City of Miami Springs, Florida

The Miami Springs City Council held a **REGULAR MEETING** in the Council Chambers at City Hall on Monday, November 10, 2003, at 7:00 p.m.

1. Call to Order/Roll Call

The following were present: Mayor Billy Bain
Councilman Eric Elza
Councilman Peter Pacheco
Councilman Rob Youngs

Absent: Vice Mayor Jim Caudle

Also Present: Interim City Manager/Chief of Police H. Randall Dilling
City Attorney Jan K. Seiden
Finance Director Charles G. Marshall
Human Resources Director Loretta M. Boucher
Public Services Director Denise Yoezle
Acting Parks & Recreation Director James R. Borgmann
Downtown Administrator Octavien A. Spanner
City Clerk Magalí Valls

2. Invocation: Councilman Pacheco offered the invocation.

Salute to the Flag: The audience participated.

3. Awards & Presentations:

3A) Presentation by Bruce Drum, Assistant Aviation Director of Operations of the Miami-Dade Aviation Department Regarding the Noise Abatement Task Force Zoning Overlay

Bruce Drum, Assistant Aviation Director of Operations of the Miami-Dade Aviation Department, gave a

presentation regarding the Aviation Department and Land Use Zoning as follows:

The Aviation Department and Land Use Zoning

I. Topics of Discussion
   A. The airport system
   B. Existing and proposed zoning ordinances
   C. Purpose of zoning ordinances
   D. Overview of Florida Statute Chapter 333 and FDOT guidelines
   E. Zoning maps
   F. Summary

II. The Airport System
   A. Miami International Airport (MIA)
      1. Service to approximately 140 cities worldwide
      2. MIA handles an average of more than 1,100 arrivals and departures per day
      3. MIA serves over 30 million passengers annually
      4. MIA contributes over $18.5 billion annually to the local economy and generates over 234,000 (direct and indirect) jobs in the region
      5. MIA is one of the busiest passenger and cargo airports in the United States
      6. MIA is twelfth in the United States and twentieth in the world in total passengers
      7. MIA is third in United States and ninth in the world in total cargo volume
      8. MIA's new runaway was just dedicated
   B. General Aviation Airports
      1. Opa-Locka Airport
      2. Opa-Locka West Airport
      3. Kendall-Tamiami Executive Airport
      4. Homestead General Aviation Airport
      5. Dade-Collier Training and Transition Airport

III. Existing and Proposed Zoning Ordinances
   A. Existing
      1. Kendall-Tamiami Executive Airport approved 1999
   B. Proposed
      1. MIA
      2. Opa-Locka and Opa-Locka West Airports
      3. Homestead General Airport

IV. Purpose of Land Use Zoning Ordinances
   A. Protect public safety by limiting the type and densities of land use activities in high risk areas near airport runaway ends

B. Protect quality of life by limiting noise sensitive land use activities such as schools and residences in high noise exposure areas while allowing for less sensitive commercial development

C. Airport Zoning Ordinances

1. Protect public health, safety, and welfare
2. Protect economic benefits and capacity of aviation facilities
3. Protect public investments in aviation facilities
4. Comply with Federal and State requirements

V. Zoning Ordinances Based On State Statute Chapter 333 and FDOT Guidelines

A. There are three types of airport zoning controls in State Statute Chapter 333

1. Height zoning: designed to prevent structures and other objects from interfering with FAA traffic corridors
2. Land use zoning: which limits noise sensitive land activities in high noise exposure areas.
3. Public safety zoning: which prohibits development in areas near airport boundaries

B. Consequences of not enforcing airport zoning controls

1. Compromises the safety and quality of life of school children and residents of Miami-Dade County
2. Unregulated development and the encroachment of incompatible land uses near airports can create significant public pressure to limit flight operations, and prevent or curtail future airport expansion for the airport system

VI. MIA's Land Use Zoning Map

A. Inner Safety Zone (ISZ)

1. Prohibits
   a. New residential construction
   b. Educational facilities (excluding aviation)
   c. Buildings for public assemblage in excess of 1000 persons (excluding hotels, motels or hospitals and their ancillary uses)

B. Outer Safety Zone (OSZ)

1. Residential units are limited to less than two per acre
2. Prohibits
   a. Educational facilities (excluding aviation)
   b. Buildings for public assemblage in excess of 1000 persons (excluding hotels, motels or hospitals and their ancillary uses)

C. Inner District (ILZ)

1. The ILZ is within the 75 DNL and greater noise contour of the latest official aircraft noise contour map for the airport

2. New residential construction and educational facilities (excluding aviation) are prohibited

D. Outer District (OLZ)
   1. The OLZ is within the 65 DNL to 75 DNL noise contour of the latest official aircraft noise contour map for the airport
   2. New residential construction and educational facilities are required to incorporate a 25 db noise level reduction into design/construction of the structure

E. No School Zone (NSZ)
   1. Extends 5 miles from the end of runaway, and has a width of ½ the length of the longest runaway
   2. New educational facilities (excluding aviation) are prohibited

F. Kendall-Tamiami Executive Airport's Land Use Zoning Map

VII. Summary

A. What the Aviation Department requests from City officials
   1. Support for the zoning ordinances so they may be honored and enforced as a matter of public safety

B. Should you desire to have a presentation on airport zoning and how it affects your specific city, please contact my office at (305) 876-7077

Bruce Drum also stated that the zoning ordinance is due to go back to the Government Operations and Environmental Subcommittee of the Board of County Commissioners on Friday at 9:30 a.m. and then it should go to the Board of County Commissioners on December 16, 2003.

Councilman Youngs said that the City was in agreement with the City of Doral since Miami Springs Senior High is overcrowded. He asked if Mr. Drum could specify the mechanism for making an exception, and if they have something planned for the City of Doral.

Mr. Drum responded that Doral is the most impacted area of South Florida since they want to build new schools and there are only a few areas left that are not covered under the State law definition. He continued to say that there is a triangular area as well as an area in the north section that is not covered, in which they could build schools. The mechanism for trying to build in a "No School Zone" is publicized by way of a proposed draft ordinance, and it would first go through the City under that jurisdiction.

Mr. Drum said that the Aviation Department and Planning and Zoning Department of Miami-Dade County have asked to opine in that process. They would usually opine against a school being placed in the "No School Zone" because of the State law and safety issues, and also because of the sound noise issue. He referred to the draft proposal and said that the final referee would be the Board of County Commissioners, and the super majority could overrule a municipality such as Miami Springs or Doral if they still wanted to have a school in the "No School Zone".

Councilman Youngs stated that the City has spoken with Commissioner Diaz about this matter and the City Council and the Mayor of Doral have specifically asked for the City's support in this matter. For this reason alone, and for the residents of Miami Springs, they wanted to give the Aviation Department the discretion to opine on the issue. He stated that if the Aviation Department was going to say no in 99% of the cases, then they would want to ask permission for an exception for Doral since they are so desperate for schools and Miami Springs is desperate for relief.

Mr. Drum stated that there were discussions this afternoon concerning this issue and they are trying to bring them up to speed on all these issues. He said that the Board of County Commissions has thirteen members, and if there is a quorum of five present, a super majority could overrule a municipality and vote down a school in a "No School Zone".

Councilman Youngs said that the decision to place or not place a school rests with the School Board.

Mr. Drum said that the School Board gets the Aviation Department's opinion and has been doing so for several years on any proposed location for a school on Miami-Dade County. In 99% of the cases, the School Board is turning down a request if it is in a "No School Zone". For the sake of argument, if they still went ahead with a proposed location for a school in a "No School Zone", it would go through the City of Doral and Miami Springs for their zoning process. The ultimate decision would then go to the Board of County Commissioners as proposed in this ordinance.

Councilman Youngs said that at the last School Board meeting they asked the Superintendent to look at the proposal and have the School Board attorneys review it to see what exceptions they could make, specifically in response to the request from Doral.

Mr. Drum pointed out that since there is no ordinance in place, and they are not complying with State law at this time, then there is no mechanism in place for MIA to overrule the State of Florida Law. With this ordinance, they would have a mechanism and would have to obtain a majority vote in the Board of County Commissioners.

Councilman Youngs asked if the Aviation Department was set on the super majority.

Mr. Drum said that he assumed that because Doral was pointing out the issue, that it would probably come out in the discussion on Friday at the GOE committee hearing.

Councilman Youngs asked if the State Law had been in place for a long time.

Mr. Drum responded that it had been in place since 1993. He stated that several schools have been put in there although they objected. He also said that the School Board has been asking for information regarding

the “No School Zone” for public schools.

Councilman Youngs asked if this generally strengthens the hand of the Aviation Department and makes it less likely that there would be schools in such a zone.

Mr. Drum said that the Aviation Department does not have the final vote. The Aviation Department only gives input to the School Board on whether it is in the school zone or outside of it. They are always concerned with schools being placed in the “No School Zone” since there is a historical record of aircraft crashing in these zones. He added that the State took these zone definitions from the military concepts that were developed over the years.

Councilman Youngs stated that in an ideal world it would be nice to have these rules and enforce them. He said that there are two charter schools that are at the end of the runway, they have already made numerous exceptions, and it seems that there should be some solution so that schools can be built.

Mr. Drum reminded Councilman Youngs that there still is the State Law that has been in place.

Councilman Youngs said that the School Board was asking how they could get around the State law.

Mr. Drum responded that there was no draft in place at the moment, which is part of the issue.

Councilman Youngs asked if Mr. Drum knew how the other schools got around the State Law.

Mr. Drum said that they were just built. He added that they were trying to get the ordinance in place to meet state law. There are a few airports that are still going through this process. He said that the Aviation Department’s problem is that the City surrounds the airport.

3B) Presentation by the Local Chapter of the Daughters of the American Revolution in Commemoration of Veterans Day

On behalf of the Daughters of the American Revolution, Helen Lawrence of 641 Nightingale Avenue asked the City to honor veterans on their day, November 11, 2003.

Ms. Lawrence stated that on November 11, 1921, an unknown American soldier from World War I was buried in Arlington National Cemetery in recognition of the war veterans and in conjunction with the timing of the end of hostilities at 11:00 a.m. on November 11, 1918.

Ms. Lawrence said that President Warren Harding requested that all citizens indulge in a period of silent thanks for these valorous lives. She continued to say that inscribed on the tomb are the words, “*Here lies in honored glory an American soldier known but to God*”. That day became known as Armistice Day.

According to Ms. Lawrence, in 1954, Congress wanted to recognize the sacrifice of Veterans and proposed to change Armistice Day to Veteran's Day. President Dwight Eisenhower signed the legislation to honor those veterans.

