



CRA Board Meeting Minutes  
Tuesday, February 23, 2021 – 4:00 p.m.  
Arts Warehouse  
Delray Beach, FL 33444

**STAFF PRESENT:**

Renee Jadusingh	Christine Tibbs	Tara Toto
Ivan Cabrera	Rob Massi	Lori Hayward
Grace Gdaniec	Lui Sixto	Kim Phan
Tracy Waterlander		

**OTHERS PRESENT:**

DJ Doody	Anthea Giannites	Bill Morris
Neil Schiller		

**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**

Chair Johnson stated staff had requested the removal of item 7c from the agenda prior to the meeting.

Deputy Vice Chair Gray asked that item 8a be moved to the Consent Agenda.

Chair Johnson stated if there was a consensus of the Board, item 8a would become item 7e.

**Motion** by Vice Chair Frankel, seconded by Commissioner Petrolia, to approve the agenda as amended. In a roll call vote, the **motion** passed (6-0). Commissioner Boylston was not present for the vote.

#### **4. Approval of Minutes**

##### **a. January 26, 2021 – Regular Meeting Minutes**

**Motion** by Deputy Vice Chair Gray, seconded by Commissioner Casale, to approve the January 26, 2021 Regular Meeting minutes as printed. In a roll call vote, the **motion** passed (6-0). Commissioner Boylston was not present for the vote.

#### **5. 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.

Chair Johnson asked for and received a consensus that item 8c be moved to the head of the agenda for discussion.

#### **6. Public Comments on Agenda and Non-Agenda Items**

**Bill Morris, 777 E Atlantic Ave, Suite 100**, stated on behalf of himself and Uptown Delray, that he believed BH3 was hiding behind the COVID-19 issues. He noted that BH3 had 14 months after submitting their initial plan to come up with a better plan and added that he did not understand the company's ultimate goal. He asserted that if they really cared about Delray Beach and that gateway, they could have come up with a plan that made sense. He encouraged the Board to let Uptown Delray to move forward with the project, noting they were originally the second ranked bidder, and stated it did not make sense to give BH3 more time.

#### **8. Old Business**

##### **c. Extension Request Based on Force Majeure – BH3 Management, LLC – SW 600-800 Blocks of West Atlantic Avenue**

Item addressed out of order.

DJ Doody, CRA Board Attorney, stated the item was before the Board as a result of counsel representing BH3 sending a letter to the CRA on February 12 asking for an extension of time under the clause in the contract referred to as Force Majeure. In summary, Mr. Doody explained the request was based on the pandemic and requested 383 days additional time in which to comply with the requirements of the contract.

Mr. Doody noted he had provided the Board with a memorandum for their edification regarding Force Majeure. He stated there was very little case law in the State of Florida, but Force Majeure was a standard provision in contracts. He asserted it is typically intended to provide an extension of performance by either party under extreme circumstances. Mr. Doody stated that generally speaking, Force Majeure applies for the inability to perform due to an act of God or situation out of control of either party.

Continuing, Mr. Doody stated Force Majeure was not, as was suggested, to be based on a delay of additional complexity or expenses. He pointed the Board to the request and stated he suggested BH3 did not necessarily provide a direct nexus showing how the CRA was to understand COVID-19 provided a basis for their failure to perform under the terms of the contract. He noted City Hall was open throughout 2020, and plans had been submitted after BH3 was given an extension of application date.

Mr. Doody asserted BH3 was now in default for failure to meet the approval date as provided by the contract, which was 365 days subsequent to the application date. He noted BH3 was now exercising their right, under the contract, to request an extension based on Force Majeure. Mr. Doody stated it was important to note the CRA had the right to approve the request. He asked that if the Board consider the application for the Force Majeure, to have a reasonable basis and to articulate it. He added that if the Board did not feel the request was based on any reasonable predicate or foundation, to articulate that, as well.

Commissioner Petrolia asked Mr. Doody to speak to Mr. Morris' assertion that the Uptown Delray project was next in line, and whether that was the case.

Mr. Doody stated that discussion was not necessarily before the Board at this time, so he would like to be very careful in his comments. He noted that he had reviewed the minutes and there was a determination that a proposal submitted by another party was positioned as second. He stated that at this time he did not believe that gave them any legal right or imposed any obligation on the CRA to award a contract to that party.

Chair Johnson stated she had invited City of Delray Beach Director of Development Services Anthea Giannites to attend to confirm the City's position that they were never closed due to COVID-19 or for any reason since BH3 had cured itself in January 2020.

Commissioner Boylston stated that yes, City Hall was open, but there were other requirements placed on BH3, the biggest item being having to have a grocery store. He stated he could not imagine getting a grocery store to pick up the phone in 2020, let alone sign an agreement and talk about what they would need to see in a project in order to say yes to it. He asserted that he saw the requirement for a grocer in the Request for Proposals (RFP) and in the contract as the absolute top priority of the project and that absolutely had to have been affected by a pandemic.

