

**City of Coral Gables City Commission Meeting
Agenda Item I-2
July 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
Assistant City Manager for Operations, Peter Iglesias**

Public Speaker(s)

**Jerry Proctor, Attorney for Starbucks
Lorie Rosen, Starbucks Coffee Company**

Agenda Item I-2 [11:25:50 a.m.]

Status report of regulatory action related to vehicle stacking at Starbucks 475 Dixie Highway and consideration of Commission action related to parking lot lease which required compliance by Starbucks with government regulations.

Mayor Cason: I-2.

City Attorney Leen: Thank you Mr. Mayor. So Item I-2 is an item relating to the Starbucks that's on U.S.-1 where there's been stacking of vehicles onto the right-of-way, which is a violation of Section 5-115(A) of the Zoning Code. The City has been working with Starbucks to try to resolve this matter. The City owns the parking lot where the drive-through is, but the City has a lease to a property owner who's Starbucks is their tenant and Starbucks obviously uses the parking lot and also the drive-through. This issue has been brought before the Commission on a number of occasions and it's been an ongoing issue for a while. This finally culminated – in a

prior Commission meeting the issue came and then the City issued a warning, Code Enforcement, on June 3rd, and issued a citation on July 13th. Following issuance of the citation, Starbucks did provide a formal short-term plan and long-term plan to address this issue. This was provided on July 14th. Peter Iglesias and I looked at it and I'm doing the legal aspect of this, and Peter, obviously is our Building Official and someone extremely knowledgeable about this area, has been looking at the engineering and building aspects of this. We both took a look at this plan and on July 15th recognized a stay of the fine effective July 14th, but that citation is still in place and it's the City's view that there is still a violation here. Now, I think last Wednesday, I actually went to Starbucks to get a coffee and some food because I was hungry, and I parked in the parking lot, because I didn't want to go through the drive-through in case it was going to stack, and I went inside and ordered my food and when I came out I did notice that there was stacking, and I also noticed that I couldn't back out, and other people were having trouble backing out. So I called Denise who is our contact at Starbucks, she's in the General Counsel's office; you've seen some of her e-mails. A very nice person, she's been working on this matter with us, but I called her and told her, Denise, I'm sitting in the parking lot and there is stacking going on and I can't back out. This is a real issue for us; and I came back and I spoke with the City Manager who was frankly not having any of it. She was very upset that this was still continuing and I thought it was justifiably so. So we sent an e-mail to Starbucks and said look, you really need to comply, and you need to comply immediately. At that point, I've now been informed that the next day, on Thursday, Starbucks did implement their short-term plan, and we have representatives from Starbucks here, and I'm going to ask them to speak. We were very happy to hear yesterday that they have implemented their short-term plan. We are going to go out and look at how that's going. There is also a long-term plan and with that I'd like – I do have some legal things to tell you about the lease and about what your options are, but before we get to that, because they have indicated that they've complied, I want to turn it over to Peter Iglesias, our Assistant City Manager for Operations to talk about the plans and what's been going on.

Assistant City Manager Iglesias: The short-term plan is their business model from what I've been told calls for five cars prior to the window. In other words, you can order and you have a stacking of five cars prior to getting to the actual pick-up window, three additional cars behind that, so for a total stacking of eight cars. This was going to take care of through a simulation by providing a person actually taking orders at the fifth car, and this was going to be the initial solution, initial trial and then certain modifications to the parking lot were going to be done to provide for that order area so that you could order through the microphone and have five cars in front to the driveway to the drive up window. Right now, I think it's been implemented we will see how that works, where right now school's out, so it's really not the best time to look at traffic studies; traffic studies would better be done in October instead of now. So that's the initial plan and then of course the final plan would be actually modifying the actual parking lot.

City Attorney Leen: And I would note that Public Works have had some concerns about the design. The decision of the Building Official, Peter, and I agree with him, was because this was a public safety matter and was causing stacking, which could cause an accident, it's dangerous. We felt that they should go forward and implement it immediately and we'll see how it works. They are doing this all at their own risk, Starbucks, because they do eventually have to get permits.

Assistant City Manager Iglesias: There is also stacking within the parking lot itself...a lot of driver issues, because you get in and then you can't get out until you are let out by either the flowing...or somebody simply letting you out.

