

City of Coral Gables
Local Planning Agency (LPA)/Planning and Zoning Board Meeting
Wednesday, January 8, 2014
Coral Gables City Commission Chambers
405 Biltmore Way, Coral Gables, Florida

MEMBERS	J9	F12	M12	A9	M14	J11	J9	A13	S10	O8	APPOINTMENT
	'14	'14	'14	'14	'14	'14	'14	'14	'14	'14	
Eibi Aizenstat - Chair	P										City Manager Patrick Salerno
Marshall Bellin	P										Commissioner Vince Lago
Jeffrey Flanagan - Vice Chair	P										Commissioner Pat Keon
Julio Grabiell	P										Mayor Jim Cason
Maria A. Menendez	P										VM William H. Kerdyk, Jr.
Alberto Perez	P										Commissioner Frank C. Quesada

P = Present
E = Excused
C = Meeting Cancelled

City Staff and Consultants:

Ramon Trias, Planning and Zoning Director
Walter Carlson, Asst. City Planner
Jill Menendez, Adm. Assistant
Craig E. Leen, City Attorney
Jane Tompkins, Development Services Director
Charles Wu, Asst. Development Services Director
Cindy Birdsill, Economic Sustainability Director

Court Reporter:

Joan Bailey

Attachments: 01 09 13 Planning and Zoning Board Meeting Verbatim Minutes

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CITY OF CORAL GABLES
LOCAL PLANNING AGENCY (LPA)/
PLANNING AND ZONING BOARD MEETING
VERBATIM TRANSCRIPT
CORAL GABLES CITY HALL
405 BILTMORE WAY, COMMISSION CHAMBERS
CORAL GABLES, FLORIDA
WEDNESDAY, JANUARY 8, 2014, COMMENCING AT 6:03 P.M.

Board Members Present:

- Eibi Aizenstat, Chairperson
- Jeffrey Flanagan, Vice-Chairperson
- Marshall Bellin
- Julio Grabiell
- Maria Alberro Menendez
- Alberto Perez

City Staff and Consultants:

- Ramon Trias, Planning & Zoning Director
- Walter Carlson, Assistant City Planner
- Craig E. Leen, City Attorney
- Jane Tompkins, Development Services Director
- Charles Wu, Assistant Development Services Director
- Cindy Birdsill, Economic Sustainability Director
- Jill Menendez, Planning Administrative Assistant

Others Participating in the Proceedings:

- Anthony Bello
- Gonzalo Sanabria

1 THEREUPON:

2 The following proceedings were had:

3 CHAIRMAN AIZENSTAT: Okay, if everybody is
4 ready, please call the roll.

5 MS. MENENDEZ: Marshall Bellin?

6 MR. BELLIN: Here.

7 MS. MENENDEZ: Jeff Flanagan?

8 MR. FLANAGAN: Here.

9 MS. MENENDEZ: Julio Grabiell?

10 MR. GRABIEL: Here.

11 MS. MENENDEZ: Maria Menendez?

12 MS. ALBERRO MENENDEZ: Here.

13 MS. MENENDEZ: Alberto Perez?

14 MR. PEREZ: Here.

15 MS. MENENDEZ: Eibi Aizenstat?

16 CHAIRMAN AIZENSTAT: Here.

17 First off, I'd like to wish everybody a
18 healthy and a Happy New Year, and welcome back.

19 As we had left off at the last meeting, we
20 were going to have both candidates come up
21 before us and speak to us a little bit. I
22 thought maybe about, if possible, a five-minute
23 presentation of each or so and tell us a little
24 bit about yourself would be great, and if
25 everybody is okay with that --

1 MR. BELLIN: Yes.

2 MS. ALBERRO MENENDEZ: Yes.

3 CHAIRMAN AIZENSTAT: -- let's get started,
4 and then afterwards we'll go ahead and call for
5 the approval of the minutes, okay?

6 We have two candidates. One is Anthony
7 Bello, and Mr. Gonzalo Sanabria. Welcome,
8 both. Thank you.

9 What I thought I would do is, I would just
10 call each of you in alphabetical order, if
11 that's okay.

12 Mr. Bello, Anthony, if you don't mind
13 coming up and talking to us and introducing
14 yourself and maybe telling us a little bit
15 about yourself, that would be great.

16 MR. BELLO: Thank you, Mr. Chairman and
17 Members of the Board, for the honor and
18 privilege of coming before you as a possible
19 member of your Board.

20 My name is Tony Bello. I've resided in
21 Coral Gables for all but three years since I
22 was five years old, and I went to Coral Gables
23 Elementary, went to Ponce Junior High, Gables
24 High -- where I met my wife of 35 years,
25 Michelle, and she's as native as they get. She

1 was born at Doctors Hospital.

2 I most recently served on the Board of
3 Adjustment for Coral Gables, where I termed out
4 after eight years, and I got an interesting
5 perspective on the requests of the public, of
6 the residents, and as it interfaces with our
7 City government and the needs and the wants of
8 those residents, in light of trying to maintain
9 the integrity and the tradition that makes
10 Coral Gables the City Special that it is.

11 I'm the president and CEO of Direct Plus.
12 We are a cable TV and Internet provider for the
13 multi-family space. Our office is here at
14 Douglas Entrance, and I've been doing that for
15 the last seven years.

16 Prior to that, I've been in leadership
17 roles, including an expat -- patriate position,
18 in Madrid, Spain, with Baby Bell US West.

19 I also spent 10 years with Metropolitan
20 Dade County, Metro-Dade back then, starting as
21 an internal auditor and rising to a position in
22 the County Manager's Office.

23 I think I bring a unique perspective, not
24 only my history in this City, but my
25 perspective from working both in government and

1 in the private sector.

2 I hope to join your Board and would very
3 much enjoy serving on the Board. Thank you.

4 CHAIRMAN AIZENSTAT: Thank you.

5 Does anybody have any questions that they
6 would maybe like to ask of Mr. Bello?

7 Thank you.

8 And he is nominated by our Board Member,
9 Alberto Perez.

10 MR. PEREZ: That's correct.

11 CHAIRMAN AIZENSTAT: Next we have with us
12 Mr. Gonzalo Sanabria.

13 Welcome.

14 MR. SANABRIA: Thank you. Thank you,
15 Mr. Chairman. And having Mr. Tony Bello as a
16 choice, I think, it's a great choice, so you
17 have two great candidates here to serve on the
18 Board.

19 I'd just like to speak a little bit about
20 my own experiences. Just two days ago, I was
21 asked to contribute to an article in Miami
22 Today about the trend of retail and development
23 along Brickell, Downtown, and the Midtown
24 areas, and I studied everything from Pinecrest
25 north, and I've noticed that there's a trend or

1 a sucking -- it's actually sucking away, in a
2 vacuum, some retail stores from the South Dixie
3 area corridor and bringing them to Downtown.
4 And it's not like the old days, where it used
5 to be that, okay, we'll just open a new store.
6 It's a consolidation move. You'll see
7 Starbucks now closing up one store, moving to
8 another, and the trend is real and it's
9 affecting the economies of this area. So
10 you've got to be very careful about what is
11 going on in those corridors, because it affects
12 us here in the City, and the future of Miracle
13 Mile as well as Merrick Park.

14 The other thing I'd like to talk about is
15 very short, is that there's some really
16 exciting new things happening along Merrick
17 Park Plaza. Surrounding properties are now
18 earmarked for new projects, with leading
19 developers like Ugo Colombo, that will make the
20 commercial district in that area a very
21 significant and fresh hub for mixed use, and it
22 will contain three facets of the economy. It
23 will contain residential, it will contain
24 office, and retail. And while I'm all for
25 that, I'm against any infringement of these

1 developments on the residential area that abut
2 these zones. I think that quality of life of
3 residential has got to be a balance between the
4 Coral Gables quality of life as a resident and
5 earmarking development in Coral Gables.

6 The other thing I want to tell you is that
7 in the 19 years that I've served on the
8 planning board, I became a team member, and I
9 worked on a collegial basis with everybody on
10 the board. In fact, I lasted for 19 years on
11 that board, and I was named chairman for five
12 years.

13 So, in summary, it will be a pleasure and
14 an honor to serve alongside you, and I hope I
15 have your consideration.

16 Thank you, Mr. Chairman.

17 CHAIRMAN AIZENSTAT: Thank you very much
18 for coming.

19 Any questions?

20 MS. ALBERRO MENENDEZ: I have a question
21 for both candidates.

22 Mr. Sanabria, why this Board? Why do you
23 want to be on this Board?

24 MR. SANABRIA: Well, I have a history of
25 serving, for my entire life. I've served Coral

1 Gables in different aspects. I was the
2 chairman of the Doctors Hospital Foundation,
3 and we raised monies to expand the emergency
4 center. I was also on the Historic Board here,
5 as you know. And I've been serving on other
6 boards outside of the City. So I feel that the
7 City, at this time, needs to be focused on some
8 new developing emphasis of where are we going
9 to go, what is going to be our identity for the
10 next 50 years. I'm not going to last 50 years,
11 I know that, but I'd like to contribute to my
12 knowledge that I have about codes and zoning
13 and land use, to perhaps put a little bit of
14 grain of sand in helping keep this together,
15 the way we want to keep it together.

16 MS. ALBERRO MENENDEZ: Thank you.

17 MR. SANABRIA: Uh-huh.

18 MS. ALBERRO MENENDEZ: Mr. Bello?

19 MR. BELLO: Yeah, I think, like
20 Mr. Sanabria, I, too, have always served and I
21 think that this particular Board is probably
22 one of the most important, as far as
23 maintaining the quality that we have in this
24 City, maintaining George Merrick's vision for
25 this City, and I think that I also want to lend

1 my common sense and my practicality to the
2 process, because I think a lot of times we get
3 stuck in rules and so forth, and I think that
4 we have to have an open mind and have the
5 ability to better serve the residents.

6 MS. ALBERRO MENENDEZ: Thank you.

7 CHAIRMAN AIZENSTAT: Any other questions,
8 anybody else?

9 Marshall?

10 MR. BELLIN: No.

11 MR. PEREZ: I'm good.

12 MR. FLANAGAN: No.

13 CHAIRMAN AIZENSTAT: Everybody's good?

14 At this time, maybe a good way to do it, I
15 would think, would be to do a roll call and
16 just maybe each person go ahead and say who
17 they would like, unless there's a different
18 opinion among the Board.

19 MS. ALBERRO MENENDEZ: That's fine.

20 MR. GRABIEL: Start it up.

21 MS. MENENDEZ: Julio Grabiell?

22 MR. GRABIEL: I vote for Mr. Sanabria.

23 MS. MENENDEZ: Maria Menendez?

24 MS. ALBERRO MENENDEZ: Mr. Bello.

25 MS. MENENDEZ: Alberto Perez?

1 MR. PEREZ: Mr. Bello.

2 MS. MENENDEZ: Marshall Bellin?

3 MR. BELLIN: Mr. Bello.

4 MS. MENENDEZ: Jeff Flanagan?

5 MR. FLANAGAN: Mr. Bello.

6 MS. MENENDEZ: Eibi Aizenstat?

7 CHAIRMAN AIZENSTAT: Mr. Sanabria.

8 Okay. Thank you very much. I appreciate
9 both of you coming. I take it that the next
10 step is going to be for the Commission, to get
11 approval from the Commission, and then
12 hopefully we welcome you on our Board.

13 MR. BELLO: Thank you very much. I look
14 forward to working with all of you.

15 CHAIRMAN AIZENSTAT: Thank you very much.
16 And thank you.

17 MR. LEEN: Mr. Chair?

18 CHAIRMAN AIZENSTAT: Yes.

19 MR. LEEN: Just as a formal matter, I would
20 recommend a motion to nominate Mr. Bello.

21 CHAIRMAN AIZENSTAT: That's a great idea.

22 Is there a motion to nominate Mr. Bello to
23 serve on the Board?

24 MR. BELLIN: Yes, I'd like to make a motion
25 to nominate Mr. Bello.

1 MR. GRABIEL: I'll second it.

2 CHAIRMAN AIZENSTAT: We have a first and a
3 second. Any discussion? No?

4 Having heard none, please call the roll.

5 MS. MENENDEZ: Maria Menendez?

6 MS. ALBERRO MENENDEZ: Yes.

7 MS. MENENDEZ: Alberto Perez?

8 MR. PEREZ: Yes.

9 MS. MENENDEZ: Marshall Bellin?

10 MR. BELLIN: Yes.

11 MS. MENENDEZ: Jeff Flanagan?

12 MR. FLANAGAN: Yes.

13 MS. MENENDEZ: Julio Grabiell?

14 MR. GRABIEL: Yes.

15 MS. MENENDEZ: Eibi Aizenstat?

16 CHAIRMAN AIZENSTAT: Yes.

17 Thank you. Thank you very much. This was
18 actually a unique experience, at least from the
19 time that I have known. It was actually
20 refreshing. It was nice to hear both
21 candidates and let us hear a little bit about
22 themselves. It was actually very nice.

23 Moving on, we have the approval of the
24 minutes.

25 MR. FLANAGAN: So moved.

1 CHAIRMAN AIZENSTAT: Moved. Is there a
2 second?

3 MR. GRABIEL: Second.

4 CHAIRMAN AIZENSTAT: We have a first and
5 second. Any discussion?

6 Having none, please call the roll.

7 MS. MENENDEZ: Marshall Bellin?

8 MR. BELLIN: Yes.

9 MS. MENENDEZ: Jeff Flanagan?

10 MR. FLANAGAN: Yes.

11 MS. MENENDEZ: Julio Grabiell?

12 MR. GRABIEL: Yes.

13 MS. MENENDEZ: Maria Menendez?

14 MS. ALBERRO MENENDEZ: Yes.

15 MS. MENENDEZ: Alberto Perez?

16 MR. PEREZ: Yes.

17 MS. MENENDEZ: Eibi Aizenstat?

18 CHAIRMAN AIZENSTAT: Yes.

19 MR. FLANAGAN: Can I ask a question?

20 CHAIRMAN AIZENSTAT: Yes, go ahead. Do you
21 have a question?

22 MR. FLANAGAN: No, sorry. We'll talk about
23 it.

24 CHAIRMAN AIZENSTAT: All right. The next
25 item on the agenda is an Ordinance of the City

1 Commission of Coral Gables, Florida, providing
2 for text amendments to the City of Coral Gables
3 Official Zoning Code, Article 3, "Development
4 Review," Division 20, "Art in Public Places,"
5 amending the Art in Public Places Code
6 provisions, and Article 8, "Definitions,"
7 amending and creating new definitions; and
8 providing for severability repealer,
9 codification, and an effective date.

10 This item is actually continued from a
11 meeting that we had on February 13th, 2013.

12 MR. TRIAS: Mr. Chairman, Cindy Birdsill,
13 the Director of Economic Sustainability, will
14 make a presentation. She is the administrator
15 of this program.

16 CHAIRMAN AIZENSTAT: That's perfect.

17 Thank you. Welcome.

18 MS. BIRDSILL: Good evening.

19 CHAIRMAN AIZENSTAT: Good evening. Happy
20 New Year.

21 MS. BIRDSILL: Happy New Year to you all.

22 As mentioned, this is a continuation from
23 your meeting in February.

24 CHAIRMAN AIZENSTAT: Could you, if you
25 don't mind, just as a formality, just state

1 your name and your position in the City.

2 MS. BIRDSILL: Oh, sure. I'm Cindy
3 Birdsill, the Economic Sustainability Director
4 for the City, and just to give some background
5 for the people who were not here at that
6 meeting, in 2010 the City had hired some art
7 consultants, VIA Partnership and Todd Bressi,
8 to help us put together a five-year Master Plan
9 and guidelines for our Art in Public Places
10 Program. At that time, they also took a look
11 at the ordinance that we had adopted and gave
12 us suggestions about how to make it better.
13 The way it flows, a lot of the phrasing, a lot
14 of the -- having the definitions all be in the
15 same area, are a lot of the changes that, even
16 though it looks numerous, a lot of them are
17 clarifications in what you have to review.

18 The changes have been presented to the
19 Cultural Development Board and the Historic
20 Preservation Board. They have both voted
21 unanimously to recommend the changes. Some of
22 the -- In addition to the clarifications and
23 the sort of better organization, we expanded
24 the definition of historic art. That was at
25 the request of the Historic Department. They

1 felt that they'd like to be able to use their
2 funds in a broader range, to include things
3 that were of the period of Merrick, not just
4 paintings and that sort of thing.

5 We also added a right for individuals to
6 donate to our Art in Public Places Fund, or to
7 donate art, even if they were not required
8 under the ordinance to do so. So that added
9 some flexibility.

10 We changed how we are administering the Art
11 Historic Fund. The way it was written, any
12 public project that the City did would have to
13 pay one percent into the Historic Fund. This
14 was extremely difficult to administrate for the
15 Public Works Department, because it meant
16 everything they did had to be budgeted with an
17 additional one percent. So we've put in a
18 requirement that the project has to be at least
19 \$100,000 before they'd have to do that. The
20 Historic Board did agree to that.

21 We also reviewed the ordinance with outside
22 counsel and with the City Attorney's Office,
23 because there is a County ordinance that
24 requires for any new public building to put in
25 one and a half percent into art for that

1 building, and so they added some clarifications
2 as to how the two ordinances would work
3 together.

4 And then, from our prior meeting in
5 February, you have in your materials the
6 changes since we had our discussion and since,
7 also, we've had a couple more Art in Public
8 Places projects that have gone through the
9 process. The Gables Ponce went through, and
10 Gables Station also went through the process,
11 and we addressed the application of hard and
12 soft costs to the definition of construction
13 cost. We had a discussion at the last meeting
14 about that, and what we have interpreted -- and
15 the City Attorney's Office has agreed that
16 based on the current ordinance, this is a
17 proper interpretation, as well -- that soft
18 costs will just be architectural and
19 engineering fees, and that can be presented
20 with, you know, the contract amount of what
21 they're paying, but it will not include
22 financing, it won't be carrying costs, it won't
23 be legal costs, it won't be marketing, any of
24 those other soft costs. So we're just going to
25 do the ones that are very tangibly evidenced.

1 And in the definition of Art in Public
2 Places, we've also made it clear, I think, that
3 the art must be publicly accessible or
4 integrated into the project. Some of the new
5 language that we added, when you're integrating
6 art into a project, that there has to be --
7 that the value of the art can only be the
8 marginal material costs. So, for example, if
9 you're going to do a plaza anyway, and you
10 have, you know, costs as the cost of the plaza,
11 and then you decide to have an artist design
12 the plaza, it's the additional cost of having
13 them do it and their materials over the cost
14 that you would have spent, anyway, so -- and
15 the art consultants said that that was a very
16 important thing. They gave us the language for
17 that. They said that what you don't want is
18 for developers to try to cost-engineer and, you
19 know, try to just do the art for something that
20 was already in the budget. We want this to be
21 a value-add to the community.

22 So those are the basic changes, and if
23 anybody has any questions, I'd be happy to
24 answer them.

25 CHAIRMAN AIZENSTAT: Okay. Let me just ask

1 you something, just so I understand from what
2 you said. If the project is under a hundred
3 thousand, there's no contribution whatsoever?

4 MS. BIRDSILL: That's for a public project.

5 CHAIRMAN AIZENSTAT: For a public project.

6 MS. BIRDSILL: So only if it's a City
7 project. If it's a private development
8 project, the way the ordinance works, it has to
9 be a project over a million dollars and it has
10 to be a commercial project.

