

**FORT LAUDERDALE CITY COMMISSION CONFERENCE MEETING**  
**JULY 10, 2012**

| Agenda<br>Item  | Page |
|---|------|
| City Commission Reports   | 8    |
| 1. Symposium on Imitation Drugs (Sale and Distribution of Herbal Incense Products)  | 8    |
| 2. Cumberland Building Mural, 800 East Broward Boulevard  | 8    |
| 3. Undergrounding of Overhead Utility Lines;<br>Special Assessment Program  | 8    |
| 4. DNA Sampling; Criminal Investigations  | 8    |
| 5. Utility Poles  | 9    |
| 6. Homestead Fraud  | 9    |
| 7. Events and Matters of Interest   | 9    |
| OB All Aboard Florida   | 3    |
| I-A South Side School   | 1    |
| I-B Audit Report – South Side School  | 1    |
| I-C Energy Saving Companies   | 3    |
| I-D Broward Boulevard Mobility Hub and Gateway Implementation Project   | 3    |
| I-E Florida League of Cities Board of Directors – Ten Most Populous Cities Seat   | 4    |
| I-F Proposed Lien Settlements – Special Magistrate and Code Enforcement Board Cases   | 4    |
| I-G Issuance of Taxable Special Obligation Bonds, Series 2012, for General Employees and Police and Firefighters Retirement Systems – Funding Unfunded Actuarial Accrued Liability (UAAL) At a Rate of 88 Percent For Both Defined Benefit Pensions (GERS and Police/Fire) and Provide for Refunding of \$30 Million Pension Note for Police and Firefighters Retirement System | 4    |
| I-H Fiscal Year 2013 Proposed Budget  | 7    |
| II-A Audit Report – Bahia Mar   | 7    |
| III-A Communications to the City Commission and Minutes Circulated For the Period Ending July 5, 2012   | 9    |
| III-B Board and Committee Vacancies   | 8    |
| City Manager Reports  | 10   |

**CITY COMMISSION CONFERENCE MEETING      1:35 P.M.      July 10, 2012**

Present:                    Mayor John P. "Jack" Seiler  
                                 Commissioners Bruce G. Roberts, Charlotte E. Rodstrom, Bobby B.  
                                 DuBose and Romney Rogers

Absent:                    City Manager                    Lee Feldman

Also Present:            Assistant City Manager       Stanley Hawthorne  
                                 City Auditor                    John Herbst  
                                 City Clerk                      Jonda K. Joseph  
                                 City Attorney                 Harry A. Stewart  
                                 Sergeant At Arms             Sergeant Mark Renner

**I-A – South Side School Update**  
**I-B – Audit Report – South Side School**

In response to Mayor Seiler, the City Auditor advised that Florida statutes provide that internal audits are exempt from the public records law until they are presented to the governing body which he understands to be at the meeting where the body meets as a group. The Commission needs to decide on how distribution should be handled. The City Attorney indicated if such reports were not made a part of the agenda package, distributed to each member of the Commission individually and then presented at the meeting, it would not be a public record until presented at the meeting.

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Mayor Seiler advised that the City Manager is at a FEMA conference representing the City. He is addressing an outstanding claim from Hurricane Wilma on behalf of the City.

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The City Auditor indicated he was asked to look into some of the causes for delays in this project. Although he was unable to evaluate whether the change orders were warranted, it was possible to assess what took place and make sure that proper procedures were followed. There were not sufficient funds at the onset of the project to complete it in its entirety. It had to be phased to meet available funding and the phasing created a number of slowdowns. The administration at the time did not have a policy of keeping the Commission updated on a regular basis. It is inherent in historic renovation that there will be numerous unforeseen conditions. It would have been better if the architect of record had been responsible for a guaranteed maximum price. However, that is not possible without funding. Project planning was overly optimistic as to how quickly and inexpensively it could be done. Mayor Seiler noted that the architect's contract was entered into March of 2006 which predates this Commission. The City Auditor commented that there were numerous things that came up during the course of the project, for example, problems with the exterior of the building, with the roof and leaky windows all of which were not identified early on.

In response to Mayor Seiler, the City Auditor advised that in March of 2004, the total cost estimate for the school and Hardy Park (without land purchase) was \$8.9 million and included a number of funding sources. Albert Carbon, Director of Public Works, advised that the 2004 estimate by Keith and Schnars did not identify the funding sources. In July of 2007, the cost was estimated at \$9.3 million. In July of 2008, it was estimated at \$9.4 million and in 2009, it

was \$9.3 million. The City Auditor indicated the most recent estimate is \$10,259,000. He outlined what is remaining and advised that award of this work is slated for the August 21 meeting. Commissioner DuBose wanted to know the total cost for the school and the park.

