



CRA Board Meeting Minutes  
Thursday, December 17, 2020 – 4:00 p.m.  
Arts Warehouse  
Delray Beach, FL 33444

**STAFF PRESENT:**

Renee Jadusingh	Christine Tibbs	Danielle Arfin
Rob Massi	Kim Phan	

**OTHERS PRESENT:**

DJ Doody	Neil Schiller	Daniel Lebensohn
Gregory Freedman	Taylor Levy	Zack Purdo
Avram New	Yvonne Odom	Laura Simon
Steve Muschlitz	Jeff Dash	Gary Broidis
Chris Caesar	James McCray	John Brewer
Pastor Carla Mays	Dan Paulus	Willie Caesar
Harold Van Arnem		

**1. Call to Order**

Chair Johnson called the meeting to order at 4:00 p.m.

**2. Roll Call**

**Present:** Chair Shirley Ervin Johnson, Vice Chair Adam Frankel, Deputy Vice Chair Angie Gray, Commissioner Ryan Boylston, Commissioner Juli Casale, Commissioner Kelcey Cordell Brooks, and Commissioner Shelly Petrolia.

**3. Approval of Agenda**

**Motion** by Commissioner Casale, seconded by Commissioner Petrolia, to approve the agenda as presented. In a roll call vote, the **motion** passed (7-0).

**4. Meeting PowerPoint Presentation**

Executive Director Renee Jadusingh stated the item was included in the backup for the Board's information and did not require a presentation.

## 5. Public Comments on Agenda and Non-Agenda Items

**Yvonne Odom, 3905 Lonesome Blvd,** (the beginning of her comment was inaudible due to microphone issues) asserted she didn't know what she could say that would have an impact because it was difficult to change the Board's mind once it was made up. She stated the changes made to the BH3 plan were as a result of community input, and said they wanted a major grocer. She added they didn't get some "rinky-dink" grocer, but Publix, which is a great company. She reiterated that the neighborhood did not want people parking there and walking downtown and did not want large residential structures because it was one (1) neighborhood which just happened to be divided by Atlantic Avenue. She stated personally she preferred ownership, but BH3 had listened. She asked the elected officials to reflect what the residents want.

**Laura Simon, Director of the Downtown Development Authority (DDA),** explained the DDA Board had met on Monday and reviewed the project with BH3. She stated the DDA Board was in support of the project and asked the CRA Board to see it through to the end. She said they were excited to see the opportunity for the grocer to come to fruition, and relayed recommendations regarding connectivity and mural on 6<sup>th</sup> Avenue. She stated it was a hard time for businesses right now, but the development would really complete the downtown and be something for the community. She asserted it was a community-driven investment and the DDA wanted to see it happen.

**Steve Muschlitz, Delray Beach business owner,** stated he and Mr. Caesar had held a community event called "Cars and Conversation" with the intent of bringing the community together. He said BH3 had reached out regarding their second annual program and wanted to be part of their positive unity event. He stated more than 215 people had shown up, including leaders in the community both black and white, had shown up in a pandemic to discuss unity, and a member of BH3 had served on the open discussion panel. He provided a definition of community and stated the project was needed to make Delray Beach one (1) community. He said the project had come this far, let's not start over.

**Jeff Dash, Dash Travel,** asserted he had been driving past the location for 17 years and it would be great to see it get developed. He said these were the right guys to do it, and he wanted to voice his support for the extension.

**Gary Broidis, Atlantic Commercial Group,** spoke in support of the extension and the project that BH3 was proposing. He stated it was not just a land development but the creation of a bridge between the area west of Swinton and the downtown Atlantic Avenue corridor. He said the workforce housing was a great need and the community was underserved by grocery stores, so he highly recommended the development.

**Chris Caesar, 332 NW 10<sup>th</sup> Ave,** stated his family had been in Delray Beach for at least 100 years. He said before his grandmother died, she was complaining about the same thing they were complaining about now, that there was no grocery store in the area. He noted he had meetings all the time but couldn't meet in his neighborhood and had to go downtown because there was no place to meet in his neighborhood. He said he was supporting BH3 because they came into the

community and were not just lip service, they listened to the community. He stated he knew parking was necessary, but the community doesn't want a lot of parking for people to park in their community and go downtown. He added that he was asking for an extension for BH3 because they had proven themselves in the community and were continuing to do so. He noted that during the pandemic BH3 provided food for nine weeks and in helping he had gotten to know some of them, and they wanted the best for the community. Continuing, Mr. Caesar stated there was nowhere to shop retail in the community, and the project was looking to change that. He asked that the Board think about the community and give the extension.

