

SUMMARY MINUTES

Regular City Commission Meeting
Thursday, February 10, 2005, 7:30 p.m.
City of Sunny Isles Beach, Florida

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| <p>ATTENTION ALL LOBBYISTS: CITY LAW REQUIRES YOUR REGISTRATION PRIOR TO ENGAGING IN LOBBYING ACTIVITIES BEFORE CITY STAFF, BOARDS, COMMITTEES OR THE CITY COMMISSION. PLEASE CONTACT THE CITY CLERK FOR FORMS AND ADDITIONAL INFORMATION.</p> |
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AGENDA

1. CALL TO ORDER/ROLL CALL OF MEMBERS

The meeting was called to order by Mayor Edelcup at 7:30 p.m., with the following officials present:

Mayor Norman S. Edelcup
Vice Mayor Lewis J. Thaler
Commissioner Roslyn Brezin
Commissioner Gerry Goodman
Commissioner Danny Iglesias

City Manager Christopher J. Russo
City Attorney Lynn Dannheisser
City Clerk Jane A. Hines

Mayor Edelcup noted that this is an historic occasion for the City as we are meeting in our new Government Center and that the next City Commission meeting on March 10, 2005 will be held in our new David Samson Commission Chambers. Mayor Edelcup said that we will be having our Grand Opening in this facility [Friday, February 25, 2005 at 2:00 p.m.] which eventually will be Miami-Dade County's Public Library branch and that the Library will be opened in the Spring and that the Post Office will open shortly but that there is a portable unit here for the time being.

2. PLEDGE OF ALLEGIANCE/INVOCATION

Action: Gloria Taft led the Pledge of Allegiance to the flag and Richard C. Schulman gave an invocation.

Mayor Edelcup gave opening remarks of decorum.

3. APPROVAL OF MINUTES

3A. Regular City Commission Meeting – January 13, 2005.

Action: Commissioner Iglesias moved and Vice Mayor Thaler seconded a **motion to approve the above-mentioned Summary Minutes. The motion was approved by a voice vote of 5-0 in favor.**

4. ORDER OF BUSINESS (Additions/Deletions/Amendments)

- 4A. Request to Hear Items: Hand outs included Amendment to Item 9A, Page 3 of the Ordinance; Deferral of Item 10D; and Two Add-On Items 5A and 10E.

Action: Mayor Edelcup noted the above changes.

Vice Mayor Thaler moved and Commissioner Iglesias seconded **a motion to approve the above-mentioned changes to the agenda. The motion was approved by a voice vote of 5-0 in favor.**

5. SPECIAL PRESENTATIONS

5A. Add-On

Presentation of a Plaque to Mayor Norman S. Edelcup by Sunny Isles Beach Citizens Coalition President Henry Kay and members of the Board.

Action: Henry Kay, President of the Sunny Isles Beach Citizens Coalition, and members of the Board [Gloria and Arnold Taft, and Cassey Gabor] presented Mayor Edelcup with a plaque expressing their appreciation to have someone that they can trust to do his best for the well being and quality of life of the citizens of Sunny Isles Beach. Mayor Edelcup accepted the plaque on behalf of the City Commission and thanked Mr. Kay and members of the Sunny Isles Beach Citizens Coalition.

6. ZONING: ZONING HEARINGS ARE QUASI-JUDICIAL PUBLIC HEARINGS.

- 6A. Request of **Fortune Ocean LLLP, Owner of the Property Located at 17121 Collins Avenue, Sunny Isles Beach, Florida**, for the Following:
[Hearing #Z2004-09]

1. Pursuant to Section 265-23 of the City of Sunny Isles Beach Land Development Regulations, the applicant is requesting to transfer 129,216 square feet of development rights.
2. Pursuant to Section 265-18 of the City of Sunny Isles Beach Land Development Regulations, the applicant is requesting a site plan approval for a 49-story, 256-unit condominium.

Protests 0 Waivers 0 Ex-Parte 0

Action: City Clerk Hines read a disclaimer for the Zoning hearing, and read the applicant’s name, hearing number, location and then administered the oath to the witness for the Zoning hearing.

Public Speakers: Judith Burke, Esq.; Carlos Ott, Architect; Mary Ann Eicke; Alexander Fusco; Roslyn Fabian; Jose of Arc-Tech Associates; Henry Kay; Gloria Taft

Judith Burke Esq., representing Fortune Ocean LLLP, reported and introduced her team. She said this project, Jade Beach II, is adjacent to and north of Fortune’s first project, which will break ground in about two weeks, and that this design will compliment the design of Jade Beach I. Ms. Burke said that this project meets all the regulations of the City’s Land

Development Regulations and that no variances are being requested. She noted that the project utilizes all of the bonuses available under the City’s regulations including the dedication of an oceanfront park and the provision of a beach access easement which is 20-feet in width rather than the 15-feet required. She introduced Architect Carlos Ott who reported and presented renderings of the project.

