



VILLAGE OF BISCAYNE PARK
640 NE 114TH STREET
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Mayor and Commission

Noah Jacobs
Mayor

Bryan Cooper
Vice Mayor

Robert "Bob" Anderson
Commissioner

Roxanna Ross
Commissioner

Commissioner Watts
Commissioner

Ana M. Garcia
Village Manager

John J. Hearn
Village Attorney

Maria C. Camara
Village Clerk

MINUTES
REGULAR COMMISSION MEETING
Ed Burke Recreation Center - 11400 NE 9th Court
Biscayne Park, FL 33161
Tuesday, February 5, 2013 at 7:00PM

1 Call to Order

Mayor Noah Jacobs called the meeting to order at 7:08pm.

2 Roll Call

Mayor Noah Jacobs - present
Vice Mayor Bryan Cooper - present
Commissioner Bob Anderson - present
Commissioner Roxanna Ross - present
Commissioner Barbara Watts - present

Present from staff were:

Village Manager Ana M. Garcia
Village Clerk Maria C. Camara
Village Attorney Eve Boutsis
Assistant to the Manager, Candido Sosa-Cruz

3 Pledge of Allegiance

4 Presentations

4.a Dr. Aaron Enteen from Gratigny Elementary School provided a brief presentation on the school and a proclamation was presented from Mayor Jacobs.

5 Additions, Deletions or Withdrawals to Agenda

Attorney Boutsis requested that item 10.c, second reading of Ordinance 2012-14 to be moved up to right after the Village Manager report.

Attorney Boutsis requested that item 8.a, review of fund raising by boards/committees be deferred to the March meeting.

6 Public Comment

Gary Kuhl: The commission is resolution happy, even though well intended. Should reconsider this. The gun control resolution should move forward. On item 9.d, it is a nice idea, but residents have volunteered. It is nice to be appreciated, but need to really look at our Village instead. Village looks worst than it ever has and instead of neighborly love we need neighborly pride. Would like to see any funds for a lunch to go towards the Village. Residents need to look at their property and do inexpensive things to improve. On 9.g and 13.b, these two items are being introduced by a commissioner who is postponing the Charter Review Board because of funds. Handball court needs to be pressure cleaned and painted. Is this part of the \$5,000 budget for the mural? When recent landscaping was done, and the art sculpture done, it was done through donations. This is not a prudent use of Village funds. Should seek donations for this mural. Do not see the significance of our 80th anniversary. Our 75th was just five years ago and that was a milestone. This is just another idea to spend money. Need to see if we are going to be around in the next five years. Need to prioritize what we really need. Appreciate the idea and sentiment, but really need to spend on what we need.

Chuck Ross: Nod to Village Manager and her efforts in getting assistance, for free, from the City of North Miami and Raydell Landscaping that helped during the MLK Day of Service. Condolences to the Village Manager on the loss of her cousin and hats off that she is here. Congratulations to Police Department on results of 2012 crime statistics. On resolution for firearms, have not seen in the materials provided about regulating licensing and training and proper security and storage. Should be included. When a gun incident involves children, it is usually the parent's gun and they should be made accountable. Last month Mayor Jacobs mentioned he was part of Mayors against Guns and wanted to clarify that. On the minutes for November 7th, a question was asked to Mr. Cooper and after he answered, I provided a rebuttal and it was not captured in the minutes, and it should be. Can I ask that it be added?

Attorney Boutsis: That directive would have to come from the Commission.

Tracy Truppmann: On fiscal responsibility, we are letting the Village grow larger and no fiscal backing. Agree on Gary on this. We need to be more efficient. People no longer come to our meetings. You go on and on on things that we don't need. We have attorney fees and I will be asking for a public records request to see those invoices. We have an Assistant to the Manager. You all campaigned on fiscal responsibility, but the Village is close to no longer being one. I don't mind my taxes, I choose to pay those taxes. But as you look forward to grow this Village, I ask you to look long and hard on how it will impact us financially.

Barbara Kuhl: Several months ago the Mayor sponsored an item about putting no smoking signs in the park. Can we instead put up a sign that simply states, Thank you for not smoking around our children. On item 13.a, computer station is a great idea. Cost is nominal and may want to consider the cost of ink which may warrant a fee for use. Volunteers from the Village can be used to monitor and tutor. On item 11.a, very important step for the Village. Have read the four proposals and would choose what Vice Mayor Cooper submitted. Also, this resolution should go to Washington. If we don't do anything, we know where this will get us.

Tracy Truppman: If we are having an issue with the audio with hearing the residents that speak, I request that this be corrected.

