

**City of Coral Gables City Commission Meeting
Agenda Items I-5, J-1 and J-2 are related
October 11, 2022
City Commission Chambers
405 Biltmore Way, Coral Gables, FL**

City Commission

Mayor Vince Lago

Vice Mayor Michael Mena

Commissioner Rhonda Anderson

Commissioner Jorge Fors

Commissioner Kirk Menendez

City Staff

City Attorney, Miriam Ramos

City Manager, Peter Iglesias

City Clerk, Billy Urquia

Assistant City Attorney, Stephanie Throckmorton

Parks and Recreation Director, Fred Couceyro

Public Speaker(s)

Etan Mark

Jackson “Rip” Holmes

Estrellita Sibila

Agenda Items I-5, J-1 and J-2 are related [11:50 a.m.]

A Resolution of the City Commission waiving the competitive process of the Procurement Code for all purchases related to 2022 holiday events/items, that would have traditionally been handled by the Business Improvement District, as Special Procurement /Bid Waivers, pursuant to Section 2-691 of the City's Procurement Code.

A Resolution of the City Commission dissolving the Business Improvement District of Coral Gables as of a date certain; prohibiting further assessments within the district; providing for liens; authorizing the district to take certain actions for the wind down of the affairs of the Business Improvement District; providing for the transfer of business assets; providing for an effective date.

A Resolution of the City Commission authorizing the City Attorney to take any legal action, including the filing of a lawsuit, if it becomes necessary, against the Business Improvement District of Coral Gables, Inc.

Mayor Lago: So, moving on to Item J-1.

City Attorney Ramos: Yes, Mayor. I actually have J-1, J-2, and I-5 are related. If you'd indulge me, I'd like to take them together.

Mayor Lago: Okay, thank you.

Vice Mayor Mena: Which ones are they, sorry?

City Attorney Ramos: J-1, J-2 and I-5. They're all related.

Vice Mayor Mena: Oh.

City Attorney Ramos: Yeah.

Vice Mayor Mena: Good.

City Attorney Ramos: So, J-1 is a resolution of the City Commission dissolving the Business Improvement District of Coral Gables as of a date certain; prohibiting further assessments within the district; providing for liens; authorizing the district to take certain actions for the wind down

of the affairs of the Business Improvement District; providing for the transfer of business assets; providing for an effective date. Ms. Throckmorton will present this item. We also have special counsel available on Zoom for any questions that might come up.

Assistant City Attorney Throckmorton: Madam City Attorney, do you want to read I-5 too so I can just present them both together, or would you like me to do them separately?

City Attorney Ramos: Yes, that's fine. I-5 is a resolution of the City Commission waiving the competitive process of the Procurement Code for all purchases related to 2022 holiday events/items, that would have traditionally been handled by the Business Improvement District, as Special Procurement/Bid Waivers, pursuant to Section 2-691 of the City's Procurement Code.

Assistant City Attorney Throckmorton: Good morning, or almost afternoon, Mayor and Commissioners. Stephanie Throckmorton, Assistant City Attorney. Last meeting, the City Clerk notified you all that the petition process approving the continued existence of the BID failed to pass and the City Commission adopted a resolution accepting those results. As such, one of the resolutions before you today dissolves the Business Improvement District on December 31st or earlier, which would be the date upon which all assets of the BID have been exhausted or transferred to the City. The resolution authorizes the BID to continue to wind down the affairs of the BID, to perform under any existing contracts, and to execute a certain number of events before the end of this calendar year. Those events are the Miracle Mile tree lighting, the pumpkin arch, Halloween on the Mile, Christmas tree and lighting on Giralda, and the Holiday Marketplace, which the executive director presented to you their plans for those events at the last Commission meeting. There are also some details in the resolution, like the City Attorney mentioned in the title, regarding collections of assessments, the execution of certain new contracts and transfer of BID assets. Just to clarify, this resolution allows the BID to execute those events I just mentioned in that wind down period, and the City is hopeful that the BID will hold those events during the authorized wind down period that's before you today. So, that's Item J-1.

Mayor Lago: Madam City Attorney, do you want to take all the items together or...?

City Attorney Ramos: Well, you should take them one at a time. So, we should take the dissolution first. This is the second step after you all accepted the Clerk's results at the last meeting.

Vice Mayor Mena: Let's do public comment.

Mayor Lago: Yeah, that's what I'm saying. Can we do the public comment for all three together?

City Attorney Ramos: Yes, you can definitely do the public comment for all three.

Mayor Lago: Okay.

Assistant City Attorney Throckmorton: Of course. If you'd like me just very briefly then, what I-5 is...

Mayor Lago: Yes.

Assistant City Attorney Throckmorton: Is a resolution that would waive any procurement requirements should the City hold the events that the BID normally would have held or similar events, just waiving procurement for those items.

City Attorney Ramos: So, to be clear, the preference of the City Manager at least is to have the BID continue to exist through December 31st, put on those events, and then refund whatever's left of the money that was assessed through the taxing arm, which is the City. Certainly, the BID has a 501(c)(6), as far as we understand it. If they have private donations that they want to spend for their purposes, that's up to them. I'm talking strictly about the BID that it was created as a taxing

district. Should they not, however, be willing to do that, then the City would have to step in, which, as Ms. Throckmorton said, is the reason for I-5. If, God forbid, all else fails, that is why J-2 was on the agenda. Should the BID refuse to provide the event or refuse to communicate with us, which frankly has been the problem and refuse to refund the monies that are left in the account, then we may have to take legal action. And that's why J-2 is on the agenda. Again, I reiterate, that is not what we want to do. We want to work together, but I have to put that on there if, God forbid, that's where we end up.

Assistant City Attorney Throckmorton: And so, the resolution before you authorizes that wind down period and those events in that wind down period. So, happy to answer any more questions after public comment.

Mayor Lago: Thank you very much. Mr. Clerk.

City Clerk Urquia: Mr. Mayor, the first speaker is Mr. Ethan Mark.

Mayor Lago: Morning, sir.

