

**City of Coral Gables City Commission Meeting
Agenda Item F-5
November 18, 2014
City Commission Chambers
405 Biltmore Way, Coral Gables, FL**

City Commission

**Mayor Jim Cason
Vice Mayor William H. Kerdyk, Jr.
Commissioner Pat Keon
Commissioner Vince Lago
Commissioner Frank Quesada**

City Staff

**Interim City Manager, Carmen Olazabal
City Attorney, Craig E. Leen
City Clerk, Walter J. Foeman
Deputy City Clerk, Billy Urquia
Planning Director, Ramon Trias**

Public Speaker(s)

**Susan Trevarthen, Outside Counsel for the City
Mercy Perez, Property Manager**

Agenda Item F-5 [Start: 3:03:59 p.m.]

Discussion regarding implementation and interpretation of Remote Parking Ordinance and the restrictive covenant provision.

Commissioner Quesada

Mayor Cason: Alright. Let's go now to F-5.

Commissioner Quesada: OK. F-5 – we briefly discussed it earlier. I see Susan is here, so come on down, if you don't mind. Alright. I wish the Vice Mayor and Commissioner Lago were here. I'll get started; I think they know the gist of it. So Commissioner Keon, I am for the remote parking ordinance, OK. We all voted on it. I think it passed unanimously. There is one aspect of it, I think is problematic and earlier -- I don't know if you were here when Mario Garcia-Serra when I asked him to give a little feedback, were you here early in the meeting?

Commissioner Keon: I caught part of it.

Commissioner Quesada: You caught part of it, OK. So the effect of this ordinance is our legislative intent in creating this ordinance is so that you can offset some of those parking requirements with a building nearby, that's what we want to have in theory, in academia, OK, but the practical impact and this is coming from my experience as a real estate attorney who does quite a bit of leases and there is actually a property manager here who brought the issue to my attention that they are having trouble going through it now, and I didn't realize that when we were going through it the first time and it absolutely makes sense; and Bill Kerdyk with his experience in real estate, I'm sure can have some feedback on this. A restrictive covenant and you know this as well, or recording a lease, a landlord 99 percent of the time doesn't want to do it unless you have, you are bringing in a tenant like a Saks Fifth Avenue or a Nordstrom or a Neiman Marcus or a major retailer, not even Starbucks, which most landlords, if you can get a Starbucks, oh my God, thank the stars you are going to make money because every other tenant wants to come into your Starbucks, because of that foot traffic, even those leases don't get recorded. So the concern that I have here is, in theory it's a great ordinance that we have; in practical effect it's never going to get implemented, absolutely never will be utilized, because the landlord, the person who is giving those parking spaces will never want to record a restrictive covenant. I understand the need of us to be able to know and control and police the actual use of those parking spaces, worked into the ordinance, and correct me if I'm wrong. I should have included a copy in the ordinance, so I apologize for that oversight on my part, is that there is every year you have to get a use, you have to apply for a use that expires yearly. When you do a closing, when you are selling a piece of property or buying a piece of property, the purchaser will always do a title search, so the restrictive covenant will pop up in that title search. If there is no restrictive covenant you also do a lien search, as the company that most real estate attorneys use down here, title companies use, Rocket Lien Search. I don't know if you guys use Rocket Lien Search, you pay \$75 and they will do research in the municipality, in the county to make sure there are no liens that aren't recorded or any other outstanding items. The use provision would pop up in that search and that's standard protocol for any real estate attorney when they are doing a transaction, which is the biggest fear, and it's the same way we can police it that way as well. So my concern, the reason I bring it up to you is because in the experience that we are seeing and Mercy Perez can talk to you about it, as Property Manager in the Gables, that is the issue, that we are coming into. Before I ask Mercy to come up and speak on it, I'd like to know your thoughts.

