

City of Coral Gables City Commission Meeting
Agenda Item F-7
November 14, 2017
City Commission Chambers
405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Raul Valdes-Fauli
Vice Mayor Pat Keon
Commissioner Vince Lago
Commissioner Frank Quesada
Commissioner Michael Mena

City Staff

City Manager, Cathy Swanson-Rivenbark
City Attorney, Craig E. Leen
City Clerk, Walter J. Foeman
Deputy City Clerk, Billy Urquia
Landscape Services Director, Brook Dannemiller
Assistant Building Director, Charles Wu
Assistant City Attorney Stephanie Throckmorton

Public Speaker(s)

Maria Cruz, Coral Gables Resident

Agenda Item F-7 [11:22:14 a.m.]

An Ordinance of the City Commission of Coral Gables, Florida amending the City Code Chapter 82, entitled “Vegetation” to include additional measures to review and protect trees to set procedures to evaluate tree protection and removal; to set an appeals process for a Tree Permit denial; to establish a Tree Trust Fund for the purposes of maintaining and increasing the City tree canopy from tree mitigation fund fees and other measures as deemed as necessary for the preservation and enhancement of the City’s tree coverage; providing for repealer provision, severability clause, codification and providing for an effective date. (Sponsored by Commissioner Lago).

Mayor Valdes-Fauli: F-7.

City Attorney Leen: F-7 is an Ordinance of the City Commission of Coral Gables, Florida amending the City Code Chapter 82, entitled “Vegetation” to include additional measures to review and protect trees to set procedures; to evaluate tree protection and removal; to set an appeals process for a Tree Permit denial; to establish a Tree Trust Fund for the purposes of maintaining and increasing the City tree canopy from tree mitigation fund fees and other measures as deemed as necessary for the preservation and enhancement of the City’s tree coverage; providing for repealer provision, severability clause, codification and providing for an effective date. This item is sponsored by Commissioner Lago and again it’s an Ordinance on First Reading, it’s a public hearing item. I would just like to add one thing for the record. This has been extensively worked on by staff and also by Stephanie Throckmorton from my office, obviously Brook and Charles and staff. One point that has been added to this ordinance and one reason why is coming before you today is that, and you are going to address this later as well, but there is a Bill in the Legislature indicating that an attempt, I don’t know if it will end up getting passed or not, but there is a Bill attempting to preempt cities in regulating trees on private property. Now this ordinance relates to both private property and public property, but one thing I think will be very helpful to the City is to have our ordinance enacted, assuming it’s within the Commission’s will to have it enacted prior to that statute if it ends up being enacted going into effect and even prior to being enacted. One other thing is, we’ve added a provision to this ordinance that addresses any potential preemption in the future and establishes an administrative process and remedy. For anyone who feels that part of this ordinance maybe preempted, there is a process established where it goes to the Board of Adjustment and then comes to you as the City Commission to make a determination whether that has occurred or not. That will protect the ordinance, I believe from facial challenges as applied challenges because obviously, the ordinance relates to both public and private property, so it’s never going to be facially preempted; and in addition to that, as applied challenges now will have to go through our administrative process. So, with that I will turn it over to the sponsor Commissioner Lago.

Commissioner Lago: From staff I think you’ve done an incredible job, giving us a quick overview in reference to the ordinance, but let’s hear from staff.

Landscape Director Dannemiller: This process started back when you were discussing the oak trees on Lisbon Park and in that process we discovered that there were some kind of holes and gaps in the code that needed to be clarified or streamlined, so that was about two years ago, and so we’ve been working diligently on that since then. You asked us to formulate those changes and come back to you. I’ll give you a quick overview of the technical and then Charles will go over the process, the streamlined processes. A lot of the items we are already doing administratively. For example, prohibiting trimming trees without getting City approval, the City trees, we are formalizing that in this code; requiring tree surveys as part of building permit process; requiring permits for co-boundary trees, trees that are straddle a property line, both

property owners or if it's on two property lines they all have to be co-applicants on that permit; establishing a tree canopy tree mitigation calculation method, currently it just says of equal environment value. We've established criteria and streamlined that and made it clear for property owners and contractors to be able to do that work easier. Clarifying and acquire tree protection measures at construction sites. Two, three years ago, you hardly saw any protection fences anywhere throughout the City, now you can't drive more than five minutes in the City without seeing tree protection fences on the swale and on private property. And lastly, establishing a Tree Trust Fund -- right now if someone can't mitigate on the property, each one has to be done individually. This will establish a process for allowing us to do that a little bit more efficiently and a little bit more streamlined.