Planning and Zoning Administrator Jorge Vera reported that staff has no objections to this development, they meet all the requirements, and noted that on parking in the memo it says 9 on the handicapped and it should be 8, and also all the comments that are relating to traffic and landscaping have been addressed by the departments, and that Calvin Giordano has reviewed it and that they meet all the requirements.

Commissioner Goodman asked about tandem parking and Ms. Burke said that they are giving out a single space for the smaller units but for a larger unit they will also get a tandem space for only their two cars, and there are still enough excess spaces for the valet guest parking. Vice Mayor Thaler asked to make sure that in the larger units that the two spaces would be for that unit only and that they can’t sell them and Ms. Burke said she believes that is already in the documents but would double check it. Vice Mayor Thaler noted that in one part of the document there are 8 handicapped spaces and 9 in another part and said he feels that there should be more handicapped parking spaces, and Ms. Burke said she would definitely look into it and add a few more. Commissioner Iglesias asked to keep the pours in non peak hours, and Mayor Edelcup asked that there be no early starts. Mayor Edelcup asked Ms. Burke to consider some sort of art either on this private place or donation of art to one of the City’s parks in keeping with the concept of beautifying the City. Ms. Burke said they will look into it, and noted that the art for this building is that incredible waterfall in the front. Mayor Edelcup thanked Ms. Burke and the developers for putting up a beautiful construction fence, and hopefully it will be emulated by other developers. Commissioner Iglesias noted that by the time they finish their building, the tree ordinance will be in place and maybe the City will take some of their unwanted trees.

Commissioner Goodman moved and Vice Mayor Thaler seconded **a motion for approval, subject to staff conditions. Resolution No. 05-Z-89 was approved by a roll call vote of 5-0 in favor.**

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| Vote: | Commissioner Brezin | <u>yes</u> |
| | Commissioner Goodman | <u>yes</u> |
| | Commissioner Iglesias | <u>yes</u> |
| | Vice Mayor Thaler | <u>yes</u> |
| | Mayor Edelcup | <u>yes</u> |

7. ORDINANCES FOR FIRST READING

- 7A.** An Ordinance of the City Commission of the City of Sunny Isles Beach, Florida, Amending Section 265-46 of the Land Development Regulations Relating to Parking Regulations to **Prohibit Parking of Vehicles on Front Lawns in Residential Districts and to Prohibit Parking of Vehicles on Publicly Maintained Lawns and Landscaped Areas**; Providing for an Exception; Providing for Enforcement; Providing for Penalties; Providing for Severability; Providing for Inclusion in the Code; Providing for Repealer; and Providing for

an Effective Date.

(Continued First Reading from 11/18/04)

Action: City Clerk Hines read the title and Planning and Zoning Administrator Jorge Vera reported and noted that this Ordinance included the changes made from the last meeting [January 13, 2005 Commission Workshop].

Commissioner Iglesias said that he would like to put in this Ordinance the idea of promoting green space and one of the policies they adopted at DOT is to promote green space by supporting tree preservation where if someone wants the trees that are being removed, they can take them in an effort to promote green space. He asked that the Ordinance reads: “The City shall support tree preservation by encouraging the transplant of trees whenever possible from public to public, public to private, private to public, private to private, whenever feasible and cost effective.”, and suggested that it could be placed in this ordinance for second reading. Planning and Zoning Administrator Vera asked where that should be placed in this ordinance because the promotion of green space is within private property, so if you get a developer that is going to give the City trees it should go on public property not private. Commissioner Iglesias said the reason he brought it up is because of the area of green space in front of a lot of homes that is really City Property, swale area, but still public, but he doesn’t mind seeing this in a separate ordinance. Mayor Edelcup said he would like to see it in a separate ordinance. City Attorney Dannheisser asked for a clarification, to limit to this one or make it a policy in general, and Commissioner Iglesias said he would give the wording to the City Attorney. City Attorney Dannheisser said that if any tree is removed, there is an opportunity first to transplant it, and Commissioner Iglesias said yes, for citywide to either save or replace trees. Commissioner Brezin suggested consulting with Landscape Architect Bill O’Leary first and Commissioner Iglesias said that the ordinance would say when feasible.

Public Speakers: Merry Wynne

Merry Wynne said she was concerned about a drainage problem with a hard surface and Building Official/Administrator Clayton Parker reported.

Commissioner Goodman moved and Commissioner Iglesias seconded **a motion to approve the proposal on first reading. The motion was approved by a roll call vote of 5-0 in favor. Second reading, public hearing will be held on Thursday, March 10, 2005, at 7:30 p.m.**

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| Vote: | Commissioner Brezin | <u>yes</u> |
| | Commissioner Goodman | <u>yes</u> |
| | Commissioner Iglesias | <u>yes</u> |
| | Vice Mayor Thaler | <u>yes</u> |
| | Mayor Edelcup | <u>yes</u> |

- 7B.** An Ordinance of the City Commission of the City of Sunny Isles Beach, Florida, Amending Section 33-3 (E) (4) of the Ethics Code of the City of Sunny Isles Beach to Require **Disclosure of Any Gift Having a Value in Excess of \$100.00**; Providing for Severability;

Providing for Repealer; Providing for Inclusion in the Code; Providing for an Effective Date.

