

City of Coral Gables City Commission Meeting
Agenda Item F-1
March 15, 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
Assistant Development Services, Charles Wu

Public Speaker(s)

Agenda Item F-1 [4:12:28 p.m.]

Discussion with proposed Resolution requesting that the City Attorney and Planning and Zoning staff prepare an Ordinance expanding the notice area and revising procedural requirements in Zoning Code for consideration by Planning and Zoning Board and City Commission. (Sponsored by Commissioner Slesnick).

Mayor Cason: Let's move onto F-1.

City Attorney Leen: So F-1 is a discussion with proposed Resolution requesting that the City Attorney and Planning and Zoning staff prepare an Ordinance expanding the notice area and revising procedural requirements in Zoning Code for consideration by Planning and Zoning Board and City Commission. This is sponsored by Commissioner Slesnick, who I'll turn it over to, but just to tell you what I did as a City Attorney is. The resolution doesn't require any of this to be done. What it does is it asks staff to initiate the process, to review it, to take it to the Planning and Zoning Board and bring it back to you. The three issues that have been identified by Commissioner Slesnick, which I'll turn it over to her to talk about, are expanding the notice

area from 1,000 feet to 1,500 feet, where there is a continuance. Typically what the law says is if there is a deferral of a matter, you have to renotice it, but if there is a continuance to a date certain, so if you are having a hearing and you continue it to a date certain, it doesn't have to be renoticed. What Commissioner Slesnick has asked is that and this has been modified a little bit, continuances over a certain period of time, perhaps a month, or it could be several weeks, that those would be renoticed to make sure people don't forget and don't show up at the next hearing.

Commissioner Lago: May I ask you a quick question in regards to that?

City Attorney Leen: Sure.

Commissioner Lago: Mayor if I may. What are you going to do about issues where its continued in two days?

City Attorney Leen: It wouldn't apply to that. It wouldn't apply to that; and that came back from individual feedback, and I know Commissioner Slesnick was concerned about that too. And then the last thing is, she wanted tenants and owners for some sort of notice, doesn't necessarily have to be mail notice, although it may be, and I'll turn it over to her, it could be posting or something like that, but she wanted tenants and owners both, residential and commercial to receive notice of, typically when you would give a notice to an owner, she wants the tenant to also receive notice. The other thing that came up was the issues of appeals. This came up in individual discussions and then I'll bring it up before the group was, and this just came up actually in a recent item was the appellate fee. A number of months ago, the Commission looked at this, you approved a waiver process for 30 votes. At the time, and I think this actually came up before our current City Manager, I think it was the prior administration who had some concerns. I don't think the present City Manager has the same concerns, but it was maybe lowering the fee for residents to file an appeal to, the fee to file an appeal on the Third District which is \$300. Now if you file an original action in the Third District, its \$300, if you file an appeal you have to pay \$100 to the Circuit Court, basically for the record, and \$300 to the Appellate Court. So the number we chose was \$300 though, but it could be any number that you decide, but someone would still have to pay a fee, but it wouldn't be \$900, and sometimes with the cost it could even be above that. So that would be a thought now. There would still be the waiver, waiving the \$300, so if they get 30 signatures, and then the second issue would be if they are the prevailing party. One issue that came up was maybe they should get their appellate fee back and I know that the City Manager raised that too, because she was concerned about a recent appeal where an individual had to pay a fee and prevailed in a sense; and I think the Commission's general view and my opinion is that we should be able to, she should have discretion to refund the fee or the Commission can or the City Attorney, depending on how it comes up. These things come up in different ways, but there should be a mechanism to refund the fee.

Mayor Cason: And I think, if I'm not mistaken, this does not apply for someone who is building a home or adding a wall to their house.

City Attorney Leen: The appellate fee?

Mayor Cason: No, no. This particular 1,500 feet.

City Attorney Leen: No.

Mayor Cason: Its just for major projects.

