

City of Coral Gables City Commission Meeting
Agenda Item E-7
February 9, 2016
City Commission Chambers
405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Jim Cason
Commissioner Pat Keon
Commissioner Vince Lago
Vice Mayor Frank Quesada
Commissioner Jeannett Slesnick

City Staff

City Manager, Cathy Swanson-Rivenbark
City Attorney, Craig E. Leen
City Clerk, Walter J. Foeman
Deputy City Clerk, Billy Urquia

Public Speaker(s)

Agenda Item E-7 [11:04:17 a.m.]

An Ordinance of the City Commission of Coral Gables creating City Code Section 2-75, "City Commission Quasi-Judicial Hearings," and establishing guidelines for the submission of documentary evidence to the City Commission; providing for a repealer provision, severability clause, codification, and providing for an effective date. (Sponsored by Vice Mayor Quesada)

Mayor Cason: E-7.

City Attorney Leen: Item E-7 is an Ordinance of the City Commission of Coral Gables creating City Code Section 2-75, "City Commission Quasi-Judicial Hearings," and establishing guidelines for the submission of documentary evidence to the City Commission; providing for a repealer provision, severability clause, codification, and providing for an effective date. This is sponsored by Vice Mayor Quesada. A couple comments regarding it and just some clarification having looked at it again last evening. There is a provision, I want to be clear, there is a provision in the Zoning Code that discusses quasi-judicial hearings, and it does have a five day requirement. We also have in our City Code; I believe it's a three-day rule regarding presenting

things to the Commission. So there are provisions out there. The problem is, is that the five day provision in the Zoning Code doesn't really have an enforcement aspect to it. This happened actually during the Paseo Hearing; you would have someone bring in evidence within the five day period and all that the provision allows is for the Commission to grant a continuance. So there is no ability to reject the evidentiary materials, and I remember Vice Mayor Quesada wants to speak on this, so I'll turn it over to him, and he is the sponsor, was concerned that frankly someone could not show the other side – these are quasi-judicial hearings, not sure the other side the evidence, present it to the Commission the same day, and the most that the Commission could do is grant a continuance, which would harm the other side because now the side that's acted rightly has to wait a whole other meeting and honestly allows for game-playing, it could, because you could continue bringing evidence to every meeting and then the Code requires a continuance.

Mayor Cason: You want to mention what I brought up to you about petitions?

City Attorney Leen: Yes. I was going to. I just wanted to talk a little bit about the history first. If it's OK Mr. Vice Mayor, I'll just go through the rest of it and I'll turn it over to you.

Vice Mayor Quesada: Please.

City Attorney Leen: So what this will do right now is, and there is going to be based on our individual discussions, it's my view that there is going to be a couple amendments between First Reading and Second Reading. So for example, this applies to quasi-judicial hearings, but I do believe it should probably apply more broadly to public hearings where there is an evidentiary requirement. So what do I mean by that? Well sometimes you have, in fact often in Coral Gables you have an application where there will be a legislative component, such as an amendment to the Comp Plan or an amendment to the Zoning Code or an amendment to the site specific in the Zoning Code, combined with a site plan review or a planned area development, and those are quasi-judicial and legislative, and my concern is that people will come and say, Oh I'm presenting this evidence on the legislative matter not on the quasi-judicial matter, and so I do believe this needs to be expanded a little bit, just after discussing it with you individually and doing another review last night, to also apply where there is a consolidated hearing, where there is a legislative component and a quasi-judicial component. Frankly, any land use and zoning application should comply with this and that's really what it would say. So what would happen is, let's say the evidence presented more than five days in advance, it would go to the City Clerk, it would be provided to the other side, everyone would be happy and that would work fine. Let's say it's less than five days, and so you are getting it the day of the hearing or the day before, what this basically says is that it's not allowed. The Commission may waive the five day requirement; accept the evidence where the Commission determines that the submitted evidence