Kevin Gleason: Good evening, I am Kevin Gleason, an attorney representing Linda Dillon regarding item 11, advocating the prohibition of sales and possession of automatic and semi automatic weapons. While I appreciate that you have opinion from council that such a resolution is not a violation of chapter 790 of the Florida Statutes. When you have two attorneys in a room you are going to get at least two opinions on that. Ms. Dillon feels that she is damaged by the possible passage of this resolution which does not reflect her position. A sub section provides in the damages section, this is the pertinent part, a person adversely affected by any ordinance, regulation, measure, directive, rule, enactment, order, or policy promulgated or caused to be enforced in violation of this section may file suit against any county, agency, municipality, district, or other entity in any court of this state having jurisdiction over any defendant to the suit for declaratory and injunctive relief and for actual damages, as limited, the court shall award the prevailing party in any such suit reasonable attorneys fees and costs. I will not work for free. On behalf of Ms. Dillon, I would request that the item be removed from the agenda and not voted upon. Well you might say that 790.33 does not specifically prohibit that because it is not an ordinance and it is not a rule. And if you read all the specific sections of 790.33 and you read prohibitions and damages section, it is clear that that resolution violates the spirit if not the letter of 790.33. This governing body has no jurisdiction to tell the legislature what to do about firearms in any way, shape or form. And so, if you start with the proposition that there's no specific prohibition, then so we can do it. Well why because if you can. Well let's go to the statute empowering what this commission can do and that is in the City of Biscayne Park code of ordinances, section 1.04 The Powers. The Village shall have all available governmental, corporate and proprietary powers and may exercise them except when prohibited by law. Through the adoption of this Charter, it is the intent of the electors of the Village that the municipal government established herein shall have the broadest exercise of home rule powers permitted under the Constitution and laws of the State. The resolution suggests that state legislature should pass laws effective across the entire state is beyond the power vested in this body by the code of ordinances. It is as we refer to in law as an ultra vires act, an act beyond the power that you hold. And so you may act accordingly, but our position is that the passage of that resolution is a clear violation of 790.33. And the passage of that will occasion the decision by Ms. Dillon whether or not to sue. Thank you.

Vice Mayor Cooper: I have some questions please.

Mr. Gleason: Certainly.

Vice Mayor Cooper: Can you please list the damages that you discussed. You basically and I'm paraphrasing, that the damages because it does not reflect the, basically her view or her opinion. I found that a little bit problematic and you actually list some concrete damages that she would experience as a result.

Mr. Gleason: First off it would not be, it would be speculative at this point because the resolution hasn't passed so we don't know what the impact is. Secondly, money damages are not what is required to seek regress for violation of 790.33. The mere passage of the resolution, or an act or any policy in violation of 790.33 exposes the Village to an injunctive action. That is to say, a court can tell you must revoke that or that what you've done without power and the damages would be at least the attorneys fees or costs associated with the precedence.

Vice Mayor Cooper: And you are saying resolution is equal to policy. So I'm not following you there. Can you clarify.

Mr. Gleason: Well you are saying that it's not. Well what is it if it's not expressing the intent of the Village of Biscayne Park to the legislature that they should pass a law, a law based upon <inaudible> logic and uninformed statements in the resolution. For example, the resolution discusses the regulation of automatic weapons. Automatic weapons have been regulated for over forty years. No one is arguing that the city is being pummeled with fully automatic Thompson submachine guns, because that problem is being taken care of a long time ago. And yet the lines of the resolution speaks in terms of automatic weapons. So it's not only <inaudible> form, but it is a violation of 790.33. Any other questions?

Mayor Jacobs: No, absolutely.

Commissioner Ross: Just one question.

Mr. Gleason: Yes ma'am.

Commissioner Ross: I know that on the Miami Dade County agenda for today's meeting, there was an item related to background checks related to firearms. And I wonder if you went before the county commissioners and opined to them as well.

Mr. Gleason: I have not been engaged by anyone. But if I had been or requested to be, I might have. I want to point out that the city of South Miami lost in a case called NRA vs. City of South Miami and had to pay damages. Now that was clearly over the line because they actually regulated.

Commissioner Ross: My question is did you appear before the Miami Dade County commission because they had a similar item on their agenda today.

Mr. Gleason: No I haven't. I have not been engaged to do that.

Commissioner Ross: Ok, thank you.

Mayor Jacobs: You state that a resolution is policy and I'm going to go back to that for a second. What I'm suggesting is that we are advocating a position, an opinion that the state should change policy. We can't at this level create policy related to guns or gun ownership in any way, shape or form. However we can speak for the citizenry as a whole to advocate a position without adding enforcement ability whatsoever until the state decides to create that enforcement. That is when the policy is created. Advocating for a policy is entirely different. That's the difference between a resolution and an ordinance.

Mr. Gleason: Your power is contained in the city of Biscayne Park's code of ordinances section 1.04. No where does it give you the authority to tell the Florida legislature what they should do on any topic.

Mayor Jacobs: Is there any where in there that tells us that we can't do that by 1.04.

Vice Mayor Cooper: We are making our recommendations as to what they can do. We are not telling them what to do.

Mr. Gleason: Adversely affected by any ordinance, regulation, measure, directive, rule, enactment, order, or policy is your resolution. A regulation, a measure, a directive, a rule, an enactment, an order or a policy.

Mayor Jacobs: It's a resolution.

Mr. Gleason: And is it none of those things?

Mayor Jacobs: It is an advocacy of a position. It has no enforcement ability. It has no teeth. It is advocating the State do something to better the community as a whole.

Mr. Gleason: I understand your position. But I don't think you understand mine.

Mayor Jacobs: Absolutely. Ok.

Vice Mayor Cooper: And I won't be intimidated...

Mayor Jacobs: And threatening us.

Vice Mayor Cooper: ...and I welcome the law suit.

Mr. Gleason: I threat no one sir. If at any time if what I said was interpreted as a threat, I apologize. It was never my position.

Vice Mayor Cooper: It sure came across that way.

Mr. Gleason: I'm simply stating the position of my client.

Mayor Jacobs: Ok, thank you.

Vice Mayor Cooper: Attorney Boutsis?

Attorney Boutsis: Hello everyone. For sake of disclosure I was involved in the litigation by South Miami with the NRA. It was before this current version of the Joe Carlucci preemption. And based on my recollection of that litigation with the NRA, literally I was with the NRA attorneys on a daily basis, it is exactly how you've described it. Having said meetings, making a law, making a police policy in place it would be contrary to the state law...