Action: City Clerk Hines read the title and City Attorney Dannheisser reported. Commissioner Iglesias suggested leaving it at \$25.00.

Public Speakers: none

Commissioner Goodman moved and Vice Mayor Thaler seconded **a motion to approve the proposal on first reading. The motion was approved by a roll call vote of 4-1 (Commission Iglesias against) in favor. Second reading, public hearing will be held on Thursday, March 10, 2005, at 7:30 p.m.**

Vote:

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| Commissioner Brezin | <u>yes</u> |
| Commissioner Goodman | <u>yes</u> |
| Commissioner Iglesias | <u>no</u> |
| Vice Mayor Thaler | <u>yes</u> |
| Mayor Edelpcup | <u>yes</u> |

- 7C. An Ordinance of the City Commission of the City of Sunny Isles Beach, Florida, Implementing the Provisions of Section 286.0115, Florida Statutes, to **Establish a Procedure Governing Ex Parte Communications with Local Public Officials Concerning Quasi-Judicial Matters**; Providing Adoption of Quasi-Judicial Hearing Procedures; Providing for Severability; Providing for Repealer; Providing for an Effective Date.

Action: [City Clerk's Note: A City Commission Workshop on Ex Parte Communications took place tonight at 6:30 p.m.] City Clerk Hines read the title and City Attorney Dannheisser reported. Mayor Edelpcup explained that this Ordinance is strictly for Zoning matters that come before the Commission when they act in a Quasi-Judicial hearing just like the one we finished on Item 6A. He said the Commission is prohibited to speak to anyone regarding these matters until there is a public hearing. Commissioner Iglesias commended Mayor Edelpcup for bringing this ordinance up and agreed with Vice Mayor Thaler that it has curbed the lobbying and in most cases almost stopped it, and said he does not feel it should be changed. City Attorney Dannheisser clarified that Commissioner Iglesias said to not adopt this Ordinance and leave it as is. Commissioner Goodman said we need a little protection and this ordinance will protect the Commission by disclosure.

Mayor Edelpcup said a year ago he recommended that we make the law tougher because the Commission was being bombarded by many developers and other people that would come in and lobby them. He said that the ordinance sent the lobbyists a message by adopting this new ordinance that prohibited in its entirety and gave them no out, which was very successful. He said when the City Attorney brought this ordinance back to our attention that inadvertently somebody could start talking to them or send them a letter and midway through the letter realize that the letter is really a lobbying attempt on a zoning matter and what do they do at that stage, and at that point the ordinance that was passed they had already committed the crime and have no recourse, and by coming back with this provision so that if there is a commissioner involved in that situation, that commissioner is protected. He said by making this change and recognizing that the Commission is not changing its philosophical approach

to zoning matters and that our doors are still closed on zoning matters.

Public Speakers: Henry Kay

City Attorney Dannheisser reiterated something from the Workshop that she mentioned to the Commission that it is an issue as to whether or not this Ordinance will ultimately be upheld by the courts, so while we are going to put this on the record as a shield, she reminded the Commission that lobbying on a zoning matter is inherently improper and anathema to justice as the Jennings case says and we should decline to do this and either way from the Commission’s comments, she said she is going to take it as an instruction to staff when developers say they are going to lobby you to tell them it is not permitted in this City and they must deal directly with staff and then at the public hearing, and the Commission said that is correct. Mayor Edelcup said that anyone in the public that wants to speak on a zoning matter they can’t speak to the Commission but they are entitled to speak with staff because they are not setting as judges as the Commission is.

Commissioner Goodman moved and Vice Mayor Thaler seconded **a motion to approve the proposal on first reading. The motion was approved by a roll call vote of 4-1 (Commissioner Iglesias against) in favor. Second reading, public hearing will be held on Thursday, March 10, 2005, at 7:30 p.m.**

Vote: Commissioner Brezin yes
 Commissioner Goodman yes
 Commissioner Iglesias no
 Vice Mayor Thaler yes
 Mayor Edelcup yes

8. PUBLIC HEARINGS (Other than Ordinances for Second Reading)

None

9. ORDINANCES FOR SECOND READING (*Public Hearings*)

- 9A.** An Ordinance of the City Commission of the City of Sunny Isles Beach, Florida, Amending Chapter 104 Commonly Known as "**The Art in Public Places Ordinance**" to Require the Placement of Artwork on Private Property as Part of Site Plan Approval; Providing for Purpose; Providing for Definitions; Providing for Applicability; Providing for Exceptions; Providing for Repealer, Providing for Severability; Providing for an Effective Date.

