

**City of Coral Gables**  
**Local Planning Agency (LPA)/Planning and Zoning Board Meeting**  
**Wednesday, March 12, 2014**  
**Coral Gables City Commission Chambers**  
**405 Biltmore Way, Coral Gables, Florida**

MEMBERS	J9	F12	M12	A9	M14	J11	J9	A13	S10	O8	APPOINTMENT
	'14	'14	'14	'14	'14	'14	'14	'14	'14	'14	
<b>Eibi Aizenstat - Chair</b>	P	P	P								City Manager Patrick Salerno
<b>Marshall Bellin</b>	P	P	P								Commissioner Vince Lago
<b>Anthony Bello</b>	-	P	P								
<b>Jeffrey Flanagan - Vice Chair</b>	P	P	P								Commissioner Pat Keon
<b>Julio Grabiell</b>	P	P	P								Mayor Jim Cason
<b>Maria A. Menendez</b>	P	P	P								VM William H. Kerdyk, Jr.
<b>Alberto Perez</b>	P	P	P								Commissioner Frank C. Quesada

**P = Present**  
**E = Excused**  
**C = Meeting Cancelled**

**City Staff and Consultants:**

Ramon Trias, Planning and Zoning Director  
 Walter Carlson, Asst. City Planner  
 Jill Menendez, Adm. Assistant  
 Craig E. Leen, City Attorney  
 Jane Tompkins, Development Services Director  
 Charles Wu, Asst. Development Services Director

**Court Reporter:**

Joan Bailey

Susan Trevarthen, Esq.

**Attachments:**

- 03 12 14 Planning and Zoning Board Meeting Verbatim Minutes
- Document entered into the record by Craig Leen, City Attorney

1 CITY OF CORAL GABLES  
 2 LOCAL PLANNING AGENCY (LPA)/  
 3 PLANNING AND ZONING BOARD MEETING  
 4 VERBATIM TRANSCRIPT  
 5 CORAL GABLES CITY HALL  
 6 405 BILTMORE WAY, COMMISSION CHAMBERS  
 7 CORAL GABLES, FLORIDA  
 8 WEDNESDAY, MARCH 12, 2014, COMMENCING AT 6:04 P.M.

9 Board Members Present:  
 10 Eibi Aizenstat, Chairperson  
 11 Marshall Bellin  
 12 Anthony Bello  
 13 Jeffrey Flanagan, Vice-Chairperson  
 14 Julio Grabiell  
 15 Maria Alberro Menendez  
 16 Alberto Perez

17 City Staff and Consultants:  
 18 Ramon Trias, Planning & Zoning Director  
 19 Walter Carlson, Assistant City Planner  
 20 Jill Menendez, Planning Administrative Assistant  
 21 Craig E. Leen, City Attorney  
 22 Jane Tompkins, Development Services Director  
 23 Charles Wu, Assistant Development Services Director  
 24 Susan Lanelle Trevarthen, Esq., Consultant  
 25 Weiss Serota Helfman Pastoriza Cole & Boniske

17 Public Speakers:  
 18 Perry Adair, Esq.,  
 19 On behalf of Dade Medical College  
 20 Jorge Alvarez,  
 21 Vice-President for External Affairs,  
 22 Dade Medical College  
 23 Larry Rentz  
 24 Laura Russo, Esq.  
 25

1 THEREUPON:  
 2 The following proceedings were had:  
 3 CHAIRMAN AIZENSTAT: Okay, let's go ahead  
 4 and get started. Call the roll, please.  
 5 MS. MENENDEZ: Marshall Bellin?  
 6 MR. BELLIN: Here.  
 7 MS. MENENDEZ: Anthony Bello?  
 8 MR. BELLO: Here.  
 9 MS. MENENDEZ: Jeff Flanagan?  
 10 MR. FLANAGAN: Here.  
 11 MS. MENENDEZ: Julio Grabiell?  
 12 MR. GRABIEL: Here.  
 13 MS. MENENDEZ: Maria Menendez?  
 14 MS. ALBERRO MENENDEZ: Here.  
 15 MS. MENENDEZ: Alberto Perez?  
 16 MR. PEREZ: Here.  
 17 MS. MENENDEZ: Eibi Aizenstat?  
 18 CHAIRMAN AIZENSTAT: Here.  
 19 The next item will be the approval of the  
 20 minutes. Is there a motion?  
 21 MR. FLANAGAN: So moved.  
 22 CHAIRMAN AIZENSTAT: Is there a second?  
 23 MR. BELLIN: Second.  
 24 CHAIRMAN AIZENSTAT: We have a second?  
 25 Marshall?

1 MR. BELLIN: Yes.  
 2 CHAIRMAN AIZENSTAT: Okay, great. Any  
 3 comments, questions? No?  
 4 Call the roll, please.  
 5 MS. MENENDEZ: Anthony Bello?  
 6 MR. BELLO: Yes.  
 7 MS. MENENDEZ: Jeff Flanagan?  
 8 MR. FLANAGAN: Yes.  
 9 MS. MENENDEZ: Julio Grabiell?  
 10 MR. GRABIEL: Yes.  
 11 MS. MENENDEZ: Maria Menendez?  
 12 MS. ALBERRO MENENDEZ: Yes.  
 13 MS. MENENDEZ: Alberto Perez?  
 14 MR. PEREZ: Yes.  
 15 MS. MENENDEZ: Marshall Bellin?  
 16 MR. BELLIN: Yes.  
 17 MS. MENENDEZ: Eibi Aizenstat?  
 18 CHAIRMAN AIZENSTAT: Yes.  
 19 The first item on the public hearing  
 20 tonight is an Ordinance of the City Commission  
 21 of Coral Gables, Florida, providing for text  
 22 amendments to the City of Coral Gables Official  
 23 Zoning Code, amending Article 5, "Development  
 24 Standards," Section 5-1408, known as "Common  
 25 driveways and remote off-street parking," by

1 providing regulations, restrictions and  
 2 procedures for the use of remote parking in the  
 3 Central Business District, known as the CBD,  
 4 amending the reference to remote parking in  
 5 Article 5, "Development Standards," Section  
 6 5-1409, "Amount of required parking" to match  
 7 the changes to Section 5-1408; providing for  
 8 severability, repealer, codification and an  
 9 effective date.  
 10 MR. TRIAS: Mr. Chairman, thank you very  
 11 much. As you know, the Code currently has  
 12 provisions for remote parking that are limited  
 13 to 500 feet of distance. The proposed language  
 14 changes that to 1,000 feet. That's the  
 15 fundamental idea.  
 16 In addition to that, there's a series of  
 17 regulations and different provisions that are  
 18 designed to encourage the redevelopment of  
 19 fairly small parcels within the Downtown. That  
 20 is the reasoning behind it.  
 21 We've had outside counsel, Susan  
 22 Trevarthen, work on the provisions, and she's  
 23 ready to give a presentation and answer any  
 24 questions you may have.  
 25 CHAIRMAN AIZENSTAT: Thank you.

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1 MR. LEEN: Mr. Chair --  
 2 CHAIRMAN AIZENSTAT: Yes.  
 3 MR. LEEN: Before Ms. Trevarthen begins, I  
 4 just wanted to put on the record, because it  
 5 was raised by an interested party, the City  
 6 Attorney's Office is neutral as to this  
 7 ordinance. We're simply here to advise you.  
 8 I think the original cover memo said that  
 9 we were recommending it. That has been  
 10 corrected. Thank you, Mr. Trias.  
 11 CHAIRMAN AIZENSTAT: Correct, we --  
 12 MR. LEEN: Susan is here. She's speaking.  
 13 She drafted this on behalf of Staff, so she's  
 14 speaking on behalf of Staff in presenting this  
 15 ordinance.  
 16 MR. TRIAS: Mr. Chairman, if I could  
 17 clarify for everybody's benefit, the yellow  
 18 copy has only two changes. One change has to  
 19 do with the number of stories. It used to be  
 20 three; now it's four. And the second change is  
 21 the change on the recommendation that clarifies  
 22 that the City Attorney is not recommending  
 23 approval. He's simply reviewing the  
 24 correctness of the --  
 25 MR. LEEN: I'm not recommending

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1 disapproval, either, just neutral.  
 2 MR. TRIAS: Thank you.  
 3 MR. LEEN: I'm here to provide you any  
 4 counsel on that.  
 5 MR. TRIAS: And that's the yellow copy.  
 6 CHAIRMAN AIZENSTAT: Thank you. Please  
 7 proceed.  
 8 MS. TREVARTHEN: Good evening, Mr. Chair,  
 9 Members of the Board. Susan Trevarthen, Weiss,  
 10 Serota, Helfman, representing your Staff, as  
 11 noted.  
 12 As Ramon mentioned, this is an existing  
 13 concept within your Code. It was available for  
 14 remote parking within 500 feet of the use that  
 15 needs the additional parking, and the current  
 16 Code says that it can't be in a single-family  
 17 zoning district and it has to be in the CBD,  
 18 and there must be a restrictive covenant.  
 19 There's also a cap on the use of the current  
 20 procedure, when you're talking about a  
 21 residential use. Only 50 percent of the  
 22 parking associated with a residential use can  
 23 be provided through remote parking.  
 24 That's pretty much it. Those are the  
 25 restrictions and the requirements associated

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1 with our current regulatory scheme. We've  
 2 worked with Staff to look at the current text,  
 3 and this is the Staff's recommendation of, if  
 4 additional approvals are considered to use  
 5 remote parking within the City, that these are  
 6 the types of protections -- excuse me -- these  
 7 are the types of protections that should be in  
 8 the Code to make sure that the City's  
 9 interests, the neighborhood interests, the  
 10 interests of the parking user, the interests of  
 11 the parking provider, everyone's interests, are  
 12 adequately addressed.  
 13 So, on Page 2 of your Staff Report, we've  
 14 tried to summarize the key components of the  
 15 ordinance language to make it easier to follow,  
 16 and we're continuing to keep this as an option  
 17 only in the CBD. It would also only be  
 18 available on project sites smaller than 20,000  
 19 square feet. The rationale for that is, there  
 20 are several aspects of your Zoning Code that  
 21 are different above 20,000 square feet.  
 22 There's also more ability to be flexible about  
 23 including additional parking on your own  
 24 property when you have a larger parcel. So the  
 25 rationale for that is that this type of relief

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1 shouldn't be necessary for larger projects that  
 2 should be able to provide for their own  
 3 required parking on-site.  
 4 The height limitation, Ramon has already  
 5 mentioned the typo on that. It should be no  
 6 taller than four stories. That represents an  
 7 approximation of the kinds of small-scale  
 8 development that we see in our CBD that would  
 9 benefit from this type of opportunity. And  
 10 finally, that the Director of Development  
 11 Services should determine that it's infeasible  
 12 to provide the Code-required parking on-site.  
 13 So those are the qualifying criteria. The  
 14 remote parking also has some qualifying  
 15 criteria. That has to be within a thousand  
 16 feet of the use that's being served. It has to  
 17 be within the City. So, even if you're in the  
 18 CBD, in the portion that's close to the City  
 19 boundary, your remote parking needs to be  
 20 within the City, so that the City has an  
 21 ability to have some control over that property  
 22 if there are problems that require enforcement.  
 23 It needs to continue to not be in the  
 24 single-family zoning district. That's  
 25 something that's already in your Code, and the

1 proposal is that it also needs to be owned by  
 2 the same party who owns the use, who is  
 3 requesting the use of remote parking. And the  
 4 rationale for that is the kind of attachment or  
 5 accountability that comes with the application  
 6 for remote parking. You, as a City, when  
 7 someone comes in wanting to use their remote  
 8 parking, you're in that applicant approval  
 9 relationship with that person. If they also  
 10 own the parking spaces, then, you know, you  
 11 have that relationship; you can build in all  
 12 the protections that you need as part of that  
 13 particular approval.

14 Finally, the remote parking must not be  
 15 proposed for use for retail or restaurant  
 16 customer parking. The rationale for that is  
 17 the belief that that's the least likely type of  
 18 person who's going to find and use that remote  
 19 parking in a reliable way and it's a better  
 20 solution for like office employees or  
 21 residents; people who park there on a regular  
 22 basis know where to go and know where to park.

23 The distance calculation is currently not  
 24 defined in your Code, and one thing this  
 25 ordinance does is provide a definition, and it

1 says that a thousand feet will be measured  
 2 property line to property line, based on an  
 3 airline measurement, so if you think of it as  
 4 the crow flies, just direct from point to  
 5 point, property line to property line.

6 The draft ordinance also has a number of  
 7 requirements in terms of the documentation that  
 8 needs to be submitted to the City if you want  
 9 to take advantage of remote parking, and all of  
 10 those are designed to support this being a  
 11 successful solution, that it's been thought  
 12 about whether the remote parking is also being  
 13 relied upon to support another use, and is it  
 14 truly available to be parked for this use  
 15 that's proposing to use it. We've, in the  
 16 process of dealing with various situations,  
 17 seen situations where maybe parking was thought  
 18 to be available, but then it turned out it was  
 19 being used for another purpose. So you'll see  
 20 where we have required affidavits and documents  
 21 and things to support that this parking is what  
 22 it is, it can be used for the purpose that it's  
 23 intended to be used for, and that it is  
 24 appropriately limited so that we can rely on it  
 25 being there, because after all, this is a

1 substitution for Code-required parking. This  
 2 is not extra parking. This is not, you know,  
 3 the whipped cream. This is the cake itself.  
 4 So, therefore, the need for the protections of  
 5 the City's interests.

6 We also talk about what happens if there  
 7 needs to be an amendment to that arrangement,  
 8 over time, and in the event that all of this  
 9 doesn't work, if somebody falls out of  
 10 compliance, then what? And the ultimate  
 11 remedies are, if they qualify under your  
 12 current Code, which would be in the CBD or  
 13 within a hundred feet of the Ponce de Leon  
 14 right-of-way, and that should be met for most  
 15 of your remote parking applicants, then they  
 16 could choose to propose to pay in lieu, under  
 17 the provisions of your City Code of Ordinances,  
 18 Section 74-201(d). Otherwise, they could  
 19 propose to modify the use. So, if the need for  
 20 the remote parking is being driven by a change  
 21 of use that is more intense in its demand for  
 22 parking or it's being driven by an increase in  
 23 square footage that demands that parking, the  
 24 person may need to alter their use to reduce  
 25 their parking demand. If everything else fails

1 and the remote parking arrangement has fallen  
 2 apart and they're not able to find another  
 3 remote parking arrangement, they'll either need  
 4 to pay in lieu or reduce the scope of their  
 5 use.

6 So we've thought through those types of  
 7 considerations that hopefully, you know,  
 8 there's enough done up front where there won't  
 9 be these problems, but in the event there are  
 10 these problems, we have remedies and we have  
 11 abilities to deal with it.

12 There's also a provision for this to be --  
 13 the paperwork to be revisited annually at the  
 14 time of certificate of use, to reaffirm that  
 15 everything is as it should be, also providing  
 16 for the City to be able to inspect the premises  
 17 of the parking at will to ensure the continued  
 18 compliance with these arrangements.

19 So I'm not going to touch on all of them,  
 20 but you've gotten the flavor of the kinds of  
 21 protections that we've built into the  
 22 ordinance. And with that, I'll wrap up, and  
 23 I'm available to answer any questions.

24 Thank you.  
 25 CHAIRMAN AIZENSTAT: Thank you.

1 Do people want to ask Susan -- Does anybody  
2 from the Board want -- since we have Susan up  
3 here, want to ask her specific questions before  
4 we take on public comment?

5 MR. BELLIN: Yes, I do.

6 CHAIRMAN AIZENSTAT: It's a little  
7 different, but since she's up here, go ahead.

8 MR. BELLIN: I have a number of questions.

9 MS. TREVARTHEN: Okay.

10 MR. BELLIN: I don't see why you're  
11 limiting the size of the project to 20,000  
12 square feet. Once you get over 20,000 square  
13 feet, the rules change. The height changes,  
14 the density changes. There's a lot of changes  
15 that take place which require a lot more  
16 parking, and it seems, if this is what you want  
17 to do, is allow remote parking, I think it  
18 ought to be available to any piece of property.  
19 You changed from three stories to four, but I  
20 think, you know, it really doesn't matter. Any  
21 building ought to have the opportunity to do  
22 that.

23 Another thing that I'm a little bit  
24 troubled about is, the Director of Development  
25 Services determines the infeasibility to

1 MS. TREVARTHEN: -- or there can be an  
2 unplanned change to the parking arrangement,  
3 and what we're trying to deal with is an  
4 orderly type of transition, which would be the  
5 planned situation. But in the unplanned  
6 situation, that's when the arrangement just  
7 falls apart. Somehow the spaces no longer are  
8 available for their intended purpose; the  
9 spaces are not being used; excess parking is  
10 being just distributed in the area and  
11 affecting the neighborhood and affecting the  
12 community. We want it to be clear that if we  
13 find that these covenants or these agreements  
14 or these requirements have fallen out of  
15 compliance, they're no longer there and they're  
16 not being honored, that the City has the  
17 ability to do something about it.

18 So what I heard in the question was more a  
19 free-ranging ability to just decide we don't  
20 like it, and I don't think it's written that  
21 way. I think it is premised on the  
22 requirements of the ordinance, and I think we  
23 do -- based on the concerns that I've gotten  
24 from Staff about enforceability and  
25 protections, we need to be thinking about that

1 provide the Code-required parking on-site. He  
2 finds it infeasible, therefore, he grants this  
3 particular piece of property the right to have  
4 remote parking --

5 MS. TREVARTHEN: Uh-huh.

6 MR. BELLIN: -- 800 feet away. And then  
7 apparently he can take that approval away at  
8 some point if he deems that they don't take  
9 care of the property properly or there's some  
10 kind of change that takes place. So he takes  
11 it away. Now what does the person do who's  
12 relying on those parking spaces that he can't  
13 provide in his building? So what does he have  
14 to do? He's got to go and find another piece  
15 of property that would qualify? Which is not  
16 an easy proposition.

17 MS. TREVARTHEN: May I address that  
18 particular one --

19 MR. BELLIN: Yeah.

20 MS. TREVARTHEN: -- because I think we had  
21 a slightly different take on that. The reason  
22 why it's written in the way it is, which you're  
23 referring to the part that says there can be a  
24 planned change to the parking arrangement --

25 MR. BELLIN: Uh-huh.

1 scenario and prepared for that scenario, but I  
2 understand your comment.

3 MR. BELLIN: Yeah, but you can take the  
4 permission away so that they can no longer use  
5 that site, and that site that they're using has  
6 to have a unity of title, so the owner of the  
7 donor site is also the owner of the --

8 MS. TREVARTHEN: I'm not sure I see that we  
9 could arbitrarily take it in the way that  
10 you're suggesting. I think it's more a  
11 recognition that they have fallen out of  
12 compliance. But we can certainly look at that  
13 and see if there's anything we can do with the  
14 wording to make that more clear.

15 MR. BELLIN: I'm still not very clear on  
16 that, but --

17 MR. LEEN: I mean, I'd like to say  
18 something to that. I do think that you --  
19 Obviously, there are a lot more requirements in  
20 here than currently exist in our Code, which  
21 it's very short. Yes, if the Development  
22 Services Director finds that it's not in  
23 compliance, basically a remedial plan is  
24 required, according to this ordinance, and if  
25 they didn't meet it, then yes, at some point

1 they would have to lose that use, because they  
2 don't have enough parking for it. So, I mean,  
3 that is the -- That would be the consequence if  
4 they did not have enough -- if they didn't  
5 comply with this ordinance, the ultimate  
6 consequence if they didn't meet the remedial  
7 plan.

8 MR. BELLIN: So what does that person then  
9 do? He's got his building, it's built, but he  
10 can't provide the parking for it. What is that  
11 option?

