



**Town of Surfside
Town Commission Meeting
May 10, 2011
7 p.m.**

Town Hall Commission Chambers - 9293 Harding Ave, 2nd Floor
Surfside, FL 33154

1. Opening

A. Call to Order

B. Roll Call of Members

C. Pledge of Allegiance

D. Mayor and Commission Remarks – Mayor Daniel Dietch

E. Agenda and Order of Business Additions, deletions and linkages

F. Community Notes – Mayor Daniel Dietch

H. Certificate of Appreciation – **Town Intern**, Chantel Raymond – Roger M. Carlton, Town Manager and Duncan Tavares, Tourism, Economic Development and Community Services Director

2. Quasi-Judicial Hearings (*Set for approximately 7:15 p.m.*)

Please be advised that the following items on the Agenda are Quasi-Judicial in nature. If you wish to object or comment upon an item, please complete a Public Speaker's Card indicating the agenda item number on which you would like to comment. You must be sworn before addressing the Town Commission and you may be subject to cross-examination. If you refuse to submit to cross-examination, the Town Commission will not consider your comments in its final deliberation. Please also disclose any Ex-Parte communications you may have had with any Commission member. Commission members must also do the same.

***A. Resolution for hotel at 9200 Collins Avenue** – Lynn M. Dannheisser, Town Attorney **Page 1-37**

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, ("TOWN") APPROVING A CONDITIONAL USE APPLICATION PURSUANT TO SECTION 90-23 OF THE ZONING CODE TO PERMIT THE DEVELOPMENT OF A THREE (3) STORY STRUCTURED PARKING FACILITY AND HOTEL SWIMMING POOL AND JACUZZI, AND A SITE PLAN APPLICATION, PURSUANT TO SECTION 90-41 ET SEQ. OF THE ZONING CODE TO PERMIT A 175 UNIT FOUR (4) STORY HOTEL WITH ACCESSORY USES, SUBMITTED BY TRANSACTA LANAI DEVELOPERS, LTD., (THE "APPLICANT"), ALL ON THE PROPERTY LOCATED AT 9200 COLLINS AVENUE, SUBJECT TO CERTAIN CONDITIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

**Denotes agenda items as “must haves” which means there will be significant impacts if the item is not addressed tonight. If these items have not been heard by 10 p.m., the order of the agenda will be changed to allow them to be heard.*

***B. Resolution for Variance 1355 Biscaya Drive – Lynn M. Dannheisser, Town Attorney Page 38-49**

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, CONSIDERING THE APPLICATION OF 1355 BISCAYA DRIVE, TO PERMIT A SEVEN FOOT 11 INCH SIDE SETBACK VARIANCE FROM SECTION 90-45 OF THE CODE OF ORDINANCES TO ALLOW A 12.9 FOOT SETBACK FOR THE ENTIRE LENGTH OF THE PIE SHAPED LOT; AND PROVIDING FOR AN EFFECTIVE DATE.

3. Consent Agenda (Set for approximately 8:45 p.m.)

All items on the consent agenda are considered routine or status reports by the Town Commission and will be approved by one motion. Any Commission member may request, during item 1E Agenda and Order of Business, that an item be removed from the Consent Agenda and discussed separately.

Recommended Motion: To approve all consent agenda items as presented below.

A. Minutes – March 8, 2011 Regular Commission Meeting

March 23, 2011 Special Commission Meeting Page 50-70

B. Budget to Actual Summary as of February 28, 2011 – Martin Sherwood, Finance Director Page 71-72

***C. Town Manager’s Report (Points of Light) – Roger M. Carlton, Town Manager Page 73-99**

***D. Town Attorney’s Report – Lynn M. Dannheisser, Town Attorney Page 100-105**

E. Projects Progress Report – Calvin, Giordano and Associates, Inc. Page 106-109

F. Code Enforcement Update – Paul Gioia, Building Official Page 110-111

4. Ordinances

(Set for approximately 9:30 p.m.) (Note: Good and Welfare must begin at 8:15)

A. Second Readings (Ordinances and Public Hearing)

***1. Short Term Rentals – Lynn Dannheisser, Town Attorney (linked with item 4B2 and 5A) Page 112-129**

AN ORDINANCE OF THE TOWN OF SURFSIDE, FLORIDA AMENDING ARTICLE IV “DISTRICT REGULATIONS” SECTION 90.41 “REGULATED USES” ADDING A NEW SECTION 90.41.1.5 ENTITLED “SHORT TERM RENTAL OF SINGLE FAMILY DWELLINGS, TWO-FAMILY DWELLINGS, MULTI-FAMILY DWELLINGS, AND TOWNHOMES” REQUIRING REGISTRATION OF SHORT TERM RENTALS IN RESIDENTIAL NEIGHBORHOODS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEALER; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR AN EFFECTIVE DATE.

[This ordinance requires registration of short term rentals for compliance with resort and other taxes. It also limits short term rentals to no more than three per year.]

B. First Readings Ordinances

(Set for approximately 10:00 p.m.) (Note: Good and Welfare must begin at 8:15)

- *1. Resort Tax** – Roger M. Carlton, Town Manager and Duncan Tavares, Tourism, Economic Development and Community Services Director **Page 130-155**
AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING CHAPTER 70 AND SPECIFICALLY ARTICLE IV “RESORT TAX” DIVISION 1 “RESORT TAX” AND DIVISION 2 “RESORT TAX BOARD” SPECIFICALLY AMENDING SECTIONS 70-106 THROUGH 70-111; AND CREATING SECTIONS 70-112 THROUGH 70-127, OF THE TOWN OF SURFSIDE CODE OF ORDINANCES PROVIDING FOR INCLUSION IN THE CODE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE. (Deferred from April 12, 2011 Commission Meeting)

[This ordinance updates resort tax imposition and adds an appeal process.]

- *2. Short Term Rental Prohibition Single Family Dwellings** – Lynn Dannheisser, Town Attorney *(linked with item 4A1 & 5A)* **Page 156-173**
AN ORDINANCE OF THE TOWN OF SURFSIDE, FLORIDA AMENDING ARTICLE IV “DISTRICT REGULATIONS” SECTION 90.41 “REGULATED USES” ADDING A NEW SECTION 90.41.1.5 RELATING TO A PROHIBITION OF SHORT TERM RENTALS OF SINGLE FAMILY DWELLINGS AND REGULATION OF TWO-FAMILY DWELLINGS, MULTI-FAMILY DWELLINGS, AND TOWNHOMES REQUIRING REGISTRATION OF SHORT TERM RENTALS IN RESIDENTIAL NEIGHBORHOODS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEALER; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR AN EFFECTIVE DATE.

[This ordinance is the same as Item 4A1 but prohibits short term rentals in H-30 Single family district]

- *3. Film and Print Production Ordinance** – Lynn Dannheisser, Town Attorney
Page 174-188
Option A- (All districts)
AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA CREATING CHAPTER 11 “ARTS, CULTURE, AND ENTERTAINMENT” AND ARTICLE I “FILM AND PRINT PRODUCTIONS” AND SPECIFICALLY CREATING SECTION 11-1 “FILM AND PRINT PRODUCTION PERMITS”, OF THE TOWN OF SURFSIDE CODE OF ORDINANCES PROVIDING FOR INCLUSION IN

THE CODE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

[This ordinance permits and regulates film permitting and processing in all districts.]

Option B – (Exempt single family)

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA CREATING CHAPTER 11 “ARTS, CULTURE, AND ENTERTAINMENT” AND ARTICLE I “FILM AND PRINT PRODUCTIONS” AND SPECIFICALLY CREATING SECTION 11-1 “FILM AND PRINT PRODUCTION PERMITS”, OF THE TOWN OF SURFSIDE CODE OF ORDINANCES PROVIDING FOR INCLUSION IN THE CODE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

[This ordinance is the same as Option A above but prohibits filming in the single family district west of Harding.]

5. Resolutions and Proclamations

(Set for approximately 10:30 p.m.) (Note: Depends upon length of Good and Welfare)

***A. Resolution Opposing Legislation on Short Term Rentals –**

Vice Mayor Joe Graubart *(linked with 4A1&4B2)* **Page 189-190**
A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, OPPOSING FLORIDA LEGISLATION THAT PREEMPTS THE RIGHT OF LOCAL GOVERNMENT TO REGULATE SHORT TERM RENTALS ON RESIDENTIAL PROPERTY; AND PROVIDING FOR AN EFFECTIVE DATE.

***B. FPL Easement – Roger M. Carlton, Town Manager Page 191-201**

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING AN AFTER-THE-FACT EASEMENT DESCRIBED IN EXHIBIT “A” GRANTING AND GIVING TO FLORIDA POWER AND LIGHT COMPANY FOREVER A TEN (10) FOOT WIDE EASEMENT FOR THE CONSTRUCTION, OPERATION AND MAINTENANCE OF OVERHEAD AND UNDERGROUND UTILITIES TO BE INSTALLED FOR THE COMMUNITY CENTER AND AQUATIC FACILITY; PROVIDING FOR AN EFFECTIVE DATE.

6. Good and Welfare *(Set for approximately 8:15 p.m.)*

Public comments for subjects or items not on the agenda. Public comment on agenda items will be allowed when agenda item is discussed by the Commission.

7. Town Manager and Town Attorney Reports

Town Manager and Town Attorney Reports have been moved to the Consent Agenda – Item 3.

All items on the Consent Agenda are considered routine or status reports by the Town Commission and will be approved by one motion. Any Commission member may request, during item 1E Agenda and Order of Business, that an item be removed from the consent agenda and discussed separately.

8. Unfinished Business and New Business

9. Mayor, Commission and Staff Communications (Set for approximately 11:00 p.m.)

***A. Community Center Opening** – Roger M. Carlton, Town Manager (Verbal)

B. Wounded Warriors Family Support – Vice Mayor Joe Graubart **Page 202**

***C. Fiscal Year 2009-2010 CAFR** [Note: The CAFR report includes 94 pages and is placed separately in the agenda package. It is available on the Town website.] **Page 203-206**

***D. FPL, Telephone and Cable Underground Conversion of Existing Overhead Service Lines Report** – Roger M. Carlton, Town Manager and Bill Evans, Director of Public Works **Page 207-227**

***E. Report on Non-retail/Restaurant, Moratorium and Status of Meetings with DVAC and Business Owners** – Roger M. Carlton, Town Manager (Verbal) (linked to Point of Light Number 2)

F. New Crime Prevention Initiatives – Police Chief David Allen **Page 228-229**

***G. Resident Parking Program** – Assistant Police Chief John DiCenso **Page 230**

***H. Contract Amendment with LAZ Parking** – Assistant Police Chief John Di Censo (linked to Point of Light Number 8) **Page 231-232**

10. Adjournment

Respectfully submitted,



Roger M. Carlton
Town Manager

THIS MEETING IS OPEN TO THE PUBLIC. IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT OF 1990, ALL PERSONS ARE DISABLED; WHO NEED SPECIAL ACCOMMODATIONS TO PARTICIPATE IN THIS MEETING BECAUSE OF THAT DISABILITY SHOULD CONTACT THE OFFICE OF THE TOWN CLERK AT 305-893-6511 EXT. 226 NO LATER THAN FOUR DAYS PRIOR TO SUCH PROCEEDING. HEARING IMPAIRED PERSONS MAY CONTACT THE TDD LINE AT 305-893-7936.

IN ACCORDANCE WITH THE PROVISIONS OF SECTION 286.0105, FLORIDA STATUTES,

ANYONE WISHING TO APPEAL ANY DECISION MADE BY THE TOWN OF SURFSIDE COMMISSION, WITH RESPECT TO ANY MATTER CONSIDERED AT THIS MEETING OR HEARING, WILL NEED A RECORD OF THE PROCEEDINGS AND FOR SUCH PURPOSE, MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE WHICH RECORD SHALL INCLUDE THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

AGENDA ITEMS MAY BE VIEWED AT THE OFFICE OF THE TOWN CLERK, TOWN OF SURFSIDE TOWN HALL, 9293 HARDING AVENUE. ANYONE WISHING TO OBTAIN A COPY OF ANY AGENDA ITEM SHOULD CONTACT THE TOWN CLERK AT 305-861-4863. A COMPLETE AGENDA PACKET IS ALSO AVAILABLE ON THE TOWN WEBSITE AT www.townofsurfsidefl.gov

TWO OR MORE MEMBERS OF OTHER TOWN BOARDS MAY ATTEND THIS MEETING.

THESE MEETINGS MAY BE CONDUCTED BY MEANS OF OR IN CONJUNCTION WITH COMMUNICATIONS MEDIA TECHNOLOGY, SPECIFICALLY, A TELEPHONE CONFERENCE CALL. THE LOCATION 9293 HARDING AVENUE, SURFSIDE, FL 33154, WHICH IS OPEN TO THE PUBLIC, SHALL SERVE AS AN ACCESS POINT FOR SUCH COMMUNICATION.



9200 COLLINS AVENUE HOTEL
ATTACHMENTS

- A. COMMISSION COMMUNICATION
- B. PLANS *
- C. RESOLUTION
- D. EXECUTED PLANNING AND ZONING BOARD RESOLUTION 11-Z-02
- E. TOWN ATTORNEY INFORMATION

*Note: Plans are available for inspection at Town Hall,
from 9 a.m. to 5 p.m., Monday through Friday



Town of Surfside Commission Communication

Agenda Item #: 2A

Agenda Date: May 10, 2011

Subject: 9200 Collins Avenue Hotel

From: Sarah Sinatra Gould, AICP, Town Planner

SITE PLAN

SITE INFORMATION:

Address	9200 Collins Avenue
General Location	West side of Collins Avenue, East side of Harding Avenue, North side of 92 nd Street
Property Size	2.249 gross acres / two lots fronting 92 nd Street, five lots fronting Collins Avenue and four lots fronting Harding Avenue
Zoning District	H40 and H30C
Adjacent Zoning Districts	East H120, South H40 and H30C, West H30B, North H40 and H30C
Future Land Use	Moderate High Density Residential
Density Permitted	108 hotel units per acre are permitted by the Comprehensive Plan. 242 hotel units are permitted. This property is not subject to the reduction in density due to aggregation required under code changes adopted on April 12, 2011. However if it were applicable, 205 hotel units would be permitted. The applicant is proposing 175 hotel units.

SITE PLAN ATTRIBUTES:

- ❖ Four-story hotel with 175 Hotel Rooms
- ❖ Three-story parking garage with 190 parking spaces total
- ❖ 60 Tandem Parking
- ❖ 24-hour valet service
- ❖ Roof top deck, including pool
- ❖ Monument signage proposed for corner of 92nd Street and Collins Avenue (Monument and wall signage shall be applied for under separate permit to be reviewed by the Design Review Board)
- ❖ Hotel pedestrian entrance fronts 92nd Street
- ❖ Vehicular entrance from 92nd Street with drop off interior to the parking garage (one-way in /one-way out)
- ❖ Loading entrance from Harding Avenue

Town of Surfside Zoning Code, Applicable Requirements

Sec. 90.42

Minimum Unit Sizes	Minimum Required	Proposed
Hotel Rooms, each	350 sq ft	170 rooms from 354 to 490 sq ft
Conference Suite, each	525 sq ft	5 rooms at 625 sq ft

Sec. 90.43

Maximum Building Heights	Maximum Required	Proposed
H30C	30 feet maximum	30 feet
H40	40 feet maximum	40 feet

Sec. 90.44

Modification of Height	Maximum Permitted			Proposed
H40	12 ft	10% of roof area	Must be of high architectural quality integral to the design of the building	Proposed extensions meet the criteria.

Sec. 90.45(b)

Setbacks	Minimum Required		Proposed
H30C	Front (92 nd St)	20 ft	20 ft
	Rear (north)	10 ft	10 ft
	Secondary (Harding Ave)	10 ft	10 ft
H40	Front (92 nd St)	20 ft	20 ft
	Side (west)	7 ft	10.8 ft
	Rear (north)	10 ft	20 ft
	Secondary (Collins Ave)	10 ft	10 ft

Sec. 90.47 (a)(d)

Yards generally, allowable projections	Required	Proposed
Projections of architectural features into required yards	Maximum 2 feet	2 feet proposed
Balconies allowed to project up to 5 feet into front setback	H40 lot with less than 75 feet of frontage	3 feet proposed

Sec. 90.47(h)

Cantilevered Canopy	Required	Proposed
Cantilevered canopy will be permitted in the required front yard, subject to the following	Must be completely supported (cantilevered) from the main structure	Supported from main structure
	Minimum 65% transparent	Approximately 90% transparent
	Maximum frontage of 30 feet in width	30 feet proposed
	Maximum 20 foot extension into front setback	Extends 16 feet into setback
	shall not extend into any side setback area	Does not extend into side setback

Sec. 90.49

Lot Standards	Required	Proposed
Minimum Lot width	50 feet	262.5 feet
Minimum Pervious area	20%	24%

Sec. 90.49.4

Guideline	Proposed
For every fifty (50) feet of a building wall in any direction, there shall be a three (3) foot minimum change in wall plane; and	After every 40 feet there is a 3 foot change in wall plane
For every one-hundred (100) feet of a building wall parallel to the public right of way, there shall be a minimum ten (10) foot wide and minimum three (3) foot deep separation of wall plane; and	After every 40 feet there is a 3 foot change in wall plane
Façade treatments fronting a public right-of-way shall provide architectural treatments consistent with and compatible to those across the public right-of-way or abutting properties and consistent with immediate buildings.	The parking garage is designed to give the impression of townhouses. The properties directly across Harding Avenue are single family residential and the properties directly across 92 nd Street are townhouses. This design is compatible and consistent with the existing neighborhood by adding a façade that reflects residential realities.
For the first ten (10) feet of height along all blank walls, a minimum of eighty (80%) percent landscape coverage, such as a vine or hedges, shall be installed and maintained.	Vines are proposed to cover the metal grates and blank walls of the garage. Design elements that represent townhouses are proposed for the remainder of the façade.

Sec. 90.50(a)(2) and (4)

Architecture	Required	Proposed
All elevations for new structures and multi-story additions (additions greater than fifteen (15) feet in height)	Minimum of 10% wall openings including windows, doors or transitional spaces defined by porches, porticoes or colonnades.	Collins Ave – 50%
		Harding Ave – 11%
		92 nd Street – 38%
		Rear/North – 11%

Roof materials are limited as follows:	a. Clay Tile; or b. White concrete tile; or c. Solid color cement tile which color is impregnated with the same color intensity throughout, provided said color if granted approval by the Design Review Board; d. Architecturally embellished metal if granted approval by the Design Review Board; or e. Other Florida Building Code approved roof material(s) if granted approval by the Design Review Board.	Hotel roof will be composed of Bi-Laminate Rubbergard Ecowhite EPDM Membrane
		Roof Deck will be composed of brick pavers

Sec. 90.50(b)(3)

Roof Deck Provisions	Required	Proposed
Roof Decks are limited to	a. Maximum 70% of the aggregate roof area;	69.7%
	b. Shall not exceed the maximum roof height required by any abutting property's zoning designation;	30 feet
	c. Minimum setback of 10 feet from the roofline on all sides	10 feet

Sec. 90.51(a)

Maximum frontage of buildings	Required	Proposed
H30C	For every 50 feet, a minimum 3 foot change in wall plane	Harding Ave – After every 40 feet there is a 3 foot change in wall plane
		92 nd St – After 25 feet there is a 14 foot change in wall plane, after 27 feet there is a 3 foot change in wall plane
H40	For every 75 feet, a minimum 6 foot change in wall plane	Collins Ave – After 75 feet there is an 8 foot change in wall plane
		92 nd St – After 57 feet there is a 13 foot change in wall plane

Sec. 90.61

Paving in front and rear yards in H30 and H40 Districts	Required	Proposed
Front setbacks, amount that may be paved with any type of material that is not readily permeable by rainwater and groundwater.	Maximum 50% paved	38% paved
Front Yard Landscaping	Minimum 30%	61%
Rear Yard Landscaping	Minimum 20%	100%
Front yard shall be accessible by vehicles from a public street	Maximum 2 curb cuts	2 curb cuts proposed
Curb cut width	Maximum 12 feet	12 feet
Distance between curb cuts	Minimum 12 feet	80.75 feet
Landscaped island	Minimum 60 square feet	599 sq ft
Permitted driveway materials	<ol style="list-style-type: none"> 1. Pavers 2. Color and texture treated concrete, including stamped concrete 3. Painted concrete shall not be permitted. 4. Asphalt shall not be permitted. 	Pavers

Sec. 90.62

Outdoor Lighting	Required	Proposed
Height of lighting fixtures and lighting poles, including mounting bases	Maximum 18 feet	10.75 feet
Design	Decorative nature and shall be in harmony with the site architecture design, the adjacent area and the neighborhood.	As with the site's architecture, which has minimal ornamentation, the proposed light fixtures are minimalistic and meant to blend in with the structure.
Permitted materials	Constructed of anodized aluminum, pigmented concrete, fiberglass or other materials of similar characteristics as approved by the Town Manager or	The proposed lights are all composed of anodized aluminum.

	designee.	
Overspill of lighting	Maximum ½ foot-candle (vertical) and ½ foot-candle (horizontal) illumination on adjacent properties	The maximum illumination at the property line is 1/3 foot-candle.

Sec. 90.67.2

Underground utilities	Required	Proposed
	All utilities including telephone, cable, and electrical systems shall be installed underground.	The lines will be installed underground and have developed their landscaping plans accordingly.

Sec. 90.77.2

Off-Street Parking	Minimum Required	Proposed
	186 Spaces	190 Spaces

Sec. 90.83

Off-Street Loading	Minimum Required	Proposed
Hotel, Greater than 100,000 sq ft	2 spaces	2 spaces

Sec. 90.91

Vegetative Provisions	Minimum Required	Proposed
Xeriscape in pervious area	50%	51%

Sec. 90.92

Landscape buffer areas between residential and non-residential properties	Required	Proposed
Landscaped buffer located along all property lines	Minimum 10 feet in depth	10 – 20 feet
	Minimum 3 trees for every 50 linear feet	3 trees/50 linear feet (72)
Protection of landscaped areas from vehicular encroachment	Type D curbing	Type "D" curbing

Sec. 90.94

Open Space	Required		Proposed
Landscaping along all buildings and structures	½ the height of the building or structure at 1 tree per 25 linear feet of each building's façade on all sides for scaling and softening		Trees and palms at ½ the height of the buildings on all sides. 41 trees and palms at 15' or over for 30' tall building and 20' or over for 40' tall building.
Landscape Strip around all buildings	Minimum 6 feet wide landscape strip		6 feet
Trees required per percent of site in Open Space	1 trees per square feet of open space	16 trees	16 trees
Shrubs required per percent of site in Open Space	10 shrubs per square feet of open space	1,560 shrubs	1,902 shrubs

CONDITIONAL USE

Section 90-23 of the zoning code provides standards of review for Conditional Uses. Conditional Uses are generally compatible with the other land uses permitted in a zoning district but, because of their unique characteristics or potential impacts on the surrounding neighborhood and the Town as a whole, require individual review as to their location, design, configuration, and/or operation for the particular use at the particular location proposed, as well as the imposition of individualized conditions in order to ensure that the use is compatible with the surrounding neighborhoods and appropriate at a particular location.

In addition to the standards set forth in this zoning code for the particular use, all proposed Conditional Uses shall meet each of the following standards. The responses to the criteria are in italics below:

- (1) The proposed use shall be consistent with the Comprehensive Plan and the Zoning Code;

The proposed uses, which include a swimming pool, Jacuzzi and a structured parking garage, are consistent with the Comprehensive Plan and the Zoning Code. These uses are customary for a hotel use, which is permitted in the H40 zoning district. The proposed garage has been designed to give the impression of townhouses, which provides aesthetic consistency with the surrounding neighborhood. The proposed pool and Jacuzzi will be on the roof deck of the garage. A landscape buffer in the form of trees and shrubs is proposed to limit the visual impact of the pool deck. The landscaping will be around the entire perimeter of the deck and will be visible to pedestrians on the street. In order to further minimize any impact of these features, the Town has limited the hours of operation of the pool and Jacuzzi from dawn to dusk and prohibited live, amplified music at any time. Evening events may be held no later than 11pm also prohibiting live, amplified music. Any recorded music is limited to 75 decibels.

- (2) The establishment, maintenance or operation of the proposed use shall not be detrimental to or endanger the public health, safety, or general welfare;

The parking garage will offer 24 hour valet service and the gate for the garage will be open until at least 9pm at night, which will avoid queuing on 92nd street. The swimming pool and Jacuzzi have limited hours of operation to mitigate any unwanted effects from hotel guests in the pool. Music, other than piped in background music has also been prohibited to further protect the public health, safety and general welfare of the surrounding neighborhood. Any recorded music is limited to 75 decibels.

- (3) The proposed use shall be compatible with the community character of the immediate neighborhood. In addition to compatibility there must be congruity between the subject development and neighboring improvements and surroundings including but not limited to form, spacing, heights, setbacks, materials, color, rhythm and pattern of architectural or aesthetic interest or value as well as with any overlays and other development schemes or legislation.

The hotel spans from Collins Avenue to Harding Avenue on 92nd Street. Collins Avenue has a range of four story multifamily and hotel uses on the west side of the road. A swimming pool and Jacuzzi are compatible in both zoning districts and within the surrounding neighborhood. The east side of Collins Avenue consists of multi-family and hotel projects with a maximum height of 120 feet. This project is consistent with the use and appearance of the existing neighborhood on Collins Avenue. The parking garage is proposed along Harding Avenue. The east side of Harding Avenue consists predominately of a range of multi-family structures. The west side of Harding consists of single family and townhouses. 92nd Street consists of townhouses directly across the street from this project. The applicant has improved the garage façade by creating the appearance of townhouses with ivy in between the architectural features to give the impression of setbacks. This design has great architectural interest and reflects the character of the community.

- (4) Adequate provisions shall be included for safe traffic movement, both vehicular and pedestrian, both internal to the use and in the area which will serve the use;

The applicant has indicated on the plans and the Town has reflected in the Development Order that the entrance gate on 92nd street will remain open until at least 9pm each night to avoid any queuing on 92nd Street. Also, the Development Order requires the applicant to complete a traffic signal analysis to determine if a traffic signal is warranted at 92nd Street and Harding. 24 hour valet service is also offered, along with self parking. However, the Development Order has prohibited self parking at any encumbered space, such as tandem spaces or spaces adjacent to a wall, to ensure safe traffic movement. If a traffic signal at 92nd Street and Harding Avenue is warranted, the applicant shall fund 25% of the first \$50,000 and 50% of everything above that for the installation of the required signal within six months of the Certificate of Occupancy.

- (5) Adequate measures exist including landscaping or other buffering measures or shall be taken to mitigate any adverse effects of noise, light or other potential nuisances; and

The applicant is proposing lush landscaping at the perimeter of the pool deck, which will be seen from the street. This will provide pedestrians with attractive and interesting landscaping to enjoy at all levels of the building, while providing a noise and visual buffer for the pool deck. The walls along Harding Avenue will have Ivy, which will grow down from the roof level down. The garage will have eyebrows at each level with planters so that the Ivy will meet to ensure the full coverage of the parking garage will be met.

- (6) The establishment of the Conditional Use shall not impede the development of surrounding properties for uses permitted in the zoning district; and

The establishment of the Conditional Use for the swimming pool, Jacuzzi and parking garage will not impede the development of permitted uses in surrounding properties.

- (7) Any other condition imposed by the Design Review Board and/or the Development Impact Committee.

DEVELOPMENT REVIEW COMMITTEE REPORT

The Development Review Committee (DIC) met on April 13, 2011 to discuss this application. The DIC meeting was attended by the following:

Staff Attendees: Roger M. Carlton, Town Manager
Bill Evans, Public Works Director
Tim Milian, Parks and Recreation Director
Lynn Dannheisser, Town Attorney
Sarah Sinatra Gould, Town Planner
James Spinks, Traffic Engineer
Paul Gioia, Building Official

Applicant Attendees: Silvia Coltrane
Hernando Marin
Neisen Kasdin

The following were discussed and, if recommended by the Planning and Zoning to the Town Commission, will become a covenant running with the property as part of the Development Order. The Planning and Zoning Board requested that the conditions from the prior resolution be added. The Town Commission may modify any of the conditions and/or request additional conditions to be included in the Development Order.

Conditions Agreed upon at DIC

1. All signage shall be submitted, reviewed and approved under a separate application for review by the Design Review Board prior to the issuance of a Certificate of Occupancy.
2. Rooftop Pool shall be limited to the following hours of operation: dawn to dusk.
3. Live, amplified music shall be prohibited. Recorded music no greater than 75 decibels is allowed from 11 am to dusk.
4. The gate at the 92nd Street entrance shall remain open between 7 am – 9 pm.
5. The service gate on Harding Avenue shall not open any earlier than 7am and later than 6pm.
6. Valet or self parking are options, however valet shall be available 24 hours per day, 7 days per week.
7. Self-parking spaces will not be permitted if the space is adjacent to a wall or other encumbrance. These spaces shall be valet only.

8. On street metered parking spaces parallel to the curb shall be provided along the north side of 92nd Street with the approval of Miami-Dade County. This will include striping and signage. No more than one of these spaces shall be a taxi stand and subject to the approval of Miami-Dade County.
9. The applicant shall perform a traffic signal analysis to determine if a light is warranted at Harding Avenue and 92nd Street. If a signal is warranted by FDOT and Miami-Dade County standards, the applicant shall fund 25% of the first \$50,000 and 50% of everything above that for the installation of the required signal prior to six months of issuance of the Certificate of Occupancy.
10. A bond shall be posted to replace public property damaged during the construction of the hotel or currently in need of replacement. The final determination regarding what property shall be replaced will be the sole determination of the Director of Public Works. The amount of the bond shall be determined jointly by the Director of Public Works and the Building Official. The bond shall be posted prior to the issuance of the building permit.
11. The applicant shall pay a contribution to upgrade the public beach access at the street end at 92nd Street and the ocean bulkhead: \$7,500. This amount shall be paid 90 days prior to the expected date of issuance of the Certificate of Occupancy.
12. The applicant acknowledges that FDOT will repave Collins Avenue during the time of construction for the project and commits to funding the cost of improvements necessary for the FDOT project to include paving, curb, gutter, and striping, but not to include subsurface improvements for areas disturbed by the construction of the hotel.
13. The applicant shall pay for the repaving and any related work (including curb, gutter and striping, but not to include subsurface improvements) to the north side of 92nd Street and the Town shall pay for repaving any related work to the south side of 92nd Street between Collins Avenue and Harding Avenue. This project shall be completed prior to the issuance of a Certificate of Occupancy. Applicant will be responsible for completing design plans and obtaining any necessary permits from Miami-Dade County and/or other maintaining agencies, if necessary.
14. The applicant shall underground the utilities on 92nd Street. This project shall be completed prior to the repaving of 92nd Street.
15. The applicant shall meet all requirements of the Department of Public Works for trash containers prior to the issuance of a building permit. The service roll gate shall be at least 15 ft. high.
16. The applicant shall meet all requirements of the Department of Public Works for water, sewer and storm drainage services.

17. The applicant shall fund the cost of two litter receptacles along Collins Avenue and two litter_receptacles along Harding Avenue in a design acceptable to the Department of Public Works. Cost and the design of the litter receptacles shall be determined by the Department of Public Works before issuance of the final certificate of occupancy.
18. The applicant shall fund a contribution of \$25,000 to the Town's Tennis Center for refurbishment of the tennis courts and other needs within six (6) months after issuance of the building permit for the hotel. Provisions to accommodate hotel guests shall be developed by the Parks and Recreation Director subject to review by the Parks and Recreation Board.
19. Remove the proposed steps along the parking garage façade on Harding Avenue and 92nd Street and replace with groundcover.
20. Provide planters with landscaping on every level of the parking garage to help to achieve the required landscape coverage on the parking garage.

NOTE: Additional conditions are included in the Resolution which were not part of the DIC meeting.

Recommendation:

The Planning and Zoning Board reviewed the application, with modifications which have been incorporated, on April 28, 2011 and voted 4-1 to recommend approval of the application to the Town Commission. Staff recommends approval of the site plan and conditional use application based on the acceptance of all conditions.

Budget Impact: Planning Staff's time was funded through cost recovery directly from the applicant. Therefore the Town did not incur an additional budget impact for staff's time.

Growth Impact: N/A

Staff Impact: N/A



Sarah Sinatra Gould, Town Planner



Roger M. Carlton, Town Manager

RESOLUTION NO. 11-Z-0_

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, (“TOWN”) APPROVING A SITE PLAN APPLICATION, PURSUANT TO SECTION 90-41 ET SEQ. OF THE ZONING CODE TO PERMIT A 175 UNIT FOUR (4) STORY HOTEL WITH ACCESSORY USES, AND A CONDITIONAL USE APPLICATION PURSUANT TO SECTION 90-23 OF THE ZONING CODE TO PERMIT THE DEVELOPMENT OF A THREE (3) STORY STRUCTURED PARKING FACILITY AND HOTEL SWIMMING POOL AND JACUZZI, SUBMITTED BY TRANSACTA LANAI DEVELOPERS, LTD., (THE “APPLICANT”), ALL ON THE PROPERTY LOCATED AT 9200 COLLINS AVENUE, SUBJECT TO CERTAIN CONDITIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

I. RECITALS.

WHEREAS, on April 4, 2011 Applicant submitted an application to the Town of Surfside, Florida (“the Application”), requesting the following:

- A. Pursuant to Section 90-41 et seq., of the Town Zoning Code, site plan approval a four-story hotel with 175 hotel rooms (including five conference suites); three-story parking garage with 190 parking spaces total; 24-hour valet service; roof top deck, including pool; monument signage proposed for corner of 92nd Street and Collins Avenue (Monument and wall signage to be applied for under separate permit to be reviewed by the Design Review Board); hotel pedestrian entrance fronting 92nd Street; vehicular entrance from 92nd Street with drop off interior to the parking garage (one-way in/one-way out); and loading entrance from Harding Avenue.
- B. Pursuant to Section 90-23 of the Town Zoning Code, conditional use approval for a three-story structured Parking Facility with 190 parking spaces and Hotel Swimming Pool and Jacuzzi as part of the redevelopment of the property at 9200 Collins Avenue, Surfside, Florida for a hotel with approximately 175 hotel rooms (including five conference suites) and related accessory uses.

Plans are on file and may be examined in the Building Department entitled “Proposed Surfside Hotel”, prepared by Revuelta Architecture International PA, dated stamped received April 4, 2011 consisting of 55 sheets total including “Cover Sheet and Index of Drawings” prepared by prepared by Revuelta Architecture International dated stamped received April 4, 2011 consisting of 2 sheets; “Boundary Survey” prepared by Florida International Land Surveyors, Inc. dated stamped received February 26, 2010 consisting of 1 sheet; “Civil Sheets C-0, C-1, C-2, C-3, C-4, C-5, C-6, C-7, C-8, and C-9” prepared by V.S.N. Engineering, Inc. dated stamped received February 26, 2010 consisting of 10 sheets; “Architecture Sheets A-01, A-01.1, A-01.2, A-02, A-03, A-04, A-05, A-06, A-07, A-08, A-08.1, A-08.2, A-09, A-09.1, A-09.2, A-10, A-11, A-12, A-13, A-14 and A-15” prepared by Revuelta Architecture International dated stamped received April 4, 2011 consisting of

201 sheets; "Electrical Sheets E-01, E-02, E-03, E-04, E-05, E-06, E-07, E-08, E-09, E-10, E-11 and E-12" prepared by Revulta Architecture International and JGP Engineering Group P.A. dated stamped received April 4, 2011 consisting of 12 sheets; and "Landscape L-01, L-02, L-03, L-04, L-05, L-06, L-07, L-08, L-09 and L-10" prepared by Revulta Architecture International and Rosenberg Gardner Design dated stamped received April 4, 2011 consisting of 10 sheets; Plans may be modified at public hearing (hereinafter referred to as the "Plans").

Legal: Lots 1-6 and Lots 20-24 in Block 4 of Altos Del Mar" No. 5 according to the Plat thereof, as recorded in Plat Book 8, Page 92 of the Public Records of Miami-Dade County, Florida.

ADDRESS: 9200 Collins Avenue

WHEREAS, on April 28, 2011, the Design Review Board and the Planning & Zoning Board heard and reviewed this Application and referred this Application for approval by the Town Commission with the additional conditions of approval attached here to and incorporated herein under Section IV. Conditions; and

WHEREAS, on May 10, 2011, the Town Commission conducted a public hearing on the Application as modified by the Applicant per the conditions of approval; and

WHEREAS, the public hearing of the Town Commission was posted, advertised, and held as required by law, all interested parties concerned in the matter were heard, and due and proper consideration was given to the matter and to the positive recommendation contained in the joint memorandum from the Planning and Zoning Administrator and the Planning Consultant; and

WHEREAS, notice was provided to all interested parties regarding the Application; and

WHEREAS, the Town Commission reviewed the Application, the written and oral recommendations of the Town Planners and other consultants who render reports with respect to the Application, including the recommended conditions, and found substantial competent evidence to support a showing by the Applicant that the requests for the approval of the conditional use and for site plan approval are in compliance with the zoning code and the Comprehensive Master Plan of the Town and maintain the basic intent and purpose of the zoning, subdivision or other land use regulations, which is to protect the general welfare of the public, particularly as it affects the stability and appearance of the community; and, further, found that said requests should be granted, subject to all of the conditions set forth in this Resolution and the execution of any attendant agreements.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPLICABLE TO APPLICANT, ITS SUCCESSORS OR ASSIGNS, AS FOLLOWS:

II. INCORPORATION OF RECITALS.

All recitals are incorporated into the body of this Resolution as if same were fully set forth herein.

III. APPROVALS.

The approvals set forth in this Section III are subject to all of the conditions set forth in this Resolution and the execution of all attendant agreements prior to the issuance of the Building Permit for the Project.

- A.** The Applicant's request for approval of the site plan submitted for the Proposed Surfside Hotel located at 92nd Street and Collins Avenue be, and the same is, hereby granted and said site plan is hereby approved, subject to all of the conditions provided in this Resolution. The failure of performance of any of these conditions shall be deemed a denial of this Application.

- B.** The Applicant's request for approval of a conditional use for swimming pool, Jacuzzi and a structured parking garage be, and the same is, hereby granted subject to conditions of approval and the execution of a tandem parking agreement which shall be recorded to run with the land.

IV. CONDITIONS.

A. Agreed Upon Conditions

1. All signage shall be submitted, reviewed and approved under a separate application for review by the Design Review Board prior to the issuance of a Certificate of Occupancy.
2. Rooftop Pool shall be limited to the following hours of operation: dawn to dusk.
3. Live, amplified music shall be prohibited. Recorded music no greater than 75 decibels is allowed from 11 am to dusk.
4. The gate at the 92nd Street entrance shall remain open between 7 am – 9 pm.
5. The service gate on Harding Avenue shall not open any earlier than 7am and later than 6pm.
6. Valet or self parking are options, however valet shall be available 24 hours per day, 7 days per week.
7. Self-parking spaces will not be permitted if the space is adjacent to a wall or other encumbrance. These spaces shall be valet only.
8. On street metered parking spaces parallel to the curb shall be provided along the north side of 92nd Street with the approval of Miami-Dade County. This will include

striping and signage. No more than one of these spaces shall be a taxi stand and subject to the approval of Miami-Dade County.

9. The applicant shall perform a traffic signal analysis to determine if a light is warranted at Harding Avenue and 92nd Street. If a signal is warranted by FDOT and Miami-Dade County standards, the applicant shall fund 25% of the first \$50,000 and 50% of everything above that for the installation of the required signal prior to six months of issuance of the Certificate of Occupancy.
10. A bond shall be posted to replace public property damaged during the construction of the hotel or currently in need of replacement. The final determination regarding what property shall be replaced will be the sole determination of the Director of Public Works. The amount of the bond shall be determined jointly by the Director of Public Works and the Building Official. The bond shall be posted prior to the issuance of the building permit.
11. The applicant shall pay a contribution to upgrade the public beach access at the street end at 92nd Street and the ocean bulkhead: \$7,500. This amount shall be paid 90 days prior to the expected date of issuance of the Certificate of Occupancy.
12. The applicant acknowledges that FDOT will repave Collins Avenue during the time of construction for the project and commits to funding the cost of improvements necessary for the FDOT project to include paving, curb, gutter, and striping, but not to include subsurface improvements for areas disturbed by the construction of the hotel.
13. The applicant shall pay for the repaving and any related work (including curb, gutter and striping, but not to include subsurface improvements) to the north side of 92nd Street and the Town shall pay for repaving any related work to the south side of 92nd Street between Collins Avenue and Harding Avenue. This project shall be completed prior to the issuance of a Certificate of Occupancy. Applicant will be responsible for completing design plans and obtaining any necessary permits from Miami-Dade County and/or other maintaining agencies, if necessary.
14. The applicant shall underground the utilities on 92nd Street. This project shall be completed prior to the repaving of 92nd Street.
15. The applicant shall meet all requirements of the Department of Public Works for trash containers prior to the issuance of a building permit. The service roll gate shall be at least 15 ft. high.
16. The applicant shall meet all requirements of the Department of Public Works for water, sewer and storm drainage services.
17. The applicant shall fund the cost of two litter receptacles along Collins Avenue and two litter receptacles along Harding Avenue in a design acceptable to the Department

of Public Works. Cost and the design of the litter receptacles shall be determined by the Department of Public Works before issuance of the final certificate of occupancy.

18. The applicant shall fund a contribution of \$25,000 to the Town's Tennis Center for refurbishment of the tennis courts and other needs within six (6) months after issuance of the building permit for the hotel. Provisions to accommodate hotel guests shall be developed by the Parks and Recreation Director subject to review by the Parks and Recreation Board.

19. Remove the proposed steps along the parking garage façade on Harding Avenue and 92nd Street and replace with groundcover.

20. Provide planters with landscaping on every level of the parking garage to help to achieve the required landscape coverage on the parking garage.

B. Conditions to be completed before grade or building permits are issued.

1. Applicant shall enter into an agreement, recorded in the public records at the expense of the owner, which shall run with the land and shall bind the heirs, successors, and assigns of said owner, which requires all developments having any tandem parking spaces to provide twenty-four (24) hour valet parking service.
2. New sidewalk and curb and gutter along Collins Avenue and Harding Avenue must be approved and permitted by FDOT. New sidewalk and curb and gutter along 92nd Avenue must be approved and permitted by Miami-Dade County.
3. All pedestrian features shall comply with the Americans with Disabilities Act, including but not limited to detectable warning features at driveway locations and be identified with details of ADA conforming handicapped ramps at the time of engineering permit.
4. All restrictions of vehicle sizes and heights and signage on requested signing and pavement marking plan shall be provided.
5. Prior to construction approvals, applicant must meet with Town Public Works Department and reach a written agreement allowing landscaping to be placed in the new water main easement on the north side of the proposed hotel.
6. Per the survey, FEMA base flood elevation is 8.0 NGVD. Per Code Section 42-92 applicant must flood proof building to one foot above the FEMA base flood elevation and certified flood proofed by a registered professional engineer or architect using a FEMA Flood proofing Certificate.

7. Proof of an FDOT permit for closing the existing driveways, utility construction, and other work on SR A1A shall be required prior to any work being performed within the Right-of-way.
8. Proof of vacation of the onsite Bellsouth easement must be provided prior to commencement of construction.
9. Applicant shall have provided copies of approvals from MD-DERM for storm water and sanitary sewer, MD Public Health UNIT for water.
10. An irrigation plan for the planters to be placed on the eyebrows of the parking garage shall have been provided and approved by the Town.
11. The site plan shall conform to the survey in the following ways: a) legal description; b) the site boundaries shall conform with the angles and distances reflected on the survey; c) the site plan shall show section, township and range with adjacent property owners on its location sketch.
12. Survey needs an owner affidavit that no changes have occurred since the survey.
 - C. That upon the submittal of an application for a building permit, the plans submitted shall meet with the approval of the Planning Consultants and shall be consistent with the modified Site Plan approved by the Town Commission. Plans shall include all the required elements of the Site Plan pursuant to the Town's Zoning Code and recommendations and these conditions.
 - D. That the Property be developed substantially in accordance with the modified plan for the May 10, 2011 public hearing and the Plans.
 - E. That the Applicant shall submit a Declaration of Restrictive Covenants (the "Declaration") in recordable form acceptable to the TOWN, prior to issuance of a building permit relating to tandem parking in perpetuity as well as the provision of twenty-four (24) hour valet parking services for owners and their guests which shall be included in such Declaration.
 - F. That the Applicant comply with all conditions and permit requirements of the Department of Environmental Resource and Management (DERM), the Miami-Dade County Fire Department (MDFD), Water and Sewer Department, Department of Environmental Protection (DEP), Florida Department of Transportation (FDOT).
 - G. That the Applicant shall submit plans for the construction of an appropriate barrier between the construction site and adjoining properties in order to minimize blowing of sand and debris. The Applicant will comply regulations of the Code of the Town of Surfside relating to construction site operations including construction fencing.

The Applicant will use its efforts to minimize vibration and noise during the construction of the project.

- H. That the Applicant has submitted all documents required under this Resolution and all impact fees, and professional fees (cost recovery) incurred in the review and processing of this Application and permitting.
- I. No building permits shall be issued (except for demolition and sales trailers) unless the Applicant has submitted all documents required under this approval and shall have paid all professional and other fees required by the Code of the Town of Surfside (including but not limited to, the connection and development fees in accordance with Section 78-83 of the Code of the Town of Surfside) are paid.
- J. Applicant shall present evidence of parking plan per agreement for the provision of off-street parking for construction workers during the period of construction of the approved project.
- K. Applicant agrees to attempt to secure approval for signalization for 92nd Street and Collins Avenue with FDOT.

Conditions to be completed before any Certificate of Occupancy is issued:

- (1) That the Applicant demonstrates that it is in compliance with all terms and conditions under this approval.

The Town Manager and /or his/her designee in review of any application, may refer any such application presented to it to such engineering, planning, legal, technical, or environmental consultant or professional(s) employed by the Town as the Manager shall deem reasonably necessary to enable him/her to review such application as required by law. Charges made by such consultants or professionals shall be in accord with the charges customarily made for such services in Miami Dade County, and pursuant to an existing contractual agreement by and between the Town and such consultant. Charges made by the Town shall be in accord with the hourly rates charges by such consultants or hourly rates of employed professionals and shall be paid within 30 days on submission of Town voucher.

That Applicant shall furnish payment and performance bond in an amount determined by the Building Official to ensure Applicant's performance of public improvements required pursuant to site plan approval and in accordance with recommendations of the Building Official after review of construction plans submitted based on development approval granted herein. Any such bond shall be issued by a surety having a minimum rating of A-1 in the Best's Key Rating Guide, Property/Casualty Edition, shall be subject to the approval of the TOWN, and shall provide that "this bond may not be cancelled or allowed to lapse until 30 days after receipt by the TOWN, by certified mail, return receipt requested, of written notice from the issuer of the bond of intent to cancel or not to

renew". As improvements are made the TOWN, within its discretion, may reduce or eliminate the bond amount. These rights reserved by the Town with respect to any construction bond established pursuant to this section are in addition to all other rights and remedies the Town may have under this Resolution, in law or in equity.

- (2) That paving within the front setback shall consist of pavers or other decorative materials approved by the Building Official. Under no circumstances shall asphalt concrete or plain concrete be utilized as paving in the front setback.

Other Conditions:

- (1) That the Applicant shall obtain a Certificate of Occupancy and a Certificate of Use from the Town upon compliance with all terms and conditions. The Certificate of Occupancy and Certificate of Use shall be subject to cancellation upon violation of any of the conditions.
- (2) That the approved site plan shall remain valid for a period of 24-months from the date of approval. If no building permit is issued within the 24-month time period, the site plan shall be considered null and void and of no force and effect.
- (3) That the Applicant shall comply with all Town Ordinances applicable to development and permit approvals and in the event the Applicant does not commence construction within six (6) months from the date the a permit issued, it shall be required to comply with Section 14.55 of the Surfside Code in effect at the time of the passage of this Resolution, as may be amended from time to time, including the posting of a bond to defray the cost of the Town having to perform these tasks, if necessary, and as may be required by the Building Official.
- (4) Applicant agrees to the condition subsequent of this approval to achieve a minimum of LEED Silver designation from the U.S. Green Building Council, and to qualify for the Florida Green Lodging Program, which is administered by the Florida Department of Environmental Protection. Failure to so achieve one of both of these designations within six (6) months of the issuance of the Certificate of Occupancy could subject this Property to revocation of said Certificate of Occupancy.

PASSED and ADOPTED on this 10th day of May, 2011.

Motion by Commissioner _____, second by Commissioner _____.

FINAL VOTE ON ADOPTION


Commissioner Michael Karukin _____
Commissioner Edward Kopelman _____
Commissioner Marta Olchyk _____
Vice Mayor Joseph Graubart _____
Mayor Daniel Dietch _____

Daniel Dietch, Mayor

ATTEST:

Debra E. Eastman, MMC
Town Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE TOWN OF SURFSIDE ONLY:**



Lynn M. Dannheisser, Town Attorney

STATE OF FLORIDA)
)ss:
COUNTY OF MIAMI- DADE)

I, Debra Eastman, Town Clerk of the Town of Surfside, Florida, do hereby certify that the above and foregoing is a true and correct copy of Resolution No. 11-Z-___ adopted by the Town Commission at its meeting held on the 10th day of May, 2011.

Issued: _____

Debra E. Eastman, M.M.C.
Town Clerk

**TOWN OF SURFSIDE PLANNING & ZONING BOARD
RESOLUTION NO. 11-Z- 62**

A RESOLUTION OF THE TOWN OF SURFSIDE, FLORIDA PLANNING & ZONING BOARD AND DESIGN REVIEW BOARD RECOMMENDING THAT THE TOWN COMMISSION APPROVE THE CONDITIONAL USE APPLICATION SUBMITTED BY TRANSACTA LANAI DEVELOPERS, LTD., (THE "APPLICANT"), PURSUANT TO SECTION 90-23-2 OF THE ZONING CODE TO PERMIT THE DEVELOPMENT OF A STRUCTURED PARKING FACILITY AND HOTEL SWIMMING POOL AND JACUZZI, AND THE SITE PLAN APPLICATION, PURSUANT TO SECTION 90-41 ET SEQ. OF THE ZONING CODE TO PERMIT A 175 UNIT FOUR (4) STORY HOTEL WITH ACCESSORY USES, ALL ON THE PROPERTY LOCATED AT 9200 COLLINS AVENUE, SUBJECT TO CERTAIN CONDITIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

I. RECITALS.

WHEREAS, Applicant as owner of the Property located at 9200 Collins Avenue, submitted an application to the Town of Surfside, Florida ("the Application"), requesting the following:

- A. Pursuant to Section 90-41 et seq., of the Town Zoning Code, site plan approval a four-story hotel with 175 hotel rooms; three-story parking garage with 190 parking spaces total; 60 tandem parking; 24-hour valet service; roof top deck, including pool; monument signage proposed for corner of 92nd Street and Collins Avenue (Monument and wall signage to be applied for under separate permit to be reviewed by the Design Review Board); hotel pedestrian entrance fronting 92nd Street; vehicular entrance from 92nd Street with drop off interior to the parking garage (one-way in/one-way out); and loading entrance from Harding Avenue.
- B. Pursuant to Section 90-23-2 of the Town Zoning Code, conditional use approval for a structured Parking Facility and Hotel Swimming Pool and Jacuzzi as part of the redevelopment of the property at 9200 Collins Avenue, Surfside, Florida for a hotel with approximately 175 hotel rooms and related accessory uses.

Plans are on file and may be examined in the Building Department titled Proposed Surfside Hotel at 9200 Collins Avenue- A development by Transacta Lanai Developers LTD which supercede those plans previously approved on March 9, 2010 by Resolution 10-Z-01 which plans may be modified at public hearing (hereinafter referred to as the "Plans").

