Memorandum

MIAMI-DADE COUNTY

Date: May 4, 2010

Agenda Item No. 9(A)(5)

To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: Waiver of Art In Public Places Requirements:
Village of Palmetto Bay

Recommendation

It is recommended that the Board of County Commissioners retroactively waive the Art in Public Places (APP) requirement for the following four (4) capital projects completed by the Village of Palmetto Bay: Palmetto Bay Park; Coral Reef Park; Ludovici Park, aka Bayfront Park; and the Village of Palmetto Bay Library. This recommendation also requires a waiver of Administrative Order 3-11, governing the process for requesting waivers of the APP requirement.

Scope

The impact of this agenda item is specific only to these projects and is a one-time request.

Fiscal Impact/Funding Source

Sec. 2-11.15 of the Miami-Dade County Code requires the allocation of not less than one and one-half percent (1½%) of the construction cost of new governmental buildings for works of art. APP contributions of approximately $14,125 for the Palmetto Bay Park project, $1,469 for the Coral Reef Park project, $446 for the Ludovici aka Bayfront Park project, and $46,835 for the Palmetto Bay Library project were not included in these projects' capital budgets. The capital funds for these projects have been spent and/or are committed for the design and construction of the buildings.

Track Record/Monitor

The Village of Palmetto Bay recently adopted its own public art ordinance; however, the existing municipal ordinance does not adhere to the requirements of the County's ordinance. On a going forward basis, the Village of Palmetto Bay has been advised that it must amend its existing ordinance to adhere to Section 2-11.15 of the County Code.

Background

It is important to note that due to a mutual and inadvertent oversight, the APP contributions of approximately $14,125 for the Palmetto Bay Park project, $1,469 for the Coral Reef Park project, $446 for the Ludovici aka Bayfront Park project, and $46,835 for the Palmetto Bay Library project were not included in these projects' capital budgets . The capital funds for these projects have been spent and/or are committed for the design and construction of the buildings.

As detailed in the September 2, 2008 memorandum issued by the County Manager, the charge of the APP Review Committee is to review and make recommendations regarding projects that have been completed or are underway and have not complied or fully complied with the Art in Public Places requirements as set forth in Section 2-11.15 of the County Code.

New government building projects undertaken by municipalities that are wholly funded by the municipality, and or partially or in whole by Building Better Communities General Obligation Bond (GOB) funds and or Safe Neighborhoods Parks (SNP) Bond are covered by the APP requirements. Section 2-11.15 of the County Code states (emphasis added):

> "Appropriation for construction to include amount for works of art. Miami-Dade County and each municipality in Miami-Dade County shall provide for the acquisition of works of art equivalent in value to not less than one and one-half (1 1/2) percent of the construction cost of new governmental buildings..."

The Village of Palmetto Bay has recently completed three (3) parks projects partially funded by GOB and SNP grants. APP staff has reviewed these projects for applicability and confirmed the following APP calculations for each:

Project Title	Total Eligible Costs	Calculated APP Allocation
Palmetto Bay Park	$941,656	$ 14,125
Coral Reef Park	$97,912	$1,469
Ludovici aka Bayfront Park	$29,758	$446

The APP-eligible costs are associated with the fabrication and installation of various permanent built structures throughout the park facilities that partially or wholly serve to shelter people. The three projects would have required a combined aggregate APP contribution in the amount of $16,040.

In addition to the parks projects, the Village of Palmetto Bay has also recently completed the construction of a new library eligible for the APP requirement. The Village has acknowledged that due to a mutual and inadvertent oversight, the APP contribution of $46,835.00 for the Palmetto Bay Library project was not included in this project's capital budget. Consequently, the Village of Palmetto Bay is making a request for a retroactive waiver of the APP requirement for these projects.

Pursuant to Administrative Order 3-11, the County Manager can appoint an APP Review Committee to consider issues related to the APP program. On September 2, 2008, the Committee was activated to review and make recommendations regarding projects that have been completed or are underway and have not complied or fully complied with the APP requirements as set forth in Section 2-11.15 of the County Code. The following individuals were appointed to serve on the APP Review Committee:

Alex Muñoz, Review Committee Chairperson, Office of the County Executive
Johnny Martinez, Office of Capital Improvements
Deborah Mastin, Office of the County Attorney
Charles Parkinson, Office of Strategic Business Management
Michael Spring, Department of Cultural Affairs
Suzanne Torriente, Office of the County Executive

As an additional member, a representative from the Department or Municipality affected by an item before the Review Committee serves on the Review Committee for the deliberation regarding that particular item.

In addition, the Chair of the Art in Public Places Trust, or the Chair's designee from the Art in Public Places Trust, serves as a non-voting, ex officio member of the Review Committee.

The APP Review Committee and its guidelines for reviewing requests for waivers of the APP requirements are established by Administrative Order 3-11, which states

> "If the facility does not conform to the definition of 'new governmental building' a waiver will be recommended to the Board of County Commissioners. Only the BCC is authorized to grant waivers. Waivers must be secured prior to the award of the construction contract."

