

City of Coral Gables  
Planning Department Staff Report

To: Honorable Planning and Zoning Board Members

From: Planning Department

Date: January 9, 2008

Subject: **Zoning Code Text Amendment – Article 3, Division 13, Concurrency Review.** An Ordinance providing for text amendments to the Zoning Code, Article 3, Division 13, entitled “Concurrency Review,” providing for updates to concurrency review provisions and procedures, including the addition of public school concurrency review procedures necessary to meet State of Florida mandated public school concurrency requirements; providing for severability, repealer, codification, and an effective date.

---

**Recommendation**

The Planning Department recommends approval of the proposed text amendment to Zoning Code Article 3, Division 13, “Concurrency Review,” as provided in Attachments A (clean version) and B (~~strike through~~ / underline version).

**Background**

This item is related to the various public school concurrency items recommended for approval by the Planning and Zoning Board on November 14, 2007 (see Attachment C), and approved on First Reading by the City Commission on December 11, 2007.

The primary purpose of the amendment is to include new regulations for public school concurrency review pursuant to new State-mandated requirements. In working with the Building and Zoning Department to amend these regulations, Staff found that a more thorough rewrite of the “Concurrency Review” section was desired in order to provide for a more efficient and effective concurrency review process in general.

In summary, the amendment includes the following changes:

1. Incorporates new requirements for State-mandated public school concurrency review, including regulations governing application review, exemptions, capacity reservations, mitigation agreements, timeframes, extensions, and review criteria.
2. Provides for a new flowchart that outlines the concurrency review process, in keeping with the format of other Zoning Code sections.
3. Removes repetitious, outdated, and confusing provisions, such as those regarding initial and intermediate development orders.

## **Zoning Code text amendment – “Concurrency Review”**

**January 9, 2008**

**Page 2 of 2**

4. Provides for a greater connection between concurrency review and the Board of Architects review and approval process.
5. Clarifies that the responsibility for meeting concurrency lies with the applicant versus the City.
6. Removes specific requirements for administrative procedures, in keeping with the format of other Zoning Code sections.

Building and Zoning Department staff have reviewed the proposed amendment and have expressed support for the changes.

### **Next Steps**

The City Commission is scheduled to consider this issue as follows (dates and times are subject to change):

1<sup>st</sup> Reading, Tuesday, January 22, 2008

2<sup>nd</sup> Reading, To Be Determined (will accompany associated school concurrency items following State-review of CLUP amendments)

Respectfully submitted,

Eric Riel, Jr.  
Planning Director

### **Attachments:**

- A. Zoning Code text amendment - clean version.
- B. Zoning Code text amendment - ~~strike-through~~ / underline version.
- C. 11.14.07 Excerpts of Planning and Zoning Board meeting minutes.

I:\P Z B\Staff Reports\01 09 08 Zoning Code amendment\_Concurrency Review.doc

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15

# Proposed Zoning Code Amendment

## Article 3, Division 13 - "Concurrency Review"

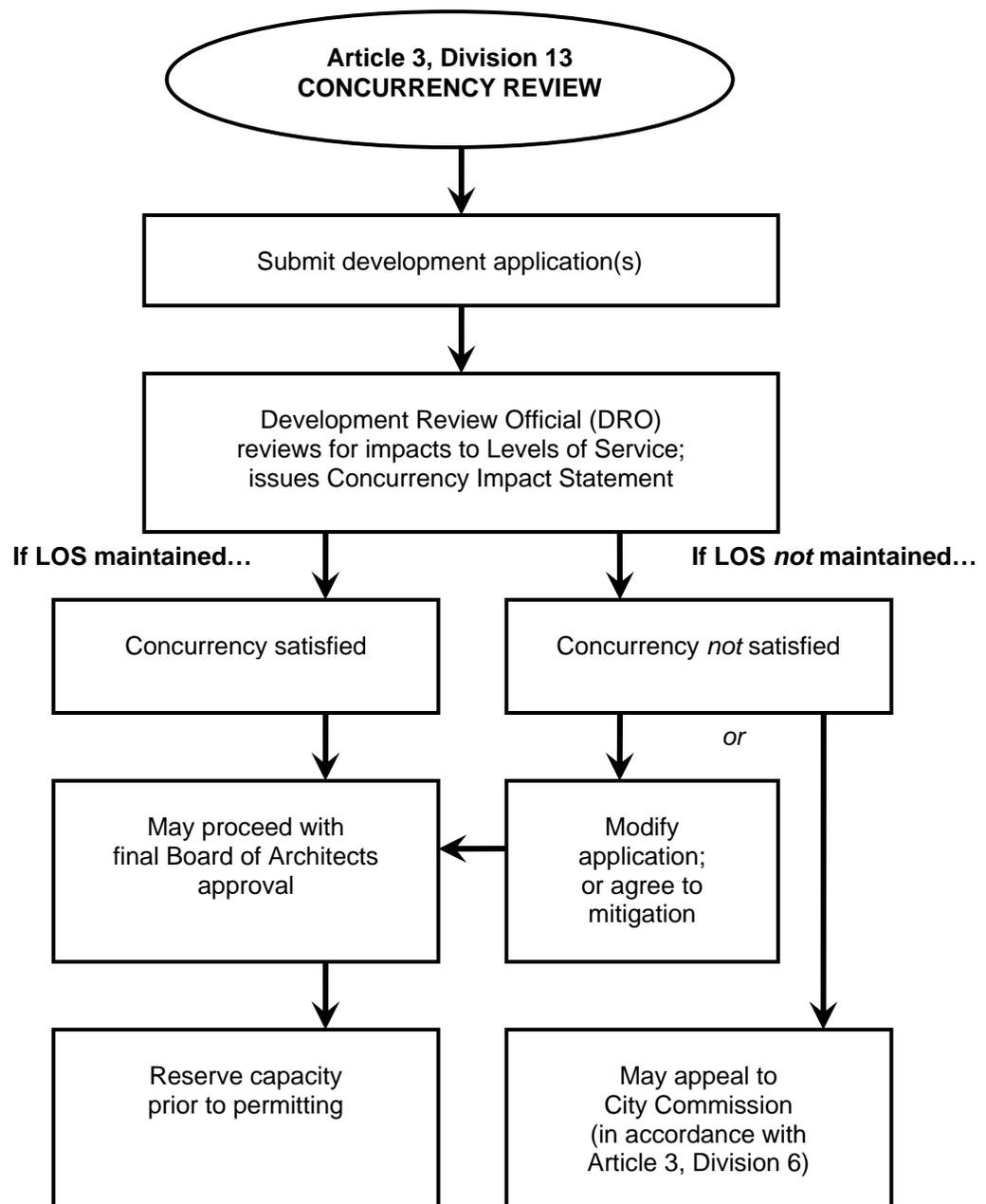
### *Clean version*

5 **Article 3, Division 13. Concurrency Review**

6 **Section 3-1301. Purpose and applicability.**

7 It is the purpose of this Division to provide a process for ensuring that the public facilities and  
8 services needed to support development are available concurrent with the impacts of such  
9 development.

10 **Section 3-1302. General procedures for concurrency review.**



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49

**Section 3-1303. Concurrency review required.**

- A. Pursuant to Florida Statutes and the City’s comprehensive plan, concurrency review is required for all applications for development approval in order to identify and address the impacts of new development on the levels of service for various public facilities and services, except as exempted under the provisions of Sections 3-1303(B) and (C) below.
- B. Concurrency review is not required for the following:
  - 1. Applications for single-family residential development platted prior to December 8, 1992.
  - 2. Applications for additions, renovations, or reconstruction of residential dwellings which do not increase the number of dwelling units placed on the premises or approved for the property.
  - 3. Additions, renovations, or reconstruction of uses accessory to residential dwellings.
  - 4. Sign permits.
  - 5. Applications which will not result in a development order.
  - 6. Applications requesting modifications of previously approved development orders where it is determined that the impacts on the prescribed levels of service imposed by the requested modifications will be no greater than the impacts posed by the previously approved development order or the previously existing use.
  - 7. Vested projects.
- C. Certificates of use and occupancy may be issued without the requirement for further concurrency review where the applicant for the certificate of use and occupancy holds a valid, unexpired building permit for the identical use of the subject structure or site or pertinent portion thereof; provided said building permit is not subject to a development agreement of other conditions requiring the applicant, successors, or assigns to provide or contract for the construction of necessary public services and facilities or other appropriate service impact mitigation measures. Where the building permit is subject to such development agreement or appropriate conditions, no certificate of use and occupancy shall be issued until the Development Review Official determines that all agreements and conditions have been satisfied.

**Section 3-1304. Public School Concurrency review required.**

- A. In addition to the provisions in Section 3-1303 above, pursuant to Florida Statutes and the City’s comprehensive plan public school concurrency review is required for all applications for development approval in order to identify and address the impacts of new residential development on the levels of service for public school facilities, except as exempted under the provisions of Section 3-1304(B) below,
- B. Concurrency review is not required for the following:
  - 1. Applications for one (1) unit single-family homes.
  - 2. Assisted Living Facilities, as defined in Article 8.
  - 3. Non-residential development.
  - 4. Any Development of Regional Impact (DRI) for which a development order was issued, pursuant to Chapter 380, F.S., prior to July 1, 2005.
  - 5. Applications for which preliminary Board of Architects approval was secured prior to January 1, 2008.

**Section 3-1305. Application.**

All applications for concurrency review shall accompany all applications for development approval, unless otherwise exempt under the provisions of this Division. Such applications shall be made in writing upon an application form approved by the City and shall be accompanied by applicable fees.

1 **Section 3-1306. City review and determination.**

- 2 A. The Development Review Official shall review each application for a development order and  
3 shall determine whether the request would have no impact or would have impacts on levels of  
4 service that fall below thresholds for public facilities and services prescribed in the Concurrency  
5 Manual.
- 6 B. In the event that the Development Review Official determines that there is no impact, a  
7 statement of no impact shall be issued to the applicant and the Board of Architects or other  
8 decision maker responsible for the issuance of the development order. Such statement of no  
9 impact shall be valid for a period not to exceed one (1) year from issuance.
- 10 C. Concurrency Impact Statement.
- 11 1. Prior to final Board of Architects review and approval, the applicant, its successors, or  
12 assigns shall secure a written Concurrency Impact Statement from the Development Review  
13 Official, who shall determine the impacts to levels of service for public facilities and services,  
14 pursuant to concurrency review criteria contained in Section 3-1307.
- 15 2. If the concurrency impact statement indicates that the proposed development satisfies the  
16 adopted levels of service, the applicant shall secure the statement, furnish it to the Board of  
17 Architects and other decision makers, and reserve capacity for all applicable public facilities  
18 and services within the timeframes prescribed in the City's Concurrency Manual. An  
19 applicant's failure to successfully reserve capacity for all applicable public facilities and  
20 services within the timeframes prescribed in the City's Concurrency Manual will render a final  
21 Board of Architects approval and/or final development order null and void.
- 22 3. If the concurrency impact statement indicates that the approval cannot be issued because the  
23 proposed development would result in a reduction in adopted levels of service, the applicant  
24 may modify the application, or come to an acceptable mitigation agreement with the City  
25 and/or other appropriate entity responsible for the public service or facility in question, subject  
26 to the City's final review and approval. Such modifications, agreements or conditions shall  
27 ensure that the necessary public facilities and services shall be available concurrent with the  
28 impacts of development. The concurrency impact statement shall be secured by the applicant  
29 and furnished to the Board of Architects and/or other decision-makers responsible for the  
30 issuance of the development order, and shall specify the modifications, agreements or  
31 conditions which shall be satisfied prior to the issuance a final Board of Architects approval  
32 and/or final development order.
- 33 D. Reservation of capacity.
- 34 1. Upon payment of a fee prescribed in the City of Coral Gables Concurrency Manual, or other  
35 fee schedule, as amended, an applicant, its successors, or assigns may reserve capacity for  
36 up to twelve (12) months from the date of capacity reservation for the project. An applicant's  
37 failure to successfully reserve capacity for all applicable public facilities and services within the  
38 timeframes prescribed in the City's Concurrency Manual will render a final Board of Architects  
39 approval and/or final development order null and void. An applicant, its successors, or  
40 assigns may secure an extension of capacity reservations for an additional twelve (12)  
41 months, subject to the terms prescribed in the Concurrency Manual, and the payment of all  
42 applicable fees.
- 43 2. A Public School Concurrency Certificate issued by Miami-Dade County Public Schools to the  
44 applicant, its successors, or assigns, shall be valid for the following time periods, unless  
45 otherwise provided for in the Proportionate Share Mitigation Agreement:
- 46 a. Twelve (12) months from the issuance of a document signifying public school capacity  
47 reservation.
- 48 b. Twenty-four (24) months from the date of issuance of a final Board of Architects  
49 approval and/or final development order. However, with one hundred twenty (120)  
50 days advance notice, up to three (3) twelve (12) month extensions of the Public School  
51 Concurrency Certificate may be granted by Miami-Dade County Public Schools. In no  
52 event shall a Public School Concurrency Certificate be valid for more than six (6)  
53 years.
- 54 c. Extensions will only be granted when Miami-Dade County Public Schools receives  
55 documentation that the applicant, its successors, or assigns are progressing in good  
56 faith through the City's review process. Once the City issues the final Board of  
57 Architects approval and/or final development order, the Public School Concurrency  
58 Certificate shall remain valid pursuant to the timeframes prescribed herein.
- 59 d. The applicant, its successors, or assigns shall be responsible for all coordination,  
60 monitoring, payments, and notification associated with the Public School Concurrency

1 Certificate, and shall advise the City of any associated agreements with Miami-Dade  
2 County Public Schools.

3 **Section 3-1307. Concurrency review criteria.**

- 4 A. The public facilities and services needed to support development shall be deemed to be  
5 available concurrent with the impacts of development if the following criteria are satisfied:  
6 1. The necessary public facilities and services are in place at the time a final Board of  
7 Architects approval and/or final development order is issued; or  
8 2. A final Board of Architects approval and/or final development order is issued subject to the  
9 condition that the required public facilities and services will be in place when the impacts of  
10 the development occur; or  
11 3. The necessary public facilities are under construction at the time the final Board of Architects  
12 approval and/or final development order is issued and such construction is the subject of  
13 enforceable assurance that it shall be completed and serviceable without unreasonable  
14 delay; or  
15 4. The necessary public facilities and services are the subject of a binding executed contract for  
16 the construction of the facilities or the provision of services at the time the final Board of  
17 Architects approval and/or final development order is issued; or  
18 5. The necessary public facilities are funded and programmed for implementation in year one  
19 (1) of the City's adopted capital budget, or similarly adopted budget of other government  
20 agencies; or  
21 6. The necessary traffic circulation, mass transit, or public school facilities or services are  
22 programmed for implementation in or before year three (3) of the city's adopted budget or  
23 similarly adopted budget of other governmental agencies including the county's capital budget,  
24 the School Board's Facilities Work Plan, or the state agency having operational responsibility for  
25 affected facilities; in all cases, such facilities must be committed for construction in or before year  
26 three (3); or  
27 7. The necessary public facilities and services are guaranteed in a development agreement to be  
28 provided by the developer, pursuant to Section 163.3220, Florida Statutes, or Chapter 380,  
29 Florida Statutes; or  
30 8. Timely provision of the necessary public facilities and services will be guaranteed by some  
31 other means or instrument providing substantially equivalent assurances, subject to City  
32 review and approval; and  
33 9. In all instances where a decision to issue a building permit is based on the foregoing  
34 provision (5), (6) (7), or (8), all of the following conditions shall apply:  
35 a. The necessary public facilities and services shall not be deferred or deleted from the  
36 adopted capital budget unless the dependent final development order expires or is  
37 rescinded prior to the issuance of a certificate of use and occupancy; and  
38 b. Implementation of the necessary public facilities and services must proceed to  
39 completion with no unreasonable delay or interruption.  
40 B. In determining the availability of public facilities and services, the applicant may propose and the  
41 City may approve development in stages or phases so that the public facilities and services  
42 needed for each stage or phase will be available in accordance with the criteria required by this  
43 chapter.

44 **Section 3-1308. Concurrency manual.**

45 The City shall promulgate and maintain a Concurrency Manual which shall contain the administrative  
46 procedures to be applied in the implementation of this Division, as determined by the Director of the  
47 responsible department.

48 **Section 3-1309. Appeals.**

49 An appeal from a negative concurrency determination may be taken to the City Commission by an  
50 aggrieved party in accordance with the provisions of Article 3, Division 6 of these regulations.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15

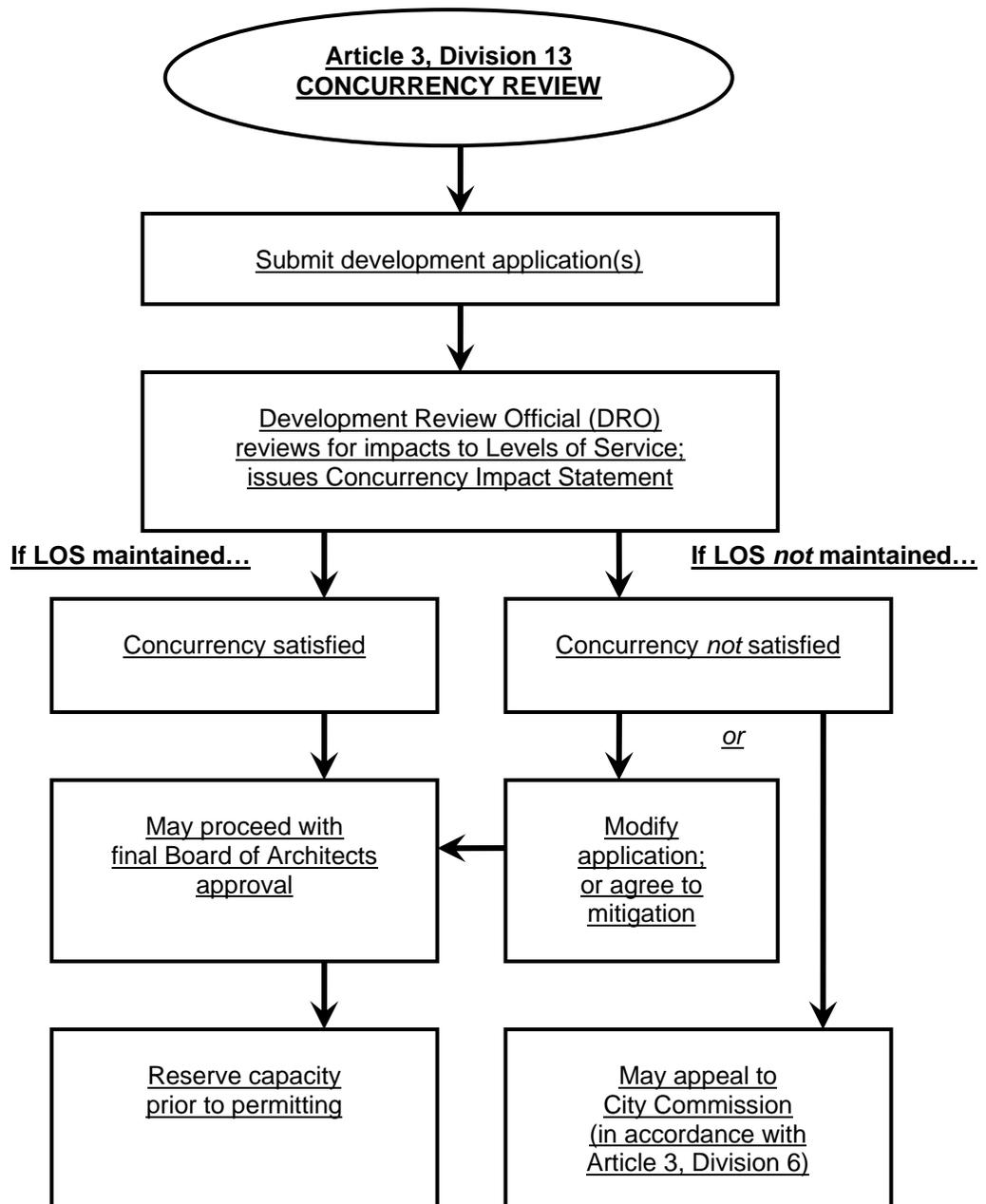
# Proposed Zoning Code Amendment Article 3, Division 13 - “Concurrency Review” ~~Strikethrough and underline version~~

5 Article 3, Division 13. Concurrency Review

6  
7 **Section 3-1301. Purpose and applicability.**

8 It is the purpose of this Division to provide a process for ensuring that the public facilities and  
9 services needed to support development are available concurrent with the impacts of such  
10 development.

11  
12 **Section 3-1302. General procedures for concurrency review.**



1  
2  
3 **Section 3-1303.2. Concurrency review required.**

- 4 A. Pursuant to Florida Statutes and the City's comprehensive plan, concurrency review is required  
5 for all applications for development approval in order to identify and address the impacts of new  
6 development on the levels of service for various public facilities and services, except as  
7 exempted. ~~Unless exempted~~ under the provisions of Sections 3-1303(B) and (C) below, all  
8 applications for development approval shall include an application for concurrency review.
- 9 B. Concurrency review is not required for the following:
- 10 1. Applications for single-family residential development platted prior to December 8, 1992.
  - 11 2. Applications for additions, renovations, or reconstruction of residential dwellings which do not
  - 12 increase the number of dwelling units placed on the premises or approved for the property.
  - 13 3. Additions, renovations, or reconstruction of uses accessory to residential dwellings.
  - 14 4. Sign permits.
  - 15 5. Applications which will not result in a either an Intermediate Development or Final development  
16 order.
  - 17 6. Applications requesting modifications of previously approved development orders where it is
  - 18 determined that the impacts on the prescribed levels of service imposed by the requested
  - 19 modifications will be no greater than the impacts posed by the previously approved
  - 20 development order or the previously existing use.
  - 21 7. ~~Applications on properties where a Development of Regional Impact has been approved for~~  
22 ~~which the development is proceeding in compliance with the conditions of the DRI approval.~~
  - 23 8. ~~Applications where the particular type of Intermediate or Final Development order would not~~  
24 ~~result in a reduction in the level of service for any of the services or facilities prescribed in the~~  
25 ~~Concurrency Management Program.~~
  - 26 9. ~~Applications for development approval within areas designated by the City where all services~~  
27 ~~or facilities have sufficient surplus capacity to sustain projected development of specified~~  
28 ~~types for one (1) to five (5) or more years as applicable to the service.~~
  - 29 7. ~~10. Vested projects.~~
- 30 C. Certificates of use and occupancy may be issued without the requirement for further concurrency  
31 review where the applicant for the certificate of use and occupancy holds a valid, unexpired  
32 building permit for the identical use of the subject structure or site or pertinent portion thereof;  
33 provided said building permit is not subject to a development agreement of other conditions  
34 requiring the applicant, successors, or assigns to provide or contract for the construction of  
35 necessary public services and facilities or other appropriate service impact mitigation measures.  
36 Where the building permit is subject to such development agreement or appropriate conditions,  
37 no certificate of use and occupancy shall be issued until the Development Review Official  
38 determines that all agreements and conditions have been satisfied.

39  
40 **Section 3-1304. Public School Concurrency review required.**

- 41 A. In addition to the provisions in Section 3-1303 above, pursuant to Florida Statutes and the City's  
42 comprehensive plan public school concurrency review is required for all applications for  
43 development approval in order to identify and address the impacts of new residential  
44 development on the levels of service for public school facilities, except as exempted under the  
45 provisions of Section 3-1304(B) below,
- 46 B. Concurrency review is not required for the following:
- 47 1. Applications for one (1) unit single-family homes.
  - 48 2. Assisted Living Facilities, as defined in Article 8.
  - 49 3. Non-residential development.
  - 50 4. Any Development of Regional Impact (DRI) for which a development order was issued,  
51 pursuant to Chapter 380, F.S., prior to July 1, 2005.
  - 52 5. Applications for which preliminary Board of Architects approval was secured prior to January  
53 1, 2008.

