

City of Coral Gables City Commission Meeting
Agenda Item E-1
December 15, 2009
City Commission Chambers
405 Biltmore Way, Coral Gables, FL

City Commission

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

City Staff

City Manager, Patrick Salerno
City Attorney, Elizabeth Hernandez
City Clerk, Walter J. Foeman
Deputy City Clerk, Billy Urquia
Planning Director, Eric Riel

Public Speaker(s)

Nick DiDonato, President and CEO of Liberty Entertainment Group and President of Coral Grand LLC
George Volsky, Coral Gables Resident

E-1 [Start: 10:23:08 a.m.]

An Ordinance of the City Commission of Coral Gables amending the previous conditions of approval (Ordinance No. 3587) and changes to the previously approved site plan for the Country Club of Coral Gables to include outdoor dining on south side of property facing North Greenway Drive, enclosed/open air outdoor area on west side of property and improvements to existing porte-cochere on the rear of the property, legally described as Lots 1-9 and 37-39, Section “B” (997 North Greenway Drive), Coral Gables, Florida, and including required conditions; providing for a repealer provision, a savings clause, and a severability clause; and providing for an effective date. (Second Reading November 17, 2009, vote: 2-2).

Mayor Slesnick: OK, we now go to E-1; this is the continued public hearing on the Country Club of Coral Gables. We left this in Commission discussion and said we'd come back to this in Commission discussion, and that's where we are, and do we have any questions for Mr. Riel?

Mr. Volsky: (Inaudible – off mike)

Mayor Slesnick: Mr. Volsky you have no standing to bring a point of order from the thing, if there is a Commissioner that has a point of order, then the Commissioner can raise the point of order.

Mr. Volsky: I can...[inaudible]...this is according to law, you know that.

Mayor Slesnick: Mr. Volsky....Ms. City Attorney...

City Attorney Hernandez: Yes sir.

Mayor Slesnick:...can a point of order be raised by a person in the audience?

City Attorney Hernandez: Yes it can Mr. Mayor. Mr. Mayor I have not read the ordinance on second reading, would you like me to read the title so that we can commence...?

Mayor Slesnick: Yes you can do that, but it is read. We are continuing the hearing from last time at the discussion level, so therefore it had been read into the record, and we are continuing at that point.

City Attorney Hernandez: Correct.

Mayor Slesnick: So it doesn't need to be read. Mr. Volsky what is your point of order?

Mr. Volsky: Mr. Mayor as you know, and as the Commissioners also know, the Robert's Rules of Order dictates our proceedings. The other day just looking at precisely these issues, whether there should be a public input into the issue now, which is sort of iffy, it can be, it cannot be either; the Commission can order a public hearing, can do... I found the following, on page, of my book 345, section 44, abstaining from voting on a question of direct personal interest; it reads: "*No member should vote on a question in which he has a direct personal or pecuniary interest not common to other members of the organization.*" This applies directly to the vote of Mayor of Coral Gables, who on a number of occasions during a number of things said that he believes that whatever happened in that particular section might affect his lifestyle and that of his neighbors because he lives there. So this is...I am going to give this to the City Attorney so she can read that....

Mayor Slesnick: Thank you Mr. Volsky; Mr. Volsky thank you very much, you can bring it forward; we have other rules that govern first before Robert's Rules of Order, and they are the Ethics Code of the State of Florida and of the County, does not require my stepping down, and I am not stepping down Mr. Volsky, so thank you, thank you very much.

Mr. Volsky: You don't accept it?

Mayor Slesnick: I don't accept it.

Mr. Volsky: Well....

Mayor Slesnick: Mr. Volsky, I vote on every issue in this City, it all affects me personally, it affects you personally, it affects everyone in this room personally, because it affects our City,

and I vote on every neighborhood issue, and I vote on every....and Mr. Volsky you stood up here...

Mr. Volsky: No, you haven't....

Mayor Slesnick: Mr. Volsky, you are just as much interested in this, you are a neighbor too, and you have taken the time to get up and give your opinion on numerous occasions.

Mr. Volsky: I am, of course I am; unfortunately I don't vote here, you do.

Mayor Slesnick: Mr. Volsky your time is up, thank you.

City Attorney Hernandez: Mr. Mayor, under Chapter 286 of the Florida Statutes, you are compelled to participate in the proceedings unless you have a direct financial conflict, the only other case law exception that is provided is that under the Jennings Rule. If a Commissioner believes that they have a conflict, a personal bias, then they can recuse themselves under law that it was established by the Third District Court of Appeals. So Chapter 286 is what rules under the conduct of Commissioners participating in voting in matters before the City Commission and you are bound by it.