Ms. Lawrence pointed out that many have died and have been wounded. She stated that we should honor our veterans and their families everyday, because it is the soldier, not the reporter that has given us freedom of the press. It is the soldier, not the poet who has given us freedom of speech. It is the soldier, not the campus organizer who has given us the freedom to demonstrate. It is the soldier who salutes the flag, who serves beneath the flag, and whose coffin is draped by the flag that allows us today to say "One nation, under God, with liberty and justice for all".

4. Open Forum:

Parking Agreement with the Baptist Church

Jack Odin of 1295 Thrush Avenue was disappointed to learn that the City could not finalize the parking agreement with the Baptist Church since it would have helped the parking situation on Westward Drive.

Mr. Odin suggested that the Post, Buckley, Schuh & Jernigan design fee for the parking lot should be added to the price of the contract. He asked City Planner Richard Ventura who signed off on the drawings, and if he reviewed the plans to make sure the spaces and the landscaping conformed to the Code.

Mr. Ventura told him he had never seen a set of drawings.

Mayor Bain said that they would have to investigate that matter.

Councilman Elza asked the City Manager to find out about this matter and to report to Council.

Interim City Manager/Chief of Police H. Randall Dilling said that he would find out since he had not seen the plans either.

City Manager

Marie Mascaro of 125 Whitethorn Drive was of the opinion that even after going through all the proper procedures, to hire a new City Manger that there is no guarantee that the City will choose the ideal candidate for the position. It has always bothered her that whenever there is a vacancy to be filled the Administration looks outside the City.

Ms. Mascaro stated that Jim Borgmann is loyal and capable, and that he has earned the position of City Manager.

Ms. Mascaro commented that Assistant Parks and Recreation Director Pat Perry also has longevity in the Recreation Department and once was the Acting Director. She said that these loyal employees are qualified to do the job on a temporary basis, and when they are considered for the top job that they know so well, they are pushed aside.

Ms. Mascaro would personally feel very comfortable knowing the people who are in charge. She felt that is only common sense to hire someone that is known and trusted versus a stranger, and she is sure that most residents would agree.

Ms. Mascaro explained that Mr. Borgmann and Ms. Perry are long time residents of Miami Springs as well as long time employees, and they love their jobs, which they perform well, and they should be given the opportunity to show they are qualified.

Ms. Mascaro urged Council to oversee all phases of City government. She was of the opinion that the City could have saved the expense of looking outside the City for a suitable City Manager, and she urged Council to consider her suggestion.

City Manager

Mike Gavila of 684 Morningside Drive said that Council should hire Jim Borgmann as the next City Manager because he has worked for every single city position, he has lived here all his life, and he also was on the City Council.

City Manager

John Kenney of 1174 Heron Avenue spoke in favor of Jim Borgmann as the new City Manager. He said that he has known him for 35 years, and he was proud when he was elected to the City Council.

Mr. Kenney explained that when Borgmann was Assistant City Manager, he asked him about the sewer system problem, and he said that different motors were installed in the pump stations, which was good planning.

Mr. Kenney added that Mr. Borgmann was able to find funding for the swimming pool renovation, and the pipes under the pool were replaced and brought up to standard. He felt that Mr. Borgmann cares about the residents and the City of Miami Springs.

8th Annual Cancer Walk

Suzanne Colon Wolar of 1024 Raven Avenue, Chairperson of the 8th Annual Cancer Walk, thanked Chief Dilling and the Police Department for their assistance. She said that Officer Danny Kelly has been the coordinator for many years and he is invaluable. She added that motorcycle officers Charlie Schubert, Jeff Clark, Ray Buckner, and Robert Barrios directed traffic, with the assistance of Public Service Aides Leslie Seminario, Jaime Rojas, and Melissa Piniella.

Ms. Conlon Wolar thanked Public Works Director Denise Yoezle and Public Works employees Jeanne Prudhomme and Earl Williams. She also thanked Human Resources Director Loretta Boucher who was the original chair of the Cancer Walk, along with her assistant Nury Diaz and Jim Borgmann.

Ms. Conlon Wolar proceeded to thank sponsors, including Gulfstream International, Florida Power & Light, Milam's Market, Murphy's Bar and Grill, Miami Springs Realty, and all the businesses that donated raffle prizes. She stated that last year they raised $17,000, this year their goal was $25,000 and they were able to collect $23,500. She thanked all the residents and businesses that helped and walked.

Parking in the Business District

Archie Mehech of 40 Curtiss Parkway stated that according to the reports, there seems to be a scarcity of parking spaces in the business area, but he was of the opinion that there is plenty of parking.

Mr. Mehech said that assuming there is a need for more parking, there should be a better system. He understands that all the businesses have to cooperate, but it has to be done in a fair way, and every owner should contribute, based on the square footage.

To answer Councilman Elza's question, City Attorney Jan K. Seiden responded that Mr. Mehech was granted a variance.

Mr. Mehech said that he was willing to cooperate, but it is not fair that the business owners should have to share the cost without having exclusivity for the use of the parking spaces.

Downtown Façade Program

Hank Flowers of 180 Navajo Street stated that the City was going to upfront the $249,000 for the Downtown Façade Program, but the City would not qualify as it must have a population of 50,000 according to existing regulations.

Sewer System

Hank Flowers said that for the past five years, there have been discussions about turning the City's sewer system over to the County, and each time there has been a change in the Administration. The last time it was discussed, the Administration said they were going to have a plan ready that would show how much the citizens would save on the utility bills.

Mr. Flowers said that he is not so much concerned with the savings, but he would not want another bond issue in a few years to repair the sewer system. He suggested that now might be the time to consider transferring the system to WASA.

Finance Director Charles G. Marshall announced that discussion of this item would be scheduled for the November 24, 2003 meeting.

Charter Amendments

Mr. Flowers urged Council to work on the pending Charter Amendments so that when the next election comes, the questions are ready to be placed on the ballot.

Councilman Elza stated that this issue was discussed at a previous meeting and City Attorney Jan K. Seiden agreed that he would begin working on the ballot questions.

Mayor Bain requested that the Administration place the Charter Amendment questions on the agenda for discussion at one of the next meetings.

City Attorney Jan K. Seiden asked Council for direction.

Mayor Bain responded that Council could begin discussions at the next meeting because too many people have already inquired about this issue.

Councilman Elza suggested that the item should be placed on a January 2004 agenda because there are other pressing issues that Council has to deal with first, such as annexation.

Mayor Bain asked Council if they wanted to set a date within the next three meetings.

Attorney Seiden explained that he would have to redraft at least two of the Charter amendment questions.

To answer Councilman Youngs' question, Attorney Seiden responded that he did not know how long it would take him to prepare the Charter amendment questions, but that he would have them ready as soon as Council wants them.

Council agreed to schedule this item for discussion during the first meeting in January 2004.

WASA Acquisition of the City's Water and Sewer System

Mayor Bain asked for a status report regarding the acquisition of the City's water and sewer system by Miami-Dade County Water and Sewer Department (WASA).

Councilman Youngs said that the feasibility of turning the water and sewer system over to the County was first considered two years ago, and WASA made some initial overtures, but they would not agree to take over the bonds. He explained that because the City was going to give up the assets and retain the liabilities, Council took the issue off the table.

Councilman Youngs said that as the repairs are made to the system, and the bonds are paid down, it is more attractive for the City to make a deal, but the City would not be in the strongest negotiating position with a high balance on the bonds. He said that he was anxious to see the numbers since he had been pushing for it for two years.

Finance Director Charles Marshall advised Council that this matter would be ready for presentation to Council at the November 24, 2003 meeting.

City Manager

Former Councilwoman Marcia Fulton of 700 Swan Avenue urged Council to use the same criteria on every candidate for City Manager.

Ms. Fulton complimented the Police Department for the outstanding job they did with the background investigation. She was of the opinion that the Police Department should conduct a background check on every candidate whether they are a City employee or an out of town candidate.

Airing of Council Meetings

Former Councilwoman Marcia H. Fulton inquired about the airing of the City Council meetings on television in the evenings.

Acting Parks and Recreation Director Jim Borgmann indicated that the reason that the last few meetings were not shown at 7:00 p.m. was because the meetings were too long and they were only on during the day.

Veterans' Day

Ms. Fulton expressed the importance of Veterans' Day and encouraged everyone to celebrate it.

City Manager

Judy Neubauer of 549 Albatross Street was of the opinion that Council made a bad decision when they selected Dennis Kelly for City Manager. She was in favor of appointing Jim Borgmann to the position because he is a resident who has worked in many City departments.

Posting of Agendas on the Web

Judy Neubauer inquired if the Council agendas were being posted on the web site.

City Clerk Magalí Valls indicated that the agendas could be found in the City Clerk's page, under Meeting Archives.

Downtown Administrator

Judy Neubauer asked what were the duties and if there was a job description for the Downtown Administrator. She said that when questions are raised about issues, the residents expect to receive answers at the next meeting.

Councilman Elza responded that Mr. Spanner's duties are stated in his contract.

Golf and Country Club

Judy Neubauer said that the golf course itself may be doing well, but the food and beverage department is suffering, because the Country Club does not have a big banquet room.

Golf and Country Club

Jose Barrios of 1290 Starling Avenue was of the opinion that no one would be interested in leasing the Golf and Country Club. He suggested that the Tennis Courts and Library could be moved to the Golf Course, the land could be sold to build a small condominium, and the proceeds would be used for the renovation of the Country Club.

City Manager

Ray Orchard of 109 Deer Run said that the City already has a man who wants the City Manager's job, who is very capable.

Annexation

Ray Orchard voiced his opinion against annexation.

City Manager

Buzz Fleischmann of 810 Pinecrest Drive stated that the City Manager should be a person that could work with each and every Council member, and that person is Jim Borgmann, who lives in the City, has a historical perspective, and institutional memory of City business. He added that Mr. Borgmann has already worked for the City in several capacities.

Community Development Block Grant (CDBG)

Kathleen Fleischmann of 810 Pinecrest Drive was concerned about the Community Development Block Grant program. She said that she was aware that it was a HUD program, which is for low-income commercial areas.

Annexation

Kathleen Fleischmann expressed her opposition to annexation and reminded Council that the people voted for them to maintain the integrity of Miami Springs as a small town.

5. Approval of Council Minutes:

5A) 10/13/2003 - Regular Meeting

Minutes of the October 13, 2003 Regular Meeting were approved as written.

Councilman Pacheco moved to approve and Councilman Rob Youngs seconded the motion. On roll call vote the motion carried 3-0. (Councilman Elza abstained).

