

City of Coral Gables City Commission Meeting
Non-Agenda Item
April 26, 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

Public Speaker(s)

Non Agenda Item [Start: 12:25:23 p.m.]

Mayor Cason: Now we are moving to the last item which is City Attorney, I-1.

City Attorney Leen: Thank you Mr. Mayor. Before I go to I-1, just so I don't forget. I'd like to request an Executive Session in the FPL transmission line matter, which is Case No. 3-D14-1467, 3-D14-1466, 3-D14-1451, Tribunal No. 09-310709-3575, which is in front of the Siting Board, which is the Governor and the Cabinet. There is also a DOA proceeding that preceded that. I've given an opinion under 9.020 of the Florida Rules of Appellate Procedure, 9.020G2, that the City remains a party to the appeals, because under 9.02G2, all parties other than the appellant or an appellee, so we are a party. The reason I mention that is because, as you all know, the Third District Court of Appeals issued a decision reversing the decision of the governor and the Cabinet in the citing of the 230 KV transmission line and associated power poles, as well as some additions at Turkey Point. We were not part of that portion of the case; we were focused on the transmission lines and the poles. For the members of the public, those are the transmission lines that would go along U.S.-1 and Ponce de Leon Boulevard. The City presently has a

transmission corridor that's there, but with power poles that are lower than what we're being proposed by FPL. FPL had asked to harden those power poles and the City had reached an agreement with FPL, settlement agreement, which basically lowered the heights of the proposed poles if the transmission line went in, the 230 KV transmission line. Since that's obviously in question, we'll wait to see how the case proceeds. The City does have a duty and the City has complied with the settlement agreement fully. The City does have a duty that if FPL decides to come in and harden, and by harden I mean they have an existing transmission line and every so often they have to come in and improve the poles and bring them up to current standards for safety reasons, and the height that they chose for those poles depends on what types of transmission lines are there. So obviously, if it's a lower voltage transmission line that's there today, the poles can be lower. If it's the high voltage transmission line and they are co-located onto the same poles, as was being proposed, then they would have to be higher; and the City was able to get FPL to agree to a commitment that those poles would be as low as feasible. Now, I'm asking for an Executive Session because there are certain things I want to discuss with you to get your guidance, which will affect the position that we may take in those cases, and by law we are allowed to do that because we are a party to an active proceeding, but just for the public because we have received some inquiries. The settlement agreement and stipulations that Coral Gables reached were comprehensive and protected the City in many different ways and took account of all the possible alternatives that could occur. So for example, if no transmission line, 230 KV transmission line never goes in, the City would be protected and would be able to have the lower poles that currently exist today or something similar to that, even if they are hardened, which is a benefit to the community because the poles are safer then. If undergrounding is allowed and that issue has come up, the City would have under our agreement, the City would have the option to avail itself of that; and in fact, in one of the stipulations that was reached it was very clear that whatever method and time the design and time that the high voltage transmission line is put into South Miami and Miami, we receive the same benefit of that. Likewise, there are provisions in there protecting the City in many different ways if these power lines ever do get placed. There is also a settlement agreement that provided a lot of protection to the City and also benefits to the City, which the City was a positive thing for the City, without getting into too much detail. And if there are any residents that have questions, please direct them to me and I can explain to you why the City is fully protected under these settlement agreements in my view. One issue that has come up is the fact that the City is owed \$1.3 million under one of the settlements, which FPL has not provided as of this time; and we've been in discussions with them regarding improvements that they could do that would be worth \$1.3 million. Regardless though, whether that happens or not, I just want to be clear to you that the settlement agreements that the City reached protect the City in the event this get sent back to Siting Board, and the Siting Board changes the final order in a way that helps the other cities. So, we are looking at this matter closely; the City will fulfill all of its legal obligations; the City will also protect itself as it's

allowed to do in the settlement agreement, and I want to meet with you to discuss this, to make sure that we are acting in the best interest of Coral Gables as you determine.

Mayor Cason: The next meeting we have, I think is the Capital Work Plan, we could do it after that, if it doesn't go on – what is it, from 1 to 4 (p.m.) next week?

Commissioner Keon: I thought it was from 9 to 12.

Mayor Cason: That might be the appropriate place to do it.

City Attorney Leen: OK.

Mayor Cason: It shouldn't take that long, so we could just piggyback on the back of the workshop. I think it's the 4th, isn't it?

Commissioner Keon: On the 3rd, we have a meeting.

Mayor Cason: Depending on how long the Commission meeting might be easier to put it on the 4th.

