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FORT LAUDERDALE CITY COMMISSION
DECEMBER 2, 2003**

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**MINUTES OF A REGULAR MEETING
CITY COMMISSION
FORT LAUDERDALE, FLORIDA
DECEMBER 2, 2003**

Meeting Was called to order at 6:10 p.m. by Mayor Naugle on the above date, City Commission Meeting Room.

Roll call showed:

Present: Commissioner Christine Teel
Commissioner Dean J. Trantalis
Commissioner Cindi Hutchinson
Commissioner Carlton B. Moore
Mayor Jim Naugle

Absent: None

Also Present: Acting City Manager Alan Silva
City Attorney Harry A. Stewart
City Clerk Lucy Kisela
Sergeant At Arms Sergeant Jacques

Invocation was offered by Pastor Steve Stolarz, Riverland Baptist Church followed by the recitation of the Pledge of Allegiance.

Motion made by Commissioner Moore and seconded by Commissioner Hutchinson that the agenda and minutes of the November 4, 2003 meeting be approved. Roll call showed: YEAS: Commissioners Teel, Trantalis, Moore, Hutchinson, and Mayor Naugle. NAYS: None.

NOTE: All items were presented by Mayor Naugle unless otherwise shown, and all those desiring to be heard were heard. Items discussed are identified by the agenda number for reference. Items not on the agenda carry the description "OB."

Presentations

OB

1. Expressions of Sympathy

The Mayor and City Commission expressed sympathy to the family of Susan C. Holmes.

2. Smoke Detector

Commissioner Moore demonstrated the proper way to test a smoke detector.

3. The Florida Department of Education

LaMont Couch of the Florida Department of Education stated that his title was Field Director and he was the liaison for Southeast Florida. He stated that he was located at FAU in Boca Raton. He explained that he was here for two reasons. One was to make

sure that the DOE became a grass roots organization for this area so they could understand more fully the local needs, and to represent everyone better in Tallahassee. He stated that Governor Bush had given a State of Education Address in Orlando, and he had distributed to the Commission some facts and figures showing where they had come from and where they were at now.

Mr. Couch stated that he could be reached at 561-297-0469, and his e-mail address was Lamont.Couch@fldoe.org.

Mayor Naugle announced that he and Mr. Couch had discussed him meeting with the Education Advisory Board.

4. Outstanding City Employees

Faye Outlaw, Interim Director Community & Economic Development, proceeded to recognize Douglas Kurtock as their department's employee of the month for December. She stated that he was a Building Inspector with Community Inspections in the northwest portion of the City, and had proven himself as an integral part of their organization.

Bruce Roberts, Chief of Police, stated that he wanted to recognize PSA Scott Bailey, who was unable to attend tonight's meeting, for his assistance in rescuing individuals from a burning building. PSA Bailey proceeded to call the Fire Department and assisted in evacuating the building.

Chief Roberts stated that the Officers of the Month for November, 2003 were Detective Jack DiCristafalo, Detective Joel Winfrey and Officer Ian Sklar (Canine Unit). He stated that they assisted in apprehending an armed robber who had absconded from felony parole in New Jersey. He further explained that Detective Winfrey had been struck in the back by a bullet, and Detective DiCristafalo returned fire hitting the suspect. He reiterated that these detectives had apprehended a dangerous felon and had responded with courage and proper police tactics neutralizing a threat to themselves and the citizens of the City. Chief Roberts commended them for a job well done.

Chief Roberts further recognized Officer Patrick O'Brien with a life-saving award for November, 2003. He stated that Officer O'Brien had responded to a call for a newborn not breathing. He saved the baby's life and was taken to the hospital. His actions enabled the baby to survive and receive emergency medical care. Unfortunately, the baby did not survive at the hospital. Chief Roberts stated that Officer O'Brien's quick actions and instructions to the mother played a key role in providing immediate care to both mother and child.

5. Municipal Clerk Certification

Mayor Naugle stated that he wanted to recognize Lucy Kisela, City Clerk, who had recently been awarded Certified Municipal Clerk designation certification from the Municipal Clerk Association. He stated this was the City's first City Clerk to obtain such a designation.

Lucy Kisela, City Clerk, stated it was an honor to do this for the City of Fort Lauderdale.

Consent Agenda**(CA)**

The following items were listed on the agenda for approval as recommended. The City Manager reviewed each item and observations were made as shown. The following statement was read:

Those matters included under the Consent Agenda are self-explanatory and are not expected to require review or discussion. Items will be enacted by one motion; if discussion on an item is desired by any City Commissioner or member of the public, however, that item may be removed from the Consent Agenda and considered separately.

Extend Policy – Supplement Military Pay of Employee Reservists Called to Active Duty**(M-1)**

A motion approving an extension through December 30, 2004 of current City policy that complies with the Governor's direction to enact provisions that raise military pay of those employees activated to the level of their civilian pay and continue existing benefits for one year.

Recommend: Motion to approve.
Exhibit: Memo No. 03-1705 from Acting City Manager.

Payment for Annual Independent Audit – Ernst and Young And Sharpton Brunson – Fiscal Year 2003/2004**(M-2)**

A motion approving a payment in the amount of \$220,209 to Ernst and Young and Sharpton Brunson for annual independent audit fees for FY 2003/2004.

Funds: See Memo
Recommend: Motion to approve.
Exhibit: Memo NO. 03-1718 from Acting City Manager.

Indemnification Agreement – Lauderdale's, Inc. - Amphibious Vehicular Tour Operation**(M-3)**

A motion authorizing the proper City officials to execute an indemnification agreement with Lauderdale's, Inc. for use of the City's S.E. 15 Street and Cooley's Landing public boat launching facilities to launch amphibious vehicular tours on a seven (7) day per week basis from 9:00 a.m. to 6:00 p.m. for a term of December 3, 2003 through September 31, 2004. (Also see Item PH-1 on this Agenda)

Recommend: Motion to approve.
Exhibit: Memo No. 03-1721 from Acting City Manager.

Disbursement of Funds – Joint Investigation - (M-4)
O.R. No. 02-117753 - \$31,948.34 U.S. Currency

A motion authorizing the equitable disbursement of funds in the amount of \$31,948.34, with each of the 12 participating law enforcement agencies to receive \$2,662.36.

Recommend: Motion to approve.
Exhibit: Memo No. 03-11-1 from City Attorney.

Payment for Grant Acquisition and Management Services - (M-5)
Planning and Financial Consultant Team

A motion approving the payment (\$75,059.20 for services rendered and \$24,222.36 subject to pending grant approval agreements) to Planning and Financial Consultant Team for grant acquisition and management services performed during FY 2002/2003 resulting in the City obtaining over \$1,880,000 in construction grants.

Funds: See Memo
Recommend: Motion to approve.
Exhibit: Memo No. 03-1733 from Acting City Manager.

Contract Award – The Poole and Kent Company – Project 10387 - (M-6)
Fiveash Water Treatment Plant Upgrades, Phase I

A motion authorizing the proper City officials to execute an agreement with The Poole and Kent Company in the amount of \$11,385,119.62 for the Fiveash Water Treatment Plant Upgrades, Phase I project.

Funds: See Memo
Recommend: Motion to approve.
Exhibit: Memo No. 03-1641 from Acting City Manager.

Contract Award – Tenex Enterprises, Inc. – NCIP Project (M-7)
10616 – Middle River Terrace Decorative Street Posts

A motion authorizing the proper City officials to execute an agreement with Tenex Enterprises, Inc. in the amount of \$58,495 for the Middle River Terrace Decorative Street Posts project.