54  
55 **Section 3-1305.3. Application.**

56 All applications for concurrency review shall accompany all applications for development approval,  
57 unless otherwise exempt under the provisions of this Division. Such applications shall be made in  
58 writing upon an application form approved by the City and shall be accompanied by applicable fees.

1 **Section 3-13064. City review and determination.**

2 A. The appropriate Development Review Official shall review each application for a development  
3 order and shall determine whether the application:

- 4 1. ~~Is a request for approval of an initial, intermediate or final development order; or~~  
5 2. ~~Would the request would have no impact or would have impacts on levels of service that fall~~  
6 ~~below thresholds for public facilities and services prescribed in the eConcurrency mManual.~~

7 B. In the event that the Development Review Official determines that there is no impact, a  
8 statement of no impact shall be issued to the applicant and the Board of Architects or other  
9 decision maker responsible for the issuance of the development order. Such statement of no  
10 impact shall be valid for a period not to exceed one (1) year from issuance.

11 C. ~~Initial development orders.~~

12 1. ~~A concurrency information statement shall be prepared prior to the issuance of any initial~~  
13 ~~development order and provided to the applicant, Board or other decision maker responsible~~  
14 ~~for the issuance of the initial development order.~~

15 2. ~~The purpose of the concurrency information statement is to provide general information and~~  
16 ~~guidance regarding the available capacity of public facilities and services. The concurrency~~  
17 ~~information statement does not ensure that capacity will be available at the time of the~~  
18 ~~issuance of an intermediate or final development order, nor does it obviate the need for~~  
19 ~~concurrency review prior to the issuance of an intermediate or final development order.~~

20 C. ~~D. Concurrency Impact Statement Intermediate development orders.~~

21 1. ~~Each application for an intermediate development order shall be evaluated on the basis of~~  
22 ~~the concurrency review criteria contained in Section 3-1305. Prior to final Board of~~  
23 ~~Architects review and approval, the applicant, its successors, or assigns shall secure a~~  
24 ~~written Concurrency Impact Statement from the Development Review Official, who shall~~  
25 ~~determine the impacts to whether or not a proposed development would result in a reduction~~  
26 ~~in levels of service for public facilities and services below adopted levels of service and shall~~  
27 ~~issue a concurrency impact statement to the applicant, pursuant to concurrency review~~  
28 ~~criteria contained in Section 3-1307.~~

29 2. ~~If the concurrency impact statement indicates that the proposed development satisfies the~~  
30 ~~would not result in a reduction in adopted levels of service, the applicant shall secure the~~  
31 ~~statement, furnish it to the shall be furnished to the applicant, Board of Architects and other~~  
32 ~~decision makers, and reserve responsible for the issuance of the intermediate development~~  
33 ~~order. capacity for all applicable public facilities and services within the timeframes prescribed~~  
34 ~~in the City's Concurrency Manual. An applicant's failure to successfully reserve capacity for all~~  
35 ~~applicable public facilities and services within the timeframes prescribed in the City's~~  
36 ~~Concurrency Manual will render a final Board of Architects approval and/or final development~~  
37 ~~order null and void.~~

38 3. ~~If the concurrency impact statement indicates that the approval requested intermediate~~  
39 ~~development order cannot be issued because the proposed development would result in a~~  
40 ~~reduction in adopted levels of service, the applicant may modify the application, or come to an~~  
41 ~~acceptable mitigation agreement with the City and/or other appropriate entity responsible for~~  
42 ~~the public service or facility in question, submit an enforceable development agreement or the~~  
43 ~~intermediate development order may be issued subject to the City's final review and approval.~~  
44 ~~appropriate conditions. Such modifications, agreements or conditions shall ensure that the~~  
45 ~~necessary public facilities and services shall be available concurrent with the impacts of~~  
46 ~~development. The concurrency impact statement shall be secured by the applicant and~~  
47 ~~furnished to the Board of Architects and/or other decision-makers responsible for the issuance~~  
48 ~~of the development order. The concurrency impact statement and shall specify the~~  
49 ~~modifications, agreements or conditions which shall be satisfied prior to the issuance of an~~  
50 ~~intermediate development order or a final Board of Architects approval and/or final~~  
51 ~~development order or both. The concurrency impact statement shall be furnished to the~~  
52 ~~applicant and to the Board and/or other decision maker responsible for the issuance of the~~  
53 ~~intermediate development order.~~

54 ~~DE. Reservation of capacity.~~

55 1. ~~Upon payment of a fee prescribed in the City of Coral Gables eConcurrency mManual, or~~  
56 ~~other fee schedule, as amended, the holder of an affirmative intermediate development order~~  
57 ~~an applicant, its successors, or assigns may reserve capacity for up to twelve (12) months~~  
58 ~~from the date of capacity reservation for the approved project, by the City's issuance of a~~  
59 ~~document signifying capacity reservation. This fee payment and capacity reservation is~~  
60 ~~optional and is not required of recipients of affirmative intermediate development orders. An~~

1 applicant's failure to successfully reserve capacity for all applicable public facilities and  
2 services within the timeframes prescribed in the City's Concurrency Manual will render a final  
3 Board of Architects approval and/or final development order null and void. An applicant, its  
4 successors, or assigns may secure an extension of capacity reservations for an additional  
5 twelve (12) months, subject to the terms prescribed in the Concurrency Manual, and the  
6 payment of all applicable fees. forfeits any right of reliance upon an affirmative intermediate  
7 development order to ensure service capacity availability and reservation. Such reservation  
8 shall ensure that the City does not permit other development which would result in a  
9 reduction in levels of service for public facilities and services for public facilities and services  
10 follow the adopted levels of service during the period of reservation.

11 2. A Public School Concurrency Certificate issued by Miami-Dade County Public Schools to the  
12 applicant, its successors, or assigns, shall be valid for the following time periods, unless  
13 otherwise provided for in the Proportionate Share Mitigation Agreement:

- 14 a. Twelve (12) months from the issuance of a document signifying public school capacity  
15 reservation.
- 16 b. Twenty-four (24) months from the date of issuance of a final Board of Architects  
17 approval and/or final development order. However, with one hundred twenty (120)  
18 days advance notice, up to three (3) twelve (12) month extensions of the Public School  
19 Concurrency Certificate may be granted by Miami-Dade County Public Schools. In no  
20 event shall a Public School Concurrency Certificate be valid for more than six (6)  
21 years.
- 22 c. Extensions will only be granted when Miami-Dade County Public Schools receives  
23 documentation that the applicant, its successors, or assigns are progressing in good  
24 faith through the City's review process. Once the City issues the final Board of  
25 Architects approval and/or final development order, the Public School Concurrency  
26 Certificate shall remain valid pursuant to the timeframes prescribed herein.
- 27 d. The applicant, its successors, or assigns shall be responsible for all coordination,  
28 monitoring, payments, and notification associated with the Public School Concurrency  
29 Certificate, and shall advise the City of any associated agreements with Miami-Dade  
30 County Public Schools.

31 ~~6. F. Final development orders.~~

- 32 ~~b. Applicants filing complete applications for issuance of a final development order within~~  
33 ~~twelve (12) months from the date of issuance of an intermediate development order shall be~~  
34 ~~exempt from the requirement of further concurrency review (but not exempt from the~~  
35 ~~payment of any applicable administrative fee set forth in the concurrency manual), provided~~  
36 ~~that (a) no significant changes have been made to the proposed development from the time~~  
37 ~~of preliminary Board of Architects approval; the approved intermediate development order;~~  
38 ~~(b) all modifications, agreements, or conditions of the concurrency impact statement, if~~  
39 ~~applicable, have been satisfied; and (c) the City has reserved capacity for the development~~  
40 ~~pursuant to subsection 3-1304(E). In the absence of these provisions, the applicant is not~~  
41 ~~entitled to rely upon the preliminary Board of Architects approval an intermediate~~  
42 ~~development order for concurrency compliance, and must follow prescribed procedures for~~  
43 ~~the issuance of a concurrency compliance statement.~~
- 44 ~~e. With the exception of final development orders for which applications have been timely filed~~  
45 ~~and capacities have been reserved pursuant to Sections 3-1304(E) and 3-1304(F)(1) above,~~  
46 ~~or certificates of use and occupancy as described in Section 3-1304(F)(6) below, the~~  
47 ~~Development Review Official shall evaluate each application for a final development order on~~  
48 ~~the basis of the concurrency review criteria contained in Section 3-1305.~~
- 49 ~~d. The Development Review Official shall determine whether or not the proposed development~~  
50 ~~would result in a reduction in levels of service for public facilities and services below adopted~~  
51 ~~levels and shall issue a concurrency compliance statement to the applicant. If the concurrency~~  
52 ~~compliance statement indicates that that issuance of the proposed final Development order~~  
53 ~~would not result in a reduction in levels of service for public facilities and services below~~  
54 ~~adopted levels of service, the concurrency compliance statement shall be furnished to the~~  
55 ~~person, board or agency responsible for the issuance of the final development order and the~~  
56 ~~final Development order may be issued.~~
- 57 ~~e. If the concurrency impact statement indicates that the requested final Development order cannot~~  
58 ~~be issued because the proposed development would result in a reduction in adopted levels of~~  
59 ~~service, the applicant may modify the application, submit an enforceable development~~  
60 ~~agreement, or the final Development order may be issued subject to appropriate conditions.~~

1 Such modifications, agreements or conditions shall ensure that the necessary public facilities and  
2 services shall be available concurrent with the impacts of development. The concurrency impact  
3 statement issued in conjunction with a final Development order application shall specify any  
4 modifications, agreements, or conditions which shall be satisfied prior to the issuance of a  
5 building permit or certificate of use and occupancy or both. The concurrency impact statement  
6 issued in conjunction with a final development order application shall be furnished to the  
7 applicant and to the applicant, Board or other decision maker responsible for the issuance of the  
8 final Development order.

- 9 f. Except where applicants have obtained a vested rights determination pursuant to Article 3,  
10 Division 18, or the final Development order application is exempt from the requirement of a  
11 concurrency compliance statement, all applications or final Development orders must obtain  
12 written confirmation that all required levels of service for public facilities and services have been  
13 satisfied and required modifications and/or conditions noted in previously issued concurrency  
14 compliance statement have been made. If the property for which application for a final  
15 Development order is made holds an expired reservation that was previously of record in  
16 accordance with Section 3-1304(E), the applicant must obtain an updated concurrency impact  
17 statement and is not entitled to rely on said expired reservation. At the times of the issuance of a  
18 final Development order building permit, the permit holder shall be automatically required to pay a  
19 fee prescribed in the concurrency manual to reserve service capacities for a period of twelve (12)  
20 months form the date of final permit issuance, unless the building permit lapses in accordance  
21 with other City regulations. In addition, the holder of an affirmative final Development order may  
22 extend service capacity reservations for an additional twelve (12) months in accordance with the  
23 fees and terms prescribed in the concurrency manual, except as otherwise provided for Public  
24 School Concurrency Certificates in Section 3-1304(E)(2) above.  
25 g. Certificates of use and occupancy may be issued without the requirement for further  
26 concurrency review where the applicant for the certificate of use and occupancy holds a  
27 valid, unexpired building permit for the identical use of the subject structure or site or  
28 pertinent portion thereof; provided said building permit is not subject to an enforceable  
29 development agreement or other conditions requiring the applicant to provide or contract for  
30 the construction of necessary public services and facilities or other appropriate service  
31 impact mitigation measures. Where the building permit is subject to such enforceable  
32 development agreement or appropriate conditions, no certificate of use and occupancy shall  
33 be issued until the Development Review Official determines that all agreements and  
34 conditions have been satisfied.

35 **Section 3-13075. Concurrency review criteria.**

- 36 A. The public facilities and services needed to support development shall be deemed to be  
37 available concurrent with the impacts of development if the following criteria are satisfied:  
38 1. The necessary public facilities and services are in place at the time a final Board of  
39 Architects approval and/or final development order is issued; or  
40 2. A final Board of Architects approval and/or final development order is issued subject to the  
41 condition that the required public facilities and services will be in place when the impacts of  
42 the development occur; or  
43 3. The necessary public facilities are under construction at the time the final Board of Architects  
44 approval and/or final development order is issued and such construction is the subject of  
45 enforceable assurance that it shall be completed and serviceable without unreasonable  
46 delay; or  
47 4. The necessary public facilities and services are the subject of a binding executed contract for  
48 the construction of the facilities or the provision of services at the time the final Board of  
49 Architects approval and/or final development order is issued; or  
50 5. The necessary public facilities are funded and programmed for implementation ~~in the capital~~  
51 ~~improvements element of the comprehensive plan for construction~~ in year one (1) of the  
52 City's adopted capital budget, or similarly adopted budget of other government agencies; or  
53 6. The necessary traffic circulation, ~~and mass transit, or public school~~ facilities or services ~~or both~~  
54 are programmed for implementation ~~in the capital improvements element of the comprehensive~~  
55 ~~plan for construction~~ in or before year three (3) of the city's adopted budget or similarly adopted  
56 budget of other governmental agencies including the county's capital budget, the School Board's  
57 Facilities Work Plan, or the state agency having operational responsibility for affected facilities; in  
58 all cases, such facilities must be committed for construction in or before year three (3); or

- 1 7. The necessary public facilities and services are guaranteed in an enforceable development  
2 agreement to be provided by the developer. ~~An enforceable development agreement may~~  
3 ~~include but is not limited to development agreements pursuant to Section 163.3220, Florida~~  
4 ~~Statutes, or an agreement or development order issued pursuant to Chapter 380, Florida~~  
5 ~~Statutes; or~~  
6 8. Timely provision of the necessary public facilities and services will be guaranteed by some  
7 other means or instrument providing substantially equivalent assurances, subject to City  
8 review and approval; and  
9 9. In all instances where a decision to issue a building permit is based on the foregoing  
10 provision (5), (6) ~~or (7), or (8), all of the following conditions shall apply:~~  
11 a. The necessary public facilities and services shall not be deferred or deleted from the  
12 ~~capital improvements element of the comprehensive plan work program or adopted one~~  
13 ~~(1) year capital budget unless the dependent final development order expires or is~~  
14 ~~rescinded prior to the issuance of a certificate of use and occupancy; and~~  
15 ~~b. The public facilities and services necessary to serve development must be contracted for~~  
16 ~~construction no later than thirty-six (36) months after the date that the initial certificate of~~  
17 ~~use of occupancy is issued for the dependent development; and~~  
18 ~~b. Implementation Construction of the necessary public facilities and services must proceed~~  
19 ~~to completion with no unreasonable delay or interruption.~~  
20 B. In determining the availability of public facilities and services, the applicant may propose and the  
21 City may approve development in stages or phases so that the public facilities and services  
22 needed for each stage or phase will be available in accordance with the criteria required by this  
23 chapter.

24 **Section 3-13086. Concurrency manual.**

25 The City shall promulgate and maintain a Concurrency Manual which shall contain the administrative  
26 procedures and fees to be applied in the implementation of this Division, as determined by the Director of  
27 the responsible department. ~~The concurrency manual shall include:~~

- 28 A. ~~Examples of preliminary, intermediate, and final development orders.~~  
29 B. ~~Examples of Development orders which would have no impact or which would have impacts on~~  
30 ~~levels of service which fall below the thresholds for public facilities and services.~~  
31 C. ~~The methodologies to be used by the department in monitoring available capacity of public~~  
32 ~~facilities and services and in preparing concurrency statements.~~  
33 D. ~~The methodologies to be used by the department in evaluating applications for development~~  
34 ~~orders for compliance with the concurrency review criteria.~~  
35 E. ~~The methodologies to be used by the department in identifying geographic areas having surplus~~  
36 ~~capacity for certain public facilities and services.~~  
37 F. ~~The time frames within which the department and the applicant must complete any action which~~  
38 ~~is required by this chapter.~~  
39 G. ~~An administrative fee schedule.~~  
40 H. ~~Examples of exceptions from concurrency review requirements.~~  
41 I. ~~Procedures for obtaining relief from these regulations.~~

42 **Section 3-13097. Appeals.**

43 An appeal from a negative concurrency determination may be taken to the City Commission by an  
44 aggrieved party in accordance with the provisions of Article 3, Division 6 of these regulations.

1 CITY OF CORAL GABLES  
 2 PLANNING AND ZONING BOARD MEETING  
 3 VERBATIM TRANSCRIPT  
 4 CORAL GABLES CITY HALL  
 5 405 BILTMORE WAY, COMMISSION CHAMBERS  
 6 CORAL GABLES, FLORIDA  
 7 WEDNESDAY, NOVEMBER 14, 2007, 6:05 P.M.

8 Board Members Present:

9 Tom Korge, Chairperson  
 10 Eibi Aizenstat, Vice-Chairman  
 11 Robert Behar  
 12 Jack Coe  
 13 Pat Keon  
 14 Cristina Moreno  
 15 Javier Salman

16 City Staff:

17 Eric Riel, Jr., Planning Director  
 18 Walter Carlson, Assistant Planning Director  
 19 Lourdes Alfonsin-Ruiz, Assistant City Attorney  
 20 Javier Betancourt, Principal Planner  
 21 Jill Menendez, Administrative Assistant  
 22 Cathy Swanson,

23 Also Participating:

	Page
24 Laura Russo, Esq.	5
25 Joseph Natoli	29
26 Perri Lee Roberts	32
27 Jeffrey Bass, Esq.	42
28 Brian Dursam	64
29 Bob de la Fuente	91
30 Vivian Villaamil, Miami-Dade County School Board representative	

31

32

33

1       THEREUPON:

2               The following proceedings were had:

3               MR. AIZENSTAT:  Since we do have a quorum,  
4       would you call the roll?

5               MS. MENENDEZ:  Robert Behar?

6               MR. BEHAR:  Here.

7               MS. MENENDEZ:  Jack Coe?

8               MR. COE:  Yes.

9               MS. MENENDEZ:  Cristina Moreno?

10              MS. MORENO:  Here.

11              MS. MENENDEZ:  Javier Salman?

12              Tom Korge?

13              Eibi Aizenstat?

14              MR. AIZENSTAT:  Here.

15              From the other Board members, do we have  
16       that they're going to be coming?

17              MR. RIEL:  Yes, everybody confirmed that  
18       they're going to be here.

19              MR. AIZENSTAT:  Okay.  Should we get  
20       started then --

21              MR. BEHAR:  Mr. Chairman, can I --

22              MR. AIZENSTAT:  Sure.

23              MR. BEHAR:  Just for the record, I have to  
24       be out of here by 7:30 today -- this evening,  
25       just to let you know, please.

1 MR. COE: The meeting can be done by 7:30.

2 MR. AIZENSTAT: The first order of business  
3 will be the approval of the minutes. Did  
4 everybody get a chance to take a look at the  
5 minutes for the previous meeting?

6 MS. MORENO: I move approval.

7 MR. COE: Second.

8 MR. AIZENSTAT: Call the roll, please.

9 MS. MENENDEZ: Jack Coe?

10 MR. COE: Yes.

11 MS. MENENDEZ: Cristina Moreno?

12 MS. MORENO: Yes.

13 MS. MENENDEZ: Robert Behar?

14 MR. BEHAR: Yes.

15 MS. MENENDEZ: Eibi Aizenstat?

16 MR. AIZENSTAT: Yes.

17 Walter.

18 MR. CARLSON: For the record, Walter  
19 Carlson, Planning Department --

20 MR. RIEL: Hold on, Walter, before you  
21 start. I just want to note a couple of changes  
22 from the agenda.

23 Item Number 9, which is the Building Site  
24 Separation, has been postponed to a future date,  
25 and, then, on Item Number 7 -- and I'm looking

1 at the blue revised agenda in front of you, Item  
2 Number 7, there's four ordinances that are going  
3 -- were going to be considered this evening.

4 Item 7-C, which is an ordinance amending  
5 the Zoning Code Concurrency Review, has been  
6 postponed or deferred to a -- a later date, and,  
7 Javier, when he does the presentation, will go  
8 into more detail about that.

9 MR. AIZENSTAT: Perfect.

10 MR. CARLSON: Again, for the record, Walter  
11 Carlson. Before you, on the green sheets of  
12 paper, you have some updated comments which came  
13 in regarding the first item before you this  
14 evening. There were three comments received.  
15 There were no objections in any of them.

16 If you would like, I can give you a brief  
17 presentation. If you would like to proceed  
18 forward without it --

19 MR. COE: We don't need a presentation, I  
20 don't think.

21 MR. CARLSON: You don't need a  
22 presentation?

23 MR. COE: No, I think we can move on.

24 MR. CARLSON: Good. Thank you. Thank you.

25 MR. AIZENSTAT: Thank you. For the record,

1 please note that Javier Salman has joined us.

2 MR. COE: (Inaudible comments.)

3 MR. AIZENSTAT: Do we need to go ahead,  
4 Eric, and swear in any of the parties or -- that  
5 are going to be speaking?

6 MR. RIEL: I -- I don't believe so, no.

7 MR. AIZENSTAT: Okay. Let's get started  
8 with the -- then, is there a presentation that's  
9 going to be made on that first item?

10 MR. RIEL: It's up to you. If you want a  
11 presentation, Walter can --

12 MR. AIZENSTAT: We don't need a  
13 presentation.

14 MR. BEHAR: We've got a motion --

15 MR. AIZENSTAT: I'm sorry, also if we could  
16 note, for the record, that Pat Keon is here.

17 So it looks like we don't need the  
18 presentation.

19 Laura?

20 MS. RUSSO: Good evening Mr. Chairman,  
21 Members of the Board. For the record, Laura  
22 Russo, of Russo & Baker, with offices at 2655 Le  
23 Jeune Road.

24 We are here before you with proposed  
25 tentative plats. There are actually two

1 applications, Ponce Place Villas East and Ponce  
2 Place Villas West, which, in fact, is only  
3 taking our approved site plan of the Old Spanish  
4 Village to allow for the townhouses to be sold  
5 fee simple.

6 We could build the same townhouses today as  
7 condominiums, but we want to sell them as  
8 individual lots, so we're going through the  
9 planning process.

10 So that is all. There is no increase in  
11 building site. There is no change -- there's no  
12 change in the streets. So the PAD Ordinance  
13 does not require replatting, so we could move  
14 forward. We just thought, for our purposes,  
15 it's something we would like to do, and it seems  
16 to be something that prospective buyers out  
17 there want, as well.

18 MR. AIZENSTAT: Let me ask a question of  
19 the Assistant City Attorney.

20 MS. RUSSO: Uh-huh.

21 MR. AIZENSTAT: Should the -- should the  
22 item be read into the record or are we okay  
23 without reading the actual item into the record  
24 that we're discussing now?

25 MS. ALFONSIN-RUIZ: You don't have to read

1           it into that record.

2           MR. AIZENSTAT: Say that again, please.

3           MS. ALFONSIN-RUIZ: You do not need to read  
4           it into the record.

5           MR. BEHAR: And this is only to replat?  
6           You're not increasing units, you're not  
7           increasing anything?

8           MS. RUSSO: Nothing. Basically, the  
9           approved master plan remains the same, and one  
10          of the sheets -- and let me see if I'm not  
11          mistaken, I believe it's under 6 and under 7 --

12          MR. COE: Right.

13          MS. RUSSO: -- basically shows -- I think  
14          the last one shows how the townhomes overlay  
15          over the -- the plats. We basically took the  
16          outline of the townhomes and created the lots.

17          MR. BEHAR: I'll make a motion to approve.

18          MS. MORENO: Second.

19          MR. AIZENSTAT: Any comments? Any  
20          questions?

21          MR. SALMAN: To the Chair, are there any  
22          changes to the architectural division between  
23          the two fee simple lots now? Does -- if they're  
24          built out as townhouses, do we have a double  
25          wall situation or how are we making that

1           division of property line effective to the  
2           building?

3           MS. RUSSO: Well, those issues will be  
4           addressed in the homeowner's association  
5           documents versus the condominium association  
6           documents. So we've already created documents  
7           which will be labeled one or the other,  
8           depending on the -- in terms of maintenance --  
9           maintenance of exterior, I mean, there's still  
10          all the conditions that were part of the Old  
11          Spanish Village, in terms of the architectural  
12          integrity and maintenance and stuff, will be  
13          done, whether they're created as condominium  
14          units or townhouses.