Continuing, Commissioner Boylston stated that he had done his research, and this might be one of the first times where it was agreed upon that the delay – a global pandemic – was an act of God. He noted that when he looks at their partner and a global pandemic affecting the number one (1) requirement of their contract, he did not see how the Board

could not give some form of extension. He stated that he believed they could discuss what length of extension was appropriate.

Deputy Vice Chair Gray stated she understood what Commissioner Boylston was saying, but asserted BH3 had had enough time, as far as she was concerned. She noted BH3 had asked for an extension before the pandemic, and the Board had considered that they would have to give more extensions if they moved forward, but to her the project was still not where it was supposed to be or what was presented originally. She pointed out the 167 housing units had been reduced to 65 workforce housing units and said that was not enough for her.

Continuing, Deputy Vice Chair Gray stated the Board had approved the project with 700 parking spaces and it was down to 300, and asserted the project was not what the Board approved. She noted if BH3 had come to the CRA in January or February of last year with a project and had it approved, she did not think anyone on the Board would have disagreed with the extension, but it was two (2) years later and they were no further than when they started on day one (1). She stated BH3 had asserted the project was ready to go and would move forward without any type of extension. She noted that was before the pandemic.

Deputy Vice Chair Gray stated for her, the CRA did not have the project they wanted or liked, BH3 had a chance with the original project, COVID-19 was an issue, but City Hall was definitely open, and so she would wait. She added that they did want a grocery store, that was number one (1), but by February of 2020 BH3 still did not have a grocery store (attached to the project). She asserted BH3 had only recently submitted to the CRA who the grocery store was after telling the community it was a Publix and not telling the Board. She stated this was deceitful, and they needed to move on.

Commissioner Casale stated the Commissioner Boylston brought up a great point, but Deputy Vice Chair Gray did as well. She asked that Ms. Giannites speak to what she felt transpired over the course of the project.

Ms. Giannites stated all she could provide was that the application was submitted at the end of February 2020 and received a thorough review from the City and its partners, the comments from which were returned at the end of March. She noted there were a couple of weeks where the doors of City Hall were not open to the general public, but City staff was still working, and provided a full review of what was submitted.

Continuing, Ms. Giannites noted that she thought what the Board was grappling with was whether or not the desired program was something that could happen in light of the impacts of COVID-19, which was different from whether or not BH3 addressed the comments. She stated there were over 100 comments, and not an insignificant amount of work to do on the proposal, so if BH3 were going to change the program, they would not want to throw good money after bad. Ms. Giannites stated City staff was happy to help the CRA Board go wherever they wanted to go with the project.

Chair Johnson asked Ms. Giannites if it was her statement that City Hall was open, and the application was received at the end of February 2020.

Ms. Giannites responded that it was.

Chair Johnson asked for clarification as to whether there was communication back and forth between the City and BH3.

Ms. Giannites stated that any application which is submitted to the City moves into what they call the Technical Advisory Committee, which is not just Development Services but also Engineering, Public Works, Building, the CRA, Fire, and Police, and plans are circulated for a full review. She noted the project was large, so instead of two (2) to three (3) weeks it took a little bit longer to review.

Ms. Giannites explained written comments were then provided on how the application needed to adjust to meet City Code. She stated staff had not received a submittal since the comments were provided to the applicant on March 31, 2020. She added at that point the ball was in BH3's court, so it did not really matter whether City Hall was open. She stated that they were open, it was just a matter of whether you could physically walk in versus working over virtual meetings and phone calls.

Chair Johnson asked if there were any other applicants that were in the process at the time. She stated she knew there had been cranes and construction, but perhaps that was pre-COVID-19.

Ms. Giannites responded that certainly there was a delay in that the City was not holding meetings, so an applicant could not get to the Site Plan Review and Appearance Board (SPRAB) or the Historic Preservation Board (HPB), and that did take a couple of months. She stated there were certainly projects that paused, but internal reviews like this one (1) still took place because it was something staff could do without having to have exchange with the public. She noted she did not have a list of projects in front of her.

Chair Johnson stated as she recalled there was a meeting held in June 2020 to discuss the selection of a grocer and the Board advised the developer to come back and see them if they ran into any trouble, as they were partners. She asserted that she did not think the CRA was ever consulted again until very close to having to meet the January timeframe.

Vice Chair Frankel stated he was somewhat in the middle, however based on what he knew, construction was an industry that really was not affected by COVID-19. He asserted that driving to the meeting, he had seen the Ray Hotel was almost open. He noted that he thought an extension of maybe 30 or 60 days was appropriate as a show of good faith, but from his perspective was enough already. He stated the project seemed like delay after delay and change after change, and the residents of the Northwest/Southwest neighborhoods were impacted.

Continuing, Vice Chair Frankel stated that when the Board held the vote a couple of years ago, he had been concerned, stating on the record that if the CRA did the new RFP and went out to the new developer, whoever that may be, this was going to happen. He asserted that he was not a fortune teller, but it did happen, and there was no dirt being moved or work being done. He stated he would be happy with a show of good faith, but other than that the CRA needed to get moving.