Legal: Lots 1-6 and Lots 20-24 in Block 4 of Altos Del Mar" No. 5 according to the Plat thereof, as recorded in Plat Book 8, Page 92 of the Public Records of Miami-Dade County, Florida.

ADDRESS: 9200 Collins Avenue

WHEREAS, the Town Planner and the Development Review Committee reviewed the Application and recommended that the Application be approved with conditions set out in the Development Review Committee Report including those certain Agreed Upon Conditions as well as such other conditions imposed by the Board all of which shall be accepted by the Applicant and owner of the Property as a covenant running with the land; and

WHEREAS, on April 28, 2011, the Design Review Board and the Planning & Zoning Board heard and reviewed this Application, considering the requirements of Section 90-23-2 of the Town Zoning Code for Conditional Use Approval, Section 90-41 et seq. of the Town Zoning Code for Site Plan Approval, and the Application's consistency with the Town of Surfside Comprehensive Plan.

NOW THEREFORE BE IT RESOLVED BY THE TOWN OF SURFSIDE PLANNING AND ZONING BOARD AND DESIGN REVIEW BOARD TO RECOMMEND TO THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AS FOLLOWS:

II. INCORPORATION OF RECITALS.

All recitals are incorporated into the body of this Resolution as if same were fully set forth herein.

III. APPROVALS.

The Planning and Zoning Board and the Design Review Board recommend to the Town Commission approval of the Applicant's requests to the Town Commission in accordance with the terms of this Section III and subject to all of the conditions set forth in Section IV of this Resolution and the execution of all attendant agreements prior to the issuance of the Building Permit for the Project.

- A. The Applicant's request for approval of a Site Plan for a four-story hotel with 175 hotel rooms; three-story parking garage with 190 parking spaces total; 60 tandem parking; 24-hour valet service; roof top deck, including pool; monument signage proposed for corner of 92nd Street and Collins Avenue (Monument and wall signage to be applied for under separate permit to be reviewed by the Design Review Board); hotel pedestrian entrance fronting 92nd Street; vehicular entrance from 92nd Street with drop off interior to the parking garage (one-way in/one-way out); and loading entrance from Harding Avenue.
- B. The Applicant's request for approval of a Conditional Use for Structured Parking Facility and Hotel Swimming Pool and Jacuzzi as part of the redevelopment of the property at 9200 Collins Avenue, Surfside, Florida for a hotel with approximately 175 hotel rooms and related accessory uses.

IV. CONDITIONS.

1. All signage shall be submitted, reviewed and approved under a separate application for review by the Design Review Board prior to the issuance of a Certificate of Occupancy.
2. Rooftop Pool shall be limited to the following hours of operation: dawn to dusk.
3. Live, amplified music shall be prohibited. Recorded music no greater than 75 decibels is allowed from 11 am to dusk.
4. The gate at the 92nd Street entrance shall remain open between 7 am – 9 pm.
5. The service gate on Harding Avenue shall not open any earlier than 7am and later than 6pm.
6. Valet or self parking are options, however valet shall be available 24 hours per day, 7 days per week.
7. Self-parking spaces will not be permitted if the space is adjacent to a wall or other encumbrance. These spaces shall be valet only.
8. On street metered parking spaces parallel to the curb shall be provided along the north side of 92nd Street with the approval of Miami-Dade County. This will include striping and signage. No more than one of these spaces shall be a taxi stand and subject to the approval of Miami-Dade County.
9. The applicant shall perform a traffic signal analysis to determine if a light is warranted at Harding Avenue and 92nd Street. If a signal is warranted by FDOT and Miami-Dade County standards, the applicant shall fund 25% of the first \$50,000 and 50% of everything above that for the installation of the required signal six months prior to the expected date of issuance of the Certificate of Occupancy.
10. A bond shall be posted to replace public property damaged during the construction of the hotel or currently in need of replacement. The final determination regarding what property shall be replaced will be the sole determination of the Director of Public Works. The amount of the bond shall be determined jointly by the Director of Public Works and the Building Official. The bond shall be posted prior to the issuance of the building permit.
11. The applicant shall pay a contribution to upgrade the public beach access at the street end at 92nd Street and the ocean bulkhead: \$7,500. This amount shall be paid 90 days prior to the expected date of issuance of the Certificate of Occupancy.

12. The applicant acknowledges that FDOT will repave Collins Avenue during the time of construction for the project and commits to funding cost of the improvements not included in the FDOT project such as paving, curb, gutter, and striping, but not to include subsurface improvements.
13. The applicant shall pay for the repaving and any related work (including curb, gutter and striping, but not to include subsurface improvements) to the north side of 92nd Street and the Town shall pay for repaving any related work to the south side of 92nd Street between Collins Avenue and Harding Avenue. This project shall be completed prior to the issuance of a Certificate of Occupancy. Applicant will be responsible for completing design plans and obtaining any necessary permits from Miami-Dade County and/or other maintaining agencies, if necessary.
14. The applicant shall underground the utilities on 92nd Street. This project shall be completed prior to the repaving of 92nd Street.
15. The applicant shall meet all requirements of the Department of Public Works for trash containers prior to the issuance of a building permit. The service roll gate shall be at least 15 ft. high.
16. The applicant shall meet all requirements of the Department of Public Works for water, sewer and storm drainage services.
17. The applicant shall fund the cost of two litter receptacles along Collins Avenue and Harding Avenue in a design acceptable to the Department of Public Works. Cost and the design of the litter receptacles shall be determined by the Department of Public Works before issuance of the final certificate of occupancy.
18. The applicant shall fund a contribution of \$25,000 to the Town's Tennis Center for refurbishment of the tennis courts and other needs within six (6) months after issuance of the building permit for the hotel. Provisions to accommodate hotel guests shall be developed by the Parks and Recreation Director subject to review by the Parks and Recreation Board.
19. Remove the groundcover in front of the proposed steps along the parking garage façade and replace with walkways to Harding Avenue and 92nd Street.
20. Provide planters with landscaping on every level of the parking garage to help to achieve the required landscape coverage on the parking garage.

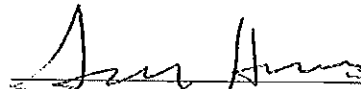
V. **EFFECTIVE DATE.** This resolution becomes effective upon adoption.

PASSED AND ADOPTED this 28th day of April, 2011

Motion by Planning and Zoning Board Member Sheldon Lisbon,
Second by Planning and Zoning Board Member Peter Glynn

FINAL VOTE ADOPTION

Armando Castellanos	<u>no</u>
Sheldon Lisbon	<u>yes</u>
Peter Glynn	<u>yes</u>
Galen Bakken	<u>yes</u>
Scarlet Hammons	<u>yes</u>




Scarlet Hammons, Chair

ATTEST:



Debra Eastman, Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR
THE TOWN OF SURFSIDE ONLY:



Lynn M. Dannheisser, Town Attorney

Linda Miller

From: Lynn Dannheisser
Sent: Tuesday, April 26, 2011 10:46 AM
To: Armando Castellanos; Elizabeth Ogden; Galen Bakken; Jorge Gutierrez; Peter Glynn; Scarlet Hammons; Sheldon Lisbon
Cc: Elected Officials; Roger Carlton; 'Sarah Sinatra'; Lynn Dannheisser; Linda Miller
Attachments: 9200 Collins-PZB SITE PLAN RESO Final 4-26.docx; Conduct of P & Z hearing.docx

All:

Item 4A on Thursday night's agenda is the application for site plan/ conditional use approvals at 9200 Collins Avenue. In most jurisdictions, a resolution that assumes approval is presented by staff prior to the meeting. Such a resolution is attached to this e-mail. In this case, I have also included the following:

1. all conditions that have been agreed upon based on the DIC report included in your original packet.
2. the conditions that were imposed on the last approval on this site based on a prior site plan but which are still relevant to this one (i.e., LEEDS certification etc.)
3. the standard generic requirements for issuance of a permit or CO

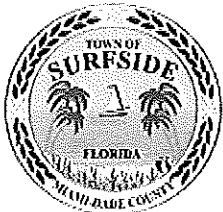
This resolution is intended as a basis from which to work and represents (from staff point of view) the optimal situation for the Town, if this Board approves the project. Notwithstanding this, as a board, you are free to modify, alter, or delete any condition based on your deliberations and I will so amend it prior to issuance to the Commission. Likewise, the Commission may do the same after they deliberate.

I am also enclosing (once again) the sections of the code relating to the conduct of quasi judicial hearings for your review. Please note that you will be asked if you have had any ex parte communications (communications in writing or verbally from either the applicant or opposition on the merits of the application). If you have (and I sincerely doubt there is a citizen in this town who hasn't!), you must simply disclose that such communication has occurred prior to the taking of evidence at this hearing. If you have time, please review the notes I presented you on quasi judicial proceedings earlier this year. Remember in this matter your decision must be based on the substantial competent evidence presented to you at the time of hearing.

I am available to answer any questions you may have. Please feel free to call me in the office at my direct line (305) 993-2065 or on my cell (786) 999-5865 with any questions or concerns you may have.

Regards,

Lynn



Lynn M. Dannheisser
Town Attorney
Town of Surfside
9293 Harding Ave
Surfside, FL 33154
305-993-1065
305-993-5097 (fax)
ldannheisser@townofsurfsidefl.gov

"All that is needed for the forces of evil to succeed is for enough good men to remain silent." - Edmund Burke

Note: Florida Public Records Law provides that most written communications to or from Municipal employees regarding town business are public records, available to the public and media upon request. Therefore, this e-mail message may be subject to public disclosure.

Sec. 2-150. Quasi-judicial proceedings.

(a) *Legal representation.*

(1) Applicants. Applicants may be represented by legal counsel.

(2) The town commission and/or the planning and zoning board may be advised by the town attorney.

(b) *Participants at hearings.* All who testify on any application must sign in and be sworn in by the presiding officer. All persons testifying subject themselves to cross-examination. Each person who addresses the town commission and/or the planning and zoning board, other than members of town staff, shall give the following information:

(1) Name; and

(2) Address; and

(3) Whether they speak for themselves, a group of persons, or a third party, if the person says that he or she represents an organization, he or she shall also indicate whether the view expressed by the speaker represents an established policy of the organization approved by the board of governing body.

(c) *Conduct of hearing.* All quasi-judicial hearings shall be recorded. A court reporter may be retained and paid for by any interested person to transcribe the proceedings. Any person may order and pay for a transcript of the proceedings. Any such retained court reporter shall identify himself/herself to the town attorney before the hearing. The order of hearing shall be as follows:

(1) The chair or staff shall read a preliminary statement once at the beginning of the quasi-judicial public hearing agenda, announce the particular agenda item, and open the public hearing. The chair shall conduct the meeting, and all questions shall be through the chair.

(2) The applicant, witnesses, town staff, and all participants asking to speak shall be sworn. Attorney's shall be excluded, unless an attorney intends to testify.

(3) The chair shall decide any parliamentary objections and objections to evidentiary matters with the advice of the town attorney or special counsel.

(4) The town staff shall present its report, recommendations, offer it into evidence, and have it made part of the record.

(5) The applicant shall present his/her case.

(6) Participants in support of the application shall present their testimony and any evidence.

(7) Representatives of the opposition as may be designated by the opposition, or the chair, if necessary, shall have the right to cross-examine individual speakers.

(8) As evidence, members may comment, ask questions of, or seek clarification from the applicant or participants in support of the applicant or staff, or any speaker through the chair.

(9) Participants in opposition to the application shall present their testimony and evidence.

(10) The applicant shall have the right to cross-examine individual speakers.

(11) Members may comment, ask questions of, or seek clarification from the applicant or participants in support of the applicant or staff, or any speaker through the chair.

(12) Town staff shall be given time for rebuttal, if requested. Town staff shall be subject to cross-examination.

(13) Any other member of the public may testify and present evidence, and is subject to cross-examination.

(14) The applicant shall be given time for rebuttal, if requested.

(15) The chair closes the public comment portion of the meeting on the matter upon the conclusion of the last speaker's comments at the hearing. Members shall discuss the matter in

public session and render a decision. No further presentations or testimony shall be permitted unless directed by the town commission and/or the planning and zoning board.

(d) [Communications with officials.] Communications with local public officials (as defined in F.S. § 286.0115(2)) regarding quasi-judicial matters shall be governed by the following procedure:

(1) If any person not otherwise prohibited by statute, Charter provision, or ordinance discusses with any local public official representing the Town of Surfside the merits of any matter on which action may be taken by any board, council or commission on which the local public official is a member, such communication shall not raise any presumption of prejudice, provided that the following process of disclosure occurs:

a. The subject and substance of any ex parte communication with a local public official representing the Town of Surfside which relates to quasi-judicial action pending before the official, as well as the identity of the person, group or entity with whom the communication took place, is disclosed and made a part of the record before final action is taken on the matter.

b. A local public official representing the Town of Surfside may read a written communication from any person; however, a written communication that relates to quasi-judicial action pending before such official shall be made a part of the record before final action is taken on the matter.

c. A local public official representing the Town of Surfside may conduct investigations, make site visits and receive expert opinions regarding quasi-judicial action pending before him or her, provided that such activities and the existence of such investigations, site visits, or expert opinions are made a part of the record before final action is taken on the matter.

(2) Disclosure made pursuant to subsection (d)(1)a., b. and c. above must be made before or during the public meeting at which a vote is taken on such matters, so that persons who have opinions contrary to those expressed in the ex parte communication are given a reasonable opportunity to refute or respond to the communication.

(e) *Record of the hearing.* Following the final disposition of the application, all evidence admitted at the hearing, the application file, all town staff reports, and the adopted order promulgating the decision of the town commission and/or the planning and zoning board shall be maintained in a separate file constituting the record of the application. The record shall be kept in the custody of the appropriate town staff at all times during the pendency of the application. The record will be made available to the public for inspection upon request during normal business hours.

(Ord. No. 1463, § 1, 9-12-06)

**TOWN OF SURFSIDE PLANNING & ZONING BOARD
RESOLUTION NO. 11-Z-_____**

A RESOLUTION OF THE TOWN OF SURFSIDE, FLORIDA PLANNING & ZONING BOARD AND DESIGN REVIEW BOARD RECOMMENDING THAT THE TOWN COMMISSION APPROVE THE CONDITIONAL USE APPLICATION SUBMITTED BY TRANSACTA LANAI DEVELOPERS, LTD., (THE “APPLICANT”), PURSUANT TO SECTION 90-23-2 OF THE ZONING CODE TO PERMIT THE DEVELOPMENT OF A STRUCTURED PARKING FACILITY AND HOTEL SWIMMING POOL AND JACUZZI, AND THE SITE PLAN APPLICATION, PURSUANT TO SECTION 90-41 ET SEQ. OF THE ZONING CODE TO PERMIT A 175 UNIT FOUR (4) STORY HOTEL WITH ACCESSORY USES, ALL ON THE PROPERTY LOCATED AT 9200 COLLINS AVENUE, SUBJECT TO CERTAIN CONDITIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

I. RECITALS.

WHEREAS, Applicant as owner of the Property located at 9200 Collins Avenue, submitted an application to the Town of Surfside, Florida (“the Application”), requesting the following:

- A. Pursuant to Section 90-41 et seq., of the Town Zoning Code, site plan approval a four-story hotel with 175 hotel rooms; three-story parking garage with 190 parking spaces total; 60 tandem parking; 24-hour valet service; roof top deck, including pool; monument signage proposed for corner of 92nd Street and Collins Avenue (Monument and wall signage to be applied for under separate permit to be reviewed by the Design Review Board); hotel pedestrian entrance fronting 92nd Street; vehicular entrance from 92nd Street with drop off interior to the parking garage (one-way in/one-way out); and loading entrance from Harding Avenue.
- B. Pursuant to Section 90-23-2 of the Town Zoning Code, conditional use approval for a structured Parking Facility and Hotel Swimming Pool and Jacuzzi as part of the redevelopment of the property at 9200 Collins Avenue, Surfside, Florida for a hotel with approximately 175 hotel rooms and related accessory uses.

Plans are on file and may be examined in the Building Department titled Proposed Surfside Hotel at 9200 Collins Avenue- A development by Transacta Lanai Developers LTD which supercede those plans previously approved on March 9, 2010 by Resolution 10-Z-01 which plans may be modified at public hearing (hereinafter referred to as the “Plans”).

Legal: Lots 1-6 and Lots 20-24 in Block 4 of Altos Del Mar” No. 5 according to the Plat thereof, as recorded in Plat Book 8, Page 92 of the Public Records of Miami-Dade County, Florida.

ADDRESS: 9200 Collins Avenue

WHEREAS, the Town Planner and the Development Review Committee reviewed the Application and recommended that the Application be approved with conditions set out in the Development Review Committee Report including those certain Agreed Upon Conditions as well as such other conditions imposed by the Board all of which shall be accepted by the Applicant and owner of the Property as a covenant running with the land; and

WHEREAS, on April 28, 2011, the Design Review Board and the Planning & Zoning Board heard and reviewed this Application, considering the requirements of Section 90-23-2 of the Town Zoning Code for Conditional Use Approval, Section 90-41 et seq. of the Town Zoning Code for Site Plan Approval, and the Application's consistency with the Town of Surfside Comprehensive Plan.

NOW THEREFORE BE IT RESOLVED BY THE TOWN OF SURFSIDE PLANNING AND ZONING BOARD AND DESIGN REVIEW BOARD TO RECOMMEND TO THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AS FOLLOWS:

II. INCORPORATION OF RECITALS.

All recitals are incorporated into the body of this Resolution as if same were fully set forth herein.

III. APPROVALS.

The Planning and Zoning Board and the Design Review Board recommend to the Town Commission approval of the Applicant's requests to the Town Commission in accordance with the terms of this Section III and subject to all of the conditions set forth in Section IV of this Resolution and the execution of all attendant agreements prior to the issuance of the Building Permit for the Project.

- A. The Applicant's request for approval of a Site Plan for a four-story hotel with 175 hotel rooms; three-story parking garage with 190 parking spaces total; 60 tandem parking; 24-hour valet service; roof top deck, including pool; monument signage proposed for corner of 92nd Street and Collins Avenue (Monument and wall signage to be applied for under separate permit to be reviewed by the Design Review Board); hotel pedestrian entrance fronting 92nd Street; vehicular entrance from 92nd Street with drop off interior to the parking garage (one-way in/one-way out); and loading entrance from Harding Avenue.
- B. The Applicant's request for approval of a Conditional Use for Structured Parking Facility and Hotel Swimming Pool and Jacuzzi as part of the redevelopment of the property at 9200 Collins Avenue, Surfside, Florida for a hotel with approximately 175 hotel rooms and related accessory uses.

IV. CONDITIONS.

1. All signage shall be submitted, reviewed and approved under a separate application for review by the Design Review Board prior to the issuance of a Certificate of Occupancy.
2. Rooftop Pool shall be limited to the following hours of operation: dawn to dusk.
3. Live, amplified music shall be prohibited. Recorded music no greater than 75 decibels is allowed from 11 am to dusk.
4. The gate at the 92nd Street entrance shall remain open between 7 am – 9 pm.
5. The service gate on Harding Avenue shall not open any earlier than 7am and later than 6pm.
6. Valet or self parking are options, however valet shall be available 24 hours per day, 7 days per week.
7. Self-parking spaces will not be permitted if the space is adjacent to a wall or other encumbrance. These spaces shall be valet only.
8. On street metered parking spaces parallel to the curb shall be provided along the north side of 92nd Street with the approval of Miami-Dade County. This will include striping and signage. No more than one of these spaces shall be a taxi stand and subject to the approval of Miami-Dade County.
9. The applicant shall perform a traffic signal analysis to determine if a light is warranted at Harding Avenue and 92nd Street. If a signal is warranted by FDOT and Miami-Dade County standards, the applicant shall fund 25% of the first \$50,000 and 50% of everything above that for the installation of the required signal six months prior to the expected date of issuance of the Certificate of Occupancy.
10. A bond shall be posted to replace public property damaged during the construction of the hotel or currently in need of replacement. The final determination regarding what property shall be replaced will be the sole determination of the Director of Public Works. The amount of the bond shall be determined jointly by the Director of Public Works and the Building Official. The bond shall be posted prior to the issuance of the building permit.
11. The applicant shall pay a contribution to upgrade the public beach access at the street end at 92nd Street and the ocean bulkhead: \$7,500. This amount shall be paid 90 days prior to the expected date of issuance of the Certificate of Occupancy.

12. The applicant acknowledges that FDOT will repave Collins Avenue during the time of construction for the project and commits to funding cost of the improvements not included in the FDOT project such as paving, curb, gutter, and striping, but not to include subsurface improvements.
13. The applicant shall pay for the repaving and any related work (including curb, gutter and striping, but not to include subsurface improvements) to the north side of 92nd Street and the Town shall pay for repaving any related work to the south side of 92nd Street between Collins Avenue and Harding Avenue. This project shall be completed prior to the issuance of a Certificate of Occupancy. Applicant will be responsible for completing design plans and obtaining any necessary permits from Miami-Dade County and/or other maintaining agencies, if necessary.
14. The applicant shall underground the utilities on 92nd Street. This project shall be completed prior to the repaving of 92nd Street.
15. The applicant shall meet all requirements of the Department of Public Works for trash containers prior to the issuance of a building permit. The service roll gate shall be at least 15 ft. high.
16. The applicant shall meet all requirements of the Department of Public Works for water, sewer and storm drainage services.
17. The applicant shall fund the cost of two litter receptacles along Collins Avenue and Harding Avenue in a design acceptable to the Department of Public Works. Cost and the design of the litter receptacles shall be determined by the Department of Public Works before issuance of the final certificate of occupancy.
18. The applicant shall fund a contribution of \$25,000 to the Town's Tennis Center for refurbishment of the tennis courts and other needs within six (6) months after issuance of the building permit for the hotel. Provisions to accommodate hotel guests shall be developed by the Parks and Recreation Director subject to review by the Parks and Recreation Board.
19. Remove the groundcover in front of the proposed steps along the parking garage façade and replace with walkways to Harding Avenue and 92nd Street.
20. Provide planters with landscaping on every level of the parking garage to help to achieve the required landscape coverage on the parking garage.

V. **EFFECTIVE DATE.** This resolution becomes effective upon adoption.

PASSED AND ADOPTED this 28th day of April, 2011

Motion by Planning and Zoning Board Member _____,
Second by Planning and Zoning Board Member _____

FINAL VOTE ADOPTION

Armando Casellanos _____
Sheldon Lisbon _____
Peter Glynn _____
Galen Bakken _____
Scarlet Hammons _____

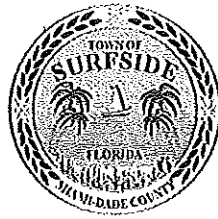
Scarlet Hammons, Chair

ATTEST:

Debra Eastman, Town Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR
THE TOWN OF SURFSIDE ONLY:**

Lynn M. Dannheisser, Town Attorney



VARIANCE 1355 BISCAYA DRIVE
ATTACHMENTS

- A. COMMISSION COMMUNICATION
- B. PLANS *
- C. RESOLUTION
- D. TOWN ATTORNEY INFORMATION

*Note: Plans are available for inspection at Town Hall,
Monday through Friday 9 a.m. to 5 p.m.



Town of Surfside Commission Communication

Agenda Item #:

Agenda Date: May 10, 2011

Subject: Rosen Variance

From: Sarah Sinatra Gould, Town Planner

Background:

The applicant, Laurie M. Swedroe, is requesting a side setback variance from the Town of Surfside Code, for the property owners Saul and Adriana Rosen. The owners are proposing a second story addition to their existing single family home. The property is located at 1355 Biscaya Drive within the H30A zoning district. The code requires the side setbacks to be ten (10%) percent of the frontage of the lot for frontages over 50 feet in width. The frontage of the subject lot is 129.6 feet, therefore the required side setback is 12.9 feet. The existing home has a five foot side setback and is therefore non-conforming.

Request

Section 90-45 of the Town of Surfside Code requires a minimum side setback of 10 percent of the frontage of the lot within the H30A zoning district. The existing one story single family home currently has a five foot side setback. The applicant wishes to build the second story addition to be flush with the wall plane of the first story, therefore the applicant is requesting a seven foot 11 inch side setback variance.

Variance Criteria

(1) Special conditions and circumstances exist which are peculiar to the land, structure, or building involved, and which are not applicable to other lands, structures, or buildings in the same zoning district;

The property is a pie shaped lot with 129.6 feet of frontage along the street which tapers down to 40 feet in the rear of the property at Point Lake. The code does not take into account the narrowing of the property, which requires a 12.9 foot setback for the entire length of the pie shaped lot.

(2) The special conditions and circumstances do not result from the actions of the applicant or a prior owner of the property;

The existing single family home appears to have setbacks determined by the width of the lot, rather than the frontage. It is unclear when the side setback requirements may have changed as this code requirement has been in place since 1960, and the home was constructed prior to the original code adoption. The proposed project is a second floor addition, which would be not only be structurally inconsistent, but architecturally unpleasing if required to be constructed at the current setbacks.

(3) Literal interpretation of the provisions of the Town Code deprives the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the Town Code and results in unnecessary and undue hardship on the applicant;

The side setback requirement creates an undue hardship on the property owners. Requiring the addition to be built with a setback based on the frontage will result in a very large setback at the narrow portion of the lot. The intention of this setback requirement is for larger setbacks based on lot frontage, which usually relates to the lot width. In the case of a pie shaped lot, the lot width does not relate to the frontage. Furthermore, the properties across the street are in the reverse situation. Those properties require a much smaller side setback as they have a minimum lot frontage but extend very large in the back of the properties towards Biscayne Bay.

(4) The hardship has not been deliberately or knowingly created or suffered to establish a use or structure which is not otherwise consistent with the Town of Surfside Comprehensive Plan or the Town Code;

The hardship is a result of the home being constructed on a pie shaped lot in 1947. The larger portion of this pie shaped lot happens to be at the front of the property, which results in the requirement for a 12.9 foot side setback.

(5) An applicant's desire or ability to achieve greater financial return or maximum financial return from his property does not constitute hardship;

Granting of the variance is not intended to assist the applicant in achieving greater financial return, rather the applicant wishes to expand the home in which they plan to occupy. The granting of the variance will allow the project to move forward with a more attractive and functional appearance, rather than requiring the second story to have a separate setback than the first story.

(6) Granting the variance application conveys the same treatment to the applicant as to the owner of other lands, buildings, or structures in the same zoning district;

The granting of the variance is specific to the conditions within this lot. This is a pie shaped lot that has 129.6 feet of street frontage which tapers down to 40 feet at the rear of the property. The home appears to be constructed with setbacks based on the width of the lot, which taper from 11 feet down to five feet, rather than the frontage of the lot.

(7) The requested variance is the minimum variance that makes possible the reasonable use of the land, building, or structure; and

The applicant is requesting to construct the second floor addition flush with the first floor for structural integrity of the building and architectural aesthetics purposes.

(8) The requested variance is in harmony with the general intent and purpose of the Town of Surfside Comprehensive Plan and the Town Code, is not injurious to the neighborhood, or otherwise detrimental to the public safety and welfare, is compatible with the neighborhood, and will not substantially diminish or impair property values within the neighborhood.

The proposed addition is generally consistent with the intent of the Comprehensive Plan and the Town of Surfside Code. The proposed aesthetics of the home and the addition of substantial landscaping will not diminish or impair property values within the neighborhood.

Recommendation:

The Planning and Zoning Board reviewed the application on April 28, 2011 and unanimously recommended approval of the application to the Town Commission.

Staff recommends approval of the side setback variance.

Budget Impact: Planning Staff's time was funded through cost recovery directly from the applicant. Therefore the Town did not incur an additional budget impact for CGA's time.

Growth Impact: N/A

Staff Impact: N/A



Sarah Sinatra Gould, Town Planner



Roger M. Carlton, Town Manager

RESOLUTION NO. 2011-Z- ____

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, CONSIDERING THE APPLICATION OF 1355 BISCAYA DRIVE, TO PERMIT A SEVEN FOOT 11 INCH SIDE SETBACK VARIANCE FROM SECTION 90-45 OF THE CODE OF ORDINANCES TO ALLOW A 12.9 FOOT SETBACK FOR THE ENTIRE LENGTH OF THE PIE SHAPED LOT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 90-45 of the Code Of Ordinances requires a minimum side setback of 10 percent of the frontage of the lot within the H30A zoning district; and

WHEREAS, the applicant has applied for a variance from of the Code, to permit a seven foot 11 inch side setback variance from section 90-45 of the Code of Ordinances to allow a 12.9 foot setback for the entire length of the pie shaped lot; and

WHEREAS, the existing one story single family home currently has a five foot side setback and the applicant wishes to build the second story addition to be flush with the wall plane of the first story; and

WHEREAS, the applicant is requesting a seven foot 11 inch side setback variance; and

WHEREAS, Section 90-36 of the Code of Ordinances provides for variance application and review; and

WHEREAS, the Planning and Zoning Board reviewed the application on April 28, 2011 and unanimously recommended approval of the application to the Town Commission and the Town Planner recommends approval of the variance requests.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AS FOLLOWS:

Section 1. **Recitals.** That the above and foregoing recitals are true and correct and are incorporated herein by reference.

Section 2. Variance 1. That it finds the requested variance from the minimum side setback requirement of Section 90-45 of the Code of Ordinances is/is not in substantial compliance with Section 90-91 of the Code of Ordinances.

Section 4. Effective Date. This Resolution shall become effective immediately upon its adoption.

PASSED and ADOPTED on this ____ day of _____

Motion by Commissioner _____, second by Commissioner _____.

FINAL VOTE ON ADOPTION


Commissioner Michael Karukin _____
Commissioner Edward Kopelman _____
Commissioner Marta Olchyk _____
Vice Mayor Joseph Graubart _____
Mayor Daniel Dietch _____

Daniel Dietch, Mayor

ATTEST:

Debra E. Eastman, MMC
Town Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE TOWN OF SURFSIDE ONLY:**



Lynn M. Dannheisser, Town Attorney

STATE OF FLORIDA)
)ss:
COUNTY OF MIAMI- DADE)

I, Debra Eastman, Town Clerk of the Town of Surfside, Florida, do hereby certify that the above and foregoing is a true and correct copy of Resolution No. 11-Z-___ adopted by the Town Commission at its meeting held on the 10th day of May, 2011.

Issued: _____

Debra E. Eastman, M.M.C.
Town Clerk

Linda Miller

From: Lynn Dannheisser
Sent: Tuesday, April 26, 2011 2:15 PM
To: Design Review Board
Cc: Elected Officials; Roger Carlton; 'Sarah Sinatra'; Lynn Dannheisser; Linda Miller
Subject: 1355 Biscaya
Attachments: Variance Criteria.docx

All:

Item 4B on Thursday night's agenda involves a variance. For your ease of reference I have attached the standards you are to evaluate in considered the request for a variance.

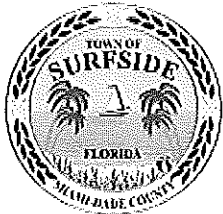
I would also direct your attention to the Town Attorney Handbook I passed out to you several months ago. If you look under Tab 13, you will find several memos of law relating to Planning and Zoning Issues that I have written over my years as a municipal attorney. While different jurisdictions have different codes, the general zoning principles are always applicable. On the issue of variances, you will see information in Chapter 13 beginning at page 33. In the case of Surfside, while you do not allow use variances, if you look under this section, you will find a discussion of the hardship standard which you will employ in the case of this request for a variance from the setback requirements.

In a nutshell, in order to receive a variance the applicant must demonstrate an unnecessary and undue hardship would result from the literal enforcement of a zoning ordinance. A hardship is **not** merely an economic disadvantage. Factors to be considered on the issue of hardship are:

1. when the landowner cannot yield a reasonable return under the current limitations;
2. when there is an irregular shape or other peculiar physical characteristics of a particular parcel;
3. where the hardship is unique and not self-created.

Once again, any questions please feel free to call me.

Lynn



Lynn M. Dannheisser
Town Attorney
Town of Surfside
9293 Harding Ave
Surfside, FL 33154
305-993-1065
305-993-5097 (fax)
ldannheisser@townofsurfsidefl.gov

"All that is needed for the forces of evil to succeed is for enough good men to remain silent." - Edmund Burke

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Sec. 90-36. Variances.

90-36.1 General variances.

(1) *Purpose, definition, scope and limitations.* A variance is a relaxation of the terms or provisions of the Zoning Code of the Town of Surfside (zoning code) where such action will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of actions of the applicant, a literal enforcement of the zoning code would result in unnecessary and undue hardship on the property. As used in this section, a variance is authorized only for lot coverage, dimensions of yards, setbacks, other open spaces, building spacing, parking, or loading requirements.

(2) *Uses and height of structures not subject to variance.* A variance is authorized only as set out in subsection (1).

a. Under no circumstances shall the town commission grant a variance that would allow a use of property that is not allowed within the zoning district under the Town of Surfside Comprehensive Plan and the zoning code.

b. Under no circumstances shall the town commission grant a variance that would allow height of development and structures within the Town of Surfside that exceeds the maximum building heights that are set out in the Town of Surfside Comprehensive Plan or the zoning code, whichever provisions are more restrictive.

(3) *Nonconforming uses and structures not grounds for granting variance.* Nonconforming use of neighboring lands, structures, or buildings in the same zoning district, and permitted use of lands, structures or buildings in any other district, shall not be considered grounds for granting a variance.

(4) *Town manager not authorized to vary terms of section.* The town manager or designee has no authority to relax the terms of this section. Authority to grant variances is lodged solely with the town commission.

(5) *Application requirements.* An application for a general variance shall be filed by the owner of the property upon which the variance is requested or the owners designated representative. The following shall, at minimum, be required to support a variance application:

a. Statements of ownership and control of the property, executed and sworn to by the owner or owners of 100 percent of the property described in the application, or by tenant or tenants with the owners' written, sworn consent, or by duly authorized agents evidenced by a written power of attorney if the agent is not a member of the Florida Bar.

b. The written consent of all utilities and/or easement holders if the proposed work encroaches into any easements.

c. Survey less than one year old (including owner's affidavit that no changes have occurred since the date of the survey). A survey over one year is sufficient as long as the property has not changed ownership and the owner provides an affidavit that no changes change occurred since the date of the survey.

d. Site plan indicating the existing and proposed structures.

e. A map indicating the general location of the property.

(6) *Staff review.* The town manager or designee shall review the application to determine whether the proposed variance complies with the general purpose and standards set forth herein. The town manager or designee shall compile a written staff report summarizing the facts regarding the application, including all relevant documents. The complete staff report shall be transmitted to the planning and zoning board and to the town commission.

(7) *Review by planning and zoning board and by the town commission.* The town manager or designee shall schedule the general variance application for a meeting of the planning and zoning board. The planning and zoning board shall conduct one public hearing on the general variance application, review the application, and make recommendations to the town commission for final action. The town manager or designee shall then schedule the variance

application, including the recommendation of the planning and zoning board, for a meeting of the town commission.

a. *Public hearing.* The town commission shall hold one public hearing on the variance application.

b. *Action by the town commission.* In considering whether to approve or deny the application, the town commission shall review the application, the purposes and standards set forth in this section, the staff report, the recommendation of the planning and zoning board, and relevant evidence, including oral and written comments received at the public hearing. No variance shall be granted except upon the affirmative vote of at least four members of the town commission.

(8) *Standards of review.* The town commission shall approve a variance only if the variance applicant demonstrates by clear and convincing evidence that all of the following are met and satisfied:

- a. **Special conditions and circumstances exist which are peculiar to the land, structure, or building involved, and which are not applicable to other lands, structures, or buildings in the same zoning district;**
- b. **The special conditions and circumstances do not result from the actions of the applicant or a prior owner of the property;**
- c. **Literal interpretation of the provisions of the zoning code deprives the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the zoning code and results in unnecessary and undue hardship on the applicant;**
- d. **The hardship has not been deliberately or knowingly created or suffered to establish a use or structure which is not otherwise consistent with the town comprehensive plan or the zoning code;**
- e. **An applicant's desire or ability to achieve greater financial return or maximum financial return from his property does not constitute hardship;**
- f. **Granting the variance application conveys the same treatment to the applicant as to the owner of other lands, buildings, or structures in the same zoning district;**
- g. **The requested variance is the minimum variance that makes possible the reasonable use of the land, building, or structure; and**
- h. **The requested variance is in harmony with the general intent and purpose of the town comprehensive plan and the zoning code, is not injurious to the neighborhood or otherwise detrimental to the public safety and welfare, is compatible with the neighborhood, and will not substantially diminish or impair property values within the neighborhood.**

(9) *Conditions and restrictions.* The town commission may impose such conditions and restrictions upon the premises benefited by a variance as may be necessary to comply with the

standards set out in this Section, and to prevent or minimize adverse effects on other property in the neighborhood. Violation of such conditions and restrictions, when made a part of the terms under which a variance is granted, shall be deemed a violation of the zoning code, and shall constitute grounds for revocation of the variance.

(10) *Expiration of approval.* The approval of a variance shall be void if the applicant does not obtain a building permit or other development order to implement the variance within 24 months after the granting of the variance. An applicant who has obtained approval of a variance may request an extension of this time period within the original approval period. The town commission may grant one or more extensions for a period of up to a total of six months for good cause shown by the applicant.

(11) *Amendments and alterations to approved variances.* Any expansion to an approved variance and any addition to or expansion of an existing variance shall require the same application, review, and approval as required under this Section for the original variance.



**Town of Surfside
Town Commission Meeting
MINUTES
March 8, 2011
7 p.m.**

Town Hall Commission Chambers - 9293 Harding Ave, 2nd Floor
Surfside, FL 33154

1. Opening

A. Call to Order - Mayor Dietch called the meeting to order at 7:05 pm.

B. Roll Call of Members - Town Clerk Debra Eastman called the roll and the following members of the Commission were present upon roll call: Commissioner Michael Karukin, Commissioner Edward Kopelman, Commissioner Marta Olchyk, Vice Mayor Joe Graubart and Mayor Daniel Dietch.

C. Pledge of Allegiance – Chief David Allen led the Pledge of Allegiance.

D. Mayor and Commission Remarks – Mayor Daniel Dietch

Commissioner Marta Olchyk encouraged the residents who have been sending the commissioners e-mails and notes with complaints and inquiries on the town's fiscal responsibility, to please attend the commission meetings and express their concerns there. She noted that she did this before becoming a commissioner. She stated that we have the government that we deserve and that the goals will not be achieved if the residents do not voice their concerns.

Mayor Daniel Dietch spoke about the importance of transparency in government and highlighted all the avenues that exist in Surfside for residents to be informed. The Mayor noted that the Town is in the process of preparing a CAFR (Comprehensive Annual Financial Report), which will provide more information regarding the financial performance. He added that the Town Manager and Town Attorney meet with residents daily to address their concerns. The Mayor noted that the Town functions better when they hear from the residents.

E. Agenda and Order of Business Additions, deletions and linkages

Vice Mayor Graubart requested to remove the following items from the Consent Agenda: Item 3(C) #5, page 32 for the awards, item 10, page 27 photo film permit

program, item 23, page 29 Buy a Brick, item 26, page 33 Lien Special Counsel, and page 41 Neighborhood Improvements, 3 (D) Attorney Reports Planning and Zoning Board, page 35, Special Matters, page 38 and Maranon. Commissioner Karukin requested to remove from the Consent Agenda items 6 and 16 on pages 25 and 28. Commissioner Olchyk requested to remove from the Consent Agenda Item 3(B), page 22 Budget, item 3(C), Community Garden, page 28 item 3(E) and page 39 Community Center. Mayor Dietch asked to pull items 4 and 42, and Item 3(A). Commissioner Kopelman requested to defer Item 4(B)2

The Mayor requested to hear Item 4(B)3 immediately following the Consent Agenda. He also requested to move Communication items 8(A) and 8(B) to be heard directly after item 4(B)3.

Town Manager Roger Carlton requested to pull the following items from Item 3(C) Town Manager's Report Points of Light: Item 3, Maranon; Item 4, Land Acquisition; Item 9, Bal Harbor Shoppes and Item 10, Photo/film permit.

Vice Mayor Graubart made a motion to approve the Agenda as amended. Commissioner Kopelman seconded the motion which carried unanimously.

F. Community Notes – Mayor Daniel Dietch

The Mayor spoke about the following community notes:

Surfside Town Hall meeting – Thursday March 24 at 7 p.m. in the Commission Chambers. The Mayor asked the residents to attend and formally be introduced to the new Town manager. He noted that a note will be posted to website and downstairs.

The Mayor also informed the residents of the following:

DUI check point 96th block of Collins Ave. Friday, March 11, 2011,

Police Department is hosting Shred-a-thon on Saturday, March 26 at 9-12 o'clock,

Surfside is offering the 9th Citizen's Police Academy every Thursday March 10th through May 19th.

He reminded the residents about the program Eye on Surfside, community awareness which will hold the first meeting on March 15, 2011 at 6 pm.

The Mayor acknowledged two officers nominated for LEO (Law Enforcement Officer) awards – Sgt. Richard Williams for the Support Services Award and Officer Jay Matellis for the Crime Prevention.

The Mayor reminded the residents about the countywide Special Election on March 15, 2011.

The Mayor announced that registration is currently available for the Senior, Adult and Youth Spring Program and that Summer Camp information is now available. He informed that the Spring Egg Hunt on April 10, 2011, the Senior Trip to Flamingo Gardens on March 16, 2011 and Baynanza will be held on April 16, 2011.

The Mayor spoke about the sustainable initiatives for which the town wants to gauge interest from community which include a Community garden and Garden Club. He spoke about the Organic Fresh Produce Buying Club.

The Mayor announced that the meetings for the Downtown Vision Advisory Committee will be held on March 10th and March 22nd.

Vice Mayor Graubart updated everyone on a Musical Event taking place on the 3rd Thursday, March 17, 2011.

2. Quasi-Judicial Hearings (None)

3. Consent Agenda

A. 2010 Surfside Census Report – Barbara Cohen

Mayor Dietch thanked Barbara Cohen for her work on the census. Ms. Cohen mentioned that the information the Commission has is for 2005-2009, since the Florida Census information is not yet available.

Mayor Dietch noted that the demographics are changing in the town. Town Manager Roger Carlton mentioned that the community is becoming much younger and that the town should provide more services to the younger residents. He also noted that there is also an increase in the older population that will need services as well. Mr. Carlton mentioned that the Community Center is the place where these services can be rendered within the budget constraints.

B. Budget to Actual Summary as of December 31, 2010 – Martin Sherwood, Finance Director

Commissioner Olchyk inquired about budget items such as capital projects, asset and loans for water and sewer, municipal parking and the storm water.

Town Manager Roger Carlton stated that in the past the agenda included a report on expenditures in relation to the budget, but this has been changed to also include the revenues.

C. Town Manager's Report (Points of Light) – Roger M. Carlton, Town Manager

Item 3: Town Manager Roger Carlton noted that the commission awarded the sale of the Maranon property for \$188,000.00. He noted that the bidder is having difficulty in obtaining financing. Mr. Carlton recommended granting a 45 day extension to the bidder.

Item 4: Town Manager Roger Carlton spoke about the Delgado property. He noted that the town is pursuing the purchase and has ordered a second appraisal.

Town Manager Roger Carlton also spoke about the single family home located between the 93rd and 95th street parking lot. He noted that pursuant to the

commission's direction, an offer was made on the property, but since then, there have been discussions with David, the Synagogue located across Harding about their desire to buy both houses. He asked for the Commission's direction of whether to pursue the purchase.

Mayor Dietch expressed support about expanding town property but cautioned against spending the money simply because it is in the budget.

Mr. Shaka Bagdaiddy from Magen David stated he has a verbal agreement with the first property and that he has the idea is to purchase the adjacent property. He noted that while it is not for sale, the owner would sell it for \$450,000. He added that once Magen David found out that the town had an interest in the property they decided not pursue the purchase.

Commissioner Olchyk inquired about any code problems that might arise. Town Attorney Lynn Dannheisser noted that any site plan would come before the Planning and Zoning Board and will be reviewed as a quasi judicial proceeding based solely on what is presented.

Commissioner Karukin noted he is not sure how the parking lot that is further away from the downtown district will be utilized. Town Manager Roger Carlton mentioned that one of the conversations going on with the Vision Committee is whether we need additional anchor further to the South for the downtown area. He noted that this is an extraordinary piece of property and added that a private/public partnership could be done on that property. Town Manager Roger Carlton added that if the town does something like that, having the entire block would be positive.

Town Manager Roger Carlton asked the Commission for authorization to continue to meet with Magen David.

Ken Arnold spoke about the use of the property by the Best Western Hotel.

Vice Mayor Graubart noted that he is favor of moving forward with the purchase of the property valued at \$285,000.00

Item 9: Town Manager Roger Carlton stated that he and Mayor Daniel Dietch attended a meeting regarding Bal Harbor Shoppes and noted the specifics of the current plan. Town Manager Roger Carlton also expressed concern that there has not been a traffic study indicating the effect of the new addition to 96th street. The Manager suggested approaching the developer and asking them to amend their plans. Town Attorney Lynn Dannheisser suggested getting Town Planner Sarah Sinatra involved in this since this proposal could have a regional impact. Commissioner Karukin volunteered to assist as well.

Randi McBride inquired if the town could be forced to re-open Carlisle. Mr. Carlton mentioned that Surfside would resist that. He added that the closing of Carlisle has already been approved by Dade County.

Item 10: Town Manager Roger Carlton reported on the County’s intent to provide an office to municipalities for photo/film permits. Vice Mayor Graubart recommended that the issue be reviewed by the Local Planning Agency.

Item 16: Commissioner Olchyk inquired about the proposed site of the Community Garden and Farmers’ Market. Mr. Tavares, Director of Tourism, Economic Development & Community Services, explained that the town is simply providing the venue, which is the community center breezeway, and added that it would be run by a private organization. Commissioner Olchyk expressed concern as to who will pay to run the venue and who would clean it.

Item 23: Vice Mayor Graubart suggested putting on display the bricks from the Buy- a-Brick program that are currently in the Manager’s conference room.

Item 42: Mayor Dietch expressed concern about the crossing safety at 93rd Street when the Community Center opens. Town Manager Roger Carlton noted that he is currently working with the County and State about alerting motorists regarding children crossing. He added that he will have a report available at the next meeting.

Vice Mayor Graubart inquired about an item on page 35 regarding the recommendation that parking and or accessory usage be included in H-30 C. He inquired if this would be a regulated use. Town Planner Sarah Sinatra noted that this was a voted upon item by the Planning and Zoning Board as the LPA to relocate the accessory uses a conditional uses to the conditional uses section.

Page 38: Vice Mayor Graubart inquired about the PILOT (Payment In Lieu of Taxes) Plan. Commissioner Karukin had previously removed that item. Town Attorney Lynn Dannheisser explained that the program is usually done to compensate local governments when another government agency takes the property out of the tax roll.

Page 39: Commissioner Olchyk inquired about the Town Manager Community Center Oversight Committee and what they refer to as “timely”. She requested clarification as to what is considered “timely”. Mr. Carlton asked Commissioner Olchyk to hold on to the question until the resolution for a change order is presented.

D. Town Attorney’s Report – Lynn M. Dannheisser, Town Attorney

E. Projects Progress Report – Calvin, Giordano and Associates, Inc.

Approval of Consent. All in favor.

4. Ordinances

A. Second Readings (Ordinances and Public Hearing)

1. Boat Storage - Sarah Sinatra Gould, Town Planner

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING SECTION 90.65 BOAT STORAGE, INCLUDING ZONING CODE DEFINITIONS OF “SETBACKS” AND “YARDS” OF THE TOWN OF SURFSIDE CODE OF ORDINANCES; PROVIDING FOR INCLUSION IN THE CODE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

[This Ordinance permits boats to be parked in the front, side and rear yards of a lot, but not in the side or rear setbacks and requires screening of boats in the side or rear yard from neighboring properties.]

The Mayor opened the public hearing. Hearing no residents wishing to speak, the Mayor closed the public hearing.

Town Clerk Debra Eastman read the ordinance by title.

Commissioner Kopelman made a motion to approve the ordinance. Commissioner Karukin seconded the motion. The motion carried 4 to 1 (Vice Mayor Graubart was absent for the vote).

B. First Readings Ordinances

1. Ordinance Calling for a Temporary Moratorium, Memo of Law and Report by Town Attorney – Lynn M. Dannheisser, Town Attorney (*Need to set date for a Special Meeting for First Reading*)

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, ESTABLISHING A TEMPORARY MORATORIUM ON THE PROCESSING OF SITE PLANS, BUILDING PERMITS, AND THE ISSUANCE OF CERTIFICATES OF USE OR OCCUPANCY FOR NON-RETAIL, NON-RESTAURANT USES FOR THE PROPERTIES GENERALLY LOCATED BETWEEN 96TH AND 94TH STREET AND HARDING AVENUE, MORE PARTICULARLY DEPICTED ON THE DOWNTOWN BUSINESS DISTRICT AREA ZONING MAP ON EXHIBIT “A’ ATTACHED HERETO; PROVIDING FOR A STUDY; PROVIDING FOR A WAIVER; VESTED RIGHTS, APPEAL; EXHAUSTION OF ADMINISTRATIVE REMEDIES AND TERM; PROVIDING FOR DIRECTIONS TO THE TOWN MANAGER; PROVIDING FOR EXCEPTIONS; PROVIDING FOR ADOPTION OF PRESENTATIONS; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN CODE; PROVIDING AN EFFECTIVE DATE.

[This ordinance imposes a temporary moratorium on the issuance of Certificates of Use and Certificates of Occupancy for non-retail, non-restaurant uses]

Item deferred until a Special Commission Meeting to be held March 23rd at 5:01 PM.

2. Ordinance – Joint Meeting Recommendations Ordinance – Roger M. Carlton, Town Manager, Lynn M. Dannheisser, Town Attorney, Sarah Sinatra Gould, Town Planner (*Need to set date for a Special Meeting for First Reading*)

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING SECTION 90-2 “DEFINITIONS”, AMENDING SECTION 90-20. “DEVELOPMENT REVIEW REQUIREMENTS” TO ESTABLISH A DEVELOPMENTAL IMPACT COMMITTEE; AMENDING SECTION 90-23 “CONDITIONAL USES”; 90-41 “REGULATED USES”; 90-45. “SETBACKS.”; 90-45.1 “AGGREGATION OF LOTS”; SECTION 90-44 THROUGH SECTION 90-67 RELATING TO DESIGN REVIEW GUIDELINES; SECTION 90-73 “PROHIBITED SIGNS.”; SECTION 90-87 INSTALLATION OF LANDSCAPING AND IRRIGATION; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR AN EFFECTIVE DATE.

Item deferred until a Special Commission Meeting to be held March 23rd at 5:01 PM.

3. Master Utility Bond Ordinance – Roger M. Carlton, Town Manager

AN ORDINANCE OF THE TOWN OF SURFSIDE, FLORIDA AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$16,000,000 UTILITY SYSTEM REVENUE BONDS, SERIES 2011, TO FINANCE THE COSTS OF WATER, SEWER, STORMWATER AND RELATED CAPITAL IMPROVEMENTS; PLEDGING CERTAIN NET REVENUES OF THE UTILITY SYSTEM FOR THE PAYMENT OF SUCH BONDS; PROVIDING FOR THE RIGHTS OF HOLDERS OF SUCH BONDS; MAKING OTHER COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

Town Clerk Debra Eastman read the ordinance by title.

Town Manager Roger Carlton explained the Master Utility Bond Ordinance and the current poor condition of the Town’s water and sewer drainage system. Town Manager Roger Carlton stated that the Town’s water systems are located behind the houses, which the County currently requires to be moved to the front. He distributed a Consent Decree and spoke about the Town’s water and sewer rates and compared them to those of Bal Harbor and Bay Harbor.

