



MEMORANDUM

TO: City Commissioners, CRA Board Members and Members of the Board of Adjustment and Appeals

FROM: Vivian L. Brooks, CRA Executive Director

DATE: February 6, 2012

RE: January 19, 2012, Building Board of Adjustment & Appeals Meeting Refuting Certain Statements made by Harvey E. Oyer, III

There were many erroneous statements made about myself by Harvey Oyer, III at the January 19, 2012 Building Board of Adjustment and Appeals meeting regarding his building at 417 E. Ocean Avenue. Therefore, I am sending this memorandum to correct those misstatements.

On page 16, lines 4 through 6 of the attached transcript Mr. Oyer states that I spoke to his father about selling the property to the CRA. This is incorrect. I spoke to his father on two occasions, once in person with his architect Steve Myott present and once on the phone, about applying for CRA grants to complete the building.

On page 16, lines 14 through 25 Mr. Oyer again misstates the situation. Mr. Oyer called me shortly after his father's death with the idea that the CRA give him three of the CRA's lots along N. Seacrest Blvd. so that he could create a compound on his father's property for his personal home. He needed the property so he could move his father's house east.

We met on the issue again at the old CRA office at 915 S. Federal Highway. Mr. Oyer had a rough site plan for the reuse of his father's home on N. Seacrest Blvd. He was adamant about the CRA giving him the three lots and now a portion of a fourth. I told him that the CRA typically gives land only for affordable housing or commercial redevelopment not personal projects. He stated he needed to land to create a garage and swimming pool. I told him I would speak to the CRA attorney about the legality of such a transaction under FSS 163.3.

At that same meeting I asked Mr. Oyer about the status of his property located at 417 E. Ocean Avenue. I asked when or if the project was going to be finished. Mr. Oyer said he was waiting for a tenant and the City to complete its historic ordinance process. I stated that we were in the process of renovating a historic property in the vicinity (the Ruth Jones Cottage) which would be converted to a restaurant and would like to have the surrounding area be inviting to visitors.

Mr. Oyer stated he would be willing to tear it down but not to spend his own money. I said I would find out how much it would cost to tear down the building. I received the estimate which was for \$2,400 and forward it to Mr. Oyer. I never offered to spend the funds to tear down the building. I only stated that the CRA had a contractor that had good pricing for demolition.

I offered that perhaps the CRA would be willing to trade the four lots on N. Seacrest for the one lot on Ocean Avenue. He declined the offer.

Mr. Oyer left the meeting visibly angry that I was not immediately amenable to giving him, free of charge four publicly owned lots so that he could create a compound for his personal home.

In speaking to the CRA attorney, Mr. Oyer's desired use of CRA property would not have been an allowable use.

Mr. Oyer's statement on page 17, lines 9 through 17 of the transcripts is a falsehood. Mr. Oyer's statement on page 18, lines 2 through 4 is also a falsehood. As the CRA Director, I have no authority to direct City staff. I never threatened Mr. Oyer that I would tear down the building.

In The Matter Of:
City of Boynton Beach
Code Meeting

January 19, 2012

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City of Boynton Beach
Code Board Meeting
January 19, 2012

PROCEEDINGS

THE CHAIRMAN: I want to call the meeting to order. Katherine, can you take the roll of the board members, please?

KATHERINE: (Indiscernible; 0:01:53).

FEMALE SPEAKER: Here.

KATHERINE: (Indiscernible).

MALE SPEAKER: Here.

KATHERINE: (Indiscernible).

MALE SPEAKER: Here.

KATHERINE: (Indiscernible).

MALE SPEAKER: Here.

KATHERINE: (Indiscernible).

MALE SPEAKER: Here.

KATHERINE: (Indiscernible).

MALE SPEAKER: Here.

THE CHAIRMAN: The order is here, so moved. (Indiscernible; 0:02:20) a few copies.

MR. SANFORD: I make a motion that we

1 approve the minutes as received or written.

2 MR. SHORES: I second that.

3 THE CHAIRMAN: We have a motion and second.

4 Can I -- can you call the roll for approval of the
5 minutes, please?

6 KATHERINE: (Indiscernible: 0:02:34).

7 FEMALE SPEAKER: Here.

8 KATHERINE: (Indiscernible).

9 MALE SPEAKER: Yes.

10 KATHERINE: (Indiscernible).

11 MALE SPEAKER: Here.

12 KATHERINE: (Indiscernible).

13 MALE SPEAKER: Yes.

14 KATHERINE: (Indiscernible).

15 MALE SPEAKER: Yes.

16 KATHERINE: (Indiscernible).

17 MALE SPEAKER: Here.

18 THE CHAIRMAN: Thank you. At this time we
19 have (indiscernible; 0:02:50) to the --

20 MR. SANFORD: Yes. Yes. I deal with
21 Cobiatt and Oyer Insurance, and when I started reading
22 this over and I saw that Oyer was involved in this, I
23 didn't know if I had a conflict or not.

24 MR. CHEROF: Let me ask you a couple
25 questions. Are you a business associate of that

1 company?

2 MR. SANFORD: No.

3 MR. CHEROF: Is any member of your family a
4 business associate or do they work for that company?

5 MR. SANFORD: No.

6 MR. CHEROF: Do you derive any portion of
7 your income or any monetary benefit from that company?

8 MR. SANFORD: No.

9 MR. CHEROF: Okay. Under the City's voting
10 conflict regulations, which are set forth in 2-211 of
11 the City Code and subsequent sections, you do not have
12 a voting conflict nor do you, as stated, have a voting
13 conflict under any other regulations. You are
14 required to participate and vote in this proceeding.

15 MR. SANFORD: Thank you.

16 THE CHAIRMAN: Thank you. As far as I
17 know, there is no old business. What we need to do
18 now is anybody who's going to testify needs to be
19 sworn in. Is that correct?

20 MR. CHEROF: That's correct.

21 THE CHAIRMAN: So that's what we need to
22 do.

23 MR. CHEROF: Okay. Any other witnesses in
24 the back that might testify, take -- even if you're
25 not uncertain, why don't you just go ahead, just in

1 case you do, so we only have to do this once.

2 Does everyone who intends to testify swear
3 or affirm that everything they say will be the truth
4 and all the truth.

5 THE CHAIRMAN: Next order of business would
6 be (indiscernible; 0:04:43).

7 MR. MACK: Thank you. I'm just going to
8 give you a brief history of what's transpired here.
9 The -- I think everyone received a packet and was able
10 to see the photos and the memo I wrote to Mr. -- to
11 the Chair. I just want to go through the time line.

12 This project started in November 2009. The
13 applicant submitted for building permits. The
14 building permit was issued in February of 2010. Then
15 there was some time when the project commenced and
16 there was inspections going on and ongoing work. Then
17 around November 2010, the project came -- pretty much
18 came to a stop. And then they almost, at that point,
19 had the building permits let expire again, but they
20 called in an interior inspection, framing, or for
21 bracing. And they passed that, approved with
22 exception, which then gained them another six months
23 to extend their permit. Then after, since that last
24 inspection, which happened April 26, 2011, there's
25 been no activity on the site.

1 My involvement with the project started
2 when the City Manager asked me the status of the
3 project and to report to her the status of the permits
4 and the condition of the building. And so I did. At
5 that time, because there was an active permit, I
6 couldn't really declare it unsafe, because they were
7 actually during construction. So I informed the City
8 Manager that they had an active permit and let her
9 know that it would expire on October 24th, 2011. I
10 informed her at that time that we would continue to
11 monitor it, and upon expiration of the permit, that I
12 would go out and review the condition of the site, and
13 accordingly take proper action.

14 So as of that date, upon expiration, I
15 proceeded to examine the site. In your packet, you'll
16 see I've got some photos which show some of the
17 existing conditions and some of my concerns. Upon
18 completing that inspection, my major concern is with
19 windborne debris from the existing stucco that's on
20 the outside of the building that's being salvaged by
21 the applicant. With it being exposed to the elements,
22 there's just -- there's a lot of potential for the --
23 for a hurricane to tear off this stucco siding and
24 becoming a projectile.

25 We've met with Mr. Oyer last Thursday. I

1 went over my concerns at that point. We basically
2 went over the options that he had, which was either --
3 which was -- my original letter was to demolish the
4 building or reinstate the permits by applying for a
5 new permit; paying the fees; and establishing a new
6 permit and completing the project. And that's pretty
7 much where we left off at this point.

8 And then prior to that, he had -- already
9 had submitted an appeal upon -- when I gave him my
10 original letter on November 15th, I gave him
11 twenty-one days to either comply with the order or
12 appeal my decision to this board, which is his due
13 process. And he chose to do that, to appeal to the
14 board, and he submitted, in writing, on December 2nd,
15 at which time I informed him he needed to submit an
16 application, which was submitted on December 7th.

17 MR. CHEROF: Mr. Oyer, are you familiar
18 with, and do you have a copy of the photographs that
19 were referred to by Mr. Mack?

20 MR. OYER: Assuming that they're the
21 photographs that Mr. Mack gave to me last Thursday,
22 yes.

23 MR. CHEROF: Correct.

24 MR. OYER: Have those changed?

25 MR. CHEROF: No.

1 MR. OYER: Then yes, sir, I do.

2 MR. CHEROF: All right. In addition to
3 your right to present your case and to have
4 individuals testify on your behalf, you also have the
5 right to question Mr. Mack regarding anything he said
6 or any of the documents that he has submitted to the
7 board.