12 MS. TREVARTHEN: Well, that -- The fallback  
13 that I mentioned, we've identified at least  
14 two. If you can't -- The third one is finding  
15 somewhere else, but if you can't find another  
16 source of remote parking spaces, then it's  
17 either payment in lieu, that program, or it's  
18 reducing your demand. It's looking at your use  
19 and reducing your demand.

20 MR. BELLIN: And what is payment in lieu?  
21 What is that?

22 MS. TREVARTHEN: That's your City Code,  
23 Chapter 74. It's an existing procedure of your  
24 regulations, where someone who is losing public  
25 parking as part of their proposals for

1 need to recognize that what we're talking about  
2 here tonight is required parking. We have lots  
3 and lots of permit parking in our parking  
4 system, and we've had meetings with our Parking  
5 Director on this ordinance and gotten their  
6 input, and the large majority, really almost  
7 all of them, are in a couple of categories.

8 One category is, you have -- And parking is a  
9 big picture here. It is in every city. It's  
10 complex. But you have a provision already in  
11 your Code, it's been there awhile, that if  
12 you're under -- I believe it's 1.25 FAR or 1.45  
13 FAR, you can be exempt from providing on-site  
14 parking, so you're not out of compliance. You  
15 just have no requirement for required parking.

16 MS. ALBERRO MENENDEZ: The CBD.

17 MS. TREVARTHEN: A large -- and this is the  
18 same area that we're talking about for remote  
19 parking. A large number of your permit parking  
20 people are those people renting those spaces,  
21 and their need for the parking results from a  
22 policy decision and a legislative determination  
23 that was made by your Commission that this is  
24 the group, because of the infeasibility or  
25 difficulty of them providing parking, that we

1 development pays in lieu for the loss of each  
2 of those parking spaces and --

3 MR. BELLIN: But --

4 MS. TREVARTHEN: I'm sorry, and then that  
5 money goes into the City Parking Fund and is  
6 used towards City parking facilities.

7 MR. BELLIN: What is that payment?

8 MS. TREVARTHEN: I believe that was adopted  
9 in the last year, and it was in the  
10 neighborhood of -- 20? 40? I don't know  
11 offhand, I apologize, but there is a number  
12 that your Commission has adopted.

13 MR. BELLIN: So it's 20 to 40,000? Is  
14 that --

15 MS. TREVARTHEN: It's a significant number,  
16 because it represents the cost of the City  
17 providing additional parking.

18 MR. BELLIN: So wouldn't a person be better  
19 off if they just bought a permit for \$90 a  
20 month in one of the parking garages or one of  
21 the remote parking sites that are all over the  
22 City? \$90 a month, so it would cost you, what,  
23 \$1,000 a year? You'd have to, you know, have  
24 40 years of --

25 MS. TREVARTHEN: Well, and that's where we

1 want to completely waive required parking and  
2 our parking system is being used to support  
3 those -- A lot of them are retail uses and  
4 customers along Miracle Mile. There's just the  
5 everyday kind of people who use our parking  
6 garages. They're traveling through, they're  
7 tourists, they're shoppers, they're people  
8 going to eat. You know, we don't necessarily  
9 know the life story of everybody who parks in  
10 them, but there's that transient purpose, which  
11 is your adopted first priority of your City  
12 parking system, and you do have priorities.  
13 That's all been thought through as part of your  
14 parking function. If your parking function was  
15 not created to be a replacement for otherwise  
16 required Code parking, and when I spoke with  
17 the Parking Director, he was familiar with only  
18 one instance where our Code-required parking  
19 had ever been used as a permit in our parking  
20 facilities, and it was just a small number of  
21 spaces. And so in the entire history of our  
22 parking operation, there's only one instance  
23 where the City has consented to rent those  
24 spaces. It was maybe -- What did they tell us,  
25 10 years ago or something?

1 So it is not, in fact, true that there are  
2 people today using their permitted parking in  
3 our City parking garages as a replacement for  
4 their Code-required parking. That's why this  
5 is a different conversation, as Staff sees it.

6 MR. BELLIN: Okay. I have one last question.

7 MR. LEEN: Well, Mr. Bellin, one other  
8 thing. You know, just be aware, you know, as  
9 worded right now, you wouldn't be able to go  
10 out and rent a spot like you mentioned. You  
11 would have to own the spot.

12 MR. BELLIN: As the required parking?

13 MR. LEEN: Yes.

14 MR. BELLIN: Okay, but the last question I  
15 have is, you've got an owner of a piece of  
16 property on Miracle Mile.

17 MS. TREVARTHEN: Uh-huh.

18 MR. BELLIN: He wants to provide parking.  
19 He's the owner of the property, so he's got to  
20 then go out and buy a piece of property,  
21 because it's got to be unity of title. He buys  
22 a piece of property and he develops it as a  
23 parking lot. Is that really what the intention  
24 is or what we'd like to see there, is, you  
25 know, little 50 by a hundred foot lots with

1 CHAIRMAN AIZENSTAT: In other words, to  
2 where that money can be used?

3 MS. ALBERRO MENENDEZ: Yeah. In other  
4 words, if the developer pays a certain amount,  
5 it should be then -- we should try to plan to  
6 put some parking facility -- because remember,  
7 the City receives this money, it goes into the  
8 parking fund -- within a certain radius, so  
9 that that development in the area that's being  
10 impacted by the lack of parking, you know,  
11 benefits from the pay in lieu, because if not,  
12 they might be paying in lieu, but it might be  
13 for a garage, you know, up north and they're in  
14 the central part of the City. Do you see what  
15 I'm saying? So I think there should be some  
16 area tied to that pay in lieu. I know that's  
17 not part of this, but that's something I needed  
18 to voice.

19 I didn't quite get the answer that I think  
20 they asked about what's magical about the  
21 20,000 square feet and the four story, and  
22 shouldn't we go further and define the height  
23 of the four stories, because I've seen projects  
24 that have four stories that are higher than  
25 others. I mean, what's the magic about that

1 nothing but parking on them, dispersed  
2 throughout the City? I mean, to me, that's a  
3 problem.

4 MS. TREVARTHEN: Understood.

5 MR. BELLIN: Okay.

6 CHAIRMAN AIZENSTAT: Anybody else?

7 MS. ALBERRO MENENDEZ: Yes, I have a  
8 question. I think the ordinance needs to  
9 describe what is the -- to be infeasible. In  
10 other words, what triggers the Department  
11 saying that you're no longer in compliance?

12 I also have a question concerning the pay  
13 in lieu of. I notice that it goes to the  
14 parking fund, but it really doesn't help the  
15 area unless you describe it as going towards --  
16 within a radius of the actual development  
17 that's paying in lieu of. I mean, if the  
18 objective is to help with the parking  
19 situation, I would think that we would have to  
20 describe it within a radius of that developer  
21 giving the money. That developer is giving the  
22 money towards getting some parking spaces for  
23 the area, and I didn't see that in the  
24 ordinance and I think perhaps you should  
25 consider --

1 whole --

2 MS. TREVARTHEN: I would never say it's  
3 magic. It's your Staff's considered input as  
4 to where we should draw that line. I don't  
5 know if Ramon wants to add on that point --

6 MR. TRIAS: Sure.

7 MS. TREVARTHEN: -- because we talked about  
8 that.

9 MR. TRIAS: What I would say is that the  
10 parking discussion is very large and deals with  
11 many issues. We were trying to deal with just  
12 one issue, which is the smaller buildings that  
13 generally are existing in the Downtown area and  
14 may want to expand and have some difficulty  
15 with achieving that because there's not enough  
16 land to provide parking on place. So that's  
17 really one very narrow issue. There may be  
18 many other issues and there may be other things  
19 that we need to consider in some other forum,  
20 but that was the reason why. I mean, that was  
21 kind of like what we were trying, to just  
22 target that question first, and then see if we  
23 could help a little bit. The 20,000 square  
24 feet has to do with the larger projects.  
25 Sometimes you can do mixed-use projects and do

1 garages and so on. So that was one simple way  
2 to deal with the smaller projects as an issue,  
3 and then see if we could help.

4 MS. ALBERRO MENENDEZ: Are we -- Is there a  
5 particular project that's in the pipeline or  
6 about to be presented that this serves?  
7 Because I'm trying to figure out why Staff  
8 would recommend this if it's not tied to  
9 something that's going to be presented in the  
10 near future, I mean.

11 MR. TRIAS: There have been discussions  
12 about at least one or two projects that have  
13 requested remote parking, yes.

14 MS. ALBERRO MENENDEZ: And -- okay.  
15 Shouldn't the projects be tied somehow, so that  
16 we could see the bigger picture instead of  
17 opening the doors to --

18 MR. TRIAS: Yeah, I mean, the best way to  
19 answer that is that, at some point, some of  
20 those projects attempted to request a variance  
21 for parking, and that seemed to be a problem,  
22 because it opens up a variety of very complex  
23 consequences. So, at that point, Staff  
24 believed that a change in the Code may be more  
25 effective, dealing with all the properties and

1 change to your Code, and so it's always helpful  
2 to see examples, but it's also a little bit  
3 dangerous because we don't want to get so  
4 hooked into the example that we forget we're  
5 writing legislative Code that is broadly  
6 applicable. So, you know, what I would  
7 generally instruct a Board is, be aware of  
8 those examples, but really, the decision you're  
9 making is these criteria, and sometimes that's  
10 easy to mix up. I mean, this is a very  
11 knowledgeable Board; you probably won't. But I  
12 just wanted to remind you of that.

13 MS. ALBERRO MENENDEZ: I'm just trying to  
14 figure out where the four stories and 20 square  
15 feet (sic), why that's the number.

16 MS. TREVARTHEN: The considered judgment of  
17 your Staff --

18 MS. ALBERRO MENENDEZ: Right.

19 MS. TREVARTHEN: -- basically, after a lot  
20 of discussion, and I also needed to address,  
21 you had raised the -- flagged the word  
22 infeasible, and I believe you had a comment  
23 about it, as well, and I just had a chance to  
24 double-check. I wanted to make sure before I  
25 said anything. That is not a trigger for

1 having the same rules apply to everybody, as  
2 opposed to having a variance process that may  
3 or may not work in the long term.

4 MS. ALBERRO MENENDEZ: Right. I'm just  
5 still trying to figure why --

6 MR. LEEN: I'd like to provide further  
7 information. My understanding is that this  
8 does -- There are a couple projects that have  
9 requested this sort of remote parking. I  
10 believe this benefits one of them, and I think  
11 the other one is here, Dade Medical College and  
12 the building that that's going in, and this  
13 particular ordinance would not benefit them.  
14 So, you know, you should -- You've asked the  
15 question, so that's my understanding. Staff  
16 can provide more information about that,  
17 because I don't know a lot about the individual  
18 applications.

19 MR. TRIAS: And there might be some  
20 testimony from some of the public hearing  
21 participants that may explain that further.

22 MR. LEEN: Right.

23 MS. TREVARTHEN: If I could respond to some  
24 of the other comments -- well, first of all,  
25 that -- this is brought to you as a legislative

1 losing your arrangement. What that is, is a  
2 trigger for being eligible to get a remote  
3 parking arrangement. So the infeasible is not  
4 part of enforcement. It's about qualifying for  
5 it.

6 MR. BELLIN: Well, I understand that, but I  
7 meant it in the other extent; it becomes  
8 infeasible. They provide their remote parking  
9 and for some reason, the remote parking doesn't  
10 fit the bill anymore. What does the guy do  
11 with his building? He only rents half of it,  
12 because now he doesn't have enough parking?

13 MS. TREVARTHEN: I'm not sure it could ever  
14 be used that way, and it looks like Ramon has  
15 something to add on that.

16 MR. TRIAS: Yeah, Mr. Chairman, if I could  
17 give an example of what may happen. I think  
18 that if you don't change the use in the  
19 building, it's impossible, basically, to find  
20 the conditions to make it infeasible. However,  
21 if you, for example, change the use in the  
22 building and all of a sudden the new use  
23 requires additional parking, that's the more  
24 likely scenario that this would be an issue of  
25 review by the Development Services Director.

1 MS. TREVARTHEN: And the other thing I  
2 wanted to address with Ms. Menendez's comments  
3 is, I understand what you're proposing about a  
4 potential restriction on how the payment in  
5 lieu program money is spent, which -- just a  
6 couple of things on that. That's an  
7 independent program of your Code of Ordinances  
8 that we're not touching in this ordinance.

9 MS. ALBERRO MENENDEZ: Yes, you are.

10 MS. TREVARTHEN: It's not within this  
11 title.

12 MS. ALBERRO MENENDEZ: Well, but it's made  
13 reference to by Section --

14 MS. TREVARTHEN: It's referenced, no  
15 question.

16 MS. ALBERRO MENENDEZ: It's referenced and  
17 it's in the body of the reference.

18 MS. TREVARTHEN: And it doesn't mean that  
19 we couldn't consider making a change, but I  
20 just wanted to be clear --

21 MS. ALBERRO MENENDEZ: It is part of  
22 74-201(d), which is what's made reference to,  
23 and it's the whole payment in lieu of parking  
24 program, and my comment is related to, if the  
25 objective is to provide the necessary parking

1 this.

2 MS. ALBERRO MENENDEZ: Right.

3 MR. LEEN: But it does apply to this.

4 MS. ALBERRO MENENDEZ: True.

5 MR. LEEN: So I think you could certainly  
6 put that -- to the extent it relates to this  
7 ordinance, you could put it into this  
8 ordinance, but you may have to do a broader  
9 change to the payment in lieu program.

10 CHAIRMAN AIZENSTAT: If you're going to do  
11 that, wouldn't you have to then open up that  
12 specific part of the Code or --

13 MS. ALBERRO MENENDEZ: We are.

14 CHAIRMAN AIZENSTAT: -- ordinance, and  
15 then --

16 MR. LEEN: Well --

17 MS. ALBERRO MENENDEZ: In Section  
18 74-201(d) --

19 MS. TREVARTHEN: I'm sorry, we're not. The  
20 title does not in any way relate to the City  
21 Code of Ordinances. This is a change to your  
22 Zoning Code.

23 CHAIRMAN AIZENSTAT: Okay.

24 MS. TREVARTHEN: It references the City  
25 Code procedure, and I'm not at all saying that

1 for the area and you're providing a method of  
2 allowing people to pay into it, then I think  
3 that the payment should be made or invested  
4 into the area that's being impacted.

5 MS. TREVARTHEN: I understand, and if I  
6 could just continue, you know, we could look at  
7 that with Craig, to see if it would be possible  
8 to alter this ordinance. There's no reason why  
9 another ordinance couldn't be brought forward  
10 if it was the recommendation of this Board and  
11 the decision of the Commission to do so, to  
12 change the payment in lieu program.

13 MR. LEEN: What are you proposing?

14 MS. ALBERRO MENENDEZ: I'm proposing that  
15 we provide or that we suggest a radius within  
16 the development that's paying into it, to  
17 provide for the parking. So, for example, if  
18 we are putting these pay-in-lieu-of funds into  
19 the parking, and we have an opportunity to do a  
20 parking garage, I think we should focus on the  
21 area that's being impacted by not providing the  
22 necessary parking on-site, or off-site, or  
23 remotely.

24 MR. LEEN: I see, but the focus of it would  
25 be -- That does seem a little broader than just

1 this is impossible to do. I'm saying that this  
2 may not be the document within which we would  
3 do it, and if I could complete, I had one more  
4 thing.

5 MR. LEEN: Sure, but I just need to finish  
6 with the Board member.

7 Ms. Menendez --

8 MS. ALBERRO MENENDEZ: Yes.

9 MR. LEEN: So I think you could do it,  
10 though. This takes precedence over -- If you  
11 do it here, this ordinance is more recent and  
12 would take precedence. I just think -- and as  
13 long as it relates to the remote parking. But  
14 I do agree with special counsel's view that  
15 it's generally better to do that as part of  
16 the, you know, whole approach to that  
17 ordinance. You could always make that  
18 recommendation in conjunction with this --

19 MS. TREVARTHEN: Of course.

20 MR. LEEN: -- that that be brought to you,  
21 and then we could -- Technically, City Code  
22 amendments don't have to be brought to this  
23 Board, but you could always request that it be,  
24 and the Commission generally is open to that.

25 MS. ALBERRO MENENDEZ: Okay.

1 MS. TREVARTHEN: And then the only other  
2 thing I wanted to add was, this is a CBD  
3 program, and having looked through your parking  
4 study and talked with your Parking Director,  
5 the vast majority of the public parking that's  
6 provided seems to be in your CBD or near your  
7 CBD. So there already is, somewhat, that  
8 relationship, but someone still, as you say,  
9 may want to make that a closer connection. I  
10 understand that.

11 MS. ALBERRO MENENDEZ: Can I just ask you  
12 again about the infeasible?

13 MS. TREVARTHEN: Uh-huh.

14 MS. ALBERRO MENENDEZ: It says here, "The  
15 Director of Development Services determines  
16 that it is infeasible to provide the  
17 Code-required parking on-site." And that is  
18 described --

19 MS. TREVARTHEN: It's the trigger.

20 MS. ALBERRO MENENDEZ: -- infeasible.

21 MS. TREVARTHEN: Well, it is something that  
22 has a dictionary definition. We actually  
23 looked at this word and several other synonyms,  
24 and it means not a hundred percent  
25 impossibility, but greatly difficult or awkward

1 to accomplish. There's many dictionary  
2 definitions of infeasibility, and we actually  
3 evaluated whether we wanted to be more precise  
4 than that, but there are a number of factors  
5 that could contribute to its feasibility.

6 So, from the perspective of, is this a word  
7 that's too vague to put in the Zoning Code, my  
8 legal opinion is no. I think a policy decision  
9 could be made if you wanted to put, you know,  
10 more --

11 MS. ALBERRO MENENDEZ: Criteria?

12 MS. TREVARTHEN: Around that.

13 MS. ALBERRO MENENDEZ: Or something that  
14 triggers --

15 MS. TREVARTHEN: We saw this as something  
16 that, you know, having some level of judgment  
17 call may be appropriate for the range of  
18 circumstances that may come in and be seeking  
19 to do this. And then that becomes one of the  
20 criteria to just be eligible to try to set up a  
21 remote parking situation. I believe that was  
22 all of your questions; am I right?

23 MS. ALBERRO MENENDEZ: Yes.

24 MS. TREVARTHEN: Okay, thanks.

25 MR. LEEN: Ms. Menendez, one other point.

1 I have reviewed this formal legal sufficiency.  
2 I thought that that was specific enough to be  
3 legal. I do agree with special counsel that  
4 you could make it more specific. To me,  
5 infeasible is a pretty strong word, though.

6 MS. ALBERRO MENENDEZ: But it's a judgment  
7 call.

8 MR. LEEN: It's a judgment call, but it's a  
9 fairly -- Infeasible is a rather high standard.

10 MS. ALBERRO MENENDEZ: It's a judgment call  
11 where Staff has to make it --

12 MR. LEEN: Yes.

13 MS. ALBERRO MENENDEZ: --- not the  
14 Commission, not --

15 MR. LEEN: No, the Commission would only  
16 have to make it by appeal.

17 MS. ALBERRO MENENDEZ: Right.

18 MR. LEEN: So you could appeal the decision  
19 of the Development Services Director.

20 MS. ALBERRO MENENDEZ: Okay.

21 MR. TRIAS: Alberto?

22 MR. PEREZ: If I could follow up on that --

23 MS. TREVARTHEN: Hello.

24 MR. PEREZ: I agree with the comments about  
25 (Inaudible due to microphone off).

1 MS. TREVARTHEN: Okay.

2 MR. PEREZ: I'm in agreement with the  
3 concerns over the limits to (inaudible),  
4 project size, et cetera.

5 So my brief questions have to do with, one,  
6 the proposed amendment allowing to provide up  
7 to 50 percent of required parking. So who  
8 determines that up to 50 percent? Because when  
9 you're looking at a building now by height and  
10 you determine that your parking is limited up  
11 to 50 percent, that could take up -- make up a  
12 lot of that building. So could you shed some  
13 light on that?