Ms. Trevarthen: When I was here for the earlier items staff said, why don't you hang around? I'm not prepared, I don't have it in front of me, but what I can tell you is really the theme of this whole ordinance was balancing the express need of property owners within the community to

have this flexibility, to violate the Code when it was hard for them to provide for parking on site against the impact on the community of setting up that arrangement, would it be a reliable arrangement?- could we count on it?- or ultimately would the impacts of that end up flowing to illegal parking, parking in City parking garages, whatever, problems that would result. So a piece of that is making sure that everybody who is part of this parking relationship, which is not your normal thing under the Code, is on notice and is committed to the continuation of that relationship. You just gave a very good explanation of why this covenant is an effective tool for making sure that anyone who owns that property or seeks to buy that property or transact with that property knows the parking agreement is there and has to account for it in whatever their future plans are for it, but like all risk management calls, ultimately it's for the City, how tightly to have all of these things documented and its balanced between what you are talking about and the concerns that you heard raised earlier about what happens when we lose track of this, and that has a negative impact on our City.

Mayor Cason: Is there another way to do it other than a covenant?- what are some other options?

Commissioner Quesada: Yes, there is.

Mayor Cason: Before he tells us the answer let me hear it from you.

Ms. Trevarthen: I would love to hear his thoughts. Everything that comes to mind for me is something that ends up in the public record, which is what your object is.

Commissioner Quesada: It's my objection because I know it's going to be every landlord's objection. Bill, you are a landlord and a landlord outside the City, you would never want to put a restrictive covenant on your property, never, and I've never had this conversation but I know your answer, and if you said anything otherwise I'd say you were lying [Laughter].

Mayor Cason: What is your solution?

Commissioner Quesada: OK. Hold on a second. This is also part of a broader conversation as well and this is one small subset, and Commissioner Keon, you are not allowed to give any input yet, because I'm not done explaining, because I know where your opinion will fall on this. I think we have a bigger parking problem in the City of Coral Gables, in the sense that if you look at Allen Morris' project, which we all love the project, it's won so many awards, is it 121 Alhambra?- or 151, I forget the address. Did you guys know that he stores high end vehicles in there because he's got such an abundance of extra parking?

Vice Mayor Kerdyk: Yes. I do.

Commissioner Quesada: He's created a business out of it and he meets all of the requirements and he's fully leased, I think he's leased out; he's like at 97 percent leased out the last time I spoke to him about it, so he's completely full and he still has an abundance of 250 parking spaces. When I worked at 355 Alhambra, I was there every day. My office was on the 8th floor and the parking was the first 7 floors. I would always park on the 7th floor because I could just walk right up one flight of stairs and I was right there. The top three stories of that building were always empty and that building was completely leased, it was retailed, there was a bank, it had the full use of that building. So I think it's a greater conversation for us to have on a separate occasion that I think our parking requirements based on my experience is that it's too much.

Vice Mayor Kerdyk: Can I just throw in another one that I have brought up here a multitude of times that really is a problem is these lifts. Lifts in certain circumstances are just...

Commissioner Quesada: The mechanical parking.

Vice Mayor Kerdyk:...the mechanical parking. Again with these bigger buildings and just to meet the Code to put in these lifts...

Commissioner Quesada: So the point is, we need to have a broader conversation on parking.

Vice Mayor Kerdyk: That's what I'm saying, that and stacking parking, all that we need to talk about.

Commissioner Quesada: Because when you look at the office and the commercial and the retail parking that we have in the City, what we are creating is a burden on the offices, on the retail spaces. For example, the issue that Mercy is going to talk to you about now, is a coffee shop that was designated as a restaurant, so therefore, if it was a coffee shop she'd be fine in the building that they are in, but because the City is deeming it to be a restaurant, they don't meet the requirements that tenant is bringing in, so therefore they are trying to bring in the Regions Bank Building -- this is the building right on Ponce Circle Park, Hartnett Park, so we have a greater parking problem. So coming back to the issue, why I put it on the agenda. I think our intent was to allow that shared parking, these limited circumstances, however, I'm telling you, in practical effect we will never see it happen if we continue with the restrictive covenant aspect of it. That's what the holdup is right now, because we are talking -- and in your example, Mercy, can you come up, I keep speaking to you in the crowd, in that example the coffee shop wants-needs 8 spaces?- remind me.