15          MR. SALMAN: I mean, I wasn't offering the  
16          question to create a problem, but I just want to  
17          make sure that it's not a problem later.

18          MS. RUSSO: Uh-huh.

19          MR. SALMAN: And if you -- your answer is  
20          satisfactory. Thank you.

21          MR. COE: Mr. Chairman, we need to have  
22          public comments on this.

23          MR. AIZENSTAT: Correct.

24          MR. COE: We should recognize the Chairman  
25          has arrived.

1 MR. AIZENSTAT: Correct. Tom Korge is  
2 here.

3 THE CHAIRMAN: I apologize for being late.

4 MR. AIZENSTAT: To bring him up to speed,  
5 we're -- if we can -- are there any public  
6 comments on this? Anybody in the public?

7 MR. COE: Move the question, Mr. Chairman.

8 MR. CHAIRMAN: There's a motion. Is there  
9 a second?

10 MR. AIZENSTAT: There is a first and a  
11 second.

12 THE CHAIRPERSON: First and second.

13 MS. MORENO: I second it.

14 THE CHAIRMAN: Okay. Any discussion on the  
15 motion?

16 MS. MORENO: We had.

17 MR. COE: Right.

18 THE CHAIRPERSON: You already had your  
19 discussions. So no further discussion. Let's  
20 call the roll on the motion.

21 MS. MENENDEZ: Eibi Aizenstat?

22 MR. AIZENSTAT: Yes.

23 MS. MENENDEZ: Robert Behar?

24 MR. BEHAR: Yes.

25 MS. MENENDEZ: Jack Coe?

1 MR. COE: Yes.

2 MS. MENENDEZ: Pat Keon?

3 MS. KEON: Yes.

4 MS. MENENDEZ: Cristina Moreno?

5 MS. MORENO: Yes.

6 MS. MENENDEZ: Javier Salman?

7 MR. SALMAN: Yes, to approve.

8 MS. RUSSO: Thank you very much.

9 MS. MENENDEZ: Tom Korge?

10 THE CHAIRPERSON: Yes.

11 Second item on the agenda is the Zoning  
12 Code Text Amendment, Article 3, Development  
13 Review, Division 20, Art in Public Places.

14 MR. RIEL: Mr. Chairman, Members of the  
15 Board, I'd like to do just a brief introduction.  
16 This is an amendment to the Zoning Code,  
17 creating a new division, Division 20, entitled  
18 Art in Public Places.

19 The City Commission of Coral Gables asked  
20 City Administration to create two new  
21 legislative regulation programs. One was an  
22 impact fee program, and the other was an art in  
23 public places program.

24 The impact fee program is basically for new  
25 developmental projects to pay their way, based

1           upon the potential impacts that new development  
2           would have.

3           The City secured a consultant, and that  
4           resulted in the completion of an Impact Fee  
5           Ordinance, which the City Commission approved  
6           about a couple of months ago.

7           At the time, they also considered an Art in  
8           Public Places Ordinance, when they were  
9           considering the impact fees, and, actually, it  
10          went to the Commission on May 23rd, 2007. They  
11          actually passed it on first reading, but, at  
12          that time, they asked that the Impact Fee  
13          Ordinance be finalized before they enact or go  
14          any further on the Art in Public Places.

15          As I indicated, that Impact Fee Ordinance  
16          was approved.

17          After that -- that point in time -- and let  
18          me just kind of give you a little background, in  
19          terms of Public Art Ordinances.

20          It was in response to the 2002  
21          Charrette, the Comprehensive Plan, and then  
22          basically Miami-Dade County's Art in Public  
23          Places Ordinance.

24          If you look at the whereas clauses in the  
25          actual ordinance, it will give you kind of a

1           good understanding of what the City Commission's  
2           intent was by creating this ordinance.

3                       The City's Cultural Development Board  
4           assisted City staff, mainly Cathy Swanson,  
5           Development Director, and the Assistant City  
6           Attorney, in the development of a program. The  
7           City staff has been working on the program, or  
8           the policies and procedures, for well over a  
9           year, and they basically modeled it after  
10          several programs that are throughout the United  
11          States. Some of those have been in existence  
12          for ten or twenty years.

13                      Programs -- similar programs in the State  
14          of Florida include Coral Springs, Palm Beach  
15          Gardens, Tampa, Sarasota, Clearwater, and a  
16          little bit closer to home, Miami Beach.

17                      The result of the research and the input  
18          from the Cultural Development Board, as well as  
19          Historic Preservation Board, resulted in the  
20          ordinance which you have before you as  
21          Attachment A.

22                      The City Commission, on October 23rd,  
23          passed, on first reading, the ordinance that you  
24          have before you, and they recommended approval  
25          on a five to zero vote.

1           The discussion at the Commission meeting,  
2           they also requested, obviously, public input,  
3           and the public input they received was namely  
4           from the University of Miami, as well as there  
5           were some other interested parties.

6           The University has been working closely  
7           with City staff on drafting some language, in  
8           terms of amendments to the ordinance regarding  
9           exemption language.

10          The City Commission, when they passed it on  
11          first reading, recommended that the ordinance  
12          come to the Planning & Zoning Board, prior to  
13          second reading, which is scheduled for December  
14          11th, and, specifically, they made a motion.  
15          They asked City Administration and the Planning  
16          & Zoning Board to consider an exemption for the  
17          University of Miami, with periodic review of  
18          that exemption, and to add language that  
19          protects the City, assuring the quality and  
20          monetary value of the collection, and that's on  
21          Page 32, at Attachment C.

22          That motion was passed by the Commission by  
23          a three to two vote.

24          For that reason, and I believe the  
25          Commissioners, also the Mayor, asked that this

1 Board specifically comment on that particular  
2 issue of the exemption, as well as anything else  
3 they might have -- you might have, in terms of  
4 the ordinance.

5 So with that, I'm going to turn it over to  
6 Ms. Swanson, Development Director. She's going  
7 to provide you a little bit more details in the  
8 ordinance.

9 We also have a -- Cathy has a presentation,  
10 in which you have copies of examples of art  
11 that -- throughout the United States, as well as  
12 within the State of Florida.

13 THE CHAIRPERSON: Before you begin,  
14 Ms. Swanson, I'd like to note that I've  
15 gotten confirmation from the City  
16 Attorney's Office that I do not have a  
17 conflict of interest on this, because I --  
18 I'm going to be teaching a course at the  
19 University of Miami next semester, I was  
20 concerned that I might have a potential  
21 conflict of interest due to the proposed  
22 exemption, and the City Attorney has  
23 assured me that there is no conflict of  
24 interest. So I just wanted to point that  
25 out.

1           That's correct, isn't it, Lourdes?

2           MS. ALFONSIN-RUIZ: That's correct.

3           THE CHAIRPERSON: Thank you.

4           MR. COE: (Inaudible).

5           MS. SWANSON: I got a word from up above,  
6           so to speak, that their PowerPoint needed to be  
7           rebutted, so at some point in my presentation,  
8           you'll start seeing the pictures that are  
9           included in your packet.

10          Huh.

11          MR. AIZENSTAT: Got them now.

12          MS. SWANSON: Thank you. Thank you.

13                 And the purpose of these pictures are just  
14                 to try and frame exactly what our hopes are as  
15                 we move forward with this art in public places.

16                 Before we begin with the -- the sculptures  
17                 and the examples, though, thank you, Eric, for  
18                 the summation.

19                 Indeed, the -- Dade County passed an  
20                 ordinance in 1973. It was one of the landmark  
21                 public art ordinances, that required government,  
22                 specifically the County, and all municipalities,  
23                 to contribute 1.5 percent of their construction  
24                 dollars into the acquisition of new art.

25                 We have had conversations with Dade County

1 on and off. The City has informally complied  
2 with it, and the Manager felt that it was time  
3 that we developed formal regulations that allow  
4 us to actively participate in the art in public  
5 places program, and ours is a little different,  
6 but before I talk about the differences, we'll  
7 see a little bit of the art, so that the public  
8 can see what we're talking about.

9 Art as Identity. This is actually a  
10 Picasso, in the middle of the Federal Square in  
11 Chicago. It is a very well-known piece for  
12 Chicago.

13 Next slide, please.

14 Philadelphia. Philadelphia has over 530  
15 art in public places sculptures, and here are  
16 just two examples. The one on the left is aptly  
17 called the Clothespin, and the other is Ben  
18 Franklin and his printing press.

19 Next one, please.

20 Chicago, again. This is at Calder. It's a  
21 Flamingo. Miami, with the Metrorail program.  
22 As Metrorail took off, so did art in public  
23 places, and here's an example.

24 Next, please.

25 This is an example of a Chihuly ceiling.

1 As you look into our ordinance, you'll see that  
2 you are able not only to develop free-standing  
3 sculpture, but also to incorporate it in  
4 architecture, provided the public has access to  
5 it, and so here's an example of a ceiling, and  
6 then also an example of a mosaic.

7 Next slide, please.

8 Crevices, bas reliefs, incorporated in the  
9 architecture, all through a process.

10 Next, please.

11 Here's an example of a wheelchair ramp,  
12 designed by an artist, the etching, and how that  
13 also could qualify for the art in public places  
14 programs for developments.

15 Next, please.

16 The Miami Airport, and here's a public  
17 school in New York, the mosaic up on the top is  
18 part of their art in public places program.

19 Next, please.

20 More examples on New York, mosaics, doors,  
21 and how we can use architect -- art in  
22 architecture.

23 Next, please.

24 Here's a public school in New York, and,  
25 unfortunately, it doesn't show in the slide, but

1           it says, "The Sky's The Limit," written on the  
2           base of the curve.

3           Next, please.

4           We have our own great example of art in  
5           public places, and that's the cut fire heads  
6           done in '38, '39, by a female artist, a  
7           full-time professional artist, who went by the  
8           name of John, because she didn't think she'd be  
9           hired as a male (sic), but those are -- those  
10          are great examples of how it becomes a defining  
11          piece of the building and also a piece of art,  
12          and then just another shot of mosaics in New  
13          York.

14          Next, please.

15          The library has a Kay Pancoast sculpture of  
16          Coral Gables. It's a beautiful, beautiful map,  
17          that is done on tile. We would encourage you to  
18          go look in their Community Room. That would be  
19          an example.

20          And in San Francisco, we're showing an  
21          example of a parking garage and how the mural on  
22          the base of the park -- on the first level of  
23          the parking garage was actually an art in public  
24          places program.

25          Next, please.

1           More examples. Whether it's a manhole  
2 cover or a pedestrian walkway.

3           Next, please.

4           Other examples, where the pedestrian, a  
5 plaza -- an urban plaza that is done in  
6 consultation with an artist, through the  
7 process, would qualify, as well as there's a --  
8 a fountain in the -- on the left side as an  
9 example.

10          Next, please.

11          Whether Overtown or Tampa, examples of art  
12 in public places.

13          Next, please.

14          Here's a story. It tells the whole story  
15 of the community and how it gathered, through  
16 these -- these art sculptures. They're actually  
17 glass and metal.

18          Next, please.

19          Banners. Now, these were banners, each  
20 commissioned by -- on a project for individual  
21 artists, and then they became a permanent  
22 collection.

23          Next, please.

24          Urban furnishings. We think this is a  
25 fabulous example of -- of functional art, where

1 people can enjoy the beauty and also have a  
2 seat.

3 Next, please.

4 West Palm Beach, as an example of the  
5 benches.

6 Next, please.

7 So these are all urban furnishing examples.

8 You have a close-up, on the right, that  
9 shows that it's actually cactus. Not  
10 necessarily appropriate for Coral Gables, but  
11 certainly for Scottsdale, but it's actually from  
12 a bus bench.

13 Next, please.

14 This is in a public housing project. It's  
15 Lincoln, with a small child on his lap. So  
16 we're giving you now some -- more examples on  
17 artists' sculptures.

18 Next, please.

19 Tampa, Miami, as examples.

20 Next.

21 This is actually right in front of the City  
22 Hall for Tempe.

23 Next, please.

24 Both, Palo Alto and San Diego, we  
25 studied -- there are over 350 public art

1 programs around the country. Every one is a  
2 little bit different, but California clearly set  
3 the stage for art in public places, and here are  
4 just a few examples.

5 Next, please.

6 New York, Miami, and a lot of Miami came  
7 through the Metrorail project and the County's  
8 infrastructure projects.

9 Next, please.

10 Central Park, Eleanor Roosevelt. Palm  
11 Desert, California started in the 1980s. They  
12 have every development, public and private,  
13 participate, even single family homes.

14 Next, please.

15 Some Washington examples. If you look over  
16 to the right, the commuter is on roller skates,  
17 and we can all understand that need, given the  
18 commuter traffic.

19 Next, please.

20 Minneapolis, as an example.

21 Next, please.

22 Another example with Philadelphia.

23 Next, please.

24 Salt Lake City, Scottsdale. Scottsdale and  
25 Salt Lake City, these are examples in private

1           developments, that we've selected.

2           Next, please.

3           Los Angeles. The Commission enjoyed the  
4           one on the left, and felt that they could relate  
5           to that sometimes, and Coral Springs, private  
6           development, copper, and it's a very impressive  
7           building -- door entry for a private  
8           development.

9           Next, please.

10          Other private developments, and Namingha  
11          sculpture, the City has something similar by  
12          Namingha in Ponce Circle Park in our temporary  
13          art display, but both of these are in private  
14          office developments.

15          Next, please.

16          These are actually in retail centers in  
17          Scottsdale, under their arts in public places  
18          ordinance.

19          Water is just as much a part of the art  
20          development as metal or bronze.

21          Next, please.

22          Other examples with Scottsdale, the -- the  
23          palm trees, and also the elevator, and how they  
24          used that as a stainglass piece.

25          Next, please.

1           Overpasses, you all looked at -- probably  
2           at the County's overpass for the University of  
3           Miami. Here's an example of how Marshall Fields  
4           qualified through their overpass connection.

5           Next, please.

6           Some of you had already seen this. This is  
7           the San Diego campus, a beautiful serpentine  
8           mosaic, counting as art in the campus.

9           Next, please.

10          Now, we looked also at art in the  
11          universities. Many of them are obligated to  
12          participate, because their artists stay and they  
13          have to do 1.5 percent, and some, like  
14          Massachusetts Institute of Technology, chose to  
15          institute their own art in public places  
16          program, where they charged themselves 1.5  
17          percent for all their construction projects.

18          University of Wisconsin, we used as an  
19          example.

20          Next, please.

21          Another MIT example. Duquesne example,  
22          where they actually embedded it on the building.

23          Next, please.

24          The University of California, over to the  
25          left, is actually a bear, and so once you know

1 the name of it, it starts to make a little more  
2 sense, and then University of Utah, there's an  
3 example of how they incorporated light into  
4 their sculpture, their glass sculpture.

5 Next, please.

6 Some other examples. The University of  
7 Akron. That's actually a Chihuly. We've seen  
8 Chihuly with Fairchild. This is done in resin.  
9 And then we used St. Michael's College in  
10 Vermont as another example, all through a formal  
11 art in public places program.

12 Next, please.

13 Just an example of a professor explaining  
14 the dynamic nature of the art.

15 Next, please.

16 Okay. Our process is a little different,  
17 in that we have looked at two different ways to  
18 celebrate art in public places. One is, and  
19 you'll see in reviewing the ordinance, if it is  
20 a City construction project, City builds a  
21 garage, then the City would need to set aside  
22 one percent of those construction costs, but  
23 that one percent would be used for the  
24 restoration of historic civic art.

25 It is such a defining piece in Coral

1 Gables, the water tower, the plazas, the  
2 fountains and all, that it's appropriate, and  
3 we've had dialog with the County, and they  
4 agree, that the restoration of that civic art,  
5 that everyone can enjoy, is a legitimate expense  
6 in our public art program, and we set aside  
7 public municipal projects that would restore the  
8 civic art and it would be the Historic  
9 Preservation Board that would prioritize --  
10 recommend a priority to the City Commission, and  
11 have the City Commission be the final  
12 determinant, but they would manage that fund,  
13 whereas the Cultural Development Board, in  
14 consultation with an Art's Advisory Board, and  
15 I'll go into that in greater detail, would  
16 recommend to the City Commission on private  
17 development art, as well as new art acquisition.

18 Next, please.

19 Just some examples of what would qualify  
20 with the City restoring its own historic civic  
21 art.

22 Next, please.

23 All of these would qualify, the Prado --  
24 redo of the Prado, Let There be Light.

25 Next, please.

1           And that's the end of the examples. So  
2           we're seeing new art, artists' sculptures,  
3           artists' architecture, art that is related more  
4           to the pedestrian, with urban furnishings, and  
5           then art historic, civic art.

6           We did have conversations with Ivan  
7           Rodriguez. He has since retired, but we  
8           reviewed with him, from the very beginning, the  
9           direction that we wanted to go with our Art in  
10          Public Places Ordinance, and he was very  
11          supportive of the direction that we were going.

12          We've also conversed with many, many, many  
13          municipalities. Both, the City Attorney's  
14          Office has made calls and inquiries, from a  
15          legal standpoint, and we've made inquiries, from  
16          an implementation and management standpoint, so  
17          we've been able to pick and choose what works in  
18          different cities and what is perhaps problematic  
19          in different cities, so that we could build an  
20          ordinance that we believe would have great  
21          success.

22          Now, when we talk about one percent, that  
23          also includes not only the acquisition of the  
24          art, but also the maintenance, the insurance,  
25          the signage, the lighting, the installation, and

1 all the other costs that come with an art piece.

2 With the two funds, then we've talked about  
3 the historic civic art element, and I'd like to  
4 just walk through how the non-City process would  
5 work.

6 Now, we defined it as non-City, and  
7 provided a series of exemptions. Obviously, if  
8 you're already in the County process and  
9 contributing to the County 1.5 percent, you  
10 don't have to pay again in Coral Gables. So if  
11 the County comes in and does a project or  
12 something else that is County qualified, they  
13 have -- they would follow the County process.

14 Single family homes, the way that we've  
15 done this ordinance, the single family homes are  
16 exempt.

17 Duplexes, townhomes, multi-family, though,  
18 would qualify to participate in this program.

19 Anything under a million dollars would be  
20 exempt, and that would be renovation, new  
21 construction. If you don't meet that threshold  
22 of a million dollars, you are not needing to  
23 participate. The City Attorney can provide you  
24 additional clarification on, that doesn't mean  
25 that you can phase it over three years and go

1 below the radar and not qualify, it's an  
2 aggregate figure that is counted in the process,  
3 and then the Commission asked us to develop  
4 another exemption and the City Attorneys -- the  
5 Assistant City Attorney can review that  
6 language, and that language would exempt, under  
7 certain circumstances, educational institutions.

8 So that would mean, the University of  
9 Miami, it would mean St. Philip's, it would mean  
10 public and private.

11 Dade County Public Schools are under a  
12 little different process, as it relates to the  
13 City and the County, so we don't believe that  
14 they would be a participant in the program, but  
15 I'm happy to go over the ordinance in detail.  
16 I'm happy to answer questions. I'm also happy  
17 to refer the exemption language that's now being  
18 contemplated to our Assistant City Attorney.

19 THE CHAIRPERSON: Well, should we take  
20 questions now or do we want to hear  
21 comments from the --

22 MR. COE: Why don't we take public  
23 comments, Mr. Chair?

24 THE CHAIRPERSON: Take the public  
25 comments first?

1 MR. COE: Yes.

2 THE CHAIRPERSON: Is there anybody from  
3 the public who wishes to comment on this  
4 proposal?

5 Please state your name and address, for the  
6 record.

7 MR. NATOLI: My name is the Joe Natoli.  
8 I'm the Senior Vice-President of Business and  
9 Finance for the University of Miami. I live at  
10 10 Edgewater Drive, in Coral Gables, and I'm  
11 here with a bunch of colleagues from the  
12 University of Miami, whom I will introduce in a  
13 moment, and thank you for having us here this  
14 evening.

15 What we'd like to do is share a little bit  
16 more -- share with you about the art in public  
17 places programs that the University of Miami has  
18 had in place.

19 At first reading -- as Eric mentioned to  
20 you, at first reading, the City Commission  
21 passed our exemption and directed the City  
22 Manager to work with the Planning & Zoning Board  
23 to exempt the University and develop a process  
24 for periodic review of the University's  
25 sculpture program, and so we're really here

1           tonight to seek your support for that.

2           From our perspective, and, we believe, from  
3           the perspective of the City Commission, the  
4           University's ongoing commitment to providing art  
5           in public places fully satisfies the objectives  
6           that -- that Coral Gables is embracing with this  
7           -- with the Art in Public Place -- Are in Public  
8           Places Ordinance, and we'll describe some of  
9           what we do, to you, tonight, and at the end of  
10          our presentation, we'll present some recommended  
11          language for the exemption. It's a little  
12          different than what you have before you, but we  
13          think we can probably work out language that  
14          would work for both of us.

15          Let me just tell you who's here with me  
16          tonight. Larry Marbert, who's our new  
17          Vice-President of Real Estate and Facilities.  
18          He's the new Sergio Rodriguez. Senior Associate  
19          Dean of Arts and Sciences, Dr. Perri Lee  
20          Roberts, who will be making a brief  
21          presentation, mostly showing the sculptures that  
22          we have throughout our Coral Gables campus.  
23          Campus Planner -- Planner Janet Gavarrete, who  
24          you've no doubt met before. Irma Abella, from  
25          our General Counsel's Office. Brian Dursam, who

1 runs the Lowe Art Museum. Rudy Fernandez, who's  
2 Vice-President of Public Relations for us, and  
3 our legal counsel, Jeff Bass. We travel in  
4 large crowds -- large crowds at the University  
5 of Miami, as you have no doubt seen.

6 I'd like to point out just a couple of  
7 things about the University as -- as developers.  
8 We're not your basic developer. We don't come  
9 into Coral Gables and do one project and then go  
10 someplace else and do another project.

11 We are here. We intend to stay here. We  
12 don't plan on growing our student body  
13 population on the Coral Gables campus, but we do  
14 plan on improving everything having to do with  
15 the quality of the experience. So whether  
16 that's starting with the quality of the students  
17 and faculty and the facilities and what visitors  
18 experience when they step foot on our campus,  
19 we're all about quality, and, frankly, art in  
20 public places is a part of that. We want people  
21 to appreciate the University of Miami campus,  
22 whether it's our neighbors, other folks in Coral  
23 Gables or -- or -- or the thousands and  
24 thousands of visitors who come to our campus for  
25 one reason or another in the course of a year.

1           So between our sculpture program, our art  
2           master plan, the Lowe Art Museum, the Beaux Arts  
3           Festival, the University makes a wide variety of  
4           art available to the public.

5           Our basic position is that the City should  
6           recognize our existing collections, and avoid  
7           the imposition of -- of a new obligation on us.

8           We believe that the most effective and  
9           efficient way of doing that would be through an  
10          exemption.

11          So with that, I'd like to introduce you to  
12          Dr. Perri Lee Roberts, who will briefly walk you  
13          through the art that we have on our campus, and  
14          then Jeff Bass will come up and talk a little  
15          bit about the specific language that we are  
16          recommending.

17          MS. ROBERTS: Thank you very much.

18          Good evening, ladies and gentlemen. My  
19          name is -- my name is Perri Lee Roberts. I'm  
20          the Senior Associate Dean for Arts and  
21          Humanities for the College of Arts and Sciences.  
22          I am an artist/drawer by training, although I  
23          specialize in 14th and 15th Century Italian Art,  
24          not the contemporary art that I'm about to talk  
25          to you about.

1           I reside at 1 Grove Isle Drive, in Coconut  
2           Grove.

3           At the end of my presentation, I will  
4           hand out a two-page description of the  
5           University of Miami's public sculpture program  
6           that will summarize the mission statement, how  
7           sculpture is selected, the makeup of the  
8           committee that makes those selections, the  
9           criteria we use for acquiring a sculpture, and  
10          also how we maintain that, and what I'd like to  
11          do, since we're not on the campus, is to walk  
12          you through the sculpture that we currently have  
13          in place.