Commissioner Lago: Mayor if I may, thank you Mr. City Assistant Manager. My question is more geared towards, I'm extremely grateful for the operator having made these changes, because I brought this up to the Commission and I brought this up to staff, this is a significant life safety issue. Anybody that drives on U.S.-1 understand what is going on at that moment for such a long time, it's just not appropriate. Eventually somebody is going to take that corner on LeJeune and get into a catastrophic accident. I commend the operator for preferring a short-term answer. What I'm looking for, and this is something that I had several conversations, several phone conversations, and actually one in-person conversation with your counsel, Mr. Manny Bedio, and he was very helpful in getting this resolved, but I'm really looking for is a timeframe in reference to long-term implementation. Is there an idea?- I know that we have to obviously go through the design phase, the approval phase, but is there anything else that can be done to speed up the process?

Assistant City Manager Iglesias: Right now the initial phase will provide you a simulation of what the actual asphalt is going to do later, the actual parking lot changes they are going to do later. They will have to get it permitted and actually built before the final parking arrangements can be done.

Commissioner Lago: Let me ask you just food for thought, just putting it out there, I haven't talked to even the City Manager about this, since we are here we might as well discuss it really quickly. I know that we are going to redevelop our existing Fire Station and basically raise that and the property that Starbucks is on, a portion of that is owned by the City, correct?

City Manager Swanson-Rivenbark: The parking lot is owned by the City and currently it is leased to Starbucks or to the owner.

Commissioner Lago: I'm just putting it out there, again, I'm not saying to do this, but as we discussed in the beginning of this presentation, the main concern there is, there is only one mode

of ingress and egress, and it has to be used simultaneously to get in and out. So what you have there is various people who are trying to park, but they can't park, because you have all the stacking, people who are trying to leave so it's basically gridlock. If they are going to put forth a long term plan to resolve this issue, maybe the City somehow, somehow figure out to increase the footprint...

City Manager Swanson-Rivenbark: Sir, I will say with respect, every square foot...

Commissioner Lago: I understand.

City Manager Swanson-Rivenbark:...of the Riviera Station with the trolley depot, with the training center, with the aspects of it is taken, we would not be able to recommend that we give additional property for the parking lot for the Starbucks. We have to be very clear on managing expectations on that. We recognize that it is a public safety issue, we recognize it is not acceptable to have cars stacking in Dixie Highway that's why we met with them to talk about short-term, long-term, but at all times we are going to reserve the right to cancel the lease in the parking lot if this is not addressed on a regular and ongoing basis.

City Attorney Leen: And if I could add, let me just explain what that means for everyone here, cancelling the lease. So obviously, we could cancel the lease by agreement, that's not an issue. If we decide that we want to issue a notice of termination we must give 30 days notice of the termination under the lease. In addition, this lease comes up for renewal in one year, Leonard told me it's in 2017; and I know that Starbucks has issued a letter of intent that they would like to renew, which we are holding at this time. What the lease says is that if they are in breach or default, essentially then the City does not have to renew the lease. So obviously, this issue is going to have to be resolved, either now, although we are going to talk more about the short-term solution, but if for some reason it was determined that it was not working the City could terminate the lease on 30 days notice. We have given notice of the violation.

Assistant City Manager Iglesias: It's a difficult site because the DOT does not want you, does not normally allow you to go in, go out the first exit and in the second.

Commissioner Lago: That's what I was trying to say before the City Manager interjected. Let me just go back to what I was trying to get at. Again, it's not only that, the issue is that, and correct me if I'm wrong, the Code states that you have to have "X" amount of parking spaces, correct?-to provide for that service that they are providing. So, it's out of the question you can reconfigure that lot and get the necessary parking spaces and have two points where you can have ingress and egress separately, that's my understanding.

Assistant City Manager Iglesias: It doesn't work out very well.

Commissioner Lago: It doesn't work out that way. So again, I agree and I have no issues at all with trying to find a solution to this problem because I value Starbucks as a tenant. They are a national tenant, they bring people to the City of Coral Gables, but again, I wouldn't have brought it to the City's attention and to everyone's attention if I didn't view it as an important issue, and that's why I brought it to everybody's attention, because it's a life safety issue. But again, what I want to be clear is there has to be a way to figure this out, whether they use a back alley, there has to be something. If not, we are going to have to be forced to cancel their contract...