**James McCray, Lindell Blvd,** stated it seemed there was a miscommunication regarding community and politics. He said BH3 was offering an opportunity for the community, and the choices the Board made today would reflect the community. He asked the Board what their legacy would be at the end of the day. He stated the project would increase value.

**John Brewer, 501 NW 13<sup>th</sup> St,** said he was in favor of the project. He stated he could vouch for each of the guys involved with BH3, and that they were part of the fabric of the community. He stated he thought Equity Development was given six (6) extensions when they were doing their project and said the goal had always been to get a grocer, and BH3 had a Letter of Intent (LOI) from Publix. He stated Publix was a great local brand that takes care of their employees and offers stock options and noted that BH3 was able to get them during a pandemic. Continuing, Mr. Brewer asserted commerce was a great way to cross-pollinate the neighborhoods. He stated the connection coming out of the project had been amazing, and BH3 would keep it going. He commented on parking, retail, and the pandemic, and said getting the project in that area would do a lot to bridge I95 to Swinton. He stated he was in favor of the BH3 project.

**Pastor Carla Mays, 200 Sterling Ave,** said the community was in favor of BH3 continuing the project and they were asking the Board to give them the time they need so that they can continue. She stated it had been a long time coming and they would appreciate not having to start over.

**Dan Paulus, GFA International,** stated the members of BH3 were consummate professionals. He noted if you look at their resumes, they come from great development backgrounds and were not a bush league operation that had just blown into town. He asserted they are a group that has taken great pride and had opened the eyes of local consultants as to the importance of the gateway. He stated the project keeps local businesses moving.

**Willie Caesar, 712 E Blvd Chatelaine,** stated he supported BH3 and thought it was a great project. He said the City and the community want the grocer and the retail. He asserted in the middle of the pandemic people are losing jobs, you can't get materials, restaurants are closing, everyone is taking a big hit, and for them to want to move forward and give the job opportunities was amazing. He stated he supported them 100 percent and it was what the community wants.

**Harold Van Arnem, 265 NW 5<sup>th</sup> Ave,** a principal in Uptown, asserted he hadn't intended to speak, but it was a stacked house and he agreed with almost everyone who came up and spoke saying the community did not want to start all over. He stated Uptown had a project that was the result of 150 public meetings that received approval from Planning and Zoning and other Boards and would build if approvals were made. He said they did not believe that from a COVID-19 point-of-view the design did not need to change and they could be in the ground in the spring. He noted with all due respect to BH3, they had produced a show but not what was promised.

**Taylor Levy, Delray Beach resident**, asked why the Board was delaying a community-centric project that benefits all. He stated over 50 percent of restaurants and small businesses were failing because of the situation as a County and Country due to the pandemic. He asserted the economic situation was unprecedented and implored the Board to take serious thought of what may be in front of us, an issue of BH3 to protect the community by beginning a project while anchors are still signing deals. He stated the project would secure hundreds of jobs during what may be a very bleak time ahead of us, and said by approving the extension, BH3 could put the plan in motion.

Mr. Levy asserted the alternative was simple – no grocer, no jobs, and no growth for a community that has waited decades for it. He stated the CRA had the ability to make sure the project could break ground and deliver a much-needed win for the Northwest/Southwest communities and greater Delray. He urged the Board to be conscious this would be a moment when people would look back and remember where they stood and asked that they create a win for West Atlantic by voting to give BH3 and Levy Land Trust the ability to deliver. He added that the community was counting on them.

## **6. Old Business**

### **a. Request Letter from BH3 Management, LLC – Development of SW 600-800 Blocks of West Atlantic Avenue**

Chair Johnson explained the special meeting was regarding development of the SW 600-800 blocks of West Atlantic Avenue.

Executive Director Renee Jadusingh stated the Board had met on December 10 to discuss a request letter received from BH3 Management related to their development of the SW 600-800 blocks of West Atlantic Avenue seeking amendments to the project phasing, reduction of the project composition, and an extension of time to get development approvals. She explained the outcome was not a blanket yes, that the Board would like to consider a fourth amendment, but some concerns about considering a fourth revamp of the project when the first Purchase and Sale Agreement (PSA) was executed in April 2019.

Ms. Jadusingh added that staff also heard that if the CRA were to entertain a fourth amendment, the Board was looking for some safeguards to give more reassurances that the project would be build. She stated at that meeting, there was a consensus for staff to work with BH3 on potential terms for a fourth amendment and to follow up at this Special Meeting. She reviewed points heard from the Board, including BH3 possibly waiving Force Majeure, the idea of imposing a penalty if BH3 misses a deadline with the amount of \$1 million put forward, and potentially to add more housing or parking. She stated those points were the basis of the discussion held in the interim.

