

**City of Coral Gables City Commission Meeting
Agenda Item H-1
December 11, 2012
City Commission Chambers
405 Biltmore Way, Coral Gables, FL**

City Commission

Mayor Jim Cason

Vice Mayor William H. Kerdyk, Jr.

Commissioner Maria Anderson

Commissioner Rafael “Ralph” Cabrera, Jr.

Commissioner Frank Quesada

City Staff

City Manager, Patrick Salerno

City Attorney, Craig E. Leen

City Clerk, Walter J. Foeman

Deputy City Clerk, Billy Urquia

Public Speaker(s)

Jennifer Cowan, City’s Outside Counsel with Lewis Longman and Walker, P.A.

Mike Tierney, City Actuary

Ronald Cohen, Attorney Representing FOP, Firefighters

Kenneth Harrison, Attorney Representing Firefighters Union

Troy Easley, Chairman, Coral Gables Retirement Board

Allen Greenfield, Attorney for Pension Board

H-1 [Start: 10:09:00 a.m.]

Resolution of the City Commission of the City of Coral Gables, Florida, relating to the Retirement System for City employees; reviewing the Retirement Board’s decision to grant cost of living increase for retirees effective January 1, 2013; finding the Retirement Board’s action inconsistent with Section 112.61, Florida Statutes; modifying the Retirement Board’s action; providing for full force and effectiveness; providing for repeal of conflicting Resolutions; and providing an effective date.

Mayor Cason: OK, we will move then to Item H-1. Mr. Manager.

City Manager Salerno: Thank you Mayor. Item H-1 is a Resolution of the City Commission of the City of Coral Gables, Florida, relating to the Retirement System for City employees; reviewing the Retirement Board's decision to grant cost of living increase for retirees effective January 1, 2013; finding the Retirement Board's action inconsistent with Section 112.61, Florida Statutes; modifying the Retirement Board's action; providing for full force and effectiveness; providing for repeal of conflicting Resolutions; and providing an effective date. I believe the City Attorney wants to address the matter initially. We also have representatives of the City, I think the different bargaining units may have representation as well, so available for the Commission to discuss with is Jennifer Cowan with Jim Lynn's firm, Mike Tierney, the City's Actuary, Mike Mattimore, Labor Counsel, and Denise Heekin, Labor Counsel as well. So with that I will turn it over to the City Attorney.

City Attorney Leen: Thank you Mr. Manager. This matter is before the City Commission under 50-293 of the City Code, which authorizes the City Commission to review decisions of the Retirement Board and to reverse them or modify them for cause; and the appropriate test here is there has to have been an action by the Retirement Board, and then this Commission has to determine that there is cause to modify them in some way. If so, you have complete authority to do so, assuming you follow Florida State Law and the City Code. Now in this particular matter the action that is before the Commission that was decided by the Retirement Board was to grant a cost of living adjustment, and what the Retirement Board did is under City Code Section 50-230(c), there is a provision for a cost of living adjustment to be paid to eligible retirees and beneficiaries on January 1st of each year, following a year in which the market value rate of return as determined by the Actuary on the assets of the Retirement System determined from October 1st of the previous year to September 30th of the current year is greater than or equal to 10 percent. Eligible retirees and beneficiaries are those who have been receiving benefits for at least one year preceding the COLA date. Now the issue here though is that the Retirement Board applied City Code Section 50-230(c), without considering State Law; they considered it, it was certainly raised to them and the record is attached so you can see that the matter did come up, but they determined that they were just going to apply Section 50-230(c), without applying the mandates of State Law. Now what State Law says in 112.61, it establishes that there are minimum standards for the operation and funding of public employee retirement systems and it applies to all retirement plans supporting whole or in part by public funds, including local government retirement plans. 112.61 states that it is prohibited to use any procedure, methodology or assumption which effectively transfer to future taxpayers any portion of the cost which may reasonably have been expected to be paid by current taxpayers. It also says that actuarial experience may only be used to fund additional benefits provided that the present value of such benefits does not exceed the net actuarial experience accumulated from all sources of

gains and losses. This was added to the statute in 1994, this provision, several years after the City's original pension COLA was adopted. Now Section 112.62 of the Florida Statute, the section right after 112.61 states that the pension funding requirements of State Law are applicable to any and all units of government, including municipal governments, which participate in, operate or administer retirement system for public employees in whole or in part by public funds and to the extent there are conflicts State Law prevails over local ordinance relating to such retirement systems or plans. Now the issue before you today is whether the City Code Section 50-230(c) can be read in isolation and inconsistently with State Law or whether they have to be read together. If they have to be read together based on the mandate of 112.62, or if there is a conflict, the Florida State Statute has to take precedence, then the issue before this Commission is that the COLA that's called 50-230(c) is unfunded, and the view of the attorney that outside counsel for the City and my view as well, is that something that's an additional benefit if it's not funded, because the whole idea of 112.61 is that you should not shift to future taxpayers the burdens of benefits, of additional benefits. It needs to be funded for now. So the COLA is an additional benefit in my view, even if it's a current benefit it's an unfunded one, and my view of State Law is that any additional benefit or current one needs to be funded to be treated that way; and that if it's not funded it can't be provided, because what you are essentially doing is adding \$20 million of unfunded liability to future taxpayers and that is prohibited by the statute, that's clear. So there are attorneys here both for the City and also I understand for the employees, so I'm sure both of them would like to speak on this, and I can be available to answer additional questions, but there are certain facts that you should be aware of. According to the Plan Actuary the Coral Gables Retirement Plan had a cumulative net actuarial loss of \$82.8 million as of September 30, 2011. The Plan also has unfunded actuarial accrued liabilities in excess of \$200 million. On November 1, 2012, the Retirement Plan Actuary reported that the return on assets for October 1, 2011 through September 30, 2012 was calculated to be 16.7 percent, so it does exceed the threshold in the ordinance which is why the issue is being presented to you today. Because this return exceeds 10 percent, the Plan provides for a cost of living increase which would become effective on January 1, 2013. The Plan Actuary calculated the COLA to be 5.95 percent and provided to all members who have been receiving monthly benefits for all of 2012. If paid the COLA would increase the unfunded actuarial accrued liability of the plan by more than \$20 million and increase the City's annual required contribution by \$1.6 million each year for 30 years, and on November 8, 2012 the Retirement Board voted to approve the 5.95 percent cost of living increase.

Commissioner Anderson: Was it unanimous?

City Attorney Leen: I believe it was unanimous.

Commissioner Anderson: Citizen Board members also voted on that?

Mayor Cason: There was one person absent, I think.

Commissioner Anderson: But it was unanimous for the ones that were there.

Commissioner Cabrera: Unanimous for those in attendance, right?

Commissioner Anderson: That's correct.

Commissioner Cabrera: The person that wasn't there usually....

City Attorney Leen: Look, there are a lot of legal issues here and I'm sure both counsels want to talk to you how they view the ordinance versus the State statute. The one thing I would say to you is that really if you are cutting through all the law the practical issue, in order to grant this COLA or any COLA the City has to fund it and it has to be a decision of the City Commission, because it would have to be an Ad Hoc COLA. It can't be done through this provision because it's an additional benefit, it's unfunded; and the way I view it is it's a practical application of the statute that is supported by Jim Lynn who I agree with in his reading of this law, I read it the same way, you can't – however you call this is it a contingent benefit?- it's a benefit provided by ordinance?- is it an additional benefit?- it's an additional benefit, if it's not funded, that's the way I read this statute. So in order to provide it you are going to have to fund it. Now Ms. Cowan would you like to speak?

Ms. Cowan: Good morning.

Commissioner Cabrera: Could you state your name for the record?

Ms. Cowan: Absolutely. My name is Jennifer Cowan; I'm with Lewis Longman and Walker. I just want to take a second and step back on something that the City Attorney said, which was Statute 112.62, in looking at the City ordinance and also looking at 112.61; 112.62 says that the provisions of the statute are to supplement local ordinances or in the event of conflict they trump local ordinances, that's effectively what it says; and I think that's important because the way that the COLA has been viewed both from the Plan Actuary who had concerns as to whether or not the COLA provision would comply with State Law and has represented in reports to the State that the COLA increase may be granted, only if the system remains in a net positive experience position determined on a cumulative basis. Again, the way that's represented is it's an additional benefit it can be granted based on a cumulative net actuarial experience. The City's Actuary has

stated that Section 112.61 applies to the Pension COLA provision and that the COLA may be granted when the cumulative net actuarial experience is positive.

City Attorney Leen: Ms. Cowan could you explain what cumulative net actuarial experience is?

Ms. Cowan: Yes. By the statute it actually tells you that, that is the, hold on one second. The present value of such benefits don't exceed the net actuarial experience from all sources of gains and losses.

City Attorney Leen: But more specifically what does that mean?

Ms. Cowan: Do you want to speak to the actuarial term?

City Manager Salerno: Let me ask Mike Tierney to briefly....

City Attorney Leen: I just want the Commission to understand what that means.

Ms. Cowan: Sure.

Mr. Mike Tierney: Mike Tierney, City Actuary. Basically it means multi-year, it means not just this year, but cumulative over a period of years. Now if you have \$83 million of unfunded due to losses from the last five or six years, that's what cumulative means. Overall, you need to be in a plus position not just for the current year.

City Attorney Leen: As my understanding you are not just looking at what the rate of return is, but you are also looking at assumptions, you are looking at everything.

Mr. Tierney: Yes, it's not just investment return, it's also salary gain or loss, it's also demographic gain or loss, people dying, people leaving, people retiring, its cumulative experience for the overall plan. So you can have an asset gain, but a loss due to retirements and you may not have any actuarial net positive experience.

Ms. Cowan: And as it's laid out in the Actuarial Report that's sent to the State, they are actually looking at a, its determined on a cumulative basis from October 1 of 2007.

Vice Mayor Kerdyk: I'm sorry, since when?

Mayor Cason: 2007.

Vice Mayor Kerdyk: 2007 – OK.