Etan Mark: Good morning.

Mayor Lago: How are you?

Mr. Mark: Morning.

Mayor Lago: Mr. Clerk, how many individuals do we have three?

City Clerk Urquia: Three, sir.

Mayor Lago: Okay. Okay.

Mr. Mark: Good morning, everyone. My name is Etan Mark. I'm an attorney for the BID. I'm going to keep this very brief. I'm not one to pound my chest or bang on the table here. I understand that you all have received some kind of a legal opinion which makes two general points. One is that you all have the discretion, as I understand it, to fix the problem that we are now faced with, that is to give us an opportunity to cure. And secondly, it's my understanding that that opinion also indicates that you do not have the authority to seize the funds that the BID currently holds. We are not -- like I said, I'm not going to make a big legal argument here. We'll let -- hopefully, if it has to come to the courts, we'll let the courts deal with it. I would simply like to move two items into the record, if I might. The first is the letter that I sent to the City Attorney on September 27, 2022. The second is email correspondence between me and the City Attorney relating to the items that are before the Commission today. And I will be here for the remainder of the meeting. If anybody has any questions, I'm more than happy to answer any questions or concerns that everybody has.

Mayor Lago: Thank you, sir.

Mr. Mark: Thank you.

City Clerk Urquia: Next speaker is Mr. Jackson "Rip" Holmes.

Mayor Lago: Mr. Holmes, good morning, sir.

Jackson "Rip" Holmes: Thank you. Thank you for your vote last time. I came today not certain, you know, what would unfold. And the last speaker sort of tells me that that's -- it's a good thing that I came. He's talking about being given an opportunity to cure. I thought this was already settled. Can I ask someone to...?

Mayor Lago: Madam City Attorney, would you like to respond?

City Attorney Ramos: Yes, the Commission did not -- chose not to allow for a cure period last time. This is the next meeting. Any Commissioner that voted in favor can move to reconsider if that's the will of the Commission.

Vice Mayor Mena: Yeah, Mr. Holmes, I think what he -- I don't want to put words in his mouth, but I think what he's saying is that the City Attorney told us it was within our discretion to provide that opportunity, but that at the last meeting, we exercised that discretion, and we did not provide an opportunity to cure.

Mr. Holmes: Okay, so it's a done issue then? It's settled.

Mayor Lago: Well, we're voting on it today.

Mr. Holmes: Sorry?

Mayor Lago: We're continuing the process today. That's why you see these items on the agenda.

Mr. Holmes: Okay, so then I think you're folding all of the three issues into one for public comment. And I sent you all an email. I'm confused also -- I think there's some probability, but it's not been formalized -- or is it? -- about returning unspent funds to tax payers.

Mayor Lago: Again, I'll let the City Attorney address that. I've had multiple conversations with her in regards to that matter.

City Attorney Ramos: So, the money that was taken -- and we don't have an accounting, so we don't know what it is -- but whatever is left over that was taken as a tax via the City can either be returned to the City for purposes of putting the events on and buying the items for the holiday events, or whatever other purposes permissible under the BID's authority, or we can return it to the property owners. That's up to the City Commission. My understanding is we'd like to see the events go forward. So, once we get the money, that's what we'll be doing with it if they choose not to put the events on.

Mr. Holmes: I'm with you a hundred percent. Put on the events. Spend the money needed to put on the events. But I'm saying, last count I heard is there's \$1.3 million in the BID bank account, so it's not going to be all spent on these events. What about the remainder? Let's say there's a million left after you do the events, that would -- would that be or not be returned to the taxpayers?

City Attorney Ramos: The decision the Commission will take at the time when we see what we have left and what is left to do with those funds.

Mayor Lago: What we need to find out right now -- and I think the City Attorney and her team is working on it -- we're trying to find out exactly how much money is left over.

Mr. Holmes: Well, there...

Mayor Lago: We're in the process -- one second. We're in the process of finding everything out. We are dealing with the BID. We are reaching out to the BID. Madam City Attorney.

City Attorney Ramos: Yes, sir.

Mayor Lago: How many times have you reached out to the BID?

City Attorney Ramos: At least four or five in the last couple of weeks. We've had communication with them or their counsel.

Mayor Lago: Okay, so we're in the process. There's nothing ironed out just yet. You know, this is new ground, and we're going to find a solution I think that is going to be beneficial for both parties, so let us do our work and we'll come back to you, okay?

Mr. Holmes. Okay, well, there is a public record -- for everyone's edification -- that as of I think like June 1st or May 31st, the BID had \$1.3 million...

Mayor Lago: We understand that.

Mr. Holmes: In its account.

Vice Mayor Mena: We're aware.

Mayor Lago: Yes, sir.

Vice Mayor Mena: We're aware.

Mayor Lago: We're aware of that.

Mr. Holmes: Okay, great. And so...

Mayor Lago: Okay.

Mr. Holmes: If you'll allow me just a couple...

Mayor Lago: Please because I have -- we have many other...

Mr. Holmes: Okay.

Mayor Lago: Big issues to address today.

Mr. Holmes: I'm concerned that there may be some power retained by the City to go after me for...

Mayor Lago: Mr. Holmes.

Mr. Holmes: For other debtors.

Mayor Lago: Mr. Holmes, Mr. Holmes, that's not up for discussion today, and that is not the (INAUDIBLE).

Mr. Holmes: Well, I think it's -- but it is being voted on.

Mayor Lago: Mr. Holmes.

Mr. Holmes: Not me by name, but as to...

Mayor Lago: Mr. Holmes.

Mr. Holmes: The power to go after debtors. It's \$100,000...

Mayor Lago: Mr. Holmes.

Mr. Holmes: In debt.

Mayor Lago: Mr. Holmes, that is not the intent of the Commission, I promise you. Please take a seat and let us move on to the next person.

Mr. Holmes: Can I just --? One last thing.

Mayor Lago: I'm asking you to please...

