MEETING OF THE CITY COUNCIL
PLANTATION, FLORIDA

October 28, 2009

The meeting was called to order by Councilwoman Bendekovic, President of the City Council.

1. Roll call by the City Clerk:

Councilmember:	Diane Veltri Bendekovic
	Jerry Fadgen
	Robert A. Levy
	Peter S. Tingom
	Sharon Moody Uria
Mayor:	Rae Carole Armstrong
City Attorney:	Donald J. Lunny, Jr.

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2. The invocation was offered by Councilwoman Uria.

   The Pledge of Allegiance followed.

3. The City Council minutes for July 28, 2009 were approved as printed.

4. The City Council minutes for July 29, 2009 were approved as printed.

5. The City Council minutes for August 26, 2009 were approved as printed.

6. The City Council minutes for August 27, 2009 were approved as printed.

7. The City Council minutes for September 9, 2009 were approved as printed.

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ITEMS SUBMITTED BY THE MAYOR

Mayor Armstrong presented Service Awards to the following employees:

D.C. James Larsen	Police	30 years
Officer Dale Clark	Police	25 years
Anibal Guadalupe	Police	25 years
Officer James Murray	Police	25 years
Matthew Taylor	Parks & Rec.	25 years

Lowell Coffman	Parks & Rec.	20 years
Sgt. Douglas Powell	Police	15 years
Andrew Bacchi	Purchasing	10 years
Anthony Deleon	Parks & Rec.	10 years
Mark De Walt	Fire/Rescue	10 years
Leslie Ethridge	Fire/Rescue	10 years
Stephen Jackson	Public Works	10 years
Robert Krogman	Utilities	10 years
Dean Pollice	Public Works	10 years
Sandra Wallett	Fire/Rescue	10 years
Mitchell Elias	Fire/Rescue	5 years
Alfred Ferrer	Fire/Rescue	5 years
Brint Hess	Public Works	5 years
Officer Andrew Khaleel	Police	5 years
Robert Palino	Fire	5 years
Victor Pedlar	Utilities	5 years

Congratulations were offered.

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Mayor Armstrong congratulated Councilwoman Bendekovic for being honored as Pioneer of the Year for Plantation on October 17, 2009.

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Diana Berchielli, Landscape Director, announced the City of Plantation's 10th Annual Tree Day on Saturday, October 31, 2009, between the hours of 8:00 a.m. and 1:00 p.m., at the Jim Ward Community Center. Also on this date, the Shade Brigade will be hosting their 3rd Annual Plant Sale, which is a great event.

Mayor Armstrong made the following announcements:

- The Volunteer Firefighters' 53rd Annual Barbecue will be held on Sunday, November 8, 2009, between 12:00 p.m. and 5:00 p.m., at the Pine Island Soccer Field.
- Art in the Park will be held at Liberty Tree Park on Saturday and Sunday, November 14 and 15, 2009.
- The Holiday Parade will be held on Saturday, November 21, 2009 at 9:00 a.m.

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CONSENT AGENDA

Mr. Lunny read the Consent Agenda by title.

8. Approve Victory Life Church to have a yard sale in their church parking lot on Saturday, December 5, 2009 from 8:00 a.m. to 4:00 p.m.

9. Award bid for roof replacement for Fire Station #2 to ISM Roofing Corporation in the amount of $102,000. (Budgeted – Designated Capital).

10. Award bid for painting of pedestrian bridge located at NW 10th Street and NW 93rd Avenue to Viktor Construction, Inc. in the amount of $40,000. (Budgeted – Designated Capital).

11. Request to waive competitive bidding and purchase one Toro Workman Heavy Duty Utility Vehicle from Wesco Turf Supply for $19,082. (Budgeted – Golf Maintenance).

12. Request for authorization to award a purchase order to Miller Pipeline Corporation for the lift station #100 sanitary sewer lining project in an amount not to exceed $121,541. (Budgeted – Utilities).

13. Approve purchase of 31 replacement vehicles for Police Department from various vendors in the amount of $716,562.50. (Police – Forfeiture fund).

Resolution No. 10724

14. **RESOLUTION** for adopting the official City holidays for the calendar year 2010.

Resolution No. 10725

15. **RESOLUTION** for the City of Plantation, Florida, pertaining to the subject of Public Finance.

Resolution No. 10726

16. **RESOLUTION** pertaining to the subject of the City of Plantation Stormwater Utility; approving agreement for Professional Services for funding recommendations between the City of Plantation and Camp Dresser & McKee, Inc. (CDM); providing that any costs and expenses for such consulting services be repaid by stormwater utility revenue, if a stormwater utility fee or assessment is adopted; having the appropriate City Officials execute the agreement and authorizing the City Administration or City Attorney to make minor revisions thereto; providing a savings clause; and providing and effective date therefor.

Resolution No. 10727

17. **RESOLUTION** approving the expenditures and appropriations reflected in the Weekly Expenditure Report for the period October 8 through October 14, 2009 for the Plantation Gateway Development District.

Resolution No. 10728

18. **RESOLUTION** approving the expenditures and appropriations reflected in the Weekly Expenditure Report for the period October 8 through October 14, 2009 for the Plantation Midtown Development District.

Resolution No. 10729

19. **RESOLUTION** approving the expenditures and appropriations reflected in the Weekly Expenditure Report for the period October 8 through October 14, 2009.

Resolution No. 10730

20. **RESOLUTION** approving the expenditures and appropriations reflected in the Weekly Expenditure Report for the period October 8 through October 14, 2009 for the City of Plantation's Community Redevelopment Agency.

Resolution No. 10731

21. **RESOLUTION** approving the expenditures and appropriations reflected in the Weekly Expenditure Report for the period October 15 – October 21, 2009 for the Plantation Gateway Development District.

Resolution No. 10732

22. **RESOLUTION** approving the expenditures and appropriations reflected in the Weekly Expenditure Report for the period October 15 – October 21, 2009 for the Plantation Midtown Development District.

Resolution No. 10733

23. **RESOLUTION** approving the expenditures and appropriations reflected in the Weekly Expenditure Report for the period October 15 – October 21, 2009.

Resolution No. 10734

24. **RESOLUTION** approving the expenditures and appropriations reflected in the Weekly Expenditure Report for the period October 15–October 21, 2009 for the City of Plantation's Community Redevelopment Agency.

NON-AGENDA

24a. Request to approve the Greater Plantation Chamber of Commerce 40th Annual "It's A Wonderful Life" Holiday Parade, which is scheduled for November 21, 2009 at 9:00 a.m. and send an application to the Florida Department of Transportation for all applicable road closures.

Motion by Councilman Fadgen, seconded by Councilwoman Bendekovic, to approve tonight's Consent Agenda as read. Motion carried on the following roll call vote:

Ayes: Fadgen, Levy, Tingom, Uria, Bendekovic
Nays: None

NOTE: Mayor Armstrong voted affirmatively on Items #20 and #24.

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ADMINISTRATIVE ITEMS

Resolution No. 10735

25. **RESOLUTION** relating to the State Revolving Loan Fund Program, approving and authorizing the implementation of the planning recommendations outlined in the Facilities Plan Documentation for the Plantation Park Phase "E" Water Distribution Project.

A memorandum dated October 22, 2009 to Mayor and Members of City Council from Hank Breitenkam, Director of Utilities, follows:

The Utilities Department has implemented a progressive capital improvement program for the replacement and/or rehabilitation of water and sanitary sewer facilities that have served their useful life.

The next stated water main project is the Plantation Park Phase E Water Distribution project, boundary as follows: Broward Boulevard to the north; Peters Road to the south; Florida's Turnpike to the east; and SW 54th Avenue (both sides) to the west. Like all our water main projects, it entails the replacement of the existing iron

water main with PVC pipe, the replacement of galvanized water services up to the meter with polyethylene services, and all new fire hydrants and isolation valves.

In the first half of 2009, the Utilities Department applied for ARRA stimulus funding for this project because the design was complete and the project was "shovel ready". The project has been slated for funding via a low-interest loan through FDEP's State Revolving Loan Fund (SRF).

As part of DEP's loan approval process and the transparency requirements of the ARRA, the public must be given the opportunity to review and discuss the project's Water Facilities Plan and offer comments to the approving governing board. All entities in the Phase E area have been notified of the October 28, 2009 hearing for this matter. In my absence, Utilities Capital Improvement Project Administrator, Danny Pollio, will present the project. Our Utilities consulting firm, Hazen and Sawyer, P.C., will provide technical support.

This project has been advertised for public bid and 24 bidders have responded with excellent prices. The prices are in the area of a million dollars less than the engineer's cost estimate. The received bids are presently being reviewed and it is anticipated that a request to award a contract will be presented to you for review and approval in November. This is definitely a great time to undertake utilities capital improvement projects due to the outstanding market pricing available.

Based on all the reasons noted in the attached Phase E Water Facilities Plan and in order to provide our water customers with improved service, I recommend this project and request your endorsement by Resolution this evening of the Phase E Water Facilities Plan.

Please contact CIP Administrator, Danny Pollio, at 954.797.2159. I may be reached at 954.797.2293.