Chair Johnson added that in counter to Commissioner Boylston's assertion, the grocer was not the only part of the development, and if everything stopped because of a grocer, that was not the only ask of the community. She stated the ask was for housing, parking, and as Deputy Vice Chair Gray said, everything just seemed to have stopped. She stated that BH3 did not come back to consult with the CRA Board or the Executive Director as they had directed them to do.

Commissioner Boylston stated it was not the only part of the development, but the Board did make the grocer a requirement, so if they did not have a grocery store, they could not move forward.

Chair Johnson asserted that the CRA could have made an exception if there had been any other movement in any other area.

Commissioner Boylston agreed that they could have voted on making an exception, but he would not have voted for it, because (correcting the food desert) was the most important aspect of the project and he would not have made that exception.

Commissioner Boylston stated Deputy Vice Chair Gray brought up a good point, that they were talking about an extension, but for what project. He asserted the Board had already voted that the most recent changes to the project were not accepted. He asked staff if the Board provided an extension at this meeting, whether they were providing an extension for what had been submitted to the City or the current iteration.

Ms. Jadusingh responded that the Board would be voting to provide an extension on what had been submitted to Development Services.

Commissioner Boylston asserted that he thought point was really important, because it was not the project that Deputy Vice Chair Gray referenced.

Ms. Jadusingh confirmed that was correct, it would be the project that was previously approved by the Board.

Commissioner Boylston stated he wanted to make sure that information was understood.

Chair Johnson agreed that the Board had not given BH3 an amendment, so it was the original project being discussed.

Commissioner Boylston stated Deputy Vice Chair Gray had mentioned the housing decreases, the parking decreases, and other changes, but that was not the project.

Mr. Doody asserted that at the February meeting the matter of a 10 percent variance was before the Board, and that motion failed, so the CRA was back to the original project approved by the Board and submitted by BH3.

Discussion ensued regarding which version of the BH3 project was before the Board.

Ms. Jadusingh displayed images of the Fabrik project. She noted there had been no variance requiring approval for the Fabrik design, as each area was within 10 percent of the original.

Commissioner Petrolia asked if Fabrik was the project that none of the Board really liked, and that was why it had gone to a third iteration.

Discussion continued regarding which project had been submitted.

Commission Boylston asked his fellow Commissioners to remember the project would still need to go through SPRAB and staff input. He noted that aside from the colors and design, Fabrik was in line with their original proposal.

Ms. Jadusingh confirmed the design could be altered through the Design Services process.

Chair Johnson asserted there was no further movement after March as far as contact with the City.

Ms. Jadusingh stated the CRA and City had a meeting with BH3 in May, and there was a meeting later in the year.

Chair Johnson stated she was referring to planning.

Ms. Jadusingh responded that they did have a planning group call around May that she was on to discuss the comments by the City, and there was another meeting closer to November before the CRA received the revised request, at which time a grocer was on the phone.

Chair Johnson stated that BH3 did not meet the requirements and the CRA had given them a 30-day extension. She asked when the 30 days to cure had ended.

Mr. Doody responded that the 30-day cure period had not yet expired.

Chair Johnson asked the expiration date, and Ms. Jadusingh asked for a moment to find the information.

Chair Johnson asserted that while discussion ensued regarding amendment four (4) to the contract, BH3 could have been using that time. She stated there had been extensions already and the CRA had not stopped talking, but there had been nothing positive from the developer.

Commissioner Boylston asked counsel to comment on how many extensions BH3 had been given.

Mr. Doody stated there had been one (1) extension, effectuated to the second amendment to the contract.

Commissioner Boylston clarified that it had been thrown out that the CRA had done all these extensions, but it was one (1).

Chair Johnson stated there had been three (3) amendments, but she understood that did not necessarily affect it.

Commissioner Boylston noted one (1) of the amendments was to keep EJS in the building.

Chair Johnson stated she was commenting for the record that there had been three (3) amendments.

Mr. Doody explained that staff believed the 30-day cure period expired February 27, which was a Saturday, so it would be Monday, March 1.

Chair Johnson stated that if March 1 was the end of the cure, BH3 had until that date to correct the situation.

Mr. Doody asserted that if BH3 had not corrected the default situation by March 1, the Board would have the opportunity to consider terminating the contract pursuant to its present terms.

Vice Chair Frankel asked staff what had happened in the four (4) weeks since the Board last addressed the issue.

Mr. Doody stated to the best of his knowledge, only that they had received correspondence from counsel for BH3 requesting the Force Majeure extension and an extension pursuant to the Executive Orders of the Governor.

Vice Chair Frankel asserted that basically it had been all a waste of time. He noted that was his big issue, and that he got what Commissioner Boylston was saying, but it was just more extension and more wasted time in his view.

Commissioner Boylston asked what the Board expected BH3 to do in those 30 days.

Vice Chair Frankel responded that they could have gotten with Ms. Jadusingh or with staff, come to some meeting of the minds, asked for a compromise, done something, not just sent a letter asking for 383 days.

Chair Johnson asserted that there were no promises as to what would happen with the Force Majeure.