Ms. Perez: Good afternoon everyone. They are mandating 9; this is a 1,528 rentable square footage coffee shop. It is stipulated in the lease; somehow, I don't know how, it just got whirled to a restaurant. It has no tables, it has no waiters, nothing, this is an Argentinian Pasteria; it is come in, come out, get a coffee, get a Danish, leave, goodbye. Somehow, don't know how, it went into a restaurant. Our parking ratio at the building is 3 per 1000, and all of a sudden I get, talk to the tenant, tenant is obviously very upset, he doesn't know what to, he is ready to pull out his lease, all this. Nine parking spaces are mandated, so here comes management and landlord because I've got to get this lease started. I go to Regions Bank, my good property manager friend Carol Chin says, OK Mercy, I can give you four. I go ahead and I give him three, and then my other good property manager friend in front of Catalonia goes ahead and rents out to me two, so I make up the nine. Now then I get this letter, he gets this letter from the City, here are all the requirements. Well first thing obviously I see restrictive covenant, I'm like "holy cow," this is never going to fly, I mean I'm just shocked. Now in the middle of this our responsibility to this tenant was to build out the vanilla shell space, we completed this. I have a TCO as of May 2014 of this year. I am beyond months delayed on this tenant and this rental income for this institutional ownership, so I'm at a crossroad, there is no way they are going to ever approve this.

Commissioner Keon: This is a coffee bar.

Ms. Perez: Coffee shop.

Commissioner Keon: A coffee shop that is going to be built into Regions Bank?

Ms. Perez: No, no, no. This is at the retail side of my office property 2990 Ponce de Leon.

Commissioner Keon: OK.

Ms. Perez: Where the First Bank Building is.

Commissioner Keon: OK.

Ms. Perez: The beautiful building with the birds.

Commissioner Keon: Oh, OK. And so they are going to just put in a coffee shop in that building.

Ms. Perez: On the retail floor, yes.

Commissioner Keon: On the retail floor. For me, that is a very, I don't know why it would be considered a restaurant, I think its use is – people from probably the building, people nearby, it's

not like somebody is going to park and go there most likely. You know by its history and design, it's not something that somebody is going to park and go there too, so I can certainly understand; and having to run around to a variety of different buildings to get two parking places here, two parking places there, and one parking place over this is, there is no reason for that. It is never going to address any parking needs for that particular business because they are not going to go there when they don't know where it is, so that to me or this issue with this is like, you know is not, although they fall under the same thing as the remote parking, it is not at all related to when we are talking about like Dade Medical that had remote parking when you have a large capacity of parking in one building that needs to be...

Commissioner Quesada: Yes, it's a different situation.

Commissioner Keon: So if there is a way to separate out those sorts of things. I certainly understand that because this is to me like...

Ms. Perez: A perfect example.

Commissioner Keon: No, not at all.

Commissioner Quesada: And that's the problem though because – so the legislation that we passed is perfect, it's exactly for this kind of thing that we want. It's perfect for this; I think so, at least from the conversations I recall. It's different when it comes to Dade Medical College, it's a bigger use, it's a lot more parking spaces, a lot more people. I think they wind up doing that, that lease and obviously if we can work something out here and it might be one person next year that use that parking space in Regions to go to that coffee shop maybe.

Commissioner Keon:....Remote parking two spaces at a time...

Commissioner Quesada: So here's what I suggest on policing it moving forward, and this is a conversation, this is actually an idea by the City Attorney who came up with this is, we do it through resolution, let's say for the next year just sort of see how it plays out, we don't do restrictive covenant. Every time someone comes in, they come before the City Commission, we do it by resolution and we can see how it goes for the next six months, the next year, we might get two a meeting, we might get one every eight months.

Commissioner Lago: Who would track each one of these resolutions and these businesses?- how would you track that?

Commissioner Quesada: Well the tracking is – now you have to get – the way the Code is written currently you still have to apply yearly for the use, correct?- so what department tracks right now tracks that currently?

Commissioner Keon: Jane's department.

Commissioner Quesada: Jane's department.

Mr. Trias: That would be through a certificate of use. Now in this particular case, I'm not aware of the details, but I'll be happy to work personally with the applicant in this case.

Ms. Perez: Thank you.