Mayor Slesnick: Thank you very much.

Mr. Volsky: I want to, before I go, just one second; he has a direct personal interest, you do have, and I think it should be....if I were a lawyer, if I were you I would abstain, you chose not to that's on your conscience sir. Thank you very much.

Mayor Slesnick: Mr. Volsky you are not me, thank heavens. Mr. Riel.

Mr. Volsky:....what you said?

Mayor Slesnick: Forget it. I said you are not me, you said if I were you.

Mr. Volsky: Of course I'm not you, thank God I'm not.

Mayor Slesnick: Do we have any questions of Mr. Riel?

Vice Mayor Kerdyk: Yes, let me ask Mr. Riel a question. We dealt with this issue once before, the outdoor dining, in 2002, that's correct?

Mr. Riel: That was for the 2002 approval.

Vice Mayor Kerdyk: Can you just give me the history of that?- of what happened at that point?

Mr. Riel: The 2002 approval included modifications to the site plan as a part of that review, and as approval of that site plan there were conditions placed upon it, and one of those was to

prohibit outdoor dining, therefore that is what is before you today, is amendments to the site plan again, various changes and to eliminate that condition, and to allow outdoor dining.

Vice Mayor Kerdyk: So in 2002, this Commission here decided not to allow outdoor dining, outside the walls, because I think it also allowed us to have outdoor dining in the pool area in other areas, no?- not at all.

Mr. Riel: That wasn't really addressed in terms of where the outdoor dining would be, the pool or an enclosed area, but there was this specific condition that indicated no outdoor dining outside of the facility.

Vice Mayor Kerdyk: Outside of the facility.

Mr. Riel: Mr. Mayor if I can just to kind of capture; last month on the 17th meeting obviously the issue was outdoor dining; the Commission did discuss various issues which included the possible elimination of outdoor seating at the restaurant, reduction in the number of café seating, further limitation of hours, and also the discussion of alcohol consumption. The Commission voted 2-2 on the matter; therefore this item is back on the agenda pursuant to the Charter. If the Commission so desires, Mr. Nick DiDonato would like to address the Commission.

Mayor Slesnick: If the Commission wishes; we were at discussion, and if there is a question for Mr. DiDonato they'll be...

Commissioner Withers: Well, Mayor obviously you know what side I'm on.

Mayor Slesnick: If you would like to ask him a question, go ahead.

Commissioner Withers: Yes, Nick is there anything new that you would like to bring to us since our last meeting?

Mr. DiDonato: First of all, I'd like to say thank you for allowing me to be here again today, and bringing me out of Toronto on the cold weather into the sunny weather of Florida. My apologies, I'll speak louder. I know this has been a long year and-a-half, and I regret having to be here again in front of you and bring this tumultuous situation up front in front of the public and yourselves. I do want to express my apologies for that and regret for this misunderstanding, if I may call it that. We believe that our intentions were very well laid out at the beginning and perhaps not laid out well enough, and we do take some responsibility for that; perhaps we should have had all the drawings in submission when we negotiated and put the lease forward. So I will apologize for that, but want to just identify that right from the onset and very much so in discussions with Cathy Swanson, one of the paramount issues in our mind was to look to the outdoor dining. Regardless of that I do appreciate the time and I'm looking at this point at the last meeting Vice Mayor William Kerdyk did identify that he might consider some kind of compromise. I'm a person who is willing to compromise and willing to listen to what has to be said, and will work toward making this successful and long term partnership, and that's what we are here to do; I look at you as my partners; I look at the City of Coral Gables as a partner and hopefully we can work together in the long term, and what I do say to you is that I will in the

long term respect the wishes of the community and the wishes of this Commission. So Mr. Kerdyk I turn to you to look at any compromise at all that you may allow for some outdoor seating. We've removed the request for outdoor seating for the restaurant altogether; we are now down to about twenty percent (20%) of what our initial request was, but I leave that to you also, and I am looking only for some outdoor seating for a café which will allow us to have a café in that area because of the reduced seating we have, or space we have available to us in the floor plan of the facility to allow us to have a café. So Vice Mayor I am looking to you.

