BEFORE THE MIAMI BEACH CITY COMMISSION
DESIGN REVIEW BOARD FILE 22889

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IN RE: PALAU SUNSET HARBOR

All of Lots 22, 23, and 24, and the north 70 feet of Lots 25 and 26, Block 15A, Island View Addition According to the Plat Thereof as Recorded in Plat Book 9, Page 144 of the Public Records of Miami-Dade County
1201-1237 20th Street, Miami Beach, Florida
_____/

PETITION TO REVERSE DESIGN REVIEW BOARD DECISION

The Sunset Islands 3 and 4 Property Owners, Inc. ("Sunset") and Olga Lens ("Lens") (collectively "neighbors"), pursuant to section 118-262, City of Miami Beach Land Development Regulations, requests that the City of Miami Beach City Commission ("commission") at its March 13, 2013 meeting reverse the decision of the Miami Beach Design Review Board ("DRB") to grant the application for design review approval for the Palau Sunset Harbor development (DRB File No. 22889) ("Palau development"), or in the alternative remand the matter back to the DRB with instructions for review consistent with the requests herein.

Agenda Item R7A
Date 3-13-13

INTRODUCTION

Palau Sunset Harbor, LLC, ("Palau" or "applicant") applied for DRB approval for the Palau development, a large mixed use project proposed for property it owns at 1201-1237 20th Street, Miami Beach. The project would abut a well-established single-family residential neighborhood. The Palau development would not only destroy important view corridors to the water and from 20th Street to the historic Sunset Islands bridge but also block abutting neighbors' views even more than does the Sunset Harbor townhouses immediately to its west. Given the virtually unanimous objection to the project by its residential neighbors, no one was surprised that the Palau application consumed hours of contentious public hearings before the DRB. During the DRB review process not one neighbor spoke in favor of this massive development. Furthermore, the DRB decision-making process included: procedural error, a failure to correctly apply the law and on a key issue a failure to base its decision on competent substantial evidence.

At the core of any quasi-judicial body's review of an application is the basic guarantee that the process is fundamentally fair.[1] DRB members failed

[1] The city commission's review of this matter pursuant to section 118-262 also fails to provide a party seeking its review with the due process one would expect in a quasi-judicial proceeding. In this process, the party initiates the commission's review by filing the petition (if represented by counsel) and must file "appropriate legal briefs" setting forth argument and facts in support

to make required disclosures of meetings with Palau representatives prior to the meetings of August 7 and October 2, 2012. Such *ex parte* communication is contrary to a fair and impartial quasi-judicial hearing process and a breach of the city's obligation to provide basic procedural due process.

The failure of the applicant and design review staff to address compliance with the specific DRB review criteria, and the failure of the order to show compliance with those criteria shows that the DRB did not observe the essential requirements of law when it approved the application. This warrants reversal of the DRB decision.

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of its case. The petitioner must show that the DRB failed to provide due process, or did not observe the essential requirements of law, or failed to base its decision on competent substantial evidence. This mirrors the process and review standards of an appellate court. But that is where the similarities end. In an appellate proceeding, the petition is followed by a response to the arguments in the petition from the other side and that response brief is followed in many cases by a reply to those arguments. This process insures that all parties (and the court) know and understand all the arguments. This is transparent and open process that is fair and provides all parties procedural due process. Therefore, it leads to few if any surprises to either side. The Miami Beach process guarantees a closed and opaque process and is designed to keep information away from the petitioner. Here, the city and the applicant have all the information regarding the petitioner's arguments. But because there is no reciprocal obligation for the city or applicant to provide a response to the petition, the petitioner has no information regarding the city or applicant's arguments. The city commission is equally in the dark. All of this makes for a process that is skewed toward one side. That is a process that fails to meet the standards of basic fairness in order to afford all parties a fair, open and impartial hearing. In that hearing the "...the opportunity to be heard must be meaningful, full and fair, and not merely colorable or illusive." *Rucker v City of Ocala*, 684 So. 2d 836, 841 (Fla. 1st DCA 1996).

Design review staff's conclusory statements on compliance with required review standards without any stated factual basis are not competent substantial evidence. Therefore, the DRB decision and order regarding the project's compliance with all the review criteria is not based on competent substantial evidence.

The DRB has no authority to delegate to city staff any of its duties to evaluate and make final determinations about whether the application meets DRB review criteria. This authority is vested only in the DRB, but that board through its order incorrectly delegated that power to the city's design review staff.

These fundamental failures on the part of the DRB warrant the reversal of that board's approval of the Palau application.

PARTIES

Sunset represents its members who are property owners on both Sunset Island 3 and Sunset Island 4 across the waterway from the proposed Palau development site. Its members include property owners within 375-feet of the site.

Lens owns the property at 2000 North Bay Road, across Sunset Drive from and within 375-feet of the proposed Palau development site.

Palau owns the property located at 1201-1237 20th Street, Miami Beach, Florida. It applied for and received DRB approval for the Palau development on that site.

On August 7, and October 2, 2012, the DRB held a publicly-noticed, quasi-judicial hearing and reviewed the application for design review approval for the Palau development. At that hearing the neighbors individually and through counsel appeared before the Design Review Board. Exhibit N, 68:15-70:1, 93:5-94:5, 71:10-77:11, 182:9-184:11, August 7, 2012 Transcript. Exhibit O, 56:14-59:23, 60:10-70:10, 72:7-76:12, 103:17-104:19, 130:21-146:12, October 2, 2012 Transcript Volume 1.

FACTUAL BACKGROUND

In late 2011, Palau applied to develop the property abutting the Sunset Islands and its historically-designated entrance. Exhibit A, Aerial map of area. The applicant proposed a bulky, 5-story, 109,279 square-foot (including approximately 13,056 square feet of commercial space) mixed-use development on this CD-2 (Commercial Medium Intensity zoning district)-zoned site. Exhibit B, Planning Board Staff Report, April 24, 2012.

The Palau site abuts RS-3 (property on N. Bay Road and Sunset Drive) and RS-4 (Sunset Island 4) single family residential neighborhoods to the east

and north and RM-3 multi-family property (Sunset Harbour Townhomes) to the west. Exhibit C, Zoning Map.

At the planning board the applicant sought a conditional use approval to allow development exceeding 50,000 square-feet plus the use of mechanical parking lifts, among other things. Exhibit D, Planning Board Staff Report, April 24, 2012.

Faced with strong neighborhood opposition, the planning board continued the matter several times. Neighbors sought a project that was less bulky and more in scale with the abutting single-family residential neighborhood. In particular, the neighbors cited the monolithic massing of the building and requested that the board require increased setbacks and more articulation to lessen the impact of the massive structure on its neighbors. Ultimately on May 22, 2012, the planning board approved the conditional use for a modified development with a specific condition relating to Design Review Board approval:

> "5. The applicant shall work with Design Review Staff to further modify the proposal to address the following, subject to review and approval of the Design Review Board:
>
> (a) Pulling back the massing, east of the World Savings Bank property, with emphasis on upper floor setback and the northeast corner of the building and adding more green space.

(b) Further modifying the ground floor area along the canal (terraces) to minimize the hardscape and increase the amount of open, landscaped area at grade level.

(c) Adding more canopy trees for increased shade to the landscape plan particularly along Sunset Drive. Also work with Sheryl Gold on this item.

(d) Removing parking on Sunset Drive.

(e) Reducing encroachment on the line of sight from Sunset Island 4.

(f) Working with Public Works staff to limit u-turns at the guardhouse."

Exhibit D, August 7, 2012 Design Review Board Staff Report.

With this directive from the planning board, the applicant made revisions to its plan and submitted it to the Design Review Board. That board held its initial hearing on the application on August 7, 2012.

At that hearing the neighbors focused on the zoning code charge to the DRB to examine development plans for consistency with the criteria in section 118-251 regarding aesthetics, safety and function of the structure and the physical attributes of the project in relation to the site, adjacent structures and the surrounding community. According the DRB review criteria, the development must not have a negative impact on adjacent neighborhoods. Under these standards, the developer must eliminate or mitigate aspects of the proposed project that adversely affect the surrounding area.

Neighbors presented expert testimony addressing the impacts of the project on the adjacent properties. Their expert and the city's design review staff found that the project failed to meet eight of the fifteen applicable standards. Exhibit E Alvarez Power Point Presentation, and Exhibit D, August 7, Design Review Board staff report). Neighbors also submitted a transcript of the expert testimony of University of Miami Professor of Architecture Francois Le Jeune at the May 22, 2012 Planning Board hearing on Palau's conditional use application. Professor Le Jeune stated that the project should be redesigned to reduce its mass and scale and maintain the view corridor from West Avenue toward the water and Sunset Island 4. Exhibit F, Excerpt of Francois Le Jeune Testimony, May 22, Planning Board hearing.

In their discussion of the DRB's neighborhood compatibility criteria the neighbors addressed the Palau project's impacts on the historic Sunset Islands neighborhood and the historic Sunset Island Bridge. In particular, the neighbors cited the 1996 Historic Designation Report. The report discussed the importance of "sensitive new construction" in the context of the neighborhood's character, which is defined by the elements of scale, proportion, massing, materials and details. Exhibit G Designation Report, 21. The report also examined "compatibility with the character of the Historic Sunset Islands Neighborhood," which positively influences proportion and

scale, massing and materials. Id., 22. In particular, the report noted: "When there is a combination of structural building types surrounding a project site, scale and proportion of the buildings closest to the proposed construction should be observed." Id.

The DRB voted to continue the item to its October 2 meeting based on the staff recommendation for a continuance so that the applicant could address staff's concerns about the proposal.

Prior to the October 2, 2012, DRB hearing, planning department staff had asked neighbor representatives to provide it with their concerns and how those concerns could be resolved. The neighbors submitted a proposed resolution approving the application with conditions. The proposed resolution set forth specific findings and the following conditions for approval:

a. The entire length of the building abutting and east of the World Savings Bank property shall be set back an additional 15 feet.
b. The entire length of the fifth floor of the northern side of the building facing Sunset Island No. 4 shall be set back an additional ten feet.
c. The entire length of the eastern portion of the building along Sunset Drive shall be stepped back as follows:
    i. First floor an additional ten feet (current proposed setback plus ten feet);

ii. Second and third floors an additional five feet (current proposed setback plus 15 feet);

iii. Fourth and fifth floors an additional five feet (current proposed setback plus 20 feet).

Exhibit H, Sunset Islands 3 &4 Proposed Resolution, October 2012.

Design review staff included the proposed resolution as an attachment to the October 2, 2012 staff report, noting that the neighboring residents continue to have serious concerns with the application. Exhibit I, 7, Staff Report, Design Review Board, October 2, 2012. In its analysis staff discussed one proposed finding regarding the comparison of the Palau project with the Sunset Harbor Townhomes development to its west but failed to address the other findings and conditions, including those relating to the Sunset Drive view corridor and the proposed setbacks. Id.

The applicant presented its revised plans to the DRB at the October 2, 2012 hearing. Design review staff determined that these plans adequately responded to their concerns and recommended approval of the application.

Notwithstanding the staff's position, the neighbors addressed the failure of the application to adequately address three of the DRB review criteria that focus on neighborhood compatibility:

a. Criteria 6 requires that the proposed structures must be compatible with adjacent structures and enhance the appearance

of surrounding properties. Yet neither the applicant nor the design review staff explained how this massive project is compatible with the abutting single-family properties and in what way it "enhanced" the appearance of these properties.

b. Criteria 7 states that the site plan layout must show efficient arrangement of land uses, especially the relationship with the surrounding neighborhood, impacts on adjacent buildings and lands, pedestrian sight lines and view corridors. But the plan for the project shows that existing site lines and view corridors are degraded or eliminated. The applicant did not address how it met this criterion. Design review staff also did not discuss or address and how the revised plans met this criterion in their written report[2] or in their presentation.

c. Criteria 12 says that the massing and orientation of structures must be sensitive to and compatible with the surrounding area and also create or maintain important view corridors. However, the massing and placement of the building fails to "create or maintain" important view corridors as it degrades the view corridor along Sunset Drive from 20th Street to the historic entrance to Sunset Islands 3 and 4.

Neighbors proposed a simple solution that would meet the three criteria at issue: Step back the proposed building along Sunset Drive an additional ten feet at the ground floor, an additional five feet on the second and third floors

[2] The staff report merely stated that the criterion is "satisfied". Exhibit I, 3.

and an additional five feet on the fourth and fifth floors. Exhibit H, 2, Proposed Resolution.

On October 8, 2012, the board rendered its order granting design review approval to the Palau pursuant to design review criteria set forth in section 118-251 of the Miami Beach Land Development Regulations and subject to conditions set forth therein.

On October 23, 2012, Sunset and another entity petitioned the DRB to rehear the matter pursuant to section 118-261.

On December 4, 2012, with only four of the seven members present, the DRB considered the petition for rehearing:

a. The DRB considered and denied a motion to continue the hearing by a 2-2 tie vote.
b. Without hearing argument or testimony and without any presentation of evidence the DRB considered and denied a motion to deny the petition for rehearing by a 2-2 tie vote.
c. There were no further motions. Therefore, the DRB counsel interpreted the DRB rules to determine that the last decision of the DRB shall stand and the request for rehearing be denied even though there was not a majority vote for such denial of the rehearing.

The DRB Order denying the rehearing was rendered on December 10, 2012, and Neighbors filed their request for city commission review of the

DRB decision pursuant to section 118-262. The city commission subsequently set the request for hearing on its March 13, 2013 agenda.

STANDARD OF REVIEW

This city commission's standard of review requires a determination of whether (1) the proceedings before the DRB afforded procedural due process; (2) the DRB observed the essential requirements of the law; and (3) the DRB's decision was supported by competent substantial evidence. Sec. 118-262(b), Miami Beach Land Development Regulations.

ARGUMENT

The DRB consideration of this matter was characterized by procedural errors. Its order fails to show that it correctly applied the DRB criteria and that its decision was supported by competent substantial evidence:

a. The failure to disclose *ex parte* communications pursuant to sections 2-511 through 513 of the Miami Beach Code of Ordinances is a failure to provide procedural due process and a failure of the DRB to observe the essential requirements of law in its evaluation of the Palau development application.

b. The applicant failed to meet its initial burden to show that it met the DRB review standards, warranting reversal of the DRB approval.
c. The failure of the DRB to evaluate the elimination and/or diminution of four view corridors pursuant to section 118-251(a)(12), is a failure to observe the essential requirements of law.
d. A staff report and presentation, which failed to examine or address the specific requirement for "the proposed structure" to have "an orientation and massing… which creates or maintains important view corridors" is not competent substantial evidence of compliance with that review criteria.
e. The DRB improperly delegated to design review staff its authority to evaluate and approve plans as meeting DRB review criteria.

DRB Members Failed to Disclose *Ex Parte* Communications as Required by Sections 2-511 through 2-513 of the City Code

Section 2-511 defines a prohibited *ex parte* communication as any written or oral communication with any member [of a city quasi-judicial board], which may directly or indirectly influence the disposition of an application, other than those made on the record during a public hearing.

Section 2-512(a) establishes a procedure "for all *ex parte* communication" with a board member of a quasi-judicial board, such as the Design Review Board. Section 2-512(a)(1) requires that "[t]he subject matter

of any *ex parte* communication, together with the identity of the person, group or entity with whom the communication took place, shall be disclosed and made a part of the record on file with the city prior to final action on the matter."

Section 2-512(a)(4) requires that "[a]ny *ex parte* communication or activity regarding a pending quasi-judicial matter and not physically made a part of the record on file with the city and available for public inspection prior to the public meeting on the matter shall be orally stated and disclosed on the record at the public meeting prior to the vote on the matter …"

Based on information and belief, prior to the Design Review Board's hearings on the Palau matter (August 7, and October 2, 2012) representatives of the applicant Palau Sunset Harbor, LLC, met with and communicated with a member or members of the Design Review Board regarding the disposition of the Palau application. Design review staff acknowledges that such communication did indeed take place. And staff states that such meetings were disclosed by the chairman who stated at the August 7, 2012 meeting: "We have met -- most of us have met with your team to go over the project. We have heard everything everybody has to say here." Exhibit N, Transcript 150:14-19.

According to design review staff this general statement by the chair is a disclosure for all DRB members (despite lack of any legal authority for the chairman to speak for DRB members on their *ex parte* communications) and meets the code's requirement for "[t]he subject matter of any *ex parte* communication, together with the identity of the person, group or entity with whom the communication took place, shall be disclosed and made a part of the record." Exhibit L, 3, Staff Report, Design Review Board, December 4, 2012. This is a fundamental misreading of the code and law in that it assumes that the chairman has knowledge of each DRB member' *ex parte* communications. The chairman as a matter of law cannot speak for the members of the DRB regarding their *ex parte* communications. Such knowledge only can be gained either through *ex parte* discussions, discussions with staff, or discussions with fellow DRB members. Therefore, this staff interpretation[3] itself is an admission by the chair of a violation of the "Sunshine Law," which prohibits communication between two or more DRB members (including through third parties) on issues related to official DRB business. Section 286.011, Fla. Stats.

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[3] Palau accepts staff's interpretation that the chairman's statement is an accurate disclosure of the board members' *ex parte* communications. Exhibit M, 5, Palau Response to Petition for Rehearing.

Astoundingly, Palau erroneously claims that the incorporation of the August 7, hearing record at the October 2, 2012 DRB hearing applies to the disclosure of *ex parte* communications made *after* that August 7 meeting. This mocks any idea that this quasi-judicial process was fundamentally fair and that neighbors and other participants in this process had adequate notice of these post August 7 communications.

At best, the chairman's "disclosure" is limited to himself. At worst it is a violation of the Sunshine Law. In either event the chairman failed to disclose the subject matter of this communication, or the identity of the person, group or entity with which the communication took place. And no other board member made these required disclosures.

According to section 2-512(b) without such disclosure a presumption of prejudice arising from that/those *ex parte* communication(s) remains attached to that communication. These non-disclosed *ex parte* communications and the attached presumption of prejudice effectively impacted the neighbors' ability to obtain a fair hearing and denied them procedural due process. Furthermore, this direct violation of the city code and state law (if you accept staff's and Palau's position that the chairman spoke for the entire board when he made his "disclosure" statement) is a failure of the DRB to observe the essential requirements of law. (See also: *Jennings v. Dade County*, 589 So.2d 1337,

1339 (Fla. 3d DCA 1991). "Upon proof that a quasi-judicial officer received an ex parte contact, a presumption arises… that the contact was prejudicial. The aggrieved party will be entitled to a new and complete hearing before the commission [here, the DRB] unless the defendant proves that the communication was not prejudicial.").

Palau Failed to Meet Its Initial Burden to Show That It Met DRB Review Criteria Requiring That it Created or Maintains Important View Corridors

In the DRB review of the development proposal, the applicant has the initial burden to show that it has met the DRB approval requirements. *Irvine v. Duval County Planning Commission*, 495 So.2d 167 (Fla.1986). These requirements are set out in sections 118-251 through 264 of the Miami Beach Land Development Regulations. However, Palau failed to meet that burden by its failure to address the DRB review criteria and how it met each of those standards.

In particular, the applicant did not present any evidence that it complied with Section 118-251(a) (12). That criteria requires a showing that the orientation and massing of the proposed structure is (among other things) compatible with the surrounding area and that it "creates or maintains important view corridors." In its presentation the applicant failed to show that it complied with this requirement.

That failure warrants reversal of the DRB's approval of the application.

The DRB Failed to Evaluate the Elimination and/or Diminution of Four View Corridors as Required by Section 118-251(A) (12)

Section 118-251(a) requires the DRB to include the examination of architectural drawings for consistency with specific criteria with regard to the aesthetics, appearances, safety, and function of the proposed structure "and physical attributes of the project in relation to the site, adjacent structures and surrounding community."

Section 118-251(a) (12) states: "The proposed structure has an orientation and massing which is sensitive to and compatible with the building site and surrounding area **and which creates or maintains important view corridor(s)**." Emphasis added.

There is no indication in the record (including the transcripts or staff recommendations) or the final order of the Design Review Board to show that the proposed Palau development has an orientation and massing that "creates or maintains" important view corridors.

The orientation and massing of the Palau building eliminates four existing view corridors: (1) the West Avenue view corridor to the waterway that extends between the World Bank property and the Sunset Harbor Townhomes; (2) the view corridor to the waterway that extends between the

World Savings building and the existing incomplete structure to its east; (3) the view corridor to the waterway that extends between the existing incomplete structure and the Mark's Cleaners building to the east; and (4) the view corridor along Sunset Drive, from 20th Street to the historic Sunset Islands Bridge.

Furthermore, the orientation and massing of the proposed Palau building diminishes the existing view corridor along Sunset Drive, from 20th Street to the historic Sunset Islands Bridge.

The failure of the board to apply correctly section 118-251(a) (12), which requires the orientation and massing of the structures to "create or maintain important view corridors," is a failure to observe the essential requirements of law.

Both design review staff and Palau state that the DRB considered "view corridors" and required "that the northeast corner of the building be further setback in order to lessen the impact on the historic Sunset Island bridge." According to staff and Palau this change "fully satisfied the Board's request." Exhibit L, 2 December 4, 2012 Design Review Board Staff Report. But this DRB request was never characterized as preserving an important view corridor. It was a response to the building's impact on the historic bridge

itself, not the view corridor along Sunset Drive from 20th Street to the historic bridge.

In fact, there is no reference in the testimony presented by the staff or the developer at the October 2, 2012 hearing connecting this change in the plans to the creation or maintaining of important view corridors. There is no mention of the Sunset Drive view corridor by the staff or Palau representatives at either the August 7, or October 2, 2012 DRB hearings.

The Design Review Staff Report Fails to Address Specific Criteria Requiring a Building's Massing to "Create or Maintain Important View Corridors" and is Not Competent and Substantial Evidence of Compliance With That Review Criteria.

Competent substantial evidence is defined as that evidence relied upon to sustain the ultimate finding that is "sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached." *De Groot v. Sheffield*, 95 So.2d 912, 916 (Fla. 1957). Competent substantial evidence is not opinion unsubstantiated by facts. *City of Apopka v. Orange County*, 299 So.2d 657, 660 (Fla. 4th DCA 1974).

The failure of the applicant and city staff to present evidence to the board that the Palau development meets the specific requirements of section 118-251(a) (12) -- that the orientation and massing of the structures creates or maintains important view corridors -- is a failure to present competent

substantial evidence to the DRB to support its decision that the Palau development is consistent with that standard.

The October 2, 2012 staff report's statement that criteria 12 was "satisfied" is not competent substantial evidence of that assertion because it is opinion with no stated factual basis.

Any claim of deference to design review staff's interpretation of the design review criteria fails where the staff has not even addressed a key component of the criteria at issue. Note that the staff report of October 2 only states that the criteria is "satisfied." There is no reference or mention of "view corridor" in the staff report despite the clear language of the provision requiring that the building create or maintain important view corridors.

Deference to the staff's interpretation is not unlimited, and the city commission's role is not unquestioning. This is especially true where there is no mention of "view corridor" in the context of this criterion in the staff report or in the transcripts of the DRB hearings.

Furthermore, any deference claimed by staff or Palau is overcome by a showing that there has been a departure from the essential requirements of law. *Bell South Telecommunications v. Johnson*, 708 So.2d 594, 597 (Fla. 1998). Here the DRB failed to apply the correct law by failing to apply each of the elements of criteria 12 -- in particular the requirement to create or

maintain important view corridors. When the agency's construction clearly contradicts the unambiguous language of a rule, the construction is clearly erroneous and cannot stand. *Woodley v. Department of Health and Rehabilitative Services*, 505 So.2d 676,678 (Fla. 1st DCA 1987). See also, *Legal Environmental Assistance Foundation, Inc. v. Board of County Commissioners of Brevard County*, 642 So.2d 1081, 1083-1084 (Fla. 1994).

The DRB Improperly Delegated to Design Review Staff Its Authority to Evaluate and Approve Plans Pursuant to DRB Review Criteria.

The city commission has delegated certain authority to the DRB to approve design review applications subject to specific criteria set forth in section 118-251. This authority, spelled out in sections 118-251 through 265, does not allow the DRB to delegate to design review staff its responsibility and duty to make decisions based on those criteria. [4]

Yet that is what the DRB did when it approved the Palau development. According to the final order of the DRB, it approved the project subject to conditions, including:

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[4] While section 118-260 authorizes the planning director to approve, approve with conditions or deny an application for eight specific issues all associated with minor public improvements, and rehabilitation, alterations and demolition of structures or portions of structures, it does not authorize the DRB to delegate its authority to approve an application (or any portion of an application) for new development such as the Palau project.

a. The **final design** and details, including materials, finishes, glazing, railings, and **any architectural projections and features**, **shall be** provided in a manner to be **reviewed and approved by staff**. Emphasis added. Exhibit I, 2, October 2, 2012 Design Review Board Staff Report.
b. The **final design** and details, including landscaping, walkways, fences, and architectural treatment of west elevation facing the former bank building **shall be** provided, in a manner to be **reviewed and approved by staff**. Emphasis added. Exhibit I, 2, October 2, 2012 Design Review Board Staff Report.
c. The **plaza** at the northeast corner of the site **shall be** further studied and **enlarged to improve its visibility and functionality**, and shall be added to the waterfront walkway easement for public access, **subject to the review and approval of staff.** Emphasis added. Exhibit I, 3, October 2, 2012 Design Review Board Staff Report..

While there is authority for the DRB to prescribe conditions of approval, there is no authority for the DRB to delegate its review and approval authority for new development to staff. Section 118-264, Land Development Regulations. Each of these conditions transforms design review decisions into staff-level determinations, without any authority in the land development regulations.

Florida law provides that a legislature may not delegate the power to

make law or the right to "exercise unrestricted discretion in applying the law." *Sims v. State,* 754 So.2d 657, 668 (2000). The DRB, without any legislative authority, gave staff the power to approve plans as a condition of DRB approval. That power is reserved to the DRB and cannot be delegated absent specific legislative authority. There is no such authority in the city code.

Therefore, the DRB order is invalid because the DRB review is incomplete. Any changes to the plans must be approved by the DRB and not staff. While staff may review these plans and make recommendations, it is the DRB that has the sole authority to approve new development for compliance with the design criteria. This final DRB review has not occurred. For this reason, this order must be quashed.

CONCLUSION

The neighbors request the city commission to (a) review the decision of the DRB and (b) reverse or in the alternative, remand this matter to the DRB with instructions that the DRB require additional setbacks along Sunset Drive as set forth herein .

Furthermore, neighbors seek a waiver and refund of the filing fees for the rehearing and appeal, both of which would not have been necessary, had the DRB process been proper to afford them a full and fair hearing.

Respectfully Submitted,

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W. TUCKER GIBBS

BEFORE THE MIAMI BEACH CITY COMMISSION
DESIGN REVIEW BOARD FILE 22889

IN RE: PALAU SUNSET HARBOR

All of Lots 22, 23, and 24, and the north 70 feet of Lots 25 and 26, Block 15A, Island View Addition According to the Plat Thereof as Recorded in Plat Book 9, Page 144 of the Public Records of Miami-Dade County
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APPENDIX
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VOLUME I

Respectfully Submitted,

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E. Power Point Presentation, Mark Alvarez, August 7, 2012.
F. Testimony of Francois Le Jeune, (Planning Board), May 22, 2012.
G. Sunset Islands Bridges, Historic Designation Report, August 1996.
H. Sunset Islands 3 &4 Proposed Resolution, October 2012.
I. Staff Report, Design Review Board, October 2, 2012.
J. Design Review Board Order, October 8, 2012 (Rendition Date).
K. Affidavit of Terry Bienstock, December 26, 2012.
L. Staff Report, Design Review Board, December 4, 2012.
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EXHIBIT "A"

Proposal

Context

Compatibility issues / adverse impacts at transition

EXHIBIT "B"

MIAMIBEACH

PLANNING DEPARTMENT
Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: April 24, 2012

FROM: Richard G. Lorber, AICP, LEED AP
Acting Planning Director

SUBJECT: **File No. 2043 – 1201, 1225 & 1237 20 Street. – Palau Sunset Harbor**

BACKGROUND

The applicant initially submitted an application to appear before the Board at the January 24 meeting. Conditional Use approval was sought for a development exceeding 50,000 sf of floor area, as well as for the use of mechanical parking lifts. The proposal was for a 5-story, mixed use building, mostly residential, with a total of 109,279 sf of floor area, including a mechanical parking garage.

The development program included 13,056 sf of ground level commercial space, including a restaurant, along Sunset Drive and 20th Street; and 70 residential units on levels 2 – 4 along the canal, across from Sunset Island 4. The project was to be built on three (3) full lots and the northern portion of two (2) other lots including the Cypress Bay property previously approved by the Board, but abandoned while under construction, and the Mark's Cleaners property.

There is a restrictive covenant on the southern portion of the property, tying the former Cypress Bay property to the "World Savings Bank property", currently owned by MAC SH, LLC. These two properties were at one time one single property, and were split at the time of the proposed construction of the former Cypress Bay project, which required a covenant in-lieu of unity of title. The application was continued by staff to the February 28 meeting to give the applicant additional time to complete the application. However, in light of strong opposition expressed at the February 28 meeting, the applicant requested continuance to the March 27 meeting to continue the dialog with the neighbors.

In the time period between the February and March Board meetings, the applicant made changes to the initially proposed project to meet concerns of staff regarding the overall density and intensity of the project. A restaurant was originally proposed at the southeast corner of the property. However, that use was changed to retail as is the rest of the commercial use on the site.

The applicant submitted to staff a list of modifications the developer agreed to prior to the March Board meeting, as requested by the homeowners associations, see attached.

At the March 27 Planning Board meeting representatives of Sunset Harbor Condominium and the Townhouse Associations, as well as numerous Sunset Island 4 homeowners spoke against the proposal. The latter objected mostly to the proposed height of the building along the canal, but also expressed their wish for the proposed project to maintain scale, massing and compatibility with the bridge into the island, which is designated as a historic site.

There was testimony from MAC SH, LLC's legal counsel who brought a traffic engineer, Jeffrey Buckholz, as an expert witness. Mr. Buckholz gave a visual presentation critiquing the Traffic Impact Study done by Richard Garcia & Associates (RGA), a traffic consultant hired by the applicant and reviewed by FTE, a peer reviewer, and the City's transportation staff. RGA, FTE, and staff responded to Mr. Buckholz' critique.

The Board held lengthy discussions based on the testimony – voting to bring the applicant back to the April 24 meeting so it could continue the dialogue with the neighbors and explore ways to scale down the height and massing within the building footprint to try to reach a compromise.

UPDATE

Since the March 27 Planning Board hearing, meetings have continued to take place between the applicant and MAC SH, LLC, and the Sunset Island 3 and 4 HOA, as well as staff. The applicant submitted to staff a list of modifications made as a result of meetings with the HOA, see attached.

As a result of these modifications, the total number of parking spaces required went further down from 143 to 140 spaces and the provided total number of spaces went up from 152 to 153. Also, the layout of the spaces and aisles in the garage changed. In addition, as a result of a recommendation from the Design Review staff, a small valet office was added close to 20th Street in front of the relocated loading spaces. Further, the developer would be including an elevator to provide private access to the twenty waterfront units.

As of this writing, representatives of the Sunset Island HOA are still not satisfied with the above referenced changes and have met with staff. Perhaps there is a possibility that more meetings could take place and the project may continue to evolve before the April meeting. The applicant has submitted a narrative detailing the changes that they have made to their proposal, since inception, in response to the concerns expressed by neighbors and the Board. Also, the Sunset Island 3 & 4 Association has submitted a revised list of conditions they would desire to see attached to any approval. In reviewing the requested conditions, many of them are sensible and are either included in staff's recommendations or warrant further consideration by the Board. The first condition, addressing the overall height and number of stories, is really the largest issue for them, and the hardest for the developer to comply with and still provide a marketable and economically feasible project.

Overall, there has been substantial time and effort put forth by everyone and considerable progress has been made. As a result, staff believes that as currently proposed, the project is better than when originally submitted months ago. Even though there may still not be a meeting of the minds, staff believes that it is still possible for all the parties to reach a compromise they can all live with. Given the condition of the property today, with the abandoned remains of previous incomplete construction, it is important that this site be redeveloped sooner than later. Although staff believes that the proposed design and overall level of construction have been greatly improved, obviously, they are still not perfect; however the Design Review Board process may also be able to further refine the proposal from that standpoint. Therefore, staff believes that, on balance, the project merits a recommendation of approval.

However, should the Planning Board believe, on balance, that the overall impact of the project as proposed, inclusive of issues of maximum height, building massing, and visual impact to surrounding neighborhoods, is unacceptable, then the Board is also within their prerogative to request additional modifications, and, ultimately, if these are not possible, to reject the application. This statement is given in an attempt to clarify any issues that may have been raised regarding the powers and duties of the Planning Board over this application.

STAFF RECOMMENDATION

In view of the foregoing analysis, staff recommends that the application be approved, subject to the following conditions, which address the inconsistencies with the aforementioned Review Guidelines:

1. The Planning Board shall maintain jurisdiction of this Conditional Use Permit. If deemed necessary, at the request of the Planning Director, the applicant shall provide a progress report to the Board. The Board reserves the right to modify the Conditional Use approval at the time of a progress report in a non-substantive manner, to impose additional conditions to address possible problems and to determine the timing and need for future progress reports. This Conditional Use is also subject to modification or revocation under City Code Sec. 118-194 (c).

2. This Conditional Use Permit is issued to Palau Sunset Harbor, LLC, as applicant and owner of the property. Subsequent owners and operators shall be required to appear before the Board to affirm their understanding of the conditions listed herein.

3. The conditions of approval for this Conditional Use Permit are binding on the applicant, the property owners, operators, and all successors in interest and assigns.

4. The proposed project shall go before the Design Review Board for approval of the proposed project, and also for approval of the modification of the site plan associated with the restrictive covenant as required by that document.

5. Any substantial modifications to the plans submitted and approved as part of the application, as determined by the Planning Director or designee, may require the applicant to return to the Board for approval of the modified plans.

6. Valet storage of vehicles shall be exclusively for the use of Palau at Sunset Harbor, as proposed by the applicant.

7. As proposed, residential valet drop-off and pick-up shall take place inside the garage. Visitor and commercial valet drop-off and pick-up shall remain on 20th Street.

8. The applicant shall work with the City to designate the use of 2 parking spaces on 20th Street for valet service and delivery by larger vehicles, as proposed by the applicant.

9. The parking garage shall consist of approximately 153 spaces, as proposed. The garage operation shall be 24 hours per day, seven days a week. There shall be security personnel of at least one person monitoring the garage operation 24 hours a day, seven days a week. The structure, operation, procedures, maintenance, service response procedures, remote technical service team, local, on-site service team, and spare parts inventory shall be in accordance with the manufacturer specifications, as proposed by the applicant.

10. The noise or vibration from the operation of mechanical parking lifts, car elevators, or robotic parking systems shall not be plainly audible to or felt by any individual standing outside an apartment or hotel unit at any adjacent or nearby property. In addition, noise and vibration barriers shall be utilized to ensure that surrounding walls decrease sound and vibration emissions outside of the parking garage.

11. For mechanical lifts, the parking lift platform must be sealed and of a sufficient width and length (minimum of eight feet by 16 feet) to completely cover the bottom of the vehicle on the platform to prevent dripping liquids or debris onto the vehicle below.

12. All free-standing mechanical parking lifts must be designed so that power is required to lift the car, but that no power is required to lower the car, in order to ensure that the lift can be lowered and the top vehicle can be accessed in the event of a power outage; robotic garages and vehicle elevators must have backup generators sufficient to power the system.

13. All mechanical lifts must be designed to prevent lowering of the lift when a vehicle is parked below the lift.

14. The ceiling heights of any parking level with parking lifts within the parking garage shall be a minimum of 11 feet by six inches.

15. All parking lifts shall only be operated using a spring loaded underwriters laboratories (UL) approved key switch control. No push button is allowed.

16. All electrical components of the lifts shall be Underwriters Laboratories (UL) approved.

17. All mechanical parking systems, including lifts, elevators and robotic systems must be inspected and serviced at least once per year with an annual safety report signed by a licensed mechanical engineer.

18. All mechanical lifts shall be maintained and kept in good working order.

19. The mechanical lifts and vehicle elevators must be inspected and serviced at least once per year with an annual safety report signed by a Licensed Mechanical Engineer and submitted to the Planning Department.

20. The generators shall be maintained in proper operating condition. The location of the generators shall be submitted for the review and approval by staff to ensure than any negative impacts associated with the operation or testing of the equipment are minimized. The generators shall be installed in accordance with Code requirements regarding minimum flood plain criteria.

21. Deliveries and trash pick-up shall take place alongside the curb on 20th Street as depicted on the plans. The trash containers shall have rubber wheels. Delivery hours shall be limited to between 7:00 AM and 9:00 AM, as proposed. The applicant shall work with the City to designate that area a commercial loading zone with applicable signage.

22. No commercial marina or docks shall be permitted on or adjacent to the subject property.

23. No residential condominium unit shall be used for commercial purposes, except for home-based businesses, as permitted by Section 142-1411 of the City Code.

24. Except as may be required for Fire or Building Code/Life Safety Code purposes, no speakers shall be affixed to or otherwise located on the exterior of the subject property.

25. The applicant shall include bicycle parking for patrons of the retail businesses and visitors in the plaza at the southwest corner of the project on 20th Street, as well as at the corner of 20th Street and Sunset Drive in a manner subject to the review and approval of staff.

26. The applicant shall submit an MOT (Method of Transportation) to Public Works Department staff for review and approval prior to the issuance of a building permit. The MOT shall address any traffic flow disruption due to construction activity on the site.

27. Prior to the issuance of a building permit, the applicant shall participate in a Transportation Concurrency Management Area Plan (TCMA Plan), if deemed necessary, by paying its fair share cost, as determined by the Concurrency Management Division.

28. The applicant shall submit to staff a restrictive covenant stipulating that the commercial spaces shall be used exclusively for retail and not for restaurant, nightclub or bar uses.

29. The applicant shall submit to staff a restrictive covenant stipulating that a valet service operator would be provided for the mechanical parking for as long as the use continues.

30. A final concurrency determination shall be conducted prior to the issuance of a Building Permit. Mitigation fees and concurrency administrative costs shall be paid prior to the project receiving any Building Permit.

31. The applicant shall obtain a full building permit within 18 months from the date of the meeting, and the work shall proceed in accordance with the Florida Building Code. Extensions of time for good cause, not to exceed a total of one year for all extensions, may be granted by the Planning Board.

32. The applicant shall resolve outstanding violations and fines, if any, prior to the issuance of a building permit for the subject development project.

33. The Planning Board shall retain the right to call the owner or operator back before them and modify the hours of operation if there are valid complaints, as determined by Code Compliance, about loud, excessive, unnecessary, or unusual noise.

34. A violation of Chapter 46, Article IV, "Noise," of the Code of the City of Miami Beach, Florida (a/k/a "noise ordinance"), as may be amended from time to time, shall be deemed a violation of this Conditional Use Permit and subject to the remedies as described in section 118-194, Code of the City of Miami Beach, Florida.

35. This order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.

36. Within a reasonable time after applicant's receipt of this Conditional Use Permit as signed and issued by the Planning Director, the applicant shall record it in the Public Records of Miami-Dade County, at applicant's expense, and then return the recorded instrument to the Planning Department. No building permit or certificate of completion shall be issued until this requirement has been satisfied.

37. The establishment and operation of this Conditional Use shall comply with all the aforementioned conditions of approval; non-compliance shall constitute a violation of the Code of the City of Miami Beach, Florida, and shall be subject to enforcement procedures set forth in Section 114-8 of said Code and such enforcement procedures as are otherwise available. Any failure by the applicant to comply with the conditions of this Order shall also

constitute a basis for consideration by the Planning Board for a modification or revocation of this Conditional Use.

38. Nothing in this order authorizes a violation of the City Code or other applicable law, nor allows a relaxation of any requirement or standard set forth in the City Code

RGL/KMH

c: Gary Held, First Assistant City Attorney

F:\PLAN\$PLB\2012\4-24-2012\2043 - 1201 - 1237 20 St rpt rgl edits and kmh edits April.docx

EXHIBIT "C"

Proposal

Context

Zoning districts

Legend:

RS-2	Single Family Residential
RS-3	Single Family Residential
RS-4	Single Family Residential
RM-1	Multifamily Residential
RM-3	Multifamily Residential
CD-1	Commercial, Low Intensity
CD-2	Commercial, Medium Intensity
I-1	Light Industrial
GU	Government Use

EXHIBIT "D"

EXHIBIT "E"

Conditional Use Review

Palau Sunset Harbor

City of Miami Beach Design Review Board

7 August, 2012

1700 Convention Center Drive

Presentation for

Sunset Islands HOA

Presentation by

Mark Alvarez

Sunset Island Resident's Concerns

Height

- Vertical height of elevation above grade
- Numerous rooftop appurtenances and other structures not counted

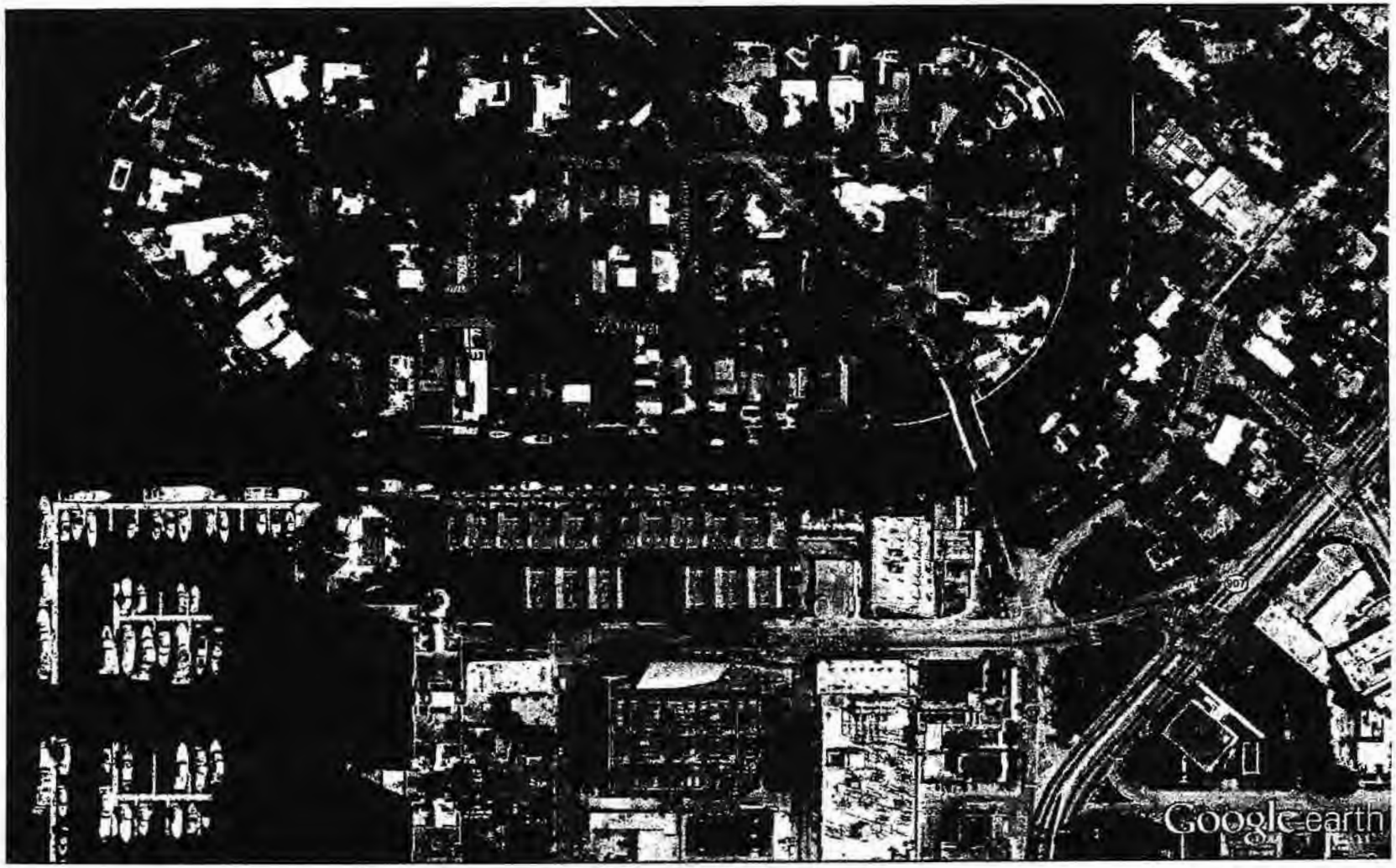
Bulk

- Combination of width and height of façade
- Two smaller buildings have less bulk than one larger one
- Articulation / varigation of wall as a mitigating treatments
- Affected by distance

Buffering

- North side (canal)
- East side (sunset Drive)
- Creates distance, visual relief
- Landscaping to hide bulk or break up visual massing
- Treatments of public spaces

Sunset Island Resident's Concerns



Design Review Criteria Sec. 118-251(a)

	Criteria	Staff Report	Reasons:
1	Lot conditions	Satisfied	
2	Location of buildings, structures, etc.	Not Satisfied	Insufficient plan detail and labeling
3	Sufficiency of plans information	Not Satisfied	Insufficient plan detail and labeling
4	Exterior design and landscaping	Not Satisfied	Additional canopy trees: much further development needed
5	Location, appearance, and design	Not Satisfied	NE corner requires further reduction Increase setback from east property line "Plans require further development"
6	Sensitive, compatible with environment	Not Satisfied	FAR reduction or redesign balconies Revise solid roof top canopy, more open Meet Planning Board 5/22 approval conditions
7	Efficient arrangement of uses	Not Satisfied	FAR reduction or redesign balconies Revise solid roof top canopy, more open Meet Planning Board 5/22 approval conditions
8	Pedestrian and vehicular traffic	Satisfied	
9	Lighting to ensure safety	Satisfied	
10	Landscape and paving materials	Not Satisfied	Additional canopy trees: much further development needed
11	Buffering to shield noise and light	Satisfied	
12	Compatible / sensitive massing & orientation & preserves view corridors	Not Satisfied	Meet Planning Board 5/22 approval conditions
13	Active street level uses / parking liner	Satisfied	
14	Screened roof top equipment	Satisfied	
15	Compatible addition to existing bldg.	Not Applicable	
16	First level transparency fronting street	Satisfied	
17	Location of service and delivery areas	Satisfied	

Planning Board Conditions May 22, 2012

Conditions to work with staff subject to DRB approval

a) pull back massing east of World Savings Bank property
   - with emphasis on upper floor setback
   - and northeast corner of building
   - add more green space

b) Further modify ground area along canal to minimize hard scape

c) Add more canopy trees, particularly along Sunset Drive

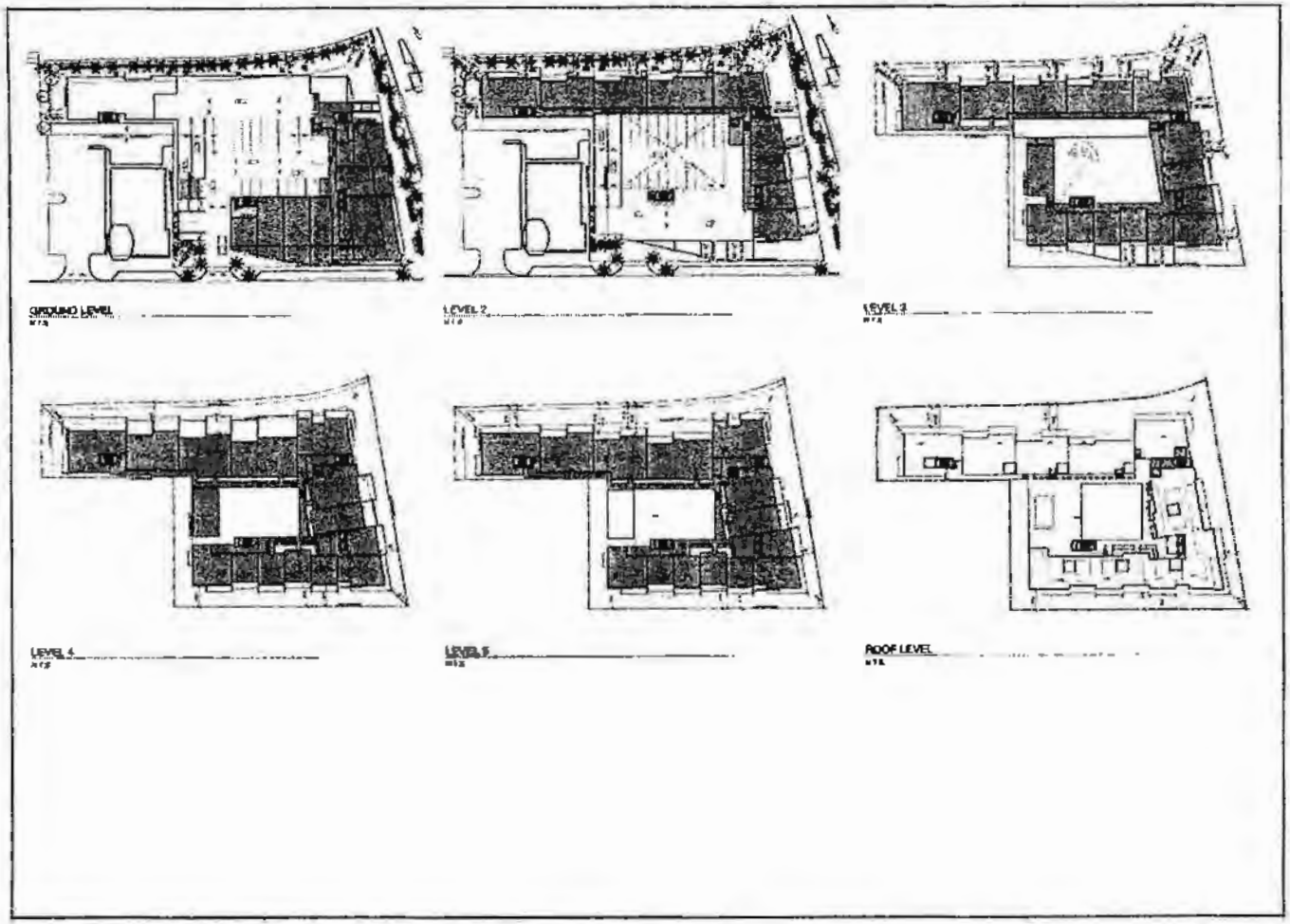
d) Remove parking spaces on Sunset Drive

e) Reduce encroachment on line of sight from Sunset Island 4

f) Work with public works staff to limit u-turns at guard house

FAR - Intensity

FAR Permitted	***2.00***	***109,350 square feet***
FAR Provided	***1.98***	***108,384 square feet***
	0.02	***966 square feet***



1165

PALAU AT SUNSET HARBOUR

F.A.R. CALCULATIONS

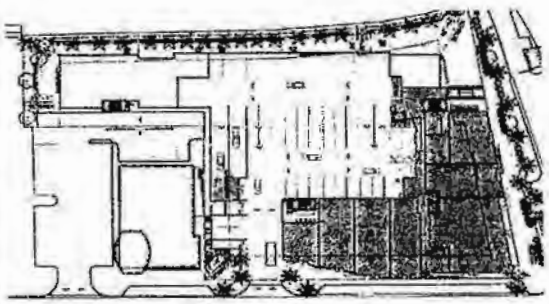
A0.02

FAR – Recessed Balconies

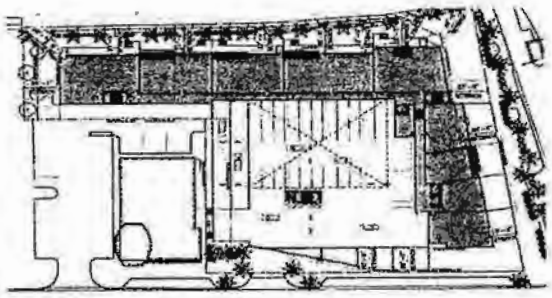
966 square feet to reach FAR =2.00

Recessed balcony areas highlighted in red

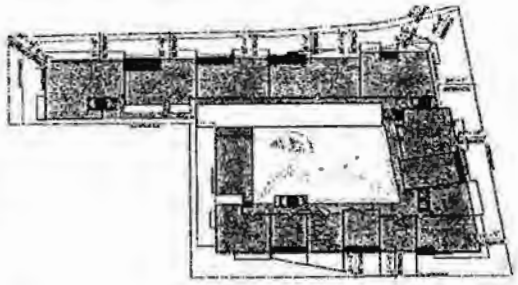
areas not provided, and not measurable based on dimensions provided



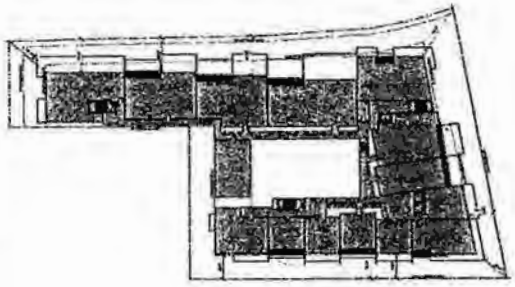
GROUND LEVEL
N.T.S.



LEVEL 2
N.T.S.



LEVEL 3
N.T.S.



LEVEL 4
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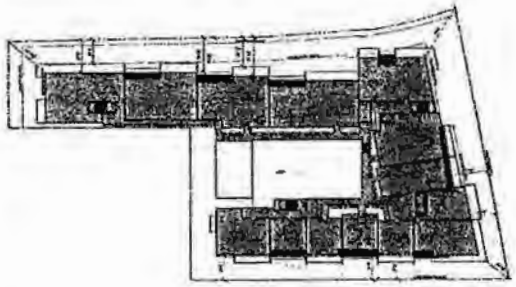
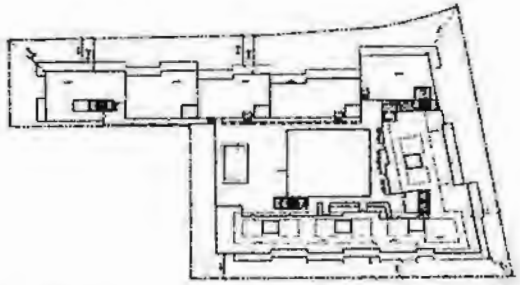


LEVEL 5
N.T.S.



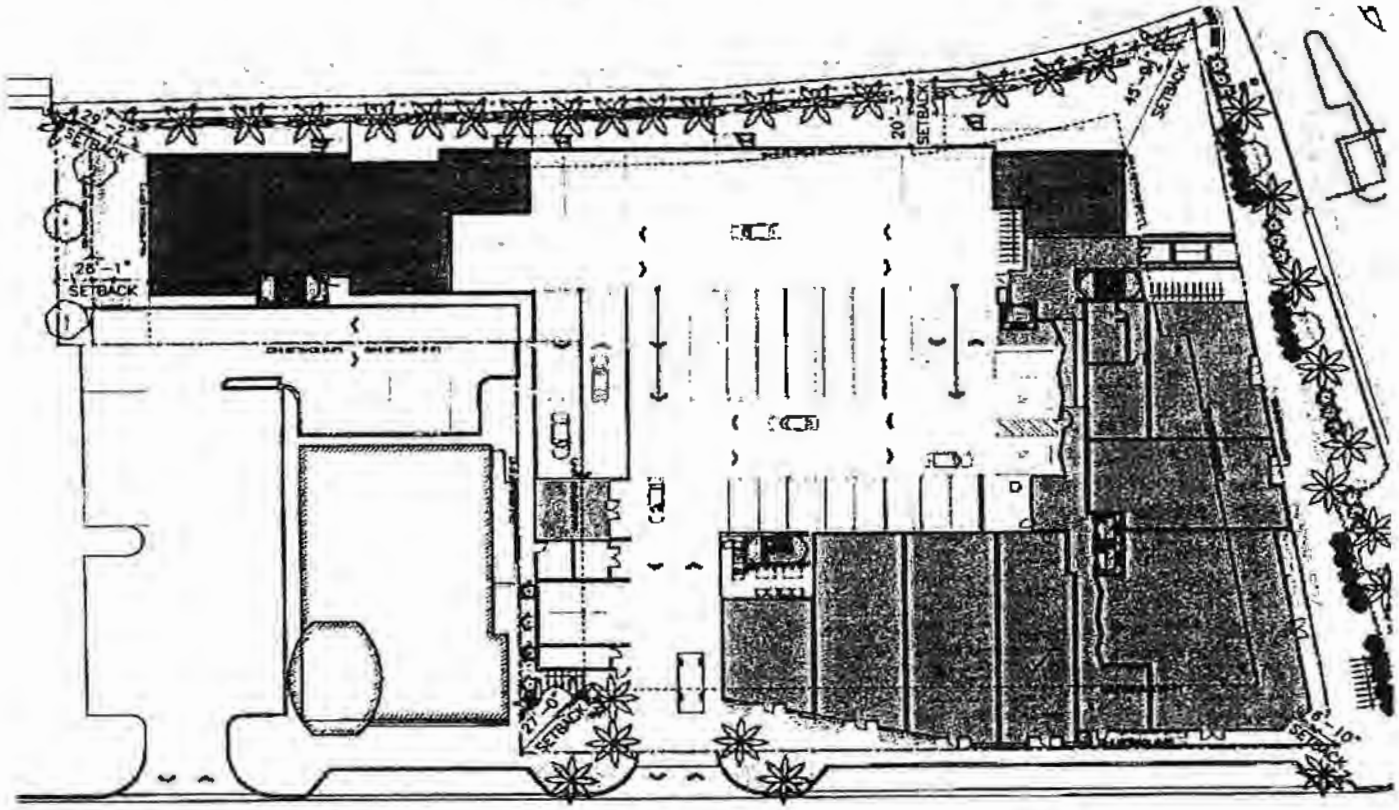
ROOF LEVEL
N.T.S.

FAR – Ground Floor "Void" Spaces

966 square feet to reach FAR =2.00

Two interior spaces, marked as "void" on ground floor plan

areas not provided, but measure to approximately = 3,800 s.f.



GROUND LEVEL

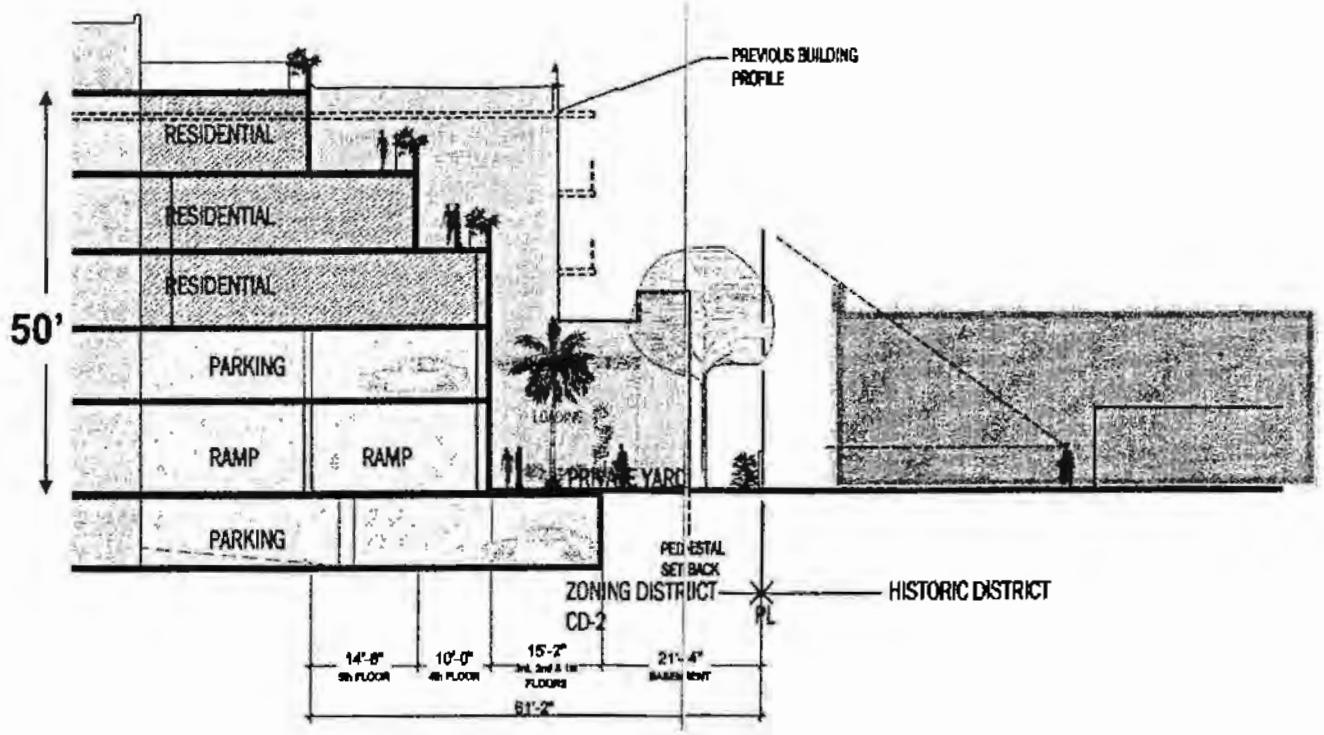
N.T.S.

Height Compatibility

Measures of Height Compatibility

Site Lines

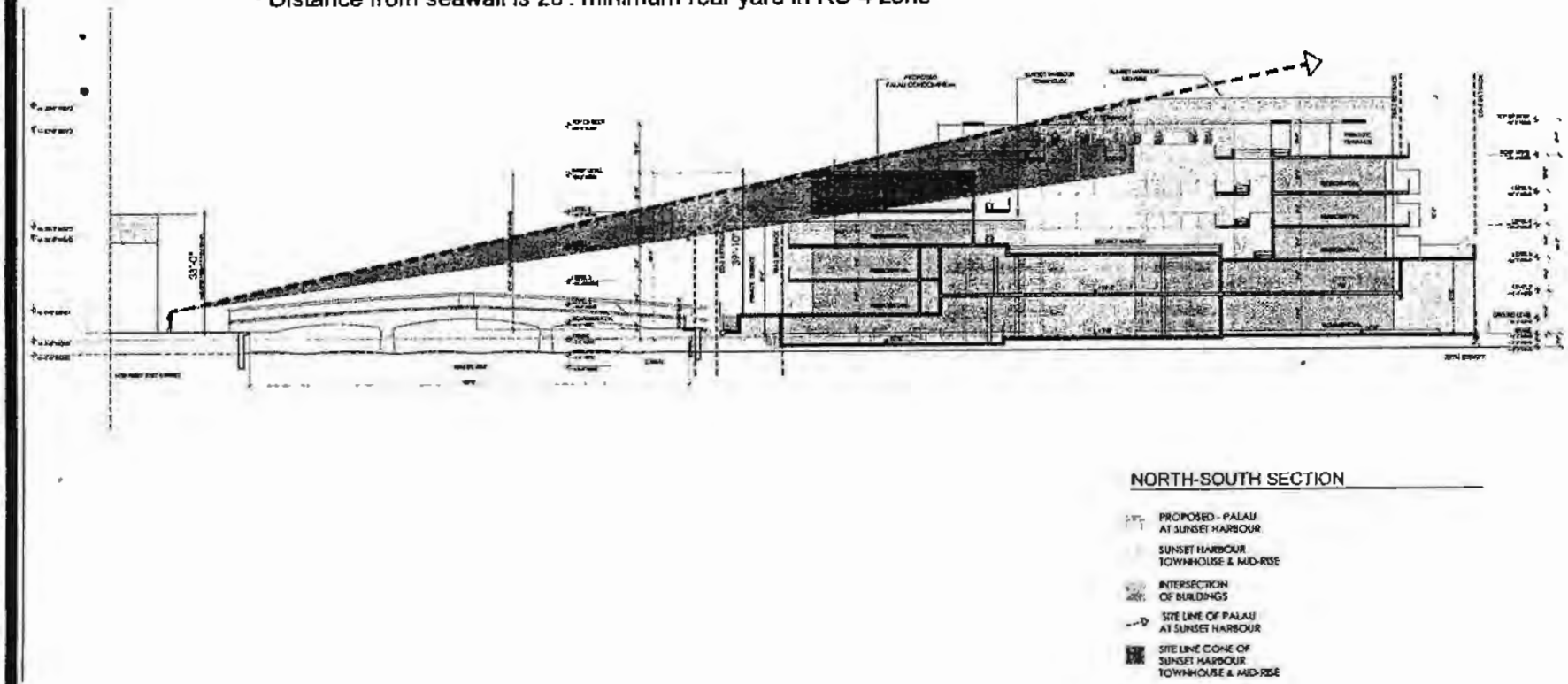
- Used in other studies to transition for height and scale
- Measure of perception of scale, and affects sense of privacy and enjoyment
- Defined by angle of view from ground viewer to top of obstruction
- May also be expressed as a ratio of height to horizontal distance
- This example from *Alton Road Neighborhood Planning Study, CMB, 2007 shows using setbacks to maintain site line.*



Height Compatibility

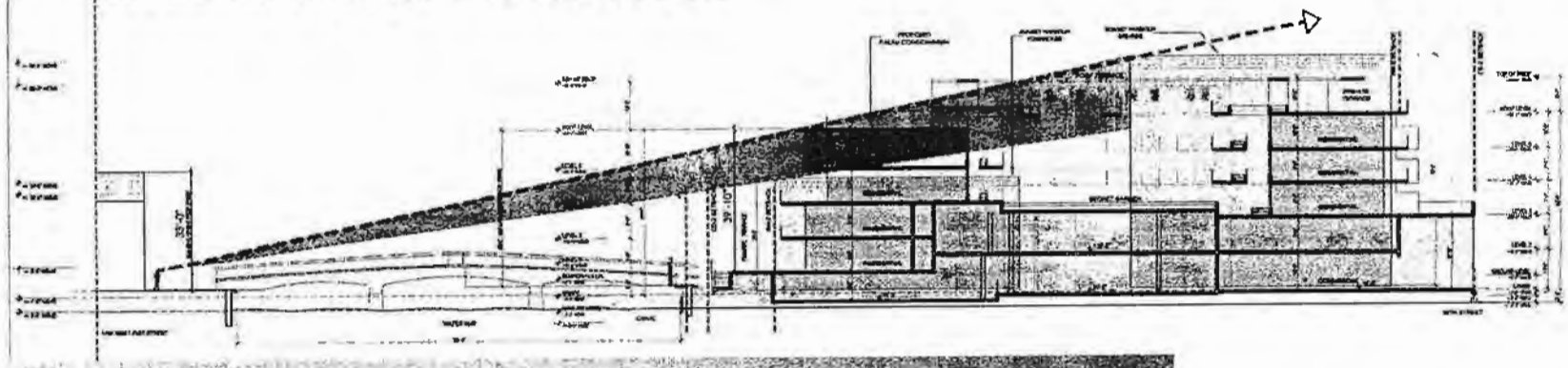
Site Lines

- May 22nd Planning Board drawing was benchmark for conditions
- Reference points are Sunset Harbor Midrise and Sunset Harbor Townhomes
- Proposed Palau Building shown as meeting or below Sunset Harbor Midrise sight line
- Measured from eye height on Sunset IV backyard
  - Eye height as ground plane + 5 ½'
  - Ground plane is NGVD + 6'
  - Distance from seawall is 20': minimum rear yard in RS-4 zone



Height Compatibility

Site Lines & Visual References

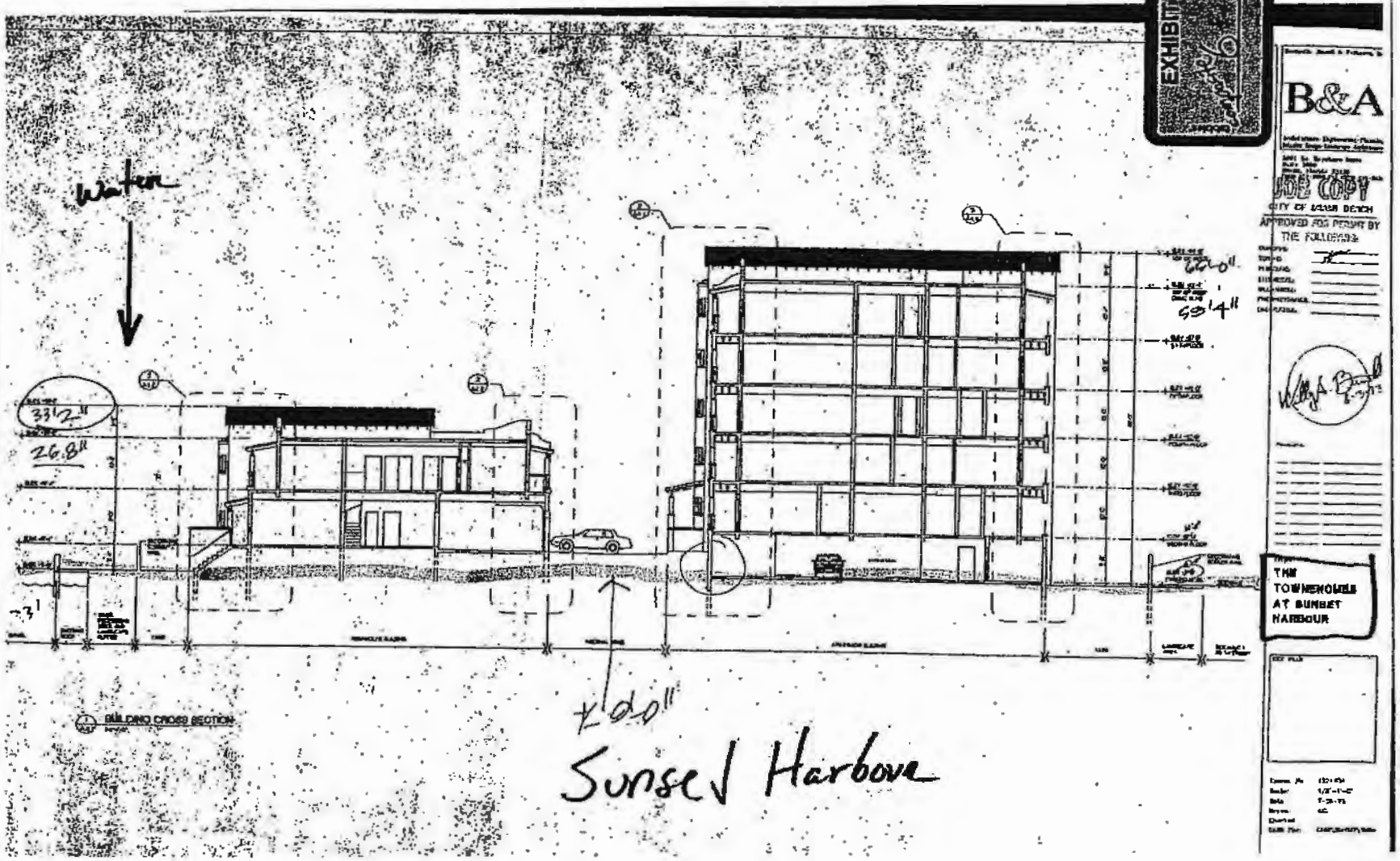


Visual sight line effect taken from seawall of 1520 W 21st Street at eye level

Palau sightline drawing section at 1420 W 21st Street
(3rd house west from park)

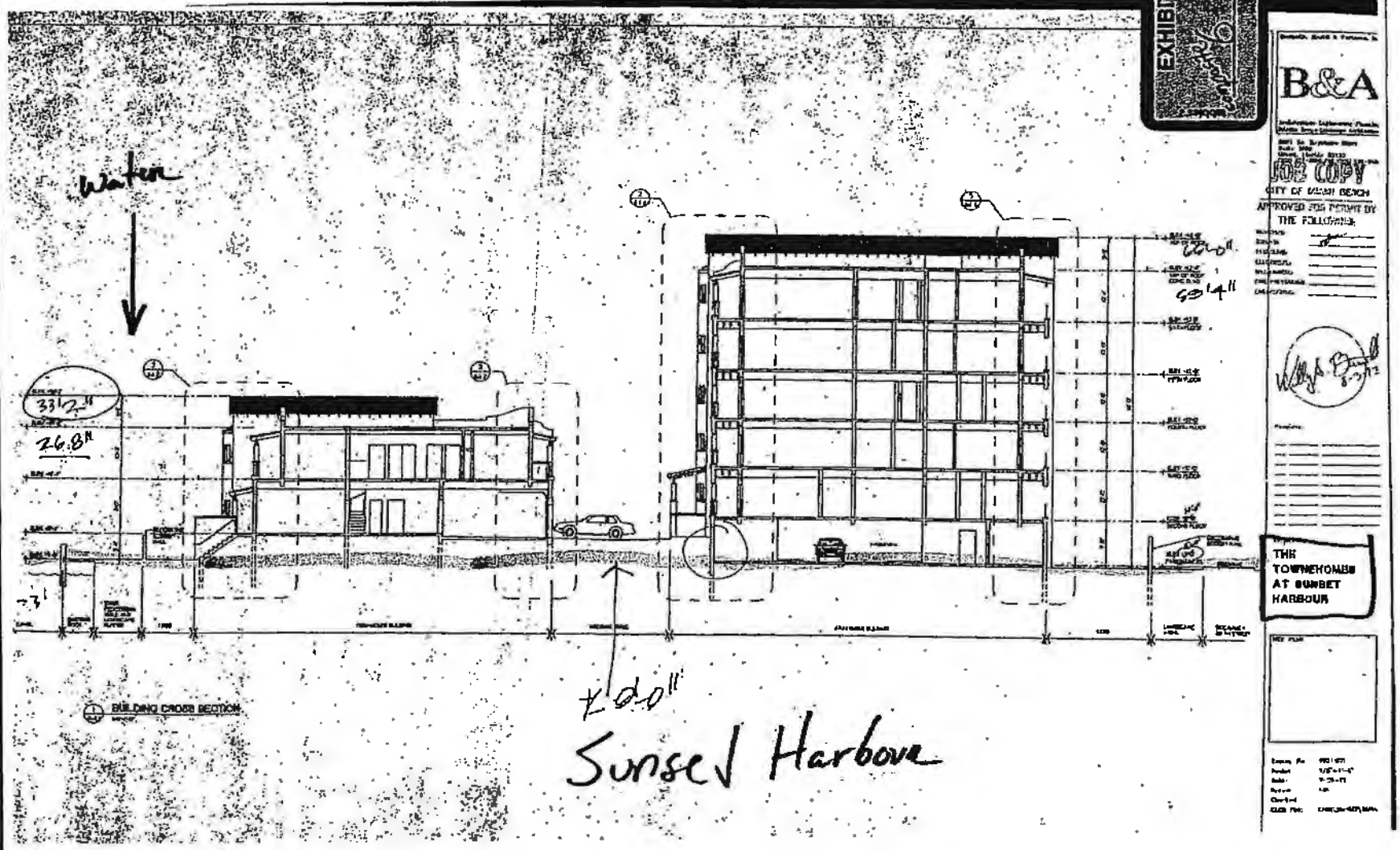
Site Line Benchmark:

Sunset Harbor



Site Line Benchmark:

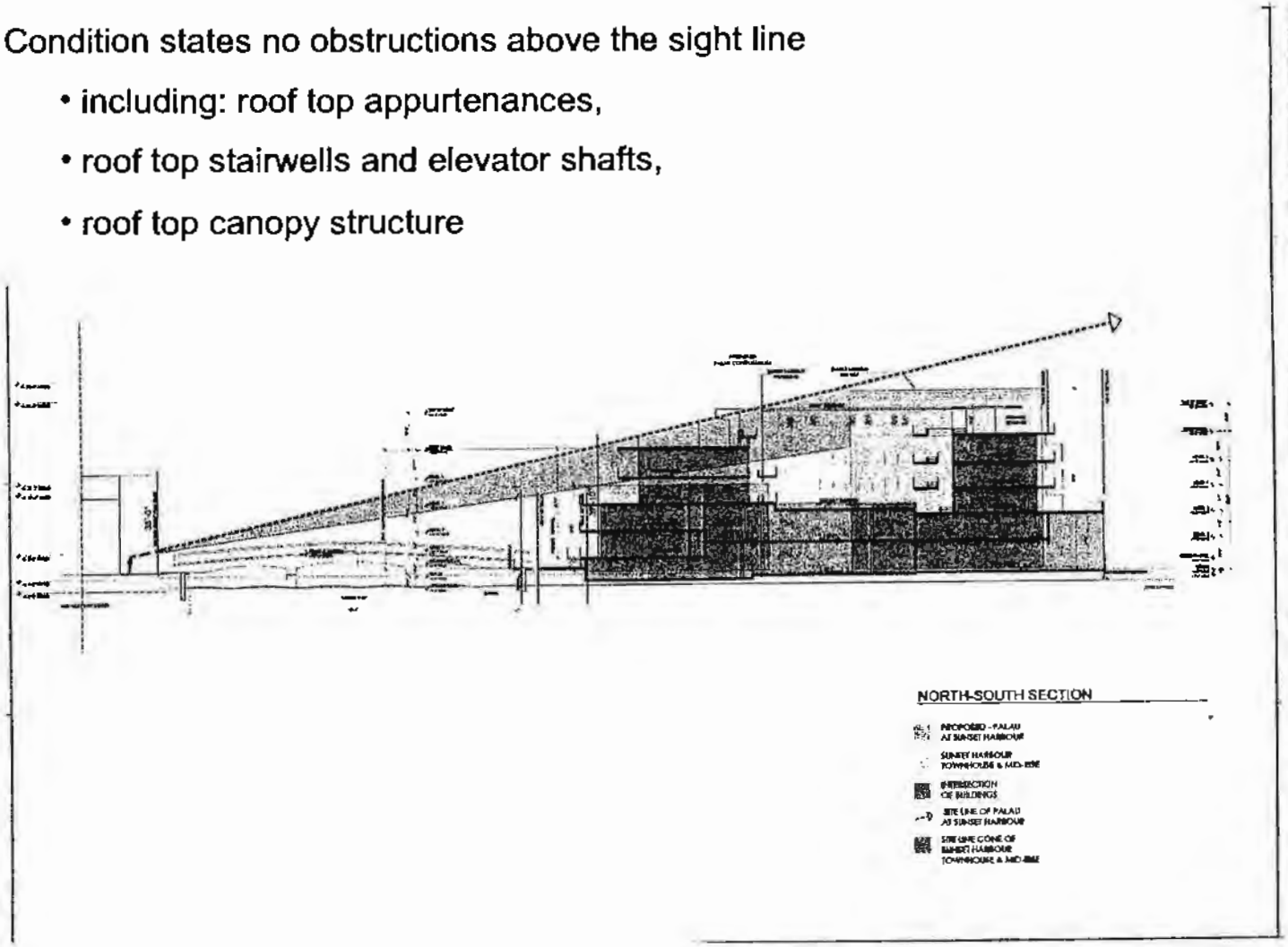
Sunset Harbor



Sight Line Benchmark

Site Lines (angle & ratio)

- Sunset IV to Sunset Harbor Townhomes: 6.7° angle 1' height for every 8.5' distance
- Sunset IV to Sunset Harbor Midrise: 12.0° angle 1' height for every 4.7' distance
- Condition states no obstructions above the sight line
    - including: roof top appurtenances,
    - roof top stairwells and elevator shafts,
    - roof top canopy structure



Height Incompatibility

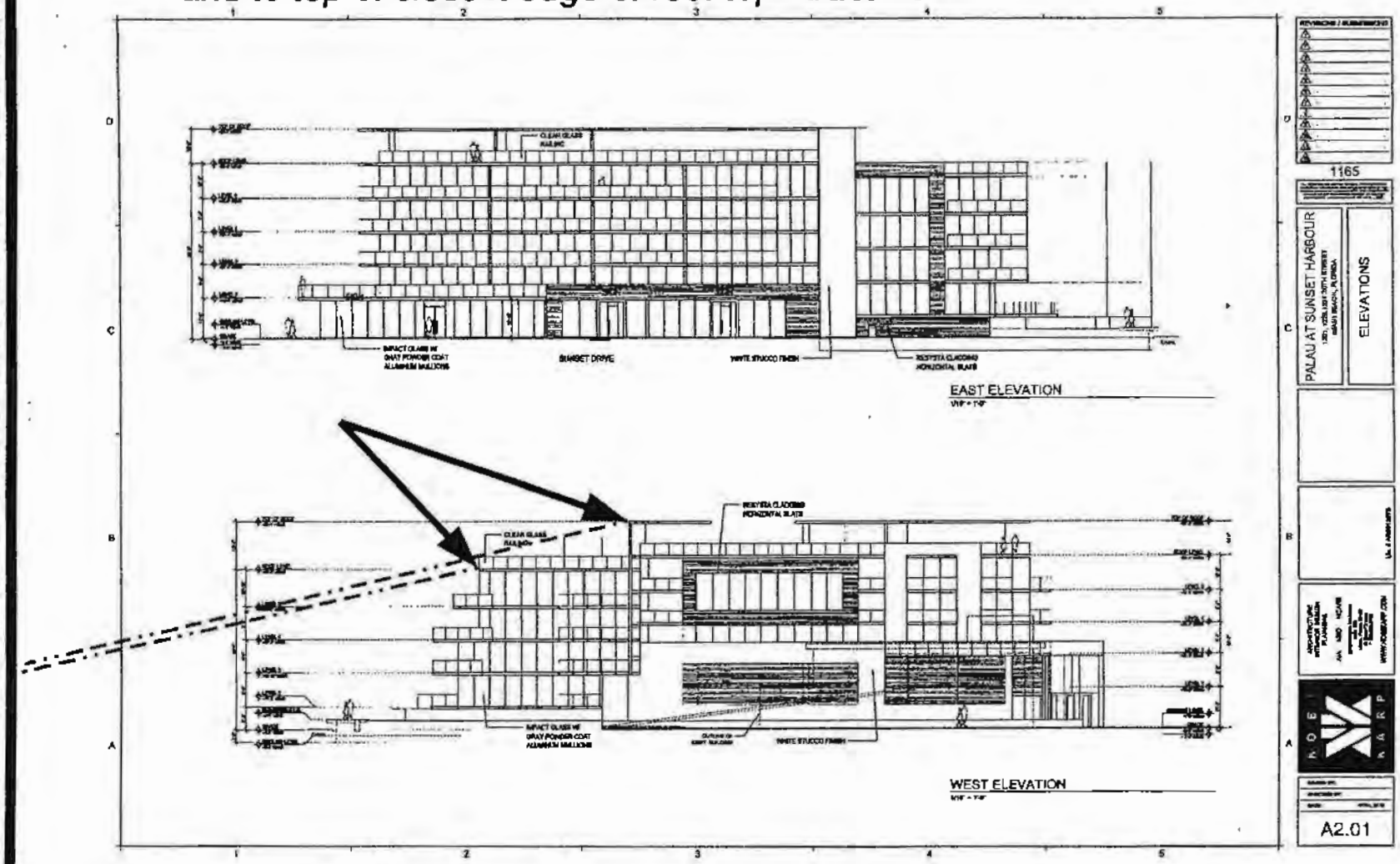
Site Angle Calculations

Height of Eye above ground level	Viewer Distance from Seawall = RM-4 minimum setback	Sunset Island Ground Level above NGVD	Sunset Canal Width	South Side Canal Bulkhead to Property Line	RM-2 Setback	Additional Horizontal Distance from RM-2 Setback	Ground Level above NGVD on South Side	First Facade Roof Height above NGVD	Other Structure Height above Roof	Brow or Extension Horizontally closer than RM-2 line	SIGHT LINE RATIO (HEIGHT / HORIZONTAL)	SIGHT LINE ANGLE
[redacted]												
5.5	20	6	120	2	20.67	0	not applicable	50	0	0	[redacted]	[redacted]
[redacted]												
5.5	20	6	120	2	20.67	11.58	not applicable	50	0	0	[redacted]	[redacted]
[redacted]												
5.5	20	6	120	2	20.67	-8.4	not applicable	50	0	0	[redacted]	[redacted]
[redacted]												
5.5	20	6	120	2	20.67	85	not applicable	50	13.67	0	[redacted]	[redacted]
[redacted]												
5.5	20	6	120	2	20.67	44	not applicable	50	13.67	0	[redacted]	[redacted]
[redacted]												
5.5	20	6	120	0	20.67	0	4.67	31.17	0	0	[redacted]	[redacted]
[redacted]												
5.5	20	6	120	0	20.67	100	4.67	65	0	0	[redacted]	[redacted]

$$\text{Sight angle} = \text{arctangent}_{\text{deg}}\left(\frac{\text{Sum of target building heights above NGVD} - \text{Sum of viewer heights above NGVD}}{\text{Sum of horizontal distances from viewer to façade or view obstruction}}\right)$$

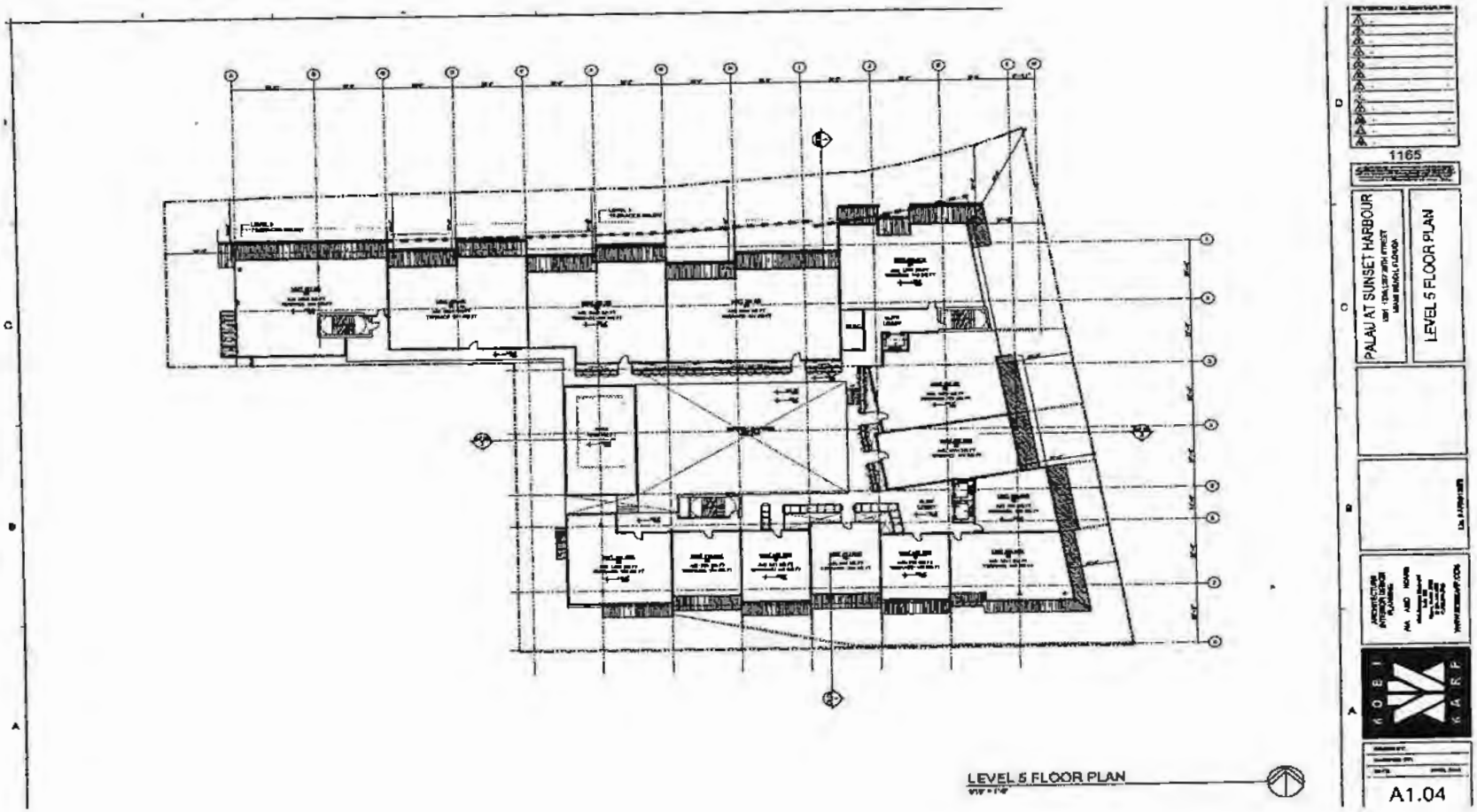
Height Incompatibility

- ***Site Lines***
  - *Measured to brow above Level 5 residential terraces*
  - *and to top of closest edge of roof top structure*



Height Incompatibility

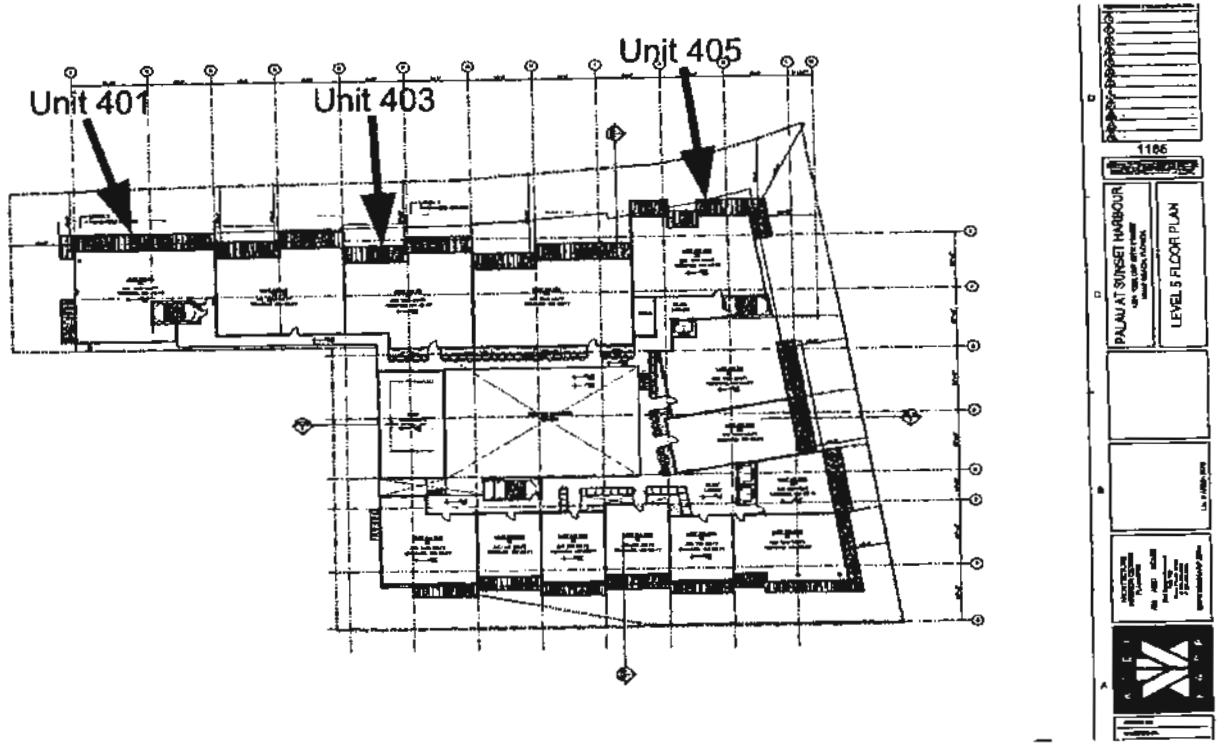
- ***Site Lines***
  - *Measured to brow above Level 5 residential terraces*
  - *Edges of terraces shown in red: brows above shown on roof top plan*
  - *Blue dashed line highlights RM-2 setback line*



Height Incompatibility

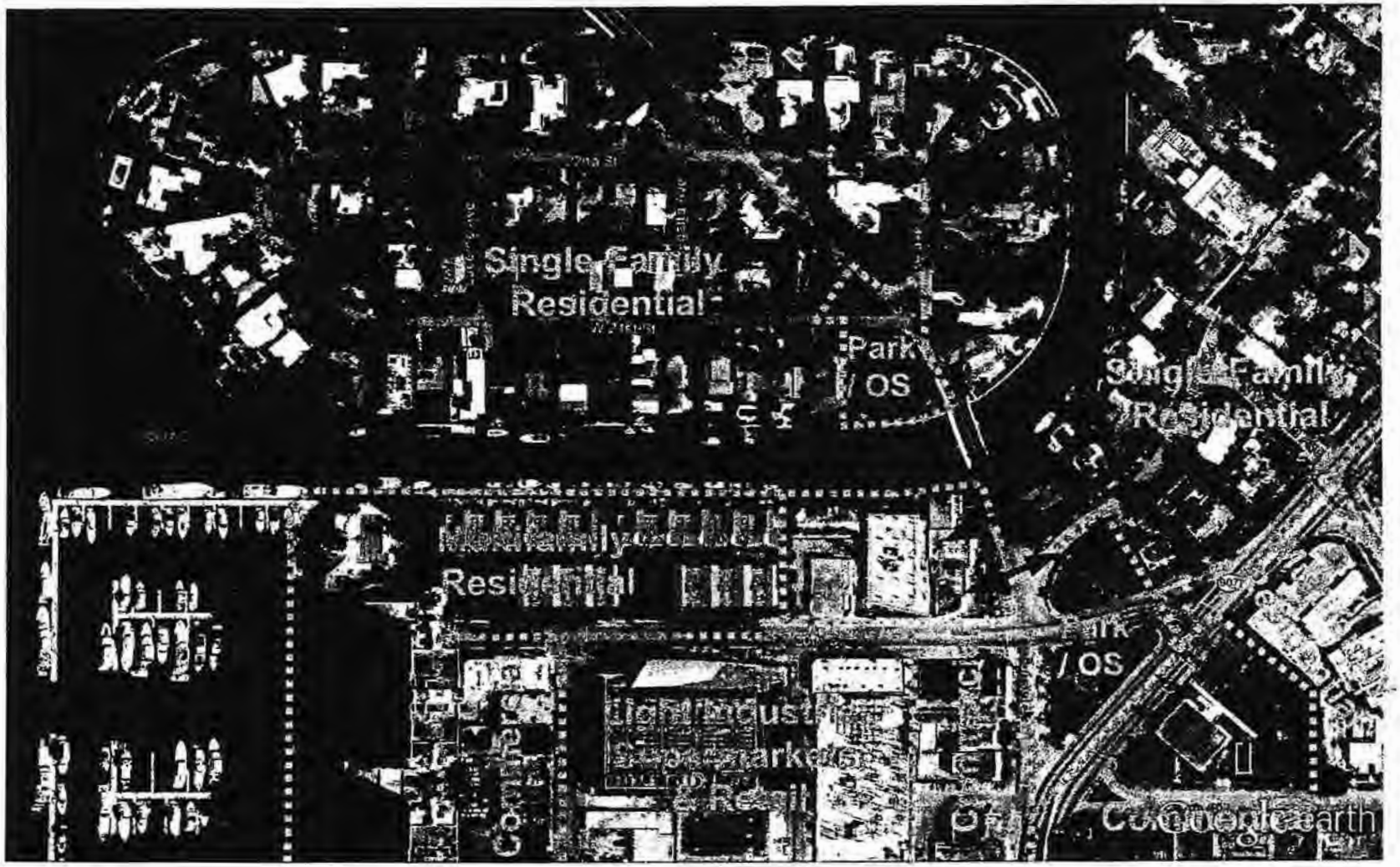
Site Lines

- Sunset IV to Palau at West Side (Unit 401) Terrace Brow — 13.3° angle
- Sunset IV to Palau at Center (Unit 403) Terrace Brow — 12.5° angle
- Sunset IV to Palau at East Side (Unit 405) Terrace Brow — 13.8° angle
- Sunset IV to Palau Roof Top Elevator Shaft & Canopy: — 11.9° angle
- Sunset Harbor Midrise — 12.0° angle
- Sunset Harbor Townhomes — 6.7° angle



Height Incompatibility

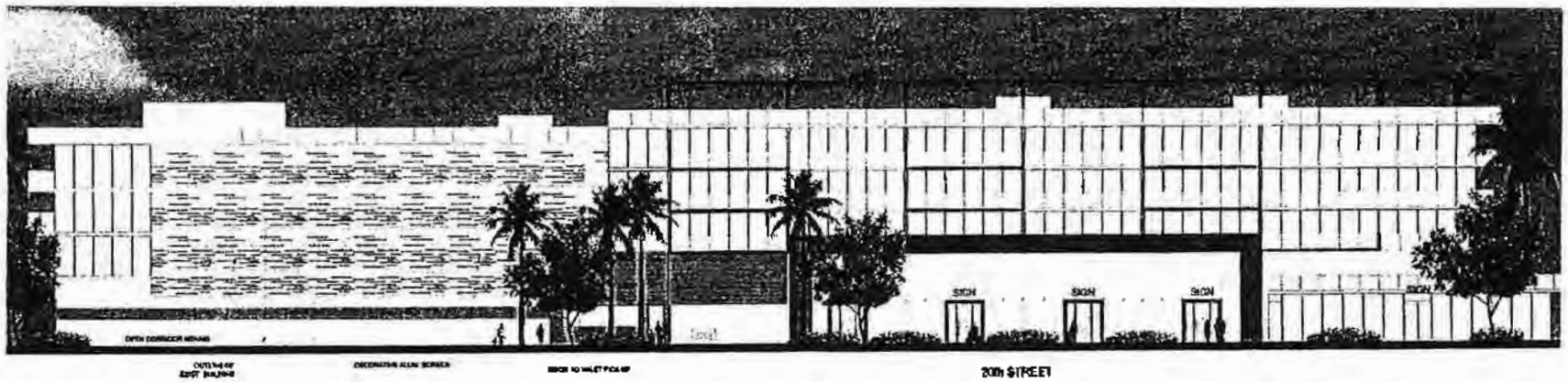
Site Lines analysis also pertains to homes to the northeast across Sunset Drive

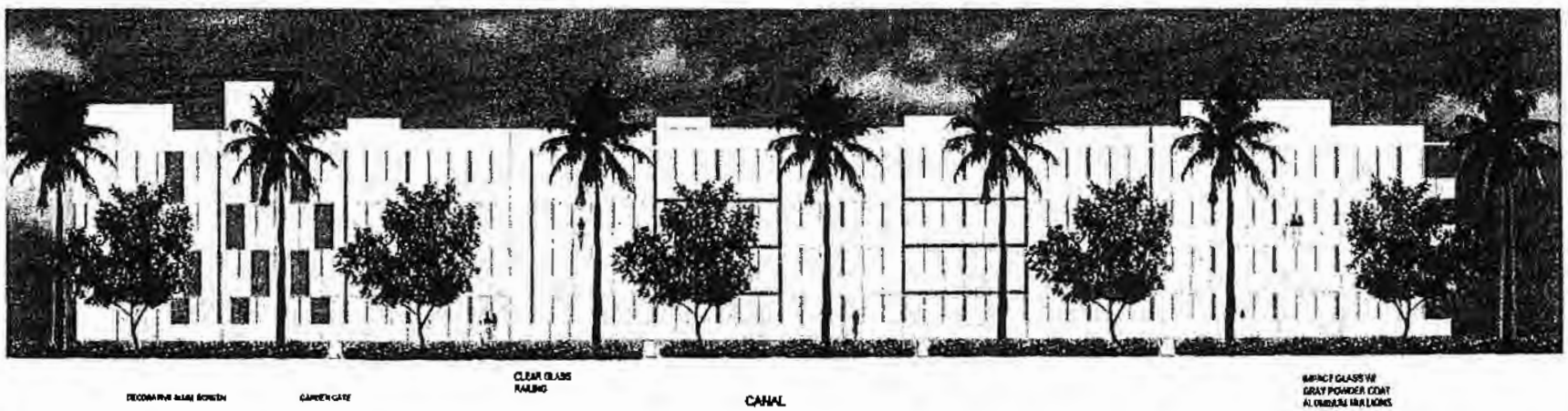


Landscape Plan

Street (south) and Canal (north) facades

- Important for pedestrian comfort, energy reduction, buffering





Nothing is great or small, except in comparison with other things

Gulliver's Travels

Jonathan Swift

FAR - Intensity

Floor area means the sum of the gross horizontal areas of the floors of a building or buildings, measured from the exterior faces of exterior walls or from the exterior face of an architectural projection, from the centerline of walls separating two attached buildings. However, the floor area of a building shall not include the following unless otherwise provided for in these land development regulations.

