

**City of Coral Gables City Commission Meeting
Agenda Item E-2
September 28, 2016
City Commission Chambers
405 Biltmore Way, Coral Gables, FL**

City Commission

**Mayor Jim Cason
Commissioner Pat Keon
Commissioner Vince Lago
Vice Mayor Frank Quesada
Commissioner Jeannett Slesnick**

City Staff

**City Manager, Cathy Swanson-Rivenbark
Assistant City Manager, Peter Iglesias
City Attorney, Craig E. Leen
City Clerk, Walter J. Foeman
Chief Preservation Officer, Dona Spain
Arts and Culture Specialist, Catherine Cathers**

Public Speaker(s)

Agenda Item E-2 [10:34:29 a.m.]

An Ordinance of the City Commission of Coral Gables, Florida providing for a text amendment to the City of Coral Gables Official Zoning Code, amending Article 3, "Development Review," Division 21, "Art in Public Places Program," Section 3-2102, "Applicability," Section 3-2103, "Art in Public Places Fund Requirements, Waivers, and Exemptions," Section 2104, "Administration," and Section 3-2105 "Enforcement," Section 2-2106 "Definitions," Increasing Art in Public Places contribution for non-municipal construction projects providing incentive for option to direct certain percentage of contribution to public parks and open spaces, clarifying the ordinance by utilizing the words "alternative options" in lieu of the word "waivers," modifying procedures of the Art in Public Places Program; providing for a repealer provision, severability clause, codification, and providing for an effective date.

Mayor Cason: Item E-2, which is also an Ordinance on Second Reading.

City Attorney Leen: Thank you Mr. Mayor. Item E-2 is an Ordinance on Second Reading. Its An Ordinance of the City Commission of Coral Gables, Florida providing for a text amendment to the City of Coral Gables Official Zoning Code, amending Article 3, "Development Review," Division 21, "Art in Public Places Program," Section 3-2102, "Applicability," Section 3-2103, "Art in Public Places Fund Requirements, Waivers, and Exemptions," Section 2104, "Administration," and Section 3-2105 "Enforcement," Section 2-2106 "Definitions," I believe that's a typo, that should say Section 3-2106, "Definitions," Increasing Art in Public Places contribution for non-municipal construction projects providing incentive for option to direct certain percentage of contribution to public parks and open spaces, clarifying the ordinance by utilizing the words "alternative options" in lieu of the word "waivers," modifying procedures of the Art in Public Places Program; providing for a repealer provision, severability clause, codification, and providing for an effective date. Again, this is an item on Second Reading; it's a public hearing item.

Mayor Cason: Any speaker cards?

City Clerk Foeman: No Mr. Mayor.

Mayor Cason: So we'll close the public hearing.

Commissioner Lago: Mayor if I may, first off I'd like to thank my fellow Commissioners for providing support and staff's great work through First Reading. I've had the pleasure over the last month or so to meet with many developers in reference to this Ordinance on Second Reading. I've met with many of their attorneys; and it's interesting, because again, what I've explained to them in detail the reason for the increase, and how this will provide a mechanism for the City to purchase private pieces of property and make them into public open space, everybody understood the benefit and how the City again was being a leader in South Florida in ensuring that we offer every one of our residents in every area in the City, public space. Just like this Commission for the first time, I can't remember how many years, decades, we purchased five pieces of property last year and the year before I think we purchased two, which was on Lisbon, correct? We closed on seven pieces of property and that's a statement by this Commission and by staff. The reason I felt that there were really no detractors; they had one concern though and I want to just hash it out now and maybe staff can hash it out later with the City Attorney. They want a delineation, a jumping off point for projects that are in the pipeline right now, they said OK, is it when you've gone to preliminary BOA (Board of Architects), or when you've gone to conceptual BOA, or when we've gone to final BOA that those projects that are in the pipeline instead of paying one percent, are going to pay one point five (1.5%), and I want to be fair to everybody. I don't want to – if you are in the pipeline and you've been working

on a project you submitted to the City, and you've already done your performance, I don't want there to be an increase. I just want to be fair.

Chief Preservation Officer Spain: We've had that discussion...

Assistant City Manager Iglesias: The Building Code, as far as when is the project accepted formerly under the Building Code is when final BOA approval is given, so we have used that traditionally as the acceptance point of where codes and ordinances apply, so it would be final BOA approval.

City Attorney Leen: And in addition to that, we are coming out with an opinion that the Assistant City Manager Building Official and I have been working on that will explain that, because that will not only apply to the Building Code, it will apply to changes in law the Commission, unless the Commission orders otherwise. So you could choose a different date, you could choose a future date, sometimes you could even apply ordinances retroactively in certain circumstances, but the general rule if the Commission doesn't say otherwise will be, any project that's gone through second BOA, pardon me, final BOA approval, final BOA approval that ordinance will not apply in terms of fees and changes to the Code for the development approval.