Mr. Holmes: Sure. As you all know, my wife is coping with the communism that's come to Peru, and I'm telling you, that's bleeding her so badly and it's bleeding me financially, so I'm begging you to be sensitive on these things.

Mayor Lago: Thank you, Mr. Holmes.

Vice Mayor Mena: Thank you.

Mayor Lago: Thank you. Mr. Clerk.

City Clerk Urquia: Mr. Mayor, the last speaker is through Zoom, and it's Ms. Estrellita Sibila.

Mayor Lago: Ms. Sibila, how are you? The floor is yours.

Estrellita Sibila: Hi, good afternoon. Thank you so much for having me today. I had a quick comment regarding the three items that are on the agenda, specifically related to the BID. It's unclear whether the BID has been transparent about what monies are available and what they intend to do with it. The items that were on the agenda led me to believe that the City is looking forward to performing the role of the BID and utilizing that money to further the events which I

am for that occurring. What I do see on this resolution that would allow them a wind down through December 31st, and my question to this Commission is, if the BID has not been complying and cooperating and being responsive to the City with regard to the monies, how can we trust them to continue to provide any sort of service and any transparency through the rest of the year through that December 31st date? And what would stop the City from entering or pushing there to be some sort of receivership or oversight of the BID and those funds that belong to the taxpayers and not to that entity?

Mayor Lago: Okay. Ms. Sibila, thank you, first off, for your question. Madam City Attorney.

City Attorney Ramos: Yes.

Mayor Lago: Is there ongoing conversations with the BID in an effort to bring this in for a landing?

City Attorney Ramos: Yes. The resolution is drafted with the benefit of hoping that they work with us. We will be asking them to communicate with us by a date certain as to whether they will. And if they won't, then we'll step in, which is why that other resolution is...

Mayor Lago: And I don't want to jump the gun but let us cross that bridge when we get there because the intent of today is to ask the BID and give the BID the opportunity to work with us.

Ms. Sibila: Is there a representative of the BID there that can make...?

Mayor Lago: They are.

Vice Mayor Mena: Yes.

Mayor Lago: They are but we're not...

Ms. Sibila: A commitment to (INAUDIBLE).

Mayor Lago: We're not -- Estrellita, we're not going to get into this back and forth the BID. This is not the intent of today. We have a lot of things on the agenda. We're going to address the matters. We're going to vote this up or vote this down. That's the intent.

Ms. Sibila: Perfect. Well, I appreciate the Commission and the City Attorney's Office looking into this. Thank you very much.

Mayor Lago: Thank you. Have a wonderful day. With that being said, there's no one else for public comment?

City Clerk Urquia: That is correct, Mr. Mayor.

Mayor Lago: What is the will of the Commission?

Commissioner Fors: Mayor, if I may, I have a couple of concerns. And I sort of want to step back from it for a moment, and I sort of mentioned this at the last Commission meeting. You know, going into this discussion around the BID -- which I felt like it snowballed very quickly -- I personally regarded the BID as an organization that does a lot of good things for downtown, puts on a lot of great events. For the last two weeks, my daughter has been asking me every day about the pumpkin patch, looks forward to a lot of the Christmas events. I think those are very much up in the air right now, especially with our current posture of our communication with the BID. I look back at, you know, what brought us here to the BID being dissolved when, in my view, it's an organization that tries to do good things for downtown, puts on these events that everybody up here posts on social media and takes photographs with. And I'm looking and I'm saying, you know, if it's not broken, what are we trying to fix? You know, that turns to the discussion we had

last time about the hyper-technicality -- or not the hyper-technicality -- the technicalities of the sufficiencies of the petitions and whether sufficient petitions were received. Since that meeting, I've had discussions with various small businessowners in our downtown, both on Giralda and on Miracle Mile. And it's my sense that these small businessowners, the ones I've spoken to, want the BID to continue, appreciate the work it does, are concerned that it is now going away. Granted, I'm disappointed that more of them aren't here this time around to discuss it. But when we turn to the sufficiency of the petitions, we say that the BID is going to be dissolved because X amount of petitions were received, and we rely on the technicality of the formalities of the petitions, and we decided to apply those legal formalities very strictly by not permitting them to be cured. That concerns me because if we take that strict application of legal formalities in that case, then how do we get around the fact that we called for -- or we put a stop -- we halted their petition process -- right? -- by two days, correct?

City Attorney Ramos: It was stopped, but we counted what was received until the last day.

Commissioner Fors: Yeah, so...

City Attorney Ramos: And there's also nothing in the...

City Clerk Urquia: Mr. Fors, the -- Commissioner, they were given those two days back.

Unidentified Speaker: Yeah.

City Attorney Ramos: Correct.

Mayor Lago: So, I think...

City Attorney Ramos: There was all -- there's...

Mayor Lago: Wait, let me...

Commissioner Fors: How were they given the two days?

Mayor Lago: But hold on. Hold on one second. Hold on one second. Hold on, okay. Let's stop misleading people, okay. Let's stop, okay. I've heard this two-day argument for some time now, and I know what's going on right now, okay. Mr. Clerk, on the record, answer the question. Commissioner Fors mentioned that, you know, the process was broken, that -- those two days. What happened to those two days?

City Clerk Urquia: Okay, so on June 28th, the City Commission voted to stop the election for the BID. However, during the August meeting, the City Commission allowed that any ballots -- any petitions that were received up until June 30th were going to be counted. So, even though the votes start -- stopped on the -- it was stopped by the Commission on the 28th, if they received any petitions after the 28th, my office was instructed to still count those petitions.

Mayor Lago: So, with that being said, okay, I'm not going to get into this anonymous game of, you know, one company says they want it, one company doesn't. Because I've been reached out by a litany of companies who have told me -- and businesses on Miracle Mile and Giralda saying, "Thank God the BID is being dissolved." Okay, because the amount of money it spends and the amount of money -- and the lack of exposure that they get. You know, let's -- listen, I'm not going to re-trade this again on the Commission floor here. Let's take a vote on this issue. We got a long agenda here. Let's not posture and play politics. Let's get this done, either yes or no. Don't try to sway people based on one thing or another. It's time to cut the mustard here and get this thing done, either yea or nay. It's enough. We've got a long agenda.