(1) Accessory water tanks or cooling towers.

(2) Uncovered steps.

(3) Attic space, whether or not a floor actually has been laid, providing structural headroom of less than seven feet six inches.

(4) Terraces, breezeways, or open porches.

(5) Floor space used for required accessory off-street parking spaces. However, up to a maximum of two spaces per residential unit may be provided without being included in the calculation of the floor area ratio.

(6) Commercial parking garages and noncommercial parking garages when such structures are the main use on a site.

(7) Mechanical equipment rooms located above main roof deck.

(8) Exterior unenclosed private balconies.

(9) Floor area located below grade; however, if the ceiling is above grade, one-half of the floor area that is below grade shall be included in the floor area ratio calculation.

(10) Enclosed garbage rooms, enclosed within the building on the ground floor level.

Volumetric buildings, used for storage, where there are no interior floors, the floor area shall be calculated as if there was a floor for every eight feet of height.

When transfer of development rights are involved, see chapter 118, article V for additional regulations that address floor area.

Floor area ratio means the floor area of the building or buildings on any lot divided by the area of the lot.

Design Review Criteria Sec. 118-251(a)

Design review encompasses the examination of architectural drawings for consistency with the criteria stated below, with regard to the aesthetics, appearances, safety, and function of any new or existing structure and physical attributes of the project in relation to the site, adjacent structures and surrounding community. The board and the planning department shall review plans based upon the below stated criteria, criteria listed in neighborhood plans, if applicable, and design guidelines adopted and amended periodically by the design review board and/or historic preservation board. Recommendations of the planning department may include, but not be limited to, comments from the building department and the public works department. If the board determines that an application is not consistent with the criteria, it shall set forth in writing the reasons substantiating its finding. The criteria referenced above are as follows:

(1) The existing and proposed conditions of the lot, including but not necessarily limited to topography, vegetation, trees, drainage, and waterways

(2) The location of all existing and proposed buildings, drives, parking spaces, walkways, means of ingress and egress, drainage facilities, utility services, landscaping structures, signs, and lighting and screening devices

(3) The dimensions of all buildings, structures, setbacks, parking spaces, floor area ratio, height, lot coverage and any other information that may be reasonably necessary to determine compliance with the requirements of the underlying zoning district, and any applicable overlays, for a particular application or project.

(4) The color, design, selection of landscape materials and architectural elements of exterior building surfaces and primary public interior areas for developments requiring a building permit in areas of the city identified in section 118-252

(5) The proposed site plan, and the location, appearance and design of new and existing buildings and structures are in conformity with the standards of this article and other applicable ordinances, architectural and design guidelines as adopted and amended periodically by the design review board and historic preservation board and all pertinent master plans.

Design Review Criteria Sec. 118-251(a)

(6) The proposed structure, and/or additions or modifications to an existing structure, indicates a sensitivity to and is compatible with the environment and adjacent structures, and enhances the appearance of the surrounding properties.

(7) The design and layout of the proposed site plan, as well as all new and existing buildings shall be reviewed so as to provide an efficient arrangement of land uses. Particular attention shall be given to safety, crime prevention and fire protection, relationship to the surrounding neighborhood, impact on contiguous and adjacent buildings and lands, pedestrian sight lines and view corridors.

(8) Pedestrian and vehicular traffic movement within and adjacent to the site shall be reviewed to ensure that clearly defined, segregated pedestrian access to the site and all buildings is provided for and that all parking spaces are usable and are safety and conveniently arranged; pedestrian furniture and bike racks shall be considered. Access to the site from adjacent roads shall be designed so as to interfere as little as possible with traffic flow on these roads and to permit vehicles a rapid and safe ingress and egress to the site.

(9) Lighting shall be reviewed to ensure safe movement of persons and vehicles and reflection on public property for security purposes and to minimize glare and reflection on adjacent properties. Lighting shall be reviewed to assure that it enhances the appearance of structures at night.

(10) Landscape and paving materials shall be reviewed to ensure an adequate relationship with and enhancement of the overall site plan design.

(11) Buffering materials shall be reviewed to ensure that headlights of vehicles, noise, and light from structures are adequately shielded from public view, adjacent properties and pedestrian areas.

(12) The proposed structure has an orientation and massing which is sensitive to and compatible with the building site and surrounding area and which creates or maintains important view corridor(s).

(13) The building has, where feasible, space in that part of the ground floor fronting a street or streets which is to be occupied for residential or commercial uses; likewise, the upper floors of the pedestal portion of the proposed building fronting a street, or streets shall have residential or commercial spaces, shall have the appearance of being a residential or commercial space or shall have an architectural treatment which shall buffer the appearance of the parking structure from the surrounding area and is integrated with the overall appearance of the project

Design Review Criteria Sec. 118-251(a)

(14) The building shall have an appropriate and fully integrated rooftop architectural treatment which substantially screens all mechanical equipment, stairs and elevator towers.

(15) An addition on a building site shall be designed, sited and massed in a manner which is sensitive to and compatible with the existing improvement(s).

(16) All portions of a project fronting a street or sidewalk shall incorporate an architecturally appropriate amount of transparency at the first level in order to achieve pedestrian compatibility and adequate visual interest.

(17) The existing and proposed conditions of the lot, including but not necessarily limited to topography, vegetation, trees, drainage, and waterways.

(18) The location, design, screening and buffering of all required service bays, delivery bays, trash and refuse receptacles, as well as trash rooms shall be arranged so as to have a minimal impact on adjacent properties.

Qualifications

- professional planner
- 20 years practice in Florida
- masters degree, planning
- masters degree, civil engineering
- accepted in judicial hearings as planning expert

AICP

MARK ALVAREZ

HAS QUALIFIED AS A

MEMBER

AMERICAN INSTITUTE OF CERTIFIED PLANNERS

JULY 1996

MARK ALVAREZ

625 NE 50th Terrace Miami, Florida 33137 tel. 786-208-6655

URBAN PLANNER

e-mail: malvares@bellsouth.net

EXPERIENCE

Mr. Alvarez provides land use planning, transportation planning, and development rights analysis services to public entities and private interests, including: comprehensive plan amendments; zoning analysis and amendments; developing area plans for redevelopment and neighborhood preservation; assisting citizens groups to liaison with governments; and analyzing development compliance. In the transportation area of practice, he performs work to develop transportation improvements that leverage redevelopment, and to developing transit system improvements for large and small systems. He has over 20 years of experience in: stakeholder engagement, baseline assessment, issue prioritization, development of performance indicators, impact analysis, cost-benefit analysis, and development of sustainable strategies.

- **Principal** — **Dec. 2006 - present**
  Alvarez Planning — **Miami, Florida**
  Mr. Alvarez provides land use planning, transportation planning, and development rights analysis services. Major projects include: *City of North Miami Beach Land Development Code amendments; Pinecrest US-1 Corridor Master Plan; City of North Miami Beach Comprehensive Plan; City of North Miami Land Use Code Amendments; West Perrine Community Redevelopment Area (CRA) Finding of Necessity; Goulds / Cutler Bay CRA Finding of Necessity; Florida Gold Coast Electric Vehicle and Charging Infrastructure Analysis Village of Pinecrest Transit Circulator Study; South Dade Busway Transit Park-and-Ride and Feeder Plan; Pinecrest South Dixie Highway Intersection Study*

- **Senior Research Associate** — **Jun. 2003 – Dec. 2006**
  Center for Urban Transportation Research, University of South Florida — **Tampa, Florida**
  As a University of South Florida Research faculty member, Mr. Alvarez was the Principal Investigator for four large transit / land use planning studies with a total value of over $1.6-million. He also conducted quantitative management and policy analysis efforts for governmental clients.

- **Capital Improvement Administrator** — **Nov. 1999 – Jun. 2003**
  City of Miami Beach — **Miami Beach, Florida**
  Mr. Alvarez coordinated the programming of a $400-million capital improvement program (CIP). Reporting to the Assistant City Manager and Chief Financial Officer, he coordinated with the City's departments of finance, budgeting, planning, public works, parking, buildings, and media relations to prioritize the City's streetscape, utility, parks, and public facility projects.

- **Principal** — **Apr. 1998 – Jun. 2003**
  Meridian Consulting, Inc. — **Miami, Florida**
  Mr. Alvarez integrated provided specialized urban planning services in transportation, transit and parking improvements to support economic development strategies in urban downtown settings, and comprehensive plan amendments. He worked with planning teams on major urban planning efforts in Northwest, Midwest, and in Florida.

- **Senior Planner** — **Nov. 1993 – Apr. 1998**
  The Corradino Group — **Miami, Florida**
  Mr. Alvarez led transportation and community planning projects, managed the company's planning staff, and developed proposals for new work. He was the project manager for many major public sector projects that included: transit development, transportation corridors, traffic calming, community redevelopment area designations and, land use policy plans.

- **Regional Planner** — **Aug. 1992 – Nov. 1993**
  South Florida Regional Planning Council — **Hollywood, Florida**
  Mr. Alvarez was responsible for land use and transportation-related planning assignments, including: evaluating local comprehensive plan amendments; updating the Transportation Element of the Strategic Regional Policy Plan, and he was the Project Manager for the US Department of Energy and Florida Department of Community Affairs' Clean Cities Program.

EDUCATION

Master of Science
Civil Engineering
Ohio State University
1992

Master of City and Regional Planning
Ohio State University
1992

Bachelor of Science
Operations Management
Ohio State University
1988

PROFESSIONAL DEVELOPMENT

American Institute of Certified Planners, 1996

Professionalism and Ethics Seminar, 2011
The Metropolitan Center,

Pedestrian Safety Training Program, 1995 FDOT

Collaborative Planning Dispute Resolution Workshop, 1993, Growth Management Conflict Resolution Consortium

COMMUNITY SERVICE

City of Miami Selection Committee, Miami Midtown Trolley Plan

City of Miami Upper East Side Council Biscayne Boulevard Committee

City of Miami Beach Transportation and Parking Committee, Commission Appointee

City of Miami Beach Traffic Calming Committee

Massing

Canal side facade

- Some visual relief provided with varigation
- Separating larger building into smaller units to better match scale is more effective

Building facade	height	width	facade area
Sunset Harbor townhouse	27'h	25'w	675 sf
Sunset Harbor townhouse	33'h	30'w	900 sf
Proposed Palau at Sunset Harbor	50'h	291'w	14,550 sf
Typical Sunset Island home	33'h (max)	40'w	1,200 sf

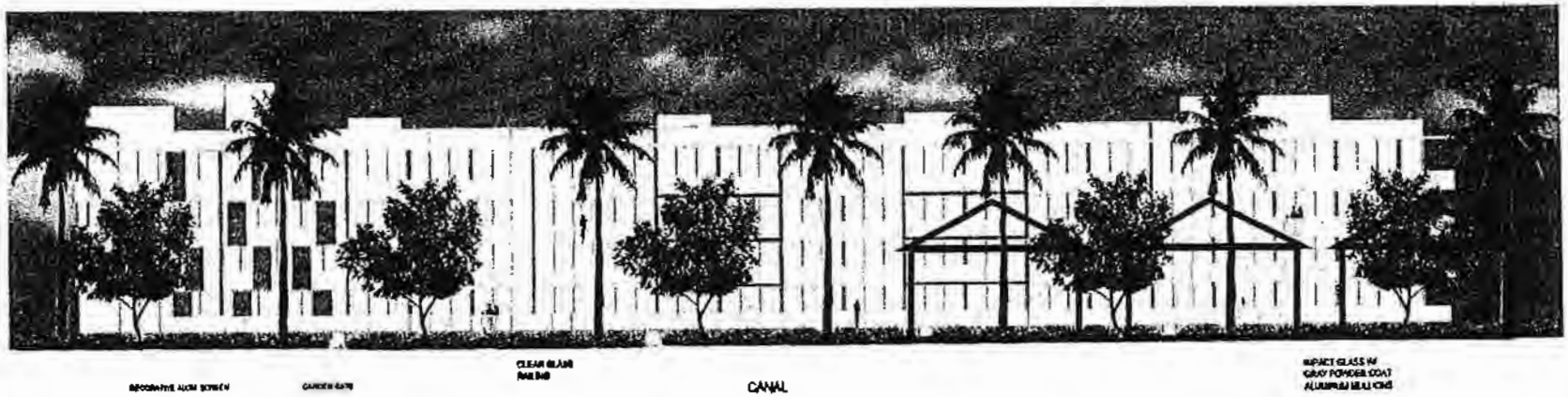


EXHIBIT "F"

1
2
3
4
5
6 EXCERPT FROM PROCEEDINGS
7 (REQUESTED BY TUCKER GIBBS, ESQ.)
8 (Testimony of
9 Professor Jean Francois Le Jeune)
10
11
12 MEETING OF THE PLANNING BOARD
13 CITY OF MIAMI BEACH
14
15
16 File Number 2043, 1201, 1225, 1237 20th Street
17
18
19 May 22, 2012
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22
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25

COPY

1
APPEARANCE OF IDENTIFIED SPEAKERS
2
Planning Board:
3
Randy Weisburd, Chairman
4 Henry Stolar
Robert Wolfarth
5 Charles Urstadt
Daniel Veitia
6 Leslie Tobin
Richard Lorber
7
8 ATTORNEY FOR CITY OF MIAMI BEACH:
Gary Held, ESQUIRE
9
10 ATTORNEY FOR PALAU SUNSET HARBOUR:
11 WAYNE PATHMAN, ESQ.,
Pathman Lewis, LLP
12 One Biscayne Tower
Suite 2400
13 2 South Biscayne Boulevard
Miami, FL 33131
14
15 ATTORNEY FOR MAC SH LLC:
16 KENT HARRISON ROBBINS, ESQ.,
Attorney at Law
17 1224 Washington Avenue
Miami Beach, Florida 33139
18
19
20 — — —
21
22
23
24
25

1 (Whereupon, the following is an
2 excerpt from the hearing proceedings:)
3 * * * * *
4 THE CHAIRPERSON: This is the Chair's
5 ten minutes. Okay.
6 Mr. Le Jeune said he would beat the
7 ten-minute clock.
8 MR. LEJEUNE: Yes.
9 THE CHAIRPERSON: I do not have any
10 other members of the public -- are there any
11 members of the public that inadvertently
12 didn't sign onto the log?
13 So, no. You are our last individual.
14 MR. LEJEUNE: Thank you for your
15 patience and the way you are running the
16 meeting. My name is Jean Francois Le Jeune.
17 I live on Belle Isle, Apartment 302, Miami
18 Beach, Florida.
19 I used to be a resident of the Sunset
20 Isle neighborhood at the time of the
21 construction of the Publix, and I am also a
22 member of the Board of the Belle Isle
23 Association.
24 I have been on this Board for three
25 years and a half, followed by three other

1 years on the historic preservation Board, so
2 I know very well how things work and the
3 complexity of running these issues.
4 I would like to say that I was asked
5 to make an urban design and planning
6 architectural review of the project.
7 Architecture is not an issue, really,
8 at this point, but urban design and planning
9 is. I think we all agree from all sides that
10 the project at that location is a necessary
11 step to improve a neighborhood which has come
12 to a major process of transformation.
13 The neighborhood is more developed
14 than it used to be. We have, right now, an
15 abandoned building, and also, we have -- we
16 have the "Mark" building standing there at
17 the corner of Sunset Drive, which I would
18 like to match the borders of that building.
19 I actually believe that the building has
20 historic value, in that it was designed by
21 Robert Swartzburg, who was actually the
22 architect of the Delano Hotel. It is an
23 empty building. I have the belief that it is
24 a very important building.
25 And it is a sensitive project. The

1 Sunset project might be able to possibly
2 integrate some of the aspects of the
3 building, and certainly recall perhaps the
4 existence of that structure in the near
5 future.
6 Regarding the project, itself, having
7 -- most of the major points have already been
8 made. It is obviously a very important
9 project in terms of massing. It is extremely
10 big, and I am pointing to some aspects of the
11 massing that -- you can see them on the
12 drawing on there of -- the project is about
13 half of the scale and mass of Sunset Harbor
14 apartments and townhouses, but it actually
15 occupies the entire space that separates from
16 houses from the apartments. So where Sunset
17 Harbor actually shows two rows of buildings,
18 separated by green spaces and open space that
19 we are hearing from, there is a much larger
20 space and much larger compact. Some people
21 said, monolithic structure. I want to
22 actually make a little joke, perhaps, that
23 the word "Palau" is actually a palace. I
24 don't know whether the developer has taken
25 that word for granted.

1 The question is whether or not it is a
2 palace or it has the massing that a palace
3 has. It may not be the most appropriate way
4 of looking at this project.
5 So I do believe that because of the
6 overall similarities that have been made and
7 analysis of the project, the height, even
8 though the building -- because -- in fact,
9 the heights have been reduced from the first
10 proposal that has been done, the setback of
11 the third and fourth floor, but that doesn't
12 take away from the FAR, which has behaved the
13 same.
14 I want to make sure that the BP --
15 that all the concessions that appears in
16 here -- that they are actually maintained in
17 the FAR as it was from the beginning.
18 But I would like to also say that the
19 height of the project, at this point, of
20 43 feet is a continuous height. It is the
21 slab of the ceiling floor, and it is very
22 different from the varying height, including
23 setbacks that are used by the Sunset
24 townhouses.
25 I think -- within the style of the

1 building that the developer and the architect
2 are aiming at, I think such a quality of not
3 enveloping full, equal facade is fully
4 possible and desirable.
5 I must say also that it not very easy
6 for us to assess a project from the material
7 that has been given by the developer.
8 Facades are actually, in part, proffered with
9 trees and things like that, which make it
10 very difficult for even an architect to read
11 the plan concept completely.
12 And the -- some of the renderings are
13 also, let's say, somewhat, if you will,
14 "fuzzy" in their definition and their
15 precision.
16 But I would like to -- I am surprised
17 that the -- and I know there are issues of
18 covenants and legal issues between the
19 Michael Comras company, 1261 20th Street and
20 the project, but I would like to, personally,
21 see if the way the building wraps around the
22 structure on 1261 20th Street has an adverse
23 impact.
24 I mean, I cannot really recall -- and
25 if there are legal issues that are permitted

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22 structure on 1261 20th Street has an adverse
23 impact.
24 I mean, I cannot really recall -- and
25 if there are legal issues that are permitted

1 in the proposal, I am not supposed to discuss
2 that -- but I cannot recall such a situation
3 where an existing building, which actually
4 does quite nicely as a landmark, as a form of
5 architecture like this. Just remember that
6 our building was actually done right after
7 the conclusion of the Publix.
8 It was done in relationship with
9 Publix in its structure, in its architecture.
10 It is very simple to believe that that
11 building would be wrapped up with a
12 quasi-50 feet wall, with some apartments and
13 association spaces facing.
14 The architect acted very nicely with
15 the Board where he shows us the space between
16 the existing townhouses and the new project
17 that will be used as green space. So parts
18 that are green space, parks that are green
19 space, I would not use the 26 feet, or
20 28 feet -- more or less -- that is extremely
21 limited, and that perhaps one of the best
22 solutions for this project would actually be
23 to make it shorter.
24 There are issues about height. The
25 residents have talked about those. I think

they make sense. I actually believe that, from a design plan point of view, that interrupting the path of structures that we put along the runway would be very useful, and opening up the gap between the Sunset townhouses and new project let's say, twice, maybe 50 feet, or something like that, 50, 55 feet would actually make -- would go a long way to change the appearance of that structure, seen from the residents of Sunset Islands' point of view, but it will also do something that I think Miami Beach has always, always been very keen of. It actually maintains a vista from West Avenue toward the water and toward the islands.

That vista will be eliminated.

I think it is very clear from the material that you have received, and any walk in the neighborhood will show that it is here that if still -- if you build the structure as proposed, 46 to 50 feet, immediately behind the 1261 Street, that vista, which is still in place today, thanks to the architect, the way they handled the side, will be eliminated. I think this the point

1 of view of the planning and urban design in
2 the City of Miami Beach. This is a main
3 issue, and I believe it has to be considered
4 by the Board.
5 Sunset Harbor Towers made that very
6 clear in one direction. The towers, Sunset
7 Harbor Drive, Palau, north/south direction
8 actually has a northern vista towards the
9 water. It doesn't exist in the east/west
10 direction, which probably was a mistake at
11 that time.
12 I think we have to insist on the --
13 the neighborhood has to open up and to
14 continue to open onto nature, the canal and
15 even -- because you can actually see the
16 houses across the canal from the Sunset
17 Harbor neighborhood.
18 So I think these are -- it seems to be
19 that in terms of the urban design and
20 architecture, this is a major adverse impact
21 on an existing property.
22 It is not the one that has been
23 discussed mostly in the meetings so far. It
24 is another -- it is actually a building which
25 is part of the district and has the same

1 function that most of the district around --
2 I think that needs to be considered very
3 seriously by the Board.
4 Otherwise, because my time is up, I
5 would say -- I would suggest that the project
6 be redesigned in order to respond to the
7 residents' comments. I think that what the
8 site needs would be probably to develop as a
9 townhouse -- is to reduce mass and scale.
10 The suggestion that part of it be
11 built in such a way to allow the landscape to
12 go underneath and come back in is
13 interesting. It reduces the lengths of the
14 waterside by leaving it open, at least as to
15 West Avenue -- that seems to be one logical
16 solution to eliminate the effect on the
17 existing building, but also to continue the
18 quality of life in the transformation and
19 development.
20 THE CHAIRPERSON: Thank you.
21 MR. LE JEUNE: So as I think you can
22 see, my main point, main point is in
23 photograph number seven and -- yes, mostly
24 seven, I mean, six is an interesting one
25 because it is taken from the steps of Publix

1 -- this is actually a very public operation.
2 There are thousands of residents and
3 thousands of people walking around, going up
4 that ramp.
5 And actually, you can see the urban
6 neighborhood. You can see the landscape that
7 is around, and I believe that image number
8 seven is directly -- it shows you the extent
9 of the open vista that we have now, and I
10 cannot know what will happen, but you can
11 imagine it basically will be done.
12 Thank you very much.
13 THE CHAIRPERSON: Thank you.
14 MR. PATHMAN: Francois --
15 MR. ROBBINS: For the record, we want
16 to move in the photographs -- as well as the
17 professor's report -- into the record, and
18 his CV into the record in order to support
19 his testimony.
20 Thank you.
21 THE CHAIRPERSON: Cross?
22 MR. PATHMAN: It is not often you get
23 to cross-examine a former Board member who
24 asks you questions. Now I get to ask him
25 questions. So I will try to be brief, but I

1 do have a few questions.
2 CROSS-EXAMINATION
3 BY MR. PATHMAN:
4 Q. You said you currently reside on Belle
5 Island.
6 A. Yes.
7 Q. And can you describe just quickly the
8 make-up of Belle Island, what kind of buildings,
9 homes?
10 A. Yes. It is -- has a side which is
11 mostly apartment buildings on the southern side,
12 and then there is a side which is mostly -- half
13 single-family, residential, in a very unique
14 organization on the Beach.
15 And then there is one -- an important
16 building, it is a mixed-use -- that is a mixed
17 residential area, definitely.
18 Q. Single-family homes there, as well?
19 A. Some single-family homes, but they
20 don't really have up to the street. They built
21 their alleys perpendicular. It is a very
22 different situation.
23 Q. But things work pretty well there,
24 right?
25 There are no crises over there?

1 A. There is no crisis, no. But I think
2 you probably -- the members who have been
3 following this know that the board has been
4 dealing with the very contentious issue of the
5 development of Sunset Island, with matters that
6 are not totally, totally different from this
7 Board.
8 Q. But with all due respect, you are here
9 to -- comments on our applications were
10 negative, and you were hired to do that;
11 correct?
12 But you live in an area that is pretty
13 similar. It has a lot of high-rises,
14 apartments, and it has single-family homes;
15 correct?
16 A. Yes. But it has significantly
17 different zoning, and it is already residential,
18 and it is all different conditions.
19 You can't compare. It is not an -- it
20 is an island that has been very -- full of
21 litigation for many years, including the tall
22 structure on the corner of -- you know, I am not
23 sure how relevant it is, but I would notate that
24 Sunset Island, Belle Island is an example of
25 good planning. Well, it works together. "Good

1 planning" is another question.
2 Q. So you understand that our project is
3 in a commercial zoning district, correct?
4 A. Absolutely true.
5 Q. And we are proposing a less intense
6 use as residential with a little bit of retail?
7 A. Yes.
8 Q. When did you become aware of our
9 project? I know you state you are active in the
10 community, but I'm just curious. When did you
11 first hear about our application?
12 A. Well, I was aware of that -- I was
13 aware relatively late, I must confess, of this
14 project. I have followed it through television,
15 and I was aware, before the project, of the
16 Cypress project earlier.
17 But I must say that I was not aware at
18 the time, more than seven months ago.
19 You know, the part of the problem of
20 the public -- the increase in size. If you go
21 into a drive by there or walk there or bike
22 there, we -- almost every day, but it is very
23 different -- if you are not within the official
24 limits, you don't get information. I am afraid
25 it would be very limited.

1 Q. Did you see our last presentation in
2 March?
3 A. I didn't see the presentation. I have
4 seen it since then.
5 Q. And so when did you become aware of
6 the project? Two, three, four months ago maybe?
7 A. About a month ago.
8 Q. About a month ago?
9 A. Yes, about a month ago.
10 Q. Okay. Would you say that everything
11 you stated today so far is your opinion, as
12 to --
13 A. It is absolutely my opinion. You know
14 me. I have been on the Board. I am actually a
15 professor. I would not state any opinion that
16 would not be mine, money or no money. It
17 doesn't matter. I would be very, very clear on
18 that.
19 Q. And are you here today as professor or
20 an expert, as a member of the faculty of the
21 University of Miami or just as a neighbor?
22 A. I am here as an expert. I was invited
23 to come here as an expert. I may have come on
24 my own to this meeting, but I can't say right
25 now, because --

1 Q. As an expert, as an expert, have you
2 prepared any studies or done any evaluation of a
3 neighborhood based upon any studies or hired any
4 professionals to guide you in your presentation
5 today?
6 A. No. I was -- I have been basically
7 using my own analysis.
8 Q. Okay. So is it fair to say that you
9 have not provided any competent substantial
10 evidence supported by facts?
11 A. I would not be talking with that
12 aspect, because I have not heard one single
13 argument today, nor in the staff report, about
14 the impact of this project on the existing
15 structure of 1261 20th Street, which I happen to
16 find extremely interesting, working very well
17 with the public and providing open use from the
18 neighborhood to the water, to thousands of
19 shoppers into the -- and for me, that is very
20 important.
21 And I am sorry that I didn't hear it
22 before, and I understand the residents are on
23 the other side. I actually am from the other
24 side. I am coming from the other side, from
25 across the neighborhood. It is a very different

1 situation than the residents, and I am surprised
2 that the staff report doesn't actually consider
3 that condition. That is a problem.
4 Q. Have you read the staff report?
5 A. Of course.
6 Q. And are you aware that staff finds
7 this project to be compatible with the
8 neighborhood, and meets all the zoning
9 requirements and plan requirements?
10 A. I have read some statements in the
11 staff report which I find somewhat ambiguous.
12 Q. But you acknowledge that that is what
13 the staff report says?
14 A. Yes.
15 Q. And do you understand that -- and I
16 know this may be a legal term -- but the staff
17 report is considered competent and substantial
18 evidence?
19 MR. ROBBINS: I am going to object to
20 that.
21 THE WITNESS: I don't know if it is
22 for me to respond to that, but the staff
23 report is written by professional planners,
24 architects, and I am a professional at the
25 time. So I consider that, whatever -- you

1 know -- evidently, the staff report is an
2 independent report by staff members, based on
3 their professional competency, their analysis
4 of the code and their interpretation of the
5 guidelines.
6 MR. HELD: If you are looking to me,
7 Mr. Pathman --
8 MR. PATHMAN: You know what my
9 question is.
10 MR. HELD: For the moment, my
11 responsibility here is to make sure that the
12 process is fair and to defend whatever
13 decision the Board makes.
14 And I don't know, until you vote, what
15 that decision is. So the opinions that I
16 give, I believe, are fairly evenhanded.
17 And I would advise you that Professor
18 Le Jeune's testimony is competent substantial
19 evidence before the Board, based upon the
20 case law as I understand it.
21 MR. PATHMAN: But it has to be
22 supported by facts.
23 MR. HELD: Yes. The facts are all of
24 the documents that he reviews that are part
25 of the application, the plans, the records,

1 and what he has observed in the community.
2 Those are -- the facts upon which his
3 opinions are based is competent substantial
4 evidence.
5 MR. PATHMAN: I would very
6 respectfully disagree. And there are a
7 number of cases we can cite.
8 Gary is aware of a number of them, and
9 is currently litigating them on behalf of the
10 City.
11 BY MR. PATHMAN:
12 Q. But have you looked at our report, the
13 traffic report or our line of sight studies
14 prior to coming today?
15 A. The traffic report -- I have not
16 looked at the traffic report. I personally tend
17 to not believe them. They have been proven
18 wrong on many, many circumstances, in the good
19 way and in the bad way.
20 Regarding the line of sight -- the
21 sight lines -- I must say that from -- for me,
22 these are not -- first of all, I am opposing the
23 project from another point of view, which is
24 mainly the point that I am trying to add to this
25 meeting.

1 But -- the sight lines that are shown
2 in the report are fine, but you know, I do not
3 believe that the sight lines taken from a
4 private property to have the same importance as
5 sight lines taken from a public space.
6 Remember, issues of sight lines -- on
7 Lincoln Road, things like that -- these are
8 sight lines that are experienced by passers by,
9 visitors -- on the private property, it depends
10 -- we have much -- where you stand.
11 I do not have any problem with the
12 sight plans presented by your client and by the
13 architect. But I can also argue that if I go
14 back ten feet at that sight line, or go to the
15 second floor of the house where that section is
16 made, the section is irrelevant. So I mean, it
17 is not using it. It makes sense, but I don't
18 think it is relevant on the property.
19 Q. And are you aware of the fact that the
20 current zoning allows us to go to 50 feet, and
21 that our project currently is at roughly about
22 45 feet, six inches?
23 A. Yes. I am aware of that because of
24 the evidence I have reviewed from you, because
25 that is better for your project.

1 Q. So you also understand that we have --
2 not only have lower FAR than what is permitted,
3 but we have setbacks that are greater than what
4 is required, and we have lowered the height of
5 the building to greater than than what is
6 permitted?
7 A. I understand all of the criteria.
8 That is why we are here all together. There is
9 no issue about that.
10 Q. And in your presentation, you didn't
11 define any quote "adverse impacts."
12 Do you have anything that you could
13 say is a direct adverse impact to the
14 neighborhood, from the --
15 A. My analysis is that the way the
16 building -- the proposed building, the way it
17 develops its massing along the waterway and
18 wrapping around 1261 -- is an adverse impact on
19 the Sunset neighborhood. Not the residential
20 one. I am talking about the neighborhood,
21 Sunset Harbor neighborhood, because we are
22 losing an important open vista within the
23 relevancy. I personally think that it is an
24 adverse impact.
25 Also, it does, from an architect's

1 point of view, diminish the value of an
2 important building in the City, and I am not
3 talking from the inside. I am talking about the
4 owner of the building.
5 MR. PATHMAN: I have no further
6 questions, but I do have a comment.
7 I would just like to say that I -- I
8 understand the professor's last comment, that
9 it would be great if it was a park. It is
10 not. It is a commercial property. We have
11 -- someone has a right to build there, and we
12 are building a less intense use, which
13 effectively they acknowledge, and it doesn't
14 have an adverse impact to the neighborhood
15 where you have a Publix, a public parking
16 garage and you have a Office Depot and so on.
17 So I would ask you to consider this.
18 So far, nothing has really been presented
19 that suggests we have an adverse impact on
20 the neighborhood.
21 THE CHAIRPERSON: Thank you.
22 With that, I don't believe there are
23 any other members of the public who wish to
24 be heard, and again, for the second time now,
25 we close the public portion of the hearing.

1 MR. PATHMAN: I have some closing
2 comments, as well.
3 THE CHAIRPERSON: I got you covered.
4 I reserve.
5 (End of transcription of excerpt from
6 proceeding.)
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1 CERTIFICATE OF NOTARY

2 STATE OF FLORIDA:
SS.
3 COUNTY OF DADE:

4 I, SHARON PELL VELAZCO, a Court
5 Reporter in and for the State of Florida at
6 Large, do hereby certify that I was authorized
7 to and did stenographically report the
8 proceedings in the above-styled cause at the
9 time and place as set forth; that the foregoing
10 pages, numbered from 1 to 25, inclusive,
11 constitute a true record of an excerpt from my
12 stenographic notes.

13 I further certify that I am not an
14 attorney or counsel of any of the parties, nor
15 related to any of the parties, nor financially
16 interested in the action.

17 WITNESS my Hand and Official Seal this
18 22nd day of May, 2012.

19

20

21 SHARON PELL VELAZCO, RPR
COURT REPORTER NOTARY PUBLIC
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23

24

25

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EXHIBIT "G"

SUNSET ISLANDS BRIDGES
Nos. 1, 2 AND 4

MIAMI BEACH
HISTORIC STRUCTURES
DESIGNATION REPORT

Sunset Islands Bridge #1, constructed in 1929.

Prepared By:
City of Miami Beach
Planning, Design and Historic Preservation Division
August 1996

CITY OF MIAMI BEACH

HISTORIC DISTRICT DESIGNATION REPORT

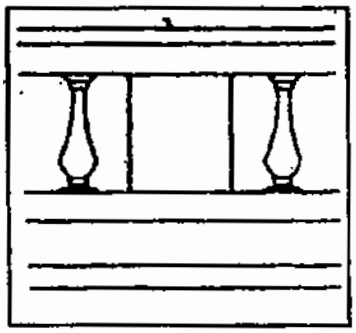
FOR

SUNSET ISLANDS BRIDGES #1, 2 AND 4
MIAMI BEACH HISTORIC STRUCTURES DESIGNATION

Prepared by:

CITY OF MIAMI BEACH PLANNING, DESIGN AND HISTORIC PRESERVATION DIVISION

AUGUST 1996



Railing Detail, Sunset Islands Bridge #1

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SUNSET ISLANDS BRIDGES #1, 2 AND 4
MIAMI BEACH HISTORIC STRUCTURES

DESIGNATION REPORT

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I. REQUEST

At its February 8, 1996 meeting, the City of Miami Beach Historic Preservation Board noted the impact the development of the Sunset Islands I, II, III and IV has had on the history and development of the City of Miami Beach. The Board further noted the historic role the Sunset Isles Bridges have played in defining the special tropical island character of the Sunset Islands residential neighborhood. Bridges #1, 2 and 4 are not only the sole surviving original Mediterranean-themed public works engineering structures in the City of Miami Beach, but are also the only remaining bridges of their kind in South Florida. Citing the aesthetic, architectural, and historical importance of the bridges to the Sunset Islands neighborhood and the first major "boom" period of the City during the 1920's, the members of the Board expressed concern over the possible loss of these significant structures and their possible replacement with structures not sensitive to the special character and history of the Sunset Islands. Accordingly, the Board directed the staff of the Planning, Design and Historic Preservation Division to prepare a preliminary evaluation and recommendation relative to the local designation of Sunset Islands Bridges #1, 2 and 4 as historic structures.

At its June 11, 1995 meeting, the Historic Preservation Board reviewed an independent analysis of the historic significance of the bridges prepared by Janus Research of St. Petersburg, Florida, for the Florida Department of Transportation, as well as the preliminary evaluation and recommendation prepared by the staff of the Planning, Design and Historic Preservation Division. The Board concurred with both said reports that the Sunset Islands Bridges #1, 2 and 4 not only met the designation criteria listed in Section 19-5 of Zoning Ordinance No. 89-2665 for designation as Miami Beach historic structures, but were also eligible for nomination to the National Register of Historic Places. The Board further noted the clear significance of the Sunset Islands Bridges #1, 2 and 4 to the successful development and defining character of the Sunset Islands and the City of Miami Beach, observing that these important historic structures could be dramatically altered or even lost in the near future if not afforded proper recognition and protection through historic designation.

Accordingly, the Board directed the staff to prepare a designation report relative to the group designation of the Sunset Islands Bridges #1, 2 and 4. The Board further directed staff to schedule and publicly notice a September 1996 hearing to consider and vote on the proposed designation of the Sunset Islands Bridges #1, 2 and 4. On September 12, 1996, the Historic Preservation Board unaminously approved a motion to recommend the designation of the Sunset Islands Bridges #1, 2 and 4 as Miami Beach Historic Structures in accordance with staff recommendations as reflected in this designation report.

II. DESIGNATION PROCESS

The process of historic designation is delineated in Section 19-5 of the Miami Beach Zoning Ordinance. An outline of this process is provided below:

Step One: A request for designation is made either by the City Commission, Historic Preservation Board, other agencies and organizations as listed in the Ordinance, or the property owners involved. Proposals for designation shall include a completed application form available from the Planning, Design and Historic Preservation Division.

Step Two: The Planning, Design and Historic Preservation Division prepares a preliminary review and recommendation for consideration by the Board.

Step Three: The Historic Preservation Board considers preliminary evaluation to determine if proceeding with a designation report is warranted.

The designation report is a historical and architectural analysis of the proposed district or site. The report:

1) describes the historic, architectural and/or archeological significance of the property or subject area proposed for Historical Site or District designation;

2) recommends Evaluation Guidelines to be used by the Board to evaluate the appropriateness and compatibility of proposed Developments affecting the designated Site or district; and

3) will serve as an attachment to the Zoning Ordinance.

Step Four: The designation report is presented to the Board at a public hearing. If the Board determines that the proposed district satisfies the requirements for designation as set forth in the ordinance, the Board

transmits a recommendation in favor of designation to the Planning Board and City Commission.

Step Five: The Planning Board will hold a public hearing on the proposed designation, and shall consider the proposed historic designation as an amendment to the zoning ordinance amendment and, subsequently, transmit its recommendation to the City Commission.

Step Six: The City Commission may, after two (2) public hearings, adopt an amendment to the Zoning Ordinance which thereby designates the Historic Preservation Site or Historic District.

III. RELATION TO ORDINANCE CRITERIA

In accordance with Section 19-5(B) of the Zoning Ordinance, eligibility for designation is determined on the basis of compliance with listed criteria set forth below.

1. The Historic Preservation Board shall have the authority to recommend that properties be designated as Historic Buildings, Historic Structures, Historic Improvements, Historic Landscape Features, Historic Interiors (architecturally significant public portions only), Historic Sites or Historic Districts if they are significant in the historical, architectural, cultural, aesthetic or archeological heritage of the City of Miami Beach, the county, state or nation. Such properties shall possess an integrity of location, design, setting, materials, workmanship, feeling or association and meet at least one (1) of the following criteria:

    a. Association with events that have made a significant contribution to the history of Miami Beach, the county, state or nation;

    b. Association with the lives of Persons significant in our past history;

    c. Embody the distinctive characteristics of a historical period, architectural or design style or method of construction;

    d. Possesses high artistic values;

e. Represent the work of a master; Serve as an outstanding or representative work of a master designer, architect or builder who contributed to our historical, aesthetic or architectural heritage;

f. Have yielded, or are likely to yield information important in pre-history or history;

g. Listed in the National Register of Historic Places;

h. Consist of a geographically definable area that possesses a significant concentration of Sites, Buildings or Structures united by historically significant past events or aesthetically by plan or physical development, whose components may lack individual distinction.

2. A Building, Structure (including the public portions of the interior), Improvement or Landscape Feature may be designated historic even if it has been altered if the alteration is reversible and the most significant architectural elements are intact and repairable.

The Sunset Islands Bridges #1, 2 and 4 are eligible for designation as they comply with the criteria as outlined above.

1. Staff finds the Sunset Island Bridges #1, 2 and 4 to be eligible for historic designation and in conformance with designation criteria as specified in section 19.5 of the Zoning Ordinance for the following reasons:

   A. <u>Association with events that have made a significant contribution to the history of Miami Beach, the County, state or nation:</u>

   The Sunset Islands Bridges #1, 2 and 4 are associated with the early creation and development of Miami Beach's Sunset Islands neighborhoods, consisting of four of South Florida's first man-made dredged islands. The vital link of the Sunset Islands to each other and to the Miami Beach barrier island was the Sunset Islands Bridges #1, 2 and 4, which significantly contributed to the realization and appeal of one of the City's earliest tropical residential island neighborhoods.

B. Association with the lives of Persons significant in our past history:

The Sunset Islands were developed by the Sunset Islands Company, headed by S. A. Lynch, President of Paramount Pictures. His presence significantly contributed to publicity efforts fueling the continued development of Miami Beach, helping make the Sunset Islands home to prominent citizens locally and nationwide. As a result of many of his efforts, several renowned film, entertainment and political personalities maintained residences on the Sunset Islands, as well as elsewhere throughout Miami Beach.

C. Embody the distinctive characteristics of a historical period, architectural or design style or method of construction:

The Sunset Islands Bridges #1, 2 and 4 possess characteristics illustrating 1920's "boom-time" Mediterranean Revival Style architecture, which was the original architectural style standard of the Sunset Islands, as well as the "style of choice" for early Miami Beach. The bridges are also the documented last remaining bridges in South Florida with continuous arched reinforced concrete girders which were cast on-site over the water.

D. Possess high artistic values:

The Sunset Islands Bridges #1, 2 and 4 represent one of the earliest architectural design styles in the progression of public works construction in Miami Beach. Further, they reflect the unique design origins of the Sunset Islands neighborhood. Each bridge consists of three massive, sweeping shallow arches with closed spandrels, and possess Classically influenced cast concrete urn-type guardrail balusters and railings. Crafted cast iron lamp posts sit on the top of solid guardrails at ends of each bridge. Collectively, these elements give the Sunset Islands Bridges #1, 2 and 4 a unique elegance and gracefulness characteristic of the historic era in Miami Beach during which they were built. The bridges are constructed of reinforced concrete, which utilized some of the earliest air entraining agents and methods for achieving enhanced durability and longevity.

E. Represent the work of a master designer, architect or builder who contributed to historical, aesthetic or architectural heritage:

In the context of the Sunset Islands Bridges #1, 2 and 4, the term "Master" shall relate to architects and engineers. Construction drawings were prepared by locally renowned Miami engineer W.E. Reynolds and the Concrete Steel Bridge Company, whose involvement in other public works projects included the Pan American Air Base ramp approach at Dinner Key (Miami), Miami River Bridges (Miami Springs), the Biscayne Bay Turning Basin at Bayfront Park (Miami), and a fourth "sister" bridge to the Sunset Islands Bridges, which was constructed in Orlando, Florida in 1929.

F. Have yielded, or are likely to yield information important in pre-history or history:

The character, quality and detail of the Sunset Island Bridges #1, 2 and 4 illustrates one of the many social "faces" of Miami Beach and South Florida during the "boom-time" era from circa 1922 through 1929. The bridges' design connotes a discrete image of wealth, the prosperity enjoyed by some in Post World War I America, and the relative extravagance of the "Roaring Twenties" Era. In addition to the use of "high style" design elements in utilitarian projects engineering structures, the bridges' construction materials and techniques, some of the most expensive at the time, illustrate the general development consensus of the "boom-time" era in Miami Beach--producing the highest quality available, no matter at what cost.

G. Listed in the National Register of Historic Places:

Currently the Sunset Islands Bridges #1, 2 and 4 are neither individually nor collectively designated site(s) or structure(s) listed in the National Register of Historic Places, although in its July 1995 Cultural Resource Assessment Survey conducted for the Florida Department of Transportation, Janus Research of St. Petersburg, Florida, determined all three bridges to be eligible for listing.

H. Consists of a geographically definable area that possesses a significant concentration of Sites, Buildings or Structures united by historically significant past events or aesthetically by plan or physical development, whose components may lack individual distinction:

The Sunset Islands Bridges #1, 2 and 4 do not consist of a geographically definable area, but are individually contributing structures within the geographically definable area known as the Sunset Islands I, II, III and IV, and collectively form the links that unify the individual isles into a cohesive urban form. The bridges qualify as significant proposed historic structures as a group of components integral to the special historic character of the neighborhood.

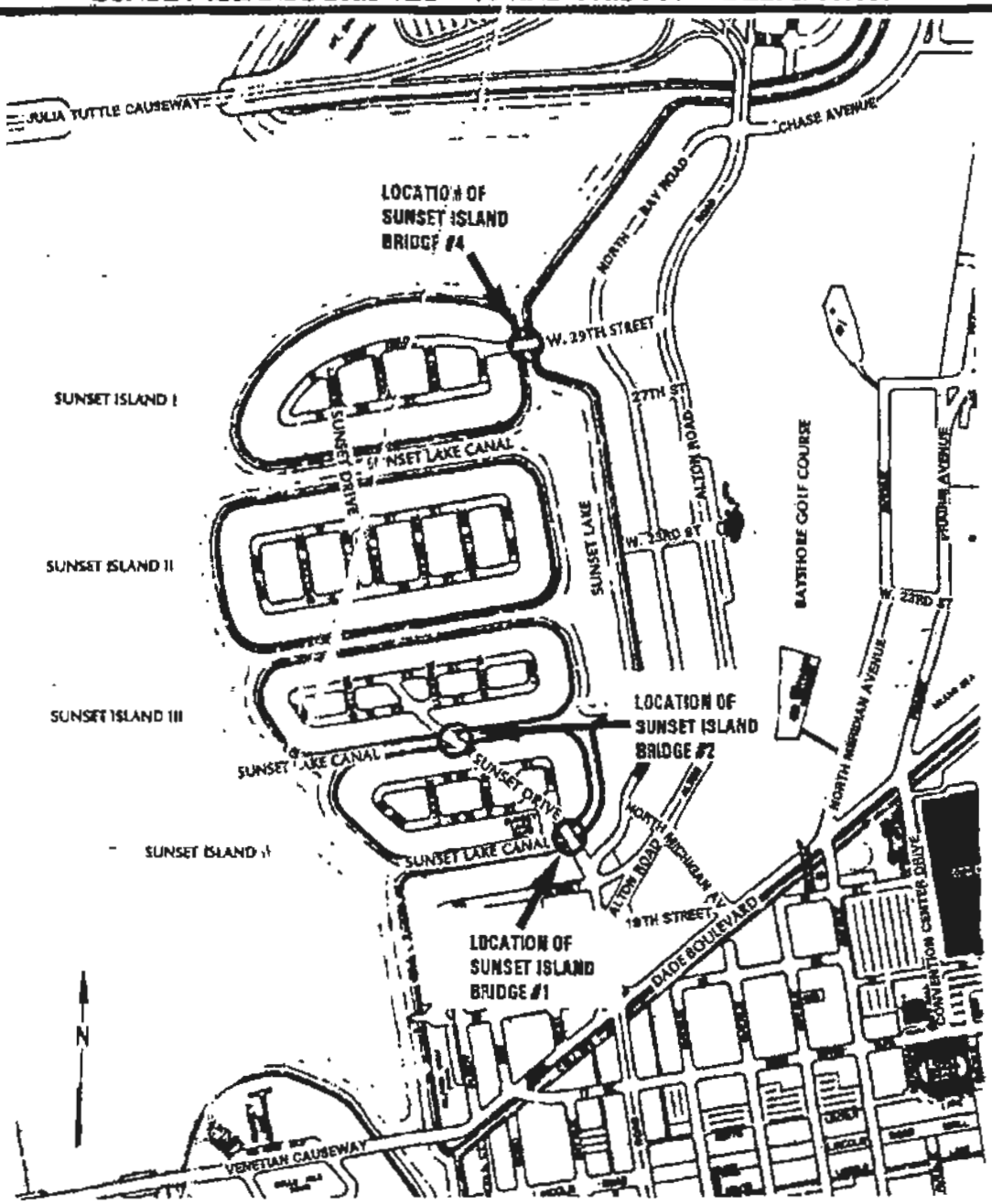
2. Altered structures proposed for designation in the City of Miami Beach may be designated historic structures if alterations are readily reversible and/or significant architectural elements are intact and repairable. In addition, staff expands its findings to include individual or collective groups of structures which are contributing, despite alterations, as important factors in representing the architectural or cultural history of Miami Beach or maintaining the special character of a neighborhood.

IV. GENERAL DESCRIPTION OF LOCATION

The Sunset Islands Bridges #1, 2 and 4 are located in the Sunset Islands neighborhood, consisting of Sunset Islands I, II, III and IV of the Sunset Lake Platted Subdivision. Sunset Island Bridge #1 carries Sunset Drive over Sunset Lake Canal and links Sunset Island IV with the Miami Beach barrier island. Sunset Island Bridge #2 carries Sunset Drive over Sunset Lake Canal and links Sunset Island IV with Sunset Island III. Sunset Island Bridge #4 carries West 29th Street over the Sunset Lake Canal and links Sunset Island I with the Miami Beach barrier island. A detailed description of the bridges' locations, is as follows:

> Sunset Islands Bridge #1 commences at the northeast corner of Lot 22, Block 15A of the Island View Addition of the Sunset Lake Subdivision on the Miami Beach barrier island, ending at the southwest corner of Lot 7, Block 4 of Sunset Island IV in the Sunset Lake Platted Subdivision, running in a southeast-northwest direction. Sunset Islands Bridge #2 commences at the northeast corner of Lot 31, Block 4A of Sunset Island IV in the Sunset Lake Platted Subdivision, ending at the southwest corner of Lot 26, Block 3D of Sunset Island III in the Sunset Lake Platted Subdivision, running in a southeast-northwest direction. Sunset Islands Bridge #4 commences at the northwest corner of Lot 13, Block 12 of the Sunset Lake Platted Subdivision on the Miami Beach barrier island, ending at the northeast corner of Lot 1, Block 1 of Sunset Island I in the Sunset Lake Platted Subdivision, running in an east-west direction.

The described locations of the structures recommended for designation by the Planning, Design and Historic Preservation Division are shown on the following Sunset Islands Bridges #1, 2 and 4 Locator Map (Map 1).



Map 1: Proposed Sunset Islands Bridges #1, 2 an 4 historic structure designation sites as recommended by the City of Miami Beach Planning, Design and Historic Preservation Division.

V. PRESENT OWNERS

The Sunset Islands Bridges #1, 2 and 4 are the property of The State of Florida Department of Transportation. The bridges' maintenance is overseen by the District Six office of the Florida Department of Transportation, located in Miami, Florida.

VI. PRESENT USE

The predominant use of the bridges is as state roadways, providing access between the residential Sunset Islands I, II, III and IV and the Miami Beach barrier island.

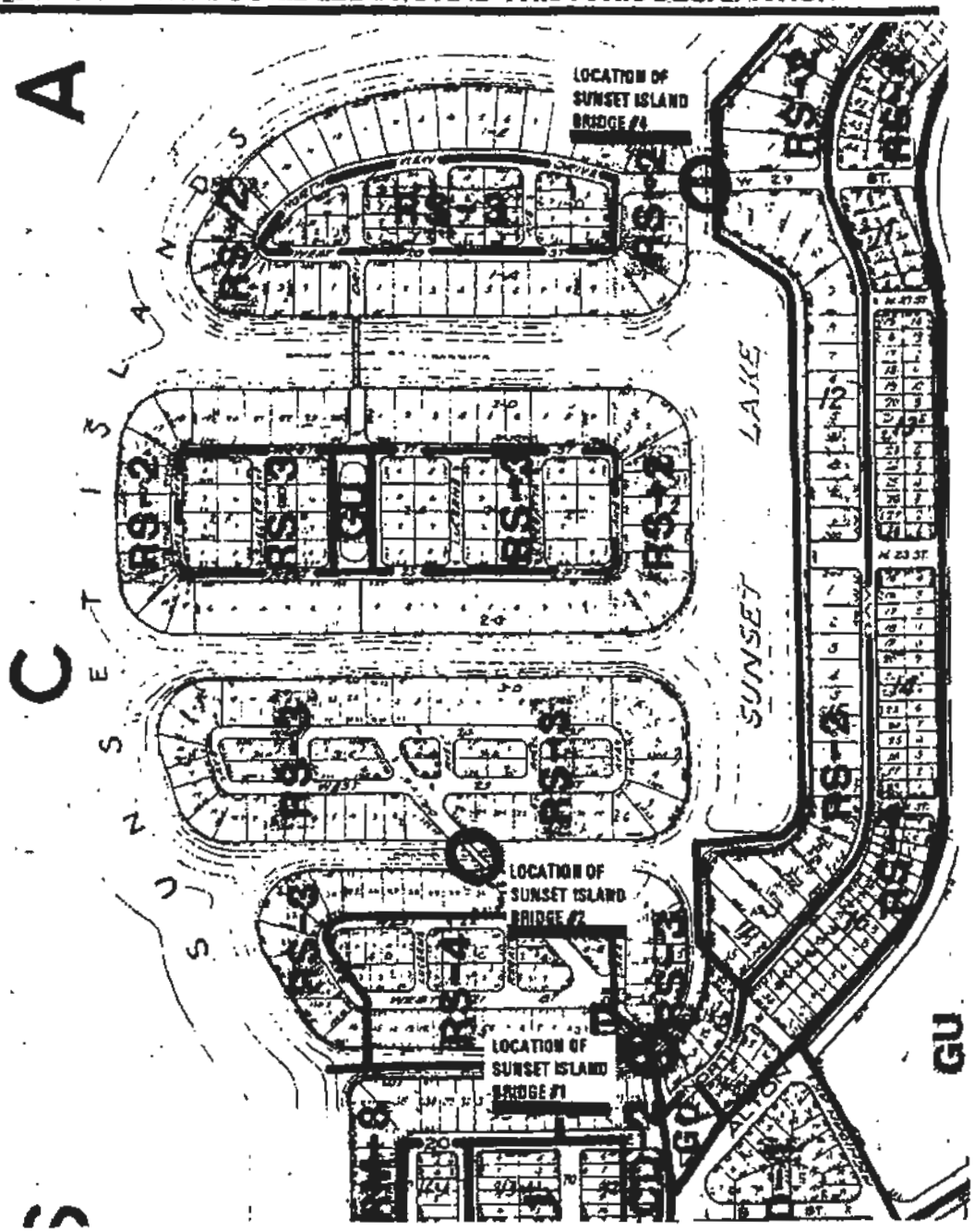
VII. PRESENT ZONING

The Sunset Islands Bridges #1, 2 and 4 sit within residential zoning districts of the City of Miami Beach. The Miami Beach Barrier Island landing of Sunset Islands Bridge #1, however, abuts a commercial district at the intersection of Alton and North Bay Roads.

Established Zoning Districts in which the Sunset Islands Bridges #1, 2 and 4 are sited in or adjacent to include:

CD-2	Commercial Medium Intensity
GU	Government Use
RM-2	Residential Single Family
RM-3	Residential Single Family

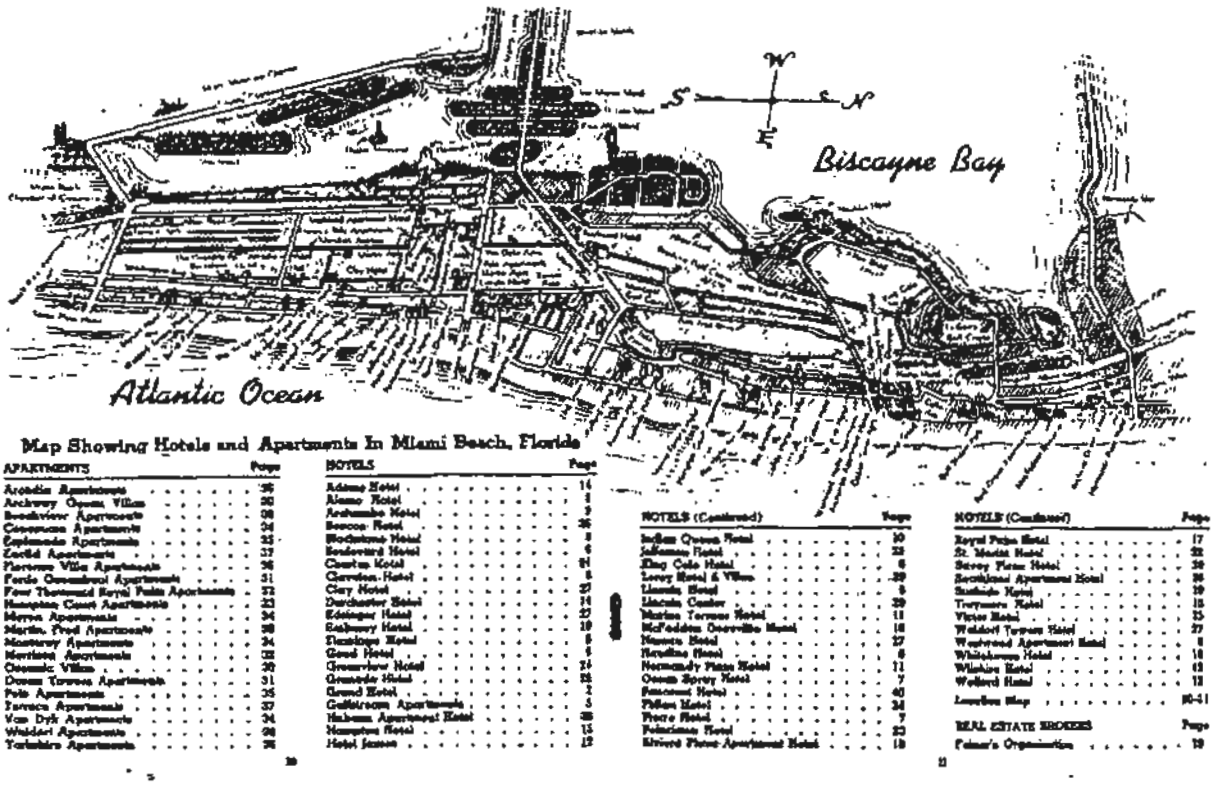
Please refer to the zoning map (Map 2) for further reference.



Map 2: Zoning Districts within which the proposed Sunset Islands Bridges #1, 2 and 4 Historic Structures are located.

VIII. HISTORICAL BACKGROUND

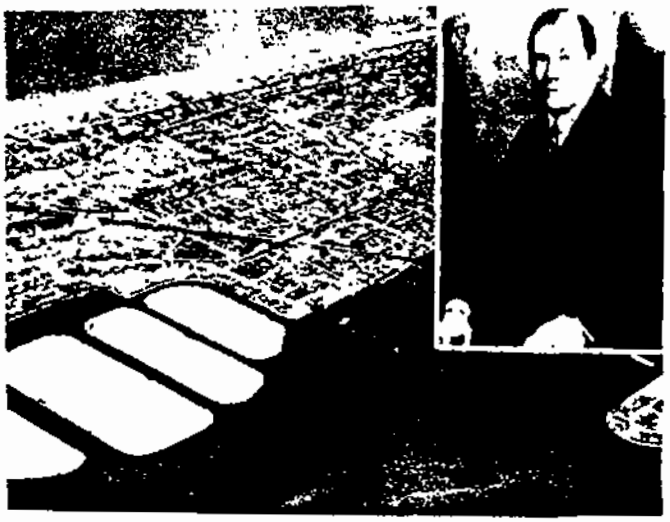
The Sunset Islands Bridges #1, 2 and 4 are the oldest bridges remaining in their original form in South Florida, and are three out of the four last remaining bridges of their kind in the State of Florida.[1] The bridges link the Sunset Islands neighborhood with the Miami Beach barrier island and provide a unique tropical island residential neighborhood unlike any other in Miami Beach and the greater Miami area. The bridges span over the Sunset Lake Canals and are located West of North Bay Road, Alton Road and the Bayshore Golf Course. The Sunset Islands are also the last islands to be constructed in the first archipelago of man-made dredged residential islands in Florida.



[1] The Sunset Islands Neighborhood is portrayed in the 1939-1940 Miami Beach Chamber of Commerce Hotel and Apartment Guide as the only residential tropical island neighborhood truly close to the "heart of it all," so exclusive that only one bridge was originally planned for access to the Sunset Islands from the Miami Beach barrier island. HASF.

The Sunset Islands were developed by the Sunset Islands Company, headed by S. A. Lynch, President of Paramount Pictures. Through his influence and presence, Mr. Lynch succeeded in making the Sunset Islands home to famous entertainers and renowned businessmen and politicians from across America. As the last quarter of the 20th Century comes to a close, the Sunset Islands Bridges remain as some of the only remaining examples in Miami Beach of the wealth and glamour of the first "boom-time" era in the City and of early 20th Century America.

Each bridge is approximately 150 feet long, forty feet wide and possess a sidewalk along at least one of its railings. All three bridges feature low, open, symmetrical railings over and through which the view of the islands, Sunset Lake and Biscayne Bay is unobstructed. The bridges link the different islands, but all four isles are not equally accessible: Sunset Islands III and IV are linked to each other, with Island IV linked to the Miami Beach barrier island, and Sunset Islands I and II are linked to each other, Island I being linked to the Miami Beach barrier island. However, Sunset Islands II and III are separated by the Sunset Canal.



Sunset Isles as viewed from the air with S. Lynch, inset ca. 1932 Klienberg, 1996.

Though designed simultaneously, the bridges were constructed as lots on the different islands were sold. Sunset Islands Bridges #1 and 4 were built in 1927, linking Sunset Islands I and IV to the Miami Beach barrier island, and Sunset Islands Bridge #2 in 1929.[2] This was actually the cornerstone of Lynch's marketing and development strategy: the Sunset Islands Company would sell lots on the islands closest to the Miami Beach barrier island, "closing-in" on Islands II and III.[3] Once Lynch filled Islands I and IV with prominent residents, Islands II and III would

become even more desirable as exclusive addresses, since the properties would already be surrounded by the likes of prominent businessmen, film and entertainment personalities. In fact, Lynch understood what was the essence of the Miami Beach land boom:

> Lavish though they were, great houses and the big spenders that lived in them did not make the Florida boom. Left to themselves, the Stotesburys and Firestones would have created only a few isolated enclaves for the wealthy--as Hobe Sound is today. What made Florida's fortune in the twenties, (and again in the fifties and sixties,) was the average man's desire to play along with the rich, and his belief that he had an inalienable right to do so.[4]

By 1936, Lynch was on a steady and successful sales course and marketing campaign. The Sunset Islands Company's 1936 Portfolio of Estates described the Islands:

> For you who have dreamed of a tropical "South Sea Island" home, this portfolio has a story to tell–a story of how scores of America's business and social leaders are making similar dreams come true.
>
> The setting for our story is one of almost legendary beauty–a group of four islands lying in famed Biscayne Bay, literally at theheart of Miami Beach, yet secluded and sheltered by broad, picturesque waterways. Lavishly landscaped, groomed to perfection over a period of twelve years during which they were withheld from the market, Sunset Islands were finally opened two brief years ago–and immediately won a sensational acceptance from an amazed public.
>
> Here, then, was no bare "development" or "subdivision"–but an impressive, park-like residential area with permanent improvements completed at a cost of over a million and a half dollars, carefully restricted and ready for immediate construction of homes and estates reflecting the magic of the "Lure of the Tropics."
>
> The pages [of the portfolio] which follow complete the story. Nearly four million dollars have to date been invested in property and building–an overwhelming endorsement of the Islands and the advantages they offer for winter estates or year-round homes. It is our sincere hope that "reading between the lines" of the story told here, you will find the answer to your problems of location, environment and congenial neighbors for your permanent "Place in the Sun"–on Sunset Islands.[5]

The portfolio included a list of residents, a venerable "Who's Who" of local and national civic and business leaders. In 1936, the isles were already home to James L. Knight of the Miami Herald; Irving Reuter, Reuters News Service; Charles Sears McCulloh, heir to the Sears fortune; W. Bruce MacIntosh, renowned American artisan and craftsman and the Baron Gerard Limnander de Niewenhove of Austrio-Hungarian Niewenhove Metalworks fame. Throughout

the 1940's and the early post-World War II years, the likes of Tony Bennett, Desi Arnaz, Steve Allen, Jimmy Durante, Carmen Miranda and many other celebrities maintaining winter addresses on the isles ensured properties on the Sunset Islands remained some of the most desirable and exclusive in Miami Beach--so exclusive, that it was unfortunately not until 1972 that all remaining restricted ownership policies were ended.on some of the properties.

Sightseeing homes of the famous, the Nikko Sightseeing Boat appears to pass under Sunset Islands Bridge #1 circa 1934. Ira Elegant, Personal Collection.

The Sunset Islands Company was not solely responsible for the construction of the Sunset Islands. Although platted in 1925 and the Sunset Canals dredged in 1926, construction of residences did not begin to rapidly occur until ten years later. This was due in part to the actions of Miami Beach developer Carl Fisher, who felt threatened by the possible competition of land sales by the Sunset Islands Company.[6] Fisher widened the canal between the islands and the mainland, creating Sunset Lake, and was able to use his influence to delay applications by the Sunset Islands Company for building bulkheads and filling in the area for land improvement.[7] The islands could not be developed until the bridges were constructed between 1927 and 1929.

Dredge fill from the newly created Sunset Lake, eastern shore Florida Historical Archives.

By the time the Sunset Islands began to develop into an exclusive Mediterranean Style tropical island residential neighborhood, the boom-time era of Miami Beach real estate was beginning to deflate.[8] The subdivision remained mostly undeveloped until after the land boom crash and the early 1930's Depression era. Substantial development of the Sunset Islands began during the late 1930's, prior to the effects of World War II and the construction boom that followed it.

However, the quality and detail of the Sunset Island Bridges #1, 2 and 4's design and construction well illustrates the prosperity of Miami Beach's and Florida's "boom-time" era from circa 1922 through late 1929. The bridges' design illustrates a discrete image of wealth, the prosperity of Post World War I America and the extravagance of the "Roaring Twenties" Era through the use of the Mediterranean style in utilitarian public works structural design. The bridges' construction materials and techniques, some of the most expensive at the time,[9] illustrate the general development consensus of the "boom-time" era in Miami Beach--producing the highest quality available, no matter at what the cost.

Construction drawings were prepared by locally renowned Miami engineer W.E. Reynolds and the Concrete Steel Bridge Company, whose involvement in other public works projects included the Pan American Air Base approach at Dinner Key (Miami), Miami River Bridges (Miami Springs), and the Biscayne Bay Turning Basin at Bayfront Park (Miami). The company also built the only other remaining bridge similar to the Sunset Islands Bridges, the Washington Street Bridge in Orlando, Florida:

> A $10,400 proposal by the Concrete Steel Bridge Company of Miami Beach was chosen. The Washington Street Bridge was constructed of reinforced concrete. It contains three arches with closed spandrels. The upper part of the bridge, with its heavy piers, balusters and light standards are of the Beaux Arts [term often used in describing Mediterranean Revival style features] style of architecture. The wide massive sweeping arches are typical of this style as well.[10]

IX. ARCHITECTURAL BACKGROUND

The Sunset Islands Bridges #1, 2 and 4 represent one of the earliest architectural design styles in the progression of public works construction in Miami Beach, as well as reflecting the unique design origins of the Sunset Islands neighborhood. The bridges are constructed of reinforced concrete, manufactured with some of the earliest air entraining agents for durability.[11] Each bridge consists of three massive, sweeping arches with closed spandrels and possess classical cast concrete urn-type guardrail balusters. Crafted cast iron lamp posts sit on the top of the guardrails at each end of the bridges. Collectively, these elements give the Sunset Islands Bridges #1, 2 and 4 a unique appearance and high aesthetic quality.

Significant advancements in construction technology were introduced to South Florida and Miami Beach during the first quarter of the twentieth century, particularly in the use of reinforced concrete. The use of concrete in constructing arched bridges was established at the turn of the nineteenth century with a steel mesh system patented in 1894 by Chicago engineer Josef Melan. This development dramatically reduced the amount of steel girders previously required in vehicular bridges. As the understanding of reinforced concrete construction developed, the highly efficient and durable concrete deck-girder bridge system was introduced by industrial architects Albert and Julius Kahn of Detroit, Michigan. Concrete deck-girder bridges were more economical to construct than those involving arched girders alone, and soon evolved into the cantilevered girders which today are the basis of modern bridge and elevated roadway support design. The Sunset Islands Bridges #1, 2 and 4 are the recorded last remaining concrete girder bridge structures poured on-site in South Florida, a process since eliminated by transit-mixed concrete, pre-stressed and/or pre-fabricated slabs and girders.[12]

The Sunset Islands Bridges #1, 2 and 4 are also some of the first recorded reinforced concrete structures in South Florida to utilize small quantities of admixtures and modifiers such as the air-entraining agent FerroBond,[13] dramatically improving the concrete's strength, durability and curing characteristics in the salt water of Biscayne Bay and the tropical climate of Miami Beach.

All three Sunset Island Bridges #1, 2 and 4 are virtually identical. Each roadbed rests on a substructure of concrete girders across the width of the bridge, featuring shallow segmental arches at each of the spans. The arched girders are framed into concrete cross-beams which rest on rectangular concrete piers (two piers per beam). The guardrails above feature pre-cast concrete urn-type balusters, with guardrail bays divided by solid square concrete posts. Rectangular posts are used to divide the bays at each arched end. The end bays of each guardrail are solid concrete with one large rectangular recessed panel.[14]

Ornamental cast-iron lamp posts rest on top of the guardrails. The fluted cast-iron lamp posts, surrounded by acanthus leaves at the bottom, rests on a square pedestal in plan (rectangular in height) which is flanked by decorative volutes (upright scroll brackets). Additional acanthus leaves encircle the upper portion of the post which supports the electric light fixtures, each post having a single upright Boulevard-type globe made of textured opaque glass.[15]

A stuccoed guardhouse located at the northeast corner of Sunset Islands Bridge #4 was probably built in the 1940's. It is still utilized today for a guard to monitor the access gate which allows cars onto the islands. The guardhouse abuts the bridge's guardrail but is visibly separate from it. Designed in the Moderne Style, it features a flat, built-up roof. Its unusual plan consists of an angled facade wall oriented toward the southeast.[16]

Mediterranean Revival Style

ca. mid 1910s - early 1930s

Sunset Island Bridge #1 as seen looking toward Sunset Island IV from the Miami Beach barrier island, 1995.

Mediterranean Revival architecture was the "style of choice" for the first major boom period in Miami Beach, particularly in the Sunset Islands. Its connotation of Mediterranean resort architecture, combining expressions of Italian, Moorish, North African and Southern Spanish themes, was found to be an appropriate and commercially appealing image for the new Floridian seaside resort.

During the mid 1910s through the early 1930s the style was applied to hotels, apartment buildings, commercial structures, residences and public works engineering structures. Its architectural vocabulary was characterized by stucco walls, low pitched terra cotta and historic Cuban tile roofs, arches, scrolled or tile capped parapet walls and articulated door surrounds, sometimes utilizing Spanish Baroque decorative motifs and Classical elements. Feature detailing was occasionally executed in keystone.

Application of the architectural vocabulary in the Sunset Islands ranged from sparing to modestly exuberant. The Sunset Islands Bridges demonstrated the quiet wealth of "boom-time" Miami Beach simply and elegantly.

X. PLANNING CONTEXT

Historic District Designation Promotes:

Continuous Neighborhood Enhancement

The Sunset Islands neighborhood is characterized by a significant number of "contributing" buildings and public works engineering structures reflective of distinctive architectural and development patterns from the earliest days of Pre-World War II "boom-time" Miami Beach to the present. The Sunset Islands I, II, III and IV and the Sunset Island Bridges still appear much as they did throughout their rich past, despite the effects of dramatically changed times. Many significant structures, once neighbored by open spaces, Biscayne Bay, or buildings and structures of complimentary scale and character, remain very much dependent upon a compatible and supportive environment in the future, which promotes sensitively designed new projects.

The review and approval of projects under the City's Design Guidelines and the Historic Preservation Ordinance will ensure smart development which is sensitive to the unique aesthetic character of the area and respectful of its early origins. Miami Beach has one of the finest and most progressive historic preservation ordinances in the nation. It was custom designed to address the special needs of a rapidly redeveloping historic seaside resort community with a view toward wise management of historic resources in tandem with appropriate new development. Historic designation will reinforce and promote continuous quality enhancement of the Sunset Islands neighborhood, just as it has done with remarkable success in the National Register Historic District in south Miami Beach.

Increased Architectural Consideration

Historic structure designation is a means of maintaining the special character of a place through increased architectural consideration when the construction of new buildings or other structures or additions to existing buildings or other structures are proposed.

Buildings, individual public works/engineering structures, and natural landscape features, old and new, are usually the major defining elements in the makeup of a neighborhood's character. The special character of a neighborhood can be maintained and reinforced by highlighting and preserving the significant architectural

features of its contributing buildings and landmarks and by understanding and being considerate of those special qualities in the design of new construction.

Although some buildings and structures are more representative of specific "styles" than others, there is a sizable collection of twentieth century modern architectural periods on the Sunset Islands from the late 1920's to the present day, with the Sunset Islands Bridges #1, 2 and 4 representing the start of the progression of architectural styles with the Mediterannean Revival Style.

In other instances a single contributing structure may not seem to possess a special significance when viewed by itself, but when viewed together with its neighboring buildings and/or structures, it reinforces a unified image of a distinct and attractive neighborhood contributing to the special character of the community's urban fabric. This is evident throughout the Sunset Islands with the Sunset Islands Bridges #1, 2 and 4.

Historic District designation does not preclude the opportunity for appropriate new development to occur at a site, it simply promotes compatible quality construction there.

Sensitive New Construction

New buildings, public works engineering and additions to existing buildings and structures can blend into a neighborhood without imitating or trying to replicate an historic architectural period. By incorporating the important architectural qualities of a particular neighborhood into contemporary design and properly siting the building, a new structure or addition can blend with its surroundings and be compatible with the neighborhood. In addition, by following existing design guidelines, renovations deemed appropriate by the Design Review and/or Historic Preservation Boards can be accomplished without being detrimental to the established character of the structure or to the neighborhood as a whole.

A number of elements work together to define not only a building's or structure's character, but also a neighborhood's. These elements include a scale, proportion, massing, materials and details. These basic elements are found in all architecture and may vary to create different styles.

Understanding these elements and their relationship to each other is essential for designing compatible renovations, additions, and new buildings. Along with current

Design Guidelines, historic designation promotes an understanding of such design features and does not require or recommend reproductions of period architecture. To the contrary, compatible contemporary design is encouraged for new construction and additions.

Historic designation affirms the Design Guidelines based on simplicity and design quality, and helps property owners make the most appropriate improvements to their properties with the least adverse effect possible to property values.

Compatibility With the Character of the Historic Sunset Islands Neighborhood, Which Positively Influences:

Proportion and Scale

Proportion deals with the relationship of the height to the width of the bridge structure and with the relationship of each part to the whole. Scale deals with the relationship of each bridge structure to the other buildings and structures in the area, the part to the whole, as well as the scale of the pedestrian. When there is a combination of structural building types surrounding a project site, scale and proportion of the buildings closest to the proposed construction should be observed. Additions and/or structural reconstruction should respect the original scale and proportions. *

Massing

Massing deals with the volumes created by the sections of a building or a structure. For example, a simple Moderne structure may be one mass but a Mediterranean Revival building with a tower, wings, hip roof, etc., has varied massing. Placing a boxlike structure in a neighborhood of high quality articulated buildings may not be appropriate. Renovations or additions to structures should respect the massing of existing buildings and neighborhood character.

Materials and Details

Materials and details used on a structure form an important part of a structure's style and character. Materials used on the walls and other surfaces of new projects should be compatible with those on existing buildings and other structures. The use of

appropriate materials and textures helps new construction fit into existing neighborhoods and helps additions to blend with the original architecture.

XI. PLANNING, DESIGN AND HISTORIC PRESERVATION DIVISION RECOMMENDATIONS

1. **Criteria for Designation:** The Planning, Design and Historic Preservation Division finds the Sunset Islands Bridges #1, 2 and 4 in compliance with the Criteria for Designation listed in Section 19-5 (B) of the Miami Beach Zoning Ordinance, Ordinance Number 89-2665.

2. **Site Boundaries:** The Sunset Islands Bridges #1, 2 and 4 within the Miami Beach City Limits (complete legal description provided in ***Section IV, General Description of Location;*** location of bridges is shown on ***Map 1***)

   Upon careful research and investigation, staff determined that the aforementioned Sunset Island Bridges were indeed of local, regional and historical significance, having an impact not only on local development history, but also modern construction technology.

   The Historic Preservation Board, at its September 12, 1996 meeting, adopted the recommendations of the City of Miami Beach Planning, Design and Historic Preservation Division as described within the Sunset Islands Bridges #1, 2 and 4 Historic Designation Report, and recommends historic designation in accordance with Section 19-5 of the Miami Beach Zoning Ordinance 89-2665 with locations shown on Map 1 and more fully described in Section IV (General Description of Boundaries).

3. **Areas Subject to Review:** All bridge elevations and plans, including structural and architectural features, gate houses, lighting fixtures, site and landscape features, as well as public rights-of-way, including bridge roadways and approaches.

   Regular maintenance of public utilities, drainage, and mechanical systems, sidewalks and roadways shall not require a Certificate of Appropriateness.

4. **Review Guidelines:** The Planning, Design and Historic Preservation Division recommends that a decision on an application for a Certificate of Appropriateness shall be based upon compatibility of the physical alteration or improvement with surrounding properties and where applicable in substantial compliance with the following:

   a. The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings as revised from time to time;

   b. Other guidelines/policies/plans adopted or approved by resolution or ordinance by the City Commission;

   c. All additional criteria as listed under Section 19-6 (C,2) of City of Miami Beach Zoning Ordinance 89-2665;

   d. City of Miami Beach Design Guidelines as adopted by the Joint Design Review/Historic Preservation Board October 12, 1993, Amended June 7, 1994, and as may be expanded upon in the future.

ENDNOTES

1. Florida Bridges and Roadways Database. State of Flroida Internet Web Site, Histroic Resources Collection. State of Florida Secretary of State, State Historic Preservation Office, Tallhassee, FL. 1996.

2. Construction Permit Records, 1927-1929. City of Miami Beach, Public Works Division. Miami Beach, Florida.

3. Letter from Daniel Read to Rudolph Van Der Bregan of the Atlanta Retail Credit Company, February 3, 1932. Miami Beach Letters Collection. Historical Museum of South Florida Archives, Miami, Florida.

4. Redford, Polly. Billion-Dollar Sandbar. E. P. Dutton & Co., New York. 1970. p. 149.

5. Portfolio of Estates. Sunset Islands Company, 1936. p. 3.

6. Carl Graham Fisher. Personal Letters Collection and Other Documents. Historical Museum of South Florida Archives, Miami, Florida.

7. Ibid.

8. Tax assessment records, 1927-1935. City of Miami Beach and Metro-Dade County Property Tax Assessment Office. Miami Beach, Florida and Metro-Dade County, Florida.

9. Florida Bridges and Roadways Database. State of Flroida Internet Web Site, Histroic Resources Collection. State of Florida Secretary of State, State Historic Preservation Office, Tallhassee, FL. 1996.

10. H.H. Dickenson Azalea Park and the Washington Street Bridge Designation Report. Lawsona/Fernecreek Neighborhood Association, Orlando, Florida. 1996. p. 2.

11. Senkavitch, Anatoly. Director, Graduate Program in Historic Preservation Planning. University of Michigan, Ann Arbor, Michigan. Personal Interview, August 1996.

12. Cultural Resource Assessment Survey of the Sunset Islands Bridge #876708 in Dade County, Florida. Janus Research, St. Petersburg, Florida, for the Florida Department of Transportation, District Six, Miami. July 1995.

13. Senkavitch, Anatoly. Director, Graduate Program in Historic Preservation Planning. University of Michigan, Ann Arbor, Michigan. Personal Interview, August 1996.

14. Cultural Resource Assessment Survey of the Sunset Islands Bridge #876708 in Dade County, Florida. Janus Research, St. Petersburg, Florida, for the Florida Department of Transportation, District Six, Miami. July 1995.

15. Ibid.

16. Ibid.

EXHIBIT "H"

Proposed findings of fact and conditions to be included in a resolution approving with conditions the design review application by Palau Sunset Harbor, LLC.

The Miami Beach Design Review Board approves, subject to the conditions below, the application of Palau Sunset Harbor, LLC for a mixed-use building for the site legally described as follows:

"All of Lots 22. 23, and 24, and the north 70 feet of Lots 25 and 26 in Block 15A of 'Island View Addition' According to the Plat Thereof, as Recorded in Plat Book 9, Page 144, of the Public Records of Miami-Dade County, Florida."

1. The findings included in the August 7, 2012 Design Review Board Staff Report, are adopted as findings to this approval except as modified herein.

2. The conditions included in the August 7, 2012 Design Review Board Staff Report, are adopted as conditions to this approval except as modified herein.

3. The Design Review Board makes the following findings:

    a. Sunset Drive extending from 20th Street to the historic Sunset Island Bridge is an important view corridor that is a major defining element of this neighborhood's character.
    b. The character of the waterfront facing Sunset Island No. 4 is illustrated by the articulated design and minimized massing of the Sunset Harbor Townhomes which are designed as lower scale buildings (with heights between 27 and 33 feet, widths of 25 to 30 feet and waterfront façade areas between 675 and 900 feet) close to the waterfront, behind which are taller buildings. These close-to-waterfront buildings reflect a relationship to the single-family buildings (with maximum heights of 33 feet, widths of approximately 40 feet and façade areas of approximately 1,200 square feet feet) across the waterway.
    c. The project is inconsistent with the May 22, 2012 Conditional Use approval of the Planning Board as it relates to the massing of the building east of the World Savings Bank building.
    d. The project is inconsistent with the May 22, 2012 Conditional Use approval of the Planning Board as it

relates to the encroachment on the line of sight from Sunset Island No. 4.

e. The project is inconsistent with the following Design Review Criteria in relation to the site, adjacent structures and surrounding community:
   i. Criteria No. 6, regarding the proposed structure's sensitivity to and compatibility with the environment and adjacent structures, and enhances the appearance of surrounding properties.
   ii. Criteria No. 7, regarding design and layout of the proposed site plan and its arrangement of land uses as it applies to the relationship to the surrounding neighborhood, impact on contiguous and adjacent buildings and lands, pedestrian sight lines and view corridors.
   iii. Criteria No. 12, regarding the structure's orientation and massing and its sensitivity and compatibility with the building site and surrounding area and its creation or maintenance of important view corridor(s).

4. The Design Review Board approval of the application is subject to the following conditions:
   a. The entire length of the building abutting and east of the World Savings Bank property shall be set back an additional 15 feet.
   b. The entire length of the fifth floor of the northern side of the building facing Sunset Island No. 4 shall be set back an additional ten feet.
   c. The entire length of the building of the eastern portion of the building along Sunset Drive shall be stepped back as follows:
      i. First floor an additional ten feet (current proposed setback plus ten feet);
      ii. Second and third floors an additional five feet (current proposed setback plus 15 feet);
      iii. Fourth and fifth floors an additional five feet (current proposed setback plus 20 feet).

5. The Design Review Board notes that the proposed design of the building includes an interior courtyard. That courtyard may be eliminated to accommodate some or all of the loss of floor area created by the conditions set forth herein.

EXHIBIT "I"

MIAMIBEACH

PLANNING DEPARTMENT

DESIGN REVIEW BOARD
STAFF REPORT

FROM: Richard G. Lorber, AICP, LEED AP
Acting Planning Director

DATE: October 2, 2012 Meeting

RE: Design Review File No. 22889
1201-1237 20th Street – Palau at Sunset Harbor

The applicant, Palau Sunset Harbor, LLC., is requesting Design Review Approval for the construction of a new 5-story mixed-use building, which will replace all existing structures on the subject site, to be demolished. The applicant is also requesting Design Review Board approval for modifications to a previously approved site plan, which is the subject of a Declaration of Restrictive Covenants in Lieu of Unity of Title.