Continuing, Ms. Jadusingh stated the discussions over the past week were very productive, with daily phone calls and emails shared. She noted she knew they were eager to be before the Board to make this request.

CRA Board Attorney DJ Doody stated he would like to place the proceeding in a proper legal context by explaining the Board was here to make a decision as to whether to authorize staff to negotiate a fourth amendment to the PSA, which had been amended three (3) times previously. He said he wanted to make it clear that the Board was not granting an extension at this time, they were approving negotiations for an amendment that would come back before them in January.

Mr. Doody asserted the Board was not under any legal obligation to approve a fourth amendment should they decide to negotiate it. He stated he would like the Board to consider that when the fourth amendment comes before them, should they decide to entertain it, they would see a fourth amendment that would:

- Amend the definition of the project
- Include terms that would modify the earnest money deposit
- Potentially have language that the closing would be in phases
- Extend the application date
- Extend the approval date
- Extend the permit date
- Extend the termination date
- New language regarding Force Majeure

Mr. Doody emphasized that the Board was not approving any revisions to the PSA during this meeting, only authorizing staff to negotiate.

Neil Schiller, attorney for BH3 Management, LLC, stated they were before the Board for a serious discussion regarding what had changed since the last meeting. He noted he had been on the phone with staff multiple times a day for the past week and had very productive conference calls, and thanked Ms. Jadusingh and staff for their time.

Mr. Schiller reviewed the proposed scope of the project:

- 69 Residential Units
  - 26 – one bedroom
  - 30 – two bedroom
  - 8 – three bedroom
  - 5 – townhomes
  - 100% workforce/affordable
  - 3,189 sf of residential amenities including internal green space, club room and fitness center
  - 19,586 sf of ground floor retail space (does not include 600 block)
- 26,680 sf of commercial office space
- 30,868 of open and green space
  - 8,672 of “Frog Alley”
  - 5,446 sf on 800 block
  - 14,528 sf of open space
  - 2,222 sf of green space
  - 352 parking space (24 over required)
  - 210 spaces on 700 and 800 block (197 onsite, 13 on street)
  - 142 spaces anticipated on 600 block (150 grocer)

Mr. Schiller quoted the West Atlantic Master Plan 2020, stating “strategies support the community’s expressed preference for the built form and encourages the City to use the development of the public-owned parcels to create context-sensitive designs that will set a precedent for future redevelopment proposals in the area.” He went on to state in order to allow developers to see a return on their investment, the plan suggests revising the redevelopment regulations to create greater flexibility and incentives to encourage midrise of two (2) to three (3) stories in the West Atlantic Neighborhoods. Mr. Schiller shared additional bullet points from the plan and stated it was what BH3 had done with the new design.

Continuing, Mr. Schiller stated one (1) of the most beneficial aspects of the design was the 69 workforce and affordable housing units, which met points within the Always Delray Comprehensive Plan. He reviewed a selection of points from the plan. He asserted that through discussion with staff, BH3 had realized the five (5) townhomes within the plan could be used for first-time homebuying programs within the Northwest/Southwest to build equity into the project from the neighborhood. He noted they were excited by that.

Mr. Schiller shared a slide highlighting the differences between the PSA and the New Fabrick plan, including:

- Reduction of residential units from 165 to 69
- Reduction of commercial office space from 21,600 sf to 26,680 sf
- Increase of workforce housing units from 40 to 60 (24 percent to 100 percent)
- Reduction of retail from 43,300 sf to 19,586 sf
- Reduction of parking from 206 over required to 24 over required
- Reduction of open and green space from 40,000 sf to 38,041 sf

Mr. Schiller asserted the adjustments came after meeting with the community to understand what they want, meeting with the Board to understand what they want, and adjusting to meet the needs of the national grocer on the 600 block.

Mr. Schiller shared the terms of a fourth amendment negotiated during the week between meetings of the Board, including:

- Deposit
  - \$250,000 deposit paid in full effect under the PSA
  - \$250,000 additional “accountability deposit” held in escrow and only released to BH3 tied to milestone events
- Phasing and Conveyance
  - Agree to close on each block separately as building permits are pulled
  - 700-block will initiate construction within 60 calendar days of obtaining first building permits
  - 800-block will initiate construction within 120 calendar days of obtaining first building permits
- Force Majeure
  - Waive all rights to claim Force Majeure for any eligible events occurring prior to the fourth amendment

- Maintain future Force Majeure events (hurricanes)
- Additional Consideration
  - South end of 600 block
    - 5 townhomes for first-time homebuyers' program for residents of Northwest/Southwest
  - 100,000 contribution to CRA Parking Fund

Mr. Schiller noted the original \$250,000 deposit had been paid upon negotiation of the original PSA and stated the Force Majeure considerations were a significant concession in an attempt to come to a compromise. He pointed to the townhomes on the 600 block and stated if the City would rather see parking there, that could be accommodated.

