

**City of Coral Gables City Commission Meeting
Agenda Item H-4
August 25, 2015
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
Planning and Zoning Director, Ramon Trias**

Public Speaker(s)

Agenda Item H-4 [4:10:42 p.m.]

Review of Rules of Procedure approved by the Board of Architects

Mayor Cason: Craig, we'll go to H-4 now – H-4, 5, and 6. Mr. Manager who is going to address H-4?

City Manager Swanson-Rivenbark: We are having the City Attorney together with Ramon Trias.

Mayor Cason: OK.

City Attorney Leen: Thank you Mr. Mayor. So H-4 is ratification, consideration by the City Commission. The Zoning Code allows the Board of Architects to adopt rules of procedure, and then they are to be ratified by the City Commission. Now ratifying them, you can change them if

you wish. The reason this came up and we are not going to get into the specific item because it may come before you at some point as an appeal, so we should not get into the merits of the specific item, but it involved three residences that were being developed in a modern style and it involved architect Ronny Matae, you may have heard about some of the issues. We shouldn't discuss that today, because it may come before you in an appeal. But what happened was because there was some disagreement over that particular application between some residents and among residents and among the applicant, the matter has gone before the Board of Architects several times, and the issue came up, well what is the appropriate procedure for how this comes before the Board of Architects. And it was my view to that – and I think that this is shared by Development Services, but the language that's presently in the Zoning Code was a little unclear, and rules of procedure can be used to clarify issues, so there could be two different interpretations of something, do a rule of procedure that's a recognized legal mechanism for addressing any sort of ambiguities or clarifying a provision in the Code. The only issue is that a rule of procedure can never be outside the Code. You can't do something that the Code prohibits, but you can clarify. So, I think that, that's a useful aspect for these rules of procedures. So what it does is, it establishes a procedure whereby if a matter goes before the Board of Architects and it comes before them as a panel – now a panel of two or a panel of three can decide the matter. It really is a panel of three, but since two is a majority allows the majority of a panel to decide the matter. That's even if the Board of Architects doesn't have a quorum, because the Board of Architects themselves normally has at least seven members.

Mr. Trias: It currently has eight.

City Attorney Leen: Pardon me, eight, so a quorum on the Board of Architects could be four or five depending on the circumstances. So this allows – and we'll say its four because that's half, but what's interesting about this is that it allows, it makes it clear that a panel doesn't need eight people to be present, it only needs three, so it allows the Board to operate.

Mayor Cason: It allows them to operate even faster and more efficiently because you wouldn't have the whole Board doing every single thing, you just split up....panels.

City Attorney Leen: Exactly Mr. Mayor. So you can have one panel of two and you could still operate as the Board of Architects, which is important to get things moving, because most things are not contentious, most things go through the process. The second thing that this establishes is that, if the City Architect or a majority of that panel, which could be two members, really two members of the panel believe that this is a significant project and really should go before the full panel, the full Board, the full Board can become a panel, so it can be up to eight people can then sit as the panel and make a determination, that is not quasi-judicial, that can be done immediately at that moment. So it allows the full Board to weigh in on important matters, which our understanding was what the Commission would want, because you'd want a different use of the Board of Architects. At that point, if there is an aggrieved party, I should say one other thing. That is not a public hearing; the public is invited and at the discretion of the Chair the public may comment, but it is not a quasi-judicial public hearing. What often happens in those Board of Architect hearings is there will be a deferral and the architect will go back, I will defer to the Planning and Zoning Director in a moment, because he can talk a little bit more about the practical aspects, but from a legal perspective what often happens is they can go back and take the comments of the Board of Architects, come back and eventually a decision is made. Now, let's say a decision is made and this is the legal issue, and there is an aggrieved party, which could be a resident within 1,000 feet, for example, or it could be the applicant themselves, maybe they don't like the way it was approved. This recognizes the right of that aggrieved party to then request a quasi-judicial proceeding before the full Board of Architects that would be at a later time. They have to request it very quickly under these rules, because the idea is not to have this take a long time but to immediately get to the question. At that quasi-judicial hearing residents have the right to speak, so there is a procedure in place that gives residents the right to speak if they want to speak, they can always be an aggrieved party and they can speak, and that's a quasi-judicial hearing. A determination is made by the full Board of Architects and then once that quasi-judicial hearing is held they can go before the Commission as an appeal and then you will hear the matter yourselves and you've heard a couple of appeals from Board of Architects review. One other thing I should mention is, the Board made a comment that they would like the Commission to adopt these rules of procedures, but they would also like you to consider an