6. Reports from Boards & Commissions:

6A) 10/21/2003 – Education Advisory Board – Minutes

Minutes of the October 21, 2003 Education Advisory Board meeting were received for information without comment.

6B) 11/04/2003 – Code Enforcement Board – Cancellation Notice

Cancellation Notice of the November 4, 2003 Code Enforcement Board meeting was received for information without comment.

6C) 11/11/2003 – Recreation Commission – Rescheduling Notice

Rescheduling Notice of the November 11, 2003 Recreation Commission meeting was received for information without comment.

6D) 11/05/2003 – Zoning and Planning Board – Minutes

Minutes of the November 5, 2003 Zoning and Planning Board meeting were received for information without comment.

6E) 11/05/2003 – Board of Adjustment – Approval of Actions Taken at their Meeting of November 5, 2003, Subject to the 10-day Appeal Period

City Attorney Jan K. Seiden explained that the first case was tabled because the applicant did not produce enough documentation to support the variance in the estimation of the board. The second case was a minor matter where a citizen just wanted to enclose part of a porch to make a closet, and they needed approval because it was a small lot.

Attorney Seiden stated that the third case was a request from Mr. Mehech to operate a traffic school on a location on the Circle, and the Building Department determined that based upon the type of usage for the property, it is not grand fathered. He originally thought that a variance was needed for as many as fourteen spaces, but it is possible that he may only need a variance for as few as six or eight spaces.

In response to Councilman Elza's question, Attorney Seiden responded that the school could be operated with less than 400 square feet since it is now possible to attend traffic school over the Internet, and instead

of 1,400 square feet only 1,000 square feet is going to be used for the business office. They have also stated that no more than ten to twelve people would be in any particular class.

Attorney Seiden said that Mr. Mehech would probably be part of the in lieu of parking program that Council will be discussing later.

Councilman Youngs said that if Council approves the action taken by the Board of Adjustment, then they approve the variance subject to the in lieu parking spaces.

Councilman Elza asked if they were going to appeal the case.

City Attorney Seiden said that they could but he did not understand why they would. He stated that this would be consistent with all the other cases that they have dealt with in the past.

Councilman Pacheco moved to approve the actions of the Board of Adjustment subject to the ten-day appeal period and Councilman Youngs seconded the motion. On roll call vote the motion carried unanimously.

7. Public Hearings:

7A) Second Reading - An Ordinance of the City Council of the City of Miami Springs Amending Code of Ordinance Section 150-002; Definitions; by Adding Thereto a New Defined Term for Inclusion Within the City Code; Repealing all Ordinances or Parts of Ordinances in Conflict; Effective Date (First Reading: 10/13/2003 - Advertised: 10/27/2003)

City Attorney Jan K. Seiden read the ordinance by title.

Attorney Seiden explained to Council that they were only amending the zoning definition section to provide a definition for a porte-cochere structure, which supports the prior ordinance that has been approved.

Councilman Peter Pacheco moved to approve and Councilman Rob Youngs seconded the motion. On roll call vote the motion carried unanimously. (Ordinance No. 908-2003).

8. Consent Agenda: (All items simultaneously approved)

8A) Approval of the City Attorney's Invoice for October 2003 in the Amount of $9,460.00

There was no discussion regarding this item.

Councilman Youngs moved to approve and Councilman Pacheco seconded the motion. On roll call vote the motion carried unanimously.

8B) Notification that a Lease Extension Agreement has been Executed with Charles R. Delongchamp for the Leased Premises Located at 274 Westward Drive for the Community Policing Office

There was no discussion regarding this item.

Councilman Youngs moved to approve and Councilman Pacheco seconded the motion. On roll call vote the motion carried unanimously.

8C) Recommendation that Council Approve an Expenditure of $19,507.75 to Phil Peterson's Harley Davidson of Miami (North) to Purchase Five 2004 FLHP1 Road King Harley Davidson Motorcycles, Utilizing Miami-Dade County's Motorcycle Bid #5206-0/05-CW, as Provided for in Section 31.11 (E) (5) of the City Code

There was no discussion regarding this item.

Councilman Youngs moved to approve and Councilman Pacheco seconded the motion. On roll call vote the motion carried unanimously.

8D) Recommendation that Council Approve an Expenditure of $2,129.59 to Dade County Association of Chiefs of Police for our Pro-rata Share of the Funding of the Annual Renewal of the Dade County Court Standby Program – Operation Fund Contribution

There was no discussion regarding this item.

Councilman Youngs moved to approve and Councilman Pacheco seconded the motion. On roll call vote the motion carried unanimously.

9. Old Business:

9A) Appointment to the Golf and Country Club Advisory Board by Vice Mayor Caudle (Group II) for a Full 2-year Term Ending on July 31, 2005 (Deferred: 10/27/2003)

Vice Mayor Caudle (Group II) was not present and the appointment was **deferred.**

9B) Appointment to the Golf and Country Club Advisory Board by Councilman Pacheco (Group III) for a Full 2-year Term Ending on July 31, 2005 (Deferred: 10/27/2003)

Councilman Pacheco (Group III) **appointed** Phyllis Causey to the Golf and Country Club Advisory Board for a full 2-year term ending on July 31, 2005.

9C) Appointment to the Golf and Country Club Advisory Board by Councilman Youngs (Group IV) for a Full 2-year Term Ending on July 31, 2005 (Deferred: 10/27/2003)

Councilman Youngs (Group IV) **deferred** his appointment to the Golf and Country Club Advisory Board.

9D) Response to Inquiry About Hiring Process for the City Manager (Requested by Councilman Youngs)

Councilman Youngs stated that the citizens had some inquiries regarding the process of choosing a City Manager. To respond to them, excerpts of the open forum in which Noel Pereda had spoken were printed and included in the Council packet.

Councilman Youngs asked Human Resources Director Loretta Boucher to come forward to answer some of the questions.

Councilman Youngs asked Mrs. Boucher if the City was selecting the City Manager based on their resumes alone.

Human Resources Director Loretta Boucher responded negatively. She said that when Council directed her to advertise the City Manager's position in professional magazines, a job description was in place with the requirements for a City Manager. There were 123 resumes, and she narrowed them down to nineteen based on the qualifications of the job description, such as education, years of experience, and background. She explained that out of the nineteen candidates, ten were from Florida and the rest were from out of the state.

Ms. Boucher said that Council directed her to select a panel of three professional people who were not involved with Council, with no special interests or preferences. She stated that she selected former Finance Director Don Nelson who has 15-20 years of experience in government, and has a good reputation with the City of Coral Gables. She felt that he would be good for the panel because of his field and the City's financial needs. The second person was Dan De Loach, a resident in good standing, and a City Clerk for

over 20 years. She said the final person was a City Manager from North Miami Beach, Gary Brown.

Ms. Boucher informed Council that she copied the resumes that were submitted and the panel members received a package containing a letter with the resumes, together with the copies of the job description. They were asked to select five or six candidates, and submit the names back to her as soon as possible. Each individual made the selections and sent them back separately in a sealed confidential envelope. She then took the consensus, created a roster, and presented the names to Council.

Councilman Youngs stated that Council advised Mrs. Boucher of the candidates they wanted to interview and asked if she had given any answers to any of the candidates before the interview.

Human Resources Director Boucher stated that she provided Council with all the questions that were recommended, as well as questions they received from residents.

Councilman Youngs asked if the selection was fixed in any way.

Human Resources Director Boucher responded that the selection was not fixed.

Councilman Youngs asked Mrs. Boucher if any candidate was favored over another, and Ms. Boucher said "no".

Councilman Youngs stated that the three people chosen for the panel are stellar in their fields. He said that the panel then reduced the candidates to the five people that were interviewed, including Mike Sprovero, Jim Borgmann, James Drumm, Dennis Kelly, and an out of state candidate. He stated that the integrity of this process was very high and that he could not imagine using more qualified people to help make the selections. He asked if it was common practice in other cities to have a blue ribbon panel or screening committee.

Human Resources Director Loretta Boucher explained that usually a City selects a group, and Council then selects five candidates and reviews their resumes. She said that several people who were concerned with the selection were offered to come to her office to see the process and to review the documentation.

Councilman Youngs stated that Ms. Boucher has been attacked personally, and her integrity has been imputed by some comments. It seemed to him that the accusations were totally unfounded, and they were an excuse for the people who did not agree with the outcome. He stated that he wanted to give Ms. Boucher a chance to respond since she had been attacked personally.

Councilman Elza recalled that when Human Resources Director Loretta Boucher first started working in the City, that the Human Resources Department was in shambles. He stated that Ms. Boucher has turned the Personnel Department into a first class operation, and that she should be commended for doing an excellent job for the past ten years.

Attorney Seiden stated that there have been members chosen to serve on the Civil Service Board who have never been sworn in because they do not have enough civil service appeals to have meetings. Over Ms. Boucher's tenure there have been two meetings, which show that the City has a proactive Human Resources Director who stops the problems before they have to be dealt with legally.

9E) Status Report/Council Action Regarding the Selection of City Manager; Letter from Candidate Dennis W. Kelly

City Attorney Seiden read the following letter from candidate Dennis W. Kelly:

To Mayor and Council:

"Please accept my sincerest appreciation for the trust and confidence you placed in me as the finalist for the position of City Manager for the City of Miami Springs. Following the meeting on Monday, November 3, 2003, and extensive conversation with friends and family, I have made a determination to withdraw my application from consideration for the position of City Manager. Thank you very much for your every consideration."

City Attorney Seiden added that Mr. Kelly said that he was happy with his current employment, and there would be a lot of complications with a new job. He added that he did not think that Mr. Kelly was prepared to make the sacrifices, and since the average tenure for a City Manager is 2.8 years, it was quite miraculous that he was employed with North Palm Beach for so many years, and in the end he suffered from all the evaluations and newspaper articles.

Councilman Youngs moved to appoint Jim Borgmann to the position of City Manager, subject to negotiation of a contract and Councilman Elza seconded the motion. On roll call vote the motion carried unanimously.

Council decided that the contract would be approved at the next regular meeting.

Jim Borgmann stated that he appreciated the opportunity to serve as City Manager. He said that Miami Springs has been his hometown since 1958, and if he did not care deeply about the City, he would not have chosen to submit his resume for the job. He hoped never to disappoint Council or the residents and to do whatever it takes to get the City back on track. He thanked Council once again.