In response to Vice Mayor Rodstrom, Mr. Carbon advised that the current bid is for design, bid, build. Assistant City Manager Torriente explained that a guaranteed maximum price is better at the beginning of a project. Because the City does not know the maximum cost, Vice Mayor Rodstrom wanted to look for a bidder that would take that responsibility and make a maximum price bid. Mr. Carbon went on to outline what is contemplated moving forward. In response to Commissioner DuBose, the City Auditor advised that the City had an insurance recovery in 2008 of about \$1.5 million relating to the hurricanes. The funds have not been appropriated. The claim was citywide and not specific to this project. About \$48,000 related to roof work for the school which was done using existing funds within the project.

Commissioner Rogers wanted to learn from this project going forward. He thought perhaps the park and the school should have been addressed as two separate projects, for example. Commissioner Roberts thought one problem was that there was no end-game as to what the school was to be and who was it to serve. Moreover changes were happening along the way. These questions need to be addressed before any more money is expended. Commissioner Rogers inquired about restrictions imposed by grants that were received for the project. The City Auditor indicated there may be ongoing restrictions on use of the property. Deadlines have not been met. Before proceeding with the construction, Commissioner Rogers questioned whether thought should be given to potential uses. The City Auditor agreed that is a key point. If the funding had been available in 2004, the project could have been completed in three years for the original plan of Parks and Recreation operating it. Changes in future use would probably not have occurred because the project would have been done. They occurred because there was time and people had an opportunity to try to change the ultimate direction.

In response to Mayor Seiler, Sandy Smith commented about there being \$50,000 by the Friends of South Side and that they never got to a position where they could raise funds. He went on to raise various questions on the topics discussed along the timeline. In response to Commissioner DuBose, the City Auditor elaborated upon the issue of mold and associated circumstances. Commissioner DuBose wanted something from the City's insurance carrier that documents a clear picture of the situation. Mr. Carbon believed mold was discovered in 2006. Commissioner DuBose wanted to know if there was any mold testing conducted when the City presented its insurance claim for Hurricane Wilma. He stressed that the City needs to secure a true final clearance.

Some discussion ensued on the sequence of occurrences. Mayor Seiler requested an update on August 21. In response to Commissioner Roberts, Mr. Carbon explained that the current outstanding bid is for the outlying buildings that are independent of the school structure; they do not impact the end user. The City Auditor agreed to provide a complete picture for the entire parcel.

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Mayor Seiler noted the City Auditor's contract expires in August. He believed that Mr. Herbst has done an excellent job and wanted to renew his contract. Vice Mayor Rodstrom noted that as employees are reviewed annually, she felt the Commission should review all of their employees as well, with the exception of the City Attorney who is leaving. These matters will be scheduled on the August 21 agenda.

**All Aboard Florida; Florida East Coast Industries****OB**

Mayor Seiler indicated that he asked Eric Swanson of Flagler to make a presentation to the Commission on this project. He reviewed slides on this topic. A copy of the slides is attached to these minutes.

Mr. Swanson responded to various logistical/operational questions and future expansion plans. Studies will be conducted to determine impact on marine traffic. As to station size, the length needs to be 800-1,000 feet. They are just beginning to address parking. He mentioned a system recently completed in Denver that has zero parking as it relies on passengers arriving by mass transit.

**I-D – Broward Boulevard Mobility HUB and Gateway Implementation Project, Downtown Walkability Analysis and Downtown Mobility Hub Joint Development Initiative**

Dana Little of Treasure Coast Regional Planning Council, reviewed slides on these topics. A copy of the slides is attached to these minutes.

Commissioner Rogers raised the point of extending the study area boundary to 7 Street on the south (Downtown Development Authority boundary).

Mark Rickards of Kimley Horn and Associates, reviewed slides on the Downtown Mobility Hub Joint Development Initiative (JDI). A copy of the slides is attached to these minutes.

In response to Commissioner DuBose, Greg Stuart, executive director of Broward Metropolitan Planning Organization, explained that with Florida East Coast (FEC) being private and these projects are public. They have been working with the FEC to a limited degree because they would have to bid on the process. Diana Alarcon, Director of Transportation and Mobility, explained the City is looking for an Request for Qualifications (RFQ) from the JDI that would solicit for public private partnerships. Mr. Stuart indicated the goal is to make the project the best outcome for the City. They hope to coordinate timelines for this project, the FEC and the WAVE.