Danny Pollio, Utilities Capital Improvement Project Administrator, provided a brief overview and schedule as to what is required to be done this evening. A copy of the Plan is available as well as a copy of the construction plan for viewing this evening. A public hearing is required by DEP for projects funded through the American Recovery and Reinvestment Act. The City of Plantation applied for stimulus funding for this project but upon evaluation by DEP they offered the City a low interest loan in lieu of a grant or a loan with principal forgiveness and that was based on the average household income of Plantation residents. This project is part of our normal ongoing Capital Improvement Program, which replaces 50+-year-old infrastructure. The only difference with this other than the previous ones is that we will be taking out a State Revolving Loan to complete it. The location of the project is Plantation Park Phase E, which encompasses about 350 homes. It is about 23,000 linear feet of four-inch, six-inch and eight-inch water mains, water services and fire hydrants. Since the project is being conducted in an established residential neighborhood environmental impacts are not expected and have never been experienced in any of the other projects. The selective alternative was the installation of PVC pipe, which is currently the standard in the industry. The second alternative considered was the use of duct iron pipe, which will result in a 5% increase in materials over PVC. The third alternative considered was no action at all, which is not an acceptable alternative. The schedule for this project is estimated to be completed in one year, starting in January 2010 with the completion in 2010. As with all of the water main projects, they normally start the first of the year and are out of there by Thanksgiving as not to impact the residents during the holiday season. The project will be completed at no additional cost to residents of Plantation. There will be no financial impact or assessment. The loan will be repaid with funds collected through our normal water and sewer bills.

In response to Councilman Fadgen, Mr. Pollio indicated that the engineer estimate was $2.5 million dollars; however, some sewer work had to be pulled, which rounded to $2.2 million dollars. He noted that all of the bids

were lower than anticipated. We will be getting not quite 60% of the original estimate. The City originally applied for ARRA funds; however, upon review of the application they came back with an offer of a loan. The State Revolving Loan has always been there; however, funds from the stimulus have been added to that.

In response to Councilwoman Bendekovic, Mr. Pollio advised that notice will be given to residents prior to beginning the project; they usually give three to four notices throughout the entire project and generally have a person on site at all times to handle any issues that may come up with residents. The new materials are going to last 100 years.

Councilwoman Bendekovic opened discussion to the Public.

Brandon Lowe, resident, commented that he received a letter last week. He was disappointed that he only had a few days notice to investigate prior to this meeting. He understands that capital improvements are necessary; however, this has no impact on property values and that is the primary concern that people have today. This is a lot of money going towards a project that ultimately does nothing to improve property values. Due to short notice, residents were in no position to investigate the necessity of this project. Some of the streets were created ten years ago; therefore, those pipes should be brand new, as well as the fire hydrants. At some point he would like to know specifically whether his SW 11th Street will be affected. As far as the economic impact, he is not following the logic that there is no cost to the residents; the money has to come from somewhere. He questioned why this project was chosen over other projects that might increase property values; how SW 11th Street will specifically be impacted, as the street and utilities are approximately ten years old; and how is there no financial impact when this comes from the water fees source. He referenced impacting irrigation systems and driveways and questioned who pays for that. He also questioned how contractors were able to bid so low.

Mr. Pollio explained that SW 11th Street will not be affected; the infrastructure is only about 10 or 12 years old. The reason door hangers were given out on that particular block was because the old water main past SW 11th Street on SW 54th Avenue will be tied into Peters Road. With regard to notice, generally they are provided 30 days prior to the beginning of the project. The notice that went out was to have residents comment on the Facilities Plan, which is part of the SRL requirement. As far as costing the residents, there was a rate increase several months ago at which time everything was taken into consideration. When there are 50+-year-old infrastructures, whether it is water or sewer, not to do anything is not an option; the water mains have to be replaced.

Mayor Armstrong indicated that if an infrastructure is required it is an important part of your property value and if you have a reputation of constantly having brown or bad water for a period of time that would influence someone coming into your neighborhood to make a purchase or acquisition. Everyone is concerned about property values but this within the Utility Department is a fund that is specifically directed to that purpose of providing utility infrastructure. This is important as far as property values are concerned because that is part of what people look for whenever they are looking to purchase or sell a property. With regard to quantifying and qualifying a bid, sometimes the low bid is not always the best bid and you have to look beyond that. She assured that those looking over the issues, in this case the Utility Department and our Consulting Engineer, Hazen and Sawyer, have a tremendous background in reputation for doing that kind of analysis. This contractor is one that has done work for us before and has performed and knows exactly what is expected in the City of Plantation. The contractors that responded to the bid are very good, confident, reputable contractors.

Steven Solez, resident, questioned whether the canopy of trees along SW 54th Avenue will be removed, as that would affect property values. He also questioned whether there would be a hook up fee to residents and whether there is a sewer plan.

Mr. Pollio advised that there will be no trees removed. There are specifications in the contract that have been worked out with the City Landscaping Department and as they do pass root barriers they clean cut the roots and go past them. When they end up too close to a tree they will either move the water main back and put it underneath a section of sidewalk or move it out to the street. They value the trees as much as the residents. With regard to hook up fees, there will be no costs at all. The City is not working on a sewer plan for Plantation Park at this time; that project is about five years away.

Mayor Armstrong clarified that no trees will be removed.

Motion by Councilman Fadgen, seconded by Councilman Levy, to approve Resolution No. 10735 relating to the State Revolving Loan Fund Program. Motion carried on the following roll call vote:

Ayes: Fadgen, Levy, Tingom, Uria, Bendekovic
Nays: None

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26. DISCUSSION CONCERNING PURCHASE OF ENCLAVE PROPERTY.

Mr. Lunny read the Resolutions as follows:

Resolution No. 10736
RESOLUTION pertaining to the acquisition of the Enclave Property (being described as Tract 7, Broward Mall at Plantation, according to the Plat thereof, as recorded in Plat Book 91 at Page 24 of the Public Records of Broward County, Florida); making a final decision to authorize the Administration to close a contract for purchase and sale of real property by and between Cambridge Place Holdings, LLC, a Florida limited liability company, and the City of Plantation, Florida for a contract purchase price of two million seven hundred thousand No/100 dollars ($2,700,000) excluding customary closing allocations and expenses; authorizing a negotiated loan to finance the acquisition of the property; authorizing the repayment of such loan's debt service by making a covenant to budget and appropriate legally available non ad valorem revenues for such purpose; accepting negotiated deed restrictions for the property which shall bind the title of the property and run with same; approving an Interlocal Agreement with Plantation Midtown for funding a portion of the City's costs and expenses in connection with this endeavor; generally authorizing the Administration to take all actions and do all things necessary to perform the transactions authorized by this Resolution (including modifying the terms thereof and executing such documents as may be appropriate in connection therewith); providing other miscellaneous authorizations in connection with these transactions; providing a savings clause; and providing an effective date therefor.

-AND-

Resolution No. 10737
RESOLUTION of the City of Plantation, Florida pertaining to the acquisition of land for public purposes in the Plantation Midtown Neighborhood District (the "Project"); approving a loan from

SunTrust South Florida Bank in an amount not exceeding $2,750,000 to finance the cost of the land acquisition project, to be repaid from legally available non ad valorem revenues; authorizing execution and delivery of a loan agreement and a note, and other action in connection with the delivery of such documents; authorizing the Mayor or Assistant to Mayor to make such changes to the loan documents as are deemed appropriate, authorizing the appropriate City Officials to close the loan; making other provisions with respect to the loan; and providing an effective date therefor.

-AND-

Resolution No. 10738

RESOLUTION declaring the official intention of the City of Plantation, Florida to reimburse from the proceeds of tax-exempt bonds or notes, certain capital expenditures to be paid by the City for land acquisition in the Plantation Midtown Neighborhood Improvement District, describing such expenditures; and providing an effective date therefor.

-AND-

Resolution No. 2009-1

RESOLUTION of Plantation Midtown approving an Interlocal Agreement with the City of Plantation for the purchase of certain property described as Tract 7 according to the Plat of Broward Mall at Plantation, as recorded in Broward County Plat Book 91 at Page 24; providing findings; providing for reimbursement of a portion of the costs of acquisition and development of the property; making other miscellaneous provisions with respect thereto; and providing an effective date therefor.

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A memorandum dated October 22, 2009 to Mayor and Members of City Council from Daniel W. Keefe, Assistant to Mayor, Herbert Herriman, Financial Services Director, Laurence Leeds, PZED Director, and Donald J. Lunny Jr. City Attorney, follows:

I. Background

As the Council may recall, at the end of its June 25, 2008 meeting, Mr. Laystrom and Mr. Brenner approached the Council to distribute an offering circular concerning the Enclave Property ("Property"). This property is owned by Cambridge Place Holdings, LLC ("Seller"), and is legally described as Tract 7, BROWARD MALL AT PLANTATION, according to the Plat thereof, recorded in Broward County Plat Book 91 at Page 24, consists of approximately 3.658 acres of land, and is located West of Federated Road and East of Pine Island Park. At that time, the Council's consensus was to explore purchasing the property.

This matter was then addressed by the Council at its meeting of July 9, 2008 when the Administration advised that the acquisition price could be expected to be no less than $3.5 million and that the ad valorem assessed value of the property was $5.256 million. At that time, the Council consensus was to have the property appraised and to continue negotiations.