Commissioner Lago: I wanted to make sure that I wanted to be very brief, because we don't have a very long agenda today, but I want to be brief on this issue, and I wanted to give my colleagues the opportunity to input. I'm flexible, I'm flexible, again I appreciate and I always respect staff's recommendations, and you know about these procedures more than I do, so again, if you want to go with final, I don't have an issue with that, if that's what the Code dictates currently, I want to be clear; the Code dictates that currently.

City Attorney Leen: No, that's not clear. The Building Code, the Building Code for purposes of what Mr. Iglesias does, he is taking the position as the Building Official, based on his interpretation of the Building Code, which he's authorized to do, that it's the final BOA approval. The broader issue of fees and changes in the law that's something with the Commission's discretion. There is case law that supports doing at the time of permitting; there are times you can even do it retroactively. What we are saying is, we think the rules should be clear for final BOA.

Commissioner Lago: My opinion is you've gone to permitting already that means you've already gone through BOA and you've already gone through Zoning, if you submitted permitted drawings to the City.

Chief Preservation Officer Spain: The Board of Architects has a preliminary approval and then there is a final approval. Sometimes the preliminary approval can take multiple times, but then once they get the final Board of Architects approval they go in for permitting.

Commissioner Lago: So they've got to get the final BOA approval then they go into permitting.

Chief Preservation Officer Spain: That's right.

Commissioner Lago: I don't have an issue with that at all. If you are already in that process, your CD's, we call construction documents, are pretty much flushed out.

Assistant City Manager Iglesias: Yes Commissioner, but to be clear, you may have to go various times to the Board of Architects. When you have a final approval then it sets the date of the Building Code that you are under. So the final BOA approval means the project – final BOA approval is set for submission to the Building Department. At that time then we set the actual Building Code.

Chief Preservation Officer Spain: But very often that's only for design and they haven't done those construction documents, because they want to make sure they are doing those construction documents on their final design.

Commissioner Lago: I just want to be sensitive. I want to be sensitive to what my colleague's opinions are and I want to make sure that we are sensitive. These are serious investments in the future of our City, and by the way, as we mentioned before in yesterday's budget, we had a phenomenal budget, again we didn't raise the millage, it's been spectacular, but Commissioner Keon I think brought it up, and that I think the numbers were between 30 and 40 percent of our budget comes from our downtown, so it's a crucial life blood of the City. So we want to be inclusive and we want to, again, Coral Gables is a great place to invest in, it's a great place to build in, we made the process much simpler, we've maintained our high standards as always, but I want to make sure that we are not alienating people from doing business in the City, because by the way, and I want to reiterate this and be very clear. When you talk about art in public places, right now the City is at one percent, the County is at one point five percent, so we are going up just to what the standard is, and we are ensuring that we have a mechanism for deliverables of future parks, which again, will increase property values as-a-whole across the City, because we know that if you have open green space property values go up.

City Attorney Leen: Commissioner one thing. The County is at one point five percent for municipal construction projects; the percentage we are applying today would apply to also non-municipal construction projects. There is a separate provision for us related to municipal

construction projects. Anyhow, the other point I wanted to make was, because I just want to be perfectly clear about this, the reason why we chose the final BOA date is because that's the date when a lot of fees are due.

Assistant City Manager Iglesias: Fees are dues at that time, it's a traditional date that we use in the Gables before, it's consistent with what we've used before. There are a number of fees that are due at that time and I think it would be appropriate from a Building Code perspective to accept that there has been enough work at that point that would be an appropriate time to accept the Building Code, which would mean an appropriate time to accept...

City Attorney Leen: And the other reason why is Section 1-111 of the Zoning Code indicates when you get an approval of that nature it's good for 18 months. So the concern was that there may be times when the Commission has such an important item it wants to apply at the time of permitting, there may be, and that has to be a decision of the Commission, it should ask for legal advice, and also advice of the Building Official when you do that, in my opinion, but the general rule we feel should be the final BOA approval, because that's when people start to get approval that has significant effect on their property, so they are going to be paying a lot of money for that fee, they are going to then start preparing construction documents, which can cost a lot of money as well, and so then if we add an additional fee or we change the law they may come back and say, oh this should be an astoppel. Now we have a good argument against astoppel many times, but we thought that the general rule, unless the Commission orders otherwise, should be the final BOA approval for those reasons.

Vice Mayor Quesada: Question for you, and I'm not against this. As far as implementation of this, so is this going to apply to projects currently in the pipeline that have been approved?

City Attorney Leen: That's what's being discussed.

Vice Mayor Quesada: Sorry, I had to step outside.

City Attorney Leen: No, no, no, I'm sorry Mr. Vice Mayor. If there is a project in the pipeline and it has not gone to the final Board of Architects approval and it has not received that final approval, it would apply, unless you rule otherwise. You could say any project that has been filed.

