

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

August 14, 2013

The meeting was called to order by Councilman Robert A. Levy, President of the City Council.

1. Roll Call by City Clerk:

Councilmember:	Jerry Fadgen Ron Jacobs Robert A. Levy Lynn Stoner Chris P. Zimmerman
Mayor:	Diane Veltri Bendekovic
City Attorney:	Donald J. Lunny, Jr.

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2. The invocation was offered by Councilman Jacobs.

The Pledge of Allegiance followed.

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ITEMS SUBMITTED BY THE MAYOR

Mayor Bendekovic read a Proclamation designating August 14, 2013, as *Plantation Garden Club Day* in the City of Plantation.

Claudette Hammond and Sharon Melson (sic), with the Plantation Garden Club, accepted the proclamation.

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

- The last day of Summer Camp is Friday, August 16, 2013. A total of 575 children attended the programs.
- On Monday, August 12, 2013 through Sunday, August 25, 2013, is Fall Class Registration of programs that begin on Monday, August 26, 2013.
- PAL Soccer Registration will be on Saturday, August 17, 2013 and Saturday, August 24, 2013 between 9:00 a.m. and 2:00 p.m. at Plantation Central Park. Online registration is available.

- The PAL Senior Division, which is 15 and 16-year-old baseball players had a very successful summer competing in the Little League Championship. We are the first team in South Florida to win the District 21 Championship. The children will be honored at a City Council meeting.

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Mayor Bendekovic made the following announcements:

- 47th Art in the Park.
- Children, Families and Elder Affairs Town Hall Meeting will be with Senator Eleanor Soble on Tuesday, August 20, 2013 between 5:30 p.m. and 7:30 p.m. at the Performing Arts Theater at Broward College, Building 68-B in Pembroke Pines, Florida.
- State Representative Katie Edwards is hosting a Senior Fair scheduled for Saturday, August 31, 2013 between 10:00 a.m. and 12:00 p.m. at the Sunrise Senior Center.
- The First Budget Hearing will be held on September 12, 2013 and the Second Budget Hearing will be on September 25, 2013.
- Everyone is invited to an Open House at Deicke Auditorium on Thursday, September 19, 2013 between 3:00 p.m. and 5:00 p.m.
- Plantation Farmer's Market is at Volunteer Park every Saturday between 8:00 a.m. and 2:00 p.m.

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State Representative Hazelle Rogers provided the following update:

- A \$74.5 million budget has been passed. 41% of that budget was healthcare; 14% transportation and economic development; 27% education; 4.2% agriculture and natural resources; 2.4% government operations and Justice Department.
- Health care is top on the list. Florida has not yet decided whether to participate with the National Health Care Program but that does not mean that Florida residents will not have an option through the Federal Programs to participate. For information call 1-800-318-2596.
- Newsletters were left for everyone. They have extended hours once a month; on the fourth Monday they are open until 7:00 p.m.
- The Building Official is aware that Broward County or South Florida adopted a 40-year inspection program. A list of properties will be received that are close to the 40 years. She is hosting an event on University Drive and Oakland Park Boulevard.
- Take a child to school or greet the bus and show the children that we care.
- With regard to Special Assessment for Law Enforcement; it is not mandatory for all cities to participate; it is an option. Whatever is collected from the Special Assessment for Law Enforcement, you have to reduce the millage rate.

Councilman Levy commented that one of our difficulties is the aging infrastructure; our water and sewer pipes need to be replaced. Finding funding is very difficult; there is not that much support because it is underground and is not seen. The problem is that we have to pay it forward before we get a problem. He requested that State Representative Rogers check on whatever funds are available from the State for aging infrastructure replacement.

State Representative Rogers stated that is a countywide issue. She assured that she will bring it before the Natural Resources Division and get an answer even before she gets to Tallahassee.

Mayor Bendekovic indicated that State Representative Rogers not only meets with her and staff personally but she also has a meeting with all of the Mayors of her District and constantly keeps us up to date.

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CONSENT AGENDA

As a Commissioner of the CRA, Mayor Bendekovic has a voting privilege on Item No's. 8 and 13.

Item No. 12 was pulled from the Consent Agenda to be discussed separately.

Mr. Lunny read the Consent Agenda by title.

3. Request to approve the purchase of one Street Sweeper, TYMCO Model 600 Regenerative Air Street Sweeper.
4. Request for authorization to engage in the second of two (2) one-year renewal provisions with Dow Water & Process Solutions in accordance with City of Plantation RFP NO. 024-11 (Budgeted – Utilities)
5. Request for authorization to participate in the Southeast Florida Cooperative Bid (Lead Agency: City of Margate: Bid No. 2013-006) to furnish and deliver liquid sodium hydroxide (caustic) from April 17, 2013 through April 16, 2014 from Allied Universal at a cost of \$2.52/gallon (less-than-full truck load) Budgeted – Utilities)
6. Request for authorization to issue a work order to Hazen and Sawyer, P.C. (H&S) in an amount not to exceed \$65,950 to conduct pilot testing on several scale inhibitor products for use in the membrane softening process of the water treatment plants (Budgeted – Utilities)

Resolution No. 11726

7. **RESOLUTION** for the City of Plantation pertaining to the subject of redevelopment; approving a draft Consent and Estoppel Agreement to allow the “Developer” under a certain grant agreement, as amended for the Grove East project (F/K/A “Altman Development project”) to undergo business entity changes as needed to add a significant new equity investor into the going future concern; providing a savings clause and providing an effective date therefor.

CRA Resolution No. 2013-1

8. **RESOLUTION** of the Plantation Community Redevelopment Agency pertaining to the subject of redevelopment; approving a draft Consent and Estoppel Agreement to allow the “Developer” under a certain grant agreement, as mended for the Grove East project (F/K/A “Altman Development Project”) to undergo business entity changes as needed to add a significant new equity investor into the going future concern, providing findings; providing a savings clause and providing an effective date therefor.

Resolution No. 11727

9. **RESOLUTION** approving that Draft Assignment, Delegation and Release Agreement as to the Interlocal Agreement; providing for distribution of the proceeds according to the Florida Emergency Telephone Act; providing findings; providing a savings clause; and providing an effective date therefor.

Resolution No. 11728

10. **RESOLUTION** approving the expenditures and appropriations reflected in the weekly expenditure report for the period July 18, 2013 through August 7, 2013 for the Plantation Gateway Development District.

Resolution No. 11729

11. **RESOLUTION** approving the expenditures and appropriations reflected in the weekly expenditure report for the period July 18, 2013 through August 7, 2013 for the Plantation Midtown Development District.

Resolution No. 11730

13. **RESOLUTION** approving the expenditures and appropriations reflected in the weekly expenditure report for the period July 18, 2013 through August 7, 2013 for the City of Plantation's Community Redevelopment Agency.

NON-AGENDA ITEM

13.5 **Resolution No. 11732**

RESOLUTION opposing the proposed Broward County Land Use Plan Text Amendment relating to the application of residential flexibility and reserve units on properties designated commercial; employment center; or an equivalent land use classification.

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

Ayes: Stoner, Zimmerman, Fadgen, Jacobs, Levy
Nays: None

NOTE: Mayor Bendekovic voted affirmatively on Items No's. 8 and 13.

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Mr. Lunny read Item No. 12.

Resolution No. 11731

12. **RESOLUTION** approving the expenditures and appropriations reflected in the weekly expenditure report for the period July 18, 2013 through August 7, 2013.

Councilmember Zimmerman advised that he has been informed by Counsel that he may have a conflict with check #142095 to the Broward Alliance for Neighborhood Development. He filed the form with the City Clerk.

Motion by Councilman Jacobs, seconded by Councilman Fadgen, to approve Resolution No. 11731. Motion carried on the following roll call vote:

Ayes: Stoner, Fadgen, Jacobs, Levy

Nays: None

Abstained: Mr. Zimmerman

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ADMINISTRATIVE ITEMS

Mr. Lunny read Item No. 14.

- Resolution No. 11734**
14. **RESOLUTION OF THE CITY OF PLANTATION, FLORIDA, AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$26,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF NON-AD VALOREM REFUNDING REVENUE NOTE, SERIES 2013 OF THE CITY TO REFINANCE THE ACQUISITION AND CONSTRUCTION OF VARIOUS PUBLIC IMPROVEMENTS AND TO PAY COSTS AND EXPENSES OF ISSUING SUCH SERIES 2013 NOTE; PAYABLE FROM A COVENANT TO BUDGET AND APPROPRIATE LEGALLY AVAILABLE NON-AD VALOREM FUNDS; APPROVING THE FORM AND OF AN AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT; AUTHORIZING THE ACCEPTANCE OF J.P. MORGAN CHASE BANK, N.A.'S PROPOSAL; AUTHORIZING THE SALE OF THE SERIES 2013 NOTE ON A NEGOTIATED BASIS TO J.P. MORGAN CHASE BANK, N.A.; AUTHORIZING THE REDEMPTION OF THE REFUNDED BONDS; AUTHORIZING THE ISSUE TO ACT AS REGISTRAR, PAYING AGENT AND AUTHENTICATING AGENT WITH RESPECT TO THE SERIES 2013 NOTE; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF THE ESCROW DEPOSIT AGREEMENT; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF THE RATE LOCK LETTER AGREEMENT; MAKING CERTAIN FINDINGS; REPRESENTATIONS AND COVENANTS WITH RESPECT THERETO; PROVIDING CERTAIN OTHER DETAILS WITH RESPECT THERETO; AND PROVIDING AN EFFECTIVE DATE.**

Mayor Bendekovic advised that the rate on the loan was 2.35%. There have been many hours of meetings and hopefully all of the efforts are appreciated and she is very pleased with the outcome.

Dr. Caravella indicated that this item concerns the refunding and refinancing of the 2003 bonds. In August these bonds became eligible for a refund and refinance and that was a good thing since we have an escalating interest rate on the 2003 bonds; over the next two fiscal years our interest rate was going from 3.1% to 5.0%. The City entered into an agreement with PMF Financial Advising and Management Team and they solicited the banks through the RFP process to refinance the bond. Six banks responded to the RFP and the low cost proposer, J.P. Morgan, was selected and the interest rate is 2.35% with a \$2.7 million total debt savings at net present value basis. Staff has worked with PMF, Bond Council and Mr. Lunny to draft the agreement and corresponding Resolution for the refund refinance item. Pending Council's approval, the next step will be to terminate the full delivery agreement which held the escrow monies for the 2003 bonds; to sign the rate lock agreement with J.P. Morgan; and the pre-closing and closing will be on August 28 and 29, 2013 respectively.

Councilman Zimmerman believes we did great with the rate; however, at last week's meeting we spoke a little about the Community Center and \$2.5 million. He does not think we had a complete consensus and noted that he was not in favor of it. If we reduce the \$26 million to \$24 million and move not to build a Community Center at this time we could save \$186,000+ a year.

Motion by Councilman Zimmerman, seconded by Councilmember Stoner, to approve the bond funding less \$2.5 million and remove the Community Center from the funding. Motion FAILED on the following roll call vote:

Ayes: Stoner, Zimmerman

Nays: Fadgen, Jacobs, Levy

Councilman Fadgen questioned whether the \$102,000 of costs related to this refinancing are an estimate.

Dr. Caravella stated that the only one that is an estimate is the miscellaneous; the rest are true figures.

Councilman Fadgen indicated that while he did agree with the demolition; Council made a promise to the residents regarding the Community Center. Even though he would like to save the money, morally he does not believe that should be done; therefore, he will not support the motion.