9F) Consideration of City Council Action in Response to Letters from Martin Marquez Regarding the Façade Improvement Program

City Attorney Jan K. Seiden stated that around the time of the last meeting, Council received two letters from resident Martin Marquez. One letter was about a meeting that the Mayor and Mr. Marquez attended with Bryan Finnie and County Commissioner Rebeca Sosa. The second letter was addressed to Council

warning them about the Community Development Block Grant (CDBG), which he alleged was not appropriately awarded to the City, and as a result, Mr. Marquez talked about the consequences that might follow without proper investigation into the matter.

Attorney Seiden stated that as a result of Mr. Marquez's letter, he asked for the matter to be placed on the agenda since he felt that Council was put under official notice that there may be a problem, and Council might have to take action. He referred to Mr. Marquez's letter of November 6, 2003, where he advised that, as a taxpayer, he reported the situation to the Inspector General and has instigated an investigation of the matter. He stated that as a result, his reason for putting the matter on the agenda has been moot since an investigation is already under way, and he doubted that they would conduct another investigation on the same issue.

Downtown Administrator Octavien Spanner stated that following Mr. Marquez's letter, he also sent a memorandum to Council via the Interim City Manager providing an in depth explanation concerning the eligibility of Miami Springs to participate under the commercial revitalization program. He explained that he also included information that was available on the website about how cities become eligible and receive a community development block grant.

Mr. Spanner stated that there are entitlement communities that have a population of 50,000, and in urban communities a population of at least 200,000, and they would have to meet the requirement of low to medium income communities. At the same time, there are small city programs that are exceptions, which include the states of Puerto Rico and Hawaii; in addition, there are other non-entitlement communities such as Miami Springs, which has a population of less than 50,000.

Mr. Spanner stated that under specific guidelines some cities do qualify for CDBG funding, which came about since Congress passed the Development Housing and Community Act in 1981. He continued saying that all the questions that Council have asked have been addressed, and he was of the opinion that it was his responsibility to clarify to Council how the City petitioned and met the requirements to receive the grant.

Mr. Spanner said that during the meeting between the Mayor and Mr. Finnie, Mr. Marquez had the opportunity to ask if any fraudulent activity took place. He stated that as soon as someone calls the Inspector General, it is to file a complaint based on fraud. He stated that he called the office of the Inspector General himself, and based on his conversation with Washington, the procedure is to delegate the investigation to an office in Miami and the person in charge is Ana Chaviz. She would eventually become responsible for investigating this case.

Mr. Spanner stated that the Mayor decided to meet with both County Commissioners, as well as the Director of Community and Economic Development to answer questions. Ms. Chaviz explained all the procedures that the City had gone through and went through an open process where there was a public hearing. He stated that City Planner Richard Ventura represented the City since he was unable to attend,

and no residents of Miami Springs went to that meeting to complain about any fraudulent activity, which comes as a surprise.

Mr. Spanner explained that the Director of Community Planning, Ms. Chaviz, said that based on the information received during their telephone conversation, that there was not any fraudulent activity occurring; however, it is her responsibility to investigate once she receives the case. She also cautioned Mr. Spanner to have a conversation with Mr. Finnie to let him know that there is still an investigation going. He explained that he did call Mr. Finnie, who was not happy since he had a good conversation with the Mayor and Mr. Marquez and he did not understand why there was suddenly an investigation.

Mr. Finnie asked if there was any political agenda concerning this matter and what was happening in the community. Mr. Spanner explained that it was the resident's choice and right to submit an inquiry. Mr. Finnie said that if there is an investigation, he had no alternative but to freeze the $249,000 that was promised to Miami Springs. He felt that this was unfortunate.

Mr. Spanner continued saying that it takes him 50 minutes to answer their questions based on what requirements are applied to this grant, the investigation would jeopardize 11 property owners, and one property owner has already asked to be excluded from the program.

Mr. Spanner requested Council to provide a resolution supporting Downtown Revitalization and to send a letter to the County stating that this has not been the decision of Council.

Councilman Youngs asked if the Office of the Inspector General had given the assignment to Ms. Chaviz, and Mr. Spanner responded that they would be giving her the assignment.

Councilman Youngs asked if the investigation was considered a fraud investigation, and Mr. Spanner responded affirmatively.

Councilman Youngs asked if Mr. Marquez swore out a complaint or an allegation of fraud.

Mr. Spanner responded that Ms. Chaviz does not know, because she had not received the case yet.

Councilman Youngs asked if he could get a copy of the complaint.

Mr. Spanner said he doubted he could get a copy because once a complaint is filed it must go through the proper channel.

Councilman Youngs asked if Ms. Chaviz had indicated how long the investigation might take.

Mr. Spanner responded that Ms. Chaviz did not know since she had not yet received the complaint. He asked the Office of the Inspector General, and they indicated that the investigation would take about three

to four weeks. He continued saying that the danger is that if the money is frozen, they might not meet deadlines. He said the fiscal year starts in October, and if the investigation takes until January, other cities that have applied for funding for the next fiscal year could be considered, and the investigation makes it difficult to go back and negotiate any funding for the City.

Archie Mehech of 40 Curtiss Parkway stated that he is part of the Façade Improvement Program that was offered to him by Mr. Spanner. He stated that he was not aware of all that had transpired, which comes as a surprise to him. He emphasized the need of showing a better face of the City as far as stores and business areas are concerned, and he thought it was a good idea to remodel the building façades.

Mr. Mehech said that he is one of the eleven property owners selected to participate in the program, and he does not know the criteria to select the participants, but he was happy to be given this opportunity. His building does not need improvement, only painting, which he could do without the help of federal funds, and he requested to be pulled out of the program.

Suzanne Colon Wolar of 1024 Raven Avenue stated that she was also a property owner and was appalled at what has transpired. She stated that she did not know that Martin Marquez was a City official and it seems that he is working in that capacity. She said that Mr. Spanner asked Council to pass a Resolution saying that Council still supports Revitalization but she does not know if it would help. She was concerned that once Mr. Finnie froze the money he would just pull it from the City.

Ms. Conlon Wolar stated that it was a shame to lose $250,000. The grant could have helped beautify many businesses and she did not understand why someone would be opposed to something that would improve the City.

Aldo Saavedra of 529 Curtiss Parkway, owner of the building at 100 Westward Drive, felt that there is a misunderstanding, and people are saying that the City is not deserving of a grant. He stated that if the business owners had to depend on the business they get from Miami Springs, his business would have gone bankrupt many years ago.

Mr. Saavedra explained that he was asked to participate in the façade program without being promised a grant, and he decided to participate anyway. He stated that the cost of repairs that they are being asked to do would amount to a couple of thousand dollars. He said that Council is only looking at having to advance a $250,000 expense, and he wanted to know if Council ever considered the fact that property taxes are going to go much higher.

Mr. Saavedra stated that residents are paying very high taxes. He was of the opinion that the Mayor was railroaded and should be careful whom he associates with.

Randy Rose stated that his family owns the property on the corner of Canal Street and Curtiss Parkway. He was of the opinion that it was an asset to the City to have money available for the Façade Program, and an incentive for the property owners. Mr. Rose explained that his property was granted $20,000 but he is only

obligated to contribute $6,000, and that he does not have a problem with beautifying Miami Springs. He felt that it was something positive for the City, and the City should go ahead and try to get the money.

Laz Martinez of 1205 Thrush Avenue stated that he has been living in Miami Springs for 10 years and last year he purchased the property at 151, 157, and 161 Westward Drive. He explained that the reason he purchased the property was because he saw a lot of banners in the Downtown area stating that there was revitalization. He stated that when he asked what was involved in revitalization a year ago, he could not get a straight answer, and nothing has been approved, and all they have to show for revitalization are signs and banners.

Mr. Martinez explained that he applied for the program and was not looking for any funds; instead, he saw it as an opportunity to participate since he is a resident, and he thought that with revitalization there would be new businesses. He was of the opinion that the City should remove all the signs and banners because there is no revitalization going on.

Councilman Elza stated that Council voted to proceed with this matter. It has been a long process and a lot of people have put a lot of time into it. He said this is a big step backwards that the City has suffered, and with the City Attorney's approval, Council should submit a resolution to the County stating the City's intent to proceed. He stated that the Architectural Advisory Board should be abolished until the matter is resolved.

City Attorney Seiden stated that the Board would not be active because it was only set up to help with revitalization.

Councilman Elza asked if Mr. Marquez went to the County as a member of the Architectural Advisory Board.

Mayor Bain stated that Mr. Marquez accompanied him to the meeting, but not as a member of the Board.

Councilman Youngs said that Mr. Marquez was appointed to the Board but he was not sure of the timing.

Councilman Elza asked if the City would need to legally defend this case.

Attorney Seiden stated that he had never been involved in a process like this before, and the questions may be moot because Bryan Finnie might say that he made a mistake, and perhaps the City does not qualify, and then the investigation would be dropped. He explained that Mr. Finnie would certainly be interrogated, and it is possible that the investigation might go further. It seems that Ms. Chaviz would eventually advise the City as to whether the guidelines are so strict and if they can be modified to some extent.

Attorney Seiden said that Mr. Spanner relayed to him what Bryan Finnie had said on a number of occasions, and that he had justification. He explained that when he met with the City Manager, Mr.

Spanner and the County Representative, the first thing he said was that he did not think the City was qualified to receive the grant.

Attorney Seiden stated that the County representative said that the determination that the City was qualified was based upon a number of criteria, and she was not very specific, but she said that they spent a lot of time reviewing the matter. The representative referred to the Empowerment Zone and the fact that the City never received funds before.

The City Attorney mentioned that this community has a problem with blight, and it came up with the C.R.A. and now it has come up again. Some of the terms are only legal terms or categories, and they are not descriptive of a ghetto community, or a run down condition.

Attorney Seiden said that both Mr. Finnie and his staff visited the City, they drove the Downtown area, and made the determination that the City is qualified, and they are the ones that are being investigated, not the City. He felt that a resolution would be inappropriate at this time.

Attorney Seiden advised Council that the decision must be made by the independent authority, but at this time, certainly the County officials and the Commissioners might have to respond to some of the questions. He explained that there is nothing the City could do at this point except to wait for the process to be completed.

Attorney Seiden said he was not surprised that the funds were frozen, which is probably a good thing, because they could have simply denied the funds. Now the process will play out, and the City will be ready to cooperate.

Councilman Youngs asked the Mayor if he approved and authorized the memorandum to the City from Martin Marquez after the meeting with County representatives, which became part of the public record.

Mayor Bain answered affirmatively.

Councilman Youngs said that the letter and opinion of Mr. Marquez did not have the Mayor's approval, and he did not instruct Mr. Marquez to make a fraud investigation.

The Mayor responded that he did not agree with the opinion, and he did not instruct Mr. Marquez to make a fraud investigation. He only approved the questions and answers in the memorandum.

