

TOWN OF MIAMI LAKES, FLORIDA

Town Council

Mayor Michael Pizzi

Vice Mayor Richard Pulido

Councilmember Mary Collins

Councilmember George Lopez

Councilmember Robert Meador II

Councilmember Nick Perdomo

Councilmember Nancy Simon

AGENDA **SPECIAL CALL COUNCIL MEETING**

March 11, 2009

6:45 PM

Miami Lakes Middle School

6425 Miami Lakeway North

Miami Lakes, Florida 33014

- 1. CALL TO ORDER:**
- 2. ROLL CALL:**
- 3. INVOCATION/MOMENT OF SILENCE:**
- 4. PLEDGE OF ALLEGIANCE:**
- 5. PUBLIC COMMENTS:**
- 6. DISCUSSION AND/OR ACTION ITEMS:**

Mitigation Fee

- 7. FUTURE MEETINGS:**

March 17, 2009 ZONING MEETING, 6425 MIAMI LAKEWAY N, MIAMI LAKES 6:00 PM

April 14, 2009 REGULAR MEETING, 6425 MIAMI LAKEWAY N, MIAMI LAKES 6:30 PM

- 8. ADJOURNMENT:**

This meeting is open to the public. A copy of this Agenda and the backup therefore, has been posted on the Town of Miami Lakes Website at www.miamilakes-fl.gov and is available at Town Hall, 15700 NW 67th Avenue, Miami Lakes, FL. In accordance with the Americans with Disabilities Act of 1990, all persons who are disabled and who need special accommodations to participate in this meeting because of that disability should contact Town Hall at 305-364-6100 two days prior to the meeting.

Anyone wishing to appeal any decision made by the Miami Lakes Town Council with respect to any matter considered at this meeting or hearing will need a record of the proceedings and for such purpose, may need to ensure that a verbatim record of the proceedings is made which record includes the testimony and evidence upon which the appeal is to be based.

Any member of the public wishing to speak on a public hearing matter on this Agenda or under public comments for items not on this Agenda, should fill out a speaker card and provide it to the Town Clerk, prior to commencement of the meeting. Any person presenting documents to the Town Council should provide the Town Clerk with a minimum of 12 copies.



MEMORANDUM

To: Honorable Mayor and Town Council

From: Frank Bocanegra, Town Manager
Nina Boniske, Town Attorney
Gonzalo Dorta, Special Town Counsel

Subject: Discussion and/or Action pertaining to Pending Litigation styled:

Town of Miami Lakes v Miami-Dade County, Case No. 07-30357(CA31),
11th Judicial Circuit Court;
Town of Miami Lakes v Miami-Dade County, Case No. 3D08-1724, 3rd
District Court of Appeal

Date: March 11, 2009

Background

As part of the Town's incorporation in the year 2000, one of the requirements imposed upon the Town by Miami-Dade County (the "County") was the annual payment of a Mitigation Fee in perpetuity. Section 9.3 of the Town's Charter specifies the terms and conditions under which payment of the Mitigation Fee occurs. The Mitigation Fee is due annually to the County in arrears on September 30, the close of the Town's Fiscal Year.

The Town Charter provided a mechanism to reduce the annual Mitigation Fee payment based upon the occurrence of certain triggering events pertaining to any subsequently created municipalities within the County. In 2004 the Town entered into conflict resolution procedures with Miami-Dade County seeking an adjustment to the Town's annual Mitigation Fee payments. The request was based upon the incorporation of Miami Gardens and the effect of that incorporation on the County's UMSA budget. As a result of these discussions, the County agreed to analyze the Town's Mitigation Fee, but ultimately made no adjustment.

