

City of Coral Gables City Commission Meeting
Agenda Item E-2
October 23, 2007
City Commission Chambers
405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Slesnick Donald D. Slesnick, II

Vice Mayor Maria Anderson

Commissioner Rafael "Ralph" Cabrera, Jr.

Commissioner William H. Kerdyk, Jr.

Commissioner Wayne "Chip" Withers

City Staff

City Manager, David Brown

City Attorney, Elizabeth Hernandez

Assistant City Attorney Alfonsin

City Clerk, Walter J. Foeman

City Clerk Staff, Billy Urquia

Cathy Swanson, Development Director

Public Speaker(s)

George Volsky, Chairman of the Coral Gables Council

Joe Natoli, Sr. Vice President of Business & Finance & CFO, University of Miami

Dr. Perri Lee Roberts, Sr. Associate Dean of Arts and Science, University of Miami

Arva Moore Parks, Historian

Jeffrey Bass, Legal Counsel, University of Miami

Santiago Echemendia, 1441 Brickell Avenue, Suite 1500

Carol Damian, Chair, Cultural Development Board

E-2

Ordinance on First Reading. An Ordinance of the City of Coral Gables Zoning Code creating a chapter to be entitled "Art In Public Places"; providing definitions; establishing policy, establishing an art fund to be used for public art purposes; providing procedures and administration criteria; providing exemptions and waivers; providing for ownership and maintenance; and providing for enforcement for an Art In Public Places program; providing for repeal, providing severability providing for codification thereof, and effective date, and repealing all ordinances inconsistent herewith.

Vice Mayor Kerdyk: Ready Ms. Swanson.

Ms. Swanson: Thank you Vice Mayor. Before I begin my presentation allow me to introduce a few of the Cultural Development Board members that are here today: Dr. Damian is our Chairman, she is not only the Chairman of the Cultural Development Board, she is in charge of the Art and State projects at the Florida International University, and she sits on the Miami-Dade Public Arts Trust; we also have Bobbi Litt, and we thank her for coming; and from a prior Board Joanne Shulte, the prior Board has really been the most active ingredient in moving this Art In Public Places forward in framing what we should include, what we shouldn't include, and how to really raise the bar, so that if we do a public art program, we do one that defines and re-enforces our City. But before I talk about public art, I'd like to go through some slides that we have, just to wet the appetite and the expectation of the Commission. Several cities define themselves by picking very choice pieces; sometimes this is called the raccoon, but it's really untitled, it's a Picasso in the Federal Square in Chicago. Philadelphia has over five hundred pieces of public art; one is the close pin, forty-five high, and the other Ben Franklin their proud legendary figure. Chicago again, a Calder statue; Miami in 1973 began the Miami-Dade County Art in Public Places program, this is around the Metrorail. We also though, as a part of our Art in Public Places, it's not just about what's outside, it's what can be incorporated inside, provided the public has free access to it. One is a ceiling, it's actually done by Chihuly in the Norton Museum of Art, and another is an outdoor mosaic. Just examples of how people have architects and developers have incorporated art in public places on the actual façade of their building which would be allowed in this program; and it doesn't need to be just the outside, it can be functional features of buildings; here's a wheelchair ramp that was designed by an artist, not an architect and incorporated in an art in public places program. The airport – Miami Airport; a façade in a New York public school. Other examples of how architecture and art meet together in an art in public places solution. This is actually a ceiling in a public school in New York and underneath it is engraved, "The Sky's the Limit". What a great example of art in public places right here in your own City, where a sculpture designed and incorporated in the WPA Building where the museum will be, a significant identifying piece. Another example just right here in Coral Gables in the Public Library – the Kay Pancoast Mural; the Library Advisory Board is actually doing a brochure that celebrates that; and then over on the San Francisco example, this is actually a parking garage, and they have an artist commissioned to design a mural within that parking garage. Some examples, its not just in structures, but it can be on the street; the manhole cover; the stairs; the mosaic; examples in Los Angeles and how they have incorporated their Art in Public Places clearly free access, and clearly essential in the community fabric. Overtown on the sidewalk-scape, also the Tampa – Tampa has a very active Art in Public Places program. As a part of this we looked at a lot of cities; what did they do that had public piece to it?- what was the private sector to it?- what worked?- what didn't work?- and how we could develop our own. This is actually a story piece in Britain where you go down and you see the whole history of the community. Here's an example of texture in Art in Public Places; each of the banners was done by a different artist and then the collection after its done hanging is on permanent public exhibit. This is an example of New York and how they can incorporate public art into everyday furnishings. West Palm Beach. Scottsdale – we've used Scottsdale in a couple of pictures here; some of it is their public piece, and others are their private sector piece. In the 1980's they

started incorporating private development in their Art in Public Places program; this is just a bus – a bus bench area; and there is a close-up of the cactus. A public housing project in New York where Abraham Lincoln has a small child seated on his lap. Some other examples within Florida. The City Hall in Tempe. Pao Alto in San Diego; San Diego has a fabulous program; we have their Art Master Plan; we studied their ordinance; and we are thinking of them right now with all of the fires and trauma that they are going through. New York, Miami; another example in New York. Palm Dessert is another very interesting example that has both public sector and private sector participation in the Art in Public Places program. The Palm Dessert even includes single family homes; ours exempt single family homes and projects over a million dollars. They charge them, they just charge a smaller fee; its one quarter of one percent for single family homes, and they participate – every development participates in the Art in Public Places program. Washington D.C. over to your right you see the commuter on wheels – roller blades. Minneapolis; another Philadelphia example; Salt Lake City; Scottsdale; and we've shown you some examples, and we all can relate to the person on the left; some private sector – private development – private participation in Art in Public Places programs as close as Coral Springs, that's all done in copper; it is a beautiful artistic piece in a private development; its actually an office development; they have an obligatory Art in Public Places program for private development. These are outside of office plazas done by the private sector as a part of the Scottsdale requirement; and you'll recognize the one over to the right; we had a similar sculpture with Namingha in the Ponce Circle Park a while back. Scottsdale – this is actually a retail mall; and the fountain reminds us that water can also be an art in public place. These are – one is a retail mall and one is an office building in Scottsdale. Marshall Field overpass – you all looked at a different overpass this morning with the University of Miami – the connection to the University of Miami; here's a private building incorporated as a part of their public art an overpass connector. We also looked at what happens with art on campus. This is an example of a pathway that is done at the University of California, San Diego. M.I.T. has been listed as one of the top ten Art in Public Places Universities, a private University that choose to participate and tax itself one point five percent (1.5%) on all of its construction, and that one point five percent goes to public art with their rationale being that the intellect operates better in a creative environment. University of Wisconsin, that's actually Randall Stadium, the football stadium, but the sculpture is a part of their program. Another example at M.I.T. and Duquesne; University of California – this is a bear over to the left; University of Utah; University of Akron that is actually a Chihuly piece, it is not glass, I believe its polymer; another example with art on campus. And then our ordinance we will go into it in detail, is a little different than most of them. While we are suggesting that the private sector participate, the public sector participate; but the public sector monies that we charge ourselves one percent (1%) for all of the construction – municipal construction projects, that we really use that as a fund in conjunction with the Historic Preservation Board to restore our civic art that was a defining piece in the 1920's. So we just gave you some of your neighborhood examples of restoration that would qualify under the Art in Public Places Ordinance; the Historic Preservation Board would submit to you annually a recommended list; you all would vote on that in terms of restoration projects and the funding would come from the Historic – the municipal projects. So that talks a little bit about where we are in terms of the visual expectation; and now if you would allow me,

I'd like to review a little bit about the background and what our ordinance is suggesting. You have in your packet the ordinance, the draft guidelines, a memorandum from the City Manager, and also a memorandum from the City Attorney's Office; you also have a legislative history of when we came on First Reading. We came first in 2005; we came back in 2006; we spoke with Historic Preservation Board; we really evolved this Art in Public Places program to a level that we are ready to present to you today on First Reading. We did this because the City Manager, and in turn the City Commission wanted to formalize our Art in Public Places process. We had been informal participants in the County's program, and this sets aside a specific ordinance that is to be followed and the City would have an Art in Public Places for the public sector, and then an Art in Public Places for the private sector. Now before this ordinance – before the City would actually be able to collect money on this ordinance, the City would have to establish an Art Master Plan. You would – the Cultural Board would supervise the development; you and the various involved Boards would review it and comment on it, and ultimately it would be our hope that the Commission accept the Master Plan; and I'm just passing around San Diego's plan because it helps you understand what that Master Plan would entail. It would involve placement; it would involve a theme; what type of art are we looking for? This is in the public realm area. It would also provide standards for what the private sector would have to follow; and we are going to go over some of that criteria so that you understand if you were in the public what you would be responsible for; if you were in the private what you would be responsible for, and then also what waivers and credits exist as a part of the first proposal. Now I talk about waivers – the public sector is – the municipal is responsible for setting aside one percent (1%) of its construction cost into this historic public art fund; the fund would be managed, recommended by the Historic Preservation Board and staff would input – obviously from the Manager, and then it would come through the Manager's Office up to you in order to disburse and prioritize funds. The second set is really from the private sector, or as we defined it in the ordinance all non municipal projects, excluding single family homes, and projects that are one million dollars (\$1,000,000) or more. At Commissioner Withers suggestion, we've included additional language that if you are already participating in the County program, or you are already contributing to a formal public art program, you don't have to be double taxed because it was never our intent. So there is added clarification that the City Attorney's Office has said, if you are in the County's program you do not have to participate in this. Now, in terms of waivers we looked at what other publicly essential programs does the Commission and the City participate in; and we looked at historic preservation; and public lands or open space. So if because its in an art in lieu of, if you choose rather than to participate in the Art in Public Places program for a dollar for dollar, you could instead choose to purchase through the public Parks and Recreation Master Plan, a defined piece of property with an MAI appraised value, that is equal to what the City already has earmarked for its projects, and what you already would be paying in Art in Public Places. So you can take your requirement and transfer it to open space. You could also take your requirement and transfer it to buying a piece of property; designating it; restoring it; and maintaining it in perpetuity of an equal value to what your Art in Public Places contribution would have been. So those are two waivers that you are allowed to pursue as a part of the project. Now in the ordinance its very clear on defining what constitute aggregate project value; what are the strategies; what are the