**I-C – Energy Saving Companies**

Terry Rynard, Assistant Director of Parks and Recreation, reviewed slides on this topic. A copy of the slides is attached to these minutes.

Ms. Rynard responded to questions relating to scope, process and benefit. Vice Mayor Rodstrom was concerned about down-time and inconvenience to citizens. Commissioner DuBose wanted more information on what is part of the cost. Ms. Rynard indicated that the hidden benefits are not included in the guaranteed savings. For example, if the total electric bill at Holiday Park was \$2,000 per month and the guaranteed savings was \$500. If only \$400 is saved, the company pays the \$100 difference. There is a verification model. It is about the energy cost based on the City's history. Commissioner DuBose felt it is about financing a project in order to save money or waiting until there is funding for the project without financing. He believed there must be some underlying expense. Ms. Rynard explained that the savings is immediate, which would not be available if the City waited until there was funding for a project. Mayor Seiler asked the City Auditor and City Attorney to review the concept. In response to Assistant City Manager Torriente, Mayor Seiler indicated that he would not object to staff proceeding to draft the associated RFP, but he wanted a more detail discussion with input from

the City Auditor and City Attorney before it is released. Commissioner Roberts wanted to see specific examples. Vice Mayor Rodstrom felt it would be helpful to gather information from other communities as to what they have done and their savings. Ms. Torriente explained the idea would be to retain a company to partner with the City in looking for potential projects.

Mayor Seiler opened the floor for public comment.

Fred Carlson, 625 Orton Avenue, referred to solar energy and wanted to wait for emerging technology.

### **I-E – Florida League of Cities Board of Directors – Ten Most Populous Cities Seat**

Commissioner DuBose asked if he could be designated to serve on this board. Mayor Seiler did not object. He agreed to serve as an alternate. He wanted to make sure there is no conflict for the upcoming August meeting.

### **I-F – Proposed Lien Settlements – Special Magistrate and Code Enforcement Board**

Item 3 – CE11090946 – 1614 NW 16 Court – Lumax USA LLC, property owner  
Item 4 – CE10090342 – 1700 NW 15 Avenue – Vighnesha LLC, property owner

Commissioner DuBose was concerned about the difference between the lien amounts and that recommended according to the WaterWorks matrix for these properties that were acquired by investors. He wanted more information about the matrix and staff time expended on these cases. It appears that the investors acquired the properties and waited to address the liens. Assistant City Manager Torriente recalled that the matrix was presented to the Commission a few months ago. Commissioner Roberts questioned the settlements being at different percentages. At Commissioner DuBose's request, this item was deferred until the matrix is presented to the August meeting.

### **I-G – Issuance of Taxable Special Obligation Bonds, Series 2012, for General Employees and Police and Firefighters Retirement Systems – Funding Unfunded Actuarial Accrued Liability (UAAL) at a Rate of 88 Percent for Both Defined Benefit Pensions (GERS and Police/Fire) and Provide for Refunding of \$30 million Pension Note for Police and Firefighters Retirement System**

Assistant City Manager Hawthorne noted the question before the Commission is the funding level. The City Manager has recommended eighty-eight percent.

Ed Stull of FirstSouthwest, City's Financial Advisor, referred to the background detail in Commission Agenda Report 12-1177. The estimated savings were calculated assuming the City would be able to invest monies from the bonds at the assumed rate of return for the respective pensions. The assumption that the City will be able to earn that rate of return is a critical assumption. The lower the rate on the taxable bonds the less risk the City has in terms of meeting that target. What is being paid on the taxable bonds has to be earned. Fortunately interest rates have dropped almost a point since this was first discussed in 2011. He elaborated upon changes to Governmental Accounting Standards Board (GASB) regulations and a recent announcement by Moody's as to how they will be treating unfunded liabilities. Generally, there is a lot of concern about unfunded liabilities continuing to grow and that the assumed rates of return may be higher. He felt Fort Lauderdale is a little ahead of the curve because it has been actively managing its unfunded liability. The City Auditor questioned the move by Moody's

because it seems that GASB has already done what Moody's wants done except for removing the five-year asset smoothing. It will affect how Moody's looks at municipalities for bond rating purposes. Mr. Stull indicated that the proposal will help with rating agencies, but it is not the final answer.