14          The program was started six years ago  
15          by Donna Shalala, and at that time, she  
16          requested that Elizabeth Plater-Zyberk, who  
17          is the Dean of the College of  
18          Architecture -- School of Architecture,  
19          rather, and that the Director of the Lowe  
20          Art Museum, Brian Dursam, who is with us  
21          tonight, that they look at the campus, the  
22          200 plus acres, and plan sites for public  
23          sculpture, and they had proceeded to  
24          identify 72 sites for a sculpture.

25          At present, we have 23 sculptures in

1 place, and there are five waiting in the  
2 queue to be placed.

3 One was in place, and has been moved,  
4 because of construction.

5 The sculptures that we have in the current  
6 sculpture collection, the 28 of them, are made  
7 up of sculptures that are primarily in the  
8 round, they're monumental sculptures. There are  
9 two Veggerby sculptures that are embedded into  
10 buildings, but, otherwise, like I said, they're  
11 large monumental sculptures in the round.

12 Twenty-five different sculptors were  
13 responsible for the sculptures on the campus.  
14 They come from diverse backgrounds and different  
15 nationalities, including a Dutch artist, German  
16 artist, Greek, Guatemalan, Spanish, Mexican,  
17 Italian, Cuban, Haitian, and, of course,  
18 American.

19 In terms of gender, there are six women  
20 sculptors, whose works are represented in the  
21 collection, and nineteen men, and they are  
22 spread throughout the campus. They're made up  
23 of a variety of materials, ranging from Cor-ten  
24 steel, to aluminum, to stainless steel, marble,  
25 and other stone materials, and I'm just going to

1 walk you through and show you all 28 sculptures.

2 You'll notice the little star on the map  
3 shows you the location of the work. This is a  
4 piece that's in front of the Wellness Center.

5 By the way, the sculptures date between --  
6 1958 is the oldest work we have on campus, and  
7 the most recent is 2003.

8 Most of them are abstract. This is an  
9 exception. This happens to be a figure by an  
10 American sculptor by the name of William King.  
11 It's entitled, Up There.

12 Thank you.

13 I don't know if you can see, it's a male  
14 figure, reclined, who has his arm reaching up  
15 towards the tree, and, appropriately, as I said,  
16 this is in front of the Wellness Center, to  
17 encourage people to make use of its facilities.

18 Around the corner, in front of one of the  
19 dorms, is this work by an American -- well, a  
20 Cuban-born artist, who currently resides in  
21 America. Actually, he's a local artist, who has  
22 also produced a piece for the campus Downtown,  
23 the Medical Campus.

24 This, as I said, is more typical of our  
25 sculptures, in that it's an abstract. It's a

1 large circular work, and it's painted red, and I  
2 don't know if you can tell from the  
3 reproduction, but we're having problems with the  
4 paint. That's slated to be repainted.

5 One of the things we've discovered in the  
6 process of putting sculpture outdoors, is that  
7 the climate in South Florida is not necessarily  
8 that conducive to having monumental works  
9 outside. We've been most success with our  
10 marble pieces. They seem to be -- survive the  
11 best.

12 Moving on, around the Student Union, is  
13 this work by two women who collaborated, Jane  
14 Manus and Rotraud Klein. Actually, an American  
15 team and a German team, and if you're familiar  
16 with moundrian sculptures, this is a moundrian  
17 sculpture that has been brought to life. These  
18 kinds of a shapes that he uses in his paintings  
19 are incorporated here.

20 The sculptures, by the way, as I said, are  
21 everywhere on campus, and we're happy to report  
22 that there has been absolutely no vandalism,  
23 that the students respect the sculptures, and, I  
24 think, actually enjoy seeing the works as they  
25 walk to class and go about their daily

1 activities.

2 This piece has actually been moved, and  
3 it's slated to be moved yet again. It's by an  
4 American sculptor by the name of Del Geist.  
5 This is around the corner of Lowe Art Museum and  
6 it was moved, because we're constructing the  
7 Paley Pavilion, and it will be relocated at a  
8 future date.

9 One of the pieces that has currently been  
10 removed is this work by John Henry, who's  
11 well-known around Miami for his public  
12 sculpture. In fact, he's well-known throughout  
13 the country. In Chicago, they've renamed a  
14 street after him, because of his contribution to  
15 public sculpture there.

16 This sculpture, as I said, needs to be  
17 relocated. It was removed, because of the  
18 construction of the Paley Pavilion, attached to  
19 the Lowe Art Museum.

20 This work is currently in front of the Lowe  
21 Art Museum, and I think it's really the  
22 signature piece of the sculpture program. This  
23 is by a Dutch-born artist, Hans Van de  
24 Bovenkamp, and -- and it's a wonderful work  
25 incorporating circles and waves, from 1987.

1           We've just recently repainted this work, at  
2           the cost of \$5,000.

3           Moving yet further away from the Lowe, by  
4           the Engineering Building, is this work by Oliver  
5           Seguin, who is a Mexican, but who was born --  
6           actually, works in Mexico or worked in Mexico,  
7           and he was born in France.

8           What you're not seeing is, this is in a  
9           beautiful piazza, that has three fountains,  
10          waterspouts, around it, and it is made out of a  
11          volcanic rock like material. It has a kind of  
12          organic life to it, and this was a gift of Esso  
13          International America, who gave two pieces to  
14          the campus. You'll see the other one shortly.

15          We do have a fair number of Latin American  
16          artists represented in the sculpture collection.

17          Cardenas is a sculptor who's represented by  
18          two pieces in the collection. This work, The  
19          Fruit of Memory, is, again, by the Engineering  
20          Building or in the quadrangle behind it, made  
21          out of marble. He is an artist who is Cuban, an  
22          Afro-Cuban, who moved to France, and his  
23          sculptures are generally by morfik, very soft  
24          looking. As I said, this -- it's so hard to  
25          tell from the slide, but it's actually a work

1           made from marble.

2           In front of the Engineering Building is  
3           this rather industrial looking piece. We've  
4           chosen sculptures or they've been selected for  
5           certain sites, because of connections to the  
6           building that they front.

7           This work by Joel Perlman is one of two in  
8           the collection.

9           In front of Ashe Building, this very large  
10          work by Fletcher Benton, who's a San Francisco  
11          artist, who's known for his public sculptures.

12          Another work that was a gift of the Esso  
13          Interamerican Corporation, by a Guatemalan  
14          artist. This is a siren. You may not be able  
15          to make out, but that's a woman's face in a  
16          bird's body, and she's enticing students to  
17          enter into their classroom building.

18          A work, which by the way, is by a local  
19          artist, Jane Washburn, is this rather poetic  
20          looking marble sculpture of a woman.

21          Out among the trees, by the Communication  
22          Building, this large sculpture by George  
23          Sugarman, which is on loan from the Foundation,  
24          and this is also slated to be repainted shortly.

25          In front of the Nursing School, another

1 work by Cardenas, who is a -- an Afro-Cuban  
2 artist, again, out of marble, entitled The  
3 Family. Appropriately, a subject matter chosen  
4 for the Nursing School courtyard.

5 By the library, one of two gifts given to  
6 us by Marty Margulies, is this large brushed  
7 aluminum gateway, and we thought this was  
8 appropriate for the library, as a way of --  
9 again, of enticing students into the library.

10 In front of the Music School are two piece,  
11 stainless steel pieces, by Leonardo Nierman,  
12 who's a Mexican-born artist. This work,  
13 Fantasy, and this violin, Music for your Eyes.

14 In the Business School yard -- courtyard,  
15 by a Greek woman artist by the name of Chryssa,  
16 this large B, that if we can -- I've had  
17 arguments with people, they're not two Ds, but a  
18 B, reminding us of its Business School location,  
19 and two other works, also, in the Business  
20 School quadrangle by another female sculptor  
21 from Spain, Elisa Arimany. This was a gift of  
22 the de la Cruz's. This is another work by her,  
23 that is in front of the Business School  
24 building.

25 This is one of the few representational

1 pieces. It's actually a ceramic piece. It  
2 celebrates the life of Simon Boliva and  
3 Alexander Humboldt, who were two important Latin  
4 American pioneers.

5 This work is across from the Judaic Studies  
6 entrance, a bronze sculpture that commemorates  
7 Dr. Korzjack, who in Europe is known as well as  
8 Anne Frank. This is a memorial to someone who  
9 was a hero during the period of the Holocaust.

10 Don Quixote de la Mancha, a sculpture that  
11 is adjacent to the Music Building, by the  
12 American artist Ralph Hurst.

13 In front of Casa Bacardi, this work by an  
14 Italian-born artist, who was an artist and  
15 resident for many years at the University of  
16 Chicago. His sculpture is spread all over their  
17 campus.

18 This work is currently waiting to be  
19 installed. It will be installed on the green in  
20 front of the library or immediately adjacent, by  
21 Ralph Provisera, who is a graduate of the New  
22 World School for the Arts.

23 This work also is waiting to be installed,  
24 by Tony Rosenthal.

25 Also to -- slated to go on the green, in

1 front of the library, Beverly Peppers' work, out  
2 of steel. This is a work that is currently  
3 being restored, so that it could withstand the  
4 elements, and, lastly, this very large sculpture  
5 by Joel Perlman, donated by Marty Margulies,  
6 and, actually, this is a photo montage. This  
7 sculpture is not currently in place in front of  
8 the library, but we were just out the other day  
9 trying to locate it properly and that are --  
10 that's a summary of the 28 sculptures that are  
11 on campus. I'll be happy to answer questions.

12 As I said, I have a handout that will  
13 describe the sculpture program for you.

14 Thank you very much.

15 THE CHAIRPERSON: Thank you.

16 Mr. Shubin.

17 MR. BASS: Mr. Chair, Members of the Board,  
18 nice to see you, Jeffrey Bass --

19 THE CHAIRPERSON: Oh.

20 MR. BASS: That's okay. Even my mom calls  
21 me Mr. Shubin, as well.

22 THE CHAIRPERSON: He's your partner.  
23 I apologize.

24 MR. BASS: I'm very, very used to that.  
25 It's a pleasure to see everybody this evening,

1 and thank you -- thank you for your attention.

2 If you were lacking any art history  
3 credits, we've assured that that presentation  
4 will satisfy the remaining obligations you all  
5 have, so no more need for nightmares on that.

6 Very briefly, we're here at the express  
7 direction of the City Commission, in response to  
8 our request that the University of Miami be  
9 exempt from the Art in Public Places Ordinance.

10 At the start of the hearing this evening,  
11 there was a question, should the witnesses be  
12 sworn this evening, and the answer was, no, and,  
13 interestingly, that was the correct answer, for  
14 a reason that really should weigh on all of you  
15 this evening.

16 The answer was, no, because this evening's  
17 hearing is not a quasi judicial hearing. We're  
18 here making policy. We're here in your  
19 legislative capacity, and we're here at the  
20 direction of the Commission, in its legislative  
21 capacity, to help refine the language of this  
22 legislation, to exempt the University.

23 So the reason the witnesses weren't sworn  
24 is, nobody's presenting evidence. Nobody is  
25 weighing evidence against a code, rendering a

1 quasi-judicial power. We're here in a different  
2 context this evening, and I think that's  
3 important.

4 We believe that the direction of the  
5 Commission was pretty simple to understand,  
6 although the hearing itself was long. The  
7 Commission wanted to do a few things. Number 1,  
8 it wanted to exempt us, and the motion to exempt  
9 us carried by a vote of three to two. That part  
10 has been stated.

11 Number 2, the Commission wanted to exempt  
12 us from a bureaucratic process that would  
13 continue to cause us to come to this City and  
14 would spare the City and its staff the  
15 consumption of its resources by having us  
16 continuously come to the City.

17 Our collection is significant, and it's  
18 significantly static, and so rather than  
19 engaging in a constant demonstration of why we  
20 should get a credit for a particular art, the  
21 decision was that we should be exempt.

22 Now, I have proposed some exemption  
23 language that I'd like to publish for you all,  
24 specific exemption language which we believe  
25 satisfies every objective of the Commission, and

1           then talk to you, very briefly, about why the  
2           language in front of you, as previously drafted  
3           by your City Attorney, is not ideal for us, but  
4           I don't think we're terribly far apart.

5           The exemption language that we propose, and  
6           I think showing fidelity to the record before  
7           the Commission, is to exempt colleges and  
8           universities, not just all educational  
9           facilities.

10          MR. COE: Excuse me. Do you have a  
11          handout? I can't read that print.

12          MR. BASS: I don't have a handout. I  
13          previously provided a copy of the text to the  
14          City Attorney, but I'll be brief as I publish  
15          it, and if somebody technologically more  
16          sophisticated than I could zoom that in or make  
17          it bigger, I welcome them to do so, but  
18          basically the exemption language would work like  
19          this: Colleges -- it would be an amendment to  
20          the existing exemption section of your code, and  
21          let me stop on that for a second.

22          Whenever you engage in the legislative  
23          process, you draw lines. You say, some people  
24          will be included, some people will be excluded.  
25          You've already crafted exemptions.

1 MR. COE: Of course.

2 MR. BASS: Single family homeowners are  
3 exempt. Duplex, garden homes, multi-family are  
4 inside. So you've already drafted exemptions,  
5 and we thought the logical place to put our  
6 exemption would be in that section.

7 We propose the following: Colleges and  
8 universities shall be exempt from the  
9 obligations arising under this ordinance, if at  
10 the time of building permit application, the  
11 college or university submits a qualified  
12 appraisal to the City Manager to demonstrate  
13 that it possesses art on its campus with a fair  
14 market value in excess of the one percent  
15 obligation otherwise arising under this  
16 ordinance for the construction at issue.  
17 Notwithstanding any provisions to the contrary  
18 in this ordinance, art is -- art that is owned,  
19 professionally curated, maintained and publicly  
20 displayed by the college or university shall  
21 qualify for this exemption.

22 Now, we believe, as drafted, the City has  
23 protection. It has protection that at the time  
24 we make the application, the value of our art  
25 would exceed that obligation, that one percent

1 obligation, as measured at that point in time,  
2 that would otherwise arise. That value would be  
3 demonstrated by a qualified appraisal, submitted  
4 to the City Manager to inspect, and as long as  
5 we own that art, and it was professionally  
6 curated, and we're pledging to maintain it, we  
7 should be exempt.

8 That's how we believe we can simultaneously  
9 eliminate the process of having to present to  
10 the Cultural Development Board, as it's  
11 presently contemplated under the language before  
12 you. We believe that that would be condemning  
13 us to the bureaucratic process that the  
14 Commission itself sought to avoid.

15 We give you assurances, along,  
16 periodically, that as we come in for permits,  
17 the value of the art that we're proposing  
18 satisfies the obligation that would otherwise  
19 exist, and by having it as a qualified  
20 appraisal, you know that the opinion of value  
21 is -- is beyond fair debate.

22 Now, the language in front of you required  
23 a covenant, as propounded by the City Attorney,  
24 a covenant. That is not ideal for us, because  
25 that is essentially a restraint on our

1 alienation of that piece of property. We would  
2 say, and we'll be happy to say, that if ever we  
3 were to sell a piece of qualifying art, we would  
4 replace it with a piece of equal or greater  
5 value, so that, again, commensurate with the  
6 cost of construction, there would always be an  
7 assurance that we would have that art on our  
8 campus to satisfy the obligation, without us  
9 having to spend new monies to acquire art, in  
10 recognition of the extensive art we already have  
11 on our campus, and I think, really, that is the  
12 gist of it.

13 We already have an exceptional amount of  
14 art on our campus, of a quality, quantity and  
15 magnitude, in terms of valuation, that is  
16 greater than anything else within the City, and  
17 I think that's what prompted the City Commission  
18 to recognize that, as the Mayor said, we are  
19 different from other developers, and it is  
20 rationally, logically, legally and substantially  
21 supported by the record evidence before you,  
22 that we maintain a lot of art, and there's a  
23 reason to treat us differently, and that's  
24 because we're a university.

25 As it relates to the valuation, the

1 language here eliminates any discussion about  
2 that. It would be an appraisal based on fair  
3 market value. I always like to say, what's  
4 unfair about fair market value? When you can  
5 come down to two times valuation, that is a very  
6 well tested and accepted valuation methodology,  
7 and we would ask that you would adopt this  
8 language of an exemption.

9 One comment. You'll learn, as you get into  
10 these processes, particularly as a lawyer, that  
11 from an administrator's perspective, things that  
12 sound good to a lawyer or sound good to a lay  
13 person, would be a disaster, in terms of cost  
14 and expense to an administrator.

15 If the University were to submit every  
16 three years a comprehensive appraisal of our  
17 entire art collection, we would probably spend  
18 more money in generating that appraisal than  
19 would be our corresponding obligation, because  
20 of the vastness of our collection. We would  
21 have to find expert appraisers in every one of  
22 the fields that we possess, and the time and  
23 expense to do that, we believe, is -- is  
24 outweighed by the salutary purpose that would be  
25 served by it.

1 Under our methodology, we come in. If we  
2 have a building that costs 25 million, we show  
3 you a qualified appraisal, that shows an opinion  
4 of value of the art, one percent, 250,000, it's  
5 inspected by the City Manager, and for purposes  
6 of that building and that obligation, we're  
7 exempt.

8 We think it works easily and cleanly, and  
9 we would hope that you would adopt it, and I'm  
10 here to answer any questions you might have.

11 MR. COE: Mr. Chairman, I have one question  
12 of the speaker.

13 MR. BASS: Sure.

14 MR. COE: So I understand what you are  
15 suggesting, the educational exemption, as  
16 currently drafted by the City Attorney, I'm  
17 looking at Page 7, begins at Paragraph 4, and  
18 it's 4, Subparagraphs A, B, and C. Are you  
19 proposing a substitution of your language for  
20 all of Paragraph 4-A, B, and C?

21 MR. BASS: Yes.

22 MR. COE: And so what about non-colleges  
23 and universities, because the -- the City  
24 Attorney's language is broader than colleges or  
25 universities?

1           Frank, right now, the only college or  
2           university within the City is UM, but there's  
3           other preparatory schools within the City that  
4           would be bound by the educational institution  
5           exemption.

6           Are they going to be deleted or  
7           incorporated in yours? Are you going to expand  
8           it or are we going to have two separate  
9           educational exemptions? What -- what -- you  
10          don't really address that in your proposed  
11          exemption language.

12          MR. BASS: Well, thank you for the  
13          opportunity to address it now.

14          I spoke only on behalf of the University.  
15          The debate in front of the City Commission was  
16          only about the University, institution of -- as  
17          an institution of higher learning.

18          I was very deliberate, because, again,  
19          we're in the legislative line drawing arena  
20          here, to present our request for an exemption as  
21          narrowly as possible, so as to avoid expanding  
22          it to other educational facilities or  
23          not-for-profits, because I was not sure that it  
24          was the will of the Commission to do so.

25          So I can't tell you, Mr. Coe, respectfully,

1           that that expansion would be faithful to the  
2           direction of the Commission, and I don't feel  
3           qualified to address whether that is a policy  
4           decision that this Board should make, absent  
5           that expressed.

6           So I'm sorry that I can't answer the  
7           question more specifically. I was just  
8           proposing exemption language for us. It's not  
9           my intent to throw anybody else off the bus,  
10          that might otherwise benefit from that language.  
11          It's just, they weren't on the bus to begin  
12          with, and I would be hesitant to invite them on  
13          it here, so -- but the specific answer to your  
14          specific question is, yes, this would be a  
15          substitute language to that language that's  
16          already on there.

17          THE CHAIRPERSON: Cristina, you had a  
18          question?

19          MS. MORENO: I have a couple of comments.

20          First, I don't think that your language  
21          addresses the problem of double counting pieces.  
22          In other words, you cannot use the same piece of  
23          sculpture to meet the one percent requirement.

24          MR. BASS: I absolutely agree.

25          MS. MORENO: Okay. And I don't think your

1 language -- I don't think that was your intent,  
2 but I don't think your language addresses that.

3 Secondly, I would be uncomfortable making  
4 it only for the University and not for other  
5 educational institutions. It seems to me that  
6 if we are exempting the University, we should  
7 also be exempting any university -- any  
8 educational institution that maintains an art  
9 program.

10 My understanding of the reasons for the  
11 exemption is that, in fact, you are complying  
12 with the spirit, if not the procedure, of the  
13 ordinance, and to the extent that another  
14 institution, a preparatory school, also chose to  
15 do that, and found it easier to do that, because  
16 they could obtain donations of art, as does the  
17 University, it should be allowed to comply, and  
18 I don't see why we would -- we would omit that.

19 MR. BASS: I agree with both your  
20 points.

21 MS. MORENO: And the third point that I  
22 have, and this is addressed not just to you, but  
23 also to the City Attorney, is that I think two  
24 things need to be clarified.

25 One is that in reaching the one percent

1 criteria, it is my understanding that the intent  
2 is to include in that not just the appraised  
3 value of the art, but also the cost of  
4 maintaining, installing, et cetera. That is not  
5 at all clear by this language, and I would point  
6 out, in particular, in Item -- I had it in front  
7 of me, and I've -- now I've lost it, but when  
8 you talk about the private developer, you talk  
9 about the appraised value, as opposed to -- of  
10 the piece of art.

11 Yeah, it's 11, Sub C, on Page 4, and it  
12 says, "The art acquisition to be incorporated  
13 within the project should have a minimum  
14 appraised value of one percent of the  
15 construction costs."

16 My understanding is that it's not just the  
17 appraised value, but you're also giving credit  
18 for cost of installation, maintenance. So I  
19 think that needs to be corrected, and the -- I  
20 lost -- I lost my thought about the second  
21 point.

22 I had the double count -- oh, also the  
23 replacement issue. We -- we need to be clear  
24 that if an owner, be it the University, be it an  
25 educational institution, or be it a private

1 developer, wants to sell a piece of art that has  
2 been proffered to meet this requirement, it can  
3 replace it with a piece of art with an appraised  
4 value of the original requirement, not of the  
5 then value of the piece of art.

6 We -- we believe that that should be the  
7 criteria, and that that should be clarified, or  
8 that the developer can then -- and I think that  
9 the easiest way might be, where you say that  
10 when they sell, they can make a contribution,  
11 that shouldn't be limited to sale of the  
12 building, it should be at any time that they  
13 want to remove the piece of art, they should  
14 have the right to either replace it with a piece  
15 of art that meets the criteria or make the  
16 payment into the fund, and I don't believe that  
17 that's clear.

18 MS. ALFONSIN-RUIZ: Thank you.

19 MR. BASS: As it relates to, I think,  
20 the only of your comments to which I can  
21 really reply, substantially, if we were to  
22 have language that said something like, no  
23 art used to qualify for an exemption under  
24 this ordinance shall be used to justify a  
25 second request for an exemption.

1 MS. MORENO: I think you're better off  
2 treating it in the aggregate, so that -- the way  
3 that I would suggest you redraft it, and I can't  
4 do it for you at this minute, is that the value,  
5 the appraised value of the art you have on  
6 campus at any one time must exceed your one  
7 percent requirement for all projects after this  
8 statute is adopted. That seems to be more along  
9 the lines of what you want to do.

10 MR. COE: Ordinance.

11 MS. MORENO: In other words, Project 1  
12 required a contribution of \$250,000. You have  
13 art on campus that requires 250,000.

14 MR. BASS: Okay.

15 MS. MORENO: Now, when you get to Project  
16 2, you have the first 250, plus now you need a  
17 million dollars' worth of art, you must show  
18 that you've got a million two fifty, at least,  
19 of art.

20 MR. BASS: That I understand. Okay.  
21 Thank you. That clarifies it.

22 MS. MORENO: Does -- does that make sense  
23 to you, City --

24 MS. ALFONSIN-RUIZ: Yes. The only issue  
25 that I have with that is that we need to have a

1 process, aside from that, and I don't have  
2 problems with the language, if we have that  
3 aggregate language in there, but we also need to  
4 have a process by which we would ascertain that  
5 the University still qualifies for the  
6 exemption, if there -- if there are years  
7 between development projects.

8 In other words, if they have a project  
9 coming up in 2008, but they don't have another  
10 project until 2013, we need to have something in  
11 place that will ascertain that they still have  
12 the art in place on campus.

