

Memorandum



Date: April 13, 2012

To: R.A. Cuevas, Jr.
County Attorney

From: Carlos A. Gimenez
Mayor

A handwritten signature in black ink, appearing to read "Carlos A. Gimenez". The signature is written in a cursive style and is positioned to the right of the printed name.

Subject: Coconut Grove Playhouse Update

Thank you for the expert assistance of your office with our ongoing efforts to help resolve the issues affecting the title of the Coconut Grove Playhouse in order to expedite the conveyance of this property to the County. As you know, we have made significant progress with this work. However, we still have outstanding issues with Aries Development Corporation and they have not accepted the financial offer conveyed to them in my letter of March 29th.

I am requesting your help with developing other legal options to address this situation. Lisa M. Martinez and Michael Spring are available to meet with you and your staff as soon as possible to provide any additional background that you may need. For ease of reference, I have attached the most recent update on the Playhouse. We are on an aggressive timetable to resolve all of these issues and are ready to proceed with equally aggressive legal action, as necessary, to resolve this matter with Aries.

We look forward to continuing to work closely with you and your office to bring this matter to a close and present our recommendations to the Board of County Commissioners without delay. I appreciate the energy and expertise that the attorneys in your office have contributed to getting us to this point.

Attachment

c: Honorable Joe A. Martinez, Chairman,
and Members, Board of County Commissioners
Representative Carlos Lopez-Cantera, Florida House of Representatives
Honorable Tomás Regalado, Mayor, City of Miami
Honorable Marc Sarnoff, Commissioner, City of Miami
Secretary Herschel T. Vinyard Jr., Florida Department of Environmental Protection
Clay Smallwood, Director, Division of State Lands, Florida Department of Environmental
Protection
Lisa M. Martinez, Senior Advisor, Office of the Mayor
Michael Spring, Director, Department of Cultural Affairs
Johnny Martinez, City Manager, City of Miami
Shelly Spivack, Chair, Coconut Grove Playhouse Board of Directors
Henry Pino, Strategic Properties Group
Gino Falsetto, Aries Development
Rick Kalwani, Aries Development
Bernard Zyscovich, Aries Development
Ellen Morceri, Head of School, Ransom-Everglades School
Sister Suzanne Cooke, RSCJ, Headmistress, Carrollton School of the Sacred Heart

Memorandum



Date: April 09, 2012

To: Honorable Chairman Joe A. Martinez
And Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor 

Subject: Coconut Grove Playhouse Update

We are pursuing the action steps that were outlined in the memorandum and letters distributed to the Board on March 29th and have significant progress to report. In summary, the following is a status report:

- Henry Pino has accepted the offer of \$275,000 outlined in my letter to him of March 29th, subject to BCC approval
- It is our understanding that the City of Miami City Manager has expressed a commitment to suspend the foreclosure proceedings on the Playhouse for 30 days (this extension would be through mid-April);
- On April 2nd, we received a letter from the Florida Department of Environmental Protection (DEP) stating that DEP staff will not recommend that the State exercise its reverter option on the property if our projected June deadline for the property conveyance is met (letter attached);
- Work on assessing the contents of the Playhouse for donation to a major local university is underway; and
- In our meeting with representatives Carrollton School of the Sacred Heart on April 2nd, they indicated that they would talk with their board of directors about exploring the possibility of identifying the resources for the development of a second, studio theater on the Playhouse property for educational purposes. We previously reported Ransom-Everglades' strong interest in working with us and others to construct a parking garage on the Playhouse site that could serve the theaters, educational institutions and businesses in the Grove.

It is important to point out that after our most recent meeting with representatives of Aries Development Corporation, they have not agreed to the offer made in my March 29th letter to them and we have not made progress on reaching a settlement. This is the most significant issue jeopardizing the timetable that we are pursuing to resolve the title issues and expedite the conveyance of the property to the County.