presents no undue prejudice to a party and that the submission is consistent with due process. You also allow to grant a continuance and there is an amendment proposed by the sponsor, this is in (C), right now it says, continuances for failure to follow the submission schedule as outlined above will only be granted by agreement of the parties or where there is no undue prejudice to either party and the Commission determines the continuance is appropriate in order to fully review the evidence. The Vice Mayor has proposed and I'm recommending that the language, agreement of the parties be removed. That's certainly something you can consider in deciding whether to grant the continuance because that shows probably a lack of prejudice to the party that's agreeing, but that doesn't mean that the Commission will not be prejudice as judges in being able to review the material, particularly if its substantial amount of material and so you may still want to reject the evidence in those circumstances, or not grant the continuance and go forward and act.

Vice Mayor Quesada: The point is to leave the power with the City Commission to determine – I was discussing this with Craig, I'm sorry Craig, I cut you off.

City Attorney Leen: No, no, please. I am going to talk about the petitions after the Vice Mayor speaks.

Vice Mayor Quesada: I still want to talk about to this point and I'll talk about it generally after you conclude. My concern is, I want to keep the power with the Commission because we could have two groups that are fighting about a certain issue and they both decide to drop a 50 page analysis on us the morning of the hearing, or as they are arguing. And for our sanity and all for due process purposes so it's fair to everyone involved, because remember we are not the only ones looking at these documents, but when they are submitted they are public record. So any resident that wants to come speak, they should have a chance to review it and give their opinion before they actually come to the hearing. So that's why I said, if both parties agree, Oh you know something, we don't want to have a continuance, we can move forward, it's not their determination to make, the two parties that are fighting. It's ours, whether we feel comfortable making the decision with the documents presented or not. I got very upset there in the Paseo hearing because I felt like both sides were bringing up documents at the last minute, and I'm not talking about individual resident that brings one document or a few pieces of paper, I'm not talking about that. I'm talking about receiving a 30 page detailed report when one of the parties starts to argue. So what am I supposed to do?- are we supposed to listen to them argue?- or present their position?- or read?- because you can't do both, and if you try to do both you are going to miss information on both sides. So that was the idea behind it. Again, it's not on the residents, the one page, or two pages, or a few sheets of paper. It's about those detailed reports that make it patently unfair for the other side to respond and for us to be properly prepared.

City Attorney Leen: So what would be done is, 2-75(a) in order to implement what the Vice Mayor is saying, would now say City Commission public hearings, we'll work with the language between Second Reading, but that's the thinking. It was say (a) in any application to the City Commission for a public hearing where evidentiary submission is expressly permitted by an applicant, aggrieved party, or member of the public, no evidentiary documentation shall be submitted less than five calendar days, that was suggested by the Vice Mayor, prior to the scheduled Commission hearing by submission of documentation to the City Clerk. Said five day rule shall apply to applicants, as well as aggrieved parties, and members of the public who request time to speak and present evidence. Now as mentioned by the Vice Mayor, typically if you have something from a member of the public you could waive this requirement, because they are not really a party and they may just bring a couple pages for you to look at and it's easy for you to do. If they bring an expert report out of nowhere then you may want to grant the continuance or reject it.

Vice Mayor Quesada: The point is, it's our determination.

City Attorney Leen: It's completely your determination now. You would have to use discretion. As long as you don't abuse discretion your decision would be upheld by any court. The other thing is, one other point I wanted to make was regarding petitions. The Mayor raised the issue, well what if petitions are presented to the Commission and they are presented they day of the hearing or the day before. There is no ability to really verify them by City staff. So what we will be looking at on Second Reading is allowing for petitions to be presented to the Commission, but indicating that if they are presented before certain amount of days, they will just be accepted, but they are not verified and they will be treated differently, they will not be treated as evidence or anything like that. You still could have the resident come and present the petition, the Commission can take them for what it's worth, but if they want these to really be in the public record, considered by the Commission, then they need to be presented in a certain amount of days in advance so that the staff can review them and make sure that they are actually, the addresses are correct so they could have an evidentiary value.