City Attorney Ramos: Mayor, I have another important point related to the amount of time. There's nothing in the law that required 30 days or 60 days. This was basically an arbitrary date that was chosen.

Mayor Lago: And they were -- by the way...

Assistant City Attorney Throckmorton: It was determined by the BID, the election time period. That was not set by the Commission resolution.

Mayor Lago: And it wasn't one or two petitions. It was 11 petitions, 11 petitions. This is simple. This is simple. Those two days, they were allowed to bring in as many petitions as they want. It was 11 petitions. So, we voted...

Commissioner Fors: Now...

Mayor Lago: We vote on this unanimously last time. We voted on this unanimously. So, let's move forward on this, enough discussion.

Commissioner Fors: Mayor, I want to expand on -- because we voted on it unanimously, since then we've had the benefit of hearing and reading legal memorandums by folks who understand the legalities more than I do, or that I did at that time or any of us. So, I mean, we've had other very smart folks weighing in on it now after the fact. I'll go back to what I said last time. And I understand that position, City Attorney, that to begin with, they're not entitled to 60 days. Therefore, whether or not the period was halted prematurely or not, at the end of the day, isn't very relevant because, at the end of the day, it's within this Commission's discretion to have a BID period, and the BID essentially exists at the will of the Commission, correct?

City Attorney Ramos: That's exactly right.

Commissioner Fors: Alright. Arriving at that conclusion -- and I spoke about this last time -- I mean, let's call a spade a spade. If we have all the discretion, then let's admit that we're exercising that discretion to terminate and dissolve the BID. And I don't feel like the reasons for that have been fleshed out sufficiently. I think we're relying on the legal sufficiency of the petitions on one end, but then on the other end, we're saying, "But we have total discretion to do anything anyway." So, if we have total discretion to do anything anyways, then I think we need to pause, step back for a moment and ask ourselves, besides those -- application of those strict legal requirements -- why are we terminating and dissolving this organization that hosts the pumpkin patch and decorates Miracle Mile and creates all these events that we want to -- that we enjoy year after year. That's the discussion I think that hasn't been had. I think we're hiding behind the technicality of the sufficiency of the petitions, while at the same time, using our broad discretion to not give the same benefit of certain other technicalities.

Vice Mayor Mena: I -- may I, Mr. Mayor?

Mayor Lago: I just -- I would like to address something.

Vice Mayor Mena: No, please, go ahead.

Mayor Lago: I have the full faith and confidence of our staff. I know that Belkys and her team, along with our Public Works team, our City Manager, Zeida, Naomi, can handle a pumpkin patch. I know you can. If Naomi is capable of delivering on almost \$3 million dollars, along with her team, for the first time ever, if Zeida is capable of bringing a world-class restaurant to Miracle Mile and addressing issues with the Biltmore, if the City Manager is capable of doing a litany of things that are happening here in the City with infrastructure and delivering on a world-class public safety building, I know we can deliver on a pumpkin patch. And if not, if we have issues, I'll help you deliver the pumpkin patch. I'll bring my own heavy machinery to address the pumpkin patch,

so we don't miss the pumpkin patch. As a person who goes every year to the pumpkin patch, it is ten -- Belkys, correct me if I'm wrong please -- it is ten portable tents where young children use crayons to enjoy themselves and a pumpkin patch with maybe a few hundred pumpkins that people can take home after they purchase them. This is not Disney World. This is a simply pumpkin patch that is something that the community enjoys, and it is about community, but it's not something complex.

Assistant City Attorney Throckmorton: And Mayor, the pumpkin...

Mayor Lago: I don't want to play politics up here. We have a job to do. Let's leave politics for another day. There's enough campaigns that are being run. We have business at hand and let's move forward with the business at hand.

Commissioner Fors: I have two additional points, two final points. First, I think the private small business owner would say to their local government, you know, "Sure, we bet you can pull off a pumpkin patch, but we'd rather be in charge of the funds and execution of the things that directly benefit our business, so that we can bring in the revenue necessary to pay our monthly rent. No, thank you, Mr. Government, for handling the pumpkin patch. We'd rather do it."

Commissioner Anderson: It's a...

Assistant City Attorney Throckmorton: So, the pumpkin patch is...

Commissioner Anderson: Arch.

Assistant City Attorney Throckmorton: A City event, and I will let Fred clarify...

Unidentified Speaker: All the other events.

Assistant City Attorney Throckmorton: It is a City event. It is (INAUDIBLE).

Parks and Recreation Director Couceyro: I'm sorry. I was finishing up with our dog owners, I'm sorry.

Commissioner Fors: So, why'd the BID agree to do the pumpkin patch?

Mayor Lago: So, wait, wait. Let me get this...

Assistant City Attorney Throckmorton: The pumpkin patch is a City event.

Mayor Lago: Let me get this straight.

Assistant City Attorney Throckmorton: That's not one of the events...

Mayor Lago: Let me get this straight.

Assistant City Attorney Throckmorton: That the BID does.

Mayor Lago: So, the pumpkin -- the entire pumpkin patch is a City-run event.

Parks and Recreation Director Couceyro: Yes.

Assistant City Attorney Throckmorton: Yes.

Mayor Lago: What the BID does is the pumpkin arch.

Assistant City Attorney Throckmorton: Yes.

Parks and Recreation Director Couceyro: Yes.

Unidentified Speaker: Okay.

Mayor Lago: So, let me tell you, let me tell you, I personally, with my company, with my own company, will do the pumpkin arch, and I will pay for it. And I will make sure that we have the funds necessary...

Assistant City Attorney Throckmorton: So, as I under...

City Attorney Ramos: Mayor, the BID has already said they'll do it. That one, we're on.

Mayor Lago: No, no, no, no.

City Attorney Ramos: We're good.

Mayor Lago: I -- no, no, no, no.

Parks and Recreation Director Couceyro: It's already been installed.