City Manager Swanson-Rivenbark: Or they close their drive-through.

Commissioner Lago: I understand that.

City Manager Swanson-Rivenbark: We've also talked with them about a different alignment, when we talked about going around the building. Sir, we have given a variety of suggestions in order to solve this. They can still lease the parking lot if there is no drive-through.

Commissioner Lago: I understand that. I understand that. But I don't want to just say we are not going to entertain...

Assistant City Manager Iglesias: But Commissioner it's a difficult site, but what they are proposing, if the simulation works, then the simulation is simply how do we simulate what they are doing? They are putting a person five cars back and saying, I want five cars from the window to the ordering spot, right?- and then three cars additional. If that's their business model and they are efficient and their efficiency within the business is such that it makes that work, then if that simulation works then the parking arrangements the realignments that they are doing should work. So, I think...

Commissioner Lago: Again, we'll find out, but again I don't want to immediately ex out any opportunities if we are talking about five feet or four feet or three feet that's required.

Assistant City Manager Iglesias: [Inaudible]

Commissioner Lago: Because again, that whole surface parking lot is going to have to be reconfigured and I want to make sure that obviously we are flexible as possible, but without bending or breaking.

Assistant City Manager Iglesias: They are reconfiguring that entry lane, they are dropping it to add an order area, and so that can be simulated by having a person there taking the order. So you have five cars from the order to the drive up window and then three more.

Commissioner Lago: And I'm concentrating on the long-term solution, as I mentioned in the beginning of my statement because this short-term solution is not going to work, it's not. It may give you an immediate...

Assistant City Manager Iglesias: It's not a short-term solution. It's a simulation.

Commissioner Lago: Having somebody out there...

Assistant City Manager Iglesias: It's a simulation to a long-term solution. So the short-term solution works, the long-term solution --- it's not a short-term/long-term, it's a simulation of the long-term solution by adding the additional...

City Attorney Leen: We've told Starbucks that they can, obviously they must implement the short-term solution, and they have, they told us. They can go forward and implement the long term solution at their own risk. But here's the issue and this is why the Manager keeps mentioning cancellation, it's meant more of a favor to Starbucks because we do believe, I believe my opinion is that under the Zoning Code we could order, we could order as a regulatory matter that the drive-through be closed, because it is causing a public safety danger, and if we did that would leave Starbucks with a difficult situation maybe, I don't know their business model, where they would have a parking lot, but not the drive-through.

Commissioner Lago: That's what I'm saying.

City Attorney Leen: So that's where we may want to mutually agree to a cancellation of the lease and without us seeking damages for breach or things like that. The goal here is to work it out and I do think we should hear from Starbucks, because I do know that they want to work it out, I do believe that they want to work.

Commissioner Lago: It's very easy to say look, we'll get rid of the window, again that's an integral part of the business model, so I don't want...

Mayor Cason: Let's hear from Starbucks.

Mr. Proctor: Thank you Mr. Mayor, members of the Commission, my name is Jerry Proctor, I'm an attorney with offices at 1450 Brickell Avenue. Thank you for putting us in a special spot on