14 My second question is, I want you to walk  
15 me through, once again, the rationale between  
16 owned by the same party who owns the same use.  
17 In my view, that kind of limits now the fact  
18 that you have a landlord from an existing  
19 building that perhaps this building is already  
20 overparked to begin with, and he wants to use  
21 additional parking as a source of additional  
22 revenue to the bottom line. Why shouldn't that  
23 landlord be allowed to have some leased-out  
24 outlet space to a party who needs it? On that  
25 same note, why does it have to be owned? Where

1 does that put, you know, tenants who are  
 2 leasing or renting in office buildings?  
 3 And then, lastly, I don't understand why it  
 4 cannot be used for retail or restaurant. When  
 5 looking at a brand new project, be it in the  
 6 CBD or outside the CBD, it's my understanding  
 7 that the City will allow or want or require a  
 8 commercial project to have some component of  
 9 restaurant or retail, which we all know from  
 10 the development side really increases your  
 11 parking (inaudible).

12 So I don't understand why it does not  
 13 include a restaurant when looking at a parking  
 14 count for a typical office or multi-family,  
 15 typically your parking requirements for spaces  
 16 are a lot higher (inaudible).

17 MS. TREVARTHEN: Right.

18 MR. PEREZ: So, if you could kind of walk  
 19 me through those elements, I'd appreciate it.

20 MS. TREVARTHEN: Certainly, Mr. Perez.

21 On the up to 50 percent, that's precisely  
 22 the language that we have in our Code today,  
 23 and that limitation, over time, from what I  
 24 understand, there really haven't been many, if  
 25 any, that we found that were actual remote

1 The second question you had was about,  
 2 again, why are we recommending ownership? And  
 3 we went around the tree several times on this,  
 4 in terms of renting or owning, but you have  
 5 situations where you have different incentives  
 6 out there, and the person who owns the parking  
 7 spaces and is just renting them, you know,  
 8 something may happen to their project and their  
 9 use. They may have an opportunity for a change  
 10 of use. They may have an opportunity to grow  
 11 in some way that affects their parking demand,  
 12 where they're going to want to cancel this  
 13 agreement and take back those spaces for their  
 14 own purposes. So they've got different  
 15 motivations than the user of the remote parking  
 16 spaces. The City and the user of the remote  
 17 parking spaces, I think, are over here, and  
 18 they have the same motivation, which is, this  
 19 is a replacement for Code-required parking. It  
 20 potentially has to be there indefinitely, as  
 21 long as the use is there, and so we want to see  
 22 stability in that arrangement.

23 So, after working through it several times,  
 24 working with Staff, this was ultimately the  
 25 recommendation as a way to avoid some of the

1 parking arrangements that were approved by City  
 2 in the past. This has been in your Code for a  
 3 while, but there weren't precedents where it  
 4 had been done. But that language is exactly  
 5 the same, and I interpret it to be a limit on  
 6 what the applicant can ask for. Right now,  
 7 there's no limit on what the applicant can ask  
 8 for, for nonresidential. They could ask for a  
 9 hundred percent of their Code-required parking  
 10 to be remote, and Staff really had a concern  
 11 with that, that that was not realistic and that  
 12 could be harmful, with the people looking for  
 13 parking places not being able to find them in  
 14 the neighborhood and parking where they  
 15 shouldn't and violating and so forth.

16 So what this ordinance does is, it keeps  
 17 the 50 percent cap on residential and it adds a  
 18 50 percent cap on the other uses. The "up to"  
 19 language is intended to be, you may request up  
 20 to, and that would -- So, you said, "Who  
 21 decides?" The person who applies decides.

22 CHAIRMAN AIZENSTAT: So there's a cap at  
 23 that, 50?

24 MS. TREVARTHEN: It's in the nature of a  
 25 cap, exactly.

1 complications that could arise with a provision  
 2 that would allow renting.

3 And your third question was, why no retail  
 4 and restaurant? And I first want to just  
 5 clarify that, because what it actually says is  
 6 customers for retail or restaurant. And  
 7 meeting with your Parking Staff and -- you  
 8 know, they have a lot of knowledge about how  
 9 customers interact with parking, and their  
 10 belief was that it's unlikely that you're going  
 11 to have customers who are -- Think of somebody  
 12 who's just driving by and they want to stop and  
 13 get an ice cream cone, or they want to do  
 14 whatever. You know, they're going to figure  
 15 out where the remote parking is? They're going  
 16 to actually go and find it and park in it?  
 17 There doesn't necessarily seem to be a lot of  
 18 credence that that's always going to happen.  
 19 It's not going to necessarily be reliable  
 20 that's going to happen.

21 The reason why I'm clarifying is, that  
 22 doesn't mean all the retail and restaurant  
 23 parking is prohibited from having remote. The  
 24 employee parking, certainly, is very  
 25 appropriate for remote, and both your Zoning

1 and Parking Staff agreed with that. So that's  
2 why it says customers, and that's just  
3 recognizing the nature of a customer  
4 relationship where somebody just drops by,  
5 whereas like an office, you often -- you  
6 usually have an appointment. You're planning  
7 to go there. You figure it out before you show  
8 up.

9 CHAIRMAN AIZENSTAT: Thank you.  
10 Julio?

11 MR. GRABIEL: Yeah. I've got a few. I  
12 question the 20,000 and the four stories, but  
13 I'm accepting that as a given to base a couple  
14 of points. I believe the ownership is  
15 important, because if you're putting parking on  
16 a satellite site that is carried with a  
17 building use, you want to make sure that that  
18 parking remains with the building forever and  
19 ever. If it's a lease, something can happen  
20 that removes the possibility of that parking  
21 then being associated with the building. So I  
22 think ownership is important, my point.

23 But the biggest question is -- maybe it's a  
24 little bit more drastic -- why 50 percent of  
25 the parking? If we're looking at buildings in

1 the CBD, we're talking about buildings which  
2 are going property line to property line, most  
3 probably, all the way up to the sidewalk. I  
4 think there's a goal, urbanistically, that the  
5 City has and planners have that we want that  
6 ground floor to be as useful and as friendly  
7 and as open to the residents and visitors and  
8 customers as much as possible. The moment we  
9 force a small site to put 50 percent of their  
10 parking in there, that eliminates a great  
11 portion of the ground floor of that building to  
12 be used for commercial use, which, A, gives  
13 value to the property and the developer, and B,  
14 makes the City more attractive.

15 I would like to consider the possibility  
16 that when you have a building in the CBD that  
17 has the possibility of having commercial  
18 activity on the ground floor, that you could go  
19 up to a hundred percent of the parking as a  
20 satellite parking. If a developer can develop  
21 and build and lease a building that has  
22 satellite parking and gets his people to use  
23 it, customers, people to buy in it, why not?  
24 That will make the Downtown area, the CBD, a  
25 lot more attractive, because we increase the

1 commercial base of the ground floor.

2 So, if we're going to accept satellite  
3 parking, I would like to consider a hundred  
4 percent of the parking to be considered to be  
5 on a satellite location, to bring that  
6 commercial activity on the ground floor as much  
7 as possible. Otherwise, you end up with, like  
8 a lot of buildings that we have in Ponce de  
9 Leon and some of the other areas, that the back  
10 side is parking and only maybe the first 20  
11 feet is retail, and we lose the opportunity of  
12 creating a very good commercial base on the  
13 ground floor and on the sidewalk.

14 CHAIRMAN AIZENSTAT: But, Julio, according  
15 to this, it is not to be used for retail or  
16 restaurant.

17 MR. GRABIEL: Well, that's the other --  
18 That was my last point, is that I believe that  
19 it should be.

20 CHAIRMAN AIZENSTAT: Residential or office.

21 MR. GRABIEL: Yeah, that --

22 MS. ALBERRO MENENDEZ: Well, that's new,  
23 right? Office is new, because the existing one  
24 says just residential.

25 MR. GRABIEL: No, I don't think so --

1 MS. TREVARTHEN: No, it's capped for  
2 residential.

3 CHAIRMAN AIZENSTAT: If we could --

4 MS. TREVARTHEN: I'm sorry, Mr. Chair. I  
5 apologize.

6 MR. GRABIEL: My thought process -- and let  
7 me know if I'm not doing this right. If we're  
8 doing a building in the CBD and it's going to  
9 have retail and any type of commercial  
10 activity, are you going to park -- are the  
11 customers going to park in the back, through  
12 the alley to get to the front of the store, or  
13 the sides? It's not. You're going to park in  
14 the City, on the street, in the City parking  
15 garage, or in the satellite parking if you know  
16 that that's available, to get to it. So to  
17 limit it so it could not be used for retail or  
18 restaurant customer parking, I don't think is  
19 right, and I would like to consider that a  
20 hundred percent of the parking, when you're  
21 within the CBD, can be done as a satellite  
22 site.

23 MS. TREVARTHEN: Understood.

24 CHAIRMAN AIZENSTAT: Ramon, can you give us  
25 some boundary lines for the CBD?

1 MR. TRIAS: Navarre on the north, Douglas  
2 on the east, LeJeune on the west, and Almeria  
3 on the south.

4 CHAIRMAN AIZENSTAT: Okay. Thank you.  
5 Anthony?

6 MR. BELLO: No.

7 MR. TRIAS: And it has been like that for a  
8 very, very long time.

9 CHAIRMAN AIZENSTAT: Right, right. Okay.  
10 I just want to be clear on it.

11 Jeff?

12 MR. FLANAGAN: I just want to clarify,  
13 because I think I just heard you say this is  
14 only for residential or basically office  
15 parking, but I think I heard Ms. Trevarthen say  
16 earlier it can be used for retail or restaurant  
17 parking, the required parking for, say,  
18 employees, but not required parking for  
19 customers.

20 MS. TREVARTHEN: That's correct.

21 MR. FLANAGAN: Okay.

22 CHAIRMAN AIZENSTAT: How do you distinguish  
23 what is required parking per Code, as opposed  
24 to what visitor parking is? Do you make -- Do  
25 you enforce that visitor parking must be

1 of questions, but I want to hear from the  
2 public first, but when I came into this, I had  
3 a lot of confusion, and some of the confusion  
4 is being answered as we go along, because I  
5 think some of the language, I was confused as  
6 to whether it was applying to the property that  
7 has the use on it or if it was applying to the  
8 property that was going to be used for the  
9 remote parking, and I think one of those cases  
10 in point is where it says the remote parking  
11 must meet the following requirements, one of  
12 those being, is not used for retail or  
13 restaurant customer parking.

14 So I was reading that as saying the remote  
15 parking facility could not be used for customer  
16 retail or restaurant customer parking, but I  
17 think I'm hearing you say, as the business or  
18 as the use, I can't use the remote parking for  
19 my customer parking.

20 MS. TREVARTHEN: Yes.

21 MR. FLANAGAN: So either I'm reading it  
22 wrong or I'm just comprehending it wrong.  
23 There's a couple other of those scenarios, but  
24 I'll get into that.

25 MS. TREVARTHEN: And I understand the

1 contained within the project?

2 MS. TREVARTHEN: Your parking ratios, your  
3 parking requirements, contain within them  
4 assumptions about what's required, and I think  
5 it does vary from use to use. Some of your  
6 uses are just per square foot --

7 CHAIRMAN AIZENSTAT: Right.

8 MS. TREVARTHEN: -- so they've been blended  
9 together. Some of them -- I'm trying to recall  
10 if some of them are driven by customer service  
11 area or tables or seats. So there may be  
12 situations where it's more apparent than  
13 others, depending on the use.

14 CHAIRMAN AIZENSTAT: What about required  
15 handicap spaces? How do you --

16 MS. TREVARTHEN: Those are always going to  
17 be separate, because that's an ADA issue and --

18 CHAIRMAN AIZENSTAT: So the ADA issue is  
19 not within here?

20 MS. TREVARTHEN: Yeah. That's Code-  
21 required parking and they would still have to  
22 provide that Code-required parking, meeting the  
23 standards of the ADA.

24 CHAIRMAN AIZENSTAT: With -- Go ahead, Jeff.

25 MR. FLANAGAN: No, I mean, I have a bunch

1 question, because we've gone round and round,  
2 trying to be clear about the terminology, and  
3 it probably can be clearer. It's inherently a  
4 situation where the terminology gets slippery.

5 CHAIRMAN AIZENSTAT: It needs to be clear  
6 on that.

7 MS. TREVARTHEN: Uh-huh. Did you have a --  
8 I'm sorry if I interrupted you.

9 MR. FLANAGAN: I want to hear from the  
10 public before I go on.

11 MS. TREVARTHEN: Okay.

12 MR. BELLIN: I have a couple of questions  
13 generated by the discussion. I don't think  
14 there is any residential zoning in the CBD.  
15 You can have apartments, but only if you put an  
16 MXD on it and it's a mixed-use building. So,  
17 in general, I'm not sure how that's going to  
18 work. You can't use it for the retail on the  
19 ground floor, and retail is required in those  
20 buildings.

21 MS. TREVARTHEN: Let me make sure I heard  
22 you correctly. You're saying that there's no  
23 single-family residential zoning in the CBD?

24 MR. BELLIN: There's no multi-family,  
25 either.

1 MS. TREVARTHEN: The reason for that, if I  
 2 may, is that you're allowed to park within a  
 3 thousand feet in the City, and so at the edges  
 4 of the CBD, it becomes relevant. That's why  
 5 those other zoning districts may become  
 6 relevant at the edges.  
 7 CHAIRMAN AIZENSTAT: At the edges.  
 8 MS. TREVARTHEN: Yeah.  
 9 MR. BELLIN: But you can't have remote  
 10 parking in those --  
 11 MS. TREVARTHEN: The person seeking to have  
 12 remote parking has to be located in the CBD,  
 13 and they can find providers of remote parking  
 14 within a thousand feet, within the City limits  
 15 of Coral Gables, for that purpose.  
 16 MR. BELLIN: But not in residential  
 17 zonings.  
 18 MS. TREVARTHEN: And as it is in the  
 19 current Code, and carrying that forward, not on  
 20 single-family residential zoning, yes.  
 21 MR. FLANAGAN: So the remote parking  
 22 space -- the remote parking facility does not  
 23 have to be in the CBD?  
 24 MS. TREVARTHEN: At the edges, no. I  
 25 believe that's where we ended up in drafting

1 measure it from the tip of the property? You  
 2 don't have to go to the center of the property?  
 3 MS. TREVARTHEN: It's the property line,  
 4 the property line.  
 5 CHAIRMAN AIZENSTAT: So it's from the  
 6 property line?  
 7 MS. TREVARTHEN: As an air measurement.  
 8 CHAIRMAN AIZENSTAT: Understood.  
 9 MS. TREVARTHEN: So closest point to  
 10 closest point.  
 11 CHAIRMAN AIZENSTAT: Understood.  
 12 Okay, let's go ahead and open it at this  
 13 point for public comment.  
 14 Jill, do we have --  
 15 MS. MENENDEZ: Jorge -- Yes. Jorge  
 16 Alvarez?  
 17 CHAIRMAN AIZENSTAT: Before we do that, if  
 18 anybody that's going to go ahead and speak, if  
 19 they could stand up and be sworn in, please.  
 20 (Thereupon, all who were to speak were duly  
 21 sworn by the court reporter.)  
 22 MR. ADAIR: I'm the next on the list after  
 23 Jorge, so -- Good evening. Perry Adair, 121  
 24 Alhambra Plaza, 10th Floor, representing Dade  
 25 Medical College, who Mr. Alvarez is here from.

1 this. So it's not a lot, but along the edges,  
 2 there's going to potentially -- not on the  
 3 east, because then you're in the City of Miami,  
 4 but the north and the west, there may be areas,  
 5 and I haven't looked at every single one, but I  
 6 think some of them were residential, maybe not  
 7 single-family. He may be correct on that.  
 8 MR. TRIAS: There are MF2 areas within a  
 9 thousand feet, yes.  
 10 MS. TREVARTHEN: Yeah, and then the  
 11 question in my mind is whether there was any  
 12 single-family. I didn't actually chase that  
 13 down. I just kept that from the current Code.  
 14 CHAIRMAN AIZENSTAT: Is there a reason you  
 15 decided not to keep it within the CBD, also?  
 16 MS. TREVARTHEN: Really, just following the  
 17 existing construct. Obviously, we're making a  
 18 lot of changes to it, but we did retain some of  
 19 the facets of the existing regulation. I mean,  
 20 if it's a concern of the Board, that's  
 21 certainly something that could be done in this  
 22 ordinance, is to be clear that the remote  
 23 parking facility also has to be within the CBD.  
 24 CHAIRMAN AIZENSTAT: And when you measure  
 25 your thousand feet, is it from -- can you

1 CHAIRMAN AIZENSTAT: Would you state your  
 2 name, please? I didn't hear.  
 3 MR. ADAIR: Sure. Perry Adair.  
 4 CHAIRMAN AIZENSTAT: Thank you.  
 5 MR. ADAIR: He didn't -- They thought there  
 6 was some chance I might not be here and Jorge  
 7 might give the remarks, so I'm taking his time,  
 8 because he's from Dade Medical College.  
 9 So, where to start? This initiative of  
 10 expanding the distance within which remote  
 11 parking can be located started a little bit  
 12 with Dade Medical College, because I was in  
 13 front of the Commission, explaining to them a  
 14 dilemma that we had at the building, needing to  
 15 find some additional parking for our uses  
 16 there, and they were not available within 500  
 17 feet, and whether that contributed in whole or  
 18 in part to the development of this ordinance, I  
 19 don't know, but I can tell you that this  
 20 solution completely obliterates any chance we  
 21 have of getting the extra parking we need. I  
 22 don't know how we got to this place. I don't  
 23 understand it, because the City was clearly  
 24 aware of what our problem was, and this  
 25 solution, this proposed ordinance, eliminates

1 any solution that we have.  
 2 So I'm talking -- So when I'm addressing  
 3 the changes, I'm addressing it from the  
 4 perspective of a real life example of what  
 5 they're doing, in addition to, because my  
 6 client today happens to be Dade Medical, but it  
 7 would be true for anyone trying to have remote  
 8 parking; the policy issues are the same.

9 So the grand policy issue is, does the City  
 10 want to be business-friendly or does it not?  
 11 Are we going to let the on-site-parking tail  
 12 wag the friendly-to-business dog? Does it  
 13 matter, if there's a parking space, whether the  
 14 business that generates that parking need owns  
 15 that parking space or not? Does it matter  
 16 whether the parking is outside the City? Isn't  
 17 there some other way to solve the problem?

18 And with that premise, let me just go  
 19 through the proposed changes with you and  
 20 explain to you why, both from Dade Medical  
 21 College's perspective and as a broader policy  
 22 perspective, why these changes that are  
 23 supposed to make the remote parking better have  
 24 actually made it infinitely worse and will make  
 25 it something that can almost never be taken

1 The use we propose there, which is going to  
 2 be instructing students -- there's some  
 3 administrative and some instructing students --  
 4 generates, according to the City's  
 5 calculations, a need for 42 more spaces than we  
 6 have.

