

City of Coral Gables City Commission Meeting
Agenda Item K – Discussion Items
May 9, 2017
City Commission Chambers
405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Raul Valdes-Fauli
Vice Mayor Pat Keon
Commissioner Vince Lago
Commissioner Michael Mena
Commissioner Frank Quesada

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)

Agenda Item K – Discussion Items [Start: 12:51:35 p.m.]

Mayor Valdes-Fauli: Alright, any other comments, any Commission items, anything else.

Vice Mayor Keon: I wanted to, in going back to the issue of the parks and the zones, is it my understanding then that you will bring back a plan to us on the 30th as to how we would do that.

City Manager Swanson-Rivenbark: Based on your direction we've scheduled that for the 30th.

Vice Mayor Keon: OK. Mayor Valdes-Fauli, I was surprised in my discussions with the Manager and with the City Attorney that when we pass a resolution there is not an administrative "reg" that goes along with the resolution that we pass; and I guess I assumed there was one, because I know when I worked for Policy and Legislative Aide for Jimmy Morales in the County, and did a lot of the work in drafting and helping to draft legislation, there was always an administrative "reg" that went with the policy, so it was a relationship between the policy and how the policy then would be administered and authority generally given to staff in the administration of that. So, the intent of the legislation was carried through in the administrative order, so that the policy

and the practices align. I was surprised to hear we don't do that, that there isn't an administrative "reg"...

Mayor Valdes-Fauli: Legislative history type of thing.

Vice Mayor Keon: No, regulation that – it's like the implementing legislation.

City Attorney Leen: Can I comment on that. You know it's just been the practice of the City in the past that there have not been regulations. I've spoken to the City Manager about it and she is interested in doing regulation. I think that from a legal perspective, I think that there is a good way to address, how is this well maintained?- you know the business regulations we just did for Miracle Mile, there were administrative regulations. So, I believe that the City Manager has been devising a couple related to the issue that you raised about the swales, pardon me, about the protection zones around schools and parks, and that's just something new that we've started. There is no history of that in Coral Gables. Now there are Code provisions that have mentioned regulations, they just have not been done, so we don't have like a book of regulations, the only exception is the Personnel Rules, we do have those, those are regulations; and then we had a draft set of regulations for the Procurement Department, which were never adopted, and the City Manager when I mentioned it to her told me to work on those two, so Christina Suarez has been working on putting those into a set of regulations as well and they are subject to the City Manager's review. So, my understanding is that eventually and this may be quite soon, actually similar to the City Attorney opinions 2017-001, there'll be City Manager regulations 2017-001.

Vice Mayor Keon: It is usually the administrative staff then that develops the regulation that's the implementing regulation for whatever the policy is, so that it is conveyed appropriately. I think it's something that I think going forward we probably should do, it's usually assigned to the Manager and then through her department directors or whatever.

Mayor Valdes-Fauli: Thank you. Commissioner Quesada.

Commissioner Quesada: Yes, a few quick items. Commissioner Slesnick when she was on the dais was the B.I.D. representative, I believe, so we have an opening now for B.I.D. representative, and because we've got to get people to work...

Commissioner Lago: I nominate Mike Mena.

Commissioner Quesada: And I second that nomination.

Commissioner Lago: Can we run the role.

Commissioner Quesada: Also we need a Chamber representative, because she was also the Chamber representative.

Vice Mayor Keon: No, I was the Chamber representative.

Commissioner Quesada: Oh, you were, OK. What about the Beacon Council?

Commissioner Lago: I nominate Mike Mena also.

Vice Mayor Keon: I think you should do the Beacon Council.

Commissioner Quesada: I know, but Mike Mena's beard is so good for the Beacon Council, it's perfect for the Beacon Council.

City Manager Swanson-Rivenbark: Commissioner Mena, I having been very involved in economic development, I think that role is more of an advisory where Javier would come to you and seek your wisdom, but it's not something where attendance is required.

Commissioner Quesada: However, I think there is an opportunity with the Beacon Council. The Beacon Council has a lot of events where they have trade organizations from different countries that come into town. A lot of times those are companies that are looking to invest or expand in South Florida and they are looking for office locations, so I think it's important for some of those bigger events that we have some representation there, because when I used to do it in the past, I found that to be very helpful.

Mayor Valdes-Fauli: And, I used to do that and we were very, very successful in attracting these companies, Delmonte, and a lot of other companies.

Commissioner Quesada: And also real quickly, I have three adjustments to make on my Board appointments. I know that it's not up until June, but I want to get it done already. So, these are all Coral Gables residents, I know we've got to vote on these, but if you don't mind if I can just group the three of them together, is that OK?

City Attorney Leen: You can.

Commissioner Quesada: So, for Economic Development Board, I currently have vacant, I want to appoint Elizabeth Patino, and then Mr. Clerk I'll give you all their full names and addresses

after and the contact information, for Board of Adjustment, Maria Garcia, and for Planning and Zoning, Jolie _____, on Planning and Zoning.