Continuing, Mr. Schiller asserted everyone wins under the agreement and outlined the portions of the plan which meet the needs of the community and the CRA. He stated as Mr. Doody had said, the project hits the main points of the original Request for Proposals (RFP). He said he hoped the Board would give BH3 the approval to continue working with CRA staff to bring the project home because it was what the community deserves and what the CRA deserves.

Commissioner Casale thanked BH3 for the hard work and recognized that it must have been challenging over the holiday. She stated that she wanted to start by addressing the people in attendance at the meeting. She responded to those who had said during public comment that the Set does not want parking, that the City has realized in retrospect as it developed that it is really lacking in parking. She stated if you look around the City, there aren't places to put parking in the downtown area to make it more accessible for people to come here. She added that if you look at the parking garage at Old School Square, it calculates out to \$35,000-\$40,000 per space, and iPic was about the same.

Commissioner Casale stated she was sharing this information because this was the taxpayers' money, and one (1) of the jobs of the City is to look at how it can accommodate the residents as it develops, and if the City is lacking in parking it is not a good situation long term. She asked that when they think about parking, residents think about it as bringing more people visiting the City. Commissioner Casale responded to Mr. Caesar's comment regarding a need for retail, pointing out the project was actually reducing the total retail. She thanked Mr. McCray for always being thoughtful and productive.

Commissioner Casale stated she appreciated the offer with respect to the accountability and milestones but thinks she would rather see the money returned at the conclusion. She added that she met with Zack Purdo and he was looking for the amount to be reduced because the \$250,000 deposit was already in place, and she would be amenable to something slightly lower but not broken down over time.

Commissioner Casale asked for clarification regarding the Force Majeure and whether COVID-19 was being excluded up to this point, or for all time during the contract.

Mr. Schiller consulted with the BH3 team and stated the intent was for everything historic to be excluded, but if COVID-19 were to strike the City in such a way that the building was

not permitted to move forward, they would want it on the table. He stated the real concern was major weather events or disasters that would shut the City down. He noted that was further language that could be discussed with staff if granted the ability to continue negotiations.

Commissioner Brooks stated his reservation was the same as last week, whether BH3 could really get it done. He asserted putting this all together was really nice, but the question still stands whether they can count on the developers to deliver like they said they would before.

Commissioner Boylston thanked staff and BH3 for working around the clock over the holiday. He stated things had not changed for him, that he thought it would be unreasonable to not provide an extension during a global pandemic. He asserted they were not asking for an unreasonable extension and said even with COVID-19 still an issue they were making the commitment to be breaking ground within a year.

Continuing, Commissioner Boylston stated having the project molded by the community and the economics of the world we are in today was a reasonable request. He noted that like last week, he is still concerned about the parking. He stated he gets that the goal of the project was not necessarily to bring a bunch of people to the community, have them park there, and then get in a golf cart to go downtown, however \$100,000 was just not going to cover it. He asserted that the cost in lieu of every parking space the project did not want to provide was \$4,600, which was a steal compared to most of downtown.

Commissioner Boylston explained he was in favor of moving ahead, but in negotiations with staff, BH3 would have to get closer to making up 100 parking spaces. He said if that meant they were providing offsite parking or were paying into the CRA Parking Fund, then they would need to look at the numbers. He concluded that it was amazing this much work had been done in four (4) business days and stated the parking is what would close the gap for him come next meeting.

Deputy Vice Chair Gray stated the project had been a long time coming, and she believed that everyone on the dais and everyone in the room wants the project to move forward. She asserted the CRA Board was not trying to hold up the project, but pointed out the project had changed tremendously. She noted everywhere in the United States, the County, and Delray Beach needs housing, so for her, reducing to 69 housing units was a problem. She stated the Ordinance calls for workforce housing in new projects, and when they are being created they are on the high-end and not affordable, and the CRA wants to make sure there is some affordable housing in these units.

Continuing, Deputy Vice Chair Gray asserted she could support the project if the majority of the units were affordable housing, not just workforce housing. She noted they had been given the land for free, had reduced the project and parking significantly. She recognized the fear that the Northwest/Southwest neighborhoods had of being parking for downtown but stated the project itself needed parking.