Mayor Cason: And not only the staff, but the other side might say, and we saw that in the Paseo, sort of dueling petitions, so I think this is just another element of fairness.

City Attorney Leen: I would note as a technical matter, petitions should not carry any weight even if they are verified in a quasi-judicial proceeding. Where they carry weight is in a legislative matter. So you can consider them for legislative purposes, because you can always consider the will of the people when you are making legislation, but in quasi-judicial matters you really are supposed to focus on, and you know this, but I'm just saying it for the record, focus on the specific parties at issue and the harms and conditions of approval to address those harms.

And obviously, you can consider the public will, but only to the extent they are raising injuries that you can directly address through conditions of approval.

Mayor Cason: Anything else?

Vice Mayor Quesada: No other thoughts.

Mayor Cason: OK. Do we have a...

Commissioner Keon: Can I ask one question? You had stated that in one – there is a provision for this five day and then there is another provision for three days?

City Attorney Leen: Yes.

Commissioner Keon: So are we going to correct the other one to five days?- what are we going to do?- what do you do now so there is not a conflict?

City Attorney Leen: This contains a repealer and also under the Code you granted the City Attorney's office the authority to reconcile and we will do that in conjunction with Development Services, which really maintains the Zoning Code.

Commissioner Keon: Right.

City Attorney Leen: The Clerk's office has typically maintained the City Code, and so we work with each other offices.

Commissioner Keon: OK. So we are going to change it for those two.

City Attorney Leen: Yes. We would reconcile that.

Commissioner Keon: So that they are reconciled.

City Attorney Leen: Yes. They would be reconciled. The other thing that we would do is, for the three day rule we probably wouldn't change that, because that applies to City staff, and so like for example, if we present to you an item, you may get it, typically you get it more than five days in advance because you get it on Thursday, Wednesday or Thursday for a Tuesday Commission meeting, you get it at least five days in advance. But under the Code, the City technically has until three days in advance. The thinking behind that is that if the City is presenting it and staff, it's already been vetted by staff because it's being presented by staff, and that's part of the City's

internal process. It's just that when we get external evidence then staff has to vet that as well. So if it's done, for example, three days in advance there is no ability to do that and incorporate it into whatever staff presents or as an add-on item.

Commissioner Keon: So there really isn't a conflict because one is coming from outside and one is coming from within.

City Attorney Leen: There is no conflict between the three day rule and this rule.

Commissioner Keon: OK.

City Attorney Leen: It's not a conflict with the Zoning Code, but there is another provision in the Zoning Code that we would reconcile, but they are consistent, they are both five day rules, this just has more specific requirements.

Commissioner Keon: OK.

Mayor Cason: And we had a case where there was a procurement appeal, is that relevant to this amount of time?

City Attorney Leen: If it involves the submission of evidence then, yes.

Mayor Cason: Five days.

City Attorney Leen: Before the Commission. So for example, on a bid protest there are already provisions addressing that when evidence has to be presented, the Procurement Officer, the report they give to the Commission, etc. But if you're going to be – it would also limit people from being able to just come forward with evidence at the day of the hearing. It is a helpful provision in that respect.

Mayor Cason: OK. Alright, do we have a motion on E-7?

Commissioner Keon: I'll move it.

Mayor Cason: Commissioner Keon makes the motion, Commissioner Slesnick seconds. City Clerk.

Commissioner Slesnick: Yes

Commissioner Keon: Yes

Commissioner Lago: Yes
Vice Mayor Quesada: Yes
Mayor Cason: Yes
(Vote: 5-0)

Mayor Cason: And for the record, there was no public input.

City Clerk Foeman: That's correct.

Mayor Cason: OK.

[End: 11:16:20 a.m.]