Commissioner Brooks stated that it went back to what he had been saying that it was extension after extension, and they did not even know if it was going to be worth it. He asserted that at the end of the day it boiled down to whether it would be fair to the community. He stated BH3 was asking for another year and questioned whether that was fair to the community that had been granted the opportunity and BH3 was not delivering. He added that he had always asked if they could deliver.



Deputy Vice Chair Gray asked counsel to describe the options and the consequences to those options for moving forward. She asked what Mr. Doody recommended, noting that she would like to just wash their hands of it.

Mr. Doody stated the Board should entertain the Force Majeure, as it was required by the contract for the CRA to at least entertain the request in a reasonable fashion. He explained that if the Board were inclined to approve the request for Force Majeure and allow for an extension, the second component would be for how long, whether they agreed with the request for 383 days or something in between.

Continuing, Mr. Doody stated that he would request any entertainment of the granting of Force Majeure be processed through a fourth amendment to the contract. He explained the fourth amendment would have to be approved with the intent to grant the Force Majeure for a certain time frame, a number of days, weeks, or months the Board deemed reasonable. He stated that under the contract, that action would extend the approval date, permit date, closing date, and termination date.

Mr. Doody noted the terms would all be set forth in the fourth amendment, and the Board would be setting up a new timeframe for BH3 to comply with the original project. He stated an extension would extend the approval date for BH3 to get an approval from the City to build the project as originally submitted to the CRA. Mr. Doody stated he would also ask that the Board consider, should they be inclined to grant Force Majeure extension, that the motion doing so expressly include a time certain or deadline for BH3 to sign the fourth amendment. He explained the Board may grant them a certain number of days extension, and BH3 may deem that unacceptable. He stated that failing execution by the deadline would mean that there was not a fourth amendment, BH3 did not have Force Majeure, and the time to cure would have expired, leaving the CRA with the option of terminating the contract.

Mr. Doody reiterated that the Board did not have to grant the Force Majeure, that was one (1) option, but if they did want to consider the request and extend the Force Majeure provision, they should determine the time that they thought was reasonable based on the circumstances as they understood the case to be, and that would be set forth in a fourth amendment which he would prepare with CRA staff and submit to BH3.

Vice Chair Frankel submitted for consideration an extension to March 30 at 5 p.m., noting that was 30 days from the end of the cure period.

Chair Johnson stated she believed the first decision was whether to grant Force Majeure.

Commissioner Boylston stated that Vice Chair Frankel's suggestion was a discussion he wanted to have. He asserted that he would not vote for the 383 days, because he did not believe that was how they were affected. He noted that was over a year, and if it were because of COVID-19 they could not have been affected that many days.

Continuing, Commissioner Boylston asked if 30 days was arbitrary, and noted to him the pandemic started, then six (6) months later they started hearing that BH3 had gotten Publix. He noted that maybe they heard through whispers rather than it being brought

straight to the Board like Deputy Vice Chair Gray had said, but six (6) months later they heard about it, so maybe six (6) months sounded realistic. He questioned whether that would make a difference for BH3 and whether they would even sign, because they might not be able to deliver what they needed to deliver in six (6) months.

Vice Chair Frankel explained that under section 1.10 of the agreement, Force Majeure, acts of God were included. He stated that he considered the pandemic an act of God and considered that Delray Beach was totally shut down for a few weeks. He noted after that, construction was up and working, there was a lot of controversy about it. He stated as a result, he thought 30 days was a reasonable time. He added that he did not think the construction industry was as hurt as hospitality or other areas.

Commissioner Boylston responded that he felt that was a good explanation.

Chair Johnson stated that first she would like to ask whether the Board agreed that they were going to grant the Force Majeure. She asserted that was step one (1).

Commissioner Boylston argued that it was dependent on the time.

Chair Johnson argued they had to talk about whether or not they were going to give the extension first, and they might just say they were not going to grant it, and February 28 was the deadline. She asked for a vote on whether to grant Force Majeure.

Commissioner Petrolia stated she had a question before moving forward. She asserted that she needed to understand if there was anything in the plan review process that was held up. She noted that she believed staff had already explained that was not the case, there was nothing in the process of submittal that was held up. She asked for clarification that there were certain submissions that were held up, but this project was not.

Ms. Giannites responded that this submission received a full set of Technical Advisory Committee comments on March 31, 2020, and the ball was in BH3's court from that time. She asserted there was nothing more for Development Services staff, Engineering staff, or the others who comment to do until a resubmittal was made.

Commissioner Casale stated the Board was considering Force Majeure and potential future litigation, so there was a lot on the table. She noted there was no point considering a 30-day extension if it could not happen in 30 days. Commissioner Casale asked what it was that needed to happen with the project, stating she thought a lot of the Board was saying the requested time was excessive. She asked if a 30-day extension were granted, whether that would mean the Board was talking in 30 days about how it was not enough time to get it done. She asserted that concerned her because if all they were doing was pushing it out, that was 30 more days that the community did not have a grocery, potentially 60 more, and on and on.