In 2006, the County created a Mitigation Task Force. The Task Force recommended to the Board of County Commissioners that Mitigation should be phased out entirely. Based upon the Task Force's recommendations, the County proposed several different phasing out plans. In April of 2007, the Board of County Commissioners adopted Resolution No. R-508-07 establishing a policy of ending the obligation of the Town to continue paying the Mitigation Payments after seven (7) years of payments. However, shortly thereafter in May of 2007, the Florida Legislature adopted legislation prohibiting the payment of any

future mitigation fees. (Chapter 2007-26, Laws of Florida) Despite the newly adopted state legislation, the County asserted that the Town still owed the annual Mitigation Fee and that the new legislation was unconstitutional.

In 2007, Litigation was filed by the Town, the City of Doral and the Village of Palmetto Bay seeking a declaratory judgment that the cities were no longer subject to payment of their annual Mitigation Fees to the County based upon this new state legislation. In May of 2008, the Court entered a Final Summary Judgment in favor of the County finding that the state legislation was unconstitutional. The Town appealed the ruling to the 3rd District Court of Appeal and the case is currently pending before the appellate court.

In late 2007, the Town also filed separate litigation in Circuit Court against Miami-Dade County alleging that the County owed the Town a reduction in annual Mitigation Fee payments and further that the County owed a refund to the Town for prior payments to the County. The litigation is in the discovery process and is currently pending.

We have held several executive sessions with the Town Council to discuss the Pending Litigation and held several settlement discussions with the County Attorney regarding the offer and the Town's counterproposals.

Status of Mitigation Fee Payments

1.	2000-01	\$1,191,800	Paid to County
2.	2001-02	1,494,934	Paid to County
3.	2002-03	1,516,538	Paid to County
4.	2003-04	1,560,608	Paid to County
5.	2004-05	1,604,305	Paid to County
6.	2005-06	1,679,707	Paid to County
7.	2006-07	1,762,013	Due September 30, 2007/budgeted
8.	2007-08	1,836,000	Due September 30, 2008/budgeted
9.	2008-09	1,910,000	Due September 30, 2009/budgeted

County Offer

On September 16, 2008 the County adopted Resolution No. R-973-08 (Exhibit "A") offering to end the Town's obligation to pay the annual Mitigation Fees as follows:

1. Payment by the Town of Fiscal Year 2006-07 Mitigation Fee of \$1,762,013. (Payment No. 7 above, Payment No. 8 and 9 would be eliminated).
2. Authorizing the Town to prepare a ballot question to amend the Town's Charter to eliminate any future Mitigation payments and to call a Special Election, subject to approval by the County Attorney of the ballot question.
3. The Charter amendment would also eliminate the Town's Most Favored Nations Status in the Town Charter as it pertains to Mitigation.
4. Voluntary dismissal by the Town of the Pending Litigation which would be held in escrow by the County Attorney and not filed with the County until the

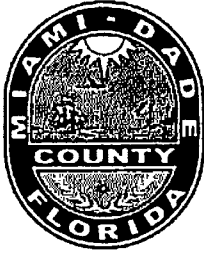
Special Election for the Town Charter amendments occurred. (Holding the dismissal in escrow was not in the original Resolution but was subsequently approved by the County at its November 12, 2008 meeting).

5. Payment of the cost of the Special Election to be absorbed by the County if held as a Mail Ballot election. (County offered subsequent to adoption of Resolution).

Town Council Consideration.

The County, through the County Attorney, has advised that the Town's counterproposals to the Offer have been rejected and the Offer specified above is the current offer to the Town. At this point the Town is still pursuing the Pending Litigation as directed. Attached is a draft Resolution (Exhibit "B") that follows the Offer of the County. The draft Resolution is for discussion purposes only for the Town Council to utilize during its consideration of the Offer.