13 THE CHAIRPERSON: Why?

14 MS. MORENO: You need to have the same  
15 for any developer or any other project.

16 MS. ALFONSIN-RUIZ: Correct.

17 MS. MORENO: I would not except them -- or  
18 let me restate that.

19 Once you develop whatever you're going to  
20 do for private developers, I would have that  
21 incorporated in your exemption language.

22 THE CHAIRPERSON: Why?

23 MR. COE: That's --

24 MS. MORENO: Because -- because once  
25 you -- once you --

1 MS. ALFONSIN-RUIZ: You have to treat all  
2 developers --

3 MS. MORENO: -- have the exemption, they  
4 can't remove it.

5 THE CHAIRPERSON: So they -- they  
6 can't, if they used one piece of art to  
7 qualify -- you know, 'cause they're not  
8 going to appraise all their art.

9 The gist of the problem, as I see it,  
10 is that it's not inexpensive to appraise  
11 art. So, you know, constant reappraisals  
12 end up costing too much money.

13 MS. MORENO: No, the way that I'm  
14 suggesting --

15 THE CHAIRPERSON: Wait. Wait. Wait.

16 MS. MORENO: I'm sorry, Tom, the way I'm  
17 suggesting, because it addresses your specific  
18 point --

19 THE CHAIRPERSON: Okay.

20 MS. MORENO: They do an appraisal right  
21 now, and they show us that what they've got on  
22 campus has a value of two million dollars.  
23 They've got credits of up to two million  
24 dollars, without giving another appraisal,  
25 unless they sell or remove a piece.

1           THE CHAIRPERSON: Okay. If they sell  
2 or remove a piece, what are they going to  
3 do, a complete reappraisal?

4           MS. MORENO: No, they only have to  
5 cover that one piece.

6           THE CHAIRPERSON: Is that acceptable?

7           MR. BASS: That's acceptable, yeah, for  
8 the -- for the qualifying piece.

9           I just want to be clear. I think we're  
10 saying the same thing, but what we're appraising  
11 is that amount of art to satisfy the one percent  
12 obligation, not a campus wide appraisal, but if  
13 our obligation were, say, \$250,000, on a 25  
14 million dollar building, we would give you an  
15 appraisal that says, "This piece of art cost 250  
16 -- has a fair market value of \$250,000." That  
17 would satisfy and give us an exemption for that  
18 that 25 million dollar building.

19           If ten years later we come in with another  
20 building of 25 million dollars, with a new  
21 \$250,000 exemption, we would have to come up  
22 with a different piece of art, and a new  
23 appraisal, to shows that that piece of art, on  
24 its face --

25           THE CHAIRPERSON: In addition, if --

1           someone's going to have to track that piece  
2           of art that you first qualified with,  
3           because if you dispose of it, you're going  
4           to have to substitute some other art.

5           MR. BASS: Right. That's a little  
6           cumbersome, but we're happy to keep those  
7           reports on file, and we're happy to give  
8           compliance and give those reports to you  
9           all at the time of building permit, to make  
10          sure that we are compliant, and for every  
11          new building that we build, if you'd like  
12          to have a look back, and make sure that we  
13          are compliant -- historically compliant --  
14          let's say we got three buildings  
15          exempt --

16          MR. BEHAR: But if you got credit for an  
17          art work five years ago, okay, and that art  
18          work, when you come back for a new project, it's  
19          worth double what it was worth at the time, are  
20          we going to give the credit -- are we going to  
21          revise that appraisal and that art work keeps --

22          MR. BASS: No, no. As I understand  
23          this --

24          MR. COE: No, that --

25          MR. BASS: How I understand these comments,

1           that piece of art is retired, once it serves as  
2           a predicate for that exemption five years ago,  
3           and that one now is off the table, and we're not  
4           coming back in to use that art or the flow or  
5           appreciation on that art, to justify that  
6           exemption, and then, you know, maybe some more.

7           Once that art is used to qualify that  
8           exemption, it's retired, it's out of our cabinet  
9           of qualifying art, and each new building would  
10          have to have a new piece of art or pieces of  
11          art, with appraised values, to satisfy the one  
12          percent obligation.

13          THE CHAIRPERSON: You know, if it were  
14          up to me, I'd give you like a five-year  
15          exemption, no reporting, nothing. At the  
16          end of five years, you know, you come back  
17          and we renew it, if you, you know, got a  
18          similar or a better quantity of art,  
19          without dealing with all these appraisals.  
20          I mean, this is just incredible.

21          MR. BASS: That's fine by me.

22          THE CHAIRPERSON: That's an incredible  
23          bureaucracy we're imposing, just -- I mean,  
24          maybe there's some legal reason we need to  
25          do it that way, but from a practical

1           standpoint, it sounds to me like we're  
2           overlawyering the heck out of this thing.

3           MR. BASS: That's fine by me, if you  
4           just want to exempt us like you do for  
5           single family homes.

6           MR. SALMAN: For the Chair --

7           THE CHAIRPERSON: With a sunset for,  
8           you know, like a five-year period, so that  
9           at the end of five years, we're going to  
10          come -- you're going to come back and  
11          you're going to show us, "Hey, we still got  
12          all this great art," or we -- you know, "We  
13          got more," and then we could exempt it  
14          again for another five years, and with a  
15          sunset. That to me made the most sense,  
16          but I guess that's not on the table here.

17          MR. BASS: If that's the will -- oh, I  
18          think that was absolutely with -- that's  
19          consistent with the spirit and the letter  
20          of what the Commission wished. So if  
21          that's -- that's the will of this Board, I  
22          think that that would be -- that certainly  
23          would be satisfactory to us.

24          MR. AIZENSTAT: To the Chair, let me ask a  
25          question, if I may. The pieces of art -- I've

1 got a couple of questions for you.

2 The pieces of art that you have, how do you  
3 acquire them?

4 MR. BASS: Let me, if I may, defer to  
5 Dr. Roberts on that, because she can give  
6 you a far better and more competent answer  
7 than I could.

8 MR. AIZENSTAT: I mean, I guess maybe --  
9 maybe I'm looking for something more basic, as  
10 to say, are these pieces of art that the  
11 University purchases or are these pieces of art  
12 that is donated?

13 DR. ROBERTS: They're donated. To date,  
14 they've been donated.

15 MR. AIZENSTAT: All the art has been  
16 donated?

17 DR. ROBERTS: Yes. There are a few that  
18 are on loan.

19 MR. AIZENSTAT: Now, out of -- that was my  
20 next question. Out of these pieces of art, how  
21 many does the University physically have title  
22 to or owns?

23 DR. ROBERTS: Let me defer to Brian Dursam,  
24 who is the head of the Sculpture Committee and  
25 he can tell you exactly.

1 MR. DURSAM: If they're on loan --

2 MR. AIZENSTAT: So you got 28? Am I right?  
3 Am I looking at this right? You have 28 pieces  
4 of art?

5 MR. DURSAM: I'm Brian Dursam, Director of  
6 the Lowe Art Museum. Do you need my residence?  
7 I'm --

8 MR. COE: Yes.

9 MR. DURSAM: I live at 1249 Mariana Avenue,  
10 in Coral Gables.

11 We currently own all but -- recollection  
12 would be the one, which is a work by George  
13 Sugarman, and that's on loan from their  
14 Foundation.

15 MR. AIZENSTAT: So you -- out of 28, you  
16 own 27 pieces?

17 MR. DURSAM: Yes.

18 MR. AIZENSTAT: Okay. The other question  
19 that I have is, you stated that about six years  
20 ago you started this process, when Donna Shalala  
21 came in to the presidency. What happened before  
22 her tenure?

23 MR. DURSAM: We didn't have such a program.

24 MR. AIZENSTAT: Okay.

25 MR. DURSAM: This is -- was her -- this is

1 really her initiative.

2 MR. AIZENSTAT: What happens down the road,  
3 if she steps down or so forth, and there's  
4 another philosophy, the way the University deals  
5 with its art program, how do you handle that  
6 situation?

7 MR. BASS: Let me answer that.

8 As it relates to this Board -- this Board's  
9 charged in the ordinance, we would handle it  
10 precisely the same way. We would come in and  
11 show you, through the City Manager's Office, an  
12 appraisal of a piece of art, commensurate with  
13 what our one percent obligation would be, and I  
14 just want to qualify, we own sizably more than  
15 28 pieces of art.

16 The Lowe Art Museum itself has 17,000  
17 pieces in its collection.

18 MR. AIZENSTAT: Right. I'm more interested  
19 in what's open to the public, as opposed to what  
20 is --

21 MR. BASS: Well, I think that -- that's  
22 an important point. The Lowe is open to  
23 the public.

24 MR. AIZENSTAT: Twenty-four hours, where  
25 somebody -- a resident can walk in there and see

1           it or so forth?

2           MR. BASS:  Certainly not 24 hours, but  
3           a resident can certainly walk in there,  
4           under the same terms and conditions that  
5           one might walk into, say, the Venetian  
6           Pool, or one might want to access the  
7           Granada Golf Course or the Biltmore Golf  
8           Course or those other public places --

9           MR. AIZENSTAT:  What about -- what about if  
10          the developer -- let's say a developer goes in  
11          and is going to do a piece of work, does it have  
12          to be open to the public?  It's got to be on the  
13          first floor and it's got to be accessible 24  
14          hours?

15          MS. ALFONSIN-RUIZ:  Yes --

16          MR. RIEL:  No.

17          MS. ALFONSIN-RUIZ:  Not 24 hours, but it  
18          has to be accessible, and the way it's defined  
19          in the ordinance is publicly accessible at no  
20          large to the public.

21          MR. AIZENSTAT:  Does the Lowe Art Museum --

22          MR. ALFONSIN-RUIZ:  And museums are  
23          exempted under the ordinance, as well.

24          MR. RIEL:  Correct.

25          MR. AIZENSTAT:  So can you walk into the

1           Lowe Art Museum for free?

2           MR. BASS: For free, no.

3           Now, previously we have said that Coral  
4           Gables residents -- Mr. Natoli, who is here,  
5           said Coral Gables can -- residents -- to avoid  
6           this debate, about what is public and publicly  
7           accessible, to avoid the debate, we will make  
8           the Lowe open to residents of Coral Gables for  
9           free.

10          Now, we don't believe we have to do that,  
11          because publicly accessible does not mean for  
12          free. The Lowe Art Museum is publicly  
13          accessible, just like the Venetian Pool is  
14          publicly accessible.

15          You all use, in your Comprehensive Plan --  
16          you designate the Granada Golf Course and the  
17          Biltmore Golf Course as public land, okay?  
18          They're not accessible to me for free, and  
19          they're not accessible to me 24 hours a day.  
20          They are publicly accessible, under reasonable  
21          terms and conditions, and we think that we have  
22          gone well above what would be required, in order  
23          to avoid this debate, but I think that I have to  
24          come back to where I started.

25          You're in a legislative capacity. There is

1 no law that says, "Exempt museums," none, okay?  
2 Your drafters chose to do that.

3 We believe, however, if you're on a college  
4 or university, who qualifies for the exemption,  
5 and we show you a piece of art that's in the  
6 Lowe Art Museum or not in the Lowe Art Museum,  
7 if it's on our campus, if it's professionally  
8 curated, if it is maintained and owned by us,  
9 not on loan -- maintained and owned by us -- we  
10 qualify, and we believe that that satisfies the  
11 spirit and the letter, and there would be no  
12 rational basis to exclude a museum, that is open  
13 to the public, under reasonable terms and  
14 conditions.

15 I would ask anybody to think about a museum  
16 that you've gone into, almost anywhere in the  
17 world, where you didn't pay an admission fee.

18 MS. MORENO: Washington, DC.

19 MR. BASS: There are some, but you can  
20 go to New York -- you can go to New York  
21 and go into others where you pay.

22 MS. MORENO: Let's study, again, what Tom  
23 is suggesting. Okay. Tom is suggesting a  
24 blanket exemption for a period of time, to be  
25 reviewed again at the end of that period of

1 time.

2 The -- the reason that I find that  
3 attractive is that I think we can determine  
4 today that what the University has in art should  
5 support a building program for quite some time,  
6 particularly if you include the Lowe, and I --  
7 I, for one, do find the argument that it is  
8 available to the public very persuasive, even if  
9 it's for a fee.

10 The reason for that exemption would be to  
11 avoid the appraisal expense to -- to the  
12 University, which would be a -- a not  
13 non-significant expense.

14 So I think we should -- I'm not saying that  
15 I'm a hundred percent convinced, but I think  
16 it's something we should consider, whether you  
17 can create the exemption, without having to deal  
18 with this one percent all the time, just based  
19 on the University coming before the Commission  
20 and saying, "Look, we've got enough art there to  
21 support what we currently have programmed for  
22 the next "X" years, and in three years or five  
23 years or whatever, we'll come before you again  
24 and demonstrate that we have enough art for the  
25 next proposal, and for everything we've done in

1 the past, and if not, we'll have to comply."

2 I mean, that will be a way of approaching  
3 it, without having to require an appraisal of  
4 each piece of art at this time.

5 MR. AIZENSTAT: Let me ask you a question.  
6 What would you say is the value of the  
7 properties or the buildings that the University  
8 of Miami has at this time?

9 MR. BASS: The properties in the  
10 buildings?

11 MS. MORENO: No, but this would only apply  
12 to future.

13 MR. BASS: This only applies --

14 MR. AIZENSTAT: No, I understand that,  
15 but I'm just curious. At the present time.

16 MR. BASS: I have no idea what the  
17 value of the property is.

18 MR. AIZENSTAT: I mean, would the art  
19 that's there -- they're talking about doing some  
20 kind of credit.

21 MR. BASS: No, I don't see that as a  
22 credit. I think it's an exemption on a go  
23 forward basis.

24 MR. AIZENSTAT: An exemption?

25 MS. MORENO: Uh-huh.

1           MR. AIZENSTAT: I wouldn't support that.

2           THE CHAIRPERSON: Well, the concept is  
3 really very simple. That is, based on what  
4 they own right now in public art, that we  
5 know about, they've shown it to us, it  
6 takes -- whether you take into account the  
7 Lowe Art Museum or not, the -- the public  
8 art they have now is more than adequate to  
9 meet the projected construction, if we were  
10 going to apply the more complicated one  
11 percent valuation procedure, for, let's  
12 say, the next three years or the next five  
13 years. So we would say, "Okay, we're going  
14 to exempt you for the next three years or  
15 five years, based on UMCAD that we know now  
16 is in place, and at the end of that time,  
17 the exemption ends. If you want to come  
18 back and get the exemption again or if we  
19 want to impose on you a new one percent  
20 requirement, that will happen." I mean,  
21 automatically they'll be under the one  
22 percent requirement of the general  
23 ordinance, assuming it's adopted, in the --  
24 in the absence of an affirmative decision  
25 by the City to regrant that exemption.

1           So all we're really doing is, we're saying,  
2           "We're comfortable with where you are now, in  
3           relation to this limited period of time, both in  
4           terms of the anticipated construction" -- we  
5           know what's in the pipeline, generally -- "and  
6           the art work that you have on public display  
7           currently, so we'll just -- rather than go  
8           through a bureaucratic process of appraising art  
9           everytime you get a new building permit, during  
10          this five-year period, say, we're just going to  
11          exempt you.

12                    "Now, at end of the five-year period,  
13          you come to us, you show us the construction --  
14          the next five-year plan of construction, show us  
15          what art you have in place then, and we'll make  
16          a decision whether to regrant that exemption or  
17          not grant the exemption, in which case you're  
18          under the one percent rule and you're going to  
19          have to apply like everybody else," or we are  
20          going to create another rule for them at that  
21          time.

22                   MS. MORENO: Well, the other possibility  
23          would be to have them appraise the 28 pieces  
24          they now have. Let's say that the value of  
25          those comes out to five million dollars. So

1           they get five million dollars worth of credit  
2           towards future building.

3           THE CHAIRPERSON: That's fine, but I  
4           think that's a big expense for them.

5           MR. BEHAR: Well, but you know what --  
6           Simultaneous speaking.)

7           MR. BEHAR: And you know what, you give  
8           them the credit today for that 27 pieces.

9           MS. MORENO: Right. We give me -- and they  
10          can build up to that.

11          MR. BEHAR: And if they're -- I agree. I  
12          personally -- I personally, you know, don't want  
13          to give them a blanket cover, because it is not  
14          right. I mean, we're asking other developers  
15          whether -- to comply with the requirement.

16          MS. MORENO: Yeah, I think the easiest --  
17          the easiest way would be to come up now with a  
18          value, and say, "Look, you have -- you have art  
19          worth five million dollars. That gives you, you  
20          know, one percent. You can construct up to  
21          \$500,000,000 and you're exempt."

22          MR. AIZENSTAT: What would happen if a  
23          developer or a project had a lot of art, and  
24          they had a certain project or a building,  
25          like -- we're looking at the Old Spanish

1 Village. Let's say it was -- let's say the Old  
2 Spanish Village had already built the whole  
3 phases, and all of a sudden they started and  
4 said, "You know what, we want to do a whole new  
5 section and call it Old Spanish Village II," and  
6 they had art throughout the street and so forth,  
7 would we go in and give them a credit for what  
8 they have now, and say, "You know, you got so  
9 much art, so when you come in for your second  
10 part, we're going to credit you?"

11 MR. RIEL: No. This program is for  
12 ownership of art, not a credit program.

13 MR. AIZENSTAT: But now we're talking about  
14 doing a credit program.

15 MR. RIEL: That's what -- that's not before  
16 you this evening. This evening, what's before  
17 you, is an ownership art program.

18 MR. AIZENSTAT: But what Cristina is  
19 discussing right now is a credit ownership.

20 THE CHAIRPERSON: For the University of  
21 Miami.

22 MR. RIEL: Yeah, for the University of  
23 Miami. That's not the same program that private  
24 developers will be subject to.

25 MR. AIZENSTAT: Okay. See, where I see it

1 is, the University of Miami is a private  
2 institution.

3 MS. MORENO: It's a non-for-profit --

4 MR. AIZENSTAT: It's a non-for-profit.

5 MR. MORENO: -- educational institution  
6 that instituted art in public places on its own,  
7 without being forced to do so.

8 MR. AIZENSTAT: Correct. I don't disagree  
9 with that, but I just don't see such a credit.  
10 I'm not convinced with giving them such a --

11 MS. MORENO: Okay.

12 MR. BEHAR: Mr. Chair, I agree. I  
13 don't see --

14 MR. BASS: If I may, I think on the  
15 rolling basis, as I had proposed, where we  
16 come in with one specific appraisal, tied  
17 to the one specific building -- although I  
18 appreciate the simplicity and the  
19 tremendous elimination of bureaucratic  
20 process in the exemption mode that was  
21 being pursued, I think we'd be very  
22 comfortable traveling under the "We come in  
23 with the art to justify the exemption on a  
24 rolling basis."

25 I think -- although I appreciate the

1 exploration of that idea, I think, in actuality,  
2 this might be an easier way to keep everybody  
3 up-to-date as to -- on a building by building  
4 basis -- what art was being used, at what value,  
5 and we can quantify that appraisal for that  
6 building, and as long as we're clear that, you  
7 know, with -- the art in the Lowe is a candidate  
8 for that, I think we end up exactly where we  
9 want to be.

10 MR. COE: Mr. Chairman, I just want to make  
11 a comment. It seems to me we're talking  
12 specifically about the University of Miami. I  
13 realize they're here to make their -- their  
14 pitch.

15 The way the proposed ordinance is drafted,  
16 it deals with educational institutions, per se,  
17 not public schools, but prep schools. St.  
18 Philip's, for example, being one of them.

19 Now, are we going to talk about an  
20 exemption to the exemption, carving out another  
21 exemption for the University of Miami?

22 Do we have what is now Paragraph 4-A, B and  
23 C, where it talks generically about educational  
24 institutions, to apply not to colleges and  
25 universities?

1           I think we're going down a slippery slope  
2 here.

3           MR. AIZENSTAT: Right. I agree with you.

4           MR. SALMAN: To the Chair --

5           MS. MORENO: I think the way that -- the  
6 way that the University is proposing it, on a  
7 one for one basis, would also work for other  
8 education institutions, and one of the reasons  
9 I'm interested in seeing that is that I think  
10 educational institutions can meet this  
11 requirement through donations.

12           I, at least, have been involved with a  
13 number of schools that have a very difficult  
14 time raising money for any kind of building. To  
15 impose on them an additional one percent, that  
16 they have raised as cash, strikes me as -- as  
17 difficult. Whereas if they can meet it through  
18 a donation of a piece of art by some, you know,  
19 alumni, et cetera, it eases the burden on that  
20 institution. I --

21           MR. AIZENSTAT: But they have that option,  
22 don't they? In other words, instead of putting  
23 in that one percent, they can produce that art  
24 piece? And it's -- we're not telling them how  
25 to get the art piece, whether they have to go

1 and purchase it or it's donated to them.

2 MR. COE: Mr. Chairman, I have a question  
3 for --

4 MS. MORENO: But what this does is it  
5 allows them to use existing art that they have,  
6 right?

7 MR. COE: Staff, Mr. Riel, is it your  
8 position that we have to vote on this entire  
9 ordinance tonight --

10 MR. RIEL: Yes.

11 MR. COE: -- or can we exempt out -- which  
12 I don't think we're going to have any agreement,  
13 can we exempt out the -- maybe exemption is the  
14 wrong word. Can we not consider the section  
15 dealing with educational institutions and  
16 perhaps approve the rest of it, because I don't  
17 think we're going to get a consensus?

18 MR. RIEL: Well --

19 MR. AIZENSTAT: By doing that, what do we  
20 get to?

21 MR. RIEL: Let me back up. I mean, the  
22 Commission passed the ordinance, five-zero.  
23 They asked that this Board provide input on that  
24 ordinance, as well as the exemption, and asked  
25 staff to create exemption language, which we've

1           done so. We feel comfortable with that, and we  
2           feel it has established the Commission's intent.  
3           We asked for your input on your language, if you  
4           feel they should be exempt, they should not. If  
5           you feel that there should be changes to the  
6           exemption language, provide that information to  
7           us, but it's our responsibility to go to the  
8           Commission on December 11th and indicate what  
9           this Board's position is.

10           MS. MORENO: But we've already --

11           MR. COE: You've made that -- you've made  
12           that clear. However, it's obvious, from this  
13           discussion, in terms of exemption language, I  
14           don't think if we stay here until three o'clock  
15           in the morning, we're going agree on exemption  
16           language.

17           MR. BASS: If I may, the resolution  
18           before you by the City, which is in the  
19           record, Resolution 2007-242, mentions the  
20           University of Miami by name, together with  
21           the exemption. It does not say, "Others."  
22           However, you all make a very good point,  
23           and you're here to give a recommendation.  
24           There was nothing that would stop you from  
25           taking action on the narrow exemption for

1 the University, and forwarding together  
2 with that a recommendation, if it's the  
3 will of the Board, that the exemption  
4 should be expanded, to accommodate St.  
5 Philip's or other educational facilities.

6 I think, by doing it that way, you  
7 would fulfill your duty to, Number 1,  
8 consider the exemption language for the  
9 University, and, Number 2, provide your  
10 comments on -- on the exemption and the  
11 ordinance in general. So you could do  
12 both.

13 MS. MORENO: The problem I have with  
14 adopting it now are the comments I made before.  
15 I mean, you need to revise this, to -- to -- to  
16 clarify that the one percent includes  
17 installation and maintenance, and to clarify the  
18 point about replacement of the art.

19 I don't know how we can vote on that,  
20 unless you vote on it with the proviso that  
21 these things get clarified. Can we do it like  
22 that?

23 MS. ALFONSIN-RUIZ: Yes.

24 MS. MORENO: Yes?

25 MR. COE: And that's my -- that's my whole

1 point. I mean, we don't have language that  
2 we're suggesting to vote on. So how are we --  
3 we're going to vote on a generality, we're not  
4 voting on language.

5 MR. RIEL: No, I think staff has presented  
6 language to you, and if you feel that's not  
7 appropriate --

8 MR. COE: Well, and maybe we should take a  
9 vote, Mr. Chairman. I don't know if we're done  
10 with the public comments.