Vice Mayor Cooper: We are not doing that.

Attorney Boutsis: I don't see it as that. If you want to be 100% clear you can always for an attorney general who is the final arbiter of the interpretation of state law. And make sure that there is no issue. That way you have no <inaudible> game. You have the attorney general issuing its opinion on whether a statement of a policy position relating the state legislature would imply. And that way you're covered.

Commissioner Watts: How much time would it take.

Attorney Boutsis: An hour's work to get it put together and submit it.

Mayor Jacobs: Would you be willing to defer it a month so we can get that information?

Commissioner Ross: We are still in public comment.

Tracy Truppmann: I'm sorry, I wasn't planning on talking. Regardless of my personal opinion on this topic, this is exactly what I'm talking about, about fiscal responsibility. Mr. Cooper, with all due respect, when you tell an attorney and you sit there, and all of you discuss with the attorney. Not our attorney but with their attorney. And you are sitting there arguing with an attorney and none of you are attorneys. You are not knowledgeable enough to sit here and argue law. This is going to cost you money. We have a \$2 million dollar budget. This is an exact waste of time. If you want to recall this commissioner I encourage you to engage in this kind of silliness...

Vice Mayor Cooper: We'll do it then.

Tracy Truppmann: ...We'll do it then. I want that on the record. We'll do it then. All of you heard him. Just for the sake of doing it and losing the Village money. Mr. Cooper I beg you to step down as commissioner...

Vice Mayor Cooper: I won't do it.

Tracy Truppman: ...of course you won't do it. You are too arrogant to realize that you don't know anything about what you are talking about and you continue to talk for the sake of arguing.

Vice Mayor Cooper: I side with what the attorney just said.

Tracy Truppman: Of course you do. Regardless of what anybody in the Village cares about what to spend money on. Ms. Garcia, you don't have other things to spend your money on? You have a \$2 million dollar budget. Focus on what you need to do. And the rest of you know what to do. I've given up on Mr. Cooper a long time ago.

Vice Mayor Cooper: I have a question for the attorney. This is a question about, basically to me we received a threat. I believe the Mayor saw it as a threat. The legal time that it is going to take moving forward, at this point I'd like to document that and I'd like to be prepared that if it moves to court, the running tab at this point will end up being what Ms. Dillon winds up paying as a result of the threat we received this evening.

Attorney Boutsis: I have no problem documenting my time

7 Village Manager

7.a Village of Biscayne Park Police Department - 2012 End of Year Statistical Review.

Manager Garcia: The Village has never been safer - a 60% reduction in crime. We are operating with less personnel, a lower budget, but with increased professionalism in the department. Will bring this item back in March where Chief Atesiano will be present.

7.b Village Hall infrastructure update - cost analysis for temporary housing.

Manager Garcia: The report details the cost for a mobile modular unit to house Village operations. Instead have made small expenditures to improve Village hall. It is not perfect, but will continue to move forward and will continue to see funding from Tallahassee and through grants.

7.c 121st Street Median Closure - Kimley Horne proposal.

Manager Garcia: By unanimous decision of the commission, we looked at making 121st Street and 5th Avenue safer. Have removed the barricades and added no U-turn signs. The proposal provided from Kimley Horne outlines the additional engineering costs, prior to and not including any construction costs. Will continue to review our CITT dollars with Finance Director and will see what is available to move forward, and create a master plan for Village wide improvements.

Commissioner Ross: If we do a master plan, and using CITT dollars, will need Kimley Horne to do that. Astonished at the cost for this project in their proposal.

Mayor Jacobs: Has signage that has been put in place improved the traffic? Any accidents reported?

Manager Garcia: No accidents. Some residents though have informed us of near misses. Have met with North Miami at the site and will work with a resident in the area to have police do more surveillance from her property.

Mayor Jacobs: Would the cost outlined in the proposal be split with North Miami?

Manager Garcia: No, the cost would be ours only. North Miami did not want the closure.

Commissioner Cooper: If North Miami does not want this, are we going to spend this amount and then be beaten because North Miami will reject and the County will then side with North Miami?

Manager Garcia: We have already met with North Miami and they agree as long as they get that left turn for the residents that live on that side.

Vice Mayor Cooper: Did you get that in writing? A commitment?

Manager Garcia: We met with the City Manager and their engineers and we have that commitment, but not in writing.

Vice Mayor Cooper: I would not authorize the expenditure of a single dollar unless we have more discussion with North Miami and their clear support, and even then I still have my doubt that we should spend this money. Would rather spend the money to litigate this gun issue.

Commissioner Anderson: How much has been spent so far on this project.

Manager Garcia: Approximately \$7,000 so far from CITT funds.

Commissioner Anderson: The \$28,000 cost on this proposal is just the start. Does not include any construction costs. Much more needed to spend on. Need to look at carefully to see how we should spend our funds.

Commissioner Watts: Visited the area. Spoke with Officer Marchese. Some say we should only look at the effect on Biscayne Park. But we have to look at the effect on North Miami, too. If we are truly concerned on safety, the closure created more traffic on the North Miami side. Only six accidents reported in 19 years. We would need to distinguish between the two intersections. Then if we split the number of accidents between the two areas, it is probably not that dangerous. Don't even thing that the no U-turn signs are really necessary. We can't please everyone. The police should do some interview on the residents of the area, and look at the huge parking lot for that apartment complex. The whole issue is quite complex.

Commissioner Ross: Manger is seeking direction from the Commission.