requirements; what is the process, so that perhaps – I'll use two examples – I'll use the Palace as an example; a ninety seven million dollar project; so nine hundred and seventy thousand dollars, if that is the project value as they go through permitting, and if the Art Master Plan is accepted and available prior to, so the ordinance is in effect; nine hundred and seventy thousand dollars for historic restoration. The Historic Preservation Board has defined a list of priorities; they have worked with Public Works and obviously the Historic Preservation office to define cost and staging; they come to you and then you all approve or revise their recommendations. So that is the municipal project through that historic restoration program. Allen Morris, 2801 Ponce de Leon Boulevard; they will be coming in as a part of the Old Spanish Village. This Commission allowed them at their request to change from what would be a high-rise luxury residential, to high-rise luxury for lease office space. They would as a percentage of their funds come and meet with the Cultural Development Board, the Arts Advisory Panel, and we have included as our recommendation, the City Architect, as a part of that Arts Advisory Panel; and they would discuss how they would see investing that money, either by providing art or providing dollars. They could choose to have that art across the street in Ponce Circle Park working with the City; they could choose to incorporate that art into their architecture; they could choose to have the art in a physical sculpture fountain, provided it goes through all of that criteria, and provided it is open to the public. There is no fee charge; it's not the seventh floor Board Room; and then they would also need to show how it remains permanent in the project. So it has to be permanent; it has to be public; and it has to be of a quality that really reflects not only Coral Gables, but obviously the Allen Morris project. And we have had very deliberate discussions with them. We've had discussions, in fact we invited seven thousand people, any property owner that could have, would have been affected by this ordinance received a post card inviting them to the Police Department. We are thankful all seven thousand didn't come, but we did review – we also noticed it in the paper – public noticing, so that people could come, comment on it, and we could take their comments into consideration as a Cultural Development Board. We've had separate meetings also with the University of Miami. I have met individually with Sarah Artecona and Janet Gavarrete. They have spoken and presented specifically to our Board with a detailed PowerPoint. You will see in the September 6th minutes a summary of that PowerPoint and the Board discussion; and then they came again at the last meeting to speak to the Board as well. So we've looked at who are the stakeholders; who are the groups that would be involved; how can we get them to comment on it? – they have provided comments; the Board has considered those comments; it hasn't always incorporated them, but professionally considered them; and then now we have before you the actual ordinance. Now I don't know if our City Attorney would like to add more comments to it, or if it's better for me to just answer questions from the City Commission as this point.

Vice Mayor Kerdyk: I have a question. Most of the people in the audience here, respectfully, other than our Committee members are here with the University of Miami. You mentioned in your presentation that the Board had commented on this and matter of fact addressed this twice, University of Miami; could you please elaborate and maybe paraphrase exactly what came out of those Board discussions, and then furthermore, maybe you can elaborate on what exactly transpired with your discussions directly with

the University of Miami – where we stand on the issue, because of course that's something that we are going to be addressing in a few minutes.

Ms. Swanson: Absolutely. Well first and foremost the Board recognizes and our department recognizes the University is a very viable part of our City, both educationally and culturally. We recognize that the Lowe Art Museum is a fabulous museum, for not only Coral Gables, but for the larger public. We know the School of Music is top-ranked, if not just broadly nationally ranked; that the Ring Theatre; the theatre program, all of the different events that come to the University and the public is invited into participate. The Lowe Art Museum, in our professional opinion, can't count toward Art in Public Places because it's an admission fee. The music.....

Vice Mayor Kerdyk: Wait, wait, let me just digress here for a second – that's in our ordinance – is that in ordinance throughout Dade County – is that part of Dade County's ordinance?

Ms. Swanson: We exclude – different cities handle it different way. You'll see sometimes museums are allowed provided it's a public sculpture garden; you know, it depends on how each city chooses to handle it. The music program – well the Board will be granting forty two point forty-five recommendations to you Thursday on music and other programs. We understand how important music is, and how so much of it emanates from the University, but that's a programmatic experience, it's not a physical, permanent experience. So we cannot count that towards Art in Public Places program; and the same is for theatre. What we could look at is the whole sculpture garden that the University has created and is continuing to build on; and the University in my discussions with them, I actually suggested do a map; show where that is and invite the public to come and experience it; and I see the Mayor has a junior one, and I have a prototype of one; and we'll pass that out. I will say though that this Art in Public Places program, whether it is a contribution, or if it's an art in lieu of that contribution, permanent; they have to own it, so we can't look at things that are on loan, or that are a part of somebody else's collection. Whether we look at how you do that in a restrictive covenant or -- we can only look at those that are going to be permanent that are going to be around moving forward. But we are very excited about that sculpture garden, and if we are going to think through this, the Art in Public Places program can be an art in lieu of fee. If you are going to just look at the art, we would like to have some additional criteria developed, not just donors, willing donors, and then the art is there. So there could be a standard that could be jointly established between the University and the City, as to what kind of art could qualify for this concept; but if you would say on that just rough map, so I can keep it easy without my calculator, that each of those, let's say twenty four sculptures were two hundred thousand dollars each; could be more could be less; the process would require a certified appraisal by a professional arts – by an arts professional. So whatever it is, it is, I'm keeping it easy; I'm not going to debate what it's worth and what it's not; but if it was two hundred thousand, then what you are looking at there is a potential four point eight million dollar (\$4.8M) credit for future development, or four hundred and eighty million dollars (\$480M). So we could work with the University as a part of this process because this allows crediting, and establish – OK University only look at what's owned; let's

work together to see who we collectively view as what's credible in terms of appraising the real value of it; and then as you go through the process and as those credits are used up, once they are used up, that's when you need to come in with additional active acquisition. Can the donors, but it needs to be a certain level in order to accept that and have it qualified, and needs to come in as part of the process. So I don't look at this as a major obstacle or hurdling point; I deliberately spent time looking at private universities that are an active part of their own Art in Public Places program, or as a part of the community. I called the University of Florida and I called Gainesville, but Gainesville does not have University of Florida in their Art in Public Places program because the University of Florida already has its own as a part of the art in State. But we looked at what was happening in Florida, and as important, what's happening at those really high level universities that our university is or is going to become; and that's why we focused on the M.I.T. program with the one point five percent (1.5%). I called the Art in Public Places Coordinator for Cambridge, they are in very active discussions with Harvard also, to build in and incorporate; they have an informal program right now; the Art in Public Places Coordinator told us the informal programs don't work because it doesn't set a theme; it doesn't set a standard; its only when the money is available; its only when donors are available. So they strongly encouraged us to formalize the process. So this ordinance attempts to accomplish all of that in terms of credit, in terms of dialogue, in terms of bringing in the Arts Advisory Panel, so that they know much more than I do what constitutes great art for a great city; and then at the end of the day it's the Commission's decision. The Commission has the right to – there are waivers or reduction provisions in here; the Commission has the right to select art, or throw it back; we are not trying to – we are trying to create great art, but we are not trying to create great controversy. So this ordinance as a First Reading attempts to accomplish everything that was intended in all of the different discussions that we've had with the different groups, and still move forward a project that is credible and defining for the City.

Mayor Slesnick: We are going to go ahead and move to public comment now.

Commissioner Cabrera: Nice presentation, very good.

Mayor Slesnick: Ms. Swanson, is your Chair intending to speak?

Ms. Swanson: She is available for questions, but we are not requiring her to come and speak. It has been our responsibility to help manage this process.

Mayor Slesnick: Well I would like to recognize Carol Damian, Chair, Bobbi Litt, member, are you Vice Chair now?

Ms. Swanson: Yes, she is.

Mayor Slesnick: Bobbi Litt, Vice Chair of our Committee and Joanne Shulte, a long time member of the Committee, past member of the Committee, past Chair. Term limited out.

Commissioner Anderson: That happens.

Mayor Slesnick: Term limited out.

Commissioner Cabrera: But she can come back, she can come back one year later.

Ms. Swanson: Part of this is also developing an Arts Advisory Panel, so you may see them coming back in a different form.

Commissioner Cabrera: And she can come back one year later, by the way, I wasn't close to the microphone when I said this, but very nice presentation, thank you.

Commissioner Anderson: Can I have a quick question?

Mayor Slesnick: Yes, go ahead.

Commissioner Anderson: In the process of, this crediting process of choosing art, there is a whole thing you have to go through -- the Board of Architects, through the Cultural Development Board, and the Arts Advisory Panel; since I don't have a visualization of how it could be, I'm just going to state what I would wish it would be; something that kind of similar to our Preliminary Review Committee where it happens all in one spot. That way the process happens, but it doesn't add another layer of beauracratic process that hampers people from wanting to do this. So if we could figure out a way to do it in a one-stop-shop fashion that would be great.