Vice Mayor Quesada: How long could you be in the pipeline before you get to that final approval?

Assistant City Manager Iglesias: You could be multiple times; an example is the Agave project.

Mayor Cason: The Agave project is the one that comes to mind. Are they going to be stuck with something that they never thought was going to be...

Vice Mayor Quesada: I know that's an outlier, that's an anomaly for this conversation, because there is an agreement with us as part of everything, so, I guess just answer the simple question, I know there are a lot of qualifications, but answer the simple question, has Agave gotten their final Board of Architects approval. I don't think so, right?

Assistant City Manager Iglesias: No, not yet.

Vice Mayor Quesada: So, they've been working on this for three years, four years.

City Attorney Leen: They should be...now, because they have a development agreement, that's been approved.

Commissioner Lago: They have a development agreement.

Vice Mayor Quesada: OK, so that's fine.

Mayor Cason: As long as they are carved out.

Vice Mayor Quesada: I have a problem with applying it to someone that's been in the process for a year or two years, it just seems so after the fact.

Assistant City Manager Iglesias: Commissioner, it's also consistent with the Building Code. If you come here five times for preliminary approval, you don't have a final approval, there could be substantial implications for the code change, but you don't have...

Vice Mayor Quesada: There could be substantial implications if that person ever wanted to go through with it or not.

City Attorney Leen: Mr. Vice Mayor, you could make it earlier; you could make it the time of application, so you could make it...

Vice Mayor Quesada: I want something that's reasonable. I don't want someone that's been in the pipeline for a year or two years, and all of a sudden now there is another half a percent they have to pay in.

Assistant City Manager Iglesias: The deal is to be consistent with what we do as far as the Building Code, and we could take the position that until you submit for final plans that the Code doesn't apply until that time. I think it's reasonable to say, because of our requirements of the BOA that when you have a final BOA approval you are in essence, that is your date as far as your Building Code and any applicable...

Vice Mayor Quesada: That's a very sound analysis, I just don't think I have enough facts to make a decision today and I'll tell you why. What I would like to see, if it's OK with everyone else, if I could just push this off one meeting, can we just get a list of all the projects that's outgoing, so we can see sort of, and we can make a determination what we think is fair, when it should apply and when it shouldn't?

Commissioner Lago: Let me think about it? It's OK, its fine with me. I don't have a problem waiting one meeting.

Mayor Cason: At what point will a developer know the final cost of the project against what you are going to apply the percentage?

Commissioner Lago: And I think that's an answer, Mayor if I may, that's why I prefaced my longwinded statement that I promised the Mayor I wouldn't. I want my colleagues to be comfortable. I want everybody to feel that at the end of the day what we are doing here, I don't look at this as, yes we are increasing the fee, but this is for the benefit of the City of Coral Gables. This is for residents to say, OK, there is development in downtown occurring, but we are actually gaining this, and what are we doing- we have this mechanism in place, so that's the whole goal.

Vice Mayor Quesada: Commissioner, I don't disagree with you.

Commissioner Lago: So that's what I'm saying, let's wait till the next meeting.

Vice Mayor Quesada: I like the idea of increasing it.

Commissioner Lago: Let's postpone it.

Vice Mayor Quesada: Absolutely. But hold on a second, because we all talk about this and how governments get a bad rap, sometimes deservedly so, for changing the rules in the middle of the game, and my concern is, I'm 100 percent in favor of this, just when it should apply. If someone's been in the process for three years and now we are going to tack on another half a

percent, I don't think that's equitable, I don't think that's fair and equitable. If I was in that situation or that person, I would hate the City of Coral Gables for doing that to me.

Commissioner Lago: I don't have an issue.

Vice Mayor Quesada: So, I just want to make sure we pick the right point of when it should apply. Is that unreasonable?

Mayor Cason: So if we defer this, the list should tell us which ones would not be subject to the increase and which ones have already sort of passed the threshold.

City Attorney Leen: So there would have to be a rule that you establish, one rule that would establish, is approvals that have gone through a development agreement that's been approved at the Commission, that's a separate process and they've already agreed to the Art in Public Places amounts, that's a contract that's been signed, so that's out of this discussion.

Commissioner Lago: Yes.

City Attorney Leen: Where you would be deciding is, do you want to like, do you want to pick a date where there is a pending application as of this date, that's when it would apply, or you would go to a second BOA...?

Vice Mayor Quesada: I think it's tough for us to make a determination, because; I'm trying to do this logically here.

Assistant City Manager Iglesias: Commissioner would you like to know which projects have not gone to final BOA?- and in the pipeline?

Chief Preservation Officer Spain: If you are asking us those who have gone to the preliminary Board of Architects, but have not received their final.