11 CHAIRMAN AIZENSTAT: Okay, and the soft
12 costs, you're only doing architectural and
13 engineering? You're not doing any permits or
14 any --

15 MS. BIRDSILL: No.

16 CHAIRMAN AIZENSTAT: -- impact fees?

17 MS. BIRDSILL: No. Those would not be in
18 the calculations.

19 CHAIRMAN AIZENSTAT: Okay.

20 Any questions?

21 MR. BELLIN: Yeah, I have a couple of
22 questions.

23 MS. BIRDSILL: Yes.

24 CHAIRMAN AIZENSTAT: Yes, Marshall.

25 MR. BELLIN: The Art in Public Places fee,

1 it's not really a fee. The developer has to
2 provide a piece of artwork that's approved.

3 MS. BIRDSILL: If they choose to do that,
4 yes.

5 MR. BELLIN: Yeah. They can do it either
6 way.

7 MS. BIRDSILL: Right, right.

8 MR. BELLIN: And that's based on a
9 building -- What if the building is phased,
10 half the building is built, and the rest is
11 abandoned, it's never finished? The perfect
12 example is the City Hall. It was started and,
13 you know, everything is buried out in the
14 parking lot. What happens when that occurs?

15 MS. BIRDSILL: Well, the timing of it is
16 that the fee has to be paid when you pull the
17 building permit. So, if they pull the building
18 permit and they choose to pay the fee, they've
19 paid it. And when they come in for the second
20 phase for that building permit, they would pay
21 the fee on that portion of it, as well. If
22 they have pulled the building permit and they
23 don't go forward, they do not get the money
24 back. If they have chosen -- and that's the
25 same with all permitting fees. You don't get

1 the money back if you don't go forward after
2 you pull the permit.

3 MR. BELLIN: No, just --

4 MS. ALBERRO MENENDEZ: No.

5 MS. BIRDSILL: Isn't that correct? That
6 was my understanding.

7 MS. TOMPKINS: If work hasn't started, they
8 can get a partial refund.

9 MS. ALBERRO MENENDEZ: Yes.

10 MS. BIRDSILL: Okay.

11 CHAIRMAN AIZENSTAT: Say that again,
12 please. If you could come up. Thanks.

13 MS. TOMPKINS: Good evening. Jane
14 Tompkins, Development Services Director.

15 If I understand the question correctly,
16 it's about building permit fees and refunding
17 them. If the work has not started, they can
18 get a partial refund of those building fees.
19 There are some charges included in the invoice
20 for a building permit that cannot be refunded.
21 For instance, we are collecting fees that are
22 passed on to the County and the State. We
23 can't refund those.

24 CHAIRMAN AIZENSTAT: What if --

25 MS. TOMPKINS: But there's a -- I believe

1 it's 70 percent of the building permit fee can
2 be refunded if the construction is not started.

3 CHAIRMAN AIZENSTAT: About 70 percent?

4 MS. TOMPKINS: I believe that's the number.

5 CHAIRMAN AIZENSTAT: And the reason is, if
6 I understand correctly, that you're not
7 refunding an advanced part of the other one is
8 because you're advancing that to other
9 agencies?

10 MS. TOMPKINS: Right, and, you know,
11 obviously, we've also incurred costs in getting
12 to the point where the permit was issued, plan
13 reviews, et cetera.

14 CHAIRMAN AIZENSTAT: Thank you.

15 MR. LEEN: You know, as a general matter,
16 the law -- Once there's been a voluntary
17 payment of a fee, the law does not require it
18 to be returned. As a matter of policy, though,
19 the City can do that, and it sounds like the
20 City does, for certain equitable reasons. But
21 it's not legally required.

22 MR. BELLIN: What happens if a building
23 permit is pulled, and because of numerous
24 reasons, maybe you have a soil situation, that
25 there's very poor soil and you've got to

1 reclaim the soil -- That could add
2 substantially to the cost of the construction.

3 MS. BIRDSILL: Uh-huh.

4 MR. BELLIN: What happens if that should --
5 or, in the other direction, what happens if you
6 designed a building and it's on piles and it
7 turns out that you don't need piles, so --

8 MS. BIRDSILL: Yeah, my understanding is
9 that it's determined at the time the building
10 permit is pulled. So, if there is some
11 unforeseen change that doesn't come back
12 through the permitting process, it wouldn't
13 impact the fee.

14 CHAIRMAN AIZENSTAT: So the fee is
15 determined at the time the building permit is
16 pulled?

17 MS. BIRDSILL: Permit is pulled.

18 CHAIRMAN AIZENSTAT: Okay.

19 MR. BELLIN: And that's set in stone,
20 so --

21 MS. BIRDSILL: Well, if somebody is trying
22 to get around it, then we would probably say
23 that it wasn't in good faith and attack it that
24 way, but if there's an unforeseen problem like
25 you're saying, it wouldn't come back as an

1 adjustment.

2 CHAIRMAN AIZENSTAT: That would be more of
3 a City Attorney issue, if somebody was trying
4 to do something like that; am I correct?

5 MS. BIRDSILL: Right.

6 MR. LEEN: Say that again? To do what?

7 MS. BIRDSILL: If somebody were
8 misrepresenting the amount of their
9 construction.

10 MR. LEEN: Oh, yes.

11 MS. ALBERRO MENENDEZ: Like fraud?

12 MR. LEEN: If there was some form of fraud,
13 we would assert the ability to seek the
14 remaining amount.

15 CHAIRMAN AIZENSTAT: Okay.

16 MR. LEEN: And we would do so, and we'd
17 probably withhold, maybe, approval of the final
18 inspection, or we might sue them.

19 CHAIRMAN AIZENSTAT: Has the City ever had
20 that issue?

21 MR. LEEN: That issue has never come to me,
22 since I've been here.

23 MS. ALBERRO MENENDEZ: No, I don't think
24 so.

25 MS. BIRDSILL: Not to my knowledge.

1 CHAIRMAN AIZENSTAT: Okay.

2 MR. PEREZ: I have two points of
3 clarification. Number one, this is still tied
4 into ground-up, new construction, correct?

5 MS. BIRDSILL: No. If you do a renovation
6 of a commercial project that's over a million
7 dollars, you would also have to pay, or
8 incorporate art.

9 MR. PEREZ: And it's always been that way,
10 or this is the change you want to -- that
11 you're proposing to make now?

12 MS. BIRDSILL: No, it's always been that
13 way. It's been applied, actually, to interior
14 buildouts of office buildings, as well.

15 MR. PEREZ: And the addition of including
16 soft costs over and above the hard, so -- the
17 addition of architectural and engineering fees,
18 is that solely the cost attributed to
19 architecture, design and engineering of the art
20 piece, if a developer chooses to donate or put
21 the art piece within his building, or is that
22 architectural and engineering fees for the
23 entire project?

24 MS. BIRDSILL: For the entire project, the
25 same as the construction cost.

1 MR. BELLIN: And I have an issue with that,
2 as well. This is all public record, so anybody
3 who wants to see what I charge for
4 architectural fees can go to the public record
5 and see what I've charged somebody to design an
6 office building.

7 MS. BIRDSILL: Right.

8 MR. BELLIN: Which presents a problem, I
9 think, for the professional, because we charge
10 fees based on a whole range of different
11 scenarios, how good the client is, if he's
12 unreasonable, if he pays on time, and I don't
13 want somebody to be able to see what I'm
14 charging this particular client, because if I'm
15 charging somebody else more, he wants to know
16 why, and I don't think it's, you know, his
17 business, really, what we're charging.

18 MS. BIRDSILL: I would assume, and the City
19 Attorney can correct me, that if there were an
20 issue of somebody concerned with that, they
21 could bring the contract in to Staff to view it
22 and then take it away, and it would never
23 become public record.

24 CHAIRMAN AIZENSTAT: But if --

25 MR. LEEN: Well, it's --

1 CHAIRMAN AIZENSTAT: Wouldn't it be
2 determined by the amount that you paid, you
3 would kind of deduce what the fee was?
4 Couldn't you work it backwards?

5 MR. BELLIN: I'm not sure --

6 CHAIRMAN AIZENSTAT: In other words, you're
7 saying as opposed to having the actual
8 contract?

9 MS. BIRDSILL: Yeah, I don't have to have
10 the contract.

11 CHAIRMAN AIZENSTAT: Okay, if you don't
12 have the contract, it's the same as doc stamps;
13 it's X amount of dollars per thousand of the
14 purchase price.

15 MR. BELLIN: Yeah, but architectural fees
16 are not figured that way.

17 CHAIRMAN AIZENSTAT: No, no, I understand,
18 but what I'm saying is, somebody would still
19 know what you're charging, even if you don't
20 have --

21 MS. BIRDSILL: As the total fee, but
22 not the breakout.

23 CHAIRMAN AIZENSTAT: Even if you take away
24 the contract, is what I'm saying.

25 MR. BELLIN: I don't see how they could

1 determine that.

2 CHAIRMAN AIZENSTAT: Okay.

3 MR. LEEN: The general rule of public
4 records is, if you bring it in and we look at
5 it and we base a decision, like the amount,
6 that even if you take it back, you're now the
7 custodian of that record, but it's still a
8 public record at that point.

9 MR. BELLIN: But it's still public record.
10 If somebody wants to see it, they can see it.

11 MR. LEEN: Now, maybe there's a way to do
12 it where they can incorporate it into the cost.
13 Now, you could tell Staff the amount, but I
14 don't know if that's the type of documentation
15 we're going to want.

16 MS. BIRDSILL: Right. I mean, I have asked
17 to see invoices and contracts before.

18 MS. BELLIN: I think it --

19 CHAIRMAN AIZENSTAT: Go ahead.

20 MR. BELLIN: I think that puts the
21 architect on the spot.

22 CHAIRMAN AIZENSTAT: It could.

23 MR. BELLIN: Yeah, it definitely could.

24 CHAIRMAN AIZENSTAT: My only comment about
25 whether you take away the contract or not, or

1 it's public record or it's not, you're only
2 doing architectural and engineering, so it's --
3 Engineering is not as much as the
4 architectural. There's usually a certain
5 percentage of a fee that's associated, I would
6 think, to an engineer and --

7 MR. BELLIN: Well, sometimes engineering is
8 greater than the architectural. Engineering --

9 CHAIRMAN AIZENSTAT: Is that being paid to
10 the architect and the architect pays the
11 engineer, or is it split?

12 MR. BELLIN: It depends on how you write
13 the contract. It can either be the developer
14 hires the architect to do the design and the
15 architectural documents, construction
16 documents, and hires his own structural
17 engineer and his own MEP engineer and his own
18 civil engineer and his own interior designer,
19 so that wouldn't be part of our fee.

20 CHAIRMAN AIZENSTAT: Okay.

21 MR. BELLIN: But the way -- Normally, it's
22 not done that way. Normally, we're responsible
23 for all the engineering.

24 CHAIRMAN AIZENSTAT: And that's why I'm
25 saying, from that you can kind of deduce what

1 the fee is from, sometimes, for some --

2 MR. BELLIN: Well, you know, sometimes guys
3 work on an hourly rate and there's no way to
4 determine that, and the other guy's figure is
5 so much a square foot in a building, or a
6 percentage of the construction cost. Now,
7 maybe the way to do this is take a reasonable
8 percentage of the construction cost and apply
9 that to every building, and if a guy happens to
10 find an architect who will work for free, he's
11 still got to pay that part, that share of --
12 like everybody else.

13 CHAIRMAN AIZENSTAT: How do you
14 determine -- How do you determine and how do
15 you write a definition for that reasonable
16 cost?

17 MR. BELLIN: I think if the building and
18 the hard cost is 3 million dollars, or 10
19 million dollars, maybe a reasonable percentage
20 would be three and a half to four percent,
21 choose a number. So now the architectural fee
22 on a 10 million dollar project is going to be,
23 let's say, \$400,000 or \$350,000, and if he gets
24 it cheaper, he's lucky, and if he pays more --
25 but you know what you're going to get, based on

1 a percentage.

2 MS. BIRDSILL: That's not really my area of
3 expertise, to decide how to determine it.

4 MS. ALBERRO MENENDEZ: Isn't there like a
5 going rate, like for engineering and
6 architectural services, for every project? I
7 know that we seem to be paying anywhere from
8 six to ten or twelve percent at times for
9 engineering and architectural services for any
10 capital project. No?

11 MR. BELLIN: Nowhere near that. Well, I
12 think Julio can probably attest to that fact.
13 If we can get six to ten percent --

14 MS. ALBERRO MENENDEZ: You'd be happy,
15 right?

16 MR. GRABIEL: Yeah, I'd be thrilled with
17 the ten percent. I think, typically, it's
18 always less than eight, you know. It's between
19 five and eight, is your average fee.

20 Now, at the same time, any architect who's
21 working for a public body knows that their fees
22 are public records, so this --

23 CHAIRMAN AIZENSTAT: Can you repeat that
24 statement?

25 MR. GRABIEL: Yeah. If you work for any

1 public body of any kind and you negotiate a fee
2 with that agency or city --

3 CHAIRMAN AIZENSTAT: Right.

4 MR. GRABIEL: -- your fees are public
5 record. So a lot of architects who do work for
6 public agencies know that their fees will be
7 out there.

8 CHAIRMAN AIZENSTAT: Correct. But the
9 issue, I think, that Marshall is bringing, it
10 would be a private client.

11 MR. BELLIN: Yeah.

12 MR. GRABIEL: No, no, I understand.

13 MR. BELLIN: We don't do any public work
14 for a number of reasons, and one of them being
15 that.

16 MR. GRABIEL: Uh-huh.

17 MR. BELLIN: And when it's public work, you
18 pretty much know what the fee is going to be,
19 because it goes out to bid and there are 40
20 guys trying to get the same job and the fee is
21 negotiated, and I understand that, but when you
22 do private work and you're talking about a six
23 to ten percent fee, that's for houses. That's
24 not for large office buildings or, you know,
25 larger buildings. And also it's commercial

1 buildings, and the definition of commercial
2 building is what, is an apartment building?

3 MS. BIRDSILL: Yes.

4 MR. BELLIN: A duplex?

5 MS. BIRDSILL: It would include
6 multi-family. That --

7 MR. BELLIN: A duplex is considered
8 multi-family?

9 MS. BIRDSILL: I don't believe it includes
10 duplexes.

11 CHAIRMAN AIZENSTAT: No, it's four or more,
12 if I'm not mistaken.

13 MS. BIRDSILL: We were talking about that,
14 and the definition of residential, I think, was
15 four or more -- three or more units, I think it
16 is.

17 MR. BELLIN: So three or less?

18 MR. GRABIEL: What if we select the
19 percentage, between five and eight, I think
20 would be a safe bet, but if the developer
21 proves -- can prove to the City that the fee is
22 paid, which means then that the architect does
23 not mind providing that record, that then that
24 can be reduced by that amount. In other words,
25 the standard is, let's say, five percent. If

1 the developer can show and demonstrate that
2 what they've paid the architect and engineers
3 is less than that five percent, then that's --
4 So no more than five, it could be less, if it's
5 proven like that, so --

6 CHAIRMAN AIZENSTAT: But you still have to
7 show something, which would in effect be public
8 record.

9 MR. GRABIEL: Well, if the architect
10 doesn't mind.

11 MR. TRIAS: Yeah, I think that's a very
12 good suggestion, and the discussion is very,
13 very real. What I would recommend as an option
14 is that the only public record be the total
15 amount, and that the Staff gets to review the
16 contracts or invoices as they want, but don't
17 include that into the public record, and that
18 may be a way to deal with this issue, because
19 at the end of the day, the real meaningful
20 number is the total amount, and that's how you
21 calculate the one and a half percent.

22 CHAIRMAN AIZENSTAT: Can you keep that from
23 being a public record?

24 MR. LEEN: You know, the issue is, there's
25 a lot of case law on this, and yeah, we could

1 litigate it, but the problem is that records
2 request is going to come to the architect if we
3 don't have it. They're going to say it's a
4 public record because it was presented to
5 Staff, and frankly, part of the fee is based on
6 that amount, so it really is a matter of public
7 record, in a sense.

8 MR. BELLIN: I think it is.

9 MR. LEEN: So I can't guarantee you that
10 you won't be ordered by a court to give them
11 your numbers.

12 MR. TRIAS: Right, but in terms of the
13 process of the City, perhaps that's one
14 solution, coming up with the total amount and
15 then Staff makes a determination. Cindy
16 certainly can do that very well.

17 MR. LEEN: The other thing you could do,
18 though, is, you could have them swear by
19 affidavit and maybe have the architect sign
20 what the total amount is of the project, and if
21 the architectural costs appear to be outside of
22 a range, the City could ask for additional
23 documentation. At that point, it does become a
24 public record.

25 MR. BELLIN: What you're saying is, the

1 architect by affidavit can attest to the cost
2 of the construction of the building?

3 MR. LEEN: Of the entire project. They
4 would then be, in a sense --

5 MR. BELLIN: But who does he get it from?
6 He gets it from the developer.

7 MR. GRABIEL: True.

8 MR. LEEN: Well, it could be the developer.
9 But, you know, that's normally what's done if
10 you don't want to rely on something; you have
11 it done by sworn statement and then you bring
12 some sort of false claim issue if the person is
13 lying and you're able to determine that at a
14 later date.

15 I can do more research into the public
16 records issue, but the law is not very helpful
17 to developers on this issue, if the issue is
18 ever really pressed by someone who really wants
19 the document. They probably ultimately will
20 have the right to the document.

21 MR. BELLIN: Maybe the way to do it is base
22 the architectural and engineering fees on the
23 square footage of work or something to that
24 effect. Like what happened with the impact
25 fees -- not with impact fees, but it was level

1 one, two and three of renovations, where it
2 used to be based on a dollar amount, and if you
3 exceeded 50 percent of the value, you were in a
4 level three and you had to bring the whole
5 building up to Code. Well, everybody lied
6 about it, because they could fudge the numbers.
7 But if you base it on the square footage of
8 work that's being done, when the people review
9 the plans, it's pretty apparent what we're
10 looking at, and I think anybody can determine
11 if it exceeds 50 percent. Maybe that's the way
12 to do it, I don't know, but I think, you know,
13 this kind of thing with relying on developers
14 to tell architects what the building costs --
15 Remember, we base our fee on a percentage of
16 the construction cost, so we tend not to get
17 the real construction costs.

18 MR. LEEN: I'm not telling you what's the
19 best. I'm just telling you, if you get the
20 specific number, there's a good argument it's a
21 public record, if you get a document, even if
22 Staff doesn't keep it. But the claim will be
23 made against -- This may never happen, by the
24 way, but you're asking, is there a risk? There
25 is.

1 MR. BELLIN: Well, yeah.

2 MR. LEEN: So, you know, the suggestion
3 that was made earlier, that you could use a
4 percentage and then allow someone to show a
5 lower amount, is a way to address that sort of
6 issue. Then the architect will have to make
7 the decision whether they want to make that a
8 matter of public record, or else they just pay
9 the fixed amount.

10 CHAIRMAN AIZENSTAT: Well, it wouldn't be
11 the architect who would have to make that
12 decision. It would be the developer that would
13 come in and say, "Here's my bill."

14 MR. LEEN: It would be the developer, the
15 architect, the client. They would all have to
16 decide that, because ultimately they might have
17 to pay more than they would otherwise pay.

18 MR. BELLIN: Well, it depends, yeah. It
19 depends on what the percentage is. It just
20 seems like there's a better way to do it
21 than --

22 MS. ALBERRO MENENDEZ: You know, I would
23 think that we could -- or not us, but maybe
24 someone can determine a percentage to address
25 the soft costs and just base it on that,

1 because -- and I wouldn't even allow them to
2 demonstrate that they've paid less. I would
3 just keep it as a percentage.

4 MR. BELLIN: You're right.

5 MS. ALBERRO MENENDEZ: To keep it simple,
6 and basically say, "Okay, it's a million dollar
7 project; five percent is the soft costs." I
8 mean, that's what I would suggest.

