

**MEETING OF THE CITY COUNCIL
PLANTATION, FLORIDA**

January 9, 2013

The meeting was called to order by Councilman Peter S. Tingom, President of the City Council.

1. Roll Call by City Clerk:

Councilmember:	Ron Jacobs (phone) Robert A. Levy Lynn Stoner Peter S. Tingom
Mayor:	Diane Veltri Bendekovic
City Attorney:	Donald J. Lunny, Jr.

Absent: Sharon E. Moody

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2. The invocation was offered by Mayor Bendekovic.

The Pledge of Allegiance followed.

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ITEMS SUBMITTED BY THE MAYOR

Mayor Bendekovic read a Proclamation designating Sunday, January 20, 2013, as *Dr. Martin Luther King, Jr., Remembrance Day* in the City of Plantation.

Claudette Hammond accepted the proclamation.

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Resolution No. 11624

3. **RESOLUTION** of Appreciation to Terri A. Harris for 23 years of dedicated service to the City of Plantation.

Motion by Councilperson Stoner, seconded by Councilman Levy, to approve Resolution No. 11624. Motion carried on the following roll call vote:

Ayes: Levy, Stoner, Jacobs, Tingom
Nays: None

Chief Harrison indicated that Terri has been invaluable to the Police Department and to the citizens of Plantation. He noted that it is a privilege and honor to present her with a retirement plaque from August 21, 1989 to January 5, 2013.

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Resolution No. 11625

4. **RESOLUTION** of Appreciation to Joseph R. Harris for 22 years of dedicated service to the City of Plantation.

Motion by Councilman Levy, seconded by Councilman Tingom, to approve Resolution No. 11625. Motion carried on the following roll call vote:

Ayes: Levy, Stoner, Jacobs, Tingom

Nays: None

Mayor Bendekovic announced that there will be a change of command at the Fire Station on January 15, 2013 at 7:30 p.m. Fire Chief Laney Stearns will be present at that meeting and he will be sworn in on February 1, 2013 in the Council Chambers at 9:00 a.m.

Councilman Tingom commented that he and his wife appreciate Joe and Terri as neighbors and will miss them.

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Jim Romano, Parks and Recreation Director made the following announcements:

- The USTA Plantation Men's Future Tournament is winding down and the Finals will be on Sunday, January 13, 2013 at the Frank Veltri Tennis Center. The winner will receive \$10,000 for first place.
- The Junior Team Tennis Sectional Championship will be held on Saturday, January 19, 2013 through Monday, January 21, 2013 at the Frank Veltri Tennis Center.
- Kids Day Off is Friday, January 18, 2013 at Plantation Central Park between 7:30 a.m. and 6:00 p.m.

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Mayor Bendekovic made the following announcements:

- The first of our official 60th Anniversary celebration will start on February 7, 2013 with an exciting new exhibit in Plantation's Historical Museum. This will be the first opportunity to purchase the City's 60th Anniversary publication, "Images of America Plantation". After February 7, 2013, the book will be available at several City facilities, Barnes and Noble Bookstores and other venues for \$21.99.
- The election will be on March 12, 2013 and February 11, 2013 is the last day to register to vote for upcoming Municipal elections.

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CONSENT AGENDA

As a Commissioner of the CRA, Mayor Bendekovic has a voting privilege on Item No. 21.

Mr. Lunny advised that he received a request from the Engineering Department to move the Quasi-Judicial Consent Agenda Item No. 25 to the Consent Agenda proper. Assuming there is no one that wishes to speak on that item, the City is able to do so.

Mr. Lunny read the Consent Agenda by title.

5. Permission for Primera Iglesia Bautista Hispana De Plantation to have a garage sale and car wash on their church property Saturday, January 12, 2013 from 7:00 a.m. until noon.
6. Approve purchase of one 2013 Ford F-150 truck from Plantation Ford at a cost of \$19,981.56. (Budgeted- Building)
7. Approve purchase of one Parks & Recreation vehicle, described as a 2013 Ford F350 Utility Body Truck from Plantation Ford in the amount of \$27,429.88. (Budgeted – Parks & Recreation)
8. Request for authorization to continue to purchase water meters from Badger Meter, Inc., and equipment from Innovative Metering Solutions, Inc. thru June 26, 2015. (Budgeted – Utilities)
9. Request for authorization to continue to purchase hydrofluosilic acid (fluoride) from Harcross Chemicals, Inc. for \$0.29/per lb. (full truck load) or \$0.325/per lb. (less than full truck load)
10. Request for approval to authorize a task order to Carollo Engineers in an amount not to exceed \$186,664 for the development of a wastewater network model. (Budgeted – Utilities)
11. Request for authorization to continue to purchase anhydrous ammonia from Air Gas Specialty Products at a cost of \$0.74/per lb. (less than full or full truck load) (Budgeted – Utilities)
12. Request for authorization to continue to purchase scale inhibitor PC 1850T from Nalco Company at a cost of \$1.25 per lb. F.O.B. for the Central and East Water Treatment Plants. (Budgeted – Utilities)
13. Request for authorization for MBR Construction, Inc., in the amount of \$61,496.82 for the painting of the East Water Treatment Plant structures. (Budgeted – Utilities)
14. Approve renewal of the City's Boiler and Machinery Insurance Policy for 2013/2014 with The Hartford in the amount of \$26,329.92.

Resolution No. 11626

15. **RESOLUTION** assessing a lien on 5318 Balsam Terrace for the cost to the City of its mowing and clearing. (Conkel)

Resolution No. 11627

16. **RESOLUTION** assessing a lien on 812 Orchid Drive for the cost to the City of its mowing and clearing. (Sylvain)

Resolution No. 11628

17. **RESOLUTION** appointing Dr. Howard Neer as a member of the Plantation Health Facilities Authority to serve a term from November 1, 2012 through November 1, 2015.

Resolution No. 11629

18. **RESOLUTION** approving the expenditures and appropriations reflected in the Weekly Expenditure Report for the period December 13, 2012 – January 2, 2013 for the Plantation Gateway Development District.

Resolution No. 11630

19. **RESOLUTION** approving the expenditures and appropriations reflected in the Weekly Expenditure Report for the period December 13, 2012 – January 2, 2013 for the Plantation Midtown Development District.

Resolution No. 11631

20. **RESOLUTION** approving the expenditures and appropriations reflected in the Weekly Expenditure Report for the period December 13, 2012 – January 2, 2013.

Resolution No. 11632

21. **RESOLUTION** approving the expenditures and appropriations reflected in the Weekly Expenditure Report for the period December 13, 2012 – January 2, 2013 for the City of Plantation's Community Redevelopment Agency.

25. Request to accept replacement financial assurance form Letter of Credit from TD Bank located at 1800 North Pine Island Road.

NON AGENDA

Request for special permission for Praise Tabernacle International Community Outreach event on Saturday, January 19, 2013 between 10:30 a.m. and 4:00 p.m. in their church parking lot.

Motion by Councilperson Stoner, seconded by Councilman Levy, to approve tonight's Consent Agenda as printed. Motion carried on the following roll call vote:

Ayes: Levy, Stoner, Jacobs, Tingom

Nays: None

NOTE: Mayor Bendekovic voted affirmatively on Item No. 21.

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ADMINISTRATIVE ITEMS

Mr. Lunny read Item No. 22.

22. DISCUSSION CONCERNING WESTFIELD MALL UNIFIED CONTROL.

Resolution No. 11633

A **RESOLUTION** OF THE CITY OF PLANTATION APPROVING THAT CERTAIN AGREEMENT REGARDING NEW IMPROVEMENTS AT THE WESTFIELD BROWARD MALL; PROVIDING FINDINGS; TEMPORARILY AND CONDITIONALLY WAIVING CERTAIN UNIFIED CONTROL PROVISIONS; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE THEREFOR.

A memorandum dated January 3, 2012, to Mayor and Members of the City Council, from Donald J. Lunny, Jr., City Attorney, follows:

I. Introduction

This matter is appearing on tonight's agenda at the request of Westfield Mall, and is sponsored by the Administration. The theatre is in for permitting, and the City's Unified Control requirements have not yet been met. The City's approval of the theatre on August 8, 2012 was expressly subject to the Staff and ordained requirement of Unified Control. If this matter is resolved prior to the meeting, there will be no need to address this item. While everyone is still working hard to resolve all issues, based upon my involvement in this matter to date, I do not believe I will have the authority to approve whatever submissions I may receive concerning this matter, and a City Council review will be necessary. Unfortunately, I have not received any current document submissions before the agenda closing deadline occurred. Thus, this memorandum constitutes a report and status, as best as I am able to present at this time.

II. Overview and Background

A. What is Unified Control?

The City's "Unified Control Requirements" have been in place for many years. "Unified Control" is required whenever waivers are granted, whenever building site boundaries are charged without replatting, for planned residential and commercial development, or when property is aggregated and developed as a single functional unit. To be proactive and explain these requirements, a "Unified Control Checklist" was prepared and is distributed to the development community by Staff. A prior version of this checklist was approved by the City Council many years ago. It has been updated from time to time based on code amendments (for example the Stormwater System Maintenance provisions). A copy of the current checklist is attached as Exhibit "1". A review of the checklist is helpful to fully understanding these requirements.

The essential purpose of "Unified Control" is to:

1. Allow separate building sites to function as a "Unified Site: for an approved development scheme;
2. Assure that buildings, commonly used improvements, and infrastructure supporting them, meet minimum maintenance standards; and,

3. Assure appropriate governmental access to the site for service providers (i.e. life safety services and franchised services).

B. The Broward Mall Development

The Broward Mall was developed prior to the City's Unified Control Requirements, and has not undergone any material change to footprints since it was originally construed. The site is platted as independent parcels (see Plat, Exhibit "2"). Each parcel has its own parking field. Thus, Sears not only owns its building footprint, but it also owns all the land on which its parking spaces are located. The same is true for other Anchors and for the Mall proper.

It is clear that the Mall is supposed to function as a unified site. This is because there is no usual setback requirement between Sears and the Mall building, or between any other anchor and the Mall building. Also, there are cross parking easements that exist on the property through an existing Restatement of Easement, Restriction, and Operating Agreement ("REA") recorded at Broward County Official Records Book 7485 at Page 526. The existing REA is not the functional equivalent of Unified Control because:

1. It can be cancelled or amended without the City's advance consent. Thus, the City has no assurance that it will remain in place in its present form for the life of the current and contemplated improvements. The REA is terminable by its terms as early as 2014. Thus, arguably all cross parking easements could conceivably expire as of that date.
2. The maintenance provisions for buildings, commonly used areas, or infrastructure are not up to the requirements of the Unified Control standards; and,
3. None of the recorded or submitted documents evidence the fact that to build the theatre, the parking spaces owned by the Anchors and which are located on their property were "counted and thus consumed" by the requested application of a shared parking formula. All parking spaces for the entire Broward Mall Plat were counted to satisfy all requirements for the Anchors, the Mall, and the theatre – even though the applicant does not own such spaces. What this means is that it is conceivable that when an Anchor wishes to add to its building, it may need an additional parking waiver (and the consent of the property owners to use spaces located on their land) because it might not be able to use all of the spaces it owns to satisfy only its desired improvements. This scheme is **contrary** to that envisioned in the REA or in the First Amendment thereto which was submitted to me in November to review.