Ms. Swanson: In all of their different dialogues and opinions, all at once so that it builds a better process; the City Architect commenting; the Arts Advisory; the architect and the developer all are a part of that; and then when we are ready we will bring it up to the City Commission for your review.

Commissioner Anderson: I'm just asking for that process to be contained, so it won't be one, two, three times, that is happens in one spot.

Ms. Swanson: We'll make sure.

Commissioner Anderson: It was a thought. Thank you.

Mayor Slesnick: Thank you. Mr. George Volsky.

Mr. Volsky: For a change, I speak in favor of this ordinance, although not in the form which it is here. One thing which is missing from this discussion – there was an impact study I understand; I haven't seen it, Ms. Swanson?

Ms. Swanson: The references to the impact fee ordinance which you all approved last time, or two times ago, Commissioner Withers wanted to make sure that before we brought this Art in Public Places program you all had a fee established for your impact fees. Those have been established, this is why we are bringing it back now.

Mr. Volsky: What fee? The impact study as I understand.....

Mayor Slesnick: Wait, wait, this is not for conversation between you and Ms. Swanson. This is to present to the Commission. Ms. Swanson, thank you. Tell us what you want to tell us, George, that's all, it's your turn.

Mr. Volsky: Don, I'm in a way, I haven't participated in drafting this, but whomever drafted appropriated my language. As you know, I am the principal author of Art in Public Places of the County. It's entirely different from what this proposes. The key – the key criteria, which we established twenty-five – thirty years ago, I hear, I don't know if I should charge the Commission for using my words in it, but that's up to you. As things are, they are many, many improprieties here, and I want to point out something very important; someone I think, Mr. Cabrera for it to go out in this, I will not go as far as that, but I will refer to the Bible and know the section about casting the first stone. In effect what you do here, you are asking private owners of properties to pay one percent (1%) toward public art in public places. On the other hand this Commission of this City is in violation, in violation of the County Art in Public Places – has been for years. Not a single amount has been set aside for Art in Public Places of municipal buildings in this City; and you know there was one the Museum Garage forty million or fifty million, I don't know how much, is about two hundred thousand dollars that should be set aside in the budget; this is the law. The fact that the City – that the County doesn't prosecute this, if you can use this word, that's immaterial, this has to be done. I have spoken to the City, I think the Mayor knows about this; to the City Attorney she said, well we don't – I spoke to the County Attorney we don't apply. It does apply, in fact I have e-mailed; I think you've seen it from Mrs. Masting, who says that the City is in violation; it applies to this. If there is some document there, and I think Mr. Brown said the City must use spend two point five million (\$2.5M) on public grant. Including public grant is the citizens, which Mr. Brown said the City spent is the sculpture outside and one that [inaudible]... and I have donated to the City, which shouldn't be there. Anyhow, some of the things, I understand that some of the – this draft will go up to Planning and Zoning Board, is it true?

Assistant City Attorney Alfonsin: Yes, that's correct.

Mr. Volsky: When?

Assistant City Attorney Alfonsin: November 14th.

Mr. Volsky: November 14th.

Assistant City Attorney Alfonsin: Yes.

Mr. Volsky: November 14th and then it comes back to this thing. So I would like to speak to this because there are a number of things, the Mayor didn't know four minutes or something – some things which are absolutely shouldn't be here because it's just ridiculous. I tell you on page two, I know you've read it, I read very carefully its maybe

legal language; it says, and I am reading: Whereas it is the purpose of the City of Coral Gables Art in Public Places Program to promote the health, safety, general welfare and quality of life – health, is this Tylenol or something?- this shouldn't be here, it just demeans the program. And again the key element in it are my – and I give you this as a present.

Mayor Slesnick: Thank you.

Mr. Volsky: What I want to say is that the City ought to move now – I'm finishing, Mayor – the City should comply with the County Ordinance because I think its smacks – what is the word, "hutzpah" that we are asking people to give money to us who are not doing what we should be doing under the law; and the law says clearly that Art in Public Places of the County applies to public buildings. Last point – I think the University of Miami should be excluded from this because they have their own program and they have art all over, we don't, and hopefully we will, but another thing. Ms. Swanson has been comparing our City to San Diego, Chicago, London, so on; let's have a sense of propriety, we are forty three-forty four thousand people, how many – how much money can we get from this? If there is a building say of ten million dollars, that a hundred thousand, wouldn't they more likely to do a mural in the entrance; not one but three Boards there are so many entities in this. There are three different Boards in charge of this. Another thing which I think the Attorney did not know that the County's Art in Public Places program has been more or less gutted, so its Cultural Department is in charge of it. So I would like to speak to the Board and go very slowly, we have plenty of time with all the details, because there are many problems in it, which I think you don't want to pass an ordinance which says in effect that this is some kind of a remedy – health remedy. This is very serious and hopefully you will proceed.

Mayor Slesnick: Thank you, George, although the term health, wealth and public welfare is a term of our use and most public documents for the power of our City to act. Mr. Joe Natoli, 10 Edgewater Drive, Senior Vice President for the University of Miami.

Mr. Natoli: Thank you. Good morning Mr. Mayor, Commissioners. Thank you all very much; the purpose of my appearance is to talk a little bit about the University of Miami's Public Arts Program, and ask you to amend the proposed ordinance to exempt the University of Miami. There are four of us that are going to be speaking, but we are going to be very brief, I promise. Let me introduce some of the other folks that are here with me today; Larry Marbert, who is new Vice President of Real Estate, it's the first time that you are seeing Larry, I'm sure you will see him again in the future; Dr. Perri Lee Roberts who will be speaking after me; Janet Gavarrete who you know well; Rudy Fernandez and Irma Abella, and of course our legal counsel Mr. Jeffrey Bass. Today we want to present you with an overview of our campus public art program. The presentation has previously been recently given to the Cultural Development Board as Cathy Swanson has mentioned, and they will be touring our campus next week. Some of you have toured the campus and others have taken the time to look at information that we've shared with you, and we appreciate that. As our presentation will show, we are already doing many of the things that you seek to do throughout Coral Gables; between our Sculpture Program and

the Art Master Plan that was designed by Lizz Plater-Zyberk and Brian Dursum; the Lowe Art Museum, the Beaux Arts Festival, and we do a lot of things with respect to cultural arts. Our basic position is that the City should amend the ordinance in a way that recognizes our existing collections and all that we are already doing, and we believe that the best and most efficient way to do that is to craft an amendment that exempts the University for our qualifying collections; and what I'd like to do is make that as easy as I can on all of us. Cathy mentioned the value of the twenty-eight sculptures that we have on campus in assessing the value; but I stand before you ready to openly Lowe Art Museum and its hundred plus million dollars worth of art, make that available for free to all Coral Gables residents, if the Commission finds its way to exempt us from this ordinance or try to credit that takes into consideration that offer. If so, that should make the math really pretty easy on this. With that I'm going to turn you over to Dr. Perri Lee Roberts, who is the Senior Associate Dean of Arts and Science, and a noted arts expert who will very briefly walk you through our campus art collection. Then Arva Parks Macabe who is one of our Trustees has asked to address you, and Jeff Bass will close for us.

Commissioner Cabrera: Mr. Natoli before you sit down though, and your colleagues come up here. Is the position you all take of financially driven position, is this what's driving you all to take – because the reality is that throughout this entire process, the University has had just an incredible amount of representation, including here you are today; quite candidly, I was expecting President Shalala to be here today.

Mr. Natoli: She's in Washington today.

Commissioner Cabrera: OK. You all have taken a real strong position in this whole thing. I really need to better understand. I know all the great things you do, and you know how I feel about the University; you and I, I think we have a really great working relationship; and every time you call I'm always excited about chatting with you; and in fact before I forget the last conversation we had about Miller Drive, you took care of it the very next day. So I can't thank you enough for handling that signage issue. But I need to better understand if you're motivated over the cost that would be allocated toward future construction, or if this is really about, you know, the fact that you all feel.....

Mayor Slesnick: Wait, wait a minute – you are telling me that there is actually a group in town that can tackle signs in one day.

Commissioner Cabrera: I'll tell you this, I'm going to defer for a moment. For about two and-a-half months my children kept telling me as I took them to school about the sign that was down at the University of Miami; a big, big sign, a coral sign on Miller Road; and Mr. Natoli called me to chat a little bit conceptually about art in public places; and as we were hanging up with each other I said, oh and by the way there's this big sign that's been down for about two and-a-half months, I never noticed it but my kids see it everyday. The next day the sign was back up. Thank you.

Mayor Slesnick: I hope our City Manager is taking notes.

Mr. Natoli: It was actually that same day, but you didn't see it till the next day.

Commissioner Cabrera: I didn't see it till the next day. But all kidding aside, Joe you impressed me so much by doing that. So thank you and thank everyone at the University.

Mr. Natoli: OK. In a nutshell our position is we do a lot already, and we'd like credit for what we do already and what we plan on doing in the future. That said we are not a one-time builder, as you know we have a lot of plans to build our campus, not to grow our student count on the Coral Gables campus, but to build more facilities on our campus; and it would be an enormous additional cost to us, and frankly we would have to find ways to reduce other things that we do. So that's really what we are asking for; we think that we fully embrace having the past and will even more so in the future the spirit of what you are trying to accomplish, and we'd like that.....

