

# GALT MILE NEWS

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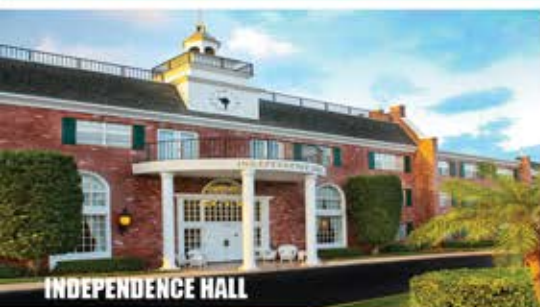
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# Sun Trolley Back from the Brink

By Eric Berkowitz

Having survived an up-close view of the Abyss, the Sun Trolley's Galt Mile Route has come roaring back from the brink of oblivion. In May of 2007, then Governor Charlie Crist, Senate President Ken Pruitt and House Speaker (now Senator) Marco Rubio shared a podium in the Capitol's fourth floor after the 60-day legislative session failed to provide Floridians with a promised tax cut. As choreographed for their staged sound bite, an ovoid grey rock inscribed with the word "Patience" was passed from one to the other, as each in turn swore to "drop taxes like a rock" in the upcoming June special session.

Notwithstanding this eerie gashouse intro, the resulting \$31.6 billion tax reform package forced local governments to muzzle deeply inbred tax and spend habits fueled by annual property tax windfalls that were suddenly eviscerated by the recession. Mandated by law to roll back their impending FY 2008 property tax assessments to FY 2006 levels, local governments were also forced to cut taxes by another 3% to 9%, contingent on their taxing proclivities over the prior 5 years and measured against a statewide average. In short, those cities and counties that most burdened their taxpayers were charged with providing commensurately greater relief.

After decades of burning through tax revenues at light speed, Broward Commissioners were suddenly confronted with a statutory obligation to slice \$100 million from the County's \$billion 2008 spending plan. In an unprecedented turf protection marathon, each Commissioner fought to cut appropriations for services and/or improvements in neighboring districts while fiercely defending their own pork projects. When the dust settled, along with libraries housed in structures not owned by the County, any local bus venues wherein utilization didn't justify continued operation were marked for extinction. Fort Lauderdale's community bus service – the Sun Trolley – is a project jointly sponsored by the Downtown Fort Lauderdale Transportation Management Association (DFLTMA) and Broward County Transit (BCT). Among the bus lines on the block was the Sun Trolley's Galt Mile route.

In fact, Fort Lauderdale's entire community bus service suffered near-terminal neglect when entrusted to former Sun Trolley Executive Director Les Hollingsworth, who spent a good deal more time solidifying his own future than that of the community bus service. When invited to address neighborhood associations and civic groups, Hollingsworth would outline a half-baked marketing strategy followed by assurances that working together would somehow salvage their besieged bus routes. Evidently, glad-handing at rubber chicken dinners tested the limits of his management skills.

Although the Galt Mile Route met the County's contractual survival standard of 7.1 riders per hour, and despite promising neighborhood association officials that he would rescue the Galt Mile route, on October 10, 2008, Hollingsworth submitted a surreptitiously drafted termination notice condoning its demise! When the GMCA revealed Hollingsworth's betrayal, a phalanx of angry residents who attended the October 21, 2008 City Commission meeting convinced Commissioners to abort the termination. By the time that the DFLTMA Board realized that their Sun Trolley Executive Director's management vision was 99% vapor (and that he was sending out resumes), the entire enterprise was facing insolvency.

When Hollingsworth was finally issued walking papers, DFLTMA Executive Director Chris Wren stepped in as the Sun Trolley's Interim Director. Wren futilely pleaded with local merchants to support underutilized routes throughout the City. Having watched Hollingsworth burn through meager agency resources to promote a series of botched screwball marketing "experiments", the vendors were understandably unwilling to invest in a program with untested leadership and a horrific track record. Later, these vendors would regret not having accepted Wren's invitation.

Within months of Hollingsworth's long-overdue dismissal, District 1 Commissioner Bruce Roberts and Wren met with GMCA officials Pio Ieraci and Eric Berkowitz to discuss last rites for the Galt Mile route. Ieraci, Berkowitz and Roberts convinced Wren to issue a temporary reprieve, and agreed to broker a series of meetings devoted to cultivating a long-neglected revenue source. The concept was simple. Instead of carrying vacationers from Port Everglades and beachfront hotels to the usual blood-letting tourist traps, by tailoring the service to accommodate the shopping needs of local residents, it would not only boost ridership, but jump-start business for vendors stung by the economic downturn.

On September 15, 2009, the City signed a 3-year County contract with two one-year extensions to operate the Sun Trolley. Guided by constituent input aggressively solicited by new Sun Trolley Managing Director Patricia Zeiler, Wren restructured the Sun Trolley to better connect shoppers, patients and other consumers with customer-hungry vendors and service providers. Since adding Holy Cross Hospital to the Galt Mile route, elderly or disabled neighborhood residents who "walk the pool" every morning hop the Trolley to their regular afternoon Physical Therapy session at the Hospital. Extending the Galt

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# ENGINEERS & ARCHITECTS

## SLIP DOWN THE RABBIT HOLE

By Eric Berkowitz

Yikes! It's back. In Tallahassee, it's not unusual for lawmakers to repeatedly propose snake bit legislation. If an influential minority constituency or a major campaign contributor envisions property rights for Cocker Spaniels or ascribing the death penalty for splashing in a public pool, a beholden lawmaker will dutifully grind out patronizing "courtesy bills" in appreciation for their support. When these over-the-top bills are first read in chamber, everyone within earshot knows they are destined for death on the calendar. However, when equally screwball bills are collaboration between powerful lobbies and their pet lawmakers, those who ignore the legislation do so at their own peril.

On February 12, 2010, when Palm City Senator Joe Negron filed Senate Bill 1964 - entitled "A Bill Relating to Design Professionals", Orlando Representative Stephen Precourt filed companion bill HB 701 in the Statehouse. The bills deified Design Professionals, immunizing architects, interior designers, landscape architects, engineers, & surveyors to legal redress. Not surprisingly, Negron is an amateur architect and Precourt is a Civil Engineer. Since the bills would obliterate legal exposure for design professionals, lobbyists for trade organizations representing Architects and Engineers cut deals with key members of vetting Committees in both houses, greasing a smooth ride through the legislative gauntlet. However, consumer rights groups, Constitutional watchdogs and association advocates were apoplectic, inveighing loud and hard against the bills. Despite its bartered approval by House and Senate lawmakers, statewide public opposition convinced former Governor Charlie Crist to veto this anti-consumer gremlin.