Deputy Vice Chair Gray asked if the street parking was allowed to be counted as part of the project.



Ms. Jadusingh stated she would check with City staff.

Mr. Schiller explained there were 21 on street parking spaces included, and he did not believe they were all currently in existence. He stated that was a great question, and he would also clarify with City staff.

Mr. Schiller stated that in response to the comment regarding affordable housing, BH3 knows the City is getting an abundance of the high end of workforce housing and not the mix the Ordinance is intended to provide and are sensitive to that. He stated the workforce housing proposed was not a way to create any sort of density bonus but were being offered as affordable and workforce because it makes the project fit into the community much better and provides real housing opportunities.

Mr. Schiller asserted that in response to the comments regarding additional housing and parking, by giving BH3 more than seven (7) days, they could investigate additional opportunities. He noted they had already started looking but needed more time.

Deputy Vice Chair Gray asked for the price point of the townhouses, asserting that those were not for her community. She stated the first-time homebuyers' program is a program people qualify for and is not something that is given.

Mr. Schiller stated that he did not believe BH3 had looked at what the prices could be, as the idea had come out of the negotiations during the past week. He asserted they had made the commitment to make them all workforce and affordable, the City and County had income limits, and they would abide by them.

Deputy Vice Chair Gray estimated prices for the units, stating that given the average income in the Northwest/Southwest Neighborhood is \$11,000, those units were not going to be priced for the neighborhood. She stated they needed to be honest about the price point when saying it was designed specifically for the people in her community.

Mr. Schiller consulted with the BH3 team and stated that the 18 units on 5<sup>th</sup>, which are two (2) bedroom units, average out at \$1,350 in rent. He stated he had the prices from the County, and the low-income category was 60-80 percent of the area median income.

Deputy Vice Chair Gray asked how that translated to a specific number, because people often don't realize what it looks like.

Mr. Schiller stated the numbers he had were from 2019, and he didn't know the specific numbers, other than a commitment that all units would be workforce and affordable. Additionally, he asserted that the first-time homebuyers' program for the townhomes was something they were committed to and wanted to work toward it however it could be made to happen, to make it so that members of the community could own those townhomes. Mr. Schiller clarified his comment that because the prices would be based on the median income in the district, he had a feeling these were real housing opportunities for people in the neighborhood.

Deputy Vice Chair Gray stated she begged to differ, and they would see what they were priced at. She asserted the CRA needed to find a way to put teeth into the agreement, because “I believe,” “we don’t know,” and “I’m not sure” were statements heard before.

Deputy Vice Chair Gray asked for clarification as to whether the \$250,000 BH3 had already given was in escrow.

Mr. Doody stated this was correct, pursuant to the contract.

Deputy Vice Chair Gray asserted that she would wait to see what the others said, but she could be in favor of continuing to negotiate. She stated she was not in favor of the \$250,000 going back incrementally and said she would like to see it increased back to the \$1 million. She said if they were so sure that the project was going to move forward, she didn’t see how that was an issue when the CRA was being asked to give up everything. She noted the CRA was giving up housing, parking, and making a fourth extension.

Continuing, Deputy Vice Chair Gray referenced the previous project, which was brought up that had multiple extensions, and noted that was what the Board was trying to avoid. She stated she wanted the project to move forward, and believed everyone here wanted it to move forward, but in order to make that work she needed BH3 to be able to give a bit more, too.

Deputy Vice Chair Gray stated that she was a little concerned about Force Majeure and COVID-19 over the next year but pointed out that BH3 had asked for an extension before the pandemic began. She said she didn’t know if it was quite fair to say they were at the table now because of the pandemic.

Deputy Vice Chair Gray asserted she could move forward but would like the extension to be a little shorter. She noted they had time to take out the housing and parking, so should be able to make it work with less time. She said they were willing but needed these things in place for the CRA and for the community.

Mr. Schiller thanked Deputy Vice Chair Gray for her comments and reviewed the three (3) extensions. He stated the first was to extend the 18 units offsite workforce housing deadline, the second was a 60-day extension, and the third was the EJS lease. He noted this was an amendment to the PSA that they wholeheartedly supported but was not at BH3’s request.

Deputy Vice Chair Gray stated the 18 units of workforce housing were up for sale. She asked Mr. Doody what impact sale of the units would have on the project.

Mr. Doody stated they are obligated under the present terms to provide a plan to relocate the units if sold.

Chair Johnson asked for clarification that Mr. Doody was referring to the current plan.

Mr. Doody stated should BH3 have an intent to sell, and there had been discussion regarding that issue, the CRA had taken the position that BH3 should provide a 60- or 90-day notice of a plan for relocation.