(First Reading 1/13/05)

Action: City Clerk Hines read the title, and Deputy City Attorney Hans Ottinot reported noting that the Ordinance was amended on page 3, Section 104-4.4(A) struck out “up to, but not limited to” and added “not exceeding”. Mayor Edelcup said that the Art in Public Places Ordinance on the books is a voluntary submission by a developer and that hasn’t produced much in the way of voluntary art coming to the City and that is why he suggested that this ordinance be put together. Deputy City Attorney Ottinot noted that Stanley Price and Clifford Schulman spoke to him and the City Attorney this morning and raised some issues but they

haven't in fact provided legal or case law with respect to tell us that this ordinance is not legally sufficient.

Public Speakers: Stanley Price, Esq.; Clifford Schulman, Esq.; Cassey Gabor

Stanley Price, Esq., stated that in his opinion this ordinance is facially unconstitutional because of many reasons: the title is defective because it says Art in Public Places when in fact the entire ordinance is Art in Private Places; a whereas clause generally sets the basis for the ordinance and it says as these opportunities are diminished, what is diminished, the fact that buildings are going where art can go?; the definition section, architectural enhancement, you define it at great length and then don't use the term anywhere in the ordinance; applicability, all multifamily developments and all commercial developments, it should be all new developments; and that the Commission determines that good art is worth \$500,000.00 or 1% of the cost of construction. Commissioner Iglesias said that the intent is to make the City more beautiful and is concerned what Mr. Price is saying that this ordinance is a violation of the First Amendment he would favor getting an opinion and an expert who deals with the First Amendment. Mr. Price suggested that it goes through Site Plan Review, the City has a gold mine here and that is the ad valorem tax base when these buildings are completed and the City should set aside a fund from the General Fund, the tax revenues, set aside 3% a year for art and let the City put art on City-owned property and you have no right to do it on private property. Deputy City Attorney Ottinot said he disagrees with Mr. Price because he had no case law decisions, when you research you research within your own jurisdiction to see if there is any precedent in respect to this ordinance and he looked around the State of Florida and did not find any other city that adopted a similar ordinance. He said he researched and found nine cities in California who adopted a similar ordinance requiring a developer to pay a fee or construct a work of art on his or her property, and that the City of Palm Desert adopted their ordinance in 1986 and has not been challenged.

Cliff Schulman, Esq., asked where the art was in the new Government Center and City Manager Russo said for the record the City has spent between 7% – 17% of the cost of this building on art and the art for this building is the entire Commission Chambers, design mosaic tiles, and fountain around it and to include that item on this building would have been exactly \$1 Million less in cost so you can either calculate the \$2.5 Million for the cost of the Commission Chambers out of the \$14.5 Million that this building cost or you can add back in what it would have cost to just been part of the building then you've got \$1 Million that we put towards it and when you do that math that is 7% being conservative of the cost of this building in art. Mr. Schulman said that you are making this City more and more expensive to build in every day, there is no other city in the state of Florida, that will require a developer not only to build all the infrastructure and all the other things that you want but then to give the City anywhere between \$.5 Million and \$2 Million for what you consider to be art. He said that the ordinance applies to anybody who wants to get a building permit, and that includes people who have already received site plan approval for their building, on the other hand the ordinance says that the art has to be approved as part of the Site Plan approval, and are making this ordinance retroactively applicable. He suggested on projects that have already received site plan approval don't have to have this ordinance applied to them at the time of the building permit. He cited a couple of cases for the City Attorney to review if this ordinance is deferred tonight, that you cannot exact from a developer something that is not reasonably related, has a rational nexus to what that developer's impact is upon your

community. Mr. Schulman suggested unless you can show a rational nexus a connection between impact and what you are asking a developer to give you or provide to the public, it is illegal and they have asked the City Attorney to look into that. He said he agrees with Mr. Price, that the City is discriminating against multi-family developments and commercial developers, and suggested this ordinance be deferred.

Mayor Edelcup said that we can create a limit, and create a little more fairness by not going retroactive back to any projects that have been previously approved. He said since we set a \$500,000.00 limit on art to be spent in a private place and it was open-ended as to what the contribution would be in lieu of that in a public place, still trying to encourage art to be spent locally at the private place he suggested capping the public place at \$750,000.00, in other words, it is a quarter of a million dollars more if you are going to give it to the City because we would rather see it spent on the project or in the alternative make them equal at \$500,000.00. Commissioner Iglesias agreed with making it equal, but he said he doesn't think that there will be a problem because the structures are works of art in themselves, but perhaps a smaller building that cannot fit in a total of \$500,000.00 that would put a nice water feature that may cost \$200,000.00 and then the difference of \$300,000.00 would go to the City for a combined total. Deputy City Attorney Ottinot noted on page 63 [in agenda package] item C, allows what was just suggested.