9 MR. BELLIN: And I think maybe that's a
10 good way to do it, because that way --

11 MS. ALBERRO MENENDEZ: Now, the question is
12 what percentage.

13 CHAIRMAN AIZENSTAT: Well, are there any
14 statistics that are kept anywhere or so forth?

15 MR. BELLIN: For soft costs?

16 CHAIRMAN AIZENSTAT: For soft costs on
17 projects.

18 MR. PEREZ: It varies. It varies by
19 project.

20 CHAIRMAN AIZENSTAT: But it's not -- Let's
21 say if you go and you want to design a project
22 or a property or a house, usually an
23 architect's fee, they're going to say, well,
24 this house or this project is going to cost you
25 either \$250,000 to build or 10 million dollars

1 to build, and I'm going to charge you X, which
2 is based off a percentage of what I think that
3 cost is going to be. So there is no definition
4 for that, there is no statistic for that?

5 MR. BELLIN: Soft costs are a different
6 issue, because soft costs take in a lot of
7 different things, the cost of carrying -- you
8 know.

9 CHAIRMAN AIZENSTAT: Right, but I'm just
10 saying as far as, that's how the architect
11 would base the architect/engineering.

12 MR. BELLIN: It's usually based on the
13 scope of the project, but sometimes you can't
14 do that because you don't know what the scope
15 of the project is, or it's so complicated, like
16 hospitals, where it's hard to really come up
17 with a number. So it's -- I don't know the
18 answer to the question.

19 CHAIRMAN AIZENSTAT: Are there other cities
20 that have taken this form?

21 MS. BIRDSILL: I have not done that
22 research. We could certainly do it. I would
23 point out that the way this is written, it just
24 says that it includes the cost of architectural
25 and engineering fees. It doesn't get into how

1 to administrate it. I don't know if that would
2 be in a different part of the Code, if we were
3 to change that, a fee schedule type portion of
4 the Code.

5 MR. BELLIN: It also says permitting fees.

6 MS. BIRDSILL: Well, I thought we took that
7 out.

8 MR. BELLIN: No, it's in there, and then
9 permitting fees --

10 MS. BIRDSILL: Oh, design. That is
11 actually a typo. That needs to come out.

12 MR. BELLIN: Okay.

13 CHAIRMAN AIZENSTAT: So what you're
14 suggesting is, in the Code, to allow a
15 different body to structure the cost or the
16 percentage, as opposed to having it implemented
17 right now? Is that what you're saying?

18 MS. BIRDSILL: Right. I -- and again,
19 correct me if I'm wrong, but I think that the
20 way fees are administered is a different
21 section of the Code.

22 MR. TRIAS: Yeah.

23 MS. ALBERRO MENENDEZ: But this particular
24 ordinance, though, mentions the fees for the
25 Arts in Public Places, so I don't think that

1 you'd find fees associated with the Arts in
2 Public Places somewhere else, or maybe you do,
3 but I mean, it's specified here. So I would
4 think that -- and there's percentages, also. I
5 would think that it just makes sense, if we are
6 going to go and recommend that a percentage be
7 applied, that it's part of this ordinance. The
8 question is what percent. And we can certainly
9 leave it up to Staff. I don't have a problem
10 with someone doing the research and determining
11 that it's six percent or -- you know, but I
12 personally think, to address the issue of
13 public record, it's probably the most simplest
14 way to do it, is basically to say six percent
15 is the soft costs associated with a
16 construction project. Again, I don't know if
17 six percent is the number.

18 MR. BELLIN: Soft costs mean a lot of
19 different things that we talked about.

20 MS. ALBERRO MENENDEZ: I know, but here
21 it's only referring to engineering and
22 architecture.

23 MR. BELLIN: Right.

24 MS. ALBERRO MENENDEZ: So you're right, it
25 might be four percent. I don't know the

1 percentage, but whatever soft costs here,
2 instead of demonstrating it through invoices,
3 demonstrating it, which I believe it would be
4 very -- I mean, that would be a lot of work for
5 Staff, and then you have to be arguing with
6 them and -- I mean, that's been -- That's my
7 suggestion, that you just put a percentage and
8 basically -- And again, I wouldn't then leave
9 it up to them to demonstrate that it's less. A
10 percentage is a percentage. Sometimes it will
11 be less, sometimes it will be more, but I think
12 we need to be consistent, would be my
13 suggestion, just to simplify it.

14 MR. BELLIN: Right. I think that, to me,
15 that's the simplest and easiest way to do it,
16 is just determine a percentage based on a
17 normal architectural fee, and I can certainly
18 tell you, in our case, what that is. It's
19 between three and a half and four percent for
20 office buildings, condos, things like that.
21 Houses are is a different issue, but they don't
22 pay --

23 MR. GRABIEL: It varies, and five percent
24 seems to me like a nice flat number.

25 CHAIRMAN AIZENSTAT: I was thinking the

1 same thing, if I'm going to go on a percentage
2 balance.

3 MR. GRABIEL: Yeah, and one of the benefits
4 of having --

5 MR. BELLIN: I'll get you to negotiate for
6 us, then.

7 MR. GRABIEL: I think one of the benefits
8 of getting a five -- a flat fee, a number, is
9 that a lot of the fees that an architectural or
10 engineering firm receives happens during the
11 period of construction, which may not be as
12 part of the initial fee.

13 MS. ALBERRO MENENDEZ: True.

14 MR. GRABIEL: And it would be difficult
15 then for City to try to start finding out how
16 much has the developer paid. Typically, that
17 might be additional services, and I don't think
18 the Staff wants to get into --

19 MR. BELLIN: Change orders.

20 MR. GRABIEL: -- change orders and those
21 types of things, just get a straight number --

22 MS. ALBERRO MENENDEZ: Great point.

23 MR. GRABIEL: -- that limits it, and it's
24 going to make it a lot easier for the Staff,
25 the City, and the developer, also.

1 MR. TRIAS: Mr. Chairman, I think, also,
2 this is determined at the building permit
3 phase, so I think we can come up with a number.
4 The number of five or four is a reasonable
5 percentage. If you need more information on
6 that, we can certainly do more research,
7 but what you've discussed is --

8 CHAIRMAN AIZENSTAT: I think you have the
9 idea of what we're discussing about.

10 MR. TRIAS: Yeah.

11 CHAIRMAN AIZENSTAT: And Marshall, you'd be
12 satisfied if it's a percentage of --

13 MR. BELLIN: I think that's a fair way.
14 That way there's nobody trying to, you know,
15 work with the architect, where, "You charge me
16 half and I'll pay you half under the table or
17 give you half some other way," or something
18 like that.

19 MR. TRIAS: Are you comfortable with
20 setting the number right now, or would you like
21 more information?

22 CHAIRMAN AIZENSTAT: Well, I mean, to me,
23 this is something we've been working on since
24 February and I'd like to see if we can move
25 along.

1 MR. TRIAS: A recommendation of five
2 percent is very reasonable.

3 CHAIRMAN AIZENSTAT: Or leave it up to
4 Staff to determine. I mean, I don't know if
5 this body -- We have two architects with us, so
6 they can maybe come up with a suggestion. I
7 know, myself, I could not. Alberto, maybe you
8 can, you know.

9 MR. PEREZ: But, I mean, I would like to
10 actually take it a little step further, because
11 I mean, I don't see an issue in paying a fee on
12 architectural and engineering if, in fact, a
13 developer has chosen to put the Art in Public
14 Places within his building, because having
15 lived it, I mean, there are engineering fees
16 and to an extent architectural fees that go
17 with designing a piece that goes in your
18 building. So I would almost like to see if we
19 could almost explore a two-tier process, where
20 obviously, A, if a developer elects to put into
21 a fund, that's capped at whatever percentage,
22 and then if, in fact, the developer wants to
23 put the piece within his building, that's
24 almost a separate number.

25 MS. BIRDSILL: Well, actually, I think the

1 benefit to choosing to put the art into your
2 building, they will determine what your one
3 percent is, including the hard and soft costs,
4 but you are able to take the cost of your
5 architect and your engineer for the art piece
6 as part of the price of the art, and so that
7 counts in the calculation back of did you meet
8 the one percent. So that somebody who was not
9 incorporating the art would be putting one
10 percent of their construction costs, but none
11 of that would have anything to do with art.

12 MS. ALBERRO MENENDEZ: So you really have
13 an advantage if, in fact, you put it.

14 MR. PEREZ: If you put it within your
15 building.

16 MR. GRABIEL: Um --

17 CHAIRMAN AIZENSTAT: Yes, Julio?

18 MR. GRABIEL: I'm sorry, no, I have another
19 point, so --

20 MR. LEEN: Well, one other thing I can do
21 is, I can conduct some research on whether --
22 although I think it's very likely a court would
23 find it to be a public record, it might be
24 exempt. There could be an argument that it's
25 either proprietary confidential business

1 information, although I don't see a case right
2 here that's cited that applies directly to the
3 rate of an architect, for example, so I'd have
4 to do some research, or it could be a trade
5 secret, although I think trade secret -- it
6 probably doesn't rise to that level. But it's
7 very specifically defined by statute. So there
8 are cases, though, out there, and maybe there's
9 one that's addressed this specific situation.
10 I haven't been asked about it, but I can look
11 into it.

12 MS. ALBERRO MENENDEZ: I think we're
13 leaning towards the percent.

14 MR. LEEN: You like the percent, okay. I
15 just wanted to let you --

16 MS. ALBERRO MENENDEZ: But thank you.

17 MR. LEEN: But I did look at the book and I
18 stand by what I said before. I do think
19 there's some risk there, so the percentage
20 might be the better way to go.

21 CHAIRMAN AIZENSTAT: But I also think that
22 we're going further than I think what your
23 intention was. You're afraid that a client is
24 going to know what you're charging one client
25 versus another or a new client. That client, I

1 don't think is going to come in and sue the
2 City and spend the money to find out --

3 MR. BELLIN: Well, I don't think he needs
4 to do that. I mean, if it's public record, he
5 just asks for public record.

6 MS. ALBERRO MENENDEZ: Right, and you've
7 got to give it to them.

8 MR. BELLIN: And you've got to give it to
9 them.

10 MS. ALBERRO MENENDEZ: That's been my
11 experience.

12 MR. BELLIN: Yeah. But it seems to me that
13 if you take a percentage, it's the percentage
14 and it's figured in the cost of doing business
15 and it's pretty clear. If a guy spends, you
16 know, 10 million dollars on his building, well,
17 he's got three percent that he's got to put
18 towards the architectural fees, it's \$300,000,
19 which is probably a reasonable number if it's a
20 10 million dollar building, or 350,000. And if
21 some guy's going to pay more than that because
22 he wants to hire Frank Gehry, should he
23 really have to -- The guy that's hiring Frank
24 Gehry may have to pay 10 percent or 12 or 15
25 percent architectural fees. Is that fair for

1 him to have to pay the Art in Public Places fee
2 on that fee, because he chooses to use --

3 CHAIRMAN AIZENSTAT: That's a good point.

4 MR. BELLIN: So it just seems to me a
5 percentage, everybody pays it and --

6 MS. ALBERRO MENENDEZ: I agree.

7 CHAIRMAN AIZENSTAT: And that would also
8 coincide with the way the fees are determined
9 for permits; is that not so?

10 MS. BIRDSILL: Again, I don't know all the
11 ins and outs of the other permit fees.

12 CHAIRMAN AIZENSTAT: Are permit fees
13 determined by the cost of the job, the entire
14 cost of the job, or the square footage? How is
15 a permit fee determined that the City gets for
16 a project?

17 MR. BELLIN: It's by an act of God.

18 MS. TOMPKINS: There are actually a number
19 of factors that go into it, but I think the
20 primary consideration is the size of the
21 project.

22 CHAIRMAN AIZENSTAT: Size of the project?

23 MS. TOMPKINS: Uh-huh.

24 CHAIRMAN AIZENSTAT: Okay, and this may
25 parallel that.

1 MR. BELLIN: Yeah, I think it's fair.
2 Everybody pays a percentage. You know, going
3 in, what it's going to be and you can't argue
4 the point.

5 CHAIRMAN AIZENSTAT: The question is, how
6 do we determine what that percentage should be,
7 or is it up to us to determine what that
8 percentage should be or is it up to Staff to
9 determine what that percentage ought to be?

10 MR. BELLIN: I would prefer to leave it up
11 to Staff. They can do the research, see what
12 other municipalities do.

13 MS. ALBERRO MENENDEZ: I have no problem
14 with that.

15 CHAIRMAN AIZENSTAT: Okay. That sounds
16 good. Okay, so we can move forward on --

17 MS. ALBERRO MENENDEZ: Well, I have a few
18 questions.

19 MR. GRABIEL: Oh, no, don't go away.

20 CHAIRMAN AIZENSTAT: No, no, no. We're
21 just moving forward on this.

22 MS. BIRDSILL: Okay.

23 MS. ALBERRO MENENDEZ: We're just moving
24 forward on that item.

25 Mine are quick.

1 MS. BIRDSILL: Okay.

2 MS. ALBERRO MENENDEZ: Who selects the Arts
3 Advisory Panel?

4 MS. BIRDSILL: The Arts Advisory Panel, the
5 ordinance creating them was revised relatively
6 recently, because it hadn't been set up as a
7 formal board previously, but now, since they
8 have so many more duties, they've been created
9 as a formal board. The Cultural Development
10 Board will recommend to the City Commission who
11 they think should be on the board, the Arts
12 Advisory Panel, but ultimately the Commission
13 will have the say.

14 MS. ALBERRO MENENDEZ: Great, okay. Who
15 selects the art appraiser?

16 MS. BIRDSILL: It would depend in what
17 context it is, but most likely Staff, if it was
18 for the City's purpose.

19 MS. ALBERRO MENENDEZ: Staff, okay.

20 CHAIRMAN AIZENSTAT: In other words, the
21 City.

22 MS. BIRDSILL: Yeah.

23 MS. ALBERRO MENENDEZ: Right.

24 CHAIRMAN AIZENSTAT: Thank you.

25 MS. ALBERRO MENENDEZ: Those are my

1 questions. The only item that I'd like to
2 revisit, if nobody has anything else, is the
3 issue of, if the work doesn't start, what
4 happens with, you know, the amount that they've
5 contributed towards the Art in Public Places?
6 Do we want to leave it as it is, where you just
7 lose it, or do you want to consider something,
8 the point that Marshall had made?

9 MR. BELLIN: Yeah. It seems to me that
10 keeping it is a little bit, I would say, not
11 fair. When you pay a fee to go to the Board of
12 Architects, maybe it's \$20,000, a certain
13 percentage of that fee is an up-front fee for
14 the permit.

15 MS. ALBERRO MENENDEZ: Right.

16 MR. BELLIN: And you get that back if you
17 don't proceed to permit, or you can get a
18 credit if somebody else does the job. It just
19 seems that if a project -- And those fees can
20 be substantial. It can be half a million or
21 million dollars.

22 MS. BIRDSILL: Yeah, the concern is, let's
23 say that they've paid into the fund and we have
24 used that money already on an art project.
25 Then it would be -- you know, keeping track of

1 how long until I can spend the money is
2 difficult.

3 MS. ALBERRO MENENDEZ: That's a good point.

4 MR. BELLIN: Maybe you just leave it in an
5 escrow account and once he pulls his permit --

6 MS. BIRDSILL: But you were talking about
7 after he's pulled the permit and didn't go
8 forward with the project, I thought.

9 MR. BELLIN: Well, yeah, let's say that
10 he's pulled a permit and doesn't go ahead with
11 the project.

12 MS. ALBERRO MENENDEZ: Do you think you
13 would be spending those funds so fast?

14 MS. BIRDSILL: It's quite possible, you
15 know. If we had a big project, we might use
16 actually the whole account on a large project.

17 MS. ALBERRO MENENDEZ: Okay.

18 MR. FLANAGAN: To follow up on that point,
19 that was an issue -- One of the issues that
20 bothered me is that there's no refunds, so I
21 agree. I understand the concern, maybe it
22 would linger out there for too long. I think a
23 middle ground, my thought would be, let's put a
24 time frame on it, that if you -- basically, if
25 you pull a permit and the project doesn't

1 proceed and you want to basically terminate
2 your rights under that permit within a certain
3 time period, you could then do that and get
4 your money back. That way the City knows,
5 however you want to allocate that money or
6 account for it, but you can't touch those funds
7 until either the project is moving forward or a
8 certain date has come and gone, whatever that
9 may be.

10 MR. BELLIN: I think that's a good idea.

11 MS. BIRDSILL: That would certainly not be
12 Staff's recommendation.

13 MR. FLANAGAN: Right, but I have a hard
14 time with somebody contributing such
15 significant money into a fund and if for
16 whatever reason a project does not go forward,
17 I think that's just complete unjust enrichment
18 to the City.

19 CHAIRMAN AIZENSTAT: Are you talking about
20 a short term, or are you talking about a
21 long-term time period? For example, you could
22 go --

23 MR. FLANAGAN: I think that varies for
24 everybody, but somewhere -- I'm thinking
25 somewhere six to 12 months.

1 CHAIRMAN AIZENSTAT: A permit is good for
2 one year without breaking ground, and then you
3 can renew it, or how does that work?

4 MS. BIRDSILL: I believe that you can.

5 CHAIRMAN AIZENSTAT: You can.

6 MR. BELLIN: Indefinitely, as long as
7 you do something --

8 CHAIRMAN AIZENSTAT: You can keep renewing
9 it.

10 MR. BELLIN: Right.

11 CHAIRMAN AIZENSTAT: I mean, you don't want
12 to keep that in there indefinitely, under those
13 terms. I mean -- Go ahead.

14 MS. TOMPKINS: The permit is good for 180
15 days after an inspection. So, theoretically,
16 if no activity occurs, there's no inspection,
17 the permit would expire in 180 days, but the
18 developer has the option of renewing that
19 permit, so --

20 CHAIRMAN AIZENSTAT: Without -- If I pull
21 my permit today --

22 MS. TOMPKINS: Uh-huh.

23 CHAIRMAN AIZENSTAT: -- how long do I have
24 without calling an inspection or breaking
25 ground?

1 MS. TOMPKINS: Well, 180 days.

2 CHAIRMAN AIZENSTAT: Tell me what
3 happens at -- All right, I'm at 179 days.

4 MS. TOMPKINS: Uh-huh.

5 CHAIRMAN AIZENSTAT: I haven't done
6 anything. I want to renew my permit. What do
7 I do?

8 MS. TOMPKINS: You come into the Building
9 Department and renew your permit.

10 CHAIRMAN AIZENSTAT: Do I pay a fee?
11 What's the process?

12 MS. TOMPKINS: There's a fee, but I believe
13 it's a nominal fee.

14 CHAIRMAN AIZENSTAT: And now I can renew it
15 again for another 180 days?

16 MS. TOMPKINS: Uh-huh.

17 CHAIRMAN AIZENSTAT: Let's say another 179
18 days go by, I don't do anything.

19 MS. TOMPKINS: Right.

20 CHAIRMAN AIZENSTAT: What's the process?

21 MS. TOMPKINS: You will come in and renew
22 your permit.

23 CHAIRMAN AIZENSTAT: How long can I keep
24 doing this?

25 MS. TOMPKINS: I don't believe there's any

1 time limit, and I --

2 MS. ALBERRO MENENDEZ: Plus what happens a
3 lot, I'm sorry, is that they call for an
4 inspection. They'll inspect the ground, and
5 then they'll keep that permit alive.

