

SUMMARY MINUTES

Regular City Commission Meeting
Thursday, June 9, 2005, 7:30 p.m.
City of Sunny Isles Beach, Florida

<p>ATTENTION ALL LOBBYISTS: CITY LAW REQUIRES YOUR REGISTRATION PRIOR TO ENGAGING IN LOBBYING ACTIVITIES BEFORE CITY STAFF, BOARDS, COMMITTEES OR THE CITY COMMISSION. PLEASE CONTACT THE CITY CLERK FOR FORMS AND ADDITIONAL INFORMATION.</p>

AGENDA

1. CALL TO ORDER/ROLL CALL OF MEMBERS

The meeting was called to order by Mayor Edelcup at 7:30 p.m., with the following officials present:

Mayor Norman S. Edelcup
Vice Mayor Lewis J. Thaler
Commissioner Roslyn Brezin
Commissioner Gerry Goodman
Commissioner Danny Iglesias

City Manager Christopher J. Russo
Acting City Attorney Erica Wright
City Clerk Jane A. Hines
Planning and Zoning Administrator Jorge Vera

2. PLEDGE OF ALLEGIANCE/INVOCATION

Action: Police Chief Fred Maas led the Pledge of Allegiance to the flag and the national anthem. Richard C. Schulman gave an invocation.

Mayor Edelcup gave opening remarks of decorum.

3. APPROVAL OF MINUTES

3A. Regular City Commission Meeting – May 12, 2004.

Action: Commissioner Goodman noted that the minutes needed to be corrected on page 11 at the end of the last paragraph before the motion, to insert “Commissioner Goodman asked City Attorney Dannheisser if they were legally within their right to do this and she said that the Commission is lawfully within their right to do this.” City Clerk Hines will amend the minutes.

Vice Mayor Thaler moved and Commissioner Iglesias seconded **a motion to approve the above-mentioned Summary Minutes, as amended. The motion was approved by a voice vote of 5-0 in favor.**

4. **ORDER OF BUSINESS** (Additions/Deletions/Amendments)

- 4A. Request to Hear Items: Amendment to 10B and 10H and move Item 10L to a discussion Item 12A.

Action: Mayor Edelcup announced the above. Commissioner Iglesias moved and Commissioner Brezin seconded **a motion to approve the above changes. The motion was approved by a voice vote of 5-0 in favor.**

Mayor Edelcup said he would like to take 9A out of order and hear before item 6A. Commissioner Iglesias moved and Vice Mayor Thaler seconded **a motion to approve the above changes. The motion was approved by a voice vote of 5-0 in favor.**

Stanley Price, Esq., asked for a deferral for item 12A, La Perla/Pier Park. He noted that today they engaged in some very good negotiations with both the City Manager and the City Attorney and are very close to reaching an agreement acceptable to all the parties and asked for a two-week deferral to finalize an agreement. Mayor Edelcup said that it would be a month as there will not be a meeting in two weeks. Mr. Price withdrew his request for deferral because a month is going to have a major impact on the project. Mayor Edelcup reminded him it was a discussion item and couldn't take action on it tonight and Acting City Attorney Wright said that any item on the agenda a motion or resolution can be passed as a result of discussing that item.

5. **SPECIAL PRESENTATIONS**

None

6. **ZONING - ZONING HEARINGS ARE QUASI-JUDICIAL PUBLIC HEARINGS.**

- 6A. Request of **TRG Sunny Isles VII, LTD, Owner of the Property Located at 15811, 15901, 15995, 16001 Collins Avenue, Sunny Isles Beach, Florida, (Trump Towers I, II, III)** for the Following:

[Hearing #Z2004-08]

1. A variance from the Code of Sunny Isles Beach to permit a building width of 825 feet where, pursuant to Section 265-35(D)(6), 250 feet is the maximum building width as measured parallel to Collins Avenue for a building or portion thereof which exceeds 20 feet in height above grade.
2. Pursuant to Section 265-23 of the City of Sunny Isles Beach Land Development Regulations the applicant is requesting a transfer of 414,207 square feet of development rights and 180 units as follows:
 - a. An adjustment to be made for a decrease of 47,860 square feet and 20 units from the Casino's Transferable Development Rights Bank and an adjustment to be made for a decrease of 366,347 square feet and 213 units from the City's Transferable Development Rights Bank.

OR IN THE ALTERNATIVE TO REQUEST 2(a)

- b. An adjustment to be made for a decrease of 236,945 square feet and 99 units from the Casino's Transferable Development Rights Bank and an adjustment to be made for a decrease of 177,262 square feet and 103 units from the City's Transferable Development Rights Bank.
3. Pursuant to Section 265-18 of the City of Sunny Isles Beach Land Development Regulations, the applicant is requesting a site plan approval for three (3) interconnecting towers each tower being 39 stories in height and containing 271 residential units, for a total of 813 residential units.

Protests 2 Waivers 0 Ex-Parte 0

Action: Mayor Edelcup gave opening remarks on zoning procedures/decorum and Acting City Attorney Wright noted that the Code provides that the City present its comments regarding the application and following that the applicant can make its comments.

City Clerk Hines read a disclaimer for the Zoning hearing, and read the applicant's name, hearing number, location and then administered the oath to the witness for the Zoning hearing. She noted for the record that two protest letters were received and distributed to the Commission. Planning and Zoning Administrator Jorge Vera reported that this site is 7.924 acres in size located in the MUR District. He said that staff recommends denial of the variance, the site plan and the transfer of development rights.