Funds: See Memo
Recommend: Motion to approve.
Exhibit: Memo No. 03-1644 from Acting City Manager.

Task Order – Keith and Schnars, P.A. – Project 10571 - (M-8)
Imperial Point Large Water Main Pre-Design Services

A motion authorizing the proper City officials to execute a task order with Keith and Schnars, P.A. in the amount of \$83,855 for survey services associated with the Imperial Point Large Water Main project.

Funds: See Memo
Recommend: Motion to approve.
Exhibit: Memo No. 03-1640 from Acting City Manager.

Change Order No. 2 – Arrow Directional Boring, Inc. - (M-9)
Project 10171-A – Force Main Replacement/S.W. 4 Avenue
Directionally Drilled River Crossing

A motion authorizing the proper City officials to execute Change Order No. 2 with Arrow Directional Boring, Inc. in the amount of \$77,900 for additional work under the Force Main Replacement/S.W. 4 Avenue Directionally Drilled River Crossing project.

Funds: See Memo
Recommend: Introduce motion.
Exhibit: Memo No. 03-1646 from Acting City Manager.

Appropriation of Water and Sewer Fund Available (M-10)
Retained Earnings for Special Assessment Refunds

A motion approving the appropriation of \$2 million from the Water and Sewer Fund Available Retained Earnings to fund special assessment refunds.

Funds: See Memo
Recommend: Motion to approve.
Exhibit: Memo No. 03-1713 from Acting City Manager.

Roadway Easement – Florida Department of Transportation (M-11)
(FDOT) – Construction of Deceleration Drop-Off Lane and
Entrance to Florida Atlantic University (FAU) on West
Commercial Boulevard

A motion approving a 10,030 square foot roadway easement to the FDOT for the construction of a deceleration drop-off lane and entrance to FAU on West Commercial Boulevard.

Recommend: Motion to approve.
Exhibit: Memo No. 03-1642 from Acting City Manager.

Settlement Agreement – Broadview Park Water Company – Settlement of Unpaid Water Bills

(M-12)

A motion authorizing the proper City officials to execute a settlement agreement with Broadview Park Water Company to accept \$150,000 in settlement of unpaid water bills.

Recommend: Motion to approve.
Exhibit: Memo No. 03-1626 from Acting City Manager.

PURCHASING AGENDA

Proprietary – Maintenance, Fire/EMS ADAMS and CAD Analysts

(Pur-1)

An agreement to purchase annual maintenance for Fire/EMS ADAM and CAD analysts is being presented for approval by the Fire-Rescue Department.

Recommended Award: Deccan International, Inc.
 San Diego, CA
 Amount: \$ 16,335.00
 Bids Solicited/Rec'd: N/A
 Exhibits: Memorandum No. 03-1509 from Acting City Manager

The Procurement and Materials Management Division reviewed this item and recommends awarding the proprietary purchase.

Motion made by Commissioner Moore and seconded by Commissioner Hutchinson that Consent Agenda Item Nos. M-3, M-5, M-7, and M-12 be deleted from the Consent Agenda and considered separately, and that all remaining Consent Agenda items be approved as recommended. Roll call showed: YEAS: Commissioners Teel, Trantalis, Moore, Hutchinson and Mayor Naugle. NAYS: None.

Indemnification Agreement – Lauderducks, Inc. - Amphibious Vehicular Tour Operation

(M-3)

Commissioner Teel stated that she had pulled this item and wanted some questions answered regarding insurance for these vehicles. She asked what amount of insurance was going to be required for this operation.

Jamie Hart, Supervisor Marine Facilities, stated that he had specified minimum amounts of insurance that were normally required from commercial operators. He explained this would have to be formally reviewed for this type of operation because this was a new venture. He added that he had liability insurance in the amount of \$8 Million which exceeded what was normally required.

Commissioner Teel asked if there was some difference regarding insurance in connection with the Maritime Laws and reiterated that she was concerned about the City

and riders of these vehicles so they would be well protected. Mr. Hart stated this matter would be fully reviewed by the City's Risk Manager, and added that this matter had been discussed with the Marine Advisory Board.

Commissioner Teel further stated that people were asking about the monetary benefit for the City from this project. She stated they were successful in other parts of the Country, but she understood the fee for the license would be \$50 per vehicle, per year. Mr. Hart stated that amount had been proposed by Mr. Bekoff because the City did not have an established approved fee for launching, only for parking. He explained the City never had it due to enforcement difficulties. Commissioner Teel added that the amount would be \$400 annually for the 4 vehicles. Mr. Hart confirmed.

Commissioner Teel stated her other concern was in regard to the weight of the vehicle, and proceeded to ask if it could damage the ramps.

Mr. Hart stated this was not the first proposal received for this type of vehicle, and a study had been conducted in 2000/2001 by the Structural Engineer which had been provided to the Commission. He explained that they had determined that the ramps could support the weight of this type of vehicle. He further explained that the City's ramps were 6" thick minimum, and the vehicles only required a 3" to 4" thickness.

Commissioner Teel asked how many trips per day were anticipated for these vehicles.

Bob Bekoff, Lauderducks, Inc., stated there would be between 5-6 trips daily due to it getting dark early at this time of year.

Commissioner Teel asked if any provision had been made for protecting the City in regard to damages that could occur to the ramps. Mr. Bekoff remarked that boats of the same size and weight go on and off the ramps daily.

Commissioner Moore asked if there was any possibility that they could get added as the additional insured for the amount of the insurance. Mr. Hart replied that the City was named as the additional insured on all policies of commercial tenants.

Mr. Bekoff stated that he would speak with his agent as to what the limits were on his policy. He stated they met the minimum amount required which was \$1 Million and the City was named as an additional insured. He stated that he would check as to what the excess limits were covered on the other policies since they were landing at 13 different public spots about 250 times per day.

Mayor Naugle stated that they could ask the Insurance Advisory Board to review the amounts so everyone would be treated the same. Commissioner Moore reiterated that he was not attempting to single anyone out, but was going by the comments made by staff. He asked if Mr. Bekoff had an \$8 Million policy. Mr. Bekoff stated he was not sure if they carried the excess limits or not, but would let Mr. Hart know. Commissioner Moore stated he did not have a problem with the Insurance Advisory Board reviewing the matter and making a recommendation. He also asked if some type of deposit could be made due to the weight of the vehicles and the number of times they would be using the public ramps. He asked if staff could review the matter and suggest a bond amount be established for repairs if necessary. Mr. Bekoff replied he would not object to the recommendation.

Motion made by Commissioner Hutchinson and seconded by Commissioner Teel that the item be approved, along with the conditions made by Commissioner Moore. Roll call showed: YEAS: Commissioners Teel, Trantalis, Moore, Hutchinson and Mayor Naugle. NAYS: None.

Payment for Grant Acquisition and Management Services (M-5)
Planning and Financial Consultant Team

Commissioner Hutchinson stated that she had pulled this item, and asked if they had to pay a percentage of the grants brought in on the original contract.

Hector Castro, City Engineer, stated that under the original terms and conditions there was a sliding scale depending on the amount of the grant which ranged from 3% to 12 1/2%. He explained that these figures were based on that schedule. He stated that the grant package which had been deferred from this year, primarily for the 15th Street Marina, would be used but another presentation would be required, along with some additional work.