11 THE CHAIRPERSON: Well, I think the way  
12 -- the way to handle it is, we have a draft  
13 ordinance before us. If we have changes  
14 that we would like to make, we don't have  
15 to dictate necessarily the verbiage to be  
16 used by the draftsman, but if we have  
17 changes --

18 MR. COE: I think we have to dictate  
19 the verbiage. I don't think we can just  
20 say do something like that. I don't think  
21 that --

22 THE CHAIRPERSON: We're a committee.  
23 We're not -- we're not finalizing this  
24 ordinance. We're going to vote on the  
25 ordinance.

1           MR. COE: Well, the way I understood  
2           it, we are to approve the language of the  
3           ordinance. Are we not?

4           MR. AIZENSTAT: That's why we're giving the  
5           language.

6           MR. RIEL: You're recommending to the City  
7           Commission --

8           MR. COE: The language.

9           MR. RIEL: -- the language.

10          MR. COE: And then, if we -- if we're just  
11          raising some generality, we're not approving the  
12          language.

13          THE CHAIRPERSON: Well, on that basis,  
14          we can never amend an ordinance.

15          MR. AIZENSTAT: Well, that's my whole  
16          point.

17          THE CHAIRPERSON: And I don't think  
18          that's correct. I don't think that's the  
19          way a committee operates.

20          MR. COE: You may be correct,  
21          Mr. Chairman, but my point is, if what the  
22          City Commission has asked us to do is to  
23          approve language for an ordinance, how can  
24          we tell the City Attorney, well, you know,  
25          make up some language that deals with

1 exemptions and try to get these other  
2 things in, without coming back and voting  
3 on it? So we're not setting that out  
4 today --

5 MS. MORENO: Then why -- can I make a  
6 motion?

7 MS. KEON: I would like to ask a question  
8 with regard to an item you talked about, with  
9 the maintenance and whatever. I didn't think  
10 any place in here it addressed the -- the  
11 contribution to the purchase of an art work -- a  
12 piece of art, that included in that it dealt  
13 with the maintenance, installation and whatever  
14 else. I thought it was the piece of art itself,  
15 and that the numbers that you're looking for  
16 don't include the maintenance, installation and  
17 all those other things, because I thought part  
18 of the fund that was being set up dealt with --  
19 or, I thought that they were required -- aren't  
20 they required to maintain this art?

21 MS. MORENO: Cathy Swanson had said to us,  
22 when she made her presentation, that you could  
23 meet the one percent requirement if you were  
24 retaining private ownership of the piece of art,  
25 by also including in that -- in those dollars,

1 the cost of maintaining the piece over time, as  
2 well as the cost of installing it -- of  
3 installation.

4 (Simultaneous voices.)

5 MR. MORENO: It doesn't say that there.

6 MS. KEON: Yeah.

7 MS. MORENO: That's why -- that's one of  
8 the points that I'm making.

9 MS. KEON: Right, No, but not for anyone.  
10 This is for -- for any person or any builder,  
11 developer, anyone that's involved in this --

12 MR. AIZENSTAT: Why don't we ask Cathy  
13 Swanson?

14 MS. KEON: Cathy, is there -- is there  
15 language about the installation and maintenance?

16 MS. SWANSON: I understand the concern.  
17 Clarification needs to be made, because included  
18 in the guidelines, which is going to be our  
19 governing document, it actually reads,  
20 "Including but not limited to installation,  
21 artist's fees, transportation, insurance, site  
22 separation, maintenance, protection from natural  
23 disasters, signage and lighting."

24 So as it got converted or translated into  
25 ordinance, that section wasn't included, but

1           it's clearly in our guidelines, and we'll have  
2           to add that clarification in the ordinance.

3           MS. MORENO: See, the problem is, in  
4           Section 11, which is the non-municipal  
5           construction projects, it talks specifically  
6           about the art acquisition shall have a minimal  
7           appraised value of one percent. That is not  
8           what you intend.

9           What you intend is that the appraised  
10          value, plus maintenance --

11          MS. SWANSON: And the cost of keeping that  
12          art --

13          MS. MORENO: Uh-huh.

14          MS. SWANSON: -- is considered as a part of  
15          that total obligation.

16          MR. COE: And the one percent is gross.

17          MS. SWANSON: The way that we wrote the  
18          guidelines, it absolutely is a gross number.

19          MS. MORENO: Yes.

20          MS. KEON: But that's not what it says  
21          there, because you have the appraised value is  
22          one percent. So you wouldn't -- you wouldn't  
23          appraise based on maintenance, installation --

24          MS. SWANSON: Well, I think it's a  
25          clarification that can be added to that the --

1 we have two different groups working on one  
2 ordinance, and it's a matter of adding a  
3 sentence and clarifying. The intent is that it  
4 is a total cost that is considered with that  
5 acquisition. I mean, we clearly spelled it out  
6 in one part of our governing document, and it  
7 did not translate into the ordinance, and we'll  
8 have that corrected.

9 MS. KEON: Okay.

10 MR. RIEL: If you look at Page 9, the  
11 section on Ownership and Maintenance -- and,  
12 again, I want to go back. The City is the owner  
13 of this property, the art --

14 MS. MORENO: No, that's -- that's when you  
15 acquire with a City fund, but not when you --  
16 the developer puts it and retains ownership.

17 MR. RIEL: Right. Right.

18 MS. MORENO: There's two different  
19 situations.

20 MR. BEHAR: And another question, Cathy.  
21 The City will have -- in order to do it, a  
22 private developer will have to be an approved  
23 artist, who gets commissioned to do the art  
24 work.

25 MS. SWANSON: Uh-huh.

1           MR. BEHAR: The University of Miami may  
2           have some beautiful art work, but does that meet  
3           the same guidelines that you're going to have,  
4           that the artist must be approved? Example, a  
5           Romero Brito may not be an approved artist to be  
6           displayed on a -- on a private developer's  
7           building, but yet it will qualify for the  
8           University's program?

9           MS. SWANSON: When we were presenting to  
10          the City Commission, and this was before they  
11          determined the exemption, with certain  
12          conditions, so when we were presenting, we did  
13          believe that the sculptured garden could qualify  
14          for a credit. You know, you were using that  
15          example. We actually used, assume that those 28  
16          pieces were each worth \$200,000, then basically  
17          you had a \$480,000,000 credit moving forward  
18          that could be charged against or those pieces  
19          could be retired moving forward.

20          The Commission really wanted to look at  
21          that exemption concept instead, and develop  
22          language not related to credit, but exemption,  
23          but I should also say, that it's included in  
24          your minutes, that the Commission also realized  
25          or felt that the Lowe was not a piece of this

1 equation. It was the sculptured garden that was  
2 the focus of what qualified for art in public  
3 places, and the discussion came forward, that  
4 the City Attorney raised, that public access  
5 doesn't mean just public access for residents,  
6 it means for everybody, and so as they look --  
7 as the language -- I think that the language is  
8 interesting, that they're proposing, but I'd  
9 really like to understand what does public  
10 display mean, and is that really public access?  
11 Isn't the focus exclusively on the sculpture  
12 garden or does the Lowe figure in?

13 The Commission did not feel that the Lowe  
14 figured in. In fact, in your minutes, they  
15 specifically talk about.

16 MR. BASS: And I just need to respond  
17 to that. It is a bedrock principle of  
18 municipal law that a Commission speaks  
19 through its resolution, not through the  
20 individual comments of any one  
21 Commissioner. That's the Blumenthal case.

22 So it is true that Mayor Slesnick focused  
23 some of his comments on the sculptured garden,  
24 and it is true that there was discussion about  
25 the Lowe, but it is untrue to suggest that the

1 Commission determined that the Lowe should not  
2 count, and I maintain it would be nonsensical to  
3 suggest that the Lowe should not count, because  
4 you don't need to be a member of the Lowe, or  
5 any other special club, other than a member of  
6 the public, to go to the Lowe, and pay a normal  
7 admission fee, and the Lowe is open, by way of  
8 clarification, 250 days a year, during normal  
9 hours, and is therefore publicly accessible.

10 I would suggest to you, as against the  
11 standard that needs to govern your legislative  
12 action, that it would be arbitrary and  
13 capricious to say, "There is a wonderful display  
14 of significant, professionally curated art, to  
15 which any member of the public can walk in,  
16 under reasonable terms and conditions, but we're  
17 not going to count it."

18 I don't think that would pass scrutiny,  
19 under the rational Nexus test, unless you're  
20 about to say that your Venetian Pool, your  
21 Biltmore Golf Court and your Granada Golf  
22 Course, and the entire island of Key Biscayne,  
23 is not open to the public, because I have to pay  
24 a dollar every time I drive over that causeway  
25 to get there.

1           It's abserd.

2           THE CHAIRPERSON: I'd make two comments  
3           to that. The first is that it's very clear  
4           to me now, whatever we do, it's -- there  
5           shouldn't be any doubt about how the Lowe  
6           is to be treated. That's Number 1.

7           It's too big of an elephant in the room  
8           to ignore.

9           MS. MORENO: Uh-huh.

10          THE CHAIRPERSON: And, Number 2, if we  
11          include the Lowe in the program, I'm  
12          totally convinced that we should just give  
13          you an exemption and be done with it,  
14          because the Lowe -- the value of the Lowe  
15          is going to grossly exceed one percent of  
16          the value of any future development you  
17          ever do in that -- that campus for a  
18          lifetime.

19          So this is silly.

20          MR. SALMAN: To the Chair.

21          THE CHAIRPERSON: Yes.

22          MR. SALMAN: I equally agree that this is,  
23          I think, putting the cart before the horse. I  
24          think you've got more \*\*\*stewards of art that  
25          you'll ever need to qualify. To ask for the

1 exemption is really putting the cart before the  
2 horse.

3 I mean, you can go for -- every time you  
4 present a building, you have to submit it for  
5 permit, and it's about qualification.

6 There is a process for qualification within  
7 the ordinance, that I'm sure it's a fairly easy  
8 enough threshold for you guys to meet.

9 So I don't see why you need a special  
10 exemption. I think you're overloading it with  
11 unnecessary --

12 MR. COE: It's starting to be repetitious,  
13 Mr. Chairman. Are we going to close the public  
14 comments so we can vote?

15 THE CHAIRPERSON: Well, is there  
16 anybody, other than the University of  
17 Miami, who wishes to speak to this  
18 ordinance?

19 MR. DE LA FUENTE: Yes, very briefly. Bob  
20 de la Fuente, with Law Offices at 1441 Brickell.  
21 I'm here on behalf of Amace Properties.

22 There was a second resolution that was  
23 adopted by the Commission, when they considered  
24 this item. This was regarding a clarification  
25 on when you vest the project from complying with

1           this new legislation, and this is Resolution  
2           Number 2007-243.

3           I don't believe you have proposed language  
4           yet from the City Attorney on this.

5           MS. ALFONSIN-RUIZ: No. The proposed  
6           language will be included. It's not in the  
7           ordinance at this time, but what it will say is  
8           that it shall not apply to applicants having  
9           secured preliminary Board of Architect's  
10          approval as of the City Commission's approval of  
11          the Master Art Plan.

12          MR. DE LA FUENTE: Right, and that is  
13          consistent with other provisions within your  
14          existing Zoning Code. So I'm just here to urge  
15          you to accept that language, as well.

16          MS. MORENO: The Master Art Plan or the --  
17          or the ordinance?

18          MS. ALFONSIN-RUIZ: The Master Art Plan.

19          MS. MORENO: Which is some ways away?

20          MS. ALFONSIN-RUIZ: Yes.

21          MR. DE LA FUENTE: Thank you.

22          THE CHAIRPERSON: Thank you.

23          MR. COE: We're closing the public hearing?

24          THE CHAIRPERSON: Any -- any -- well,  
25          let me make sure. Is there anybody else,

1 other than the University of Miami, who  
2 wishes to speak at this time?

3 Well, then we'll close it for the  
4 public comments, and --

5 MR. COE: At this time, Mr. Chairman, I'll  
6 move staff's recommendation as drafted.

7 THE CHAIRPERSON: Is there a second on  
8 that?

9 MR. BEHAR: Before we do that, I have a  
10 question -- a couple of questions for  
11 Cathy.

12 MR. RIEL: You need a second, Mr. Chair.

13 MS. KEON: You know, I'll second it, for  
14 the purpose.

15 THE CHAIRPERSON: What?

16 MR. RIEL: You need a second.

17 MR. KEON: I'll second it, so that we can  
18 have a discussion.

19 THE CHAIRPERSON: Pat Keon second it,  
20 for purposes of discussion.

21 THE CHAIRPERSON: Go ahead. You have  
22 the floor.

23 MR. BEHAR: Cathy, the -- the guidelines,  
24 the developer, on the private sector now -- the  
25 University, I think we're clear -- the private

1 sector will have to comply with your  
2 requirement, have to come for your approval, and  
3 then it goes to the Commission, correct?

4 MS. SWANSON: The Cultural Development  
5 Board and the Arts Advisory Panel will converse  
6 with the developer and the City Architect, and  
7 their architect. In this process, reach  
8 consensus, and then that recommendation will  
9 come from the Cultural Development Board to the  
10 City Commission.

11 MR. BEHAR: Okay, but there will be --  
12 there will be an approved list of artists that  
13 one will go to or how's that going to work? How  
14 -- if we're doing a project, and we plan to do a  
15 beautiful fountain, that's going to get approved  
16 by the Committee and then pass it on to  
17 Commission? That's one question.

18 And the second question is, if we're  
19 talking about a 25-million-dollar project,  
20 that's about \$250,000 that's going to be  
21 dedicated to an art work, but what if -- and I'm  
22 going to use the example of the Old Spanish  
23 Village. I would assume that that project may  
24 be in excess of a hundred million dollars, as a  
25 combined project, between the office building

1           and the rest of the components. Obviously that  
2           has to contribute at least one million dollars  
3           towards this program or incorporate at least one  
4           million dollars' worth of art work in the  
5           project. Is there a cap that we're going to set  
6           or it's going to be an unlimited amount? If a  
7           project exceeds, you know, 200 million dollars,  
8           you have to contribute to that effect, or you're  
9           -- in your mind, there will be a cap that will  
10          be assessed to each project?

11                 MS. SWANSON: Your second question first.  
12           There is no cap. Some cities do set caps. The  
13           -- in the public discussion related to it, we  
14           felt that the bigger the project, if you install  
15           the cap, you'd create a regressive fee, rather  
16           than an equitable fee.

17                 Now, on that Old Spanish Village, excellent  
18           example, they could invest that in art onsite or  
19           near site, including Ponce Circle Park. So  
20           investing -- you know, if they -- they could  
21           choose to use the art acquisition fund, they  
22           could choose to put it into their architecture  
23           through the process or they could -- or a  
24           sculpture or to do something that qualifies on  
25           Ponce Circle Park or some of the other public

1 right-of-ways near there.

2 MR. BEHAR: But hypothetically say that  
3 we're going to incorporate it, it would then be  
4 on the site, not through the donation, where  
5 they're controlling, there's no cap? Whatever  
6 it -- is the one percent of the total  
7 construction cost, they have to be, in effect,  
8 put in place?

9 MR. SWANSON: There is an appeal or a  
10 waiver process that's in here, that they could  
11 apply for, if they felt that that was beyond  
12 what was reasonable and appropriate, and that's  
13 the -- I'll turn to the City Attorney as to  
14 where. While she's looking at that section,  
15 I'll answer your first question, and that is the  
16 selection of artists.

17 We will define that in the Art Master Plan.  
18 Some cities give -- and you can go to the  
19 website, Coral Springs is a great example,  
20 approved artists.

21 We were not intending to be so restrictive.

22 MR. BEHAR: And I hope you're not, and  
23 that's part of the question.

24 MS. SWANSON: No.

25 MR. BEHAR: I hope you're not, because that

1 gives more of a -- of a variety of art work to  
2 be incorporated throughout the City.

3 MS. SWANSON: No, in fact, when we were  
4 talking to some cities that have that approved  
5 list, they found that it was a hindrance, rather  
6 than a help. It became too restrictive in  
7 presenting art to the public. So that was not  
8 an intention on this -- in this process, but we  
9 did look at the Art Master Plan to be the  
10 document that would fill in those kinds of  
11 processes.

12 MR. BEHAR: Okay. And lastly, I want to  
13 make sure, on the record, that I commend you and  
14 the staff, everybody who's put this together, I  
15 think it's a great task to be able to start  
16 incorporating art in public spaces in our City,  
17 and at this point, we don't have sufficient. I  
18 think it will be a great -- and, again, I  
19 commend you for your efforts.

20 MS. SWANSON: Thank you.

21 Did you find the section that's Appeals and  
22 Waivers?

23 MS. ALFONSIN-RUIZ: Yes. "A developer may  
24 seek a reduction, adjustment or complete waiver  
25 of the requirements of this ordinance."

1           We gave examples of two, in particular, in  
2           the ordinance, but at any time, for good reason,  
3           they can go before the City Commission.

4           MR. AIZENSTAT: Let me ask the Assistant  
5           City Attorney, the items that Ms. Swanson spoke  
6           about, as far as -- that would include, I'm not  
7           sure if it's the insurance, the maintenance, the  
8           lighting, and so forth, you have that clear as  
9           to how you would incorporate that into this  
10          ordinance?

11          MS. ALFONSIN-RUIZ: Absolutely. And, in  
12          fact, if we go to Page 4, it would be under 11,  
13          subsection C, and all we have to do is add an  
14          additional sentence that say -- that says that  
15          the one percent value shall include maintenance,  
16          lighting, insurance.

17          MS. KEON: I don't know why you'd -- why  
18          would you bother?

19          MS. ALFONSIN-RUIZ: Pardon?

20          MS. KEON: Why would you bother with that?  
21          I mean, how do you know -- are you going to  
22          project that out with the maintenance --

23                 (Simultaneous voices.)

24          MS. ALFONSIN-RUIZ: It's a percent.  
25          There's a value.

1           MR. AIZENSTAT:  It's usually they have -- I  
2           think they have separate --

3           MS. MORENO:  There's -- there's a value.

4           MS. KEON:  This -- I mean, go ahead and  
5           finish, and then I'll --

6           MR. BEHAR:  But I'll tell you why, Pat,  
7           because if, for example, you did a plaza, okay,  
8           and a fountain --

9           MS. KEON:  Right.

10          MR. BEHAR:  And that constitutes as part of  
11          the art work, there's a maintenance associated  
12          with that.

13          MS. KEON:  Right, but you also have in here  
14          an art fund, that in lieu of a piece of art or  
15          whatever, the developer can make a cash -- a  
16          contribution, that is the one percent of  
17          whatever the value, whatever, and it's put into  
18          this art fund.

19          It calls out here that the -- it is that  
20          fund that is responsible for the maintenance --

21          MS. MORENO:  No.  (Simultaneous speaking.)

22          MR. AIZENSTAT:  No, Pat, I think we're  
23          talking about only the pieces --

24          MS. KEON:  When you own it.

25          Sorry.  When it's a private -- when you --

1           when own it?

2           MR. BEHAR:  But, Pat, I will assure you,  
3           nine out of ten times, the developer will choose  
4           to apply that one percent, to his credit, on the  
5           project, rather than put it into a fund that he  
6           may not see any benefit directly in the project.

7           MS. MORENO:  The problem that happens is  
8           that when it is owned by the developer, when it  
9           is owned by the building, then that private  
10          owner is required to insure and maintain that  
11          piece of art and install it.

12          If you put it into the fund, then the City  
13          takes over that insurance and maintenance  
14          obligation.

15          MS. KEON:  But doesn't it -- I thought the  
16          ordinance calls out for -- that they're, then,  
17          required to maintain it, and I would assume they  
18          would want to insure it, if they're responsible  
19          for keeping it, and if they chose not to insure  
20          it, let them not insure it.

21          I mean, we don't care if they chose to  
22          insure it or if they chose not to insure it.  
23          That's their business.

24          You, as the City, are saying to them, "You  
25          have to replace it.  If you don't want to insure

1           it, don't insure it, but if something happens to  
2           it, you need to replace it."

3           MS. MORENO:  It's inequitable, because the  
4           guy that contributes the one percent for the  
5           City's project, is only limited to one percent,  
6           but the guy who retains it is --

7           MS. KEON:  But you don't know that going  
8           forward.  I mean, somebody could donate a piece  
9           that's made out of one material, that has a  
10          lifespan of so many years, and somebody else  
11          donate something that's a metal, that only has a  
12          lifespan of so years, are you going to say to  
13          them, "Well, the lifespans of these two -- the  
14          components of these pieces of art aren't equal,  
15          so you get less, you get more."

16          I mean, I think --

17          MS. MORENO:  I was told that there was a  
18          formula where you determine the maintenance  
19          obligation for the pieces, and that that would  
20          be known upfront.

21          MS. ALFONSIN-RUIZ:  Yes, that's correct.

22          MR. AIZENSTAT:  Cathy.

23          MS. ALFONSIN-RUIZ:  Yes, please.

24          MR. AIZENSTAT:  The developer would have  
25          the option as to which route he wants to go.

1 MS. RUIZ-ALFONSIN: That's correct.

2 MS. KEON: Right, and that's fine, but, I  
3 mean, I would think that a developer, if it's  
4 sitting in front of your property, that you're  
5 either trying to rent space off -- out of or  
6 you're trying to sell to somebody else, I would  
7 think you would maintain it. You would maintain  
8 it, just by the nature of being yours, and the  
9 value that it adds to your property, but, I  
10 mean, if you feel you need to lay it out, I  
11 think that's fine -- I don't -- I think the one  
12 percent should be the value of the piece of art  
13 itself, and the other components, those are --  
14 that's a choice they make, if they choose to do  
15 it on their property and it's insured with their  
16 property, and it's maintained with their  
17 property and it's theirs and they have all of  
18 the rights that that -- having that piece of art  
19 incorporated into their building brings with it,  
20 with the increased valuation of their building  
21 because of it, and so on and so on.

22 I mean, I don't -- I wouldn't worry about  
23 that number. I mean, what -- what the -- the  
24 maintenance and everything else, that one  
25 percent, I think the one percent should be that

1           it is a piece of art that is commensurate with  
2           the value of that building, and that's the one  
3           percent.

4           I mean, and that's why -- you know, for the  
5           ones that the City is responsible for or the  
6           fund that goes into -- you know, the dollars  
7           that go into a fund, that the City can purchase  
8           art work out of, you can also maintain and care  
9           for and whatever.

10          As far as the University of Miami, I think  
11          that their sculptured garden is -- is beautiful.  
12          I would only hope that, in their art plan, they  
13          would also have some of those sculptures on the  
14          perimeter of their building, so that you don't  
15          have to -- on the perimeter of their property,  
16          so you don't have to just go inside the  
17          University to see it, but that as you walk down  
18          the street or you drive by or whatever, you get  
19          -- that you have the opportunity to see and  
20          enjoy the art in a -- in a maybe more public  
21          place, than in the interior of your building,  
22          but that you would incorporate that on the  
23          outside.

24          I wouldn't think that the museum should  
25          qualify, because I think you have to go inside

1 to do it, any more than any museum in any city  
2 or whatever, other than the building itself, and  
3 maybe if the design and the structure or  
4 something that's built into the building, that  
5 as you're walking by, you can appreciate, but I  
6 don't -- I don't think that going into it -- I  
7 don't think that the Lowe and the holdings of  
8 the Lowe Art Museum should be part of this, but  
9 I would think that your sculptures should exceed  
10 it.

11 Is your concern, with the University, is  
12 that if you -- that they're going to look for  
13 you to -- to increase your holdings going  
14 forward, over the base that you have now?

15 I mean, is that -- is that what part of  
16 your concern is?

17 MR. NATOLI: No. I mean, really, the  
18 -- we just feel like we complied with the  
19 spirit of where the City is trying to go.

20 MS. KEON: I do too, yeah.

21 MR. NATOLI: There's a lot of different  
22 ways to try to add the numbers up.

23 MS. KEON: Yeah.

24 MR. NATOLI: Now, the wording that -- as it  
25 exists today would require us to get an

1 appraisal every three years --

2 MS. KEON: Why bother?

3 MR. NATOLI: -- of all our art which would  
4 cost us a bunch of money. So that's really what  
5 we're trying to say here, we've already complied  
6 with the spirit.