Public Speakers: Joseph Goldstein, Esq.; Tom Daly, TRG; Charles Sieger, Architect; Elias Malowany; Juan Muna; Henry Kay; Edith Sandquist; Steve Zucker; Isaac Aelion; Joel Frank; Abel Camps

Joseph Goldstein, Esq., representing the applicant, reported that the property is the former Days Inn property, La Playa I, La Playa II, as well as the Fountainhead Hotel. He said it is a 7.9 acre parcel and unique to the City. Tom Daly corrected him saying it is a 7.29 acre parcel of land. He said that they are proposing an 813-unit project and has three condo towers on top of a single platform, and that there is going to be a 10,000 square-foot park. Mr. Daly said that they felt the project would be better with a flat-pool deck, and the difference for the variance is whether or not between the first and second tower and the second and third tower, that they lower the pool deck by 12-feet. He said the City Code allows a building to be 800-feet long as long as the distance between the middle building is 20-feet, and he would like to raise that to 30-feet. Charles Sieger, Architect for the project presented renderings of the project. Mr. Daly said the parking pedestal is 20-feet but under the building 30-feet of parking which is legal within the face of the building. He said in this plan what they want to do is that this has an unoccupied area that does not count as FAR but they are trying to raise this pedestal up so it meets the pedestal behind the building and within the purview of the Commission, and people walking by can't see the difference in the section of this elevation within the building but it allows it to be flat. He said that they believe it is a better building for the people who live in the building. Mr. Sieger said that when they raised the pool deck to be flat, they actually stepped it back an additional 34-feet as well to make it less visible even though they added the height. Planning and Zoning Administrator Vera asked Mr. Sieger

what the actual height with the pool deck with the variance request, and Mr. Sieger said with the variance request it would be 36-feet to the top surface and there are no planters on top of that pool deck.

Mayor Edelcup said that years ago the City passed liberal zoning laws and have spent many hours accommodating the needs of the developers and the people and what eventually evolved was one of the most liberal codes in all South Florida. He said we have to continuously balance the needs of the developers with the needs of the neighboring people, even though they are saying it is a better building for the people living in it, but as Commissioners we have to look at it and determined if it is a better building for not only the people that live in it but for the people that live around it. He said in coming up with a liberal code they tried to meet the requirements up front so we would not be confronted with variances. He noted as we all learned in the Omnipoint case, variances have to meet all the conditions of a hardship and there really is no hardship when you have acquired as much property here and you can't turn to that land and say that land has created a hardship, it is a self-induced hardship and not anything other than that. Mayor Edelcup said that this land has enough space on it to provide for many different designs, and are surprised that they came forward with a plan that requires a variance because in the past, they have dealt with many of their projects without a variance and they have all turned out to be beautiful buildings.

Commissioner Brezin said that the aim is to prevent structures from creating a mass scale that would prohibit beach accesses and block the ocean view. She said that the requested variances is the result of the applicant's acquisition and aggregation of five separate parcels to create one development site with a 900-foot frontage on Collins Avenue. She said what it represents to her as she sees it is that it would be economically feasible for them to do that, but as she views this, they are creating the very thing that this Commission was against from the very beginning.

Commissioner Iglesias said he doesn't like this variance. He said he does agree that sometimes a variance makes a building better but as the Mayor said, we have a series of standards for variances that we have to abide by, by law unless it is a hardship, he doesn't see approving it. He said he works with variances all the time and if we didn't have variances we wouldn't have any landscape on Collins Avenue, but he would suggest to go to plan B where you lower your pedestal, have no variances, and you move forward.

Vice Mayor Thaler said he concurs with the prior statements, and what the key word here is the view corridors, he feels that they have taken them away from the City by raising it up even on the 850-foot length/width, and they must go back and rethink this project. He said he feels that they have taken away the view corridors from the ground level.

Commissioner Goodman said that they have to make some changes and noted when we first became a City we said everybody that builds on Collins Avenue has to give us a beach access and there are three buildings with two beach accesses. He said pertaining to traffic and parking, he noted that FDOT gave them permission but the entrances and exits don't line up on Collins Avenue, there is 158th Street and 159th Street, and we are concerned about traffic and how traffic runs in Sunny Isles Beach. He said when people come out of the development, they are going to have to make a right turn and head north and if they want to go south they are going to have to go north and make a u-turn. He said if they put their

entrance where the traffic light is on 159th Street in the middle of their buildings, that would give them entrance and exit from all directions. Commissioner Goodman said that he has yet to see a building being built with three tandems and after looking at their plans, they have 63 triple tandems, that is 189 cars that would have to be moved in and out, and there are 813 apartments and 700 parking spaces. He said everyone says they have valet parking, he can agree with valet parking, but if he was buying an apartment in that building and you had 813 and you are giving 977 parking spaces, the apartments are 2-bedroom, 3-bedroom, some are larger than that and parking circumstances is 1.20, and he feels it should be 1.50 or 1.62.

Mr. Daly said they have developed an internal circulation plan where everything exited at the light and were criticized by staff and consultants because there is a 75-foot setback required from the curb line to the building and the criticism was that in the internal circulation plan that the 75-feet is substantially chewed up by roadways coming back and forth because they were horizontal/parallel roadways to the street and that was rejected, they then went to multiple interest actions the FDOT said they would not allow no different..., Ocean IV is a intersection with a roadway at Rascal House and FDOT said they didn't want an intersection at the light, they wanted it to either go in before the light and go out after the light, which is what they did at Ocean IV at the request of FDOT. He said when staff and consultants suggested that they not have parallel roadways chewing up all the landscape areas they then went to multiple entrances which require a u-turn if you want to head southbound on an exit. He said staff and consultants did not approve it, they said to go to FDOT and get them to approve it if that is what they want and FDOT approved it.

Commissioner Goodman said that the problem is that we don't own Collins Avenue, anything that happens on Collins Avenue has to go to FDOT and Miami-Dade County. He said that Miami-Dade County controls the traffic lights and FDOT controls the road, but they don't live here and the citizens of Sunny Isles Beach are becoming very upset and we have no avenue to try to change anything because we only have one street. Mr. Daly said they have 100% valet parking for the residents. Mr. Seiger said that in reference to the beach access, they have given two and the north one is substantially larger then the requirement, so they tried to compensate the fact for not going through the middle of the site.

