

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

May 14, 2014

The meeting was called to order by Councilmember Lynn Stoner, 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 Councilmember Fadgen.

The Pledge of Allegiance followed.

3. Approval of the minutes of the meeting held January 8, 2014.
4. Approval of the minutes of the meeting held January 22, 2014.
5. Approval of the minutes of the meeting held February 12, 2014.
6. Approval of the minutes of the meeting held February 26, 2014.
7. Approval of the minutes of the meeting held March 12, 2014.

The minutes of the City Council Meetings held on January 8, 2014, January 22, 2014, February 12, 2014, February 26, 2014 and March 12, 2014 were approved as printed.

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ITEMS SUBMITTED BY THE MAYOR

Mayor Bendekovic introduced Shawna (sic) and the ladies of the Friends of the Library.

Shawna presented a check in the amount of \$26,537.45 to Monica Knapp of the Helen B. Hoffman Library. In addition to this check they gave other monies as well making it a total of \$41,863.69.

Mayor Bendekovic commented that we could not have the fine Library we have without the commitment and dedication of the Friends of the Library.

Ms. Knapp thanked the ladies for all of their hard work. She explained that the Friends of the Library pay for all of our programming and special events; nothing comes out of the budget for that.

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Police Chief Harrison explained that this was the 1st Annual Car Wash. He and Officer Steve Geller presented cash in the amount of \$1,850 to Mr. Romano to go toward camp scholarships.

In response to Councilmember Stoner, Mr. Romano advised that were 23 families that qualified. Two other families qualified; however, there was not enough money but now there is. We will contact them tomorrow and let them know that they are now eligible for the scholarship. He thanked them very much.

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Jim Romano, Director of Parks and Recreation, made the following comments:

- The Annual Memorial Day Service will be held at Veterans Park on Monday, May 26, 2014.
- There is a multitude of summer camps going on; the Summer Camp program that goes from June 9, 2014 to August 1, 2014; Summer Camp with the Frank Veltri Tennis Center; the Share A Pony Summer Camp at the Equestrian Center; the Golf Academy at the Plantation Preserve and the Camp Elite program that will be held at Volunteer Park.

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Mayor Bendekovic made the following comments:

- The Kids in Science Club – STEM Day in Broward County will be on May 17, 2014 between 2:00 p.m. and 5:00 p.m. at the Jim Ward Community Center.
- Kids Day Off will be the Share A Pony at the Equestrian Center on Friday, May 23, 2014.
- Participants are wanted for the Independence Parade on Friday, July 4, 2014.
- The 17th Annual Wine, Jazz and Taste of Plantation will be at the Plantation Renaissance Hotel on Saturday, June 28, 2014. There is a VIP reception from 5:00 p.m. to 6:00 p.m. and General Admission is from 6:00 p.m. to 9:00 p.m.
- The Plantation Farmer's Market is every Saturday at Volunteer Park between 8:00 a.m. and 2:00 p.m.

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It was noted that Item No. 33 was pulled from the agenda.

CONSENT AGENDA

As a Commissioner of the CRA, Mayor Bendekovic has a voting privilege on Item No. 29.

Item No.'s 24 and 28 were removed and discussed separately.

Mr. Lunny read the Consent Agenda by title.

8. Permission for DHL to host an Employee Appreciation Picnic/Luncheon on May 22, 2014 from 11:00 a.m. to 5:00 p.m. on their property.
9. Permission for Rick Case Hyundai to have a promotional event – Tent Sale Memorial Weekend – May 22 through May 26, 2014.
10. Permission for St. Benedict's Episcopal Church to sell Christmas Trees from December 5, through December 25, 2014.
11. Approve St. Benedict's Episcopal Church Bazaar and Rummage Sale on Saturday and Sunday, November 22 and 23, 2014.
12. Approve St. Benedict's Episcopal Church Retirement Party for Father Deshaies on Saturday, August 16, 2014.
13. Permission for Plantation Community Church to have an Arts & Crafts Show on their property October 18, 2014 from 9:00 a.m. until 4:30 p.m.
14. Approve Plantation General Hospital private picnic for hospital employees on Friday, May 16, 2014.
15. Approve High School Swim Team Fees for Plantation, South Plantation and St. Thomas Aquinas High Schools.
16. Resurfacing Tennis Courts at Jacaranda Lakes and Jim Ward Community Center and Frank Veltri Tennis Center (Budgeted – Parks & Rec).
17. Request to approve a purchase order to Florida Bearing in the amount of \$21,089.24, to replace two (2) submersible pumps for lift station 52. (Budgeted – Utilities)
18. Request to approve a purchase order to Southeastern Pump in the amount of \$22,120 to replace two submersible Barnes pumps for lift station 46 rehabilitation. (Budgeted – Utilities)
19. Request to approve a purchase order to Winningham & Fradley, Inc. in the amount of \$27,000 to provide professional engineering services for the complete rehabilitation of lift station #66. (Budgeted-Utilities)
20. Request to purchase anhydrous ammonia from Tanner Industries, Inc. utilizing the SE FL Co-operative Bid ITB No. 2014-12, through April 13, 2015. Renewal terms - 4 renewal options for one year each. (Budgeted – Utilities)

21. Request to approve purchase of yearly maintenance for Accela – Building Department permitting software. (Budgeted-IT)
22. Request for Light Pole Purchase – Country Club Circle Trail Lighting Upgrade – City Project No. 14-02. (Budgeted – Eng)
23. Request for LED Light Fixture Procurement – Country Club Circle Trail Lighting Upgrade – City Project No. 14-02. (Budgeted – Eng)

Resolution No. 11871

25. **RESOLUTION** of the City Council of the City of Plantation, Florida, to apply for the U.S. Department of Justice FY 2014 Edward Byrne Memorial Justice Assistance Grant (JAG) through the Broward Sheriff’s Office.

Resolution No. 11872

26. **RESOLUTION** approving the expenditures and appropriations reflected in the Weekly Expenditure Report for the period April 17 through May 7, 2014 for the Plantation Gateway Development District.

Resolution No. 11873

27. **RESOLUTION** approving the expenditures and appropriations reflected in the Weekly Expenditure Report for the period April 17 through May 7, 2014 for the Plantation Midtown Development District.

Resolution No. 11875

29. **RESOLUTION** approving the expenditures and appropriations reflected in the Weekly Expenditure Report for the period April 17 through May 7, 2014 for the City of Plantation’s Community Redevelopment Agency.

Ordinance No. 2502

30. **ORDINANCE** Second and Final Reading rezoning 10.39 plus or minus acres from “CF-P” (Zoning Use District) to “PRD-6Q” (Planned Residential District 6 – DU/AC) in accordance with the City of Plantation Comprehensive Zoning Ordinance, Chapter 27-687; and assigning 31 flexibility reserve units to the following described property located in Flex Zone 76 so as to permit the construction of 62 townhomes without amending the City Comprehensive Future Land Use Plan; property located at 12700 West Broward Boulevard; Plantation, Florida; lying in Section 2, Township 50 South, Range 40 East and described as Tract “A” of First Presbyterian Church of Plantation, as recorded in Plat book 150, Page 19, of the Public Records of Broward County, Florida, generally located on the south side of Broward Boulevard approximately 1/3 mile west of Flamingo Road; providing findings; providing a savings clause; and providing an effective date therefor. (The Cove at Lago Mar)

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

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

Mayor Bendekovic voted affirmatively on Item No. 29.

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Mr. Lunny read Item No. 24.

Ordinance No. 2503

24. **ORDINANCE** Second and Final Reading of an ordinance of the City of Plantation, Florida, calling for and ordering a binding referendum to be held in the City of Plantation on November 4, 2014; to determine whether a majority of the electors voting in such referendum are in favor of certain proposed Charter amendments that would change the City's form of government from that of a Strong Mayor to that of a Council-Manager; establishing the date of the referendum for the Charter amendments to be held on November 4, 2014; requesting that the Broward County Supervisor of Elections conduct the election in accordance with applicable laws and regulations; providing a ballot language; directing that the Notice of Election be prepared and published; providing changes to the City Charter necessary to implement such change to the city's form of government if approved, including deleting references in the Charter to Strong Mayoral powers and prerogatives, changing the title of the officers of the City Council and deleting the Council Officer of Treasurer, changing certain provisions of the Charter relative to elected officials and rights of elected officials relative to appointees and employees, changing certain provisions of the Charter relative to appointees and employees; deleting the office Mayor and the Strong Mayor powers, creating the Charter Office of City Manager and providing the duties and responsibilities thereof; providing for future ordained changes to the Charter and Code to implement the change to the form of government if approved; providing for severability; and providing an effective date therefor.

A memorandum dated May 1, 2014 to Mayor and Members of the City Council, from Donald J. Lunny, Jr., City Attorney, follows:

Attached, please find a draft Ordinance proposing a referendum to change the City's form of government from "Strong Mayor" to "Manager-Council". This Ordinance was prepared in accordance with direction received at a Workshop on March 26, 2014, and the changes requested at First Reading.

Changes resulting from First Reading on April 23, 2014

1. The areas where changes were made for Second Reading are shown in blue highlight.
2. Section 6 has been clarified so that the Council may adopt an Ordinance after the referendum to vest the Mayor with duties that are beyond merely "ceremonial" (such as, but not limited to, the execution of contracts) (Line 251).
3. The proposed Charter duty of the Manager to provide staff assistance to the Members of the City Council has been deleted. (Lines 410-412).
4. In our considered view, the previously proposed residency requirement (in Lines 347-351) is valid under the current state of the case law; however, future cases may erode the underpinnings of the requirement. To address this concern, the Council may wish to provide that additional qualifications and requirements for the manager may be provided by ordinance or resolution, so that if a residency requirement is created by ordinance or resolution and called into serious question in the future, the matter can be addressed by a housekeeping measure instead of requiring a referendum. The changes proposed in this regard appear in Lines 340-343, and 347-351.

5. In view of the Council discussion at First Reading, Section 10 of the Charter (Lines 263-265) has been clarified so that the Council authorizes the number of budgeted positions in each division, department, or office the Council chooses to create, and by the same token, Subsection 14(j) of the Charter (Lines 413-417) requires the manager to make recommendations to the City Council concerning the creation and designation of departments, divisions, offices, and number of budgeted positions that the manager believes are needed. The manager will still fill the positions, and will prescribe the duties and responsibilities of the positions.

The Ordinance as Proposed for First Reading

Consistent with the direction received by the Working Group on March 26, 2014, the draft Ordinance shows in Exhibit "A" only the substantive changes to the Charter that will be made by the proposed change in the form of governance. Sections 7 of the Ordinance (Lines 73-92) provides that future, non-substantive changes to the Charter in the area of elections, terms, deleting references to Mayor, etc. will still need to occur and will be ordained in the future if the ballot passes. Likewise, Section 8 indicates that future Code changes will also be ordained if the ballot passes. (Lines 93-95).

The following is noteworthy concerning the substantive Charter changes reflected on Exhibit "A" to the Ordinance:

1. Since the Council determined that the City Manager will supervise all employees and have disciplinary prerogatives with respect thereto, the employee disciplinary review procedure in the Charter is being repealed. (Pages 5-7).
2. Section 10 of the Charter (Lines 257-290) has been substantially revised to clarify that the City Council will provide for the appropriate Offices, Departments, and Divisions of the City and shall fund same. The Council will not appoint or vacate any position, except the Police Chief, Fire Chief, City Clerk, and City Attorney. These four (4) positions will have duties and responsibilities prescribed by the Council, shall take direction from the Manager as may be authorized by the Council, and shall report to the Council (as desired by the Council).
3. The Working Group recommends that the City Manager and Police Chief, Fire Chief, City Clerk, and City Attorney be appointed and removed by a super-majority vote of the City Council. This recommendation promotes stability in governance. (Lines 274, 283, 339, and 356).
4. Section 14 (Lines 337-474) creates the Office of City Manager. The Working Group used the ICMA Model Charter Provision, with the changes thereto recommended in yellow. Subject areas of these changes include:
 - a. Circumstances under which the Manager will be required to reside in Plantation.
 - b. Removing the Manager's right to a Removal Hearing before the City Council.
 - c. Removing from the Manager's supervision of Boards and Committees and the Special Magistrates.
 - d. Authorizing the Manager's specific legal authority (in the same manner as previously agreed for the Chief Administrative Officer position) (Lines 426-433).