During the 2011 session, Negron reincarnated the legislation as Senate Bill 288 on December 12, 2010, albeit with a new partner in the other chamber. In the Statehouse, first term Sarasota Representative Gregory Steube filed House Bill 605, which died on March 7, 2011 in the House Civil Justice Committee. Rejected by the Senate Committee on Regulated Industries following a March 9, 2011 vote of 4 YEAs and 8 NAYs, Negron's Senate version was also "laid on the table." Committee members in both houses were particularly troubled by a poorly veiled Catch-22 provision specifically designed to eliminate both liability and the cost of malpractice insurance for members of these professions.

The legislation allowed for recovery of economic damages up to the amount of the design professional's existing liability insurance coverage. Since current Florida law doesn't actually require this insurance and the bill would otherwise render them judgment-proof, design professionals would have had little incentive to purchase malpractice insurance. In effect, by cancelling their insurance, they would also cancel their only financial exposure. On December 21, 2011, a week and a half after the bill was filed, Construction Law Attorney Lee Weinraub of Becker Poliakoff commented, "This senate bill would allow design professionals to defectively design building components, causing significant monetary damage to their clients, yet limit their liability to some nominal sum and cancel all their professional liability insurance. Don't take my word for it - read the bill and see for yourself how ludicrous this is." Unless an association's engineer, interior designer and/or architect felt morally compelled to pay premiums for a malpractice policy, the association would not be able to recover damage costs for negligence, defective designs and/or other professional foul-ups. If an engineer designs, oversees construction for and signs off on a structurally defective roof that collapses later that day or a landscape architect turns the entire association grounds into crispy brown mulch overnight, the association would not even be

legally entitled to an apology.

Early in the current session, Negron again revived his twice-burned Design Professionals Deification package, filing Senate Bill 286 on January 15, 2013. In the two years since the 2011 debacle, Negron's former Statehouse sponsor Representative Greg Steube had familiarized himself with the regulatory landscape and was staunchly supporting legislation helpful to common interest homeowners and their associations. Selected by the Community Associations Institute (CAI) to receive the annual "Friend of Community Associations and CAI Florida Legislative Alliance" legislative award on October 3, 2012 for his legislative advocacy on behalf of community associations and CAI members, Steube would not be filing a "companion bill" that threatened to victimize more than 2 million Florida association homeowners.

This being his third bite at the apple, Negron knew that a sister bill in the Statehouse would be intensively scrutinized in the Civil Justice Subcommittee, the Business & Professional Regulation Subcommittee and the Judiciary Committee. Scouting a dance partner who brought the required "influence" to the table, he recruited Naples Representative Kathleen Passidomo to file House Bill 575 - the companion legislation in the Statehouse. What a surprise, Passidomo sits on the House Civil Justice Subcommittee and serves as Vice Chair of the House Judiciary Committee. In selecting Passidomo, Negron bought a rubber stamp in two of the three House vetting committees.

Somewhat modified from previous versions of the bill, SB 286 enables architects, interior designers, landscape architects, engineers, & surveyors to dispense with liability simply by using specific language that states as much in a contract (in an uppercase font sized at least 5 points larger than the rest of the text). The new bill doesn't even carry the pretense that a design professional would still have a statutory incentive to avoid committing malpractice, since victims would not be permitted to file against a violator's malpractice insurance. At the heart of Negron's argument is a judicially created doctrine called the "Economic Loss Rule."

Courts created the "Economic Loss Rule" to shield companies from questionable product liability actions. Under the doctrine, economic damages may not be recovered in a negligence action if the damages are not accompanied by physical property damage or bodily injury. In short, this rule "bars a plaintiff from bringing tort claims to recover pure economic damages arising from a breach of contract cause of action absent personal injury or property damages." As a result, if a plaintiff cannot prove a tort independent of some contractual breach, the economic loss rule bars recovery on any noncontract claims.

However, consistent with nationwide legal precedent, Florida Statutes and the Florida Constitution, Florida courts (including the Florida Supreme Court) have repeatedly (and rightfully) upheld that the Economic Loss Rule is not a defense to professional malpractice and negligence by a licensed professional practitioner (rulings specify architects, lawyers, engineers, doctors, etc.). Notwithstanding contractual agreements that limit liability for the law firms, engineering firms, hospitals and architectural firms through which they do business, individual lawyers, engineers, doctors and architects remain personally liable for malpractice or negligence.

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Ocean Mile route south to the Galleria provided local residents with cheap and easy transportation to a world-class shopping venue and brought desperately needed new business to Macy's, Neiman Marcus, Dillards and scores of smaller stores trying to rebuild a faltering customer base.

Since the southernmost link in the Galt Mile route – a stretch of Sunrise Boulevard from A1A to the Galleria – is also the northernmost link in the Las Olas Beaches/Convention Connection route, seamlessly connecting these two existing routes enabled Galt Mile shoppers to also access the Harbor Shops, stores on Las Olas Boulevard and a host of other shopping destinations. As an ancillary benefit, this new connectivity boosted recreational utilization as well, as an increasing number of Galt Mile and North Beach (the Palms, etc.) condo dwellers realized that a Trolley ride to the Fort Lauderdale beach area, Bahia Mar, Port Everglades, Broward Center for the Performing Arts, the Convention Center, the Museum of Art or the Las Olas Riverfront was fast, cheap and free of parking headaches. Despite the strained economy, burgeoning ridership incentivized further expansion as the DFLTMA chalked up a home run.

On January 18, 2012, Broward County Transit (BCT) Capital Planning Manager Barney McCoy notified the County's 18 local partner municipalities about the availability of additional funds for the Community Bus Service program. BCT funds its share of the program by tapping revenues from the County's 2000 Local Option Gas Tax, for which each participating municipality serves as a "pass-through" agency to its local bus operator. In short, funds allocated to each municipality are in turn budgeted to its Community Bus Service. When several municipalities either reduced service hours or discontinued fully funded routes, the unused resources held by the County were made available to the other municipalities. Four of BCT's 18 partner municipalities dug into the cookie jar, including Fort Lauderdale.