8 MR. OYER: Understood.

9 MALE SPEAKER: Who (indiscernible; 0:09:04)
10 and why are we keeping (indiscernible)?

11 MR. MACK: The original permit was done
12 to -- to salvage a building that was deteriorating.
13 There has been some previous contact with the owner
14 prior to this application being approved by the City.
15 And they chose to go forward with the restoration of
16 the building.

17 I think the intent of the applicant was to
18 save the facade, to have the building designated at
19 some prior -- at some future time, as a historic
20 structure. And so they proceeded in renovating and
21 tearing down, basically, the majority of the building,
22 just leaving three sides of stucco and rebuilding it
23 from the ground up. So when the project's done,
24 you'll have a stucco facade with a brand new building
25 on the inside. It's just a -- basically a shell

1 building.

2 MALE SPEAKER: (Indiscernible;0:10:02)?

3 MR. MACK: Correct. That's my
4 understanding.

5 THE CHAIRMAN: The packet that you passed
6 out, provided by Mr. Oyer, there's this -- the last
7 page has something different in it than your packet.

8 MR. MACK: I haven't had a chance to look
9 through Mr. Oyer's presentation.

10 THE CHAIRMAN: The last page in this packet
11 that Mr. Oyer handed us requesting action. The third
12 line is something different. We haven't seen that
13 before.

14 MR. MACK: Correct.

15 MALE SPEAKER: (Indiscernible;0:10:42).

16 MR. MACK: Correct.

17 MALE SPEAKER: Okay.

18 MALE SPEAKER: A question for Mr. Mack.

19 MR. OYER: Good evening, members of the
20 board. And I apologize. I had brought an overhead,
21 but apparently there's no AV set up for that, so,
22 we're going to go through in your paper version. I
23 want to give you a little background on the site,
24 which I think would be instructive in how we consider
25 this building.

1 For the record, my name is Harvey Oyer,
2 III. I'm the managing member of 417 East Ocean Ave.,
3 LLC, which is an entity owned by myself and my two
4 sisters, one of which is here this evening, Christian
5 Macoviak. The other sister is teaching school
6 tonight.

7 This building was built in 1925 by our
8 grandfather. It's been in our family for eighty-seven
9 years. It's never been owned by anyone other than us.
10 In 1996, the City paid for a historic survey. This
11 was one of several buildings in town designated to "be
12 considered historic in the future" if you had a
13 historic ordinance, which it was not until the last
14 six months or eight months, that you've created that.

15 The building was occupied all of my
16 lifetime up until the hurricanes in 2004 and 2005.
17 Francis, Jean, and Wilma caused damage to it, the
18 extent of which I'm not sure. But it affected the
19 roofing system, the floors. It was largely a
20 destroyed building.

21 I've had very little knowledge of it. This
22 was a project of my father's not of mine. But he
23 began the selective demolition and restoration of the
24 building, as Mr. Mack suggested, by taking everything
25 out except the two side walls and the front elevation:

1 Flooring system, roofing system, everything removed,
2 and began a restoration.

3 December of last year our father died. In
4 January, I began meeting with your city staff. I'm
5 not sure if Mr. Mack was here at the time.

6 MR. MACK: I was.

7 MR. OYER: But I met in a series of at
8 least three meetings with, it seemed like your entire
9 planning and building department, Fire Marshal,
10 janitor, cook, everyone. And what we were doing was
11 trying to figure out what to do with a number of
12 different buildings that were now under -- or going to
13 be under the ownership of my sisters and I, trying to
14 figure out what is the best use of these.

15 And all of which, but for this one -- so
16 you know for the record -- we've restored and fixed
17 up. We have tenants in every building that we have in
18 the city, including the properties across the railroad
19 tracks, which I would venture to say are maybe the
20 only fully-occupied, successful buildings on Ocean
21 Avenue.

22 This one, though, is trouble, because we
23 didn't know what to do with it. We had a construction
24 loan from a local bank that my father had taken out to
25 -- that had taken draws. So money was owed. We had a

1 series of contractors with construction liens. We had
2 no tenant in sight and no use in sight. So it was a
3 giant red herring. And what we were trying to do is
4 figure out what can we do with this. And that was the
5 subject matter of these various meetings.

6 And the initial conversations really surrounded,
7 were there any incentive programs that the CRA could
8 provide to assist us, and when this historic
9 preservation ordinance that's been bandied about for
10 years be put in place. Because, you see, under a
11 historic ordinance -- and one was in planning at the
12 time -- this structure, if designated, and it would
13 qualify for designation, would then be eligible for
14 what's called an ad valorem tax exemption for ten
15 years, which means the value of all the improvements
16 that you put into the building are exempt from city
17 and county tax for a decade.

18 That's part of our county's incentive
19 program to restore historic buildings. The City of
20 Boynton Beach is one of the last municipalities to the
21 show. And they finally did it this year. And that
22 made a big difference financially. If we could take a
23 building that was nearly valueless in its present
24 condition, put several hundred thousand dollars in it,
25 and exempt that several hundred thousand dollars of

1 improvement value from ad valorem taxes for ten years,
2 it made a material difference.

3 And that, coupled with the existing CRA
4 facade grant, sign grant, tenant improvement
5 allowance, et cetera, would almost make this project
6 viable. So we were trying to make lemonade out of
7 lemons here.

8 So what I was told in those meetings was we
9 have a historic ordinance that is about to be passed.
10 We're going to create a historic preservation board.
11 We are going to hire a historic preservation planner.
12 We are going to apply for and obtain certified local
13 government status. And we are going to enter into an
14 inter-local agreement with Palm Beach County to do
15 what all the other large municipalities have done for
16 years, which is this historic tax abatement program.

17 And so I waited, and we waited, and we
18 waited. And in the process, you did enact an
19 ordinance. You did hire a preservation director. In
20 fact, I was on the screening committee. I think I was
21 the only non-city employee on the screening committee.
22 I have a background in historic preservation. I've
23 restored a number of buildings. And we're presently
24 waiting, I'm told by Warren, as of today, for the
25 certified local government status and an inter-local

1 agreement. So we're still not there.

2 So part of this is due to the City asking
3 us to wait. Part of it was simply getting it under
4 control. In our father's will, I was designated as
5 personal representative, but any of you that have gone
6 through this, know that it takes the court a while to
7 appoint you as a PR and let the creditors' claim
8 period lapse. So it was not until April of last year,
9 four months lapsed, before I was even in a position
10 where I could do anything.

11 And the first thing I did was pay the bank
12 off and pay off all of the contractor liens and clear
13 title to the property. I'm trying to give you a
14 background of where we've been. I think it will be
15 helpful for you to understand how we got stuck in the
16 position that we're in.

17 We -- I then engaged a very prominent
18 architectural firm called Glidden Spina & Partners --
19 you're probably familiar with them, Keith Spina. And
20 I think I even have an architectural rendering in your
21 packet of what they rendered for us, in an effort to
22 begin to advertise it to attract tenants.

23 We also engaged WG Compass, one of the top commercial
24 brokerage firms in the county, to list it for lease
25 and for sale, so that we could either find a tenant or

1 find a buyer. And all this is an effort to do
2 something with the property. I don't want any of you
3 to think that our family was sitting on our hands
4 watching this thing fall apart. We absolutely were
5 not.

6 And as you'll discover from the building
7 permit history, the inspection history and the CO
8 history, there has been an ongoing construction
9 project here. And it was interrupted only by our
10 father's death and my waiting for the City to get
11 their historic ordinance and infrastructure in place.

12 We had a series -- and Andrew can correct
13 me if I'm wrong -- from the time the original permit
14 was pulled, three different inspections. All three
15 passed, as part of an overall plan of restoring the
16 building. And as you can see in the photographs that
17 I've provided to you of each of the four elevations,
18 and more importantly, the images titled "new concrete
19 footer with hurricane strapping", the following image
20 entitled "new studs", the following image entitled
21 "interior bracing", the next one entitled "exterior
22 bracing", you can see that some expense and effort
23 went into this. And this is what culminated in those
24 three prior inspections and passes.

25 We actually did perform additional work

1 during August of last year that we didn't call for an
2 inspection. And I take responsibility for that. Our
3 contractor, who's here tonight, Gregory Bowser, who's
4 done all the work on this project, completed the work,
5 told me we should call for an inspection, keep the
6 building permit alive. For whatever reason, I don't
7 know what it was, busy at work or busy trying to
8 manage half a dozen other historic properties that
9 were dumped in my lap, it didn't get done.

10 As a result, the six-month period came and
11 went. And we realized it the day after it expired.
12 Mr. Bowser called and asked for the inspection. He
13 was told that he could not have it. The permit had
14 closed. When questioned why, because customarily a
15 little grace period is given, in fact customarily I'm
16 told, and we get Mr. Bowser's testimony, that as a
17 professional courtesy, oftentimes, when your permit
18 expires, someone from the building department calls
19 and notifies and says, Greg, did you realize your
20 building permit expired. We were off by a day, and we
21 were told that we could not have it inspected, despite
22 the fact that the work had been completed.

