of Lasalle Lang and provide the same terms and conditions as that particular purchaser is providing.

Commissioner Tobin responded that the City's contract, which includes the right of first refusal, is different from that. The City's right of first refusal sets up the terms and conditions of how the City exercises the right of first refusal.

Discussion continued.

Mayor Levine asked City Attorney Smith, which stands, the terms of the City's agreement, or matching the LOI?

Jose Smith, City Attorney, stated that the City needs to match the material terms and conditions of the LOI that they have received from the purchaser.

Commissioner Tobin disagrees on the timing. Discussion continued.

Jimmy L. Morales, City Manager, stated that he has not seen the LOI.

Discussion continued regarding the LOI.

Vice-Mayor Weithorn stated that this deal has financial risks and non-financial risks. There is no doubt that this deal has risks. She stated some of her concerns:

1. The capital bond capacity:
Typically, the bond is for 30 years. Her first question is if the City is bonding for 30 years, do they have a 30-year asset getting back. She previously asked the Administration if the City has done an existing conditions survey to see the condition of the building and was told that it was not done. She is worried about borrowing money for 30 years if the City is not going to get the payback during the same period. Maybe something can be done during the due diligence period, but she still worries about a parking garage in that location for 30 years when the building is already 12 or 13 years old.

2. Capital borrowing capacity without public benefit:
She reviewed future projects and found the following: Convention Center Parking getting rid of surface lots and building a garage, renovation of the 17th Street Garage, which has defects that need to be addressed very soon; issues in the South of Fifth area and West Avenue Corridor that at some point will have to be addressed; North Beach has already been programmed and discussed, and to do true mass transit they need to have a transit park garage. There are six potential projects. She expressed that her concern is if the City has enough money to do all of these without using capital capacity.
3. Ability to control future pricing:
This Commission cannot assume market rates for the next 36 years. They have no authority to control what future Commissions will do. In the accounting world that is called the two-hammer risk.
4. The real estate tax risk:
Vice-Mayor Weithorn is not sure that they have confirmed that market rates do not kick in real estate taxes. She added that the City needs bond counsel to answer that, because they have to prove a public benefit. She would have done more if she had had more time.

Commissioner Tobin stated that it seems that they have a free look at the deal. When he looked at the first right of refusal on their lease, the City has a certain amount of time to advertise and let the public weigh in for transparency. If the City does not buy this garage, Lasalle will charge market rate; they are not doing this for charity. The question is if the City wants to buy the deal. Since the City is in the parking business, they may want to save on real estate taxes and put money back on the resident's pockets for police, infrastructure, etc.

Discussion continued.

Jimmy L. Morales, City Manager, referred to Page 38 as the best-case scenario and explained the debt service based on market rate.

Mayor Levine stated that this is a business deal and he thinks there is a bigger issue. He stated that what Vice-Mayor Weithorn addressed is a public policy and this is a public policy discussion.

Discussion continued.

Mayor Levine thanked Commissioner Tobin for his research.

Alex Tachmes, Esq., stated that they agree with the City Attorney that the City needs to meet the terms of the LOI that have already been executed. The timing is very critical to them because if the City takes an enormous amount of time, their buyer will walk and they will be left without any buyer for the garage, and that will be the worst-case scenario for them. He restated the timeframe as before.

Mayor Levine asked the Administration for a recommendation.

Jimmy L. Morales, City Manager, explained that the benefit is the present value; it is a departure from previous policy, which will require a change in ordinance.

Discussion continued.

Commissioner Tobin explained that he would not change the rate on other garages, but on a lot where private garages are charging more, the City could keep it at that. The only reason he makes these public comments is that they do not want to do anything without letting the public know.

Discussion continued.

Commissioner Tobin addressed Alex Tachmes and stated that a City Commission meeting will be held in 30 days, and as a matter of form, this Commission would not do anything without letting the public know. They certainly have the financial will to close a deal like this, they certainly want to look at the structural facility, but in terms of making them wait, this is not what is happening. He emphasized waiting until January 15, 2014 and Mr. Tachmes will never be able to close with the other buyer by that time.

Vice-Mayor Weithorn explained that this is a huge public policy departure since they have never built a garage if it was not for the benefit of the residents. This garage is primarily used by valet and visitors. They need to make a decision: 1) Do they want to use the parking from fund balance and not necessarily for the benefit of our residents? Alternatively 2) Do they want to be in the market rate business? She is not comfortable making that decision today with only a handful of people in the room because this is a big departure from what they have done in the past.

Frank Del Vecchio spoke.

Mayor Levine believes that if they exercise the option to go forward, they would want to do it as a governmental policy. In his opinion, it will be at a rate of \$1 for the benefit of the community, and not maintaining the commercial rate because they are trying to give a huge benefit to the community. To buy it and charge the same rate is a challenge. If the Commission feels it is wise to exercise the option to buy and operate at \$1 per hour that will be a decision to be made.

Commissioner Wolfson agrees with Mayor Levine. If this Commission is ready to do this, plan to do it at a loss and for the best interest of the residents.

Commissioner Steinberg asked Saul Frances, Parking Director, what the parking revenue losses would be.

Commissioner Tobin stated that he does not see the appetite to charge \$1 per hour because right now there is an opportunity to buy the garage and charge \$1 per hour at a financial loss, and every garage that the City owns and charges \$1 per hour is a financial loss. The difference is that this one is looking at them right in the face. They do it everywhere and lose money everywhere.

Discussion continued.

Saul Frances, Parking Department Director, stated that they have not had a chance to review the numbers on the existing operators, but to look at page 64 of the Agenda and the loss of revenue would be about \$1 million a year.

Discussion held.

Saul Frances, Parking Department Director, in answering Mayor Levine, explained that there is a parking demand and they are currently undergoing an analysis, and will have some hard numbers to find out what the demand is, but he knows the demand is high.

Commissioner Tobin would not buy it if they were going to charge \$1 an hour. He rather spend the money and build another garage. He would not buy it to reduce the rate, he rather build more parking.

Mayor Levine asked the Commissioners from a public policy if they felt that the City should buy this garage, and charge a \$1 an hour rate, and all Commissioners present agreed that at \$1 an hour it would be a loss. He added that the consensus of this Commission is that they want the rate to remain at \$1 per hour. He asked Commissioner Tobin if he still feels that it is something the City Commission should do.

Commissioner Tobin responded "no," and explained that he would rather increase the number of parking spaces.

Jimmy L. Morales, City Manager, stated that this was brought up for a possible reconsideration, but if there is no motion to reconsider, the item stands.

Jose Smith, City Attorney, stated that it is correct.

Mayor Levine recognized Commissioner Tobin for bringing this item to their attention and hopes he continues digging into the details and bringing issues like this to their attention.

Commissioner Tobin appreciates the discussion and is happy with the outcome.

Meeting adjourned at 5:03:15 p.m.

City Clerk's Note: Refer to Resolution 2013-28438 (Item C7AA) adopted at the 12/11/13 Commission Meeting.

Handout or Reference Materials:

1. Memorandum No. 032-2013 dated December 12, 2013, from Jimmy L. Morales, City Manager, to Mayor Philip Levine and Members of the City Commission RE: Request to hold a Special Meeting on the City Commission.
2. Email from Marcia Monserrat to Rafael Granado dated December 12, 2013 RE: C7AA Draft.