Motion made by Commissioner Hutchinson and seconded by Commissioner Trantalis to approve this item. Roll call showed: YEAS: Commissioners Teel, Trantalis, Moore, Hutchinson, and Mayor Naugle. NAYS: None.

Contract Award – Tenex Enterprises, Inc. – NCIP Project 10616 - (M-7)
Middle River Terrace Decorative Street Posts

Commissioner Teel stated that she had pulled this item, and stated it was her understanding that this was an NCIP Program which was a carryover from 2002/2003.

Hal Barnes, Engineering Design Manager, stated that this grant had been awarded during the 2002/2003 cycle. Commissioner Teel asked if a breakdown of funds could be provided for this project. Mr. Barnes explained that the total cost of the project was \$58,495, and was made up of \$34,795 NCIP monies. He stated that CDBG Funds were contributing \$23,560, and \$140 from the Association. He further stated that \$11,000 was from CAP points which were used to match the \$34,795.

Commissioner Teel asked if CDBG Funds could be explained. Mr. Barnes explained those funds were Community Development Block Grants which were allocated to certain communities within the City from the Federal Government. Commissioner Teel asked what was the actual expenditure for the City. Mr. Barnes stated the \$34,795 was the City funding from NCIP. He further explained that the CAP points were like imaginary dollars and were used to match the NCIP contribution. If the CAP points were not available, Mr. Barnes explained there would have to be a match for the \$58,495.

Nina Randall stated this was going on Dixie Highway from the Bridge to 14th Street. She explained they were using their grants to improve the Dixie Highway area because it was the gateway to their community. She added that they had spent their own funds and used their energies to beautify the area. She explained they had chosen a design which matched the bordering neighborhoods so there would be a unified effect between the

two neighborhoods. She further stated that the improvements done had added to the community and the tax base of the City.

Commissioner Teel stated that she had received a lot of e-mails from individuals suggesting they look for other ways to save money during the tough budgetary times. She felt they needed to find monies to help with public safety or capital improvements, and these types of projects could possibly be postponed during these difficult times so there could be less impact on people's jobs. She asked if the neighborhood would be willing to forego the poles for a temporary period of time, and those funds could possibly be used to help with the budgetary shortfalls.

Ms. Randall stated she had spoken to some individuals in the community, and the answer to that question was that they had written to the Commission stating that the police and fire departments should not have to bear the burden of the City's shortfall, nor should other City employees. She further stated that this was a deferred grant from 2002, and if postponed then things should be done equitably. Commissioner Teel stated they needed to find every penny they could in any place possible to help with the budget. She stated that she appreciated the neighborhood's thoughtfulness.

Commissioner Hutchinson asked if only residents had attended the CAP meetings or were businesses also present. Ms. Randall stated only residents had attended the meetings. Commissioner Hutchinson stated she had received a lot of e-mails regarding the CAP points. She stated that they had both businesses and residents which participated in the East CAP Program, but they had been told that the businesses could not incur the CAP points.

Bruce Chatterton, Planning and Zoning Services Manager, stated that his department had not created the policy, but they had been asked to enforce it. He stated that the policy given to them by the NCIP staff was that one had to have a residence in the area. He stated that CAP was a neighborhood driven program. He stated obviously commercial was part of the neighborhood, but they had felt to avoid confusion it should be based on households, opposed to businesses.

Commissioner Hutchinson stated that in the south area they had encouraged businesses and residents to attend the CAP meetings. Mr. Chatterton agreed they had encouraged everyone to attend. Commissioner Hutchinson suggested that possibly the Commission should review this matter once again since there was a lot of controversy surrounding it.

Commissioner Moore stated that the business person should attend the meetings and be considered. He stated that a couple of issues bothered him regarding this matter. He congratulated Middle River in their efforts over the past years. He stated that this Civic Association was going to receive Community Development Block Grant Funds, and the community had to have an income requirement in order to be designated for such funds. Earlier today, another Civic Association had stated that they did not want to see low income housing opportunities built in their community because of the good of their community. Basically, they had stated that individuals were walking through their neighborhoods giving them an unsafe feeling. He asked if this Civic Association was at the point where they believed they did not want affordable housing units built within their Association boundaries.

Ms. Randall stated that in speaking for herself, she had no objection to low income housing and always had supported scattered housing because if the community wanted to see everyone brought up "from their boot straps," they could not have the ugly places for low income individuals separated from the community. She felt they needed to be scattered throughout the City. She encouraged the Commission to make it a requirement for the developers that a certain percentage of the units should be designated for low income.

Commissioner Moore asked if the community was receiving these block grant funds because it was for a roadway improvement.

Ms. Outlaw replied that an area had to have a census track showing a predominant of low to moderate income individuals living within their boundaries. She further stated that she did not know the population for this particular area, but it would have had to meet the minimum criteria in order to obtain the block grant monies.

Commissioner Moore asked if the previous Civic Association who had spoken earlier today met such requirements. Ms. Outlaw stated she would obtain the information, but she was sure they did.

Commissioner Trantalis stated that he understood Commissioner Moore's feelings regarding the comments made earlier today by a member of another Association. He did not think the person had said they did not want low income or affordable housing in South Middle River, but had stated that they did not need any more because he felt the area had their share of such housing. He did not think the individual was attempting to slight any person of a low or moderate income.

Commissioner Moore left the meeting at approximately 6:52 p.m.

Commissioner Trantalis stated that the lion's share of the funding for this project was coming from a Federal source. Mr. Barnes stated that the \$23,560 was coming from the Federal CDBG. Commissioner Trantalis asked if this was turned down would these funds go towards police and fire. Mr. Barnes replied it would not. Commissioner Trantalis stated they needed to save money, but he felt the Commission should approve this project since half the funds were coming from other sources, and he would not want to lose those monies. He felt the whole point was to spruce up the streets which would encourage other outside investment for the area, which in turn would increase the tax value of the area and bring money into the City.

Motion made by Commissioner Hutchinson and seconded by Commissioner Trantalis to approve this item. Roll call showed: YEAS: Commissioners Trantalis, Hutchinson and Mayor Naugle. NAYS: Commissioner Teel.

**Settlement Agreement – Broadview Park Water Company -
Settlement of Unpaid Water Bills**

(M-12)

Commissioner Hutchinson stated that she had pulled this item, and asked what penalties were involved.

Frank Coulter, Public Services, stated that it depended on how they had been calculated. He explained when they first began negotiating, they had calculated to make them as large as possible and they had gotten them to the low 200's. He explained further they had been applying payments to the penalties and not to the premium.

Commissioner Moore returned to the meeting at approximately 6:55 p.m.

Commissioner Hutchinson asked if any penalties were going to be paid to the City or just the \$150,000. Mr. Coulter replied only the \$150,000.

Commissioner Trantalis left the meeting at approximately 6:55 p.m.

Motion made by Commissioner Hutchinson and seconded by Commissioner Moore to approve this item. Roll call showed: YEAS: Commissioners Teel, Moore, Hutchinson and Mayor Naugle. NAYS: None.

Commissioner Trantalis returned to the meeting at approximately 6:56 p.m.

MOTIONS

Settlement of General Liability File No. GL 99-859B (M-13)
(Equicredit Corporation of America)

A motion authorizing the proper City officials to settle General Liability File No. GL 99-859B with Equicredit Corporation of America.