Councilman Youngs asked if the Mayor was satisfied with Mr. Finnie's answers after the meeting.

Mayor Bain stated that he was going to come back to Council, he felt very confident that his questions were answered, until Councilman Elza raised the issue in a public forum. When the agenda item came up, he was ready to decide that the City should front the money, and he felt good after the meeting with Mr. Finnie.

The Mayor said that he felt no ill will by attending the meeting, and the County welcomed Mr. Marquez. He felt that what Mr. Marquez did was on his own accord, and knowing his reputation, nothing would have stopped him from his opinion.

Councilman Youngs suggested asking Mr. Marquez what was the basis of his fraud allegation, and if he arrived at his conclusion because of the meeting.

Mr. Martin Marquez stated that he only asked if the City of Miami Springs qualified for the funds. He informed Council of what took place at the meeting. The Director said that the City did not qualify, and even the City Attorney thought the City might not qualify. He said that the problem is that if the money is issued, and the City is not qualified, the money would have to be reimbursed, and after the investigation, the City will know for sure.

Mr. Marquez said that his opinion was based on the statement from the Director that the City was not qualified, and it was very clear. He only asked for a final opinion from the Office of the Inspector General, because then the City could not be sued for misappropriating funds, if in fact this is the case.

Councilman Elza asked Mr. Marquez whom he was representing. Councilman Youngs asked Mr. Marquez if the Mayor asked him to do this.

Mr. Marquez stated that as a taxpayer, it is his money, and he has the right to ask for an opinion. He provided documentation that funds had been inappropriately issued in the past, and what the consequences were.

Councilman Youngs asked Mr. Marquez if he was not satisfied with the answers provided at the meeting with Bryan Finnie.

Mr. Marquez responded that he was not satisfied after the meeting because Mr. Finnie said that the City was not qualified.

Councilman Youngs asked Mr. Marquez if he received any information from anyone else outside of the meeting.

Mr. Marquez explained that City Attorney Jan K. Seiden told him that he felt the City did not qualify, and this statement was made prior to asking for a fraud investigation.

Councilman Elza thought that Mr. Marquez's statements were a total contradiction to what was stated before, about Mr. Finnie driving through the Downtown.

Councilman Youngs asked if Mr. Finnie signed the approval letters from the County.

Mr. Spanner verified that Mr. Bryan Finnie signs the approval letters. He added that the City went though a

screening process by an independent selection committee, a public hearing was held, and the County Commissioners voted.

Mr. Spanner said that regardless of the opinion of the City Attorney or Mr. Marquez, the fact that Mr. Finnie stated in his letter is that when there is a non-entitlement, a community is not really qualified for the money. He said that he is very familiar with the program, and that is why he recommended that the City should apply for the grant.

Mr. Spanner explained that a non-entitlement community can work directly with the County within the Urban Entitlement program, and the City can decide to opt out every two years, and work directly with the State. The state and the counties have different ways to measure the priority areas, and the state would rate the City on a point system, considering the demographics and photographs of the Downtown areas.

Councilman Youngs stated that if the City were to opt out of the County's program and apply for state funding, Mr. Spanner would consider the cost benefit, but under this standard, the City would ask the State Attorney General for an investigation to see if the City qualifies.

Mr. Spanner explained the grant criteria, and said that the projects are justified based upon the economic information.

Councilman Youngs understood that an economic area with more business would create more jobs, and this is the basis of receiving the federal grant money. He said that this is exactly what the City is trying to accomplish.

Mr. Spanner said that Mr. Finnie mentioned the fact that the City is close to an Empowerment Zone, and this is one of the reasons that the City of Miami Springs is qualified. In addition, they also take into consideration minority business owners.

Councilman Youngs felt that it is ludicrous to ask for a fraud investigation, or for an opinion from the Inspector General's Office, and he does not know why Mr. Finnie's determination does not suffice.

Attorney Seiden clarified that the County promised the City funding two years ago, and the applications were sent to the City in March 2003, with a 30-day deadline. He explained that Mr. Spanner rushed to complete the applications, and the first time he reviewed the applications was at a meeting with Tangy White, and that is when it was questioned if the City was qualified. Ms. White said that the County made the determination that the City is qualified, the projects could go forward, and he agreed that was fine.

Attorney Seiden explained that originally there were twenty-six potential applicants, the number was reduced to eleven, and five were waiting for the next funding cycle. The City received three separate letters for $75,000, and one should have been $99,000.

Attorney Seiden added that the City has not reached the point of negotiating the contracts, because some of the requirements for refunding to the City would have been an affidavit signed by each of the property owners attesting to the fact that they have created another job. The documents were to be formatted to fit the City's situation as soon as Council gave authorization to advance the funding.
Councilman Pacheco mentioned that Council requested standards, procedures, and guidelines for administering the funds.

Attorney Seiden clarified that this is exactly what they would have done.

Councilman Elza asked why the County was not allowed to administer the program and why the City wanted to be the administrator.

Attorney Seiden explained that the County did not want to administer the program.

Mayor Bain said that all through the process, everyone knew that the City had an extra reserve of $249,000, except for him, and he was always told that the City would not have to advance any money. Then he took it upon himself to go to the County and find out more information, because he was concerned about the City being reimbursed. The Mayor said that Mr. Marquez took action on his own, and in the end, maybe the City is not qualified.

Councilman Elza stated that the reality is that now the funds are not available and Council must decide if there are any other alternatives.

Mayor Bain explained that everyone confirmed that the City was qualified for funding, and he is very optimistic that the City would receive the funds after the investigation. There were questions in his mind that were answered, and he would go along with everyone who said that the City is deserving of the funds.

Councilman Pacheco stated that being new to the Council, he did not know where the $249,000 would come from, and when he asked, he was told that funds were available in the cash reserve. He agreed that it was a learning process, and it is sad that one person with an agenda would come forward and question whether the City is qualified for the funding.

Councilman Pacheco agreed that the Downtown area needs a facelift that would bring in more than the $249,000 in the long term because the improvements would increase the tax base. He pointed out that currently there are many stores for rent, he supports revitalization for Miami Springs and there are other alternatives to revitalize the central Downtown area.

Councilman Youngs stated that the Façade Improvement Program met all the parameters for what the residents wanted for the City because it did not increase density, and it would not utilize tax dollars, while it supported the business owners.

Councilman Youngs said that if the Downtown area were to deteriorate and become an area of blight that

qualifies for the empowerment zone, the residents would have lost the quality of life they now enjoy. He emphasized that the quality of life in Miami Springs depends upon thriving small businesses that are operating at lesser margins than big companies. He commented that the City should support the businesses, and if non-entitlement part B allows it, the City should encourage it for the benefit of Miami Springs.

Councilman Youngs explained that he would not want to have a grant program if the City is not qualified, but this is not for him to determine, and that is why Council voted to go forward, subject to review of the contract and the qualifications from the County and City Attorney. He felt that there is no need for an additional resolution, only a statement of support, and for the City Attorney to cooperate with the investigation. He was afraid that the investigation would take three or four months, and the City might not be eligible for funding this year.

Councilman Youngs asked Mr. Spanner to report back to Council as to how long the investigation might take.

Mr. Spanner wanted to make it clear that now his job is going to be more difficult.

Councilman Youngs asked Mr. Spanner to reassure the business owners that the City would continue to find ways to support the Downtown area.

Councilman Youngs explained that in a personal setting, people have checking accounts that must be balanced each month, and the City has a budget that must be balanced at the end of the year. If the City saves money from one year to the next, it builds up a cash reserve, which is like a savings account, and the balance is approximately $750,000.00. He said that there is a sufficient reserve, but if the balance goes down to zero, then the City is at risk during rough times.

Mayor Bain said that it was a surprise to him because he was told that the City was drained and operating at a deficit, and the budget was tight with a 2% cost of living increase. He asked the Finance Director to keep him informed about these issues.

Finance Director Charles G. Marshall offered to answer any of the Mayor's questions.

Mayor Bain emphasized that part of Mr. Marshall's s responsibility is to call him to give him the information so that he is able to make an informed decision.

To answer the Mayor's question, Councilman Youngs said that he knew the City was being asked to make a decision about advancing the $249,000, and he asked Mr. Spanner to investigate to see if the City qualified. He explained that at the meeting when Council discussed and voted to advance the money, Mr. Spanner reported that the City was qualified and the contract negotiations were flexible.

Mayor Bain stated that the agenda item did not have any backup documentation and he was not aware that

Council was being asked to vote to advance $249,000 for the Façade Improvement Program.

Councilman Elza said that he was present when Mr. Spanner first presented the information about the grant, and the question was raised about who would administer the grant, either the City or the County.

Mayor Bain stated that Council did not take action on September 8, 2003.

Councilman Elza interjected by stating that the program was first presented in April or May, and Council was told at that point, not during the budget meeting.

Councilman Youngs suggested that the Administration could make the agenda items clearer by stating what Council would be voting on, and by including the proper documentation. He said that it is the responsibility of the Administration to keep Council informed.

10. New Business:

10A) Recommendation that Council Exercise its Option to Extend the Existing Contract with Grau & Company, P. A., and to Approve the Proposed Engagement Letter in the Amount of $67,500 for the Fiscal Year 2002/2003, Including an Additional $10,000 for Assistance in the Implementation of GASB 34

City Attorney Jan K. Seiden said that it is the recommendation of the Administration that Council approve an option to extend the existing contract with Grau & Company, P. A., and to approve the proposed engagement letter, in the amount of $67,500.00, including an additional $10,000 for assistance in the implementation of GASB 34.

Finance Director Charles G. Marshall stated that the format of this year's Comprehensive Annual Financial Statement would change drastically. He explained that normally the auditors change after five years, and this would be the second year for Grau & Company P. A.

Mr. Marshall added that the fee for the implementation of GASB 34 would be $10,000, which would take approximately one extra month.

To answer Councilman Pacheco's question, Mr. Marshall responded that the total would not exceed $77,500.00, and it could be less.

Attorney Seiden stated that he sat on the review panel when the auditors were selected, the fee for Grau & Company was substantially lower than the other two companies, and they were asked to provide an option to renew for a second and third year.

Councilman Elza moved to approve and Councilman Pacheco seconded the motion. On roll call

vote, the motion was carried unanimously.

(Council recessed for a five-minute break)

10B) Discussion Regarding Resolution No. 2002-3205 Providing Recommendations to Miami-Dade County Public Schools for the Alleviation of Overcrowded Conditions at the Miami Springs Senior High School and Discussion of the Role of the Education Advisory Board (Requested by Councilman Pacheco and Councilman Youngs)

Councilman Youngs stated that he and Councilman Pacheco wanted to clarify the role of the Education Advisory Board and to re-educate people about Resolution No. 2002-3205.