Commissioner Cabrera: And I appreciate that, and I'm all ears when it comes to the presentation you are going to make and then the only thing I would say back to you all, think of the taxes that you are saving, think of the taxes you are saving every time you build one of those big buildings or schools or whatever it is. That's my rebuttal.

Dr. Roberts: Good afternoon, we have a presentation that will magically appear, and you'll forgive me, I can't control it, so I'm going to have to ask them to say "next". First of all I am an art historian and also serve as an adjunct curator for the Lowe Art Museum, and I've toured at least two of you on campus of our sculpture collection, and the presentation I'm going to go through very quickly and concentrate on our current Art in Public Places project, which is ongoing for six years since the arrival of Donna Shalala – next slide please. This is simply to reiterate the goals of the ordinance and to emphasize that the University is currently meeting all of those goals – next slide please. We can keep going; all of the photographs that you are going to see are of the sculptured collection. I'd like to focus here on this particular ordinance or goal of the ordinance, to enrich the public environment for citizens and visitors of the City through the incorporation of the visual arts. As had already been recognized, we are a cultural center in Coral Gables, and we are also the premiere collector of art in the City of Coral Gables, and if you haven't been to campus to see our sculptured collection it is small but growing. In the course of six years we put twenty-eight large scale sculptures on our campus, and in the corner of the slide, you see just four representative works. In choosing the sculptures, many of which have been donated to us, and are not on loan, the majority of the twenty-eight in place are not on loan, but have been donated, we have had a sculptured committee that has vetted this sculpture; we have not accepted simply anything that's been given to us; and we have purposely looked for diverse artists; men, women, international, in fact these sculptures that you are seeing on the screen now to the upper left is sculptured by an Afro-Cuban artist out of marble; to the right is an American and German team of sculptures out of steel; to the lower right out of aluminum by a Haitian artist; and to the lower left out of bronze by a Guatemalan artist. These sculptures have been placed throughout the campus in front of classroom buildings, administrative buildings, and also in front of the student residences, and even the wellness center. If you

have the opportunity to visit, you'll see that they are sited, in not only to protect them from the elements, but also as appropriate to the site. For example, outside of the wellness center we have a sculpture that looks like a reclining figure who is exercising. The intention is to fill the campus with sculpture; we've picked out seventy-two sights – next slide. We already have in place a system for maintaining the sculptures – I should warn you its very, very, expensive to keep sculpture outdoors in South Florida, we've already spent quite a lot of money to constantly survey our sculptures that are in place, and restoring them and repainting them. We have contracted with a well known conservator who visits periodically to review these sculptures, and our intention is as, I said, to expand the sculpture collection. The process for choosing, for installing, is a collaborative one; we have a committee that is appointed by the President. It includes a representative from the School of Architecture; the head of the Committee is the Director of the Lowe Art Museum; we also have a member from the Art Department, and when the Art in Public Places Board of Coral Gables is formed, we will invite a member of that Committee to be an ex-officio member on our Committee to aid us and to hopefully collaborate with us – next slide please; and next after that, please. This is just an example of the kind of educational or community outreach we have in mind. We have already in draft stage a map of the campus that shows where the sculpture will be located, that's going to be available at the Lowe Art Museum and also on our website, so that you can download it. We have future plans for having a pod-cast that you can download from our website so that you could use your ipod and walk through the campus, and view the sculpture. In addition, any events that are related to our public sculpture collection will also appear on our website. The Smithsonian Institution maintains a national registry of sculpture by American artists that are accessible to the public, and our intention is to register our sculptures that are by American artists on that site, so that we'd bring the attention of the larger community – next please – next. As you know our campus is open 24/7. We welcome people to come visit the sculpture, and particularly at certain times of year like Beaux Arts Festival, which is now in its fifty-seventh year, our campus is flooded with visitors, and so our sculpture is very, very public; we don't keep count of how many people walk pass it on a daily basis, but it is a wide open garden setting that we will continue to keep open to the public – next slide please. This is to remind you of the scope of our campus of how large it is, and the orange dots on that map are currently where sculpture is located, but we have picked out seventy-two additional sites. They were carefully chosen by our Dean of Architecture who is an expert in urban planning, and the Director of the Lowe Art Museum – next slide please. Our intention is the same as yours, and that is to embellish, increase, advance, the civic pride of our community. We are very proud of our public sculpture collection; we want to do more to advertise it, to welcome people to the campus; we've just now started giving tours; I said that if the Dean will let me out, I would be happy to do tours on a daily basis to whomever would like to come to the campus; and I will repeat that over and over again. We have not been perhaps as active in publicizing what we have on the campus, but we will certainly continue to do so – next slide please. This is just to remind you of – next – of all the things that we are proud of on campus. Again, I'd like to repeat what our request is, our request is to be exempted from the proposed ordinance in recognition of our current public sculpture program, and in recognition of the fact that we serve as the premiere cultural institution in the City; and a document that has not yet been shared with the

Cultural Board is our two-page statement about our public sculpture program that describes exactly how pieces are chosen, the maintenance program, and so on and so forth. So we will make this available to the City Council. Thank you.

Commissioner Cabrera: You meant City Commission.

Dr. Roberts: City Commission.

Commissioner Cabrera: I have a quick question for you or comment. I listened to your discussion regarding your committee that was formed by the President.

Dr. Roberts: Yes.

Commissioner Cabrera: And then your offer to invite a member of a new committee that could possibly be formed here by the City; you know the only problem I have with that?- the ex-officio. If we were to move in that direction it would need to be a voting member; that sticks in my craw, if we were to move it forward, just thought I'll tell you, if for no other reason to give you feedback.

Dr. Roberts: Thank you for that feedback; I will pass that along; it's just that the committee is appointed by the President.

Commissioner Cabrera: I understand, and the President might want to consider allowing that person – the President would have all of the freedom and rights to appoint, but I really would have a problem with an ex-officio membership, because you know what it does?- they don't have any voting power, and the reality is that we have a University of Miami Community Relations Board where University staff are not ex-officio's; they get to vote on each and every item that comes before here, so I thought that it would be good for both sides to create.....

Dr. Roberts: It's a very good suggestion, I'll be happy to take it back. Thank you.

Commissioner Cabrera: ...So think about it.

Commissioner Anderson: Thank you very much.

Mayor Slesnick: Arva Moore Parks.

Ms. Parks: Thank you; I'll be very brief. I just can't help to stop and think about the very close connection between the City of Coral Gables and the University of Miami through its founder George Merrick, and I have to mention his name whenever I speak. But I think the other thing that's very important to realize is that the very first art museum in all of Dade County began at the University of Miami, and that's the Lowes in 1952, and they have been collecting ever since. After Hurricane Andrew, Tab Foote began enhancing the University campus with landscaping, and those of us who attended in the sixties ('60's) like I did when it was a scruffy place, its marvelous today to see what its really looking

like; and after Donna Shalala arrived, the change in the public sculpture, which I need to remind you occurred before your ordinance, I think its been just a remarkable change, and I know that her plans are to continue this. I think back to the University and how far it's come since its founding; and in the 1930's the Art Department had two people in it, who ran it and taught everyone; it was Denman Fink and Richard Merrick. So we look at the connection between the City of Coral Gables and the artist who designed Coral Gables, I think we have this amazing connection that we need to pay particular attention to. Thank you.

Mayor Slesnick: Thank you Arva; and Arva thank you again for all that you continue to do for the City too, and your work with all our various committees and boards. Thank you. And Jeff Bass, I guess, is to close for the University.

Commissioner Anderson: And hometown hero.

Mr. Bass: Thank you very much, thank you; I'll use that point as an invitation to.....

Mayor Slesnick: For those watching who don't necessarily read the Herald everyday, Jeff Bass did help, in fact saved an individual who was about to drown, and had been badly injured by a run-away boat, and Jeff put himself at great risk to save this individual. Jeff we think that's the kind of citizenship that we admire.

Mr. Bass: Thank you, thank you very much. Obviously a reminder if you haven't taken a CRP refresher course, put it on your list before your New Years resolution to do so, because it will make all the difference. Anyway, thank you so much for this opportunity to address you. I want to focus very carefully on what I hope to be a pragmatic solution to a problem which we can readily identify; and that is, the ordinance as drafted in the definitional section excludes museums from its definition of public art. It defines public art, and then there is a little comma, and it says other than museums, and then there is another comma; so museum art is excluded from the definition of public art. We think that the policy decision before the Commission today should be why, and we would hope that we have given you ample substantial competent evidence to show about all the public art that we have on our campus, a great majority of it in our museum; and we believe that this Commission should include museum art, provided that it is of a qualifying quality, provided that it is open to the public under reasonable terms and conditions as ours is; and if there were any hang-up whatsoever about the fact that the Lowe Art Museum charges an admission fee, you heard Mr. Natoli offer on behalf of the University to waive that fee for Coral Gables citizens, eliminating any discussion whatsoever as to whether or not that art is public. So we would ask that you amend the ordinance in the definitional section, to delete, strike out that other than museum language, so its clear that if you have a qualifying collection in a museum, you qualify and do not need to meet any new obligations, and that you have a companion amendment to your ordinance that grants a credit, or exemption recognizing the valuation of that qualifying collection in that museum. I've taken the liberty of drafting actual language, I can circulate it to you, I've provided it previously to your City Attorney, but the policy decision is for you to make, as to whether you are going to include or exclude that, and

we think that you should absolutely include; it is there, and it is a wonderful asset for the community. I'm here to answer any question you have, and we would ask for your favorable consideration of that change to the ordinance. Thank you.