7 MS. KEON: Yeah, I mean -- I mean, I would  
8 think that for as long as the University of  
9 Miami, you know, complies with the spirit of the  
10 ordinance, it should retain an exemption from --  
11 and that would be end of it, and it can be  
12 revisited at any time.

13 I mean, at such time as they -- you know,  
14 the Commission feels that they no longer comply,  
15 then, you know, you can go back and hold them to  
16 it. Until -- as long as they do, they  
17 shouldn't -- they shouldn't be exempt, and they  
18 shouldn't have to give you all those appraisals  
19 or anything else.

20 I think you should let them go about the  
21 business of educating.

22 MR. COE: Mr. Chairman, at this time, I  
23 call the question.

24 THE CHAIRPERSON: Well --

25 MR. COE: We're starting to be

1           repetitious.

2           MS. KEON:   And I -- yeah --

3           THE CHAIRPERSON:  You called the  
4           question.  Is there any further discussion?  
5           I have some discussion.

6           MS. KEON:  Yeah, I have -- I have a  
7           question, also.  There is a --

8           THE CHAIRPERSON:  We have to vote on the  
9           calling of the question, when it's called, to  
10          see if the discussion will be shot down.  Okay.  
11          So let's call --

12          MR. AIZENSTAT:  The question is -- can you  
13          -- is --

14          MR. COE:  Approving the ordinance as  
15          drafted.

16          MR. AIZENSTAT:  With adding what needs to  
17          be added for that one percent?

18          THE CHAIRPERSON:  No, he's just calling  
19          the question on his motion at this time.

20          MS. KEON:  He's calling the question.

21          MR. AIZENSTAT:  Can I ask --

22          THE CHAIRPERSON:  So we're voting on  
23          -- excuse me --

24          MR. COE:  We're voting on calling the  
25          question.  We're not voting on the substance of

1           what we're going to vote on yet.

2           THE CHAIRPERSON: We're voting on  
3           whether we're going to continue the  
4           discussion.

5           MR. RIEL: Correct.

6           THE CHAIRPERSON: So go ahead and call.  
7           A yea vote is for continuing the -- for  
8           stopping the discussion.

9           MS. MENENDEZ: Robert Behar?

10          MR. BEHAR: Yea.

11          THE CHAIRPERSON: Jack Coe?

12          MR. COE: Yes.

13          THE CHAIRPERSON: Pat Keon?

14          MS. KEON: I think, no. If -- I want to  
15          vote, no, if I want to continue the discussion?  
16          Is that what you're saying to me?

17          MR. RIEL: That's correct.

18          MS. KEON: No.

19          THE CHAIRPERSON: Cristina Moreno?

20          MS. MORENO: No.

21          THE CHAIRPERSON: Javier Salman?

22          MR. SALMAN: No.

23          MS. MENENDEZ: Eibi Aizenstat?

24          MR. AIZENSTAT: Yes.

25          MS. MENENDEZ: Tom Korge?

1 THE CHAIRPERSON: No.

2 MR. COE: Could we please take a break,  
3 Mr. Chairman?

4 THE CHAIRPERSON: Yeah, sure. We'll  
5 take -- we'll take a three-minute break.

6 MR. BEHAR: Mr. Chairman, you weren't here  
7 at the beginning of the meeting. I have to  
8 leave at 7:30. At this point I will excuse  
9 myself.

10 THE CHAIRPERSON: Okay.

11 (Recess taken.)

12 THE CHAIRPERSON: We have a very packed  
13 agenda. We've already lost Robert Behar.

14 MS. KEON: Could I just ask you another  
15 couple of questions, and then we'll come --

16 THE CHAIRPERSON: And I have a few  
17 comments.

18 MS. KEON: If I may, on Page 7 of this --  
19 Page 7 (1) "Projects that cause a purchase,  
20 designation, restoration, and perpetual  
21 maintenance of historically significant  
22 buildings equal to or greater than the  
23 calculated dollar contributions otherwise  
24 required," would that be like with the Old  
25 Spanish Village, now, they have -- they've

1 incorporated a building into that project, that  
2 was -- is a historically significant building,  
3 have they not?

4 So would what they project to be the  
5 maintenance and restoration and whatever of that  
6 particular building, in their project, could  
7 that qualify as what their contribution to this  
8 would be?

9 MS. ALFONSIN-RUIZ: That would be an  
10 adjustment. That's why -- it falls under the  
11 "Waivers."

12 MS. MORENO: It would be an adjustment,  
13 because it needs Commission approval.

14 MS. ALFONSIN-RUIZ: Correct.

15 MS. KEON: They -- all right, but they can  
16 go before the Commission.

17 You know, I have -- I have a little concern  
18 over that. I think that -- I think that anyone  
19 that would include a historical building in  
20 their project would care for, would maintain,  
21 and -- and already is under the -- the  
22 regulations -- the Historic Preservation  
23 regulations of the City and the code and  
24 everything else, would be required to maintain  
25 it, like they would any other building.

1           So I would -- I'm not so sure I like the  
2           whole waiver provision. I think it's easy for  
3           people to substitute those types of things  
4           instead of having the money available for what  
5           would be public art, and -- and they'll use it  
6           for -- the waiver provisions to maintain  
7           property that they would have maintained anyway.

8           So I have a -- I have a concern about  
9           that if - in going forward to the Commission. I  
10          would have a concern with that.

11          The other item that I -- it seems that  
12          you're looking at -- that the -- that art work  
13          either has to be apparently owned by the City or  
14          owned -- or the funding is used either to  
15          purchase art either by the City or by the  
16          private developer to purchase the art on  
17          their -- within their project.

18          Is it permissible, under that fund, for the  
19          City to participate in a traveling art program?

20          No.

21          I think you should include that. I really  
22          do. I think that there are lots of very  
23          significant art works that we would never have  
24          the money to buy or never be able to purchase  
25          or -- or that no developer is likely to purchase

1           for us, that could be made available to us, to  
2           participate in, you know, a visiting art  
3           program, where you might have it for six months  
4           or whatever, and I think that -- I think maybe  
5           it would be a good thing to incorporate into  
6           this ordinance, the ability to use those funds  
7           to participate in, you know, that type of a  
8           program, and I would assume that it would go  
9           before your Cultural Board, that would make that  
10          decision, but I would -- I wouldn't like to see  
11          you not allow consideration of that.

12                 MR. AIZENSTAT:  If I may, Pat.  Are you  
13          talking about like sort of like when they had  
14          the Flamingos outside?

15                 MS. KEON:  No.  I know that there is now a  
16          -- and I would say, often, in New York, along  
17          Park Avenue, because it's -- you know, it's the  
18          divided boulevard, and it's so pretty there,  
19          they often are -- there will be installations  
20          that maybe come from -- they're on loan from  
21          some artist, that they'll travel from city to  
22          city, that are on display, and there is a cost  
23          to the city to be able to participate in having  
24          that art work that is internationally recognized  
25          art work be in your --

1           MS. MORENO: Like when we had Christo wrap  
2 the islands?

3           MS. KEON: Yeah. What's the artist there  
4 -- what is the one that -- there's one that's  
5 now traveling the country that I read about.

6           DR. ROBERTS: Large Botello was in  
7 September.

8           MS. MORENO: Yes, they were.

9           MS. KEON: Okay, the Boteros are one, but  
10 there is another one, and their heads, it's  
11 really pretty.

12           Simultaneous speaking.)

13           THE CHAIRPERSON: Well, I don't mean to  
14 cut you short too much, but, I mean, that's  
15 an admirable suggestion, however, I think  
16 that would require a lot more thought and  
17 consideration that we're going to be able  
18 to give it tonight.

19           MS. KEON: No, I think that is -- maybe --  
20 there's a provision in here that says, you know,  
21 ownership, it has to belong to one or the other.  
22 I think that they maybe would take a look at  
23 having consideration for being allowed to use  
24 the fund to participate in a traveling art  
25 program.

1           There is a better word for that, that I'm  
2           sure that Cathy and the -- the people involved  
3           in drafting this could tell you, but it would  
4           allow it to participate in that type of a  
5           program.

6           THE CHAIRPERSON: Okay. Any other  
7           comments?

8           MS. KEON: That's all.

9           MR. SALMAN: I have two comments.

10          THE CHAIRPERSON: Yes, sir.

11          MR. SALMAN: Under "Exceptions", Item  
12          Number 3, "Non-Municipal Projects whose  
13          aggregate project value is less than one million  
14          dollars," I'd like to see that value indexed  
15          over time. Otherwise it's going to have an  
16          interesting effect over time, but I'd like -- I  
17          don't think it was the intent of the writers to  
18          create, because ten years from now, a million  
19          dollars is going to be worth a lot less. So I'd  
20          like to see that indexed.

21          THE CHAIRPERSON: Indexed to what?

22          MR. SALMAN: To CPI.

23          THE CHAIRPERSON: CPIU?

24          MR. SALMAN: Yes.

25          THE CHAIRPERSON: Okay.

1           MR. COE: Is that an amendment to the  
2 motion?

3           MR. SALMAN: That's an amendment to the  
4 motion.

5           MR. COE: I'll accept that amendment.

6           THE CHAIRPERSON: Okay. We've got a  
7 friendly amendment to the motion.

8           Anything else?

9           MR. SALMAN: And the second issue will be  
10 that we delete the exemption for educational  
11 institutions in its entirety.

12          THE CHAIRPERSON: Do you accept that as  
13 a --

14          MR. COE: That's being proposed as a  
15 friendly amendment?

16          MR. SALMAN: That's a friendly amendment.

17          MR. COE: I'll accept that one, as well.

18          THE CHAIRPERSON: Okay. That's a  
19 friendly amendment.

20          MS. KEON: I'm sorry, so you would just  
21 delete this entirely?

22          MR. SALMAN: Delete it.

23          MS. MORENO: And not --

24          MR. SALMAN: Delete it. They're a  
25 developer. To hold them to a different issue --

1           whether they're private or public, I think that  
2           they can meet what they have through the normal  
3           process that's set up within the ordinance, but  
4           to create a special exemption is actually going  
5           to hurt them in the long run, forcing them to do  
6           appraisals, periodic reporting, and they should  
7           do it on a building by building basis, just like  
8           everybody else. I mean, I think that, honestly,  
9           it's to their betterment.

10           THE CHAIRPERSON: Any other questions  
11           or comments?

12           MR. COE: Call the question.

13           MS. MORENO: I disagree.

14           THE CHAIRPERSON: I have some -- I  
15           have some --

16           MS. MORENO: I strongly disagree.

17           THE CHAIRPERSON: Okay. Go ahead.

18           MS. MORENO: I'm sorry. You've been  
19           waiting patiently, Tom. Please, go ahead.

20           THE CHAIRPERSON: All right. Okay.

21           MR. RIEL: Mr. Chair, I just want to make  
22           sure that that friendly amendment was accepted  
23           by the --

24           MR. COE: Yes, I accepted it.

25           MR. RIEL: Thank you.

1 THE CHAIRPERSON: It was accepted.

2 The definition section, 20-102, Paragraph  
3 7, "Construction costs means total value of the  
4 construction or renovation work." Do we mean  
5 total cost, not value? It's on Page 4 of 11.  
6 The top of Page 4, the first one, definition of  
7 construction costs means total value of the  
8 construction or renovation work or does it mean  
9 total cost of the construction? I would submit  
10 that the value is usually greater than the cost.

11 MR. COE: I think it means cost.

12 THE CHAIRPERSON: Okay. So would you  
13 accept inserting cost as --

14 MR. COE: Yes, I would accept that as a  
15 friendly amendment.

16 THE CHAIRPERSON: Okay. I have another  
17 question, and that question relates to what  
18 is included within the cost. Do cost  
19 include soft costs, such as architectural  
20 or legal fees, impact fees?

21 MS. ALFONSIN-RUIZ: No.

22 MS. MORENO: It says -- the next sentence  
23 says what costs are included.

24 MR. COE: I think it defines it in the next  
25 sentence.

1           THE CHAIRPERSON: Okay. So that -- I  
2           just want to be clear about that. Now, the  
3           costs are calculated on the date of the  
4           building permit. So am I correct in  
5           assuming that if there are later change  
6           orders made to the building, the increased  
7           cost or decreased cost resulting from the  
8           change orders will not affect the fee that  
9           has to be paid or the contribution that has  
10          to be made?

11          MS. ALFONSIN-RUIZ: If you look at Page  
12          3, Number 1, "Aggregate project value means  
13          the total of all construction costs  
14          associated with a particular site plan  
15          project, regardless of the number of  
16          permits associated with the project, or  
17          whether it's a phased project."

18          So if there are any changes, they will be  
19          included.

20          (Simultaneous speaking.)

21          THE CHAIRPERSON: And how are you --  
22          how are you going to monitor that? Well, I  
23          don't really care. I just wanted it to be  
24          clear. You might want to clarify that,  
25          when it gets to the Commission, because

1 I -- I did not know -- read it that way.

2 Section 11, on Page 4, Paragraphs A, B, C  
3 and D, I don't understand -- I understand what  
4 they mean, so I'm not going to ask you about  
5 that, but why are they under Section 11? They  
6 don't seem to relate directly to Subsection 11  
7 of this section.

8 You might want to look at whether that  
9 belongs organizationally in a different place --

10 MR. AIZENSTAT: For non-municipal  
11 construction?

12 MR. COE: It's non-municipal construction.  
13 It's talking about private development.

14 THE CHAIRPERSON: This is non -- just  
15 take a look at it, just as a drafting  
16 matter. I don't want to -- I don't want to  
17 waste a lot of people's time on this, at  
18 this point.

19 MS. ALFONSIN-RUIZ: It's just tries to  
20 define to developers, under the  
21 non-municipal construction project, what  
22 options they have.

23 THE CHAIRPERSON: Well, it defines a  
24 non-municipal construction project to be  
25 any non-City construction, renovation in

1 Coral Gables in excess of one million  
2 dollars, excluding single family homes, and  
3 the next sentence says, "Developers may  
4 petition to have the public art acquisition  
5 incorporated within their project, provided  
6 there is regular public access at no charge  
7 to the public."

8 I don't know how that has to do with  
9 defining a -municipal construction project.  
10 That was my point. So I think A through D  
11 don't belong in there. That's all I'm  
12 saying.

13 They belong here somewhere, but that's not  
14 the place they belong.

15 I'm trying to do this quickly, so if I  
16 sound rude, I apologize.

17 Throughout here, I noticed that we used the  
18 term construction costs and aggregate project  
19 value as a defined term, but I think you need to  
20 capitalize those wherever you --

21 MS. ALFONSIN-RUIZ: Okay.

22 MR. COE: Is that another friendly  
23 amendment?

24 THE CHAIRPERSON: Yeah or whatever.

25 MR. COE: I would accept that as a

1 friendly amendment.

2 THE CHAIRPERSON: Thank you.

3 Let me see. Okay. I think this has  
4 already been addressed, to some extent.

5 Page 7 of 11, the top of the page,  
6 Paragraph Numbered 1, subparagraph or  
7 whatever, "Projects that cause the  
8 purchase, designation, restoration and  
9 perpetual maintenance of historically  
10 significant buildings," is the word "and"  
11 intended to be used there or do you mean  
12 the word "or"?

13 Could it be any of those or do you have to  
14 do all of those?

15 MR. COE: Or.

16 MS. ALFONSIN-RUIZ: Or.

17 MR. COE: It's a scrivener's error.  
18 I'll accept that as a friendly amendment,  
19 as well.

20 THE CHAIRPERSON: Okay. And the CPI  
21 regulation -- adjustment, we've already  
22 discussed, and that will be placed throughout  
23 here, wherever it needs to be.

24 The term educational institution, well,  
25 that's already --

1           MR. COE: Yes, it's structured now, that's  
2 deleted.

3           THE CHAIRPERSON: That's why I'm not  
4 going to discuss that at all.

5           And I think -- give me one more second.  
6 I apologize.

7           Okay. I think that -- that should do it.

8           Any other --

9           MR. AIZENSTAT: At this point, one other  
10 friendly amendment, if I may, to implement the  
11 one percent to include what Cathy Swanson had  
12 said --

13          MR. COE: Yes, I think that was assumed.

14          MR. AIZENSTAT: Okay. I didn't know.

15          MS. MORENO: So we have eliminated any  
16 exemption for the University of Miami? That is  
17 completely contrary to what the City Commission  
18 said.

19          MR. AIZENSTAT: Well, then they can bounce  
20 it back.

21          MR. COE: Actually, I disagree with that,  
22 Ms. Moreno. I don't think it is. I think the  
23 City Commission was asking whether or not we  
24 thought there should be an exemption, and as it  
25 stands now --

1 MS. MORENO: The way it's written --

2 MR. COE: -- as constituted, it's that it's  
3 not going to have an exemption. Now, we may  
4 vote that down, but that's the way it is right  
5 now.

6 MR. AIZENSTAT: But can't they --

7 MS. MORENO: The way you have it -- the way  
8 you do that, is penalize the University of Miami  
9 for having engaged in an art in an public places  
10 initiative before this ordinance was adopted,  
11 because they don't get any credit for what  
12 they've already done, and that's not right.

13 THE CHAIRPERSON: Let me ask -- let me  
14 ask another question of Eric about all  
15 this.

16 Eric, could the University of Miami Art  
17 in Public Places Program be molded into the  
18 UMCAD approval, so that it's just reviewed  
19 when UMCAD is -- comes up again, instead of  
20 having it as part of this ordinance?

21 MR. RIEL: I wouldn't suggest those be  
22 intermingled, because I just don't see the -- I  
23 think those UMCAD discussions are -- I just  
24 think I would not suggest that.

25 THE CHAIRPERSON: Well, the reason I

1           ask is, I don't think there's a real issue  
2           about whether the University of Miami  
3           complies in spirit with the goals and  
4           purposes of this proposed ordinance.  
5           Rather, it's just a question of accounting,  
6           and if it could be rolled into the UMCAD,  
7           maybe that's an easier way to deal with all  
8           this.

9           MR. RIEL: Well, if it's just a  
10          question of accounting, I mean, that's  
11          something that they can just do an annual  
12          report to us, but I would just not like --  
13          I wouldn't want to roll it into that UMCAD  
14          process --

15          THE CHAIRPERSON: Okay.

16          MR. RIEL: -- because the UMCAD process is  
17          to change the plan.

18          THE CHAIRPERSON: Okay. Okay. Fair  
19          enough.

20          MR. RIEL: Okay.

21          MR. COE: Call the question, Mr. Chairman.

22          THE CHAIRPERSON: The question is  
23          called.

24          Any more discussion?

25          MR. RIEL: Mr. Chair, I don't know if you

1 want me to take thirty seconds and just frame  
2 what the changes were. Would you like me to do  
3 that?

4 THE CHAIRPERSON: You're welcome to  
5 try.

6 MR. RIEL: Okay. There was a motion  
7 for staff's recommendation, including  
8 changes -- including the vesting language  
9 that was introduced, including maintenance  
10 language on Page 4, clarifying that that  
11 includes maintenance, insurance, upkeep,  
12 inclusion of language regarding indexing  
13 over time to CPI, clarification language  
14 you asked for on costs, the fact that the  
15 exemption language for educational  
16 institutions will be deleted entirely, and  
17 that -- clarifying the construction costs,  
18 aggregate costs terminology. If I missed  
19 anything --

20 MR. SALMAN: Indexing.

21 MR. RIEL: No, I got the indexing.

22 MS. ALFONSIN-RUIZ: Page 7, Subparagraph 1,  
23 "or."

24 MR. RIEL: "Or", okay.

25 MS. KEON: Cathy, could I ask one question?

1 THE CHAIRPERSON: We've called the  
2 question again, so if you want to vote on  
3 calling -- on whether we can cut off  
4 debate, to bring it to a vote. There's no  
5 objection to the question being called,  
6 we'll move to a vote on the ordinance as --

7 MR. COE: Amended.

8 THE CHAIRPERSON: -- as amended.

9 MS. MENENDEZ: Jack Coe?

10 MR. COE: Yes.

11 MS. MENENDEZ: Pat Keon?

12 MS. KEON: No.

13 MS. MENENDEZ: Cristina Moreno?

14 MS. MORENO: No.

15 MS. MENENDEZ: Javier Salman?

16 MR. SALMAN: Yes.

17 MS. MENENDEZ: Eibi Aizenstat?

18 MS. AIZENSTAT: Yes.

19 MS. MENENDEZ: Tom Korge?

20 THE CHAIRPERSON: No.

21 MR. RIEL: The vote's three-three.

22 MR. COE: Right.

23 THE CHAIRPERSON: Three-three? So it  
24 goes up with a three-three.

25 That's what it does.

1 MS. MORENO: Now, can I --

2 MR. RIEL: It goes forward as no  
3 recommendation, I believe.

4 MR. COE: It goes as no recommendation.

5 MS. MORENO: Can we make a separate motion?

6 MR. COE: Actually, you want to do another  
7 motion?

8 THE CHAIRPERSON: Yeah, I'll take a  
9 motion.

10 MS. MORENO: What I'd like to do is to  
11 approve it, the changes that were proposed, and  
12 that Mr. Riel has presented, with a blanket  
13 exception for the University of Miami, in  
14 recognition of its contributions to art to date,  
15 not only -- not only by the sculptured garden,  
16 but by the Lowe, by its programming, et cetera.  
17 The University has been meeting its obligation  
18 to the cultural development of the City of Coral  
19 Gables for years, and to me, they should receive  
20 an exemption from this requirement and should  
21 not be penalized by having already done it,  
22 because the rest of us haven't done it before.

23 So that's 1.

24 And the second one is, I believe you need  
25 to clarify that if a private developer is using

1 a piece of art to meet the requirement, and he  
2 elects to sell that piece of art, he needs to  
3 replace it with art of a value equivalent to the  
4 exemption that he received.

5 He can do that at any time, whether it is  
6 in connection with the sale of the property  
7 itself or with the sale of a piece of art only.  
8 I think that clarification needs to be made.

9 And I think, just as a point of discussion  
10 for a future date, I would certainly think that  
11 you could have works of art on loan, and that  
12 don't have to be actually owned, as long as you  
13 replace them, but I'm not putting that in the  
14 motion, because that's too -- so my motion is,  
15 all of the other changes, except I've replaced  
16 the deletion of the educational, with a blanket  
17 exception for the University of Miami, and I  
18 request a clarification that if a developer  
19 sells a piece of art, he has to replace it -- he  
20 has the right to sell it, but he has to replace  
21 it with a piece that is of equivalent value or  
22 pay that money into the fund, similar to the  
23 language that you have in the event of the sale  
24 of the building, but also applicable to the sale  
25 of the art.

1 THE CHAIRPERSON: Is there a second to  
2 that motion?

3 MS. KEON: I'll second it.

4 MR. COE: Call the question.

5 MS. KEON: I have a question. I have a  
6 question I'd like to ask, before the question  
7 gets called.

8 THE CHAIRPERSON: Yeah. Well, let's  
9 have a little discussion at least on us.

10 MS. KEON: Rather than just a blanket  
11 exception for UM, would you consider that as  
12 long as they have an art in public places  
13 program in effect, that that would meet --

14 MS. MORENO: Yes. I'll accept that  
15 friendly amendment.

16 MS. KEON: -- rather than just a blanket  
17 exception, as long as they have one and can  
18 provide it, present it, defend it, that that --

19 MS. MORENO: I'll accept that as a friendly  
20 amendment.

21 MS. KEON: Okay.

22 THE CHAIRPERSON: Okay.

23 MS. KEON: What about the issue of being  
24 able to use these funds to participate in  
25 traveling internationally recognized art

1 programs?

2 MS. MORENO: I think that's a great idea,  
3 but I think your -- that is going to require  
4 more redrafting than we have here.

5 MS. KEON: Um, I just think it's something  
6 that they should consider. I mean, would you --  
7 it's my understanding that we are not -- we are  
8 not voting on the ordinance.