On December 3, 2008, the matter was returned to the City Council, and the Council adopted Resolution No. 10438 which authorized the Administration to sign a Contract for Sale and Purchase for the property in the amount of $3,824,000. This was the property's appraised value. Shortly after City Resolution No. 10438 was adopted, the Mayor signed a Contract for Sale and Purchase in the amount of $3,600,000. Three Amendments to the contract have been made to extend the City's due diligence period because of this transaction's special complications.

As the elected Officials recall, Jacobs Carter Burgess Consulting was retained to complete a Park and Ride Study for the Plantation Midtown Area, which was funded by FDOT. The study was presented to Plantation Midtown Advisory Board on January 5, 2009, and the Midtown Advisory Board voted to proceed with the investigation of the purchase of the property, and with the presentation of the Park and Ride Study to the City Council.

The study was then presented to the City Council on January 21, 2009. The consultants recommended long term utilization of the property was for an Intermodal Transportation Center (i.e. a "Park and Ride Facility"). As the Council may recall, this long range use would benefit the District by creating additional off-street parking within Midtown, and providing a "hub" for mass transit. This long term use will need additional grant and other governmental entity funding in order to be developed. In the short term, the Administration proposes to use the property for parking incident to Pine Island Park. After considering the matter, the Council adopted Resolution No. 10472, which supported the Jacobs Carter Burgess Plantation Midtown Park and Ride Feasibility Study.

Resolution No. 10438, and the City's Code, requires the City Council hold an advertised hearing in order for the City to make a final decision to purchase the property. The matter is now being returned to the Council for final consideration, and the Administration recommends approval.

II. Action Needed

Included within your Agenda Packets are the following Resolutions:

1. A proposed Exhibit "1" City Resolution authorizing the appropriate City officials to close the transaction, accepting proposed Deed Restrictions for the property's title, and approving an Interlocal Agreement with Plantation Midtown for cost sharing;

2. A proposed Exhibit "2" Resolution authorizing the City to enter into a loan agreement with SunTrust Bank, and to otherwise close a proposed loan with SunTrust Bank;

3. A proposed Exhibit "3" Resolution that will allow the City to finance certain pre-closing expenses with loan proceeds pursuant to the Internal Revenue Code; and

4. A proposed Exhibit "4" Resolution for Plantation Midtown to approve the cost sharing Interlocal Agreement.

III. Essential Considerations

The essential considerations for this transaction are as follows:

A. As the Council may recall, the previous Broward Mall Owner conveyed the property to the Seller with restrictions ("Deed Restrictions") to the effect that (i) the property could only be used for a multi-family development in accordance with an agreed concept plan, (ii) the property was subject to repurchase rights, (iii) the property was subject to lien rights in favor of the Broward Mall Owner if the City did not contribute to the road maintenance assessments or did not adequately maintain the property, and (iv) the property was subject to an environmental indemnity in favor of the Broward Mall Owner for any damages suffered by the Broward Mall as a result of any contamination occurring on the property.

The City's purchase obligations are contingent upon the Broward Mall Owner releasing the Deed Restrictions. Because the Broward Mall Owner was reluctant to release all of its rights, the Seller sued the Mall Owner seeking to have a Court determine that the Deed Restrictions would not be enforceable if the City purchased the property. The City was joined in this litigation. The contract provides that in the event the City was joined in the case, the Seller would be responsible to pay all of the City's attorney's fees, costs and expenses.

The Administration and the current owner of the Broward Mall, Broward Mall, LLC (an affiliate of Westfield), have negotiated draft changes to the Deed Restrictions that would apply to the property. The following is noted:

(i) The property will remain subject to both permitted uses and prohibited uses. The permitted uses are written broadly enough to cover the City's intended uses for the property, and also are written broad enough to cover other governmental entities' potential uses if the City, in the future, swaps or sells this property. A draft concerning the proposed new list of uses is set forth and is attached to this memorandum as Exhibit "A".

(ii) The Broward Mall Owner will still need to waive its repurchase rights and consent to this transaction. It will still maintain its repurchase rights in the future, but the City need not be concerned with these rights so long as it devotes the property to the agreed upon uses.

(iii) In Lieu of allowing potential liens on the City property for not paying the City's share of the private road maintenance for Federated Road, the draft document entitled, Consent to Transfer, Temporary Superseding Deed Restrictions, and Permanent Modification to Deed Restriction, (which is proposed to be approved by Section 2 of the Exhibit "1" proposed City Resolution), contains a covenant to Budget and Appropriate non ad valorem money each year for this purpose. It is to the City's advantage to contribute to a portion of Federated Road's maintenance expenses, rather than having the road be a public road, (which the Broward Mall Owner does not want), and the City bearing the total cost of maintaining same.

(iv) The environmental indemnity has been slightly revised such that if the City did cause some sort of contamination, the City would claim any limit of its liability that might then be available under sovereign immunity. The City paid for a January 6, 2009 Phase 1 Environmental Assessment of the property, which did not disclose any justification to complete a Phase 2 Study. Although the Environmental Assessment indicates that it cannot be relied upon beyond 180 days from its preparation date without a data update, the Fire Department has reported that it has had no service calls concerning discharges of hazardous materials within ¼ mile of the property, and the Administration is not aware of any new discharges that may affect the reliability of the Environmental Assessment's conclusion.

B. In view of the fact that the City will be accepting the property with title restrictions, the Administration negotiated a further reduction in the purchase price from $3,600,000 to $2,700,000.

C. The closing is contingent upon the City obtaining a loan. Mr. Herriman has received some competitive quotes for financing, and has determined that the best quote received was from SunTrust Bank. Also included in the agenda package for this item is an Exhibit "2" proposed Resolution authorizing the loan,

and an Exhibit "3" proposed Resolution allowing the City to pay certain pre-closing expenses with the loan proceeds. The Exhibit "2" "highpoints" of the proposed financing are: (i) the term of the loan would be for 15 years, (ii) the interest rate is as of this writing a "Bank Qualified" tax exempt rate of 4.13%, and (iii) the loan is pre-payable without penalty at any time. The City plans on making semi-annual payments over the life of the loan to SunTrust, which assuming the City borrows $2,725,000, are estimated to be approximately $122,761 each (for an annual cost of $245,522). The City will repay the loan from non ad valorem revenue. The City will use its Bond Counsel, Daniel Livermore, Esquire, for the public securities and tax aspects of the SunTrust loan.

D. The Administration proposes to use the property long term in a manner consistent with the Plantation Midtown Plan. As stated above, a feasibility study for an Intermodal Transportation Center has been favorably considered by Plantation Midtown. The Administration further proposes that the City have an Interlocal Agreement with Plantation Midtown so as to be able to have Plantation Midtown absorb a portion of the costs associated with the property's acquisition and carrying costs. Hopefully, the use of the property, as well as other improvements in the District, will increase the assessed value of the property in the District over the life of the SunTrust loan so as to avoid a material increase in the District millage. Section 4 of the Exhibit "1" proposed Resolution approves an Interlocal Agreement with Plantation Midtown. This Agreement indicates that Plantation Midtown will reimburse the City for 75% of the purchase costs and that the City will bear the maintenance expenses for the property until same is redeveloped; however, the Interlocal Agreement will remain subject to the annual budgeting and appropriation process so as to preserve flexibility to make cost sharing adjustments in the future based upon future financial conditions. The Exhibit "4" Resolution is Plantation Midtown's approval of this Interlocal Agreement.

E. Mr. Leeds has confirmed that the property has no vested rights for concurrency and, therefore; the City will need to pay for concurrency rights whenever it develops the property. He has also confirmed that the proposed long term use of the property as an Intermodal Transportation Center is consistent with the City Comprehensive Plan and the Midtown Plan.

F. All brokerage commissions and claims for a brokerage commission shall be the responsibility of the Seller.

G. The City purchase will be contingent upon the City being dismissed for the litigation with the prejudice and all of the City expenses in connection therewith being paid by the Seller.

H. The Administration has requested the Seller to pay for repairing the sidewalk along Federated Road within the property, which has been estimated to cost $13,950.

I. The City has an unrestricted right to cancel the purchase proposed before the expiration of the due diligence period. As of this writing, the due diligence period expires October 31, 2009.

IV. CONCLUSION

If the City wishes that the property be purchased, the City Council and the Board of Directors of Plantation Midtown will need to adopt the various resolutions authorizing this transaction. The various documents needed to close this transaction have not been finalized as of this writing, and so the authorizing Resolutions allow the Administration (with the approval of the City Attorney) to make changes to them as appropriate to close the transaction.

If any of you have any questions or comments, please do not hesitate to contact Mr. Keefe for "business issues or questions", or Mr. Herriman for "financing issues or questions", or Mr. Leeds for "concurrency or Plan consistency issues or questions", or Mr. Lunny for "legal issues or questions".

Mr. Lunny felt this was this was the best deal we could get for the City and is happy to bring this back to Council.