Vice Mayor Kerdyk: You are looking to me. Nick, here's how I see it. I did say that at the last meeting and you know, this is a very tough issue for me, and let me tell you why. I think you are a decent human being, very decent and you are trying to get this thing started at the Country Club, and it's a financial issue for you and a financial issue for the City of Coral Gables and I understand that on one side; you have to look at my voting record, my core beliefs, my principles and convictions over the times I've served the City itself, and I've always been one that has hesitated to move forward when commercial enterprises affect immediate residential neighborhoods, and this is why I'm struggling so much on this issue here is because I understand the necessity even though I am sort of miffed with the whole situation because when we initially dealt with the lease, there was never anybody that told me hey, this was a quid pro quo, you have to give this outdoor dining to this good tenant, and I wish we could have dealt with this issue up front, and for everybody purposes. So we are in a very precarious situation, here. I would love you as a tenant of the facility, and I'm debating this with my core beliefs and principles of how to deal with this situation. So its not an easy call, and I did proffer those things at the last meeting, but I've reflected a lot, believe me; I don't know if I've ever reflected so much on issues that have affected the City, and we've dealt with some huge issues here, but this is something that I have thought about and I just can't get over my past voting here, and I mean, I don't mind you putting up maybe a nice sign or something like that, its just that I have issues with going onto the front portion of the Country Club there, and putting that outdoor seating, that's where I'm having an issue. Since we are talking candidly between a couple of friends of ours and yourself, so I'm shying away from supporting the outdoor dining there. Yes please, please.

Mr. DiDonato: One of the things that I think was a major concern was the alcohol component and as I said we listened to the community and listened to the concerns, and at this point we are willing to look at having some seats of an outdoor café for restricted hours only serving food and coffee and non alcoholic items, and will respect your wishes, and this is also on an interim basis. I've just been handed this memorandum from Elizabeth Hernandez identifying the rules that we would follow, and so we are going to be under some strict scrutiny from this Commission, and we are hoping that the alcohol component was a major issue and that's what it appeared to be in the discussions, and we are willing to even look at that.

Vice Mayor Kerdyk: First of all this is the first I saw this sheet here given to me five minutes before the Commission meeting was presented, so I haven't really had the time to peruse over it and ascertain what was on there.

City Attorney Hernandez: Right. Those were the conditions that the Commission...what we tried to do was capture all of the different concerns about reporting, the conditional approvals that no

rights would vest, so it had to be part of the motion and making sure that its part of the covenant, that there is no equitable estoppel principles that could be applied. So we wanted to be sure that everything in all the other meetings that the Commission has discussed about moving forward with this potentially on a trial basis is incorporated into what was provided, and we wanted you to have it succinctly.

Vice Mayor Kerdyk: Alright, can I ask you a question? When was our last Commission meeting?- November 17th?

City Attorney Hernandez: Yes.

Vice Mayor Kerdyk: This is December 15th...

City Attorney Hernandez: Yes sir.

Vice Mayor Kerdyk:...its dated December 15th, and I got it two minutes before I walk into the thing; couldn't we have gotten this thing to me two or three weeks, not to say I would have considered it or anything, but it certainly would have been a prudent decision...

City Attorney Hernandez: Right, no...it's the time period reviewing all the minutes of all the discussions of the Commission as well as all the necessary reviewing approvals.

Vice Mayor Kerdyk: No, I'm not blaming you, believe me, believe me, whatsoever.

City Attorney Hernandez: No, it's the time...

Vice Mayor Kerdyk: Mr. City Manager, to have, and I should discuss it with the City Attorney too, I mean, I shouldn't have a document here that after we've debated this thing for three or four months and then we come down the day before, the hour before, ten minutes before the Commission meeting, I've gotten something that I have to read whether about what's the possibilities are; I appreciate you doing that, but I think the timing of it stinks, to be honest with you, and I sort of don't hold the tenant any way responsible for that, whatsoever.

City Attorney Hernandez: Here Commissioner, its trying to bring together all the issues that are being brought up, up until the last minute, that's all.

Commissioner Withers: You know Bill, so many times that this Commission we have votes that we have to make, and I know how you have voted, because I've been sitting with you for a long time, and so many times when we vote it has to be that way, its either this way or its that way; we don't have the opportunity to second guess our opinions, we don't have an opportunity to evaluate if our decision was the right decision, or the wrong decision, it's the vote we have to walk away from here, and its in concrete unless the process starts all over again and we change. You know the thing about this, and I understand your position, I understand Don's position, but the opportunity I think we have here is that we can vote on something that we don't have to cast in concrete today; we can vote on something; and listen the greatest fear I think, in this whole issue is the fear of the unknown. We don't know what impact....if it's a visual fear that everyone