Vice Mayor Quesada: You know what would be nice to see, and I think this will benefit us on more than one ground.

Commissioner Lago: Can I just tell you one thing really quickly, and this is something that I also want staff and we are going to do this homework for the next Commission meeting. I want staff to also give us an idea in reference to how further along, how articulated are these drawings -, because you know you can sign up for BOA and basically submit a document and you are time

stamped that you submitted to BOA, but that's not the way it works, in my opinion. So, I want to make sure...

Vice Mayor Quesada: Are you afraid that people are going to rush in the next two weeks to do that?

Commissioner Lago: I'm afraid that people have done that already, because we've been talking about this for three months, so what I want to make sure is...

Vice Mayor Quesada: Hold on a second. I would have no problem saying that at a minimum we go back to the first time we discussed this on the dais or the first time Planning and Zoning.

Commissioner Lago: That's fine. I just want to make sure that our staff who is very competent and we can have Ramon, we can have Peter's staff, we can have our Preservation Officer take a deep look and say, these plans that came to BOA in a rush manner were they properly flushed out?- do they have enough to potentially get a BOA approval that day?- or were they just coming in under our opinion just to get time stamped saying that they came to BOA on this day? I want to be fair.

Vice Mayor Quesada: We may not determine that the BOA is the right marker, whatever marker we decide it is.

Assistant City Manager Iglesias: To answer that. The reason that we use the final BOA approval is because at that time we have an established project, it's gone through the design process, you have enough design development drawings to establish your project at that point.

Mayor Cason: You know what the numbers are against which...

Assistant City Manager Iglesias: At the final BOA approval. At that point you've established your project; you are not coming in with...

Vice Mayor Quesada: And you are invested to get to that point also. I just want to be fair. If it takes someone half a million dollars at that point...

City Manager Swanson-Rivenbark: It's going to be difficult for the Clerk to transcribe these minutes. No sir, you talk as much as you want, we just can't talk over you.

City Attorney Leen: Mr. Vice Mayor one point of clarification is that, it used to be that certain fees were paid earlier, but one thing that the ACM Building Official and I have been working on

this opinion is that there will be certain fees, the bigger ones that you are talking about that would be paid at the time of the final BOA approval. The reason for that is that, if you have a non-refundable fee earlier and it's non-refundable, but you end up not doing the work there could be legal issues with that. So this is the date that we pick...

Vice Mayor Quesada: Got it.

City Attorney Leen: But again, you can choose any other date or a change in the law.

Vice Mayor Quesada: Very simple. I'm going to make a motion to approve this item, however, I'm going to make an amendment that the next meeting or as we see fit to determine when the implementation of it will occur.

Commissioner Lago: That's fine.

Mayor Cason: Alright.

Commissioner Keon: I also have – I'd like to see this continued also, because I have some other issues with it too.

Vice Mayor Quesada: OK. Then I withdraw my motion, and then I move to defer this item to the next meeting.

Commissioner Keon: I'd like to put on the record what the concerns I have are, so you can take a look at them also, alright; and I do support having dollars for open space, but I have concerns about it with incorporating it into this Art in Public Places ordinance. One of the things that concern me is that the intent of this ordinance was to encourage developers to include legitimate credentialed or juried public art in their developments, so that was the overriding reason, is my understanding, as to why this was developed or if they chose not to, to provide a public art fund, is that right?

Chief Preservation Officer Spain: Yes.

Commissioner Keon: OK. So that was the primary reason for this to be developed. I have a concern the way that this is structured that there may possibly be an unintended consequence of not having that art built into our buildings to create the ambience and the exceptional buildings, if the way that it is set up, because if currently now they are required to have, it's one percent into their buildings, there are also is currently the opportunity to purchase park land too, it seems it has never been used though. That opportunity is there, so I don't know if we need to tell them

that – really quantify the value of the art that they are placing in their projects, and if it’s not one percent that if it really doesn’t come up to one percent based on not their say, but your say, that the remainder could then be added to parkland or whatever...

Ms. Cathers: And Commissioner that is currently how it is in the guidelines, so if they do choose to incorporate art within their project and there is a balance then that balance is put back into the Art Acquisition Fund.

Commissioner Keon: OK. But there is an opportunity to put it into park land too. Why does it only go into – well currently it only goes into the Art Acquisition Fund, the balance, but that’s a policy or that’s an administrative or a practice?- it’s not a policy, but it is a practice that is happening now where the practice could as easily be the remaining amount could go into park land as opposed to just Art Acquisition Fund, because the way that this is set up it could go to either, is that right?

Ms. Cathers: I’m sorry, excuse me, right now it’s within the guidelines, which the ordinance references, so we can change the guidelines to incorporate that.

City Attorney Leen: No, no, you would have to change the ordinance.

Commissioner Keon: You would have to change the ordinance?- why would you have to change the ordinance?