Motion made by Commissioner Hutchinson and seconded by Commissioner Teel to approve the settlement as recommended. Roll call showed: YEAS: Commissioners Teel, Moore, Hutchinson, Trantalis and Mayor Naugle. NAYS: None.

Settlement of General Liability File No. GL 02-129 (M-14)
(Paul Gessow)

A motion authorizing the proper City officials to settle General Liability File No. GL 02-129 with Paul Gessow.

Motion made by Commissioner Hutchinson and seconded by Commissioner Moore to approve the settlement as recommended: Roll call showed: YEAS: Commissioners Teel, Trantalis, Moore, Hutchinson and Mayor Naugle. NAYS: None.

PUBLIC HEARINGS

**Certificate of Public Convenience and Necessity -
Lauderducks, Inc.****(PH-1)**

A public hearing to consider the application of Lauderducks, Inc. to operate four (4) amphibious sightseeing vehicles over irregular routes within the City, pursuant to Sections 27-191 and 27-192 of the Code of Ordinances. Notice of public hearing was published November 20 and 27, 2003. (Also see Item M-3 on this Agenda)

Motion made by Commissioner Moore and seconded by Commissioner Hutchinson to close the public hearing. Roll call showed: YEAS: Commissioners Teel, Trantalis, Moore, Hutchinson and Mayor Naugle. NAYS: None.

Commissioner Teel asked what were the dimensions of the vehicles being used. Mr. Bekoff replied they were 35' x 8' 5". Mayor Naugle read the dimensions in the back-up material which had been provided and stated the vehicles were 33' 10" long, 11' 9" high, and 8' 5" for the beam.

Commissioner Hutchinson returned at approximately 6:58 p.m.

Commissioner Teel stated that in reading the minutes of the Marine Advisory Board meeting, comments had been made that these vehicles were clumsy in the water. Mr. Bekoff stated that he was used to boats with steerable drives which spin around on a dime. In fact, the "Ducks" had a revised Coast Guard approved rudder system installed and would pivot on the nose of the boat. He stated he wanted to retract his statement about the vehicles being clumsy. Commissioner Teel asked for further details regarding noise. Mr. Bekoff explained that the vehicles were as loud as a heavy pick-up truck with a gasoline engine.

Commissioner Teel asked what routes were to be used by these vehicles. Mr. Bekoff explained they would go north along the Beach as far as Sebastian Street, turn around and go south on A1A/Seabreeze, west on Las Olas Boulevard to Andrews Avenue, north on Andrews Avenue, turn west on Second Street through the Arts and Entertainment District past the Performing Arts Center, turn left on 7th Avenue, and turn towards the Colee Hammock Marina. He stated they would then go down the New River into New River Sound, south on the Intracoastal Waterway, and exit at 15th Street ramp, west on 15th Street to Cordova to 17th Street, over the Bridge, and back north on A1A. He further stated that when special events occur, they would go north on 15th Avenue to Broward Boulevard, west to 7th Avenue. Today, he stated since it was Christmas on Las Olas, they had gone east on Las Olas Boulevard and had cut down around the back of the Cheesecake Factory and SE 4th Street.

Commissioner Moore introduced the following resolution:

RESOLUTION NO. 03-179

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA, AUTHORIZING THE ISSUANCE OF FOUR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY TO LAUDERDUCKS, INC. TO OPERATE FOUR SIGHTSEEING VEHICLES PURSUANT TO SECTIONS 27-191 AND 27-192 OF THE CODE OF ORDINANCES.

Which resolution was read by title only. Roll call showed: YEAS: Commissioners Teel, Trantalis, Moore, Hutchinson and Mayor Naugle. NAYS: None.

Rezone RS-8 to CF-H – Saint John United Methodist Church (PZ Case No. 17-Z-03) (PH-2)

At the October 15, 2003 Planning and Zoning Board regular meeting, the following application was approved by a vote of 8-0. Notice of public hearing was published November 20 and 27, 2003.

Applicant: Saint John United Methodist Church
Request: Rezone property from RS-8 to CF-H
Location: 1520 N.W. 5 Street

Motion made by Commissioner Moore and seconded by Commissioner Hutchinson to close the public hearing. Roll call showed: YEAS: Commissioners Teel, Trantalis, Moore, Hutchinson, and Mayor Naugle. NAYS: None.

Commissioner Moore stated that he was a member of this congregation.

Commissioner Hutchinson introduced the following ordinance on first reading:

ORDINANCE NO. C-03-43

AN ORDINANCE CHANGING THE UNIFIED LAND DEVELOPMENT REGULATIONS OF THE CITY OF FORT LAUDERDALE, FLORIDA, SO AS TO REZONE FROM RS-8 TO CF-H, LOTS 1 THROUGH 4, LOTS 6 AND 26, BLOCK 4, "DORSEY PARK 1ST ADDITION", ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 21, PAGE 30, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, LOCATED ON THE SOUTH SIDE OF NORTHWEST 5TH STREET, BETWEEN NORTHWEST 15TH TERRACE AND NORTHWEST 15TH AVENUE, IN FORT LAUDERDALE, BROWARD COUNTY, FLORIDA, AND AMENDING THE OFFICIAL ZONING MAP AND SCHEDULE "A" ATTACHED THERETO TO INCLUDE SUCH LANDS.

Which ordinance was read by title only. Roll call showed: YEAS: Commissioners Teel, Trantalis, Moore, Hutchinson, and Mayor Naugle. NAYS: None.

**Historic Designation – City of Fort Lauderdale -
403 Tarpon Terrace (HPB Case No. 29-H-02)**

(PH-3)

A public hearing to consider a resolution granting historic designation for landmark status to the property located at 403 Tarpon Terrace, which was recommended for approval December 9, 2002 by the Historic Preservation Board by a vote of 7-0. On April 3, 2003, the City Commission deferred consideration of this item to May 6, 2003 by a vote of 4-0; on May 6, 2003, the City Commission deferred consideration of this item to July 1, 2003 by a vote of 5-0; on July 1, 2003, the City Commission deferred consideration of this item to September 16, 2003 by a vote of 5-0; and on September 16, 2003, the City Commission deferred consideration of this item to December 2, 2003 by a vote of 5-0.

Applicant: City of Fort Lauderdale
Request: Historic designation (landmark) status
Location: 403 Tarpon Terrace

Motion made by Commissioner Hutchinson and seconded by Commissioner Teel to defer this matter until March 16, 2004 at 6:00 p.m.

Commissioner Trantalis stated that this matter had first come before the Commission on December 9, 2002, (April 3, 2003) and these items had constantly been deferred since that time. He stated the Historic Preservation Board had unanimously voted to designate these structures, and asked why they were constantly postponing these items. He felt they needed to come to some sort of closure regarding these matters, and respect the recommendations made by the Historic Preservation Board. He asked if the Commission would consider voting in favor of the recommendation made instead of constantly deferring the items since there was no prospect of a resolution for any of the items. He reiterated that the items were being deferred, but with no direction or guidelines. He stated every time the items were deferred, they were pushing them closer to the ultimate outcome of demolition.

Mayor Naugle stated that if an applicant asked for a deferral, they usually granted the request. He stated they could reiterate that this would be the last deferral. He stated further that the back-up information indicated they were hopeful that the City would arrive at procedures to assist with the designations. He explained this was zoning in progress, and while the deferrals were taking place the homes were being protected and were not eligible for Certificates of Appropriateness for Demolition. Essentially, the deferrals were the same as the designations for the short term. He stated that all three buildings were being maintained, and due to the City's interest in them, a plan was being developed for one of them regarding preservation.

