



City Commission Meeting

ADDENDUM MATERIAL 2

City Hall, Commission Chambers, 3rd Floor, 1700 Convention Center Drive
June 10, 2015

Mayor Philip Levine
Vice-Mayor Jonah Wolfson
Commissioner Michael Grieco
Commissioner Joy Malakoff
Commissioner Micky Steinberg
Commissioner Edward L. Tobin
Commissioner Deede Weithorn

City Manager Jimmy L. Morales
City Attorney Raul J. Aguila
City Clerk Rafael E. Granado

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ATTENTION ALL LOBBYISTS

Chapter 2, Article VII, Division 3 of the City Code of Miami Beach entitled "Lobbyists" requires the registration of all lobbyists with the City Clerk prior to engaging in any lobbying activity with the City Commission, any City Board or Committee, or any personnel as defined in the subject Code sections. Copies of the City Code sections on lobbyists laws are available in the City Clerk's office. Questions regarding the provisions of the Ordinance should be directed to the Office of the City Attorney.

ADDENDUM AGENDA

C4 - Commission Committee Assignments

- C4K Referral To The Neighborhood/Community Affairs Committee And The Finance And Citywide Projects Committee A Request From The Parks And Recreation Facilities Committee For A Competition Swimming Pool.
(Sponsored by Commissioner Joy Malakoff)
- C4L Referral To The Land Use And Development Committee And Planning Board Related To Development Near North Shore Open Space Park, The Rezoning Of 226 87 Terrace, And Revisions To The Parking Land Use Designation.
(Sponsored by Vice-Mayor Jonah Wolfson)

C4 - Commission Committee Assignments (Continued)

C4M Referral To The Land Use And Development Committee - Legal Opinion Concerning Whether A Vacancy On The Historic Preservation Board Renders The Board Improperly Constituted And Without Power To Act, And To Discuss An Amendment To Sec. 2-22(21) To Require The Mayor And City Commission To Fill Board Vacancies Within 90 Days.

(Sponsored by Vice-Mayor Jonah Wolfson)

R9 - New Business and Commission Requests

R9S Discussion Regarding The May 27, 2015 Land Use And Development Committee Motions To: 1) Refer An Item Regarding The Repair Of The Lakeview Drive Seawall To The Full City Commission With A Favorable Recommendation; And 2) Direct The Administration To Identify The Worst Seawalls To Be Budgeted For Repair In FY 2016 And To Update The Land Use And Development Committee On The Worst Sea Walls At The July 29, 2015 Meeting.

(Sponsored by Commissioner Edward L. Tobin)

C4 - Commission Committee Assignments

- C4K Referral To The Neighborhood/Community Affairs Committee And The Finance And Citywide Projects Committee A Request From The Parks And Recreation Facilities Committee For A Competition Swimming Pool.
(Sponsored by Commissioner Joy Malakoff)

Cardillo, Lilia

From: Granado, Rafael
Sent: Friday, June 05, 2015 3:48 PM
To: Cardillo, Lilia
Cc: Granado, Rafael
Subject: FW: Parks and Recreational Facilities Advisory Board Motion for Competitive Swimming Pool
Attachments: ATT00001.htm; LTC 238-2015 Parks and Recreational Facilities Advisory Board Motion.pdf; ATT00002.htm

Consent Agenda Addendum



Rafael E. Granado, Esq., *City Clerk*
CITY CLERK'S OFFICE
1700 Convention Center Drive, Miami Beach, FL 33139
Tel: 305-673-7411 www.miamibeachfl.gov

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From: Malakoff, Joy
Sent: Friday, June 05, 2015 3:24 PM
To: Morales, Jimmy
Cc: Granado, Rafael; Perez, Fatima; Taxis, Mark; Stewart, Bonnie
Subject: Parks and Recreational Facilities Advisory Board Motion for Competitive Swimming Pool

As per this request from the Parks and Recreation Facilities Committee, I would like to place this request for a competition swimming pool on the Consent Agenda for referral to the Neighborhood/Community Affairs Committee and to the Finance Committee. I believe that Miami Beach High School should have outstanding competitive swimming, golf and tennis teams. We live surrounded by water with plentiful pools, but none can be used for competitive swimming meets.

I would like the Committees to have the City's Parks and Recreation Division research the best location, the cost, research on other competitive pools in South Florida, and other details; and the Finance Division research the financing options including corporate sponsorships.

Thank you.

Joy

Sent from my iPad
Commissioner Joy V.W. Malakoff

Begin forwarded message:

From: "Cardillo, Lilia" <LiliaCardillo@miamibeachfl.gov>

Date: June 5, 2015 at 3:02:24 PM EDT

To: "Bello, Alejandro" <AlejandroBello@miamibeachfl.gov>, "Bernstein, Lynn" <LynnBernstein@miamibeachfl.gov>, "Berthier, Melissa" <MelissaBerthier@miamibeachfl.gov>, "Bridges, Sonia" <SoniaBridges@miamibeachfl.gov>, "Gomez, Carla" <CarlaGomez@miamibeachfl.gov>, "Casanova, Cynthia" <CynthiaCasanova@miamibeachfl.gov>, City Attorney's Office <ATTO_Dept@miamibeachfl.gov>, City Clerk's Office <CLER_Dept@miamibeachfl.gov>, City Manager's Office <CityManager'sOffice@miamibeachfl.gov>, "Crespo-Tabak, Sylvia" <SylviaCrespo-Tabak@miamibeachfl.gov>, "De Pinedo, Naima" <NaimadePinedo@miamibeachfl.gov>, "DeFreze, Caroline" <CarolineDeFreze@miamibeachfl.gov>, Department Directors <DepartmentDirectors@miamibeachfl.gov>, Executive Staff <ExecutiveStaff@miamibeachfl.gov>, "Feldman, Steven" <StevenFeldman@miamibeachfl.gov>, "Ferreiro, Ines" <InesFerreiro@miamibeachfl.gov>, "Frances, Francis" <FrancisFrances@miamibeachfl.gov>, Jonah Wolfson <jonahwolfson@wolfsonlawfirm.com>, "Del Risco, Jose" <JoseDelRisco@miamibeachfl.gov>, Management Team <ManagementTeam@miamibeachfl.gov>, Mayor's Office <MAYO_Dept@miamibeachfl.gov>, "McFadden, Millie" <MillieMcFadden@miamibeachfl.gov>, "Monserrat, Marcia" <MarciaMonserrat@miamibeachfl.gov>, "Peacock, Althea" <AltheaPeacock@miamibeachfl.gov>, "Perez, Febe" <FebePerez@miamibeachfl.gov>, "Plotkin, Andrew" <AndrewPlotkin@miamibeachfl.gov>, "Sam, Yarily" <YarilySam@miamibeachfl.gov>, "Vargas, Ellen" <EllenVargas@miamibeachfl.gov>, "Walters, Pauline" <PaulineWalters@miamibeachfl.gov>, "Wong, Claudia" <ClaudiaWong@miamibeachfl.gov>

Subject: Parks and Recreational Facilities Advisory Board Motion

Honorable Mayor Levine, Commissioners and Executive Staff:

Please see attached LTC 238-2015 dated June 5, 2015. If you have any questions, please contact this office at any time.

Respectfully submitted,



OFFICE OF THE CITY MANAGER

NO. LTC # 238-2015

LETTER TO COMMISSION

TO: Mayor Philip Levine and Members of the City Commission

FROM: Jimmy L. Morales, City Manager

DATE: June 5, 2015

SUBJECT: **PARKS & RECREATIONAL FACILITIES ADVISORY BOARD MOTION**

The Parks and Recreational Facilities Advisory Board passed the following motion at its June 3, 2015 meeting recommending the funding of a capital project for Fiscal Year 2015/16 to build a competition size pool.

MOTION:

The Parks and Recreation Board requests that a new competition swimming pool of 50 meters by 25 yards in size, 8 to 10 feet deep with a diving board of 1 meter, assuming the pool is 10 feet deep, is funded as a capital project for Fiscal Year 2015/16. This request is based on the fact that all other public schools in the County have a pool available within a mile or so where their competitive teams practice. Miami Beach is at a disadvantage and has to go miles away to find a suitable competition pool and has difficulty finding space. The Board finds Flamingo Park to be a suitable location because there are already showers and lockers.

Members present: Lori Nieder (Vice-Chair) Chris Groward, Dana Turken, David Berger, Eliane Soffer Siegel, Jenifer Caplan, Lee Zimmerman, Leslie Graff, Paul Stein. Attended by phone: Ronald Krongold and Stephanie Rosen.

Members Absent: Jonathan Groff (Chair) and Harriet Halpryn

Motion made by: Chris Groward

Motion seconded by: Leslie Graff

Motion Passes: 9-0

JLM/JMP/R/TE

c: J. Mark Taxis, Assistant City Manager
John Rebar, Director, Parks and Recreation
Elizabeth Valera, Deputy Director, Parks and Recreation
Tatiana Escobar, Administrative Services Manager



MIAMI BEACH

OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM

To: Jimmy Morales, City Manager

From: Jonah Wolfson, Commissioner

Date: June 10, 2015

Re: **Commission Agenda Item - Consent Agenda - Referrals to the Land Use and Development Committee and Planning Board Related to Development Near North Shore Open Space Park, the Rezoning of 226 87 Terrace, and Revisions to the Parking Land Use Designation.**

Please add an item to the June 10, 2015 City Commission Consent Agenda referring the following to the Land Use Committee and the Planning Board:

1. **Parking Regulations Within 250 Feet Of NSOSP**
An Ordinance Amending The Code Of The City Of Miami Beach, Florida, By Amending Chapter 130, "Off-Street Parking," Article III, "Design Standards," By Amending Section 130-68, "Commercial And Noncommercial Parking Garages," To Establish Regulations For Main Use Parking Garages Located On Non-Oceanfront Lots In The RM-2 District With A Property Line Within 250 Feet Of North Shore Open Space Park; Providing For Codification; Repealer; Severability; And An Effective Date
2. **Signage Regulations Within 250 Feet Of NSOSP**
An Ordinance Amending The City Code Chapter 138, "Signs," At Article V, "Sign Regulations By District"; And Article VI, "Specific Use Signs," At Section 138-172, Entitled "Schedule Of Sign Regulations For Principal And Accessory Use Signs," In Order To Establish Sign Criteria For Ground Floor Commercial Uses In Parking Garages Located On Non-Oceanfront Lots In The RM-2 District, With A Property Line Within 250 Feet Of North Shore Open Space Park; And Creating Section 138-206, Entitled "City Identification Signs At City Entrance And Exit Points," In Order To Establish The Process By Which The City May Erect City Identification Signs Near The City's Entry And Exit Points; Providing For Codification; Repealer; Severability; And An Effective Date.
3. **Rezoning - 226 87th Terrace**
An Ordinance Amending The Official Zoning District Map, Referenced In Section 142-72 Of The Code Of The City Of Miami Beach, Florida, By Changing The Zoning District Classification For The Parcel Located At 226 87th Terrace, From The Current Zoning Classification Of GU, "Government Use District", To The Proposed Zoning Classification Of RM-2, "Multifamily Residential, Medium Intensity;" Providing For Codification; Repealer; Severability; And An Effective Date.