Assistant Development Services Director Wu: Thank you Brook. For the record, Charles Wu, and I'll be introducing some of the processes that we established. Number one, we established a formal process, if you want to do work on private property and your affected tree what is the process? First we'd like to go to a series of exercises; first the applicant will have to determine what can he do to preserve the tree on site, and that's an example of the Lisbon tree situation. The other option is to maybe you can modify the tree and to prune the roots and you can still keep the tree that is the second level of the option. The third option is, if those two cannot work maybe you can remove the tree on site on the same property and still make the property useable for redevelopment; and the last option is really to move the tree off-site. So, we have a series of exercises that we ask the applicants to go through before they actually take down a tree. So, you don't want to make it too easy to say, I want to remove a tree, I want to build from lot line to lot line. The second thing we added, which is new is to have approved administrative variance of 20 percent. Staff can approve this variance if there is tree hardship that it can be demonstrated to staff. That includes setback building as in ground cover coverage, and it does not affect the maximum building area for the site. Number three, we changed the appeal process from administratively, which was today the Tree Appeals Board to the Board of Adjustment. As you are all aware, the Board of Adjustment today hears appeals on variances, we are taking the Tree Appeals to the Board of Adjustment, they've been appraised of this and they agreed with the new additional responsibility, and the City Code does establish some guidelines, some criteria how to approve or to deny a Tree Appeal Process. Secondly, the Code clarifies if you want to remove a tree on public property is the discretion of the City Manager's office. Today our package do not allow it, here we formalized it. Last, we have some enforcement provisions, which finally we make it official that the Code Enforcement Board and Code Enforcement Officer can enforce the Code. We increased the violation from \$500 to \$5,000 to the extent of the law. Willful acts will be fined if they take down the tree on private property up to \$15,000; and the violator upon conviction in the court can be subject to imprisonment in County Jail not to exceed 60 days. In addition, civil remedy, the City is entitled to award of attorney fees. That concludes the processes that we established in the formal City Code.

Assistant City Attorney Throckmorton: Just to mention to establish a policy that Brook mentioned about having a separate fund for mitigation for the canopy around the City.

Assistant Building Director Wu: The City Code does establish \$1,500 for every founded square feet tree canopy loss that will be in the proposed ordinance and can amend that subsequently by resolution in the fee schedule in the future.

Commissioner Lago: Thank you.

Assistant Building Director Wu: And that will be a trust fund to establish trees on public property.

Commissioner Lago: Thank you. I just want to also say thank you to Craig. When I brought him the issue of the State legislation that's being moved forward, which is again an attack on Home Rule, it could affect our tree canopy and our ability to protect not only on public, but on private, he moved expeditiously and made sure that staff put this on the front burner. I know you've been working on it for some time and I think this has been important. I think also delineating a process, which was simple for all parties involved, I think is critical. This can only help us and I think will clarify things and hopefully give us an avenue to continue to protect our canopy as much as possible.

Mayor Valdes-Fauli: This is a public hearing and Maria Cruz wishes to speak, Maria Cruz.

Ms. Cruz: I'm very happy that we are addressing this. If you all have been reading the paper, you see that sometimes it's better to do the wrong thing, cut the trees down then we get fined, but we don't have to replace the tree. I think putting the money into a fund to replace a tree someplace else really does not answer the question. In our neighborhood, we've had people that have bought property, they come in and they decide that they don't like the trees that are there, so they cut them down. When the City finds out either because a neighbor or somebody complains, they get fined, but they don't have to replace the tree. I think there is a problem with that. If you cut them without a permit, you should be forced to put back the tree that you removed, otherwise it's very convenient, you know I'll pay the fine and get away with it. That doesn't work. If you looked at the paper yesterday the same thing was happening with the mangrove. Sometimes it's easier to pay the fine and get my way than to replace, OK. I think there should be some replacement on site, not someplace else. It doesn't do my neighborhood any favor if I cut down a tree and then in some part far away there will be a tree that will be replaced with the money that I paid. That doesn't serve the purpose. It has to be where it was cut.

Mayor Valdes-Fauli: Thank you Maria.