23 Which leads me to the most troubling part of this.
24 And that is, a series of conversations that have
25 occurred over many years wherein the CRA has wanted to

1 buy this property. My father was never willing to
2 sell it. And I only know this because -- not just
3 from my father telling me this, but because I had the
4 previous CRA director and your now current CRA
5 director call me on multiple occasions, asking me to
6 attempt to talk my father into selling this property
7 as well as another property that our family owns at
8 512 and 516 North Seacrest. And my answer was always
9 the same. I don't think my father will have any
10 interest in this. They were all built by his father.
11 And if any of you knew my father, he was not
12 interested in parting with buildings, he was
13 interested in restoring buildings.

14 After his death, these conversations
15 resumed with the CRA director and eventually
16 culminated, not coincidentally, at the same time
17 period that this demolition order was given. And it
18 went something like this. I had a telephone
19 conference with CRA director Vivian Brooks, one
20 evening about 5 o'clock. It was in October. I can
21 look at my phone records and find the exact date,
22 wherein she wanted to trade property on Seacrest
23 adjacent to our family home on Seacrest, in return for
24 this property; meaning the CRA would take title to
25 this property.

1 This came on the heels of earlier calls
2 from her and a city commissioner, asking us to tear it
3 down. We told her we were certainly open to the idea
4 of tearing it down. We didn't have any prospects for
5 what we were going to do with it. And they requested
6 that we tear it down, sod it, irrigate it, and allow
7 Art in Public Places to place sculpture or something
8 in the spot.

9 My response, without consulting with my
10 sisters was, we would be open to that idea, but, you
11 know, please don't ask us to bear the expense of that.
12 That sounds like a public purpose. Share in the cost
13 with us. And we were told no, they wouldn't share in
14 the cost. This was her demand. And that if we didn't
15 do it -- and I'm paraphrasing -- we're going to
16 require you to tear it down anyway, so you can do it
17 our way now or you can do it our way later.

18 And fast forward to the telephone
19 conversation at approximately 5 p.m. in October. She
20 again reiterated, trade us the property on Seacrest
21 for this location. I told her we did not have an
22 interest in that; that there was a big valuation
23 difference in the two properties. If the CRA was
24 interested in purchasing this property, we were open
25 to the idea, but there was not an equivalent value in

1 the two properties.

2 In a somewhat angry tone, she told me that
3 I will have it torn down. That was 5 or 6 p.m. on one
4 day in October. 9 a.m. the next morning, Tim Large,
5 from your building department called me and said you
6 need to demo the building. And I've worked with Tim
7 long enough to know that he's an honest man. I said
8 Tim, did you just wake up this morning and decide that
9 our building needed to be demo'ed? And he said no, I
10 have instructions to call you and tell you that it
11 needs to be demo'ed. And I said, Tim, let me tell you
12 about a conversation I had last night. And I shared
13 with him the conversation with Vivian Brooks. And his
14 response -- and again, I'm paraphrasing -- is, I'm
15 sorry. I didn't know all this was going on. You
16 know, I'll get back to you. And he let it go.

17 And about three weeks later, Mr. Mack
18 attempted to call me. I think I was out of town. We
19 traded calls a few times over a course of three, five
20 days, maybe a week. And then I received the letter in
21 the staff's packet dated November 15th, 2011, alleging
22 a violation of several provisions of your building
23 code that effectively states that he, as the building
24 official, deemed the building "unsafe, constitutes a
25 fire hazard, dangerous to human life, and in relation

1 to existing use, constitutes a hazard to safety or
2 health, giving me twenty-one days to appeal or have it
3 torn down.

4 That is what instituted this appeal. I
5 sent -- because I am not a building expert at all,
6 hired actually three structural engineers: The one
7 who had worked on the project, from whom you have a
8 letter in your packet dated November 30th, 2011,
9 Florida licensed structural engineer, signed, sealed.

10 I then hired two other firms, one is Slider
11 Engineering; the other is Kimley-Horn, maybe the
12 largest, most recognized engineering firm in th
13 estate. And they came and looked at it.

14 I also hired two fire inspectors, one of which I
15 consulted without a fee, and that's Herman Bryce, our
16 former county fire chief; and a man named Larry
17 Weintraub, who is a career firefighter and fire
18 inspector. And they -- Mr. Weintraub inspected the
19 property, and chuckling, said there's no way that
20 anyone could deem this to be a fire hazard. If I held
21 a lighter to it for an hour, it couldn't catch on
22 fire, and if it did, it doesn't pose any hazard.
23 There's not another building within a hundred feet of
24 it.

25 When I brought that to Mr. Mack's attention

1 last week, he did concede that it did not constitute a
2 fire hazard, that that was language that was in the
3 code provision that got regurgitated in his letter,
4 and therefore, that issue would not be on the table
5 this evening. So I assume that issue is not on the
6 table, because I did not bring those experts.
7 Which I think boils this down to just the issues of is
8 this structurally unsound; does it pose a safety
9 hazard to our community. And I heard Mr. Mack's
10 issues when we met last week. I'm in no position, as
11 a layperson, to refute them. The structural engineers
12 that I hired acknowledged that those could be
13 problems. And the problem would be that the stucco on
14 the exterior wall is attached to a wire mesh, almost
15 like a hog wire, on the inside. And on the inside of
16 that are some diagonal boards. And the original
17 studding, which as you can see from the images, have
18 been replaced by brand new studding, hurricane
19 strapped into a new footer, et cetera, all of which
20 was part of the approved building permit, hopefully on
21 its way to completion.

22 Father died in the midst of it. It didn't
23 get completed. And that if there were to be a
24 windstorm and the wind could get on the interior side
25 of that wall, because there's nothing holding the

1 stucco to the wall other than the wire, and the wire's
2 attachment to that studding is apparently not
3 sufficient, that it could sail away in the wind.

4 He told me there is not the same problem if
5 the wind comes from the other side, because it pushes
6 it in. That's not the problem. Solution is to finish
7 the building, put a roof on it, put a back wall on it,
8 problem goes away. And I said terrific, that's what
9 we've been trying to do. But, you know, we've been
10 frustrated by a series of issues: Waiting for the
11 City; waiting for me to be appointed PR; not
12 recognizing the custom of calling my contractor and
13 giving the professional courtesy to let him know it
14 expired; not allowing our work to be inspected even
15 though it was a day afterwards.

16 So here we are, folks. And for the record,
17 I want to say my family has worked with this community
18 for -- since the community's existence, as you know.
19 And I think I've worked very well with everyone in
20 this city on a number of projects, including this
21 morning. Our family donated trees to be planted in a
22 park this morning. We went to the tree planting.
23 I've worked very well with your building staff, your
24 planning staff. They're exceptional people. But I'm
25 very frustrated by the way this has played out. I've

1 been open and honest and had repeated meetings with
2 them from the beginning, asking what I can do to
3 fulfill their vision for downtown, how can I work with
4 you, how can you work with us. And for them to pull
5 this out -- and I'm not sure if the city commissioner
6 is behind it, if it's the CRA director behind it; I
7 asked for all of them to be witnesses here tonight. I
8 was told after I arrived that Mr. Mack could not
9 compel them to be a witness so that I could
10 cross-examine them for the record. But I think that's
11 an abuse of public office, to have told me that they
12 will force me to demo a building if I don't enter into
13 some sort of agreement with the City or the CRA.

14 I'd love to be able to put it on record
15 tonight, which is why I have a court reporter.
16 Tonight's transcript will be sent to the State
17 Attorney's Office. I have to say, I'm incredibly
18 disappointment with the way the City has handled this
19 and not willing to send the City Administrator, Vivian
20 Brooks, or any of the other witnesses that I requested
21 to be here.

22 So putting that aside for a moment, my
23 incredible disappointment with the way this has been
24 handled by the City, which I think is for sure,
25 unethical, and most likely illegal, let's deal with

1 the problem that you all are authorized to deal with.
2 I am here to try to fix the problem. We were wide
3 open to the idea of demo'ing this building, but we
4 were not wide open to putting sod and irrigation and
5 public artwork there, because that was the whim of
6 your CRA director. And we're certainly not open to
7 trading this land for land worth a third of its value
8 because that was the whim of your CRA director.

9 So what I am requesting at the end of this,
10 which is what the Chairman asked, is I would like to
11 reopen the permit that we've already paid for, that
12 we've had three inspections and three passes on those
13 inspections. We had work completed that would have
14 constituted another inspection, and -- but not for me,
15 my fault, not calling for the inspection when our
16 contractor asked us to, we would still have an open,
17 live, active permit now and we would be continuing our
18 construction.

19 That last bullet point that you're
20 questioning is I'm still in a holding pattern even as
21 of today. I had a telephone conversation with Warren
22 Adams, your preservation planner, and he filled me in
23 as to where you are. He said that he would make a --
24 I don't want to put words in his mouth; you can bring
25 him up -- that he would make a recommendation that

1 this would be historically designated, because in the
2 world if designation, you don't designate anything on
3 the interior anyway under these local designation
4 programs. It's only exterior facades, and it doesn't
5 include the rear facade, which is the only one of the
6 four missing.

7 So this would qualify. He would recommend
8 it. And we would qualify for the program that would
9 allow us enough cost savings to continue with the
10 restoration. So we continue to wait on the City to
11 catch up to us with the program we'd like to utilize.

12 So, folks, this is where are, stuck,
13 looking for your guidance and assistance, and
14 hopefully understanding the situation we're in. We're
15 not bad citizens. We don't purposefully leave
16 abandoned buildings that are attractive nuisances or
17 hazards. We are trying to do the right thing and be
18 good stewards of the community. We're stuck in a
19 rotten position and I think some awfully rotten
20 behavior by some of your city officials. Thank you.