Town Manager Roger Carlton noted that the ordinance before the Commission requests authorization to approach group lenders for bond interest pricing. He added that there will also be a resolution that will set the terms of the bond. He noted that this debt has no claim on taxes or the general fund and the only guarantee for this debt are the revenue from the rates from the water, sewer and drainage system. Town

Manager Roger Carlton explained about the flow of funds or buckets.

Mr. Sergio Masvidal, Public Financial Management, addressed the Commission and spoke about rate covenants.

Jolinda Herring from Bryant, Miller, Olive stated that her firm will render an opinion that the bonds are tax exempt and this will allow for a lower interest rate.

Mr. Carlton spoke about the extraordinary job that has been done by the Citizens Oversight Committee in working on this process. The following members of the committee were present and spoke about their professional background:

Martin Oppenheimer,
Bertha Goldenberg,
Pete Hernandez, and
Gerald Chenevert

The members of the committee expressed a general consensus in favor of the project and the well thought out plan that takes into consideration the convenience of the residents and their quality of life in the future.

The other two members not present are Walter Lugo and Irving Levine.

Commissioner Karukin expressed his desire that Mr. Oppenheimer, given his background in public education, be involved in the proposed communication plan to inform residents about the project. He also requested that information be provided for the residents who will need to install a separate meter for their sprinkler system.

Mayor Dietch suggested that a workshop be held for the residents in order to explain to them about their bill and why a second meter might be advantageous to them. Town Manager Roger Carlton mentioned that an invitation to the workshop will be mailed out with the next bills.

Commissioner Kopelman inquired about consequences of the Town defaulting on this note. Jolinda Herring stated that if the town default on the note, the bank which holds the bond, has the right to file lawsuit against the town for payment from all future water and sewer revenue until the debt is satisfied. Mr. Masvidal opined that the town's risk of default is low since utility issued bonds are generally a strong credit. Town Manager Roger Carlton noted that a portion of the \$16 million could be set aside as additional reserves up front, in addition to the reserves the town already has.

Commissioner Olchyk asked if there is any alternative to proceeding with the bonds. Town Manager Roger Carlton stated that if the cash flow is utilized to fund the project, it could take up to 15 years to complete and the town would be torn up for that time. Commissioner Olchyk inquired about utilizing half of the bond amount taking the rest out of the reserves and any other funds that might be available. Town Manager Roger Carlton noted that there is not enough money in the reserves to borrow half and use the rest from it to complete the project.

Town Attorney Lynn Dannheisser read the following 3 changes to the ordinance into the record: Page 16, Form of bond – note that in the second to last paragraph “in addition to compliance with, subparagraph (i)”, it should read “the preceding paragraph”. Page 23, Disposition of revenues – change from “net revenues” to “gross revenues”. Page 26, four paragraphs from the bottom: “compliance with subparagraph (i)”, should read “preceding paragraph”.

Vice Mayor Graubart inquired about the rates comparison analysis with the other municipalities. Public Works Director Bill Evans explained the comparisons.

Vice Mayor Graubart inquired about the percentage Calvin, Giordano and Associates is charging for this infrastructure project. Mr. Chris Giordano did not have an exact figure, but Town Manager Roger Carlton interjected that it was approximately 8 or 9%.

Commissioner Kopelman made a motion to accept the ordinance as amended. Commissioner Karukin seconded the motion.

Mayor Dietch commented that there is a provision in the bond covenant for an annual audit, which will be available to the resident.

Vice Mayor Graubart commented that had the town utilized bonds to build the community center along with the water and sewer bonds, the town would now be in a \$30 million debt.

Commissioner Olchyk asked if bids were obtained from other firms, other than CGA. The Mayor replied that other bids were obtained. Town Manager Roger Carlton noted that when the town awarded the bid to CGA, that award encompassed different services provided by CGA. He also mentioned that the commission had authorized to allow CGA to complete the water and sewer project. Town Manager Roger Carlton noted that other companies can be utilized for future projects.

Resident Sasha Plutno commented that his water bill has risen and expressed concern that it will continue to increase with the bond issue.

Mayor Dietch noted that the water rates include the debt service and rate stabilization. He also spoke about CGA’s rate and noted that the project requires professional oversight and design. He added that the agenda packet is available on the website.

The ordinance was approved on roll call 4 to 1 with Vice Mayor Graubart dissenting.

5. Resolutions and Proclamations

A. Bottle Bill Resolution – Vice Mayor Joe Graubart

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF

SURFSIDE, FLORIDA, URGING THE GOVERNOR, STATE REPRESENTATIVE AND STATE SENATORS IN THE FLORIDA LEGISLATURE TO ADOPT A STATE OF FLORIDA “BOTTLE BILL” TO AMONG OTHER THINGS ENCOURAGE THE RETURN OR RECYCLE OF ALL BEVERAGE CONTAINERS AND OTHER RECYCLABLE MATERIALS; FURTHER DIRECTING THE TOWN CLERK TO TRANSMIT THIS RESOLUTION TO CERTAIN PUBLIC OFFICIALS; AND PROVIDING FOR AN EFFECTIVE DATE.

Town Clerk Debra Eastman read the resolution into the record.

Vice Mayor Graubart made a motion to adopt the resolution. Mayor Dietch seconded the motion.

Commissioner Olchyk expressed opposition to spending time and money on legal work, research and procedures on something that she feels is philosophical and not practical. She also expressed concern about the term “minimal” as an approximate cost and asked for specific costs. Vice Mayor Graubart opined that there would be no cost to sending this item to Tallahassee.

Upon roll call, the motion carried 3 to 2 with Commissioners Olchyk and Kopelman dissenting.

B. Resolution Authorizing the Town Manager to Execute Community Center Change Orders – Roger M. Carlton, Town Manager
A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AUTHORIZING THE TOWN MANAGER TO EXECUTE CHANGE ORDERS FOR THE COMMUNITY CENTER FROM THE DATE OF THIS RESOLUTION TO THE ISSUANCE OF THE CERTIFICATE OF OCCUPANCY AND RETURN TO THE TOWN COMMISSION FOR AFTER-THE-FACT APPROVALS SO LONG AS THE TOTAL AMOUNT OF CONSTRUCTION COSTS DOES NOT EXCEED FIVE MILLION DOLLARS; PROVIDING FOR AN EFFECTIVE DATE.

Town Clerk Debra Eastman read the resolution into the record.

Commissioner Kopelman made a motion to accept. Vice Mayor Graubart seconded the motion.

Town Manager Roger Carlton stated that the Community Center is in the home stretch in the building construction. He noted that the work is being conducted 7 days a week and 12 to 14 hours a day to get it finished by the time the kids get out of school. He also noted that at this point, multiple decisions are being made on a daily basis. Town Manager Roger Carlton stated that bringing change orders before the Commission can take a month or longer and proposed that he have the authority to approve the change orders as long as he stays within the \$5 million

budget. He noted that he will not make the decisions alone, but will also have Mr. Paul Gioia's input as well as Calvin, Giordano and Associates.

Vice Mayor Graubart inquired about the dollar amounts of the change orders the Town Manager is requesting authority to approve. Town Manager Roger Carlton noted that it would be whatever it takes to complete the project.

Vice Mayor Graubart suggested that the change orders be signed off by all the parties involved in the decision making.

Mayor Dietch spoke in favor of giving Town Manager Roger Carlton the authority to approve the change orders in order to complete the project in time. He noted that the control the Commission has is the budget.

Commissioner Olchyk inquired as to what "timely" refers to and what the deadline is. She also expressed concern about the possibility of going over budget in order to complete the project as a result of the manager having the authority to approve the change orders. Town Manager Roger Carlton stated that most children in town attend public schools, which end the first week of June, and that he would like to have an opening celebration at around Memorial Day. Mr. Carlton also noted that the resolution has a very clear cap of \$5 million.

The motion to approve the resolution carried unanimously.

**C. Problem Gambling Awareness Week Proclamation – Mayor Daniel Dietch
A RESOLUTION OF THE TOWN OF SURSIDE, FLORIDA
PROCLAIMING PROBLEM GAMBLING AWARENESS WEEK TO
RAISE PUBLIC AWARENESS ABOUT THE EFFECTS OF GAMBLING
AND SPREADING THE MESSAGE OF HOPE.**

Town Clerk Debra Eastman read the resolution into the record.

**Vice Mayor Graubart made a motion to approve the resolution.
Commissioner Karukin seconded the motion. The motion carried
unanimously.**

***D. IT Support Services – Chief David Allen Page 180-192**

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF
SURFSIDE, FLORIDA, AUTHORIZING THE REAPPROPRIATION OF
FUND BALANCE (RESERVES) TO THE OFFICE OF TOWN
CLERK/DIRECTOR OF ADMINISTRATIVE SERVICES BUDGET;
AMENDING THE TOWN'S BUDGET FOR FISCAL YEAR 2010-2011;
AND PROVIDING FOR AN EFFECTIVE DATE.**

Town Clerk Debra Eastman read the resolution into the record.

Commissioner Karukin made a motion to approve the resolution. Commissioner Kopelman seconded the motion.

Chief Allen commented that the existing equipment is old and a contract is needed to maintain it.

Commissioner Olchyk spoke about the contract with CGA which includes IT services. Chief Allen mentioned that CGA has a contract with the Town, but the Police Department is not included. Commissioner Olchyk inquired if other firms were approached for a better price. Chief Allen noted that no other firm was approached. He further noted that CGA lowered the price of the contract and it seems reasonable. Commissioner Karukin noted that he had the same concerns as Commissioner Olchyk. Chief Allen noted that the contract is for one year.

Mr. Carlton mentioned that for \$75,000 a year, we are getting maintenance on the entire fleet of computers.

The motion carried 4 to 1 with Vice Mayor Graubart dissenting.

E. Forfeiture Funds – Chief David Allen

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, PROVIDING FOR THE FISCAL YEAR 2010/2011 POLICE CONFISCATION FUND EXPENDITURE IN THE AMOUNT OF THIRTY EIGHT THOUSAND SEVEN HUNDRED FORTY THREE AND SIXTY-FOUR CENTS (\$38,743.64) TO BE FUNDED BY PROCEEDS OF CONFISCATED FUNDS.

Town Clerk Debra Eastman read the resolution into the record.

Commissioner Kopelman made a motion to accept the resolution. Vice Mayor Graubart seconded the motion.

The motion carried unanimously.

F. Purchase of Pressure Washer and Trailer – Assistant Police Chief, John DiCenso

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA APPROVING THE PURCHASE OF A PRESSURE WASHER AND TRAILER FROM SMITH-HAMILTON INDUSTRIAL TOOLS; AUTHORIZING THE TOWN MANAGER TO EXPEND PARKING FUND PROCEEDS; AND PROVIDING FOR AN EFFECTIVE DATE.

Town Clerk Debra Eastman read the resolution into the record.

Commissioner Kopelman made a motion to accept the resolution. Commissioner Karukin seconded the motion.

Commissioner Kopelman inquired why the town needs a 3,500 psi versus 3,000. Bill Evans replied that while the 3,000 psi is an adequate pressure washer, the 3,500 will also take care of other issues such as cleaning the sewer and the pipes and clean at a greater level.

Commissioner Olchyk inquired about what will happen to the smaller pressure washer the town currently owns. Mr. Evans replied that it will be used for smaller jobs.

Commissioner Olchyk expressed concern about not having the funds available in the municipal parking fund. Mr. Carlton noted that there is currently \$2 million in that fund.

The motion carried unanimously on roll call.

6. Good and Welfare

Public comments for subjects or items not on the agenda. Public comment on agenda items will be allowed when agenda item is discussed by the Commission.

Alan Gorme spoke about the commercial parking and noted that there are no time constraints in the ordinance. Town Manager Roger Carlton stated that the times enforced are 6:00 pm to 8:00 am.

Barbara McLaughlin inquired about what occurred at the meeting at Bal Harbour. Town Manager Roger Carlton mentioned that he will comment later in the evening.

Richard Iacobacci commented that the St. Regis construction parking is still affecting the streets and the residents. He inquired about any restrictions. Police Chief Allen mentioned that there are no restrictions unless the restriction is posted. He added that they have posted one-hour parking signs and enforced the law. The Chief also mentioned that there are residents that allow parking in front of their homes and in their driveways.

Sasha Plutno noted that the town lost its community flood insurance discount. Mr. Plutno mentioned that he spoke to the Commission about this 6 months ago and inquired about the status. Mayor Dietch stated that the item will be discussed later in the meeting.

Lou Cohen mentioned that the Charter Review Committee met in 2009 to 2010. He asked that the Commission take a look at the issues that were discussed in the Charter Review Committee and make decisions based upon that.

7. Town Manager and Town Attorney Reports

Town Manager and Town Attorney Reports have been moved to the Consent Agenda – Item 3.

8. Unfinished Business and New Business *A. Report of the Ad Hoc Communications Committee – Randi MacBride, Chairperson

The Mayor thanked Randi MacBride and the Ad Hoc Communication Committee for their time and effort in preparing the report to the Commission. Ms. MacBride noted that Committee Members Cheryl Arnold and Jeff Burros were also present at the meeting along with the liaison Commissioner Karukin. Mayor Dietch noted that Norma Rojas and Kathy Imberman also served on the Committee.

Vice Mayor Graubart asked if some of the members of the committee could stay on to ensure that the recommendations are implemented. Mayor Dietch suggested including short term, intermediate and long term initiatives as points of light where they will be updated every month. He noted that this relieves the committee members of this burden and hands it off to the manager.

Mayor Dietch noted that the solid waste authority that has a “report fraud” button on their website. He suggested that it could be expanded to report abuse, report waste, etc. He added that the button provides a direct link to the agencies responsible for that.

Mayor Dietch mentioned that a suggestion box has been ordered for town hall. Ms. MacBride also suggested a utility payment drop off box for after hours.

B. Report of the Ad Hoc Code Enforcement Committee - Anthony Blate, Chairperson - No Action

9. Mayor, Commission and Staff Communications (*Set for approximately 10:15 p.m.*)

A. Community Center Plaque – Vice Mayor Joe Graubart

Vice Mayor Graubart directed everyone to the Town Hall plaque that was recently refurbished. He noted that the plaque shows the Commission that was present at the inception of the Community Center and the same Commission was present at the dedication. The Vice Mayor noted that at the new Community Center the Commission of Inception and Commission of Dedication have all different members. Vice Mayor Graubart suggested that the new plaque read “Dedicated to the people of Surfside, by the people of Surfside”. He further suggested that the architect and contractors be listed. He further suggested that neither this commission nor the previous commission should be listed.

Commissioner Kopelman stated that both Commissions should be listed on the plaque.

Barbara Cohen noted that the reserve money for the Community Center came from the resort tax.

The direction to the Town Manager is to proceed as planned. No vote was taken.

B. Non-resident use of Community Center – Commissioner Marta Olchyk

Commissioner Olchyk expressed that the Community Center should be for the residents of Surfside at no cost and suggested that people in the surrounding communities should pay for its use. Commissioner Kopelman noted that for this year and next year he would like to limit access to the Community Center to residents of Surfside only.

Town Manager Roger Carlton stated that until the Town has an idea of what the load on the Community Center will be, the use of the Community Center should be for Surfside residents only. He further noted that opening the Community Center with a fee to the residents would be a disaster. He further suggested that residents with non-resident guests to the Community Center not be turned away.

Town Manager Roger Carlton mentioned that the plan is to open the facility with identification to Surfside residents without charging any fees and have a non-resident guest policy. Parks and Recreation Director Tim Milian noted that an exact number of allowable guests have not been determined.

The question of whether to allow hotel guests to utilize the facility will be discussed next month.

Vice Mayor Graubart stated that he knows that the Commission is not in favor of charging residents, but noted that if the Commission establishes what a resident would pay, they can also have an idea of what to charge a non-resident.

C. Report on Feral Cats and Dog Feces – Roger M. Carlton, Town Manager

Town Manager Roger Carlton spoke about the problem with feral cats in the community. He noted that as the number of cats grows, the problems with them grow. He noted that the recommendation is to increase spaying and neutering programs and coordinate a process by which the cats will be captured. Town Manager Roger Carlton suggested 15 feral cat feeders in the community who would responsibly feed the cats by putting out food for no more than an hour. He stated that condominium buildings will be approached to voluntarily allow the Town to enter their properties in order to police the feral cat population. He added that a report of the progress will be brought before the Commission.

Town Manager Roger Carlton stated that he was also approached about the dog feces problem. He stated that there are 5 dog stations, which have been successful in significant collections of dog feces.

Barbara McLaughlin noted that the program for cats includes health care and shots.

Vice Mayor Graubart suggested that a zone of 50 yards be established immediately around the community center where no feral cats can be fed. He cited health concerns for the children attending the community center.

Mayor Dietch spoke of the importance of finding a solution to this problem.

Jeff Burros stated that he lives in the area around the Community Center and noted that his daughter loves cats, but has asked about the bad smell while walking on the beach. He expressed that this cannot be good for tourism and added that he has picked up litter on the beach.

D. FOP Collective Bargaining Agreement Wage Re-opener – Assistant Police Chief, John DiCenso
Call for Executive Session – Lynn M. Dannheisser, Town Attorney

Town Manager Roger Carlton stated that the executive session will be held at 4:00 PM on March 23, 2011 and at 5:01 there will be the first reading of the two ordinances that were deferred at tonight's meeting.

E. Status Report – Building Department – Paul Gioia, Building Official

Building Official, Paul Gioia, spoke about the amnesty program. He noted that 96 cases complied within the 120 days, 18 did not comply and are set for Special Master on April 7th. Mr. Gioia also stated that of the 64 FEMA violations, it now only has 3 violations. Mr. Gioia stated that he hopes that by middle of year the other 3 will be mitigated. Town Manager Roger Carlton noted that once the 3 cases remaining are finished, the Town can reapply for the flood insurance discount.

10. Adjournment

Accepted this ____ day of _____, 2011

Daniel Dietch, Mayor

Attest:

Debra E. Eastman, MMC
Town Clerk



**Town of Surfside
Special Town Commission Meeting**

MINUTES

March 23, 2011

5:01 p.m.

Town Hall Commission Chambers - 9293 Harding Ave, 2nd Floor
Surfside, FL 33154

1. Opening

- A. Call to Order:** Mayor Daniel Dietch called the Special Commission meeting to order at 5:16.
- B. Roll Call of Members:** Town Clerk Debra Eastman called the roll and the following members of the Commission were present upon roll call: Commissioner Michael Karukin, Commissioner Marta Olchyk, Vice Mayor Joe Graubart and Mayor Daniel Dietch. Commissioner Kopelman was absent from the meeting.
- C. Pledge of Allegiance:** Vice Mayor Joe Graubart led the Pledge of Allegiance.
- D. Agenda and Order of Business** Additions, deletions and linkages

2. Ordinances

A. First Readings Ordinances

- 1. Ordinance Calling for a Temporary Moratorium, Memo of Law and Report by Town Attorney – Lynn M. Dannheisser, Town Attorney**

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, ESTABLISHING A TEMPORARY MORATORIUM ON THE PROCESSING OF SITE PLANS, BUILDING PERMITS, AND THE ISSUANCE OF CERTIFICATES OF USE OR OCCUPANCY FOR NON-RETAIL, NON-RESTAURANT USES FOR THE PROPERTIES GENERALLY LOCATED BETWEEN 96TH AND 94TH STREET AND HARDING AVENUE, MORE PARTICULARLY DEPICTED ON THE DOWNTOWN BUSINESS DISTRICT AREA ZONING MAP ON EXHIBIT "A" ATTACHED HERETO; PROVIDING FOR A STUDY; PROVIDING FOR A WAIVER; VESTED RIGHTS, APPEAL; EXHAUSTION OF ADMINISTRATIVE REMEDIES AND TERM; PROVIDING FOR DIRECTIONS TO THE TOWN MANAGER; PROVIDING FOR EXCEPTIONS; PROVIDING FOR ADOPTION OF PRESENTATIONS; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION

IN CODE; PROVIDING AN EFFECTIVE DATE.

[This ordinance imposes a temporary moratorium on the issuance of Certificates of Use and Certificates of Occupancy for non-retail, non-restaurant uses]

Town Clerk Debra Eastman read the Ordinance by title.

Commissioner Karukin made a motion to adopt the ordinance. Commissioner Olchyk seconded the motion.

Commissioner Karukin inquired about how this ordinance will be applied if an existing business is sold and a same type business comes in to replace it. Town Attorney Dannheisser directed Commissioner Karukin to Section 4, where the exemptions are addressed and noted that this is one of those incidents. .

Vice Mayor Graubart expressed concern that this restriction can drive property values down and may enable developers to come in and get things at bargain prices.

Commissioner Olchyk requested clarification as to what is considered “temporary”. Town Attorney Lynn Dannheisser noted that the moratorium is for 6 months. Commissioner Olchyk inquired about what would occur if there are no recommendations in 6 months. Ms. Dannheisser noted that if so the issue would have to come back to Commission.

Resident Carol Stevens Penson stated that she received a notice. She also expressed that she does not want a purely commercial district and does not want to limit the types of business in that area.

Dorie Lurie commented that there are buildings that house businesses in the Downtown district that are not owned by Surfside residents. She asked if they can protest. She added that this is affecting people’s property rights.

Town Attorney Lynn Dannheisser noted that moratoriums are well established and well recognized planning tool that cities and counties use when they are in the process of developing a vision. She added that a moratorium is a place holder and a planning tool. Ms. Dannheisser stated that it is utilized in the short term and that there is case law that supports it.

Sasha Plutno stated that this will limit property owner’s rights and expressed opposition to the ordinance.

Jack Stevens stated that the moratorium is premature. He also spoke about the St. Regis Hotel which is ready to open and the effect this will have on traffic.

Vice Mayor Graubart expressed opposition to the ordinance and cited the potential economic impact it may have.

Orestes Jimenez inquired about the cost of the Committee and expressed opposition to the ordinance. Mayor Dietch noted that the Committee is comprised of Surfside residents or business operators and not consultants.

Upon roll call the motion failed to pass 2 to 2, with Commissioner Olchyk and Mayor Dietch voting in favor and Commissioner Karukin and Vice Mayor Graubart dissenting. Commissioner Kopelman was absent from the meeting.

Commissioner Karukin made a motion to reconsider now. Commissioner Olchyk seconded the motion.

Commissioner Karukin noted that if he voted in favor of the ordinance it would go to the P&Z Board.

A vote on reconsideration was taken and upon roll call, the motion passed 3 to 1 with Vice Mayor Graubart casting the dissenting vote. Commissioner Kopelman was absent from the meeting.

2. Ordinance – Joint Meeting Recommendations Ordinance – Roger M. Carlton, Town Manager, Lynn M. Dannheisser, Town Attorney, Sarah Sinatra Gould, Town Planner

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING SECTION 90-2 “DEFINITIONS”, AMENDING SECTION 90-20. “DEVELOPMENT REVIEW REQUIREMENTS” TO ESTABLISH A DEVELOPMENTAL IMPACT COMMITTEE; AMENDING SECTION 90-23 “CONDITIONAL USES”; 90-41 “REGULATED USES”; 90-45. “SETBACKS.”; 90-45.1 “AGGREGATION OF LOTS”; SECTION 90-44 THROUGH SECTION 90-67 RELATING TO DESIGN REVIEW GUIDELINES; SECTION 90-73 “PROHIBITED SIGNS.”; SECTION 90-87 INSTALLATION OF LANDSCAPING AND IRRIGATION; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR AN EFFECTIVE DATE.

Town Clerk Debra Eastman read the Ordinance by title.

Commissioner Olchyk made a motion to adopt the ordinance. Commissioner Karukin seconded the motion.

Town Planner Sarah Sinatra gave an overview of the ordinance and spoke about modifications to the code.

Vice Mayor Graubart inquired why the 85% was chosen. Town Manager Roger Carlton noted that this figure represents a reasonable balance and gives developers creativity and establishes a trade off and has advantages. He noted that there is 15% less units. Sarah Sinatra explained aggregation now and what is proposed.

Ms. Sinatra mentioned that the ordinance has been heard by LPA. She added that the LPA was 3-2 and clear that this is the recommendation.

Vice Mayor Graubart expressed that he is opposed to the ordinance and expressed concern about the composition of the committee.

Shelley Eichner of CGA stated that they always implement the will and desire of Commissioners. She added that it is their position to take input and put it into a code and apply good planning principles.

Commissioner Olchyk spoke about the possible economic impact on community and inquired about the cost.

Dorie Lurie entitled her comments, "where did the money go" and asked about the building permits that were not closed, the size of the meeting notice placed in the Miami Herald and why mail notice was not provided to the residents.

Alan Krischner, 9479 Corp, spoke about the Best Western property and requested that whatever action is taken accommodate hotel development.

Joel Simmons stated that the gross acre should be to erosion control line rather than the perimeter of the lot. He spoke about the aggregation of lots and suggested that the use should be changed to density.

Felice Rivolta spoke about the 8x15 parking space.

Town Manager Roger Carlton stated that there is some merit to this information and mentioned that he will bring back clarification to the second reading.

The Mayor closed the public hearing.

Commissioner Karukin responded to Ms. Lurie's concerns and assured her that their minds are not made up.

Vice Mayor Graubart requested that parking information be taken to the P&Z Board.

Mayor Dietch commented that if the Commission moves forward with this, there are still opportunities to tweak other elements. .

Upon roll call, the motion passed 3 to 1 with Vice Mayor Graubart casting the dissenting vote. Commissioner Kopelman was absent from the meeting.

4. Adjournment: Mayor Dietch adjourned the special meeting at 6:40 pm.

Accepted this ____ day of _____, 2011

Daniel Dietch, Mayor

Attest:

Debra E. Eastman, MMC
Town Clerk

TOWN OF SURFSIDE, FLORIDA
MONTHLY BUDGET TO ACTUAL SUMMARY
FISCAL YEAR 2010/2011
As of FEBRUARY 28, 2011
42% OF YEAR EXPIRED (BENCHMARK)

Agenda Item # 3B

Page 1 of 2

Agenda Date: May 10, 2011

GOVERNMENTAL FUNDS	ACTUAL	ANNUAL BUDGETED	% BUDGET	
GENERAL FUND				
REVENUE	\$5,556,667	\$8,804,081	63%	A
EXPENDITURES	\$3,364,835	\$8,804,081	38%	
Net Change in Fund Balance	\$2,191,832			
Fund Bal.-Beg. of FY(audited assigned+unassigned)	\$2,867,867			
Fund Balance-February 28, 2011	<u>\$5,059,699</u>			
RESORT TAX				
REVENUE	\$47,181	\$123,010	38%	B
USE OF RESTRICTED FUND BALANCE		\$19,800	42%	
EXPENDITURES	\$67,552	\$142,810	47%	C
Net Change in Fund Balance	-\$20,371			
Fund Balance-Beg. of Fiscal Year (audited)	\$179,035			
Fund Balance-February 28, 2011	<u>\$158,664</u>			
POLICE FORFEITURE/CONFISCATION				
REVENUE	\$15,090	\$25,000	60%	D
USE OF RESTRICTED FUND BALANCE		\$20,000	42%	
EXPENDITURES	\$16,173	\$45,000	36%	
Net Change in Fund Balance	(1,083)			
Fund Balance-Beg. of Fiscal Year (audited)	\$71,825			
Fund Balance-February 28, 2011	<u>\$70,742</u>			
TRANSPORTATION SURTAX				
REVENUE	\$59,471	\$156,415	38%	E
USE OF RESTRICTED FUND BALANCE		\$80,285	42%	
EXPENDITURES	\$39,227	\$236,700	17%	
Net Change in Fund Balance	20,244			
Fund Balance-Beg. of Fiscal Year (audited)	\$416,500			
Fund Balance-February 28, 2011	<u>\$436,744</u>			
CAPITAL PROJECTS				
REVENUE	\$35,399	\$139,660	25%	
USE OF COMMITTED FUND BALANCE		\$4,000,000	42%	
EXPENDITURES	\$2,165,869	\$4,139,660	52%	
Net Change in Fund Balance	(2,130,471)			
Fund Bal.-Beg. of FY(audited committed+unassigned)	\$4,888,357			
Fund Balance-February 28, 2011	<u>\$2,757,887</u>			

NOTES:

A. Timing Difference - FY 2011 ad valorem property tax revenues are remitted to the Town primarily from mid-November to March

B. Timing Difference - Includes only the Oct-Jan resort taxes. The February is collected in March

C. Timing Difference - Tourist Promotional events are scheduled for later in fiscal year

D. Forfeiture revenue fluctuates widely-the Town received a \$15,036 payment during January

E. Timing Difference - Includes only the Oct-Jan CITT revenues. The February is not received until late May 2011

ENTERPRISE FUNDS

ACTUAL

ANNUAL BUDGETED	% BUDGET
------------------------	-----------------

WATER & SEWER

REVENUE	\$1,207,366	\$3,331,303	36%	
USE OF NET ASSETS/LOAN PROCEEDS		\$8,138,300	42%	
EXPENDITURES	\$835,933	\$11,469,603	7%	F
Change in Net Assets*	\$371,433			
Unrestricted Net Assets-Oct 1 (audited)	\$440,000			
Unrestricted Net Assets-Feb 28, 2011	<u>\$811,433</u>			

MUNICIPAL PARKING

REVENUE	\$215,127	\$305,600	70%	
USE OF NET ASSETS		\$2,179,836	42%	
EXPENDITURES	\$251,794	\$2,485,436	10%	F
Change in Net Assets*	(\$36,667)			
Unrestricted Net Assets-Oct 1 (audited)	\$2,043,034			
Unrestricted Net Assets-Feb 28, 2011	<u>\$2,006,367</u>			

SOLID WASTE

REVENUE	\$763,905	\$1,291,343	59%	G
EXPENDITURES	\$442,802	\$1,291,343	34%	
Change in Net Assets*	\$321,103			
Unrestricted Net Assets-Oct 1 (audited)	\$77,491			
Unrestricted Net Assets-Feb 28, 2011	<u>\$398,594</u>			

STORMWATER

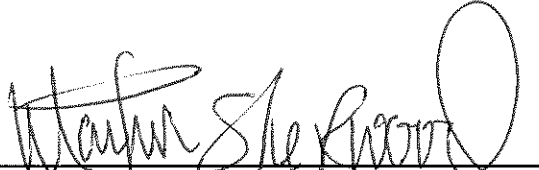
REVENUE	\$203,047	\$487,000	42%	
USE OF NET ASSETS/LOAN PROCEEDS		\$1,353,442	42%	
EXPENDITURES	\$95,084	\$1,840,442	5%	F
Change in Net Assets*	\$107,963			
Unrestricted Net Assets-Oct 1 (audited)	\$40,626			
Unrestricted Net Assets-Feb 28, 2011	<u>\$148,589</u>			

NOTES:(con't)

* the change in net assets excludes financial impact from Capital Assets

F. Underage due to delay in commencement of Infrastructure/Capital Outlay projects (\$8.1 mill for water/sewer, \$1.4 mill for stormwater, \$2.1 mill for parking)

G. Timing difference: Billing (and the resulting revenue) for the entire fiscal year pertaining to Residential (non-condominium) customers are recorded in October


Finance Support Svcs Dept Head


Town Manager



**Town of Surfside
Town Commission Meeting
May 10, 2011 - 7:00 p.m.**

Town Hall Commission Chambers - 9293 Harding Ave, 2nd Fl
Surfside, FL 33154

**POINTS OF LIGHT
After Action Items**

1. Awards/Certifications:

a. Comprehensive Annual Financial Report (CAFR)

Current Status: In an effort to present the Town's financial information to all interested parties, the Town has prepared a Comprehensive Annual Financial Report (CAFR) for the fiscal year ended September 30, 2010. The Town has submitted the CAFR to the Government Finance Officers Association of the United States and Canada (GFOA) to determine its eligibility to be awarded a Certificate of Achievement for Excellence in Financial Reporting. The Certificate of Achievement is a prestigious national award, presented to less than 4,000 of approximately 90,000 governmental units nationwide. The Certificate recognizes conformance with the highest standards for preparation of state and local government financial reports. In order to be awarded a Certificate of Achievement, a governmental unit must publish an easily readable and efficiently organized CAFR, whose contents conform to program standards. Such reports must satisfy both generally accepted accounting principles and applicable legal requirements. Notification regarding the Certificate will be made by August 2011. Item completed.

b. City Livability Awards

Current Status: These are awarded annually through the United States Conference of Mayors. The Town submitted two applications by the April 8, 2011 deadline. One application focused on the Parks & Recreation's Senior Programs, the other on the Tourist Bureau's 3rd Thursday Event Series. Unfortunately we were not selected for the awards. Item completed.

2. Downtown Vision project: Tourist Bureau Director, Duncan Tavares will prepare a report for the November Commission agenda with recommendations on how to move the Downtown Vision project forward.

Current Status: The Downtown Vision Advisory Committee (DVAC) met for the fifth time on April 27, 2011. The minutes for the March meeting and April meetings are attached. The key discussion held during the second April meeting related to the Planning and Zoning Board and Town Commission direction to address the moratorium issues as a top priority. To that end, the DVAC reached a broad consensus on a package of ideas which met the goal of ending the moratorium. Those ideas will be finalized in the May 12, 2011 DVAC meeting in the form of a draft letter of intent with the land owners and the Town that allows ending the moratorium and beginning the process of fleshing out the many ideas included in the vision for eventual review by the Planning and Zoning Board and Town Commission. Staff will provide the draft letter of intent to the Town Commission for your individual comment prior to the DVAC meeting.

3. Maranon property: In order to accelerate the sale of the Maranon property as previously directed by the Town Commission, Finance Director, Martin Sherwood and Building Official, Paul Gioia will order an update to the appraisal of the Maranon property. Town Manager, Roger Carlton will move forward with the sale process subject to final approval of the sale when the bids are received.

Current Status: The Town Commission approved the sale in the amount of \$188,000 during the January 18, 2011 Town Commission meeting. As mentioned during the March 8, 2011 Town Commission meeting, the sole bidder requested a 45 day extension until May 2, 2011 to close. That extension was granted. The property sale closed on May 3, 2011 after the bidder delivered the full amount of the sale (less deposit) in cashier's checks. Item completed.

4. Land Acquisition: Finance Director, Martin Sherwood and Building Official, Paul Gioia will order a new appraisal of the two pieces of property south of the Town Hall trailers and an updated appraisal of the vacant lot which the Town currently rents and is used for the parking of police cars. A strategy recommendation will appear on the November 9, 2010 Town Commission meeting agenda.

Current Status: The Adkin property closed on March 25, 2011 at the purchase price of \$320,000 plus \$3722 in closing costs. The transaction included three promissory notes of \$80,000 each in February 2012, 2013 and 2014 at no interest. Regarding the Delgado property (south of Town Hall), the court has granted BankUnited a final judgment authorizing a foreclosure sale. An electronic auction was held on April 6, 2011 and the bank was awarded title based on their sole bid of approximately \$2.1 million. The Town has two appraisals at a significant lower amount. We will continue to pursue this acquisition but will not bring a recommendation until a reasonable price is achieved. Regarding the single family home on Harding Avenue between the 93rd and 94th Street lots, the situation has become complicated as the Town Commission requested that discussions be held with the Magen David Congregation across Harding Avenue which at the time wanted to acquire the house for sale as well as the house to the south. Unfortunately, the delay has caused the owner of the north home to accept a third party offer which is under legal review by the seller's attorney. The proposed contract has financing contingencies which may give us an opportunity to re-enter the process. We will keep the Town Commission updated regarding this situation. The Town Commission is aware that all acquisitions are subject to your final approval.

5. Town Commission and Planning and Zoning Board joint meeting: A resolution of the Town of Surfside, Florida, calling for a joint meeting between the Town Commission and Planning and Zoning Board to create a process to identify the issues to be reconsidered in the Zoning Code (Ordinance no. 10-1558); authorizing Commissioner Michael Karukin to enter into negotiations with the Petition Committee challenging Ordinance No. 10-1558; authorizing the Town Manager and Town Attorney to do all things necessary to effectuate the terms of this resolution; providing for an effective date.

Current Status: The first joint meeting was held November 4, 2010. After substantial discussion, the Town Manager, Town Attorney and Town Planner were directed to prepare specific recommendations for action at the second joint meeting scheduled for December 9, 2010. The detailed changes to the code resulting from the joint meeting were presented to the Planning and Zoning Board during their January 27, 2011 meeting. The result was a deferral to the February 24, 2011 meeting in order to allow Staff time to answer questions presented by citizens and Board members at the Planning and

Zoning meeting. The Planning and Zoning Board stated that they wanted to make their final recommendations to the Town Commission in February 2011. In fact, the Planning and Zoning Board approved the recommendation on a 3/2 vote with modifications and forwarded them to the Town Commission for the March 8, 2011 agenda for first reading. The item was deferred to a Special Town Commission meeting on March 23, 2011 and was approved on a 3/1 vote. Second reading was held during the April 12, 2011 Town Commission meeting and the ordinance was passed.

The new Development Impact Committee held its first meeting on April 13, 2011 to review the Transacta Lanai project on 92nd Street. The Planning and Zoning Board reviewed the Development Order and related reports from the Planning staff and the Town Attorney recommended the project with amendments for review by the Town Commission during the May 10, 2011 meeting.

6. Water, Sewer and Storm Drainage project: Town Manager, Roger Carlton will report to the Town Commission at the November 9, 2010 meeting on financing the water, sewer and storm drainage project. Mayor, Vice Mayor and Commissioners to provide names for a citizen review committee to assist the Town Manager in the review of the alternatives.

Current Status: The fourth meeting of the Water/Sewer/Storm Drainage Project Citizen Oversight Committee (Gerard Chenevert, Walter Lugo, Irving Levine, Jason Nevader, Marty Oppenheimer, Pete Hernandez, and Bertha Goldenberg) was held April 7, 2011 and the focus was the proposals from the various banks for financing the project. The Committee unanimously agreed that Regions Bank provided the best proposal at 4.72% fixed interest over a 15 year term with a 20 year amortization schedule. The Town Commission awarded the financing to Regions Bank during the April 12, 2011 meeting. The closing was completed on April 28, 2011 and the net proceeds of the bond sale have been deposited. The bids for the construction were opened on April 28, 2011 and are currently being evaluated to ensure that the award recommendation is made for the best responsive and responsible bidder. The review by Calvin Giordano and Associates and staff will be discussed with the Oversight Committee and an award recommendation including possible additive alternatives will be made to the Town Commission in the June 14, 2011 meeting.

We are also working with Bal Harbour to determine the feasibility of cooperating with the Village in the construction of a new sewer force main on Collins Ave from the Bal Harbour town limit to the northern limit of Miami Beach. This project will allow interconnection of the existing sewer force main on Byron Avenue to provide a back up in the event of a major disruption as recently occurred in Miami Beach water and sewer mains. Simultaneously, Staff met with County Commissioner Sally Heyman and WASD staff to determine if a Building Better Communities bond issue funded \$8.5 million new force main to interconnect with the North Dade Sewer Treatment Plant could be accelerated. This would allow an alternate route for the sewage to avoid the situation which occurred in April 2011 when the only force main available to take our sewage and Bal Harbour/Bay Harbor Islands as well, failed completely for nearly three days. A more detailed report on these two projects will be made in the future.

7. Concession stand: Town Manager Roger Carlton provided an advertisement for an RFP for a concession stand to Parks and Recreation Director, Tim Milian for review. The timing of the procurement will coincide with the planned opening of the facility.

Current Status: The Town Commission on April 12, 2011 approved negotiation with the sole proposer David Jacobson Import International, LLC. These negotiations have been completed and the agreement is under final review by the Town Attorney and staff. The final document will be presented

to the Town Commission for retroactive approval in the June 14, 2011 meeting. The concession stand is nearing completion and the vendor will be ready for the opening.

8. Red light cameras and Multi-Space Meters: Police Chief David Allen and Assistant Chief John DiCenso manage the implementation of red light cameras and Multi-Space Meters.

Current Status:

Red Light Camera Safety Program

Representatives from Surfside, North Miami, Aventura, Miami Gardens, and Hialeah Police Department attended a Red Light Camera meeting on Tuesday, April 12, 2011. The following items were discussed:

- Creating a county wide agreement with guidelines
- Miami Dade College will put on a Red Light Camera course for civilians
- Red Light Camera signs and equipment should be checked on a regular basis for debris and branches
- Cases where the Magistrate will dismiss violations due to the officer failing to provide a registration
- Officer reviewing the violations not in court
- Officers' laptops/air cards very slow in court
- Improving the time it takes to download the evidence package for court
- Violators not filing the affidavit on time

HB 4087 (Bill to repeal red light cameras) will most likely pass in the House of Representatives at the time of this writing. The Senate has not reviewed any bills to abolish red light cameras. The Florida Police Chiefs Association and Florida Sheriffs Association have notified the House and Senate of their opposition to the repeal. If anything further happens regarding this legislation, a verbal report will be made to the Town Commission during the May 10, 2011 meeting.

On May 4, 2011, the Miami-Dade Police Chiefs Association (Red Light Committee) met with Chief Traffic Judge Steven Leifman on uniform guidelines for municipalities for red light camera programs.

On May 6, 2011, Surfside officers went to County traffic court for first citations to be appealed. A verbal report will be made at the May 10, 2011 Town Commission meeting regarding these two events if necessary.

Revenue from inception to April 15, 2011 - \$73,500

Citations Issued Through April 27, 2011 - 3055

88th Street and Harding Avenue – 763
88th Street and Collins Avenue – 286
90th Street and Collins Avenue – 330
93rd Street and Collins Avenue – 1257
96th Street and Collins Avenue - 419

This item will remain active on the Points of Lights until the system is fully stabilized.

Multi-Space Meters – Status Report

This project has been in place for four months. Adjustments have been made as needed and the meters are functioning quite well. A modification to the LAZ parking contract which will save the Town \$11,760 per year by reducing their services to collection only and a one time refurbishment of the remaining 53 single space meters is included in Section 9 of the May 10, 2011 agenda. Item completed.

9. Bal Harbour Comprehensive Plan Amendment hearing: Town Manager, Roger Carlton and Commissioner Edward Kopelman will attend the Comprehensive Plan Amendment hearing at the Village of Bal Harbour on October 19, 2010 at 7 pm. A report to the Town Commission will be made after the Bal Harbour meeting.

Current Status: Staff continues to monitor this project and will report to the Town Commission when appropriate.

10. Photo/film permit program: Town Manager, Roger Carlton will prepare a policy for the photo/film permit program in conjunction with input from Surfside citizens. A report will be prepared by Parks and Recreation Director Tim Milian, Police Chief David Allen and Tourist Bureau Director, Duncan Tavares for the December 14, 2010, Town Commission agenda.

Current Status: A significant long term television shoot was discussed by the Town Commission during the April 12, 2011 meeting. Direction was given to Staff to attempt to terminate the event with legal advice to avoid any risk to the Town. That effort was successful. The proposed regulatory ordinance is scheduled for review by the Town Commission in the May 10, 2011 meeting.

11. Circulator bus: Town Manager, Roger Carlton will review the potential linking of the Surfside circulator bus with other communities to allow residents transportation to the Sunny Isles library and possible other destinations. A report will be made to the Town Commission at their November meeting.

Current Status: After a number of meetings with Bay Harbor Islands, Bal Harbour and Sunny Isles Beach, it has been determined that the greatest opportunity for enhancement is to link with Sunny Isles Beach to allow our riders to use Sunny Isles Beach's route which goes to the mainland with stops at Aventura Mall, Mt. Sinai Medical Center North, Costco and the Aventura Publix shopping center. The details of this and an Interlocal Agreement which defines how their riders will be allowed to use our route to Mt. Sinai Hospital and how our riders will be allowed to use their route will be presented to the Town Commission on the June 14, 2011 agenda.

12. Community Garden

Current Status: A meeting was conducted with Dylan Terry of Ready-To-Grow Gardens on February 2, 2011 and an inspection of a potential site for a Community Garden at Dickens Avenue and 88th Street was explored. An initial proposal was recently received from Mr. Terry. A review of this proposal to move this initiative forward was held March 2, 2011 with the Directors of the Tourist Bureau, Parks & Recreation and Public Works. A meeting was held on April 14, 2011 with interested

residents to discuss the formation of a Garden Club that could oversee the ongoing maintenance and programming for the garden.

To date, nineteen (19) residents have expressed interest in a Community Garden. Randall Rubin has offered to spear head the not-for-profit Surfside Garden Club that will operate and manage the Community Garden. The Town, through the involvement of the Public Works Department, will build the garden with this fiscal year's allocated funds with the assistance of Ready-To-Grow Gardens. This company will also assist the Garden Club in operating and maintaining the garden which will open in late summer/early fall. An agreement with Ready-To-Grow and more detail regarding the Garden Club and the relationship with the Beautification Committee will be presented to the Town Commission in the June 14, 2011 meeting.

13. Farmers Market

Current Status: - The Tourist Bureau Director met with the Miami-Dade County Office of Community Health and Planning on December 21, 2010. The County has received a Federal Stimulus Grant to initiate Community Gardens and Farmers Markets. On December 23, 2010 the Tourist Bureau Director met with The Green Market Management Company about the possibility of reinstating the Surfside Farmers Market. A proposal was received in mid-January. Outreach was conducted to both Bal Harbour and Bay Harbor Islands in an attempt to create a tri-community sponsorship of the market. Both neighboring communities are in support of this initiative. The Tourist Bureau Director met with the Assistant Town Manager of Bay Harbour Islands on February 22, 2011 to discuss the logistics of having the market alternate weekends in Bay Harbour Islands and Surfside. This initiative's greatest achievement is that Bay Harbor Islands, Bal Harbour Village and Town of Surfside have come together for a joint venture that will benefit all three communities. It was approved by the Bay Harbor Islands Council at their April meeting. Therefore The Green Market Management Company will start a year round Surf-Bal-Bay Farmers Market every Sunday from 9:00 am until 3:00 pm. The market will alternate each week between Surfside and Bay Harbor Islands as Bal Harbour does not have an adequate space to host the market. The tentative start date is Sunday June 12, 2011 with the first location to be determined. The Surfside location will be the north parking lot on 95th Street at Collins Avenue. There is no fee to the Town for the operation of this market. All three communities have agreed to limited advertising and promotional expenses as a shared cost managed by the three communities not to exceed \$1500 per community for the year. Further information will be provided once scheduling, Bay Harbour Islands location and vendor information is available.

14. Fresh Produce Buyers Club

Current Status: Discussions are on-going with Farm Fresh Miami produce buying club about a possible Surfside branch. The club distributes fresh produce from area farms to a fee paying subscriber base. A visit and review of an existing program in Miami Beach was held Thursday, March 3, 2011. To date eighteen (18) families have expressed interest in this initiative. The fresh produce buyers club, Endlessly Organic (www.endlesslyorganic.com), owned and operated by Surfside resident Cheryl Arnold, is the recommended club that will utilize a portion of the breeze way at the Community Center as a distribution point one day every two weeks. The club would oversee all operation and contact with the residents that become members. The Town's commitment is to provide the space, a few tables and to dispose of produce boxes. This will be achieved through existing staffing of the Community Center during their regularly scheduled hours. The Gazette and Town website will be utilized to provide information to residents. In exchange for the distribution location, Endlessly Organic will

conduct cooking demonstrations and educational seminars for all residents. These events will become part of the Community Center programming as a way to energize and engage various segments of the community regarding healthy eating and life style habits. The company will also provide assistance in the form of seminars and seeds/seedlings to the Community Garden/Garden Club through their connections to area farmers. While the Town will provide the space for a year as a demonstration project, the agreement can be rescinded at any time. A start date will be determined by the Director of Parks and Recreation once he is comfortable with the daily operation of the Community Center. Further information on the start date, seminar times and Community Garden/Garden Club initiatives will be provided as the arrangements are finalized.

15. Feral Cat and Dog Feces Concerns

Current Status: A report was included in the Town Commission March 8, 2011 agenda. The Town Manager will develop ordinances and meet with stakeholders regarding the dual issues once the major initiatives of the Community Center and water/sewer/storm drainage projects are stabilized.

16. Tourist Resort Tax Auditor program received a \$6000 allocation in the FY 10/11 Budget

Current Status: After consulting with the Finance Director and the Town's Audit firm, three proposals were sought in the beginning of February for an 'Agreed Upon Procedure Audit' to commence as soon as possible. Based on the feedback from the potential proposers, the Town's process required reassessment. The collection of Resort Tax in the future is related to the proposed changes to the Town's Resort Tax Ordinance. The Resort Tax Ordinance on first reading was deferred until the May 10, 2011 Commission Meeting. Once the proposed amendment to the ordinance is approved by the Town Commission, the process to select the auditors will begin.

17. Municipal parking lot renovation program: \$428,000 has been allocated in the FY 10/11 Budget for paving, sealing, restriping, concrete curb repairs, litter receptacles, improved lighting and landscaping and drainage services.

Current Status: This project design will be awarded to the new pre-qualified engineering/architectural vendor(s) after a mini competition. The proposals were submitted on May 4, 2011 and an award will be recommended to the Town Commission in the June 14, 2011 meeting.

18. Document imaging and scanner software: This \$26,500 project was funded in the FY 10/11 Budget

Current Status: Due to more pressing procurement items, (VOIP, Maranon property and expiration of photocopier lease) this project has been delayed until Summer 2011.

19. Bike Racks/Bus Benches/Shelters

Current Status: Town Manager Roger Carlton and Parks and Recreation Director Tim Milian have met to discuss the development of a comprehensive bicycle program for Surfside. We also have the bus benches and shelters on our horizon and will report on all three amenities within 30 days.

20. Library Assets Disposition

Current Status: This project has been finished under the leadership of Duncan Tavares and with the help of various departments and volunteers. The trailers have been removed, however there remains a debate with the trailer rental company regarding “damage” created by the bookshelf anchors. We will now move forward to establish the “Kindle” library in the new Community Center reading area. Appropriate furniture has been ordered. Recognition of the volunteers was completed during the April 12, 2011 Town Commission agenda. Item completed.

21. Clean up/update/enhance Town Website content

Current Status: Staff is using the work of the Communication Committee which was accepted by the Town Commission during the March 8, 2011 meeting to develop an RFP to obtain new web management services. The RFP has been reviewed and will be advertised by May 15, 2011 with award tentatively scheduled for the July Town Commission meeting.

22. Electric Car Charging Stations

Current Status: Staff has obtained the City of Sunny Isles Beach RFP and will meet with the selected vendor to determine if we should use the Sunny Isles Beach process. This item has been put on hold until the new Sunny Isles Beach city manager is on board. It is expected that staff will make a recommendation to the Town Commission in July 2011.

23. Crossing Safely at 93rd and Collins/Harding

Current Status: Assistant Chief of Police John DiCenso, Public Works Director Bill Evans and Town Manager Roger Carlton met with FDOT pedestrian safety coordinator Carlos Sarmento to seek an immediate pedestrian safety upgrade to the two intersections prior to opening of the Community Center. FDOT District Engineer, Gus Pego confirmed on May 2, 2011 that the eight pedestrian crossing warning signs have been ordered and will be installed prior to opening. A follow-up call was held with Miami Dade County officials to ensure that the time extension for the crosswalk “time remaining” sign is extended.

24. Vice Mayor Joe Graubart requested Staff to meet with FPL and AT&T to review poles that are leaning in several areas.

Current Status: A meeting was held with FPL. Their policy is that a pole may lean up to 17 degrees unless it is in danger of falling. Apparently, the aesthetics are not the issue. A report regarding undergrounding all utilities in Surfside appeared on the April 12, 2011 Town Commission agenda and was deferred until the May 10, 2011 meeting due to the long agenda. Staff will await direction from Town Commission review of the report.

25. Citizen’s Academy: This program is similar to the Police Academy in that Surfside residents are given the opportunity to learn the roles and responsibilities of each department in an interactive and informal setting over a series of evening sessions.