The City Auditor explained the proposal is advantageous. Moody's and GASB would like the City to discount the unfunded liability at a different rate that will inflate the unfunded liability that needs to be recorded in the City's books. By prefunding, the discounting is eliminated in its entirety. The bond issue will be shown on the books; it will be a hard number that will not fluctuate. It is advantageous from a financial reporting perspective. He emphasized the critical assumption is earning at least 3.8 percent. He felt it is a reasonable hurdle.

In response to Commissioner Roberts, Mr. Stull advised that the bonds relating to the GERS would extend to 2039 and for police/fire, 2030. Commissioner Roberts believed it would be possible over that period of time to achieve the needed percentage of earnings. In response to Vice Mayor Rodstrom, Mr. Stull advised that at 88 percent, including refunding the \$30 million, \$380 million in bonds would be issued. Vice Mayor Rodstrom observed that the amount has increased since the last discussion. Mr. Hawthorne advised that the budget includes numbers based on 75 percent. Mr. Stull indicated that the \$297 million (75 percent level) did not include the \$30 million, which would have totaled \$328 million. It will be shown on the City's books as a loan. Vice Mayor Rodstrom questioned if this would impact the City's credit rating. Mr. Stull pointed out that the City already has the liability that is shown on the books, so there is no more liability than what the City already has. In response to Vice Mayor Rodstrom, Doug Wood, Director of Finance, believed the idea to use this type of product originated with the City Manager. Vice Mayor Rodstrom was aware of cities who have used this product very unsuccessfully and asked where it has been used successfully in the last couple years. Mr. Stull advised that there are many instances. He noted that when this topic was first discussed, there was an open discussion about there being elements of risk. Mr. Hawthorne reiterated that the budget includes \$5 million at the 75 percent level shaved down from the actual number of \$5.6 million. The City Auditor reiterated that the liability exists; the risk is the need to achieve 4 percent. The City would have to make up anything that is short of 4 percent, in addition to making the required pension payment.

Commissioner Rogers questioned why there is not a commensurate savings with the increased percentage levels of borrowing. Mr. Stull believed it may have something to do with the amortization. Commissioner Rogers questioned the need to calculate the present value. The City Auditor explained that this is akin to doing a refunding of outstanding bonds and in such case, present value savings is calculated. It is not a term bond so the percentage depends on where the additional money is layered-in. Mr. Stull explained that they attempted to level the savings over the life of the amortization but the amortization is definitely different for each year. Commissioner Rogers asked if Mr. Stull is recommending this. Mr. Stull indicated he would recommend it with a caveat. The City must be comfortable with the investment managers for the pensions that they can achieve this rate of return. Commissioner Rogers noted over the past twenty years, the police/fire pension has averaged earnings of nine percent. Based on this fact and that the last ten years has not been good, he felt it is a good risk. Mr. Stull agreed. The lower the interest rate on the taxable bonds, the lower the risk. Commissioner DuBose asked about the impact of losses on future budgets. The City Auditor explained it is viewed over the lifetime of the issue. In any given year, depending on volatility of the market, earnings will be above or below the target. For those periods of time where there is under-performance, it will impact the experience rating on the pension plan. Any year of under-performance would be factored-in at twenty percent because of the five-year smoothing. It would be added to the

amount the City would have to pay. He confirmed that this would have an effect on projected savings over the years. Over the long run, the same amount has to be funded to the pension regardless. One percent would be roughly \$600,000. It was confirmed for Vice Mayor Rodstrom that this item is in the budget for which the tentative millage rate is to be set at this evening's meeting.

The City Auditor commented about the potential pressure on future commissions to grant cost of living increases (COLA). He raised the idea of adding to the bond indenture that if a COLA is granted, payment of the bond would be accelerated. The City Attorney advised that most pension obligation bonds have a standard provision that there be no additional benefits while the bonds are outstanding. Another concern is bonding capacity for non-ad valorem tax revenues and how much this reduces the City's flexibility in the future. There is a limited amount of non-ad valorem tax revenue that can be pledged. Mr. Stull indicated that the bonding capacity is substantial.

Mayor Seiler was comfortable with 75 percent and noted that only \$5 million of the projected \$5.6 million savings is incorporated in the budget. Mr. Wood pointed out that the \$30 million issue last year brought the City current in making its annual contribution to the pension, which resulted in a savings of about \$2 million annually. In response to the City Auditor, Mr. Wood indicated that the current payment for the \$30 million is rolled into this proposal. The City Auditor advised that he would not recommend taking a current payment and financing it over twenty or thirty years; it is an inter-generational equity issue. Mayor Seiler agreed. The City Auditor felt the City Manager should develop a plan on how to pay the \$30 million over the next five years so that the City would be caught up and on a pay-as-you-go basis because at some point interest rates are going to rise again.