7 Now, we don't necessarily agree with that  
 8 calculation, but we're going to live with it  
 9 because we agreed we would and we'd try to find  
 10 the spaces elsewhere. So, at present, our  
 11 arrangement with the City is, we cannot have  
 12 our building permit and we cannot build out the  
 13 third floor. We can't use it. We have to pay  
 14 rent on it to our landlord, of course, it's not  
 15 his problem, but we can't use it. So the  
 16 students that would come there and the teachers  
 17 that would come there and the administrative  
 18 staff that would come there because of those  
 19 students on that floor, that would generate  
 20 additional jobs here in the City, that would  
 21 generate additional customers for the City's  
 22 businesses, we can't do it. Why? At present,  
 23 it was only because we couldn't find spaces  
 24 within 500 feet. Now, as you go through the  
 25 ordinance, I'm going to explain to you why that

1 advantage of. So let's just go through it.  
 2 CHAIRMAN AIZENSTAT: Before you do that --  
 3 MR. ADAIR: Yes.  
 4 CHAIRMAN AIZENSTAT: -- could I ask you to  
 5 give us the location of the Dade Medical  
 6 College?  
 7 MR. ADAIR: Sure. 2222 Ponce, and let me  
 8 just give you --  
 9 CHAIRMAN AIZENSTAT: Thank you.  
 10 MR. ADAIR: -- a little more -- a finer  
 11 point on that. So Dade Medical College has  
 12 three floors in the 2222 Ponce building.  
 13 That's a seven-story commercial condominium.  
 14 Each floor is a unit.  
 15 We are in operation there. We lease the  
 16 third, fourth and fifth. We're in operation  
 17 there on the fifth floor. We are currently  
 18 building out the fourth floor, and the third  
 19 floor, which we're paying rent on, we can't use  
 20 because of parking. So here is the dilemma we  
 21 have there. We have 76 spaces that we have  
 22 allocated to us in our lease. We're a tenant  
 23 there. It's part of the larger Giralda  
 24 project. So we have 76 spaces that are  
 25 allocated to us under our lease.

1 situation is worse.  
 2 By the way, if this ordinance is passed,  
 3 with its limit on four stories, our building is  
 4 seven stories. Of what possible relevance --  
 5 Let's talk about that for a minute. That's a  
 6 good place to start, so let's just go through  
 7 the ordinance and take them one at a time.  
 8 The existing project in the CBD, that is a  
 9 tough proposition. So the Central Business  
 10 District, the City -- Listen, if you live in  
 11 the City of Coral Gables and you leave the City  
 12 of Coral Gables, as soon as you cross the  
 13 border, you know you're no longer in the city  
 14 of Coral Gables. It has a beautiful look to  
 15 it, both in the Central Business District and  
 16 beyond. So it is up to the City to decide,  
 17 this much business, this much not business, and  
 18 we're not here to address the boundaries of the  
 19 Central Business District today. But the  
 20 policies I'm talking about are  
 21 business-friendly no matter where they're  
 22 located.  
 23 Now, you can only approve this remote  
 24 parking if the site is smaller than 20,000  
 25 square feet. The premise there is that only a

1 site smaller than 20,000 square feet would  
 2 generate a need for off-site remote parking.  
 3 That's a huge leap of faith, and in fact, I'm  
 4 here to tell you it's not true, because we are  
 5 in a building that is more than four stories.  
 6 I want to say if we're more than 20,000 square  
 7 feet or not, and that's tough, because I didn't  
 8 do that calculation before I came here. But it  
 9 doesn't matter. Whether you limit by space or  
 10 by floors, how does that -- The assumption is,  
 11 I can solve my problem better on site, and  
 12 there is the central -- the central premise  
 13 that is tied in most uniquely with the  
 14 infeasible concept of the ordinance where we  
 15 miss.

16 You see, the premise of this is that  
 17 government is going to tell business what's  
 18 feasible and what's not feasible. Government  
 19 is going to tell business, "Here's how you do  
 20 business here." And we're talking about a  
 21 very, very limited -- where the parking is. So  
 22 we're going to tell a business owner, who says,  
 23 "I'm going to bring a business to the Gables,  
 24 but the building will be here. I don't think  
 25 it's feasible to take that much of that kind of

1 Let's take an easy example. Let's suppose,  
 2 right on-site, I could pay \$250 a space for  
 3 parking. They have this parking available, I  
 4 could get it right on-site. Let's suppose I'm  
 5 a tenant in a commercial space. But that  
 6 destroys the business model for me. Within a  
 7 thousand feet, I can get the parking at a \$100  
 8 a space.

9 Now, look at where we are. We have Staff  
 10 saying, "Well, that doesn't sound so bad to me.  
 11 Pony up the extra 150." But the businessman is  
 12 saying, "That's not reasonable. There's no  
 13 reason to do business that way when I can meet  
 14 that parking need within a thousand feet."  
 15 You've got the feasibility in the wrong place.  
 16 It shouldn't matter that a businessman makes a  
 17 decision that I can put the parking somewhere  
 18 else. The idea that it should be a hundred  
 19 percent, I couldn't agree with you more. Why  
 20 not? If that's a better business decision, it  
 21 brings a business to the City, it brings jobs  
 22 to the City, why not? Why eliminate that,  
 23 right off the bat, we're not even going to  
 24 consider that?

25 Okay. This is why we hate technology, no?

1 space and make the parking for the space. I  
 2 think it's feasible to have remote parking,  
 3 somewhere else. I think that's a better  
 4 business investment for me."

5 It is really no different than, "We've made  
 6 a policy decision not to require parking for  
 7 some uses. We'll make it zero and let them be  
 8 accommodated in the City garages."

9 So let me just continue, so we don't lose  
 10 track of where we are in the ordinance. So  
 11 20,000 square feet and four stories. Those are  
 12 not the parameters to set if we're going to be  
 13 pro business. We're going to let the business  
 14 come and tell us, "Here's the business we want  
 15 to do, here's the need it generates, whatever  
 16 the size of the project, and we think we can  
 17 meet our parking off-site."

18 Now, the infeasible, it is -- I don't want  
 19 to debate whether it's too vague or not,  
 20 because it is a conversation we don't need to  
 21 have today. My problem is, it's in the wrong  
 22 place. It's in the wrong place. The  
 23 businesses should say, "Here's what's feasible  
 24 for my business plan, if you want me to come to  
 25 this City," not for us to say in advance --

1 All right, so the maximum remote parking,  
 2 we've talked about, retail or restaurant -- I  
 3 mean, the policy issues that I'm talking about  
 4 have all been recognized here. Why? Why this  
 5 limitation? Forget about, for the moment, that  
 6 it eliminates the possibility of Dade Medical  
 7 solving their problem. Why limit it as we're  
 8 limiting it?

9 The ownership. Now, think about what we're  
 10 saying. Think about what we're talking about.  
 11 We have a person doing business in a leased  
 12 space, a commercial leased space. They could  
 13 own it, but let's just say they're a tenant.  
 14 If they don't own the spaces, if they don't own  
 15 another parking garage or own a lot, like you  
 16 were saying, that they're now going to tie up  
 17 our service parking, because that's what the  
 18 Code drives them into, what possible sense does  
 19 that make? What does it matter, as long as  
 20 they have the parking tied up, whether they own  
 21 it or lease it? They have control over it and  
 22 have contractual rights with that person who's  
 23 providing the parking.

24 Now, let's talk about this idea of, they  
 25 have to own it because you won't have control

1 of the parking -- for two things: Unless they  
 2 own it, you won't have control of it, and  
 3 unless it's located in the City, you won't have  
 4 control of it. What does the City care whether  
 5 it has control over the parking or not? What  
 6 it has control over is the use. When the  
 7 applicant comes to you, the premise is -- it  
 8 has to be, the premise has to be located in the  
 9 City. All you need to do is to tell that owner  
 10 he has to provide this parking within a  
 11 thousand feet, and by the way, I'm not even  
 12 sure a thousand feet is the right number, you  
 13 know, but we're not -- A study was presumably  
 14 made of that, and when we get to the  
 15 Commission, we'll have our own facts on whether  
 16 a thousand feet is the right number, but let's  
 17 pass over that for the moment. Suppose that  
 18 they don't own it. Suppose that the applicant  
 19 does not own it, and he has the property tied  
 20 up under a lease. You raised the point, what  
 21 is he going to do? Now we're talking about the  
 22 business owner taking the risk that he knows  
 23 of. He says, "I have to have the parking.  
 24 I've got it under control under this lease.  
 25 I'm willing to take the risk that something

1 else happens to that parking, and if I can't  
 2 find a solution, that's the problem I knew that  
 3 I had." But when you say he has to own it,  
 4 let's take my client. It doesn't own another  
 5 piece of property within that distance that can  
 6 supply this parking. He's out of the game, on  
 7 the third floor of this property.  
 8 Why is that a good result for the City?  
 9 Why? How about the limiting it to the parking  
 10 has to be in the City? For what purpose? What  
 11 does it matter? If you really had to tie up  
 12 that property -- Think about it for a minute.  
 13 I want to have a unity of title between these  
 14 two parcels. For what purpose? So you own the  
 15 parking, where the parking is, and you own  
 16 the use, where the use is going to be. Now  
 17 you're telling, "In order for you to do  
 18 business in the City, you have to get you to  
 19 agree to tie those properties together, that  
 20 one can't be sold without the other." Why?  
 21 What purpose does that serve? All you really  
 22 need is a covenant to say that you're tied to  
 23 his parking. Why does he have to give up the  
 24 right, the use of his property, however he  
 25 wants, forever? He can control that in a

1 contractual arrangement between you two. And  
 2 then you decide how much risk you're willing to  
 3 take about that parking might not be available.  
 4 Instead, the premise of this is, "We're  
 5 going to take that business right out of the  
 6 game. We're not even going to give them the  
 7 chance to do that." Why? Why is that better?  
 8 If it was outside the City, let's talk  
 9 about that. Suppose that piece of property is  
 10 outside the City. You're inside the City and  
 11 you have a covenant, tying them together,  
 12 saying, "This parking is this, and if you don't  
 13 supply the parking, you can't do business in  
 14 the City anymore." What more control do you  
 15 need than that?  
 16 But instead, we say, "I don't want you  
 17 here, because you have to go outside the City  
 18 to solve your parking problem." Why? Why is  
 19 that better? What good does that do for the  
 20 City?  
 21 Now, all of these restrictions about the  
 22 proof we want, to show that you have the  
 23 parking really tied up, they all assume that  
 24 the business owner -- and by the way, the  
 25 concept of, "Listen, we have to have some

1 assurance the parking is going to be there," is  
 2 completely reasonable, right? But why do you  
 3 want it? Because you want to make sure the use  
 4 doesn't go on without the parking. But you  
 5 don't need control of the parking to do that.  
 6 You only need control of the use, because as  
 7 soon as the owner of the use can't demonstrate  
 8 to you that the parking is still available, you  
 9 say, "Give me your certificate of occupancy.  
 10 You can't operate that business anymore." Now,  
 11 it may be a solution where you just can reduce  
 12 the intensity of what you're doing, that could  
 13 be, but that's not for the City to decide.  
 14 That's for the business owner to decide. The  
 15 policy we ought to be looking about when we  
 16 talk about these kinds of ordinances is, "How  
 17 are we business-friendly and how much control  
 18 do we really need?"  
 19 Now, I want to go through some of the  
 20 comments that were made during the explanation,  
 21 because I don't think I captured them all. So  
 22 the infeasible, we did talk about, not a  
 23 hundred percent, but it's very difficult, we  
 24 could debate whether it's too vague or not, but  
 25 the point is, it puts infeasible in the wrong

1 place.

2 The reason that we're asking -- The reason,  
3 I think, everybody who asked the question asked  
4 about the 20,000 square feet and the four  
5 stories. We all hit upon it together, because  
6 there's no rational basis for that, right?  
7 There really isn't. There's a presumption that  
8 they can solve the problem some other way, and  
9 now, once we get to that premise, we're telling  
10 you the best way to solve it, but why? Why  
11 tell a business owner? This is a beautiful  
12 city, everybody wants to come here, but we're  
13 not that beautiful, right? We're not that much  
14 better than everybody else. "Let somebody else  
15 let me solve my problem down on Brickell Avenue  
16 or Mary Brickell Village or somewhere else with  
17 a parking solution that's reasonable, I'm going  
18 there instead." Why not let the business owner  
19 make up his mind?

20 Let me see here. Use -- I'm leaving one  
21 out that I thought wasn't good.

22 Ownership, Director of Development, four  
23 stories -- Yes, he did. I've touched upon them  
24 all. I'm happy to answer any questions that  
25 any of the Board members have. But the

1 perspective of this ordinance is not what we  
2 need. Yes, you have to have parking, but this  
3 is not the way to go about it, and I'll quit  
4 after this.

5 This was an ordinance that was developed,  
6 knowing the problem we had, right? And  
7 crafting a solution by which we can never solve  
8 our problem. This is a tenant who's here now,  
9 now in the City, and wants to add more jobs,  
10 and this is what came out of the plan. I don't  
11 understand that process, but whether it's this  
12 business, Dade Medical, or some other, those  
13 are my comments.

14 CHAIRMAN AIZENSTAT: Thank you.

15 MS. ALBERRO MENENDEZ: Wait, can I ask a  
16 question of Mr. Adair?

17 MR. ADAIR: Absolutely.

18 CHAIRMAN AIZENSTAT: Yes, but I didn't want  
19 to open everything to questions until we  
20 have --

21 MS. ALBERRO MENENDEZ: Okay.

22 CHAIRMAN AIZENSTAT: But if it's something  
23 quick --

24 MS. ALBERRO MENENDEZ: Yeah, it's quick.  
25 Well, it may not be quick.

1 CHAIRMAN AIZENSTAT: Let's go ahead --

2 MR. ADAIR: She's talking about me when she  
3 says that part. The question will probably be  
4 quick.

5 MS. ALBERRO MENENDEZ: Right. My question  
6 is quick. I'm not sure that --

7 CHAIRMAN AIZENSTAT: Maria, you can direct  
8 the question to him afterwards.

9 MS. ALBERRO MENENDEZ: Sure.

10 CHAIRMAN AIZENSTAT: Let's let all the  
11 people speak.

12 MS. ALBERRO MENENDEZ: Sure.

13 MR. ADAIR: Thank you.

14 CHAIRMAN AIZENSTAT: The next person?

15 MR. ALVAREZ: Good evening, Mr. Chairman,  
16 Members of the Board, Mr. Leen, and Mr. Trias.

17 I wanted to say for the record, my name is  
18 Jorge Alvarez. I'm the Vice-President for  
19 External Affairs for Dade Medical College, and  
20 our corporate office is located at 95 Merrick  
21 Way, and Mr. Adair did a great job of touching  
22 on all these points. I won't take up too much  
23 of your time. I just want to give you a little  
24 bit of the business angle to this.

25 We are currently at 99 employees and 60

1 students. Our projections, which we would have  
2 met very easily because of the demand of our  
3 programs, were to be up to 200 students, and  
4 just to give you an idea, every 10 to 12  
5 students adds a faculty member. Every 15  
6 students to 20 adds an administrative person.  
7 So we've been stymied in our growth while we're  
8 paying approximately a million dollars a year  
9 in rents for 60,000 square feet. I wanted to  
10 add to Mr. Adair's comments, three floors and  
11 60,000 square feet. So we're sitting inside a  
12 building that we're leasing in good faith, with  
13 60,000 square feet, trying to generate a  
14 business that has been successful on five other  
15 campuses, and here, again, in our hometown --  
16 this is where I live, this is where the  
17 majority of our executives live, this is where  
18 our corporate offices are, and basically -- and  
19 just to tell you a little bit about our  
20 students, the average age is 35 years old, so  
21 we're not talking about, you know, frat kids  
22 running around, you know, doing things. We're  
23 talking about people who the majority work.  
24 The majority are single parents, they're here  
25 to try to better their lives, and they add --

1 everywhere we have a campus, they add to the  
 2 quality of life, by purchasing, by walking  
 3 around, by being involved in local businesses.  
 4 That's where we've been stymied and that's  
 5 where we're hoping that -- and I want to say,  
 6 for the record, Mr. Trias and his Staff have  
 7 been wonderful with us throughout this process,  
 8 very accessible, very amenable. They know our  
 9 issues. I'm not saying, of course -- This  
 10 wasn't done purposely, but we were blind-sided  
 11 when we saw this, because as Mr. Adair said, it  
 12 was contrary to what everyone on his Staff and  
 13 the Commission knows, what our issues are.

14 So, again, thank you for letting me speak.

15 CHAIRMAN AIZENSTAT: Thank you.

16 Jill, the next speaker?

17 MR. RENTZ: Hi, there. I'm Larry Rentz.

18 I'm with the Allen Morris Company. I have been  
 19 with the company for 40 years. I know some of  
 20 you all. I just learned about this a couple  
 21 hours ago. I don't have a specific client, but  
 22 I have read through this. I'm trying to -- I'm  
 23 trying to explain in my own mind what's the  
 24 purpose of this, because -- okay, Allen does  
 25 build sizeable buildings, but there's a lot of

1 small business owner, that is a huge number.  
 2 And that business owner -- That's enough to  
 3 cancel the expansion of his 5,000 foot  
 4 building, and that's -- that's infeasible.

5 So the conversion from mandating -- and I'm  
 6 speaking for myself, not for Allen, I haven't  
 7 seen Allen -- of mandating, in order to be  
 8 able to park as a part of the required parking,  
 9 you must own it? You will shut down a lot of  
 10 property owners out there that now have some  
 11 income from parking.

12 So I would like to ask special counsel a  
 13 couple questions.

14 CHAIRMAN AIZENSTAT: Could you --  
 15 Unfortunately, if you could direct your  
 16 questions or your comments over to the Board,  
 17 this way --

18 MR. RENTZ: I've heard all of the  
 19 explanations why the conversion to a building  
 20 owner -- instead of providing required parking  
 21 remotely on a rented lot, they now have to own  
 22 it, and none of them are very satisfying. I  
 23 haven't heard anybody here talk of economics,  
 24 and I don't know, and I'm sorry if I'm a  
 25 Johnny-come-lately here, but to mandate you've

1 owners out there that own 5,000 square foot  
 2 lots. And that lot is not big enough to build  
 3 on if it's vacant, the highest and best use.  
 4 Until somebody buys that 5,000 foot lot, plus  
 5 another one, plus another one, and has a  
 6 footprint large enough to build a sizeable  
 7 building that has structured parking, that  
 8 parking lot will sit there. And what this  
 9 ordinance does, as Mr. Trias pointed out, it's  
 10 restricted only to 20,000 foot. That's the  
 11 demarcation between the size of your lot that  
 12 you must have to go more than three stories,  
 13 plus 200 feet of frontage. And if you just  
 14 restrict it to that, I think that's  
 15 prejudicial, first of all.

16 Second of all, if I'm a small business  
 17 owner and I own a 10,000 foot lot and I have a  
 18 5,000 foot building on it, and my business is  
 19 expanding, the big thing here is, you're  
 20 going from a property owner, paying taxes, they  
 21 can't go and rent a parking lot now. From a  
 22 5,000 square foot owner, who that's all they  
 23 own in the world. A 5,000 foot -- and Alberto  
 24 knows, a 5,000 foot lot in Coral Gables CBD is  
 25 at least a million dollars, \$200 a foot. For a

1 got to own, for the small business owner, they  
 2 will never expand. It's too expensive to buy  
 3 just for parking. Has anybody done any  
 4 economics? I mean, you say you don't --  
 5 Somebody said they don't even want a retail  
 6 business owner to provide parking for their  
 7 customers. Where are you going to park these  
 8 people? Miracle Mile is being changed to  
 9 parallel parking. Where are you going to park?  
 10 Are you trying to convert every small parcel  
 11 and force a developer to assemble those small  
 12 parcels from little owners, that that's all  
 13 they've got, into a larger parcel to build a  
 14 high-rise and provide parking in a structure?  
 15 That's what it feels like, because you are  
 16 confiscating the little guy's rights here to  
 17 use a vacant lot of 5,000 feet, 6,000, 7,000.  
 18 No one will build anything on a five or six or  
 19 7,000 foot lot.

20 I haven't seen the ordinance, but special  
 21 counsel mentioned it, the City Code on payment  
 22 in lieu of. I did a lot of work, when Allen  
 23 was trying to do Ponce Towers, with the Parking  
 24 Director, and I think he's still here, but it  
 25 sounds like that is what the focus of this

1 ordinance is, to force people who need parking  
2 and they can't economically afford to go out  
3 and buy expensive land that's in the CBD, to  
4 pay the City. That's great for the City  
5 revenue, but it doesn't solve the parking  
6 problem for the little guy or for an office  
7 building owner or a shop owner. They still  
8 don't have anywhere to park.