5. Section 14(5) contains the non-interference provision preventing Members of the Council from directing Staff. (Lines 442-454).
6. The Working Group felt that the Mayor should still proclaim elections. (Lines 479-484).
7. The Office of Treasurer is deleted. (Lines 486-492).

Conclusion

The proposed Charter amendment is now ready for consideration by the City Council at Second Reading.

Mr. Lunny explained that the Working Group prepared the Ordinance along the lines that the Council requested. The difference being proposed is as follows:

Under the proposed Charter amendment before today the operational positions of City Clerk, Police Chief and Fire Chief were appointed by the Council by super-majority, clearly not subject to the Manager's day to day supervision. This created a concern because while all of those Directors subordinates were subject to the Manager's supervision the actual three Directors would be subject to both the Council and the Manager, in essence, the classic two-master concern. After discussing this with those operational Directors and venting the issue a little, they would like to propose the following:

The three positions of Police Chief, Fire Chief and City Clerk would be clearly within the City's Manager's supervision and control. The Manager would have the supervision and control of those operational departments along with all of their subordinates. The Manager would need to nominate for the Council's consideration, persons to fill those appointments and that was suggested because those departments are critical and the concern was that if the Manager had no say it might affect the City's ability to attract a Manager of the caliber expected by this Council. They proposed that the Manager would nominate individuals and the Council would then approve them by the super-majority, which was indicated last time. In the event of a termination of any of those positions, the Manager would make the recommendation and the Council would have the final say by the same super-majority indicated last time. Finally, some have publicly expressed a desire to see more than one candidate; therefore, a sentence was added to the new provision that says, "Council can require the Manager to propose more than just one once he has bedded them". In terms of the position of the City Attorney, the bar rules indicate that lawyers can take direction from Boards of Directors from CEO's, from Directors within their authority; it does not impact the professional way that a City Attorney would react to the City so the language with respect to the City Attorney is the same as the prior draft. That means independent of the Manager, takes direction from the Manager, direction from the Council, the Manager does not have to recommend the City Attorney, and it is completely within the Council's prevue to appoint the City Attorney.

The Ordinance was prepared along the lines that have been thoroughly discussed. It is felt that maybe this change would strike a better balance for those operational departments and also would hopefully satisfy the Council's desires in this respect and would allow a more practical implementation of this change should the voters decide to do it. That is the change being proposed.

Councilmember Jacobs believes the proposed changes in the memorandum are the best solution he has seen.

Motion by Councilmember Jacobs, seconded by Councilmember Fadgen, to approve Ordinance No. 2503 with the changes as outlined in Mr. Lunny's memorandum of May 14, 2014. Motion carried on the following roll call vote:

Ayes: Jacobs, Levy, Zimmerman, Stoner

Nays: Fadgen

Councilmember Fadgen mentioned that he expressed his objection during the earlier meeting when this was discussed. After Lisa Huriash with the Sun Sentinel got this publicized in the newspaper receiving feedback from residents, it is believed that this is ill conceived. There has been no discussion since 1999 about changing the form of government and he believes it is an abuse of the residents of our City to put this before them. If we are convinced that the form of government is not good that would be the only reason to present it to the people. Unless you are convinced of that you are imposing a burden on the residents of this City and he thinks we could have unattended bad consequences as a result. In addition it is on the wrong election; our General Election should be in March dealing with municipal elections as the law exists today rather than the November election. One or two people saying that we should change our form of government do not make this issue such that it has to be before the people. He thinks we are going to spend about \$30,000 or \$40,000 for this election and the bad consequences could occur. He is going to oppose it. He noted that we can get rid of anyone of us every two years by a 50% vote plus one vote but now we have this Manager that will be hired and a super-majority has to be had in order to vote him out. He strongly opposes this and thinks that we lack wisdom in bringing this forward.

Councilmember Levy commented that we are already having a referendum, this is not additional cost. We are already asking people if they want to change the election from March to November. This is asking the public what they would prefer; this is not saying or putting an extra burden on anyone because none of us know how the public will decide. It is giving the public a chance to decide what kind of government they want. If the people choose to have a government of their choice, whether it be City Manager or a Strong Mayor, they should have the right every few years to do that. This issue has not been looked at in 15 years; things change. There is a reason why the huge majority of communities throughout the United States have a Council-Manager form of government. The Manager is responsible to every one of the Council and Council and responsible to the public. If the public does not like the Manager we hire the public can get rid of us and when we go the new people can pick a new Manager. Four people out of the five make that decision and that is the way that it should be because you do not want somebody that can be thrown out by one vote; it takes time and it is a learning curve to learn the community. No one is saying the present form of government is bad; we are saying there are other avenues available and the public should have the right to decide for themselves what kind of government they want. There are no vested interests here. He questioned if the burden is being placed on Councilmember Fadgen since the position he likes to run might be weakened and no longer available. He mentioned telephone calls he received and they were asking why term limits were not being put down.

Councilmember Zimmerman questioned if the motion is approved if that means we also approve changes made in the Second Reading.

Councilmember Stoner advised that those were included in the motion.

Councilmember Zimmerman mentioned Item #4 from Mr. Lunny's first memo which talked about and we have now taken out the residency requirements yet the explanation says that we may want to consider something else. He questioned if Mr. Lunny could provide some guidance.

Mr. Lunny stated that he felt that the residency requirement was valid as written; however, given that there is some concern about that and there is some case law that might suggest that the evolution of that law might suggest that the requirement would be eroding over time, he felt that rather than in sponce that requirement in the charter we would clearly indicate that the Council could by Ordinance or ordain other requirements for the candidates consideration. Currently, the ICMA model language indicates that the selection of a Manager would be limited to expertise. It is a very limited range of inquiry and by putting that language where he put it; it allowed the Council to add other considerations in the selection process as it might choose, including residency or others.

Councilmember Zimmerman commented that the other language added does allow, if we pass this, to ordain that at a later date.

Mr. Lunny replied yes, without a referendum along with other requirements that you might want for that position.

Councilmember Fadgen indicated that he was talking about the process. He resumed a candidate in the last two elections, both in 2011 and 2013, and nothing was brought up about the form of government. He thinks if there was a need to change the form of government it might have come up in one of the forums and if not there, maybe some of the people in the neighborhoods. None of that occurred. In terms of Mayor, he believes we are all going to be at a loss if we lose our sixth elected official. He thinks that makes Plantation unique. He is saying for the good of Plantation we should defeat it tonight; in 1999 we beat it 2/1. It is important to everyone. The unattended bad consequences will result if the vote turns out that we change the form of government.

Councilmember Zimmerman commented that he was also in that election and attended all of the forums and this item was presented in at least two of the forums that he had to directly answer the question. It was asked and it was a concern.

Mayor Bendekovic stated that she has all the confidence in the world that we have educated voters and she thinks they will do the right thing. She agrees that we are unique. Let the residents decide. If that is what they want they will have to also pay for it; there are pros and cons to both sides. That information has been provided to the Council and it needs to be provided to the public so they can make an educated vote. The point is about giving the residents a choice. She thinks it is a cost savings to change the election from March to November.

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Mr. Lunny read Item No. 28.

Resolution No. 11874

28. **RESOLUTION** approving the expenditures and appropriations reflected in the Weekly Expenditure Report for the period April 17 – May 7, 2014.

Councilmember Zimmerman advised that he was informed that he may have a conflict with Check No. 157844 to the Broward Alliance and Neighborhood Development. Paperwork has been filed with the City Clerk.

Motion by Councilmember Jacobs, seconded by Councilmember Levy, to approve Resolution No. 11874. Motion carried on the following roll call vote:

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

Note: Councilmember Zimmerman abstained from Check No. 157844.

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ADMINISTRATIVE ITEMS

Mr. Lunny read Item No.'s 31 and 32.

31. **DIRECTION REGARDING AGREEMENT – SOLID WASTE (EXPIRATION DATE OF 9/30/15)**

A memorandum from Edward Consaul, Public Works Director and Priscilla Richards, Strategic Operations Administrator, dated May 15, 2014, to Mayor and Members of City Council follows:

SUBJECT: Bags used for residential solid waste and recycling materials curb side pickup
REQUEST: Direction regarding suggested change to the type of blue bags and clear recycling bags
HISTORY: Numerous residents have inquired about the possibility of replacing the current blue bags and clear recycling bags with bags that have drawstrings.
DEMONSTRATION: The drawstring bag will hold the same amount of solid waste and recycling materials as the current type of bag.
ANALYSIS:

Description	New Price per Bag	# in box	Increased Price per box
Standard thickness blue bag with drawstring	\$.05	20	\$1.00
Standard thickness Recycling bag with drawstring	\$.05	30	\$1.20

TRANSITION: It would take approximately 15-20 weeks to deplete the bag current inventory (at current rates of purchase) before new bags would appear on store shelves.

CONSIDERATIONS:

1. Keep the current types of blue and recycling bags.
2. Change the current types of blue and recycling bags to drawstrings.

32. DIRECTION REGARDING SUGGESTED CHANGE TO THE TYPE OF BLUE BAGS AND CLEAR RECYCLING BAGS.

Mayor Bendekovic commented that we constantly get phone calls regarding blue bags but the one call that seems to surface more than any of the other calls is, "Why can't we have drawstrings?" We have a drawstring bag and a blue bag to show. We will give you the cost factor and all of the information needed to make a decision.

Priscilla Richards stated that several people have asked if we could get the drawstrings on the bags, which we have done. You get the same amount in the bags and the price would be an increase of \$1 per box. It would be \$1.20 per box if you purchase the combination; the recycling bag with the blue bag. The manufacturer advised that it would take approximately 15 to 20 weeks to deplete the current inventory on the shelves in Publix and Winn Dixie before these new bags would appear on the shelves.

Councilmember Stoner believes that the ply of the bag has been reduced over the years. She is not inclined to do the drawstring because it will break once you try to tie it after putting too much in the bag. Personally, she would rather see a thicker ply than a drawstring.

Ed Consaul, Public Works Director, indicated that they are twice as thick as the current Glad garbage bags; these are 1.7 mills and Glad is .7 mills.

Councilmember Jacobs noted that it is recycled plastic. If we changed to non-recycled plastic they would be strong like the old bags used to be. He suggested offering a kitchen pail size bag; the ten-gallon tall kitchen bag. There are issues with having more than one size bag. More shelf space would be necessary in the grocery store, which they do not want to give up and there is the cost. It is a matter of whether the convenience is worth the cost. He was also thinking about a slightly larger blue bag.

Mayor Bendekovic questioned if Councilmember Jacobs was saying to eliminate the larger bag and have all small bags.

Councilmember Stoner clarified that he is saying to do both.

Councilmember Fadgen mentioned that the combination recycle bags are an additional \$1.20 per box and the box of garbage bags is an additional \$1.

Ms. Richards indicated that there are 20 bags in the box for an additional \$1. The combination box has 30 bags.

Luigi Pace (sic) with Waste Management was present. He clarified that the combination box has 30 bags per box and the blue bags are 20 per box and then there is a box that has ten garbage bags and three recycle bags.

Councilmember Fadgen stated that he was not sure that it satisfied any needs. He will continue using them.

Councilmember Zimmerman expressed concern with the size; it does not fit in the garbage can in the garage. You used to be able to stretch them but with the plastic content now it does not stretch. Both the recycle bags and the blue bags would have a drawstring. He is inclined to leave it the way it is.

Councilmember Levy commented that he likes the idea of bigger because it does not fit into the normal trash bin. If they could be made bigger to fit that it would solve a lot of problems, such as animals getting into the bags, because they would be in a proper container. He liked Councilmember Jacob's idea of having one that also fit into a regular kitchen container but he understands all of the problems making that happen. He definitely would like to see the blue bag bigger and fit into a normal garbage can.