LEGAL DESCRIPTION:
All of Lots 22, 23, and 24, and the north 70 feet of Lots 25 and 26 in Block 15A of "Island View Addition" According to the Plat Thereof, as Recorded in Plat Book 9, Page 144, of the Public Records of Miami-Dade County, Florida.

HISTORY:
The application came before the Board on August 7, 2012, and was continued to a date certain of October 2, 2012, in order to addres the concerns expressed by the Board and Staff, as well as to fully re-notice the application.

SITE DATA:

Zoning -	CD-2 (Commercial, Medium Intensity)
Future Land Use Designation-	CD-2 (Commercial, Medium Intensity)
Lot Size -	54,765 SF
Existing FAR -	Not Provided
Proposed FAR -	108,269 SF / 1.98 (Max FAR = 2.0)
Existing Height -	Not Provided
Proposed Height-	5-stories / 50 feet, 60 feet to highest non-habitable projection
Existing Use/Condition -	Vacant construction site and vacant dry cleaners
Proposed Use -	Mixed-Use – 50 Residential Units, 11,325 S.F. of Commercial Space, and 153 parking spaces (140 required)

THE PROJECT:
The applicant has submitted plans entitled "Palau at Sunset Harbour", as prepared by Kobi Karp Architecture, Interior Design & Planning, dated August 2012.

There is a restrictive covenant on the southern portion of the property, tying the former Cypress Bay property to the "World Savings Bank property", currently owned by MAC SH, LLC. These two properties were at one time one single property, and were split at the time of the proposed construction of the former Cypress Bay project, which required a covenant in-lieu of unity of title.

The applicant is proposing the contruction of a new 5-story mixed-use building on the site currently occupied by the abandoned 'Cypress Bay' development as well as the now vacant Mark's Cleaners site. The ground floor is comprised of commercial units facing the majority of Sunset Drive as well as 20th Street. Vehicular entrance to the property is located at the south west corner of the site. Parking is provided at the first floor and part of the second floor in the center of the project, utilizing vehicular lifts in most areas. Residential units are located on the upper five floors, with a central landscaped courtyard provided above the parking garage, surrounded by residential units. A common pool and pool deck, as well as private roof-top terraces are also proposed.

COMPLIANCE WITH ZONING CODE:
A preliminary review of the project indicates the following:

1. As required by the City Code, Conditional Use approval from the Planning Board was approved on May 22, 2012.

This shall not be considered final zoning review or approval. These and all zoning matters shall require final review and verification by the Zoning Administrator prior to the issuance of a Building Permit, including final parking calculations and a concurrency review.

ACCESSIBILITY COMPLIANCE:
Additional information will be required for a complete review for compliance with the Florida Building Code 2001 Edition, section 11 (Florida Accessibility Code for Building Construction.) The above noted comments shall not be considered final accessibility review or approval. These and all accessibility matters shall require final review and verification by the Building Department prior to the issuance of a Building Permit.

PRELIMINARY CONCURRENCY DETERMINATION:
In accordance with Chapter 122 of the Code of the City of Miami Beach, the Transportation and Concurrency Management Division has conducted a preliminary concurrency evaluation and determined that the project does meet the City's concurrency requirements and level-of-service standards. The City's concurrency requirements can be achieved and satisfied through payment of mitigation fees or by entering into an enforceable development agreement with the City. The Transportation and Concurrency Management Division will make the determination of the project's fair-share mitigation cost.

A final concurrency determination shall be conducted prior to the issuance of a Building Permit. Mitigation fees and concurrency administrative costs shall be paid prior to the project receiving any Building Permit. Without exception, all concurrency fees shall be paid prior to the issuance of a Temporary Certificate of Occupancy or Certificate of Occupancy.

COMPLIANCE WITH DESIGN REVIEW CRITERIA:
Design Review encompasses the examination of architectural drawings for consistency with the criteria stated below with regard to the aesthetics, appearances, safety, and function of the

structure or proposed structures in relation to the site, adjacent structures and surrounding community. Staff recommends that the following criteria is found to be satisfied, not satisfied or not applicable, as hereto indicated:

1. The existing and proposed conditions of the lot, including but not necessarily limited to topography, vegetation, trees, drainage, and waterways.
   Satisfied

2. The location of all existing and proposed buildings, drives, parking spaces, walkways, means of ingress and egress, drainage facilities, utility services, landscaping structures, signs, and lighting and screening devices.
   Satisfied

3. The dimensions of all buildings, structures, setbacks, parking spaces, floor area ratio, height, lot coverage and any other information that may be reasonably necessary to determine compliance with the requirements of the underlying zoning district, and any applicable overlays, for a particular application or project.
   Satisfied

4. The color, design, selection of landscape materials and architectural elements of Exterior Building surfaces and primary public interior areas for Developments requiring a Building Permit in areas of the City identified in section 118-252.
   Satisfied

5. The proposed site plan, and the location, appearance and design of new and existing Buildings and Structures are in conformity with the standards of this Ordinance and other applicable ordinances, architectural and design guidelines as adopted and amended periodically by the Design Review Board and Historic Preservation Boards, and all pertinent master plans.
   Satisfied

6. The proposed Structure, and/or additions or modifications to an existing structure, indicates a sensitivity to and is compatible with the environment and adjacent Structures, and enhances the appearance of the surrounding properties.
   Satisfied

7. The design and layout of the proposed site plan, as well as all new and existing buildings shall be reviewed so as to provide an efficient arrangement of land uses. Particular attention shall be given to safety, crime prevention and fire protection, relationship to the surrounding neighborhood, impact on contiguous and adjacent Buildings and lands, pedestrian sight lines and view corridors.
   Satisfied

8. Pedestrian and vehicular traffic movement within and adjacent to the site shall be reviewed to ensure that clearly defined, segregated pedestrian access to the site and all buildings is provided for and that all parking spaces are usable and are safely and conveniently arranged; pedestrian furniture and bike racks shall be considered. Access to the Site from adjacent roads shall be designed so as to interfere as little as possible with traffic flow on these roads and to permit vehicles a rapid and safe ingress and egress to the Site.

Satisfied

9. Lighting shall be reviewed to ensure safe movement of persons and vehicles and reflection on public property for security purposes and to minimize glare and reflection on adjacent properties. Lighting shall be reviewed to assure that it enhances the appearance of structures at night.
Satisfied

10. Landscape and paving materials shall be reviewed to ensure an adequate relationship with and enhancement of the overall Site Plan design.
Satisfied

11. Buffering materials shall be reviewed to ensure that headlights of vehicles, noise, and light from structures are adequately shielded from public view, adjacent properties and pedestrian areas.
Satisfied

12. The proposed structure has an orientation and massing which is sensitive to and compatible with the building site and surrounding area and which creates or maintains important view corridor(s).
Satisfied

13. The building has, where feasible, space in that part of the ground floor fronting a street or streets which is to be occupied for residential or commercial uses; likewise, the upper floors of the pedestal portion of the proposed building fronting a street, or streets shall have residential or commercial spaces, shall have the appearance of being a residential or commercial space or shall have an architectural treatment which shall buffer the appearance of the parking structure from the surrounding area and is integrated with the overall appearance of the project.
Satisfied

14. The building shall have an appropriate and fully integrated rooftop architectural treatment which substantially screens all mechanical equipment, stairs and elevator towers.
Satisfied

15. An addition on a building site shall be designed, sited and massed in a manner which is sensitive to and compatible with the existing improvement(s).
Not Applicable

16. All portions of a project fronting a street or sidewalk shall incorporate an architecturally appropriate amount of transparency at the first level in order to achieve pedestrian compatibility and adequate visual interest.
Satisfied

17. The location, design, screening and buffering of all required service bays, delivery bays, trash and refuse receptacles, as well as trash rooms shall be arranged so as to have a minimal impact on adjacent properties.
Satisfied

STAFF ANALYSIS:

As indicated previously, the applicant is proposing a well conceived and highly desirable mixed residential and commercial plan for the redevelopment of the subject site. Staff is very pleased with the modern design vocabulary proposed, which will help form an iconic gateway to the Sunset Harbor neighborhood. At this point the plans have been reviewed extensively by the Planning Board and the Design Review Board with considerable input from the surrounding neighborhood. Important issues related to the operation of the valet (which will be completely internal to the property), as well as the garage entrance/exit location, have been extensively evaluated, and approved as outlined in the requirements of the Planning Board's Conditional Use approval, which was also included for reference in the original application provided. It should be noted that the applicant could have proposed an entirely commercial development of this site, which would have had a much higher impact upon the adjacent residential neighborhoods.

On May 22, 2011, the project received Conditional Use approval from the Planning Board. As part of that approval the Planning Board imposed the following condition related to the Design Review Board approval:

5. *The applicant shall work with Design Review staff to further modify the proposal to address the following, subject to review and approval by the Design Review Board:*

    a. *Pulling back the massing, east of the World Savings Bank property, with emphasis on upper floor setback and the northeast corner of the building, and adding more green space.*
    b. *Further modifying the ground floor area along the canal (terraces) to minimize the hardscape and increase the amount of open, landscaped area at grade level.*
    c. *Adding more canopy trees for increased shade to the landscape plan, particularly along Sunset Drive. Also work with Sheryl Gold on this item.*
    d. *Removing parking spaces on Sunset Drive.*
    e. *Reducing encroachment on the line of sight from Sunset Island 4.*
    f. *Working with Public Works staff to limit u-turns at the guardhouse.*

Staff has reviewed the revised plans for compliance with the above conditions and has the following comments and recommendations:

5.a – *Pulling back the massing, east of the World Savings Bank property, with emphasis on upper floor setback and the northeast corner of the building, and adding more green space.*

Staff believes this condition has been **satisfied**. Since the previous DRB meeting, the massing at the northeast corner of the building has been further reduced with an increased setback of approximately ten (10') feet for the entire portion of the building located north of the northeast stairwell, as previously recommended by staff. The reduction in massing at this corner is important so as not to overwhelm the historic Sunset Island bridge. To the neighborhoods benefit, however, it is also important to note that the massing of the building facing north has also been further broken down with additional modulation in plan of the residential units and balconies facing the waterway, compared to the plans previously reviewed. The previously proposed continuous balconies have been replaced with individual balconies at most levels.

5.b. – *Further modifying the ground floor area along the canal (terraces) to minimize the hardscape and increase the amount of open, landscaped area at grade level.*

Staff believes this condition has been **substantially satisfied.** Based upon the plans provided (Sheet L-1) the terraces of the ground floor units facing the waterway have been reduced in size and the area for at-grade landscaping has been substantially increased. Furhter, additional understory planting and groupings of shade trees (green buttonwood), have been incorporated into the design. Clustered groupings of shade trees, as previously recommended by staff arenow located in a variety of locations, which will provide the shade canopy desired while also allowing views to the waterway from the residential units. This will benefit both the condo units as well as the single family homes across the waterway. Staff would further recommend that in the areas where the stairway access to the first floor of residential units is not in conflict with the partially underground parking, that these stairs be set into the terraces, rather than projecting further into the available common landscaped areas, in order to further increase the area available for at-grade landscaping. As the drive aisle on the north side of the site exceeds the minimum 22'-0" by 1'-10", staff would recommend that the entire north wall of the garage structure, along with the adjacent stairway access to the residential terraces above be setback an additional 1'-10" from the north property line. This will allow for more landscaping along the entire north side of the site.

5.c. – *Adding more canopy trees for increased shade to the landscape plan, particularly along Sunset Drive. Also work with Sheryl Gold on this item.*

Staff believes this condition is **satisfied.** Since the previous meeting, the applicant has increased the building setback along the ground floor of the south elevation facing 20th Street, resulting in a total sidewalk width with minimum of 12'-0". This additional setback now allows for the placement of more canopy trees within the sidewalk along the entire south side of the property, which will greatly enhance the pedestrian character of the street. A combination of graen buttonwood trees and live oak trees is now proposed.

5.d. – *Removing parking spaces on Sunset Drive.*

Staff believes this condition is **satisfied**, to the extent possible by the applicant. The applicant has removed one (1) perpendicular parking space from the plans along Sunset Drive, near the corner of 20th Street, as it may be too close to the intersection. The Parking Department has indicated that the removal of all parking spaces does not meet City Code requirements, as the removal is not for the sole purpose of creating access to an off-street parking facility. In order to approve such removal, approval from the City Commission would be required, in addition to payment of $35,000 for each space removed. Staff recognizes the need for street parking in this rapidly developing neighborhood, and believes that the enhanced landscape plan proposed for the area along Sunset Drive will substantially mitigate the retention of the (3) perpendicular parking spaces.

5.e – *Reducing encroachment on the line of sight from Sunset Island 4.*

Staff believes this condition is **satisfied.** In comparing the north-south section line of sight diagram, the roof-top elements in the revised plans have been further setback from

the north elevation of the building, substantially reducing their visibility as viewed from the rear yards of the residential properties on Sunset Island 4. Further the applicant has clarified that there is no internal connection between the top floor units fronting the waterway and the roof-top terraces. Staff would also recommend that the Board **not** approve any roof-top structures that are not specifically called out in the plans and elevations provided.

5.f - Working with Public Works staff to limit u-turns at the guardhouse.

Staff believes that this condition is **satisfied**. After further review with the Public Works Department, both Planning and Public Works staff believe that eliminating the break in the center median south of the new guardhouse would require anyone that made a wrong turn onto Sunset Drive to proceed through the guard gate and across the bridge to Sunset Island 4 in order to turn around. With the elimination of drop-off areas along Sunset Drive for either the residential units or the commercial uses, staff does not believe that u-turns before the guardhouse will be a significant issue.

As previously recommended by staff, the applicant has relocated the landscape buffer from the center of the sidewalk along Sunset Drive to the edge of the curb. This allows for one wider sidewalk adjacent to the commercial spaces and an enhanced landscape buffer. It is also important to note that the transition between the elevated bridge and the sidewalk along the east side of the property has been further developed. The applicant has submitted a photo overlay entititled "Retaining Wall Study", which indicates how the grade will be modified in this location. The applicant has indicated that additional documentation will be submitted at the meeting which visually depicts the proposed new construction at this corner lovation. Staff is confident that with further development and detailing the extensive grade change can be resolved with a suitable design solution.

However, as per the resolution from the Sunset Islands 3 & 4 Association submitted on 9/26/2012 **(see Attachment 1)**, the neighboring residents still have serious concerns. Staff believes that the Planning Board review and Design Review Board review have resulted in significant improvements to the overall design. In comparing the Palau project with the adjacent Sunset Harbor Towhnhomes project, they are composed of two entirely different architectural vocabularies. The Townhomes incorporate a sixty-five (65') foot height condition along 20th Street with 2-story townhouse units along the canal and an intervening courtyard in-between. The Palau project is characterized by a modern, progressive architectural vocabulary with expansive use of glass and modern materials, however both preserve a similar amount of open sky as viewed from the Public Park across the canal. Staff must also stress that the land area of the Sunset Harbor Townhomes project is approximately three (3) times the area of the Palau project, and the length of Palau along the waterway is less than one-half of the Towhnhomes project, resulting in substantially less impact. It is also important to note that more than one-half of the Palau site is located directly across the canal from a public park, with two and a half single family home sites directly facing the project to the west of the park.

Lastly, as indicated in the 'City Attorney's Opinion on Applications by Palau Sunset Harbor, LLC to the Planning Board and Design Review Board' **(see Attachment 2)**, the property at 1261 20th Street ('Parcel A'), previously owned by World Bank, is owned by MAC. World Bank also owned the adjacent land at 1237 20th Street ('Parcel B'), sold to Lease Florida Sunset Harbor, LLC. Lease Florida began constructing a project called Cypress Bay, which ceased construction prior to completion. World Bank sold Parcel B to Lease Florida without approval of a lot split by the

Planning Board. This was not discovered until the Cypress Bay project was underway. To remedy this situation, and to address a deficiency in parking for the Cypress Bay project, among other issues (cross easements for utilities, access and relief from interior setbacks), MAC and Lease Florida executed a Covenant in Lieu, pursuant to City Code Section 118-5, so Parcels A and B could be considered one site for zoning purposes. The parties also executed the Declaration setting forth the cross-easements between these properties. Palau, the current owner of Parcel B, and the successor under the Covenant in Lie and the Declaration, recently purchased the Mark's Cleaners property at 1201 20th Street ('Parcel C').

Palau's new project on Parcels B and C requires a modification of the site plan attached to the Covenant in Lieu and the Declaration, as provided for in The Covenant in Lieu. The Covenant in Lieu indicates the following:

> *No modification shall be effectuated in such site plan without the written consent of the then Owner(s) of the Property, whose consent shall not be unreasonably withheld, and the written consent of the Director of the City's Planning Department. ...Should the Director or any Owner(s) of any portion of the Property withhold such approval, the then owner(s) of the phase or portion of the property for which modification is sought shall be permitted to seek such modification by application to modify the plan at public hearing before the appropriate City Board or the City Commission of Miami Beach, Florida, (whichever by law has jurisdiction over such matters).*

The City Attorney and the Acting Planning Director have determined that the Design Review Board is the appropriate Board to address a site plan modification.

Accordingly, should the Board approve this application, it will be approving a modification of the site plan, "Exhibit C", of the Declaration of Restrictive Covenants In Lieu of Unity of Title **(see Attachment 3)**, which was executed on December 15, 2010, between Lease Florida Sunset Harbor LLC., and MAC SF, LLC, and further amended (Amended and Restated Declaration of Easements and Restrictive Covenants) by the same parties, executed on February 23, 2011 **(see Attachment 4).**

City Code section 118-5 requires the applicant to combine the multiple lots comprising the subject property with a unity of title or covenant in lieu of unity of title before obtaining a building permit. Accordingly, Applicant shall comply with City Code section 118-5 by executing and recording in the public records a unity of title or covenant in lieu, subject to the approval of the City Attorney, combining the lots comprising the subject property, before submitting its application for a building permit.

RECOMMENDATION:

In view of the foregoing analysis, staff recommends the application be approved, subject to the following conditions, which address the inconsistencies with the aforementioned Design Review criteria:

1. The applicant shall comply with City Code section 118-5 by executing and recording in the public records a unity of title or covenant in lieu, subject to the approval of the City Attorney, combining the lots comprising the subject property, before submitting its application for a building permit.

2. Revised elevation, site plan and floor plan drawings shall be submitted to and approved by staff; at a minimum, such drawings shall incorporate the following:

   a. The drive aisle on the north side of the site shall be reduced from 23'-10" to 22'-0" in width, and the entire garage structure, along with adjoining steps to the residential terraces above shall be setback an additional 1'-10" from the north property line, and the additional area landscaped in a manner to be reviewed and approved by staff.

   b. The final design and details, including materials, finishes, glazing, railings, and any architectural projections and features, shall be provided in a manner to be reviewed and approved by staff.

   c. The roof top, including any canopies, and stairwell or elevator bulkheads,shall be further developed and detailed to include any and all such elements that may be proposed above the main roof level, and shall be lowered in height to the extent possible, subject to the review and approval of staff. No roof-top elements that are not explicitly shown on the roof plans and elevations presented to the Board shall be approved at a later date by staff.

   d. The final design and details, including landscaping, walkways, fences, and architectural treatment of west elevation facing the former bank building, shall be provided, in a manner to be reviewed and approved by staff.

   e. The applicant shall engage a soils engineer to evaluate the former Mark's Cleaners site for possible chemicals contamination, shall provide such report to staff, and shall take and take any and all necessary action to decontaminate the site, if necessary.

   f. All roof-top fixtures, air-conditioning units and mechanical devices shall be clearly noted on a revised roof plan and shall be screened from view, in a manner to be approved by staff.

   g. Prior to the issuance of a Certificate of Occupancy, the project Architect shall verify, in writing, that the subject project has been constructed in accordance with the plans approved by the Planning Department for Building Permit.

3. A revised landscape plan, prepared by a Professional Landscape Architect, registered in the State of Florida, and corresponding site plan, shall be submitted to and approved by staff. The species type, quantity, dimensions, spacing, location and overall height of all plant material shall be clearly delineated and subject to the review and approval of staff. At a minimum, such plan shall incorporate the following:

   a. Irrigation, uplighting and the City's standard bound aggregate system with fertilization trench may be required for all street trees located within the sidewalk, subject to the review and approval of staff.

   b. Along the north elevation in the areas where the stairway access to the first level of residential units is not in conflict with the partially underground parking, such

stairs shall be relocated to be in-set into the terraces in order to increase the available landscape area for at-grade landscaping in the common outdoor area.

c. The applicant shall further study and prepare plans, including corss sections, for the transition area from the Sunset Isle bridge approach to the project plaza at the northeast corner of the site. These plans should also include the public access corridor to the canal walk, which may be required by the County's Shoreline Review Board.

d. A fully automatic irrigation system with 100% coverage and an automatic rain sensor in order to render the system inoperative in the event of rain. Right-of-way areas shall also be incorporated as part of the irrigation system.

e. The utilization of root barriers and/or structural soil, as applicable, shall be clearly delineated on the revised landscape plan.

f. The applicant shall verify, prior to the issuance of a Building Permit, the exact location of all backflow preventors and all other related devices and fixtures; such fixtures and devices shall not be permitted within any required yard or any area fronting a street or sidewalk. The location of backflow preventors, siamese pipes or other related devices and fixtures, if any, and how they are screened with landscape material from the right-of-way, shall be clearly indicated on the site and landscape plans and shall be subject to the review and approval of staff.

g. The applicant shall verify, prior to the issuance of a Building Permit, the exact location of all applicable FPL transformers or vault rooms; such transformers and vault rooms, and all other related devices and fixtures, shall not be permitted within any required yard or any area fronting a street or sidewalk. The location of any exterior transformers, and how they are screened with landscape material from the right-of-way, shall be clearly indicated on the site and landscape plans and shall be subject to the review and approval of staff.

h. Prior to the issuance of a Certificate of Occupancy, the Landscape Architect or the project architect shall verify, in writing, that the project is consistent with the site and landscape plans approved by the Planning Department for Building Permit.

4. All building signage shall be consistent in type, composed of flush mounted, non-plastic individual letters and shall require a separate permit. No illuminated signage shall be permitted facing north.

5. The final exterior surface color scheme, including color samples, shall be subject to the review and approval of staff and shall require a separate permit.

6. A traffic mitigation plan, which addresses all roadway Level of Service (LOS) deficiencies relative to the concurrency requirements of the City Code, if required, shall be submitted prior to the issuance of a Building Permit and the final building plans shall meet all other requirements of the Land Development Regulations of the City Code.

7. Manufacturers drawings and Dade County product approval numbers for all new windows, doors and glass shall be required, prior to the issuance of a building permit.

8. All roof-top fixtures, air-conditioning units and mechanical devices shall be clearly noted on a revised roof plan and shall be screened from view, in a manner to be approved by staff.

9. All new and altered elements, spaces and areas shall meet the requirements of the Florida Accessibility Code (FAC).

10. The applicant may be required to submit a separate analysis for water and sewer requirements, at the discretion of the Public Works Director, or designee. Based on a preliminary review of the proposed project, the following may be required by the Public Works Department:

    a. A traffic and neighborhood impact study shall be conducted as a means to measure a proposed development's impact on transportation and neighborhoods. The study shall address all roadway Level of Service (LOS) deficiencies relative to the concurrency requirements of the City Code, and if required, shall be submitted prior to the issuance of a Building Permit. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code. The developer shall refer to the most recent City of Miami Beach's Traffic and Neighborhood Impact Methodology as issued by the Public Works Department.

    b. Remove/replace sidewalks, curbs and gutters on all street frontages, if applicable. Unless otherwise specified, the standard color for city sidewalks is red, and the standard curb and gutter color is gray.

    c. Mill/resurface asphalt in rear alley along property, if applicable.

    d. Provide underground utility service connections and on-site transformer location, if necessary.

    e. Provide back-flow prevention devices on all water services.

    f. Provide on-site, self-contained storm water drainage for the proposed development.

    g. Meet water/sewer concurrency requirements including a hydraulic water model analysis and gravity sewer system capacity analysis as determined by the Department and the required upgrades to water and sewer mains servicing this project.

    h. Payment of City utility impact fees for water meters/services.

    i. Provide flood barrier ramps to underground parking or minimum slab elevation to be at highest adjacent crown road elevation plus 8".

    j. Right-of-way permit must be obtained from Public Works.

k. All right-of-way encroachments must be removed.

l. All planting/landscaping in the public right-of-way must be approved by the Public Works and Parks Departments.

11. The Applicant agrees to the following operational conditions for all permitted uses and shall bind itself, lessees, permittees, concessionaires, renters, guests, users, and successors and assigns and all successors in interest in whole or in part to comply with the following operational and noise attenuation requirements and/or limitations. The applicant shall ensure through appropriate contracts, assignments and management rules that these restrictions are enforced and the applicant agrees to include the rules and regulations set forth in these conditions in any contract or assignment.

a. NOISE CONDITIONS

i. No commercial outdoor bar counters shall be permitted on the premises.

ii. The Design Review Board (DRB) or the Planning Director shall retain the right to call the owners and/or operators back before the DRB, at the expense of the owners and/ or operators, to impose and/or modify the hours of operation, or amend or impose other conditions, should there be a valid violation (as determined by Code Compliance) about loud, excessive, unnecessary, or unusual noise or other conditions of this approval. An adverse adjudication of a violation against the owner or operator is not necessary for the board to have jurisdiction over the matter under this condition. This condition vests jurisdiction independent of any other condition hereof.

iii. A violation of Chapter 46, Article IV, "Noise," of the Code of the City of Miami Beach, Florida (a/k/a "noise ordinance"), as amended, shall be deemed a violation of this approval and subject the approval to modification in accordance with the procedures for modification of prior approvals as provided for in the Code, and subject the applicant to the review provided for in the first sentence of this subparagraph.

iv. Except as may be required for fire or building code/Life Safety Code purposes, no loudspeakers shall be affixed to or otherwise located on the exterior of the premises.

v. No outdoor live music shall be permitted at any time, inclusive of percussion, musical instrument, or vocal.

vi. Entertainment establishments, as well as dance halls, as defined in the Miami Beach City Code, shall be prohibited, and the applicant will not seek permits therefore.

vii. Special events pursuant to the Miami Beach City Code may not be held on the premises and the applicant agrees that it will not seek or authorize applications for such permits.

b. OPERATIONAL CONDITIONS

i. All trash containers shall utilize rubber wheels, or the path for the trash containers shall consist of a surface finish that reduces noise, in a manner to be reviewed and approved by staff.

ii. Adequate trash room space, air conditioned and noise baffled, shall be provided, in a manner to be approved by the Planning and Public Works Departments. Sufficient interior space must be provided so that doors can remain closed while trash and trash bags are being deposited in dumpsters. Doors shall remain closed and secured when not in active use.

iii. Trash room(s)/garbage room(s) shall be large enough, or sufficient in number to accommodate enough dumpsters so that no more than one pick up of garbage per day will be necessary.

iv. Garbage dumpster covers shall be closed at all times except when in active use.

v. Garbage pickups and service deliveries shall not take place between 6PM and 8AM.

vi. Outdoor cooking anywhere on the premises is prohibited. Kitchen and other cooking odors will be contained within the premises. All kitchens and other venting shall be chased to the roof and venting systems shall be employed as necessary to minimize or dissipate smoke, fumes and odors.

vii. Equipment and supplies shall not be stored in areas visible from streets, alleys or nearby buildings.

12. The project shall comply with any landscaping or other sidewalk/street improvement standards as may be prescribed by a relevant Urban Design Master Plan approved prior to the completion of the project and the issuance of a Certificate of Occupancy.

13. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.

14. At the time of completion of the project, only a **Final** Certificate of Occupancy (CO) or **Final** Certificate of Completion (CC) may be applied for; the staging and scheduling of the construction on site shall take this into account. All work on site must be completed in accordance with the plans approved herein, as well as any modifications approved or required by the Building, Fire, Planning, CIP and Public Works Departments, inclusive of all conditions imposed herein, and by other Development Review Boards, and any modifications required pursuant to field inspections, prior to the issuance of a CO or CC. This shall not prohibit the issuance of a Partial or Temporary CO, or a Partial or Temporary CC.

15. The Final Order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be

returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.

16. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.

17. Nothing in this order authorizes a violation of the City Code or other applicable law, nor allows a relaxation of any requirement or standard set forth in the City Code.

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ATTACHMENT 1

Proposed findings of fact and conditions to be included in a resolution approving with conditions the design review application by Palau Sunset Harbor, LLC.

The Miami Beach Design Review Board approves, subject to the conditions below, the application of Palau Sunset Harbor, LLC for a mixed-use building for the site legally described as follows:

"All of Lots 22. 23, and 24, and the north 70 feet of Lots 25 and 26 in Block 15A of 'Island View Addition' According to the Plat Thereof, as Recorded in Plat Book 9, Page 144, of the Public Records of Miami-Dade County, Florida."

1. The findings included in the August 7, 2012 Design Review Board Staff Report, are adopted as findings to this approval except as modified herein.

2. The conditions included in the August 7, 2012 Design Review Board Staff Report, are adopted as conditions to this approval except as modified herein.

3. The Design Review Board makes the following findings (in addition to those findings presented in the staff report):

    a. Sunset Drive extending from 20th Street to the historic Sunset Island Bridge is an important view corridor that is a major defining element of this neighborhood's character.
    b. The character of the waterfront facing Sunset Island No. 4 is illustrated by the articulated design and minimized massing of the Sunset Harbor Townhomes which are designed as lower scale buildings (with heights between 27 and 33 feet, widths of 25 to 30 feet and waterfront façade areas between 675 and 900 feet) close to the waterfront, behind which are taller buildings. These close-to-waterfront buildings reflect a relationship to the single-family buildings (with maximum heights of 33 feet, widths of approximately 40 feet and façade areas of approximately 1,200 square feet feet) across the waterway.
    c. The project is inconsistent with the May 22, 2012 Conditional Use approval of the Planning Board as it relates to the massing of the building east of the World Savings Bank building.
    d. The project is inconsistent with the May 22, 2012 Conditional Use approval of the Planning Board as it

relates to the encroachment on the line of sight from Sunset Island No. 4.

e. The project is inconsistent with the following Design Review Criteria in relation to the site, adjacent structures and surrounding community:
   i. Criteria No. 6, regarding the proposed structure's sensitivity to and compatibility with the environment and adjacent structures, and enhancement the appearance of surrounding properties.
   ii. Criteria No. 7, regarding design and layout of the proposed site plan and its arrangement of land uses as it applies to the relationship to the surrounding neighborhood, impact on contiguous and adjacent buildings and lands, pedestrian sight lines and view corridors.
   iii. Criteria No. 12, regarding the structure's orientation and massing and its sensitivity and compatibility with the building site and surrounding area and its creation or maintenance of important view corridor(s).

4. The Design Review Board approval of the application is subject to the following conditions (in addition to those conditions presented in the staff report):
   a. The entire length of the building abutting and east of the World Savings Bank property shall be set back an additional 15 feet.
   b. The entire length of the fifth floor of the northern side of the building facing Sunset Island No. 4 shall be set back an additional ten feet.
   c. The entire length of the building of the eastern portion of the building along Sunset Drive shall be stepped back as follows:
      i. First floor an additional ten feet (current proposed setback plus ten feet);
      ii. Second and third floors an additional five feet (current proposed setback plus 15 feet);
      iii. Fourth and fifth floors an additional five feet (current proposed setback plus 20 feet).

5. The Design Review Board notes that the proposed design of the building includes an interior courtyard. That courtyard may be eliminated to accommodate some or all of the loss of floor area created by the conditions set forth herein.

EXHIBIT "J"

DESIGN REVIEW BOARD
City of Miami Beach, Florida

MEETING DATE: October 2, 2012

FILE NO: 22889

PROPERTY: 1201-1237 20th Street –
Palau at Sunset Harbor

LEGAL: All of Lots 22, 23, and 24, and the north 70 feet of Lots 25 and 26 in Block 15A of "Island View Addition" According to the Plat Thereof, as Recorded in Plat Book 9, Page 144, of the Public Records of Miami-Dade County, Florida.

IN RE: The Application for Design Review Approval for the construction of a new 5-story mixed-use building, which will replace all existing structures on the subject site, to be demolished. The applicant is also requesting Design Review Board approval for modifications to a previously approved site plan, which is the subject of a Declaration of Restrictive Covenants in Lieu of Unity of Title.

ORDER

The applicant, Palau Sunset Harbor, LLC.,, filed an application with the City of Miami Beach Planning Department for Design Review Approval.

The City of Miami Beach Design Review Board makes the following FINDINGS OF FACT, based upon the evidence, information, testimony and materials presented at the public hearing and which are part of the record for this matter:

A. Based on the plans and documents submitted with the application, testimony and information provided by the applicant, and the reasons set forth in the Planning Department Staff Report, the project as submitted is consistent with the Design Review Criteria in Section 118-251 of the Miami Beach Code.

B. The project would remain consistent with the criteria and requirements of section 118-251 if the following conditions are met:

1. The applicant shall comply with City Code section 118-5 by executing and recording in the public records a unity of title or covenant in lieu, subject to the

approval of the City Attorney, combining the lots comprising the subject property, before submitting its application for a building permit.

2. The applicant shall execute and record in the public records of Miami-Dade County an easement providing for public access between the hours of sunrise and sunset, over its waterfront walkway, subject to the approval of the City Attorney, prior to the issuance of a Building Permit for the proposed project.

3. Site plan approval is contingent upon meeting Public School Concurrency requirements. Applicant shall obtain a valid School Concurrency Determination Certificate (Certificate) issued by the Miami-Dade County Public Schools. The Certificate shall state the number of seats reserved at each school level. In the event sufficient seats are not available, a proportionate share mitigation plan shall be incorporated into a tri-party development agreement and duly executed prior to the issuance of a Building Permit.

4. Revised elevation, site plan and floor plan drawings shall be submitted to and approved by staff; at a minimum, such drawings shall incorporate the following:

   a. The drive aisle on the north side of the site shall be reduced from 23'-10" to 22'-0" in width, and the entire garage structure, along with adjoining steps to the residential terraces above shall be setback an additional 1'-10" from the north property line, and the additional area landscaped in a manner to be reviewed and approved by staff.

   b. The final design and details, including materials, finishes, glazing, railings, and any architectural projections and features, shall be provided in a manner to be reviewed and approved by staff.

   c. The roof top, including any canopies, and stairwell or elevator bulkheads, shall be further developed and detailed to include any and all such elements that may be proposed above the main roof level, and shall be lowered in height to the extent possible, not to exceed a clear height of 8'-6" between any finished floor and the underside of the roof slab structure above, subject to the review and approval of staff. No roof-top elements that are not explicitly shown on the roof plans and elevations presented to the Board shall be approved at a later date by staff.

   d. The final design and details, including landscaping, walkways, fences, and architectural treatment of west elevation facing the former bank building, shall be provided, in a manner to be reviewed and approved by staff.

   e. The applicant shall engage a soils engineer to evaluate the former Mark's Cleaners site for possible chemicals contamination, shall provide such report to staff, and shall take any and all necessary action to decontaminate the site, if necessary.

   f. All roof-top fixtures, air-conditioning units and mechanical devices shall be clearly noted on a revised roof plan and shall be screened from view, in a manner to be approved by staff.

   g. Prior to the issuance of a Certificate of Occupancy, the project Architect shall verify, in writing, that the subject project has been constructed in

accordance with the plans approved by the Planning Department for Building Permit.

5. A revised landscape plan, prepared by a Professional Landscape Architect, registered in the State of Florida, and corresponding site plan, shall be submitted to and approved by staff. The species type, quantity, dimensions, spacing, location and overall height of all plant material shall be clearly delineated and subject to the review and approval of staff. At a minimum, such plan shall incorporate the following:

   a. The plaza at the northeast corner of the site shall be further studied and enlarged to improve its visibility and functionality, and shall be added to the waterfront walkway easement for public access, subject to the review and approval of staff.

   b. Irrigation, uplighting and the City's standard bound aggregate system with fertilization trench may be required for all street trees located within the sidewalk, subject to the review and approval of staff.

   c. Along the north elevation in the areas where the stairway access to the first level of residential units is not in conflict with the partially underground parking, such stairs shall be relocated to be in-set into the terraces in order to increase the available landscape area for at-grade landscaping in the common outdoor area.

   d. The applicant shall further study and prepare plans, including cross sections, for the transition area from the Sunset Isle bridge approach to the project plaza at the northeast corner of the site. These plans should also include the public access corridor to the canal walk, which may be required by the County's Shoreline Review Board.

   e. A fully automatic irrigation system with 100% coverage and an automatic rain sensor in order to render the system inoperative in the event of rain. Right-of-way areas shall also be incorporated as part of the irrigation system.

   f. The utilization of root barriers and/or structural soil, as applicable, shall be ~~clearly delineated on the revised landscape plan.~~

   g. The applicant shall verify, prior to the issuance of a Building Permit, the exact location of all backflow preventors and all other related devices and fixtures; such fixtures and devices shall not be permitted within any required yard or any area fronting a street or sidewalk. The location of backflow preventors, siamese pipes or other related devices and fixtures, if any, and how they are screened with landscape material from the right-of-way, shall be clearly indicated on the site and landscape plans and shall be subject to the review and approval of staff.

   h. The applicant shall verify, prior to the issuance of a Building Permit, the exact location of all applicable FPL transformers or vault rooms; such transformers and vault rooms, and all other related devices and fixtures, shall not be permitted within any required yard or any area fronting a street or sidewalk. The location of any exterior transformers, and how they are screened with landscape material from the right-of-way, shall be

clearly indicated on the site and landscape plans and shall be subject to the review and approval of staff.

i. Prior to the issuance of a Certificate of Occupancy, the Landscape Architect or the project architect shall verify, in writing, that the project is consistent with the site and landscape plans approved by the Planning Department for Building Permit.

6. All building signage shall be consistent in type, composed of flush mounted, non-plastic individual letters and shall require a separate permit. No illuminated signage shall be permitted facing north.

7. The final exterior surface color scheme, including color samples, shall be subject to the review and approval of staff and shall require a separate permit.

8. A traffic mitigation plan, which addresses all roadway Level of Service (LOS) deficiencies relative to the concurrency requirements of the City Code, if required, shall be submitted prior to the issuance of a Building Permit and the final building plans shall meet all other requirements of the Land Development Regulations of the City Code.

9. Manufacturers drawings and Dade County product approval numbers for all new windows, doors and glass shall be required, prior to the issuance of a building permit.

10. All roof-top fixtures, air-conditioning units and mechanical devices shall be clearly noted on a revised roof plan and shall be screened from view, in a manner to be approved by staff.

11. All new and altered elements, spaces and areas shall meet the requirements of the Florida Accessibility Code (FAC).

12. The applicant may be required to submit a separate analysis for water and sewer requirements, at the discretion of the Public Works Director, or designee. Based on a preliminary review of the proposed project, the following may be required by the Public Works Department:

    a. A traffic and neighborhood impact study shall be conducted as a means to measure a proposed development's impact on transportation and neighborhoods. The study shall address all roadway Level of Service (LOS) deficiencies relative to the concurrency requirements of the City Code, and if required, shall be submitted prior to the issuance of a Building Permit. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code. The developer shall refer to the most recent City of Miami Beach's Traffic and Neighborhood Impact Methodology as issued by the Public Works Department.

    b. Remove/replace sidewalks, curbs and gutters on all street frontages, if applicable. Unless otherwise specified, the standard color for city sidewalks is red, and the standard curb and gutter color is gray.

    c. Mill/resurface asphalt in rear alley along property, if applicable.

d. Provide underground utility service connections and on-site transformer location, if necessary.

e. Provide back-flow prevention devices on all water services.

f. Provide on-site, self-contained storm water drainage for the proposed development.

g. Meet water/sewer concurrency requirements including a hydraulic water model analysis and gravity sewer system capacity analysis as determined by the Department and the required upgrades to water and sewer mains servicing this project.

h. Payment of City utility impact fees for water meters/services.

i. Provide flood barrier ramps to underground parking or minimum slab elevation to be at highest adjacent crown road elevation plus 8".

j. Right-of-way permit must be obtained from Public Works.

k. All right-of-way encroachments must be removed.

l. All planting/landscaping in the public right-of-way must be approved by the Public Works and Parks Departments.

13. The Applicant agrees to the following operational conditions for all permitted uses and shall bind itself, lessees, permittees, concessionaires, renters, guests, users, and successors and assigns and all successors in interest in whole or in part to comply with the following operational and noise attenuation requirements and/or limitations. The applicant shall ensure through appropriate contracts, assignments and management rules that these restrictions are enforced and the applicant agrees to include the rules and regulations set forth in these conditions in any contract or assignment.

a. NOISE CONDITIONS

i. No commercial outdoor bar counters shall be permitted on the premises.

ii. The Design Review Board (DRB) or the Planning Director shall retain the right to call the owners and/or operators back before the DRB, at the expense of the owners and/ or operators, to impose and/or modify the hours of operation, or amend or impose other conditions, should there be a valid violation (as determined by Code Compliance) about loud, excessive, unnecessary, or unusual noise or other conditions of this approval. An adverse adjudication of a violation against the owner or operator is not necessary for the board to have jurisdiction over the matter under this condition. This condition vests jurisdiction independent of any other condition hereof.

iii. A violation of Chapter 46, Article IV, "Noise," of the Code of the City of Miami Beach, Florida (a/k/a "noise ordinance"), as amended, shall be deemed a violation of this approval and subject

the approval to modification in accordance with the procedures for modification of prior approvals as provided for in the Code, and subject the applicant to the review provided for in the first sentence of this subparagraph.

iv. Except as may be required for fire or building code/Life Safety Code purposes, no loudspeakers shall be affixed to or otherwise located on the exterior of the premises.

v. No outdoor live music shall be permitted at any time, inclusive of percussion, musical instrument, or vocal.

vi. Entertainment establishments, as well as dance halls, as defined in the Miami Beach City Code, shall be prohibited, and the applicant will not seek permits therefore.

vii. Special events pursuant to the Miami Beach City Code may not be held on the premises and the applicant agrees that it will not seek or authorize applications for such permits.

b. OPERATIONAL CONDITIONS

i. All trash containers shall utilize rubber wheels, or the path for the trash containers shall consist of a surface finish that reduces noise, in a manner to be reviewed and approved by staff.

ii. Adequate trash room space, air conditioned and noise baffled, shall be provided, in a manner to be approved by the Planning and Public Works Departments. Sufficient interior space must be provided so that doors can remain closed while trash and trash bags are being deposited in dumpsters. Doors shall remain closed and secured when not in active use.

iii. Trash room(s)/garbage room(s) shall be large enough, or sufficient in number to accommodate enough dumpsters so that no more than one pick up of garbage per day will be necessary.

iv. Garbage dumpster covers shall be closed at all times except when in active use.

v. Garbage pickups and service deliveries shall not take place between 6PM and 8AM.

vi. Outdoor cooking anywhere on the premises is prohibited. Kitchen and other cooking odors will be contained within the premises. All kitchens and other venting shall be chased to the roof and venting systems shall be employed as necessary to minimize or dissipate smoke, fumes and odors.

vii. Equipment and supplies shall not be stored in areas visible from streets, alleys or nearby buildings.

14. The project shall comply with any landscaping or other sidewalk/street improvement standards as may be prescribed by a relevant Urban Design

Master Plan approved prior to the completion of the project and the issuance of a Certificate of Occupancy.

15. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.

16. At the time of completion of the project, only a **Final** Certificate of Occupancy (CO) or **Final** Certificate of Completion (CC) may be applied for; the staging and scheduling of the construction on site shall take this into account. All work on site must be completed in accordance with the plans approved herein, as well as any modifications approved or required by the Building, Fire, Planning, CIP and Public Works Departments, inclusive of all conditions imposed herein, and by other Development Review Boards, and any modifications required pursuant to field inspections, prior to the issuance of a CO or CC. This shall not prohibit the issuance of a Partial or Temporary CO, or a Partial or Temporary CC.

17. The Final Order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.

18. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.

19. Nothing in this order authorizes a violation of the City Code or other applicable law, nor allows a relaxation of any requirement or standard set forth in the City Code.

IT IS HEREBY ORDERED, based upon the foregoing findings of fact, the evidence, information, testimony and materials presented at the public hearing, which are part of the record for this matter, and the staff report and analysis, which are adopted herein, including the staff recommendations which were adopted by the Board, that the Application for Design Review approval is GRANTED for the above-referenced project subject to those certain conditions specified in Paragraph B of the Findings of Fact (Condition Nos. 1-19, inclusive) hereof, to which the applicant has agreed.

PROVIDED, the applicant shall build substantially in accordance with the plans approved by the Design Review Board, as determined by staff, entitled "Palau at Sunset Harbour", as prepared by Kobi Karp Architecture, Interior Design & Planning, dated August 2012, modified in accordance with the conditions set forth in this Order and staff review and approval.

No building permit may be issued unless and until all conditions of approval that must be satisfied prior to permit issuance as set forth in this Order have been met. The issuance of Design Review Approval does not relieve the applicant from obtaining all other required Municipal, County and/or State reviews and permits, including final zoning approval. If adequate handicapped access is not provided on the Board-approved plans, this approval does not mean that such handicapped access is not required.

When requesting a building permit, the plans submitted to the Building Department for permit shall be consistent with the plans approved by the Board, modified in accordance with the conditions set forth in this Order.

If the Full Building Permit for the project is not issued within eighteen (18) months of the meeting

date at which the original Design Review Approval was granted, the Design Review Approval will expire and become null and void, unless the applicant makes application to the Board for an extension of time, in accordance with the requirements and procedures of Chapter 118 of the City Code; the granting of any such extension of time shall be at the discretion of the Board. At the hearing on any such application, the Board may deny or approve the request and modify the above conditions or impose additional conditions. If the Full Building Permit should expire for any reason (including but not limited to construction not commencing and continuing, with required inspections, in accordance with the applicable Building Code), the Design Review Approval will expire and become null and void.

In accordance with Section 118-264 of the City Code, the violation of any conditions and safeguards that are a part of this Order shall be deemed a violation of the land development regulations of the City Code.

Dated this 4TH day of OCTOBER, 2012.

DESIGN REVIEW BOARD
THE CITY OF MIAMI BEACH, FLORIDA

BY: _____
THOMAS R. MOONEY, AICP
DESIGN AND PRESERVATION MANAGER
FOR THE CHAIR

STATE OF FLORIDA)
)SS
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 4th day of October 2012 by Thomas R. Mooney, Design and Preservation Manager, Planning Department, City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the Corporation. He is personally known to me.

NOTARY PUBLIC STATE OF FLORIDA
TERESA MARIA
MY COMMISSION # DD 928148
EXPIRES: December 2, 2013
Bonded Thru Budget Notary Services

_____
NOTARY PUBLIC
Miami-Dade County, Florida
My commission expires: 12-2-13

Approved As To Form:
Legal Department: _____ (10-4-2012)

Filed with the Clerk of the Design Review Board on 10-8-2012 (M Blah)

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EXHIBIT "K"

W. Tucker Gibbs

From: terry bienstock <tbienstock@tbienstock.com>
Sent: Wednesday, December 26, 2012 10:19 AM
To: 'Lorber, Richard'; 'Belush, Michael'; 'Cary, William'
Cc: W. Tucker Gibbs; 'Jackie Lalonde'; 'Peter Luria'; 'Jeff Brandon'; 'Smith, Jose'
Subject: Affidavit re Palau
Attachments: Affidavit.pdf

Richard:

On behalf of Sunset Islands 3 & 4, I submit for the official file, my affidavit as to what I would have testified to upon rehearing. Jose Smith suggested I put my testimony in affidavit form and file it with the Planning Dept so it is part of the record for the appeal to the Commission. I will drop off the original affidavit at your office.

I will also forward by separate cover, the email I sent to the DRB members before the vote, asking for a meeting. I will just forward a single request as a sample. The identical request went to all the DRB members.

Terry Bienstock
President
Sunset Islands 3 & 4

AFFIDAVIT

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

BEFORE ME, the undersigned authority, personally appeared Terry Bienstock, Affiant, who being by me first duly sworn, on oath deposes and says that:

1. I am President of the Sunset Islands 3 & 4 Property Owners, Inc. ("Sunset Islands").

2. On August 7, and October 2, 2012, the City of Miami Beach Design Review Board ("DRB") held publicly noticed, quasi-judicial hearings and reviewed the application for design review approval for the Palau Sunset Harbor development (DRB File No. 22889) ("Palau project").

3. On August 7, and October 2, 2012, Sunset Islands 3 and 4 Property Owners, Inc. appeared before the City of Miami Beach Design Review Board to object to the application of Palau Sunset Harbor on its decision to grant the application for design review approval for the Palau project.

4. I attended and testified at the August 7, and October 2, 2012 DRB hearings.

5. In connection with the DRB proceedings regarding the Palau project, I along with another representative of Sunset Islands was advised by Staff that it was improper to meet with the DRB members outside the publically-noticed hearing, so we made no such attempts before the August 7, 2012 meeting.

6. At the August 7, 2012 meeting, a general comment was made by the Chair that "some" members had met with "some" Palau representatives. As a result, we approached the Chair and several members after the meeting and asked if they would meet with us. They said no.

7. We again heard that after the August 7, 2012, postponement of the vote on the Palau project, that Palau was continuing to meet with DRB members regarding the Palau project. So I sought again to meet with each DRB member between August 7 and Oct. 2, 2012.

8. No member would meet with us or discuss what information Palau told them in connection with the vote to take place on October 2, 2012.

9. I sent an email to each DRB member, a representative sample of what was sent to each DRB member is attached. No DRB member responded.

10. At the DRB meeting on October 2, 2012, no DRB member disclosed whether they had direct communications with Palau representatives regarding the Palau project, what was discussed, and what aspects of the project were shown to them on site.

11. After we filed for rehearing, I again reached out to all DRB members to meet on site. This time, they all responded and we met with all but one DRB member on the Palau site.

12. On November 16, 2012, representatives of the association and I met with DRB chair Jason Hagopian on site. He stated he had visited the Palau site previously and had discussions with Palau representatives regarding the Palau project before his vote on Oct. 2, 2012.

13. On November 16, 2012, I met with DRB member Carol Housen on site. She stated, and confirmed in writing that she had visited the Palau site previously and had discussions with Palau representatives regarding the Palau project before her vote on Oct. 2, 2012 and after the August 7, 2012 meeting. She also stated that she was directed only to look at the canal side of the project, and the developer's representatives did not discuss the project's impact on the Sunset Drive view corridor.

14. On November 29, 2012, I met with DRB member Lilia Medina on site. She stated she had visited the Palau site previously and had discussions with Palau representatives regarding the Palau project before her vote on Oct. 2, 2012. She stated that she was only directed to look at the canal side of the project, and the developer's representatives did not discuss the project's impact on the Sunset Drive view corridor.

15. On November 30, 2012, I met with DRB member Leslie Tobin on site. She stated she had visited the Palau site previously and had discussions with Palau representatives regarding the Palau project before her vote on Oct. 2, 2012.

16. On December 3, 2012, I met with DRB member Seraj Saba on site. He stated he had visited the Palau site previously and had discussions with Palau representatives regarding the Palau project before his vote on Oct. 2, 2012.

17. Affiant declares that he has examined this Affidavit and to the best of his knowledge and belief, it is true, correct and complete.

18. Further the Affiant says naught.

Terry Bienstock

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me by Terry Bienstock, who is personally known to me or has produced FDL#B523 2754 1570 as identification, and who did take an oath.

WITNESSED my hand and seal this 24 day of December, 2012.

Notary Public

Printed name of Notary Public
My Commission Expires:

RUBEN H YANES
Notary Public - State of Florida
My Comm. Expires Oct 20, 2013
Commission # DD 927259
Bonded Through National Notary Assn.

EXHIBIT "L"

DESIGN REVIEW BOARD
City of Miami Beach, Florida

MEETING DATE: December 4, 2012

FILE NO: 22889

PROPERTY: 1201-1237 20th Street

LEGAL: All of Lots 22, 23, and 24, and the north 70 feet of Lots 25 and 26 in Block 15A of "Island View Addition" According to the Plat Thereof, as Recorded in Plat Book 9, Page 144, of the Public Records of Miami-Dade County, Florida.

IN RE: A request for a rehearing of a previous final decision of the Design Review Board, wherein it approved both the construction of a new 5-story mixed-use building to replace all existing structures on the subject site, to be demolished, as well as modifications to a previously approved site plan.

ORDER

The applicants, MAC SH, LLC, and the Sunset Islands 3 and 4 Property Owners, Inc., filed an application with the City of Miami Beach Planning Department containing a Petition for rehearing of a previously issued Design Review Approval.

On October 2, 2012, the Design Review Board approved the original application for Design Review Approval, determining based on the plans and documents submitted with the application, testimony and information provided by the applicant, and the reasons set forth in the Planning Department Staff Report, that the project as submitted was consistent with the Design Review Criteria in Section 118-251 of the Miami Beach City Code, subject to the conditions set forth in the October 2, 2012 Final Order for the project. The Petition for rehearing timely followed.

The City of Miami Beach Design Review Board held a hearing on Tuesday, December 4, at which a quorum of the Board was present, taking into consideration the Petition, evidence, information, testimony and materials presented at the public hearing and which are part of the file and record for this matter.

Following denial of a motion to continue the hearing (which failed due to a tie vote), and denial of a motion to deny the Petition for Rehearing (which failed due to a tie vote), there being no further motions, IT IS HEREBY ORDERED, that the last decision of the Board shall stand as the decision of the Board, and that the request for a rehearing of the subject project is DENIED.

Dated this 10th day of DECEMBER, 2012.

DESIGN REVIEW BOARD
THE CITY OF MIAMI BEACH, FLORIDA

BY: _____
THOMAS R. MOONEY, AICP
DESIGN AND PRESERVATION MANAGER
FOR THE CHAIR

STATE OF FLORIDA)
) SS
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 10th day of December 2012 by Thomas R. Mooney, Design and Preservation Manager, Planning Department, City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the Corporation. He is personally known to me.

_____
NOTARY PUBLIC
Miami-Dade County, Florida
My commission expires: 12-2-13

Approved As To Form:
Legal Department: _____ (12-10-2012)

Filed with the Clerk of the Design Review Board on 12/10/2012 ( )

EXHIBIT "M"

BEFORE THE DESIGN REVIEW BOARD OF THE CITY OF MIAMI BEACH, FLORIDA

DRB FILE NO. 22889

IN RE: PALAU SUNSET HARBOR
1201 – 1237 20th STREET, MIAMI BEACH, FLORIDA 33139

PALAU SUNSET HARBOR, LLC'S RESPONSE TO MAC SH, LLC'S AND SUNSET ISLANDS 3 AND 4 PROPERTY OWNERS, INC.'S PETITION FOR REHEARING

Applicant, PALAU SUNSET HARBOR, LLC, (hereinafter referred to as "PALAU" or "Applicant") hereby responds to the Petition for Rehearing (hereinafter referred to as the "Petition"), filed on October 23, 2012 by MAC SH, LLC and SUNSET ISLANDS 3 AND 4 PROPERTY OWNERS, INC. (collectively hereinafter referred to as "Petitioners"), and states as follows:

Background and Procedural History

On May 22, 2012, the Planning Board of the City of Miami Beach, Florida unanimously approved PALAU'S application for a Conditional Use Permit. On October 2, 2012, the Design Review Board of the City of Miami Beach, Florida unanimously approved PALAU'S application for Design Review Approval. The foregoing approvals were issued to PALAU after multiple hearings and continuances before the Planning Board, Design Review Board and Board of Adjustment, spanning a time period just shy

of one full year.[1] On October 23, 2012, Petitioners filed their Petition for Rehearing of the Design Review Board's October 4, 2012 Order Granting PALAU Design Review Approval. For the reasons discussed below, the Petitioners' request for a rehearing should be denied because the Petition for Rehearing is without merit and Petitioners do not meet the threshold requirements to have the Petition heard by the Design Review Board.

Analysis and Argument

Pursuant to City of Miami Beach Code Section 118-261, the design review board has the discretion to hear or not to hear a petition for rehearing. The first sentence of Section 118-261specifically provides that "the design review board **may** hear a petition for rehearing by any person identified in section 118-262". Section 118-261 further provides, in relevant part, as follows:

> *The petition for rehearing **must demonstrate** to the board that (i) there is **newly discovered evidence** which will probably change the result if a rehearing is granted, or (ii) the board has **overlooked or failed to consider** something which renders the decision issued erroneous.* (emphasis added).

The Design Review Board must deny Petitioners' request for a rehearing because Petitioners fail to satisfy either of the two requirements in Section 118-261 cited-above, which would allow the Design Review Board to even consider the Petition.

[1] **The Planning Board and the Design Review Board's unanimous approvals were issued after approximately 11 and 8 hours of presentations before those respective boards and approximately 15 hours of meetings with Staff.**

None of Petitioners' arguments demonstrate something newly discovered or an overlooked issue. On the contrary, Petitioners assert matters that were already extensively considered by the Design Review Board.

Petitioners assert the following seven (7) arguments in support of their Petition for Rehearing:

1. Failure to evaluate the elimination and/or diminution of four view corridors pursuant to Section 118-251(A)(12);
2. Failure to evaluate the application consistent with the historic designation report of the Sunset Islands bridges pursuant to Section 118-251(A)(6);
3. Failure to disclose ex-parte communications as required by Sections 2-511 through 513 of the City Code;
4. Failure to consider the effects of modifications to previously approved site plan pursuant to Miami Beach Code 118-5;
5. Failure to evaluate the addition on the building site pursuant to 118-251(A)(15);
6. Failure to consider setbacks and overlooked evidence; and
7. Failure to consider modification of operation and use.

This Response will address each of Petitioners' seven arguments, as follows:

1. Failure to evaluate the elimination and/or diminution of four view corridors pursuant to Section 118-251(A)(12)

Petitioners disingenuously argue that the Design Review Board failed to evaluate the elimination and/or diminution of four view corridors pursuant to Section 118-251(A)(12). All applicable view corridors were carefully reviewed and evaluated by

both the Planning Board and Design Review Board. The Staff Reports generated by these Boards evidence this and reveal that the Palau site plans and schematics (with respect to view corridors) comply with all relevant design review criteria. Petitioners' argument is further undermined by the fact that the Petition attaches a report authored by Jean-Francois Lejeune, **dated May 17, 2012,** that specifically addresses the issue of the vistas and view corridors Petitioners complain about.[2] Further, the date of Mr. Lejeune's report, alone, unequivocally demonstrates that Petitioners' argument pertaining to view corridors and vistas is not newly discovered evidence. Lastly, Petitioners' argument ignores the fact that the Board, at the October 2, 2012 Design Review Board meeting, required additional setbacks to the northeast corner of the Palau project, which Palau complied with.

Based on the foregoing, Petitioners fail to demonstrate something newly discovered or something overlooked by the Board. This position is supported by Design Review Board Staff, as evidenced by the Design Review Board Staff Report dated December 4, 2012.

2. **Failure to evaluate the application consistent with the historic designation report of the Sunset Islands bridges pursuant to Section 118-251(A)(6)**

This argument should insult the Design Review Board, considering Petitioners devoted, at the October 2, 2012 Design Review Board meeting, a considerable portion of their argument to the historic designation report of the Sunset Islands bridges. At this meeting, Board member Jason Hagopian, and Petitioners' counsel, Tucker Gibbs, both

[2] It is worth noting that Mr. Lejeune's testimony at the May 22, 2012 Planning Board meeting stated that the Palau project does not have any adverse impacts on the Sunset Islands residential neighborhood.

acknowledged the Board's receipt and review of the historic report. Moreover, there was considerable testimony and cross-examination concerning the report. Additionally, there was open discussion at the October 2, 2012 meeting, wherein it was highlighted that Assistant Planning Director, William Cary, the author of the historic designation report, was recommending approval by the Design Review Board. Lastly, Petitioners ignore the fact that Palau's site plan was modified to scale back the northeast corner of the Palau project for the sole purpose of showing sensitivity to the historic bridge.

Based on the foregoing, Petitioners fail to demonstrate something newly discovered or something overlooked by the Board.

3. **Failure to disclose ex-parte communications as required by Sections 2-511 through 513 of the City Code**

The Design Review Board Staff Report for the December 4, 2012 meeting correctly points out that ex-parte communications were discussed and disclosed at the August 7, 2012 Design Review Board meeting. The December 4, 2012 Staff Report correctly points out that the Board Chairman stated, at the August 7, 2012 meeting "[W]e've met, most of us here have met with [Palau's development] team to go over the project." Furthermore, at the October 2, 2012 Design Review Board meeting, Petitioners' counsel, Tucker Gibbs, read into the record that Petitioners are incorporating all documents and records from the prior Design Review Board and Planning Board proceedings – thus, mooting Petitioners' argument about ex-pate communications.

Based on the foregoing, Petitioners fail to demonstrate something newly discovered or something overlooked by the Board.

4. **Failure to consider the effects of modifications to previously approved site plan pursuant to Miami Beach Code 118-5**

In addition to the reasons set forth in the Design Review Board Staff Report for the December 4, 2012 meeting (a copy of which is attached to this Response as **Exhibit "A"**), this argument fails because it completely ignores the fact that the Petitioners devoted a substantial amount of time to this issue at the October 2, 2012 meeting. At this meeting, Petitioner, MAC SH, LLC's representative, Michael Comras, Petitioners' counsel, Kent Harrison Robbins, Assistant City Attorney, Gary Held, and Assistant Planning Director, William Cary, all made specific references on the record concerning the effects of modifications to the previously approved site plan. This issue was well vetted at the October 2, 2012 meeting, which caused William Cary to specifically state at the meeting that Mr. Comras met with Staff to address all of Mr. Comras' issues and concerns relating to the modified site plan and how it affects MAC SH, LLC's/Comras' building.[3]

Based on the foregoing, Petitioners fail to demonstrate something newly discovered or something overlooked by the Board.

[3] It should be noted that Petitioners' Argument No. 4 is personal to MAC SH, LLC and Mr. Comras, not to the remaining Petitioner.

5. **Failure to evaluate the addition on the building site pursuant to 118-251(A)(15)**

This argument is invalid for the same reasons discussed in Palau's response to Petitioners' Argument No. 4, above. Petitioners simply ignore the fact that Petitioners devoted time to this issue at the October 2, 2012 meeting.

Based on the foregoing, Petitioners fail to demonstrate something newly discovered or something overlooked by the Board.

6. **Failure to consider setbacks and overlooked evidence**

In addition to the reasons set forth in the Design Review Board Staff Report for the December 4, 2012 meeting, this argument fails because it is rendered moot by Palau's modified site plan that was approved by the Design Review Board. The Staff Report from the October 2, 2012 Design Review Board states as follows:

> The City Attorney and the Acting Planning Director have determined that the Design Review Board is the appropriate Board to address a site plan modification. Accordingly, should the Board approve this application, it will be approving a modification of the site plan . . .

Pursuant to the above-cited language from the Staff Report, Petitioners' argument is invalid because (i) the Design Review Board specifically addressed its authority to modify the old site plan and (ii) the setbacks Petitioners complain about are no longer relevant as they have been superseded by a new site plan.[4]

[4] It should be noted that the Palau project meets or exceeds all required setbacks.

Based on the foregoing, Petitioners fail to demonstrate something newly discovered or something overlooked by the Board.

7. Failure to consider modification of operation and use

This argument is invalid for the same reasons discussed in Palau's response to Petitioners' Argument No. 4, above. Petitioners simply ignore the fact that Petitioners devoted time to this issue at the October 2, 2012 meeting.[5]

Based on the foregoing, Petitioners fail to demonstrate something newly discovered or something overlooked by the Board. This position is supported by Design Review Board Staff, as evidenced by the Design Review Board Staff Report dated December 4, 2012.

Conclusion

As stated above, the Design Review Board should deny Petitioners' request for a rehearing because Petitioners fail to meet the threshold requirements for a rehearing. The Petition for Rehearing must be denied unless Petitioners demonstrate something newly discovered or something overlooked by the Design Review Board – which Petitioners have failed to do. Petitioners' arguments are completely contradicted by the record that was compiled after nearly 11 hours of presentations before the Planning Board and 8 hours of presentations before the Design Review Board, which Boards issued unanimous approvals to Palau. Further, Petitioners' arguments insult the

[5] Additionally, it should be noted that the Planning Board determined that the Palau project has a less intensity then the dry cleaning business that was previously operating on the subject property.

Design Review Board, as they suggest that the Design Review Board lacks the perspicacity to understand the requirements needed to proceed with a rehearing. It is hard to believe, as Petitioners argue, that Petitioners, Design Review Board, Staff and the Applicant overlooked so many critical aspects of the design review process, especially when the facts overwhelmingly show the opposite. **Based on the foregoing, the request for a rehearing, and the Petition itself, should be denied**.

Respectfully submitted,

PATHMAN LEWIS, LLP
Counsel for PALAU SUNSET HARBOR, LLC
One Biscayne Tower
2 South Biscayne Boulevard, Suite 2400
Miami, FL 33131
Tel No.: (305) 379-2425
Fax No.: (305) 379-2420

By: _____
Wayne M. Pathman, Esq.

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EXHIBIT “A”

MIAMIBEACH

PLANNING DEPARTMENT

DESIGN REVIEW BOARD
STAFF REPORT

FROM: Richard G. Lorber, AICP, LEED AP
Acting Planning Director WHC for RGL

DATE: December 4, 2012 Meeting

RE: Design Review File No. 22889
1201-1237 20th Street – Palau at Sunset Harbor

The re-hearing applicants, MAC SH, LLC, and the Sunset Islands 3 and 4 Property Owners, Inc., are requesting a re-hearing of a previous decision of the Design Review Board, wherein it approved both the construction of a new 5-story mixed-use building to replace all existing structures on the subject site, to be demolished, as well modifications to a previously approved site plan, which is the subject of a Declaration of Restrictive Covenants in Lieu of Unity of Title. If the re-hearing request is granted it may be heard immediately.

LEGAL DESCRIPTION:
All of Lots 22, 23, and 24, and the north 70 feet of Lots 25 and 26 in Block 15A of "Island View Addition" According to the Plat Thereof, as Recorded in Plat Book 9, Page 144, of the Public Records of Miami-Dade County, Florida.

HISTORY/REQUEST:
On May 22, 2011, the project received Conditional Use approval from the Planning Board.

The application was approved by the Design Review Board on October 2, 2012, subject to the conditions of the Final Order.

On October 23, 2012 a 'Petition for Rehearing' was filed by the MAC SH, LLC., and the Sunset Islands 3 and 4 Property Owners, Inc.

Section 118-262 of the Miami Beach City Code specifies that the Design Review Board may consider a petition for rehearing by the applicant, the owner(s) of the subject property, the city manager, an affected person, Miami Design Preservation League, or Dade Heritage Trust. For purposes of this section, "affected person" shall mean either a person owning property within 375 feet of the applicant's project reviewed by the board, or a person that appeared before the board (directly or represented by counsel), and whose appearance is confirmed in the record of the board's public hearing(s) for such project. The petition for rehearing must demonstrate to the board that:

(I) there is newly discovered evidence which will probably change the result if a rehearing is granted, or

(ii) the board has overlooked or failed to consider something which renders the decision issued erroneous.

The basis for the attached re-hearing petition submitted by the applicant is that there is newly discovered evidence which is likely to be relevant to the decision of the board.

STAFF ANALYSIS:
The petition for rehearing claims that several items were overlooked or were failed to be considered by the Board. Staff believes that this is not the case, as all items mentioned in the reasons for the petition were discussed and considered by the Board as outlined below.

Page 3 of the re-hearing petition:
FAILURE TO EVALUATE THE ELIMINATION AND/OR DIMUNITION OF FOUR VIEW CORRIDORS PURSUANT TO SECTION 119-251(A)(12)

First, staff must note that any reference pertaining to view corridors implies Public View Corridors, and not private view corridors. Any views to the water from the MAC SH LLC., are not protected public view corridors, and the property owner does not have an inherent right to water views through the same or another owner's property. All of the view corridors referenced in the petition were discussed and reviewed by both the Planning Board and the Design Review Board. The Board, at the August 7, 2012 meeting, did require that the northeast corner of the building be further setback in order to lessen the impact on the historic Sunset Island bridge, and this change was made in the plans presented to the Board for the October 2, 2012 meeting, and the change fully satisfied the Board's request.

This is NOT newly discovered evidence which will probably change the result if a rehearing is granted.

Page 5 of the re-hearing petition:
FAILURE TO EVALUATE THE APPLICATION CONSISTENT WITH THE HISTORIC DESIGNATION REPORT OF THE SUNSET ISLANDS BRIDGES PURSUANT TO SECTION 118-251(A)(6)

The Board was provided copies of the designation report or made aware of the designation report at the August 7, 2012 meeting. This issue was discussed and evaluated by the Board at both the August 7, 2012 and October 2, 2012 meetings. Although the Palau Project is not located within the Sunset Isles Bridge historic site, nor is the project subject to the regulatory review or approval of the Historic Preservation Board, both the Planning Board and the Design Review Board did seriously consider the compability of the proposed Palau structure with the historic bridge and did require that the northeast corner of the proposed Palau structure be modified and significantly set further away from the historic bridge in order to complement rather than detract from the historic site.

This is NOT newly discovered evidence which will probably change the result if a rehearing is granted.

Page 7 of the re-hearing petition:
FAILURE TO DISCLOSE EX-PARTE COMMUNICATIONS AS REQUIRED BY SECTION 2-511 THROUGH 513 OF THE CITY CODE

Ex-parte communications were discussed at the August 7, 2012 meeting.

At the beginning of the Board discussion, the Board Chairman indicated "We've met, most of us here have met with your team to go over the project", (referring to the Palau development team), and other Board members individually indicated that they had met with the applicant.

This is NOT newly discovered evidence which will probably change the result if a rehearing is granted.

Page 8 of the re-hearing petition:
FAILURE TO CONSIDER THE EFFECTS OF MODIFICATIONS TO PREVIOUSLY APPROVED SITE PLAN PURSUANT TO MIAMI BEACH CODE 118-5

It was clearly stated in the the Staff Report from the October 2, 2012 meeting that by approving the subject application, the Board would also be approving a modification to the site plan:

> *"Lastly, as indicated in the 'City Attorney's Opinion on Applications by Palau Sunset Harbor, LLC to the Planning Board and Design Review Board'* ***(see Attachment 2)****, the property at 1261 20th Street ('Parcel A'), previously owned by World Bank, is owned by MAC. World Bank also owned the adjacent land at 1237 20th Street ('Parcel B'), sold to Lease Florida Sunset Harbor, LLC. Lease Florida began constructing a project called Cypress Bay, which ceased construction prior to completion. World Bank sold Parcel B to Lease Florida without approval of a lot split by the Planning Board. This was not discovered until the Cypress Bay project was underway. To remedy this situation, and to address a deficiency in parking for the Cypress Bay project, among other issues (cross easements for utilities, access and relief from interior setbacks), MAC and Lease Florida executed a Covenant in Lieu, pursuant to City Code Section 118-5, so Parcels A and B could be considered one site for zoning purposes. The parties also executed the Declaration setting forth the cross-easements between these properties. Palau, the current owner of Parcel B, and the successor under the Covenant in Lie and the Declaration, recently purchased the Mark's Cleaners property at 1201 20th Street ('Parcel C').*
>
> *Palau's new project on Parcels B and C requires a modification of the site plan attached to the Covenant in Lieu and the Decleretion, as provided for in The Covenent in Lieu. The Covenant in Lieu indicates the following:*
>
> > *No modification shall be effectuated in such site plan without the written consent of the then Owner(s) of the Property, whose consent shall not be unreesonably withheld, and the written consent of the Director of the City's Planning Department. ...Should the Director or any Owner(s) of any portion of the Property withhold such approval, the then owner(s) of the phase or portion of the property for which modification is sought shall be permitted to seek such modificetion by application to modify the plan at public hearing before the eppropriate City Board or the City Commission of Miemi Beach, Florida, (whichever by law has jurisdiction over such matters).*
>
> *The City Attorney and the Acting Planning Director have determined that the Design Review Board is the appropriate Board to address a site plan modification.*

Accordingly, should the Board approve this application, it will be approving a modification of the site plan, "Exhibit C", of the Declaration of Restrictive Covenants in Lieu of Unity of Title ***(see Attachment 3)****, which was executed on December 15, 2010, between Lease Florida Sunset Harbor LLC., and MAC SF, LLC, and further amended (Amended and Restated Declaration of Easements and Restrictive Covenants) by the same parties, executed on February 23, 2011* ***(see Attachment 4).*** *"*

This is NOT newly discovered evidence which will probably change the result if a rehearing is granted.

Page 10 of the re-hearing petition:
FAILURE TO EVALUATE THE ADDITION ON THE BUILDING SITE PUSUANT TO §118-251 (A)(15)

The Staff Report erroneously indicated that this criteria was "Not Applicable", and this was corrected to "Satisfied" on the record at the October 2, 2012 meeting. The design of the proposed new building and its relationship with the former 'World Savings Bank' building was discussed at length, and both the Board and staff determined that the proposed new building was sensitive to and compatible with the existing improvement.

This is NOT newly discovered evidence which will probably change the result if a rehearing is granted.

Page 11 of the re-hearing petition:
FAILURE TO CONSIDER SETBACKS AND OVERLOOKED EVIDENCE

The setback analysis referred to in the petition has no bearing on the application, as it is noted on the setback analysis (Exhibit B) in the petition, the noted setbacks are the

> *"minimum setback requirements IF the property was not joined for zoning purposes through a covenant in liew of unity of title. – Note: RM setbacks are based upon survey data of irregular proportions and are approximate."*

As the property, including the parcel owned by MAC SH LLC., is in fact considered one property for zoning purposes as they are joined by a unity of title, these setbacks do not apply. There are no required setbacks between the MAC SH, LLC. property and the parcels owned by the applicant for the Palau project. In fact the Palau project provides a greater setback between the 'MAC SH, LLC., parcel and the Palau project than the zero setback that the Code allows.

This is NOT newly discovered evidence which will probably change the result if a rehearing is granted.

Page 12 of the re-hearing petition:
FAILURE TO CONSIDER OPERATION AND USE

The Board reviewed and discussed the increase in commercial space with the proposed modification to the site plan, as well as the nine (9) parking spaces referred to in the petition, rendering this argument not-valid.

This is NOT newly discovered evidence which will probably change the result if a rehearing is granted.

RECOMMENDATION:
In view of the foregoing analysis, staff recommends the request for a re-hearing of the subject application be DENIED.

RGL:WHC:MAB
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BEFORE THE MIAMI BEACH CITY COMMISSION
DESIGN REVIEW BOARD FILE 22889

IN RE: PALAU SUNSET HARBOR

All of Lots 22, 23, and 24, and the north 70 feet of Lots 25 and 26, Block 15A, Island View Addition According to the Plat Thereof as Recorded in Plat Book 9, Page 144 of the Public Records of Miami-Dade County
1201-1237 20th Street, Miami Beach, Florida

RECEIVED
2013 FEB 27 PM 12:23
CITY CLERK'S OFFICE

APPENDIX
PETITION TO REVERSE DESIGN REVIEW BOARD DECISION

VOLUME II

Respectfully Submitted,

W. Tucker Gibbs, P.A.

P.O. Box 1050
Coconut Grove, Florida 33133
Tel (305) 448-8486
Fax (305) 448-0773
Email: tucker@wtgibbs.com

EXHIBIT "N"

(TRANSCRIPTION FROM CD)

MEETING OF THE DESIGN REVIEW BOARD
CITY OF MIAMI BEACH

REGARDING: 2043, 1201, 1225, 1237 20th Street

August 7, 2012

APPEARANCE OF IDENTIFIED SPEAKERS

DESIGN REVIEW BOARD:
Jason Hagopian, Chairperson
Mickey Minagorri
Seraj Saba
Carol Housen
Marilys Nepomechie
William Cary
Michael Belush

ATTORNEY FOR CITY OF MIAMI BEACH:
GARY HELD, ESQUIRE

ATTORNEY FOR PALAU SUNSET HARBOUR:

DAVID SACKS, ESQ.,
Pathman Lewis, LLP
One Biscayne Tower
Suite 2400
2 South Biscayne Boulevard
Miami, FL 33131

ATTORNEY FOR MAC SH LLC:

KENT HARRISON ROBBINS, ESQ.,
Attorney at Law
1224 Washington Avenue
Miami Beach, Florida 33139

- - -

(Whereupon, the following proceedings were had:)

MR. BELUSH: This is Number 22889, 1201 to 1237 20th Street, Palau at Sunset Harbor. The applicant is requesting design review approval for the construction of the new five-story, mixed-use building which will place all existing structures on the subject site to be demolished, and staff is recommending that the applicant give the presentation and that members of the public speak, and that the application be continued to a date certain of October 2, this year.

MR. CARY: This is a very interesting project which has been reviewed, probably had more public hearing exposure than almost any other project on Miami Beach, probably 20 hours, at least, before the Planning Board which -- after which time it was granted a conditional use approval, where all of the traffic issnes have been evaluated by the Planning Board and having studied and approved, and a tremendous amount of public testimony has been granted, and there is very good reason why this project has had the

attention that it -- that it -- that it is getting.

I am just going to briefly outline a little bit of the earlier history on the site, as many of you know, where Sunset Harbor Towers I and II are currently located, was originally the site of a -- of a -- a lumber yard.

MR. ROBBINS: I don't mean to interrupt you, Mr. Cary, but I wanted to file -- request a continuance on the basis of improper notice, and I don't want to waive our rights concerning that. So I didn't want to disrupt you, but, you know, if Mr. Held can raise that --

MR. CARY: It is up to the chairman, I think.

MR. ROBBINS: Mr. Chairman, I do have a motion to continue this matter for failure for provide proper public notice.

THE CHAIRPERSON: Is that true?

MR. HELD: Can you state with more specificity the grounds for your --

MR. ROBBINS: Two grounds, under the City charter --

MR. HELD: Can you say your name?

MR. ROBBINS: My name is Kent Harrison Robbins. I represent MAC HS LLC, which is the owner of 1261 20th Street. Mr. Comras' property, the old World Bank building, it is not that old, actually, but it is the World Bank building.

Under the Miami Beach Charter, under the Citizens' Bill of Rights, the right to notice, persons are entitled to notice of a city hearing; shall be timely informed as to time, place, nature of the hearing, and the legal authority pursuant to which the hearing is to be held. And the key word here is nature of the hearing, and the legal authority, pursuant to which the hearing is to be held.

The issue here is whether or not the notice properly gives a legal authority to go forward on this hearing. There is no citation to any ordinance. Although it says it is going to be a design review approval, it doesn't say under what provisions of the code, and what is the legal authority to go forward with the hearing. And that's

required under the City charter.

But moreover, there is another defect, a substantive defect as to notice, and that has to do with an -- we are going to pass this out -- the issue of the covenant in lieu of unity of title under 118-5.

As you probably know, our project, our site at 1261 is part of a unified site plan, with the Cypress building, which are the two adjoining lots to my client's building.

And that covenant in lieu of unity of title has been opined upon by the City attorney concerning objections that my client may have as a signatory to that covenant as to when objections can be raised as to -- as to conformance with or violations of the covenant in lieu of unity of title.

The City attorney opined on February 7, 2012, after receiving memos from both the applicant here, as well as my client, that the matter of the covenant in lieu of unity of title must be considered by this board at this hearing as part of its consideration of the modification of the site plan.

And it specifically said that we are supposed to go forward before this board under 118-5, which was not cited, nor was the issue of the covenant in lieu of unity of title actually noticed for this hearing.

So that is the fundamental defect. Just to understand how indepth we are going to have go on this issue, although it has been noticed, if we were forced to go forward, we will have the right, under 118-5, as well as under the terms of the covenant in lieu of unity of title to present and consider the prior approved site plan to the project, as well as prior approvals and orders considering that prior plan, and how the proposed change in the site plan and modifications would impact the previously-approved site plan for this project.

And I would actually tender to you and show you the actual -- what was the approved site plan, and explain why we believe that it is inappropriate for the site plan to be changed, in light of the covenant in lieu of unity of title. And we would be entitled to

that entire evidentiary hearing.

However -- and Mr. Held, correct me if I am wrong -- it has not even been noticed for this matter. Yet, we are obligated by the memo of the City attorney to go forward in this forum, in this process, and raise all of these issues. So given that already, the staff has recommended continuance of this matter for the plans to be further adapted and cleaned up, it would probably be in the best interests for this matter to be continued, to be properly noticed with formal notice by advertising, by posting and by mailing, specifying that this matter will go forward, not only on the design review application, but also on the modification of the covenant in lieu of unity of title, and the site plan related to that.

For that -- on that ground, I would ask that this matter be continued for the reasons of that defective notice.

THE CHAIRPERSON: Gary, I will respond.

MR. ROBBINS: For the record, we are going to be placing into the record the

1 covenant, the amended covenant, the
2 easements, agreements, as well as the opinion
3 of the City attorney.
4 Thank you.
5 -- as well as 118-5.
6 MR. SACKS: I believe that may be part
7 of your staff package, those covenants, we
8 may --
9 Maybe not the covenant.
10 MR. HELD: Wait. I need to hear Mr.
11 Sacks' comments on this.
12 MR. SACKS: Yes. I was simply
13 pointing out for sake of ease for the board
14 that I do believe -- please confirm, that the
15 City Attorney's opinion letter on the
16 covenant Mr. Robbins raises, is in your
17 package. I believe that it is --
18 MR. HELD: Yes, the opinion is in your
19 package. The opinion states that -- that a
20 request for modification of the site plan is
21 properly before the board and part of this
22 application. So the question is, is it -- is
23 either that specific aspect of the
24 application, the approval of a modification
25 of the site plan, does that need to be

1 separately included in the legal notice, and
2 does this specific code section need to be
3 identified as part of the legal notice?
4 So we recently have modified our
5 notice procedures to include a reference to
6 the -- the code section under which the
7 specific applications are made, and this
8 legal notice does not.
9 I wouldn't have opined that a separate
10 notice needs to be stated for the
11 modification, which would be part of your
12 design review approval, but the planning
13 director thinks that that also could have
14 been separately noticed, and possibly should
15 have been separately noticed. So a request
16 for continuance is properly well stated,
17 though it would have to be because we have a
18 30-day notice requirement.
19 Now, that would probably have to be
20 for probably --
21 MR. ROBBINS: October.
22 MR. HELD: -- the October hearing.
23 MR. ROBBINS: And instead of -- the
24 next hearing is right after Labor Day, and
25 most of my -- most of the neighborhood is not

1 going to be around the day after Labor Day.
2 MR. HELD: So it is not just that you
3 would continue the item. It has to be
4 renoticed?
5 MR. ROBBINS: That's correct.
6 THE CHAIRPERSON: It would have to be
7 renoticed for the October meeting.
8 MR. SACKS: Can I jump in here for a
9 minute, please?
10 David Sacks, Law Office of Pathman and
11 Lewis, representing Palau Sunset Harbor, the
12 applicant in this matter.
13 With respect to the notice issue,
14 notwithstanding any changes that may have
15 been made, there is Florida case law on point
16 that says that notice -- it just needs to be
17 out there. It can be insufficient so long as
18 the public is advised.
19 It is a technical point. It is form
20 over substance, and he is here. The people
21 in this audience are here.
22 I would say that having said that, and
23 getting all dressed up, don't give us "no
24 place to go."
25 We are here today, folks. We have

1 been at this since January.
2 And I would also like to remind
3 everyone on this board that your other board,
4 Board of Adjustment -- we had an appeal where
5 guess what, notice and due process were
6 argued at that hearing, and -- this past
7 Friday's hearing -- we won on that point, as
8 well.
9 In my opinion, based upon everything I
10 have heard -- and I can go back to January --
11 both myself and my team, including the owners
12 that are here from Israel, have flown in
13 today. So to allow a form over substance
14 technical issue when we are all here makes
15 zero sense.
16 And I would also say that there is
17 Florida case law on this point. So I would
18 ask that you allow us -- and I believe
19 William, you were in the middle of saying
20 that you recommended a continuance, but you
21 would allow us to move forward. I think that
22 should be granted, just --
23 THE CHAIRPERSON: Well my greatest
24 concern is that this could have been brought
25 to the attention of the chairman of the board

and the City attorney at 8:30 this morning. We have had people waiting here --

MR. SACKS: Agreed.

THE CHAIRPERSON: -- for five hours. And that, I think, is very unfortunate and very uncourteous.

MR. SACKS: I agree.

MR. HELD: Okay. Thank you, Mr. Chair.

MR. LORBER: Richard Lorber, acting planning director. Having been very familiar with this case and brought it through the previous board hearing and then an appeal, I can tell you, David is right. We have had -- been at this for a long time.

However -- in the notice provision -- not including the citation to the code, if that was all we were talking about, Kent is good at finding that, and we can debate whether it could go forward.

I tend to think that that is kind of minor. We will correct that in the future. However, Kent's first point about the action being taken here today -- you actually are being asked to do two things: Your normal

DRB function approving the, you know, reviewing and approving the project is of course, before this board, but in this case, there is also an extra added feature, and that is, you are actually the board that is going to review the modification of the proposed site plan that is contained in the covenant in lieu of unity of title, that does go back previously to a previous version of this.

The very long history -- probably have to go through the whole history with you. But in this case, it was always my intention to have the advertisements say, "approve the building," but also "review and approve the modification to the site plan associated with the covenant in lieu."

I see now that that didn't occur, that it is not part of the notice.

And I think -- David, I hate to do this, but I would recommend that we re-advertise and include the revision of the site plan, because that is part of the unique aspect of this case.

There is this covenant in lieu of

unity of title. It does contain a site plan. And the code -- that covenant says that it must be -- it can only be amended by going through the City, which -- the appropriate board at the City, which has been deemed to be the DRB.

I would also recommend the continuance for two months. I hate to have to do it.

MR. SACKS: Can the project be at least presented with no --

MR. LORBER: Wait. One other comment -- excuse me, William.

The room is full of people, and often, when we discuss with an appellant this proper notice or improper notice and they make the case that there is improper notice, I point out that, "but the room is full of people."

So there is an awareness of the project, and people are here today. And I think it might be unfair to the people that have taken the time out to come down and sit through the first part of your hearing, to just send them home. Maybe it would be okay if we did hear testimony, had the beginning discussion. It is a complex project, so

maybe you could get in -- you know, the first hearing. Let's discuss if that is -- to allow parties.

MR. HELD: -- allow the applicant to hear board comments, since -- well, you have had an opportunity to review the application, but -- up to now.

MR. CARY: But then we will re-notice it properly. That is all I can offer.

MR. SACKS: I appreciate it. I would like to read into the record, though, on the chance that we still can go forward, that case that I had mentioned -- the case mentioned, it says, in part: "Plaintiffs admit that the advertised public hearing was held prior to the enactment of the zoning ordinances, therefore, they were afforded the notice and an opportunity to be heard."

You are here. Mr. Gibbs is here.

I will go on with the case.

-- "That the notice did not comply with law, with state law requirements is not constitutionally significant."

In other words, deficient notice is proper under this case. So while I

appreciate the comment, Richard, at least allow us to be heard.

I certainly would like us to be heard again. The owners have showed an interest in coming to the six Planning Board hearings, to various meetings with the neighbors. They are sitting here today, from -- coming in from Israel, to be here, expecting to be heard.

Notwithstanding the technical issues that came up, but also in light of case law, I think we should be allowed to be heard. I would really appreciate the Board to consider that, in the totality of the circumstances.

MR. HELD: Mr. Chair -- so you won't know until the end of a presentation, rebuttal, public hearing, until you -- if you would have voted for approval anyway. So taking into account Richard's comments that we should have -- go forward with the hearing, and the Board at least give comments and deliberate, then we will know where we stand. So --

THE CHAIRPERSON: But we don't make a motion today. Is that the idea?

MR. HELD: Well, that is the opinion of the planning director. I would concur with that. We are proceeding, you know -- it is the applicant's risk at going forward, because Mr. Robbins will exercise his rights of appellate review and challenge it.

And we will probably be in court, anyway. If not that issue, it will be another issue. We can decide at some later point in the proceeding whether you are actually going to take a vote on the merits or not, is my feeling.

MR. SACKS: Well, they should at least have the benefit of hearing your comments.

MR. ROBBINS: There are other issues about the incompleteness of the application which I would present at the beginning of my presentation, and some of these issues were, in fact, raised in the staff report.

But the point is, every member of this board is sworn to uphold the Miami Beach Charter. The Miami Beach Charter and the Citizens' Bill of Rights specifically has very detailed requirements concerning notice.

And it is a matter of respect to the

citizens of Miami Beach that notice be compelled by its -- by the planning staff and by the City so citizens will have full notice of what is happening in front of their boards to decide whether or not they should appear or should not appear. So this is so critical, and it is an issue of citizens' rights. It is not just an issue of whether or not we are going to delay this project.

THE CHAIRPERSON: And we defer to recommendations from Gary and the legal department. I mean, we are not lawyers here.

And we defer to the recommendations from Gary and the legal department. I mean, we are not lawyers here.

I do wonder if we go through the process -- and then we are going to actually then -- we may continue it again -- what -- what happens --

MR. HELD: That was the recommendation of staff anyway, which contemplated you hearing and giving initial comments.

MR. LORBER: I guess our staff recommendation -- in your staff report, does recommend continuance to October on the basis

of those issues Kent brought up. But that is still -- you have a room full of people. There is no reason why you can't hear some comments, get familiar with it, and then follow our staff recommendation from the staff report, which was to continue to October.

THE CHAIRPERSON: Right. The staff recommendation is to hear the presentation for the, for the Board to take public testimony, for the Board to discuss the project -- and our recommendation was for the project to be continued until a later date for the concerns of staff to be addressed.

MR. GIBBS: Mr. Chairman, my name is Tucker Gibbs, and I represent the Sunset Islands Three and Four homeowner's -- property owner's association.

(Discussion off the record.)

MR. GIBBS: Sorry, I said Sunset Islands -- I apologize. My concerns -- my client's concern is the way you all are trying to go about doing this is neither fish nor fowl.