City Attorney Leen: And Mr. Clerk, so we will treat this as if it's like a Consent Agenda, so there are three items, they'll be a motion and a second and then you can prepare successive resolutions for each of them.

Mayor Valdes-Fauli: A motion?

Commissioner Lago: So moved.

Mayor Valdes-Fauli: Second? – Vice Mayor Keon, yes, it's unanimous.

Vice Mayor Keon: Yes – would you call the roll?

Commissioner Mena: Yes

Commissioner Quesada: Yes

Vice Mayor Keon: Yes

Commissioner Lago: Yes

Mayor Valdes-Fauli: Yes

(Vote: 5-0)

Mayor Valdes-Fauli: Anything else?

Vice Mayor Keon: I'd like to reappoint Marlin Ebbert back to the Sustainability Board, because she had to resign in order to run and she would like to continue that work.

City Manager Swanson-Rivenbark: Ms. Vice Mayor is that under your appointment, your placement?

Vice Mayor Keon: Yes. She was my appointee before, so I just want to reappoint her, because she had to resign and let her continue to meet.

Mayor Valdes-Fauli: Fine. Do you need to call a vote or it's unanimous?

Commissioner Quesada: Yes – unanimous.

Mayor Valdes-Fauli: Alright, any other item to come before the Commission?

Vice Mayor Keon: No. Happy Mother's Day to all the mothers.

Mayor Valdes-Fauli: Wait, wait, wait, we have City Attorney items now, which I left to the end.

City Attorney Leen: So just briefly, I'd like to request an Executive Session in the Cascar Case, Case No. 2013-025997, CA-01 Cascar v. City of Coral Gables, that's the case involving the Alfred Browning Parker house at 2 Casarina Concourse. That case could be going to trial, we are moving for summary judgement. I think we have an extremely strong position in the case, but because there is a lot at issue, its approximately \$5 million claim, although I think the claim is inflated in my opinion, but because there is a significant claim I do feel that I need to brief you on it since it may go to trial. Two, I wanted to brief you briefly about Air B&B, Home Away.....and Flip Key. The City has filed a lawsuit as to Flip Key and for those at home these are for vacation rentals in Coral Gables. The City Commission and staff have been very focused on limiting and prohibiting, and restricting vacation rentals, particularly in the single-family residential district. The way the City views the Code, those sort of overnight accommodations are allowed in commercial, commercial limited in industrial zones, but not in the other residential zones. So Flip Key, we sent a cease and desist letter to, and they have not complied and there was a citation issued and they have not complied, so the City filed a lawsuit. Now as to Air B&B and Home Away, I just want to briefly read into the record what I think will be the settlement with them, because my understanding is that the City, it's not a final settlement, it's sort of a standstill agreement settlement, but it looks like both Air B&B and Home Away in principle will agree to this; and what it does, is the City Attorney's office can prepare a letter on City letterhead that we are going to provide to Air B&B and Home Away for purposes of this discussion, I'll just say Air B&B, we will provide Air B&B and they will provide that letter to all of their hosts, they call them. That letter will indicate where these vacation rentals are illegal in Coral Gables, so it would be very clear about that; Air B&B will then provide that to each of their hosts by e-mail and they'll also post it on their website for new hosts coming in. What I've been told by Code Enforcement and what the City Prosecutor has been told is that whenever we raise this issue with a resident they comply. They don't often know that it is not legal in our City and I don't think we've ever had to actually issue a citation, I think we've issued warnings and we've issued warnings that says to a number of properties and Mr. Vice Mayor, I believe that we sent you a list of them. There are many properties on there; my understanding is that they've complied whenever we've asked them to. The issue the City has always had is that we can't get all the addresses, so we can't send them all a letter, so now through this Air B&B will send a letter to them. In addition, the Home Away will provide, pardon me, Air B&B will provide confirmation to the City that it has done that, either through an attorney who will write a letter to us indicating on behalf of them that they've done this, or through some sort of affidavit or false claim ordinance document that we can enforce. In addition to that, they will not object to the City appearing as amicus curia in the case involving the City of Miami, which is pending now in

the Third District Court of Appeal and we would appear in that case simply to present our position, the City of Coral Gables, so that if the Court, the Court may rule in favor of Miami they may rule against, whatever happens we want to make sure that doesn't hurt Coral Gables to enforce its ordinance. In addition to that, Air B&B will assist the City in removing any nuisance properties from their site as they arise, but those will be specific properties that come up, it would not be every property at once, it would be specific properties as they come up. In addition, they will not interfere with our, the City's enforcement efforts, so we can continue citing houses as they come up, you know there is nothing that prevents us from doing that. This would be in effect for six months and then we'll be reevaluated, each side reserves all rights, during the six month period though, assuming they comply with this agreement, we would not enforce the subpoena or a cease and desist. So that's the idea, the idea to go forward, we believe; and I've been working with the City Manager, with the Assistant City Manager, both Assistant City Managers, the Deputy City Attorney and I brief each of you individually. I believe that this would be a good way to see if we can get voluntary compliance by all the residents, because ultimately if they comply there is no real issue, they don't have to get into a lawsuit with Air B&B. So, I wanted to brief you on that in public before we go forward and agree to this, and I want to know if you had any input in public, as opposed to the individual discussions, in case there was any disagreement.