Mayor Bendekovic advised that we will leave the blue bag and explore the cost factor of a larger bag as well as the weight factor.

Ms. Richards indicated that the second part of this is that staff is looking for direction regarding the Franchise Agreement for Collection and Disposal of Solid Waste. In June you authorized extension of the Franchise Agreement for two years until September 30, 2015. We were told that the next time it was up for renewal that you wanted to competitively bid this contract. A timeline has been given with tasks that must be accomplished. We need to get working on this now in order to get the Request for Proposals out by the Fall to bring back in January. We would like to know if Council would like to extend the current contract for one more year or if you would like it to be competitively bid.

In response to Councilmember Stoner, Ms. Richards advised that the contract terms allow an extension.

Councilmember Stoner questioned how many extensions are available in the contract.

Mr. Lunny clarified that the contract provides that it can be amended; all of the extension terms have run out. There is not any provision in the contract that would allow for an extension but you can modify the contract.

Councilmember Stoner questioned if we have to go back to the table and renegotiate the terms if we want to amend or modify the contract.

Mr. Lunny stated that we can simply say that the term will be extended one year. If that is acceptable to the provider and to the Council that is the scope of the amendment. The reason why staff suggested that the last term be authorized is because the entire disposal and processing system was altered. Our concern was that the affects of that change in market for the disposal may not be completely settled at this time. He advised that if Council wishes to do an extension that the extension be very short for one year, at the most two, and there are reasons for that advice that he can give privately. That is why staff suggested just one year. The concern was that maybe the market is not completely settled and we might want to wait one year.

Councilmember Stoner commented that we can do one or two years.

Mr. Lunny indicated that his legal advice is not to go longer than two years; that has been the same legal advice for many years.

Councilmember Stoner questioned why one year versus two.

Ms. Richards advised that they were told to be competitively bidding within one year.

Mr. Lunny mentioned that there is one other reason that is not legal. If you move it for one year it takes it out of an election cycle and much more Administrative business of the City of all types gets done outside of election cycles. It helps in that respect.

Councilmember Jacobs was in favor of one year.

Councilmember Fadgen stated that if there was no response one year would be fine.

Councilmember Zimmerman was in agreement with the one year.

Councilmember Zimmerman agreed with one year.

Councilmember Stoner indicated that the consensus was one year.

Mr. Lunny advised that this would come back with a short amendment for one year.

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LEGISLATIVE ITEMS

Mr. Lunny read Item No. 34.

34. DEFERRED PUBLIC HEARING AND FIRST READING OF AN ORDINANCE OF THE CITY OF PLANTATION, FLORIDA PERTAINING TO THE SUBJECT OF ZONING; AMENDING THE USE REGULATIONS PERTAINING TO FAST FOOD RESTAURANTS IN THE B-2P, B-3P, B-7Q, OB-C AND B-2L ZONING DISTRICTS; CLARIFYING THE B-7Q ZONING REGULATIONS; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE THEREFOR. (REQUEST TO DEFER TO MAY 28, 2014)

Motion by Councilmember Jacobs, seconded by Councilmember Zimmerman, to Defer Item No. 34 to the May 28, 2014 meeting. Motion passed on the following roll call vote:

Ayes: Jacobs, Levy, Zimmerman, Fadgen, Stoner

Nays: None

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Mr. Lunny read Item No. 35.

35. DEFERRED CITY COUNCIL CONSIDERATION OF AMENDING THE ZONING CODE TO ALLOW ASSEMBLY USES, INCLUDING HOUSES OF WORSHIP, IN A B-2P DISTRICT.

The Planning and Zoning comments follow:

MEETING DATE: April 23, 2014

SUBJECT: LEGISLATIVE ITEM: City Council consideration of amending the Zoning Code to allow Assembly Uses, including Houses of Worship in a B-2P District.

APPLICANT: Planning, Zoning, and Economic Development Department (PZED) as required by Section 27-32(a) of the Zoning Code.

LOCATION: B-2P Zoning Districts Citywide.

An application for a use variance shall not be accepted by the PZED Director unless the governing body of the City promulgates a resolution (or alternatively adopts a motion after vote) by which it determines that it does not wish to enact an amendment to the City's zoning and land development regulations so as to regulate the proposed use in some manner (e.g. to make same prohibited in all zoning districts, or to make same a conditional use, a permitted use, or a contingent use in the zoning district the subject property enjoys). In determining whether to amend the City's zoning and land development regulations to regulate a use in some manner, the matter shall be considered a legislative item.

In this case, PZED has a pending application for a use variance to allow an assembly use (house of worship) in the Mercedes Theatre, zoned b-2P. Section 27-32(a) requires the Council to determine by motion if it does not wish to regulate the proposed use as a permitted, conditional, conditional use subject to conditions, or a contingent use in B-2P districts.

To be discussed at the City Council.

Mr. Leeds explained that there is a provision in the zoning code that requires whenever somebody applies for a use variance that the issue first be brought to the City Council. The Council is tasked with making a decision whether to change the code; amend the zoning code, to address assembly uses. In this case, a B-2P zoning district, this is the most prevalent shopping center zoning district in the City outside of Midtown and Gateway. Council has two choices; they can suggest recommending that staff prepare an ordinance that amends the code to allow assembly uses subject to conditions in these districts. The process will take four to six months because there will be a lot of discussion as to what sort of conditions or restrictions or limitations that are put on assembly uses. Many of the uses in the code have limitations. If you choose not to recommend that the ordinance not be amended, the applicant has the option of applying for a use variance, going through the process, Review Committee, Planning and Zoning Board and City Council. In this case, he cannot tell for sure if it would go through Review Committee because it is a zoning code change and does not involve the site plan. He reiterated that one option is to recommend staff to prepare an amendment to the code and the other option is not recommend that staff prepare an amendment to the code, in which case he assumes the applicant would proceed with his use variance application. He suggested hearing from the applicant on that issue.

Councilmember Levy clarified that this is a particular use being asked of the Mercedes Theater in order to use it as an assembly and their representative is here to discuss that. He questioned if Mr. Leeds is saying that we could theoretically change the entire B-2P to allow this throughout the City or we could have a variance for this one use only.

Mr. Leeds advised that the last part of the statement is correct. The petitioner is not here to discuss his particular application; it is not before you. For the interest of practicality, he is going to discuss it in a general manner. A use variance applies to a single piece of property, in this case to a single building on a single piece of property and can be assigned conditions that are site specific.

Attorney Mitchell Ceasar was present on behalf of the applicant, along with Pastor Marilyn and Pastor Juan Smith.

Mr. Ceasar indicated that the church they had is seeking to take over what is now not a very lively Mercedes theater. This would be a significantly less intensive use than the theater ever was; it is a very small congregation. Whatever decision the Council decides is fine. Their greatest interest is to receive approval and if possible, to receive approval as quickly as possible. If you decide not to change the code they have the ability to go through the variance process and hopefully succeed that, which would be fine with them. They want to rehab the theater. They think it would be a great addition to the Mercedes Plaza.

Councilmember Fadgen stated that whenever possible he tries to support churches; however, in shopping centers we have had some real problems with churches where you would expect them to congregate primarily on the weekends, but then you find out there are services all times of the day and study groups going on during the day. It causes conflicts with the other tenants. He is concerned about it from the impact point.

Mr. Ceasar reiterated that this is a very small congregation. They have already presented documents explaining what the use would be and how intense and the actual number of the congregation. He does not think that those concerns will remain when the time comes. They were very specific to avoid the issues because they know the concern.

Councilmember Jacobs questioned whether a use variance is a permanent variance that continues indefinitely.

Mr. Lunny replied yes. A condition can be imposed but in the absence of a condition, which is enforceable, it runs with the property. It is like a conditional use.

Councilmember Jacobs questioned when the word enforceable is used if that means that something special has to be done in the condition to make it enforceable.

Mr. Lunny stated no, it just has to be an enforceable condition.

Councilmember Jacobs believes if we are going to do it a use variance would be the way to go. He would rather not have it continue indefinitely.

Mr. Ceasar indicated that as explained to staff, they are very amenable to working through details. He did not think they would have a problem with coming up with a condition so when the use goes away.

Councilmember Stoner only wants to focus on amending the zoning. She always saw that corner as being primed for redevelopment. She questioned if the current zoning is really an enticement and if it is very viable in the market place today.

Mr. Leeds believes the zoning is viable as it is. He thinks that the issue has more to do with the owner's plans for the shopping center and it is more of a private sector decision. It is an excellent potential redevelopment parcel because it is located near the intersection of two heavily traveled roads. It is a challenge but it has a lot of exposure to Sunrise Boulevard. As discussed with some of you, we expect some things to start happening in the Motorola complex to the south. This part of the City has potential. He thinks the B-2P zoning is appropriate for this location.

Councilmember Stoner commented that he is not inclined to do a change in the zoning.

Councilmember Stoner stated that he was not inclined either.

Councilmember Levy thinks that the single use variance and maybe putting a review on it after a particular amount of time could be a conditional use.

Motion by Councilmember Jacobs, seconded by Councilmember Zimmerman, not to change the zoning. Motion carried on the following roll call vote:

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

* * * * *

Mr. Lunny read Item No. 36.

36. PUBLIC HEARING AND FIRST READING OF AN ORDINANCE OF THE CITY OF PLANTATION PERTAINING TO THE SUBJECT OF INDEMNIFICATION; UPDATING THE PROVISIONS OF THE CITY INDEMNIFICATION LAW TO EXPAND ITS SCOPE, CLARIFY ITS PROCEDURES, AND REQUIRE REIMBURSEMENT UNDER CERTAIN CIRCUMSTANCES, PROVIDING A SAVINGS CLAUSE, AND PROVIDING AN EFFECTIVE DATE THEREFOR.

A memorandum from Donald J. Lunny, Jr., City Attorney, to Mayor and Members of the City Council dated May 7, 2014 follows:

This Ordinance is sponsored by the Legal Department. It serves a public purpose of protecting officials who serve the City, and decreasing real or perceived barriers to citizens who wish to engage in public service.

It has been many years since the topic of defense and indemnification of the City's officials has been reviewed. Attached for First Reading, please find an Ordinance recommended by the Legal Department which is designed to update the City's indemnification and defense procedures. The following is noteworthy:

- a. It is sometimes necessary that the city pay for legal representation of its officials. The Legal Department represents the City, and because of the Rules regulating the practice of law, the Legal Department may not always be able to represent officials in legal matters –even where the Legal Department is of the view the official did nothing inappropriate or wrong.
- b. The Ordinance's obligation to pay for legal fees, costs, etc., applies only in cases where the City's policies of insurance do not afford full coverage for the matter.
- c. The proposed amendment more clearly includes within the City's defense and indemnity obligation other agency investigations or interviews or proceedings.
- d. The proposed Ordinance more closely tracks the Administration's current practice in authorizing the Risk Management Supervisor to obtain legal counsel for the official or to approve the retention of legal counsel by the official. Typically, this is examined as part of the analysis by Risk Management concerning coverage for the matter.
- e. A new provision has been added to the effect that if it is finally determined by a Court of competent jurisdiction that an official has committed a crime or has knowingly violated any Broward County Charter or Broward County Ordinance provision or State Statutory provision

regulating the conduct of such officials, the official shall be obligated to reimburse the City for all costs and fees incurred in defending such official.

This Ordinance is now ready for consideration at the May 14, 2014 City Council Meeting for First Reading. If any of you have further questions, please contact me.

Mr. Lunny explained that this is an ordinance that his department is sponsoring and it is primarily housekeeping in nature. The explanations are highlighted in the memorandum.

Motion by Councilmember Jacobs, seconded by Councilmember Levy, to approve Item No. 36 as presented. Motion carried on the following roll call vote:

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

Mr. Lunny requested that Ms. Slattery advertise this for Second Reading as soon as possible.

* * * * *

Mr. Lunny read Item No. 37.

