

City of Coral Gables City Commission Meeting
Agenda Item F-4
July 11, 2017
City Commission Chambers
405 Biltmore Way, Coral Gables, FL

City Commission

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

City Staff

City Manager, Cathy Swanson-Rivenbark
Assistant City Manager, Peter Iglesias
City Attorney, Craig E. Leen
Deputy City Attorney, Miriam Ramos
City Clerk, Walter J. Foeman
Deputy City Clerk, Billy Urquia

Public Speaker(s)

Agenda Item F-4 [11:52:58 a.m.]

An Ordinance of the City Commission of Coral Gables, Florida, creating Section 82-5, under Article I, Chapter 82, Vegetation, of the City of Coral Gables Code, providing for maintenance of hedges on private property, providing for a repealer clause, severability clause, codification, enforceability and providing for an effective date.

(Sponsored by Vice Mayor Keon).

Mayor Valdes-Fauli: Next is F-4, ordinance regarding vegetation.

City Attorney Leen: Yes.

Mayor Valdes-Fauli: Vice Mayor Keon.

City Attorney Leen: So, Mr. Mayor, Item F-4 is an Ordinance of the City Commission...

Mayor Valdes-Fauli: It's yours.

City Attorney Leen: Oh, you --- What did you say, sir?

Mayor Valdes-Fauli: No, no, no. It's vegetation and Vice Mayor Keon is...

City Attorney Leen: Yes. An Ordinance of the City Commission of Coral Gables, Florida, creating Section 82-5, under Article I, Chapter 82, Vegetation, of the City of Coral Gables Code, providing for maintenance of hedges on private property, providing for a repealer clause, severability clause, codification, enforceability and providing for an effective date. This item is sponsored by Vice Mayor Keon. Also, there had been some changes -- well, actually, this is not between first and second reading. There were some changes -- this came up at the last meeting. There's been some changes in anticipation of first reading, which -- and this is a public hearing item, Madam Vice Mayor, who's acting as mayor for this item until the Mayor comes back. So, with that, I would turn it over to our Deputy City Attorney.

Deputy City Attorney Ramos: So, as all of you may remember, at the last meeting, I was asked to give a presentation about options regarding the regulation of hedges. There's been a couple of occasions where private property owners have gotten into disputes about Property Owner A puts in a hedge. Property Owner B finds that the hedge is too high, can't maintain the hedge. And so, the question was, well, what do we do about regulating them and we didn't have anything in our books. So, last Commission meeting, I presented to you different options from different municipalities in the state of Florida and how they regulate. By and large, they regulate by

height, so they just have a height requirement and that's that. The will of this Commission was to not regulate by height, so we looked at other options. And, the option that's being put forth today in this first reading is essentially that the property owner that installs the hedge has to maintain all three sides, meaning the top, you know, and the side on the opposite side of their side. So, whether that means another private property or whether it means the public right-of-way, it would be their maintenance requirement. Now, it does not grant a right of access necessarily to that property owner to enter into private property on the other side. So, if their neighbor, Neighbor B, does not let them on, then their duty to maintain that side goes away and transfers to Neighbor B. So, that's what's proposing for you, and I'm happy to take direction and changes between first and second, if that's the will of the Commission.

Vice Mayor Keon: Can I just talk about this for a minute? I know that there was some discussion over this. You know, there have been two incidences where there are -- you know, there are hedges that are about -- almost 20 feet high or 18 feet high. You know, the back neighbor to them is elderly, lived there a long time. They have -- their yard man is as old as they are and they don't want -- you have to get up on a ladder in order to be able to trim it. You know, they have grave concerns about it. We said, okay, you know, well, ask the people who the hedge belongs to trim both sides. If the individual that is the back-door neighbor doesn't want someone to come on their property, then it reverts to them. It is only to help them. And, the incident has -- what has happened is when the neighbor -- an elderly neighbor tried to trim the hedge, the other neighbor didn't like it and called the police and they were threatened with arrest over trimming a hedge.

