



City of Miami Springs, Florida

The Miami Springs City Council held a **REGULAR MEETING** in the Council Chambers at City Hall on Monday, September 25, 2006, at 7:00 p.m.

1. Call to Order/Roll Call

The following were present:

Mayor Billy Bain
Vice Mayor Zavier Garcia
Councilman Bob Best
Councilman Paul C. Dotson
Councilman Rob Youngs

Also Present:

City Manager James R. Borgmann
Assistant City Manager Ronald K. Gorland
Chief of Police H. Randall Dilling
Finance Director William Alonso
Human Resources Director Loretta M. Boucher
Interim Public Services Director Robert T. Williams
Elderly Services Director Karen L. Rosson
Golf Director Michael W. Aldridge
City Planner Richard E. Ventura
City Clerk Magalí Valls

2. Invocation: Councilman Best offered the invocation.

Salute to the Flag: The audience participated.

3. Awards & Presentations:

3A) Report from Springs River Festival President Connie Brandenburg

Springs River Festival President Connie Brandenburg thanked Council for their support last year.

Ms. Brandenburg stated that expenses are increasing and they are looking for more sponsors and volunteers. She reported that the last festival was very successful with a record amount of more than \$20,000 going to local charities. She added that she will not be the Chairperson for the next festival.

Festival Chairperson Margie Palmer praised Connie Brandenburg for doing a wonderful job and having a record breaking year. The success was due to the perfect weather. She asked Council to approve the festival dates for next year: April 13-15. She also requested \$6,000 for start-up fees and in lieu of a golf tournament, the "Taste of the Springs" event will be held at the Circle on January 28, 2007, in conjunction with a City-sponsored antique car show.

City Manager Borgmann said that an upscale car show is planned for next year.

Ms. Palmer announced that the Committee would be holding an open meeting on Wednesday, October 4, 2006 for all volunteers at the Lion's Club, 301 Swallow Drive.

Council thanked Connie Brandenburg for her hard work.

3B) Recognition from Orange Bowl Committee Honoring Miami Springs Hawks/City "Park of the Week"

City Manager Borgmann said it is a pleasure to get recognized by others outside of the City. The City was presented with a plaque for the Orange Bowl Youth Football League "Park of the Week" award and in turn he presented it to Mayor Bain so that it can be hung proudly in City Hall. He thanked the Orange Bowl for their recognition and support of youth athletics throughout the county.

Mayor Bain urged everyone to visit the field to see the new goal posts and to support the kids by watching the games.

4. Open Forum:

Garage Sales

Martin Marquez of 401 Hunting Lodge Drive asked Council to revisit the garage sale ordinance and close the loopholes that allow its abuse. He said that the ordinance should be based on specific addresses, not the families living at the address at any given time. Under the guise of different renters, multiple garage sales are occurring with some frequency in the neighborhoods. Code Compliance is aware of the abuses but there is nothing they can do. The ordinance could be modified with an eye toward increasing the penalties for violations.

Noise Pollution

Dona Kelley of 830 Swan Avenue said that she would like to comment on several agenda items at this time. Regarding Agenda Item 9F she is firmly against all types of noise pollution.

Guns

Regarding Agenda Item 10A, Dona Kelley stated that she is against all kinds of guns and she does not relish the thought of a supply in the Downtown area.

Fossil Fuels

Dona Kelley urged Council to support the resolution listed in Agenda Item 10F enacting a “Freedom from Fossil Fuel Act”. She said that Al Gore is right and this summer is proof that drastic action must be taken to curtail global warming.

McMansions

Dona Kelley referred to Agenda Item 11A and said that immediate action is needed to contain the mad rush to cover every square inch of the City with oversize houses that look awful and block needed drainage.

Variance Request

Dona Kelley referred to the request to schedule a Board of Appeals meeting to consider an appeal for a variance that was denied to keep a trailer in the side yard under Agenda Item 11B. She read with interest the mission statement of the Finance Department and it has appeared enough in the monthly News Bulletin. Perhaps it could be replaced with advice to residents not to buy any boat, trailer, or recreation vehicle if the property does not provide proper storage. Variances equal precedence regardless of arguments to the contrary.

Parking

Dona Kelley commented that Agenda Item 11C does not say what Vice Mayor Garcia has in mind regarding parking in the Downtown area. She has observed a cluster of City vehicles that park Downtown, including a Medley police car.

Parking in the Swales

Regarding Agenda Item 11D, Dona Kelley said that the reality of property dedicated to the City that is maintained by the resident is a long-standing fact of life. If neighbors are misusing one's swale it should be a matter of referral to the Community Policing Office.

Parking in the Swales

Tim Hawks of 549 Payne Drive stated that he submitted a letter to Council in regard to parking in the swale and since that time he had experienced additional problems. He went out to mow his grass on Sunday and there was a car parked in the swale and he had a dispute with a 20-year old youth who told him that he could park anywhere he pleases and he was parked 10-feet from a fire hydrant against the flow of traffic.

Mr. Hawks said that he should not have to come back later to cut the grass in the swale because some kid who does not even live in Miami Springs parks in front of his house instead of the person he is visiting.

Excessive Noise

Raúl Zayas of 260 Morningside Drive stated that a major tax payer operates a nursing facility in front of his home, which has a piece of equipment with a turbine that makes a substantial amount of noise. He received a letter from the Mayor explaining that the City would do their best effort to solve the problem but he believes that the City dropped the ball because it closed an open permit with a complaint pending.

Proposed Tax Bill

Raúl Zayas of 260 Morningside Drive bought a house and the previous owner paid \$1,600 in taxes, but his taxes are over \$7,000. He said that a 400% tax increase is ridiculous and unfair when other homeowners are protected by the 3% cap.

City Manager Borgmann explained that the law is a State law and not a Miami Springs law. The assessed value of a homesteaded property can only go up 3% a year.

Attorney Seiden explained that it is actually a constitutional amendment and the law went into effect a few years ago. It was intended to be a godsend for small communities where the assessments were going up higher than 3% every year. The City of Miami and the County are trying to pass resolutions to urge the tax assessor to stop assessing the higher rates in these situations.

Attorney Seiden added that the tax assessors throughout the state have never assessed properties at the fair market value. When there is a sale of a property that has a basis of \$150,000 and it is sold for \$450,000, one can be sure that the value of the tax assessment will be at the full value of the sale, which is hurting the real estate market.

Vice Mayor Garcia stated that the Congress and the Senate, and even the County were trying to regulate taxes. They are looking at different options, including raising the homestead exemption.

Mayor Bain showed his proposed tax bill and said that only about 1/3 of the total \$6,000 corresponds to City taxes. He suggested that Mr. Zayas should contact his representatives.

5. Approval of Council Minutes: (5A and 5B simultaneously approved)

5A) 08/30/2006 – Workshop Meeting

Minutes of the August 30, 2006 Workshop meeting were approved as written.

Councilman Youngs moved to approve and Councilman Dotson seconded the motion, which carried unanimously on roll call vote.

5B) 09/11/2006 – Regular Meeting

Minutes of the September 11, 2006 Regular meeting were approved as written.

Councilman Youngs moved to approve and Councilman Dotson seconded the motion, which carried unanimously on roll call vote.

6. Reports from Boards & Commissions:

6A) 08/16/2006 – Golf and Country Club Advisory Board – Minutes

Minutes of the August 16, 2006 Golf and Country Club Advisory Board meeting were received for information without comment.