this morning's agenda to you Mr. Mayor and to the Commission. I'm joined by Sylvia Arbisue and Lorie Rosen from Starbucks that can help me answer operational questions and perhaps even lease questions. As City Attorney Leen mentioned, we have implemented the short-term plan here and I'm going to get to the long-term in a minute, I promise. The short-term plan involves a person outside the store in what we are doing right now is we are actually bringing supervisory personnel from other stores in, because we haven't hired the additional personnel on site, which we will be doing in the next three weeks. Those personnel are coming in during the rush hour period six mornings a week, every morning except Sunday, which is a very slow morning. They are present outside in the parking lot particularly to assist people if the stack in the drive-through goes beyond two cars. Two cars is the point at which the speaker is located. The issue that the City has really sensitized us to, which we've encountered in other places around the country is that the order needs to get into the store faster than it is in certain rush hour situations. That's the purpose, the main purpose of the employee that is out in the parking lot during rush hour six mornings a week, and that will continue six mornings a week as we move forward, and that has been very successful thus far. I realize it's summer, but it has been noticeably successful in terms of our turnaround, our speed, and as I said, we are going to have permanent employees doing that work at the store by about the middle of August. So those are permanent changes that are really in place now and are going to be in place at the store in less than 30 days. What we want to do with the City going forward is move the speaker box. We want to move it out to a point where we have that additional time for the order to come into the building and employees inside the building to perform that same improvement that we are kind of doing on foot at this point. That is our goal. As you know, and I've listened with interest to your comments, there are a lot of moving parts here and there is not a lot of land to work with in terms of shifting things one way or another. We do have to get permits, we want to get permits before we do that work. We've been through a lot of different versions and reviews of different drawings as Mr. Iglesias and the Manager mentioned, we want to finish that process. We want to present any necessary studies to Mr. Iglesias and his staff. If those studies can be done in September right when school starts that's fine. We want to present plans which will take into account really all of these issues by October of this year, and we want to pursue those plans diligently forward from there. Florida DOT (Department of Transportation) will have some say in the matter; and we also have, I want to announce to the Commission, internal improvements to the store, renovations to the store that we have in mind as well that are more of a national plan. Those plans obviously, are going to have to be coordinated and thought through with discussion in terms of our lease. A lot of things seems to be coming to a head, say in early part of next year, but it's our goal to do all of these things, the personnel, the permanent personnel, the submittal of plans, the continued monitoring of the situation, and to work with the City to identify quickly if our plans at any point are not working to work as quickly as we can and to make this work long-term and to remain on the property, hopefully with a drive-through long-term. Again, I have the folks here from Starbucks.

I'm here because Ms. Brown is not in town right now, but the local folks that have all the knowledge are here and we are happy to answer any questions. Thank you.

Mayor Cason: Thank you.

City Attorney Leen: So the last thing to say is that the – one thing that's important here and hopefully this will resolve a lot of it and they will go forward and do exactly what they said, but you know we have our regulatory authority, we have our proprietary authority. So what I would suggest and I would also like to defer to Peter and the City Manager if they have any thoughts, but I think we should continue to monitor the situation, if necessary if this really doesn't work and we are not able to cooperate, we put them on notice of the violation, we could always exercise our right to terminate, I'm not sure Cathy, if you want to give them time, but I think that we would give them some time because we've asked them to do this, and then reserving that ability though just so you know that we need this issue to be fixed, from both the proprietary capacity because we are the landlord, we own the property, we do not want to be contributing to this problem. We have sovereign immunity for it, in my view, but you don't, and we do need to make sure that this thing is getting fixed; and from a regulatory perspective, as a regulator we have to protect the public, and in fact our lease expressly references that in Section 24, and talks about how we can't contract away our police power. We have to treat this property as if we would treat any property even if we were not the owners. So as the owner we need to make sure that our tenant is doing the right thing, and then as the regulator we need to make sure that there is no public safety danger coming out of this property; and so we are going to continue to vigorously enforce and I know that Peter is going to be continuing to review every single thing that's coming in on this matter.

Assistant City Manager Iglesias: As they work toward that permanent solution, we'll be able to have that simulation in where that speaker and order area is in or whether you have a person taking orders at that location the results are the same. So we'll be able to actually monitor the situation to see how it works, if it doesn't work with the person there then it's not going to work with the speaker there so within that time.

Mayor Cason: Got yah.

Assistant City Manager Iglesias: We've allowed them to proceed at their own risk, they wish to proceed with plans and so forth, to get permits to change the actual parking facility.

Commissioner Keon: Have they started already with the person out there.

City Manager Swanson-Rivenbark: I was very disappointed when Craig alerted me on Wednesday that they had implemented none of the short-term on the parking lot.

Commissioner Keon: Right.

City Manager Swanson-Rivenbark: So I have had our office monitoring and our office went today and there was a person outside taking the orders, so I wanted to make sure that before you all convened that they had implemented that.

Commissioner Keon: I think how my feeling on this whole issue is, it should have started before, but there is a person there now and you will, we will monitor on a regular basis, anytime that we go by there in that monitoring and that person isn't out there or other than Sunday morning, the other six days of the week during the hours that you have agreed to have a person there, if at any single time that person isn't there and there is stacking I think that you should have the authority to require them to close down that window, anytime between now and the time that you can determine if that works, a solution to this issue and then you can go through the process of moving the speaker or whatever.