37. PUBLIC HEARING AND FIRST READING OF AN ORDINANCE OF THE CITY OF PLANTATION PERTAINING TO THE SUBJECT OF COMPREHENSIVE PLANNING; RECAPTURING THE PREVIOUSLY APPROVED 3,210 COMMERCIAL SQUARE FOOTAGE IN LOCAL ACTIVITY CENTER (LAC), AND REASSIGNING TO FOUR (4) RESIDENTIAL UNITS IN LOCAL ACTIVITY CENTER (LAC), TO THE FOLLOWING DESCRIBED PROPERTY LOCATED IN FLEX ZONE 73 SO AS TO PERMIT THE CONVERSION FROM COMMERCIAL TO RESIDENTIAL USE; PROPERTY LYING IN SECTION 7, TOWNSHIP 50 SOUTH, RANGE 42 EAST, AND DESCRIBED AS MELROSE PARK SECTION 8, TOWNSHIP 39-36 B LOTS 8 THRU 11, BLK 7 AND TRACT 1 LESS OR 40424/1464, LESS OR 40424/1468 AND ALSO LESS RD R/WS DESC IN ORS 18869/467, 43439/1398, 43439/1420 AND LESS POR TR 1 FOR R/W CASE # 96-339795 DESC IN OR 25131/280 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA. GENERALLY LOCATED ON THE SOUTHEAST INTERSECTION OF BROWARD BOULEVARD AND STATE ROAD 7 (US 441); PROVIDING FINDINGS; PROVIDING A SAVINGS CLAUSE, AND PROVIDING AN EFFECTIVE DATE THEREFOR. (GROVE EAST)

The Planning and Zoning comments follow:

REQUEST: Consideration of a request for assignment of four (4) LAC units to allow conversion of 3,210 square feet of retail use to residential use.

EXHIBITS TO BE INCLUDED: Planning and Zoning Division report; ordinance; subject site map; development review application; Planning and Zoning Board Meeting minutes of April 1, 2014; and Review Committee Meeting minutes of February 25, 2014.

REVIEW COMMITTEE RECOMMENDATION: NO OBJECTION to the project moving forward for further review (February 25, 2014)

PLANNING AND ZONING BOARD RECOMMENDATION: APPROVAL subject to staff comments (April 1, 2014)

HISTORY:

The subject property is zoned SPI-2 (Four Corners Commercial) and located within the City's designated Community Redevelopment Area (CRA). The land use designation is Local Activity Center (LAC). The site is bound on the north by Broward Boulevard, on the south by SW 2nd Court, on the east by SW 38th Avenue and church use, and on the west by State Road 7.

On April 13, 2005, City Council approved a site plan for the construction of a mixed use development consisting of six multi-family buildings with 192 dwelling units, two mixed use buildings totaling 49,416 square feet. The two mixed use buildings include of 21,968 square feet of retail use and a 4,095 square foot club house on the first floor plus 28 dwelling units on the second floor.

CURRENT PROPOSAL: East Mixed Use Building

The east mixed use building is "L" shaped and fronts Broward Boulevard to the north and the apartment complex access drive to the west. The ground floor retail spaces facing west have no Broward Boulevard exposure and leasing has been sporadic.

The applicant would like to convert:

- a) Three ground floor retail spaces to three studio apartments each containing over 1,000 sq. ft. These units are considered studio apartments as the partition separating the living/dining area from the sleeping area does not extend the full height of the ceiling, and
- b) An existing 2nd floor common area with a small second floor building addition to create an 850 sq. ft. one bedroom apartment. The exterior improvements will match the existing façade.

An LAC Assignment application requires written responses to the criteria contained in Section 19-71(b) (1-11) of the City's Land Development Code, which is attached hereto as Exhibit "A".

STAFF COMMENTS:

PLANNING AND ZONING:

Planning:

Ordinance No. 2485 requires the applicant pay City impact fees to the Building Department prior to issuance of a building permit. Please contact the Zoning Division at time of permitting. This request has been acknowledged by the applicant.

Zoning:

1. All exterior changes shall match the existing building, including color and roofing material. If the paint has faded, consider repainting the entire building.
2. Please label the roofing material above the two-story enclosed area.
3. On the south elevation, second floor, the floor plan shows a window where the proposed bathroom is. However, the elevation sheet A-4 does not show a window in this location. At time of permitting, revise the elevations to match the proposed floor plan.

ENGINEERING DEPARTMENT: No objection.

TRAFFIC CONSULTANT: No objection.

DESIGN, LANDSCAPE & CONSTRUCTION:

Staff has no objection to the assignment of 4 LAC units as it is the Departments understanding that there will be only interior alterations that will not impact the existing code required landscaping.

BUILDING DEPARTMENT: No objection.

FIRE DEPARTMENT: No objection as to this request.

POLICE DEPARTMENT: No objection.

UTILITIES: Not supplied by Plantation Utilities Department.
Contact Broward County Utilities.

O.P.W.C.D.: No objection.

WASTE MANAGEMENT: No objection.

Exhibit "A"

An LAC Assignment application requires written responses to the criteria contained in Section 19-71(b) (1-11) of the City's Land Development Code.

- 1) Whether there is a change in population, socio-economic factors, or physical development of property nearby or affecting the subject property, which change was unforeseen or unanticipated, and which change has created a present problem or opportunity that justifies utilizing any portion of the LAC residential unit allowance;

Applicant's Response: The Grove East development is located on the southeast corner of Broward Boulevard and State Road 7. The units in question are interior units that do not front either Broward Boulevard or State Road 7 and are not visible from either road. As a result, the three commercial units have proven to be unsatisfactory for commercial development due to the lack of visibility. The Applicant seeks to convert these three to residential units which are more viable under the current market conditions. The property was approved by the city in 2005 and constructed shortly thereafter, and these units have remained vacant the entire time. Obviously this was unforeseen at the time the project was proposed and the site plan approved, and does not require a change in land use or the zoning classification, but only the allocation of four additional LAC units for residential use. The remaining vacant unit is above the clubhouse next to other residential units and was originally foreseen as a storage unit, but has proven to be impractical for that purpose.

- 2) Whether the project as proposed offers significant benefits not otherwise available to the City (for example, does the planning, design, and development of the property exceed the minimum otherwise required land development requirements in terms of reserving appropriate open space, development themes, taking advantage of natural and manmade conditions or environments, controlling pedestrian and vehicular traffic systems, substantially intensifying landscape or providing landscape contributions to the City, and improving or maintaining public infrastructure or giving the City a contribution in aide of infrastructure improvements or maintenance? Does

the planning, design, and development of the property exceed setbacks and building separations? Is the planning, design, and development of the property compatible with the size and scale [building height, mass, and elevations] of existing or planned surrounding and nearby buildings and structures? Does the planning, design, and development of the property meet many or all of the aspirational principles that govern site design considerations, and reflect an orderly and creative arrangement of buildings and land uses as appropriate?) ;

Applicant's Response – The impact of converting four vacant units to one bedroom residential apartments will not be significant in that the project is already built out and this is only a minor tweak to the project. This proposed change, however, does not significantly affect land development requirements and has no affect whatsoever on open space, development themes, and the like. This proposed change does not have any effect on setbacks or building separations or the size or scale of buildings, since these buildings have already been constructed. This is merely converting vacant commercial space to four residential units that should have greater utilization than the vacant commercial space.

- 3) The extent to which the project contributes to the tax base, adds employment, and provides other positive economic impacts;

Applicant's Response – The Applicant's request for four LAC units contributes in that it should add four residents and eliminate vacant commercial space. Having positively utilized space in lieu of vacant space obviously has a small, but positive economic impact.

- 4) The extent to which the project impacts public services (e.g., fire, EMS, school, police, water, wastewater, stormwater, and other services), and generates negative secondary effects of odors, fumes, noise, traffic, or crime;

Applicant's Response – The conversion of the four units should have no significant impact on public services and definitely will not generate negative secondary effects such as odors, fumes, noise, traffic, or crime.

- 5) The extent to which the property has potential to be developed in a desirable manner under its present land use and zoning scheme without the application of LAC residential unit allowance and whether such foreseeable development is or is not more beneficial to the community;

Applicant's Response – The property was already designed and constructed in a desirable manner under the present land use and zoning scheme, but did require application of certain LAC residential unit allowances. The Applicant has been unable to fill the four vacant commercial spaces and seeks the four additional LAC residential units to allow their conversion to beneficial residential units.

- 6) The nature and types of uses surrounding the subject property and whether the development proposal is compatible and complements those uses;

Applicant's Response – The Applicant's request for four LAC residential units is compatible with the existing development of the site as a mixed use commercial and residential development, which has already been deemed to be compatible with the surrounding zoning and uses.

- 7) The extent to which the proposed development is consistent with specific goals, objectives or policies of the City comprehensive plan (including specifically, the goals, objectives, and policies of the local activity center future land use designation), as well as, if applicable, the Plan of Redevelopment of the Plantation Community Redevelopment Agency or the Plantation Midtown Plan;

Applicant's Response – Since the proposed site is already constructed and only the interior design and use of four units is being converted, the Applicant submits that it has already been determined that the overall development meets these criteria and the conversion of the four units should not affect this approval.

- 8) The extent to which LAC residential units will remain available for future use by the City under this section's requirements and under any possible regulatory scheme;

Applicant's Response - LAC residential units will remain available for future use in that only four units are being utilized for completion of this existing development. This is not a large scale request that will deplete the City's LAC units.

- 9) The extent to which the utilization of LAC residential units serves or does not serve the public's health, safety, or welfare;

Applicant's Response - The proposed utilization of the four LAC residential units does serve the public's health, safety, and welfare in that it converts vacant commercial space to four residential one bedroom apartments that will serve a specific demographic need and will be occupied as opposed to vacant.

- 10) The future land use and needs of the community; and

Applicant's Response - The project is already fully built out and developed so this criteria has already been met in the original planning and construction phases. The internal conversion of four units should not affect the overall nature of the project or any prior determinations of compatibility.

- 11) Such other policy considerations that may not be set forth above but which are nonetheless considered by the city governing body to be reasonable and appropriate under the circumstances.

Applicant's Response - The project is already fully built out and developed so this criteria has already been met in the original planning and construction phases. The internal conversion of four units should not affect the overall nature of the project or any prior determinations of compatibility.

Mr. Leeds explained that this is a proposal that concerns the Grove East mixed use development on the southeast corner of Broward Boulevard and State Road 7. The southerly portion is a three-story apartment complex, the front portion first floor is retail and the second floor is residential. In the LAC process four LAC units is similar to the assignment of flex units; similar criteria; similar process. He has no objection to the application. One of the units is on the second floor and it is basically the applicant modifying an existing unused area to create an additional one-bedroom apartment. There are three retail spaces on the ground floor that are difficult to lease because they face west into the back of the other part of Grove East retail that is located next to Miami Subs. They do not have a Broward Boulevard exposure. The applicant wishes to take

these three spaces and convert them to studio apartments, which meet or exceed the code requirements. Staff has no objection to the application; there is some precedent in a completely different site; Midtown 24, where the ground floor units did not lease out and were converted successfully to apartments.

Attorney John Voigt was present on behalf of the applicant.

Mr. Voigt advised that the three downstairs units are larger than typical garden apartments but they are with the design that is open with the partial wall so it is not enclosed. The upstairs space was a storage unit and by extending a couple hundred feet there can be a balcony overlooking the pool on the second floor. That would be the rental unit. They believe that the necessary criteria have been met.

In response to Councilmember Stoner, Mr. Voigt stated that they agree with staff comments and they do not have any issues with them. The first set was addressed after DRC and they readdressed the design after the Planning and Zoning Board. There is only one thing and that is making two windows match.

Councilmember Levy questioned how successful those apartments are and if this is the reason to convert retail into residential because the residential has been so successful.

Mr. Voigt indicated that it has been more successful than commercial.

Jeff Fusing (sic), with the developer and the management company, was present.

Mr. Fusing stated that in research of this they wanted to visit Midtown 24 to see their success because they face the same challenges. They have been tremendously successful on converting over to residential units; they are 100% leased. They are hoping for the same success at Grove East.