Current Status: The Town is investigating the possibility of working with FIU’s Metropolitan Center to develop a seven week program consisting of two hour sessions once a week. Surfside

residents would attend sessions devoted to such items as the differences in governmental authority, how the Town operates (budgeting and services provided) and code enforcement. Further information will be provided once scheduling and costs are established. If the Town Commission concurs, this program could begin in Fall 2011.

26. Building Relationships between the Condo Residents and Single Family Homes

Current Status: The Tourist Bureau Director will work with Commission Kopelman to create programs and activities in the new Community Center that will bring the Town's two distinct communities together. One of the opening events may be a sponsored dinner inviting condo leaders and representatives from the single family neighborhood.

27. Seniors' Assistance Program

Current Status:

The Surfside Civic Association's Julia Magnani will co-ordinate with Richard Iacobacci on contacting the Town's seniors regarding possible chores for the volunteers to complete. They will utilize the existing list from the Police Department. Outreach will be conducted through various avenues including the Town's Gazette. Mr. Iacobacci will ensure that all volunteers are processed through the Town's Human Resources Department for the required background check. Early Fall 2011 is the intended commencement date.

28. Earth Day April 22, 2011

Current Status: Initial contact was made with organizers of Earth Day. A resolution of support was approved on the April 12, 2011 Town Commission agenda. A tree planting was conducted at the Community Center on April 22, 2011. Item completed.

29. New Recognition Program

Current Status: Based on a request from Vice Mayor Joe Graubart, Town Clerk Debbie Eastman has completed the process of revamping the look and format of the certificates of recognition that are distributed at Commission meetings and other occasions. The Town Commission accepted the new recognitions as a Point of Light in the April 12, 2011 meeting. There are sufficient funds in the Office Supply budget line item remaining for FY 10/11 to implement the program. Item completed.

30. Mayor Daniel Dietch has requested that the feasibility of Surfside sharing Bal Harbour's street sweeper be explored.

Current Status: The first cost estimate submitted by Bal Harbour was too high and negotiations to lower the price were unsuccessful. Public Works Director Bill Evans has negotiated a more reasonable price with Sunny Isles Beach and an Interlocal Agreement will be presented to the Town Commission in June.

31. Town of Surfside Memorial Day Event - Commissioner Olchyk

Current Status: Rabbi Pearlson requested that Town Staff working on Memorial Day stop work for one minute at 3:00 pm for a moment of silence for Memorial Day observation. Police officers working

on Memorial Day at 3:00 pm will stop patrol and turn on their blue lights for one minute (except for emergency calls). The Police Honor Guard will also participate in the Memorial Day event.

32. Ceremony and Plaque Commemorating the Ten Year Anniversary of 9/11 – Vice Mayor Graubart

Current Status: The Police Department will coordinate an event in front of Town Hall for the 10 year anniversary of September 11. The Miami Dade Fire Department and other agencies will be requested to participate. This will be a combined event with Village of Bal Harbour and Bay Harbor Islands.

33. Bike Rental Station

Current Status: Based on a request from Vice Mayor Joe Graubart, and building on inquires made by the Tourism, Economic Development and Community Services Director, the Town is investigating the feasibility of working with Deco Bike (www.decobike.com) on installing a bike rental station similar to the those installed on Miami Beach.

34. eReaders for Community Center

Current Status: Based on a request from Commission Ted Kopelman, the Town will incorporate eReaders into the addition room of the Community Center. There will be comfortable furniture and patrons will be able to check out Kindle type devices. Further information will be provided once costs and operational procedures are established.

35. Miami Dade County Haulover Golf Course – Use for Town of Surfside Athletics

Current Status: Miami Dade County has given the okay for groups to use the open space temporarily as a practice site. The County has future plans to develop the site as an amphitheater/open green space. Staff will connect Surfside groups with Miami Dade County if requests are made. Item completed.

36. Community Center Grand Opening Pin Design

Current Status: The attached pin design has been recommended by the Parks and Recreation Committee through the Parks and Recreation Department. Pins will be given away as a memento throughout Grand Opening Ceremony events.

37. Tree Trimming – Mayor Dietch

Current Status: All trees in Surfside either in the Town's right of way or FDOT's right of way have been inventoried for FEMA purposes. We have also secured a quote to have all trees in the public right of way trimmed for aesthetic purposes as well as preparing for the hurricane season. This work will commence Tuesday, May 3, 2011 and will be completed by May 6, 2011. The cost of this work is \$4,740 to include removal of all trimmings. We have also asked the contractor to give a quote for any private residence in need of having dead trees removed which may or may not have been cited by Code Enforcement.

38. 75th Anniversary Time Capsule

Current Status: The Time Capsule has been ordered, the size is 19 x18 x 10. The contents of the capsule will be items that were selected by the 75th Anniversary Committee. At this time, Staff is researching the minutes and a list of items will be posted once all the information is collected.

39. Tenth Mile Markers on the Beachwalk Hardpack – Mayor Dietch

Current Status: This request is being investigated and a recommendation will be made during the June Town Commission meeting.

40. Miami-Dade County Homeless Trust Parking Meters - Vice-Mayor Graubart

Current Status: The program raises funds for the Homeless Trust by utilizing refurbished parking meters that are hand painted by a Romero Brito to collect coin donations. The meters are not used in lieu of any Town owned parking meters. Each meter requires a one-time \$1000 sponsorship payable to the Miami-Dade Homeless Trust. Meters are installed, maintained and collected by the Homeless Trust and all proceeds collected go directly to the Homeless Trust. Based on the cost to install, no further action is recommended.

41. e-Waste Collection Event Prior to Hurricane Season – Mayor Dietch

Current Status: Miami Dade County will not provide the service, but can recommend qualified vendors to assist. Staff will discuss options to move this forward as well as explore opportunities to team with Bay Harbor Islands and Bal Harbour Village. A report will be made in June.

The following items have been completed. These items have been deleted from the April 2011 Points of Light report.

1. Awards/Certifications:

a. City of Excellence: At the request of Mayor Daniel Dietch, Town Manager, Roger Carlton designated Tourist Bureau Director, Duncan Tavares and Parks and Recreation Director, Tim Milian, to prepare a report on the process the Town will take to become a “City of Excellence”. The report is to be on the agenda for the November Town Commission meeting. Dennis Giordano, CGA, offered to assist Mr. Tavares. Town Clerk, Debra Eastman will help prepare the draft.

Current Status: The Florida League of Cities has completed revamping this program. It will now be the Municipal Achievement Awards. While the application deadline is May 23, 2011, information regarding the process and subsequent requirements was recently delivered. Staff has reviewed the material and determined that the Town will not meet the priorities this year. Other potential awards will be reviewed and applications filed if appropriate. Item completed.

12. Water saving program: Town Manager, Roger Carlton instructed former Public Works Director, Fernando Rodriguez with the assistance of John Messarian, Engineer with Calvin,

Giordano and Associates to obtain information regarding a water saving program that would provide reduced water usage in toilets. A report will be presented to the Town Commission at their November meeting.

Current Status: The program has been expanded to include other “green” issues. A report from the Town’s consultant, Calvin Giordano and Associates was accepted by the Town Commission during the February 8, 2011 Town Commission meeting, Public Works Director Bill Evans will begin to bring specific recommendations in the near future. Item completed.

13. Prepare a Five Year Financial Plan

Current Status: The Five Year Financial Plan appeared on the February 8, 2011 Town Commission meeting agenda. A Commission workshop was held on March 1, 2011 and direction was given that will help support the FY 11/12 budget process. Item completed.

18. Canine feces bag receptacles installation

Current Status: Duncan Tavares will coordinate the process to obtain sponsorships. Receptacles have been placed in Veterans Park and at the 93rd Street entrance to the beach behind the Community Center. In the clean-up of the Public Works storage area by then Acting Director John DiCenso, four additional new receptacles were found. These receptacles have been installed, two at the lift station at 93rd and Byron Avenue and 89th and Dickens and one at the Hawthorne tot lot. One more will be installed at a beach entrance to be determined. Consideration will be given to funding additional stations in the FY 11/12 Budget process. Item completed.

19. Establish a reserve policy for all fund types for capital outlay projects and smoothing rate increases

Current Status: This has been analyzed in the Five Year Financial Plan. The Town Commission Workshop was held on March 1, 2011 and direction was given to Town staff as required to prepare the FY 11/12 budget. Item completed.

20. Complete open permit closeout in the Building Department

Current Status: Staff will report regarding the open permit program as well as the new Downtown enforcement program and the FEMA permit closeout and the amnesty program from time to time. Item completed.

23. Interior and exterior repainting of Town Hall

Current Status: The exterior painting is complete with a slight delay to refurbish the planter on 93rd Street by Town Staff. Skateboard prevention devices have been installed where appropriate and a notice has been posted on the Town website. Item completed.

26. Whitefly

Current Status: An inspection of Surfside was conducted on January 7, 2011 with the Commercial Urban Horticulture agent for Miami-Dade. The Vice Mayor attended. The determination: Surfside presently does not have whitefly but could in the near future. Public Works Director Bill Evans is including an inspection and treatment clause in the Town's landscaping RFP which will be advertised in the near future. Lukes-Sawgrass Landscape will provide training for Public Works and Parks and Recreation Staff to recognize and handle any of these types of infestations on public property. Training will be provided at no cost to the Town as part as of their community outreach program. Item completed.

28. Set a "Meet the Town Manager" date

Current Status: The meeting was held on March 24, 2011 and a lively discussion was held with the attendees. Item completed.

29. FAQ's related to what a resident can expect during the building permit process

Current Status: The document is attached to this report. Item completed.

31. Future of independent Employee Holiday Fund

Current Status: Town Manager Roger Carlton met with Julia Magnani on January 21, 2011 to discuss alternative methods to reward Town Employees during the holiday season. The existing process will remain in place. Item completed.

33. Crossing Barrier at 96th and Harding

Current Status: Meetings have been held with FDOT District Engineer Gus Pego as well as field staff from Miami Dade County and FDOT. The project will continue based on upstream traffic impacts on 96th Street and right turn movements on Byron Avenue. Item completed.

35. Mayor Daniel Dietch requested a suggestion box be installed at Town Hall

Current Status: The box has been installed on the counter in the lobby. Item completed.



Downtown Vision Advisory Committee

Meeting Minutes

March 22, 2011

The meeting was called to order at 7:00pm in the Manny Crawford Conference Room, 2nd Floor Town Hall.

In Attendance:

Committee Members: Eli Tourgeman, Charles Kesl (representing the Beautification Committee in David Steinfeld's absence), Ken Arnold, Sergio Castion, Andy LaBrada, Jessica Weiss, Leann Roth, Robert Andai, Julia Magnani, Sharon Levy, Louis Cohen, Shaun Grenald.

Town Staff: Roger Carlton, Sarah Sinatra, Duncan Tavares.

Town Commission: Commissioner Karukin.

Town Manager Welcome: The Town Manager reiterated his gratitude to all those in attendance for their commitment and briefly discussed the progress with the key action items (see below).

Review of March 10, 2011 Meeting Minutes: made a motion to approve the minutes, seconded the motion; the committee approved the minutes unanimously.

Downtown Code Enforcement Status Report (Key Action Item from Feb 15): Committee Members were provided an update from the Building Department. Courtesy notices were sent to 104 properties outlining 412 Code Violations. To date there have been 45 voluntary compliances. However the number of compliances may be higher as most notices do not require a permit to comply. The courtesy notices expire on April 2, 2011. The remaining outstanding violations will then move through the Code Enforcement process.

Vacant Window Treatment Ordinance Draft (Key Action Item from Mar 10): Committee Members were present a draft revision to the ordinance based on feedback received at the last DVAC meeting. The following additional recommendations will be added: provide a provision to include a "For Rent" sign in the window covering; give property owners the option of paying the Town to install the provided window covering; allow for a "cut out" in the covering for approved displays; remove the item that requires the property owner to remove gum from the sidewalk outside of their property as the Town just invested in a power washer for this very purpose. All suggestions will be added to the amendment for presentation to the Planning & Zoning Committee at their May meeting.

Identity: Who are we? Is this the image for our downtown?: The following common themes emerged:

- A clean simple “beachy” theme was expressed by many.
- Downtown’s identity should reflect the residents.
- The Town is neighborly and welcoming – a small close knit diverse community.
- Safe.
- Family oriented.
- Easy going and relaxed.
- Unique feel with a great mixture of amenities.
- Off the beaten path but with easy access to other locales/attractions.
- A sense of history with a literary connection.
- Boutique, mom & pop stores add to the charm.
- Should not present a uniform aesthetic – quirky is marketable.
- The “Town In-between” / “Welcome Home” / “Our Little Secret”.
- Need to figure out what would appeal to a mixture of residents and tourists.
- Market our strength – the restaurants/cafes.
- Market everywhere. Target 35 -55 year olds.
- Need to create a sense of energy – possibly through individualized storefronts.
- Dramatic solutions without becoming cartoony.
- Build off of The Bal Harbour Shops. Create a flow from 96th Street.
- Appeal to those driving by with landscaping/visuals to tempt them to stop.

The following are other suggestions and statements that came out of the above discussion:

- There is a perceived residents/families vs merchants with a view that the residents do not support the businesses.
- Aesthetically the right landscaping can connect the two blocks without seeming uniform.
- The welcome sign at Veterans Park could possibly be a logo for downtown.
- A wave motive could be used throughout the district either on the buildings, awnings or window coverings.
- Tiki bars on the beach would add atmosphere and create a sense of place/destination.
- Chain stores can have a positive effect and would bring other independent stores to the area.
- There should be a concerted effort to market the Town – possibly by a specific group.
- The Tourist Board presently markets the district/Town with their events and advertising utilizing their limited budget from Resort Tax.
- Allow café seating.
- Have clean, simple, modern look and signage.
- Make the district more pedestrian friendly; add benches; clean up the alleys.
- Facilitate retail on eastern 95th as a gateway to the beach through a public/private venture.
- Events are important.
- There is a need for better landscaping, lighting and seating.
- Increased parking options with better signage are needed.

Commissioner Karukin feels that all of these are moot points once hotels return to the area – existing businesses will prosper and new businesses will be attracted to the area.

The Town Manager would like the committee to think about the following for next month's meeting as this conversation continues:

Think about what the identity is of other places eg. Coral Gables, South Beach and Bal Harbour.

What is Surfside's?

How is marketing to tourists different?

The committee needs to look at thematic words and design.

Do we need an overall marketing plan for the district?

As retail must evolve to meet the demands of a more modern market how does this affect our identity?

How does the downtown address the diverse needs of seniors, the Orthodox Jewish community or the increasing Hispanic population?

Think about other Town's that have re-themed themselves.

Look at maximizing Surfside's assets while minimizing our liabilities.

Discussion on Business Improvement Districts (BIDs): The Town Manager described what constitutes a BID and the Committee was given an informational handout on BIDs. This is being presented as a discussion option only. The Town will need a vehicle to ensure that the DVAC process and ongoing improvements becomes a reality. A BID is one way to achieve this. The community would cede some power to the group that runs the BID however all members of a BID would be approved by the Town Commission. Minimal standards, policies and goals are set. Operational capital is established. A vote of 51% is needed for agreed upgrades. Times Square in New York City (NYC) is a BID. NYC has over 150 BIDs. A BID is a taxing district whereby the downtown property owners pay into a fund for improvements to the district. The Town's commitment is usually in the area of maintenance and any necessary upgrades to the infrastructure. The Florida Redevelopment Association will be holding a workshop on BIDs April 15, 2011 in Coral Gables. Representatives from the Coral Gables and Naples BIDs will discuss their different approaches to forming their BIDs. In an effort to continue the Committee's education on BIDs for further discussion, the Town will cover the \$10 cost for committee members interested in attending. More information will be emailed to everyone after the meeting.

Eli Tourgeman informed the Committee that assessments were made in the early 1990s that tackled upgrading store facades, and landscaping issues, and that this could work again. Louis Cohen feels that the owners will pay assessments when there is a real demonstrated need.

Action Item - Committee to decide: Based on consensus, the Town Manager will initiate plans to repave the alleys behind the businesses as part of the Town's investment in infrastructure.

Public Comment: Members of the public in attendance introduced themselves, offered their assistance to this process. Their comments are included above.

Next Meeting: Thursday April 14, 2011 at 7:00pm

Topics: Identity revisited (see suggestions above)

Sidewalk Café Ordinance

Streetscaping: trees/landscaping, seating, signage, etc

Meeting Schedule: Thursday April 14

Wednesday April 27

Thursday May 12

Tuesday May 24

Public Comment: Members of the public in attendance introduced themselves, offered their assistance to this process. Their comments are included above.

The meeting adjourned at 8:45 pm.

Respectfully submitted,

Name of signor



Downtown Vision Advisory Committee

Meeting Minutes

April 14, 2011

The meeting was called to order at 7:00pm in the Manny Crawford Conference Room, 2nd Floor Town Hall.

In Attendance:

Committee Members: Scarlet Hammons, Eli Tourgeman, Jennifer Brilliant (representing the Beautification Committee in David Steinfeld's absence), Ken Arnold, Sergio Castion, Jessica Weiss, Robert Andai, Sharon Levy, Louis Cohen, Jackie Murphy, Shaun Grenald.

Downtown Property Owners: Donald Kahn, David Kahn, Jack Stevens, Sharlane Packar, Henry Stevens.

Town Staff: Roger Carlton, Sarah Sinatra, Duncan Tavares.

Town Commission: Mayor Dietch, Commissioner Karukin.

Review of March 22, 2011 Meeting Minutes: Louis Cohen made a motion to accept the minutes as presented; Eli Tourgeman seconded the motion; the motion was passed unanimously by the Committee.

Downtown Code Enforcement Status Report (Key Action Item from Feb 15): The Town Manager updated the Committee on the number of buildings that are being repaired and/or painted as a direct result of the code enforcement letter. Those building owners that have not voluntarily complied will now go through the code enforcement process. The Building Official will provide a detailed update for the Committee at the next meeting. The cleaning of the sidewalks with the Town's new power washer will begin next week.

Vacant Window Treatment Ordinance Draft (Key Action Item from Mar 10): The Town Manager informed the Committee that the amended ordinance, with all of the Committee's recommendations, will go before the Design Review Board at their May meeting.

Repaving Alleys Update (Key Action Item from Mar 22): The Town Manager explained that an RFP is going out for an assessment of paving, striping and enhanced landscaping for all of the Town parking lots and the downtown alleys that are owned by the Town. Upon receipt of this information, an RFP will then address the actual work needed. This is a budgeted item for this Fiscal Year.

Moratorium Ordinance Discussion: The Town Manager explained the purpose of the temporary Moratorium and that the Town Commission approved it on first reading at the April 12, 2011 Commission Meeting. The Town now has time, within the deadline, to decide on the direction for downtown businesses. This ordinance temporarily limits new businesses to retail and/or restaurants. The Committee has been charged by the Commission to make its recommendations to the Planning & Zoning Board for review at their next meeting. The final recommendations, which will also include feedback from the downtown property owners, will then be taken back to the Town Commission for discussion and possible adoption.

The Committee was presented with a list of business types and was asked to indicate next to each category whether the business should be located on the street level, an upper floor or on any floor. The Committee was also asked to note any type of business that would be desirable if not listed and to mark business types that do not contribute significantly to the long term economic growth of downtown. This, albeit unscientific, survey revealed the following: the Committee Members were very divided on these criteria however they were unanimous in that both retail and restaurants should be allowed on any floor. There was also a consensus on not allowing psychics and coin-op machines in the downtown district. A recap of the results will be presented at the next meeting. N.b. the Property Owners were not in support of this survey or its results.

The following Committee Members' comments resulted from this discussion:

- Restricting businesses seems undemocratic.
- Property owners have rights as well. A positive turn around will benefit all property owners. Working together will benefit all property owners.
- Zoning inherently limits what can be built and usages in certain areas. It is a necessary function. Restrictions are already in place and are not undemocratic. This is how various zones are managed.
- Property owners are the key to the success of downtown. If they pay for improvements then the DVAC can move quickly on initiatives.
- What is the property owners' plan?
- Adequate parking/ a parking garage is needed. Businesses will then be attracted to Surfside.
- Need to address a successful businesses mix before enforcing limitations. Market forces have a marked effect on success.
- Need businesses that draw residents and visitors. There is something missing – the draw to shop there does not exist.
- There needs to be an overall vision for downtown.
- One only needs to look at Bay Harbor Islands (BHI). Allowing professional and service businesses on the ground floor has succeeded in destroying their downtown. It lacks the right mix of businesses that attract people.
- BHI now restricts usages as it wants to improve its downtown. There is a need for distance restrictions; chain stores are desirable; simplify usage categories and their appropriateness. Something needs to be done – leaving it to market forces clearly does not work. The restaurants are what bring people to downtown Surfside.
- Stores and certain service businesses also bring people downtown who then decide to patronize the restaurants.
- Main Street is dead. Service businesses are necessary but they do kill a downtown. Limitations are needed but should include grandfather clauses. Property owners will rent their properties if there is an appropriate mix of businesses – this is what attracts other businesses.

The following Property Owners' comments resulted from this discussion:

- There should not be any restrictions on the types of businesses.
- There should not be any rezoning of the district.
- The laws of supply and demand should prevail.
- Restrictions hinder the ability to rent the spaces.
- The biggest obstacle is the lack of parking.
- Lack of parking is the reason retail is not coming to Surfside.
- Once there is adequate parking (i.e. a parking garage) then anchor stores will be interested.
- Only "mom & pop" stores can fit in the size of the building spaces and can work with the parking that is available.
- Some larger retailers are looking for smaller spaces but there remains the parking issue.
- The crossing situation at 96th Street and Harding Avenue, and access to The Shops of Bal Harbour, is a hindrance to anchor stores.
- There are ADA compliance issues if certain businesses are restricted to upper floors.
- The Property Owners can formulate their own plan to help the business district.
- Property Owners will pay assessments for certain improvements.

The Town Manager summed up the varying comments as follows:

- DVAC Members have different levels of support for restrictions but are willing to make a recommendation at the next meeting once Staff provides more detailed information for review.
- Property Owners want market forces to be the deciding factor, not restrictions; the lack of parking is a major factor in vacancy rates; all are willing to pay an assessment for certain improvements (including a parking solution).

Outside Smoking Ban Proposal: The Vice Mayor requested that the Committee discuss a possible outside smoking ban that would particularly pertain to the restaurants' outside café seating. This item was deferred from the April 12, 2011 Commission Meeting to May 10, 2011. Four Committee Members voted in favor of the ban while six Committee Members voted against the ban. The results will be sent to the Vice Mayor.

Action Item for April 27: The Town Manager will meet with the property owners to discuss their concerns and recommendations. An update from this meeting will be given to the Committee at the next meeting.

Town Staff to return with recommendations for business distance requirements, limitations on business types/location, and grandfathering provisions for the Committee to review prior to its recommendation to the Planning & Zoning Board.

Public Comment: Comments included in the related topics above.

Next Meeting: Wednesday April 27, 2011 at 7:00pm
Topics: Moratorium Ordinance Discussion Continued
Identity revisited
Sidewalk Café Ordinance

Meeting Schedule: Wednesday April 27
Thursday May 12
Wednesday May 25

The meeting adjourned at 9:30 pm.

Respectfully submitted,

Name of signor



Downtown Vision Advisory Committee

Meeting Minutes

April 27, 2011

****N.b. Set to be adopted by the DVAC at the May 12, 2011 meeting***

The meeting was called to order at 7:00pm in the Manny Crawford Conference Room, 2nd Floor Town Hall.

In Attendance:

Committee Members: Eli Tourgeman, Ken Arnold, Sergio Castion, Jessica Weiss, Robert Andai, Julia Magnani, Louis Cohen, Jackie Murphy, Shaun Grenald.

Downtown Property Owners Representative: Jack Stevens.

Town Staff: Roger Carlton, Sarah Sinatra, Duncan Tavares.

Town Manager Welcome: The Town Manager apologized to Bernie Oberlander regarding his comments at the last DVAC meeting. He met with Mr. Oberlander at Oberle Opticians to personally apologize. Mr. Oberlander has spent a considerable amount of time, effort and money on his store. This store is an example of what should exist downtown.

Review of April 14, 2011 Meeting Minutes: Eli Tourgeman made a motion to approve the minutes; Louis Cohen seconded the motion; the minutes were approved unanimously by the committee.

Downtown Code Enforcement Status Report Update (Key Action Item from Feb 15): Over forty buildings have voluntarily complied. The others will now go through the code enforcement process.

Vacant Window Treatment Ordinance Draft Update (Key Action Item from Mar 10): This ordinance will go before the Planning and Zoning Board at their May meeting. First reading will occur at the June Town Commission Meeting and the second at the July meeting.

Repaving Alleys Update (Key Action Item from Mar 22): The Town is moving ahead with an assessment of the required work. Jack Stevens voiced his concerns about the privately owned alley on the west side of Harding and the Town's heavy handed approach last time. There is also a drainage issue there. The Town Manager assured all that the Town would work with the property owners regarding their alley.

Property Owners Meeting Update / Recommendations for business distance requirements, limitations on business types and grandfathering provisions (Key Action Item from April 14): The Town Manager explained that these may be moot points after the committee discusses the ideas from the property owners meeting. These will be discussed under the Moratorium agenda item.

Moratorium Ordinance Continued Discussion / Property Owners Meeting Update:

(Key Action Item from Apr 14): The Town Manager updated the committee on the meeting with the property owners from last night (Tuesday April 26, 2011). He stated that sixteen owners were in attendance representing approximately seventy five percent of the buildings downtown.

The following are ideas that the Town Manager wanted the attendees to discuss*:

- Grandfather existing service oriented businesses on the ground floor for ten years. Property owners would have a six month window of opportunity to exercise this option upon the sun setting of the Moratorium.
- The number of non-retail and restaurant spaces on the ground floor will be limited by distance requirements.
- Property owners could build up to four stories with the option of having residential units on the upper floors.
- Property owners could amalgamate their holdings by a Unity of Title to increase the building frontage to 200 feet so that additional floors, with the elevators and ADA compliance, could be achieved. The larger ground floor space would then be attractive to national retailers and restaurants.
- The Town would build a garage on the Abbott Street lot. With easements from the property owners, the alley would then be upgraded with utilities buried underground. This would create an attractive area to access the businesses on that block of Harding Avenue. The ground floor of the garage would have retail space.
- Eliminate Harding Avenue street parking, leave bus lay-bys, and add a valet parking option. The sidewalks could then be widened for sidewalk cafés. This would create a better pedestrian environment with better landscaping and streetscaping.
- Initiate a façade upgrading program.
- Form a Business Improvement District (BID) with commitments from the business owners and the Town.

Please note that these ideas are not the expressed views of the Commission, Planning & Zoning Board or any other committee. They are discussion items only.

The following are comments from the property owners:

- Do not approve of the “grandfathering” item as all of my tenants would go out of business after 10 years.
- The restrictions should not be implemented in the present economic situation. The Town Manager stated that this is the time to help downtown. In a better economy no one is interested in these matters.
- The demographics of the area do not support the existing types of retail. “Mon & Pops” can barely survive and they are the best bet for the area.

The Town Manager confirmed that the following are supported by the attendees:

- Limit parking on Harding Avenue (as outlined above) with wider sidewalks once a garage is built on Abbott as mentioned above. Jack Stevens dissented on the limited Harding Avenue parking.
- A focused marketing effort for retail and restaurants financed by BID and/or parking funds.
- A 94th Street garage with retail on the ground floor.
- 95th Street enhancement project from Abbott to the beach.

All attendees agreed to a quarterly meeting as a means of keeping informed and as a method to achieve common goals.

Every effort will be made to ensure that Shaun Grenald is including in all upcoming property owners meetings.

Jack Stevens presented to the committee various photos of buildings in the business district. He discussed the lack of ADA compliance and the limited space available on the second floor for services (non-retail/restaurant) businesses. He stated that thirty one tenants would be out of business if the moratorium became law and that none of the property owners would agree to unity of title. You cannot compare Bay Harbor Islands (BHI) to Surfside as BHI has multistoried dedicated office buildings and a parking garage.

The following are comments from committee members:

- Not one of the committee members are interested in throwing out tenants. All are concerned about doing the right thing and helping the downtown district as something needs to be done.
- Businesses have evolved downtown and have changed downtown.
- A long term service district does a disservice to downtown.
- There is a perception from tenants and Surfside residents that the property owners do not care: they do not improve their buildings; only collect high rents.
- Having a dialogue with the property owners is a great step.
- Assessments, like those for repairs/improvements in condo buildings, are an acceptable way to achieve objectives.
- Unity of title can also apply to those who buy buildings next door to their existing properties.
- If the property owners commit to a BID and a marketing plan/representative then usage requirements could be dropped.
- Parking garages and anchor stores will solve problems downtown.
- The buildings on Abbott Street, west of a parking garage, could become live/work spaces for artists.
- There is no loyalty to tenants from landlords or vice versa when money is involved.
- Ten years notice (grandfathering) is enough time.
- ADA is not the issue.
- By stating that the Town is going to throw out tenants is similar to yelling "fire" when there is none.

- With a parking garage at 94th Street, the buildings west on Harding opposite the garage could be similar to those mentioned for Abbott Street. They could be professional/service/doctors' offices.
- Housing above the ground floor is acceptable.
- The Town could grandfather all existing businesses until they leave.
- All committee members are very supportive of the property owners' offer and willingness to open the line of communication.

See Action Item information below.

Sidewalk Café Ordinance: FDOT has already been given a draft of this ordinance for their review. DVAC will address the ordinance at the next meeting.

Mission of Downtown Vision Advisory Committee: The Town Manager advised the committee that all of these issues are extremely important for the members to address and make recommendations. Now that the property owners are agreeing to most of the above stated discussion items means that the committee can now proceed on other topics such as identity and streetscaping.

Brand Identity Revisited: The TEDACS Director presented the advertisements that the Tourist Bureau has used to market the Town and events. The present slogan adopted by the Tourist Board is "Taste The World On Two Blocks". The committee liked the 3rd Thursday graphic, which included people in silhouette, as a possible image for the vacant window coverings. The following items were discussed by the committee:

- Surfside: A State of Mind.
- A Surfside State of Mind.
- I Love Surfside.
- Take a Walk on the Surfside.
- The slogan should involve the history of the Town.
- Issac Singer wrote the following: A day of pleasure / reaches of heaven / a succession of wonders. There may be a place for his work.

Slogans should not be too vague.

Vague can be useful in marketing seasonally and/or to niches.

Need a theme.

Need image.

Towns can become known for their art installations: eg. painted snails, cows, frogs.

Need to address who the slogan is targeting: restaurant patrons? Tourism?

Needs to be catchy.

The Town will investigate schools/universities taking this on as a class project and the utilizing of websites that will send ideas with the Town only needing to pay for the selected slogan. The committee will return to the next meeting with further ideas.

Action Item: Articulate the ideas discussed with the property owners (as outlined in the Moratorium discussion above) to include more details for the committee to ratify at the next meeting. If there is a dissenting minority view on certain items, the Town Manager has stated that those members could present an accompanying Minority Report to the Commission.

On-going meeting schedule: To be discussed at the next meeting.

Public Comment: None.

Next Meeting: Thursday May 12, 2011 at 7:00pm

Meeting Schedule: Thursday May 12
Wednesday May 25
June: TBD

The meeting adjourned at 9:15 pm.

Respectfully submitted,

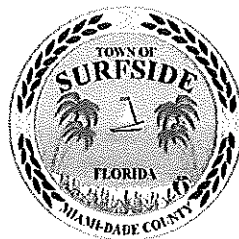
Name of signor



1''



1 1/8''



TOWN OF SURFSIDE
Office of the Town Attorney

MUNICIPAL BUILDING
 9293 HARDING AVENUE
 SURFSIDE, FLORIDA 33154-3009

Lynn M. Dannheisser
 Town Attorney

Telephone: 305 993-1065

MEMORANDUM

TO: Town Commission

FROM: Lynn M. Dannheisser, Town Attorney *gmb*

CC: Roger M. Carlton, Town Manager
Debra E. Eastman, M.M.C., Town Clerk

DATE: May 10, 2011

SUBJECT: Town Attorney Monthly Update for May, 2011

The Town Attorney has prepared the following **Resolutions** for the **Quasi-Judicial Hearings** scheduled for the May 2011 Commission Meeting:

1. Resolution for hotel at 9200 Collins Avenue approving a Conditional Use Application pursuant to Section 90-23 of the Code To Permit The Development Of A Three (3) Story Structured Parking Facility And Hotel Swimming Pool And Jacuzzi, And A Site Plan Application, Pursuant To Section 90-41 Et Seq. Of The Zoning Code To Permit A 175 Unit Four (4) Story Hotel With Accessory Uses, Submitted By Transacta Lanai Developers, Ltd., (The "Applicant"), all on the property located At 9200 Collins Avenue.
2. Resolution for Variance at 1355 Biscaya Drive considering the Application Of 1355 Biscaya Drive, to permit a seven foot 11 inch side setback variance from Section 90-45 of the Code to allow a 12.9 foot setback for the entire length of the pie shaped lot.

The following **Ordinances and Resolutions** have been prepared (and/or reviewed and researched) or other advice rendered regarding the issues contained in them. In the case where agreements are attached, those contracts have also been drafted and/or reviewed and revised this month:

(Second Reading)

Short Term Rentals requiring registration of short term rentals in residential neighborhoods.

(First Reading)

Short Term Rental Prohibition Single Family Dwellings and regulation of two-family dwellings, multi-family dwellings, and townhomes requiring registration of short term rentals in residential neighborhoods.

Resort Tax Amending Chapter 70 and specifically Article IV “Resort Tax” Division 1 “Resort Tax” and Division 2 “Resort Tax Board” specifically amending Sections 70-106 Through 70-111; and Creating Sections 70-112 through 70-127

Film/Photo Shoot Ordinance

Resolution Opposing Legislation on Short Term Rentals

Resolution Approving FPL Easement

The Town Attorney has attended and advised at the following meetings:

April 12, 2011 Commission Meeting

April 13, 2011 Development Impact Committee

April 28, 2011 Executive Session regarding Young Israel v Surfside

April 28, 2011 Planning & Zoning Meeting which included two Quasi-Judicial Hearings

May 2, 2011 Executive Session regarding Davis v Surfside

Town Manager and Town Clerk Issues

Finalize Documents for Maranon closing; follow-up with post closing issues.

New property acquisitions and foreclosure and research eminent domain issues

Potential private public partnership issues

Hotel density and other zoning inquiries from hotels and other property owners

Continue to work with Manager and Planner on studies necessary for downtown revitalization

Water/sewer/stormwater infrastructure capital improvement bond closing

Parking and parking study issues town wide and relative to town parking lots

Magen David, Surf Club, Beach House and other property owner inquiries and receipt of site plans

Construction of community center/engineering, RFP issues,

Lien foreclosure and code enforcement special master issues and schedule of hearing

Notice and advertising of zoning and other ordinances

Phone, public records requests

Meet with Best Western and Beach House property owners

Meeting and research re: Delgado

April 28, 2011 Planning & Zoning Agenda:

Quasi-Judicial in nature:

Request of Owner of Property located at 9200 Collins Avenue

Preparation of Town Of Surfside Planning & Zoning Board Resolution No. 11-Z-02

Preparation of Chairperson Zoning Statement

Planning Board sitting as recommending Board to the Town Commission:

Request of Owner of Property located at 1355 Biscaya Dr. for a side setback variance.

Planning and Zoning Board sitting as LPA for adoption of the ordinance.

Short Term Rental Ordinance.

Items for the April 28, 2011 Design Review Board:

1. Request of the Tenant of Property located at 9578 Harding Avenue for exterior façade upgrades to the front and rear of the existing CVS pharmacy and is proposing an expansion into the adjacent bay, increasing store frontage and approval of a new sign.
2. Request of Owner of Property located at 9580 Carlyle Avenue to add 219.54 sq foot addition and a sukkah to a single family residence.
3. Request of Owner of Property located at 9300 Bay Drive for a second story addition to their single family residence on the West side of Bay Drive.
4. Request of Owner of Property located at 9537 Harding Avenue to replace the existing signage for Bank United with a new sign.
5. Request of Owner of Property located at 9476 Harding Avenue for approval of an awning.

Building Department/Code Enforcement:

The Town Attorney continues to work with the Building Official, Code Enforcement, film permit and short-term rental Violations and preparation for the June 2, 2011 Code Enforcement Hearing before the Special Master. The Town Attorney is involved with several issues: moratorium, historic preservation, issuance of zoning permits under the current zoning code, continues to give advice and handle calls from staff and residents relative to Community Center issues, boat storage and the feral cat concerns and banners, zoning research on Magen David, location and distancing separation issues and other downtown vision issues.

Human Resources Department:

The Town Attorney has worked with the Town Manager and Human Resource director on several issues relating to Town personnel and policies and procedures.

Finance Department:

Review of bond ordinance/ budget issues
Preparation for 2011/2012 Legal Department Budget
Modular Library closing matters

Police Department:

Dell Computer Agreement
Assist, advise and preparation of resolutions for IT services and computer equipment.
Work with Chief DiCenso on contract issues (Laz Second Amendment)

Public Works:

Assist and advise Public Works Director on any new issues.
Review of solid waste agreement with Solimar Condominium Association.

Parks and Recreation and Community Center issues:

Review issues relative to Community Center and construction requirements included but not limited to:

1. IT issues
2. West Construction's commitment to complete
3. Prepare substantial revisions to Community Center Concession Stand and Agreement
4. VSI – Software Agreement
5. Community Center Change Orders

Tourist Bureau:

Follow-up with Tourist Bureau and Downtown Visionary Committee.
Preparation of Film Permitting Ordinance.
Preparation of Resort Tax Ordinance.
Review and revisions to Short-term Rental Ordinance
Vacant Window Ordinance

Litigation:

John Davis v. Town of Surfside Case No. 07-17286 CA 08, Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida. This case has been consolidated with a previous case filed by a former sergeant in the Town's police department. Settlement discussions have been unfruitful. An Executive Session was held on Monday, May 2, 2011 regarding the litigation strategy and pending Calendar Call on May 31, 2011 for the Trial Calendar for June 6, 2011.

Young Israel of Bal Harbour, Inc. v. Town of Surfside Civil Action No. 1:10-cv-24392 in the United States District Court for the Southern District of Florida. On December 10, 2010, Young Israel served a complaint alleging the Town Zoning Code imposes a substantial burden on Young Israel in violation of the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA). Young Israel asks the Court to grant the following: a preliminary and permanent injunction against the Town and to enjoin the Town from taking any action to prevent, hinder or interfere in any manner with construction of the proposed synagogue; a permanent injunction ordering the Town to adopt amendments to the Town Zoning Code and to issue permits and licenses as are necessary to permit construction of the proposed synagogue; a judgment for \$5,000,000 plus interest and costs for actual and punitive damages; a judgment for attorney's fees; and any further relief the Court deems just and proper. A teleconference was held on April 21, 2011 with Young Israel, President, Morris Kaplan and Sheldon Lisbon regarding potential settlement discussions.)

This matter is covered by The Florida League of Cities which has approved counsel to assist in the defense of this case. The Town's lawyers filed a Motion to Strike and Motion to Dismiss. Plaintiff, Young Israel filed a Memorandum in Opposition to Defendant's Motion to Strike and a Memorandum in Opposition to Motion to Dismiss. The Town reviewed and revised in consultation with outside counsel Replies to Plaintiff's opposition memos. The Court denied the Motion to Strike and the Town has filed a Request for Oral Argument. Settlement discussions were held with Young Israel representatives. An Executive Session was held on Thursday, April 28, 2011 to discuss the litigation strategy.

American Enterprise Bank v Bishop Partners, LLC, Surfside et.al Case No. 11-07139 CA 04 filed in Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida. The case involves a mortgage foreclosure action against Defendants who owned property in Surfside. It appears that Surfside has been named as a defendant due to an unsatisfied lien on a Surfside property due to a code violation relating to a failure to pull a building permit. Investigation is on-going.

Florida League of City Cases:

We monitor, coordinate witnesses and assist with requests for discovery with League counsel on cases that are covered by the FMIT. In addition to Young Israel (see above), we assist counsel with the following FMIT cases:

Warren Blum v. Town of Surfside Case No. 02-19134 CA 08

This action commenced in 2001 against the Town, former Town Manager, Rodriguez and former Police Chief, Boemler. Blum, a former police officer alleges breach of contract, violation of policeman's bill of rights and fraud in the inducement. A Motion for Continuance has been filed and we await a new trial order. Pursuant to the FMIT policy, the Town is responsible for only the \$5,000 deductible. FMLA counsel and the Town Attorney's office have been in frequent contact to discuss this matter and as of this date, no settlement has been reached.

Dina Agin v. Town of Surfside Case No. 07-41974 CA 30

Dina Agin filed a complaint seeking damages for injuries allegedly arising from a trip and fall accident due to a defective condition on the property/premises/sidewalk near the corner of 96th Street and Bay Drive in the Town of Surfside. We have assisted League counsel with discovery and document requests and on-going case development issues. Bal Harbour Village has been dismissed as a party. Trial has been re-set for the 3 week period commencing October 17, 2011. Plaintiff's attorney moved the court for a continuance to 2012 because she is a snow bird and to conduct further discovery. Surfside argued that the Town is prepared, there has been more than enough discovery conducted by FDOT and the Plaintiff, and the trial should not be delayed to 2012 on a 2007 case. The court compromised and moved trial to October.

Special Matters:

Discussions with outside counsel. (Young Israel counsel, Harold Rifas, Richard Sarafan, J. Hiley Wicks, Nancy Stroud)

Service of Process Memorandum

Analysis and continued research of historic preservation tax issue re: changes in Surf Club.

Parking Trust Fund; review of other cities handling of this issue

Land Acquisition of Two Parcels Immediately South of Town Hall

Potential Acquisition of 9333 and Harding Avenue Property

Vacant window ordinance

Newsrack

9501 Collins possibilities

9522 Abbott

Beach House/ 9419 Collins Avenue issues

Psychic/crystal/botanica store issues

Historic Preservation Board Powers

Research issues re: condo hotels

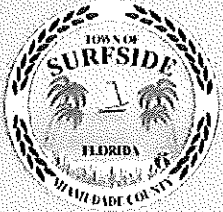
Chanel ERA, LLC / Tacku Investments, LLC documents/issues

Follow-up with Development Impact Committee – 9200 Collins – Revise Zoning Resolution

Surf Club/Historic Preservation

Conflict of Interest issues

Follow-up with legislation out of Tallahassee and Miami Dade County.



TOWN OF SURFSIDE

9293 Harding Avenue
Municipal Building
9293 Harding Avenue
Surfside, Florida 33154
(305) 861-4863
(305) 861-1302

Page 1
Town of Surfside
Projects Progress Report

Daniel Dietch
Mayor

Joe Graubar
Vice Mayor

Marta Olchyk
Commissioner

Michael Korukin
Commissioner

Edward Kopelman
Commissioner

Roger M. Carlton
Town Manager

TOWN OF SURFSIDE PROJECTS PROGRESS REPORT CALVIN, GIORDANO & ASSOCIATES, INC. May, 2011

1. **Community Center** –Work continues to occur seven days per week approximately 11 hours per day, depending on daylight. Contractor is receiving shipments of pavers three times per week until completion. FPL has stated that they will have the transformer installed and the building energized by mid May. The soft opening date is set for the week of June 6, 2011 and the grand opening is tentatively scheduled for the weekend of June 11-12.

April Activities

Exterior

This month the Activity Pool received mosaic tile and the Funtraption Activity Equipment.

The Main Pool received its coping, water slide footers, lane line anchors and the water slide.

The spa received its coping and tile.

The pool pumps, filtration units and heaters were installed for all 3 pools.

The exterior stucco on the building was completed and priming/painting began.

The large planting installation occurred prior to installation of pavers in order to protect the pavers from the equipment.

Portions of the aluminum fence were installed. Areas where further construction activities must occur were not installed.

The excess stockpiled material was trucked off of the site and grading east of the bulkhead began.

Interior

This month electrical, plumbing and mechanical work continued in both buildings.

Drywall was hung throughout both buildings.

Interior tile was laid in both the men's and women's locker rooms and bathrooms.

The drop ceiling was installed throughout the building.

The walls were primed and painting began.

Doors frames were installed throughout the building.

2. **Planning and Community Development** – Planning and Community Development –The Planning Department reviewed a Site Plan and a Conditional Use application for a hotel at 9200 Collins Avenue. The Development Review Group, which consists of a technical review of the plans, provided comments to the applicant of which the applicant modified the plans for review by the Development Impact Committee (DIC). The DIC meeting was held on April 13, 2011. As a result of this meeting, 18 conditions were requested in the Development Order. The Site Plan report, Conditional Use application and the Development Order were reviewed by the Planning and Zoning board on April 28, 2011 and presented to the Town Commission on May 10, 2011. Staff also reviewed a single family setback variance. This variance application was heard by the Planning and Zoning Board on April 28, 2011 and Town Commission on May 10, 2011. Per the direction of the Planning and Zoning Board, staff also prepared a memorandum to the Board describing the process for analyzing density of hotels on the beach. Staff presented this report to the Planning and Zoning Board, who then directed Staff to analyze the appropriate density for beach front hotels and come back to the Board at a future meeting with this report. A moratorium ordinance was passed on April 12, 2011. The intent of this ordinance is to temporarily stop new service and office uses until the Downtown Vision Process Advisory Committee, who is studying the appropriate uses in the downtown, can provide a recommendation to the Town Commission. Planning staff continues to answer general zoning calls and emails from the public and to review building permits for conformance with the zoning code

3. **Website, Information Technology, TV Broadcasts** - The Town Commission approved the IT Department’s recommendation for the VOIP(Voice over Internet Protocol) phone system vendor on April 12, 2011. Preparations for phone system installation have begun and are anticipated to be completed by the end of May. IT staff is also working on the new Police Department Server which runs all USA software utilized to access FDLE(Florida Department of Law Enforcement) information by all Police staff. The Police Mobile Server has been installed – this server is utilized to Police specific progress reports when the officers are in their vehicles. IT is also in the process of finalizing the laptop order for the Police Department. Two new desktop computers have also been setup for Police Dispatch. In addition, IT is working on the Rec-Trac project for software and hardware implementation. The Rec-Trac system will be utilized by the Community Center operating staff. All software and hardware has been ordered to complete this project. The new copier has been installed and is 100% fully functional.

4. **Public Utilities / Engineering** –

Plans for all phases of the Utility Rehabilitation Project have been distributed to the Pre-Qualified Contractors. The Mandatory Pre-Bid Meeting occurred at 2:00 P.M. on April 5, 2011 and Bids are due at 2:00 P.M. on April 28, 2011.

Stormwater System

Construction plans and specifications – 100% complete. Plans have been reviewed by staff and oversight committee and are currently out to bid.

Permits – All permits obtained except contractor DERM permit and contractor FDEP well permit.

Construction schedule – Bids are due April 28, 2011 with anticipated construction duration goal of 16.5 months. CGA and staff are including an “early bonus system” to achieve this ambitious schedule.

<u>Grant</u>	<u>Status</u>	<u>Probability</u>
FDEP Grant \$873,500	In place	100%
FDEP Grant \$125,000	In place	100%
FDEP Grant \$100,000	In place	100%
FDEP Grant \$2,949,550	In process	25%
SFWMD Grant \$570,000	In process	10%
State Revolving Fund Loan \$2,771,000	In process	75%

Sanitary Sewer Collection System

Construction plans and specifications – 100% complete. Plans have been reviewed by staff and oversight committee and are currently out to bid. The Improvements being completed on the Sanitary Sewer System are required per a consent decree with Miami-Dade County.

Permits – All permits related to the Sanitary Sewer System Improvements have been applied for and issued with the exception of the permit for the Dry Sewer Line, which was a late addition to this project. A permit application for this work has been submitted to the proper agencies for review and approval.

Construction schedule – Bids are due April 28, 2011 with anticipated construction duration goal of 16.5 months. CGA and staff are including an “early bonus system” to achieve this ambitious schedule.

Water Distribution System

Construction plans and specifications – 100% complete. Plans have been reviewed by staff and oversight committee and are currently out to bid.

Permits – WASD, DERM and HRS approvals have been obtained.

Construction schedule – Bids are due April 28, 2011 with anticipated construction duration goal of 16.5 months. CGA and staff are including an “early bonus system” to achieve this ambitious schedule.

Grant status - Building Better Community Bonds \$829,000 – In place

Stormwater Master Maintenance

This month, CGA Staff assisted the Town by submitting the Annual Report Form for individual NPDES permits. The stormwater drainage system is being cleaned and maintained on a yearly basis as required by the National Pollution Discharge Elimination System Permit. Repairs and

replacement program coincide with the Florida Department of Environmental Protection Stormwater project and grants.

5. **Neighborhood Improvements** - CGA prepared initial cost summaries and preliminary strategies for implementing a street tree/tree canoping program for the Town. The goal is to enhance the quality of the residential districts by employing the benefits of street trees, including increased property values, shade, and micro-climate/heat island impacts. The provision of street trees have been conceptualized so that they also provide for opportunities with traffic calming, particularly at the street corners and at the mid-blocks, so as to further the livability of the streets and potentially protect both pedestrians and children. The initial, suggested strategy seeks to use trees as a neighborhood wayfinding, and community branding element, where specific trees would be used as typical plantings on north-south streets, different from those east-west and potentially flowering trees at the intersections. These, essentially, will constitute the fundamentals of a tree master plan that seeks to continue and further the neighborhood enhancement goals developed in an early study and already begun through zoning and design guidelines regulation adoptions. The approach will be further developed pending a walk-through with Town Staff to assess the existing conditions, existing constraints, and potential opportunities. CGA is also developing designs for more attractive street signs and improvements to the traffic calming devices throughout the single family neighborhood.

The items listed above are being competitively bid as “additive alternates” on the Infrastructure Rehabilitation Project. If the bids submitted are such that funding is available, conceptual plans will be presented to the Commission for direction/approval prior to any design or implementation.



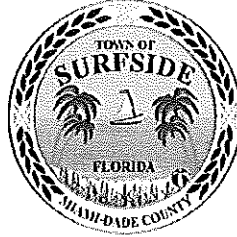
TOWN OF SURFSIDE
 BUILDING DEPARTMENT
 MUNICIPAL BUILDING
 9293 HARDING AVENUE
 SURFSIDE, FLORIDA 33154

“Code Compliance Update”

May 10, 2011

- 1) On May 11, 2010, the Town of Surfside Commission approved Resolution No. 10-1934 prepared by the Building Department, granting residents that were issued Courtesy Notices for non life threatening issues a One Hundred Twenty Day (120) Amnesty period for them to correct Code Compliance issues without fines or penalties. These amnesty letters were mailed on July 15, 2010 to all residents that were issued “Courtesy Notices” that met the criteria of the amnesty program. A total of one hundred fourteen (114) amnesty letters were mailed. On October 13, 2010 a reminder notice was mailed to all those that were not in full compliance with the Amnesty Program. There are eighty three (83) residences that are now in full compliance, twenty three (23) residences are continuing to show an effort on meeting full compliance and eight (8) residences still show no effort in meeting compliance. Those eight (8) residences that continue to disregard the General Maintenance Amnesty Program are scheduled to appear before a Special Magistrate on June 2, 2011.
- 2) There are still thirty seven (37) residences out of four hundred plus (400+) residences that were issued Courtesy Notices pertaining to the Chain Link Fence Ordinance that continue to disregard the Chain Link Fence Ordinance. These thirty seven (37) residences will be issued a “Civil Violation” with a new compliance date. If they do not comply with the date given on the Civil Violation a fine of \$100.00 per day applies.
- 3) On March 17, 2011, sixty six (66) courtesy notices were issued to residences that have dead trees, hedges and palms. Residences that have overgrown trees, hedges and plants also received the courtesy notices, attached to the courtesy notice was a copy of the Town of Surfside landscape ordinance. Fifty three (53) residences are in full compliance. I will continue to work with the remaining thirteen (13) residences until full compliance is met.