C. Document Description

There are four operative documents that are involved in this matter:

1. The original REA;
2. A proposed "First Amendment to "REA" which is proposed to:
 - a. Suitably evidence that all property owners have consented to the theatre site plan and the shared parking formula;
 - b. Provide private agreements concerning the updated parking provisions in the REA (which by their terms contemplate that Anchors can continue to expand buildings so long as they meet

parking ratios on their individual building sites that were not the same as the City's shared parking formula);

3. A Declaration of Covenants that:

- a. Will affect only the Westfield owned portion of the Broward Mall Plat to include the updated maintenance standards for this portion of property only; and,
- b. Will prevent the amendment to the REA and First Amendment without advanced City consent; and,
- c. An indemnity letter that will allow Westfield to obtain permits and complete the Unified Control requirements before obtaining a Certificate of Occupancy.

Since Bill has advised that documents 2 and 3 are being revised, I saw no need to include prior drafts as exhibits to this memorandum. Document 4 has been approved.

D. Legal Department Scope of Review

I was requested by the Planning, Zoning and Economic Development Department ("PZED") to evaluate the Westfield Mall originally REA, as well as a proposed First Amendment thereto submitted under cover of Mr. Laystrom's letter to me dated Friday, November 9, 2012. My comments were given to Bill on November 28, 2012.

The purpose of my review was to ensure that:

1. The parties principally owing the building sites within the Mall have suitably evidenced their consent to the New Site Plan (given prior legal counsel's earlier statements that the negotiations for such consent were ongoing); and,
2. Determine the extent to which compliance with the City's unified control standards would be appropriate.

These were express requirements of the City Council's approval of the theatre item on August 8, 2012. The requirement had to be met prior to Building Permits being issued. See attached Exhibit "3" Minutes, Page 13456.

I have Bill's second set of submissions made on December 21, 2012, and my comments were given to Bill on December 29, 2012.

As of the agenda closing deadline today, I have not received any further documents. Thus, I am unable to advise the Council whether or not and to what extent the balance of comments below are problematic. Original comments to November's submissions made on November 29, 2012 appear in black type. Comments in red type concern December's submissions made on December 28, 2012.

III. Topic 1: Consent

The signing of the proposed First Amendment constitutes suitable evidence of consent provided:

- a. The Site Plan that is attached and is identified as the “*New Site Plan*” is approved by the City Planning, Zoning and Economic Development Department as being consistent with what was approved by the City.
- b. In the First Amendment, some improvements are mentioned that are not part of the City’s recent Site Plan approval (for example, the “*Developer Parking Structure*” in the “*Developer Permissible Parking Structure Area*” (mentioned in Paragraph 6), or elevations approval for the “*Outparcel Building*” in the “*Out Parcel Building PBA*” mentioned on page 1). As to all improvements that do not, in fact, have site plan approval, a disclaimer should be added to the text of the document, or to the drawing attached and referenced as the New Site Plan, indicating that these improvements and the reservation of site area for same, have not been approved by the City of Plantation as of the date the First Amendment is recorded.
- c. In the second sentence of Paragraph 6, the words “*over this private covenant*” are inserted after the words “*excess parking spaces*”.
- d. The existing REA does not allow any of the property owners to use the parking located on another owner’s land to satisfy zoning parking requirements for an improvement located on his or her property. I this Site Plan approval, a Shared Parking requirement was requested and applied for the entire site to facilities an improvement on Westfield’s property. Therefore, please add the following to the end of Paragraph 6 of the First Amendment:

“The parties understand and agree that the foregoing private parking covenant is not the manner in which parking sufficiency requirements are calculated for purposes of the City’s land development regulations and the New Site Plan, as the City was requested to use, and employed, a Shared Parking Formula, to evaluate the parking service requirements (and waivers thereto) for the new construction reflected on the New Site Plan. This shared parking formula takes into consideration all parking spaces located upon the five building sites which comprise the Broward Mall (the “Shopping Center Site”, “Sears Site”, “Macy’s Site”, “Dillard’s Site”, and “Penney’s Site”), the extent of improvements located therein, the nature of the improvement’s use, and the time of the use of the improvements as a single unified site (and thus without consideration of the boundaries of the respective building sites, the number of spaces within each of them, or the extent of construction within each of them).”

Bill’s submission of December 21, 2012 did not contain a revised First Amendment to Declaration. Please send this document for review as soon as possible.

IV. Topic 2: Unified Control

The City’s Unified Control requirements are triggered as a result of the subject Site Plan Approval because of the waivers, and the relocation of parcel lines without re-platting. I would note that unlike unified commercial sites that are subject to a perimeter Plat, the Plat of the Broward Mall is not a perimeter Plat. Additionally, except for some sensible boundary adjustments that were made in order to accommodate the Shopping Center

Site's request for theatre construction, no significant reconstruction is proposed on any of the other four (4) building sites. When so viewed, from a regulatory perspective, requiring the full City Unified Control Requirements to the four (4) building Sites that are accommodating construction on the Mall Site without significant improvements being installed therein can be perceived as unreasonable. Therefore, a deviation from the typical standards is appropriate in this case. The City proposed to require:

- a. That a provision be added to the proposed First Amendment which states that neither it nor the REA may be modified, superseded, or released without the City's advance written consent, which consent will not be unreasonably conditioned, withheld, or delayed. The City's review will be limited as to scope with determining whether the proposed change violates any requirement of the Broward Mall Site Plan Approval or Conditional Use Approval. The application of any proposed change to the Restatement to REA, as amended, will be responsible to reimburse the City for its reasonable costs and fees incurred in any such view. The Consent may be executed by the Mayor, the City Chief Administrative Officer, Director of PZED, or the City Attorney.

I have agreed to accept in lieu of the above a separate Declaration of Covenants that accomplishes the same thing only from the Mall Owner. Please see my markup to this Document as Exhibit "4".

- b. Please add in the signature block area of the First Amendment Consent where I can sign that the City has consented to the First Amendment and the REA for the above limited purposes. This is because the REA, as amended, contains the reciprocal easements for parking, indirectly allocates parking between the various owners in accordance with the private covenants that restrict further improvements within each site in accordance with the private covenant, and indicates how the City calculated parking and references the approved Site Plan.

I have agreed to accept in lieu of the above a separate Declaration of Covenants that accomplishes the same thing only from the Mall Owner. Please see my markup to this Document as Exhibit "4".

- c. Please reference in the First Amendment that anti-waiver provision Control that will be impressed only on the Shopping Center Site, as amended, since this is the site at the time wherein significant improvements are proposed. The City will evaluate the need for the other parcels to be included within the separate document when, as, and if other material expansions to building footprints are proposed.

I need to see the First Amendment.

- d. The Declaration of Covenants for just the Mall owned portion of the Site should be limited to the maintenance and lien provisions typically included in the Unified Control Checklist documents, for buildings, parking areas, driveways, and storm water treatment areas and facilities. This Declaration should be likewise not subject to amendment or release without the City's consent, with the same limited scope of review as stated above.

The requested provisions are absent from the Exhibit "4" Declaration. I proposed language modeled after the cited Unified Control Provisions, as follows:

"All landscaping within the Property shall be regularly maintained with proper horticultural and arboricultural practices, including without limitation such replanting and, as is from time to time necessary, mowing, trimming, fertilization, and weed, insect, and disease control. All dead or diseased sod, trees, plants, shrubs, or flowers shall be promptly replaced. This maintenance includes all landscaped areas within rights-of-way within the project (i.e., swales and other areas within the right-of-way, which are not paved). (See Unified Control Checklist, Page 7).

All buildings with the Property shall be maintained in a first-class condition, especially as to the exterior appearance of the building. Painting or other exterior maintenance shall be periodically performed as reasonably required. No excessive and/or unsightly mildew, rust deposits, dirt, or deterioration shall be permitted to accumulate on any building or other improvement. (See Unified Control Checklist, Page 8 and 9).

All off-street parking facilities, access drives and loading areas within the Property shall be paved and properly graded to assure proper drainage. All driveways and parking areas within the Property shall be paved with a hard dust-free surface. All sidewalks, roads, streets, driveways, parking areas, and other paved or hard surfaced areas located within the Property and intended for use by vehicular or pedestrian traffic shall be kept clean and free of debris at all times, and cracks (including uneven settlement at expansion or control joints), damaged or eroding areas on same shall be repaired, replaced or resurfaced as necessary or requested by the City Engineer. All curbing and bumper stops within the Property shall be replaced if damaged. All striping, including but not limited to parking space, traffic lane and directional markings, within any road, street, or parking area located within a Property shall be repainted as necessary, so that same will be clearly visible at all times. (See Unified Control Checklist, Page 9).

"Maintenance of Surface Water Management System". All swales within the Property shall be maintained to accommodate their intended drainage function, and shall as reasonably required by the City Engineer be re-graded or re-cut from time to time as may be necessary to maintain proper slopes and retention. Swale areas shall be planted with grass, and no other landscape material or improvements shall be permitted in swales unless approved by the City Engineer.

Surface grates for catch basins within the Property shall remain free of obstructions and shall be open to the air along their entire surface areas. Sediment and debris which may collect at the bottom of a catch basin shall be periodically suctioned out or dug out so as to prevent such material from being introduced into a storm sewer pipe or other connective facility. At all times, the debris or deposits shall be maintained at an elevation lower than the lowest invert elevation of the storm sewer pipe(s) (or other connective facility).

Storm sewer pipes within the Property shall be maintained so that they do not have obstructions to flow. The pipes shall be periodically inspected using remote television equipment to ensure that the pipes remain free of root intrusions, sediment build-up, garbage, refuse, plant material, or other debris. Any of the foregoing conditions shall be removed. Furthermore, any collapsed, cracked, or dislocated pipe or connective fixtures shall be repaired or replaced.

Infiltration trenches within the Property shall be inspected and maintained to ensure that their design capacity to treat and convey water is maintained.