EXHIBIT A



Miami-Dade Legislative Item File Number: 082487

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File Number: 082487 **File Type:** Resolution **Status:** Adopted
Version: 0 **Reference:** R-973-08 **Control:** Board of County Commissioners
File Name: MIAMI LAKES CHARTER ELIMINATING MITIGATION PAYMENTS TO MDC **Introduced:** 8/27/2008
Requester: NONE **Cost:** **Final Action:** 9/16/2008
Agenda Date: 9/16/2008 **Agenda Item Number:** 11A5

Notes: Title: RESOLUTION APPROVING AN AMENDMENT TO THE CITY OF MIAMI LAKES CHARTER ELIMINATING MITIGATION PAYMENTS TO MIAMI-DADE COUNTY AND THE "MOST FAVORED NATIONS CLAUSE" AS IT APPLIES TO MITIGATION UPON CERTAIN CONDITIONS

Indexes: MIAMI LAKES **Sponsors:** Natacha Seijas, Prime Sponsor
 MITIGATION IMPACTS

Sunset Provision: No **Effective Date:** **Expiration Date:**
Registered Lobbyist: None Listed

Legislative History

Acting Body	Date	Agenda Item	Action	Sent To	Due Date	Returned	Pass/Fail
Board of County Commissioners	9/16/2008	11A5	Adopted				P

REPORT: Pursuant to the County Manager's Memorandum of Changes, dated September 16, 2008, a scrivener's error existing in the subject line of the cover memorandum of this resolution; the title of this resolution, and in the 4th Whereas Clause, was noted and corrected to replace the words "City of Miami Lakes" with the words "Town of Miami Lake." Commissioner Seijas noted, several years ago, the County imposed a moratorium on all incorporation applications, and the Miami Lakes community, as an exception to this moratorium, developed the mitigation concept and offered to pay mitigation to offset the loss in the unincorporated area tax base. She noted the Board accepted this offer, and subsequently, the City of Miami Lakes was created, with other cities following suit. Commissioner Seijas stated she felt enough time had passed since the City of Miami Lakes had incorporated for the County to absorb the impacts, and the County should not spend any more public resources defending this concept in court. She recognized Mayor Wayne Slaton, Vice Mayor Mary Collins, and Council Members Roberto Alonso and Robert Meador, present today from the Town of Miami Lakes, and expressed her appreciation