Mayor Cason: So there has been – according to the Pension Board’s Actuary the loss as of September 2011 is almost \$83 million.

Ms. Cowan: Yes.

Mayor Cason: OK – and in their report they say under Section, Cumulative Experience Position, one of the options is to grant a new COLA only when the system is in a net positive cumulative experience, this approach may well be closest to the original intent.

Ms. Cowan: And that would be as I understand it, in compliance with Section 112.61 where you are dealing with the additional benefit – granting it when the benefit exceeds the cumulative net actuarial experience.

Mayor Cason: Past cost of living – there has been past cost of living increases, but were they in a period when there was a net gain or a net loss?

Ms. Cowan: The last one I believe was in 2007 and that was when there was a net, cumulative net gain.

Mayor Cason: Gain – OK. So is this the first time where there has been a cumulative net loss when this issue has come up?

Ms. Cowan: That I am aware of. I believe in 2003 there was also an ad hoc granting of the COLA and that certainly...

Mayor Cason: But not under this formula.

Ms. Cowan: And that’s certainly an option as well as the Commission at any time can grant a benefit and fund for it.

Commissioner Cabrera: Wasn’t there a, and I’m sorry to jump in, but we’ve had consecutive losses it’s not just been 2003 and – I was under the impression that we’ve had consistent losses well before 2003, if I’m not mistaken. Mr. Attorney, correct me if I’m wrong.

Mr. Tierney: You are correct and the losses over that period certainly are cumulative negative position. The fact that the Actuary chose 2007 as a way to try to shore up a cumulative experience is what he decided to do. One can argue that since this was passed in '89, maybe one should go back to '89 to figure out what the cumulative experience was, but it gets a little fuzzy about the application, the statute that was passed in '94. There were rules before '94 that talked about the same thing in terms of cumulative experience, but the history is not complete about all that prior to then. There is history of actuarial gains and losses, but they don't provide the original gain or loss number, they provide the current unfunded portion of it, so we were not able to figure out what that might have been had one asked about that, but the point is that the Board and the Actuary chose 2007 to measure it and that's what they did, whether or not it was or was not applicable prior to that is something that the Board and the Actuary chose not to explore or try to figure out.

Mayor Cason: But the Actuary, the Pension Board's Actuary said that for the past several years we have questioned whether the current COLA provisions meet the spirit of the State rules under section, under Charter 60(t), so they began calculating cumulative gain/losses as of October 1, 2006, and then they calculated the almost \$83 million loss.

Mr. Tierney: That's what he said, but I don't think it was an issue that was first discovered; this has been disclosed and discussed for many years. When it was passed in 1989, in 1990 the Actuary referred to this as an ad hoc COLA, so it was never intended that it would be funded anywhere in addition. At that point they talked about cumulative losses because they were aware of the rule at that time and so they complied with it, but it was never discussed as an issue about how to keep track of it.

Mayor Cason: Thank you.

City Attorney Leen: Mr. Mayor, if I may say, one other thing in the record that you should consider before you hear from, I'm not sure if you are done with your presentation yet, or you have more to say?

Ms. Cowan: I just had one more thing; it may be what you are going to add.

City Attorney Leen: Why don't you do your presentation and I know they want to speak as well.

Ms. Cowan: Just one other point. Within your packet that you will see correspondence with the Actuary for the Florida Division of Retirement and in there the Actuary has confirmed that promised benefits must be part of the funding requirement of the plan at the time the benefits

were promised. So essentially, if it's a current benefit and it's promised it has to be funded for. If it's an additional benefit the Actuary has said the cumulative net experience when it's negative additional benefits cannot be funded from that accumulated actuarial experience. So again, following with the statute you have either the current benefit in which it's funded or you have an additional benefit which can be funded through accumulated actuarial experience if there is a net gain, cumulative net gain.

Mayor Cason: OK. Why don't we hear from....

City Attorney Leen: One other thing. The way I read the – we chose to send a letter, the City, to the State and ask for their opinion and as a general matter you can defer to the State's interpretation of its own law, that's a principle of administrative law, the important questions I think for you are two and three, which in a nutshell what it says is regardless of when these are promised, I know there is a dispute about is this a current benefit?- or a future benefit?- is a promise benefit?- the issue though is that no matter what type of benefit it is, if it's not funded, this is what the question is basically, funded when it's promised its treated as an additional benefit in the sense that it needs to be funded when you provide it and the State agreed with that view, and you can defer to that in interpreting this. Now, I know you are going to hear from the counsel for the employees and they have a presentation, but remember that all along, at least in my view, no matter what happens here how you view this ordinance or the State Law, the State Law makes it very clear these have to be funded and this is not funded and the Actuary did not account for it, and that may have been – maybe the Actuary should have done that, perhaps the Retirement should have done that, but of course to fund something that requires Commission action, so if it hasn't been funded then they were compelled to deny this. In my view, unless the Commission decides to fund it; and I don't mean to be confusing, but that's really the issue of cause here, is that it's ultimately for you to decide whether to fund it. If you don't fund it you can't as a matter of law, in my view, go forward.

Mr. Tierney: There is an actuarial point associated with that and that is that in order for you to know the financial impact of any pension benefit, an actuarial impact is required to be prepared letting you know what it cost before you pass it, so in this example, in this case COLA due to favorable experience, if it was intended to let you know that an impact statement needed to be done and if not the State requires that you have one done in order for you to be able to authorize the new revenue based on the information about what it cost. OK, so that's the actuarial requirement of making sure that you know what things cost before liabilities are increased in the pension system.

Mayor Cason: So basically the Plan Actuary says that it could be anywhere, his calculation in this letter are, \$1.6 million if you do it over 30 years up to \$2.1 million a year if you do it in 15 years, so that's sort of a ballpark?

Mr. Tierney: In terms of the COLA as applicable in the ordinance. Of course if you take action, you can take action on anything, you don't have to be compelled to take action on that, you can do whatever you want to do because you have the cost before you decide, the liabilities are increased, and you authorized it, and an impact statement needs to be done telling you what that is for whatever COLA you decided what you want to do, but it's a separate action.

Mayor Cason: Which has not been done. OK.

Commissioner Quesada: I want to clear up – I have two questions from something you said Mr. Tierney and Mr. City Attorney. Your last sentence, did you say that if this Commission decides to go forward we still cannot go forward, is that what you said?

City Attorney Leen: What I said is it's my legal opinion that the error here that exists is the fact that the Pension Board granted this by law as if it was entitled, even though in my view the ordinance doesn't apply because of State Law because there is no current funding of the benefit. So the Commission could fund this benefit, could fund a different COLA, could fund – it's up to you ultimately what you want to do, but there is legal error here in the sense that they did not take into account the fact that this was not funded and thus it's an additional benefit, that's the way I view it.

Commissioner Quesada: OK. Thank you for clarifying that. Mr. Tierney, you said is the requirement to create an impact statement that you just discussed, the lack of preparing one of these statements does that precludes the funding you are saying under State Law?

Mr. Tierney: It doesn't preclude it; you can fund whatever you want. I think what that is, is the benefit is not valid; the State is going to throw back the actuarial report if you show up with additional liabilities that you guys weren't told about before when it happened. That's the key element of the actuarial impact statement, that's why we are required to tell you before you decide on increasing liabilities in the system what the cost implications are of that, and back in 1989, by the way there are gain sharing programs throughout the State, a couple handfuls anyway, and in each case it was because they couldn't afford a prefunded COLA and so they wanted to use gains to pay for it so the City wouldn't have to pay anything, that's why all this language and why the statute provision was added so that people could, you know you either had to prefund it or you have to make a separate decision each time.

Commissioner Quesada: OK. Thank you.

Mayor Cason: Are there other cities in Florida that have taken the same position that they have not been able to do it, their formula because of the lack of a positive cumulative experience?

Ms. Cowan: Yes, yes there are other cities that are faced with a similar situation where they have the gain sharing provision within their ordinance, they've had positive investment gains that would trigger the gain sharing provision, but they don't have the cumulative net actuarial gain such that they could fund it without implicating 112.61.

Commissioner Cabrera: I don't necessarily believe that unless I can be shown actual proof of that. Are there documentation to reflect that?- because I saw that in the item that there were three cities, Hollywood, Sunrise and Vero Beach, is it possible for you all to get the information actual data that supports your statement?

Ms. Cowan: Sure. I'll contact them and get the information for you on that. There are additional cities beyond those and so I can get information on that as well.

Commissioner Cabrera: Well, I was looking at these specific ones.

Ms. Cowan: OK.

Mr. Tierney: Yesterday I was in Titusville, they have a gain sharing provision and we just saw the documentation yesterday, same thing. They have a test and show that it's negative and therefore no COLA is possible. So I have a current example that I just dealt with yesterday, it wasn't an issue yesterday, it's a non issue but it came up as part of a bigger picture of pension reform, so it was discussed as what do we do with this?- and the answer is, well it's OK, because if you actually ever get back to net positive experience it's OK to pay COLA. I didn't have an issue with it, but for sure that's kind of spot on, they actually had a supplemental special reserve account in order to try to prove to the City it wasn't going to cost any more money in case there were losses after a gain where you granted a COLA. So they spent a lot of time trying to figure out how to make it be no cost to the City.

Mayor Cason: OK. Any other questions from our side? Can I have the other lawyer please come forward, thank you.