Manager Garcia: Currently there is no funding. Will come back to the commission with exact CITT dollars currently available and discuss further during the budget process and come up with a five year plan, and will include what residents have asked for.

Barbara Watts: Recommends we have a workshop. Will put on March agenda to discuss further.

Commissioner Anderson: Recommends we not have staff spend any more resources at this time.

7.d Calendar of events that have been tentatively scheduled through the end of the year was provided.

7.e Update on Key Initiatives

> Safety Assessment at the Ed Burke Recreation Center - At the March meeting, the Chief will speak more on this item.

> Code Compliance Community Flyer - Candido Sosa-Cruz is working with the Code Compliance Board to prioritize violations and create a flyer to communicate these to the residents. It will be done in three languages, English, Spanish and creole, with a goal to educate and promote pride in the Village. The items to be include are:

- * Unightly items in the front/side yard, carport or porch.
- * High grass, weeds and dead trees.
- * Deteriorating fences
- * Trash/garbage/yard debris put out on the wrong day, leaving garbage containers out after pick-up, storing containers in the front yard.

Mayor Jacobs commends having the flyer in three languages.

Vice Mayor Cooper: What part of our code refers to unsightly items? Questions those homes that decorate their homes.

Mr. Sosa-Cruz: More for items that do not belong, as opposed to decorative items.

Commissioner Anderson: Has complained numerous times on unsightly items, for example sofas in the front. Looks for the Code Officer to use good judgment.

Commissioner Watts: Good idea to keep a log of those homes that do not have correct house numbers per our ordinance when Public Works is delivering the flyers.

Manager Garcia: Code Officer is looking into the issue of the house numbers.

> F.I.R.E.S - Proud that we are recipient of this software at no cost to the Village. Will save the police department time and money.

7.f

Manager Garcia announced that on January 17th, the best case scenario for the State of Florida and all affected municipalities happened when the Supreme Court upheld the State's original mandate to retain the 3% levy on worker's salaries to go towards their retirement under the Florida Retirement System. During the budget process, a major portion of the \$103,792 that was placed in contingency was in the event that the ruling would go the other way.

Mayor Jacobs: Since we raised the millage so high to plan for this, we should commit \$80,000 of the contingency to go back to the Reserves to protect our Village and our residents.

Commissioner Watts: This provides the opportunity to look at the salaries for all employees and provide raises. We owe it to our employees and some of this should go back to them.

Commissioner Ross: Reminds everyone that any amount from contingency cannot be spent without commission approval. This is not the time to discuss this.

Commissioner Anderson: We all agree that a certain amount should go back to Reserves, unless another item has priority.

Vice Mayor Cooper: Now is not the time to give raises.

Vice Mayor Cooper makes a motion to deposit the entire contingency amount of \$103,792 in to the Reserves. It is seconded by Mayor Jacobs.

All in favor: Mayor Jacobs and Vice Mayor Cooper.

Opposed: Commissioner Anderson, Commissioner Ross and Commissioner Watts

Motion fails: 2/3

Agenda item 10.c was taken out of order as requested earlier by Attorney Boutsis.

10.c **Ordinance 2012-14**

AN ORDINANCE OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, **RELATING TO AD VALOREM TAXATION, PROVIDING A REVISED PROVISION AUTHORIZING QUALIFIED SENIORS TO APPLY FOR ADDITIONAL HOMESTEAD TAX EXEMPTION BENEFITS; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT; PROVIDING FOR AN EFFECTIVE DATE**

Attorney Boutsis read the title and provided a recap.

Mayor Jacobs opened the meeting for public comment and there were none.

Commissioner Ross makes a motion to adopt Ordinance 2012-14 as was amended at first reading. It was seconded by Commissioner Watts.

Commissioner Anderson: The increased loss of revenues is borne on those residents that do not and cannot apply for this exemption. The savings that it is being provided to those that do qualify is approximately \$237 per year. Not right for so many to subsidize this. Sounds nice, but financially we are digging a deeper hole. Not the right move.

Vice Mayor Cooper: Do we know who these seniors are and how this will affect them?

Mayor Jacobs: Reason it was draw up this way is that it was the safest response to the situation.

Commissioner Watts: If we vote this way now, can we change in a different year?

Attorney Boutsis: Yes

Manager Garcia: Confirms that this will affect the revenues of the 2013-14 budget year.

Mayor Jacobs: Important that we continue to provide this to those that need it most.

Commissioner Anderson: Helping those that can't afford it, but affecting those also living on the edge. Many younger families moving in and it is not fair to subsidize another group of people.

The motions was called to a vote:

All in favor: Mayor Jacobs, Vice Mayor Cooper, Commissioner Watts and Commissioner Ross.

Opposed: Commissioner Anderson

Motion carries: 4/1

Attorney Boutsis requested that agenda item 10.a be moved up.

10.a **Ordinance 2012-10**

AN ORDINANCE OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, RELATING TO THE LAND DEVELOPMENT CODE, **AMENDING CHAPTER 3, RELATING TO PERMITTED USES TO ALLOW DAY CARE/SCHOOL USE IN THE "A" ZONING DISTRICT** ON PROPERTIES WITH PUBLIC FACILITY FUTURE LAND USE MAP (FLUM) DESIGNATION; AND TO ALLOW PUBLIC FACILITIES WITHIN THE "D" DISTRICT, EXCLUSIVE OF ANY SCHOOL USE; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION; PROVIDING FOR AN EFFECTIVE DATE.

Attorney Boutsis read the title.

Attorney Boutsis asked that all who will be speaking on this ordinance to stand and be sworn in.

