

City of Coral Gables City Commission Meeting
Agenda Item E-8
December 11, 2007
City Commission Chambers
405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Slesnick Donald D. Slesnick, II
Vice Mayor Maria Anderson
Commissioner Rafael “Ralph” Cabrera, Jr.
Commissioner William H. Kerdyk, Jr.
Commissioner Wayne “Chip” Withers

City Staff

City Manager, David Brown
City Attorney, Elizabeth Hernandez
Assistant City Attorney, Lourdes Alfonsin
City Clerk, Walter J. Foeman
City Clerk Staff, Billy Urquia

Public Speaker(s)

Andy Murai, Coral Gables Resident
Steven Adams, Coral Gables Resident

E-8 [11:04 a.m.]

Ordinance on First Reading. An Ordinance amending the City Code Section 86-59 of Chapter 86, entitled “Waterways”, Division 2, entitled “Anchoring, Mooring, etc.”; providing for prohibitions on the length of boat or craft; providing for placement of boat or craft within minimum side setbacks for main structure; providing for placement of boat or craft parallel to the abutting property; amending Section 86-60 by adding a section specifying when to allow the mooring of boat or craft to other boats; adding Section 86-62, entitled “Definitions” to define “Boat Mooring Space”; amending Section 86-86 by adding a section making it unlawful to obstruct passage to the waterway due to hurricanes; providing for severability, repealer, codification, and an effective date.

Mayor Slesnick: This is an ordinance on First Reading. This came about and maybe in looking at the crowd here, maybe we need to have a workshop or something else, but this came about by the fact that the City enforcing something which turned out to be very unfair to other people, and that is people’s boats extending over to other people’s property. So that seems like a fair enough thing that we had wanted to stop people’s boats extending over other people’s property and blocking their view and their access to the waterway from their own property. If that’s not what we are doing here then it’s a surprise to me.

Vice Mayor Kerdyk: Maybe I can add something to this. I think the issue is not that people don't agree about extending onto another person's right-of-way. The fact is that, I think that this ordinance with the setback provisions really damages a person's right to hold a boat in the back of their house, and I think probably that's what a lot of these people are here, and are going to articulate. I have a lot of questions to ask the City Attorney about this issue right here, and a lot of it has to deal with the setbacks and how she ascertain that this is the way to move and notice provisions...

Mayor Slesnick: Why don't we do this – why don't we go ahead and have you ask the questions because – we have more people to appear at this than we have most development items? Rather than be here all day, I think everybody wants to learn about what we were trying to do; number one, where we went wrong, if we did, and why. So your questions seem to be on point. But again, let me say this, it was I, I think actually that brought this up originally because I thought that the decision of our City to support the rights of one individual who is intruding on other people's property was wrong, but it was the law at the time, so the whole effort was to correct that situation, not to not allow people to have their own boats on their own property. So if you ask your questions, and we get answers, then maybe you all will here where we are going on this.

Vice Mayor Kerdyk: Let me go ahead and start off. The first one is, did we notice everybody on the waterway that this was coming forth? And is that necessary to notice people on the waterway?

Assistant City Attorney Alfonsin: It's not necessary to notice people on the waterway, but it's not the City Attorney's office call to notice, I'm not sure whether it was or not.

Mayor Slesnick: Andy Murai asked me about that, let me say this, this is an issue of general application throughout the City, and as I told Andy its my feeling, first there was no obligation to, but secondly the publishing of a First Reading is in fact very effective obviously, and that is we vote on these ordinances twice and they are a month a part, so it was in fact an effective first notice to publish the First Reading of the ordinance, is where we get a lot of our input, obviously.

Vice Mayor Kerdyk: Another question would be, have we surveyed the waterfront right now to determine if we do agree upon this ordinance how many people would be in violation with regards to the setback requirements? Again, keeping under consideration that everybody, at least I agree upon not infringing on another person's, but encapsulating everything on their individual waterfront; have we done any surveying as far as that goes, Mr. City Manager?

City Manager Brown: I don't believe we've done a survey to decide who else was in violation. This ordinance was crafted as a result of a lawsuit settlement.

Vice Mayor Kerdyk: Well let me tell you what you are going to find.

Mayor Slesnick: Can I just ask one question?

Vice Mayor Kerdyk: Sure.

Mayor Slesnick: You keep referring – who is it that decided that we have to use setbacks and which setback?– I don't know where that started. We talked about infringement on other people's properties, but I don't know, and I assume that we picked up the setbacks just as if we would on a building, but I don't know how it got applied here.

City Manager Brown: This is a City Attorney item.

Commissioner Cabrera: Somebody's got to take responsibility on this because the natives are restless.

Assistant City Attorney Alfonsin: If I may, we got staff's opinion, Planning Department, we did a lot of research, it was other ordinances around the State of Florida, and in, I would say in the majority of those the side setbacks is what was used.