Mayor Armstrong explained that the price was significantly higher when this property was first considered. This property is not new to the City of Plantation in terms of having some interest in it as well as some oversight in attempts to make the acquisition over a period of years. This is the first time we have been able to put a deal together that she believes is reflective of the value to the City and to our anticipated uses for the property. Even though the Park & Ride has been the focus through which we would be able to potentially use or develop the property, there are other things that are components of that, not only the Intermodal Transportation Facility, but the fact that we desperately need parking at Pine Island Park for the kind of activities that are done there. In order to be able to maximize those kinds of activities, we need to find a direction that will mitigate that particular concern. This property always represented a part of that solution; therefore, that is one of the driving factors for providing some justification for the ownership of this property. The other thing, as it relates to the $2.7 million price tag, we have to recognize that there are already 200 or better parking spaces on site ready to be used immediately. The cost associated with that is something that should be considered; if we had to do that kind of improvement work, we would have a cost above the land cost price of probably another $500,000 or better to make that property useable. As part of the Midtown Plan, we recognize that this is a central area and that the ability to be able to connect to the Midtown Main Street in the future is something that will be extremely important to the District as a whole.

We will not need to use any new resources at this time in order to pay the City's portion of that debt for the next few years. Mayor Armstrong believes this is an important piece of property to Midtown and in looking back we have made some great visionary decisions on property acquisitions. The owner has been very cooperative.

Mr. Lunny commented that the seller did not have to sell the property to the City; they did not have to grant extensions while all of the details were being worked out, but they did. They did not have to agree to $2.7 million. The seller stayed with the City and wants to see the public acquire this property. The City has an interest in the property and not having it be devoted to a different kind of commercial use that is not as controlled as what it would otherwise be.

In response to Councilman Fadgen, Mr. Lunny indicated that all of the litigation fees are being paid by the seller and are subject to indemnification. He did not have the exact amount at this time.

In response to Councilman Fadgen, Mayor Armstrong advised that the Midtown Board considered the subject of the Park & Ride and the acquisition of the property both at the same time and recommended that the City move forward based on the number that was on the table at the time. Her impression of the discussion was that there was a good sense that the property was important to the District and if it could be appropriately acquired that there was great support. The questions surrounding the Park & Ride were questions that were still unknown and had to be answered at that time.

Owen Duke, member of Plantation Midtown Advisory Board, was present. He shared Mayor Armstrong's opinion of the property. This item was submitted to the Board in May and he did not get the impression that anyone was against it. The Board passed a motion to explore the purchase.

In response to Councilman Fadgen, Mr. Duke advised that he loves the property because it is a flexible piece of property and will do a great deal for the City. There was no resistance from the Board; they just wanted to explore the idea more at that point.

In response to Councilman Fadgen, Mr. Lunny indicated that the appraisal was for $3.824 million and Mr. Keefe interviewed the appraiser who prepared the report. The appraiser told Mr. Keefe that her sense of the market for this type of parcel would decrease in value approximately 10% and that the City and Seller's agreed discount was so far in excess of the 10% that it was an excellent deal.

Councilman Fadgen commented that when this was approached two or three years ago there was a lot of reaction in the community with regard to buying a parking lot. With the split that is proposed, the property owner's in Midtown are going to be the payers of the bulk of the property and the rest would be paid by the residents. As far as maintenance is concerned, it is estimated the City's annual cost would be just less than $14,000.

Mr. Lunny believed the $14,000 was the extra sidewalk, which the seller has agreed to pay.

Mayor Armstrong advised that the City went in and made improvements on the parking lot several years ago in order to be able to have a user's lease with the Broward Mall at that time so that it could be used in conjunction with special events. Mr. DeCelles, Public Works Director, looked at the property and it is in good shape and it is not anticipated that there will be any additional maintenance. The park is currently maintained by the Parks and Recreation Department and the estimate to do that maintenance was approximately $10,000 for the year.

Mr. Lunny referenced Page 5 Item H, which shows that the $13,950 is the cost for the sidewalk. We are going to need to pay our fair share of the road assessment, which was outlined. Federated Road is a private road and we have agreed to pay our fractional share of Federated Road of $14,400, as opposed to the road becoming public, which is the norm, then we would have to pay it all.

In response to Councilman Fadgen, Mayor Armstrong indicated that the Central Park land was donated initially as part of a land swamp with Gulf Stream. They proposed a bond in order to be able to do the development of the property. For whatever reason, at that time, the result of the referendum was not positive and very shortly thereafter, the Council made a decision, through non ad valorum revenues, to produce the bond in order to be able to acquire the additional infill at Central Park. That was a significant step on the part of a visionary Council back in the 1970's.

With regard to the first right of refusal by the Broward Mall, Mr. Lunny advised that the documents are still being review by their Counsel, but they have agreed that they will not exercise and have waived their right of first refusal.

Councilman Levy commented that his concern is if the Plantation Midtown Advisory Board is in favor of this. He sees this land as open space whereas one of the things they are concerned with in Midtown is density. This will actually provide open space. Theoretically, it could have put in more multi-family residential. By keeping open space and an ability for people to enjoy the greenery and the park land around that area, it is improving and enhancing the quality of life. If Council approves this they will get criticized; however, he feels this is the right thing to do at this time.

Councilwoman Bendekovic advised that when this was first brought up she voted against it. She understands this is a great deal but a lean budget was passed and now we are going to put out a quarter of a million dollars. She questioned why, if we had a quarter of a million dollars in our budget, why it wasn't put to use somewhere else. In her opinion, the parking lot is in horrible condition and it appears that maintenance may be more than what is anticipated. She has to be convinced that there is a quarter of a million dollars in the budget that she was not aware of.

Mayor Armstrong explained that there are multiple funds and budgets created. This particular acquisition will be primarily directed 75/25 to the Midtown Development funds. This will not impact the General Fund budget one way or the other. The other fund within the budget is basically the $61,000, which can be secured by three years of payments from another fund balance and will not affect the budget one way or the other because it is, in essence, a fund that was developed and secured by the $50,000 option that was received on some land in the Midtown District that has been sitting and accumulating money; there is $145,000 for three years to basically make the payments on that debt.

In response to Councilwoman Bendekovic, Mr. Duke concurred that the Board was not aware that they would be given a 75% debt. He could not state whether the Board would endorse the debt, as this was looked at in May 2009.

Mayor Armstrong advised that the decision of this group that sits as the Board of Directors for the Midtown District is basically the decision-making body as to what is in the best interest of the District.

Councilwoman Bendekovic realizes that all of the Advisory Boards are there as advisory, but it when going into debt like that it would be nice to know that they were also on board for the 75%.

Councilman Levy questioned whether a motion to table until the Plantation Midtown Advisory Board had a chance to review this proposal would be acceptable.

Mayor Armstrong indicated that some time lines are involved.

Mr. Lunny advised that the Interlocal Agreement is not "cast in stone". As soon as the Weekly Bill List is approved the terms of the terms can be varied. The agreement says, "Every year, as part of the budgeting process, we will look at that number and you can either agree or not agree and that number can float". The property, only through grace, was given to the City to use as parking during one time period, which was a temporary use. If the deal is not closed, even the temporary use is not assured. The seller could sell to someone else and we will not have that parking. You should not think of this as buying the property for a parking lot, the use restrictions will allow this asset to be bundled with the existing park property and swap it out with something else. The uses are very broad and there is a long term plan endorsed by Council and Midtown, which is driving this asset ultimately towards an Intermodal Transportation Center that is believed will be a value to the District. He is somewhat concerned with pushing the time lines because the seller has a need to get its cash. The seller will agree to a short ten-day extension, only to work out the legal documents because we are still waiting for the seller's counsel to do that, but we are at the point where this either needs to be approved or not approved. If this goes back to Midtown and they reach a conclusion that they would like to see different funding, then Council and Midtown can work that out.

Mayor Armstrong suggested if approved and the Plantation Midtown Advisory Board decides this is not in their best interest, that funds could be obtained from another source. She assured that there is funding available that will not have any impact on the General Fund.

Councilwoman Uria commented that this is the time to purchase things that are for sale; however, she was having a hard time because the millage was raised last year and reports are coming in that residential will be down another 10-15% and commercial will also be down. In good faith, we have gotten through this budget year and if we purchase this property it will be taken off the tax roll. Even though the appraiser said this is an excellent price, a new written appraisal will be needed because the appraisal is old. Several locations were shown for the Park & Ride; it did not have to be this property. When other properties were purchased we were in a different economic time. She did not feel that she could support this and could not, in good conscious, use taxpayers' money. She stated that Plantation Midtown was developed to create more density.

Councilman Levy thought that the Plantation Midtown Advisory Board had reviewed and endorsed this proposal. He would feel more comfortable if the Board would have endorsed the plan where they would be paying 75% of the cost, which is a burden on them and the people of Midtown. He did not believe a vote should be done at this time.

Councilman Fadgen speculated that the Plantation Midtown Advisory Board would be in favor of acquiring the property but may not be in support of the split. He noted that Council could proceed relative to the discussions that the Plantation Midtown Advisory Board has had relative to the property.

Mr. Duke indicated that he also would feel more comfortable if the Board were to review this proposal.

Councilman Tingom questioned whether anyone from the Plantation Midtown Advisory Board has expressed a negative opinion on the property during previous discussions.