Councilmember Stoner advised that from day one she was against demolition of the Community Center and said that it would be cheaper to fix it and sit on it for a few years. She said all along that there would still be debt service if we take the bond. There will be about \$286,000 per year in debt service for 11 years plus the cost of operating. Initially costs of operating the Community Center came in a little over \$100,000 and when it got into what it really cost we were almost \$350,000 per year in operating costs. This is going to be a larger building and probably will require at least one more additional staff. Easily with benefits and new employees, we are looking at \$450,000 per year to maintain this building plus the \$286,000 in debt service. When Council made a decision on that particular vote they did not have the foresight to realize what the true financial impact was going to be in the future.

In response to Councilman Jacobs, Councilmember Stoner stated that the terms of the Note say that there is a principal payment due every year and interest is paid twice a year. If you take the \$2.5 million and divide it by 11 years there is \$227,272 in principal every year that has to be paid back.

Dr. Caravella noted that the Kennedy component amount would be total \$2.9 million over the life of the loan and \$259,000 the first year; \$264,000 the second year and then it stays at that.

Councilman Jacobs questioned why we are borrowing \$2.5 million for the Community Center.

Dr. Caravella explained that it was \$2.1 million for the project originally and in the first year of the Kennedy Center being open the Parks and Recreation Department had about a half million dollars in capital requests to furnish and get the Kennedy Community Center set up. It was agreed administratively to use \$2.5 million since we would be looking for money to furnish the building.

Councilman Jacobs noted that the City has to come up with an extra \$260,000 per year if we add the Community Center into the bond.

Councilmember Stoner emphasized that the City cannot afford it. It is not that she does not want to give them the Community Center and that she does not want to do it; it is not about who wanted what when. In this financial picture this does not work; the numbers have to work. If we can save not just the debt service but not have the additional maintenance we will have saved \$700,000 to \$800,000 just in one year by not doing this.

Councilmember Stoner referenced the Note under Definitions on the Resolution; Page 3; 2013 Project. Note Counsel is not defined and the Bryant Miller & Olive is referred to in Section 12, Page 6, as Bond Counsel.

Mr. Lunny clarified that it is a bond for some provisions of State Law. One of our issues last time was to make sure the Council had a front load discussion about keeping money available for the Kennedy Community Center. The 2003 bonds can only be used for the Kennedy Community Center. This provision allows you to use it for Kennedy Community Center or some other purpose, which previously you would not have been able to do provided Note Counsel approves it and it is authorized by law. Note Counsel is any nationally recognized Bond Counsel.

Councilmember Stoner stated that the terms need to be defined.

Mr. Lunny advised that it is defined in other documents. If you are going to change the structure of what is being done tonight and make this purely a refunding so that you are terminating the reserve you had before then there would be no reason for a definition of a 2013 project. They were trying to keep it available to Council as directed last time and have an option that if times change the money could be used somewhere else for a capital project that you do not really and clearly have at the current time because there are restrictions on the prior Resolution. If the Council decides to make this a straight redemption and refunding type of procedure a lot of this Resolution will change.

Councilman Zimmerman indicated that he is not against the Community Center; he does not think now is the time to do that. In two or three years from now we will establish our reserves and can get bond funding. To take a loan when we cannot afford to pay back everything we have is not good business.

Councilman Levy concurred with Councilman Fadgen. Council promised the residents that they would have a Community Center. He did want to repair the old Community Center and keep it as it was; however, there was no support for that and he had to assume a second position, which was to demolish the Community Center and build a new one. He believes that Council has a moral obligation and we are not taking additional bond money since this was already approved by the bond issue at least a decade ago. He thinks that we need a Community Center in that location and that the people are waiting patiently and are expecting us to live up to the previous Council's promises. He definitely will support us going ahead with the promise we made to provide that Community Center. He cannot support Councilman Zimmerman's motion.

Mr. Lunny advised that Section 2 of the Resolution says "Capitalized terms used herein and not otherwise defined shall have the meaning set forth in the loan agreement". On Page 7 the loan agreement defines Note Counsel as initially Bryant Miller & Olive or any other attorney or law firm of attorneys of nationally recognized standings in matters pertaining to Federal Tax Exemption of Interest on Obligations.

Councilmember Stoner mentioned Mr. Lunny's fee. As issuer's counsel you will basically be issuing an opinion letter on behalf of the City and you would have attended some meetings. You are relying on others and she believes that his fees are excessively high for this matter.

Mr. Lunny indicated that it is actually in the reverse. Bond counsel does some things in connections with these transactions and issuer's counsel does other things. One of the things the issuer's counsel does is render an opinion that not only is the bond and the legislation suitably authorized and enforceable in accordance with their terms, but more importantly that the compliance with those provisions will not constitute a breach of any legal provision, Administrative regulation, Resolution, covenant agreement or instrument that the City has that is unconnected with this transaction. Issuer's counsel's opinion is much broader in terms of their responsibility. This is a very complex transaction; it is not simple. He has a strong desire to protect the City and Council and their team has done a considerable amount of work in this matter and that work has resulted in a lot of benefits in this transaction, some of which were his doing and some of which were other people's doing. In setting a fee, a variety of factors is given, which is their agreement with the City, some of which are the risks in the matter, the size of the issue, whether it is tax exempt, or fees customarily charged. In looking in their past fees for transactions they charged \$15,000 for a \$6 million tax exempt issue in 2007; our fees are the same as they were in 2007, actually they are a little less. In 2007 they could go on the Division of Bond Finance website and get the printed forms to make sure that their fees and bond counsel fees were reasonable. He did that this time; however, the data is not available for issuer's counsel. They asked the financial advisor to render advice with respect to his fees and bond counsel's fees as to whether they were reasonable, which they did. He believes that the requested fee is reasonable given the opinion risks, given the work that is needed and given a true understanding of the scope and responsibility of his firm in these matters.

Councilmember Stoner disagreed. She questioned who reviews Mr. Lunny's monthly bills.

Dr. Caravella stated that the departments review them and then Finance processes them.

Councilmember Stoner commented that on this particular matter, she assumes that no hourly bills will be submitted; this is a lump sum fee.

Dr. Caravella noted that is correct.

Mr. Lunny advised that he has offered a choice because in the past they have charged for an opinion in connection with the matter and they have charged their \$190 per hour rate for document review and meetings. They can either do that, which would be \$190 and \$20,000 for an opinion or it would be \$25,000 including everything. He knows that the \$25,000 is the better choice and Mr. Shimun has indicated that he wants a time record for all of the matters that are subject to that so he can confirm that more than \$5,000 has been spent on the first part.

Councilmember Stoner stated that even though you get a check for \$25,000 there is still post closing work that will be part of that \$25,000.

Mr. Lunny understood and noted that he has been doing this for quite some time. He stated that he has the same interests as Councilmember Stoner and he wants to make sure that she understands what he does; he does not just show up and sign his name to a letter; he is actively involved in the matter.

Councilmember Stoner commented that they will discuss this further in private. She mentioned financial covenants on Page 3 of the J.P. Morgan Credit Facility Proposal.

Dr. Caravella explained that they review all of the outstanding debt and assets and confirm that we have enough to ensure the debt that we will owe on this Note.

Councilmember Stoner mentioned the loan agreement, Page 4, base rate. We have the higher of their prime rate or one month plus 2.5%. She questioned if this Note is going to be 2.35% fixed.

Dr. Caravella indicated that as soon as she gets approval of the Council she will sign a rate lock order and assure that.

Councilmember Stoner stated that there was a comment in the rate lock agreement that if the amount is not funded we pay a reinvestment premium to lender. She questioned what that calculation is.

Sergio Moskov (sic), with PFM, was present.

Mr. Moskov advised that the rate lock agreement basically stipulates that you must close the transaction after signing the agreement; otherwise, there would be a breakage fee. The bank is hedging their rate on their side in order to lock you in from the approval tonight until closing. The breakage fee is based on calculation. The number would move based on how much the market moved from the time you signed the rate lock to when you broke it. The rate indicated as of the date of the proposal was 2.35%; however, an updated indication was received today and it is 2.32%. If we do not close at the time expected and the rate is lower that would result in no breakage fees to the City but if their at-market rate is higher, based on this calculation there would be a breakage fee. The rate lock they are talking about would be signed tomorrow or Friday and they are planning on closing on August 29, 2013. That is about eight days and he would expect that breakage fee would be under \$75,000. He stated that \$75,000 is a conservative estimate based on significant movement in the market.

Motion by Councilman Jacobs, seconded by Councilman Fadgen, to approve Item No. 14 as it was presented by Administration with the understanding that the item is the refunding; it is not a Community Center being built or anything like that; those are decisions to be made later on. Motion carried on the following roll call vote:

Ayes: Stoner, Zimmerman, Fadgen, Jacobs, Levy
Nays: None

Councilman Fadgen commented that the 2003 bond had the funds in there for a Community Center. The only variable here is the fact that there is a lower interest rate associated with that debt. That is really the differential we are talking about. Based on the commitment made he believes it is worth doing.

Lee Hillier, resident, was present. He mentioned the 1993 bond, which was a product morphed into the 2003 bond, which did not have expended funds. His biggest problem is that we do not have a freestanding gym. He mentioned an arbitrage bond in which 90% of the money shall be spent within a 36-month period. He is questioning if the \$26 million is going to be spent. It was not spent in 2003 and it was not spent in 1993 and we still have an entire generation of children on the east side of our town that do not have a gymnasium to progress as participants of the City to try to get a basketball scholarship and/or other motivational tools. He does not think that the facilities at the Jim Ward Community Center are adequate and we no longer have a Community Center; we have a parcel of land that has some opportunity for development. He believes that Council should move forward and build a gymnasium. He does not like that we have to spend money because that is taxation without representation.

Councilman Jacobs indicated that the City has an agreement with the school district to use their gymnasiums for basketball, etc., and that is why we, as a City, never moved forward and built our own separate facility.

Mr. Hillier disagreed with that perspective. We need our City to build a system that we can freely use as a community absent of the rules and regulations of the School Board because there are always strings attached. A priority issue is allowing children primarily on the east side of the Turnpike to have facilities that are not available to them.

Councilman Jacobs concurred and stated that it would be a higher level of service.

Mr. Lunny advised that we are refinancing existing publicly bonded debt. There are bonds that are outstanding and being held by investors nationally and all we are doing is achieving debt service savings of a significant amount for the budget. This is not a new money issue of \$26 million; the only money that is new money technically in this bond is derived from an old reserve, which previously was \$2,100,000 for the Kennedy Community Center and \$2,500,000 so we can do the furnishings. This is not a situation where the City is issuing bonds and raising \$26 million for capital items. This is 99% debt service savings and some percent keeping an option on the table for a development that was discussed.

Mr. Hillier questioned how much has been spent of the 2003 bond.

Mr. Lunny indicated that all of the money has been spent except for \$2.1 million in the bond proceeds fund, which was earmarked for the Kennedy Community Center and now it will be more flexible going forward.

Rico Petrocelli, resident, was present. He agreed with Mr. Hillier; the reason there is \$2.1 million for the Kennedy Community Center is because the gym was not built. We have always had an agreement with the School Board; the only problem is that we have to staff it and staff from the school has to have someone in at a certain hourly rate. Having our own gym, similar to other cities, it would be under our control and we could have it any time we want. The \$2.1 million goes back to 1989 and it was designed specifically for a gymnasium on the east side.

Mr. Lunny stated that the 2003 bond issue had a projects list that was very narrow and the only item left is the Kennedy Community Center. He believes you may be referring to the 2002 bond issue, which had a much longer projects list with A and B and that has been paid and fully performed. The 2003 bond did not have the gym as a component as he recalls.

Councilman Levy commented that the need for the gym still remains.