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Date 6-10-15

4. Comprehensive Plan - Parking Category
An Ordinance Pursuant To The Procedures In Section 163.3184(3), Florida Statutes, To Amend Policy 1.2 Of The Future Land Use Element Of The Comprehensive Plan By Modifying The Parking (P) Future Land Use Category To Allow For Residential Uses When Abutting A Land Use Category That Permits Such Uses; Providing For Inclusion In The Comprehensive Plan; Transmittal; Codification; Repealer; Severability; And An Effective Date.

Please feel free to contact my Aide, Brett Cummins at x6437, if you have any questions.

JW

Parking Regulations Within 250 Feet of NSOP

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CITY CODE CHAPTER 130, "OFF-STREET PARKING," ARTICLE III, "DESIGN STANDARDS," AT SECTION 130-68, "COMMERCIAL AND NONCOMMERCIAL PARKING GARAGES," TO ESTABLISH REGULATIONS FOR MAIN USE PARKING GARAGES LOCATED ON NON-OCEANFRONT LOTS IN THE RM-2 DISTRICT WITH A PROPERTY LINE WITHIN 250 FEET OF NORTH SHORE OPEN SPACE PARK; PROVIDING FOR CODIFICATION; REPEALER; SEVERABILITY; AND AN EFFECTIVE DATE.

WHEREAS, the North Beach area of the City has lagged behind other areas of the City in economic redevelopment; and

WHEREAS, the Mayor and City Commission desire to encourage innovative and compatible redevelopment in the North Beach area; and

WHEREAS, the Mayor and City Commission seek to encourage the development of innovative mixed-use parking garages that will provide additional public parking in the area adjacent to North Shore Open Space Park; and

WHEREAS, the amendment set forth below is necessary to accomplish all of the above objectives.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:

SECTION 1. Chapter 130 of the City Code, entitled "Off Street Parking" Article III, "Design Standards," Section 130-68, entitled "Commercial and noncommercial parking garages," is hereby amended, as follows:

* * *

Sec. 130-68. Commercial and noncommercial parking garages.

Commercial and noncommercial parking garages as a main use on a separate lot shall be subject to the following regulations, in addition to the other regulations of this article:

* * *

(10) Parking garages providing at least one hundred (100) public parking spaces, located on non-oceanfront lots in the RM-2 district, with a property line within 250 feet of a North Shore Open Space Park:

a. Residential or commercial uses may be incorporated into the garage structure. In no instance shall the combined residential and commercial space exceed 35 percent of the total floor area of the structure.

- b. In no instance shall the amount of floor area of the structure used for parking, exclusive of the required parking for the residential or commercial space in the structure, be less than 50 percent of the total floor area of the structure, so as to ensure that the structure's main use is as a parking garage.
- c. All required parking for any commercial or residential use shall be provided within the structure. Restaurant or retail uses open to the general public that are located on the first floor of the structure shall not be subject to a parking requirement. Residential uses shall provide one parking space for each unit.
- d. The maximum height for the structure shall be 75 feet.
- e. Setbacks shall be the same as the setbacks required for the RM-2 zoning district, except that front and side street setbacks shall have a required setback of 0 feet.

SECTION 2. CODIFICATION

It is the intention of the City Commission, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code of the City of Miami Beach as amended; that the sections of this ordinance may be renumbered or relettered to accomplish such intention; and that the word "ordinance" may be changed to "section" or other appropriate word.

SECTION 3. REPEALER

All ordinances or parts of ordinances and all section and parts of sections in conflict herewith be and the same are hereby repealed.

SECTION 4. SEVERABILITY

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 5. EFFECTIVE DATE

This Ordinance shall take effect ten days following adoption.

PASSED AND ADOPTED this _____ day of _____, 2015.

ATTEST:

Rafael E. Granado, City Clerk

Philip Levine, Mayor

Signage Regulations Within 250 Feet of NSOP

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CITY CODE CHAPTER 138, "SIGNS," AT ARTICLE V, "SIGN REGULATIONS BY DISTRICT"; AND ARTICLE VI, "SPECIFIC USE SIGNS," AT SECTION 138-172, ENTITLED "SCHEDULE OF SIGN REGULATIONS FOR PRINCIPAL AND ACCESSORY USE SIGNS," IN ORDER TO ESTABLISH SIGN CRITERIA FOR GROUND FLOOR COMMERCIAL USES IN PARKING GARAGES LOCATED ON NON-OCEANFRONT LOTS IN THE RM-2 DISTRICT, WITH A PROPERTY LINE WITHIN 250 FEET OF NORTH SHORE OPEN SPACE PARK; AND CREATING SECTION 138-206, ENTITLED "CITY IDENTIFICATION SIGNS AT CITY ENTRANCE AND EXIT POINTS," IN ORDER TO ESTABLISH THE PROCESS BY WHICH THE CITY MAY ERECT CITY IDENTIFICATION SIGNS NEAR THE CITY'S ENTRY AND EXIT POINTS; PROVIDING FOR CODIFICATION; REPEALER; SEVERABILITY; AND AN EFFECTIVE DATE.