9 They asked us to look at it, to make  
10 recommendations on this ordinance. You know,  
11 that's something --

12 MS. MORENO: Simultaneous speaking.)

13 MR. RIEL: Not true.

14 MS. KEON: I would like them to look at --  
15 to look at whether it is appropriate, and I  
16 think you have boards here that can make that  
17 determination, that, you know, to consider for  
18 inclusion --

19 THE CHAIRPERSON: I think Cristina is  
20 saying --

21 MR. COE: Pat, I think that's wrong. I  
22 think we're voting on the language of the  
23 ordinance.

24 THE CHAIRPERSON: And it's probably  
25 premature, because they haven't really --

1           what you're asking them to do is think  
2           about it and come back with a proposal, as  
3           I understand it.

4           MS. KEON: Well, I think, before it  
5           gets to second reading, I'd like to look at  
6           it and see if it's appropriate.

7           (Simultaneous speaking.)

8           MR. COE: We've already had a reading of  
9           this thing. We've already had -- the Commission  
10          already had Reading Number 1. This is going to  
11          come up for Reading Number 2, and approve it.

12          MS. KEON: The other question -- the other  
13          question that I have is, why would you do it at  
14          permitting, as opposed to when you -- when they  
15          get their CO? Was there a reason why you would  
16          do it at permitting, rather than at CO?

17          MS. ALFONSIN-RUIZ: The Building Inspector  
18          determines, at the time of building permitting,  
19          what the cost of construction is.

20          MS. KEON: Okay. It's just that if you --  
21          and you didn't have any opposition from  
22          developers on that at all?

23          MS. ALFONSIN-RUIZ: No.

24          MS. KEON: I would think it would be an  
25          upfront cost that they would rather delay until

1 the CO.

2 MS. ALFONSIN-RUIZ: The -- the code,  
3 actually, currently reads that construction  
4 costs are determined by the Building Inspector  
5 at the time of permitting.

6 MS. KEON: Right, but I know, like permit  
7 fees and that sort of thing -- I mean, a lot of  
8 the other fees are not paid -- are paid at CO.

9 MR. SALMAN: All -- all impact fees or  
10 associated fees, contributions, however you want  
11 to say it, are assessed at the time of permit,  
12 as determined by the Building Official, as to  
13 the cost of construction.

14 He has to be in agreement --

15 MS. KEON: Right.

16 MR. SALMAN: -- that the permit is being  
17 issued, and the costs being assigned are  
18 comparable.

19 MS. KEON: Right. They're assessed,  
20 they're not paid. A lot of them are paid at CO.

21 MR. SALMAN: That number is used for the  
22 assessment for those costs.

23 MS. KEON: Right.

24 MR. SALMAN: What you're arguing is, when  
25 do they get paid?

1 MS. KEON: Yeah, I thought that they -- I  
2 thought this said that it would be paid, not  
3 assessed. That's why I'm asking.

4 MR. SALMAN: They're assessed and paid at  
5 the time of building permit issuance, as a  
6 condition for building permit issuance.

7 MS. KEON: I'm going to tell you, they're  
8 not. They're generally paid at CO, for most  
9 impact fees.

10 MR. SALMAN: No.

11 MR. RIEL: No, really, no.

12 MS. MORENO: No.

13 MR. SALMAN: No, that's not correct.

14 MS. KEON: I'm going to tell you, they're  
15 not.

16 MR. SALMAN: That's not been my experience.

17 MS. KEON: It's mine.

18 THE CHAIRPERSON: All right. Any  
19 further discussion on the motion?

20 MS. KEON: No.

21 MS. MORENO: As I understand your  
22 amendment, it's that the University of  
23 Miami will be exempt from this requirement  
24 for so long as it is maintaining an active  
25 art in public places program of its own?

1 MS. KEON: Yes.

2 MS. MORENO: I accept that amendment.

3 THE CHAIRPERSON: Okay. So that --  
4 that would be the motion, with the friendly  
5 amendment. No further discussion? Let's  
6 call the roll.

7 MS. MENENDEZ: Pat Keon?

8 MS. KEON: Yes.

9 MS. MENENDEZ: Cristina Moreno?

10 MS. MORENO: Yes.

11 MS. MENENDEZ: Javier Salman?

12 MR. SALMAN: No.

13 MS. MENENDEZ: Eibi Aizenstat?

14 MR. AIZENSTAT: No.

15 MS. MENENDEZ: Jack Coe?

16 MR. COE: No.

17 MS. MENENDEZ: Tom Korge?

18 THE CHAIRPERSON: Yes.

19 Okay. So we're done with this.

20 MR. COE: Mr. Chairman, no, I have one more  
21 motion.

22 THE CHAIRPERSON: You want to do  
23 another motion?

24 MR. COE: One more motion. And I fully  
25 agree with Ms. Moreno, that what the University

1 of Miami has done in public art is laudable. I  
2 just don't think they should have a blanket  
3 exception.

4 I, then, therefore, make a final motion and  
5 proposal, that we adopt everything that we had  
6 previously on the table, except we include now  
7 the existing Paragraph 4, on Page 7, dealing  
8 with educational institutional exemptions.

9 MR. RIEL: As drafted by staff?

10 MR. COE: As drafted by staff.

11 THE CHAIRPERSON: Is there a second for  
12 that motion?

13 MR. SALMAN: I'll second it.

14 THE CHAIRPERSON: Second it.

15 Is there any discussion on that motion?

16 MR. COE: Call the question.

17 THE CHAIRPERSON: The question is  
18 called.

19 MS. KEON: Did they -- was there -- there  
20 was an objection. They had an objection to the  
21 restrictive covenant; is that right?

22 MR. COE: Correct.

23 MS. KEON: And they have to have all the  
24 certified appraisals and whatever else?

25 MR. COE: Correct, as drafted.

1 THE CHAIRPERSON: Okay. Well, let's  
2 call the question, please.

3 MS. MENENDEZ: Cristina Moreno?

4 MS. MORENO: No.

5 MS. MENENDEZ: Javier Salman?

6 MR. SALMAN: Yes.

7 MS. MENENDEZ: Eibi Aizenstat?

8 MR. AIZENSTAT: Yes.

9 MS. MENENDEZ: Jack Coe?

10 MR. COE: Yes.

11 MS. MENENDEZ: Pat Keon?

12 MS. KEON: No.

13 MS. MENENDEZ: Tom Korge?

14 THE CHAIRPERSON: No.

15 Okay. That's it. That's it.

16 MR. COE: That's it.

17 THE CHAIRPERSON: Next item on the  
18 agenda, are we going to take Number 7 next,  
19 Eric?

20 MR. RIEL: Yes.

21 THE CHAIRPERSON: How long is Item  
22 Number 8 going to take?

23 MR. RIEL: 8? About five minutes.

24 THE CHAIRPERSON: Well, let's do that  
25 one right now.

1           MR. RIEL: My preference is to go to 7. We  
2           have a School Board member here that's been  
3           waiting for this item.

4           THE CHAIRPERSON: But if it's really  
5           only going to be five minutes, we may not  
6           get to it, if we go to --

7           MR. RIEL: I think we'll get to it this  
8           evening.

9           THE CHAIRPERSON: Okay.

10          MR. RIEL: I'd like to proceed forward with  
11          this item, figuring the time spent.

12          THE CHAIRPERSON: Okay.

13          MR. COE: We're going to do last one?

14          MR. RIEL: No, we're going to do Number 7.

15          THE CHAIRPERSON: We're doing Number 7,  
16          and then Number 8.

17          MR. RIEL: Go ahead, Javier, do Number  
18          7.

19          MR. BETANCOURT: Good evening Mr. Chair,  
20          Mr. Vice-Chair, Members of the Board. For the  
21          record, Javier Betancourt, Principal Planner.

22                 You have before you amendments to various  
23                 City regulations to meet State of Florida  
24                 mandated public schools concurrency  
25                 requirements.

1 I'm going to go extra ordinarily quick. If  
2 you need me to spend more time on an item, by  
3 all means, please interrupt me.

4 The easiest way to probably do this is to  
5 simply go through the Staff report packet with  
6 you. You'll see that we're proposing a number  
7 of amendments for your recommendation, including  
8 amendments to the Comprehensive Plan, City Code.

9 We're actually pulling the item that was to  
10 amend the Zoning Code, and we'll bring that back  
11 to you at the next meeting, and, finally, we  
12 have an amendment to the Interlocal Agreement.

13 A lot of the background was provided to you  
14 at your last meeting, so I'm not going to go  
15 over those issues again, but just quickly to  
16 refresh your memory, what we're simply doing is  
17 implementing State mandated requirements for  
18 public school concurrency.

19 In short, these require the establishment  
20 of levels of service for public schools, much  
21 like we have for other public services --  
22 services and facilities.

23 We've been participating in an  
24 intergovernmental effort with DCA, the School  
25 Board, Miami-Dade County and other

1 municipalities to implement these requirements.

2 The County has taken the initial steps, and  
3 is acting as a model for the local governments,  
4 and our proposed regulations largely mirror the  
5 County's language.

6 If you turn to Attachment A in your packet,  
7 you'll find the proposed Comp Land amendments.  
8 These will provide for a New Educational  
9 Element, and revised Intergovernmental  
10 Coordination and Capital Improvements Elements.

11 These amendments include goals, objectives  
12 and policies that promote stronger  
13 intergovernmental coordination, establish levels  
14 of service for public schools, establish  
15 concurrency service areas, allow for proportion  
16 and shared mitigation options when capacity is  
17 not available, incorporates the School Board's  
18 facilities work program into the City's Capital  
19 Improvements Program, and promotes siting  
20 standards of compatibility of Public School  
21 facilities with their surrounding communities.

22 Attachment B in your packet provides for an  
23 amendment to the City Code, providing for the  
24 removal of concurrency regulations in the City  
25 Code, that are duplicative of identical

1 regulations that are in the Zoning Code.

2 In other words, the same regulations are  
3 currently found in two places, and we want to  
4 remove them from the City Code, in order to  
5 avoid any potential inconsistencies or  
6 conflicts.

7 Attachment C, again, is the proposed  
8 amendment to the Zoning Code. That item has  
9 been pulled.

10 MR. COE: Has been pulled.

11 MR. BETANCOURT: Will be brought back to  
12 you.

13 And, finally, Attachment D in your packet  
14 provides for an amendment to the existing  
15 Interlocal Agreement between the City's School  
16 Board, and all other local governments in  
17 Miami-Dade County.

18 All the changes proposed in this agreement  
19 are pursuant to State mandated requirements, and  
20 the entire agreement has to be approved in  
21 identical form, word for word, by all  
22 signatories.

23 Attachment E is an executive summary of  
24 Public School concurrency and implementation  
25 efforts.

1            Attachment F is the minutes from the last  
2 meeting, at which no review, this item was  
3 presented by the School Board.

4            Exhibit G is the School Board's response to  
5 questions raised at the last meeting, and Vivian  
6 Villaamil, a School Board Staff, is here to  
7 answer any question that you might have.

8            Exhibit C (sic) is a notice that is being  
9 provided to applicants and developers via the  
10 Building & Zoning Department, and the City's  
11 website, that puts them on notice regarding  
12 concurrency requirements.

13           Exhibit I provides for DCA required data  
14 and analysis.

15           And, finally, Exhibit J is the public  
16 notice of this agenda item.

17           These items will be considered on first  
18 reading by the City Commission on December 11th.  
19 It will then go to DCA for review. Come back to  
20 the City for second reading and adoption  
21 sometime in early 2008.

22           With that, I conclude my very quick  
23 presentation, as promised.

24           I'm available to answer any questions, as  
25 is staff from the Building & Zoning Department

1 and the School Board.

2 Thank you.

3 MS. SALMAN: To the Chair.

4 To the City's Legal Advisor, my firm  
5 currently works for the -- has as a client the  
6 Dade County Public Schools.

7 Does that present a conflict of interest  
8 for me? I'm sorry for not having brought it up  
9 earlier.

10 MS. ALFONSIN-RUIZ: I'm sorry? Could --  
11 could you repeat --

12 MR. SALMAN: We're currently under contract  
13 with Dade County Public Schools. Does that  
14 present a conflict of interest?

15 MS. ALFONSIN-RUIZ: Not in this situation,  
16 because this is a statutory requirement.

17 MR. SALMAN: Okay.

18 MS. MORENO: As I understand this  
19 presentation, we have no choice. So what's the  
20 purpose of discussing it all?

21 I do want to point out that my concern --

22 MR. AIZENSTAT: That's a good point.

23 MS. MORENO: -- is borne out by the  
24 statistics that they presented to us, which is,  
25 you know, you look at Ponce de Leon Middle,

1           twelve percent of the students reside in the  
2           City of Coral Gables, Coral Gables, fourteen  
3           percent, but -- and what this does is, it says a  
4           developer in the City of Coral Gables cannot  
5           pull a permit if the schools are not -- do not  
6           have seats for those children, but there's  
7           nothing here that says that we're going to get  
8           seats for those children, because we only have  
9           fourteen percent residents.

10           Be that as it may, we're told, it's  
11           mandatory, we have no choice, so let's why  
12           discuss it?

13           THE CHAIRPERSON: Well, the only -- the  
14           only reason for discussing it, and the only  
15           concern I have about doing this in this  
16           manner, as a quick item, is, you know, are  
17           we bound to do it in exactly this way?

18           MR. COE: Yes.

19           MR. RIEL: Yes.

20           THE CHAIRPERSON: Exactly this way? We  
21           can't do anything different than what is  
22           here?

23           MR. COE: (Simultaneous speaking.)

24           MR. RIEL: What has happened is,  
25           Miami-Dade County drafted the regulation.

1 MR. COE: It's pre-emptive.

2 MR. RIEL: And what we've gone -- they've  
3 gone through the DCA, gotten their comments. We  
4 drafted language that addresses -- attempts to  
5 address those comments, but, yes, this is the  
6 model ordinance that other local governments are  
7 adopting the same.

8 So we did, you know, do some minor changes  
9 to adapt it to Coral Gables, but, yes, it is a  
10 mandated provision.

11 THE CHAIRPERSON: Well, let me just  
12 make sure I understand this correctly. If  
13 we adopt a different ordinance than the one  
14 that's before us, it would be illegal?

15 MR. RIEL: No. No. I can't --

16 MR. COE: The County preempts the City.  
17 You have to correspond to what --

18 THE CHAIRPERSON: I understand, but I  
19 asked a very simple question. If we change  
20 something in this ordinance, we make some  
21 modifications --

22 MR. COE: And if it's in variance to  
23 what the County has done, yes, you can't do  
24 that.

25 MR. BETANCOURT: Mr. Chair, if I may. In

1 terms of the Interlocal Agreement, that has to  
2 be adopted word for word, identical with what  
3 other local governments have done, because  
4 everyone is going to be a signatory to the same  
5 agreement.

6 MR. COE: Exactly.

7 MR. BETANCOURT: In terms of the  
8 educational facilities element, there is some  
9 room for tweaking there.

10 We could add, additionally, those  
11 objectives and policies that we feel are  
12 important. In fact, if we've done so,  
13 particularly as it relates to being compatible  
14 with the surrounding communities and whatnot,  
15 but the --

16 MR. COE: That's already in there.

17 MR. BETANCOURT: Right, but in terms of  
18 LOS, concurrency service areas, regulations,  
19 some of the meat of it, more or less, that's got  
20 to be the same.

21 THE CHAIRPERSON: The Interlocal  
22 Agreement, I guess, was drafted by the  
23 County Attorney, and everybody just  
24 conforms?

25 MR. BETANCOURT: It's been an

1           intergovernmental process throughout the  
2           past year and a half. All the local  
3           governments have gotten together, but it's  
4           -- the primary players have been the County  
5           and the School Board.

6           THE CHAIRPERSON: I just wanted -- I  
7           just wanted to be sure that if we -- if we  
8           really don't have true input into this, you  
9           know, changes and so forth, then I'm fine  
10          with just, you know, a pro-forma of  
11          approval, but otherwise we don't have time  
12          for this.

13          MR. COE: With that, Mr. Chairman, I'll  
14          move staff recommendation, based on the findings  
15          of fact contained in this package.

16          THE CHAIRPERSON: Is there a second?

17          MR. SALMAN: I'll second.

18          MR. COE: Call the question.

19          THE CHAIRPERSON: Any discussion? No  
20          discussion, call the roll, please.

21          MS. MENENDEZ: Javier Salman?

22          MR. SALMAN: Yes.

23          MS. MENENDEZ: Eibi Aizenstat?

24          MR. AIZENSTAT: Yes.

25          MS. MENENDEZ: Jack Coe?

1 MR. COE: Yes.

2 MS. MENENDEZ: Pat Keon?

3 MS. KEON: Yes.

4 MS. MENENDEZ: Cristina Moreno?

5 MS. MORENO: Yes, only because I'm  
6 mandated.

7 MR. CHAIRPERSON: Yes.

8 MR. KEON: Yes.

9 MS. MENENDEZ: Tom Korge?

10 THE CHAIRPERSON: Yes.

11 That's done.

12 Sorry to drag you down here.

13 MR. COE: I hope they paid you overtime for  
14 this.

15 MR. RIEL: The last item on the agenda,  
16 Mr. Chair, Members of the Board, is an amendment  
17 to the Zoning Code, Article 3, Division 5,  
18 Planned Area Development.

19 Very quickly.

20 The Commission, in 2005, went out for an  
21 RFK, to look for a public and private  
22 partnership to do adult -- a senior housing  
23 facility on City-owned land. The Commission, in  
24 fact, at Tuesday's meeting, approved, on second  
25 reading, that lease agreement with those

1 individuals.

2 As a part of that, that property owner has  
3 to come through the City of Coral Gables' review  
4 process. They're going to have to do a change  
5 in land use and come to this Board for a site  
6 plan approval via the PAD requirements. And the  
7 reason they're doing a PAD, because a PAD allows  
8 flexibility, and, you know, an adult care  
9 facility is something that's unique to the  
10 community. One of the things that we found out  
11 when they started to doing their analysis was,  
12 there were two provisions of the code that  
13 caused concern to them.

14 One was the minimum lot depth and the other  
15 was the fact that the parcels had to be  
16 contiguous.

17 These parcels that the City is in  
18 partnership with, are separated by Andalusia  
19 Avenue.

20 So we suggested alternative language that  
21 only allows for an exception to that contiguous,  
22 if it's an adult facility or affordable housing,  
23 and we're also suggesting that the lot depth be  
24 reduced from what is currently 200, to 100 feet,  
25 and that would be available to all PADs, and the

1 reason for staff supporting that is, if you're  
2 doing a PAD in the CBD, you look at the half of  
3 the block depth, it's typically 100 feet. It  
4 would be very difficult for someone to get a  
5 200-foot lot depth.

6 So we're suggesting these two changes to be  
7 made to the current code.

8 THE CHAIRPERSON: Eric, could I ask you  
9 a quick question?

10 MR. RIEL: Sure.

11 THE CHAIRPERSON: Is this something  
12 that could be handled with the application,  
13 when it comes to us, or should it be done  
14 beforehand?

15 MR. RIEL: We would like to have it  
16 done before, because obviously the property  
17 owner would like the assurance that they  
18 could proceed forward. I can tell you the  
19 site plan will be before this Board in the  
20 next month or two.

21 THE CHAIRPERSON: Yeah. Okay.

22 MS. MORENO: I move to adopt.

23 MR. COE: Second.

24 THE CHAIRPERSON: Is there any  
25 discussion? Yes.

1           MR. SALMAN: I have a problem with  
2           extending it to affordable housing. We're  
3           making an exception here that we may not  
4           want to live with later. I would limit it  
5           only to this particular use.

6           MR. AIZENSTAT: You would only limit it to?

7           THE CHAIRPERSON: ALFs.

8           MR. SALMAN: ALFs.

9           MS. MORENO: I do not accept that  
10          amendment.

11          MR. COE: Okay. Call the question,  
12          Mr. Chairman.

13          THE CHAIRPERSON: Any further  
14          discussion?

15          MR. AIZENSTAT: Yes. Could I ask why  
16          you're saying that?

17          MR. SALMAN: Because we've got a series of  
18          parcels of land to the south of us that are  
19          going to be either developed as affordable  
20          housing or have major affordable housing  
21          components, which would qualify them under this  
22          amendment, and as such, we may not want to have  
23          that privilege extended to them.

24          I'm thinking about some large pieces of  
25          property and some smaller ones down there.

1           THE CHAIRPERSON:  But why?  I mean, why  
2           wouldn't --

3           MR. SALMAN:  Because this is a case by  
4           case basis.  This is about a project.  It's  
5           too project specific, because this is the  
6           property behind Miracle Mile, I believe,  
7           and the parking lot on the other side of  
8           Andalusia --

9           MR. RIEL:  Yeah.

10          MR. SALMAN:  It is very site specific, and  
11          you're providing a blanket change to the code.

12          THE CHAIRPERSON:  I see.  So --

13          MR. SALMAN:  I think it's much more  
14          specific to the use.  I have no problem  
15          with either the project or the need for the  
16          change, and the assurance from this Board  
17          that they are going to get it, however I  
18          would like to limit it to this specific  
19          project, rather than go back into the code  
20          and monkey with that, because we are going  
21          to deal with the consequences later and I  
22          don't think we've had the time to digest  
23          this thing in its entirety as to what the  
24          possible implications in the rest of the  
25          City are going to be.

1 THE CHAIRPERSON: If you want to offer  
2 that as an amendment, and you can get a  
3 second, then it can be considered.

4 MR. SALMAN: I offered it as an  
5 amendment to limit it only to ALFs.

6 MS. MORENO: No.

7 MS. COE: Mrs. Moreno did not accept it.

8 THE CHAIRPERSON: He can offer it as an  
9 unfriendly amendment.

10 MR. SALMAN: I offer it as an  
11 unfriendly amendment.

12 MR. AIZENSTAT: Cristina, and I ask you  
13 why --

14 MS. MORENO: Because I think that it's  
15 indispensable that we create affordable housing  
16 in the City of Coral Gables and anything that  
17 would promote that, I'm in favor of it.

18 MR. AIZENSTAT: Do you think that people  
19 look at affordable housing, to benefit them, and  
20 not really what is, quote/unquote, affordable  
21 housing?

22 MS. MORENO: I am trusting that when we  
23 define affordable housing facilities, we will  
24 deal with that issue.

25 MR. COE: It's an ordinance.

1 MR. AIZENSTAT: You feel comfortable with  
2 that, Eric?

3 MR. RIEL: Yes.

4 MR. COE: There is a second.

5 MR. RIEL: We feel comfortable, because  
6 there's criteria, there's minimum criteria in  
7 this, and, also, PAD is discretionary,  
8 conditional use review, so it's got to come to  
9 this Board, no matter what. So the Board has  
10 the opportunity --

11 MR. AIZENSTAT: Javier, if it comes to the  
12 Board --

13 MR. SALMAN: Then I withdraw.

14 MR. COE: Mr. Chairman, call the question.

15 MR. RIEL: PADs are only through this Board  
16 and the Commission approval.

17 THE CHAIRPERSON: Okay. So -- the  
18 proposal as presented by the staff is on  
19 the table for vote. Would you call the  
20 question, please?

21 MS. MENENDEZ: Eibi Aizenstat?

22 MR. AIZENSTAT: Yes.

23 MS. MENENDEZ: Jack Coe?

24 MR. COE: Yes.

25 MS. MENENDEZ: Pat Keon?

1 MS. KEON: Yes.

2 MS. MENENDEZ: Cristina Moreno?

3 MS. MORENO: Yes.

4 MS. MENENDEZ: Javier Salman?

5 MR. SALMAN: Yes.

6 MS. MENENDEZ: Tom Korge?

7 THE CHAIRPERSON: Yes.

8 Anything else?

9 MR. RIEL: That's it.

10 THE CHAIRPERSON: We are adjourned.

11 When is the next meeting?

12 MR. RIEL: December 12th.

13 THE CHAIRPERSON: Thank you.

14 (Thereupon, the meeting was concluded at 8:30

15 p.m.)

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

STATE OF FLORIDA:

SS.

COUNTY OF MIAMI-DADE:

I, NIEVES SANCHEZ, Court 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 23rd day of November, 2007.

\_\_\_\_\_  
NIEVES SANCHEZ