Mayor Edelcup said then that they have a consensus here that they agree to a \$500,000.00 cap for both places, and the difference will go to the City if they don't spend the \$500,000.00, and that they are also agreeing that this is not going to apply retroactively.

Commissioner Goodman moved and Commissioner Iglesias seconded **a motion to adopt the ordinance, as amended. Ordinance No. 2005-221 was adopted by a roll call vote of 5-0 in favor.**

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| Vote: | Commissioner Brezin | <u>yes</u> |
| | Commissioner Goodman | <u>yes</u> |
| | Commissioner Iglesias | <u>yes</u> |
| | Vice Mayor Thaler | <u>yes</u> |
| | Mayor Edelcup | <u>yes</u> |

Sitting in as the Local Planning Agency and the City Commission, to Consider an Ordinance Amending the Land Development Regulations (LDRs)

9B.1 A Resolution of the Local Planning Agency of the City of Sunny Isles Beach, Florida, Recommending to the City Commission of Sunny Isles Beach, the Ordinance Amending Section 265-46 **“Off-Street Parking, Loading and Driveway Standards”** of the Land Development Regulations, to Repeal Section 265-46A (2) (b) which Provided for a Parking “Buy-Down” Amending Section 265-46A(4) to Reduce Tandem Parking from 100% to 20%; Amending Section 265-46A(7) to Enlarge the Size of All Parking Spaces to No Less than Nine Feet; Providing for an Effective Date.

Action: City Clerk Hines read the title, and Mayor Edelcup reported.

Public Speakers: none

Vice Mayor Thaler moved and Commissioner Iglesias seconded the **motion. LPA Resolution No. 2005-27 was adopted by a voice vote of 5-0 in favor.**

9B.2 An Ordinance Of The City Commission Of The City Of Sunny Isles Beach, Florida, Amending Section 265-46 “**Off-Street Parking, Loading and Driveway Standards**” of the Land Development Regulations to Repeal Section 265-46A (2) (b) which Provided for a Parking “Buy-Down” Amending Section 265-46A(4) to Reduce Tandem Parking from 100% to 20%; Amending Section 265-46A(7) to Enlarge the Size of All Parking Spaces to No Less than Nine Feet; Providing for Inclusion in the Code; Providing for Severability; Providing For An Effective Date.

(First Reading 1/13/05)

Action: City Clerk Hines read the title, and City Attorney reported and noted that Commissioner Goodman is sponsoring this Ordinance.

Public Speakers: Alan Krischer, Esq.; Clifford Schulman, Esq.; Peter Weiner

Alan Krischer, Esq., with the Law Firm of Holland and Knight, representing TRG Sunny Isles Beach Ltd, which is an affiliate of the Related Group, and that they have applied several months ago with an application for site plan approval and have been working with staff related to one of the issues discussed in a previous matter and they wanted to clarify one aspect of the ordinance. He said the ordinance as it is presently drafted does not speak to applicant such as themselves that have been many thousands of dollars developing site plans that are based on existing standards, and their application will be coming up next month and they would like the ordinance to be clarified on the record that it would not apply to those folks that have already come in and applied for site plan approval. City Attorney Dannheisser said that it was the wish of the Commission that it apply to such a large project as this is probably one of our last really large projects with 822 units, that is why specifically she did not exempt that, but that it is a policy decision. Mr. Krischer said that would be a tremendous hardship that would work on an applicant that has relied on the rules set forth and have been working on for several months and to have to start over again with a new site plan would be a tremendous difficulty for the applicant. Mr. Krischer said the project is Trump Towers and City Attorney Dannheisser said it is slated for March 10, 2005.

Clifford Schulman, Esq., representing J. Milton and Associates, said they have no objection with the change from 100% to 20% of tandem parking, but is concerned about the change from 8½ feet to 9 feet on a parking space, as this will add bulk to the building. He said he is also concerned about the Buy-Down, and suggested not to eliminate the Buy-Down because it allows the developer to give the City money to build public parking, and suggested if the Commission is going to cut down on the Buy-Down then don't take it away altogether bring it down from 20% to 10%, but leave the 8½ because you will see larger parking pedestals then you would like because the developer is forced to do so. Commissioner Goodman said that we have at the present time probably 1,000 parking spaces in Sunny Isles Beach and we rely on Haulover Park, so if you give us money for public parking where are we going to put it? Peter Weiner, Dezer Properties, asked that this item be deferred and have a workshop, and Mayor Edelcup noted that at first reading he said that the developers have an opportunity to