WHEREAS, the North Beach area of the City has lagged behind other areas of the City in economic redevelopment; and

WHEREAS, the Mayor and City Commission desire to encourage innovative and compatible redevelopment in the North Beach area; and

WHEREAS, the Mayor and City Commission want to encourage the installation of innovative City identification signs at the City's entry and exit points; and

WHEREAS, the amendment set forth below is necessary to accomplish all of the above objectives.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:

SECTION 1. Chapter 138 of the City Code, entitled "Signs," at Article V, "Sign Regulations by District," under Section 138-172, entitled "Schedule of sign regulations for principal and accessory use signs," is hereby amended, as follows:

Zoning District	Number	Awning/ Marquee	Flat	Projecting	Detached (Monument)	Accessory Signs	Special Conditions
RS-1 RS-2 RS-3 RS-4	Residential use: One sign per street frontage that has copy limited to the name of the building.	Not permitted.	Residential use: Six-inch letters.	Not permitted.	Not permitted.	Not permitted.	30 square feet for a religious institution, public and semipublic uses, clubs or schools.
RM-1 RM-2 RM-3 R-PS 1 R-PS 2 R-PS 3 R-PS 4 RO TC-3	No more than one sign identifying the main permitted uses for each street frontage. Unless otherwise listed in section 138-171, all signs must front on a street; however, multiple street front facing signs for the same licensed oceanfront hotel or apartment building within the RM-3 district may be permitted through the design review or certificate of appropriateness process as applicable if the aggregate sign area does not exceed the maximum size permitted under this subsection. <u>Signs for ground floor commercial uses in parking garages, providing at least one hundred (100) public parking spaces located on non-oceanfront lots</u>	Ten square feet; the height of the letters shall not exceed 12 inches. Not permitted in the RM-3 district. Not permitted in RO.	One per street frontage; 20 square feet for every 50 feet of linear frontage, or fraction thereof, up to maximum of 30 square feet. Flat signs shall not be located above the ground floor, except in hotels and apartment buildings within the RM-3 district. Flat signs in hotels and apartment buildings within the RM-3 district shall be limited to the name of the building or the use that encompasses the largest amount of floor area in the building. Within the RM-3 district, and subject to the review and approval of the design review board or historic preservation board, as applicable, one building identification sign for hotels and apartment buildings two stories or higher, located on the	15 square feet Not permitted in RO.	15 square feet, however, if sign is set back 20 feet from front property line, area may be increased to a maximum of 30 square feet. Pole signs are not permitted. Existing pole signs may be repaired only as provided in section 138-10. Notwithstanding the above, a detached sign located on a perimeter wall shall be limited to five square feet and shall not have to comply with the setback requirements of section 138-9. The height and size of the monument structure	One sign for each licensed accessory use; area of sign shall not exceed 75 percent of the main use sign, 20 square feet maximum. For hotels and apartment buildings in the RM-3 district, one street front facing flat sign per every licensed accessory use facing or having direct access to a street or sidewalk, 20 square feet for every 50 feet of linear frontage, or fraction thereof, up to maximum of 30 square feet. However, multiple street front facing signs for the same licensed accessory use of oceanfront hotel and apartment buildings within the RM-3 district may be permitted through the design review or certificate of	1. Maximum size for schools is 30 square feet. 2. Signs shall not have copy indicating prices. 3. An exterior directory sign, attached to the building up to six square feet, listing the names of all licensed uses within the building is permitted; sign material and placement shall be subject to approval through the design review process.

<p><u>in the RM-2 district, with a property line within 250 feet of North Shore Open Space Park shall be subject to the CD-2 standards.</u></p>		<p>parapet facing a street, is permitted with an area not to exceed one percent of the wall area on which it is placed. Corner buildings may provide one combined sign instead of the two permitted signs. This sign shall be located on the corner of the building visible from both streets and shall have a maximum size of 40 square feet. <u>Signs for ground floor commercial uses in parking garages, providing at least one hundred (100) public parking spaces located on non-oceanfront lots in the RM-2 district, with a property line within 250 feet of North Shore Open Space Park shall be subject to the CD-2 standards.</u></p>		<p>shall be determined under the design review process except as provided herein. In the RO districts, sign area shall not exceed ten square feet, and the monument structure shall not exceed five feet in height.</p>	<p>appropriateness process as applicable if the aggregate sign area does not exceed the maximum size permitted under this subsection.</p>	
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SECTION 2. Chapter 138 of the City Code, entitled "Signs" Article V, "Sign Regulations by Districts," Section 138-206, "City Identification Signs at City Entrance and Exit Points," is hereby created to read as follows:

* * *

Sec. 138-206. City Identification Signs at City Entrance and Exit Points.

The City may erect freestanding or flat identification signs on public or private property at or near the entrance and exit points to the City. The size, location, orientation, and design of any such signs, whether located on public or private property, shall be approved by the Design Review Board or, if the signs are located within an historic district, the Historic Preservation Board.

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MIAMI BEACH

OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM

To: Jimmy Morales, City Manager

From: Jonah Wolfson, Commissioner

Date: June 10, 2015

Re: **Commission Agenda Item – Consent Agenda – Legal Opinion Concerning Whether a Vacancy on the Historic Preservation Board Renders the Board Improperly Constituted and Without Power to Act, and Referral to the Land Use and Development Committee to Discuss an Amendment to Sec. 2-22(21) to Require the Mayor and City Commission to Fill Board Vacancies Within 90 Days.**

Please place on the June 10, 2015 City Commission Consent Agenda referring the following to the Land Use and Development Committee:

Issue: Whether a vacancy on the Historic Preservation Board renders the board improperly constituted and without power to act.