The City's Flood Prevention Code is codified in Chapter 9 of its Code of Ordinances. This Code in Sec. 9-77 requires that private surface water management systems be inspected annually by a professional engineer licensed in Florida and that such engineer certify on an annual basis that the surface water management system is in compliance with such Chapter's requirements. To the extent remedial action is necessary to enable certifications to be made, which are not specified in this paragraph, such remedial action shall also be an affirmative duty of the Owner. (See Unified Control Checklist, Page 10.)

In the event the Property is not adequately maintained in accordance with the standards set forth in this section, the City shall notify the Owner and give the Owner a reasonable opportunity to maintain such elements as are required herein. If the Owner shall refuse or fail to maintain same after written notice and a reasonable opportunity to cure, then the City of Plantation shall have the right, but not the obligation, to repair or maintain same and record a Notice of Lien specifying the actual, liquidated costs thereof. The fact that the City undertakes repair or maintenance shall impose no continuing duty on the part of the City for such repair or maintenance. This remedy shall be supplemental and cumulative to all other remedies of the City of Plantation to enforce its ordinance and development requirement. The recording of a Notice of Lien shall cause a lien in favor of the City of Plantation to attach to the Property, with the priority of the Lien being superior to any interest or Lien created after the recording date of this Declaration." (See Unified Control Checklist, Page 10 and 11).

- e. Please modify in the First Amendment the provisions of Paragraph 7.6 of the REA to reflect that a governmental access easement will be granted over the "ring road". Perhaps this should instead be referenced in a revised Section 7.9(d). We believe that simply granting this easement will not create a public dedication, we will acknowledge the owner's right to close the road as is its custom to prevent such road from being considered public, and will agree to relocate the road should ever the private property owners wish to relocate the road in the future, or end use of same. The idea is that so long as the road is in use, government access will be provided. You have the typical form easement for this purpose, and you were going to propose language within these lines to accommodate your client's desires. Please furnish this language at your earliest convenience.

The above requirement has been met with the form of easement tendered with your submissions of December 21, 2012, and I agree with your client that Paragraph 6.6 of the REA allows your client to convey such easement without any further amendment being needed. Please undertake to have same completed and executed.

- f. Other comments/requirements imposed by the Council and reflected in the Minutes of the Meeting:

None.

- g. Does the Site have a bus stop or tram stop?

No Legal requirements will be needed to address this topic.

- h. Was the First Amendment going to be modified to include an encroachment provision for the bistro? If consistent with the Site Plan we can do this and consent at this time.

It is my understanding that the Property transfers that are being implemented in the First Amendment will take care of this Item. Please confirm.

IV. Topic 3: Permit Requirements

In the meeting with the Developer on December 11, 2012, I advised that I would be willing to accept a hold harmless and indemnity commitment from the Mall indicating that these matters would be achieved by the first Certificate of occupancy for the theatre. In that regard, the form of Indemnity letter submitted is acceptable, provided:

1. The Form of the First Amendment is attached thereto and referenced therein and complies with the foregoing requirements;
2. Paragraph ii is modified to more clearly include an obligation by the Mall to either defend the City from claims covered by the Indemnity or reimburse the City for its reasonable defense costs (i.e. incurred attorneys fees, paraprofessional fees, expert witness fees, and court costs).
3. A provision is added to the effect that if the City needs to enforce the Indemnity, the City may recover is reasonably incurred attorneys fees, paraprofessional fees, expert witness fees, and court costs.

UNIFIED CONTROL CHECKLIST

I. INTRODUCTION

This Checklist is designed to be helpful to the development community in satisfying the City unified control law. This law is principally contained in the Platting Chapter of Plantation's Code and in Sec. 27-686, City Code. Although the City's unified control requirements are mostly found in the City's ordinances, some requirements have been imposed by the Council through administrative direction.

This memo will highlight the major concepts of unified control, identify whether the concept is anchored in ordinance or in past City Council direction, present the rationale for the requirements, and in selected instances, will disclose language which has been accepted in certain situations. Hopefully, the Checklist will save time in addressing routine unified control items. In addition to these uniform requirements, there will usually be project specific requirements which result from City Council development orders.

CONCEPT 1: THE UNIFIED CONTROL REQUIREMENTS IS TRIGGERED BY ANY SUBDIVISION OR ZONING ORDINANCE WAIVER

A. Requirement

The city's ordinances require "unified control" whenever any zoning or subdivision waiver is obtained. Unified control is not solely triggered by a parcel under multiple ownership. The Code reads in relevant part:

“All land included within an application to the City Council for a development permit where any requirement of the zoning or subdivision ordinances of the City of Plantation is sought to be waived (such as, but not limited to, the dedication or deeding of public road rights-of-way; deviations of building setback lines, etc.), shall be under a plan of common development ...” [Sec. 27-686, City Code].

B. Rationale

The City ordinance requires unified control even if a parcel was under single ownership when zoning ordinance waivers are obtained. Once a parcel is developed, the City does not monitor real estate title transfers. If property is built without unified control and then becomes subject to multiple ownership, the property owners often have difficulty obtaining further development approvals since other owners in the original parcel who are not seeking development orders have no incentive to place unified control on their land.

CONCEPT 2: A SITE PLAN IS REQUIRED WHEN PLATTING WAIVERS INVOLVING UNIFIED CONTROL ARE GRANTED

A. Requirement

The Code requires that a current site plan be required at the time a previously platted piece of property is “subdivided without replatting. In relevant part, the Code states:

“... and also except that a parcel may be leased or sold without replatting where said parcel is (a) part of both a recorded plat previously approved by the City Council and a City Council approved current site development plan, and (b) where the purchaser commits the parcel to continued development pursuant to said recorded plat and (c) obtains a review and reapproval of such site development plan if same is more than six (6) months old based on such divided ownership and (d) otherwise commits to continue said purchased parcel under a plan of unified control previously approved by the legal department of the City for the entire previously platted land area committed to such unified control (or a substituted form of unified control to be approved by the legal department of the City for such parcel prior to the issuance of any building permits for such parcel).” [Sec. 20-1, City Code].

B. Rationale

1. Requiring a site plan for the entire property enables the Council to be satisfied that the resulting building sites after the property is subdivided constitute an integrated development in terms of function. The Code reflects a governmental desire, for example, to ensure that outparcel to creation will not result in a partially developed property’s parking count becoming insufficient, or that intended parking lot ingress or egress is not fenced off or obstructed by outparcel owners, or that one owner does not interfere with drainage appurtenances for the site, or that the structures are harmonious from an architectural point of view. This governmental desire is reflected in the following unified control ordinance provisions (underlined language of which is included in all unified control documents):

“[The applicant must] Proceed with the proposed development according to the provisions of this ordinance and conditions attached by the City Council when such development permits are granted (approval of site plan, elevations and locations of buildings depicted thereon, landscape and parking plans, exterior finishes, etc.)”

“...no encroachment may be made into any common-owned land or area which would affect the outward elevations of any primary structure without prior approval by either the City Council or its Plan Adjustment Committee and all such encroachments shall be uniform as to applicability between the developer or future unit owners under a delineated procedure approved by the Building Department which procedure shall minimally require prior approval of the owner(s) of such land of such intended encroachments and a hold harmless agreement from such (owners) to the City for granting permits for such requested encroachments (it being understood that the Council can delegate to the Building Department approval of any elevation changes occasioned by such encroachments within the common areas of such developments).”

“... no provision is included within the unified control documents which would permit a conflict with the ordinances of the City of Plantation or the regulations of other governmental agencies having any jurisdiction over the property covered by such development and affirmative assurances of compliance with such ordinances and governmental regulations are to be contained within the unified control documents (illustrious of such compliance with ordinance would be a requirement that the City’s comprehensive sign ordinance be fully complied with within the development; that no less restrictive signs be permitted within the development; that no traffic regulation, directional signs or efforts to control flow of traffic or speed of traffic be allowed to be erected, implaced or otherwise installed upon or adjacent to any private road system within the development which would conflict with the ordinances of the City of Plantation or other duly enacted governmental regulations concerning traffic, signage and control; that no surface water drainage be permitted that would conflict with the requirements of the City’s ordinances for subdivision improvements or the regulations of any drainage district having jurisdictional authority over the property covered by said development, etc.).”

“...such additional requirements as are imposed by the City Council in its review of the applicant’s requested development approvals, as well as such additional requirements as the administration deems proper to adequately protect the health, safety and welfare of the future occupants of primary structures within said development be included in legally enforceable form within such unified control documents.” [Sec. 27-686, City Code].

Additional approved language for these requirements is:

“No traffic regulation, directional signs or efforts to control flow of traffic or speed of traffic (including speed bumps) may be allowed to be erected, implaced or otherwise installed upon or adjacent to the private road system within the development which would conflict with the ordinances of the City of Plantation or other duly enacted governmental regulations concerning traffic, signage and control. In the event development phases are not built, temporary (or permanent) cul-de-sacs at the end of each phase of on-site road construction shall be installed if required by the City Engineer, so as to assure reasonable traffic flow. Easements have been additionally granted in favor of governmental and quasi-governmental authorities, utility companies, ambulance or emergency vehicle companies, law enforcement (including enforcement of the Florida Uniform Traffic Control laws), and mail carrier companies, over and across all roads existing from time to time within the Property, and over, under, on and across the Property, as may be reasonably required to permit the foregoing, and their agents and employees, to provide their respective authorized services to and for the Property.” [TRAFFIC]

B. Rationale

1. When a parcel is subdivided, the City has a legitimate interest in making sure the created building sites meet the minimum area, width and depth zoning requirements (i.e., that they are “buildable”). Although most of the City’s zoning classifications have site development criteria, requiring a site plan to be current enables the Council to better assure itself that the resulting building sites are buildable with respect to intended development.
2. Without site planning the entire parcel so as to define the common elements, etc., it could be conceivable that a property could be divided in such a way that a portion of the property which had zoning service requirements (i.e., drainage, landscaping, buffering, etc.) could be conveyed to a separate owner which could refuse to maintain the property, or which could interfere with common service needs of all other owners.
3. Where the City does not require site plans for the entire property, it does not have the enhanced ability to evaluate the above criteria in a meaningful way, and instead, can only request that a temporary unified control covenant be recorded which requires the owners to work together and consent to future site plans. The language accepted these cases is:

“... The parties agree to utilize the Property as if it was a parcel not under separate ownership and control and it shall be developed accordingly. ... The parties agree to execute replacement unified control provision(s) as future portions of the Property are site planned, and further, that prior built Tracts on the Property will be included within the site plan considerations for the developing parcels. It being the intent that preceding development be considered in connection with proposed future development so as to assure the proposed development and preceding development together satisfy the site plan requirements for the Property, and to assure a continuity of site amenities between and among the parcels.” [TEMP-UC]

4. The City has a legitimate interest in making sure the created building sites meet the minimum parking requirements, and in many developments, the parking in garages is counted towards a project's parking requirements. In the first quarter of 2005, the Legal Department was requested by the City to add the following unified control requirement:

"...All required parking spaces shall be kept in accordance with the Ordinances of the City of Plantation or other duly enacted governmental regulations concerning parking. Where garages are required or where they have been shown on an approved site plan, the PARCEL OWNER or other legal title owner shall not physically convert garages or use same in a manner that would reduce the garage's vehicle storage to a number less than its original minimum design. In the event the garage is converted to uses which eliminate sufficient vehicle storage, the governing ASSOCIATION shall have the authority to enforce this provision without City involvement." [GAR]

C. Enforcement Issues

One enforcement issue is what kind of "lease" triggers the unified control requirement. If read literally, any time a shopping center leases a bay, a new site plan would be needed. The City has in the past enforced this requirement only when leases are long term (for example, over fifty years), or when tenants are given substantial control over property by virtue of the lease.

