

City of Coral Gables City Commission Meeting

Agenda Item F-1

January 27, 2009

City Commission Chambers

405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Donald D. Slesnick, II

Vice Mayor William H. Kerdyk, Jr.

Commissioner Maria Anderson

Commissioner Rafael "Ralph" Cabrera, Jr.

Commissioner Wayne "Chip" Withers

City Staff

Interim City Manager, Maria Alberro Jimenez

City Attorney, Elizabeth Hernandez

City Clerk, Walter J. Foeman

City Clerk Staff, Billy Urquia

Public Speaker(s)

F-1 [Start: 10:44:28 a.m.]

Discussion regarding the possibility of establishing mediation procedures to facilitate neighborhood and developer dialog when conflict exists.

Commissioner Maria Anderson

Mayor Slesnick: F-1 Ms. Anderson.

Commissioner Anderson: Yes, thank you Mr. Mayor; this is an item I bring before you talking about the possibility of establishing mediation procedures to facilitate neighborhood and developer dialogs when conflicts exit. A few years ago I sat through, we all sat through some hearings at Fairchild Tropical Garden, and back then that idea started to brew; we were neighbor against neighbor over a fence, and I let this idea sit for a while; and I've sat through many a hearing, and many a contentious zoning hearing, or a decision-making hearing between neighbors and wondered why I haven't brought this. Last Commission meeting gave me great resolve to bring this idea forward, an idea that is actually not new among cities. It's already existing in many cities, including one that I was referred to in Louisville, Kentucky. Coral Gables is our home town, and many of the times that we sit here, we have our neighbors come before us; and we know many of them, and we have to...many a time, it's a happy occasion, but sometimes as in many of our zoning hearings, its not a happy occasion; and its not because of the issue, its because of the emotions, the fear, the distrust, the facts get distorted, things like that; and my concern is that because of this kind of adversarial relationship that exist normally and tends to exist normally between developers and neighbors, and neighbor to neighbor, that we develop a process that helps us guide the discussion along better. My desire is always and always will be for the truth, and wherever the truth lies, that's how I rule; and I would like to find a way to put together a process where there is a third party mediator that would be called into the

process when there are serious issues at hand between neighbor against neighbor, or for my case when a development project comes against and neighbors are fighting it, for whatever right reason or they feel, that person would be to get the parties together to look over the facts, to create fact sheets, to develop points of agreements, points of disagreements, and try to come to some type of resolution, so that when the Commission receives this information we are basing it on fact, and not on fear, or anger, or you know, the things that happen very often that really distorts the picture of the process. I think when you have the facts before you and people have come to the table, whether they are for something or against something, if they have come to the table with a third party, it might have a better outcome, my feeling would be. For me, it makes for a better decision-making process on my part; I think it eventually ends up in a better community feeling. We get the distinct pleasure of living and driving by our own decisions; and I'd like for those decisions be made in a more impartial, thoughtful and less antagonistic manner on all parties. My thought would be that this process, whomever initiates the change, whether it be a development project or a neighborhood issue that's initiated, that person would pay for that process; it could be done through the City and we would have a pool of mediators to have that happen; and I'd like the opportunity to have staff take a look at something like that and bring it back to us for review, and see how we can manage to do that. My initial desire would be to do things with a larger scope with development and neighbors, and maybe expand it along the way; there are other models like I said in Louisville, Kentucky, that have different types of issues that they deal with, but I'd like to start with that and see how we go for that.

Commissioner Withers: Let me respond. I think it's a good idea, but I think its dangerous territory, if we don't really be prepared to deal with the issues. Is it St. Phillips Church?- we kind of had a mediation process, and I think that went relatively well, and everybody both sides, neighbors, Church and City all worked out well. I think the JCI building, we had a mediation process, and that went relatively well.

Commissioner Anderson: I will beg to differ on that one.

Commissioner Withers: Well I mean, as far as the local neighbors.

Commissioner Anderson: Yeah, the local neighbors, but see....