6 MR. LEEN: The City does have a requirement
7 on how long it takes to build the building.
8 It's one year, right?

9 MS. TOMPKINS: One year, but --

10 MR. LEEN: But, you know, we often -- Those
11 two interplay with each other.

12 MS. ALBERRO MENENDEZ: Right.

13 CHAIRMAN AIZENSTAT: I mean, to me, you
14 know, I'm hearing what Jeff is saying. By the
15 same token, if you're not going to build and
16 you don't pull your permit, I mean, you should
17 be entitled to some of that money, but there
18 should be a time period. If you're going to
19 play the 180-day game, then you've got to be at
20 risk, if you're going to play the game. You
21 know, you've got --

22 MS. ALBERRO MENENDEZ: Wouldn't you know
23 sooner than the 180 days?

24 CHAIRMAN AIZENSTAT: That's what I'm
25 saying.

1 MS. ALBERRO MENENDEZ: Yeah.

2 CHAIRMAN AIZENSTAT: So, for example, if we
3 say, you know what, there is a period of the
4 first 180 days where if the project doesn't
5 commence, meaning they don't call for an -- If
6 they call for an inspection, that project has
7 commenced, for me. If they don't call for an
8 inspection, they don't commence, they don't do
9 anything, during that initial period, they
10 can't get their financing, whatever it is
11 during that period, then, okay, they can get
12 back their money, or I don't know what percent
13 or whatever; that's 180 days. But past that
14 point, if they're willing to play that game and
15 start doing that, then I think they should be
16 at risk.

17 MS. ALBERRO MENENDEZ: I think 180 days is
18 a long time, though.

19 CHAIRMAN AIZENSTAT: Thirty?

20 MS. ALBERRO MENENDEZ: Yeah, I think a
21 developer would know within, I would guess, 30
22 to 45 days whether you're moving forward or
23 not. No?

24 MS. PEREZ: There's many variables to it,
25 and maybe a 180 days is too long, but 30 days

1 for sure is too short.

2 MS. ALBERRO MENENDEZ: What do you think?

3 MR. PEREZ: You know, I think a middle
4 ground between the two, I mean, is a fair
5 number. Obviously, there's a number of
6 variables when it comes down to a go or no go.
7 Obviously, financing, marketing, et cetera.
8 Most definitely, 180 days is probably too long.

9 CHAIRMAN AIZENSTAT: Right.

10 MR. PEREZ: But I would say probably a fair
11 number is probably somewhere around 90 days.

12 MS. ALBERRO MENENDEZ: 90 days? Let me ask
13 you, do they get a hundred percent back or do
14 they get a percentage back? Because right now
15 the permit fees is a percentage, it's not a
16 hundred percent, because you have to figure
17 that the Staff has administratively done
18 something, you know, with the money.

19 MR. BELLIN: Yeah, but we're talking about
20 different issues. This issue, specifically, is
21 about the Art in Public Places. The permit
22 issue, to me, is a different issue.

23 So, if he pays the fees -- and there's
24 probably a mechanism for that, but the Art in
25 Public Places, you contribute it. If the

1 building doesn't go, do you get it back, or do
2 have 90 days to start, and if you don't start,
3 you lose it?

4 MS. ALBERRO MENENDEZ: So you're saying it
5 should be a hundred percent reimbursable?

6 MR. BELLIN: I think in that first -- yeah,
7 I think that in that first -- maybe it's 90
8 days, just with respect to the Art in Public
9 Places fee.

10 MR. FLANAGAN: Right. I think, at that
11 point, if any work or Staff time has gone into
12 it, I would think it would be very nominal. As
13 the money comes in, it gets dumped into the
14 bank account and it sits there.

15 CHAIRMAN AIZENSTAT: How does the Staff
16 feel, based on the conversation, about the 90
17 days?

18 MS. BIRDSILL: Well, two things. One, I
19 think that makes it very hard for us to
20 administrate, because then I have to keep track
21 of when every little bit comes in, and another
22 thing to point out is, generally the people who
23 are paying the fee are the people who do not
24 have the big projects. They don't have -- It's
25 not coming to be enough money to make it worth

1 them go through the process to incorporate the
2 art into their building. It's not true in
3 every case, but usually the developers who have
4 a significant project and it's going to be a
5 couple hundred thousand dollar payment, they
6 would prefer to put that investment back in
7 their own building and it's worth them going
8 through the process there, so that the payments
9 largely that are coming in are the smaller
10 ones.

11 CHAIRMAN AIZENSTAT: Should there be a
12 threshold?

13 MS. BIRDSILL: Again, that would be hard to
14 administrate.

15 MR. FLANAGAN: On an average, and I know
16 the past few years may have been different than
17 maybe what's happening now, or go back seven
18 years, but let's say on a monthly basis, how
19 many deposits are made into the account?

20 MS. BIRDSILL: I don't actually know that,
21 offhand. We'd would have to pull that.

22 MS. TOMPKINS: I don't have that information.

23 MS. BIRDSILL: I mean, I know the account
24 is around a million right now.

25 MR. FLANAGAN: Is it one? Are there 20?

1 MS. BIRDSILL: It's probably more than
2 that.

3 MR. FLANAGAN: More than 20 a month?

4 MS. BIRDSILL: Yeah. There's a lot of
5 little ones, yeah.

6 MR. BELLIN: Cindy, let me ask you a
7 question, and maybe it's a moot point. If a
8 developer decides to incorporate the Art in
9 Public Places in his building, he doesn't pay a
10 fee.

11 MS. BIRDSILL: Correct.

12 MR. BELLIN: So when he pays for his
13 permit, that fee is not in there.

14 MS. BIRDSILL: That's correct.

15 MR. BELLIN: It is in there in the sense
16 that he's going to spend another hundred
17 thousand dollars on a piece of artwork.

18 MS. BIRDSILL: Correct.

19 MR. BELLIN: And one percent of that --

20 MS. BIRDSILL: Yeah, he still has to invest
21 that one percent, but then he's investing it
22 back in their own project.

23 MR. BELLIN: Yeah, and if the project
24 doesn't go ahead?

25 MR. LEEN: You know --

1 MS. BIRDSILL: Well, what they will have
2 done is, they've gone through the approval
3 process for the artwork, so they will have, in
4 addition to the approved building permit, an
5 approved art piece, and they just would not be
6 constructing it.

7 CHAIRMAN AIZENSTAT: So they wouldn't spend
8 that?

9 MR. BELLIN: And that's a small number
10 compared to the total number.

11 MR. GRABIEL: That's part of the cost of
12 the developer.

13 MR. BELLIN: Yeah.

14 MR. FLANAGAN: But if they don't build the
15 building, they don't buy the art, so now they
16 haven't spent the money on the Art in Public
17 Places.

18 CHAIRMAN AIZENSTAT: They haven't put up
19 the money.

20 MS. BIRDSILL: Correct.

21 MR. BELLIN: Well, but they've put up a
22 little bit of money, because the piece of art
23 is \$100,000, and they got one percent, one and
24 a half percent of the \$100,000, so it's \$1,500
25 if they don't put the art.

1 MR. GRABIEL: They will have paid the
2 artist's fee. They will have paid probably the
3 architects and the engineers to see how the
4 piece is installed within the building. But
5 that's part of the same cost as paying the
6 architect and engineer's fees. It's part of
7 the cost of development in Coral Gables.

8 MR. PEREZ: Correct.

9 MR. BELLIN: It's a very small number if
10 they don't go ahead with the building.

11 MR. GRABIEL: Exactly.

12 MR. BELLIN: Because it's only based on the
13 amount of the payment that it would normally
14 be, which say it's \$100,000; it's one and a
15 half percent of that number.

16 MS. BIRDSILL: Uh-huh. Of the construction
17 cost, yeah.

18 MR. BELLIN: If the building doesn't go
19 ahead. So it's \$1500. It's not worth fighting
20 over.

21 MS. BIRDSILL: Right.

22 MR. LEEN: As City Attorney, the one
23 concern I would have for the City having
24 absolute right of refund, because sometimes
25 this can be a substantial amount of money, is,

1 normally for a fee, I wouldn't recommend that
2 to the City, although ultimately it's your
3 decision, but because they're encumbered funds
4 we have a duty to the -- We can't spend them,
5 obviously. They're basically held in escrow
6 during that time period. If a mistake is made
7 and they're spent, we probably have liability
8 to the person who's paid the fee to begin with,
9 and we're basically waiving what's called the
10 voluntary payment doctrine. We're giving a
11 right to have a reimbursement.

12 Generally, if that's what the Board wants
13 to do, it would be preferable legally if you
14 don't give a right to have the refund, but you
15 give the ability to request one, or you give
16 the Commission -- There's already a provision
17 in here about waiver for the Commission, which
18 is somewhat limited and allows the Commission
19 to waive requirements in certain issues. If
20 someone has an extenuating circumstance where
21 they can demonstrate that really they should
22 get the money back, maybe you could provide for
23 an ability to go to the Commission and provide
24 some criteria, but make it completely
25 discretionary. The Commission might not give

1 them all back, but there's at least a
2 mechanism. But I think that if you give them
3 the right, then really she can't spend the
4 money until -- and it's a lot of money.

5 MS. ALBERRO MENENDEZ: Right, until 90
6 days.

7 MR. LEEN: Yes. It's just a thought. I'm
8 not saying -- You may want to allow the refund.
9 It can be inequitable. We've had some
10 circumstances since I've been here where people
11 come and they're like, "Well, we're not going
12 to do this. We're worried about paying the fee
13 because we're not sure if we're going to go
14 forward with the project." I remember that
15 once, when they wanted to wait and wait and
16 wait. And sometimes they'll have an issue
17 because they need to get the permit by a
18 certain date in order to preserve their rights.

19 So I'm not saying it's not a real issue,
20 but I do have a little bit of a concern when
21 we're getting a lot of money and we're
22 basically having to hold it in escrow.

23 MS. ALBERRO MENENDEZ: So what you're
24 suggesting is basically saying that if a
25 project doesn't commence before the 90 days,

1 that they can -- or within the 90 days, we
2 should say, they can appeal to the Commission
3 for refund of the Arts in Public Places fee?

4 MR. LEEN: You may want to simply put that
5 Staff has the authority to do it under the
6 appropriate circumstances.

7 MS. ALBERRO MENENDEZ: Staff?

8 MR. LEEN: Or the Manager or the
9 Commission. That's up to you. But I'm just
10 saying that -- and I'm not recommending that.
11 I'm just saying it's preferable to giving the
12 absolute right.

13 MS. ALBERRO MENENDEZ: I think it's
14 difficult for Staff to determine who gets it
15 and who doesn't.

16 MR. LEEN: Maybe.

17 MS. ALBERRO MENENDEZ: I mean, that's been
18 my --

19 MR. LEEN: Maybe it should be the
20 Commission, then. It's just my thoughts, but
21 legally you could do it. I'm not saying you
22 can't make a refund, but --

23 MR. BELLIN: I think the ultimate decision
24 probably ought to be made by one of the boards.
25 Maybe it's the Board of Adjustment, maybe it's

1 Planning and Zoning, maybe it's the Commission.

2 MS. ALBERRO MENENDEZ: Well, that's a good
3 point. It doesn't have to be necessarily the
4 Commission.

5 MR. LEEN: It doesn't have to be the
6 Commission, although the Commission is best
7 situated to deal with the funds and the budget,
8 because sometimes this may be -- you know, they
9 may be wanting to use this money in a certain
10 way. Obviously it has to be used for art, but
11 they may have -- you know, the money that's
12 being used for this artwork is coming from this
13 fund and it means they don't have to spend
14 money from the general fund for this.

15 MR. BELLIN: I think it's a good idea to
16 really designate somebody, or some board or
17 body to be in that position, ultimately.

18 CHAIRMAN AIZENSTAT: But hearing what you
19 said, it's a nominal amount in the end.

20 MR. BELLIN: Well, if they don't build it,
21 yeah. If they choose to put the art in their
22 building, whatever it is. If they choose to
23 make a payment to the fund, then it's
24 substantial. Then it could be \$100,000. Do
25 they get it back or not? If it's incorporated

1 in the building, they're only paying the fee
2 based on the cost of construction of that art
3 piece.

4 CHAIRMAN AIZENSTAT: Then wouldn't that
5 give an incentive to a developer to really do a
6 piece of art in their project?

7 MR. BELLIN: I think they should do it in
8 all cases.

9 CHAIRMAN AIZENSTAT: Right. I do, too, and
10 that's why I'm saying, by not giving that
11 option of a refund, it actually makes them want
12 to do --

13 MS. ALBERRO MENENDEZ: It becomes an
14 incentive.

15 CHAIRMAN AIZENSTAT: It becomes an
16 incentive.

17 MR. BELLIN: It does become an incentive,
18 maybe if it's explained to the developer, you
19 know, what his options are.

20 CHAIRMAN AIZENSTAT: Or I assume the
21 architect or whoever is project manager would
22 do that.

23 MR. BELLIN: Well, I'd be happy to do it,
24 but --

25 CHAIRMAN AIZENSTAT: Jeff?

1 MR. FLANAGAN: That's all I have on that
2 one.

3 MS. ALBERRO MENENDEZ: After hearing
4 discussion, you're still of the opinion that we
5 should --

6 MR. FLANAGAN: I am still of the opinion, I
7 think, in the grand scheme of how this works,
8 90 days goes by in a couple blinks of an eye,
9 that I have a hard time -- I think it's very --
10 It might be somewhat difficult to get started
11 in having this accounting about what money is
12 coming in. I don't know how much money comes
13 in. You know, that's why I asked that
14 question. I don't know how many deposits are
15 made on a monthly basis to this fund, I have no
16 clue, and I don't know what the average deposit
17 amount is per project. There's probably no
18 average, but it seems like I think we penalize
19 the smaller projects if you're not going to
20 incorporate it, because now you don't get your
21 money back, but the guy who's going to
22 incorporate it into his project never spent the
23 money in the first place, except for the
24 nominal amount, and I just think 90 days is
25 like -- I think it's easy enough to do, and I

1 would suggest that we incorporate that into the
2 ordinance.

3 CHAIRMAN AIZENSTAT: Any other comments?
4 Julio?

5 MR. GRABIEL: On another subject, or are we
6 still on --

7 CHAIRMAN AIZENSTAT: Well, on this subject
8 still.

9 MR. GRABIEL: Oh, on this subject? Okay,
10 no.

11 CHAIRMAN AIZENSTAT: Jeff, are you done
12 with any comments?

13 MR. FLANAGAN: Yes, thanks.

14 CHAIRMAN AIZENSTAT: Thank you.
15 Julio?

16 MR. GRABIEL: Yeah. I think the Staff has
17 done a wonderful job with the ordinance, from
18 when we started. It's clearer and easier to
19 read and to understand. I only have one major
20 concern, which is the location of the artwork.
21 Throughout, it says spaces visible to the
22 public, publicly accessible areas, public space
23 or publicly accessible private spaces, but yet
24 the definition of publicly accessible, it's
25 only exterior locations. I think that's very

1 limiting. I have seen in a lot of the work
2 that's done in Art in Public Places for the
3 County where the artist and the owner have made
4 a combination of pieces of work which is
5 outside of the building and then in the
6 interior of the building, which is still
7 accessible to the public.

8 A great example of this is if you go to the
9 Performing Arts Center in Downtown. All of the
10 railings have been designed by an artist, by
11 Bedia. The floors are designed by Bedia. So
12 the public lobby areas are all using an artist
13 to create a better building. If we only limit
14 it to outside of the building -- I think
15 there's tremendous opportunities for a good
16 piece of artwork to be incorporated within the
17 building. I would not put it inside a private
18 office. You know, it's not for a developer to
19 buy a painting that he's going to then put in
20 his office. But I think in the publicly
21 accessible areas of a building that may not
22 necessarily be open 24/7, I understand that
23 that probably will be pushing the outside one,
24 but there's a tremendous opportunity for an
25 artist, a good artist, to develop even a piece

1 that starts outside and goes into the building,
2 that we would be limiting if we limit it to
3 just exterior locations.

4 MR. BELLIN: That brings up another
5 question, for me. If it's incorporated in the
6 building, the City owns it. If it's Art in
7 Public Places, the City owns it.

8 MS. BIRDSILL: No, actually the developer
9 is the owner of the artwork on their property.
10 They just enter into a covenant, agreeing that
11 they will always keep it as part of the
12 property and that they will maintain it.

13 MR. BELLIN: What happens if, for
14 argument's sake, it's a mosaic on the floor or
15 it's hand railings, there's a hurricane, and
16 the building is destroyed. Then what happens?

17 MS. BIRDSILL: Hopefully it's insured and
18 you can replace it. They're supposed to be
19 replaced.

20 MR. BELLIN: But do you have to replace it?

21 MS. BIRDSILL: Yeah.

22 MR. BELLIN: You have to replace the mosaic
23 on the floor?

24 MS. BIRDSILL: You would have to replace
25 the art.

1 CHAIRMAN AIZENSTAT: And how do you insure
2 that? Do you take a look at their insurance
3 binder, to make sure that it's covered?
4 Because it may be a named item as opposed to
5 just general -- They may not have replacement
6 coverage.

7 MS. BIRDSILL: Yeah. We have not required
8 a particular insurance on it. We've made the
9 assumption that the developer is insuring their
10 building with it, because they enter into a
11 covenant with the City that requires them to
12 maintain it and keep it in good repair.

13 MR. LEEN: It would be Code Enforcement
14 that's generally -- We could seek an
15 injunction. You know, we could seek a Court
16 order. But generally, the way we would enforce
17 that is through a ticket if they refused. If
18 the property owner refused to put the art back
19 and was in violation of the covenant or the
20 ordinance, they would be cited and it would go
21 in front of the Code Enforcement Board or the
22 Magistrate, Special Magistrate.

23 CHAIRMAN AIZENSTAT: And if a property
24 becomes destroyed, they've got to go to the
25 City to build it back, at which point I assume

1 that you would look at that property --

2 MS. BIRDSILL: Right.

3 CHAIRMAN AIZENSTAT: -- and notice that
4 they have to put the piece back.

5 MS. BIRDSILL: Right.

6 MR. FLANAGAN: I thought I read that the
7 art basically becomes public property.

8 MS. BIRDSILL: No. That may be if the
9 developer donates property to the City, artwork
10 to the City that we put in a public space.

11 MR. FLANAGAN: Okay.

12 MS. BIRDSILL: But no, if it's on the
13 developer's property, it remains the
14 developer's property.

15 MR. GRABIEL: And it's his responsibility
16 to maintain it and to keep it.

17 MS. BIRDSILL: Yes. Yes.

18 MR. GRABIEL: And if it's destroyed, to fix
19 it.

20 MR. BELLIN: I read similar or the same
21 thing you did. I thought it became public
22 property.

23 MR. FLANAGAN: So where did I read it? Now
24 I can't find it. I'll look. If anybody else
25 has other questions, I'll read through it and

1 see if --

2 CHAIRMAN AIZENSTAT: That's a good idea.

3 MS. BIRDSILL: Well, certainly if it's
4 there and you find it, that would be an error.
5 It's intended that if it's on the developer's
6 property that it remains their property. So,
7 if you find it and it's incorrect, we'll
8 correct that.

9 CHAIRMAN AIZENSTAT: While Jeff is
10 looking or so forth--

11 MR. BELLIN: It also mentions here that the
12 art, and it's on Page 9, the public has to have
13 access to it, highly visible and accessible, 24
14 hours a day, seven days a week, at no charge to
15 the public.

16 MS. BIRDSILL: Correct. That was what
17 we've been saying, and I understand Julio's
18 point, but --

19 MR. BELLIN: If this is in a building --

20 MS. BIRDSILL: We don't want it in a
21 building that doesn't have access to the public
22 24/7. So, if your lobby is always open to the
23 public and they can always come in, then you
24 could have something in the lobby, or if you
25 have a vestibule or if you have an interior

1 courtyard, you know, that there's a pathway
2 that the public can go through at any time,
3 then it's really a public amenity, rather than
4 an enhancement of the private -- solely an
5 enhancement of the private building. That was
6 the thinking on it.