9 MS. ALBERRO MENENDEZ: Right.

10 MR. RENTZ: So pardon me for coming in so  
11 late. I mean, I haven't read everything, and I  
12 am speaking for myself only. I fail to see the  
13 public benefiting at all, and in fact, it is  
14 a -- You're taking the right of small property  
15 owners from them for parking rental revenue.

16 Thank you.

17 CHAIRMAN AIZENSTAT: Thank you for coming.  
18 Jill?

19 MS. MENENDEZ: No more.

20 CHAIRMAN AIZENSTAT: Do we have anybody  
21 else?

22 MS. MENENDEZ: No.

23 CHAIRMAN AIZENSTAT: Nobody else?

24 At this point, we're going to go ahead and  
25 close for public comments.

1 right to appeal or challenge any final action  
2 of the City and its officials under this  
3 subsection. So you're telling a business owner  
4 that if you get that feasibility decision and  
5 it goes adverse to you, you can't even appeal.

6 That's where we are.

7 MR. LEEN: Mr. Chair, if I may provide  
8 supplementation to that. I was present at all  
9 the Commission meetings. Dade Medical College  
10 came before the Commission a couple of times.  
11 Once it was on a sign, an appeal relating to a  
12 sign. The time that I think Mr. Adair is  
13 speaking about is, I believe their president  
14 came and spoke, and the Commission at that  
15 time -- and I believe, I'm not positive about  
16 this, but I believe I was the one who sent the  
17 e-mail to them, ultimately, but it may have  
18 just been directed by the Commission, but they  
19 were basically told to look for parking up to a  
20 thousand feet by hundred-meter increments.

21 MR. ADAIR: Hundred-foot increments.

22 MR. LEEN: Pardon, me a thousand feet by a  
23 hundred-meter increments above 500, to see how  
24 far out they would have to go to find  
25 sufficient parking for their use, and they did

1 Board discussion?

2 MS. ALBERRO MENENDEZ: I had a question for  
3 Mr. Adair.

4 You mentioned -- I'm curious to know what  
5 process you underwent. You had mentioned that  
6 you were before the Commission. Can you just  
7 tell us, was it a variance process or --

8 MR. ADAIR: No, we were before the  
9 Commission, actually, to try to -- We had asked  
10 the City to lease us 42 spaces where the  
11 parking garage is, and we were there to sort of  
12 make our case for the -- hopefully to convince  
13 the Commissioners to convince the Manager to  
14 convince the Parking Director to let us rent  
15 the 42 spaces. So we didn't have a -- We're  
16 not in the variance process, we weren't. I'd  
17 have to conjecture that it wouldn't -- I don't  
18 think it would be successful on the standards  
19 that the Code has to obtain a variance. But  
20 that was the context in which we were in, and  
21 it really plays into -- it really plays into  
22 that point about what I was saying about  
23 whether it was feasible or not, because in this  
24 ordinance, it says that you can go through the  
25 City process, but you otherwise waive your

1 that and they presented it to the City.

2 My recollection from that was that at least  
3 one or two of the Commissioners were looking to  
4 see -- and of course, the Commission as a whole  
5 asked them to do this. It was basically  
6 unanimous consent. They wanted this  
7 information. They were looking to see, if they  
8 were to expand beyond 500 feet, how far would  
9 they have to expand to be able to allow this,  
10 and of course, that may have potentially been  
11 done by a variance procedure, or it could have  
12 been done by a legislative change, and I think  
13 that that's what ultimately led to this  
14 ordinance. Now, I don't want to speak for  
15 Staff. At least the way I perceived it was  
16 that the Commission raised this issue about  
17 looking at remote parking. This is a Staff  
18 recommended item. They took it themselves and  
19 looked at it, and this is what their best  
20 recommendation is for the City as a whole. It  
21 wasn't meant to address Dade Medical College.  
22 In fact, as I think has been pretty clear on  
23 the record, it doesn't address Dade Medical  
24 College. But that's where -- That was where it  
25 came from.

1 MS. ALBERRO MENENDEZ: Okay, got it.  
 2 MR. ADAIR: Is that it?  
 3 MS. ALBERRO MENENDEZ: Yes, sir.  
 4 CHAIRMAN AIZENSTAT: Thank you.  
 5 MR. ADAIR: You're welcome.  
 6 CHAIRMAN AIZENSTAT: Jeff?  
 7 MR. FLANAGAN: I'm not ready to ask.  
 8 MS. ALBERRO MENENDEZ: I have a question,  
 9 Mr. Chairman.  
 10 CHAIRMAN AIZENSTAT: Yes.  
 11 MS. ALBERRO MENENDEZ: The existing Code,  
 12 does it restrict sizes of buildings?  
 13 MR. TRIAS: No.  
 14 MS. ALBERRO MENENDEZ: No? So we've added  
 15 this additional requirement?  
 16 MR. TRIAS: Yes.  
 17 MS. ALBERRO MENENDEZ: Along with the  
 18 ownership of the lot that's being used for  
 19 parking as the remote site?  
 20 MR. TRIAS: Yeah, what I would describe the  
 21 process is that it began as a change in the  
 22 distance and then it evolved into a variety of  
 23 other requirements, such as the ones you're  
 24 mentioning.  
 25 MS. ALBERRO MENENDEZ: But serving -- what

1 objective was the Staff trying to accomplish?  
 2 MR. TRIAS: There were several objectives,  
 3 and mostly based on the experience that Staff  
 4 has had, reviewing some practical proposals,  
 5 and what we have noticed is that sometimes the  
 6 parking may have been provided at some point,  
 7 but it's no longer available, and those are  
 8 practical things that we realized, and that  
 9 this was the best attempt at providing some  
 10 security or some certainty to the City in terms  
 11 of that being a permanent solution. So keep in  
 12 mind, this is for the required parking, when a  
 13 project is approved. If somebody wants to rent  
 14 additional parking on their own, that's a whole  
 15 different story. This is only for the project  
 16 review, when a project is reviewed and  
 17 approved.  
 18 MR. LEEN: One other thing I wanted to say,  
 19 just -- At least my perception of this  
 20 ordinance is that it does allow for appeal to  
 21 the City Commission. What you're waiving --  
 22 What would be waived is an appeal -- basically,  
 23 a certiorari proceeding to the Court.  
 24 Now, I will say, and I did raise this with  
 25 Staff, this -- you know, I had suggested that a

1 provision be placed in here giving the  
 2 Commission more discretion, potentially, to go  
 3 beyond a thousand feet or to waive the  
 4 provisions of this ordinance in extraordinary  
 5 circumstances. I believe Staff wanted this to  
 6 be kept at the professional Staff level, and  
 7 they're not recommending that. But I will tell  
 8 you, there is not a lot of discretion in  
 9 here --  
 10 MS. ALBERRO MENENDEZ: No.  
 11 MR. LEEN: -- for City Staff. So  
 12 ultimately, there would not be a lot -- My  
 13 opinion to the Commission, even on an appeal,  
 14 is that they would not have a lot of  
 15 discretion, either, because they're basically  
 16 determining whether this ordinance is met or  
 17 not. So you should be aware of that.  
 18 MS. ALBERRO MENENDEZ: Right.  
 19 MR. LEEN: This greatly limits the  
 20 discretion of Staff and the Commission, even on  
 21 an appeal.  
 22 CHAIRMAN AIZENSTAT: When it was at 500  
 23 feet, there was discretion there?  
 24 MR. LEEN: Well, I have the provision.  
 25 Really, it's just very permissive. Remote

1 off-street parking is allowed -- It says the  
 2 perimeter of the remote -- It says, "Remote  
 3 off-street parking is permitted, provided, one,  
 4 the perimeter of the remote off-street parking  
 5 facilities is located within 500 feet of the  
 6 perimeter of the building site; two, the remote  
 7 parking facilities are not located in a  
 8 single-family zoning district; three, the  
 9 property owners submit an appropriate  
 10 restrictive covenant or parking easement in  
 11 recordable form acceptable to the City  
 12 Attorney, and four, the restrictive covenant or  
 13 parking easement provides for the continued use  
 14 of the remote parking until such time as the  
 15 City Manager releases the obligation of the  
 16 restrictive covenant or parking easement."  
 17 So those were the four requirements. I'm  
 18 not sure if the word is discretion. It was  
 19 very permissive.  
 20 CHAIRMAN AIZENSTAT: And how many people  
 21 did you have that actually came and took  
 22 advantage of this?  
 23 MR. LEEN: Well, that I would defer to  
 24 Staff.  
 25 MS. TREVARTHEN: If I may, Mr. Chair.

1 CHAIRMAN AIZENSTAT: Please.  
 2 MS. TREVARTHEN: And if you're wanting to  
 3 follow along, it's on Page 2 of your ordinance.  
 4 You'll see the strike-through language that Mr.  
 5 Leen just read.  
 6 It's important to say again, because I'm  
 7 not sure everyone heard, to our knowledge no  
 8 one has done this. It is not at all correct to  
 9 suggest that large numbers of arrangements are  
 10 going to be upset, and that's why we keep  
 11 stressing to you that we're talking about  
 12 Code-required parking. We're saying nothing  
 13 about whether an owner of a surface parking lot  
 14 can continue to lease his parking spaces for  
 15 businesses that are not required to have  
 16 parking or businesses that want more parking.  
 17 I mean, that's all out there. That has nothing  
 18 to do with this ordinance. This ordinance is  
 19 only about the situation where you are creating  
 20 a situation where you're not going to have  
 21 enough Code-required parking, and I think  
 22 that's also worthy of note, because I heard  
 23 what Mr. Adair had to say about, you know, "Let  
 24 the private property owner or the lessee make  
 25 these decisions and let them decide what risks

1 they want to take, and in the event those risks  
 2 don't work out, they understand that they may  
 3 have to lose that use."  
 4 But I would just say that that's exactly  
 5 the situation that Dade Medical is in. For  
 6 whatever reason, they chose to enter into a  
 7 lease before determining whether the parking  
 8 was available for the change of use that they  
 9 proposed, and that is the core, the beginning  
 10 of the situation that they find themselves in.  
 11 So the fact that we found a solution where  
 12 the third floor is not able to be used is  
 13 really an example of what Mr. Adair said. That  
 14 lessee made their choices, and that's the  
 15 consequence of not having -- because this was a  
 16 decision to change a use, in a new building.  
 17 This was not an old, small building that has  
 18 very difficult problems in terms of refitting  
 19 itself as a, you know, 1920s on 2,000 square  
 20 feet or whatever. I mean, you can come up with  
 21 all kinds of small examples. This was a brand  
 22 new building with a change of use.  
 23 So those are the kinds of factors that we  
 24 considered, and that's precisely why that's not  
 25 a situation that would ever qualify for a

1 variance, because it's a self-created hardship,  
 2 and that is something that will defeat a  
 3 variance.  
 4 Other things that I wanted to bring to the  
 5 Board's attention, if I may, is that we are  
 6 aware of situations, we don't know how  
 7 prevalent they are, but there are some  
 8 situations out there where parking spaces are  
 9 available and are owned by a condo, and the  
 10 example that Mr. Trias was referring to, that  
 11 we're aware of, that also might want to take  
 12 advantage of this procedure, they own the  
 13 spaces off-site and they own them as a condo.  
 14 So it doesn't necessarily mean you have to go  
 15 find a vacant piece of land or a parking lot.  
 16 It could potentially be spaces within an  
 17 overall development.  
 18 The other thing I wanted to touch on was --  
 19 let's see here -- the consequences. This was a  
 20 concern, particularly, that we talked about  
 21 with Staff. You know, I understand the  
 22 argument being made about allowing business to  
 23 make the risk assessment of what's feasible and  
 24 what's appropriate, but what needs to be added  
 25 to that, so that you understand all the policy

1 implications of that proposition is, the  
 2 consequences of it failing do not fall solely  
 3 on that business. They fall on the neighboring  
 4 properties that are going to have people  
 5 illegally parking. They fall on the City,  
 6 where there's already great demands on the City  
 7 parking facilities for the primary purposes for  
 8 which that parking system was created, which  
 9 was transient users of the Downtown, people who  
 10 want to come to, you know, dine and enjoy this  
 11 wonderful environment that we have.  
 12 So I think that we're in the framework of a  
 13 legislative decision here about where to draw  
 14 these lines, and they're difficult lines, and  
 15 as Ramon stated, there's a lot to parking and  
 16 this was never intended to be the be-all and  
 17 end-all ordinance that solves every parking  
 18 problem that ever existed. It was merely  
 19 intended to deal with this particular Code  
 20 procedure that, to our knowledge, no one has a  
 21 current arrangement for, but we have some  
 22 people interested in using it, to make sure  
 23 that it's used in a way that protects the  
 24 interests that the City has, as well as the  
 25 community, in this situation.

1 So I believe that was what I wanted to  
 2 offer. Thank you for the time, Mr. Chair.  
 3 CHAIRMAN AIZENSTAT: Thank you.  
 4 MR. BELLIN: Eibi?  
 5 CHAIRMAN AIZENSTAT: Yes, Marshall.  
 6 MR. BELLIN: The ordinance has always been  
 7 in place, the remote parking.  
 8 MS. TREVARTHEN: The date of adoption, I do  
 9 not know. I don't know if it was part of the  
 10 Zoning Code rewrite. Do you know?  
 11 MR. BELLIN: I don't know, either.  
 12 MS. TREVARTHEN: Okay.  
 13 MR. BELLIN: But what I'm saying is, it's  
 14 been in place for a long time.  
 15 MS. TREVARTHEN: At least since what? Was  
 16 that 2007, I guess?  
 17 MR. BELLIN: And it's never been used.  
 18 MS. TREVARTHEN: Okay.  
 19 MR. BELLIN: Doesn't that tell you  
 20 something about the ordinance itself? If it's  
 21 never been used, and a lot of people have  
 22 apparently looked at it, it makes no sense to  
 23 do this.  
 24 MR. LEEN: You know, Ms. Russo keeps saying  
 25 that and she keeps nodding that it has been

1 by a unity of title, and if it met the 500  
 2 feet, it met it -- it was -- you know, they  
 3 were stretching it. And it was also used --  
 4 because the FAR was used, in order to give FAR.  
 5 So it's been used in a couple buildings. I  
 6 don't think it's been used that often, but it  
 7 has been used, and I want to say it's been  
 8 around at least -- it might be as long as 30  
 9 years.  
 10 CHAIRMAN AIZENSTAT: Thank you.  
 11 MR. BELLIN: Then why are you proposing to  
 12 take that away from a building like Allen  
 13 Morris's building or any other building that's  
 14 higher than four stories?  
 15 MS. TREVARTHEN: I don't believe we're  
 16 proposing to take anything away. We're talking  
 17 about regulations that would be in effect going  
 18 forward.  
 19 MR. BELLIN: But somebody can't use remote  
 20 parking if the building is higher than four  
 21 stories.  
 22 MS. TREVARTHEN: In the future, yes, but  
 23 she's talking about an existing situation.  
 24 MS. BELLIN: But I'm saying, if it  
 25 benefited Allen Morris --

1 used.  
 2 You should let us know if it has.  
 3 MS. TREVARTHEN: And we would be happy to  
 4 hear that.  
 5 MR. LEEN: Yes.  
 6 MS. ALBERRO MENENDEZ: It's been used in  
 7 other developments. I think the Allen Morris,  
 8 121 Alhambra, had some remote parking. I don't  
 9 know if Laura knows that or can confirm it, but  
 10 I remember some large development projects  
 11 having some remote sites.  
 12 CHAIRMAN AIZENSTAT: Laura, do you have  
 13 some knowledge?  
 14 MS. RUSSO: Good evening, Mr. Chair,  
 15 Members of the Board. For the record, Laura  
 16 Russo, 2655 LeJeune Road. The remote parking  
 17 section of the Code has been in there way  
 18 before the rewrite. It's been there at least a  
 19 couple decades. I believe one of the buildings  
 20 it was used in, and it came about during the  
 21 development of the Allen Morris project, was  
 22 the property on the southwest corner of Ponce  
 23 and Alhambra, and it had remote parking which  
 24 was directly across the street on the north, to  
 25 Alhambra Plaza, 121, and it was tied together

1 MS. TREVARTHEN: Oh, yes, I understand  
 2 that.  
 3 MR. BELLIN: So why would this make sense?  
 4 Why would it make sense to take that ability  
 5 away from somebody who's building a high-rise  
 6 building?  
 7 MS. TREVARTHEN: That is ultimately a  
 8 policy determination for this Board and the  
 9 Commission.  
 10 MR. TRIAS: Yes, and the most useful ideas  
 11 right now are policy ideas that exactly test  
 12 the ideas that are being proposed. The concept  
 13 was that in the larger projects, there is a  
 14 garage, typically, that has been designed.  
 15 There's multiple uses. It's more complicated,  
 16 so there's more opportunity to resolve parking.  
 17 So, therefore, remote parking was not going to  
 18 be such an issue in those larger projects.  
 19 Now, that may be wrong, and that certainly  
 20 is a policy choice. You could disagree and  
 21 propose something different.  
 22 MR. PEREZ: I just have one --  
 23 CHAIRMAN AIZENSTAT: Please.  
 24 MR. PEREZ: -- question. So, Ramon, just  
 25 for a point of clarity, so this defines for new

1 projects? So the definition of new project is  
2 ground-up new projects, or can it also be  
3 defined as a repurposing or a reuse of an  
4 existing building?

5 MS. ALBERRO MENENDEZ: Everything.

6 MR. TRIAS: Yes, everything. That's  
7 correct, and then what happens is that when the  
8 review is done for the parking requirements,  
9 whether the project is a brand new building or  
10 whether it's an addition to an existing  
11 building or not, you always check it for  
12 parking. So, at that point, you have the  
13 option to do the remote parking.

14 MR. PEREZ: So --

15 MS. TREVARTHEN: And if I -- I'm sorry, if  
16 I can address that, because it is addressed on  
17 Page 2 of the ordinance, at paragraph B2. It's  
18 applications that are to expand or change the  
19 use of an existing project located in the CBD.  
20 So that's the universe of people who can ask to  
21 create a remote parking relationship.

22 MS. ALBERRO MENENDEZ: So for new --

23 CHAIRMAN AIZENSTAT: No, it's existing.

24 MR. PEREZ: So a new project, a repurposing  
25 or a --

1 it must be unique, those kinds of things?

2 MS. TREVARTHEN: Yes, I believe so, uh-huh.

3 MR. FLANAGAN: As opposed to some areas  
4 that have what we'll call a non-use variance,  
5 which does not apply the strict variance  
6 standard?

7 MR. TRIAS: We only have one process for  
8 variances.

9 MR. FLANAGAN: So maybe that is something  
10 that the City ought to look at, because in  
11 order to solve one person's problem, we are  
12 changing something -- I'll say City-wide or  
13 CBD-wide, that may have a tremendous amount of  
14 unintended consequences that won't be known  
15 until some point in the future, when we  
16 encounter it.

