

City of Coral Gables City Commission Meeting
Agenda Item I-3
October 11, 2011
City Commission Chambers
405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Jim Cason

Vice Mayor William H. Kerdyk, Jr.

Commissioner Maria Anderson

Commissioner Rafael “Ralph” Cabrera, Jr.

Commissioner Frank Quesada

City Staff

City Manager, Patrick Salerno

City Attorney, Craig E. Leen

City Clerk, Walter J. Foeman

Deputy City Clerk, Billy Urquia

Public Speaker(s)

Daniel Ponce, Counsel for Biltmore Hotel

Reeder Glass, Special Counsel for the City on Biltmore matters

Adolfo Jimenez, Attorney with Holland and Knight for the City

I-3 [Start: 10:08:24 a.m.]

Commission discussion and/or actions regarding Biltmore matters.

Mayor Cason: Item I-3.

City Attorney Leen: Item I-3 is a discussion and/or actions regarding Biltmore matters. As the Commission knows this matter came before the Commission two Commission meetings ago. I received certain instructions at the time to go forward and mediate the matter, and then to come back to the Commission to make a report. I can tell you – and I believe the Biltmore wants to speak today, but before that just to give you the status report, the mediation impasse after two full days of mediation. We’ve also had a meeting since then, which was outside the mediation, just a settlement meeting and that happened yesterday, I met with Mr. Ponce, Mr. Prescott, Mr. Butler with Mr. Jimenez our attorney, our counsel is over here, so we are prepared to discuss this

matter today, but I thought that before we did, Mr. Mayor it's within your discretion, but it's my understanding that the Biltmore wanted to say something.

Mayor Cason: Yes I would be – but as I said it's not a public hearing, but I think it's fair to ask a representative from Seaway to address the Commission. Go ahead.

Mr. Ponce: Good morning Commissioners, my name is Daniel Ponce, I'm counsel for the Biltmore Hotel, I practice law on Brickell Avenue. A lot of energy has been expended by a lot of people in this room trying to come to a solution of where we are at, and we've made in my judgment, substantial progress.

City Attorney Leen: Excuse me – Mr. Ponce I don't mean to interrupt you, but there was one thing I had meant to say and I'm not sure you'd be OK with this as well, I hope you will. I was planning to limit my remarks to not discuss the actual communications at mediation because of the agreement, and also we are somewhat limited in discussing anything involving the escrow agreement. So in my presentation I do not plan to discuss what happened at the two days of mediation, not necessarily our settlement discussions on Friday, we can discuss those, and you can present your final offer, but we did want to make that clear at the beginning.

Mr. Ponce: I'm aware of your position and certainly will honor the mediation; nobody has any intentions of breaching that Mr. Attorney.

Commissioner Quesada: Are you willing to waive the confidentiality in the escrow agreement today?

Mayor Cason: Or are you agreeing to maintain the confidentiality we agreed upon at the last meeting?

Mr. Ponce: Well I think you are saying two different things.

Commissioner Anderson: Two different things.

Commissioner Quesada: I was saying something else. Are you willing to waive the confidentiality provision so that we can discuss these terms?

Mr. Ponce: Commissioner to the extent that there are any documents, and I don't think there is any real secret as to what is out there, what's in the escrow, just for the sake of everybody may not know, back a year ago we entered into an escrow with the City which became a repository through SunTrust Bank and through PriceWaterhouse of thousands and thousands and thousands and thousands of documents, I think at last tally Mr. Butler how many documents are in it?- 18,000 documents. So when you say waive the escrow, what you are basically asking is throw out 18,000 documents in the public domain, which I don't know is necessary for the

conversation today; that to the extent that we talk about something or we bring something out I actually think we waived it by talking about it in that sense, but to waive the whole escrow agreement, which was in the precursor, PriceWaterhouse doing their analysis, which is a precursor of negotiations we've had, and before Craig got here we negotiated with Liz and we all agreed that everything that we were doing was under the ambient of trying to attempt to avoid litigation and trying to solve something. So, I think we are doing two things: one, both sides being true and honest to the positions; number two, we were keeping things in a relatively contained environment so that everybody would have a chance to talk with each other and without things spilling out, and I think both sides have done a very good job in the last year of doing that. So, I'd like to maintain that, if we could.

City Attorney Leen: And the concern from my end is that if you are not going to do a waiver, the Biltmore insisted, Seaway insisted on this escrow agreement to protect these documents, because they view many of them as trade secrets, so I do not feel comfortable talking about it at all, it's for their protection, so I do not feel comfortable talking about it at all. So what I would ask as a courtesy is that you do not discuss those documents.

Mr. Ponce: Well I'm not going to discuss documents, but I'm going to discuss concepts and where we're at, and where I think we are in the negotiations based on what we talked about yesterday for several hours and last night until 11 o'clock. So, if I may proceed?

Vice Mayor Kerdyk: I just want to be clear – that's what I want to hear, I want to hear where we are, where we were before, where are now, and where we are going, that's ultimately why I'm sitting here today.

Mr. Ponce: First off until late last night...I believe we had 99 percent of what we needed to get done as far as business points accomplished, not necessarily – we obviously have to draft a final document, we obviously had legal matters that the lawyers have to deal with, but business points...I thought we were most of the way there. The City and the Biltmore had negotiated an awful lot of things; number one, I believed we reached agreement on all golf course matters. I think the golf course situation was resolved late yesterday afternoon with Craig, Adolfo and myself and Mr. Prescott. The terms of that basically are that the Biltmore will continue to manage the golf course; there will be a base rent payment made to the City by the Biltmore. If I may, can I all hand you a sheet that has basically all these terms laid on it?- I don't think it breaches anything.

Commissioner Cabrera: Well let me ask you this Mr. Ponce – did the City Attorney have a chance to see what you are going to give us?

Mr. Ponce: Yes, we discussed this document all day yesterday....

Commissioner Cabrera: You are OK with that?

City Attorney Leen: Well, I've seen it; but if you introduce it into the public record it will be a public record.

Mr. Ponce: I'm aware of that.

City Attorney Leen: Well you are also stating the City's position as well, that will be up to the Commission whether you are comfortable making our position a public record.

Commissioner Cabrera: I'm going to defer to my colleague the attorney.

Commissioner Quesada: I want Craig to take a look at it first before he passed it out to us. I would want the City Attorney to review the document prior to...

Mr. Ponce: He has seen it; we gave it to him last night, gave it to him yesterday in the day-time, we made a couple changes after our meeting last night, he has seen it.

Mayor Cason: Do you have any problems Craig, with the information that's in this sheet, do you agree with our position as characterized as you negotiated?

City Attorney Leen: No. We do believe that our City's position, although this is much closer than – this is closer to our position what it says in here, we do not believe it correctly states our entire position. What I would recommend is that you present to them the offer, and I will too, and if you think there is something incorrect that I've done or we haven't been complete, then at that point we should discuss handing out something in writing.

Vice Mayor Kerdyk: You know what?- let's do this – let's go through the golf course thing, get this one off our plate and then proceed onto the hotel. You see where the differences are so that I know that you don't deal with this issue in 30 minutes after he makes his presentation. I'd like to deal with the Biltmore golf issue first, understand that, and then he can go to the hotel, if that's OK.

Mr. Ponce: So do I hand out the documents?

Vice Mayor Kerdyk: Why don't you just go ahead and tell us your position...

Commissioner Cabrera: Can you hold them just until – take us through it, eventually I think the documents will be distributed because I see the writing on the wall. So go ahead Mr. Ponce.

Vice Mayor Kerdyk: Let's go through the golf course first.

Mr. Ponce: Again, I know that I'm repeating myself because a lot of people in this room are familiar with it, a lot of people perhaps not. The golf courses were rebuilt several years ago. The City had the obligation to build the bridges, we built the bridges, there was monies borrowed, there was an agreement reached and obviously in any agreement when you get to real time you start building things, things cost more money or things need to be done you didn't anticipate being done, so you have to restructure all the bridges that no one thought they had to be done. At the end of the day there were some agreements reached, some in writing, some orally, which we tried to solve last year, but we could not. I think we have successfully concluded as of today, and this is what the golf course settlement piece of this is. The Biltmore will write the City a check for \$650,000...

Commissioner Cabrera: Is that the base rent?

Mr. Ponce: No, no, this is just for the golf course; this is \$650,000 for the golf course settlement of a dispute. Part of that dispute pays for the \$377,987 that both the City and the Biltmore have basically have said is the right number, and then there is an addition. If you all remember some of you were on the Commission then, we borrowed an additional \$250,000, we the Biltmore, and the Sunshine Fund and turned that money over to the Granada Golf Course, because it needed improvement. The commitment in writing was that, that money would be paid back to the Biltmore by virtue of the rent it was paying...

Commissioner Cabrera: I'm sorry Mr. Ponce, I apologize to you and to the rest of you in the audience, but I cannot focus on your presentation with the sidebars that are going on here, I'm sorry, until they are eliminated I can't focus on this. I'm so sorry but this is such an important matter that to have these sidebars during your presentation is completely unacceptable and I apologize to you.