The account that follows provides more background on these issues:

Aries Development Corporation

In my letter of March 29th to Aries Development Corporation, we provided explanations for our rejection of two of the three options that Aries proposed for resolving their issues: 1) conveying more of the Playhouse's property to Aries; and 2) the County's assuming the Playhouse's agreement with Aries for commercial development of the Playhouse property. The third option offered by Aries was a cash payment of approximately \$2.1 million to \$2.35 million that included Aries' proposal that the County acquire additional property that Aries had purchased "behind" and contiguous to the Playhouse on Charles Street; Aries placed the cost for the County's purchase of this property at approximately \$1.75 million. In my letter of March 29th to Aries, we rejected the proposition of our buying the additional property based on our concern that this would compromise our ability to accomplish the improvements

necessary for returning great theater to this site. This additional property is not necessary for us to achieve this goal.

Consequently, this left approximately \$997,848 in Aries-claimed expenses for "advances" made as part of their agreement with the Playhouse. Upon further review of the Aries-Playhouse agreements, it came to our attention that through a lease agreement to operate parking on the Playhouse site, the Aries group, through Paradise Parking, had committed to making \$20,000 per month payments to the Playhouse. The Playhouse informed us that no payments had been made to them pursuant to this agreement for almost 3 years (preceded by one year of only partial rent payments). This unmet obligation by Aries would amount to \$766,607 (if no interest is calculated on these unpaid amounts). Consequently, it is the Playhouse's position that most of its debt to Aries (i.e., \$997,848) is met by these monies owed to the Playhouse by Aries (i.e., approximately, \$766,607 for the parking operation plus interest on this amount and other Playhouse development costs). Aries has countered that their expenses for operating parking and the revenues that have been generated resulted in insufficient proceeds to make these payments. Aries' claim for funds and the Playhouse' response that the debt is addressed by parking "rent" owed by Aries are previously-held positions. The offer of \$250,000 to Aries in my letter of March 29th to them was made in an effort to provide a catalyst to resolve this matter.

In our meeting of March 13th with representatives of Aries, we requested financial documentation regarding their parking operations on the Playhouse site; on March 21st, we received a one-page, unaudited spreadsheet from Aries listing "Profit and Loss 2007 through 2011" for their Playhouse parking operation. In preparation for our follow-up meeting with Aries, we reviewed the terms of the lease agreement for parking between Paradise Parking and the Playhouse. In my staff's meeting on April 5th with Aries representatives Rick Kalwani and Bernard Zyscovich, we pointed out the following terms of this agreement:

- The \$20,000 per month payments for parking to the Playhouse were not reliant on Paradise parking's expenses and/or revenues from this parking operation; by the lease agreement, they were obligated to make these payments to the Playhouse regardless of the cost of doing business; and
- The lease agreement for parking explicitly states that Paradise Parking had full financial responsibility for covering the expenses for operating parking on the Playhouse site and at the same time, they were responsible for making \$20,000 per month payments to the Playhouse.

At our April 5th meeting with Mr. Kalwani and Mr. Zyscovich, they claimed that Paradise Parking had made \$430,150 in "rent" payments to the Coconut Grove Playhouse pursuant to their lease agreement to operate parking on the Playhouse site. We have requested cancelled checks from Mr. Kalwani to substantiate these payments, no later than Tuesday, April 10th and Mr. Kalwani has agreed to provide us with this information as soon as possible. At the same time, at our request, the Playhouse board of directors has provided us with documentation that they have received only \$313,393 of the \$1,080,000 in parking lease payments owed to them to date from Aries. If one were to accept Aries' claim that \$997,848 is owed to them by the Playhouse and the Playhouse's account that it is owed \$766,607 in unpaid lease payments from Aries (without the interest calculation on the unpaid balance and without other Playhouse-claimed development costs), the difference, \$231,241, would be addressed by the \$250,000 settlement offer made to Aries. My staff reports that at the conclusion of their April 5th meeting, representatives of Aries mentioned that they were considering the option of litigation to pursue their interests.

