

AGENDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
OCTOBER 13, 2009

Attachments to the items below can be viewed at the following link:

http://www.dep.state.fl.us/secretary/cab/public_notices.htm

Substitute Page

Item 1 Minutes

Submittal of the Minutes from the August 25, 2009 Cabinet Meeting.

(See Attachment 1, Pages 1-10)

RECOMMEND APPROVAL

Substitute Item 2 Hall of Fame Associates Lease Modification

DEFERRED FROM THE SEPTEMBER 29, 2009 AGENDA

REQUEST: Consideration of (1) an application for an after-the-fact modification of an existing 25-year sovereignty submerged land lease to increase the preempted area from 115,399.54 square feet to 146,978 square feet for an existing 43-slip commercial marina; and (2) assessment of an additional \$14,221.45 administrative fine in accordance with section 18-14.002, F.A.C.

APPLICANT: Hall of Fame Associates, a California Limited Partnership
Lease No. 060447536

LOCATION: 435 Seabreeze Boulevard
Fort Lauderdale, Broward County
Section 12, Township 50 South, Range 42 East, in New River Sound
Aquatic Preserve: No
Waterbody Classification: New River Sound, Class III, not approved for shellfish harvesting
Designated Manatee County: Yes, with an approved manatee protection plan
Manatee Aggregation Area: No
Manatee Protection Speed Zone: Slow speed zone, year round

CONSIDERATION: \$14,359.85, representing (1) \$13,179.96, as the initial lease fee computed at the base rate of \$0.149455 per square foot, discounted 30 percent because a minimum of 90 percent of the slips are open to the public for rent on a first-come, first-served basis, and discounted 10 percent for participation in the Clean Marina Program; and (2) \$1,179.89 as the 25 percent surcharge payment for the additional area. Sales tax and county discretionary sales surtax will be assessed pursuant to sections 212.031 and 212.054, F.S., if applicable. The lease fee may be adjusted based on six percent of the annual income pursuant to section 18-21.011(1)(a)1, F.A.C.

Substitute Item 2, cont.

STAFF REMARKS:

Background

The original 5-year lease was modified to a 25-year term in 1990 and expires in 2015. The existing lease authorizes the use of 115,399.54 square feet for 43 slips. The marina is divided into two parcels, the north parcel and the south parcel. The north parcel consists of 59,690.54 square feet and the south parcel consists of 55,709 square feet. The proposed addition of 31,578.46 square feet is to the north parcel, for a new total of 146,978 square feet.

On March 9, 2006, the Department of Environmental Protection (DEP) conducted a site inspection and discovered that vessels moored at the north parcel extended beyond the lease boundary resulting in preemption of an unauthorized area. On October 31, 2008, a Temporary Use Agreement (TUA) was executed for the prior unauthorized use of sovereignty submerged lands. The lessee has paid \$2,500 in administrative costs.

In addition to the proprietary violations, the Lessee conducted a minor unpermitted modification to the leased structures at the west end of the southern parcel docking structures. These modifications would have required a regulatory permit and entailed the redirection of two finger piers and occurred within the lease area. The unauthorized activity did not create additional slips or preempt additional area, but resulted in a modified mooring layout. On December 28, 2006, a regulatory consent order was executed which required the payment of \$2,000 for civil penalties and \$500 for costs and expenses, totaling \$2,500.

A July 14, 2009 site inspection confirmed that the existing facility remains in compliance with the TUA.

Project Detail

The lessee is requesting after-the-fact authorization to expand the existing lease by 31,578.46 square feet to include the currently preempted area located outside of the authorized lease area.

The upland property adjacent to the northern parcel is used as a small dock masters office and parking for the marina. The upland property adjacent to the southern parcel is used as parking for the marina and a restaurant, which is currently closed.

A minimum of 90 percent of all the slips will continue to be maintained on an open to the public first-come, first-served basis pursuant to section 18-21.003(28), F.A.C. This requirement has been included as a special lease condition.

A special lease condition has been added that requires the Lessee to submit annually, to DEP's Division of State Lands, a signed certification that the Lessee has read and understands the terms and conditions of the lease. This certification will serve as an acknowledgement that the Lessee is in compliance with the lease.

Substitute Item 2, cont.

A lease condition has been added that requires the Lessee to annually submit photographs of the facility to DEP. The photographs will assist with ensuring compliance with the lease on a more frequent basis than the current 5-year lease inspection interval. Photographs will be used to verify that all activities are occurring within the lease boundaries and are consistent with the lease conditions.

Administrative Fine

DEP has assessed the maximum fine, \$2,500, allowed for a first offense. However, pursuant to section 18-14.002(4)(c), F.A.C., the fines for a first offense may exceed \$2,500 upon approval by the Board of Trustees. Pursuant to section 18-14.002(2)(d), F.A.C., when determining the amount of a fine to be imposed, the Board of Trustees shall consider the need to deter future violations by removing any economic benefits to the violator from failure to comply with the law. Therefore, DEP recommends the Board of Trustees assess an additional \$14,221.45 fine as the penalty to remove the economic benefit gained for the unauthorized preemption of sovereignty submerged lands over five years. If the Board of Trustees approves this recommendation, the total assessed fine will be \$16,721.45.

Noticing

The project was noticed to 19 property owners and no objections were received. The project is located within the 25-foot setback area on both sides and letters of concurrence have been obtained from the affected adjacent property owners.

Commenting Agency

Broward County is a designated manatee county with an approved manatee protection plan. The Florida Fish and Wildlife Conservation Commission has reviewed the application and provided comments dated March 4, 2009 and has no objection to this application provided the Lessee maintains the manatee awareness signs required in the existing lease.

Comprehensive Plan

A local government comprehensive plan has been adopted for this area pursuant to section 163.3167, F.S. The Department of Community Affairs determined that the plan is in compliance. The proposed action is consistent with the adopted plan according to a letter received from the City of Fort Lauderdale on May 11, 2009.

(See Attachment 2, Pages 1-11)

RECOMMEND APPROVAL OF (1) THE LEASE MODIFICATION SUBJECT TO THE SPECIAL APPROVAL CONDITIONS, THE SPECIAL LEASE CONDITIONS, AND PAYMENT OF \$14,359.85; AND (2) ASSESSMENT OF THE ADMINISTRATIVE FINE IN THE AMOUNT OF \$14,221.45