(COMMENTS MADE OFF THE RECORD)

Vice Mayor Keon: I mean the only thing is just -- if there is a complaint, there is some ability to address, you know, that hedge. And, it's usually -- it's really because it's not when, you know, a hedge could be maintained from the ground, you know. It's when you have to, you know, you

can allow hedges, if it's in the back, if it's 20 feet high -- I mean, I don't want you to regulate the height. It's just when it gets to that height, often it is -- it's a burden on...

Commissioner Quesada: Can I walk through...

Vice Mayor Keon: The backdoor property neighbor.

Commissioner Quesada: Can I walk through...

Vice Mayor Keon: So, that's all.

Commissioner Quesada: A practical example?

Vice Mayor Keon: Yeah.

Commissioner Quesada: Practical example. My backdoor neighbor has got 20-foot-high hedges.

Vice Mayor Keon: Right.

Commissioner Quesada: And, it comes in over my yard for a certain portion in the back. So, it's their -- under this law, it's their obligation to come in and trim that up, right?

Vice Mayor Keon: If you ask.

Commissioner Quesada: And if I say no, then it's my obligation to maintain it.

Vice Mayor Keon: It's your obligation.

Commissioner Quesada: So, that I can cut up going up and they can't -- if they call the cops or something...

Deputy City Attorney Ramos: To the property line.

Commissioner Quesada: I'm well within my right.

Vice Mayor Keon: To the property line.

Commissioner Quesada: Obviously...

Vice Mayor Keon: Yeah.

Commissioner Quesada: To the property line.

Vice Mayor Keon: Right.

Commissioner Mena: But isn't that already your right?

Mayor Valdes-Fauli: Yes, it is.

Commissioner Quesada: Yeah.

Deputy City Attorney Ramos: So, under common law, you can already cut to the property line. That's correct.

Commissioner Quesada: So, we're just...

Deputy City Attorney Ramos: When the police got called out on that case, it was really nothing for them to do, because she was allowed to trim to the property line.

Commissioner Lago: Are we just...

Commissioner Quesada: So, then we're just...

Commissioner Lago: Are we...

Commissioner Quesada: Codifying the common law.

Deputy City Attorney Ramos: Well, we're putting the onus on the neighbor who installed it.

Commissioner Mena: Yeah. Then we're -- actually, we're not. We're actually, on the front end, shifting the burden...

Deputy City Attorney Ramos: Correct.

Commissioner Mena: To the owner...

Mayor Valdes-Fauli: Right.

Deputy City Attorney Ramos: Of the hedge.

Commissioner Mena: Of the property on which the hedge is planted...

Commissioner Quesada: Oh, because...

Commissioner Mena: To first attempt to cut it themselves.

Deputy City Attorney Ramos: Correct.

Vice Mayor Keon: Well, most of the time, people are willing to cut it themselves. When they can't or it's a burden for them to maintain...

Commissioner Quesada: Is there any penalty involved?

Vice Mayor Keon: That's the issue.

Commissioner Mena: Why -- and I guess...

Deputy City Attorney Ramos: Yes. If they didn't do it...

Vice Mayor Keon: Okay, then you...

Deputy City Attorney Ramos: It would be a Code Enforcement violation.

Vice Mayor Keon: You know you're an attorney. If you can give me a better solution, I'm more than happy...

Commissioner Mena: Well, one of the other...

Vice Mayor Keon: To listen to what you have to say.

Commissioner Mena: Well, we could talk -- I mean, I think we can talk about that now. One of the other concerns I have is why doesn't this apply to trees, for example. Like I have -- for example, earlier this year, my neighbor has a tree which has large branches that overhang not only my property, but my house, my roof.

Vice Mayor Keon: Right.

Commissioner Mena: And I had to pay somebody, an arborist, at great expense, to come out and cut that. Why is this any different than that? Isn't that, at the end of the day, my problem because it's on my property?