Commissioner Casale told Ms. Giannites she did not know the intricacies of what happens in her Department, so she did not know what the next stage was and what needed to be done. She noted in addition to that, there was the concern that none of the Board

members liked the iteration of the Fabrik project being discussed. She asked what changing that would entail, because she could not sense how long the process would take.

Chair Johnson asked if Mr. Doody wanted to respond to the question, as it seemed to have to do with whether to grant the Force Majeure.

Commissioner Casale clarified her question to Ms. Giannites, explaining she was asking the next steps of the project and the real time involved. She stated if the Board was contemplating a 30-day extension and there was absolutely no probability that something could happen in 30 days, then they should not grant the extension.

Ms. Giannites explained it was a big project and there was a significant number of comments. She stated if BH3 were to resubmit, they have to submit revised drawings, with a written exchange specific to each comment. She read an example comment and stated BH3 had to provide a written response and a plan set that addressed each, with a statement explaining where responses to each comment could be found.

Continuing, Ms. Giannites asserted this was a three (3) block project, to be fair, and once they submitted comments it would go back through the Technical Advisory Committee. She stated with a project this large, it was at least three (3) weeks for City staff to review. She pointed out there were 103 planning comments alone.

Ms. Giannites stated if BH3 had addressed every comment and it was a flawless submittal, then staff would go to the Boards. She stated SPRAB was only meeting once a month, not twice, because it was in a virtual arena. She noted it was going to take at least 60 days to be approved by SPRAB, then it would go on the appealable report to be officially approved or pulled and reheard, depending on what happened with the City Commission. She asserted that to be fair, 30 days was not possible.

Chair Johnson asserted that in all the time that there had been discussion of amendments, BH3 could have been working on it. She stated that the comments were given in March, and there had not been one (1) meeting with them to try and talk about any of the questions. She stated that she was willing to vote to give them Force Majeure, and after that discuss the timeframe.

Commissioner Casale stated she would like to interject that they could give Force Majeure but had to determine the amount of time. She asserted that it should be considered in the conversation.

Commissioner Boylston agreed.

Commissioner Casale stated she was amenable to giving BH3 a small amount of time, but when she looked at staff's comments, it looked like at a minimum 90 days. She reiterated the time frames outlined by Ms. Giannites and asserted that if a Board member was not amenable to giving more than 30 days, then they should say no on the Force Majeure.

Chair Johnson asked if Mr. Doody would like to provide a legal reason as to whether the Board should grant Force Majeure.

Mr. Doody stated that under the contract, the Board was required not to act unreasonably. He asked that the Board act and consider the matter in a reasonable fashion.

Chair Johnson asked for clarification.

Vice Chair Frankel explained the contract had a reasonableness standard. He stated the Board could not unreasonably withhold consent.

Commissioner Casale stated she was not saying she was not amenable to it; she was just saying that she felt the conversation had to include the timeframe.

Chair Johnson responded that she wanted to first decide if they were going to grant Force Majeure, then discuss the time. She asked that the clerk call the roll.

Mr. Doody stated to that extent, he would respectfully request that she entertain a motion as to whether or not to grant Force Majeure.

Deputy Vice Chair Gray asserted that she believed they needed to put a time to it. She stated that whoever made the motion, the time should be added into it. She noted that she believed Commissioner Casale was correct.

Chair Johnson asked counsel whether he agreed the Board needed to add the time before deciding whether to give Force Majeure.

Mr. Doody responded that was at the discretion of the Board.

Chair Johnson asked if everyone agreed that they needed to discuss the time.

Commissioner Boylston stated that he was.

Vice Chair Frankel stated that based on what Ms. Giannites was telling them, he did not think that 30 days was reasonable. He noted that just looking at the legal aspects, he wondered if 90 days was possible.

Ms. Giannites responded this was a conversation she and Neil Schiller, counsel for BH3, had on many projects. She stated it depended on how complete the application was. And asserted if every comment was addressed without creating a new issue, it was possible.

Vice Chair Frankel stated the point from his perspective was that the Board and the City had done enough things for this applicant and it was enough already, however, he believed that based on the contract and the Force Majeure provision, they had to be reasonable. He asked Ms. Giannites in due respect to the applicant, from a City perspective, what would be a minimum reasonable timeframe that she could opine on that the Board should consider.

Ms. Giannites stated the aggressive schedule would be 90 days.

Vice Mayor Frankel made a motion that the Board grant the Force Majeure with a 90-day period and asked Mr. Doody if a date certain was needed to execute.

Mr. Doody stated the timeframe would be 90 days from March 1.

Chair Johnson asked if Commissioner Frankel wanted to add an execution date.

Vice Mayor Frankel stated he would go 90 days from March 1, which would be May 31.

Chair Johnson reiterated that 90 days would be the Force Majeure extension, which would be amendment number four (4), and the execution of the agreement would be within a week of this meeting.

Ms. Jadusingh asked to revisit the date, as it was Memorial Day. She offered that it be changed to June 1.

Mr. Doody requested that the applicant be given until Monday, March 1 at 5 p.m. to sign the fourth amendment to the contract.

Commission Boylston asked counsel for clarification regarding what the next step would be if BH3 did not sign the amendment.