CONCEPT 3: LIEN RIGHTS AND MAINTENANCE

A. Requirements

1. The City Code reads:

"That a proper method of assessment for maintenance of commonly and/or privately owned property and improvements with lien rights and enforcement rights be created within the unified control documents so as to give the City reasonable assurance that the future maintenance of such private facilities and land will not be at public expense and that the developer bear his fair share of such expenses during the development of the property covered by such unified control documents."

2. The Legal Department has received administrative direction to include under this category:
 - a. That portions of undeveloped property be maintainable by a brush hog tractor mower if the Council does not otherwise require sodding or seeding with irrigation.

Some approved language is:

"As to the balance of the Property not included within the [developed] Tract, the parties agree to keep their respective Tracts in a condition conducive to begin maintained with a bush hog mower, and the Property shall be cut so as to keep growth at a 12" height limit. In particular, the PARCEL

OWNER of any such undeveloped PARCEL shall remove any accumulations of garbage, trash or refuse.” [UNDEVEL]

- b. That parcel owners can maintain swale rights-of-way adjacent to their property by defining same as a common element. (The City Administration encourages land owners to maintain public swale property adjacent to the project because the City does not have the manpower or machine power resources to maintain the property as the adjacent owners may wish.)
- c. Where a property owner does not agree to establish a legal entity to maintain common elements and lien individually owned parcels for the costs thereof, joint and several liability for common element maintenance is required with each owner maintaining his own parcel (subject to lien rights of others in the event of insufficient maintenance).
- d. To establish clearer standards of maintenance so that the property is maintained in a state intended by the development order approved language has been used.

(i) As to landscaping, the approved language is:

“All landscaping shall be regularly maintained with proper horticultural and arboricultural practices, including without limitation such replanting and, as is from time to time necessary, mowing, trimming, fertilization, and weed, insect, and disease control. All dead or diseased sod, trees, plants, shrubs, or flowers shall be promptly replaced. This maintenance includes all landscaped areas within rights-of-way within the project (i.e., swales and other areas within the right-of-way, which are not paved).” [LANDMAIN]

(ii) As to residential project amenities other than landscaping, the approved language is:

“All property, buildings, and common elements within the PROJECT shall be maintained in a safe, neat and well-kept manner by the DEVELOPER or its successor. It is understood that this standard of maintenance is not brand new, but Class A residential condition for its age, reflecting reasonable wear and tear. All sidewalks, roads, streets, driveways, parking areas, and other paved or hard surfaced areas located within a PARCEL and intended for use by vehicular or pedestrian traffic shall be kept clean and free of debris at all times, and cracks (including uneven settlement at expansion or control joints), damaged or eroding areas on same shall be repaired, replaced or resurfaced as necessary or requested by City Engineer. All curbing and bumper stops shall be replaced if damaged. All striping, including but not limited to paring space, traffic lane and directional markings, within any road, street or parking area located within a PARCEL shall be repainted as necessary or as requested by the City Engineer, so that same will be clearly visible at all times.

All lakes and waterways which are Common Areas which are first conveyed by the Declarant to the Association and not the Community Association shall be kept free of garbage, trash, and debris, and reasonably free of aquatic weed accumulation, so as to maintain the recreational, open space, and aesthetic value

of such waterways in addition to preserving their drainage retention and flow functions.

All recreational amenities, the perimeter wall, and other structures which are part of the Common Areas first conveyed to the Association and not to the Community Association, and which are by other provisions of this Declaration required to be maintained by the Association, shall have painting or other exterior maintenance periodically performed as reasonably required as determined by the Board or as reasonably requested by the City Building and Zoning Director so that no excessive or unsightly mildew, rust deposits, dirt, paint peeling, cracking, graffiti, or deterioration shall accumulate.” [RESMAINT]

(iii) As to commercial project amenities other than landscaping, some approved language is:

“All buildings shall be maintained by the PARCEL OWNER in a first-class condition, especially as to the exterior appearance of the building. Painting or other exterior maintenance shall be periodically performed as reasonably required. No excessive and/or unsightly mildew, rust deposits, dirt, or deterioration shall be permitted to accumulate on any building or other improvement. All off-street parking facilities, access drives and loading areas shall be paved and properly graded to assure proper drainage. All driveways and parking areas shall be paved with a hard dust-free surface. All sidewalks, roads, streets, driveways, parking areas, and other paved or hard surfaced areas located within a PARCEL and intended for use by vehicular or pedestrian traffic shall be kept clean and free of debris at all times, and cracks (including uneven settlement at expansion or control joints), damaged or eroding areas on same shall be repaired, replaced or resurfaced as necessary or requested by the City Engineer. All curbing and bumper stops shall be replaced if damaged. All striping, including but not limited to parking space, traffic lane and directional markings, within any road, street, or parking area located within a PARCEL shall be repainted as necessary, so that same will be clearly visible at all times.” [COM-MAIN]

3. As to surface water management systems:

“Maintenance of Surface Water Management System. All swales shall be maintained to accommodate their intended drainage function, and shall as reasonably required by the City Engineer be re-graded or re-cut from time to time as may be necessary to maintain proper slopes and retention. Swale areas shall be planted with grass, and no other landscape material or improvements shall be permitted in swales unless approved by the City Engineer.

Surface grates for catch basins shall remain free of obstructions and shall be open to the air along their entire surface areas. Sediment and debris which may collect at the bottom of a catch basin shall be periodically suctioned out or dug out so as to prevent such material from being introduced into a storm sewer pipe or other connective facility. At all times, the debris or deposits shall be

maintained at an elevation lower than the lowest invert elevation of the storm sewer pipe(s) (or other connective facility).

Storm sewer pipes shall be maintained so that they do not have obstructions to flow. The pipes shall be periodically inspected using remote television equipment to ensure that the pipes remain free of root intrusions, sediment build-up, garbage, refuse, plant material, or other debris. Any of the foregoing conditions shall be removed. Furthermore, any collapsed, cracked, or dislocated pipe or connective fixtures shall be repaired or replaced.

Infiltration trenches shall be inspected and maintained to ensure that their design capacity to treat and convey water is maintained.

The City's Flood Prevention Code is codified in Chapter 9 of its Code of Ordinances. This Code in Sec. 9-77 requires that private surface water management systems be inspected annually by a professional engineer license in Florida and that such engineer certify on an annual basis that the surface water management system is in compliance with such Chapter's requirements. To the extent remedial action is necessary to enable certifications to be made, which are not specified in this paragraph, such remedial action shall also be an affirmative duty of the Association." [SURFWTR]

4. Not only with the Association (or other owners if there is no Association) have lien rights for lack of maintenance on a defaulting owner's property, but the Legal Department has obtained direction to add a provision in unified control documents which gives the City an option, but not an obligation, to enforce the document terms. Some approved language for Associations is:

"In the event the property is not adequately maintained in accordance with the standards set forth in this section, the City shall notify the Association and give the Association a reasonable opportunity to maintain such elements as are required herein. If the Association shall refuse or fail to maintain same after written notice and a reasonable opportunity to cure, then the City of Plantation shall have the right, but not the obligation, to repair or maintain same and record a Notice of Lien specifying the actual, liquidated costs thereof. The fact that the City undertakes repair or maintenance shall impose no continuing duty on the part of the City for such repair or maintenance. This remedy shall be supplemental and cumulative to all other remedies of the City of Plantation to enforce its ordinance and development requirements. The recording of a Notice of Lien shall cause a lien in favor of the City of Plantation to attach to the lots of the respective parcel owners and the lots of the Developer, jointly and severally, with the same priority as liens for assessments as set forth in the Declaration, and with the same rights of enforcement." [CITYLIEN]

This language can be easily modified to lien all owners if there is no Association.

5. '197.592, Fla. Stat., was amended in 1986 so as to provide that any land obtained by Broward County and not conveyed to the record fee simple owner is to be conveyed to the municipality, free of any liens of record. The County started to implement this law in 1995, and sometimes by mistake, project service

amenities (roads, parking areas, landscape islands, etc.) become titled in the County and then conveyed to the City of Plantation. ‘617.312, Fla. Sta. (1997), indicates that provisions of a Declaration of Covenants and Restrictions survive a tax sale. See also Gain v. Fiddlesticks Country Club, Inc., 710 So.2d. 76 (Fla. 2nd DCA 1988). However, it does the City little good to have title to such a land subject to a private Declaration. In order that the City may more cost effectively return these amenities to the project owners, and encourage that these oversights do not occur, the Legal Department obtained direction to add a provision in the unified control documents, and some approved language reads:

“In the event the Association shall fail to pay applicable real estate taxes and other assessments for any of the Property, it shall be an obligation of each property owner to pay that property owner’s proportionate share of taxes and assessments (based upon the total cost therefore divided by the number of dwelling units subject to these restrictions), and such proportionate share shall be a lien against each such parcel, enforceable by the City. Furthermore, in the event any property subject to these restrictions ever, for any reason, becomes titled in the City of Plantation, by tax deed or otherwise, the City may, without any additional evidence of consent by the grantees or without any additional specific evidence of delivery of the deed(s) (taking title subject to these restrictions conclusively establishing irrevocable consent to such delivery), convey to all of the property owners subject to these restrictions and undivided interest to such property the title to which shall become accessory to each dwelling unit. This conveyance need not list specific individual grantees but may be a general conveyance to all property owners of the project at the time the deed is dated, with the owners of each of the parcels of the project acquiring an undivided interest equivalent to a fraction, the numerator of which is one (1) and the denominator of which is the total number of parcels within the project”.
[TAX-PROP]

B. Rationale

While the City has a lot of mowing and clearing, nuisance, or Code Enforcement power which it could use without resorting to unified control, the past policy of the Council is to enable the private property owners to affect maintenance without City intervention. Put simply, there is little incentive for one owner to maintain common elements if the maintaining owner does not have lien rights. Unified control was designed to ensure that property was kept in the same condition it was as promised by the developers, reasonable wear and tear expected. This condition is often in a better state than that which would otherwise trigger an ordinance violation, and results in maintaining good property values.