Commissioner Anderson: May I ask a quick question? Are there other speakers? OK.

Mayor Slesnick: There is not for the University; this is the last speaker for the University.

Commissioner Anderson: What is your vision for credit? You said credit or exemption.

Mr. Bass: Well, I think the easiest thing would be exemption, that if you had a collection that qualifies, and I drafted the language; you have a qualifying collection that exceeds a hundred million dollars, open to the public, and permanently dedicated exhibition space, or gallery space, greater than twenty five thousand square feet, so this is the real deal, this is not like a lobby for a private den or study where somebody has really expensive art. If you have a qualifying collection in excess of one hundred million dollars, a permanent dedicated exhibition gallery or museum space, open to the public, you should be exempt from any and all obligations under this ordinance; and I proffer it that way as narrowly as possible to avoid a lot of other people saying, well, I've got a really expensive piece of art from my grandpa, I should be exempt. I don't think at all that's what the ordinance is trying to accomplish. Our scale essentially of being a public museum, I think, necessitates or justifies that exemption.

Assistant City Attorney Alfonsin: And if I may address Mr. Bass' request, the problem with exempting the University of Miami or any other development at this time is very premature because there are projects...

Commissioner Cabrera: Very what?

Assistant City Attorney Alfonsin: Very premature..... projects that are going to be developed in twenty years at the University of Miami, and this very distinguished faculty and administrative personnel that are here today and spoke today, may not be there twenty-thirty-fifty years from now when new projects are coming in, and a new President at the University may have a different perspective as to art, and whether they want art on campus.

Vice Mayor Kerdyk: But the question is now, that has been proffered to open the Lowes that they would not necessarily ask for an exemption, but they also would ask for a credit for that; now that's a whole different situation, is that correct?

Assistant City Attorney Alfonsin: But that would be a credit at the time of the project being developed at the time of permitting, because the Lowe Art Museum could be closed five years from now; twenty years from now there could be a project worth two hundred and fifty million dollars going up at the University of Miami, and the Lowe Art Museum may no longer be there, so the credit – absolutely credit is acceptable from a legal standpoint at the time of permitting.

Vice Mayor Kerdyk: Let me just ask Mr. Bass, how would you answer that?

Mr. Bass: I would absolutely agree that you should be able to verify the time of building permit application that we have a qualifying collection, but I think you need to amend the legislation provides for that; I think that's a responsible piece of legislation where nobody wants to speculate about where we might be twenty years out, but if we are twenty years out and we pull a building permit we should be able to show you that our.....

Vice Mayor Kerdyk: The same thing should be said, we should commend the President for being so aggressive with this as far as art and sculptures, but the next President may not have the same sentiment, and this thing might change; so we have to look from the City's perspective to make sure that we are getting what we want.

Mr. Bass: But you can't buy the future....[inaudible]

Vice Mayor Kerdyk: You guys are all nice guys but I don't know what happens five years from now.

Commissioner Anderson: I think there are conditions that can be placed on it that quality; I mean that's one of the discussions we had.

Mayor Slesnick: Since we seem to be coming to a close of the University of Miami piece let me add my thoughts and that is, I would be, and I've told the City Attorney this and the City Manager this, I would be willing to exempt the University. I think that it's appropriate, it's proper; the University is a totally different animal than any other development project of the City of Coral Gables. It is part of our being; it is part of part of the creation of this City; the University goes back to the very beginning of us being a place on the map, and I think that the program that they have is aggressive and good now. The thing that I would disagree with, and this is interesting, because I would exempt them for totally different reasons; I don't think we should exempt them from museums because I think we are going to get ourselves into a bind of having other places that have interior art and so forth that want to be exempted in the same rationale. I don't think we should exempt them because of Arts Festivals, or concerts, or Ring Theater programs, even though I go to concerts, and I go to the Ring Theater, and I can tell you if "*The Cat on a Hot Tin Roof*" if it's still playing, it's a great production; everybody should see it; the students do a professional job of that. I would exempt them because of the exterior open, you know, objects of public art that are on the grounds, and open to any day, all hours of the day appreciation by the public, and by the way I consider the students at the University, the faculty, and the administration as part of the public; so I mean, I really think that it's based on that. Now, I would say that we would be very silly indeed if we didn't have some kind of mechanism to go back and be able to review that program on a regular basis to see whether that exemption would continue. I think the reason I'd go for an exemption rather than credit is because we relieve them of all the beaurocratic paperwork, and we relieve ourselves of the beaurocratic paperwork of the constant review and the constant comparisons and so forth. But I think that a periodic review of the exemption would be appropriate.

Commissioner Anderson: Just a thought, I'd like to piggyback on that because during our pre-agenda meeting yesterday we had a bit of discussion, and I looked at that – I look at this ordinance, first of all kudos to the drafters of the ordinance, everybody who worked on it, I think its fabulous; I think we didn't preview what was going to come before us especially with collections like the University of Miami. I too felt, and we had a discussion and we agreed to disagree with our Assistant City Attorney; I also agree that there should be an exemption, and it should have some type of mechanism and a waiver process – not a waiver process, a credit process and a review process, to do that. I shouldn't be carte blanche because things change. I think taking a tour of the campus and seeing what they have is spectacular, just in and of itself. I'd like to even broaden the language, but I'm not going to even go there, I just would like to state my point of view that I do believe in exemption with conditions would be something that I would look favorably upon.

Vice Mayor Kerdyk: And how does the City Attorney view that exemption?

Assistant City Attorney Alfonsin: Again, it's.....

Mayor Slesnick: Disagrees.

Assistant City Attorney Alfonsin:what the art is worth ten or fifteen years from now, they can sell art, they can return loaned art, again, it's a matter of what happens at the time of application for permitting.

Mayor Slesnick: That's why I favor periodic....

Vice Mayor Kerdyk: I got to tell you, I don't have a problem with crediting; I like the idea of the Museum – in crediting the Museum as far as its being open to the public of the City of Coral Gables, I like that idea; that's the direction I like going in, which is, I think we all essentially trying to get to the same place, which is helping the University get the deserved credits or exemptions that they.....

Assistant City Attorney Alfonsin: Vice Mayor, if I may say that open to the public means open to all public, not just citizens of Coral Gables. When you are talking about public art it means open to everyone. They way the ordinance reads right now its at no charge; when its open to the public means its visible to everyone that's coming through the City, not necessarily to residents of Coral Gables.

Mayor Slesnick: The other thing is museums apply to people who seek out museums. Now Jeannette and I are members of Lowe, and I encourage everyone to be members of the Lowe, and that supports the Museum; but museums are for special – to me Art in Public Places is for the passers-by; downtown it will be different, you won't even have to get out of your car, and most of our public art will be for the passer-by; the person who will appreciate art because it exist and its there in front of them, its not something they have to seek out, and its for the person who maybe never saw themselves as an art

appreciation person, but they are thrust on them, and they are put into a position of having to appreciate art, or decide if they appreciate art, or determine what kind of art they like, and their minds will be broadened and we will be a more cultured City, that's all. I love the Lowe. We have one other speaker, Santiago Echemendia, 1441 Brickell Avenue, Suite 1500. Hello Santiago.

Mr. Echemendia: Good afternoon Mr. Mayor, Commissioners, Santiago Echemendia, 1441 Brickell Avenue, on behalf of Amace Properties. It's more of a request for clarification; we have a project that got vested with preliminary approval by the BOA, which is how your Code last year....

Mayor Slesnick: You are looking for us for clarification, right?

Mr. Echemendia: From the City Attorney, so if we are vested from relative development approval already then we would argue that of course we're vested from this ordinance which is amendment to the Zoning Code where you can't pull a building permit visa via this ordinance; and so if the Assistant City Attorney....

Assistant City Attorney Alfonsin: That is correct.

Mr. Echemendia: I hear Lourdes, and we agree with Lourdes, your City Attorney is telling me something a little different, and that's why we needed...I just walked out of her office and so; I have some proposed language that clarifies the issue, which is under the exemptions.....

Mayor Slesnick: Let me ask you this – would proposed language in this area be a material change or is this something....

Assistant City Attorney Alfonsin: That would be a material change.

Mayor Slesnick: To explain or to clarify....

Assistant City Attorney Alfonsin: It's not in the ordinance now, so it would be a material change because it's not in the ordinance.

City Manager Brown: Sandy, in your issue whether you are included in this ordinance or not.

Mayor Slesnick: I thought that you said they were included.

Mr. Echemendia: Actually we are vested....

Mayor Slesnick: He agrees with you, so all he's asking is for language that state your position, is that not what you are saying?

Mr. Echemendia: A clarification on the record is great, but some language that says under exemptions projects that are vested pursuant to Section 1108, then its clear in the ordinance that if you're vested you're vested, as opposed to just hearing it from the dais, which really isn't binding the ordinance.

Mayor Slesnick: OK – fine. Before we vote today I'd like to have you present that to the City Attorneys and have an opinion from them whether we are changing the demeanor or tenure of the ordinance, or whether it's just a clarification of what was intended in the first place. I think we need to know that before we vote.

Mr. Echemendia: Fair enough.

Mayor Slesnick: OK. I mean, and probably before we vote we'll take a five minute stretch break to have them talk to you about that.

Mr. Echemendia: That sounds good.

Mayor Slesnick: I mean we need to know whether we are voting on substance or on procedure.