meet between first and second readings of this ordinance if they so choose, so that this Ordinance wouldn't be delayed. Mayor Edelcup said that it really goes back to the design of the building, if we set the basic criteria and that is all we are trying to decide tonight, do we defer a problem in the future, or do we solve the problems up front and require architectural design to take place now because when we don't have public space to provide additional parking, we are trying to prevent people from scratching cars next to them, and the tandem parking situation does not work out later on when the building fills up it is not feasible in our view for the parking to have a tandem approach to it. Commissioner Iglesias said he agreed with Mayor Edelcup and he said he would like to see 9-foot width on businesses but on residential we can still get away from it, and the 20% tandem is feasible and moved that those already in the hopper that we don't penalize as far as the buy-downs, he said we will get bigger garages, but if it goes forward as it is, what is going to happen with the FAR, are we going to include it? Commissioner Brezin said we have a major problem here when it comes to parking, we must accommodate the people coming into your buildings and it is your responsibility to provide sufficient parking for your residents, so she agrees with this ordinance. City Attorney Dannheisser said that the FAR is a good point but we can always bring this back as an amendment to this Ordinance for the Commission's consideration. Commissioner Iglesias said a parking structure takes about 8½ feet and if we give them FAR up to the first 20, it may or may not be needed, but based on the requirements they may have to go higher and it goes into the FAR it is taking away from the building, so we won't count the FAR towards it. Mayor Edelcup suggested that we try to move this question and then instruct staff to work with Commissioner Iglesias to present an amendment at the next meeting.

Mr. Schulman asked about applications in progress, and Commissioner Iglesias said it would not count as to what's in the works. Mayor Edelcup said we need to clarify what we mean by what's in the works. City Attorney Dannheisser said that if it is in Shelley Eichner's report then this ordinance will or will not apply, and Shelley Eichner said that every other week she prepares the *Project Tracking Chart* which is a record of all of the applications that have been filed with the City and suggested that everything that is on that list as of today would be considered with the City, and that was agreed to by the Commission.

Commissioner Brezin moved and Commissioner Goodman seconded **a motion to adopt the ordinance, as amended. Ordinance No. 2005-222 was adopted by a roll call vote of 5-0 in favor.**

Vote: Commissioner Brezin yes
 Commissioner Goodman yes
 Commissioner Iglesias yes
 Vice Mayor Thaler yes
 Mayor Edelcup yes

[City Clerk's Note: The Commission took a break at 10:00 p.m., and will reconvene at 10:15 p.m.]

10. RESOLUTIONS

10A. A Resolution of the City Commission of the City of Sunny Isles Beach, Florida, **Awarding Bid No. 04-12-02 Golden Shores Entrance Wall to Tenex Enterprises; Authorizing the**

City Manager to Negotiate and Enter into an Agreement with Tenex Enterprises, Inc., for Construction of the Golden Shores Entrance Wall, in Substantially the Same Form and Amount (\$195,376.00), as the Agreement Attached Hereto as Exhibit "A"; Providing that Any Changes are Approved as to Form and Legal Sufficiency by the City Attorney; Providing the City Manager with the Authority to Do All Things Necessary to Effectuate the Terms of this Agreement; Providing for an Effective Date.

Action: City Clerk Hines read the title and City Manager Russo reported. Mayor Edelcup asked if it was possible to do sandblasting work on the fence such as an imprint of a palm tree or egret. City Manager Russo said he didn't think so on this type of wall, but that the only part visible is where it turns on Collins Avenue, but he will check. Commissioner Brezin asked if we could put landscaping in front of it. Vice Mayor Thaler asked how long this will take, and City Manager Russo said they have 120 days to complete this and they have a penalty provision.

Public Speakers: none

Commissioner Goodman moved and Commissioner Brezin seconded a **motion to approve the resolution. Resolution No. 2005-770 was adopted by a voice vote of 5-0 in favor.**

- 10B.** A Resolution of the City Commission of the City of Sunny Isles Beach, Florida, **Reappointing Judge Marshall Ader (Retired), Judge Robert Newman (Retired), Darcee Siegel, and Maurice Donsky as Special Masters**, for a Period of One Year, in Accordance with Ordinance No. 2001-141; Providing for an Effective Date.

Action: City Clerk Hines read the title and City Manager Russo reported. Mayor Edelcup said that he would like it expressed to the Special Masters to uphold the law particularly in those cases where it is a commercial violation that hasn't been corrected and that they assess the full maximum penalty as possible and be lenient on any residential areas where people are attempting to comply.

Public Speakers: none

Commissioner Brezin moved and Vice Mayor Thaler seconded a **motion to approve the resolution. Resolution No. 2005-771 was adopted by a voice vote of 5-0 in favor.**

- 10C.** A Resolution of the City Commission of the City of Sunny Isles Beach, Florida, Authorizing the City Manager and City Attorney to Enter into Discussions/Negotiations and/or Mediation in the Condemnation Action Involving the **Property Located at 201-182nd Drive Also Known as "Empress Property"**; Providing the City Manager with the Authority to Pay All Fees and Costs Related to Presuit Negotiations; Providing the City Manager and City Attorney with the Authority to Do All Things Necessary to Effectuate this Resolution; Providing for an Effective Date.