CONCEPT 4: GOVERNMENTAL ACCESS

A. Requirement

The City ordinance states:

“That valid governmental access is provided for the servicing of the development, both during and after construction of same.”

B. Rationale

Most people recognize this requirement is essential for governmental service to the development.

The Governmental Access Easement (and the Unified Control Agreement) enables the City to clearly demonstrate traffic control jurisdiction, and enables government and its franchisees access to serve property. The City form easement is attached as Exhibit "1". Where public utilities lines are specifically located and contained in other specific easements, paragraph 2 of the form can be deleted.

CONCEPT 5: FRANCHISE SERVICE

A. Requirement

The Code requires that:

“That the developer and subsequent owners of property within the proposed development must agree to utilize, where offered, all municipal franchised services and may not independently contract for such services without prior approval of the City Council (presently included within franchised services of the City are garbage collection and cable television).”

B. Rationale

Putting this language in a recorded unified control document is from a legal point of view unnecessary; however, the ordinance probably requires this language as a method of publicly notifying people of this requirement. Some approved language for projects regardless of whether they are residential or commercial is:

“The developer and subsequent owners of property within the Project agree to utilize, where offered, all municipal franchised services and may not independently contract for such services without prior approval of the City Council.” [FRANCHIS]

CONCEPT 6: AMENDMENTS

The ordinance states that no amendments to unified control documents may be made without City approval. Some approved language is as follows regardless of whether the project is residential or commercial:

“No amendments to this Unified Control Agreement shall be made without the approval of the City of Plantation, which shall review the proposed amendments to ensure that a proposed amendment is consistent with, and does not conflict with, all applicable land development regulations and issued development orders for this project, and which approval after such limited review shall not be unreasonably withheld.” [AMEND]

CONCEPT 7: RECORDING

We executed unified control documents must be accompanied when tendered for approval with an opinion of an attorney licensed to practice law in Florida that the documents were duly executed and are valid and binding on the owners of the project property, and in addition, must disclose who the record owners and mortgagees are of the property, and whether such attorney has, after due inquiry, any knowledge that there are owners or mortgagees whose interest is not reflected of record. Mortgagees must consent to the unified control documents. After recording, the City requires a post-recording opinion that as recorded, the unified control documents are binding upon all owners and mortgagees.

CONCEPT 8: LEGAL DESCRIPTIONS

Prior to review by the City Legal Department, all legal descriptions proposed for the Governmental Access Easement and for the Unified Control Agreement must be approved by the City Engineer and must have an "Approved as to Form" notation stamped thereon by the City Engineer when submitted to the City Legal Department.

Mr. Lunny requested that Council approve this because he does not have the authority to approve this.

Mayor Bendekovic commented that she is appreciative of the "Team Westfield", Bill Laystrom and Don Lunny. They have spent many hours on developing this and they have come to a consensus. She thanked them for all of the hours they put in because it is going to be such an investment for the City of Plantation.

Mr. Lunny indicated that the first issue was whether the anchors in this mall suitably evidenced their consent to the development order. In this particular piece of property, the anchors own their parking fields and the mall owns a portion of the parking field. The Council approved shared parking, which was requested by the mall for the theatre; therefore, when shared parking was approved the site is treated as a whole and the theatre, from a Zoning perspective, consumes spaces that are located on property that the applicant does not own. In that respect, the following has occurred:

The mall has given us a representation in writing that the anchors have consented to the new improvements on the site plan. We do know that there is a First Amendment to the operating agreement, which deals with private parking commitments among the anchors and the mall to facilitate the theatre. It does not use the shared parking formula but in the event that those private covenants are not met, the mall has an obligation to process for approval a parking structure that would be subject to Council's review and approval. They also made a representation that they have no adverse notice that the anchors do not consent to this. In fact, they said that the concern they have is that they own malls all over and these anchors have no reason to execute the consent. Sometimes when negotiating a new lease in another state the landlord will request that the papers be signed in Plantation and it might delay the document in getting signed. Their main concern is that they could not get this done by CO as they communicated to him, Mr. Shimun and the Mayor. Finally, they have agreed to indemnify us from any losses in that respect, including defense costs. The indemnity is reinforced by the owner of the Broward Mall and can be released upon a sale and assumption of the obligation by the new property owner. If it turns out that after litigation the anchors prove that they did not consent the mall has agreed to remove the building and/or repurpose it pursuant to law. Rather than have a recorded document they are making a substantial commitment and putting, in simple terms, their money where their representations are and we have that documented. We do not have a recorded covenant but we have, what he considers, a practical alternative.

In terms of maintenance, this is a less important issue to the City. Generally when a waiver is obtained of the site plan or subdivision law our unified control standards have maintenance provisions that are private covenants. They have to be reflected in the title and if the property owner does not maintain and the City has to expend funds to maintain the property the City gets a lien on the property. There are maintenance provisions that are dated in the existing operating agreement and the mall has agreed not to change those nor change the cross parking or other types of unified control obligations that are not up to current code, but nonetheless, have been on the property for some time. They have also agreed that any event the City enforces with respect to maintenance that they would reimburse the City for all staff time and all attorney time up to the point of violation if the Special Magistrate found in the City's favor. They did not agree to self help provisions or lien rights and they did not agree to give the City a letter of credit to secure the obligation. Mr. Lunny stated that he has gone as far as he can. He is personally unaware of any citations with regard to the maintenance with respect to that property. It would be his hope that with this indemnity, it would be sufficient to have the property owner continue acting in a responsible way.

In terms of the parking, they did not want a restrictive covenant that highlighted the language on parking; that it was shared and what that means for all the anchors. They feel that they have that suitably explained and that by shipping around an amendment it would cause delay and they would not be able to get it finished prior to their Building permits. They did give a reinforced indemnity; meaning guaranteed by Westfield, that in the event the City is sued for anything related to the shared parking formula and we incur losses, that would be subject to their indemnity and our defense fees would be covered as well. They did commit in writing a little more liberally than they did with the anchors that if there is a shortage in the shared parking application by virtue of another party's improvements or by virtue of a use mix that they would undertake to propose a parking structure that would be subject to Council's approval. Additionally, we have agreed and would propose to agree subject to Council's approval, that the Enclave site, which is currently being used only for PAL, parent parking and for events, that we would make that available to other members of the public who patronize the mall kind of as a reserve just in case. They in turn would agree to suspend the City's roadway maintenance obligation, which is currently about \$16,500 per year for Federated Road, it is our obligation as a land owner in the Broward Mall park; we own Tract 7 and there are a total of 8 tracts in that property. We thought that was a fair accommodation. The indemnity, commitments for a parking garage, and the parking lot arrangement would all go away as being unnecessary when as and if all of the anchors sign a restrictive covenant that has the shared parking language in it. While we do not have this nit to the title of the property, which would be something that would be expected to occur under the unified control standards, he feels that we have gone as far as we can and we are out of time because the permits are desired to be pulled shortly. The Mayor has reserved this time to see if that arrangement is satisfactory to Council or if there are any questions. He apologized that this was not available earlier in the day. He has with him, if this is acceptable, a Resolution that approves these arrangements in draft form and authorizes the Mayor or Chief Administrative Officer to sign documents once they meet his final approval.

Councilman Tingom commented that hopefully the Regal Theatre is successful and parking does not become an issue. They have agreed to build a parking structure to accommodate the theatre or at what point does that become a requirement.

Mr. Lunny advised that we are making available the property that the City owns and the shared parking approval is done. Just like any other development order, once you approve something and determine that the parking is adequate for site plan approval sometimes the actual experience is different than the theoretical experience. The construction of a parking garage is not triggered by that scenario, it would be triggered if an anchor did a significant expansion to the building or the mall wanted to substitute some use for a higher parking consumptive use, then they might fall short of the formula. That would then come before the City and Council

would determine whether or not waivers are appropriate. All of that are future issues and may or may not trigger a need to build a parking structure. Nothing today approves that, it is just a backup commitment.

Motion by Councilperson Stoner, seconded by Councilman Levy, to approve Resolution No. 11633. Motion carried on the following roll call vote:

Ayes: Levy, Stoner, Jacobs, Tingom

Nays: None

Mr. Laystrom thanked the Mayor and Mr. Lunny.

Mr. Laystrom introduced Rebecca Gagalis (sic), Bob McKenzie, and Connie, General Manager.

In response to Councilman Levy, Mr. Laystrom indicated that the total additional investment in the community is about \$45 million. The pressing time part is that they need to get Regal open before December 15, 2013.

* * * * *

Mr. Lunny read Item No. 23.

23. SOLID WASTE DISPOSAL DISCUSSION

Mayor Bendekovic advised that Gary Shimun and Priscilla Richards would do a presentation and then Sun-Bergeron and Waste Management would do a presentation.

Councilman Tingom commented that it is his understanding that Council can listen to this information tonight and take action at a future meeting.

Mayor Bendekovic indicated that the item can be brought back on January 23, 2013.

Mr. Shimun gave a brief presentation as follows:

- A selection of a recycling facility was made in October.
- Optional disposal services were approved; however, they have held off so that the other options can be reviewed. He noted that the Bergeron option includes some of these services and theirs that is separate from the County because this is an agreement with the County.
- Selection a disposal site is different than the people who come around and collect the household waste in the trucks; this is only where it gets delivered.
- Franchise contract for hauling solid waste will be discussed at a later date.

Update on the new Recycling Facility

- The City agreed to participate in the Interlocal Agreement with Broward County. The contractor, RE Communities, has to build that facility by July 2013 and as of December 12, 2012, they have not gotten a site.
- Broward County can terminate that agreement with RE Communities after February 1, 2013 if they do not have their approvals and permits. If that happens then Broward County will most likely enter into some long or short term contract with Wheelabrator.