17 So, food for thought, there might be  
18 another way to skin the cat, to solve Dade  
19 Medical's problem, rather than going through a  
20 global overhaul. Now, maybe some overhaul is  
21 required, but I think the language we have  
22 here -- and I don't know even if we went till  
23 midnight we'd be able to flesh all this out,  
24 although I'd be willing to do it -- I think is  
25 somewhat confusing, and as I try and reconcile

1 MS. TREVARTHEN: An expansion or a change  
2 of use is currently what's written.

3 MR. TRIAS: Yes.

4 MR. PEREZ: An office building and  
5 converting it to a different use, be it  
6 restaurant, be it whatever --

7 MS. TREVARTHEN: That would be a change of  
8 use and it could propose this, if it met the  
9 other criteria, yes.

10 CHAIRMAN AIZENSTAT: Jeff?

11 MR. FLANAGAN: I was going to ask that  
12 question. Let me back up. Well, I guess from  
13 a policy standpoint, if the ordinance has been  
14 in effect for so many decades and it's barely  
15 been used, or it has worked, I can understand  
16 why we want to maybe amend it to provide  
17 greater protections to the City. It sounds  
18 like this may have gone kind of to the complete  
19 opposite end of the spectrum. I don't have  
20 problems protecting the City, but while we've  
21 been told that this isn't about Dade Medical  
22 College, it sure sounds like it's about Dade  
23 Medical College. And the City's variance  
24 procedure for parking, is that the standard  
25 variance, it can't be a self-created hardship,

1 the protections that the City wants for  
2 required parking, I play that into the desire  
3 to have people utilize mass transit. We have a  
4 free trolley service. We know the City of  
5 Miami's trolley, now you can get from the Port  
6 of Miami, you can get through Downtown, Coral  
7 Way, and you can end up right there on Ponce,  
8 anywhere between, I think, Alhambra and  
9 Almeria. So there's plenty of  
10 interconnectivity from a mass transit  
11 standpoint. You have a lot of people, I think,  
12 who park, maybe, at the Douglas Station and  
13 take the trolley up to come to work. Now,  
14 sure, that's probably excess parking or that's  
15 convenience parking, but I'm having a hard time  
16 sitting here reconciling the restrictions in  
17 this proposal with what I think is a broader  
18 public good intent of using mass transit and  
19 knowing that people are doing that, wondering  
20 if somehow that shouldn't be inserted in here  
21 somewhere, even further required, maybe for  
22 some of the required parking. I don't think I  
23 agree a hundred percent could be off-site,  
24 but -- and I have no answers, so I'm kind of  
25 just going on and on, but I wanted to get my

1 kind of general thought process out there for  
2 consideration.

3 MR. BELLIN: One of the things that we try  
4 and do, as architects -- the parking drives the  
5 design, and what we try and do is limit the  
6 base, the parking base, as much as possible,  
7 and if we could take a story off, we'd be very  
8 happy to do that. And in providing remote  
9 parking, we may be able to do those kinds of  
10 things, and I just don't understand why there's  
11 a limit of four stories, and I've said it  
12 probably 20 times tonight. It makes no sense  
13 to me at all.

14 CHAIRMAN AIZENSTAT: Anybody else?  
15 Ramon?

16 MR. TRIAS: No, Mr. Chairman. I think that  
17 if anybody has any other policy decisions --  
18 and that's the sense that I would describe;  
19 these are choices and they're policy choices --  
20 I think that if you could recommend them to us,  
21 we can certainly try to relook at the language  
22 and then come back to you with something that  
23 reflects your policy wishes, because at the end  
24 of the day, the issue of parking is much larger  
25 than the remote parking.

1 The biggest impact that we have in terms of  
2 aesthetics in this City is the bulk of parking,  
3 okay? By far, that is, from an aesthetics  
4 point of view, the largest impact, is the  
5 parking garages that we have Downtown. So the  
6 effect of parking is very significant in many,  
7 many dimensions. So I think that the City will  
8 certainly benefit from some policy ideas on how  
9 to revisit parking. Our intent was just to  
10 deal with one minor issue, but certainly there  
11 are many other issues that I would appreciate  
12 your input on.

13 CHAIRMAN AIZENSTAT: Anthony?

14 MR. BELLO: Yeah. It's ironic that, you  
15 know, they tried to fix the Dade Medical issue  
16 and came out with something that would not have  
17 worked, for example, in the Alhambra building.  
18 So, in essence, you're killing what was  
19 something that was working before, that had  
20 worked before, because of the 20,000 foot  
21 restriction.

22 So I'm in agreement with my colleagues here  
23 that, you know, the ownership and the 20,000  
24 and the height, the four stories, is -- I don't  
25 think that's acceptable.

1 MS. ALBERRO MENENDEZ: Are those items that  
2 we would want, perhaps, to direct Staff to come  
3 back with those types of changes?

4 CHAIRMAN AIZENSTAT: Well, I would think  
5 Staff is hearing what we're saying, and as a  
6 result, if there's -- if there's a motion or if  
7 there's no motion, or we would ask Staff to  
8 come back to us, they're listening to us or  
9 taking notes.

10 MR. TRIAS: Yeah. My recommendation is  
11 that we come back to you next month, because I  
12 think we got some really good input, and see  
13 where we are at that point.

14 MS. ALBERRO MENENDEZ: Can I ask my  
15 colleagues something, if I may? I raised this  
16 issue of the pay-in-lieu concept, which I'm in  
17 favor of, I mean, but I'm in favor of it as it  
18 relates to within the area that's being  
19 affected. Would there be consideration from  
20 the other Board members if we were to restrict  
21 it within the CBD area? I know you don't have  
22 the ordinance in front of you, I have it here,  
23 but so that perhaps Staff can bring it back for  
24 consideration. It could be voted down, but at  
25 least to consider it, because I feel that if a

1 developer or a property owner is going to pay  
2 into a parking fund for the purpose of  
3 providing parking, it should be within a  
4 particular area, and I'm willing to say within  
5 the CBD, which is much broader than what I  
6 originally was thinking of.

7 So just a thought. If you all agree,  
8 perhaps Staff can bring that back, and again,  
9 we can shoot it down, they might not recommend  
10 it, et cetera, but I would like to consider it.

11 MR. LEEN: Mr. Chairman --

12 MR. BELLO: Maria, I think -- Aren't all  
13 these issues going to be within the CBD?

14 MS. ALBERRO MENENDEZ: It's not specified  
15 in the ordinance. In the ordinance, it  
16 basically says, "Funds generated by the parking  
17 replacement assessment program shall be  
18 deposited into a City account specifically  
19 established for parking development reserves.  
20 The funds may be used to acquire property or  
21 pay for capital improvements, development and  
22 construction costs for any public parking  
23 facility." Within -- I would love to add  
24 "within the CBD area," but that's just a  
25 suggestion. Again, I understand that it's not

1 part of what we're considering today, but since  
2 we're coming back, perhaps we can add it.

3 MR. LEEN: Ms. Menendez, and Mr. Chair, if  
4 I may, that issue has come up a couple times,  
5 regarding the payment in lieu, and I know -- I  
6 believe that the ordinance, you have it in  
7 front of you, the Code provisions, does say  
8 that you can do it along Ponce, too, which is  
9 not in the CBD.

10 MS. ALBERRO MENENDEZ: Right.

11 MR. LEEN: So there is an area that's not  
12 in the CBD, and, you know, one suggestion I had  
13 at one point, and I know that Staff is dealing  
14 with so many things, we just haven't followed  
15 up on it yet, but was that there may be a  
16 reason to expand that along U.S. 1, because  
17 there's a lot of properties there that are  
18 older, and I got a request from those  
19 properties and I know I've dealt with them with  
20 Development Services a couple times, and, you  
21 know, the issue is that if they can't -- You  
22 have some older properties, sometimes, that  
23 don't have enough parking, and now you may even  
24 be restricting their ability to use off-site  
25 parking, but in addition to that, you know,

1 you're going to have a restrictive parking  
2 ordinance, that's very restrictive as to remote  
3 parking, you may want to consider in what  
4 circumstances can the City Commission deviate  
5 from this, and perhaps your solution will be  
6 zero, never, and then the Commission will have  
7 to consider that, but I do think it is  
8 something that at least should be considered,  
9 and I do plan to raise that with the  
10 Commission.

11 CHAIRMAN AIZENSTAT: Julio?

12 MR. GRABIEL: Yes.

13 Ramon, what I would try to do is make it --  
14 Right now, you have heard, we find this to be  
15 very limiting. So I would try to make it as  
16 broad as possible. Don't limit the size of the  
17 lot. Don't limit the height of the building,  
18 you know, and I would even consider that the  
19 amount of parking that's allowed could be  
20 maximized, that it doesn't limit it to 50  
21 percent, for up to a hundred percent.

22 If we're looking to create a CBD that is  
23 active, that has commercial activity, that has  
24 people walking on the streets, that has  
25 restaurants and stores on the ground floor, the

1 there's a question whether they can take  
2 advantage of the payment in lieu program,  
3 because Ponce actually does run down along U.S.  
4 1, but there's a certain amount of feet it has  
5 been to be within. So, you know, it may be  
6 something you want to talk about later, but it  
7 really is not within the scope of this title,  
8 so that would be something else that would have  
9 to come before you, and because it's in the  
10 City Code, it doesn't have to come before this  
11 Board, although you can request it, and I would  
12 recommend that it be allowed to come before you  
13 in conjunction with this or something else, if  
14 that's what your thought was.

15 The other thing I wanted to say, though,  
16 was, I would like to know your thoughts  
17 regarding the Commission discretion, Commission  
18 override. I was planning to recommend that to  
19 the Commission, not really as a -- It's  
20 ultimately a policy decision for them, but I do  
21 believe that protection of the Commission's  
22 discretion is an important thing, and I do  
23 believe that the way that this came up was the  
24 Commission saying, "Well, we want the ability  
25 to attract businesses to our City." So, if

1 more flexible that we make it for the developer  
2 and the owners of the land, the better it will  
3 be. And as you said, the parking is the worst  
4 part of development of a building.

5 I have, if I may say, an anecdote. Many  
6 years ago, I was working with I.M. Pei, when he  
7 did the building Downtown, what used to be the  
8 Centrust, and as he was designing the building,  
9 he made one comment one day and he said, "This  
10 building is a dog." Everybody looked around  
11 and nobody knew what he was talking about. I  
12 was the only fool who asked him, "Mr. Pei, why  
13 are you calling this building a dog?"

14 He said, "Any building that sits on top of  
15 a parking garage is a dog." Okay? We're full  
16 of dogs. Coral Gables is full of dogs, because  
17 we have a whole bunch of buildings which are  
18 sitting on top of parking garages. If we can  
19 give developers the opportunity of building and  
20 designing facilities that go down to the  
21 ground, that does not have to sit on top of a  
22 parking, and still provide the City with the  
23 amount of parking required, that the City feels  
24 is needed, I think we should be looking at  
25 that, as an option. And I don't know if this

1 is the method or the technique or the form of  
2 trying to get that, but I would at least  
3 explore it.

4 MR. BELLIN: Susan, I have another  
5 question. The remote parking issue -- Well,  
6 let's go back to Miracle Mile, the building on  
7 Miracle Mile, a change of use. It's an office  
8 building, now it's going to become a  
9 restaurant. Are they required to provide  
10 parking?

11 MS. TREVARTHEN: That's that 1.25 or 1.45  
12 FAR issue.

13 MR. BELLIN: You're exempt at 1.45.

14 MS. TREVARTHEN: Right.

15 MR. BELLIN: So you don't need to provide  
16 parking.

17 MS. TREVARTHEN: Right.

18 MR. BELLIN: So 50 percent of nothing is  
19 nothing. So they could put a restaurant there  
20 and not have to provide any parking?

21 MS. TREVARTHEN: Yes.

22 MR. TRIAS: Yes.

23 MS. TREVARTHEN: We're not touching any of  
24 that. That is the way it is, right now.

25 MR. BELLIN: Okay.

1 MS. TREVARTHEN: It's only people with Code  
2 requirements for parking that this would cover.

3 MR. TRIAS: Mr. Chairman --

4 CHAIRMAN AIZENSTAT: Yes.

5 MR. TRIAS: If I could just put it in  
6 context, this issue is very complex and it  
7 includes some areas in which parking is not  
8 required. So I just want to say all that, that  
9 maybe we're looking too much into one very,  
10 very small proposal and we're trying to solve  
11 all the parking problems in the world in that,  
12 and that's not the intent, so -- But I'll be  
13 happy to come back to you with better ideas and  
14 then we'll continue the conversation next  
15 month.

16 CHAIRMAN AIZENSTAT: From what I'm  
17 listening to the Board and so forth, I'd like  
18 to make a proposal that we ask Ramon and Susan  
19 to actually come back to us, if it's next month  
20 or the month after, whenever you're ready,  
21 implementing or putting into place some of our  
22 requests and our comments. That would be  
23 great. How does the rest of the Board feel?

24 MR. BELLO: Mr. Chairman --

25 CHAIRMAN AIZENSTAT: Yes.

1 MR. BELLO: I would also -- I support  
2 Mr. Leen's idea of appealing to the Commission.

3 MR. GRABIEL: I do, too.

4 CHAIRMAN AIZENSTAT: But that would --

5 MS. TREVARTHEN: The idea of -- I'm sorry,  
6 appealing to what?

7 MR. TRIAS: To the Commission.

8 MR. BELLO: Appeal to the Commission.

9 MS. TREVARTHEN: Oh, yes.

10 MR. TRIAS: As part of the process.

11 MR. LEEN: That's already in the ordinance.

12 MS. TREVARTHEN: The appeal is already  
13 there, yeah.

14 MR. LEEN: But remember, an appeal -- just  
15 understand, an appeal to the Commission, the  
16 Commission really has no more discretionary  
17 authority there than the original actor.

18 MR. BELLO: That they could have.

19 MR. LEEN: What I was saying was that the  
20 Commission -- You may want to build into this  
21 some discretion for the Commission to act, even  
22 when this ordinance would otherwise prevent the  
23 parking in extraordinary circumstances.

24 MR. BELLO: Yes.

25 MS. TREVARTHEN: More of almost a variance.

1 MR. LEEN: Similar to a variance.

2 MS. TREVARTHEN: Not saying a Code  
3 variance, but a --

4 MR. LEEN: It could be a waiver. It could  
5 be a lot of things. Remember, we're  
6 treating --

7 CHAIRMAN AIZENSTAT: I wouldn't use the  
8 term variance.

9 MS. TREVARTHEN: Yeah.

10 MR. LEEN: By the way, one of the reasons  
11 why we believe that we do have the ability to  
12 have the applicant waive the right to appeal is  
13 because parking is a privilege. We view this  
14 as a privilege, the ability to do remote  
15 parking. So, in my view, you could waive some  
16 of these provisions if the City believed it was  
17 in its interest. However, there would need to  
18 be a provision in there, saying that. If  
19 there's not, then, you know, the City generally  
20 needs to follow its Code.

21 CHAIRMAN AIZENSTAT: Do you need anything  
22 from us to defer this?

23 MR. LEEN: Well, I would ask Staff, what  
24 are they looking for? It certainly can be  
25 deferred to the next meeting. You don't have

1 to vote on it.  
 2 But do you want a vote? Do you want  
 3 direction?  
 4 MR. TRIAS: I'm fine. I'm fine with the  
 5 input we got.  
 6 MR. LEEN: It's ultimately up to the Board.  
 7 Do you want to --  
 8 CHAIRMAN AIZENSTAT: I think you've heard  
 9 what we need in it.  
 10 MS. TREVARTHEN: We've heard a diversity of  
 11 opinions, and we'll try to accommodate those,  
 12 I'm not saying that we're necessarily going to  
 13 be able to capture every single one, but we'll  
 14 be happy to come back with our next best shot  
 15 at it.  
 16 MR. BELLIN: Eibi?  
 17 CHAIRMAN AIZENSTAT: Yes.  
 18 MR. BELLIN: I'd like to make a motion,  
 19 because I really want it on the record that we  
 20 make certain recommendations or there are some  
 21 things we're not happy with, and rather than  
 22 have them come back and say, "Well, we just  
 23 didn't consider, you know, changing the height  
 24 of the building," because of whatever reason.  
 25 So I'd like our recommendations to be part

1 of --  
 2 CHAIRMAN AIZENSTAT: Well, she's going to  
 3 come back to us with what she's heard from us.  
 4 I think if you make a motion, then you're  
 5 making a motion based upon this item that's  
 6 brought before us. For me, I think I'd rather  
 7 see what she comes back with.  
 8 MS. ALBERRO MENENDEZ: I agree. I think we  
 9 need to make a motion on whatever ordinance is  
 10 proposed to us.  
 11 CHAIRMAN AIZENSTAT: Right.  
 12 MR. BELLIN: With recommendations.  
 13 MS. ALBERRO MENENDEZ: But right now, I  
 14 mean, we would have to agree as a Board on  
 15 those items, and I'm not ready to agree on all  
 16 of them.  
 17 MR. BELLIN: I don't think we have to  
 18 agree. You'd have to state the ones that you'd  
 19 like to see changed --  
 20 CHAIRMAN AIZENSTAT: Susan is actually --  
 21 MS. TREVARTHEN: I can list some categories  
 22 and see if I've captured them. I've certainly  
 23 heard the height issue. I've heard the lot  
 24 size issue. The percentage cap, I've heard a  
 25 couple different views on that. I've heard

1 whether it has to be located in the City. I've  
 2 heard the ownership issue, the question over  
 3 whether to limit the payment in lieu.  
 4 Those are the ones that just come right off  
 5 the top of my head. Have I missed --  
 6 CHAIRMAN AIZENSTAT: Marshall?  
 7 MS. TREVARTHEN: -- a topic?  
 8 MR. BELLO: Waiver by the Commission.  
 9 MS. TREVARTHEN: Waiver by the Commission,  
 10 okay.  
 11 MR. BELLIN: And also the issue of retail  
 12 and restaurants.  
 13 MS. TREVARTHEN: Retail and restaurant  
 14 customers, okay.  
 15 MR. BELLIN: And that's why if it's on the  
 16 record --  
 17 MS. ALBERRO MENENDEZ: Okay, go ahead. I  
 18 don't want you to --  
 19 CHAIRMAN AIZENSTAT: No, no, you can --  
 20 MS. TREVARTHEN: And then we're not trying  
 21 to like vote on it, but at least we agree these  
 22 are the topics you would like us to examine,  
 23 with your comments and direction.  
 24 CHAIRMAN AIZENSTAT: Susan, if it's  
 25 possible, when you come back, if you can also

1 come back with some examples, possibly, of  
 2 certain sites or past history or upcoming  
 3 history or -- It will give us an idea of the  
 4 impact that our decision would have.  
 5 MR. LEEN: Mr. Chair, I would recommend  
 6 that -- based on what's being said, that you  
 7 move to continue this to the next meeting.  
 8 CHAIRMAN AIZENSTAT: That's correct.  
 9 MR. LEEN: And that you ask Staff, as part  
 10 of that, to come back with a revised proposal,  
 11 based on your suggestions.  
 12 CHAIRMAN AIZENSTAT: Is there a motion to  
 13 continue this?  
 14 MR. FLANAGAN: So moved.  
 15 MR. BELLO: Second.  
 16 CHAIRMAN AIZENSTAT: Do you want to call  
 17 the roll, please?  
 18 MS. MENENDEZ: Jeff Flanagan?  
 19 MR. FLANAGAN: Yes.  
 20 MS. MENENDEZ: Julio Grabiell?  
 21 MR. GRABIEL: Yes.  
 22 MS. MENENDEZ: Maria Menendez?  
 23 MS. ALBERRO MENENDEZ: Yes.  
 24 MS. MENENDEZ: Alberto Perez?  
 25 MR. PEREZ: Yes.

