



## ***City of Miami Springs, Florida***

The Miami Springs City Council held a **SPECIAL MEETING** in the Council Chambers at City Hall on Thursday, June 7, 2012, at 4:00 p.m.

### **1. Call to Order/Roll Call**

The meeting was called to order at 4:12 p.m.

The following were present:

- Mayor Xavier M. Garcia
- Vice Mayor George V. Lob
- Councilwoman Jennifer Ator
- Councilman Bob Best

Also Present:

- City Manager Ronald K. Gorland
- Asst. City Mgr./Finance Director William Alonso
- City Attorney Jan K. Seiden
- Grant Writer/Public Information Specialist Carol Foster
- City Clerk Magali Valls
- Deputy City Clerk Suzanne S. Hitaffer

**2. Invocation:** Mayor Garcia offered the invocation and the audience participated in the Pledge of Allegiance.

**3. Resolution No. 2012-3548 – A Resolution of the City Council of the City of Miami Springs Acknowledging and Approving the Recitals contained Therein; Authorizing and Approving the Closing of the Curtiss Mansion Historic Tax Credit Transaction Between the City and NGM Insurance Company; Authorizing and Approving the Specific Documents for the Closing of the Transaction; Authorizing and Approving the Execution of any Additional Closing Documentation; Authorizing City Manager Ronald K. Gorland, and Assistant City Manager/Finance Director William A. Alonso to Execute the Required Closing Documentation; Authorizing the City Manager and Assistant City Manager/Finance Director to Designate Alternate Signatories; Effective Date**

City Manager Ronald K. Gorland stated that there were some outstanding concerns involving property tax issues and how the Property Appraiser will view the group of new companies that were formed to create the entities necessary for the historic tax credit transaction; it could possibly be two years before the County responds. As a result, the amount of tax is unknown; the activities could be taxed, which would be less, or the entire entity could be taxed, and this should not be the case because other communities pay no taxes for museum type entities that have fund raising activities. There is a possibility that the City could be subjected to taxes in an amount up to \$80,000 per year.

City Manager Gorland explained that the Internal Revenue Service (IRS) actively promotes these types of activities and there could be issues with a federal audit. The worst case is that the tax credit could be "unwound" at some point in the future. He advised Council that these were the two important issues to consider before adopting the resolution.

City Attorney Jan K. Seiden asked the City Manager to state what he received from Attorney Chaves today and Mr. Gorland explained that Mr. Chaves gave his approval and said to proceed with the transaction.

City Attorney Seiden added that the approval from Mr. Chaves was based on his review of all the documentation in the transaction and not his personal review. He clarified that he had not reviewed the documentation except for one document that is a guarantee from the City and he was involved in some discussions in regard to memos and leases.

Councilwoman Ator commented that she understands the issues with the Tax Appraiser and she knows that a lot of time and energy was spent to make the transaction cost neutral to the City. She asked if any of the provisions related to the division of revenues had been taken into account as it relates to the potential tax liability.

City Manager Gorland responded that Curtiss Mansion, Inc. (CMI) assumes the responsibility for the potential property tax liability as it relates to their activities. If the tax liability is based on the collection of companies there might be some sharing of the liability to consider.

City Attorney Jan K. Seiden received a telephone call from Attorney Erik Wishneff who advised him that there were a few issues raised by the investor's attorney in regard to the survey and title insurance requirements. He contacted Manuel Pérez-Vichot who agreed to help with the survey so that it will include additional items that were requested.

City Attorney Seiden stated that he could not speak to anything being handled by a third party or give assurance that they will be done to the satisfaction of the investor. He wants Council to be aware of this because ultimately they will decide whether to proceed or not based upon his comments and what the City Manager had disclosed.

City Attorney Seiden explained that the investor's attorney requires title insurance coverage that is called affirmative coverage that is not permitted in the State of Florida. Title companies in Florida provide what is called a Florida endorsement or Form 9, and this issue was thought to be resolved, but it was raised again today and the attorney who raised the issue may have confused this transaction with another transaction.

City Attorney Seiden spoke with Chicago Title who advised him that they cannot provide affirmative coverage and they are convinced that the comprehensive coverage is virtually identical, but he cannot confirm that this will be 100% okay with the investor.

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

City Attorney Seiden referred to a number of recitals in the "whereas" clauses that describe what had transpired to this point. He noted that Section 2 provides for the City Council authorization of the transaction to go forward and Section 3 provides that Council authorizes and approves the execution of the specific closing documents that are referenced in the bullet points.