City Attorney Leen: Board of Architects it would still be posted or – its whatever they currently do. It would be for major projects, that's absolutely right, only be for major projects.

Commissioner Keon: Does that mean commercial projects or residential projects?

Commissioner Slesnick: Both like the Agave project, its next to single family homes and there are people there that are renting so they never got notice of the project coming on, and then our office building, 2701 Ponce is right next door. You don't have to send it to all the tenants necessarily, but at least post something in the building or on the front door.

Mayor Cason: That's important because you don't know who the tenants are, they change all the time, so certainly owners, but it should be a requirement that the building manager should have the name of person, put a flyer...It could be very onerous and very expensive, I think, tall buildings nearby...

Commissioner Slesnick: Also, if you have a condominium building, it could be put on the bulletin board of the condominium, so if you have 500 people in the building. But right now those people who rent have just as much rights in the City of Coral Gables as the people who own the property, so I really would like to see a little bit more additional notice provided.

Mayor Cason: Craig, in our private meeting you mentioned Pie Square, would you talk about that.

City Attorney Leen: Yes. You know one issue that came up is that when you go from 1,000 to 1,500 feet that the additional 500 feet is a large area because its Pie R squared, 3.14 times the radius square, so it's the additional 500 feet, which is 25, forgive me, 250,000 square feet times 3.14, forgive me if I'm getting... anyway it's a large amount. I'm usually good at that.

Mayor Cason: But what you are saying is it may be a lot more people that are involved and a lot more money, if you look at it.

City Attorney Leen: One issue that came up, I couldn't say this to you because of the Sunshine Law, but one issue that has come up is, well maybe it could be 1,200 or 1,250. The other issue that came up was, maybe it should be 1,500, but between 1,000 and 1,500 it be more of a courtesy form of notice where they wouldn't receive appellate rights, or maybe not, but that would be studied; and then that would come forward through the Planning and Zoning Board to you as an ordinance.

Commissioner Slesnick: Or if it could be like in single family residential areas like the Paseo project, which is mostly residential in that neighborhood, just so more people are aware.

Mayor Cason: The only concern that I have about expanding it is that you may have people that can't even see a project that is very far away that will get some kind of legal right to appeal. What's the difference between a courtesy and...

City Attorney Leen: What our Code says right now is that the administrative appellate right is based on who receives courtesy notice, that's what it says. So if you are within 1,000 square feet and you get courtesy notice, you have an administrative appellate right. It doesn't necessarily mean you have the right to go to court, you still have to demonstrate a substantial injury that's different than what other people have. You still have to show unique injury basically to be able to have standing in court. So the square footage is not always sufficient, but for administrative purposes what that means is that, let's say something goes before the Board of Adjustment and we give notice of 1,000 feet, and anyone within 1,000 feet could appeal to the City Commission. Now if you go to 1,500 feet, then anyone within 1,500 feet will have the right to appeal to the City Commission.

Commissioner Lago: Let me ask you a question Mayor, if I may. In reference to our neighboring Cities, what is the standard protocol in regards to notifications?- what do they follow?

City Attorney Leen: I know that some of them are less than 1,000 feet.

City Manager Swanson-Rivenbark: I know some are less than 300 feet.

City Attorney Leen: We have always been the best or one of the best.

Commissioner Lago: I don't have an issue if you want to expand notification, but I want to make sure that we put it on the record that we are going above and beyond what any other City is doing.

Mr. Wu: Absolutely, we are going above and beyond.

Commissioner Lago: Because that's what I think gets lost a lot. Like a perfect example, a perfect example is A Loft. A Loft gets stated that this Commission had something to do with the reason that project was built. This Commission has nothing to do with that project, as I memorialized in my comments and it goes back to 2008, Resolution 2008-36, which I have a copy if anybody would like to go Martha and Chelsea, they'd love to give you a copy of it. I just want to make sure that people understand that what this City does and the extent that it goes to make sure that everybody's properly noticed, from the neighborhood, from the Neighbors ad, which Commissioner Slesnick put together and its been now a staple that we do every week to our E-NEWS, to our App, to all the other postings that we do, which I think puts us at least has to be at the top in regards to notifications.