In response to Councilmember Stoner, Mr. Fusing advised that they are 95% occupied on the residential portion.

Councilmember Levy commented that Grove East is a totally complete transformation of the area and we appreciate it.

Motion by Councilmember Zimmerman, seconded by Councilmember Fadgen, to approve Item No. 37. Motion carried on the following roll call vote:

Ayes: Jacobs, Levy, Zimmerman, Fadgen, Stoner

Nays: None

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QUASI-JUDICIAL CONSENT AGENDA – None.

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QUASI-JUDICIAL ITEMS

Mr. Lunny read Item No. 38.

38. DEFERRED REQUEST FOR PARKING WAIVER FOR LEVAN & NEIDENBERG LOCATED AT 7067 WEST BROWARD BOULEVARD.

The Planning and Zoning comments follow:

SUBJECT: PP13-0028: 12.9% shopping center parking waiver to accommodate a 38,000-square-foot law office - call center for LaVan & Neidenberg at Winn Dixie Marketplace Center.

APPLICANT: Rod A. Feiner, representative/G&I VII S FL Portfolio SPE, LLC, owner.

ADDRESS: 7067 West Broward Boulevard.

This item was deferred from the April 23, 2014 City Council meeting. Members of the Council directed the applicant to consider improvements such as parking lot repair, sealcoat and restripe, improved landscaping and improved parking lot lighting. Staff emailed the applicant lighting and landscape plan comments May 1, 2014.

LIGHTING: Based on applicant's photometric plan, the shopping center does not provide minimum code required lighting (one lumen) along the (Band of America), west (single family), and portions of the north (Cypress Road) lot lines. The shopping center also does not provide the minimum required light level in the middle portion of the central parking field. According to the photometric plan, no lighting is provided along portions of the west property line. Installation of lighting will still be a change for residents living on the west side of the wall in this area.

PARKING: The applicant has requested a 12.9% reduction based on 600 proposed employees. Assuming 90% attendance, 540 parking spaces (54% of the shopping center parking) are required. The Council authorized a 30% parking waiver for the LA Fitness shopping center.

The property owner has offered to enforce private parking restrictions and the law office – call center has offered to limit occupancy based on parking. Planning and Zoning cannot enforce either requirement. Staff does not recommend these be made conditions of approval as they create an unrealistic expectation about the City's ability to enforce private restrictions.

If the Council wishes to grant the parking waiver, staff suggests the following:

- a) Maximum 440 cubicles based on the following:
 - a. 396 cubicle-employee parking spaces (Assuming an average of 90% cubicle occupancy), plus,
 - b. 32 office employee parking spaces (Assuming 90% occupancy based on floor plan office count; no additional parking required for visitors of client intake), plus,
 - c. Estimated 10 parking spaces for new employee training (two 1,000-square-foot training rooms provided), for a total of,
 - d. 438 parking spaces or approximately 43% of the total provided shopping center parking.
- b) Prior to approval of a business license or permits:
 - a. Approval of floor and cubicle plans to confirm cubicle and office count.
 - b. Install lighting in accordance with City Code requirements (next page) with special attention to shielding the adjacent homes to the west.

- c. Install the landscaping as recommended (see below).
- d. Amend the current parking agreement to provide for periodic cubicle count inspections.
- e. Any other conditions required by City Council.

LANDSCAPE COMMENTS: Diana Berchielli met with Rod Feiner and the Agent for Winn Dixie Market Place on 4/29/2014. Items discussed included:

1. The replacement of all dead, missing, or declining plant material (trees, palms, hedge ground cover and sod) throughout the site.
 - a. Removal and replacement of perimeter hedge along the northern, eastern, and southern perimeter with an appropriate specie (minimum specifications 30" x 24" planted 24" on-center); fill in as needed along the western perimeter.
 - b. Replacement of missing trees in planting islands (islands > 8' wide can accommodate a large shade tree; islands < 8' wide a medium shade tree; minimum specifications 14'x 6', 3" caliper).
 - c. Replacement of missing trees along the perimeter; northern, western, southern, and eastern perimeter; (where overhead lines are present the use of a medium shade tree; minimum specifications 14'x6', 3" caliper).
 - d. Replacement of plant material in the landscape pedestrian zones as discussed.
2. Remove all exotic invasive plant material from planting beds throughout the site.
3. 3" of clean mulch around all new and existing trees and palms and all planting beds; mulch shall be kept 3" away from the trunks and stems of plants. Please do not use cypress or Red mulch (Melaleuca, Eucalyptus, or recycled mulch may be used).
4. Fertilize all planting beds and trees on the property three to four times per year. Our soils in Plantation lack certain elements; therefore, we typically suggest a general use fertilizer with an analysis of 8-2-12 or a palm special/ornamental tree fertilizer with an analysis of 13-3-13 or similar. Please follow manufacturer recommended rates and methods of application.
5. Replacement of missing or weed infested sod.
6. The automatically-operating underground irrigation system shall be fully operational with a minimum of 100% coverage, with a 50% minimum overlap in all landscape areas. The rain sensor shall be fully operational as well as the rust inhibitor if applicable.
7. Any tree trimming to be done requires a tree trimming permit directly issued through the Department of DL & CM.
8. Staff requests an additional meeting to discuss plant species as well as a pre-planting meeting on site prior to the commencement of any work to be done with regard to the landscape.

Mr. Leeds advised that there are a number of items that the Council asked the applicant to address. He would like to follow the applicant's presentation.

Attorney Rod Feiner was present on behalf of the applicant. He noted that he also represents the tenant. Carl Peterson, traffic engineer, was also present.

Mr. Feiner indicated that Council asked them to look at certain ways they can improve the property and look at the number of units they could have. He made the following comments:

- They will agree to update the lighting in the Center such that all lighting in the Center meets the current code for lighting requirements.

- They met with the landscaper and the City Arborist on site and agree to provide landscaping as set forth in a memo; the landscaper made certain recommendations. They will agree to install that landscaping subject to the caveat that it does not cost more than \$50,000. If that landscaping costs more than \$50,000 they will agree to spend \$50,000 updating the landscaping at the site subject to an item of priority as set by the City Arborist or City Staff.
- They will amend the existing parking declaration to provide zoning and non-Code Enforcement staff the right to conduct compliance inspections upon reasonable notice.
- They will keep the prohibition on working shift hours that currently exists in the parking declaration.
- The landlord and tenant shall enter into a private agreement, which mandates that if parking zone B gets filled the tenant is required to park in the more eastern portion of the site, which is near the empty bank parcel that is basically unused so that they do not interfere with other tenants uses. They are funneling the parking as required and that will be enforced. It will be a conditional approval where the City could revoke the BTR through a car decal or other appropriate method so it is easily ascertainable whether it is being followed or not.
- They submitted a floor plan to staff and agree that the space shall follow this floor plan, which limits the number of what Mr. Leeds is calling the Call Center and what he is calling the work stations in the middle to 490 work stations maximum. They will also agree that the total number of employees that can be located in this use is 550 employees, which is a reduction of 50 employees from what they were originally requesting. That can be imposed as part of the Certificate of Occupancy or another way. They cannot make a greater reduction work.

Mr. Lunny commented that it was noted that the document would indicate zoning and other non-Code Enforcement Staff would have a right to conduct code compliance inspections. He questioned if that was in recognition of the fact that if one of our officers with a badge or the Building Official or Fire Chief or any badge bearing individual would have the right notwithstanding such agreement to conduct those inspections.

Mr. Feiner stated that Mr. Lunny was correct; anyone with a badge can walk in. They can work on whatever language is acceptable to the City Attorney to clarify.

Councilmember Stoner mentioned painting of the buildings.

Mr. Feiner indicated that they painted the entire shopping center seven years ago and they have been pressure cleaning it yearly.

In response to Councilmember Stoner, Mr. Feiner advised that they do not have any intentions of upgrading or modernizing the elevation. With regard to lighting, they found out that the lighting was not very good when they submitted the photometric plan that especially on the exterior of the shopping center was extraordinarily dark. They will upgrade that so it meets code requirements. The lighting will be shielded as appropriate so there is no spillover onto the adjacent properties.

Councilmember Stoner mentioned reasonable notice for access. She questioned if that was defined.

Mr. Feiner replied that it is usually 24 hours before working hours; the day before is usually good.

Mr. Lunny advised that would work.

Councilmember Stoner mentioned \$50,000 maximum for the landscaping; that is not going to come close.

Mr. Feiner stated that the property is extraordinarily large and part of their concern is that the City Arborist wants the entire hedge that is existing on the entire property replaced; it is Ficus and she is concerned about White Fly and the cost for treating the White Fly would be larger than what they can do. With that and removing the Ficus it could get very expensive very quickly. They are trying to upgrade the Center as best they can and make economically feasible. If it is more than \$50,000 they will prioritize as City staff directs them.

Councilmember Stoner questioned how many vendors they requested.

Mr. Feiner indicated that one of the joint ventures of the owner is Equity One; they have contracts with five or six landscapers and they put requests out to all of them. They have worked with them in the past and know they provide good products. They met with staff on April 29, 2014. He told the client what the basic response was from staff and a memo was done afterwards to confirm it. He noted that when they walked the site the City Arborist was fairly specific about the type of tree she wanted if they had to be replaced, how they had to be grown and she did not want any in pots, she wanted trees that were grown naturally because they stand up better. They will do whatever she wants; they had to incorporate all of those types of things into the overall proposal.

Councilmember Stoner questioned if Mr. Ezzeddine has seen the list.

Danny Ezzeddine, Director of Design, Landscape and Construction Management, was present. He advised that staff met with the applicant. He reviewed the comments and staff did not mention anything about \$50,000.

Councilmember Stoner mentioned that based on staff comments and his expertise, she questioned if we are safe in saying that it is over \$50,000.

Mr. Ezzeddine clarified that it is over \$50,000.

Mr. Leeds indicated that in terms of lighting in addition to the exterior of the Center, there are lights but according to the photometric plan they are all out of commission. Just as important as the perimeter is the central parking field. The central part of the central parking field running north to south is very dark. Since this is where most of the people will be parking in the evening he would like to have the applicant state for the record that he will agree to address that as well. The parking analysis has been provided and it was based on the floor plan and things that are difficult to move. It is not based on occupancy. You could easily exceed 650 people and still meet Fire and Building Codes if you had the proper evacuation routes and if you were sprinkled. He strongly urged Council not to include the condition that it is limited to 600 employees. The only way to determine occupancy is based on a floor plan and a cubicle count. If you want to tie the approval to the floor plan and cubicle count and that is subject to inspection and we will know if a cubicle is moved. The applicant has indicated that the landlord and tenant are going to enter into a private agreement; that is fine; we do not want to be part of that because it is something that we cannot enforce. Government is all about creating accurate expectations and if we put that the employee count is limited to 600 and a call is received from a tenant stating that there is not enough parking there is nothing we can do. He believes it should be limited but it can easily be limited to the floor plan and the cubicle count. The private agreement on the parking is good; this is an issue between the tenants and the landlord. He would not recommend that the applicant use reserve parking. Reserve parking means when you reserve a portion of parking and no one else except one particular tenant can use it. He would like the applicant to address that issue. If you go to reserve parking there will be a parking issue between 4:30 p.m. and 7:00 p.m., depending on when the business empties because that is the time, Monday through Thursday, that the health club, supermarket and the law office call center are all going to be occupied simultaneously.

Councilmember Stoner noted that they are asking for a 160-space reduction or 12.9%; this seems excessive.

Mr. Leeds advised that this is much less than the former Office Max soon to be LA Fitness Shopping Center. That parking waiver was close to 30%.

Councilmember Stoner commented that they will have underground parking and their thing on top.

Mr. Leeds indicated that they are going to have ground floor parking but that was not enough to compensate for the Fitness Center and the restaurants; also, that was an overall smaller parking lot. Council has granted waivers in the 6% to 10% range routinely so percentage wise it is not excessive. His only comment is that he mentioned 440 cubicles and Mr. Feiner mentioned 490. His analysis is based on 43% of the shopping center being used during these peak hours. He is comfortable with 440 cubicles but the Council has the discretion to pick a number in between.