6B) 08/16/2006 – Disability Advisory Board – Minutes

Minutes of the August 16, 2006 Disability Advisory Board meeting were received for information without comment.

6C) 09/05/2006 – Education Advisory Board – Minutes

Minutes of the September 5, 2006 Education Advisory Board meeting were received for information without comment.

6D) 09/07/2006 – Code Enforcement Board – Minutes

Minutes of the September 7, 2006 Code Enforcement Board minutes were received for information without comment.

6E) 09/14/2006 – Board of Parks and Parkways – Minutes

Minutes of the September 14, 2006 Board of Parks and Parkways meeting were received for information without comment.

7. Public Hearings:

7A) PUBLIC HEARING – Resolution – A Resolution of the City Council of the City of Miami Springs, Florida Adopting the Final Levying of Ad Valorem Taxes for General Operations and Voted General Obligation Debt Service for the City of Miami Springs for the Fiscal Year 2006-2007; Providing for an Effective Date

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

Mayor Bain opened the public hearing to those persons wishing to speak. There were no speakers, and the public hearing was closed.

Mayor Bain referred to Agenda Item 9G which will require additional funding and could affect the millage rate.

To answer the Mayor, Finance Director Alonso explained that the requests for the equipment listed in items 4, 5, and 6 deal with Water and Sewer. Item 3 is the Golf Course and Item 2 is the only General Fund request. The amount of savings from the Golf Course and Water and Sewer could be a subsidy to the General Fund if that is what Council wishes to do, and that could be used to lower the millage rate.

Mayor Bain asked what would be the actual savings by financing the items.

Mr. Alonso said that financing the maintenance equipment for recreation would save \$22,595, the golf course maintenance equipment would save \$59,394, and the water and sewer items would save \$40,000, which would be a total savings of \$122,000. He explained that he would remove the entire amount for the capital expenditure and budget the debt service for that year. He said to keep in mind that the debt service would be for the next three years, or approximately \$32,000 per year.

To answer the Mayor's question, Finance Director Alonso said that the millage could be lowered to 7.4745 by removing the capital expenditure of \$92,000 in the Golf Course and adding debt service of \$32,606, removing the capital expenditure for water and sewer totaling \$62,000 and adding debt service of \$21,974, and removing the capital expenditure in Recreation of \$35,000 and adding \$12,405 for debt service. Council would need to approve a subsidy to the General Fund from the Golf Course of \$59,394 and \$40,000 from Water and Sewer.

Councilman Best stated that the interest rate would be 4.03%.

Councilman Youngs said that a 4.03% interest rate is good, although it does increase the cost of the items by 12%. He asked Council to consider how important it is to make the cut and suggested lowering the millage to 7.5000.

Mayor Bain stated that it would be a good way to secure the needed equipment without taxing the citizens.

Finance Director Alonso clarified for Councilman Youngs that the total interest for the three year period totals \$17,392 for all the equipment totaling \$275,000.

Councilman Dotson said that it seems the City would be borrowing to finance a tax cut.

Councilman Youngs felt that it would be a trade-off and Council must decide if that is what they want to do.

Finance Director Alonso stated that his original intention to finance was not to reduce taxes, but it makes business sense because the City is receiving 5.5% interest on its investments and the 3-year loan interest is 4.03%. Although it will cost \$17,000 for interest, Council must consider the cost of not investing the \$275,000 at 5.5%.

Councilman Youngs was of the opinion that Council could decide to reduce the tax rate or add the surplus to the reserve fund.

To answer Vice Mayor Garcia's question, Finance Director Alonso confirmed that \$192,000 would go to the cash reserve in the proposed budget. He said that it is always good to increase the reserve but that it would be Council's decision.

Vice Mayor Garcia was of the opinion that Council must weigh the priorities and funds should be added to the cash reserve and allocated for future improvements. He pointed out that saving \$122,000 would only be a savings of \$30.00 per household and he would rather add to the reserve.

Mayor Bain suggested that half the savings could be added to the General Fund reserve and the remaining half could be used to cut the tax rate.

Councilman Dotson stated that \$500,000 is designated for the hurricane reserve, which is not enough considering last year's hurricanes, but it is a substantial amount for most years. He said that \$194,000 was put into the reserve fund for recreation and \$100,000 is set aside for golf course capital expenditures every year, so it is not as if the funds are not being put aside for the needed expenses to protect the City.

Councilman Dotson said that he never thought about financing tax cuts. He knows that the intention is good, and the fact that the City can borrow money at a lower rate than what is paid on the investments is a good situation that perhaps the City should take advantage of.

Councilman Dotson stated that he fought for a large tax cut because the people were entitled to some consideration after many years of escalating taxes. He likes the idea of trying to increase the tax cut.

Councilman Youngs suggested reducing the millage rate to 7.5000 which takes \$96,000 of the \$122,000 for the tax cut and \$26,000 that could be added to the surplus.

Vice Mayor Garcia agreed that Councilman Youngs' suggestion was a good idea. He would approve because he had not heard any discussion or comments based on his idea in reference to setting aside funds for future capital improvements.

Mayor Bain had suggested setting aside funds for the recreation center at the last meeting and Council decided to add the funds to the reserve and make a decision later. In his opinion, Council should lower the millage to 7.5.

Councilman Best said that reducing the millage to 7.5 is a responsible measure by Council.

Councilman Best moved to lower the millage rate to 7.5 mills and Vice Mayor Garcia seconded the motion.

City Attorney Seiden stated that Council has a responsibility in regard to Agenda Item 9G by virtue of this action.

The motion was unanimously carried on roll call vote.

City Attorney Seiden read the resolution in its entirety.

Councilman Best moved to adopt the resolution. Vice Mayor Garcia seconded the motion, which was carried 5-0 on roll call vote (Resolution No. 2006-3329).

7B) PUBLIC HEARING – Resolution – A Resolution of the City Council of the City of Miami Springs, Florida Adopting the Final General Fund, General Obligation Debt Service Fund, Enterprise Funds, Special Revenue Funds and Expendable Trust Funds Budgets for the Fiscal Year 2006-2007; Authorizing the City Manager to Proceed with Implementation of Service Programs and Projects; Prohibiting Unauthorized Liabilities and Expenditures of Funds; Providing for an Effective Date

City Attorney Seiden read the resolution by title.

Mayor Bain opened the public hearing to those persons wishing to speak. There were no speakers, and the public hearing was closed.

Vice Mayor Garcia moved to adopt the resolution and Councilman Best seconded the motion.

City Attorney Seiden read the resolution in its entirety.

The motion was carried 5-0 on roll call vote (Resolution No. 2006-3330).

Mayor Bain said that Council worked hard and diligently in the budget process. He is happy to see that there is a team effort, which was shown by the participation of the Public Works and Recreation Department Staff. He thanked Finance Director Alonso for running all the numbers that he requested and for the assistance of the City Manager and Assistant City Manager.

(Agenda Items 9A through 9F were discussed at this time)

8. Consent Agenda:

8A) Approval of Budget Transfers Within Departments as Provided in Section 9.04 (1) of the City Charter

City Manager Borgmann stated that Council approval is required for seventeen inter-fund transfers within departments, switching funds from one account to another to cover expenses.

To answer Councilman Dotson's question, Finance Director William Alonso explained that all the enterprise funds have depreciation and in last year's sanitation fund, depreciation was budgeted for the new sanitation trucks, assuming that they were going to be delivered on time, which did not happen.