Commissioner Withers: That concern one is, the mediation process might do very well for the local neighbors, but beyond the local neighbors the impact on the rest of the folks and the City could create some animosity, because local neighbors...

Commissioner Anderson: Give me an example because I'm not following that part.

Commissioner Withers: No, what I'm saying is, if the local neighbors work out a deal with the developer and they are all happy and its good for them and all that stuff, is it really good...number one, is it what the City wanted?- and I'll give you an example, Merrick Park, something that has stuck in my mind for ever, and ever, and ever. The entire Merrick Park was going to be a certain tree, which the City was going to allow the developer to put in the right-of-way, as an agreement to that certain tree, the developer would maintain the tree, maintain the tree grate, clean the sidewalks, trim the tree, be responsible for the tree, sign a waiver that if someone

tripped on the root they would be responsible, it would be totally their responsibility. One person argued, and argued, and argued, and negotiated a deal with Merrick Park saying, that I want to keep these four trees in front of my place, and the City kind of said, OK; did not force that neighbor to put the tree in that the City felt was right to put in, so we kind of let the mediation direct the City, as opposed to the City being owner and a shareholder. We kind of backed off and said you know what, we don't want to tread on that political mine field, we'll let the mediation decide the final resolution of the issue; and so I don't want the City to lose the perspective that they are the final authority, what they say goes, even though it might not be what we agreed with during the mediation; and then secondly, to carry the point forward, is if the local mediation is good for the hundred foot or two hundred foot area where everybody is discussing, does it have impacts outside the City?- or outside that hundred foot or two hundred foot diameter that might be adverse?- and that other neighbors might not...do you see my...

Commissioner Anderson: I do somewhat. I remember with the JCI project there was a mediation, a private agreement took place between neighbors, while that was fine, it worked for them, that's not what I'm trying to figure out; and I'm not trying to skirt making a decision on any issue, because I certainly have been in the hot seat of all of them. It seems like I make a comment, you all can vote five, but I seem to be singled out a lot of times, but I know the feeling, and I'm fine to bear it because I'm not afraid of making decisions if I feel they are right, but sometimes I feel that just the issues are clouded by anger and fear and suspicion, I mean, let's face it, that's just the real thing; it would be a City directed mediation; we encouraged that for UM and the neighbors, and I think that resulted, I think, in a better project and when we came we kind of blessed it, we don't have to, but my whole idea is truth telling; I mean, what I saw at the last Commission meeting really concerned me beyond belief; there were people that I care about, people that I know, people that have been a friend, and there was some gross misstatements made there on issues that I believe can cloud and become very political when we are called basically to try to make those decisions in as best conditions as possible, but I'm not trying to remove our...we have to make the tough calls always, but I just wanted to....go ahead.

Mayor Slesnick: Well, I was just going to comment sort of in the vain that you are proposing and that Chip commented, I believe in mediation very much. I worked with mediators for thirty-five (35) years now in my practice; and I am a certified mediator, and I supported greatly our efforts in mediation at the University of Miami, St. Phillips, and so forth. There is a problem with it, and its not one that, we maybe able to address it and that is, that to be effective in mediating you have to have identifiable parties and not too many of them; and as it turned out the University of Miami for whatever the rest of the City thought, the rest of the City sort of allowed the neighborhood and the University to work out the deal, we didn't get a lot of input from other areas of the City; and if you take on certain subjects now and mediate, I'm not sure who's it going to be and whether or not there is going to be a....and I have to be very honest, I am getting more and more concerned that we have one homeowners association in the City who has strong feelings about everything that happens from the north boundaries to the southern boundaries, and they are going to impose upon us strong feelings about these things, so if you start a mediation about a development up near Douglas entrance...

Commissioner Anderson: Well, I think we could limit that...

Mayor Slesnick: OK, I'm just saying, if we move forward in doing this, we need to be concerned about this, is all I'm saying.

Commissioner Anderson: Absolutely, and I would limit it; I'm a firm believer that the people who are in the adjacent area or affected area should be the ones that be involved in that kind of thing, only if and when there is a big disagreement.