Mr. Duke advised that discussions have been very general and just about the property; there was no discussion about the Midtown Board being involved in the financing. They listened to the Park & Ride presentation and liked the idea of the property; however, they were still exploring whether the property could even be purchased. He felt that there should be more discussion with the Board in order to come to a conclusion.

In response to Councilman Tingom, Mr. Lunny advised that a commitment would be required from the seller to further extend the due diligence period. The original contract says, "When the due diligence period expires, they will close 30 days thereafter". Any extension of the due diligence period might be workable as long as the ultimate closing deadline of the end of November does not move too much. The further you try to push the due diligence the harder it will be for the attorneys to do what needs to be done. The impediments would be that there would have to be an extension because if we do not get an extension by Friday at 5:00 p.m., we are terminating. We have come so far and worked so hard that we do not want to get terminated. The other concern is whether you want to put the Plantation Midtown Advisory Board in a position of making this decision at this time and delegate to them your authority or whether you are seeking advice as to what they think. He counseled the Council not to approve this subject to their meeting; you want it to come back.

Mr. Laystrom was present on behalf of the seller. He believed an extension of the closing date could be worked out since it sounds like the Plantation Midtown Advisory Board meeting is coming quickly. Their issue is getting to a point where the decision is made so they do not have to look at other opportunities for the property. His concern with not approving it tonight was that a Plantation Midtown Advisory Board meeting is needed as well as another Council meeting to decide whether or not the recommendation of the Plantation Midtown

Advisory Board is accepted. He suggested approving this tonight noting that the Plantation Midtown Advisory Board comments have been heard. He also suggested extending the due diligence period to the day after the Board meets or the day after Council votes and extend the closing date to December 1, 2009.

In response to Councilman Tingom, Mr. Romano advised that the Broward Mall has always allowed the City to use the property for parking during the Thanksgiving tournament, the Orange Classic tournament and the Firefighters' Barbecue.

Councilman Tingom has seen the Council make decisions for or against Advisory Board comments. He was in favor of moving forward because he felt the property is a reasonable price. He understands that there are additional sources of funding and that it would not affect the ad valorum rate or the taxes.

Councilwoman Bendekovic opened discussion to the public.

Lynn Stoner, resident, was present. She questioned whether the Council has been provided with a copy of a signed contract and noted that the City's ordinance on the purchases of real property requires that all purchases shall be presented to the City Council for approval after they have been perused by Administration and Legal Department and signed by the seller. She was a little surprised and disappointed that Council was voting on a project without seeing a signed contract. She believes that the new restrictions indicate that the mall will increase the maintenance assessment upon the sale to the City. They are also requiring a non ad valorum assessment to be incorporated into our regular budget. She questioned whether Council has been provided with the new restrictions.

Mr. Lunny advised that the essential terms are stated in the memorandum. He did not believe that the actual contract has to be provided to Council. The contract was an exhibit to the resolution that was initially approved on December 3, 2008 at the $3.8 million dollar price and the only thing they have done is extend the due diligence and lower the price.

As to the question about the non ad valorum assessment, Mr. Lunny stated that the current declaration provides that if the City fails to maintain the property the seller has a lien on the City's property in order to enforce the payment obligation. The City cannot acquire property and have a lien on it.

Ms. Stoner commented that an abbreviated document does not allow you to freely interpret a signed 35-page contract. If it was as simple as a one-page brief it would be a one-page contract; it is not.

In response to Ms. Stoner, Mr. Lunny did not recall whether the contract said something about the seller paying an additional deposit if there was an extension after the initial due diligence.

In response to Ms. Stoner, Mr. Lunny advised that Administration has signed a commitment letter subject to a very modest break fee if the Council does not approve the request and that was to lock in the rate, which is customarily done. Fees have not been paid to the bank to begin the appraisal process and originate the loan.

Ms. Stoner referenced the ordinance and advised that an appraisal is required for properties over $500,000, which is to be presented to City Council.

Mayor Armstrong advised there is an appraisal and there have been several appraisals on this property; there are probably three on file. The appraisal was presented to the Council at the time they authorized going forward and was part of the information provided in December 2008.

Ms. Stoner questioned how City Council is supposed to evaluate the deal if they do not have the purchase contract.

Mayor Armstrong advised that Council has all of the points of the purchase contract, which have been outlined.

Ms. Stoner believed Mayor Armstrong was selling the Council short in thinking that they cannot read a purchase contract and interpret it for themselves. She trusts the Council's vision and appreciates the fact that the property has potential value; she just does not believe that this is the time for the purchase.

Councilman Fadgen questioned whether the motion would include all four resolutions or whether it would include three.

Mr. Lunny thought it would be best to vote on each resolution separately.

In response to Councilman Levy, Mayor Armstrong advised that there was discussion with regard to acquiring the trailer park site and this does not have any affect on that. At the time we looked at the trailer park site it was with an understanding that we would identify funds outside of the General Fund to be able to do that, which is the same thing we are doing with this property.

Motion by Councilman Tingom, seconded by Councilman Fadgen, to approve Resolution No. 10736. Motion carried on the following roll call vote:

Ayes: Fadgen, Levy, Tingom, Bendekovic
Nays: Uria

Motion by Councilman Fadgen, seconded by Councilwoman Bendekovic, to approve Resolution No. 10737. Motion carried on the following roll call vote:

Ayes: Fadgen, Levy, Tingom, Bendekovic
Nays: Uria

Motion by Councilman Fadgen, seconded by Councilwoman Bendekovic, to approve Resolution No. 10738. Motion carried on the following roll call vote:

Ayes: Fadgen, Levy, Tingom, Bendekovic
Nays: Uria

Motion by Director Fadgen to approve Midtown Resolution No. 2009-1.

Councilwoman Bendekovic questioned whether Council can have the Midtown Directors make a recommendation. The Board members volunteer and have a lot of expertise in their field and she is very concerned with the finances. She did not feel it right to put a debt on the individuals without a recommendation.

Mayor Armstrong assured there are funds to take care of this debt obligation that are outside of the General Fund and that would be either with the Midtown fund or through another fund. This can be brought before the Plantation Midtown Advisory Board.

Mr. Lunny advised this is not an essential transaction requirement in terms of the seller. Council needs to decide whether this is essential to your decision to purchase the property. There is a possibility that we will have to push the Friday deadline more into November because of the transaction requirements on the legal side. If you are not inclined to approve this last resolution until the Plantation Midtown Advisory Board considers it, then he will ask the seller tomorrow to extend the due diligence until the November meeting and they may feel more comfortable doing that knowing that the first three resolutions have been approved. Ultimately, this is the Council's decision as to whether they feel this is essential to the City.

Councilwoman Bendekovic feels that is the reason we have Advisory Boards and she values their opinions, especially when that is the corridor that will provide some of the funds for some of these finances.

Mayor Armstrong commented that essentially we have acquired the property; it is just a question of where you are going to go or how to split the funding.

Councilman Levy noted that it is important to have an endorsement from the people who will be most affected. He concurred with Councilwoman Bendekovic that input is needed from the Plantation Midtown Advisory Board. If there is a way to get the Board's approval prior to passing the fourth resolution he would like to see that happen.

In response to Councilwoman Bendekovic, Mr. Laystrom advised that he has left the choice with the Council. He has offered to extend the due diligence. The decision is whether you are going to go ahead and purchase the property knowing that the Plantation Midtown Advisory Board might recommend that they not pick up 75%. It is the question of the funding source for the funds.

Councilman Fadgen indicated that after studying the backup he felt the decision should be made.

In response to Councilman Tingom, Mr. Lunny advised there are no pitfalls of not approving the fourth resolution because he is going to take the action tonight as authorizing Mayor Armstrong to proceed and that means that we will request an unrestricted extension of the due diligence period until November 18, 2009 and then this item will come back before Council. As the City Attorney, he is uncomfortable in listening to all of this discussion thinking they are all going to stay with their current positions if Plantation Midtown Advisory Board does something different.

Councilwoman Bendekovic requested that someone from the City be present at the Plantation Midtown Advisory Board to be sure they will have all of the essential information of the contract so they can make a judgment.

Mr. Laystrom indicated that their position would be to close if possible. If it is the issue of which percentage the Plantation Midtown Advisory Board will take, they are granting the extension. He did not know whether it would be called unrestricted.

Mr. Lunny expressed concern as to whether all of the Council members will feel the same during the next meeting. If Plantation Midtown Advisory Board agrees to pay the 75% this item still has to be put on the agenda and approved. If the Board says they are not willing to pay anything that might develop some additional conversation.

Mr. Laystrom reads unrestricted as they can decide not to close for several other reasons besides the Plantation Midtown Advisory Board decision. He suggested that if they want that extension the seller should not be

penalized with whatever other due diligence items that still need to be done. The other thing is that the seller faces a penalty if this deal does not close, as they are supposed to pick up the legal fees. He requested that if this extension be done that at least the costs go back to the City because it is not something that the seller has done and should not have to pay expenses that they did not cause.

Councilman Levy was willing to make a motion that resolution #4 is approved pending the decision of the Plantation Midtown Advisory Board to endorse it and the funding mechanism. He has been voting based on the funding mechanism coming from Midtown. He would still be for that if Midtown endorsed the plan. He agreed that if Midtown does not endorse the plan and other funding sources have to be voted on, he would reserve the right to review the entire plan.