Summary Opinion: A vacancy on the Historic Preservation Board renders the board improperly constituted and without power to act.

Background: On March 16, 2015, the Historic Preservation Board (“HPB”) issued an Order approving an application for a Certificate of Appropriateness for the construction of a four story building on a surface parking lot located at 426 Euclid Avenue, Miami Beach, Florida 33139 (“HPB File No. 7471”). However, on the date of the hearing, contrary to Sec. 118-103 requiring the board to be composed of seven members, the HPB was composed of only six members as the term of the required representative from the Miami Design Preservation League, Jo Manning, had expired on December 31, 2014. In response to a challenge concerning the improper composition of the HPB, the board determined that it had the authority to act so long as a quorum was present. The approval of HPB File No. 7471 has been challenged and is currently pending before the Special Master (Case No. HPSM 15-002).

Analysis: Sec. 118-103 provides “The historic preservation board **shall** be composed of seven members.” (emphasis added.) The City Code mandates the HPB to be composed of

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seven members, and a vacancy on the board means the board is not properly constituted and without power to act. In *A.C. Kibler, Beatrix Meyer-Burghagen, and Freedom of Choice Realty, Inc., v. Department of Professional Regulation*, 418 So.2d 1081 (Fla. 4th DCA 1982), the Fourth District Court of Appeal held, in part, that the probable cause panel of the Florida Board of Real Estate was not properly constituted and reversed the Order of the board. The Fourth District Court of Appeal found the following:

If this cause did not require reversal based on the Board's failure to accord the findings of the hearing examiner the proper presumption of validity, it would still require reversal based on the **improper constitution** and action of the probable cause panel. The Department contends that the statute and regulations are silent on the number of members required to form a probable cause panel. But Rule 21V-20.09 of the Florida Administrative Code, containing the operating rules of the Board, declares: "The probable cause panel shall be composed of not less than two members of the Board, one of which shall be a lay member of the Board." And Section 455.225(3), Florida Statutes (1981), describing discipline of professions and occupations, provides, "The [probable cause] panel... shall be composed of board members, but not more than one of the panel members shall be a lay member." Despite these clear requirements that there be at least two members, one broker and one lay person, the Board accepted the recommendation of a panel that consisted of only one Board member, Mrs. Bishop, who is a broker. The requirements quoted above were clearly violated by the Board.

Id. at 1083. (emphasis added). This case is on all fours. As in *A.C. Kibler*, the violation of the requirement that the HPB be composed of the requisite members rendered the board improperly constituted.

The confusion concerning this issue stems from a legal opinion issued by former City Attorney Jose Smith on February 15, 2013. The former City Attorney's opinion mischaracterizes the Florida Supreme Court holding in *Clark v North Bay Village*, 54 So.2d 240 (Fla. 1951), as well as Florida Attorney General Opinion AGO 2012-23. The opinion concludes that boards can continue to conduct business when a vacancy exists as long as the minimum quorum requirement is met.

Clark v North Bay Village, 54 So.2d 240 (Fla. 1951)

The former City Attorney's opinion cites *Clark* for the purported proposition that it established the "general rule" concerning board vacancies, and that the "Supreme Court held that two vacancies on the five-member City Council did not prevent the Council from conducting business with its three remaining members constituting a quorum." Contrary to the holding in *Clark*, the former City Attorney's opinion states that the *Clark* opinion established the "general rule" concerning board vacancies, and that the vacancies did not prevent the Council from conducting business.

Initially, it is vital to note that the issue in *Clark* was not whether the Council could continue to conduct business with two vacancies. The sole question in *Clark* was "whether only two councilmen could constitute a quorum." *Id.* at 241. The holding in *Clark* was that "where the village charter provided that the village should be governed by a council of five, a majority of the council being necessary for a quorum, the vacancies... could not be deducted in ascertaining a quorum." *Id.* at 240. The Florida Supreme Court observed that "[s]hould we hold that a quorum is a majority of the remaining qualified councilmen, it would be possible for the two of their number to continue to govern the Village by their own design, or their failure or neglect to fill existing vacancies." *Id.* at 242.

The Florida Supreme Court also observed that:

The able Circuit Judge thought he should declare a quorum to be a majority of the remaining qualified councilmen, rather than a majority of the number of councilmen who by statutory declaration compose 'the Council', because a contrary ruling would create a hiatus in the City Government.

It is our view that such hiatus can be remedied, or could have been avoided, by the remaining councilmen electing successors to McCracken and Ridings. There is no excuse for the existence of such hiatus. However, a **temporary hiatus is preferable** to creating a condition whereby two of the remaining councilmen, upon their caprice, whim or fancy, can govern the City until there may be another city election, in the face of the fact that the Charter provides that the Council shall be composed of five members and that a majority of 'the Council' shall constitute a quorum.

Id. (emphasis added). The reasoning articulated in *Clark* supports the conclusion that a vacancy on a board that is statutorily required to be composed of a certain number of members is improperly constituted and without power to act. If the City Commission fails to fill vacancies, it is preferable for the board not to conduct business rather than to conduct business with a composition that contradicts and undermines the balance of interests contemplated by the composition mandates in the City Code which requires board members to be of specific professions and occupations, and possess certain knowledge and experience.