Mr. Doody asserted they would be back to square one (1), with no Force Majeure.

Commissioner Boylston stated that at that point, at least the Board had accepted a Force Majeure, set a reasonable time, and abided by the contract.

Mr. Doody confirmed that was correct. He noted at that point BH3 would have rejected the CRA's position of an extension of 90 days.

**Motion** by Vice Chair Frankel, seconded by Commissioner Petrolia, to grant the Force Majeure with a 90-day period expiring on Tuesday, June 1, 2021 at 5 p.m., giving the applicant until Monday, March 1, 2021 at 5 p.m. to sign the fourth amendment to the contract. In a roll call vote, the **motion** passed unanimously (7-0).

## **7. Consent Agenda**

- a. CRA Monthly Progress Report – February 2021**
- b. First Amendment to Rent Subsidy Funding Agreement – APEX Insurance & Investment Group, LLC**
- c. Project Consultancy & Design Services Funding Application – Barry Silverman, LLC (Also Known as Bear's Food Shack), 540 West Atlantic Avenue**

- d. **Site Development Assistance Program Funding Application – Glavidia Hair Studios, LLC, 119 NE 2<sup>nd</sup> Avenue**
- e. **Authorization for CRA Executive Director to Administratively Approve and Execute All Documents for the Closings and Second Mortgage Program for the Corey Jones Isle Workforce Housing Development** *(item added with approval of agenda)*

**Motion** by Vice Chair Frankel, seconded by Commissioner Boylston, to approve the Consent Agenda as printed. In a roll call vote, the **motion** passed unanimously (7-0).

## 8. Old Business

- a. **Authorization for CRA Executive Director to Administratively Approve and Execute All Documents for the Closings and Second Mortgage Program for the Corey Jones Isle Workforce Housing Development**

Item moved to Consent Agenda.

- b. **Letters of Intent to Purchase CRA-Owned Properties – 362 NE 3<sup>rd</sup> Avenue and 313 NE 3<sup>rd</sup> Street**

Christine Tibbs, Assistant CRA Director, explained the CRA had received two (2) unsolicited letters of intent regarding purchase of the CRA-owned properties at 362 NE 3<sup>rd</sup> Avenue and 313 NE 3<sup>rd</sup> Street.

Ms. Tibbs stated at the November 12, 2020 Board meeting, staff had presented a discussion item related to the first unsolicited letter of intent to purchase the CRA-owned parking lot located at 362 NE 3<sup>rd</sup> Avenue. She showed an overhead map and explained the property was the parking lot adjacent to the Bedner's Grocery Store Farmers Market. She stated at the November meeting, the Board requested staff obtain an appraisal for the parking lot and review any cultural document files or plans which pertained to the area. She stated the Board had also requested the option to hold a Workshop about the entire area sometime in early 2021.

Continuing, Ms. Tibbs stated that subsequent to that meeting, staff received a second letter of intent on January 4, 2021 to purchase the parking lot at 362 NE 3<sup>rd</sup> Avenue and also the Arts Warehouse at 313 NE 3<sup>rd</sup> Street. Ms. Tibbs stated staff obtained an appraisal of the parking lot in early December 2020, which set the as-is market value at \$1,810,000. She noted the full appraisal was attached to the backup for the meeting.

Ms. Tibbs explained staff had also reviewed the relevant cultural documents and plans. She stated the CRA's Redevelopment Plan mentioned both properties as part of the Pineapple Grove Neighborhood Plan. She noted the CRA's role was described as supporting arts-related uses and features that help establish and maintain the area's identity as an arts district. She outlined the main goals for the neighborhood in the plan.

Ms. Tibbs stated staff had located the relevant vision plan, which was titled "Cultural Delray Beach: Creative, Authentic, Intimate," and was also attached to the backup. She noted the vision plan did not specifically outline a vision for the properties but did discuss development keeping the arts in mind. She noted that staff also wanted to discuss the other developments happening near the properties. She stated an Infrastructure Improvement Grant had been awarded for 324 and 325 NE 3<sup>rd</sup> Avenue in December 2019 for upgrades and improvements to a water main and explained those would be an office building and a garage and were currently being constructed.

Continuing, Ms. Tibbs stated that at 214 NE 4<sup>th</sup> Street was a proposed private development project consisting of townhomes and mixed use, and an application was pending with the City. She explained the ongoing infrastructure and streets project on those streets was managed by the City that the CRA was financing would entail streetscape improvements and beautification to the area. She added that in 2020 the City and CRA had also improved Artists' Alley, which was located next to the Arts Warehouse.

Ms. Tibbs stated at this time, staff was requesting the Board discuss the item and provide any direction on whether there was any current desire to dispose of the properties and put them up for the necessary public notice.

Ms. Jadusingh asserted that the real question was timing, and whether it was time to move forward with these properties. She noted she had spoken with City staff right before the meeting regarding the infrastructure project, and it looked like that project was going forward and would probably include improvements to Artists' Alley. She asked that the Board consider whether it was the right time to dispose of these properties considering there was still other development pending in the area and they did not know what that would be, and that they did not know the impact of the streetscape. She added that the improvements would make the area look more like the Central Business District.