Assistant City Manager Iglesias: There is a...time because school is out, so it's not the best time to do this, but it will give us some indication. If it doesn't work now it won't work then.

Commissioner Keon: It won't work then. So I would certainly – my feeling on it is, I would allow them that opportunity to see if it works, but at any time in our monitoring process that person isn't there and they are stacking back onto the highway that you immediately close that window.

Mayor Cason: Does anyone here disagree here on the dais?

Commissioner Lago: I have no issues with that.

Mayor Cason: OK. There are your instructions.

Commissioner Keon: Is that a motion or is that direction?

Mayor Cason: It's unanimous.

Assistant City Manager Iglesias: The drive-through is now conditional use, so we can always control, also there is a the business model change that could increase stacking, then we would

have the ability to act at that time, so we are going to change the drive-through from as-a-right to conditional use.

Commissioner Keon: Under no circumstances can you have stacking back onto the highway, under no circumstances.

City Attorney Leen: The Commission's direction is unanimous and clear. What I would ask is that if there is stacking, I really think that Starbucks should look at temporarily closing, even outside the hours, closing the window until it's corrected. It's a big issue, someone could get killed.

Commissioner Keon: Well, I know that that's a very important element to Starbucks is to have that drive-through, because it's quick, you don't want to get out of your car and park. Do you have a model that you only do that's only drive-through?- or are all of your stores drive-through and eat in?

Ms. Rosen: It's a combination.

Commissioner Keon: I know it's a combination, but is there a model that there is only drive-through?

City Manager Swanson-Rivenbark: Lorie can you go ahead and identify yourself for the City Clerk.

Ms. Rosen: Lorie Rosen, Starbucks Coffee Company and I live in Weston, Florida. So there are different models, different prototypes, but in Florida we only actually have two drive-through only in the entire State of 475 stores.

Commissioner Keon: Does it work?

Ms. Rosen: One of them is on a beach location and it's specifically oriented to the beach and the other is on 163rd Street, but there is such a model but certainly this real estate doesn't fit that business model.

Commissioner Keon: Well if it were to, I mean if you want to retain a location there on South Dixie Highway and if the majority of your business is drive-through as opposed to eat in, if they were to be only a drive-through doesn't that change the parking requirements?

Assistant City Manager Iglesias: It's just very difficult because there is not enough stacking, they could maybe stack three more cars.

Commissioner Keon: No, but if they were to remodel or do renovations, not being only a drive-through, the only people that they would have to accommodate with regard to parking would be the staff, which would eliminate a lot of the need for all of the parking spaces so you would have a bigger area to be able to work with a surface area to stack cars or for ingress and egress or whatever else.

Assistant City Manager Iglesias: Commissioner you'd need about three more cars roughly because it's a very constraint site.

Commissioner Keon: OK.

Assistant City Manager Iglesias: So it would be about three more cars.

Ms. Rosen: If I may just say so we could better explain perhaps the business model. When we built that store ten years ago, we didn't have a lot of drive-throughs. In fact, in the Miami area today we have many less drive-throughs than we do cafes. We are moving in a different generation of stores you'll see suburban areas, but nonetheless, we have a better plan today if we were building that store today, that we didn't have ten years ago, and we think now what we had planned with our renovations to make those interior improvements to increase the efficiencies and better improve the circulation of the folks in the store making the beverages. If you will allow us time to implement what will be interior and then in addition to now exterior changes, I think we are going to solve this. And I think what I will tell you is, if we can adapt the site to allow for the right flow of customers from point "A" to point "B," we are going to be in a much better place.

Commissioner Keon: OK. But I think it's important that you understand that at any time that there is stacking...

Ms. Rosen: Yes, I apologize for the frustration. We have to staff our stores in advance three weeks with employees and what we call partners and unfortunately we weren't able to respond as quickly as we would have liked. But we did respond Thursday morning, those folks are out there and we believe and we've seen results that we have caused any backup onto U.S.-1 since we've implemented the plan, and if we need to tweak it or adjust it we are happy to do that.

Mayor Cason: OK. Thank you very much.

[End: 11:54:47 a.m.]