Mayor Lago: No, no, wait, stop. One second. Stop, stop, stop, stop. Stop one second. I want to pay personally for the pumpkin part -- for the pumpkin arch, and I want it to be -- come from my own business because I want to make sure that we have the funds necessary to address it. And if I have to hire an outside consultant to help me deliver on the pumpkin arch, I will also pay for that too. So, please, Mr. Manager, through your office and through Belkys' office, let's facilitate that I personally -- like I've done on multiple occasions where I have given thousands of dollars to

cleanups in the downtown, and a litany of other things -- I would like to pay for the pumpkin arch along with the programming, and along with the, I guess, creation of the pumpkin arch as required.

City Manager Iglesias: Mayor, the pumpkin arch has been installed today.

Mayor Lago: Okay. But I want to...

City Manager Iglesias: Belkys...

Mayor Lago: Can I backpay for it? And since we're dealing with pumpkin arches and so -- you know, the City can't move forward without a pumpkin arch. I want to make sure that the funds are there, and I'm willing to pay for it. There's a reason why I'm bringing this up. This is absolutely a ridiculous waste of time. We have business at hand. There is a full agenda, and we're going back and trying to relitigate an issue that is clear as day. They did not meet the requirements. They didn't meet the requirements. And right now, for one reason or another, there's political wrangling up here, and there's a litany of different things that are being discussed. It's a waste of time. We need to move on. If you're going to vote up, vote it up. If you're going to vote it down, you vote it down. That's it, it's fine. I'm fine with that, but I don't want to do this political grandstanding here. Let's move on.

Commissioner Fors: I had one more point, Mayor. First, obviously, it's not just the pumpkin arch. It's the Miracle Mile tree lighting, the Halloween on the Mile, Christmas tree and lighting on Giralda Avenue, the Holiday Marketplace. I mean, we're not just talking about the pumpkin arch.

Commissioner Anderson: Well, that's not what they agreed to do, and I know our staff can handle what we need.

Commissioner Fors: That's -- right.

Commissioner Anderson: And we'll be able to flip a switch on a Christmas tree.

Commissioner Fors: Now, here's the question. Here's my last point -- or end of this point, one more point, which will be brief. I still have not heard -- and I think it's not natural to not discuss it -- is why we're exercising our discretion to dissolve the BID, apart from the formal requirements of the petitions.

Vice Mayor Mena: I -- so...

Commissioner Fors: And I have one more point after you're done.

Vice Mayor Mena: No, no.

Commissioner Fors: Go ahead.

Vice Mayor Mena: Listen...

Commissioner Anderson: But you already said it was one before.

Vice Mayor Mena: I think there's more -- honestly, I think, with all due respect to the BID, I think the ones hiding behind the technicalities are the BID. They didn't get the votes, they didn't. I was in favor of giving them another year. I've said on the record I value what the BID has done and added to the City, I do. And I understand that their attorney -- and I read your letter -- has a slight -- not slight but a difference of opinion on some of the underlying legal issues, and I appreciate that. They didn't get the votes. So, did we have the discretion to allow them to cure that? Yes, but we exercised not to do that. I'm not against a continued discussion about whether there should be a BID and what it should look like or not. I've said on the record, I'm for that. And we told

the prior attorney -- it wasn't you at the time. It was the other gentleman from Berger Singerman. We were very clear about that. Where we are right now, though, if we're being honest, there's a large sum of money that they have, and this is now basically kind of a leverage negotiation with each side threatening to litigate. I get that. It's totally normal, commercially reasonable behavior. I litigate; I get it. I don't begrudge anybody that, but there's a difference of opinion about what should happen with those monies. The BID has agreed on the pumpkin arch, great, but there's still another however many million dollars -- you know, one point -- whatever it is, that remains and what's going to happen to those funds. I didn't see Mr. Mark -- and I'm happy to let you address it if -- because I'm going to reference your letter -- with the Mayor's permission. I didn't see -- I wasn't clear what your position is with respect to what happens to those funds. I appreciate that you think we should exercise our opportunity to cure and allow that. I get it. Let's assume for a moment we're not doing that. Now you have this sum of money. You've agreed to the arch, great. What is -- I would be -- I'm curious to hear what your position -- I know what our City Attorney's position is -- with respect to then what happens to those funds, which were assessed effectively, you know, through the taxing power of the City and now sit in your client's account. I presume you don't believe that your client just gets to keep those funds, so does it need to put on events that are consistent with its bylaws? Does it have to do that within a certain amount of time? What happens to the one point whatever million dollars, in your opinion? And setting aside that this may be litigation and everything that may or may not happen, what is your position on what happens with the funds? Understanding that you disagree with our position that you give it back to the City and we'll do it, what's your position then?

Mr. Mark: Sure, and that's a fair question, and that goes to sort of the heart of the problem here, which is that this resolution that you all are talking about, it does two things that are simply unlawful. It dissolves a 501(c)(6) entity or purports to try to dissolve a 501(c)(6) entity, which it does not have the authority to do as a matter of law.

City Attorney Ramos: That's factually incorrect, I'm sorry. That's not what we're doing here.

Mr. Mark: And second...

Vice Mayor Mena: Well, let...

Mr. Mark: And second, it...

Vice Mayor Mena: With the Mayor's permission -- we'll let our City Attorney's office address whatever -- but I asked him a question, in all fairness, and this is his position on the matter. Because I need to understand his position so that we can make an informed decision, not going backwards, but going forward

Mr. Mark: And second, it purports to try to claw back the funds that are in the BID's bank account and say that these are actually City funds. So, those two things are related. It -- so, to directly answer your question, the BID is a stand-alone corporation.

Vice Mayor Mena: Understood.

Mr. Mark: It is a 501(c)(6). That money is not the City's money.

Vice Mayor Mena: Okay.

Mr. Mark: That money is the BID's money to be spent in accordance with the BID bylaws. That is our -- that is my position. That is the BID's position.