Cecelia Hollar, Director Construction Services, stated that they had a hold on any permits for these properties and demolition could not take place at this time. She stated there was zoning in progress and the properties were not at risk. She stated that the property owners had indicated that their desire to defer was not due to any implications towards demolition, but they wanted to find ways to preserve the properties for their

benefit and the benefit of the City. She stated their department had developed a summary report of incentives for preservation of historic properties, and the information would be sent to the Commission in a Friday memo. Then, discussions could be held at a future Commission Conference meeting. She stated there had been no indication from the property owners that this was a delay tactic, other than to assist them in doing what the City wanted them to do.

Commissioner Trantalis asked what was the point of continuing to defer these items in incremental time slots, and why not defer for longer periods of time. Ms. Hollar explained that they should encourage a resolution, and had an indication from the property owners that they were almost at the point where they were ready to understand the meaning of having their properties designated, and offer suggestions regarding incentives. She suggested that the items be deferred for 60 days. She felt deferring them until March would supply sufficient time for resolution.

Roll call showed: YEAS: Commissioners Teel, Trantalis, Moore, Hutchinson and Mayor Naugle. NAYS: None.

**Historic Designation – City of Fort Lauderdale – 828 S.E. 4 Street (PH-4)
(HPB Case No. 30-H-02)**

A public hearing to consider a resolution granting historic designation for landmark status to the property located at 828 S.E. 4 Street, which was recommended for approval December 9, 2002 by the Historic Preservation Board by a vote of 7-0. On April 3, 2003, the City Commission deferred consideration of this item to May 6, 2003 by a vote of 4-0; on May 6, 2003, the City Commission deferred consideration of this item to July 1, 2003 by a vote of 5-0; on July 1, 2003, the City Commission deferred consideration of this item to July 1, 2003 by a vote of 5-0; on July 1, 2003, the City Commission deferred consideration of this item to September 16, 2003 by a vote of 5-0; and on September 16, 2003, the City Commission deferred consideration of this item to December 2, 2003 by a vote of 5-0.

Applicant: City of Fort Lauderdale
Request: Historic designation (landmark) status
Location: 828 S.E. 4 Street

Motion made by Commissioner Moore and seconded by Commissioner Hutchinson to defer this matter until March 16, 2004 at 6:00 p.m. Roll call showed: YEAS: Commissioners Teel, Trantalis, Moore, Hutchinson and Mayor Naugle. NAYS: None.

**Historic Designation – City of Fort Lauderdale – 833 North Rio Vista Boulevard (PH-5)
(HPB Case No. 31-H-02)**

A public hearing to consider a resolution granting historic designation for landmark status to the property located at 833 North Rio Vista Boulevard, which was recommended for approval December 9, 2002 by the Historic Preservation Board by a vote of 7-0. On April 3, 2003, the City Commission deferred consideration of this item to May 6, 2003 by a vote of 4-0; on May 6, 2003, the City Commission deferred consideration of this item to July 1, 2003 by a vote of 5-0; and on September 16, 2003,

the City Commission deferred consideration of this item to December 2, 2003 by a vote of 5-0.

Applicant: City of Fort Lauderdale
Request: Historic designation (landmark) status
Location: 833 North Rio Vista Boulevard

Motion made by Commissioner Moore and seconded by Commissioner Hutchinson to defer this matter until March 16, 2004 at 6:00 p.m. Roll call showed: YEAS: Commissioners Teel, Trantalis, Moore, Hutchinson and Mayor Naugle. NAYS: None.

Amend Section 26-8 – Impoundment of Vehicles

(O-1)

An ordinance amending Section 26-8 of the Code of Ordinances, entitled “Impoundment of Vehicles,” providing for severability, providing for conflicts, and providing for an effective date. Ordinance No. C-03-41 was published November 8, 2003, and passed on first reading November 18, 2003 by a vote of 5-0.

Commissioner Moore introduced the following ordinance on second reading:

ORDINANCE NO. C-03-41

AN ORDINANCE AMENDING SECTION 26-8, IMPOUNDMENT OF VEHICLES, OF THE CODE OF ORDINANCES OF THE CITY OF FORT LAUDERDALE, FLORIDA, PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR AN EFFECTIVE DATE.

Which ordinance was read by title only.

Mayor Naugle stated that a settlement had been made today regarding where property had been taken, and asked if the City Attorney was comfortable that the City had the ability to go on private property and impound vehicles. The City Attorney replied that this ordinance gave them as much comfort as they could expect. He further stated this would allow them to go on private property and tow derelict vehicles. He continued stating that the only exposure they would have would be the possibility of trespassing.

Roll call showed: YEAS: Commissioners Teel, Trantalis, Moore, Hutchinson and Mayor Naugle. NAYS: None.

Amend Ordinance No. C-75-103 – Membership of the Citizens Board of Recognition

(O-2)

An ordinance amending Ordinance No. C-75-103 to revise the membership of the Citizens Board of Recognition by adding two appointments as follows: one past honoree from one of the categories that requires City residency excluding Exemplary Former City Employee; and Council of Fort Lauderdale Civic Associations president or designee. Ordinance No. C-03-42 was published November 22, 2003 and passed on first reading by a vote of 5-0.

Commissioner Moore introduced the following ordinance on second reading:

ORDINANCE NO. C-03-42

AN ORDINANCE AMENDING ORDINANCE NO. C-75-103, EXPANDING THE MEMBERSHIP OF THE CITIZENS BOARD OF RECOGNITION TO INCLUDE ONE PAST HONOREE FROM ANY EXISTING AWARD CATEGORY OTHER THAN EXEMPLARY FORMER CITY EMPLOYEE AND THE PRESIDENT OF THE COUNCIL OF FORT LAUDERDALE CIVIC ASSOCIATIONS, OR THE PRESIDENT'S DESIGNEE.

Which ordinance was read by title only. Roll call showed: YEAS: Commissioners Teel, Trantalis, Moore, Hutchinson and Mayor Naugle. NAYS: None.

**Amendment to the Pay Plan – Unpaid Furlough Days for (O-3)
Non-bargaining Unit Employees (Management and Confidential)**

An ordinance amending Schedules I and II of the Pay Plan by establishing unpaid furlough days for certain employees; providing for pro-ration of the number of furlough days and deduction of pro-rated unused furlough days from vacation leave balance, sick leave balance and final termination pay balance for certain employees; providing for reimbursement of a pro-rated portion of the furlough days taken in excess of employee's allotment of furlough days as to certain employees; providing for non-applicability of furlough days as to certain employees; and providing for effective date and sunset date. Notice of proposed ordinance was published November 22, 2003.

Commissioner Hutchinson introduced the following ordinance on first reading:

ORDINANCE NO. C-03-44

AN ORDINANCE OF THE CITY OF FORT LAUDERDALE, FLORIDA AMENDING SCHEDULES I AND II OF THE PAY PLAN BY ESTABLISHING UNPAID FURLOUGH DAYS FOR CERTAIN EMPLOYEES; PROVIDING FOR PRORATION OF THE NUMBER OF FURLOUGH DAYS AND DEDUCTION OF PRORATED UNUSED FURLOUGH DAYS FROM VACATION LEAVE BALANCE, SICK LEAVE BALANCE AND FINAL TERMINATION PAY BALANCE FOR CERTAIN EMPLOYEES; PROVIDING FOR REIMBURSEMENT OF A PRORATED PORTION OF THE FURLOUGH DAYS TAKEN IN EXCESS THE EMPLOYEE'S ALLOTMENT OF FURLOUGH DAYS AS TO CERTAIN EMPLOYEES; PROVIDING FOR NON-APPLICABILITY OF FURLOUGH DAYS AS TO CERTAIN EMPLOYEES; AND PROVIDING FOR EFFECTIVE DATE AND SUNSET DATE.