- 4) One hundred and three (103) Courtesy Notice's were issued to the downtown business owner's and property owner's pertaining to sprucing up the downtown business district. Out of the one hundred three Courtesy Notice's issued, there are now forty (40) business owner's and property owner's that have met full compliance, twenty eight (28) business owner's and property owner's have met partial compliance and continue to proceed to meet full compliance. I will continue to work with the remaining thirty five (35) business owner's and property owner's until full compliance is met.



TOWN OF SURFSIDE
Office of the Town Attorney


MUNICIPAL BUILDING
9293 HARDING AVENUE
SURFSIDE, FLORIDA 33154-3009

Lynn M. Dannheisser
Town Attorney

Telephone: 305 993-1065

MEMORANDUM

TO: Town Commission

FROM: Lynn M. Dannheisser, Town Attorney 

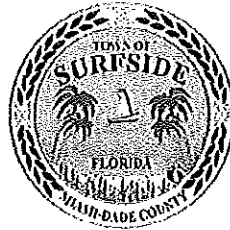
CC: Roger M. Carlton, Town Manager
Debra E. Eastman, M.M.C., Town Clerk

DATE: May 3, 2011

SUBJECT: Short Term Rental Ordinance Update

Since the writing of the attached memorandum, the Florida legislature has been considering SB 476 and HB 883 which seeks to pre-empt municipal home rule authority and, among other things, prohibit the passage of a town ordinance that will restrict or prohibit short term rentals unless a town has an ordinance already in effect by June 1, 2011. At this point, the bill has passed the House. At the time of the writing of this update, no action has yet been taken by the senate to the best of my knowledge. If the Town does not pass an ordinance on this subject, it will be subject to the state's mandate and have no ability to regulate or restrict short term rentals.

Knowing this, the Planning and Zoning Board sitting as the LPA considered this ordinance and another alternative that promotes restrictions but prohibits short term rentals in the single family district. Staff has advertised both so you have an option. (Duncan Tavares will provide you with a full analysis on this issue.) However, please be advised that if you choose the alternative as opposed to this ordinance, you will have to call a special meeting to obtain passage before June 1. Otherwise, if you pass this ordinance which is up for second reading on May 10, 2011 you will have an ordinance on the books for pre-emption purposes which you may amend in the future unless this issue too is addressed in the legislature.



TOWN OF SURFSIDE
Office of the Town Attorney

MUNICIPAL BUILDING
9293 HARDING AVENUE
SURFSIDE, FLORIDA 33154-3009

Lynn M. Dannheisser
Town Attorney

Telephone: 305 993-1065

MEMORANDUM

TO: Town Commission

FROM: Lynn M. Dannheisser, Town Attorney *LMD*

CC: Roger M. Carlton, Town Manager
Debra E. Eastman, M.M.C., Town Clerk

DATE: April 12, 2011

SUBJECT: Short Term Rental Ordinance

Recommendation: The Tourist Bureau recommends that the Commission adopt this Ordinance. The evolution of this ordinance is explained below.

Background and Explanation of Ordinance: Short term rental ordinances are increasingly being passed by local municipalities in response to complaints surrounding the rental properties. The concern is that without regulation, short term rentals change the character of the neighborhood, may result in property not being properly maintained, may cause excessive noise and traffic, and usually non-compliance with tax requirements. Originally, the Vice Mayor requested this ordinance but wanted to impose a total ban on short term rentals. After research, we determined that the Florida courts have over-turned such legislation.

The type of short term rental ordinances withstanding challenge to date impose limitations on short term rental properties by requiring the properties to register with the municipality, obtain applicable licenses, and comply with the local code. These limitations have also resulted in increased compliance with the local code including the resort tax requirements.

There have been and continue to be challenges to the short term rental ordinances claiming, among other things, a violation of property rights. Currently there are ongoing challenges in federal and state courts for a variety of concerns associated with short term rental ordinances. Ordinances have been overturned for failure to clearly define tenancies (*Milo v. City of Venice*), failure to have a valid grandfather clause (ongoing with *Gwynn v. City of Venice* case no. 2009 CA 17007 NC; Islamorada grandfather clause was valid but the ordinance permitted ongoing short term rentals with a registration process).

Below is a synopsis of relevant case law reflecting the courts determinations based upon various challenges which will explain how the Town derived the terms of its own proposed ordinance.

In *Rollison v. City of Key West*, 875 So.2d 659 (3d DCA 2004), the property owner challenged the City ordinance prohibiting short term rentals. The property owner claimed that the ordinance was not applicable because it was a lawful nonconforming use at the time of purchase, prior to the passing of the ordinance. The city claimed that the use was not a permitted use at the time of purchase and therefore the property owner was not “grandfathered in”. The Court held that the City’s administrative interpretation was in conflict with the stated policy at the time of purchase and the property owner complied with that stated policy and therefore it was a lawful non-conforming use.

In *Milo v. City of Venice*, No. 2008 CA 552 CA (Fla. 12th Cir. Ct. March 7, 2008) the City’s short term rental ordinance was invalidated because the permitted use “business” and “temporary residence” were not defined in the code. The Court held that the ordinance improperly relied on definitions in Florida Statutes that were not cross referenced and it was unreasonable to expect property owners to anticipate that interpretation.

The Village of Islamorada’s vacation rental ordinance has been upheld after two challenges. The vacation rental ordinance requires the annual registration of the rental property, a copy of all necessary occupational licenses (including applicable county and state licenses), an inspection report by the Fire Chief, the number of approved parking spaces and a contact person for the property. The ordinance places a limit on the number of licenses that will be issued annually and provides requirements that the property owner and renter must abide by and the penalties for violating the regulations. The determination of validity of the ordinances appear to be based upon the grandfather clause; The clause set forth requirements such as, in order for property owners to be eligible they had to prove they had filed monthly tax reports since 2001 and could not have registered the property for a homestead exemption. The Court held that requiring landlords to comply with requisite laws was not arbitrary or unreasonable and that the ordinance and the requirements were lawful.

The Miami Beach short term ordinance limits short term rentals in two historic districts within the City; it does permit grandfathering-in of a select number of properties that met stringent standards set forth by the city. The ordinance also clearly defined the tenancies (in *Milo* the ordinance was not upheld by the court, in part, for failing to

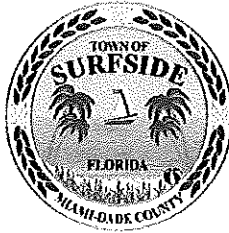
clearly define the tenancies). The Miami Beach ordinance was passed in June of 2010 and has not been challenged.

Currently, the city of Venice (subjected to several challenges-specifically *Gwynn v. City of Venice*) has suspended their short-term rule pending the outcome of ongoing litigation. The ordinance banned rentals for less than 30 days in residential neighborhoods. The ongoing *Gwynn* case seems to whether the ordinance can be applied to her because she was renting her property prior to ordinance being passed.

The most recent case that was decided was in July 2010; however no determination was made on the merits. *Neumont v. Monroe County* went before the 11th Circuit Court of Appeals, the property owners alleged a vacation rental ordinance was not properly adopted and the ordinance restricting vacation rentals was part of a regulatory effort to ban vacation rentals. The 11th Circuit held that the first claim re: properly adopting the ordinance was a question for the Florida Supreme Court and that the 2nd claim that the ordinance was in effect a taking in violation of their constitutional rights was not ripe.

An ordinance clearly defining the tenancies, that allows for grandfathering-in of properties, and which is not overly broad will likely meet the criteria that has been determined by case law. The challenges are on-going and additional criteria may yet be determined. The case law is obviously evolving but the proposed ordinance complies with the case law in effect at the time of the writing of this memorandum.

The proposed Surfside short-term rental ordinance would require the registration of the dwelling for each rental period (not to exceed three times in 12 months), for each property owner to obtain the applicable county and state occupational licenses and for the property owners and renters to comply with the Town Code and pay the required resort tax.



Town of Surfside Commission Communication

Agenda Item # 4A

Agenda Date: May 10, 2011.

Subject: Short Term Rental Of Single Family Dwellings, Two-Family Dwellings, Multi-Family Dwellings, and Townhomes / Prohibition Of Short Term Rentals Of Single Family Dwellings.

Background: Dwelling units rented for six months or less qualify as short term rentals as defined by the State. Surfside does not address the subject with a specific ordinance. However, there are a number of dwelling units on offer as short term (vacation) rentals. The number of units is difficult to assess as most of these units are rented through their respective owners, realtors and via various vacation rental websites. This type of accommodation is gaining in popularity with vacationers and has become an integral part of the tourism industry in many locations world-wide. These locations are also grappling with the issue of how to effectively manage short term rentals. Surfside, like many Florida locations, is attractive to "snow birds" who have historically rented on a short term basis over the winter months.

A first reading of a short term rentals ordinance was submitted to the Town Commission at the April 12, 2011 meeting. The ordinance was also passed the Planning & Zoning Board meeting on April 28, 2011 albeit with much discussion. This passed version, presented here for second reading, was submitted at that time based on the following information from Fausto Gomez, of Gomez Barker Associates, Inc., the Town's legislative consultant.

The State is attempting to preempt municipalities from regulating short term rentals under the following bills:

Senate Bill: CS/CS/SB 476: Public Lodging Establishments

GENERAL BILL by Judiciary; Regulated Industries; Evers

Public Lodging Establishments; Prohibits local governments from regulating vacation rentals based solely on their classification or use. Provides that public lodging establishments formerly classified as resort condominiums and resort dwellings are classified as vacation rentals. Provides additional penalties for the offense of unlawfully distributing handbills in a public lodging establishment, etc.

EFFECTIVE DATE: upon becoming a law

*House Bill: CS/CS/CS/HB 883: Public Lodging/Public Food Service Establishments
GENERAL BILL by Economic Affairs Committee; Government Operations Appropriations
Subcommittee; Business and Consumer Affairs Subcommittee; Homer
Public Lodging/Public Food Service Establishments; Excludes nonprofit organizations providing
certain housing from definition of "public lodging establishment"; prohibits local governments from
regulating, restricting, or prohibiting vacation rentals based solely on their classification, use, or
occupancy; revises authority preempted to state with regard to regulation of public lodging
establishments & public food service establishments; provides that public lodging establishments
formerly classified as resort condominiums & resort dwellings are classified as vacation rentals, etc.
EFFECTIVE DATE: upon becoming a law*

In other words, unless a town had its own legislation, no town will be able to prohibit or regulate short term rentals in the future.

It is widely viewed that the State will pass these bills in some form. However, if a municipality has an ordinance in place prior to June 1, 2011 it is also widely viewed that these ordinances will be grandfathered in by the State and the legislation will not apply. Thus the critical time line that is in effect for the Town's necessary response by June 1, 2011.

The primary difference in the two ordinance versions presented is that one version specifically prohibits short term rentals in the single family neighborhood (H-30 district). A requirement that the property owner have a Business tax receipt, and is in compliance with other laws, is in the version listed for first reading but does not appear in the version listed for second reading.

It is important to note that some condominium buildings presently allow for short term rentals in their condominium documents. Certain condominium units have been, and are presently, being sold with this condition as an incentive. The Town Attorney's cover memo (attachment A), included with the short term rentals ordinance presented to the Town Commission on April 12, 2011, outlines relevant case law that has limited the ability of municipalities to prohibit short term rentals. By adding a comprehensive set of restrictions (seen in both versions), the version passed on first reading, by not prohibiting short term rentals, should avoid litigation regarding landlords' rights to rent their property for six months or less.

Besides administrative requirements outlined in both versions of the ordinance, the following requirements listed in both versions are of particular importance and should be noted for their restrictive nature:

- Each property needs approval by the Town within six months of enacting of an ordinance to qualify.
- The owner must demonstrate a history of renting short term and that this income is the primary source of revenue from the property.
- The property must have been registered for Resort Tax submission with the Town as of May 10, 2011 (please note that none are registered to date).
- Proven Resort Tax taxable room revenue equal to at least fifty percent of total room revenue over the last two years covered by such payments.
- The property must have been registered with the State as a Transient accommodation as of May 10, 2011.
- Compliance to all other applicable laws including the filing of Business tax receipts. (Please note that this is only in the version that prohibits short term rentals in the H-30 District.)

Both ordinance versions view the preserving of the character and integrity of the Town and its residential neighborhoods as being of primary importance.

Analysis: Town Administration views this as a critical opportunity for the Town to avoid preemption by the State in this arena. By addressing one of the two options presented, the Town Commission will establish its role as the entity primarily responsible for the governance of this issue. Without any provision the decision will be made by the State which usually proves tantamount to no regulation at all.

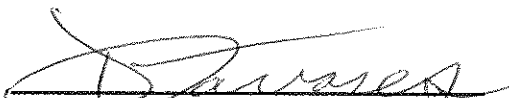
During the Planning & Zoning Board meeting of April 28, 2011, there was significant discussion regarding the section of the zoning code that prohibits commercial activity in the H-30 district. While the code does prohibit commercial activity there is a distinction between businesses such as a doctor's office, an accounting practice and/or prepared food production versus property owners exercising their rights to rent for six months or less. The Town Attorney will provide details on this distinction at the May 10, 2011 meeting.

Therefore there exists the necessity for an ordinance that clearly defines the Town's position and outlines the responsibilities of said property owners.

Budget Impact: Due to the restrictive registration requirements, there will be minimal, if any, additional revenue to the Town in the form of fees and Resort Tax.

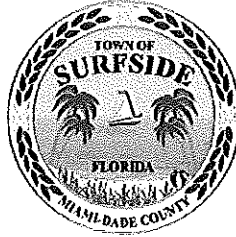
Staff Impact: Existing staff will be utilized to manage the process adopted as part of their required duties. The Building Department, especially Code Enforcement, will be required to address all violations.

Recommendation: Staff recommends that, in order to avoid preemption by the State regarding short term rentals governance, the Commission either ratifies, on second reading, the previously submitted version of the ordinance which allows short term rentals in the H-30 District or adopt, on first reading, the option that prohibits short term rentals in the H-30 District. If the later is adopted on first reading at the May 10, 2011 Town Commission Meeting, a Special Meeting of the Town Commission must be conducted before the June 1, 2011 State deadline for ratification on second reading.


Department Head


Town Manager

ATTACHMENT A



TOWN OF SURFSIDE
Office of the Town Attorney

MUNICIPAL BUILDING
9293 HARDING AVENUE
SURFSIDE, FLORIDA 33154-3009

Lynn M. Dannheisser
Town Attorney

Telephone: 305 993-1065

MEMORANDUM

TO: Town Commission

FROM: Lynn M. Dannheisser, Town Attorney

CC: Roger M. Carlton, Town Manager
Debra E. Eastman, M.M.C., Town Clerk

DATE: April 12, 2011

SUBJECT: Short Term Rental Ordinance

Recommendation: The Tourist Bureau recommends that the Commission adopt this Ordinance. The evolution of this ordinance is explained below.

Background and Explanation of Ordinance: Short term rental ordinances are increasingly being passed by local municipalities in response to complaints surrounding the rental properties. The concern is that without regulation, short term rentals change the character of the neighborhood, may result in property not being properly maintained, may cause excessive noise and traffic, and usually non-compliance with tax requirements. Originally, the Vice Mayor requested this ordinance but wanted to impose a total ban on short term rentals. After research, we determined that the Florida courts have over-turned such legislation.

The type of short term rental ordinances withstanding challenge to date impose limitations on short term rental properties by requiring the properties to register with the municipality, obtain applicable licenses, and comply with the local code. These limitations have also resulted in increased compliance with the local code including the resort tax requirements.

There have been and continue to be challenges to the short term rental ordinances claiming, among other things, a violation of property rights. Currently there are ongoing challenges in federal and state courts for a variety of concerns associated with short term rental ordinances.

Ordinances have been overturned for failure to clearly define tenancies (*Milo v. City of Venice*), failure to have a valid grandfather clause (ongoing with *Gwynn v. City of Venice* case no. 2009 CA 17007 NC; Islamorada grandfather clause was valid but the ordinance permitted ongoing short term rentals with a registration process).

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The proposed Surfside short-term rental ordinance would require the registration of the dwelling for each rental period (not to exceed three times in 12 months), for each property owner to obtain the applicable county and state occupational licenses and for the property owners and renters to comply with the Town Code and pay the required resort tax.

KEY BISCAZYNE

Council seeking to eliminate 'party houses'

■ Party houses — single-family homes rented out for overnight parties — have become a nuisance in some areas of Miami Beach, and Key Biscayne commissioners don't want their island to be next.

BY TANIA VALDEMORO LONGEST
tvaldemoro@miamiherald.com

The Key Biscayne Village Council is scrambling to come up with rules to limit so-called party houses in neighborhoods of single-family homes while allowing property owners to continue the practice renting their properties to tourists and part-year residents as short-term rentals.

But after two hours of discussion Tuesday, the question still remains: what exactly will Key Biscayne regulate?

Mayor Frank Caplan said the council is trying to beat a June 1 deadline, when two proposed bills in the Florida Legislature — House Bill 883 and Senate Bill 476 — will prevent local governments from imposing their own rules, if lawmakers pass both measures.

Both bills state, "A local law, ordinance, or regulation may not restrict the use of vacation rentals, prohibit vacation rentals, or regulate vacation rentals solely on their classification, use, or occupancy."

Currently, Key Biscayne does not regulate short-term rentals. But council members also said they did not want Tallahassee to restrict their legislative powers in the future.

At Tuesday's meeting, Caplan brought forth a draft ordinance that banned "vacation rental businesses," meaning a person or business that rents out their condo, coop, timeshare, single-family or multi-family home for less than 30 days.

During the meeting, the mayor said he did not think short-term vacation rentals were a problem and he wanted light regulation.

But his measure brought out a crowd of more than 30 people to Village Hall Tuesday in protest.

"I strongly object to this ordinance," said Patricia Romano, a resident and real estate broker. "Vacation rentals help

homeowners go through the bad times. The renters use the restaurants, go to the stores more than the people in the hotels do."

While the majority of people at Village Hall agreed with Romano's point of view, council members were riveted by the story from Eduardo and Mary Alfonso, who spoke in favor of regulation.

"The home across the street from us is used as a vacation rental," Eduardo Alfonso said. "The people who rent are people who come to have parties on Key Biscayne. ... It's quite an inconvenience for the residents who live in the area. I think most of us who moved here, moved to live here," he added.

In the end, the council decided to rewrite its ordinance and focus on short-term rentals in single family neighborhoods. Council member Michael Davey suggested the council not regulate short-term rentals in condos since condo boards set up their own rules.

Caplan suggested the new ordinance make clear that the rental in a single-family neighborhood be "consistent" with the residential character of the area. For example, he said, "No valet parking, no little buses bringing people hither and yon."

Council member Robert Gusman said his colleagues should consider capping the number of people allowed in the single-family home.

But the council could not agree on how long a short-term vacation rental would last. It will decide that next month. Other cities have defined the duration. Miami Beach defines short-term vacation rentals as six months and one day, said city spokeswoman Nannette Rodriguez.

Council member Enrique Garcia suggested the fewer rules the better.

"There are a lot of people who rent out their single-family homes. I like small government, but the point here is to protect ourselves from any future events," he said.

The council is expected to pass new rules on short-term vacation rentals at its May 24 meeting.

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF SURFSIDE, FLORIDA AMENDING ARTICLE IV “DISTRICT REGULATIONS” SECTION 90.41 “REGULATED USES” ADDING A NEW SECTION 90.41.1.5 ENTITLED “SHORT TERM RENTAL OF SINGLE FAMILY DWELLINGS, TWO-FAMILY DWELLINGS, MULTI-FAMILY DWELLINGS, AND TOWNHOMES” REQUIRING REGISTRATION OF SHORT TERM RENTALS IN RESIDENTIAL NEIGHBORHOODS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEALER; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Surfside is granted the authority, under its home rule power, to exercise any power for municipal purposes, except when expressed prohibited by law; and

WHEREAS, the maintenance of the character of residential neighborhoods is within the home rule power of the Town; and

WHEREAS, limitations on the rental of single family, two-family, multi-family, and townhouse dwellings serves a substantial governmental interest preserving the character and integrity of residential neighborhoods; and

WHEREAS, the Town of Surfside recognizes that the unregulated rental of single-family, two-family, multifamily, and townhouse dwelling units by seasonal residents uniquely impacts certain neighborhoods within the Town, therefore, it is necessary and in the interest of the public health, safety, and welfare to the monitor and provide reasonable means for citizens of the Town of Surfside to mitigate impacts created by such rental units within the Town as set forth in this Article.

WHEREAS, the Town seeks to maintain residential districts that promote the permanent residency of families; and

WHEREAS, the Town Commission hereby finds this Ordinance necessary to protect the public welfare.

WHEREAS, the Planning and Zoning Board, as the local planning agency for the Town, has held public hearing on April 28, 2011 and recommended approval of the proposed amendments to the Code of Ordinances and also found the proposed Code amendments to be consistent with the Comprehensive Plan; and

WHEREAS, the Town Commission shall have conducted a duly noticed public hearing on these regulations as required by law on April 12, 2011 and May 10, 2011 having complied with the notice requirements required by Florida Statutes; and

WHEREAS, after due public notice, and having received input and participation by interested members of the public and staff, and having considered the Town of Surfside Planning & Zoning Board's recommendation, the Town Commission found the proposed Code changes to be consistent with the Comprehensive Plan, finds the proposed change to the Code necessary and in the best interest of the community.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The foregoing "WHEREAS" clauses are ratified and confirmed as being true and correct and are made a specific part of this Ordinance.

Section 2. Code Amended. The Town Code is hereby amended by adding a new Section 90.41.1.5 entitled "SHORT TERM RENTAL OF SINGLE FAMILY DWELLINGS,

TWO-FAMILY DWELLINGS, MULTI-FAMILY DWELLINGS, AND TOWNHOMES” which shall read as follows:

Sec.90.41.1.5 SHORT TERM RENTAL OF SINGLE FAMILY DWELLINGS, TWO-FAMILY DWELLINGS, MULTI-FAMILY DWELLINGS, AND TOWNHOMES.

A. Definitions and Registration:

1. Intent. The Town of Surfside recognizes that the unregulated rental of single family, two-family, multi-family, and townhome dwelling units by seasonal residents uniquely impacts certain neighborhoods within the Town of Surfside. Therefore, it is necessary and in the interest of the public health, safety, and welfare to the monitor and provide reasonable means for citizens of the Town of Surfside to mitigate impacts created by such rental of such dwelling units within the Town of Surfside as set forth in this Article.
2. Definitions. For the purpose of this Section, the following terms, phrases, words, abbreviations and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number.

“Owner” shall mean the person whom is vested ownership, dominion, or title of property.

“Responsible Party” shall mean the owner or the person designated by the owner of the property to be called upon to answer for the maintenance of the property and the conduct and acts of seasonal residents of single family, two-family, multi-family, and/or townhome dwelling units.

“Seasonal resident” shall mean guests, tourists, lessees, vacationers, or others who lease a single family, two-family, multi-family, and townhouse dwelling unit for valuable consideration for a period of time between one (1) day to no more than six (6) months.

“Short term rental” shall mean any occupancy of a single family, two-family, multi-family, and townhouse dwelling unit for a period of time between one (1) day to no more than six (6) months provided however the terms of this short term rental ordinance shall not apply to film and print productions and use of the aforementioned premises for those purposes.

3. Registration Required. It shall be unlawful for any person to allow another person to occupy any single family, two-family, multi-family, and townhouse dwelling unit as a seasonal resident within the Town of Surfside, or offer such rental services within the Town of Surfside, unless the person has been registered with the Town of Surfside in

accordance with provisions of this Section. A registration is required for each rental period for which the single family, two-family, multi-family, and/or townhouse dwelling unit is rented. No more than three (3) registrations shall be issued within a twelve (12) month period. Every person required to procure a registration under this Section shall submit a formal application to the Town Manager or designee.

4. Application for Registration. Applications for registration shall set forth and/or include at a minimum:

- a.)Address, lot, block and subdivision name of single family, two-family, multi-family, and townhouse dwelling unit offered for rental;
- b.)Name, address, and phone number of owner of said single family, two-family, multi-family, and/or townhouse dwelling unit;
- c.)Name, address, and emergency contact phone number of responsible party for said single family, two-family, multi-family, and townhouse dwelling unit, which shall be a twenty-four-hour, seven (7) days a week contact number;
- d.)That the phone number for the responsible party will be answered twenty-four (24) hours a day, seven (7) days a week by a party with authority to address or coordinate problems associated with the single family, two-family, multi-family, and townhouse dwelling unit;
- e.)Acknowledgements by owner of the following:

- i. That all vehicles must be parked in the driveway of the single family, two-family, multi-family, and townhouse dwelling unit and clear of all grassy areas and sidewalk sections pursuant to Town of Surfside Code of Ordinances;
- ii. That it shall be unlawful to allow or make any noise or sound which exceed the limits set forth in the Town's Noise Ordinance;
- iii. That no garbage container shall be located at the curb for pickup before 12:00 pm of the day prior to pickup, and garbage container shall be removed before midnight of the day of pickup;
- iv. That whoever, without being authorized, licensed, or invited, willfully enters or remains in any structure or conveyance of a single family, two-family, multi-family, and townhouse dwelling unit, or, having authorized, licensed, or invited is warned by the owner or lessee, to depart the unit and refuses to do so, commits the offense of trespass in a structure or conveyance;

b) Proof of owner's current ownership of the single family, two-family, multi-family, and townhouse dwelling unit.

g) Issuance or Refusal of Registration. The Town Manager or his designee shall issue a registration to the applicant upon proof of the following:

- i. The owner and/or responsible party completes the Town of Surfside registration application form; and
- ii. The registration fee has been paid to the Town of Surfside; and

iii. Incomplete registration applications are unacceptable and requested registration shall not issue.

h.) Registration not transferable. No registration issued under this article shall be transferred or assigned or used by any person other than the one to whom it is issued, or at any location other than the one for which it is issued.

i.) Expiration of Registration. All registration issued under the provisions of this article shall be valid for the rental period requested in the application.

j.) Complaints. Whenever a violation of this article occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint, stating fully the causes and basis thereof, shall be filed with the Town Manager or his designee.

B. Fees for Registration. The Town of Surfside is authorized and shall charge a fee for registration to compensate for administrative expenses. The fees for registration shall be set forth in a resolution adopted by the Commission of the Town of Surfside, and may be amended from time to time

C. Resort Tax and Enforcement

1. Payment of Resort Tax required. Owners are subject to payment of the resort taxes as establish by the laws of the Town of Surfside.

2. Violations of this section:

a) are subject to the following fines. The special master may not waiver or reduce fines set by this ordinance.

(i) First violation: \$500

(ii) Second violation within the preceding twelve (12) months: \$1500

(iii) Third violation within the preceding twelve (12) months: \$ 5000

(iv) Fourth or greater violation within the preceding twelve (12) months: \$ 7500

b) In addition to or in lieu of the foregoing, the Town may seek injunctive relief

c) Any code compliance officer may issue notices for violations of this ordinance, with enforcement of section 90.41.1.5 and alternative enforcement of section 90.41.1.5 as provided in Chapter 90 of this Code. Violations shall be issued to the owner, manager, real estate broker or agent, or authorized agent, or any other individual or entity that participates in or facilitates the violation of this section. In the event the record owner of the property is not present when the violation occurred or notice of violation issued, a copy of the violation shall be served by certified mail on the owner at its mailing address in the property appraiser's records and a courtesy notice to the contact person identified in subsection (4)(c) above.

D. Previously Existing Short Term Rentals.

1. For a period of six (6) months after the effective date of this ordinance, owners of certain properties shall be eligible to apply for approval of registration permitting short term rental of residential units for these properties under the requirements and provisions set

forth below. Properties that are eligible are those that can demonstrate a current and consistent history of short-term renting, and that such short-term rentals are the primary source of income derived from that unit or building, as defined by the requirements listed below.

- a. In order to demonstrate current, consistent and predominant short-term renting, the property must comply with all of the following:
 - i. have been registered with the Town for the payment of Resort Tax and made resort tax payments as of November 10, 2011; and
 - ii. have had Town of Surfside Resort Tax taxable room revenue equal to at least 50% of total room revenue over the last two-year period covered by such payments; and
 - iii. have been registered with the State of Florida as a Transient Apartment, Resort Dwelling, or Resort Condominium pursuant to Chapter 509, Florida Statutes, as of November 10, 2011.

Section 3. Inclusion in the Code. It is the intention of the Commission, and it is hereby ordained that this Ordinance shall become and be made a part of the Town of Surfside Code; that the sections of this Ordinance may be renumbered or relettered to accomplish such intention; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 4. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. Conflicts. Any and all Ordinances and Resolutions or parts of Ordinances or Resolutions in conflict herewith are hereby repealed.

Section 6. Effective Date. This ordinance shall become effective upon passage.

PASSED and ADOPTED on first reading this 12th day of April, 2011.

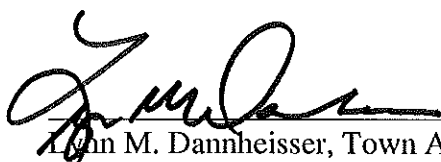
PASSED and ADOPTED on second reading this 10th day of May, 2011.

Daniel Dietch, Mayor

Attest:

Debra E. Eastman, MMC
Town Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**



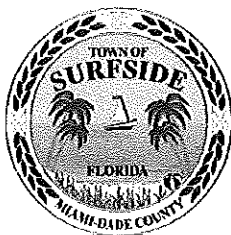
Lynn M. Dannheisser, Town Attorney

On First Reading Moved by: _____

On Second Reading Seconded by: _____

Vote:

Mayor Dietch	yes_____	no_____
Vice Mayor Graubart	yes_____	no_____
Commissioner Karukin	yes_____	no_____
Commissioner Kopelman	yes_____	no_____
Commissioner Olchyk	yes_____	no_____



Town of Surfside Commission Communication

Agenda Item # 4B1

Agenda Date: May 10, 2011.

Subject: Amending the Chapter 70 Article IV "Resort Tax" Ordinance.

Background: Currently Surfside is one of only three municipalities in Miami-Dade County eligible by Florida State Law Chapter 67-930 Municipal Resort Tax (attachment 1) to impose a Resort Tax of four percent (4%) on accommodations and two percent (2%) on food and beverage sales as a source of revenue. Miami Beach and Bal Harbour are the other two municipalities with the same capability. This unique revenue generating opportunity is also defined in the Town's Charter in Sec, 69-A. Resort Tax (attachment 2).

The Chapter 70 Article IV Resort Tax (Sec. 70-106 to 70-111) governing the collection and use of this tax is from 1960. Other municipalities have revised their ordinances since the tax's inception. Some of the existing language in Article IV is no longer applicable to the Town in the 21st Century.

The ordinance also lacks information on the governance of the Tourist Bureau portion of the Resort Tax Fund by the Tourist Board. The Board represents the Commission, and has oversight on how the resort tax portion, assigned to the Tourist Bureau's budget, is utilized. However, clearly defined roles and responsibilities for the Board members do not presently exist.

To facilitate collection of the tax, businesses submit a monthly Resort Tax Report with their tax payment (attachment 3). The report does not require supporting documentation and a procedure for auditing the submissions does not exist. Therefore, the tax submissions are done on an honorary basis. Notifications of past due resort tax submissions are sent to the applicable businesses. This has proven to be an effective means in securing outstanding (honorary) payments to date however there is no course of action if compliance is not achieved or if a business fails. There also lacks a procedure for accommodating any possible tax submission disputes for the Town or applicable businesses.

Analysis:

The proposed amendments address the following areas that were lacking in the original ordinance:

- Provides definitions of terms used throughout the ordinance to avoid any potential confusion.
- Authorizes the taxation of beer, malt and refrigerated beverages, as well as take-out, bringing the ordinance in line with amendments to the State Statute since 1960.
- The responsibility of the applicable businesses to collect and remit the tax is addressed.
- Provisions for enforcing compliance, a delinquency penalty schedule, and the creation of a means for the settling of disputes is provided.
- Requirements to provide sufficient documentation with the tax submittal are defined.
- Identifying the creation of a special fund for all Resort Tax receipts brings the ordinance in line with the Town's Charter and complies with the State's statute. The capability of the Town to use a portion of the fund for Town purposes is not diminished.
- Identifying that a minimum of thirty four percent of the Resort Tax collected becomes the Tourist Bureau's budget aligns this amended ordinance with the traditional amount outlined in the original ordinance (attachment 4).
- By simplifying and stating that the Tourist Bureau's use of a portion of the fund becomes part of the Town's annual budgetary process codifies a process that has traditionally been fulfilled.
- Defining the roles and responsibilities of the Tourist Board and its relationship to the Town Commission and applicable staff will, in the event of ambiguities, be of benefit in the future.


Recommendations from the previous and present Tourist Boards, developed during three publicly noticed Tourist Board meetings and a dedicated workshop focused on the Chapter 70 Article IV "Resort Tax" Ordinance, conducted over the last year, are included in these recommended amendments. Besides the existing ordinance, the Board reviewed the Florida Statute and the Town's Charter as well as those ordinances pertaining to Resort Tax from Miami Beach and Bal Harbour. These recommendations were reviewed by the Town Manager and Town Attorney who also included recommendations in this proposal.


Budget Impact: The revision of the ordinance to include beer, malt and refrigerated beverages, as well as take-out, as taxable items will result in an immediate increase to the amount of Resort Tax collected from applicable businesses and, therefore, an increase to the revenue stream for the Town. A potential benefit of codifying requirements for Resort Tax submission documentation from applicable businesses is the creation of a system of checks and balances to assist in the verification that the proper amount of tax is being submitted to the Town. With such regulatory requirements it is appropriate to establish an appeal procedure which is included in the ordinance recommendations.

Increasing Resort Tax revenue is in line with the direction given by the Town Commission during the workshop on the Five Year Financial Plan. The increased revenue total, estimated to be \$382,000 in FY 2011/12, will help achieve the goal of diversifying the Town's revenue sources for less reliance on property taxes.

Staff Impact: Existing staff resources will be utilized to facilitate these changes. Audit capacity will be provided by outside consultants at a limited cost.

Recommendation: Staff recommends that the Town Commission approve these amendments to the Chapter 70 Article IV "Resort Tax" Ordinance.


Department Head


Town Manager

Municipal Resort Tax

Chapter 67-930, Laws of Florida,

As amended by Chapters 82-142, 83-363, 93-286, and 94-344, Laws of Florida

Brief Overview

The Municipal Resort Tax may be levied at a rate of up to 4 percent on transient rental transactions, and up to 2 percent on the sale of food and beverages consumed in restaurants and bars in certain municipalities whose respective county population fell within specified limits based on the 1960 Census and whose municipal charter specifically provided for the levy of this tax prior to January 1, 1968. The tax levy must be adopted by an ordinance approved by the governing body. Revenues can be used for tourism promotion activities, capital construction and maintenance of convention and cultural facilities, and relief of ad valorem taxes used for those purposes.

General Law Amendments

There were no general law amendments resulting from the 2010 Regular Legislative Session.

Authorization to Levy

Municipalities in counties having a population of not less than 330,000 and not more than 340,000 (i.e., Broward County) and in counties having a population of more than 900,000 (i.e., Miami-Dade County), according to the 1960 decennial census, whose charter specifically provided or whose charter was so amended prior to January 1, 1968, for the levy of this exact tax, are eligible to impose it by ordinance adopted by the governing body. The tax shall be levied upon the rent of every occupancy of a room or rooms in any hotel, motel, apartment house, rooming house, tourist or trailer camp, as the same are defined in part I of ch. 212, F.S., and upon the retail sale price of all items of food or beverages sold at retail, and of alcoholic beverages sold at retail for consumption on the premises at any place of business required by law to be licensed by the state hotel and restaurant commission or by the state beverage department. However, the tax shall not apply to those sales the amount of which is less than 50 cents nor to sales of food or beverages delivered to a person's home under a contract providing for deliveries on a regular schedule when the price of each meal is less than \$10.

Municipalities Eligible to Levy

Currently, only three municipalities in Miami-Dade County (i.e., Bal Harbour, Miami Beach, and Surfside) are eligible to impose the tax. According to the Department of Revenue (DOR), all three municipalities are imposing the tax at the following rates: 4 percent of transient rental transactions and 2 percent on the sale of food and beverages.

Administrative Procedures

It is the duty of every person renting a room or rooms and every person selling at retail food or beverages or alcoholic beverages for consumption on the premises to act as the collection agent. Every such person must collect, report, and pay over to the municipality all such taxes imposed, levied, and collected, in accordance with the accounting and other provisions of the enacted ordinance. Any municipality collecting the tax shall have the same duties and privileges as the DOR under part I of ch. 212, F.S., and may use any power granted to the DOR under this part, including enforcement and collection procedures and penalties, which shall be binding upon all persons and entities that are subject to the tax. Additionally, municipalities responsible for administering the tax shall participate in the Registration Information Sharing and Exchange (RISE) Program and share tax administration information as prescribed by the DOR.¹

Distribution of Proceeds

The governing body may authorize by ordinance the creation of an authority or commission empowered to contract and be contracted with its own name as an agency of the municipality to expend such portion of the proceeds of this tax as the body may determine appropriate.

Authorized Uses of Proceeds

The tax proceeds shall only be used for the creation and maintenance of convention and publicity bureaus; development and maintenance of art and cultural centers; enhancement of tourism; publicity and advertising; construction, operation, and maintenance of auditoriums, community centers, and convention structures; or relief from ad valorem taxes being used for any of these other purposes.

Relevant Attorney General Opinions

No opinions specifically relevant to this tax have been issued.

1. Section 213.0535, F.S.

ATTACHMENT 2

Charter references: Resort tax, § 69-A.

Sec. 69-A. Resort tax.

The Town of Surfside shall have the right, pursuant to the provisions of Laws of Fla. ch. 67-930, as amended by Laws of Fla. ch. 83-363, to impose, levy and collect a municipal resort tax, not to exceed four per cent (4%) upon the rent of rooms in any hotel, motel, apartment house, rooming house, tourist or trailer camp as same are defined in F.S. ch. 212, and not to exceed two per cent (2%) upon the retail sale of all items of food, beverages and alcoholic beverages, other than beer or malt beverages, sold at retail for consumption on the premises, provided that the tax shall not apply to sales which are less than fifty cents (50¢). The total receipts from the above tax levy shall be kept and maintained in a separate fund and shall in no event be transferred to the general fund. Said fund shall be used for the following purposes only: payment of necessary expenses of collecting, handling and processing of said tax; creating and maintenance of convention and publicity bureaus, cultural and art centers; enhancement of tourism; publicity and advertising purposes; for the future cost, purchase, building, designing, engineering, planning, repairing, reconditioning, altering, expanding, maintaining, servicing and otherwise operating auditoriums, community houses, convention halls, convention buildings or other structures; and other related purposes, including relief from ad valorem taxes heretofore levied for such purposes.

(Res. No. 677, § 1, 10-12-67; Ord. No. 1285, § 1, 8-11-92)

ATTACHMENT 3

This return should be prepared on a typewriter or filled out legibly with blue ink only. Make all remittances payable by check or money order to Town of Surfside.

ORIGINAL – IMPORTANT

This return must reach the Town of Surfside before the last day of the preceding month for which the tax is due to avoid penalty and loss of 2% commission.

OPERATOR MUST FILE RETURN EVEN THOUGH NO TAX IS DUE.



TOWN OF SURFSIDE
 9293 Harding Avenue
 Surfside, Florida 33154

Be Sure!

1. Form is filled out completely.
2. Month covered is correct.
3. Remittance is attached and signed.

RESORT TAX REPORT
4% ROOMS
2% FOOD AND BEVERAGES

If you close or sell your business, or if you change your business location, please immediately notify the Town of Surfside Resort Tax Department in writing.

COLUMNS	1	2
Enter figures for items below in appropriate column at right	Sales	Taxes
A. Gross food and beverage receipts		
B. Exempt Sales		
C. Taxable food and beverage sales (lines A-B)		
D. Gross rental receipts		
E. Exempt Sales		
F. Taxable rental sales (lines D-E)		
G. Total Taxes Collected (lines C+F)		
H. Deduct 2% of line G as your commission if this return is filed on time		
I. Debit or credit memos issued by Town of Surfside		
J. Total amount due (lines G-H plus or minus I) if this return is filed on time pay this amount to Town of Surfside		
K. Add 10% of line G as your original month of delinquency, add additional 10% of line G as your continued month of delinquency if this return is <u>not filed on time</u>		
L. Add ½% of line G and multiply by number of months of delinquency if this return is <u>not filed on time</u>		
M. Total amount due (lines G+K+L plus or minus I) if this return is <u>not filed on time</u> pay this amount to Town of Surfside		

I hereby certify that this return has been examined by me and to the best of my knowledge and belief is a true, correct and complete return.

_____ Date

_____ Signature of Operator

RESORT TAX – INSTRUCTIONS

IMPORTANT:

Operator must file return even though no tax is due.

Line A, Column 1 – Enter gross sales of all food and alcoholic beverages (except beer and malt products) consumed on premises.

Line B, Column 1 – Enter all sales of food and alcoholic beverages exempt from resort tax (carry-outs).

Line C, Column 1 – Subtract Line B from Line A

Line C, Column 2 – Enter 2% of Line C, Column A

Line D, Column 1 – Enter total rent collected in any Hotel, Motel, Apartment, Rooming House, Condominium or Boarding House.

Line E, Column 1 – Enter total rent paid for 6 months periods or longer.

Line F, Column 1 – Subtract Line E from Line D.

Line F, Column 2 – Enter 4% of Line F, Column 1.

Line G, Column 2 – Add Line C, Column 2 and Line F, Column 2.

Line H, Column 2 – Enter 2% of Line G, Column 2 if your return is filed on time.

Line I, Column 2 – Enter any debit or credit memos issued by the Town of Surfside.

Line J, Column 2 – Line G, Column 2, minus Line H, Column 2 plus or minus Line I, Column 2 if this return is filed on time.

Line K, Column 2 – Add 10% of Line G, Column 2 as your original month of delinquency, add an additional 10% of Line G, Column 2 as your continued month of delinquency if this return is not filed on time.

Line L, Column 2 – Add ½% of Line G, Column 2 and multiply by number of months of delinquency if this return is not filed on time.

Line M, Column 2 – Line G, Column 2, plus Line K, Column 2, plus Line L, Column 2 plus or minus Line I, Column 2 if this return is not filed on time.

CAUTION: Always put into the proper columns the figures relating to the type of items applying to or covered specifically by the particular column.

RESORT TAX – GENERAL INFORMATION

- I. EFFECTIVE DATE OF LAW – October 2, 1992
- II. ITEMS SUBJECT TO TAX – Certain rent from occupancy of a room or rooms in any hotel, motel, apartment house, rooming house, or condominium and on retail sale price of food, beverages and alcoholic beverages, other than beer or malt beverages, sold at retail for consumption on premises.
- III. RATE OF TAX – Four percent (4%) on all rentals and two percent (2%) on all other sales described in (II) except for certain exempt sales set forth in (IV).
- IV. EXEMPT SALES –
 1. Any person who shall reside continuously longer than six months at any one hotel, condominium, apartment house or rooming house, and shall have paid the tax levied by this section for six months of residence in any one hotel, condominium, rooming house or apartment house.
 2. Any Federal, State, county or municipal government or agency thereof.
 3. Nonprofit religious, educational or charitable corporations or institutions when engaged in religious, educational or charitable activities within the purview of their nonprofit or charitable purposes.
 4. Transactions involving less than fifty cents (.50c).
 5. Any person who is or becomes an occupant under a written lease for a period of more than twelve consecutive months in any apartment, condominium, motel or hotel in the Town of Surfside.
- V. OPERATOR'S COMMISSION – Each operator shall deduct two percent (2%) of the amount of tax collected and/or due providing that the amount of tax collected and/or due is remitted to the Town Manager, Town of Surfside, on or before the last day of the month following the close of each calendar month.
- VI. REMITTANCE TO TOWN OF SURFSIDE – All resort taxes collected and/or due shall be remitted to the Town of Surfside Resort Tax Department, along with the original copy of the reporting form on or before the last day of the month following the close of each calendar month. Please make the check or money order payable to "Town of Surfside".
- VII. PENALTIES – That any person, person, firm or corporation violating any of the provisions of this ordinance shall, upon conviction thereof, be punished by a fine not to exceed \$1,000, or by imprisonment not to exceed ninety (90) days, or both such fine and imprisonment in the discretion of the Dade County Court. Each day that a violation is permitted to exist shall constitute a separate offense.

Additional penalties will be levied for late payment, fraud, and interest charges for delinquency.

OPERATOR'S COPY

Please keep for your records



TOWN OF SURFSIDE
 9293 Harding Avenue
 Surfside, Florida 33154

RESORT TAX REPORT
4% ROOMS
2% FOOD AND BEVERAGES

If you close or sell your business, or if you change your business location, please immediately notify the Town of Surfside Resort Tax Department in writing.

COLUMNS	1	2
Enter figures for items below in appropriate column at right	Sales	Taxes
A. Gross food and beverage receipts		
B. Exempt Sales		
C. Taxable food and beverage sales (lines A-B)		
D. Gross rental receipts		
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F. Taxable rental sales (lines D-E)		
G. Total Taxes Collected (lines C+F)		
H. Deduct 2% of line G as your commission if this return is filed on time		
I. Debit or credit memos issued by Town of Surfside		
J. Total amount due (lines G-H plus or minus I) if this return is filed on time pay this amount to Town of Surfside		
K. Add 10% of line G as your original month of delinquency, add additional 10% of line G as your continued month of delinquency if this return is <u>not filed on time</u>		
L. Add ½% of line G and multiply by number of months of delinquency if this return is <u>not filed on time</u>		
M. Total amount due (lines G+K+L plus or minus I) if this return is <u>not filed on time</u> pay this amount to Town of Surfside		

I hereby certify that this return has been examined by me and to the best of my knowledge and belief is a true, correct and complete return.

 Date

 Signature of Operator

Resort Tax Allocation According To Existing Ordinance

Food & Beverage: 2 %

45% to Tourist Bureau

5% to Town Facilities

50% to Town Facilities

Rooms: 4%

5% to Tax Collection

25% to Town Facilities

50% to Community Center & Tourism Facilities

The Breakdown By Fiscal Year

Note that the Tourist Bureau receives just over one third of the Resort Tax collected as the departments' annual budget.

2007/2008:

Total Resort Tax: \$391, 597.88

Tourist Bureau Portion: \$133, 933.71 (34%)

2008/2009:

Total Resort Tax: \$371, 221.08

Tourist Bureau Portion: \$130, 267.29 (35%)

2009/2010:

Total Resort Tax: \$388, 526.56

Tourist Bureau Portion: \$133,338.17 (34%)

ORDINANCE NO. 11- _____

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING CHAPTER 70 AND SPECIFICALLY ARTICLE IV "RESORT TAX" DIVISION 1 "RESORT TAX" AND DIVISION 2 "RESORT TAX BOARD" SPECIFICALLY AMENDING SECTIONS 70-106 THROUGH 70-111; AND CREATING SECTIONS 70-112 THROUGH 70-127, OF THE TOWN OF SURFSIDE CODE OF ORDINANCES PROVIDING FOR INCLUSION IN THE CODE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Town of Surfside ("Town") proposes to amend its Code of Ordinances to amend guidelines for imposition and collection of the resort tax and to create a Resort Tax committee.

WHEREAS, The Town Commission held its first public reading on April 12, 2011 and recommended approval of the proposed amendments to the Code of Ordinances having complied with the notice requirements by the Florida Statutes; and

WHEREAS, The Town Commission has conducted a second duly noticed public hearing on these regulations as required by law on May 10, 2011 and further finds the proposed change to the Code necessary and in the best interest of the community.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA as follows:

Section 1. Recitals. The foregoing "WHEREAS" clauses are ratified and confirmed as being true and correct and are made a specific part of this Ordinance.

Section 2. Code Amendment. The code of the Town of Surfside, Florida is hereby amended as follows:

Ordinance No. _____

ARTICLE IV. RESORT TAX*

*Charter references: Resort tax, § 69-A.

DIVISION 1. Resort Tax.

Sec. 70-106. Tax imposed. Short title of article.

~~In addition to all other taxes of every kind imposed by law there is hereby imposed and levied a resort tax of four percent upon the rent of rooms in any hotel, motel or apartment house, as same are defined in F.S. ch. 212, and two percent upon the retail sale of all items of food, beverages and alcoholic beverages, other than beer or malt beverages, sold at retail for consumption on the premises of any place of business required by law to be licensed by the state division of hotels and restaurants or by the state division of alcoholic beverages and tobacco, provided that the tax shall not apply to sales which are less than \$0.50. Nothing contained in this section shall be construed to impose a tax upon, or be applicable to, the unexpired term of any bona fide written lease in effect prior to the effective date of the ordinance from which this article was derived, or any renewal thereof within the same hotel, motel or apartment house, which is otherwise exempt pursuant to subsection 70-110(5). This article shall be known as the Surfside Resort Tax Ordinance.~~

Sec. 70-107. ~~Payment and collection.~~ Definitions.

~~The resort tax imposed under this article shall be collected from the person paying the rent and the person purchasing food, beverages and alcoholic beverages for consumption on the premises. It shall be the duty of every person renting a room or rooms, and every person selling at retail for consumption on the premises, food, beverages and alcoholic beverages, other than beer or malt beverages, in acting as the tax collection medium or agency of the town, to collect from the person paying the rent or the retail sales price, for the use of the town, the tax imposed and levied under section 70-106.~~

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Apartment House means any building or part thereof where separate accommodations for two or more families living independently of each other are supplied to transient or permanent Guests or tenants either owned or operated by an individual, trust, or corporate entity. The term "apartment house" shall include houses, condominium, bungalow courts, timeshare rentals, and all other dwellings or similar character.

Appeal is the process for requesting a formal change to an official decision.

Audit means an examination and verification of accounting records and supporting documents.

False or Fraudulent Return means a return that is filed with incorrect and/or incomplete information.

Guest means any person making a retail purchase of (a) food or beverages; or (b) alcoholic beverages sold at retail for consumption on the premises, at any Restaurant or other business premises required by law to be licensed by the State Hotel and Restaurant Commission or by the State Beverage Department.

Hotel and Motel mean every building or other structure kept, used, maintained, advertised as or held out to the public to be a place where sleeping accommodations are supplied for pay to transient or permanent Guests or tenants, whether or not there is, in connection with any of the

Ordinance No. _____

building, any dining room, cafe or other place where meals or lunches are sold or served to Guests.

Lawful means obeying or conforming to the law.

Occupancy means the use or possession or the right to the use or possession of any Room in a Hotel, Motel or Apartment House, or the right to the use or possession of the furnishings or to the services and accommodations accompanying the use and possession of such Room.

Occupant means a person who, for a consideration, uses, possesses or has the right to use or possess any Room in a Hotel, Motel or Apartment House under any lease, concession, permit, right of access, license to use or other agreement, or otherwise.

Operator means any person operating a Hotel, Motel, Apartment House or any person operating a Restaurant or other premises serving or selling at retail food or beverages, and of alcoholic beverages sold at retail for consumption on the premises, at any place of business required by law to be licensed by the State Hotel and Restaurant Commission or by the State Beverage Department in the Town, including but not limited to the Owner or Proprietor of such premises, the lessee, sublessee or mortgagee in possession, the licensee, or any other person otherwise operating such Hotel, Motel, Apartment House, Restaurant or other premises.

Person means an individual, partnership, society, association, joint stock company, corporation, estate receiver, trustee, assignee, referee or any other Person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals.

Rent means the consideration received for Occupancy, valued in money, whether received in money or otherwise, including all receipts, cash, credits and Property or services of any kind or nature, and also any amount for which credit is allowed by the Operator to the Occupant, without any deduction therefrom whatsoever.