City Attorney Leen: Right now, because the ordinance for the – you are talking about the amended ordinance or the original ordinance?

Commissioner Keon: No the current, the original ordinance.

City Attorney Leen: Because the original ordinance places that as an alternative whereby a property owner can come forward or an applicant and proffer open space that they would go buy and donate to the City. That’s an alternative, so we would need to amend that as well. What you want is for the money that’s left over to go into open space, which also I would note would not hold the Art Fund, Art Acquisition Fund harmless. I remember that was one of the issues that had been raised was holding them harmless.

Commissioner Lago: And the reason why I don’t think anybody has adopted or taken measure of, let’s go and proffer a piece of open space is because, most of these one percent fees are, there are not enough funds to purchase an empty lot or purchase a home and demolish like we’ve done.

Commissioner Keon: Right.

Commissioner Lago: There isn't enough money, so they decide, and by the way, and in the past and I mentioned it before on several occasions here, several developers before there was a list put together by Dona and her team, of really qualified artists, has happened many times here where developers have gotten away with, in my opinion, "murder," I mean "murder," in reference to some of the work that they put up, which does not even have any value and basically, this is years in the past, we've been very careful to ensure that they now have a list of qualified artists who are world renowned or we encourage just donate to the Art Fund, donate to the Art Fund and the City in the future will make public art available.

Commissioner Keon: I know, but I also think that the constraints in the existing ordinance that do not allow the money to go into a park fund as well as an art fund is a way to look at – I don't expect that someone, the cost of going out and buying a parcel of land particularly in the downtown area is far more than what this is, so the language in the current ordinance is not effective, it is not good, it's not good at all.

Chief Preservation Officer Spain: That's right...it says causing the purchase of parcels identified in the City's Parks and Open Space...

Commissioner Keon: Well causing the purchase means that you can, you could deposit those funds into a public land fund. It doesn't mean you have to go out and purchase the parcel, it means you could contribute to a public land fund that will be used to purchase public land, is that not....

Chief Preservation Officer Spain: It actually goes on, it says...

City Attorney Leen: Donating such parcels to the City.

Chief Preservation Officer Spain: And donating such parcels to the City, so I think if you wanted to do that, that we would have to change, amend this number four.

City Attorney Leen: By the way, that relates to something Commissioner Keon raised had raised, which I'll raise in the public session is that we are removing, by the way, in the Whereas clause "and donating such parcels to the City", because this is amending that.

Commissioner Lago: And that's why the purpose of this ordinance is to continue to have a mechanism that's driving Art in Public Places to the tune of one percent and then having that

additional point five percent be toward public open space. I don't want to lose the fact that one percent for art, I also want to make sure that we have that in perpetuity for open space.

Commissioner Keon: OK. But you have an alternative and if you want to fund a fund for open public space, you can simply amend this ordinance so that the balance of that can go into a park land fund, that's the first thing that I think you can do without increasing it at all. Now the other issue or the concern I have is that, you can either require, according to this, and I want to make sure I understand it so that, is that you are requiring now a two percent contribution to be on site; there isn't an issue of there being a balance or anything else. This is saying, it has to be two percent on-site. If you chose not to put two percent on site you can opt instead to contribute one percent to the Art in Public Places and point five percent to a park fund. So in essence, you are giving them an incentive to not put two percent in their building, because they can do one and-a-half percent and on huge projects that's a significant amount of money, a half a percent is a significant amount of money.

Commissioner Lago: Right now we are doing only one anyways, right now they are only doing one, so actually we are not changing the amount of art funds that are going to be attributed to whatever.

Commissioner Keon: Maybe not change the amount of art funds that may be contribute into a fund, but what you are changing is the art that the developer puts into their building....

Chief Preservation Officer Spain: She's concerned that the two percent no one's going to do it, so we will not have public art on buildings necessarily.

Commissioner Keon: I don't know that no one is going to do it, but I think you give them an incentive to not do it, because you are going to be cheaper to not do it.

Commissioner Lago: OK. I'm going to give you an example. Yesterday, I met with an individual, a developer in town who is building a project and he wanted to talk about LEED ordinances, he wanted to talk about – ,because he knows that I have a little bit of a background in regards to this, so he was picking my brain in reference to what would the City like to see – solar panels on buildings, and how would that be in reference to aesthetics and the Code, I was giving him some ideas. One of the items that he brought up was that he had given a donation, as per his agreement, to the museum years ago, as per his development agreement...

Chief Preservation Officer Spain: I know who you are talking about.