amendment to the Zoning Code, and this would require an amendment to the Zoning Code, eliminating the quasi-judicial Board of Architects hearing and having the Commission do the quasi-judicial hearing. The feedback I got from the Board of Architects was that they feel like they are not well situated to do full evidentiary quasi-judicial hearings, that ultimately their role is simply to give their best judgment as to architecture and not to weigh the competing issues that sometimes come in on a broader scale related to how this particular developer what they want to do for the City in terms of, is this development going to be in the best interest of the City regardless of the architecture or maybe you want to make a change in architecture. There could be a lot of reasons why maybe it's taking a long time and the Commission wants to consider that, because you may want to consider public sentiment and what the public thinks, as opposed to simply the architectural integrity of the building. There are a lot of things that the Commission may want to consider in that quasi-judicial hearing that's ultimately up to you, but their concern was that they are not well situated to have these quasi-judicial public hearings.

Mayor Cason: How many do they have? How often does this come up?

City Attorney Leen: It's never come up because we've never really had the quasi-judicial hearing, because no one has requested it. So in the past the appeal just went directly to the Commission, but the Code – it would be better to do it this way, because the rules of procedure are very consistent with the Code.

Mr. Trias: In the past three years, I recall only one appeal to the Commission, so it's very rear.

City Attorney Leen: And I think since I've been here there's been two.

Mayor Cason: So they want us to make judgments on architectural issues?

Mr. Trias: Not exactly. From my perspective what the rules allow is a quorum of two, which is great, because it allows for – like in the summer we had three members....so quorum was difficult, but a quorum of two, which is the panel, make it official and then allow for that. And

then the appeal, the official appeal, there is a public hearing and people are noticed and the property is posted, to take place only at the Commission level, that's what the Board prefers. I concur with that view.

City Attorney Leen: I think the concern is that, let's say 30 residents come and are not happy with this type of architecture, that's fine, that's their community that's their legitimate right to dispute it, but the Board of Architects was saying, we don't know how to evaluate that because we just look at it for architecture, we don't look at public sentiment, that's really the Commission, as the elected officials. So that was their concern.

Mayor Cason: So I would think that if we do that we would need to have some restriction, you know have somebody who lives eight miles away that comes in and wants to opine on some project. You would have to have something like 1,000 feet.

Mr. Trias: My recommendation would be to follow the 1,000 foot notice and that would be the aggrieved party, the City Attorney has opined on this. There is a middle step which is that informal appeal to the full Board that is also an option; it's just that it's not a public hearing. So, I think that allows for some flexibility to resolve issues when there are personalities involved and maybe clashing of whatever. They may request, during the meeting, right, during the meeting they may request...

Mayor Cason: Let me ask you that intermediate step. I've had somebody come to me recently that said, well there is group think. If one of the architects opposes all the rest of the architects and say that's my buddy, I'm going to oppose it too, is there any chance that, that intermediate step to have a secret ballot so that that issue doesn't come up?- you just put it on a piece of paper, it's not quasi-judicial, before it comes to us or does it have to be public?

City Attorney Leen: It can't be a secret ballot; there have been Attorney General opinions. They can do a written ballot, they can ballot it, but it has to be....

Mayor Cason: You all submitted the same type when we pick the City Manager.

Mr. Trias: We could discuss that with them and with the City Attorney.

City Attorney Leen: In an appropriate case the Chair could ask for written ballots, the Code provides for written ballots, as I recall. It's very rarely done, and it's done sometimes when you are choosing a City Attorney or City Manager.