Attorney Boutsis provided background on what a quasi-judicial items is and the background on this ordinance.

Attorney Boutsis asked for disclosure from each Commissioner:

Commissioner Watts: Has a list of people who she has spoken to dating back to Father Cutie, Moses Shumow, Tracy Truppman, Michelle Chao, Victor Romano, Linda Dillon, Fred Jonas, Linda Brewer, residents on 9th Avenue, David Tunnel, James Cleary and his wife, Harvey Bilt, Officer Marchese, staff and colleagues. These conversations will not affect her decision.

Commissioner Ross: Since 2011, has read numerous e-mails which were sent to the Commission from the Clerk and which the Clerk has, has spoken to the Village attorneys, Chuck Ross, Tracy Truppman, Milton Hunter, Father Cutie, Karen Cohen, several parents, and those concerned with traffic. Will remain impartial.

Mayor Jacobs: Has had any number of conversations with Marilyn Bernstein, Jeff Jacobs, Elizabeth Jacobs, Tracy Truppman, and other conversations in passing, and Father Cutie. Will remain impartial.

Vice Mayor Cooper: Most conversations were done prior to this application. Read same e-mails as stated by Commissioner Ross. Spoke with Father Cutie prior to this particular application, but not currently. Will remain impartial.

Commissioner Anderson: Spoke with Dan Keys, Barbara Kuhl, Judith Gersten, Chester Morris, Milton Hunter, Tracy Truppman, Karen Cohen, The Grizzles. Reached out to Richard Grosso for legal opinion. Will remain impartial.

Mr. Michael Compo, attorney for the applicant, waived his right to cross examine.

Attorney Boutsis provided additional background: Explained that the Village's Comprehensive Plan includes a future land use element. Every seven years, you look at this plan and update it. Biscayne Park did this in 2010 at which time the State required an educational element for cities of a certain size, as it relates to public schools. When Planners did the EAR (Evaluation Appraisal Report) in 2010, our language was broadened and includes public schools and one parcel within the Village was identified. Once that was done, the zoning map was updated. Consistent with the Comprehensive Plan, the applicant is asking to change your zoning to allow a daycare/school in the specified zoning district. The parcel consists of four lots, 8, 9, 10 and 11, but it is one property. And the property has two zoning districts.

Commissioner Anderson: On the application, who is paying for the attorney's time?

Attorney Boutsis: Right now we do not have a fee schedule in place. Recommend that one is put in place for the future.

Attorney Michael Compo: Original application was for a pre-school and elementary school. Now it is being presented as a pre-school only. Applicant has sat through this extremely long process because she believes in it. Applicant did great work at the Miami Shores Presbyterian School. This is a perfect location for a preschool and applicant is committed to a long term lease.

Applicant Sandi Busta: Worked at the Miami Shores Presbyterian School for 27 years and was Director for 19 of those years. Started with 75 students and grew it to 250 based on the request of the parents. Not looking to do this here. Has tailored the proposal for Biscayne Park for preschool only. Personal financial commitment is \$150,000 to start. Does not intend to fail. Understands the traffic concern. There are different times to start. Bulk of the kids will start at 9:00am when area schools have already started. Pickups are also staggered.

Commissioner Watts: If it passes at first reading, can we expect to get full plan before the second reading?

Attorney Boutsis: That is the next step which is after the ordinance is approved.

Commissioner Watts: What is the limitation of students in the Miami Dade County code for student size?

Attorney Boutsis: Based on space that is available.

Applicant Busta: Based on size, looking to stay under 100.

Commissioner Watts: Could the Hall at the Church be changed to classrooms. Can an additional floor be added?

Attorney Boutsis: Only first floor can be used. For the Hall, would have to provide a separate application.

Father Cutie: Since 2011, there have been a series of revisions. Original concept from the Church's perspective was to use the educational buildings as a school like it was in the 50's through the 70's. Currently they are used for religious education. When the school idea was first brought up, there were rumors of 400 students and new buildings. This is never what the church wanted. Spoke to the neighbors surrounding the church. When they realized the scope of the project, they were in support of it. The vision of Ms. Busta matches the vision of the church. We want to host this type of school. There is no hidden agenda.

Commissioner Anderson: Understands that the church is renting space to an independent person.

Father Cutie: The church will not tell Ms. Busta how to run the school. We are just the host.

Mayor Jacobs opened the meeting to public comments:

Barbara Kuhl: Confusing process. It originally went to Planning & Zoning, and then to the Commission, but this was thrown out even though many people there were overwhelmingly against it. They voted 4 to 1 against it. Then it came back in January and there was lighter attendance. What was not correct was the information given to the Board. Planning & Zoning kept asking if they could set criteria and the attorney told them yes you can. That Board felt they were in control. But Miami Dade County code states that the Village must adhere their code and cannot be more or less stringent. My understanding is that Planning & Zoning did not get accurate information. Feels their recommendation is completely invalid. All who came to Planning & Zoning were against it. Where are all those that are for it. Need to make decisions for the Village. Did not appreciate threat from attorney and Father Cutie at the Planning & Zoning meeting that if we vote no, we will get a charter school or mega-church.

Chuck Ross: Not speaking for or against. Asking for clarification on type of school. What are we talking about? Can we override Miami Dade County and control the number of students? Would like to see a secular based program. It should not be religious based in our community. If for profit, does it make the building taxable?