Commissioner Lago: Then you know who I'm talking about -- and that's why he is not contributing to the Art Fund. So I said, that's a shame, because you have such a beautiful building and now it would be great to see a nice piece of art, and he goes, well don't worry, he went to show me some of the art that he will be including himself, very high end contemporary art, world class art, in the lobby and out of his own collection that he will be rotating, and I'll tell you right now it is on par with some of the best work that you've seen in museums, in South Florida and abroad. My concern here is two-fold, if you want to push this off and have a discussion in more detail at the next Commission meeting, as always you know I'm a team player, we can entertain that, that's not a problem, and we can let staff have personal meetings with you to really discuss it and how beneficial it would be not only for the art, but also public space. I just don't want to get this lost and come back six months later and then we'll have a real situation where people have really gone and gotten a final BOA approval.

Mayor Cason: You have another concern?

Commissioner Keon: Well, I have a concern about someone that will place art in a museum that one is not open and available...

Chief Preservation Officer Spain: I believe that if it's the same developer that I'm thinking of many years ago, if that was to comply with open landscape, not Art in Public Places, that was for the...

Commissioner Slesnick: I was on the Museum Board at the time, and it's the building to the north and they decorated the plaza of the museum in exchange for not having the green space next door.

Commissioner Lago: I thought it was art, I thought it was art.

Commissioner Slesnick: It wasn't art.

Commissioner Lago: No matter what the issue is, if you'd like maybe they are donating to the Art Fund, I didn't get into that detail, but point being the art that I was shown is extensive and far exceeds whatever the one percent is for that project, far exceeds it, if not doubles it, it maybe even triples it.

Chief Preservation Officer Spain: We need to check on that project.

Commissioner Lago: Check on it.

Chief Preservation Officer Spain: Obviously they have a building permit.

Mayor Cason: When you come back which is sooner rather than later, could you also touch on what if somebody donates a piece of art, who determines what the value is. I know for example that Agave has nothing to do with this, they had a proposal at one point to bring in a lot of art from Tequila to the Agave project and my question is, how do we have a mechanism to say what its worth in terms of the percent that they have to put in?

Commissioner Keon: But I think also, in addition to saying what its worth, it's going to be where is it?- because if it's in a place that is not fully accessible to the public it shouldn't count.

Commissioner Lago: And I agree with you on that.

Mayor Cason: But haven't we discussed this before on other projects where you said it had to be open to the public and I forget it was one...I'm not sure which of those projects that art had to be open? It was in a plaza or something, remember?

Chief Preservation Officer Spain: Yes. Yes – and after they said that it was going to be open, I remember that discussion.

Mayor Cason: We have a motion and deferred, if you could discuss those.

City Attorney Leen: Mr. Mayor it would be a motion to continue.

Mayor Cason: Motion to continue, you made a motion to continue.

City Attorney Leen: And then the other issue is, I do believe it would be useful to have guidance, maybe even a straw vote of the Commission as to whether you want to make this change or not, otherwise when we go back we have to come with another ordinance, the sponsor I would ask.

Mayor Cason: For those who want to make the change raise their hands in a straw vote.

Commissioner Slesnick: The change is from one percent to one and-a-half.

Mayor Cason: One to one and-a-half.

Commissioner Keon: Well it's from one percent to two percent.

City Attorney Leen:....should be raised by Commissioner Keon.

Commissioner Lago: But I want to be clear, again, its two percent, but what's going to be exercised and I don't see it happening, I don't see...I'm going to give you two percent. What's going to happen is they are going to say, I'm going to put one percent worth of art, which is the standard right now and I'm going to give you point five into a trust, basically a park fund, which is going to be used to continue to buy parks, that's the purpose of my ordinance.

Commissioner Keon: But the ordinance today as its written does not say that.

Commissioner Lago: Yes, because ...

Commissioner Keon: It says two percent, so the only choice you have is, you put two percent into your project or you can chose to put one percent into your project and a half a percent into the park, but otherwise you have to put two percent into your project, so what do you decide?- what do you decide? Do you decide I'm going to put one percent in there and I'll give a half to here, because I'm not doing this two percent, and what happens to our buildings when we are looking to do, if we really want to do buildings, where you can still to this day, even if you want to move it to one and-a-half percent and instead of having change the part in the ordinance where it's not a parcel of land where you can contribute to up to a half percent, you can contribute to a park or a land fund, but that's the only thing I'm asking you, but you're the sponsor, I know that you have something very specific in mind so the only time that we can talk is here on this dais, but I would like you to just give it some thought, whatever you come back with is certainly a show of discretion and I respect it.

Commissioner Lago: And I understand what you are saying, but the key is here is when these developments have happened and you require one percent for art, and if you do give them the opportunity to put into a park fund the numbers are so slim that there is no property as the ordinance is written now today, that they can buy a piece of property and give it to the City. What I don't want to do is take away one percent from art right now, because again, in your opinion that one percent are we in line with the rest of the municipalities and that's what works.

Commissioner Keon: But you can move it to one and-a-half percent and you could give them the option, amend the current ordinance to give them the option to contribute whatever is beyond the one and-a-half percent, beyond the one percent into an art fund a half into or whatever, you need to make that decision, that would be up to you.