As new governmental facilities, the three (3) parks projects as well as the Palmetto Bay Library project are eligible for the Art in Public Places requirement. Given that these four (4) projects by the Village of Palmetto Bay do comply with the definition of "new governmental buildings" and did not request the waiver prior to the award of construction contracts for these projects, a waiver of Administrative Order 3-11 also is required.

It should be noted that under the Village's existing public art ordinance, the Village of Palmetto Bay accepted a donated artwork by Romero Britto for the exterior entrance area of the Palmetto Bay Library project. The Village, however, did pay for the materials and fabrication of the piece, in addition to the relative installation cost of the art work. In order to comply with the APP guidelines, municipalities have the option of administering their own public art projects or working collaboratively with Miami-Dade Art in Public Places to administer, manage and implement the public art components. If the municipality should choose to implement its own public art projects, it is responsible for adhering to the program's requirements as follows:

1.) 1½% of the total construction cost of new government buildings must be allocated for the commission or purchase of artworks;

2.) A competitive, quality-based artist selection process must take place and a selection committee with knowledge and expertise in the visual arts must select the art work;

3.) APP funds must be used solely for commissioning works of public art and a professional artist must be contracted with to implement the works of public art. A percentage of the APP funds may be set aside for program administrative costs and repair and maintenance expenses for the public art project. It is recommended that up to 15% of the total public art allocation be set aside for costs associated with administering the project and up to 15% be set aside for costs associated with the future maintenance of the public art project; and

4.) For BBC/GOB-funded projects, APP funds must be spent within the facility that generates the public art monies.

Although commended for adopting its own public art ordinance and for incorporating an artwork in the project, by accepting a non-competitive-based, donated artwork, the Village of Palmetto Bay did not adhere to the APP requirements, including the 1½% allocation for public art and administering a competitive, quality-based artist selection process. On a going forward basis, the Village of Palmetto Bay has been advised that it must amend its existing ordinance and procedures to adhere to Section 2-11.15 of the County Code.

The Department of Cultural Affairs is working cooperatively with the municipalities to identify and establish early working relationships. The Department has conducted workshops for these municipalities on the APP program, highlighting the APP requirements and working implementation procedures.

On February 25, 2010, the APP Review Committee recommended the waiver of Administrative Order 3-11 and the waiver of the Art in Public Places requirement for the following Village of Palmetto Bay Projects: Palmetto Bay Park; Coral Reef Park; Ldovici Park, aka Bayfront Park and Village of Palmetto Bay Library. On March 9, 2010, the Art in Public Places Trust also approved these recommendations. Both the APP Review Committee and the APP Trust emphasized the importance of considering these to be a one-time waivers based on the specific circumstances associated with the under-calculation and/or omission of the APP allocation for these projects.

Assistant County Manager

MEMORANDUM
(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: May 4, 2010

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 9(A)(5)

Please note any items checked.

_____ "3-Day Rule" for committees applicable if raised

_____ 6 weeks required between first reading and public hearing

_____ 4 weeks notification to municipal officials required prior to public hearing

_____ Decreases revenues or increases expenditures without balancing budget

_____ Budget required

_____ Statement of fiscal impact required

_____ Ordinance creating a new board requires detailed County Manager's report for public hearing

_____ No committee review

_____ Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve

_____ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 9(A)(5)
5-4-10

RESOLUTION NO. _____

RESOLUTION AUTHORIZING APPROVAL OF A RETROACTIVE WAIVER OF THE ART IN PUBLIC PLACES (APP) REQUIREMENT FOR THE FOLLOWING FOUR CAPITAL PROJECTS COMPLETED BY THE VILLAGE OF PALMETTO BAY: PALMETTO BAY PARK; CORAL REEF PARK; LUDOVICI, AKA BAYFRONT PARK; AND THE VILLAGE OF PALMETTO BAY LIBRARY THIS RECOMMENDATION ALSO REQUIRES A WAIVER OF ADMINISTRATIVE ORDER 3-11, GOVERNING THE PROCESS FOR REQUESTING WAIVERS OF THE APP REQUIREMENT

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the retroactive waiver of the Art in Public Places requirement for the following four (4) capital projects completed by the Village of Palmetto Bay: Palmetto Bay Park; Coral Reef Park; Ludovici Park, aka Bayfront Park; and the Village of Palmetto Bay Library; and approves the waiver of Administrative Order 3-11, governing the process for requesting waivers of the Art in Public Places requirement.

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The foregoing resolution was offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Dennis C. Moss, Chairman
Jose "Pepe" Diaz, Vice-Chairman

Bruno A. Barreiro	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Barbara J. Jordan	Joe A. Martinez
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 4th day of May, 2010. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. DBM

Deborah Bovarnick Mastin

MIAMI-DADE COUNTY
BOARD OF COUNTY COMMISSIONERS
OFFICE OF THE COMMISSION AUDITOR

Legislative Notes

Agenda Item:	**9(A)5**
File Number:	**100838**
Committee(s) of Reference:	**Board of County Commissioners**
Date of Analysis:	**April 20, 2010**
Type of Item:	**Retroactive Waiver of the Art in Public Places Program**

Summary

The following resolutions authorize retroactive waivers of the Art in Public Places Program for the following projects:

- City of Hialeah Projects (Walker Park and West Okeechobee;
- Villa Aurora Housing Development;
- Village of Palmetto Bay Projects (Palmetto Bay Park, Coral Reef Park, Ludovici aka Bayfront Park, and Palmetto Bay Library); and
- City of Miami Beach Projects (Beachfront Restrooms and Fire Station #4).