to them for their efforts in resolving this issue. She noted she felt that since the Town of Miami Lakes was the first community to enter into the mitigation payment agreement, it was only fitting that the Town of Miami Lakes be the first to terminate this agreement, and she hoped the remaining cities would join in. Mayor Wayne Slaton, Town of Miami Lakes, noted at times and in some circumstances, mitigation had been warranted; however, he felt from the beginning that the circumstances would change in the future and mitigation would no longer be warranted. He expressed appreciation to the Board for this resolution, which presented a good opportunity for the residents of Miami Lakes to end mitigation. Commissioner Seijas expressed appreciation to Mayor Wayne Slaton for a magnificent job done serving as Mayor of the Town of Miami Lakes for the past eight years. Vice-Mayor Mary Collins, Town of Miami Lakes, expressed appreciation to Commissioner Seijas for putting forth this resolution and providing the Town of Miami Lakes with an opportunity to end the mitigation payment issues. Councilmember Roberto Alonso, Town of Miami Lakes, expressed appreciation to the Board of County Commissioners (BCC) for this resolution and noted he looked forward to a good relationship between the Town of Miami Lakes and the County. Councilmember Robert Meador, Town of Miami Lakes, expressed appreciation to the BCC for this resolution, which, he noted, served as a bright light in a dark tunnel. It was moved by Commissioner Seijas that the Board adopt the foregoing proposed resolution. This motion was seconded by Commissioner Edmonson, followed by discussion. Commissioner Sorenson spoke in support of this item, and hoped the Cities of Palmetto Bay and Doral would join Miami Lakes in ending mitigation. She noted she sponsored a resolution that was amended in Committee to treat all three municipalities equitably. She noted that resolution was not before the Board today, but was what she desired to see happen. Commissioner Sorenson noted the Board now understood that mitigation caused divisiveness and created too much animosity between municipalities and the County, and needed to be ended. She spoke in support of this item, and hoped her colleagues would support her resolution involving the Cities of Palmetto Bay and Doral. Commissioner Sosa noted, coming from a municipal government, she understood the difficulty in delivering services. She stated she hoped the mitigation issue would be resolved with the remaining cities as well, but also hoped this would send a message to the municipalities considering annexations going forward that the County could no longer entertain mitigation. She noted she hoped that the County Management was prepared to absorb in the budget, the exit of mitigation payments charged to those municipalities for the past years, if this item was approved. Commissioner Diaz noted he sponsored a resolution some time ago to address the mitigation issues with the City of Doral, and wanted to ensure the resolutions pertaining to all three municipalities, particularly the City of Doral, were clear and equitable. Vice Chairwoman Jordan noted there were donor and recipient communities when the mitigation process was created, and Miami Gardens was considered a recipient, revenue neutral, community. She noted at that time, the County was left with the remaining unincorporated areas, and she felt mitigation was the only fair process. Vice Chairwoman Jordan asked the County Manager to provide a report reflecting the name of the remaining communities currently providing mitigation and what the amounts were. In response to Vice Chairwoman Jordan's question whether any annexations had ever provided mitigation payments, County Manager Burgess noted several annexations had provided mitigation payments. Vice Chairwoman Jordan spoke in support of this item, but stated she wanted a policy kept in place that ensured the integrity of the remaining unincorporated areas and prevented the same issues from occurring in the future. Commissioner Sorenson asked staff to clarify whether the amended resolution she proposed, pertaining to the City of Palmetto Bay, would proceed to the next BCC meeting in the same manner as the forgoing resolution, or would further steps be needed. Assistant County Attorney Craig Collier noted the resolution proposed by Commissioner Sorenson was more general in terms, and directed the County Mayor or his designee to work out a detailed resolution similar to that for Miami Lakes, and would not be ready by the next BCC meeting, but did not require a 2/3's vote of the Commission. In response to Commissioner Sorenson question whether the resolution she sponsored, pertaining to the City of Palmetto Bay, could be amended to mirror the forgoing resolution, Commissioner Seijas stated she had no problems with requesting a waiver of the Committee process to allow both Commissioners Sorenson and Diaz' resolutions to be forwarded to the next BCC meeting. Commissioners Sorenson and Diaz asked Assistant County Attorney Craig Collier to prepare the appropriate resolutions for eliminating the mitigation payments of the Cities of Doral and Palmetto Bay to Miami-Dade County that mirrors the City of Miami Lakes resolution, in order to be fair and equitable. Hearing no further comments or questions, the Board proceeded to vote.

County Manager	9/10/2008	Scrivener's Errors	Board of County Commissioners	9/16/2008
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REPORT: Replace the words City of Miami Lakes to Town of Miami Lakes in the subject line of the cover memo, in the title of the resolution and in the 4th Whereas clause.

Governmental Operations and Environment Committee	9/9/2008	3H	Forwarded to BCC with a favorable recommendation	P
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REPORT: Assistant County Attorney Geri Bonzon-Keenan read the foregoing proposed resolution into the record. Chairwoman Seijas relinquished the Chair to Vice Chairman Diaz, and moved a motion that this resolution be forwarded to the County Commissioner with a favorable recommendation. The motion was seconded by Vice Chairman Diaz, followed by a discussion. Commissioner Gimenez noted he opposed mitigation from the beginning, but would support this resolution if other cities were included. Commissioner Seijas stated each city began at different times and paid different amounts, and she felt it would be fair to evaluate each city separately. Hearing no further comments or questions, the Committee proceeded to vote on the foregoing proposed resolution as presented. NOTE: Chairwoman Seijas submitted a memorandum dated September 09, 2008, requesting the Board of County Commissioner (BCC) Chairman Barreiro waive the Committee rules and procedures and allow the foregoing resolution to be forwarded to the September 16 BCC meeting for consideration.