Mayor Seiler opened the floor for public comment.

Broward County Mayor John Rodstrom indicated that he has looked hard at pension bonds. The 7.75 actuarial percentage assumption is a fictitious number, so there is actually no refunding. He elaborated upon the market historically. When the market has been flat since 2000, he questioned the City thinking it will make 7.75 percent. If there is a drop of 30 percent, for example, in the first year, he contended it is not possible to ever catch up. The early years are the important ones because later on the balance is less. Moreover, this only works with risky investments. He believed the City's trend with respect to unfunded liability has been scary. The City is paying \$7 million more annually in pension payments from the General Fund because of additional benefits given. If the actuarial assumption is not met, the City would go deeper in debt. With bonds, the City would have to file Chapter 9 if it cannot make its debt service payments. Now, the pension deficit can increase without shutting down the City. He referred to the \$30 million being a situation of having to borrow money in order to pay the City's bills. He urged the Commission to pay this off as soon as possible.

Fred Carlson, 625 Orton Avenue, elaborated upon the risk associated with this proposal in general and fiscal irresponsibility around the world. The future is uncertain.

There was no one else wishing to speak.

Vice Mayor Rodstrom pointed out that this proposal is about plugging a hole in the budget. She wanted to find another way. Commissioner Roberts referred to the fire assessment fee at \$2.7 million in addition to this \$5 million and \$4.8 million from reserves. Some \$12 million would have to be found. The only alternatives would be to cut services or raise the millage. Vice Mayor

Rodstrom suggested short-term borrowing. Commissioner Roberts pointed out that there have already been a lot of cuts. He did not want to make further cuts, but rather to stabilize and see the results of the reorganization and cuts that have already been made. With the current recommendation, the reserve is at 17 percent, therefore it is not possible to take any more from the reserve.

NOTE: The meeting recessed at 4:57 p.m. and reconvened on the first floor at 11:20 p.m. to address Item II-A, Audit Report for Bahia Mar.

Mr. Stull advised that in order to get the proposed bonds issued in time for the 2013 budget, the timeline is very tight. If the Commission decides to move forward with the bonds, they will move forward with issuing an RFP and begin immediately to prepare the documents. The bonds need to be issued before September 30. Both Commissioners Roberts and Rogers were interested in a higher level than 75 percent. Mayor Seiler was agreeable with 75 percent. There was consensus approval at 75 percent not including the \$30 million note with Vice Mayor Rodstrom and Commissioner DuBose opposed.

### **I-H – Fiscal Year 2013 Proposed Budget**

Please see regular meeting agenda Item R-06.

### **II-A – Audit Report – Bahia Mar**

The City Auditor indicated he found that there is no one on staff ensuring that Bahia Mar was in compliance with its long-term lease with the City. This responsibility has now been assigned to the Real Estate Division of the Parks and Recreation Department. He has provided the division with a checklist for contract compliance. He was asked to obtain financial statements to give the City assurances with respect to rent revenue and capital improvement replacement account. Bahia Mar was very cooperative in furnishing statements dating back for several years. They are in compliance with the capital improvement reserve account section of the lease. There is a credit balance in that account of approximately \$28 million that reflects improvements made to the marina several years ago in excess of what they are required to do. The lease payments have not been accurate, however. In one year, they under-paid, over-paid in another and missed an entire \$75,000 payment in another. When it was brought to their attention, they immediately paid. This review focused on the financial aspects of the lease. He does not know where the Building Division stands with respect to all of the other lease provisions.

In response to Vice Mayor Rodstrom, the City Auditor indicated there is no documentation required with respect to improvements made that are reflected in the capital improvement reserve account credit balance. However, their auditors are required to make that the expenditures meet the definition for capital improvements in accordance with hotel industry accounting. They have certified this. Commissioner Rogers asked about the concept of a percentage of profit recovery under a lease in the future. The City Auditor indicated it would require confidence in the income numbers being reported to the City. When Bahia Mar was acquired and became part of a holding company, there were no financial statements to define Bahia Mar. He asked them to present the consolidating and consolidated schedules. Not all of the leases that the City deals with will be with organizations large enough to have that kind of an audit. It makes things more complicated and allows for a degree of creative accounting in terms of what is reported as expenses. It makes compliance and oversight more difficult. In response to Mayor Seiler, the City Auditor advised that the audit is paid for by Rahn Bahia Mar. The lease provides for an opinion on items other than what would be in a standard financial audit. The