Background and Relevant Legislation

The Art in Public Places (APP) Program Appropriation, Implementation and Fund Transfer Procedures are defined under Ordinance 94-12 and Administrative Order 3-11 (AO 3-11). The ordinance also establishes an APP Trust. AO 3-11 defines the program implementation and funds transfer procedure.

Waiver requirements under 94-12 may be approved by the Board of County Commissioners (BCC) when it appears that the construction project covered is not appropriate for application of the APP requirements. Appropriation requirements include the following:

- Construction of new governmental buildings only (building must be habitable and no renovations);
- Appropriation value is not less than one and one-half percent (1 ½ %) of the construction cost;
- Remainder of appropriation funds can be used for program administrative costs, insurance costs for the repair and maintenance of any works of art acquired, or to supplement other appropriations for the acquisition of works of art, or to place works of art in or near governmental facilities which have been already constructed.

AO 3-11 defines the APP program implementation and funds transfer procedure to include the following components:

- Allow for a review committee, to review new capital projects and their eligibility for the contribution to the APP program;
- Recommendations to the BCC for a waiver if a facility does not conform to the definition of "new governmental building";
- Waivers must be secured prior to the award of the construction contract;
- All contract award recommendations submitted for approval by the BCC must include a line item "Art in Public Places Contribution";
- Upon award of a construction contract by the BCC, the Finance Department will transfer by journal entry the APP funds to the Art in Public Places Trust Fund (APPTF) and these transfers must occur prior to the execution of the contract by the County Manager;
- Projects constructed by Departments require the Department Director for the agency executing the construction project responsible for the transfer of the APP funds;
- The County's internal auditing staff will randomly check those agencies which engage in in-house construction projects to ensure compliance; and
- Allow for a professional advisory committee to be responsible for recommending new selections of art to the full APP Trust.

In FY 2007-08, APP was transferred to the Department of Cultural Affairs (CA). During that same year, an audit report on APP (APP Audit Report) issued by the Audit and Management Services Department in February 2008 revealed that the current procedures for APP appropriation were not in place to ensure timely identification of all eligible construction projects subject to the APP Ordinance (94-12).

The APP Audit Report revealed various projects where the APP appropriation was omitted including: Overtown Transit Project, WASD Douglas Road Administrative Headquarters Facility and MDAD Central Collection Parking Plaza.

On July 17, 2008, the BCC approved R-860-08, requiring the County Mayor or designee to study the APP program and provide a subsequent report. The County Manager responded on September 4, 2008, with a status report that included background of the APP Program, APP's program direction, APP's accomplishments under the new leadership of the CA Department, APP project qualifications/expenses, assessment of current APP program conditions, accountability and sustainability of APP program.

In early 2009, CA and the Office of Capital Improvements (OCI) collaboratively compiled a list identifying any outstanding GOB projects (where applicable) omitting this APP appropriation.

The items (4F, 4G, 4H and 4I) on the April 12, 2010, Recreation, Culture and Tourism Committee agenda are the direct result of the collaborative effort with OCI to review the list of General Obligation Bonds (GOB) and Safe Neighborhood Parks (SNP) funded projects for compliance with the APP program requirements.

Policy Change and Implication

On February 25, 2010, the APP Review Committee recommended waiver of APP requirement for the above-mentioned projects included in the RCT agenda. On March 9, 2010, the Art in Public Places Trust also approved these recommendations. The APP Review Committee and the APP Trust consider these one-time waivers based on the specific circumstances associated with the under calculation of APP allocations for these projects.

According the CA, since assuming responsibility for the APP program several measures have been incorporated to ensure that all current and future capital projects that are APP eligible comply with the APP program requirements.

The measures implemented by CA (in cooperation with OCI and the Office of Strategic Business and Management) to ensure APP program compliance include the following:

- Workshops with County departments throughout the year;
- Creation of a system to ensure that the APP allocation is calculated and planned at the outset of all eligible capital projects resulting in a budget line item built into the capital budgets; and
- APP program Training Sessions for Municipalities.

Budgetary Impact

The table below reflects the fiscal impact for each project to include the amount of APP allocation that was not included initially, the amount that is being recaptured and remediated for future projects.

Project	Original APP Amount	New APP Amount
Walker Park & West Okeechobee	$67,530 + $367,500=**$435,030**	**$448,000**
Villa Aurora Housing Development	**$164,000**	**Work in Progress**
Village of Palmetto Bay Projects	$14,125 + $1,469 + $446 + $46,835=**$62,875**	**Work in Progress**
City of Miami Beach Projects	$8,051 + $19,437=**$27,488**	Exceed County APP requirements by **$945,778**

Prepared By: Mia B. Marin