Vice Mayor Mena: So, you're -- again, I just want to make sure I understand. And Mayor, if it's okay with you, I'm just -- I'm trying to understand the...

Mayor Lago: Of course.

Vice Mayor Mena: Issue because, again, I'm not focused on going back. I'm focused on what now happens with the funds and how do we go forward. So, you know, we ask you to turn over the monies. You're not going to agree, I get it. You're going to just put on events that are consistent with your bylaws. Like what -- like -- and I'm not asking you to commit to anything specific. I'm just saying, generally speaking, you would agree that you don't just get to sort of keep those funds in perpetuity. They have to be expended in furtherance of marketing the business district and whatever else it is that your bylaws purport the purpose of the BID is, right?

Mr. Mark: Yes.

Vice Mayor Mena: Okay. Do you have to do that by a certain amount of time? I'm just...

Mr. Mark: I don't believe so. I mean, I -- again, I don't have...

Vice Mayor Mena: You could sit on that money for ten years if you want.

Mr. Mark: That is my understanding. The BID has no intention of doing that, but that is my understanding. And you know, again, to kind of get to the note of the question, which is, is the BID going to agree to help put on these events or not, right now, we've got -- as far -- from my perspective, the sword of Damocles is kind of dangling over our heads, and this Commission has the authority to kind of swing the axe and kill -- and attempt to kill the BID. It puts us in a very easy position. I sometimes say to people when they put me in this position, you're making my choice very easy because you're threat -- you're -- this is an existential threat...

Vice Mayor Mena: I get it.

Mr. Mark: To the existence of the BID.

Vice Mayor Mena: I get it.

Mr. Mark: So...

Vice Mayor Mena: I would categorize it as your client put a noose around its neck, not that we chopped an axe...

Mr. Mark: Perfect.

Vice Mayor Mena: Because they didn't get the votes. But I understand we disagree on that, and we can tell...

Mr. Mark: And -- well...

Vice Mayor Mena: I'm not going to argue with you about the two days. We disagree, I get it.

Mr. Mark: Fair enough. (INAUDIBLE) on one...

Vice Mayor Mena: I respect your opinion on it. I just don't agree with it.

Mr. Mark: Right. Because on one hand, you all are taking a very strict approach concerning the propriety of the 11 votes, and on the other hand, you're saying, "You know what, this was 28 days, that's good enough." And we're -- on the June 28th, we're going to tap off the last two days. Respectfully...

Vice Mayor Mena: And on the third hand, your client could have gotten another 30 votes like they did in the prior election, but they didn't get close.

Mr. Mark: Well, respectfully, our client was told that they should stop going out and soliciting those votes. That is what happened. So, it's not going to be very hard for me to go into a court and say, "Hey, if we had those two more days, we would've been running around collecting those two votes." Because, at the end of the day, when do people vote?

Vice Mayor Mena: Maybe.

Mr. Mark: They vote at the last second. That's when people at least...

Vice Mayor Mena: Would we still have discretion at that point?

Mr. Mark: To terminate the BID?

Vice Mayor Mena: Yeah. You get the votes; can I still say no?

Mr. Mark: That's a good question.

Mayor Lago: I think it is too.

Vice Mayor Mena: I think we can, right?

City Attorney Ramos: That's correct.

Vice Mayor Mena: Doesn't that --? At the end of the day, it's our call...

Mr. Mark: Well...

Vice Mayor Mena: And we've made it.

Mr. Mark: Sure.

Vice Mayor Mena: Whether you should have had two days, whether you had 10 more votes, we could have said no and we did.

Mr. Mark: Well, what are you saying no to is the question.

Vice Mayor Mena: To the BID.

Mr. Mark: Well, you're saying no to the ability to tax -- to collect revenue on behalf of the BID. That's a separate issue, not dissolution of the BID, okay. And again, let's at least be intellectually fair and consistent about this, okay. Are you going to say that because somebody notarized improperly that that ballot's going to be thrown out on one hand, and then the other hand, say forget procedural rights...

Vice Mayor Mena: Well, I think...

Mr. Mark: Forget due process...

Vice Mayor Mena: Sure.

Mr. Mark: We're going to end this election two days early.

Vice Mayor Mena: Well, again, due process dictates that it's ultimately our discretion, so that's why I think that's such an important question. But setting that aside, on the votes that were not counted, we did the math that they -- the problematic notarizations didn't get them there. You would have had to recount votes that were cast by people who did not even own the properties. They were basically nullities, like it didn't exist. So, you can go back to the actual owner, but you're going back to him for the first time because he's not the one that voted the first time. It's not Bill Kerdyk getting the wrong person to notarize it. It's Joe Blow, who doesn't even own the property, cast a vote.

Mr. Mark: You're -- and you're basing that on the SunBiz records, I assume, which are not...

Vice Mayor Mena: Basing that on our City Attorney's Office and what was represented to us, and I accept that as -- and if you have a disagreement with that, a judge will be able to decide it. But again, I come back to -- you know, you're treating it as a due process and I get that to a point, but ultimately, it's our call and we made it.

Mr. Mark: If so, then let's call it what it is. It's a political decision. That's what...

Vice Mayor Mena: Well...

Mr. Mark: So, we -- I've heard multiple times today that this is not about political grandstanding. This is about process so...

Vice Mayor Mena: It's a government decision, not a political decision.

Mr. Mark: Well, I'm...

Vice Mayor Mena: There's a difference. And I think that the distinction is -- that's important to me is it's -- the votes matter. The votes are an indication to me of what the will of the community is. And the fact that the BID's existence operates on such a razor-thin margin that throwing out five votes left you short tells me that you don't have broad support, and that's a problem for me as the elected official who has to decide whether to continue with the BID.

Mr. Mark: And...

Vice Mayor Mena: So, let's say you got one vote over the threshold, I'm not blown away. I'm not really impressed to be honest with you.

Mr. Mark: By the way...

Vice Mayor Mena: Like...

Mr. Mark: I appreciate that point as well. And what I -- all I'm suggesting -- and I think what the BID's real position here is -- is give us an opportunity to let the will of the people actually follow through...