Nearing the end of its three-year pact, Fort Lauderdale City Commissioners wanted to insure the Sun Trolley's fiscal viability before their planned consideration of signing the first one-year contract extension (from October 1, 2012 to September 30, 2013) at the June 5th City Commission meeting. To help DFLTMA snag resources for planned service expansions, in February 2012, Fort Lauderdale City staff responded to McCoy's invitation by submitting funding applications for an additional \$92,109 on behalf of the Sun Trolley.

Of the additional \$92,109 subsequently approved by BCT for the remainder of FY 2011-12, \$2,484 would offset a Las Olas Beach route deficit, \$27,945 would fund an additional trolley run for the Convention Connection route and a whopping \$61,680 was earmarked to provide the increasingly popular Galt Ocean Mile route with new Saturday and Sunday service. Unfortunately, the \$61,680 was inadequate to fully fund the Galt route's planned weekend service.

To remedy the shortfall, City staffers drafted an amendment to the Interlocal Agreement (ILA) that extends the contract between the City of Fort Lauderdale and Broward County. The Amendment housed a request for an incremental allocation of \$19,918.08. Since no additional Gas Tax monies were available for the balance of fiscal year 2012, and city bean counters were cloistering reserves as a cushion against 2013 budget blowback, the only source of revenues was a non-transferable Federal Transit Administration (FTA) grant dedicated to the Convention Connection bus route. Although Federal regulations intractably bind FTA revenue disbursements to the route for which they were approved, when Wren interconnected the Galt Mile and Convention Connection routes, he serendipitously obliterated the funding obstacle. Since the Federal dollars could legally be used to plug the deficit anticipated by the Galt Mile route's weekend expansion, it remained on Zeiler's "to do" list.

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With cadres of commuting regulars congregating on the bus to lunch on Las Olas after shopping in Galleria, utilization rates soon outpaced projections. Flourishing under the aggressive leadership of Wren and Zeiler, monthly ridership reached an unprecedented 32,000 in December, 2012. In addition to attracting waves of frugal shoppers, the service has thinned the number of vehicles clogging city streets (and comparably cut the City's carbon footprint). In one program sponsored by the Sun Trolley, parking spaces are reserved in centralized venues like Broward Government Center and the County Courthouse for carpooling commuters who then hop the Trolley to work. In January, Sun Trolley Executive Director Patricia Zeiler observed "Currently, Sun Trolley serves as an alternative to driving a car for over 7,000 passengers per month." On January 2, 2013, Zeiler expanded the Beach Link Route to a 7-day service. Running between the Harbor Shops (on the 17th Street Causeway) and the Galleria Mall (at Sunrise Boulevard and the Intracoastal Waterway) with an option to cruise Las Olas Boulevard and Himmarshee Street, patrons can catch rides every 30 minutes from 9:30 AM to 6:30 PM for 50¢/ride or \$2 for unlimited daily jaunts. Two weeks later she launched "Fort Lauderdale Excursion", a new airport transportation and baggage storage service that enables tourists to sock away their luggage in "Bags To Go" before using the Sun Trolley (\$19.95/person) and/or Water Taxi (\$29.95/person) for unlimited rides throughout the City until they return to the airport, grab the bags and fly off. It sure beats spending a 14-hour layover drifting in and out of semi-coma in the airport lounge.

Wren and Zeiler have also turned the page on the Sun Trolley's stunted commercial appeal. Newly awakened to its positive impact on business, instead of having to sweet-talk merchants into supporting the bus service, local vendors are actively competing for destination status on a Sun Trolley route. Many are willing to help finance the required expansion.

Zeiler also never forgot how extending the Galt Mile route to Holy Cross Hospital mutually benefitted the Sun Trolley and the Medical Center. On January 20, a \$20,000 contribution enabled Zeiler to further extend the Galt Mile route to Broward Health Imperial Point Medical Center. Commenting on the expansion, Zeiler said "We are so pleased to have Broward Health Imperial Point Hospital join our route destinations. The Galt Link Route continuously ranks as one of Sun Trolley's most popular routes amongst Broward County residents and we are confident that adding Broward Health Imperial Point will only serve to increase ridership."

Keenly aware of the stiff competition among healthcare service providers, Broward Health Imperial Point CEO Alice Taylor added "Diagnostic services such as CT, MRI, ultrasound, X-ray and digital mammography are now just a trolley ride away for residents of Galt Ocean Mile. The partnership also means increased access to dozens of physicians in various specialties whose offices are located on the hospital's campus." Galt Mile residents who walk the pool every morning are delighted. •

Rabbit Hole...Continued

Under Florida law, while companies can limit their liability in a contract, licensed professionals cannot contractually mitigate their "duty of care" to the injured party. Commenting on the bills, Construction Law Specialist Sanjay Kurian of Becker Poliakoff said "No other class of professional has ever been so completely financially insulated from damages caused by their negligence, wrongful acts, or misconduct. As doctors, lawyers, and accountants are precluded by statute from limiting exposure for their own negligence," extending this all-encompassing immunity to engineers, architects and interior designers conjures a universe shaped by the conceptual progeny of Lewis Carroll and Ayn Rand, whose novel "The Fountainhead" (no relation to the Galt Mile condo of the same name) lionized an architect for dynamiting low-income housing that offended his artistic sensibilities.

In associations that ignore the threatened statutory bear trap, engineers, architects and other design professionals hired to design, install and/or oversee critical infrastructure would be virtually unaccountable and silently slip down the rabbit hole if and when their negligence results in a financial holocaust, forcing unit owners to absorb the budgetary impact of their malpractice. In an email alert, Community Association Institute (CAI) Florida Legislative Alliance Chair Robert Taylor framed the bills as "an unfortunate attempt to shift the ultimate negligence liability burden from the design professionals to the consumers." In short, Taylor's observation mirrored a warning in Charlie Crist's veto message after quashing the 2010 version of this bill.

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As per the legislation, associations that hire design professionals who commit malpractice will be limited to filing breach of contract claims against the design professional's "business entity" (defined in the bill as any corporation, limited liability company, partnership, limited partnership, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, whether fictitiously named or not, doing business in this state). Although the legislation fully inoculates licensed professionals against liability, it allows an association to require the design professional's business entity to maintain professional liability insurance. Since current law doesn't mandate this insurance, it will be incumbent on the association to require its inclusion in any contract in an amount sufficient to mitigate the cost of potential damages.