Our position is, either you decide to

1 take all the testimony you are going to take
2 and vote on this issue and be done with it,
3 or you say, okay -- allow people to speak,
4 but acknowledge that there is going to be
5 another hearing, which is what you are
6 talking about.
7 My concern is -- is that as the
8 attorney for my group, I do not want to make
9 my presentation today unless I know that when
10 I make my presentation, you are going to vote
11 after it. I do not want to get up here and
12 make my presentation, have my clients to get
13 up here and speak to you all today and then
14 two months later, in October, have them --
15 have you all say, "Okay, we heard it two
16 months ago, and we are going to vote on it
17 now."
18 That is unacceptable. It is a due
19 process issue for my clients, so my position
20 is, you all should decide what you are going
21 to do. I have no problem with taking public
22 testimony, but the staff report says there
23 are plenty of problems with this application.
24 One of the reasons why staff has asked it to
25 be continued is because of the problems. So

1 those problems may be rectified in one form
2 or fashion between now and the next meeting,
3 but everybody will have spoken to a set of
4 plans and an application that was incomplete.
5 So I have a real problem with that.
6 Yes, we have very general issues,
7 which I think people can speak to today. But
8 specific issues relating to the specific
9 plans -- well, if there are problems with
10 those specific plans, if there are dimensions
11 missing, the elevations and certain other
12 issues are not compatible -- are not
13 consistent, that is a problem.
14 So I think we ought to take a step
15 back, frankly. Have your meeting, have the
16 meeting in October, have the applicant do all
17 of the things staff has told the applicant to
18 do in terms of making their plans better and
19 making their plans more responsive.
20 We will meet with the applicant. We
21 will talk about the issues. I mean, the
22 applicant knows what our issues are, but we
23 will continue to talk with the applicant and
24 hopefully come up with at least narrowing the
25 issues before the next -- before the meeting

1 in October.
2 But I got to tell you, it is -- right
3 now, we are in a kind of a quandary. I don't
4 want to have my people get up here and make
5 our full-blown presentation and then be cut
6 out in October.
7 THE CHAIRPERSON: Are we going to
8 still get to vote at the end and still make a
9 motion today?
10 MR. HELD: You are talking about a
11 vote on the merits, or on continuance?
12 THE CHAIRPERSON: Just like we would
13 do a normal item, where we go to -- at the
14 end, say, "Is there a motion," and then a
15 motion to continue --
16 MR. HELD: Well, it seems like the
17 party at risk, which is the applicant, wants
18 you to go forward. So if you, as a board,
19 feel that you have received enough
20 information and you are ready to vote, then I
21 would say you can go ahead and vote. And if
22 --
23 THE CHAIRPERSON: Well, we always vote
24 at the end of a presentation.
25 MR. HELD: Well, it is either to vote

1 on the merits or to continue. It is one or
2 the other.
3 THE CHAIRPERSON: Right.
4 MR. HELD: So if Mr. Gibbs wanted to
5 waive his right to make a presentation before
6 you take a vote, that is up to him. But his
7 -- if his main concern is he may not get an
8 opportunity to present if you continue it, if
9 he has presented here and there may be a new
10 set of plans, we should assure him that if
11 there is a revised set of plans, that there
12 will be time for additional comments in
13 October as long as they are not duplicative
14 of what has been said here today.
15 MR. GIBBS: And therein lies the rub.
16 And that is the concern, Mr. Chairman. The
17 concern is, is that our comments, even though
18 they are going to be transcribed and they are
19 on tape and everything else, will become
20 stale.
21 THE CHAIRPERSON: But that is how it
22 is every time we continue a project. We hear
23 -- we hear you one time, we have a
24 continuance. We say we vote to continue the
25 project with the staff comments, and then we

1 come next month and you come again. And that
2 is the process.
3 MR. GIBBS: I understand that. But I
4 want -- if that is the process, I want the
5 ability to advocate for my clients. I want
6 the ability for my clients to say, "Well, you
7 know what, we want to wait. We want to wait
8 until October to make our presentation."
9 If you all are going to wait until
10 October, if the plans are not complete, I
11 think we have a right to make our full
12 presentation in October, when it is fresh and
13 when we have everything. Because -- yes, it
14 becomes duplicative. Why should we be forced
15 to make our presentation two months before
16 the decision is made?
17 I don't understand that.
18 THE CHAIRPERSON: And what are you
19 presenting?
20 MR. GIBBS: I represent the neighbors,
21 or at least some of the neighbors. I won't
22 presume to say I represent all of the
23 neighbors.
24 THE CHAIRPERSON: Okay.
25 MR. GIBBS: My only point is, is that

1 we want to be able to make our case in one
2 coherent fashion. We do not want to make it
3 in this month and then in the next month.
4 THE CHAIRPERSON: But what I can't say
5 is that when we continue in October that
6 there won't be another continuance. I mean,
7 you have to do it at some point, and we do
8 have people that come --
9 MR. GIBBS: Right.
10 THE CHAIRPERSON: -- for three
11 meetings, and the neighbors come every single
12 time. So I don't know how to tell you --
13 MR. GIBBS: I do this for a living. I
14 know that.
15 MR. HELD: Mr. Chair, even if the
16 application was complete, if the Board
17 decided that they were not ready to vote on
18 it, you would be making two presentations.
19 THE CHAIRPERSON: I understand.
20 MR. HELD: So I understand your point,
21 Tucker, and you have made it well. But we --
22 you know, if the Board wants to proceed, they
23 should just be allowed to proceed.
24 And Mr. Chair --
25 MR. GIBBS: Obviously, Mr. Chairman,

1 this is the Board's prerogative. I am giving
2 you our position. I feel very strongly about
3 it, obviously, and that is where we stand.
4 We would like the opportunity to be able to
5 make our case on the complete application.
6 Thank you.
7 MR. GIBBS: For the record --
8 MR. SACKS: Excuse me. May I?
9 I was next, please.
10 MR. ROBBINS: Sure.
11 MR. SACKS: Thank you.
12 MR. ROBBINS: Your turn.
13 MR. SACKS: I appreciate that.
14 You went two in a row, by the way.
15 I would also like to state for the
16 record -- and Tucker's argument, while I
17 understand it, don't forget the fact that we
18 have had -- since January 2012, we have had
19 meetings January, February, March, April,
20 May, and we have had a March seven hour
21 hearing.
22 And so what I am trying to say is the
23 same thing Tucker is saying, that we have
24 revealed all of our cards, too, which sound
25 like, if I can metaphorically categorize what

1 you are saying, we have done that, as well.
2 But I think that we are all here
3 today. I have read some cases that say even
4 deficient notice is satisfactory. Again, we
5 are all -- we are all here. Who has been
6 prejudiced?
7 Due process is a nice word, but we are
8 all here today. Allow us to be heard today.
9 I would even go so far as to ask for a
10 vote -- I don't think it is going to
11 happen -- a vote oo the merits. That is how
12 confident I feel on this project. We have
13 been at this a long time.
14 THE CHAIRPERSON: Okay.
15 MR. SACKS: Thank you.
16 MR. GIBBS: Can I just make one quick
17 response?
18 THE CHAIRPERSON: One quick response.
19 MR. GIBBS: What he is talking about
20 is a Planning Board decision. I get it.
21 Design review is not the Planning Board, and
22 believe me, you all told me this from the
23 very beginning. The design review is a
24 different venue, different standards. This
25 is a new day. It is not all the way from

January. It starts now.
So this is new. It is design review. Thank you.
THE CHAIRPERSON: Thank you.
MR. SACKS: I would also like to read into the record the case that I cited regarding deficient notice. That case is --
What is the cite --
MR. HELD: David, just hand it in to the clerk. Okay?
MR. SACKS: Okay. That's even better.
THE CHAIRPERSON: So we are going to proceed with this application.
And if the applicant wishes to step up and make the presentation --
MR. ROBBINS: Mr. Chairman, may I continue with my --
THE CHAIRPERSON: Yes, I forgot your --
MR. ROBBINS: Comment an hour ago?
Well, at this point, we also want to raise issues concerning the insufficiency of the application and the defects of the application, the site plan and submission requirements.

Do you want me to raise that at a later date?
THE CHAIRPERSON: I have -- as a board, we have to -- we have to know that staff has reviewed the application. If it wasn't a ready application, we wouldn't be looking at it. So --
MR. HELD: Kent, why don't you make that as part of your presentation after the applicant's presentation. Okay?
MR. ROBBINS: I can certainly do that, but there are --
MR. HELD: Thank you, Kent.
MR. ROBBINS: Thank you very much, Mr. Held.
MR. SACKS: Is it still morning?
Good afternoon.
MR. HELD: Wait. Staff has to complete his report.
THE CHAIRPERSON: We have not gotten past that, yet.
MR. CARY: Mr. Chairman, members of the Board, member of the public, just to continue -- there is good reason why this has been a project which has been very

scrutinized and been the subject of many, many hours of public hearings.
As I was indicating, where the Sunset Harbor Towers One and Two are today was originally a low-scale lumberyard. When those towers were constructed, it was the intention of the developer to continue that development on the west side -- on the north side of the site, along the waterway separating Sunset Islands Four from the -- what is now the -- what is the industrial district. And so it was only as a result of your major protest from within the residential community, particularly the islands, that that decision to continue that development, which would have blocked all views and literally put the industrial district in a 20-story -- you know -- high box, that caused the development of what then became the townhouse development, right across the street from Publix, to be completely re-configured to be lower than the scale and to not permit the development that was going to occur there previously.
So certainly, with the development of

the -- the eastern portion of the site now, it is very appropriate for the neighbors of the project to be very concerned about what is going to be developed there so we don't end up with another, you know, Sunset Harbor Towers-type of project in this location.
And the -- you know, Planning Board did a lot of soul searching on this, and they requested, when they granted the conditional use approval, that the Design Review Board, you know, specifically address certain issues with regard to the project. And those are summarized on Page 6 of our staff report.
On May 22nd of 2011, the project received conditional use approval from the Planning Board. As a part of that approval, the Planning Board imposed the following condition related to the Design Review Board approval. "The applicant shall work with the design review staff to further modify the proposal to address the following subject for review and approval by the Design Review Board: A, pulling back the massing east of the World Savings Bank building, with emphasis on upper floor setbacks and the

northeast corner of the building, and adding more green space;

B, further modifying the ground floor area along the canal, the terraces, to minimize the hard scape and to increase the amount of open landscaped area at grade level;

C, adding more canopy trees for increased shade to landscaped plan, particularly along Sunset Drive, and to also work with Cheryl Gold on this item, who is a -- you know, a landscape specialist;

D, removing parking spaces on Sunset Drive;

E, reducing encroachment on the line of sight from Sunset Island Four, that is from the residential property, single-family residential properties;

And F, working with the Public Works Department to limit U-turns at the guardhouse, which is located on Sunset Drive.

And staff has met with the applicants and the architects and the neighbors on numerous occasions to be able to address all of these issues in a satisfactory manner.

Many changes have been made to the project which have addressed these concerns, additional work is needed. That is one of the reasons that we have requested that the Board continue the project and not approve the project at this time.

There are many factors that need to be considered here. First and foremost is the -- the design and massing of the new project which is across from the Sunset Harbor Four does not adversely impact or overwhelm the residential properties to the north. We believe that many design modifications have been made, and a few more can be made, as well.

Additionally, the project has to be a viable project. It has to have a certain number of residential units that can be marketed, as well as viable commercial space, and it has to be able to contain all of its own parking and not have an adverse impact upon new traffic circulation in the area or upon the ease and attractiveness of the Sunset Isle Three and Four residents being able to approach their residences, which only

has one, you know, bridge access, which is from Sunset Drive, and for their access to their own property not to be disrupted by this new development project.

And I will not state that this is not a large project. It is a large project. Whenever you put a five-story high project next to a single-family residential neighborhood, it is a big project.

And so the Board does have to very seriously consider the relationships between those projects, even though we have a larger project immediately to the west of it.

But all in all, we have found that the developer and the architects and the neighbors have been all responsive to discussions that we have had. We feel the project is, you know, very definitely going in the right direction. There are some further refinement and improvements that need to be made, including increasing the set-back on the east side. We have recommended that the setback from the northeast corner be increased, you know, to a minimum of ten feet more of set back. We have recommended that

the stairs that are on the terraces for the individual units on the waterway, wherever possible, be pulled back into the terraces, themselves, rather than projecting out into the open landscaped area that the Planning Board requested the Design Review Board further consider. We believe that the landscaping of this project really, to the max -- to really ensure that the project does not physically overwhelm the surrounding contacts, should be very carefully addressed.

To that end, we are recommending that along the 20th Street elevation of the project, the eastern portion of the building, which is the retail space, be set back an additional ten feet to provide adequate area. Otherwise, we are only going to have a five-foot sidewalk -- to provide adequate area for major shade, canopy, because we feel that the number of canopy trees on the side is insufficient. I think we have provided you with a copy of the comments that were made by -- by Cheryl, Cheryl Gold, with her assessment of the status of the landscaping plan, which we feel is not adequate, to date.

All in all, we think it is a handsomely-designed project. We think that it will be an asset to the neighborhood, but we think it is imperative that the Board, you know, spend the additional time necessary working with the applicant and the applicant's architect and the neighbors to finetune the project so that we achieve that critical balance that is necessary.

And it is only because of the unique, you know, siting of this project next to the single-family residential neighborhood, and what could have happened there, that the adjacent -- those single-family property owners, as well as the property owners of the Sunset townhouses immediately to the west have a very legitimate concern and want to see this -- this process be, yon know, fully and thoroughly investigated, and resolved properly.

THE CHAIRPERSON: Thank you, William.

Okay. Good afternoon. Please state your name and address.

MR. SACKS: Good afternoon. David Sacks, with law offices at 2 South Biscayne

Boulevard, on behalf of the applicant, Palau Sunset Harbor.

Before I go on -- and Mr. Held -- Mr. Held, in an abundance of caution, do we -- does the Board need to take any kind of vote, based upon what happened just before with respect to --

MR. HELD: No, they are proceeding.

MR. SACKS: So we are proceeding. There is no need to do that. Okay.

MR. GIBBS: So this matter has not been continued at all?

MR. HELD: It has not been continued. They are taking it under advisement.

MR. GIBBS: Okay. Thank you.

MR. SACKS: Anyway, thank you for allowing us to continue today. We are -- agaio, representing Palau Sunset Harbor.

With us today is our architect, Kobi Karp of Kobi Karp Architecture and Design, as well as the owners of the property, Meyer Srebnik and Jill Kravitz.

We would like to thank some of the members of the Board who have met with us regarding this project over the last few --

well, last few months since the May 22nd Planning Board approval.

I would also like to state that that Planning Board order -- and while Tucker is correct in saying that it is a totally different board -- that order carries a heck of a lot of weight. There were certain findings of fact and conclusions of law that were made on that day, including but not limited to the fact that the project is consistent with the comprehensive plan, the City of Miami Beach's comprehensive plan and the land development regulations.

Having said that, I would like to also remind the Board that there is a history involving the Planning Board, and it is a necessary board, step one -- Planning Board. If you have a project that is in excess of 50,000 square feet, you need Planning Board approval before you get to Design Review Board.

We also incorporated into our project a very unique and efficient -- the utilization of the mechanical parking, and that is why we are in front of the Planning

Board. Obviously, the residents were very involved in the process, and therefore, the Planning Board had a very long history.

So I do think that it counts. It -- I do think that it matters. So after a January, February, March, April, May scheduled hearings, some of which were seven to eight hours, as I mentioned a little bit earlier -- and during that process, a heck of a lot of neighborhood outreach, all of the associations in the area were met with numerous times. I would say -- 30 is a fair number. That may be debatable, but it is certainly right up there with maybe a variance on -- two on each side.

THE CHAIRPERSON: Just really quick --

MR. SACKS: Yes?

THE CHAIRPERSON: If we can -- I know we will have a long meeting -- so I would like if -- maybe have your presentation be limited to about 20 minutes, at most, and then rebuttal responses, ten minutes.

We have a lot of people to hear. So just -- if you can -- be very "pointful" and "impactful," that would be great.

MR. SACKS: I was an auctioneer in a past life, so I can do that.

So to continue, we had a lot of neighborhood outreach. There were many concessions made -- that I will mention a little bit later -- that are also in your package today -- that state concession after concession after concession, and if I may, the goalpost kept getting moved with respect to some of the neighborhood outreach.

There -- after everything that was asked for that was put -- reduced to, in writing, there are still -- because we met with some of the neighborhood associations or a neighborhood association yesterday, and again, new requests were made even yesterday.

Again, the project as I had mentioned a little bit earlier is a mixed-used project that has 50 residential units. The residential portion of the project is along 20th Street, and -- I am sorry -- yes. It is along 20th Street, and the commercial component -- I'm sorry. The commercial component is up front and aligned with the sides the property fronting Sunset Harbor,

with pure residential behind the -- behind the property fronting the waterway facing the Sunset Harbor Three and Four.

That was also a concession, might I add.

The commercial space is approximately 11,000, a little over 11,000 square feet. Again, I had mentioned the Planning Board order that we had where again, there were findings of fact, conclusions of law, consistency with the comprehensive plan, the structures and uses are consistent with the land development regulations, as I mentioned, and that the public health safety, morals, and general welfare will not be adversely impacted.

That was a finding of fact at the Planning Board level. Evidence required that any quasi-judicial hearing, especially for land use zoning matters -- and that includes recommendations made -- again at the Planning Board level, but time after time, we have had recommendations for approval January through -- February through May, all recommendations for approval, and we kept making changes,

many iterations; again, in an effort to comply with some of the neighborhood concerns and staff concerns.

Again, I had mentioned the neighborhood outreach. Within your package is an April 5, 2012, memo of the -- prior to the first extensive Planning Board meeting, that is the one that I mentioned that about was eight hours. We were here -- at least our team was here, and everybody in this -- many of the people in this room -- concessions were made that included -- that we move the egress from Sunset Drive to 20th Street, increase landscaping; we removed rooftop trellis work, relocated the pool, incorporated valet parking, improved stacking and traffic flow of interior parking, created an internal loading zone. We reduced the number of residential units from 70 -- and I think it -- at one point, it may have been more, and certainly, that is consistent with the comp plan and the zoning code -- to no more than 50.

All concessions, all serious concessions; and again, in an effort for our

client to work with the City of Miami Beach and design a gorgeous project, as William said, at the gateway to the Sunset Harbor area.

I should also mention that one of the things that we chose not to do in concessions that we made is that the Cypress Bay project -- if you are familiar with the area, the Cypress Bay project was approved, I believe, in 2006. But whenever it was approved, there was a height variance granted that I believe gave up to what -- 63 -- three extra feet. We chose not to pursue that additional square footage, and we are well within our zoning envelope. We are below the 50-foot requirement, and I will say with respect to every other aspeet of zoning, we meet setbacks. I mean, I could go on and on, but again, I am trying to keep this brief.

And we have added beverages and bike racks to Sunset Drive because again, it is the front and gateway to this important area that is evolving as we speak.

We decided to do all of these things, again, to make it look fantastic for the

entire neighborhood and for this project.

Additional modifications were made -- and I don't mean to belabor the point, but it is important that we get this on the record, because change, change, change -- it can't go on. I'm very -- I'm disheartened by the fact that we cannot even seek an approval today, but I must get, for the record, the additional changes.

We also lowered the north elevation of the four-story residential structure.

We set back the top two floors approximately -- a setback of an approximately nine feet.

We decided not to have boat slips used for commercial use. Again, all at the request of the neighborhood associations.

Valet was moved to the interior of the building.

Landscaping -- added significant, significant landscaping to the east elevation;

Relocating the lobby to 20th Street, and probably some additional things, but I am going to stop right there. I guess the point

was received. We have worked with the neighbors. We have made concessions. We comply with the zoning code.

By the way, this is a commercially-zoned property. Yet, we are putting a mixed-used project in place.

We comply with the -- we are consistent with the comp plan. And again, as I stated earlier, the Planning Board found that as a finding of fact.

And again, you know, there is no need to go on with the fact that we have had neighborhood outreach. I think I have made that point abundantly clear, and I think I have made the point that we have had competent substantial evidence all the way through until today, and that is going to continue, because -- and as William mentioned a little bit earlier, there was a directive of sorts, kind of the handing of the baton at the May 22 Planning Board hearing. I believe William read into the record the conditious 5-A through F.

Well, that was the condition whereby it was almost a message to the Design Review

Board to look at additional things, additional things that related to what is in your purview.

And Kobi Karp is going to go into those right now as part of his presentation, but it is essentially a checklist of "done, done, done and done," because that is what we have to do in order to get this project approved, because we have had opposition, continuing opposition, every step of the way. We would like to get this project approved.

Thank you.

Kobi, I am going to turn it over to you.

MR. KARP: Hi. Good afternoon. Thank you very much for seeing us. My name is Kobi Karp, for the record, and this is Jennifer McCaughney. She is the one who actually does all of the work.

My name is Kobi Karp, and as -- I don't want to belabor the history, but I do want to bring you just up to speed as to where this project is located and where we came from and, hopefully, where we are going.

This project is uniquely located right

here. This is actually where the new garage is being built by Scott Robbins, this whole block right here, which has substantially commercial.

Our zoning is at this corner. It is CD-2. So as was mentioned before, there were commercial uses there before. There was -- Mark's Dry Cleaners is there, which we are proposing to demolish. There is the existing shell of the condominium project which was previously approved there, obviously, with a variance. We are looking to demolish that, as well.

Immediately across the street, we have a project that was recently approved, old Rosinella Bakery. It is the old funeral home, and it is now being converted into a bakery and a restaurant.

And immediately adjacent to it starts other nice commercial uses. There is a gym, which was converted from what is an old Jewish temple, and next to it is Martino Tires.

This wraps around a large block, which is the FP&L substation right here, which is

also aligned -- across the street from us by the old Car Doctors, which also is a Robbins development, which has offices in the second floor and has commercial on the ground floor.

Taking that into reality, we are immediately adjacent -- across the street here. This is the bridge that brings you to Sunset Island. It is a bit on the tilt. The entry to Sunset Island, or basically two hills. And then there is a bridge which goes on an angle and focuses your attention to this public park.

This is the fountain on Alton Road. It is a park. There is a park right here, which is a green space, and these parks basically function as buffers and create a nice separation to the single family residential on North Bay Road right here, which we have met with and, as was mentioned, we have some letters of support.

And obviously, there are some neighbors who are not for the project. And just for the record, I live right -- I live on Sunset Island since 1993, with my wife and my kids. We live right here. So most of

these folks in the room are my neighbors.

Actually, I think all of them, except Kent Harrison Robbins. He is not my neighbor.

We basically -- but seriously this is the site located right here. This is the Michael Comras office, which was previously -- and it is shown right here -- it is the old World Bank. And our project basically calls for, on 20th Street, to have a commercial liner on the street.

The height is 50 feet. We are not seeking any variances. We are looking at the staff comments. We have met with staff. Actually, we agree with most of their comments, and what I would like to do, if you would like me -- give me a minute, I would like to walk you through the project, if that is okay.

Good.

The project, basically, sits on the corner, which is CD-2. It has a path which leads you straight to Sunset Island.

Sunset Island has a bridge -- oh, I almost forget. I also brought Andy Witkin

with me, the landscape architect, in case there are many discussions or -- a lot to be had about the landscaping.

But what we are looking to do is create a nice pedestrian gesture, which would allow the pedestrian movement from the Sunset Island to come across and walk onto the neighborhood.

The neighborhood is up and coming. There is a lot of nice restaurants which are coming into the neighborhood, and we are looking to promote that. So the landscape that we propose is to have that path. Along it, we have a separate path which was mentioned. We have two points of entry. We have a principal point of entry to the building on 20th Street. This is commercial retail on the ground level, and right now, if you would give me a minute, I have a map which is kind of interesting.

Here it is.

This is our site right here, and this is the commercial district. This is Sunset Harbor Townhomes. They go between 60 feet down to 30 feet in height.

Our height restriction is 50 feet. So we are right in the middle. We actually made a section that is part of the drawings --

Actually, Jennifer, do you have those drawings?

Because there were comments on the staff report that we wanted to clarify to you, specifically, there was a note about FAR, because our balcony was touching on three sides. And so what we did is we cut it loose.

So we have a set of drawings --

Thank you very much --

So what we are proposing, in essence, is a building which meets and greets the setbacks which are required, and it is all residential along the water because we are immediately across from Sunset Number Four.

But if you look here, there is a park. And this is the public park of Sunset IV. So there is a park here.

This is the entry and the exit of North Bay Road, and there is a park here.

There is the park with the fountain.

This is the Car Doctors with

Rosinella, and this is the FP&L substation.

That is the Publix with the parking right here.

And over here would be where Scott Robbins is building his parking structure.

So that is our neighbors to this side.

The neighbors to this side, which is across a 120-foot wide waterway -- that we have single-family residential, of three homes that face immediately, directly right here.

So most of our property, not all of our property, but most of our property essentially faces the park of Sunset Island Number Four.

There is a park here. There is also a green park here, and there is another green space over here.

There is a house right here, immediately across the bridge, and let me see if I have a photo of that -- I think I have a photo of that -- which was just recently built.

This is the section, actually, which is kind of interesting. This is the section

looking across the waterway. It is a blow-up of what is in your package. But in essence, to keep it simple, the picture is what is -- existing at Sunset Harbor Townhomes.

They have lower rise on the water, and they have a little bit higher towards the street. We are at a 50-feet height restriction, and what we tried to do is create more of a green space along the water promenade -- along the water, an access, a public access to the water.

So we have that. And then what we did is we have two stories of residential on top of two stories of residential, and at planning -- what we were asked to do was set it back. So we set it back on an angle. So when you're standing across the waterway, there is a 120-foot waterway, plus the setbacks -- we were able to mitigate and create a view corridor, which actually required us to lower our building on the water side by approximately ten percent.

The property that sits immediately across the water is this one right here. So this house -- and most houses on this -- this

is the park, across the bridge, and this is the house that was just recently built. And it says, right, there are other houses also -- similar, about 30 to 35 feet, with nice roof-topped terraces.

And this house specifically sits diagonally from our site, which is right here.

This board is kind of interesting. It has where the Cypress building was built, was approved, and as was mentioned, received a variance of two feet.

Jennifer?

Three -- three feet.

Nonetheless, we are not looking to increase our height. We are looking to lower our height, especially as we advance towards the water. And this line right here signifies basically that we would be setting ourselves further away from this corner.

This is the corner that staff has recommended for us to set back an additional ten feet from the setback line.

Having said that, some of the things that -- you know, over here, which are kind

of interesting -- now, we have created a realm where the parks are and where we have set our building back where there is an opportunity to create more plaza and landscaping. What staff has also mentioned is that right now, there is some parking spaces here. There is an "insy" and "outsy" for Mark's Dry Cleaners. You come, you drive underneath. It is a drop-off. It has been there for the past ten -- maybe two decades, three decades.

But in essence, what we are proposing to do is not to have an insy or outsy here for our vehicles. We are only having it at this location, and our valet is inside. So most people who live in the building -- there are about -- no more than 50 apartments in the building -- there are 20 apartments facing the water, five per floor, four floors facing the water, and the other 30 live on top of the commercial.

And what we are proposing to do is have a lobby which brings you into a core here, which brings you into the 30 units, and you continue down the other gallery, and it

brings you into the 20 units on the waterway.

We are proposing to have a pedestrian access, public access along the water, like a shoreline promenade, if you will, with beverages and so forth, and we are looking to create a setback and landscaping, which then gives some private landscaped area for the lenai apartments.

We also have a view corridor that we have to respect, for Mr. Comras' property, the World Bank right here, so that is the angle that we are looking here.

And staff is asking us to move from the setback another ten feet on the commercial side.

And these are the landscaping which are currently under construction, but the site, Sunset Islands, was finally able to find a way to relocate the gatehouse from this location, and it will be centrally located right here, which is kind of aligned with our little pedestrian entry into the building on that side.

So in essence, the concept of the building is pretty straightforward in that

what we are looking to do is to create residences that go around -- there is one, two, three, four, five -- like I said, residences here on four floors, so there are 20 apartments right here.

And then there are some residences here, which we -- again, we pulled back, and there are some residences over the commercial.

Our pool -- in a mini, inside the building, we created an open space which has a cross-ventilated space, which affords the units the opportunity, if they want it, to have a floating garden and a mini-tiered area, which is -- we have thought quite "vernacular" in architecture to some of the other apartment buildings in Florida. But it also creates a nice green space, and it allows us to keep the pool and the mini-tiered area which sits on top of the gym right here, away from the private areas, with very private terraces, which are not public. There are private terraces on the rooftop.

So to get back to that section, this is the section, if you will, to look at the

World Bank.

This is 20th Street right here. And this would be the canal. This would be the public promenade. This would be the setback. This would be the residential that we would step back. You can see how it comes up a little bit higher when it gets to 20th Street.

And this is the shape, pretty much, of the World Bank as it exists right now. This is our gym, and it is open on top to the landscaped area.

Am I clear on that?

Good. So then what we wanted to do is we created a little rendering just to help -- this is our entry into the garage. This is the commercial on 20th Street. And because it is a CD-2 zoning, the commercial setbacks are X, but the setbacks for residential and most of our project is residential -- even though it is CD-2 -- and we can do full commercial, as has been and is currently the use there -- we are looking to have residential. The residential setbacks are greater than the commercial setbacks. So you

can clearly see, even on 20th Street, that the residences are substantially set back.

The ghosted-in element is the World Bank, and behind it, this is our gym which opens up to the garden. This is our walk-along, which is open, cross-ventilated, with landscaping at the ground level.

I ghosted it in so that I can see what the building looks like, not only in elevation, but also in 3D.

And then what we did also is we have -- can I show them the black and red, Jennifer?

This is a more precise plan, because -- and it is convoluted. I will pass it around, but in essence, what it tries to show is the red is where we were before, and the black is where we pulled it in even further.

(End of CD 1.)

(Beginning of CD 2.)

There is a duplication of the last three pages of CD 1 for the first three pages of CD 2).

MR. KARP: -- for the lenai apartments.

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So it clearly -- you can see here, this is the setback. We were behind the setback. And we were able to pull it in even more. We did it into the garden space right here, which is our gym, with the pool on top, and the idea -- the notion is that you walk along and you enter your unit within the garden, and then the apartment opens up, this view here, it looks to Miami Beach, and this looks up North Bay Road.

MR. CARY: Excuse me -- excuse me, Kobi. Can you just clarify, when you say -- "What we had before, and what we have now," these changes were made in direct response to the concerns of the neighbors and the

Planning Board?
MR. KARP: Yes.
MR. CARY: So this is the revised plan that was reviewed and approved by the Planning Board?
MR. KARP: Yes, William; correct.
MR. CARY: So red is the original plan for the Planning Board, and the black is the revised plan?
MR. KARP: Correct, yes. And I wanted to show you that because we -- even though we do have some neighbors here who are not supporting us, we did try to accommodate -- you know, you can't make all of the people happy all of the time, but maybe some people some of the time.
But this is the walk.
This is the green setback.
This is the residential -- and the parking -- and our parking --
Now, in comparison -- forget the parking on Mark's Dry Cleaners, but I am talking about just the element, itself, of Cypress. It had two levels of parking, which was exposed to the outside, on the vertical

walls.
Our parking proposes to be not only covered from the top, but to be closed in, and we have the parking requirements for the residential and for the commercial in the project. So it is important to note that, because what we tried to do here is -- there it is, in essence.
Right. This is kind of interesting, because this is from the back -- this is from the park looking across, and this is the bridge, 120-foot from seawall to seawall.
And again, our seawall right now is a low seawall, so you – obviously, we will have to put a new seawall, which is going to raise it in height, similar to the seawall on the other side of the park, which will bring our finished grade elevation to probably six and a half or seven NGVD.
This is the townhomes of Sunset Harbor. There is a liner here and then there is another liner in the back. The units on 20th, Jennifer -- are what, six stories?
They are six stories.
And what we are looking to do is to

make a big separation, a landscape separation between the two projects, because there is an opportunity, if you will, to create a negative space, an open space, between the two projects. And -- because if people would want to come and walk here -- and you can see it clearly on the black and white more than the color landscape -- they can walk all the way along here and then they can come to this little linear park. And if something ever happens with this property and it does get developed, because it can get developed 50 feet, five stories. It can get infilled in, maybe there would be a link, so that people can actually walk all the way around and -- I thought it would be kind of nice. And then separate circulation all together for people who want to walk to the island.
And then of course, if Public Works decides to get rid of these parking spaces, or not, then that area would be landscaped as -- as a corner with a sitting area and so forth.
Did I miss anything?
MR. CARY: Just to clarify, we covered

5-A through 5-F in the staff report.
MR. KARP: Yes. Yes, sir, and I am here if you have any suggestions or ideas. I will sit right here.
THE CHAIRPERSON: Okay. Thank you very much.
Okay. At this time, is there anybody in the audience that wishes to comment on this application?
Please, one at a time. Step to the microphone, state your name and address, and you will have five minutes to make your comments, and we will move on. We have a lot of comments to address today.
MR. GIBBS: My name is Tucker Gibbs, and I represent the Sunset Harbor -- Sunset Island. I don't know why I keep on doing it – III and IV neighborhood association.
I am going to wait to make my full presentation, but I am going to introduce the people who will be speaking. We will be having -- excuse me -- presentations by Mr. Terry Bienstock. He will be followed by Mark Alvarez, to be followed by one of the neighbors, Dr. Olga Lens, and followed by

Peter Luria. That will be our presentation.
That will -- other members of the public, obviously, will be speaking, and then I would like to wrap up at the -- at the conclusion of the public hearing.
Thank you very much.
MR. HELD: Tucker, is three minutes a person -- do you think that will be enough?
MR. GIBBS: Pardon me? Well, I think five, and I will tell you why. I -- this is a quasi judicial proceeding. I understand that you all may or may not be taking a vote, and there may be a notice issue, but I assume we are still a quasi-judicial proceeding.
This is an issue that relates to a staff report that is rather lengthy. It also relates to 16 applicable standards that are -- to be applied, not to mention 5A through F of the Planning Board's decision. So we would like to be able to make our full case.
And Mr. Alvarez is -- is an expert witness, as a planner, who is going to be discussing some of these issues.
MR. HELD: Okay. Thanks.
MR. GIBBS: So we would like to make a

full presentation.
MR. ROBBINS: My name is Kent Harrison Robbins, and I already identified myself. And we would also ask more than just five minutes to make our presentation. We have to deal with the covenant in lieu of unity of title, which is an entire presentation as to the appropriateness of the proposal with respect to what had been previously approved by the City. One of the problems we have is the City lost the Design Review Board file for the prior approval --
MR. HELD: Kent, can you --
MR. ROBBINS: We have to reconstruct, and that is going to be some difficulty.
Even that, alone, may take 15, 20 minutes.
MR. HELD: We will make that decision when you come up. You are out of turn, at this point.
MR. ROBBINS: Well, I just wanted to make certain that I am not waiving my right. We certainly can't do it in five minutes.
MR. HELD: Mr. Chair, I think -- the swear witnesses.

THE CHAIRPERSON: Sure. If -- whoever is going to speak on this project, please stand and raise your right hand.
Do you swear to tell the truth, the whole truth, and nothing but the truth.
PROSPECTIVE WITNESSES: We do, yes.
THE CHAIRPERSON: Okay.
Thank you, everybody. Let's get started.
MR. BIENSTOCK: Good afternoon. My name is Terry Bienstock. I am a 26-year resident of the Sunset Island Three, 2312 Bay Avenue; also president of the Sunset Islands III and IV Property Association.
Let me start out, just for the record, because I have asked Mr. Karp if I could use some of the blow-ups that he was using to show you folks, and he just told me no. So I will do my best, without reference to any of the diagrams that --
This is the neighborhood outreach that you have heard about. It is a wonderful, friendly outreach that culminated in a meeting last night where we were not shown one piece of paper or one plan. So let me

start out by saying very simply, we are opposed to this development as it is proposed.
We want a development, we want a mixed-use development. This is not a bad looking building. It is in the wrong place. It is too massive. It is out of scale, and it is too high for this neighborhood.
It is a neighborhood, it is a -- it is a parcel or a series of parcels cobbled together that is an odd shape. It is not only an odd shape, but it is completely surrounded by nothing more on every side, all four sides, by either single-family homes or two-story commercial parcels.
So to start out, they are proposing something that there tower over every adjacent parcel.
This is what I guess some will call a transitional area. It goes from single -family homes to some homes to some commercials, to some high-rises further away, and some five-story commercial further away.
But the fact is, on three sides, it is adjacent to no more than homes that are two

1 stories high on three sides.
2 On the fourth side, there are
3 commercial parcels which Mr. Karp talked
4 about that are stories high, including the
5 Comras building. The World Bank building,
6 that is only two stories.
7 This is a project that is way out of
8 scale for this location.
9 It would be fine somewhere else. It
10 might be fine two blocks away. But where it
11 is, is overwhelming to the neighborhood, and
12 this is just for any neighborhood.
13 So let me talk about that for a
14 minute.
15 The Sunset Islands One, Two, Three,
16 and Four are one of the last remaining
17 historically considered neighborhoods in all
18 of Florida; not just in the area, not just on
19 the beach, but in all of Florida.
20 Our neighborhood was so significant
21 and so original -- and what I have shown up
22 here -- I have found some postcards of
23 Lincoln Road from the 1930s and 1940s of what
24 our islands looked like.
25 And by the way, I am proud to say, our

1 islands --
2 MR. HELD: Mr. Bienstock, if you are
3 going to walk away from the podium, use the
4 microphone.
5 MR. BIENSTOCK: I will use the mic.
6 I am proud to say, our islands look
7 substantially like that today, after -- since
8 the 1920s when we started. We take --
9 although we own our homes, we don't consider
10 us to be owners. We consider ourselves to be
11 stewards, because we understand the
12 significance and the importance of
13 maintaining the historic values of the area,
14 and not just our homes, but of our
15 neighborhood.
16 We have worked with the City of Miami
17 Beach -- improve the values of the area. And
18 not just our homes, but of our neighborhood.
19 We have worked with the City of Miami Beach
20 to embark on almost $10 million worth of
21 infrastructure changes and improvements to
22 these islands that are in process.
23 At the front entrance -- and again,
24 sorry I can't use the Karp documents -- but
25 at the front entrance, what we show you

1 doesn't tell the story. The City of Miami
2 Beach is spending half a million dollars, to
3 which we are contributing upwards of a
4 hundred thousand dollars -- the entire reason
5 for the entrance -- pre-dating Palau -- is
6 all going to be building a new guardhouse,
7 new landscaping -- and by the way, when we
8 had to design it, we had to come to the
9 Historic Preservation Board, and all these
10 boards.
11 THE CHAIRPERSON: You came to this
12 Board.
13 MR. BIENSTOCK: And we came to this
14 Board to make sure that it was
15 architecturally sensitive to the mass and
16 scale of the historically designated bridges
17 and to the neighborhood, and it was designed
18 to be consistent with the adjoining bridge.
19 Needless to say, years ago, when we
20 fought the Sunset Harbor development from the
21 tower going to where the townhouses were, we
22 had to litigate it. They had already gotten
23 their approvals. We found out about it, as
24 the tower was going in, towering over our
25 homes.

1 We sued, and ultimately they gave up
2 -- gave in, and built the townhouse. And we
3 thought we solved the issue. We thought we
4 solved the mass and scale of what is going
5 across -- to be both residential and to be
6 scaled so it would be like single-family
7 homes, and then step up.
8 Needless to say, we were shocked when
9 this project was proposed; a project that
10 should be on Biscayne Boulevard or South
11 Dixie Highway, or somewhere in a commercial
12 area, and would be perfectly appropriate.
13 But in the midst of a residential
14 neighborhood?
15 And you are going to hear folks speak
16 who live on every side, and they have
17 submitted written comments, and some of them
18 are here. They are going to talk about what
19 it is going to look like, to look out their
20 front door or their side door or their back
21 yard and have to look up, and up and up, to
22 the top of the building immediately adjoining
23 them.
24 You guys are going to make a decision.
25 You will go on to the next thing.

These folks are going to build a project and they will go on to the next thing. We are going to be facing this building every time we drive into home and away from home for the rest of our lives.

So we ask that this project be scaled back to something that is compatible and consistent with the historic bridge, historic neighborhood, and single family home neighborhood.

Thank you.

THE CHAIRPERSON: Thank you, sir.

State your name and address?

MR. ALVAREZ: Mark Alvarez. I am a professional planner. My address is at 3109 Grand Avenue, Number 331, Miami, Florida.

Hold on one second while I plug this back in.

That always happens. Excuse me. I will need probably a little more than five minutes, if that is okay.

THE CHAIRPERSON: Just talk fast. You will do it.

MR. ALVAREZ: Okay. I will do my best.

The Sunset Islands residents' concerns, and I think Mr. Bienstock framed them out very well -- but all along, there have been basically three major issues, and it is about the height, the bulk of the building, and the buffering. These are the -- this is exactly what was presented in the Planning Board, but I think Mr. Bienstock framed this out perfectly.

I think you have to understand that Sunset Island, when you look at the transition, you have to look at what you are transitioning to, and what Sunset Island is.

And I love the fact that Mr. Bienstock used the word "stewardship," because it is such a historic island. It is really different when you drive in there. And so the stewardship aspect of this is very important. It is not only a single-family residential neighborhood, but it is one that is very historic and very characteristic of the early development of Miami Beach.

You have seen the aerial before. I was going to talk about its position both north and south, but I think it has been

discussed, so I will save my time.

This is design review criteria, relatively summarized, 17 criteria. What I did is I made a column there that shows, from the staff report, what was satisfied and what was not satisfied.

The colors aren't coming out so good, but there are nine -- I am sorry -- eight that were not satisfied of those 17 criteria. Now, admittedly, most of those boil down to a few points. The first one is, as was discussed between you, the materials -- that the drawings are not really complete. There are a lot of dimensions missing. There are labels missing. There are stairwells that -- where the roof used to be, I think, labeled as stairwells, or as I once understood them to be stairwells, but they are no longer labeled. We are not sure how high they are, etcetera.

The other things they relate to is there is an FAR issue, and the most important thing, the most important two things are going to do with the height and scale of the building, the bulk of it, I should say, and

also the -- the lack of landscaping.

I am going to speak -- sorry. I am too loud?

You hear me now? Perfect. I am sorry if I was too loud.

I am going to speak to two of these, actually three of them, three, and one of them in quite a bit of detail. So I will try to go as quickly as I can.

I also discussed the Planning Board, the Planning Board sought, before giving its conditional use approval, to put in six -- basically, six conditions. One of them was about pulling back the massing, both on the east side and on the north side. And with that, they -- they -- they made a condition about sight lines. And sight lines is something I am going to speak about quite a bit, in the time I have.

Their condition about sight lines was that there would be no rooftop appurtenances, none of the things that are no longer counted towards the height that would go beyond that sight line, but there was also a few important things about the sight line.

What I want to talk about first is FAR. And just for -- very briefly -- the FAR they have is close to the FAR.

We are very close to the FAR that is allowed, which allowed us 2, and they are at 1.98. I think I actually made a presentation in the Planning Board and said we are not trying to take away any FAR. We don't care about their development rights. We just care about the outside of the building and how it affects the neighborhood.

However, upon reviewing these drawings, there were some things that stuck out, and I guess it was -- it came to my attention because of the staff comments. Staff had made a comment about the balconies that were now -- some of them were somewhat recessed, and I showed them in red -- it doesn't come out quite that red on the screen -- but those balconies may be counted toward FAR, and staff suggested that they should be, and they should be dimensioned and properly accounted for.

What I thought was a more important issue were these two spaces on the ground

floor. There are two spaces on the ground floor that are completely surrounded by walls. They are not very well labeled, but they are labeled as void. They have walls around them. They have no doors into them. We are not actually sure what they are. But they are parts of the building, and according to your code, they should count as FAR. However, these drawings exclude those two.

These drawings that were submitted by the applicant show on the first -- the ground level, the left top one, those two spaces have no blue in them. So they were not included in the FAR. They are not parking. They are not -- to what we know. We just don't know what they are, but they should be counted to the FAR. And hopefully, that will -- that issue will be resolved. I measured it, which was a little difficult on the plans. I think we are in the range of three, almost 4,000 square feet, between those two spaces, and it would put it over the FAR.

Now, I want to talk about height, and this is the thrust of really what I want to

talk about.

It is common for a measure -- height is about relationship to the neighborhood. We are talking about transition, and it is not only the height, but it is the distance that the height is from the place, from the neighborhood, from the house, from whatever it is that you are transitioning to.

So this is -- just a study from Alton Road, and it shows the basic concept of using sight lines. And sight lines take into account that relationship between height and distance, and things that -- for example, they use a tree here, say, well, we can obstruct it with a tree, and we will use that line as our reference.

So it is just to show that we used these very commonly, and it is a very good measure, to show that relationship for transition.

When we get to the application in front of you, what I have right now is the -- and Mr. Karp explained this, and he explained it very well -- this is -- what went to the May 22nd -- and I am showing it because that

is what the Planning Board said, "This is the sight line for which no appurtenances go above, and this is the sight line that we are making our conditions about."

And what is important about the sight line is you could draw a sight line to the top of a proposed building, and it doesn't mean anything, because that building moves around. It moves up, it moves down as you go through the process. It may move sideways and so forth. But he tied it to a reference point. The top line's reference point -- the bottom line's reference point is the Sunset Harbor Townhomes, 33-foot, the peak of them.

The top line -- what the Planning Board was referring to, its reference point, its built reference point, something that is out there, something that can't move, is the top corner of the Sunset -- excuse me, the Sunset Harbor midrise, which is 65 feet, but about 110 to 120 feet back from the wall. That is the line.

What has happened is -- and I am afraid that we have not paid attention to the fact that that line is actually defined, and

it has an angle. We have been talking about what goes above and what goes below it, but we have not talked about the fact that that line is fixed.

And if we look at what that line comes out to, that is just a reference. I won't spend too much time on this. It is just a picture from -- from a few houses to the left showing the space between the two midrise buildings and then the lowrise buildings at Sunset Harbor.

And this is a drawing of Sunset Harbor, and I think it shows one important thing that I want to point out, which is that there is a separate building -- and you have put the very large, tall mass, very far to the back. And the very low mass is in the front.

And in fact, those do produce two separate sight angles, but that is how they achieved what was considered to be a compromise for compatibility to this neighborhood. So that is -- that is our benchmark.

And again, all of this is measurable,

because that is built.

And when you measure out everything, and you look at all -- it is basically just calculating the height over the distance, and then you get an angle. And Sunset Harbor townhouses, the lower ones make an angle from Sunset Island Four, basically, exactly the way -- the way that was drawn on the application. You have a person standing on their back yard. I use the setback line for that, 20 feet back. I calculated everything off of NGVD, so they are a little higher, and the person's eye is a little bit higher, etcetera. It is all of the distances. The angle for Sunset Harbor is 6.7 degrees. Or, if you prefer to talk about rise over run, one foot in height for every eight feet, eight and a half feet of distance.

The benchmark one, the one for Sunset Harbor midrise, is 12 degrees. And again, if you want to talk about rise and run, it is one foot of height for every 4.7 feet horizontal. So that is our benchmarks.

Now, the way the drawing is shown -- and this is the current one -- you can see --

actually, you can't see on this screen, but -- it is very faint, but there is actually still something that pokes above that line.

But what is also important is you are looking at a section line of their building. For example, you have seen that their building, the blue -- shaded in blue part has two sort of masses.

So the section line goes through the interior court. Of course, it doesn't tell you in this diagram that there is something closer to us, to the west, which is the gymnasium, and there is something further away, which is the -- Sunset Drive.

So it is actually more massive than was suggested by these two sort of columns. But what is more important is that this occurs at a certain place on the building, and there are other parts of the building that come out further than that.

So I am not going to get into this, unless you want to, just for lack of time, but that is the calculations. I have the tables, etcetera.

What I want to show, instead, is where

those lines were taken from. What I measured to were from these drawings. One is the -- the very top point, it is very light, is the stairwell, the elevator -- sorry, the wall for the elevator that goes up to the -- to the roof, and the one that's further to the left is the brow. There is a brow extending over the terrace of the fifth floor.

May I have a little more time, please?

THE CHAIRPERSON: You have had double the time. So I have to suggest to you, to wrap it up, please.

MR. GIBBS: Excuse me. Excuse me. As the attorney for the neighbors, I have to say, this is a quasi-judicial proceeding. My clients are entitled to make their case, to produce their competent substantial evidence. This is our expert on this issue, which is critical to your decision.

MR. HELD: You are not entitled to unlimited time, Tucker. The Chair and the Board are entitled to set reasonable time limits at three minutes. That is been upheld in the courts, Tucker.

MR. GIBBS: Three minutes isn't long

enough. He is our expert.

MR. HELD: He has already had ten minutes. So we don't have to discuss three.

MR. GIBBS: Okay. If you want to cut him you off, it is your prerogative. It is appealable.

MR. HELD: He was not cutting him off. He was giving him additional time, and you got up to object.

MR. GIBBS: I am just asking for him to have the time he is needs.

MR. HELD: It is not going to be unlimited.

MR. GIBBS: I don't ask for that.

MR. KARP: This is Kobi Karp. I just wanted to clarify for the record that maybe I misunderstand Mr. Terry. He has -- my boards are public. He can use them any time he wants.

Plus, my Board are already being abused up there -- abused, sorry -- they are being used up there, anyway.

So please, feel free to use it, Terry. I am sorry if I misunderstood you when I came

off and you came on. Thank you very much. Sorry.

THE CHAIRPERSON: Please continue.

MR. ALVAREZ: Sorry. The data is public records.

Just to further inform you about where those edges are -- again, it is the brow. It is the edge of the brow -- of the brow above the terraces of the fifth floor. I just wanted you to be very clear about where we are measuring the sight lines to. And I took you there.

And you can see, because those brows go in and out on the building. They are on different places. And I believe that the one that you -- that you saw from the diagram that is with the application, is about where unit 403 is, in the middle. And that one is pretty far back. And in fact, that one gives us about -- the way I went through the measurements, about a 12 and a half degree angle. Just a tiny bit more than that angle that was given to you by the Planning Board.

However, the other parts of the building, to the west and to the east, stick

out quite a bit from that, and they don't subscribe to that -- to that sight angle. So they are too high, or too far forward. They either -- either they are needing to be moved back or moved down. And you can see the angles. There, 3.3 on unit 405 is and sorry. 13.3 and 13.8 for unit 405.

So they exceed that angle for the Sunset midrise.

Just lastly, I want to go into -- I am sorry, the colors don't work very well on this screen, but we spent a lot of time looking at the -- the north/south -- the transition to the north. As you go further east, of course, there is a park. We talked about houses, but the park is just as important. That is where everybody in the community comes to, and they need to have the same access and the same sight lines and the same consideration for transition.

And then as we wrap around to the Sunset Drive, you have -- you have homes, you have one home right across the street from Sunset Drive, and two parks.

And again, the same consideration

needs to be given. I couldn't calculate that because we don't really have enough information in the plans to even have a comment for the applicant to supply a study of the transition across Sunset Drive. That is in the -- it is in your comments from the staff. So the same goes for that, except I couldn't calculate it for that, that northeast part going into that neighborhood along Bayshore Drive.

And lastly, it is just the landscaping. I think staff has given you a very good opinion on that. It is just that -- the drawings are straight out of the submittal.

You know, the landscaping is very sparse, to my eye, but there are far better experts than I, and I think he has done a very good job on that, those comments.

Thank you.

THE CHAIRPERSON: Okay. Who is next?

MR. SACKS: Real quick, I just want to make sure I have the opportunity to cross-examine the experts.

Is that permissible, Gary?

MR. HELD: Yes.
MR. SACKS: Thank you.
THE CHAIRPERSON: Please state your name and address.
MS. LENS: My name is Olga Lens, and I live at 2000 North Bay Road, which is across from this project that we are discussing here today.
I agree completely with the opinion and the objections of my neighbors, although I don't belong to the island. I think that, contrary to something that this -- this gentleman here said before, I think that my property is going to be adversely, to use his words, affected by this construction, because it is going to occlude completely the side of my house to the -- to the sea, to the bay.
And besides, I think I understand -- - although I don't nnderstand very well -- the language of lawyers or architects. The entrance or some of the garage facilities are going to be facing, practically, the side of my honse, and -- which is going to increase the traffic, the vehicles, and the -- human exchange there.

So I repeat myself -- and I don't want to take more of your time -- I think that the objections are very proper, and I feel that I am directly affected by those circumstances. Okay? Thank you very much.
THE CHAIRPERSON: Thank you very much. Okay, next?
MR. LURIA: If I could take a moment to put a Board up --
Good morning -- afternoon.
THE CHAIRPERSON: Please state your name and address.
MR. LURIA: It is -- good morning. I didn't expect it to be this long.
Good afternoon. My name is Peter Luria, and I live on Sunset Island III. 1800 West 23rd Street. I am also a member of the Board of directors.
In my hand is a petition signed by over a hundred residents from all the Sunset aisles, One, Two, Three, Four -- Sunset Islands, the Sunset Harbor Towers and lower North Bay Road, which I will leave with you.
While we would like to see this property developed, its current design is not

sensitive enough to the neighborhood. We agree with the staff report, but feel that their recommendations do not go far enough. The mass, scale, height and length of this building is too overwhelming. It is one huge box, instead of separate buildings, and their design encompassing five separate lots, has no view corridors or breezeways.
These are some of our recommendation: Number one, reduce the mass, scale and height of this structure; eliminate the entire 5th floor along the water, and also along Sunset Drive.
At least eliminate the top floor at the northeast corner along the northeast corner nearest the historic Sunset Island bridge looking across the canal at the public park. That is the public park right here;
Follow the precedent of the Sunset Harbor Townhomes directly to the west. These are 33 feet in height.
Number two, increase the setback on the northeast corner nearest of the historic Sunset Island bridge. The staff report recommends an additional ten-foot setback,

but that is not far enough.
The additional ten-foot setback recommended in the staff report only brings it back to where it is currently. This five-story building will overwhelm this historic bridge and diminish its significance. Replacing a one-story building with a five-story one is just not the same.
The Miami Beach Historic Structure's designation report, on Page 20, reads, "Historic structure designation is a means of maintaining the architectural special character of a place to increase architectural consideration when construction of new buildings and other structures, or additions to existing structures or buildings are proposed."
End of quote.
The required setback, therefore, should be greater than now exists.
And number three, notch the first floor of the southeast corner at the intersection of Sunset Drive and 20th Street.
This historic corner is a gateway to the Sunset Harbor district, and the

transition from mixed use to the residential neighborhoods of the Sunset Islands and lower North Bay Road. It has been a drive through for Mark's Cleaners, the large overhang allowing for a view around the corner. It was designed by Robert Swartburg, the architect of the Delano Hotel. Follow this precedent.

Notching the corner would allow for an outdoor cafe and increase the pedestrian traffic and soften the transition from residential to mixed use.

In conclusion, a project of this magnitude, stretching five combined properties at this special location, requires a more sensitive design.

This site is the gateway to the Sunset Harbor district and the transition from mixed use to the residential neighborhoods of the Sunset Islands and lower North Bay Road. Treat it as such. Make it more compatible with the neighborhood. Reduce the mass, scale, height and length of this massive building. Give us back our corners and reduce the mass, as compensation for losing

view corridor and breezeways.

Thank you.

THE CHAIRPERSON: Thank you very much.

MR. LURIA: Now, may I ask one other indulgence?

Our architect couldn't make it, but I have an e-mail that he sent. If I could read it, it is a short --

STAFF: And I passed it out.

THE CHAIRPERSON: We have a copy of it here, I think.

MR. LURIA: Is that --

THE CHAIRPERSON: I think that is fine. Yes.

MR. LURIA: Okay. Very good. Thank you.

THE CHAIRPERSON: Thank you very much.

MR. CARY: For the TV viewers' information, that is a letter from Francois Le Jeune.

MR. LURIA: Sorry, what?

MR. CARY: That is a letter from Francois Le Jeune?

MR. LURIA: Yes.

MR. CARY: That is who you are

referring to?

MR. LURIA: Yes, as a resident of the neighborhood. Correct. Thank you.

THE CHAIRPERSON: Good afternoon. Just state your name and address, please.

MS. LELAND: Good afternoon. As everyone knows, my name is Jackie Leland. I am a resident of Sunset Island. I am also a member of the Budget Advisory Committee Board for the City of Miami Beach and, much like yourselves, I have a fiduciary duty, like you do, today.

I am here because I want to talk to you about the fiduciary duty you have. I know that you folks know how serious it is, and I am certainly not trying to preach to the choir here.

We do have to live for the rest of our lives with this decision that you make, and it is a critical decision. We are in favor of the development, as long as that development is appropriate in terms of its mass and scale, which it is not. Because it -- and we had a very contentious issue all throughout the Planning Board on this

project.

I, personally, have talked to, I would say, about 150 folks from -- not just our islands, but from neighboring buildings, and there is not a single person I met while canvassing and serving and talking to people that were in favor of this.

Kobi says that there are a couple of people in favor of the project; I think that is Kobi and the attorney. Other than that, I am not sure who is in favor of the project as it is currently proposed.

Mr. Terry has been eloquent, as have all of you, in reviewing the diagrams assigned to the Design and Review Board for decision -- obviously, he speaks to the need to make sure that the appropriate project is put in place.

We have seen the disasters in our neighborhood right across the street from us of what happens when we don't stand the line. I have had to do it in the Budget Advisory Committee meetings. I have had to say, "Look. We cannot afford to do this because of X, Y and Z. It is just that simple."

We ask that you simply deny it as proposed, that you do send them back to do the right thing.

We have tried to work with them, but I can assure you, they have never tried diligently to work with us on their issues. They have not tried to work with us on mass and scale. They have thrown little bones, thinking that that is going to suffice, but it really doesn't.

So I -- I, personally, beg you to please not allow this project to move forward until there is true compromise being made here that we all can live with in perpetuity, which is what is going to happen to this building.

Thank you very much for your time.

THE CHAIRPERSON: Thank you very much.

There were a lot of people that stood up --

Please state your name and address, please.

MS. MANNING: My name is Jo Manning. I live at 1460 Ocean Drive. I am a member of the Historic Preservation Board. I am a

member at large, like Ms. Housen and Mr. Minagorri. I do not presume to speak for that Board. I am speaking as someone who lives here, who is a private citizen, and who has seen too much development. I am speaking out against over development.

This project, in my opinion, significantly overwhelms the surrounding context. There is no question in my mind. I think here, less is really more.

There is extreme massing.

I picked up a few terms from being on the Board, even though I am not an architect and I am not a lawyer, but I think I have some common sense. And one of the things I want to bring up is the traffic study -- I have not looked at the traffic study, but any traffic study that can say everything is going to be all right, when there are several parking garages, two very large grocery stores, several residential complexes, buses, taxis -- all kinds of people being picked up and dropped off for the grocery stores, and for the restaurants -- let's not forget the restaurants -- I have a good friend who lives

on Sunset Island Four. I visited her many times. There is going to be a problem at that guardhouse. I have seen problems already. There is going to be a traffic issue, with all due respect to the traffic study.

I think this needs to be a more modest proposal. I think that just because something can be built doesn't mean it should be built. I think you have to step back and look at what this is going to do to the neighborhood. We have a duty, we have an obligation. We have to think as several people have said about the future. This will be the future, if this is allowed to happen. We should make it a good future.

Thank you very much.

THE CHAIRPERSON: Thank you very much.

Please -- just state your name and address, please.

MS. FROILICK: Good afternoon. My name is Marilyn Froilick. I am the president of the homes of Sunset Harbor. We are very much affected by this project because we are right next door. And I have seen today a lot

of people get up here and be against the project, and -- because it affects them personally.

When Scott Robbins built his garage, I was the first one here in support of that garage, although that beautiful, beautiful building completely took our view away. I live in the penthouse, and I used to see the water. Now, I see Scott's garage -- which is very nice, but it is not the water -- but I stood here and I supported that project.

As a matter of fact, I was one of the people from day one -- I go back 12 years -- trying to bring a garage to Sunset Harbor, because we need it in order for the businesses to prosper. And it is -- this project is massive. It is a little bit too big. It has -- it needs to be tweaked, definitely, it needs to be tweaked. But it needs to be built, because what we have there now is the dilapidated building in the corner.

We have a building that was started to be built, and it is -- you know, in this -- it has to be torn down, and if we make life

so difficult for people who want to come to Miami Beach to do a good project, if we make life so difficult, they are going to leave, and who knows what is going to go up there. Maybe three warehouses?

More stores?

Two-story stores that we don't need?

This is the gate to Sunset Harbor also. It is not only the gate to the Sunset Islands.

We have to live with this, too, and we don't want these people or any other developer to get so scared of the people that have power and can -- hire lawyers and can hire consultants, you know, to come in front of all of the boards and scare them away, after we have to live -- if they go into their little islands, or they go onto Bay Road, but we have to live with whatever is there now. And it is horrible. What is there now is very bad for Sunset Harbor. Not only for the townhomes, but for everybody.

I live next door to two huge towers. And you know what, they don't bother me. You get used to just coming home and, you know, I

live -- I look at the other side. I have the towers. I look outside my other window, I have the entire bay. Okay? So you have to compromise in life. And you have to respect other people, too.

So I urge this Board to give the recommendations to this developer on how to make the best possible project, but not to just make it so hard on -- that it will just walk away and leave us with the Mark's and that building that needs to come down.

And you know, they have to fix their problem with Comras, because they have something, of course, going on there that the City of Miami Beach should have never let that happen, but it flew by.

Thank you.

THE CHAIRPERSON: Thank you very much.

Please state your name and address.

MS. LAWSON: My name is Jane Lawson, 1810 Jefferson Avenue, Miami Beach.

Good afternoon. I am here as a resident of Palm View Historic District advocating on behalf of my fellow Miami Beach residents and their stated desire to restrict

the scale and massing of this proposed project.

As a community, I believe that we must go well beyond the footprint in assessing new real estate developments to the surrounding communities. Especially when they are immediately adjacent to a single-family -- and residential neighborhood.

In addition, I am here representing the Board of directors and the general membership of Miami Beach United, which is dedicated to preserving the integrity of our residential neighborhoods, among other things.

I want to tell you that MBU has endorsed the concept of a transitional zone where all proposed developments within 350 feet of a single-family neighborhood would not exceed the allowable height for that -- for the neighborhood, and be permitted only 15 percent of that height from a distance of between three hundred and five hundred feet away from the neighborhood.

While obviously, this concept is just a concept, at this point, it is not an

ordinance. In the future, such an ordinance would serve to protect the neighborhoods like Sunset Three and Four from out-of-scale, adjacent developments.

And I want to say -- I didn't have a lawyer. I don't know, you know, come from an island or North Bay Road. I come from Palm View. I shop all the time in that neighborhood, and really, to see such a mass as I enter 20th Street where Mark's Cleaners is -- you know, I appreciate that it is a nicely-designed building, but I really believe that the massing and the scale needs to be rethought a bit.

And I support everything that Terry and Peter have said on it. And I hope that the Design Review Board will consider the concept of appropriateness of massing on this all-important project, and I thank you very much.

THE CHAIRPERSON: Thank you very much.

Please state your full name and address.

MR. DELVECCHIO: Frank Delvecchio, 301 Ocean Drive. I am trying to put myself in

your shoes. How do you apply the design review criteria to the overwhelming problem here, which is massing?

So I took a stab at it, and if you look at your -- at the recommended conditions in the staff report, which is on page nine of 14, I will give you three suggestions of how to grapple with this overwhelming problem of massing.

First -- and those deal with setback, height, and massing, itself.

On the issue of setback, condition 1C in the staff report recommends an additional setback of ten feet from the street and from the bridge. There has been testimony that that would put it back to the original when there was only a one-story building, now there are three-story buildings. So I think you can consider doubling that to a 20-foot setback. So condition 1C would strike the ten-foot setback and substitute a 20-foot setback.

Then I suggest two additions to condition one. Condition one deals with the massing, scale and height. Dealing with

massing, I suggest that the north facade that is facing the water -- you could deal with massing by stepping back the higher floors, floors four and five, so that the elevation facing the water is basically on a line with the adjacent townhomes, which are around 33 feet, and that stepback would be the fourth floor and the fifth floor on some kind of an angle, I am suggesting, a 45-degree angle. That will -- would give you an opportunity to modulate the design and push the upper floors back and give a -- a line equivalent to the townhomes immediately adjacent to the waterway.

And then the last condition, how do you deal with a 200 to 250-foot long building?

William Cary came up with a terrific idea on a recent ordinance, on south of Fifth, where we are in a historic area, where most of the lots are 15 feet, where there would be a development of lots greater than 50 feet, there would be some differentiation as if there might -- you might even feel there were two buildings, with a notched

carve-out in between.

So I have tried to develop some language to deal with the problem of massing.

And the language I developed, which followed -- for south of Fifth was to differentiate sections of the north elevation basically in three planes, in the vertical plane, in the horizontal plane, and at the ground level, that is with setback. So that the massing would be more harmonious with the adjacent properties.

I believe you are going to continue this. I believe there is a flexibility within the -- within the FAR and the objectives of the developer to maximize his FAR.

There are a lot of things that an architect could do with this as far as the stepback on the higher floors of residential. You could actually give some residential views from the stepback floors northward over the water.

So these are my three suggestions as you -- as you work to come up with a harmonious development.

Thank you.

THE CHAIRPERSON: Thank you very much. Okay, next?

Please state your name and address, please.

MR. ROBBINS: My name is Kent Harrison Robbins. I already announced who I represent.

First of all, I want to raise a number of issues as far as fundamental fairness, as far as why we -- this matter should be continued and not have to go forward.

MR. HELD: Maybe we can agree on a time, Kent.

MR. ROBBINS: Well, we have three issues to go through. First, we have a procedural objection, you asked me to delay until I make my presentation.

MR. HELD: Can you do it -- the whole thing in 15 minutes?

MR. ROBBINS: No. I have to also make a presentation, unless this Board agrees that it is going to continue it -- as to the issue concerning the covenant in lieu of unity of title, and we are entitled to due process,

1 and that is a -- procedure that has never
2 even been addressed by this staff yet.
3 So I have to go through what was a
4 covenant, what were the obligations in the
5 covenant, and what is being proposed.
6 I also make my substantive objections,
7 to the extent I can, to what is being
8 proposed.
9 So I suspect it could be 20 to
10 25 minutes. I will cut it short.
11 Remember, at the BOA, we were able to
12 keep it down fairly short, and I will do my
13 best to do it, but my client has due process
14 rights. He is part of this unified site. He
15 is considered a unified, aggregated property,
16 joined with this project, and he opposes this
17 project because it is not compatible. So why
18 shouldn't we have at least what they have?
19 MR. HELD: I understand.
20 Is the sense of the Board that you are
21 going to continue it, at this point?
22 Do you -- does the Chair know?
23 THE CHAIRPERSON: I -- yes. We will
24 continue.
25 MR. HELD: Can you hold off on the

1 covenant in lieu argument until October?
2 MR. ROBBINS: I am -- I reserve my
3 rights as to that.
4 MR. HELD: Sure.
5 MR. ROBBINS: Absolutely. I will
6 raise that at the next hearing.
7 MR. HELD: So 15 minutes?
8 MR. ROBBINS: Yes.
9 MR. HELD: Thank you.
10 MR. ROBBINS: Thank you.
11 MR. HELD: Thank you.
12 MR. ROBBINS: The first thing I want
13 to go over is the deficiencies. Now, I want
14 to tell you something. I think Kobi Karp and
15 his firm, as you know, are just excellent,
16 excellent architects. So I don't want you to
17 take my -- my criticism of his application
18 and his plans as a criticism of him. He is
19 obviously -- he is a champagne architect, and
20 he has probably been put on a beer budget.
21 So you know, he has not done
22 everything he is supposed to do here.
23 Now, under Section 118-1, Site Plan --
24 "When land development and regulations
25 require site plans, site plans shall show the

1 following: One, it should show the location,
2 dimensions and character of parking spaces,
3 as well as storm drainage and sanitary
4 facilities."
5 Well, why is that important?
6 Well, there are two reasons: Under
7 our covenant, there are nine spaces that
8 could be utilized on our site by the
9 commercial parking next door.
10 Yet, it is not clearly defined, the
11 relationship of how they are going to use
12 those parking spaces.
13 Given that we originally offered those
14 nine spaces when there was only going to be
15 3,000 square feet, now, there is 11,000
16 square feet of commercial space, we do not
17 know what relationship or how they are going
18 to allocate the use of that parking space.
19 It is supposed to -- location, dimensions and
20 character should be clarified.
21 Also, with respect to the storms sewer
22 issue, there is a storm sewer easement and
23 utility easement if you look at the survey,
24 and there has been no consideration about how
25 this new plan and project is going to be

1 built right on top of a utility easement.
2 They would have to apparently -- I
3 believe they would have to move that utility
4 easement, but that utility easement goes
5 right through the center of my client's
6 property, and he is not going to consent to
7 the tearing up of his property or the
8 changing of the easement. So there has been
9 no discussion as to that utility easement and
10 how that is going to be handled.
11 The other issue that we have is there
12 should be a tabulation of project density and
13 square foot of lot area per apartment unit.
14 That is number ten under 118-1.
15 There are no FAR tabulations on a
16 per-apartment-unit basis, nor are there FAR
17 tabulations on a floor basis.
18 And under the submission requirements,
19 under the submission requirements, as far as
20 tabulation, zoning data -- it compels FAR
21 calculations for each floor. And if you look
22 at your -- the plans that were presented --
23 and let me get the number -- the plans, as
24 presented -- and that is A 0.02, which is the
25 FAR tabulations, there is no "separate floor

tabulation on each floor."

That is compelled.

And I will submit a copy of the submission requirements under the Design Review Board.

There are no tabulations. It is just a dimension. And this was one of the problems they had before the Planning Board. They didn't provide these tabulations and actual calculations of the FAR, and they are trying to sneak FAR into -- into the balconies, which are prohibited.

And if you include the calculations of the FAR -- we don't know how much FAR is on the site, so we can't intelligently make recommendations as to how much can be diminished on the massing of this project. For if you don't know what the real FAR calculations are, how do you know how much, as a matter of right, they really can build on this site?

This Board needs to make this applicant come back with those calculations.

There is also the issue raised -- and I am not going to repeat anything, I will

allow the testimony of the planner, who is a very well -- knowledgeable gentleman, but he also talked about on the ground level, the areas that are stated "void," we don't know how that is treated, but it appears to be a closed area. Yet, that is not included in the FAR.

That should be included in the FAR, and that should diminish the massing and height and width of this building.

Now, let's go over to another submission that is lacking. There is supposed to be -- under this "Submission Requirements," under five, there are supposed to be detailed plans and elevations of the existing and proposed building, indicating all dimensions, surface materials, design features and elements, texture, color, as well as attachments such as signs."

What was presented to us, until today, was a very vague and very blurred set of plans.

Today, we received these new set of plans, and they look pretty good, but we didn't have an opportunity to really evaluate

the new set of plans that were handed to you today.

Yesterday, my client, Michael Comras, asked the planning staff, "Are there any additional plans?"

They said no. So today, at the hearing, we are handed these new set of plans. Are these plans better than the other ones?

Absolutely. But they still do not meet the requirements of service materials, texture, color, elevation -- "should also indicate window design and all architectural elements."

That is not shown.

This is a Design Review Board. This is not a Planning Board. You should have the opportunity of looking at all these details. We are talking about a massive building, 250 frontage along the water, over 100,000 square feet, and yet they don't give you these details.

And then additionally, under number six, "The floor plans for all new and existing floors of a proposed building should

be submitted."

There is no indication where the kitchens are, where the windows are in the plan. There is no indication where the -- where the bathrooms are going to be. There is no indication, in the set of plans that we were working from, as to where any of that is. And I don't think even in the revised set of plans -- there is a new set -- there is any indication.

This, once again, is a Design Review Board, and they don't give you this fundamental information.

Finally, contextual sketches -- this is really important, to be able to understand the relationship of this project to the adjoining projects.

It says under number seven, "A contextual sketch or detailed computer photo image of the project showing street elevations of the proposed project and schematic elevations to the building on either side."

Well, there are actually buildings on all sides. This goes from end to end. And

all they have here -- and it is repeated both in the plans handed today to us, as well as the plans that were submitted as part of the application under A 2.04 -- their A.2 -- it only shows the contextual north elevation.

It doesn't show the contextual relationship for the east elevation, nor does it show the context where it relates to my client's building, where it relates to the World Bank and its relationship to the west side and south side of the appendage that goes behind his building.

There is no contextual relationship, and you know how -- I think all of you are familiar with -- you know, how wonderful and how auspicious that building is. But it is literally wrapped around and hidden, at least from three sides, from the neighborhood.

And there is no attempt to relate, from an architectural standpoint, what is being proposed from what is already there. And you need to know that, and they shouldn't even expect this Board to make a determination until all these fundamental analytical materials are provided to you so

you can apply your knowledge, experience and wisdom to this application.

So you are being deprived of the ability to properly analyze this project. And until this information is provided, it makes it very difficult for us, as people that are conjoined with this property, from analyzing how this is going to impact us.

And I show you another problem that we have, and this is something that I think the architects will really appreciate.

There are sectionals, you know, and in sectionals, you try to figure out how -- the heights of each of the elevations of each of the floors and its relationship to the project, to the grade, as well as to above grade. Well, there is a particular problem with our project. Our project is using -- our project uses nine feet of their driveway, of their land, to provide for a 22 -- excuse me, 11 feet of their land to provide a driveway for our parking spots.

Yet, we do not see the relationship or we don't have sufficient information to analyze the relationship of our parking

facility and our building to the sectionals, the sectionals that were provided to you.

And if you look at the sectionals that were provided to you, the north/south sectional -- it doesn't go through the area on the appendage that is behind my client's property, lots -- I think lots 24 and 25. Rather, it goes behind -- let me see. I'm sorry.

Excuse me. Lots 25 and 26, it doesn't show -- it shows sectional through the center of the building, but that doesn't relate to the area of the void behind my client's building. It doesn't relate to the -- to the apartments behind my client's building. So we can't really line everything up.

And why is this important to have sectionals?

There are a few reasons. First of all, there is a problem with the means of egress from their building.

Now, there is a new set of plans that were provided as to the ground level, and I would be directed more towards the architects -- in the new set of plans, if you

look at the ground floor -- I am trying to do this with just having a couple of minutes to review it. I have not had a chance to have my architect review it.

My architect, in fact, Jean Francois Le Jeune was, in fact, precluded from testifying today, or giving advice because he has now been put on the Planning Board. And we were just advised, just before this hearing, that he would be prevented from testifying on behalf of my client, and cannot serve as our expert in this matter.

But I am trying to do the best I can. I have been a consultant attorney for over 5,000 square feet of development, so I have learned to look at some plans.

And as far as what I can tell -- and I am not testifying, I am just saying that the architects should look at this and be able to see that the means of egress from the stairway on the first level, if you look at -- on the set of plans that were provided to us today, the means of egress is not clear.

And as you know, the means of egress has to run all the way -- if you are

1 looking -- Ms. Nepomichie, if you will look
2 at the stairway, and Mr. Hagopian, if you
3 look at that stairway -- and that stairway
4 needs to really exit outside. It is a
5 secondary means of egress. It actually has
6 to -- it is over 75 feet from the other
7 stairway. So to exit from there -- it
8 doesn't show how it is going to come along
9 the property.
10 Now, initially, if you look to the
11 other set of plans, it showed a way along the
12 perimeter of my client's property. But now,
13 to try to "pretty up" the edge, they show
14 landscaping in the area that would be the
15 pathway for the means of access, life safety
16 access to the front of the building. So this
17 is not even really a realistic plan. And if
18 you look at the landscaping plan, there is no
19 showing of anything on that level. So they
20 are using landscaping to block a means of
21 egress for a person to escape from this
22 building, should there be a fire. It is not
23 going to be permitted to be built in any way,
24 no doubt about it, but how can you analyze
25 the impact of this building to my client's

1 property if you don't even have this basic
2 information of means of egress on the edge of
3 my client's property?
4 They show, on some of these
5 elevations, landscaping along the edge, in
6 some of the renderings that were provided to
7 you, but there is no -- no place to put
8 landscaping, unless they push the building to
9 the east 5 to 10 feet, and push it to the
10 north 5 to 10 feet.
11 There is another issue concerning why
12 the sectional is so important, and that's the
13 issue of what is allowed on the -- on the
14 level of the first floor.
15 Now, as you all know, and -- but I
16 will just remind you, because I know you guys
17 are experts in land development regulations,
18 under [L] ---excuse me. Under 130-38 [C],
19 because there is mechanical parking in this
20 project, there are no variances allowed.
21 None. There cannot be a single variance in
22 this project.
23 However, however, under 140-308, NCD
24 2nd District, the first floor facing a
25 waterway must have residential use or

1 commercial uses along its facade.
2 So if you look at it, they put a void
3 there. They don't put a residential use on
4 the most western side, and along the ground
5 level, all they have is a grassy area to walk
6 in. That's not a residential use. That's
7 not a commercial use. That's the required
8 setback for an RM-2 area.
9 So there is no residential commercial
10 use lining the parking garage. That is
11 prohibited under the CD-2. So what they
12 tried to do is -- to try to cover up this
13 problem, what they have done is -- this is a
14 three-foot high area. If you look at the
15 original drawing -- and I was just looking at
16 it just now, one that was handed to us just
17 now today, the picture of the bridge and
18 existing seawall -- and you can look at the
19 survey -- the height of the existing seawall
20 is three feet. So they -- to try to cover up
21 and mask the parking garage, instead, and
22 putting a use in there, they raised the level
23 from three feet to six feet, or six
24 and-a-half feet, to block it, and they don't
25 put any residential use along that edge.

1 You are going to probably hear an
2 argument saying, "Well, it is going to be
3 impractical. You can't put habitable space
4 on the ground level. It is not going to meet
5 the flood zone."
6 Well, the reason why they can't meet
7 the habitable space requirement is because
8 the mechanical parking is preventing them
9 from designing it in a way that would be
10 appropriate; or, alternatively, to get the
11 appropriate variances.
12 So they are using an excuse by their
13 own situation, by their own doing, they are
14 adding -- they are essentially not putting
15 the required liner on the first floor. This
16 is the problem:
17 What they did was, to put themselves
18 into a further position -- to force
19 themselves -- to make it appear as though
20 they are compelled to do that -- and they
21 said it was a gift to us -- by reducing the
22 height from 60 feet to 47 feet. But they had
23 to reduce all of the heights, all of the
24 floors there. So it reduced the subterranean
25 even further down and put the void further

down so there is not sufficient area.

Now, the reason I can't go into this -- into more detail is because there is no sectional so I can actually demonstrate how -- if they designed this building, they could have put a residential use liner along the north side of the building.

Now, the other issue that gets me really annoyed is the allegation -- the representation that this developer made so many concessions, they reduced from 70 units to 50 units.

They had to. The required parking made them reduce the number of parking spaces, and you can't -- in order to provide -- to build this building, it is not -- in the historic district, they had to provide the required parking, and the required parking would only allow them to have 50 units in 13 square feet of commercial space. They could not put any more parking in this space. And therefore, they couldn't put any more units.

So for them to say that they made a concession from 70 units to 50 units, is

hogwash. They didn't have a choice, under the code.

So they reduced the height to mask this lower level problem, and they reduced it from 73 units or 70 units down to 50 units -- because they had to, to comply with the code. Not for any other reason. Not because they made concessions.

The only things they really made a concessions was putting in -- putting in the valet parking because they had to, and it was appropriate. There was no sufficient parking in front of the building to put a valet stall and to put the loading zone inside the building, because otherwise, it would have been in the front setback of the building, which was prohibited, especially if there is some residential use on the first level.

That's -- that's really the problem we have here. So there is a gross misrepresentation about the concessions made by this applicant. They have not made concessions. They really have stonewalled us, stonewalled the neighborhoods, and that's what we are stuck with.

And then they don't even give us enough information to be able to assess it and for this Board to assess what is going on. So don't be fooled.

I am going to tell you what, Kobi is a great architect. They have good lawyers, and they are doing their best for their client, because that's what their client told them to do, but they did not do what is compatible, what is appropriate.

Would you hand out the rest of those -- the photographs --

THE CHAIRPERSON: You are over your time.

MR. ROBBINS: Okay. I will just hand out the photographs. And I promise two minutes on that, and I will stop.

This is one -- and while the photographs are being handed out -- this is one of the most auspicious locations in the City of Miami Beach. It is the primary entryway to Sunset Isles, one of the most beautiful residential areas, as well as the primary entryway through 20th Street, which is the entryway to Sunset Harbor.

And if you look at these photographs -- and let me go through them. They are all numbered, one through -- 1 through 8 --

And we have provided those at the last hearing --

You can look at this and look at how auspicious on the -- the importance of this building, as a transitional building.

Looking from the south, looking north at the Mark's Cleaners is number one.

Look at the green space on the right.

Look at the "low" where the funeral home is, two stories. That is going to remain two stories.

The Mark's -- existing Mark's Cleaners, the entryway and bridge to Sunset Isles --

Then there is another -- another shot from that same angle, a little bit better vision, a little better view showing the fountain.

Then looking due -- due west along 20th Street, once again, it is a low-scaled neighborhood in the immediate area.

The storefronts on the south side is -- it is very clear that it is low to scale, and it is currently low scale.

If you go to the next one, number four, you start to see my client's building. It is a two-story building.

And then you go forward down 20th Street, and you get a sense of where the taller building is from Sunset Harbor.

And then you see my client's building, and how auspicious it is, and how great a building it is.

And then you see the view -- that they are going -- number seven -- the view corridor.

And Francois Le Jeune, if we are going to -- he testified at the Planning Board hearing, so we are going to submit the transcript of his testimony.

He was cross-examined, so it would be admissible -- and that -- that transcript -- you can pass it out --

That transcript -- he testifies that this view corridor should be preserved more than it is being proposed now. This is an

important view corridor, and should be respected.

And then the last one is the view from the canal, from the waterway.

THE CHAIRPERSON: Okay.

MR. ROBBINS: This is important. I really appreciate all your time. Thank you very much. I look forward to seeing you in a couple of months. Hopefully, we will be able to sit down and have some common dialogue and be able to work this out.

And I introduce to you the well-known and respected businessperson from our community, Michael Comras.

THE CHAIRPERSON: Please -- just state your name and address, please.

MR. COMRAS: Good afternoon, Board members, staff.

Michael Comras, with offices at 1261 20th Street, or should I say, that were at 1261 20th Street. I say that because if you look at the rendering I just provided, which was provided by the applicant, it shows my building vaporized; it is actually -- how the Palau project was designed as if my building

wasn't there.

I have been developing properties on Miami Beach for approximately 20 years, many of which are in the historic district. A critical component of all of our projects are sensitivity to scale, mass, and context. When my building is "devaporized," you can clearly see that none of these items have been addressed. The height and mass completely envelopes my property. The monolith that spans approximately 260 feet long without breaks for view corridors is harsh and lacks articulation.

The rendering is not just -- the rendering is just not accurate, does not match the site plan, floor plans, or elevation provided by the applicant.

I do understand that the new drawings may provide for some of this detail, but as of yesterday, when I spoke to Michael Belush, those drawings had not been received.

The renderings show -- sorry.

The renderings are just not accurate. It does not match the site plans, floor plans or elevations provided by the applicant. It

is actually impossible to understand how this area works without -- across -- north and south of my property. The renderings show some very low landscaping along the north adjoining property line.

On the landscaping plan, there is no landscaping in that area.

In fact, on the site plan, there is not even an area for landscaping.

It is also unclear if the area between the stairwell and the western building edge is all glass. That section is necessary for us to confirm, amongst other things, that there is adequate height under the overhang so cars can -- cars parked along the north side of my property will have enough room to back up.

It would also allow us to understand how the properties would be separated, but also work together.

I would ask, as part of your approval process, that you require that no noisy back-of-house functions like generators or other items be placed in that area.

This is not an issue of money. This

is an issue of quality of life. I spend my days in that building, every day. Most of us are at our office more than we are at home. This is my home. I am not treated quite like the homeowners along -- on the Sunset Harbor Townhomes, or in the Sunset Island homes, but this is my home. And I just need their property to be respectful of my property. But the drawings and the details that have been provided to date do not take into any consideration my property or provide for any of those details.

I -- in an effort to not only offer criticism, I had arranged to have Professor John Francois Le Jeune come and speak and offer some suggestions -- which I will be happy to meet with the developer at some time to discuss as to how these properties could work together. But at this point, I do not have Professor Le Jeune to offer some of those comments.

Before I -- I would respectfully request that you continue this project so we may be provided with the proper details to fully understand the massive project. I

thank you.

THE CHAIRPERSON: Thank you very much.

Okay. Does anybody else that hasn't spoke yet need to speak?

Okay. That is going to end public comment right now.

You need to do what?

MR. GIBBS: I am just going to ask the Board to allow me to be able to speak at the next meeting and make my presentation after everything has been presented. That's all.

THE CHAIRPERSON: Yes. I don't think that's a problem, yes.

MR. GIBBS: Okay. I just wanted to verify that on the record. Thank you all very much.

THE CHAIRPERSON: Thank you.

MR. GIBBS: Tucker Gibbs.

MR. SACKS: Thank you. I would like to call -- I would like to cross-examine a couple of people, please. I might as well just do it in simple order. I would like -- Bienstock to stand, please, to the stand, to the dais.

Mr. Bienstock, you are with the -- you

are the president of the association?

MR. BIENSTOCK: I am.

MR. SACKS: That's correct?

MR. BIENSTOCK: I am.

MR. SACKS: That is the Sunset Harbor Homeowners Association --

MR. BIENSTOCK: No, Sunset Isles.

MR. SACKS: So I do it, too. Just like Tucker.

MR. BIENSTOCK: Three and Four.

MR. SACKS: Bingo.

In your capacity as the president, you have been involved at the project for -- I guess it was back as far as when the project application was filed; correct?

MR. BIENSTOCK: Yes.

MR. SACKS: Since that time, have you had various conversations, the meetings -- I mention 30 or so -- with that approximation in mind, have you been part of many of those, most of those, all of those?

MR. BIENSTOCK: We have not had anywhere near 30 meetings. We had a handful of meetings before the May Planning Board, and then we were told by your client that

they had no intention of ever meeting with us again.

MR. SACKS: But there has been -- besides meetings, I would imagine, because in this modern age, there are e-mails and things like that, of that nature.

There has been e-correspondence between yourself, I guess, our project team, Mr. Cicero, Kobi Karp, etcetera -- that has transpired over the, I guess, months, many months?

MR. BIENSTOCK: Not since May.

MR. SACKS: Not since May?

MR. BIENSTOCK: Until two days ago.

MR. SACKS: Yes, because in May, there was an approval, and now we have this hearing, and there has not exactly been dialogue. But that has been the case.

There has been just an unbelievable amount of e-mails that have transpired.

MR. BIENSTOCK: No, not true.

MR. SACKS: I have an unbelievable amount of e-mails, believe me.

MR. BIENSTOCK: So do I, but they have nothing to do with this project.

MR. SACKS: Well, they go directly to the heart of the matter. They go directly to this project at issue, where all of the issues that you raised with respect to mass, scale, etcetera -- were discussed, and mass, scale and height and all of the issues that you raised today were actually -- while the purview of the Planning Board is to follow those guidelines, there were many designer guidelines that were actually addressed; height, mass, scale -- all of those things were addressed at that time.

MR. BIENSTOCK: No --

MR. SACKS: Do you remember that?

MR. BIENSTOCK: No.

MR. SACKS: They were, in fact.

MR. BIENSTOCK: No.

MR. SACKS: They were, and it was at the Planning Board that those issues were adjudicated -- although this is a completely different Board, that is probably why many of these issues are conflated.

And the Planning Board took it upon themselves to listen to the residents, and listen to the residents, and listen to the

residents, on many of the issues that you have raised.

MR. BIENSTOCK: No. If I may explain?

MR. SACKS: Please.

MR. BIENSTOCK: We were -- we have been consistent, since certainly February -- and I think I submitted my e-mail to the Planning Board from February that said the main issue that we have with this project is the size, mass, scale, and height.

There were a lot of small issues. Those, by and large, have been dealt with. But they were throwaway issues. For example, we said there were too many units. We were told by the developer that they had said 71, but they really always planned for 50. "So we are going to go to 50."

You call that a concession?

I call that giving the sleeves off a vest, because the hard issue was the building was too tall and too uninterrupted, too massive. We raised it in February. We raised it in March, April, May, June, July -- August, too, this hearing -- and that has not been addressed other than with minor tweaks

here and there, until the staff suggested some major changes, which we were told last night from your client were not acceptable to them.

MR. SACKS: Is it fair to say that many of the requests that were made, in your opinion -- and only your opinion -- that we were planning on doing that were part of our plans -- that many of the requests you made to change, we did make those changes at the request of, I guess, yourself, as the -- in your capacity as president; correct?

MR. BIENSTOCK: There were many changes that were minor in nature that your client conceded to, yes. And --

MR. SACKS: Minor in --

MR. BIENSTOCK: -- and we appreciate that.

MR. SACKS: "Minor" -- is a reduction of 70-plus units to 50-units considered minor?

Would you consider that number of units minor?

MR. BIENSTOCK: Minor, because they told me they were doing it anyway.

MR. SACKS: No, that is not true, not at all.

MR. BIENSTOCK: They --

MR. SACKS: That is not true. I will go on.

MR. BIENSTOCK: You can ask all of the other people who sat at the meetings and were told the exact same thing I was told. They are here in the audience.

MR. SACKS: Well, let me just state this for the record. In your capacity for the association, do you send out e-mails on a regular basis to your association on -- on a regular basis?

MR. BIENSTOCK: Not on a regular basis, but periodically, as there is something to report.

MR. SACKS: Would you say that after every Planning Board hearing, that you did so?

MR. BIENSTOCK: I don't know if I did it after every Planning Board, but after some.

MR. SACKS: Yes, you did. And if you would like, I will submit to the clerk all of

1 these e-mails, if you would like, after, that
2 do state that after each hearing, that you
3 have made certain misrepresentations, and
4 they are in the e-mail, about the property
5 being higher -- 60 feet, for example.
6 And, I would say that you provided
7 misinformation to your entire association.
8 And they, in fact, relied on your
9 evidence or on what you were saying, and that
10 was pure misinformation.
11 MR. GIBBS: Could I object -- as Mr.
12 Bienstock's attorney, it is quasi-judicial
13 proceeding. I am allowed to object on behalf
14 of my client. This has nothing to do with
15 the standards that you all are supposed to be
16 applying, as Design Review Board members.
17 You tell me how any of these questions have
18 anything to do with your application of those
19 standards to this set of plans, because it
20 doesn't.
21 MR. SACKS: I will make --
22 MR. GIBBS: It is more like making a
23 speech.
24 The question is: He is entitled to
25 ask my client questions about facts that he

1 testified to at the hearing today, not about
2 some e-mail he may have sent to a member of
3 his board, or somewhere else.
4 MR. SACKS: I will make the
5 connection.
6 The misstatements are evidence. The
7 evidence went out to various neighbors.
8 Various neighbors are testifying today based
9 upon some of those misstatements.
10 MR. GIBBS: Then you need to
11 cross-examine them, not my client, my
12 president.
13 MR. SACKS: But he is president of the
14 association that sent them out. This is --
15 MR. GIBBS: It does not --
16 MR. SACKS: There is a connection
17 between the misstatements and --
18 MR. GIBBS: No --
19 MR. SACKS: There absolutely is. And
20 therefore, that evidence is not competent,
21 substantial evidence as a result of the
22 misstatements. That is the point that I am
23 trying to get across.
24 MR. GIBBS: Fact-based evidence is
25 competent, snbstantial evidence, and if he

1 can say what specific evidence it is and then
2 try to tie it in, that would be great.
3 MR. SACKS: Your first word you
4 said --
5 MR. GIBBS: But to specific testimony
6 that was made today, relating to the
7 standards -- that is the issue. But to sit
8 here and drag -- we have been here -- I have
9 been here -- I got here at 8:30 and came back
10 at 9:30.
11 You all have been here since 8:30.
12 This is ridiculous. The idea is, is
13 the standards, and whether or not you guys
14 are going to apply those standards to the
15 facts as they present them.
16 To talk about e-mails and try to go
17 back is ridiculous. Absolutely ridiculous.
18 Number one --
19 MR. SACKS: You said, "fact-based."
20 You said, "fact-based," and I am saying these
21 are not facts. That is what I am
22 establishing.
23 MR. GIBBS: To be defined.
24 THE CHAIRPERSON: We understand what
25 you are --

1 MR. SACKS: Let me go on more
2 specifically.
3 When you mention mass, scale, height,
4 etcetera, are you aware that the property is
5 zoned CD-2?
6 MR. BIENSTOCK: I don't --
7 MR. SACKS: The property is CD-2. Are
8 you aware of some of the zoning? You were at
9 many of the hearings, you might know.
10 MR. BIENSTOCK: Just that -- whatever
11 I have heard here. I am not an expert.
12 MR. SACKS: 50 feet is the height
13 limitation. Is the property within that
14 zoning envelope, the light limitation?
15 MR. BIENSTOCK: Today?
16 MR. SACKS: Yes.
17 MR. SACKS: Let me answer --
18 Sorry, let me let -- you can answer.
19 MR. BIENSTOCK: I would say no,
20 because that is --
21 MR. GIBBS: I object.
22 MR. SACKS: I pulled back, because I
23 know the answer.
24 MR. BIENSTOCK: In my opinion -- you
25 want my opinion?

MR. SACKS: Yes.
MR. BIENSTOCK: No.
Can I answer? Can I answer, counsel?
MR. SACKS: Yes.
MR. BIENSTOCK: Because it is five stories, and then there is a whole roof deck with a trellis, with a ceiling.
We have objected to the roof deck from day one because there is really a sixth story. So my answer would be no, I think this is a six-story building.
MR. SACKS: It is all permitted by code, everything that I have just said.
MR. BIENSTOCK: That is not what staff has said. They said that the trellis that you are putting up is not permitted by code. It is a hardened structure and shouldn't be. It should be some type of lighter trellis.
MR. SACKS: Let me move on, because that is a -- I disagree with that wholeheartedly. But it certainly would have been in every single staff report, because we have never changed -- or we have reduced, in fact, and that has been consistent all along. I will continue.