Action: City Clerk Hines read the title and City Attorney Dannheisser reported that the owners of the Empress Property have made an offer to enter into presuit negotiations and we

would have to hire a mediator [\$200.00 per hour] for this and in our judgment it could only facilitate it, it may not result in what we would like to see, but ultimately it may save us some money. Commissioner Goodman said in reference to the Miami-Dade County Board of Education and the City negotiating with them regarding the school, how do we handle this if we are going after the property in reference to them wanting to build the school, and City Attorney Dannheisser said this makes it all the more critical to try to gain an negotiated settlement and actual acquisition than go through the condemnation if we can avoid it, since we have these new legal issues.

Public Speakers: none

Vice Mayor Thaler moved and Commissioner Brezin seconded a **motion to approve the resolution. Resolution No. 2005-772 was adopted by a voice vote of 5-0 in favor.**

- 10D.** A Resolution of the City Commission of the City of Sunny Isles Beach, Florida, Authorizing the **Transfer of Development Rights (“TDRs”) in the Amount of 126,737 Square Feet of Floor Area to Sunny Isles Development Company, LLC for Use in Connection with the Development Approval Granted by Resolution 04-Z-85 From the TDR Bank Established for Tract “D” Remainder Parcel Owned by Porto Bellagio Partners, LLC;** Directing the Planning and Zoning Administrator or Designee to so Transfer the TDRs; Providing for the Consent to the Transfer of the TDRs by Porto Bellagio Partners, LLC Owners of Tract “D” Remainder Parcel; Authorizing the Adjustment of the TDR Bank by the Planning and Zoning Administrator or Designee; Providing the City Manager with the Authority to Do All Things Necessary to Effectuate this Resolution; and Providing for an Effective Date.

Action: [City Clerk’s Note: See Action Item 4A.] Item Deferred.

10E. Add-On

A Resolution of the City Commission of the City of Sunny Isles Beach, Florida, **Accepting Donations** from Royale Florida Enterprises, Inc., Sunny Isles Luxury Ventures, LLC, and Residences at Ocean Grande, Inc., **of \$3,000.00 Each to be Applied Toward the Purchase of 65mm X 65mm X 90mm Optic Crystals with Art Work to Commemorate the New Government Center**, in a Total Amount of \$9,000.00, Attached Hereto as Exhibit “A”; Authorizing the City Manager to do All Things Necessary to Effectuate this Resolution; Providing for an Effective Date.

Action: City Clerk Hines read the title and Mayor Edelcup asked why are we voting on this tonight when we voted on this at the December 9, 2004 City Commission meeting. Commissioner Goodman said he listened to the tapes from that meeting and he read the recommendation from that item, and under *additional information*, which was reported by the City Manager, “The Dezer Trump Organization, through my contact with Mr. Gil Dezer, has offered to contribute 50% of the cost of this commemorative item.”, and Commissioner Goodman said when the City Manager reported the recommendation and the reasons, it was his interpretation that the Commission was voting on accepting that money. He said he listened to the tape and the City Manager did say something of a different nature, but he

thinks that it was part of the motion and that is what he voted on. Commissioner Iglesias asked the City Attorney, if we get a donation don't we have to accept it, and City Attorney Dannheisser said yes you have to accept it, and that the City Manager announced at that same meeting that he would have to come back before you in order for you to accept the donations, which is what he is doing now. Commissioner Iglesias said if you meet outside the Sunshine Law, like some Commission members met [February 3, 2005 regarding the Government Center Grand Opening] and you discuss something that's going to come before us, it is a violation. Commissioner Goodman said the meeting he attended didn't discuss anything but the program.

Mayor Edelcup said there were a lot of misunderstandings, a lot of the Commissioners thought that we approved this in December, we still think that, and if we didn't, we will approve it today. He said that staff had the opportunity to notice this meeting [February 3, 2005] and staff did not notice this meeting, there were a lot of mistakes made at the staff level and perhaps at the Commission level. City Manager Russo said that at the December 9th City Commission meeting, the resolution was approved for the purchase of the crystals, and that this would have to come back to the Commission with regard to the donations. He said he is directing his staff not to participate in any meetings that are not properly, legally noticed, and the person that's going to make that determination is the City Clerk, and if the City Clerk has any question about that, the City Clerk will check with the City Attorney, which is our procedure, and that's what happened in this case.

Commissioner Goodman said in the event that we made an honest mistake, to clarify the situation we can refuse to accept the donation which would clarify everything, and Commissioner Iglesias said no it would not, the point is it came before us whether you accept it or not accept it. Mayor Edelcup offered a compromise that we will vote on the issue, still believing that when we voted in December, that we had voted on this issue, but to clarify any misunderstandings we will vote on it again today, but that the resolution reflects that it is the reflection of the majority of this Commission, that they thought they had voted on it in December and the minutes of this meeting today should reflect that comment. He asked the City Attorney if that would be satisfactory and City Attorney Dannheisser said that she gave her instructions with regard to that meeting on the record and it is the Commission's choice how they want to proceed. Mayor Edelcup said he recommends that the Commission vote on this issue with the resolution stating that it is the belief of the majority of this Commission that they had voted on this in December but apparently upon listening to the tapes we have found that it is incorrect and therefore we are voting on it today to clarify that misunderstanding.