21 THE CHAIRMAN: (Indiscernible: 0:30:29)--

22 MR. CHEROF: Turn it right towards you.

23 THE CHAIRMAN: Here?

24 MR. CHEROF: There you go. See the light
25 just came on as you get closer.

1 THE CHAIRMAN: Oh, I can see the light.
2 Thank you. You mentioned twice that you're willing to
3 tear the building down?

4 MR. OYER: We were willing to entertain the
5 idea. But I hadn't consulted with my sisters.

6 THE CHAIRMAN: Okay. I don't understand
7 why you don't want to tear the building down. I'm not
8 saying give it to anybody, trade it to anybody. If
9 you tear it down, sod it and maintain the property,
10 that's all. It's your property to do with as you
11 please. What's the purpose of trying to save the
12 exterior stucco other than the historic designation?

13 MR. OYER: I guess it's --

14 THE CHAIRMAN: Which is not part of what
15 we're here for.

16 MR. OYER: I think it's an intangible that
17 maybe is beyond the scope of what you all do. It's
18 important to our family. My grandfather built it with
19 his own two hands. It's where my father's first
20 office was. It's where I, you know -- I must have
21 painted that thing a dozen times in childhood to earn
22 my allowance. And to knock down one more historic
23 building, I'm not sure it's healthy for the community.

24 If you look on the opposite of the 500
25 block where there's a giant hole in the ground with a

1 fence around it, that was another one of the ingenious
2 ideas of the CRA a decade ago, is let's continue to
3 bulldoze and acquire land for which they have no
4 strategic knowledge or ability to turn that into
5 something. And to do that one more time because the
6 CRA director thinks it would look neat to have sod and
7 a statue, that doesn't make it the right thing to do.

8 So we would entertain it. But it was not
9 our desire.

10 THE CHAIRMAN: You don't have to sell the
11 building or trade the building or do anything with the
12 property. You mentioned several times that you would
13 entertain the idea of knocking it down. They wanted
14 you to sod it and do whatever. But you don't have to
15 do that. You could knock it down, because you said
16 you're willing to do that, twice.

17 MR. OYER: I said I was willing to
18 entertain it and take it back to my sisters. I even
19 went so far as Vivian Brooks offered to send to me a
20 quote from a demo company that apparently was going to
21 demo the building next door. She sent the quote. I
22 even called her back and said looks like a reasonable
23 price, can we talk about it further. And I never
24 heard back from her. The next time I heard back from
25 her it was give us the land in return for the other

1 land. So that conversation never concluded and it was
2 thrown off course.

3 And this may be a bit of ego or pride here,
4 but I'm not about to deal with someone who threatens
5 me. So if they want to come back to the table and
6 deal honestly and in good faith, we would be delighted
7 to consider it. But until then, we will not.

8 THE CHAIRMAN: But that individual's not
9 here, so.

10 MR. OYER: I requested that individual to
11 be here in writing over a week ago. Apparently your
12 City Attorney advised that that was not required. So
13 I'm in no position to prove that to you. Perhaps the
14 authorities will.

15 THE CHAIRMAN: Mr. Mack?

16 MR. MACK: Just a couple of things I wanted
17 to kind of clarify. The -- back in September, I had
18 received an e-mail, like I said, from the City
19 Manager, to give an update of the status of the
20 permits. Then that's when I instructed Mr. Large to
21 call and ask Mr. Oyer what his intentions were with
22 the property, because I wasn't going to go through
23 this whole scenario of ordering it to be deemed unsafe
24 and torn down if his intention was to have it
25 demolished.

1 Previous conversations, back when we did
2 meet with him and we met with him in January 11, 2011,
3 and July 28, 2011, he did come in and we met with him.
4 And at that time, he expressed to us that his desire
5 was to complete the project or demolish it. They were
6 doing feasibility studies on whether or not that was a
7 feasible option to complete it or it was just better
8 to bulldoze it and start over again.

9 So back in September is when I asked Mr.
10 Large to contact Mr. Oyer. And he did. And Mr. Large
11 reported back to me. And he told me that -- in an
12 e-mail that he is currently marketing the property for
13 sale and will continue to look for a buyer. He is
14 currently marketing the property for a tenant, and
15 will recommence with the renovations upon signing of a
16 lease with a tenant. He would consider demolition of
17 the remaining structure if the City was willing to pay
18 for the cost. Those were his exact words in an e-mail
19 to me.

20 I then forwarded those to the City Manager,
21 to give them an update and told them that I would
22 monitor it, and when the permits expire, I would take
23 the necessary steps to commence with the evaluation.
24 And if it was deemed unsafe, that we would order it to
25 be demolished.

1 Just a couple of other observations. I
2 mean, you don't have to have an approved inspection to
3 get an extension. We can -- you can request an
4 extension prior to the expiration at any time prior to
5 the 26th of April 2011.

6 THE CHAIRMAN: If you request the extension
7 in writing prior to the expiration, the building
8 official will probably grant it. That was one of my
9 next questions, why didn't you or your contractor do
10 that?

11 MR. OYER: And --

12 THE CHAIRMAN: Because you've restored
13 buildings before. Your contractor's got a lot of
14 experience.

15 MR. MACK: So that was one option and one
16 observations that, I mean, we do that all the time.
17 And we can extend it up to ninety days. And we can
18 give as many as we need. Obviously we don't like to
19 keep extending permits for just things to be standing
20 up and being half under construction.
21 The other option was, I mean, obviously, if this was a
22 critical state that we know that this building is
23 being considered, that it's -- it needs to be maybe,
24 possibly demolished, then, you know, as an owner, I
25 would be looking to make sure that, you know, I keep

1 my permits active.

2 A courtesy, Mr. Bowser's in our office
3 weekly. I mean, he does a lot of work down at the
4 other Oyer buildings. He's doing some restoration of
5 Hurricane Alley. I've seen him in and out of our
6 office several times. And I don't know the exact date
7 that Mr. Bowser came in. He did come in and request
8 an extension after the permit had expired.

9 My recollection is that it was after I sent
10 my letter on November 15th that he came in and asked
11 for an extension, and I told him at that point, no, we
12 wouldn't be extending the permit, and that basically
13 he has his option to go to the board. So that's
14 pretty much where I stand.

15 THE CHAIRMAN: Does the board have
16 anything?

17 MR. RURERY: Yes. Is there a -- do you
18 have some sort of time line, if the permit was
19 extended, where work would be done out there or the
20 building would be made safe? Because as I look at it
21 right now, as a contractor, if a storm comes through,
22 in my opinion, the thing has got more of a chance than
23 not of coming down in the wind. And so I recognize
24 that problem. And if something isn't done to that
25 building, either to stabilize the existing walls more

1 than what they are, and your engineer kind of states
2 that it's not currently a problem and that it's safe
3 for construction to move forward. But I don't think
4 any engineer would look at it and say that it's safe
5 to withstand a storm season.

6 So you know, I think something would have
7 to be done to the facil -- to the building, you know,
8 either taking that down or commencing construction to
9 stabilize what's there.

10 MR. OYER: I think your question was do we
11 have a timeline? And that timeline, in part,
12 unfortunately, has been dictated by the City's
13 program. So we've been waiting for that, because it
14 is such a material financial difference.

15 And we were ready to do. I was ready to
16 apply for it in January. If -- Mr. Mack was in the
17 meeting -- he will recall. So effectively, we've been
18 waiting on that while simultaneously trying to find a
19 tenant or a buyer.

20 I will say that we've been lucky. This has
21 been in this state for a couple of hurricane seasons.
22 I had our contractor shore it up again. I think it's
23 about as stable as you can make it. But if we were
24 hit by a big one, you know, it would come down.

25 We would love to be in a financial

1 position, if the City could provide us the tax
2 abatement, to complete the project. And we don't even
3 have to complete the project. I think we put a back
4 wall on it and a roof, and this problem goes away.
5 And the interior build-out can wait until we have a
6 tenant at a later date. So I don't think we're that
7 many months away from solving it.

8 MR. RURERY: Okay. But is this project
9 contingent, or is a make or break, depending on you
10 getting the historical status and the financial
11 supports, tax abatement? Is that make or break?
12 Would the project move forward even if you didn't have
13 a buyer, even if you didn't have the historical
14 abatement -- tax abatement in your hand?

15 MR. OYER: We need at least one of those to
16 happen, a tenant or the tax abatement, one of the CRA
17 grants, because on its own -- and I can run through
18 the math with you, but finishing this building, the
19 cost of it, you could never gain that back in the rent
20 without the tax abatement or a CRA grant; which is one
21 of the frustrating parts about this, is you hate to
22 tear down a good looking building. You saw the
23 rendering of what the elevation could look like
24 restored. It would be a very attractive building.
25 And it would really further the CRA's goals.

1 What they want to do is put people
2 downtown. And there's no one better on Ocean Avenue
3 of doing it than our family. Go to Hurricane Alley,
4 and it's filled with people at every lunch and dinner.
5 And we have all of our space occupied, and all of the
6 apartments upstairs occupied.

7 We are eager to activate this as well. We
8 just haven't had the lucky break. And we need one of
9 them to occur for it to make sense financially.

10 MR. RURERY: But you can understand where
11 that puts us because --

12 MR. OYER: I do.

13 MR. RURERY: -- our decision will be based
14 on whether or not to extend the permit, but we cannot
15 designate the building as historical. So we then have
16 no guarantees that we won't be in the same boat, six
17 months, a year from now.