Mr. Trias: I hear you and I can't imagine how this confusion has taken place, but I'll get to the bottom of this. The issue is, as the ordinance was drafted it's difficult to meet the requirements, that is true and that's a policy choice...

Commissioner Quesada: That's what I'm saying, from a policy perspective should we be creating so much parking that people are starting second businesses in the parking, like Allen Morris?- I'm not chastising him, he's been very ingenious to do that, but do we need it all, but at the same time we have to make sure that we can service all of our residents.

Commissioner Lago: Are you sure that he created all that parking and it wasn't a requirement as per the Code?

Commissioner Quesada: If you go into any of the 16-story office buildings that we have, I don't know, go at 10 o'clock in the morning, 10:30 (a.m.) you will see the top three stories are empty.

Commissioner Lago: I've been saying that for a long time, that's not the issue. The issue here is what does the Code dictate?- what does it require you if you are a developer and you are going to build a new office space, it says, what is the parking calculation?- what is it?

Commissioner Quesada: Oh, the parking ratio?

Commissioner Lago: OK. I bet you if you go backwards, I'm sorry Ramon, if you go backwards and you see how we developed that building, you didn't say, OK, I'm going to build 300 extra parking spaces.

Commissioner Quesada: No, of course not. He did the minimum requirement under the Code. I'm sure he did. What developer would build more parking spaces just to have it?

Commissioner Lago: There is a cost; the average is around \$20,000 for parking space.

Mayor Cason: How is it like places like Miami-Dade College can't find Allen Morris' three empty floors? I mean, you are saying all this empty space.

Commissioner Keon: But his is leased out...

Commissioner Quesada: His was leased out.

Interim City Manager Olazabal: Probably not excess parking. According to the ordinance it's most likely what Commissioner Lago was saying, they built it because it was required according to the parking ratio, so most likely Allen Morris Building doesn't have excess parking. For the remote parking ordinance you need excess parking, which is not required by the Code.

Commissioner Lago: So if you go back to the Vice Mayor who's got 20 years of experience, he could probably tell you that we as a City, when you look at all the other municipalities, 32 in this County, have the most stringent parking requirements on any developer, and that's a good thing, but it's also a bad thing, and we've had this discussion how many times on the dais already?- we just touched on it, like dabbled on it because there is a multitude of problems that are forthcoming and that we are dealing with, either from end users, developers, the other day with Shoma Homes, Dade Medical College, now you are basically a result of something that we try to do to resolve an issue...

Commissioner Quesada: And it's still not resolved.

Commissioner Lago: And it's still not resolved, so at the end of the day I think what you said, we need to sit down maybe have a Sunshine Meeting and discuss this.

Commissioner Quesada: I would love to do this.

Commissioner Keon: Do a workshop.

Mayor Cason: On this particular issue today, do you want to have a motion to remove the restrictive covenant...

Commissioner Quesada: Requirement and to have our staff – first of all, any requests for this has got to come through resolution through the City Commission for the next year, I would say just to sort of see how it plays out. Do you have a problem with that Craig?

City Attorney Leen: I do think you can legally have things come before you. I mean, right now the way it's drafted a lot of the things don't come before you unless there is a waiver or an appeal, but...

Commissioner Quesada: We can't specifically legislate that though?

City Attorney Leen: Well, you can direct staff to bring everyone before you before they approve it and...by resolution, you could do that, but what I'm saying is if you are going to remove the requirement ultimately you need to amend the Code provision; and in a given case could you waive the requirement the Commission by resolution?- I'm comfortable with that, but I think if you are going to be doing this multiple times it should be done by amendment to the Code.

Commissioner Quesada: Do you guys have a problem with that?

Commissioner Keon: I have no problem with this issue; I would waive it in a heartbeat. The only one that I would like to see when it is 100 spaces or it's 150 spaces, I mean I'd like to see something when it's a huge amount of parking in one specific place. I do think in order to protect the City itself, I can see where you would want something recorded for that, but in these instances when it's all on one site, but in this instance it's two here, it's two here, its two here, it doesn't serve – you are dancing to try to meet the Code and it doesn't serve any purpose...

Commissioner Quesada: It's not accomplishing the goal.

Commissioner Keon:...I mean I think we should certainly be able to waive that provision...