In addition to the Constitutional quagmire opened by this bill, as a practical matter, Constitutional Courts and State lawmakers have repeatedly prohibited licensed professionals from shifting their professional liability to the corporate umbrellas under which they practice. As stated by CAI, business entities, including engineering, legal or medical professional associations can easily "hide" assets by placing them in other entities – thus eliminating any realistic chance of a consumer or community association recovering any equitable award when suffering damages as a result of professional negligence. CALL Attorney Yeline Goin also points out that the "bill language is so badly worded that it could also be interpreted to mean that an association could not sue an architect or engineer after turnover for construction defects, even when the association was not a party to the contract." When CAI lobbyist Travis Moore later met with Negron, he told Moore that his bill wasn't intended to apply to persons not a party to the contract, but Negron didn't alter the misleading language.

Another real danger buried in this legislation inures to its status as a precedent, as it would create an opportunity for other licensed professionals to "purchase" statutory immunity to liability on the Capitol steps. If the legislation is enacted, by 2014, bills using it as a roadmap will seek similar protections for lawyers and doctors who commit malpractice. In fact, while being vetted in the Senate Judiciary Committee on March 6, Clearwater Senator Jack Latvala amended the bill by adding Geologists to the list of protected "Design Professionals", prospectively freeing them of any liability for affirming that your land is free of sinkholes – just before your house disappears into the ground.

Negron was not going to allow his bill to be marooned on a committee calendar as occurred in 2011. As an emollient to the vetting process, Negron and Passidomo brokered interchanges between key members of each review committee and a regiment of Design Trades lobbyists who "assist" cooperative politicians, specifically lobbyist David Daniel from the Florida Surveying and Mapping Society, David Roberts from the American Society of Interior Designers, Executive Director Frank Rudd of the Florida Engineering Society, Mike Huey of the Florida Association of the American Institute of Architects, Phil Leary from the Florida Association of Professional Geologists and Jim Horne from the Northeast Florida Home Builders Association.

With the wheels greased, after whizzing through the Senate Committee on Regulated Industries, a Committee Substitute reconfigured to include Latvala's geologists (CS/SB 286) was approved in the Judiciary Committee, leaving a March 14th hearing by Senate Community Affairs Committee as the only remaining obstacle in the upper house. Since Negron's bill was amended and redrafted as a Committee Substitute, so was Passidomo's HB 575. Having passed the House Civil Justice Subcommittee, CS/HB 575 was sent to the House Business and Professional Regulation Subcommittee, after which it would undergo review by the House Judiciary Committee (where Passidomo is Vice-Chair).

While design trades have pulled out the stops to buy members a free pass for negligence, building trades officials oppose the bill. If licensed professionals become empowered to deliver defective work product without consequence, the liability will flow upstream to contractors, builders and developers as well as the carpenters, plumbers and electricians who took direction from negligent engineers, archi-

ects, or other design professionals. Among the building trade organizations that have spoken against the bill's approval to vetting committees are the Associated Builders & Contractors of Florida; Florida Fire Sprinkler Association; Florida Home Builders Association; Florida's Associated General Contractors and Florida Transportation Builders Association. Also opposing the bill are consumer watchdog groups, association advocates (CAN, CALL, CAI, etc.) and the Real Property Section of the Florida Bar, which characterizes the legislation as creating an inequity without remedy.

Unless you want the engineer who will manage your next concrete rehabilitation or orchestrate repairs of deteriorating parking deck expansion joints to have responsibility for those projects commensurate with that of your pet goldfish, you might consider contacting Negron, Passidomo, District 93 Statehouse Representative George Moraitis, District 34 Senator Maria Sachs and/or members of the remaining vetting committees and expressing your disapproval of this bill. It might take roughly thirty seconds to send each email.

Ordinarily, common sense would also dictate alerting Governor Scott to your concerns if the bill becomes enrolled. However, in view of the fact that last April he signed a bill into law that eliminates implied warranties (HB 1013), enabling developers to sell properties riddled with illegal construction defects (building code violations) to unsuspecting homebuyers without recourse, he will likely either break out into hysterical laughter or fall asleep, depending on how his meds are balanced.

While evaluating the legislation's private sector fiscal impacts in the Professional Staff Analysis prepared for House and Senate Committees, staffers framed two observations in a manner suggestive of a fair and balanced net result. They open by pointing out that parties "who experience an economic loss attributable to the professional negligence or professional malpractice of a design professional" will "be barred from claims for negligence" not authorized in the contract. On the bright side, they noted that if Design Professionals have no liability for malpractice, they may realize a savings on their malpractice insurance, which they may or may not pass on to clients. See – no problem. By the way, these pinheads are our future lawmakers! •



Palm City Senator Joe Negron Sponsors Anti-Consumer Design Professionals Bill.



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SUN

MON

TUE

WED

**14** Urban Gourmet Market  
1201 E. Las Olas Blvd.  
9 a.m. to 4 p.m.  
Info.: 954-462-4166

Battle For The Paddle  
Esplanade Park  
Info.: ashley@precisionpaddleboards.com

The Five Beethovens  
(Through 4/16)  
Broward Center for the Performing Arts  
Tix.: 954-462-0222

**15** Commissioner Bruce Roberts:  
Pre-Agenda Meeting  
Beach Community Center, 6 p.m.

**16** BINGO  
Galt Towers Social Room  
(4250 Galt Ocean Drive)  
7:30 p.m.  
Info.: Cyndi Songer: 954-563-7268

Fort Lauderdale City Commission Meeting  
City Hall, 6 p.m.

West Palm Beach Golf Expo  
(Through 4/18)  
South Florida Fairgrounds  
Info.: 954-445-4999

**17** BINGO  
Regency South Party Room  
7 p.m.  
Info.: Bob Pearlman: 954-547-4063

**21** Urban Gourmet Market  
1201 E. Las Olas Blvd.  
9 a.m. to 4 p.m.  
Info.: 954-462-4166

**22**

**23** BINGO  
Galt Towers Social Room  
(4250 Galt Ocean Drive)  
7:30 p.m.  
Info.: Cyndi Songer: 954-563-7268

**24** BINGO  
Regency South Party Room  
7 p.m.  
Info.: Bob Pearlman: 954-547-4063

**28** Urban Gourmet Market  
1201 E. Las Olas Blvd.  
9 a.m. to 4 p.m.  
Info.: 954-462-4166

City Wide Market  
War Memorial, 9 a.m. to 5 p.m.  
Info.: 954-828-5380

Roberta Flack  
Hard Rock Live, 7 p.m.  
Tix.: 954-797-5531

**29** Fleet Week  
(Through 5/6)  
Port Everglades  
Info.: 954-649-4777

**30** BINGO  
Galt Towers Social Room  
(4250 Galt Ocean Drive)  
7:30 p.m.  
Info.: Cyndi Songer: 954-563-7268

**1** BINGO  
Regency South Party Room  
7 p.m.  
Info.: Bob Pearlman: 954-547-4063

SUNFEST  
(Through 5/5)  
Intracoastal Waterway, along Flagler Dr from  
Banyan Blvd to Lakeview Ave, WPB  
Info.: 561-659-5980