Mr. Lunny advised that Councilman Jacobs brought to his attention a matter where he has advised him that he may have a potential conflict in view of some business dealings he has with a related entity of J.P. Morgan Chase Bank. He did not realize until during the discussion tonight of how that entity fits in his matters that he might have this issue. When an Elected Official appears to have a conflict and would rather to abstain to avoid an appearance of impropriety he needs to make the announcement before the vote and while he can participate in the matter he has to file the memorandum. He requested the Council to do one of two things. First, the motion passed unanimously; therefore, the Council can allow an abstention to be reflected on the record; secondly, the Council, procedurally does not want to do that should reconsider the matter and Councilman Jacobs would indicate that he is abstaining to avoid any appearance of impropriety and a vote would have to be taken; if it was a tie the Mayor would have to vote on the matter. Councilman Jacobs apologized in bringing the issue up late and he apologized not being able to fully analyze the complexities of the matter at this time.

Councilmember Stoner questioned whether that includes the vote to remove the Community Center from that document.

Mr. Lunny stated that the note buyer is J.P. Morgan Chase and the entire deal is set up based on a competitive solicitation. It may not technically be a conflict but to reach that conclusion he would have to research.

Councilman Jacobs clarified that the question is whether the first vote has to be taken over again.

Mr. Lunny replied no, it is the second vote where you awarded the bond to J.P. Morgan Chase Bank. The consensus was to table the item until Mr. Lunny has a chance to research.

Mr. Lunny referenced the memo from PMF indicates that on June 18, 2013 they distributed a request for proposals to a pool of 27 bank lenders. The memo did not indicate whether those proposals were sealed. He asked Dr. Caravella to call the consultant, which she did. Bond Counsel and the consultant are of the view that the method of that solicitation was such that it was a sealed solicitation. That is important for two reasons. One is that there is a prevention in the ethics code for any employment or contractual relationship with someone who is doing business with or subject to the regulation of the City and the other is a provision is doing business with your agency and having an invalid employment or contractual relationship. There are exceptions to that provision for two things. One is where the business is awarded based on sealed competitive bids and the second is where any business arrangements that each of you have are on terms that are similarly offered in the community to the public and they are no more favorable to anyone. Unless there is some special advantage that you have received, for those of you who have routine relationships with this bank, he does not believe you would fall under the exception of doing business with and having or holding employment or a contractual relationship. That would address most of the concerns. Councilman Jacobs' issue is more complex because his issue might rise to the level of a business associate type of relationship and under a different of the State Ethics Code he would be prevented from voting on any manner which might inure to the private gain of a business associate. Based on the facts as he understands them, his advice would be that Councilman Jacobs, in order to avoid any appearance of impropriety, consider announcing that he will abstain for an appearance of impropriety on the award. The first vote is still valid; however, if you are going to reconsider the second you can always try to reconsider the first as well; that is up to Council. He requested that as a courtesy to Councilman Jacobs, the best thing would be to reconsider the item; first ask for a motion and vote to reconsider the item; allow Councilman Jacobs to make the statement that he wishes to abstain to avoid any appearance of impropriety and then consider approving the matter.

Councilman Fadgen mentioned the motion concerning the award is on the table so we should go to the first motion made by Councilman Zimmerman and reconsider that.

Mr. Lunny advised that Councilman Jacobs did not have a conflict as to the first decision. The second decision was to approve the financing as proposed; that included the extra money for the facility.

Mr. Lunny advised that it is not a legal argument based on the series of debt incurred over the years since 1993; it is a policy decision.

Motion by Councilmember Stoner, seconded by Councilman Levy, to reconsider Item No. 14. Motion carried on the following roll call vote:

Ayes: Stoner, Zimmerman, Fadgen, Jacobs, Levy

Nays: None

Motion by Councilmember Stoner, seconded by Councilman Zimmerman, to approve, removing the Community Center. Motion carried on the following roll call vote:

Councilman Jacobs announced that he would abstain from voting to avoid an appearance of impropriety.

Ayes: Stoner, Zimmerman
Nays: Fadgen, Levy, Mayor Bendekovic
Abstained: Jacobs

Mayor Bendekovic stated that if Mr. Lunny would have done what he was asked to do about the Acres, which means you gave a park to that part of town and now you are trying to take something away from this part of town she probably would have voted to not include the \$2.5 million in to the bond. She does not think that is equitable that you do one side of town one way and another side of town another way. The \$2.2 million could have gone into reserves; could have been used in different ways; she was using it that way for revenue options but it could have been placed into a reserve because it is an asset. In order to be equitable, just because she does not have this side of town to voice their concerns and why they should have it she is going to vote no. She would have supported it because it would have been cost savings and would have eliminated some of our losses. She is not going to vote to eliminate it from the bond.

Motion by Councilman Fadgen, seconded by Councilman Levy, to award the financing to J.P. Morgan Chase as presented. Motion carried on the following roll call vote:

Councilman Jacobs announced that he would abstain from voting to avoid an appearance of impropriety

Ayes: Stoner, Zimmerman, Fadgen, Levy
Nays: None
Abstained: Jacobs

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Mr. Lunny read Item No. 15.

15. DISCUSSION CONCERNING RENEWAL OF AGREEMENT FOR OPERATION AND MAINTENANCE OF PLANTATION TRAM.

A Report and Recommendation dated August 14, 2013, to the Mayor and Members of City Council, from Edward Consaul, Public Works Director and Priscilla Richards, Strategic Operations Administrator, follows:

SUBJECT: Renewal of Agreement for Operation and Maintenance of Plantation Tram.

HISTORY: The City of Plantation entered into an Interlocal Agreement with Broward County for Community Bus Service in September of 2009. The Agreement terminated in 2012 and included two, one-year extensions until September of 2014. The City and Broward County have exercised both extensions.

The City of Plantation entered into an Agreement with Limousines of South Florida, Inc., a Keolis Transit America Company for the Operation and Maintenance of Transit Bus Service

(Plantation Tram) in 2012 for one year with one year extension until September of 2014. The City notified Keolis of its intention to extend the contract until 9/30/13 in July.

Mr. Thomas Stringer, Jr. met with Ed Consaul, Priscilla Richards, Steve Rodgers and Debbie Gallagher on July 29, 2013. Mr. Stringer requested the meeting to introduce himself as the new Regional Vice President of East Area Operations of Keolis Transit America which is located in Los Angeles, CA. During that meeting, Mr. Stringer mentioned that Keolis had received the extension notice and would be requesting an increase in the service fee per hour. He followed up with the attached letter dated 7/31/13 requesting that the City consider an amended rate of \$54.96 per revenue service hour due to increased costs of vehicle operations and fleet maintenance. The current rate is \$31 per revenue service hour. This increase; therefore, would be \$23.96 per service hour.

On August 1, 2013, the City sent a letter concerning the interpretation of the contract with a request that Keolis advise the City of where they see that the contract allows Keolis to agree to an extension based on acceptance of a rate increase.

Kevin Adams, Executive Vice President of Keolis Transit America Company and Vasti Amaro, Senior Vice President of East Area Operations for Keolis, both indicated on the telephone that Keolis is requesting the rate increase as of October 1, 2013. Keolis would also be willing to work with the City and participate in a competitive bid process as soon as possible if they are granted the increase. Attached is Keolis letter dated August 9, 2013 requesting a meeting with City staff and Broward County "with the aim of reaching a compromise arrangement regarding rate adjustments".

ANALYSIS: Keolis invoices for approximately 1,146 service hours per month. The current rate is \$31 per service hour. Broward County contributes \$15 per hour and the City pays the balance of \$16 per hour.

City total **Current** Annual Cost:

\$16 x 1,146 hours x 12 months = \$549,529.92

Net Increase: \$329,529.92

RECOMMENDATION: Due to the budgetary shortfall, the City would be unable to approve an increase in the service hour rate. Section 2.1.3 of the Interlocal Agreement between Broward County and the City of Plantation for Community Bus Services requires a public meeting if any of the routes are changed or eliminated.

Provide direction to staff regarding Keolis request for a meeting and advise Administration to conduct a public meeting as soon as possible for the discussion of the potential elimination of the Plantation Tram due to increased costs as required by ILA with Broward County.

Mayor Bendekovic indicated that at the last budget meeting it was proposed that we eliminate the tram system, which was \$220,000 at the time. When the budget was approved that was reversed and we decided to go on and have the tram. This year Administration did not recommend the removal of the tram service as an expenditure

reduction. The reason being was that they were under the understanding that within the year Broward County was going to take over the service due to the fact that they wanted complete control of all of the municipalities. Since that time South Florida Limousine sold the business and another carrier/provider has come in. That individual has raised their prices and the net increase to our tram service will be \$316,000. We need Council's direction because currently this is not affordable to the City of Plantation.

Priscilla Richards, Strategic Ops Administrator, provided the following presentation:

- We were told by Broward County that they were interested as of next year, starting October 1, 2014, taking over the community bus systems.
- 18 cities have these community bus systems.
- The Mayor signed a renewal with the County through that date and we renewed with our vendor, which was Limousines of South Florida, which is now Keolis Transport.
- They are looking for a substantial increase; we are not the only City this is happening to. The Town of Davie has issued an RFP for this service.

Ms. Richards introduced Irv Minney and Barney McCoy, with Broward County Transit.

Mr. McCoy advised that the County's position on this is that they are not in a position to offer anymore operating funds to not only the City of Plantation but to Davie. In addition are the other 12 cities who have Keolis as a service provider. It was their understanding for quite some time that as the contracts were renewed that the rates would increase. The County's position is that their contribution is really capped at the \$15 per hour in terms of operating. They have always been liberal with the capital assistance in terms of providing the federally funded vehicles. They are not in a position to offer anymore operating assistance. Their budget is being capped at \$2.4 million for the Community Bus Program. When cities choose to withdraw from the Community Bus Program or if they are unable to stay in the program because of failure to meet ridership criteria and things of that nature they are at liberty to take those monies and reinvest in the system. They had a round of solicitations in the last six months where some cities reduced their service levels and removed themselves from the programs. They were able to offer those funds back to the cities through a competitive process but it still had to be done within that \$2.4 million cap.

Mayor Bendekovic commented that the County will not be making up the difference so we need to know whether Council wants to eliminate the Tram system. If so, we have to have two public hearings to do so.

Councilman Jacobs questioned whether we can go out for bid for a different provider. We can keep the tram and operate it ourselves instead of with this provider.

Dr. Caravella stated that Davie is in the same situation as us; they experienced a huge rate increase for their tram service so they put an RFP out to see who else can provide tram services to operate the tram as a lower cost. They did actually go out to bid a year ago and received ten RFP's so there are other providers who can provide tram services. Their bid closes August 29, 2013 and they are willing to share the results with us.

Councilman Jacobs questioned if the City were to do that whether the County would continue contributing at the same rate that it has been contributing.

Mr. McCoy indicated that the County will continue contributing the same rate of \$15 per hour for the operating.

Councilman Jacobs commented that if the majority of Council wanted to look at finding another provider that could operate the tram at the same or less if it would be harmful to do so. He questioned if there is a timeframe if we decide to stop the tram all together.

Ms. Richards stated that we have signed a renewal with Broward County to continue the service but they are fully aware of the fact that we cannot afford to continue with this rate. She also tried to get Keolis to tell us whether or not they would continue at this rate because the contract says that the City can renew for that additional year; it is not a mutual agreement. She requested a legal letter stating that they will not or cannot continue to provide services above October 1, 2013. She did not get that; she received a letter that they would like to sit down and talk with staff and Broward County.

Councilmember questioned if they had any option of arbitrarily doing anything.

Mr. Lunny advised that we could try to hold them in default and hold them responsible for the one year that we continue.

Councilman Jacobs questioned if we are going to continue until 2014.

Ms. Richards clarified that it would be until September 30, 2014.