Commissioner Lago: That parking that she has to have to meet the requirements so she can get her certificate of use comes at a cost. What cost – now because the City interpreted you not as a café, but as a restaurant, what are they charging you per parking space?

Ms. Perez: Oh, per parking space – well monthly to these buildings are \$95 per month, per vehicle, per spot.

Commissioner Lago: So you are talking about – she has to pay almost \$800 a month asking for 8 parking spaces, that's \$7,200 a year, she's got to come up with that revenue, which she thought, I don't know if it was in their business plan.

Commissioner Keon: I really understand that. I kind of would like to know why were they treated as a restaurant as opposed to a coffee shop.

Mayor Cason: Well that's a separate discussion. That should be in an appeal process for that too, that's separate, I think.

Mr. Trias: Mayor, Mayor, if I could. I don't know what the request is and nobody here knows either. I'll be happy to review it as soon as we get a chance; and I would agree with you and everything you've said. Frankly, everything you've said makes sense, but it would be better if we could review this, the request.

Commissioner Keon: Absolutely.

Mr. Trias: And one last thought. Industrial parking, the issue is not very complicated. We do not have a shared parking provision, most other cities do, so therefore every use in a mixed use building has to have its own parking, so you add on it and eventually you have the seven stories you were talking about. Now as part of the Mediterranean Village project, they are proposing a methodology for shared parking that you will get a chance to review and there is a scientific methodology developed by engineers that many cities have adopted. I believe Miami has it and many other cities, and you will get that information very soon, and you'll be able to make a policy decision on that issue too.

Commissioner Lago: That may be a starting off point to an answer throughout the City.

Mayor Cason: Let's take care of the restrictive covenant question right now.

Commissioner Quesada: The restrictive covenant portion, I guess I'll ask through the City Manager, I will ask that you direct staff that you handle looking at this specific applicant to see if it really should be designated as a restaurant or as a café. If not, I'm going to make a motion assuming that that comes back and still has to be a restaurant, because we don't know the details of it, that the restrictive covenant portion for this café be waived.

City Attorney Leen: Why don't you direct me to meet with her and to settle this matter?

Commissioner Quesada: I'm going to direct our City Attorney to meet and settle it.

City Attorney Leen: Giving me the authority to settle matters, so we can resolve this with her in this case, but I do think you are going to need to, because this is going to come up again...

Commissioner Quesada: We should have a further conversation later on. I think what we should do is -- I would like to meet with you further and with Susan as well and with Ramon so I can, again this was just supposed to be a discussion item, it's gotten a little more in-depth, so we'll bring it back in a more substantive meeting.

Vice Mayor Kerdyk: Read it again, familiarize myself with it.

Commissioner Lago: You know what I'd like to see also, I'd like to see it again when we have more in depth conversation is, where does the City stack up in reference to other municipalities in regards to their parking requirements. I want to see where the City of Miami, where the City of Pinecrest, the City of South Miami is requiring because I think, not I think, I know...

Mr. Trias: Commissioner Lago.

Commissioner Lago: Yes sir.

Mr. Trias: Part of the methodology explanation for the Mediterranean Village is a comparison of all of those, so the developer has done that already and you'll have it soon.

Commissioner Lago: Thank you sir. Thank you. Great work.

Mayor Cason: Thank you very much.

City Attorney Leen: Can I ask you before we -- just so I know what to do. Are you under a time sensitivity?- does it come back to the Commission in December?- or are you saying that -- because if not what you can do, if it can come back to you what I'll do is do a settlement and bring it back and you'll approve it by resolution and then that will...

Commissioner Quesada: I don't think they have the time.

City Attorney Leen: If they don't have the time, well then the other thing is just direct me to settle it with them by resolution.

Commissioner Keon: Work with Ramon and...

City Attorney Leen: Yes, do a motion.

Commissioner Quesada: Is it unanimous for direction for you to settle with them?

All Commissioners: Yes.

City Attorney Leen: OK. Unanimous consent?

Commissioner Lago: Yes, unanimous consent.

Mayor Cason: Yes, unanimous consent.

Ms. Perez: Thank you all very much.

[End: 3:27:07 p.m.]