Mr. Ponce: So let me make it more simple; what we agreed to write a check for \$650,000, let's call it at closing so-to-speak, once we get the deal finished, and that the City would then be receiving a \$40,000 per quarter payment commencing in the fourth quarter of 2013. This additional amount of money \$650,000 less \$377,987 is about \$280,000, that \$280,000 which would be the reimbursement back to the Biltmore from the money that it borrowed from the Sunshine Fund would come back to the Biltmore by virtue of the first seven quarterly payments not being made, in other words the Biltmore would bring that money internal, that money would not be limited to the City. So \$650,000 check at closing, the first seven quarters would reimburse the Biltmore for the written agreement, and we are done, and as of last night, yesterday afternoon I believe we had complete agreement on that issue with the City.

Vice Mayor Kerdyk: OK. I want to hear from the City on that.

City Attorney Leen: As to the golf course...

Vice Mayor Kerdyk: I want to hear the golf course.

City Attorney Leen: He has correctly stated the terms that we discussed with the golf course, but that golf course agreement was part of a package deal. It was resolving the whole matter, because the City is making substantial concessions on the golf course in my opinion, and we would only do that if there were substantial concessions made on the hotel lease by Seaway.

Mr. Ponce: We don't disagree with that.

Vice Mayor Kerdyk: I'm OK with that, that's what I want to know. I just want to know that OK, we don't have to focus on the golf course so much, we need to find out what's going on with the hotel's perspective from my issue.

Commissioner Cabrera: So you feel comfortable, I'm hearing you and I'm trying to follow the process, you want to try to take one item at a time, is that right Bill?

Vice Mayor Kerdyk: I think we are finished with this item pretty much.

Commissioner Cabrera: I'm not in disagreement with you, I like the approach.

Vice Mayor Kerdyk: I just want to make sure things don't get muddled or mixed up, so now I understand this piece of the pie, I want to understand the bigger piece of the pie.

Commissioner Cabrera: I got it, I got it, OK.

Commissioner Anderson: I have a question. What you are saying is that the golf course agreement issue is part of the package deal of the hotel; it's not one separate thing, it's part of the negotiation.

City Attorney Leen: Yes Commissioner, it's completely and a hundred percent a package deal, it should not be considered separate.

Mr. Ponce: We agree with that Commissioner.

Commissioner Anderson: Alright, thank you.

Mayor Cason: We move on to the central issue, which is the hotel.

Mr. Ponce: And again, a lot of effort on both sides; what we had come down to was that \$5,000,156.59, or fifty-nine dollars and zero cents would be deferred, that deferral would start being paid at \$100,000 a quarter for twelve (12) quarters, which is three (3) years, and then at \$125,000 per quarter thereafter until paid in full, and again this is on the sheet so I can hand it out to you all, you can read along with me rather me trying to tell it to you, you can just make notes on the sheet. Point 2, is that the interest rate on that will be 2.5 percent interest, it would

start July 1, 2012, and initially what we had agreed and discussed was that the base rent would be what the base rent has always been \$600,000, or roughly \$150,000 per quarter, that was the base rent that was in the original conversations. Late yesterday afternoon Mr. Prescott and I met with Mr. Leen and his counsel, we agreed to raise that number to \$800,000; late last night we agreed that we'd raise it to \$800,000, and we would put a C.P.I. (Consumer Price Index) index on it where the CPI index would be adjusted once every five (5) years. Now today, just so you'll know the base rent has a CPI index in it that has been adjusted to what has been, on the terms of the current lease anyway, \$600,000, so we jumped it \$200,000, instead of having an annual C.P.I. it would go once every 5 years. We also negotiated yesterday, and this is where with all due respect to one of my law school professors would say, this is where the "rubber hits the road", what do we do about the rehabilitation, restoration and expenses of the monument of the hotel?- It's not lost on anybody, but that was deeded to the City by the federal government, it's not lost on anybody that certain statutory, regulatory responsibilities to how you manage it, how you invest in it, how you keep the monument alive and well. My clients have managed this for 18 years; they are the longest most successful operators of the hotel since George Merrick opened it up in 1926. It's very important to know that these gentlemen, investors in that, they are partners in that deal, which is principally Gene Prescott and Bob Kay, have invested not only 18 years of their heart and sweat, but they have invested millions upon millions of dollars today. No one ever wanted the recession we are all living in; we all feel it every day for a million different reasons. With that said, the 3.5 percentage rent has been paid historically, which frankly years ago we all come over here, and have a party and here's the check, and life is good, and life moves on. Well the world has changed now, and what's happened now we believe and I think you all believe too, that a portion of the percentage rent above the base, so let's talk about it, I can try to give an example, but I'll probably confuse you, the base rent is \$600,000, we agreed to take it to \$800,000. Above that the total rent is three and-a-half (3.5) percent, so every year what you would do is, 3.5 percent times the definitional revenue of the hotel qualifies as rent for the City, you multiply that 3.5 percent and figure out the number. From there you would deduct historically the \$600,000, and that balance is the percentage rent that's due. Historically, always since the beginning that percentage rent or the "true-up" as we might call it, the difference between the base and the difference between the total percentage rent has always been paid in April of the ensuing year. So let's take 2010 for example, the year end 2010 closes, the external auditors, the outside accounting firm comes in performs an audit, proposes has a specific schedule it tells the City what the rental is, does the calculations, the City has the right as it has exercised last year to come in and audit that, satisfy itself that the rental number is correct, and then from there the calculation is done. So you have the base rent that is paid quarterly by quarter by quarter, and we have the percentage rent at the end. What we are proposing, let my digress for a second, between the \$800,000 we are proposing on base rent, and the \$400,000 the City will get quarterly now from the payment of the deferral, remember the deferral piece...being paid at two and-a-half (2.5) percent interest over the next however many quarters it might be at

\$100,000, that would guarantee the City right now based on what we proposed last night \$1.2 million base rent irrespective of what the revenues of the hotel made or may not make. Everybody understand that?

Mayor Cason: Yes.

Mr. Ponce: So now what we are talking about now, what we've proposed and we started this conversation last summer and obviously a lot of things have happened since last summer with the PriceWaterhouse analysis and this and that and the other thing, and two of the Commissioners, is how do we jointly share the responsibility of the restoration, the rehabilitation of the monument?- how do we jointly put some of this percentage rent in money?- this excess above the base back into the monument, so the monument can continue to be preserved for our kids and our grandkids? Billy and I grew up around here and I'm sure some of you too, I can remember breaking into the Biltmore back in the '70's as a kid in high school and sneaking around there and being scared to death, we don't obviously ever want to see that again as long as any of us live. So the question is, our concept, our thought, our proposal has been to take that excess percentage and put it back into the monument. We would all agree, I'm generalizing now, but that the law that we live under with the federal statutory...requires that any excess revenue coming out of the monument be used either for the monument or other historic purposes or parks and recreation. That is what the, generally speaking, what the federal guidelines require us to do. So the method we propose is, how do we get there?- what we proposed, and we thought frankly by the time we increased the number from \$600,000 to \$800,000 a year that we would get an agreement on this was that, that money would be used, and we would agree to a definition of what is rehabilitation and what is restoration? I was a CPA in my prior life and decided I couldn't add or subtract any more, but I do know a little bit about taxes and about accounting, and about that kind of stuff; we labored for the last several days to come up with what we thought was a reasonable definition of what would be the expense categories that this would fit. We are calling it the Rehabilitation and Restoration expenses R&R, and again I can pass out the document, it's got the definition right there for you. If you'd like me to I'd read it to you.

Vice Mayor Kerdyk: Read it.

Mr. Ponce: Seaway and the City will co-fund rehabilitation and restoration expenses hereinafter referred to as R&R expenses. I put in the hereinafter just now, of the Biltmore. The City will match dollar for dollar funding provided by Seaway for R&R expenses. R&R expenses means, and this is important, R&R expenses mean capital items that add to the value of the property, prolong its useless life, its useful life, I'm sorry, or adapt it to new uses. Let's go back over that again. Expenses mean capital items that add to the value of the property, prolong its useful life or adapt it to new uses. R&R expenses does not include, and I think some of you are concerned and have legitimate concerns, does not include funding any item not attached to or made a part of the

property, unless specifically made or designed specifically for use by the Biltmore. City is not required in any year to fund beyond the amount by which the percentage rent exceeds the base rent, that means basically we'll do that percentage rent calculation the max the City would match is that amount.

Vice Mayor Kerdyk: OK. Could I ask a question just to clarify?

Mayor Cason: What I would suggest is we hear what you have to say, we hear our lawyers and have a discussion so we have all the elements.

Vice Mayor Kerdyk: I need some clarification because I want to understand this perfectly so that when we have our discussion we can address this issue, and I just want to – for an example, can I take an example on this issue here?

Mr. Ponce: Sure.

Vice Mayor Kerdyk: What is the normal in general is the City receiving on the 3.5 percent multiplier that we give every year?- what is it?- \$1.4 million?- \$1.6 million?- what is it?

City Attorney Leen: That amount varies; my understanding is it's varied between \$1.2 million and \$1.6 million.

Vice Mayor Kerdyk: OK, so let's just take \$1.4 (million) as the number. So the \$1.4 million – you take the \$800,000 out of that, so you have \$600,000 now, and you put this into a separate fund, the \$600,000, the Biltmore matches that at \$600,000, so now you have \$1.2 million for capital improvements to the facility under the definition that essentially...OK.