Mr. Wu: Yes. Yes.

Commissioner Lago: I don't know about anybody else. I don't have an issue with taking it even a step further, but I want to make sure that people understand that we are not catching up to anybody. We are already exceeding everybody, now we are going to exceed everybody even further, which is perfectly fine.

Mayor Cason: And if you move forward on this, if you could show us ten or fifteen comp cities what they do, because unfortunately, you can expand it as much as you want, but there still are going to be 95 percent of the people who never got it, don't care, don't go, you could expand to 5,000 feet.

Commissioner Lago: Mayor, if I may, I want to take it a step further, a step further. I'm sorry to give you more work through the Manager please. I would like for you to find out what every single municipality in Dade County does, that way they can never say well, they left out Miami Beach, which does 1,500 feet, or 500 feet. Again, I want it to be, I would like for our next Commission meeting, if possible or you disseminate it. I want it at the next Commission meeting because I want it on record.

Mr. Wu: OK.

Commissioner Lago: So, I would like for the next Commission meeting, if you could provide me and my colleagues the information in regards to what every other municipality does in regards to notifications.

Mayor Cason: And also if you could just pick some buildings, some recent building, go out 1,500 feet, see how many homes are within that 1,500 versus 1,000. Look at the cost angle because there is a cost angle on this too.

Commissioner Lago: And by the way, this doesn't mean that I want to stop this process, I want to move forward. I agree with Commissioner Slesnick, the more we can expand the notification the better, but I just want to make sure that people are aware that the City is already going above and beyond.

Mr. Wu: I can put it in context Mr. Mayor. Current boundaries is 1,000 feet, pretty much. We have very long, wide blocks so 1,000 feet is one block, but three blocks and-a-half north and south, that's 1,000 feet today. If we expand to 1,500 feet, you would include two wide blocks east-west, but north-south expand to five blocks, five City blocks, so that gives you the context of...

Commissioner Lago: Charles are you aware of any other municipality that does 1,000 feet?

Mr. Wu: A 1,000 feet is max, as far as I know. I know other cities actually do 200 feet, 500 is fairly common, but if you ask for the survey, we'll do that survey.

Commissioner Lago: But in some cases its four times, three times more than any other municipality.

Mr. Wu: Yes. I think 1,000 is reaching...

Mayor Cason: We'll know it when you come and you can show us.

Commissioner Keon: I can understand the concern for going 1,500 feet.

Commissioner Slesnick: Or even 1,200, two blocks.

Commissioner Keon: Or whatever, I mean to go that far on major projects which are likely commercial projects.

Mr. Wu: I would be concerned about doing the Board of Adjustment cases going that far out though.

Commissioner Keon: Pardon me?

Mr. Wu: Board of Adjustment cases.

Commissioner Slesnick: You mean for like some of the condominium buildings or the smaller buildings that are coming in.

Mr. Wu: No, I'm talking about the typical setback, variances.

Commissioner Keon: No.

Commissioner Slesnick: Oh, no, no, no – major projects.

Commissioner Keon: I think its major projects. Its just so that people are made aware of development in close proximity to their neighborhood, and three or four or five blocks away is not so far for a big project.

Mr. Wu: And so that you know, staff does the mailing, this is manpower, so we would like consideration to have the applicant do it.

Mayor Cason: And there is a cost to the applicant, but maybe its not a lot, but you could come back and give us some sense. But again, to realize even if it went out 5,000 feet, don't kid ourselves there are an awful lot of people who will not pay attention, will say they didn't know about it, no matter what we do. I've seen this for the last five years, every single project, I didn't know about it.