Vice Mayor Mena: The opportunity I was willing to give -- and I said this on the record, and I'll say it again -- the opportunity I'm willing to give is a separate, brand-new discussion about whether we have a BID in this city going forward and what the parameters of that looks like. I told that to your predecessor counsel -- in all fairness, it wasn't you. It was the gentleman from Berger Singerman. I apologize, I forget his name at the moment. But I said that very clearly to him. If you want to have a meeting and talk about a BID going forward in the City, I'll be there. But not cooperating with the current dissolution based on the decision of this body doesn't help.

Mr. Mark: And thank you for that. The issue that we have here, of course, is that -- and that's a conversation that the BID will have -- is prepared to have, to be clear. But are they going to be required to have it when, at the same time, this Commission is saying we're terminating your existence and we're forcing you to turn back all these funds? I personally don't believe that that presents a spirit of that you're alluding to...

Mayor Lago: Mr. Vice Mayor.

Mr. Mark: Respectfully.

Vice Mayor Mena: Understood. That's all I have.

Mayor Lago: Vice Mayor, if I may.

Mr. Mark: Thank you, Mr. Mayor.

Mayor Lago: I look forward to hearing that dialogue in court, obviously, so thank you for being here.

Mr. Mark: Well, I don't believe (INAUDIBLE).

City Attorney Ramos: Mr. Mayor, I need the opportunity to respond if I can.

Mayor Lago: Of course, of course. This is exactly what I didn't want to do.

Vice Mayor Mena: Yeah, but I...

Mayor Lago: And I think it's -- listen, by the way, you made some great points.

Vice Mayor Mena: I need to understand his position.

Mayor Lago: And I understand that. I'm not saying it in a bad way.

Vice Mayor Mena: Yeah.

Mayor Lago: I'm saying, it's just we have such a long agenda, and I know that everybody has a lot of things to take care of. So, go ahead, Madam City...

City Attorney Ramos: I'm sorry to have to repeat myself. I started the...

Mayor Lago: It's okay, please.

City Attorney Ramos: I started this item by saying we're not looking to dissolve the 501(c)(6).

Mayor Lago: I know.

City Attorney Ramos: We're looking to dissolve the Chapter 170 taxing district, which is what this Commission created.

Mayor Lago: Yes.

City Attorney Ramos: The 501(c)(6) can continue to exist forever and provide whatever services they want, and they can do it with the money that they were able to get, not through the City's taxing arm.

Mayor Lago: Yes.

City Attorney Ramos: That's all.

Mayor Lago: They can do this as a private entity, and I welcome that. I look forward to it. Now, are there any other further comments?

Commissioner Menendez: Two of us.

Commissioner Anderson: I have a couple short comments.

Mayor Lago: Okay.

Commissioner Anderson: Okay, for the BID. I had the same conversation that Vice Mayor Mena had about a new BID, okay. You had the opportunity to cure. You chose not to inspect the ballots. You chose not to be able to know whether or not you had the right people voting. To now ask for more and more time -- and there's not even a single affidavit to support your allegations. So, you know, when I look at issues like that, it's time for you to look at establishing a new BID. If you want to have that conversation, I'm open to it.

Commissioner Menendez: I just want to, you know -- I think, and I agree with a few of my colleagues that the BID has done a phenomenal job, and it's evident over the years, year after year. I think it was important to clear up what was said earlier, I think -- and Madam City Attorney, tell me if I'm wrong. So, those two days were for them to count, not two days for them to -- voters to vote -- continue voting?

City Attorney Ramos: I don't know who told them they couldn't go out and continue to get votes. I certainly did not. But yes...

Commissioner Menendez: I think...

City Attorney Ramos: They continued to...x

Commissioner Menendez: At least I was under the impression that folks could continue voting, and my concern is, maybe that wasn't clear coming from City Hall. I don't know if it was or wasn't.

Mayor Lago: Commissioner, if I may. I agree with your comments. That was clear as day. It was clear as day. So, we keep going in circles again. And to me, they're not going to take -- they're not going to cloudy the discussion in an effort to somehow, some way find, you know, a possibility to cure the issue. The issue is very clear, very clear. We've discussed this a thousand times.

Commissioner Fors: My final point that I was going to make...

(MULTIPLE PARTIES SPEAKING IN UNISON)

Mayor Lago: Commissioner Menendez, I want to make sure you're finished.

Commissioner Menendez: And the only -- the -- I mean, like I said, where I'm uncomfortable is if residents were told or under the impression you cannot vote, you ran out of time, and yet, the time was still there. That's where I'm -- as a Commissioner, as an elected, as a Coral Gables resident, I think that's a concern that residents who had the right to vote, had the power to vote, were under the impression they couldn't when they could. That's my focus. The other part is -- my question is, if they did have the votes, and the taxing district went forward, and everything went forward as it was last year, would they be obligated then to fulfill conducting, managing, having all these events take place in the timely fashion?

City Attorney Ramos: So, they have -- those monies are taken from the property owners for a very specific purpose. They can only use those monies for that purpose. If they had continued to exist, they would have been -- the property owners would have been taxed again, they would have gotten the money, and they would have continued to have to use it for that purpose.

Commissioner Menendez: They would have to do all the -- whatever the pumpkin spice or the pumpkin thing we're doing.

Assistant City Attorney Throckmorton: (INAUDIBLE) are -- yeah.

City Attorney Ramos: So, their creating documents don't say this, this, this, and this event. It says, more generally, events that benefit the business community, blah, blah, blah, blah, blah.

Commissioner Menendez: So, we wouldn't be in a predicament where we're not sure whether or how these events are going to take place if things would have gone -- they would have had the votes, they would have...

City Attorney Ramos: I assume not.

Commissioner Menendez: I would assume.

Unidentified Speaker: Of course.

Commissioner Menendez: Okay, we're in a situation, unfortunately, that is almost like a lose-lose situation...

Vice Mayor Mena: Because...

Commissioner Menendez: And I'm not too thrilled about that.