Mayor Edelcup said it is apparent that we have a problem with the variance, and Mr. Daly said to consider the variance gone. Mayor Edelcup said that we can therefore look at this on the basis then if you are withdrawing the variance that we are basically going to have to move this into a deferral. He said we can move forward to get additional comments from the public and Mr. Goldstein said he would like to hear public comment. Commissioner Brezin said that the continuous 825 feet frontage on Collins Avenue to her is certainly out of character and harmony and the compatibility of the surrounding structures. Mayor Edelcup said that one of the reasons we came up with a liberal code was to get rid of those old two-story motels that were a blight on the east side of the City and one of the major trade-offs for that was that we would allow tall, skinny buildings with view corridors and beach accesses and that was the promise that this Commission and the previous Commission made to the public and he thinks we are duty-bound to live by our promise to the public and we have to keep that in mind when we are looking at this project or any future projects.

Vice Mayor Thaler noted that on the handicapped area, by consolidating the three buildings that they have cut out some handicapped numbers on an individual basis there should be more

handicapped spots then they are putting into this building and they should look into that. Mr. Daly said that the required handicapped subject to the building permit would be provided in accordance with the ADA compliance. Vice Mayor Thaler said it is 2% for the total the way it is laid out, if you do it by individual buildings they take 8-handicapped spots per building, which would be 24, the other way it comes down to the need of 20, there is a difference of four more spaces. Commissioner Goodman said there are 813 apartments and from what he read on the plan, they have 26 parking spaces for guests.

Mayor Edelcup opened the public hearing. Abel Camps asked about beach accesses and City Manager noted that there was one open at the south end of Turnberry and the City has been negotiating with the new owners of the Fantasy site who seemed to be agreeable to giving the City a temporary access. Mayor Edelcup said that we are also working on other solutions.

Mayor Edelcup noted that in looking at the Site Plan reviews he didn't notice one of the other provisions that are required and that is the art in public/private places. Mr. Goldstein said for the record there are three locations for statues/fountains that are shown in the plans for the art in public places as well as two mural locations. He said that they will modify their plans in accordance with the Code and come back to move forward with their application. He noted for a bookkeeping item, request #2 was the TDR request, and they had requested alternate TDR options, and they sent a letter to staff yesterday withdrawing option A and preceding with Option B. Mayor Edelcup said that in the future anyone bringing site plans to them for review, it is not in the spirit of the City's procedure to come in with alternatives, that they come in with their final site plan, and not burden the Commission to understand two and then having one of them dropped during the evening.

Mayor Edelcup asked Acting City Attorney Wright how we would legally defer this and she said that there are two ways of deferring this item, it can either be elected or granted, meaning that it can be by motion of the applicant or by the Commission. Mr. Goldstein asked that it be deferred to the next scheduled Commission meeting.

Commissioner Iglesias moved and Commissioner Brezin seconded **a motion for deferral to July 14, 2005. The motion was approved by a voice vote of 5-0 in favor.**

7. ORDINANCES FOR FIRST READING

None

8. PUBLIC HEARINGS (Other than Ordinances for Second Reading)

None

9. ORDINANCES FOR SECOND READING (*Public Hearings*)

Sitting in as the Local Planning Agency and the City Commission, to Consider an Ordinance Amending the Land Development Regulations (LDRs)

9A.1 A Resolution of the Local Planning Agency of the City of Sunny Isles Beach, Florida, Recommending to the City Commission of Sunny Isles Beach, the Ordinance Amending Ordinance No. 2004-218, Amending Section 265-23 of the Land Development Regulations, Relating to Transfer of Development Rights; Providing for Revised Definitions; Providing for Amendments to the Provision on TDRs Transferred from City-Owned Sender Sites; Providing for Amended Development Limitations on TDRs Transferred from Privately-Owned Sender Sites; Providing for a Clarification to the Provision on TDRs from a Privately Owned Sender Site to a Privately Owned Receiver Site; Providing for Clarifications to Development Limitations Upon Receiving Sites; Providing for Amendments to the Review Process by the City Commission and Recording of Documents; Providing for an Amendment to the Zoning in Progress Provision and the TDR Bank Procedures and Limitations, Attached hereto as Exhibit “A”; Providing for an Effective Date.

Action: City Clerk Hines read the title and noted under the second whereas clause, it should read section 265-23 not 165-23.

Public Speakers: none

Vice Mayor Thaler moved and Commissioner Brezin seconded the **motion**. **LPA Resolution No. 2005-29 was adopted as amended, by a voice vote of 5-0 in favor.**

9A.2 An Ordinance of the City Commission of the City of Sunny Isles Beach, Florida, **Amending Ordinance No. 2004-218, Amending Section 265-23 of the Land Development Regulations, Relating to Transfer of Development Rights;** Providing for Revised Definitions; Providing for Amendments to the Provision on TDRs Transferred from City-Owned Sender Sites; Providing for Amended Development Limitations on TDRs Transferred from Privately-Owned Sender Sites; Providing for a Clarification to the Provision on TDRs from a Privately Owned Sender Site to a Privately Owned Receiver Site; Providing for Clarifications to Development Limitations Upon Receiving Sites; Providing for Amendments to the Review Process by the City Commission and Recording of Documents; Providing for an Amendment to the Zoning in Progress Provision and the TDR Bank Procedures and Limitations; Providing for a Repealer; Providing for Severability; Providing for an Effective Date.

(First Reading 05/12/05)

Action: City Clerk Hines read the title and City Planner Shelley Eichner reported the change that was made at First Reading on page 5 in paragraph 2B.