Councilmember Stoner stated that Council has granted parking waivers over a period of time. For example, The Fountains; you cannot find a parking space in The Fountains. She wonders if some of those parking waivers should have been granted.

Mr. Feiner advised that when he said that lighting would meet code requirements; that is for the entire site. The interior site that Mr. Leeds mentioned will meet code requirements; it is a condition of approval. With regard to occupancy, he is suggesting that the City have both remedies, that it have the ability to hold them to the floor plan submitted and they can require us to submit a list of employees within 24 hours. He is offering that as an additional condition. Not only do you have the fixed elements Mr. Leeds was talking about on the floor plan but as an additional condition on the maximum occupancy which would be part of any CO so even though they could have a larger amount of people by code under the Fire Marshall they are voluntarily restricting it to the amount he is saying. As to reserve parking, there is no reserve parking. They are funneling employees where they should park first and required to park before going to other areas. They do not want to create reserve parking where another tenant would have an issue with that because we are taking up their spaces they use for their employees behind the Center. This was discussed with the other tenants and they were told that they would not do that. If the Council wants to tie the parking waiver solely to the LaVan and Neidenberg use and should LaVan and Neidenberg vacate the shopping center the parking waiver is no longer valid; they would agree with that condition as well.

Councilmember Stoner is not convinced; she wants an owner that takes pride in their property. This particular owner has not taken any pride and is not vested in this community. She does not want it to become invasive into the law firm's business. This is a different situation; this is not private property for LaVan and Neidenberg; it is a strip mall that has not been maintained over the years.

Mr. Feiner stated that when they bought the property seven years ago they immediately made improvements; they fixed the drainage on the property and repainted the buildings. Equity One Corporate Headquarters is in North Miami Beach; they are local. They have a property manager who goes between this and three other properties, all in this area, who is responsible for supervising, maintaining and making sure that the contracts are being followed. This is not a case of an absentee owner.

Councilmember Stoner commented that if there is a property manager they need to step up to the table and look at the City where their property is located. We try to have a higher level of how things are maintained in this community and try to keep that enforcement up.

Mr. Feiner indicated that they have come to the table in good faith. He pointed out that the numbers shown by Mr. Peterson last time show the time that Mr. Leeds was most concerned about, the 4:30 p.m. to 7:30 p.m., which is one of the least intensive times the parking lot is being used. The main time periods were between lunch time; 12:00 p.m. and 1:30 p.m.

Councilmember Jacobs stated that from an economic perspective 600 jobs is a wonderful thing. The applicant has at least met half way and he would be willing to make some concessions.

Motion by Councilmember Jacobs, seconded by Councilmember Levy, to approve the parking waiver and accept all of the conditions that were mentioned; lighting, applicant will meet with staff and come to an agreement on a landscaping plan, compliance inspections, no shift hours, the floor plan with the listed 490 work stations max, applicant agrees to have a private landlord/tenant agreement on parking listing that if there are no parking in B that they will move to E, and the waiver is conditional upon this use. Motion carried on the following roll call vote:

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

Mr. Leeds believes that there should not be a reference to the private agreement in the motion.

Councilmember Jacobs agreed to remove that from the motion.

In response to Mr. Lunny, Councilmember Jacobs advised that the private agreement has to do with the parking; that if there is overflow in B that they would go to another section.

Mr. Lunny indicated that if that is an important consideration he would suggest that the City should be added can enforce it and staff should be directed to enforce it.

Councilmember Stoner mentioned that the waiver will go away when this tenant goes.

Councilmember Zimmerman agrees with everything except for the landscaping. We take pride in what our community looks like. He thinks they should work with the Arborist and meet City demands as far as landscape goes; he does not want to limit the dollar amount. They are requesting a large variance in parking. The lighting is a liability issue.

Mr. Ezzeddine agreed with Councilmember Zimmerman; he does not like to put a limit on the landscape because we do not know.

Councilmember Stoner suggested phasing it in such as removing the hedges as one piece at the end.

Mr. Ezzeddine indicated that we can work whatever you suggest; they can work with the applicant.

Councilmember Jacobs recommended approving it conditioned upon coming to an agreement with landscaping staff to plan something beyond \$50,000.

Mr. Feiner advised that would be fine; they will work with staff. He will relay Council's comments to his client. They will get the quotes and meet with staff.

Councilmember Zimmerman commented that they should focus on what is really visible to the public in the front and in the rear back once those roads are used more. It is all visible and it is what we present to the community.

Mr. Ezzeddine stated that the property is not attractive at all and staff would like to work with them.

Mr. Feiner assured that they will work with staff and come to an accommodation whether it be phasing or some other way.

In response to Councilmember Jacobs, Mr. Lunny indicated that he understands the operation side of the shop saying there are not resources to police the parking. He suggested making it private and not part of the motion because it makes no legal sense. If it is important to Council to control where people park, the agreement must have the City has a beneficiary and if important, it can be enforced.

Mr. Feiner advised that he will stipulate that the City is a third party beneficiary to that.

* * * * *

Mr. Lunny read Item No. 39.

Resolution No. 11876

39. **RESOLUTION APPROVING A 1,950-SQUARE-FOOT MASSAGE ESTABLISHMENT 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 D OF JACARANDA PARCEL 822, AS RECORDED IN PLAT BOOK 96, PAGE 28, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA AND GENERALLY LOCATED ON THE SOUTHWEST CORNER OF UNIVERSITY DRIVE AND SW 10 STREET AT 1017 SOUTH UNIVERSITY DRIVE; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE THEREFOR. (ELEMENTS THERAPEUTIC SPA)**

The Planning and Zoning comments follow:

REQUEST: Conditional use approval to allow a 1,950-square-foot massage establishment.

EXHIBITS TO BE INCLUDED: Planning and Zoning Division report; subject site map; Conditional use/site plan application; Planning and Zoning Board Meeting minutes of March 4, 2014; and Review Committee Meeting minutes of January 28, 2014.

PLANNING AND ZONING BOARD RECOMMENDATION: APPROVAL subject to staff comments (5/0, March 4, 2014).

REVIEW COMMITTEE RECOMMENDATION: No objection to the application moving forward (January 28, 2014).

ANALYSIS:

The subject property is zoned SPI-3 and located on the southwest corner of University Drive and SW 10th Street. The site is bound by SW 10th Street on the north, commercial uses to the south, University Drive to the east, and a vacant parcel which is part of the Crossroads Office Park to the west zoned OP-P. City Council

approved a redevelopment site plan with a parking waiver for this property on August 14, 2013. The site plan included demolition of the existing two-story retail/office space (Office Max) and replacement with a 45,000-square-foot sportcenter (LA Fitness) at the north end of the west building. The parking waiver reduced the required parking from 808 to 559 spaces.

The applicant, Elements Therapeutic Massage, is seeking conditional use approval to occupy an interior tenant space as a massage establishment within the 10.29-acre mixed-use center known as Market on University (p.k.a. Office Max Plaza). If approved, the business will have a reception area and seven treatment rooms, approximately 18 staff members (1 supervisor, 3 front desk attendants and 14 massage therapists). The proposed business hours will be Monday to Saturday from 9:00 a.m. to 9:00 p.m. and on Sunday from 10:00 a.m. to 7:00 a.m. The names and credentials of the massage therapists have not been provided with this application but will be reviewed upon application for a business license.

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:

Planning:

1. The proposed use is consistent with the Commercial land use designation on the adopted Future Land Use Map.

Zoning:

Conditions of Approval:

1. City Code requires massage establishments to provide parking at one (1) space per 150 square feet of floor area; thereby, requiring nine parking spaces (four more than allocated to this space for retail use). Administrative parking waiver (PM14-0022) granted a four-space parking reduction.
2. City Code requires that each individual massage therapist comply with the provisions of Chapters 14 and 27 of the City Code, Section 480.043 of the Florida Statutes, and Chapter 64B7-26 of the Florida Administrative Code.
3. Hours of operation shall be limited to Monday thru Saturday from 9:00 a.m. – 9:00 p.m. and Sunday from 10:00 a.m. to 7:00 p.m.
4. Massage therapy must take place in the locations depicted on the floor plan attached hereto in Exhibit "B".
5. Business license approval is subject to the conditions of this approval.

Signage:

1. Signage is not part of this review.
2. Note: Total cumulative window signage shall not exceed 20% of the glazed area on which the signs are displayed.

TRAFFIC CONSULTANT: No objection to the conditional use.

ENGINEERING DEPARTMENT: No objection to the conditional use.

DESIGN, LANDSCAPE AND CONSTRUCTION MANAGEMENT: No objection.

BUILDING DEPARTMENT: No objection to the conditional use.

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

The applicant is aware that conditions may arise upon review of all required permitting plans.

UTILITIES: No objection although additional capacity charges may apply.

O.P.W.C.D.: No objection to the conditional use.

WASTE MANAGEMENT: No objection to the conditional use.

EXHIBIT A

CONDITIONAL USE STATEMENT

Project Name: Market on University
Proposed Elements Massage

Property Address: 1003-1091, 1189 South University Drive
Plantation, Florida 33324

Locust Gardens (E&A), LLC obtained approval to modify the existing Market on University shopping center at the northwest corner of University Drive and Peters Road to include an LA Fitness Health Club facility on August 27, 2013. As part of this redevelopment, the applicant would like to replace an existing vacant space within the center with a massage establishment. A massage establishment requires conditional use approval. Any conditional use request requires consideration of the criteria found in Section 27-768 of the City of Plantation Land Development Code. These criteria and the applicant's position with regard to each are as follows:

1. **A binding and buildable site plan that allows the Council to determine the architectural features and buffering needed to protect the surrounding property.**

The applicant has obtained approval for a buildable site plan addressing the above concerns at the August 27, 2013 City Council meeting. Attached to this applicant are the approved site plan and elevation from that meeting.

2. **The proposed conditional use will be consistent with the general plan for the physical development of the district including any master land use plan or portion thereof adopted by the Council.**

The proposed conditional uses will be consistent with the general plan for development of the district. Elements Massage is a nationally franchised, first-in-class massage establishment that can be found in over 150 Class A shopping centers throughout the country.

3. **The proposed conditional use will be in harmony with the general character of the neighborhood, considering population density, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses. A present need for the conditional use must be demonstrated.**

Elements Massage targets middle to upper class population. The interior finishes of the tenant are high end (see attached proposed finish schedule) and are consistent with the surrounding community. The exterior of the tenant will be consistent with the approved elevations referenced above and the Tenant's signage will be consistent with the Uniform Sign Agreement approved by staff. The use will not overburden the traffic and parking conditions of the center.

4. **The proposed conditional use will not be detrimental to the use, peaceful enjoyment, economic value, or development of surrounding property, or the neighborhood and will cause no objectionable noise, vibration, fumes, odors, dust, glare or physical activity.**

The proposed use will not cause any objectionable noises, vibrations, fumes, odor, dust or glare or in any way be detrimental to the use and peaceful enjoyment or economic value of the property or surrounding neighborhood.

5. **The proposed conditional use will not adversely affect the health, safety, security, morals, or general welfare of residents, visitors, or workers in the neighborhood.**

The proposed use will not adversely affect the health, safety, security, morals, or general welfare of residents, visitors, or workers in the neighborhood.

6. **The proposed conditional use will not, in conjunction with existing development in the area and development permitted under existing zoning, overburden existing public services and facilities.**

The proposed use will not overburden existing public services and facilities. The use is filling a vacant space that previously served as children's dance studio.