Norman Anderson of 887 Heron Avenue said that it has been proven that the smaller the school, the better the education, and at the last meeting of the Education Advisory Board, the issue of a High School addition was raised again. He said that the boundaries for the High School have not changed since 1977, and now there is an opportunity for the boundaries to change with the opening of the Doral High School in 2006, and the following year with the opening of the new Miami Jackson Senior High School.

Mr. Anderson urged Council not to allow the School Board to build another school in the City, no matter how big, because then there would not be funds available to build a school in Hialeah. He said that the School Board reallocated the $3.5MM that was available for the High School renovations, and now the renovation funds are being held by the oversight committee.
Mr. Anderson said that the message to the School Board should be to remove the portables and to reduce the student capacity to approximately 2,500 students, which would improve the education.

Councilman Pacheco mentioned that there have been discussions about installing permanent portables at Miami Springs Middle School.

Mr. Anderson felt that a Middle School should be built in the City where the students live, and not to install concrete portables, and Council should react to this matter.

Maria Mitchell of 830 Bluebird Avenue said that she is a strong proponent of small public schools because numerous studies show that students do best in smaller schools, and they are more active in student activities. She felt that Springview Elementary School is an example of an excellent school, and the City deserves a Middle School and High School that matches the Elementary School.

Ms. Mitchell was of the opinion that the best use for the $25MM would be to build a school in South Hialeah that would accommodate half of the population of the High School. She said that now all of a sudden, the issue of an addition at the High School is back on the agenda, and this would only delay the construction of a school in South Hialeah.

Ms. Mitchell reiterated that the City Council should let the School System know that the $25MM should go

toward a new school in South Hialeah, because the growth is in the City of Hialeah.

Councilman Elza said that Council should give direction to the Education Advisory Board that they are not supportive of building another 800-student station at the High School, and he thought the issue was resolved, and it should not be pursued further.

Councilman Pacheco pointed out that the addition is scheduled for discussion on the Education Advisory Board agenda for Wednesday, November 12, 2003. He concurred that Council must give strong direction to the Education Advisory Board that Council is not supportive of expanding the High School, and they want the portables removed from both the High School and the Middle School.

Councilman Youngs referred to Resolution No. 2002-3205 dated December 9, 2002. He felt that it was a monumental achievement, because the School Board could do whatever it wants at the High School, and it was only by the political influence and the solidarity of the community that forced the School Board to back down on an addition.

Councilman Youngs reviewed the four recommendations listed in the resolution. He said that the renovation funds that were tied to the new construction are now tied up with the State Oversight Board, so there is not much that can be done about this.

Councilman Youngs would like to direct the Education Advisory Board to follow the City Council resolution and to not consider any other proposals.

Councilman Youngs stated that there are a couple of things that should be reinforced. No one in the City Council, and he is not talking about anyone in particular, has the authority to direct a member of any advisory board to go on their own fact-finding mission, to take up any new issue without the general approval of the rest of the City Council.

Councilman Youngs said he wanted to make that statement and resolve to abide by that, and the City Council should pass a resolution reinforcing Resolution 2002-3205.

Attorney Seiden suggested that as a matter of procedure, that Council does not send resolutions to advisory boards, but could send instead a Memorandum of Direction.

Mayor Bain was of the opinion, and he asked the City Attorney if Council should just tell the Education Advisory Board not to hold the meeting of November 12, 2003.

The City Attorney confirmed that it was Council's prerogative to ask the Board not to meet and they could even take away their authority if they are so inclined.

Mayor Bain referred to the Education Advisory Board agenda for the meeting of November 12, 2003, which listed discussion of the Senior High School overcrowding, and it is an item that should not have been included after what happened the other night.

The Mayor said that he would like to entertain a motion stating that the Education Advisory Board should not meet until Council is able to re-assess what the members are doing.

Councilman Youngs said that Council could tell the Education Advisory Board not to meet, although he has a better idea. The members of the Board are doing very valuable things including putting pressure on the School System to find a site in Hialeah, and when faced with the difficult task of finding a site in Hialeah, the School Board would easily give up and move on to other projects.

Mayor Bain asked Councilman Youngs what was his suggestion.

Councilman Youngs suggested that Council direct the City Manager to issue a Memorandum of Direction, directing the Education Advisory Board to abide by Resolution No. 2002-3205 adopted on December 9, 2002.

Attorney Seiden said that there should be a memorandum from the City Council to the Education Advisory Board saying:

1. That no single member of the Education Advisory Board in any individual capacity has the authority to direct the board to do anything.

2. Attached hereto and by this reference made a part hereof, is a copy of the former resolution (No. 2002-3205), which stands for the policy of the City in regard to Miami Springs High School.

3. The Education Advisory Board should be made aware of the fact that no board of the City makes policy for the City, and that only the City Council makes policy for the City. If they choose to suggest policy, they may do it in the appropriate manner, by proposing it to the Council, and the Council will consider it at a future Council meeting.

Attorney Seiden said that by sending these directives in a form of a memorandum to the Education Advisory Board with those three points, they will get the idea, and hopefully they will not cut off the good work they are doing, but give them direction as to where they should go.

Councilman Youngs said: "So moved". Councilman Elza seconded the motion.

In discussion, Councilman Youngs said that the Education Advisory Board is doing a lot of good things.

Mayor Bain inquired if the Education Advisory Board in fact made policy that night.

Councilman Youngs was of the opinion that the answer in his mind was "yes", because they entertained the idea and stated that they needed additional information and also that they needed the input from parents from students in Hialeah. They were going to ask the construction people to talk to them at the next meeting what it would mean to put an 800-student station addition at the High School.

Councilman Youngs stated that the 800-student station addition is on the Education Advisory Board agenda for their next meeting, and they entertained the idea. Carol Cortes said on her own that she would not propose it because she realized how controversial the issue was. Then she told some people that she would not press it any further, and so did Principal Doug Rodriguez, but the City's Education Advisory Board considers it an open issue.

Councilman Elza was of the opinion that Council needs to close the issue.

Mayor Bain asked Councilman Youngs if he had talked to Carol Cortes.

Councilman Youngs informed Council that he spoke to her a week or so after that meeting and she said that she had not realized the issue was so controversial. By that time, he had asked the City Clerk to send over to her the documents that Council now has in front of them. Ms. Cortes had indicated she does not understand why the City would turn down the $25MM for the school, and at the end of the meeting she understood it, although he does not know if she agreed with it, but she agreed to abide by Council's opinion.

The Mayor asked the Clerk to call the vote.

The motion carried unanimously on roll call vote.

Councilman Elza inquired who would be writing the Memorandum of Direction to the Education Advisory Board.

Attorney Seiden asked the City Clerk to submit the Memorandum of Direction to the Education Advisory Board.

10C) Consideration of Memorandum of Understanding and Payment for the Restaurant Property Located at 78 Canal Street in Regard to the Prior Agreement Between the City and Property Owner for the Providing of Required Parking for the Site

City Attorney Jan K. Seiden stated that according to Mr. Sprovero, Mr. Lowe's restaurant was almost ready to open. He referred to the minutes, which refer to the site plan approval for the restaurant.

Attorney Seiden said that the minutes reflect what Mr. Lowe proposed as a restaurant renovation on his property. He could not provide any parking, and in his variance presentation and site plan approval he was required, and he agreed to provide the cost of twenty-one parking spaces in the City parking lot in lieu of providing the required parking.

Since the time that Mr. Sprovero left, the cost of the parking spaces was not determined, but the minutes clearly reflect that it was Council's desire to have an agreement in place before a Certificate of Occupancy or Occupational License was issued in order to guarantee that payment would be made. If payment was not made, then the documents would be subject to revocation, and the business would be shut down until such time as the payments are made.

Attorney Seiden stated that the Memorandum of Understanding also provides for the approval of a payment plan that Council may or may not want to entertain at some point. There are two similar agreements to be executed at some future date for Mr. Santana and for Mr. Bartolone. He added that the parking lot renovation is almost ready to begin, it would provide sixty-five spaces, and the cost would be approximately $2,000 to $3,000 per space.

Attorney Seiden mentioned that Mr. Mehech made some comments at the Board of Adjustment, and quite frankly the City has a parking problem. Most of the discussion was related to how it can be solved. He said that the former Council established this policy to move forward with the fee in lieu of parking, and the cost of providing parking for any site is far in excess of what is being required of Mr. Lowe, Mr. Santana, and Mr. Bartolone.

Attorney Seiden said that if the property owners were to purchase property to provide parking, the cost would be far in excess of the cost of these parking spaces. Also, there is no maintenance cost involved because the City would maintain the lots, and it is a one-time cost to them. Without the agreement, they could not have opened their businesses, and it is a fair arrangement that is similar to agreements that other cities have.

The only policy consideration that Council might have to make in the future, assuming that the municipal parking lot is sold out to the three businesses, would be if another developer were to want additional parking spaces. In that case, would the money go back on a pro rata basis to the people who have provided the parking, or would the money go into a trust fund that the City would establish for the development of future parking. This was originally the plan, but the new Council can establish a new policy.

Attorney Seiden did not believe that the decision would really impact Mr. Lowe at this point, and he needs an agreement, which was previously approved by Mr. Sprovero.

To respond to Councilman Youngs' question, Attorney Seiden felt that Mr. Lowe is very unhappy about the agreement.

Mr. Joe Lowe of 750 Falcon Avenue was present with his attorney. He said that there have been many stories about bringing businesses into the City of Miami Springs. Mr. Lowe felt that his development on Canal Street is exactly what the citizens want, he has invested a lot of money, and he feels that he is being penalized by having to pay for parking.

Councilman Elza stated that Mr. Lowe was aware of the fact that he was required to pay the City for twenty-one spaces since January 14, 2002, and that this should not be a surprise to him.

Attorney Seiden agreed that Mr. Lowe absolutely knew about the parking, and the variance would have not been granted if he had not agreed to the condition.

Mr. Lowe said that his agreement was to black top the part behind his property and in the front, as shown on the site plan. He said that his project has been pending for two years, and he stated in his letter to the City Manager on July 16, 2001, that he did not agree to pay for any parking.

To answer Councilman Youngs' question, Mr. Lowe reiterated that he did not agree to pay for any parking spaces.

Councilman Youngs asked what would be the status of the construction if the City feels that Mr. Lowe made an agreement to pay for parking, and if he could be denied a Certificate of Occupancy.