Commissioner Lago: Let me give you my opinion, I'm not a lawyer, so I ask for the City Attorney to discuss this later with staff and figure out a way to do this. This is my ultimate goal, I would like to remain, and by the way, you guys have done a great job with the list of qualified

artists and basically educating developers who come to this community about what real quality work is and you give them a list of prequalified artists who are local, local artists from this community, international artists also are an option. I want to make sure that we continue to offer these developers the options of choosing local and international artists from a prequalified list, number one; number two, I want to maintain the Art in Public Places at one percent and I want to have a kicker of point five, so I want to increase it to one point five where its dedicated solely to the purchase of private lands and making them public. I want it to be a park fund similar to our Art Acquisition Fund when the developer so chooses not to buy the art and get into that, that person can just pay into the fund. So, I want to be very clear, we don't do the two percent, whatever which way, because we know that's not going to happen, I want to make it one and point five which equals one point five as Commissioner Keon was saying, that is my ultimate goal here.

City Attorney Leen: Commissioner the concern I've had...

Commissioner Lago: And this is why I wanted to bring it up.

City Attorney Leen: You could certainly do an option, so you could raise it to one point five and say they have the option to pay point five to parks, but that will not necessarily mean people will, or you can create an incentive program, because the whole purpose here is to make that component an option and not a requirement.

Commissioner Lago: And that is the reason why...and I'm happy that the City Attorney mentioned that, because I wanted to clarify Commissioner Keon.

Commissioner Keon: No, I understand that.

Commissioner Lago: From inception what I just basically told you was my plan, one and point five, and the City Attorney told me that due to some legal discussions or the way the Code is written, we needed to move in the direction of an incentive program, because people would not give one for art and point five for the park trust, they could just give it to art, again, I can't force people to do that. So again, if my Commissioners feel they are more comfortable with going that route, I have no issue with that, and we'll just urge people to donate to public land with that point five.

Commissioner Keon: Well the way the ordinance is written it's only they have to donate a parcel; they can't donate to, so nobody does it, so if you could give some thought to changing the existing ordinance to allow for contribution to the public park fund as well.

Commissioner Lago: With an increase to one-point-five.

Commissioner Keon: With an increase to one-point-five and just change that part and it could also go to the remainder over the one percent, I mean or one-point-five percent could also go to a park. Now, I don't know that – the issue is the administrative order that follows once we enact an ordinance, they write an administrative policy as to how it is applied. Now if the administrative order is written in such a way that the only opportunity or all of the funds are directed to art, they are going to go to art, if the administrative policy is done and reviewed then that amount of money may be divided between park and may be divided between art in public places. If somebody is contributing a million and-a-half dollars of public art into their building that meets all of the requirements that we are asking for then the issue with the public art fund is that somebody is doing it, we are not going to have to do it, and especially we know the cost of land in the downtown, no one is ever going to give us a parcel of land, it is not likely that somebody is going to give us a parcel of land downtown, but the place where we really need open space and we really need green space is in the downtown area, and in the North Ponce area where we are developing residential buildings and residential neighborhoods, as well as the commercial neighborhoods, so we don't look like and it's not to speak badly of the Datran Center, but it is a solid mass of concrete. What differentiate our City is that these are the requirements for green space around our buildings, and I applaud your effort of requiring green space, so that we don't become just slabs of concrete.

Commissioner Lago: And that's why again, and the Commission is doing their best at \$300,000 a year budgeted, but it will never catch up to what we need. I'm going to request that staff and the City Attorney and his great staff go back, figure out a way to get an ordinance or amend our current ordinance that continues to require one percent for public art and point five for public open space trust fund, some sort of fund where they can pay into it, because there is no way they are going to be able to provide us with a piece of property.

City Attorney Leen: Commissioner there is an underlying policy determination there, which is that, which needs to be made by the Commission ultimately, which is, you are the sponsor so you are proposing this and then the Commission decides, but the concern I have is that if you want to do what I hear you both talking about, the way you can do that is allow the one percent to be put on the property, you can do that. I don't think...

Commissioner Lago: I don't want that, that's not what I want.

City Attorney Leen: What I'm saying is that right now the way its worded is you can either put two percent on the property or you can pay one-point-five percent.

Commissioner Lago: Listen, we are getting way, way, way, way too much in the weeds. Let's go back, erase everything, OK, let's start from the beginning, we're on First Reading.

Mayor Cason: Second Reading.