18 MR. OYER: Other than if we re-evaluate it
19 six months from now and see what kind of progress
20 we've made. And fortunately we have six months
21 between now and hurricane season. So that's not a
22 threat -- an imminent threat now. And what I would
23 ask this board, which is in the requested action, is
24 allow us to reopen the building permit; call for the
25 extension, and continue work. And if we can close the

1 shell of that building up, which may, in fact, be
2 affordable on its own, because we don't have to build
3 the parking lot and the landscaping and everything
4 else, give us that opportunity to close it up.
5 Because once we tear it down, she's gone forever. And
6 then we'll look back at it like we did the other side
7 of the 500 block of Ocean Avenue. And I miss those
8 buildings. They were beautiful historic buildings.
9 They would all be fully occupied if they were still
10 here today. But some knee-jerk reaction a decade ago,
11 took them all down. And as a result, we have half of
12 Ocean Avenue, the heart of our downtown, blighted and
13 empty. And that's not a plan.

14 MR. GURITZY: Who's saying that you could
15 close that structure in, put a roof on it without any
16 of these credits?

17 MR. OYER: No, sir, we can't. The way the
18 program works is, if you do not have your
19 architectural plans approved before you commence the
20 work, and those plans then have to go to the city
21 commission and be approved, and then they have to go
22 to the county commission and be approved, you're not
23 eligible for the money. So you cannot begin work and
24 retroactively go back and get the exemption. You have
25 to do all of the paperwork on the front end, before

1 you begin any of the work. Otherwise, I would have,
2 you know, started, if I knew I was going to have the
3 exemption. I did this on my house in West Palm Beach.
4 It's a terrific program. I'm not sure why it took
5 Boynton twenty years to adopt it.

6 MR. GURITZY: But this rendering doesn't
7 tell me that the existing walls are still there. That
8 building can be duplicated even it's knocked down to a
9 hole in the ground, just like you put here in the
10 artist's rendering.

11 MR. OYER: Yeah, but then it won't --

12 MR. GURITZY: Without keeping what's there.

13 MR. OYER: That is correct. You could
14 replicate anything. But then it does not qualify for
15 the grant and it's not the original walls of the
16 building, which obviously means something to our
17 family.

18 MR. GURITZY: But as Mr. Shore stated, our
19 decision is not based on your historic designation.

20 MR. OYER: I understand.

21 MR. GURITZY: We don't sit on that board.
22 That's not what we're here for.

23 MR. OYER: I understand. But I think it
24 certainly colors the story, and is something you
25 should be aware of in making your decision. And

1 you're asking how we got to this point. I'm
2 explaining to you how we got to this point. And these
3 are all bona fide, honest reasons.

4 MALE SPEAKER: Mr. Mack?

5 MR. MACK: I just wanted to point out, I
6 mean, one of the reasons why I moved on this in
7 November was because it's not a quick process for me
8 to just deem a building unsafe and have it torn down
9 in thirty days. You know, there's a lot of due
10 process involved. There's court -- you know, this --
11 obviously, this -- your decision here could go to the
12 courts. And I could be -- this could be tied up until
13 past hurricane season.

14 So my objective -- and again, when I plan
15 this -- when I'm looking back and made a timeline
16 here, I wanted to make sure that before June 1st, that
17 either this building was completed or safened up so
18 that the community wasn't at risk. So that's my
19 primary objective here, is to make sure that we
20 protect our citizens.

21 MALE SPEAKER: More questions for Mr. Oyer?

22 MALE SPEAKER: What would it take to make
23 what's existing completely safe?

24 MR. MACK: We'd either have to demolish the
25 building or finish out the drawings and close up the

1 openings. So you'd need a roof, the remaining wall in
2 the back. Basically, all the drawings that were in
3 your package to complete, they would need to complete
4 that construction. And then there's some openings
5 that don't show being completed in there. They would
6 also have to safen those openings.

7 FEMALE SPEAKER: Could you do that by June
8 2011 (sic), prior to the hurricane season?

9 MR. OYER: I'm sorry, could we complete
10 that?

11 FEMALE SPEAKER: Yes.

12 MR. OYER: Ma'am, I don't know. I'm not --
13 I'd have to ask our contractor if that's possible.
14 I'm assuming it is. And you know, quite frankly, I
15 looked this up before we came. We haven't had a
16 hurricane hit Florida in June in the last century. So
17 I don't want to test our luck. We might be. But I
18 think we might even have a little more leeway than
19 that.

20 FEMALE SPEAKER: Yes, I know. But I don't
21 like to go -- we always -- hurricane season is June to
22 November. And I've lived in Florida a long time. I
23 don't want to use anything other than what we know to
24 be hurricane season.

25 MR. OYER: I agree.

1 FEMALE SPEAKER: And so -- and Mr. Mack,
2 you are concerned that this would not withstand
3 hurricane if it came, if they didn't complete it by
4 June 1st?

5 MR. MACK: Correct. With the structure
6 open to the elements, and the forces of the wind, my
7 concern is that it wouldn't make it through a storm
8 event, and it would cause windborne debris.

9 MALE SPEAKER: Clarification. In order for
10 him to construct the building, he would have to
11 finance it himself. He would have to turn in drawings
12 that were approve. And he'd have to get the
13 construction underway and renew the permit?

14 MR. MACK: Correct. There's certain --

15 MALE SPEAKER: And he's waiting for other
16 monies, which --

17 FEMALE SPEAKER: That's true.

18 MALE SPEAKER: -- will prevent him from
19 having it done by June the 1st?

20 MR. MACK: Correct. He would need --

21 MALE SPEAKER: That's what I heard.

22 MALE SPEAKER: I have one question --

23 MR. OYER: Let me clarify that, if I could.

24 We do have approved drawings that are still there, so
25 that part is done. What I said we didn't have the

1 money to do was complete the entire build-out without
2 the -- some sort of incentive package. But we
3 probably do have the money to complete the enclosure
4 of the building, which is the part that's relevant to
5 your board. So I want that clarified in the record.

6 MALE SPEAKER: The shell of the building
7 envelope?

8 MR. OYER: Yes.

9 MALE SPEAKER: Is that correct?

10 MR. OYER: Yes.

11 MALE SPEAKER: I had one other que -- I got
12 a bit confused. Correct me if I'm wrong. We were, at
13 one point, just moments ago, talking about making safe
14 the existing three walls there by lateral bracing and
15 perhaps securing the -- I would be concerned about the
16 stucco, the wire lathe detaching, if it's not already
17 in certain places. But certainly -- I'm not an
18 engineer, I'm just a contractor as well. But
19 certainly, some lateral bracing could stiffen that.

20 The last thing, I would think, would want
21 to be done, would be close those holes so that wind
22 could go through. But once again, I'm not an
23 engineer. But if it's perhaps an option to complete a
24 building envelope, you know, and make that secure,
25 saving the facade, is that what we're talking about

1 now, in a fairly timely fashion? Is that--

2 MALE SPEAKER: If we were to renew the
3 permit and get the construction underway, he could
4 have it closed in, in a matter -- it's just a matter
5 of time, if he has the people to do the work and he
6 has the materials. But we're not doing anything.

7 MALE SPEAKER: There's something that's
8 conflicting with me. Because I believe I asked the
9 question that if you put the shell up, that you would
10 still need some of those funds. But then I'm hearing
11 now you don't need those funds. So --

12 MR. OYER: No. Let me try to clarify. We
13 would need the funds or the incentive program or a
14 lease that we could borrow against to complete the
15 entire build-out. That means with HVAC and plumbing
16 and light fixtures and so forth. That's not what I
17 heard Mr. Mack say we needed to do to make this safe.
18 What I heard him say is you need to close the building
19 envelope. You don't need an HVAC system; you don't
20 need plumbing fixtures; you don't floor coverings and
21 wall coverings. You need it airtight.

22 That we do have the budget for. And that
23 is what your concern is. And maybe we sit on that
24 until we get a tenant or get a tax abatement. But
25 we've lost the abatement, at least on that portion of

1 it. All we could get the abatement on is whatever we
2 do on the interior after that. So that too would not
3 allow us to take full advantage of the program.

4 MR. MACK: One of the things that Mr. --
5 and maybe you can clarify. You said that you couldn't
6 continue with the envelope because you would lose --
7 you couldn't qualify for historic credits with the
8 county. Is that --

9 MR. OYER: For the work we've already done.
10 So we couldn't close that up now and then comeback to
11 Warren later, apply for the program, because we've
12 already completed that work. So we would only qualify
13 for the abatement, at that point, for the interior
14 work.

15 And Warren, correct me if I go astray here,
16 but I'm pretty familiar with these programs.

17 THE CHAIRMAN: The plans as submitted are
18 for a shell structure?

19 MR. MACK: Correct.

20 THE CHAIRMAN: So what's the problem with
21 getting it finished?

22 MR. MACK: At this point, we've been -- you
23 know --

24 THE CHAIRMAN: The permit's expired, there
25 have been no approved inspections, and nothing's

1 happened?