Mr. Ronald Cohen: Good morning everyone, I am Ronald Cohen, an attorney; I've been asked to speak on behalf of the FOP, the Firefighters and retiree Robert Murray. I've had an opportunity to speak to this Commission over the last 25 years on a variety of issues. I've always appreciated your attention and consideration and I want to thank you in advance for that. I want to make sure that you are clear what we argued to the Retirement Board, but we understood the Retirement Board to have decided and why we think not only this COLA should be paid, but the COLA actually has to be paid. It is our position, and I believe this is what the Retirement Board decided that this is not an additional benefit as set forth in Chapter 112.61. Chapter 112.61 – it wasn't that they disregarded Chapter 112.61. We are very much aware of it, but it doesn't apply to every benefit it only applies to additional benefits. For example, you have a normal service retirement, when people get to be a certain age or reach a number of points they get to retire at that age, that's not an additional benefit. There is nothing to indicate that that's an additional benefit, and you are supposed to prefund for that, and if you don't it doesn't mean you don't pay it, that's the "tail wagging the dog", that's what we've heard today. It's not funded and it is funded, it's not prefunded. We will show where we believe it is funded, it's not prefunded, but to say it's an additional benefit because it hasn't been prefunded is the tail wagging the dog thing. We have made a mistake all these years and paid it all these years, but now we see it different and therefore it becomes an additional benefit. The key to this is whether or not it is an additional benefit, we don't walk away from 112.61, and neither did the Retirement Board; 112.61 allows actuarial experience to fund additional benefits as long as the present value of such benefits does not exceed the net actuarial experience accumulated from all sources of gains and losses. It only applies to additional benefit. Let's look if we could at your ordinance, because I think it's very important to look at what has been promised to the people and this is from Ordinance No. Section 50-233, and what it says is, it says cost of living increase effective as of each January 1, each person who has been in receipt of benefits for the preceding year will receive a permanent increase in monthly benefits calculated as follows, and what follows is the calculation of the benefit and the trigger for the benefit. I ask you to look at this ordinance; there is nothing in it that indicates as an additional benefit. Cost of living increase effective as of January 1, so that's when?- when are we going to pay this benefit?- OK- to who now? Each person who has been in receipt of benefits for the preceding full year – who?- when we are going to pay it?- who we are going to pay it to? Will not may not, if the Commission chooses, but will receive a permanent increase in monthly benefit calculated as follows; and then it says, it will be granted if the market value rate of return on the assets of the retirement system determined from October 1 of the previous year to September 30th of the current year is greater than or equal to 10 percent; and then it says look back and you look at the cumulative gains just in investment returns, just in investment return, it has nothing to do with any of the other actuarial considerations. There are plenty of other actuarial considerations that determine whether or not a plan has cumulative gains or losses; salary assumptions, how much do we think the salaries are going to go up? If we think

salaries are going to go up a lot, we think pensions are going to go up a lot, if we are wrong the cost is coming down because the salaries haven't gone up as much. Are people dying?- are people leaving?- do you have 20 firefighters injured in a fire?- or disabled?- all of a sudden, that's an actuarial gain or loss as well. So this ordinance doesn't speak about anything with actuarial gains or losses, so there is nothing in the language of the benefit to indicate that it is an additional benefit that it is contingent on total actuarial gains and losses, and we have an e-mail from the actuary in Hollywood and we'll read that to you, their ordinance said, I'm not sure which Hollywood they are talking about, they didn't share with us their letter to the State, we got it when you all were kind enough to put out your agenda and include in it, they knew we were interested in it, they weren't kind enough to share with us, or let us have any input into it, but I don't worry too much about that because if you look carefully at what the State says, the State never says this is an additional benefit, they don't say it's an additional benefit at all, but there is nothing in the language to indicate it's an additional benefit. When you make enough money, when the Plan makes enough money on one factor then this COLA will be paid, it is a trigger, it is nothing more than a trigger and they are trying to convert it now at this very late day into an additional benefit, and this is important, as we look there is nothing in the language to indicate it's an additional benefit; and now let's look at the history, because there is nothing in the history to indicate it's an additional benefit and I think you can know that just from the presentation that you've heard here today; it's been paid over and over and over again, and they didn't start figuring too actuarial gains until 2007, he said that. We just picked a year and used it. It has been paid over and over and over again, it was paid by this Commission in 2003 with no consideration of was there cumulative actuarial gains?- it's never ever until this year been treated as an additional benefit, it has never been. It has always been paid when the trigger was met; the trigger's made, we pay the benefits, and to say it's not funded I don't believe it's correct. I have Exhibit C-1, and I'm not an actuary sometimes I wish I was, but not often; Exhibit 1-C from the report and it will show here City contribution requirements, and it list the actuarial gains and losses over history; you have gains because you've done well, you have losses because you haven't done well, you have plan changes, you can go back here – 1996 with Retiree COLA, you started funding for it, you started paying off that Retiree COLA in 1996, and you have 14 years left to pay, and there was one in 1997 Retiree COLA, and one in 1998 Retiree COLA, and one in one in 1999 Retiree COLA, and it tells you the balance – I have copies if anybody wants to see it. As I said I am not an actuary – may I approach Mr. Mayor?- thank you.

Commissioner Cabrera: Take us through this now.

Mr. Cohen: I'm going to do my best, honestly, I was hesitant to even use this because we all haven't hired an actuary yet, they are expensive, we are hoping that you will do the right thing, we know we may have to at some point, but we are hoping you do the right thing; but what this

looks like to me from the actuarial report is you have your normal cost of running your pension – here’s how much the benefits cost, and if everything goes the way we expect it to go, we earn what we say we are going to earn, salaries are what we say they are, disabilities are what we are assuming they are going to be, we’ll have no gains or losses, but the world doesn’t always go according to our assumptions and the world can be different. So we have gains and you have losses every year. When you have a loss, when you have less money in your Plan than you thought you were going to have, that’s part of your unfunded actuarial accrued liability, and you have to pay that off, but the law says you don’t have to pay it off all at once, you can amortize it over time, you can pay it off over time. So if one year you are supposed to make 8 percent and you lose 20, you have an unfunded liability, you don’t have to pay that difference off all at once, you can pay it off over time. What I understand these to be, this is what I think – I think what I said was right, legal stuff I’m fair about, actuarial stuff I’m doing my best, but this is what I understand, I’ve been listening to him for the better part of my adult life, listening to them and talking to them, but these are the bases of the unfunded liability. So in 1983 you had an actuarial gain of \$32,000, you had a gain, and you get a credit for that, you are \$32,000 ahead. Then you had a plan amendment, the next year and interesting that cost just about the same amount of money almost to the dollar you had a plan amendment, that cost money, you improved the plan somewhat, and when you do, when you improve a plan you have to pay for it, but you don’t pay for it all at once. If you raise the multiplier they used to do in the olden days or increased benefits like they used to, you don’t have to pay for that increased benefit all at once, you get to amortize it, the law says you can pay it off over 30 years. It looks to me like you have a 30 year amortization schedule because I’m looking at the last page and some things are paid off over 30 years, so you have gains and losses each year. Now you have here if you go to 1996 Retiree COLA, it indicates here ’96, ’97, you are paying this off, so when the letter that goes to the State says it’s not funded, and that’s the letter that went to the State, I don’t believe that’s accurate, I believe it’s not prefunded, I believe that there is no plan to start funding these COLA’s as they go, I’m going to start funding them earlier on the assumption that you are going to have to pay them, that tells me one of two things, that maybe the actuary was just wrong by not making provision to fund these or maybe you don’t have to prefund these, I should say prefund, alright. What you heard today is it’s not funded and therefore it’s additional, that’s the “tail wagging the dog”, OK? The answer is it additional and should it be prefunded? – that’s the question, is it additional? – is it based on cumulative actuarial gains? – it’s never been considered that way, not by the Retirement Board, not by you all. The actuary starts getting nervous now, the actuary starts getting nervous because maybe he should have prefunded it, and I don’t know, it’s very possible that the actuary made a mistake. I will tell you, I’m not certain the actuary made a mistake, I won’t say that until I consult with an actuary, but the Retirement Board assumes that, that experience is going to earn 7 ¾ percent a year, that’s what it figures its earnings going to be. This is only paid when you earn 10, they are not assuming that you are going to earn 10, they are

only assuming that they are going to earn 7 ¾, so I don't know that you make plans to pay something that you don't think is ever going to be paid. Maybe you do, and maybe they've made a mistake, and maybe they need to prefund it here, and I think that it's very clear that historically it hasn't been paid, particularly if you look at the actuary's letter; the actuary says in his letter, the systems actuary, not Mike Tierney, the systems actuary Nyhard, Randall Stanley, he says in his letter that the COLA can only be paid when the system is in a net positive cumulative experience position, to only pay a COLA when it's in a net positive cumulative experience position, which you are being asked to do now, may present, and I love this in quotes, a potential negative ramification from having granted COLA's in past years without observance of the experience position, and the position might not have supported new COLA's in recent years, that's actuary speak, and I can try to translate that for you. We have never done that, we have never ever treated this ever, ever, ever have treated this as an additional benefit. We never have treated this as an additional benefit. It's a benefit when the trigger is met, we pay it, and what's very interesting. If you go to 112.61, you can only pay an additional benefit in the amount of what the cumulative actuarial experience is. Your payment isn't tied at all to how well, to how much the gain is over 10 percent. You pay the same COLA, if the gain is 11 percent or if the gain is 70 percent, you pay half of the CPIW, that's what was agreed on, that's what you've done, that's what you've always done, and now you are being asked to do something completely different; and it could be that the actuary made a mistake. I'm not sure he did, but if he did and its worth looking into, should these things start being prefunded?- I mean can you assume that when I'm only going to earn 7 ¾, I'm going to pay a COLA when it earns 10?- I don't know what the actuary is going to say, I think that's something the Retirement Board should look into. I think that's something people should hear from, but if it has been a mistake, if it has been a mistake in having it not prefunded doesn't mean it doesn't have to be paid, that is the "tail wagging the dog". This has never been an additional benefit, it's never been treated as an additional benefit, it's never been paid as if it was an additional benefit. Even the actuary says we haven't determined cumulative actuarial gains and losses, and the letter from the State, the letter from the State, read that letter, it does not say this is an additional benefit, it didn't conclude that it was an additional benefit, and I think it's going to be very hard for them to say, Oh yes, this is an additional benefit, you know why?- because it's been paid over, and over, and over again, and every year they get a valuation, they review your actuarial valuation, every year they get an annual report for Police and Fire, and for the general employees plan, another part of that division of retirement. Your papers have been approved, all three pension plans have been sent to the regulators year after year, after year and this part has never been questioned; the part's been questioned is if the City putting in enough money, that part's been questioned, and there has been some disagreement about that, but there has never been a question that this should not have been paid, it's just never, ever existed. This has always been paid, then we get a very specific question asked to them, but they don't conclude that this is an additional benefit, it's not an

additional benefit, it was promised to these people while they were here, it says it will be paid, you've never seen it that way, and you can't change it now. I think that there is a bit of a give-away here frankly, in the resolution that you have before you, in the resolution that you have before you. If you go to Section 1, you have Section A, and Section B, and Section 1, and it says that, it says here the retirement plan has a total unfunded actuarial accrued liability of more than \$200 million, and that would increase the City's unfunded liability by an additional \$20 million...