Mr. Lunny stated that there will either be a legal dispute with Keolis. Keolis has indicated that it will not perform at the current rate structure; you cannot make them appear.

Ms. Richards commented that we requested they put that in writing and the letter that came back was if we can sit down and talk about it. They implied that on the phone and they were told that the response was needed in writing. The last letter received was more of a business letter, not a legal letter.

Councilman Jacobs noted that there is a timeframe; if they are not going to perform then we have to do something now.

In response to Councilmember Stoner, Mayor Bendekovic advised that they want their rates to increase on October 1, 2014.

Councilman Jacobs suggested that we proceed with terminating the process to terminate the tram and watch Davie carefully and maybe we can reverse that termination if we see that Davie is successful in getting a decent rate and that those people would be willing to do something for us.

Councilmember Stoner questioned whether we want to pursue the default aspect.

Councilman Fadgen mentioned the termination clause in the agreement and questioned if it is a 30-day or 60-day notice.

Ms. Richards indicated that there is a termination clause. We had one more year to extend it and it was at our option not under mutual conditions; therefore, we exercised that option and said that we do the last year with this rate and the letter came back stating that with fleet and operations costs they need \$54 and change. She has talked to several people and they implied that they really need that as of October 1, 2014.

Councilman Fadgen commented that they priced themselves out of the market unless they come back to the agreed price. He questioned our obligation to terminate.

Mr. Lunny advised that we have 15 days notice for cause and 30 days for convenience. We still have an agreement with Broward County.

Mayor Bendekovic stated that we would have to have a public hearing.

Mr. McCoy indicated that a public hearing would be required to meet Title 6 requirements. As it relates to the actual extension, that is a formal process entirely and requires consent of the County Attorney.

Councilman Fadgen mentioned that we will wait for Davie to get their bids back and if it is an agreeable situation we may consider piggybacking assuming the organization is successful and can handle an additional setting.

Ms. Richards believed that the comment was made that we should plant a schedule at the public hearing at an appropriate time before October 1, 2014 but in the meantime if the numbers come in for Davie come in and it is a workable number for the City.

Mayor Bendekovic stated that we should probably schedule it for the September 12, 2014 meeting. By then we would have the results of the RFP and see what the cost factor is there.

Councilman Fadgen commented that based on public comments, last year when it was considered to terminate the tram service there was a strong position of many people that depend on the tram service. He has since spoken to some of the people who said do not terminate the service and he replied that he would do his best not to terminate it but there may be a cost. If it is that valuable a small fee by the users may be appropriate.

In response to Councilman Levy, Mayor Bendekovic indicated that she did an average and this month we had about 12,000 riderships but at the peak we maybe have 16,000 riderships a month. She divided it for the difference and came up with a quarter or you add another dime or 15 cents and make it 40 cents or 50 cents and that would cover the entire expense of the tram. When mentioned last year, it was noted that a unit would have to be put in the tram. She believes if 50 cents were charged it would also incur the cost of the mechanism.

Councilman Jacobs commented that if there are 14,000 riders per month and you collect 50 cents a ride that is \$7,000 per month; multiply that by 12 and that comes out to \$84,000 per year.

Mr. McCoy advised that he would caution the City with charging a fare on the community buses. Based on experience, ridership will drop and you will put the entire program in jeopardy.

Mayor Bendekovic reiterated that we cannot afford this.

Motion by Councilman Jacobs, seconded by Councilman Fadgen, that we proceed with terminating the tram; follow the process and avoid the process of termination if we find an alternative that works to continue it; we should try to continue the tram. Motion carried on the following roll call vote:

Ayes: Stoner, Zimmerman, Fadgen, Jacobs, Levy

Nays: None

Councilmember Stoner commented that in 2014 this was going to go back to the County.

Ms. Richards clarified that we were told that they would be handling the community bus service themselves.

Mr. McCoy indicated that the discussion was that they would try to manage the contract in order to find a better rate. The conversation started specifically as related to maintenance because dealerships charge different hourly rates on the repair. If they can get the cities together and go as one unit they could get a better rate relating to maintenance. With regarding to operating, it depends on who is in the market. They wanted to meet with the cities and see if they would be interested in coming onto one contract; the financial contribution would still be the same, \$15, but it was meant to drive the maintenance cost down for the vehicles, specifically to Maroone and Plantation Ford.

Mayor Bendekovic stated that we need to schedule a public hearing for September 12, 2014.

Dennis Conklin, resident, was present. He urged Council to support terminating the tram due to the gap in the budget and this would be permanent.

* * * * *

Mr. Lunny read Item No. 16.

16. RESOLUTION OF THE CITY OF PLANTATION APPROVING THAT CERTAIN DRAFT REQUEST FOR LETTERS OF INTEREST; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE THEREFOR.

A memorandum dated August 8, 2013, to Mayor and Members of the City Council, from Gary Shimun, Chief Administrative Officer and Donald J. Lunny, Jr., City Attorney, follows:

RE: Resolution Approving a Request for Letters of Interest to Acquire NW 21st Court Recreation and Open Space Site.

Attached, please find an Exhibit "1" Resolution approving a proposed "*Request for Letters of Interest*" soliciting interest from the private sector acquiring up to 15 acres of land located in western Plantation, in an area of the City known as "Plantation Acres". The Administration desires to solicit interest consistent with budgetary presentations. The responses will be evaluated by Staff and proposed rankings will be presented to the City Council for consideration and approval. If approved by the City Council, the Administration will then negotiate a proposed contract for the sale of the property, and will present both the proposed contract and a proposed Resolution to the Council to determine the property surplus. This way, the City will determine the property surplus only after knowing proposed terms of sale, and approving same. No contract will be effective, and no decision to surplus will be made, until all of these matters are approved in the future by the City Council.

I. Background

a. Original Public Recreation and Open Space in Plantation Acres

As the elected officials may know, the area of the City known as Plantation Acres was annexed into Plantation in 1974. In 1975, Broward County conveyed to Plantation approximately 18 acres of undeveloped property which could be used for recreation and open space, as follows:

1. Land on NW 21st Court. A 4.74-acre parcel which was conveyed by virtue of that certain Deed dated December 16, 1974 which is recorded in Broward County Official Records Book 6500 at Page 527 (this property is located at 11831 NW 21st Court in Plantation, and has been assigned a property ID number of 4940 25 02 1810):
2. Land now comprising a small portion of Volunteer Park. A 4.44-acre parcel which was conveyed by virtue of that certain Deed date December 16, 1975 which is recorded in Broward County Official Records Book 6500 at Page 523 (this site is located at 1451 NW 188 Terrace, Plantation, and has been assigned a property ID number of 4940 36 55 0020); and,
3. Open Space at NW 118th Avenue and NW 8th Street. For many years, because of its odd shape, this parcel was referred to as the “donut Parcel”. It was approximately 5.02 acres in size, is located at 800 NW 8th Street, and has a property ID number of 4940 36 04 0220. It was conveyed to Plantation by virtue of a Deed dated December 16, 1975 and recorded in Broward County Official Records Book 6500 at Page 531.
4. New River Park. This approximate 3.76-acre parcel was conveyed to Plantation by virtue of that certain Deed dated December 16, 1975 which is recorded in Broward County Official Records Book 6500 at Page 529. It is located at 11600 Tara Drive, and has been assigned a property ID number of 5040 12 01 0010.

**b. Public Recreation and Open Space acquired by Plantation
in Plantation Acres after Annexation**

After the annexation of Plantation Acres, the City acquired over 89 additional acres of land in the Plantation Acres area of the City that can be used for Park and Open Space. There is approximately a 400% increase in land area that can be devoted to this purpose. These acquisitions were not financed by mechanisms which caused them to be acquired by local funds derived solely from the Plantation Acres Community (such as special assessments, for example); instead, the cost of acquisition was paid for by the entire City. These acquisitions were as follows:

1. Additional Land along NW 21st Court. An approximate ten-acre parcel which was conveyed to Plantation by virtue of that certain Deed dated July 10, 2000 which is recorded in Broward County Official Records Book 30708 at Page 238 (this parcel is located at 12001 NW 21st Court in Plantation, and has been assigned a property ID number of 4940 25 02 1820); and
2. Balance of Volunteer Park: This approximately 84-acre facility was assembled in portions from its original 4.4-acre size over time, as follows:
 - a. The City acquired the first parcel of property comprising Volunteer Park by virtue of that certain Trustee’s Deed recorded in Broward County Official Records Book 18008 at Page 393;
 - b. The City acquired the second parcel of property comprising Volunteer Park by virtue of that certain Warranty Deed recorded in Broward County Official Records Book 18689 at Page 426.

- c. The City acquired the third parcel of property comprising Volunteer Park by virtue of that certain Warranty Deed recorded in Broward County Official Records Book 18689 at Page 430;
 - d. The City acquired a fourth parcel of property comprising Volunteer Park by virtue of that certain Warranty Deed dated July 24, 1993 and recorded in Broward County Official Records Book 20930, at Page 668; and,
 - e. The City acquired the fifth parcel comprising Volunteer Park by virtue of that December 18, 2001 Special Warranty Deed recorded in Broward County Official Records Book 32524, at Page 67.
3. Completion of Five-Acre Open Space at NW 118th Avenue and NW 8th Street. This was an approximate .8-acre “hole in the donut” purchase on December 27, 1988. The deed is recorded in Broward County Official Records Book 16610 at Page 758.

c. Recent Administration Efforts to allow Plantation Acres community to retain NW 21st Court Parcel as Recreation or Open Space

In order to achieve budget, the City has been discussing whether to surplus the property along NW 21st Court. As stated above, the property is comprised of a vacant, but cleared ten-acre parcel, and a five-acre parcel partially developed as a passive park, with the balance in open space. This topic about potentially selling the ten-acre portion of the facility was discussed as part of the budget discussions at the following City Council meetings: February 13, 2013, June 26, 2013 and July 10, 2013. The potential for adding the additional five acres was disclosed at the following City Council meeting: July 10, 2013.

Prior to evaluating whether to add the five-acre parcel to the mix, and in an effort allow the ten-acre site to remain open space, the Administration wrote to the Plantation Acres Improvement District (PAID) and inquired as to whether it would like to acquire the property. A copy of this letter is attached as Exhibit “2”. To date, PAID has not indicate it is interested in an acquisition. The PAID Board is wholly elected by the Plantation Acres community, and has the power to finance an acquisition of this nature. The Administration also wrote to the Plantation Acres Homeowners’ Association and asked if it would be willing to form a legal entity to acquire the property. A copy of this letter is attached as Exhibit 3. The Plantation Acres Homeowners’ Association verbally indicated that they could not find a funding source to purchase the property. Since neither PAID, nor the Plantation Acres Homeowners’ Association has expressed a willingness to acquire the site, the City needs to evaluate the private sector interest in acquisition.

d. Highpoints of the RLI

The “highpoints” of the Request for Letters of Interest, are as follows:

- a. Responses are requested on October 15, 2013. This will allow serious proposers to fully investigate the sites, and allow the City Council to determine how to address the matter once the 2013-2014 Budget discussions are concluded and the budget is approved.
- b. Responses are solicited for the sites as quality housing. Once the property is sold, if sold for development of quality single family homes, the property must be deed restricted for this purpose at a density not to exceed two (2) homes per acre of land.

The buyer must process and pay for all necessary land use and zoning and site development plan approvals; however, if the City chooses not to grant land use plan changes and zoning changes necessary to allow construction of single family homes at a density of two (2) homes per acre at the end of calendar year 2014, the buyer would have the option of conveying the property back to the City in return for a refund of the purchase price, without interest. While the City cannot contract away its legislative comprehensive planning and zoning prerogatives, Staff believes that the RLI would attract more serious developers if they knew that they could receive a return of their purchase price if their expectations were not met in this regard.