has well that's one issue, but if it's a fear of drunken beer parties or cigarette smoke cascading in the neighborhood, or if it's a fear of people leaving the parking lot and hitting joggers on North Greenway, those are fears of the unknown; in this case we have the opportunity to evaluate it, to study it, to see six months from now, eight months from now, a year from now, and right now with the weather being what it is we are going to get a real good indication over the next four-five months as to what kind of impact this is going to have, well I guess we will know the year before when it gets up and running – October I think, we will have four, five or six months to evaluate it. So my whole point is, why not take the opportunity to study it, we have the opportunity to reverse ourselves, if we are not happy with it, instead of just slamming the door on it now. I have no more to say on this matter. Well maybe I do after I hear Don.

Mayor Slesnick: And Chip and Maria I hope you all understand that I fully respect your positions as I have respected almost everyone's position in almost every issue in eight and-a-half years as we've discussed many, many topics and disagreed on many and agreed on many, so. This is to me a very critical issue, I've stated this over and over again, its changing our Zoning Code, this is not just approving a site plan with outdoor dining on a front yard of a club, its changing the Zoning Code and it affects all neighborhoods, not just North and South Greenway, it affects all neighborhoods; and I've said before there are many other places in our City that might make good outdoor dining cafes, if we start that trend of having them in other people's neighborhoods, not just my neighborhood. Like Mr. Kerdyk, I have always been proud of my votes in defense of neighborhoods and votes in defense against intrusion of commercial activity in neighborhoods; and I will stand by my record and stand by that statement. What we have had characterized here is, and some of the statements this morning, not from you Mr. DiDonato, but some of the statements previous would tend to urge this urban legend on that its all the citizens of Coral Gables versus the Greenway Drives, and that's just not true. There became sort of a self-appointed group of fifty or so people that e-mailed us several times, from the streets just north of the Greenway Drives who were in favor of this, but the fact of the matter is that we have heard no outpouring of the 45,000 citizens in the City, and we do have on the record a statement from the Riviera Homeowners Association opposing it, and we have a signed letter to us now from the Biltmore Homeowners Association opposing it. So this is not the Greenways versus the world, this is in fact a lot of people weighing with a lot of honest opinions from all over the board. As you all know from having watched these meetings or having read the Miami Herald, one of our elderly statespersons in this City, Ms. Roxcy Bolton and I do not agree on many issues, and she has taken me to task on many issues, but in this case as one of the elderly spokespersons of our City, not to call you elderly Ms. Bolton, but someone who has watched and made comment on many items over the years, she has written us a letter stating her deep concerns for the green space in front of the City's Country Club. She has brought to my attention that we work hard for green space, we buy areas for parks, we do all kinds of things to save green spaces, and here we are talking about utilizing this green space for commercial activity. She is concerned also about the bird bath, which is a historic bird bath, the trees, the historic trees out front, and the windows and the treatment of the historic windows, which are some of the last remaining pieces of the historic building. So that she has expressed those concerns and fears to me in a letter; and I just want this as a part of the...Ms. Bolton does not live on the Greenway Drives by the way, and does not take this position because of her dearness to the club, but because of her concern of green space, trees, historic properties and our adherence to the Zoning Code. I feel like we are

part of the same system as the Police Department; the Police Department's motto is to protect and defend, and my vote has been and will be based on protecting the defending neighborhoods.

Commissioner Anderson: I'll just say a few things for whatever that's worth. I think my view of the neighborhood includes the City, and there maybe people here who actually, I think, have given up trying to voice their opinion, because they feel they are not being heard, and it doesn't matter right now at this point, they've shared that with me over lunch there and let me know that they are supportive, but they don't feel at this point its worth a try, but there are people out there who do believe this is a good thing, and the issue of the neighborhood, this is a public building and for me speaking personally, this is a building that we all have taken a burden on and we all support right now, all of us at the tune of \$10,000 per month; and I don't understand in my own mind what a small trial would be with our Commission control. I just offer those thoughts and I have more comfort defining neighborhood as a City over a public building. Thank you.

Vice Mayor Kerdyk: Let me just say my final words here. There are great people on both sides of the spectrum here, and I have heard their concerns, or I wouldn't even be sitting up here debating this matter right now, because as I told you my principles and convictions have me not supporting it, that's why I had great consternation on how to move here. So I have heard, there a lot of my good friends that are on both sides of this issue, that's the one tough thing about being a City Commissioner, its so much easier being a State legislator or Senator because you make a decision and its global, but when you make individual situation it really affects the quality of life of people and again I like the tenant, I think he is doing well, but I have to get back to my core belief system, and my core beliefs are commercial intrusion is not something that we need to bring into the residential area, so I cannot support it at this juncture this proposal, and I apologize to you.