Commissioner Cabrera: Its letter C, letter C.

Mr. Cohen: C, I'm sorry, 1-C, that really doesn't matter the size of your unfunded liability, it's really irrelevant to this, it really is irrelevant, it's disturbing that – to me it's disturbing that it's in the ordinance, that's not the issue. Was the trigger met?- the trigger was met, the conditions are present, this needs to be paid, it's been promised to them. I understand it's painful to pay that kind of money. Some of these people paid for this, it hasn't always been a non contributory plan, there was a period of time where it was a contributory plan and people paid for this and people were disabled in the line of duty paid for this. Thank you very much Mr. Mayor, we appreciate your time.

Mayor Cason: Craig?

City Attorney Leen: I think they have some additional.

Mayor Cason: Do you want to say anything now or do you want to wait?

City Attorney Leen: Yes. I understand their position, the issue though is this sentence, accordingly except as herein provided....

Commissioner Quesada: Where are you reading from?

City Attorney Leen:...I'm reading from 112.61, legislative intent relating to the how all of these public employee retirement benefit plans are looked at, interpreted, read, and it says, "accordingly except as herein provided it is the intent of this act to prohibit the use of any procedure, methodology or assumptions the effect of which is to transfer to future taxpayers any portion of the cost which may reasonably have been expected to be paid by the current taxpayers"; and the way I read this is whether you call this a procedure or however you want to look at it, it's a contingent COLA and it's not prefunded, so – and this sentence is not even talking about additional benefits, so that type of procedure where it would transfer to future

taxpayers, an unfunded liability of the pension plan, that's an issue, and I don't think that was addressed in this presentation, and I think that is the concern here, and it's true in the resolution it mentions there are \$200 million in unfunded liability, but that's to show the gravity of this issue. If there is going to be – if the Commission were going to allow this to proceed notwithstanding legal error, it's just to show that this is serious and it relates to the gravity of the error to add \$20 million additional, but of course you are absolutely right that alone is not why you would overturn the Pension Board's decision; the issue would be however much this is transferring, is it transferring liability? – is this a procedure a contingent benefit, whatever you want to call it, is this a procedure that transfers to future taxpayers liability, because you can imagine a lot of different types of contingent benefits that could exist that are not prefunded that could add a tremendous amount of liability and those procedures are prohibited by statute, and that's the concern here, and that's why what I was discussing before, it doesn't mean that you can't – you know the ordinance does say what it says, there is no question, that's what the ordinance says, it would grant the benefit – if State Law didn't exist, I agree with Mr. Cohen, the benefit would apply, but because State Law exist there is secondary question in my opinion about funding and its made even more important when you have \$200 million in unfunded liability, but regardless of that it's still transferring money to future taxpayers, and that's the issue I see. I'm curious for your view of that sentence.

Mr. Cohen: Two things, it has to be equitably funded by current as well as future taxpayers and that's what you've been doing because you are not usually going to earn 10 percent and you never assume that you are going to earn 10 percent. So what you have been doing since 1996 is when its granted you've been paying it with current and future taxpayers, that's what you have been doing. The taxpayers that were here during that year paid for it to fund it and the future taxpayers paid for it by the 1996 COLA that was granted is going to be paid for by the next 14 years of taxpayers. You see the remaining years left is 14 years. Then you get – and nobody has ever said to you, you have a group of regulators, just so we are clear, government pensions are not governed by ARISA, the federal law governing ARISA, its left up to the states. Florida has a provision in its Constitution unlike any other state, I believe, dealing with public pensions and you have a very, very heavily regulated public pension system in the State of Florida, and you have Police and Fire, so you have another regulation because you all accept the 175 and 185 fund. The law in Florida requires that a minimum of once every three years, and I believe your Retirement Board sends it up every year, an actuarial valuation has to be sent to the State, for a State actuary to review, they have two now, and they review those. I've seen letters where they write back saying your valuation is not approved because you haven't done this or you haven't done that. I haven't seen any evidence ever that a regulator has said that this is improperly transferring payments to future generations to taxpayers. I haven't seen anything; and if it was a mistake, OK, if it was a mistake and nobody said it is. Nobody said really that this is, nobody

said well here's why it's being funded this way, nobody said this is the way we've done it, this is the way we decided to do it, you are OK with it for the last 20 years. I know you all haven't been here for 20 years, but the Commission has been OK with it, the State's been OK with it, now all of a sudden it's wrong because somebody wants to give a new interpretation or something to save money and that's what's disturbing. We are – I am not unconcerned with the amount of money, I don't think we are, but it's a promise you made and it just has to be made by current as well as future taxpayers, that's what it says, and if you don't pay it and then it should have been paid they'll be the future taxpayers paying for it not the current taxpayers; and then you have this general language there and it says you can't use the methodology that will do it, nobody has said that you have, none of the state regulators have ever said, no this methodology isn't fair; and then you have the next specific one, which is really what it is, is it an additional benefit?- and the only argument that you've heard that's an additional benefit is that it wasn't prefunded. It has been funded, you have papers saying it was funded; it's funded by current and future taxpayers. So that language doesn't concern me, that's general language that nobody has questioned that the way in which you are doing it is appropriate, nobody has ever questioned that.

Vice Mayor Kerdyk: Wait, hold on Ken, let me just ask. I think the question for me is what's the difference now than it was in 2007 or 2003 in your perspective?

City Attorney Leen: My understanding is that and I would defer to some extent to our actuary he knows more about the history he was here, but I would just say that....

Commissioner Anderson: He wasn't here actually.

City Attorney Leen:...OK, well who has looked into the issue at my request. One of the COLA's is my understanding, was an ad hoc COLA...

Vice Mayor Kerdyk: I think it was 2003.

City Attorney Leen:...and the other one at least as counsel has stated, and I would rely on what she said because I am not an actuary or a pension attorney is that we weren't in a deficit at that time, so that's the issue here, the deficit. I would agree that if we were in a positive situation...would occur; the problem here is that State statute saying that you can't fund these types of things where there is actuarial loss; it can't be funded through....

Vice Mayor Kerdyk: I understand perfectly.

City Attorney Leen: It actually has to be funded.

Mr. Ken Harrison: Ken Harrison with the firm of Sugarman and Susskind, we are here speaking on behalf of the Firefighters Union. Just a quick comment on what the City Attorney is saying. If you try to look at this as current and future taxpayers, look at current cost and future cost, that's why you amortize things, you've got to pay the current cost out of current tax base. You can defer to future tax – the amortization payment can be deferred as it becomes a current cost, current taxpayers pay it, that's the way it's applied and has been, that's why you can amortize a cost over a period of time. Current taxpayers are paying current cost, you are not deferring a current cost on forward, you are deferring a cost that will come current at a future date, that's why that statute was if you don't make the payment you have to make this year then you are deferring it, that's where you get the issues.

City Attorney Leen: If I may just respond though. My understanding – I heard what you said about the funding, but my understanding was that this was not funded.

Mr. Harrison: I think what Ron has said, and I wholehearted agree with his passionate comments here, this is a benefit that's built into your pension plan, it's not an additional benefit, it's there, it's always been there, it has a trigger that says that certain things occur it will be paid. He makes a very good point, you are assuming 7 ¾, but you don't pay this unless you make 10 percent. The second part is you've got to be in a positive cash flow for investments over the last period of time since you paid the last one, and that's clear in the reports you have in front of you since 2007. If you look at the returns and look at the cumulative effect of those five years, you are in a positive return over that whole period. There are a couple of losses, but the rest of those periods are positive. This period though you happen to have exceeded the 10 percent, trigger goes in, first trigger is in, over 10 percent. Look at the next one – what's happened since the last COLA was paid?- are you in a positive flow?- yes you are, there is no choice here. The question as I see it in front of you today, first of all, did the Retirement Board do something wrong that would cause you or would give you cause to override it?- I don't think they did. They considered the information that was in front of them, which is all the information that's in front of you, they evaluated it and they said look, here's the trigger, here's our position since the last one, it's not an additional cost, 112.61 is not applicable here. Therefore, we have an obligation to grant it, in accordance with the calculation that's provided in your ordinance. As Ron said one half of the CPI. Not a lot of choices here. If this trigger occurs, secondary provision is in place, you will grant it. Did they act in a manner that would give you cause to overrule them?- I don't think so. The information in front of you shows they had all the information in front of them, they made a decision which you have vested them with the right to make these kinds of decisions. They have an Actuary Report that says, here's the cost, so the need for actuarial report that was eluded to earlier is in place, their actuary said this is the cost if you do it in 30 years or if you do it in