Mr. Ponce: Correct. What we are trying to establish – I think where we all broke down is over process, and that process is basically what we have proposed as we've always done, because remember the City has complete audit right, audit function, we would do the projects, and understand something because again, I'm not a historical person...but you've got to wrap your mind around the concept that every time you do anything in that project, we would all agree that restoring the Biltmore Tower, the Gibraltar Tower is a big huge renovation, restoration project, we would all agree that if we added a wing or a building or built-out rooms what that would be. But we need to take cognizant of the fact is that any time that you drill on the side of that building its 80 years old, you don't know what you are going to find; you are going to find plumbing in there that's galvanized lead stuff from the '20's, you're going to find maybe next to it a piece of PBC. So nothing in this hotel is simple when you go about trying to fix something. Mr. Prescott and I were sitting a couple of years ago out in the patio and all of a sudden a water spout just kind of came out of the side at one of the buildings up there the third floor above the Granada Ballroom, how do we fix that?- he goes I don't know. We got to take off the historical roof, we got to do this, we got to do that. So not to belabor the point, it's expensive to do

anything. So restoration is just not, here's five projects that we want to do, let's make a dream list, it's really an on-going daily process. So what we proposed was we would do the projects, we the Biltmore would do the day-to-day stuff, the big stuff, the little stuff, obviously the Gibraltar Tower is tantamount and from that at the end of the year we would be accountable to the City for what we did, meaning for the sake of using your example. Let's say its \$600,000, let's say the City has – the Biltmore has put in its match or put its money in, \$1.2 million, the City is being asked to match it \$600,000, we will then report to you here is what we did. If you don't like what we did, or if there is some dispute about what we did, or what we thought that maybe you didn't need to do it this way, you should have done it that way, then we can have a dispute mechanism that can resolve it. My suggestion perhaps is that the Commission can resolve it, and so it's one of these things is that it's a verification or as perhaps as the City is now suggesting last night for the first time, maybe it needs an approval process, maybe you need to come to us with a bunch of projects you want to do and then we'll decide as a Commission as to whether or not you want to do those projects, if we are going to approve those projects. That doesn't allow for planning, it doesn't allow for you to take care of things as they come up, how do you create a contingency fund? So this is not without a lot of thought on our part. Now, we are not perfect and we certainly welcome suggestions and I think we've come a long, long way with a good definition that brings in general accounting principles, it brings in tax concepts, and we struggle with that, it wasn't easy to come up with this.

Mayor Cason: So that's your proposal as we are right now.

Mr. Ponce: Yes sir.

Vice Mayor Kerdyk: Is that in perpetuity?

Mr. Ponce: I'm sorry sir?

Commissioner Kerdyk: Is that in perpetuity?- this is going to last forever?- this agreement is your proposal for this going to last forever?- or is this a defined...

Mr. Ponce: Commissioner with all respect none of us are going to last forever.

Mayor Cason: But there is 70 years left on this.

Vice Mayor Kerdyk: There is 70 years left.

Mr. Ponce: 70 years left. My understanding is 54 years...

Vice Mayor Kerdyk: Or 50 years.

Mayor Cason: Plus 20-20.

Mr. Ponce: But in the lease itself there is a renewal term that renewal term says, my understanding when the lease was modified in '99, that this initial term was for 20 years with two 15 year options on behalf of the Biltmore. In the lease it basically says at the end of that 20-year term, at the expiration of the initial term, upon written notice by the developer delivered to the City at least 90 days prior to the expiration of the initial term of first renewal, the City and the developer shall renegotiate the rent provisions of this lease for each renewal term based upon the appraisals as provided for in Section 4.5. So that's in the lease already, it's always been there, so there is at the end of the first term there is an automatic review, appraisal. Now there is an appraisal section, if you want to go into a lot of detail here, but there is a mechanism to protect the City from that, so no it's not in perpetuity.

Mayor Cason: But that part is 30 more years roughly?

Mr. Ponce: That part is, yes, 30 more years.

Mayor Cason: 30 more years, OK. I would ask now that the City Attorney to make our presentation and then we can have a discussion.

City Attorney Leen: Thank you Mr. Mayor.

Mayor Cason: Thank you very much.

City Attorney Leen: First, I would like to say that we have talked quite a bit in the two discussions we had with Seaway as part of the mediation, and then yesterday as part of our settlement discussions. There is still a fundamental disagreement between the parties that needs to be understood. The percentage rent issue that you just heard discussed is a major concession by the City, if it is made as currently presented. The reason why, at least in my opinion, in reading the lease and the opinion of our counsel Seaway presently has the duty to maintain the structure of the Biltmore. So as a matter of contract law they already have that duty, so what we are basically deciding here if we go with their proposal is that for the next, and there is some dispute over how long this would be, our counsel is telling us 65 years. We heard 30 years, but for a substantial amount of time the City will be making a concession on a substantial portion of the rent under their proposal. Now our counterproposal, which the Commission should know in all fairness was that we would agree in concept that there could be money provided by the City on a matching basis to Seaway in order to restore the structure, but it would be done as a matter of discretion because presently they have that duty under the lease in our opinion, and the way that, that would be done would be every year, this was our proposal, every year Seaway would be able to make an application to the Commission and have the matter placed on the agenda and come to you and present their capital expenditures, and then the Commission could decide, but it would be done as a matter of discretion. The benefit of that proposal is that for the next few years of course there would be many reasons for the Commission to give them substantial capital "X",

reimbursement within the confines of our deal of course, but there maybe because we are reaching an agreement, there is a benefit to both sides. You may want to compensate them for that, but 3, 4, 5, 7, 10 years from now, 20 years from now the City would still under their proposal, the City would be bound as a matter of contract law to that concession and would have to continue even if Seaway is making a substantial profit, we would still have to use taxpayer dollars to match, and that is the concern. So, our proposal we thought well in those years, like in years 10, 11, 12, 13, 14, 15 the Commission could look at the issue, because the Commission is the governing body of the City, and they ultimately have the duty to protect the public, the Commission could look at the matter and determine whether it was just to provide you with this funding or not, and we were prepared, the City was prepared to leave this to the Commission, and I have to say Seaway was not. Seaway wanted this to be guaranteed as a matter of law. What I would suggest to the Commission, well actually before I make any suggestions, I also wanted to mention a few other terms, I don't want to leave them out of the public discussion because yes, these were the main business terms that have been discussed. Also there was – one business term, I'm not sure if you mentioned it, forgive me if you did, was that the parties agreed on an interest rate of 2.5 percent.

Mr. Ponce: Yes, I mentioned that.

City Attorney Leen: I'm sorry about that. Now the other terms that are important to the City to protect its position are that of course GALIC as an initial matter must sign off on this deal. They have to do it if it's going to be an amendment to the lease anyway, but we want them to sign off to the substance of the deal, and what we do that as meaning is that both Seaway and GALIC must waive all of their arguments going forward that the City somehow not owed rent, that if there was ever a cure that needed to be done that they didn't have the duty to do it, and what I mean by that is under the current lease we are owed something like \$4.5 million, it's our position that, that is an obligation of Seaway and that if GALIC was ever to step into the lease after default that they would have to pay the whole \$4.5 million amount. That is their business deal that they agreed to, they would need to waive any argument, GALIC, that they would not owe us that \$4.5 million, that is a very important consideration for the City. Likewise one concern just to advise you as your legal advisor, one concern would be if you make these substantial concessions to Seaway, will Seaway turn around and sell this to another operator because you are giving them major business concessions. So another issue we discussed is that there could be no assignment or transfer of this deal to another party, that this would just be for the benefit of Seaway, not even for GALIC, it would be for the benefit of Seaway, because you are making the deal with Seaway, and if they ever attempted to transfer it there is one of two things you could do; you could say that the City has to consent, that would be one, within our discretion; or two, you would have to say that or you could say that whoever it gets transferred to does not get the benefit of this deal.

Vice Mayor Kerdyk: Or number three, you could have a transfer fee.

City Attorney Leen: Or three, you could have a transfer fee, of course. Thank you Mr. Vice Mayor that is true. In addition, it is important that if GALIC ever stepped in – one other thing that was important to the City was that if there is a default under the new agreement that everything would revert back to the way it is now, and what I mean by that is, I would never want to recommend to you as a City Commission something that in one year if there was a breach we would be in a substantially worse position than we are now. Right now if you were to issue a notice of default there would be a 10-day cure period for Seaway and a 20-day cure period for GALIC. It is our view that they would have to cure all past due rent during that time, and there may be some dispute on that, but we believe in the end we would prevail on that issue. The concern is that if you make these changes to the lease and GALIC is able to take advantage of them, if there is a breach or a default in a year or two now none of that money would be owed, instead in order to cure the lease they would just have to pay whatever rent payment wasn't made in that one quarter, and if we went to court we would lose the ability to sue for all of the things that we are entitled to under the lease. So these are other terms and there are several more, I don't want to...

Commissioner Anderson: Please, I'd actually like to hear them that would be fine.

City Attorney Leen: Well another – let me give you one other important term. I don't want anyone to think that this is exhaustive.

Vice Mayor Kerdyk: I think this is a very important issue.

Commissioner Anderson: Hit the salient, the most important points.