Deputy Vice Chair Gray asked if the CRA had that plan, because it had already been listed.

Daniel Lebensohn, BH3, stated the 18 units already delivered were on top of the 69 units in the amended plan. He asserted that if the workforce housing covenant stays in place, it doesn't matter who owns it, it is subject to the workforce housing covenant. He noted the relocation was only required if the covenant were to be lifted, which was not their intention.

Deputy Vice Chair Gray asked Mr. Doody to explain further.

Mr. Doody stated he did not know that he could address the comments other than what the contract provides, which is should BH3 desire to redevelop or sell the properties, purchaser shall provide written notice to the CRA 90 days prior and identify potential locations for new workforce housing within the appropriate housing district for the remainder of the 40-year term.

Deputy Vice Chair Gray asked if the CRA was in receipt of that written notice.

Mr. Lebensohn stated there was no contract in place on the units. He asserted this was not the time for a legal debate, but the housing covenant of the 18 units stands. He asked that the Board not forget that they were not proposing to provide 69 workforce and affordable housing units, whereas before they only had to provide 12 additional units.

Deputy Vice Chair Gray asked that legal make sure the CRA was not on the losing end of that discussion.

Mr. Lebensohn asserted he agreed that there was no loss of units as those 18 units remain as workforce housing.

Ms. Jadusingh commented that Commissioner Brooks had an emergency and had to leave but was on the phone.

Vice Chair Frankel stated at the last meeting he and his colleagues had asked a lot, and some of those who had spoken before him had noted there were things that needed to be addressed even more. He asserted the thing that stuck out to him most was the grocery. He pointed out people during the public comment period had said grocery was the number one (1) need of the community, and 90 percent of the public comments had mentioned the national grocer. He stated Mr. Schiller had said they "locked up" a grocer, and asked that this comment be clarified for the record.

Mr. Schiller stated BH3 had a signed LOI from Publix.

Vice Chair Frankel responded that he was not a real estate expert and asked what that meant. He asked if it still had to go to a construction committee and things of that nature.

Mr. Schiller shared a slide with the grocer's timeline. He stated to his understanding, it was not the average Publix LOI. He stated it was a binding letter.

Mr. Lebensohn stated it was a signed LOI, which was typical in commercial real estate leasing. He said what he knows is that they resurrected Publix's appetite for the location and to be candid, they want to see buy in from the CRA before moving forward.

Mr. Lebensohn asserted that Publix previously had real estate committee approval and believes they can obtain it again but will need to go through the process. He stated BH3 had spoken with a laundry list of grocers and had exhausted resources to source alternate grocers and had gotten Publix back to the table during a pandemic.

Vice Chair Frankel stated it was his understanding that Publix looked at the area several years ago and it fell apart for one reason or another. He asserted that two (2) areas that were doing well in the pandemic were grocers – Publix was having record sales – and construction, so the frustrating part for him was looking at the timeline of the project. He stated the deal was signed in April 2019 and he wasn't pointing fingers because a lot had gone on with the City and the world, but overwhelmingly what he hears is that people want the grocer. He said he was concerned that deal would fall apart, and they'd be back here in eight (8) months. He asserted that he knew everyone was working very hard, but that was the big item.

Mr. Lebensohn agreed, noting the grocer was a fundamental item of the RFP, and most conversations in the current environment were regarding the food desert. He stated he understood the concern and stated with the thin margins of the supermarket business they are concerned with volume and geography. He asserted that he could not speak on their behalf, but that they had them engaged. He noted it was extensively negotiated and Publix drives a lot of the process.

Mr. Lebensohn stated he believed BH3 could make it happen when they knew that the CRA was in support.

Commissioner Petrolia echoed the appreciation for everything that had been done, and to the public that had come along and stuck it out. She commented on the grocery store, stating it was the pinnacle of everyone's concern. She asserted BH3 had to go get the grocery store, but that was part of the RFP, and without that it was a done deal. She noted it was great they were looking at Publix, but they were looking at Publix before BH3 even got involved. She stated the same subsidiary had been part of discussions several years prior and it was not new for this particular location.

Continuing, Commissioner Petrolia stated she was hearing the constant echo that they not start over, but pointed out that was where they were, starting over at ground zero two (2) years in with BH3. She asserted that was her frustration, because the CRA had not delivered to the community. She stated that was why she had said if they wanted her vote that BH3 needed to step up to the plate and put \$1 million in a bond, not an accountability deposit that was refundable over time. She said she wanted something that said that they were getting it done come hell or highwater.