something less, but 30 year amortization is the max. You have an option at doing it at less; you can amortize it for a shorter period. One of his concerns was due to the age of the retiree you may want to amortize it over a shorter period, but you don't have to, because the pension plan covers more than retirees, it covers an ongoing something beyond the horizon period of time. The State says you can't amortize more than 30 years, but you can do less. So you have that information in front of the Pension Board, they considered it, did they do anything illegal?-improper?- I don't think so, they acted within their authority, within the provision of the ordinance that they have in front of them to administer the plan as enacted by this Commission, which contains a benefit that has a trigger. Can you prefund something when you can't assume you are going to make it? For 10 years, which is the real problem with pension funds, the stock market has not come even close to anticipated returns for a variety of reasons. How could that be expected?- how could you plan for that? What you do when the triggers take place, you put it in place, you fund it, you amortize the payments out properly done, the decision how long to amortize, they chose to amortize over the longest period available to them, which is the most economical way to go. The cost per year is going to be lower if you amortize over a longer period, that's what they chose to do. So did they do anything that would create a cause for you?- I don't think so, that's number one for you to decide, is there cause here for you to overrule them? All of this other stuff that you are hearing was in front of the Pension Board, everybody acknowledges that; they acted properly, they took everything into consideration and moved forward. The thing that I was tasked to do though was to address the City's that were in the report that was in front of you, and I heard the question, are there other cities? There were three cities addressed in that report that said that they had similar situations and they chose to forego a COLA or a 13th check. I think it was Hollywood, Sunrise and Vero Beach; Hollywood is very interesting, they had a referendum, they went to their citizens to reduce pension benefits. Part of that referendum was to do away with COLA's effective October 11, 2011, it's not applicable here. They did something totally different; they went to a referendum to reduce benefits because their collective bargaining process went to impasse and they went to imposition, they went through all of that. They created a situation for a 13th check and in that the provisions are very clear and it says, they actually call it a supplemental benefit in their provision, which is Section 33.06-OG, and it's called the supplemental benefit 13th check, and it says, the supplemental benefits which are clearly additional benefits. You don't have that question here, provided under this section shall only be paid after such time as the system has recovered any aggravated losses experienced beginning with the actuarial experience on or after October 1, 2008. So they only look at the actuarial experience back to 2008, which had significant losses. They never attained the position that they could have granted a COLA because of the criteria they had to operate with. Even after the referendum change the benefits did away with COLA's after a specific period of time, so the Hollywood situation is not in any way like what you have here in Coral Gables. The next one was Sunrise and that was kind of interesting; they have three plans up there

and the only one that has a supplemental benefit is the General Employee Plan, the Police and Fire Plans have mandated COLA's. There are COLA's at a certain percentage every year, so that's not applicable here because it's not performance based; yours is a performance based. The supplemental benefit for the General, though again was a 13th check, but again it's called in their plan in their ordinance a supplemental benefit. It's an additional benefit, it's not applicable here, it's not the same. You have a benefit that's written into the plan, if this occurs you will pay; here its supplement if these things happen we will pay this; and again, they have provisions in there that says this 13th check ties right into the requirements of 112.61, which is the total aggregate actuarial experience. So if you are in a negative position you can't pay it, you have to be in a positive total aggregate position. Again, it's not applicable here; it's not the same language. The final one was Vero Beach. The interesting thing there, I happen to represent the Vero Beach Police Pension Fund, and they don't have a COLA or a 13th check; however, the General Plan and the Fire Plan have some provisions. The General Plan provides a COLA at the option of the City Manager, totally his discretion and he submits it through his budget document, he didn't do it this year, but it's not the same language as you have here. It's clearly – you can differentiate it, you can show the difference. The Fire Plan has an ad hoc additional benefit, as Ron explained, ad hoc and you did in 2003, that's an additional benefit. They only pay it again, if their actuarial report shows that they complied with 112.61, which is the total aggregate actuarial loss. So again, it's not the same as you have here, so those three cities clearly can be differentiated from the provisions that you have in your ordinance because their ordinances are different. They allow – they either directly tie into 112.61 or they allow discretion at the City's level, so they are clearly differentiated and I think you have to take that into consideration when you look at that and you read this report. Again, I would reiterate what Ron has said, this is something that has been in place for a while, you have a history of granting it, the time that you did it ad hoc clearly you did that in 2002 or 3, and if you look at the position of the plan they had negative returns 3 out of 5 years on that one. So you even ignored the first criteria.

Vice Mayor Kerdyk: Different financial time though.

Mr. Harrison: Yes it was and it was in your prerogative to provide that...

Vice Mayor Kerdyk: We were trying to give back to the employees – we are in a different life now unfortunately.

Mr. Harrison: And we understand that and we are both sympathetic to it as Ron said, but clearly you have a situation here where you do not have an additional benefit, you have a benefit that has triggers associated with it, and it just so happens that we are coming out of some bad times, we have a good year and it triggered the payment of this COLA and there is a cost associated

with that and we understand that, can we be sympathetic?- but the real issue before you, number one is, is there a cause for you to take this action?- because you can only override for cause. I don't think you have that here.

Mayor Cason: It seems to be that all of this....

City Attorney Leen: Mr. Mayor, I received a request from the Retirement Board, I guess several members here want to speak, but I need to make a legal ruling related to that. According to our Ethics Code, only the Chairperson can speak before the Commission. It's up to you whether you want to recognize that person.

Commissioner Cabrera: I was going to recognize the Chair and the Retirement Board's attorney; I was going to ask them both to speak at some point in time.

City Attorney Leen: They could speak, but based on the Sunshine Law and also our Ethics Code only one person from that Board can speak and that is the Chairperson. I received an e-mail related to that and I just wanted to...

Mr. Harrison: Let me ask a question, but if they are a citizen of the City, how does that apply?

City Attorney Leen: They are prohibited.

Mr. Harrison: They've be prohibited?

City Attorney Leen: They'd be prohibited by our Ethics Code because they are also quasi-judicial personnel and advisory personnel and also their decisions are being reviewed here.

Mayor Cason: I think this is going to be – these are legal arguments and I think we know the people want their COLA's if they could get them. I know a lot of speakers want to talk about how cost of living has gone up, and how the hardships and so on, but I think the focus is on – it seems to me is this or not an additional benefit?- the question is how do we find that? – we have two sets of lawyers saying two different things with tremendous possible impact on the City. If we go the wrong way it could cost us tens of millions of dollars; is the right way to get a resolution as to whether this is an additional benefit?

City Attorney Leen: Mr. Mayor, the issue here just looking at it as your advisor – obviously we are both reading the statute, that's the issue there is not case law really addressing the specific point, so I stand by my reading of the statute, but normally in those situations what you would do

is you would ask the State, which we did here. I guess they are not happy with the way it was worded, you could ask the State more specifically if you wanted to, but I read what the State stated, and I was comfortable with relying on that, at least in my own opinion, but you don't have a case decision, so you've heard the arguments so you have to evaluate for yourself what you think would be more likely to prevail.

Commissioner Anderson: I have a couple of questions or comments. So we have an ordinance in place that has triggers and we have met all of the triggers this time around, is that correct?

Mr. Cohen: This year all those triggers are in place.

Commissioner Anderson: Are all in place. So when the Board made their decision to recommend the COLA, they were basing it on that ordinance, which is within their right.

Mr. Cohen: Yes.

Commissioner Anderson: OK. – Go ahead.

Mr. Cohen: The only thing I would say differently, I'm not sure that the Board's decision was to recommend, I don't know the language, but I think they've given authority....

Commissioner Anderson: OK – they based it on the ordinance.

Mr. Cohen:...I think to pay it, but based on the ordinance.

Commissioner Anderson: OK, based on the ordinance, that's the better – I want to clarify that. OK. I get it. I understand.

City Manager Salerno: Mayor?

Vice Mayor Kerdyk: Let me just ask one other question. One thing, and I appreciate letting the Chairman speak and I have several other questions, but what happened to the minutes on this meeting?- that's an issue...

City Attorney Leen: I requested that the minutes be put into the packet, but it's my understanding that the person who prepares them was sick or something like that....

Commissioner Anderson: How convenient.

City Attorney Leen:...or that there was not – there has not been another meeting either where they could approve their minutes.

Commissioner Cabrera: What is this?- Mayberry?

City Attorney Leen: All I'm saying is that I requested the minutes, they have not been approved by the Board, I had heard there was an issue with their preparation, maybe it's not sick, but I had heard there was an issue. I do think you have sufficient – you have everything that was before them.

City Manager Salerno: Mayor let me ask if I could ask these gentlemen if they could sit down for a moment and let City Counsel and the Actuary respond to those comments because they have been sitting there listening to that and I think the City needs to hear the response.

Mayor Cason: Yes, go ahead.

Ms. Cowan: Good afternoon again. What they've focused on in presenting to you is what the ordinance says, but the ordinance can't be read in a bubble. You have to read it along with the State Statutes, particularly Section 112.62 says, these provisions supplement the local Code, and to the extent that they conflict these provisions prevail. You have to take that into account and so when you are determining whether or not you can grant the COLA, you have to look at, OK?- in accordance with 112.61, and I think because we've gone over this so much, if its beneficial to you I have copies of the actual statute so you can – do you have the language?- OK. So that you can see the language we are talking about. As the City Attorney pointed out it's not just about additional benefits; the first part of the statute talks about the intent to go ahead and implement the article of the Constitution that deals with this, Article 10, Section 14, and in doing so to manage, administer, operate and fund in such a manner to maximize the protection of the retirement benefits, to recognize the pension liabilities attributable to the benefits promised public employees be fairly, orderly and equitably funded. So it's talking about the benefits as a whole, then it breaks it down, accordingly except as provided herein, it's the intent of the act to prohibit use of any procedure or method or assumption the effect of which is to transfer to future taxpayers any portion of the cost which may be reasonably then expected to current taxpayers. I read that again only because that's where we are at; is it a present benefit?- because in the statute language there is present benefit and there is additional. Now in ordinance language, he talked about other cities and he talked about supplemental benefits, he talked about this really being a benefit that's contemplated in the ordinance, it has the will language that it was built in. When asked if it was funded he said, well it was built in, but the question really is, is it funded

according to the statute?- is it prefunded such that it's a current benefit?- is it a current benefit that you are going to take ad hoc action on and fund?- or is it an additional benefit?- because if it's not prefunded then you are not doing ad hoc in the statute it's an additional benefit; and so that's really – it's looking at this as a whole and understanding that regardless of how we might define things, how the statute defines it is either it's a present benefit, it's been prefunded, or we take care of it ad hoc, or it's the additional benefit. I would also say there was a lot of emphasis about what's been done in the past and the reports that have been provided to the State and you know that they haven't sent those reports back, but I would draw your attention once again to the actuarial report that was sent in 2011, where the Plan Actuary in describing the benefits, in describing this benefit in particular states, that the COLA increases may be granted only if the system remains in a net positive experience position determined on a cumulative basis from October 1, 2007. So the reports that have been sent to the State say we are only going to grant this if the system is in the net positive experience. So...