Restaurant means any business or place for the serving of food or beverages required by law to be licensed by the Hotel and Restaurant Commission of the State, or any premises required by law to be licensed by the State Beverage Department for the sale of alcoholic beverages.

Return means any return filed or required to be filed as provided in this article.

Room means any room of any kind in any part or portion of a Hotel, Motel or Apartment House, which is available for or let out for use or possession for any purpose other than as a place of public assembly.

Sales Price means the retail sales price charged by the Operator to a Guest, consumer or any other Person for each sale of food or beverages sold at retail, and of alcoholic beverages sold at retail for consumption on the premises.

Special master or special magistrate means a person appointed pursuant to this chapter.

Take Out means consumption away from and/or within the environs of the business.

Town Manager means the Town Manager of the Town or designee.

Unlawful means not obeying and not conforming to the law.

Sec. 70-108. Tax returns; due date; forms, etc. Violations of article generally

~~It shall be the duty of each person acting as the tax collection medium or agency of the town, as described in section 70-106, to make a return to the town manager on or before the last day of the month following the close of each calendar month, on forms provided by the town manager, of the total nonexempt rents or sales prices charged and received together with the amount of tax collected. Payment of the amount collected must accompany each report. All taxes collected by a~~

~~tax collection medium or agency shall be held in trust for the account of the town until actual payment thereof has been made to and receipted for by the town manager.~~

~~(a) Any Operator or other Person who fails or refuses to register as required in this article or to furnish any Return required to be made, or who fails or refuses to furnish a supplemental Return or other data required by the Town Manager, or who renders a false or fraudulent Return or claim shall be guilty of a violation of this article and shall be punishable as provided in section 1-8.~~

~~(b) Any Person required to make, render, sign or verify any report or claim who makes any false or fraudulent report or claim with intent to defeat or evade the determination of any amount due required by this article shall be guilty of a violation of this article and shall be punishable as provided in section 1-8.~~

~~(c) In addition to the foregoing the Town, in its sole discretion, may revoke all other licenses including, but not limited to, Certificate of Occupancy, Certificate of Use, and such other licenses as permitted by law.~~

Sec. 70-109. Use of tax revenue. ~~Imposition; amount.~~

~~(a) Any and all funds received under and by virtue of the resort tax imposed by this article shall be used for no other purpose than as follows:~~

~~(1) *Tax collection expense.* Payment of necessary expenses of collecting, handling and processing of such tax.~~

~~(2) *Promotion of town.* For publicity, advertising, promotional events and tourist and convention bureau activities, including at least one annual publication listing all hotels, motels, apartment houses, business and community facilities with an outline of their accommodations, the information of which will be beneficial and necessary for the promotion of tourism.~~

~~(3) *Town facilities.* Any monies not expended for the items set forth above in subsections (1) and (2) of this subsection (a) shall be used for capital improvements and maintenance of the town's facilities, limited only to the community center, prevention of beach erosion and the enlarging, care, maintenance and beautification of the town's public beaches, all of the foregoing being necessary adjuncts to the promotion of tourism in the town.~~

~~(4) *Allocation.* In order to facilitate budget procedures and enunciate commission policy, the funds received shall be allocated and used in the following percentages:~~

~~a. Five percent of total resort tax for tax collection expense.~~

~~b. Forty five percent of resort tax attributable to retail sales and two percent on room rentals for promotion of town.~~

~~c. Fifty percent of resort tax attributable to retail sales and two percent on room rentals for town facilities.~~

~~d. One hundred percent of resort tax attributable to two percent on room rentals for community center and tourism related facilities.~~

~~(b) Anything in this section to the contrary notwithstanding, ultimate and final decision for appropriation of funds in the resort tax budget shall remain with the town commission for implementation upon adoption of the town budget.~~

~~(c) If the resort tax proceeds in any fiscal year exceed or are less than the budgeted amount, expenditures in the above three categories shall be adjusted proportionately in that fiscal year.~~

Ordinance No. _____

(a) There is hereby levied and there shall be paid a tax of four percent (4%) on the Rent of every Occupancy of a Room in any Hotel, Motel or Apartment House in the Town, and also two percent (2%) upon the total Sales Price of all items of food or beverages sold at retail and of alcoholic beverages, including all refrigerated beverages, sold at retail for consumption on the premises or consumption away from and/or within the environs of the business (take out) of any Restaurant or business selling such items.

(b) As provided by Ordinance No. 1286, enacted on August 11, 1992, in lieu of the tax imposed and levied pursuant to section 70-109(a) above, there is hereby imposed and levied a municipal resort tax:

(1) Upon the Rent of every Occupancy of a Room or Rooms in any Hotel, Motel, Apartment House, as the same are defined in Part I, Chapter 212, Florida Statutes, in the Town, at the rate of four percent (4%) of the Rent received by the Person renting such Room or Rooms from the person paying such Rent; and

(2) Upon the retail sale price of all items of food or beverages sold at retail, and of alcoholic beverages, including all refrigerated beverages, sold at retail for consumption on the premises or consumption away from and/or within the environs of the business (take out) of any Restaurant or at any place of business selling such items in the Town required by law to be licensed by the State Hotel and Restaurant Commission or by the State Beverage Department, at the rate of two percent (2%) of such retail sales price.

(c) The tax shall constitute a debt owed by the Occupant or Guest to the Town which shall be extinguished only by payment to the Operator or to the Town. The Occupant or Guest shall pay the tax to the Operator of the Hotel, Motel, Apartment House or Restaurant at the time the Rent or the Sales Price is paid. If the Rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the Occupant's ceasing to occupy space in the Hotel, Motel or Apartment House. The Operator is solely responsible for payment to the Town regardless of the Operator's collection deficiencies and/or inability to collect from the Occupant or Guest.

Sec. 70-110. Exemptions, applicability.

~~The resort tax authorized in this article shall not be imposed or levied upon or collected from:~~

~~(1) Any person who shall reside continuously longer than six months at any one hotel, apartment house or roominghouse, and shall have paid the tax levied by this section for six months of residence in any one hotel, roominghouse or apartment house.~~

~~(2) Any federal, state, county or municipal government or agency thereof.~~

~~(3) Nonprofit religious, educational or charitable corporations or institutions when engaged in religious, educational or charitable activities within the purview of their nonprofit or charitable purposes.~~

~~(4) Transactions involving less than \$0.50.~~

~~(5) Any person who is or becomes an occupant under a written lease for a period of 12 consecutive months or more in any apartment, motel or hotel in the town.~~

(a) No municipal resort tax shall be imposed pursuant to this article upon:

(1) Federal, State or Town governments, or any agency thereof.

Ordinance No. _____

(2) Any nonprofit religious, nonprofit educational or nonprofit charitable institution when engaged in carrying on the customary nonprofit religious, nonprofit educational or nonprofit charitable activities.

(3) Persons and transactions exempted as provided by section 4, chapter 67-930, Laws of Florida, 1967.

(b) No municipal resort tax shall be paid on any transaction involving Rent or a Sales Price of less than fifty cents (\$.50). No municipal resort tax shall be imposed or paid on any Rents collected under a written lease for a period longer than six consecutive months.

Sec. 70-111. Penalties and interest. Registration required; registration certificate.

~~In addition to any other penalties, the following are hereby levied and imposed upon each person acting as the tax collection medium or agency of the town, as described in section 70-106, for failure to follow and comply with this article:~~

~~(1) Original delinquency. Any person who fails to remit the resort tax imposed by this article within the time provided shall pay a penalty equal to ten percent of the amount of such tax, in addition to the full amount of such tax.~~

~~(2) Continued delinquency. Any person who fails to remit the resort tax imposed by this article on or before the 30th day following the date upon which such tax has become delinquent shall pay a second penalty equal to ten percent of the amount of such tax, in addition to the full amount of such tax and the first ten percent penalty.~~

~~(3) Fraud. If the town manager determines that the nonpayment of any resort tax imposed by this article is due to fraud, a penalty equal to 25 percent of the amount of such tax shall be paid in addition to the penalties imposed by this section.~~

~~(4) Interest. Any person who fails to remit the resort tax imposed by this article within the time provided shall pay interest at the rate of one half of one percent per month, or portion thereof, on the full amount of such tax, exclusive of penalties from the date upon which such tax first became delinquent until fully paid.~~

(a) Within 30 days after the effective date of the ordinance from which this article is derived, or within 30 days after commencing business, whichever is later, each Operator of any Hotel, Motel, Apartment House or Restaurant shall register the Hotel, Motel, Apartment House or Restaurant with the Town Manager and obtain a resort tax registration certificate, to be posted in a conspicuous place on the premises at all times. The certificate shall, among other things, state the following:

(1) The name of the Operator, mailing address and names of the corporate officials if applicable.

(2) The address of the Hotel, Motel, Apartment House or Restaurant.

(3) The date upon which the certificate was issued.

(b) Such certificate shall contain the following statement:

"This Resort Tax Registration Certificate signifies that the Person named on the face hereof has fulfilled the requirements of the Resort Tax Ordinance by registering with the Town Manager for the purpose of collecting from Occupants or Guests the Resort Tax and remitting said tax to the Town Manager. This certificate does not authorize any Person to conduct any unlawful business in an unlawful manner, nor to operate a Hotel, Motel, Apartment House or Restaurant without strictly complying with all local applicable laws, including but not limited to those requiring a

permit from any board, commission, department or office of this Town. This certificate does not constitute a permit."

(c) Such registration certificate shall not be assignable or transferable, and each new Operator shall be required to obtain a new registration certificate.

(d) All businesses must secure an annual Business Tax Receipt, an annual Occupational License, Certificate of Occupancy and Certificate of Use. As permitted by law the issuing of these licenses is conditional upon payment of all outstanding Resort Tax Returns.

Sec. 70-112. Collection by Operator.

Each Operator shall collect the tax imposed by this article to the same extent and at the same time as the Rent or Sales Price is collected from every Occupant or Guest. No Operator shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the Operator; that it will not be added to the Rent or Sales Price; or that, if added, any part will be refunded except in the manner provided in this article.

Sec. 70-113. Records to be maintained by Operator.

It shall be the duty of every Operator to keep all records as may be necessary to determine the amount of tax due pursuant to this article and to preserve such records for a period of three years. The Town Manager, or his/her designee including independent auditors, shall have the right to inspect such records at all reasonable times and to conduct an audit as deemed necessary. The following records shall be kept available for inspection/audit: invoices of product purchases, sales receipts, tax receipts submitted to the State of Florida, tax returns, and all other relevant documents.

Sec. 70-114. Refunds.

(a) Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Town under this article, it may be refunded as provided in subsections (b) and (c) of this section, provided a claim in Writing therefore, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Town Manager within one year of the date of payment. The claim shall be on forms furnished by the Town Manager.

(b) An Operator may claim as a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once, or erroneously or illegally collected or received, or when it is established in a manner prescribed by the Town Manager that the Person from whom the tax has been collected was not an Occupant or Guest lawfully subject to the tax collected pursuant to this article; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the Occupant or Guest or credited to Rent subsequently payable by the Occupant or Guest to the Operator.

(c) An Occupant or Guest may obtain a refund of taxes overpaid, paid more than once, or erroneously or illegally collected or received by the Town, by filing a claim in the manner provided in subsection (a) of this section, but only when the tax was paid by the Occupant or Guest directly to the Town Manager or when the Occupant or Guest, having paid the tax to the Operator, establishes to the satisfaction of the Town Manager that the Occupant or Guest has been unable to obtain a refund from the Operator who collected the tax.

(d) No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto with supporting documents as

outlined in section 70-113. No refund or credit shall be allowed unless a signed affidavit and claim in writing is timely filed with the Town Manager as described in subsection (a) above.

Sec. 70-115. Operator's credit for collecting tax.

For the purpose of compensating the Operator for the keeping of prescribed records and the proper accounting and remitting of taxes by him, such Operator shall be allowed two percent of the amount due and accounted for and remitted to the Town, in the form of a deduction, in submitting his report and paying the amount due by him, and the Town Manager shall allow such deduction of two percent of the amount of the tax to the Person paying the tax for remitting the tax in the manner provided in this article and for paying the amount due to be paid by him. The amount of compensation is not to exceed \$50.00 per monthly remittance per registered business. The two percent allowance shall not be granted, nor shall any deduction be permitted, where the tax is delinquent at the time of payment or where there is a manifest failure to maintain proper records or make proper prescribed reports.

Sec. 70-116. Filing of Return; Remittance of tax.

Each Operator shall, on or before the 30th day of the month following the close of each calendar month, or at the close of any longer reporting period which may be established by the Town Manager, make a Return on forms provided by the Town Manager, of the total Rent or Sales Prices charged and received and the amount of tax collected. Operators shall file a Zero return if applicable. At the time the Return is due and filed, the full amount of the tax collected, less the applicable Operator's credit for collecting tax shall be remitted to the Town Manager. Applicable penalties will be applied for any late submittal of Returns and the Operator's credit will not qualify. The Town Manager may, establish shorter reporting periods for any certificate holder if he deems it necessary in order to ensure collection of the tax, and he may require further information on the Return. Returns and payments are due immediately upon cessation of business for any reason. All Returns shall be accompanied with copies of tax receipts filed with the County/State. The Town reserves the right to conduct a Resort Tax Audit of the participating businesses. All taxes collected by Operators pursuant to this article shall be held in trust for the account of the Town until payment thereof is made to the Town. The filing of Returns electronically is mandatory upon notification from the Town Manager.

Sec. 70-117. Delinquency penalties; interest.

(a) Original delinquency. Any Operator who fails to remit any tax imposed by this article within the time required shall pay a penalty of ten percent of the amount of the tax in addition to the amount of the tax.

(b) Continued delinquency. Any Operator who fails to remit such tax on or before the 30th day following the date on which the tax first became delinquent shall pay a second delinquency penalty of ten percent of the amount of the tax in addition to the amount of the tax, plus the ten percent penalty first imposed.

(c) Fraud. If the Town Manager determines that the nonpayment of any tax due under this article is due to fraud, a penalty of 25 percent of the amount of the tax shall be added thereto in addition to the penalties stated in subsections (a) and (b) of this section.

(d) Interest. In addition to the penalties imposed, any Operator who fails to remit any tax imposed by this article shall pay interest, at the rate of one percent per month or fraction thereof,

on the amount of the tax, exclusive of penalties, from the date on which the tax first became delinquent until paid.

(e) Penalties and interest merged with tax. Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax required to be paid under this article.

Sec. 70-118. Failure to collect and report tax; determination of tax by Town Manager.

(a) If any Operator shall fail or refuse to collect the tax imposed by this article and to make, within the time provided in this article, any report and payment of the tax or any portion thereof required by this article, the Town Manager shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the Town Manager shall procure such facts and information as he is able to obtain, upon which to base the assessment of any tax imposed by this article and payable by any Operator who has failed or refused to collect the tax and to make such report and payment, the Town Manager shall proceed to determine and assess against such Operator the tax, interest and penalties provided for by this article.

(b) If any operator charged in this section fails or refuses to make his records available for inspection so that no audit or examination has been made of the books and records of such operator or person, fails or refuses to register as an operator, or fails to make a report and pay the tax as provided by this division, or makes a grossly incorrect report, or makes a report that is false or fraudulent, it shall be the duty of the Town to make an assessment from an estimate based upon the best information then available to it for the taxable period of sales or rentals, together with interest, plus penalty, if such have accrued, as the case may be. Then the Town shall proceed to collect such taxes, interest and penalty on the basis of such assessment, which shall be considered prima facie correct; and the burden to show the contrary shall rest with the operator.

(c) The Town Manager may charge a reasonable fee for obtaining information which requires the ascertainment of the amount of any tax collected by the Operator or any prorations and any expenses entailed by the Town in determining the prorations of any amount collected or due upon any transfer.

(d) In case such determination is made, the Town Manager shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the Operator so assessed, at his last known address. Such Operator may, within five business days after the serving or mailing of such notice;

- (1) pay the amount due and any additional assessed fees in the manner and within the time indicated on the notice; or
- (2) Request an administrative hearing before a special master to appeal the decision of the Town Manager which resulted in the assessed tax, interest, and penalties.

(e) An appeal of the determination of the tax notice shall be accomplished by filing a request in writing setting forth the specific grounds of fact and in law for the appeal, at the address indicated on the tax determination notice, not later than five business days after the service of the tax determination notice. Failure of the named violator to appeal the decision of the Town Manager within the prescribed time period shall constitute a waiver of the violator's right to an administrative hearing before a special master. A waiver of the right to an administrative hearing shall be treated as an admission of the violation, and the penalties shall be assessed accordingly.

(f) If the named violator, after service of the tax determination notice, fails to pay the tax assessed, interest, and penalties, or timely request an administrative hearing before a special master, the Town Manager shall prepare an affidavit of default. The affidavit must so reflect and must set forth a request that the special master issue an order finding the violator guilty of a continuing violation, imposing continuing delinquency penalties to be effective beginning on the date of the tax determination notice, and ending at the date the taxes, fees, and penalties are paid. The Town manager in consultation with a special master, shall set the matter down for hearing on the next regularly scheduled hearing date or as soon thereafter as practicable.

Sec. 70-119. Hearing procedures; enforcement of orders.

(a) Upon receipt of a named violator's timely request for an administrative hearing for any tax determination notice, or upon receipt of affidavit(s) of noncompliance from the Town Manager, the special master shall set the matter down for hearing on the next scheduled hearing date or as soon thereafter as possible.

(b) The manager shall send a notice of hearing by first class mail to the named violator at his last known address. The notice of hearing shall include, but not be limited to, the following:

(1) The name of the Town Manager or designee who issued the tax determination notice.

(2) The factual description of the alleged violation constituting reasonable cause.

(3) The date of alleged violation.

(4) The section of the Code allegedly violated.

(5) The place, date and time of the hearing.

(6) The right of a violator to be represented by an attorney.

(7) The right of violator to present evidence, witnesses and cross-examine witnesses, if not waived pursuant to section 70-118(e).

(8) Notice that failure of the violator to attend the hearing may result in a civil penalty and administrative hearing costs being assessed.

(9) Notice that requests for continuances will not be considered unless received by the special master at least five calendar days prior to the date set for the hearing, and absent a showing of good cause.

(c) If there are cases to be heard, the special master shall call hearings on a monthly basis or upon the request of the manager, no hearing shall be set sooner than ten calendar days from the date of service of the civil violation notice, excluding Saturdays, Sundays and holidays.

(d) A hearing date shall not be postponed or continued unless a request for continuance, showing good cause for such continuance, is received in writing by a special master and the manager at least five calendar days prior to the date set for the hearing.

(e) All hearings of a special master shall be open to the public. All testimony shall be under oath. Upon proper prior notice, a hearing shall proceed in the absence of the named violator or the special master may enter a default order.

(f) The proceedings at the hearing shall be recorded and may be transcribed at the expense of the party requesting the transcript.

(g) The town clerk shall provide clerical services and the manager shall provide administrative personnel as may be reasonably required by special masters for the proper performance of their duties.

(h) Each case before a special master shall be presented by the manager, his or her designee or the town attorney. The manager shall have the authority to retain legal counsel for the special

master upon request.

(i) The hearing need not be conducted in accordance with the formal rules relating to evidence and witnesses, but fundamental due process shall be observed and shall govern the proceedings.

(j) Each party shall have the right to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witnesses regardless of which party first called that witness to testify; and to offer rebuttal of the evidence.

(k) A special master shall make findings of fact and conclusions of law based on evidence of record. In order to make a finding upholding the town manager's decision, a special master must find that a preponderance of the evidence indicates that the named violator was responsible for the violation of the relevant section of the Code.

(l) The fact-finding determination of the special master shall be limited to whether or not the violation alleged occurred, and, if so, whether the person named in the notice of violation may be held responsible for that violation. Based upon this fact-finding determination, a special master shall either affirm or reverse the decision of the town manager as to the responsibility of the named violator of the code violation. If a special master reverses the decision of the Town Manager and finds the named violator not responsible for the code violation in the alleged civil violation notice because the town did not present a preponderance of evidence to indicate that such violator is responsible for the violation, then, and in that case, the named violator shall not be liable for the payment of any civil penalty, absent reversal of the special master's findings pursuant to section 70-120 hereof.

(n) If the decision of the special master is to affirm the decision of the town manager, the following elements shall be included:

(1) The amount of tax, fees, and penalties in the tax determination notice and as otherwise provided for herein.

(2) Administrative costs of hearing in the amount of not less than \$200.00.

(3) The date by which the violation must be corrected to prevent resumption of continuing violation penalties, if any.

(o) If correction is not made within the period set by the special master, continuing violation penalties shall begin to accrue again after the time for correction has run and the Town Manager has filed an affidavit of noncompliance and a notice of continuing violation. The Town Manager shall serve on the violator a copy of the affidavit of noncompliance and a notice of continuing violation which shall include the following:

(1) Date of issuance.

(2) A reference to the order of the special master that continues to be violated.

(3) Notice of the right to request an administrative hearing before the special master and instructions on how to file the request.

(4) Notice that failure to request an administrative hearing within 5 business days after the date of the notice of continuing violation shall constitute a waiver of the right to a hearing.

(5) Notice that the hearing is strictly limited to whether and when the violator complied with the order of the special master.

(6) Notice that the violator shall be liable for the reasonable costs of the administrative hearing if the violator is unsuccessful at the hearing. At reasonable intervals, a violator may request an inspection to determine compliance with an order of the special master. After his inspection, the town manager shall issue an affidavit of noncompliance and notice of continuing violation or an affidavit of compliance, in recordable form, as appropriate.

Ordinance No. _____

Sec. 70-120. Appeals.

(a) An aggrieved party, including the town, may appeal a final order of a special master to the circuit court. Such an appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the special master. An appeal shall be filed within 30 calendar days of the issuance of the order sought to be overturned. Failure to make such appeal within the prescribed 30-day period shall render the findings of the special master conclusive, binding and final.

(b) Unless the findings of a special master are overturned in a proceeding held pursuant to this section, the findings of the special master shall be admissible in any proceeding to collect unpaid penalties.

(c) No aggrieved party other than the town may apply to the court for relief unless such party has first exhausted all remedies provided for in this chapter and has taken all available steps provided in this chapter. It is the intention of the town that all steps provided by this chapter shall be taken before any application is made to the court for relief, and no application shall be made by any aggrieved party other than the town to a court for relief except from an order issued by a special master pursuant to this chapter. It is the intention of the town that, notwithstanding anything to this chapter to the contrary, the town shall retain all rights and remedies otherwise available to it to secure compliance with or prevent violations of the Code. For purposes of an appeal, the clerk shall make available, for public inspection and copying, the record upon which each final order of a special master is based. The clerk shall make a reasonable charge, commensurate with the cost for the preparation of the official record on appeal and transmittal thereof to the circuit court, for making certified copies of any record or portion thereof.

Sec. 70-121. Actions to collect, enforcement.

(a) Any tax required to be paid by any Occupant or Guest under the provisions of this article shall be deemed a debt owed by the Occupant or Guest to the Town. Any such tax collected by an Operator which has not been paid to the Town shall be deemed a debt owed by the Operator to the Town. Any Person owing money to the Town under the provisions of this article shall be liable to an action brought in the name of the Town for the recovery of such amount and all reasonable and applicable administrative and legal fees.

(b) The Town shall have the same duties and privileges as the Department of Revenue under F.S. Chapter 212, Part I, and may use any power therein granted to the Department of Revenue, including enforcement and collection procedures and penalties.

Sec. 70-122. Taxes to constitute special fund.

(a) The total receipts of the Resort Tax portion from the tax imposed and levied pursuant to this article shall be kept and maintained in a separate fund and shall in no event be transferred to the general fund. The use of this fund is subject to the budgetary process of the Town on a fiscal year basis. A budget for the utilization of this fund must be submitted for the Town Commission approval as a part of the budget adoption process. A minimum of thirty-four (34) percent of the fund shall be used for the promotion of the tourist industry under the annual Tourist Bureau budget, which shall include but not be restricted to the following: publicity, advertising, promotional events, tourist bureau activities.

Ordinance No. _____

Division 2. Resort Tax Board.

Sec. 70-123. Created.

There is hereby established a Resort Tax Board as a governmental agency of the Town (“the Board”).

Sec. 70-124. Composition; appointment; vacancies; compensation; removal from office, etc.

a) *Number, Term and Qualification of Members.* The Board shall consist of five members. Each Commissioner shall appoint one Board Member. All appointed Board members must be ratified by a vote of the Town Commission. Any newly elected Commissioner has the right to appoint a Resort Tax Board member unless the corresponding appointment has yet to reach the end of their two year term. Each of the five members shall be persons who either work or reside in Surfside and at least three of the five members shall be persons who have experience in tourism and/or tourism related activities. One Town Commissioner shall serve as a non-voting ex-officio member of the Board.

(c) *Vacancies.* Any vacancies occurring on the Board shall be filled at the earliest possible date by the Town Commission for the remainder of the unexpired term.

(d) *Reappointment.* Board members shall be eligible for reappointment and shall hold office until their successors have been duly appointed and qualified.

(e) *Compensation of Members.* Members of the Board shall serve without compensation but shall be reimbursed for necessary expenses occurred in the performance of the official duties, as shall be determined and pre-approved by the Town Commission.

(f) *Acceptance of Appointment;* Before entering upon the duties of office, each Board member shall file a written acceptance of appointment and take and subscribe to-- the oath of office prescribed by law, which shall be filed in the office of the Town clerk. Each appointed member is required to provide the Town Clerk with a Form 1-Statement of Financial Interests, within three business days of being appointed to the Board.

(g) *Removal of Members From Office; Attendance.* A Board Member may be removed from office only by a majority vote of the entire membership of the Town Commission; however, whenever a Board member shall fail to attend three consecutive meetings without prior notification to the Director or Town Manager, the chairman shall certify such non-attendance to the Town Commission, and, upon such certification, the Board member shall be deemed to have been removed and the Town Commission shall fill the vacancy pursuant to paragraph (c) above.

Sec. 70-125. Organization.

(a) [*Generally.*] The members of the Board shall select a chairman from among the members who shall serve at the pleasure of the Board, and such other officers as deemed necessary or desirable. A member of the Town Commission shall serve as a non-voting ex-officio member of the Board.

Ordinance No. _____

(b) Staff. A Director, or other Town Manager designee, shall oversee the daily operation and administering of the Resort Tax Board and will work with the Board to achieve budgetary objectives. The Town manager shall provide adequate clerical and other administrative backup for the Board.

(c) Minutes. Minutes of each Board meeting shall be kept and prepared under supervision and direction of the Board. Copies of the minutes shall be filed with the Town clerk.

(d) Rules and Regulations. The Board shall make and prescribe such rules and regulations reasonably necessary and appropriate for the Board's activities.

Sec. 70-126. Power and Duties.

The Board shall have the following enumerated powers and duties.

(1) To adopt and/or amend procedures as it related to publicity, advertising, promotional events, Tourist Board activities.

(2) To expend resort tax funds collected pursuant to Chapter 70 of the Town Code. Specifically, those amounts allocated by the Commission during their annual budgetary process, the minimum being thirty-four (34) percent of the Resort Tax collected, to advertising promotion and special events as part of the Tourist Bureau budget.

(3) To employ or retain an advertising and/or public relations consultant and/or firm as it relates to specific Tourist Board activities. The Tourist Board shall designate a member to assist the Town Manager, upon request, in the process of selecting a Director for the department.

(4) To authorize placement of advertising in various media.

(5) To organize special events for the promotion of Surfside as a tourist destination.

(6) To submit an Annual Report to the Town Commission every May as part of the budgetary process.

Sec. 70-127. Compliance with applicable law.

The Board shall comply with all applicable provisions of state law, county ordinances and the Town Code, including but not limited to those pertaining to public records, open meetings, financial disclosure and those with respect to competitive bidding requirements for purchase of goods and services.

Ordinance No. _____

Section 3. Severability. If any section, subsection, clause or provision of this Ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, the remainder shall not be affected by such invalidity.

Section 4. Conflict. All sections or parts of sections of the Town of Surfside Code of Ordinances in conflict herewith are intended to be repealed to the extent of such conflict.

Section 5. Inclusion in the Code of Ordinances. It is the intention of the Town Commission, and it is hereby ordained that the provisions of this Ordinance shall become and made a part of the Town of Surfside Code of Ordinances, that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and the word "ordinance" may be changed to "Section" or other appropriate word.

Section 6. Effective Date. This Ordinance shall be effective ten (10) days after adoption on second reading.

PASSED and ADOPTED on first reading this _____ day of _____, 2011.

PASSED and ADOPTED on second reading this ____ day of _____, 2011.

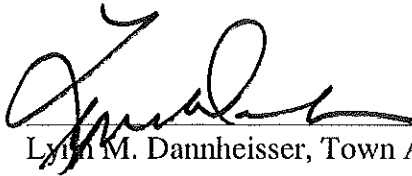
Daniel Dietch, Mayor

Attest:

Debra E. Eastman, M.M.C., Town Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**

Ordinance No. _____


Lynn M. Dannheisser, Town Attorney

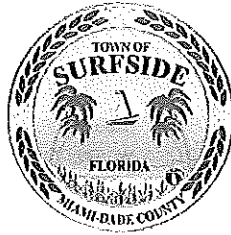
On First Reading Moved by: _____

On Second Reading Seconded by: _____

Vote:

Mayor Dietch	yes _____	no _____
Vice Mayor Graubart	yes _____	no _____
Commissioner Karukin	yes _____	no _____
Commissioner Kopelman	yes _____	no _____
Commissioner Olchyk	yes _____	no _____

Ordinance No. _____



Town of Surfside Commission Communication

Agenda Item # 4B2

Agenda Date: May 10, 2011.

Subject: Short Term Rental Of Single Family Dwellings, Two-Family Dwellings, Multi-Family Dwellings, and Townhomes / Prohibition Of Short Term Rentals Of Single Family Dwellings.

Background: Dwelling units rented for six months or less qualify as short term rentals as defined by the State. Surfside does not address the subject with a specific ordinance. However, there are a number of dwelling units on offer as short term (vacation) rentals. The number of units is difficult to assess as most of these units are rented through their respective owners, realtors and via various vacation rental websites. This type of accommodation is gaining in popularity with vacationers and has become an integral part of the tourism industry in many locations world-wide. These locations are also grappling with the issue of how to effectively manage short term rentals. Surfside, like many Florida locations, is attractive to "snow birds" who have historically rented on a short term basis over the winter months.

A first reading of a short term rentals ordinance was submitted to the Town Commission at the April 12, 2011 meeting. The ordinance was also passed the Planning & Zoning Board meeting on April 28, 2011 albeit with much discussion. This passed version, presented here for second reading, was submitted at that time based on the following information from Fausto Gomez, of Gomez Barker Associates, Inc., the Town's legislative consultant.

The State is attempting to preempt municipalities from regulating short term rentals under the following bills:

Senate Bill: CS/CS/SB 476: Public Lodging Establishments

GENERAL BILL by Judiciary; Regulated Industries; Evers

Public Lodging Establishments; Prohibits local governments from regulating vacation rentals based solely on their classification or use. Provides that public lodging establishments formerly classified as resort condominiums and resort dwellings are classified as vacation rentals. Provides additional penalties for the offense of unlawfully distributing handbills in a public lodging establishment, etc.

EFFECTIVE DATE: upon becoming a law

*House Bill: CS/CS/CS/HB 883: Public Lodging/Public Food Service Establishments
GENERAL BILL by Economic Affairs Committee; Government Operations Appropriations
Subcommittee; Business and Consumer Affairs Subcommittee; Horner
Public Lodging/Public Food Service Establishments; Excludes nonprofit organizations providing
certain housing from definition of "public lodging establishment"; prohibits local governments from
regulating, restricting, or prohibiting vacation rentals based solely on their classification, use, or
occupancy; revises authority preempted to state with regard to regulation of public lodging
establishments & public food service establishments; provides that public lodging establishments
formerly classified as resort condominiums & resort dwellings are classified as vacation rentals, etc.
EFFECTIVE DATE: upon becoming a law*

In other words, unless a town had its own legislation, no town will be able to prohibit or regulate short term rentals in the future.

It is widely viewed that the State will pass these bills in some form. However, if a municipality has an ordinance in place prior to June 1, 2011 it is also widely viewed that these ordinances will be grandfathered in by the State and the legislation will not apply. Thus the critical time line that is in effect for the Town's necessary response by June 1, 2011.

The primary difference in the two ordinance versions presented is that one version specifically prohibits short term rentals in the single family neighborhood (H-30 district). A requirement that the property owner have a Business tax receipt, and is in compliance with other laws, is in the version listed for first reading but does not appear in the version listed for second reading.

It is important to note that some condominium buildings presently allow for short term rentals in their condominium documents. Certain condominium units have been, and are presently, being sold with this condition as an incentive. The Town Attorney's cover memo (attachment A), included with the short term rentals ordinance presented to the Town Commission on April 12, 2011, outlines relevant case law that has limited the ability of municipalities to prohibit short term rentals. By adding a comprehensive set of restrictions (seen in both versions), the version passed on first reading, by not prohibiting short term rentals, should avoid litigation regarding landlords' rights to rent their property for six months or less.

Besides administrative requirements outlined in both versions of the ordinance, the following requirements listed in both versions are of particular importance and should be noted for their restrictive nature:

- Each property needs approval by the Town within six months of enacting of an ordinance to qualify.
- The owner must demonstrate a history of renting short term and that this income is the primary source of revenue from the property.
- The property must have been registered for Resort Tax submission with the Town as of May 10, 2011 (please note that none are registered to date).
- Proven Resort Tax taxable room revenue equal to at least fifty percent of total room revenue over the last two years covered by such payments.
- The property must have been registered with the State as a Transient accommodation as of May 10, 2011.
- Compliance to all other applicable laws including the filing of Business tax receipts. (Please note that this is only in the version that prohibits short term rentals in the H-30 District.)

Both ordinance versions view the preserving of the character and integrity of the Town and its residential neighborhoods as being of primary importance.

Analysis: Town Administration views this as a critical opportunity for the Town to avoid preemption by the State in this arena. By addressing one of the two options presented, the Town Commission will establish its role as the entity primarily responsible for the governance of this issue. Without any provision the decision will be made by the State which usually proves tantamount to no regulation at all.

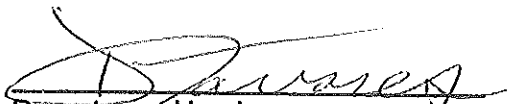
During the Planning & Zoning Board meeting of April 28, 2011, there was significant discussion regarding the section of the zoning code that prohibits commercial activity in the H-30 district. While the code does prohibit commercial activity there is a distinction between businesses such as a doctor's office, an accounting practice and/or prepared food production versus property owners exercising their rights to rent for six months or less. The Town Attorney will provide details on this distinction at the May 10, 2011 meeting.

Therefore there exists the necessity for an ordinance that clearly defines the Town's position and outlines the responsibilities of said property owners.

Budget Impact: Due to the restrictive registration requirements, there will be minimal, if any, additional revenue to the Town in the form of fees and Resort Tax.

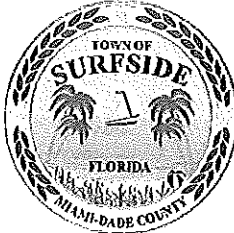
Staff Impact: Existing staff will be utilized to manage the process adopted as part of their required duties. The Building Department, especially Code Enforcement, will be required to address all violations.

Recommendation: Staff recommends that, in order to avoid preemption by the State regarding short term rentals governance, the Commission either ratifies, on second reading, the previously submitted version of the ordinance which allows short term rentals in the H-30 District or adopt, on first reading, the option that prohibits short term rentals in the H-30 District. If the later is adopted on first reading at the May 10, 2011 Town Commission Meeting, a Special Meeting of the Town Commission must be conducted before the June 1, 2011 State deadline for ratification on second reading.


Department Head


Town Manager

ATTACHMENT A



TOWN OF SURFSIDE
Office of the Town Attorney

MUNICIPAL BUILDING
9293 HARDING AVENUE
SURFSIDE, FLORIDA 33154-3009

Lynn M. Dannheisser
Town Attorney

Telephone: 305 993-1065

MEMORANDUM

TO: Town Commission

FROM: Lynn M. Dannheisser, Town Attorney

**CC: Roger M. Carlton, Town Manager
Debra E. Eastman, M.M.C., Town Clerk**

DATE: April 12, 2011

SUBJECT: Short Term Rental Ordinance

Recommendation: The Tourist Bureau recommends that the Commission adopt this Ordinance. The evolution of this ordinance is explained below.

Background and Explanation of Ordinance: Short term rental ordinances are increasingly being passed by local municipalities in response to complaints surrounding the rental properties. The concern is that without regulation, short term rentals change the character of the neighborhood, may result in property not being properly maintained, may cause excessive noise and traffic, and usually non-compliance with tax requirements. Originally, the Vice Mayor requested this ordinance but wanted to impose a total ban on short term rentals. After research, we determined that the Florida courts have over-turned such legislation.

The type of short term rental ordinances withstanding challenge to date impose limitations on short term rental properties by requiring the properties to register with the municipality, obtain applicable licenses, and comply with the local code. These limitations have also resulted in increased compliance with the local code including the resort tax requirements.

There have been and continue to be challenges to the short term rental ordinances claiming, among other things, a violation of property rights. Currently there are ongoing challenges in federal and state courts for a variety of concerns associated with short term rental ordinances.

Ordinances have been overturned for failure to clearly define tenancies (*Milo v. City of Venice*), failure to have a valid grandfather clause (ongoing with *Gwynn v. City of Venice* case no. 2009 CA 17007 NC; Islamorada grandfather clause was valid but the ordinance permitted ongoing short term rentals with a registration process).

Below is a synopsis of relevant case law reflecting the courts determinations based upon various challenges which will explain how the Town derived the terms of its own proposed ordinance.

In *Rollison v. City of Key West*, 875 So.2d 659 (3d DCA 2004), the property owner challenged the City ordinance prohibiting short term rentals. The property owner claimed that the ordinance was not applicable because it was a lawful nonconforming use at the time of purchase, prior to the passing of the ordinance. The city claimed that the use was not a permitted use at the time of purchase and therefore the property owner was not "grandfathered in". The Court held that the City's administrative interpretation was in conflict with the stated policy at the time of purchase and the property owner complied with that stated policy and therefore it was a lawful non-conforming use.

In *Milo v. City of Venice*, No. 2008 CA 552 CA (Fla. 12th Cir. Ct. March 7, 2008) the City's short term rental ordinance was invalidated because the permitted use "business" and "temporary residence" were not defined in the code. The Court held that the ordinance improperly relied on definitions in Florida Statutes that were not cross referenced and it was unreasonable to expect property owners to anticipate that interpretation.

The Village of Islamorada's vacation rental ordinance has been upheld after two challenges. The vacation rental ordinance requires the annual registration of the rental property, a copy of all necessary occupational licenses (including applicable county and state licenses), an inspection report by the Fire Chief, the number of approved parking spaces and a contact person for the property. The ordinance places a limit on the number of licenses that will be issued annually and provides requirements that the property owner and renter must abide by and the penalties for violating the regulations. The determination of validity of the ordinances appear to be based upon the grandfather clause; The clause set forth requirements such as, in order for property owners to be eligible they had to prove they had filed monthly tax reports since 2001 and could not have registered the property for a homestead exemption. The Court held that requiring landlords to comply with requisite laws was not arbitrary or unreasonable and that the ordinance and the requirements were lawful.

The Miami Beach short term ordinance limits short term rentals in two historic districts within the City; it does permit grandfathering-in of a select number of properties that met stringent standards set forth by the city. The ordinance also clearly defined the tenancies (in *Milo* the ordinance was not upheld by the court, in part, for failing to

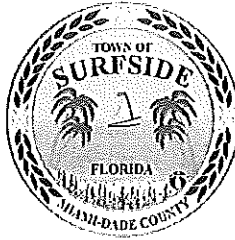
clearly define the tenancies). The Miami Beach ordinance was passed in June of 2010 and has not been challenged.

Currently, the city of Venice (subjected to several challenges-specifically *Gwynn v. City of Venice*) has suspended their short-term rule pending the outcome of ongoing litigation. The ordinance banned rentals for less than 30 days in residential neighborhoods. The ongoing *Gwynn* case seems to whether the ordinance can be applied to her because she was renting her property prior to ordinance being passed.

The most recent case that was decided was in July 2010; however no determination was made on the merits. *Neumont v. Monroe County* went before the 11th Circuit Court of Appeals, the property owners alleged a vacation rental ordinance was not properly adopted and the ordinance restricting vacation rentals was part of a regulatory effort to ban vacation rentals. The 11th Circuit held that the first claim re: properly adopting the ordinance was a question for the Florida Supreme Court and that the 2nd claim that the ordinance was in effect a taking in violation of their constitutional rights was not ripe.

An ordinance clearly defining the tenancies, that allows for grandfathering-in of properties, and which is not overly broad will likely meet the criteria that **has** been determined by case law. The challenges are on-going and additional criteria may yet be determined. The case law is obviously evolving but the proposed ordinance complies with the case law in effect at the time of the writing of this memorandum.

The proposed Surfside short-term rental ordinance would require the registration of the dwelling for each rental period (not to exceed three times in 12 months), for each property owner to obtain the applicable county and state occupational licenses and for the property owners and renters to comply with the Town Code and pay the required resort tax.



TOWN OF SURFSIDE
Office of the Town Attorney


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9293 HARDING AVENUE
SURFSIDE, FLORIDA 33154-3009

Lynn M. Dannheisser
Town Attorney

Telephone: 305 993-1065

MEMORANDUM

TO: Town Commission

FROM: Lynn M. Dannheisser, Town Attorney 

CC: Roger M. Carlton, Town Manager
Debra E. Eastman, M.M.C., Town Clerk

DATE: May 3, 2011

SUBJECT: Short Term Rental Ordinance Update

Since the writing of the attached memorandum, the Florida legislature has been considering SB 476 and HB 883 which seeks to pre-empt municipal home rule authority and, among other things, prohibit the passage of a town ordinance that will restrict or prohibit short term rentals unless a town has an ordinance already in effect by June 1, 2011. At this point, the bill has passed the House. At the time of the writing of this update, no action has yet been taken by the senate to the best of my knowledge. If the Town does not pass an ordinance on this subject, it will be subject to the state's mandate and have no ability to regulate or restrict short term rentals.

Knowing this, the Planning and Zoning Board sitting as the LPA considered this ordinance and another alternative that promotes restrictions but prohibits short term rentals in the single family district. Staff has advertised both so you have an option. (Duncan Tavares will provide you with a full analysis on this issue.) However, please be advised that if you choose the alternative as opposed to this ordinance, you will have to call a special meeting to obtain passage before June 1. Otherwise, if you pass this ordinance which is up for second reading on May 10, 2011 you will have an ordinance on the books for pre-emption purposes which you may amend in the future unless this issue too is addressed in the legislature.



TOWN OF SURFSIDE
Office of the Town Attorney

MUNICIPAL BUILDING
9293 HARDING AVENUE
SURFSIDE, FLORIDA 33154-3009

Lynn M. Dannheisser
Town Attorney

Telephone: 305 993-1066

MEMORANDUM

TO: Town Commission

FROM: Lynn M. Dannheisser, Town Attorney *LMD*

CC: Roger M. Carlton, Town Manager
Debra E. Eastman, M.M.C., Town Clerk

DATE: April 12, 2011

SUBJECT: Short Term Rental Ordinance

Recommendation: The Tourist Bureau recommends that the Commission adopt this Ordinance. The evolution of this ordinance is explained below.

Background and Explanation of Ordinance: Short term rental ordinances are increasingly being passed by local municipalities in response to complaints surrounding the rental properties. The concern is that without regulation, short term rentals change the character of the neighborhood, may result in property not being properly maintained, may cause excessive noise and traffic, and usually non-compliance with tax requirements. Originally, the Vice Mayor requested this ordinance but wanted to impose a total ban on short term rentals. After research, we determined that the Florida courts have over-turned such legislation.

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There have been and continue to be challenges to the short term rental ordinances claiming, among other things, a violation of property rights. Currently there are ongoing challenges in federal and state courts for a variety of concerns associated with short term rental ordinances.

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The proposed Surfside short-term rental ordinance would require the registration of the dwelling for each rental period (not to exceed three times in 12 months), for each property owner to obtain the applicable county and state occupational licenses and for the property owners and renters to comply with the Town Code and pay the required resort tax.

KEY BISCAZYNE

Council seeking to eliminate 'party houses'

■ Party houses — single-family homes rented out for overnight parties — have become a nuisance in some areas of Miami Beach, and Key Biscayne commissioners don't want their island to be next.

BY TANIA VALDEMORO LONGEST
tvaldemoro@miamiherald.com

The Key Biscayne Village Council is scrambling to come up with rules to limit so-called party houses in neighborhoods of single-family homes while allowing property owners to continue the practice renting their properties to tourists and part-year residents as short-term rentals.

But after two hours of discussion Tuesday, the question still remains: what exactly will Key Biscayne regulate?

Mayor Frank Caplan said the council is trying to beat a June 1 deadline, when two proposed bills in the Florida Legislature — House Bill 883 and Senate Bill 476 — will prevent local governments from imposing their own rules, if lawmakers pass both measures.

Both bills state, "A local law, ordinance, or regulation may not restrict the use of vacation rentals, prohibit vacation rentals, or regulate vacation rentals solely on their classification, use, or occupancy."

Currently, Key Biscayne does not regulate short-term rentals. But council members also said they did not want Tallahassee to restrict their legislative powers in the future.

At Tuesday's meeting, Caplan brought forth a draft ordinance that banned "vacation rental businesses," meaning a person or business that rents out their condo, cop, timeshare, single-family or multi-family home for less than 30 days.

During the meeting, the mayor said he did not think short-term vacation rentals were a problem and he wanted light regulation.

But his measure brought out a crowd of more than 30 people to Village Hall Tuesday in protest.

"I strongly object to this ordinance," said Patricia Romano, a resident and real estate broker. "Vacation rentals help

homeowners go through the bad times. The renters use the restaurants, go to the stores more than the people in the hotels do."

While the majority of people at Village Hall agreed with Romano's point of view, council members were riveted by the story from Eduardo and Mary Alfonso, who spoke in favor of regulation.

"The home across the street from us is used as a vacation rental," Eduardo Alfonso said. "The people who rent are people who come to have parties on Key Biscayne. ... It's quite an inconvenience for the residents who live in the area. I think most of us who moved here, moved to live here," he added.

In the end, the council decided to rewrite its ordinance and focus on short-term rentals in single family neighborhoods. Council member Michael Davey suggested the council not regulate short-term rentals in condos since condo boards set up their own rules.

Caplan suggested the new ordinance make clear that the rental in a single-family neighborhood be "consistent" with the residential character of the area. For example, he said, "No valet parking, no little buses bringing people hither and yon."

Council member Robert Gusman said his colleagues should consider capping the number of people allowed in the single-family home.

But the council could not agree on how long a short-term vacation rental would last. It will decide that next month. Other cities have defined the duration. Miami Beach defines short-term vacation rentals as six months and one day, said city spokeswoman Nannette Rodriguez.

Council member Enrique Garcia suggested the fewer rules the better.

"There are a lot of people who rent out their single-family homes. I like small government, but the point here is to protect ourselves from any future events," he said.

The council is expected to pass new rules on short-term vacation rentals at its May 24 meeting.

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF SURFSIDE, FLORIDA AMENDING ARTICLE IV "DISTRICT REGULATIONS" SECTION 90.41 "REGULATED USES" ADDING A NEW SECTION 90.41.1.5 RELATING TO A PROHIBITION OF SHORT TERM RENTALS OF SINGLE FAMILY DWELLINGS AND REGULATION OF TWO-FAMILY DWELLINGS, MULTI-FAMILY DWELLINGS, AND TOWNHOMES REQUIRING REGISTRATION OF SHORT TERM RENTALS IN RESIDENTIAL NEIGHBORHOODS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEALER; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Surfside is granted the authority, under its home rule power, to exercise any power for municipal purposes, except when expressed prohibited by law; and

WHEREAS, the maintenance of the character of residential neighborhoods is within the home rule power of the Town; and

WHEREAS, limitations on the rental of single family, two-family, multi-family, and townhouse dwellings serves a substantial governmental interest preserving the character and integrity of residential neighborhoods; and

WHEREAS, the Town of Surfside recognizes that the unregulated rental of single-family, two-family, multifamily, and townhouse dwelling units by seasonal residents uniquely impacts certain neighborhoods within the Town, therefore, it is necessary and in the interest of the public health, safety, and welfare to the monitor and provide reasonable means for citizens of the Town of Surfside to mitigate impacts created by such rental units within the Town as set forth in this Article.

WHEREAS, the Town seeks to maintain residential districts that promote the permanent residency of families; and

WHEREAS, the Town Commission hereby finds this Ordinance necessary to protect the public welfare.

WHEREAS, the Planning and Zoning Board, as the local planning agency for the Town, has held public hearing on April 28, 2011 and recommended approval of the proposed amendments to the Code of Ordinances and also found the proposed Code amendments to be consistent with the Comprehensive Plan; and

WHEREAS, the Town Commission shall have conducted a duly noticed public hearing on these regulations as required by law on _____, and _____ having complied with the notice requirements required by Florida Statutes; and

WHEREAS, after due public notice, and having received input and participation by interested members of the public and staff, and having considered the Town of Surfside Planning & Zoning Board's recommendation, the Town Commission found the proposed Code changes to be consistent with the Comprehensive Plan, finds the proposed change to the Code necessary and in the best interest of the community.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The foregoing "WHEREAS" clauses are ratified and confirmed as being true and correct and are made a specific part of this Ordinance.

Section 2. Code Amended. The Town Code is hereby amended as follows:

Sec.90.41.1.5

- A. SHORT TERM RENTALS OF SINGLE FAMILY DWELLINGS STRICTLY PROHIBITED (H-30 SINGLE FAMILY HOME DISTRICT).**

1. Short term rentals defined in Section B.1.a below are strictly prohibited in the H-30A H-30B and H-30C Single Family District except as provided in subsection A. 2. immediately hereinbelow.
2. If any single family home is currently under a short term lease that has been properly registered, has obtained the applicable county and state occupational licenses both with respect to the property owner and renters, has paid the required resort tax and otherwise complies with the terms of Section C. hereinbelow, said property shall be considered grandfathered and not subject to the terms of this Section A. Grandfathered properties will however be subject to the regulations provided in balance of this Ordinance.

B. SHORT TERM RENTAL OF TWO-FAMILY DWELLINGS, MULTI-FAMILY DWELLINGS, AND TOWNHOMES.

1. Definitions and Registration:

- a. Intent. The Town of Surfside recognizes that the unregulated rental of two-family, multi-family, and townhome dwelling units by seasonal residents uniquely impacts certain neighborhoods within the Town of Surfside. Therefore, it is necessary and in the interest of the public health, safety, and welfare to the monitor and provide reasonable means for citizens of the Town of Surfside to mitigate impacts created by such rental of such dwelling units within the Town of Surfside as set forth in this Article.
- b. Definitions. For the purpose of this Section, the following terms, phrases, words, abbreviations and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number.

“Owner” shall mean the person whom is vested ownership, dominion, or title of property.

“Responsible Party” shall mean the owner or the person designated by the owner of the property to be called upon to answer for the maintenance of the property and the conduct and acts of seasonal residents of two-family, multi-family, and/or townhome dwelling units.

“Seasonal resident” shall mean guests, tourists, lessees, vacationers, or others who lease a single family, two-family, multi-family, and townhouse dwelling unit for valuable consideration for a period of time between one (1) day to no more than six (6) months.

“Short term rental” shall mean any occupancy of a single family, two-family, multi-family, and townhouse dwelling unit for a period of time between one (1) day to no more than six (6) months provided however the terms of this short term

rental ordinance shall not apply to film and print productions and use of the
aforementioned premises for those purposes.