**5** Urban Gourmet Market  
1201 E. Las Olas Blvd.  
9 a.m. to 4 p.m.  
Info.: 954-462-4166

**Sunday Jazz Brunch**  
Riverwalk, Downtown FL  
11 a.m. to 2 p.m.  
Info.: 954-828-5985

**6** Commissioner Bruce Roberts:  
Pre-Agenda Meeting  
Beach Community Center, 6 p.m.

**7** BINGO  
Galt Towers Social Room  
(4250 Galt Ocean Drive)  
7:30 p.m.  
Info.: Cyndi Songer: 954-563-7268

**8** BINGO  
Regency South Party Room  
7 p.m.  
Info.: Bob Pearlman: 954-547-4063

Fort Lauderdale City Commission Meeting  
City Hall, 6 p.m.

**12** Urban Gourmet Market  
1201 E. Las Olas Blvd.  
9 a.m. to 4 p.m.  
Info.: 954-462-4166

Bill Cosby  
Hard Rock Live! 7 p.m.  
Info.: 954-797-5531

**13**

**14** BINGO  
Galt Towers Social Room  
(4250 Galt Ocean Drive)  
7:30 p.m.  
Info.: Cyndi Songer: 954-563-7268

**15** BINGO  
Regency South Party Room  
7 p.m.  
Info.: Bob Pearlman: 954-547-4063

Pompano Beach Fishing Rodeo  
(Through 5/18)  
Pompano Beach  
Info.: 954-942-4513

APRIL 19: 5th Annual Spin-A-Thon, Esplanade Park, 1 to 7 p.m., Info.: 954-494-7793 or [www.marineindustrycares.org](http://www.marineindustrycares.org)

APRIL 20: YogaFest 2013, Huizenga Plaza, 10 a.m. to 10 p.m., Tix.: 954-463-9800

APRIL 20: Re-nourish Fort Lauderdale - Removing Exotic Plants and Re-Planting Native Plants, Snyder Park, 9 a.m. to Noon, Info.: 954-828-4750

APRIL 20: Hillsboro Inlet Lighthouse Tour, Sands Harbor Resort & Marina, 8:45 a.m. to 3 p.m., Info.: 954-942-2102

APRIL 20: Jammmin' in the Park Fest, Botanical Garden Amphitheatre in Luderhill, Info.: 954-730-3000

APRIL 20: Parent's Night Out, Ft. Lauderdale Children's Theatre, 6 p.m., Info.: 954-763-6882

APRIL 26: Riverwalk Get Downtown, Las Olas Place, 5 to 8 p.m., Info.: 954-468-1541, ext. 203

APRIL 26-28: Broadway and Ballet, Program IV, Broward Center for the Performing Arts, Tix.: 954-462-0222

APRIL 26-28: Pompano Beach Seafood Festival, Atlantic Blvd & A1A in Pompano Beach, Tix.: 954-941-2940

APRIL/MAY



## THU

## FRI

## SAT

<b>18</b> BINGO Southpoint's North Lounge (3400 Galt Ocean Dr) 7 p.m. \$5/person for 3 boards  Art Walk Las Olas Las Olas Blvd. 10 a.m. to 9 p.m. Info.: 954-258-8382	<b>19</b> Jazz on the Square El Mar Drive & Commercial Blvd 6:30 to 10:30 p.m. Info.: 954-776-5092  Reba McEntire (Through 4/20) Hard Rock Live!, 8 p.m. Tix.: 954-797-5531  Las Olas Wine & Food Festival Las Olas Blvd., 7:30 to 10 p.m. Info.: 954-524-4657	<b>20</b> Music-By-The-Sea A1A & Commercial Blvd 6:30 to 10:30 p.m. Info.: 954-771-2900  Earth Day Celebration Flamingo Gardens Info.: 954-473-2955  Lauderdale Air Show (Through 4/21) Ft. Lauderdale Beach Info.: <a href="http://lauderdaleairshow.com">http://lauderdaleairshow.com</a>
<b>25</b> BINGO Southpoint's North Lounge (3400 Galt Ocean Dr), 7 p.m. \$5/person for 3 boards	<b>26</b> Jazz on the Square El Mar Drive & Commercial Blvd 6:30 to 10:30 p.m. Info.: 954-776-5092  Stamp for Yoo! Young at Art Museum, Davie, 7:30 p.m. Info.: 954-424-5018  Rush BB&T Center Tix.: 800-745-3000	<b>27</b> Music-By-The-Sea A1A & Commercial Blvd 6:30 to 10:30 p.m. Info.: 954-771-2900  Re-nourish Fort Lauderdale - Dune Restoration and Sea Oat Planting Fort Lauderdale Beach Park 8 a.m. to Noon Info.: 954-828-4750
<b>2</b> BINGO Southpoint's North Lounge (3400 Galt Ocean Dr), 7 p.m. \$5/person for 3 boards  Les Ballets Trockadero de Monte Carlo Broward Center for the Performing Arts Tix.: 954-462-0222	<b>3</b> Jazz on the Square El Mar Drive & Commercial Blvd 6:30 to 10:30 p.m. Info.: 954-776-5092  West Palm Beach Antiques Festival Aircraft Expo Center, WPB Info.: 941-697-7475	<b>4</b> Music-By-The-Sea A1A & Commercial Blvd 6:30 to 10:30 p.m. Info.: 954-771-2900
<b>9</b> BINGO Southpoint's North Lounge (3400 Galt Ocean Dr), 7 p.m. \$5/person for 3 boards  USA Diving International Grand Prix Fort Lauderdale Aquatic Complex 8 a.m. to 7 p.m. Info.: 954-828-4580	<b>10</b> Jazz on the Square El Mar Drive & Commercial Blvd 6:30 to 10:30 p.m. Info.: 954-776-5092	<b>11</b> Music-By-The-Sea A1A & Commercial Blvd 6:30 to 10:30 p.m. Info.: 954-771-2900  The Fort Lauderdale Bus Loop 6 to 11 p.m. Info.: 954-260-6194
<b>16</b> BINGO Southpoint's North Lounge (3400 Galt Ocean Dr), 7 p.m. \$5/person for 3 boards  Driven Music Conference (Through 5/19) Hyatt Regency Pier Sixty-Six Info.: 954-591-5803	<b>17</b>	<b>18</b> Music-By-The-Sea A1A & Commercial Blvd 6:30 to 10:30 p.m. Info.: 954-771-2900  4th Annual Covenant House FL 5K on A1A Start: The Parrot, 7 a.m. Info.: 954-568-7914