Vice Mayor Kerdyk: When was that?

Ms. Cowan: It's in the Actuarial Report, it's on page 40...

Vice Mayor Kerdyk: Page 40.

Ms. Cowan:....Yes, its Exhibit 7, and it's of the 2007 Actuarial Report.

Vice Mayor Kerdyk: And when was that, when was that document from?

Mr. Tierney: I think it was May 2012

Ms. Cowan: May 1, 2012, this is the latest Actuarial Report.

Mayor Cason: Can you read that again.

Vice Mayor Kerdyk: Yes, read that one more time.

Ms. Cowan: Yes. In the summary....

Vice Mayor Kerdyk: This is the Plan Actuary that's writing this?

Ms. Cowan: That's correct and these are the representations that have been made to the State. The summary of the principle provisions dealing with the COLA provision, it provides the

language of the COLA provision and then it states, "COLA increases may be granted only if the system remains in a net positive experience position determined on a cumulative basis from October 1, 2007, and it says not in the ordinance identifies that.

Mayor Cason: Which it has not been – and it has not been...

Vice Mayor Kerdyk: No it's a negative.

Mayor Cason: It's a negative.

Vice Mayor Kerdyk: But let me ask you a question. I assume that the Retirement Board had that same provision there, how could that be interpreted differently?- how can, knowing that provision was in there that was defined by the Plan Actuarial, how could they have interpreted and ruled differently from what that basically says there?- because that's pretty clear.

Mr. Tierney: That's why we are here.

Ms. Cowan: That's why we are here.

Vice Mayor Kerdyk: I know, I know. What was the thought process?- maybe somebody needs to clarify that to me.

Mayor Cason: Maybe they weren't aware of it.

Vice Mayor Kerdyk: It's pretty clear.

Mayor Cason: You have anything you want to add Mr. Tierney?

Mr. Tierney: In his 2012 COLA letter, the Plan Actuary provided the actuarial impact and you have already read it, you've seen the report, so he is providing an impact to the Pension Board. The Pension Board has no authority to spend money, to spend the \$20 million only you do, and so that impact statement supplied to them really should have gone to you, if someone wanted to take action on COLA so that you can authorize that additional expenditure. Pension Board can't spend money so that's kind of the issue and that's what Mr. Stanley Nyhard (sic: Mr. Randall Stanley from Nyhart Actuaries) who is the Plan Actuary has been trying to tell the Board for the last three or four years, so it's kind of like, he is saying that the Commission would have to pass this every time that's one of the points in one of his letters. That's the key, actuarial impact statements are required so that the decision-makers, the Commissioners are able to understand

that before that additional cost is added to the system. Pension Board can't do it, only the Commission can.

Commissioner Quesada: Mr. Tierney let me ask you a question related to this document that was passed out to us by opposing counsel; do you have a copy of this?

Mr. Tierney: Is that page C....

Commissioner Quesada: It says City of Coral Gables Retirement System, that's the title, its Exhibit 1-C.

Mr. Tierney: Yes, I'm familiar with it.

Commissioner Quesada: I need you to look at the document, if you can share that with him. I just want to make sure I'm reading this right, he said he wasn't an actuary, I'm not either, so I just want to make sure I understand this. I'm looking at the first page, he mentioned 1996, toward the bottom of the page, January 1, 1996, it says, actuarial loss and in parenthesis gain, and then in parenthesis it says \$9 million dollars and change. Does that mean in that year there was an actuarial gain of \$9 million in the system?- I just want to confirm that.

Mr. Tierney: Actually not. It's the 2011 balance of a gain back in '96 was a lot higher, but you've already paid 16 years, have credited for 16 years back against it. That's why what Mark said before is that this stuff we actually don't have an actual history, theoretically could deduce it from this, but we don't have the original gain from that year, we only have the current balance as recognized by this actuarial report. So it could be \$15 million gain back then.

Commissioner Quesada: OK. OK. But this is the existing balance. Let's move to January 1, 1997, now the actuarial loss, it says \$711,000, so this is the loss, could have been more at the time....I'm sorry?

Mr. Tierney: I'm making it up just so we can talk about it; it's probably a million back then.

Commissioner Quesada: OK. So hypothetically it was a million, but at this point....

Mr. Tierney: It was greater than that back then.

Commissioner Quesada: So when I see the very next line down, January 1, 1997, Retiree COLA, \$890,000, so even though there was a loss that year we gave the COLA, is that correct?- correct assumption?

Mr. Tierney: That's true, but maybe it was because of the \$15 million gain from the year before was part of the cumulative experience.

Commissioner Quesada: OK.

Mr. Tierney: We don't have complete information about what the actuary did then and what he didn't do then, and by the way, it isn't the current actuary, it's the prior actuary.

Commissioner Quesada: OK, I understand that, it's just as he was speaking I was going through this and the only thing that's consistent is that this document is inconsistent, and any actions that previous Commissions have taken, I guess, what I'm saying here, because when you start looking – I marked here January of '97, January of 2000, January of '03, January of '04, January of '05, October '05, October '06, those are all times that we had, what seems to me, major actuarial losses where we gave COLA, and then in all the other years, well not all the other years, but some of the other years we had gains and we gave COLA, so it's very inconsistent from what I'm seeing; and then what I see from 2005 to present or I guess until this cuts off which is October 2011, is that we are upwards of \$70-\$80 million in losses.

Mr. Tierney: \$83 million give or take.

Commissioner Quesada: I'm sorry?

Mr. Tierney: \$83 million give or take.

Commissioner Quesada: \$83 million, OK that's where that number comes from, based on this, roughly \$82.7 million since that time in losses that we've had. I just wanted to understand that. Thank you.

Mr. Tierney: And appreciate the fact that this doesn't tell you whether the prior Commissions passed something or whether the Pension Board did it because of the ordinance provision, OK?- there is a lot of unknowns associated with those prior behaviors. When you talk about you did it, I'm guessing if it was just the ordinance provision the Commission didn't do anything, so we try to go back and get some minutes of prior meetings to see what happened and we couldn't, so

unfortunately we can't tell you what happened then and why and whether the Commission took action or whether the Board just did it.

Commissioner Quesada: OK. Thank you. Thank you for clarifying that.

Mayor Cason: Anybody else want to make a legal point?- if not, Craig do you want to summarize?

City Attorney Leen: I wanted to read something about the Chairperson....just so it's clear for the record, we are not saying that someone from the Retirement Board can't speak, what we are saying under our Ethics Code, it says that "no advisory personnel, autonomous personnel or quasi-judicial personnel after deliberating, considering, ruling or recommending on an application filed with the Board or Committee upon which they serve shall appear before a higher Board or the City Commission to testify as an affected party. However, this section shall not prohibit the Chairperson of a City" from I think City Board, the word is missing, "from appearing before the City Commission to provide the Board's recommendation". I interpret that to mean that the Chair could come and speak and describe what happened or your recommendation or your reason for making it on behalf of the Board, and you can hear from the attorney as well if he'd like to speak, but otherwise they would be committing an ethical violation, I'd have to advise them not to do it, the other Board members.

Mayor Cason: Does the Chair want to speak? Come forward please.

Commissioner Quesada: You know Mr. City Attorney based on your statements; I want to disclose that I met with some members of the union yesterday. I didn't believe we were under that....

City Attorney Leen: I have not treated this as similar to a zoning matter, you mean like a quasi-judicial matter. There is a component here because you are assessing this by appeal and I don't think that that matters, but in order to be extra careful considering you raised it, I would ask each of you if you've had discussions with affected parties, have that affected you in any way in your ability to act as judges in this matter.

Vice Mayor Kerdyk: No.

Mayor Cason: No.

Commissioner Anderson: No.

Commissioner Quesada: It has not.

City Attorney Leen: So let the record reflect all of them said no.

Commissioner Cabrera: And we all met. We met with both the Fire and the Police Union's leadership.

Vice Mayor Kerdyk: Right.

Commissioner Quesada: Correct.

Mayor Cason: OK, would you like to....

Mr. Troy Easley: Well thank you very much for the opportunity, I appreciate all of you all for letting the Board attorney and myself speak to all of you today.

Commissioner Cabrera: Would you just state your name for the record.

Mr. Easley: Troy Easley, Chairperson for the Pension Fund. Just want to make clear a couple of points. All of you have appointees to the Pension Fund for a reason; you believe in them, you think that they are doing a good job and they are. They try to do the best they can, we have some controversy on the Board, which is understandable, but for the most part we get through the issues that we have to and a lot of them are very contentious issues. A lot of the decisions we make are based upon the precedence that we have had established over the years, and in a lot of cases we will approve an item because we believe the item is correct and then also if it is deferred to you in the future and you have to vote on it, great, then you vote on it, hopefully you'll concur with what we had to say. This is a unique situation and with the information that all of us had, I think we all made the best decision. There are some items that Mr. Leen had brought up about the Florida Statute which I was not aware of at that time. Unfortunately, I think a lot of us were not aware of it at that time, but nonetheless this is a legal issue that we have to work our way through. I think that it is a benefit that has been established, not an additional benefit, that's my opinion and it seems to have been agreed upon by the majority of the people on the Board that voted that day. Unfortunately, a lot of you weren't there that day, but I think a lot of you might have agreed with us in our decision-making. The problem that I have is that unfortunately we brought so much information and we don't get a lot of it and we cannot make complete decisions without having a complete understanding. This is why I requested the City Manager comes to meetings. As a matter of fact he has come to some of our meetings and I've

requested through your appointees that you guys come to our meetings to see how much we have to contend with. We still have a lot of issues ahead of us, the 415 and some other general employee issues that we have to contend with. I welcome all of you, please come before us. Now that I'm done with that part, I want to just say that the City's Pension Fund, the Pension Board has been trying to work diligently with the City. Our actuary came back to us with five recommendations last year. We understand the situation that the City has been in, and we decided to hey, let's go ahead and work with the City on some of these issues. We adopted some of them, cost the City some money, we still have some outstanding issues and we said, let's defer those to down the line so that we don't have to hit the City so hard. So we are very keenly aware of the funding of the City and how hard to hit the City with certain issues and what have you. With that being said and we were very much aware that this is a \$20 plus million dollar item that's going to impact the City, but we are also very much aware that we are talking about people now; people that need this money to make a difference in their lives, especially when things are really starting to turn around. The City is doing better now, in my opinion, it's a benefit that's been there it's been established, I just feel that the right thing to do is to move forward and grant this COLA to the employees, the retirees, what have you.