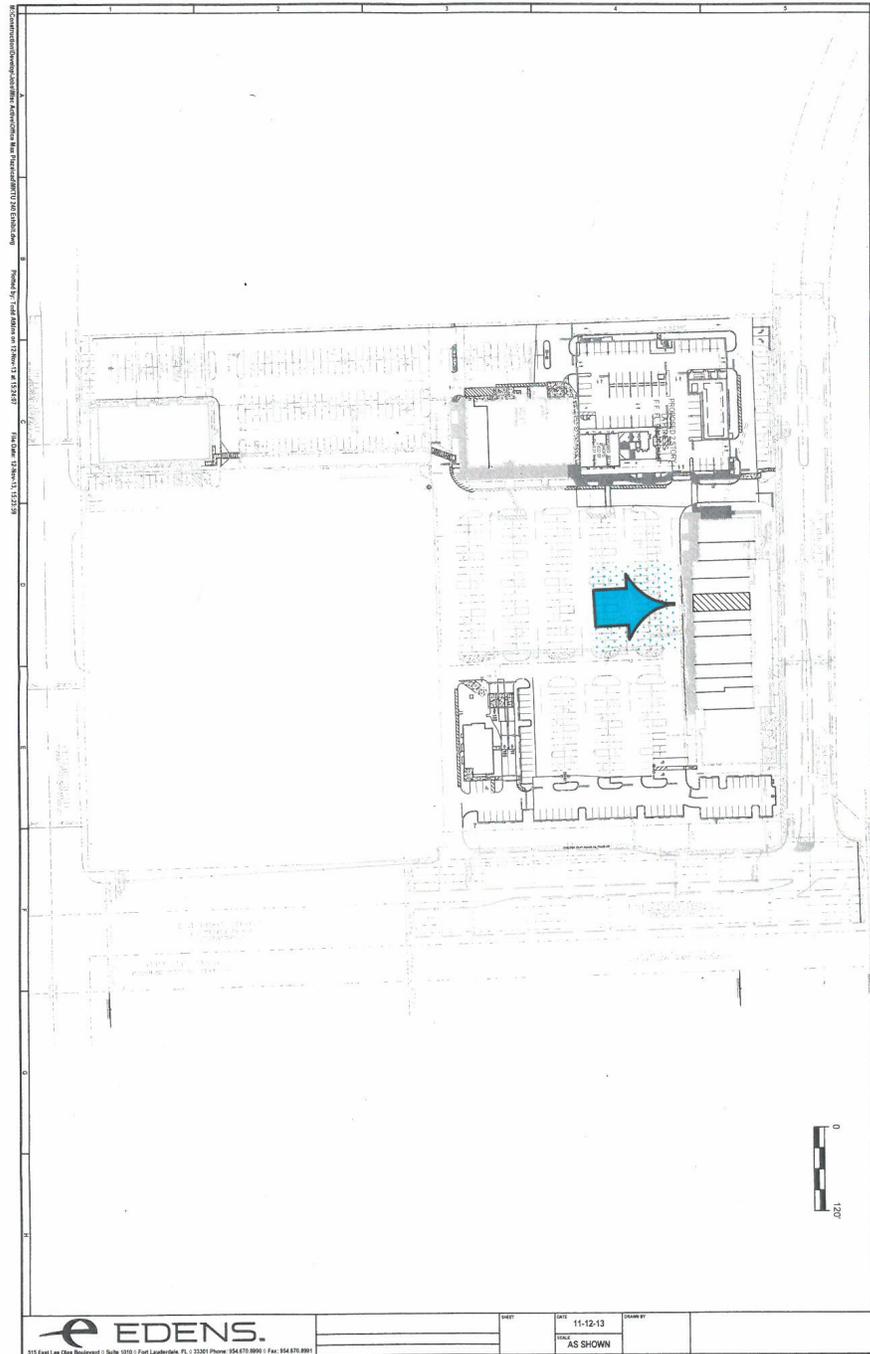
7. **The proposed conditional use shall meet all other specific standards which may be set forth elsewhere in the Code of Ordinances for such use.**

The proposed use will meet all other specific standards which may be set forth elsewhere in the Code of Ordinances for such use.

8. **The proposed conditional use shall disclose the square feet of use sought for approval so that an adequate evaluation can be made.**

The proposed use will be 1,950 square feet as shown on the accompanying site plan.

EXHIBIT "C"



14811

Mr. Lunny advised that there do not appear to be many significant issues in the staff report; there are conditions of approval that are recommended.

Mr. Leeds explained that if approved, it should be subject to the conditions of approval in the backup.

Councilmember Levy questioned if this is located within the LA Fitness Center itself or adjacent to the Center.

Ryan Halberg, with Edens, the owner, was present.

Mr. Halberg indicated that it is in the same line of shops with Carrabba's.

In response to Councilmember Stoner, Mr. Halberg stated that they agree with staff comments and have no problems complying.

Motion by Councilmember Jacobs, seconded by Councilmember Levy, to approve Resolution No. 11876. Motion carried on the following roll call vote:

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

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40. REQUEST FOR SITE PLAN AMENDMENT FOR MOTOROLA LOCATED AT 8000 WEST SUNRISE BOULEVARD.

Barbara Hall on behalf of Motorola has requested to defer this item to the June 11, 2014 meeting.

Motion by Councilmember Fadgen, seconded by Councilmember Jacobs, to defer Item No. 40 to the June 11, 2014 City Council Meeting. Motion carried on the following roll call vote:

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

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Mr. Lunny read Item No. 41.

41. REQUEST FOR SIGN SPECIAL EXCEPTION FOR THE MANOR LOCATED AT 601 NW 82nd AVENUE.

The Planning and Zoning comments follow:

SPECIAL EXCEPTION REQUEST:

From: Section 22-30, which limits mixed-use master plan developments to a maximum of two ground signs fronting a public right-of-way subject to a minimum separation of 300 feet.
To: Allow an additional ground sign for The Manor (Veranda Phase II) for a total of five ground signs.

To: Reduce the separation between ground sign to 75 feet.

EXHIBITS TO BE INCLUDED: Planning and Zoning Division report; subject site map; Development Review application; and sign details.

ANALYSIS:

In February of 2004, the City Council approved a master plan development of approximately 25 acres which included an existing five-story office building, 382 new multi-family units in two high-rise buildings, 16 new townhouses in four buildings and 48,850 square feet of retail and restaurant space. The Manor, also known as Veranda Phase II, is part of the overall master plan and located southeast of the existing office building and north of Veranda Phase I. The building was completed in November 2013 and encompasses 181 multi-family rental units in a six-story building with 16 townhouses units.

Section 22-30 of the code limits mixed-use master plan developments to a maximum of two ground signs fronting a public right-of-way subject to a minimum separation of 300 feet. Currently, four ground signs exist within the master plan (See attached aerial photograph). Lakeside Office Building has two signs, one on Pine Island Road north of the main entrance and one on American Expressway north of the secondary entrance. Publix Plaza has two signs fronting Pine Island Road, one on a kneewall at the main entrance and one on a fountain wall at the northeast corner of Pine Island Road and American Expressway. The permits for Publix Plaza were issued in error. Veranda Phase I does not have signage.

The applicant is requesting approval of a ground sign located on the south side of the secondary entrance from American Expressway. The proposed 13.7-square-foot sign is non-illuminated, 5' in height, 6' in width, and constructed of beige and gray stucco with aluminum plate letters. If approved, the sign will be set back 10' from the property line and have a separation of approximately 75' from the existing Lakeside Office Building sign on the north side of the same entrance.

STAFF COMMENTS:

PLANNING AND ZONING:

1. The applicant has consistently had sign code violations (snipe signs, sandwich signs, and banners) on the subject property and other properties within the Master Plan since issuance of the Certificate of Occupancy. If approved, staff recommends the approval be subject to all illegal signage being removed from the subject site and adjacent properties.
2. The subject site encompasses two parcels. The north setback indicated for the sign includes land in both parcels. Provide proof of or execute a unity of title for the two parcels.
3. The sign appears to be located within a water main easement and access easement. Provide authorization for the sign to be located within the access easement. Note: Utility Department comments regarding the water main easement.

TRAFFIC CONSULTANT: No objection.

ENGINEERING DEPARTMENT: No objection.

DESIGN, LANDSCAPE & CONSTRUCTION MANAGEMENT:

At time of permitting please address the following:

1. Please show landscape materials for monument/free-standing signs on site plans submitted as per Chapter 22-106 (1) regulations governing signs generally. Please include species, quantities, locations, height, spread, spacing, and mulch type on plans.

2. Please include Tree Protection details as per City codes; 2" x 4" posts, 48" in height, with 3, 2" x 4" rails spaced equally. Please note on plan that appropriate tree protection barriers will be placed around all existing trees within the construction zone.

BUILDING DEPARTMENT: No objection

FIRE DEPARTMENT: No objection as to this request.

UTILITIES: Objection, no structures can be installed in utility easements.

Mr. Leeds indicated that there is a correction to the Staff Report, Planning and Zoning Condition #2; he will delete that; it is a separate issue that has nothing to do with the signage. Veranda I did not have a sign and was originally built as a condominium; however, it has been operated as a rental for some time. The addition of this sign is not a major problem; the problem is that we have eight illegal signs advertising the rental units. This is not something that has been permitted with any other apartment complex in the City. If you choose to approve the permanent signs he would request that all the snipe signs, banners, balloons, on and off of property, be removed before the permit is issued.

Councilmember Jacobs made a Jennings Disclosure; he had a communication with Attorney Bill Laystrom on this item and he will base his decision on all of the evidence presented in the hearing and that communication will not affect his decision. He also disclosed the meeting under the County.

Attorney John Voigt was present. He stated that they would agree to staff conditions as far as removing the signs. He mentioned the northeast corner of the site where the monument sign would go. That ties in with #3 about the water main easement, which are the utilities. There is fire hydrant right there and the sign is about six feet wide. The way it is shown on the plan it would encroach by about a foot so they worked on a new plan so it can be moved back closer to the palm tree and it will be out of the easement. There is not a footer that sticks out; it is literally one-foot and one-inch when facing the sign. That will be remedied. It is a miscommunication between their engineers and their marketing department when it came to locating the sign. The landscape plan is already approved and in existence; they were trying to place the sign so as not to have to move, disrupt or add landscaping. If required, they are willing to add landscaping. They will protect the trees and repair any landscaping that is removed or damaged. The idea when trying to rent the units is to make it attractive. They are agreeable to staff comments and request approval since there is no sign.

Mr. Leeds stated that he is all right with this; he only asked because he has not heard from the Utilities Department on this issue that approval should be subject to Utilities approval of the Building permit and the applicant meeting the current setbacks as shown on the plan today. The applicant can enlarge the setbacks but he cannot bring it closer to the street.

Mr. Voigt advised that they were not aware of the encroachment until it was in the staff report and then they had to determine that it was a foot in. Since then they have been working on a new plan but it was not ready to show at this meeting.

Motion by Councilmember Jacobs, seconded by Councilmember Zimmerman, to approve the special exception subject to staff comments and approval by the Utilities Department. Motion carried on the following roll call vote:

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

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COUNCILMEMBERS' COMMENTS

Councilmember Fadgen mentioned that some portions of the City have a difficult time getting their bulk material out, primarily plant material, for bulk pick up. In Park East they are not allowed to put anything out until the weekend so they do not have very much time to get things together. In his neighborhood pick up is not until Thursday so he has six days to get ready. He specifically mentioned James Thornton, a resident, who is older and is having trouble with this. He requested that Council consider a way to make it a uniform number of days for the entire City rather than having certain sections only have a day or two to get ready.

Mayor Bendekovic advised that he is allowed to get the plant material out on the weekend before pick up and has Saturday, Sunday and Monday; three days.

Councilmember Fadgen believes it is unfair that residents in Park East only have three days and suggested some type of rotation for pick up.

Councilmember Levy mentioned how confusing that would be to everyone. This is an individual case and he needs to negotiate. The Mayor said that her office is available to talk to him. He believes that something could be worked out if it is a hardship. To change the policy for the whole City, the cost and confusion would be very difficult.

In response to Councilmember Levy, Councilmember Fadgen indicated that Mr. Thornton pays his lawn person for mowing; however, he does not do tree material and bushes.

Councilmember Stoner suggested discussing this with Mr. Consaul in Public Works and possibly some ideas can be exchanged.

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Councilmember Levy advised that the Governor has ordered all flags at half staff tomorrow because it is Public Safety Officer Memorial Day. The whole State will be recognizing Police and Fire who have lost their lives in the line of duty.