Mayor Slesnick: Madam City Attorney would you read the title of the ordinance we are about to vote on.

City Attorney Hernandez: Yes sir. An Ordinance of the City Commission of Coral Gables amending the previous conditions of approval (Ordinance No. 3587) and changes to the previously approved site plan for the Country Club of Coral Gables to include outdoor dining on south side of property facing North Greenway Drive, enclosed/open air outdoor area on west side of property and improvements to existing porte-cochere on the rear of the property, legally described as Lots 1-9 and 37-39, Section "B" (997 North Greenway Drive), Coral Gables, Florida, and including required conditions; providing for a repealer provision, a savings clause, and a severability clause; and providing for an effective date. Members of the City Commission you have already voted on the other portions of the application, the only issue that is here for you today is the issue of the outdoor dining, so that would be your motion one way or the other would be only as to that specific aspect of the application.

Commissioner Withers: I'll move that we allow the outdoor dining as the applicant has requested.

Commissioner Anderson: I'll second that.

Mayor Slesnick: It's been moved and seconded; moved by Mr. Withers second by Ms. Anderson, further discussion?

Commissioner Withers: Yes, just a question; is the Country Club right now considered a commercial enterprise?- what do we consider it now; we've heard talk about bringing commercial intrusion in a neighborhood by both the Mayor and Vice Mayor and my point is...

City Attorney Hernandez: It is a commercial use.

Commissioner Withers: So is this considered...

Mayor Slesnick: Chip, Chip, let me just say, whether we consider it commercial or not, I think its clear that what we are talking about is further intrusion outside the property walls and into the neighborhoods environment, that's my statement.

Commissioner Withers: Well we all agree it is already commercial intrusion into residential neighborhood, and the other areas Don, and I'm not taking you to task, that you said there were a lot of other commercial areas in residential areas where we had the opportunities of putting outside dining.

Mayor Slesnick: Sure; there are areas all along Biltmore Way. You'll remember that this Commission took an exception to Roy's Restaurant coming to 550...

Commissioner Withers: On the outside.

Mayor Slesnick: Yes, on the outside because of the Biltmore's too objection and other residents besides that. We have a library which, I don't know if you strictly call it commercial, but there is a library next to our Youth Center which has lots of areas where you can have pleasant outside tea gardens and so forth for people to use.

Commissioner Withers: That's a good idea, that's a very good idea; people can go out and read a book and drink tea, that's a great idea.

Mayor Slesnick: You have Venetian Pool...

Commissioner Anderson: I don't think its going to fly Chip.

Mayor Slesnick:... You have Venetian Pool where currently we do things within the walls but there are areas outside that could be, in fact there is a whole parking lot right there on the fountain on Toledo that as you know would be a nice area.

Commissioner Withers: I think that's a little bit of a stretch putting a dining area in a parking lot.

Mayor Slesnick: Well it wouldn't be a parking lot, its like putting a dining area in a front yard Chip, so. There are people who in fact wrote to us about living near Venetian Pool and urging us to consider that if it extruded beyond its walls it would be very objectionable to them, so.

Commissioner Withers: I just wanted to clarify what we recognize the Country Club as now, it is a commercial establishment, and it is a commercial operation in a residential neighborhood, it's already there, and we are allowing outside dining already, we are just not allowing it in the front...

Mayor Slesnick: That's right.

Commissioner Withers:...which I don't understand; we allow it on one portion on the west side, but we are not allowing it in the front.

Mayor Slesnick: It's within walls of the property.

Commissioner Withers: And they wanted to put walls up, but the Historic Preservation Board said you can't put walls up.

Mayor Slesnick: But Chip...OK.

Commissioner Withers: I'm just trying to...

Mayor Slesnick: There is a front yard concept near to the street if you will; if you go down the street there has historically been green front yards on the entire street, including this Country Club, including the Country Club. Mr. Clerk.

Commissioner Withers: Yes

Commissioner Anderson: Yes

Vice Mayor Kerdyk: No

Mayor Slesnick: No

(Vote: 2-2)

Commissioner Cabrera: Abstained

City Attorney Hernandez: According to the provisions of our Charter, this ends this matter at this point because of a tie vote the matter is deemed denied.

Mayor Slesnick: Thank you.

[End: 10:51:28 a.m.]