- c. Responding to the RLI creates no contractual rights or expectations, as these are only created, if created, after future City Council approvals in connection with approving a Contract for Sale and Purchase and determining to surplus these municipal assets.

e. Conclusion

This Resolution is now ready for approval as a Consent Agenda item.

Councilman Levy advised that this item has to do with 10 to 15 acres of land located in Plantation Acres.

Mayor Bendekovic indicated that they are requesting a letter of interest, which is for developers. They need the responses by October 15, 2013 and parameters have been set requesting what they would be looking at. The density for one of the items cannot exceed two homes per acres on the land.

Mayor Bendekovic presented a brief Power Point presentation and noted the following:

- The North Acres Park is at NW 118th Avenue and NW 20th Court.
- The five acres conveyance of the property was made on December 16, 1975; that is 4.7 per parcel and it is located at 11831 NW 21st Court. It was conveyed to the City by Broward County and there is a restricted covenant, which means that the Council and the City would have to go to the Broward County Commission to get that restriction raised. The City of Plantation is required to have four acres per 1,000 which comes out to 354.6 acres of open space and park land; Plantation presently has 645 acres of open space and park land; therefore, we do meet the County's requirements and standards for 2015.
- On July 10, 2000 a 2,000-acre parcel at 12001 NW 21st Court, which is adjacent to the other parcel of 4.474 acres, was conveyed to the City through a land swap with the School Board of Broward County. About 75% of the North Acres have lived there since before 2000 and at that time an elementary school was projected to be built there. Due to the under enrollment and the decline in enrollment that school is no longer needed nor is the one that was projected on NW 118th Avenue in the Central Acres due to the fact that we also purchased that property. That was going to be a middle school.
- On June 14, 2012 we had the first budget workshop at which time one of the revenue options was to recommend selling the ten acres as surplus.
- On July 25, 2012 the City Council set the maximum millage rate again. The revenue option included the recommendation to sell the surplus land.
- On August 23, 2012 the final workshop before the First and Second Reading of the Budget, which included the ten acres as a revenue option, was given to the Council once again. The recommendation for the revenue option included selling off the ten-acre parcel. The Budget passed with a three to two vote. The millage rate increase passed with a five to zero vote.

- On February 13, 2013 Administration presented to the City Council outlining shortfalls with the 2014 Budget. It again included the real estate surplus.
- On April 1, 2013 letters were sent to P.A.I.D., Dr. Ed Zurlich, and the Plantation Acres Homeowners and Landowners Association, John George, giving them the first right to refuse it or purchase the property from the City. This was only for ten acres; at that time the other five acres was not a conversation. Response was requested by May 1, 2013 and a verbal confirmation was received from President John George of the Homeowners Association that they could not come up with the funding to purchase the property. No response was received from P.A.I.D. A response was recently received from P.A.I.D. at which time Dr. Zurlich called and indicated that they would not be able to purchase the property.
- On May 16, 2013 after receiving a verbal response from John George and no response from P.A.I.D. she met with Broward County Representative Marty Kerr. Commissioner Kerr represents not only Plantation but Sunrise as well and they have always been very vocal with regard to the west of our City and what it does to the City as far as public safety. Metropica will be going in and it is a huge residential unit and the people that will gain profits will be the developer and the City of Sunrise. The County has some wetlands that they want removed and they had to find places for mitigation. With that, she said there are a total of probably 20 acres in Plantation and this would be a win-win for the developer as well as the City of Plantation. Not only did she want to do mitigation; she wanted them to build a wall on NW 28th Court; finish the berm all the way to Broward Boulevard and for them to give us some public impact fees because it will impact our services.
- On June 3, 2013 she met with Parks and Recreation, Commissioner Kerr's representative, Priscilla Richards and the developer's engineers. They looked at the land and she gave them the proposals. She was told that the developer would get back to us. Not hearing back from the Engineer, the City re-contacted the Engineer and they have yet to get back to us.
- On June 26, 2013 surplus properties were mentioned during the presentation including looking to sell off the surplus land as one option to balance the budget.
- On July 10, 2013 some of the revenue options were not acceptable to the Council; therefore, they had to regroup and that is when the five acres were added to the ten-acre parcel. Now it included 15 acres in order to close the gap. There were some comments from Council at that time and that brings us to the remaining dates on pending approval.
- Tonight the requested letter of interest on the Council's agenda; then a First and Second Public Hearing on September 12 and 25, 2014 and on November 14, 2014 the City Council makes final approval to surplus land and transfer property based on a negotiated transaction in light of the request of a letter of interest responses.
- On December 31, 2014 the parcels are transferred.

Mayor Bendekovic reminded everyone that every park in the City belongs to every taxpayer.

After speaking with individuals, 25% of the acreage would be developed; the other 25% has to go to roadways, easements and retention. 15 acres, which would equate to 11.25 acres for development, would either equal one-acre lots or 22 houses. She indicated that the ten acres on the North Acres was originally to be an elementary school and the revenue generated from those houses would be between \$3,500 and \$5,000 which would bring in \$70,000 for the City in the future.

Councilman Levy mentioned that listening to proposals does not necessarily mean that we are voting or exceeding to whatever the proposal is; we are gathering information and during the budget process that was one option. We never voted on anything like that and he does not want the implication being that we somehow gave

total approval to this happening. It was one of the proposals to settle the budget problem and we all listened to it.

Mayor Bendekovic stated that there were a few comments but she disagreed with one comment because with this year's budget there was a three to two vote and that was to sell the ten acres. On this budget Council has not voted on anything because of the fact that we have not got to the First and Second Hearing.

Councilman Levy indicated that Council did vote on the budget; however, one of the options was that this would come before us before we ever voted to sell it; it was an option in the budget that could have settled some of the budget crisis but we still would have had to vote on it to actually sell it. By voting on the budget they did not vote to actually sell the land; they voted to incorporate that as part of a plan. He does not want anyone to get the wrong impression that this Council voted already.

Mayor Bendekovic advised that this Council has not voted and she did not indicate that. This Council would have to bring it back to the public hearing. All she is requesting is a letter of interest to see what is out there and if Council wants to continue with the ten acres or the five acres she needs to know. If Administration cannot move ahead with a request of a letter of interest then we will have to go back and find \$2.2 million.

Councilman Levy stated that all Council did was look at an option. He referenced the proposal to a developer to use it as wetlands mitigation and questioned whether that means if the developer were to agree to that it could be left; what would have to be done.

Mayor Bendekovic explained that it would have to be a swap because Broward County is not releasing those wetlands and they need that additional 20 acres for that development. If we make that swap it would have to be turned into wetlands; it would be completely open space.

Councilman Levy questioned if it floods now if it would create more of a problem if they were to make it into wetlands.

Mayor Bendekovic advised that our wetlands in Volunteer Park do not flood nor does our Preserve wetlands flood. It would be open space wetlands.

Councilman Zimmerman looks at this piece of property as another part of reserves in the City. He is not in favor of selling the property.

Motion by Councilman Zimmerman, seconded by Councilman Fadgen, that the 15 acres of the North Acres is not sold to balance the budget. Motion carried on the following roll call vote:

Ayes: Stoner, Zimmerman, Fadgen, Jacobs, Levy

Nays: None

In response to Councilmember Stoner, Mayor Bendekovic clarified that this is a denial of a request of a letter of interest, which in turn would say that she will not move any further with this at this time.

John George, President of Plantation Acres Homeowners Association, was present. He thanked the Council for their vote. Mayor Bendekovic commented that the parks belong to every resident in Plantation; however, this part belongs to the residents of the North Acres; they are the ones who use it. Even though this is a park primarily for the North Acres, nothing has ever been done to make it a park because the City does not have the

money. There is no way to ever recover that property when the City has the money to develop it into a useable park. There are approximately 89,000 people in Plantation Acres and the North Acres only have 14,000 people. That is less than 16% of the total population and yet they will be paying 49% of the budget shortfall by giving land up that is in their community and that is not fair. They will continue looking for someone to buy the land and use it as a park with a playground.

Eugene Marchese, Jr., Chairman for Plantation Acres Homeowners Association, was present. They want to try to raise funds or somehow work with the Council to improve the park a little at a time or draft an overall plan and work toward it.

Councilman Levy thanked everyone for coming to the meeting.

Jayne Flanigan, resident, thanked the Council for their vote.

Councilmember Stoner requested that Mr. Romano contact Mr. George, Mr. Marchese, or Ms. Flanigan and as they get their fundraising together and decide on what kind of equipment they want to put in they need to coordinate with you for safety purposes and the criteria that is required to go into those parks.

Mr. Romano advised that Ms. Flanigan sits on the Parks and Recreation Advisory Board and he is sure this will be mentioned at the September meeting.

In response to Councilmember Stoner, Mr. Romano indicated that they could check their inventory to see if anything is left over from the Community Center that can be used at this park.

* * * * *

LEGISLATIVE ITEMS

Mr. Lunny read Item No. 17.

17. PUBLIC HEARING AND FIRST READING OF AN ORDINANCE OF THE CITY OF PLANTATION, FLORIDA, PERTAINING TO THE SUBJECT OF STORM WATER MANAGEMENT; PROVIDING CLARIFYING CHANGES TO THE STORM WATER UTILITY FEE WHICH ARE NECESSARY AS A RESULT OF THE CITY DECISION TO UTILIZE THE NON-AD VALOREM TAX PROCESS TO COLLECT SUCH FEE; CHANGING THE METHOD BY WHICH INFLATIONARY ADJUSTMENTS ARE CONSIDERED FOR APPROVAL; CLARIFYING THE TRIENNIAL METHODOLOGY REVIEW AND MAKING SAME MANDATORY; MAKING OTHER MISCELLANEOUS CHANGES TO THE METHOD BY WHICH PRIVATE STORM WATER SYSTEMS ARE REVIEWED AND THE FEES CHARGED FOR SAME; PROVIDING A SAVINGS CLAUSE AND PROVIDING AN EFFECTIVE DATE THEREFOR.

A memorandum dated August 8, 2013, to the Mayor and Members of the City Council, from Donald J. Lunny, Jr., City Attorney, follows:

Re: Ordinance Pertaining to the Subject of Storm Water Management

The attached ordinance is a legal housekeeping measure.

A.

When the Council adopted its most recent fee approving Resolution in November 2012 and elected the non-ad valorem assessment method of collection, it changed the manner in which the annual inflationary adjustment became effective. Previously, the language indicated it would be presented as a line item in the budget and would become effective unless specifically *not* approved by the City Council (.e. by specific motion and vote). Instead, the Council asked that this require the annual approval of the Council as part of the annual budgetary process. The ordinance has been changed to comply with this request. (Lines 232-245)

B.

As the elected officials are aware, after the City created the Storm Water Utility and approved the Storm Water Utility Fee, it elected to collect the fee using the non-ad valorem tax assessment process by adopting Resolution No. 11604. This election has caused the following, notable clarifying changes:

1. Clarifies that a “Developed Property” or “Property” is one that has its own ad valorem tax folio or property identification number (and deletes the portion of these definitions which define a parcel of property in a zoning building site context as no longer being relevant) (Lines 133-142).
2. Language indicating the monthly fee will be annualized for the non-ad valorem assessment. (Lines 197-198).
3. Clarify that only the triennial methodology review (and any consequent fee adjustments) will be made by ordinance. (Lines 201-208).
4. Providing some clarifying changes to the initial fee that more appropriately reflect the annual budget approval process to be consistent with Resolution No. 11604. (Lines 213-213)
5. Reflect that the non-ad valorem assessment process involves the creation of an assessment roll and periodic amendments to same from time to time, and that this process will be supervised by the City Engineer, who can allocate assessments fairly in special circumstances the preparation of the roll for the Council’s consideration, consistent with the methodology that is in effect. (Lines 158-174) and,
6. Other language miscellaneous changes were made to implement the levy of the fee using the Uniform non-ad valorem assessment procedures.