Are you aware that the property is consistent with the City's comprehensive development plan?
MR. BIENSTOCK: No, I don't know one way or the other.
MR. SACKS: It is.
THE CHAIRPERSON: Let's just focus things on design-related issues right now, because that's really the issue that is -- it is the only issue that this Board -- I mean, the other legal issues and things, that is something that our lawyers -- the City lawyer is going to have to work out.
And honestly, we have read through everything that we have got in our packages.
We have met -- most of us have met with your team to go over the project. We have heard everything everybody has to say here.
I mean -- I am going to speak for myself, but I am very aware of what the whole -- there is some interpretations here that are going on. I know what you are doing. Most of it is within the purview of the code. I understand that, but we are also here to

review the design and to hear the residents of this City and what they have to say about the project.
So, I mean, the back and forth that is happening here -- I get your point. I know you are saying, "It is to code and everything is fine," and this side is saying, "We don't like it that high. We want it lower. We want it less massive."
And I know -- I mean, this whole -- it is allowed by the code issue. It comes in front of us with every single project they have; and we deny things that are approved by the code and we accept other things that are approved by the code. So I want to keep things on point.
And I think our Board is definitely going to have to see this project again. We are going to perhaps make a motion to continue. And you know, hopefully, a lot of these issues that -- that are legitimate issues are addressed to -- is comfortable. I don't know if there needs to be more meetings with whoever is in the area to go over what are some of the major sticking points, but

staff has given some of their recommendations in the report.
But clearly, between now and the next meeting, which I guess would be in October?
By the time you have the project -- updated, I think there has to be some serious, sit-down -- it is going to help to get some -- some support, for sure, on the project. It doesn't have to be anybody that is in this room.
But -- I mean, this project is in the middle of a very, very complex and poignant location on the Beach. That's why there are so many people here. And there were people here that were -- I think, just couldn't stick around, and figured they would come back later.
We want to see something happen here, too. I mean, we are a Design Review Board. So we review projects that are part of development on the Beach. And I think residents, whether they are pro or anti-development, need to welcome projects on the beach and know that this Board and the City and the staff take projects like this

very, very, very seriously.

I think all commercial projects should at least come in front of our Board, twice, at minimum.

And we approved a couple of big projects last -- last month. I mean, we want to give every project a lot of attention.

So we are just looking at the design. The other legal issues which are -- I know are perhaps important, those kind of need to be worked out with Gary and his team.

And the whole noticing issue -- I mean, unfortunately, there were some problems with how the project was noticed, but it was within the legal purview, and I -- I really think between now and whenever this project comes back in front of us, we just need to get some consensus here and a real clear understanding of what was done in response to some of the issues, why some things weren't done.

I mean, we could -- this could go on and on and on. I know that it is very -- there has been a lot of meetings and there has been a lot of terms and issues that have

been brought up, and concerns, and this -- some people say that they have not been addressed, and you say they have been addressed.

And there are tiny concessions, bigger concessions, but I think, if we don't seek some substantial understanding of what the design is, next time -- we are going to be just as confused next time as we perhaps are this time.

MR. CARY: Mr. Chairman?

THE CHAIRPERSON: Yes.

MR. CARY: Many or most of the concerns that have been expressed during the course of the public testimony have been, you know, summarized in the staff report, and staff has made a number of recommendations based upon those concerns. We know these are concerns that the neighborhood has.

There is one thing that I wanted to try to clear up, if I could. And that is the whole sight line discussion that came up at the Planning Board.

It is my understanding that the issue of the Planning Board was that when viewed

from the single-family residential properties across the waterway, there shall be no less sky visible above the highest point of the Palau project than there is above the highest point of the highest project to its west. I wanted to make sure that by being blocked by the new project, and by the previously-approved project, which has already been built adjacent to it -- that was basically the standard and the criteria that the Planning Board hoped the Design Review Board would also adhere to.

And I think it is also important, if the Board is agreeable to doing so, if the Board could at least -- if you don't want to engage in your own analysis of the design at this time, if you could provide some guidance to the applicants and some feedback to the neighborhood, whether you agree with the concerns that have been identified by staff in the staff report, as well as the issues that you believe that -- that we believe need to be further addressed before this project comes back to the Board for consideration --

We have tried to address all of the

issues that Michael has already identified as the issue of the FAR calculation in the staff report. We know where we stand on that.

The applicant has already begun to address that issue. Those drawings just came in today. We are seeing them for the first time as you are seeing them. So they were not part of the package. So it is correct that the FAR calculations, based on the current plans, are not correct, and those types of things do have to be addressed. But those things are all noted in the staff analysis and the staff report.

MR. SACKS: And Mr. Chair, just to clarify things, although distasteful, sometimes a cross-examination can be -- the purpose of it was, it was to attack, essentially, the credibility in some instances.

There has been essentially a credibility issue that has been established, and that is part of where we were going, where I was going. Because my clients, like I have said, have been frustrated through this process.

1 That said, if we would -- if you would
2 like to stop the cross-examination and
3 continue, because I see -- I am reading the
4 tea leaves as to where the Board is going --
5 Certainly, we are going to be back
6 here. I have many comments for Mr. Alvarez,
7 if we could cross-examine him.
8 Or we could -- and I am sure he is
9 going to put on the same presentation next
10 time -- I don't know. What is the will of
11 the Board?
12 Because there are many more comments
13 that I have, but I do not want to waste
14 anybody's time here.
15 MR. CARY: Well, David, it is a Design
16 Review Board, public hearing. Those are the
17 issues that are being considered by -- by the
18 Board. That is the task that the City
19 Commission gave to the Design Review Board:
20 "We want for you to review all proposed new
21 design within the City. If you don't feel it
22 is up to an adequate standard, make
23 recommendations on how it may be approved,
24 and see to it that it is approved, that it is
25 improved."

1 It is not a courtroom. The
2 cross-examination that you are doing is
3 turning more Board members off to your case
4 than it is bringing along with you. If you
5 focus on the design issues that have been
6 raised by the neighborhood and by staff and
7 by others, you will be making a great deal
8 more progress with the Board, because
9 frankly, I think everybody gets very, very
10 turned off with the interrogation, especially
11 when it gets very, very negative. Because
12 most of us, frankly, are not even following
13 it. I mean, you are intimately familiar with
14 all of the legal issues and all of the
15 e-mails that have gone back and forth. The
16 rest of the Board is not. They are looking
17 at design.
18 MR. SACKS: Right. And design -- I
19 would say that -- I would like to know more
20 specifically what the design issues -- what
21 the adverse impacts are, and how -- how
22 they --
23 MR. CARY: You have a very qualified
24 Board that will make those determinations.
25 MR. SACKS: That is at the heart of

1 the matter. But I think I would be remiss,
2 on behalf of my client -- because this has
3 been again -- and if there was any kind of --
4 that was never my intention. However, to --
5 we speak the truth of what has happened and
6 what the history of this project has been,
7 and how we have been stonewalled.
8 And by the way, we are compliant with
9 the code. We are compliant with all of the
10 staff reports that have recommended approval
11 to date.
12 This staff -- I would imagine that the
13 next recommendation that you will see, and as
14 we met last week, would recommend approval.
15 So we will likely go there. So I think that
16 is the way we need to go.
17 But again, I would be remiss on behalf
18 of my client unless I did state for this
19 Board, knowing that there was most likely a
20 continuance, that there really is a
21 credibility problem, and we have been
22 stonewalled.
23 THE CHAIRPERSON: Okay. That's noted.
24 MR. SACKS: Thank you.
25 THE CHAIRPERSON: It is noted.

1 And, I want everybody to have
2 confidence that I am pretty certain all of us
3 are going to, between now and the next
4 meeting, take a pretty hard look at
5 everything that we have and do what we need
6 to do to make sure that we -- because we have
7 to disseminate all of the information we hear
8 here today. So whether somebody is credible
9 or not credible, or if they are lying or
10 not -- I mean, honestly, I have -- we have no
11 control over that.
12 So that's why the drawings and the
13 exhibits and the design -- those things have
14 to speak. That's our -- that is it. This is
15 what is going to happen. And so -- the Board
16 is approving what is on paper --
17 MR. SACKS: Right.
18 THE CHAIRPERSON: That is the issue.
19 So like the issues about the sight line and
20 William's clarification of that -- I can look
21 at the sight line drawing and I can say, if
22 what William said is true, then I can make an
23 assessment like, "Oh, this diagram is
24 actually correct."
25 But if it is -- so I think there are

some things that need to be clarified in the design and the drawings. That is my -- if we are going to come and go through the Board and kind of go over what we would like to see next time -- I think I agree with most of staff's comments.

I think maybe, kind of looking at whatever the outstanding issues are that maybe the community is having, that you try to approach them with some sensitivity. I understand you can't just lop an entire floor off of this entire building and reduce it by ten units, or 15 units from a development deal. I guess it is not going to work. But every deal -- for every peg, there is a hole, and I -- you know, I think everybody would like this -- wants this to work here. And that's -- that's the challenge, I think.

I mean, I know it has been a long road for your team and for the residents. From what I have heard, and what I believe, there has been many meetings and many phone calls and many e-mails and community meetings, association meetings and signature gathering, and you know, the great part about that is

that there is concern about it. And that's the point.

I mean, when we have -- you just witnessed seven other projects come in front of us, and not one person stood up to even say, "I like it" or "I don't like it."

So it does make for a longer process here, but the idea is that at the end of all this, the Beach ends up with the best project that we can have. So that's all I have to say about it right now.

I would like to get some comments from my other Board members, and then hopefully, we can make a motion.

MR. SABA: Good afternoon. I am just going to make a few quick comments about my initial impressions. Before I do that, I should disclose I met with the applicant last week.

First of all, I think the comment staff has made about -- I believe condition 1-C, "setback from the property line ten feet," is a good one. I would recommend that. It gets very tight as far as pedestrian access along that street.

I would like to see something along those terms.

Number two, along Sunset -- Sunset?

Yes. Along Sunset Drive -- I did ask the applicant, while I was meeting with them last week, to rework the corner there.

Actually, that is mainly on the Sunset, but mainly that corner. I am not sure if I saw something like that on one of the boards, but it certainly wasn't in the package. So I would like to see -- I would like to see that again. I would like to see that reworked a little bit more. That is a very good opportunity, in my view, to have some public space. And really, you have such a wide area from the curb all the way to the building -- that something really nice can be done there, that I think can -- can frame the view as you're coming into the island.

And then a third, also, is on the other side, the side of the channel -- I think that also needs a little more development. It is very difficult to see from the sections that we have been provided really what is going on there, but it seems

that there is not really a lot of public space. So I would like to see more public space.

On that side, it looks like two people can barely fit there, according to this section that I have.

And I also think that the drawings are a little bit exaggerated. So I would like to see the reality of the plant material when they are installed.

I would like to see a little bit more public space on the boardwalk. There was a lot of private space, and very little public space.

I also think further renderings of the building -- maybe from different views -- I mean, we really only have this one shot that looks like I am lying on the ground, looking up at the building, which I think is a very deceiving perspective.

So I would like to see more perspective shots of the 3D model from various angles, especially coming in from -- from Alton Road down 20th Street, and what that approach is going to look like.

MS. NEPOMECHIE: Good afternoon. Almost good evening, at this point. It has been a long day. I would be glad to actually echo our chair's appreciation for the intensity with which this community and all of the participants in this process have approached the project.

Clearly, a lot of people care a lot about what is happening here, and not only the people who are financially vested in the process, but everyone else.

Clearly, the Board, neighbors and everyone who is working with and for them I think that the result will be a very good building.

I -- actually, I appreciate what there is to date on this. I agree completely that the building is not where it could be or where it should be, but it is the beginning of, I think, a very valuable project.

I appreciate that it is a mixed-use -- it introduces residential area in a threshold moment of the City where there are elements from many, many different parts, and uses in the City that are coming together; and I

think it does it using a building typology that is very -- such a part of the history of Miami Beach.

It is a courtyard building. It is a courtyard building that at the moment, is consistent -- of consistent height all the way around. Courtyard buildings don't need to do that.

If there are ways to make the numbers work -- and only those who have got access to that information can speak to that with great precision, which would -- this Board cannot, by definition -- if there are ways to make the numbers work, then I think that lowering the height of the building along the waterway is something that makes a certain amount of sense.

Increasing setbacks -- by staff and many of the people who have come to speak this afternoon makes a certain amount of sense.

Certainly, respecting existing buildings already on the property and establishing and articulating those relationships in a way that is clear makes a

great deal of sense.

As I look through this, my one big suggestion to the architect's group -- I don't know if Kobi and any of his colleagues are still here --

You are still here. Kobi, build a model. Build a physical model that includes your project, the bridge, Sunset Isle, what is across the way -- on Sunset -- a piece of Sunset Harbor -- that really deals with all of these changes in elevation which are mysterious between the edge of your property and the edge of the existing conditions.

Physically build it at a 16 scale, at a little bit bigger, if you can do it.

Given the amount of investment already involved in this process, I think that it would answer a million questions. It will make your job of communicating your aspirations a million times easier, and I really, really suggest that it be done.

It is a wonderful visioning tool that will make a lot of these things really work.

So that is thought number one.

As I go through the drawings, I would

say that -- yes. I am interested in the sort of mysterious moments, that gray -- the gentleman who spoke about the void spaces -- he was making a point about FAR.

I am just curious as to how those spaces are going to be used, and I am wondering if there is a better way to think about them.

The northeast corner, the southeast corner of the property -- I just need information. I am thinking the physical model might provide it, but if there are other means to do it, I would be grateful for that.

As I look at the project, the architectural elements and language are fairly and consistently with the building. I love the idea of introducing wood screens, as well as the glass and concrete elements.

I don't see them applied in the same way at every part of the elevation, so I am a little confused, and some of that would actually -- I believe could be clarified.

I think that this is a project that will be a really valuable addition to the

1 Beach, to Sunset Isle, to the entire part of
2 the -- this new sort of developing, once upon
3 a time, semi-warehouse, semi-industrial part
4 of Miami Beach.
5 I think it is a wonderful step in a
6 really good direction. I think that
7 visioning tools that will make conversation
8 easier are really what is needed here so that
9 we can move forward.
10 And that's it.
11 MS. HOUSEN: Thank you. I will be
12 brief. If I have more -- hopefully, when you
13 come back on the continuance, that will
14 clarify. It is -- I had big circles around
15 my voids. I am not sure what they were. But
16 I had other questions on staff
17 recommendations on the traffic mitigation
18 plan -- I don't know if that has been done
19 yet, but I think it is going to be a very
20 important part of this project.
21 And questions that I, personally, have
22 are these commercial units -- I would like to
23 be able to know how is somebody going to be
24 able to get in to make deliveries, say, to
25 their restaurants, coolers, refrigerators,

1 beer trucks, things that are really big and
2 large -- where are they going to be coming
3 in?
4 Where are they going to park?
5 I see one place over here on 20th
6 Street, but I also see one dumpster, which
7 makes me think, way over back by the closest
8 location to the gate at Sunset Islands -- it
9 is impossible to make a delivery from here to
10 there. You're going to flow this traffic for
11 commercial space and deliveries, which I
12 would like to see come back with more
13 explanation on that, where the dumpsters are
14 going to be.
15 I just see big squares. I don't see
16 how this is actually going to flow, or what
17 kind of businesses it may attract, other than
18 offices.
19 MR. SACKS: Well, we have that.
20 MS. HOUSEN: I am sure. It is not in
21 my package, and I never did meet with anyone
22 before today, but I did have the project
23 downloaded. So I have been reading it for
24 about a -- months.
25 Kobi, you had something to say?

1 Thank you.
2 MR. KARP: Yes. Just for FYI, page
3 A1.010, you can see we had to provide both
4 residential and commercial trash separately.
5 Air conditioning -- on the right hand side,
6 you have one section and you have the
7 commercial trash room on the other side,
8 right here.
9 MS. HOUSEN: I see it right here.
10 MR. KARP: That is proposed to be a
11 commercial loading area, and it is noted as
12 such right here.
13 MS. HOUSEN: In front?
14 MR. KARP: Yes, ma'am.
15 And also, we have the traffic study by
16 Garcia, and we will resubmit that as part of
17 it, as well.
18 MS. HOUSEN: So that has been done?
19 MR. KARP: Yes. And we will clarify,
20 like Marilys says, the area, the crawl space
21 underneath the building, which has been
22 cross-ventilated space. It is not an FAR
23 area.
24 MS. HOUSEN: Okay. Thank you. That
25 will really allay my concerns, and I look

1 forward to seeing it, Kobi.
2 MR. KARP: And we will take those
3 architectural comments on the model. We will
4 have it next time, and the tying up of the
5 elevations --
6 THE CHAIRPERSON: Mickey?
7 MR. MINAGORRI: Good afternoon.
8 When -- when new development kind of has this
9 confrontation with the homeowners -- and the
10 passion that we heard here today, it is
11 four o'clock. So this is a new record for
12 us --
13 At some point, you are going to have
14 to get four votes --
15 (End of CD Number 2.)
16 (Beginning of CD Number 3.)
17 (First few pages of CD 3 is a
18 duplication of the end of CD 2.)
19 MS. NEPOMECHIE: -- really suggest that
20 it be done.
21 It is a wonderful visioning tool that
22 will make a lot of these things really work.
23 So that is thought number one.
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THE CHAIRPERSON: Mickey?

MR. MINAGORRI: Good afternoon. When -- when new development kind of has this confrontation with the homeowners -- and the passion that we heard here today, it is four o'clock. So this is a new record for us --

At some point, you are going to have to get four votes --

Usually, we have five people, even though we have, I think, six Board members now?

THE CHAIRPERSON: Seven, starting in September.

MR. MINAGORRI: So there has got to be a -- a four-vote -- I would like to see less lobbying, less lawyers -- and no offense to the lawyers present, but we are not Judge Judy here, and the truth of the matter is that we really want to get the information so that we can make an intelligent decision.

Today, I think because of all of the legal and having Gary and -- we felt intimidated that we may be crossing certain legal matters. So whatever legal matters need to be resolved, they should be resolved prior to coming in front of this Board.

I really want this to be a clean process. I really want to hear -- I pay a lot of attention to the neighbors, to the homeowners, how they are going to be impacted, and I also pay attention to the fact that you are working within the law, within what zoning says.

So having said that, we are going to have to make a decision one way or the other. And all we are saying is let's find a way to create a meeting of the minds so that next time it comes before -- before us, number one is, we all get a real clear picture of our concerns that are answered, whether it is with the sample, whether it is with all of the information that we have asked here today.

I think the idea of Marilys, of doing a real mock-up of the project, I think the

model, we could -- well, a lot of other developers have come before us, and that helps to clarify, I would say, 95 percent of the questions.

I think the communication between one side and the other -- one side is saying, "We just got this today" -- I am appalled to think that anything would come up before us when you have so many people that are opposing it, that are not getting the information. And even though you are -- cross-examining him, I feel that if they say they have not gotten the information, and you say they have, then there is a miscommunication somewhere.

And we are not here to play judge, and I think we are here to get the facts and to decide where do we go. But I mean, there is really a miscommunication between the developer and the side of the homeowners. So that has to be cleared up.

I don't know how many -- forget about -- just erase everything and start fresh and say, we made a presentation. We know -- you are not going to get a vote today

from us, but at least we all got a sense of where this is going so that when we meet again in October, we can make a decision, but that we all feel comfortable with.

MR. CARY: Mr. Chairman, just so that the TV members of the public watching this public hearing know that the development review process is truly working, I will just summarize some basic quality improvements that are already been made to the project as a result of the Planning Board public hearings: One is that the lobby was relocated from Sunset Drive to 20th Street only. There is no lobby at all for the residents on Sunset Drive.

There is no action -- garages, from Sunset Drive.

All valet services and parking are required to be internal to the -- to the building.

There may be no valet drop-off, you know, on the street, or valet services on 20th Street.

The upper two floors of the residences facing the waterway have been set back -- how

many feet now, Kobi?

Ten feet or 12 feet further back from the lower floors to address the sight line and sky visibility issues.

The northeast corner of the building has been pulled back further still.

There has been a lot of design development -- excuse me. I shouldn't say, "design." I should say, "massing and scale adjustment" made to the project during the course of these many public hearings that have already been held.

So I don't want for the neighbors or the public to feel that -- that the development review process is not working, because I think it is working exactly the way it is intended to work.

But I think the message that this Board is delivering to you -- and certainly, staff is delivering -- really focus on the design issues. That is where this Board can be of the greatest assistance to you and to the neighborhood.

I think Marilys' suggestion of a white carbon massing model that includes the

neighborhood so that the Board can understand the spatial relationships between the single-family homes on the north side of the waterway and the townhouse project next to -- and your project will really answer a lot of questions relative to whether the project design is really achieving what you need for it to achieve.

MR. BIENSTOCK: Can I say something to leave on a positive note?

Because we have heard a lot of negative, and I will be really brief.

We want this project to be done. We are okay with this development. We are okay with the architect, notwithstanding the back and forth. We really are.

Kobi is a friend as well as a neighbor. When they came to us and said, "Give us some ideas," we didn't put together a group of everybody like, people who had nothing, no idea or just anti everything.

We put a group together, Scott Robbins, Chad Oppenheim, Jeff Brandon, a property developer, Jeff Lex, a prominent developer, Peter and myself -- and Bill

Taylor, another prominent -- these are people who were made to say "yes" to this.

We have 118 homes. I dare to say 15 percent of the residents are developers; building developers, lawyers for developers.

I was outside general counsel for Arvida and Lennar. We want this project.

We have gone over and over, trying to figure out how to help them get this done.

We don't want it done five years from now. We want it done now. There are solutions to this problem. They have sat with the Scott Robbins of the world and the Chad Oppenheims of the world, and they said, "Here is the way to remass the building and make your money, and you can leave and you will have a great project and everyone will be happy."

The problem has been, we are at dichotomy. It was highlighted last time. They don't want to lose one square foot. That is a problem. That is where we are.

We want to get this done. We put a group together to try to help them to get it done, and we are committed to try to do that.

We have met -- our groups have met with staff many times, and we are available. We want to help this project get approved. We don't want you to deny it. We want you to get a sensible project together.

And I will shut up and sit down.

MR. SACKS: And he is keeping it positive?

I respectfully disagree with much of what Mr. Bienstock said.

That is my last comment.

THE CHAIRPERSON: Okay. Well, let's make a motion.

MS. NEPOMECHIE: So I would like to move that we continue this project for the day of what --

UNIDENTIFIED SPEAKER: October second.

MS. NEPOMECHIE: October 2nd meeting.

UNIDENTIFIED SPEAKER: I second.

THE CHAIRPERSON: All those in favor?

Aye.

And then also to note, we will do a full public re-notice of the application, and the plans will be due by noon on August 31st.

MR. BELUSH: -- wait around for six

hours -- if -- if the Board wishes, we could do a time certain.

THE CHAIRPERSON: Can you do the agenda that way, to put this project first next time?

MR. CARY: What the Board has always requested in the past is that they are allowed to do single-family residences first.

If the Board wants to make an exception for that, and it would help the neighbors to know when the project is going to be heard, staff would --

THE CHAIRPERSON: Okay. I think we should put it in the beginning.

MR. BELUSH: Or do you want to do a time certain of say 11 o' clock, and then we can focus on getting the single-family homes out of the way?

MR. CARY: What is the best time for the neighborhood, Terry?

MR. BIENSTOCK: (Inaudible).

MR. CARY: Well, we are not going to be here at five o'clock.

(Inaudible).

MR. CARY: But remember, the board

meeting begins at 8:30. Do you want to have it at 9:00 A.M.?

MR. BIENSTOCK: If you are going to do it first, do it first.

THE CHAIRPERSON: Just put it at --

MR. BIENSTOCK: People can come before work as opposed to -- go to work --

MR. CARY: Do you want to do a time certain of 9:00 A.M.? That way, you can get extensions out of the way.

THE CHAIRPERSON: What would we get in front?

What would we get between 8:30 and nine?

MR. CARY: You want to make it 8:30? We will make at 8:30.

THE CHAIRPERSON: Well, warn the single-family homeowners. Just let them know.

Okay. The meeting is adjourned.

Who seconded the motion, please?

MR. CARY: Who?

THE CHAIRPERSON: Who seconded that last motion?

MS. HOUSEN: I will second it.

THE CHAIRPERSON: Myrelis first did it, and Carol seconded it.

MR. BELUSH: I got it.

(WHEREUPON, the transcription from CDs was concluded.)

CERTIFICATE OF NOTARY.

STATE OF FLORIDA:
SS.
COUNTY OF DADE:

I, SHARON PELL VELAZCO, a Court Reporter in and for the State of Florida at Large, do hereby certify that I was authorized to and did stenographically report the proceedings in the above-styled cause before the City of Miami Beach Design Review Board, at the time and place as set forth; that the foregoing pages, numbered from 1 to 189, inclusive, constitute a true record of my stenographic notes.

I further certify that I am not an attorney or counsel of any of the parties, nor related to any of the parties, nor financially interested in the action.

WITNESS my Hand and Official Seal this 7th day of August, 2012.

SHARON PELL VELAZCO, RPR
COURT REPORTER NOTARY PUBLIC
COMMISSION NO: EE 015147
Expires 8/19/2014

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CERTIFICATE - REPORTER NOTARY OATH
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6
THE STATE OF FLORIDA)
7
COUNTY OF MIAMI-DADE)
8
9 I, Sharon Pell Velazco, Notary Public for the
10 State of Florida, certify that any and all
11 witnesses or parties requested to be sworn by
12 the court reporter during the course of these
13 proceedings, as indicated in the transcript of
14 proceedings, personally appeared before me and
15 were duly sworn.
16
17 WITNESS my hand and official seal this 7th day
18 of August, 2012.
19
20
21
22
SHARON PELL VELAZCO, RPR
23 Notary, State of Florida
Commission No: EE 015147
24 Expires 08/19/2014
25

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EXHIBIT "O"

VOLUME I

MEETING OF THE DESIGN REVIEW BOARD
CITY OF MIAMI BEACH

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October 2, 2012

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(Whereupon, the following proceedings were had:)

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THE CHAIRPERSON: Thank you.

MR. BELUSH: Now, the first application we have for review is DRB 22889, 1201 through 1237 20th Street, Palau at Harbour South. The applicant, Palau Sunset Harbour LLC, is requesting design review approval for the construction of a new five-story, mixed-use building which will replace all existing structures on the subject site to be demolished.

The applicant is also requesting the Design Review Board approval for modifications to a previously approved site plan which is the subject of a Declaration of Restrictive Covenants in Lieu of Unity of Title.

And one thing I just want to make clear, in the staff report, we have several attachments, including attachment one, which includes a resolution from the neighbors to the north requesting modified conditions. These are conditions from the neighborhood.

These are not staff conditions, that we are recommending approval of.

MR. CARY: And Mr. Chairman, I would just like to comment a little bit on this project, because it has been a very interesting review process, and I really think that it -- it very carefully points out how the public hearing process works so successfully in Miami Beach.

This project, as most of you know, went first before the Planning Board for a conditional use permit involving multiple public hearings and many, many hours of public hearings.

The neighborhood legitimately had serious concerns that they felt needed to be addressed for an existing single-story and partially constructed new construction on the site being replaced by five-story construction, which will obviously, clearly, significantly change the scale of this neighborhood.

Those concerns were taken very much to heart by the Planning Board, to the extent that when the Planning Board did grant the

1 conditional use approval, as Leslie Tobin,
2 you will remember, because she was on the
3 Planning Board at that time -- the Planning
4 Board actually requested formally that the
5 applicant work with the neighborhood and with
6 the Planning Department and work toward
7 achieving certain goals that the Design
8 Review Board would hopefully observe in its
9 review of the design for the project.
10 This is because the Planning Board
11 doesn't get involved in the review of design,
12 but it did review the concept of massing,
13 size, location of the project, and all that
14 before granting the conditional use permit.
15 I think that this has resulted in a
16 number of really important changes in the
17 project, from my perspective. It really
18 forced the applicant and the architect to not
19 only sharpen their pencils, but really define
20 their horizon as to what was a realistic
21 project to be able to develop on this very
22 unique site, which on one side, is faced by
23 -- one of our earliest islands built in the
24 mid 1920s, Sunset Island Four.
25 Immediately next to an historic

1 bridge, the Sunset Islands bridges were
2 designated back in 1997, on the edge of an
3 industrial district, and at the entrance to
4 -- to these two unique islands and on a, you
5 know, a rather pristine waterway that leads
6 into Biscayne Bay.
7 So it has been a tricky site. It is
8 an oddly-shaped site, and many, many
9 challenges have had to be met here.
10 We have spent -- planning staff has
11 spent a great deal of time both meeting with
12 the neighborhood, with Terry and with Peter
13 and with Tucker. We have met on so many
14 occasions with the applicants and their
15 architects, it is almost impossible to count
16 any longer.
17 We have met, you know, frequently with
18 Michael Comras to address his concerns, with
19 the various architects and with his
20 attorneys, as well.
21 And we realize that no project is
22 going to be perfect here, but we feel that
23 the design of this project has come a very
24 long way. We think it has progressed very
25 nicely, and it has, you know, arrived to the

1 point that the staff is very comfortable in
2 recommending approval of the project subject
3 to, you know, the conditions that we have
4 outlined in the report.
5 So I look forward to the public
6 testimony. I think it is, you know, a real
7 tribute to the City of Miami Beach that so
8 many people from the neighborhood are coming
9 out today to be involved in what will be one
10 of the most significant residential projects,
11 new residential projects, I think, that will
12 be developed in the city for a long time to
13 come. I think it will set a lot of standards
14 on how -- the obligation of a new residential
15 project to try to fit as well as it can into
16 an existing neighborhood in an existing
17 context. So I am looking forward to the
18 discussions today.
19 THE CHAIRPERSON: Thank you, William.
20 Gary?
21 MR. HELD: Mr. Chair, I just have a
22 couple of comments, as well. First, with
23 regard to citizen testimony, there is a case
24 that I usually quote a couple of sentences
25 from, from the Third District Court of

1 Appeal, to assist citizens in determining the
2 nature of their comments. So the case is
3 Miami-Dade County versus Wahlberg. It is
4 from 1999, and -- give me a moment to scroll
5 down --
6 The language is that "Citizens'
7 testimony in a zoning matter is perfectly
8 permissible and constitutes substantial
9 competent evidence so long as it is
10 fact-based. Mere generalized statements of
11 opposition are to be disregarded, but
12 fact-based testimony is not."
13 And if there are any questions with
14 regard to that, I can -- I can expand.
15 Attachment number two in the Board
16 package is an opinion from the City attorney
17 with regard to the appropriateness of the
18 application before you, and attached to that,
19 as well, are the two covenants.
20 Attachment three is a declaration of
21 restrictive covenant, unity of title, and
22 attachment four is an amended and restated
23 declaration of -- title.
24 We believe that the matter is
25 perfectly and properly before you.

The adjoining property owner to the west has objected to the application. So part of your task today is to approve a modification of the site plan that is attached to these documents.

And the criteria that you should use for making a determination as to whether it is appropriate to modify the site plan to allow the proposed development is the design review criteria that is in the code. So we don't need to look to any other authority. You have your scope defined by the ordinances of the land development regulations, and you should confine yourselves to those criteria.

If you have any questions with regard to any of the documents, I am happy to discuss those, as well.

THE CHAIRPERSON: Thank you, Gary.

Okay. Does the Board have any preliminary questions right now before we hear from the applicant?

MR. HELD: Mr. Chair, we were going to discuss time.

THE CHAIRPERSON: Yes.

I think we would like to limit our

initial presentations to 15 minutes per speaker, and public comment to three, three to four minutes, please. We have a lot of people to get through. We want to hear everybody. We want to give everybody the opportunity to -- to be heard, but we also -- we need to get through the project. We think the staff report and all of the background homework the Board has done puts us in a very qualified place to listen to everybody and to make our decisions. Okay?

So let's get things started.

MR. ROBBINS: May I make a question -- of information, point of information?

My name is Kent Harrison Robbins. I represent MAC SH LLC. That is part of the unified site, development site that is before you today.

We would request 15 minutes, would like to present -- given that it directly impacts our property, and we are part of that development site.

MR. HELD: Mr. Chair, I would expect that Mr. Robbins and also Mr. Gibbs would each have 15 minutes.

If the applicant believes that it is -- that is unfair, and you want equal time, we can do that at the discretion of the Chair.

MR. PATHMAN: I would ask for equal time, especially for rebuttal.

THE CHAIRPERSON: Okay.

Thank you. Let's get things started. Please state your name and address. Thank you.

MR. PATHMAN: My name is Wayne Pathman. I am with the Law Office of Pathman Lewis, One Biscayne Tower, Two South Biscayne Boulevard, Miami, Florida, Suite 2400.

We are here today on DRB file number 22889. Prior to being here today and before I actually go into it, I would like to thank staff, William and Michael and Gary for all of the time that they have spent with us working on this file through the Planning Board, as well as preparation for today's DRB hearing.

Good morning to Mr. Chairman and members of the Board. A little bit of prior history I would like to give you, prior to

going into our presentation and Kobi Karp, our architect's presentation, which will be very thorough. We have a model, as requested. We have a number of boards to show you.

Prior to today, we had received unanimous Planning Board approval for a conditional use of a project in excess of 50,000 square feet, and for mechanical parking. Staff had previously recommended approval. The planning staff had recommended approval for that, before that Board. We have had numerous hearings before the Planning Board; two very lengthy ones, one lasting almost seven hours, another over four hours. So this -- this project has been well digested before staff and before the Planning Board.

Hopefully, today, we will do it in less time, but I can't guarantee that. I know our presentation is relatively short.

I did want to bring to your attention that prior to even the time frame that we would have come to the DRB, we engaged the assistant director and William Cary in

1 looking at our project while going to the
2 Planning Board, and the reason for that was
3 we wanted to get input, knowing we were
4 coming to this Board, and not have to design
5 twice, not have to go through one Board and
6 get approvals for something that this Board
7 may not like, so we engaged William. William
8 attended those hearings and we believe that
9 we have a project that we will present today
10 that incorporates all of the concerns that
11 staff has, and I believe that is why we have
12 such a glowing recommendation from staff,
13 where not only does Mr. Cary indicate that we
14 have satisfied the concerns or conditions,
15 but in some occasions exceptionally
16 satisfied.
17 In my 25 years of doing this here
18 before the City of Miami Beach, that is one
19 of the nicest recommendations I have had on
20 behalf of any of my applicants or any of my
21 clients.
22 And I think it is important to
23 understand that, because as William said
24 before we started, the amount of time and
25 effort that went into preparing for this

1 hearing, the concerns of the neighborhood,
2 not just Sunset Island, but the entire
3 neighborhood on both sides of the bridge.
4 So there has been a lot of thought, a
5 lot of revisions. We have made over 30
6 concessions, both as a result of staff's
7 comments, the neighborhood comments, to this
8 plan.
9 The project, we believe, will add a
10 vibrancy to the Sunset neighborhood. We
11 believe that the Sunset neighborhood is
12 evolving. You have a new parking garage with
13 retail, and it needs multi-family homes, as
14 well, to work together and make a substantial
15 neighborhood that is beginning to be
16 generated in that area.
17 I think most of you are very familiar
18 with the neighborhood, and know that this is
19 something that is going to evolve and it is
20 going to continue to evolve, and staff has
21 taken all of that into consideration by
22 virtue of their analysis of our project.
23 We have incorporated, like I said,
24 almost 30 suggestions made by the
25 neighborhood and staff, some of which are and

1 some of the things that we have conceded are,
2 we have reduced the height, the permitted
3 height.
4 This is a commercially zoned piece of
5 property. The permitted height is 50 feet.
6 We have below 50 feet at approximately
7 46 feet. We have less than the permitted FAR
8 that we are allowed. And that we meet or
9 exceed all of the setback requirements.
10 The area is compliant a hundred
11 percent with the comprehensive plan and the
12 zoning footprint. Again, this is a
13 commercially zoned property.
14 The Planning Board has already
15 approved or accepted plans concerning traffic
16 circulation, parking, drop-off and
17 deliveries, trash removal, ingress and
18 egress.
19 We are completely, a hundred percent
20 required -- I mean, compliant with the LDRs.
21 That was one of the determinations the
22 Planning Board had to make, as well as staff.
23 So you have received some information
24 by representatives of the Sunset Islands,
25 saying that we are not compliant, but in

1 fact, we are a hundred percent compliant.
2 The scale of this project is perfectly
3 in conformance with the neighborhood, and
4 staff, on both occasions, both before the
5 Planning Board and before you here today, has
6 determined that. And that's their job. They
7 -- they apply all of the criteria that is set
8 forth that is mandated originally by the
9 Commission, and all of that was done here.
10 And if you are familiar with the
11 criteria, a number of things that are
12 suggested are that they are consistent with
13 the LDRs, which I indicated we already have,
14 and we have the approval from the Planning
15 Board, that the scale of the proposed project
16 is compatible with the surrounding area. The
17 Planning Board has determined that we are.
18 You also will have that right to make that
19 determination.
20 The issue concerning noise -- we have
21 already gone through all this with the
22 Planning Board. We went through how we would
23 only have ambient noise, no outdoor speakers,
24 no outdoor restaurants, etcetera, the -- no
25 commercial boat dockage and so on.

All of that has already been digested. All of that is already part of the conditions of the Planning Board resolution.

We also have the Planning Board determination --

If that is for me, please hold my calls, thank you.

-- has determined that the proximity for similar size structures and residential uses does not create adverse impact. We went through that on two occasions with the Planning Board in very long hearings, and it was determined by the Board that we do not have those negative impacts.

There was a lot of testimony given by both sides and experts, and ultimately, we had the unanimous decision by the Planning Board. Ms. Tobin, who was there for most of the hearing on both the presentations, I am sure is well aware of that and can advise her fellow Board members of the -- all of the issues we addressed, and even the five issues that you raised concerning ingress and egress, trash removal, parking and so on, all of that has been addressed.

You are here today to -- not only to approve the design, but to modify the site plan. I will get into it a little bit later, because you are going to hear argument about these easements.

I hope all of you have read the City attorney opinion, because I think that should put your mind at ease concerning these easements and what is required of us pursuant to those covenants. I am not going to get into that now, unless you -- unless you ask me later to review those. I have them. I was one of the original drafters of the amended covenants, representing a prior owner of the property. So I am well versed on the issue of the covenants and what was raised during those negotiations.

Now, at this time, I would like to introduce our architect, Kobi Karp, who will take you through a very extensive review of our project.

We have a model. I would invite you to come down, maybe, when Kobi is looking at the model to explain everything in detail, and I would ask that you favorably review our

application and that you give me time for rebuttal.

Thank you.

THE CHAIRPERSON: Thank you very much.

MR. HELD: Mr. Chair, just to clarify, if the Board does go down to the model, all conversations by Board members have to be on the record with the microphone.

THE CHAIRPERSON: On the microphone. Okay.

If you -- if we go to look at the model and you say anything, or we talk about it, we have to be on a mic. Okay?

Ready when you are.

MR. KARP: Good morning, ladies and gentlemen. Sorry it took me a couple of minutes to set up some of the boards. But what I wanted to -- my name is Kobi Karp, 2915 Biscayne Boulevard, and I am the architect for the project.

Thank you very much for seeing us first thing in the morning. Appreciate it very much.

I wanted to take a minute because I did come up in front of you a couple of

months ago and presented this project. More specifically, what we have done since then, we have had an opportunity further to get some of the comments that we have received on the project and find ways to implement them.

If you would be just so kind to give me a couple of minutes, I will just walk you through it. Okay?

One of the things that we were requested is to bring the color landscape plan with the landscape material. There were a number of concerns about the plant material, the quantity of the plant material and the circulation.

More specifically, we are in a very unique -- site, as was mentioned, where we are not only along the water that we are proposing a public promenade, but we are obviously also along 20th Street and how that relates from the gateway to the community.

We did make a little model, and it just reverts back -- to go back to the macro, before we go to the micro, we made a model which basically shows the neighborhood, single-family residential, immediately across

a 120-foot wide waterway, and the bridge.

We are located right there. As you probably have seen in your staff report, it is pretty comprehensive. What we did do specifically is that we lowered our height along the water to four residential floors, each one being about nine feet, which would be 36 feet in height, of the residential over the base flood elevation.

And that helped us also to create a facade which is quite in context of the neighborhood buildings.

This is just an image looking from the waterway toward the bridge, and looking at the waterway from the bridge onward.

I can go on and talk to you about the neighborhood and the context of the neighborhood. Obviously, you all know that the neighborhood has, on one side, right here, kitty-cornered, we have a very beautifully -- I think a very beautifully designed Publix. Right here on this corner, by Carlos Zapata.

This right here is the Car Doctors, which was then converted to a retail with

offices on the second floor -- streamlined building.

Immediately behind it, it hides the FP&L substation for the community.

Over here, we have the single-family residential of Sunset Island. I live on island number three since 1999.

And it is interesting in context because when we met, we looked at some of the houses which are about 33 feet in height, and their height and their sloping roofs, and we looked at how it is that we can relate and some of the things that you see in your package. We agreed to remove all of the rooftop structures and elements to really create a slim and slender facade along the water.

Having said that, another important note which is shown quite nicely in the renderings -- it is the space that was then created. At the last meeting, there was a concern about how it is that we meet the corner toward the bridge, and how it is that we can potentially set the corner back. And not only that, but also straighten out the

building. So we met with staff. We have looked at a number of options, and what we have come up with is essentially a way to push the building back, and also set it back. That created a visual effect which you can see also on the model, and also on the rendering. It blows it up quite nicely, and it shows on the landscape plan -- which I happen to have here --

There it is.

There is a public walk which lets you walk across the bridge, which is not really as defined right now because of all of the vehicular penetrations which occurred via Mark's Dry Cleaners. So obviously, we eliminated those. We do not have any vehicular penetrations on Sunset Drive.

We also pushed the building back and created a plaza on this corner, and we also are trying to create a plaza on the corner of 20th and Sunset as you arrive to the site.

Those were some of the comments we received last time, and seeing obviously if we can increase our landscaped area and buffer with plant material, which is not

exotic, more deciduous and so forth, and the canopy that would give it the protection.

We met with various folks who are concerned about the landscape. They had comments, gave us specifications, and I believe that we have implemented them into the landscape plan.

One important note that I did forget to mention as soon as I walked up -- the comments by your staff and the recommendations and conditions that are allotted in your staff report, we agree with each one, and one completely.

So that is, in essence, the direction that we have been working with on the landscape plan, setting the building back, setting the top two floors of our building -- obviously, we have four residential floors facing the water -- to take the top two floors and set them back even further. You can see that on -- quite clearly in your -- in your package. There are floor plans, and on those floor plans, you can see first that the roof plan pushes the structure back and creates the stepping effect. And we felt

that to be important.

Let me just tell you what page you may look on, if you have the package in front of you. The progression of building massing -- which are these pages right here -- we put them into the record because it showed us the progress of evolution of the project since we presented this project originally back in November of last year. I presented it to the Sunset Island Tower, North Bay Road, Sunset Harbour Tower and Townhomes. So if I need to stop, just tell me.

What I got -- 58 seconds -- but in essence, that shows the progress of the evolution that we are going. But more important -- and I will try to be brief -- we brought materials.

We feel that the architecture is a critical element for us. I brought a sample board here which I will be more than happy to share with you. It basically shows the materials that we are looking to use.

We are looking with an eye towards recycle. We are looking at Resista material wood to create more of a residential effect,

specifically so toward the Sunset Drive destination.

And then obviously, on the other side on 20th Street, where we have more of an industrial facade, that changes the architecture language quite a bit.

Having said that, just as a reference, the discussions last time that we had was how it is that we treat the pedestrian movement in the building.

And if you will remember, what we said is that we have two towers within the building. We have an elevator which is along Sunset Drive, which then services the 20 residential units.

We have four residential floors, and there are five units per floor. So we have, in essence, 20 residential floors -- 20 residential units -- forgive me for that little mistake. Just making sure you guys are awake after all of the coffee you had.

But what is very uniqne about this project is that yes, the site is unique, and yet, the site is different. And if you look at the board -- let me take it out of here.

Right here. We implemented this board on the 300 series to see how it is that we can step our building and how we can make our impact as minimal as possible in relationship not only to the single-family residential across the water -- because the single-family residential across the water, as soon as you enter Sunset Island, has homes which are about 33 feet high. If you count the rails and all that, it counts even taller.

What we wanted to do is really go into a direction which is more tranquil and subdued. And you can see the architecture of the Sunset Harbour -- and what we tried to do is bring the language of the architecture which is more modern and contemporary, and what we wanted to do was to find a way, how it is that we can streamline the building and break up the massing in a three-dimensional way. So we broke up the facades, which you can see. That cost us some FAR, as well, because it counts as FAR.

We have stepped it back, and we have also let it sit right immediately on the grassy landscaped area, and that is important

to feel because when you look at this section, the pink height are the townhomes, and the blue height is us right here.

So if you take these four floors right here, one, two, three, four -- and you measure them in height, you can see that the overall height of this element right here is 39 feet, ten -- it is 40 feet. And that is the interesting delta, because once you meet the base flood elevation -- and all of us have to meet the base flood elevation -- because we are residential. We are not commercial.

The mandate by my client here was, "Look, Kobi, I don't want to have any commercial boats on the water. I don't want to have any commercial tenants on the water."

Meaning, "I don't want to have any food and beverages, commercial. I don't want to use the variance, Kobi, that the previous project, Cypress" -- Cypress had a three-foot high variance request, a canopy top on the roof.

He said to me, "No, I don't want to use that. I want to use my rooftops only for

private uses, and take the pool area and keep the pool as small as you can."

How big is the pool, Jennifer?

15? 15 by 30.

It is the size of a residential pool. "And let it be only accessible for the homeowners, because we agreed to have not more than 55 homeowners on this project."

And that's important to acknowledge, because what we did then is we divided the project with the comments from staff which said, "Please give us an entry of a pedestrian on 20th Street."

And everybody said to us, "Please give us a vehicular entry and exit on 20th Street.

"Please take your garbage and your loading inside."

So we did all of that.

And then what became interesting is it created an opportunity to create a building that is quite low and streamlined that fits into the setback.

When we studied further, since our last meeting over the past two months, and we met with staff, we found ways to shave it off

of the corner of the bridge. And the reason that that became important is because on one side, meaning on 20th Street, right here, this is 20th Street -- this is the towers, and this is the entry.

But you can see in perspective -- and this is an artist's rendering, so I am telling you, it is taken out of our model and it is pretty darn close, but you can see -- and right now, the gatehouse is under construction. You can see the gap between the gatehouse and the sidewalk, and the sidewalk and the property line.

And if you go there now, you can start to actually envision it.

And in your package, I put a little photo. It is immediately after the long picture, you know, that has this -- kind of the next page after that has a site photo, standing on the property, which starts to show you what the landscape plan clearly reflects, the amount of open space that we have, not only to provide a walk to -- yeah, not only to provide a walk, but also to provide a public access.

We are proposing to have a public access along the water, with benches and seating, and at that end, when you come to the end, there is a little park.

Then in the future -- because right now, there is a bank building here which belongs to Michael Comras. And that building may or may not stay there. And if it does not stay there, there can be a 50-foot high structure there.

So when we looked at -- with an eye to the future -- because the future sometimes comes -- this is a ghosted-in image where there is a gem -- these are our units -- that there might be an opportunity in the future for people to circle back to the public right-of-way and walk all the way around.

We did the same thing in the Capri, where we made all of the streets public domain.

So that is the architecture.

These are the details that we are looking at. That is the landscape changes and modifications that we have done. I think that staff has noted each and every item in

there.

I have brought more boards, but I would rather answer any questions.

Did I miss anything, Wayne?

Oh, circulation. Yes, very important.

What we came to this site -- because this site is -- basically functions in a very unique way, as a circulation hub to the end of North Bay Road, to the park right here -- there is a fountain park.

Right here, there is another park which is basically just a green space.

And then here, we are -- you can see on this page, A0003, where the orange line would be, that is our residential setback, which we meet, greet, and beat.

You can look at the actual setbacks that we have. We have substantially more setbacks.

And it goes up from 20 feet, it goes up to 30 feet. It goes up to 50 feet on the corner, on the diagonal as you measure the diagonal from the bridge.

And I want to be very crystal clear about it, because there is a concrete pole, a

concrete FP&L pole when you come across the bridge. And it is existing there, and you can see it. And that is all the way on the edge of the seawall.

When you get to the pole and you step back 50 feet on an angle, that is where our building starts. So it is a big, open gap space which would be quite nice to enter the island because you will feel that you are entering not only with one side of landscaping, but with both sides of landscaping, and you will have an opportunity to leave the island via the bridge and have again that landscaping effect on both sides.

And that is what is important.

And we have more trees in here, but we didn't want to hide it. We wanted to expose it. We wanted to show it the way it really would be without the landscaping. But you can clearly see the pole on this corner, and you can clearly see where the Mark's Dry Cleaners are currently, and how far back we would be.

And that is also -- by definition of the use, we are not doing a commercial use.

We -- one of the original thoughts was why don't we make commercial volumes that 50 feet high, and then the setbacks are substantially less, as well.

We want to make our residential project. We want to make a residential project which is complementary to the neighborhood.

There are people on Sunset Islands who are my neighbors who have contacted me to meet with the developer and look for apartments in the building. So it is a very nice, complementary building, yet, at the same time, it is not on Sunset Island. It is next to other commercial uses.

And I believe that architecturally, we have strived with your Planning Department and with your staff to come up with an architectural solution which is quite interesting.

The circulation that Wayne was referring to is that right now, there is an entry and exit on Sunset Drive, and that will be completely eliminated.

There is also an entry and exit at

this corner that will be eliminated.

Our only vehicular entry and penetration shall be along the west side where you enter the building, and that's where you circulate.

Once you enter the building, valet will be there to pick up your car, give it back to you. So we are trying to not only meet the parking requirements, both for the residents and the commercial uses, which we do have, but also beat them and have a full valet service. So take that load off of the street.

The circulation from pedestrian is very important, because what happens now is that we have created -- you can see in these photos, you have a sidewalk, and then you have buildings that come up to the sidewalk.

And as much as you like me to be this close to you, it is not as nice as if it was to be 20 feet set back, plus additional setbacks for the landscaping.

So with that, I will stop.

Wayne?

MR. PATHMAN: Baywalk.

MR. KARP: Baywalk, yes. One of the islands that we did feel that was very important for our project and very unique -- you can see the setback that we have, because we are -- across from the Sunset Island III and IV park.

When you come across the bridge and you have to realize that you see this bridge, the bridge turns away and focuses its focal point on the fountain park.

When it was designed, this bridge from Sunset Island, it was not perpendicular to our property, but it was on an angle. The angle is about 35 degrees, and it focuses you towards this fountain park right here.

Well, what we have then created is -- based on the last meeting, is if we have a plaza on the corner here, which can be used for outdoor seating and so forth, you can walk along Sunset Drive and make a left and walk along the water.

We felt it to be important that we can offer that as part of the public realm, that folks can actually walk along the water and have that opportunity, because the water body

is quite nice. It is about 120 feet from seawall to seawall.

And if you have been on the property right now, the seawall that exists is very low. Our mandate is to put a new seawall, very much like the seawall that is across the park, which would bring it up to 66 NGVD. Because for example, the house right here, this house, the finished floor elevation has to meet the base flood elevation, which is about nine, ten NGVD, and then the seawall that we have right now is quite low. It is made of basically sacks of clay.

We are going to put a proper seawall with a proper seawall cap, which will give us also the promenade.

Wayne -- open space, of course.

MR. CARY: First, I want to thank the Design Review Board for specifically requesting that you provide this model, because I think that is a wonderful opportunity, and I encourage all members of the public to try to take a look at the model even before you give your testimouy.

And I certainly request that all of

the Board members do so, as well. It is an exceptionally well made model.

But what this points out to me is the process that I had discussed earlier. You know, I have had wonderful conversations with Terry Bienstock, who has lived in this neighborhood for a long period of time, and Terry told me how Sunset Towers III was going to be built where the townhouses project is today. And it is only because of Terry and other neighborhood residents who were seriously alarmed at what the impact would be if a Sunset Tower III was built where the townhouses project is today, that has resulted in the townhouse project that just dramatically reduced the scale of the development.

Now, imagine if what was before us today was Sunset Towers III, at that height, and the manner in which it would eclipse the neighborhood and pretty much the -- this entire portion of the city.

Kobi, what I wanted to ask you is, what is the scale of the project -- of the model, itself? I am sorry.

MR. KARP: The scale is one inch to 40.

MR. CARY: Okay, one inch equals 40 feet.

How high are the Sunset Harbour towers?

MR. KARP: These towers are -- 250, plus or minus feet.

MR. CARY: 250. So they are more than five times the height.

MR. KARP: Yes.

MR. CARY: Okay. Now, if one of those towers was before us all today, I would not want to be in this public hearing room. I mean, there is no way that staff could even review it realistically and make any suggestion to the Board that in any way this was a quality design or something that works within the neighborhood, within the neighborhood context.

What this points to is the huge importance of the public hearing process, because Terry and his neighbors did, you know, really a remarkable job in really, you know, blocking a huge urban design mistake

that would have occurred if they had not been there. And you know, that is extraordinary, and I think there is not a person here that is not here with good reason and good concern, but I think if you look at this model and look at what could have been and you look at what we are dealing with today and the refinements that have been made, and you look at the relationship of the size of any one of the homes, you know, in the Sunset Islands area, compared with the scale of your homes -- and the scale has been broken down on both Sunset Harbour, both the townhouses project and on the Palau project -- I think that you will see that the whole design and planning process in the City has really worked very much in favor of the community.

And this is -- you know, this is a community that is responsive to the neighbors and to the public. So -- you know, every word of public testimony is valuable and is important for the Board to take into the most serious consideration, but we are pretty pleased with the way this has come out.

MR. KARP: And I just want to add, I

have been coming in front of the Design Review Board for the past few months, years, and both Michael Belush, William Cary, everybody and the staff has taken great care to look at each and every elevation.

And not the rear, the jamb -- how does it face the water, yes, but how does it face the street?

How does it face the MAC building?

What is the elevation?

What is the finish?

What is the setback?

What is the landscaping?

And even the conditions in the report give staff and us an opportunity to look even greater at certain details that they would like to have.

And it is not just the Design Review Board. It is also the Planning Board. When we met with the Planning Board and when we met with the staff, we went through that with a fine-tooth comb.

And again, if there was -- there are things that we could do, you know, move the egress off the 20th Street, increase the

landscaping, remove the rooftop trellis, relocated pool, incorporate the valet parking all inside, improve the stacking, create internal loading zone, reduce the number of residential units, don't use the nine parking spaces which the MAC has next door -- and leave it alone -- I agreed not to use, please don't use the height variance, don't have the parking structure exposed -- all of those things were continuously compounded over time. And I personally am very happy to stand here in front of you longer than I normally would have taken, but with the deep scrutiny that I went through, because at the end of the day, yeah, these folks are my neighbors, and they have been for the past 15, 20 years, almost, but it is also someplace where I enter and exit the island on a daily basis. So it is in my best interest.

And there are some great architects on -- who live on the island. Chad Oppenheim lives two doors down. We met with him, we sat in the backyard with Meier. He was kind enough to offer us coffee.

We met with Bill Taylor, who is actually -- you know, lives right over here.

So it is interesting, because we are across from the park of Sunset Island III and IV. We are at an important location where we are zipper connection between the commercial and industrial facade, if you will, of an up and coming neighborhood, whether it is -- whether it is the parking structure, which I personally liked that Scott had done by Architectonica, or whether it is the Publix which is kitty-cornered to me -- which I like, also -- I mean, do I prefer the FP&L substation to be clad and be treated differently?

Yes. But there is nothing that we can do about those things.

There is a commercial development across where the funeral home is being converted.

So it -- it is interesting. Do we want to make a statement that is better than the existing context? Meaning, you know, these structures on the bay which are 70 feet high, or 65, or whatever it is -- yes, we do.

Do we want to be shorter than them?

Yes.

Do we have an opportunity to create a public realm, a public space, a pedestrian circulation around them?

Yes, we do have that opportunity, and create a statement of architecture which is unique to the neighborhood and the community.

So -- and by the way, the model is -- you know, pretty much to scale. It is laser-cut.

We tried even the trees -- to take the quantity and the sizes of the trees and the vegetation. So if you like them and you want to hold us to them, we are fine with that.

So that's -- that's the process that we have gone through. And honestly, for me, it is -- it has been a pleasure.

Thank you.

THE CHAIRPERSON: Thank you.

Does that conclude your presentation at this point, besides rebuttal?

MR. PATHMAN: Besides rebuttal, yes.

THE CHAIRPERSON: Okay.

MR. PATHMAN: One thing I would like

to mention, if you want to hear about traffic -- which we did very extensively before the Planning Board, and our traffic plan was adopted and approved by the City -- you can certainly discuss that, but I don't know that it is necessary.

THE CHAIRPERSON: It is something that the -- was reviewed and approved with the Planning Board level?

MR. PATHMAN: Yes, it was. Extensive conversation, review, a number of experts on both sides -- reviewed by the City, as well, and the City examiner testified on the record that they approved the plan and that we are -- actually have a lower count than what is even permitted.

THE CHAIRPERSON: Okay.

MR. PATHMAN: And all that is a matter of public record.

THE CHAIRPERSON: I think that is sufficient for me, unless somebody else on the Board feels they want to hear more about it.

Okay. At this time, we will open up to public comment.

When you step up to the mic, please be sure to state your name and address.

MR. INGRAHAM: Could I have a microphone?

My name is William Ingraham. I live at 2125 Lake Avenue. I am a practicing attorney, and I have lived on Lake Avenue for 45 years.

And my family is an old Florida family. I have raised my children on Lake Avenue. And I remember when they were little, we had to send to Miami to get a pizza because there was no one selling pizzas on Miami Beach. It was a city of old people, and it was pretty run down. And over the years, we know what has happened to Miami Beach.

But what I am concerned with, as a resident, is that over the last couple, two or three years, we seem to see a creeping away of the standards to preserve Miami Beach.

All of a sudden, we are listening to pretty words from architects and attorneys about this, that, and the other, and all the

while, the old Miami Beach is slipping away.

Our islands were built in 1927. I have a modest little house on Island IV, which is surrounded by houses in the ten, 12, and the $14 million category, which is why, as Mr. Cary points out, that we have a booming real estate market.

But if we cheapen it with items like this, projects like this, we are going to destroy the hen that lays the golden eggs.

I would like to come over -- and I don't know if I have --

MR. HELD: Sir, you do have to use the microphone. So you cannot speak without the microphone, sir.

MR. INGRAHAM: The first thing I noticed about this model is -- that was hidden from me -- from Mr. Karp prior to the meeting -- he refused to show it to anyone, as well as the drawings. They are a big secret, I guess.

But anyway, the first thing I noticed about this model is that it is not to scale. It is not to scale at all.

I don't know -- I think Mr. Karp even

admitted that it was a little bit -- a little bit different.

But I want to point out to you some really significant things here.

First of all, I was the one who led the fight against Sunset Harbour, Mr. Cary.

I was the head of the coalition.

MR. HELD: I congratulate you.

MR. INGRAHAM: I spent two years fighting with these people over their construction.

When they first came to us with the idea of building this tower here, they said, "Oh, we will put some pretty trees along the side here, and you won't mind it at all, having this great big building there."

Well, to make a long story short, we fought two years. Each side spent over a hundred thousand dollars in legal fees. This was not a gift from anybody. We had to fight every inch of the way.

The developer, who was Canadian -- and incidentally, put up some crappy buildings when he got through -- sued us personally, brought slap suits against the officers of

the corporation for fighting him in court.

And this went on for two years. And I say it cost hundreds of thousands of dollars in attorney's fees. And finally, finally, the developer saw reason and we were amenable to negotiations, so we arrived at a compromise.

First of all, the ugly high-rise was eliminated. And in the place of the ugly high-rise, the builder agreed to build townhouses.

Now, if you look at the townhouses, you will see that they have some special features. First of all, they are set back.

If I may point, they are set back from the waterway, which is erroneously depicted as being much wider than it really is.

They are set back. Also, they are set back with two-story height limitations, with four stories on 20th Street, or whatever that street is, over there. They are four stories there, and two stories here, with a very nice setback.

And this was a product of two years of litigation.

So 20 years have gone by. We thought this matter was closed forever, and it would never be reopened and we would never be here again facing the same turmoil that we had 20 years ago.

But Mr. Karp and his friends, who are out of town developers, have brought us this building here. And if you notice, the setback is not the same setback as on the other property.

And do you notice also that as the old Sunset Harbour developer promised us, "Well, we will plant some pretty trees here and then you won't mind all this concrete."

Over here, on this side here, this looks like they planted some trees for us on the city property.

In my research on our island entrance, I found that Mark's Cleaners had appropriated a great deal of public land for their parking lot and their areas. And it looks like -- Palau here has also built on the property line, up to the property line, and they have gratuitously given us back the public area there that has always belonged to our

entrance.

They have also mischaracterized our entrance here, and they have not really reflected the impact of this big high-rise on the houses on North Bay Road.

These houses on North Bay Road are selling in the millions, tens of millions of dollars --

THE CHAIRPERSON: Sir, we are going to do our best over here to -- to maintain the time limits. So we have given you a few extra minutes. If you can just wrap it up, please.

MR. INGRAHAM: Thank you. I am really appearing as an attorney for myself. I am not appearing as a resident. I am an attorney. I am a practicing attorney, and I think I deserve more than two minutes.

THE CHAIRPERSON: Well, you are hitting five, over five.

MR. HELD: Right. And we really -- we are really limiting the attorney representations to those that are representing groups.

MR. INGRAHAM: I think I made my

point.

My point is that Palau, despite all of the pretty talk, has not met the same standards that were established 20 years ago in the Sunset Harbour project.

And I also want to point out to you that this is going to be another example of a Walgreens on Pine Tree and Arthur Godfrey.

I think you all are familiar with that monstrosity. It was permitted by -- permitted, approved by the Design Review Board, and then when it was built, everybody was horrified, the way it sat back against the canal, and how ugly it is in that area.

Well, we got the same situation here. This area is so bad that when it rains, the water is two feet deep.

The City has permitted all these businesses, high rises, grocery stores, shops, parking garages, without mitigation from the developers. And consequently, this -- this is a gridlock here on -- for example, on Saturday evenings, busy section, it is gridlocked and we have to use the center section here, which is now crammed with cars

every day.

There has been no -- no consideration by the city planning in respect to us homeowners who live on these two islands and who have expensive properties.

Thank you.

THE CHAIRPERSON: Thank you very much.

MR. CARY: Kobi, could you please clarify if the scale of this model is 100 percent accurate, or all representations?

MR. KARP: Yes, this model is, and also, this model is laser-cut. So what we did is we took the CAD files that we have and then we laser cut it.

And just to be specific, you can see how this is -- this water body right here is about 120 feet wide, and you can put scales to it. You can measure it and it is very precise. This right here -- you bet.

MR. INGRAHAM: (Inaudible)

THE CHAIRPERSON: Make sure to talk into the mic, please.

MR. KARP: Yes, you are, but let me just --

You have to account for the quarter

inch at the bottom of the scales, the triangular scale -- yes, I don't want to cut your scale, but right here -- I will be more than happy also to share with you.

Okay. This is 50 here, and then here, is not.

Here, it is less, by four feet, okay, from the total height.

But I will be more than happy to send -- to give you my CAD drawings for the City and so forth, and they can check it and qualify it.

THE CHAIRPERSON: Thank you, Kobi.

MR. KARP: Because again, our intention here is -- in the trees and the vegetation we are representing, we cannot get a TCO or a CO -- and I am sorry I wasn't here for the fight with these neighbors, but these neighbors had a different zoning.

The zoning here was CD -- RM 3. We -- we have a 50 -- the code changed and our height changed and our FAR changed for this design. So what we did is we took the code and the setbacks and we met all of the setbacks, whether they are height and they

are FAR, and we have met them, greet them and beat them.

Furthermore, what we did is we decided to do this project with our residential component so that the commercial element on it is on 20th Street and on the corner.

So our -- and then here, you can see that these townhomes are about 65 feet high in the back and they are about 25 feet high in the front, and we are 45 feet high on the water. So you can see that the heights are there, and we are not trying to misrepresent anything.

On the contrary, if you come and look at the -- at the map, you will see that the laser cut -- we took the public works for the bridge, for the gatehouse, and we gave it to the guys who make the model, and that's what they cut, and then we took great care to do all of that.

Again, you can see also that we even represented here without our seawall being built. So once our seawall will be built, it would create even a better -- so we took great care to really tone down any kind of

thoughts.

And also, the last time when we came in front of you -- sorry to interrupt you -- you said you wanted the renderings in a certain angling. So we rendered the -- rendered in a certain angle so the buildings look like what they would really look like at six feet.

THE CHAIRPERSON: Okay. Thank you.

MR. KARP: So sorry for the very long answer.

THE CHAIRPERSON: Please state your name and address.

MR. BRANDON: My name is Jeff Brandon. I live at 2130 Bay Avenue, and I have since 1987, and I speak as a resident.

Today, I talk about the facts as Mr. Kobi --

The project is contextually intensive. Not my words, those are Chad Oppenheim's. You remember him last time. This project does not fit on this property. It is a fine project, it is designed beautifully and it has some wonderful materials. It will be some place a very much credit to it, but not

on this piece of property.

One of the views --

THE CHAIRPERSON: Please take the microphone with you, sir. If you are going to talk while walking, just take the mic, okay?

MR. BRANDON: That particular -- I showed to you because it is part of Mr. Karp's package in the previous iteration to plans. I think it is also current with what we have today.

We have not seen those plans until they were made available to us, nor was the model.

But what I show you that is -- that is a mass of building that occupies all of this site, with minimal setbacks on the east, which is the biggest concern I have today, which is the Sunset Drive corridor. The building masses right up to the actual setback. There is actually no given thought to what you guys have as your Miami design criteria.

And I tried to read it to you from yours, that "buildings in the bay front

should provide light breeze corridor to the ocean and the bay."

This does not -- have little of that at all. What you are being told here today is that there is a massive effort that has been made over the Sunset Island bridge. It is not the case. It simply does not happen.

You are also charged with responsibility of building's pedestal should not form a continuous sheer wall.

If this doesn't form a continuous sheer wall for the entire width of the property, then what does?

It is a mass of building. An attractive building, nobody can say that Kobi has not designed a beautiful building. But it is in the wrong spot.

You are also -- "new construction, if taller than neighborhood buildings" -- and this is taller -- "should be terraced to maintain the perception of compatible scale."

Those are your design criteria.

Mr. Pathman would have you believe that scale is perfectly in compliance with the neighborhood. I object to that, and I

disagree with that. The residents are here today not because we support this project. Those people are here today because they want to see something that is compatible, something that does have the sensitivity and the context of the entire neighborhood, something that picks up -- you folks speak -- and I am not an architect, but you talk about vocabulary.

You talk about appropriateness of plans. This is an absolutely critical piece of property. It is the entryway into a neighborhood. It is not just the entryway to our islands. It is the entryway to Sunset Harbour, which is going to be one of the most dynamic places to be over the next 20 years. I am absolutely privileged to walk by this property every day.

We support this project. We have never opposed this project. We just don't support this project as it is currently being presented to you.

Thank you for your time.

THE CHAIRPERSON: Thank you very much.

MR. PATHMAN: A couple of quick

comments. It is easier if we go one on one.

MR. KARP: Just a quick comment. The rendering that is being presented to you is being presented from model --

THE CHAIRPERSON: I am very aware of that, thank you.

MR. KARP: Not to scale.

THE CHAIRPERSON: Good morning. State your name and address.

MR. BIENSTOCK: Terry Bienstock, president of Sunset Islands III and IV Association, resident at 2312 Bay Avenue, Sunset Island III.

"Those who cannot remember the past are condemned to repeat it."

How often have we heard that?

The fact that something can be built or meets some technical requirements doesn't mean it is the right thing for the right place. We have seen that over and over again on Miami Beach.

The mission of the DRB is to weed out those projects that are out of scale with the neighborhood, and this is one of them. It negatively impacts our residents, both

1 financially as well as aesthetically.
2 We have to see this project every
3 single day, multiple times a day, because it
4 is -- it now becomes our front entrance.
5 In Palau, we believe you are looking
6 at an arrogant project. Its design, mass,
7 and height simply overwhelms everything
8 surrounding it, even the model, which we show
9 is not in scale. But regardless, it gives
10 you enough of an idea.
11 It is surrounded on three sides by
12 single-family homes. No one we have spoken
13 to over the past year while this has been
14 evaluated has looked at this project and
15 turned to us and said, "You know, this looks
16 right for this area. This looks right."
17 People have said, just as Jeff Brandon
18 said -- by the way, Jeff is a developer.
19 This is not somebody -- somebody who's
20 against development. This is what he does
21 for a living, builds projects like this.
22 No one has looked at this and said,
23 "This looks right."
24 Some people have said, "This is a nice
25 building, but it is the wrong place."

1 Some people fear that it won't be
2 built so there will be just emptiness. But
3 that is not the criteria for this group.
4 Some fear that there will be, you
5 know, warehouses built there, or something
6 worse could be built there.
7 You heard Mr. Cary talk about what
8 could be, what could have been. It could
9 have been a high-rise.
10 Well, that is not the criteria. It is
11 not what could have been. It is what is and
12 what will be.
13 And we know what it is today because
14 it is already constructed. All three, four
15 sides are finished. That is what they will
16 look like for the next hundred years, or
17 50 years.
18 What we want is a project in the
19 center of it that enhances the neighborhood,
20 not detracts from it, not diminishes it.
21 You are looking at a project that is
22 five and then six stories with the pool deck
23 that simply dwarfs all of the properties
24 around it, the single-family homes on three
25 sides -- and even the commercial on the

1 fourth side is only two-story commercial.
2 Even the Comras building next to it is only a
3 one-story, one and-a-half story commercial.
4 Now staff has said there is no adverse
5 neighborhood impact. I have to say, after
6 working with staff and being at these
7 meetings, that conclusion is simply
8 misdefined.
9 Let me just say this: The conclusion
10 that there is no adverse neighborhood impact
11 was reached by staff before they ever spoke
12 to anyone in the neighborhood.
13 They will confirm that the first time
14 we met with staff, they have already issued
15 their report saying no adverse neighborhood
16 impact. They had not met with one person in
17 the neighborhood.
18 Second, is they said this -- this
19 doesn't have a problem with historic bridges,
20 and their only report that was issued in
21 1996, approved by the Commission -- and is
22 the governing law in the area of the historic
23 neighborhood, the historic bridges and the
24 Sunset Islands -- they issued a report saying
25 it meets all criteria, and admitted to us

1 that they didn't even know -- the director
2 didn't even know that this was a
3 historically-designated bridge, that it was
4 adjacent to it. Didn't know.
5 So the fact that today, staff is
6 saying that this meets the criteria to the
7 residents has -- carries very little weight.
8 The meager changes that occurred --
9 you all were pretty clear at the last meeting
10 in August. Go back with the residents, take
11 into account the mass and scale and the
12 height issues that the residents have said,
13 talked about, and do something about it.
14 And that's precisely what didn't
15 happen. We never heard from them again until
16 Friday, and you all know what that was about.
17 That was just for appearances's sake. They
18 didn't meet with us, they didn't reach out to
19 meet with us. Instead, they worked to give
20 minimum lip service to what staff requested,
21 because they didn't even do everything staff
22 requested, they did some of what staff
23 requested, and hoped they could slide this
24 through.
25 After consultation with three credible

architects, you have seen their reports, land planning engineer and several developers who live in our islands, we met with staff and proposed what we had proposed before. If you look at this project, the reason we are in this fix is because they created all this interior space, instead of making it on the exterior.

The secret garden. Had they put the garden on the outside, we wouldn't be here because they would be able to set back the building in a rational fashion to reduce the mass and scale and have some step-in that would make a very big change in the appearance of the building.

Instead, they decided to benefit the handful of residents that live there, to the detriment of the hundreds and hundreds of residents who live all around it.

Staff said to us, "Can you put something in writing? Can you put a proposal in writing? We don't think what you are asking for is unreasonable. And we will send it to the Design Review Board," which we did, and then they did, and you have it in front

of you. And others will talk about that.

But I just want you to hear one thing: When you hear our residents speak, don't just listen to what they say, but listen to who they are. These are not crazies who are coming in here to say, "Oh, all development is bad, we don't want to -- we don't want anything" -- it is not true. You are going to listen to architects and engineers and lawyers and doctors and developers, and listen carefully to what they have to say.

Thank you.

THE CHAIRPERSON: Thank you.

MR. PATHMAN: Mr. Chairman, I have one question of Mr. Bienstock.

You referred to a report concerning the historic bridge, I believe.

THE WITNESS: Yes.

MR. PATHMAN: Were you referring to the historic bridge designation report for the Sunset Islands bridges I, II and IV?

MR. BIENSTOCK: Yes.

MR. PATHMAN: Okay. And you indicated that staff has not adequately looked at and examined the issue in relation to our

building and the bridge; is that correct?

MR. BIENSTOCK: No.

MR. PATHMAN: What did you state?

MR. BIENSTOCK: What I stated is that when we first met with staff and they had already issued the report supporting this project, the planning director informed us that he was unaware of this report and didn't know the bridge was historic.

MR. PATHMAN: Are you aware that the author of this report is the assistant director, Mr. William Cary?

MR. BIENSTOCK: Yes. But I am talking about Mr. Lorber, who is the head of the Planning Department, who issued the report. Mr. Cary was not involved in the report to the Planning Board. It was Mr. Lorber.

MR. PATHMAN: But you understand that Mr. Cary is the assistant director and has been involved both at Planning Board level and today at the DRB, and the report was drafted at Mr. Cary's discretion to give to the DRB; is that correct?

MR. BIENSTOCK: That is obvious.

MR. PATHMAN: And are you aware of a

paragraph in this report that states the following -- I would like to read this into the record -- "Design combines historic designation, promotes an understanding of such design features and does not require or recommend reproductions of period architecture. To the contrary, compatible contemporary design is encouraged for new construction and additions."

MR. BIENSTOCK: Are you aware of where it says that "renovations -- placing a boxlike structure" – on Page 22 – "compatibility with the character of the historic -- island neighbor which positively influences -- placing a boxlike structure in a neighborhood of high quality, articulated buildings may not be appropriate. Renovations or additions and structures should respect the mass of existing buildings and character."

And those types of statements are throughout the historic designation report.

(Applause.)

MR. PATHMAN: I am actually glad that Mr. Bienstock read that because it just goes

to show you that he is not understanding what he is reading in this document.

Mr. Cary is the one who authored it. He has reviewed it. He has applied these standards to our application, has given us a glowing recommendation.

It is not a boxlike structure. It does not meet that criteria he just read. It is more in line with what I read.

And you have Mr. Cary here today, who can certainly answer these questions for you, and you don't have to take my word or Mr. Bienstock's word.

But the truth is, it is a well-designed building that is compatible with the neighborhood and compatible with the bridge.

MR. BIENSTOCK: This report is not even referenced in the staff report. It is not even mentioned.

THE CHAIRPERSON: The entire Board did receive a copy of that.

MR. BIENSTOCK: At my -- at my submission.

THE CHAIRPERSON: And we did all look

at it and read it. So I mean, that is all I can at least offer at this point. We are aware of it. I read it. I highlighted it. I -- the same questions you both read off. So --

MR. PATHMAN: I think it is convenient when you have the author of the article, who is also the assistant director who wrote the recommendation.

THE CHAIRPERSON: Okay thank you, both of you. Thank you.

Next, please, state your name and address, thank you.

DR. KADIYALA: Kumar Kadiyala, 2111 Regatta Avenue.

I live in direct sight lines of the proposed project. My wife and I are both surgeons. We moved here eight years ago and stumbled on this wonderful neighborhood, and have had the privilege of raising our two and-a-half year-old twin sons here.

This is my first utterance at a public meeting in this forum, and to be honest, it may be my last because I take offense of telling our president of our homeowners

association he doesn't quite understand what he is saying -- he is reading.

We are here as residents of our neighborhood. We are all professionals of this neighborhood, giving our own time for the better benefit of our city.

I will leave the details to Mr. Bienstock and other developers within my neighborhood. But I echo the comments they have said in multiple meetings in the past and will be saying in the future, that the nature of the project is a wonderful idea.

All of us welcome a development of this site, particularly since this is a once-in-a-generation project that will be here for decades and decades to come.

However, I echo those concerns as to size, scope, scale, and density that Mr. Bienstock had so eloquently outlined in numerous other meetings.

The issue is, it is a neighborhood. It is not purely a business aspect, and as someone who drives up and down Alton Road, this is our one chance to make a visually appealing entrance to the historic South

Beach neighborhood.

THE CHAIRPERSON: Thank you very much.

Please, next person -- just -- good morning.

Just state your name and address, please.

MS. HOLLANDER: Thank you. Thank you for the opportunity to be here.

My name is Susan Hollander, and I live at 1450 West 21st Street, which is in direct sight line of the project, of the Palau project.

I am pro-development, with limitations. I have to be. By day, I am a real estate advisor, commercial realtor and real estate attorney.

By night, I teach real estate law in the business school of FIU and at NYU.

Winston Churchill has said that "We shape our buildings, and thereafter, they shape us."

I ask that you please keep this in mind as we reshape the future of what will happen in this neighborhood.

It has been mentioned by both the

1 developer and by the residents that we are at
2 the gateway to our neighborhood. It is not
3 only the gateway, but it is the only way in
4 and out unless you want to swim there --
5 which I did consider when the new owner of
6 the property rented the property to a movie
7 company for several months that blocked
8 entrance with their major trucks and told me
9 not to talk on my cell phone even when I
10 walked by because it would disturb the movie
11 that was being filmed there. I needed to get
12 home and I was talking on my cell phone.
13 But that was just another use that
14 this current owner is using in the interim
15 that has caused a disturbance to the
16 neighbors, and that is not even the permanent
17 use.
18 Another issue is that they have
19 mentioned the historic bridge. The report
20 that was written by Mr. Cary that -- we
21 understand or we don't understand, but I
22 think something that the developer
23 understands very well is that the historic
24 bridge on the low scale of our neighborhood,
25 adds value to their project. And that's why

1 they want to pack as many units as they can
2 facing our neighborhood that are small scale,
3 because it is pleasing to view that.
4 And like I said, I am pro-development.
5 I want a beautiful project there, but I don't
6 want the benefit to that developer at the
7 detriment to all the homes and all the people
8 that live on our island.
9 So that addresses massing and scale
10 and traffic, to some extent. I am still
11 concerned about the three parking spaces that
12 I understand -- and correct me if I am wrong
13 -- will be on 20th Street, because those are
14 three spaces, but as we know on Miami Beach,
15 people take the liberty to park anywhere they
16 see a place that they could fit more than
17 three cars in. And as I said, it is the only
18 entrance in and out. Not just for us trying
19 to get home and make dinner, but for
20 emergency vehicles that come in and out,
21 police cars, anybody that is trying to get in
22 and out -- that is the only way. So I am
23 concerned about traffic and those three
24 parking spaces.
25 I am concerned about the setback from

1 the water. When we see the townhomes, we see
2 setback -- it is a larger setback, and the
3 townhomes are only two stories and they are
4 terraced.
5 This is a block. It might be a
6 prettier block than the townhomes, but it is
7 still a massive block, massing, and we just
8 see a big square across from us.
9 Something else that I am concerned
10 about is crime reduction. They say that they
11 are going to have a public walkway that I
12 guess will empty itself directly onto our
13 bridge. So again, they are using our park
14 and our bridge -- which I realize is a public
15 park -- our park and our bridge and our low
16 density to increase the value of their
17 property, while not really caring that much
18 about what we have to say.
19 And I am sure we have all been to a
20 lot of hearings, but we have been here -- we
21 have been fighting tooth and nail, basically,
22 because it has been a very slow progress to
23 get any -- any reductions or any setbacks
24 from the developer. And if we weren't here
25 today, and if we hadn't been here for the

1 past, I guess, six or eight months, we would
2 not have had anything happen.
3 But I just ask you, please keep in
4 mind that we do shape our buildings, and
5 thereafter, they shape us. And today, each
6 of you has the opportunity to shape the
7 future of not only how the residents will
8 experience living on Sunset Islands, but also
9 how people who enjoy using the canal will
10 experience, as well.
11 Thank you for the opportunity to be
12 here.
13 THE CHAIRPERSON: Thank you very much.
14 MR. PATHMAN: I don't have any
15 questions, but I do have a couple of
16 comments. I just want to clarify the record
17 on a couple of things; one, with regard to
18 three parking spaces -- we have met
19 extensively with the City and Public Works
20 and the Parking Department, and obviously,
21 they control the parking spaces. Mr. Cary is
22 aware of that. We did get them to eliminate,
23 I believe, one space, but they are not in
24 agreement of agreeing to eliminate the other
25 three spaces. It is not something we

control. They want them there. They feel it is necessary. Maybe in the future when the building is built, they might reconsider, but it is not within our control.

The other thing is that the public walkway that was referred to -- that is a requirement under the shoreline review, for it to have a bay walk. We would prefer not to have it, but -- because it is something we are going to be landscaping, encroaching on our private property -- but it is required for the public benefit as well as the island's benefit.

THE CHAIRPERSON: Thank you.

MS. HOLLANDER: If I can just address that -- I don't mind if they have it. I just want to know what type of extra stops they are going to do to abate crime and homelessness.

THE CHAIRPERSON: Thank you.

MR. HELD: Mr. Chair, I think just to further clarify the record, those three spaces are on Sunset Drive and not 20th Street.

THE CHAIRPERSON: Yes, thank you.

Next is --

Please state your name and address.

MR. SAMUELS: Yes. I am Michael Samuels. I am at 1830 West 24th Street on Sunset Island III. I have lived there for the past 12 years.

My story is that I joined the Board of the homeowners association of Sunset Island III and IV several years ago and served for a number of years on the Board, eventually as the vice president.

The reason I joined the Board was virtually solely because I felt that the entrance to our islands was -- was an eyesore. It was a very deficient place in terms of the appearance of Mark's Cleaners.

The appearance of the parks -- it was like everybody said, the gateway to the neighborhood, and that area needed attention from our homeowners Board. So we did what we could for several years, made little progress, Mark's was not going anywhere.

And now, we have a completely different opportunity, and it is incredibly exciting.

And I want to say that I am in favor very much of developing this project. I want Mark's gone. I want something that is architecturally sensitive and beautiful and sophisticated and going to enhance the entrance to our islands and the entire neighborhood. And I do think the developers have made some concessions in that regard, and I think we are partway there. And the key is to get the rest of the way there.

I am not going to go over the details. I think Terry did a great job, and I think Jeff Brandon did, too. I think we want less massing. We want more terracing. We want better setbacks. We want better context, and we are partway there. The key is to finish the job and to get the project right. This is our one chance, and this is what our homeowners' association and people like me have been dreaming about for years. So I hope the Board takes this very seriously. Thank you.

THE CHAIRPERSON: Thank you very much.

Just state your name and address. Thank you.

MR. CAPORALE: My name is Robert L. Caporale, C-A-P-O-R-A-L-E. I live at 1710 West 23rd Street, which, as you know, is on Sunset Island III.

I am a member of the homeowners association, but I am appearing on behalf of myself and my family.

We are responsible, caring and tax paying citizens of this city. We are not obstructionists, and we bring to you and to your attention our feelings about this project and whether or not it is compatible with the neighborhood.

And I understand why counsel for an applicant would express the opinion that it is compatible with the neighborhood, but I suggest to you to look out at the neighborhood, and I suggest to you that no one here from this neighborhood thinks that this project is compatible.

You have heard others describe the site as unique, important, a gateway to the Sunset Harbour neighborhood, the entire neighborhood, not just our neighborhood, our residential neighborhood.

1 And they also describe this project as
2 a residential project. Well, I happen to be
3 a lawyer, and I suggest to you that those --
4 that that terminology is a bit deceptive,
5 because what we have here is a developer who
6 intends to build a condominium project, sell
7 those condo units, and they will be gone.
8 They are not a neighbor. They are not a
9 citizen of this city. They are a developer
10 for profit. I understand that. They have a
11 right to attempt to do that. But they do not
12 have a right to come in and impose upon this
13 community and this neighborhood a building
14 and a structure that is not compatible. And
15 I suggest to you that notwithstanding the
16 staff report, you, as Board members, have an
17 obligation and a duty that I hope you will
18 apply and not just rubber stamp a staff's
19 report. We wouldn't need this Board if that
20 is all you were going to do.
21 So I ask that you apply your criteria
22 carefully, specifically to this project, and
23 keep this neighborhood in a manner that saves
24 its value, makes it safe, makes it pretty,
25 and keeps our families and our neighborhood

1 the way it should be, and not to be imposed
2 upon by this proposed development.
3 Thank you.
4 THE CHAIRPERSON: Thank you very much.
5 Good morning.
6 MS. LIEBMAN: Good morning.
7 THE CHAIRPERSON: Please state your
8 name and address.
9 MS. LIEBMAN: My name is Nancy
10 Liebman. I live on Belle Isle, 9 Island
11 Avenue. I am here today as a neighbor. I am
12 here today as a preservation activist in this
13 city for the past 32 years, and I was a
14 little concerned about what is going in my
15 neighborhood just around the corner where I
16 live, work, do have children who live in
17 Sunset Harbour. So I am very concerned about
18 what this is.
19 I was here -- I don't even know how
20 many years ago when the towers were built.
21 We were all horrified. I didn't even live
22 near there, but to see that going up on the
23 waterfront -- those were the dark days of
24 Miami Beach. That is the best way I can
25 describe it. There was nobody, none of you,

1 nobody like you looking to see what was
2 happening. The only way it could be stopped
3 was to go to court. And fortunately, the
4 people of Sunset Harbour did that.
5 It was a long battle. We all watched,
6 and we were proud that the neighbors were
7 able to express their displeasure and have a
8 change made there.
9 The staff report concerned me. I love
10 William Cary. He always does the best. But
11 you or someone called Palau an icon for the
12 neighborhood, the Sunset Harbour
13 neighborhood. That is not an icon. It is
14 what you are hearing described here. It is a
15 piece of concrete that is going to have 20 --
16 is it 20 now -- it is hard to keep track
17 because it keeps changing. It is a piece of
18 concrete that is being built there for
19 profit. Who knows what it will actually turn
20 out to be.
21 One of my side endeavors is chairing
22 the Miami Beach United, which is an
23 organization that formed last year to protect
24 the rights and the pleasures of living here
25 and having a quality of life as a resident.

1 We have passed a resolution which is going to
2 be heard in November at the Land Use where it
3 requires that these kinds of commercial
4 projects, residential in nature or whatever
5 they are, that are out of scale with the
6 residential area, such as Palau, will be
7 reviewed for the height, the mass, the scale,
8 the sheer walls, the lack of visuals going
9 toward the water, all of those arguments.
10 You have been there before because
11 Belle Isle -- we argued the same things when
12 the project was going on the north side of
13 the Venetian causeway. This is residents
14 trying to work with residents, which I think
15 you all are.
16 And I would urge you to consider some
17 of the things that are just going to be
18 thrown into this neighborhood. Sunset
19 Harbour is an emerging neighborhood. It used
20 to be nothing but a tow yard. It has
21 improved. It's great. Don't let that energy
22 -- don't let that energy stop. Don't let
23 projects that are out of scale and not good,
24 as they did in the dark days.
25 Thank you. Very nice to visit with

you. I have never seen all of you together.

THE CHAIRPERSON: Thank you very much. Good morning.

MR. URSTADT: Good morning. My name is Charlie Urstadt, and I am a member the Planning Board. I am the chairman of the Miami Design Preservation League. I am on the Board of Belle Isle Residents Association. I live in Belle Isle, but I am not here in any of those roles right how.

Hi, Wayne. How are you?

MR. PATHMAN: Hi, Charlie. How are you?

MR. URSTADT: I spent a lot of time with Wayne because -- and I have many hours spent on this project because of the Planning Board. And I thought I would bring some of my experiences in that role here and maybe help you all in what you are facing right now.

It is tough. I mean, I have sat up there, sat right there where you are, and this project went on for hours and hours and hours. I guess I heard 14, and then I heard another six, or something like that. So I

have a lot of knowledge and experience with what this is.

And our criteria as Planning Board members is obviously different from what you all are dealing with, and I think when we went through the details of this project, we all felt -- I mean, the consensus that I gathered on the Board was that this was a great project in many ways and could do many wonderful things for the Sunset Harbour neighborhoods. And that is a plus for Miami Beach, without a doubt.

Mark's is gone, and the sad structure next to it is not a good thing for the whole city. So having this property improved is fantastic.

And it is important to you, obviously, to balance the rights of the owner of the property with the greater good of the city, and how that will be affected. And I think on the whole, having a new residential condominium designed well in that spot is going to be good for everybody.

But you obviously have very strong powers in the sense that the powers that you

have to impose on the applicant in terms of design will make a significant impact on this project, and I think that is something that if I were in your position, I would obviously take very seriously.

Nancy, former Commissioner Liebman, just referenced the Belle Isle project across the street from the Grand Venetian. And in that situation, the Design Review Board imposed some very stiff standards, standards which, in fact, wound up reducing the square footage of the property. So you know, you do have strong powers, and you need to use those wisely.

And I will be very brief, Mr. Chairman. I know I am running out of time.

My point, I guess, is that you have really a company of different possibilities and ways of dealing with this. But if you look around, you can see the residents are very concerned about this.

And I found that every time there was further discussion amongst the residents and further criteria, other concerns expressed by the Board, this project improved.

And so there is no harm in listening to what is being said, making your own comments and suggestions, letting the developer know what you think, and then continuing it, if need be.

So that is my -- my sage advice, and I appreciate your time.

Thank you very much.

MR. PATHMAN: Mr. Chairman, I have a couple of questions of Charlie, if I may.

Charlie, you indicated --

MR. URSTADT: Remember Bea Kalstein? Does anybody here remember Bea?

Wayne sort of hangs around and look at you as you're talking like see did. She was wonderful.

Thank you, Wayne. Sorry. You are wonderful. Sorry.

MR. PATHMAN: Well, I am not sure what that meant, but I guess it was a compliment.

MR. URSTADT: She was great.

MR. PATHMAN: You mentioned you are a member of the Planning Board, and you are currently serving on the Planning Board.

MR. URSTADT: That is correct.

MR. PATHMAN: And you recall our presentation and that there was a unanimous vote, one of which was yours.

MR. URSTADT: Correct.

MR. PATHMAN: And you recall you had mandated that we do a few things. You put a few conditions that imposed on the project in order to obtain a vote; is that correct?

MR. URSTADT: That's correct.

MR. PATHMAN: And we did all of them.

MR. URSTADT: You did a great job.

MR. PATHMAN: And since then, we have even modified the plan even more.

MR. URSTADT: That's great, and apparently, you need to do more because the residents seem very upset.

MR. PATHMAN: Well, it is not about doing more. We may never be able to satisfy everybody, because I think we have done about everything we have been able to do.

But my concern is that you are here -- you are here today speaking again, although you already have given us your directive when you sat on the Planning Board --

-- I have not finish my question --

MR. URSTADT: What they are facing here on the Design Review Board --

MR. PATHMAN: But I have not finished my question.

-- and we finished and we did everything that you asked of us when you were on the Planning Board. And many of these same issues, everything that you have heard today was heard in front of the Planning Board. Wasn't that correct?

MR. URSTADT: I think the design is a different criteria than what the Planning Board was considering.

MR. PATHMAN: The design may be a different criteria, but everything you have heard today was heard in front of the Planning Board, wasn't it, for the most part?

MR. URSTADT: Not necessarily. There were other people who spoke, and that is not necessarily true.

MR. PATHMAN: Can you tell me what you heard today that is different?