capital improvement account is one and another is attesting to lease payments being in accordance with the lease. The lease payments did not comply with the terms of the lease. The auditors failed to identify under-payment of the lease. He believed the same auditing firm has been onboard for the last five years. He explained that the firm will not test every transaction in such a large audit but rather look at materiality and do testing around the materiality threshold. It is possible that checking on every lease payment may not have risen to a level of materiality for the firm to opine on it when the opinion is a footnote in the financial statement. The City Auditor confirmed for Mayor Seiler that Bahia Mar is in full compliance with Section 5 (Page 28 of the lease). A copy of page 28 is attached to these minutes. The Bahia Mar internal staff was providing a schedule. He requested their auditing firm to issue an opinion on this specific information which was done.

Mayor Seiler opened the floor for public comment.

Mary Fertig, Idlewyld Improvement Association, thanked Vice Mayor Rodstrom for her efforts with respect to the status of the capital improvement reserve account. She asked what is intended to be done with the credit. She also inquired about the status of the lease coming forward. In response to Vice Mayor Rodstrom, Mayor Seiler understood the City Manager had intended for this item to be on the regular meeting agenda this evening, but there were too many other items.

### **III-B – Board and Committee Vacancies**

Please see regular meeting agenda item R-02.

### **City Commission Reports**

#### **Symposium on Imitation Drugs (Sale and Distribution of Herbal Incense Products)**

Commissioner DuBose noted a symposium being held by the Broward Sheriff's Office and Sunrise Police Department on August 29 concerning imitation drugs. He asked that the Police Department attend.

#### **Cumberland Building Mural, 800 East Broward Boulevard**

Commissioner Rogers brought attention to the worsening state of disrepair of the tiled mural on the Cumberland Building and solicited assistance from the community and, or building tenants in convincing the owner to take steps to preserve it.

#### **Undergrounding of Overhead Utility Lines: Special Assessment Program**

In response to Vice Mayor Rodstrom, the City Attorney confirmed that this item is slated to be scheduled on the August 21 conference meeting.

#### **DNA Sampling; Criminal Investigations**

Vice Mayor Rodstrom indicated that the police took a sample of her DNA in connection with investigating the burglary of her vehicle. She asked the Police Chief to develop a fact sheet about this practice including particulars about storage and disposal of DNA samples so that it could be provided at an upcoming District II crime meeting.

Utility Poles

Vice Mayor Rodstrom advised that Florida Power and Light Company is installing new utility poles leaving the old poles that are still being used by Bellsouth. She asked the City Manager to followup with Bellsouth to see if they could connect to the new poles so that the old ones could be removed.

Homestead Fraud

Mayor Seiler wanted an announcement posted on the City's website that would ask citizens to report addresses where residences are being rented and owners are still claiming homestead exemption.

Events and Matters of Interest

Members of the Commission announced recent and upcoming events and matters of interest.

**III-A – Communications to City Commission and Minutes Circulated for Period Ending July 5, 2012**Community Appearance Board

**The Community Appearance Board would like to take a moment to recognize the outstanding efforts of the City of Fort Lauderdale staff who have provided their time to this Board. As you know, our annual event was on May 10, 2012. Reina Gonzalez, our CAB Liaison coordinated the event. She was assisted in various ways by Heather Steyn, Erik Froman, Jon Stahl, Eden Bertonazzi, and Monique Damiano. Each of these individuals did an outstanding job assisting with our needs, as well as those of the Keynote Speaker and guests. Last but not least, we would like to thank Mr. Feldman, our City Manager, for his lively and insightful speech regarding the importance of community. His video on painting the town could not have been more timely or perfect. The event would not have been such a great success without their efforts.**

**We would also like to recognize Ms. Gonzalez, Jolie Reed and Rafeela Persaud, for the excellent job they have done as the dedicated staff for our board over the years. Information has always been timely disseminated to the board, and the meetings have run smoothly. We are saddened to be losing this fine team as our support staff, but look forward to the opportunity ahead with our new team. the **motion** passed unanimously. CAR**

Education Advisory Board

**Motion made by Ms. Small, seconded by Ms. Elijah to invite the Mayor and Commissioners to the August 16<sup>th</sup>**

Education Advisory Board Meeting. Broward County Superintendent Robert Runcie will be the guest speaker for the evening. In a voice vote, the **motion** carried unanimously.

**City Manager Reports** - None

There being no other matters to come before the City Commission, the meeting was adjourned at 11:58 p.m.