Florida Attorney General Opinion AGO 2012-23

The former City Attorney's opinion also cites Florida Attorney General Opinion AGO 2012-23. Like the *Clark* opinion, the Florida Attorney General's opinion is mischaracterized and does not support the former City Attorney's conclusion.

In AGO 2012-23, the Florida Attorney General was asked whether a nine-member governing body of a mobile home park recreation district could continue to operate and conduct business in the event of a vacancy. The former City Attorney's opinion states that "[t]he Attorney General opined that 'the [enabling] statute does not require the suspension of business upon the occurrence of a vacancy, but would appear to allow the board to continue to function and conduct district business while seeking a person to fill the vacancy on the board so long as a quorum is present.'" However, the following critical language from the Florida Attorney General's opinion was omitted, "[t]he district cannot contravene the statutory requirement of a nine-member board of trustees by conducting business in an on-going fashion with an eight-member board." In fact, the Florida Attorney General specifically avoided the issue by stating that "[t]his office cannot advise the board that it may continue to do business indefinitely with less than the statutorily prescribed number of board members."

Nevertheless, predicated upon the former City Attorney's flawed opinion – based on his misreading of the *Clark* opinion and Florida Attorney General Opinion AGO 2012-23 – the HPB interpreted the City Code to mean that it can indefinitely conduct business with a vacancy so long as a quorum is present. The HPB's interpretation has put the current City Attorney in the untenable position of defending the board's erroneous actions before the Special Master in HPSM 15-002. The HPB's interpretation, taken at face value, would mean that it could conduct business in perpetuity with one or more vacancies. This interpretation would effectively nullify and void the language in Sec. 118-103, that is, that "[t]he historic preservation board **shall** be composed of seven members." (emphasis added). This is an absurd conclusion.

Sec. 118-106 of the Code of the City of Miami Beach, Florida

The HPB interprets Sec. 118-103 and Sec. 118-106 in *pari materia* to mean that it can conduct business in perpetuity with one or more vacancies so long as a quorum is present. The quorum requirement for the HPB is the presence of four members of the board. *Id.* This interpretation turns the requirement of a seven member HPB composition on its head. The seven member composition is mandatory; not aspirational. The City Code may be read in *pari materia*, but it cannot be read in such a way as to render the plain and unambiguous language in Sec. 118-103 meaningless and of no effect. A principle tenet of statutory interpretation requires that “statutes that relate to the same subject must be read in *pari materia* and construed in such a manner as to give meaning and effect to each part.” *Fla. Dep’t of Education v. Cooper*, 858 So. 2d 394, 396 (Fla. 1st DCA 2003); citing *Palm Beach County Canvassing Bd. V. Harris*, 772 So. 2d 1273 (Fla. 2000). “Courts should not construe a statute so as to render any term meaningless.” *Id.*

Despite the HPB’s asserted authority to interpret Sec. 118-103 in a manner other than what is consistent with said section’s plain language, it is well-established that the plain statutory language controls. *Karell v. Miami Airport Hilton*, 668 So. 2d 227, 229 (Fla. 1st DCA 1996) ([it is the duty of the court] “to interpret and apply the statutes as written, so far it is possible to do so, and not as one party or the other would like to have them written.”); see also *Anderson Columbia v. Brewer*, 994 So. 2d 419, 421 (Fla. 1st DCA 2008) (“we are bound to give effect to legislative intent as expressed through the plain statutory language ... only when that language is ambiguous or of doubtful meaning should other considerations entire into the analysis”). Further, although an agency’s interpretation of the statute that it is charged with enforcing is entitled to great deference, if the agency’s interpretation conflicts with the plain and ordinary meaning of the statute, deference is not required. Moreover, when the language of the statute under interpretation is unambiguous and has a plain and ordinary meaning, the plain meaning should be given effect. *Osorio v. Board of Professional Surveyors and Mappers*, 898 So.2d 188, 190 (2005).

“Even where a court is convinced that the Legislature really meant and intended something not expressed in the phraseology of the act, it will not deem itself authorized to depart from the plain meaning of the language which is free from ambiguity.” *State v. Egan*, 287 So. 2d 1, 4 (Fla. 1973). This is simply not the case here. The language in Sec. 118-103, that is, that “[th]e historic preservation board **shall** be composed of seven members” is clear, unambiguous, and unmistakable. An inherently unreasonable and improper interpretation is not entitled to any deference. *Mayo Clinic of Jacksonville v. Dep’t of Prof. Reg., Bd. of Medicine*, 625 So. 2d 918, 919 (Fla. 1st DCA 2003).

Conclusion: It is my opinion, as an attorney member of the City Commission, that a plain reading of Sec. 118-103 requires that a vacancy on the HPB renders it improperly constituted and without power to act, particularly where the vacancy is the result of an expired term rather than a vacancy resulting from a sudden death, resignation or the like. However, I am mindful of the practical difficulties and consequences of a rigid or mechanical application of Sec. 118-103. Accordingly, I am proposing the following Ordinance which requires board vacancies to be filled within 90 days. It is my firm belief that the Ordinance strikes an equitable balance between preserving the public interest in faithfully observing the City Code, and a board's ability to continue doing business during a temporary vacancy.

Please feel free to contact my Aide, Brett Cummins at x6437, if you have any questions.