MR. URSTADT: Well, I think Terry Bienstock made some great points, and I think some of those things were different. I think

one of those problems that there has been with this project is there has been a very contentious atmosphere, and a lot of that has to do with the kind of cross-examination that is being done, like here. So I would suggest that a little more conciliation would be probably in order, and might make a big difference.

MR. PATHMAN: Well, I appreciate your sentiments, but unfortunately, I have an obligation to make a record in case there is an appeal, and that is why it is necessary to cross-examine.

MR. URSTADT: Do what you have to do, Wayne.

MR. PATHMAN: My issue was that you voted, you approved it, and we met all of the conditions that you put upon us; is that correct?

MR. URSTADT: As I said on the Planning Board.

MR. PATHMAN: Thank you.

THE CHAIRPERSON: Thank you both. Good morning.

MS. LALAND: Good morning. Jackie

Laland, 1515 West 22nd Street.

I'm -- I think I have been before you folks before, spoken on -- on behalf of the residents before.

I am also, you know, a member of the association, an officer of the association.

I want to call a spade a spade, you know?

It is real simple. You look over there, you can see the mistakes that were made by the City. Those big two aces of spades right over there, you know, look, are completely out of character with our building.

But that is not the project we are talking about today. We are talking about one that is to be built, one where you folks specifically gave a directive to those developers, and they specifically ignored your directive, which was to get in touch with us folks, the neighborhood, and to try to work it out. Because we want to work it out. Everybody has told you we want to work it out. They haven't, and they are not going to, and they are not going to do anything

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unless you guys tell them what to do.

And so that's your responsibility. And I know how hard it is to have a very serious responsibility, we just had it in the Budget Advisory Committee. We have -- we had to go and we had a lot of lobbying where we had to tell folks that the best thing for the City of Miami Beach was to enact a better pension plan so that the residents of this city would be better off.

It wasn't easy. We had a lot of people that didn't want us to tell the truth.

And we are asking that you tell these developers the truth, because unless you tell them that they have to be compatible with the neighborhood, that they have to work with us, they are not going to do it.

We tried, you know? And we are reasonable people.

So once again, I ask you to please exercise your powers; as Charlie said, to please understand that we do not feel that this building, as it is proposed now, is compatible with our neighborhood, but we do sincerely believe that it can be, if you give

those developers that directive.

I thank you very much for your service to the City.

THE CHAIRPERSON: Thank you very much.

MR. PATHMAN: Mr. Chairman, I have no questions, but I do have a couple of comments I would like to make the Board aware of.

As noted in the staff report, we met and have tried to meet many times with the Sunset Islands Homeowners Association.

And most recently -- I think it was about three weeks ago -- my client was contacted by Mr. Luria, who is a Board member, and asked to meet.

My client said he would be happy to meet. He would like to bring our project manager, which is Matt Cicero, who is sitting over there, to meet with them.

They rejected that meeting. They only wanted to meet with our principal, Mr. Meier Zabernick, without any other representation.

I was not going to attend the meeting, but the project manager was going to be there.

They refused to meet with us. And

then there was some dialogue over the last few days about meeting -- which again, they indicated that there was no point in meeting if we are not going to make any changes.

We have made all of the changes that the Board has asked us to do, that the Planning Board has asked us to do, and that staff has asked us to do.

But our meetings, for the most part, have been contentious. They have not been productive, and there is a whole other element that we may get into as to what those meetings really entailed.

Unfortunately, they chose to tell us who we should meet with. I mean, who could meet -- who could attend the meeting, which they said only Mr. Zabernick can attend. Mr. Zabernick said, "I need to have my project manager there. He is intimately familiar with the project. He knows all of the details, and it will be a more productive meeting if he is there."

And they refused, and there are e-mails or texts that corroborate that. So I want you to be aware of that. It was not

that we were saying, "We will not meet with you." We did try, and they rejected it.

In addition to that, we have -- we have tried very diligently to incorporate -- they don't give us any credit, but there are over 30 changes from the time that we filed this application before the Planning Board to today. Mr. Cary is aware of those. He has taken those into consideration, and many of the things that you are hearing are not accurate. We have made significant changes to this project.

THE CHAIRPERSON: Thank you.

Good morning. Please state your name and address.

DR. IVERS: Good morning. Hi. My name is Dr. Robert Ivers. I live at 2122 Bay Avenue, Sunset Island Number IV. I have lived there since 1976. I was born and raised here in Miami Beach, went to North Beach, Nautilus, Beach High. I have had my practice on Lincoln Road for 42 years.

There has been a very serious problem going on, on 20th Street, which happens to be the main entrance over here. I can't give

you the exact date, but in particular, was -- last week, we had that torrential rain that lasted about 35 minutes in there.

I do some work with the Weather Bureau because I am a ham radio operator and I am on their emergency net in there, and I am part of their spotter program.

At that time, Tremont Towing said that they had the largest money day that they have ever had towing cars out of there. It was impossible to get from Alton Road, from the east, and into --

THE CHAIRPERSON: You have to stay on the mic.

MR. HELD: Yes, you do, sir.

DR. IVERS: Sorry.

This is the entrance right here --

THE CHAIRPERSON: I don't think it is -- turned on.

I don't know how to --

DR. IVERS: All right. And I -- and the entrance over here. I went back -- I live at the end of Sunset Island. I put on my foul weather gear, walked over. We measured 34 inches of water in there in less

than 35 minutes -- of rain.

While I came back over here, two police cars were being towed out of there. It was impossible to leave or any -- I looked over here, and now the same problem is going on over at the Fresh Market here.

Now, I have heard before this Board that -- that everybody said that they did traffic studies, height elevations and everything else. If you are going to have this whole project back here asking for another five feet elevation in here, another set of steps -- up over the third step of Publix, okay, that went up over there, all right. In the middle of this whole thing, the movie production company for -- Tremont -- and some of you may have seen it, it is on cable TV. I forget exactly what channel was on there -- was a huge trucker which came over there and had to tow Tremont out of there.

Okay?

Now, here, we have over here, okay, on an -- and this was not a named storm. Forget about during a hurricane or a real torrential

tropical storm. This was just one of our 30, 35-minute downpours.

A car is going to enter here because it is flooded from approximately the -- about ten feet in from where Mark's is, all the way down in here, okay?

Part of it is when I looked down at your new garage, which I guess is owned partly by the City, I don't know -- the north entrance was blocked off. It was flooded, you could not enter that garage, and that's the City's project.

So whoever did the traffic studies in here and height elevations in here -- okay.

Now, where are they going to park if they can't enter here because their cars are flooded out? Okay?

THE CHAIRPERSON: Thank you for your comments.

MR. KARP: Just as a side note to Dr. Ivers, right now, obviously, the site that stopped construction -- just stopped, and the water from Mark's Dry Cleaners is running into the public right-of-way.

Our project is designed to take all of

the water, hold it on our side, and we maintain it on our side. So that will alleviate any water that comes up on our side, and we have the drainage contained on-site. Thank you.

THE CHAIRPERSON: Thank you.

DR. IVERS: In response to Mr. Karp there, I talked to the general construction manager up in Lakeland, Florida, for Publix in there. They said they have come before the City approximately five times. The City says, "We cannot raise it anymore."

The problem is there, and that's it. Okay?

In particular, I have -- there, I saw the flooding of the garage. I went over to the manager of Publix, who had six cars trapped up -- upstairs, up there, and they were putting food that was defrosting back in there because there was no way that the cars were coming out. They actually blocked the entrance and exits to Publix in there. So --

THE CHAIRPERSON: Thank you.

DR. IVERS: -- how are we going to enter in there?

Where are we -- they going to park?
THE CHAIRPERSON: Thank you.
DR. IVERS: They are either going to stack up on Sunset Drive --
THE CHAIRPERSON: And next, please --
MR. PATHMAN: If I could just add about that parking issue and the flooding -- we have mechanical parking, so cars are allowed in there.
DR. SINGAYA: Good morning. My name is Dr. Singaya. I live right across from the project where it is going to be happening. It is 1410 West 21st Street.
I welcome the project. It is going to clean out the whole neighborhood, which is a plus thing. But my concern is, it is surrounded by three residential in the behind and two sides. It is an all residential neighborhood. So I think residents should be heard about the height, because if it is going to stand out above all of the structures around it, it is going to look odd. And I think that's one of the major concerns, that it should match the adjacent structure, at least the Sunset Harbour

townhouses. It shouldn't be bigger than that. So that's my concern. Once you build, you can't take it away, so you have to restrict it right from the beginning.
So I think that's my concern, and I live right behind it. You know?
And if you look, you know, all of the houses here on the island are, like, a certain height. I mean, it is going to overlook all of the -- over the structures, and -- but it is going to be the only -- highest structure in that neighborhood on that line, on the whole road. And my concern is, it should match the adjacent structure, at least the Sunset Harbour townhouses.
THE CHAIRPERSON: Okay. Thank you for that, presenter.
MR. PATHMAN: But I do have a couple of comments.
THE CHAIRPERSON: Mr. Pathman, were you saving your comments for rebuttal?
MR. PATHMAN: Well, I think, like we did in Planning Board, it was easier --
MR. HELD: But you are not doing cross-examination, so maybe you should just

hold it.
MR. GIBBS: I have no problem with him doing this in place of rebuttal. If this is in place of rebuttal, that is fine.
MR. PATHMAN: I am trying to be informative and correct the record.
MR. HELD: Add it to your list.
MR. PATHMAN: That is my list.
THE CHAIRPERSON: So Tucker and Kent, are you planning on --
MR. GIBBS: There are some more people.
THE CHAIRPERSON: Please, let's step up.
Thank you.
Just state your name and address.
DR. LENS: My name is Dr. Olga Lens, and I live in the house that is -- not in the island, but it is in the corner at the entrance of the island.
I am not going to repeat all of the concerns of these -- of my neighbors, let's call them. But I have -- want to tell you that I feel that my house is the most affected from all of these projects, because

I live just across the street where all these things is going -- this drama is going to develop.
So I am not going to go into it, into this, but I want -- I feel like I am going to have these people, the condominium, as someone has called it -- very properly, in my opinion -- sitting in my parlor, because I -- it is going to be a very narrow space between them and I.
I think that the project is very nice. It is beautiful, it is fantastic, but it is going to affect the tranquility in my house.
And besides, I want to express -- express my public appreciation to Mr. Terry here, who has given me the opportunity to voice out all these concerns, which are my neighbors', which are mine, too. It is okay.
Thank you very much.
THE CHAIRPERSON: Thank you very much.
DR. LENS: I hope that everything is going to work out.
MR. DELVECCIO: Good morning.
THE CHAIRPERSON: Thank you.
Good morning.

MR. DELVECCIO: Good morning. Frank Delveccio, 301 Ocean Drive.

I think there are two questions of the Board.

MR. PATHMAN: Excuse me, Mr. Board members, before Mr. Delveccio speaks, I would like to ask if he is here as a registered lobbyist. I know he has sometimes spoken on behalf and is a registered lobbyist, and I am wondering if he is being paid today and if he is a registered lobbyist, or has he registered.

THE CHAIRPERSON: Mr. Delveccio?

MR. DELVECCIO: What did Charlie Urstadt say about the -- the tenor of the other side?

MR. PATHMAN: It is just a question.

MR. DELVECCIO: Why do they do that kind of thing?

I retired, after 25 years service as a federal official, and Director of Planning and Redevelopment for HUD, New England and moved here in 1996.

I am a retired attorney from Massachusetts. I have not taken a penny from

anyone in my 16 years here on the Beach. I have donated my time -- pro bono, and we have an attorney who has the gall to come up with a prejudicial statement like that.

I am really offended by that.

MR. PATHMAN: I am sorry that you are offended, but if you are a lobbyist, I wanted to know if you are registered because I had checked and you were not registered. Simple question. I know you had registered in the past. I wanted to know.

MR. HELD: Okay. Wayne -- Wayne, I think he has answered the question, and I am not even counting the answer against his time.

So if you are ready to begin, Mr. Delveccio --

MR. DELVECCIO: Well, he has made a mistake in his facts. He said I have registered as a lobbyist in the past. I have never registered as a lobbyist. I am not a lobbyist. I do not represent private interests. I have spoken on behalf of my condominium association and neighborhood associations, and I am doing so as a -- as an

individual on behalf of a good planning --

THE CHAIRPERSON: Okay. Why don't you --

MR. DELVECCIO: Now I am going to collect myself. I wish I had a drink of water.

Boy, you totally threw me off.

I see this is a question of power and judgment, and you, as members of the Board, have -- have to decide whether you have sufficient, substantial, competent evidence to disapprove this project or recommend significant conditions which would meet standards of compatibility.

I believe, after having attended the Planning Board sessions on this and this one, and seeing the evidence, that the -- the neighborhood has made a credible case that the project, as presented, doesn't meet design compatibility standards. And based on looking at the cases that I have seen and the opinions of counsel, the test will be -- if the applicant appeals your negative decision, whether you based it on substantial, competent evidence.

So I think you should have some confidence that you could go either way.

On the question of judgment then, you have to decide whether the recommendations of the neighborhood -- which are basically to retain the density, there is no reduction in density, no reduction in use of allowable FAR -- it is a question of setback and step-back.

And the neighborhood did present some recommended conditions. These are hard decisions for the -- for the developer because he would have to rearrange the massing, not reduce the massing.

So you are design professionals. You have had substantial experience in your private careers, and on this Board you have not hesitated to make a decision in the past.

This is a contentious project, and for me, I think the case is made that setbacks and further setbacks would tremendously improve the compatibility with the neighborhood.

Thank you very much.

I am sorry for getting angry with you,

fellow counsel, but it -- it touched me personally.

MR. PATHMAN: I had -- I just had to ask. You know that.

THE CHAIRPERSON: Thank you very much. Good morning. Please state your name add address.

MR. WEINER: My name is Gary Weiner. I've lived at 2142 Bay Avenue on Sunset Island IV for the last 15 years. I lived on -- at 1430 West 21st Street for about 20 years prior to that, and then prior to that, when I was a kid, I lived in Kumar's old house. So I have been on the island about 40 years, plus or minus.

My father bought the building that was referred to previously as Car Doctors, in 1950, so I have a lot of experience with this ueighborhood.

I am speaking today as a resident. I was also treasurer of the island for 13 years, and vice president for several, and president for several.

There is no point to repeating many of the fine points that have been already made

by my fellow residents, but you should know that I also believe that the project, while being beautiful in design by one of our neighbors, Kobi, has too much mass.

There are two facts that I do want to present today. When I was treasurer, we used to do our assessments -- and I can tell you that there is nearly a half a billion dollars worth of real estate property on the two islands. And I hope that the Board takes into account the potential impact on the value of our properties, vis-à-vis the project.

The second point and more important I would like to make is, what is contentious doesn't have to be contentious. It is possible to work together.

Along with Bill Ingraham and seven or eight other people who dealt with the Sunset Harbour project, a project which was permitted -- when we got hold of it and we actually spent, I think more than those two years -- and during that project -- during that time, it was very contentious at the start, but it didn't end that way. We

actually collected 10,000 signatures of residents to put on the public -- to have a public referendum to rezone that area. We campaigned, we did a lot of work. So our group can be persistent, as well as the developer in this case.

At the end of the day, and most importantly, we finally sat down with the developer and changed the project significantly. And privately, they told us that they felt it was a better project.

There was a great deal of attention paid -- on the waterway in that discussion, and that is why the townhomes on the front of 20th have a higher -- a greater height to them than on the actual water.

We, of course, face that same issue on the entranceway to our island on Sunset Drive right now.

But this does sound pretty contentious, from what I have heard today. I just want to let you know that it doesn't have to be that way. I think with your help in this, and with maybe a renewed effort, we can try to do something that will make this

more palatable to everyone.

Thank you.

THE CHAIRPERSON: Thank you very much. Anybody else for public comment? I know there are a lot of you in the audience.

Please step up to the mic.

I want to make sure everybody has the chance to speak.

Good morning.

MR. LURIA: Good morning.

THE CHAIRPERSON: Please state your name and address. Thank you.

MR. LURIA: My name is Peter Luria. I live at 1800 West 23rd Street, Sunset Island III. I am a member of the Board of Directors, but I am speaking on my own behalf, as a resident.

I would like to take a moment just to mention that Mr. Pathman, at the last hearing before the Planning Board, also chose to disclose this confidential settlement communication between us and the developer. It was not relevant to the issues before the Planning Board then, nor is it now.

It is Mr. Pathman's desperate attempt

to prejudice the Board against us. This e-mail has been shown to Jose Smith, the City attorney, and he considered it not only irrelevant, but a completely legal attempt on our part to mitigate the impact of this project on our neighborhood.

But since Mr. Pathman chose to bring it up again, he should disclose that Palau did offer to pay us 50 to $75,000 so that we would go away and to help our underground. We turned it down.

I don't know how many times you see 100 people sign an e-mail. That shows you the concerns of the neighborhood. A hundred people signed this e-mail opposing the project as it basically now stands.

That was turned in at the last hearing.

The staff report mentioned all of the conditions that, in their opinion, have been satisfied, but omitted the most important one: The resident's concern regarding the mass and scale. It is a glaring omission, and I am asking the Board to please correct it.

The developer will tell you all of the concessions that they have made -- all of which were made grudgingly, screaming and kicking, forced by either the Planning Department, the Planning Board, but none have addressed the core issues of mass and scale.

Regarding the number of units, they did go from 70 to 50 along the canal, which made a lot more sense, anyway, but did not reduce the square footage.

They moved the pool to another location on the roof. That's fine.

They agreed to certain use restrictions. They were forced to, but that's fine. We think that those are smart.

And they did do some landscaping improvements -- grudgingly, and not after being asked several times.

The key to your solution is the secret garden. That is the core of this.

If you -- it is a book called The Secret Garden. Okay? For those of you --

Now, they designed it -- it may be nicer than a prison, but they designed it like that, from the outside, as big as they

can, with this secret garden in the center. Okay? A zen garden that's supposed to be for, I guess, meditation, but has given us nothing but ulcers.

One of the mistakes -- the big mistake, and it was made somewhere in the City, and I think it really should have been illegal -- was the division of the property where the World Bank is, allowing it to be developed on the back side. That doesn't make sense. And as a result, we are dealing with that issue.

I think you should separate it so we have a view corridor. Let them build townhouses back there separate from the core structure.

As far as the core structure goes, they have moved it away from the strategic bridge by ten feet, but -- you have basically the same feet away, maybe a little more, but it is five stories tall, not one, as it is now. And so -- right across, adjacent to a public park.

I would tell you, please eliminate one unit -- they have five units per floor -- one

unit on the top floor so it is not so massive right in that corner, which is better for the strategic bridge and also across from our park.

And how you would take advantage of the secret garden -- push the top two floors back into that garden along the Sunset Drive.

You have the room.

They can have a terrace, you know, for the -- where the one apartment was eliminated for the apartment next door, and you would have the ability to push that back.

I am really not an architect. I don't profess to be. I am just trying to give some solutions, some ideas to -- to Palau to consider, which they really don't -- won't do unless you really push the issue.

Those are some ideas I think that might help resolve the concerns of some of the residents and allow them to build this building.

Thank you very much.

THE CHAIRPERSON: Thank you very much.

MR. PATHMAN: I have some questions for Mr. Luria, if I may, Mr. Chairman.

1 THE CHAIRPERSON: Okay.
2 MR. PATHMAN: Mr. Luria, you mentioned
3 --
4 MR. LURIA: May I get a glass of
5 water?
6 MR. PATHMAN: Yes.
7 MR. LURIA: Go ahead.
8 MR. PATHMAN: No, I will wait for you
9 to return.
10 Are you ready?
11 MR. LURIA: Are you?
12 MR. PATHMAN: I am always ready.
13 MR. LURIA: I know you are.
14 MR. PATHMAN: I am going to show you a
15 copy of the e-mail that you referred to that
16 you sent out on January 7, 2012. Can you
17 please let me know if that is the e-mail that
18 you sent, that you referred to earlier where
19 you had indicated about an e-mail that was
20 disclosed to the City attorney and to the
21 Planning Board?
22 MR. LURIA: That is one of many
23 e-mails.
24 MR. PATHMAN: I am just asking you if
25 that is the one you are referring to.

1 MR. LURIA: Let me answer it my way,
2 would you please, unless you would like to
3 answer for me.
4 MR. PATHMAN: Well, I asked you a
5 specific question.
6 MR. LURIA: And I am trying to give
7 you my answer --
8 MR. PATHMAN: Okay. Go ahead.
9 MR. LURIA: -- in my way.
10 It is one -- that is the answer to
11 your question -- of several e-mails.
12 I did discuss this with Jose Smith.
13 Mr. Held did come into the meeting, and it
14 was considered irrelevant and nothing
15 illegal, even though he would like to apply
16 it.
17 There are other e-mails prior to that
18 regarding the -- the underground project
19 which was discussed at a Board meeting with
20 Palau when they had another attorney, Michael
21 Larkin, and they were supposed to get back to
22 us, but we didn't have numbers. I finally
23 got some of the numbers and I sent an e-mail.
24 I thought we were trying to resolve
25 it, and maybe I was kidding around with my

1 sense of humor, but that is all it was
2 intended to be, as far as the wording of it.
3 But yes, that is my e-mail.
4 MR. PATHMAN: Okay. And can you read
5 for me the third -- the second highlighted
6 portion of the second paragraph, beginning
7 with "How much?"
8 MR. LURIA: Let me ask a question --
9 Mr. Held -- Mr. Held -- is this relevant to
10 the issue before this Board?
11 MR. HELD: You have already stated
12 that the City attorney has said no.
13 MR. LURIA: So then why are we going
14 over it here, okay, at this point?
15 MR. HELD: I think you were the one
16 that brought it up first, Mr. Luria.
17 MR. LURIA: No, I never brought it up
18 before. I am asking if it is not relevant,
19 then why do we have to discuss it in front of
20 -- to prejudice this Board and waste
21 everybody's time?
22 MR. HELD: Are you done?
23 Because I don't want to confuse the
24 court reporter.
25 MR. PATHMAN: Sure.

1 MR. LURIA: God forbid.
2 MR. HELD: If this was brought up
3 before at the Planning Board, it was not
4 brought up at this meeting, and you were the
5 one who introduced it at this meeting. So
6 you are -- Mr. Pathman is entitled to
7 cross-examine you on it. If you have given
8 your answer --
9 Wayne --
10 MR. PATHMAN: He has not given his
11 answer. I just asked him to --
12 MR. HELD: He did answer the question.
13 Nobody guaranteed --
14 MR. PATHMAN: I am on question number
15 two.
16 MR. HELD: Okay. The Board doesn't
17 really care about this. So why don't you
18 just drop it, Wayne?
19 MR. PATHMAN: Well, Gary, the reason I
20 am not going to drop it is because I have to
21 make a record. Mr. Luria put it into the
22 record just now and I want to clarify the
23 record.
24 MR. HELD: The Court is not going to
25 clarify it either. Just drop it.

MR. PATHMAN: Well, that will be up to the Court to decide.

MR. HELD: How many questions do you have on this subject?

MR. PATHMAN: I may have five or six.

MR. HELD: That is too many. Ask two.

MR. PATHMAN: Gary, come on. I have a right to cross-examine, and I was allowed to do that at the Planning Board. I have the right to do it here.

I was not the one who put it in play. He put it in play. He made a comment about my client offering him money, okay, which never happened.

MR. LURIA: That's not true. That's absolutely not true.

MR. HELD: Peter, come on --

MR. PATHMAN: He stated it is a confidential memo, which it is not. It was copied to a number of people. It was sent to Mr. Cicero. It is not a confidential memo. It is not.

MR. LURIA: The memo may be copied to more than one person. I don't know that the meaning of confidential memo means only one

individual gets a copy of it.

MR. HELD: You -- okay. Excuse me for a moment. I am going to rule that since the City attorney has opined that this is not relevant, there should be no further examination on this issue.

MR. PATHMAN: Gary, when was that opined?

And that's hearsay. There is no such opinion.

Mr. Smith -- excuse me, Jose Smith told me the exact opposite -- the City attorney. "You should introduce it."

Okay?

So if you want to get Jose down here, let's get Jose down here.

MR. HELD: You did introduce it. This line of questioning is not going anywhere. Nobody cares about it.

MR. PATHMAN: Well, it is -- someone should care.

MR. HELD: Ask your five questions and get it over with, Wayne.

MR. PATHMAN: Thank you, Gary.

MR. LURIA: I think we should have

Jose Smith come down.

MR. HELD: I don't think that's necessary.

MR. LURIA: Well, if it is not necessary, it is not relevant. I don't think I want to answer any more questions regarding something that has no relevance to this Board.

And is -- this is typical of the -- the approach that Palau has done. When we try to work out these issues, they -- they make it impossible.

MR. HELD: Peter, if you want to decline cross-examination, then go ahead and sit down.

MR. LURIA: Thank you.

MR. PATHMAN: I will read it into the record then. In the second paragraph, it states here, "How much extra will it cost you if you have to eliminate one column of apartments from your plans?

"We are an equal opportunity, pay for play POA."

Now, this was not a confidential memo. This was sent to Mr. Cicero, who is the

project manager, saying that if we don't play ball with them, "You are going to lose one floor of your building, because we are going to protest you until the very end of the day," which is what they are doing here.

And he just said earlier that they want us to reduce it by one floor. That is exactly --

MR. LURIA: No, I never said that.

MR. PATHMAN: I would like to have the opportunity to speak.

MR. LURIA: I never, never said that. You put words in my mouth.

MR. PATHMAN: I asked -- Mr. Held instructed him to sit down.

MR. HELD: No, I asked him if he wanted to sit down.

MR. PATHMAN: Well, you can't cut me off and let him speak and not let me cross-examine, Gary. Come on.

MR. LURIA: I would like to answer something that --

MR. PATHMAN: Everything he has said so far is hearsay.

MR. LURIA: Well -- it is up to -- it

1 is really not relevant to this Board, but
2 they will have to determine if it is
3 relevant. But really, the attorney has
4 already said it is not.
5 However, it is true that they offered
6 us money, but -- we were doing an underground
7 project. There are two big FP&L poles in
8 front of their unit. That's why we said,
9 "You should pay for yours and we will pay for
10 ours."
11 The problem is, it is a vacuous
12 connection, because you can't take one down
13 on one side. As a result, we decided to
14 leave our last pole up and not even deal with
15 that issue. They will decide if they want to
16 take their poles down.
17 Our association is going to vote on
18 spending $2 million to underground our
19 utilities sometime this fall.
20 As far as the -- the reducing one
21 floor -- that was an idea -- that was after
22 -- the issue was that Palau came to our Board
23 to ask for our -- wanted our support. They
24 were fining Comras. So it may not have been
25 worded properly, but I was referring to --

1 they wanted our support, and we didn't think
2 there were any issues.
3 We were always told that "There are no
4 variances we are asking for. There is really
5 nothing -- we would like you -- would like
6 your support."
7 So we said, "Reduce the number of
8 units and get rid of the curb-cut,"
9 basically, and some use restrictions.
10 Only after about two weeks after that
11 e-mail, that Chad Oppenheim raised up the
12 subject and said, "I am sorry. I was at the
13 Board meeting, I am not a member of the Board
14 and I was not at the annual homeowners
15 meeting, but there are some issues you should
16 take into account; mass and scale."
17 And that's when we reversed. But it
18 had nothing to do -- it is not an attempt to
19 blackmail them. It is an attempt to try to
20 settle this. But as you can see, they really
21 are not interested in settling with the
22 residents.
23 MR. HELD: Okay, can we stop this line
24 now?
25 And Wayne, if you think you are going

1 to be denied due process because there is no
2 cross-examination, then make it part of your
3 appeal.
4 At this point, I think we just --
5 should just go on with the hearing.
6 MR. PATHMAN: So am I to understand
7 that Peter --
8 MR. HELD: Peter, will you please take
9 a seat?
10 I think you made your point.
11 MR. PATHMAN: So he is -- I am not
12 going to be allowed to rebut and do
13 cross-examination?
14 I want to make the record clear
15 because I am going to take you up on your
16 offer.
17 MR. HELD: You are allowed to.
18 MR. PATHMAN: I want to make it clear.
19 Okay.
20 MR. HELD: We can't talk at the same
21 time. Are you done?
22 MR. PATHMAN: I am done --
23 MR. HELD: Thank you.
24 MR. PATHMAN: -- with that comment.
25 MR. HELD: Okay. Mr. Luria has

1 declined cross-examination.
2 MR. PATHMAN: Okay.
3 MR. HELD: If you want to make that an
4 issue on appeal, fine. You still have -- may
5 have some time for rebuttal. You can include
6 whatever you want to say in your time for
7 rebuttal.
8 MR. LURIA: If that is the case, I
9 will go back up.
10 MR. HELD: Peter --
11 MR. LURIA: You told me to go sit
12 down.
13 MR. HELD: You declined
14 cross-examination. Will you stop it already?
15 MR. LURIA: I am not the one doing it.
16 MR. HELD: Really?
17 MR. LURIA: He is still up there.
18 MR. HELD: Mr. Chair, please call --
19 is there another witness from the public?
20 MR. PATHMAN: Mr. Held, we did not
21 bring this up. It was not going to be part
22 of our presentation. I had it here, Mr.
23 Luria brought it up and put into the record.
24 I have every right to comment on it and I
25 have every right to make an argument on

1 behalf of my client.
2 MR. HELD: And we said you could do
3 that as part of your rebuttal.
4 MR. PATHMAN: No, I want to do it now.
5 MR. HELD: You don't get to do
6 everything you want to do, Wayne.
7 MR. PATHMAN: I am asking the
8 chairman. Okay?
9 It is important -- you just let him
10 speak for 15 minutes on this issue. I wasn't
11 going to raise the issue. Okay?
12 It was raised at the Planning Board.
13 The Planning Board heard it. It is public
14 record. I was going to leave it alone. But
15 he raised it, and now it is an issue.
16 MR. HELD: It is not an issue.
17 MR. PATHMAN: He mentioned they
18 offered them money, which we never did.
19 MR. HELD: Can you please call another
20 witness, Mr. Chair?
21 THE CHAIRPERSON: We will save it for
22 the rebuttal, please.
23 We are going to see the next person
24 from the public.
25 Please state your name and address.

1 MR. GIBBS: Wait, there is one other
2 person.
3 I am sorry.
4 THE CHAIRPERSON: So -- okay. So will
5 there be anybody else from the public?
6 Okay.
7 MR. GIBBS: I just wanted to get my
8 stuff together, as they say.
9 MR. HELD: So just to clarify, Mr.
10 Gibbs will have 15 minutes of time. Is that
11 acceptable?
12 You don't need that long.
13 MR. GIBBS: I am hoping I don't need
14 that long. I don't think I do, but --
15 MR. HELD: I will set the clock.
16 MR. GIBBS: -- I will do my best.
17 MR. HELD: We are happy to have
18 leftover time for you, Tucker.
19 MR. GIBBS: Thank you.
20 THE CHAIRPERSON: Good morning, still.
21 MR. GIBBS: Good morning.
22 My name is Tucker Gibbs, law offices
23 at 3835 Utopia Court in Coconut Grove, and I
24 represent the Sunset Islands III and IV
25 property owners.

1 And my clients -- I want you all to
2 understand, you have heard this, my clients
3 support a mixed-use development at this
4 location. Their concern about this project
5 centers on its impact on the single-family
6 residential neighborhood. Specifically, as
7 you heard, the project is too big. It is out
8 of scale with its neighbors. It is much too
9 massive. Its height is incompatible with the
10 single-family neighbors to the north and to
11 the east. And the plans before you today,
12 after months of meetings, months of
13 discussions, Planning Board hearings in March
14 and May -- you all heard it several months
15 ago in August -- our position is these plans
16 do not comply with three critical design
17 review criteria and the code that you need to
18 apply, which warrants your denial of this
19 application.
20 Before I get into the body of my
21 argument, I would like to incorporate into
22 the record -- just to be -- just to be safe
23 -- all documents relating to this Design
24 Review Board hearing and proceeding, as well
25 as the Planning Board proceeding which has

1 been referenced ad nauseam today, and go on
2 to my argument.
3 This development is located at the
4 northeast corner of Sunset Harbour, CD2
5 zoning district, where it is next to
6 single-family zoned properties across Sunset
7 Drive and across the canal on Sunset Island
8 IV.
9 The project is adjacent to Sunset
10 Drive from 20th Street to the historically
11 designated Sunset Island bridge, which I
12 think Mr. Bienstock said is the only entrance
13 to Sunset Island III and IV.
14 The project also abuts the World
15 Savings bank property and the Sunset Tower
16 Townhomes to its southeast and east.
17 To its south is the Publix and other
18 commercial establishments.
19 This is the only commercial or
20 commercial/residential mixed-use project
21 adjacent to single-family residential in the
22 Sunset Harbour CD-2 district. And yet, my
23 clients do not object to the mixed-use
24 development here. They object to a mixed-use
25 development here -- excuse me -- they object

to this one, as you have heard, because the project quite simply is incompatible with its neighbors.

The developer does not seem to understand that this site on the edge, on the edge of that CD-2 district, next to a single-family zoned neighborhood, is unique and warrants conditions to protect this neighborhood from its impacts.

Over the years, City staff has recognized this special corner of Miami Beach. As we talked about, in 1995, the Historic Preservation Board designated the bridge as historic, and the designation report noted the historic character of the area.

I know you all have looked at the historic designation report, but I want to talk to you about a couple of things in that report which are critical to your review and critical to your application of those three standards.

The designation report noted the historic character of the area. The report also recognized "The design guidelines of the

City will ensure smart development which is sensitive to the unique aesthetic character of the area, and very respectful of its early origins."

According to the report, on Page 20, it says, "Buildings, individual Public Works, engineering structures and natural landscape features, old and new, are usually the major defining elements in the make-up of a neighborhood's character. The special character of a neighborhood can be maintained and reinforced by highlighting and preserving the significant architectural features of its contributing buildings and landmarks."

Landmarks such as the bridge.

"By understanding and being considerate of those special qualities in the design of new construction" -- and then it goes forward, further on Page 21, and says, "a number of elements work together to define not only a building or structure's character, but a neighborhood's. These elements include scale, proportion, massing and materials and details. These basic elements are found in all architecture and may vary to create

different styles."

So we understand that a different style can work here as long as it addresses scale, proportion, massing, material and details as it relates to the historic property, which is the bridge.

Understanding these elements and their relationship to each other is essential for designing compatible renovation, additions and new buildings. And as I said, these elements are the bases of the 17 design review criteria you apply when you make your decision.

The Design Review Board examines development plans, as they say in the code, for consistency with the criteria, with regard to aesthetics, appearances, safety and function of the structure, physical attributes of the project in relation to the site, adjacent structures and the surrounding community. And a look at that criteria shows the development must not have a negative impact on the adjacent neighborhood.

Under these standards, the developer must eliminate or mitigate aspects of the

project which adversely affect the surrounding area. The following criteria that focus on neighborhood compatibility, we assert, are not satisfied. And that is number six, criteria number six, which talks about proposed structures must be compatible with adjacent structures and enhance the appearance of surrounding properties.

That means that this project has to actually enhance the appearance. People can talk about Mark's. They can talk about the falling down building next door. We understand that. But the appearance is more than just Mark's and more than just that property next door. That appearance is the view corridor, the view corridor down 20th -- I mean, excuse me, down Sunset Drive from 20th to the bridge, to the historic bridge. That is an important issue for this community. It is an important issue in terms of historic context.

The site plan lay-out -- number seven, the next DRB criteria -- the site plan lay-out must show efficient arrangement of land uses, especially the relationship with

the surrounding neighborhood, impacts on adjacent building and lands, pedestrian sight lines and view corridors.

View corridors are very important in your evaluation. Yet, I don't think I saw the term "view corridor" in anything that was before you. It wasn't brought up by the applicant. It wasn't brought up in the staff report, but view corridors are critical.

This plan degrades or eliminates the existing sight lines and view corridors, and I just reference you to the last meeting you all had. Mr. Alvarez got up and spoke about sight lines. This degrades sight lines, not only across the canal, but it degrades sight lines on Sunset Drive.

Criteria number 12 -- massing and orientation of structures must be sensitive and compatible with the surrounding area and also create or maintain important view corridors -- maintain or improve important view corridors. And my question: How does a five-story structure on top of Sunset Drive maintain that view corridor to Sunset Isle IV and the historic bridge?

The staff report is troubling in some of its conclusions and conditions. In concluding that the project as now designed satisfies all of the Design Review standards, as well as the Planning Board's conditions, it is not clear as to a couple of issues.

And I wanted to address specifically -- and I am going to find it here -- condition 2-C.

Condition 2-C talks about lowering -- "any canopy, stairwell, elevator, bulkhead shall be lowered to the height -- to the extent possible."

Our concern is these shonld not be visible from Sunset Isle IV. It should not be visible.

When we look at that building, those pretty elevations and everything else showing what my clients are going to be looking at -- that should be what they are looking at. They shouldn't be looking at an elevator shaft. They shouldn't be looking at a stairwell shaft. They shouldn't be looking at air conditioning units or anything else that they have up there.

They should be looking at a building. And that material should -- that for lack of a better word, that stuff should be massed, it should not be visible.

2-D specifically says, "The final design" -- regarding the western elevation -- "leaves the design review of that facade and that portion of the property solely to staff," with no design review by you.

It is design review by staff.

It is our position -- that is your job. You want to delegate that to staff, you are delegating that to staff with absolutely no standards, no instruction.

The fact is, that's your decision. If they have not designed this property right on that western side, and it needs, as they say here, all design review, that's what this Board does, is design review.

So you need to -- you need to review that. That's our position.

2-F, it says that -- it says, "Rooftop fixtures, mechanical equipment must be noted on a revised roof plan."

That -- that recommendation has been

in the Design Review recommendations from the beginning. Design Review Board staff has put that in there before the meeting in August, and I can't find it.

Now, look. I am not an architect. I am not a planner, but I saw this plan, which was the plan back in August of this year -- and it has the rooftop plan -- I don't see a single mechanical equipment. And they may have no mechanical equipment on the roof. I do nnt know, but this rooftop plan, which is A-1.05, doesn't show really anything except terraces and elevator lobbies, some stairwell shafts and elevator shafts.

The plan that I got just recently also shows virtually the same thing. On the rooftop design on A-1.04, it doesn't show mechanical equipment or anything else. I may be wrong. There may be mechanical equipment. I just want it to be clarified, because if there isn't a plan that shows all of the fixtures, the canopies, the trellises, whatever they have got up there, then this is not complete. You all need to see that.

My clients want to know -- they want

to know when they look -- those people who live on Sunset Island IV along that waterway, the people who use that park, who want to enjoy that park, they want to know what they are going to see. Are they going to be seeing trellises, canvas tops, whatever?

Are they going to see mechanical equipment?

I don't know where it is.

At some point, I hope staff can tell me or the applicant can tell me on which set of these plans this is shown.

Those are -- those are small issues, relatively speaking, but they are important issues. They are important issues to my client, and again, we would like to see them resolved.

My clients' issues are pretty clear. The project is too big. It lacks contextual sensitivity. I love Chad Oppenheim's comment. I thought that was a perfect way to put it.

You all have it in good perspective, and it is too massive, and thus incompatible.

In addition to the staff

recommendations, in attachment one, we had a proposed findings of fact and conditions. And what I would like to do is basically ask you all -- we would like you to find that as a matter of fact, that Sunset Drive extending from 20th to the historic Sunset Drive bridge is an important view corridor. That is a major defining element of the neighborhood's character.

We would also like you to recognize as a finding of fact that the character of waterfront facing Sunset Isle IV is illustrated by the articulated design and minimized massing of the Sunset Harbour townhomes close to the waterway, and these close-to-waterfront buildings reflect that relationship to single-family houses because they are somewhat comparable, unlike this building at its closest point to the water.

We would also like you all to find as a matter of fact that it is inconsistent with the conditional use approval of the Planning Board as it relates to the massing of the building east of the World Savings Bank building, the one that nobody has dealt with

yet that you are going to hand off to staff.

We also would like you to find as a matter of fact the project is inconsistent with the May conditional use approval with the Planning Board as it relates to the encroachment on the line of sight from Sunset Island IV.

And finally, we would also like you all to find as a matter of fact that it is inconsistent with criteria number six, criteria number seven, criteria number 12, as I have discussed with you, and as it is in the attachment number one.

And we would like you to include two conditions, two additional conditions that staff has not included; number one, that the entire length of the building abutting and east of the World Savings Bank property should be set back an additional 15 feet, really provide that building -- Professor Le Jeune spoke at the Planning Board. It is in the record. He specifically talked about the fact that you need to have a sense of space. You need to be able to see the building in its context.

Having this building so close to that architectural gem, as some people have described it, is a travesty. Pull this building back. Give the neighboring building some space.

The second condition we would like is the entire length of the building, of the eastern portion of the building along Sunset Drive should be stepped back. It should be stepped back, as a first floor, an additional ten feet. The second and third floors, an additional five feet, and the fourth and fifth floor, an additional five feet.

That stepping back provides a legitimate view corridor. You don't have that. What they have done is step it back in very small increments. We would like larger increments to provide that necessary view corridor.

We would also like you to clarify condition 2-C which requires -- we would like it to require that no rooftop fixtures and structures be visible from Sunset Isle IV.

Condition number 2-D, that DRB should be reviewing the final architectural

1 treatment and other design details of the
2 western elevation prior to the issuance of a
3 building permit.
4 Condition 2-F, the DRB approval is not
5 final until the applicant submits the
6 required roof plans showing all fixtures on
7 the rooftop; that is, if they have not
8 already done that -- I can't find it.
9 So in conclusion, the staff has done a
10 very good job. I think everybody here can
11 agree on one thing: Staff has done a very
12 good job in trying to encourage the developer
13 to improve its response to the neighbors'
14 legitimate concerns regarding the negative
15 impacts of this project.
16 The developer does not want to build a
17 smaller, less intense and compatible project.
18 What the developer has done, as somebody has
19 said, is that the developer has not done
20 anything on its own. The developer has only
21 done what this staff has pushed and pushed
22 him to do. The developer has not done
23 anything on its own. The neighbors have
24 pushed and the City has pushed, and the
25 developers made it very clear that it is not

1 going to do anything unless the staff
2 essentially forces it to do it.
3 We urge you to require the developer
4 to design the project that reflects the
5 sites's unique position on the edge of the
6 commercial district abutting single-family
7 residential neighborhood, either condition
8 the project as recommended by staff, with our
9 additional proposals, or deny the application
10 and protect our neighborhood.
11 I thank you very much for your
12 attention.
13 THE CHAIRPERSON: Thank you very much.
14 MR. HELD: Mr. Chair, can we clarify
15 who is making the presentation, and how much
16 time he is requesting?
17 Mr. Comras?
18 MR. COMRAS: Sorry?
19 MR. HELD: Are you seeking a
20 three-minute presentation, or are you taking
21 time from Mr. Robbins?
22 How is this going?
23 MR. COMRAS: I am actually speak on
24 behalf of Comras Company, the tenants of the
25 building at 1261 20th Street and I would ask

1 that I get approximately ten minutes.
2 MR. HELD: And are you sharing time
3 with Mr. Robbins?
4 MR. COMRAS: No. It is not the
5 intention. We have different things that we
6 are discussing.
7 MR. ROBBINS: (Inaudible.)
8 MR. COMRAS: I will make it as brief
9 as I can.
10 I appreciate the courtesy of this
11 being heard.
12 MR. HELD: It is up to the chair.
13 THE CHAIRPERSON: Okay. Just please
14 be as efficient as you can.
15 MR. COMRAS: I thank you.
16 My name is Michael Comras. I'm a
17 tenant of the building at 1261 20th Street,
18 immediately adjacent to the project Palau.
19 As the -- in connection with the
20 project, when this property was acquired by
21 the ownership, it was acquired with the
22 understanding that there were two documents
23 that were part of this -- that came along
24 with the site, the Declaration of Restrictive
25 Covenants in Lieu of Unity of Title and

1 Amended and Restated Declaration of Easement
2 and Restated Covenants.
3 We both acquired the lots -- the
4 predecessor of Palau, as well as myself,
5 acquired the lots, and attached to those
6 documents was an approved site plan. And the
7 approved site plan is what I put in front of
8 you here. I would like to take a second and
9 review that.
10 And I am here to say that I am
11 pro-development. I am a developer here on
12 the Beach for 20 years. I developed well
13 over 20 buildings, and I really do want to
14 see some positive development on this site,
15 but understanding where I am coming from, in
16 terms of this site plan.
17 The original site plan consisted of
18 the entire site, which was ultimately split
19 with an illegal lot split by the predecessors
20 of interest. The City required covenants to
21 be issued, which ultimately were executed.
22 In those covenants, it allowed us --
23 it allowed people to develop the property in
24 accordance with the approved site plan that
25 was attached. And as you can see in front of

you, the approved site plan shows the 1261 building with its parking around it, and parking, surface parking, only surface parking up to the water. All of the massing was placed to the east of the property.

In the declarations, it does allow for the modifications to the approved site plan. The modifications, if they are not agreed to, get to come in front of this Board. So you guys get charged with trying to determine what is a fair, reasonable change to an approved site plan which both parties agreed to when these sites were acquired.

The approved site plan shows no development north of the property. It shows the 13 spaces, while the proposed site plan maximizes that area between the rear of the building and the water.

The approved site plan, in the declaration of easements in 5.6 reads "MAC hereby acknowledges MAC's approval of and consent to development and construction of the project pursuant to the approved site plan."

The Declaration of Restrictive

Covenants in paragraph one states "The subject site will be developed as a unified development site in substantial accordance with the approved site plan," a copy of which is attached as Exhibit C, which is in front of you.

The approved site plan calls for 20 units, residential units, with 3,600 square feet of retail space. The proposed site plan requires -- looks for 50 units and over 11,000 square feet of retail space.

That is two and a half times the number of units that was originally proposed for this site, and over 300 -- three times the amount of retail that was proposed for this site.

The developer seeks to unilaterally add a third parcel into this covenant. The covenant only governs two parcels, as indicated in the staff report which states, "These two properties were at one time one single property, and were split at the time of the proposed development, at the time of the proposed construction of the former

Cypress Bay project, which required a Covenant in Lieu of Unity of Title. This document has the approved site plan attached to it."

The adding of a third parcel completely changes the original intent of the covenants. The City attorney in his memo dated February 2nd states, "As Parcel C is not included in the definition of property, in either the Covenant in Lieu or the Declaration, it raises the question of further modification of these documents."

It goes on to say -- it goes on to say that "This issue must be revolved prior to the issuance of a building permit for the Palau project. We have a question as to how the developer expects to resolve this open issue. The addition of parcel C combined with the oversized internal magic garden and extensive use of the mechanical parking has greatly intensified this development, to the detriment of Parcel A and the surrounding neighborhood.

There was a portion of the City attorney's memo referring back. He states,

"The cross easements between Parcel A and Parcel B, which are the -- in the declaration remain the same," and then he footnotes that "There is no increase in stated cross easements and the declaration on the MAC parcel. Therefore, no modification of the declaration to account for the change in the site plan and the covenant in lieu."

The covenant created in connection with the Cypress Bay project provides for an easement. The easement is for short time parking on parcel A from the 3,600 feet of retail space to be located on parcel B.

When all of a sudden, a site plan is modified to increase the retail space from 3,600 square feet to over 11,000 square feet, an over 300 percent increase in the space, the intensity is just too great on my property. We are going to be parking for 11,000 feet where the approved site plan only contemplated 3,600 square feet. The Planning Board has required that all parking for the new project be accommodated internally.

Should the Palau project move forward, we would request, as part of any approval, a

1 condition eliminating the parking easement
2 from the covenants.
3 The approved site plan did not
4 contemplate any structures to the north of
5 Parcel A between the building and the water.
6 The new site plan not only proposes to
7 maximize the development in this area, but
8 also to build without regard to interior
9 setbacks that would otherwise be required but
10 for the declarations. This approach greatly
11 intensifies encroachments affecting Parcel A.
12 The face of the Palau building --
13 The facing of the Palau building along
14 with the north side of Parcel A will come to
15 within approximately one parking space.
16 We would ask that this distance be
17 increased and the mass reduced.
18 And I just want to point out what I am
19 speaking about.
20 The property line sits right here.
21 The way the project is currently
22 designed is that the first floor will come up
23 to this level, this line, and the second
24 floor will cantilever over all the way up to
25 the back of this building.

1 This entire mass will be replaced, the
2 surface parking lot will be completely
3 replaced with a five-story structure
4 cantilevering to the south within 16 to
5 20 feet of my rear office window.
6 In summary, given the existence of
7 these covenants and their intent with the
8 attached approved site plan, we respectfully
9 ask this Board to create a balance between no
10 development to the north of Parcel A and the
11 intensive development that is being proposed.
12 Reducing the scale, massing and
13 introduction of view corridors will greatly
14 enhance the long term viability of this site.
15 Without it, Parcel A will have three
16 cavernous, 50-foot walls surrounding it.
17 As a suggestion, perhaps transitioning
18 from the two-story townhomes, maybe to
19 three-story townhomes and working its way up
20 to four stories through the back of Parcel A
21 would be a solution.
22 -- insist in any approval a condition
23 to remove the parking easement from the
24 declarations, to determine now how the
25 developer plans to unify the sites prior to

1 obtaining a building permit.
2 And on condition two, I echo Tucker's
3 opinion that the staff report should add the
4 word "west" -- after the word "west," add the
5 "south elevations, as well."
6 And then five, the last item would be
7 on the landscape plan provided by Kobi
8 earlier, there is no landscape at all to the
9 north of my building and to the south of
10 their elevation.
11 I thank you, and I would ask that you
12 find a balanced solution to this issue.
13 THE CHAIRPERSON: Thank you very much.
14 MR. HELD: Mr. Chair --
15 THE CHAIRPERSON: Yes, sir?
16 MR. HELD: There were two points
17 raised that are legal issues that I would
18 like to comment on.
19 THE CHAIRPERSON: Please.
20 MR. HELD: The first one is the
21 replacement of the surface parking with the
22 five-story building north of the Comras
23 building, and whether there is anything in
24 the document that relates to that.
25 And so in -- on the 20th Street side

1 of the -- what used to be called the Lease
2 Florida structure, there is a sight line
3 easement that is angled which provides
4 visibility coming from the east to the west
5 on 20th Street for the Comras building.
6 That is specifically provided for in
7 paragraph 4.3 of the second document,
8 attachment four.
9 There is no sight line easement that
10 is similarly provided for the property that
11 is north of the Comras building.
12 So we have to assume that the
13 covenant, itself, does not prohibit the
14 placement of a structure on that portion of
15 the property, and that that is an opinion
16 that I have reached. There may be contrary
17 opinions in the room. You are welcome to
18 express them when I am done.
19 The second point is the adding of the
20 Mark's Cleaners parcel to the east, and there
21 is a portion of the modification paragraph in
22 attachment four -- it is paragraph 6.13, and
23 it provides "The foregoing shall not prevent
24 any owner from placing additional covenants,
25 conditions, restrictions or easements on its

1 own parcel not inconsistent with or in
2 conflict with this declaration."
3 And it was our opinion that adding the
4 Mark's Cleaners parcel and combining that
5 with the rest of the Palau-owned site to
6 create the proposed site plan does not
7 interfere with or unnecessarily burden the
8 Comras parcel to the extent that it would be
9 prohibited by the documents.
10 So it is our opinion that the Palau
11 property or interests can add the Mark's
12 Cleaners parcel without the consent of
13 Comras.
14 MR. COMRAS: I would like to clarify
15 the two points, because I was not referring
16 to a sight line from the rear of my property.
17 I am referring to the site plan --
18 MR. HELD: No, I understand. I was
19 saying that --
20 MR. COMRAS: If I can just finish. I
21 am sorry.
22 MR. HELD: Yes.
23 MR. COMRAS: So the site plan which is
24 attached to the agreement, which was approved
25 -- and clearly, there is a process that it is

1 allowed to go through this Board to adjust
2 for the site plan. And what I am saying is
3 not necessarily that I want to preserve a
4 sight line, but I am concerned with the
5 massing of what is being proposed, and going
6 from nothing to the opposite extreme, and the
7 developer taking advantage of this Board by
8 proposing something so obtuse for a site that
9 is very narrow.
10 And if you have been out to the site,
11 you have seen the distance from the back of
12 my building to the water, and you have seen
13 from the rendering the overhang which will
14 encroach all the way forward.
15 So when you start talking about, Gary,
16 the second two items of increasing the volume
17 of the retail space from 3000 to over
18 11,000 square feet, and those people have the
19 right to use the parking on my site, to say
20 that that does not increase the intensity of
21 an easement, I don't think is correct.
22 MR. HELD: Well, I think with regard
23 to the nine spaces -- and staff can
24 confirm -- they are no longer relying on the
25 nine spaces that are provided for to cover --

1 MR. COMRAS: Then those nine spaces
2 out to be removed from the covenants. That
3 should be a condition by this Board, if you
4 choose to go forward with this project.
5 But the other -- just the other item
6 is the intensity of the massive structure
7 behind -- and perhaps this offers a solution
8 in terms of the height and mass transitioning
9 from the low-scale townhomes to the much
10 larger structure to each of the properties.
11 Thank you.
12 MR. PATHMAN: Mr. Chairman, I have
13 some questions of Mr. Comras, if I may.
14 THE CHAIRPERSON: Please.
15 MR. PATHMAN: Mr. Comras, when you
16 purchased your property, were you not aware
17 of the then-amended and restated declaration
18 of easements, restricted covenant and the
19 deed -- I mean, excuse me, the deed in lieu
20 of unity of title?
21 MR. COMRAS: With the approved site
22 plan, yes.
23 MR. PATHMAN: And most recently as
24 last year, you retained counsel to
25 renegotiate those covenants and easements.

1 And do you recall that I was the attorney
2 representing Mr. Wasserstein?
3 MR. COMRAS: There was no real
4 negotiation of the covenants. It was more a
5 fulfilling or the completion of the documents
6 that were previously in place.
7 MR. PATHMAN: You have before you and
8 you read into the record from them, the
9 Amended and Restated Declaration.
10 MR. COMRAS: Yes.
11 MR. PATHMAN: And that's what was
12 filed and recorded of record last year?
13 MR. COMRAS: Yes.
14 MR. PATHMAN: Okay. Let me bring to
15 your attention that the first thing on the
16 declaration of restrictive covenants,
17 paragraph one says, "The owners of the
18 property whose consent shall not unreasonably
19 be withheld" -- you have always withheld your
20 consent, right, to any of the changes --
21 MR. COMRAS: I don't believe
22 withholding my consent was unreasonable in
23 any fashion.
24 If you look at the scale of what you
25 are proposing to take advantage of, given the

1 site had no structures on it, you are
2 building the maximum you could possibly
3 obtain, cantilevering to the south to within
4 20 feet of the building.
5 MR. PATHMAN: But isn't that what you
6 agreed to when you purchased the property?
7 MR. COMRAS: We agreed to an approved
8 site plan with the resolution of -- procedure
9 for resolution if we do not agree, and that's
10 why we are here in front of this Board today.
11 MR. PATHMAN: And you recognize, as
12 counsel for the City has stated, the plans,
13 the site plan, can be modified, and the City
14 has rendered an opinion from the City
15 attorney to both the Planning Board and the
16 DRB to suggest that we have right to modify,
17 and we have the right to modify the site
18 plan?
19 MR. COMRAS: Nobody is suggesting you
20 cannot modify the site plan. We are
21 suggesting it should be modified in a
22 cohesive, sensitive manner which is not
23 negatively impacting the neighborhood and the
24 parcel of land which we occupy.
25 MR. PATHMAN: And as counsel for the

1 City, Gary Held has pointed out, the only
2 thing that you reserved in these declarations
3 was a line of sight on 20th Street. Is that
4 not correct?
5 MR. COMRAS: No. I reserved the right
6 to disagree with the site plan changes.
7 MR. PATHMAN: Mr. Chairman, I would
8 submit that if you read the City attorney's
9 opinion -- which I would just like to read a
10 couple of the conclusions -- that Mr. Comras
11 has misstated the accuracy of the
12 declarations, has not agreed with the City
13 attorney's opinion, which I think is more
14 relevant as the fact that this is something
15 that, as Mr. Held has indicated, is from the
16 City attorney. This is the advice that was
17 given to the Planning Board, the advice that
18 is given to this Board.
19 MR. COMRAS: And it says that the
20 application --
21 MR. ROBBINS: I am objecting to this
22 and putting this into the record. This
23 opinion of an attorney --
24 MR. PATHMAN: It is already in the
25 record.

1 MR. ROBBINS: The attorney is not
2 here, and that should not be admitted at this
3 time.
4 MR. CARY: Well, it --
5 MR. HELD: Sorry, William --
6 It is rebuttal. It is not
7 cross-examination. If you want to make a
8 statement, include it to your list on
9 rebuttal.
10 MR. PATHMAN: Well, my issue is that I
11 have asked Mr. Comras --
12 MR. HELD: No, I understand that.
13 Wayne, we have to distinguish between
14 rebuttal and cross-examination.
15 MR. PATHMAN: I am.
16 MR. HELD: You are not in the process
17 of asking or restating a question or an
18 answer. Okay?
19 MR. PATHMAN: Gary, I understand.
20 MR. HELD: You are making this --
21 MR. PATHMAN: Then I will ask him a
22 question. Okay?
23 Have you read the City attorney's
24 opinion?
25 MR. COMRAS: Yes.

1 MR. PATHMAN: Okay. Can you read for
2 me --
3 This is a copy of the opinion.
4 MR. ROBBINS: This is outside the
5 scope of direct testimony and it is not
6 relevant.
7 MR. HELD: Wayne, just include it in
8 your rebuttal.
9 MR. PATHMAN: Gary --
10 MR. ROBBINS: The opinion is in the
11 record already.
12 MR. PATHMAN: The rebuttal will take
13 three hours.
14 MR. HELD: The opinion is in the
15 record. Mr. Robbins is correct.
16 MR. ROBBINS: So what do we need for
17 him to read it? It has no relevancy.
18 MR. PATHMAN: Because I have questions
19 after he reads it.
20 You are not going to allow me to then
21 ask --
22 MR. HELD: No. If you are going to
23 ask a question, then ask a question already.
24 But stop making argument as part of your
25 cross-examination.

MR. PATHMAN: If you look at the declaration, Mr. Comras, where it indicates that "The proposed modifications of the property, usage of the property, physical condition or site plan may be required to return to the appropriate Development Review Board, and if modification or release a previously-issued approvals have -- or imposed conditions."

You agree that you accepted that condition, and that you signed this document when it was recorded for public record?

MR. COMRAS: I agreed that if something was not in accordance with my reasonableness, that we could bring it to this Board, and this Board could make a determination as to what is equitable in terms of the development.

I think by you proposing massive development on this is looking to take advantage of this Board and the community.

MR. PATHMAN: I am not going to have any further questions.

They are all nonresponsive.

THE CHAIRPERSON: All right.

Please state your name and address.

MR. ROBBINS: Hello. My name is Kent Harrison Robbins. My offices are at 1224 Washington Avenue, Miami Beach, Florida.

I represent MAC SH LLC, which is the property owner of 1261 20th Street.

Now, let's quickly go over what the issues are here and why I am making this presentation. As you remember, last time we were here, I objected because there was insufficient notice concerning the one -- one of the two matters that you need to consider at this hearing, and I brought forth the fact that the prior hearing had not been noticed concerning approval of modifications of a previously approved site plan.

That was not noticed. So then we had to renotice it and come back and spend all of the money to have another appearance here.

Now we have this hearing, and I sent a letter out yesterday to make certain everybody would -- would consider this matter.

Has everybody received the October 1, 2012, letter sent to this Board?

Has anybody not received it?

Let's put it that way.

I want to bring it to your attention, and bring parts of it to your attention.

But as presented in this Board, what is being proposed to be added is lot 22, which is the Mark's cleaner property. That was not originally part of the site plan.

Mr. Comras has an interest in this site plan, and MAC SH LLC has an interest in that site plan because that is the plan which was agreed to by the parties.

Now there is a process within the code, under 118-5 of the code concerning land development regulations involving unified development sites.

118-5 specifically says -- and this is actually also stated in the covenant signed by both parties -- "Proposed modifications to the property's use, operation, physical condition or site plan shall also be required to return to the appropriate Development Review Board or boards for consideration of the effect on prior approvals, and the affirmation, modification, or release of

previously-issued approvals or imposed conditions."

Now, we are submitting a copy of this letter, and attached to this letter is, in fact, that not only the approved site plan, but also a copy of the previous Design Review Board order approving the project that had been partially constructed on the site, the five-story building which was set back from my client's property, which provided only surface parking on the north 70 feet of lots 25 and 26.

That is the approved site plan, and there is a DRB approval for that project.

Unfortunately, the staff did not provide you with a copy of that DRB order or the plans from that DRB order. We have the construction project plans, and that's where we also extracted information from here.

Unfortunately, the DRB file could not, I guess, be found at the City. However, we were given a set of building construction plans for that project, which was Design Review-approved and was signed off by the Planning Department.

1 So that is the best reconstruction we
2 can have of the plans that were approved by
3 the Board, and we are going to submit a copy
4 of those plans for the record.
5 And the members of the this Board
6 should be allowed to review those plans.
7 Why am I going into such detail about
8 these rules?
9 Because the staff report did not bring
10 to your attention your obligations to look at
11 the prior approvals and look what has -- what
12 is being suggested to be changed.
13 And that is your duty, and that is a
14 requirement. But unfortunately, that has not
15 been presented to you, so when I sent you the
16 letter yesterday, having received the
17 planning report which staff -- staff report
18 which did not include those proposed prior
19 orders and prior approvals, I felt obligated
20 to provide that to you so you could make a
21 reasonable decision based on the code and
22 fulfill your duties as a member of the Design
23 Review Board.
24 So having given that to you and having
25 had a chance to -- hopefully, to review that

1 letter with the attachments, I also wanted to
2 bring to your attention something that I
3 brought to you two months ago, but which
4 still has not been corrected -- and that is a
5 deficiency of the site plan.
6 You know, the site plan A.10, which is
7 the overlay on this approval, a copy of which
8 we are also going to be including in the
9 record, that is in the set of plans being
10 presented to you.
11 Under 118-1 for site plans, the site
12 plan is supposed to specify all property
13 lines, location, dimensions of lot, setback
14 lines, easements, and location, size of
15 sanitation, storm sewers, culverts. It is
16 also supposed to provide calculations of
17 square footage of overall project density and
18 square foot of lot area per apartment unit.
19 None of that was provided. That is
20 required under the site plan requirements
21 under -- under the code, under 118-1.
22 So why is that so important?
23 It is so important because when you
24 want to analyze what was approved versus what
25 is being proposed to be able to determine the

1 impact on the changes and the effect of these
2 proposed changes from the original approved
3 plan, you have to compare apples to apples.
4 And that's the site plan information.
5 In fact, in the building -- the
6 building plans that were provided by me, they
7 have those analyses. They show all of the
8 setbacks. They show all of the square
9 footage per unit. That was not provided
10 here.
11 And why is that?
12 Well, we can't really figure out how
13 much FAR is being transferred.
14 Now, who was the person on the expert
15 -- the expert from the City who is handling
16 unified development sites?
17 Who is the -- is that you, Mr. Belush,
18 or is that Mr. Cary?
19 We need to have somebody that will be
20 able to testify as to that -- you know, be
21 able to question the --
22 MR. Belush: Sorry, what are you
23 asking?
24 MR. ROBBINS: This is a unified
25 development side. Therefore, it incorporates

1 -- so I am asking for the person from the
2 staff who analyzed this project as to the
3 uniform -- unified development site under
4 118-5.
5 Mr. Cary, did you do that?
6 Did you evaluate --
7 MR. HELD: We wouldn't be designating
8 on the spot an individual. If you have a
9 question, ask the question, and we will see
10 if someone can answer.
11 MR. ROBBINS: I will ask Mr. Belush.
12 If he doesn't know and they are not prepared,
13 that is fine, but we need to have a staff
14 expert to be able to analyze a unified site
15 plan, because under the code, the unified
16 site plan not only includes what they are
17 proposing, but also my client's project.
18 My project has -- is part of that
19 unified site plan, and unless they consider
20 my unified site plan in evaluating this
21 project, you really are not doing your job.
22 Because you have to look at all of the
23 development on the site, not just what is
24 being proposed here, but also what is on Mr.
25 Comras's site.

And you have to look at the Design Review Board's analysis based on incorporating my client's development on the site.

Isn't that correct, Mr. Cary?

MR. CARY: Yes, and that is exactly what we have done, Mr. Robbins. I think that your client will testify that he met with us, together with another architect with, with Les Palenson to look at how the development project would potentially impact his site. He made a series of recommendations.

MR. ROBBINS: That's correct.

MR. CARY: We asked the architects to address those recommendations. Those have been made, substantial changes were made to the plan in order to accommodate your client's concerns, including the right-of-way area, the ability of cars to back out property, raising the height of the building in that area so there would be no impact or --

MR. ROBBINS: Right.

MR. CARY: -- negative impact on the ability to maneuver cars in the area.

MR. ROBBINS: So can I ask you a question --

MR. CARY: We discussed the past elevation, mostly with Mr. Comras.

All of those concerns were related directly to the architects, and those concerns have been -- have been addressed to the extent that is appropriate at the design -- at the design development level before a project goes into a full permit drawings and final design development.

MR. ROBBINS: Right. So -- so you evaluated this project as a unified development site. Where did you state that in your staff report?

I didn't see any reference to unified development site as with respect to Mr. Comras's property in the evaluation of the impact of his FAR and setbacks --

MR. CARY: We evaluated the project relative to the design of the new structure and its relationship to the existing former World Savings Bank project, and we reviewed it in accordance with the request of the Planning Board, as well.

MR. ROBBINS: Right.

MR. CARY: The Planning Board had significant discussion about what changes they would like to see made, what changes they did not want to have made.

They decided not to have a view corridor through along -- along -- it would be West Avenue, through to the water. They decided that was inappropriate, that it was fine for the -- for the project to come up to where it is -- it is proposed to be located.

So yes, we took into consideration what was requested by the Planning Board, as well as what was requested by your client.

MR. ROBBINS: Let's go into some of the issues --

MR. CARY: No I am not going into any further detail. It is inappropriate. I am not on cross-examination --

MR. ROBBINS: The issue of setbacks between -- and how you evaluated what would be the appropriate setback between my client's -- the east side of my client's property and the west side of the proposed

project.

Originally, the original site plan provided for a 21-foot setback from my client's property. Isn't that correct?

MR. CARY: Mr. Robbins, we are evaluating the currently-proposed project, not a project that was previously approved by the Design Review Board which had a completely different design concept and a completely different plan.

We are reviewing what is before the Board now, and whether it satisfies the requirements of the design evaluation criteria.

MR. ROBBINS: So just to make certain, you didn't analyze the impact that this proposed project would have on the existing approved site plan?

Jut to put that --

MR. CARY: I think I have already stated that we have very carefully examined the impact that it would have been, and if it would have a significant impact --

MR. ROBBINS: I am asking you.

MR. CARY: -- in upgrading the quality

of the elevation, the design of the building, which this Board is responsible for looking at, this Board will determine if they --

MR. ROBBINS: I am not asking you.

MR. CARY: If there is adequate distance between the development, between the existing World Savings Bank project and the new project, whether the elevations have been adequately and properly developed. Those are the responsibilities of the Design Review Board.

MR. ROBBINS: Would you agree that 21 feet was the original proposed setback of the project that was previously approved, and now there is a zero setback?

MR. CARY: That is totally irrelevant.

MR. ROBBINS: Okay. And would you agree also that originally, the FAR and density was 1.42 for the original project, and now it is 2.0?

Wouldn't you agree?

MR. CARY: 2.0 is permissible.

MR. ROBBINS: Right. But it is substantially increased.

MR. CARY: What is your point?

MR. ROBBINS: Would you agree also --

MR. CARY: No, I am not agreeing to anything further, Mr. Robbins. I am sorry, we are we reviewing a completely separate project. We are not reviewing something that was previously approved by the Board which began and has ceased construction.

MR. ROBBINS: I am asking you also, are you agreeing that there is also -- there would be, right now, as being proposed in the data, the data sheet that is provided, nine parking spaces on my client's property is not being internalized into the parking garage and the CUP as per the CUP order which requires approximately 153 parking spaces? But in fact, nine spaces are now being maintained on my client's property?

MR. CARY: Based upon our preliminary zone evaluation, the project, as designed, satisfies the requirements of the City code.

MR. ROBBINS: Okay. Well, I am asking you about a condition use permit. Didn't the order -- and I have a copy of the order if you need to look at it -- if you didn't -- it was specifically said at the hearing --

wasn't it specifically stated that all parking would be internalized within the parking garage on the Palau site, and the parking would not go on my client's property.

MR. CARY: The project, as designed, satisfies the building -- the City code requirements.

MR. ROBBINS: But I am asking you about the conditional use.

MR. CARY: It satisfies the building requirements, Mr. Robbins.

MR. ROBBINS: So you are saying -- do you know if the nine parking spaces are going to be utilized as part of --

MR. CARY: It satisfies the City code requirements.

MR. ROBBINS: I am asking you, as far as this particular project is concerned, is this project going to utilize nine parking spaces --

MR. CARY: I have already provided you with the answer, Mr. Robbins.

MR. ROBBINS: On my client's site.

MR. CARY: It satisfies the requirements of this development.

MR. ROBBINS: I am not finished with my question. May I ask my question?

MR. HELD: Kent, I think you have asked the question about five times.

MR. COMRAS: He answered it the way he wants to answer it.

MR. ROBBINS: I am going to ask him, does those nine spaces -- are those nine spaces on my client's property part of the required, necessary parking in order to build the Palau project?

MR. Belush: Let's ask the architect, in their parking-type relations, do they consider those parking spaces -- if those are required parking, or -- my understanding was that all of the required parking was being provided within the building envelope. And that is access parking.

MR. HELD: Introduce your name again for the record, please.

MR. KARP: Hi. My name is Kobi Karp. Address, 2515 Biscayne Boulevard.

MR. HELD: Thank you. Do you have an answer to that question?

MR. KARP: I happen to have an answer

to Kent's question. Hopefully, I can address it. I am not using any of those nine spaces that are spoken about. We have our own parking on our own project for the residential and the commercial component, so we are not looking to use any of those spaces.

MR. ROBBINS: Thank yon.

So then we would be asking you for a continual -- this Board approval, that those nine spaces not be utilized as part of the project.

MR. HELD: And they were not proposed to be utilized.

MR. ROBBINS: Well --

MR. KARP: Again, what Kent is saying is not necessarily what I was saying. Right. You asked me for the zoning. I just want to make sure that I am not here to -- to do anything.

I am here to put -- to make sure that we all agree that the project, as designed, meets all of the zoning criteria, and I have all of the parking that I need enclosed within my parking structure, completely.

Thank you.

Thank you.

MR. HELD: Thank you, Mr. Karp.

MR. ROBBINS: I want to bring to your attention -- should -- and it is now being -- everybody is trying to not answer the question -- should those nine shared parking spaces be utilized on my property, the original approved project provided for only 3,600 square feet of retail space. The proposed project has 11,325 square feet of space. It would triple the intensity of use of my client's lots, my client's property, contrary to the intent of the easement, and contrary to the intent of the parties when they entered into the site plan.

The project is explicitly defined in these documents as a 20-unit, 3,000-square foot commercial property.

That is how the project is defined.

What we are trying to do is just assure that the intent of the parties is evaluated by this Board, and the impact on -- on Mr. -- on MAC SH LLC, Mr. Comras's property, is not adversely impacted by this

change, or unnecessarily adversely impacted.

And it is the responsibility of this Board, because the staff -- the staff has not done it, at least, it is the responsibility of the Board to consider what has been previously approved under the code, and look at what the changes in impact will have to minimize that impact.

Under one -- under the code and criteria, under one -- under the criteria, under one -- excuse me -- under Section 12, the proposed -- you have to look at the proposed structure and its orientation, massing, whether it is sensitive and compatible with the buildings.

The putting of all this mass against the World Bank building is not appropriate, and you should consider that and analyze that, especially consider important view corridors. That is the responsibility of the Design Review Board, not the responsibility of the Planning Board.

As a representative of the Planning Board stated before you, it is your responsibility to look at these view

corridors, these issues.

MR. KARP: Let me just try to help you out for a second, if I may, because Kent did bring up a point. If you look at Page A-01, you can -- it is quite simple. You can see on page A-01 what Kent was saying, which is why don't we just give up those spaces which are back there and landscape it. And Michael said the same thing. Michael Comras said the same thing.

And that's fine. That's great. Because what can be a condition is, take the area, if you will, of where you can see on page A-1.01 where the six parking spaces are that we have left space to access those parking, just landscape it all.

It sounds to me like they want to give it up, those spaces, and that should be a condition, and to just give up those spaces, just make it all landscaping, and I think that's a very valid suggestion. It actually works nice because you can see -- there is a view corridor between the Sunset Harbour townhomes and where it is that we are proposing on the west side as a CD setback,

and then there is an RN setback of 26 feet, plus.

We can -- we already are proposing to landscape it and connect it to the public right-of-way, and that will be quite nice as a big garden that goes all the way around that connects to the public promenade.

MR. CARY: And staff would certainly be very supportive of that suggestion.

MR. KARP: I think it is a good suggestion, and it would be nice to landscape that whole area.

MR. CARY: Excellent idea.

MR. COMRAS: If I could respond to that -- as it relates to those parking spaces, the parking spaces will -- are going to be utilized. We would ask that the building, itself, the structure, be set back and be reduced in size and mass, and incorporate landscape along there.

Just to clarify what William spoke before -- when we met, we totally reviewed the elevations as provided by Kobi so I would understand exactly what was being proposed. It does not mean that I agreed with it. But

it actually -- just clarifying what was proposed -- so I just want to make that clear.

So there is no desire to remove those spaces to provide all that landscaping.

In fact, if the building along the north line of the property was set back and reduced in height and scale, they could put in the appropriate landscaping as required, as I would do, when I go to develop other properties next to other people.

Thank you.

THE CHAIRPERSON: Thank you.

MR. HELD: Mr. Chair, before Mr. Pathman continues, can -- I just want to check with the court reporter to see how she is doing.

MR. ROBBINS: She is a very good court reporter. I use her when Mr. Pathman doesn't use her. So she knows and does --

THE CHAIRPERSON: We are going to stop for a moment and take a five-minute break.

And lunch has arrived for those Board members who have ordered it.

(Whereupon, at 12:02 p.m., there was a

recess in the proceedings.)

CERTIFICATE OF NOTARY

STATE OF FLORIDA:
SS.
COUNTY OF DADE:

I, SHARON PELL VELAZCO, a Court Reporter in and for the State of Florida at Large, do hereby certify that I was authorized to and did stenographically report the proceedings in the above-styled cause at the time and place as set forth; that the foregoing pages, numbered from 1 to 188, Volume I, inclusive, constitute a true record of my stenographic notes.

I further certify that I am not an attorney or counsel of any of the parties, nor related to any of the parties, nor financially interested in the action.

WITNESS my Hand and Official Seal this 23rd day of February, 2013.

SHARON PELL VELAZCO, RPR
COURT REPORTER NOTARY PUBLIC
Commission NO: EE 015147
Expires 8/19/2014

CERTIFICATE - REPORTER NOTARY OATH

THE STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

I, Sharon Pell Velazco, Notary Public for the State of Florida, certify that any and all witnesses or parties requested to be sworn were sworn by the Chairman during the course of these proceedings, and were duly sworn.
WITNESS my hand and official seal this 23rd day of February, 2013.

SHARON PELL VELAZCO, RPR
Notary, State of Florida
Commission No: EE 015147
Expires 08/19/2014

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EXHIBIT "P"

VOLUME II

MEETING OF THE DESIGN REVIEW BOARD
CITY OF MIAMI BEACH

DRB 22889
1201, 1225, 1237 20th Street

October 2, 2012

APPEARANCES

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Seraj Saba
William Cary
Carol Housen
Leslie Tobin
Lilia Medina
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- - -

(Whereupon, the following proceedings were had:)

THE CHAIRPERSON: We have just wait until we are -- on.

Okay. We are going to reconvene where we left off, Mr. Robbins.

MR. ROBBINS: I am going to try to summarize and raise a few more issues and move on.

We would like to adopt the comments of learned co-counsel, Mr. Gibbs, and his expert, and we do not have to rehash those issues.

You have to look at specifically criteria six, seven, eight, 12 and 15.

Now, look at 15. This is important here. 15 says -- "An addition on a building site shall be designed, sited, massed in a manner that's consistent with existing compatible -- existing improvements."

Apparently, there was an oversight by the staff when they wrote down that that criteria is not applicable, because this is a unified site plan. This is an existing building, the World Bank building, and this

is essentially an addition to the site.

So it has to be the siting, the design and the mass has to be sensitive to and compatible with the existing improvements.

That is your charge, and you have to do that.

So apparently -- and with all due respect -- apparently, the nature of this project -- because it is a competent in lieu of unity of title, and it is a unified site plan -- that's not something that is normally reviewed by the Design Review Board, and it is very unusual.

In fact, I have actually reviewed, I believe, every single unified project that has been approved by the City over the last 15 years, and it averages about one or two a year. And very rarely do they come back to the Design Review Board.

So the City is not used to its own criteria, which is to consider the old project and compare it to the new project. Unfortunately, they don't have that much experience, so they miss those criteria under 118-5.

So that's why 15 is particularly applicable. You have to look at my client's property as part of that site, and then analyze this in addition to that site.

MR. CARY: That was a typo, Mr. Chairman. You are absolutely correct. That should have been marked satisfied.

MR. ROBBINS: Well, okay. And there wasn't -- it was testimony by the staff member that Mr. Cary -- that he did not consider comparison. He looked at this entire -- this new design review project. This is not a new design review project. It was a prior order, and you have to look at that.

You know what Michael Comras is looking for?

He is looking for balance. He doesn't want it all. He knows he is going to have to probably give up some of that -- that view corridor, that view that he has now looking over the lots, that he has the clear view, which you would expect on the site plan. He realizes that, but he realizes that this Board has a duty to balance the respective

interests of the property and assure compatibility.

Mr. Gibbs suggested putting townhouses on that -- the rear 70 feet of lots 25 and 26. We think that is a great idea. Or, there should be a transition from the five stories or four stories down to three and two stories, to make it more compatible with the two-story units that are facing the water and Sunset Harbour.

That's what we are asking for. That's what we are asking for, is some balance, some -- you know, the developer, he is acting like he is giving so many concessions. If you look at the analysis of the concessions, there are nearly none on our side.

I think there is -- they had a setback of five feet, and the reason they had a setback five feet and cantilever was because they were interfering with a driveway which was part of the easement.

They have not given up anything. Whatever they did, they had to do. When they say they reduced it from 70 units to 50 units, they didn't really give that up.

They -- the required parking minimizes the number of units. They have just enough parking for 50 units, and they couldn't put any more parking on that site. So they didn't give up anything.

Even the FAR -- I think it is -- 108,000 square feet is allowed, and this is 107. A thousand square feet, less than one percent was given up in FAR.

They have not given up.

Make them sit down. We have been trying to do this for almost -- over a year now. Sit down and try to get some type of compatibility, some type of modification, some type of giving up a little bit here and a little bit there to make it more appropriate and compatible.

Don't allow this building to be built in a way that doesn't respect the existing west view corridor. Professionals as you, that view corridor on West Avenue is an important view corridor that should be considered.

There is also the issue of the internal parking. There has been jumping

around as to whether or not -- whether or not the nine spaces that are my client's property, is or is not going to be utilized as part of this project.

It was my understanding before the conditional use permit and according to the order of the conditional use permit by the Planning Board, those nine spaces were to be internalized, and there was to be 153 parking spaces within the garage, itself.

And there was no consideration of circulation off the site and into my client's property when it was analyzed by -- by the Planning Board.

This Board should make it a condition that this covenant is changed in order to assure that those nine spaces are never utilized and circulation never goes off-site, and it is maintained and internalized. That should be a requirement and condition of this Board.

In addition, in addition, there are issues involving the indemnification proceedings and issues that I raised with Mr. Held, this matter, the pending matter before

the Board of Adjustment that was ruled and is not a final determination, and this is more of a legal issue -- but there -- when a matter is filed before the Board of Adjustment, all matters and hearings are supposed to be stayed unless certain conditions precedent are met by the developer. And one is to indemnify the City from any attorney's fees that it would incur as a result of -- of that process. This developer has not even done that.

Now, we have gone forward -- over my objections, we have gone forward with this here. I don't want to hold these people up and not allow them to have their just due and be able to make a presentation. But this matter should have been stayed, and it should not have been heard until -- until they indemnified the City for their costs.

Finally, all I am doing is -- is going to make certain that there are certain things in the record. I want to make certain that the Planning Board order is in the record so this Board can review it and identify the fact that there are 153 parking spaces that

were supposed to be part of the garage and not supposed to be on my client's site, and for the other purposes.

I also want to bring it to your attention that that Planning Board decision did not contemplate or consider the FAR that was on my client's lot, so when they approved the FAR, it did not include the FAR on my client's property. And I think that is a fundamental problem because -- unless FAR over 50,000 is specifically approved, there has to be a credit taken down for the approved FAR from the amount of FAR that constitutes my client's building, and that has not been done.

In addition, I want to make certain that there was a memo that I submitted in the record, and I want to make certain that is there. We are going to be doing a reduced copy for the clerk, a reduced copy of the overlay for the original site plan and the -- and the proposed new site plan, and we are going to submit a copy of that into the record.

I also would ask this Board to take

notice of the prior records. We submitted a set of photographs of the neighborhood which showed the importance of the World Bank building, the beauty of the World Bank building, but more importantly, the beauty of this particular location within the City.

As everybody knows, there is that beautiful park and open space at the corner of 20th Street and Sunset, across the way, a tremendous green space. This is a critical building. This is the building that introduces everybody to Sunset Harbour. It introduces everybody to Sunset Islands. It should have auspicious architecture.

For you to go back and say, "Make it more compatible, make it better," is something that this Board has the responsibility to do.

This is the first time you have actually had a hearing where you are considering the facts. Before, it was just a procedural matter and it was continued without specific directions.

But I remember this Board said, this Board said, "Work with the developer," and

told us to work with the developer. When we tried to work with the developer, we were told they are not going to do anything unless they tell us what to do, unless this Board tells us what to do.

They are not going to change it. So you need to exert your power and you need to do what's right and assure compatibility. Don't get run over by this developer. Don't let him think because he is aggressive -- they have a very powerful lawyer, a very influential person. They have an influential people, developers, and investors. But that is not the issue for this Board. This Board is purely an architectural Board considering compatibility.

We have architects on this Board, and these -- these architects and experts can evaluate the appropriateness and compatibility. And all my client is asking for is some balance and some fairness and equity.

Thank you.

MR. HELD: Mr. Chair --

THE CHAIRPERSON: Thank you very much.

Yes, Gary?

MR. HELD: I have a comment on the issue of modifying the covenant with regard to the nine parking spaces, as both Kent and Mr. Comras have asked.

Reading attachment three, I think the authority of this Board for modification is limited to the site plan and not the covenant. You don't really have authority to breach the terms of the covenant, itself, but what you have authority to do is modify the site plan.

And I don't see any language -- and unless somebody wants to point it out to me that you have authority to modify the covenant, itself, I don't think you do. So the nine spaces would have to be modified by agreement between the parties, if there ever was an agreement.

Kent?

MR. ROBBINS: I think the City does have that authority. The City, through its supervisory authority, specifically provides the planning director and the City attorney to negotiate and consider the terms, and to

assure that terms of the covenant are compatible with land development regulations and the orders of the Design Review Board, Historic Preservation Board and Planning Board. And that authority is inherent in 118-5, and it is explicit as far as the responsibility of the planning director to review it and the City attorney to review it.

And I know that the covenant, in fact, was imposed by the Planning Department because there was a plan use disaster that occurred where the project was approved without the appropriate lot splits. So as a band-aid, the covenant was imposed upon the project in order to assure that they can go forward with their building permit. A condition of any building permit is the unification of plans. The unification will require that we require further documentations concerning the incorporation of lot 22 into the project. The City would have the authority and discretion to make demands as far as what is appropriate with the unification terms and language, and I think -- in fact, I know that the City would

have the ability to impose those conditions as conditions for the Board as well as condition of approval of any unified development site.

MR. HELD: Thank you, Kent, for your comments, but my opinion stays the same.

THE CHAIRPERSON: Thank you, Gary.

Okay. Is there anybody else that would like to comment on this application right now? I know there are a lot of you in the audience that weren't intending on speaking, but this is your opportunity.

Anybody want to come up and speak favorably about the project?

MR. HELD: So why don't we just identify the amount of time that Wayne gets for rebuttal and --

How much time do you need?

MR. PATHMAN: Well, I am going to have Kobi go through some of the architectural issues and rebuttal, and then obviously there were quite a few people who spoke, so I can try to do it in 20 minutes, 30 minutes.

MR. HELD: Is 15 okay?

MR. PATHMAN: It is probably not going

to be 15, but I can try.

MR. HELD: You can try.

MR. PATHMAN: But Kobi is going to need at least 15 minutes of his own to walk you through the architectural issues that were raised.

MR. KARP: I will try to be a lot less, Gary, I promise. I just want to bring a couple of points that the lawyers brought up.

If you just give me a second to look at the plans that we submitted, please, because -- and I will be as brief as possible. Because a couple of things were brought up which I think we need to review. I will start it at the end instead of in the beginning.

If you just entertain me -- just go to the last page, which is A 301 of your package which we submitted, and it shows a section through the World Bank. It -- because "compatible" was discussed a few times, and I wanted to discuss its relationship, and that is also why we brought the model. Not only for our commercial properties, but it is a

1 section that shows -- that shows the existing
2 bank.
3 It shows -- it is a west section in,
4 and it goes to -- all the way to the
5 boardwalk, the public right-of-way, all the
6 way on the left. It shows how it is that we
7 have two residential floors and how we set
8 back two residential floors.
9 And it is important to note because
10 then you can see how it is in the back that
11 we accommodated the parking to be continued
12 and remain behind the bank.
13 If you just would be kind enough and
14 entertain me just for one more second, and
15 you go on to the page A 300, it is the
16 colorful one. It looks like this.
17 And the reason is because I just
18 wanted to be crystal clear that we did take
19 time to really reduce the height along the
20 water body, and not only set it back to the
21 residential -- because a residential
22 setback -- you can see it has a setback to
23 match what it is at the townhomes, the
24 shorter townhomes on the water, but we also
25 stepped it back for the top two floors.

1 And you can see there exactly how we
2 set it back and how we took care to have a
3 floor height, nine-foot eight, nine-foot
4 eight -- the top of slab, top of slab, with
5 an eight-inch slab only gives us nine feet
6 clear. We didn't ask for ten feet inside.
7 We could have. It is four residential
8 floors, and what we are trying to do is have
9 it as low as possible.
10 And you can clearly see -- I showed
11 you the photo. When you enter Sunset Island
12 Number Four, the first house on the right
13 hand side, it is 30-plus feet. I won't make
14 up a number for you because it meets base
15 flood elevation. You can do the math,
16 yourself.
17 And then it has a rooftop element and
18 it has a rail to it. So it is going to be
19 extremely close to my proposed four
20 residential floors.
21 Now, it sits on the setback of its
22 property.
23 That's where I go on -- please, if you
24 just give me one more second -- and you can
25 see on Page A-2.03. A-2.03 has a black and

1 white elevation on the bottom and it has a
2 color elevation on top. And the reason is so
3 there is no -- so it is crystal clear on the
4 bottom what is the existing building.
5 And I do think that the World Bank is
6 a beautiful building. And you can see how it
7 is that we are proposing to have the finishes
8 there, and that's why I brought you the
9 finished material board so you can see the
10 finishes one by one.
11 And you can see how the commercial is
12 facing 20th Street, and you can see how the
13 residential -- the three floors of
14 residential right above it are purely
15 residential. And you can see the sizes of
16 the units, because the sizes of each and
17 every unit is laid out on the floor plans.
18 And on the roof plan, you can see
19 exactly what the mechanical air conditioning
20 are going to be and where the elevators are.
21 I just want to take you -- if you just
22 give me one more second, please -- to A-2.01.
23 A-2.01 is the elevation, again, facing
24 the bank, and it has, in black and white, the
25 dimensions. It shows us how it really steps

1 back along the water. It notes where the
2 cladding of the Resista is, and it also shows
3 you where the existing bank is.
4 And then it goes up and above it and
5 shows it in color because that's -- that
6 floating brown volume is our gym that faces
7 the secret garden.
8 Again, the secret garden, we have that
9 range, and that range, and we can get rid of
10 it all together. It just doesn't do us any
11 good. That is what we met with Stef about,
12 we met with the neighborhood.
13 That garden is a vernacular massing
14 that we use here in Florida for cross
15 ventilation. It creates a beautiful
16 landscaped space inside. It creates a green
17 environmental building with cross
18 ventilation, and it does not add to the
19 massing, and that's what we discussed.
20 And by the way, the architects I met
21 with for that was Chad Oppenheim -- we sat in
22 his back yard -- and Bill Taylor, who are
23 both very knowledgeable, very qualified
24 architects with years of experience. They
25 have given us comments before, and I was --

and my developer said, "Please, if you have ideas and solution, give it to us," graphically, and so forth. "We will be more than happy to implement."

And I even spoke to Bill Taylor a few minutes ago. He had some comments, and we will work those out because they are very valid comments that we can accommodate.

Sorry to interrupt, but Page A-1.05 -- A-1.05 clearly shows that -- how it is that I set the building back. And specifically, you can see from the corner.

The corner is where the bridge and actually the site is unique and bows out. What we have done is we have held the line straight and we have set it back. The requirement setback is 20 feet, and you can see that itself, is set back to 30 feet from the canal, 37 feet, plus, from Sunset Drive, and from the corner, as you measure it, it is 52.

And what that does is, it creates vistas and view corridors that do not exist right now. If you look at the landscape plan, you can see that the existing

single-story structure blocks the vistas to the water. There is no accessibility to the water.

Let me rephrase it. The structures that exist there right now are up to the seawall. What we are proposing is to demolish it, pull it back 20 feet, and landscape it -- make it a public promenade so that you can have access.

So yes, are we compatible? Yes. We are relating ourselves not only to the ex-Car Doctors and not only to single-family residential in height, but also we are providing landscaping and setbacks at the ground level and vistas and view corridors.

And again, you can look at A-1.05. It is a perfectly good example. The building sets itself back.

And also, on the townhomes side, meaning on the west side, we have that whole landscaped garden area.

I just want to point those items out to you because you can see on the roof, it says, AC, AC, AC, and that's where the mechanical is hidden, completely encased and

enclosed, just like our parking.

And we did reduce our quantity of units -- getting back to the parking -- and yes, I can have more parking because I can simply expand my parking. So I am not short on parking, and parking does not dictate.

But again, Kent is a lawyer, and that's why I want to bring it to the record that I can have more parking enclosed and encased in this structure, and I can have more density. But we have made a decision together to decrease the density.

I just want to take you, please, for one second, to Page A-1.03. And you can see on Page A-1.03, which is the 4th floor, how it is that we have pulled back along the water and along the corner.

And you can see those striped lines are the terraces, and I am just noting them so that people who are not architects who happen to be looking at it can clearly say and look and see where it is that we were, and we did manage to pull it back.

And you can see the size of the units. The size of the units on the water are

bigger, and the units that face 20th Street are substantially smaller, and you have the sizes right there, and you can look at them.

Again, I just want to take you, if you just give me one more opportunity, to Page A-1.01. That is a plan that is on top of the commercial. So you see the commercial is below, and then we have pulled it back on Sunset Drive to meet the RM-2. You can see on Sunset Drive, we pulled on the RM-2, and then when we come to the corner, we pulled it even more. And that's what we have done since the last time we came here in front of you.

You were asking me to pull it back, so I pulled it -- I pulled it back in both directions.

And you can see clearly that my parking is encased and enclosed in between the structure, completely.