Mayor Valdes-Fauli: What happens if we impose the obligation on the neighbor to cut his or her hedge goes into your property and the yard man falls from 20 feet up...?

Commissioner Lago: It's a liability.

Commissioner Mena: Yeah.

Vice Mayor Keon: Yeah, I don't know.

Mayor Valdes-Fauli: Does the City have the liability, because we imposed the duty on...

City Attorney Leen: No. We would take the position that we have sovereign immunity from any liability.

Mayor Valdes-Fauli: No, no. Okay, we have sovereign immunity, but is it our liability?

City Attorney Leen: You know there could be liability that's transferred. Probably both property owners could potentially sue...

Commissioner Lago: Well, I mean, we could potentially be embroiled in litigation for sure. I mean -- and I'm not a lawyer. I leave that up to this side of the room.

City Attorney Leen: We could include an immunity clause.

Vice Mayor Keon: I don't know.

Commissioner Mena: And in addition to the fact...

Commissioner Lago: (INAUDIBLE).

Commissioner Mena: Yeah. In addition to the fact that this process envisions the owner of Property A trying to go to owner of Property B, and then the...

Mayor Valdes-Fauli: Right.

Commissioner Mena: Owner of Property B saying no. How do we even regulate -- how do we even know that conversation happened?

Mayor Valdes-Fauli: They have a dog.

Vice Mayor Keon: Well, it's because we'd get the complaint through Code Enforcement.

Deputy City Attorney Ramos: Right. We would get a complaint, and then we'd require them to file...

Commissioner Mena: And the person says, that's not true. He never asked me, and then what do you do?

Mayor Valdes-Fauli: The person bites...

Vice Mayor Keon: You ask them.

Mayor Valdes-Fauli: The dog bites the person's leg off.

Deputy City Attorney Ramos: We'd require them to file a false claims ordinance statement, probably some sort of affidavit.

City Attorney Leen: We would order them to maintain it. It happens.

Commissioner Lago: There's like a mediation -- is there like a mediation of some sort over the hedge.

City Attorney Leen: No, what happens is we order them to maintain it...

Vice Mayor Keon: Yeah.

City Attorney Leen: And then the property owner that's there will say, well, I want them -- my neighbor to maintain it, and then they would enter into this agreement. You know, we could create a registry of these, if you would like.

Commissioner Mena: That's an opposite of what I would like. I mean, that's -- I think we're creating a lot of bureaucracy over trimming hedges.

Mayor Valdes-Fauli: Right, right.

Vice Mayor Keon: Yes.

Commissioner Mena: And I'm concerned about that.

Vice Mayor Keon: But, I don't know how to help this woman. I don't know how to help these people.

Commissioner Mena: I mean, I guess...

Vice Mayor Keon: And, I guess I have a need to help them.

Commissioner Mena: What I'm not understanding is why can't they just be responsible for cutting whatever's on their property the same way I was with the tree on my property earlier this year. I don't understand.

Commissioner Lago: Yeah. Like for example, I have a neighbor -- my backdoor...

Vice Mayor Keon: Well, how often...

Commissioner Lago: My back...

Vice Mayor Keon: Go ahead, go ahead.

Commissioner Lago: My backdoor neighbor doesn't cut their trees, so I have to end up cutting the trees. If not, I'll have an issue with the power lines that are running, you know, in between our two property lines. I take it upon myself -- again, I don't cut sufficiently as to damage the tree or to cut too much into their property. I cut -- so, every month I have my gardener come cut to the property line. And yes, it's a nuisance, but that's the only way I know how to deal to remedy the issue.

Commissioner Mena: Yeah. But, the converse is true as well, right? If you had a branch that was growing through their property, they would have to cut it back to the property line (INAUDIBLE)...

Commissioner Lago: But I would...

Commissioner Mena: And, I'm not saying that you would ever do that, Commissioner.

Commissioner Lago: No, no, no, no, no, no. But it's happened before. It's happened...

Commissioner Mena: Of course.