Mr. Laystrom advised they would extend the contract that way and if it does not come up that way the Council will have an opportunity to consider whatever they would like to do.

In response to Councilman Tingom, Mayor Armstrong indicated that she would identify the other funding sources during the Council meeting after the Plantation Midtown Advisory Board meeting. This recommendation is the preferred way and appropriate way because of the interest and the benefit of this property purchase to the people in the Midtown District.

Director Fadgen withdrew his motion.

Motion by Director Levy, seconded by Director Fadgen, to approve Midtown Resolution No. 2009-1 pending approval and endorsement by the Plantation Midtown Advisory Board. Motion carried on the following roll call vote:

Ayes: Fadgen, Levy, Tingom, Bendekovic
Nays: Uria

Mayor Armstrong indicated that an attempt would be made to get the information developed and prepared in order to get it to the Plantation Midtown Advisory Board members sooner than November 17, 2009; however, she did not believe there was any way to guarantee an earlier meeting.

In response to Councilwoman Bendekovic, Mayor Armstrong stated that the Park and Ride will put the property in a position, if the Advisory Board and if the City decides that the Park and Ride can be designed to take care of a number of things such as what is needed at the park in terms of parking and a public plaza, to apply for funds from FDOT and try to roll the land purchase into that project.

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LEGISLATIVE ITEMS – None.

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QUASI-JUDICIAL CONSENT AGENDA – None.

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QUASI-JUDICIAL ITEMS

27. REQUEST TO DEFER SITE PLAN, ELEVATION AND LANDSCAPE PLAN APPROVAL FOR WESTSIDE MEDICAL OFFICE BUILDING LOCATED AT 8251 W. BROWARD BLVD TO DECEMBER 2, 2009.

Motion by Councilwoman Uria, seconded by Councilman Fadgen, to defer the site plan, elevation and landscsape plan approval for Westside Medical Office Building located at 8251 West Broward Boulevard, until December 2, 2009.

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28. REQUEST FOR THREE-YEAR EXTENSION OF APPROVAL FOR SITE PLAN, ELEVATION AND LANDSCAPE PLAN FOR WESTGATE PLAZA.

A memorandum dated October 28, 2009 to Mayor and Members of City Council, from Laurence Leeds, PZED Director, and Pauline Hampton, Planner, follows:

SUBJECT: Request for three-year extension of the approval for Site Plan, Elevation and Landscape Plan for Westgate Plaza (PP05-0024/PM07-0014).

REQUEST: The applicant has submitted the attached letter dated August 20, 2008, requesting a three-year extension of the site plan development order.

BACKGROUND:

The subject property is zoned SPI-2, contains 9.4 gross acres and is developed with a 129,000 (+ or -) square foot shopping center. The site is located on the northwest corner of Broward Boulevard and State Road 7.

The City Council approved a redevelopment site plan on February 19, 2003. The site plan proposed the demolition of the Shell Gas Station and a portion of the center. Two new outparcel buildings; a pharmacy and fast food restaurant were proposed at the intersection on State Road 7 and Broward Boulevard. The plans also included upgrades to landscaping, parking and a new shopping center façade consistent with the Plantation Tropical Design theme.

On January 25, 2006, City Council approved an amended site plan, replacing the pharmacy with an 11,700-square-foot bank/retail building, including drive through lanes. Subsequently, Broward County required the applicant to dedicate additional right-of-way for a bus bay on Broward Boulevard. The applicant submitted a second site plan amendment consistent with the plat change. The site plan amendment was approved by the Plan Adjustment Committee on April 12, 2007.

STAFF COMMENTS

Planning and Zoning Department:

1. The Code provides the applicant one year to obtain building permits and the ability to grant an additional six-month extension for good cause. If the three-year extension is granted, the applicant will have until October 14, 2012 to reapply for a building permit.

2. If the City Council chooses to approve the extension, staff recommends the following conditions:

   a. All prior site plan approval conditions, including the original 2003 site plan as amended in 2006 and 2007 remain effective.
   b. Verification from Broward County that the plat approval has not expired prior to issuance of a building permit.

_____

In response to Mr. Lunny, Fire Chief Pudney advised that a commitment from the property owner has been made to temporarily stabilize a fire lane so that the trucks can have appropriate life safety access to the building.

Emerson Allsworth, Attorney, and Richard Berrie, architect, were present on behalf of the applicant.

Chief Pudney explained that he, Mr. Leeds, and Mr. Butler met with the applicant and it was his understanding that they will accommodate the request to install a stabilized bay suitable for Fire Department access within 90 days.

Councilwoman Uria disclosed that she had a conversation with Mr. Allsworth about Items #28 and #29, but it would not impact her vote.

Councilwoman Bendekovic and Councilman Fadgen stated that they also had conversations with Mr. Allsworth about Items #28 and #29 but that it would not impact their vote.

Mr. Allsworth advised that the applicant is requesting a three-year extension of the Westgate site plan. It was last approved in 2006. Because of the economic recession they were not able to go forward with the bank on the corner; however, they want to protect their site plan. They proposed to upgrade the parking lot on the corner where the Shell gas station was and back between the two buildings, which had been demolished. The area where the gas station was will be sodded and landscaped and the area between the two buildings will be paved, striped and completed.

Motion by Councilman Fadgen, seconded by Councilwoman Bendekovic, to approve the three-year extension for Westgate Plaza, located at 15-299 North State Road 7. Motion carried on the following roll call vote:

Ayes: Fadgen, Levy, Tingom, Uria, Bendekovic
Nays: None

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29. REQUEST FOR APPROVAL OF SIGN SPECIAL EXCEPTION FOR WESTGATE PLAZA LOCATED AT 15-299 NORTH STATE ROAD 7.

A staff report dated October 28, 2009 from Laurence Leeds, PZED Director, follows:

EXHIBITS TO BE INCLUDED: Planning and Zoning Division report; subject site map; Special Exception application.

SPECIAL EXCEPTION REQUEST:

From: Section 22-20(q), which requires a nine-foot street setback for a nine-foot high ground sign (Sign height is measured to the top of the sign copy panel; architectural treatments above the sign copy are not included).

To: Allow a two to three-foot street setback for two nine-foot high grounds on State Road 7 and Broward Boulevard respectively. In this case, sign architectural treatments increase total sign height to 12 feet.

EXECUTIVE SUMMARY: The Sign Code allows a ground sign up to seven feet in height with a one-foot setback from the street lot line. The street lot line is commonly the back of the public sidewalk running parallel to the street. The Sign Code provides that any ground sign exceeding seven feet shall provide a setback equal in height to the sign. In this case, the Sign Code requires a nine-foot setback for each proposed nine-foot tall sign.

If the special exception is approved, the applicant will be granted two nine-foot high ground signs (total height of 12 feet each with architecture), set back two feet from State Road 7 and three feet from Broward Boulevard as per the submitted plan.

Based upon information submitted by the applicant, the applicant has not demonstrated that he has met the criteria listed in Section 22-11(b) – Exhibit A to justify a sign special exception. See also Section 22-11(e) – Exhibit B.

ANALYSIS:

The subject property is zoned SPI-2, contains 9.4 gross acres, and is developed with a 129,000 (+ or -) square foot shopping center. The site is located on the northwest corner of Broward Boulevard and State Road 7.

The City Council approved a redevelopment site plan on February 19, 2003. The site plan proposed the demolition of a gas station and the middle portion of the center. Two new outparcel buildings, a pharmacy and fast food restaurant, were proposed at the intersection on State Road 7 and Broward Boulevard. The plans also included upgrades to landscaping, parking, and a new shopping center façade consistent with the Plantation Tropical Design theme.

On January 25, 2006, City Council approved an amended site plan, replacing the pharmacy with an 11,700-square-foot bank/retail building, including drive through lanes. Subsequently, Broward County required a plat modification to dedicate additional right-of–way for a bus bay on Broward Boulevard. The Plan Adjustment Committee later amended the site plan on April 12, 2007 consistent with the plat modification.

Where applicable, the review of a Special Exception request should include consideration of the criteria noted in Section 22-11 of the Land Development Code.

STAFF COMMENTS:
PLANNING AND ZONING:
The applicant has not met the special exception criteria (see Exhibit A below) justifying the granting of the special exception. If the special exception is approved, the following conditions shall apply:

a. The sign plan detail is not drawn to scale. Revise plan accordingly.

b. The applicant has not provided some sign details, including but not limited to, sign lettering, font, and color. Applicant to submit fully detailed sign plan to confirm compliance with all other code requirements.

c. Applicant to show sign locations on landscape site plan to verify the signs do not interfere with existing landscaping.

LANDSCAPE ARCHITECTURE:

At time of permitting phase please submit landscape plans in conformance with Gateway 7 signage codes. Include on plans proposed species, sizes, spacing, mulch type, and locations of plan material.