History

- Cities in Broward County have a Waste Disposal District that needs a new contract by this coming July.
- Broward County approved separate agreements with Wheelabrator and Sun-Bergeron on August 28, 2012 to provide these services.
- Cities have the option to either select Wheelabrator and/or Sun-Bergeron for disposal sites for the City's standard garbage, yard waste, bulk trash, construction and demolition debris.
- Broward County has also requested commitments for two optional programs; Billing and Flow Control. Originally they wanted that by January 1, 2013 for the fiscal year 2014 but that date has been extended to February 28, 2013.
- There are two contract options for Sun-Bergeron. One through the County and the other by piggybacking on their Miramar contract.
- There are three pricing options for Wheelabrator; all three are through the County.
- The City also has some options of having the County provide Flow Control Enforcement at \$.37 per ton and centralized billing at \$.15 per ton or having the residential service billed to the City by the contractor. That is another decision to be made.

Process

- Administration and Public Works staff met to discuss what would be presented to Council.
- There are five options for solid waste disposal services.
- The benefits of each option were discussed for the residents of Plantation.
- The benefits of Centralized Billing and Flow Control Enforcement.

Sun-Bergeron – Option #1

- This is the Broward County contract that was signed June 26, 2012. The term is five years with up to three five-year extensions upon mutual consent.
- This is based on \$45.25 per ton.
- The disposal fee is subject to an annual adjustment with a cap not to exceed 5% for any year and a floor of not less than 1%. That is based on the consumer price index for Urban Wage Earners and Clerical Workers.
- The average for the period of 2001 to 2012 was a little over 5%.
- If you take the disposal rate of \$45.25 per ton, the one-year cost is a little over \$1 million so the five-year cost is just under \$5.5 million.
- There is no shared revenue so that is not added into the calculation.
- That would give a total cost of \$5.457 million for the five-year contract.
- The optional services discussed are the hazardous waste and the electronics at \$2.06 per capita. That was agreed upon at the last meeting and the bulk trash and yard waste drop off at \$0.52 per capita.
- The five-year cost for hazardous waste and electronics is \$875,500 and the bulk trash and yard waste drop off at \$221,000.
- We have the options of Centralized Billing for residential only at \$0.15 per ton and Flow Control Enforcement at \$0.37 per ton.
- When adding all of the potential costs this option comes out at \$6.661 million.

Sun-Bergeron – Option #2

- This is a piggyback on the Miramar contract and was also signed last June. It is a five-year term with up to three five-year consecutive terms at Miramar's option and mutually acceptable terms.
- The cost is \$45.25 per ton.
- Optional services (no free paint) are offered at a cost of \$24,120.50 per year.
- Revenue share is \$2 per ton.
- There is a disposal fee subject to an annual adjustment by multiplying the disposal fee by the Disposal Services Charge Inflationary Factor.
- There is no maximum or floor.
- This based on the Urban Wage Earners and Clerical Workers cpi calculation and it is a little over 5% on average.
- If we started with a base rate of \$45.25 it calculates to about a 2% increase.
- The next increase would be \$46.16.
- In the event of "unusual conditions" that are not under the control of any party that affects a party's ability to perform the non-performing party shall diligently attempt to mitigate those and notify the other party of the extent of anticipate duration of the unusual conditions.
- The Contractor may request a price, schedule and performance relief, as applicable; provided that in order to request an increase in price, the Contractor must demonstrate, by providing the City with audited financial statements or other materials certified by the contractor and a Public Accountant to be true and accurate that the cost must result in at least a 10% increase in the Contractor's total price for the previous six months.
- The City, at its own expense, may audit those Contractors records.
- The City has 60 days to determine whether to agree to the Contractor's requested adjustment to the Disposal Fee.
- The Contractor's ability to request price, schedule and performance relief is limited to one time in a 12-month period.
- If the City decides not to grant the adjustment, the City or the Contractor can terminate the agreement by providing written notice that would remain in force for 180 days.
- The City would then have to find alternative means to dispose of its residential solid waste.
- The Disposal Rate is \$45.25 and the five-year total is \$5,457,308.38.
- There is a revenue share so that was backed out. It is calculated at \$482,000 giving a disposal cost of \$4.974 million.
- If the optional services are added Bergeron will provide the hazardous waste and electronics during the five-year period for \$60,000 and the bulk trash and yard waste for an additional \$60,000.
- We will not have the options through the County for Centralized Billing and Flow Control.
- The contractual price over five years is \$5,095,000.
- Their closest facility is across I-595 in the Town of Davie; four miles from Plantation.

Sun-Bergeron facilities

- Davie
- Deerfield Beach
- Dania
- Pompano Beach

Wheelabrator – Option #1

- The term is five years plus one five-year extension and two additional five-year extensions upon mutual agreement.
- They are offering a loyalty program of \$500,300 lump sum up front if you agree to this before January 31, 2013.
- There is also a revenue sharing portion, which is 35% above the \$88 per megawatt hour with a \$0.75 per ton floor.
- Revenue sharing for Ferrous Metals, which is 25% above the \$50 per ton for Ferrous Metals pricing, with a \$0.50 per ton floor.
- There is a base price of \$46.25 per ton.
- Disposal fee is subject to an annual adjustment with a cap not to exceed 5% for any year and a floor of not less than 1%.
- It is based on a cpi calculation from the Bureau of Labor Statistics and that is for all urban consumers as opposed to the other one mentioned.
- During a calculation over the period of time from 2002 to 2012 the average was 5.16%.
- The disposal rate is \$46.25 per ton with a five-year cost of \$5.577 million.
- There is a revenue share factor to be backed out of that, which accumulatively over the five years is \$301,000.
- The loyalty program is \$500,300 giving a total disposal cost of \$4.776 million.
- This also includes the hazardous waste and the bulk yard pickup through the County and the Centralized Billing and the Flow Control Enforcement.
- When added they come to a total of \$5,979,940.

Wheelabrator – Option #2

- The term is five years plus one five-year extension with one five-year extension plus two additional five-year extensions upon mutual consent.
- A loyalty program of \$500,300 lump sum.
- Revenue sharing for energy only at 25% above \$25 per megawatt hour.
- The first megawatt hour is not included. That gives a base price of \$43 per ton.
- The Disposal Fee is going to be subject to an annual adjustment with a cap not to exceed 5% for any year and a floor of not less than 1%.
- The cpi calculation was based using the All Urban Consumers, which was calculated at 5.16%.
- At the rate of \$43 per ton, a five-year period gives \$5,185,000.
- The revenue share is \$904,000.
- The loyalty program is \$500,300.
- The total disposal cost is \$3,781,000.
- Adding in the hazardous waste and bulk trash pickup from the County as well as Centralized Billing and Flow Control gives a total cost of \$4,984,961.

Wheelabrator – Option #3

- The term is five years plus one five-year extension with one five-year extension plus two additional five-year extensions upon mutual consent.
- A loyalty program of \$500,300 lump sum.

- There is no energy revenue share and nothing for ferrous metals.
- The base price is \$42 per ton.
- The Disposal Fee adjustment is not to exceed 5% for any year or less than 1% using the All Urban Consumers CPI.
- The average increase was calculated at 5.16%.
- The disposal rate at \$42 per ton gives a rate over five years of \$5,065,000.
- There is no revenue share.
- You do get the loyalty program of \$500,300 for a total cost of \$4,565,000.
- Adding in hazardous waste, bulk trash, Centralized Billing and Flow Control gives a total rate of \$5,768,000.

Wheelabrator facilities

- 4400 South State Road 7, Fort Lauderdale; 7.72 miles from Plantation.
- 2600 Wiles Road, Pompano Beach.

Centralized Billing

- This is a County program. Without Centralized Billing the City has to pay the site operator within 30 days of invoice for residential waste service.
- Centralized Billing services include:
- Site operator who would invoice hauler for commercial waste and the County for residential waste.
- County would pay site operator for residential tonnage from the City.
- County would bill and collect from the haulers.
- County will provide the City with reports.
- County handles delinquent accounts.
- County researches discrepancies.
- The fee is \$0.15 per ton and that is adjusted on the Annual Consumer Price Index.
- There is no fee to the Districts for the time period July 3, 2013 to September 30, 2013.

Flow Control Enforcement Services

Detection methods are included:

- Inspecting of transfer and disposal facilities.
- Inspection commercial properties.
- Monitoring hauler activity.
- Verifying tonnage and origin history.
- Following up on complaints from cities.

Enforcement methods:

- Reporting results to cities.
- Working with disposal facilities.
- Direct communication with haulers.
- Fee is at \$0.37 per ton.
- Fee can be adjusted with the Consumer Price Index.

- No fee to District cities.

Other Services:

- Annual commercial account survey.
- Review of data providing a written response to requests from developers for land use. That expense in the future would be borne by developers.

Opt In or Opt Out

- Once you choose the Solid Waste Disposal Service you do not have the option to opt out.
- Cities can opt in and out of each County program (Centralized Billing and Flow Control) prior to March 1st of each subsequent fiscal year.
- County has the right not to offer a program (with six months written notice).

Comparison

- The #1 ranking is Wheelabrator Option #2.
- The reason there are eight options rather than the five discussed is that the three options from Wheelabrator were included.
- If you choose not to enter into this until after January 31, 2013, the amount they are offering goes down to \$250,000 and that is good until June 30, 2013. After that they offer nothing.
- As they rank, Wheelabrator Option #2 signed by January 31, 2013, ranks #1 with a total cost of \$4,984,000.
- Sun-Bergeron Option #2 ranks #2 at \$5,095,000.

Options

- Make a decision and execute an ILA with the County by January 31, 2013. That includes the \$500,300 loyalty program.
- Consider issuing an RFP for solid waste disposal services.
- Consider waiting for results from the City of Fort Lauderdale's RFP that was due January 9, 2013. That date has been extended to January 23, 2013.
- Consider not contracting for Centralized Billing or Flow Control.

Comparison without Centralized Billing and Flow Control

- The ranking of the top two do not change because of this.

Councilman Levy questioned where the loyalty amount is calculated and where that \$500,000 comes from.

Mr. Shimun believes that Wheelabrator is offering that to the program based on previous tonnage and as an incentive.

In response to Councilman Levy, Mr. Shimun clarified that if a decision is made by January 31, 2013 they will write us a check immediately for the \$500,000. If we do not make a decision by January 31, 2013 we have until June 30, 2013.

Ron Bergeron, Sr., Lonnie Bergeron, Brad Cane (sic), employee, George Platt and Mitch Ceasar, consultants, were present.

