

City of Coral Gables City Commission Meeting
Agenda Item I-1
October 27, 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

Public Speaker(s)

I-1 – Pending Litigation Report [Start: 10:58:00 a.m.]

Mayor Slesnick: Madam City Attorney.

City Attorney Hernandez: Yes Mr. Mayor; I have the pending litigation report before you and I have a couple of additions. On page 4, the two cases that are related, Fabric Family and Salone Consulting are a result of a breach of contract case. The City had entered into an agreement and for services they were provided the two principals broke their affiliation; both are making claims on the monies. We filed our memorandum in opposition to their memos for summary judgment; we thought we were going to be able to get mediation; mediation efforts have broken down, so are going to deposit the monies into the registry of the court and let them continue to fight amongst themselves. We just have tried all avenues to try to get these people to resolve their differences, so that the City can issue the check to the appropriate parties, and it's really more of an emotional issue between those parties, and we need to break the City free of that. So I wanted the Commission to be aware of that. I have nothing further to update on the other cases. On the litigation report, I just have one other matter to bring up. As you know pursuant to the provisions of Chapter 112, whenever a Board member files a memorandum regarding a conflict, it shall be provided to the other members of the agency, and shall be read publicly at the next meeting held subsequent to the filing of the written memorandum; Commissioner Cabrera recused himself on Item E-1 at the meeting of October 13th, and I will now read into the record his disclosure of local officer interest; “I am of the opinion that because I had an exparte discussion with both the applicant and a party opposed to the application, that I engaged in prohibitive discussions and therefore I do not believe I should participate in the public process and decision making regarding this matter”. Thank you Commissioners.

Commissioner Anderson: I have a question on that.

City Attorney Hernandez: Yes ma'am.

Commissioner Anderson: There are two different things, and I've participated in both because I recused myself for financial issues on a vote, twice I believe in the past eight years, and I've also done a Jennings; doesn't an ex parte be more about Jennings?

City Attorney Hernandez: Yes, ex parte on a quasi-judicial matter is a Jennings issue.

Commissioner Anderson: OK – wasn't this an ex parte communication not a financial issue?

City Attorney Hernandez: No, it was not a financial issue, it was a Jennings issue.

Commissioner Anderson: Right – and can Jennings be cured on the record?

City Attorney Hernandez: Jennings can be cured in some instances on the record when the office...there are five questions that we ask, and the key question is, do you believe that you can set aside the information that you have received in an ex parte communication in order to render a fair and unbalanced decision? If the decision-maker indicates, yes I can, I can sit and hear the testimony that is given before the full body and render a fair and unbiased decision, then you have cured any potential Jennings violation.

Commissioner Anderson: Wouldn't that have been the more correct route to have done that through the Jennings versus, because it was a conflict of interest? – where's the conflict? I'm really lost, I really want to understand, where's the conflict?

City Attorney Hernandez: The conflict of interest, as you know under Chapter 286, requires that all officers who do not have a financial conflict to vote on a matter; however, Chapter 286 has been applied by both the State Ethics Commission as well as the Miami-Dade County Ethics Commission with regards to individuals – they prosecute individuals who do not disclose a financial disclosure; the courts adopted the Jennings violation and have indicated that an individual who has an ex parte communication on a quasi-judicial matter has created a presumption of conflict that needs to be addressed at the public hearing, and if it cannot be addressed, then they need to file a disclosure and recuse themselves where appropriate.

Commissioner Anderson: OK – just doesn't seem right. I thought it was financial, but you know, you are the attorney; I thought it was financial in nature, that's how I recused myself before.

City Attorney Hernandez: That's under the Statutes, under Chapter 112 and under Chapter 286.

[End: 11:02:45 a.m.]