City Attorney Leen: Just so you are aware, one other thing I should say. What the Third District said was that the Siting Board, which is the Governor and Cabinet, committed an error by not considering that they could as a condition of approve require the undergrounding of the line; and secondly, that they did not adequately consider a local government zoning and land use regulations. Now the issue for Coral Gables, it may be a little different than some of the other cities are that we have an existing transmission line, which is why there was a benefit to the City of resolving this matter. The other cities don't have existing transmission lines along the U.S.-1 corridor. So that was an issue that made Coral Gables different, but what we made sure to do and what we don't want to have happen and the stipulation and the settlement agreement protect us, is we don't want obviously, Coral Gables being the only City with a very high transmission line and the other cities not having one or having undergrounding or something like that. Even if the City is obliged to harden, which we are by the agreement and by law, at some point we do have to allow hardening of these lines, but that doesn't mean we have to allow hardening at a height that would allow a 230 KV line if that's not been permitted. Instead it would be for hardening of a height based on the existing transmission line. So that's the position at this point I'm taking, but I want to get your guidance and at some point, I'm sure FPL will be talking to us. I do want to say for purposes of the record though that the City has complied with the settlement agreement and will continue to do so and at this point there's been no application filed by FPL to harden. Maybe they are waiting to see what happens with this case, because obviously its possible there

could be an appeal, it's called a Notice of Discretionary Review by the Supreme Court, but there could be an attempt to appeal to the Supreme Court, there could be a motion for rehearing in the Third District. It's been remanded to the Siting Board, so there is a lot of stuff that could happen, and this is probably going to take a while.

Vice Mayor Quesada: And FPL is going to fight that the whole way through.

City Attorney Leen: Probably.

Mayor Cason: Can we do it either after the Commission meeting if it ends early, or the next day after the Capital Workshop?

City Attorney Leen: Yes. Yes.

Commissioner Slesnick: On record I prefer after the Commission meeting because we have the annual Garden Club meeting on Wednesday at 11:30, so I'd like to be out by 11:30 on Wednesday.

Mayor Cason: OK. You've got two possible days.

City Attorney Leen: I know I've said this three times, but I want to be clear, because you know obviously FPL may look at this. We are not saying that the City is backing away from the settlement. We are saying that the settlement protects the City in light of this event and we plan to assert all our rights under the settlement, and that's why I want to come to guidance for you to determine how best to do that.

Commissioner Keon: Is hardening means replacement of the pole?- is that what hardening means? So it's the ability to replace an existing pole.

City Attorney Leen: Yes. The poles are old.

Commissioner Keon: The hardening isn't that you somehow do something to the existing pole. It's that you replace the pole.

City Attorney Leen: You bring in a new pole. Madam Manager.

City Manager Swanson-Rivenbark: It will result in a whole new pole.

Commissioner Keon: A whole new pole; and the whole new poles that they are talking about bringing in are four feet in diameter.

Mayor Cason: They are fatter.

City Attorney Leen: They are much fatter because they are very high. Although they agree to limit the width a little bit, because remember we lowered the height, but those heights which as I recall were something like 77 feet, I don't remember exactly, but it ranged between the 70's and low 90's.

Commissioner Keon: Why would we permit those? Should we talk about that at the session?

City Attorney Leen: Yes, we should talk about that, but those would be if the 230 KV line – the Commission has always been concerned about height. You've been extremely clear about that and that's part of why we reached the agreement was to lower the heights as much as possible, which FPL is not doing for any other city and it would cost them additional money and engineering to do that. There were a lot of negotiations that went into bringing them as low as possible to meet the aesthetic goals of the City. However – and also the safety goals, because there is a safety component too. They can't be so low that it will cause a safety concern. However, that was all based on a 230 KV line coming in and being co-located so that this power pole would have a number of lines on them and this high voltage line had to be a certain distance away. If it's the present transmission line and they are simply replacing the poles, obviously it could be much lower. They always wanted to do it in contemplation of the 230 KV line, but obviously the fact that there's been a reversal of that decision and the City stipulations indicate that this transmission line can't go in until it's been fully permitted and it goes in at the same time as with South Miami and Miami and now there is not even a right to put in the line, and obviously it would mean under our settlement agreement that they could make it lower, they have to make it as low as feasible, under the circumstances, and they have an obligation to do that that's enforceable by the City. I guess what I'm trying to say is that we have a lot of rights under the settlement. I don't want anyone thinking that we've given up our ability to take full advantage of this decision to protect the citizens of Coral Gables.

Commissioner Keon: But until the decision comes down from the court or the Siting Board or whomever, a final decision on this issue, do we not permit the pole of that size and diameter?

City Attorney Leen: Under the settlement agreement, we have the duty, if they decide to go forward with hardening, FPL, we have a duty to process that application, assuming they meet all their obligations under the settlement agreement, which they have not as of this moment. So right now we don't have that duty in my view. But because they don't have the right to put in a 230

KV line and because the court said that could be underground as a condition, at this point I don't see how they could put in the 230 KV power poles as part of their hardening application, and to me that's consistent with our agreement with them. So we have a right to insist on that.

Commissioner Keon: Well, I just want to make sure that we work with our permitting department and that any application for a permit to harden those lines that come in, that show it at the four feet or whatever, that we don't give them the permit.

City Manager Swanson-Rivenbark: Understood. And to that flavor, I'd like to have Peter Iglesias, our new Assistant City Manager join us in the Executive Session. I know it's a very select attendance, but he'll be able to contribute greatly to the discussion.

Commissioner Lago: Perfect.

City Attorney Leen: In order to do that he'd have to do it as your designee. He would have to be the Acting City Manager.

City Manager Swanson-Rivenbark: He would be my designee. He's my designee.

City Attorney Leen: OK.

[End: 12:38:17 p.m.]