Vice Mayor Kerdyk: Let me tell you what you are going to find when you do the survey, Mr. City Manager; you are going to find davits, you are going to find pilings in the setbacks, you are going to find boathouses, you are going to find people that have bought boats to put them on their property, buying boats encompass on their property, you are going to find tenders behind boats, you are going to find all sorts of things that get into the side setbacks, and to be perfectly frank with you, if you look at, let's take for example Gables Estates; Gables Estates is an area of acre properties, but some of the properties only have a hundred feet of waterway, but have severe setbacks; I mean they have thirty-thirty five foot setbacks; can you imagine owning a piece of property in Gables Estates and having basically enough land to park a thirty foot boat, or a twenty foot boat? I personally think that we need a lot more attention to this, and maybe have a workshop as you mentioned initially to look at the setback requirements. There are things that – the boat moves every time tide goes in, tides go out; you could have a boat that was at one point not in an encroached area or in the setbacks, and another two hours in the encroached setbacks. So, I think there are a lot of issues that we need to before we move forward here, and...

Commissioner Cabrera: A lot of unknown variables.

Vice Mayor Kerdyk: I personally would like to defer this issue, with seeing what else you all have to add to it.

Mayor Slesnick: By bringing up the issue of setbacks as opposed to just intrusion on other people's space, are we talking about – have this been to the Zoning, the Planning and Zoning Board?

Assistant City Attorney Alfonsin: This is an amendment to the City Code.

Mayor Slesnick: OK. Should this, if we are going to bring in the idea of setbacks though, then we are talking about zoning issues, so should this go or should – is the removal of the setback issue take it out of that realm?

Assistant City Attorney Alfonsin: We could take it to the Planning and Zoning Board, the setback requirement is just a matter of the five feet or sight specific whatever amount it is. So it's just a matter of placing a numerical value on the side and the size of the boat. It has nothing to do with the Zoning Code. The reason we placed it in the City Code is because that was the ordinance that was at issue that went before the Third District Court of Appeals.

Mayor Slesnick: So my question is that if you told me we are going to remove any reference to setbacks and there really would be no issue about Planning and Zoning.

Assistant City Attorney Alfonsin: That's correct.

Commissioner Cabrera: OK, I'll tell you what – there is just a lot of unknowns here, and I'm with you on deferring this item, and let me translate that to you folks in the audience. It's better that we defer than we move forward with this process today. It's in your best interest; I think its in the City's best interest if we do that as well, so that's the reason I'm doing; I'm not trying to win any votes, or give you an early Christmas present, I just think its in the best interest of all.

Mayor Slesnick: And actually it was supposed to be a Christmas present, it was supposed to stop people from intruding on your space, so to have it come up, and I don't think we ever thought about setbacks; that's something that came up with the suggested ordinance.

Commissioner Withers: Is there both a navigation issue and a setback issue? I mean, are we concerned about intrusion into the waterway also with this?

Assistant City Attorney Alfonsin: Well, this addresses other matters aside from the size of the boat; Police had input into what was addressed in the waterway ordinance.

Commissioner Withers: I know there are certain areas of the canal which constructed improperly and they just do arrow according to the Army Corp of Engineers, on I think the Mahi section under the Granada Bridge there is an issue there.

Assistant City Attorney Alfonsin: Our Code does address that already; there has to be seventy-five feet between the waterways between docks.

Mayor Slesnick: Mr. Murai, are you sort of the spokesperson for this group? Because if I call on one person – if we are going to put this off to a workshop I would...

Mr. Murai: Mr. Mayor, [inaudible – off mike].

Mayor Slesnick: Well you are signed up to speak so I'll let you.

Mr. Murai: Andy Murai, 200 Solano Prado. Mr. Mayor, I think there is a basic unanimous agreement with the people here today, that I know what you are trying to address, and I think that can be easily be accomplished if an ordinance is considered to have boats within your property line, or if it protrudes to another lot as an agreement from your neighbor. I think that if wording to that effect is put into the ordinance it would solve this issue. I know how this issue came about; we ruled on it on Code Enforcement Board, had to do with no guidance from the City, and it was affirmed by the Third District Court of Appeals, and I know what you are trying to accomplish. So, if you have a vertical line extending to the waterway on your property, and your border is within that vertical line, or it intrudes and you have an agreement with your neighbor, that ends this entire controversy, and am I correct to say that everybody here is in agreement with that?

Audience: Yes

Commissioner Anderson: Let me ask you a question; that would be fine with me, but what happens if the neighbor moves, I'm just thinking ahead of time, how would that agreement, that's something we could work out.

Mr. Murai: If you have an agreement with your neighbor...

Commissioner Anderson: And they move – how does that agreement...?

Mr. Murai: With the existing neighbor – if that existing neighbor is not in agreement then Code Enforcement will decide the problem.