Ali Waldman with Sun-Bergeron made the following presentation:

- The contract between Sun-Bergeron and the City of Miramar has benefits that the County contract does not have.
- The first benefit is that the contract went through a complete full procurement at the City of Miramar. 16 municipalities participated in that process and Plantation was one of them.
- The Evaluation Committee in Miramar was composed of representatives from all over the County.
- It is important to understand that competition in the market place is critical.
- The reason why the prices are half of what we used to pay is because a company like Sun-Bergeron came to the table, spent the money, made the investment in the community and stands here side by side with one of the largest companies in the world.
- Prices in Broward County have been brought down substantially, almost by half.
- The Miramar RFP complies with all of the procurement codes of the City of Plantation.
- Plantation does not have to waive the procurement code to piggyback onto the Miramar contract.
- There are no legal impediments whatsoever.
- There is an ordinance, #2-226-G5, which requires that in order for the City to acquire goods and services through an existing governmental contract it has to be through a competitive process.
- The County's process was not a competitive process; it was a direct negotiation with a current vendor; the only vendor in the County, Wheelabrator.
- There is a legal impediment in the code that says you have to acquire services that have been competitively bid in order to piggyback or in order to acquire services through other governmental bodies.
- Sun-Bergeron has guaranteed a recycling goal of 75% through the County contract and has orally and is in the process of modifying the Miramar contract to include that same guarantee.
- It is important to the City, as well as to the County, because in the year 2020 we have a goal to meet that 75% recycling.
- They have committed to do that because they have the ability since they are proposing to recycle not just MSW but the entire solid waste stream, which is composed of much more than just the trash that comes out of the home or restaurants. It is composed of the solid waste that comes from construction demolition debris, from bulk waste and from yard waste.
- Wheelabrator can only meet the 50% recycling through incineration; they can never reach that goal if you only take one class of solid waste, MSW, and recycle it. The whole stream has to be recycled.
- With respect to the optional services, they have provided the City cost recovery on the two services the City would like to elect instead of having to go through the County and pay a larger amount.
- One clarification was made by letter today; that the numbers they provided the City were not used, which were substantially lower than the cost that the County is charging for those optional services.
- The optional service cost is reflected as \$1,023,837.13; the total of the two ancillary services for five years and \$240,767.42 for one year.
- Those services have been offered at a substantially lower rate; for one year those services would be offered for \$24,120.50 and for five years \$120,000.
- Option #2 is the ancillary program and service cost they offered and they are correct.
- Option #1 actually lists the County costs and that should not be stated like that; it should be the exact same numbers shown in Option #2.

In response to Councilman Tingom, Ms. Waldman stated that for one year they would be charging \$24,000 +/-.

Councilman Tingom commented that it is approximately \$20,000 less.

In response to Mr. Lunny, Ms. Waldman advised that Option #1 prices are set by the County; however, Sun-Bergeron is offering them at a lower rate. Option #2 reflects the lower rate. The optional services do not have to be taken through the County.

- There is a credit for Option #2 for Wheelabrator of \$904,526 for the revenue share with respect to the megawatt hours.
- The letter sent today identified why that number should not be in that slide. That number is like a cpi; they change from year to year. To estimate a five-year number where there is a fluctuation factor is unfair and Sun-Bergeron requests that the City not show that credit or show it based on historical information because it puts Sun-Bergeron at a disadvantage.

In response to Mayor Bendekovic, Ms. Waldman clarified that the \$904,526 should not have been part of the calculations because that number is not an actual number; it is an estimate. That estimate is based on something that changes from day to day and year to year; it is not a stagnant number. If you are going to give them credit for revenue sharing with the City, at least be fair to the other vendor, which is Sun-Bergeron, and do it accurately and historically.

Mr. Bergeron advised that one of the issues they have a concern with is a credit on hypothetical kilowatt hours, Ferrous Metals. If you take historical data from what has happened in the past it will give more of an idea of what that \$904,000 really is. He believes that it is important to have a competitive playing field. The other thing he would like the Council to take into consideration is the environment and the business plan within the four corners of both of these contracts. They are very proud that they recycle at very high levels and when you take all four solid waste components across the board, they achieve the 75% goal with all four components averaged. In the CND area they achieve 90% or better and vegetation 99%. Wheelabrator has two incinerators and a landfill. He thinks that it is extremely important to know whether we are looking at dollars and cents or if we are going green. Sun-Bergeron is making an effort to meet the 75% and that is important. When you take the Ferrous Metals and kilowatt hours out of the scenario they are the most competitive bidder and they do recycle. They do not have a landfill, so for economic purposes, it is important for them in their business plan, to recycle everything possible. A lot of this material will go to a cement plant and when it is put and born there, there is no residual, it actually goes into cement and makes a product. When looking for numbers and how close they are we need to consider what is best for our community overall and what is best for the environment. He reiterated that when taking the \$904,000 out of the metrics, Sun-Bergeron is the lowest bidder. He believes that staff needs to review this very thoroughly because there is a tremendous quality of life in South Florida and the important thing is that they are good stewards to maintain that quality.

Attorney Bill Laystrom was present on behalf of Wheelabrator Technologies as well as Waste Management, along with Bill Roberts, Vice President of Wheelabrator.

Mr. Laystrom distributed materials to Council. He indicated that about 20 years ago the County embarked on an RFP process to decide what to do with their garbage and where it would go. At that time it was decided that waste energy plants were the way of the future and the way to address growing municipal solid waste. Wheelabrator and Waste Management went out for bids, won the bids and built these plants on our guarantee, not the County's. Two plants were built to do waste energy and they now take, and have for 20 years, solid waste and turn it into renewable energy. For years the County has worked with us with regard to getting credits

for both the electricity and the Ferrous Metals and that is where the staff came up with the credit that we are entitled to. There are basically two processes; one at the City of Miramar and one at the County. The City of Miramar went first and then the County did a competitive negotiation. They invited us both in and the reason they picked two was because those were the two that bid Miramar. We went session after session and at the end the County said they were going to do the same contract with both Cities because this is the best price and Wheelabrator came in with the best price at \$42 for municipal solid waste. He believes the competitors have now started adding on other things, which was heard earlier. In Miramar and Broward County the process was about municipal solid waste; it was not about bulk trash, CND, yard waste or hazardous waste disposal and electronic waste disposal. Once the numbers were out, all of a sudden, all of these new offers are coming in to basically adjust the price. He referred to the chart that talks about electric. There are at least 10-15 estimates that staff does and they spend hours looking at the electricity and the Ferrous Metals, as well as cpi. They believe that several estimates are not unfair but are not accurate when taking them off of our bid; specifically the household hazardous waste and electronic recycling. That came in well after any of the negotiations as an additional offer in Davie to "even things out". Staff then looked at the County price and Sun-Bergeron's price. Typically the hauling companies do those types of services to pick up household hazardous waste or CND, yard waste and all of the others. Staff has made correct estimates and has probably added a cost to our side because that was the only cost they had but the reality is they can do those services if they are put out for bid. From their perspective, they believe they are the lowest bidder; they are the lowest proposer and they are the only responsive responsible bidder. They have been doing this for many years in Broward County and have provided the City with quality service at a cost that was set by the County, of which their price was only a portion of the numbers that were previously mentioned. The County had their own charges for all of the "optional charges"; those were not Wheelabrator charges. If you go to Sun-Bergeron's facility in Davie, that facility is not a solid waste facility; it is what is called a transfer station. That means that is where the trucks go to drop off solid waste and whatever recycling is going to be done is done. After that it is taken on long haul trucks to JED landfill. They said they do not own a landfill and that is because they have entered into a contract with JED in Kissimmee, Florida. For years the County and this City have been committed with doing something with our garbage besides sticking it in a landfill. All of the services that we provided and Sun-Bergeron provides are services that are after the normal recycling. The City of Miramar contract has a \$25,000 penalty if they do not provide enough recycling out of the materials. He would submit that is the cost of doing business on an annual basis because they have quoted 90% in Miramar to recycling then it went back to 25% to 30%. The industry is somewhere between 20% and 25%, maybe 30% in a facility that is the best facility in a cooler climate where more can be done. The County tried this type of recycling at the router facility in Pembroke Pines and it failed. Residents were upset and the heat gets to it making it an impossible situation. In their opinion, the recycling goal will not be met and effectively it is an effort to avoid the discussion about where the garbage is going at the end of the day and it is going to a landfill. When talking about contracts with loopholes, there are at least two or three that were negotiated at the end of the process. One was the unusual costs. When looking for something to be certain, which is what all of the Cities told them when they were going around with the MLOU's, they negotiated contract form with the City Manager's Group and that is the contract form that the County used, which basically does not allow for any of those. Staff did an excellent job going through this; they looked at both facilities. Sun-Bergeron is a new business and this is the business of solid waste disposal with lots of liability and lots of environmental needs to make sure this stuff does not go to a landfill. He truly believes that Wheelabrator is the choice today. With regard to procurement, he believes that the Council has the authority to enter into any of these contracts, specifically the Interlocal Agreement from the County, which can be entered to at any time; it actually is not a procurement.

Councilman Levy requested clarification on the allegation that the \$904,000 credit is a misnomer and may or may not appear. He questioned where the \$500,000 loyalty money is coming from.

Mr. Laystrom referenced the signing bonus. The loyalty money is completely paid by Wheelabrator and it is not taken out of any other rates; it is not County money it is a Wheelabrator check and it is absolutely paid to you. The calculation is basically \$2 per ton times the tonnage for the last two years and you get one for each five years. When you bring it forward you get one check up front for the whole amount. Staff will look at the \$904,000. It is reasonable to make assumptions like you would on anything else. He agreed that there is a possibility that it will not reach that amount; it could go either way. He would say the same thing about fuel costs under the Miramar contract.

Councilperson Stoner commented that both parties have indicated their respect for the staff's ability and their cooperation and the time involved in reviewing all of the matters.

In response to Councilman Levy, Mr. Shimun advised that staff's recommendation was for the Wheelabrator Option #2 to be signed before January 31, 2013 and that total would be \$4,877,624.25.

In response to Councilman Tingom, Mr. Consaul advised that if this is not done by January 31, 2013 we will lose the chance of the \$500,300. He has no opinion either way as to which one was better, the numbers speak for themselves.

Councilman Levy questioned how the deadline date of January 31, 2013 was accomplished and why that is in effect.

Mr. Laystrom indicated that they structured it the same way they had done the signing bonus. They knew you would need time to do this. County negotiations were finished in September and if they do not have their tonnage as of July then the absolute perfect storm happens and they start going after additional disposal out of other counties to bring it here and at the same time we would be landfilling it somewhere else. The purpose was so that we could anticipate and get out marketing if there was not going to be enough solid waste going to the plant. At the time, it was part of discussions back in August and September with the County.

In response to Councilman Levy, Mr. Laystrom stated that they did not guarantee the County a certain amount of tonnage. Their plants will handle well over 1 million tons and we now have three quarters of the cities coming to the Wheelabrator plant and if that were to drop they would have to find additional disposal.

In response to Councilperson Stoner, Mr. Laystrom advised that they are reserving the space for Plantation if you select by January 31, 2013.