EXHIBIT "A"

Section 22-11(b) of the Code requires the applicant to address the following criteria in the review of the special exceptions:

1. That special conditions and circumstances exist such as, but not limited to, building orientation, vehicular circulation or vision obstructions (not to include landscaping) that are peculiar to the land, structure, or building that create a site specific justification for the exception;

   Applicant's Response: The proposed location setback is necessary in order for the signage not to be located within the approved site parcel location and further due to the perimeter landscaping along State Road 7 and Broward Boulevard. The size of the sign meets the code. The only Special Exception is because of the setback being less than nine feet from the two roads.

   Staff's Response: Applicant is already permitted to place a seven-foot high sign in a location that does not interfere with the interior parcel landscaping. The applicant has not identified any special circumstances or site specific justification distinguishing this center from other shopping centers located throughout the City.

2. That a literal interpretation of the provisions of this Chapter would deprive the applicant of rights commonly enjoyed by other property of lands, structures or buildings of similar character with identical special circumstances (nonconforming signs shall not be grounds for issuing sign special exceptions), or alternatively, that a special exception from the provisions of this Chapter is warranted and justified to protect, preserve, or enhance the City's tax base or to prevent or eradicate conditions of economic blight.

   Applicant's Response: A denial of this application would deprive the owner of the ability to have identifying signage for this large shopping center at the northwest corner of State Road 7 and Broward Boulevard.

   Staff's Response: Denial of the application would not deprive the shopping center of the ability to have identifying signage. The applicant is currently allowed to have a 64-square-foot, seven-foot high identification sign setback one-foot from the road at this location.

3. That the special conditions and circumstances do not result from the action of the applicant,

   Applicant's Response: The conditions are the result of the approved site plan and of the perimeter.

Staff's *Response*: *The site plan of the shopping center does not qualify as "special conditions or circumstances" justifying the sign special exception. Regardless of shopping center design, the applicant is currently allowed a 64-square-foot, seven-foot high sign identification sign at this location. There are no special conditions or circumstances distinguishing this site from other shopping centers.*

4. That the sign special exception to be granted is the minimum measure needed to address the special conditions and circumstances that justify the special exception.

   Applicant's Response: The request is for the maximum available setback for State Road 7 and Broward Boulevard due to the circumstances described above.

   Staff's Response: Applicant's response does not address the criteria. First, applicant has not identified any special conditions or circumstances distinguishing this site from other similar shopping centers. Second, applicant has not explained how increasing the sign height from seven feet to nine feet (28%) is a "minimum measure".

5. That the sign special exception will be in harmony with the general purpose and intent of this Chapter and will not be injurious to the neighborhood, or surrounding property, and will not otherwise be detrimental to safe and convenient use of nearby rights-of-way;

   Applicant's Response: The granting of this Special Exception is appropriate given the size of the shopping center and the need for monument signage. It has no detrimental impact on any other property or on the right-of-way.

   Staff's Response: Applicant has not explained how shopping center size justifies an increase in height from seven to nine feet. Based on the Sign Code, ground sign height and setbacks are not based on the size of the shopping center.

6. That all other signage on the property is in substantial compliance with this Chapter, as applied.

   Applicant's Response: The size of the sign meets code.

   Staff's Response: Staff is not aware of any other special exceptions being granted to this property for signage.

EXHIBIT "B"

Code Section 22-11(e): Sign special exceptions are not legislatively sanctioned, and are to be discouraged. The applicant shall have the burden of proof which shall include the burden of going forward with the evidence and the burden of persuasion on all issues which are to be determined by the City governing body.

Emerson Allsworth, Attorney, and Richard Berrie, architect, were present on behalf of the applicant.

Mr. Allsworth provided a brief presentation of the sign special exception request. Currently, Westgate does not have any signage. They are entitled to 64 square feet of signage on State Road 7 and Broward Boulevard. Mr. Berrie has designed a monument sign and the question is the location. A setback waiver is necessary because

there is nowhere to place the signs without intruding on one side of the building. The monument sign on the west entrance of Broward Boulevard cannot be moved any further north, as it is next to the building and the State Road 7 location is next to a drive aisle and cannot be moved any further. If this request were to be denied they would use a seven-foot sign instead of a nine-foot sign that would be in the same location without a waiver. The only thing the Council is allowing is the ability to have a nine-foot sign.

In response to Councilwoman Bendekovic, Mr. Lunny explained that the zoning rules can be waived, which are setbacks. Life safety rules such as fire code requirements, building code requirements and the vehicle recovery requirements adjacent to roadways that are supervised cannot be waived. If this waiver is granted for zoning purposes and it does not otherwise meet the safety requirements, the sign will not be permitted.

Motion by Councilman Fadgen, seconded by Councilwoman Uria, to approve the special exception for Westgate Plaza located at 15-299 North State Road 7. Motion carried on the following roll call vote:

Ayes: Fadgen, Levy, Tingom, Uria, Bendekovic
Nays: None

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30. REQUEST FOR TEMPORARY MRI UNIT FOR DPI OF PLANTATION LOCATED AT 7301 NW 4TH STREET FOR NO LONGER THAN EIGHT WEEKS.

A staff report dated October 28, 2009 from Laurence Leeds, PZED Director, follows:

BACKGROUND:

On February 28, 2007, an administrative conditional use approval was granted to allow a medical laboratory at this location. The laboratory is currently operating as a diagnostic center offering MRI's and ultrasounds.

REQUEST:

Diagnostic Professional (DPI) installed an MRI unit in the facility last year. DPI has informed staff the installed MRI unit was not reliable and is not performing to industry standards. DPI has consulted with the manufacturer and arranged for replacement of the unit. Replacement of the unit will require partial demolition of an exterior wall.

During construction, DPI is requesting approval to place a temporary MRI mobile unit within six standard parking spaces at the rear of the building. The unit should be at this location for no longer than eight weeks while a new MRI unit is being installed. The applicant has provided a sketch showing the proposed trailer location.

STAFF COMMENTS:
PLANNING AND ZONING:

1. The applicant is proposing to install an electrical power source to power the temporary MRI mobile unit. **PLEASE NOTE:** The installation of the electrical power source does not authorize future parking of any other mobile medical units.

ENGINEERING:

1. The alley behind the building is currently used as a thoroughfare for two-way traffic but has a width less than required for a one-way drive. It is currently not signed or marked for direction of travel. As agreed by the applicant, a hold harmless agreement will be required prior to installation of the mobile MRI unit.
2. An ADA accessible path will need to be provided at the time of permitting.

Note: A detailed review of the civil drawing has not been performed at this time. If the site plan application is approved by City Council. A thorough engineering review will be performed at the time of application for construction permits. Surface water management permit(s) through Old Plantation Water Control District (OPWCD) and/or SFWMD may be required and a copy(s) provided to the Engineering Department at the time of permit review. The applicant will be required to execute a developer agreement and post security for all engineering and landscape related improvements at the time of permitting.

BUILDING DEPARTMENT: No objection.

FIRE DEPARTMENT: The applicant has met all the Fire Department requirements for this review.

Claude Hanuschak, representative, was present.

Councilwoman Bendekovic reviewed the staff comments with Mr. Hanuschak.

Motion by Councilwoman Uria, seconded by Councilman Tingom, to approve the request for a temporary MRI unit for DPI of Plantation located at 7301 NW 4th Street for no longer than eight weeks, subject to staff comments. Motion carried on the following roll call vote:

Ayes: Fadgen, Levy, Tingom, Uria, Bendekovic
Nays: None

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31. REQUEST FOR 49-SPACE PARKING WAIVER FOR GROVE EAST LOCATED AT 3840-3940 WEST BROWARD BOULEVARD.

A staff report dated October 28, 2009 from Laurence Leeds, PZED Director, follows:
REQUEST:

Applicant requests a 49-space parking waiver to allow up to 100% medical office use in the ground floor retail area of Grove East.

ANALYSIS:

The site plan for Grove East, including Miami Subs and the Bank building, was approved in conjunction with a mixed-use, shared parking waiver. The parking waiver required residential parking areas to be open to non-residential uses during the day.

If the non-residential components of the plan were reviewed as a "stand alone" project, 252 spaces are required. The mixed-use parking waiver, based on the ability to share parking during daytime hours, effectively reduced the non-residential parking requirement to 213 spaces. This waiver was based on retail only, with no medical or general office in the ground floor of Grove East.

Earlier this year, the applicant requested and obtained an administrative waiver for ten spaces to replace 3,000 square feet of retail (one space/300 square feet) with 3,000 square feet of medical office (one space/150 square feet of floor area). The ten-space waiver was the equivalent of a 5% reduction below the provided 213 spaces.

This latest 49-space waiver request is to (1) initially allow two new medical offices (2,133 square feet) and an accounting office (1,063 square feet), and long term, (2) to allow the applicant to lease up to 100% of the ground floor retail for medical and/or general office depending on tenant interest and demand. A 49-space waiver is the equivalent of a 23% reduction. If we include the approved urgent care waiver, the total parking waiver is equal to 28%.

Staff is sympathetic to current market conditions and the difficulty in obtaining small-scale retail businesses at this time. At the same time, sufficient parking may not be available in the future due to conditions outside the City's control. These include the following:

- Miami Subs and Bank of America, can, if they choose, collectively reserve 55 conveniently located parking spaces for their exclusive use, denying the use of these spaces to tenants and customers of Grove East.
- Depending on their physical condition, medical patients may be reluctant to park in the residential parking area due to the longer walking distance.
- Presently, the second floor of the bank building is unoccupied as is much of Grove East retail space. With so much of the complex empty, it is difficult to predict "actual" parking needs for higher-demand uses such as medical office.