Mayor Slesnick: It seems to me, and this is not going to satisfy everybody, but if you mediate you mediate with the most affected parties, and then of course other parties get a chance to present to us when it comes to us, but at least we have a mediated version of the proposal by the most affected parties, and then of course everyone in the City has a right to comment, take a position, and make their case known when we consider the final thing.

Commissioner Anderson: Absolutely, and my goal would be to begin as a limited affected party area.

Commissioner Cabrera: Can I comment?

Commissioner Anderson: Absolutely.

Commissioner Cabrera: I've got mixed feelings, but I don't want to say no to your idea because I think your idea has certainly merit and it should be looked at further, but I'd like to comment on a couple of things that have been said. I recall the tree issue at the Village of Merrick Park, and I think you made a really good point of using that as an example, at the same time what I also recall from that one episode was that we eventually took a position as a City Commission, do you remember that? I remember the vote; the vote was 4-1.

Commissioner Withers: Well, I don't remember.

Commissioner Cabrera: Oh yeah.

Commissioner Withers: On those four trees?

Commissioner Cabrera: On those four trees, which if I had to vote on it again, I would have voted in your direction, more for the fact that those trees are just not working out on that sidewalk, and they are creating all kinds of obstacles for people to walk.

Mayor Slesnick: Make a motion?

Commissioner Cabrera: No, I don't; I've got other motions that I'd like to make before this one, believe me, don't ask me for those kinds of things, I've got a whole list of them, dating back to 1924 of resolutions that were made, which we weren't even around then; 1934 I take it back. Secondly, I've seen mediation have some very positive effects, and then at the same time very negative effects on our City; for example, the mediation that took place between Burger King Corporation or Flagler Development in those days, and now Bacardi with regards to traffic calming. While we calmed an entire area of our City, in fact it's your neighborhood...

Commissioner Anderson: And I had nothing to do with it.

Commissioner Cabrera: Oh absolutely, I never...

Commissioner Anderson: I make that clear.

Commissioner Cabrera: I never suggested that you did in fact...

Commissioner Anderson: You never know. I know you didn't mean to, but it's important to note.

Commissioner Cabrera: OK. As I was saying, with regards to that issue the bottom line is while we calmed an area of our City, we created a completely new set of challenges for another area that was contiguous to it. So now we are facing those problems where Mr. Delgado's meeting with residents of that area who now are asking for more traffic calming, and we don't have the monies that we had from the mediation because they paid for it and now we are having to look at ways to pay for it out of our own pocket. The UM Village, the housing village, yeah, we had a fairly positive outcome, but if you think about it, the outcome was delayed just inordinately; we went longer than we should have and if you think about it, if UM was in the same position today that it was three years ago, would they have been able to build those because of the economic times. So that mediation could have had a tremendous adverse affect on the process, and as far as truth telling, I think that Commissioner Anderson makes a very valid point, but you know what, I have learned in the last eight days that you are not going to get truth telling, because of some homeowners association who thinks that they are empowered above this government wants to put out a message that is erroneous, misguided, completely full of misinformation, they are going to rile up the residents, and they are going to take a very active position as they have in the last, like I said, eight days where we have been swamped with e-mails calling us shameful and comparing us to Washington D.C. beaurocrats bailing out banks over a park, that's how idiotic this whole thing has been. So for that reason, I have just tremendous mixed feelings about mediation.

Commissioner Anderson: Well these are actually kind of the projects that would work, and its City lead, that's the kind of stuff I'm looking...I mean, I also got that same e-mail, and I've gotten other things on other projects, so I understand; but I do think its incumbent upon us to lead a process of truth, and its at least an opportunity to bring you back a proposal, and incorporate your thoughts, and you are certainly – obviously you would have to agree to it as a Commission, but I think these are the kind of things that we can begin to do to put some boundaries, some controls over what gets out there; we want facts and a person that will agree. I'm looking for persons that voted on mediation, would agree on a fact sheet, a white paper saying, these are the facts, and everybody signs off. So that paper is actually part of our document, because I mean, I have to tell you, it was very – it has been very disconcerting over certain big decisions we've had to make, the kind of misrepresentation that's been made, and the kind of things that's been said about us at different times. I just want truth and we can base it on truth, and whether people chose to accept it or not, at least we have it documented that people have agreed that, yes, this is the truth, and if they wish to change that beyond that on their own, that's not up to us, but at least we make decisions based on more of the facts; we can distribute it