Public Speakers: Henry Kay

Commissioner Iglesias said that from the last meeting to this meeting circumstances occurred that no property owners may have been affected except the Bellagio, therefore he is not really against this because of the circumstance but he wanted to note for the record in the last paragraph on page 5 “in order to ensure that no more development rights are created than was originally established from the sender site, it is critical that the concurrent and simultaneous reduction occur both density and intensity of the equation”. He said that he did not agree with it but he agrees with what the Mayor said at the last meeting that we do it concurrently and it is certainly a lot easier for math. He said that he thinks TDRs is an excellent system because

TDRs do not create new density or new FAR, you transfer from one point to another point. He said it is a win-win situation for the City because we get a park and for the developers they are transferring from an area where the tax base is higher and therefore we get more money and for the person that sold it.

Mayor Edelcup said he wanted to go on the record to inform everyone that he wrote a memo to staff instructing staff to set up the procedure for sub-accounts. He said it is not required to be in the ordinance as it is an administrative procedure that we can accomplish.

Commissioner Iglesias moved and Vice Mayor Thaler seconded a **motion to adopt the ordinance. Ordinance No. 2005-230 was adopted by a roll call vote of 5-0 in favor.**

Vote:

Commissioner Brezin	<u>yes</u>
Commissioner Goodman	<u>yes</u>
Commissioner Iglesias	<u>yes</u>
Vice Mayor Thaler	<u>yes</u>
Mayor Edelcup	<u>yes</u>

Mayor Edelcup asked for two minor changes: Move up 10B and 10K before 10A, and the Commission agreed.

10. RESOLUTIONS

- 10A.** A Resolution of the City Commission of the City of Sunny isles Beach, Florida, Approving an Agreement between the City and **Calvin, Giordano and Associates, Inc., for Ongoing Geographical Information System (GIS) Interactive Web Hosting and GIS Data Maintenance**, in an Amount Not to Exceed \$3,097.50 Per Month, Attached hereto as Exhibit "A"; Authorizing the Mayor to Execute Said Agreement; Authorizing the City Manager to Do All Things Necessary to Effectuate the Terms of this Resolution; Providing for an Effective Date.

Action: City Clerk Hines read the title and Information Technology Director Derrick Arias reported. Vice Mayor Thaler asked if this is the maximum we can be charged and IT Director Arias said yes.

Public Speakers: none

Commissioner Iglesias moved and Commissioner Brezin seconded a **motion to approve the resolution. Resolution No. 2005-798 was adopted by a voice vote of 5-0 in favor.**

- 10B.** A Resolution of the City Commission of the City of Sunny Isles Beach, Florida, **Approving the Acceptance of a Donation in the Amount of ~~\$2,600.00~~ \$4,660.00 from the Sunflower Society to Sponsor Children to Attend the City Summer Day Camp Program;** Authorizing the City Manager to Do All Things Necessary to Effectuate this Resolution; Providing for an Effective Date.

Action: [City Clerk's Note: An amended Resolution was distributed before the meeting, and it was determined to be taken out of order before 10A.] City Clerk Hines read the title and

Connie Morrow of the Sunflower Society presented a check in the amount of \$4,660.00 to Cultural and Human Services Director Susan Simpson. Ms. Morrow thanked the Board members and Vice Mayor Thaler for their support. Vice Mayor Thaler noted that this check would send nine children to the Summer Day Camp Program.

Public Speakers: none

Commissioner Iglesias moved and Vice Mayor Thaler seconded a **motion to approve the resolution, as amended. Resolution No. 2005-799 was adopted by a voice vote of 5-0 in favor.**

- 10C.** A Resolution of the City Commission of the City of Sunny Isles Beach, Florida, Amending Resolution No. 2004-724, Approving a **Two-Year Agreement with BellSouth to Provide Local and Long Distance Services**, Attached hereto as Exhibit "A"; Authorizing the Mayor to Execute Said Agreement; Authorizing the City Manager to Do All Things Necessary to Effectuate the Terms of the Agreement; Providing for an Effective Date.

Action: City Clerk Hines read the title and Information Technology Director Derrick Arias reported noting that the City will be saving about \$1,200.00 a month.

Public Speakers: none

Commissioner Goodman moved and Commissioner Iglesias seconded a **motion to approve the resolution. Resolution No. 2005-800 was adopted by a voice vote of 5-0 in favor.**

- 10D.** A Resolution of the City Commission of the City of Sunny Isles Beach, Florida, **Awarding Bid No. 05-04-02, Attached Hereto as Exhibit "A", To Vila & Son Landscaping Corp. ("Contractor")** in the Total Amount of \$96,669.25 **for Landscape Improvements for Atlantic Isle and at Government Center**; Authorizing the Mayor to Execute an Agreement with Contractor, Attached hereto as Exhibit "B"; Authorizing the City Manager to Do All Things Necessary to Effectuate the Terms of the Agreement; Providing for an Effective Date.

Action: City Clerk Hines read the title and City Manager Russo noted that there is an amendment to the resolution as follows:

- in the second Whereas, after Atlantic Isle, add "and Government Center";
- in the last Whereas after the amount of "96,659.25 add "of which approximately \$6,000.00 is for the Government Center";
- in Section 2 after Atlantic Isle, add "and Government Center"; and
- in Section 3 after the amount of "96,659.25 add "of which approximately \$6,000.00 is for the Government Center".

City Manager Russo said that the reason for the amendment is that approximately 25% of the dollar amount of the Atlantic Isle landscaping is being paid for by the Atlantic Isle Association and we don't want them to pay more than their fair share. Public Works Director James Watts reported noting that once the Notice to Proceed is sent to Vila & Son, that this job will be completed within 45 days.

Public Speakers: none

Commissioner Goodman asked if Vila & Son will maintain it as part of the contract and Public Works Director Watts said that it will be handled by Lukes' Landscaping.

Commissioner Goodman moved and Commissioner Iglesias seconded a **motion to approve the resolution, as amended. Resolution No. 2005-801 was adopted by a voice vote of 5-0 in favor.**

- 10E.** A Resolution of the City Commission of the City of Sunny Isles Beach, Florida Approving an Agreement with the Town of **Bay Harbor Islands and Participating Municipal Police Departments for Police Mutual Aid and the Joint Declaration to the Mutual Aid Agreement**; Authorizing the Mayor to Execute the Agreement and the Police Chief to Execute the Joint Declaration; Authorizing the City Manager to Do All Things Necessary to Effectuate the Intent of this Resolution; Providing for an Effective Date.