Section 4 approves the execution of any and all other documentation that might not be listed in the resolution, according to Attorney Seiden, and Section 5 authorizes the City Manager and Assistant City Manager/Finance Director to execute all documentation required for the closing of the transaction.

City Attorney Seiden advised Council that they could refuse to execute the resolution, they could approve the resolution without any conditions or they could approve it subject to certain conditions based on any additional findings before the documents are executed the next day. If there are no further clearances or clarifications on the outstanding issues, he would like Council to acknowledge whether or not the transaction should go forward.

In response to Councilwoman Ator's concern about the title insurance coverage, City Attorney Seiden clarified that the investor's attorney raised the issue and at one point he thought the issue was resolved, but he cannot tell Council that they will 100% accept the comprehensive endorsement as opposed to the affirmative coverage.

City Manager Gorland explained that the only downside is that there is an event scheduled at the Curtiss Mansion on Saturday and if the flows are not executed before the event is held, it could affect the possibility for the historic tax credit transaction. The facility cannot be placed in service and the only potential is not holding that event on Saturday.

City Attorney Seiden said that it was agreed that the title insurance issues could be resolved post closing and if the City cannot deliver what is required then it becomes an issue. The question that was raised is whether or not the title agent will agree that the uses that are insured by the comprehensive endorsement include the proposed uses to which the property will be put once the transaction is closed and the Certificate of Occupancy (CO) is issued.

City Attorney Seiden added that the regulators have said that the endorsement cannot be modified and they have to accept that; they knew about this issue with the coverage before and it could be a confusion, but he cannot take responsibility for it and the burden is on Council to make a decision one way or another.

The resolution contains reference to the CMI Agreement that is next on the agenda and even though Council is approving the resolution, it is not in effect an approval of the agreement, according to Attorney Seiden.

Vice Mayor Lob asked if the City is in any way financially responsible if the transaction cannot go through because of the title insurance,

City Attorney Seiden replied that the City had been financially responsible all along and the amount would not be more than what had been spent to this point.

Councilwoman Ator said that if the transaction is closed and the insurance is not acceptable, she would like to know the downside.

City Manager Gorland commented that the downside is that the transaction might have to start over with an another investor; the problem is that an event on Saturday would be held that would be considered placing the facility in service and that could prevent the transaction from ever happening in the future.

City Attorney Seiden added that there were two or three items that were left off the survey and the surveyor should be able to handle it, but it is still an open issue.

To answer Councilman Best's question, City Attorney Seiden explained that it is a standard policy in the State of Florida that title companies provide an endorsement instead of affirmative coverage, according to Florida State law.

Attorney Seiden reiterated that Council could pass the resolution conditionally or without conditions and the only condition is related to the answer regarding the title insurance that should be received tomorrow. He explained that it is somewhat of a risk for Council to consider.

Councilwoman Ator explained the only risk would be if the event is held on Saturday, the Curtiss Mansion would not be eligible for a tax credit in the future and the City would be liable for the expenses anyway.

City Attorney Seiden said that Chicago Title is a large company, the investors should accept the coverage they are offering and it is very possible that one individual is confusing this transaction with another.

Councilman Best expressed his confidence in Chicago Title based on his experience in the aviation industry and Attorney Seiden agreed there is no doubt about their credibility.

**Vice Mayor Lob moved to adopt the resolution pending anything extraordinary coming up in the next day.**

City Attorney Seiden asked for clarification if Council would be passing the resolution unless something is heard tomorrow that negates their approval. He asked Vice Mayor Lob to define "extraordinary".

Vice Mayor Lob was of the opinion that the City Attorney would know what is good for the City or not.

City Attorney Seiden explained that Council would be approving the resolution as it stands, and if he or the Administration were to find out something that is beyond the scope of what they know now that would be negative to the City, they would not allow the documents to be signed and sent. The approval would be based on what has been conveyed to Council.

**Vice Mayor Lob moved to adopt the resolution as stated. Councilman Best seconded the motion, which carried 4-0 on roll call vote.**

#### **4. Approval of Contract – Lease Curtiss Mansion Operations**

City Attorney Jan K. Seiden stated that there were two versions of the agreement with CMI and Version No. 2 contains language that is not included in Version No. 1. The language under "Demised Premises" describes what the current property consists of in regard to the Lease and there will be an upcoming issue when Council will be asked to include some additional property in the demised premises that does not exist at the time the Lease is signed.

City Attorney Seiden clarified that he did not want to include the following language:

*"The parties further acknowledge that additional adjacent vacant land may be approved by the City for inclusion within the demised premises that is beyond the Tract A Boundaries."*

Attorney Seiden would recommend that Council should not agree to this provision because it does not contemplate the current state of affairs.

