

**City of Coral Gables City Commission Meeting
Agenda Items E-3
December 8, 2015
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
Development Services Assistant Director, Charles Wu**

Public Speaker(s)

Agenda Item E-3 [Start: 11:31:17 a.m.]

An Ordinance of the City Commission of Coral Gables, Florida providing for text amendments to the City of Coral Gables Official Zoning Code; Article 2, “Decision Making and Administrative Bodies,” Division 3, “Board of Architects,” Section 2-301, “Powers and Duties,” Section 2-302, “Membership, Terms, Vacancies, Removal”; and Section 2-303, “Meetings, Quorum, Required Vote”; Article 3, “Development Review”; Section 3-303, “Reconsideration of City Architect Administrative Determination”; and Section 3-606, “Procedures for Appeals” by updating the membership and certain procedures of the Board of Architects and requiring appeals of the Board of Architects’ decision to the City Commission be a de novo, quasi-judicial hearing; providing for a repealer provision, severability clause, codification, and providing for an effective date.

Mayor Cason: Alright, let’s move to Item E-3, it’s an Ordinance on First Reading.

City Attorney Leen: Mr. Mayor, Item E-3 is an Ordinance of the City Commission of Coral Gables, Florida providing for text amendments to the City of Coral Gables Official Zoning Code; Article 2, "Decision Making and Administrative Bodies," Division 3, "Board of Architects," Section 2-301, "Powers and Duties," Section 2-302, "Membership, Terms, Vacancies, Removal"; and Section 2-303, "Meetings, Quorum, Required Vote"; Article 3, "Development Review"; Section 3-303, "Reconsideration of City Architect Administrative Determination"; and Section 3-606, "Procedures for Appeals" by updating the membership and certain procedures of the Board of Architects and requiring appeals of the Board of Architects' decision to the City Commission be a de novo, quasi-judicial hearing; providing for a repealer provision, severability clause, codification, and providing for an effective date. There is also a Board of Architects Rules of Procedure, updated Rules of Procedure that govern the Board of Architects. In voting on this, that is also being considered as well as part of the item. This is a public hearing item. Mr. Wu is here to discuss it.

Mr. Wu: Thank you Mr. Mayor, Commissioners, for the record Charles Wu, Development Services Assistant Director. This is a formality based on your last meeting, we got in this case. You directed staff to allow appeals from the Board of Architects to come before you before as a de novo quasi-judicial hearing, meaning you'll be hearing a full quasi-judicial case, you'll be taking testimony and it will be a de novo case, meaning you will hear the entire record all over again, and the reason is the Board of Architects decided that they are not equipped to conduct public hearings since they are more of a technical design review committee. So pursuant to that directive, we have amended the rules of procedure, which was passed out before you today, and has been approved by the Board of Architects recently, and the ordinance also reflects these changes. In addition to that, we thought we would give the opportunity for the City Manager to appoint alternates to the Board of Architects as an option. Its turns out during the summer and holiday times, we've had a hard time meeting quorum and getting the regular business going; and another option to let you know that, we are allowing public comment formally on the Board of Architects, but the Board of Architects comments has to be received at the beginning of the meeting and that is reflected in the rules of procedures.

Vice Mayor Quesada: Let me ask you a quick question, because you said something that didn't match up with my understanding, this question is for the City Attorney. Page 2, "Appeal to the City Commission," first full paragraph, middle of that paragraph says, "the appeal a de novo quasi-judicial hearing," which is a little bit of a conflicting statement. Typically our appeals is de novo, we are reviewing. I'm saying in the past what this dais has done, is we are reviewing the facts that were previously presented at the lower proceeding.

City Attorney Leen: Yes, Mr. Vice Mayor.

Vice Mayor Quesada: But he said that the facts will be presented, so is it almost like a – if someone be allowed to accept new testimony, new evidence at that appeal proceeding?

City Attorney Leen: This is the item before you; this is really the issue you have to decide.

Vice Mayor Quesada: I was actually focusing on the quorum issues before.

City Attorney Leen: What this will do is, instead of having the quasi-judicial hearing in front of the Board of Architects, which happened on the Segovia appeal and is going to happen on the appeal you remanded today, that quasi-judicial hearing would happen before the City Commission.

Vice Mayor Quesada: Answer one question for me.

City Attorney Leen: Yes sir.

Vice Mayor Quesada: At that appeal before us, are we going to be allowed to be receiving new testimony that the lower Board did not receive.

City Attorney Leen: Yes.

Vice Mayor Quesada: I think that's a mistake.

City Attorney Leen: You do?

Commissioner Lago: I have to agree with you on that.