to the press, and we can begin – yeah, whatever that's worth – but at least we have something, and I do believe that it makes for better decision-making for my part, I speak only.

Commissioner Withers: But these would not be for projects that are built-to-right?

Commissioner Anderson: No, no, these are only things that come to us, we could set the parameters; I'm not looking for that to happen with all of them; I'm looking only right now, at a limited time or a limited process, to look at issues of development projects or projects in the City with neighbors that's causing concern, its not as-of-right projects because that would be...

Commissioner Cabrera: Would the mediation then, in your proposal, would the mediation be done by an outside mediator?

Commissioner Anderson: It would be something that we could say, the City would control, like we put out an RFQ or whatever, to seek qualified, we would have a pool of mediators that would be available with credentials and certifications, and then the two parties would have to agree to that person.

Commissioner Cabrera: And who would pay for the mediator?

Commissioner Anderson: The person who is initiating the change; let's say in the development case, the person that is bringing forth the zoning change or project, that person would put that into the pool, into a City pool for that.

Commissioner Cabrera: OK, obviously you've given this a lot of thought; here's my response to what you just came up with. If I am the applicant, then my responsibility would be just to simply fund for the cost of the mediator, and then the City would have a selection pool of which to choose from, is that right?

Commissioner Anderson: That both parties would have to agree to.

Commissioner Cabrera: OK, that was the part that I was looking for; excellent.

Commissioner Anderson: Right; not one, but everybody has to agree, unlike in the past some of those mediations...

Commissioner Cabrera: You know, I'm fine with it, but you know at the end...

Mayor Slesnick: [Inaudible – off mike]

Commissioner Cabrera: You could, you could have a very long fight; at the end of the day, I see ourselves in many, many instances as mediators, I mean, we may be final decision makers, but I've seen everyone on this Commission mediate an issue before us, whether it was St. Phillips Church, or the DYL, or the Village of Merrick Park, or even before I took office, I recall Commissioner Kerdyk and Withers doing some mediation, I mean, I can just go on and on, JCI, Kings Bay; I can just start rattling it off, and we've all taken positions, but at the end of the day

we have also taken on how we were going to vote, but I have seen mediation in a public forum. I don't want to give you the impression that I'm not supportive of it, but I still have mixed feelings over it.

Mayor Slesnick: OK, well Ms. Anderson has asked that if we will give her, her support and asking the staff to come back with a more detailed proposal.

Commissioner Cabrera: That's only fair.

Commissioner Withers: That's fine, even if it improves the process of the required neighborhood meeting, where we ask to reach out...

Commissioner Cabrera: Formalize it.

Commissioner Withers:...let's formalize what's required, where we want to see...

Commissioner Anderson: Correct, absolutely.

Commissioner Cabrera: And I'd like you to just consider the following; as you enter the mediation process, even before you enter it, perhaps there is a component where the staff has a formal meeting with both parties before a mediator comes to play, so that staff can inform and educate both parties on what Ms. Anderson alluded to earlier as stating the facts.

Commissioner Anderson: Absolutely.

Mayor Slesnick: And I think too, we need to make sure we don't require every developer or walk in and start paying for something, I mean, it needs to be over a controversy.

Commissioner Anderson: I think we can figure that out with staff. I had that same concern, how does that get triggered?- and I think that's something that maybe staff can look at and figure out and bring us back a proposal.

Mayor Slesnick: Very good.

Commissioner Anderson: Thank you very much.

Mayor Slesnick: Thank you Ms. Anderson.

[End: 11:05:00 a.m.]