Action: City Clerk Hines read the title and Police Chief Fred Maas reported.

Public Speakers: none

Commissioner Goodman moved and Vice Mayor Thaler seconded a **motion to approve the resolution. Resolution No. 2005-802 was adopted by a voice vote of 5-0 in favor.**

- 10F.** A Resolution of the City Commission of the City of Sunny Isles Beach, Florida, Authorizing the City Manager and the Chief of Police to Enter into a **Renewal Agreement with the Federal Government (United States Department of Justice and Treasury) to Receive Forfeited Property**, Effective from October 1, 2005 through September 30, 2008; Authorizing the Mayor and the Chief of Police to Execute Said Agreement; Authorizing the City Manager and Chief of Police to Do All Things Necessary to Effectuate this Agreement; Providing for an Effective Date.

Action: City Clerk Hines read the title and Police Chief Fred Maas reported.

Public Speakers: none

Commissioner Goodman moved and Vice Mayor Thaler seconded a **motion to approve the resolution. Resolution No. 2005-803 was adopted by a voice vote of 5-0 in favor.**

- 10G.** A Resolution of the City Commission of the City of Sunny Isles Beach, Florida, Authorizing the **Purchase of Office Furniture from Herman Miller Corporate Design Choice, Inc.**, Under State of Florida Government Contract No. A40913, in an Amount of \$24,761.84, Attached hereto as Exhibit "A"; Authorizing the City Manager to Do All Things Necessary to Effectuate the Terms of this Resolution; Providing for an Effective Date.

Action: City Clerk Hines read the title and Police Chief Fred Maas reported.

Public Speakers: none

Vice Mayor Thaler said he wanted to add that the delivery is expected the week of July 18, 2005. Planning and Zoning Administrator asked Chief Maas to have Barbara Valera submit the PO as soon as possible because that is when the delivery date will start. Mayor Edelcup said that Vice Mayor Thaler's amendment is to be added.

Commissioner Goodman moved and Commissioner Iglesias seconded a **motion to approve the resolution, as amended. Resolution No. 2005-804 was adopted by a voice vote of 5-0 in favor.**

- 10H.** A Resolution of the City Commission of the City of Sunny isles Beach, Florida, Approving the **Second Amendment to the Agreement between the City of Sunny Isles Beach and Marlin Engineering, Inc.**, Attached hereto as Exhibit "A", in the Amount Not to Exceed \$17,053.90, for Additional Services to Convert Current Electronic Files to a Format Acceptable to Florida Department of Transportation and Upgrade Pedestrian Crosswalk for the Sunny Isles Boulevard Project; Authorizing the Mayor to Execute Amendment to Agreement; Authorizing the City Manager to Take Any and All Action as May be Necessary to Effectuate this Resolution; Providing for an Effective Date.

Action: [City Clerk's Note: An amended Resolution was distributed before the meeting.] City Clerk Hines read the title and Public Works Director Watts reported and noted that this amendment should finish their work. Mayor Edelcup asked which crosswalk this was and Public Works Director Watts said it was the one on Collins Avenue closest to the bridge [at 163rd Street] where the light is.

Public Speakers: none

Commissioner Brezin moved a **motion to approve the resolution, as amended. Resolution No. 2005-805 was adopted by a voice vote of 5-0 in favor.**

- 10I.** A Resolution of the City Commission of the City of Sunny isles Beach, Florida, Approving an **Interlocal Agreement with Miami-Dade County**, Attached hereto as Exhibit "A", for the Performance of Professional Services Associated with the Five-Year NPDES Operating Permit; Authorizing the City to Contribute its Annual Share Amount of \$9,450.00; Authorizing the Mayor to Execute Said Agreement; Authorizing the City Manager to Do All Things Necessary to Effectuate the Terms of the Agreement; Providing for an Effective Date.

Action: City Clerk Hines read the title and Public Works Director Watts reported.

Public Speakers: none

Commissioner Goodman moved and Vice Mayor Thaler seconded a **motion to approve the resolution. Resolution No. 2005-806 was adopted by a voice vote of 5-0 in favor.**

- 10J.** A Resolution of the City Commission of the City of Sunny isles Beach, Florida, Approving a **Lease Agreement with Miami-Dade County for the Lease of Property Located at 17200 Collins Avenue for a Fire Station**, in the Amount of \$1.00 per Year, Attached hereto as Attachment “A”; Providing the Mayor with the Authority to Execute the Agreement; Providing the City Manager with the Authority to Do All Things Necessary to Effectuate the Terms of the Agreement; Providing for an Effective Date.

Action: City Clerk Hines read the title and City Manager Russo said that we are deferring this item because we have had some changes that we want to make to the agreement which the County is aware of and we need more time. Mayor Edelcup asked if we would bring it back in July and City Manager Russo said yes.

Commissioner Goodman asked if they are anticipating tearing down the building there now and build a new one or just adding to the one there now. City Manager Russo said that he had not gone over that detail with them but he believes they are building a whole new station. Acting City Attorney Wright said that they are talking about both but that they have not made a decision yet. She said right now they would like to make the improvements but they don't know exactly what or how far they are going to go. Commissioner Goodman asked if it had anything to do with finances and Acting City Attorney Wright said yes, but she is not sure if that is all the issues.

Mayor Edelcup said that one of the other issues that he had mentioned to staff was when they are speaking to the Fire Department as to whether or not we can get a satellite office for the fire inspection up in Sunny Isles Beach since we are providing the facility for them. He said that maybe this can be an inducement to have a satellite office up here and he asked the City Manager to pursue that. Commissioner Goodman said if any issues come up and they need the City's help or support he would appreciate finding out so he can work on it. City Manager Russo said that might be on their funding although we had been led to believe that this is a priority for them.