Councilman Dotson asked the reason for the excess Workers Compensation funds.

Mr. Alonso explained that the budget was prepared considering that DJB was managing the Golf Course for the entire year and when it became a City department in February, Workers Compensation was included in the City's coverage. He said that under the management of DJB the City was paying more than \$20,000 per year, which is a substantial savings.

Vice Mayor Garcia moved to approve and Councilman Best seconded the motion which was carried 5-0 on roll call vote.

9. Old Business:

9A) Appointment to the Ecology Board by Mayor Bain for a Full 3-Year Term Ending on April 30, 2009 (Joe Podgor's seat)

Mayor Bain **deferred** his appointment to the Ecology Board.

9B) Appointment to the Ecology Board by Councilman Youngs (Group IV) for an Unexpired Term Ending on April 30, 2007 Created by the Resignation of Donna Dawson

Councilman Youngs **deferred** his appointment to the Ecology Board.

9C) Appointment to the Civil Service Board by Vice Mayor Garcia (Group III) for a Full 3-year Term Ending on June 30, 2009

Vice Mayor Garcia **appointed** Roslyn Buckner to the Civil Service Board.

9D) Appointment to the Education Advisory Board by Councilman Youngs (Group IV) to Fill an Unexpired Term Ending on May 31, 2007 (Dorrene Cook's seat)

Councilman Youngs **deferred** his appointment to the Education Advisory Board.

9E) Appointment to the Code Enforcement Board by Councilman Dotson (Group II) to Fill an Unexpired Term Ending on September 30, 2008, Created by the Resignation of Walter Sharpe

Councilman Dotson **appointed** Rhonda Calvert to the Code Enforcement Board.

9F) Discussion Regarding Code of Ordinances Section 99.01 – Unnecessary, excessive, or unusual noises, generally (Tabled: 9/11/2006)

Alex Miranda of 273 Morningside Drive said that since January 2006, the residents surrounding Fair Havens Center have had their peace and tranquility disturbed due to installation of a new air conditioning chiller. Many have lost hours of sleep and enjoyment of the outdoors due to the constant noise that the unit creates. He played a recording of the noise that they are experiencing everyday.

Mr. Miranda contacted the Code Compliance Office and was told that there is a noise ordinance in place but that it is very vague in regard to noise from air conditioning units. He then called the Police Department to complain about the noise and was told that this was not a police matter, although the officer heard a noise disturbing the surrounding area.

Mr. Miranda continued to explain the history of the residents' complaints. He spoke with Code Compliance Officer Cardini who said that he was the only one complaining and that the permit was closed and nothing else could be done. Building Official Reed was surprised that Mr. Cardini was aware of the complaint and not even a warning was issued to the management at Fair Haven Center and he instructed Mr. Cardini to issue a written warning to establish that there was a problem.

Mr. Miranda stated that several residents decided to collect signatures to make City officials aware of the problem and a notice was sent to the City on March 31, 2006. On May 12, 2006, he received a copy of an e-mail stating that the maintenance man at Fair Havens would be shutting off the unit between the hours of 10:00 p.m. and 5:00 a.m. The City Manager's response was that he hoped this final action would resolve the problem for the neighbors in the area.

Mr. Miranda said that on May 25, 2006, Mayor Bain visited the neighborhood and followed up with a letter assuring him that he was aware of the problem and included a list of the measures that Fair Havens agreed to take to reduce the noise. Thanks to the numerous visits to the neighborhood by City officials, the residents were able to vent their frustrations, but feel that little has been accomplished to resolve the problem.

Mr. Miranda recited Code Section 99.09 that states:

“It shall be unlawful to operate or cause to be operated any noise creating blower, power fan, air conditioning unit or internal combustion engine unless the noise from such blower or fan is muffled and such engine is equipped with a muffler device sufficient to deaden such noises, so that they shall not annoyance to the public or disturb the rest and quiet of persons residing in or occupying property near enough to be annoyed by the unmuffled blower, fan or exhaust of any such engine.”

Mr. Miranda said that Miami Jackson Senior High School had enclosed its air conditioning units inside concrete buildings and Fair Havens is using plywood as a barrier and a similar concrete barrier might be the only solution. He urged Council to take action that would restore peace and quiet in the neighborhood.

Deborah Olsen of 241 Morningside stated that noise pollution control is important to the quality of life to the neighborhood. She said that when Fair Havens installed the new air conditioning unit she realized how disruptive noise can be. Noise is defined as any unwanted sounds and very loud noises can cause a physical loss of hearing, stress and stress-related symptoms, hypertension, sleep loss, fatigue, impaired concentration and communication.

Ms. Olsen said that she expects the City leaders to give priority to noise control and the quality of life of the citizens. Without relief, this problem would ultimately be detrimental to the quality of life in the City, to the health of the residents, and to the property values of their homes.

Gladys Gomez of 461 Curtiss Parkway agreed with all the comments that had been made.

Jorge Veizaga of 290 Morningside Drive also expressed his disapproval of the noise.

Judy Karpis of 1170 Quail Avenue stated that she has had a similar noise problem for the last two years as expressed in her numerous e-mails to City officials. She said that Chief of Police Dilling offered to help but instead she was harassed and was made out to be the bad guy.

Ms. Karpis said that the band creating the noise disbanded but they continued to play last Saturday, which causes her headaches, hypertension and weight gain due to the pain. She begged City officials for help and she called each Council member asking for the noise ordinance to be enforced. She added that she and her husband are good neighbors who are considerate and careful not to make excessive noise. She is desperate to solve the problem but has not received any relief.

Alex Karpis of 1170 Quail Avenue said that obviously the noise has caused a lot of problems and consternation within the family and it is a sensitive issue that is a reality because when the band plays, the noise can be heard in their home, although it might not be heard by the police when they are outside. He certainly hopes that the ordinance is enforced.

Raúl Zayas and Beatrice Zayas of 260 Morningside Drive declined to speak at this time.

Mayor Bain stated that the noise generated by the air conditioner at Fair Havens is an unusual situation that should be addressed. He said that he spoke with the management at Fair Havens and a Trane representative who told him there is a piece of piping that could be installed.

Vice Mayor Garcia visited both properties in question during the day when the noise was not as noticeable as it would be at 5:00 or 6:00 a.m. when the City is quiet. He realizes that the noise is a concern because he has heard it and the noise ordinance is not enforced like it is in other municipalities with special equipment that measures noise levels. He suggested that the City could acquire the special equipment in order to be able to control the noise.

City Attorney Seiden stated that the City purchased a device that measures decibels, but the Code does not address a specific decibel level. He said that he has heard the noise himself and he sympathizes with the residents. There is new technology for air conditioner compressors and chillers that is not addressed by the current ordinance because it is a high pitched whining noise.

Mayor Bain said that as far as he is concerned, the ordinance could be enforced as it is written. He felt that Fair Havens is out of compliance and that they should be required to construct a wall.

City Manager Borgmann stated that Fair Havens could be cited for non-compliance and they would have to come into compliance but the City can not tell them to put up a wall.

Councilman Best stated that he responded to an e-mail from Ms. Olson. He said that in his neighborhood, All Angels Church installed a water exchanger air conditioning unit that coils the noise. He added that he visited the neighborhood next to Fair Havens, heard the noise and he appreciates the residents' concern.

Councilman Best said that most bands would rent a warehouse rather than play in a residential neighborhood. He questioned what measures could be taken to solve the noise with the Fair Havens air conditioner other than enclosing it with some type of material. He agreed that there is no excuse for the noise to be affecting so many residents.