Which ordinance was read by title only. Roll call showed: YEAS: Commissioners Teel, Trantalis, Moore, Hutchinson and Mayor Naugle. NAYS: None.

CITIZEN PRESENTATIONS

Irene K. Brown – Trash Transfer Station

Irene Brown stated she was in the plant industry for over 35 years, and she and her husband wanted the Commission to reconsider the decision to close the Trash Transfer Station. She stated that they used the station frequently because of their business. She further stated that an alternative would be for them to use the larger dumps which catered to larger companies. She continued stating that there was a difference between paper and reality. She stated further that by closing the station, they would not be giving the smaller companies the ability to pick up trash and deliver it to the station. She continued stating that the yard trash receptacles used were inadequate.

Mrs. Brown stated that she had also spoken to the employees at the Trash Transfer Station and they had informed her that it was not a financial winning proposition, but they also had ideas how the station could be turned into a profit. One idea was that if the station was opened for longer hours and less days, and the fee raised, the situation would be more feasible. She stated that with the closing of the station, illegal dumping would occur giving rise to rodent infestation and take away from the beauty of the City. She, therefore, asked the Commission to reconsider their decision in regard to this matter. She also stated that if a hurricane would occur, how would the City begin to get rid of their debris. She felt at the cost of money, they were turning a service into a disservice.

Mayor Naugle stated that the Commission had a lengthy discussion regarding this matter, but the Commission had still decided to close the facility. He explained they would retain their license there and use it for City operations, so in the case of inclement weather the facility would be available.

Plat Approval for “Manors Plat” – Drac Development
(PZ Case No. 29-P-02)

(R-1)

At the October 15, 2003 Planning and Zoning Board regular meeting, the following application was approved by a vote of 8-0:

Applicant: Drac Development
Request: Plat approval for “Manors Plat”
Location: Northeast corner of Dixie Highway and N.E. 17 Court

Commissioner Moore introduced the following resolution:

RESOLUTION NO. 03-180

A RESOLUTION OF THE CITY COMMISSION OF THE
CITY OF FORT LAUDERDALE, FLORIDA APPROVING
A PLAT KNOWN AS "MANORS PLAT."

Which resolution was read by title only.

Mickey Aldrich, surveyor, stated she was representing the applicant and would answer any questions the Commission might have regarding this matter.

Commissioner Trantalis asked if an agreement had been reached between the owners and the neighborhood Association regarding any concessions that the owners were willing to make concerning the improvement of the specified area in connection with the Commission approving this plat.

Ms. Aldrich replied that she was aware they had met, but was not aware of any agreement that might have been reached.

Commissioner Trantalis reiterated that he had received a note from the President of the Middle River Terrace Homeowners Association that an agreement had been reached, but no one appeared to be present at tonight's meeting to verify this. He explained that the letter dealt with landscaping being added to the property.

David Randall, President of Drac Development, stated that he had reached an agreement with Tim Smith to implement the addition of 4 Oak trees consisting of 16' in height, and they would be planted adjacent to their property. He stated the only problem would be that they would have to receive permission for such plantings, and if a permit was needed the Association would be responsible in obtaining it. He reiterated that they had only agreed to plant and purchase them.

Commissioner Trantalis stated that it was great that landscaping was to be added to the area, but he felt it would be good if the people who owned the land gave permission for that to be done. Mr. Randall replied that the Association was the one who had to secure such permission.

Commissioner Trantalis asked what type of project was going to be built on this property. Mr. Randall explained there would be 8 townhouses built at the site. Ms. Aldrich explained further that the site plan was presently being reviewed. Mr. Randall stated they were ready to submit applications for building permits.

Kevin Erwin, Planning and Zoning, stated that the Commission would not review the project. He explained it was a townhouse development and only DRC approval was required. He explained there was no final DRC approval as of this time.

Roll call showed: YEAS: Commissioners Teel, Trantalis, Moore, Hutchinson and Mayor Naugle. NAYS: None.

Executive Airport – Supplemental Joint Participation Agreement (JPA) – Florida Department of Transportation (FDOT) – Security Enhancements – Facilities Management System (R-2)

A resolution authorizing the proper City officials to execute a Supplemental JPA with FDOT to accept \$52,977 and to amend the project description of this grant fund from partial funding of a facilities management system for Executive Airport to 100 percent of the costs for security improvements/measures with no required matching funds. (Also see Items R-3 and R-4 on this Agenda)

Commissioner Moore introduced the following resolution:

RESOLUTION NO. 03-181

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA, AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A SUPPLEMENTAL JOINT PARTICIPATION AGREEMENT WITH THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION, TO AMEND THE JOINT PARTICIPATION AGREEMENT WITH THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION, FOR AN AIRFIELD FACILITIES MANAGEMENT SYSTEM AT THE EXECUTIVE AIRPORT AND REDIRECT GRANT MONEY IN THE AMOUNT OF \$52,977.00 FOR SECURITY IMPROVEMENTS (FINANCIAL PROJECT NO.: 236160-1-94-01; CONTRACT NO.: AE386).

Which resolution was read by title only. Roll call showed: YEAS: Commissioners Teel, Trantalis, Moore, Hutchinson and Mayor Naugle. NAYS: None.

Executive Airport-Supplemental Joint Participation Agreement (JPA) – Florida Department of Transportation (FDOT) – Security Enhancements – Aircraft Ramp (R-3)

A resolution authorizing the proper City officials to execute a Supplemental JPA with FDOT to accept \$508,461 and to amend the project description of this grant fund from construction of an aircraft ramp to 100 percent of the costs for security improvements/measures with no required matching funds. (Also see Items R-2 and R-4 on this Agenda)

Commissioner Moore introduced the following resolution:

RESOLUTION NO. 03-182

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA, AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A SUPPLEMENTAL JOINT PARTICIPATION AGREEMENT WITH THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION, TO AMEND THE JOINT PARTICIPATION AGREEMENT WITH

THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION FOR THE CONSTRUCTION OF AN AIRPORT APRON, AND REDIRECT GRANT MONEY IN THE AMOUNT OF \$508,461.00 TO SECURITY IMPROVEMENTS AT THE EXECUTIVE AIRPORT (FINANCIAL PROJECT NO.:411025-1-94-01; CONTRACT NO.:AK289).

Which resolution was read by title only. Roll call showed: YEAS: Commissioners Teel, Trantalis, Moore, Hutchinson and Mayor Naugle. NAYS: None.

Executive Airport – Joint Participation Agreement (JPA) - (R-4)
Florida Department of Transportation (FDOT) – Security Enhancements

A resolution authorizing the proper City officials to execute a JPA with FDOT to accept \$688,000 of grant funding for 100 percent of the costs for security improvements/measures with no required matching funds. (Also see Items R-2 and R-3 on this Agenda).