City Attorney Leen: Another important term – yes?

Vice Mayor Kerdyk: Well I just wanted to – hasn't anybody talked to GALIC?- is that a possibility that they are going to consent to that?

City Attorney Leen: GALIC was at the mediation, I can't discuss – I can discuss with you under our agreement individually I can brief you, but I cannot discuss that other conversation.

Commissioner Cabrera: Let's be clear on that. GALIC was – because I want to bring this back later, GALIC was at one of the mediation meetings, is that correct?

City Attorney Leen: Yes – although they were entitled to come to both.

Commissioner Cabrera: OK, but in essence you had potentially one-eleven hour meeting in which GALIC participated, and then you had a subsequent meeting where it was just the City and Seaway, both the City's attorneys and Seaway's attorneys, is that correct?

City Attorney Leen: Yes.

Commissioner Cabrera: OK. When you are done bringing the other terms that Ms. Anderson asked about, I'd like to come back to some questions that I have based upon what Mr. Ponce said, is that alright with you?

City Attorney Leen: OK.

Mayor Cason: Well you want to finish up our presentation and have questions?

City Attorney Leen: Thank you Mr. Mayor. A couple of additional terms that I would consider to be material and then there are other – there is a whole written agreement which is why I just don't want to miss something and have it said that we didn't include that, but another term that we discussed, this would ultimately be up to the Commission whether you wanted to do this or not, but if they breached again one of the terms that we proposed is that you would authorize the City Attorney then to issue a notice of default, it would already be there so that we are not in the exact same position a year from now, and one additional one is that there was an indemnification provision requiring them to basically as I recall, indemnify and protect the City if there were any claims related to this, I think was there?- Mr. Glass was there – there was an indemnification provision in our proposal, wasn't there?

Mr. Glass: Mostly a waiver.

City Attorney Leen: Mostly a waiver, but it was a very complete waiver that protected us in many different ways through injunctive relief, equity, through legal actions, and that would have to be in any sort of agreement, a complete protection for the City because we are the ones making the substantial concessions. That's basically the terms, although I don't want to imply that it's exhaustive. Now, as your legal advisor I would say that a default is warranted; under the prior, and I'll get to my recommendation in a second, but it would be warranted at this time because at the last meeting we did say that we did present – as I recall it the Commission informed Seaway that their offer was not acceptable, Commission then said that our proposal, which we had made, and please understand, our proposal was made in tremendous good faith, it was an excellent proposal, it allowed in my opinion, it allowed Seaway a substantial amount of time to pay off their past due arrearages, and also made – basically from what I've heard it's something they could never get in court or anywhere else, it was a very generous offer by the Commission in my opinion, it was rejected and my mandate from the Commission was to hold the mediation and to seek to try to get some sort of agreement on those grounds, and we were unable to do it, because this percentage rent is a fundamental disagreement between the parties. It is true there has been a lot of agreement on other issues, but this is a fundamental agreement. So, I would say that if the Commission desires a default would be warranted at this time; however, I would also say that there may be a benefit to continue to negotiate under very strict

guidelines and with guidance from the Commission, although we do not – I would not recommend to you to negotiate this in public, because it may not work to our benefit, because there are a lot of issues; however, I would recommend – that’s really the choice for the Commission, but I do think that there could be a benefit to continued discussion.

Commissioner Anderson: Continued discussion in the terms – would there be a notice of default recommended as well as part of the continued discussion?

City Attorney Leen: Well, the Commission has several choices; one is, you could just instruct us to go forward and after the Commission informs us what are you looking for here?- what sort of agreement is required?- we would go forward and do that. You could, if you wish, give me the authority to issue a notice of default, but I wouldn’t issue it as we did the discussions. You may or may not want to do that, or you could instruct issuance of the notice of default. Those would be your three choices. Now, if there ever was a notice of default to be issued, I would request authority to be able to extend the deadline to cure, but ultimately this is a decision for the Commission, it is a major decision. There is a fundamental disagreement between the parties. I would request if we are going to go forward with further discussion, guidance from the Commission regarding this fundamental disagreement.

Vice Mayor Kerdyk: I think it’s important.

Commissioner Anderson: Thank you. It makes it very clear.

Mayor Cason: Do we have anything else to say on our side from the legal point of view? Outside counsel wants to say anything or not?

City Attorney Leen: No Mr. Mayor.

Mayor Cason: Why don’t we open it up for Commission discussion?

Mr. Ponce: May I respond briefly?

Mayor Cason: Go ahead.

Mr. Ponce: Number one, we would welcome the opportunity to continue the mediation with Bruce Greer. Contrary to what the City’s position, and I’ll preface it by saying, everybody is operating in good faith, there is no question about that in my judgment. I think Bruce Greer helped us an awful lot the one day we were together; I was very actually disappointed when the City unilaterally decided to terminate the mediation without calling us and telling us they were going to do that, and then never called us to talk, and Friday afternoon I picked up the phone and called Craig and said, can we keep talking?- and he said I hoped we would keep talking. So, we want to keep talking. We believe that the best environment is in the mediation process with a

mediator, and we can make it quick, we have a couple of issues and that's it. Secondly, I have to disagree with Craig's statement about what the obligation of the Biltmore is as far as the rehabilitation and restoration of the monument. If you look at Section 9-1 of the lease it says, the developer shall throughout the initial term in any renewal term, at no expense whatsoever to the City maintain the premise and the buildings and improvements now or hereafter erected as a luxury destination, first class resort hotel thereon, and shall not do or suffer any waste with respect thereto. The developer shall promptly make all repairs interior and exterior necessary to keep the premise and the buildings and improvements in good and lawful order and condition. Now, I've only been a trial lawyer for 37 years, and I can tell you candidly all of those words will mean different things to different people, and contrary to what Craig has stated and Reeder said earlier obviously in other meetings, that he believes this is clear that the restoration, rehabilitation, obligation of this 80-year old building is clearly 100 percent on the shoulders of the operators of the Biltmore, we just disagree with that, and the reason why we are here is to compromise and try to reach a middle ground that make sense. We would welcome the opportunity to continue the conversation.

Commissioner Anderson: I have a question – did we call off the mediation?

City Attorney Leen: Thank you. What happened was, I would like to describe this fully. When we were here in front of the Commission what was important was that the mediation be finished by this meeting, so that we could come and speak to you. We had talked about a one-day mediation. Now in the resolution itself we left that open because we recognized it was possible it might go a second day; we had our first day of mediation and we were prepared to impasse at that time because there was just no overlap between the parties positions, but we continued to discuss and based on some statements by counsel, which I cannot disclose because it was a part of mediation, we decided we would go another day, and we would then again attempt to reach an agreement. They wanted to go another day; we wanted to go another day. The mediator was out of town, so on the second day we met and the mediator gave us the authority, both sides either one of them if we could not reach agreement on that day to issue a, to declare an impasse. We also agreed that if we were able to reach an agreement we would meet again, yesterday, the day before the Commission meeting to finalize that agreement. We did not reach an agreement on the second day and there were still fundamental differences between the parties. So we exercised our right at the mediation, we informed them that we would be impassing the matter and then a subsequent e-mail was sent, but we informed them at the mediation that position was extremely clear. Then when we learned that Seaway was unhappy that they wanted to talk to us more, I agreed to meet with them yesterday and we did make progress yesterday in the meeting; and I would just like to say to the Commission I would not recommend any further mediation. The reason is we have done that, it didn't work, and it's very difficult for me to discuss with you what happens at a mediation. I'd much rather it happen in settlement discussions outside of

mediation, so then I can present to you what happened like I did today. There was a tremendous benefit of having a settlement discussion yesterday that was not a part of the mediation, because ultimately you are a public body and I would like to be able to discuss these matters with you at a Commission meeting.

Commissioner Cabrera: You know, everything you said, we've had previous conversations regarding this, I do agree with most of the comments made, but I can also say that on the first mediation that took place, the relatively short briefing that I received from you, I got the impression that much of that meeting was spent more as an arbitration than a mediation, and in fact without getting into too much detail, what I learned was the greatest progress that was made was done so toward the very end of the meeting, and it was really coordinated by you and Mr. Prescott, and I felt good about that. I understand that you met yesterday, but I'm also aware that the mediator was available yesterday to meet and so as I listened to both sides, I can see both sides positions very clearly, but I don't know how the rest of you feel, but having a neutral party helping us complete this process may be in the best interest of all.

Mayor Cason: It seems to me that the progress was made after the mediation ended a couple of hours ago...

Commissioner Anderson: That's absolutely.

Mayor Cason:...And it seems to me that the closer we get to a decision of whether we are going to call a default the more progress we are getting. I look forward to perhaps continued discussions, but I don't think we should do any more mediation.

Commissioner Anderson: I totally agree. We've done a good faith attempt, I think I'm glad we've made progress, but I think we need to heed our attorney's advice as far as I'm concerned I'm heeding his advice, and I have an idea of where we'd like to go, but I'd like to discuss it further.

Commissioner Cabrera: But I'm not suggesting that a good faith attempt was not made, so please don't misquote me, I'm not stating that; all I'm stating is that for the good of all sides the mediator played a vital role, and I know there were some hic-cups early on with the mediation. Hey listen, if it's the will of this entire body not to move forward with the mediator so be it, but it should be our decision, not someone else's.