C.

After the Storm Water Utility was established, the Council adopted Ordinance No. 2473 which adjusted all of the City’s permit and review fees. Consistent with the fees Ordinance, the Storm Water Ordinance is proposed to be modified in Section 9-77, Plantation City Code, to reflect that the five (5) percent fee therein identified is not charged in addition to the regular permit fee changed by the Engineering Department for drainage matters. (Lines 264-269)

D.

In an effort to be more efficient, and given that the Engineering Department’s Human Resources are less now than they were when Storm Water Management Utility was approved, the City’s review of annual inspection

documentation required of private storm water systems is proposed to be only once very five (5) years. As a result, the \$35 annual fee is adjusted to \$175 for the five (5) year period. (Lines 273-284)

E.

If any of you have any questions or comments, please do not hesitate to contact Mr. Butler or Mr. Shimun.

This housekeeping Ordinance is now ready for consideration at First Reading.

Motion by Councilmember Stoner, seconded by Councilman Zimmerman, to approve Item No. 17 on first reading. Motion carried on the following roll call vote:

Ayes: Stoner, Zimmerman, Jacobs

Nays: Fadgen, Levy

George Lord, resident, was present. He mentioned Article 7, Section P, and the last four sentences say, "... should not and will not be more than the particular and special benefits to be derived for each property benefited thereby". That means if he does not receive anything he should not be paying anything.

Mr. Lunny advised that this is a finding and determination that is additional support for why you chose to do this because now the fee is being put on the non-ad valorem assessment roll. The Council has determined that Country Club Estates does benefit from the program.

Mr. Lord disagreed.

Dennis Conklin, resident, was present. He stated that when this was previously discussed he strongly urged the Council not to participate in this unfunded mandate. This is being forced upon lower forms of government by the Federal Government. He encouraged Council not to move forward.

* * * * *

Mr. Lunny read Item No. 18.

18. PUBLIC HEARING AND FIRST READING OF AN ORDINANCE OF THE CITY OF PLANTATION, FLORIDA, PERTAINING TO THE SUBJECT OF A MORATORIUM; REPEALING EMERGENCY ORDINANCE NO. 2486 CONCERNING A MORATORIUM; IMPOSING A TEMPORARY MORATORIUM ON THE RECEIPT OR PROCESSING OF APPLICATIONS, PERMITS OR PENDING APPROVALS PERTAINING TO THE INSTALLATION OR SIGHTING OF ANY "TELECOMMUNICATIONS TOWERS", AS MAY BE DEFINED BY FEDERAL LAW, OR "WIRELESS PERSONAL TELECOMMUNICATIONS SERVICE ANTENNA TOWERS" AS DEFINED BY CHAPTER 5.5 OF THE PLANTATION CITY CODE, OR "TOWER" AS DEFINED UNDER SECTION 365.172 FLORIDA STATUTES, OR ANY OTHER COMMUNICATIONS FACILITIES SOLELY CONTAINED OR MOUNTED ON A SINGLE STAND ALONE TOWER, AS ANY BE CONTEMPLATED BY SECTION 337.401 FLORIDA STATUTES; SUCH MORATORIUM BEING EFFECTIVE FOR ANY MUNICIPAL PUBLIC RIGHTS-OF-WAY WITHIN THE CITY OF PLANTATION, FLORIDA, AND FOR REAL PROPERTY WHICH IS NOT VEHICULAR PUBLIC RIGHT-OF-WAY (INCLUDING PRIVATE PROPERTY WITHIN PLANTATION); PROVIDING

THAT SUCH MORATORIUM SHALL EXPIRE SIXTY (60) DAYS AFTER THIS ORDINANCE'S EFFECTIVE DATE; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE THEREFOR.

A memorandum dated August 1, 2013, to Mayor and Members of the City Council, from Donald J. Lunny, Jr., City Attorney, follows:

RE: Moratorium Ordinance

I.

At its meeting of July 24, 2013, the City Council enacted an Emergency Ordinance extending the City's Moratorium for the placement of communications towers in rights-of-way until September 16, 2013. The City also extended such Moratorium to apply to communications tower installations on private property. The Moratorium was passed just after midnight, and emanated from a discussion about a proposed telecommunications ordinance where some industry representatives preferred a Moratorium over the City proceeding on the Ordinance without advanced opportunity for industry input.

II.

When the City enacts an Emergency Ordinance, the Legal Department recommends that a regularly enacted ordinance on the same matter be considered by the City Council as soon as reasonably possible. This permits time for the elected officials to reflect on the matter, allows more time for public input, and affords the public increased notice and opportunities to attend hearings as are established by the City Council. The Council can decide to replace the emergency enactment with a regularly enacted ordinance, or to repeal the emergency enactment. Staff recommends the former.

III.

This matter is now ready for consideration as a Legislative Item at First Reading at the City Council meeting of August 14, 2013. Staff has scheduled an Industry Group meeting on the proposed Telecommunications Ordinance for Monday, August 5, 2013, and will give the Council an update on such proposed Telecommunications Ordinance at the August 14, 2013 City Council meeting.

Mr. Lunny advised that it is the City Legal Department's custom that when you act in an emergency fashion, which you did at the last meeting as requested by certain members of the Industry, that the City prepare and submit to you an ordinance on the same topic to enact in a regular manner. As elected officials, you normally get two opportunities; two different hearings to consider topics and sometimes the decision making changes and sometimes it does not. Having two hearings also allows the public and others to communicate with you. That is why he prepared the moratorium ordinance was prepared for first reading. It is staff's view that we ask that you adopt this moratorium at first reading so as to continue the moratorium. You are not required to do so but if you wish to repeal the moratorium you would have to pass this on first reading and go to second reading. Topic 1 is the moratorium ordinance. The other matter, which he requested Council take as a separate item, is when you did the emergency moratorium it was reported that they would meet with the Industry and report back to Council, which is what he did in the August 6, 2013 memorandum. Council can choose to give staff direction; Mr. Leeds had a couple of items he wanted further direction on. Ultimately this is what we are going to propose

to advertise if you would like them to. There will be one more report to Council and he is here to give Council the opportunity to reflect on the matter and act on a moratorium in the usual and customary way.

Councilman Fadgen questioned if the moratorium will be passed by itself.

Mr. Lunny advised that is the item on the agenda for action. Council requested that he meet with the Industry and report where we are and that it is why it is called supplemental because he did not want to come back without doing what they said they would do. This is not final because the Mayor is allowing him to have a meeting on Tuesday with additional attorneys from the Industry. If you choose to give some policy direction on this he has outlined in the memo where staff would like policy direction and maybe the Industry would too because they had some concerns about the prior draft which are noted. If you choose not to give direction that is your choice.

Motion by Councilman Fadgen, seconded by Councilman Jacobs, to approve the moratorium. No vote was taken.

Attorney Paul D'Arelli was present on behalf of Clear View Tower Corporation. Clear View Tower Corporation has a site that they have located and entered into lease for property generally located behind the Whole Foods Market in the Business Park. This process began back in April 2013 where they were approaching the City to apply for a permit under the then existing regulatory scheme to site a flag pole antenna installation, which is desperately needed in that area. They came to the City looking for an opportunity to do business and entered into a lease with the Business Park where the Aetna Building is located. He has gone through all of the steps to apply to the City for a pre-development meeting; they are on an agenda for July 26, 2013, which happened to be two days after Council took action to adopt the emergency moratorium. They were then called the next day and told they could not be considered on the pre-development meeting agenda because of the fact that the moratorium was put in place. The requested that an exception be provided in the moratorium for an applicant that had filed and was placed on an agenda for pre-development prior to the enactment of the emergency ordinance. He is not making a legal argument as to vested rights; he is making an equitable argument. This is a business owner that came to our City in good faith to operate under the existing regulatory scheme and has a signed lease with the property owner, which is an institutional office owner, who went to great lengths to get that lease in place. They have a lease with the carrier that is going to be locating on the cell tower; a top three provider; and there is a desperate need for service in that area. He has suggested language that would exempt from the effects of the moratorium for the ordinance change. There was a previous moratorium that only applied to public right-of-way so there was no notice that anything was going to happen that would affect cell towers on private property. He would like to suggest language and dialogue in exchange that would show that their client had been working with staff to get the application in as far back as April 2013 and had actually been placed on the agenda.

Mr. Leeds believes it is a mistake to give someone entitlement or a right that other people are not going to be allowed to receive simply because they made application to the pre-development agenda. Pre-development is a very informal meeting; there are no minutes taken and it is basically the first look. Mr. D'Arelli is correct; they did start the process in April 2013 but they did not get on the pre-development agenda until they came in with an authorization from the property owner to submit the application for pre-development. They could not get that in April or May; it came later. Generally, people advise that they are going to buy or lease property and based on something that has not been approved we tell them they do so at their own risk. This applicant entered into a lease and committed themselves without any approval from the City. At the time that the pre-development was scheduled and up to the moment of the meeting that the Council passed the moratorium they had no idea whether it was going to be passed or not. There was nothing to report to this applicant. He understands Mr. D'Arelli's position; he would advocate the same thing if he represented Clear View but there

are other people in the City and other representatives who may want to put up 150-foot tall towers on other commercial properties. He does not think an exception should be created. That is not a legal argument; that is a planner's argument after attending a meeting with Mr. Lunny and meeting with the groups, which included AT&T, Verizon, FP&L. In his opinion, everyone should be treated equally.

Mr. D'Arelli stated that they are not asking to be treated differently. Their client was here at a point and time that is different from the point and time that anyone might come with an application in the future. They moved in good faith to secure the site and entered into an agreement and established an application process not in a rush to beat everyone else. If they would have come later they would want to play under the rules; they are not trying to say they will not go through a process; they would go through the process and comply with the regulations on the books today that are in force and in effect and were contemplated at the time the business deal was put together. If anyone else was on the pre-development agenda prior he would say that they should be afforded the same treatment.

Councilman Fadgen commented that the reason the moratorium is in place and the objective they were trying to accomplish by the ordinance was to avoid having obnoxious towers going up everywhere in a non-uniform manner. It sounds like the property you are talking about has no cell coverage at all. He questioned if their tower is offensive.

Mr. D'Arelli advised that it is a flag pole style installation so it is a monopole. He had the client meet with Jim Inklebarger, who is an ownership interest in the immediate adjacent office park, and he has absolutely no problem with it. As late as today, Mr. Inklebarger expressed his continued support for the location of the facility.

Councilman Fadgen questioned if it is internal on the property.

Mr. D'Arelli stated that it is on the west side of the road just behind the Whole Foods; at the southwest corner of the back of the Whole Foods Plaza across the street adjacent to the lake. There is a lot of vegetation from the standpoint of trees and buffering; it is about the least obnoxious place it could be located and provide coverage in that area.

Mr. Lunny pointed out that there is a provision on Page 3 of 4, Line 105, that perhaps we could adapt for this purpose. It says, "While the City is in the process of formulating regulations, the City reserves the right by resolution to adopt other typical installation descriptions that may be excluded from the moratorium". That was a mechanism within the right-of-way piece. If Council is willing to consider a typical installation of a flagless monopole of the size and height, maybe not exactly what Mr. D'Arelli's client wants but something similar, he could be directed to modify the moratorium to give that out on private property as well and then the full merits would not have to be considered of something you have not seen and determining whether to make an exception or not. Staff and Mr. D'Arelli's client could be given the opportunity to continue working together on a process and if there is an agreement it can be presented and approved by resolution.

Councilman Levy mentioned flagless pole and questioned if there would be a flag.