7 MR. GRABIEL: I understand, but even in --
8 and it would be easy to fix that one by saying
9 it means exterior and interior locations that
10 are highly visible and accessible 24/7. But I
11 think, still, it's limiting. I think there
12 could be a developer who does an office
13 building that has a tremendous piece of artwork
14 that after hours, after nine o'clock at night,
15 the lobby closes, but it's open -- so maybe
16 there's a way of saying that it's open, you
17 know, 70 percent of the time or 80 percent of
18 the time, accessible to the public, but time,
19 you know, after hours, it's closed. But as
20 long as it's open to the public between, you
21 know, six o'clock in the morning and ten
22 o'clock at night, it's still accessible to the
23 public. Otherwise we're going to end up with a
24 lot -- My concern is that the beauty of Art in
25 Public Places and what I've seen at the

1 County -- I'm in the County Art in Public
2 Places -- is the way that the architectural and
3 the artwork has been incorporated into so many
4 buildings, to benefit the building and the
5 public access to those buildings.

6 If we keep it just to the outside, we're
7 going to end up with what's called plop art,
8 you know, just sculptures sitting in the front
9 of a plaza or a thing attached to the wall, but
10 really not things that are truly integrated,
11 and we're losing an opportunity to really
12 create an integrated art and architecture in
13 the City.

14 MS. BIRDSILL: Yeah, we definitely do
15 encourage an integration on the exterior, so
16 that, you know, we've certainly told people if
17 they want to do the paving in front of the
18 building on their sidewalks, if they want to
19 have an interesting canopy or if they want
20 something on the facade, I mean, all those
21 things are options. But one of the other
22 benefits of having them be exterior is that it
23 changes the view of the City as you're driving
24 through it and moving through it. I think if
25 you have something in an interior lobby, you're

1 only going to know about it if you research it
2 and know about it. It's not going to be
3 something that the general public happens upon
4 and has an experience of that.

5 MR. GRABIEL: Using your example of the
6 pavement, you know, the way it's written, the
7 pavement would have to stop at the front door,
8 and if it would benefit the building to have
9 that same pattern designed by an artist go and
10 flow into the lobby, you can't do it. You
11 would have to have, then, a --

12 MS. BIRDSILL: I think that would be very
13 cool.

14 MR. GRABIEL: But we lose an opportunity to
15 really integrate art into the architecture. I
16 think we need to -- you know, I, for sure,
17 would definitely suggest that we change to
18 exterior and interior locations that are highly
19 visible and accessible 24/7 --

20 MS. BIRDSILL: Okay.

21 MR. GRABIEL: -- but I would want to see if
22 there's an opportunity to expand that a little
23 bit more, so it's not just for 24/7 but --
24 22/7, 20/7? I don't know.

25 CHAIRMAN AIZENSTAT: Any other comments?

1 MR. LEEN: I just wanted to make one point
2 regarding that. You know, it is my view of the
3 ordinance, again, that the Commission has the
4 ultimate authority to allow something like that
5 in the appropriate case, again, under the
6 waiver requirements. It says, "A developer may
7 seek a reduction, adjustment or complete waiver
8 of the requirements of this ordinance. The
9 reduction, adjustment or complete waiver shall
10 be made by resolution of the City Commission."

11 MS. ALBERRO MENENDEZ: So there's
12 already --

13 MR. LEEN: So there is a -- There is a
14 measure in place that can provide what you're
15 saying. The Commission has the authority to do
16 these things. Now, the fact is it hasn't been
17 used, I haven't seen that since I've been City
18 Attorney, but it does exist.

19 CHAIRMAN AIZENSTAT: But are you
20 referring -- but that doesn't take into account
21 the period to get back your funds.

22 MR. LEEN: I'm not talking about the funds,
23 although I -- My view is, that applies to
24 everything.

25 CHAIRMAN AIZENSTAT: Well, that's why I'm

1 asking that question.

2 MS. ALBERRO MENENDEZ: But we can help it a
3 little. We can help it a little by limiting it
4 to the first 90 days, meaning that if they
5 don't -- as it relates to the reimbursement.
6 Meaning that if they don't act within the first
7 90 days and determine that they're not going to
8 proceed with the construction, that in fact
9 they can take the step and go before the
10 Commission and ask for consideration of funds
11 being refunded.

12 MR. LEEN: Yes. This -- but I also meant
13 in terms of your comment.

14 MS. ALBERRO MENENDEZ: Right.

15 MR. LEEN: Something like that, if it was a
16 very special case and Staff thought it was
17 worthwhile, or even if Staff didn't, but the
18 Commission did, there is a mechanism by which
19 the Commission can consider this. It's not
20 standard, though. Generally, I would think
21 that the Commission would follow its ordinance.
22 But there is the ability to petition the
23 Commission for adjustments.

24 MS. ALBERRO MENENDEZ: Okay.

25 CHAIRMAN AIZENSTAT: Thank you. Any other

1 comments? No?

2 Thank you.

3 MS. BIRDSILL: Thank you.

4 MS. ALBERRO MENENDEZ: With what Craig
5 mentioned, our City Attorney, are you
6 comfortable with your concern?

7 MR. GRABIEL: No, but I would live with
8 that one, changing the public -- Publicly
9 accessible means exterior and interior
10 locations.

11 MR. LEEN: Can you show me where?

12 MR. TRIAS: So the only change that you're
13 recommending is the word interior?

14 MR. GRABIEL: Uh-huh.

15 MR. TRIAS: Okay. That's in the
16 definitions.

17 MR. LEEN: Are you proposing that as an
18 amendment to the recommendation?

19 MR. GRABIEL: Yes.

20 CHAIRMAN AIZENSTAT: All right, is there --
21 Well, let me ask you, is there a motion,
22 anybody that would like to do a motion?

23 MS. ALBERRO MENENDEZ: I don't mind putting
24 a motion with conditions. I was starting to
25 write up some wordage, but please change it if

1 it's not what we all agreed to, or what some of
2 us agreed to.

3 So we're approving the ordinance as
4 presented, subject to the following -- is it
5 three conditions? Well, let me say them and
6 then we can go from there. If, within 90 days
7 of the construction permit being issued, it is
8 determined that the construction will not
9 commence, property owner may request
10 consideration from the City Commission for
11 reimbursement of the Arts in Public Places
12 fees.

13 CHAIRMAN AIZENSTAT: But it may not be all
14 the fees. There would be a determination.

15 MS. ALBERRO MENENDEZ: Well, that's up to
16 the Commission.

17 CHAIRMAN AIZENSTAT: Right, but I would
18 leave the language up to the City Attorney.

19 MS. ALBERRO MENENDEZ: Okay, but we have to
20 put the motion.

21 MR. LEEN: What is your intent?

22 CHAIRMAN AIZENSTAT: Right, the intent.

23 MR. LEEN: What is your intent? What do
24 you want to do?

25 MS. ALBERRO MENENDEZ: The intent is to

1 allow, within 90 days, the ability, if in fact
2 the construction -- after issuing the permit,
3 if the construction is not going to commence,
4 that they be allowed to exercise their right,
5 which already is mentioned in the ordinance, to
6 request a refund for the Arts in Public Places
7 fee --

8 MR. LEEN: Okay.

9 MS. ALBERRO MENENDEZ: -- from the City
10 Commission.

11 MR. LEEN: And it could be part or all?

12 MS. ALBERRO MENENDEZ: Absolutely, but I
13 think that, knowing developers, they're going
14 to go for all and then it's going to be up to
15 the Commission and Staff's recommendation to
16 apply. And then the second item I had was --

17 MR. PEREZ: Maria, excuse me. On that
18 topic of 90 days, can we also use that time in
19 the event that, during that period, the
20 developer changes his mind -- Let's say the
21 project does go forward and he decides that he
22 doesn't want to contribute to the fund, but he
23 wants to incorporate within his building. Can
24 we give him --

25 MS. ALBERRO MENENDEZ: From what I heard

1 just from Craig, I think you have that ability
2 with the language that exists in the ordinance
3 today.

4 Is that not true?

5 MR. LEEN: Well, the language in the
6 ordinance is only supposed to be used if Staff
7 can't otherwise resolve it.

8 If you have that situation come up now,
9 Cindy, what --

10 MS. BIRDSILL: It can't happen that way.
11 For them to pull the building permit, the art
12 has to be already approved, so they've already
13 gone through the process.

14 MR. PEREZ: Okay. So during that 90-day
15 process, if the developer wants to go and say,
16 "I've changed my mind, I'd rather incorporate
17 it within my building," what you're saying is,
18 they can't do that?

19 MS. BIRDSILL: They can't. They needed to
20 have the artwork approved to pull the building
21 permit.

22 CHAIRMAN AIZENSTAT: And I agree with that.

23 MS. BIRDSILL: Yeah.

24 CHAIRMAN AIZENSTAT: At the beginning, when
25 you -- I mean, you design your building

1 accordingly.

2 MR. PEREZ: Depending.

3 MR. LEEN: So the only thing that would be
4 available to them would be this measure, but
5 again, you know, in mentioning the measure, I'm
6 not saying that the Commission is always going
7 to do this. It's an extraordinary request.
8 It's basically an adjustment of the law. But
9 there is a mechanism there in an extraordinary
10 circumstance for someone to do this, for
11 someone to request it, but then it's the
12 Commission's discretion.

13 MR. FLANAGAN: Craig, what page is that on,
14 please?

15 MR. LEEN: That's on Page -- It's 3-2003,
16 B.

17 MR. FLANAGAN: I'm sorry, 3 dash --

18 MR. LEEN: 3-2003, B, Waiver of
19 Requirements.

20 CHAIRMAN AIZENSTAT: Waiver of
21 Requirements.

22 MS. ALBERRO MENENDEZ: Well, they struck
23 that. They struck that in the new ordinance.

24 MR. LEEN: Oh, in the proposal?

25 MS. ALBERRO MENENDEZ: Yes. They struck

1 that out.

2 MS. BIRDSILL: That might have been moved,
3 rather than struck.

4 MR. LEEN: Excuse me?

5 MS. BIRDSILL: That might have been moved.
6 That wouldn't have been something that was
7 taken out.

8 MS. ALBERRO MENENDEZ: That's on Page 3 of
9 10.

10 MS. BIRDSILL: Okay. I don't have the page
11 numbers.

12 MS. ALBERRO MENENDEZ: Here. Do you want
13 it? It's here.

14 MS. BIRDSILL: Which one are you looking
15 at, the red one?

16 MS. ALBERRO MENENDEZ: It's Page 3 of 10 of
17 your ordinance.

18 MR. FLANAGAN: There's like four different
19 versions.

20 MR. LEEN: Yeah, I had it in there, as part
21 of --

22 MS. ALBERRO MENENDEZ: See, this is what I
23 have, Craig.

24 MR. LEEN: You have it --

25 MS. ALBERRO MENENDEZ: You're looking at

1 the old one that was presented.

2 MR. GRABIEL: You're looking at the
3 old one.

4 MS. ALBERRO MENENDEZ: No, no, this is --

5 MR. LEEN: This is what --

6 MS. ALBERRO MENENDEZ: But the red one is
7 the one that -- no, no, this is it, because
8 this is where all of the new stuff is that she
9 mentioned.

10 MR. FLANAGAN: Exhibit D.

11 MR. LEEN: I assume that Exhibit D is
12 current.

13 MS. ALBERRO MENENDEZ: Right. Exhibit D is
14 the ordinance, right? Attachment D is the
15 ordinance?

16 MR. GRABIEL: Right.

17 MS. ALBERRO MENENDEZ: Okay. So, yeah, I'm
18 looking at the right one. You're looking at
19 the old one, which I started with --

20 MR. LEEN: The current one.

21 MS. ALBERRO MENENDEZ: -- then I had to do
22 it again.

23 MR. LEEN: The current one.

24 MS. ALBERRO MENENDEZ: Right, the current
25 one. So, if you look at the new ordinance,

1 which is Exhibit D, and look at Page 3 of 10,
2 that B is struck, struck out -- a strike-out.
3 I don't know if it's somewhere else in here,
4 but --

5 MS. BIRDSILL: I'm not sure what you're
6 looking at. I'm sorry, I'm not getting it.

7 MR. FLANAGAN: Right below it. It starts
8 there. It's confusing.

9 MS. ALBERRO MENENDEZ: A developer of a
10 non-municipal construction that is not
11 exempt -- These are exemptions, yeah. I read
12 this.

13 MS. MENENDEZ: She's looking at this one.

14 MS. ALBERRO MENENDEZ: But what he
15 mentioned --

16 MR. FLANAGAN: Go to Page 3 of 10, waiver.
17 Waiver of Art in Public Places, right there.

18 MS. ALBERRO MENENDEZ: Yeah, but it's not
19 this language.

20 MR. FLANAGAN: Yeah, I know.

21 MS. ALBERRO MENENDEZ: See, the old
22 language says the developer -- It's what Craig
23 read, which is --

24 MR. TRIAS: Mr. Chairman --

25 CHAIRMAN AIZENSTAT: Yes.

1 MR. TRIAS: There's also one line in Page 4
2 that says no other waivers of the Art in Public
3 Places fee shall be permitted. So specifically
4 it says that, so --

5 MS. BIRDSILL: I'm sorry, I forgot about
6 that. Yes.

7 MS. ALBERRO MENENDEZ: Yes.

8 MR. FLANAGAN: So I go back to my 90 days,
9 automatic.

10 MR. BELLIN: I have another question.

11 MR. LEEN: You can allow that language to
12 remain.

13 MS. BIRDSILL: Well, I think that we took
14 it out on purpose because the Commission
15 didn't -- and we didn't want everybody going to
16 them with their project. We want, you know --

17 MR. LEEN: You know, I think ultimately the
18 issue for Staff is, you know -- based on what
19 the Board is saying, you know, and maybe the
20 Commission will have a different view, but
21 based on that, do you prefer 90 days where it's
22 going to be encumbered or do you prefer the
23 Commission to have discretion? What would be
24 the preference of Staff, and ultimately the
25 Board, what would be your preference?

1 MS. BIRDSILL: Well, one of the benefits of
2 not having the discretion is, then you don't
3 have everybody saying, "It shouldn't apply to
4 me," and then it doesn't bring any politics
5 into it.

6 MR. FLANAGAN: And if you can go to the
7 Commission and there's discretion, that's going
8 to take longer than your 90 days, to have --

9 CHAIRMAN AIZENSTAT: Because you've got to
10 set --

11 MS. BIRDSILL: Right. So I would suppose,
12 if there's a refund, I would prefer it to be
13 set.

14 MR. BELLIN: Cindy, I have another
15 question. The process is that the artist has
16 to be approved?

17 MS. BIRDSILL: Yes.

18 MR. BELLIN: That's the first step?

19 MS. BIRDSILL: Yes.

20 MR. BELLIN: The next step, then, is for
21 the artist to present his proposal to the Board
22 for approval?

23 MS. BIRDSILL: Yes.

24 MR. BELLIN: The Board then says, "We don't
25 like it."

1 MS. BIRDSILL: Right.

2 MR. BELLIN: What happens to all the money
3 that's outlaid by the developer to get to that
4 point?

5 MS. BIRDSILL: That's a risk.

6 MR. PEREZ: He loses it.

7 MS. BIRDSILL: That's a risk, in the same
8 way if you needed site plan approval.

9 MR. BELLIN: Well, but it's a little
10 different, because you've hired this artist --
11 and that's what happened with the Ponce Cat
12 building with the first proposal, and there was
13 a lot of money invested in that piece of art
14 that was rejected by the Board.

15 MS. BIRDSILL: Right.

16 MR. BELLIN: So it just lost money? Is it
17 a credit towards the ultimate --

18 MS. BIRDSILL: No. It's the same as if you
19 needed to redesign some architectural piece.

20 MR. BELLIN: Okay.

21 MR. FLANAGAN: Sorry, another question.
22 Sorry to interrupt your train of thought and
23 your motion.

24 MS. ALBERRO MENENDEZ: No, no, no. I
25 wasn't going to say anything.

1 MR. FLANAGAN: If I'm not out of order,
2 Cindy, what does the Arts Advisory Panel --
3 what do they review?

4 MS. BIRDSILL: Their charge is to review
5 art for the City generally. It can be a
6 donation, or if the City is creating art under
7 the Art in Public Places program with the
8 funds, they would participate in it, or when a
9 developer wants to incorporate their work into
10 their project, they're one of the first steps.
11 So the process for the developer, for example,
12 is, they will come in and first meet with the
13 Arts Advisory Panel, which are the arts
14 professionals. The Arts Advisory Panel takes a
15 look at the credentials of the artist and they
16 make a recommendation as to whether the artist
17 is qualified, and then they also look at the
18 concept that the artist is presenting and they
19 decide whether they would recommend that or if
20 they have comments.

21 And the one Marshall is actually talking
22 about, the artist had gone ahead and made very
23 complex mechanics at that point, when he could
24 have presented drawings, which would have been
25 cheaper, I think. Then the Cultural

1 Development Board uses the Arts Advisory Panel
2 as sort of their advisory board, and they
3 can -- They usually take their recommendation
4 and will follow it, but they also have the next
5 recommendation, to say whether or not they like
6 the art. They're looking at the concept at
7 that point.

8 The Board of Architects will look at how
9 the piece of art is integrated into the
10 project. So they do not have a say about the
11 aesthetics. The other Arts Advisory Panel and
12 the Cultural Development Board can make a vote
13 based on the aesthetics of the art and the
14 concept. The Architectural Review Board just
15 looks at how it's sited and how it interacts
16 with the architecture, not the concept of the
17 art itself. And then it goes to Commission,
18 with all those boards' recommendations.

19 MR. BELLIN: Cindy --

20 MR. FLANAGAN: Go ahead.

21 MR. BELLIN: Is there an appeal process?
22 If a developer doesn't agree with the Board --

23 MS. BIRDSILL: Sure. Well, all those
24 boards are advisory boards, so the developer
25 can still proceed and take it to the

1 Commission. The Commission would just be
2 receiving, you know --

3 CHAIRMAN AIZENSTAT: The recommendations.

4 MS. BIRDSILL: -- non-recommendations from
5 those boards, and then they could decide what
6 they want to do.

7 MR. FLANAGAN: Is it a similar process when
8 somebody contributes to the fund and somebody
9 wants to go out and buy the art from somewhere?

10 MS. BIRDSILL: Yes. You mean, if the City
11 were to take the funds and do a project?

12 MR. FLANAGAN: Yeah, and go by a similar
13 process.

14 MS. BIRDSILL: Yes. It would be a similar
15 process, although I think we have some
16 flexibility to add people to the review
17 process. For example, if, you know, there's
18 another entity that's involved in the process,
19 if it was going to be incorporated into the
20 Chamber of Commerce, for example, then we'd
21 probably have members of that Chamber of
22 Commerce involved.

23 MR. FLANAGAN: I just remember from back in
24 February, Julio, you said, I think, on the
25 County side that with each project, there's

1 different people that review it --

2 MR. GRABIEL: Right.

3 MR. FLANAGAN: -- so you're always getting
4 a --

5 MR. GRABIEL: Fresh.

6 MR. FLANAGAN: -- different vantage point,
7 rather than kind of the same mind set, same
8 likes or dislikes every time. So I'm
9 wondering -- I think you had raised that, back
10 in February, and I thought that was a great
11 point. I just don't see it. It looks like we
12 have -- and I've got no doubt that everybody
13 that reviews these knows what they're talking
14 about, but it's nice to maybe mix it up, and if
15 it isn't a smart idea to somehow incorporate a
16 mix-up of membership for whoever sits as the
17 final arbiter of what is appropriate or not.

18 In the County, Julio, who ultimately
19 decides yes or no?

20 MR. GRABIEL: The trust. It does not go to
21 the Commission.

22 MR. FLANAGAN: It does not go to the
23 Commission?

24 MR. GRABIEL: The art does not get
25 politicized. Is that the right word? It's off

1 the hands of the politicians. It goes to the
2 trust. Now, but the trust does not select the
3 artist. There is a selection committee that
4 changes every so often, that's made out of
5 curators, artists, architects, landscape
6 architects, who are involved in the arts, and
7 they're the ones who go through the short list,
8 or a long list and then they select the artist
9 from that. Eventually then it goes to the
10 trust, but I don't remember one single case
11 where the trust has objected to the artist
12 that's selected by the committee.