2 MR. MACK: Correct.

3 THE CHAIRMAN: That's what's happened?

4 MR. MACK: For six months.

5 MALE SPEAKER: That's the problem.

6 FEMALE SPEAKER: And the permit --

7 MR. MACK: For over six months now.

8 FEMALE SPEAKER: -- expired by one day?

9 MR. OYER: Well, we had done work -- I had
10 the contractor do some additional work in August. And
11 correct me if I'm wrong, Greg, but it was August. And
12 he wanted to call for an inspection, and we had half a
13 dozen projects going on at the time, and it just fell
14 to the back burner, because the others actually
15 involved tenants that needed to move in, and I take
16 full responsibility for that.

17 FEMALE SPEAKER: I have a question.

18 MR. OYER: But there's something we could
19 call for today. If this was an open permit, we could
20 call for it; it would pass; we would have another six
21 months, and we wouldn't be having this discussion.

22 FEMALE SPEAKER: And I have a question
23 maybe for the City Attorney. Since you did some
24 constru -- some work after the permit had expired --

25 MR. OYER: Prior to the permit expiring.

1 FEMALE SPEAKER: -- prior to it expiring.

2 MR. OYER: Two months prior.

3 FEMALE SPEAKER: But no inspection?

4 MR. OYER: But no inspection.

5 FEMALE SPEAKER: Would there be some fees
6 or some liability -- responsibility to -- because they
7 didn't pay -- they didn't properly have that
8 inspected?

9 MR. CHEROF: I can't speak to the issue of
10 liability on that, and I'm not sure that the question
11 actually is relevant to the determination of --

12 MS. AGEE: If I'm --

13 THE CHAIRMAN: There would be
14 administrative fees for him to either reactivate this
15 permit or renew it.

16 MR. CHEROF: Yes.

17 MS. AGEE: That's what I'm concerned about.

18 THE CHAIRMAN: That would be -- that would
19 be done by the building department. They would tell
20 him what he has to pay.

21 MS. AGEE: Yes. That's what I was
22 concerned about. In other words, you did some work
23 and you didn't have it inspected, and that was within
24 the permit period.

25 MR. OYER: Yes, ma'am.

1 MS. AGEE: But there would be some
2 administrative fees.

3 THE CHAIRMAN: Well, the permit expired
4 because he didn't have an approved inspection --

5 MS. AGEE: Right.

6 THE CHAIRMAN: -- over the period of
7 180days.

8 MS. AGEE: Yes.

9 THE CHAIRMAN: All he needs is an approved
10 inspection for another 180 days.

11 MR. OYER: Or --

12 THE CHAIRMAN: If he can get one.

13 MR. OYER: Or at that time could have paid
14 for an extension.

15 THE CHAIRMAN: Or he could have requested
16 an extension, which he didn't do. The administrative
17 fees are determined by the building department --

18 MR. OYER: Right.

19 THE CHAIRMAN: -- if he wants to renew this
20 permit, if it's possible.

21 MS. AGEE: But my concern is that he didn't
22 have it inspected after the -- within the time period
23 -- within the permit period.

24 THE CHAIRMAN: He can continue to work as
25 long as his permit is active. His permit's active

1 until the building official said it's expired; it's
2 unsafe. He doesn't have to have an inspection every
3 time he does work.

4 MR. MACK: The first extension fee request
5 is fifty dollars.

6 THE CHAIRMAN: Does anyone else on the
7 board have any questions? Mr. Oyer, does anybody else
8 want to say anything?

9 MR. SHORES: I just want to be clear, okay?
10 The permit is for the shell only, again. That is what
11 I heard.

12 MR. OYER: Correct.

13 MALE SPEAKER: Is that --

14 MALE SPEAKER: Okay.

15 MR. SHORE: Okay. And, so, the completion
16 of the enclosed envelope, the shell itself, can be
17 done without -- whether or not it's approved as a
18 historical building that can be completed. We can
19 count on that, because it would be impossible for us
20 to vote, at least for me, to vote otherwise if we're
21 not going to have a guarantee that the building is
22 going to be enclosed, that you're not going to have
23 the funds.

24 THE CHAIRMAN: Is your contractor here?

25 MR. OYER: Yes, sir.

1 THE CHAIRMAN: Could you give me a timeline
2 on how long it would take to make that building an
3 envelope complete, walls, roof, et cetera?

4 MALE SPEAKER: Sir, you're going to need to
5 come to the microphone. Any response you make needs
6 to be on the record, and as you come up please
7 identify yourself.

8 MR. BOWSER: Hello, everybody. I'm Gregory
9 Bowser, Gregory Bowser Construction Services, living
10 right here in Boynton Beach.

11 THE CHAIRMAN: How long will it take you to
12 close that building up and make it safe, with a roof,
13 walls, et cetera? Give me a drop dead date. Give me
14 a "estimate".

15 MR. BOWSER: I'd take the whole six months.
16 Or --

17 THE CHAIRMAN: Okay.

18 MR. BOWSER: -- now --

19 THE CHAIRMAN: That's not --

20 MR. BOWSER: Now --

21 THE CHAIRMAN: That's not going to --

22 MR. BOWSER: We're --

23 MS. AGEE: That's -- that's --

24 MR. BOWSER: By --

25 THE CHAIRMAN: That's not going to happen.

1 MS. AGEE: And then six months won't be
2 within the June 1st deadline.

3 THE CHAIRMAN: That's not going to happen.

4 MR. BOWSER: Well, okay, so let me back it
5 off to five. I have one other suggestion, though.
6 Why would we have to go ahead and complete the shell
7 if we can get an engineer to come in and look for
8 additional shoring on what exists and then do --

9 THE CHAIRMAN: I can answer that, because
10 I'm also a contractor. I'm also building inspector,
11 and I can give you the answer off the record. Not on
12 the record.

13 MS. AGEE: Now, I'm concerned, because the
14 whole thing that we've been talking about and trying
15 to help is to have it -- the shell, the envelope --
16 completed by June 1st --

17 THE CHAIRMAN: Before.

18 MS. AGEE: Or before June 1st, because that
19 is the time period that you're concerned about,
20 hurricane season. And, again, having been a Florida
21 resident, I don't care what you talk about as to what
22 date the hurricanes mostly come in September or
23 October, hurricane season is June 1st.

24 THE CHAIRMAN: The reason we're going
25 through this motion is before I ask for a vote on this

1 appeal, you haven't convinced me, and I don't think
2 you've convinced enough people on this board, to
3 overturn the building official's ruling. Do you have
4 anything else? Can you give me a drop-dead date of
5 sixty days?

6 MR. BOWSER: I could give you 120.

7 MS. AGEE: That'd be before -- that --

8 MALE SPEAKER: No. No.

9 MR. BOWSER: That's four months.

10 THE CHAIRMAN: Okay. I want to ask for a
11 motion.

12 MS. AGEE: Wait a minute. Wait a minute.

13 THE CHAIRMAN: I want to ask for a motion
14 on the appeals. Anybody want to make a motion?

15 MR. CHEROF: Chair, let me just confirm on
16 the record. Mr. Oyer, is there any other testimony
17 you want to provide or is there any additional
18 questions you have for Mr. Mack?

19 MR. OYER: Well, I'm not sure I understand
20 the chairman. If we were to complete this before the
21 1st of June how does that not accomplish your
22 objective?

23 THE CHAIRMAN: If we overturn the ruling of
24 the building official I want a guarantee, and I'm sure
25 the rest of the board members do also, want a

1 guarantee that it's going to be done. Otherwise --

2 MR. OYER: I think that's why --

3 THE CHAIRMAN: -- otherwise -- otherwise the
4 motion will include demolition. If it's not done by
5 this date we're going to tear it down. If that's the
6 motion. If someone makes that motion.

7 MR. OYER: Well, I'm sorry. I thought your
8 colleague did suggest that date and you said no, that
9 would not work. Mr. Bowser said he could have it done
10 by the 1st of June and you said that wouldn't work.
11 I'm missing something.

12 THE CHAIRMAN: I'm not going to take it to
13 the very last day. No. I --

14 MS. AGEE: What would 120 days -- looking
15 at the math, what would 120 days, which Mr. Bowser
16 said you could have it done in 120 days, okay, where
17 would that put us?

18 MALE SPEAKER: May.

19 MALE SPEAKER: May.

20 MS. AGEE: May.

21 MALE SPEAKER: May 19th.

22 MS. AGEE: May 1st.

23 MALE SPEAKER: May 19th.

24 THE CHAIRMAN: Okay. Once again I'm going
25 to call for anything else, Mr. Oyer?

1 MR. OYER: No, but I'd like to reiterate
2 for the record that I did not have an opportunity to
3 examine the witnesses that I think had relevant
4 information related to this proceeding, so I reserve
5 the right to appeal that.

6 THE CHAIRMAN: I'd like to call on the
7 board if someone wants to make a motion. Don't be
8 shy.

9 MR. CHEROF: Chair, let me remind you there
10 are two matters before you. One is the issue
11 regarding the extension of the permit and the other is
12 the building official's determination that it was an
13 unsafe structure and suitable for demolition --

14 THE CHAIRMAN: If we --

15 MR. CHEROF: -- if you can get a motion.

16 THE CHAIRMAN: If we determine it's unsafe
17 the second portion is moot, is it not?

18 MR. OYER: Depending on how you structure
19 your motion I'll see how that comes out.

20 THE CHAIRMAN: Okay. Mr. Mack, are you in
21 agreement that they can finish this structure within a
22 reasonable amount of time and make it safe? Yes or
23 no? Be prior to hurricane season.