Chair Johnson clarified that staff was asking for discussion on one (1) property at a time.

Commissioner Boylston asked if there was a Workshop coming up to discuss the vision for the area.

Ms. Jadusingh stated she would like to hold a Workshop, and now that there is information about the infrastructure project moving forward, there should be updates to share in the next few months.

Commissioner Boylston asserted that he had no interest in selling the parking lot, noting there was plenty of development happening and development did not need to be spurred by making the lot available. He stated with the growth, it might become even more important that the property remain a parking lot.

Commissioner Boylston added that he wanted to have a conversation in regard to the Arts Warehouse. He stated he did not want it to turn into another large A-GUIDE grant like some of the other cultural and art entities, so he would like to know what the vision for it was moving forward, but at this point he was not interested in selling either parcel.

Commissioner Petrolia agreed that she had no interest in selling the parking lot. She asserted it was serving a purpose, that you could go there any time of the day and see that it was parked out. She noted there was no on street parking along 3<sup>rd</sup> and it was going to become very difficult to park in the area, which would exacerbate the problem of trying to bring people in. She reiterated that she had zero interest in that.

Continuing, Commissioner Petrolia stated something unfortunate happened a few years ago when the warehouses were sold, as they were the stimulator to keeping the area around the Arts Warehouse an artists' district. She asserted it should not be called an artists' district right now, however, that did not necessarily mean that it could not be re-visioned and the community the community could see something different happen. She stated it was too early for the CRA to be considering doing something with the Arts Warehouse property, and it was something they should put off. Commissioner Petrolia stated that as far as she was aware, the Arts Warehouse was not a huge financial drag on the A-GUIDE.

Ms. Jadusingh stated she did not have the numbers in front of her, but the Arts Warehouse was a CRA-funded program outside of the A-GUIDE and was staffed by the CRA. She noted that before COVID-19 it was pretty much breaking even with rentals and studio space. She stated the Arts Warehouse had taken a hit during COVID-19, but Arts Warehouse staff had been able to assist CRA staff more because work there had skyrocketed, so staff time was used.

Commissioner Petrolia confirmed that the Arts Warehouse had not been some sort of large burden for the CRA to carry.

Ms. Jadusingh agreed, noting the goal was to make it self-sustainable.

Commissioner Petrolia asserted that answered the question as far as both properties. She stated the Board should have the conversation eventually about the arts' district and said maybe that was where they would make those decisions.

Deputy Vice Chair Gray stated she agreed and noted she had wanted to revisit the Arts Warehouse when the CRA was spending a lot of money to keep it going. She thanked staff for trying to bring it up to pay for itself and added that at some time in the future if they saw that it was not, the CRA did not have to sell the property, but maybe have someone else manage it. She stated she did not want to take that off the table.

Chair Johnson stated she liked what her fellow Commissioners had said, and agreed it was a little too soon for the CRA to rid itself of valuable parking. She noted parking was a concern for any area. She asserted there was a lot of potential for the area, and with all of the construction, hopefully it would have a new direction, and the Board would know more about that after a Workshop. She stated the Arts Warehouse was probably the anchor in progress for the future.

**Motion** by Commissioner Boylston, seconded by Commissioner Petrolia, to reject letters of intent to purchase the CRA-owned properties at 362 NE 3<sup>rd</sup> Avenue and 313 NE 3<sup>rd</sup> Street. In a roll call vote, the **motion** passed unanimously (7-0).



**c. Extension Request Based on Force Majeure – BH3 Management, LLC – SW 600-800 Blocks of West Atlantic Avenue**

Item addressed earlier in the meeting.

**9. New Business**

None.

**10. Other Business**

**a. Comments by Executive Director**

Ms. Jadusingh shared images from the event on Saturday featuring Stamped author Jason Reynolds. She stated there were very insightful comments from the kids of Delray Beach and she thought they made a good showing. She noted this was the first installment of the Authors Talk series, and shared details of the events scheduled for March and April.

Continuing, Ms. Jadusingh shared the details of the current exhibits at the Arts Warehouse, including Citizens on Watch by Joan Litfin and Reflections by Samuel Spear, Jr. She stated both would be on display through March 5. She noted a video featuring Mr. Spear could also be found on the CRA website.

Ms. Jadusingh stated the ribbon cutting ceremony for Corey Jones Isle was scheduled for March 5 at 10 a.m. and would be broadcast live via Facebook. She noted the groundbreaking had taken place a year ago, and now they were ready to cut the ribbon on the first three (3) homes. She added that she had heard there were buyers ready.

Deputy Vice Chair Gray asked if the family had been notified.

Ms. Jadusingh responded that notifications had been sent to the Jones and Banks family and noted that the Community Land Trust (CLT) was helping with marketing of the event.

Ms. Jadusingh shared images from the Senior Resource Center at the 700 building and noted it was going well. She shared images from the Southwest Neighborhood improvement project and the Osceola Park Neighborhood project. She noted there was a monthly public outreach meeting on the Osceola Park project on February 24 at 6 p.m.