## UPCOMING EVENTS IN OUR AREA

May 25 - 27  
Fort Lauderdale Home Design & Remodeling Show  
Broward County Convention Center  
Info.: 954-765-5900

May 25 - 27  
Tony Hawk Rad Science  
Broward County Convention Center  
Info.: 954-765-5900

May 31  
4th Annual Burger Battle  
Huizenga Plaza, 7 to 10 p.m.  
Info.: [www.goriverwalk.com](http://www.goriverwalk.com)

June 1  
Relay For Life of Lauderdale-by-the-Sea  
El Prado Park (4500 El Mar Dr), LBTS, 6 a.m. to Noon  
Info.: 954-564-0880



**FOR A COMPLETE  
LISTING OF EVENTS,  
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[WWW.GALTMILE.COM](http://WWW.GALTMILE.COM)**

APRIL 26-28: 3rd Annual Deerfield Beach Wine & Food Festival, Quiet Waters Park, Info.: 561-338-7594

APRIL 27: Great Strides, Fort Lauderdale Beach Park, 8 to 11 a.m., Info.: 954-739-5006

MAY 15: Color Run 5K, 6 a.m., Info.: [www.goriverwalk.com](http://www.goriverwalk.com)

First Saturday of every Month: Beach Cleanup, Commercial Blvd. & the Beach LBTS (Meet at pavilion), 9 to 9:30 a.m., Info.: 954-776-1000

Second Saturday of every Month: Beach Sweep, 9 a.m. to 12 p.m., Info.: 954-474-1835

Sundays: Tour-the River Ghost Tour, Stranahan House & Water Taxi, 7:30 p.m., Tix.: 954-524-4736

Thursdays and Fridays: Gentle Yoga, North patio behind Tiki Bar (Ocean Manor Resort 4040 Galt Ocean Dr.), 9 a.m., Info.: 754-779-7519

Sundays: Beginner Pilates, North patio behind Tiki Bar, 9 a.m., Info.: 754-779-7519

Thursdays: Beginner Pilates, North patio behind Tiki Bar (Ocean Manor Resort 4040 Galt Ocean Dr.), 10 a.m., Info.: 754-779-7519

Saturdays: Saturday Night Under the South Florida Stars, Fox Astronomical Observatory at Markham Park, Sunset to Midnight, Info.: 954-384-0442

# WHAT WERE THEY THINKING?

Common Interest Communities and their advocates who closely monitor high profile association legislation often overlook scores of bills that, although targeted to other purposes, adversely impact their interests. The following two needles in the 2013 legislative haystack will not only harm unit owners, the underlying rationale for their existence strains credibility. Fueled by political "quid pro quo" and cruising below the media radar, these thinly veiled pork piñatas stand an excellent chance of becoming law – while we sleep. One is a blatant patronage bill masquerading as an attempt to shield Homestead Exemptions from abuse. The other is a "pro-bank" wolf dressed in "pro-association" clothing.

## Squeezing Tip Money From State Law

Whether necessary to help fund a retirement property or to salvage a "vacation home" suddenly made insupportable by a soured economy, renting their association properties is often an indispensable survival strategy for unit owners. If creatively timed and structured, rentals need not cost property owners their Homestead Exemptions, not only to slice \$25,000 to \$50,000 from the property's value for tax purposes, but to preserve eligibility for the far more valuable Save Our Homes tax cap.

Under current law, Property Appraisers have enormous discretion in determining whether renting a property constitutes its abandonment as a primary residence. Although there is currently no specific amount of time homeowners must reside in the property to maintain a homestead exemption, they must be able to prove that it's their permanent residence on January 1 of each year, according to the Florida Department of Revenue.

Section 196.061, Florida Statutes, which guides Property Appraisers in determining how rental of a homesteaded property impacts the exemption, provides that "rental of all or substantially all of a dwelling previously claimed to be a homestead for tax purposes constitutes abandonment of the dwelling as a homestead, and the abandonment shall continue until such dwelling is physically occupied by the owner." The statute then carves out a loophole "However, such abandonment of such homestead after January 1 of any year does not affect the homestead exemption for tax purposes for that particular year if this provision is not used for 2 consecutive years." Due to a ballot amendment approved by Florida voters, this "Two-year Rule" is not applicable to members of the military under transfer orders – and their spouses.

A unit owner can theoretically rent a property on January 2 through December 31, 2014 (returning to live in the property by January 1, 2015) without jeopardizing the Homestead Exemption as long as the property is not leased again until after January 1, 2016 (as per the "Two-year Rule"). However, Broward County Property Appraiser Lori Parrish "suggests" that homesteaded lessors planning such extended rentals notify her office and elicit her blessing to avoid a permanent residency challenge to the exemption.

On January 16, 2013, Senator John Thrasher, R-St. Augustine, filed Senate Bill 342 (SB 342), entitled "Rental of Homestead Property." Two days later, Representative Charles David "Dave" Hood, Jr., R-Daytona Beach, filed identical House Bill 279 (HB 279). The bills propose limiting the period of time that a property can be rented without losing its homestead status to 30 days in a calendar year. While it would remove the "two-year rule" for homes rented fewer than 30 days per year, homes rented more than 30 days per year could risk losing their exemption, depending on the magnanimity of the local Property Appraiser.

The bill was conceived by St. Johns County Tax Collector Dennis W. Hollingsworth, who claims that the time restriction is a safeguard against abusing the homestead law. He commented "If we don't put a number of days on it, then we're opening a real can of worms. There's no rhyme or reason in the law." While shielding tax exemptions from abuse seems a reasonable legislative objective, the 30-day leases approved in the legislation meet the needs of few tenants and fewer land-

lords. As it turns out, Hollingsworth is less concerned with protecting tax revenues than bartering patronage for some local homeowners.