24 MR. MACK: Up to the --

25 THE CHAIRMAN: Have the trusses been

1 ordered? Are they, you know --

2 MR. MACK: I mean, up to this --

3 THE CHAIRMAN: Do you have any --

4 MR. MACK: Up to this point we've seen no
5 progress.

6 THE CHAIRMAN: Thank you.

7 MR. MACK: And at this point --

8 THE CHAIRMAN: Thank you.

9 MR. MACK: -- I mean there's no guarantee
10 that financing or any --

11 THE CHAIRMAN: Right.

12 MR. MACK: We just -- I don't know.
13 There's too many variables --

14 THE CHAIRMAN: Right.

15 MR. MACK: -- for me to trans.

16 THE CHAIRMAN: Once, again, somebody want
17 to make a motion?

18 MR. BOWSER: I'm sorry, sir. You asked if
19 something had been ordered?

20 THE CHAIRMAN: Yes. Have the trusses been
21 ordered?

22 MR. BOWSER: They're sitting on the site,
23 aren't they?

24 THE CHAIRMAN: No. No, they're not. I was
25 there.

1 MALE SPEAKER: I believe --

2 MR. BOWSER: They're sitting on the site.

3 THE CHAIRMAN: Okay.

4 MR. BOWSER: Well, hold on. There's a
5 dispute --

6 MALE SPEAKER: Mr. Chairman?

7 MR. BOWSER: -- on a material fact here.

8 MALE SPEAKER: Mr. Chairman, in all
9 fairness, the --

10 THE CHAIRMAN: Yes.

11 MALE SPEAKER: -- contractor --

12 THE CHAIRMAN: Yes.

13 MALE SPEAKER: -- responded to your question
14 but did not --

15 THE CHAIRMAN: Yes.

16 MALE SPEAKER: -- come to the microphone.

17 Sir, come up and respond to the question regarding the
18 trusses.

19 MR. BOWSER: The trusses are not on site.
20 The beams that support the trusses are on site.

21 THE CHAIRMAN: Okay. Where are the
22 trusses?

23 MR. BOWSER: The next stage was to order
24 the steel post that holds up the beams, and the
25 trusses were just getting ready to be ordered when we

1 had to stop.

2 THE CHAIRMAN: Okay.

3 MALE SPEAKER: So if the permit was --

4 MALE SPEAKER: What is the time -- what is
5 the timeline to getting the trusses?

6 MR. BOWSER: My last set of trusses, it
7 took them one week. Now, this is a little bit larger
8 project, but it's probably we're talking two weeks
9 right now to get trusses in.

10 MR. RURERY: I might not be clear, but is
11 your intent if your -- if the permit was active would
12 your intent be to commence work immediately and start
13 the process of closing this up or is this process
14 going to, kind of, linger and take 120 days or longer
15 before you actually really start work on it?

16 MR. OYER: It would be to commence it
17 immediately. Had I fully understood the severity of
18 the issue, which I did not, we would have been working
19 on this all along.

20 MR. RURERY: But you guys would move
21 forward with the project and say hey, let's get this
22 thing --

23 MR. OYER: Sure. No, you know, I --

24 MR. RURERY: -- you know, closed up.

25 MR. OYER: -- can cite a lot of examples

1 where we --

2 MR. RURERY: Okay.

3 MR. OYER: -- move projects along. This
4 was --

5 MR. RURERY: I think it's entirely possible
6 for you to get the roof closed up and --

7 MR. OYER: Of course it is.

8 MALE SPEAKER: I do too.

9 MALE SPEAKER: You know the whole
10 building --

11 MR. RURERY: If the walls were up and the
12 roof was up and you were drying it in and it was June
13 1st but there was a significant amount of work, you
14 know, to me that's great progress. Construction is
15 taking place all the time through hurricane season.
16 But if come June 1st you're just putting in your first
17 footings or just playing around with inspections then
18 I don't think we're really making progress on the
19 building. I think it's just something that's being,
20 you know, put off until a further date.

21 MS. AGEE: If we put into the motion that
22 this had to be done, this envelope had to be done by
23 May 19th, which is what your contractor said, and the
24 alternative would be demolition if it wasn't done,
25 could you accept that?

1 MR. OYER: Well, I'd like to accept that.
2 I think my concern is we could more money into this
3 and for whatever reason, act of God, I fall over from
4 a heart attack like Dad did, it's not done. Then
5 we've wasted a lot more money. So I hate to be far
6 along, as this gentleman suggested, making a good
7 faith effort, and for whatever reason it's not
8 completely dried in and then you all say now you need
9 to tear it all down. Instead of wasting 60,000
10 dollars we've now wasted 120,000 dollars.

11 THE CHAIRMAN: I couldn't go for a date
12 that late, Beverly, because the due process is going
13 to take ninety days and that's going to put you into
14 August or September. So it's not going to happen.

15 MR. MACK: The other issue is if you extend
16 it you then have six months from the date that --

17 THE CHAIRMAN: Right.

18 MR. MACK: -- you reinstate the permit--

19 THE CHAIRMAN: Well --

20 MR. MACK: -- that we couldn't do anything
21 until it's done.

22 THE CHAIRMAN: I think this board can
23 extend or we recommend an extension with a time frame.

24 MS. AGEE: I see what you're saying.

25 THE CHAIRMAN: Yes or no?

1 MR. CHEROF: I don't agree, Chair. I think
2 that the issue before the board is whether to extend
3 the permit. If the board extends the permit the
4 applicant enjoys all of the benefits of the permit
5 that traditionally exist under the code.

6 THE CHAIRMAN: Oh, we can't --

7 MR. CHEROF: Right.

8 THE CHAIRMAN: We can't ask the building
9 official to put a time frame on the extension for,
10 perhaps, sixty days?

11 MR. CHEROF: No, sir.

12 THE CHAIRMAN: Okay. I'm still waiting for
13 a motion.

14 MR. BOGGS: I would make a motion to extend
15 the building permit. I don't know if anyone else --

16 THE CHAIRMAN: We've got a motion to
17 extend. Any second?

18 MS. AGEE: I second the motion. But do we
19 have a date on that motion?

20 MR. CHEROF: We can't.

21 MS. AGEE: And that's what you' resaying.

22 MR. CHEROF: City councils have --

23 THE CHAIRMAN: We have a motion and a
24 second.

25 MALE SPEAKER: Six months.

1 THE CHAIRMAN: We have a motion to extend
2 the permit and a second. Can you call the roll?

3 KATHERINE: (Indiscernible; 1:01:01).

4 MS. AGEE: Yes. In favor of the motion.

5 KATHERINE: (Indiscernible).

6 MALE SPEAKER: Yes, in favor.

7 KATHERINE: (Indiscernible).

8 MALE SPEAKER: Yes.

9 KATHERINE: (Indiscernible).

10 MALE SPEAKER: Yes.

11 KATHERINE: (Indiscernible).

12 THE CHAIRMAN: No.

13 MR. OYER: Thank you, folks. I appreciate
14 it.

15 THE CHAIRMAN: That's it.

16 MALE SPEAKER: What about the unsafe -- is
17 it still --

18 THE CHAIRMAN: Well --

19 MALE SPEAKER: Deemed unsafe or -- I mean,
20 all you did is extend the permit at this point.

21 THE CHAIRMAN: Mr. City Attorney, does the
22 unsafe question still appear?

23 MR. CHEROF: It's still a matter of appeal.
24 Don't you agree, Mr. Oyer? Do you still have --

25 MR. OYER: The unsafe condition?

1 MR. CHEROF: Yes, sir.

2 MR. OYER: I don't know. That's a good
3 question. If we have an extension and we have an
4 opportunity to go make it safe how do we make a ruling
5 on the safeness at this point?

6 MR. CHEROF: Well, you have appealed the
7 determination that it's unsafe. That's a standalone
8 issue as well. The board could also determine that it
9 is a safe structure. Do you --

10 MR. OYER: Then --

11 MR. CHEROF: I would assume, based upon the
12 board's action, that you want a determination at this
13 point.

14 THE CHAIRMAN: Okay. You want a separate
15 motion? I need a separate motion on the --

16 MR. OYER: Yes, sir.

17 THE CHAIRMAN: -- on the finding of unsafe
18 by the building officials. Someone want to make a
19 motion?

20 MS. AGEE: I don't think we've heard enough
21 information on that issue. On what basis does the
22 building department determine that it's unsafe and --

23 THE CHAIRMAN: In the packet that he
24 provided us he showed pictures and explained why
25 it's --

1 MS. AGEE: No.

2 THE CHAIRMAN: -- unsafe per the building
3 code.

4 MS. AGEE: No, I saw that. Now, why does
5 Mr. Oyer think that it is safe?

6 MR. OYER: I'm relying on the engineer's
7 letter that I've presented into evidence, and, again,
8 I'm not an engineer so it's difficult for me to
9 directly address this, but the way it's been explained
10 to me is if this was a building in its completed form
11 it would be unsafe, but because it is a construction
12 process in progress and we have an approved plan for
13 closing it in, and we, you know, have a contractor and
14 an architect and an engineer that are working towards
15 that, and you've now graciously extended that, I don't
16 think it's an unsafe structure. It's in progress
17 construction.