Commissioner Anderson: And actually I didn't say good faith, those were my words not yours.

Vice Mayor Kerdyk: You know in my opinion I think that we have to listen to our attorney's advice in this particular case. I think actually, we can go ahead and have the discussion about it, first of all let me just say, I think we've made substantial progress, I mean the Biltmore Golf Course is off the table as far as I'm concerned, I know it's part of the bigger package, we've got

the \$650,000, which is substantial cash down, I think that's a good thing. I think there has been compromise; we all realize that the Biltmore Hotel is the iconic structure in the City of Coral Gables and we want to see that flourish, there is no doubt about it, that's why we are sitting up here, and ultimately, Commissioner Cabrera, the decision is going to rest with us here; and I think it all gets back to this percentage rent issue, and I can tell you from my standpoint, my standpoint – you asked for clear direction, I'm going to give you clear direction. My clear direction is that it's got to have a definable timeline on it, it can't be into perpetuity, it cannot go into perpetuity, it has to have a definable timeline whatever that may be. I know that the Biltmore said that their projections look good in 2013, I know that has been delayed because of this economic downturn has continued a lot longer than we thought it was going to be, but I do think it has to have a definable timeline on it.

Commissioner Cabrera: That's a good point that you made, and you have a lot of experience from that end of things being in the real estate business. What would be in your opinion – no I'm serious, you give a definitive direction that's well given, I compliment you on it, I commend you on it. Just so that I have a better understanding, what would be in your opinion an appropriate timeline?

Vice Mayor Kerdyk: My crystal ball is very cloudy, so...

Commissioner Cabrera: So is theirs, but we are giving direction today.

Mayor Cason: We are looking out for 30 years left at this part of the lease with a couple more of 20 years...

Mr. Ponce: Its 15 years.

Mayor Cason: I think its 20 years, but at any rate...

City Attorney Leen: Mr. Glass – we do have someone who knows the contract more than anyone.

Mayor Cason: I have the contract here that I read once more last night.

City Attorney Leen: Would you please come up.

Commissioner Cabrera: I don't have the contract.

City Attorney Leen: He can answer your questions regarding the term.

Mr. Glass: Reeder Glass with Holland and Knight, Special Outside Counsel to the City with respect to the Biltmore Hotel since 1994. The lease term originally was 50 years with two-20 year options; and the first amendment the Biltmore requested and the City agreed to move the

start time for the 50 years from 1986 to 1992, take five years off of the first renewal option. So roughly speaking there is 30 years left in the original term, the second year term of 15 years followed by a second renewal term of 20 years. If you take all of those it's around 65 years.

Mr. Ponce: And I do stand corrected, because I said it was two-15 year renewals, its one-15 followed by a 20, I apologize.

Mr. Glass: But the 30 years for the first is roughly correct.

Mayor Cason: The amount of money we are talking about potentially if you been up to the \$1.6 million, you subtract your \$800,000...

Mr. Ponce: Subtract \$800,000.

Mayor Cason: \$800,000 from \$1.6 million is \$800,000, so it could be anyway from minimum of \$24 million if you open-end it, up to who knows what depending on how well the hotel does. So, we are talking about a lot of money, a lot of money for an open-ended...

Mr. Ponce: The base rent is \$800,000 a year for 30 years; let's do that math, its \$24 million, right? So it's a lot of – the numbers get big when you start rolling it out; unfortunately most of us in this room won't be alive when that conversation is being had.

Vice Mayor Kerdyk: With the 70 years, not the 30 years.

Mr. Ponce: Because I'll be 130...

Commissioner Anderson: And that's why I want to make sure the City is in its best position possible.

Mr. Ponce: [Inaudible]...

City Attorney Leen: Mr. Mayor, in order to get the full benefit of that concession though, because currently, correct me if I'm wrong Reeder, the estimated base rent which is a calculation is about \$600,000 plus a CPI adjustment annually. What they are proposing, they did make a concession to the City of going to \$800,000, but originally it was \$800,000 with no CPI, and then it was \$800,000 with a CPI adjustment every 5 years. That will erode because the \$600,000 as a yearly CPI and that has an every 5-year CPI, their proposal that will erode that concession over time. I would recommend that if that were ever to be done that the CPI should be yearly.

Mr. Ponce: We have no problem talking about that also.

Vice Mayor Kerdyk: When you are talking about a 65-year lease, or 60-65 year lease what you are basically talking about is ownership in the property. Any time people look at a lease in

general when the appraisers do it, that's ownership. If you create value which you will do with some concessions depending on how long you structure that out, then you will have to look at what we talked about before which is possibly a transfer fee or some other denominator that would help us out as far as equalizing the playing field, should the structure get sold and we do not have that agreement in there where it says it changes upon sale. So we need to take that into consideration.

Mayor Cason: Frank do you want to say something at this point?

Commissioner Quesada: That's actually a good segway; it's something I was thinking about. Has the Biltmore had any conversations about selling the Biltmore lease?

Mr. Ponce: None whatsoever.

Commissioner Quesada: None whatsoever; and Bill, thank you for bringing up the point of the transfer fee, I think that's a point. It's something that I've been thinking about since Craig and I spoke yesterday about the developments and how everything was proceeding. I just have a few more questions. For the capital expenditures, the language that you read to us earlier, pursuant to that language would the Biltmore be required to perform capital improvements?- is it a formal requirement?

Mr. Ponce: I think it's implicit that we make capital improvements, we have to. We've been doing \$2-\$2.5 million a year every year-average it out over the 18 years, so the answer to that is yes. Let's put it this way Commissioner, if we don't make any capital improvements, then you are not going to get – your match money is going to go to you and not back into the monument.

Commissioner Quesada: OK.

Mr. Ponce: Let's just give an example, say one year there is only \$500,000, and let's say the additional percentage rent is \$800,000, a \$300,000 gap, if there is not projects and money expended, that money will come to the City. Don't assume that every year that all that money will go right into it. I think it will most likely because the hunger of that building is not getting any younger. Think about this, a 30-year goal renovation is now 30 years old; you can get an antique car tag after 25 years on the car.

Vice Mayor Kerdyk: Can I just...

Commissioner Quesada: Go ahead, go ahead.

Vice Mayor Kerdyk: That's a very good point, so the \$800,000 we are using, the \$500,000 that we spend on the thing you say we get back \$300,000, but actually we would get back \$450,000

because you would have to match the \$500,000, so it would be \$250,000, so OK – very good thank you.

Mr. Ponce: Correct.

Commissioner Quesada: Is there an estimate that you have that you are aware of the current renovations that are needed for the Biltmore right now?

Mr. Ponce: There certainly has been exchanged some lists and ideas we've certainly projected out over the years what general accounting principles and good hospitality principles which suggest you do, but I don't have a list to hand to you here right now. We can certainly work on that, and we do, there is no question. Let's talk about the Gibraltar Tower, we had the Dade County grant of a million and-a-half dollars sitting right there ready to go and we could not pull the trigger on it to get that, that money will go straight to that tower, it needs it.

Mayor Cason: That money is still there, it's still your money.

Commissioner Quesada: My biggest concern in listening to all the terms and the back and forth, I think the rest of the Commission will agree with me, correct me if I'm wrong, if I'm misstating any of your opinions; obviously we don't want to waste any taxpayer money on this, absolutely not, we want to make sure that term is fair and reasonable for both sides, and we want to make sure that the City asset, the facility is taken care of properly. That's why I think it's very important that this agreement, essentially what I'm hearing this principle term that's still up in the air is worked out properly because we really need to make sure that this asset is protected going forward. We hear it all the time, I know I've probably received 200 e-mails on the issue over the last few months, and the general feeling always is we need to make sure that the door stays open and it's very important to all of us, I mean that's why we are taking these steps; and I don't want to regurgitate items that we've discussed in the past because I know all the Commissioners up here and the Mayor have discussed this ad nauseum that we want to make sure it's in the best interest of the City, this is owned by 47,000 residents, it's not just Seaway, we want to make sure we are doing the best thing for the taxpayers. A few more questions for you. Another issue that's holding me up which was one of the first items I asked you when you got up here is the escrow agreement. I despise this escrow agreement and the confidentiality provisions related to it, doesn't have that transparency. We didn't have it before 2009, was when it was negotiated 2009 roughly?

Commissioner Anderson: Right – but we couldn't go forward.

Commissioner Quesada: Don't quote me on the date because it's been some time.

Mr. Ponce: Commissioner your counsel and the City Auditor have had access to all those records.

Commissioner Quesada: I understand that, I understand that.

Mayor Cason: But we are not allowed to discuss that, and I don't know for example, how much money you've spent on renovation if anything in the last couple of years, we just don't have that data.

Mr. Ponce: There is no reason for you not to have it.

Mayor Cason: Well it's not something that we can discuss in public.

Mr. Ponce: We'll be glad to forward it to you; I mean there is nothing that says we can't talk about certain things and that's what I suggested to you earlier if there are questions you have we're glad to answer them, you got to get the documents, we'll give them to you, you want to waive portions of this to satisfy questions, we're glad to do it; by the way we are glad to waive the confidentiality, the mediation we had the other day too.