Councilman Elza emphasized that the variance was granted based on the condition that Mr. Lowe would pay for twenty-one spaces, or the building permit would not be issued.

Attorney Eric Assouline referred to the site plan, which notes that parking spaces 8 – 21 are to be resurfaced with asphalt and paint striping as shown on detail D/A-2, and this is the only reference.

Councilman Elza questioned if the City had approved the site plan because it was not sealed or approved. He remembered that it was Council's decision that Mr. Lowe was to pay for twenty-one spaces.

Attorney Seiden said that the site plan review process is detailed in the minutes of the City Council Regular meeting of January 14, 2002, and they speak directly to the issue. The idea was that the City was going to pay for the improvement of the Canal Street side, and Mr. Lowe was going to pay for the equivalent of twenty-one spaces.

Mr. Lowe explained that he had no recollection of signing any documents or agreeing to pay for twenty-one spaces.

Attorney Seiden stated that the minutes clearly reflect that before a Certificate of Occupancy is issued, Mr. Lowe would sign the Memorandum of Understanding and Payment, but there was no idea of what the cost would be at that time.

Councilman Youngs said that Council approved the site plan based on representation from the former City Planner that Mr. Lowe had agreed to pay for twenty-one spaces, and if this was an error, then Council approved the site plan in error. The Council decision is whether the Certificate of Occupancy should be issued as a condition of this agreement.

Councilman Youngs was of the understanding that in January 2002, and today, that in exchange for the granting of the parking variance, Mr. Lowe would enter into an agreement to reimburse the City a reasonable cost for the parking spaces that his property was deficient under the current Code.

Councilman Youngs said that as Council sits today, if Mr. Lowe is not in agreement to pay for the parking, and the City is not in agreement to issue the Certificate of Occupancy, then the approval of the site plan is in jeopardy because it was made under false pretenses. He explained that Council would have to go back and revisit the variance and the site plan.

Mr. Lowe stated that his restaurant is ready to open and now he is left hanging with this agreement.

Councilman Youngs said that the project cannot go forward until there is an agreement, and Council has to revisit the site plan.

Mayor Bain asked Mr. Lowe what was the main issue that he disagreed with in the contract, or if he was looking for relief.

Mr. Lowe said that he would like relief and to be able to work out an agreement later. He wants to be fair and not take advantage of anybody.

Councilman Elza stressed that there must be an agreement with the City before Mr. Lowe is issued a Certificate of Occupancy. He said that Mr. Lowe agreed in the beginning to pay for the cost of twenty-one parking spaces, and that Council should hold him to this agreement.

Mr. Lowe insisted that he did not agree to pay, and the first time he heard about it was when former Mayor Wheeler asked former City Planner Steve Johnson if there was an agreement with him and Mr. Santana.

Councilman Youngs explained that the minutes do not reflect that Mr. Lowe signed a written agreement, or verbally stated that he agreed, but when Council approved the site plan, it was represented that Mr. Lowe had agreed to the parking conditions, and if this was not true, then Council must go back and readdress the

site plan.

Attorney Assouline said that the agreement as proposed by the City Attorney does not set an amount that Mr. Lowe is responsible for, and depending on the amount, it might not be worth debating this issue.

Councilman Elza suggested that the item could be tabled until Council votes on the parking lot, and then Mr. Lowe would know the cost of the parking spaces.

Councilman Pacheco asked if there was any discussion about the cost of the parking spaces.

Attorney Seiden stated that it was only an estimate and nobody really knew the cost.

Councilman Youngs remembered discussions about the cost ranging from $2,000 to $5,000 per space, and then Jack Odin said that if the City builds a parking garage, the cost would range from $12,000 to $13,000 per space.

Attorney Seiden advised Council that they did not have to table the item, and all he wanted was their conceptual approval for the form of the agreement, and after the price is set, and they are willing to sign it, he would deal with any small changes.

Councilman Elza moved to approve the agreement in concept and Councilman Youngs seconded the motion.

Councilman Youngs said that this agreement is not meant to be a punitive clause, it is meant to deal with the parking requirements in the City Code, and to make a compromise instead of denying a project. He encouraged Mr. Lowe to work with the City Attorney in order to arrive at an agreement within the general format, and if not, Council must readdress the site plan.

Mayor Bain felt that Mr. Lowe was objecting to the requirement for twenty-one spaces.

Councilman Elza explained that the number of spaces could not be changed.

Attorney Seiden explained that this was not the proper forum for Council to go back and revisit the calculations.

Councilman Pacheco said that a motion was made to approve the site plan.

Councilman Youngs added that the site plan was approved based on the condition of the variance.

Councilman Pacheco did not approve of the agreement because it does not specify an amount, and he understood that Mr. Lowe agreed to pay for the cost of improving twenty-one spaces.

Attorney Seiden clarified that the minutes reflect that before the restaurant could open, that Mr. Lowe would have to have an agreement in writing as to an amount. He stated that all discussions were held in public, it was discussed at a number of meetings, and it was totally agreed upon.

Councilman Pacheco objected to the agreement having an open amount for the parking space, because the City could come back and say the cost would be $10,000 per space.

Attorney Seiden brought up the fact that he was litigating the issue of the buildings that encroached into the parking lot, which had to be resolved first.

Councilman Pacheco believes that the City has a responsibility to revitalize the Downtown and it should take on some of the responsibility.

Councilman Elza felt that this is a subject to be discussed another day.

Councilman Youngs agreed that the parking issue was raised, and Council must deal with the parking requirements at some point and make a compromise. He did not favor the agreements with Mr. Lowe or Mr. Santana because they are only band-aides for the problem.

Councilman Elza suggested that Council approve the contract in concept, and then work out an agreement for the cost of the parking spaces.

Attorney Seiden said that Mr. Lowe wanted to do business with the City, and this was the only way to accomplish this project.

Mayor Bain felt that this is a situation where the City could help the property owner open his business, but he understands that it must be done legally in a different forum.

Councilman Pacheco stated that Council would eventually discuss the issue of establishing a Downtown Business District, and at that point, there would be a new set of rules for future projects, and Council is applying these requirements haphazardly. He would like to see something that is fair that applies to everyone equally, and at the same time, the City should support a portion of the infrastructure that is needed to improve the Downtown.

Attorney Seiden stated that the position of the City has always been that if the property owner had to purchase a piece of property for parking, the cost would have been far in excess to develop and maintain it to the City standards.

Councilman Elza said that he did not foresee the City receiving any grant money in the near future, and that

he does not approve of using General Fund money to subsidize the parking lot. Mr. Lowe agreed to pay for the parking from the beginning, and the City should hold him to the agreement.

On roll call vote, the motion failed 2-2, with Councilman Pacheco and Mayor Bain casting the dissenting votes.

10D) Recommendation that Council Approve Payment of $12,925.15 for Change Orders 1 Through 5 to the Redland Company for not in Contract Work Done in the Construction of the Stormwater Drainage System in Basin 15

Public Services Director Denise Yoezle stated that it is the Administration's recommendation that Council approve five change orders for the Basin 15 stormwater construction project, which is complete. The change orders were all necessary, and the prices were reasonable.

Ms. Yoezle informed Council that funds are available from the grant from the South Water Management District, and the funds are 100% reimbursable.

Councilman Elza moved to approve and Councilman Youngs seconded the motion. On roll call vote, the motion carried 4-0.

(Agenda Items 10E and 10F were approved simultaneously)

10E) Recommendation that Council Waive the Competitive Bid Process, as Provided by Section 31.11 (E) (6) (g) of the City Code and Approve an Expenditure of, not to Exceed $20,000.00 (6-month period) to Severn Trent – Avatar, for Utility Bills for Fiscal Year 2003/2004

City Attorney Jan K. Seiden read the title of the award.

Attorney Seiden stated that Severn Trent – Avatar is the company that performs the meter readings and bill mailing services for the City. The approval would be for a six-month period, because the Finance Director wants to go out to bid.

Councilman Elza moved to approve and Councilman Youngs offered the second.

In discussion, Councilman Pacheco stated that he would like the service to be competitively bid in the future.

Finance Director Charles G. Marshall stated that the City has used the services of Severn Trent- Avatar for four years, but he would like to see if there is a more competitive company that can do a better job.

On roll call vote, the motion carried 4-0.

10F) Recommendation that Council Waive the Competitive Bid Process as Provided by Section 31.11 (E) (6) (g) of the City Code and Approve an Expenditure of, not to Exceed $18,000.00 (6-month period) to Severn Trent – Avatar, for Meter Reading Services for Fiscal Year 2003/2004

Councilman Elza moved to approve and Councilman Youngs seconded his motion. On roll call vote, the motion carried 4-0.

Councilman Pacheco said that he wants to bid this service and added that he was aware that Severn Trent – Avatar does not read all the meters.

Finance Director Marshall stated that he has had to make the company read the meters by hand to prove to the City that they have read every meter. He also wants to bid the service to see if there are other companies that can do a better job.

Councilman Youngs asked Mr. Marshall if he knew of another company, and Mr. Marshall responded that there were two other companies that provide similar services.

Councilman Youngs asked if Mr. Marshall was comfortable with this decision.

Mr. Marshall responded affirmatively. He added that the approval would be for six months, and during this time he would have time to send out a bid.

10G) Recommendation that Council Approve Change Order No. 1 to Purchase Order No. 030651 Awarded to Design Build Inter American on November 25, 2002 for the Police Department's First Floor Renovations, at a Cost not to Exceed $142,082.35

Interim City Manager/Chief of Police H. Randall Dilling stated that the Police Department's first floor needed additional work in the amount of $2,800.00.

Councilman Pacheco moved to approve and Councilman Elza seconded the motion. On roll call vote the motion carried 3-0. (Councilman Youngs was absent at roll call)

10H) Recommendation for Award to the Low Bidder, Development & Communications Group of Florida, Inc., for the Canal Street Municipal Parking Lot Renovations in the Amount of $153,294.94

Public Services Director Denise Yoezle stated that this award would be for the parking lot that has been under consideration for the last couple of years, which will provide 65 parking spaces, of which three are handicapped parking spaces.

Ms. Yoezle said that the work would encompass the demolition of the two small buildings that City Attorney Seiden litigated, as well as the installation of storm drainage, paintings, stripings, sidewalks, irrigation, landscaping, and lighting. She recommended an award to the low bidder. In the event that the two small buildings do not require asbestos abatement, the contract price will be reduced by $5,000.00, which is something yet to be determined.

Ms. Yoezle suggested awarding the bid for the full price of $153,294.94. The $5,000.00 would be deducted from the payments to the contractor, if the asbestos abatement were not required.