Commissioner Moore introduced the following resolution:

RESOLUTION NO. 03-183

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA, AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A JOINT PARTICIPATION AGREEMENT WITH THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION, RE-DIRECTING A GRANT OF \$688,000.00 FOR 100% OF THE COSTS FOR SECURITY IMPROVEMENTS AT THE EXECUTIVE AIRPORT WITH NO REQUIRED MATCHING FUNDS (FINANCIAL PROJECT NO.: 407678-1-94-01).

Which resolution was read by title only. Roll call showed: YEAS: Commissioners Teel, Trantalis, Moore, Hutchinson and Mayor Naugle. NAYS: None.

Lot Clearing and Cleaning Charges (R-5)

A resolution authorizing the imposition of liens against certain properties for costs associated with clearing and removal of debris located thereon.

Commissioner Moore introduced the following resolution:

RESOLUTION NO. 03-184

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA, ASSESSING AGAINST THE PROPERTIES DESCRIBED IN THE SCHEDULE ATTACHED HERETO THE COST AND EXPENSE OF CLEARING LOTS FOUND TO HAVE AN UNLAWFUL OR

EXCESSIVE ACCUMULATION OF RUBBISH, DEBRIS OR TRASH UNDER CHAPTER 18 OF THE CODE OF ORDINANCES OF THE CITY OF FORT LAUDERDALE, FLORIDA AND IMPOSING SPECIAL ASSESSMENT LIENS AGAINST SUCH PROPERTIES FOR THE COST AND EXPENSE INCURRED IN CLEANING AND CLEARING SAME; AUTHORIZING AND DIRECTING THE PROPER CITY OFFICIALS TO RECORD A NOTICE OF SPECIAL ASSESSMENT LIEN IN THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA.

Which resolution was read by title only. YEAS: Commissioners Teel, Trantalis, Moore, Hutchinson and Mayor Naugle. NAYS: None.

Building Board-Up and Securing Charges

(R-6)

A resolution authorizing the proper City officials to impose liens against certain properties for costs associated with boarding and securing the buildings.

Commissioner Moore introduced the following resolution:

RESOLUTION NO. 03-185

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA, CHARGING AND ASSESSING AGAINST THE PROPERTIES DESCRIBED IN THE SCHEDULE ATTACHED HERETO THE COST AND EXPENSE OF SECURING AND BOARDING UP BUILDINGS LOCATED THEREON WHICH WERE FOUND UNSAFE UNDER SECTION 111 OF THE FLORIDA BUILDING CODE AND IMPOSING LIENS AGAINST SUCH PROPERTIES; AUTHORIZING AND DIRECTING THE PROPER CITY OFFICIALS TO RECORD CLAIMS OF LIEN AGAINST THE PROPERTIES IN THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA.

Which resolution was read by title only. YEAS: Commissioners Teel, Trantalis, Moore, Hutchinson and Mayor Naugle. NAYS: None.

Amend Advisory Board Rules – Add Rule Regarding Qualification to Serve and Persons Convicted of a Crime

(R-7)

A resolution amending the Advisory Board Rules created by Resolution No. 96-133 and amended by Resolution No. 97-51 to include a rule regarding qualification to serve and persons convicted of a crime.

Commissioner Moore introduced the following resolution:

RESOLUTION NO. 03-186

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA, AMENDING RESOLUTION NO. 96-133 APPROVING RULES PERTAINING TO ADVISORY BOARDS, AS AMENDED BY RESOLUTION NO. 97-51, TO INCLUDE A RULE REGARDING QUALIFICATION TO SERVE AND PERSONS CONVICTED OF A CRIME.

Which resolution was read by title only.

Mayor Naugle questioned the wording of this. He stated that it appeared that the felony had to involve dishonesty or false statement, and asked if that was the intent. The City Attorney replied that it was the intent, and further stated that the dishonest statement involved a felony. Mayor Naugle further stated that he felt it should be a felony or crime. He explained this had been done because of a registered sexual offender being appointed to an advisory board. He felt it would not cover that type of incident. The City Attorney stated they would have been guilty of a felony. Mayor Naugle stated he felt something was missing from the wording.

Commissioner Trantalis stated that it should read "felony or false statement." The City Attorney stated he thought they were referring to the language in the resolution, but now realized they were talking about the language in the form. He stated the language in the resolution did use the word "or." Commissioner Moore stated that the wording in the resolution was correct, but the wording in the application should be reviewed. The City Attorney stated that if the Commission adopted the resolution, they would conform the application to the resolution.

YEAS: Commissioners Teel, Trantalis, Moore, Hutchinson and Mayor Naugle. NAYS: None.

**Dispute Resolution/Special Master's Recommendation
For Lauderdale Beach Hotel LLC Historic Designation
(HPB Case No. 27-H-01) and Site Plan (PZ Case No. 51-R-01
and 1-DR-02)**

(M-15)

The City Attorney stated that this item was set for a hearing. A motion had been made to reconsider an action the Commission had previously taken regarding the Lauderdale Beach Hotel, and tonight was the date set for the hearing as to whether or not they would reconsider their previous action. He reiterated that the question before the Commission this evening was the motion to reconsider.

Motion made by Commissioner Trantalis and seconded by Commissioner Moore to reconsider the action taken by the City Commission on November 19, 2002 in connection with the Lauderdale Beach Hotel.

Commissioner Teel stated she was confused and asked for some further clarification of the matter.

The City Attorney further stated that the issue was whether or not to reconsider the action that had previously been taken by the Commission. If such motion failed, then the action would not be reconsidered, and there would be nothing else to hear.

Commissioner Hutchinson asked what if the motion passed. Commissioner Moore stated that the discussion could be held tonight, or a date certain could be set for such discussion. At this moment, they were only discussing whether the matter was to be reconsidered or not. He stated it would be appropriate for everyone to have an understanding of what had been passed before any further voting be done.

The City Attorney stated that earlier today he had sent a memorandum to the City Commission, along with a copy of the mediated settlement agreement and what issues were before the Commission. He further stated they had approved a mediated settlement agreement in November, 2002, and that had been challenged as to whether Smull vs. Town of Jupiter applied. He stated it was his opinion that this case had no application because this was not a quasi-judicial hearing. He explained a motion had been made to reconsider, but in the meantime the City had been sued by an historical preservation board, and two-named individuals. After that, the developer sued the City. Therefore, there were 2 lawsuits pending. He stated if the Commission reconsidered and denied the project, it basically would undo the approvals the Commission had granted over one year ago. He further stated that "bad facts made bad law," and in this case there was bad facts. He recommended that the City not reconsider this issue. He stated there was an historical preservation trust that had sued the City, and if they were correct in their assertions and prevailed in their lawsuit, then if the City did not reconsider, he felt they would not be in the position to suffer any damages. If they would prevail, the hotel would be stopped based upon the theories put forward by them. In the event they did not prevail and the Commission reconsidered the approval previously given, there was a good likelihood then that the City would suffer damages.

The City Attorney stated his recommendation was to let the Preservation Trust fight the battle.

Commissioner Moore clarified that a vote "no" on the motion would continue to allow the Trust to handle the suit. A vote "yes" for reconsideration of the development would create the possibility of having to take a position on that development. The City Attorney confirmed.

Commissioner Trantalis clarified that the vote to reconsider could also be followed by a vote to still grant the permit. The first vote to be taken was to simply to entertain a discussion as to whether or not the matter would be reconsidered. A vote "yes" would not be a final vote on whether or not to reconsider, but would only open up discussion. Mayor Naugle stated it would be a final vote. Commissioner Trantalis corrected his statement and stated it would be a final vote regarding the issuance of the permit, and would be a vote to simply reconsider. Commissioner Moore confirmed.