And if you please just go to Page A-1.00, it is important, because what was noted between -- what was previously approved and what was previously submitted -- I looked at my staff review that I got, and in there,

there are actually eight and-a-half by 11 plans of the project that was previously approved. Jeff Falkanger was the architect. And it clearly shows drainage on the property of the World Bank. It clearly shows circulation. It shows a lot of detail in it.

But what is interesting is, on my project, on Palau, you can clearly see that what we have done is we have created a green space towards the bank with bike racks. We have glazed the facade facing 20th Street so you don't see the cars. And that is important, because the previous project that was approved had the parking garage exposed to the public right-of-way, both to the single-family residential and both to the public right-of-way on 20th Street. We do not have that condition.

That building that was previously approved was three floors over two floors, for a total of five floors. I have four floors of residential facing, meeting the base flood elevation criteria.

And you can clearly see on Page A-1.00 how it is set back with the bike racks, how

it is that we meet the RM-2 setback of 26 feet and we are setting back.

So the compatibility of the size and the scale -- I mean, the model shows a lot because it clearly shows that this building here -- I can pull into the secret garden, but I don't have a secret garden behind the World Bank. All I can do is pull it back as much as possible. All I can do is lower it as much as possible, and I have substantially done so, and I have provided a vista and a view corridor facing this way. And that's very important because I have also opened up the vista and view corridor here, aperture here facing Sunset, and that is important to understand because when you look at my site plan, you will see that the drive -- like I told you, the bridge is on an angle looking to the fountain.

And then you will see that I have set my building back on the corner and opened up the aperture even more, so that when you are in the public right-of-way, you will see the building open up, and the aperture towards the bridge.

So am I respecting the bridge?

Yes, I am; very much so.

And at the pedestrian level, you have full access to the bridge and to the walk along the promenade.

And if you are able to fly, and you are 20 feet up in the air, you can clearly see how the aperture opens up and how you will start to see the vista of the park here. That's why I think it is very critical to understand that not only did we take it seriously, the massing and the size -- I mean, this is a building next door. That's what was approved. Whatever they did -- here it is, it is right here. It is sitting next to my building. You can see it.

And by the way, I didn't do it on purpose. It just fell because it sat all night in my car.

This is -- this is what it looks like, and it sits on the street. You can go there and between this facade and this facade, which is a beautiful glass facade by Publix, I have compression.

What we have done is we have done to

the commercial -- and by doing the residential, we have set it back. We have set it back substantially on top of 20th Street. We have set it back on Sunset Drive. And we have even more so done it on the single-family residential.

And this house right here is very similar in height to my house -- to my building. And this house is closer to the property line. It is closer to the public right-of-way, and when I enter the island, I see this even more so.

So can I make this building be a park? That's not my mandate. My mandate was to make this building the best that I can, with the maximum amount of green space and public spaces that I can, to make the circulation work the best that I can. And anybody who has given me any comments, whether it was the planning staff, the neighbors, the Planning Board members -- and by the way, neighbors -- I went to neighbors. I got letters of support from this house and Pardo, and I went and got other letters of support from other people.

And I didn't ask anybody to come here. And this here is very important to understand, that any comments that they have given to us -- Bill Taylor just gave me comments about the staircase tower. He said it should be treated in a certain manner.

I said, "Bill, that is a very good comment. I will certainly implement it."

And that is the kind of input that has been very positive. When I finished my presentation, I said it has been an honor and a pleasure to work with your staff, to work with the Planning Board and to work with the neighbors. And I have received great comments, and many of those comments, I have been able to accommodate -- most of them. And that's why it was a pleasure to do and work in this project, which took a little bit longer than expected.

I -- if I missed anything --

Wayne, did I miss anything?

Jennifer?

MR. PATHMAN: I will cover it.

MR. KARP: Okay. I will sit down.

MR. CARY: Kobi, I want to ask you a

question, please. Tucker raised a point relative to the rooftop elements, stair bulkheads, elevator bulkheads, whatever.

You are aware that we have a coodition in the staff report which is recommended to the Board, a condition 2-C, which says the rooftop excluding any canopies and stairwell or elevator bulkheads shall be further developed and detailed to include any and all such elements that may be proposed above the main roof deck and shall be lowered in height to the extent possible, subject to review and approval of staff. No rooftop elements that are not explicitly shown on the roof plans and elevations presented to the Board shall be approved at a later date by staff.

That condition means that if everything is not on the drawings that are before the Board today, and when the permit drawings come in, and we find that you have to have more rooftop mechanical enclosures and all of that, that has to come back to the Design Review Board for approval.

MR. KARP: Yes, sir.

MR. CARY: We will not be able to

approve that administratively. So I want to be sure that you address Tucker's concern, which is a very good concern. This is what too often happens with some so many of the buildings we approve here. And once the mechanical engineer gets done, we end up with incomplete mechanical forests up on top of otherwise beautiful buildings, that have a very negative impact, and then the neighborhood has to look at them. So --

MR. KARP: Yes, I accept that condition, and it is a good condition. Thank you very much.

MR. CARY: Thank you.

Also, you may want to -- you know, we spend a lot of time relocating the lobby --

MR. KARP: Yes.

MR. CARY: -- from Sunset Drive so it wouldn't have an adverse impact on the residents of the islands, and the lobby is relocated from Sunset Drive to 20th Street. As well as widening the -- setting the building back further along its pedestal to be able to provide 12 feet minimum of clear sidewalk width in order to provide major tree

pits so that we have major canopy trees to further mitigate any adverse impact the height of the building may have on the street. I don't know if you want to talk about those --

MR. KARP: Yes, I do want to talk about that. And specifically, we did do that. And you can see on 20th Street, on Page A-1.00 -- and we put that note in there of a 12-foot sidewalk, and the tree planters is in there because we did have meetings and comments of specific size of trees, and types of trees that were requested to be implemented in there, and we have agreed to that.

And you can clearly see also how we have set it back, on Page A-1.00, on the ground floor plan, and it has a 12-foot sidewalk.

And furthermore, just so -- sorry to interrupt -- one second -- you can see on Sunset Drive where the gatehouse is. We have notched it back to meet the RM-2 plus setback. And we have created there a whole landscaped area with a public promenade that

meets all of the shoreline requirements; the width, the benches, and so forth. The landscaping -- and we have that as a pedestrian promenade all the way along.

So our intent is to create it as a public promenade, and create a landscape, a buffer between us and the building.

MR. CARY: And also, you have met with Cheryl Gold, as requested by the Planning Board?

MR. KARP: Yes, and Cheryl had given us specific instructions of what it is that she wants to have there and we have accommodated it.

And if -- right, Jennifer?

Yeah, everything.

And I have also, from Andy Witkin, the landscape architect here with us, as well. Yes, we have absolutely been more than happy to do so.

MR. CARY: Okay. And for the benefit of the TV viewers who, you know, have not received a copy of this e-mail from Cheryl Gold, from Cheryl Gold to Richard Lorber dated September 28th, which is Friday --

"Richard, we have reviewed the latest landscape plan and we are encouraged to see a vast improvement from the original plan.

"We appreciate staff's commitment and ongoing work with the developer to achieve a considerable increase of shade canopy in the revision of the species selection."

She goes on to talk about the elimination of parking spaces, which she was also encouraged by.

So --

MR. KARP: Any questions? Any suggestions?

I am here to assist. Thank you.

Thank you.

MR. PATHMAN: I will try to be as brief as possible, but obviously there are a number of things I need to address. I appreciate the Board's indulgence because I have to make a record on certain things, and it is necessary, as this matter may ultimately be appealed. So I will try to move quickly.

First, I would like to say that in dealing with staff, and not just Mr. Cary and

Michael Belush, but with Mr. Lorber and other members, before I went to the Planning Board, we spent a considerable amount of time. It wasn't as if we just came in here and threw some plans and filed them and didn't meet with staff and didn't meet with the neighborhoods; didn't, you know, hear or consider all of the things you just heard, a letter -- or was it a letter read by Mr. Cary -- someone who was concerned about the landscaping. As soon as we became aware that that person was concerned about the landscaping, we approached them.

And we have always had a very positive attitude. The developer has had a very positive attitude.

And something that you should understand is that this project is on commercial property, and they would have a right to go in and develop a commercial project. They chose not to. They chose to develop something that they felt would be compatible with the neighborhood, that would help the neighborhood as it's becoming more vibrant. And you see the resurgence of this

area, that it would combine both multi-family and some small retail. And that's clearly permitted.

And we are below the height that we are permitted, 50 feet. We are below the FAR, we meet or exceed the setback. We meet or exceed the landscaping.

So when you look at staff's report -- which I think, William, knowing how this matter would be contested by the neighborhood -- one neighborhood only, by the way, there is nobody else here from the other associations, or that has appeared -- and so you have the Sunset Harbour -- or Sunset Island Homeowners Association, and I understand their concerns. We always have. But we don't get any credit for all of the concessions that we have made, and there were many. But in looking at William's report, I think he identifies many of them.

And I don't know how often you have a report that says, "satisfied," or "exceptionally satisfied."

And that's something that you need to understand, because the law says that there

is competent substantial evidence as presented by the staff report. And that report needs to be rebutted by anybody who is protesting. I don't think you heard that today. You heard a lot of hearsay. You didn't hear any experts. You heard people complaining. Yes, we knew that was going to happen, but you don't hear anybody say -- and I have handed two cases to Gary -- what the standard is, the standard that you are supposed to employ in evaluating this process.

And I would like to just read this one case into the record. It is a district court case out of the Third District, and it says as follows, it says -- and I am just paraphrasing -- that the applicable zoning district -- and that means the applicable zoning code standards of review, which we have, as identified by staff -- and by the Planning Board's ratification of our submittal to them and their unanimous approval -- if this is accomplished, then the application must be granted, must be granted, unless opposition carries its burden. Its

burden is -- which is to demonstrate the applicant's requests do not meet standards and are, in fact, adverse to the public interests.

Well, we have met all of the standards. Staff has indicated we have met all of the standards. There is a Supreme Court case that says the following: "The party opposing the application must show by competent substantial evidence that the proposed exception did not meet such standards, and was, in fact, adverse to the public interest. It goes on to say that they "must show by competent substantial evidence that the proposed exception" -- this is the important part -- "does not meet the published criteria."

What does that mean?

Well, the published criteria is what you are mandated to find when you make a vote. It is what staff has given you in their report. It is what the Planning Board has already ratified and unanimously affirmed. So if you didn't find or hear that today -- which I don't believe you did -- you

must find in our favor. You must find that competent substantial evidence that has been presented by us, by staff, has not been refuted.

There have been a couple of other things that have been said throughout the day. One thing that I think is important -- and I will take this out of order -- but Professor Le Jeune testified at the Planning Board hearing. He was not here today. He was an expert, I believe hired by Mr. Comras or Mr. Kent Harrison Robbins, and they referred to him today as if he was against the project, or that he said things that it was adverse to the neighborhood. I want to read to you from the record what he did say. "My analysis is that the way the building, the proposed building, the way it develops its massing along the waterway and wrapping around 1261" -- which was the address -- "is an adverse impact on the Sunset -- is not an adverse impact on the Sunset neighborhood. It is an impact" -- meaning the Sunset neighborhood, meaning Sunset Islands -- "it is not an impact to the Sunset Island

neighborhood. It is an impact on the other side of the bridge."

So here was an expert that was proffered by the other side, so to speak, Mr. Comras, and he says -- and he is someone who currently sits on the Planning Board. He used to sit, I think, on this Board, and he testified and said under oath that there is no impact to the residential neighborhood.

And I have a copy of the transcript here if anybody wants to see it.

I find that compelling. Why?

Because they don't mention it. They didn't tell you that. They, in fact, misquoted Professor Le Jeune.

And here Kent is now going to come and take up my time and tell you something else, but the record is here.

And I would like to finish before Kent interrupts me. I gave him that courtesy. I would like that courtesy.

Do you guys mind for a second, please?

So that wasn't told to you. That is totally disingenuous because you have someone who you probably all know who sits on a Board

1 here at the City and said the exact opposite
2 of what was represented here today.
3 You heard issues about code
4 requirements and setbacks. Well, I am not
5 going to get into too much detail about that
6 because you have the staff report, and it is
7 a strong report.
8 And I think you all rely heavily on
9 staff. You know that they are very
10 qualified. You know that Mr. Cary is the
11 assistant director, and is very thorough,
12 especially in an issue like this. This
13 wasn't like something was a surprise, that we
14 were going to have a long hearing today or
15 not have protesters. And I am sure he took
16 that into consideration when he wrote his
17 recommendation. And there is nothing in that
18 recommendation that says this project should
19 not be approved. Nothing.
20 I want to touch just quickly -- I
21 didn't intend to bring up Mr. Luria's comment
22 about the pay for play. He brought it up.
23 But I have to make a record, unfortunately,
24 and I am just going to comment on this. This
25 was a memo that was sent by them, by Mr.

1 Luria, copied to all the Board members and
2 sent to my client, saying, "Here is our
3 conditions."
4 You can read it however you want to
5 read it. I think the language is pretty --
6 pretty clear. Okay?
7 No one put a gun to his head. No one
8 said to bring it up today. That was his own
9 fault for bringing it up. But he brought it
10 up, and that's what we have been dealing
11 with.
12 I don't think that this Board should
13 condone that activity. I didn't like having
14 to deal with it, but that has been the
15 contention that we have had all along.
16 And we have tried diligently to work
17 with the Board. I know a number of people
18 that live on the island, and we have made
19 many concessions, but not one person, not one
20 that came up here said anything about the
21 concessions that we have made. Not one. But
22 William can tell you, I can tell you, Kobi
23 can tell you, my client can tell you that it
24 is over 30, and they are significant.
25 You know, just by way of example,

1 originally, the staff wanted the ingress and
2 egress to the building to be on Sunset Drive,
3 but the association did not. We allocated
4 with staff, Planning Director Lorber that we
5 wanted to move it to 20th Street, even though
6 that's not what staff wanted.
7 We did that for the benefit of the
8 residents on Sunset Island. That's just one
9 of the concessions which caused us to
10 redesign, redo everything.
11 We then internalized -- and Ms. Tobin
12 can tell you that one of her issues when she
13 was on the Planning Board was traffic
14 circulation; where are all of the cars going,
15 how are you dealing with the cars, how are
16 you dealing with the traffic?
17 We have an excellent traffic plan. We
18 internalized all of the drop-off and all of
19 the pick-up for both the residents who live
20 there and the retail. It is all
21 internalized, as well the trash pick-up.
22 We also have created an extended lane
23 there so you are not blocking traffic for
24 deliveries. And those will be regulated by
25 time constraints, whether it is seven A.M. to

1 nine A.M., whatever the deliveries will be.
2 We will work with 1256 on that. It is
3 something that we put on the record at the
4 Planning Board.
5 Again, I want to reiterate, competent
6 substantial evidence. That is the standard.
7 There has been none today. Not one expert
8 testified to say that our project is not in
9 keeping with the neighborhood, that it has an
10 adverse impact, that our traffic is not --
11 you know -- study was not done correctly or
12 that our parking was a problem. Nothing.
13 Not anything. A complete zero.
14 It was just statements, most of which
15 I would tell you was hearsay. For instance,
16 Mr. Luria held up a piece of paper and said,
17 "I have a hundred signatures here."
18 He didn't indicate whether it was
19 certified; didn't indicate whether it was
20 notarized; didn't indicate who the signatures
21 were. We don't know what they were told when
22 they signed this, allegedly. We don't know
23 what kind of e-mail was sent out. No
24 establishment of any base for the
25 consideration of thnse signatures. Complete

1 hearsay.
2 And you would think – and I expected
3 that after all of this, all of these hours,
4 all of these presentations, that there would
5 have been something, that there would have
6 been something that they would have had that
7 said, "Well, here is evidence of something.
8 Here is some documentation."
9 But to the contrary. Everything they
10 said, we refuted -- every single thing --
11 with competent, substantial evidence,
12 including professor Le Jeune's statement,
13 including what the law says the standard is.
14 Mr. Comras brought up issues about the
15 easement. He has a convenient memory,
16 because I negotiated with him and his lawyer
17 -- who is not here today -- those easements
18 to be modified. And at no time did he
19 reserve unto himself anything, anything other
20 than a 20-foot easement or roughly a 20-foot
21 easement on 20th Street.
22 He could have said, "Well, I am not
23 signing this because I want a view of the --
24 a corridor to the back."
25 And one thing -- and I think the City

1 attorney can opine on is -- that the
2 exclusion of something doesn't mean it is
3 included. It means it is excluded.
4 He didn't ask for it to be included
5 and therefore, he has no right to ask for
6 this Board to consider it.
7 And very specifically, through Mr.
8 Comras and Mr. Robbins, what they are trying
9 to get you to do with the nine spaces is give
10 them a windfall, take them away from us, give
11 it to him so he has a better value to his
12 property. And one day, when his building is
13 torn down and he builds a five-story
14 building – as he is entitled to -- he will
15 have the use of that area.
16 Well, I would advise you as counsel
17 already has, you can't take the spaces from
18 us. We are not using them. They are not
19 part of our required parking, but you can't
20 take them. They are ours, and that would be
21 a taking.
22 And unless we agree with Mr. Comras to
23 revise the covenants, the only chance he has
24 of getting the spaces back -- but just so he
25 understands, you understand -- when Kobi was

1 explaining to you the detail on the project,
2 the overhang portion of those spaces, we
3 could have put our building further out so
4 that those spaces would not be useable, but
5 we didn't, because our property line goes
6 further into those parking spaces.
7 But to be a good neighbor -- which he
8 doesn't want to admit -- we pulled the
9 building back beyond the property line and we
10 allowed him to use those spaces which we are
11 not going to use. So he is going to have
12 better use of those spaces than we are
13 because we are not including them in our --
14 MR. LORBER: Can I just correct the
15 record?
16 The statement that --
17 Richard Lorber, acting Planning
18 Director. Hi --
19 The City did not permit what you just
20 said. Those spaces must be accessible, and a
21 proposal that did --
22 MR. PATHMAN: That's what I am saying.
23 MR. LORBER: No, you said, "We could
24 do it."
25 MR. PATHMAN: No, but what I am

1 saying, Richard, when we had this discussion,
2 is that we could agree to eliminate the
3 spaces altogether, but we also realized we
4 had this covenant, so we pulled the building
5 back so there is no conflict, there is no
6 issue.
7 He will have use of the spaces. We
8 are not planning on using them, at this
9 point. They are not part of our required
10 parking, so he has the benefit of that.
11 MR. LORBER: There would not be -- the
12 City would not permit the ground floor of the
13 developer-proposed building to encroach
14 closer than the required back-up space
15 necessary for full use of those parking
16 spaces that currently exist, regardless of
17 any arrangements or --
18 MR. PATHMAN: But you acknowledge that
19 that is part of our property, that the
20 property line extends to –
21 MR. LORBER: It very well may be.
22 MR. PATHMAN: That is all.
23 MR. LORBER: But the previous site
24 plan -- the unfortunate previous site plan
25 has those spaces and the City would not let

any encroachment take away the usability of those spaces, period.

Thank you.

MR. PATHMAN: The -- going on, the covenants specifically are designed to allow this to happen. The City attorney has given you an opinion that was part of your package, and in that opinion, it says the following:

"The application to the Planning Board for conditional use approval was properly such a request, and the subject matter of the request is properly before the Planning Board.

"As to Design Review Board application, the subject matter of the request for Design Review approval is properly before the Design Review Board. If MAC objects to site plan modifications, the subject matter of an application by Palau to modify the site plan in the covenant in lieu from a Cypress Bay project for the Palau project is properly before Design Review Board."

These opinions do not reach the sufficiency of clearness because that is a

whole -- another argument which Gary can tell you, but that is not necessary for this purpose.

It says, "Following Design Review Board approval, the site plan modification -- it is not necessary to further modify either the covenant in lieu or the declaration as provided in the covenant in lieu, paragraph five, or declaration, paragraph 6.13. An order -- a similar action of Design Review Board can be executed and recorded to reflect such change."

So the point is that after you heard all of these arguments and all of the things that Kent was saying, and Mr. Comras, that's not accurate.

What is accurate is the digestion of all of those documents -- which the City was involved in back when they were originally executed, and again was reviewed by them before they were executed this past year and recorded -- gives you the power to do exactly what we are here before you -- approve this plan, modify our site plan.

They are not adversely affected by our

site plan. They want you to believe that, but the truth is, both parties, back when Mr. Comras bought this property, knew what they were buying.

These declarations were part of the conditions upon which he bought the property. He then had another bite at the apple to modify them last year. He did. He signed it, and it was recorded.

And the staff is telling you in the report that we have the right to add this other parcel, to make a better improvement in the neighborhood, to combine these two lots.

If you recall -- and I don't know if you -- it's in your package or not -- but Cypress Bay was the last developer of the middle parcel, and they got a three-foot height variance. They also had all their parking facing the water, and not one protester. Not one.

So here we come along with this project -- it is an excellent project, a lot of detail, a lot of time spent, a lot of concentration on what the neighbors want, not just Sunset Island -- we addressed the issues

of the Sunset townhomes, the Sunset Harbour buildings, the North Bay Road and so on, and others who had an interest in the area -- and everybody has welcomed us, other than the Sunset Island Homeowners Association.

We believe that the project designed by Kobi Karp and all of the things that we have been asked to do and have incorporated into our project -- many of them voluntarily -- it is not like it was a fight over it. We said, "Okay. We will incorporate that."

Or, "Here is some of our own ideas" -- staff has embraced that. Not just the Design Review Board staff, but the Planning staff and the Planning Board. So we are batting a thousand so far. We are three for three, at least from staff and the Board, itself.

We -- I ask you to consider that and consider that when you are deliberating, as well as the fact that no evidence has been presented -- competent, substantial evidence -- that shows that we have deviated from the required criteria.

Let's see -- just bear with me for a

second. I just want to review my notes.

I mentioned the variance. Again, we are not using that variance, even though we could have. We would have had an entitlement to do it.

To show the good faith of our client, who is the head of the project, he said, "No, we don't want any variances."

We didn't seek the variances for height, for density. We did the opposite. We condensed. And I think that that is something that you should seriously consider, because we are outside or below our permitted footprint.

Again, I want to reiterate the importance of what the covenants really say and what the City attorney's opinion says. It basically tells you that we have the right to develop our parcel independent of Mr. Comras's parcel, and he has the same right.

I asked Mr. Comras at the Planning Board hearing, "Would you agree today on the record to agree to reduce your height and density that you have a right to on your property?"

He said no.

But I asked him that because he was pushing us to do it and telling the Board that we should be doing it, and that we should be required to have something less. He had an opportunity to be "The good citizen" and say, "You know what, I am going to do it. I am going to commit to it today, I am going to do something less than."

But the truth is, most likely -- I mean, I don't know. I am not a fortuneteller -- but his property will be developed into something probably different than what it is today. As that area continues to evolve and emerge into a vibrant area, I am sure you are going to see it a different building than what is there today.

There was talk about unification. The City attorney has already opined and we have met with the City attorney after the Board's approval -- and it has to be in succession -- you approve, you agree to allow us to modify our site plan, we then submit probably a covenant in lieu of unity of title to combine our two parcels and we have a unified plan

that meets all of the code requirements, all of the setback requirements.

There have been other comments about working with the neighborhood. Now, working with the neighbor doesn't always mean that you agree, but you try. And we did that. I know that I attended at least ten meetings with the Sunset Island Homeowners Association; another half a dozen with other associations; numerous ones with staff. Not for the purposes of banging our project through and saying that, you know, "This is the way it is going to be, or the highway."

It was to reach concession as much as we could, to make compromise, and we were the only ones who compromised. It was a one-way conversation. We are the only ones who compromised.

Just wrapping up -- Mr. Robbins had intimated about me being a powerful and influential attorney. I don't know exactly where he was going for that, but I know it wasn't a compliment.

And I can tell you that at no time did myself, my client or anybody on this team

ever approach anybody -- whether it was a homeowner's association or staff or a member of a Board -- in any improper way or try to use any improper influence. We had straight discussions with very good and qualified people like Mr. Cary, Mr. Belush, Mr. Lorber, Mr. Held.

And this was a difficult project. It is a difficult project, as far as presentation. It is a beautiful project and it belongs in the neighborhood. It belongs where it is being built.

And you have staff recommendation, you have a strong staff recommendation. You have heard nothing that allows you -- I mean, you can obviously make the decision you want -- but there has -- no evidence has been presented that says we are not within the criteria or footprint that we are entitled to.

And I think that the Planning Board, too, had taken up many of these issues, not necessarily directly design, but they granted us the right to have more than 50,000 square feet.

The mechanical parking -- we made a number of concessions, it was a difficult process, a longer process than it was even before this Board -- at least so far -- and we got their approval and we got a unanimous vote.

I also think it is important that when you consider who was here today as far as the residents, you should consider who was not here. No one from the other associations appeared against this project, and that would be at least three other associations that I am aware of that are in favor of this project by their absence. And we have met with them and they said they have no objections.

And that should be considered, too. It is not just about one neighborhood. It is not just about their actions or their issues with regard to massing. We have taken into consideration over 30 different things to create a better project for the neighborhood.

And this neighborhood, as you have heard some way, is evolving. It is changing and it is going to continue to change. But -- you already have on the south side of the

bridge where our project is located, you have a destination Publix. You have a new parking garage that has 30,000 square feet of retail, which is a project I also worked on. Yon have new emerging businesses that are retail. You have the funeral home converting into a restaurant cafe and shop. You have a power station -- it is not like this doesn't fit.

And we are in scale when you look at the building -- and one of the things -- I just want to use this one board to demonstrate -- I don't think our eyes can see over mountains or waves. You don't do this with your eyes. You see what is in front of you. And when you say, "mass," you either see mass or it is not.

You heard people comment about the Sunset Harbour townhomes, but I mean, they don't ever talk about the buildings in the back, the big ones.

And I mean, when you look at this and if you look to this area here, your eye doesn't look over this and then over that. It sees the mass. Yes, there is a slight break, but you see a 65 to 70-foot, rather,

building, and they are telling you that everything should be 35 feet or 33 feet.

The fact is, you already have buildings that are much higher. And those buildings, why they were able to do that is they got a variance. Well, we can't get that variance. So if we were to condense our project, we wouldn't be able to seek a variance to have more mass or more height like they did at the Sunset Harbour townhomes.

But the truth is, if you have driven the area and you have seen those properties from both the water side and the street side, they are massive; three times, plus, more massive than ours.

And so -- in keeping with the neighborhood -- I think we are more than in keeping with the neighborhood. And again, I would just like to say that Professor Le Jeune agreed, as did other experts on the Board, the Planning Board, that this does not have a negative impact to the neighborhood.

Thank you very much for your time, and we appreciate your positive consideration and

request you approve this project.

THE CHAIRPERSON: Thank you.

MR. GIBBS: Mr. Chairman, can I just have one minute?

Because there are some statements here that I don't believe are accurate.

MR. PATHMAN: Are we going to go back and forth?

MR. GIBBS: No, I just want one minute, and that will be it.

THE CHAIRPERSON: One minute.

MR. GIBBS: Okay. I would like a minute to rebut.

A reminder to the Board that this is a continuation of the hearing on the 7th of August, at which time there was professional expert testimony provided by Mr. Mark Alvarez, who dealt with issues of sight and of the view corridors. And it is in your -- it is in your packet. It was handed out, the -- that material.

Number two, Dr. Le Jeune actually provided a letter -- which was also presented at the last meeting -- in which he talked about -- "I can still -- I still consider the

1 project to be excessively monolithic for
2 mass, footprint and overall height. The
3 relation to the existing building is weak and
4 difficult to evaluate."
5 And he goes on and makes a proposal to
6 reduce the height of the project by one floor
7 in the northeast section. And he goes on,
8 and you have that in your record, too, that
9 was presented in the last meeting.
10 In addition, at the Planning Board
11 meeting, Dr. Le Jeune specifically says that
12 "I would suggest that the project be
13 redesigned in order to respond to the
14 residents' comments. I think that this site
15 needs -- what the site needs would be
16 probably to develop as a townhouse to reduce
17 mass and scale."
18 Dr. Le Jeune was not a big supporter
19 of this project. You can look at the record,
20 and the record says that.
21 Thank you very much.
22 THE CHAIRPERSON: Thank you.
23 MR. PATHMAN: I would like to just
24 comment -- I never said he was a supporter.
25 What I did say and the point I was trying to

1 make on the record is there is no adverse
2 impact on the Sunset neighborhood, not on the
3 residential one.
4 That is all I was trying to make a
5 point of.
6 THE CHAIRPERSON: Thank you.
7 Do you need one more minute?
8 MR. ROBBINS: Just a minute.
9 I want to make it clear that as far as
10 your responsibility as members of this Board,
11 you have the authority to use your expertise
12 to apply the criteria to this project. You
13 are not bound by a staff report. You are not
14 bound by a determination by an expert of the
15 applicant. You have the expertise, as an
16 expert Board, to consider, weigh and make a
17 determination. That determination would be
18 upheld unless there is -- unless it meets the
19 burden of -- a challenge is met -- if the
20 burden is met during the course of a
21 challenge. And nothing has been suggested
22 that it would be challenged in that manner.
23 Just -- as far as Professor Le
24 Jeune -- Professor Le Jeune specifically
25 recommended in writing that you should

1 maintain the current height for the rest of
2 the project, but open up the lower floor in
3 the area adjacent to the existing structure.
4 This can be done by removing two
5 apartments and placing the building on a 15
6 to 18-foot pied a terre that would create a
7 view corridor to and from the island. This
8 strategy would allow to articulate the
9 building in two clearly identifiable sections
10 and reduce its overall impact and masses, and
11 that, of course, would preserve the view
12 corridor, something that everybody recognizes
13 is important, and not only the view of the
14 building, but the view from West Avenue over
15 the water to Sunset Island.
16 That is all I would like to say today.
17 I really appreciate all of the time
18 and effort that this Board has taken. I know
19 we have a lot of experts and architects,
20 engineers, people that really have knowledge
21 in the area, and I am hoping that we have a
22 great discussion about what is appropriate,
23 what is compatible, and what we are going to
24 be seeing in this area of Miami Beach for the
25 next few generations.

1 Thank you.
2 THE CHAIRPERSON: Thank you.
3 MR. PATHMAN: I want to be clear about
4 something. I just want to be clear about
5 something. I am not saying that Professor Le
6 Jeune was here to support us, but he made it
7 very clear -- but they have not refuted --
8 even though two lawyers have come up here --
9 that it has no impact to the residential
10 neighborhood. That is what he said, on the
11 record.
12 THE CHAIRPERSON: We understand.
13 MR. PATHMAN: Thank you.
14 THE CHAIRPERSON: Thank you.
15 Okay. So at this time, we are going
16 to close public comment officially.
17 Okay?
18 Just before we get started with Board
19 comment, I do sincerely want to thank all of
20 you, whether you are residents or homeowners
21 in the area, legal counsel, clients,
22 applicant, etcetera, and of course, to my
23 fellow Board members, thank you for --
24 everybody for taking the time and the effort
25 to be here and to voice your thoughts on the

1 project.
2 I have gone -- been to many of these
3 meetings where I have always sort of ended
4 them saying that I am surprised when there is
5 not comment or support, whether it is support
6 or opposition to a project, when I see
7 single-family homes being built, or other
8 projects. So in the sense of what this Board
9 can do and what these Design Review Board
10 meetings are for, I appreciate the
11 involvement.
12 And as a fellow Miami Beach resident
13 and as I can speak on behalf of my whole
14 Board, we take this process very seriously.
15 There has been a little bit of
16 discussion, maybe, about the fact that maybe
17 we have not been reviewing things, or we have
18 not seen things, but I assure you, we receive
19 all of the documents that are available for
20 public consumption, and we do read and review
21 all of the drawings and all of the e-mails
22 and all of the reports. It is quite a bit of
23 work. And we know that we owe that to -- to
24 the applicant and to the residents and to
25 everybody in the City.

1 So -- and I want to assure you that
2 everybody on the Board, including myself,
3 takes this role very seriously.
4 I don't know if -- I know one of our
5 Board members has to leave soon, still --
6 Yes?
7 Okay. Okay. I think it is going to
8 -- I am looking forward to sort of hearing
9 some of the comments that relate to the
10 design of the project.
11 We, of course, have -- will take into
12 consideration everything that we have heard
13 today, but I would like us to focus on what
14 we can do, what the thoughts are in the
15 design and what can be done, or what maybe
16 needs to be done to make this the best
17 project that we can for this neighborhood.
18 So if there is a volunteer from the
19 Board that would like to start comment --
20 Carol?
21 MS. HOUSEN: I will start. A couple
22 of questions and a couple of comments. First
23 of all, the question for Mr. Pathman.
24 You said there have been about ten
25 meetings, approximately, with different HOAs

1 in the district?
2 MR. PATHMAN: Or more, with --
3 including all of the HOAs, but roughly about
4 ten -- eight or ten with the Sunset Islands.
5 MS. HOUSEN: And did you have some
6 positive support from the area, from --
7 MR. PATHMAN: Yes, that's why they are
8 not here protesting from the Sunset
9 townhomes, the Sunset Harbour buildings and
10 North Bay Road association. Mostly, they do
11 not wish to be -- to be involved, but they
12 had nothing negative to say and they were not
13 here to speak against the project.
14 MS. HOUSEN: Some of my concerns --
15 and I will go over them one by one -- the
16 flooding problem. I think Kobi said that's
17 going to be resolved when he puts in his
18 underground work. Is that correct, that the
19 flooding is going to go away on that bridge,
20 or be modified?
21 MR. KARP: Yes, Carol. Right now,
22 what happens is there is no drainage system
23 for the site, for the Mark's Dry Cleaners
24 and/or the job that stopped construction.
25 What we will do is we will have our

1 drainage for our property, and we will
2 collect all of the run-off, and we have to do
3 so also by law. And that's what we can do.
4 Absolutely.
5 MS. HOUSEN: Okay.
6 Maybe Kobi -- you could explain this
7 better. The view corridor from the building
8 from the bank, which would be going east,
9 north and east; is that correct?
10 Yes.
11 MR. KARP: Um-humm.
12 MS. HOUSEN: Where -- the side where
13 your gymnasium is, and -- are they going to
14 have -- it looks like where the bike racks
15 are -- I believe it's set back quite a bit to
16 leave those windows in an open space from the
17 bank. And I want to make sure I am reading
18 that correctly. I am looking at A-1.00.
19 You see, by the bicycle racks there,
20 where you recommended putting greenery in
21 between the two buildings here --
22 MR. KARP: Yes.
23 MS. HOUSEN: -- I am talking about
24 view space here.
25 MR. KARP: Yes.

MS. HOUSEN: So this is all going to be open to the bank?

MR. KARP: Yes, and green space as well; correct.

MS. HOUSEN: Okay. That clarified that.

I had notes on your -- rooftop.

Just a minute.

On five, A-5, A-1.5, is this accurate to be all of your AC and what is going to be installed on the roof, or is there additional pieces that need to go up there for --

MR. KARP: No additional pieces need to go up there.

MS. HOUSEN: So A-1.5 is -- is how you are proposing it?

MR. KARP: That's correct.

MS. HOUSEN: It covers them all?

MR. KARP: That's correct.

MS. HOUSEN: Will there be cooling towers on the roof?

MR. KARP: No. There will be split air conditioners. No cooling towers.

MS. HOUSEN: I think that is my only question.

Thank you.

THE CHAIRPERSON: Thanks.

Leslie?

MS. TOBIN: Okay. So I have had the privilege of hearing this project over and over and over again.

It -- I have to commend Kobi -- I think from the first time I saw this project to where it is now, it is -- you have addressed so many of the concerns that we had in the Planning Board. You have addressed a lot of concerns that I think as a Planning Board we had, and individually, as we had.

I think the building does a great job of breaking down the mass that was first presented to us. When it was first presented to us, it was one long elevation that really -- you know, for the Sunset Island homeowners -- did nothing.

I mean, you know, it -- it has come so far since then. I -- I have, you know, a few comments that -- that I have thought of as we have been sitting here today.

I think -- you know, it concerns me that -- it is nice to hear Mr. Pathman say

that there are the homeowners associations -- maybe not Sunset Harbour -- Sunset Island -- but Sunset Harbour and some of the others that are in favor. You know? And I don't -- I think it would be --

(Unintelligible from the audience).

MS. TOBIN: Okay. But they are not here.

(Unintelligible from the audience).

MS. TOBIN: I watched the last hearing.

MR. PATHMAN: It is all hearsay.

MS. TOBIN: Well, you know, I wish that -- unfortunately, I wish there had been some here that were in favor, because I think it would be -- it would be nice to hear that.

I think that, you know, in reviewing the plan, I think what Mr. Luria said about that corner unit, you know -- that has been a struggle that we have had from the beginning, that first unit, the corner that comes from Sunset Island coming out to -- over the bridge.

You know, I know you stepped it back. I know that you've -- you know, you have done

a lot of things. Part of me just feels like, you know, to get rid of that top corner unit could bring that scale down and maybe make, you know -- I mean, I don't want to design it. I know that things -- you know, that there is a breaking point where you have to have so many units in order to do it, but I feel like if it could just be that one, you know, so instead of four, you know, four stories, it is three stories -- I feel like it could reduce the scale. That's just my feeling.

I also feel like -- you know, some of these comments that are made, you know, regarding the setbacks that you have from the World Savings Bank onto your side -- I think you all have done a great job of making those setbacks along that side. You're maintaining the same setbacks that they already had to use, and so I don't see why there is such an issue, you know?

You are doing a two-story space there, and then it is stepping back also. So I think you guys have addressed that very well.

I feel like -- you know, as far as the

enclosed parking -- I think it is a nice thing that you are not looking at parking. I think that the secret garden is covering the parking, and you know, for -- I wouldn't want to see a mass of a building that is all, you know, one big, huge buildiug. I would rather see what you all have done in breaking it down.

I think that -- you know, I know you can only do the best you can with the water and sewer. I feel like that whole area -- if I try to go to Publix on a day where we have had one of those flash rains, nobody can get in and out.

I don't -- you know, I think that's something that as the City, we need to try and figure out how we can work on that. I don't know if that's the Planning Board -- but I feel that, you know, you have accommodated -- you have moved that entrance, like we asked you to.

You have done a lot of the things. I think, you know, where -- I happen to really like the diversity in that elevation where you have got the Resista on the stairwell --

I do understand that it is kind of a mass when you are driving over from Sunset Harbour – I mean, from Sunset Island, out, that maybe, you know, where that -- because that is a new element that wasn't there before.

And you know, maybe there is something that can be done to soften it. I like -- I like very much that -- the design of it. I think the scale is very much in -- in line with what's going on in Sunset Harbour.

I just think that maybe, you know, just that one top corner unit, you know, if anything, could be, you know, removed, scaled down -- I don't know. It is -- you know, when I look at the proposed perspective that you have coming over, that is the first thing that I see. And so maybe if it just came down a little bit, it might help the homeowners. I don't know.

But I think you have accommodated and worked very well with, you know, everything that has been thrown at you.

MR. KARP: I will just try to be brief and discuss it. This is the element you are talking about here, and I think that staff

and I have spoken, and Bill Taylor as well, that we are going to look at things to soften it up substantially.

This -- this corner right here that you are talking about -- and I put this rendering because it shows both sides. It shows the building, which is my proposed corner, versus the proposed corner. And this corner has to be taken in balance because there is a park immediately against it.

I wanted to take you -- if you just give me a second -- to a sheet in the plans that I submitted to you, Page A -- A-2.00.

And A-2.00 shows how the bridge ascends up, and then it shows the two residential units and how I set them back.

And you can see at the corner -- and if you give me a second, and you might want to look at the model -- it -- the corner -- we have set it back to the tune of 50 feet.

So this request to bring it down in height -- originally, my building was 50 feet. So what I did, since the Planning Board -- I brought it down four feet, and I also pushed it back, so that I created that

whole green space in front there, Leslie.

So it became a -- I mean, when you look at the plan of this thing, the corner is not only set back from the face of the building substantially, and not only from the aperture of the bridge -- because when you go across, you are looking down to the fountain. It is a critical corner for me. And by --

MS. TOBIN: And it has come so far. I am not -- you know, I am just merely stating, you know, a thought of, you know – it is hard to sit up here and see how far yon have come, how much has been done, and still hear so -- I mean, four and a half hours of opposition. You know?

And that's a -- you know, we struggle up here.

In terms of everything that you have done, you know, you meet all of the criteria. It is just very hard, you know -- and I am -- and I don't know that there is ever going to be anything that everybody is going to agree on. I don't -- I mean, sitting here and sitting through the Planning Board, I don't think that is ever going to happen.

1 You know, it was just a thought -- and
2 trust me, I know how much you brought that
3 back. I know how much you have done that.
4 And I know what that -- I know what is
5 involved in that.
6 You know, I don't know that I can give
7 anybody any solutions. It is just -- you
8 know, it is just a thought.
9 MR. KARP: Thank you. But definitely,
10 all of the issues that you have with the
11 staircase and so forth, for sure.
12 Absolutely. Thank you.
13 MS. TOBIN: Thank you.
14 THE CHAIRPERSON: Thanks, Leslie.
15 MR. CARY: Leslie, there is one thing
16 that he -- Kobi and I had -- had discussed,
17 you know, possibly considering on that --
18 that top floor, northeast corner unit, was to
19 either eliminate or substantially reduce the
20 extent of the -- of the roof over the
21 terrace, to begin to pull back, you know, the
22 perceived mass at that point.
23 I don't know if that is something that
24 you think is worth looking at further. It is
25 one of the things that we have thrown around.

1 I think it works extremely well,
2 successfully, the way it is right now,
3 architecturally, the way it is now.
4 MS. TOBIN: I do, too. It is just --
5 it is like I said. It is just hard to hear
6 so much against it. Like, you know, I --
7 when you look at the perspective, that is
8 just the only thing I see that may be --
9 MR. CARY: Right.
10 MS. TOBIN: If there is even more a
11 way to soften it --
12 You know, if Kobi reworks it, I will
13 leave that to him. But maybe that's it.
14 Maybe that is -- you know, extends out so
15 far --
16 MR. KARP: That is a good point, and I
17 -- I think that we should certainly study
18 that. Absolutely. Because I think that
19 would push it back substantially, and -- from
20 that horizontal cantilever, yes.
21 MS. TOBIN: Which Frank Lloyd Wright
22 might not like, but --
23 MR. KARP: He is my hero. I grew up
24 in Minnesota.
25 Yes, that is a very good point, and I

1 think we should certainly entertain it.
2 Thank you.
3 THE CHAIRPERSON: Seraj, would you?
4 MR. SABA: Hi. Good afternoon.
5 MR. KARP: Good afternoon.
6 MR. SABA: I would, in general, concur
7 with the rest of the Board. I think it is a
8 very attractive building, stylistically. I
9 think it is going to be very nice. It does
10 set itself apart from the townhomes that are
11 next to it, and I think that's -- that's a
12 plus.
13 I have one comment, or actually, a
14 question about the large space on the
15 northeast corner. It was -- it was quite a
16 point during your presentation that there was
17 a lot of public access all the way around,
18 and I thought that I heard somebody somewhere
19 say that there was a plaza on that corner
20 next to the bridge.
21 MR. KARP: If you look on Page
22 A-1.01 --
23 MR. SABA: Yes.
24 MR. KARP: What we have done is we
25 have taken the sidewalk and then we continued

1 the sidewalk, obviously, outside of our
2 property, so it is buffered by the
3 landscaping, so that the drive coming off of
4 Sunset Island has a green landscape buffer of
5 bushes and trees and so forth.
6 Then there is a wide sidewalk, and
7 then it comes to our property.
8 What we did then is pulled into our
9 property, our walk, which then lets you walk
10 on our property to a plaza termination where
11 there is a bench, make a left, meaning go
12 westerly, walk along the water.
13 So now you have views and vistas for
14 the public all the way along the water, the
15 whole length of the property, with benches
16 every so often, with trees, so it is shaded.
17 And it really faces north, so it is kind of
18 nice.
19 And you walk all the way along the
20 water. When you come to the end of the
21 property, meaning all the way to the west,
22 where you come to the property line adjacent
23 to the townhomes, that's where we have a 25,
24 26-plus foot setback. There, we created
25 another plaza park with benches and so forth

where people can sit.

If sometime in the future there is an opportunity where another building will come in, instead of the World Bank, I am sure that there will be a continuation to bring it back to the public right-of-way on 20th Street.

MR. SABA: So we are talking about -- I mean, maybe a ten-foot large plaza with a bench?

MR. KARP: Yes. I would say that it is about --

MR. SABA: It is not really that -- that large, but I mean -- I thought -- when I heard it, I thought it was, like, a lot larger, because there is a big open space there. But most of that open space is a private garden?

MR. KARP: Yes.

MR. SABA: Is that correct?

MR. KARP: Seraj, I understand where you are going, and it is a good point. And certainly, now there I have a 50-foot -- I have basically a 30-foot landscaped square. I can certainly enlarge it and make it a more -- a more --

MR. SABA: And is there going to be anything that is in that space that is going to be blocking the view corridor as you are coming up Sunset?

MR. KARP: Just landscaping.

MR. SABA: A fence there?

MR. KARP: Just landscaping.

MR. SABA: No fence, no walls, anything in that space?

MR. KARP: By code, I would have to put a picket fence, you know, because of shoreline requirements and so forth, sunset to sunset right, accessibility so people don't go back there -- because we have to maintain it, and -- and take care of in perpetuity.

But certainly, I will be more than happy to study the opportunity to enlarge that area for security purposes, yes.

MR. PATHMAN: It is a standard shoreline requirement.

THE CHAIRPERSON: Is this open to the public during certain hours, and at night, the gate is closed?

MR. KARP: Yes.

THE CHAIRPERSON: But that's how the bay walks are.

MR. KARP: Yes. Yes, absolutely.

MR. SABA: No. I mean -- you have pushed it back significantly in that -- in that corner, and you know, the building being pushed back so much -- I am just -- it would be a shame if, you know, you pushed your building back, but then there was some, you know, other element there that blocked the view corridor as you are approaching the bridge. That's my concern. So I think that's a very important point that was made there.

MR. KARP: I agree.

MR. SABA: My only other comment is -- you -- you know that there was one -- well, there was, I guess, a few requests that we made the last time, and one of them was that -- was that the developer meet with the association. And it is sort of disappointing that that didn't happen, because I think that had that happened and we still were looking at the same project here, and everything being the same, you know, maybe we wouldn't

have had so much animosity that we had this morning. You know? Maybe it would make our decision a little bit easier. But unfortunately, that didn't happen. And so we also have to take that into consideration.

I -- I -- that doesn't sit real well with me, that we asked for a simple meeting to happen and you know, had you guys had a meeting and couldn't work things out, and then still came back here, I think that would have been a big difference. But unfortunately, it didn't happen, for whatever reason. And the reason isn't really that important, but it could have happened, and it didn't happen.

MR. PATHMAN: If I could just quickly comment -- we wanted to meet. You know, my client contacted --

(Unintelligible from the audience.)

UNIDENTIFIED SPEAKER: Don't lie, Wayne. Don't lie, that is nonsense.

THE COURT: Okay, okay. We got it. We got it.

MR. PATHMAN: The point is that we did try. My client can -- he has the e-mail, if

you want to show it --
THE CHAIRPERSON: We have seen it. We know it.
MR. PATHMAN: We tried.
THE CHAIRPERSON: We know all of the details.
MR. PATHMAN: And we had many meetings, and I am sorry that we couldn't meet again.
MR. HELD: Mr. Chair --
THE CHAIRPERSON: Yes, Gary?
MR. HELD: I noticed during the conversations that there is no conditions dealing with an easement for public access on the waterfront walkway, and I drafted one and can read it into the record, either now or whenever you are ready.
MR. PATHMAN: Gary, that would be required of shoreline --
MR. HELD: Sorry --
MR. PATHMAN: When we go to shoreline, they will require us to.
MR. HELD: Well, we will also add something that says the applicant shall execute and record in public records an

easement, subject to the approval of the City attorney, providing for public access over its waterfront walkway before the issuance of a building permit."
THE CHAIRPERSON: Right, between the hours of sunrise and --
MR. CARY: Sunset, is what our normal condition reads.
MR. HELD: Yes. We will incorporate that into the text of the easement.
MR. PATHMAN: Okay. Okay.
Thank you, Seraj. Any other landscape issue.
That you see now that that --
MR. SABA: No, the landscape plan is really well done.
Another -- another point to me -- and I think we did ask for the building to be set back along 20th Street, which they did, and I think that whole streetscape there is -- you know, is really improved.
I think, you know, they did most everything that we asked.
No other comments.
THE CHAIRPERSON: Thank you.

Lilia?
MS. MEDINA: Yes, thank you.
I think the project has really benefitted from a lot of the discussion, the meetings, the -- the Planning Board conditions have been met in most part except for the parking spaces on Sunset Drive that is -- that's something that still is an issue with Public Works.
I don't have any concerns about the discussion by MAC, and I think that the building has been pulled back adequately.
I think that the view corridor, now that it has been clarified on the west side where you have 26 feet of easement, will be helpful to have that West Avenue end point.
I do believe that the Sunset Drive view corridor has been met at the angle that it is.
I have one question that I perhaps am -- misunderstood from Tucker Gibbs' comments.
Was there a mention that there was an elevator shaft on the north side of the building?
Or -- not sure?

You might have said that, Tucker, and I am not sure if that's true or not.
MR. GIBBS: Let me come up and speak.
Yours is bigger.
Yes, I was looking at the -- there is an elevator lobby, it says, towards the north side, behind that -- behind the -- this unit, the unit in the northeast corner.
There is an elevator lobby and there is the stairwell at the same general location.
There is also a stairway -- I don't know if that is just the stairway up from the unit below, or -- to the roof, but there is a stairwell up at the one on the west side.
Those are the two -- I think there are a couple in the back towards the secret garden.
MS. MEDINA: But there are not any on the north side?
MR. GIBBS: Yes, it is on the northern portion of the --
MS. MEDINA: But it is not really facing totally onto the waterway?
MR. KARP: No. It is on -- it is

specifically -- he is on Page A-1.05, and he is referring to -- you see, see grid line number two.

And right behind that, correct, is a staircase -- an elevator and a staircase.

And what happened -- if the building is 40 feet high and if it is set back from the property line about 40 feet -- which it is, and more, you -- that's why that section that we drew shows that it is completely hidden behind there.

And I can show it to you again. But -- I am sorry. So what we did is we set the staircases and the elevators all the way back to that grid line two, would be behind grid line two so that it would not very visible from --

MR. GIBBS: And that was our concern, only that it not be visible from IV.

MS. MEDINA: Thank you.

I think, again, the project has benefitted from a lot of changes, but on the other hand, I am concerned about so many folks from Sunset Isle.

This has been going on for a while,

since November, and you know, to me, it is very important, public comment. I am going to be a little bit more drastic than just looking at the northeast corner unit. I believe that maybe the planning -- that the Design Review Board and maybe the staff would consider -- and I know this is a financial impact on the project, but in line with the existing townhouses on the north side, if the project could be redesigned to remove one line, one floor of units on the north side. So--

MR. KARP: Are you asking me, Lilia, because --

MS. MEDINA: That is my suggestion, to look at that.

MR. KARP: That is a good question. And if you look at the model right here -- and again, because these townhomes back here go to 60 feet, 65 feet on 20th Street -- 70, at the peak, and on the waterfront, they are 20, 25 feet.

And you can see in this photo right here that not only are we in context, and not only are we compatible to it, but also you

can see that by setting it back and reducing the height as we did -- because our height is shown to you on Page A 300.1, and you can see the pink townhomes on the front, and you can see the pink townhomes in the back -- and we are right here.

This is the unit that you are talking about, and it is within the setback. If you were to stand on the other side of the waterway and look across -- and that's why we removed all of the staircases and all of the elevators, because we had this element on our roof. We removed it. We stepped it back substantially. You can see how much we stepped it back right here.

And we have also reduced the height to nine feet clear and -- nine feet clear. And the house that I showed you on the other side of the water is -- has substantially more height.

So I -- I like to be positive on what it is that I can do and jump on the other side, but my structure here clearly states from floor to roof is 39 feet, ten inches.

MS. MEDINA: And how does that compare

-- how does that compare with the townhomes, the lower buildings?

MR. KARP: To the peak over the townhomes -- yeah --

Let me just be conservative, Ms. Medina. Let's say that my building is 40 feet, and the townhomes to the peak is 33 feet. So the difference is the seven feet, right?

But you see the pink here?

The townhomes are closer to you. So what I did is I set it back, the first two floors, and I brought them down two feet.

And then I took the top two floors and I set them back another ten feet. Ten feet is three steps back.

And all of those actions were done in order to accommodate what it is that we are talking about, about height, because we are not only in context of the townhomes in the front, we are also in context with the townhomes in the back.

You do not see just the front ones. You also happen to see the ones in the back, because it is important to understand that

you see it in three dimension. So that's why I took a three-dimensional photo and I took a section that clearly shows -- because this happens across from the park. It happens across from one, two and-a-half homes right here.

And that's why I took that action, because I couldn't push it back anymore and I could not pull it down anymore.

And you can see in my plans -- I have two separate cores; one for the units on the water, which are bigger and lower and set back, and I have the other one for the units on 20th Street.

And those units have the rooftop elements and they have higher clearance. They are 50 feet in height.

And that's why we took this action, and that's what is important.

So to lose another floor doesn't achieve as much as what we have achieved here with your staff over the past six months of pulling down, pulling back into the project -- and by the way, nine feet clear in sight -- by the time you put the air conditioning

and the mechanical systems -- I pulled it as low as I can. I didn't play around with it. I said, this is as low as I can go, and that's what I did.

And by the way, because you were talking about the neighbors, when I went to the Planning Board, I took time -- because they are also my neighbors -- and I went around and I spoke to the neighbors and I met with the neighbors. And I wanted to see what the comments were. I met with the neighbor who lives in this here, and they have given me letters of support and so forth.

But I want to continue to work with comments. And as I told you, Bill Taylor, who lives in the house right here, came to me this morning, said, "I looked at the plans and I was thinking about the staircase," the same as what Leslie has just said.

"Maybe we can make it less massive. Maybe we can make it more open. Maybe we can -- because it is a low rise. It is not a -- even a midrise."

And we can do that, and we can work with staff on that. Absolutely. Why not?

We can do that.

And those are positive remarks, absolutely, that don't affect the project in a way that you are thinking about, because to remove a floor off of it doesn't do the effect that you want it to.

What we did is, when we were closer -- and that's what was being referred to by Leslie -- we were closer to the water, we were in the same line as the townhomes. And we said, "Let's pull it back, and let's pull it back not only for the first two floors, but let's pull it back for the second two floors."

And then you asked me about the elevators. And the elevators sit over here. That's that little cube sticking up. And you see how it is below the red?

I could have made it taller. I didn't do that. I don't play those games. I wanted it to be as slim and as low as I can.

And that's why I pushed it back. I didn't -- you know, William and I sat down and we said, "Let's just push it back."

We also said, "How about here?"

You see, this is what Leslie just said. "This eyebrow here -- in perspective, if you get rid of that eyebrow -- it is like a hat that sits. If you get rid of it, it will look better."

And that's why I right away said, "That is a valid point. Let me jump on that."

That's -- just like Seraj said to me, "You know, Kobi, you have all this big, green, open space here."

I have this big, green, open space here that does not exist right now.

"Why don't you use it in the more proper fashion, make something out there?"

And right away, I will jump on that. I will say yes to those things. That is very logical.

Sorry about the long answer.

MS. MEDINA: It is obvious that you have done a lot of modifications and you have a setback that is pretty substantial on that north side.

I think, you know, overall, the design is very good. The materials that are being

used is -- is very modern and pleasing to the eye.

The setbacks, the bay walk or the canal walk, the corridor -- sort of the ability to have all -- cafes -- all of that is really pedestrian amenities that I am in favor of.

I am still concerned, though. I mean, you know, as far as the Sunset Isle neighborhood, this is a substantial number of folks that have come out, time and time again. So --

MR. KARP: And Ms. Medina, I will take it a step further. We met before, and you know, some of the suggestions were "Why don't you take a floor off on the water, and why don't you put it right here?"

You know, "Why don't you just take this right here and locate it here on the back," right?

Well, that would mean that I would need to go in for a variance and a hardship. And this code was set by the public and by the officials who looked at this and said, "Do you know what, make it 50 feet high.

This is what we want at the entrance."

There was a building here approved with a height variance, with exposed parking, with commercial and residential. So not only did I step up to the plate and meet all those conditions, but we have greeted them and we have set it back. That's why I have such a nice staff recommendation for approval.

And if I can go for a variance, somebody will oppose that variance. For sure, somebody will oppose that variance. And I will take that square footage and I will put it here -- that's not going to -- that's the problem that -- and the discussions that we had also with the Planning Board. Those things came up before.

And that's why I feel that everything that has been requested from me from the Planning Board and from the DRB -- and that's why Leslie says -- it is an overhaul of the project. That's why I stood here and I said to you it is a pleasure and honor to be here, it is a much better project.

And can I make everybody happy? No. But within the code and the requirements and

the neighborhood, this is really the best that we can do.

And yes, you can tell me to lob off a unit and you can tell me to lob off a floor, but it is not right. I am already below the FAR. I am already below the height. I already have the parking that is required, and there's going to be an ordinance where I do not need to provide it, but I provided it.

And I could have circulated on 20th Street. I could have circulated on Sunset Harbour. But I had people on Sunset Island who said to me, "Kobi, we want to get off that island in an emergency vehicle, and we don't want to have -- not an entry or an "outsie" to the project. We don't want anything stopping the emergency vehicles."

So we took it off completely. I took it off completely. There is no entry at all of any vehicles from the side. And not only did I then move it away, I moved it all the way.

So to -- to comply with all of those requirements, whenever a comment like that came, we pushed it way back. If you look at

the model and you come to the plaza and you see on this corner, how this corner relates to this corner, not only is it shorter, not only is it set back, not only is there a public promenade, there is a public view of 200 feet long that people can walk. They cannot walk now, and never could, even if there was commercial, because it wouldn't have the setback. You can only do that because you have a residential project.

And because you have a residential project which is complementary to the residential program here and here -- this guy built a 30, 35 feet for his house. I will go measure it with you happily. This guy is going to be demolished one day. Guess what, he is going to be.

And this guy has already demolished, and his height of the ceilings are 12 to 14 feet. And this will be demolished. They are all being built the same way.

So if they are being built at 33 or 35 feet, and I am being built at 40 feet, and I am in a commercial use next to 65,70 -- next to 75 feet -- and that's why I stepped

it back. That's why I created that element, and that's why I come before you.

So if to lob off a floor was a solution, Ms. Medina, it would have been done. But it is not the solution.

MR. HELD: Mr. Chair, I just have to make a comment about the significance of either the number of people who come out or the presence or absence of a homeowners association or not.

This is a quasi-judicial hearing, and your decision has to be based on the evidence that is presented and the criteria in the code. And while, you know, passions have been high and there is a lot of opinions about whether this is a good project or not, you really have to examine the plans, take the legitimate, competent, substantial evidence that has been presented and make a decision.

You know, there are other classic statements that zoning -- you know, can't be assigned -- or you know, and I read the statement at the beginning about what competent substantial evidence is for citizen

testimony. It is fact-based. It is not just opinion.

And you have to make your decision based upon the facts that are presented, and not the numbers of people.

And as a matter of fact, I often comment when a condition is proposed, you know, it is subject to the neighbor, or something like that -- that's considered an illegal, unlawful delegation of authority. You have to make a decision, not the neighbor.

THE CHAIRPERSON: But if the Board feels, for instance, that there is something with the context of the way the form the overall building is doesn't relate to the existing context, that's a valid reason for us to make an adjustment or a recommendation.

MR. HELD: Right. That is a design issue that you are making a an informed judgment on, as an appointed Board member.

THE CHAIRPERSON: Okay.

MR. CARY: Lilia, if I could just comment on your concern relative to the view corridor from the single-family residential

properties across the waterway -- that was a point of very major discussion by the Planning Board, and essentially, the standard the Planning Board established was that when you were in the rear yard of the single-family residences across the waterway, that there be, essentially, no less sky visible above the new project than there is above the existing townhouses project. So that is why, you know, staff specifically asked Kobi to go through this very, you know, exacting process of producing these drawings that you see on sheet A-3, you know, .300.1, which compares the amount of sky that is above that line.

And that is what -- he literally based his setback, in setting back the top two floors of the new project, was that you would have an equivalent amount of light and air and sky visible so that someone in a home behind the new project is not deprived of any more sky view or light or air than is deprived of that if they were behind the townhouses. That is the way that that sky view order was established, and that's why

the Board -- why the Planning Board and my staff, you know, has not requested or suggested that an additional floor be removed.

We have already had those units pushed way back into what the secret garden space was going to be. It has been substantially reduced by probably 15 feet, I would say, in width.

Kobi?

MR. KARP: Yes.

MR. CARY: In order to be able to accomplish that.

If the Board thinks maybe it needs to be back further, then maybe it needs to go back further.

I mean, those are some of the issues that are up for more discussion.

(Unintelligible comment from the audience.)

MR. HELD: First of all, it is improper.

Second of all, it is not on the record because it is not in the microphone. And you can only come up to the microphone at this

1 point if you are invited to by the chair.
2 THE CHAIRPERSON: Lilia?
3 MS. MEDINA: I think you have
4 clarified it, Kobi, and thank you.
5 MR. KARP: Thank you.
6 THE CHAIRPERSON: Good afternoon.
7 MR. MINAGORRI: Good afternoon.
8 As a president of an HOA myself, I
9 appreciate what you and your HOA have done
10 here today, and I take your comments very,
11 very seriously because we deal with this many
12 times. And we really, really come together
13 to see how it is going to really affect the
14 -- the neighborhood. We just don't have as
15 many doctors as you do, in our neighborhood.
16 But thank God, we are not elected
17 officials. Otherwise, we would be in trouble
18 here today, because you guys have a very
19 strong support for what you are asking for.
20 Having looked at that, I would say
21 that from looking at the photographs here on
22 Page A-0.07, where it shows the empty garage
23 and the dry cleaning building that I don't
24 know how long they have been there -- I would
25 really be in a crying mode, because that is

1 even more horrible, horrible to look at than
2 the Sunset townhouses.
3 So I mean, to -- to say that this is
4 -- that nobody has ever complained about
5 this, or that this is something that the
6 homeowners association is not head over heels
7 trying to either destroy these buildings or
8 make it into a park -- I don't live on the
9 island, but it just seems like just an
10 eyesore.
11 And the fact that you have a few homes
12 that have a direct line of sight to these
13 buildings --
14 But on the other hand, I hear Leslie,
15 who has been part of the Planning Board, and
16 is now on our Board, and I hear, you know,
17 comments from -- from my colleagues who are
18 very professional and have been part of this
19 whole process. And it seems that, Kobi, you
20 have done a fantastic job of kind of really
21 tweaking it and making all of the adaptations
22 so that number one, so that it is legal, it
23 meets code, it is within compliance.
24 So you can't satisfy everybody, but I
25 think if you look at that corner that Leslie

1 and Seraj were talking about and see how we
2 could smooth that so that maybe that corner
3 that is a little bit more of the show point
4 of the building as we are leaving --
5 I understand that home that is over
6 30 feet right at the corner there, and I also
7 understand that you have all these other park
8 areas around it. But the truth of the matter
9 is that -- you know, for me, I think that
10 this is a project that has been already
11 really studied, dissected with a microscope.
12 I have never seen so much detail and so many
13 hours spent on a project as the attorney had
14 explained, all of the meetings that have been
15 happening before it comes to us. But as the
16 Design Review Board, I like the project. I
17 like what I see.
18 And I think that based on -- on the
19 parking -- I think that's part of the
20 massiveness of the project, because you have
21 brought in the parking to the first level, to
22 the ground level, and the way that it is
23 spread out -- I mean, you are obviously
24 taking all of the square footage that you
25 have brought, to bring the building, but you

1 have wrapped it around the bank and you have
2 done it in a way that it just seems to have a
3 -- a nice pedestrian flow. So I, for one, I
4 like what I see, and I hope that we could all
5 make a decision today to move forward with
6 it.
7 MR. KARP: Thank you, Mickey.
8 THE CHAIRPERSON: Thank you, Mickey.
9 Just some quick architectural
10 questions, first.
11 Sheet A-1.05 -- this is the roof plan
12 again. Just really quickly, the units that
13 face the canal -- they -- the access to those
14 roof terraces, it happens from that public --
15 the corridor that is to the south of the
16 units?
17 There is no internal stair that takes
18 you up from the unit up to the terrace; is
19 that correct --
20 MR. KARP: Correct.
21 THE CHAIRPERSON: -- on those units in
22 the back, around the canal.
23 MR. KARP: Yes.
24 THE CHAIRPERSON: And when I am
25 looking on that roof plan again, there is a

-- there is a dashed -- dark dashed line that starts sort of on the south, and the east side, I see there is an arrow, concrete canopy above. That concrete canopy is only occurring on the south face and two-thirds of the east face; is that correct?

MR. KARP: Yes, that is true.

THE CHAIRPERSON: Okay. And those units on those two faces do have stairs that connect their unit to the private roof terrace --

MR. KARP: Yes.

THE CHAIRPERSON: -- internally.

MR. KARP: Yes, that's true.

THE CHAIRPERSON: Sheet L-1 -- it is the last sheet in our packet, the landscape plan. The -- the ground floor garden on the west side, that's -- the west side, right? Even though the --

MR. KARP: Left is west.

THE CHAIRPERSON: Yes, thank you. The arrow is going --

MR. KARP: Yes, the arrow is going in the wrong direction.

THE CHAIRPERSON: On the west side,

that is at the same -- that's -- you can basically get on that lawn from the river -- from the bay walk, basically?

MR. KARP: Yes.

THE CHAIRPERSON: There is a connection there around the same plane?

MR. KARP: Yes, you can.

THE CHAIRPERSON: The code does not allow you to add another story to the southern part of the building and take a story off the front, the north part of the building --

MR. KARP: No.

THE CHAIRPERSON: -- without getting a variance.

MR. KARP: No. The code does not allow me that.

MR. HELD: And the variance wouldn't be allowed, anyway. There is a maximum of A three-foot height. It is impossible. All height variances is limited to that now.

THE CHAIRPERSON: Okay.

MR. KARP: And that is what we have, only four floors instead of five that you have on 20th Street, facing the water. Only

four.

THE CHAIRPERSON: And when I look at sheet A-1.00, around the adjacent -- A-1.00 -- excuse me, around the adjacent bank building, the setbacks -- I am seeing it says a zero.

Technically, there is a -- there is no setbacks that are required around those two lines, the north/south running line and the east/west running line?

MR. KARP: Yes, but we do hold back the building five feet -- we hold it five feet so that we can landscape that area over there.

THE CHAIRPERSON: I think there is a walkway that runs north/south. Is that right?

MR. KARP: So along the property, along -- you see where it says "electrical room" and "loading spaces"?

THE CHAIRPERSON: I do.

MR. KARP: Right. And then there is a setback. We were hoping to landscape that area.

THE CHAIRPERSON: Okay. Currently,

there is -- on the L-1 plan, there is no landscape indicated on the north/south run there?

MR. KARP: Yes. You are correct, and that needs to be landscaped.

THE CHAIRPERSON: So the entire length, basically?

MR. KARP: Yes, the entire length, please.

THE CHAIRPERSON: Similar to the little bit that you have on the L-1 sheet running east/west, the CES 36?

MR. KARP: Yes, that is a true statement.

THE CHAIRPERSON: Okay. That is --

MR. BELUSH: Jason, we have a condition in the staff report.

Condition 2-D, to address the design, because it wasn't really clear what was happening in that area.

THE CHAIRPERSON: Okay. On sheet A-3.00.1 -- that is the colored sheet with the light blue and the red and the pink, and I guess there is an increase in floor-to-floor height on the top units

because they are the penthouse units, and --

MR. KARP: Which -- sorry, Jason --

THE CHAIRPERSON: Your color plan with the view lines, the pink and the --

MR. KARP: Yes.

THE CHAIRPERSON: I see the top units on the north --

MR. KARP: Yes. And I also have drains from the roof, that I want to take them internally.

THE CHAIRPERSON: Well, okay. That's sort of the end of my technical questions, at this point.

You know, I, too, you know, distinctly remember at the conclusion of our last meeting that the Board did request -- suggest, strongly suggest that the applicant and the residents get together to work some things out.

So the level of what did happen between that meeting and this meeting, between the two groups -- it is a little hard to exactly know, but it sounds like not -- there was not actually -- seems like there was not a lot of actual sit-downs and

discussions. Maybe, if anything, there was more -- I don't know -- arguments and oppositions.

So that said, I do sort of echo what Seraj said about the fact that it is -- you know, it is -- it is very interesting that I know, typically, when someone opposes something, they will come out and speak about it. And maybe if they don't oppose it, maybe they don't come out.

So it is a little bit strange that there isn't -- that the applicant didn't find a way to -- if -- I am sure there are people out there that support this project. You have mentioned this, there are other associations, there are letters, e-mails -- none of those really have been a part of the package that we have received for this meeting.

It would have been good to hear, you know, somebody or some people saying that either they -- they approve or they have no comment about it.

So I certainly appreciate the efforts of the Sunset Island Homeowners Association

in mobilizing their association to get out here and speak on behalf of the project, but I also realize that it doesn't mean that nobody supports that project. They just don't happen to be here. I have to know that.

We review many, many projects where nobody comes at all, so I know that on those projects, some people oppose it and some people are for it. So we -- we -- like I said, we value everybody's opinion and concerns on this project.

I don't live in this neighborhood, but I live here on the Beach. I live on an island that is funny. It has some recent development that was bigger than -- that was more of a commercial, multi- family nature, and at that time, I had a lot of concerns about how that was going to affect access to my -- well, I live up on Allison, near LaGorge. When Aqua was being built, it was this whole thing, and new traffic -- and granted, I don't have a historic bridge that leads to my -- leads to Allison. It is connected. But you are very familiar with

that. I am sure a lot of you pass that -- that bridge many times.

But you know, when I first looked at this -- at this project, if there was nobody here in opposition, you know, the first time around, I said wow, there has been a lot of effort, it looks like, in the design and the clarification and the delineation of this project. And I thought with all of the exciting development that is happening in this neighborhood -- I said wow, this is really a nice addition to see in this neighborhood.

You know, in light of the opinions voiced by the residents in the nearby area -- and I know it is not just people on the Sunset, but you know, from around the whole area, it certainly made myself -- and I am sure the Board and staff -- even take a more -- a more stringent, scrutinized look at the whole project, as a whole.

I am really glad to see some of the changes that have happened between the last meeting and this meeting. I think the setbacks being increased and some of those

1 issues are certainly a bonus overall for the
2 project. I see things -- you know, the
3 increase in the foliage and the trees along
4 the canal -- I think it is kind of nice that
5 you did it, but I also think in a way -- I am
6 not quite sure why you would want to block
7 the views from both sides of -- you know, by
8 having these big shade trees on the north
9 side of the building, which you don't really
10 need.
11 But you know, I know it is going to be
12 better for the residents to look over.
13 Now, that said, I want to think and I
14 do believe that this project will be a
15 benefit for everybody that lives in that
16 neighborhood, whether they are on Sunset I,
17 II, III, IV, on Island Avenue, on the
18 Venetians or anywhere in this neighborhood.
19 I know it may be hard for the residents to --
20 to see that, because I know they have been
21 involved with this project for months in
22 relation to the massing and the size and the
23 detailing and -- so big, and it is so much,
24 and why is it taller than the buildings next
25 door -- these are all very valid concerns.

1 It is funny to me, though, that we get this
2 much opposition to this project, but when a
3 house is being built right next door on
4 Sunset that is completely out of scale and
5 out of whack, and bigger than anything I ever
6 want to see that comes in front of this
7 Board, that nobody shows -- you know, I
8 shouldn't say nobody. We have had people
9 that have come to -- to oppose those. But
10 that there is such a large outpouring for
11 this project, but so much less when something
12 is actually happening on the island --
13 Now, granted, it is a residence versus
14 a multi-family residential, but you know, I
15 think the distance that this is off the --
16 you know -- not right in the center of the
17 neighborhood, of the islands, but off on the
18 other side of the canal, I think the air
19 space between the residential, the
20 single-family residential and the
21 multi-family residential that is provided by
22 the canal and the view corridors that have
23 been presented by the project -- I mean, I
24 think this is going to be a huge enhancement.
25 Yes, to the gateway, to this neighbor,

1 and to the gateway to the Sunsets. I mean, I
2 just -- you know, obviously, there are a lot
3 of improvement going on in that area right
4 now with the new guardhouse and the new
5 street improvements, and this is sort of, you
6 know, a private venture that is -- I think is
7 going to be a huge asset to the public, the
8 public part that is there. And that includes
9 the series of three little parks that are
10 sort of spread onto the Sunsets and then sort
11 of around.
12 And then this increased setback along
13 -- along 20th and along the street to the
14 Sunset Islands, these humougous setbacks that
15 are going to have the patterned sidewalk, I
16 am sure, and the landscaping and this little
17 pocket park near the bridge now, which I
18 think, you know, I would like maybe to put as
19 one of the conditions that we approve this --
20 that we sort of look at maybe expanding that,
21 whether it be part of the river walk side,
22 the bay walk side, or maybe it is more part
23 of the sidewalk side. I don't know. I don't
24 know what can be done, that maybe since there
25 is so much area there, that you kind of chip

1 into that corner and maybe make something
2 that is more -- I don't know. You have to
3 work with Public Works and the City and
4 things, but -- really look at that corner.
5 I definitely think, you know, you do
6 need to have your concrete canopy on the
7 roofs up at ten feet high?
8 I would suggest maybe we bring those
9 -- bring those down, you know?
10 And all of your -- your -- it is not
11 exactly clear how high your elevator shafts
12 and your stairwells pop up, but I certainly
13 want to make sure those are kept to a
14 minimum, you know, eight feet or whatever it
15 is -- has to be nine feet to get your -- you
16 know, but to keep those as low as possible.
17 I know the -- the concrete overhang on
18 the roof -- it is fairly extensive on the
19 south and the west side. I would suggest
20 keeping it as low as you can. You don't have
21 to get any -- you know, you probably have
22 some lighting there, but maybe you can keep
23 all of the MEP systems away from that, and it
24 just can be this canopy that is just, you
25 know, at eight and a half feet or something,

1 or nine feet or something, you know, just to
2 bring it down, because all those things, you
3 will see.
4 You do see some of these things that
5 are popping up on the roof. I mean, because
6 of your location, you are able to get really
7 far away from the building, and so the sight
8 lines are -- they are long.
9 So I am just trying to work at ways we
10 can compress things a little bit.
11 I did like Lilia's idea of removing
12 the overhang at the corner, maybe, kind of
13 lighten up the corner a little bit, even
14 though you have set it back 50 feet from the
15 corner, I think, is a lot of -- I am a big
16 fan of strong corners. But I know here, we
17 are trying to give room for the bridge to
18 breathe.
19 But you know, I have thought long and
20 hard about this project. And certainly, you
21 know, even in the middle of the night,
22 thinking about its effect on the
23 neighborhood, and why everybody is so
24 passionate about it. And it is really good
25 to see.

1 It is hard for our Board because we
2 have to dissect the design and the comments,
3 and then on the side of all that, there is
4 all of the kind of -- the legal discussions
5 that have been going on as a subtext to this
6 project, which typically, we don't --
7 typically, don't have to deal with.
8 So I think -- I think the articulation
9 of the facades and the materials -- it is --
10 it is a lot more than just a big white box,
11 and that's what I really like about it.
12 I do appreciate the undulations that
13 you have created on the north facades facing
14 the canal, despite the fact that it is going
15 to create some units that are going to be in
16 perpetual shade. I mean, I understand the
17 sacrifices there.
18 I don't think just by making it the
19 same height as the townhouses in the back
20 that all of a sudden, it fits into the
21 context. I don't think that's -- I don't
22 think that's really a solution.
23 So I am sympathetic to the residents
24 that live on the Sunset that faces this
25 building, but I think it is going to be a

1 grand improvement. And, over time, like a
2 lot of the other signature pieces of
3 architecture that are in this city that
4 maybe, you know, were a little bit bigger or
5 bigger than what people wanted, and were
6 still approved and were still within code, if
7 you are looking at -- I mean, even the
8 parking garage that was built is certainly
9 bigger than what is around it, 1111 parking
10 garage.
11 I mean, a lot of these things -- it is
12 not always about just matching the building
13 height. And for me, that's -- has been the
14 struggle here, is knowing that this is a
15 bigger building than -- than what is around
16 it, but I think the way that it has been
17 articulated and designed is very successful.
18 So that's my initial thoughts, for
19 sure.
20 MR. CARY: Mr. Chairman, I just wanted
21 to comment to the Board and to the -- to the
22 neighbors that I think one of the most
23 instructive things for me for this project
24 has been the ability to look at this really
25 amazing model, because you know, I have

1 always felt that when you replace a one-story
2 building with a -- you know, four and-a-half,
3 five-story building, it is going to have a
4 huge impact, regardless of how well designed
5 it may be.
6 But in literally coming over here and
7 looking at this project, looking at the scale
8 of the townhouses projects, looking at the
9 scale of the residences on Sunset I -- Island
10 IV, looking at the scale of the new parking
11 garage next to Publix, looking at the
12 overwhelming monstrosity of scale of the
13 Sunset Harbour towers, I'm not nearly as
14 concerned about being shocked by this being a
15 large project when it is built.
16 I think that it has been articulated
17 in a way, and it has a much more -- low
18 horizontal, low-slung feel than I had really
19 ever imagined that it was going to have, even
20 from all of the excellent perspective and
21 renderings that have been provided.
22 But like with any, you know, high
23 quality project -- and this comment is
24 directed to the developers and to Kobi -- is
25 that God will be in the detailing. I mean, a

planning staff is going to look very carefully at how this building is detailed, how the materials are used, and how it is executed, because you have to have the same quality of detailing that we would expect to be invested into any new residential structure on the Sunset Islands neighborhood. I mean, it really has to be good, because it is a focal point. I mean, this is the first thing that you see when you come off of Alton Road, and it is just going to have to be really good.

So I know you have already invested a few dollars, but I think you really need to consider investing what it takes to really put your -- your name on the map in terms of producing a really high quality residential, you know, development in Miami Beach.

And as we can see, you know, that -- now that we have been identified as the, you know, the number one, you know, residential community in the U.S., I think that sets a standard that we have to live up to. And if you were not prepared to do that, you would not be here and you would not have hung in

here for as long as you have.

So again, I would encourage everyone that has not had a chance to sit down and look at that model. It really is rather amazing, and it really -- it really lays to rest any lingering concern I may have had relative to the scale, mass and bulk of the project being excessive.

And I think that that is really a direct result of this, you know, intensive involvement by Tucker and Terry and Peter and everyone else in the neighborhood that has just -- that have just been absolutely relentless in making your concerns known to the planning staff, to the Planning Board, to the Design Review Board and to anyone else that would be willing to listen to you, and I think the project has tremendously improved in the process.

Thank you.

THE CHAIRPERSON: Is the applicant willing to adhere to all of the comments that are in the staff report?

MR. HELD: Conditions.

THE CHAIRPERSON: Conditions, thank

you.

MR. CARY: Kobi, could you just clarify for us -- the northeast corner, top floor unit, that does not have a terrace; is that correct?

MR. KARP: The northeast does have a terrace, and it is accessible from the public staircase. So it does have a terrace.

MR. CARY: It does have a terrace?

MR. KARP: Yes, but the comment that was made about cutting back --

MR. CARY: -- removing the roof canopy over that terrace, entirely or substantially and working with staff to --

MR. KARP: Yes.

MR. CARY: And the applicant is willing to accept that?

MR. KARP: Yes.

MR. CARY: And we can provide a condition in the staff report to effectuate that, in addition to Gary's excellent proposal to add a condition relative to providing access to the water, public water, public walk along the waterway.

MR. HELD: William, do you have a

condition for the plaza?

I have written something. I don't know whether you have written something, as well --

MR. CARY: Seraj, would you like to define for us what condition you would like for that northeast ground level plaza?

MR. HELD: I can read something and you can work with it, if you want.

MR. SABA: My concern is -- well, there are two things: One is -- you know, is the public space going to be a little bit larger; and number two, just maintaining the view towards -- towards the water, because I mean, he has pulled the building back. I don't want some other, you know, obstruction in that space, whether it is -- it might be inadvertent -- landscaping, or a fence that we are not thinking of. I just want to make sure that that is preserved.

MR. CARY: Preserved from Sunset Drive, a clear view through to the waterway?

MR. SABA: Correct.

MR. CARY: And the elevation of the bridge and the park across the way?

MR. SABA: Right.

MR. CARY: That is a very important point.

MR. SABA: And I believe he also said that he would work with staff on --

You know, if you could expand the public space a little bit more, that would be fine with me.

MR. KARP: Yes, I --

THE CHAIRPERSON: Yes. Right now, you sort of have this elevated lawn area as part of that unit. I mean, I was thinking you would get a big chunk of that off, make that little yard smaller, and add it to the -- to the public side.

I mean, right now, the public plaza is basically a bench and a little bit of -- I mean, I would -- I would suggest taking -- I don't know, like, a good ten-foot by 15-foot chunk out of that -- that elevated lawn area and giving it back to the -- to the river walk, the bay walk area or the sidewalk area.

Does that make sense?

MR. KARP: Yes, it makes sense. I think we will sit down with staff and

absolutely come up with something that works very well. Absolutely.

THE CHAIRPERSON: It might affect the gated -- the way the gated walkway heads to the bay walk. Maybe the sidewalk gets, you know -- but I think it would be nice to give more of a substantial portion back to the public.

MR. SABA: Yes. The opposite corner on 20th and Sunset, it is such a node. It is a node, and that's kind of what I think the other corner needs to be. And it doesn't have to be that big, either, but, you know --

MR. KARP: But in the same spirit, absolutely.

MR. HELD: So Mr. Chair, I have a sentence that might work.

THE CHAIRPERSON: That is how designers describe it.

Now you tell us, Gary.

MR. HELD: The plaza at the northeast corner of the project shall be further studied to enlarge it, to improve its visibility and functionality, and to add it to the waterfront walkway easement for public

access subject to the review and approval of staff.

I mean, feel free to edit.

MS. HOUSEN: Gary, if I can add -- there was a discussion -- on 20th Street, on that small area between the bank and the project, to add more landscaping, which Kobi had agreed to do --

MR. HELD: I think Michael said there is a condition --

MR. BELUSH: We already have a condition --

MR. HELD: -- that addresses that.

MS. HOUSEN: Okay.

MR. PATHMAN: We have no objection to that language.

MR. HELD: I think staff understands from the comments of the Board what was intended.

THE CHAIRPERSON: And if there is to be a condition about lowering the canopies on the roof --

MR. KARP: Yes, I will work with staff to lower --

MR. BELUSH: I have a condition here,

if you can, to eliminate the canopy. "The rooftop canopy at the northeast corner unit directly covering the terrace below shall be eliminated in order to further minimize the perceived height and mass at the northeast corner of the site in a manner to be reviewed and improved by staff."

MS. TOBIN: I don't think it needs to be eliminated or reduced --

MR. BELUSH: You could say so -- "shall be reduced," instead of "eliminated."

THE CHAIRPERSON: And I was making reference to the -- whatever the rooftop --

MR. CARY: You were talking about the roof top structures, themselves?

THE CHAIRPERSON: Structures.

MR. CARY: You want them to be --

THE CHAIRPERSON: They are shown at ten feet high.

MR. CARY: No greater than eight-foot six, to the underside.

THE CHAIRPERSON: I think that would be a good compromise. Yes.

MR. KARP: On the roofing, absolutely, yes.

MR. CARY: And then you would make eight feet to the underside of the structures, the rooftop elements.

MR. KARP: Yes, yes. I just need to make -- because I am going to have roofing up there. So we are going to work together to lower it as much as possible to meet code, and it should be coming down to about eight-foot six clear to the underside from the roofing.

So we will definitely lose a foot, a foot and-a-half.

MR. CARY: With a clear height, then, not to exceed eight-foot six?

MR. KARP: Yes, sir.

Yes.

THE CHAIRPERSON: And the railings that you are proposing or are going to propose for all those upper terraces -- are they glass railings that are inset from the edge, or have we figured that out yet?

MR. KARP: Yes. That is what we have been working on with staff.

MS. TOBIN: Do we need to make a motion, or is it something that -- I mean,

because there are so many things --

MR. HELD: Someone needs to make the motion.

MS. TOBIN: But there are so many conditions that have been added.

MR. HELD: Well, the motion could just reflect "the conditions that have just been discussed," and staff and we have kept record of them.

MS. TOBIN: Okay. So I will make the motion.

MR. BELUSH: One other thing I need to add -- just a second. I need to add a condition regarding school concurrency.

This was given to me by the Miami-Dade School Board, and it basically states, "Site plan approval is contingent upon meeting public school concurrency requirements. Applicant must obtain a valid school concurrency determination certificate issued by the Miami-Dade Public Schools. The certificate shall state the number of seats reserved at each school level. In the event sufficient seats are not available, a proportional share mitigation plan shall be

incorporated into a tri-part development agreement and duly executed prior to issuance of a building permit."

It basically states that they can't get their building permit until they satisfy the school's request for --

MR. HELD: That is a request by the School Board, and you should include it.

So if -- the motion should be a two-part motion; one is to grant the Design Review approval, and the second part is to approve the modification of the site plan and the covenants that are attached to the staff report.

THE CHAIRPERSON: Okay. Can we -- is there a motion to approve the modifications to the site plan?

MR. HELD: It could be one motion.

THE CHAIRPERSON: Okay. Who will -- what is the motion?

MS. TOBIN: I will make a motion to approve the -- to approve this based on the conditions that we just read into the -- into what, the staff -- okay. Is that it?

MR. HELD: It is to grant Design

Review approval and approve the modification of the site plan, subject to the standard conditions and the other conditions read into the record.

MS. TOBIN: What he said. What he said.

THE CHAIRPERSON: Is there a second?

MS. HOUSEN: I will second the motion.

THE CHAIRPERSON: Thank you.

All those in favor.

MR. CARY: The second was?

THE CHAIRPERSON: Carol, and the first was Leslie. All those in favor --

BOARD IN UNISON: "Aye."

MR. KARP: Thank you very much for your time.

MR. PATHMAN: Thank you for your time and consideration.

(Whereupon, at 12:10 p.m., there was a recess in the proceedings.)

1 CERTIFICATE OF NOTARY
2 STATE OF FLORIDA:
SS.
3 COUNTY OF DADE:
4 I, SHARON PELL VELAZCO, a Court
5 Reporter in and for the State of Florida at
6 Large, do hereby certify that I was authorized
7 to and did stenographically report the
8 proceedings in the above-styled cause at the
9 time and place as set forth; that the foregoing
10 pages, Volume II, inclusive, constitute a true
11 record of my stenographic notes.
12 I further certify that I am not an
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14 related to any of the parties, nor financially
15 interested in the action.
16 WITNESS my Hand and Official Seal this
17 23rd day of February, 2013.
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9 witnesses or parties requested to be sworn were
10 sworn by the Chairman during the course of these
11 proceedings, and were duly sworn.
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13 of February, 2013.
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Condensed Title:

A resolution, pursuant to Section 118-262 of the City Code, to review the Design Review Board order relative to DRB File No. 22889, rendered on October 8, 2012, as requested by W. Tucker Gibbs, PA on behalf of Sunset Islands 3 and 4 Property Owners, Inc. and Olga Lens, as affected persons.

Key Intended Outcome Supported:

N/A

Item Summary/Recommendation:

Pursuant to City Code Section 118-262, W. Tucker Gibbs, PA on behalf of Sunset Islands 3 and 4 Property Owners, Inc. and Olga Lens, as affected persons, is requesting that the City Commission review a Design Review Board decision rendered on October 8, 2012 (DRB File No. 22889) pertaining to the approval of a 5-story, mixed-use development project located at 1201-1237 20th Street – Palau at Sunset Harbour.

On January 16, 2013, the City Commission set the public hearing for March 13, 2013 to review the order of the Design Review Board pertaining to DRB File No. 22889 (1201-1237 20th Street – Palau at Sunset Harbour).

Based upon the issues raised in the petition, the Administration recommends that the City Commission deny the appeal.

Advisory Board Recommendation:

The Design Review Board approved the subject development project on October 2, 2012, subject to the conditions of the Final Order.

Financial Information:

Source of Funds:		Amount	Account
	1		
	2		
	3		
OBPI	Total		

Financial Impact Summary:

City Clerk's Office Legislative Tracking:

Richard Lorber or William Cary

Sign-Offs:

Department Director	Assistant City Manager	City Manager

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MIAMIBEACH

AGENDA ITEM R7A
DATE 3-13-13

MIAMIBEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Kathie G. Brooks, Interim City Manager

DATE: March 13, 2013

PUBLIC HEARING

SUBJECT: **Palau Appeal**

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, [GRANTING OR DENYING] AN APPEAL REQUEST FILED BY W. TUCKER GIBBS, P.A., ON BEHALF OF SUNSET ISLANDS 3 AND 4 PROPERTY OWNERS, INC. AND OLGA LENS, OF THE DESIGN REVIEW BOARD'S ORDER RELATIVE TO DRB FILE NO. 22889 FOR 1201-1237 20TH STREET, PALAU AT SUNSET HARBOR.

ADMINISTRATION RECOMMENDATION

Based upon the issues raised in the petition, the Administration recommends that the City Commission deny the appeal.

BACKGROUND

On October 2, 2012, the Design Review Board (DRB) approved DRB File No. 22889, pertaining to a 5-story, mixed-use development project located at 1201-1237 20th Street – Palau at Sunset Harbour.

On October 23, 2012 a "Petition for Rehearing" was filed by MAC SH, LLC, and Sunset Islands 3 and 4 Property Owners, Inc. Such re-hearing request was considered by the DRB on December 4, 2012. Following denial of a motion to continue the hearing (which failed due to a tie vote), and denial of a motion to deny the Petition for Rehearing (which failed due to a tie vote), there being no further motions, it was determined by the attorney for the Board that the last decision of the Board stands as the decision of the Board (which was for approval of the application).

Pursuant to City Code Section 118-262, W. Tucker Gibbs, P.A., on behalf of Sunset Islands 3 and 4 Property owners, Inc. and Olga Lens, as affected persons, filed a "Request For City Commission Review of the Design Review Board Decision" ("Request") rendered on October 8, 2012 (DRB File No. 22889) pertaining to the approval of Palau project.

Section 118-262 of the Miami Beach City Code allows the applicant, the City Manager on behalf of the City Administration, the Miami Design Preservation League, Dade Heritage Trust or an 'Affected Person,' to seek review of any order of the Design Review Board by the City Commission. For purposes of Section 118-262, an "affected person" shall mean either:

(i) a person owning property within 375 feet of the applicant's project reviewed by the board, or

(ii) a person that appeared before the design review board (directly or represented by counsel), and whose appearance is confirmed in the record of the design review board's public hearing(s) for such project.

The Request alleges that the definition of 'affected person' has been satisfied because the named appellants appeared at the hearing before the DRB. (Request para. 4).

Pursuant to Section 118-262 of the Miami Beach Code, the review by the City Commission is not a "de novo" hearing, and it must be based upon the record of the hearing before the DRB. Section 118-262(b) states the following:

In order to reverse, or remand for amendment, modification or rehearing any decision of the Design Review Board, the City Commission shall find that the Design Review Board did not do one of the following:

1) provide procedural due process;
2) observe essential requirements of law; or
3) base its decision upon substantial, competent evidence.

In order to reverse or remand a decision of the DRB, a 5/7th vote of the City Commission is required.

ANALYSIS

The DRB's review of the subject project was based upon the information and exhibits submitted by the applicant, and the Board had before it the recommendation for approval with proposed conditions presented by its professional staff in the form of a comprehensive staff report, all of which constitute competent, substantial evidence in support of the decision. The Board agreed with the staff recommendation in the report.