Commissioner Quesada: OK, that's fine, but my greater question – what about the questions of the residents, the inquiries, I mean, we try to promote transparency at all times, I think it's very important. This is a City asset; this is something that was transparent up until this agreement came into place, that is a concern.

Mr. Ponce: No Commissioner, with all due respect let me correct you on that. We have always maintained throughout the years that many of the documents we provide to the City, we would provide them literally with a stamp on it saying confident proprietary information, because obviously the Biltmore Hotel is in a competitive environment, it's a hotel, because lots of hotels in Coral Gables and all over South Florida would love to know what the Biltmore is doing, and its revenues and gross expenses, etc. So many, many times over the years we have provided information that the Manager, the prior Manager had asked for under, I don't want to call it a "seal", but under a confidentiality stamp. Now, we've all agreed that in the event there was an appropriate request for that record, and if there was not, if the Biltmore was not prepared to in theory go to court to defend it, that the City would have the obligation to turn it over, and that's something that Liz and I worked on a long time, Reeder and some of his partners worked on. So we've done it. Now what happens when we decided, when the City decided to do the PriceWaterhouse analysis and wanted to download thousands and thousands and thousands of documents, and we provided every document they asked for, that was just the mechanism to be able to produce everything with the idea being at some point when this thing ends what is deemed confidential remains confidential, and what is not won't be. So, I hope I'm clarifying it a little bit. This is not a new process we invented two summers ago.

Commissioner Quesada: Reeder can I get your take on that, I believe you were a part of that process.

Mr. Glass: Yes. The restriction that the Biltmore wanted was the not to make public what they call proprietary information. This is how they went around doing their business and it was not in effect delivered to the City every year as part of the financial information that was provided. So the escrow is to protect that, but where it really comes out into a communication issue is the restriction on what PriceWaterhouse can say based on use of proprietary information to reach those conclusions or opinions, and so that's the area they can't talk about; and under the escrow agreement the way in which that's to be resolved is the documents go back to the Biltmore, the Biltmore then marks what they say is proprietary, and it comes back into the escrow, then PriceWaterhouse looks at what they say is proprietary, if they are not using any of that information then they are free to discuss their conclusions and the background and why they reached them. If there is something in there that they would say in public that would be part of the proprietary information that has to be redacted and not available. Now that's the general thumbnail sketch of that situation, until that process I described takes place no one knows what the Biltmore is going to say is proprietary or just simply confidential or in a different category.

Mr. Ponce: But the information you've requested we are more than glad to give it to you.

Commissioner Quesada: Again, in my opinion it comes back to what residents have access to, and I understand both sides of the argument, I understand that, but it is a concern for me, it's that greater transparency that we are all thirsting for on this item; but look, I understand that this is not one of the principle terms that's been discussed today, I wanted to air that out there because that's something that's been weighing on me. Look, the way I see it, the City has no obligation to be negotiating, renegotiating with the Biltmore right now. I think we are moving forward in tremendous good faith as the City Attorney, Mr. Leen has mentioned, by moving forward. It's tremendously valuable to have a 30-65 year lease depending on whatever interpretation that is, with the Biltmore, and again, it's probably one of our most valuable assets, if not the most valuable asset in the City outside of City Hall. So, I think what we offered is very generous, I really do, and I think Mr. Leen described it very clearly in that years 10 through 15, or later on to revisit this capital expenditure provision have the Commission have that discretion, depending on how things are going. Again, the crystal ball is cloudy for all of us, we don't know what's going to be happening in 10 years, we don't know what's going to be happening in 2014, I don't think many people anticipated what happened in July and August of 2009 in the hotel industry. So I think that's very important to have this Commission involved when it comes to that term. I am fully supportive of the recommendation that we've heard from the City Attorney...

Mr. Ponce: May I be heard on just one final point?

Commissioner Quesada: Yes.

Mr. Ponce: We've got two positions on one really big issue at this point; obviously there will be other things as Craig has pointed out that we'd have to work some legal stuff as I like to call it. I believe in my judgment that a mediator can be very, very helpful; we've got two positions, we've got to make movement to the middle, and how are we going to get there if without somebody helping us get there.

Mayor Cason: I think we moved farther toward the middle after we had the mediator and the end of the mediation and the impasse, most of this some things that I heard yesterday that you've conceded on have been in the last few hours.

Mr. Ponce: With all due respect the initial mediation meeting is a lot of posturing and people talking and pounding on their chest like gorillas in the woods, and then it will eventually get to something. If we would have had another day or so, I thought it would be helpful. In all fairness it's nobody's fault, Bruce Greer was at a prior trip out of town.

Commissioner Cabrera: Mr. Kerdyk provided some direction when he said timeline, he has a concern with timeline, I respect his direction on it, I concur with my colleague, I don't know how the rest of my colleagues feel, but I think this is a juncture where we all agree on certain items. Mr. Kerdyk, I agree on your item on timeline, I would support your timeline, I realize I put you on the spot by asking you what would be an appropriate timeline, maybe that was not the right question to ask you at the time, but notwithstanding I'm interested in knowing, and this is the only time you and I have a chance to discuss it. Can we then agree, this Commission agrees not one member of the Commission, but this entire Commission whether we move forward with or without a mediator? What is the will of this Commission?

Commissioner Anderson: I do not want to move forward.

Commissioner Cabrera: OK. You say no, I say yes. What do you say Mr. Mayor?

Mayor Cason: I say no for a mediator.

Commissioner Cabrera: OK. Mr. Kerdyk?

Vice Mayor Kerdyk: I'm going to stay with our City Attorney.

Commissioner Cabrera: And there are four votes, that's it.

Commissioner Quesada: I say no. I know this mediator, but I agree that we've made substantial movements...

Commissioner Cabrera: Commissioner...

Commissioner Quesada: No, I want to be heard on this, and I think it's important that we gave it an additional four weeks and it didn't come down – last night is when all the conversations were happening, and I know participating in a lot of negotiations maybe it's a psychological thing on both sides always want to squeeze it out to the very last second, but I don't want to go past today, I really do not want to go past today. I was dead serious four weeks ago when I said I was ready to default and we wanted to give four more weeks. We've been waiting too long and I think, Commissioner Cabrera, we spoke about this the last time the Biltmore came up and the rest of the Commissioners have been dealing with this for a lot longer than we have, but as residents we've been dealing with this for too long. I don't like the fact that Seaway just stopped paying, I don't like the fact that the legal games were being played for such a long time when our counsel advised us four weeks ago that essentially all the arguments were baseless in his opinion. I don't like the way it's played out, I really don't, and you got to understand our concern is, why would we want to continue moving forward with Seaway if this could happen again in the future?- that's a concern that I think about all the time, it really is – Oh, OK, maybe we work something out, maybe we are happy for the next year, two years, maybe I'm gone the next time this comes up again, but I don't like the games, it's not fair to the residents, it's not fair to the City that's why I really don't want to move forward, that's why I really wanted today to be the drop-dead date, and again these are things that go through my mind. I think it goes through all the residents' minds, and I see all the support here and we receive all the e-mails and the phone calls, it's just that it – you have to understand what it puts us through, even though I'm new, even though Jim is new here, we are inheriting all that stress and all that concern and moving forward and we want what's best for the residents. So again, these are the concerns going through my head and why I have trepidation.

Mayor Cason: I would like to at this point ask our City Attorney; I echo a lot of what you said, I feel the same way, I feel very frustrated, I'm very upset that unilaterally two and-a-half years ago they just stopped paying us, and said we are going to stick it to you. I think that was not called for and I would like to know if this has ever happened to your knowledge, I asked you to take a look to see what the due diligence is on this, could somebody address that?

Commissioner Anderson: Once we get that answer I'd like to...

City Attorney Leen: Yes. I did ask Holland and Knight, Mr. Jimenez who is one of our counsel, to look into your question, and he did some research. Could you please come up and state your findings.

Mr. Jimenez: Good morning, Adolfo Jimenez with Holland and Knight. I was asked to look at historically what occurred in the past in connection with Seaway?- has there ever been an issue in the past?- and essentially what we've done is gone back and looked historically what's occurred. It's not the first time that Seaway has experienced financial issues and financial

problems, specifically in St. Petersburg, the St. Petersburg Hilton in 1992 it suffered a setback when essentially a \$10 million loan on that property and it fell behind \$1.4 million in payments. Eventually in March 1994 Seaway, the Seaway subsidiary had this property filed for bankruptcy. One of the amounts that were owed at that time was a \$3.5 million grant that was owed to the City of St. Petersburg, and the City of St. Petersburg was out that money, the bankruptcy did not save Seaway, they lost the property and essentially it was money that they were out. So a new owner came in...[inaudible]...and so that's the history that they have in that particular property.

Vice Mayor Kerdyk: That's 17 years ago; how's there history from that point forward? I deal in real estate every day, if you look at people's history, most people you can find – probably look at everybody in the audience here you will find something in their background that is not exactly right; how do they look from 1994 to 2000, let us talk current stuff.

Mr. Jimenez: Current stuff is the Biltmore essentially, the situation that we have right now. I think it's a situation concerning leveraging, the amount of leverage that it's sustained in that property became too much and...

Vice Mayor Kerdyk: It's a joke. OK. I don't want to hear more.