Commissioner Lago: I'm just pushing everybody join E-NEWS, join E-NEWS, join E-NEWS, the Lisbon Park, the Sepera Park that's what I mentioned when I spoke at both of those events this past weekend. No matter what we do, given the fact that we go above and beyond what no other City does in regards to notifying its residents in print and electronically. Some people are still going to say, I never heard about what's going on.

City Manager Swanson-Rivenbark: Mr. Mayor can we just get a clarification though. Its notification in this process and we are going to be developing it and gathering more information, but 1,500 feet, is it 1,000 feet which we have today, plus another 500 as courtesy, or are we giving appeal rights to those people within that additional expanded area? Do we want to make

sure that they are notified and they are aware of the project?- or do we want them to be able to actually appeal an action?

Mayor Cason: My view has always been the closer you live you live the more standing you have in terms of its going to affect you. I just don't want something that's going – there are a lot of people against everything and we've seen them in a number of projects along in the past five years that will come and want to sue or appeal and they live 1,500 feet away. Certainly everybody should know about it, everything we can do to notify people that a project is coming, they can participate in the process, but do we want to get people, encourage people who are 500 feet farther away to have standing? How of them does it require to appeal?- just one?

City Attorney Leen: It just takes one. So I did the calculation. Its 3 million square feet is 1,000, and its 6,750,000 square feet is 1,500, so its more than double the land area. Now its very possible though, in fact, I've always thought it would be worthwhile in our Code to establish an appellate area, maybe its 1,000 feet, because right now with the Board of Architects, for example, there is just a posting. No one receives courtesy notice by mail. What that means is that we've always applied the 1,000 foot circle to the Board of Architects, but there is an argument that no one has the right to appeal, which can't be the outcome, so we've used 1,000 square foot, so maybe it would be worthwhile as part of this, in a sense you'd be expanding rights too, to recognize a 1,000 foot zone for people to be able to appeal, so that's clear, but then give this courtesy notice for major items up to 1,500 square feet, that's a possibility.

Mayor Cason: Well basically what the resolution says you guys are going to study, expand the notice area and the procedural requirements, so why don't you come back with some options and some considerations for us at a later date.

City Attorney Leen: There needs to be a motion because there is a resolution, but we would incorporate all this.

Mayor Cason: Vice Mayor makes the motion.

Commissioner Lago: I'll second the motion.

Mayor Cason: Commissioner Lago seconds. City Clerk.

Commissioner Keon: Yes

Commissioner Lago: Yes

Vice Mayor Quesada: Yes

Commissioner Slesnick: Yes

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Agenda Item F-1 – Discussion with proposed resolution regarding

City Attorney and Planning and Zoning staff prepare ordinance expanding notice area

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Mayor Cason: Yes
(Vote: 5-0)

City Attorney Leen: Mayor Cason, one other thing. With the appellate issue, that can be done at this moment, it can be done at the next meeting, are you interested in changing the appellate fee to \$300?

Mayor Cason: Yes.

City Attorney Leen: So do you want to do that now?- you can do it by motion. That would be done right now.

Commissioner Lago: So moved.

Commissioner Slesnick: Second.

Mayor Cason: Commissioner Lago made the motion, Commissioner Slesnick seconds.

City Attorney Leen: Just for residents, just for residents.

Vice Mayor Quesada: The other question is what is their cost?

City Attorney Leen: Its going to be subsidized, it would be subsidized. This is just for residents, not for commercial properties or commercial appealers.

Mayor Cason: City Clerk.

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

City Attorney Leen: And Mayor Cason if I could say, that also would mean that, I'm sorry, I'm just trying to make sure I get everything, I'm sorry Mr. Vice Mayor, you could also refund where they prevail that would be part of that.

Commissioner Keon: And they also have the option of signatures as opposed to any fee.

City Attorney Leen: And they still have the 30 signatures.

Commissioner Keon: They still have the signatures.

Commissioner Lago: Mayor, if I may, Madam City Manager, and also just the information in regards to the municipalities in Dade County. I appreciate it.

Mayor Cason: It's in there.

[End: 4:28:53 p.m.]