Commissioner Lago: Let me tell you and I agree. Our City Manager will tell you that's an item that I think Craig Leen brought up yesterday in our pre-agenda meeting. I've seen this happen already in the last month and I showed you the pictures Madam City Manager, I think I showed them to Craig also twice already. It didn't happen in our City, thank God, one of them was on the front cover of the Herald two days, but the other one happened, and I showed Peter the example, so he can go visit, two majestic oaks that was probably about 100 to 125 years old, were cut down on 57th Avenue – beautiful, majestic, I'm selling them short.

Mayor Valdes-Fauli: Where?

Commissioner Lago: I drive by them on 57th Avenue and S.W. 2nd, and I have pictures of them, I can show them to you.

Mayor Valdes-Fauli: That's not within our City.

Commissioner Lago: No, they are not within our City, but the issue there, the issue there was a simple one. Again, like Maria stated, the trees were in the way, the trees were in the way from the duplex that was going to be knocked down; they were going to build a six-unit building. So, it's better to do the deed and then ask for forgiveness later, pay the \$100,000 fine, \$50,000 fine, whatever it may be, but you got rid of the sore in your side, which were again these two beautiful trees that were not allowing you to implement the development that you wanted to do. Again, I understand what Maria is saying, I'd love to have a discussion with all of you, see where your ideas are. I agree to a certain extent that we should, if an individual cuts down a tree on a piece of property, they should be forced to replace that tree, and I'm not talking about a small 3-4 inch caliper tree, they should be forced to replace a tree of some magnitude, because if not, I mean again, don't forget, property values are through the roof in the City of Coral Gables. People are tearing down trees and when they are redeveloping homes, they try to maximize every single square inch, the square foot; the square foot prices are so high right now. So, what ends up happening, if a tree is in the way of a footprint of a home and they can't build an additional bedroom, they just knock down the tree and then pay the consequences later if they get caught.

City Attorney Leen: So one thought about that. I think that the City should consider as part of this ordinance, maybe between First and Second Reading, a provision that says that if a tree is removed and then the party who removed the tree or that property owner or successor wants to build in that area that they can't.

Mayor Valdes-Fauli: That's a very good suggestion.

City Attorney Leen: They cannot take benefit of what they've done, that's what you can do. Now the issue is you always have to allow, I'm sorry, I didn't mean to interrupt...

Commissioner Lago: No, no, no.

City Attorney Leen:...the issue is you always have to allow some reasonable development on that property so that you don't commit a taking, but if you make it clear in the code that if they cut down a tree that's illegal, illegally cut down a tree in order to gain a benefit from it, I do think you would have a good argument in any court that they cannot take advantage of that, that's sort of a discouragement principle, they cannot then benefit from their wrongdoing.

Commissioner Lago: Listen Craig, while I want to discourage people from cutting down as many trees as possible, I want to preserve our canopy. I get very nervous when we start putting those limitations on people. I want to, in between First and Second Reading, let's address this issue, let's look into it a little further to bring all these ideas and if my colleagues have any other ideas let's even analyze what our City Attorney just stated right now and let's discuss those as potential options in this ordinance. In my opinion, I want to be careful, maybe we can hit it with a bigger fine, maybe we can force them to not only fine them, but instead of saying you must replace that tree with a two or three or four inch and I apologize, I know that Brook is probably cringing at my analysis of the size of a tree – no we force them or require them to replant a tree with a significant caliper and a significant canopy.

Commissioner Mena: Maybe there is some kind of relocation fee, I don't know. But, I have the same reservation you have about once it's down...

Commissioner Lago: But, we've got to be careful because it's happening...

Commissioner Mena: I know, I hear you. It's tough.

Mayor Valdes-Fauli: Do you want to make that motion on First Reading?

Vice Mayor Keon: Can I ask one question?

Mayor Valdes-Fauli: Of course.

Vice Mayor Keon: You have examples of trees in each category. I'm assuming that these are options for the trees that could be replanted, is that right on page 9? I'm sorry; I think I have a different...

Assistant City Attorney Throckmorton: Yes, and I believe we might be adding a few between first and second reading.

Landscape Director Dannemiller: We'll be massaging that a little bit more to make it a little clear.

Vice Mayor Keon: Why would we encourage Black Olives have traditionally been problematic both because of the disease that they have where there is staining and it's very hard to treat them, they are difficult, they are not native, they snap and break in storms. Why – would this be an opportunity for us to really look at planting more of the native trees so that we can, we don't go through what we did in this last hurricane with some of these other trees and discourage. You have fichus species, I don't know if you want to encourage more fichus to be planted unless they have the area where they can drop their roots and they can grow. Would we use this more as an opportunity to plant the native tree that you'd like to see here in the City, as opposed to the instant canopy?