Mr. Allen Greenfield: Mayor, Commissioners, City Manager, and Mr. Leen, my name is Allen Greenfield, I am the attorney for the Pension Board and have been the attorney for almost the past 26 or 27 years, so I have a little bit of knowledge of the history and the background of some of these items. Our Board as you know is composed of 9 members, five appointed and four elected. We don't legislate and I've told our Board from time to time, we are there to administer the ordinance that the Commissioners pass, we are not there to legislate, we are not there as advocates of the unions, we are not there as advocates of the City, we are there as advocates of the participants to make certain that we administer the ordinance in accordance with what we believe is the interpretation of the ordinance. This Board has been very conscientious, we have had a lot of contentious matters over the time, but we've gone through them and I think the Board has been a very, very important Board to the City. We are not here and certainly I'm not here to either advocate or to be an opponent to the City Manager's recommendations to the Board, that's legislation for the Commissioners to handle. As an explanation of what happened at that particular meeting, and as I understand the minutes are available if the Board wanted them, I mean if the Commissioner wanted them, and I don't know why you haven't received them, but they are available I was told. Mr. Stanley gave his November 1st letter which you have to the Board, it was sent to our administrator not to myself or to the Chairperson, I didn't get this until we got our package for the Board meeting, which are a few days before the Board meeting. He presented his letter and talked about it, and we certainly talked about what was said in his letter. The Board understood that he was saying that it looks like in the future we are going to have to take a look and see what the impact of giving a COLA is based upon 112.61, and so when we got

into the discussion of 112.61 it became a matter of is this an additional benefit?- or is it a benefit that was already established? The Board took the position that this was a benefit that was already established in 5230(c). It was clear as to how 5230(c) was to be administered, and the Board took a vote and the vote was to approve COLA for this year based upon the ordinance 5230(c). Whether that particular vote is reviewable by this Commission, obviously the Commission has the authority in the ordinance to review for cause the decision of the Board. Randall Stanley's recommendation certainly gives you cause and reason to consider this matter because in all candidness he is bringing forth certain problems that he perceives by the statute, but yet when you go into the statute, in all respect to what Craig says, he was correct in reading that portion of it, but the other portion of the statute talks about additional benefits. We did not make the ruling as to whether this was or was not an additional benefit, but we believed that it was a benefit already in the ordinance, the ordinance was there and so if – not from the legal sense, but from a practical sense, this was a benefit that was already there, it was not an additional benefit. Now there is a difference between legal interpretation of words and practical determinations and that's why...

Mayor Cason: The Board was not – didn't have though the November 28th e-mail back from Joseph Edmonds, is that correct?

Mr. Greenfield: No, it did not.

Mayor Cason: So they did not know what the State's position was at least....

Mr. Easley: No, we did not until after we made our decision to approve the COLA.

Mr. Greenfield: And if we were in a position and had the time we'd probably would have asked the State just as a matter of curiosity not as a matter of we being a proponent or an opponent is this or is this not an additional benefit?

Vice Mayor Kerdyk: Have you looked at the language that the City sent to the State for interpretation.

Mr. Greenfield: Yes.

Vice Mayor Kerdyk: Does the language look good to you as far as the....

Mr. Greenfield: It was kind of – I thought if you were writing a letter saying, when the American flag goes by do you take your hat off and do you put your hand over your heart?- you can't say no to those types of questions.

Commissioner Cabrera: Great analogy.

Mr. Greenfield: The questions that were asked were questions that, is 112 applicable to cities?- of course it is. He didn't ask the key questions, I think.

Vice Mayor Kerdyk: Which was?

Mr. Greenfield: Is this or is this not an additional benefit?

Vice Mayor Kerdyk: We need to ask it.

Mr. Greenfield: Thank you very much.

Vice Mayor Kerdyk: Go ahead Maria.

City Attorney Leen: I was just going to sum up and give you your options.

Mayor Cason: And I was going to ask you, if the question was asked in a different way, would you expect a different answer?

City Attorney Leen: Well you know the most important part of the question, I'll just read it, it's up to you to make the judgment, "would you confirm that Chapter 112.61 first part, intends that liabilities for promised benefits", so I do think it assumes a promised benefit, "which could be one in the ordinance, to public employees be fairly and equitably funded by current as well as future taxpayers", and then here's the important part of the question, I think, "and that this implies that such promised benefits be a part of the funding requirements of the plan at the time they were promised", and the answer to that question – and I don't think that, that's a question is this the American flag type question, I think that, that's a legitimate question related to funding; and to me the response to that would be what the actuary from the State said was, "as provided under Section 112.61, benefit liabilities for public employee plans must be equitably funded by current as well as future taxpayers". The important sentence is, this would imply that any promised benefits must be part of the funding requirements of the plan at the time the benefits were promised. So, yes, you could ask the more specific question, you could for example send the ordinance to the State and say, is this an additional benefit?- or is this a benefit that needs to

be funded?- but I do think that there is sufficient language, in particular that you two to rely on or to defer to, I don't think it's just routine questions, does 112.61 apply to the City?- I think it's more specific than that, at least the way I read it. At this point, I was just going to....

Vice Mayor Kerdyk: Can I ask one more question...

City Attorney Leen: Sure.

Vice Mayor Kerdyk: Nyhart company that's I guess the actuarial, the Plan Actuarial, is that right?

City Attorney Leen: Yes.

Vice Mayor Kerdyk:...And this is the provision I keep going back to is that COLA on page 3, exhibit 7, where it says, COLA increases may be granted only if the system remains in a net positive experience position to determine on a cumulative basis from October 1, 2007. I was sitting up here in 2007 when we granted it, I was here in 2003 when we granted it and I'm trying to draw if there are any distinctions between 2003, 2007 and now 2012, and right here distinguish it to my impression what consideration did you give to this language right here?- again, COLA increases may be granted only if the system remains in a net positive experience position, we know it's not in a net positive position.

Mr. Greenfield: I'm sorry, what is the date of that.

Vice Mayor Kerdyk: The date on this is May 1, 2012, this is a recent actuarial report, this is not any - this is as good as it gets as far as recent - as good as it gets Ralph.

Commissioner Cabrera: As good as it gets, as good as it gets, I like that line.

Mr. Easley: I have an answer for that. If you turn to page 3, many of the Board members were under the impression that there were of that same letter that you are talking about, Nyhart, November 1st, does everybody have a copy of that?

Commissioner Anderson: No.

Mr. Easley: It does say that there might be an issue with the administration of the COLA, but it also goes on further to state that in our opinion, and this is according to the Pension Fund's

actuary, there are two possibly three approaches to administer the current COLA provision; the first one is, amend the ordinance each time the COLA is granted...

Mayor Cason: This COLA was done in 2003, wasn't it?

Mr. Easley:...second one, grant new COLA's only when the system is net positive, and then the third one, which is least likely because there is a pretty good chance that the Division of Retirement would not approve or possibly unclear whether they would approve their request that the Commission approve it on a one-time basis all of their COLA's without reference to experience position and just it be approved from here forward. So it does go on to provide three, I'm not an attorney, I'm not an actuary, he just provided us the numbers and said you guys take the position. The real question here has already been defined by both sides is, is this an additional benefit or a benefit that's been established?- and as I previously stated we all believe it to be a benefit that is not additional, that was triggered by certain items underneath the current ordinance and we tried to stay as a Pension Fund or a Pension Board as close to the ordinance as possible. We don't like to deviate from that, we like to use precedence as ground rules in many cases, and I don't see an issue with that. We are glad that it came to your level in hopes that we can get some clarification on some of the positions that have been outlined here today, but our actuary did not say that we cannot do this COLA. If he did then we wouldn't have had the options outlined in page 3 of his letter to us.

Mayor Cason: He didn't say you couldn't do it, he gave you other options to do it, but not under the funding, not under the automatic – under 2 he says, this approach may well be closer to the original 10, only when the system is under a net positive, so he had doubts. Craig will you summarize again what we have to focus on?

City Attorney Leen: Yes. The issue for you to decide is whether for cause the Retirement Board's decision should be modified. You have several options; you could affirm or take no action, you will basically be relying on the ordinance itself, notwithstanding the provision of State Law, we would be – and of course I would defend that whatever you decide, so we would argue that the ordinance – the one issue though is I still believe that you would need to fund the COLA in some way or else I think it could be struck down. The second is you could remand, you can ask for more consideration by the Pension Board. I heard the Pension Chair saying that they hadn't considered some of these things, so you certainly have that option, but you would have to stay, in my view you would need to stay their action and remand for more fact-finding and you can even instruct them what sort of facts of law do you want them to consider; third, you could modify their action – here there is really a legal issue, if the union and the employees are correct you probably can't modify the amount of the COLA, if they are not correct and this is an ad hoc

COLA you could modify the amount of the COLA and award a lower COLA or a higher COLA, but you will be funding that and it will be done ad hoc not pursuant to law, it would be in your discretion; and lastly, you could stay or defer, you could ask for more info from the State, information from the State I heard that, that was one thing that was mentioned, or you could ask me to attempt to discuss settlement or something like that if that's possible, this is a contested matter, but ultimately at some point you would have to make the decision either now or later as to whether to affirm or to modify this decision.