Deborah Olsen of 241 Morningside Drive asked about the location of the air conditioning unit that Councilman Best was referring to and he explained that the unit sits on a concrete slab approximately 100 feet from the front of his house. She was of the opinion that sound waves carry more easily from rooftop units.

Councilman Best felt that the pitch of the noise is more annoying and it causes an increase in stress level.

Alex Miranda of 273 Morningside Drive said that he noticed the sound near the house of Councilman Best's home, which is similar to the sound of what he and his neighbors are experiencing. He drove up close to several homes and some of the Council members enjoy peace and quite. Fair Havens has some concrete on the South side and these serve to block the noise. He believes that a concrete barrier would help mitigate the noise.

To answer the Mayor's question, Assistant City Manager Gorland stated that he did not notify Fair Havens about tonight's meeting.

Councilman Dotson said that it bothered him that the problem has been ongoing for nine months and no solution has been reached. He is not absolutely sure that a concrete wall would be the answer, but apparently it is one way of blocking sound that could be deflected to go in another direction.

Councilman Dotson said that apparently the City had not been persuasive enough and there is a need to explain to Fair Havens that the City has to enforce the ordinance or suggest that if they cannot stop the noise, that they have to turn the air off. He felt that this measure would force them to comply and the City cannot continue to rely on their good will.

Mayor Bain asked the City Attorney if Code Compliance could instruct Fair Havens to install a concrete wall to obstruct the noise.

City Attorney Seiden said that the attempts made by Staff and Code Compliance have not resolved the situation and the appropriate way to handle the situation would be to follow the standard Code Enforcement procedure. A Notice of Violation would be issued establishing what the problem is and Fair Havens would be given a certain amount of time to correct the problem. If the problem is not corrected, a subpoena is issued and the case would go before the Code Enforcement Board. At that point, the citizens who are complaining and Fair Havens would appear before the Board to present both sides and the Board would decide whether or not a violation exists.

Attorney Seiden assumed that the Code Enforcement Board's decision would be based upon Code of Ordinance Section 99-09 that was enacted in 1969 and it is very deficient. He referred to a case involving dog noise that forced a change in Code Section 90-11 and at that time he asked the City Council if they were interested in modifying the noise ordinance. He suggested the only real way to enforce the ordinance is to have the proper equipment and trained personnel.

Attorney Seiden said that he discovered a 50-page opinion from Stetson Law School regarding valid noise ordinances and unconstitutional restrictions. He stated that it is a very succinct and up-to-date article that acknowledges that it is a tremendous problem and they have suggestions for re-drafting ordinances to make them as enforceable as possible.

Attorney Seiden stated that the City is dealing with a large organization with resources and depending on the ruling of the Code Enforcement Board, they could appeal to a higher court. In his opinion, Section 99-09 has deficiencies as to enforceability but this does not prevent Council from directing the Code Compliance Staff to try and make them comply.

Councilman Dotson thinks that Fair Havens should be contacted and informed that since the City had tried to resolve the situation and there appears to be no solution, that the only alternative would be to begin the Code Enforcement process and they might be subject to fines. He felt that perhaps this would get their attention and more cooperation. The City should start playing hard ball and it is important for Fair Havens to act as a good corporate citizen.

Dona Kelley of 830 Swan Avenue has been an observer at the Code Enforcement Board hearings for many years. Based on her own experience, she knows that Code Enforcement officers would do everything possible to avoid bringing a case before the Board and she suffered for many months without help from the City. She said that the procedure is strictly between the Board and the party being cited, not the complainers.

Attorney Seiden disagreed with Ms. Kelley. He said that in this particular case the witnesses would be permitted to give testimony to support the case, although for most violations there are no witnesses involved.

Mayor Bain referred to Section 99.09. He said that it is clear that Fair Havens can be cited and the City can start the ball rolling.

Attorney Seiden disagreed with the Mayor's interpretation of the Code.

Councilman Youngs said that the City Attorney has acknowledged that the ordinance is deficient and that it could be challenged. He felt the ordinance is valid until the circuit court rules that it is not. Council could make a decision but there is a risk of an appeal that would involve legal fees, and the City Manager would not take the risk without Council's direction.

Councilman Youngs was of the opinion that Council should advise the City Manager to take the risk and enforce the Code as it stands immediately. The consequence is that it might upset a corporate citizen but other attempts outside of the enforcement process have not worked, and Council should take the risk.

Councilman Best asked that the City Attorney quantify the deficiency of the ordinance. Attorney Seiden said that he would prefer not to go on record at this time.

The City Attorney read from the Stetson comments:

“Municipal ordinances describing noise standards and vague terms that failed to provide fair warning of what conduct is forbidden or failing to set reasonable guidelines for their enforcement can be found to violate the due process rights under the Fourteenth Amendment. The key criterion considered in determining whether legislation is unconstitutionally vague is whether persons of common intelligence understand its prohibitions without the need to guess at its meaning. The main goals of the vagueness doctrine are to ensure that the public has reasonable notice of what conduct is forbidden by a law and to avoid arbitrary or discriminatory enforcement of a law whose standards are unclear.”

Attorney Seiden stated that he would be glad to discuss the matter but it would be better not to go on record because he would not want to help Fair Havens make a case should it ever reach that point. Council could ask the City Manager to begin the code enforcement process with the hope that Fair Havens understands that the City is more serious and take more steps to solve the problem. The burden is on Fair Havens to convince the Code Enforcement Board that they are not at fault based upon the ordinance.

City Manager Borgmann referred to the back-up materials in the Council packet and he read excerpts of the correspondence. He said the City’s approach has always been to try a friendly approach first instead of using the hammer from the beginning.

The City Manager outlined the attempts to enforce Code of Ordinance Section 99-09 as follows:

1. Gaining Fair Havens managements’ recognition of the issue and their cooperation to resolve
2. Contribution and installation of an acoustical blanket provided by the manufacturer, designed to absorb high pitched sounds.
3. Numerous technical discussions with the manufacturer’s representative.
4. Agreement was made with Fair Havens management not to operate the unit between 10:00 p.m. and 5:00 a.m.
5. Many on-site visits were made to check the decibel levels at various times.
6. Numerous meetings with Fair Havens management and the manufacturer to explore alternatives for resolving the noise problem.
7. Design and installation of an additional plywood sound barrier next to the roof-top unit.

The City Manager agreed that the steps taken by Fair Havens at their expense had not worked.

Enrique (?) of 501 Minola Drive, asked Council to proceed with the Code Enforcement Board and if the present ordinance fails, Council should be prepared to change the ordinance.

Alex Miranda of 275 Morningside Drive referred to the blanket that was scientifically designed to decrease the noise. They took fiberglass material and a piece of sheet metal and it was not a scientifically designed blanket provided by Trane. The maintenance personnel placed plywood up against the existing railing.

Vice Mayor Garcia referred to the complaints and the air conditioning permits and the City Attorney said that the Building Official should be able to answer these questions.

City Attorney Seiden said that Council could direct the City Manager to ask Code Compliance to take necessary steps to make them comply.

Mayor Bain said that, in the interim, Council would work to improve the ordinance.

Judy Karpis of 1170 Quail Avenue said that everyone else had a second chance to speak without invitation but that she is treated like a stepchild. She was happy that Council was helping the other residents who live near Fair Havens, but she wanted to know what Council is doing about her case.