Vice Mayor Mena: They thought these events -- with all due respect, the BID thought these were good events to do when they planned them. Now, all of a sudden, they're being leveraged. That's what's happening. Let's just be honest about it. We didn't come up with these events. The BID came up with these events. The BID planned to do these events. The BID budgeted these events. They assessed through the City taxes to host these events. Now, all of a sudden, whether or not those events are going to happen is up in the air...

Mayor Lago: Mr. Manager.

Vice Mayor Mena: And the reason is it's a leverage play on the money. I get it.

Mayor Lago: Mr. Manager, to the point...

Vice Mayor Mena: It's just not an effective way to get to a good faith result on this issue.

Mayor Lago: To the point of the Vice Mayor, we can host these events, correct?

City Manager Iglesias: We're looking at hosting the events.

Mayor Lago: Okay, so if they want to leverage these events, it's perfectly fine. I've committed to the businesses...

City Manager Iglesias: It's very...

Mayor Lago: And to the residents that we will deliver on these events. And as property owners who own significant amount of properties on the Mile and who play in politics, you should be our partner on this issue if you want to do these -- if you want to have these events. But we're willing to take them on 110 percent because I think it's good for our downtown and it's good for our community. Now...

Commissioner Fors: I have a final comment.

Mayor Lago: Are there --? Can we wrap this up? Because we have a 12 o'clock time certain. We have a lunch. By the way, I know you're very strict on lunch, 12:30.

Commissioner Menendez: I'm on a diet now. I'm good.

Mayor Lago: We're going to have to push that lunch back because I have a lot of items that I need to take.

Commissioner Menendez: No problem.

Commissioner Fors: I just have a final comment that I think was left unresolved, and this just from the legal perspective, and no answer may be given today. But I go back to what I did two meetings ago and the last meeting, which is my biggest concern from procedural aspect is those extra two days. This gentleman said that they were told they couldn't continue to collect votes. The Mayor said that it was very clear that they could continue to collect votes. I think that fact is -- and City Attorney suggested that that was also the case, that they could have continued, that they knew they could have continued even though it had halted. I think what actually happened there is big legally for that question. If Mr. Mark is right, then I think there's a bigger legal concern. If the City Attorney is right, then I think there's a lot less of a legal concern.

Commissioner Menendez: Could we get a copy...?

City Attorney Ramos: And so because...

Commissioner Menendez: At some point, could we get a copy of what we voted on?

City Attorney Ramos: Because there was no time limit prescribed in the law for which they had to vote, and because -- like the Vice Mayor said -- they could have gotten all the votes, and you could have still dissolved them, there's no legal concern there.

Mayor Lago: So, moving on, moving on...

Commissioner Fors: But did someone tell them...

Mayor Lago: Commissioner.

Commissioner Fors: Even though we're halting your 60 days, you should still continue to collect votes?

City Attorney Ramos: I don't think...

Mayor Lago: Commissioner...

City Attorney Ramos: Anybody told them that, but I think...

Mayor Lago: Nobody said that.

City Attorney Ramos: It was obvious.

Assistant City Attorney Throckmorton: And I don't believe that the City proactively told people...

Mayor Lago: So...

Assistant City Attorney Throckmorton: To stop sending in ballots...

Mayor Lago: Yes.

Assistant City Attorney Throckmorton: Either.

Mayor Lago: Exactly, just like the Clerk has mentioned that multiple times. The Clerk has mentioned that on multiple times, so I don't care how many times you repeat it over and over again, it's not going to change the truth.

Commissioner Menendez: I know we're...

Mayor Lago: I mean, people even are shaking their heads in the stands obviously because they understand that that's just obvious. So, let's stop this and let's move on.

Commissioner Fors: I mean, you said it was very, very clear that they could continue getting votes. We never told them that it was. I mean...

Commissioner Menendez: Can we get a copy of that? Not now but...

Commissioner Fors: And that's what...

Commissioner Menendez: Circulate that?

Commissioner Fors: Clear is.

Mayor Lago: I make a motion...

Assistant City Attorney Throckmorton: I can circulate a copy of the transcript.

Mayor Lago: I make a motion -- I pass the gavel. I make a motion for J-1. If we don't stop, this is going to be forever. I make a motion.

Commissioner Anderson: I'll second it.

Vice Mayor Mena: Mr. Clerk.

Commissioner Anderson: Yes.

Commissioner Fors: No.

Vice Mayor Mena: Yes.

Commissioner Menendez: No.

Mayor Lago: Yes.

(Vote: 3-2)

Assistant City Attorney Throckmorton: Mr. Mayor, could we also get a vote on Item I-5?

Vice Mayor Mena: I'll move it.

Commissioner Anderson: Second.

Commissioner Fors: No.

Vice Mayor Mena: Yes.

Commissioner Menendez: No.

Commissioner Anderson: Yes.

Mayor Lago: Yes.

(Vote: 3-2)

City Attorney Ramos: We have one more. It's...

City Clerk Urquia: We -- yes.

City Attorney Ramos: J-2, Mayor.

Mayor Lago: Can I get a motion?

Commissioner Anderson: I'll move it.

Mayor Lago: Can I get a second? Commissioner?

Vice Mayor Mena: Yes.

Vice Mayor Mena: Yes.

Commissioner Menendez: No.

Commissioner Anderson: Yes.

Commissioner Fors: No.

Mayor Lago: Yes.

(Vote: 3-2)

Assistant City Attorney Throckmorton: Thank you all.

Mayor Lago: Moving on -- thank you.

City Commission Meeting
October 11, 2022

Agenda Items I-5, J-1 and J-2 are related - Resolutions of the City Commission waiving the competitive process of the Procurement Code for all purchases related to 2022 holiday events/items that would have traditionally been handled by the BID; dissolving the BID of Coral Gables as of a date certain; prohibiting further assessments within the district; providing for liens; authorizing the district to take actions to wind down its affairs; authorizing the City Attorney to take any legal action against the BID of Coral Gables, Inc.