Commissioner Anderson: I understand. But let's say you have the boat, and you have a neighbor that agrees for the encroachment on that, but that neighbor moves away, passes away, or whatever.

Mr. Murai: I think that the encroachment goes away when the neighbor moves.

Commissioner Anderson: But that leaves the person in non-compliance. I'm just putting it as a kind of devil's advocate.

Mr. Murai: A lot of people have lots on a curve that are very small on the water, and if you enact the ordinance the way it is today, they will not be able to park anything. Everybody is in agreement here today as to the property line.

Commissioner Cabrera: But would you agree, Mr. Murai, that it is probably the best to take this as a workshop matter, rather than to...

Mr. Murai: If you'd like to do so, that's fine sir; the only thing that I'm trying to avoid is to spend countless hours on this issue, countless meetings, create circuses, you know, that...

Mayor Slesnick: Well, how about this...?

Commissioner Cabrera: I think this is a relatively black and white issue; this is not the sign ordinance, OK, I know you are so familiar with it and I don't mean to throw it back your way, but you were instrumental in helping us achieve the sign ordinance. But here's what happened – when you asked the audience to get their feelings on your suggestion, there was a member in the audience that didn't necessarily agree with you; and I – Mr. Murai, with all due respect, I mean, I'm on this side, but I think you are misreading me because I am very much interested in your recommendation, and I think your recommendation brings a great deal of common sense, which you know, it's something that we sometimes lack, and a workshop might allow us to take it to that level and come to an agreement, and then have all members of the audience be participants, as well as yourself.

Mr. Murai: That's fine. I just want to put on the record that keeps focus on the property line...

Commissioner Cabrera: Agree.

Mr. Murai: And keep focus – if it extends to a neighbor, and the neighbor is in agreement as there are some people have bolstered, the neighbors are in agreement, you know Mr. Perez; I remember the case, we spent hours on that case; and I understand your position, it needs to be solved because there is no language to that, Mr. Mayor. So I think it works out well.

Commissioner Cabrera: And it's not a six months process, but Mrs. Anderson brought up a very good point, how do you deal with issues such as someone moving, or someone dying, or something that could change the outcome of the property.

Mr. Murai: Whatever the will of the Commission is. Thank you so much for allowing me to speak.

Mayor Slesnick: OK. Thank you. Now...

Commissioner Anderson: Things we'll probably deal with at that workshop.

Mayor Slesnick: How about this – how about David, how about if you set one workshop session down in the south end where most of our – there are other canal residents, but maybe at Fairchild or one of the places down there, and have a one-time when we meet with any neighbor wanting to show up and give us their input, but is it fair to say, and correct me now, I'm just trying to move this along, is it fair to say that based on what we all talked about, and head nods, that we are looking at restricting boats to be within the property lines.

Commissioner Cabrera: Right.

Commissioner Withers: Are we concerned about a triangular visibility issue as far as looking down the waterway, or are we just looking straight down the property line?

Mayor Slesnick: That's something I don't know, and I understand now from the comments from the City Attorney that the Police did actually did contribute something's to safety issues, and so forth. But when this started all we were talking about is we weren't talking about safety or width, we were just about flowing over to other people's property. But I think in that little one workshop we would invite the Police to come, Marine Patrol, and have them there and talk about these issues, and maybe we'll find common agreement on those issues.

Commissioner Cabrera: Let me understand who the participants of the workshop would be; are we going to participate, or are we asking staff to do this.

City Manager Brown: Staff would do that with the neighbors.

Commissioner Cabrera: Who's that?

City Manager Brown: Staff would do that with the neighbors.

Commissioner Cabrera: Staff would do that with neighbors and you'll bring along Marine Patrol. Just give us a heads up when you are doing this, because it might be a real interesting workshop to attend.

City Manager Brown: I'll do that. I do have one concern, and I'll just put it on the record, the neighbor agreement you take that scenario down the line, and the new neighbor moves in, and the new neighbor does not want the boat across the property, we'll be right back where we are.

Commissioner Anderson: What'll do?

City Manger Brown: We'll go through the workshop issues and talk about that; its great to have your neighbor help you out, but when that neighbor goes away, and now...

Commissioner Anderson: That was my concern.

Commissioner Withers: We have to reinforce it.

City Manager Brown: Well, I understand that.

Commissioner Cabrera: It becomes a civil dispute.

Assistant City Attorney Alfonsin: Enforcement – enforcement would be the issue.

Mayor Slesnick: Let's put it this way – let me synopsize the one position on that is, if your neighbor doesn't care they are not going to complain and we are not going to be

citing you, but if we recognize it in the law then it does become a big issue. So, I think if you are going to intrude at your neighbors permission you ought to just do it between you know that you are at risk if the new neighbor may not...