Landscape Director Dannemiller: We've already drafted a slightly revised list of trees and on that, instead of the same fichus species we have a couple species that the native species, the stronger species and would not include Ficus Benjamina and some of the other problematic species. So, the trees that will be on this, these are just examples. We have just four canopies, so certain trees grow to certain sizes, so a Silver Button is a small tree; an Oak is a big tree, so we get different...

Vice Mayor Keon: Right – I see where they are divided into species, but I don't know, I would tend to want to leave Black Olive off the list.

Landscape Director Dannemiller: Yes, I don't remember Black Olive is on the list.

Assistant City Attorney: It remains on the list

Vice Mayor Keon: It remains on the list. Maybe you can just cull that list.

Landscape Director Dannemiller: There is Black Olive called Black Olive Shady Lady, which is a smaller stature version of the Black Olive tree that is not as susceptible to the staining and is a strong tree. So, we don't want to preclude...

Vice Mayor Keon: Then you should identify the particular Black Olive, because if you have Black Olive that means any Black Olive. So, if you want to have a particular type of Black Olive

that doesn't stain or whatever else then include it, but not Black Olive in general or whatever. You took the Bridal Veil off the small trees, it looks like it...

Landscape Director Dannemiller: Yes, we moved that to a medium tree.

Vice Mayor Keon: Oh, to a medium tree.

Landscape Director Dannemiller: Yes, we moved that to a medium tree, we added the leopard tree which is also a medium tree and we clarified that. So, we'll have a more defined list before Second Reading.

Vice Mayor Keon: OK. Maybe you just go through and look at your list and exclude those trees...

Landscape Director Dannemiller: And this is private property too, we don't want to prevent people from planting trees that they want to if they have appropriate space. If you have a large open space a ficus tree could be appropriate. If you already have a Black Olive Shady Ladies, which we do on certain areas of the City, then matching that tree is appropriate. So, this is just to give examples of appropriate size trees, just under that we have a catchall that says the canopy mitigation will be determined for other trees that are not on the list. So, if you come in and you have a unique flowering tree that you want to plant, we'll see what size that grows to and then we'll assign a square footage canopy for that.

Vice Mayor Keon: Is the Board of Adjustment going to be the Tree Board that you talk about here, who is on the Tree Board?

Assistant City Attorney Throckmorton: They will hear appeals from the Tree Preservation Agency, which is City staff for variances for private...

Vice Mayor Keon: The Tree Preservation Agency is staff.

Assistant City Attorney Throckmorton: Is staff and so appeals on private property would go to the Board of Adjustment for request for variances and appeals about removal of trees on public property would go to the City Manager.

Mayor Valdes-Fauli: Commissioner Lago.

Commissioner Lago: You know prior to Second Reading would you do me a favor and just check to see what other cities throughout the State of Florida are going to address this concern,

maybe other neighboring communities that are in similar scope and size to the City of Coral Gables.

Landscape Director Dannemiller: We did look at probably half a dozen different local tree codes when we drafted this. We have a couple of consulting arborists chime in on it, some residents that are particularly interested also reviewed and gave us feedback and we took it to the Board of Adjustment and the Landscape Advisory Board to get feedback.

Assistant City Attorney Throckmorton: Commissioner this is particularly about trees removed without a permit, that's your particular concern.

Commissioner Lago: Yes that's basically it, and again, how did they address that? Did they force them to plant a tree of the same size and scope?- did they fine them?- just so I can get more of an idea what's going on.

Mayor Valdes-Fauli: Do you make a motion?

Commissioner Lago: Make a motion.

Mayor Valdes-Fauli: Second.

Commissioner Mena: Second.

Mayor Valdes-Fauli: Will you call the roll please?

Commissioner Lago: Yes

Commissioner Mena: Yes

Commissioner Quesada: Yes

Vice Mayor Keon: Yes

Mayor Valdes-Fauli: Yes

(Vote: 5-0)

Assistant City Attorney Throckmorton: And Vice Mayor, thank you, I know you sort of kicked all this off with the Sherman's Oak and the 1015 Lisbon Park, so with that resolution and acquired the trees survey, sort of got everything going, so thank you for that as well.

Vice Mayor Keon: Yes thank you. You've beefed it up and made it even better, so thank you.

[End: 11:41:22 a.m.]