JW

CHAPTER 2 – ADMINISTRATION

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 2, ENTITLED "ADMINISTRATION," OF THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, ARTICLE III, ENTITLED "AGENCIES, BOARDS AND COMMITTEES," DIVISION 1, ENTITLED "GENERALLY," SECTION 2-22 THEREOF, ENTITLED "GENERAL REQUIREMENTS," BY CREATING A REQUIREMENT THAT VACANCIES ON THE BOARD OF ADJUSTMENT, DESIGN REVIEW BOARD, HISTORIC PRESERVATION BOARD, PLANNING BOARD BE FILLED WITHIN 90 DAYS OF VACANCY, AND PROVIDING FOR CODIFICATION; REPEALER; SEVERABILITY; AND AN EFFECTIVE DATE.

WHEREAS, the City Code provides that the Board of Adjustment ("BoA") shall consist of seven voting members, and specifies the required composition of the board; and,

WHEREAS, the City Code provides that the Design Review Board ("DRB") shall be composed of seven regular members, and specifies the required composition of the board; and,

WHEREAS, the City Code provides that the Historic Preservation Board ("HPB") shall be composed of seven members, and specifies the required composition of the board; and,

WHEREAS, the City Code provides that the Planning Board ("PB") shall be composed of seven regular voting members, and specifies the required composition of the board; and,

WHEREAS, notwithstanding the plain and unambiguous language of the City Code mandating that each of the above referenced boards be composed of seven members, the BoA, DRB, HPB, and PB (collectively, the "Board's") have interpreted their respective quorum requirements to mean that vacancies can exist indefinitely and that they can continue to conduct business so long as a quorum is present; and,

WHEREAS, the Board's interpretation is contrary to the plain and unambiguous language of the City Code which specifically provide that the Board's "shall" be composed of seven members; and,

WHEREAS, the Board's interpretation undermines the balance of interests contemplated by the Board's composition requirements in the City Code, and is unfair and prejudicial to applicants appearing before the Boards who are entitled to and expect hearings before boards composed of members who possess the discipline of professions and occupations required by the City Code; and,

WHEREAS, it is the duty of the Mayor and City Commission to appoint members to the Boards upon the occurrence of a vacancy or expiration of a term;

WHEREAS, the Mayor and City Commission recognize that it may be impractical to fill a board vacancy upon occurrence or expiration of a term and believe that a requirement that a vacancy be filled within 90 days is a fair and reasonable amount of time for appointments to be made, and an equitable balance between preserving the public interest in faithfully observing the City Code, and the Board's ability to continue doing business during a temporary vacancy.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:

Section 1. That Chapter 2, "Administration," Article III, "Agencies, Boards and Committees," Division 1, "Generally," of the Code of the City of Miami Beach, Florida, is hereby amended as follows:

**CHAPTER 2
ADMINISTRATION**

* * *

**ARTICLE III
AGENCIES, BOARDS AND COMMITTEES**

* * *

**DIVISION 1
GENERALLY**

* * *

Sec. 2.22(21). Filling special vacancies on certain boards.

- a. Whenever a vacancy occurs on the Board of Adjustment, Planning Board, Design Review Board, or Historic Preservation Board prior to the end of a member's term of office due to resignation, termination, removal or death, a special vacancy exists and said member shall cease to hold office immediately upon such resignation, termination, removal or death. After the City Clerk has been notified in writing by the board's liaison that a special vacancy exists, a notice of special vacancy shall be posted in City Hall, on the City's website, and in any other place(s) that may be designated by the City Commission by resolution. The notice of special vacancy shall also be published once in a newspaper of general circulation in the City. An appointment to any of the above-referenced boards to fill a special vacancy shall not be made for at least ten (10) business days after the newspaper publication of the notice of special vacancy.
- b. Notwithstanding subsection (21)a., the City Commission may, if it finds that an emergency exists, authorize the temporary filling of a special vacancy by resolution. A person appointed to fill the special vacancy shall serve only on an acting basis, but with all of the powers and duties of board membership, until a final appointment is made.
- c. Notwithstanding anything seemingly to the contrary in the City Code, whenever a vacancy exists on the Board of Adjustment, Design Review Board, Historic Preservation Board, or Planning Board for a period of 90 days for any reason whatsoever, including the 60 day period after the expiration of a term of office pursuant to Sec. 2-24, such

board shall be deemed to be improperly constituted and shall not have the power to act until such time as the vacancy is filled.

SECTION 2. CODIFICATION.

It is the intention of the City Commission, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code of the City of Miami Beach as amended; that the sections of this ordinance may be renumbered or relettered to accomplish such intention; and that the word "ordinance" may be changed to "section" or other appropriate word.

SECTION 3. REPEALER.

All ordinances or parts of ordinances and all section and parts of sections in conflict herewith be and the same are hereby repealed.

SECTION 4. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect ten days following adoption.

PASSED and ADOPTED this _____ day of _____, 2015.

ATTEST:

RAFAEL E. GRANADO, CITY CLERK

PHILIP LEVINE, MAYOR

(Sponsored by Vice-Mayor Jonah Wolfson)

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney

Date

Underscore denotes new language

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MIAMI BEACH

OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM

TO: Jimmy Morales, City Manager

FROM: Ed Tobin, Commissioner

DATE: June 8th, 2015

SUBJECT: Agenda item for June 10th, 2015 City Commission Meeting

Please place on the June 10th, 2015 Agenda for City Commission Meeting a discussion in support of after action report from the 5/27 Land Use and Development Committee which stated:

MOTION: 3-0 (ET/JW)

1. Refer an item regarding the repair of the Lakeview Drive Seawall to the full City Commission with a favorable recommendation.
2. Direct the Administration to identify the worst seawalls to be budgeted for repair in FY 2016 and to update the Land Use and Development Committee on the worst Sea Walls at the July 29, 2015 meeting.