Mayor Valdes-Fauli: I think it's a good compromise and a good solution. I wanted to ask on Flip Key, do we also notice the homeowners that they are violating the law.

City Attorney Leen: Well with Flip Key they will not give us the information, so we are filing a lawsuit to prevent Flip Key from operating in Coral Gables.

Mayor Valdes-Fauli: OK.

City Attorney Leen: Air B&B and Home Away have worked with us.

Mayor Valdes-Fauli: No, no, but I'm talking about Flip Key.

City Attorney Leen: Flip Key they haven't, so we are asking them to take down all of the properties in Coral Gables.

Commissioner Lago: Now they are going to have to comply or...

City Attorney Leen: They defaulted, yes, so that's the first item. The second item is on Mars Street there is an issue, its come up, let me give you the address, and this will come back to the Commission, because we would want to alert the property owner as well, but the property is

13071 Mars Street, this has come up with some records that the City has received, some e-mails and things like that, this is in Gables-by-the Sea. There is an area that is part of the public right-of-way that's at the end of Mars Street that has been fenced off, it's been fenced off for about 20 years, there is a covenant running with the land, and there is a resolution addressing this. Both of them indicate that the City can require that this fence be removed at any time. What essentially happened is the homeowner that's next to it has been maintaining it and fenced it off, and in a sense has been using it as part of their property, because it's fenced off and they've been maintaining it. The issue is, is that the neighborhood wants access to the public right-of-way and the City has the absolute right to remove the fence.

Mayor Valdes-Fauli: It's very, very appropriate for a neighborhood to have access to the public right-of-way.

City Attorney Leen: So what we've done is, we've asked the homeowners association through Nancy Sanabria who e-mailed me back that she is going to be bringing it to the homeowners association, so that will give the adjoining property owner notice, and then we will bring it back to the Commission, so the adjoining property owner wants to come and speak about it, they would be able to. So, it's being done transparently with the Commission ultimately determining whether to remove the fence or not, which you have the absolute right to. Lastly, there is an issue that has come up with Ross Dress for Less at the end of, at Douglas and Miracle Mile. We are working it out. I just want to briefly put it in the record, I told them I would. As you may remember a couple of meetings ago, and I know Mr. Holmes was here and spoke about it, remember the City was doing – there is a private part of the sidewalk and there is a public part of the sidewalk, and the City would like the entire sidewalk to be uniform. So, Mr. Holmes had an objection at a meeting and what the City did was, we reapproached the problem, and so we created what's called a license agreement, so its voluntary, where the party can go forward, the property owner, and agree to the City putting in pavers and the property owner doesn't lose any of their development rights, but it ensures for uniformity, and so far we've gotten compliance with everyone. Ross though has resisted, I don't know if they fully objected yet, they initially objected, but now they say that they are going to work with the City and they should be letting me know in a day or two. The only reason I raise this is because, the whole idea of this approach was not to have an ordinance requiring this. I will have to come back, and we agreed to do that; we agreed to proceed in this way assuming everyone would agree voluntarily to put the pavers in. I still have the opinion that the City is a zoning matter could require the public sidewalk to be uniform, in order so you don't have splotches, where you have one sidewalk in one place and a different material in another place, that's an aesthetic issue, the City can require aesthetics, we've done that for 90 years. So, I'm just raising this issue with you, I will be bringing it up at the next meeting, hopefully by then Ross would have agreed, I believe they will, they told me they think they'll agree in the next day or two. The issue though that, I see our ACM/Building

Official saying nodding no, the issue that's come up though is that we don't want this to delay the project at all, and we are there right now, right Mr. Building Official, we are there right now, and so we need to get this agreement from them today or tomorrow, if possible, otherwise it may end up delaying the project if we were to go back and do it. So, that's why I'm bringing it to your attention today. So, I was wondering if I could get, if it would be OK if they'd be a unanimous consent that I should go forward and go back to Ross, and tell them that the Commission would like them to do this, that this is very important to the City.

Mayor Valdes-Fauli: I think that we all are in agreement with that and unless I hear some objection, you do have the unanimous consent of the Commission.

City Attorney Leen: To proceed – I will let them know. Those are all my....Mr. Mayor.

Commissioner Lago: Thank you.

Mayor Valdes-Fauli: Anything else to come before the Commission? We are adjourned.

[End: 1:08:30 p.m.]