Commissioner Teel asked if the reconsideration would take place this evening. Mayor Naugle stated the matter would have to be agreed upon or a different date scheduled. The City Attorney confirmed.

Commissioner Hutchinson asked when the Commission voted last was that not a vote to reconsider. Mayor Naugle confirmed, and stated they were now to vote to undo the

approval and discuss the matter once again. The City Attorney stated that there had not been a motion to reconsider the last time, and the motion was to set a hearing for a future date, which was today's date, for the motion to be reconsidered.

Roll call showed: YEAS: Commissioners Trantalis and Mayor Naugle. NAYS: Commissioners Teel, Moore, and Hutchinson.

Mayor Naugle stated that the motion failed and the item would not be reconsidered.

Commissioner Trantalis stated that for future reference he wanted to ask a question regarding discussions which had been held in the past regarding personal liability of a City Commissioner in connection with votes taken that might have been contrary to advice given by the City Attorney on a given point. He stated this matter was brought up because it was stated that the City Attorney felt they did not have legal authority upon which to reconsider or reverse the issuance of the building permit, if they moved forward and reconsidered and denied the issuance of such permit, they might have been personally liable. If that was the case, it appeared that every time the Commission was told they did not have legal authority upon which to make a decision, they would be open to personal liability. He asked why then have a City Commission if they only needed to ask the City Attorney as to whether something was good or bad, and the Commission's vote would be irrelevant. He asked if some further clarification could be given.

The City Attorney stated that it was a good idea to ask questions of the City Attorney. He explained it did not subject the Commissioners to personal liability. Under Corn vs. Lauderdale Lakes case, under Crimes. Vs. DeKalb Georgia, along with a number of other cases, they had a presumption of correctness when they did whatever they did. On legislative matters, of which this was not, they had absolute immunity under any set of circumstances no matter what is said by the City Attorney. Under administrative matters such as site plans and development review, the Commission was presumed to be correct and had limited liability, and with such presumption if the City Attorney stated that the Commission could not do something because constitutional rights might be violated, which he had not done in this case, and the Commission did it anyway, then they would lose the presumption of immunity and someone could raise the issue and the burden of proof would change. He explained the Commission would have to state why they did what they did, and have to show public safety involvement and the like.

The City Attorney continued stating that in this particular case, he wanted the Commission to take particular note to the fact that they had asked for a written opinion, which was given regarding the case of Smull vs. Town of Jupiter, and in that case he was careful to state that the case had no application in this regard. He stated that was not the only reason this could be reconsidered, and not the only reason to pull a permit. He further stated that he had told the Commission they could not rely on that case for a reconsideration of an action taken by them previously because the action, in his opinion, had not been quasi-judicial. He believed the memorandum had been artfully drafted to protect the Commission the best he could from whatever they might decide to do at a later date.

Commissioner Trantalis stated if they had decided to reconsider this evening and then decided to reverse the issuance of the building permit, then the City Attorney's legal opinion would not have subjected them to the removal of the presumption of personal liability, and it would still be there.

The City Attorney replied that he would argue that the opinion limited itself to the Smull case. Mayor Naugle stated that if a vote was based on something other than Smull, than it would be a whole new ball game. Commissioner Trantalis and the City Attorney confirmed.

Commissioner Trantalis stated that possibly some of the Commissioners might have voted against the reconsideration for fear it would heap upon them personal liability. He further stated that he was bringing this matter up for future cases. He also pointed out that he had spoken with one of the partners of the developer, and he had expressed an interest in working with the Historic Preservation Board in order to negotiate some kind of modification to the proposal which would not happen now. He stated there had been an interest expressed to try to accommodate a public purpose in an attempt to preserve historic structures. He stated further that the individual wanted to make an appointment with the Historic Preservation Board and the Broward County Trust for Historic Preservation.

The City Attorney reiterated that two lawsuits were taking place at this time, and those cases had not gone anywhere so far. He assumed the developer would intervene in the case with the historic preservation trust.

Commissioner Trantalis stated they could proceed with the lawsuits, but the reality was that once the building was built would they tell them to tear it down.

Mayor Naugle stated that has happened before. The City Attorney stated that was a possibility. He further stated that the City's position had been that with the litigation pending, they had stopped approvals for any development permits until the Commission made their decision. After this evening, any approvals the developer received would be on the condition that they proceed at their own risk while the litigation was prevailing. If the developer wants to proceed, they would do so at their own peril. Ultimately, if the Historic Trust wins their lawsuit and the permit invalidated, then they would be back where they were with no liability to the City.

Commissioner Trantalis asked if he was indicating that the actual document of the building permit would have a proviso printed on the document that they would be proceeding at their own peril. The City Attorney replied they had similar circumstances in the past, and what had been done was that with the application for the development permit, they had required that a letter accompany the permit from the lawyer acknowledging the pending of the litigation, and that they would be proceeding at their own peril.

The Acting City Manager asked if they could issue permits absent an approval of the subject minutes. The City Attorney stated that based on the Smull case, it stated "filing with the clerk", and on January 14, 2003 the minutes were filed with the Clerk and placed on the City's website. On January 15, 2003, they were signed by the Mayor even though they had not yet been approved. It had been a formality and for some reason the item had been skipped over in December, but the minutes went through and submitted to the Mayor. In his opinion, even if the Smull case applied the 30 days would have started to run in January.

Mayor Naugle announced that the City Clerk would have that item on the next Commission agenda.

Fort Lauderdale/Hollywood International Airport - Day-Night Average Sound Level Counter (OB)

Commissioner Moore introduced the following resolution:

RESOLUTION NO. 03-187

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA, URGING THE BROWARD COUNTY BOARD OF COUNTY COMMISSIONERS TO ADOPT A SIXTY LDN DAY-NIGHT AVERAGE SOUND LEVEL CONTOUR FOR LAND USE COMPATIBILITY ADJACENT TO THE FORT LAUDERDALE/HOLLYWOOD INTERNATIONAL AIRPORT.

Which resolution was read by title only. YEAS: Commissioners Teel, Trantalis, Moore, Hutchinson and Mayor Naugle. NAYS: None.

Commissioner Hutchinson asked if this could be sent to Dania Beach, Davie and Hollywood.

Advisory Board/Committee Appointments (OB)

The City Clerk announced the appointees/reappointees who were the subjects of this resolution:

Budget Advisory Board	Delores McKinley
Citizens Board of Recognition	E. Birch Willey Eubenia "Genia" D. Ellis
Education Advisory Board	Beth Gillou
Historic Preservation Board	Barbara Walker Niara Sudarkasa, Ph.D*
Insurance Advisory Board	Larry P. Castello
Unsafe Structures and Housing Appeals Board	H. Tom Jones Charles Schneider

Commissioner Moore introduced a written resolution entitled:

RESOLUTION NO. 03-188

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA, APPOINTING BOARD MEMBERS AS SET FORTH IN THE EXHIBIT ATTACHED HERETO AND MADE A PART HEREOF.

Which resolution was read by title only. YEAS: Commissioners Teel, Trantalis, Moore, Hutchinson and Mayor Naugle. NAYS: None.

There being no other further business to come before the Commission, the meeting was adjourned.

At 7:52 P.M., Mayor Naugle adjourned the meeting.

Jim Naugle
Mayor

ATTEST:

Lucy Kisela
City Clerk