Mr. Echemendia: Fair enough.

Mayor Slesnick: That's all for the public hearing. Madam Chair did you want to address any issues you've heard raised.

Mrs. Damian: My only is the museum part.

Mayor Slesnick: This is Carol Damian, Chair of our Cultural Advisory Board.

Mrs. Damian: Yes, Carol Damian, North Greenway Drive, Chair of the Cultural Development Board. I think that the exemption issue is a legal issue; I didn't write the ordinance, I don't have – I'm willing to hear what everybody has to say; I must say that I felt the University of Miami came on very strong throughout this whole situation, and for the record, speaking for the Board; but I have problems with the museum issue; I don't think the museum has anything to do with Art in Public Places, and it is kind of a waste of time to try to put that aspect into this – writing this ordinance. It's not in public ordinances anywhere; a museum is not a public place as such. My recommendation would be to leave out that aspect of the ordinance, I don't think its really necessary at all; and I think it opens up a lot of problems, because as you see a public museum it means you are going to have to open up your doors to the public, and I don't know if the Lowe wants to open – really to the public, not just the few people of Coral Gables that might want to go in there for free. So I do have problems with that aspect of the ordinance completely.

Mayor Slesnick: Thank you.

Commissioner Cabrera: While you are here though, Madam Chair, congratulations by the way as a new Chairperson for the Board. What are your feelings with regards to giving credit for certain work for the sculptures that are currently there; I've read some of your minutes, but I'll be very candid with you, I've not been able to keep up with everything that's gone on, because it's been a lengthy process that you all have gone through, but I just wanted to get from you in three hundred words or less what your thoughts are.

Mrs. Damian: OK, and I'm speaking for myself as the Chair of this group, but the Board has changed over – we've been working on this for a long time.

Commissioner Cabrera: I know.

Mrs. Damian: The Board has changed, and the ordinance has changed, and I think that at this point we really want to put this in effect; Coral Gables has to have this policy. One of the reasons why I'm very reluctant to completely one hundred percent (100%) support an amendments and credits is, I'm afraid it opens up a door that with major development in this City, I just wonder how a balancing act is going to occur, well they are exempt so we should be exempt, and we have this fabulous collection and we are going to put it outside; and I'm building this huge beautiful development on Ponce de Leon Boulevard, and it's going to have a courtyard, and I'm going to put in four-million dollar sculptures; so therefore, don't ask me for anything else. So I'm wondering about things like that; that an exemption for one in a public arena is an exemption for all, it opens up that door. I don't know about credits; I really – I don't know how that works, so I can't comment on the credit aspect; I'm just worried about exempting an institution that is already exempt from – for the future. They don't pay taxes, so they are exempt; so we are exempting them from an exemption. I just have problems with that.

Commissioner Cabrera: Thank you, you've helped me.

Mayor Slesnick: Thank you. OK, we are closing the public hearing; we will take a couple of minutes break just to get an answer back from our City Attorneys about the one specific piece of language that we've been asked to consider. Are there any other comments before we step out? OK, let's try to keep this to five minutes; we'll be back here at a quarter of, and for those of you waiting for other items it will be right after this.

Mayor Slesnick: We'll be having a very difficult time with something that I'm afraid – when we get the answers from our attorneys is going to be – it almost seems to me, Mr. Brown, and it's not my intent to delay this at all, and I agree with the Chair; I spoke to her in the hall, and she said we need to get this ordinance in place; I think she said that here, I agree. But you know it seems to me we are facing some difficult problems here in the sense that – and it's going to the Planning and Zoning Board in two weeks, which I don't really understand that process, how it came to us for First Reading, and then back to Planning and Zoning Board; I would think that, if we send this to Planning and Zoning Board to come back to us with recommendations on both the University of Miami exemption versus credits, or do you think.....

Commissioner Anderson: My thoughts would be – I don't know, I think that's our decision; I mean, they can give us recommendations, but it's a bigger policy.

Mayor Slesnick: I guess they will be giving us recommendations, no matter what.

Commissioner Anderson: No matter what.

Vice Mayor Kerdyk: Could we pass it on First Reading, and then.....

Mayor Slesnick: We can, we can, but if in fact the Board changes it.....

Commissioner Anderson: It would have to be advertised, but that's OK.

City Manager Brown: Mr. Mayor, let me talk about the process. This isn't a large issue, and we knew that, rather than waste thirty days back and forth between the Planning and Zoning Board and the Commission, I did bring it forth, like we did metal roofs, so we could get your input; we're going to take your input and go to Planning and Zoning. It would be my recommendation to pass it on First Reading, and let staff call out the exemptions and credits.....

Mayor Slesnick: Then we'll have to address the two issues that's been brought up, in actuality other than one person's complaint about some of the wording we've had two issues; the University of Miami and Santiago's issue about exemption because of the date of application for permit or for a zoning change, whatever; and so therefore I would ask the Commission, is there a motion to address the University of Miami's request for exemption; and we don't need to worry about the words if we vote yes, that they should be exempted, then we'll send that on and the Planning and Zoning Board can come back with the words.

Commissioner Anderson: I'll make that motion.

Mayor Slesnick: OK, I have a motion to exempt the University of Miami...

Commissioner Anderson: With language forthcoming.

Mayor Slesnick: With language forthcoming; will that include though the period review of the exemption?

Commissioner Anderson: Well, for me to agree with it there would have to be a process that would have to be reviewed.

Mayor Slesnick: OK, process with period review; is there a second to that?

Commissioner Withers: I'm not seconding it, even though I might support it; I have several problematic questions that I need to have answers before I even talk about exemptions for anybody.

Mayor Slesnick: OK.

Commissioner Withers: I mean, that's how I feel.

Mayor Slesnick: Do we need the City Attorney back for that?

Commissioner Withers: Yes, yes.

Mayor Slesnick: Well, we need to find the City Attorney then.

Commissioner Withers: I would support your motion but I just have.....

City Manager Brown: I'll answer that question; they are researching Santiago's issue right now.

Mayor Slesnick: That's what I was afraid of. Well, maybe what we are going to have to do then is take a break and go onto our next agenda item; here's the City Attorney as we speak. If you can turn your head away from what you've just been researching, we are going to have some questions for you from Mr. Withers to begin with about exemptions in general.

Commissioner Withers: I generally support the concept of this ordinance, but I just have a lot of issues which I think are problematic, and at the end of the day, are we the final – is the Commission at the end of the day the final stop for anybody with anything with this ordinance?

Assistant City Attorney Alfonsin: Yes.

Commissioner Withers: On absolutely everything?

Assistant City Attorney Alfonsin: Yes.

City Manager Brown: Yes.

Commissioner Withers: OK, then let me ask you a couple questions. On the municipal construction project, you talk about renovating public buildings, does that include maintenance of public buildings, would that be considered?

City Manager Brown: That would be construction.

Assistant City Attorney Alfonsin: Maintenance – no.

Commissioner Withers: Like for instance, let me give you a good example: the fountain that we are re-doing.

Commissioner Anderson: Restoration.

Commissioner Withers: Restoration.

Assistant City Attorney Alfonsin: Restoration.

Commissioner Withers: I'm assuming that by definition is public art.

City Manager Brown: Yes.

Assistant City Attorney Alfonsin: Yes.

Commissioner Withers: So the money that the City is putting into the fountain would count as our donation to the municipal construction project.

Assistant City Attorney Alfonsin: Yes.

City Manager Brown: That's correct.

Commissioner Withers: That just flies in the face of everything we are trying to do; we are trying to add more ambience and new things and whatever to downtown, and all we are doing is restore – not all we're doing, I don't mean to slight it, but we are restoring a responsibility that we are responsible for doing anyway. You see what I'm saying?

City Manager Brown: I understand what you are saying, but no, the same thing goes in this ordinance – the work we're doing on the Merrick as its written right now – the work we do on the Merrick House, the second floor, the one hundred thousand dollar project, we have to pay one thousand dollars into a fund because of that.

Commissioner Withers: Not that I support everything Mr. Volsky says and his approach, but I do agree with the general comment that what good for – what we are imposing on others we have to do ourselves; and if I'm a developer out there, and saying I'm getting ready to get gigged for one percent or half a percent or whatever to do this, then the City has the same responsibility, but they are doing things that they should be doing with tax dollars anyway; how can I feel that I'm – that's just one problem I have, problematic, to me that's just.....Another example, as far as a water feature goes – the Hyatt Hotel, the Court of Alliance, I don't know if you've all eaten there, and they have all these little fountains all over the place, is that considered public art? It's a fountain, it's an architectural feature, it's nicely done. So what I'm getting at is...

Assistant City Attorney Alfonsin: Cathy?

Commissioner Cabrera: It's in our building.

Commissioner Withers...there is so much subjectivity here.

Ms. Swanson: It can be public art, but it has to go through the accreditation process....

Commissioner Withers: OK, and that's where – I just did a quick review, and half the people shook their heads yes, half the people shook their heads no. So the problem I have is, there is so much subjectivity in defining what's an architectural feature, what's public art, who gets the credit; I just see Cathy, again, I think it's a good thought we are doing here, but I see a tremendous amount of....

Ms. Swanson: Better to clear it now than later.

Commissioner Withers: OK.

Mayor Slesnick: Can I go back to your – now that you raise it, it bothers me greatly that we would consider the restoration of a fountain, which is a piece of public art as a – no, I'm serious.

Commissioner Withers: But it is Don; it's written right here; renovating...