Mayor Cason: Will it come to us only with a majority, unanimous – would it come to the Commission on this proposal if they all agree that it should go to us we should decide?- is that a unanimous decision?

Mr. Trias: It would be an appeal. It would be an appeal.

City Attorney Leen: It's an appeal. It's a request for a quasi-judicial hearing.

Mayor Cason: It would be from the applicant not the....

Mr. Trias: Or an aggrieved party. Either the applicant – so it has to be a formal request for an appeal.

City Attorney Leen: The only caveat is because we need to give a resident the right to speak at some point in the process; if we are going to charge a fee then we have to give them the right to speak before the Board of Architects. If we are not going to charge them a fee then they could have the right to speak before the City Commission. What we can't do is make someone pay an appeal fee to be able to speak, because the state law says they have the right to speak once.

Mayor Cason: Anymore discussion on this? H-4 – do we have a motion?

Commissioner Lago: I'll make a motion.

Mayor Cason: Commissioner Lago makes the motion. Second?

Commissioner Slesnick: And the motion is?

Mayor Cason: To agree to this proposal rules of procedure.

Commissioner Slesnick: So if you have more than two and you have an aggrieved party then it comes to the Commission?

Commissioner Lago: Yes. Exactly.

City Attorney Leen: That would be the comment and so staff would have to work on an amendment to the Zoning Code to address that.

Mayor Cason: But the intermediate step could be that you could go to the full.

Mr. Trias: Yes, that's the intermediate step, but it's not advertised, there is no public notice and so on. The advertising again, is an appeal to the Commission.

Commissioner Slesnick: And the time process, since the Board of Architects meets every week, you would have somebody could appeal for the following Board of Architects meeting to have the full Board.

Mr. Trias: They could do it at that meeting.

Commissioner Slesnick: Oh, they could do it, and then it would come to the next Commission meeting after that to put it on the agenda.

Mr. Trias: Yes, if it's properly advertised.

Mayor Cason: I think it would be important not to get overwhelmed by these things. If they go to the full Board the same day and they agree with the two, then yes, they come to us.

Mr. Trias: The practical reality is that 99 percent of the cases are fine.

Commissioner Lago: That's what I was going to say, I think in the last four years, you mentioned, there's been one case.

Mr. Trias: One appeal to the Commission in three years.

Vice Mayor Quesada: Hold on a second. I've got one more question. Are we creating a situation potentially that it's a difficult issue of Board of Architects doesn't want to vote so they don't show up, so it automatically reverts back to us?- so we create an addition to that procedure that we are proposing here, if you miss more than two of these or three of these votes then you are automatically out of Board of Architects. So that I don't want to encourage a situation on Board of Architects because I don't really want to really vote on this, I'm just not going to show up, and all of a sudden we get a lot of projects coming our way. I'm just thinking about the unintended consequences.

Commissioner Lago: Don't forget also, this is a voluntary Board where they meet very frequently. So again, it's not like most Boards that meet once a month, this Board is meeting on a weekly basis and sometimes they hear 100-120 different cases a day.

Mr. Trias: Yes. Yes, it's over 100 usually. This is a very small request; this is once every two or three years.

Commissioner Lago: Sometimes when I've been here I've seen the Board of Architects could extend late into the afternoon, when you expect it to be over say 10:30, 11 o'clock, no they are here 1, 2, 3 o'clock. I don't want to overburden these professionals who give up a lot of their

time already, and if this is far and few occasions, in reference this happened once in the last few years, I'm willing to...

Mayor Cason: If it gets out of hand we can always revisit later on.

Mr. Trias: Oh yes.

Vice Mayor Quesada: Alright, just keep it in mind.

Mayor Cason: We had a motion from Commissioner Lago, Commissioner Quesada seconds.
City Clerk.

Commissioner Keon: Yes

Commissioner Lago: Yes

Vice Mayor Quesada: Yes

Commissioner Slesnick: Yes

Mayor Cason: Yes

(Vote: 5-0)

[End: 4:24:33 p.m.]