13 MR. FLANAGAN: Got it.

14 MR. GRABIEL: It used to be that the trust
15 did the selection and it was very messy, very
16 messy, because the trust members were selected
17 by the Commissioners and then it became
18 politicized.

19 MR. FLANAGAN: Right.

20 MR. GRABIEL: And this way, it's hands off
21 from the Commission, the County Commission, and
22 it's hands off from the trust. It's done all
23 at the same level of professionals doing the
24 art selection and the selection of the artist,
25 which I think is the better way, but -- Cindy

1 and I have talked about this many times.

2 CHAIRMAN AIZENSTAT: From what I hear from
3 Cindy, it goes through so many different stages
4 and so many different people look at it, and
5 it's actually ultimately up to the Commission.

6 MS. BIRDSILL: Yes. Yeah, there was a --
7 you know, a decision made that that's how our
8 process would work and that the Commission
9 should have the final say, when it went through
10 its original enacting.

11 MR. GRABIEL: My concern with the process,
12 and I'm not going to push for a change, is that
13 it's got so many layers, you know, between the
14 Art Selection Committee and the Cultural Board
15 and then the Board of Architects, and
16 eventually up to the Commission, that either
17 the process is going to take very long and it's
18 going to be difficult to integrate the
19 architectural and the art, because to do that
20 you have to be a little bit more involved in
21 the whole process, and/or that it can become
22 politicized, and typically that's not a benefit
23 to the art or actually the City.

24 MS. BIRDSILL: Just -- I do think that on
25 the projects that have come through, we've been

1 able to work with the developers to get board
2 meetings quickly and get decisions out quickly,
3 so --

4 CHAIRMAN AIZENSTAT: So the process has
5 worked?

6 MS. BIRDSILL: Once they're ready to go,
7 I've been able to get the process to go fairly
8 quickly.

9 MR. BELLIN: Cindy, can we put something in
10 here to really make it the responsibility of
11 the board that selects the artist and the
12 piece, they only review for aesthetics of the
13 art piece, and that's all they should review
14 for, but that's not the case.

15 MS. BIRDSILL: That's not the case.

16 MR. BELLIN: No.

17 MS. BIRDSILL: And I don't think that that
18 would be appropriate. I mean, I think their
19 comments were appropriate, that the art that
20 was in that case presented didn't have any
21 breathing room.

22 MR. BELLIN: If the Board of Architects are
23 the ones that review the siting, the location,
24 the integration of the piece into the building,
25 then let the Board of Architects do it.

1 MS. BIRDSILL: Well, they do that from the
2 architectural perspective, but the Arts
3 Advisory Panel was looking at it from the
4 viewpoint of the integrity of the piece.

5 CHAIRMAN AIZENSTAT: You're talking about a
6 specific project?

7 MS. BIRDSILL: Yes.

8 MR. BELLIN: A specific project, because
9 you run across these problems and you say, "How
10 do we solve that problem?" And that's the
11 problem we had, where the Board said, "I don't
12 like where it is."

13 MS. BIRDSILL: Well, the display of the
14 piece is part of the presentation of the art,
15 and I think that's inherent to what they're
16 looking at.

17 MR. BELLIN: Okay.

18 CHAIRMAN AIZENSTAT: Do you want to
19 continue with your motion? We sidetracked you
20 quite a bit.

21 MR. FLANAGAN: Sorry.

22 MS. ALBERRO MENENDEZ: Well, the issue of
23 the 90 days following the issuance of the
24 permit.

25 CHAIRMAN AIZENSTAT: So 90 days and --

1 MS. ALBERRO MENENDEZ: Following the
2 issuance of the permit --

3 CHAIRMAN AIZENSTAT: It doesn't go to the
4 Commission.

5 MS. ALBERRO MENENDEZ: Yeah, I --

6 CHAIRMAN AIZENSTAT: Well, we've struck
7 that out.

8 MR. LEEN: No, just the recommended -- It's
9 currently the law. It's the recommended
10 ordinance would remove it.

11 MS. ALBERRO MENENDEZ: Right.

12 MR. LEEN: Currently, under the law,
13 though, they do have that authority.

14 CHAIRMAN AIZENSTAT: Okay.

15 MS. ALBERRO MENENDEZ: So do you want to
16 keep that section in there?

17 CHAIRMAN AIZENSTAT: You won't have a
18 conflict by striking out one part where they
19 can, and then by law they can't?

20 MR. LEEN: Well, you could give them a more
21 specific delegation, if that's what you're
22 saying. You could say that the Commission can
23 just reconsider the fee within, you know, the
24 90 days. I, for one, do like the Commission --
25 I don't want to go into the realm of policy

1 here, but I'm always -- my office is always in
2 favor of the Commission having the authority to
3 address issues as they come up, because they're
4 the ultimate governing body of the City.

5 MS. ALBERRO MENENDEZ: Right.

6 MR. LEEN: Now, if they want to give that
7 up in the ordinance, that's up to them, but --

8 MS. ALBERRO MENENDEZ: And plus, the way I
9 see it, I don't think that there's enough of
10 these cases, I would think, to really burden
11 them with this, unless you tell me otherwise.

12 MS. BIRDSILL: So far, there's only been
13 three.

14 MS. ALBERRO MENENDEZ: Yeah. In how many
15 years?

16 CHAIRMAN AIZENSTAT: In how long? Three in
17 how long? In what period, what time period?

18 MS. BIRDSILL: Three since 2010.

19 MS. ALBERRO MENENDEZ: So one a year,
20 pretty much.

21 MR. GRABIEL: I think that's changing. I
22 mean, we were going through a very slow period
23 of construction.

24 CHAIRMAN AIZENSTAT: Right.

25 MR. GRABIEL: To my understanding, there's

1 a lot of projects coming up in the City that
2 will be involved in this.

3 MS. ALBERRO MENENDEZ: But a lot of those
4 are going to be incorporating art within them,
5 and they're not going to be affected by this.
6 We're really addressing those that are going to
7 be paying into the fees.

8 MR. GRABIEL: I understand.

9 CHAIRMAN AIZENSTAT: So, Maria, please
10 continue.

11 MS. ALBERRO MENENDEZ: What I would like to
12 consider is keeping that B, under Section
13 3-2003; removing, on the next page, 4, that
14 last sentence above C, saying, "No other
15 waivers of the Art in Public Places fee shall
16 be permitted," and then introducing the
17 90-day -- that within 90 days, if it is
18 determined that the construction is not going
19 to commence, that the property owner may seek
20 consideration by the City Commission for refund
21 of fees, and then let the Commission decide, I
22 mean, if they have the ability, with the
23 existing ordinance to do so, unless they think
24 otherwise, then they'll change it. And then
25 the last item, outside of the one that --

1 Julio, you also mentioned something that you
2 wanted to change?

3 MR. GRABIEL: Yeah.

4 MS. ALBERRO MENENDEZ: And then that the
5 soft costs be determined by the percentage of
6 the construction as determined by Staff. I
7 mean, that's what we talked --

8 CHAIRMAN AIZENSTAT: To be determined by
9 Staff?

10 MS. ALBERRO MENENDEZ: By Staff. I think
11 that's what we had --

12 CHAIRMAN AIZENSTAT: And what --

13 MR. FLANAGAN: I think that eventually
14 needs -- The number needs to be in the
15 ordinance.

16 MS. ALBERRO MENENDEZ: Well, but you told
17 me that that's up to Craig, that we just throw
18 these things out there and then he decides
19 where to put it.

20 CHAIRMAN AIZENSTAT: No, but that
21 percentage, you're saying, is to be determined
22 by Staff?

23 MS. ALBERRO MENENDEZ: I think that's what
24 we had discussed. I don't know if that's what
25 everybody agrees to, or if a percentage wants

1 to be --

2 CHAIRMAN AIZENSTAT: Does Staff feel
3 comfortable with that, Cindy?

4 MS. BIRDSILL: Yes, I think it will be
5 easier to administrate. It was a good
6 suggestion and --

7 CHAIRMAN AIZENSTAT: So you feel
8 comfortable determining what that percentage
9 should be?

10 MS. BIRDSILL: It won't be me. It will
11 be --

12 CHAIRMAN AIZENSTAT: Well, no, Staff.

13 MR. TRIAS: We are comfortable with that.

14 MS. BIRDSILL: Right, right.

15 CHAIRMAN AIZENSTAT: Okay.

16 MR. FLANAGAN: It will be in the ordinance.

17 MS. BIRDSILL: That we'll recommend.

18 MR. LEEN: If I may ask, why not make all
19 soft costs a percentage, then, not just
20 architectural?

21 MS. BIRDSILL: However you want to define
22 it, then it would be a percentage.

23 MS. ALBERRO MENENDEZ: The soft cost is
24 defined as architectural and engineering.

25 MR. LEEN: And engineering.

1 MR. GRABIEL: Yeah.

2 MS. ALBERRO MENENDEZ: That's the
3 definition of the soft costs, so what we're
4 saying is --

5 MR. LEEN: The percentage will be for both?

6 MS. ALBERRO MENENDEZ: Right.

7 MR. LEEN: I understand.

8 MR. TRIAS: Mr. Chairman --

9 MS. ALBERRO MENENDEZ: So let's say it's a
10 million dollar project. Five percent of that
11 million dollars is soft costs.

12 MR. BELLIN: Soft costs with respect to
13 only the architectural and the engineering
14 costs?

15 MS. ALBERRO MENENDEZ: Yes.

16 MR. BELLIN: Soft costs are a whole lot
17 more than that.

18 MR. FLANAGAN: I think soft costs as
19 defined in the ordinance.

20 MS. ALBERRO MENENDEZ: Yeah, it's defined
21 in the new ordinance.

22 MR. FLANAGAN: You may say construction
23 costs plus five percent.

24 MR. BELLIN: Plus five percent of the
25 architectural and engineering fee, that's it,

1 because soft costs can be 20 percent of the
2 total cost of the project.

3 MS. ALBERRO MENENDEZ: As defined in the
4 ordinance, I think in the ordinance it clearly
5 states --

6 MR. BELLIN: It had permit fees in there,
7 but --

8 MR. LEEN: I think the idea behind it is
9 that -- What I'm hearing for Staff to do is
10 that they will do a percentage that will cover
11 all soft costs, and that will satisfy the
12 ordinance.

13 MR. BELLIN: But all soft costs are a
14 different thing.

15 MR. TRIAS: Mr. Chairman --

16 MS. ALBERRO MENENDEZ: As defined here --

17 MR. LEEN: As defined in the ordinance.

18 MS. ALBERRO MENENDEZ: As defined in the
19 ordinance, which is plus soft costs of
20 architectural and engineering fees.

21 MR. BELLIN: Okay.

22 MS. ALBERRO MENENDEZ: That's what I'm
23 referring to. I'm not looking to add --

24 MR. TRIAS: And the issue is, do we stop
25 there with the ordinance language, or do you

1 actually add a percentage? My recommendation
2 is just to leave it as is and let Staff come up
3 with a percentage in a reasonable amount.

4 MS. ALBERRO MENENDEZ: That's what we --

5 CHAIRMAN AIZENSTAT: That's what we're
6 saying.

7 MR. TRIAS: Exactly, and that's the issue.

8 MS. ALBERRO MENENDEZ: And you know what?
9 It doesn't matter whether it's engineering,
10 architectural, legal fees; it's a percentage of
11 the construction.

12 MR. TRIAS: It's a percentage.

13 MS. ALBERRO MENENDEZ: So it doesn't matter
14 how you define it, really, when you come down
15 to it. As long as it's a percentage of the
16 construction, it doesn't matter what it
17 includes.

18 MR. TRIAS: If you're comfortable with
19 that, that is the most effective way of doing
20 it.

21 MS. ALBERRO MENENDEZ: Although if Staff
22 interprets it as though it's more than just
23 architectural and engineering, you might be
24 looking at a larger percent.

25 MR. BELLIN: It could be 20 percent of the

1 total cost of the building.

2 MS. ALBERRO MENENDEZ: Right.

3 MR. BELLIN: The soft costs.

4 MS. ALBERRO MENENDEZ: Right.

5 MR. BELLIN: Because of financing and
6 carrying costs and insurance and a whole lot of
7 other things.

8 MS. ALBERRO MENENDEZ: Right, right.

9 CHAIRMAN AIZENSTAT: But that's not the
10 way --

11 MR. BELLIN: I think as it's defined in the
12 ordinance, it's defined as --

13 CHAIRMAN AIZENSTAT: Correct.

14 MR. BELLIN: -- being two things,
15 engineering and architecture.

16 CHAIRMAN AIZENSTAT: And that's how the
17 whole discussion got started.

18 MR. BELLIN: Yeah, and that's it.

19 MS. ALBERRO MENENDEZ: Do you want to cap
20 it?

21 MR. BELLIN: Yeah, those two items.

22 MR. PEREZ: Cap architectural and
23 engineering.

24 MS. ALBERRO MENENDEZ: Right. That's what
25 I'm saying.

1 MR. BELLIN: Yeah.

2 MS. BIRDSILL: And that's what we're
3 proposing, yeah.

4 MS. ALBERRO MENENDEZ: Okay, great.

5 CHAIRMAN AIZENSTAT: Okay, so we have the
6 two items, and what was the third, please?

7 MS. ALBERRO MENENDEZ: The third was --

8 MR. GRABIEL: The third item is the
9 definition of publicly accessible, which with
10 regards to Art in Public Places means exterior
11 and interior locations that are highly visible
12 and accessible. I still have trouble with the
13 24 hours a day, 7 days a week, because even
14 public buildings are not open 7 days a week for
15 24 hours. The City Hall closes --

16 CHAIRMAN AIZENSTAT: Well, what we need to
17 do is, we need Maria to make a motion, and then
18 when there's a second or so forth, then you can
19 say that you may agree to -- you would second
20 it if she amends it, based on this, or not.

21 MR. GRABIEL: Perfect.

22 CHAIRMAN AIZENSTAT: I think that's the
23 best way for us to go --

24 MR. GRABIEL: Sure.

25 CHAIRMAN AIZENSTAT: -- if you don't mind.

1 MS. ALBERRO MENENDEZ: So my motion
2 included the three items discussed. So I don't
3 know if there's a second.

4 CHAIRMAN AIZENSTAT: The three items -- I'm
5 just not clear on the third item.

6 MS. ALBERRO MENENDEZ: Okay, the third item
7 has to do --

8 CHAIRMAN AIZENSTAT: I'd like for Maria to
9 say it.

10 MS. ALBERRO MENENDEZ: Right here. Under
11 the Section 3-2005, entitled Enforcement, in
12 particular Page 7 of 8, under Publicly
13 Accessible, with regards to Art in Public
14 Places, it means exterior and interior
15 locations that are highly -- so, in other
16 words, we're adding interior -- locations that
17 are highly visible and accessible 24 hours a
18 day, 7 days a week, at no charge to the public.

19 That's my motion.

20 CHAIRMAN AIZENSTAT: So we have that
21 motion. Is there a second?

22 MR. BELLIN: I'll second it.

23 CHAIRMAN AIZENSTAT: We have a second. Any
24 discussion?

25 MR. GRABIEL: Yes.

1 CHAIRMAN AIZENSTAT: Julio?

2 MR. GRABIEL: Yeah, I would like to see
3 explored the possibility of not limiting it to
4 24 hours a day, 7 days a week, at no charge to
5 the public. I see even public buildings like
6 City Hall closes at a certain time, and still
7 it's accessible to the public. I don't know
8 how to define that. Is it at least 18 hours
9 out of the 24, or, you know, 12 hours of the
10 24, six days a week? Something like that. So
11 it would allow a developer who wants to include
12 artwork into his lobby, his foyer, hand
13 railings, anything like that interior, it still
14 can be done and still it's accessible to the
15 public.

16 CHAIRMAN AIZENSTAT: Cindy, do you have a
17 way to define something like that, to
18 incorporate it, as far as the time period for
19 that building to allow access?

20 MS. BIRDSILL: We don't. I mean, our art
21 consultants have suggested that we have the
22 24/7, because the intent was to impact the
23 areas that people are flowing through
24 regularly, and again, I still feel that it
25 would be great if somebody brought it into the

1 lobby, but if they didn't have the experience
2 outside the building, then the general public
3 is missing out on that. I think, you know, the
4 airport is fabulous, but it is open a whole
5 lot. And unfortunately, I think to limit it to
6 public buildings to be also in the interior,
7 City Hall is historic. I don't know what other
8 buildings we would do that with, maybe a new
9 one.

10 MS. ALBERRO MENENDEZ: No, and they close.

11 MR. GRABIEL: They close.

12 MS. BIRDSILL: Yeah.

13 MR. GRABIEL: I mean, the Performing Arts
14 Center, for the County, it closes.

15 CHAIRMAN AIZENSTAT: The problem that we're
16 having is the 24/7, is from what I understand
17 from Julio.

18 MS. ALBERRO MENENDEZ: Well, playing
19 devil's advocate against what Julio is saying,
20 though, what is the meaning of Art in Public
21 Places? I mean, I think the way I see it, it's
22 to enjoy art, you know, like that everybody can
23 enjoy it, that we're not restricted to hours,
24 that we're not -- So that's where I'm having
25 like a little hesitation on accepting your

1 amendment, because I've always seen the Arts in
2 Public Places as a -- you know, more of a
3 public -- that everyone from the public can
4 enjoy it at any time.

5 MR. BELLIN: But Maria, if the intent of
6 this is X, then that's what we really need to
7 talk about. Is the intent to have a piece of
8 art in a public place, where the public can go
9 any time, day or night, and enjoy it? And
10 that's not going to happen in a private
11 building. The developer is going to lock the
12 door, like in an office building, they're going
13 to lock the door at six o'clock, and people are
14 not going to go in there without having access
15 to that building with a special key.

16 MS. ALBERRO MENENDEZ: But shouldn't the
17 developer look at perhaps incorporating a plaza
18 with an art piece?

19 MR. BELLIN: Sometimes you can't do it.
20 You don't have the space.

21 MS. ALBERRO MENENDEZ: Well, in the case of
22 the Ponce Cat, they came up with something that
23 worked well, much better in my opinion than the
24 initial, because there was just not enough
25 space, you know. I mean, to me, Art in Public

1 Places --

2 MR. BELLIN: But that's not interior.
3 That's not in a lobby. That's on the exterior
4 of the building, where you drive by and you see
5 it or you walk by and you see it, and I think
6 to try and bring public art into a private
7 building, I don't see how that can work.

8 MR. PEREZ: I mean, it just becomes -- I
9 mean, there's many variables to it, obviously,
10 from a private owner. From a landowner
11 perspective, obviously, there's a number of
12 different variables when entertaining where to
13 locate your art, the biggest one being a
14 security risk, you know.

15 MS. BIRDSILL: That's a good point.

16 MR. PEREZ: You probably -- You don't want
17 access to just anybody, you know, soliciting
18 your building at any time of the day. So, from
19 a private perspective, you always look at risk
20 number one, in saying, "Okay, I'm going to have
21 a piece of art in my building where the public
22 could walk into my building during operating
23 hours," but that still becomes a risk. So I
24 think variable number one becomes, okay, at
25 what point does this art become a security

1 hazard, and I think in theory the concept is
2 great, but I think it's become somewhat of a
3 challenge, from a landowner perspective, to
4 just allow anybody into your building, to
5 access it, no matter what time of day it is.