Commissioner Petrolia asserted they had been sitting there for two (2) years, and the reality of the situation was that there had not been a pandemic for two (2) years, and here they were at square one (1). She asked what there was to make her think that they wouldn't be at the same place in 10 months, with nothing to show for it. She stated they either needed to deliver together or it was time to move on. She added it was time to cut bait or get serious about moving forward. She said she had said \$1 million because \$1 million would get something done.

Continuing, Commissioner Petrolia stated it was not about being difficult. She asserted these were the guys they had picked, and they thought BH3 had the best plan. She said she was OK with the current iteration, but the problem was that she didn't know if it was going to get done or if it was just another thing to keep the CRA on the line. She stated she couldn't do that to this community again and again, to continually promise and not deliver.

Commissioner Petrolia commented that she understood the community didn't want big huge parking structures. She said she didn't like it either, but the downside was that if they didn't address parking on the front end, they would be addressing it on the back side. She stated she knew this because every other area that is alongside of Atlantic Avenue has parking problems. She said they had been trying to keep people from parking along people's residential streets and causing problems when they come back to their cars at 2 a.m., and it was happening in other areas. She said they had to make sure people were not parking on the community's streets.

Commissioner Petrolia stated it was a little deceptive to show the number of parking spaces going in as additional when the original plan was for 700 spaces. She asserted the plan had really dialed back parking, and that was one (1) of the reasons some of the people on the panel had chosen to go with this project over the other projects. She noted that now that the parking was not the enticement, it was going to affect the community in the future.

Continuing, Commissioner Petrolia asked if the CRA ever had an LOI from Publix when going through the process.

Mr. Doody stated he did not recall off the top of his head, but knew they were very close and trying to get an LOI at the time.

Commissioner Petrolia stated Mr. Schiller was correct as to the terms of the three prior amendments but noted there had been multiple extensions on the last project the last time they went down this path and it got them nowhere. She asserted that when they keep having to do extensions, they had to start asking themselves why they had to buy all this time and understand what was going on instead of getting a shovel in the ground.

Commissioner Petrolia stated she did not disagree that everyone was on the same page, everyone wants to see action happen on West Atlantic. She asserted nothing was more hurtful to her than to say that they had not started it, and that was the reason she was so

frustrated and wanted to be able to say it was happening or they were getting a big check back.

Commissioner Petrolia asked for clarification regarding what the accountability deposit means. She asked if they received money back as they hit marks.

Mr. Doody stated as he understood the proposal, the money would be placed in an escrow deposit at the time the fourth deposit was executed, and at such time as they made certain milestones, they would be able to draw down on it.

Commissioner Petrolia asserted that meant by the time it gets to the very end there is very little left in there, and that was actually the mark they wanted to get to. She stated she was not interested in that, she wanted something that would be paid out in the event they get to the point where the project does not move forward.

Commissioner Petrolia stated Force Majeure was a problem for her as well, because the State constantly has emergencies, and that allows for developers to tack on six (6) month intervals to their project. She noted it could be applied even if it didn't affect the developer, such as blue tide, red tide, and Zika Virus. She added there were projects in Delray Beach that had added two (2) years.

Mr. Doody confirmed this was correct. He noted that during the course of the discussion, it had come to mind that in other jurisdictions where he serves as attorney he had had developers waive their rights under an Executive Order. He noted it could be done.

Commissioner Petrolia stated the Swinton Social Project, as an example, was still in play due to Force Majeure. She asserted she remembered when Mayor Cary Glickstein gave a six (6) month deadline, but the developers had been able to add on all of these things to extend the time period. She said it could be detrimental to the CRA getting the project done, and maybe they could ask for an exception for COVID-19.

Continuing, Commissioner Petrolia stated she understood that the community was going for workforce housing and affordable housing and that was great, and Deputy Vice Chair Gray had made a great point in asking if it was really for the Northwest/Southwest community. She said probably not, but it was housing that was more affordable than what was coming on the market, which was a good thing. She stated in reference to the 18 offsite units, the onus was on the developer. She asserted those units also took a longer time to put in place than promised and stated those 18 units should not be mixed into the 69 units in the project, because that was an extra and separate decision, and they should not lose sight of that. She stated this was BH3's 18 units that they should be responsible for, and the CRA should not be having to chase another landlord down.

Commissioner Petrolia stated in a nutshell, it would take a bigger price tag where BH3 was delivering or losing in order for her to be on board.

Commissioner Casale asked for clarification regarding the 18 units. She stated it was her understanding that those units roll into the project, since it incorporates more workforce housing units than originally agreed to and were not in addition to.