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Mayor Bendekovic indicated that we will be having a legislative update at the end of June or the beginning of July. All questions should be directed to Priscilla Richards, as she is the liaison for Legislative actions.

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Mayor Bendekovic announced the Memorial Day Service on Monday, May 26, 2014 at Veteran's Park at 9:30 a.m.

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Councilmember Levy stated that the Governor has until tomorrow to sign the budget; the 15th is the deadline. He questioned if Plantation is in jeopardy of any of the things that were put in the budget that the Governor might line item veto.

Mayor Bendekovic was not aware of any at this point. The things we were concerned about did not pass. There are other areas of concern but nothing that will impact us. We did have something that got up to the end of being passed but then we were cut off at the final budget; it was for generators and it was \$100,000.

Councilmember Levy commented that they are tuning in on water projects and questioned if we have any.

Mayor Bendekovic advised that we do not have any water projects but after seeing the list of projects, Plantation will have quite a few more for next year. We saw what was being approved for stormwater in other cities.

Councilmember Stoner indicated that she attended the meeting last night with State Representative Katie Edwards, who stated that the budget is being increased by \$2 billion. She noted that the tag fees will be reduced \$25.

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Councilmember Stoner encouraged everyone to attend the Memorial Day Service and to expose their children to the history. She commended the Parks and Recreation Department.

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PUBLIC REQUESTS OF THE COUNCIL CONCERNING MUNICIPAL AFFAIRS

Dennis Conklin, resident, was present. He mentioned the Green Amendment Resolution No. 10481 and requested that a Resolution be done to appeal that Resolution.

In response to Councilmember Fadgen, Mr. Lunny advised that a motion would be required to repeal this. It does not have to be advertised.

Motion by Councilmember Fadgen, seconded by Councilmember Jacobs, to repeal Resolution No. 10481. Motion Failed on the following roll call vote:

Ayes: Jacobs, Fadgen

Nays: Levy, Zimmerman, Stoner

Mr. Lunny questioned if Councilmember Fadgen would like to know if there is any fiscal impact to that.

Councilmember Fadgen believed that there was a dues payment required by the City.

Mayor Bendekovic advised that we do not belong to that; that is a different organization.

Councilmember Stoner indicated that has not been paid for over two years.

Mr. Conklin reiterated that the City is not following the original Resolution.

Mr. Lunny withdrew the comment. It was his understanding that there were some points or something that staff was able to get and some external financing for this. He is not sure that is the case.

In response to Mayor Bendekovic, Mr. Leeds explained that it is an organization that looks at the practices and operations of the City and determines that the City is energy efficient and protects the resources of the City, the natural features of the City and also the environment. With Plantation, "The Grass is Greener", it is an appropriate application for us to request. It is not in conflict with this.

Councilmember Stoner emphasized that it says, "Global climate change is a concern". She is not seeing anything that is offensive to this City or to its residents.

Councilmember Levy indicated that we have a concern about our environment and he is not willing to say that we are not concerned about it.

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Eugene Marchese, resident and President of Plantation Acres Homeowner's Association, was present. He stated that the Plantation Acres Homeowners Association Board met with the City Parks and Recreation Director, Jim Romano, on November 22, 2013, at which time ideas were discussed for the 15 acres called North Acres Park located on 21st Court in North Acres. After that meeting they found out that the ten acres of land that was saved in August had been mitigated in 2011 by the City to Volunteer Park so theoretically there are no wetlands that have to be addressed on the ten acres. Brett Butler, City Engineer, confirmed this. The Association then moved forward with some ideas and sketches to determine what they would want on the land and to see how the land would be prepared. In April 2014 there was a meeting for their membership at which time there was a consensus and a sketch of what could be done with 15 acres. Their Vice President announced that he had walked the surrounding houses of the 15 acres and every homeowner he spoke to said they were in support of a park versus other development. At that point, he realized that the ten acres is zoned CPP Community Facility Non Residential Restrictive and stated that the City Council would have to approve adding the ten acres to the five acres and making it part of North Acres Park before anything else can be done. As the President of the Plantation Acres Homeowner's Association, he is representing all of the land owners. They are requesting if the ten acres of land could be designated as part of the North Acres Park in perpetuity and if possible, if they can get some sort of small seed money or funds to start the planning process. Once there is a plan and they know the land is dedicated to the park they can begin fundraising and other things in an attempt to help develop the park over the next five to ten years. He cannot do anything until these things happen.

Councilmember Fadgen clarified that there is 15 acres but it is really five acres and ten acres that need to be under one designation to be 15 acres.

Mr. Marchese understands that the Mayor needs direction from the City Council. They want this to be a 15-acre park and he knows that the five acres is in perpetuity; he would hope that somehow that all blends together.

Mr. Lunny advised that when the City accepts property sometimes it accepts it from the private sector with restrictions and that is the condition of acceptance. Often we accept plat dedications or grants that will be used for public purposes only and when it is not used for public purposes it reverts to the private property owner. Sometimes the City accepts a restrictive covenant because that is what the owner is requiring. Five acres of that property has a restriction on it; the other ten was acquired through a swap and the title is unrestricted. There is no consideration for restricting that in perpetuity at this time. That is important because if the City were to apply for external funding, federal funding or the FRDP grant in Florida, the external source could require that the City restrict that park in perpetuity and there is consideration for that because the City asked for it and received it. His concern is that if the Council were to say and even ordain, this would be forever a park and there is no consideration that supports that which is legally sufficient; you cannot bind your future Council to that position. A future Council could say that the City still owns the property and we are going to lift that restriction. Unless there is a significant consideration that is legally sufficient that warrants that kind of action he is not sure that would be binding on a future Council and he would not want them to create an expectation that it could be done. The other issue is that there is not a need legally to take the ten and combine it with the five; the City has the authority with the given zoning to treat the entire 15-acre piece and develop it however you wish. The City could rezone it to SCP, which is the City Park designation, which would be unnecessary. There is no need for taking the ten and adding it to the five. In terms of what is going to happen to the property, the Mayor asked the Council last time if they wanted to surplus the property and there was some budget discussion. The Council said no so it has been a dead issue in Administration. It is being held in inventory where it will stay until the Council decides whatever it wants to do with the property. The bottom line is that to the best of his knowledge, no plans to flip the property to the private sector exist, no such plans were made once it was decided that it would not be appropriate for the time being and in terms of authorizing development, you can do that now provided during the budget time there are funds to do it. These are not impediments; there is a legal concern with the enforceability of saying this Council is going to determine that it is going to be a park forever. Without some transaction or offer acceptance or significant material consideration, you will not be able to bind future Councils to that decision.

Councilmember Fadgen stated that he would support setting up some sort of plan or priority of things that should be done as to how it should be developed.

Mr. Marchese questioned if it would be possible to get the SCP zoning change; this way it is designated as a park. He will then work with Administration to see if they can get some seed money or not. Once it is designated as a park they will begin fundraising attempts and perhaps that in-perpetuity can be done at a later date when he can say he has a certain amount of dollars for the park development, which would be the substantial reason to create the in-perpetuity.

Mr. Lunny indicated that it would be up to the Council to decide whether whatever is offered is significant enough to tie up the ten acres of value forever. Sometimes in the City's past we have bought property, placed it in inventory, might not be able to develop it as planned and unload it. Sometimes the reverse is true. This particular one was a School Board swap. There is value to keeping things in inventory and for relatively little capital investment in making a passive park you would have to decide whether the business decision in terms of best management practice would support trying to take that park out of inventory. In his opinion, there is not a legal impediment. Without something sufficient to bind future Councils, he does not want to create the impression that you can do that and it would stick.

Councilmember Fadgen believes we have addressed the selling of the property; he is not interested in that he thinks it should be developed as a park whether the zoning is changed now or later. He thinks it is good to proceed with a plan in conjunction with the City and hopefully it can be set in our priorities to be able to fund it in the near future.

Mayor Bendekovic clarified that if this were taken out of surplus she would have to have Council approval. She has very adamantly told Mr. Marchese that Council made a statement with a 5/0 vote that this was not going to be surplussed and this would never have been brought up; the only reason it was brought up was because Mr. Marchese has chosen to develop a plan that he has not even discussed with Administration to possible get a figure. The figure she is getting with the part they design would be in the range of \$1.7 million park and that does not include maintenance. She stated that the rumors he says are out there are false; this Administration had no reason to bring this up if it was not for him doing this sketch.

Mr. Marchese advised that he met with Mr. Romano.

Mayor Bendekovic emphasized that she asked him to schedule a meeting with her and Mr. Romano. No calls have been placed to her office. There are no culvert operations in this Administration and she has not appreciated his inferences.

Mr. Marchese indicated that he could not come to her office until the membership said what they would like to see. The meeting was in April and then he was out of town for 15 days.

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Lee Hillier, resident, was present. He received an email on behalf of the Acres Homeowner's Association. He is here to see what can be done about the North Acres Park from a management standpoint. This park was dedicated in 1995. The Broward County Department of Environmental Protection did the survey of where the known wetlands was and of that the ten acres was a wetlands area and he is surprised how that can be set as a surplus piece of property when a wetlands designation was part of that parcel. One of the things their community has always asked for is to have parity with the rest of the community. He noted that the City did not have any money in 1976 and they still do not have any money.

Mayor Bendekovic indicated that the City offered for PAID to purchase the property and they chose not to. She questioned if the property purchased in 1976 was the Ann Kolb Acres in the Middle Acres. That property is in perpetuity and it has been there since 1975.

Mr. Hillier mentioned when June Quinn was serving as Chairman of the Parks and Recreation Board is when she pointed out the necessity for this City park. He submitted an article to Mayor Bendekovic.

Councilmember Levy appreciates Mr. Hillier's discussion on the history of the property. He does not see a conflict with this group. We have already voted to take that out of surplus and maintain it as a park. In his opinion that says that we all want the same thing; we want to maintain this because it is open space. Once you get rid of it you never get it back. We all want an appropriate ecological balance in the Acres especially and we all know about Metropica coming in, which is part of that development on the edge of the Everglades. This is going to have a major impact. Those of us in Plantation better be aware of what is happening around our borders, especially on the Sunrise side. That development they are asking for is unbelievably huge; towers, residential, and commercial. This is going to be three times as worse as the impact by Sawgrass Mills.

Mr. Hillier agreed. He suggested that we build up some things on their property for their own protection.

Councilmember Levy stated that we have already voted to try to maintain this in some way as a park, whether it be passive. He did not see the configuration regarding the baseball and other fields. He does not see this as an active park. Mr. Hillier is not requesting an active park; he is asking for wetlands. Mayor Bendekovic is saying she got the message from this Council that we are not putting it in surplus and selling it; however, we want to do something that benefits the residents and all of Plantation. There will be huge ecological impacts when they start concreting over the Everglades. That is going to be a major impact with traffic, water quality, and with the entire environment of the Acres. This will affect every one of us. This can help to mitigate but he is getting mixed signals between passive and active. He suggested that the group get together and come up with something that everyone agrees on and he certainly thinks that it would be receptive to this dais and the Council. There is no need to vote again on anything.

Mr. Hillier implored this Council to have the CP designation so they would have level of certainty about it remaining a park.

Councilmember Levy mentioned that Mayor Bendekovic has offered her office for everyone to get together. We have all voted to protect that property. Whatever we need to do to maintain it and better it for the people of the community. The decision process should be all inclusive. He thinks that we are all together in the fact that we do not want to lose this opportunity for something that benefits the value and quality of life of everyone around it because everything around it is impinging on that quality of life.

Mr. Hillier stated that if Council could direct Legal Counsel to take action to make this designation they could leave with a higher level of certainty.

Councilmember Levy would prefer to see the group come together with the Mayor and Administration and come up with that as a recommendation.

Mr. Lunny advised that the designation to change the zoning to SCP is not necessary.

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SEALED COMPETITIVE SOLICITATIONS – None.

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WORKSHOP – None.

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Meeting adjourned at 10:30 p.m.

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Councilmember Lynn Stoner, 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