Vice Mayor Quesada: Because – I mean the point of the appeal process is you are not happy with what was presented. I hate the fact to say like, well you know something, I didn't present it properly the right way, I'm going to get another shot in front of a different dais altogether. I think it will slow down the process is a concern for me and I think it's going to create additional work for everyone just because someone wasn't properly prepared the first time. They are going to have an opportunity to represent in front of us. I just think from a procedural standpoint it's going to create a backlog and I think one of the concerns that people have when they come before us is that it's very time consuming to come before the City of Coral Gables and we want to be efficient and giving people a second bite of the "apple" because they weren't happy with that first group. What's going to end up happening is, what could potentially end up happening is that no one really prepares for the first time, because they don't like anyone that's on the Board, they just want to get to the Commission, so they are just going to not care whether they lose, appeal to us, and then we have a whole new hearing. It almost takes away that power from the Board of Architects and the reason why they put it in place is to be the initial experts on the topic and I don't know if I'm by myself on this. I see a lot of potential for procedural negative impacts.

City Attorney Leen: Can I make a comment because I want to make sure you fully understand. You may be right; obviously it's this Commission's decision. I could see how you would want it at the Board of Architects level like any other Board that appeals to you. The concern that brought this in front of you is that we had a quasi-judicial hearing in front of the Board of Architects that went for a number of hours and there was some, I won't say criticism, I think there was some dissatisfaction from a lot of different people, stakeholders, Commission, Board...

Vice Mayor Quesada: I remember this was a recent appeal, it came to us, and they were upset because they didn't properly introduce the proper evidence to support their appeal at the lower level. So they are upset that they put...

City Attorney Leen: But that was Board of Adjustment.

Vice Mayor Quesada: I guess I'll use legal terminology here, there were upset that they put on a bad case at the trial court.

City Attorney Leen: But see the thing is that under this proposal they would not present their case before the Board, it would be more like an administrative board. So what would happen is, what typically happens with the Board of Architects you bring your plans, no one comes, maybe the neighbor comes and makes a few comments and it allows the Board to move quickly, but if there is going to be a full hearing where people come and present testimony that would be done before body other than the Board of Architects under this proposal. Now the alternative – we have to have a quasi-judicial proceeding at some point. It can either be in front of the Board of Architects or it could be in front of you, we can have one or the other that's completely a policy decision for you.

Vice Mayor Quesada: My position on the policy issue as the way you frame it is, just because an applicant did not put on all the right evidence that they felt they should have at the trial level doesn't mean that they should get a second bit of the "apple" before us. I just think it's asking for additional work, it's going to create additional work for everyone and we've selected those Board of Architects because they are the experts when it comes to architecture that we've determined in our City. I'm sorry I cut you off.

Mr. Wu: If I could add two things, I don't know if this helps. Planning and Zoning cases are also quasi-judicial hearings and they make a recommendation albeit a recommendation. Time and time again by the time it gets to you sometimes new information comes before you as well, so I don't see anything that different that...

Vice Mayor Quesada: What kind of new information could possibly come up that they could not have presented at the first proceeding?

Mr. Wu: Well cases come before you all the time that has changed significantly. The Mediterranean Village is an example. It went through several times before the P&Z and you got two iterations of it before you approved it.

Vice Mayor Quesada: But that's a different scenario that's P&Z that's not Board of Architects. We are dealing with Board of Architects exclusively here, right? Typically what happens is to get that approval – I don't think that's an "apples to apples" comparison.

Mr. Wu:...is also a quasi-judicial hearing and it did not change the situation for Board of Architects, if you have a quasi-judicial hearing and you also have a quasi-judicial hearing.

Vice Mayor Quesada: However from the Planning and Zoning situation though it only comes to us if there is an objection; however in the Mediterranean, again it's not an "apples to apples" comparison what you are saying, because in the Mediterranean Village scenario it was not an as-of-right project, so therefore they are entitled to that full hearing before us with new evidence to be presented before us. So I think that's where the distinction is.

Mayor Cason: And what you are going to have and I agree with you, what you are going to have is people that don't like a particular architectural style they are going to come, we just had one. We weren't sure what the appeal was but he didn't like the architecture, I guess the trees were something else.

City Attorney Leen: The question though what came from the Board was they felt uncomfortable, the Board of Architects, at least a couple of members who I spoke with, having like 30 members of the public coming and speaking, not really on architectural matters all the time, but sometimes on contextual matters, which they felt maybe the Commission would be better situated to hear from the public and make that balancing of interest. You are absolutely right, if you have it before the Commission the residents are going to come to the Commission, they are going to have a full hearing in front of you and then you'll make the decision, and I could see how you might want to...

Vice Mayor Quesada: I'm not trying to dissuade them from coming to the Commission. What I'm trying to prevent here is a duplication of the process and a lengthening of the process, which we all frown upon.

Mayor Cason: In our first couple years here we didn't get any of these appeals and now we are starting to get more and more of them. I mean the Board of Architects are the experts in architecture; this is a question of aesthetics and the context. They have to face up that they have to look at both of those, but I don't want everyone to come to us every single one of these would be appealed to us.

Vice Mayor Quesada: But here's what it really comes down to. What it really comes down to is they are still allowed to appeal to us, we are still allowed to overturn the decision of the Board of Architects under our current procedure, however, they just cannot introduce new evidence. I think what it comes down to the very practical impact of what's changing is, the way I see this, tell me if I'm incorrect is that they are just going to be allowed to introduce new evidence during the appellate process, which I think is a mistake.