Moses Shumow: Sent text messages to ten families, but they could not attend due to family responsibilities. Just because no one is here, does not mean we are not interested. False statements have been made. It was said that there are no children in Biscayne Park and there is no need for a school. The current census shows a big number of children. Choosing a school for your children is a very difficult decision for parents. Even though he will not send kids to this school, he supports the efforts. Just because it is based in a church does not mean it will be religious. Just because there are 6 to 9 vocal residents opposed, it does not mean it is all of Biscayne Park. Need to hear all voices. Has not been convinced that this will change Biscayne Park. But Biscayne Park is changing and younger families are moving in.

Tracy Truppman: Asked for extended time to speak. Supports and commends the previous speaker's points on parental choices for schools and that it is a difficult decision. There have been issues with the process. Our attorney serves at the pleasure of the Village. The path that the attorney is taking you on is done before you know all the information. How many on the commission listened to the audio of the Planning & Zoning Board. *Commission response:*

- *Commissioner Anderson read the minutes of both meetings.*
- *Vice Mayor Cooper read the minutes of the first meeting.*
- *Mayor Jacobs read the minutes of both meetings.*
- *Commissioner Ross read the minutes of both meetings. Listened to the audio of the first meeting, and attended the second meeting.*
- *Commission Watts read the minutes of both meetings and listened to the audio of both meetings.*

There are three main issues. The liability and safety of the children, the size of the school and the huge traffic issue, and we would be adding a business in Biscayne Park. Heard that the Planners could push this through. Will this be a revenue generating item? We cannot afford this. Cannot afford to lose police to handle traffic. Planning & Zoning recommended a preschool from age six weeks to 5 years old. You have a text amendment without clear specs. You have to have clear information to overturn Planning & Zoning's recommendation. Definition of a preschool is different between a public and private school. Asks the commission not to vote on this tonight and instead go back to Planning & Zoning to clarify. Get specifics on what the school is going to consist of. What were the changes between the first and second Planning & Zoning meeting. Was it that they were told they would have control. Attorney should have first asked the commission how to proceed instead of pushing this process through. John Hearn is your attorney but you have someone else that you did not vote for handling this. This process violates the charter. Many spoke and want to see a smaller school. You were led down a legal path that you cannot go back on. You have handed your powers over to the attorneys. We should be able to talk to everyone on this. I have been in public education for 20 years. Have never seen a process go through like this. Disturbing that the Planners stated it could be pushed through. Has the applicant paid anything for this? Nothing has been budgeted for this item. We have limited funding. It must be regulated and have minimal impact. An after care was never discussed, only a preschool. I support education and a good curriculum, but we must be financially responsible.

Gaspar Gonzalez: Supports the measure and encourages we pass it. Wishes it were more than up to 5 years old. Would like to be talking about a charter school or an elementary school. Come to 8th court -- there are many children. One family with three children entering elementary school. They are moving because they don't like their school options. Other families with school age children who happen to be friends with the Ross' and Steve Bernard's left the Village because of limited school options. Have heard from many families that fear Biscayne Park is becoming the PBS of Villages. Great for families with pre-school age children (Sesame Street) and then families of only retirees (American Masters). Biscayne Park should be a vibrant place to attract families with a good school. It is a recipe for success. Wishes it were more ambitious.

Charlotte Floyd (Senior Ward for the Church of the Resurrection): We all want the same thing - to improve the community. Let's work together to make it win-win.

Father Cutie: Residents felt threatened at Planning & Zoning meeting. It was not meant as a threat. It is just fact. We are trying to operate our church as is. Churches have been sold and bought by larger churches with 1,000 attending service. It is the reality today.

Attorney Boutsis provided answers on the following:

> On Planning & Zoning presentation and Miami Dade County code: What was explained to Planning & Zoning is exactly what was well explained to the commission tonight. We have the development agreement which is the next step and this is where we can put in the conditions as long as they are reasonable and agreed to and meets the minimum requirements. Negotiating is part of the development agreement.

> On liability, the students are the responsibility of the school and church. If traffic study states a police officer is needed, or a crossing guard is needed, it will be the responsibility of the school and church. On liability for the property, it is the responsibility of the church.

Commissioner Ross: Can indemnification be a part of the development agreement?

Attorney Boutsis: Yes.

Attorney Boutsis continued:

> On liability, we are covered under the League. Overall our exposure because of statutory sovereign immunity is \$200,000 and that is covered under our League insurance.

> Regarding that there must be clear and convincing evidence. Not in our code. This is an application for a text amendment. This dynamic makes it a quasi-judicial matter and State law dictates the process. And that process is:

- Was due process provided?
- Did you adhere to correct law?
- Competent substantial evidence?

> On a charter violation - there is none. There is no requirement here for a referendum.

> Regarding payments from the school. Have received no payment from Ms. Busta, their attorney, or Father Cutie. Period. Attorney invoices are public record.

> If not for profit, it would be reported to Property Appraiser and Tallahassee and handled accordingly.

> On the question if a day care and/or preschool, the direction was based on the motion made and approved by the Planning & Zoning Board.

Jerry Bell, Bell David Planners: Have received no payment.

Commissioner Anderson: On number of students, Miami Dade County code is based on square footage. If applicant goes higher and we go lower, what happens if we don't agree?

Applicant Busta: Has to be licensed by DCF and they will tell me how many students which will be the maximum.

Attorney Boutsis: Applicant can appeal it and show there is no reasonable criteria for what the Village is asking.

Commissioner Anderson: Understands that there needs to be a give and take on both sides.

Attorney Boutsis: Recommends we change our code for business licenses.

Commissioner Watts: Traffic study question. How traffic affects the Village is different than what Miami Dade County may have.