1 MS. MENENDEZ: Marshall Bellin?  
 2 MR. BELLIN: Yes.  
 3 MS. MENENDEZ: Anthony Bello?  
 4 MR. BELLO: Yes.  
 5 MS. MENENDEZ: Eibi Aizenstat?  
 6 CHAIRMAN AIZENSTAT: Yes.  
 7 MS. TREVARTHEN: Thank you, Mr. Chair.  
 8 CHAIRMAN AIZENSTAT: Thank you, Susan.  
 9 Okay, the next item is an Ordinance of the  
 10 City Commission of Coral Gables, Florida,  
 11 providing for a text amendment to Article 3,  
 12 "Development Review," of the City of Coral  
 13 Gables Official Zoning Code, to modify existing  
 14 procedures and create new procedures to resolve  
 15 disputes and provide relief from the  
 16 application of the Zoning Code; providing for  
 17 severability, repealer, codification, and an  
 18 effective date.  
 19 MR. LEEN: Mr. Chair, I'm going to be  
 20 presenting this item.  
 21 CHAIRMAN AIZENSTAT: Okay. Mr. City  
 22 Attorney, if you may, please.  
 23 MR. LEEN: Thank you, Mr. Chair.  
 24 So, to begin, I just want to provide the  
 25 background context. It's not really before you

1 today, although it is relevant, so I can  
 2 discuss it. This effort to amend the Code, so  
 3 that there can be a viable settlement procedure  
 4 in the Code to address zoning and land use  
 5 issues, comes about because of the trolley  
 6 building litigation, which I'm sure you're all  
 7 aware of, and in fact, I have for you, and this  
 8 is just for informational purposes, but I'm  
 9 going to put it in the record, because it's an  
 10 interpretation I've already given, and which  
 11 I'm making -- you know, it's obviously a public  
 12 record, but I'm making -- I'm putting that,  
 13 filing that, with the Clerk, and this is an  
 14 opinion I issued under my authority under the  
 15 Zoning Code, an interpretation of our current  
 16 settlement procedures.  
 17 But what we have with the trolley case is a  
 18 situation where we are going to have to enter  
 19 into a settlement at some point, if we decide  
 20 to settle the matter. Obviously, we could  
 21 continue with the litigation. But if we were  
 22 to do that, we need a mechanism available by  
 23 which we can bring that before the City  
 24 Commission and still comply with all applicable  
 25 laws related to land use and zoning, and this

1 is the procedure that we came up with, and  
 2 there's two different procedures here.  
 3 Now, this doesn't just apply to the trolley  
 4 building case, though. I just wanted to be  
 5 perfectly frank with you, that's how the issue  
 6 came up, but when you look at the Code right  
 7 now, I felt that it was deficient in the sense  
 8 that it did not have a mechanism available for  
 9 a settlement of a litigation that allowed the  
 10 Commission to do the appropriate land use and  
 11 zoning determinations.  
 12 The other concern I had was, and this comes  
 13 up occasionally, is that for a First Amendment  
 14 issue, or for a RLUIPA issue -- and RLUIPA is  
 15 the -- You may be aware of this, but there's a  
 16 statute which basically says that cities have  
 17 to sometimes make religious accommodations, for  
 18 people's religion. You also know -- You know  
 19 of the ADA, where you have to make  
 20 modifications for people's disabilities.  
 21 There's a number of laws like this, where  
 22 the cities sometimes have to make  
 23 accommodations, and the concern is that a  
 24 provision in the Zoning Code or the City Code  
 25 or anywhere might not permit that, but yet

1 Federal law requires it, and if Federal law  
 2 requires something, you've got to do it anyway.  
 3 The supremacy clause requires it. But it puts  
 4 us in the strange position of violating our own  
 5 Code, even though we're doing it -- we're  
 6 acting lawfully in doing it, because we're  
 7 following Federal law or we're following State  
 8 law, but yet we still have to violate the Code.  
 9 So the idea here is to create a mechanism,  
 10 and there's two of them, and I'll go over them  
 11 briefly, and then I wanted to get your  
 12 comments. The first mechanism does exist in  
 13 the Code, but it's very narrow. It's Division  
 14 17, Protection of Landowners' Rights; Relief  
 15 from Inordinate Burdens. Many of you may have  
 16 heard of the Bert Harris Act. What the Bert  
 17 Harris Act is, is a statute -- Well, before I  
 18 even get into that, you've heard of a taking, a  
 19 constitutional taking, under the Fifth  
 20 Amendment to the Constitution. Generally, a  
 21 government cannot take property without due  
 22 process and must provide just compensation when  
 23 it's taking property, unless, obviously, it's  
 24 been forfeited or something like that, because  
 25 of a criminal violation, but if the Government

1 is going to take or do a physical invasion of  
2 someone's property, generally it has to pay  
3 just compensation. It's condemnation law, it's  
4 called.

5 Well, in Florida, there's a statute that  
6 even if you don't show a constitutional taking,  
7 like you don't show that the Government is  
8 actually taking your property, or denied you  
9 economic use of that property, so basically the  
10 Government has required you to keep your  
11 property as a park or something like that, and  
12 you can't do any development on your property  
13 at all, that would be like a Fifth Amendment  
14 taking.

15 Well, there's a statute that has a lower  
16 standard. It's called inordinate burden, and  
17 when the Government requires you to bear an  
18 inordinate share of a burden for a public  
19 benefit, that's basically how the statute talks  
20 about it, but -- so if you're having to bear a  
21 public benefit and it's burdening you, it's  
22 harming you, there's a statute that allows the  
23 City or allows the Government -- well,  
24 actually, the statute allows a claim against  
25 the City, but the statute also allows the

1 review it. The City has to reject it. Then  
2 the applicant can go through this process, and  
3 it's very narrow.

4 My thought was, well, what if you're in a  
5 lawsuit, though, and you're settling the  
6 matter, and it's the City that wants to  
7 initiate this process, in order to allow a  
8 settlement of the matter. For example,  
9 perhaps, in the trolley litigation, or in  
10 another litigation. In that litigation right  
11 now, the City is the owner of the trolley  
12 building property. We have a contract, a land  
13 exchange agreement with Astor Development, but  
14 we're the owner, so they don't even own the  
15 property at this point. So it's questionable  
16 whether they could really be the applicant  
17 under this procedure. If the City is going to  
18 be able to settle this matter and use this  
19 procedure, or if the settlement is in a future  
20 lawsuit regarding land and wants to settle the  
21 matter and bring it before its own Commission  
22 to consider these remedies, the amendments that  
23 we are providing would allow the City to do  
24 that.

25 I do want to say, in Section 3-1703, A, 4,

1 Government to resolve that problem, and even  
2 deviate from its own codes in order to do that.  
3 So sometimes that means that the City might  
4 have to give additional density, additional,  
5 you know, FAR, additional height, or other  
6 provision of the Zoning Code might have to  
7 be -- might have to not be followed, in order  
8 to comply with the Bert Harris Act.

9 So what this provision does, I think,  
10 because it says Protection of Landowners'  
11 Rights; Relief from Inordinate Burdens, it  
12 seems to me to be directed -- basically putting  
13 a provision in the Zoning Code that allows us  
14 to deal with Bert J. Harris situations, even  
15 when a Bert J. Harris Act claim has not been  
16 brought.

17 But what I found, when I looked at this,  
18 is, it's extremely narrow and it really  
19 requires the applicant to bring these sort of  
20 claims and it requires the applicant to  
21 basically come to the City, file an application  
22 to do something that violates the Zoning Code.  
23 Perhaps the applicant believes it's the only  
24 thing they can do without having an inordinate  
25 burden on their property. Then the City has to

1 that should be underlined, "Any of the remedies  
2 listed in Section 17.001(4)(c) of the Florida  
3 Statutes." Sorry about that. That's in  
4 addition to the Code. Those remedies are  
5 what's the remedies provided by the Bert Harris  
6 Act.

7 So, since this is really a Bert Harris type  
8 procedure, it seems to me, it seems like they  
9 should have the same remedies as the Bert  
10 Harris Act.

11 The other thing I wanted to say here, and  
12 you can all -- you've all had an opportunity to  
13 look at this, and I'm going to answer your  
14 questions -- and, please, ask any questions you  
15 think are helpful, or not. Whatever you want  
16 to ask, please ask me. I've put a lot of  
17 thought into this. But basically, in the end,  
18 what we're doing is, we're expanding this  
19 provision so that the City could initiate the  
20 process and so that this can be brought before  
21 the City Commission for a dispute resolution  
22 agreement. The City could make, basically, a  
23 legislative decision for a Bert Harris Act type  
24 claim or for a claim where there's an  
25 inordinate burden allegedly being placed on a

1 property, and the City could then resolve the  
 2 matter.  
 3 Now, the second dispute resolution  
 4 mechanism, really the zoning relief procedure,  
 5 I'll give you an example where this might come  
 6 up. You know, sometimes with a -- particularly  
 7 during election season, we have a sign  
 8 ordinance, and I'll get a -- I'll have someone  
 9 call and say, "Well, I want to do this type of  
 10 sign," or, "I want to do something like this,"  
 11 and it may technically be in violation of the  
 12 sign ordinance. And I'm not saying this  
 13 happens a lot. It happens occasionally. But I  
 14 may take a look at the case law and feel, "You  
 15 know what, we have to allow this anyway," and  
 16 basically, under my authority as City Attorney,  
 17 I will instruct City Staff to allow it, because  
 18 Federal law takes precedence over a Zoning  
 19 Code, even as applied.  
 20 Well, imagine that on a much bigger scale,  
 21 like a RLUIPA case or an ADA case, and perhaps  
 22 we're going to have to allow a building or some  
 23 modification to a building, perhaps, to satisfy  
 24 the ADA, for example, and it may have to go  
 25 into a setback or something like that, or you

1 may have to add a floor to a building, who  
 2 knows what the reason would be, but in order to  
 3 comply with Federal law, you may need to modify  
 4 the building, and it may not comply with the  
 5 Zoning Code.  
 6 What this procedure allows is basically a  
 7 hearing, where notice is given, a hearing is  
 8 provided, and these issues can be decided by  
 9 the City Commission, and they can provide  
 10 whatever zoning relief is necessary, in order  
 11 to comply with the Federal law or State  
 12 Statute. It's additional tools that are given  
 13 to the City Commission. The matter still  
 14 could -- It's not Staff making these decisions,  
 15 in either of these relief procedures. It's the  
 16 City Commission making these decisions, and  
 17 after a public hearing, whether it be -- In the  
 18 first provision, it's a legislative hearing,  
 19 but still a public hearing; it's a legislative  
 20 matter. The second one is similar, because  
 21 you're basically -- And what's the difference  
 22 between legislative and quasi-judicial? The  
 23 reason why these are ultimately legislative  
 24 decisions, in my view, although we're providing  
 25 a tremendous amount of due process, anyway, and

1 notice, et cetera, but the reason why is  
 2 because the City is not -- This is not just a  
 3 private use being put in a property that may be  
 4 affecting surrounding property owners in some  
 5 way, which is quasi-judicial, generally. This  
 6 is a legislative decision of the Commission,  
 7 looking at a host of issues, perhaps settlement  
 8 of a lawsuit, in the trolley building case, for  
 9 example, a trolley building, which is for the  
 10 benefit of the public, a building that  
 11 potentially may be larger than required by the  
 12 Zoning Code; the effect on the surrounding  
 13 residents, the effect on the residents, like  
 14 for example with the trolley building case, in  
 15 Coconut Grove, who would be our neighbors.  
 16 That sort of decision isn't just, "Is this  
 17 building appropriate for this site?" There's a  
 18 lot of issues that the Commission is  
 19 considering there, and they're ultimately  
 20 weighing the risks of different issues and  
 21 making a legislative call. And the Bert Harris  
 22 Act already recognizes that, that that's  
 23 basically a legislative decision, in the Bert  
 24 Harris type situation.  
 25 So, basically, that's an overview. I'm not

1 going to speak more on this right now. I'm  
 2 going to wait to hear your questions. There's  
 3 a lot here, so please --  
 4 MS. ALBERRO MENENDEZ: I have a question.  
 5 MR. LEEN: Yes.  
 6 MS. ALBERRO MENENDEZ: The case that you  
 7 mentioned, the trolley, is outside of our City.  
 8 MR. LEEN: Yes.  
 9 MS. ALBERRO MENENDEZ: Do you think this  
 10 would be more appropriate under like a City  
 11 Code, rather than the Zoning Code, given that  
 12 there's cases that are not going to be  
 13 involving, you know, properties within our  
 14 City?  
 15 MR. LEEN: Already, the Commission has the  
 16 authority to resolve something that's not a  
 17 zoning or land use matter, just a settlement of  
 18 a lawsuit, because we have a settlement  
 19 authority resolution. It gives certain  
 20 authority to me to settle things, certain  
 21 authority to me and the Manager to settle  
 22 things, certain authority to the Commission to  
 23 settle things.  
 24 So sort of the twist here, the interesting  
 25 part of this, is there's also a land use and

1 zoning decision that's part of this, and that  
2 comes about because of the land exchange  
3 agreement. We are in a situation where, if we  
4 were to lose the lawsuit, for example, we will  
5 be required, basically, by a Court order,  
6 specific performance, if we lose -- and we  
7 stand by our lawsuit. I'm just talking  
8 hypothetically.

9 MS. ALBERRO MENENDEZ: Right.

10 MR. LEEN: But if we were to lose, we would  
11 be ordered into the Coconut Grove building, and  
12 then we would have to give up our current  
13 trolley facility and there would be a building  
14 built there. That's already been approved.

15 Now, if the proposed settlement is, well,  
16 you know what, we're not going to go into the  
17 Coconut Grove trolley facility, or if we do,  
18 we're going to go there temporarily, but  
19 ultimately we're going to come back here and go  
20 into this new development, and there will be a  
21 trolley site within the building, a trolley  
22 facility within the building as a whole, then,  
23 yes, it will be a new building. It's going to  
24 have to be approved for land use and zoning in  
25 some way, and one issue here is, time is of the

1 generally follow the Zoning Code regarding  
2 those uses. But if the Government feels like  
3 there's a need and they make a policy decision  
4 that it's in the public interest to place a  
5 trolley building, let's say, for example, in an  
6 area where you wouldn't normally, maybe right  
7 near a residential area. Now, should they do  
8 that? Not necessarily, and obviously, there  
9 would be a lot of debate about it. It would be  
10 a major political issue, probably. But let's  
11 say, ultimately, the Commission believed that  
12 the need for that building, and that was the  
13 only space available, and there was a public  
14 need for it -- the Commission, in my view, has  
15 authority to do it. Similar to the power of  
16 condemnation, eminent domain, the City is  
17 allowed to take property for a public use, and  
18 they convert it to that public use.

19 So that's why I'm -- I'm not saying that  
20 the City of Coral Gables would normally do  
21 that. You know, we're very, very -- In my  
22 view, in my experience here now in three years,  
23 and you have more experience here than me,  
24 we're very careful about what we develop, I  
25 feel. The buildings that we -- the Government

1 essence, too. You know, a lot of these  
2 things -- I mean, one thing I would raise with  
3 you is that, you know, you might say, "Well,  
4 why don't you amend the Code to allow the  
5 trolley building, for example?"

6 Well, remember, this is a unique situation  
7 because this is going to be a dual government  
8 use/trolley building, and we may not want to  
9 amend the Code more generally to allow  
10 completely private uses when there's not a  
11 government use involved to be able to do that,  
12 to be able to have a higher building, for  
13 example, or increased density.

14 The whole idea here is that the Government  
15 is generally not subject to the Zoning Code  
16 when it's building a building for a public use.  
17 So the case law -- The case law talks about  
18 that. When the Government is acting -- similar  
19 in my view, when the Government is acting  
20 similar to a private entity, like, you know,  
21 the Government owns -- the City owns some  
22 property on Miracle Mile.

23 MS. ALBERRO MENENDEZ: Right.

24 MR. LEEN: We lease it out. There's  
25 private uses there. My view is, we would

1 buildings, the private buildings, are all very  
2 beautiful. They all go through our Board of  
3 Architects, generally. Now, does a City  
4 building have to, a Government building? No.  
5 Under my view, it wouldn't have to. Does that  
6 mean that the City wouldn't do it? No. The  
7 City certainly has the option to do it.

8 MS. ALBERRO MENENDEZ: Thanks.

9 CHAIRMAN AIZENSTAT: Marshall?

10 MR. BELLIN: A question with respect to the  
11 trolley station. Apparently, the City has come  
12 to an agreement with the developer --

13 MR. LEEN: I'd like to make something clear  
14 here. The City -- I know that it said in the  
15 Herald that there was an agreement. I want to  
16 tell you, I never told the Herald that. I'm  
17 not sure who told them that, but there is no  
18 agreement.

19 MS. ALBERRO MENENDEZ: Oh, there is no  
20 agreement?

21 MR. LEEN: There is no agreement in place.

22 MR. BELLIN: Okay.

23 MR. LEEN: There's no agreement. We are  
24 in --

25 CHAIRMAN AIZENSTAT: But we're not here

1 because of --  
 2 MR. LEEN: Yes. We are in negotiations,  
 3 and that's all I can really say at this point.  
 4 But there is no agreement in place. We are  
 5 doing our best to try to resolve the matter,  
 6 but ultimately, it's going to take all the  
 7 different parties to agree, and I don't want to  
 8 get into the specific negotiations.

9 MR. BELLIN: That's fair, but a question in  
 10 general terms. You get involved in a lawsuit,  
 11 and the way to solve that, the way to always  
 12 solve lawsuits, is money. So, therefore,  
 13 you've got to come to a monetary agreement with  
 14 the party that's suing you. How do you  
 15 determine or who determines what that monetary  
 16 award will be?

17 MR. LEEN: Normally, that would be the --  
 18 Depending on how large it is, it would be  
 19 either the City Commission, the City Manager,  
 20 or myself. If it's within \$25,000, it's  
 21 myself. If it's up to \$100,000, it's the  
 22 Manager or me. Above that, it's to the  
 23 Commission, unless it implicates insurance, and  
 24 then the Manager and I have authority again.

25 MR. BELLIN: What happens if the City says,

1 They can be on the record. The Commissioners  
 2 will have to vote. It could be a tough vote.  
 3 They'll have to consider all the different  
 4 issues. But they have that authority,  
 5 ultimately, in my view, as the governing body  
 6 of the City and as the elected officials, and  
 7 then I have to give them my best recommendation  
 8 regarding that settlement, whatever it may be,  
 9 and they have to hear from Staff, and then they  
 10 have to make the decision, but I think  
 11 ultimately the power should be with them. They  
 12 shouldn't be prevented from being able to do it  
 13 because there's so many different procedures  
 14 that they would have to go to, to ever have it  
 15 come before them.

16 CHAIRMAN AIZENSTAT: The public to come and  
 17 give their voice, what is the procedure for  
 18 that? Does this spell out any time frame or  
 19 any procedure, legally? Can you go over that,  
 20 just briefly?

21 MR. LEEN: Yes. They're both a little  
 22 different. So, first, the zoning relief  
 23 procedure, it's more similar to what you're  
 24 probably used to, but there's a notice  
 25 provision provided in there. Take a look at

1 "I'll give you a million dollars," and the  
 2 developer says, "I want 10"?"

3 MR. LEEN: That sort of thing, that all has  
 4 to be decided by the City Commission, those  
 5 sort of decisions.

6 MR. BELLIN: But that's a final decision?

7 MR. LEEN: Yeah, the Commission has the  
 8 authority to settle matters.

9 Now, the issue here, though, is that  
 10 there's a land use and zoning component, and by  
 11 the way, it may not happen in this particular  
 12 case, we may decide to go forward with our  
 13 lawsuit, but what I found when I was trying to  
 14 determine if we could settle the case, was that  
 15 there was not a mechanism available to readily  
 16 bring this issue before the Commission. It  
 17 really stymies, in my opinion, the Commission's  
 18 ability to settle matters.

19 CHAIRMAN AIZENSTAT: And this gives you a  
 20 vehicle or a tool in which to do so?

21 MR. LEEN: Yes, while still providing the  
 22 public with notice, with the ability to come  
 23 and if they don't like the settlement, they'll  
 24 have to know about it, because there will be a  
 25 public record. They can speak against it.

1 3-1801(c).

2 MR. GRABIEL: What page?

3 MR. LEEN: It's on Page 6.

4 MS. ALBERRO MENENDEZ: Page 6.

5 MR. LEEN: So the City displays a notice of  
 6 the request for zoning relief on the City's  
 7 public notice bulletin board, maintains copies.  
 8 The location, date and time of the public  
 9 hearing is included in the notice. The  
 10 notification containing the information should  
 11 also be mailed by the City Clerk at least 15  
 12 days prior to the public hearing, to the  
 13 property owners of record, as well as property  
 14 owners within a radius of 1,000 feet of the  
 15 property described in the request, that the  
 16 request is site-specific. So that's pretty  
 17 similar to the types of provisions you're used  
 18 to.