Henry Pino / Strategic Properties Group

At our first meeting with Mr. Pino on March 19th, he presented us with an outline of \$571,000 of unreimbursed Playhouse costs for his company Strategic Properties Group (SPG), including a deposit,

Honorable Chairman Joe A. Martinez
And Members, Board of County Commissioners
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architectural and legal fees, and interest accrued pursuant to SPG's loan agreement with the Playhouse. At our follow-up meeting on March 30th, Mr. Pino agreed to accept the offer of \$275,000 as a complete and final settlement of this matter and as an expression of his continued interest in facilitating the return of great theater to the Playhouse.

City of Miami

Although we have not yet had a formal response to my letter of March 29th to Mayor Regalado, I have met again on March 29th with Commissioner Marc Sarnoff who continues to express support for our efforts to help the Playhouse clear the title of the property so that it can be conveyed to the County. It is important to reiterate that we will need the City's cooperation with:

- Ceasing the foreclosure proceedings on the property;
- Stopping citations on the property for code violations and working cooperatively with us to help address the property issues giving rise to these violations; and
- Resolving the outstanding City fines and penalties.

We are appreciative of City Manager Johnny Martinez's commitment to suspend the foreclosure proceedings and we look forward to receiving a response from the City regarding all of these pending issues.

State of Florida

While the April 2nd letter from DEP regarding the State's position on the reverter provision is encouraging, it is important to point out that this letter represents a staff position in regard to their eventual recommendation to the Board of Trustees of the Internal Improvement Trust Fund (BOT). Absent an additional binding document, there is no binding agreement from the BOT that they will not exercise the reverter provision. Thus, absent same, this is a business risk to be considered prior to the expenditure of County funds, in advance of the property's conveyance to the County.

Actions Required in April

In conclusion, please note that my March 29th update report to you outlined the following actions that must take place this month to maintain our aggressive timetable for this project:

- **Action Required:** Stakeholders (Aries Development Corporation and Henry Pino) agree to settlement offers from the Playhouse board via County staff.
- **Action Required:** City of Miami confirms to County that existing foreclosure proceedings have been dismissed, and all other existing liens, fines and citations are resolved.
- **Action Required:** State Department of Environmental Protection provides the County with appropriate assurances regarding the reverter.
- **Action Required:** Playhouse board finalizes an agreement with major, local university to inventory, remove and archive materials inside the Playhouse.

Attachment

c: Representative Carlos Lopez-Cantera, Florida House of Representatives
Honorable Tomás Regalado, Mayor, City of Miami
Honorable Marc Sarnoff, Commissioner, City of Miami
Secretary Herschel T. Vinyard Jr., Florida Department of Environmental Protection

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And Members, Board of County Commissioners
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Bernard Zyscovich, Aries Development

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Sister Suzanne Cooke, Head Mistress, Carrollton School of the Sacred Heart



Florida Department of Environmental Protection

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Rick Scott
Governor

Jennifer Carroll
H. Governor

Herschel T. Vinyard Jr.
Secretary

April 2, 2012

The Honorable Carlos A. Gimenez
Mayor, Miami-Dade County
Stephen P. Clark Center
111 N.W. 1st Street
29th Floor
Miami, Florida 33128-1930

RE: Coconut Grove Playhouse

Dear Mayor Gimenez:

As you are aware, the Florida Legislature enacted a law in 2011 that will require any lands that have been conveyed with reversionary language by the Board of Trustees of the Internal Improvement Trust Fund (BOT), to do so at the BOT's option if not used for the purpose for which it was conveyed within 3 years. This law went into effect on June 17, 2011. As staff to the BOT, we are encouraged by your March 29, 2012 memorandum to the Honorable Chairman Joe A. Martinez and Members of the Miami-Dade Board of County Commissioners, which outlines an action plan for the County to be able to vote to accept the title to the Coconut Grove Playhouse by June of 2012. We, as staff to the BOT, will not recommend that they exercise the option for the property to revert to BOT ownership if the projected June deadline is met and the Coconut Grove Playhouse is conveyed to the County for use as a playhouse.

Sincerely,

Clay Smallwood
Director
Division of State Lands

CS/sw