Ponte Vedra Beach, south of Jacksonville in St. Johns County, is home to the headquarters of the PGA Tour and hosts The Players Championship. Golf enthusiasts, links groupies and media personnel who annually swarm the renowned TPC Sawgrass Golf Courses during The Players Championship and other PGA events need temporary room and board. Bill sponsor Thrasher said that Hollingsworth asked him to back the legislation because local homeowners who want to annually rent space to PGA golfers or paparazzi covering PGA events feared that St. Johns Property Appraiser Sharon Outland would shred their Homestead Exemptions. Seizing an opportunity to share some local media glow, Hollingsworth and Thrasher cooked up this turkey.

While virtually useless for the purposes that most owners (or tenants) lease a property, the 30-day lease terms are perfect for siphoning a few bucks from the golf tournament. While facilitating lucrative month-long rentals for a handful of St. Johns homeowners, enacting this local patronage pork trough would threaten tens of thousands of leases between unit owners and their annual or seasonal tenants in community associations across the State.

Property Appraisers, the natural beneficiaries of exemption restrictions, oppose the bill as geocentric and unenforceable. Pat Poston, director of exemption services for Palm Beach County Property Appraiser Gary Nikalits, said the bill would adversely affect seasonal rentals in Wellington for polo season and disrupt winter rentals throughout the County. Leery of unproductively wasting limited enforcement resources, Poston said "I have cases where I know the person is renting the property, but I can't get a hold of any leases and an advertisement on a website isn't enough." In short, Poston objects to specifically tailoring a statewide exemption to facilitate tip money for a handful of St. Johns homeowners at the expense of homeowners in every other jurisdiction.

Realtors and tourism officials are concerned about the legislation's impact on the housing market. Incrementally stripping tens of thousands of properties from an already overpriced and undersupplied rental market will skyrocket leasing costs for tenants. Since a healthy percentage of the lost rentals currently accommodate seasonal vacationers, visiting tourists may turn to destinations with more reasonable housing options, crimping the State's economic recovery. Far more damaging is the direct impact it will have on the tens of thousands of association homeowners who purchased their units with the understanding that seasonal rentals could help offset mortgage and association expenses.

Since this bill would defunct rental rights of homesteaded unit owners, threaten critical tourist revenues, intensify shortages in the statewide rental market and disrupt annual and seasonal rentals in every Florida community – solely to help a few dozen St. Johns residents sponge off a golf tournament; Thrasher's collaboration with Hollingsworth is a prime candidate for the legislative "WTF" award. Nevertheless, since Thrasher, a recent Chairman of the Republican Party of Florida, is a close ally of Senate President Don Gaetz, no one should be surprised when the bill is enrolled and sent to the Governor's desk.

Continued on page 13



## The "Safe Harbor" Bad Penny

A legislative enigma closer to home ushers from a bill filed by our own District 93 Statehouse Representative George Moraitis - House Bill 1339 (HB 1339). Those of you who followed last year's ill-fated Omnibus Association bill (HB 319) through to its demise should recall that it enjoyed overwhelming support from community associations across the State - until it mysteriously sprouted a poison provision that sharply limited lender liability for association obligations. In the zero-sum world of association budgets, every expense dodged by a foreclosing bank must be assessed to unit owners. The enigmatic pro-bank provision suddenly submerged the bill in a controversy from which it never recovered.

A 13-member Foreclosure Study Commission empaneled by the Legislature in 1992 concluded that mortgage lenders should be partially responsible at foreclosure for unpaid condominium assessments. When lenders grudgingly consented to assume a token financial obligation for association units repossessed in foreclosure, Florida lawmakers rewarded this gesture by capping their minimal statutory exposure. Known as the "Safe Harbor" clause, it described the lender obligation as "the lesser of 6 months' past due assessments or 1% of the original mortgage debt" for units immersed in foreclosure.

Upon learning that they could legally sidestep this nominal statutory obligation by repeatedly postponing the final stage of the foreclosure process - the assumption of title - banks began systematically defaulting on their statutory debts, forcing each association's members to subsidize the resulting budgetary shortfalls. 18 Years after agreeing to an obligation they never fulfilled, a 2010 bill modestly increased that obligation from 6 months' past due assessments to 12 months - or 1% of the original mortgage debt if it was less costly, a seemingly futile gesture given the industry-wide predisposition of lenders to simply ignore the debt. When exploding numbers of lender-controlled non-contributing units brought common interest communities to the brink of bankruptcy, they sought relief in Court.

Although most judges cited the Safe Harbor clause when dismissing actions by condominium associations against lender defendants, a growing number of courts upheld an association's right to collect fees and costs not addressed in the 1992 statutory language, awarding associations interest, administrative late fees, collection costs and reasonable attorney fees incident to collection. Although Moraitis contended that his provision merely echoed existing law, in fact, it specifically precluded associations from recovering these incremental expenses never mentioned in the Statute.

Admonishing that Moraitis' bill was not simply a confirmation of a law that was already on the books, association attorney Michael Bender (Kaye Bender Rembaum), a former President of the Southeast Florida Chapter of the Community Associations Institute (CAI) who still serves on its governing board, "Mortgage Terminator" attorney Ben Solomon (Association Law Group) and other association advocates pointed out that Moraitis' bill also sought to financially hamstring Cooperatives, which were never party to the Safe Harbor cap. Associations across the state that launched a campaign to either modify or kill the legislation were willing to sacrifice its many useful provisions to quash the onerous lender protections. Convinced that his bill's momentum would overcome the lost support, Moraitis stubbornly ignored the maelstrom - but Senate President Mike Haridopolos did not. Responding to his powerful Space Coast association constituency, Haridopolos stranded former Senator Elyn Bogdanoff's companion bill (Senate Bill 680) on the calendar, functionally dooming both bills.

Exercising damage control with his disappointed association constituents, Moraitis promised to file the Omnibus Association bill again this year. Having learned from last year's humiliating debacle, he filed House Bill 73 on December 28, 2012, reviving a majority of the favorable provisions that crashed and burned during the prior session while wisely excluding the toxic Safe Harbor language.