Commissioner Lago: Before. But, I have a better relationship with the dentist on the other side.

Commissioner Mena: Right.

Commissioner Lago: So, he's come to me and told me, Vince, do you mind if we cut, you know, a portion of that hedge. And I said, of course. He goes, don't worry. I'll take care of it myself. But, some people don't have that relationship.

Commissioner Mena: I hear you.

Commissioner Lago: In the case...

Vice Mayor Keon: This poor, old woman.

Commissioner Lago: This poor, old woman, who I've been copied on that email. So, I understand her, but I also tend to lean towards what Commissioner Mena's saying, because how many of these cases do we have? Do we want to get involved in hedge trimming and whether you cut the hedge too much or you didn't cut the hedge enough or you're encroaching on my property.

Mayor Valdes-Fauli: I agree with you a hundred percent. There are many, many of these issues -- hedges, dogs, whatever it is, lawn mowing when the yards abut -- that I think would be better left for the neighbors to work out among themselves. By common law, they can cut whatever part of the hedge spills onto their property -- or tree or whatever, the adjoining neighbor. And maybe we're trying to legislate too much.

Vice Mayor Keon: Maybe. I mean maybe it can just go to a dispute. I mean, we have a citizen's dispute...

Mayor Valdes-Fauli: Is that (INAUDIBLE)...

Deputy City Attorney Ramos: We have a neighbor dispute policy, but that's when neighbors are complaining against each other...

Vice Mayor Keon: Right.

Deputy City Attorney Ramos: On stuff that's not life safety, so it wouldn't cover this type of situation.

Vice Mayor Keon: Oh, then leave it. I don't know.

City Attorney Leen: (INAUDIBLE) complaint made by the neighbor that the other neighbor cannot touch the hedge on their side. The complaint to police was out of order.

Deputy City Attorney Ramos: Correct.

Unidentified Speaker: Right.

City Attorney Leen: They can definitely cut to the -- and we can reaffirm that.

Deputy City Attorney Ramos: Well, in her case, I offered to bring them both to my office and serve as a mediator and she did not want to be present. She didn't want anything to do with her neighbors, so...

Vice Mayor Keon: She's afraid of them.

Mayor Valdes-Fauli: Fine.

Vice Mayor Keon: She's older. Alright, I mean, we can just withdraw it. I don't...

Mayor Valdes-Fauli: Okay.

Vice Mayor Keon: I don't know...

Mayor Valdes-Fauli: If you want to withdraw it...

Vice Mayor Keon: The answer. I wanted an answer and I was hoping we would...

Mayor Valdes-Fauli: No, but there is no answer, because it depends on the...

Vice Mayor Keon: Get one. I wanted an answer...

Mayor Valdes-Fauli: Yeah, yeah, of course.

Vice Mayor Keon: But, I don't know that there is an answer.

Mayor Valdes-Fauli: But, we can't legislate -- there may be an answer and that depends on relations between the neighbors, but we can't legislate an answer for...

Vice Mayor Keon: I -- yes.

Mayor Valdes-Fauli: Twenty-some thousand...

City Attorney Leen: One other thing I should raise since this may not...

Vice Mayor Keon: Okay.

City Attorney Leen: Go forward then is that the County does have -- it's an eight-foot...

Deputy City Attorney Ramos: The height restriction, yeah.

City Attorney Leen: Height restriction on hedges, which we have not applied in the City. So, and we're not...

Mayor Valdes-Fauli: What's the restriction?

City Attorney Leen: We're going to continue not to apply it.

Mayor Valdes-Fauli: How many feet?

Deputy City Attorney Ramos: The County has an eight-foot -- eight feet.

Mayor Valdes-Fauli: Eight foot.

City Attorney Leen: Unless we receive other direction.

Mayor Valdes-Fauli: Okay, so we...

(COMMENTS MADE OFF THE RECORD)

Mayor Valdes-Fauli: Go on? Commissioner Keon? Alright.

Vice Mayor Keon: Yeah, we can. This is...