Commissioner Anderson: I want to take back a brief history and then put forward what I believe, what I see and what I'd like to see. I concur with you Commissioner Quesada, today is my "D-Day" as far as I'm concerned. In 2010 we reached an agreement which is essentially what the agreement that we offered a few weeks ago more or less; and two weeks after we approved it, it came back and there was no resemblance of it. We get an agreement, essentially the same agreement this year two weeks later or a few weeks later, it doesn't even look like the agreement that we proffered, which I believe was generous. I would love to make sure the continuity of Seaway; however, somebody else can step in and do this. I just need for us for truth-telling, you know, this has gone on too long. To agree on an agreement to change it 2010, to do 2011 and then change it, and expect us to continue to do this, and then till 11 o'clock last night, when I talked to our attorney it was 11:30 last night after a really long day. I think I got the message, I'm frustrated, so frustrated. I believe that the course of action by our attorney is the proper one; I think we've made progress, but not on the fundamental issues and I'm willing to give some more time, but I'm willing to give him the authority to notice them, to issue that notice of default if we cannot agree on the fundamentals.

Mayor Cason: Would you like to comment some more.

Mr. Glass: Just a brief comment. We don't believe this is a legal issue; we've analyzed the seriatim defenses that the Biltmore has asserted and started with, the excess income, the mutual mistake of fact, and now the lease doesn't require them to do the renovations and rehabilitation. We don't think there is any merit in those positions sufficient to cause the Commission to

compromise the position. This is an economic issue – 2008 was the best year the Biltmore had, \$46.4 million, they were doing very well, they projected they'd be at \$50 million, their own, if the economy hadn't turned. So the economy turned and so we've been sitting in this in between position now for a couple of years. Fifteen months ago the City staff recommended to the Commission that we give them the deferred relief that fundamentally is the same position that we have today. What we were not prepared to do is recommend a material restructuring of the lease, because I've been involved now in the Gables Grand, the Merrick Park, and I know this project, and every time there's been any material change in a position, or you are initially creating an obligation on a long term basis there is a process that the City's gone through, with experts and committees, and transparency and all those things that are necessary to make sure that the asset is in effect properly taken care of, and also that there is fair rental value. There is nothing to suggest that a concession on the percentage rent by using it in this fashion that a) produces a fair rental value of the net, this is an economic concession that the City Commission may well want to do for some period of time, but it doesn't in effect necessarily say that this is a solution that's going to last for the remainder of the original term, and so the mediation effort clogs up whenever you are talking about not a legal point that the mediator can work through, or some other kind of term, but whether or not the City is going to fundamentally change the lease going forward for the remaining term of the lease; and this is the challenge for the Commission is to what they are prepared to do and what they need to see in order to make that adjustment.

Mayor Cason: In reading the lease again last night, I think it's very clear, I agree with you, this is not a legal matter it's an economic matter. It says very clearly over and over again, "*the developer agrees that it has performed examination and investigation of the building, represents that it's a sophisticated developer, an operator of real estate who will rely solely upon examinations and investigation and accepting responsibility for the buildings under the lease, understands that it is where-is, as-is with all its faults...*" etc., etc. I mean, it's clear if we move forward and allow some more time, this is a concession by the City, we are going to be losing by the citizens could be up to \$800,000 a year for "X" number of years, and we would be able to put some of this perhaps into maintaining the building, but is not an obligation. Other developers with deeper pockets could probably do it. I think that we made some progress in the last day or two, I personally I'm willing to give a little bit more time, one more and no more time to continue these discussions without a mediator, but as we've been doing in the last couple of days and see if we can reach agreement on the base rent, I think the base rent should be higher personally, I think we should have a limit on the time that we allow this to go forward, and perhaps look at the CPI whether it should be every year or five years, because we are taking a risk if interest rates go up on that.

Commissioner Cabrera: They are comfortable with one year.

Mayor Cason: But that element needs to be looked at, and whether it's going to be 50/50 or 60/40, what are the items that we would be willing to repair because as of yesterday there were some items that were not affixed to the building that you all were discussing, so. I see we are getting closer, but only under the pressure of deadline, I would be willing to go for another period of time, very short and after time there is no more kicking the can down the road. If we don't reach agreement, then I think we need to move on.

Commissioner Cabrera: What's your recommendation in terms of a timeframe?

Mayor Cason: If we were to declare default today it would be ten (10) days, so we have a problem with – Maria you are not, you are here Monday's and Tuesdays, right?

Commissioner Anderson: Yes, I don't have the ability to be here on Wednesdays, Thursdays or Fridays, so...

Mayor Cason: I would say within 10 days.

Commissioner Cabrera: OK.

Mayor Cason: Another 10 days without a mediator to focus in on these issues that we've all talked about and see if we can reach an agreement, and if not then I would...

Vice Mayor Kerdyk: I think maybe two weeks is our next Commission meeting, would that fit?

Mayor Cason: That's fine, two weeks.

Commissioner Cabrera: OK. I would support you with that. May I, since we are all giving direction, may I just say one quick thing publicly with all of us here?- because I'm really interested in hearing your feedback on it, you may not agree with me. You made a comment about the problems associated with the renovation restoration as it relates to not knowing what's going to go wrong. You used an example that you were outside in the courtyard one day and something happened and you didn't know how to fix it, you had to take the roof off. Mr. City Attorney I understand you had certain concerns with how this would be presented to us, you would like to see it presented prospectively rather than retrospectively so that the Commission – renovations and restorations, OK, that's the sense I got from you, that was your recommendation.

City Attorney Leen: My concern was that if we were to do something like this it would be the mechanism as how it interacts with the budget, it could be either way but there needs to be a way to present it so that we can budget for it.

Commissioner Cabrera: Got it, I understand that, very good point. I'm just trying to refrain both sides. So what I'd like to see happen, and I don't know how the rest of you all feel, is to come back with a mechanism that provides for what the City needs so that it falls in line with our

budgetary projections, and at the same time handles emergencies that arise at a very, very old building. That's all I'm trying to do, I know I'm drilling down on this problem, but I don't want this problem to come back, I don't want this to be another issue that we have to decide on, and that's the first component; the second component is, I hope the rest of us or the rest of you feel comfortable that if there is a process in which a permission approval has to be given that it be the Commission that does it. Do you all feel comfortable with that?

Commissioner Quesada: That's essentially the recommendation that...

Commissioner Cabrera: I just want to make sure in case somebody wants to change that mechanism, I want to make sure we are all comfortable with that.

Mayor Cason: But I would not be comfortable with is they say, here's what we did and cough up your money. I think it needs to be – because I don't want to see television sets, rugs, I don't want to see china.

Commissioner Cabrera: Right.

Mr. Ponce: The definition excludes them.

Commissioner Cabrera: It's not attached. But I understand the Mayor's concern. What I'm concerned about is what you pointed out and that is, that it's a very old structure and there will be emergencies that will arise from...

Mr. Ponce: For the sake of example, let's say at the end of the day there is \$600,000 of matchable dollars coming from the City, for sake of a better term, whatever we negotiate has to have some piece of, here's a project, here's a project, here's a project, and we all agree it's a good project. Some of that's going to be, there's got to be some contingency, there's got to be a category of – we don't know what's going to happen. If we have to come in here and ask permission to go fix a problem that doesn't work right, you don't want to interfere that deeply into the operation of the project. These are the kind of things that we never talked about yesterday.

Commissioner Cabrera: That's why I want to talk about them now.

Mr. Ponce: So is it pre or post.

Commissioner Cabrera: I don't want to sound like the European Union talking about Greece. I just really want us to be able to drill this down to a point where both sides are comfortable with it and my colleagues are most comfortable with it, that's what I'm looking for.

Mayor Cason: One of the elements that has to be in the agreement is that, if there is anymore defaults on rent automatically everything is due, and I agree with that. No more economic

arguments, bad times, I mean this would be a major concession by the citizens, the 47,000 people that are going to give up millions and millions of dollars of revenue that would have come in that could be used for a number of things from cultural events to planting trees, all kinds of things. This would be a major concession and therefore we just want this problem not to be coming back to us again. You paid for 17 years, you stopped unilaterally, I would want to see an automatic mechanism be in place if they should ever default again on any of these elements of this agreement that we hope would be forthcoming.

Commissioner Anderson: I have a question for the City Attorney. Do you have the authority under the contract?- or do you need it from us to during these extended negotiations to authorize a notice of default?

City Attorney Leen: The default provision states, the occurrence of any of the following shall constitute an event default: *“The failure of developer to pay any installment of rent, additional rent or any other sum due to the City hereunder when and as the same becomes due and payable and such failure continues for more than ten (10) days after written notice thereof from the City to the developer.”* Now as a general matter I would say that the Office of the City Attorney does have the authority to provide notice of a failure to pay, and that is vested in my authority as your Chief Legal Advisor and as the person who is with the City Manager executing this contract, and a prior Commission has approved this, so that authority already exists. Now what happened was, my understanding, I wasn't here, but about a year ago this came before the Commission and the Commission said we want you to bring this to us if you are going to take any action. So as of this time I have not issued any notice of default because of that general instruction; however, I do believe I have that authority already.

Mayor Cason: Even if you were to issue a notice of default there still would be ten days for discussions potentially or more if you wanted. So either way with the default or not there's a possibility for continued discussions for a short period of time.