Councilman Best asked what property the provision might include and City Attorney Seiden clarified that there are certain grounds to the west of the Tract A property that is Golf Course property between the bike path and the boundary of the Curtiss Mansion property. The property is not used for any purpose and CMI has approached the City Administration to request utilization of the property in order to provide a better parking lot configuration and this request must come to Council for their authorization.

There is a provision on page 10 that refers to the Sale of Naming Rights that was drafted based upon the requirements that were discussed with the City Manager and Assistant City Manager/Finance Director, according to Attorney Seiden. A different provision for the Sale of Naming Rights was proposed by CMI that is contained in Version No. 2 of the Agreement. He refused to amend an indemnification provision that states:

*"In case the City shall, without fault on its part, be made a party to any litigation commenced against CMI, CMI shall protect and hold the City harmless and shall pay all costs, judgments, expenses and reasonable attorney's fees . . ."*

City Attorney Seiden explained that CMI had requested deleting "*reasonable attorney's fees*", he refused to take it out and he is leaving it at Council's discretion. There is also a general attorney's fee provision that is imposed on page 14 that CMI would like to remove and he refused based on his own judgment, but any of the provisions are subject to Council's review and approval.

City Attorney Seiden noted that there is an insurance provision that provides for \$5MM per occurrence and that \$1MM basic coverage be provided for liability with a \$4MM umbrella. This is based on the City Manager's recommendation to be consistent with the Golf Course.

**Councilwoman Ator moved to approve CMI Lease No. 1. Vice Mayor Lob seconded the motion.**

To answer Mayor Garcia's question, CMI President Jo Ellen Morgan Phillips stated that the area that they are requesting to utilize for parking is a pie-shaped area off to the right hand side of the old entrance gates.

City Attorney Seiden interjected to explain that there is no objection to CMI acquiring the property; it is not currently part of the agreement and after Council approves the request, the agreement can be amended to include it.

Mayor Garcia asked for an explanation of the naming rights.

Ms. Morgan Phillips stated that the naming rights will begin at \$500.00 for trees and benches, etc. and it would be time consuming to bring each naming right to the City Council. CMI asked for a cut off at \$100,000 and Council could decide to reduce the amount.

Mayor Garcia stated that his concern was related to the naming rights for a room or the building itself.

City Attorney Seiden said that it was agreed that CMI would receive the financial benefit for the naming rights and in his opinion it is only respectful that Council should be consulted.

Ms. Morgan Phillips assured Council that CMI would be very respectful, but they do not want to come to Council for naming trees or items of that nature.

City Attorney Seiden suggested that the Lease could be amended to provide for Council approval of naming rights for anything over a certain amount.

Mayor Garcia explained that his concern is that future CMI representatives might decide to sell the naming rights for a room for \$500.00 and he would like to include a provision that the City Council must approve the naming rights for all rooms.

City Attorney Seiden requested that Council approve Version No. 1 of the Lease Agreement with the understanding that the agreement would be amended in regard to the naming rights provision.

City Attorney Seiden reiterated that he would make it a condition of approval that the City Management and CMI meet to review the naming rights provision to come up with an amendment that is more in line with what the Mayor discussed.

**Vice Mayor Lob moved to amend the motion as stated by the City Attorney (to approve Version No. 1 of the Lease Agreement with the condition that the naming rights provision would be amended). Councilwoman Best seconded the amended motion.**

Councilman Best asked about the demised property issue and the land that might be infringed upon.


City Attorney Seiden responded that the topic is not up for discussion at this time and he respectfully requests that it not be discussed until it is presented as an agenda item.

**The motion was carried 4-0 on roll call vote.**

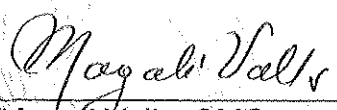
City Attorney Seiden commented that approximately one year ago Council approved a lease with Experience Aviation (EA) and since it is inconsistent with the transaction framework, the lease will be terminated so that EA can enter into a lease with CMI. He will prepare a letter for EA to sign that will terminate the lease.

**5. Adjourn**

There being no further business to be discussed the meeting was adjourned at 4:46 p.m.

  
Zavier M. Garcia  
Mayor

**ATTEST:**

  
Magali Valls, CMC  
City Clerk



Approved as amended during meeting of: 6-25-2012.  
Page 7, fourth paragraph from the bottom.

Transcription assistance provided by Suzanne S. Hitaffer.

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