County Attorney	8/27/2008	Assigned	Craig H. Collier
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County Attorney	8/27/2008	Assigned	Governmental Operations and Environment Committee	9/9/2008
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Legislative Text

TITLE

RESOLUTION APPROVING AN AMENDMENT TO THE TOWN OF MIAMI LAKES CHARTER ELIMINATING MITIGATION PAYMENTS TO MIAMI-DADE COUNTY AND THE "MOST FAVORED NATIONS CLAUSE" AS IT APPLIES TO MITIGATION UPON CERTAIN CONDITIONS

BODY

WHEREAS, Section 6.05 of the Miami-Dade County Home Rule Charter requires an affirmative vote of two-thirds (2/3) of the members of the Board of County Commissioners then in office to approve the amendment of any pre-agreed condition contained in a municipal charter of a municipality prior to a vote of the municipality's electorate; and

WHEREAS, in the Incorporation/Annexation and Mitigation Workshop of the Governmental, Operations and Environment Committee of the Board of County Commissioners, the Town of Miami Lakes, the Village of Palmetto Bay and the City of Doral discussed the phasing out of mitigation payments to the County, which were voted upon by the electors as a pre-agreed condition contained in their respective municipal charters; and

WHEREAS, the Board expressed its intent to phase out mitigation through the adoption of Resolution

No. R-508-07; and

WHEREAS, the Board being duly advised, acting in furtherance of the County's Home Rule powers, desires to phase out mitigation payments made by the Town of Miami Lakes in an orderly manner, as set forth in this resolution upon certain conditions; and

WHEREAS, Section 9.3 of the Town of Miami Lakes' charter provides: "For the reasons outlined in the Report and subject to calculations, decreases and CPI adjustments set forth in the Report, the Town shall annually contribute municipal property revenues into a Municipal Service Trust Fund ("MSTF"); and

WHEREAS, the Report referenced in the Town of Miami Lakes' charter entitled Miami Lakes Municipal Advisory Report/Conceptual Agreement provides for the following "Most Favored Nation Clause":

Both parties agree that if a subsequent incorporation of any donor area is approved, without conditions outlined in this agreement, including but not limited to the contribution of at least 55% of the surplus funds to the MSTF, and those terms would be beneficial to the Town of Miami Lakes, the terms under this Memorandum of Understanding will immediately be replaced with the terms granted to the subsequent new city.

WHEREAS, the Board desires to approve the modification of the Town of Miami Lakes' charter to eliminate all future payments of its mitigation obligation after payment of mitigation for fiscal year 2006-2007 in the amount of \$1,762,013 so long as the Town, as part of the modification, eliminates the above referenced "Most Favored Nations Clause" as it applies to mitigation,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. The Board of County Commissioners by an affirmative vote of two-thirds (2/3) of its members approves a ballot question which authorizes an amendment to the Town of Miami Lakes Charter to eliminate all future payments of its mitigation obligation after payment of mitigation for fiscal year 2006-2007 in the amount of \$1,762,013 and delete the municipality's charter provision relating to "most-favored-nations-clause" as it applies to mitigation, which would eliminate Miami Lake's right to obtain the benefit of terms or arrangements pertaining to mitigation enjoyed by municipalities incorporated subsequent to the incorporation of Miami Lakes.

Section 2. This resolution shall be effective only upon the Town of Miami Lakes voluntary dismissal with prejudice of the appeal to the Third District Court of Appeal in Town of Miami Lakes v. Miami-Dade County Case No.3D08-1724 and Town of Miami Lakes v. Miami-Dade County Case No.07-30357(CA31) and approval by the County Attorney of the form of the Town of Miami Lakes' ballot question consistent with the provisions of this resolution.