Mr. D'Arelli noted that it would be flagged if the City wants it to be flagged but it does not need to be flagged.

Mr. Lunny believed there may be setback issues. He does not know too much about exactly what this is; he has had some discussion with Mr. Leeds about a height and where it might be. He is not sure whether it can be moved. He would be uncomfortable asking Council to hear the item and not apply the moratorium as opposed

to creating a facility to address the item in your discretion if you wish to and then that would give Mr. D'Arelli the ability to work with staff and come back.

Councilman Fadgen questioned whether an initial paragraph would be proposed under Section 5.

Mr. Lunny clarified that he would propose to expand Section 5 to allow typical installations and that might be a mechanism if Mr. Leeds is of the view that this is an appropriate height and appropriately camouflaged and located in an appropriate way and he and Mr. D'Arelli can work that out, then there would be the prerogative of bringing that to Council as opposed to saying, "We are not going to apply anything new at all".

Amended motion by Councilman Fadgen, seconded by Councilman Jacobs, to revise the moratorium for second reading. Motion carried on the following roll call vote:

Ayes: Stoner, Zimmerman, Fadgen, Jacobs, Levy

Nays: None

In response to Mr. D'Arelli, Mr. Lunny advised that the City's view is that there was no application pending at the time of the moratorium; they understand that the client disagrees. Rather than determine that we are going to exclude the moratorium from this, his idea is to provide this mechanism so that the two of you can cooperate or negotiate to determine whether you are going to come back to Council. If the Council wants to approve as a resolution that this would be a typical installation they could do so while the moratorium is in effect. It would come through staff.

Mr. D'Arelli stated that he would take that over nothing but believes that it leaves a great deal of uncertainty as opposed to operating under the regulatory scheme in effect at the time they made application with pre-development.

Mr. Leeds supports Mr. Lunny's recommendation. He has met with the representative of Clear View and the pole exceeds the height and it does not meet the setbacks. This suggestion does not back staff into a corner tonight.

Mayor Bendekovic commented that it is mentioned that it is a 100-foot tower on one page and then it says it is 150-foot tower. Page 13 says a 100-foot tower at this location would be highly visible from University Drive but the last page says this is a reminder that the proposal for the 150-foot stealth communication tower has been scheduled. She mentioned that the required height of the Motorola tower was 180 feet and they are saying they want 150 feet and then 100 feet.

Councilman Levy indicated that all of that needs to be clarified.

Mr. D'Arelli advised that the request is 150 feet; the 100 feet came back with staff's reference to the tower.

Attorney Melissa Anderson, with Crown Castle, was present. She wanted to be sure that the original exception that Mr. Lunny and Council offered to Crown Castle still exists.

Mr. Lunny indicated that it does still exist.

Councilman Fadgen stated that he would like to hear any comments from the Industry relative to the supplemental information and proposed ordinance.

Mr. Lunny indicated that the main thing they were concerned about was how the application was formulated. Basically what the law says is that we cannot require information of wireless providers that their antennas, transmitting devices, are safe. The law further says that we are allowed to write to the FCC to get assurance that the wireless provider meets all appropriate safety requirements; this is a State Law provision. While we cannot require that of them, we are permitted by the State Legislature to write to the FCC. He decided to say that no application would be complete and; therefore, the shock clock would not start until we wrote to the FCC and got an answer. Alternatively, the wireless provider could voluntarily offer this information and the application period would close and the shock clock would start. Some people said they did not think that was appropriate. They said the FCC is a black hole and they cannot get the information from the FCC so we are not going to get the information from the FCC. Someone also said that the FCC will only give this response after the antennas have been approved, which he has not independently evaluated. They are requesting that we do away with that part of the ordinance and he is saying that we are covered almost as well by certification that we are requiring of them that if, at any time we discover that they are not meeting all safety requirements that we can require them to remove their antenna and take appropriate action. If we do not want to have a dispute with the Industry because of an agency that we cannot control and because of a State Law that does not, according to the Industry, make practical sense, then we do have a fall back provision. He has not discussed this topic with our Special Communications lawyer. If Council does not want to give direction on this he knows that it will be a subsequent topic of discussion.

In response to Councilman Levy, Mr. Lunny advised that we are not liable if we permit it. If the law is that we cannot have our own engineers evaluate the safety of the transmissions and we are preempted from that and all we can do is write a Federal agency in Washington and hope for the best, he does not perceive us as having significant exposure under that regulatory scheme. His view is that he would like to stick with that until it is sent to our Special Communications lawyer.

Councilmember Stoner commented that there is a lot going in along Broward Boulevard and she thought that was part of the moratorium.

Mr. Butler stated that is FDOT's right-of-way and it was put well into place long before we began considering this matter. That is the ATMS system. They occupied to the greater extent poles that they already owned and put this equipment on their existing poles.

Councilmember Stoner mentioned allowing median installations if other poles already exist in the median. She questioned how many poles get to go in a median.

Mr. Lunny said that he wrote that because previously it was said that there will be no telecommunications towers in medians.

Councilmember Stoner questioned how many collocations.

Mr. Butler indicated that we are trying to formulate a new regulation. They do have some concerns and he believes they can be worked through; he is only speaking about the right-of-way component. Staff brought this to your attention because they were uncertain when they learned of the Industry and what their intentions were. We were not sure how they could potentially impact the right-of-way; all we knew was that they were going to install an independent pole with equipment and begin to operate. As we learned a little more we realized that it covered a very small area of service and we began to question how many we would actually see. We are trying to figure out ways to work with the Industry but keep that under some form of reasonable control.

Councilmember Stoner presented a picture of all of the towers in the area and it is overwhelming as it exists today not with the expansion. She mentioned the cabinets. Her concern is visibility with drivers.

Mr. Butler stated that the regulation is addressing that. When the first draft was given it speaks loudly to dealing with that. The Industry has a little concern with some of that and we are listening to them to see what we can do to work with them and understand a little better some things that we did not know.

Councilmember Stoner indicated that boundaries need to be set as to limitations of numbers for the poles, collocations and everything else.

Mr. Butler advised that there is higher law at the State level that says we must work with them in a uniform manner. It is incumbent of us as a City to be understanding of how the Industry operates in light of that law and using this uniformity requirement to work within our own ability by law to regulate them. When the first draft was written we gave it our first shot and thought that we did reasonably well. There are forms of language that touch on the issues being brought up. The way it was written will give staff the ability uniformly to regulate those concerns with a higher level of ability to do so. The Industry is regulated in ways that we did not understand thoroughly and after learning more it may prompt us to have to change and tweak a little to be sure that we do not ultimately regulate in a way that is either unlawful or impractical. He hopes that staff has taken those issues into consideration.

Mr. Leeds indicated that end that Planning deals with is on non-right-of-way property. It is usually private property but it can be public. It can be County property or an FP&L substation, which are usually located adjacent to single family areas. He has looked at the draft ordinance, at other cities and what Plantation has approved on its sites. His objective deals with aesthetics and appearance, etc. He cannot ask whether you need to have a taller tower. From the Industry standpoint, they want a desire to install at least as much antenna ray as they can and he cannot ask if that is needed for emergency coverage or if it is needed because people are using I-phones as a substitute for laptops. From an aesthetic standpoint, in the City of Plantation most of the cell towers on public sites are 100 to 125 feet. He believes there is one tower at Fire Station #3 that is 150 feet. The non-City government site; the draft ordinance says 200 feet. The ordinance has setbacks that are a variable to height. He thinks that is too tall and that the maximum height on a government site should be 125 feet. He also thinks that should be the standard for commercial and office. That means that Mr. D'Arelli's proposal, which is indicated as various heights, would be limited to 125 feet. On Industrial property, the IL-P and Motorola, he thinks that 150 feet is appropriate; the draft ordinance says 180 feet. On FP&L sites he is concerned about going above 100 feet. FP&L has said that their transmission wires are at or around 90 to 100 feet. Their objective is to go to a substation site and replace the concrete pole with a larger concrete pole. It not only carries the electrical service but has cell antenna rays higher. FP&L has said that they need at least 20 feet of separation between the electrical wires when it is reconnected to the tall pole they cannot put the cell antennas too close. His recommendation on these sites because of their proximity to residential is 100 feet. He also thinks that FP&L, who disagrees with this position, should be required to put up a flagless monopole so people are not looking at the exterior antennas. In terms of residential, the number in the ordinance is 45 feet; he cannot speak to that. In terms of appearance, he does not think any cell tower should be allowed on any location unless it is either a monopole or architecturally enclosed. He has discussed with the Industry if they are talking about a 150-foot tower in the Industrial Park, if they try to disguise it as a clock tower, it may not work architecturally. It is something that needs to be discussed. If we went to a monopole he would recommend a flagless monopole because it would need a huge flag to be proportional and all it is going to do is attract attention. His objective is to minimize the appearance. Residential, according to Mr. Lunny someone can come in and say they own the lot in the City and want to put a 45-foot tower in their backyard because there is a gap in service. He does not know how likely that is; we would have to get into requirements. Generally he

would not want it in the front yard, the street side yard and he would want setbacks for the electrical cabinets. The ordinance format, which is more of a writing issue, contains elements of right-of-way and non-right-of-way areas. In order to make it easier for the Industry and staff to interpret he suggests that they be separated into two sections; one that deals exclusively with right-of-way and one that deals exclusively with non-right-of-way. It would be much easier to process these applications.

Councilman Fadgen wanted to hear from the Industry relative to some of the height issues.

Attorney Melissa Anderson, with Crown Castle, was not prepared to discuss the portion of the ordinance relating to towers on private property. She thanked Mr. Lunny and staff for taking the time to work with them. She thinks they will be able to work out one or two ordinances.

Attorney Paul D’Arelli stated that the issue with the height is that as you go taller on the monopole facilities there is the ability to place more equipment inside of the pole in order to service more providers on that single pole. As a balancing of the height versus the number of poles they may be better off with a particular location to allow a taller pole to place the equipment of four providers in it rather than two and then have another request for a pole in the nearby vicinity to service a few other providers.

Mr. Lunny advised that he would proceed to advertise this one and will apply Zoning in Progress. He is meeting with lawyers on Tuesday and believes that there will be another Industry meeting sometime around the Planning Board meeting. Everyone has emails with the Susan Slattery, City Clerk, so as things come in for the agenda she has offered to transmit them.

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QUASI-JUDICIAL CONSENT AGENDA - None.

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QUASI-JUDICIAL ITEMS

Mr. Lunny read Item No. 19.

Resolution No. 11733

- 19. **RESOLUTION** APPROVING A 130-SQUARE-FOOT MASSAGE ESTABLISHMENT (VITAL BODY MASSAGE) AS A CONDITIONAL USE TO BE LOCATED IN A SPI-3 ZONING DISTRICT ON PROPERTY LYING IN SECTION 9, TOWNSHIP 50 SOUTH, RANGE 41 EAST, AND DESCRIBED AS TRACT 809 OF JACARANDA PARCEL 809 (LESS PART DESCRIBED IN ORB 18389, PAGE 37, FOR ROAD) AS RECORDED IN PLAT BOOK 97, PAGE 1, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF PINE ISLAND ROAD AND FEDERATED WEST ROADWAY); PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE THEREFOR.

REQUEST: Consideration of a conditional use approval to allow a 130-square-foot massage establishment.

EXHIBITS TO BE INCLUDED: Planning and Zoning Division report and application.