19 CHAIRMAN AIZENSTAT: Right.

20 MR. LEEN: Now, the other provision, I did  
 21 not alter at all the notice provisions in  
 22 there. Let me see -- Forgive me, real fast,  
 23 while I -- This is treated more like a purely  
 24 legislative decision, so it's placed on the  
 25 agenda.

1 CHAIRMAN AIZENSTAT: Correct.  
 2 MR. LEEN: So, now, that may be something,  
 3 if you think that notice should be provided, it  
 4 can be. That would be expanding the notice  
 5 provisions currently in the Code, though.  
 6 MS. ALBERRO MENENDEZ: Well, but you have  
 7 here a thousand feet.  
 8 MR. LEEN: Where is that?  
 9 MR. GRABIEL: That's for the zoning.  
 10 MR. LEEN: No, that's for the zoning relief  
 11 procedure.  
 12 MS. ALBERRO MENENDEZ: Oh, you're the other  
 13 one?  
 14 MR. GRABIEL: Yeah.  
 15 CHAIRMAN AIZENSTAT: So when it's placed on  
 16 the agenda --  
 17 MR. GRABIEL: The other one is City-wide.  
 18 You can't send notices City-wide.  
 19 MR. LEEN: Well, the idea behind it is  
 20 that, because it's a legislative decision, it  
 21 affects everybody. But you could, just like  
 22 with the zoning relief one, which is also  
 23 legislative, in my view.  
 24 Do you have a difference of opinion, Susan?  
 25 Do you think that it's -- either of these are

1 quasi-judicial, in your view?  
 2 I mean, the first one, before you --  
 3 Division 17 says it's not quasi-judicial.  
 4 CHAIRMAN AIZENSTAT: Right.  
 5 MR. LEEN: But Division 18 -- and I should  
 6 actually give some credit to Susan Trevarthen,  
 7 as well. Susan -- This has been altered to  
 8 some extent by myself; I've looked at it and  
 9 I've amended it, but there's a similar type of  
 10 procedure in Sunrise, which Susan was  
 11 instrumental in working on. So I appreciate it  
 12 and I appreciate her help with that.  
 13 So would you talk about how you view the  
 14 procedure?  
 15 MS. TREVARTHEN: Yes. What we have done in  
 16 other cities, many other cities, is the basic  
 17 zoning relief, and we do treat that as  
 18 quasi-judicial, because in every case that I've  
 19 been involved with, it is site-specific. A  
 20 church wants to use its premises in a way that  
 21 the Zoning Code permits, but they believe they  
 22 have the right to do it under the Religious  
 23 Land Use and Institutionalized Persons Act.  
 24 Somebody wants to set up a sober home, where  
 25 there are aspects of the Zoning Code that make

1 that difficult to do, but the Fair Housing Act  
 2 and the Americans with Disability Act protect  
 3 that use and come into play as a supervening  
 4 Federal law.  
 5 All of the cases that I'm familiar with,  
 6 that we've used it for, have been  
 7 quasi-judicial in nature. They've been very  
 8 site-specific.  
 9 MR. LEEN: And, you know, what's  
 10 interesting is, when you look at the second  
 11 settlement procedure, which is what we took  
 12 from Sunrise -- I made some additions to it, to  
 13 make sure it would apply in our particular  
 14 situation, but I mean, there's an argument you  
 15 could make, though, that if you're required to  
 16 do it based on Federal supremacy, it's really  
 17 not quasi-judicial. In fact, it's compelled.  
 18 So --  
 19 MS. ALBERRO MENENDEZ: Yes.  
 20 MR. LEEN: But I think that, you know, you  
 21 heard what Ms. Trevarthen said, also, it's  
 22 obviously constructed in a way that gives  
 23 notice to people and lets them come and appear  
 24 and object. But, you know, ultimately, in my  
 25 mind, sometimes these things are compelled.

1 You have to allow, for example, an ADA  
 2 compliance issue or an accommodation.  
 3 MS. TREVARTHEN: And then --  
 4 MR. LEEN: Sometimes you could do it in  
 5 different ways, though, you know, so -- Yes?  
 6 MS. TREVARTHEN: In our standard procedure,  
 7 it's only pre-litigation, and so the applicant  
 8 is coming forward and saying, "I'd like to see  
 9 my Federal rights protected before I go to  
 10 court."  
 11 MR. LEEN: That's true.  
 12 MS. TREVARTHEN: And so it works  
 13 differently than what you've developed here.  
 14 MR. LEEN: I modified it so that it could  
 15 be done during litigation, and that brings a  
 16 different issue into play, too, because if  
 17 we're sued, for example, under Section 1983, or  
 18 under, you know, Title VII, or if we're sued or  
 19 if we're -- In this particular case, there's a  
 20 Title VII issue with the FTA. But let's say we  
 21 were sued under Title VII or something like  
 22 that. At least when I was at the County  
 23 Attorney's Office and I had those type of cases  
 24 where there was a Section 1983 case, our view  
 25 was that we could settle them as long as there

1 was a colorable 1983 claim, and for example,  
 2 they weren't bound by the State statutory caps  
 3 on liability, because it was based on Federal  
 4 law. So we took the view, and I take the view,  
 5 that if it's required or if it allows us to  
 6 comply with the Federal law, then it's  
 7 supremacy. So I don't think it's  
 8 quasi-judicial in the same way. I think there  
 9 you could make a very good argument it's  
 10 legislative. But, you know, it's been set up  
 11 in this way, and I have no issue with that. I  
 12 think it's perfectly fine for the public to be  
 13 able to come and to speak. I think that that  
 14 was the -- That's the view of Coral Gables.  
 15 That's the way that we -- That's why we have a  
 16 public hearing in front of you and two public  
 17 hearings in front of City Commission, in many  
 18 matters.

19 So I think that it's better than just  
 20 settling the matter and saying, "Well, so we  
 21 settled it," the City Manager or City Attorney  
 22 signs the settlement, gets the Commission's  
 23 approval, no public hearing, under the theory  
 24 that this is compelled by Federal law. I think  
 25 it's better to provide the public the ability

1 to come and make their voices known. They may  
 2 be in favor of it and they may be against it.

3 Now, the reason why we didn't change the  
 4 other provision, to add all those notices, now  
 5 that I recall, is that it was already created  
 6 as a legislative decision and it's based on the  
 7 Bert Harris Act, which is a legislative  
 8 decision. So I haven't modified that.

9 Now, if you think that we should provide  
 10 additional notice provisions, we can, but the  
 11 Bert Harris Act doesn't require that.

12 MR. BELLIN: Craig, I have a question.  
 13 Maybe it's a stupid question, but I really  
 14 don't know the answer to it. If this Board  
 15 says no, then what happens? Does it go to the  
 16 Commission, anyway?

17 MR. LEEN: It's going to go to the  
 18 Commission no matter what, but I --

19 MR. BELLIN: Then what's the purpose of it  
 20 coming here?

21 MR. LEEN: Because it's an amendment to the  
 22 Zoning Code and because the Commission cares  
 23 very much about what you say, and I do, as  
 24 well.

25 MR. BELLIN: It just seems to me, it should

1 go directly to the Commission, if that's the  
 2 case.

3 MS. ALBERRO MENENDEZ: I think we look at  
 4 all zoning amendments.

5 MR. BELLIN: Right, I agree, and I think  
 6 that's the way it should be, but it just seems  
 7 like --

8 MS. ALBERRO MENENDEZ: Even if we say no,  
 9 it goes to them and then --

10 MR. BELLIN: -- if our opinion doesn't  
 11 matter, then why would we give it?

12 MR. LEEN: Well, legally, it has to go to  
 13 you. This has to go to you.

14 MS. ALBERRO MENENDEZ: Yeah.

15 MR. LEEN: We're required to have a public  
 16 hearing in front of you, but it's a real public  
 17 hearing. If you have any thoughts regarding  
 18 these changes or ways to make it better, I  
 19 would be -- I would love to hear them.

20 CHAIRMAN AIZENSTAT: Jeff?

21 MR. FLANAGAN: I'd just suggest that I  
 22 think, Craig, under 3-1801(c), the notice --

23 MR. LEEN: Yes.

24 MR. FLANAGAN: -- that I think it should  
 25 be -- My notes ask whether it should be

1 advertised, because it looks like we're just  
 2 giving notice to property owners, and I think  
 3 under the quasi-judicial stuff, we publish in  
 4 the paper, we advertise, and I know there's a  
 5 quasi-judicial and not quasi-judicial, but if  
 6 somebody is seeking relief from the zoning  
 7 procedure, I think, as you were saying, in this  
 8 City and the way we operate, I think it's  
 9 better that we basically advertise, as we would  
 10 for a zoning application.

11 MR. LEEN: Okay.

12 MR. FLANAGAN: And then I can  
 13 differentiate, I think, between this aspect,  
 14 where there's a Federal law that allows  
 15 somebody to do something that the Zoning Code  
 16 may not be able to do, versus what I understand  
 17 of the trolley issue.

18 So, hypothetically speaking, if the City  
 19 prevailed in its lawsuit, that would terminate  
 20 the agreement for the swap?

21 MR. LEEN: Hypothetically speaking, if the  
 22 City prevails in its lawsuit, that means that  
 23 the City -- that the site in Coconut Grove is  
 24 not zoned correctly, or violates the FTA -- we  
 25 have a number of different counts -- or

1 violates the Comp Plan. I believe that we have  
2 three different counts.

3 Hypothetically speaking, then, Astor would  
4 not have complied with the contract to provide  
5 us a site that we can go into. Now, they have  
6 a certain amount of time in which to do that,  
7 so I don't think that automatically terminates  
8 the agreement. I think we would still have to  
9 look at that. But that's what we've been  
10 presented. Astor has presented us that site.  
11 We've objected, we've raised a number of  
12 grounds for objection, and that's what's before  
13 the Court.

14 MR. FLANAGAN: And I think I differentiate,  
15 maybe, that issue, which to me is -- I'll call  
16 that almost a self-created problem, and if  
17 we're looking at that as a project or a  
18 building bearing an undue burden for the public  
19 benefit, I guess I would -- I don't see it that  
20 way, because that project was premised on  
21 something happening, a new garage somewhere  
22 else, and if that can't happen and the building  
23 can be redesigned -- and so it's sort of  
24 self-created.

25 MR. LEEN: I hear what you're saying, and I

1 in front of the Planning and Zoning Board?

2 MR. LEEN: No, this would go straight to  
3 the Commission. The theory behind that -- and  
4 of course, the Commission can always send it to  
5 you if it wishes. The theory behind that is,  
6 ultimately, the reason the Commission can do  
7 this is because it has the sovereign power to  
8 settle these matters and to make these public  
9 judgments. So the idea is that it can go right  
10 to them, and they can make that decision.  
11 They're not changing the Zoning Code. And I  
12 think that's a benefit of this provision.  
13 They're not -- you know, this is a difficult  
14 case. They're not changing the Zoning Code to  
15 deal with the difficult case, which might make  
16 the Zoning Code worse.

17 MR. FLANAGAN: Right.

18 MR. LEEN: Instead they're dealing with  
19 this specific case and the problems caused by  
20 it, be they under Federal law, State law, or  
21 whatever a law may be.

22 I did want to suggest one other change.  
23 The provision in Division 17, on Page 4, D, at  
24 the top, I am going to recommend to the  
25 Commission that it say -- instead of what it

1 think the response to that would be that the  
2 Commission would have to decide that, because,  
3 you know, the Commission might reject the  
4 settlement, and they're allowed to, under this  
5 procedure, by saying, for example, "That's  
6 self-caused. We don't believe that we should  
7 do this."

8 What this allows, though, is -- you know,  
9 and let's say, for example, hypothetically, in  
10 order to build this building, the City, in  
11 order to settle the case, is saying, "Well, we  
12 want you to put a public use in the building,  
13 and we're going to benefit from that."  
14 Obviously, you're going to have a burden by  
15 that public use. Now, you're agreeing to it,  
16 in order to settle a case, so it's a little  
17 different than us imposing it. But  
18 nevertheless, you are bearing this additional  
19 burden, so we're going to mitigate that burden  
20 by basically allowing relief from different  
21 zoning provisions. As long as there's some  
22 relation to them, I believe that we could do  
23 that.

24 MR. FLANAGAN: And my last -- Relief here  
25 goes straight to the Commission, does not come

1 says right now, that it say, "All relief  
2 granted pursuant to this Division shall be  
3 consistent with the City of Coral Gables  
4 Comprehensive Plan, except as permitted by  
5 Federal or State law," comma, "and shall not  
6 violate any controlling Federal law, State  
7 statute or Miami-Dade County ordinance," the  
8 theory being that it would have to be based,  
9 though, on something above, above our law.

10 CHAIRMAN AIZENSTAT: I think that's good.

11 MR. LEEN: Okay.

12 MS. ALBERRO MENENDEZ: Yeah.

13 CHAIRMAN AIZENSTAT: Any other comments?  
14 Would anybody like to make a motion?

15 MR. BELLIN: I'll make a motion.

16 MS. ALBERRO MENENDEZ: I'll second it.

17 CHAIRMAN AIZENSTAT: The motion is with the  
18 changes that Craig has requested?

19 MR. BELLIN: Yes.

20 CHAIRMAN AIZENSTAT: And what about --

21 MR. LEEN: The suggestion about  
22 advertising.

23 CHAIRMAN AIZENSTAT: -- the suggestion  
24 about advertising by Jeff?

25 MR. LEEN: I'm fine with that, that

1 advertisement.  
 2 Susan, was there any reason why it didn't  
 3 have advertisement in the one in Sunrise?  
 4 MS. TREVARTHEN: No.  
 5 MR. LEEN: I think that's perfectly fine.  
 6 CHAIRMAN AIZENSTAT: Marshall, is that your  
 7 motion, is with those?  
 8 MR. BELLIN: Yes.  
 9 CHAIRMAN AIZENSTAT: And Maria, your second  
 10 is --  
 11 MS. ALBERRO MENENDEZ: Yes. Yes, sir.  
 12 CHAIRMAN AIZENSTAT: Any other comments,  
 13 questions?  
 14 Call the roll, please.  
 15 MS. MENENDEZ: Julio Grabiell?  
 16 MR. GRABIEL: Yes.  
 17 MS. MENENDEZ: Maria Menendez?  
 18 MS. ALBERRO MENENDEZ: Yes.  
 19 MS. MENENDEZ: Alberto Perez?  
 20 MR. PEREZ: Yes.  
 21 MS. MENENDEZ: Marshall Bellin?  
 22 MR. BELLIN: Yes.  
 23 MS. MENENDEZ: Anthony Bello?  
 24 MR. BELLO: Yes.  
 25 MS. MENENDEZ: Jeff Flanagan?

1 MR. FLANAGAN: Yes.  
 2 MS. MENENDEZ: Eibi Aizenstat?  
 3 CHAIRMAN AIZENSTAT: Yes.  
 4 All right, this adjourns the meeting. The  
 5 next meeting is on April 9th. Thank you,  
 6 everybody.  
 7 MS. ALBERRO MENENDEZ: Thank you.  
 8 (Thereupon, the meeting was adjourned at  
 9 8:26 p.m.)  
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1 CERTIFICATE.  
 2  
 3 STATE OF FLORIDA:  
 4 SS.  
 5 COUNTY OF MIAMI-DADE:  
 6  
 7 I, JOAN L. BAILEY, Registered Diplomate  
 8 Reporter, Florida Professional Reporter, and a Notary  
 9 Public for the State of Florida at Large, do hereby  
 10 certify that I was authorized to and did  
 11 stenographically report the foregoing proceedings and  
 12 that the transcript is a true and complete record of my  
 13 stenographic notes.  
 14 I further certify that all public speakers were  
 15 duly sworn by me.  
 16 DATED this 17th day of March, 2014.  
 17  
 18  
 19 SIGNED COPY ON FILE  
 20  
 21 JOAN L. BAILEY, RDR, FPR  
 22  
 23 Notary Commission Number EE 083192.  
 My Notary Commission expires 6/14/15.  
 24  
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unfairly, disproportionately and inordinately burdened by a final order of the City that either denied development approval to the applicant or imposed one (1) or more conditions of approval on the applicant.” *Id.*

5. If Astor submits its Development Proposal to the City and the Proposal is denied, Astor may then submit an application approved by the City pursuant to Section 3-1702(A), seeking relief through the Dispute Resolution Procedure from the order denying its Development Proposal. Astor’s application may take into account in seeking review of its Development Proposal any alleged unfair, disproportionate, or inordinate burden resulting from the denial, may consider the entire circumstances of the matter in assessing the scope of any burden, and may include allegations that the Development Proposal and the requested relief from the City’s Zoning Code were compelled by the City of Miami’s contested zoning approval of the Coconut Grove facility (which is the subject of the declaratory judgment lawsuit between the City of Coral Gables and Astor, as well as a pending appeal from a dismissed action brought by residents living near the Coconut Grove facility), as well as the Federal Transit Authority’s expansive assertion of its jurisdiction, and retroactive application of guidelines/instructions contained in its October 1, 2012 circular (the City of Coral Gables has taken exception to the FTA’s findings and determinations while agreeing to conduct an equity analysis as part of a plan to resolve the matter; the City has also requested that Astor assume responsibility for any alleged non-compliance). Ultimately, Astor may ask the City to consider the totality of the circumstances involving the lawsuit and the unique factual circumstances of this case in determining whether the threshold is met, as that would be in conformity with the purpose of the Dispute Resolution Procedure, which is “to avoid expensive, uncertain, unnecessary, and protracted litigation,” (§ 3-1701), and instead resolve disputes in the public interest.

6. The application would seek to resolve the ongoing Lawsuit and any litigation resulting from a denial of the Development Proposal. The City can consider the application along with the City Manager’s report and recommendation on the application and any proposed dispute resolution agreement (§ 3-1704(D)) at a public hearing to decide whether to make an offer to resolve the dispute with Astor. Zoning Code § 3-1705 (A). Any decision to grant relief to Astor pursuant to the Dispute Resolution Procedure is in the sound discretion of the City Commission in the exercise of its inherent sovereign powers to settle legitimate disputes and pursuant to the factors outlined in Section 3-1703 (B). Of course, this Opinion takes no position at this time as to whether Astor could ultimately demonstrate the prerequisites for relief under the Dispute Resolution Procedure. Instead, this Opinion simply establishes, consistent with the plain wording of the Zoning Code, that the Dispute Resolution Procedure is an available process that can be invoked by Astor (or a similarly situated applicant) in seeking possible resolution of its dispute.

7. The second mechanism by which the City Commission could consider approving a version of Astor’s Development Proposal is through a stipulation for entry of a final judgment in the Lawsuit. Upon agreement by the parties and the Court, a stipulated final judgment can adopt a version of the Development Proposal agreeable to the parties. This process was approved by the Third District Court of Appeals in *Zoning Board of Monroe County v. Hood*, 484 So. 2d 1331 (Fla. 3d DCA 1986). In *Hood*, the applicants sought a zoning change to accommodate a development. The development plan was disapproved by the County, and resulted in litigation in state and federal court. The parties stipulated to entry of a final judgment that required the zoning board “to ‘review and approve the final development plan.’” *Id.* at 1332. The zoning

board conducted public hearings, approved the development plan, and ordered rezoning. The County Commission, however, overruled the approval. The trial court then enforced the stipulated final judgment, reinstating the approval of the development plan, and the Appellate Court affirmed. *Id.* This decision was cited with approval by the Fourth District Court of Appeals in *Stranahan House, Inc. v. City of Fort Lauderdale*, 967 So. 2d 1121, 1126-27 (Fla. 4<sup>th</sup> DCA 2007). Accordingly, the parties could stipulate to a settlement and ask the Court to enter a final judgment implementing that settlement. Consistent with analysis in *Hood*, the final judgment could also include the establishment of an expedited process for review, public hearing, and approval of the Development Proposal.