6 MS. ALBERRO MENENDEZ: But, you know, I
7 think you raise a great point. The problem
8 that I see is that if you give them this
9 choice, that's all you're going to see. Nobody
10 is -- A developer, especially if they have a
11 beautiful piece, is going to want to put it
12 outside. So where do you draw the line? This
13 becomes then an arts in public, slash, private
14 place. You know, that's my concern. I mean,
15 then you're defeating the purpose of what I
16 think the City is trying to establish, which is
17 an arts in public place.

18 MR. BELLIN: But it's defined, and I think
19 that it should be in a public place, where the
20 public can enjoy it and see it, and not in
21 places that they're restricted in going. And a
22 lot of times you can't even get into a
23 building, even if it's like an office building
24 or a condominium. And condominiums also have
25 to provide the art in public places, and you

1 can't get into the condominium without a
2 special key or card to get in there.

3 It seems like the intent is to put the art
4 in places where people can see it, 24 hours a
5 day, and then it's the challenge of the
6 developer to determine where it's going to go,
7 and if he has no place to put it, like we did
8 on the Ponce Cat building, we managed to put
9 Art in Public Places where it was easily seen
10 by anybody who walked by that building.

11 MS. ALBERRO MENENDEZ: Right.

12 MR. BELLIN: So that's the challenge.

13 MS. ALBERRO MENENDEZ: And you know,
14 remember, we've reincorporated that paragraph
15 where there's always an opportunity to go to
16 the Commission and basically say, "Look, we
17 have an unusual case and we need some -- " I
18 mean, would that fit there, also?

19 MR. LEEN: Well, yes, it could. But, you
20 know, one thing I wanted to ask you was, in
21 terms of that paragraph, I think a lot of this
22 can be addressed by -- I would like to rewrite
23 this paragraph a little bit, to narrow it to
24 some extent, to address the concern of Staff
25 that we don't want everyone coming in and

1 asking for a change. It should be
2 extraordinary, and it should say that, and
3 should have some standards, but one of them
4 could be these two examples you've given.
5 Those could be put in there as examples of what
6 would be done.

7 MS. ALBERRO MENENDEZ: My only concern --

8 MR. LEEN: But that could address all these
9 situations, and we could both narrow it, which
10 is what -- I think Staff is concerned that it
11 becomes, you know, you never know in every
12 individual case who's going to be seeking an
13 adjustment, what is their -- You want to make
14 sure you're fair to everybody, but on the other
15 hand, it allows us to address these very
16 specific circumstances in a paragraph that's
17 already there.

18 CHAIRMAN AIZENSTAT: Maria, would you like
19 to amend your motion? Because the way your
20 motion is now, it's 24/7.

21 MS. ALBERRO MENENDEZ: Right.

22 CHAIRMAN AIZENSTAT: Would you like to
23 amend it with giving the City Attorney some
24 kind -- let him address the way the paragraph
25 is written?

1 MS. ALBERRO MENENDEZ: Well, he wasn't
2 referring to that paragraph. He was referring
3 to the paragraph that we reincorporated, which
4 was B.

5 CHAIRMAN AIZENSTAT: Correct, but that
6 would address the 24/7 question, also. In
7 other words, if somebody -- The way I see it
8 is, if somebody is doing a project and wants to
9 incorporate it going into their building, he's
10 saying that's a vehicle for them to go to the
11 Commission to allow them to do that, or am I
12 incorrect?

13 MR. LEEN: Yes, that would be a vehicle to
14 allow them to do it.

15 MS. ALBERRO MENENDEZ: That's how I
16 interpret it.

17 CHAIRMAN AIZENSTAT: That's correct, so
18 that's why I'm saying --

19 MS. ALBERRO MENENDEZ: I don't have a
20 problem with that. My only concern is that we
21 don't end up not making it accessible.

22 MR. GRABIEL: As long as we leave it the
23 way it is, just changing exterior and interior
24 locations that are highly visible and
25 accessible 24 hours a day --

1 MS. ALBERRO MENENDEZ: I don't have a
2 problem with that one, as long as it's
3 accessible to the public.

4 CHAIRMAN AIZENSTAT: That's the way -- From
5 my understanding, that's the way you made the
6 motion --

7 MS. ALBERRO MENENDEZ: Yes.

8 CHAIRMAN AIZENSTAT: -- and that's the way
9 Marshall --

10 MR. BELLIN: I don't see how that's going
11 to happen. I just don't see that happening.

12 MR. GRABIEL: Well, they'll see it case by
13 case.

14 MS. ALBERRO MENENDEZ: But, you know, if
15 you make it 24-hour accessible, then they have
16 to make it happen. If not, they just don't get
17 it inside.

18 MR. BELLIN: Well, that's exactly the
19 point. It's somewhere else.

20 CHAIRMAN AIZENSTAT: But if not, they
21 can -- The way Craig is going to word it, they
22 can do it under a special circumstance, go to
23 the City Commission at that point.

24 MR. BELLIN: The developer has the option.
25 It's his choice. He has the option. If he

1 wants a beautiful piece of art in his lobby, he
2 puts it in his lobby. It just doesn't qualify
3 as the Art in Public Places.

4 MS. ALBERRO MENENDEZ: Right.

5 MR. GRABIEL: Yeah, but my point is that
6 there's opportunities for an artist working
7 with the developer to do a piece of work that
8 comes from the outside to the inside and works
9 well. If we leave it the way it is, with 24
10 hours a day, 7 days a week, then the developer
11 can go to the Commission and say, "This is my
12 artwork. This is what I'm committing myself to
13 do. You need to allow me to only keep it open,
14 you know, 20 hours a day," or whatever he
15 wishes it to be --

16 MR. BELLIN: But once you've set that
17 precedent, you've said to every developer, I
18 can do the same thing.

19 MS. ALBERRO MENENDEZ: That's my concern,
20 that this ordinance then starts -- if you allow
21 that, it starts becoming art in public, slash,
22 private places.

23 CHAIRMAN AIZENSTAT: No, it's got to be art
24 in public places.

25 MS. ALBERRO MENENDEZ: If you give them a

1 choice, they're always going to want it inside.

2 MR. BELLIN: But once you set a precedent
3 and give it to somebody, the next guy is
4 entitled to it, as well.

5 MS. ALBERRO MENENDEZ: So you're -- Okay.

6 MR. BELLIN: So that's my concern, is, it
7 becomes art that's not in public places. It
8 becomes art that's incorporated in the
9 building, that the tenants enjoy but nobody
10 else does.

11 MS. ALBERRO MENENDEZ: Okay, so I'm sorry,
12 Julio, but I'm going to strike my third
13 amendment, and if it doesn't go through, then
14 you guys can --

15 CHAIRMAN AIZENSTAT: So you're
16 withdrawing --

17 MS. ALBERRO MENENDEZ: I want to keep it
18 exterior. I don't want to include the interior
19 portion, of allowing art to go interior and
20 letting it count towards the Art in Public
21 Places.

22 MR. PEREZ: Correct.

23 MS. ALBERRO MENENDEZ: I want to keep the
24 art where it's meant to be, which is for the
25 enjoyment of the public.

1 CHAIRMAN AIZENSTAT: Okay.

2 MR. TRIAS: So, Ms. Menendez, you're going
3 to keep the language as is?

4 MS. ALBERRO MENENDEZ: Right, but again,
5 someone has to second it, and then we have to
6 go through the motion, and if Julio wants to
7 make another motion, we'll go from there.

8 CHAIRMAN AIZENSTAT: You're amending your
9 motion?

10 MS. ALBERRO MENENDEZ: I'm striking my
11 amendment to the motion. I am not adding the
12 interior part of it.

13 Sorry.

14 CHAIRMAN AIZENSTAT: Maria, just to keep it
15 simple --

16 MS. ALBERRO MENENDEZ: Two items. My
17 approval for the ordinance --

18 CHAIRMAN AIZENSTAT: I would like -- Would
19 you mind withdrawing your motion?

20 MS. ALBERRO MENENDEZ: I'll withdraw it.

21 CHAIRMAN AIZENSTAT: And that way, you can
22 just put a new motion in --

23 MS. ALBERRO MENENDEZ: Okay.

24 CHAIRMAN AIZENSTAT: -- and see if there's
25 a second, please. It will just keep the record

1 clean.

2 MS. ALBERRO MENENDEZ: Okay, the 90 days
3 following the permit being issued, if the
4 construction is not commencing, property owner
5 may request consideration from the Commission
6 for reimbursement of the Arts in Public Places
7 fee. Number two, that the soft costs will be
8 determined by the percentage of construction as
9 determined by Staff. Number three -- I did
10 have a number three -- that B, under Section
11 3-2003, and as suggested by our attorney, who's
12 going to look at it and reword it, stay in; and
13 that we strike, under Section 3-2003, the last
14 sentence on Page 4 of 10, which states, "No
15 other waivers of Art in Public Places fees
16 shall be permitted," because it conflicts with
17 the paragraph B being put back in place, as
18 modified by our City Attorney.

19 CHAIRMAN AIZENSTAT: Is there a second?

20 MS. ALBERRO MENENDEZ: That is my motion.

21 CHAIRMAN AIZENSTAT: Is there a second?

22 MR. BELLIN: I'll second it.

23 CHAIRMAN AIZENSTAT: We have a second?

24 MR. BELLIN: Yes.

25 CHAIRMAN AIZENSTAT: Seeing we've already

1 had our discussion, let's go ahead and call the
2 roll, please.

3 MS. MENENDEZ: Jeff Flanagan?

4 MR. FLANAGAN: Yes.

5 MS. MENENDEZ: Julio Grabiell?

6 MR. GRABIEL: Yes.

7 MS. MENENDEZ: Maria Menendez?

8 MS. ALBERRO MENENDEZ: Yes.

9 MS. MENENDEZ: Alberto Perez?

10 MR. PEREZ: Yes.

11 MS. MENENDEZ: Marshall Bellin?

12 MR. BELLIN: Yes.

13 MS. MENENDEZ: Eibi Aizenstat?

14 CHAIRMAN AIZENSTAT: Yes.

15 MS. ALBERRO MENENDEZ: Okay.

16 CHAIRMAN AIZENSTAT: Thank you.

17 The next item on the agenda is an Ordinance
18 of the City Commission of Coral Gables,
19 Florida, providing for text amendments to the
20 City of Coral Gables official Zoning Code,
21 Article 5, "Development Standards," Division
22 19, "Signs," Section 5-1911, "Encroachments
23 over public rights-of-way," by eliminating the
24 requirement for a restrictive covenant for
25 signs which encroach nine inches or less into

1 the public right-of-way, providing for
2 severability, repealer, codification and an
3 effective date.

4 MR. TRIAS: Mr. Chairman, the proposed
5 ordinance is simple as that. It's simply
6 eliminating one requirement, to try to make the
7 process a little bit faster and more efficient
8 for the applicants. In our view, the typical
9 condition would be a wall, a wall that is in a
10 downtown building at the property line, and
11 then if a sign is proposed on that wall,
12 sometimes it would encroach maybe a couple of
13 inches or something very minimal, and at this
14 point the process is a bit cumbersome and
15 sometimes has created a hardship for some
16 individuals, so the proposal is to not require
17 the restrictive covenant up to nine inches.

18 CHAIRMAN AIZENSTAT: Do you have any
19 examples that you can show us, any presentation
20 prepared?

21 MR. TRIAS: No, we don't have any
22 presentation beyond the description.

23 MR. BELLIN: Well, let me ask you a
24 question. Why not eliminate that requirement
25 for every encroachment of nine inches or less?

1 MR. TRIAS: That was discussed with the
2 City Attorney, and we believe that in some
3 cases we wanted to keep that requirement. But
4 in the cases that it was so minimal that it
5 really wasn't creating any kind of practical
6 issue, we could eliminate it.

7 And keep in mind, all of this is reviewed
8 by the Board of Architects, also by the City
9 Architect, so there's a process of review and
10 some professional judgment that goes into this
11 approval.

12 MR. BELLIN: Is it fair to say, if we have
13 a column and the column has a capital, and the
14 capital extends beyond the column, nine inches,
15 do you need a covenant for that?

16 MR. TRIAS: The Building Code allows that,
17 and that's a different issue. What we're
18 talking about is just signs.

19 MR. BELLIN: Okay.

20 MR. TRIAS: Yeah.

21 MS. ALBERRO MENENDEZ: Right, but I think
22 that what Marshall is saying is that --

23 CHAIRMAN AIZENSTAT: That would be a sign.

24 MS. ALBERRO MENENDEZ: There's
25 encroachments that are less than nine inches

1 that are handled by Public Works, has
2 restricted covenants, has additionally
3 insured -- the City has additionally insured
4 and has the requirement of the property owner
5 to maintain. How do those items get managed
6 now? If we were to waive the restrictive
7 covenants for these signs that are less than
8 nine inches, who's liable for the signs? Who
9 maintains the sign? Is there going to be
10 another document? I'm all for streamlining,
11 but --

12 MR. TRIAS: That's a very good point and
13 I'm glad you brought that up, because we had a
14 conversation earlier today with the City
15 Attorney, and he suggested that we have some
16 waiver language in the permit, that waives the
17 liability. Perhaps he could explain it more.

18 MR. LEEN: Yes. The way it will be now is,
19 if there's no restrictive covenant, the Code
20 still requires maintenance of the sign, so we
21 could still cite them as a matter of Code
22 Enforcement. I would like to add to this,
23 though, to the ordinance, and I'm going to
24 recommend it here today, based on my review and
25 the discussion I had with the Planning and

1 Zoning Director, that there be a provision
2 added to this that says that the property owner
3 has a duty to defend, indemnify and hold
4 harmless the City for any injury caused by the
5 encroachment to third parties, and that the
6 City may bring a cause of action to enforce
7 this provision. The reason why is, that's what
8 our restrictive covenant says right now.

9 MS. ALBERRO MENENDEZ: Right.

10 MR. LEEN: And that's one of the reasons
11 that we have the restrictive covenant, is, if a
12 sign, you know, heaven forbid, were to fall on
13 someone or to hurt someone, it is on City
14 property, so there could be a claim brought
15 against the City. I'm not saying it would be a
16 legally sufficient claim, but it would be
17 brought. It would almost certainly be brought.
18 They'd probably bring it against both the
19 property owner and the City.

20 The idea behind this is, the restrictive
21 covenant, one, provides for insurance, but two,
22 also provides for indemnification of the City,
23 so the City is not being harmed from allowing
24 the encroachment.

25 So I would like that provision. I would

1 recommend to you that you recommend the greater
2 than nine inches amendment. I do think that
3 will speed things up, where there's a very,
4 very small risk to the City, in an encroachment
5 of less than nine inches, but I still think
6 there should be a provision in there saying
7 that if something happens, you're still the one
8 responsible for your encroachment, and so
9 the --

10 MR. TRIAS: And that provision will be in
11 the building permit language.

12 MR. LEEN: Well, no, I think it should be
13 put into the Section 5-1911.

14 MR. TRIAS: All right.

15 MS. ALBERRO MENENDEZ: Yeah, it should be
16 the ordinance.

17 MR. LEEN: I think it should say the
18 property owner has a duty to defend, indemnify
19 and hold harmless the City for any injury
20 caused by the encroachment to third parties,
21 and the City may bring a cause of action to
22 enforce this provision.

23 MS. ALBERRO MENENDEZ: I feel comfortable
24 with that, because of the reason for the
25 restrictive covenant, in protection of the

1 City.

2 MR. LEEN: And in case you're worried about
3 that, we have not had that happen since I've
4 been here, so I don't think this would be used
5 very much, but there could be a time it is, and
6 the City should not have to pay for the entire
7 amount of someone's injury based on a property
8 owner's encroachment.

9 MR. BELLIN: What happens in the case of
10 awnings? Awnings have special requirements.
11 You've got to pull a separate permit. And
12 awnings do collapse. The one at Snow's
13 Jewelers, the one that was on Salzedo,
14 collapsed.

15 MR. TRIAS: Mr. Chairman --

16 MR. BELLIN: Nobody was there, but --

17 MR. TRIAS: Yeah. This does not apply to
18 awnings. This is only about signs. And
19 whatever is with awnings, they're still
20 required to have the restrictive covenant and
21 go through the process.

22 MR. LEEN: Yes, you would still have a
23 restrictive covenant.

24 MR. TRIAS: This is a very narrowly focused
25 issue.

1 MR. LEEN: It's only signs.

2 MR. TRIAS: Yeah.

3 MR. BELLIN: Understood. Only signs that
4 are --

5 MS. ALBERRO MENENDEZ: What is the typical
6 encroachment -- I'm sorry, go ahead, Marshall.

7 MR. BELLIN: Only for signs that project
8 off a building nine inches or less, and that's
9 it.

10 MR. TRIAS: Yes, and this will be only when
11 the wall is at the property line, okay, so
12 you're encroaching into the public
13 right-of-way, so it applies to a very narrow
14 set of signs.

15 MS. ALBERRO MENENDEZ: Sometimes you have
16 the property back and it still encroaches,
17 especially if it's wider than nine inches.

18 MR. TRIAS: Well, right.

19 MS. ALBERRO MENENDEZ: What I was going to
20 ask you is, what's the typical encroachments
21 for a sign? Do you know how much they encroach
22 by? Is it two, three, four?

23 MR. TRIAS: Two, three, four, and that's
24 about the typical. No more than that,
25 typically.

1 MS. ALBERRO MENENDEZ: So what's the magic
2 thing about nine inches? It's just because the
3 original ordinance said it?

4 MR. TRIAS: No. Nine inches, it was -- The
5 Building Code allows encroachments, right now,
6 as part of getting a building permit, up to 12
7 inches in cases of columns and capitals and
8 cornices and so on, and in our view, nine
9 inches was a reasonable number as compared to
10 some of the things that are typically in a
11 building that are similar, in terms of
12 encroachments, not signs but similar in terms
13 of the physical encroachment into the
14 right-of-way. So that was it. Certainly it's
15 an arbitrary number. Certainly you could come
16 up with a different number, if you prefer.
17 It's up to you.

18 MR. FLANAGAN: Do we require a covenant for
19 a support column or a cap or whatever it is, if
20 it extends -- encroaches into the right-of-way?

21 MS. ALBERRO MENENDEZ: Yes, I'm pretty sure
22 they do.

23 MR. TRIAS: If it encroaches more than
24 what's allowed by the Building Code. So, yes.

25 MR. FLANAGAN: No, but my question, if they

1 stay within the encroachments allowed under the
2 Building Code, do we require a covenant?

3 MR. TRIAS: No, that would not be required.

4 MS. ALBERRO MENENDEZ: Well --

5 MR. TRIAS: What happens is that balconies,
6 for example, typically --

7 MS. ALBERRO MENENDEZ: No, that's not --
8 and again, I'm not here as Staff, but every
9 encroachment that goes into the right-of-way
10 requires a restrictive covenant, which
11 requires, you know, the maintenance and it
12 requires the liability protection for the City.
13 The only difference is, less than nine inches,
14 in the Public Works items, it can be done
15 administratively, but they still require the
16 restrictive covenant to be signed. Anything
17 over has to go in front of the Commission.

18 MR. TRIAS: Okay.

19 MS. ALBERRO MENENDEZ: That's my
20 recollection, but I mean, again, I don't know
21 if it's changed.

22 MR. TRIAS: Right, and --

23 MR. LEEN: That's my feeling, too. My
24 recollection is that basically any encroachment
25 into the right-of-way, except for the waiver

1 that you just mentioned with Public Works, or
2 now this one, if it's passed, that we do give
3 restrictive covenants for that, but I'd have to
4 double-check.

5 Ms. Tompkins is shaking her head yes.

6 Do you want to --

7 MR. FLANAGAN: If it's good for one, it's
8 good for everything.

9 MS. TOMPKINS: Ms. Menendez is correct,
10 yeah. We do require the restrictive covenants
11 for other encroachments, but the Public Works
12 Department has the authority to approve those
13 encroachments up to nine inches. If they're
14 over nine inches, they have to go to the
15 Commission for approval.