BACKGROUND: Section 27-51 of the Code allows the Director of Planning, Zoning and Economic Development to administratively approve a request for conditional use approval as long as the use is less than 4,000 square feet in area (known as a minor use approval). The Director's decision to approve a minor use approval shall become final fourteen (14) days after notice to the applicant, all property owners within three hundred (300) feet of the property, and the elected officials. Any elected official may require the City governing body's quasi-judicial consideration of the matter, provided the elected official makes a request of the City Clerk during such 14-day time period to advertise the matter for consideration at the next reasonably available City Council meeting. The City's regular advertising requirements apply to the City Council meeting at which time the item will be considered, and at such advertised meeting, the City governing body may approve or deny the application.

ANALYSIS: A request from an elected official was received requesting the City governing body's quasi-judicial consideration of the proposed conditional use application.

The subject site is an office suite inside a 50,800-square-foot office building located at 300 North Pine Island Road. The building is primarily occupied with general office and medical office users. The site is bound by office use to the north; park use to the south and east; and multi-family residential use, across Pine Island Road to the west.

The applicant requests approval to allow a 130-square-foot massage establishment having one licensed massage therapist. The suite is located on the second floor of the building within an interior office space with no visibility to the building exterior. The proposed operating hours are 9:00 a.m. to 6:00 p.m., Monday through Saturday.

The review of a conditional use request should include consideration of the criteria noted in Section 27-768 of the Land Development Code, which is attached hereto as Exhibit "A".

STAFF COMMENTS:

PLANNING AND ZONING: No objections to the conditional use; however, if approved, the following conditions are recommended:

1. This office is for one (1) licensed massage therapist only. Additional massage therapists will not be permitted to join this practice unless meeting the standards in Chapter 14 and 27 of the Code.
2. No exterior signage is permitted.
3. Clients shall enter through the main lobby of the office building.
4. Occupational license approval is subject to the conditions of this approval.

BUILDING DEPARTMENT: No objections to conditional use.

FIRE DEPARTMENT: No objection as to this conditional use request.

POLICE DEPARTMENT: No objection under the descriptions of the business plan.

EXHIBIT "A"

Project Name – Vital Body Massage
Date – May 31, 2013

Conditional Use Statement:

1. Site plan as provided by the owner is attached. The office building is a three-story Executive Suites building of newer construction.
2. There are many buildings in the surrounding area which are dedicated to Health and Wellness. These include medical offices. Therapeutic Massage is beneficial to the health and wellness of the area population.
3. The Therapeutic Massage office will be located in a professional building. As a sole owner and only employee, I will have only one client visiting at one time. Any additional traffic will be minimal and adequate parking is available at 300 South Pine Island Road, Plantation, Florida where the office will be located.

Many individuals in the community will benefit from Therapeutic Massage in order to help reduce stress, tension, muscle and joint pain. Techniques used will be Swedish Massage for general stress reduction, Deep Tissue Massage for reduction of pain in muscles and joints and Sports Massage for physically active clients. I have successfully benefited residents of Hallandale Beach, Florida where I've had an office for almost three years. Since I've recently moved my residence to Plantation, I would like to offer the same health benefits to the members of my new community. As a Florida licensed professional, I am a member of (AMTA) American Massage Therapist Association and (NCBTMB) National Certification Board of Therapeutic Massage and Bodywork.

4. The Therapeutic Massage office will be located in a 130-square-foot Executive Suite on the second floor of a professional building. No excessive noise, vibration or other abnormalities will be generated from the proposed business use.
5. The proposed business use will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers. On the contrary, the proposed business use will improve health, reduce stress and tension and overall improve the lives of those seeking Therapeutic Massage.
6. The proposed business use will not overburden existing public services and facilities. I will be operating a small office where I will see only one client at one time for periods of 60 or 90 minutes, depending on the length of Therapeutic Massage Services needed.
7. All other specific standards in the Code of Ordinances will be met. This includes Section 27-721, Paragraphs:
 3. Massage permitted and regulated under Chapter 480 of the Florida Statutes.
 42. This paragraph will not apply as my business use will not include any equipment for "Toning" of the muscles.
 55. This paragraph will not apply as my business use will not include any sort of "Wrapping".
8. The proposed Suite 246A located within 300 South Pine Island Road, Plantation, Florida is 130 square feet.

Councilmember Stoner indicated that she wants to be very careful about terminology. Council recently had an in-depth discussion on massage establishments within the City and was concerned that they wanted to preserve the public safety of its residents. During a Google search she found a website that discusses a previous establishment in Hallandale. One of her concerns is the month-to-month lease in a 10x13 room raised a few flags. In checking further, she found a reference that brought up another red flag. She found out that a business license can be issued without a background check and the only reason that an official background check of any kind is that if there is a public complaint. She is wondering if we want to tighten the requirements for massage establishments that the applicant has to provide a criminal background check as part of that. Legally she needs to ask if we can and then subsequently if her colleagues would feel like tightening that ability.

Mr. Lunny advised that there are some State Law provisions that regulate this profession that he would have to review to see what they say on municipal authority to do what is being requested. When we wrote the ordinance we went about as far as the Police Department and the Planning and Zoning Department were willing to go but we can take a second look.

Councilmember Stoner commented that in her discussions with staff, she believes that their response to her was that they are comfortable with tightening it but we have to have that legally done so we have the ability to do that.

Harry Rivera, representative, was present.

In response to Councilmember Stoner, Mr. Rivera stated that some of his clientele will follow him to Plantation from Hallandale. He has many repeat clients. In reference to Police background checks, when he applied with the City Clerk's Office they mentioned that a background check needed to be performed and he believes that it came back clear. He noted that was already addressed with the Police Department.

Ms. Slattery clarified that no background check was required; we require you to abide by the ordinance and provide the information.

Mr. Rivera referenced any information found on the internet with his name and noted that the name Harry Rivera is a common name.

Councilmember Stoner commented that it was in a similar line of work.

Councilman Jacobs questioned what a background check would do for the City. If there is a convicted felon they still have a right to work.

Councilmember Stoner indicated that we do not have to give them a business license to perform the same service they were convicted of.

Mr. Lunny advised that Councilmember Stoner is correct. The ordinance indicates that there is the ability for the State to suspend the license for someone who engaged in activity in connection with massage that was illegal and if that license has been suspended then we do not have to issue a license for it. Part of the information that is now required in the City Clerk's Office is who owns the establishment; what is their civil background and that gets flushed through the State system so we can check to see if there has been any actions on the license because we do not have the administrative apparatus to regulate this to that extent.

Councilman Jacobs noted that is not a background check; that is seeing if their license is valid.

Mr. Lunny stated that if the gentleman is permitted to proceed and if something happens and the Police Department investigates and determines that it is inappropriate certainly the City can take action at that time.

Councilman Jacobs indicated that he can understand giving a business license check to see if someone is licensed by the State but otherwise he does not see any point to going any further from the City Clerk perspective.

Councilmember Stoner believes there is a public safety issue. There is no additional investigation; you are relying completely on what an applicant provides. She thinks that a little more could be done to check on this. In this particular instance some verbiage came up associated with the name that makes her think, as a matter of public safety, implement some additional steps.

Ms. Slattery advised that applicants are required to provide any criminal charges they have had with their business from the State saying that the State has not taken their license away or put them on suspension. They bring it into us and we do verify that it is current. It is part of the ordinance and it is a requirement. A license will not be issued; it will not go forward to the Planning and Zoning Department unless the person has given us everything they are required to give us.

Councilman Jacobs noted that it is perjury.

In response to Councilmember Stoner, Ms. Slattery reiterated that we go the State Licensing; that is what the ordinance requires. We go by the steps that are in the ordinance and make sure that the person is not giving us something that has been tampered with. We have access to go onto the sites. She stated that they are required when they renew their license business tax receipt to provide their current year's license from the State. If it expires within that year we contact them and say they are being issued a license for one year; they have to give us a State license for our period, October 1st through September 30th.

Councilman Levy commented that there has been a change in the law regarding background checks recently. They are now charging about \$150 for a background check and you have to go through a private company.

Councilmember Stoner indicated that Accurate charges about \$15 for a name search and that pulls all of the licenses, property, criminal, etc. The applicant would have to give written permission to do that. She stated that she is not willing to put what she found on public record; she does not know Mr. Rivera or anything about him other than what she discovered on Google and she would not want to hinder his ability to do business. She would prefer that he sign a one-year lease so we know the commitment.

Motion by Councilmember Stoner, seconded by Councilman Jacobs, to approve Resolution No. 11733; however, she would like to tighten the Resolution. Motion carried on the following roll call vote:

Ayes: Stoner, Zimmerman, Fadgen, Jacobs, Levy

Nays: None

Councilman Levy questioned whether Mr. Rivera had any problem with Hallandale Beach while there. He questioned whether the Hallandale office would remain open and where most of the clients will come from.

Mr. Rivera stated that he did not have any problems whatsoever. He followed all rules and regulations. He is required to submit a monthly report to City Hall, which he does. He is not keeping the Hallandale office open; he is moving everything to Plantation. It is a one person office; he only needs a 10 x 15 space, which is what he

currently has to keep his expenses low. The reason he signed a month-to-month lease was because he was not sure what the outcome of this process would be and he did not want to be tied to a one-year lease. He expects most of his clients to come from the local Plantation area but at the moment his clients range from Miami to Boca.

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20. REQUEST TO DEFER TO AUGUST 28, 2013 SITE PLAN, ELEVATIONS AND LANDSCAPE PLAN APPROVAL FOR MARKET ON UNIVERSITY LOCATED AT 1003-1179 SOUTH UNIVERSITY DRIVE.

Motion by Councilman Fadgen, seconded by Councilman Jacobs, to defer Item No. 20 until August 28, 2013. Motion carried on the following roll call vote:

Ayes: Stoner, Zimmerman, Fadgen, Jacobs, Levy
Nays: None

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COUNCILMEMBERS' COMMENTS

Mayor Bendekovic reminded everyone that the City Council meeting will be changed from Wednesday, September 11, 2013 to Thursday, September 12, 2013. She noted that there will be an Executive Session on August 28, 2013 at 5:30 p.m.; a City Council meeting on August 28, 2013; and then the First and Second Public Hearing on the Budget.

She requested that Council members return their Budget notebooks/folders.

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Councilmember Stoner questioned if it is possible to consider have another meeting in between the meetings every other week so we are not going until 11:00 p.m. and 12:00 a.m.

Councilman Zimmerman was fine with having a meeting in between.

Councilman Jacobs stated that it would not make a difference if the meetings were every week or not.

Mayor Bendekovic advised that she would not take it into consideration because she believes that the second and fourth weeks give everyone time to get ready. She stated that there will not be anymore Workshops because the new State Law says that everyone can speak at Workshops so there is no need to have them. She suggested that whoever is chairing the meeting keep everyone to three minutes and maybe we need to look at a resolution and keep to that time.

Councilman Levy questioned the Council's consensus with regard to public speaking time.

Councilmember Stoner indicated that the same people always speak.

Mayor Bendekovic indicated that Resolution 1 can be changed, which she already has in the works.

Councilman Zimmerman stated that if it will help speed up the meeting he would vote for three minutes.

Councilman Fadgen prefers five minutes.

Councilman Jacobs noted that five minutes is fine.

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Councilman Zimmerman mentioned health insurance and requested options regarding dependent coverage.

Mayor Bendekovic advised that the information is forthcoming. They are also looking at singles that are not contributing. This will be brought back at the First Public Hearing.

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Councilman Fadgen referenced comments from the public concerning microphones. Some of us do not speak into the microphones or do not turn them on and it becomes irritating. He reminded everyone to be aware of that.

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PUBLIC REQUESTS OF THE COUNCL CONCERNING MUNICIPAL AFFAIRS – None.

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SEALED COMPETITIVE SOLICITATIONS – None.

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WORKSHOP – None.

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Meeting adjourned at 11:20 p.m.

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Councilman Robert A. Levy, 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 _____, 2014.

Susan Slattery, City Clerk