EXHIBITS TO BE INCLUDED: Planning & Zoning Division report, application, and Grove East Declaration of Restrictive Covenants.

STAFF COMMENTS:
PLANNING AND ZONING:

Staff is reluctant to support a waiver allowing up to 100% medical office. Staff would consider a modified waiver for only the two medical offices proposed at this time and allowing the remainder of the building to be used for general office in addition to retail.

Manny Martinez, representative, and Ron Kall, architect, were present.

Mr. Martinez commented that Grove East was completed last year. They have had a difficult time leasing space; however, more tenants were attracted during the Spring. If this waiver is approved, it will cover all of the individuals that have letters of intent. Six of the buildings are residential and two buildings are mixed use; building #7 which has ground floor retail and the clubhouse that serves the residential, and ground floor retail in building #8 with residential units above. They currently have a total of 570 parking spaces. When Grove East was approved it was approved for retail only, which requires one parking space per 300 square feet. Office requires one parking space per 200 square feet and medical offices require one per 150 square feet. He is trying to avoid having to come back every other week with parking waiver requests.

Mayor Armstrong questioned whether 100% medical would create more energy on that corner. She also questioned whether a lesser number could be used for the parking waiver and limiting medical uses, as the 49 spaces basically allows 100% medical.

Mr. Martinez thanked Mr. Leeds for his assistance and professionalism. He told Mr. Leeds they do not want to become a one purpose type of retail center. The main purpose of the parking waiver is to give flexibility so they can accommodate the use that is more stringent in parking requirements. They have received two letters of intents from medical offices as well as one from an insurance company and one from a tax consultant. They would love to get a hair dresser, clothing stores and a children's bookstore; however, the market is not there right now. Medical use is one of the industries that are most stable at this time. He believes there is adequate parking and there should not be an issue.

Mayor Armstrong suggested limiting the amount of medical that would be in buildings #7 and #8 to 50% to 60% so they do not turn 100% medical..

In response to Councilwoman Bendekovic, Mayor Armstrong advised that to have 100% medical would change the entire dynamic on the site and she believes that would be a problem.

Councilwoman Uria also was going to request a lower percentage of medical; however, the economy will dictate. She felt that residents would prefer more diversity in the community.

Mr. Martinez was uncomfortable with putting a restriction on the uses at this time and hopes to bring more diverse types of tenants.

Councilman Tingom would like to see 60% medical as well as other types of tenants.

Councilman Fadgen explained that there are 15 units and if ten of them are medical, that would be 66% or ten parking spaces for medical use.

Mr. Leeds advised that there is no restriction on general office; general office and retail are close enough so there is no concern. He suggested the percentage either be 66% or ten parking spaces just to take into consideration the possibility that the tenant spaces may change in size. This provides flexibility in case they wish to move interior walls.

In response to Mr. Lunny, Mr. Leeds clarified that a pharmacy is retail.

In response to Councilwoman Uria, Mr. Martinez advised that he would like as much flexibility as possible.

Motion by Councilwoman Uria, seconded by Councilman Fadgen, to approve 66% or ten tenant spaces for Grove East located at 3840-3980 West Broward Boulevard. Motion carried on the following roll call vote:

Ayes: Fadgen, Levy, Tingom, Uria, Bendekovic
Nays: None

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COUNCILMEMBERS' COMMENTS

Councilman Tingom wished everyone a Happy Halloween.

In response to Councilman Fadgen, Mayor Armstrong advised we were able to contact the County relative to the small businesses opportunity and an information packet will be put together with regard to what was found with the County program.

In response to Councilman Levy, Mayor Armstrong indicated that regular flu shots were administered last Thursday at Central Park. We ran short and took the names of those who were unable to get the shots. Those residents were called yesterday and came in this morning to get shots at the Fire Department. That program is completed.

Chief Pudney explained that the H1N1 vaccine doses are beginning to arrive in Broward County. The City has signed the appropriate paperwork to have doses brought here, which may arrive within the first week or two of November. The first group of people to be inoculated will be emergency responders, police officers and people that deal in healthcare facilities within the City. As additional doses become available the County has yet to decide how they intend to inoculate the public at large. The City is waiting for the County to make that decision so that we can move forward. The School Board has decided to inoculate children in schools in the targeted age groups and those doses have begun to be delivered this week. Plantation Park and Mirror Lake Elementary Schools were first on the list and that should be done by the end of this week.

In response to Councilwoman Bendekovic's question with regard to the NW 74th Avenue closure, Mr. Butler advised that data was collected with traffic counters and that information was processed. Apparently one of the traffic counters had a malfunction; therefore, another round of data will be collected, beginning on Monday for a full week rather than three days.

Councilwoman Bendekovic thanked the Plantation Historical Society for selecting her as Pioneer of the Year; this was quite an honor.

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PUBLIC REQUESTS OF THE COUNCIL CONCERNING MUNICIPAL AFFAIRS

Dennis Conklin, resident, was present. He referenced Grove East and reminded everyone that the last presentation by DOT that was planned for that corner is a structure that will suspend an elevated light rail system directly in front of that beautiful project.

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Mr. Conklin commented that the City did the rollback but it was for a figure very close to $2.7 million dollars and he was amazed that so much money was found during tonight's meeting. If that money would have been discovered a month earlier it could have prevented a tax increase for Plantation.

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Lloyd McClendon, resident, was present. He indicated that he applied for a permit in September to replace an existing chain link fence. Due to a Zoning rule, a portion of the request was declined.

In response to Councilwoman Bendekovic, Mr. McClendon advised that he came before Council previously. Upon meeting with staff we were sent to apply for a variance, which costs $750. At that time we were told that fence variances are usually denied. They have tried the process and each time there is a problem. Neighbors have similar fences and he wants to know what he can do. He resides on a corner lot and the Zoning rule states that whichever side of the house is the longest is the side of the house. This is a privacy issue; this is where their daughter plays and there has been a recent warning about suspicious activity with children in the area.

Mr. Leeds explained that an application was provided along with information and the applicant was told that they had to prepare an application and state how they meet the variance criteria. In speaking with the applicant's wife, she said that after looking at the variance criteria they wanted additional time so that when the package was put together it was very clear, exact and precise. She even said that she did not want to be in a position where she was rushed to put the package together. The applicant and his wife were told by staff that the record of the Board of Adjustment is that they seldom grant a variance. Staff did not discourage the applicants but in the interest of full disclosure, they wanted to tell them that the variance criteria is very difficult to meet and that staff's role is to analyze the applicant's description of the variance criteria and to give their opinion as to whether the request meets criteria or not. The final decision is up to the Board and they are in a position where they have the role of taking other things into consideration. The applicant can be processed; the Board meets once a month. Unfortunately, the Zoning Code that has been adopted in Plantation says that the front yard is not defined by where your front door is; it is defined by the narrower frontage on a corner lot.

Mr. Lunny commented that two storms came through before Mr. Leeds began his service with Plantation and he thought there was a general relief after those, that if your fence was damage and it could be shown as the result of those storms that the Council would allow the fence to be rebuilt to the current condition, in terms of height. Mr. Leeds would not know that because he was not here at that time.

Mr. Leeds advised this is not a replacement fence; this is a fence the applicant wants to install because they want privacy.

Mr. McClendon indicated there is an existing four-foot high chain link fence. Zoning is saying the six-foot height is all right; however, because this section is the front of the property, that it can only be four-feet high. They have already removed the damaged piece from the hurricane and replaced that section in the back. When trying to do an application for the variance Zoning will not help you; they are specific that they will not tell you what to put in the box or how to fill out the form and they are very clear about that.

Mr. Leeds stated that in terms of the Code, staff cannot tell the applicant how to arrive at the hardship criteria; that is not their function.

Mr. Lunny cautioned the Council and did not think they have the jurisdiction to do what they are trying to do, and noted that if inclined to do this, it should be coupled with an instruction to Mr. Leeds to review the Code and a bring a report back so that the Code can be amended so that everyone that is similarly situated will be treated alike without the need for variances. He was concerned with Council granting the variance when it is the Board of Adjustment's prerogative to do so.

Councilman Fadgen commented that as a governing body, Council establishes the ordinances and regulations. He did not believe it was the Council's intent to create a situation and concurred that all other similarities may be able to be taken care of by amending the ordinance.

In response to Mr. Leeds, Councilman Levy clarified that the fence is being changed from a four feet to six feet; it is not being moved.

Motion by Councilman Fadgen, seconded by Councilwoman Uria, that the front door to the McClendon property is at 660 El Dorado Parkway and to approve the fence replacement on the side street at 660 El Dorado Parkway. Motion carried on the following roll call vote:

Ayes: Fadgen, Levy, Tingom, Uria, Bendekovic
Nays: None

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WORKSHOPS – None.

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Meeting adjourned at 11:12 p.m.

_____
Diane Veltri Bendekovic, 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 _____, 2010.

_____
Susan Slattery, City Clerk