Ms. Jadusingh responded that was not necessarily the case, and they would count however they were being put forward. She asked BH3 to clarify.

Mr. Schiller stated the units were in addition to what was included onsite. He asked that he be permitted to correct the record.

Chair Johnson answered as long as it was short.

Mr. Schiller asserted the extensions of deadlines having to do with states of emergency have to do with development orders under State statute and were not Force Majeure events under the Code. He reiterated that BH3 had not asserted Force Majeure and it would not be eligible for any of those states of emergency. He reminded the Board that Force Majeure extensions must be approved by the CRA Board.

Commissioner Petrolia responded that she appreciated having the difference brought to her attention, because it was a concern, and time was of the essence.

Mr. Doodly stated to further comment, the distinction was accurate, but the original point was that those emergency orders can be waived by a developer.

Mr. Schiller agreed that time was of the essence, and if the Board should be so gracious as to allow BH3 to meet with CRA staff, they would like to bring the item back before the regularly scheduled January move because they want to move.

Commissioner Boylston clarified this was not the fourth extension of the PSA, it was the fourth amendment. He stated it was not accurate to say this was the fourth time they were given more time.

Chair Johnson stated that unfortunately, the terms were not enough for her. She asserted this was not the agreement that was made 22 months ago, and she would like to state for the record that the pandemic had only been acknowledged for the past eight (8) months.

Chair Johnson noted this was a P3 (Public/Private Partnership) project, which means the developer and the City are in partnership. She stated there had been at least two (2) different occasions where the Board had directed the developer to stay in touch with the CRA and they had failed to do so. She said she found that very disconcerting and didn't know what would stop them from continuing with that behavior.

Continuing, Chair Johnson asserted the community needs housing, they don't just need workforce and affordable housing. She stated it was not what they contracted for and added the community may have spoken out that they didn't want density, but she was not so sure that was the reason for the change.

Chair Johnson stated the City needs parking, whether they like it in that location or not, and said she believed there could be parking that was not what would be considered ugly, because there are all kinds of designs. She noted they don't recognize that people come

through the community, whether they park in that location, continue downtown, or park in your neighborhood and take the FreeBee.

Chair Johnson stated she believed there were things that could have been done in those 12 months, but in her opinion the developer was nowhere to be found. She said they would show up when there was a point in the timeline to be met, so for 22 months they were right back where they started in April 2019. She asserted that the reason she was not in favor of negotiation for a fourth amendment was that was the kind of trouble that the previous developer got into, continuously being given amendments and extensions for whatever reason, and after three (3) years the plug finally had to be pulled.

Continuing, Chair Johnson asserted her biggest concern was that there was nothing in the presentation except the timeline that talked about the grocer. She stated an LOI was not a commitment, and that grocer could turn around at any minute and say they are not interested anymore. She stated that the CRA was there for an entire year, and she sat in as many meetings as she could where each one (1) talked about Publix. She noted at the end Publix said give us the land and they would come back in 2022 and say whether or not they would give back the land because they are not interested. She stated she felt they were in the same boat and paddling to stay afloat.

Chair Johnson stated she agreed with Commissioner Petrolia that BH3 should put some skin in the game. She said if they would just put \$1 million down because they really believe they can bring this home, but the methodology they were using didn't even put in the full \$250,000.

Deputy Vice Chair Gray asked for clarification regarding what happens if the Board approves moving forward with negotiation and the results they require are not there in January.

Mr. Doody responded that at that time, they would not approve the amendment. He stated staff would work to the best of their ability to bring forward a document that reflects the discussion, provided they could reach an accord to present to the Board.

Chair Johnson noted Commissioner Brooks had returned to the dais. She asked that Mr. Doody restate the motion on the floor.

Commissioner Brooks returned to the meeting at 5:54 p.m.

**Motion** by Commissioner Boylston, seconded by Commissioner Petrolia, to approve the negotiation of a fourth amendment. In a roll call vote, the **motion** passed (5-2). Chair Johnson and Vice Chair Frankel voted no.

Commissioner Petrolia stated she wanted to make it clear that she would not be supporting the amendment if it did not come back where she wanted to see it.

Commissioner Casale added the accountability deposit was a problem. She noted the grocery store by the timeline was quite a way out, and they didn't want to be refunding money only to not get to the result they want.



## 7. Other Business

### a. Comments by Executive Director

None.

### b. Comments by Board Attorney

None.

### c. Comments by Commissioners

None.

## 8. Adjournment

There being no further discussion, the meeting was adjourned at 5:56 p.m.



Renee Jadusingh, Executive Director



Shirley Ervin Johnson, Board Chair