Mayor Slesnick: But I agree that if we restore buildings like the museum building, that would be a restoration of a building; it's a construction project, but the restoration of a piece of public art should not be included. I mean, what we are doing is we're restoring a piece of public art – that's what that is. And Chip if you're, one more comment on what you said, and if you're right and we should be doing what the private sector should be doing, there is no minimum....

Assistant City Attorney Alfonsin: There is no threshold.

Mayor Slesnick: There is a threshold for the private, one million dollars (\$1,000,000), isn't it?

Assistant City Attorney Alfonsin: Yes.

Mayor Slesnick: There is no threshold for the public sector, so I would suggest that I would like to see a threshold for the public sector, and to show that we may be out in front of the private sector, I'd say let's do a half threshold – five hundred thousand (\$500,000), and make it an important project, and that way you would probably – let's take the fountain for example, we are using State monies too for that, does that count toward the threshold, or does it just what we put into it?

Assistant City Attorney Alfonsin: It's one percent of what the City – what the construction costs are.

Mayor Slesnick: The construction costs, so that means that we then, in Chip's example, under this current ordinance would be paying one percent of what the State gives us in a grant. See that makes no sense.

City Manager Brown: We just had a comment that you do not want to include the maintenance or the restoration of public art.

Mayor Slesnick: I know that, but I was going back to the logic of not taking a look at when we use State monies, why would we pay one percent on State monies that we went out and got from the State, and we are paying a premium to get grants then? Chip, it's yours.

Commissioner Withers: OK, the other question is when we buy a piece of park land...

Vice Mayor Kerdyk: Thank goodness.

Commissioner Withers: No, not you Bill, I like the way you worked that in there. We're required to set aside one percent of that.

Assistant City Attorney Alfonsin: I'm sorry, I didn't hear the question.

Commissioner Withers: We buy a piece of park land.

Assistant City Attorney Alfonsin: That's not construction.

Commissioner Withers: Only if we renovate or if we upgrade the park...

Assistant City Attorney Alfonsin: Exactly.

Commissioner Withers: ...we have to pay one percent art in public place.

Commissioner Cabrera: So let's take it further; the park that we just bought – the one point two million dollars (\$1.2M) for the triangular piece of land next to the Chinese Village, we now develop it, and as we develop it we have to pay one percent?

Commissioner Withers: Yes.

Assistant City Attorney Alfonsin: Yes.

City Manager Brown: Yes.

Vice Mayor Kerdyk: Just like when you did the roof for the fire, that's two hundred thousand (\$200,000), you are going to have to pay.

Commissioner Withers: See, these are the problematic issues that I think we need to really...

Commissioner Cabrera: Well, according to Mr. Volsky, we are already not going by it, and the County is not enforcing it.

Commissioner Withers: OK. Let me ask you about murals, because right now one of the – some of the pictures I saw had murals, but we have an ordinance that doesn't allow murals; are we going to readdress that, and now accept that as public art?

Ms. Swanson: If the Commission wants murals addressed, we would have to go in and revise the ordinance, but several cities address public art through the provision of murals. They can be interior or exterior.

Commissioner Withers: I'm just asking you all.

Commissioner Anderson: I favor murals, but I may be the only one.

Ms. Swanson: You can limit interior murals, if that's the wish of the Commission.

Mayor Slesnick: Well, but interior then really doesn't make it as public as I thought we were trying to get to.

Commissioner Withers: That was kind of a loaded question; I'm just showing you the subjectivity you have in this whole – here we don't feel strongly about murals, but others might feel they are great. A good example is Stanley Davidson; I remember when he wanted to put this man in front of his building; I don't know if you remember, we all got memoed on that and the City Manager nixed the idea because he said this sculpture just didn't fit the character of Coral Gables.

City Manager Brown: Was that me?

Commissioner Withers: Yes, that was you.

LAUGHTER

Commissioner Withers: And I agreed with you...

Commissioner Cabrera: But we moved it and we put him in front of City Hall.

LAUGHTER

Commissioner Withers: But again, that was totally subjective – that was good Ralph – but I guess what I'm saying is, if the Board rejects a piece of sculpture or a piece of artwork that a developer comes and says I want to be able to put this here, and the Board says no, they then comes to us and asks us if we are going to accept to put that piece of sculpture?

Assistant City Attorney Alfonsin: No, what comes before the Commission is what the Arts Advisory Panel, and the Board, and the Board of Architects for placement have already accepted. They are coming to you with a recommendation for a particular piece of art.

Commissioner Withers: I'm talking about an appeal process for someone that's rejected.

Assistant City Attorney Alfonsin: You're the ultimate decision maker; an appeal goes to the courts, to the circuit court.

Commissioner Withers: So if someone wants to put this sculpture in front of their building and the three Boards say no, do they have the right to appeal to us?

Assistant City Attorney Alfonsin: No.

Commissioner Withers: They don't.

Assistant City Attorney Alfonsin: Because you are the ultimate – the Cultural Development Board is a recommending Board to you – you make the final decision.

Commissioner Withers: So it's not going to come to us with a yea or nay from them, it's just coming with a recommendation.

Assistant City Attorney Alfonsin: Exactly.

Commissioner Withers: On everything.

Assistant City Attorney Alfonsin: Yes.

Commissioner Withers: OK. Last question – and again, this is all part of the definitions; is a public area inside of a building like a third floor, give you an example, at the Hyatt again, up on the second floor mezzanine, there is a public elevator lobby there, is that considered public space?

Assistant City Attorney Alfonsin: Not under this ordinance.

Commissioner Withers: So what's considered public space inside of a building if it's not covered, if it's an atrium, what's considered public space, or is there no public space in a building?

Assistant City Attorney Alfonsin: In a public building public artwork that's on the outside the exterior of the building so that anybody can see it as they are passing.

Commissioner Withers: So the ceiling in City Hall is not considered public art because it's not accessible to any person?

Assistant City Attorney Alfonsin: From the historical.

City Manager Brown: Cathy.

Ms. Swanson: The language that I've seen elsewhere, and perhaps it needs to be clarified, is if the public can freely go in without an admission and enjoy and take part in the art, then it is indeed public art. The Cupola, the lobby, it doesn't have to be...

Commissioner Anderson: Outside.

Ms. Swanson: What we want to avoid is the seventh floor no entry, but there is where all their treasure chest is.

Commissioner Withers: I'm sorry.

Ms. Swanson: The seventh floor of a building that the public cannot freely access, that's what we want to avoid.

Assistant City Attorney Alfonsin: An office that has artwork in it.

Commissioner Withers: Is it access by physical barriers, or is it access by opening and closing times?

Ms. Swanson: General business hours would allow the definition, I believe, the definition of public.....

Assistant City Attorney Alfonsin: Yes.

Commissioner Withers: So eight to five, Monday through Friday.

Assistant City Attorney Alfonsin: Yes. And generally when it is publicly accessible, it's publicly accessible for a certain amount of days a year, two hundred and somewhat days a year; it excludes holidays, and weekends, and its forty hours a week.

Commissioner Withers: So developer's courtyard might not meet that criteria?

Ms. Swanson: A developer's courtyard that has a gated courtyard that the public can't go into, and brown bag or something like that, you are saying?

Commissioner Withers: Well, like City Hall; it's secured by a door; people just can't – what's the difference between a gate and a door?

Commissioner Cabrera: There is another ingress – egress, over at the porter cashier, has no gate, people can come in and out.

Commissioner Withers: You mean at a developer's courtyard.

Commissioner Cabrera: No, in our courtyard, you said City Hall; in our courtyard at City Hall we have a gate.

Commissioner Withers: I'm talking about the ceiling here in City Hall.

Commissioner Cabrera: The Cupola?

Commissioner Withers: The Cupola.

Mayor Slesnick: That's between eight and five, Monday through Friday.

Assistant City Attorney Alfonsin: Right.

Mayor Slesnick: I liked your example of a second floor lobby; I don't see that as being public art, even if you can get there. I mean, who goes to the second floor elevator lobby?

Ms. Swanson: I think the intention was the ground floor easy access first access, and we can look at what the definition should be the result.

Mayor Slesnick: Based on your.....

Commissioner Withers: I'm not trying to poke holes in this, but I just – I just see so many appeals and so many questions, and so much time sucked up trying to interrupt, you know, I want to try to make it as simple as we possibly can.

Ms. Swanson: And you'll recall that a major part of this process is the establishment of professionals as the Arts Advisory Panel to be doing the recommended selections and guiding this process through. We do not have an Art Master Plan at this point; we do not have the Arts Advisory Panel; we deliberately delayed the establishment of an Arts Advisory Panel until this has been considered by the Commission. So those two additions to this process really help complete it.

Commissioner Withers: I guess you had an example of the Chihuly ceiling, well in Buckhead there is one of the buildings has these incredible Chihuly chandeliers hanging from them; I don't know if I'm an owner of that building that I just want public access at any time for anybody to come in; I want some kind of security.

Ms. Swanson: You don't want public access, then you don't want it counted towards public art. That's your prerogative.

Commissioner Withers: Well, it's not because I don't want public access because I don't want people to see it; it's because I don't want public access – open public access for people to damage it.

Ms. Swanson: So you may choose your public art component to be out in the plaza space, so that they can walk by, but that's not....

Commissioner Withers: But if I have a five million dollar [inaudible] or whatever the sculpture is going to be, and I'm just going to put it out for everyone to view, and at the same time put it out there for everyone to damage, I have a real concern about that.