City Attorney Leen: You are absolutely right.

Vice Mayor Quesada: If you think about this, it takes away the ability for that lower Board, Board of Architects, to make a fully informed decision because they weren't presented all the evidence.

City Attorney Leen: There is a second part to that though. We are not allowing the Board of Architects to hear that evidence in the first instance. All they are hearing is architectural aspects.

Vice Mayor Quesada: So what's the role of the Board of Architects now?

Mayor Cason: And what does evidence mean? You are going to come and say, I've got 50 more petitions from my point of view, that will be the new evidence that they want to introduce.

City Attorney Leen: I understand. Maybe we should take it back and look at it again, if that's the Commission's will. I can understand.

Mr. Wu: If I can ask Craig. Can we limit that no new evidence be presented during the appeal?

City Attorney Leen: We can but we have to allow at some point in the preceding the residents to come in and present evidence regarding the context. It either has to be in front of the Board of Architects or the City Commission. I can see it going back to the Board of Architects and maybe we can work with the procedures there for the quasi-judicial proceeding to make it more limited.

Vice Mayor Quesada: Here's what I suggest at this point. I'm going to move to defer this item to the next meeting; I don't want to move to approve it at this point. I would like to have more discussion on this. I would like to have a sit-down with you Mr. City Attorney prior to the next

meeting to discuss it a little bit more. I do agree that some changes need to be made to the Board of Architects; however, I want to think about it some more and I apologize if we didn't discuss it, you and me, more heavily prior to this meeting today.

City Attorney Leen: Thank you. It's a big issue for you. Can I say one other thing, not in support of this? One concern I have is that it does seem that the Board of Architects process is being used to make things that would have been, I know we don't like the term as-of-right, but that was thought as-of-right it makes them into something that comes before the Commission and you have to vote on; and I do think that's a concern at one point, because I think the Commission's will is that you want the Board of Architects to be an expedient process, a good effective expedient process and not take a long time. This was our attempt to address that, but let's go back, we'll meet with you, and we'll try again.

Vice Mayor Quesada: Because I think one thing that I recall that we discussed at that hearing where the applicant was upset because they hadn't introduced the proper evidence at the lower proceeding so we couldn't rely on it to make our determination is try to have some sort of – for the residents to be able to anticipate what's going to come in a neighborhood and so that the property owner that's doing the work or the developer that's doing the work to anticipate what's going to be allowed and what's not. It's all about sort of the expectation, managing expectations for everyone all around, I think that was the biggest concern that we had with both the developer and the neighborhood on that issue. So I think it's very important to work that in here somewhere, so I think we can improve upon what we've put together here.

Mr. Wu: If I can say one thing for the record for the Board of Architects' benefit. They unanimously feel they are not equipped to handle a quasi-judicial hearing and they wanted me to convey...

Vice Mayor Quesada: You say they are not equipped.

Mr. Wu: They do not feel they are equipped based on the meetings and based on the expertise.

Vice Mayor Quesada: You are saying we don't feel...

Mr. Wu: They are not, Board of Architects are not.

Vice Mayor Quesada: So you are saying for all of the years that they've been doing these they've haven't been equipped to do them?

Mr. Wu: They have not been doing quasi-judicial hearings.

City Attorney Leen: What's happened is no one's ever done a quasi-judicial hearing until this one was Segovia. They've always been these sorts of administrative proceedings where someone may come and speak that was the first case where we had a lot of residents come, that I'm aware of, and they requested a quasi-judicial hearing and we had evidence taken and it was like a four or five hour proceeding and then they had the vote and then it came to you on appeal. I had a feeling that this is going to happen more often because we seem to be...

Vice Mayor Quesada: So we have to address it.

City Attorney Leen: We need to address the problem.

Mayor Cason: You need to address it and I think that they have a responsibility to look at the aesthetics, the placement of the building within the context of the community, but I don't want them to tell us, we can't discuss the context, kick it upstairs and then we get every one of these, because you are going to get more and more. You say in Spanish "los gustos no se discuten," there is difference, tastes are not something that you are always going to agree on, you are going to get modern versus not modern, "McMansion" versus...I mean we face these, but I don't want us to be spending two or three hours of every Commission meeting, which could happen as the economy improves and we get more and more redevelopment, new homes coming in replacing old ones and they all come here in front of us to decide, that's what they are there for, they are the experts. They have to take some hard decisions and then they can be appealed to us if there are grounds for it. So we have a motion to defer, do we have a second?

Commissioner Lago: I'll second the motion.

Mayor Cason: Vice Mayor made the motion, Commissioner Lago seconds. City Clerk.

Commissioner Keon: Yes

Commissioner Lago: Yes

Vice Mayor Quesada: Yes

Commissioner Slesnick: Yes

Mayor Cason: Yes

(Vote: 5-0)

[End: 11:46:15 a.m.]