18 MS. AGEE: The person who wrote that letter
19 indicating that it was safe is not here to testify.

20 MR. OYER: No, ma'am, he's not.

21 MR. RURERY: I think if you read the letter
22 it, kind of, indicates that it's safe as far as the
23 construction process. However, if it's in its current
24 condition and it's sitting out there in the middle of
25 hurricane season, he doesn't really say that it's

1 shored properly and that it's safe under those
2 conditions. So if it looks like it does now come June
3 1st I think there needs to be an engineer who's
4 looking at this thing saying this is what's necessary
5 to make it safe, because, you know, as I look at it
6 the thing is coming down in a storm.

7 MR. SANFORD: Can we set a time for that
8 building to be put in a safe condition?

9 FEMALE SPEAKER: That would be --

10 MR. OYER: Define safe. I don't think we
11 can define safe, but --

12 THE CHAIRMAN: The building official--

13 MR. OYER: -- is that the issue --

14 THE CHAIRMAN: -- already did.

15 MALE SPEAKER: Yes.

16 THE CHAIRMAN: He gave him twenty days.

17 MALE SPEAKER: The building official did
18 say --

19 MR. CHEROF: Mr. Chair, let me make a
20 recommendation. If you --

21 MALE SPEAKER: I think you'd have to--

22 MR. CHEROF: -- want to dispose of it in
23 this manner Mr. Oyer could weigh in whether he objects
24 to it or not, and that would be that the board table
25 the portion of the appeal that deals with the building

1 officials finding that it's an unsafe structure.

2 THE CHAIRMAN: That's a consideration. I'd
3 also like to open up the previous motion, if I can,
4 with a date certain that he's going to renew the
5 permit. Can we do that?

6 MR. CHEROF: Right now I think the request
7 was to extend it to August 12, 2012. I think that's
8 what the current request was that was just approved.

9 THE CHAIRMAN: Okay. And there are fees
10 involved in that which he must pay before --

11 MALE SPEAKER: Right. So right now his
12 permit is good till August 12, 2012, and at that point
13 he has six months from then?

14 THE CHAIRMAN: Have --

15 MR. SANFORD: Why can't we -- if nothing
16 takes place for the next ninety days or sixty days,
17 and the structure is exactly the way it is now, can't
18 we, in that sixty days, this is unsafe. You've got to
19 take it down.

20 MR. CHEROF: You have that determined
21 already. There is an appeal pending as to that
22 determination. What you can do to accomplish your end
23 is to table it to a date certain and revisit it at
24 that particular point.

25 MR. BOPGESS: I make a motion to table it

1 for -- table the issue at hand for sixty days.

2 MR. SHORES: I second that.

3 MALE SPEAKER: Well, I would like to hear
4 what the --

5 THE CHAIRMAN: Okay. And we have -- I have
6 a motion and a second. Now we can have some
7 discussion.

8 MALE SPEAKER: Okay.

9 MR. MACK: I mean, at this point he can
10 start construction immediately. His -- at that point
11 he's -- as soon as gets an inspection. The last
12 inspection he has, the permit is good for six months.
13 I can't order a building to be demolished if it's
14 under construction. So --

15 THE CHAIRMAN: If it has a valid permit.

16 MR. MACK: Correct.

17 THE CHAIRMAN: So we just killed the other
18 one. Is that correct, Mr. Cherof?

19 MR. MACK: In a --

20 MR. CHEROF: No, you've -- I believe the
21 motion was to extend the permit.

22 THE CHAIRMAN: Right. So now he has a
23 valid active permit. So the building --

24 MR. CHEROF: But he needs an inspection.

25 THE CHAIRMAN: -- just stated that he can't

1 declare a building unsafe if it has a valid permit.

2 MR. CHEROF: Coupled with an inspection, I
3 think, is what his testimony was. So by tabling the
4 matter you will be affording Mr. Oyer time to act on
5 his permit, get his contractor in and call for an
6 inspection to determine if they could secure the
7 unsafe structure.

8 MR. OYER: I have a question for the city
9 attorney. If you table it for sixty days, and I think
10 everyone agreed we can't have the envelope closed in
11 sixty days, and we act in reliance. We go spend
12 money. Mr. Bowser begins to enclose it. We come back
13 sixty days from now. It's not entirely enclosed,
14 which it won't be no matter what the good faith
15 efforts are. This board, apparently, could then deem
16 it unsafe and say take it down, Mr. Oyer, after we
17 just expended more money on it. So that --

18 MR. CHEROF: I can't speculate as to what
19 would happen if you proceed based upon the action of
20 the board. I suppose time will tell on that. But --

21 MR. OYER: Well, I --

22 MR. CHEROF: But certainly when it returns,
23 having been tabled, the board could resume the hearing
24 with respect to the determination of unsafe structure
25 and you could offer new evidence at that particular

1 point regarding the condition of the property.

2 MR. OYER: Well, I think that's a dangerous
3 position to be in, that you're ordering us to come
4 back in sixty days and have it, quote, "safe",
5 whatever safe is. I've heard his idea of safe. I
6 have a PE that, you know, disagrees with him. So what
7 happens when we expend more money and we come back in
8 sixty days and your board chair says aha. I got you.
9 You're not entirely dried in. Tear the whole thing
10 down.

11 MS. AGEE: Why do we have to make it sixty?

12 MR. MACK: I'm not saying dried in.

13 MS. AGEE: Why do we have to table it for
14 sixty days.

15 MR. OYER: I didn't make that up. I heard
16 that from the board.

17 MALE SPEAKER: I just -- arbitrary.

18 THE CHAIRMAN: There was a motion and a
19 second that we still haven't finished discussing.

20 MS. AGEE: Okay. So we're discussing it.
21 Can we table it in a sufficient amount of time so that
22 it's -- that you would believe that you'd have -- you
23 might not have the envelope but that you'd have it to
24 the point where both the building department and your
25 people would say that it was safe.

1 MR. OYER: Yes, ma'am. I'd like to go back
2 to the way we were, which was had I called for an
3 inspection a day earlier like I was supposed to we
4 would still have a valid building permit and a valid
5 construction project, and that's all I'm asking to go
6 back to. Had I been aware of a dangerous situation or
7 anything other than the CRA's desire to tear it down,
8 I didn't know it was based on anything other than they
9 want it torn down. Had we had this discussion I would
10 have called for an inspection and we would have been
11 doing more work out there. So all I'm asking is to go
12 back to the same position we were in when we should
13 have called an inspection, not a whole new set of
14 rules. Give us an opportunity to finish it.

15 THE CHAIRMAN: Based upon the action we
16 just took to extend his permit to August the 1st why
17 don't we extend the unsafe till August the 1st also?

18 MR. BOPGESS: Make a motion to do so.

19 THE CHAIRMAN: There --

20 MS. AGEE: Second the motion.

21 THE CHAIRMAN: Okay. Now the motion is
22 second to extend the unsafe or to table the unsafe
23 until August the 1st when this permit will expire
24 again. Any further discussion?

25 MR. OYER: I'm sorry. Is it August 1st or

1 August 9th?

2 MALE SPEAKER: August 12th.

3 MR. OYER: August 12.

4 THE CHAIRMAN: I don't know. I got August
5 1, 2012 as the --

6 MALE SPEAKER: Whatever was in the packet.

7 MALE SPEAKER: Let's confirm that.

8 MR. OYER: I just want to be clear what it
9 is. I didn't know if it was six months from today or
10 six months from some other date.

11 MALE SPEAKER: Here's the request. August
12 1, 2012. August 1st.

13 MALE SPEAKER: August 1st.

14 MR. OYER: Okay. So it's six months
15 from --

16 MR. CHEROF: You had a date certain time
17 that you had requested to extend it to.

18 MR. OYER: Okay.

19 MR. CHEROF: August 1, 2012.

20 MR. OYER: Okay.

21 THE CHAIRMAN: Katherine, would call the
22 roll on the motion to table the unsafe at which time
23 his permit will also expire if there's no significant
24 progress and we'll be back?

25 KATHERINE: (Indiscernible; 1:10:13).

1 MALE SPEAKER: Yes.

2 KATHERINE: (Indiscernible).

3 MALE SPEAKER: Yes.

4 KATHERINE: (Indiscernible).

5 MALE SPEAKER: Yes.

6 KATHERINE: (Indiscernible).

7 MS. AGEE: Yes.

8 KATHERINE: (Indiscernible).

9 THE CHAIRMAN: No. Okay. You got what you
10 asked for.

11 MR. OYER: Thank you, folks. I appreciate
12 it.

13 THE CHAIRMAN: Thank you. Mr. Cherof, do I
14 have to close this meeting prior to the film we're
15 going to enjoy?

16 MR. CHEROF: Didn't know you were going to
17 watch a film.

18 THE CHAIRMAN: Aren't you going to stay?

19 MR. CHEROF: Have I seen it before?

20 THE CHAIRMAN: If there's any -- I think
21 we've all --

22 MALE SPEAKER: I think --

23 THE CHAIRMAN: Are there any announcements?
24 Anybody want to say anything else?

25 MR. SANFORD: I make a motion we adjourn

1 the meeting.

2 THE CHAIRMAN: Motion to adjourn. Second?

3 MR. SHORES: Second.

4 THE CHAIRMAN: All in favor?

5 IN UNISON: Aye.

6 THE CHAIRMAN: Aye. The meeting is closed.

7 (Proceedings concluded)

8

9

CERTIFICATION

10 I, Penina Wolicki, the court approved
11 transcriber, do hereby certify the foregoing is a true
12 and correct transcript from the official electronic
13 sound recording of the proceedings in the
14 above-entitled matter.

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February 3, 2012.

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PENINA WOLICKI

DATE

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