Ms. Swanson: And you as a developer would be an integral part of this process and may choose not to invest your art that way, may choose instead to either pay the money or do

the ceramic mosaics that are on the buildings, your parked fire-heads on your museum building where people can't reach. There are a lot of other ways that you could satisfy the obligations of an Art in Public Places program.

Commissioner Withers: Well, I would prefer to let people see that piece of sculpture, and at the same time be given some flexibility to protect that and secure it, so that it can be seen.

Ms. Swanson: It's not the City's intention to assume liability if the public art is on the private property.

Commissioner Withers: I'm not saying that; but I'm saying as far as the wide open gate twenty four hours a day, seven days a week.

Assistant City Attorney Alfonsin: We can identify hours – working hours, working week with Saturday, Sunday and holidays excluded in the publicly accessible definition.

Mayor Slesnick: We can also include, Chip, in public accessible definition a word about – a sentence about appropriate security measures.

Commissioner Withers: Yes.

Assistant City Attorney Alfonsin: As long as if it's open to the public and it's visible to the public at no charge, those are the only keys; we can address the hours and the times.

Commissioner Withers: Hours are just one thing when it's inside buildings, but an open courtyard and other areas.

Mayor Slesnick: We have a motion.

Assistant City Attorney Alfonsin: And Commissioner, if I also may, the Master Art Plan is going to tell you where art is needed in the City, and where it should be placed and that's going to be reviewed by the Cultural Development Board, by the Art Advisory Panel, with the City Architect sitting in as one of the panelist, and it will go to the Board of Architects as well before it comes to the Commission.

Commissioner Withers: But don't you think the developers are going to want to put art on their own property?

Assistant City Attorney Alfonsin: They can choose to put....

Commissioner Withers: But if you are a developer and you have a three-four million dollar piece of artwork, I think you are going to not say to the City put it somewhere else, you are going to pretty much want to dictate where on your property.

Assistant City Attorney Alfonsin: Absolutely – and eventually it will come to you with a placement that's already been accepted by everyone, working with the developer; the developer is going to be part and parcel of placement.

Ms. Swanson: And the developer discussions that we've had, it is their preference.

Mayor Slesnick: I have a motion about the exemption, did I get a second?

Commissioner Cabrera: Can you repeat the motion again.

Mayor Slesnick: The motion was to direct the administration and I guess the Planning and Zoning Board to consider an exemption for the University of Miami with periodic review of that exemption, and other language which would protect the City and assuring that quality and monetary value of the collection.

Commissioner Cabrera: See, I was more comfortable with – but I think you said this just to get us through here, but I was more comfortable with looking at credits rather than exemptions. I don't know how the rest of you feel. But did you use the word exemption just to get us from point "A" to point "B".

Commissioner Anderson: No actually, I think exemption is the right word.

Commissioner Cabrera: OK.

Commissioner Withers: I'll second it. Let me just point out why I second it. I did some real quick math; if we take the one hundred million dollar Lowe exhibition, that's a ten billion dollars in development that they'd be exempted from, that's the same as a credit, isn't it?

Vice Mayor Kerdyk: I guess, but let me just say I won't be voting for this motion whatsoever. I would like to deal with the issue between First and Second Reading by being very aggressive with the crediting for the University of Miami, but when I may legal with our legal counsel opines that this might open up to litigation later on, then I just can't support this, at this present time. It's not the fact that I don't want to address the fact with the University of Miami, I just don't think it's....

Commissioner Cabrera: But you could change your mind between First and Second Reading.

Vice Mayor Kerdyk: I could.

Commissioner Withers: This comes back for a Second Reading for UM, right?

Mayor Slesnick: Well, not only that, it's going to the Planning and Zoning Board too, and then come back. OK, we have a motion and second.

Mr. Clerk.

Commissioner Withers: Yes

Commissioner Anderson: Yes

Commissioner Cabrera: No

Vice Mayor Kerdyk: No.

Mayor Slesnick: Yes

(Vote: 3-2)

Mayor Slesnick: Now we have looking for a main motion.

Commissioner Anderson: I'll move that for the main motion for the art in public places.

Mayor Slesnick: Wait, we didn't get to Santiago's – I'm sorry, we have a determination by our City Attorney.

Assistant City Attorney Alfonsin: The ordinance is silent as to when it vests, and our Zoning Code only speaks to vesting after the adoption of the Zoning Code; so its up to the Commission to place language in the ordinance at this point that says whether it vests at preliminary Board of Architects approval or at time of building permit.

Mayor Slesnick: And are we prepared...

Mr. Echemendia: Mr. Mayor, can I just add one thing?

Mayor Slesnick: You may, because we interrupted this without an answer to you, so go please.

Mr. Echemendia: Your Code currently provides that vesting as a preliminary BOA approval; this is the only ordinance that provides vesting at the pulling of building permit, so it's inconsistent with the rest of your Zoning Code. To the extent that we are vested, and this is considered under the case law in the City Attorney's own memo as a land development regulation, not an impact fee, this is a little different from your impact fee ordinance. Then we will submit to you under provisions of Section 1-108 that provides for provisions of regulations in effect when the application was filed shall govern review and approval of the application for the development approval that were in fact vested. That was the ordinance or Zoning Code that was in effect at the time that we got preliminary BOA approval. To argue then that on the one hand we are vested under 1-108, but by the way, you can't pull a building permit because you didn't provide the art in public places in effect is divesting us.

Mayor Slesnick: Is there a motion by the Commission to move to annotate the ordinance with the vesting of the time of the preliminary approval, as another land use.

Vice Mayor Kerdyk: I'll make that motion.

Mayor Slesnick: Mr. Kerdyk moves; is there a second?

Commissioner Withers: I'll second.

Mayor Slesnick: Second by Mr. Withers. Any other discussion?

Mr. Clerk

Commissioner Anderson: Yes

Commissioner Cabrera: Yes

Vice Mayor Kerdyk: Yes

Commissioner Withers: Yes

Mayor Slesnick: Yes

(Vote 5-0)

Mr. Echemendia: Thank you very much.

Mayor Slesnick: Now, Maria.

Commissioner Anderson: I'll make the motion for the Art in Public Places, but I want to say something for the Planning Board

Mayor Slesnick: As amended.

Commissioner Anderson: Pardon?

Mayor Slesnick: As amended.

Commissioner Anderson: As amended, right.

Mayor Slesnick: Is there a second?

Vice Mayor Kerdyk: I'll second it.

Mayor Slesnick: OK. Maria Anderson has moved the Arts in Public Places ordinance as we have amended it twice now, and you've second it.

Commissioner Cabrera: But you voted against it.

Mayor Slesnick: He voted against one of the amendments.

Vice Mayor Kerdyk: We're referring it.

Commissioner Anderson: To the larger ordinance.

Vice Mayor Kerdyk: I'm not throwing the baby out with the bath water.

Mayor Slesnick: And you wanted to ask a question.

Commissioner Anderson: Well, I just wanted to throw it out there for the Planning and Zoning Board, and I don't know from a legal standpoint, is the issue of the exemption, do we want to also think about developers who already have – developers meaning entities – that have sited artwork and a Master Plan, and that would be the University of Miami as one of them, but that could apply to anybody else, couldn't it?

Assistant City Attorney Alfonsin: Yes.

Commissioner Anderson: Would that help with some of the language as far as legally opening, I mean, I'm just throwing it out there, because it could be distinguished with developers or entities that already have sited artwork with a certified Master Plan, and versus a building that's going to be developed.

Assistant City Attorney Alfonsin: Again that goes to the issue of credits for artwork in place at the time of building permitting. For developers that have paid, for example, it's a hypothetical; a developer five years from now pays the one percent fee, or purchases artwork at the one percent of the construction costs, and twenty years from now the University of Miami does not have any artwork on campus, and the developer that paid the fee five years from now is going to request that fee back, that payment back because there is a new project going on.

Mayor Slesnick: Madam City Attorney, Madam City Attorney, I don't know that you are trying to have you argue against what we voted on. What I'd like to make sure what the City Attorney's Office comes up with is appropriate language that would protect us from that, because if the University of Miami three years from now or five years from now has no artwork we want to review the exemption. If in fact we approve an exemption in the final vote.

Assistant City Attorney Alfonsin: What I'm saying is for purposes of other, for example, Fairchild Gardens has artwork – sited artwork now; we will draft language that will protect developments such as those that have artwork on site now.

Vice Mayor Kerdyk: I brought that up yesterday. Fairchild Gardens is the perfect example of this issue right here because they do have artwork, they could go build something else and we are back to square one with them, so they need to be exempted too, if we are going to exempt people.

Commissioner Anderson: No, but actually they pay a fee to get in.

Commissioner Cabrera: You don't pay a fee to go to the University of Miami.

Commissioner Anderson: You can walk on campus. I'm just throwing that; I'm not going to open up a can; I just throw it out there and see what sticks from a legal perspective.

Mayor Slesnick: Anyway, we have a motion and a second and it's been amended.

Mr. Clerk.

Commissioner Cabrera: Yes

Vice Mayor Kerdyk: Yes

Commissioner Withers: Yes

Commissioner Anderson: Yes

Mayor Slesnick: Yes

(Vote 5-0)

Mayor Slesnick: And let me just enter into the record, we may have all gotten this letter, but I'll enter mine, its from the University of Miami dated October 17th and it concerns the University of Miami, and with it they sent me this guide, sculpture which I'll enter into the record, too.