Councilman Elza moved to approve and Councilman Pacheco seconded the motion. On roll call vote the motion carried unanimously.

City Attorney Seiden said that Council should take into consideration Jack Odin's statement to the effect that the engineering costs would have to be added. The final amount would be divided by 65, which is the total number of parking spaces.

Ms. Yoezle stated that in another item she had to consider a possible charge for construction management. She stated that the design and engineering fee would be about $250 per parking space, plus $250 for the construction management, totaling an additional $500 per space. She stated that construction management might be in the range of $15,000.00, and if the cost were included in the first base cost, it would add about $250 per space.

Councilman Elza asked why construction management is required to build a parking lot.

Ms. Yoezle stated that there was quite a bit of electrical, irrigation, and drainage work involved.

Mayor Bain asked what was the total cost of the parking lot.

Ms. Yoezle referred to the last page of the agenda packet, under item 12B, # 4.

Attorney Seiden stated that construction management and the engineering charges would add approximately $500 to the $2,358.00, for a total of about $2,888.00.

Councilman Elza was of the opinion that the price should not be raised.

To answer Councilman Pacheco's question, Ms. Yoezle responded that the price included the demolition of the buildings.

Councilman Elza stated that the item on the table was only to consider the $153,294.94. If there was anything additional, it should be discussed separately.

Ms. Yoezle responded that she was only answering questions and providing additional information.

Councilman Elza asked if Post, Buckley, Schuh and Jernigan, Inc. (PBS&J) had been given an award for the construction management.

Ms. Yoezle responded that it was only an estimate provided in case Council chooses to add the amount to the price per space.

Councilman Elza asked when the construction management would be presented for Council approval, and Ms. Yoezle did not have a time estimate.

Councilman Elza asked Ms. Yoezle if she was getting three bids, and Ms. Yoezle responded that there would be two other bids in addition to the one from PBS&J.

Councilman Youngs commented that if Council approved this agenda item, Ms. Yoezle would have to acquire other bids.

Councilman Elza asked if the drawings for the parking lot had been completed, and Ms. Yoezle responded affirmatively.

Councilman Elza asked if Council had approved the drawings, and Ms. Yoezle responded that Council had not approved the drawings but that they were finished.

Councilman Elza stated that the demolition cost should not be added to the cost of the parking spaces.

Councilman Elza moved to approve and Councilman Pacheco seconded the motion. On roll call vote the motion carried unanimously.

Attorney Seiden stated that an agenda item would be scheduled at a future meeting to discuss what is to be included.

11. Golf Course Items:

11A) Review of August and October Golf Course Financial Statements

Finance Director Charles G. Marshall stated that he would like Mr. Bradley and Mr. Rhodes to review the statements with Council.

Mr. Marshall informed Council that he had not finished the adjustments for September because of the year-end. He said that the August financial statements were just for Council's information, and that only the month of October would be discussed.

Mr. Marshall stated that the total loss is $35,138 compared to last year's total loss of $47,938.

Mr. Bradley stated that the loss is down significantly, the cost is very much under control and the only concern was marketing. He referred to the 1/3 page ad for the convention bureau for $3,000, and said that he would make smaller flyers for the hotels, golf shops, etc.

Councilman Youngs suggested that Larry Weber could provide Council with a status report on the condition of the Golf Course.

Finance Director Marshall said Council would receive the report as soon as possible.

Mayor Bain inquired about the handicapped golf course.

Mr. Bradley stated that they were filing for a 501-C3 designation and that he has an agreement with the Children's Golf Foundation in which Mr. Ventura and himself are working to get a survey to look at approximately 5- 5 ½ acres of land around the pond. He ordered an aerial survey and would get drawings of what it would look like. He stated that they were moving forward with the project and would prepare a package for Council in the near future.

John Rhodes of 37 Deer Run stated that he has noticed an improvement in the operations, and the revenue was down $13,000 during the same time last year, and the losses are $8,000 less. He stated that they offer many activities for the people.

Councilman Pacheco congratulated Mr. Rhodes and said that the only area they needed work on is the labor cost.

12. Other Business:

12A) Discussion of Golf Course Bond Special Election Scheduled for November 18, 2003 (Requested by Councilman Youngs)

Councilman Youngs said that in talking with Finance Director Charles G. Marshall he indicated that it might be possible to obtain funds for the bond refinancing at a lower cost and he raised the issue to see if Council would consider postponing the Special Election until Council has time to consider whether or not there are viable options to refinance the bonds by some other means.

Councilman Elza said that the City would have to pay for the election whether it is held or not.

City Clerk Magalí Valls informed Council that she has already expended approximately $4,000 in legal advertising and the Elections Department had indicated that so far the City has incurred expenses of about $1,500, but this amount would change.

Councilman Youngs said that the City would not recover approximately $6,000-$10,000 if the election were to be rescheduled.

Councilman Elza said that at this point it is not known if this would even work. This would involve re-platting the Golf Course and then trying to borrow the money and the City would have to use the General Fund. This would push the millage rate almost immediately up to 10 mills.

Finance Director Charles G. Marshall stated that he had contacted the Florida League of Cities, and that it would have a negative impact.

Council agreed to hold the November 18, 2003 Special Election as originally planned.

12B) Status Report Regarding the Bridges and the Canal Street Projects

Public Services Director Denise Yoezle said that at the previous meeting some questions came up about the Florida Department of Transportation (FDOT) bridge project as well as the City's Canal Street project.

Ms. Yoezle reported that the FDOT bridge project is scheduled for completion in mid December and Gus Quesada, the Project Manager, is very confident that the project will be completed on time. Both temporary bridges have been removed.

Councilman Elza asked Ms. Yoezle about the FDOT paving.

Ms. Yoezle responded that she attends weekly construction meetings and this topic is on the table.

Councilman Pacheco stated that the potholes in the area were unbelievable.

Ms. Yoezle stated that the potholes were brought to the attention of Mr. Quesada. She said that there was some confusion as to the incoming bridge at Curtiss Parkway where a few vehicles were going into the

incoming traffic. She assured Council that Mr. Quesada promised to add some additional signs to clarify that it is a U-turn only.

Councilman Elza stated that he had not seen a lot of work by Carlos Santana's place.

Ms. Yoezle said that the goal was to have everything completed by mid December, but their contract does not end until the first week of January, and technically it could take up to that long.

Ms. Yoezle stated that the bus shelter on Canal Street has been demolished and the bus routes 7 and 36 have been permanently relocated to Nakhoda Street. She stated that they would add signs indicating that these are bus stops.

Ms. Yoezle mentioned that there was a question regarding the Le Jeune Road Flyover Project and how the triangular portion of land would look once the project is completed. In response, she stated that the triangular portion where the Shell station once was would be a retention pond for stormwater and it would be covered with sod and trees.

Ms. Yoezle referred to the question about the parking agreement between the local churches and stated that those negotiations had been terminated.

Ms. Yoezle also referred to the new ordinance for the proposed fees to be charged in lieu of parking. She stated that she spoke with PBS&J and found out that they have not been asked to do any study to determine fees for that ordinance, nor for the Canal Street parking lot.

Councilman Elza stated that he did not think it was necessary to spend that money at the moment.

Public Works Director Denise Yoezle stated that there has not been any contract negotiated with Post, Buckley, Schuh & Jernigan.

Councilman Elza stated that he did not understand why they would need to find out the price to build a parking garage if they did not have the land to build it on.

Mayor Bain said that he wished to put this item aside for the time being.

Attorney Seiden said that the City could call the engineers and ask them how much low price parking garages cost per space, as well as mid-level parking garages just to get an estimate.

Ms. Yoezle stated that she would get the free estimate and would bring it to back to Council.

12C) Consideration of Holiday Council Meetings of November 24, 2003 and December 22, 2003

After a short discussion, Council decided to meet in Regular session on Monday, November 24, 2003.

By consensus, Council cancelled the December 22, 2003 City Council Regular Meeting.

13. Reports & Recommendations:

13A) City Attorney

Florida One Development Corp.

City Attorney Jan K. Seiden reported that an oral argument in the Florida One Development case was held last week, and it is not easy to predict the outcome. The Court asked multiple questions of both parties, and they were unhappy that the record did not reflect some specific findings, specifically that Mr. Price made the point that City Planner Richard Ventura had done research regarding how many places had received variances in the past, and there was a representation in the record by Mr. Price that everybody who had ever applied was granted a variance.

Attorney Seiden said that the Court asked why this was not recorded more appropriately, and in retrospect, he probably should have asked Mr. Ventura to testify and put it in the record. They were concerned about this, but by the same token, they questioned the appellant as to the fact of whether or not there is standing.

Attorney Seiden explained that the standing issue is two-fold, as far as the City is concerned, they want to encourage citizens to participate in the process, and encourage them to appeal, but standing to appeal to a Board of Appeals and standing to appeal to a Court may be two different issues. He explained that the idea of standing is that the issue was the distance requirement between churches and schools and the person that had standing to appeal those issues were churches and schools, not a vendor who is located next door and conducts virtually the same activities as Florida One Development Corp.

Attorney Seiden explained that there are three judges, they reviewed the materials, and were attentive, although there was a panel of two family court judges and a judge that recently had his investiture to the bench from the County Court to the Circuit Court. He was under the impression that if Florida One is not successful, that they would take the appeal to the next level.

On behalf of the City, Attorney Seiden said that he has been proactive and solicited a proposal from informational purposes from a former professional who works with Miami-Dade County about Code revision, and the City will need help with future projects.

13B) City Manager

Holiday Lighting Ceremony

Interim City Manager/Chief of Police H. Randall Dilling announced that the Holiday Lighting Ceremony is scheduled for Thursday, December 4, 2003 at 6:30 p.m., and a detailed schedule would be provided in the near future.

13C) City Council

New City Manager

Councilman Youngs stated that he is looking forward to working together in harmony with the new City Manager. He said that it is important to be able to raise questions without it appearing to be accusatory, and to be able to ask questions so that the facts are presented in order to make good decisions. He will do everything possible to be successful with the City Manager, and to be successful with each Council member as well.

Congratulations

Mayor Bain congratulated James R. Borgmann on his appointment as City Manager.

14. Adjourn.

There being no further business to be discussed the meeting was adjourned at 11:50 p.m.

_____
Billy Bain
Mayor

ATTEST:

_____
Magalí Valls, CMC
City Clerk

Approved as written during meeting of: 1/12/2004.

Transcribed from tape by M. J. Valls.
Words ~~stricken through~~ have been deleted. Underscored words represent changes. All other words remain unchanged.