City Attorney Leen: Yes. If we were going to go forward with the notice of default, or if you were going to formally recognize that I have that authority, I would want the ability to extend the time period to cure, so that we could continue to negotiate. It's really up to the Commission whether you want to do that and then have us negotiate, or whether you want us to negotiate first.

Mayor Cason: Can you explain what GALIC, which is Great American Life Insurance Company, what would happen if there was a default, not cure, what would happen next just so people are aware of the process.

City Attorney Leen: Under the terms of the agreement if a notice of default was issued the City, pardon me, Seaway would have 10 days to cure the payment default and the payment defaults under the lease, so that would be approximately \$4.5 million. If they did not do that their lender,

GALIC, who you just mentioned, they would have twice that, so they would have an additional 10 days, so they would have 20 days total in which to cure. If they didn't cure at that point the City could terminate the lease and evict the tenant. If they did cure then GALIC would have the ability to foreclose on the tenant, if GALIC cured. If Seaway cured we would just continue.

Mayor Cason: And then GALIC would have the ability to chose another operator if they so desire.

City Attorney Leen: Yes, it's my understanding and please confirm this, that we would have some consent rights there, but it cannot be – it wouldn't be completely within our discretion.

Mr. Reeder: Well they have a right to select an operator with the City's consent the same with respect to transfer.

City Attorney Leen: And I think it's one of those types of consents where we have to be reasonable in granting it or not.

Mayor Cason: Bill?

Vice Mayor Kerdyk: It's been a long bumpy road over the last couple of years and I've had this discussion with Mr. Prescott many times, and the last thing that I really wanted to see is that the Biltmore would not pay their rent payments; it's been very, very bothersome. The Biltmore is basically a living and breathing building, when you default the building all hell breaks loose. No matter which way you look at it, it's bothersome as far as the business that they have coming or the business that they are going to get, it changes the whole perspective. So even though I have admonished and really disliked the way this is set-up, I understand that I personally want to see as far as we can push it, to see if there is any agreement that can be done. We do have operators that have been there 18 years, there is a lot of good things that have happened in the Biltmore over those time periods. We have some fundamental agreements here, and we just have to get over this one last hurdle, which is going to be a definable period of time in my vision. This is a big issue because it sounds great, OK, we are going to default them, then all of a sudden these guys are going to step in, GALIC is going to step in, well they may run the hotel like they are running it now, or they may not run it, and it may be they may not run it; there could be a bankruptcy, there are a lot of possible scenarios that are out there and none of them are really that good, and even though I want every dollar that the residents deserve there are some trepidations from my standpoint of where our iconic structure ends up being in the next two weeks to a month. So for my own mind, my thoughts I need to give it as much time as possible to do it, and I understand as much time is definable and two weeks is a definable period of time. So I'm all good with bringing it back here for two weeks from now, hopefully with an agreement, because Mr. Ponce you know that you can hear my fellow Commissioners, this is a

very serious situation, I think we are at the end of the rope, but we owe it, I think we owe it to the citizenry to try to go one more time at this issue.

Commissioner Cabrera: So the question then becomes, do we move until the next Commission meeting with ongoing discussions with our attorney or do we give our attorney the ability to issue the notice of default and allow the ten days?

Vice Mayor Kerdyk: I would like it to come back here first.

Commissioner Cabrera: OK, Alright, I'm trying to gauge our sense of it. Those are the two questions.

Mayor Cason: Those are the two options I think that are on the table right now. I want to ask everybody if there are any other elements in the next two weeks we want our negotiators to focus on. Frank do you have any?

Commissioner Quesada: I don't want any conversations that we've had here today to be interpreted as being exhaustive of the only terms that are still up in the air; I just want to be clear with that.

Mr. Ponce: One of the things we didn't talk about today that we talked about last summer was an effort to come up with a permanent solution, that the Biltmore and the City would have aligned interest, that the City and the Biltmore would have a piece of the pie together so-to-speak down the road, and a mutual usage of the hotel as far as any ultimate exit strategy of any kind by anybody, and that's one of the things we've totally gotten away from in the interest of the whole economy. If you go back to where we were and as Mr. Glass said, oh it was a great year, but '09, '10, '11, despite our best predictions it's gotten worse and worse and worse. There are \$2.5 million of advanced deposits for events at the Biltmore that I can assure you could be at serious risk the moment the default is issued. You've got a lender – there are all kinds of repercussions, so we do want to continue to engage in dialogue, we get the message loud and clear here. I believe two weeks is a fair opportunity and let us go about doing it.

Commissioner Quesada: So just finishing up on what I was saying, I don't want it to be interpreted at any later discussions that this was exhaustive; these are the only things we're discussing. As Mr. Leen mentioned at the beginning of his discussion, these are just some examples of other issues, we know there are other issues out there.

Mr. Ponce: You are a practicing lawyer, I know you are in the real estate world, you know there is always something else to talk about.

Commissioner Quesada: Of course, so I don't want any interpretation when the two sides get together that these are the only issues we have to discuss. Second thing for me, I don't want to

find out the terms on Monday night two weeks from now as what happened yesterday. We are all a little bit hazy even though we've read the contract, we've met with staff and we've discussed this, it was a cram session. There is no need for me to be on the phone with staff until 1-1:30 in the morning last night discussing all the different options and different scenarios. I would ask that any meetings and any discussions don't go past maybe Thursday of next week, so that we have a few days to absorb everything. I don't want this to be a last minute phone call session between your side and our staff going back and forth at the eleventh hour. You are not going to get a favorable view from me if that happens just because I need time to absorb it, I need time to look at different scenarios, I need to look at the terms, and we need to be fully briefed by counsel, because we discuss different scenarios over the phone with staff, but as we are sitting here we are having more discussions on other items that other Commissioners are bringing up, it brings up other thoughts, other questions that I have. So I don't want to have to go through this process and be a rush, a cram session on the last time again. I do not – I don't like the fact that this is going another two weeks, I think that's where the votes are heading here, I do not like that, this is where I want it to end, we gave you four weeks and now we are going another two weeks. You mentioned yourself, last summer we were having discussions about X, Y, and Z, this has been going on too long.

Mr. Ponce: With respect the PriceWaterhouse analysis wasn't done yet. So anything we tried to do last year with a lot of respect, had to wait for the PriceWaterhouse analysis to be concluded, the City was not prepared at that moment to move forward with it.

Commissioner Quesada: OK. I understand that. I just don't want this any further.

Mayor Cason: Let me do this. Let me ask Ralph and Maria, I want to say something and then we can decide on which of the two solutions. Anything else you want to say?- the elements to focus on?

Commissioner Cabrera: I just want us to be able to focus on another element here and that was what Mr. Kerdyk brought up, a transfer fee, that was an idea that was discussed, there was also discussion that this was not transferable, I think that needs to be somehow tightened up by the time that it comes back, but I'm not interested in continuing this dialogue because quite frankly I think we are all saying the same thing over and over again, I just like to be able to drill this thing down and ask that we move with most haste, and that alright you can call me at 1:30 because I don't sleep anyway.

Mayor Cason: Maria?

Commissioner Anderson: Next Commission meeting is it.

Mayor Cason: I agree with that too. The next Commission meeting is it; there will be no more cans kicked anywhere, that's it. Hopefully you will use the days between now and that next Commission meeting to hold a series of meetings, don't wait till the end, I agree with Frank on that, we need to be able to know so we can discuss with our counsel well before the next meeting whether we reached an agreement or not. I would like to take a look at the base rent, I think it should be higher and the question of the kinds of items we are going to consider is rehab and restoration.

City Attorney Leen: And just so I can recap what I am hearing, because I will go in good faith attempt once again this last time to reach an agreement, but what I am hearing from the Commission is that on the issue of percentage rent they need to move from that substantially, the Commission is not willing to accept an unlimited for 50 years or whatever amount of years it is, that sort of commitment from the City, that sort of concession, that is what I am understanding and that's the position I plan to take.

Mayor Cason: And I'd like to see some data if you could make it available on how much you have put into rehab and restoration over the last 17 years, and what your estimates are, as is right now of what's due, what you think is out there just to have some sense of this. OK. So do we have a resolution?- I would suggest we start first with a resolution which is that we have discussions for two more weeks, and then we can pick up the question in two weeks of default or not.

City Attorney Leen: Well Mr. Mayor, I don't think you need a resolution, I have that authority if you instruct me, I will do as you say and I will put it back on the agenda in two weeks for final resolution.

Commissioner Quesada: I want to make one last point...

Mr. Ponce: Just one last point...

Commissioner Quesada:...Mr. Ponce, Mr. Ponce one last point on my end. As of right now I think what the City has offered is an exceptional deal and I'm fully supportive of that, so if there is going to be any change in my perspective it would have to be exceptional on the behalf of Seaway, I'm fully supportive of Craig Leen's and staff's proposal to the Biltmore.

Mr. Ponce: Mr. Cason we will provide the information you want and we have provided before the City, but in the last 17 years the number is over \$60 million.

Mayor Cason: I would like to see the data. OK. So, you have your marching orders, everybody agrees, and thank you very much.

Mr. Ponce: Thank you sir, thank you for your time.

[End: 11:40:20 a.m.]