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EXHIBIT B

RESOLUTION NO. 09- _____

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, PERTAINING TO THE PENDING LITIGATION STYLED; TOWN OF MIAMI LAKES V. MIAMI-DADE COUNTY, CASE NO. 07-30357(CA31) IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT AND TOWN OF MIAMI LAKES V. MIAMI-DADE COUNTY, CASE NO. 3D08-1724 IN THE 3RD DISTRICT COURT OF APPEAL; RELATING TO THE TOWN'S CHARTER; PROPOSING ELIMINATION OF MITIGATION PAYMENTS TO MIAMI-DADE COUNTY UNDER CERTAIN CONDITIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town is currently a party to pending litigation styled; Town of Miami Lakes v. Miami-Dade County, Case No. 07-30357(CA31) in the Circuit Court of the Eleventh Judicial Circuit and the Town of Miami Lakes v. Miami-Dade County Case No. 3D08-1724 in the 3rd District Court of Appeal pertaining to the payment of mitigation fees (collectively the "Pending Litigation"); and

WHEREAS, in the Incorporation/Annexation and Mitigation Workshop of the Governmental, Operations and Environment Committee of the Board of County Commissioners, the Town of Miami Lakes, the Village of Palmetto Bay and the City of Doral discussed the phasing out of mitigation payments to the County, which was voted upon by the electors as a pre-agreed condition contained in their respective municipal charters; and,

WHEREAS, the Miami-Dade Board of County of County Commissioners expressed its intent to phase out mitigation through the adoption of Resolution R-508-07,

and more specifically expressed its plan to do so under Resolution R-973-08, dated September 16, 2008; and,

WHEREAS, County Resolution R-973-08 requires the Town to provide for payment of the outstanding Mitigation Fee for Fiscal Year 2006-07 in the amount of \$1,762,013; authorizes the Town to prepare a ballot question (subject to approval of the ballot question by the County Attorney) authorizing an amendment to the Town's Charter through a Special Election eliminating the obligation to pay to the County any mitigation fees for future fiscal years, so long as the Town as part of this Charter modification eliminates the Most Favored Nation Status as it applies to the Town's contribution to the Municipal Services Trust Fund; requires the Town to voluntarily dismiss with prejudice the Pending Litigation with such dismissal to be held in escrow by the County Attorney pending the actual occurrence of the Special Election and,

WHEREAS, the County has additionally offered to pay the cost of the Special Election in the form of a Mail Ballot election; and,

WHEREAS, the Town Council desires to move forward with the settlement of the Pending Litigation, and to coordinate the Charter Amendments and Special Election needed to approve same.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, AS FOLLOWS:

Section 1. Recitals.

The above recitals are true and correct and incorporated herein by this reference.

Section 2. Direction regarding Pending Litigation.

The Town Council directs the Town Manager, Town Attorney and Town Clerk to take all necessary steps to:

1. Prepare ballot text amending the Town's Charter to eliminate the payment of annual Mitigation Fees starting with Fiscal Year 2007-08 and to modify the Town's Most Favored Nations Status (the "Charter Amendments");
2. Coordinate with the County and the Supervisor of Elections the scheduling of a Special Election Mail Ballot for the Charter Amendments to be paid for by the County;
3. Negotiate an Escrow agreement with the County Attorney for the Fiscal Year 2006-07 Mitigation Fee in the amount of \$1,762,013 to provide that the funds shall only be released to the County upon the actual Special Election occurring and the certification of the results of the Special Election by the Supervisor of Elections¹; and

¹ Holding the payment in escrow is not in the County's Offer.

4. Prepare a Stipulated Settlement for Voluntary Dismissal of the Pending Litigation which will be effective and filed with the Court(s) only after the Special Election is certified.

Section 3. Effective Date.

This resolution shall take effect immediately upon approval.

PASSED and ADOPTED this 11th day of March, 2009.

Motion to adopt by _____, second by _____.

FINAL VOTE AT ADOPTION

Mayor Michael Pizzi _____

Vice Mayor Richard Pulido _____

Councilmember Mary Collins _____

Councilmember George Lopez _____

Councilmember Robert Meador _____

Councilmember Nick Perdomo _____

Councilmember Nancy Simon _____

Michael Pizzi
MAYOR

ATTEST:

TOWN CLERK

APPROVED AS TO LEGAL SUFFICIENCY:

TOWN ATTORNEY
Weiss, Serota, Helfman, Pastoriza,
Cole & Boniske, P.L.