Attached please find an email outlining resident concerns.

If you have any questions please do not hesitate to call our office.

Best Regards,

Dessiree Kane
on behalf of Commissioner Ed Tobin

Kane, Dessiree

From: Ed Tobin [ed@edtobin.com]
Sent: Thursday, June 04, 2015 4:20 PM
To: Kane, Dessiree
Cc: jbercow@brzoninglaw.com
Subject: Fwd: Cherokee Avenue street end seawall

Desi,
Please add on and call PW for an update.
ET

Begin forwarded message:

From: Jeffrey Bercow <jbercow@brzoninglaw.com>
Subject: RE: Cherokee Avenue street end seawall
Date: June 4, 2015 at 2:34:18 PM EDT
To: Edward Tobin <ed@edtobin.com>
Cc: "Kane, Dessiree" <DessireeKane@miamibeachfl.gov>, "Bruce A. Mowry (brucemowry@miamibeachfl.gov)" <brucemowry@miamibeachfl.gov>, "Jimmy Morales (JimmyMorales@miamibeachfl.gov)" <JimmyMorales@miamibeachfl.gov>

Commissioner,

Thanks again for sponsoring this effort. I note that this matter is not on the June 10 Commission agenda; when do you think it will get back to the Commission?

FYI, the after action report from the 5/27 Land Use and Development Committee stated:

MOTION: 3-0 (ET/JW)

1. Refer an item regarding the repair of the Lakeview Drive Seawall to the full City Commission with a favorable recommendation.
2. Direct the Administration to identify the worst seawalls to be budgeted for repair in FY 2016 and to update the Land Use and Development Committee on the worst SeaWalls at the July 29, 2015 meeting.

Regards,

Jeff

Bio

Vcard

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JEFFREY BERCOW, ESQ.
Bercow Radell & Fernandez
200 South Biscayne Boulevard, Suite 850
Miami, FL 33131
305.377.6220 | Office
305.898.3881 | Cell
305.377.6222 | Fax
jbercow@brzoninglaw.com



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From: Edward Tobin [<mailto:ed@edtobin.com>]
Sent: Friday, May 15, 2015 10:05 AM
To: Jeffrey Bercow
Cc: Jimmy Morales (JimmyMorales@miamibeachfl.gov); Bruce A. Mowry (brucemowry@miamibeachfl.gov); Kane, Dessiree
Subject: Re: Cherokee Avenue street end seawall

Jeff,
I am placing this on the next Commission Agenda for discussion and/or referral.
Best,
Ed

Edward L. Tobin

Sent from my iPhone
Please excuse any typos

On May 14, 2015, at 9:16 AM, Jeffrey Bercow <jbercow@brzoninglaw.com> wrote:

Dear Commissioner Tobin:

I hope all is well with you. I am writing to you regarding a matter that is affecting my home and the Lakeview Drive neighborhood.

As you may recall, my home abuts the Cherokee Avenue street-end on Surprise Lake. The seawall separating the lake from the street-end has been in a

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terrible state of disrepair for many years; there is no seawall cap and the wall is cracked and cannot hold back the lake during the higher tides. Please see attached photos take in 2012 and 2013; the situation has only gotten worse. I am concerned that continued degradation of the city seawall will undermine the structural integrity of my seawall, shown in the 2nd attachment. Please stop by when you are next in the neighborhood, and I would be happy to show you the extent of the problem.

When the General Obligation Bond was approved by the electorate 15 years ago, repairs to this seawall were part of the package for the LaGorce neighborhood. Despite my repeated efforts since then with City staff – and I have a very thick file that I would be very happy to share with you – and the many promises of city staff (Public Works, Capital Improvements) that the project would be bid out in a few months, there have been no repairs to the seawall. As far as I can tell, there is nothing planned in the near future that will remedy this problem.

The Manager has been very helpful in attempting to address this issue; I have had several meetings with him and staff members since you have been in office in an attempt to move this issue forward. But I can't honestly say that we are any closer to a solution today than we were a few years ago.

I have corresponded with staff in the recent past, and have had several candid discussions with the City Engineer. Mr. Mowry believes that this seawall needs repair/replacement, but has told me that there are no funds for individual seawall projects; in order to fund seawall projects this year staff needs to tie the seawall work with other work that is funded. There is no pending project with funding in my neighborhood to which the Cherokee seawall work can be tied.

And that is why, Commissioner, I need your help in making sure that this seawall repair project is funded and expedited. We all know how important seawalls are to the Commission's efforts to make sure that the City is protected from climate change.

I will be following up by telephone later today.

Sincerely yours,

4/5

Jeff Bercow

Bio	Vcard
<p>JEFFREY BERCOW, ESQ. Bercow Radell & Fernandez, P.A. 200 South Biscayne Boulevard, Suite 850 Miami, FL 33131 305.377.6220 Office 305.898.3881 Cell 305.377.6222 Fax jbercow@brzoninglaw.com</p> <div style="border: 1px solid black; height: 40px; width: 100%; margin-top: 10px;">x</div> <p style="text-align: center; background-color: black; color: white; margin-top: 10px;">www.brzoninglaw.com</p>	

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<Cherokee Ave street end 111513 #1.jpg>

<Cherokee Ave street end 111513 #3.jpg>

<Cherokee Ave. street end 10.13.12.jpg>

S/S

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