Attorney Boutsis and Mr. Bell: Traffic levels we use are part of the Comprehensive Plan and they are based on Miami Dade County code levels.

Commissioner Watts: What if we don't agree on the development agreement? How can we recoup the attorney costs?

Attorney Boutsis: Technically we could pass an ordinance on the fees associated or perhaps a filing fee. But when they submitted their application, we had no fee in place and we cannot go retro-active.

Commissioner Watts: On the minutes of the Planning & Zoning Board, Tracy Truppman states that the applicant has not provided certain State regulation documents.

Attorney Boutsis: That will be a part of the development agreement.

Commissioner Watts: Once we change the zoning, can any other businesses go in?

Attorney Boutsis: No, just a school.

Commissioner Watts: Cannot put in maximum number of students in the text amendment?

Attorney Boutsis: No, it is by the Miami Dade County code.

Commissioner Watts: Can a time limitation be added to include a review in five years?

Attorney Boutsis: You can always do a review requirement, but whatever they have it is vested.

Commissioner Anderson: Ordinance being voted on tonight is to allow a daycare / school.

Attorney Boutsis: The ordinance was left as originally drafted. We can put in Planning & Zoning's recommendation of a preschool up to age 5.

Commissioner Ross: Land Use Board recommends preschool up to age 5. But if we use Miami Dade County code, it states day care nurseries can go up to 6.

Attorney Boutsis: Recommends we keep it consistent to Miami Dade County code.

Vice Mayor Cooper: Does a day care / school term allow for a charter school? Can it be changed in the future?

Attorney Boutsis: Yes, a concern of the P&Z Board, but the applicant wanted that word in there.

Commissioner Ross makes a motion to amend language in the ordinance to reflect the language of day care/nursery school as per Miami Dade County Code. It is seconded by Commissioner Anderson.

Tracy Truppman: Planning & Zoning Board was given direction of size and many parameters. No longer valid. This needs to be told to them.

The motion is called to a vote:

All in favor: Mayor Jacobs, Vice Mayor Cooper, Commissioner Anderson, Commissioner Ross, and Commissioner Watts.

Opposed: None

Motion carries: 5/0

Commissioner Watts: On the church Hall, if we take square footage based on Miami Dade County, this will increase the number.

Attorney Boutsis: But must consider playground, parking, etc.

Commissioner Ross: Definitely an arduous process and have been educated. We have no regulations on this parcel which has a totally different use, and this has made it difficult. Time to pay the piper. It is not residential only. It has another use. Need to make sure that the use that is applied is what fits in our Village, and what we can accommodate here.

Commissioner Ross makes a motion to adopt Ordinance 2012-10 as amended. It is seconded by Commissioner Anderson.

All in favor: Mayor Jacobs, Vice Mayor Cooper, Commissioner Anderson, Commissioner Ross, and Commissioner Watts.

Opposed: None

Motion carries: 5/0

Commissioner Anderson: Now that it is approved at first reading, it then goes to a second reading. After that can we talk to the people?

Attorney Boutsis: Only on the text amendment. When the applicant submits the request for the next step, it becomes quasi-judicial again.

Commissioner Ross: To better handle these issues in the future, provide direction to the attorney to develop a fee schedule. There was commission consensus to have attorney draft.

Mayor Jacobs: Asks the attorney to provide the attorney costs spent to date on this matter.

Attorney Boutsis: John Hearn has asked for authorization to move forward on an inter-local agreement with the City of North Miami on water utility issue.

Commissioner Anderson: Prefers to hold off one more month and keep asking North Miami to share in drafting this and to bring back in the March meeting.

9 **Consent Agenda**

Commissioner Ross pulls the minutes for August 7th and November 7th.

Commissioner Ross pulls item 9.b

Vice Mayor Cooper pulls item 9.c and it becomes item 11.b. (Resolution 2013-04)

Mayor Jacobs pulls item 9.e and it becomes item 11.c (Resolution 2013-06)

Vice Mayor Cooper pulls item 9.g and it becomes item 11.d (Resolution 2013-08)

Left on the consent agenda:

Approval of the minutes for:

- > December 4, 2012 Regular Commission Meeting
- > December 20, 2012 Regular Commission Meeting
- > January 8, 2013 Regular Commission Meeting

Resolution 2013-05

RESOLUTION OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK IN SUPPORT OF "15 DAYS OF NEIGHBORLY LOVE" -- VALENTINE'S DAY GOODWILL INITIATIVE ON THIS 80TH YEAR AS A VILLAGE; PROVIDING FOR AN EFFECTIVE DATE

Resolution 2013-07

RESOLUTION OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK RATIFYING THE APPOINTMENT OF KARLA GOTTLIEB TO THE ECOLOGY BOARD; PROVIDING FOR AN EFFECTIVE DATE

Commissioner Ross makes a motion to approve the balance of the consent agenda and it is seconded by Commissioner Anderson.

All in favor: Mayor Jacobs, Vice Mayor Cooper, Commissioner Anderson, Commissioner Ross and Commissioner Watts.

Opposed: None

Motion carries: 5/0

On the minutes of August 7, 2012, Commissioner Ross makes a motion to approve with the amendments provided by her. It is seconded by Commissioner Anderson.

All in favor: Mayor Jacobs, Vice Mayor Cooper, Commissioner Anderson, and Commissioner Ross.

Opposed: Commissioner Watts

Motion carries: 4/1

On agenda item 11.a, Resolution 2013-03, Mayor Jacobs states the item deserves more time for discussion. Will pull and defer to the March meeting. There is commission consensus for the Attorney to get an Attorney General opinion based on the earlier discussion of this item.