Ms. Karpis reminded Council that she had lived in the town for a long time and grew up on Redbird Avenue when Mayor John Cavalier was fighting the Florida East Coast Railroad in regard to the train whistles that affected a lot of people. She is not asking for Council to resolve her situation but to enforce the noise ordinance fairly and unilaterally. She wants relief for everyone, not just herself.

Vice Mayor Garcia assured Ms. Karpis that Council is sympathetic to her case as well. Council mentioned that they would take measures to modify the ordinance and use the decibel meter.

Ms. Karpis clarified that her situation is not just four little boys playing band in the garage and it is a professional band. She said that Police Officer Garcia commented that the sound system could not have been hooked up or it would have blown the windows out. Councilman Best told her over the phone that it would take 120 decibels to blow the human eardrum. The sound system is rented out professionally and it is a business being run out of a house.

Council assured Ms. Karpis that she was not being ignored.

Councilman Best said that after reviewing the information provided by Staff, that he found that the City of Miami has the most stringent ordinance because it quantifies decibels.

Attorney Seiden stated that the process was halted in 1991 due to the expense involved in purchasing the equipment and training employees to use the decibel meters. The process involves regular maintenance and continuing education and it is not an inexpensive undertaking. In the past Council felt that for a City the size of Miami Springs the effort was not warranted.

Councilman Best felt there is not much difference between the Karpis situation and what is going on by Fair Havens and both offenders should be served by Code Compliance.

City Attorney Seiden clarified that the direction that Council is giving to the City Manager is to ask the Code Compliance Department to determine if a violation exists. In both cases, the City Manager will notify Code Compliance of a possible violation because of the citizen complaints. If there is a violation, they will be cited with the appropriate proceedings and the same would apply in the case with Ms. Karpis.

Councilman Youngs said that the cases of Fair Havens and Judy Karpis are related to different sections of the ordinance. There is a standard of twenty-five feet in a residential district for audible noise or music and the City Manager could be directed to enforce section 99-02 on Quail Avenue.

City Manager Borgmann explained that in the Karpis situation, that the Police Department was called because Code Compliance was not on the job, and if they determined there was a violation it would be turned over to Code Compliance.

Councilman Youngs was in favor of directing the City Manager to have Code Compliance enforce Section 99-02 on Quail or to pay overtime to the Code Compliance Officers.

City Manager Borgmann stated that the police reports indicated that no noise was detected when the Police were there and that would not be cause for the particular section to be enforced.

Councilman Youngs felt that the City could deter the activity even if a citation could not be issued.

Councilman Dotson stated that Council has been trying to solve the Karpis problem for a long time. It bothers him that Ms. Karpis commented that the Police Officer told her to get better earplugs, which is conduct unbecoming to a police officer.

Mayor Bain would like Council to be provided with the paperwork to show the history of the complaints regarding 1170 Quail.

Councilman Dotson asked Council to make a decision about the Fair Havens' case.

City Manager Borgmann agreed that the Administration would move forward by saying the two attempts to resolve the noise problem and the third promised attempt had not fulfilled the requirement under the Code.

Councilman Dotson would like the Administration to send Fair Havens a letter or to communicate by telephone to explain that no progress had been made in the last nine months despite of the attempts and it is time to invoke the code enforcement process.

City Manager Borgmann explained that a cover letter would be sent with a notice of violation.

The City Attorney said that standard procedures should be utilized.

Councilman Dotson felt that the code enforcement process is the proper procedure to follow.

(Council took a 5-minute recess at 9:20 p.m.)

City Attorney Seiden said that it would be prudent for Council to ask Staff to investigate the cost of getting a decibel meter system before he begins working on the ordinance.

Mayor Bain requested guidance from the City Attorney as to how the ordinance could be strengthened with the current resources.

The City Manager said that the meter is inexpensive and he will try to get a price.

Assistant City Manager Ronald K. Gorland said that it is better to bring in the people that already have the equipment and is certified.

Council **directed** the Administration to enforce the ordinance as written.

9G) Report Regarding Additional Financing for the Bid Awarded to Design-Build InterAmerican, Inc. for the Design and Construction of Two Restroom Facilities at Stafford and Dove Avenue Parks

City Manager Borgmann presented a report regarding the additional financing for the bid award that was previously discussed for the restroom construction and miscellaneous items. He explained that Council had approved the purchase, \$200,000 was allocated in the current budget and information was requested as to how the additional \$85,000 would be funded.

Vice Mayor Garcia moved to approve and Councilman Best seconded the motion which was carried 5-0 on roll call vote.

City Manager Borgmann clarified that there is one item that needed to be confirmed with SunTrust regarding the interest rate that should be 4.03% annually, payable quarterly.

9H) Resolution – A Resolution of the City Council of the City of Miami Springs Amending the Schedule of Charges and Fees for the Operation of the Miami Springs Golf and Country Club; Effective Date (Tabled: 8/28/2006)

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

In reply to Councilman Dotson's question, Golf Director Mike Aldridge said that the greens are in good shape and that the business was very good last weekend.

Mayor Bain stated that he looked at every green and it is remarkable how the grass has grown in the last ten weeks.

City Manager Borgmann stated that the opening of the greens was delayed due to too much rain and not enough sunlight.

Councilman Best approved of the rates as recommended by Mr. Aldridge and the Administration.

Mike Aldridge confirmed that the rates are good through mid December.

Councilman Youngs moved to adopt the ordinance and Councilman Best seconded the motion which was carried 5-0 on roll call vote (Resolution No. 2006-3331).

To answer Councilman Dotson's question, Finance Director Alonso stated that the August revenues totaled approximately \$25,000.

(Agenda Item 10E was discussed at this time)

9I) Status Report – Interlocal Agreement with Virginia Gardens

City Attorney Jan K. Seiden reported that he and the City Manager had a very comprehensive meeting with Virginia Gardens Mayor Deno regarding the Interlocal agreement, expanded water purchases and senior center fees.

City Manager Borgmann is preparing a letter to send to Mayor Deno outlining the points of the discussion and additional information that he requested.

9J) Discussion Regarding Debris Removal

City Manager Borgmann said that the agenda item description should have clarified that it was related to emergency debris removal after a disaster. He explained that there were difficulties in making a selection based on lack of recommendations from other municipalities and the selection was narrowed down to those vendors who they feel confident will respond to Miami Springs in an emergency.

The City Manager stated that the priority is cleaning the City after a disaster when there is so much debris in the streets that it is impossible for Public Works to clean it up in a timely fashion and remove it from the City. He said that Council requested additional back up information that was provided and put together by the Ad Hoc Staff composed of representatives from Public Works, Police, Recreation, etc.

Councilman Best asked Interim Public Services Director Robert Williams for his recommendation.

Interim Public Services Director Williams stated that he recommends DRMS because they are a local company with headquarters in Doral who could respond in a short period of time.

To answer the Mayor's question, the Assistant City Manager said the agreement is valid for one year but that it can be renewed and it does not preclude the use of another company.

City Manager Borgmann added that after either Hurricane Wilma or Katrina the City piggy-backed off another bid, there was a legal quagmire regarding exclusivity and an arrangement was made where the City was divided between two companies.

City Attorney Seiden stated that it is difficult to piggy-back on a contract when dealing with services because there is a question of who becomes the primary responder.

Councilman Youngs moved to approve and Councilman Best seconded the motion.

City Attorney Seiden asked if there is a contract and Assistant City Manager Gorland stated that the City would accept the terms and conditions of the County's contract.