- 10K.** A Resolution of the City Commission of the City of Sunny isles Beach, Florida, Approving a **Parking License Agreement by and between the City of Sunny Isles Beach and Fortune Beach, LLC** for Use of a Portion of the Parking Lots Under the William Lehman Causeway and the Sunny Isles Boulevard Causeway; Authorizing the Mayor to Execute the Parking License Agreement, Attached hereto as Exhibit “A”; Authorizing the City Manager to Do All Things Necessary to Effectuate the Agreement; Providing for an Effective Date.

Action: City Clerk Hines read the title and City Manager Russo reported that this agreement came about because Fortune had previously leased space under the William Lehman Causeway with their Meridien project, the Tangiers site, and that expired at the end of December 2004. He said during this time period the City had been negotiating for them based on the letter that he initiated to the various developers in the area to lease the space under the Sunny Isles Causeway for use to keep construction equipment and vehicles off of Collins. He said in that area the City has a right to lease out exclusively, in addition they were looking for spaces to continue under the Lehman Causeway, which we do in a non-

exclusive basis as we had done before with Fortune and Related Companies.

City Manager Russo said at that same time they had various discussions over creating a park-like setting at the western nose of the area under the Sunny Isles Causeway. He said that they had numerous negotiations, meetings and discussions with FDOT to get permission to build a park-like setting there inclusive of a parking area, an area ultimately to be used for the water taxi, combined through an offer of Fortune International to build that out over time, to start in a year. He said the City came up with schematic plans with the help of Bill O'Leary and that whole process has resulted in this 3-year agreement which would provide leasing up to 400-spaces under the Lehman Causeway and a minimal number of spaces remaining under the Sunny Isles Causeway, approximately 80 now, and then diminished significantly less once they start building the park-like setting in a year. Mayor Edelcup asked if the park-like setting would be created within a year of when we sign this, and City Manager Russo said they would utilize the lots for one year, and start building it in one year.

Mayor Edelcup asked when it would be completed, and City Manager Russo said it would take about six months, which would be a total of 18-months. Mayor Edelcup said it should be included in the agreement.

Mayor Edelcup noted that after three years the agreement can be renewed and asked if the rate is determined, and City Manager Russo said they would negotiate the rate. Mayor Edelcup said that the agreement needs to be revised to provide for a negotiated rate on any renewal because the lease agreement is silent and noted that the term is on page 278 of the agenda. City Manager Russo said it is noted in section 7 that if we renew it they would pay the rate that we currently charge for the monthly parking permit, but we would clarify it. Acting City Attorney Wright asked Judith Burke if Fortune would agree to what the Mayor is asking for and she said yes. Acting City Attorney Wright clarified that in Section 8 under Term, what we would say is "The amount of the rate that would be charged under an extended term would be the amount equal to the monthly parking fee currently charged by the City at that time."

Public Speakers: Judith Burke

Judith Burke, Esq., representing Fortune, said that Fortune would commence development clearly within one year, that is in the agreement, and they would pursue the construction as quickly as they can, and estimate that it will take six months. Mayor Edelcup said that is fine as long as we have it on the record. Commissioner Iglesias pointed out that FDOT has the right to within 30-days terminate the lease if they need it for maintenance of traffic or staging, or if anything would happen, and asked if they were aware of this, and City Manager Russo said yes and that agreement is part and parcel of this and that we got some pretty good assurances from FDOT that it wouldn't happen. He said that is one of the reasons why there are no structures on this park-like setting, so if FDOT does need to go in there to do any kind of maintenance of the under structure of the causeway they can get in there freely without destroying any of this improvement that we are making there because the middle would be a parking lot. Mayor Edelcup asked if both parties acknowledged the prior right of that, and Acting City Attorney Wright said it was provided in the agreement.

Commissioner Goodman moved and Vice Mayor Thaler seconded a **motion to approve the resolution, as amended. Resolution No. 2005-807 was adopted by a voice vote of 5-0 in**

favor.

- 10L.** A Resolution of the City Commission of the City of Sunny Isles Beach, Florida, **Authorizing the City Manager to Negotiate and Enter into a Third Amendment to the Agreement** in Substantially the Same Form as the Agreement Attached hereto as Exhibit “A”, by and between the City of Sunny Isles Beach and the **Newport Operating Management Corp., D/B/A Newport Beachside Resort**, its Successors or Assigns (“Permittee”), to **Temporarily Close Pier Park**; Providing the City Manager with the Authority to Do All Things Necessary to Effectuate the Terms of this Agreement; Providing for an Effective Date.

(Moved to Item 12A)

11. MOTIONS

None

12. DISCUSSION ITEMS

- 12A.** Discussion regarding an Amendment to the Ingress Egress Agreement with La Perla Sunny Isles, LLC for the **Temporary Closure of Pier Park**.

Action: Mayor Edelcup asked Stanley Price to address this item.

Public Speakers: Stanley Price Esq.; Richard Lamandon

Stanley Price, Esq., representing La Perla/Cornerstone Group, reported that they were approved originally for the La Perla Development in 2002, and they have run into a lot of issues with the Park, which ultimately led to a resolution with the City in an Egress Agreement with the City in 2004. He said since they entered into that Agreement they have been fully cooperative with the City but because of the importance of the Park closure, they were asked in February 2005 to submit a schedule of events and on February 14, 2005 they submitted a letter to Clayton Parker advising him of the construction schedule. He said that in early June 2005, in order to ensure that their construction schedule can be met in terms of life safety issues for people using the Park, commence work on improving the Park, closing off the area during the construction. Part of their agreement was that no construction staging could take place in the Park so they provided a construction schedule whereby that portion of the project closest to the Park would be the last portion of construction which is the wall of the parking garage. He said they have now reached that point and that is why time has become of the essence so they can do the improvements to the park and close their units. He said that they did not hear back from the City so on May 10, 2005 they submitted a letter to City Manager Russo stating how important the scheduling would be.