Public Speakers: none

Vice Mayor Thaler moved and Commissioner Goodman seconded a **motion to approve the resolution, as amended. Resolution No. 2005-773 was adopted by a voice vote of 5-0 in favor.**

11. MOTIONS

None

12. DISCUSSION ITEMS

12A. Add-On

Discussion by Stanley K. Shapiro regarding the Prime Time Seniors of 501C3.

Action: Mayor Edelcup introduced Stanley K. Shapiro. Mr. Shapiro said he belongs to VFW Post 3559 American Legion Post 85 in Miami Beach, and is a senior citizen activist in Miami Beach and Miami-Dade County. He brought up at his Post the idea of writing letters to our servicemen overseas. He said he has already gone before the Commission in North Bay Village, Bal Harbour, and Surfside and they each gave him \$1,000.00 for the Prime Time Seniors, and he will be going before the Bay Harbor Island Commission next. He then asked Sunny Isles Beach for a donation of \$1,000.00.

Commissioner Goodman moved and Commissioner Iglesias seconded a **motion to donate \$1,000.00 to the Prime Time Seniors. The motion was approved by a voice vote of 5-0 in favor.**

12B. Add-On

Discussion by City Attorney Dannheisser regarding the Miami-Dade County School Board.

Action: Mayor Edelcup said that City Attorney Dannheisser wanted to bring the Commission up to date on an item. City Attorney Dannheisser said that the Commission had requested an Attorney General Opinion as to whether the School Board could initiate the condemnation action for the property that we wanted to acquire for the school site and where Dade County could construct the school site. She said we asked the question as to whether the School Board could initiate a condemnation action on our behalf so that we could acquire the property for an educational purpose because we were going to pay for all the costs including the cost of acquisition, they would then turn the title over to us, and we would in turn lease back the property, long-term lease, for them to construct a school. She said the answer has been returned from the Attorney General in the negative, specifically, they have opined that the School Board may not use its power of eminent domain on behalf of the City to obtain fee simple title and subsequently convey that title to the City even if a lease hold interest is granted back to the School Board. She said this leaves us with a couple of options: she said she met with City Manager Russo and our Lobbyist Ron Book to reinstate the provision that was sunsetted that took away our power of eminent domain to acquire property for a public school and all that we are left with is the power to acquire a property for a Charter School. She said that Mr. Book has taken this and run with the ball and is now in the form of a Bill in front of the Legislature and the end of the term will be at the end of April and we should know at that time, and before we have done anything we can actually condemn this property on our own. City Attorney Dannheisser said that alternatively we can have the School Board exercise its authority and basically do the entire acquisition and construction. She said she met with Mayor Edelcup, City Manager Russo, and the school construction people because they also had an issue with what we have contemplated and discussed which is that if they didn't live up to the educational standards or performance standards that we would negotiate, that we would have some leverage that we would have the authority to default them in the lease and take back the property. She said we would buy the school back or pay for the bonds for the construction. She also noted that the

construction people have an issue and do not believe they have the legal authority to enter into such an agreement there either. She said she has formulated a question for their attorney to answer based on those conversations just as she formulated the letter request to the Attorney General. She stated that once we have the answer to that, the Mayor will bring your options back before the Commission and to the Advisory Committee, and thinks we should wait to have discussion on this until we get that opinion, but we will continue to try to acquire this site through negotiations because that is not affected by any of this.

Mayor Edelcup said that the City Attorney has succinctly defined where we are at and she is right we need to wait until we get a reply from the School Board because that reply may necessitate us going back to the drawing board depending upon their decision. As soon as we get the response from the School Board he suggested that this Commission convene to examine that response and determine whether or not it is acceptable or if it needs to go back to the Subcommittee for a determination as to where we go. Vice Mayor Thaler noted that there is a School Board meeting next Tuesday, is there any way we can push the issue to see if we can get even a verbal answer before that. City Attorney Dannheisser said they are very structured at the School Board, they will not discuss anything impromptu. Mayor Edelcup also noted that the Oversight Board has refused to release the funds at the School Board level. City Attorney Dannheisser said this opinion, if the property owners get hold of it, may impact on negotiations as well so we have to reexamine once we get the opinion.

13. CITIZENS’ FORUM: REQUESTS, PETITIONS & OTHER COMMUNICATIONS

None

14. ADJOURNMENT

Commissioner Goodman moved and Vice Mayor Thaler seconded a motion to adjourn the meeting, and Mayor Edelcup adjourned it at 10:52 p.m.

Respectfully submitted by:

Approved by the City Commission on March 10, 2005

Jane A. Hines, City Clerk

Norman S. Edelcup, Mayor