Commissioner Cabrera: It becomes a civil matter, it becomes a civil matter.

City Manager Brown: Because the issue is as the enforcement body we are going to be in the same court of law we just left.

Vice Mayor Kerdyk: Let's face it – most people buy a house understanding that their waterfront is this much and this is what they are going to keep their boat in, in this much waterfront, so I mean, that's it; not with setbacks, but this is their waterfront and this is where their boat's going.

Mayor Slesnick: The thing that we were trying to correct is a minority of issues, and we weren't trying to disrupt the majority of lives.

Commissioner Cabrera: I know but, it really kind of in a way concerns me that...

Mayor Slesnick: I think Mr. Murai brought all these people here today.

Mr. Murai: [Inaudible – off mike]

LAUGHTER

Commissioner Cabrera: Are you asking us also to now readdress metal roofs while we have everybody here today?

Mayor Slesnick: I know that you all signed up to speak, and this was a public hearing, but what I'm asking you is that if you are satisfied with how we are going to progress on this to forego, we will by the way keep a record of everyone who was here, it will become part of the official record with your addresses and position statements that you have made here; this is part of the official record. If there is anyone who feels they absolutely have to speak, I'm not going to take that away from you because you've come a long way from the south – yes, please.

Mr. Adams: Good morning; I will not take more than five minutes; I appreciate your comments. I live I Gables by the Sea...

Mayor Slesnick: You need to give us your name and address.

Mr. Adams: Steven Adams, 1125 Bella Vista, I'm an attorney with the law firm of Jones and Adams. The problem that we have in Gables by the Sea in particular on Bella Vista is we have a beautiful view, but we are at a cul-de-sac at the end of the canal. We have concave sea walls, and what happens with concave sea walls is that the barcus sea wall is usually maybe forty (40) feet. So the neighbors on the concave are constantly in

agreement – I but a little bit, you but a little, there is never an issue. If we start going to imposing, obviously the setbacks, with ten foot setbacks you are left with an eighteen foot access to the water; that would be outrageous, that's the only reason why I even moved to Coral Gables to finally be on the water; I would be losing that property right if we did that. I brought with me, and you can just Google it, but just take a look at the plat at Gables by the Sea; every single house on Bella Vista – three homes on Bella Vista would lose water access if you did that. Why? Because they are all on the concave sea wall.

Mayor Slesnick: So if we go back to lot lines.

Mr. Adams: Lot lines and like you said neighbor agreements, obviously to address your concern, if for example, in my scenario, I have my neighbor's agreement to overextend a few feet; if he sells and a new neighbor comes in, and we can't work it out, I've got to move, and I'm square with that..

City Manager Brown: That's all I want to know.

Mr. Adams: I'm square with that.

Commissioner Cabrera: You are, but somebody else may not be, but you know what it's a civil matter; it doesn't become a City matter...

Mr. Adams: Correct.

Commissioner Cabrera: That's kind of the direction that we'll like to take it so that it becomes between neighbors and not City officials get involved.

Mr. Adams: Exactly.

City Manager Brown: I'm good with that.

Mayor Slesnick: Thank you.

Commissioner Cabrera: I think everybody is good with that.

Mayor Slesnick: Well, thank you all. Its good to have you in City Hall; most of you don't come here, and I hope one message you'll take away from this is that there was no intention of this body to restrict your rights, to have boats and to keep them on your property at all; it was to really protect you from some other less caring person who wants to block you by having a boat that takes up two lots, and we had the situation, so there we go.

Commissioner Cabrera: Wait until we start charging toll on the Mahi waterway, you'll be back, right?

LAUGHTER

Mayor Slesnick: I'd like a motion to defer.

Commissioner Cabrera: So moved.

Mayor Slesnick: OK. Mr. Cabrera moves, Ms. Anderson seconds it. We'll defer this until such time. Do you want to try to bring this back by the second meeting in January?

Commissioner Cabrera: Mr. Manager, how is your capability to bring this back in the second meeting in January?

City Manager Brown: We can do that. I was going to say that the holiday season is a little tough to whip up this workshop; by the second meeting we can certainly have this disposed of.

Mayor Slesnick: Add that to your motion, deferred to the second meeting in January.

City Manager Brown: I would look to the neighbors to have that workshop in early January.

Commissioner Cabrera: I would add to the motion to bring this item back to the second meeting in January, if there is a problem you'll let us know by the first meeting.

City Manager Brown: I will.

Mayor Slesnick: And it's been moved and Ms. Anderson that's OK with you – seconded.

Mr. Clerk

Commissioner Anderson: Yes

Commissioner Cabrera: Yes

Vice Mayor Kerdyk: Yes

Commissioner Withers: Yes

Mayor Slesnick: Yes

(Vote 5-0)

Mayor Slesnick: Thank you all very much. It's good to see you all up here.

[End 11:26 a.m.]