Mr. Price said that approximately two weeks ago a meeting was held with Alliance Construction, their general contractor on the property, in which certain issues were raised for the first time, and he learned for the first time on Tuesday morning [June 7, 2005] when he

picked up the Miami Herald that there is an issue. He spoke to Richard Lamandon, Principle of La Perla/ Cornerstone Group, Tuesday, and later that day he called the City Attorney as to what the issues were, and suggested that they sit down in a meeting to discuss the issues and the resolutions of those issues. He said that he met with City Manager Russo and Acting City Attorney Wright this afternoon, and basically the issues discussed with them were two-fold: 1) The City believed they were entitled to compensation for lost revenues during that portion of time in which construction of the Park was necessitated by the creation of the Park, cutting off the area for life-safety issues so they can construct that portion of their building which is the entranceway to their building; and 2) the issue of ensuring the City that this would be done on an expedited basis, and they were told that their representatives indicated to the City that this could be done in six months time. He noted that he would submit both letters into the record which indicated no such representations were ever made by them, that they have always envisioned a nine-month process. He said that their construction was scheduled at a point in time where they wanted to temporarily terminate the use of the park would coincide with that portion which is not the season for the Park and the use of the beach. He said it is also the rainy season and hurricane season so they tried to build a realistic schedule and felt that nine months would be needed for completion of this Park. He said that the completion of this Park is very important to them in regard to their ability to close units.

Mr. Price said when he spoke to the City about compensation they said they are generating about \$12,500.00 a month in parking revenue. He noted that it was always envisioned that his client would continue to operate the parking as they had done in the past. He said that they had purchased the property from Dr. Cornfeld and no longer have an association with Dr. Cornfeld, even though as part of their commitment to the City that during that temporary cessation of the Park, they would agree at their expense to let people park across the street and they would charge that rate that is charged and regulated by the City. He said at the end of the Public Hearing of that matter, City Manager Russo had suggested to them that maybe it would be better for the City to operate the parking, and his client said if that is what the City desires, then they would have no problem letting the City operate that Park. He noted that he pulled out the agreement with the City and that it was always fully contemplated that the Park was going to be closed. He said that it was fully understood that the revenues that were going to be generated at the time the City had the Park would be maintained by the City and at the end of the day, they were going to provide 29 parking spaces within their building. He said that the County was additionally concerned that the Park should not be impaired over to what was previously operated there so as part of the ultimate settlement with the County and the City, they agreed that they would replace the 29 spaces in the Park and in addition, still provide an additional minimum of 29 parking spaces in their building at a fee not to exceed what the City charges for parking.

Mr. Price said the reason he asked for deferral earlier this evening was because he thought they were pretty close to a negotiated form, and it would have to come back to the Commission for ratification, as time is at the essence because they are ready to commence construction. He said that what they would like to recommend to resolve this issue is that they would be prepared to give the City an agreement that they would complete the Park in six months subject to force majeure (hurricane contingencies), they would agree to a penalty consistent with the Ingress Egress Agreement that they presently have which is \$500 a day, if they do not complete the Park, and they asked to waive the \$12,500 fee so they can take

the money and hire additional workers to expedite the completion of the Park. He asked that if this is acceptable to the Commission, to adopt a resolution, instruct the City Attorney and him to sit down, reduce this commitment in writing and let them proceed with the closing of the Park.

Mayor Edelcup noted that Mr. Price mentioned that they were going to be operating the Park, as he knows, the City cancelled the lease with the operator of the Park because he breached the agreement and that is how the City ended up running it. He said it was out of Mr. Price's control since it was Dr. Cornfeld that was operating it at the time, but it still remains that the City operates it and enjoys \$12,500 a month revenue from that operation. City Manager Russo said we are talking about the displacement of the 29 spaces during construction of the Park which would be, by the previous agreement that was made, across the street in the open parking lot of the Newport.

Richard Lamandon said that there will be an additional 29 parking spaces and that they would enter through the same driveway except they will be parked by valet from the building. He also noted that the City will be building some bathrooms, although they are not permitted yet and they won't go up at the same time, they have been asked to plumb those out at their cost to do those bathrooms. He said that there is a sewer line that goes from those bathrooms that goes all the way out to the street and if they have to put that sewer line in going all the way out to the street, they will have to once again have to dig up that Park, and close it once again to put in the sewer line. He said that they have been asked as a courtesy if they could run their sewer line across to their sewer line which is on their property for their building and have that service the Park to stop the Park from being closed down a second time to put those bathrooms in. Mr. Lamandon said that they are willing to consider all of that at their cost, but at the same time that they are considering that they are also being asked to be penalized for closing it down, and being asked for an outrageous fee if they don't hit it on time. He said he is willing to spend the \$12,500 to get the extra people and get it done for the City in the six-month period of time. He said that they have to bear all the extra cost of putting in running the sewer for the bathrooms, water lines, and being hit on all sides, and if he doesn't get it done in six months to penalize them.

City Manager Russo clarified what Mr. Lamandon said and if it includes all this he would go along with it: stubbing out of the sewer line, water line, drainage line, and electrical conduit to be put in there. Mr. Lamandon asked A.C. Kid, General Superintendent of Alliance Construction, if that was all the extra cost they had talked about earlier and he said yes, and agreed. Vice Mayor Thaler said the way they have laid this out he feels that the City needs some leverage to get that Park finished in six months and that they should have a bigger penalty and get it done in six months. Mr. Lamandon said that at that time they will have about \$90 Million out on construction and that is a lot of incentive to get it done. Mayor Edelcup said that what they are saying is that they want to ensure the public that they are going to get their Park back in six months, give us some leverage that the Vice Mayor is asking for. Mr. Lamandon said that what happens today is that someone gives you a commitment to build something and they don't show up when they say they will, and he considers \$500 a day as penalty, and Mayor Edelcup said the money is not the issue, he just wants to make sure the City gets the Park back in six months. He said if we can build into the agreement that six months from whenever the agreement starts, that we get the Park back no matter where they are at, barring an act of God or force majeure. Mr. Lamandon asked

Mr. Kidd if they can do it and he said yes. Commissioner Goodman asked if that will include what the Manager said the stub-outs, and Mr. Lamandon said yes.