Councilman Tingom questioned whether Wheelabrator anticipate building a facility similar to the 441 facility in Palm Beach County. He questioned how much better the technology would be if it were built in the new plant.

Mr. Laystrom stated that they were one of the proposers for that; Palm Beach is actually doing it themselves. They would build it using a design build type contract. They are top of the line; they update their facility every time there is an opportunity. One of the things about this contract is that there is no risk on the City's part should they have to do those improvements. Federal law changes all the time as far as what type of equipment they have to have. The way the City Managers negotiated this contract in the County does not allow an increase in the contract, just the cpi and that is it.

Councilman Levy commented that he feels rushed with the deadline. It is too important of a decision to make tonight. He thought there was just going to be a discussion and no vote.

Mr. Laystrom advised that there will be another hearing.

Mayor Bendekovic indicated that the item could be deferred to January 23, 2013. She is concerned about the calculation.

Councilperson Tingom preferred to wait until January 23, 2013 since they were not aware of the letter to Ms. Richards. That would allow Mr. Shimun to review this letter. He would feel more comfortable having solid information.

Mr. Laystrom advised that Council would not be approving the contract today; it would simply be direction to staff to bring the contract to you.

Councilman Levy noted that staff can be directed to bring the information back.

Mr. Ceasar stated that this is a big contract and he requested that the Council to investigate, specifically, the \$900,000 as there is no guarantee that is the number. The numbers are extremely close and if that gets adjusted they can move very easily.

Councilperson Stoner commented that during discussion you said you respected the results of staff and all of staff efforts and what was put forward. A last minute e-mail over numbers that have been submitted and made a part of an official Power Point does not happen in two seconds. She is not in favor of deferring this item.

Councilman Levy stated that to him this is not deferring anything; it is negotiating and discussing because we were given some information tonight that we did not have that we need to make a proper informed decision so he would call it negotiating.

Councilperson Stoner indicated that she would call it someone that was not timely responsive in submitting their numbers.

Ms. Waldman clarified that on the unusual conditions provision which was set forth in the presentation, Sun-Bergeron has agreed not to exercise the termination provisions under that provision. Wheelabrator is challenging the Miramar procurement process in Court right now; the case ended today and closing arguments will be tomorrow. During that proceeding Sun-Bergeron stipulated that it will not exercise its termination rights under the unusual conditions provision. That takes one of the risks off of the table.

In response to Councilman Levy, Ms. Waldman indicated that they will know the outcome in a very short time.

Councilman Levy believed it would behoove Council to wait in order to make a decision.

Ms. Waldman stated that there is a number that is not an accurate number and it will give staff an opportunity to review that number. If Sun-Bergeron is going to be compared and that number is going to be used to benefit Waste Management/Wheelabrator, at least get the number to the point where it is accurate.

Mr. Laystrom advised that the Court case is for Miramar. Today Council would be selecting a Wheelabrator proposal that is not challenged anywhere. Whatever the Court decides, either you do or do not have the Miramar option to select afterwards. The answer to today is the same. Under unusual circumstances, in the Court they see they have a problem with that provision and now want to change it. That contract seems to be changing every day.

Mr. Lunny clarified that the motion was to support staff's recommendation, which would be to enter into the Interlocal Agreement and choose the Wheelabrator Option #1 and if that failed for some reason, that is the only one. He questioned whether it is Councilperson Stoner's intent to preclude that being considered at January 23, 2013 or would it be that it just failed tonight. He thinks the Administration's thought was, depending on what happens tonight, they still have to come back to Council on January 23, 2013. If the item is approved tonight and direction is given to go with the Interlocal Agreement and Wheelabrator Option #2, a Resolution will be on the agenda for January 23, 2013. If this fails for some reason, we still would have January 23, 2013 to make whatever decision you wanted to make. There are two different alternatives. One is that if the motion fails they do not want the other person to think they won because there has been no affirmative decision that way. As he heard the motion it was that you want to do this tonight to approve staff recommendations. If that fails, that is not going to preclude the Council from making the same motion on January 23, 2013; it is only that it will not happen tonight.

Councilperson Stoner commented that there is not enough of a number change between today and January 23, 2013; that chart is not going to change sufficiently enough based on what has been submitted.

Mr. Lunny just wants to know whether it is in Councilperson Stoner's contemplation that if the motion to support staff's recommendation fails that it does not mean the other vendor has won without an affirmative motion and it only fails tonight. The elected colleagues might need to know that before they vote. If you desire otherwise than having January 23, 2013 as a second reading, you should say it so it is clearer.

Councilperson Stoner suggested that it be put as a motion to approve staff's rankings with a final review of the revision on January 23, 2013.

Mr. Lunny stated that the motion was to approve staff's ranking and if that is done then we still would have to bring back to Council the Interlocal Agreement and the Option #2.

Councilman Levy commented that if it does not pass it does not mean we are disapproving staff's recommendation; it only means that we are not voting for that motion. Staff's recommendation can still play on January 23, 2013.

Mr. Lunny indicated that would be his understanding.

Councilman Tingom noted that there is a third option and if the motion were withdrawn it would come to the next meeting. According to Mr. Shimun's recommendation, this would be the least expensive option of what the residents would pay.

Mr. Shimun replied affirmatively.

Mayor Bendekovic clarified that this is not a recommendation; it is a ranking.

Councilperson Stoner stayed with her motion.

Councilman Tingom indicated that the motion is to affirm staff's recommendation and enter into negotiations with Wheelabrator and that contract.

Mr. Lunny advised that there is no negotiation; it is to accept the recommendations and the direction to staff would be at the next meeting you would approve a Resolution approving the Interlocal Agreement and instructing Mr. Auerhan that we would like Wheelabrator Option #2.

Motion by Councilperson Stoner, seconded by Councilman Jacobs, to approve staff's recommendations for Item No. 23. Motion carried on the following roll call vote:

Ayes: Stoner, Jacobs, Tingom

Nays: Levy

Councilman Levy commented that he believed in not rushing judgment and he does not think that waiting until January 23, 2013 is going to create a problem; therefore, he will vote no.

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LEGISLATIVE ITEMS

Mr. Lunny read Item No. 24.

24. PUBLIC HEARING AND FIRST READING OF AN ORDINANCE RELATING TO THE SUBJECT OF MASSAGE; AMENDING THE ZONING CODE UPDATE ZONING REGULATIONS AND DEFINITIONS FOR MASSAGE ESTABLISHMENTS TO BE CONSISTENT WITH STATE LAW AND REGULATIONS; AMENDING THE USE REGULATIONS IN THE SPI-2 ZONING DISTRICT TO MAKE MASSAGE ESTABLISHMENTS A CONDITIONAL USE WHICH IS ALLOWED ONLY IN THE HCS; HEALTHCARE SERVICES SUBDISTRICT, HC: HYBRID COMMERCIAL SUBDISTRICT, AND THE PO: PROFESSIONAL OFFICES SUBDISTRICT; AMENDING THE CITY'S OTHER ZONING USE REGULATIONS AS TO MAKE MASSAGE ESTABLISHMENTS A CONDITIONAL USE WHICH IS ALLOWED ONLY IN THE B-2P CENTRAL BUSINESS DISTRICT, B-3P GENERAL BUSINESS DISTRICT, AND THE SPI-3 DISTRICT; UPDATING AND AMENDING THE CITY'S BUSINESS REGULATIONS PERTAINING TO MASSAGE ESTABLISHMENTS AND MASSAGE THERAPISTS TO MAKE SAME MORE CONSISTENT WITH STATE LAW AND REGULATIONS; PROVIDING THAT APPEALS FROM THE DENIAL, REVOCATION, OR SUSPENSION OF A LOCAL BUSINESS RECEIPT TAX FOR A MASSAGE THERAPIST OR A MASSAGE ESTABLISHMENT SHALL BE MADE TO THE BOARD OF ADJUSTMENT; PROVIDING A DEFINITION OF PUBLIC NUISANCE IN CONNECTION WITH THE FOREGOING; PROVIDING FINDINGS, PROVIDING A SEVERANCE CLAUSE; AND PROVIDING AN EFFECTIVE DATE THEREFOR.

Mr. Lunny explained that this item was considered by the City Council at Workshop and direction was given to advertise. The Planning and Zoning Board wanted to make a recommendation which is included in Mr. Leeds' memorandum of January 9, 2013, that an additional exemption be made for massage therapists operating out of a beauty parlor, nail spa or health spa, that they be exempt. The State law does not provide for that exemption and a concern would arise in his judgment as to whether the exemption could arguably deplete the benefits of the rigorous regulation that is being recommended by the Police, Legal and Planning Departments to try to minimize any potential negative secondary affects of businesses that are not fully compliant with operating requirements.

In response to Councilperson Stoner, Mr. Lunny indicated that he is all right with this.

Motion by Councilperson Stoner, seconded by Councilman Tingom, to approve Item No. 24. Motion carried on the following roll call vote:

Ayes: Levy, Stoner, Jacobs, Tingom
Nays: None

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QUASI-JUDICIAL CONSENT AGENDA

This item was moved to the Consent Agenda as per a request from the Engineering Department.

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QUASI-JUDICIAL ITEMS – None.

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COUNCILMEMBERS' COMMENTS

Councilman Jacobs appointed Jeremy Wehby to the Planning and Zoning Board.

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Mayor Bendekovic reminded everyone about the Multi Cultural Event of Martin Luther King on January 20, 2013.

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Councilman Tingom announced that Erin DiMeglio received an award from Elizabeth Pines, a Commissioner in the Florida Commission on the Status of Women, during halftime at a girls' basketball game at South Plantation High School.

He wished everyone a Happy New Year.

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PUBLIC REQUESTS OF THE COUNCIL CONERNING MUNICIPAL AFFAIRS

Rico Petrocelli, resident, was present. While traveling on Broward Boulevard he noticed the City logo on a campaign sign and questioned whether that logo was authorized to go on the sign.

In response to Mayor Bendekovic, Ms. Slattery indicated that she went to the location and took pictures of the sign, which will be reviewed tomorrow.

Mayor Bendekovic advised that they will review the photo to see if the sign does in fact have the City logo on it. The City logo is not to be used on anything other than our stationary.

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SEALED COMPETITIVE SOLICITATIONS – None.

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WORKSHOPS – None.

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The Meeting adjourned at 9:35 p.m.

Peter S. Tingom, President
City Council

ATTEST:

Susan Slattery
City Clerk

RECORD ENTRY:

I HEREBY CERTIFY that the Original of the foregoing signed Minutes was received by the Office of the City Clerk and entered into the Public Record this _____ day of _____, 2013.

Susan Slattery, City Clerk