- c. Registration Required. It shall be unlawful for any person to allow another person
to occupy any single family, two-family, multi-family, and townhouse dwelling
unit as a seasonal resident within the Town of Surfside, or offer such rental services
within the Town of Surfside, unless the person has been registered with the Town of
Surfside in accordance with provisions of this Section. A registration is required for
each rental period for which the single family, two-family, multi-family, and/or
townhouse dwelling unit is rented. No more than three (3) registrations shall be
issued within a twelve (12) month period. Every person required to procure a
registration under this Section shall submit a formal application to the Town
Manager or designee.
- d. Application for Registration. Applications for registration shall set forth and/or
include at a minimum:
- i. Address, lot, block and subdivision name of single family, two-family, multi-
family, and townhouse dwelling unit offered for rental;
 - ii. Name, address, and phone number of owner of said single family, two-family,
multi-family, and/or townhouse dwelling unit;
 - iii. Name, address, and emergency contact phone number of responsible party for
said single family, two-family, multi-family, and townhouse dwelling unit,
which shall be a twenty-four-hour, seven (7) days a week contact number;
 - iv. That the phone number for the responsible party will be answered twenty-four (24)
hours a day, seven (7) days a week by a party with authority to address or
coordinate problems associated with the single family, two-family, multi-family,
and townhouse dwelling unit;
 - v. Acknowledgements by owner of the following:
 - (a.) That all vehicles must be parked in the driveway of the single family, two-
family, multi-family, and townhouse dwelling unit and clear of all grassy areas
and sidewalk sections pursuant to Town of Surfside Code of Ordinances;
 - (b.) That it shall be unlawful to allow or make any noise or sound which exceed
the limits set forth in the Town's Noise Ordinance;
 - (c.) That no garbage container shall be located at the curb for pickup before 12:00
pm of the day prior to pickup, and garbage container shall be removed before
midnight of the day of pickup;
 - (d.) That whoever, without being authorized, licensed, or invited, willfully enters
or remains in any structure or conveyance of a single family, two-family, multi-
family, and townhouse dwelling unit, or, having authorized, licensed, or invited is
warned by the owner or lessee, to depart the unit and refuses to do so, commits
the offense of trespass in a structure or conveyance;
- e. Proof of owner's current ownership of the single family, two-family, multi-family, and
townhouse dwelling unit.

f. Issuance or Refusal of Registration. The Town Manager or his designee shall issue a registration to the applicant upon proof of the following:

- i. The owner and/or responsible party completes the Town of Surfside registration application form; and
- ii. The registration fee has been paid to the Town of Surfside; and
- iii. Incomplete registration applications are unacceptable and requested registration shall not issue.

g. Registration not transferable. No registration issued under this article shall be transferred or assigned or used by any person other than the one to whom it is issued, or at any location other than the one for which it is issued.

h. Expiration of Registration. All registration issued under the provisions of this article shall be valid for the rental period requested in the application.

i. Complaints. Whenever a violation of this article occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint, stating fully the causes and basis thereof, shall be filed with the Town Manager or his designee.

j. Fees for Registration. The Town of Surfside is authorized and shall charge a fee for registration to compensate for administrative expenses. The fees for registration shall be set forth in a resolution adopted by the Commission of the Town of Surfside, and may be amended from time to time

k. Resort Tax and Enforcement.

i. Payment of Resort Tax required. Owners are subject to payment of the resort taxes as establish by the laws of the Town of Surfside.

ii. Violations of this section:

(a) are subject to the following fines. The special master may not waiver or reduce fines set by this ordinance.

(i) First violation: \$500

(ii) Second violation within the preceding twelve (12) months: \$1500

(iii) Third violation within the preceding twelve (12) months: \$ 5000

(iv) Fourth or greater violation within the preceding twelve (12) months:
\$ 7500

(b) In addition to or in lieu of the foregoing, the Town may seek injunctive relief

(c) Any code compliance officer may issue notices for violations of this ordinance, with enforcement of section 90.41.1.5 and alternative enforcement of section 90.41.1.5 as provided in Chapter 90 of this Code. Violations shall be issued to the owner, manager, real estate broker or agent, or authorized agent, or any other individual or entity that participates in or facilitates the violation of this section. In the event the record owner of the property is not present when the violation occurred or notice of violation issued, a copy of the violation shall be served by certified mail on the owner at its mailing address in the property

appraiser's records and a courtesy notice to the contact person identified in subsection (4)(c) above.

C. Previously Existing Short Term Rentals.

1. For a period of six (6) months after the effective date of this ordinance, owners of certain properties shall be eligible to apply for approval of registration permitting short term rental of residential units for these properties under the requirements and provisions set forth below. Properties that are eligible are those that can demonstrate a current and consistent history of short-term renting, and that such short-term rentals are the primary source of income derived from that unit or building, as defined by the requirements listed below.
 - a. In order to demonstrate current, consistent and predominant short-term renting, the property must comply with all of the following:
 - i. have been registered with the Town for the payment of Resort Tax and made resort tax payments as of May 10, 2011; and
 - ii. have had Town of Surfside Resort Tax taxable room revenue equal to at least 50% of total room revenue over the last two-year period covered by such payments; and
 - iii. have been registered with the State of Florida as a Transient Apartment, Resort Dwelling, or Resort Condominium pursuant to Chapter 509, Florida Statutes, as of May 10, 2011; and
 - iv. complied with any other required laws including the filing of Business tax receipts.

Section 4. Inclusion in the Code. It is the intention of the Commission, and it is hereby ordained that this Ordinance shall become and be made a part of the Town of Surfside Code; that the sections of this Ordinance may be renumbered or relettered to accomplish such intention; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 5. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 6. Conflicts. Any and all Ordinances and Resolutions or parts of Ordinances or Resolutions in conflict herewith are hereby repealed.

Section 7. Effective Date. This ordinance shall become effective upon passage.

PASSED and ADOPTED on first reading this 10th day of May, 2011.

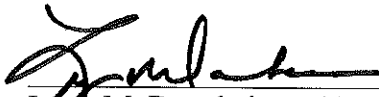
PASSED and ADOPTED on second reading this ____ day of _____, 2011.

Daniel Dietch, Mayor

Attest:

Debra E. Eastman, MMC
Town Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**



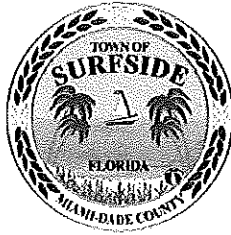
Lynn M. Dannheisser, Town Attorney

On First Reading Moved by: _____

On Second Reading Seconded by: _____

Vote:

Mayor Dietch	yes	_____	no	_____
Vice Mayor Graubart	yes	_____	no	_____
Commissioner Karukin	yes	_____	no	_____
Commissioner Kopelman	yes	_____	no	_____
Commissioner Olchyk	yes	_____	no	_____



Town of Surfside Commission Communication

Agenda Item # 4B3

Agenda Date: May 10, 2011.

Subject: Film And Print Production Ordinance.

Background: The Town of Surfside, in an effort to balance diverse interests and concerns regarding the filming of movies, television shows and videos, as well as photo shoots, within the Town limits, should enact a series of procedures and requirements to regulate the activity. Presently there is only a basic Film Permit form (attachment A) with no guidelines or any advisory committee to help guide and enhance the process.

Filming at locations within Surfside has often occurred without notification to the Town. A series of procedures and requirements will serve as notice to the film and print production community that Surfside mandates it be an active agency in regulating film and print related matters when these occur in Town. Surrounding jurisdictions already have procedures in place. A number of movies, television programs, music videos and fashion shoots have taken advantage of our region's attributes and weather. The greater Miami Beach area continues to attract such endeavors evident by the news of a new Charlie's Angels television show set to film here.

The following neighboring communities all have defined approaches to this matter:

- Bal Harbour Village: Only requires a Beach Access Permit, Indemnity Document and that the Village is named as an additional insured.
- Bay Harbor Islands: A dedicated ordinance outlining the requirements for a permit including applicability, permissible hours and fees.
- Miami Beach: Due to the extensive use of their locales by production companies, the City has the most comprehensive policies and procedures. Through their dedicated Film Division there is an application accompanied by a listing of prerequisites and guidelines. They also have a small incentive program to help sell their destination to production companies.
- Miami-Dade County: www.filmmiami.org is the dedicated website that production companies can access permitting processes for the county, City of Miami and Miami Beach.

Presently there is a simple procedure the Town has traditionally followed when a film company or photo shoot is interested in working in Surfside; assuming they contact the Town in advance. The Town's basic Film Permit is required. This is reviewed by the Building Official who discusses the application with the Town Manager. If Police assistance is needed there does exist, in their contract, an outline of related costs associated with the use of off-duty officers for special events. Based on the application, various requirements including appropriate fees paid in advance are identified. The Town Manager approves/modifies/denies the application once completed by the applicant.

The need to strengthen the Town's policy was recently made evident when a television production company wanted to film a reality series for seven weeks in a single family home on Biscaya Island. While meeting all of the requirements of the Town's existing film permit, including an addendum of additional items added by the Town Manager and Staff, the Town Commission instructed the Town Manager at the April 12, 2011 Town Commission Meeting to attempt to deny the permit subject to the Town Attorney's advice. Without clear direction from the Town Commission, in the form of an ordinance, ambiguities will continue to exist as to the direction the Town should take when presented with an application. Since these productions can substantially boost the local economy and improve our image, it is advisable to codify the rules so that there is an alignment between staff's regulatory role and Town Commission policy. Any potential impact to the quality of life of residents will also be addressed with such a process.

The Town would initiate an internal application review team consisting of the Town Manager, Chief of Police, Building Official and Tourism, Economic Development & Community Services Director. This team would work with a citizen's advisory committee, prior to the issuing of a permit, consisting of Peter Glynn, Andy LaBrada and Bera Kahn. All three have experience in the film and print production arena.

Analysis: The objective of the two options of the Film and Print Production Ordinance is to outline clear policies and procedures to address interest in using Surfside as a production location. Deciding on one option will provide a clear path for interested production companies and for Town staff. These policies can reasonably accommodate a request while protecting the quality of life for Surfside's residents. One option, with accompanying guidelines, balances the rights of the homeowner renting the property with those of neighboring property owners. The option prohibiting productions in the single family neighborhood directly addresses the quality of life issues for those residents who do not rent to production companies.

The frequency and longevity of the shoots has expanded recently. Research has revealed that "finders' fees" are being paid to neighbors who link homeowners to the production companies and second home owners essentially covering a large portion of their costs. This takes an infrequent event into the realm of a business in the single family neighborhood and justifies the need for clarity through regulation. One of the two ordinance options presented prohibits productions in the single family neighborhood.

By conducting outreach to the Miami-Dade Office of Film & Entertainment, a more cohesive relationship can be achieved to address interest in Surfside as a production location. Other municipalities in the county have entered into an inter-local permitting agreement with the County concerning permitting. This form of cooperation will be presented as an interlocal agreement at the Town Commission's June meeting if a version of the proposed ordinances is ratified on first reading at the May 10, 2011 meeting.

Further outreach could also be conducted with State's Governor's Office of Film and Entertainment (www.filminflorida.com). In essence, this will serve to inform these regional film agencies that the Town of Surfside has a process that they can identify to entities looking to film in Surfside.

Using Miami Beach as a model, the following will be developed:

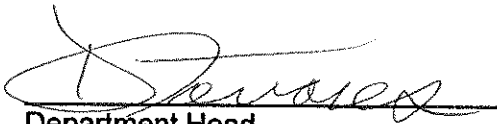
- a) A comprehensive Film and Print Application for Surfside.
- b) A Film and Print Requirements and Guidelines document that will outline such issues as:
 - Permits required and corresponding fees.
 - Parking and traffic obstruction policies.
 - The use of off-duty police.
 - Code of conduct.
 - Permissible days/hour and guidelines for exceptions.
 - Residential neighborhood notifications and agreements.
 - Use of town property, facilities and services.
 - A copy of the lease/rental agreement.
 - A required Indemnity Agreement.
- c) All documents will be available from Town Hall and on the Town and Tourist Bureau's websites. There will be a monthly report regarding Film and Print Production permits to the Town Commission and advance notice will be given in the event of a major production that could have impact on a neighborhood or the community at large.

These items will be brought before the Town Commission, as part of a resolution at the June meeting, with the second reading of one of the ordinance options if ratified at the May 10, 2011 meeting.

Budget Impact: The Town would receive permit fees that become part of the General Fund. Total amount of fees generated per fiscal year unknown at this time.

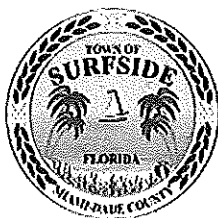
Staff Impact: Existing staff will review and issue/deny the permits as part of their required duties.

Recommendation: Staff recommends that the Commission adopts one of the two ordinance options presented.


Department Head


Town Manager

ATTACHMENT A



**Building Department
Request for Filming Permit**

Date of Request: _____ Permit Number: _____

Permit Fee: _____

Filming Job Address: _____

Filming Company: _____

Bonding Company: _____

Insurance Company: _____

Off Duty Policeman assigned: _____

Policy # _____

Responsible Person: _____ Phone #: _____

Electrical Contractor: _____ Permit # _____

Telephone #: _____

Signature of responsible person

Notary Signature Date Commission Expires

Request for Filming Permit (cont)

This permit is subject to the following of Conditions:

- 1- _____
- 2- _____
- 3- _____
- 4- _____
- 5- _____
- 6- _____

Please be advised, any violation of anyone of the above conditions will prompt a courtesy violation notice, a second violation will cause the revocation of the permit.

For office use only:

Permit Expiration Date: _____ **Permit Issuance Date:** _____

Town Manager: _____

Police Chief: _____

Building Official: _____

ORDINANCE NO. 11- _____

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA CREATING CHAPTER 11 “ARTS, CULTURE, AND ENTERTAINMENT” AND ARTICLE I “FILM AND PRINT PRODUCTIONS” AND SPECIFICALLY CREATING SECTION 11-1 “FILM AND PRINT PRODUCTION PERMITS”, OF THE TOWN OF SURFSIDE CODE OF ORDINANCES PROVIDING FOR INCLUSION IN THE CODE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Town of Surfside (“Town”) proposes to amend its Code of Ordinances to establish guidelines for film and print production permitting.

WHEREAS, The Town Commission held its first public reading on _____ and recommended approval of the proposed amendments to the Code of Ordinances having complied with the notice requirements by the Florida Statutes; and

WHEREAS, The Town Commission has conducted a second duly noticed public hearing on these regulations as required by law on _____ and further finds the proposed change to the Code necessary and in the best interest of the community.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA as follows:

Section 1. Recitals. The foregoing “WHEREAS” clauses are ratified and confirmed as being true and correct and are made a specific part of this Ordinance.

Section 2. Code Amendment. The code of the Town of Surfside, Florida is hereby amended as follows:

CHAPTER 11. ARTS, CULTURE, AND ENTERTAINMENT.

Ordinance No. _____

ARTICLE I. FILM AND PRINT PRODUCTIONS.

SECTION 11-1. Film and Print Production Permits.

The town manager or the manager's designee, shall have the authority to issue, modify or revoke permits for film and print productions, in accordance with criteria set forth in this section and the film and print regulations approved by separate resolution of the town commission.

(1)

[Unlawful without permit.] Except for filming by individuals for personal or educational use, and "professional journalists" collecting, photographing, recording, or reporting "news," as such terms are defined in F.S. § 90.5015, it shall be unlawful to engage in film and print production activities on public property, residentially zoned (private) property, or in film and print activities that require any town services, without a film and print permit.

(2)

[Additional regulations and conditions may be imposed.] The town manager or the manager's designee may impose additional reasonable regulations and conditions to a specific permit to ensure the public health, safety and welfare, and peaceful enjoyment of surrounding residents and businesses, at any time.

(3)

[Application needed.] Individuals or businesses wishing to conduct film, television, video and/or photography projects on public property, private residential property, or any location that impacts or requires city services, must apply in advance to the town, providing a completed application, including proof of insurance and indemnification, as required by the film and print regulations, and receive a permit, before any film or print production activity may commence;

(4)

Town services. Upon receipt of a completed permit application, the permit will be reviewed to determine what, if any, town services will be required. Requirements may vary for each production. The town manager or the manager's designee, in their discretion, may require additional town services and/or monetary deposits not specifically listed or codified.

(5)

Film and print regulations. The mayor and town commission may adopt by resolution film and print regulations and the town manager or the manager's designee will administer the regulations as they pertain to film and print productions working within the town. The manager may

Ordinance No. _____

authorize amendments to the regulations proposed by the administration, and shall present such amendments to the town commission for approval, by resolution.

(6)

Code of conduct. The city code of conduct for film and print productions shall be distributed with all notification and/or signature forms. Copies are available in the office of arts, culture and entertainment.

(7)

Parking. All productions requiring prearranged parking must receive prior approval from both the parking department and the town manager or the manager's designee before a permit may be issued. Unless prior approval is received for specific requests, all production vehicles must park legally at all times.

(8)

Moratoria. The town manager or the manager's designee, at his sole discretion, is authorized to place a temporary moratorium on the issuance of film and print production permits for locations and/or neighborhoods which have experienced overuse as a result of high volume and/or heavy impact filming. The moratorium shall remain in effect for a maximum period of six months, but may be renewed for additional six-month periods if in the discretion of the manager, the impact of the prior filming activities in the area warrants extension.

(9)

Conflict with noise provisions. The town manager or the manager's designee, may issue a permit that authorizes filming in conflict with Chapter 54, Article III, of this Town Code, or other applicable noise ordinance, only where the applicant has met all of the town's requirements for obtaining a permit as prescribed in this division and the film and print regulations, and the filming cannot be performed in compliance with the applicable noise ordinance. Such a permit must specify the precise manner by which the noise ordinance may be exceeded, by what duration, and at what locations. Such permit authorization may be modified or revoked if in the discretion of the manager, or designee, the authorization excessively negatively impacts the surrounding neighborhood. Having a permit shall not relieve the permit holder from compliance with all other applicable local, county, state or federal laws.

(10)

Enforcement.

a.

Permits shall be maintained at the site on which the photography or filming occurs. Upon the request of any police officer or code compliance officer of the town, the owner, lessee of the property

Ordinance No. _____

or representative of the production company, shall produce such permit for inspection.

b.

Persons engaged in film and print activities without a permit, or otherwise in violation of a permit, this section or the film and print regulations provided for herein, shall be subject to enforcement by town police or code compliance officers, through the issuance of immediate cease and desist orders, the violation of which may subject the offender to arrest, and/or enforcement as provided for in section 1-8 of this Code, and/or notices of violation referred to special masters, who have authority to issue fines or enforce compliance, as provided for herein. As an alternate and supplemental remedy, the town may enforce this section by injunctive relief in any court of competent jurisdiction, and in such circumstance the town shall be entitled to recover its reasonable attorneys' fees and costs. For repeat offenders, the manager or designee may decline to issue permits to such person or entity for one year, or such other period as the manager deems appropriate.

Section 3. Severability. If any section, subsection, clause or provision of this Ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, the remainder shall not be affected by such invalidity.

Section 4. Conflict. All sections or parts of sections of the Town of Surfside Code of Ordinances in conflict herewith are intended to be repealed to the extent of such conflict.

Section 5. Inclusion in the Code of Ordinances. It is the intention of the Town Commission, and it is hereby ordained that the provisions of this Ordinance shall become and made a part of the Town of Surfside Code of Ordinances, that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and the word "ordinance" may be changed to "Section" or other appropriate word.

Section 6. Effective Date. This Ordinance shall be effective ten (10) days after adoption on second reading.

PASSED and ADOPTED on first reading this _____ day of _____, 2011.

Ordinance No. _____

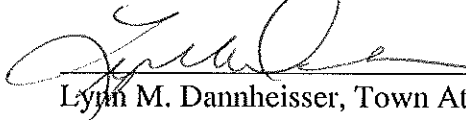
PASSED and ADOPTED on second reading this ____ day of _____, 2011.

Daniel Dietch, Mayor

Attest:

Debra E. Eastman, M.M.C., Town Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**



Lynn M. Dannheisser, Town Attorney

On First Reading Moved by: _____

On Second Reading Seconded by: _____

Vote:

Mayor Dietch	yes_____	no_____
Vice Mayor Graubart	yes_____	no_____
Commissioner Karukin	yes_____	no_____
Commissioner Kopelman	yes_____	no_____
Commissioner Olchyk	yes_____	no_____

Ordinance No. _____

ORDINANCE NO. 11- _____

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA CREATING CHAPTER 11 “ARTS, CULTURE, AND ENTERTAINMENT” AND ARTICLE I “FILM AND PRINT PRODUCTIONS” AND SPECIFICALLY CREATING SECTION 11-1 “FILM AND PRINT PRODUCTION PERMITS”, OF THE TOWN OF SURFSIDE CODE OF ORDINANCES PROVIDING FOR INCLUSION IN THE CODE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Town of Surfside (“Town”) proposes to amend its Code of Ordinances to establish guidelines for film and print production permitting.

WHEREAS, The Town Commission held its first public reading on May 10, 2011 and recommended approval of the proposed amendments to the Code of Ordinances having complied with the notice requirements by the Florida Statutes; and

WHEREAS, The Town Commission has conducted a second duly noticed public hearing on these regulations as required by law on June 14, 2011 and further finds the proposed change to the Code necessary and in the best interest of the community.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA as follows:

Section 1. **Recitals.** The foregoing “WHEREAS” clauses are ratified and confirmed as being true and correct and are made a specific part of this Ordinance.

Section 2. **Code Amendment.** The code of the Town of Surfside, Florida is hereby amended as follows:

CHAPTER 11. ARTS, CULTURE, AND ENTERTAINMENT.

Ordinance No. _____

ARTICLE I. FILM AND PRINT PRODUCTIONS.

SECTION 11-1. Film and Print Production Permits.

Except in the H-30 Districts including H-30 A, H-30 B, and those portions of the H-30 C District located west of Harding Avenue, the town manager or the manager's designee, shall have the authority within the Town to issue, modify or revoke permits for film and print productions in accordance with criteria set forth in this section and the film and print regulations approved by separate resolution of the town commission.

(1)

[Unlawful without permit.] Except for filming by individuals for personal or educational use, and "professional journalists" collecting, photographing, recording, or reporting "news," as such terms are defined in F.S. § 90.5015, it shall be unlawful to engage in film and print production activities on public property, residentially zoned (private) property, or in film and print activities that require any town services, without a film and print permit.

(2)

[Additional regulations and conditions may be imposed.] The town manager or the manager's designee may impose additional reasonable regulations and conditions to a specific permit to ensure the public health, safety and welfare, and peaceful enjoyment of surrounding residents and businesses, at any time.

(3)

[Application needed.] Individuals or businesses wishing to conduct film, television, video and/or photography projects on public property, private residential property, or any location that impacts or requires city services, must apply in advance to the town, providing a completed application, including proof of insurance and indemnification, as required by the film and print regulations, and receive a permit, before any film or print production activity may commence;

(4)

Town services. Upon receipt of a completed permit application, the permit will be reviewed to determine what, if any, town services will be required. Requirements may vary for each production. The town manager or the manager's designee, in their discretion, may require additional town services and/or monetary deposits not specifically listed or codified.

(5)

Film and print regulations. The mayor and town commission may adopt by resolution film and print regulations and the town manager or the manager's designee will administer the regulations as they pertain to film

Ordinance No. _____

and print productions working within the town. The manager may authorize amendments to the regulations proposed by the administration, and shall present such amendments to the town commission for approval, by resolution.

(6)

Code of conduct. The town code of conduct for film and print productions shall be distributed with all notification and/or signature forms. Copies are available in the office of arts, culture and entertainment.

(7)

Parking. All productions requiring prearranged parking must receive prior approval from both the police department and the town manager or the manager's designee before a permit may be issued. Unless prior approval is received for specific requests, all production vehicles must park legally at all times.

(8)

Moratoria. The town manager or the manager's designee, in his sole discretion, is authorized to place a temporary moratorium on the issuance of film and print production permits for locations and/or neighborhoods which have experienced overuse as a result of high volume and/or heavy impact filming. The moratorium shall remain in effect for a maximum period of six months, but may be renewed for additional six-month periods if in the discretion of the manager, the impact of the prior filming activities in the area warrants extension.

(9)

Conflict with noise provisions. The town manager or the manager's designee, may issue a permit that authorizes filming in conflict with Chapter 54, Article III, of this Town Code, or other applicable noise ordinance, only where the applicant has met all of the town's requirements for obtaining a permit as prescribed in this division and the film and print regulations, and the filming cannot be performed in compliance with the applicable noise ordinance. Such a permit must specify the precise manner by which the noise ordinance may be exceeded, by what duration, and at what locations. Such permit authorization may be modified or revoked if in the discretion of the manager, or designee, the authorization excessively negatively impacts the surrounding neighborhood. Having a permit shall not relieve the permit holder from compliance with all other applicable local, county, state or federal laws.

(10)

Enforcement.

a.

Permits shall be maintained at the site on which the photography or filming occurs. Upon the request of any police officer or code compliance officer of the town, the owner, lessee of the property

Ordinance No. _____

or representative of the production company, shall produce such permit for inspection.

b.

Persons engaged in film and print activities without a permit, or otherwise in violation of a permit, this section or the film and print regulations provided for herein, shall be subject to enforcement by town police or code compliance officers, through the issuance of immediate cease and desist orders, the violation of which may subject the offender to arrest, and/or enforcement as provided for in section 1-8 of this Code, and/or notices of violation referred to special masters, who have authority to issue fines or enforce compliance, as provided for herein. As an alternate and supplemental remedy, the town may enforce this section by injunctive relief in any court of competent jurisdiction, and in such circumstance the town shall be entitled to recover its reasonable attorneys' fees and costs. For repeat offenders, the manager or designee may decline to issue permits to such person or entity for one year, or such other period as the manager deems appropriate.

Section 3. Severability. If any section, subsection, clause or provision of this Ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, the remainder shall not be affected by such invalidity.

Section 4. Conflict. All sections or parts of sections of the Town of Surfside Code of Ordinances in conflict herewith are intended to be repealed to the extent of such conflict.

Section 5. Inclusion in the Code of Ordinances. It is the intention of the Town Commission, and it is hereby ordained that the provisions of this Ordinance shall become and made a part of the Town of Surfside Code of Ordinances, that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and the word "ordinance" may be changed to "Section" or other appropriate word.

Section 6. Effective Date. This Ordinance shall be effective ten (10) days after adoption on second reading.

PASSED and ADOPTED on first reading this 10th day of May, 2011.

Ordinance No. _____

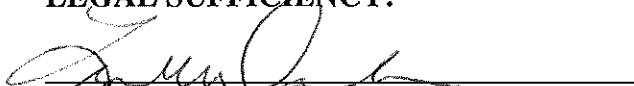
PASSED and ADOPTED on second reading this ____ day of _____, 2011.

Daniel Dietch, Mayor

Attest:

Debra E. Eastman, M.M.C., Town Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**



Lynn M. Dannheisser, Town Attorney

On First Reading Moved by: _____

On Second Reading Seconded by: _____

Vote:

Mayor Dietch	yes_____	no_____
Vice Mayor Graubart	yes_____	no_____
Commissioner Karukin	yes_____	no_____
Commissioner Kopelman	yes_____	no_____
Commissioner Olchyk	yes_____	no_____

Ordinance No. _____

RESOLUTION 2011-__

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, OPPOSING FLORIDA LEGISLATION THAT PREEMPTS THE RIGHT OF LOCAL GOVERNMENT TO REGULATE SHORT TERM RENTALS ON RESIDENTIAL PROPERTY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, The Florida House of Representatives and the Florida Senate have pre-filed two Bills now designated as, CS/CS/HB 883 and CS/SB 476, respectively, providing for a preemption of the right of local government to regulate real property zoning, use and occupancy as it pertains to short term rentals of residential property, which legislation reads in pertinent part: *“(b) Notwithstanding any local law, ordinance, or regulation, a vacation rental, as described in s. 509.242(1)(c), is deemed residential property and may not be prohibited or treated differently than other residential property based solely on its classification, use, or occupancy.”*

WHEREAS, the Town of Surfside presently collects resort tax and attempts to gain compliance with all legislation relating to short term rentals and should continue to have home rule authority in its own jurisdiction;

NOW THEREFORE, THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, HEREBY RESOLVES AS FOLLOWS:

The Town Commission of the Town of Surfside hereby urges both Houses of the Florida Legislature, and in particular the Miami-Dade County Delegation, to vote against the passage of HB 883 and SB 476, as amended by Committee Substitute or otherwise;

BE IT FURTHER RESOLVED, that a copy of this Resolution shall be provided to the members of the Miami-Dade County Legislative Delegation, Miami-Dade Board of County Commissioners, the Florida League of Cities, and all municipalities in Miami-Dade County.

PASSED AND ADOPTED this 10th day of May, 2011, at a Regular Meeting of the Town Commission of Surfside, Florida, at which a quorum was present.


Motion by Commissioner _____. Seconded by Commissioner _____.

Daniel Dietch, Mayor

Attest:

Debra E. Eastman, MMC
Town Clerk

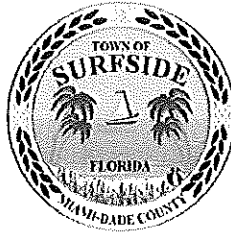
**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**



Lynn M. Dannheisser, Town Attorney

Vote:

Mayor Dietch	yes	_____	no	_____
Vice Mayor Graubart	yes	_____	no	_____
Commissioner Karukin	yes	_____	no	_____
Commissioner Kopelman	yes	_____	no	_____
Commissioner Olchyk	yes	_____	no	_____



Town of Surfside Commission Communication

Agenda Item # 5B

Agenda Date: May 10, 2011

Subject: Florida Power and Light Company Easement for Community Center

The attached is a standard form easement required by Florida Power and Light Company when they bring power to a building . . . in this case the new Community Center. In order to have the installation completed timely, the Town Manager needed to sign the easement prior to the May 10, 2011 Town Commission meeting.

Therefore, the attached resolution is being brought to you for retroactive approval. The easement was reviewed by the Town Attorney prior to it being signed by the Town Manager.

Town Manager

EASEMENT

This Instrument Prepared By:

Work Request No. _____
Sec. __ Twp __ S, Rge __ E

Lynn M. Dannheisser, Town Attorney
9293 Harding Ave., Surfside, Florida 33154

Parcel I.D.
(Maintained by County Appraiser)

Plat Book 8, Page 92 of Public Records of Miami-Dade County
Plat Book 70, Page 31 of Public Records of Miami-Dade County

Form 3722 (Stocked) Rev. 7/94

The undersigned, in consideration of the payment of \$1.00 and other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, grant and give to Florida Power & Light Company, (Grantee) having an address of 700 Universe Blvd. Juno Beach, Florida 33408, its licensees, agents, successors, and assigns, an easement forever for the construction, operation and maintenance of overhead and underground electric utility facilities (including wires, poles, guys, cables, conduits and appurtenant equipment) to be installed from time to time; with the right to reconstruct, improve, add to, enlarge, change the voltage, as well as, the size of and remove such facilities or any of them within an easement ten (10) feet in width described as follows:

Reserved for Circuit Court

SEE EXHIBIT "A"

Together with the right to permit any other person, firm or corporation to attach wires to any facilities hereunder and lay cable and conduit within the easement and to operate the same for communications purposes; the right of Ingress and egress to said premises at all times; the right to clear the land and keep it cleared of all trees, undergrowth and other obstructions within the easement area; to trim and cut and keep trimmed and cut all dead, weak, leaning or dangerous trees or limbs outside of the easement area which might interfere with or fall upon the lines or systems of communications or power transmission or distribution; and further grants, to the fullest extent the undersigned has the power to grant, if at all, the rights hereinabove granted on the land heretofore described, over, along, under and across the roads, streets or highways adjoining or through said property. Grantee shall provide notice to Grantor prior to any work being performed in the easement.

IN WITNESS WHEREOF, the undersigned has signed and sealed this instrument on April 27 2011

Signed, sealed and delivered in the presence of:
[Signature]
(Witness Signature)

[Signature]
Mayor Daniel Dietch

Print Name: _____
[Signature]
(Witness Signature)

Print Name: Daniel Dietch
Print Address: 9293 Harding Ave., Surfside, Florida 33154

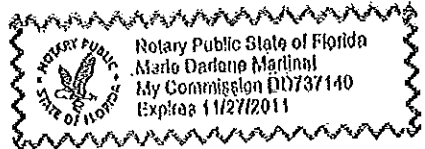
Print Name: MARTIN SHERWOOD
(Witness)

Attest: [Signature]
Debra E. Eastman, M.M.C., Town Clerk
Print Name: Debra Eastman
Print Address: 9293 Harding Ave., Surfside, Florida 33154

(Corporate Seal)

STATE OF FLORIDA AND COUNTY OF MIAMI-DADE. The foregoing instrument was acknowledged before me this 27 day of April, 2011, by Daniel Dietch & Debra Eastman the Mayor & Town Clerk of the Town of Surfside, a Florida Municipality, on behalf of said corporation, who are personally known to me or have produced Surfside as identification, and who did (did not) take an oath.

My Commission Expires:



[Signature]
Notary Public, Signature
Print Name Mario Darlene Martin

**LAND DESCRIPTION
SURFSIDE COMMUNITY CENTER
10 FOOT FLORIDA POWER AND LIGHT Co. EASEMENT
TOWN OF SURFSIDE, MIAMI-DADE COUNTY, FLORIDA**

A strip of land 10 foot in width being a portion of Lot 11, Block 1 as shown on "ALTOS DEL MAR No. 5", according to the Plat thereof, as recorded in Plat Book 8, Page 92 and a portion of vacated right-of-way of State Road A-1-A as described in the Official Records Book 27172, Page 4775, all in the Public Records of Miami-Dade County, Florida, said strip of land lying 5.00 feet each side of the following described centerline:

COMMENCING at the Northwest corner of Lot 1, Block 1, "SURFSIDE CENTER", according to the Plat thereof, as recorded in Plat Book 70, Page 31, of the Public Records of Miami-Dade County, Florida

THENCE South 86°51'54" West on the Westerly prolongation of the North line of said Lot 1, Block 1, said line also being the South line of Lot 2, Block 2, as shown on said "ALTOS DEL MAR No. 5", a distance of 20.02 feet to the intersection with the West line of a said vacated right-of-way;

THENCE South 05°22'19" East on said West line, a distance of 79.01 feet;

THENCE North 84°37'41" East, a distance of 5.00 feet to the intersection with a line 5.00 feet East of and parallel with said West line of a vacated right-of-way and to the **POINT OF BEGINNING** of said centerline;

THENCE South 05°22'19" East on said centerline and on said parallel line, a distance of 118.60 to the intersection with a line 12.50 feet North of and parallel with South line of Lot 11, Block 1, "ALTOS DEL MAR No. 5";

THENCE North 86°46'30" East on said centerline and on said parallel line, a distance of 66.30 feet to the **POINT OF TERMINATION** of said centerline;

The sidelines of this easement are to be shortened or lengthened so as to form a continuous strip of land in width and to intersect existing properties

Said lands lying in Section 35, Township 52 South, Range 42 East, Town of Surfside, Miami-Dade County, Florida and containing a total net area of 1,849 square feet, more or less.

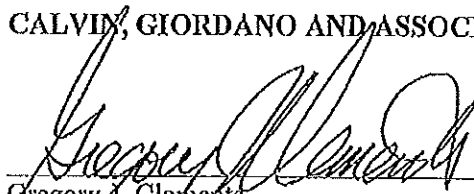
SURVEYOR'S NOTES:

1. Not valid without the signature and original raised seal of a Florida Licensed Surveyor and Mapper.

Prepared by:
CALVIN, GIORDANO & ASSOCIATES, INC.
1800 Ellice Drive - Suite 600
Fort Lauderdale, FL 33316
April 07, 2011
P:\Project\2007\071202 Surfside Community Center\Survey\Legal Description\20065355-12-BSMF-FPL.docx

2. Lands shown hereon were not abstracted by the surveyor for rights-of-way, easements, ownership or other instruments of record.
3. Bearings shown hereon are Relative to Florida Department of Transportation right-of-way map for State Road A-1-A, Section 87060, Financial I.D. No. 2507471, prepared by Metric Engineering, Inc., and last dated February 2005, Sheets 12 to 15 of 15 with the baseline of said State Road having a bearing of North 05°22'19" West.
4. The description contained herein does not represent a field boundary survey.

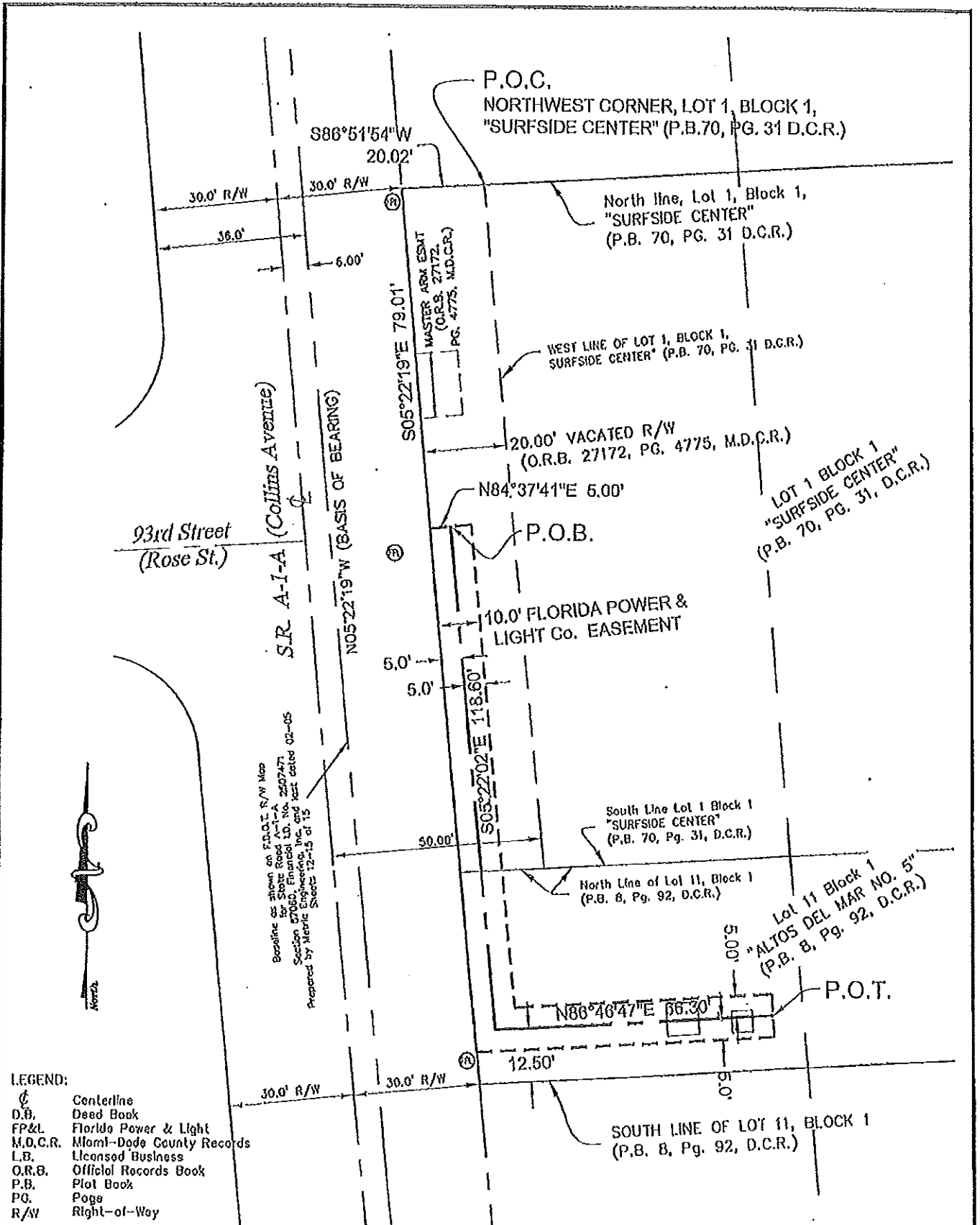
CALVIN, GIORDANO AND ASSOCIATES, INC.

 Date: 4-7-2011
Gregory D. Clements
Professional Surveyor and Mapper
Florida Registration Number LS 4479

Prepared by:
CALVIN, GIORDANO & ASSOCIATES, INC.
1809 Eller Drive - Suite 660
Fort Lauderdale, FL 33316
April 07, 2011
P:\Project\2007\071201 Southside Community Center\Survey\Legal Description\055355-12-ES\NT-FPL.docx

SHEET 2 OF 3 SHEETS

P:\Projects\2007\071202 Surfside Continuity Center\Survey\SKETCH\071202-V-SB-ESMT-FPL.dwg



- LEGEND:**
- ⊕ Centerline
 - D.B. Deed Book
 - FP&L Florida Power & Light
 - M.D.C.R. Miami-Dade County Records
 - L.B. Licensed Business
 - O.R.B. Official Records Book
 - P.B. Plot Book
 - P.O. Page
 - R/W Right-of-Way



Calvin, Giordano & Associates, Inc.
EXCEPTIONAL SOLUTIONS
 1100 Ely Dr., Suite 600, Fort Lauderdale, Florida 33316
 Phone: 954.931.7731 Fax: 954.971.8107
 Certificate of Authorization #18k

SKETCH OF DESCRIPTION
 10 FOOT FLORIDA POWER & LIGHT CO. EASEMENT
 TOWN OF SURFSIDE, MIAMI-DADE COUNTY, FLORIDA

SCALE	FRONTS	SHEET
1" = 30'	06-5355,12	
DATE	CAD FILE	3
04-07-11	SEE LEFT	

RESOLUTION NO. ____

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING AN AFTER-THE-FACT EASEMENT DESCRIBED IN EXHIBIT "A" GRANTING AND GIVING TO FLORIDA POWER & LIGHT COMPANY FOREVER A TEN (10) FOOT WIDE EASEMENT FOR THE CONSTRUCTION, OPERATION AND MAINTENANCE OF OVERHEAD AND UNDERGROUND UTILITIES TO BE INSTALLED FOR THE COMMUNITY CENTER AND AQUATIC FACILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, The Town of Surfside has executed on April 27, 2011 an easement described in Exhibit "A" attached hereto, granting and giving to Florida Power & Light Company (hereinafter "FPL") forever a ten (10) foot wide easement for the construction, operation and maintenance of overhead and underground utilities to be installed for the Community Center and Aquatic Facility; and

WHEREAS, it is in the best interest of the Town to approve this easement.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above-stated recitals are hereby adopted and confirmed.

Section 2. Granting of Easement Approved. The FPL Easement attached as "Exhibit A" is hereby approved after-the-fact and the Town Manager is hereby authorized to do to do all things necessary to effectuate this easement.

Section 3. Effective Date. This Resolution shall be effective immediately from adoption hereof.

PASSED and ADOPTED on this 10th day of May, 2011.

Motion by Commissioner _____, second by Commissioner _____.

FINAL VOTE ON ADOPTION

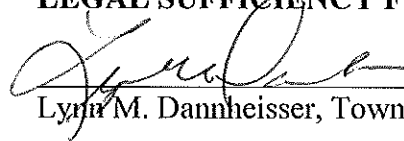
Commissioner Michael Karukin _____
Commissioner Edward Kopelman _____
Commissioner Marta Olchyk _____
Vice Mayor Joseph Graubart _____
Mayor Daniel Dietch _____

Daniel Dietch, Mayor

ATTEST:

Debra E. Eastman, MMC
Town Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE TOWN OF SURFSIDE ONLY:**



Lynn M. Dannheisser, Town Attorney

EASEMENT

This Instrument Prepared By:

Work Request No. _____
Sec. __ Twp __ S, Rge __ E

Lynn M. Dannhelsser, Town Attorney
9293 Harding Ave., Surfside, Florida 33154

Parcel I.D.
(Maintained by County Appraiser)

Plat Book 8, Page 92 of Public Records of Miami-Dade County
Plat Book 70, Page 31 of Public Records of Miami-Dade County

Form 3722 (Stocked) Rev. 7/94

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Reserved for Circuit Court

SEE EXHIBIT "A"

Together with the right to permit any other person, firm or corporation to attach wires to any facilities hereunder and lay cable and conduit within the easement and to operate the same for communications purposes; the right of ingress and egress to said premises at all times; the right to clear the land and keep it cleared of all trees, undergrowth and other obstructions within the easement area; to trim and cut and keep trimmed and cut all dead, weak, leaning or dangerous trees or limbs outside of the easement area which might interfere with or fall upon the lines or systems of communications or power transmission or distribution; and further grants, to the fullest extent the undersigned has the power to grant, if at all, the rights hereinabove granted on the land heretofore described, over, along, under and across the roads, streets or highways adjoining or through said property. Grantee shall provide notice to Grantor prior to any work being performed in the easement.

IN WITNESS WHEREOF, the undersigned has signed and sealed this instrument on April 27 2011

Signed, sealed and delivered in the presence of:

[Handwritten Signature]

(Witness Signature)

Print Name:

[Handwritten Signature]

(Witness Signature)

Print Name:

[Handwritten Signature]

(Witness)

[Handwritten Signature]

Mayor Daniel Dietch

Print Name:

Daniel Dietch

Print Address: 9293 Harding Ave., Surfside, Florida 33154

Attest:

[Handwritten Signature]

Debra E. Eastman, M.M.C., Town Clerk

Print Name:

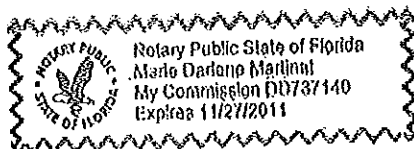
Debra Eastman

Print Address: 9293 Harding Ave., Surfside, Florida 33154

(Corporate Seal)

STATE OF FLORIDA AND COUNTY OF MIAMI-DADE. The foregoing instrument was acknowledged before me this 27 day of April, 2011, by Daniel Dietch & Debra Eastman the Mayor & Town Clerk of the Town of Surfside, a Florida Municipality, on behalf of said corporation, who are personally known to me or have produced Surfside as identification, and who did (did not) take an oath.

My Commission Expires:



[Handwritten Signature]
Notary Public, Signature

Print Name

Mario D'Amico Martini

**LAND DESCRIPTION
SURFSIDE COMMUNITY CENTER
10 FOOT FLORIDA POWER AND LIGHT Co. EASEMENT
TOWN OF SURFSIDE, MIAMI-DADE COUNTY, FLORIDA**

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Said lands lying in Section 35, Township 52 South, Range 42 East, Town of Surfside, Miami-Dade County, Florida and containing a total net area of 1,849 square feet, more or less.

SURVEYOR'S NOTES:

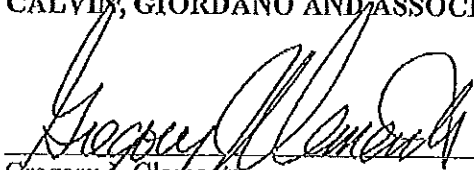
1. Not valid without the signature and original raised seal of a Florida Licensed Surveyor and Mapper.

Prepared by:
CALVINI, GIORDANO & ASSOCIATES, INC.
1800 Biscayne Drive - Suite 600
Fort Lauderdale, FL 33316
April 07, 2011
P:\Projects\02007071202 Surfside Community Center\Survey\Legal Description\055355-12-FSMT-FPL.docx

SHEET 1 OF 3 SHEETS

2. Lands shown hereon were not abstracted by the surveyor for rights-of-way, easements, ownership or other instruments of record.
3. Bearings shown hereon are Relative to Florida Department of Transportation right-of-way map for State Road A-1-A, Section 87060, Financial I.D. No. 2507471, prepared by Metrio Engineering, Inc., and last dated February 2005, Sheets 12 to 15 of 15 with the baseline of said State Road having a bearing of North 05°22'19" West.
4. The description contained herein does not represent a field boundary survey.

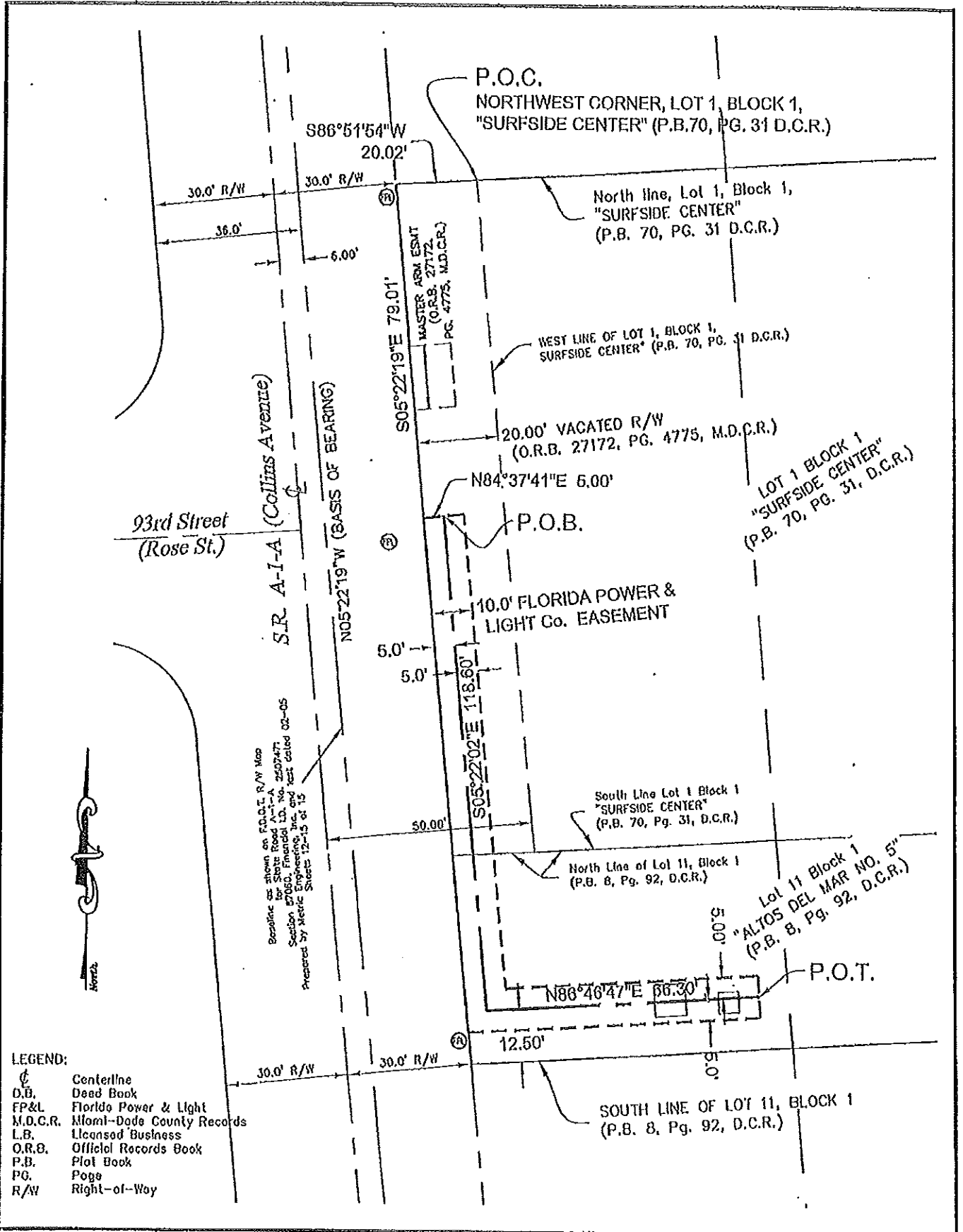
CALVIN, GIORDANO AND ASSOCIATES, INC.