Commissioner Goodman asked if they will be collecting the fees for the 29 parking spaces and Mr. Lamandon said no, they will be parking across the street and that Dr. Cornfeld has agreed to 29 spaces across the street. City Manager Russo said that he has a call into Dr. Cornfeld but he has not returned it yet, but that agreement says that they are parking across the street. Commissioner Iglesias said that he likes the deal. Mayor Edelcup said we need time to put this deal in a documentary form so that we can approve something.

Acting City Attorney Wright said to reiterate the terms: 1) Six months to fully construct the improvements including stubbings and stuckups from the date of the effective date of the agreement and there may be an extension of time only for force majeure, and force majeure only includes hurricanes. Mr. Lamandon said he spoke to City Manager Russo today and said if there was an occurrence that is not a hurricane but it is something extraordinary they would communicate with him on that. City Manager Russo said that the one they did discuss which has happened before is an emergency issue with the County Sewer Department. He noted that they have a major overflow sewer line that goes through that Park and they have had to open it up on an emergency basis and actually impacted their construction, and Commissioner Iglesias said that happens when you have excessive rain. Mayor Edelcup said if it is accepted by the City Manager as an exception then the City would allow that to be tolling time. Mr. Price said to define it in the agreement to define force majeure and have the City determined the period of time in which the force majeure is in effect and the Commission agreed. Acting City Attorney Wright also noted 2) the lost revenue that the City is going to be experiencing. She said the City is willing not to go after them for the lost revenue however, they agree to apply the \$12,500 per month towards their good faith effort in trying to make sure this Park is completed in time, and City Manager Russo added the stubbing-out of all the utilities that the City needs for that Park, the bathrooms, and Mayor Edelcup stated that it should read in lieu of the \$12,500 they will do all the following and list all of that. City Manager Russo said that it would include their due diligence to move quickly and the stubbing-out of the water, sewer, drainage and electric utilities that the City would need. Mr. Price asked that there be recognition in this addendum that the construction of the bathrooms be coordinated with Jade, and City Manager Russo said that they were at the meeting they held and they are doing their best to coordinate that. City Manager Russo also stated that the pedestrian beach access would at all times maintained.

Acting City Attorney Wright said that this agreement will come back to the July 14, 2005 Commission meeting for ratification. Mayor Edelcup said if there are changes this Commission may not approve it.

Commissioner Goodman moved and Commissioner Brezin seconded a **motion authorizing the City Manager to negotiate and execute an agreement with La Perla based upon the terms discussed tonight. The motion was adopted by a voice vote of 5-0 in favor.**

12B. New Item:

Discussion to Re-Prioritize Capital Projects.

Action: Commissioner Iglesias said about two months ago they all met with FPL and discussed going back and forth looking at Atlantic Isle for the undergrounding and now they are going to do the landscaping and, in speaking with the City Manager, he wanted to bring back to the Commission to re-prioritize. City Manager Russo said that they had a Capital Projects meeting this afternoon and are looking in the budget on re-ordering our priorities. He said in the works with engineering being done right now on undergrounding is the alleyway in Golden Shores, 172nd and North Bay Road, a small section we are adding for streetlights on North Bay Road just north of 174th Street. He stated that they are reevaluating because Sunny Isles Boulevard is being done as part of our project and where we thought we were going to be starting more on Collins the development is from where we started this plan, the developers are taking care of sections that we thought we might have to go into. He said he has to get some numbers, they have to talk to FPL we just had a meeting to talk about the numbers aspect of that and he and Jorge had a meeting with Scott Gombar about looking at reevaluating the priority list, and today we had a meeting about numbers.

Commissioner Iglesias said based on the deal that we made with the Sayan property the property owners in Atlantic Isle are going to get money which we can use, and City Manager Russo said that timing may be good because everyone has to make their own individual connection and we can't get involved in that. City Manager Russo said that there was a question whether or not we could mandate it which we still have to look at. Commissioner Goodman asked if that is going to be looked at in the 2006 budget and City Manager Russo said that they are looking at it in there and there are a few phases to it and this is the kind of thing that would definitely go into 2005/2006/2007 because we have a couple of areas already in the works. Mayor Edelcup said it is in the 10-year plan. Vice Mayor Thaler asked if all this work would effect the landscaping that we just did, and Commissioner Iglesias said no.

Mayor Edelcup said to schedule a Manager's update and City Manager Russo suggested to schedule a Workshop on City Projects at 5:30 p.m. and break at 7:00 p.m., prior to the July 14, 2005 Commission meeting. The Commission agreed and Commissioner Iglesias said he will verify his calendar.

13. CITIZENS' FORUM: REQUESTS, PETITIONS & OTHER COMMUNICATIONS

- 13A.** Henry Kay discussed the language of the agendas as published. He said he attended a luncheon meeting by Legislative effort to pass laws that would be destructive for Sunny Isles Beach residents who live in condominiums. He mentioned mandatory reserves, and that they have been asked to communicate throughout Florida to create in every County a center of communications to direct ourselves to our Legislators and convince them to convey to them the dangers of their proposals.

14. ADJOURNMENT

Commissioner Goodman moved and Commissioner Iglesias seconded a motion to adjourn the meeting, and Mayor Edelcup adjourned it at 10:18 p.m.

Respectfully submitted by:

Approved by the City Commission on July 14, 2005

Jane A. Hines, City Clerk

Norman S. Edelcup, Mayor