City Attorney said that approval would be subject to his review of the contract.

The motion carried 5-0 on roll call vote.

10. New Business:

10A) First Reading – Ordinance – An Ordinance of the City Council of the City of Miami Springs Amending Code of Ordinance Section 150.070, CBD, Central Business District; to Provide an Additional Approved Use for the District; Repealing All Ordinances or Parts or Ordinances in Conflict; Effective Date (This item will allow a new permitted use in the CBD: Sporting Goods Store, including the sale of weapons and related products used for sporting and hunting activities)

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

Attorney Seiden stated that this item was discussed at the last meeting and he drafted the ordinance so that it provides for a sporting goods store and not a weapons facility.

Attorney Seiden explained that the ordinance provides for the sale of weapons and related products used for sporting and hunting activities so long as such merchandise is removed from the premises within 24-hours of delivery and receipt, and there are no store displays or merchandising activities. He added that no more than two stores are allowed in the district that sells the described merchandise or Council could limit it to one store.

Council agreed to limit the ordinance to one store.

To answer the City Manager's question, the City Attorney explained that it would be inappropriate to call it a mail order weapons store and he called it a sporting goods store.

Councilman Youngs moved to approve the ordinance as amended and Vice Mayor Garcia seconded the motion.

Councilman Youngs stated that one speaker during Open Forum was against the issue and Council is allowing this business to occur and protecting the safety of the citizens by limiting the activity in a way that is reasonable.

The motion was carried 5-0 on roll call vote.

10B) Recommendation that Council Waive the Competitive Bid Process as Provided in Section 31.11 (E) (6) (g) of the City Code, and Approve an Expenditure of not to Exceed \$13,844.30 for Fiscal Year 2006 to USA Software, Inc., for Software Maintenance for the Police Department, Funded out of the Repairs and Maintenance Account in the I.T. Department Budget

City Manager Borgmann read the title of the award for software maintenance for the Police Department. He explained that USA Software, Inc. is a sole source vendor.

Chief of Police H. Randall Dilling said that this request pertains to the annual software agreement for the mobile data terminals, and dispatching.

Vice Mayor Garcia moved to approve and Councilman Best seconded the motion which was carried 5-0 on roll call vote.

10C) Consideration of Agreement Between Miami-Dade County General Services Administration Fleet Management Division and the City of Miami Springs for Fueling and Fuel Site Maintenance Services (Item 4 of the Agreement)

City Manager Borgmann stated that this is a request for approval of an agreement between Miami-Dade County General Services Administration Fleet Management Division for fueling and fuel site maintenance services. He explained that the City is issued cards that can be used at a Dade County fueling station in case of an emergency when the City's pumps are not working.

Chief of Police Dilling stated that the County was very helpful and cooperative last year during the hurricane season, this is an agreement for the service and the City is only obligated to use the service every three months to keep it active. He highly recommends approval.

Councilman Garcia moved to approve and Councilman Dotson seconded the motion which was carried 5-0 on roll call vote.

City Attorney Seiden stated that he reviewed and approves the agreement.

10D) Recommendation that Council Approve the Police Department Annual Radio Maintenance Contract and Expenditure with Communications International, Inc., in the Amount of \$17,823.96, as Provided in Section 31.11 (E) (6) (c) of the City Code

City Manager Borgmann read the title of the award to Communications International, Inc. He said that this is another sole source vendor that has provided excellent service in the past and the Administration recommends renewal.

Councilman Best moved to approve. Councilman Garcia seconded the motion which was carried 5-0 on roll call vote.

10E) Approval of Golf Cart Lease with Yamaha Leasing for 48 Months, at a Monthly Cost of \$4,668.75 to be Funded from the Rentals and Leases Account in the Golf Department

City Manager Borgmann explained that the Administration searched for additional quotes, including Easy Go who was one-cent less and when Yamaha found out that the City was negotiating with Easy Go they offered several additional perks.

Finance Director Alonso said that subsequent to the City Manager's memorandum that indicated a delivery date in December for the newly designed carts, Yamaha advised that the delivery date would be in October and they are waiving the current lease for six months from October to March, which is worth more than \$25,000.

Mike Aldridge stated that the City is saving the maintenance fees for the 52 month lease. The City will receive 75 new Yamaha carts, one beverage cart and a range picker.

Councilman Best moved to approve and Vice Mayor Garcia seconded the motion.

City Attorney Seiden said that this approval represents a waiver of the competitive bid process, subject to his approval of the contract.

City Manager Borgmann added that the waiver is in the best interests of the City financially.

The motion carried 5-0 on roll call vote.

10F) Resolution – A Resolution of the City Council of the City of Miami Springs Urging the State and Federal Government to Create and Enact A “Freedom from Fossil Fuel Act”, to require the Investigation, Exploration and Funding for Alternative Sources of Fuel, and to Advocate All Reasonable and Responsible Methods for the Reduction and Eventual Elimination of our Current Dependence Upon Foreign Oil and Fossil Fuels by 2017; Urging Other Governmental Support of the Act; Directions to the City Clerk; Effective Date

City Attorney Jan K. Seiden read the resolution by title. He explained that the City received a letter from the City of South Miami with a copy of their resolution, which he revised to make it clearer.

To answer Councilman Best’s question, Attorney Seiden said that he did not know the origin of the initiative but there must be legislation pending in Congress and State government.

Councilman Best moved to approve and Vice Mayor Garcia seconded the motion.

Councilman Youngs questioned if approval of the resolution would be saying that the City of Miami Springs is advocating drilling off the Florida coast. He said that the resolution indicates that the City supports all reasonable efforts to reduce and eventually eliminate the current dependency upon foreign oil. He was of the opinion that it would not be reasonable to have drilling off the coast of Florida.

City Manager Borgmann said that the last whereas clause sums up what Council will do. It reads:

“The City Council of the City of Miami Springs is desirous of stating and promoting its support of any and all reasonable and responsible efforts that will reduce and eventually eliminate our current dependency on foreign oil and fossil fuels.”

Councilman Best felt that Councilman Youngs raised a valid point about the energy issues in the country.

Councilman Youngs said that the City would be getting involved in a national issue.

Further discussion ensued regarding the interpretation of the proposed resolution.

City Attorney Seiden stated that the main point is to avoid the greenhouse gas effect, although Council might disagree about fossil fuels and burning oil.

The motion failed 4-1 on roll call vote with Councilman Best voting aye and Mayor Bain, Councilman Dotson, Vice Mayor Garcia and Councilman Youngs casting the dissenting votes.

10G) Resolution – A Resolution of the City Council of the City of Miami Springs Providing for the Fourth Amendment to the FY2005-2006 General Fund Special Revenue Fund Budgets; Providing for an Increase in the Recreation Department’s Budget for the Acquisition of Park Restroom Facilities; Providing for an Increase in the Building and Zoning Budget for Higher than Budgeted Building Inspector Fees; Increasing Permit Revenues; and Providing for the Establishment of a Hurricane Special Revenue Fund Budget for FY2005-06; Effective Date

City Manager Borgmann read the resolution by title.

Councilman Garcia moved to adopt the resolution and Councilman Youngs seconded the motion which was carried 5-0 on roll call vote (Resolution No. 2006-3332).

11. Other Business:

11A) Discussion Regarding “McMansions” – Consideration of Moratorium on New Applications

City Manager Borgmann explained that local architect Manuel Perez-Vichot, Chairman of the Zoning and Planning Board, provided documents regarding the issue of “McMansions” and potential changes that could be made to the Zoning Code that would help curtail the overdevelopment of single-family lots with large homes.