Having reacquired the support of thousands of associations statewide, his new association bill was found favorable in the Civil Justice Subcommittee and scheduled for vetting by the House Judiciary Committee. Its companion bill in the other chamber, Senate Bill 436 (SB 436) filed by Senator Thad Altman (R-Melbourne), was also found favorable by the Senate Committee on Regulated Industries and forwarded to the Senate Judiciary

Continued on page 14



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Committee for review. With his bill once again being escorted through the committee process by Donna Berger's Community Advocacy Network (CAN), the Community Association Leadership Lobby (CALL - Becker & Poliakoff's advocacy plumbing) and CAI, Moraitis unleashed a surprise that left most of his association supporters stunned. He filed a separate bill on March 4 containing the pro-bank safe harbor language.

To quell the suspicions of associations that were again shocked and angered by his inexplicable sponsorship of a thinly veiled anti-association bill, Moraitis added some modestly positive sweeteners for Condominiums, Cooperatives and Homeowner Associations. The bill empowers associations to enter seemingly abandoned units to assess their condition. If deemed necessary, it also authorizes association boards to effect repairs and perform other maintenance measures to limit deterioration in the abandoned unit and adjoining common elements.

As indicated in the House of Representatives Staff Analysis for HB 1339, "Current law grants a condominium association the irrevocable right of access to each unit during reasonable hours to maintain, repair, or replace any common elements or any portion of a unit to be maintained by the association pursuant to the declaration. The association also may access the unit to prevent damage to the common elements or a unit." Evidently, associations already enjoy the statutory benefits offered in Moraitis' bill. The Staff Analysis acknowledges Moraitis' attempt to duplicate these rights in his bill by diplomatically stating "The bill amends s. 718.111(5), F.S., to strengthen the association's power to access a unit..." An association would only benefit from Moraitis' statutory redundancy in the unlikely event that its governing documents prohibited the association from entering a unit under any circumstances - even to protect common elements, limited common elements and/or adjacent units.

Along with stripping away the remaining protections from Condominium Associations ripped off by lenders, HB 1339 would similarly eviscerate the rights of Cooperatives. While attempting to saddle Cooperatives with the meager Safe Harbor liability limits (which currently burden Condominiums and Homeowner Associations), the bill provides that foreclosing lenders are "not liable for any interest, administrative late fee, reasonable cost or attorney fee, or any other fee, cost or expense that came due" to the association. Under current law, Cooperatives can charge lenders for association assessments and any fees, costs or expenses due and unlike Condominiums, subsequent legal actions brought against lenders to remedy non-payment are never blocked by the Safe Harbor liability limitations. If this bill passes, lenders would be beneficiaries of the same subsidies they extort from Condominium budgets.

Moraitis is an enigma. After sponsoring the legislative session's primary association bill, he waited for two months before springing this hop toad from his backpack. When Sandy shredded A1A and the beach, Moraitis pushed FDOT to fast-track a recovery plan - hours before Mayor Jack Seiler and City Manager Lee Feldman asked for his assistance. To be fair, it's certainly possible that this legislative schizophrenia is a consequence of the political horse trading that often enables bills to survive hostile vetting committees. On the bright side, by late March, there was no companion bill in the Senate, which supports the prospect that the legislation was filed to cover a political marker. Also, dumping the toxic provision into a separate vehicle should protect HB 73 from association blowback. Whatever his motives, this second legislative frontrunner for "WTF" recognition richly deserves a replay of the fate suffered by last year's "Safe Harbor" Easter surprise - death on the calendar. •



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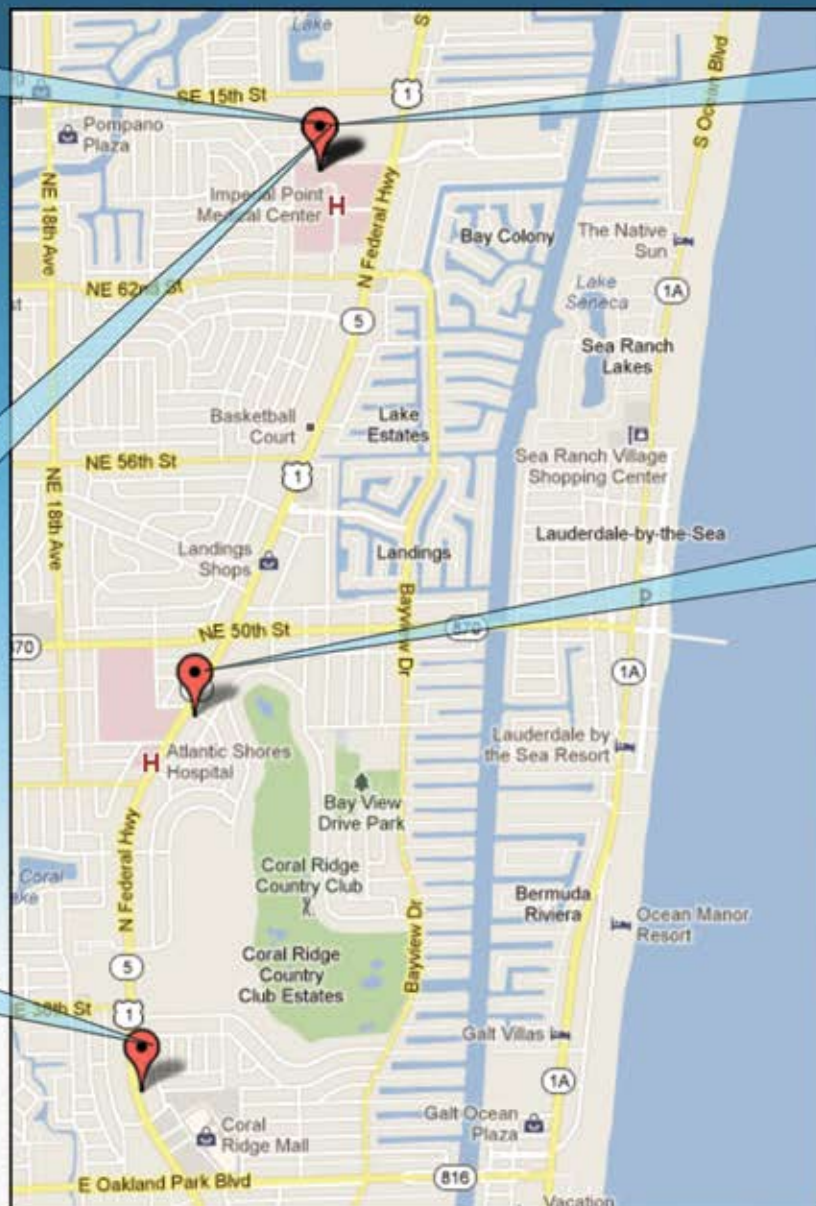
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