Commissioner Lago: No, no, but we are on First Reading again, we are going to erase this whole conversation. I would like to proffer an ordinance or amend an existing ordinance that does the following: allows a developer who is currently obligated, let's not get away from that, obligated to either give one percent of the total construction cost of the project, including soft costs to a fund or provide, which we know has not worked in the past, because it's everywhere all over the City, I can give you examples, but I don't want to embarrass people, and they got away with it with the previous administration and it's wrong, OK, it's wrong. I've seen the quotes, I've dealt with the architects, I told them you got away with it, you know you did. Donating a piece of art that is worth one percent, there are two options here – you donate the artwork that's worth one percent or if you don't want to deal with that headache, getting a curator, dealing with galleries, dealing with fabrication, dealing with installation, dealing with the City's requirements, you donate it into a fund, one percent. I want to continue that, I don't want that to change, but I want to figure out a way that besides that one percent they also pay point five percent into a park acquisition fund where we have an ability in five years, and the Commission will thank us, similar to the discussion we had yesterday about the unfunded liability and how we are paying it down, in twenty years they'll thank us also, that we can achieve the goal of going on Ponce and buying a nice piece of property in the North Gables area to meet the needs of those residents, that is the goal.

Mayor Cason: You want to make a motion to that?

City Attorney Leen: Well wait, I don't mean to interrupt Commissioner, but I need to make a legal point, which is that the only way to do that is through an impact fee.

Commissioner Lago: OK, that's fine.

Mayor Cason: Figure it out, figure it out and come back to us.

Commissioner Lago: I'm willing to be upfront here and say, if we don't do it the way that I'm requesting then maybe we do it through an impact fee, but at one point – the County is already charging one point five for art in public places.

Vice Mayor Quesada: Commissioner Lago, the procedural vehicle doesn't concern you; the ultimate goal is what concerns you.

Mayor Cason: So work it out.

Commissioner Lago: We need to be dedicated in this community, we need to be dedicated like we were these last two years when we bought seven pieces of land and every resident that I meet with they tell me the first thing, thank God you bought that public place, when are you coming to my neighborhood?- well you know, we only have \$1.6 (million) in the budget, so far we are putting away \$300,000, what do I need to do?- and like in the case of the great employee who donated a piece of property, I don't know how many years ago in the North Gables, we are listening, so if any employees here want to donate land to the City of Coral Gables and make it a park we are willing to name it after you. Craig, maybe you want to donate (laughter), City Attorney, City Manager, she's willing. I know that Peter maybe, he lives in the City and Dona too. I made my case. I don't want to waste any more time, I made my case. I have a very capable staff. If it has to be an impact fee like the City Attorney mentioned it, if you want to do a straw poll in reference to what I've articulated today, my Commissioner's support so that we can give some direction to staff, I'm more than willing...

Vice Mayor Quesada: Commissioner Lago, I'm fully in support of your idea, I just want to think about it a little more when to implement it.

Commissioner Slesnick: Commissioner Lago, you are talking about instead of charging two percent, they can give one and-a-half percent if they give a half a percent to public land.

Commissioner Lago: Yes ma'am. Yes Commissioner.

Mayor Cason: I'm in favor of that.

Commissioner Keon: I'm in favor too. I feel like this is putting a rider on a bill or something to get...

Mayor Cason: So do you want to continue this, you want to defer it, what do you want to do?

Commissioner Lago: Continue it, let staff come and present impact fee, different options, and different avenues to get to what I just articulated.

Vice Mayor Quesada: But I think what I've heard we are all in agreement to the substance of it, just the final technicalities of it.

Mayor Cason: So a motion to continue, you made the motion.

Vice Mayor Quesada: So moved.

Commissioner Lago: Second.

Mayor Cason: Vice Mayor made the motion to continue it.

City Attorney Leen: To continue it to a date that staff's ready or continue it to a date certain?

Commissioner Lago: When we gave you a straw poll right now it was 5-0, in my opinion, we are just giving you the necessary time, so that we can deliver.

Vice Mayor Quesada: And what I would like to see, I guess I didn't really ask for it, just sort of every project we have in the pipeline sort of where they are at, if they've gone to the Board of Architects the first time application, Planning and Zoning, and that sheet that also help us for other items that come up related to projects.

Mayor Cason: And how you handle the issue of...

Vice Mayor Quesada: Its doesn't have to be terribly detailed, just sort of where they are in the process.

Mayor Cason: And how you'd handle the issue of donated art, who determines the value?

Commissioner Lago: That's key, that's key because I'm under the impression that Agave was considering some of the artists that I mentioned great work.

Vice Mayor Quesada: It may be ancillary to this item, but it doesn't need to be decided, because I don't want to slow it down.

Commissioner Lago: It doesn't need to be decided that's a different topic, but he can brief us via e-mail or something, but I think it's an important topic what the Mayor brought up.

Mayor Cason: Alright – City Clerk.

Commissioner Keon: Yes

Commissioner Lago: Yes

Vice Mayor Quesada: Yes

Commissioner Slesnick: Yes

Mayor Cason: Yes
(Vote: 5-0)

[End: 11:18:18 a.m.]