City Manager Borgmann explained that the current Code basically allows structures of this nature to be built and everyone recognizes the fact that many of the homes are out of place and character.

The City Manager requested that Council review the information and provide direction to Staff or the City Attorney as to what would be the next step as far as drafting a new ordinance that would protect the residential neighborhoods from overdevelopment.

Martin Marquez of 401 Hunting Lodge Drive agreed with the City Manager's statement. He urged Council to allow the public the opportunity to have input on the documents or possibly consider a moratorium.

Mayor Bain recommended scheduling a Special Meeting.

City Attorney Seiden agreed that a Special Council meeting should be scheduled. He said that Manny Perez-Vichot indicated that he would be willing to participate and it would be beneficial to receive input from people who have expertise. He stated that there are provisions in the Code for a moratorium and the City Manager has the authority to issue an order and place a resolution on the agenda. A public hearing is required and a Special Meeting could be called within twelve hours.

Attorney Seiden stated that the impact of a moratorium is not one-sided and there could be property owners that challenge it. He said that if Council feels that there is a need for a moratorium and is prepared to defend it, then he should be instructed to prepare a resolution for the next meeting.

Councilman Dotson would like to pass a resolution as soon as possible to establish a moratorium and Councilman Best agreed.

Councilman Youngs inquired if Council is required to make a finding of fact to state the prerequisites for a moratorium that exists. Attorney Seiden stated that he would include it in a resolution.

Councilman Best felt that it would be appropriate to ask the Building Department if any applications are currently on file relative to these types of buildings.

The City Manager said he could provide a list of all the "Mc Mansions" that have been built in the City.

Mayor Bain felt that there was a consensus to impose a moratorium.

City Attorney Seiden stated that if Council feels there is an eminent emergency, the City Manager could call an emergency meeting within twelve hours of this meeting. If there is no quorum for the meeting, the City Manager can enter a moratorium on his own discretion by Administrative Order. At that time, a hearing would be set which would be when a public hearing would be held at which time Council would modify, restrict or comply with the order, or if Council feels that time is sufficient, a public hearing could be held at the next regular meeting.

Mayor Bain asked Council to consider a date for a Special meeting before October 9th.

Councilman Youngs suggested scheduling a short Special Meeting for the purpose of instituting the moratorium and scheduling a future meeting for the public hearing that would allow more advance notice to the public.

Attorney Seiden read Code of Ordinance Section 150.116 – Administrative Building Moratorium:

“(A) Whenever it shall be made to appear to the City Manager that it is in the public interest to make a comprehensive determination as to whether existing zoning districts applying to a portion of the area of the City are appropriate, and it is further made to appear to him that the existing zoning districts may be detrimental to the area should they continue to remain applicable, and building permits be issued predicated thereon, notwithstanding any other provision to the contrary, the City Manager shall immediately instruct the City Clerk to call an emergency meeting of the City Council within 12 hours to consider the imposition of a moratorium, and the City Manager shall further instruct the City Clerk to post public notice of the meeting in an appropriate place in the recreation center, field house, public library, and, unless otherwise forbidden, in a conspicuous place in the United States Post Office in the City, and in such other locations as the council may direct, and to advise the news media of the meeting. If a majority of the council members present at the meeting concur in the determination of the City Manager, then they shall by resolution delineate the area in question, and prohibit the issuance of building permits thereon. If a meeting of the City Council cannot be called because a quorum of the City Council, as defined in the Charter and Code of the City, cannot be present at the meeting, or if the meeting is called and a quorum of the City Council is not present at the scheduled time and place, then the City Manager may immediately issue his administrative order delineating the area in question, and prohibiting the issuance of building permits thereon. The City Manger’s determination shall be predicated on consideration . . .”

(B) Any resolution or administrative order issued pursuant to division (A) shall be complied with by all City personnel, and shall be effective until reversed . . .

(C) Immediately upon issuance of any resolution or administrative order pursuant to division (A), the City Manager shall notify the City Clerk, whose duty it shall be to place the matter before the City Council for consideration and review following a public hearing as soon as practicable.

(D) The clerk shall give reasonable notice by publication

(E) At the public hearing, the City Council shall inquire into the propriety of a building moratorium, and may reverse, modify, or supersede any moratorium order previously issued . . .

(F) Should the City Council determine that a building moratorium is reasonably necessary, it shall order the same, and direct that no building permits be issued within the affected area. The Council's order shall fix a time within which the City Manager shall report back to Council with his recommendations relating to appropriate zoning districts for the affected area. The time limitation shall be a reasonable one, predicated upon the time needed for a comprehensive analysis of the area. The initial Council moratorium shall be for a period not to exceed 120 days. The Council on its own motion or otherwise may continue any moratorium for a longer period of time, if reasonably necessary. . .

(G) Should the City Manager be unable to report back to the Council within the time period prescribed by its moratorium order, upon timely request by the City Manager, and after a public hearing on the need therefore, the Council may reasonably extend the time limitation . . .”

Council scheduled a Special Meeting at 6:45 p.m. on October 2, 2006 to establish a moratorium.

Councilman Youngs asked if Council wanted the City Manager to establish an administrative moratorium by order between now and Monday, October 2nd.

City Manager Borgmann stated that it would have to be a very dire emergency for him to order a moratorium that would not wait for Council's decision.

To answer Vice Mayor Garcia's question, Attorney Seiden stated that any application that is received before the institution of the moratorium would be valid.

11B) Scheduling of Board of Appeals Meeting to Hear Case No. 54-V-06 – 1340 Lenape Drive – Michael and Cynthia Perez (Variance denied by the Board of Adjustment on September 6, 2006)

Council **scheduled** a Board of Appeals meeting for October 9, 2006.

11C) Discussion Regarding Parking in the Downtown Area (Requested by Vice Mayor Garcia)

City Manager Borgmann stated that Vice Mayor Garcia asked him to place this item on the agenda.

Vice Mayor Garcia said there is a parking problem in the downtown and residential areas. He said that many people drive large Sport Utility Vehicles (SUV's) and although Council cannot regulate the type of vehicles, they can regulate where they park.

Vice Mayor Garcia said that the problem is that SUV's park on the corners at intersections. He proposed regulating parking so that only compact vehicles are allowed to park at the corners of business intersections.

City Attorney Seiden suggested that City Planner Ventura should consult with a Traffic Engineer.

The City Manager stated that there are uniform traffic codes and standards that were used by Miami Beach and signs must be installed in order to enforce the law.

Mayor Bain commented that only the parking spaces on the left side of the corner at the intersections on Westward Drive would be affected.

11D) Discussion Regarding Parking in Swale Areas

City Manager Borgmann said that significant input was received from the Police Department, Code Compliance and the end result was the memorandum from the City Attorney.

To answer the Mayor's question, Attorney Seiden stated that the swales are dedicated to the use of all the citizens of Miami Springs. He said that the City does not have the right to lease the property because it is not the fee simple owner. On a case-by-case basis there might be blocks that the City might own.

Tim Hawks of 549 Payne Drive stated that the friends of the next door neighbor park in front of his house.

City Attorney Seiden explained that it is a perpetual dedication that creates a benefit to every property owner that lives adjacent to the property.