The Request claims that several issues justify reversal or remand. This is not the case, as all issues raised were discussed and considered by the DRB as outlined below.

The Petition raises the following arguments on appeal:

1. DRB members failed to disclose ex parte communications as required by sections 2-511 through 2-513 of the City Code. (at Petition, page 14).
2. Palau failed to meet its initial burden to show that it met DRB review criteria requiring that it created or maintains important view corridors. (at Petition, page 18).
3. The DRB failed to evaluate the elimination and/or diminution of four view corridors as required by section 118-251(a)(12). (at Petition, page 19).
4. The design review staff report fails to address specific criteria requiring a building's massing to create or maintain important view corridors is not competent and substantial evidence of compliance with that review criteria (at Petition, page 21).
5. The DRB improperly delegated to design review staff its authority to evaluate and approve plans pursuant to DRB review criteria (at Petition, page 23).

These issues are each discussed below.

1. FAILURE TO DISCLOSE EX-PARTE COMMUNICATIONS AS REQUIRED BY SECTION 2-511 THROUGH 513 OF THE CITY CODE

Ex-parte communications were discussed at the August 7, 2012 meeting. At the beginning of the Board discussion, the Board Chairman indicated "We have met, most of us have met with your team to go over the project," Transcript at p. 150, (referring to the Palau development team), and another Board member individually indicated that she had not met with the applicant (see Transcript at p. 170). These statements by Board members satisfied the disclosure requirement in the City Code. If Appellants wanted the "reasonable opportunity to refute or respond to the communication," as provided by Section 2-512(a)(4), they should have taken this opportunity at the hearing. Further, if they thought ex parte contacts had occurred but had not been disclosed, they should have raised this possibility and objected at the hearing. Otherwise, this objection should be considered waived.

2. **FAILURE TO MEET ITS INITIAL BURDEN TO SHOW THAT IT MET DRB REVIEW CRITERIA REQUIRING THAT IT CREATED OR MAINTAINS IMPORTANT VIEW CORRIDORS.**

Appellants assert that "the applicant has the initial burden to show that it has met the DRB approval requirements," and "Palau failed to meet that burden by its failure to address the DRB review criteria and how it met each of those standards." Petition at 18. Palau, however, satisfied the requirement to meet its initial burden by providing the plans that showed which view corridors were provided and to what extent. There is no requirement that a separate document or explanation be provided showing how each design review criteria is satisfied. With respect to view corridors, the plans themselves are evidence of such proof.

3. **THE DRB FAILED TO EVALUATE THE ELIMINATION AND/OR DIMUNITION OF FOUR VIEW CORRIDORS PURSUANT TO SECTION 118-251(a)(12).**

Section 118-251(a)(12) provides: "The proposed structure has an orientation and massing which is sensitive to and compatible with the building site and surrounding area and which creates or maintains important view corridor(s)."

First, it is important to understand that not all view corridors are protected. View corridors across or over another person's or entity's property are not always protected. View corridors in setback areas, or along sidewalks are likely protected. Each one is evaluated on its own merits. Views to the water from the adjacent property across the Palau property is not a protected view corridor, and a property owner does not have an inherent right to water views through another owner's property.

All relevant view corridors referenced in the Petition were discussed and reviewed by the DRB. The Board, at the August 7, 2012 meeting, did require that the northeast corner of the building be further setback in order to lessen the impact on the historic Sunset Island bridge, this change was made in the plans presented to the Board for the October 2, 2012 meeting, and the change fully satisfied the Board's request. The Board's review and discussion of views in the plans satisfied the design review criterion on this point.

4. **THE DESIGN REVIEW STAFF REPORT FAILS TO ADDRESS SPECIFIC CRITERIA REQUIRING A BUILDING'S MASSING TO CREATE OR MAINTAIN IMPORTANT VIEW CORRIDORS IS NOT COMPETENT AND SUBSTANTIAL EVIDENCE OF COMPLIANCE WITH THAT REVIEW CRITERIA.**

The staff evaluation contained in the staff report is competent substantial evidence. It is fact based, because it is based on a review of the application and its accompanying plans and surveys and accompanying documents, and is based upon field inspections, and thus is competent substantial evidence upon which the DRB can base its decision under Florida law. *City of Hialeah Gardens v. Miami-Dade Charter Foundation, Inc.*, 857 So.2d 202, 204-05 (Fla. 3d DCA 2003) ("the Chief of Police, the Director of Public Works, and the Chief Zoning Official, gave specific fact-based reasons for their recommendations that the application be rejected."); *Metropolitan Dade County v. Sportacres Development Group*, 698 So.2d 281, 282 (Fla. 3d DCA 1997) ("maps, reports and other information which, in conjunction with the testimony of the neighbors, if believed by the Commission, constituted competent substantial evidence."); Dade County v. United Resources, Inc., 374 So.2d 1046, 1050 (Fla. 3d DCA 1979) ("recommendations of professional staff"); *Norwood-Norland Homeowner's Ass'n v. Dade County*, 511 So.2d 1009, 1013 (Fla. 3d DCA 1987) ("Dade County Development Impact Committee report"); *Metropolitan Dade County v. Fuller*, 515 So.2d 1312, 1314 (Fla. 3d DCA 1987) ("staff recommendations").

5. THE DRB IMPROPERLY DELEGATED TO DESIGN REVIEW STAFF ITS AUTHORITY TO EVALUATE AND APPROVE PLANS PURSUANT TO DRB REVIEW CRITERIA.

The inclusion of conditions in the DRB Order that allows staff to make specific decisions on plans to be submitted is not an unlawful delegation of authority. These are minor matters within the scope of staff's authority, including materials, finishes, glazing (windows), railings, architectural projections, landscaping, walkways, fences, facades between buildings, and the compliance of the applicant with a condition imposed to enlarge a plaza and connect to a walkway. The DRB need not involve itself in every minor detail of the design of a proposed development. These matters are included in board orders to emphasize staff's review of them when the project is submitted for building permit. Unlawful delegations arise when insufficient standards are set out for the implementation of delegation by the person to whom authority was delegated. The design review criteria remain the standards against which either the Board at the time of design review approval, or the design review staff at time of building permit, and are sufficient to provide a lawful delegation of authority on these minor points.

A review of the transcripts for the DRB hearings indicates that the DRB observed the essential requirements of law, made its determinations based on substantial, competent evidence, and afforded all parties involved due process. Additionally, the Board held public hearings during which members of the public were afforded the opportunity to testify and present evidence. Based upon all of the competent, substantial evidence submitted, the Board determined that the proposed project would meet the Criteria for Design Review Approval in Section 118-252 of the Code, subject to the conditions in the Final Order.

CONCLUSION

Based upon the issues raised in the petition, the Administration recommends that the City Commission deny the appeal.

KGB/JGG/GMH/RGL/TRM

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MIAMIBEACH

City Clerk's Office

MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Rafael E. Granado, City Clerk

DATE: February 27, 2013

SUBJECT: **Petition to Reverse Design Review Board (DRB) Decision Relative to File 22889, Palau Sunset Harbor.**

Attached is the Petition to Reverse Design Review Board Decision regarding Palau Sunset Harbor filed by W. Tucker Gibbs, Esq., attorney for The Sunset Islands 3 and 4 Property Owners, Inc. and Olga Lens. In addition, Mr. Gibbs has filed a lengthy Appendix (Volumes I & II), consisting of 352 pages, which has been be placed in your iPad Dropbox and linked to the City's webpage. If you would like a printed copy of the Appendix, please call me at 305.673.7411 or email me at rafaelgranado@miamibeachfl.gov.

If additional parties file pleadings on this matter, they will be forwarded to you as well.

This item is scheduled to be heard by the City Commission on March 13, 2013, at 5:01 p.m. as item R7A - A Resolution [Granting Or Denying] An Appeal Request Filed By W. Tucker Gibbs, P.A., On Behalf Of Sunset Islands 3 And 4 Property Owners, Inc. And Olga Lens, Of The Design Review Board's Order Relative To DRB File No. 22889 For 1201-1237 20th Street, Palau At Sunset Harbor.

REG/lc

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BEFORE THE MIAMI BEACH CITY COMMISSION
DESIGN REVIEW BOARD FILE 22889

RECEIVED
2013 FEB 27 PM 12:
CITY CLERK'S OFFICE

IN RE: PALAU SUNSET HARBOR

All of Lots 22, 23, and 24, and the north 70 feet of Lots 25 and 26, Block 15A, Island View Addition According to the Plat Thereof as Recorded in Plat Book 9, Page 144 of the Public Records of Miami-Dade County
1201-1237 20th Street, Miami Beach, Florida

_____/

PETITION TO REVERSE DESIGN REVIEW BOARD DECISION

The Sunset Islands 3 and 4 Property Owners, Inc. ("Sunset") and Olga Lens ("Lens") (collectively "neighbors"), pursuant to section 118-262, City of Miami Beach Land Development Regulations, requests that the City of Miami Beach City Commission ("commission") at its March 13, 2013 meeting reverse the decision of the Miami Beach Design Review Board ("DRB") to grant the application for design review approval for the Palau Sunset Harbor development (DRB File No. 22889) ("Palau development"), or in the alternative remand the matter back to the DRB with instructions for review consistent with the requests herein.

INTRODUCTION

Palau Sunset Harbor, LLC, ("Palau" or "applicant") applied for DRB approval for the Palau development, a large mixed use project proposed for property it owns at 1201-1237 20th Street, Miami Beach. The project would abut a well-established single-family residential neighborhood. The Palau development would not only destroy important view corridors to the water and from 20th Street to the historic Sunset Islands bridge but also block abutting neighbors' views even more than does the Sunset Harbor townhouses immediately to its west. Given the virtually unanimous objection to the project by its residential neighbors, no one was surprised that the Palau application consumed hours of contentious public hearings before the DRB. During the DRB review process not one neighbor spoke in favor of this massive development. Furthermore, the DRB decision-making process included: procedural error, a failure to correctly apply the law and on a key issue a failure to base its decision on competent substantial evidence.

At the core of any quasi-judicial body's review of an application is the basic guarantee that the process is fundamentally fair.[1] DRB members failed

---

[1] The city commission's review of this matter pursuant to section 118-262 also fails to provide a party seeking its review with the due process one would expect in a quasi-judicial proceeding. In this process, the party initiates the commission's review by filing the petition (if represented by counsel) and must file "appropriate legal briefs" setting forth argument and facts in support

to make required disclosures of meetings with Palau representatives prior to the meetings of August 7 and October 2, 2012. Such *ex parte* communication is contrary to a fair and impartial quasi-judicial hearing process and a breach of the city's obligation to provide basic procedural due process.

The failure of the applicant and design review staff to address compliance with the specific DRB review criteria, and the failure of the order to show compliance with those criteria shows that the DRB did not observe the essential requirements of law when it approved the application. This warrants reversal of the DRB decision.

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of its case. The petitioner must show that the DRB failed to provide due process, or did not observe the essential requirements of law, or failed to base its decision on competent substantial evidence. This mirrors the process and review standards of an appellate court. But that is where the similarities end. In an appellate proceeding, the petition is followed by a response to the arguments in the petition from the other side and that response brief is followed in many cases by a reply to those arguments. This process insures that all parties (and the court) know and understand all the arguments. This is transparent and open process that is fair and provides all parties procedural due process. Therefore, it leads to few if any surprises to either side. The Miami Beach process guarantees a closed and opaque process and is designed to keep information away from the petitioner. Here, the city and the applicant have all the information regarding the petitioner's arguments. But because there is no reciprocal obligation for the city or applicant to provide a response to the petition, the petitioner has no information regarding the city or applicant's arguments. The city commission is equally in the dark. All of this makes for a process that is skewed toward one side. That is a process that fails to meet the standards of basic fairness in order to afford all parties a fair, open and impartial hearing. In that hearing the "...the opportunity to be heard must be meaningful, full and fair, and not merely colorable or illusive." *Rucker v City of Ocala*, 684 So. 2d 836, 841 (Fla. 1st DCA 1996).

Design review staff's conclusory statements on compliance with required review standards without any stated factual basis are not competent substantial evidence. Therefore, the DRB decision and order regarding the project's compliance with all the review criteria is not based on competent substantial evidence.

The DRB has no authority to delegate to city staff any of its duties to evaluate and make final determinations about whether the application meets DRB review criteria. This authority is vested only in the DRB, but that board through its order incorrectly delegated that power to the city's design review staff.

These fundamental failures on the part of the DRB warrant the reversal of that board's approval of the Palau application.

PARTIES

Sunset represents its members who are property owners on both Sunset Island 3 and Sunset Island 4 across the waterway from the proposed Palau development site. Its members include property owners within 375-feet of the site.

Lens owns the property at 2000 North Bay Road, across Sunset Drive from and within 375-feet of the proposed Palau development site.

Palau owns the property located at 1201-1237 20th Street, Miami Beach, Florida. It applied for and received DRB approval for the Palau development on that site.

On August 7, and October 2, 2012, the DRB held a publicly-noticed, quasi-judicial hearing and reviewed the application for design review approval for the Palau development. At that hearing the neighbors individually and through counsel appeared before the Design Review Board. Exhibit N, 68:15-70:1, 93:5-94:5, 71:10-77:11, 182:9-184:11, August 7, 2012 Transcript. Exhibit O, 56:14-59:23, 60:10-70:10, 72:7-76:12, 103:17-104:19, 130:21-146:12, October 2, 2012 Transcript Volume 1.

FACTUAL BACKGROUND

In late 2011, Palau applied to develop the property abutting the Sunset Islands and its historically-designated entrance. Exhibit A, Aerial map of area. The applicant proposed a bulky, 5-story, 109,279 square-foot (including approximately 13,056 square feet of commercial space) mixed-use development on this CD-2 (Commercial Medium Intensity zoning district)-zoned site. Exhibit B, Planning Board Staff Report, April 24, 2012.

The Palau site abuts RS-3 (property on N. Bay Road and Sunset Drive) and RS-4 (Sunset Island 4) single family residential neighborhoods to the east

and north and RM-3 multi-family property (Sunset Harbour Townhomes) to the west. Exhibit C, Zoning Map.

At the planning board the applicant sought a conditional use approval to allow development exceeding 50,000 square-feet plus the use of mechanical parking lifts, among other things. Exhibit D, Planning Board Staff Report, April 24, 2012.

Faced with strong neighborhood opposition, the planning board continued the matter several times. Neighbors sought a project that was less bulky and more in scale with the abutting single-family residential neighborhood. In particular, the neighbors cited the monolithic massing of the building and requested that the board require increased setbacks and more articulation to lessen the impact of the massive structure on its neighbors. Ultimately on May 22, 2012, the planning board approved the conditional use for a modified development with a specific condition relating to Design Review Board approval:

> "5. The applicant shall work with Design Review Staff to further modify the proposal to address the following, subject to review and approval of the Design Review Board:
>
> (a) Pulling back the massing, east of the World Savings Bank property, with emphasis on upper floor setback and the northeast corner of the building and adding more green space.

(b) Further modifying the ground floor area along the canal (terraces) to minimize the hardscape and increase the amount of open, landscaped area at grade level.

(c) Adding more canopy trees for increased shade to the landscape plan particularly along Sunset Drive. Also work with Sheryl Gold on this item.

(d) Removing parking on Sunset Drive.

(e) Reducing encroachment on the line of sight from Sunset Island 4.

(f) Working with Public Works staff to limit u-turns at the guardhouse."

Exhibit D, August 7, 2012 Design Review Board Staff Report.

With this directive from the planning board, the applicant made revisions to its plan and submitted it to the Design Review Board. That board held its initial hearing on the application on August 7, 2012.

At that hearing the neighbors focused on the zoning code charge to the DRB to examine development plans for consistency with the criteria in section 118-251 regarding aesthetics, safety and function of the structure and the physical attributes of the project in relation to the site, adjacent structures and the surrounding community. According the DRB review criteria, the development must not have a negative impact on adjacent neighborhoods. Under these standards, the developer must eliminate or mitigate aspects of the proposed project that adversely affect the surrounding area.

Neighbors presented expert testimony addressing the impacts of the project on the adjacent properties. Their expert and the city's design review staff found that the project failed to meet eight of the fifteen applicable standards. Exhibit E Alvarez Power Point Presentation, and Exhibit D, August 7, Design Review Board staff report). Neighbors also submitted a transcript of the expert testimony of University of Miami Professor of Architecture Francois Le Jeune at the May 22, 2012 Planning Board hearing on Palau's conditional use application. Professor Le Jeune stated that the project should be redesigned to reduce its mass and scale and maintain the view corridor from West Avenue toward the water and Sunset Island 4. Exhibit F, Excerpt of Francois Le Jeune Testimony, May 22, Planning Board hearing.

In their discussion of the DRB's neighborhood compatibility criteria the neighbors addressed the Palau project's impacts on the historic Sunset Islands neighborhood and the historic Sunset Island Bridge. In particular, the neighbors cited the 1996 Historic Designation Report. The report discussed the importance of "sensitive new construction" in the context of the neighborhood's character, which is defined by the elements of scale, proportion, massing, materials and details. Exhibit G Designation Report, 21. The report also examined "compatibility with the character of the Historic Sunset Islands Neighborhood," which positively influences proportion and

scale, massing and materials. Id., 22. In particular, the report noted: "When there is a combination of structural building types surrounding a project site, scale and proportion of the buildings closest to the proposed construction should be observed." Id.

The DRB voted to continue the item to its October 2 meeting based on the staff recommendation for a continuance so that the applicant could address staff's concerns about the proposal.

Prior to the October 2, 2012, DRB hearing, planning department staff had asked neighbor representatives to provide it with their concerns and how those concerns could be resolved. The neighbors submitted a proposed resolution approving the application with conditions. The proposed resolution set forth specific findings and the following conditions for approval:

a. The entire length of the building abutting and east of the World Savings Bank property shall be set back an additional 15 feet.
b. The entire length of the fifth floor of the northern side of the building facing Sunset Island No. 4 shall be set back an additional ten feet.
c. The entire length of the eastern portion of the building along Sunset Drive shall be stepped back as follows:
    i. First floor an additional ten feet (current proposed setback plus ten feet);

ii. Second and third floors an additional five feet (current proposed setback plus 15 feet);

iii. Fourth and fifth floors an additional five feet (current proposed setback plus 20 feet).

Exhibit H, Sunset Islands 3 &4 Proposed Resolution, October 2012.

Design review staff included the proposed resolution as an attachment to the October 2, 2012 staff report, noting that the neighboring residents continue to have serious concerns with the application. Exhibit I, 7, Staff Report, Design Review Board, October 2, 2012. In its analysis staff discussed one proposed finding regarding the comparison of the Palau project with the Sunset Harbor Townhomes development to its west but failed to address the other findings and conditions, including those relating to the Sunset Drive view corridor and the proposed setbacks. Id.

The applicant presented its revised plans to the DRB at the October 2, 2012 hearing. Design review staff determined that these plans adequately responded to their concerns and recommended approval of the application.

Notwithstanding the staff's position, the neighbors addressed the failure of the application to adequately address three of the DRB review criteria that focus on neighborhood compatibility:

a. Criteria 6 requires that the proposed structures must be compatible with adjacent structures and enhance the appearance

of surrounding properties. Yet neither the applicant nor the design review staff explained how this massive project is compatible with the abutting single-family properties and in what way it "enhanced" the appearance of these properties.

b. Criteria 7 states that the site plan layout must show efficient arrangement of land uses, especially the relationship with the surrounding neighborhood, impacts on adjacent buildings and lands, pedestrian sight lines and view corridors. But the plan for the project shows that existing site lines and view corridors are degraded or eliminated. The applicant did not address how it met this criterion. Design review staff also did not discuss or address and how the revised plans met this criterion in their written report[2] or in their presentation.

c. Criteria 12 says that the massing and orientation of structures must be sensitive to and compatible with the surrounding area and also create or maintain important view corridors. However, the massing and placement of the building fails to "create or maintain" important view corridors as it degrades the view corridor along Sunset Drive from 20th Street to the historic entrance to Sunset Islands 3 and 4.

Neighbors proposed a simple solution that would meet the three criteria at issue: Step back the proposed building along Sunset Drive an additional ten feet at the ground floor, an additional five feet on the second and third floors

[2] The staff report merely stated that the criterion is "satisfied". Exhibit I, 3.

and an additional five feet on the fourth and fifth floors. Exhibit H, 2, Proposed Resolution.

On October 8, 2012, the board rendered its order granting design review approval to the Palau pursuant to design review criteria set forth in section 118-251 of the Miami Beach Land Development Regulations and subject to conditions set forth therein.

On October 23, 2012, Sunset and another entity petitioned the DRB to rehear the matter pursuant to section 118-261.

On December 4, 2012, with only four of the seven members present, the DRB considered the petition for rehearing:

a. The DRB considered and denied a motion to continue the hearing by a 2-2 tie vote.
b. Without hearing argument or testimony and without any presentation of evidence the DRB considered and denied a motion to deny the petition for rehearing by a 2-2 tie vote.
c. There were no further motions. Therefore, the DRB counsel interpreted the DRB rules to determine that the last decision of the DRB shall stand and the request for rehearing be denied even though there was not a majority vote for such denial of the rehearing.

The DRB Order denying the rehearing was rendered on December 10, 2012, and Neighbors filed their request for city commission review of the

DRB decision pursuant to section 118-262. The city commission subsequently set the request for hearing on its March 13, 2013 agenda.

STANDARD OF REVIEW

This city commission's standard of review requires a determination of whether (1) the proceedings before the DRB afforded procedural due process; (2) the DRB observed the essential requirements of the law; and (3) the DRB's decision was supported by competent substantial evidence. Sec. 118-262(b), Miami Beach Land Development Regulations.

ARGUMENT

The DRB consideration of this matter was characterized by procedural errors. Its order fails to show that it correctly applied the DRB criteria and that its decision was supported by competent substantial evidence:

a. The failure to disclose *ex parte* communications pursuant to sections 2-511 through 513 of the Miami Beach Code of Ordinances is a failure to provide procedural due process and a failure of the DRB to observe the essential requirements of law in its evaluation of the Palau development application.

b. The applicant failed to meet its initial burden to show that it met the DRB review standards, warranting reversal of the DRB approval.
c. The failure of the DRB to evaluate the elimination and/or diminution of four view corridors pursuant to section 118-251(a)(12), is a failure to observe the essential requirements of law.
d. A staff report and presentation, which failed to examine or address the specific requirement for "the proposed structure" to have "an orientation and massing… which creates or maintains important view corridors" is not competent substantial evidence of compliance with that review criteria.
e. The DRB improperly delegated to design review staff its authority to evaluate and approve plans as meeting DRB review criteria.

DRB Members Failed to Disclose *Ex Parte* Communications as Required by Sections 2-511 through 2-513 of the City Code

Section 2-511 defines a prohibited *ex parte* communication as any written or oral communication with any member [of a city quasi-judicial board], which may directly or indirectly influence the disposition of an application, other than those made on the record during a public hearing.

Section 2-512(a) establishes a procedure "for all *ex parte* communication" with a board member of a quasi-judicial board, such as the Design Review Board. Section 2-512(a)(1) requires that "[t]he subject matter

of any *ex parte* communication, together with the identity of the person, group or entity with whom the communication took place, shall be disclosed and made a part of the record on file with the city prior to final action on the matter."

Section 2-512(a)(4) requires that "[a]ny *ex parte* communication or activity regarding a pending quasi-judicial matter and not physically made a part of the record on file with the city and available for public inspection prior to the public meeting on the matter shall be orally stated and disclosed on the record at the public meeting prior to the vote on the matter ..."

Based on information and belief, prior to the Design Review Board's hearings on the Palau matter (August 7, and October 2, 2012) representatives of the applicant Palau Sunset Harbor, LLC, met with and communicated with a member or members of the Design Review Board regarding the disposition of the Palau application. Design review staff acknowledges that such communication did indeed take place. And staff states that such meetings were disclosed by the chairman who stated at the August 7, 2012 meeting: "We have met -- most of us have met with your team to go over the project. We have heard everything everybody has to say here." Exhibit N, Transcript 150:14-19.

According to design review staff this general statement by the chair is a disclosure for all DRB members (despite lack of any legal authority for the chairman to speak for DRB members on their *ex parte* communications) and meets the code's requirement for "[t]he subject matter of any *ex parte* communication, together with the identity of the person, group or entity with whom the communication took place, shall be disclosed and made a part of the record." Exhibit L, 3, Staff Report, Design Review Board, December 4, 2012. This is a fundamental misreading of the code and law in that it assumes that the chairman has knowledge of each DRB member' *ex parte* communications. The chairman as a matter of law cannot speak for the members of the DRB regarding their *ex parte* communications. Such knowledge only can be gained either through *ex parte* discussions, discussions with staff, or discussions with fellow DRB members. Therefore, this staff interpretation[3] itself is an admission by the chair of a violation of the "Sunshine Law," which prohibits communication between two or more DRB members (including through third parties) on issues related to official DRB business. Section 286.011, Fla. Stats.

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[3] Palau accepts staff's interpretation that the chairman's statement is an accurate disclosure of the board members' *ex parte* communications. Exhibit M, 5, Palau Response to Petition for Rehearing.

Astoundingly, Palau erroneously claims that the incorporation of the August 7, hearing record at the October 2, 2012 DRB hearing applies to the disclosure of *ex parte* communications made *after* that August 7 meeting. This mocks any idea that this quasi-judicial process was fundamentally fair and that neighbors and other participants in this process had adequate notice of these post August 7 communications.

At best, the chairman's "disclosure" is limited to himself. At worst it is a violation of the Sunshine Law. In either event the chairman failed to disclose the subject matter of this communication, or the identity of the person, group or entity with which the communication took place. And no other board member made these required disclosures.

According to section 2-512(b) without such disclosure a presumption of prejudice arising from that/those *ex parte* communication(s) remains attached to that communication. These non-disclosed *ex parte* communications and the attached presumption of prejudice effectively impacted the neighbors' ability to obtain a fair hearing and denied them procedural due process. Furthermore, this direct violation of the city code and state law (if you accept staff's and Palau's position that the chairman spoke for the entire board when he made his "disclosure" statement) is a failure of the DRB to observe the essential requirements of law. (See also: *Jennings v. Dade County*, 589 So.2d 1337,

1339 (Fla. 3d DCA 1991). "Upon proof that a quasi-judicial officer received an ex parte contact, a presumption arises… that the contact was prejudicial. The aggrieved party will be entitled to a new and complete hearing before the commission [here, the DRB] unless the defendant proves that the communication was not prejudicial.").

Palau Failed to Meet Its Initial Burden to Show That It Met DRB Review Criteria Requiring That it Created or Maintains Important View Corridors

In the DRB review of the development proposal, the applicant has the initial burden to show that it has met the DRB approval requirements. *Irvine v. Duval County Planning Commission*, 495 So.2d 167 (Fla.1986). These requirements are set out in sections 118-251 through 264 of the Miami Beach Land Development Regulations. However, Palau failed to meet that burden by its failure to address the DRB review criteria and how it met each of those standards.

In particular, the applicant did not present any evidence that it complied with Section 118-251(a) (12). That criteria requires a showing that the orientation and massing of the proposed structure is (among other things) compatible with the surrounding area and that it "creates or maintains important view corridors." In its presentation the applicant failed to show that it complied with this requirement.

That failure warrants reversal of the DRB's approval of the application.

The DRB Failed to Evaluate the Elimination and/or Diminution of Four View Corridors as Required by Section 118-251(A) (12)

Section 118-251(a) requires the DRB to include the examination of architectural drawings for consistency with specific criteria with regard to the aesthetics, appearances, safety, and function of the proposed structure "and physical attributes of the project in relation to the site, adjacent structures and surrounding community."

Section 118-251(a) (12) states: "The proposed structure has an orientation and massing which is sensitive to and compatible with the building site and surrounding area **and which creates or maintains important view corridor(s)**." Emphasis added.

There is no indication in the record (including the transcripts or staff recommendations) or the final order of the Design Review Board to show that the proposed Palau development has an orientation and massing that "creates or maintains" important view corridors.

The orientation and massing of the Palau building eliminates four existing view corridors: (1) the West Avenue view corridor to the waterway that extends between the World Bank property and the Sunset Harbor Townhomes; (2) the view corridor to the waterway that extends between the

World Savings building and the existing incomplete structure to its east; (3) the view corridor to the waterway that extends between the existing incomplete structure and the Mark's Cleaners building to the east; and (4) the view corridor along Sunset Drive, from 20th Street to the historic Sunset Islands Bridge.

Furthermore, the orientation and massing of the proposed Palau building diminishes the existing view corridor along Sunset Drive, from 20th Street to the historic Sunset Islands Bridge.

The failure of the board to apply correctly section 118-251(a) (12), which requires the orientation and massing of the structures to "create or maintain important view corridors," is a failure to observe the essential requirements of law.

Both design review staff and Palau state that the DRB considered "view corridors" and required "that the northeast corner of the building be further setback in order to lessen the impact on the historic Sunset Island bridge." According to staff and Palau this change "fully satisfied the Board's request." Exhibit L, 2 December 4, 2012 Design Review Board Staff Report. But this DRB request was never characterized as preserving an important view corridor. It was a response to the building's impact on the historic bridge

itself, not the view corridor along Sunset Drive from 20th Street to the historic bridge.

In fact, there is no reference in the testimony presented by the staff or the developer at the October 2, 2012 hearing connecting this change in the plans to the creation or maintaining of important view corridors. There is no mention of the Sunset Drive view corridor by the staff or Palau representatives at either the August 7, or October 2, 2012 DRB hearings.

The Design Review Staff Report Fails to Address Specific Criteria Requiring a Building's Massing to "Create or Maintain Important View Corridors" and is Not Competent and Substantial Evidence of Compliance With That Review Criteria.

Competent substantial evidence is defined as that evidence relied upon to sustain the ultimate finding that is "sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached." *De Groot v. Sheffield*, 95 So.2d 912, 916 (Fla. 1957). Competent substantial evidence is not opinion unsubstantiated by facts. *City of Apopka v. Orange County*, 299 So.2d 657, 660 (Fla. 4th DCA 1974).

The failure of the applicant and city staff to present evidence to the board that the Palau development meets the specific requirements of section 118-251(a) (12) -- that the orientation and massing of the structures creates or maintains important view corridors -- is a failure to present competent

substantial evidence to the DRB to support its decision that the Palau development is consistent with that standard.

The October 2, 2012 staff report's statement that criteria 12 was "satisfied" is not competent substantial evidence of that assertion because it is opinion with no stated factual basis.

Any claim of deference to design review staff's interpretation of the design review criteria fails where the staff has not even addressed a key component of the criteria at issue. Note that the staff report of October 2 only states that the criteria is "satisfied." There is no reference or mention of "view corridor" in the staff report despite the clear language of the provision requiring that the building create or maintain important view corridors.

Deference to the staff's interpretation is not unlimited, and the city commission's role is not unquestioning. This is especially true where there is no mention of "view corridor" in the context of this criterion in the staff report or in the transcripts of the DRB hearings.

Furthermore, any deference claimed by staff or Palau is overcome by a showing that there has been a departure from the essential requirements of law. *Bell South Telecommunications v. Johnson*, 708 So.2d 594, 597 (Fla. 1998). Here the DRB failed to apply the correct law by failing to apply each of the elements of criteria 12 -- in particular the requirement to create or

maintain important view corridors. When the agency's construction clearly contradicts the unambiguous language of a rule, the construction is clearly erroneous and cannot stand. *Woodley v. Department of Health and Rehabilitative Services*, 505 So.2d 676,678 (Fla. 1st DCA 1987). See also, *Legal Environmental Assistance Foundation, Inc. v. Board of County Commissioners of Brevard County*, 642 So.2d 1081, 1083-1084 (Fla. 1994).

The DRB Improperly Delegated to Design Review Staff Its Authority to Evaluate and Approve Plans Pursuant to DRB Review Criteria.

The city commission has delegated certain authority to the DRB to approve design review applications subject to specific criteria set forth in section 118-251. This authority, spelled out in sections 118-251 through 265, does not allow the DRB to delegate to design review staff its responsibility and duty to make decisions based on those criteria. [4]

Yet that is what the DRB did when it approved the Palau development. According to the final order of the DRB, it approved the project subject to conditions, including:

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[4] While section 118-260 authorizes the planning director to approve, approve with conditions or deny an application for eight specific issues all associated with minor public improvements, and rehabilitation, alterations and demolition of structures or portions of structures, it does not authorize the DRB to delegate its authority to approve an application (or any portion of an application) for new development such as the Palau project.

a. The **final design** and details, including materials, finishes, glazing, railings, and **any architectural projections and features, shall be** provided in a manner to be **reviewed and approved by staff**. Emphasis added. Exhibit I, 2, October 2, 2012 Design Review Board Staff Report.
b. The **final design** and details, including landscaping, walkways, fences, and architectural treatment of west elevation facing the former bank building **shall be** provided, in a manner to be **reviewed and approved by staff**. Emphasis added. Exhibit I, 2, October 2, 2012 Design Review Board Staff Report.
c. The **plaza** at the northeast corner of the site **shall be** further studied and **enlarged to improve its visibility and functionality**, and shall be added to the waterfront walkway easement for public access, **subject to the review and approval of staff**. Emphasis added. Exhibit I, 3, October 2, 2012 Design Review Board Staff Report..

While there is authority for the DRB to prescribe conditions of approval, there is no authority for the DRB to delegate its review and approval authority for new development to staff. Section 118-264, Land Development Regulations. Each of these conditions transforms design review decisions into staff-level determinations, without any authority in the land development regulations.

Florida law provides that a legislature may not delegate the power to

make law or the right to "exercise unrestricted discretion in applying the law." *Sims v. State,* 754 So.2d 657, 668 (2000). The DRB, without any legislative authority, gave staff the power to approve plans as a condition of DRB approval. That power is reserved to the DRB and cannot be delegated absent specific legislative authority. There is no such authority in the city code.

Therefore, the DRB order is invalid because the DRB review is incomplete. Any changes to the plans must be approved by the DRB and not staff. While staff may review these plans and make recommendations, it is the DRB that has the sole authority to approve new development for compliance with the design criteria. This final DRB review has not occurred. For this reason, this order must be quashed.

CONCLUSION

The neighbors request the city commission to (a) review the decision of the DRB and (b) reverse or in the alternative, remand this matter to the DRB with instructions that the DRB require additional setbacks along Sunset Drive as set forth herein .

Furthermore, neighbors seek a waiver and refund of the filing fees for the rehearing and appeal, both of which would not have been necessary, had the DRB process been proper to afford them a full and fair hearing.

Respectfully Submitted,

W. TUCKER GIBBS, ESQ.
Attorney for Neighbors

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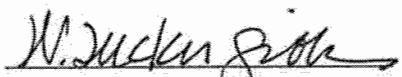

W. TUCKER GIBBS

RESOLUTION NO._____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, [GRANTING OR DENYING] AN APPEAL REQUEST FILED BY W. TUCKER GIBBS, P.A., ON BEHALF OF SUNSET ISLANDS 3 AND 4 PROPERTY OWNERS, INC. AND OLGA LENS, OF THE DESIGN REVIEW BOARD'S ORDER RELATIVE TO DRB FILE NO. 22889 FOR 1201-1237 20TH STREET, PALAU AT SUNSET HARBOR

WHEREAS, a process for review by the Mayor and City Commission of decisions rendered by the Design Review Board when requested by an applicant or any affected person has been established under Section 118-262 of the Miami Beach City Code; and

WHEREAS, Palau Sunset Harbor, LLC was the applicant for a proposed 5-story, mixed-use development project, which was approved by the Design Review Board on October 2, 2012 and the Order for such approval was rendered on October 8, 2012 (DRB File No. 22889, 1201-1237 20th Street – Palau at Sunset Harbour); and

WHEREAS, a request for a re-hearing of the DRB decision pertaining to File No. 22889, which was requested by MAC SH, LLC, and Sunset Islands 3 and 4 Property Owners, Inc, was denied by the Design Review Board on December 4, 2012 and the Order for such denial was rendered on December 10, 2012; and

WHEREAS, W. Tucker Gibbs, P.A., on behalf of Sunset Islands 3 and 4 Property Owners, Inc. and Olga Lens, has requested a review of the Design Review Board order rendered on October 8, 2012, pertaining to the proposed 5-story, mixed-use development project, (DRB File No. 22889, 1201-1237 20th Street – Palau at Sunset Harbour).

WHEREAS, pursuant to Section 118-262, the review by the City Commission is not a "de novo" hearing; it must be based upon the record of the hearing before the Design Review Board. Furthermore, Section 118-262 (b) provides: In order to reverse, or remand for amendment, modification or rehearing any decision of the Design Review Board, the City Commission shall find that the Design Review Board did not do one of the following: 1)provide procedural due process; 2)observe essential requirements of law, or 3)base its decision upon substantial, competent evidence; and

WHEREAS, Section 118-262(a) requires the appellants to file with the City Clerk a written transcript of the hearing before the Design Review Board two weeks before the scheduled public hearing on the appeal; the transcript and associated material were transmitted to the Mayor and City Commission via LTC; and

WHEREAS, on January 16, 2013, the City Commission set the hearing for this appeal to be held on March 13, 2013, and the City Clerk was directed and did notice such hearing; and

WHEREAS, on March 13, 2013 the City Commission heard the parties, and pursuant to the argument given, the written materials submitted, and having been duly advised in the premises determined that the October 2, 2012 decision of the Design Review Board [did or did not] result in, respectively, 1) a denial of due process, 2) a departure from the essential requirements of law, nor 3) a decision that was not based upon substantial, competent evidence; and

WHEREAS, on March 13, 2013 a motion was made by the City Commission to [grant or deny] the appeal by W. Tucker Gibbs, P.A., on behalf of Sunset Islands 3 and 4 Property Owners, Inc. and Olga Lens of the October 2, 2012 decision of the Design Review Board pertaining to DRB File No. 22889; and

WHEREAS, the motion to [affirm or reverse] the decision of the Design Review Board was made and seconded, and approved by a vote of _____.

NOW THEREFORE BE IT RESOLVED THAT the Mayor and City Commission hereby [grant or deny] the appeal filed by W. Tucker Gibbs, P.A., on behalf of Sunset Islands 3 and 4 Property Owners, Inc. and Olga Lens and [reverse or affirm] the October 2, 2012 decision of the Design Review Board pertaining to DRB File No. 22889.

PASSED and **ADOPTED** this _____ day of March, 2013.

ATTEST:

_____
MATTI HERRERA BOWER
MAYOR

_____
RAFAEL GRANADO, CITY CLERK

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

_____ 2/25/13
City Attorney Date

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MIAMIBEACH

CITY OF MIAMI BEACH
NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY given that a public hearing will be held by the Mayor and City Commission of the City of Miami Beach, Florida, in the Commission Chambers, 3rd floor, City Hall, 1700 Convention Center Drive, Miami Beach, Florida, **on Wednesday, March 13, 2013, at 5:01 p.m.** Pursuant To Section 118-262 Of The City Code, For An Appeal Filed By W. Tucker Gibbs, P.A., On Behalf Of Sunset Islands 3 And 4 Property Owners, Inc. And Olga Lens, Of The Design Review Board's Order Relative To DRB File No. 22889 For 1201-1237 20th Street, Palau At Sunset Harbor

Inquiries may be directed to the Planning Department at (305) 673-7550.

Parties to the appeal are invited to appear at this hearing, or be represented by an agent, or to express their views in writing addressed to the City Commission, c/o the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. The review shall be based on the record of the hearing before the Design Review Board, shall not be a de novo hearing, and no new, additional testimony shall be taken. This hearing may be opened and continued and under such circumstances additional legal notice would not be provided.

Rafael E. Granado, City Clerk
City of Miami Beach

Pursuant to Section 286.0105, Fla. Stat., the City hereby advises the public that: if a person decides to appeal any decision made by the City Commission with respect to any matter considered at its meeting or its hearing, such person must ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

To request this material in accessible format, sign language interpreters, information on access for persons with disabilities, and/or any accommodation to review any document or participate in any City-sponsored proceeding, please contact us five days in advance at (305) 673-7411(voice) or TTY users may also call the Florida Relay Service at 711.

Ad # 763

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BEFORE THE MIAMI BEACH, FLORIDA CITY COMMISSION
DESIGN REVIEW BOARD FILE NO. 22889

RECEIVED
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CITY CLERK'S OFFICE

IN RE: PALAU SUNSET HARBOR
1201-1237 20th STREET, MIAMI BEACH, FLORIDA 33139

PALAU SUNSET HARBOR, LLC'S RESPONSE TO SUNSET ISLANDS 3 AND 4 PROPERTY OWNERS, INC.'S AND OLGA LENS' PETITION TO REVERSE DESIGN REVIEW BOARD DECISION

PALAU SUNSET HARBOR, LLC, (hereinafter referred to as "PALAU") hereby responds to SUNSET ISLANDS 3 AND 4 PROPERTY OWNERS, INC.'S (hereinafter referred to as "SUNSET") and OLGA LENS' (hereinafter referred to as "LENS") (collectively hereinafter referred to as the "OPPONENTS") Petition to Reverse Design Review Board Decision (the "Petition"), filed with the City of Miami Beach, Florida on February 27, 2013, and states as follows:

Background and Procedural History

On May 22, 2012, the Planning Board of the City of Miami Beach, Florida **unanimously** approved PALAU'S application for a Conditional Use Permit. On October 2, 2012, the Design Review Board of the City of Miami Beach, Florida **unanimously** approved PALAU'S application for Design Review Approval. The foregoing approvals were issued to PALAU after multiple hearings, continuances, an appeal and a rehearing, occurring before the Planning Board, Board of Adjustment

PATHMAN LEWIS, LLP • ONE BISCAYNE TOWER, SUITE 2400 • 2 SOUTH BISCAYNE BLV
Agenda Item R7A
Date 3-13-13

and Design Review Board. The Planning Board's unanimous approval was issued after **four (4) hearings and over fourteen (14) hours of presentation**. The Design Review Board's unanimous approval was issued after approximately **eight (8) hours of presentations** before the Design Review Board, spread out **over two (2) hearings almost two (2) months apart**. In addition, the foregoing approvals involved approximately **twenty (20) hours of meetings with Staff from the Planning Board and Design Review Board**. The PALAU project could very well be one of the most thoroughly vetted and evaluated projects in the history of the City of Miami Beach.

Both the Planning Board and Design Review Board unanimously approved PALAU's application because PALAU listened to directions and suggestions from the **Planning Board, Design Review Board, Staff and neighbors** and significantly modified the project to appease Staff and neighbors. The following are some of the many reasons demonstrating why PALAU received unanimous approval from both the Planning Board and Design Review Board:

- PALAU has not maximized their permitted FAR;
- PALAU meets or exceeds all setback requirements;
- PALAU fully complies with the comprehensive plan, zoning footprint and all applicable Land Development Regulations;
- PALAU is not using a 3 foot height variance granted to it;

- PALAU's traffic, noise, trash removal and parking plans/studies were approved;
- PALAU's mass and compatibility with surrounding areas was approved;
- OPPONENTS' own expert, Jean-Francois Lejeune, testified that the PALAU project does not have any adverse impacts on the Sunset Islands residential neighborhood.

In addition to the foregoing, it is important to note that there is substantial support for the PALAU project from the neighbors and the community as a whole. OPPONENTS are solely composed of some residents from Sunset Islands 3 and 4 Property Owners, Inc. and one resident on North bay Road. None of the other neighborhoods are opposing PALAU and PALAU has a binder full of letters of support from the residents of the other neighborhoods. **PALAU also has letters of support from residents of Sunset Islands 3 and 4**. More people will live in PALAU than are opposing PALAU. In fact, PALAU already has most of the units pre-sold.

On February 27, 2013 SUNSET filed its Petition to Reverse Design Review Board Decision. OPPONENTS' Petition follows the Design Review Board's December 4, 2012 Order Denying SUNSET'S Motion for Rehearing of the Design Review Board's **unanimous** approval of the PALAU Project on October 2, 2012. For the reasons discussed below, the Petition should be denied because the Petition is

without merit and OPPONENTS fail to meet the legal standards required to undo the **unanimous** approval of the Design Review Board.

Legal Standard

Pursuant to City Code Section 118-262(b), OPPONENTS cannot prevail unless the City Commission finds that the Design Review Board did not do one of the following:

1. Provide procedural due process;
2. Observe essential requirements of law; or
3. Base its decision upon substantial competent evidence.

Procedural Due Process

The record shows that OPPONENTS were afforded procedural due process. Procedural due process requirements are met if the parties are provided notice and an opportunity to be heard. Jennings v. Dade County, et al., 589 So.2d 1337, 1340 (Fla. 3rd DCA 1991). Further, the parties must be able to present evidence, cross-examine witnesses, and be informed of all the facts upon which the Design Review Board acts. Id.

In our case, the Design Review Board's unanimous approval was issued after approximately eight (8) hours of presentations before the Design Review Board,

spread out over two (2) hearings almost two (2) months apart, wherein evidence was presented, witnesses were cross-examined and all facts upon which the Design Review Board acted were disclosed on the record.[1] OPPONENTS monopolized many of those eight (8) hours of presentations to present their own evidence and testimony and to examine witnesses.

The Design Review Board afforded the parties more than enough procedural due process.

Observe Essential Requirements of Law

The court in Sams v. St. John's County Code Enforcement Board, 712 So.2d 446 (Fla. 5th DCA 1998) recited the burden to establish the failure to observe essential requirements of law, and found that it hadn't been met in that case:

> **The required "departure from the essential requirements of law" means something far beyond legal error. It means an inherent illegality or irregularity, an abuse of judicial power, an act of tyranny perpetrated with disregard of procedural requirements, resulting in a gross miscarriage of justice.** Sams at 446.

Stated differently, the failure to observe the essential requirements of the law is a "failure to accord due process within the contemplation of the Constitution, or commission of an error so fundamental in character as to fatally infect the judgment

[1] At the Planning Board stage, unanimous approval was issued after four (4) hearings and over fourteen (14) hours of presentation wherein evidence was presented and witnesses and experts were cross-examined.

and render it void". City of Winter Park v. Jones, 392 So.2d 568 (Fla. 5th DCA 1981).

This Commission cannot overturn the Design Review Board's decision and reach a different conclusion simply because it is not satisfied with the result. Department of Highway Safety and Motor Vehicles v. Pitts, 815 So.2d 738, 742 (Fla. 1st DCA 2002). This Commission may correct an error "only when there has been a violation of a clearly established principle of law resulting in a miscarriage of justice. Allstate Insurance Company v. Kaklamanos, 843 So.2d 885 (Fla. 2003); Ivey v. Allstate Insurance, 114 So.2d 679, 682 (Fla. 2000); Sams, *supra*. A disagreement over the interpretation of the law is not a basis for reversal or remand of the decision of the Design Review Board. Kaklamanos, *supra*; Ivey, *supra*.

OPPONENTS have neither presented an argument nor revealed any record evidence that shows the Design Review Board committed an error so fundamental in character as to fatally infect the decision and render it void. This is so because the Design Review Board committed no error. Consequently, OPPONENTS do not show that the Design Review Board failed to observe essential requirements of law.

Decision Based On Substantial Competent Evidence

This Commission must limit its review to a determination as to whether the decision below is supported by competent substantial evidence and must ignore

evidence that is contrary to the decision below. Florida Power & Light Company v. City of Dania, 761 So.2d 1089 (Fla. 2000); Town of Manalapan v. Gyongyosi, 828 So.2d 1029 (Fla. 4th DCA 2002); Sarasota County v. Kemper, 746 So.2d 539 (Fla. 2d DCA 1999). Competent substantial evidence is tantamount to legally sufficient evidence. Florida Power at 1092. The issue before the Commission is not whether the Design Review Board's decision is the "best" decision or the "right" decision or even a "wise" decision but is whether the decision is lawful. Dusseau v. Metropolitan Dade County Bd. of County Com'rs, 794 So.2d 1270, 1275-1276 (Fla. 2001).

This Commission must review solely the record to assess the evidentiary support for the Design Review Board's decision. Evidence contrary to the Design Review Board's decision is outside the scope of the inquiry at this point, for the Commission, above all, cannot reweigh the "pros and cons" of conflicting evidence. As long as the record contains competent substantial evidence to support the agency's decision, the decision is presumed lawful and the Commission's job is ended. Dusseau at 1275-1276.

It is well settled law in Florida, that absent an abuse of discretion, the Commission cannot set aside the decision of a quasi-judicial body merely because the reviewing court may have reached a different conclusion on the evidence, where there is substantial competent evidence legally sufficient to justify the order challenged. City of Jacksonville Beach v. Car Spa, Inc., 772 So.2d 630 (Fla. 1st DCA 2000);

Florida Power, *supra*; St. Johns County v. Smith, 766 So.2d 1097 (Fla. 5th DCA 2000); Hillsborough County v. Putney, 495 So.2d 224 (Fla. 2d DCA 1986). In other words, this Commission cannot substitute its evaluation of competent substantial evidence for that of the Design Review Board. Town of Juno Beach v. McLeod, 832 So.2d 864 (Fla. 4th DCA 2002).

As discussed in greater detail below, the evidence overwhelmingly supports the Design Review Board's approval of the PALAU project. The evidence is not only substantial but un-rebutted. Pursuant to the above-cited Florida law, because there is competent substantial evidence to support the design Review Board's decision, the decision is presumed lawful and the Commission's job ends here.

Legal Argument

I. FAILURE TO DISCLOSE EX-PARTE COMMUNICATIONS

OPPONENTS' argument, that ex-parte communications were not disclosed, fails for two reasons, as follows:

1. Ex-parte communications were disclosed on the record.

The record clearly demonstrates the disclosure of ex-parte communications. Both the Design Review Board Staff Report for the December 4, 2012 meeting, and OPPONENTS' Petition, correctly point out that the Chairman of the Design Review

Board disclosed on the record, at the August 7, 2012 Design Review Board meeting, that the Design Review Board Members met with and had ex-parte communications with the PALAU team. This, alone, satisfies the spirit and intent of section 2-512 of the Miami Beach Code of Ordinances, which Code section provides for disclosure on the record of ex-parte communications.

OPPONENTS' argument that the Design Review Board Chairman's August 7, 2012 disclosure of ex-parte communications is somehow lacking, because the Design Review Board continued the August 7, 2012 hearing to October 2, 2012, is without merit. "A continuance generally means only that the date of hearing is postponed." McKinney v. Hirstine, 257 Iowa 395, 131 N.W.2d 823, 825 (1964). "It does not affect the merits of a case; **it leaves all matters as they were before, except that the time is changed**." Id. Further, Black's Law Dictionary (Rev. 4th ed.) defines a continuance as ". . . the entry of a continuance made upon the record of the court, for the purpose of formally evidencing the postponement, or of connecting the parts of the record **so as to make one continuous whole**".

As demonstrated by the above-cited cases, the Chairman's August 7, 2012 disclosure is, alone, sufficient because the occurrence of the continuance to October 2, 2012 is immaterial because the law treats the October 2, 2012 hearing as if it occurred on August 7, 2012. Pursuant to McKinney, *supra*, and Black's Law

Dictionary, *supra*, the continuance had no affect on the merits of the proceeding, "left all matters as they were before" and resulted in "one continuous whole".

Furthermore, to the extent that OPPONENTS argue that any alleged ex-parte communications occurring after August 7, 2012 should have been disclosed at the October 2, 2012 hearing, such argument fails because SUNSET has not identified on the record whether any such communications even exist. The only ex-parte communication OPPONENTS identify on the record is the above-referenced disclosure from the Chairman, which communication occurred prior to the August 7, 2012 hearing. OPPONENTS Petition is devoid of any facts showing that ex-parte communications occurred after August 7, 2012. OPPONENTS merely argue on Page 15 of its Petition that **"based on information and belief"** other ex-parte communications exist. Such non-factual, vague and precarious language is insufficient to show error because this proceeding before this Commission is, pursuant to City Code Section 118-262, **not** a de novo hearing. Thus, this Commission is **not** permitted to consider any arguments or evidence that is not already contained on the record and that was not asserted or introduced at the time the Design Review Board approved PALAU's application on October 2, 2012. As of October 2, 2012, OPPONENTS never raised the issue of ex-parte communications and, therefore, OPPONENTS are barred from doing so now for the first time before this Commission. Under Florida law, it is the appellant's duty to point out where in

the record the alleged error can be substantiated. See N & D Holding, Inc. v. Town of Davie, 17 So.3d 819 (Fla. 4th DCA 2009). OPPONENTS do not point out where in the record ex-parte communications exist after August 7, 2012. This fact is fatal to OPPONENTS' argument.

Based upon the foregoing, OPPONENTS' argument fails because (i) there was disclosure on the record of ex-parte communications occurring before August 7, 2012; (ii) OPPONENTS do not comply with Florida law that requires OPPONENTS to point out where in the record ex-parte communications exist after August 7, 2012; and (iii) OPPONENTS base their argument on nothing more than "information and belief", which is insufficient under Florida law.

2. OPPONENTS waived their right to object to ex-parte communications

The second reason OPPONENTS' argument fails is OPPONENTS waived their right to complain about ex-parte communications by failing to timely object. OPPONENTS, after learning of the ex-parte communications on August 7, 2012 failed to raise an objection prior to the Design Review Board's approval of PALAU'S application. The first time SUNSET complained about ex-parte communications was in a Petition for Rehearing filed with the City on October 23, 2012, some 78 days after SUNSET first learned of the ex-parte disclosure when the Chairman announced same at the August 7, 2012 Design Review Board hearing. The first time LENS complained about ex-parte communications was in the Request for City Commission

Review of Design Review Board Decision, filed with the City on December 28, 2012 (hereinafter referred to as the "Request"), 144 days after LENS first learned about the ex-parte communication that the Chairman disclosed on August 7, 2012. Instead of diligently exercising their right to inquire about the ex-parte communication, OPPONENTS took no action for 78 and 144 days, respectively, and waited until after the Design Review Board voted in PALAU'S favor to first express an objection to the ex-parte communication. There is not a single shred of evidence in the record to show that OPPONENTS raised the ex-parte issue until after Design Review Board approval in this matter. As stated above, under Florida law, it is the appellant's duty to point out where in the record the alleged error can be substantiated. See Town of Davie, *supra*. Again, OPPONENTS do not point out where in the record they complained about ex-parte communications prior to the Design Review Board's approval on October 2, 2012. This fact is fatal to OPPONENTS' argument.

Furthermore, to allow OPPONENTS to tardily raise this ex-parte issue, after resting on its laurels, would be manifestly unfair and contrary to City Code Section 2-512(4), which requires disclosure of the ex-parte communication so that an affected party is given "a reasonable opportunity to refute or respond to the communication". See City Code Section 2-512(4). OPPONENTS were advised of ex-parte communications on August 7, 2012 and, thus, OPPONENTS had reasonable

opportunities to refute or respond to the communications but failed to do so. OPPONENTS are not entitled to a second bite at the proverbial apple.

For the forgoing reasons, OPPONENTS' arguments relating to ex-parte communications are without merit and this Commission should reject same.

II. FAILURE TO MEET DRB REVIEW CRITERIA FOR CREATING OR MAINTAINING VIEW CORRIDORS

SUNSET argues that the Design Review Board wrongfully approved PALAU'S application because PALAU did not present any evidence showing the project creates or maintains view corridors, per City Code Section 118-251(a)(12).

This argument is completely without merit because it ignores the mountain of competent substantial evidence presented by PALAU, upon which the Design Review Board relied. The competent substantial evidence presented by PALAU consists of, in part, testimony from PALAU'S architect, Kobi Karp, Design Review Board Staff Reports, fact based comments from Design Review Staff and Board members and the site plans submitted by PALAU.

Under Florida law, PALAU'S site plans constitute competent substantial evidence upon which the Design Review Board can base its decision. See City of Hialeah Gardens v. Miami-Dade Charter Foundation, Inc., 857 So.2d 202, 205 (Fla. 3rd DCA 2003). The Design Review Board considered and reviewed the plans and found them to comply with City Code Section 118-251(a)(12), as recommended by

the Design Review Board Staff in the Staff Report, dated October 2, 2012, which Staff Report specifically provides that the criteria found in Section 118-251(a)(12) (regarding view corridors) is satisfied. There is an abundance of Florida law that provides that staff reports/staff recommendations constitute competent substantial evidence. Hialeah Gardens, *supra*; Metropolitan Dade County v. Fuller, 515 So.2d 1312, 1314 (Fla. 3d DCA 1987); Dade County v. United Resources, Inc., 374 So.2d 1046, 1050 (Fla. 3d DCA 1979).

Specifically, the transcript for the October 2, 2012 Design Review Board meeting is saturated with testimony and comments from Staff and Design Review Board Members themselves, relating to view corridors.[2] For example, at the October 2, 2012 hearing, William Cary, responding to comments from someone opposing the project, stated as follows:

> MR. CARY: [The Planning Board] decided not to have a **view corridor** along . . . West Avenue, through to the water. They decided that it was inappropriate, that it was fine for the – for the project to come up to where it is – it is proposed to be located. So yes, we took into consideration what was requested by the Planning Board, as well as what was requested by your client. (October 2, 2012 DRB Hearing Transcript, Page 175, Lines 7-14).

[2] It should be noted that PALAU listened to the DRB and its Staff and made great effort to accommodate and implement their comments and suggestions.

Another example of evidence in the record justifying the decision of the Design Review Board (in relation to view corridors) comes from project architect, Kobi Karp, who testified at the October 2, 2012 hearing, as follows:

> MR. KARP: The requirement setback is 20 feet, and you can see that itself, is set back to 30 feet from the canal, 37 feet, plus, from Sunset Drive, and from the corner, as you measure it, it is 52. And what that does is, **it creates vistas and view corridors** that do not exist right now. The structures that exist there right now are up to the seawall. What we are proposing is to demolish it, pull it back 20 feet, and landscape it -- make it a public promenade so that you can have access. So yes, are we compatible? Yes. We are . . . providing landscaping and setbacks at the ground level and **vistas and view corridors**. And again, **you can look at A-1.05**. It is a perfectly good example. The building sets itself back. (October 2, 2012 DRB Hearing Transcript, Page 231, Lines 16-24 and Page 232, Lines 4-18).

Moreover, the hearing transcripts show Design Review Board Members, themselves, commenting on and evaluating the issue of view corridors. For example, Design Review Board Member, Lilia Medina, commented as follows:

> MS. MEDINA: I think the project has really benefitted from a lot of the discussion, the meetings, the -- the Planning Board conditions have been met . . . and I think that the building has been pulled back adequately. **I think that the view corridor, now that it has been clarified on the west side where you have 26 feet of easement, will be helpful to have that West Avenue end point. I do believe that the Sunset Drive view corridor has been met at the angle that it is**. (October 2, 2012 DRB Hearing Transcript, Page 297, Lines 3-19)

The above-cited portions of the record unequivocally demonstrate that the issue of view corridors was extremely well vetted and the Design Review Board's decision was based on competent substantial evidence.

Accordingly, OPPONENTS' argument is invalid and this Commission should reject same.

III. FAILURE TO EVALUATE ELIMINATION AND/OR DIMINUTION OF VIEW CORRIDORS

OPPONENTS argue that the Design Review Board wrongfully approved PALAU'S application because the Design Review Board did not evaluate whether the project creates or maintains view corridors per City Code Section 118-251(a)(12).

OPPONENTS' argument fails for the same reasons OPPONENTS' previous argument fails, and then some. This argument flies in the face of the competent substantial evidence upon which the Design Review Board relied to render its approval. This argument ignores the fact that there were many hours spent during Design Review Board hearings wherein both sides presented evidence devoted to the topic of view corridors and such issue was thoroughly discussed and evaluated by the Design Review Board and its Staff.

In addition, OPPONENTS conveniently fail to mention that the record consists of a report dated May 17, 2012, authored by Jean-Francois Lejeune, one of SUNSET'S own experts, who testified before the Planning Board on May 22, 2012.

Mr. Lejeune's report and testimony specifically address OPPONENTS' issues and complaints about view corridors.[3] Thus, it is disingenuous for OPPONENTS to argue that the Design Review Board failed to evaluate the view corridors when OPPONENTS, themselves, actively participated in facilitating the Design Review Board's evaluation process.

Lastly, OPPONENTS' argument ignores the fact that the Design Review Board, at the October 2, 2012 Design Review Board meeting, required additional setbacks to the northeast corner of the PALAU project, which PALAU complied with.

For the foregoing reasons, OPPONENTS' argument is invalid and this Commission should reject same.

IV. STAFF REPORT FAILS TO ADDRESS MASSING AND IS NOT COMPETENT SUBSTANTIAL EVIDENCE

OPPONENTS argue that the Design Review Board Staff Report dated October 2, 2012 fails to address specific criteria requiring massing to create or maintain view corridors per City Code Section 118-251(a)(12). OPPONENTS also argue that the October 2, 2012 Staff Report is not competent substantial evidence.

[3] It is worth noting that Mr. Lejeune's testimony at the May 22, 2012 Planning Board meeting stated that the Palau project does not have any adverse impacts on the Sunset Islands residential neighborhood.

SUNSET'S argument fails because the October 2, 2012 Staff Report specifically provides that the criteria per City Code Section 118-251(a)(12) is "satisfied" and there is an abundance of Florida law that provides that a Staff Report constitutes competent substantial evidence. Hialeah Gardens, *supra*; Fuller, *supra*; United Resources, *supra*.

As stated above in response to OPPONENTS' prior arguments, the October 2, 2012 Staff Report is just a small part of the competent substantial evidence that the Design Review Board relied upon. The Design Review Board also relied upon expert testimony, site plans and fact based comments from Staff, all of which constitute competent substantial evidence and demonstrate that the Design Review Board properly evaluated massing.

Below are excerpts from the August 7, 2012 and October 2, 2012 Design Review Board hearings, which are part of the record in this matter, which excerpts show how massing was evaluated by the Design Review Board.

From Assistant Planning Director, William Cary, at the August 7, 2012 DRB Hearing, Transcript Page 181, Lines 7-17:

> MR. CARY: **There has been a lot of** design development -- excuse me. I shouldn't say, "design." I should say, **"massing and scale adjustment" made to the project during the course of these many public hearings that have already been held**. So I don't want for the neighbors or the public to feel that -- that the development review

> process is not working, because I think it is working exactly the way it is intended to work.

From Assistant Planning Director, William Cary, at the October 2, 2012 DRB Hearing, Transcript Page 336, Lines 2-8:

> MR. CARY: So again, I would encourage everyone that has not had a chance to sit down and look at that model. It really is rather amazing, and it really -- **it really lays to rest any lingering concern I may have had relative to the scale, mass and bulk of the project being excessive**.

From Palau Architect, Kobi Karp, at the October 2, 2012 DRB Hearing, Transcript Page 25, Lines 4-12:

> MR. KARP: The **progression of building massing -- which are these pages right here -- we put them into the record because it showed us the progress of evolution of the [massing of the] project since we presented this project originally back in November of last year.** I presented it to the Sunset Island Tower, North Bay Road, Sunset Harbour Tower and Townhomes. So if I need to stop, just tell me. What I got -- 58 seconds -- but in essence, that shows the progress of the evolution that we are going.

From Design Review Board Member, Leslie Tobin, at the October 2, 2012 DRB Hearing, Transcript Page 280, Lines 4-12:

> MS. TOBIN: Okay. So I have had the privilege of hearing this project over and over and over again. It -- I have to commend Kobi -- I think from the first time I saw this project to where it is now, it is -- you have addressed so many of the concerns that we had in the Planning Board. You have addressed a lot of concerns that I think as a Planning Board we had, and individually, as we had. **I think the building does a great job of breaking down the mass that was first presented to us**. When it was first

> presented to us, it was one long elevation that really -- you know, for the Sunset Island homeowners -- did nothing.

Thus, the record reveals expert testimony, fact based Staff comments and fact based comments directly from the Design Review Board, all of which show that massing was thoroughly vetted and all of which serve as competent substantial evidence. Based on the foregoing, OPPONENTS' argument has no merit and this Commission should reject same.

V. THE DRB DELEGATED TO STAFF ITS AUTHORITY TO EVALUATE AND APPROVE PLANS

OPPONENTS argue that the Design Review Board improperly delegated to Design Review Staff its authority to approve PALAU'S plans.

This argument should not be considered by the Commission because OPPONENTS failed to raise this issue in its Request for City Commission Review of Design Review Board Decision, filed with the City on December 28, 2012. Pursuant to City Code Section 118-261(a), the Request ". . . **shall** state the factual bases and legal argument in support of the appeal . . ." OPPONENTS, having failed to comply with City Code Section 118-261(a), cannot now raise this issue for the first time before this Commission.

Even if this argument was properly before this Commission, it has no merit because the Design Review Board has already approved the plans and has not delegated approval of the plans to Staff. The Design Review Board merely vested

Staff with the authority to perform ministerial and administrative tasks such as ensuring compliance with future conditions imposed by the Design Review Board. OPPONENTS reference nothing in the record that prevent Staff from performing this limited duty. The Design Review Board treated PALAU'S application and approval no differently than that of any other developer.

For the forgoing reasons, OPPONENTS' argument is either not properly before this Commission or without merit and, therefore, this Commission should reject same.

Conclusion

OPPONENTS' Petition does not set forth any basis to disturb the Design Review Board's **unanimous** approval of PALAU's application. The record demonstrates that (i) the parties were provided with procedural due process, (ii) the Design Review Board observed essential requirements of law; and (iii) the Board's decision is based upon substantial competent evidence. The record shows that the Design Review Board carefully and competently evaluated PALAU'S application during many hours of hearings and presentations. There is an overwhelming amount of competent substantial evidence to support the Design Review Board's approval. Pursuant to the above-cited Florida law, this Commission cannot re-hear or re-weigh the evidence and cannot substitute its judgment for that of the Design Review Board.

Based upon the above-referenced facts and above-cited law, OPPONENTS Petition must be denied.

Dated March 8, 2013

Respectfully submitted,

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BEFORE THE MIAMI BEACH CITY COMMISSION
DESIGN REVIEW BOARD FILE 22889

IN RE: PALAU SUNSET HARBOR

All of Lots 22, 23, and 24, and the north 70 feet of Lots 25 and 26, Block 15A, Island View Addition According to the Plat Thereof as Recorded in Plat Book 9, Page 144 of the Public Records of Miami-Dade County
1201-1237 20th Street, Miami Beach, Florida

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SUPPLEMENTAL APPENDIX
PETITION TO REVERSE DESIGN REVIEW BOARD DECISION

Respectfully Submitted,

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Agenda Item R7A
Date 3-13-13

BEFORE THE DESIGN REVIEW BOARD
OF THE CITY OF MIAMI BEACH, FLORIDA
FILE NO. 22889

IN RE: PALAU SUNSET HARBOR
ALL OF LOTS 22, 23, AND 24, AND THE NORTH 70 FEET OF LOTS 25 AND 26, BLOCK 15A, ISLAND VIEW ADDITION ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 9, PAGE 144 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY.
1201-1237 20TH STREET, MIAMI BEACH, FLORIDA 33139

_____/

PETITION FOR REHEARING

Petitioners, MAC SH, LLC, and the Sunset Islands 3 and 4 Property Owners, Inc. (collectively, "Petitioners" or "Neighbors"), pursuant to section 118-261, City of Miami Beach Land Development Regulations, petition the City of Miami Beach Design Review Board for a rehearing on its decision to grant the application for design review approval for the Palau Sunset Harbor development (DRB File No. 22889) and state as follows:

1. On August 7, and October 2, 2012, the City of Miami Beach Design Review Board ("Board") held publicly noticed, quasi-judicial hearings and reviewed the application for design review approval for the Palau Sunset Harbor project (DRB File No. 22889) ("Palau project").

2. One reason that the August 7, 2012 hearing was continued to October 2, 2012 was that the second issue that was to be decided by the Board, modifications to a previously approved site plan, had not been noticed. The related "unified development site" includes the South 130 feet of Lots 25 and 26 (1261 20th Street) which legal description and address were not included in the application or notices.

3. On October 8, 2012, the Board rendered its order granting design review approval to the Palau pursuant to design review criteria set forth in section 118-251 of the Miami Beach Land Development Code and subject to conditions set forth therein. The motion for approval did not reference the previously approved site plan nor did the order.

4. Section 118-261 (Rehearings), permits affected persons who have appeared before the Design Review Board on the matter or who own property within 375 feet of the applicant's project to petition the Board for a rehearing.

5. Petitioner MAC SH LLC attended, was represented by counsel and participated in both hearings, owns property within 375 feet of the applicant's project and is an "affected person" pursuant to section 118-261. Petitioner Sunset Islands 3 & 4 Property Owners, Inc. attended, was represented by counsel and participated in both hearings and is an "affected person" pursuant to section 118-261.

6. Petitioners seek a rehearing and request the Board to take additional testimony and to issue a new decision reversing or modifying its previous decision.

7. Petitioners assert that the Board has overlooked matters as set forth herein that render its decision erroneous or did not consider evidence that should have been considered at the hearing.

FAILURE TO EVALUATE THE ELIMINATION AND/OR DIMUNITION OF FOUR VIEW CORRIDORS PURSUANT TO SECTION 118-251(A) (12)

8. Section 118-251(a) requires design review to include the examination of architectural drawings for consistency with specific criteria with regard to the aesthetics, appearances, safety, and function of the proposed structure "and physical attributes of the project in relation to the site, adjacent structures and surrounding community."

9. Section 118-251(a) (12) states: "The proposed structure has an orientation and massing which is sensitive to and compatible with the building site and surrounding area **and which creates or maintains important view corridor(s).**" Emphasis added.

10. While the staff report claims that this criteria is "Satisfied," neither the staff recommendations nor the October 8, 2012 order of the Design Review Board identify any factual basis for concluding that the building in this project has an orientation and massing that "creates or maintains important view corridors."

11. On the contrary, the orientation and massing of the building eliminates or substantially diminishes existing view corridors that were preserved under the

2004 site plan, which plan was modified by the new site plan and proposed building. Those view corridors include:

a. The existing West Avenue view corridor to the waterway that extends between the World Bank property and the Sunset Harbor Townhomes that was preserved under 2004 site plan was eliminated.

b. The existing view corridor to the waterway that extends between the World Savings building and the existing incomplete structure to its east that was preserved under the 2004 site plan was eliminated.

c. The existing view corridor to waterway from the World Savings building that was preserved under the 2004 site plan was eliminated.

12. Additionally, the view corridor running along Sunset Drive, from 20th Street to the historic Sunset Islands bridge, was substantially diminished.

13. No evidence was presented at the hearing to support the elimination and/or substantial reduction of these critical view corridors that had been preserved in the prior site plan nor to diminish the view corridor along Sunset Drive.

14. The failure to preserve the view corridors was addressed by Professor Lejeune in his report to the City of Miami Beach and provided to all parties and was either overlooked or not considered by the Board. See copy of report and email attached hereto as Composite Exhibit A.

15. The failure of the Board to apply correctly section 118-251(a) (12) which requires the orientation and massing of the structures to "create or maintain important view corridors", warrants a rehearing.

16. The failure of the applicant to present evidence to the Board that it meets the specific requirements of section 118-251(a) (12) to show the Board that the orientation and massing of the structures creates or maintains important view corridors, warrants a rehearing

17. Although the Board found at paragraph 5(a) of the order that the northeast corner of the site impeded the visibility and functionality of the view corridor along Sunset Drive, the order unlawfully delegated its authority to the staff to evaluate revisions of the proposed site plan to increase visibility and functionality of that view corridor without specifying the criteria that would be applicable to create and maintain view corridors.

Moreover, the staff report failed to consider the effect of the modifications of the site plan and physical conditions of the prior approved development order; it failed to consider how the modification diminished or eliminated the view corridors and, therefore, overlooked the criteria mandated by Miami Beach Code Sec. 118-5.

FAILURE TO EVALUATE THE APPLICATION CONSISTENT WITH THE HISTORIC DESIGNATION REPORT OF THE SUNSET ISLANDS BRIDGES PURSUANT TO SECTION 118-251(A) (6)

18. Section 118-251(a) requires design review to include the examination of architectural drawings for consistency with specific criteria with regard to the aesthetics, appearances, safety, and function of the proposed structure "and physical attributes of the project in relation to the site, adjacent structures and surrounding community."

19. Section 118-251(a) (6) states: "The proposed structure, and/or additions or modifications to an existing structure, indicates sensitivity to and **is compatible with the environment and adjacent structures, and enhances the appearance of the surrounding properties**." Emphasis added.

20. The Historic Designation Report expressly explains the importance of "sensitive new construction" which allows a new structure to "blend with its surroundings and be compatible with the neighborhood." In defining compatibility with the historic Sunset Islands neighborhood, that study addressed proportion and scale stating, "When there is a combination of structural building types surrounding a project site, scale and proportion of the buildings closest to the proposed construction should be observed."

21. The failure of the Board to correctly apply section 118-251(a) (6) which requires the project to be compatible with its neighbors and "enhance the appearance of surrounding properties" including the adjacent single-family neighborhood including the historic bridge structures, warrants a rehearing.

22. The failure of the applicant to present evidence to the Board that it meets the specific requirements of section 118-251(a) (6) to show the Board that the project is compatible with the adjacent single-family neighborhood and historic bridge structures as defined by the Historic Designation Report, warrants a rehearing.

FAILURE TO DISCLOSE EX-PARTE COMMUNICATIONS AS REQUIRED BY SECTIONS 2-511THROUGH 513 OF THE CITY CODE

23. Section 2-511 defines a prohibited ex-parte communication as any written or oral communication with any member [of a city quasi-judicial board], which may directly or indirectly influence the disposition of an application, other than those made on the record during a public hearing.

24. Section 2-512(a) establishes a procedure "for all ex-parte communication" with a board member of a quasi-judicial board such as the Design Review Board. Section 2-512(a)(1) requires that "[t]he subject matter of any ex-parte communication, together with the identity of the person, group or entity with whom the communication took place, shall be disclosed and made a part of the record on file with the City prior to final action on the matter."

25. Section 2-512(a)(4) requires that "[a]ny ex-parte communication or activity regarding a pending quasi-judicial matter and not physically made a part of the record on file with the City and available for public inspection prior to the

public meeting on the matter shall be orally stated and disclosed on the record at the public meeting prior to the vote on the matter ..."

26. Prior to the Design Review Board's hearings on the Palau matter, representatives of the applicant Palau Sunset Harbor, LLC, met with and communicated with a member or members of the Design Review Board regarding the disposition of the Palau application.

27. No disclosure has been made of the subject matter of this communication communication, or the identity of the person, group or entity with which the communication took place.

28. According to section 2-512(b), without such disclosure, a presumption of prejudice arising from that/those ex-parte communication(s) remains attached to that communication thereby warranting a rehearing.

29. The evidence of these ex-parte communications would establish the presumed prejudice of the Board. Without full disclosure of the ex-parte communications, the ultimate outcome of these proceedings would be affected because it will be presumed by the courts that prejudice has occurred, resulting in the reversing of the order.

FAILURE TO CONSIDER THE EFFECTS OF MODIFICATIONS TO PREVIOUSLY APPROVED SITE PLAN PURSUANT TO MIAMI BEACH CODE 118-5.

30. In 2004, the Design Review Board approved a previous site plan for the subject property. The proposed project modifies this previously approved site plan.

31. According to the notice for the October 2, 2012 hearing, the Design Review Board was to consider the modifications to the previous site plan.

32. The Staff Report submitted to the Design Review Board did not consider the previous site plan for the subject property and the previous site plan was not presented to the Board at the hearing or discussed by the Board.

33. At no time did the City instruct the Board to consider the criteria under Miami Beach Code Sec. 118-5 and determine the effect of modifications to the property's use, operation, physical condition, or site plan.

34. Miami Beach Code § 118-5, the land development regulations for unified development sites, requires that:

> proposed modifications to the property's use, operation, physical condition or site plan shall also be required to return to the appropriate development review board or boards for consideration of the effect on prior approvals and the affirmation, modification or release of previously issued approvals or imposed conditions.

Section 118-5, Miami Beach Code.

35. Palau's development includes substantial changes to the property's use, operation, physical condition and site plan.

36. The Project on the northeast parcel of the 2004 site plan was a 5 story mixed use structure containing 20 residential condominium units and approximately

3,600 square feet of retail space. In sharp contrast, the proposed project has 50 residential condominium units and 11,325 square feet of retail space. Among other things, the modified plan and project propose the following changes:

Approval Plan	Proposed Plan
20 residential condo units	50 residential condo units
3,600 square feet of retail	11,325 square feet of retail
40,280 square feet. (rev. 51,153) FAR	108,269 square feet FAR
1.16 FAR(rev. 1.42)	2.0 FAR
34 parking spaces (plus 9 shared)	144 parking spaces (plus 9 shared)
21 foot setback on west	0 foot setback on west
Northern 70 feet of lots 25 and 26: Surface parking spaces only	Northern 70 feet of lots 25 and 26: 5 story structure with 8 condo units
9 shared parking spaces to be used by customers of 3,600 square feet of retail	9 shared parking spaces to be used by customers of 11,325 square feet of retail

37. The staff report never considered the effect any of these changes on the previous approved plan and neither did the Board. None of the design review criteria was analyzed using this data and, therefore, that data was overlooked in the analysis. The order never made findings addressing the §118-5 criteria.

FAILURE TO EVALUATE THE ADDITION ON THE BUILDING SITE PURSUANT TO §118-251 (A) (15)

38. In addition to the criteria referenced in the first argument above, the staff report failed to consider the criteria specified in §118-251(15) which provides that:

> An addition on a building site shall be designed, sited and massed in a manner which is sensitive to and compatible with the existing improvement(s).

39. The staff report explicitly found that said criteria was "Not Applicable" to the project.

40. Accordingly, by not considering the existing improvements, which was the existing World Bank Building that was part of the "unified development site", the staff report did not consider the design, siting, and massing of the additional structures upon the existing World Bank Building, at 1261 20th Street, the south 130 feet of lots 24 and 25.

41. The staff report did not consider whether the modifications were sensitive to, and compatible with the World Bank Building.

42. While in the middle of his cross–examination, the staff member reversed the position of staff and said that the criteria was "Satisfied," no facts were considered and no analysis was given to establish that the additional structures on the unified development site were compatible and sensitive to the World Bank Building.

43. The Board never considered the effect of the modifications of the site plan upon the existing building and, therefore, failed to consider the criteria under §118-5 nor under §118-251(15).

FAILURE TO CONSIDER SETBACKS AND OVERLOOKED EVIDENCE

44. At the time of the 2004 site plan approval, the approved buildings substantially complied with the setback requirements under the code.

45. The City staff analyzed the setbacks immediately prior to the October 2, 2012 Design Review Board meeting and provided a copy of that analysis to MAC SH, LLC, a copy of which is attached hereto as Exhibit B.

46. Unknown to MAC SH, LLC, this setback analysis was not considered by the Board because this analysis was not included in the package sent by the City to the Board for its consideration at the October hearing.

47. The setbacks were essential for the Board to determine the impact of the additions and modifications to the unified development site and to the existing World Bank Building.

48. The analysis shows that the modifications severely encroached on the setbacks that were respected in the 2004 approved site plan.

FAILURE TO CONSIDER MODIFICATION OF OPERATION AND USE

49. The Board failed to consider the effect of the increase in retail commercial space as a result of the proposed modification. The staff refused at the hearing to state whether the proposed modified site plan would be able to use the shared parking required under the original site plan.

50. It failed to consider that the 9 shared parking spaces of the World Bank site were to be used by customers of 3,600 sq. ft. of retail space on the original project site and would be used by customers of 11,325 sq. ft. of retail space under the modified site.

51. At the hearing, the staff affirmatively refused to consider the impact on use and operation, as required by §118-5 and, therefore, the Board was unable to consider the function as required by §118-251.

WHEREFORE, Petitioners request that the Design Review Board grant the rehearing, take additional testimony and issue a new decision reversing or modifying its previous decision regarding the Palau at Sunset Harbor project (DRB File No. 22889).

Respectfully Submitted,

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Application Project Palau
20th Street & Sunset Drive, Miami Beach

Jean-François Lejeune
Professor, Director of Graduate Studies
University of Miami School of Architecture

Introduction

As a former resident of the Sunset Harbor Neighborhood and current resident of Belle Isle as well as a member of the Board of BIRA (which I am not representing today) I would like to stress the importance of resolving the entrance of Sunset Harbor Neighborhood at Sunset Drive and 20th. The now vacated property of Mark's and the abandoned shell of a housing project create eyesores that are potentially dangerous and are delaying the revitalization of the street. Moreover they are not conducive to increased pedestrian traffic, which is critical for the success of current and future businesses.
However, the project as presented today at the Planning Board does not fulfill important review criteria set forth in section 118-192(b) of the City Code regarding application for new structures 50,000 square feet and over. Please note that my comments mainly relate to the urban impact on both the Sunset Harbor Neighborhood as well as adjacent neighborhoods such as Sunset Islands.

Development

Within the section 118-192(b) of the City Code regarding the Planning Board's review criteria for new structures above 50,000 sq. ft,, it is important to highlight points 3 & 10, which read respectively "Whether the scale of the proposed use is compatible with the urban character of the surrounding area and creates adverse impacts on the surrounding area, and how the adverse impacts are proposed to be addressed" and "Whether the proximity of the proposed structure to similar size structures and to residential uses created adverse impacts and how such impacts are mitigated." My opinion is that these two very important criteria, perhaps the most critical ones for the neighborhood and surrounding areas, are not met.

1. The overall mass of the proposed project, even in its new version, is very large. A comparison with Sunset Harbor shows the difference. As designed (and analyzed in roof plan format), the Palau project is about equivalent to one half of the overall gross mass of Sunset Harbor townhouses and apartments together (the two towers are excluded from this analysis). Specifically, the section of the Palau project along the canal has about the same length than each section of the existing Townhomes at Sunset Harbor, while the section along 20th Street is actually slightly longer.
   However the Palau complex is made up of one single mass, without the wide

EXHIBIT
A composite

and planted courtyard space that occupies the space between the street bar and the canal bar within the SH complex. This makes a significant difference and definitely increases the impression of mass. Moreover, the part of the project envisioned along the canal is not made up of individual townhouses but of continuous apartments with one single roofline, thus increasing the impression of one large and single mass.

2. This problem is compounded by the fact that the overall height of the proposed project, even in its new version, is higher than the townhouses at Sunset Harbor. Whereas those townhouses are 33' 2" feet high at the top of the ridge, and drop to 26' 8" feet at the lower profile of the roof line where the balconies are, the Palau canal apartments show a continuous roofline at a height of 43' 6" feet. This is significantly more. Its negative effect is increased by the fact that this part of the Palau project is not made up of individual townhouses with individual profiles, but rather a continuous line of apartments with a continuous and uninterrupted roofline. The setback now proposed above the second floor is certainly an improvement but it is not significant enough to alleviate the height issue. On the street side, the building shows a continuous roofline at 50 feet above grade but parapets and terraces accessories could make it appear higher.
   The Planning Department report alludes to the fact that the difference in height between the two sides of the Sunset Harbor resulted from a conflict with residents across the waterway. The criteria for evaluating larger than 50,000 square foot criteria structures, adopted by the City Commission after the SH conflict was resolved, provides the Planning Board with the authority to address these issues and apply the lessons learned from the SH conflict.
3. It is important to state here that the perspective renderings presented by the developer and its architects are not correctly drawn and make the Palau project look smaller than it would be especially on the canal and Sunset Drive sides. Note that the somewhat fuzzy style of the canal side rendering makes it difficult to read as well. Moreover, the Planning Board should also realize that the proposed elevations do not follow the requirements for elevations as they are in fact renderings and show the buildings behind rows of trees. All of that seems to suggest that they intend to mask the real mass of the project.
4. The distance between the Sunset Harbor townhouses on the canal side and the new project is about 28 feet (more or less 40 feet at the terrace level). This is a significant problem, as the project establishes a continuous bar along the water, with no opening to the neighborhood. Seen from West Avenue, the "wrapping" section of the building will create a 46 to 50 foot high wall, which will block the current vista from West Avenue toward the canal and Sunset Island. I do believe that maintaining the current open vista is a very important element of planning this neighborhood that the Board has to weigh very strongly in their analysis of the project. This "vista" is equally important for some of the homeowners from the other side of the canal. Remember that Sunset Harbor Drive does have such a terminated vista on its north-south axis. It does not have it on east-west axis, which is unfortunate.

5. It is interesting to note that the Planning Department report does not make reference to the existing and occupied building at 1261 20th Street. (I am not commenting here on the legal issues concerning the prior approved site plan which does not provide for a building on the site north of that existing building). The fact is the proposed Palau development, specifically on the property that sits between the 1261 20th Street property and the canal, does not from a design standpoint recognize the existing building and its specific condition. The proximity of the proposed Palau building with the structure standing at 1261 20th Street shows a complete lack of urban respect for a neighborly building and property. Indeed, it imposes the potential presence of tall wall (46 to 50 feet) at very close distance of the tall and transparent façades of the existing structure. Please note that the building in question was built by Mateu Arquitectos very soon after the opening of the Carlos Zapata-designed Publix, one of the very best Miami Beach buildings, in order to reflect and make a nice gesture to Zapata's work. It is also a very good building as well. This gives more weight to my previous argument that an open vista should be required, which would allow the developer to continue to build behind 1261 20th Street but with more consideration for the urban and neighborhood impact of the project.
6. Because it is in a CD-2 area, the project does not have requirements for an Open Space Ratio. However, the review criteria give the Planning Board the latitude to address this condition in relation to a very intense residential development. The Planning Department should study whether there are more equivalent situations within the city territory and evaluate other urban solutions for mitigating this over-intensive use of land, which, in its current configuration, does not provide adequate open space.

A last point that I would like to add before the conclusions is related to the use of a mechanical garage to support the density of the project. Considering the review criteria listed in section 130-38 of the City Code (regarding the use of mechanical parking systems), I believe that "a cumulative effect on adjacent and nearby structures" could arise and they would adversely impact immediately adjacent small businesses. First, because of the loss of some metered spaces on 20th Street due to the new valet entrance; secondly, because my experience makes me doubt that the proposed valet use of the commercial parking will make any sense for the type of retail that can be expected along 20th Street (based also upon the observation of the shops across the street). Moreover, even though the developer and its architects have included an alternative to the mechanical garage, the proposed solution that includes a full underground level is certainly an expensive one and makes me doubt that "the proposed use of mechanical parking does not result in an increase of density or intensity over what could be constructed with conventional parking" (point 3).

Overall, I would kindly but professionally suggest to the Planning Board not to approve this project.

My suggestions:

- Develop the waterside as townhouses in order to reduce mass and scale;
- Study another organization of the project and its garage in order to provide for more open space on the ground.

JFL/05.17.2012

Geist, Wanda

From: Peter Luria [peterpl@bellsouth.net]
Sent: Tuesday, August 07, 2012 1:04 PM
To: Geist, Wanda
Subject: Fwd: PALAU PROJECT

Sent from my iPhone

Begin forwarded message:

From: "Lejeune, Jean-Francois" <flejeune@miami.edu>
Date: August 7, 2012 12:54:02 PM EDT
To: Peter Luria <peterpl@bellsouth.net>
Subject: FW: PALAU PROJECT

On 8/7/12 12:52 PM, "Jean-Francois Lejeune" <jflejeune@earthlink.net> wrote:

PALAU PROJECT

PROFESSOR JEAN-FRANCOIS LEJEUNE

I was involved in this project as an expert witness for Michael Comras Company. However, following my appointment to the Planning Board, I have decided not to appear as lobbyist but send my comments as a private citizen of Miami Beach, living at 20 Island Ave # 302 and also as a concerned architect and urban designer.

Preamble with a quote from famous architect Rem Koolhaas: "Architects work in two ways. One is to respond precisely to a client's needs or demands. Another is to look at what the client asks and reinterpret it. You must make a judgment about whether the client's project will create value for society because you must answer that demand through your work. There is something in every project we do that goes beyond how it was initially defined."

1. Documents provided are incomplete and inconsistent, in particular in regard to the treatment, the elevation, and the section of the boardwalk as well as to the existing structure along 20th Street owned by Michael

Comras company. The structure designed by famed architect Roney Mateu has real architectural value and thus must be treated with respect. Provided documents do not show a section and make it difficult to evaluate how the relationship will be established.

2. The three computer renderings provided are inconsistent with the plans and elevations provided in the official file. I must say that those renderings are clearly a step forward in giving to this important and delicate site a solution that pleases and adds to the quality of the historic environment. Those renderings show a more articulate architecture with wood screens, deeper balconies, and could provide the direction of a good architecture.

3. I still consider the project to be excessively monolithic, both in mass, footprint and overall height. The relation to the existing building is weak and difficult to evaluate.

4. Proposal :

A. Reduce the height of the project by one floor in the northeast section, in the exact area facing the park on the bridge.

B. Maintain the current height for the rest of the project but open up the lower floor in the area adjacent to the existing Roney Mateu structure. This could be done by removing two apartments and placing the building on 15-18-foot pilotis that would create a view corridor to and from the island. Such a strategy would allow to articulate the building in two clearly identifiable sections, and reduce its overall impact and masses.

Thank you.

JFL.

Sent from my iPad

LEGEND

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CANAL

BRIDGE NOT LOCATED

LOT 20

LOT 21

LOT 22

LOT 23

LOT 24

LOT 25

LOT 27

BUILDING NOT LOCATED

5'-0" (REAR)

20'-2" (REAR)

26'-1" (INTERIOR SIDE)

18'-2" (INTERIOR SIDE)

10'-0" (SIDE - ABUTTING)

26'-1" (SIDE FACING A STREET)

18'-2" (SIDE FACING A STREET)

18'-2" (INTERIOR SIDE)

3 STORY BUILDING UNDER CONSTRUCTION (AS OF 9/28/11)

1 & 2 STORY BUILDING

1 & 2 STORY BUILDING

0'

20'-0" FRONT

POINT OF COMMENCEMENT SOUTHEAST CORNER OF LOT 22

SUNSET DRIVE (PUBLIC RIGHT OF WAY)

NORTH BAY ROAD (PUBLIC RIGHT OF WAY)

20TH STREET (PUBLIC RIGHT OF WAY)

WEST AVENUE (PUBLIC RIGHT OF WAY)

SUNSET DRIVE (PUBLIC RIGHT OF WAY)

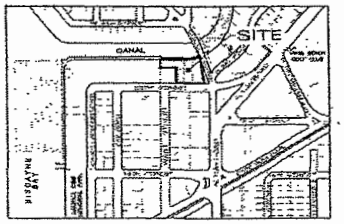
GRAPHIC SCALE

NORTH

- CD-2 SETBACK REQUIREMENTS

- RM-1,2,3 SETBACK REQUIREMENTS FOR RESIDENTIAL USES

- MINIMUM SETBACK REQUIREMENTS IF THE PROPERTY WAS NOT JOINED FOR ZONING PURPOSES THROUGH A COVENANT IN LIEU OF UNITY OF TITLE. - NOTE: RM SETBACKS ARE BASED UPON SURVEY DATA OF IRREGULAR PROPORTIONS AND ARE APPROXIMATE.



LOCATION SKETCH
NOT TO SCALE

LEGAL DESCRIPTION:

SURVEYOR'S NOTES:

SURVEYOR'S CERTIFICATION:

FORTIN, LEAVY, SKILES, INC.

FORTIN, LEAVY, SKILES, INC.
CONSULTING ENGINEERS, SURVEYORS & MAPPERS
FLORIDA CERTIFICATE OF AUTHORIZATION #LB-2243
11350 N.W. 7th AVENUE, MIAMI, FLORIDA 33168
Phone: 305-691-4490 / Fax: 305-651-7182 / Email: help@fourinc.com

TOPOGRAPHIC SURVEY
PALAU
CITY OF MIAMI BEACH, MIAMI-DADE COUNTY, FLORIDA

Date: 10/27/11
Scale: 1"=20'
Drawn By: DWF
Ind. No. 000034
Published: 10/27/11 1:07p
Ref. Dwg. 7031-100-3
Field Book: 97/31-14, 41/102-105
Job No. 111008
Dwg. No. 7031-100-1
Sheet 1 of 1

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