16 MR. FLANAGAN: Got it. Okay. I just think
17 what's good for one is good for all. What's
18 the hardship for an applicant? What hardship
19 has been created by having to have somebody go
20 do an opinion of title and issue a covenant?

21 MR. TRIAS: It's purely the paperwork and
22 the effort that it takes. It has been
23 expressed as a hardship by some applicants in
24 the past, and from our point of view, we
25 thought it was an easy way to streamline the

1 process. But clearly, it's nothing more than
2 that.

3 MR. FLANAGAN: Right. I agree, and I'm all
4 for streamlining it and let's make things
5 happen, but I really have a hard time with the
6 City -- No matter what's contained in an
7 ordinance or what language may be in a building
8 permit, somebody at some point is going to come
9 back and say, "I had no idea," and there's
10 going to be a fight. At least with a covenant
11 and doing an opinion of title, somebody is
12 preparing the covenant, they're signing off on
13 it, and in my mind it's just a much -- it's an
14 overt act at that point and they know darn well
15 what they're getting into.

16 MS. ALBERRO MENENDEZ: That's a good point.

17 MR. FLANAGAN: So I have a very hard time
18 giving up the clear, explicit protection that
19 the City gets from a covenant and by being
20 named as an additional insured. I mean,
21 somebody could -- I could agree to indemnify
22 the world, but if I don't have a penny to my
23 name, then it's an absolutely hollow
24 indemnification. So, if we don't know that
25 they have insurance, then it could very well be

1 worthless. So I have a very hard time with
2 this.

3 CHAIRMAN AIZENSTAT: When you do a covenant
4 and they have to hold insurance, do they go
5 ahead and name the City as an additional
6 insured, so they're notified?

7 MS. ALBERRO MENENDEZ: Yes.

8 MR. LEEN: There's a waiver -- There's a
9 way to waive that. In certain circumstances --
10 There are insurance companies that won't do it,
11 and it goes to the risk manager, who can decide
12 to waive that in limited circumstances, but
13 normally we are added as an additional insured.

14 CHAIRMAN AIZENSTAT: That's a good point.

15 MS. ALBERRO MENENDEZ: And right now it's
16 my understanding that it's done for special
17 driveways, it's done for any encroachment that
18 exceeds -- any encroachment that's on the
19 right-of-way, regardless of the distance. The
20 only difference is, if it's up to nine inches,
21 it's done administratively. If it's more, it
22 goes before the Commission.

23 MR. FLANAGAN: So I'll move that we --
24 what?

25 MS. ALBERRO MENENDEZ: Kill it?

1 MR. FLANAGAN: Do not approve. Recommend
2 that we deny the application again, since it's
3 technically an application.

4 MS. ALBERRO MENENDEZ: I'll second it.

5 CHAIRMAN AIZENSTAT: We have a first,
6 second. Any comments?

7 MR. GRABIEL: I think the City has a
8 reputation for making life very difficult to
9 developers, and this is a minor point, nine
10 inches of a sign, which typically has to be
11 approved by the Board of Architects and the
12 Building Department, so it's something that is
13 well fixed and it's not going to be falling
14 down, and if we have already within our venue
15 for an architect to design a building that has
16 a capital, a cornice or entablature that is
17 nine inches over the property line, a sign of
18 nine inches should be allowed.

19 MR. FLANAGAN: But you still provide a
20 covenant for the cornice that extends. As
21 Maria says, even a driveway, if you want to do
22 a brick driveway approach, I think you need to
23 do a covenant and you need a special permit for
24 that, and that's not falling on anybody, and
25 so --

1 MS. ALBERRO MENENDEZ: Once there are any
2 space encroachments, they have to do the
3 restrictive covenant.

4 MR. GRABIEL: Yeah, but typically that's
5 when you're going through a building design and
6 it's already part of the building permit, so
7 it's already in the process. This is dealing
8 with --

9 MS. ALBERRO MENENDEZ: This is paperwork.

10 MR. GRABIEL: -- probably an existing
11 building --

12 MS. ALBERRO MENENDEZ: Yeah, this is
13 paperwork.

14 MR. GRABIEL: -- and attaching it to the
15 building and things like that, which, you know,
16 there's some times you see the store that's
17 open and the sign doesn't get up till six
18 months after, because they have to go through
19 all the paperwork. So I think what the Staff
20 is trying to do is trying to help a developer
21 who's investing money in the City to get their
22 sign up. That's what we're looking at.

23 MR. FLANAGAN: But any delay is probably
24 architectural review or a permit issuance, and
25 I would -- Forget it, I know from my experience

1 doing this that you can very easily get a
2 covenant prepared and ready to go during that
3 approval process.

4 MR. PEREZ: I agree with Julio. I mean,
5 it's not only the developer, but it's for an
6 existing building, for a company, a restaurant,
7 a bank, anybody who wants to come and open and
8 do business in the Gables, this is only another
9 layer of difficulty.

10 MS. ALBERRO MENENDEZ: Well, let me ask you
11 something. What if we were to require for it
12 to be provided within 30 days of, you know, the
13 permit being issued or something that allows
14 it? My concern with what Jeff said is the
15 protection for the City, because right now, a
16 restrictive covenant goes with the property.
17 If you decide not to have it, tomorrow you sell
18 your building, and the person who took over
19 those encroachments, there's nothing protecting
20 the City. So what if we were, in an effort to
21 streamline, because I'm familiar with all those
22 businesses that can't get their sign up, that
23 we say upon issuance of permit you have 30 days
24 to comply with the necessary paperwork, as a --
25 you know, what do you think of that? I mean,

1 in other words, that won't be the issue that's
2 causing the delay, but yet the City at the end
3 will get its protection.

4 MR. PEREZ: 30 days or before issuance of
5 TCO or CO?

6 MS. ALBERRO MENENDEZ: Okay, I'm seeing
7 Jane say no, so -- What would be Staff's
8 concern with that?

9 MS. TOMPKINS: The sign is probably already
10 up by the time 30 days have passed.

11 MR. FLANAGAN: Correct.

12 MS. TOMPKINS: And then where are we?
13 We're back at the Code Enforcement Board.

14 MR. LEEN: We have to cite them.

15 MR. PEREZ: But why couldn't it be before
16 TCO or CO?

17 MS. ALBERRO MENENDEZ: Oh, that's a good
18 one, prior to the TCO or CO.

19 MR. TRIAS: This is typically just a sign
20 permit, in an existing building. It's for
21 those kinds of very minor projects.

22 CHAIRMAN AIZENSTAT: It's not for
23 construction of a building.

24 MR. TRIAS: Right, right, so the reason
25 this was brought up is because somebody would

1 be trying to just put up a sign and all this
2 and says, "Oh, my God, you know, it's going to
3 take so long and it's creating such a
4 hardship," and it just didn't seem to be worth
5 the effort, and it was just a way to try to
6 streamline that process, just for the changing
7 of a sign, for example, on an existing
8 building, so --

9 MR. LEEN: My office had a couple people
10 come, over the course of the last few years,
11 and they had a lot of difficulty getting
12 through the Board of Architects process and
13 then the restrictive covenant and then the
14 insurance. They're a small business owner, so
15 I think -- and it took a lot of time, so I
16 think that the thought was that this might
17 assist them a little bit, and the City does
18 want to -- This is more of a policy issue, but
19 I think at least, you know, one way I think you
20 might look at it is that the City allows
21 businesses in the City if you're going to have
22 a sign that's going to have to encroach into
23 the right-of-way, unless it's just flat, and so
24 the City is willing to allow property owners to
25 do that without going to the expense of getting

1 a lawyer, doing a restrictive covenant, et
2 cetera, for nine inches or less.

3 Now, what that number should be or whether
4 it should exist is ultimately a policy
5 decision, and I can tell you, you're right,
6 it's better to have -- from a legal matter, it
7 is better to have the restrictive covenant.
8 The thought was, though -- and, you know, some
9 of the Commissioners have said this in
10 meetings, and I know Staff has talked about it,
11 and one of our goals is to try to make it
12 easier for businesses. So this was one idea
13 that came up, and that's why it's being
14 presented to you, and I was comfortable with
15 the nine inches because, one, I haven't seen
16 claims, really, even for 20-inch signs, but,
17 you know, there is a danger in a 20-inch sign
18 or a large encroachment that is greater than a
19 smaller one, and I thought that there was
20 language we could put in the ordinance that
21 would protect the City. But ultimately, there
22 is more risk, you're right. So that is a
23 policy judgment.

24 MS. ALBERRO MENENDEZ: What is the typical
25 encroachments of these signs.

1 MS. TOMPKINS: Again, it's minor. It's
2 predominantly the buildings that are in the
3 CBD.

4 MS. ALBERRO MENENDEZ: Right.

5 MS. TOMPKINS: Most of them are already
6 built, if not at the property line, very close
7 to it. Think of your typical sign for a
8 restaurant or something. It's projecting out
9 from the wall just a few inches, you know, a
10 couple of inches, maybe, for the mounting
11 brackets, and then maybe a couple of inches for
12 the actual lettering. We're not talking about
13 something that's going to be like a blade sign,
14 you know, and projecting out at a right angle,
15 a foot or two feet or something.

16 I'd also like to just mention that I did
17 have a conversation with Michael Sparber, our
18 risk manager, and he was very comfortable with
19 this ordinance, because in his experience, the
20 City doesn't have claims from people injuring
21 themselves on signs. The reason we have the
22 restrictive covenant requirement for other
23 right-of-way encroachments is generally
24 slip-and-falls. People trip over a sidewalk
25 crack or they -- something like that. It's not

1 the sign falling off and hitting someone on the
2 head.

3 MR. LEEN: But, you know, the other thing
4 you might consider is, you could lower the
5 inches.

6 MS. ALBERRO MENENDEZ: Yes, that's what I
7 was thinking.

8 Let me ask you, though, so you really think
9 it would be a problem to say, once your permit
10 is issued -- of course, they can always do it
11 sooner -- you have 30 days to submit the
12 certificate of insurance, adding the City as an
13 additional insured?

14 MS. TOMPKINS: Well, again, if you give
15 them 30 days, yes, because the sign is going to
16 be up probably within a week of when the permit
17 is issued --

18 MS. ALBERRO MENENDEZ: Right.

19 MS. TOMPKINS: -- and in some cases it's
20 already up when the permit is issued.

21 MS. ALBERRO MENENDEZ: Right. I don't have
22 a problem with the sign being up. I just have
23 a problem CO-ing it, you know, giving it a
24 final, until such time as the insurance -- as a
25 thought. You don't think that would work? It

1 becomes too --

2 MS. TOMPKINS: Again, it doesn't address
3 some of the other issues about, are we working
4 with property owners to develop business here
5 and are we trying to make the process as
6 uncomplicated and smooth as we can? I guess,
7 through my experience, I just don't see that
8 requiring this restrictive covenant was really
9 adding any value to the City.

10 CHAIRMAN AIZENSTAT: Well, right now we
11 have a motion and we have a second.

12 MR. PEREZ: You have a motion to deny,
13 right?

14 CHAIRMAN AIZENSTAT: We have a motion to
15 deny and we have a second. Let's call the
16 roll. We'll see and we'll take it from there,
17 and if it doesn't pass, then we can make
18 another.

19 MS. ALBERRO MENENDEZ: I'd like to amend --
20 or I'd like to withdraw my second.

21 CHAIRMAN AIZENSTAT: Good, okay, so --

22 MR. FLANAGAN: My motion still is out
23 there, and if it dies for lack of a second, it
24 dies for lack of a second.

25 CHAIRMAN AIZENSTAT: Is there a second from

1 anybody?

2 Okay. Anybody --

3 MS. ALBERRO MENENDEZ: I'd like to make a
4 motion that we allow it up to six inches. In
5 other words, anything six inches or less can go
6 through this streamlined process that the City
7 is trying to achieve.

8 CHAIRMAN AIZENSTAT: Is the three inches
9 really going to make a difference?

10 MS. ALBERRO MENENDEZ: I think nine inches
11 is pretty wide for a sign, personally. It's a
12 sign. It's not -- I mean, you don't have to --
13 This is my motion.

14 CHAIRMAN AIZENSTAT: I understand.

15 MS. ALBERRO MENENDEZ: This is my motion.

16 MR. TRIAS: Ms. Menendez --

17 MS. ALBERRO MENENDEZ: Do I have a second?

18 MR. TRIAS: Ms. Menendez, would you also --

19 MR. FLANAGAN: Would you be amenable to
20 requiring a certificate of insurance?

21 MS. ALBERRO MENENDEZ: Well, I understand
22 what the City is trying to do. You know, as
23 the receiver of many of those complaints, the
24 issue always came at the end, the sign is --
25 the sign, the sign, the sign, and I know what

1 they're trying to achieve. Honestly, I would
2 feel more comfortable in requiring a period
3 within the time, but if I'm hearing from our
4 City Attorney that he's not concerned with it,
5 I'm hearing from the risk manager that he's not
6 concerned with it, and I'm hearing from the
7 directors, then I'm not going to be concerned
8 with it. I mean, I think we've expressed. At
9 the end of the day, it's up to our Commission.
10 They themselves have had issues, from what I
11 hear, with the delay of the signage. So, if
12 they can live -- and that's one of the reasons
13 I was asking, what is the average sign width,
14 because nine inches -- I mean, nine inches is
15 not -- I mean, it's not your typical sign,
16 but --

17 MR. TRIAS: The last time this was an
18 issue, the sign was about three inches.

19 MS. ALBERRO MENENDEZ: Yes.

20 MR. TRIAS: So that's within your proposal.

21 MS. ALBERRO MENENDEZ: And sometimes the
22 property is not up to the property line, it's
23 set back, and what's really encroaching is an
24 inch.

25 MR. TRIAS: Yeah.

1 MS. ALBERRO MENENDEZ: You know? So -- My
2 motion is six inches, to allow any sign that's
3 less than a six-inch encroachment to go through
4 the process that they're -- or the changes that
5 they're --

6 CHAIRMAN AIZENSTAT: Now, is that with the
7 verbiage that Craig asked to be put in there,
8 also?

9 MR. LEEN: I would recommend that you add
10 the E, with the additional language
11 about defending and indemnifying --

12 MS. ALBERRO MENENDEZ: With the verbiage
13 that's recommended by our City Attorney.

14 MR. LEEN: And I would recommend that the
15 last sentence, which says signs which encroach
16 six inches or less now, or really less than six
17 inches --

18 CHAIRMAN AIZENSTAT: Right.

19 MR. LEEN: -- may be administratively
20 approved by the City Architect, and must comply
21 within our subject items C, D and E, as
22 specified in the section.

23 MS. ALBERRO MENENDEZ: That's part of my
24 motion.

25 CHAIRMAN AIZENSTAT: Is there a second?

1 MR. BELLIN: I have an objection to what
2 you just brought up.

3 CHAIRMAN AIZENSTAT: Marshall, let me just
4 see if there's a second.

5 MR. BELLIN: Okay.

6 CHAIRMAN AIZENSTAT: Is there a second?

7 So that dies.

8 Go ahead, please.

9 MR. BELLIN: I don't think the City
10 Architect really ought to be able to
11 administratively approve signs. It ought to be
12 up to the Board of Architects, and it's always
13 been up to the Board of Architects.

14 Carlos generally can do certain things
15 administratively, but signage is very important
16 to a building, and Carlos is a very competent
17 person, but I think that's what the Board of
18 Architects is for, and that's who ought to be
19 making the decisions whether it's proper or
20 not.

21 CHAIRMAN AIZENSTAT: But I don't see this
22 as being a decision whether the sign is proper
23 or not. I think, from what I'm seeing, it's
24 just more of a streamlining the paperwork that
25 is needed.

1 MR. BELLIN: But that's not --

2 MR. TRIAS: Mr. Chairman, if I could
3 correct that issue, it just says "may," that
4 the City Architect may, to give him that
5 option --

6 MR. BELLIN: Okay.

7 MR. TRIAS: -- but he may still decide to
8 send it to the Board.

9 MR. BELLIN: I was just addressing what
10 Craig said.

11 MR. LEEN: I do think that the language
12 could allow an administrative approval.

13 MR. BELLIN: Yeah, "may" is fine, if he
14 wants --

15 MR. TRIAS: That was the intent, just
16 "may," to allow it, and that's what it says.

17 MR. BELLIN: And also, what is the intent
18 of this whole process, to streamline the
19 permitting process?

20 MS. ALBERRO MENENDEZ: Yes.

21 MR. BELLIN: And in the whole permitting
22 process, that's about how much streamlining
23 this is going to do. There are so many other
24 issues. It just seems to me that this is
25 really a non-issue, and if you want to protect

1 the City, then a restrictive covenant ought to
2 be required. That's right. If it encroaches
3 into the property line and something from the
4 sign falls, a guy hits his head, whatever it
5 is, the intent is to protect the City, and the
6 way you protect the City is by a restrictive
7 covenant.

8 MS. ALBERRO MENENDEZ: I was going there,
9 but I think I've heard from the City Attorney,
10 I've heard from the Director --

11 MR. BELLIN: This is my opinion.

12 MS. ALBERRO MENENDEZ: I understand.

13 MR. FLANAGAN: You should have seconded my
14 motion.

15 CHAIRMAN AIZENSTAT: You can still make the
16 motion.

17 MR. BELLIN: No, I just wanted it to be
18 very clear as to --

19 MS. ALBERRO MENENDEZ: If I don't have a
20 second, you have another opportunity.

21 MR. BELLIN: I didn't think six inches made
22 a whole lot of difference, one way or the
23 other. I think if it's an encroachment, it's
24 an encroachment.

25 MR. FLANAGAN: Yeah, correct.

1 CHAIRMAN AIZENSTAT: Is there a motion?

2 MS. ALBERRO MENENDEZ: There was a motion.
3 You're looking for a second.

4 CHAIRMAN AIZENSTAT: There was no second.

5 MS. ALBERRO MENENDEZ: Okay.

6 CHAIRMAN AIZENSTAT: Yeah, nobody seconded,
7 so --

8 MS. ALBERRO MENENDEZ: It died for lack of
9 a second.

10 MR. GRABIEL: I'd like to move to leave the
11 ordinance the way it is, with the added line F,
12 as set up by the City Attorney.

13 CHAIRMAN AIZENSTAT: Is there a -- Go
14 ahead.

15 MR. PEREZ: I second it.

16 CHAIRMAN AIZENSTAT: We have a motion. We
17 have a second. Call the roll, please.

18 MS. MENENDEZ: Julio Grabiell?

19 MR. GRABIEL: Yes.

20 MS. MENENDEZ: Maria Menendez?

21 MS. ALBERRO MENENDEZ: Yes.

22 MS. MENENDEZ: Alberto Perez?

23 MR. PEREZ: Yes.

24 MS. MENENDEZ: Marshall Bellin?

25 MR. BELLIN: Yes.

1 MS. MENENDEZ: Jeff Flanagan?

2 MR. FLANAGAN: No.

3 MS. MENENDEZ: Eibi Aizenstat?

4 CHAIRMAN AIZENSTAT: Yes.

5 Okay. Seeing no other items on the agenda,
6 thank you, everybody, for coming --

7 MR. FLANAGAN: Thank you.

8 CHAIRMAN AIZENSTAT: -- and have a healthy
9 and a Happy New Year.

10 MS. ALBERRO MENENDEZ: Thank you. You,
11 too.

12 (Thereupon, the meeting was adjourned at
13 8:20 p.m.)

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C E R T I F I C A T E

STATE OF FLORIDA:

SS.

COUNTY OF MIAMI-DADE:

I, JOAN L. BAILEY, Registered Diplomate Reporter, Florida Professional Reporter, and a Notary Public for the State of Florida at Large, do hereby certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 13th day of January, 2014.



JOAN L. BAILEY, RDR, FPR

Notary Commission Number EE 083192
Expiration June 14, 2015.