 Date: 4-7-2011
Gregory J. Clements
Professional Surveyor and Mapper
Florida Registration Number LS 4479

Prepared by:
CALVIN, GIORDANO & ASSOCIATES, INC.
1800 Eller Drive - Suite 600
Fort Lauderdale, FL 33316
April 07, 2011
E:\Projects\2607071\202_Sprflds Community Center\Survey\Legal Descriptions\055335-12-ES\NY-FPL.docx

SHEET 2 OF 3 SHEETS

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- LEGEND:**
- ⊕ Centerline
 - D.B. Dead Book
 - FP&L Florida Power & Light
 - M.D.C.R. Miami-Dade County Records
 - L.B. Licensed Business
 - O.R.B. Official Records Book
 - P.B. Plot Book
 - P.G. Page
 - R/W Right-of-Way

Boundary as shown on P.D.O.T. R/W Map for Rose Road A-1-A Section 27172, Financial ID. No. 2507477 Prepared by Metric Engineering, Inc. and last called 03-05 Sheets 12-15 of 15



Calvin, Giordano & Associates, Inc.
EXCEPTIONAL SOLUTIONS
 1110 Ely Drive, Suite 600, Fort Lauderdale, Florida 33316
 Phone: 954.921.7731 Fax: 954.921.8107
 Certificate of Authorization #188

SKETCH OF DESCRIPTION
 10 FOOT FLORIDA POWER & LIGHT CO. EASEMENT
 TOWN OF SURFSIDE, MIAMI-DADE COUNTY, FLORIDA

SCALE	PROTOTYP	SHEET
1" = 30'	06-5355,12	3
DATE	CADW	
04-07-11	SEE LEFT	3



April 25, 2011

Please read following request:

Mayor and fellow Commissioners:

I am asking that the Town support "Wounded Warriors Family Support" by contributing \$500.00 to this organization that supports families "...of those who have been wounded, injured or killed during combat operations."

Please know that this is not the first time that the Town has made such a contribution; the Town has a rich tradition of helping others.

Thanks very much for your consideration,

Joe Graubart, Vice Mayor

A handwritten signature in cursive script that reads "Joe".



Town of Surfside Commission Communication

Agenda Item # 9C

Agenda Date: MAY 10, 2011

Subject: Comprehensive Annual Financial Report (CAFR) for the Fiscal Year Ended September 30, 2010

Background: The Fiscal Year 2010 CAFR is the first CAFR prepared since Fiscal Year 2006 a period of four years. During that four year period only audited financial statements were prepared. While an audited financial statement meets the minimum standard of reporting it does not provide the broad base of financial information and transparency that the current Town Commission requires and that the Administration has been directed to provide. Additionally, the independent auditing firm of Marcum, LLP has provided the Commission with a communication letter, dated April 4, 2011, detailing that all procedures were performed in accordance with generally accepted auditing standards and that no material misstatements existed.

Due to the complexity of the CAFR and the limited financial knowledge that many of our citizens may have, the following is a list of the highlights with a brief explanation:

1. Of great importance is the Independent Auditors Report (page 1) which reflects an unqualified ("clean") audit opinion which is the highest assurance given that the overall Town's financial statements are in conformity with generally accepted accounting standards and principles. A clean audit opinion should give comfort to the Town Commission and the citizens of our community that the finances are being handled properly and that there is no need for a forensic audit which would be both expensive and wasteful.
2. The first major section of the CAFR (page 3) is the Management Discussion and Analysis which introduces the Town's basic financial statements. The basic elements of this analysis are as follows:
 - a. The Town's net assets exceed liabilities by \$24,706,676 and increased by nearly \$1,632,000 during the fiscal year. This analysis is comparable to a balance sheet in the private sector and we are in substantial surplus. (Chart page 7, detail page 16)

- b. For the Governmental Activities element of the Town operation general government required 29.4% of resources available including offsetting grants and revenues, public safety required 51.9%, physical environment 11.7%, leisure services 7.9% and transportation showed a surplus of 1% (due to grants). (Page 9)
- c. Major proprietary funds showed operating income of \$527,516 for water and sewer, \$182,185 for parking and \$295,042 for sanitation. (Page 9 and page 21)
- d. The only long term debt reflected in the CAFR is for compensated absences (sick and annual leave) that are convertible upon termination. The total amount of \$393,306 is spread out over the careers of employees as they leave Town service (page 13). There is a short term non-interest bearing \$100,000 payment due in April 2011 for the balance of the acquisition of the 95th Street parking lot.
- e. The business type activities of the Town (non ad valorem programs) transferred \$208,502 to the General Fund (ad valorem tax supported) to fund their cost for administrative activities including legal department costs. (Page 16)
- f. The Pension Trust Fund included \$10,643,601 as of September 30, 2010 and was 99.1% fully funded. The fund has absorbed most of the losses to its portfolio during the past three years from poor performance of the stock market and as of the December 31, 2010 quarterly report has returned to full funding. The Town funded the full actuarial established requirement in all recent years even though the requirement grew substantially to make up for poor investment performance. (Page 24, 45, 53)
- g. The financial management and accounting policies of the Town are described in detail in pages 26-50 of the CAFR. These descriptions are included in twelve "Notes" which describe financial management processes including how funds are invested cautiously, how we depreciate assets, how we handle receivables (monies owed to the Town), the status of the Pension Plan, the new "Other Post Employment Benefits" reporting requirements (state mandated retirees benefits) and, our risk management.
- h. A key analysis appears in Budgetary Comparison Schedule (page 51). If a citizen concerned about the finances of the Town wishes to read only one chart, this is it. Bottom line is that all major General Fund revenue line items for the FY 09/10 budget were exceeded by actual audited performance with the minor exception of franchise taxes. The full revenue increase for the fiscal year was \$362,499 favorably over budget. Audited expenditures in the same property tax supported fund were under budget in every area by \$608,727 with police coming in \$256,029, parks and recreation coming in \$194,244 and legal coming in \$43,029 favorably under budget. While individual small items may cause consternation to some, Town Staff performed wonderfully to hold the line on expenses and worked hard to generate non ad valorem revenues. The net of the two numbers is \$971,226 described as an "excess" of revenues over expenditures and these funds add

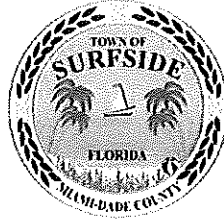
to reserves and/or can be used to help balance the budget for the fiscal year 2012 currently being prepared.

- i. In addition to the general government and proprietary funds there are three "non major" governmental funds (Tourism, Transportation Surtax and Police Forfeiture) that are reported on page 56. All of these funds are in surplus and Staff watches expenditures closely. (Page 56-60)
- j. The Statistical Section of the CAFR describes financial trends, revenue and debt capacity, demographics and operating information. This information covers 7-10 years of available data and is invaluable to anyone who wants to analyze trends, revenue and debt capacity, demographics and operating information over many years. (Page 61-90) Specifically the reader should look at the chart (page 69) which shows the decline in our property tax revenue, which the Town Commission and the Administration met with reduced spending to still bring in a surplus.
- k. The Independent Auditors Report on Internal Controls over Financial Reporting (page 91) states that there are no deficiencies or material weaknesses in our financial controls during fiscal year 2010. This supports the "clean" audit opinion previously mentioned.
- l. The final section is the "Management Letter" in accordance with the Rules of the Auditor General of the State of Florida" which would disclose any State of Florida deficiencies and make recommendations for improvement. The Management Letter also tracks previous findings to determine if the weaknesses have been resolved. Bottom line, there were no weaknesses disclosed in fiscal years 2009 and 2010 (page 93). This should be another signal to our citizens that Staff and the Town Commission are managing the finances and implementing effective policies to protect their funds.

Recommendation: It is recommended that the Town Commission accept the Comprehensive Annual Financial Report, as audited by Marcum LLP CPA's for the fiscal year ended September 30, 2010, including the communications letter dated April 4, 2011. It is further recommended that the Town Commission join me in expressing gratitude and congratulations to Finance Support Services Director Martin Sherwood and his Staff, Mayte Gamlotea, Controller and Marisol Rodriguez, Accounting Clerk for their diligence and hard work and effort leading up to the production of the CAFR and the "clean" report five months earlier as compared to fiscal year 2009. It is also important to acknowledge the hard work of all our Department Directors who finished the year with savings big and small and their continual effort to generate non ad valorem revenues that helped create a significant surplus in all operations of the Town.


Finance Support Services Dept.


Town Manager



**PLEASE NOTE THAT
THE
CAFR REPORT IS
SEPARATE FROM
THIS
AGENDA PACKET
BUT INCLUDED
HEREIN**



Town of Surfside Commission Communication

Agenda Item #: 9D

Agenda Date: MAY 10, 2011

Subject: Florida Power & Light (FP&L), telephone and cable Underground Conversion of Existing Overhead Service Lines.

Objective: To improve the reliability of the electrical utility system Town wide while simultaneously improving aesthetics by removing all overhead wires and existing power poles which are currently in various states of disarray.

Background: Based on a number of citizen inquires, the Town staff has approached FP&L and begun discussions regarding the feasibility of replacing the overhead wires and power poles including cable and telephone with underground conduit and wiring. To date these discussions have been positive and we have investigated the costs, governmental discount funding, financing resources and right of way/versus easement considerations.

Analysis: In our meetings with FPL it has been determined that the underground conversion process could remove existing overhead lines and power poles within the Town limits, excluding the locations where the above ground service enters the Town at both the north and south Town limits. Although the above ground lines and poles could be removed there will still be a need for transformers and switch cabinets to be installed. These transformers and switch cabinets will be placed at ground level (green FPL boxes on concrete pads).

The removal of overhead lines and power poles will greatly increase the reliability of the Town's electrical utility. The underground lines are not susceptible to being blown over in a storm or having a tree limb impact them during a storm. Although it is less likely to experience a power outage with the underground system, if there is an outage it is normally for a much shorter duration. This is due to the fact that most repairs can be done from a switch cabinet (now located at ground level) and do not require bucket trucks to replace or repair the above ground power poles.

An important reason to undergo the conversion process is aesthetics. Staff has heard numerous resident concerns about the appearance and condition of the existing power poles. This conversion process would remove all poles from the Town limits, except where power enters the Town from neighboring jurisdictions. The entrance poles will be hardened concrete and not wood like the existing poles in Town. Not only does this remove the poles and power lines from the line of sight, but it also allows the trees throughout Town to grow to in areas and heights that the overhead lines previously limited.

Budget Impact: The current "non-binding cost estimate" from FPL estimates the FPL design and construction cost at \$4.87 Million (\$6.50 Million less 25% Governmental Adjustment Factor-GAF). This cost estimate excludes items such as site restoration, service laterals and securing easements. It is estimated that this work will cost an additional \$1.2 Million for a total undergrounding cost of approximately \$6.07 Million.


Recently FPL gained approval from the Florida Public Service Commission for a tariff to provide local governments with an option to recover the cost of converting overhead distribution facilities to underground. This tariff is called the MGRUF (Mechanism for Governmental Recover of Undergrounding Fees). The tariff says local governments must pay in advance for the entire cost of converting overhead facilities to underground. Local governments identify the FPL customers benefiting from the conversion and contract with FPL to recover the conversion cost from those customers. FPL then bills those customers for a portion of the conversion cost each month, based on a payback schedule of up to 20 years. The monthly charge to these customers may not exceed either:

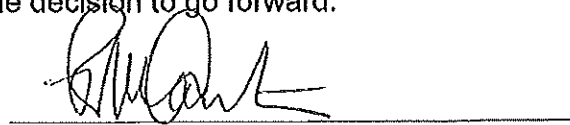
1. 15% of the customer's monthly electric bill
2. \$30 per residential customer or
3. \$50 per every 5,000 kilowatt-hours of consumption per commercial customer

FPL then makes annual payments to the local government, reflecting the entire amount collected from the identified customers. These annual payments (payback the Town's advance) are estimated to be \$450,000. The Town could possibly amortize the cost of the FPL underground lines including the corollary cost for the cable and telephone lines with this revenue stream.

Staff Impact: No additional staff is required, but existing staff will work with FPL, cable and telephone providers to manage and direct their efforts.

Recommendation: It is recommended that the Town Commission direct staff to further investigate the GAF, MGRUF Tariff and the design/construction/logistics. The Town Staff would then come back to the Commission as soon as possible with a more detailed plan as well as a process to involve the community in the decision to go forward.


Department Head


Town Manager



Questions?

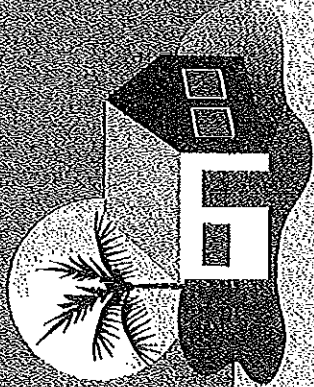
We share your goal of responding to the needs of your community in considering the installation of underground electric facilities. Please contact your FPL representative if you would like further assistance and information.



FPL

Florida Power & Light Company
P.O. Box 14000 Juno Beach, FL 33408

www.FPL.com

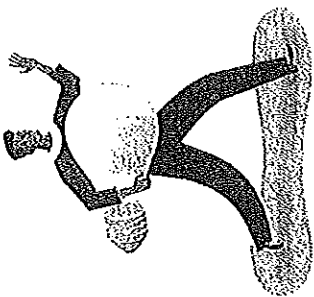


Underground Utilities and Your Community

A Guide For Local Governments

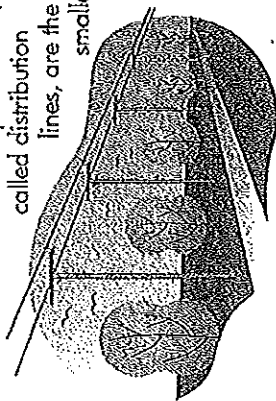


FPL



Underground vs. Overhead Power Lines

Many communities have considered converting pole-mounted or overhead electric power lines of the type seen in neighborhoods, to underground facilities. These power lines, called distribution lines, are the smaller,

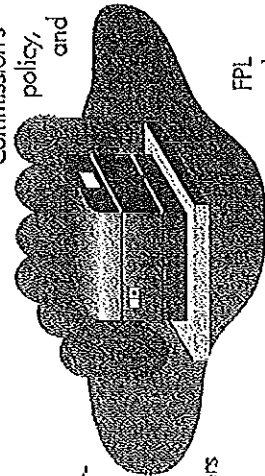


overhead power structures that bring electricity to your community's homes and businesses.

The reliability of overhead and underground lines is relatively comparable. For example, both facilities are subject to lightning damage. Although overhead lines may have more exposure to wind and tree damage, underground facilities are more prone to flood damage.

Underground facilities are typically more expensive than are overhead lines. FPL's standard design calls for overhead facilities; the costs for which we all pay as part of our electric bill. It is the Florida Public Service Commission's

policy, and



FPL agrees, that those who request underground facilities in a particular area should pay for the cost differential.

Making The Move To Underground

If your area chooses to convert overhead distribution facilities to underground, we can help. FPL recently gained approval from the Florida Public Service Commission for a tariff to provide local governments with an option to recover the cost of converting overhead distribution facilities to underground. This tariff is called the *Mechanism for Governmental Recovery of Undergrounding Fees*.

15% of the customer's monthly electric bill
 \$30 per residential customer or

\$50 per every 5,000 kilowatt-hours of consumption per commercial customer.

How The Tariff Works

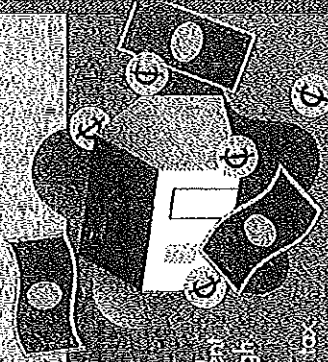
The tariff says local governments must pay in advance for the entire cost of converting overhead facilities to underground. Local governments then identify the FPL customers benefiting from the conversion and contract with FPL to

FPL makes annual payments to the local government, reflecting the entire amount collected from the identified customers.

Other Funding Options

Other options that local governments may consider for recovering the cost of converting overhead distribution facilities underground are:

Special Assessments: Chapters 197 and 190 of the Florida Statutes allow municipalities to fund underground conversion costs by levying special assessments imposed on tax bills. Landowners benefiting from the conversion must be identified and the special assessment may be collected directly from the local government imposing the



assessment through annual property tax bills. **Municipal Service District Units and Municipal Service Taxing Units:** Another option (250.014) of the Florida Statutes allows counties establish these governmental units in certain areas and levy service charges. Special assessments or taxes within these units to fund underground conversion costs.



February 11, 2011

Mr. Roger Carlton
Town Manager
Town of Surfside
9293 Harding Ave.
Surfside, FL 33154

Re: Town of Surfside
Electric Facilities Conversion – Ballpark Estimate
Entire Town
WR # 4086309

Dear Mr. Carlton:

FPL welcomes the opportunity to assist you in examining the feasibility of converting from overhead electric distribution facilities to an underground system at the following location:

Entire Town limits in Surfside, Florida.

As per your request, the non-binding "ballpark" estimate to complete this conversion is \$6,500,000. This estimate is provided strictly to assist you in preliminary decision making and it does not include the conversion of any existing streetlight system. It is not an offer from FPL to perform the requested conversion and should not be construed or used as such for detailed planning purposes. This represents an "order of magnitude" figure based on previous FPL experience and reflects the CIAC payment that the Town would ultimately need to make to FPL if the conversion were performed at this point in time. It is our experience that conversions in developed areas are the most complex and challenging types of construction. As such, this estimate likely will not precisely represent the Town's ultimate actual cost to convert, but can assist the Town in preliminary decision-making.

FPL estimates include only estimated charges to be paid by the Town to FPL. The costs of the following items are not included with the estimate and are the responsibility of the Town / residents. These potential costs should be included in future planning of the project:

- Site restoration (sod, landscaping, pavement, sidewalks, etc)
- Rearrangement of customer electric service entrances (requires electrician) from overhead to underground. Also, additional customer expense if local inspecting authorities require customer wiring to be brought to current codes.
- Trenching/backfilling for service laterals.
- Removal and undergrounding of other utilities (e.g. telecom, CATV, etc.)
- Acquiring, describing, securing and recording of easements for underground facilities. In underground systems, major components formerly attached to poles must now occupy "at grade" appurtenances, e.g., ground level pad mounted transformers and switch cabinets. Facilities of an underground distribution system will not be placed in road right-of-way, with the exception of cables required for crossings. (See special note below)

(Continued from Sheet No. 9.726)

- 9. **Termination Prior to the Conversion Completion.** Failure by the Local Government Applicant to comply with any of the requirements, terms, or conditions of this Agreement or FPL's Electric Tariff shall result in termination of this Agreement. The Local Government Applicant may terminate this Agreement at any time prior to the start of the Conversion and the CIAC paid by the Local Government Applicant will be refunded to the Local Government Applicant; provided however, that the refund of the CIAC shall be offset by any costs incurred by FPL in performing under the Agreement up to the date of termination.
- 10. **Assignment.** The Local Government Applicant shall not assign this Agreement without the written consent of FPL.
- 11. **Adoption and Recording.** This Agreement shall be adopted by the Local Government Applicant and maintained in the official records of the Local Government Applicant for the duration of the term of this Agreement. This Agreement also shall be recorded in the Official Records of the County in which the Underground Facilities are located, in the place and in the manner in which deeds are typically recorded.
- 12. **Conflict between Terms of Franchise Agreement.** In the event of a conflict between the terms of this Agreement and any permit or franchise agreement entered into by Local Government Applicant and FPL, the terms of this Agreement shall control.

IN WITNESS WHEREOF, FPL and the Local Government Applicant have executed this Agreement on the date first set forth above.

LOCAL GOVERNMENT APPLICANT

FPL

Signed _____

Signed _____

Name _____

Name _____

Title _____

Title _____

Signed _____

Name _____

Title _____

Approved as to Terms and Conditions

Signed _____

Name _____

Title _____

Approved as to Form and Legal Sufficiency

Signed _____

Name _____

Title _____

**UNDERGROUND FACILITIES CONVERSION AGREEMENT –
 GOVERNMENTAL ADJUSTMENT FACTOR WAIVER**

This Agreement, which is available to customers that sign the Agreement on or before October 30, 2008, is made and entered into this _____ day of _____, 20____, by and between _____ (“Local Government Applicant”), a Florida municipal corporation or county with an address of _____ and FLORIDA POWER & LIGHT COMPANY (“FPL”), a Florida corporation with an address of P.O. Box 14000, 700 Universe Boulevard, Juno Beach, FL 33408-0429.

WHEREAS, the Local Government Applicant has requested that FPL convert certain overhead electric distribution facilities located within the following boundaries (the “Conversion”):

(collectively, the “Existing Overhead Facilities”) to underground facilities, including transformers, switch cabinets and other appurtenant facilities installed above ground as set forth in Attachment A hereof (collectively, the “Underground Facilities”).

NOW THEREFORE, in consideration of the foregoing premises and the covenants and agreements set forth herein, and other consideration the sufficiency of which is hereby acknowledged, the parties intending to be legally bound, hereby covenant and agree as follows:

I. Governmental Adjustment Factor Waiver (“GAF Waiver”) Eligibility Criteria. The Local Government Applicant represents and warrants that it meets the following eligibility criteria for the Conversion:

- a. In order for the Conversion to incorporate a sufficient amount of overhead facilities to provide electrical continuity, the Conversion must include a minimum of approximately 3 pole line miles or approximately 200 detached dwelling units within contiguous or closely proximate geographic areas (the “Conversion Area”). The Conversion may be completed in mutually agreed upon phases, with the project size minimums applying to the aggregate project – provided that any necessary subsequent phase begins within a 1 year period from completion of the prior phase and the minimums are met within, at most, 3 phases; and
- b. The Local Government Applicant must require all customers within the Conversion Area who currently have overhead service directly from the Existing Overhead Facilities to convert their service entrances to underground within 6 months of completion of the Underground Facilities installation or each phase thereof; and
- c. The Local Government Applicant must be willing and able to execute a right of way (“ROW”) agreement with FPL if the Local Government Applicant requests that facilities be placed in the ROW; and
- d. For any affected laterals, the complete lateral must be converted, including all stages of any multi-stage lateral; and
- e. There are no state or federal funds available to the Local Government Applicant to cover any portion of the cost of the Conversion.

Special Circumstances. Conversions which do not meet the project size minimums described in section I.a are eligible for the GAF Waiver in the following special circumstances:

- i. 100% of the Existing Overhead Facilities within the Local Government Applicant’s corporate limits are to be converted, but are less than the pole line mileage or dwelling unit minimums; or
- ii. A single lateral that serves at least one Critical Infrastructure Facility as determined by the appropriate local agency with the mutual agreement of FPL; or
- iii. An island or peninsula where 100% of the Existing Overhead Facilities are to be converted; or

(Continued on Sheet No. 9.726)

(Continued from Sheet No. 9.725)

iv. When the aggregate size of the first 3 phases of a project would satisfy the minimum size criteria but, for mutually-agreed engineering or logistical reasons, those phases are non-contiguous; provided that (a) the next (4th) phase must be adjacent to one or more of the first 3 phases such that the combined contiguous area meets the minimum size criteria, and (b) this 4th phase begins within 1 year from completion of the 3rd phase.

2. **Contribution-in-Aid-of-Construction (CIAC).** The Local Government Applicant shall pay FPL a CIAC as required by FPL's Electric Tariff and Section 25-6.115 of the Florida Administrative Code with the Otherwise Applicable CIAC amount reduced by the GAF Waiver.
 - i. Otherwise Applicable CIAC \$ _____
 - ii. GAF Waiver \$ _____
 - iii. CIAC Due \$ _____

In the event the actual cost of the Conversion exceeds the estimate, the Otherwise Applicable CIAC shall be adjusted by the lesser of (a) the difference between the actual cost of the Conversion and the estimate, or (b) 10% of the Otherwise Applicable CIAC identified above. The GAF Waiver shall also be adjusted accordingly and the Local Government Applicant shall pay FPL the resulting difference in the amount of the CIAC Due.

3. **Applicant-Installed Facilities.** The Local Government Applicant may, upon entering into an applicant-installed facilities agreement satisfactory to FPL, construct and install all or a portion of the Underground Facilities. Such work must meet FPL's construction standards and FPL will own and maintain the completed facilities. The Local Government Applicant agrees to rectify any deficiencies, found by FPL, prior to the connection of any customers to the Underground Facilities and the removal of the Existing Overhead Facilities.
4. **Compliance with Tariff.** The Local Government Applicant agrees to comply with and abide by the requirements, terms, and conditions of FPL's Electric Tariff.
5. **Timing of Conversion.** Upon compliance by the Local Government Applicant with the requirements, terms, and conditions of FPL's Electric Tariff, this Agreement and any other applicable agreements, FPL will proceed in a timely manner with the Conversion in accordance with the construction drawings and specifications set forth in Attachment A hereof.
6. **Relocation.** In the event that the Underground Facilities are part of, or are for the purposes of, relocation, then this Agreement shall be an addendum to the relocation agreement between FPL and the Local Government Applicant. In the event of any conflict between the relocation agreement and this Agreement or the Electric Tariff, this Agreement and the Electric Tariff shall control.
7. **Term.** This Agreement shall remain in effect for as long as FPL or any successor or assign owns or operates the Underground Facilities.
8. **GAF Waiver Repayment.** If the Local Government Applicant does not satisfy the relevant eligibility criteria, the Local Government Applicant shall repay the GAF Waiver within 30 days of written notice from FPL of such failure. Additionally, if at any point within 30 years of completion of the Underground Facilities installation, the Local Government Applicant elects to have electric service within the Conversion Area supplied by a provider other than FPL, the Local Government Applicant shall repay FPL a pro-rata share of the GAF Waiver. The pro-rata share (which shall reflect partial years) shall be determined as follows:

$$\text{GAF Waiver} * [(30 - \text{years since the Underground Facilities completion date}) / 30]$$

(Continued on Sheet No. 9.727)

INSTALLATION OF UNDERGROUND ELECTRIC DISTRIBUTION FACILITIES
 FOR THE CONVERSION OF OVERHEAD ELECTRIC DISTRIBUTION FACILITIES

SECTION 12.1 DEFINITIONS

APPLICANT - Any person, corporation, or entity capable of complying with the requirements of this tariff that has made a written request for underground electric distribution facilities in accordance with this tariff.

CONVERSION - Any installation of underground electric distribution facilities where the underground facilities will be substituted for existing overhead electric distribution facilities, including relocations.

CONTRIBUTION-IN-AID-OF-CONSTRUCTION (CIAC) - The CIAC to be paid by an Applicant under this tariff section shall be the result of the following formula:

CIAC =

- 1) The estimated cost to install the requested underground facilities;
- + 2) The estimated cost to remove the existing overhead facilities;
- + 3) The net book value of the existing overhead facilities;
- 4) The estimated cost that would be incurred to install new overhead facilities, in lieu of underground, to replace the existing overhead facilities (the "Hypothetical Overhead Facilities");
- 5) The estimated salvage value of the existing overhead facilities to be removed;
- + 6) The 30-year net present value of the estimated non-storm underground v. overhead operational costs differential, which is set at \$0 (zero) per pole-line mile of the existing overhead facilities;
- 7) The 30-year net present value of the estimated average Avoided Storm Restoration Costs ("ASRC") calculated as a percentage of the sum of lines 1) through 6). Simplified eligibility criteria for each ASRC Tier are summarized below. Applicants must enter into an Underground Facilities Conversion Agreement with the Company which provides full details on terms, conditions and compliance requirements.

Tier	Percentage	Pole-Line Miles	Customer Conversions	Completion
1 *	25%	3 or more	100%	3 phases
2	10%	1 to <3	100%	3 phases
3	5%	< 1	n/a	n/a

* The GAP Waiver will apply in lieu of Tier 1 ASRC for eligible conversions by Local Government Applicants.

GAF Waiver

For Applicants entering into an Underground Facilities Conversion Agreement - Governmental Adjustment Factor Waiver with the Company, the otherwise applicable CIAC amount, as calculated above, shall be reduced by the GAF Waiver. The amount of the GAF Waiver shall be calculated as follows:

GAF Waiver =

- 25% x the otherwise applicable CIAC;
- + 75% x the ASRC (avoids double-counting the ASRC embedded in the otherwise applicable CIAC.)

If the Applicant elects to construct and install all or part of the underground facilities, then for purposes of calculating the ASRC or the GAF Waiver amount only, the otherwise applicable CIAC shall be adjusted to add FPL's estimated cost for the Applicant-performed work. In addition, the Direct Engineering, Supervision, and Support (DESS) costs associated with this Applicant-performed work will be reduced by 20% from the amount that would have applied if FPL performed this work.

DISTRIBUTION SYSTEM - Electric service facilities consisting of primary and secondary conductors, service drops, service laterals, conduits, transformers and necessary accessories and appurtenances for the furnishing of electric power at utilization voltage.

SERVICE FACILITIES - The entire length of conductors between the distribution source, including any conduit and or risers at a pole or other structure or from transformers, from which only one point of service will result, and the first point of connection to the service entrance conductors at a weatherhead, in a terminal, or meter box outside the building wall; the terminal or meter box; and the meter.

(Continued on Sheet No. 6.301)

Issued by: S. E. Romig, Director, Rates and Tariffs
 Effective: April 6, 2010

(Continued from Sheet No. 6.300)

SECTION 12.2 GENERAL

12.2.1 Application

This tariff section applies to all requests for underground electric distribution facilities where the facilities requested will be substituted for existing overhead electric distribution facilities. Any person, corporation, or entity capable of complying with the requirements of this tariff may submit a request as follows. Requests shall be in writing and must specify in detail the overhead electric distribution facilities to be converted or the area to be served by underground electric distribution facilities in lieu of presently existing overhead electric distribution facilities serving said area. Upon receipt of a written request, FPL will determine the feasibility of converting the existing facilities, any necessary revisions to this written request, and the non-refundable deposit amount necessary to secure a binding cost estimate and notify the applicant of said amount.

12.2.2 Contribution-In-Aid-Of-Construction (CIAC)

Upon the payment of a non-refundable deposit by an Applicant, FPL shall prepare a binding cost estimate specifying the contribution in aid of construction (CIAC) required for the installation of the requested underground distribution facilities, where the installation of such facilities is feasible, and provide said estimate to the Applicant upon completion of the estimate along with either an Underground Facilities Conversion Agreement or an Underground Facilities Conversion Agreement - Governmental Adjustment Factor Waiver. The CIAC amount to be collected pursuant to a binding cost estimate from an Applicant shall not be increased by more than 10 percent of the binding cost estimate to account for actual costs incurred in excess of the binding cost estimate. However, the CIAC may be subject to increase or refund if the project scope is enlarged or reduced at the request of the Applicant, or the CIAC is found to have a material error prior to the commencement of construction. The binding cost estimate provided to an Applicant shall be considered expired if the Applicant does not enter into either an Underground Facilities Conversion Agreement or an Underground Facilities Conversion Agreement - Governmental Adjustment Factor Waiver and pay the CIAC amount specified for the installation of the requested underground electric distribution facilities within 180 days of delivery of the binding cost estimate to the Applicant by FPL.

(Continued on Sheet No. 6.310)

(Continued from Sheet No. 6.301)

12.2.3 Non-Refundable Deposits

The non-refundable deposit for a binding cost estimate for conversion to a direct buried cable in conduit underground electric distribution system shall be determined by multiplying the number of pole line feet of existing overhead electric distribution facilities to be converted by \$1.20. The deposit must be paid to FPL to initiate the estimating process. The deposit will not be refundable, however, it will be applied in the calculation of the CIAC required for the installation of underground distribution facilities. The deposit and the preparation of a binding cost estimate are a prerequisite to the execution of either an Underground Facilities Conversion Agreement or an Underground Facilities Conversion Agreement - Governmental Adjustment Factor Waiver. If the request for underground electric distribution facilities involves the conversion of less than 250 pole line feet of existing overhead facilities, then no deposit will be required for a binding cost estimate, provided, however, that all other requirements of this tariff shall still apply.

12.2.4 Non-Binding Cost Estimates

Any person, corporation, or entity may request a non-binding cost estimate free of charge. The non-binding cost estimate shall be an order of magnitude estimate to assist the requestor in determining whether to go forward with a binding cost estimate. Neither an Underground Facilities Conversion Agreement nor an Underground Facilities Conversion Agreement - Governmental Adjustment Factor Waiver may be executed on the basis of a non-binding cost estimate.

12.2.5 Underground Facilities Conversion Agreement

Any Applicant seeking the installation of underground distribution facilities pursuant to a written request hereunder shall execute either the Underground Facilities Conversion Agreement set forth in this tariff at Sheet No. 9.720 or, if applicable, the Underground Facilities Conversion Agreement - Governmental Adjustment Factor Waiver set forth in this tariff at Sheet No. 9.725. The applicable Agreement must be executed and the CIAC paid by the Applicant within 180 days of the delivery of the binding cost estimate to the Applicant. Failure to execute the applicable Agreement and pay the CIAC specified in the Agreement within the 180 day time limit, or termination of the Agreement, shall result in the expiration of the binding cost estimate. Any subsequent request for underground facilities will require the payment of a new deposit and the presentation of a new binding cost estimate. For good cause FPL may extend the 180 day time limit. Upon execution of either the Underground Facilities Conversion Agreement or the Underground Facilities Conversion Agreement - Governmental Adjustment Factor Waiver, payment in full of the CIAC specified in the binding cost estimate, and compliance with the requirements of this tariff, FPL shall proceed to convert the facilities identified in a timely manner. However, new service extensions, maintenance and reliability projects, and service restorations shall take precedence over facilities conversions.

12.2.6 Simultaneous Conversion of Other Pole Licensees

Before the initiation of any project to provide underground electric distribution facilities pursuant to either an Underground Facilities Conversion Agreement or an Underground Facilities Conversion Agreement - Governmental Adjustment Factor Waiver the Applicant shall have executed agreements with all affected pole licensees (e.g. telephone, cable TV, etc.) for the simultaneous conversion of those pole licensees' facilities and provide FPL with an executed copy of the Agreement(s). Such agreements shall specifically acknowledge that the affected pole licensees will coordinate their conversion with FPL and other licensees in a timely manner so as to not create unnecessary delays. Failure to present FPL with executed copies of any necessary agreements with affected pole licensees within 180 days after delivery of the binding cost estimate to the Applicant shall result in the expiration of the binding cost estimate, the return of any CIAC paid, and the termination of any Underground Facilities Conversion Agreement or Underground Facilities Conversion Agreement - Governmental Adjustment Factor Waiver entered into between the Applicant and FPL.

12.2.7 Easements

Before the initiation of any project to provide underground electric distribution facilities pursuant to either an Underground Facilities Conversion Agreement or an Underground Facilities Conversion Agreement - Governmental Adjustment Factor Waiver, the Applicant shall provide FPL, at no cost to FPL, all easements, including legal descriptions of such easements and all survey work associated with producing legal descriptions of such easements, specified as necessary by FPL to accommodate the requested underground facilities along with an opinion of title that the easements are valid. Failure to provide the easements in the manner set forth above within 180 days after the delivery of the binding cost estimate to the Applicant shall result in the expiration of the binding cost estimate, the return of any CIAC paid, and the termination of any Underground Facilities Conversion Agreement or Underground Facilities Conversion Agreement - Governmental Adjustment Factor Waiver entered into between the Applicant and FPL.

(Continued on Sheet No. 6.320)

Issued by: S. E. Romig, Director, Rates and Tariffs
Effective: April 4, 2006

(Continued from Sheet No. 6.310)

12.2.8 Affected Customer Services

The Applicant shall be responsible for the costs associated with any modifications to the service facilities of customers affected by the conversion of FPL distribution facilities which are made necessary as a result of the conversion. The Applicant shall be responsible for arranging the conversion of affected residential overhead customer service facilities by providing, at no cost to FPL:

- a) any necessary rearranging of the customer's existing electric service entrance facilities to accommodate an underground service lateral through the use of a licensed electrical contractor, in accordance with all local ordinances, codes, and FPL specifications; and
- b) a suitable trench, install FPL provided conduit according to FPL specifications to a point designated by FPL, and perform the backfilling and any landscape, pavement or other similar repairs

FPL shall be responsible for the installation of the service lateral cable, the cost of which shall be included in the Applicant's binding cost estimate. In the event a customer does not allow the Applicant to convert the customer's affected overhead services, or the Applicant fails to comply with the above requirements in a timely manner consistent with FPL's conversion construction schedule, then the Applicant shall pay FPL, in addition to the CIAC specified in the binding cost estimate, the costs associated with maintaining service to said customer through an overhead service drop. The cost for maintaining an overhead service drop from an underground system shall be:

- a) the sum of \$789 for residential dwellings containing less than five individual units; or,
- b) the estimated cost to maintain service for residential dwellings containing five or more individual units.

For existing residential underground service laterals affected by a conversion the Applicant shall be responsible for the trenching, backfilling and any landscape, pavement or other similar repairs and installation of FPL provided conduit, according to FPL specifications, necessary to bring existing underground service laterals of affected customers to an FPL designated handhole or transformer. FPL will install the necessary cable, the cost of which shall be included in the binding cost estimate. However, in the event that a customer owned service lateral fails on connection to the underground distribution system the customer will be responsible for the replacement of their service lateral or compliance with section 10.5 of FPL's tariff.

The Applicant's responsibilities for modifications to the service facilities of non-residential customers affected by the conversion of FPL distribution facilities which are made necessary as a result of the conversion will be specified in an attachment to any Underground Facilities Conversion Agreement or Underground Facilities Conversion Agreement - Governmental Adjustment Factor Waiver.

12.2.9 Other Terms and Conditions

Through the execution of either the Underground Facilities Conversion Agreement set forth in this tariff at Sheet No. 9.720 or the Underground Facilities Conversion Agreement - Governmental Adjustment Factor Waiver set forth in this tariff at Sheet No. 9.725 the Applicant agrees to the following:

- a) The Applicant shall be responsible for all restoration of, repair of, or compensation for, property affected, damaged, or destroyed, to accommodate the installation of underground distribution facilities and the removal of FPL's overhead distribution facilities;
- b) subject to section 2.7 Indemnity to Company, or section 2.71 Indemnity to Company -- Governmental, FPL's General Rules and Regulations, the Applicant shall indemnify FPL from any claim, suit, or other proceeding, which seeks the restoration of, or repair of, or compensation for, property affected, damaged, or destroyed, to remove existing facilities or to accommodate the installation of underground distribution facilities arising from or brought as a result of the installation of underground distribution facilities;
- c) the Applicant shall clear easements provided to FPL of trees, tree stumps and other obstructions that conflict with construction or installation of underground distribution facilities in a timely manner consistent with FPL's construction schedule.

(Continued on Sheet No. 6.330)

(Continued from Sheet No. 6.320)

12.2.10 Type of System Provided

An underground distribution system will be provided in accordance with FPL's current design and construction standards.

12.2.11 Design and Ownership

FPL will design, install, own, and maintain the electric distribution facilities up to the designated point of delivery except as otherwise noted. The Applicant may, subject to a contractual agreement with FPL, construct and install all or a portion of the underground distribution facilities provided that:

- a) such work meets FPL's construction standards;
- b) FPL will own and maintain the completed distribution facilities;
- c) the construction and installation of underground distribution facilities by the Applicant is not expected to cause the general body of ratepayers to incur greater costs;
- d) the Applicant agrees to pay FPL's current applicable hourly rate for engineering personnel for all time spent for (i) reviewing and inspecting the Applicant's work done, and (ii) developing any separate cost estimate(s) that are either requested by the Applicant to reflect only FPL's portion of the work or are required by FPL to reflect both the Applicant's and FPL's portions of the work for the purpose of a GAF Waiver calculation pursuant to an Underground Facilities Conversion Agreement - Governmental Adjustment Factor Waiver; and
- e) the Applicant agrees to rectify any deficiencies found by FPL prior to the connection of any Customers to the underground electric distribution system and the removal of the overhead electric distribution facilities.

12.2.12 Relocation

Where underground electric facilities are requested as part of, or for the purpose of, relocation, the requirements of this tariff shall apply. As applicable, the Underground Facilities Conversion Agreement or the Underground Facilities Conversion Agreement - Governmental Adjustment Factor Waiver shall be executed as an addendum to the relocation agreement between FPL and the Applicant. In the event of any conflict between the relocation agreement and this tariff, the tariff shall control. Furthermore, where the regulations of the Federal or State Department of Transportation (DOT) prevent pre-payment of deposits and other conversion costs, the Federal or State DOT may pay the CIAC after the work has been performed.

Issued by: S. E. Romig, Director, Rates and Tariffs
Effective: April 4, 2006



ERL

Town of Surfside

Overhead to Underground Conversions

March 9, 2011

Topics:

- What are Overhead to Underground Conversions?
- Storm Secure
 - Encouraging Underground Facilities
 - Eligibility Criteria
 - CIAC Computation
- Conversion Process
- Questions

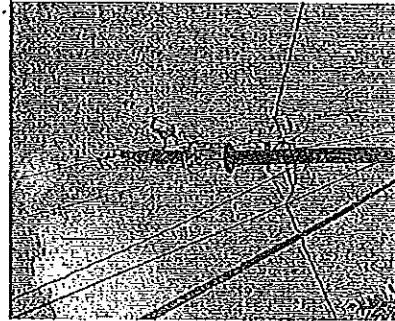


FPL

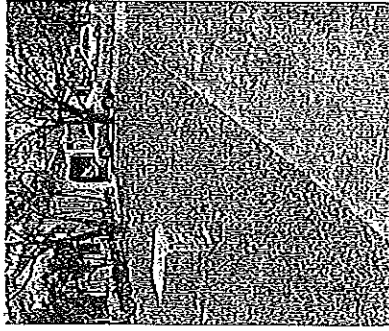
Overhead to Underground Conversions

- The removal of any existing overhead electrical facilities and replaced with electrical facilities placed underground.

aerial...



...to padmount



FPL



Storm Secure

- Four Point Program
 - Hardening the Electric Network - Adopt N.E.S.C. "extreme wind velocity" standards for new and upgraded poles
 - Line Clearing/ Vegetation Management - accelerate line clearing efforts so that 75% of the work is completed by July 31st
 - Pole Inspections - Adopt an eight-year pole inspection and record keeping program
 - Encouraging Underground Facilities- Governmental Adjustment Factor (G.A.F.) - 25% incentive of the base CIAC, Contribution-in-Aid-of-Construction



FPL

Eligibility Criteria

- 3 pole line miles or minimum 200 detached dwelling units for the Conversion Area.
- The Local Government must require all customers within the Conversion Area served by an overhead service to convert to and underground service within 6 months after completion of the UG facilities installation.
- Easements required or the Local Government must be willing and able to execute a Right-of-Way Agreement.
- No state or federal funds available to the Local Government to cover any portion of the cost of the Conversion.



FPL

CIAC Computation

• Contribution-In-Aid-Of-Construction (CIAC)

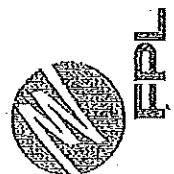
+	New Underground (hardened)
-	Hypothetical Equivalent New Overhead (hardened)
+	Existing Overhead - Net Book Value
+	Existing Overhead - Removal
-	Existing Overhead - Salvage Value
+/-	<u>Operational Cost Differential (30-year NPV)</u>
-	<u>CIAC due FPL (non-GAF)</u>
	<u>GAF (25%)</u>
	<u>CIAC due to FPL (GAF)</u>



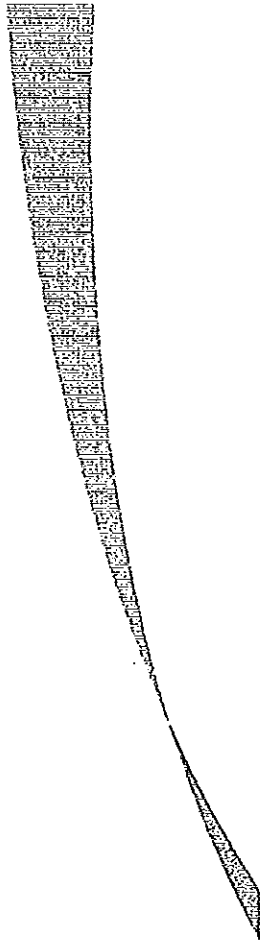
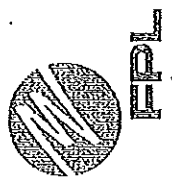
FPL

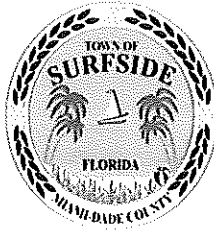
Conversion Process

- Sequence of Events
 - Applicant provides written request to FPL
 - FPL provides non-binding ballpark estimate
 - Applicant secures easements and pays engineering deposit
 - FPL performs detailed engineering and determines cost
 - Engineering deposit applied to total cost if project proceeds



Questions





Town of Surfside Commission Communication

Agenda Item #: 9F
Agenda Date: May 10, 2011
Subject: New Crime Prevention Initiatives

Background: At the April 12th 2011 Town Commission Meeting, the Mayor requested for the Town Manager to identify new crime prevention initiatives to address the perception of crime in Surfside. In reality, Surfside experiences very little crime. This is due to both proactive enforcement efforts and current crime prevention initiatives of the Police Department. Crime in Surfside actually decreased in 2010 from 2009.

SPD has implemented many crime prevention programs and initiatives over the past several years including nine Citizens Police Academies, monthly crime prevention meetings, residential and business security assessments, and awareness programs for seniors, women, and children. They are all funded from the forfeiture budget as well as are much of our equipment and technology. However, there is always a need for improvement and to provide better service to the community.

Analysis: Crime prevention initiatives are critical to educate our residents about crime and the prevention of crime. Most crime in Surfside is non-violent and is of a property type nature. The criminals who have targeted Surfside are usually opportunists who look for unlocked car doors, purses left on shopping carts, belongings left on the beach, bicycles unsecured in the front yard, and other similar thefts. Our goal is for residents and business persons to know how to better protect themselves and their property, to know their police officers on a more personal level, to watch out for their neighbors' homes and immediately report suspicious activity. The new programs and technology we hope to phase in over the next year are:

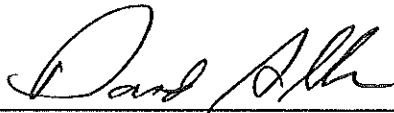
- Citizens Patrol – trained residents who will work directly with the Police Department to be the eyes and ears of the community and report suspicious activity
- Crime Watch – Eye on Surfside neighborhood watch signs installed in the residential area
- Bike with the Chief – residents join the Chief and other police officers on a recurring bicycle ride through the residential area to get to know their police department and identify crime problems and quality of life issues
- Crime Prevention Expo – a fair at the 96 Street Park to demonstrate to our residents the latest crime prevention techniques
- Mobile license plate readers – instruments installed on parking enforcement vehicles to instantaneously check license plates from national and countywide databases and to alert the Police Department of stolen cars and parking violations scofflaws

- Red light camera license plate readers – instruments mount with our red light cameras to immediately identify stolen cars entering or leaving the Town limits
- Crime prevention through environmental design – landscaping, lighting, and physical barriers to the residential entrances to enhance safety and deter criminal activity

Budget Impact: Funding for these initiatives may come from the forfeiture and parking budgets and revenue from the red light camera program.

Staff Impact: None

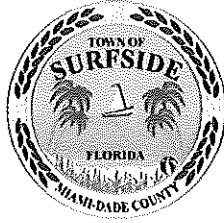
Recommendation: Staff recommends the Town Commission approve the implementation of this expanded crime prevention initiative to address the perception of crime in Surfside. The Administration views this program as an enhancement to a job already well done by our Police Department. Should additional efforts be required in the future, recommendations will be made to the Town Commission.



David Allen, Chief of Police



Roger M. Carlton, Town Manager



Town of Surfside Commission Communication

Agenda Item # 9G

Agenda Date: May 10, 2011

Subject: Resident Parking Program

Background: In November 2006 the Town Commission instituted the resident parking program which provided free metered parking to residents in the business district and municipal lots. The program was offered in conjunction with business merchants and was designed to encourage residents to patronize local businesses. Originally intended as a pilot program it has continued each year since.

The parking permits are free of charge to residents and are valid October 1 through September 31 of each year. Each household is eligible to receive two permits. Proof of residency and license plate number(s) are required when registering for the permit. Each permit is individually numbered and recorded on the Town's registration form.

In 2009 it became necessary to add the following restrictions:

- Not valid in the 9400 – 9500 blocks of Harding Avenue
- Parking limited to four (4) hours in any location
- Cannot be used for all day or overnight parking

This year the Town has issued the most permits since the program began (2025).

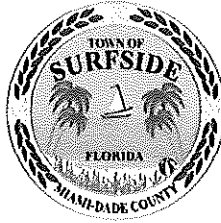
Recently a random check was conducted on sixty (60) parking permits throughout the Town. It was discovered that twelve (12) permits were on vehicles with license plates that did not match the one on the Town registration form. Of the twelve vehicles, six were not even registered to Surfside residents. In addition, Parking Enforcement Officers have caught construction workers using resident permits to park in the Abbott lot. When the resident was contacted they admitted letting the construction worker use their permit. It is apparent that the program is being abused by some residents and resulting in lost revenue from the parking space.

Staff is recommending the following changes to the resident parking program:

- Use of a permanently affixed decal
- Authorization for the Police Chief to revoke resident parking privilege
- Establishment of an appeal process for any revocation to the Town Manager
- Vehicles displaying a revoked parking permit and parked illegally at a meter will be cited
- Vehicle must be registered to a Surfside resident
- Vehicle registration must be shown at time of registration

Budget Impact: The cost to print the parking permits last year was \$1200 as additional permits were necessary due to increased demand. The software program needed to track the vehicle registrations cost \$1550. The cost for clerical staff to process the registrations and do data entry is estimated at \$3250. Total cost of the resident parking program is approximately \$6000.

Analysis: The resident parking program is being abused by a minority of residents and needs tighter restrictions and sanctions in place.



Town of Surfside Commission Communication

Agenda Item # 9H

Agenda Date: May 10, 2011

Subject: Contract Amendment with Laz Parking

Background: On November 9, 2010, the Town Commission passed Resolution 10-1984 authorizing an amendment to the agreement with Laz Parking for the collection and maintenance of the new multi-space parking meters. This amendment was necessary because it was felt that Town staff did not have the experience or expertise necessary to service and maintain the new meters.

However, during the five months that the new meters have been operational Town staff has learned how to service and maintain the equipment very effectively. Because staff is able to respond within minutes to any problem with the meters it has not been necessary to call upon Laz Parking for any service or maintenance problems.

Town staff has demonstrated that they are fully capable of servicing and maintaining the meters.

The Police Department is requesting Amendment 2 to the existing agreement with Laz Parking for the remainder of the twelve month period regarding the multi-space meters. Under the amendment Laz Parking would be responsible for collections only at a reduced price of \$30.00 per meter per month which is less than its current \$65.00 per meter per month fee.


Budget Impact: The cost of the amended agreement for collections only from the 28 multi-space meters for the remaining six (6) months is \$5040 which saves the Town \$5,880. Calculated over a full year the savings would amount to \$11,760.

The funding source is the Municipal Parking Fund line item number 402-9500-545-3410.


Analysis: Amendment 2 with Laz Parking will continue the smooth transition to the new multi-space meters and result in substantial savings.

Staff Impact: Minimal

Recommendation: It is recommended that the Surfside Town Commission approve Amendment 2 with Laz Parking for collections only from the 28 multi-space parking meters for the remainder of the twelve month period.



John Di Censo
Assistant Chief



Roger M. Carlton
Town Manager

Staff Impact: Clerical staff spends considerable time on the registration process and data entry.

Recommendation: It is recommended that the Surfside Town Commission approve the changes to the resident parking program. We would also request your reaction to implementing a \$30 annual fee for FY 11/12. This will offset the cost of the program.



John Di Censo
Assistant Chief



Roger M. Carlton
Town Manager