To answer Mr. Hawks' question, City Manager Borgmann stated that the Code says that the concrete buttons are regulated by the Chief of Police. The pyramid blocks are not allowed because they are a safety issue.

Attorney Seiden said that small, round flat top concrete parking or traffic bumpers may be utilized so long as the buttons do not obstruct access to nor use of the City swale area.

Councilman Youngs said the standard language in plat dedications is that the land is dedicated to the public at large.

Councilman Dotson stated that he has the same problem as Mr. Hawks and if anyone asks permission to park in front of his house, he would say yes because he realizes that the average number of cars per family is three. He would like to have the right to grant permission for parking and not be excluded from getting into his own driveway.

Mr. Hawks stated that he used to have nice grass and now the swale looks like a driveway for the neighbors.

Attorney Seiden said that other cities utilize resident decals but they would not win in court if it were challenged.

Councilman Youngs stated that the swale dedication has been in place since the land was platted.

Discussion ensued regarding maintenance of the swales.

Attorney Seiden suggested that the ordinance could be amended to say that if a homeowner is prevented from access to the swale area then he has the right to call the Police Department to have the vehicle removed. He said that the question should be directed to the Chief of Police.

Councilman Best said that the City Attorney's main objection is that the City would be subject to legal attack.

City Attorney Seiden stated that the City could be attacked for enacting a provision that is contrary to law by giving a special right to property that the City does not own.

Councilman Youngs asked to table the item. He does not know if there is a legal answer that would allow exclusive rights to land that is dedicated to the public.

Mr. Hawks emphasized that he would like a solution so that any resident can tell someone to move a car from in front of their house.

City Manager Borgmann said that the burden of maintaining the swale is on the homeowner and one of the rights is to have access to the property to do this. The language could read that a police officer could respond to determine the owner of the vehicle and have it removed if it is obstructing the ability to maintain the swale.

Chief of Police H. Randall Dilling stated that he has his own ideas as a property owner in the City and the Code of Ordinances puts the responsibility on the property owner to maintain the swale, yet it is public property, which is a conflict. He explained that the Police Department can only regulate cars that are parked in a non-parallel position, blocking the sidewalk or facing the opposite direction.

Mayor Bain said that “No Parking” signs are in the swale on the north side of the High School and he received a citation. He suggested installing signs when they are requested by residents.

Chief Dilling asked if the ordinance could go one step further to say that a resident has preference for use of the swale area since they are required to maintain it.

The City Attorney answered affirmatively, as long as the City is prepared to pay legal fees when it is challenged.

Vice Mayor Garcia moved to extend the meeting for 15 minutes until 11:15 p.m. and Councilman Best seconded the motion which carried unanimously on voice call vote.

Attorney Seiden stated that other cities have parking decals.

City Manager Borgmann explained that the decal system allows people with a residential parking permit to park at metered spaces. In some cases, spaces are rented out to valet companies so that clients of the restaurants and hotels can park in the area, which is a way to control parking.

Councilman Youngs offered to look into this situation since he has a lot of experience with plats and wording regarding use of the swale areas, which are usually dedicated as public land.

Mayor Bain suggested tabling the item until Councilman Youngs further researches the matter.

12. Reports & Recommendations:

12A) City Attorney

No report.

12B) City Manager

Miami-Dade Water and Sewer

The City Manager reported that he met with personnel from Miami-Dade Water and Sewer again today.

City Manager Borgmann said that the technical crew will be working in the City to conduct inspections and possibly change some meters. The City promised to give them additional information regarding the number and size of meters throughout the City. The meeting was productive, which is an indication that the process is moving forward. The County said that there is enough information upon which they can make some decisions.

Vacation

City Manager Borgmann announced that he will be out of town next week on Thursday, October 6 through Sunday October 8, 2006. He will be back for the October 9, 2006 Regular Meeting.

12C) City Council

Education Advisory Board

Councilman Youngs was sorry for having missed the last couple of Education Advisory Board meetings. He said there are important education issues forthcoming and State School “WWW” is in Region 3 and the construction will be under the direction of John Neblett. It does not mean that the boundary zonings will be exclusive to Miami Springs’ feeder pattern. He has not been re-appointed to the Attendance Boundary Committee and the schedule has not been set. If he is not re-appointed, he will still attend the boundary meetings and report back to Council.

Ludlam Bike Path Lighting

Vice Mayor Garcia reported that he met with the City Manager to discuss the status of the Ludlam Bike Path lighting. The project is moving along and the City Manager will follow up with Florida Power and Light.

Ortiz Family

Councilman Dotson said that he had not had a chance to talk about the Ortiz family who planted trees on the sixth hole at the Golf Course in remembrance of their son who died very young. He thought that it was a great gesture and since some of the holes have names, he thought that the sixth hole could perhaps be changed to a memorial hole.

City Manager Borgmann said that the Ortiz family has indicated their desire to continue planting trees every year on the anniversary of their son’s death.

Stadnik Way

Councilman Dotson asked if there is news regarding the naming of the first two blocks of Curtiss Parkway after John Stadnik. The City Manager stated that the County is moving forward with the street dedication for Alex Bromir, which will be held in November. He will follow up with County Commissioner Rebeca Sosa.

Debate

Councilman Dotson stated that it is very important for Council to debate, discuss and take time to be sure that every agenda item is covered as thoroughly as possible. In doing so, there could be moments of trivia or wasted time, but it is the only chance that Council has to talk business with each other and he wanted to endorse that concept.

Councilman Dotson moved to extend the meeting for 15 minutes until 11:30 p.m. and Councilman Youngs seconded the motion which carried unanimously on voice call vote.

Dick Bergen

Councilman Best said that Dick Bergen, who is a friend to many, ~~had been is~~ extremely ill ~~and he has now passed away, but that he is not aware of the arrangements for the services.~~ and asked everyone to keep him in their prayers.

Legislative Council

Councilman Best reported that the first Legislative Council in Orlando went well. He was appointed to the Home Rule Charter Committee. The next meeting will be held on October 20 and the final meeting will be in November.

Pelican Playhouse

Councilman Best announced that the Pelican Playhouse will open with the “Mid Summer Nights Dream.” He complimented Ralph Wakefield for producing a wonderful show with professional actors. The shows are scheduled for October 12, 13, 14, 15, and October 20, 21, 22, 2006.

FEC Canal

Councilman Best reported that the clean-up of the FEC Canal is progressing well and the project is almost finished.

“WWW” School

Mayor Bain referred to his meeting with Regional Center 3 Superintendent Mr. Núñez and Administrative Director Mr. Kalinsky when he expressed his concern that the “WWW” should be in Region 3 District and that the green area at Stafford Park should be preserved.

City Manager Borgmann reminded Council of the invitation to meet the Principal at the High School for a breakfast on Friday morning September 29, 2006.

Golf Course

Mayor Bain stated that he would like a map or plaque hung at the Golf Course showing all the dedications at each hole.

Debate

Mayor Bain said that the debate in Council meetings is honest, straightforward and it is a pleasure to leave with a handshake. He felt that Council is a good team that works for the good of the community.

13. Adjourn.

There being no further business to be discussed the meeting was adjourned at 11:21 pm.

Billy Bain
Mayor

ATTEST:

Magalí Valls, CMC
City Clerk

Approved as amended during meeting of: 10/9/2006
(Page 33 – Councilman Best reported that Dick Bergen is extremely ill)

Transcription assistance provided by S. Hitaffer

Words ~~stricken through~~ have been deleted. Underscored words represent changes. All other words remain unchanged.