Vice Mayor Kerdyk: Did you say that you had or had not heard from – saw the letter from the State before you make the decision?- you said you had not seen it?

Mr. Easley: We did not have any information regarding this matter before the meeting.

Mayor Cason: So one of the options would be to...

Vice Mayor Kerdyk: Remand it.

Mayor Cason:...remand it or reask the question of the State, send them the plan and ask them if this is an additional benefit, yes or no?

City Attorney Leen: You could do one or both of those.

Mayor Cason: Is there any downside for that in terms of any mechanisms?

City Attorney Leen: Well whatever the State says it's not binding, but you would need – I would recommend you defer to it, so that's one issue here is we have information from the State, it does provide you a basis to overrule because you can rely on what the State has told you, you are allowed to defer to that, a court is likely to defer to that because remember this is an interpretation of a State Statute, so anything that I say or we decide will not be entitled to deference, only what the State says about that, there is no case law.

Mayor Cason: There is no case law you say.

City Attorney Leen: I've asked our counsel several times to find case law, I'm told there is none and I have heard none cited over here either, so in my view there is no case law on this issue.

Commissioner Quesada: Mr. City Attorney, I'm looking at 50-230(c), what happens January 1st if we defer or remand?

City Attorney Leen: Well, we would have to deal with that situation equitably and probably what would happen is if you awarded the COLA it would have to be retroactive to January 1st.

Commissioner Cabrera: No, if we decide to do nothing the ordinance would automatically award the COLA.

City Attorney Leen: Based on the current status quo – yes, if you do nothing, if you don't modify, you don't overrule, it will go into effect January 1st.

Commissioner Cabrera: That's what happens January 1st.

Commissioner Quesada: Unless we remand.

City Attorney Leen: But you would have to remand and you'd stay their decision for cause, the cause would be that you want them to consider more information.

Commissioner Anderson: So it automatically goes. OK. I'm going to throw in a few thoughts just for a second. I don't know where we are going to go with this today...

Commissioner Cabrera: I do.

Commissioner Anderson:...I think I know where it's going too, punt – I think we have had an ordinance in place that has had triggers, I wish the question had been asked properly to the State so we could have gotten clarity, but I think that we in the past had been thoughtful of our employees in situations of retirees many of whom are disabled and we need to keep that under consideration whatever we do today. I personally support the decision of the Retirement Board, however we want to word that because I just think it's the right thing to do. I think it met the triggers and I think it's also the right thing to do from a human point of view, and we've done it in the past, and I think you know, we just gave two straight back-to-back tax decreases to the taxpayers, but on the other hand we are not that kind to our employees lately. So, I'd ask us just to keep that in mind as we consider it.

Commissioner Cabrera: I share the same comments. Number one, I consider this an established benefit, I don't see it as an additional benefit, I think we have set precedent on this time and time again, it's been established that way, it is a past and an ordinance that is in fact in effect today, and lastly, I echo what Mrs. Anderson says when all of this is said and contemplated and both sides have argued, it's really about doing the right thing, it's not about siding with one side or the

other, it's about doing the right thing, and so for me it's an easy decision this morning to support this ordinance

Mayor Cason: Frank.

Commissioner Quesada: First let me say Chairman Easley, other members of the Pension Board that are here, thank you for your service, that's probably the most thankless position on a Board in the City of Coral Gables. I know you get some very contentious...so thank you and that comes from all of us, because I know you have some very long difficult meetings and you are the tip of the spear there being the Chairman, so thank you. You know, I've been listening to all the arguments on both sides, this retirement system document that was presented by the counsel for the employees; I'm not sure if you mentioned the Police Department or the Fire Department, but it helped clarify things to see it broken down like this. I have a problem, I can't support the Retirement Board decision today, based on a lot of things I heard today. From Chairman Easley I heard that not everything was considered, not everything was before them, so I'm not faulting them for the decision that they made, absolutely not. It's not an easy process to go through all of this. I think from what I heard from the attorneys on both sides, the number one concern for me is we haven't had any consistency throughout the years from what we've done and that's a problem, so I think, with this I think we should be moving forward, and with this I'll ask the City Manager, I think we need to take a look at this ordinance, 50-230(c), and I think it needs to be revised, so there is more clarity, so that we don't run into this situation again. However we decide to amend it in the future, I just think that something needs to be done immediately. I think adding this roughly \$20 million liability to future taxpayers in the City; I think is problematic to me. I know there is argument that because it's going to be amortized out, its \$1.6 present taxpayers and future, but I see that as a \$20 million tax increase, so that's why I'm taking the position I am. In the same breath I agree with Commissioners Anderson and Cabrera that I think we do need to do something for our employees, I just think with the way this is phrased it concerns me doing it through this vehicle, and I think there are other ways we can do it, and I would ask the rest of the Commission members that we find other ways to do that.

Mayor Cason: Bill.

Vice Mayor Kerdyk: Just very briefly. I do see it as an additional benefit, I concur with the City Attorney and at this point I can't support the Retirement Board's decision.

Mayor Cason: Any of you see any merit in going back with a different question to the State and getting....?

Vice Mayor Kerdyk: I want to make sure we make the right decision. To me it's the right decision because its people's future, there is no doubt about it, a hundred percent. So in my opinion I do see there is merit to going back to it and reasking the question. Right now – let me finish please – right now under the way our City Attorney has laid it out, I support like I said, his decision. I take into consideration what the labor attorney has said, and I take into consideration what the City Attorney has said, but really I'm relying on our City Attorney here, but I do want to make the right decision, I really, really do and I think that if we go back and revisit it one more time from the State I'll feel more comfortable up here.

Commissioner Cabrera: It's December 11th, so unless in a month this thing kicks in one way or the other, so I guess we'll have to take a position on it today and then direct staff, and then the question then beckons who from staff?- and how do we do this?- how do we go and get clarification from the State of Florida on this matter?

Mayor Cason: Well Craig if we decided, and I'll give you my position; my position is like Frank's and Bill's in the sense that based on what I have in front of me, not being a lawyer and an actuary but based on our City Attorney's arguments, we need to make sure that the question of additional benefits is crystal clear because we do want to make the right decision. I happen to have a pension, I happen to have a COLA, it is important that if the mechanism should be triggered and its triggered legally then we have an obligation, but I want to make sure that the State answers the right question so there is no doubt about it, if it is an additional benefit not funded that's clear then I think we can and then we can look – there are other options, option one is amend the ordinance each time a COLA is granted, like we've done in 2003. So there are other things that can be done in the future, but I would like to see this our attorney go back in a more fulsome way whatever way you want to provide and try to get an answer as quick as possible to see whether what we've been saying is in fact the State's position.

Commissioner Anderson: I'd actually like for the City Attorney and the attorney for....to work together on that question please. I just think it would be the fair thing – I don't side with the City....

Vice Mayor Kerdyk: Right, right, I agree, I agree, but you should ...

Commissioner Anderson: No, I'm saying there should be some input as to how the question is phrased.

Vice Mayor Kerdyk: But you should have both sides plus the City Attorney do it, not just one side.

Commissioner Anderson: Well of course, of course.

Mayor Cason: We want a fair question asked....

Commissioner Anderson: Well what did I say?

Vice Mayor Kerdyk: I thought you said the unions only – both sides.

Commissioner Anderson: Absolutely.

City Attorney Leen: I could draft a mutual question based on what I've heard today and I could send it to both sides for the objections.

Vice Mayor Kerdyk: Totally amenable to that.

Commissioner Quesada: Just to be clear Mr. City Attorney, just in case there is any disagreement between the attorneys that Craig that you will have the final decision as to what to send.

Mayor Cason: We have trust in our City Attorney.

Commissioner Anderson: I'm sure he is a very thoughtful individual and he will probably work hard to see that done.

City Attorney Leen: I understand what you want to ask.

Mayor Cason: Do we have a motion then?

Unknown Speaker: Mr. Mayor can I approach?- I'm a retiree and I have a lot of information that I can give to you that will solve some of your problems.

Mayor Cason: Well I think some of the information we want now is we've discussed is we want the State to tell us whether we can do this or not. So I would like to know is someone has a motion?

Commissioner Quesada: So moved based on my statements.

Mayor Cason: Which is to defer this....

Commissioner Quesada: No, no, is to not accept the recommendation of the Board....

Mayor Cason:...And go back to the State.

City Attorney Leen: So let me clarify. So you are basically vacating their decision, you are vacating the decision of the Retirement Board, but you are not making a final decision on the matter at this time. Are you going to have the Pension Board consider this in the first instance again and remand it or....

Commissioner Quesada: My motion is to vacate the Pension Board's decision....

City Attorney Leen: OK.

Commissioner Quesada:...and to make a final decision at this point based on the language that we heard from Mr. Tierney and the attorney from the City.

City Attorney Leen: OK. So you are vacating the decision of the Pension Board, if this motion is approved, you are vacating the decision of the Pension Board, you are asking me to draft a letter to the State that I will show to counsel for both sides, and I can see you saying no, but whether you participate or not....OK, OK, so I will show it to both sides and I will try to take into consideration their comments as neutral as possible...

Commissioner Quesada: Point of clarification.

City Attorney Leen: Yes.

Commissioner Quesada: By vacating the position does that mean January 1st...

City Attorney Leen: It will not go into effect.

Commissioner Quesada: OK.

City Attorney Leen: And then it will come back before you after we get the letter and then for your final decision of the Commission.

Mayor Cason: Second?

Vice Mayor Kerdyk: I'll second it.

Mayor Cason: So we have a motion by Commissioner Quesada seconded by the Vice Mayor.

City Clerk

Commissioner Quesada: Yes

Commissioner Anderson: No

Commissioner Cabrera: No

Vice Mayor Kerdyk: Yes

Mayor Cason: Yes

(Vote: 3-2)

[End: 12:00:20 p.m.]