**b. Comments by Board Attorney**

Mr. Doody stated he would provide the Board with a copy of the proposed fourth amendment and advise on March 1 as to whether it was executed.

Chair Johnson asked the next steps if the amendment was not executed on March 1, and whether a Special Meeting to terminate would be required.

Mr. Doody responded that would be up the Board. He asserted that if BH3 failed to comply with the 30-day cure period, they would remain in default status. He stated that under the terms of the contract, the CRA then had the opportunity to consider terminating the agreement.

Commissioner Petrolia stated the issue now would be that the CRA was moving forward with a project that was not necessarily acceptable to the Board, which was the second iteration of the project. She noted that was one of the reasons BH3 did not move forward to begin with. She asked if that project had now been deemed acceptable, and asserted it seemed unfair to move forward with something that the Board did not want.

Mr. Doody asked for clarification of the question.

Commissioner Petrolia stated there was a reason BH3 did not move forward with the responses to the comments on the Fabrik plan. She noted they had said the reason was because the Board was not accepting of the project. She stated now the CRA Board was asking them to move forward with that same project that they had not been comfortable with in the past.

Mr. Doody responded that he was not sure he could agree with that. He stated all he could suggest was that BH3 was required to move forward under the project they submitted in response to the RFP which was approved by the CRA Board and gave rise to the Purchase and Sale agreement. He stated the terms of that project were outlined in the agreement, notwithstanding numerous conversations, and discussions; the terms were not modified. He asserted the project would revert to the original description.

Mr. Doody stated that BH3 had submitted a plan, the City had acted on that submission and BH3 was in receipt of those comments, and it was incumbent upon them to act on those comments.

Commissioner Petrolia stated to be very clear, this was the project that had the grocery store on the second floor.

Mr. Doody responded that he would have to review the notes to respond to that question.

Commissioner Petrolia stated that she believed it was and wanted to let everyone know this was probably not going to be a good thing.

Commissioner Casale asserted that she agreed, and that she had tried to say so during the discussion of the agenda item. She added that with respect to the grocery store, the conversations were that Publix was not amenable to being on the second floor, so it might not matter.

Commissioner Petrolia stated that counsel need to be cognizant of the fact that the Board might have given BH3 something to do that was not possible.

Commissioner Casale asked if they should revisit the vote.

Chair Johnson asserted that the Board had told BH3 the second-floor grocer was not acceptable, and Publix had told them it was not acceptable. She stated she believed that BH3 had hitched their wagon to Publix and not listened to the Board. She added this plan was what was approved, and they should have come to the CRA to work out disagreements but did not. She stated it was her opinion that BH3 let Publix take over and drive the project into the ground.

Ms. Jadusingh asked for a moment to verify the location of the grocer in the plan. She stated from the images, it looked as though it was on the first floor.

Mr. Doody stated the contract was silent as to the location of the grocery store. He noted it did not identify first or second floor, only square footage.

Commissioner Petrolia stated that would answer the question.

### **c. Comments by Commissioners**

Commissioner Boylston thanked staff for putting the meeting together and properly preparing for the important decision.

Chair Johnson stated it had been a very delicate process, and as much as they would like to do the best for the City, they must give consideration and she thought they had done a good job of that. She thanked Vice Chair Frankel for his input.

Deputy Vice Chair Gray thanked staff for the covering around the old gas station on 8<sup>th</sup>, which really told the world what the CRA had been doing. She stated it was a huge statement, and she had gotten many phone calls about. She added that it looked great and was wonderful for the space. She asked for an update on what the medical center on Atlantic Avenue was doing.

Ms. Jadusingh stated that a few months ago, the Board had allowed the CRA to enter into a revokable license agreement for the temporary use by ChenMed General Medical Center of the CRA-owned building. She noted they were using the space a few days a week for a few hours to primarily cater to seniors. She stated there had been technology classes, diabetes classes, and recently a sickle cell training. She explained it was to provide walkable, supportive services for seniors in the space while it was empty.

Deputy Vice Chair Gray asked if staff could help with the signage, noting it was a little hard to see. She stated it was a wonderful program, but it was the best kept secret, so they needed to do something about that.


Continuing, Deputy Vice Chair Gray stated that on Sunday she had the opportunity to visit Pompei Park, and the resurfacing of the tennis courts and basketball courts was amazing. She noted there were more kids there than she had seen in a long time, and they loved

the courts. She stated the Police Department had been challenged to a basketball game with the children of the community on 3 p.m. on Sunday. She encouraged everyone to visit and said it reinforced the community policing being done.

Chair Johnson thanked Ms. Jadusingh, the Spady Museum, and the Arts Garage for a fantastic job on the Authors Series. She stated the youth in the room were fascinated and she thought they read the book or would be. She asserted those were the sorts of things the CRA was doing, it was not always about the bricks and mortar.

## 11. Adjournment

There being no further discussion, the meeting was adjourned at 5:36 p.m.



Renee Jadusingh, Executive Director



Shirley Ervin Johnson, Board Chair