At 10:55pm, Commissioner Anderson makes a motion to extend the meeting an additional 20 minutes. It is seconded by Commissioner Ross.

All in favor: Mayor Jacobs, Vice Mayor Cooper, Commissioner Anderson, Commissioner Ross and Commissioner Watts.

Opposed: None

Motion carries: 5/0

10 Ordinances - FIRST READING

10.b Ordinance 2013-01

AN ORDINANCE OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, **RELATING TO MODIFYING THE START DATE FOR THE CHARTER REVIEW ADVISORY BOARD**; MODIFYING ORDINANCE 2012-08; PROVIDING FOR SEVERABILITY, REPEALER, CODIFICATION AND AN EFFECTIVE DATE.

Attorney Boutsis read the title and provided background. Due to budgetary and time constraints, move to next election cycle in 2016 as there is not enough time for this year's election.

Mayor Jacobs opened the meeting to public comment and there was none.

Vice Mayor Cooper: Sooner we start the better. Need to start this process now.

Commissioner Ross: The way it is written, intended to happen every two years, or is it every seven years. Need to clarify.

Mayor Jacobs: Why not start in October, and budget accordingly.

Attorney Boutsis offers the following suggested language for Section 2-35(2)(c) (page 2, line 15 of Ordinance 2013-01): Selection of the board members shall be made 24 months prior to the regularly scheduled election starting with the election of November 2016 and every third election thereafter.

Mayor Jacobs: Due to the lateness of the meeting and so much more to discuss, should continue the discussion to March.

Vice Mayor Cooper: Let the Board start now.

Commissioner Ross makes a motion to amend the Ordinance as suggested by the Attorney and to approve at first reading, and to continue the discussion at second reading next month. It is seconded by Commissioner Anderson.

All in favor: Commissioner Anderson and Commissioner Ross

Opposed: Mayor Jacobs, Vice Mayor Cooper and Commissioner Watts
Motion fails: 2/3

Commissioner Watts makes a motion to defer to the March meeting. It is seconded by Commissioner Ross.

All in favor: Mayor Jacobs, Vice Mayor Cooper, Commissioner Anderson, Commissioner Ross and Commissioner Watts.

Opposed: None

Motion carries: 5/0

11 Resolutions

11.b Resolution 2013-04

RESOLUTION OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK IN SUPPORT OF CONTINUED EFFORTS TO RESTORE THE LOG CABIN AND ESTABLISH A MUNICIPAL SITE IN CELEBRATION OF THE 80TH ANNIVERSARY OF THE VILLAGE; PROVIDING FOR AN EFFECTIVE DATE

Attorney Boutsis read the title.

Vice Mayor Cooper: Do not want to commit to building a new municipal building.

Commissioner Ross: Purpose is to reaffirm our commitment and to participate in Viva Florida 500!.

Vice Mayor Cooper: Asks to strike reference to building a new municipal building (page 2 line 6).

Commissioner Ross: Should continue to strive for this.

Commissioner Ross makes a motion to approve Resolution 2013-04 with the amendment to strike the reference of building a new municipal building. It is seconded by Commissioner Anderson.

All in favor: Mayor Jacobs, Vice Mayor Cooper, Commissioner Anderson, Commissioner Ross and Commissioner Watts.

Opposed: None

Motion carries: 5/0

15 Reports

15.a Board / Committee Reports

Dan Samaria, Chair of the Recreation Advisory Board: Need board members.

Vice Mayor Cooper left at 11:14pm

Mayor Jacobs: Requests that all items pending and not heard be moved to the March meeting.

Commissioner Anderson: Obligation of all Commissioners to stay through to the end of the meeting. Appalled that Vice Mayor Cooper walked out.

16

Announcements

Clerk Camara read the announcements:

All public meetings are held at the Ed Burke Recreation Center,
11400 NE 9th Court, Biscayne Park.

Wednesday, February 6th - Code Review Board at 7:00pm
Tuesday, February 12th - Special Commission Meeting at 6:30pm
Wednesday, February 13th - Code Compliance Board at 7:00pm
Thursday, February 14th - Recreation Advisory Board at 7:00pm
Friday, February 15th - Movie Night at the Park starting at 6:00pm
Monday, February 18th - Village Departments are closed in observance of President's Day
Tuesday, February 19th - Planning & Zoning at 6:30pm
Wednesday, February 20th - Parks & Parkway Advisory Board at 6:00pm
Wednesday, February 20th - Code Review Board at 7:00pm
Monday, February 25th - Ecology Board at 6:30pm

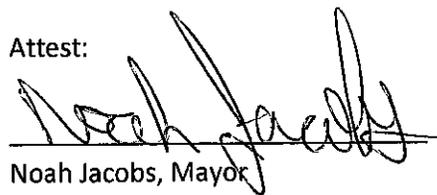
Our next regular Commission meeting is Tuesday, March 5, 2013 at 7:00pm.

Adjournment

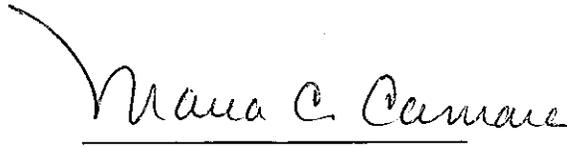
The meeting was adjourned at 11:16pm.

Commission approved on June 4, 2013.

Attest:



Noah Jacobs, Mayor



Maria Camara, Village Clerk