

City of Coral Gables City Commission Meeting
Agenda Item E-2
January 28, 2025
Police and Fire Headquarters
2151 Salzedo Street, Coral Gables, FL

City Commission

Mayor Vince Lago

Vice Mayor Rhonda Anderson

Commissioner Melissa Castro

Commissioner Ariel Fernandez

Commissioner Kirk Menendez

City Staff

City Attorney, Cristina Suárez

City Manager, Alberto Parjus

City Clerk, Billy Urquia

Public Speaker(s)

Wayne Pathman

Agenda Item E-2 [12:08 p.m.]

An Ordinance of the City Commission approving the vacation of a public right-of-way pursuant to Zoning Code Article 14, “Process,” Section 14-211, “Abandonment and Vacations” and City Code Chapter 62, Article 8 “Vacation, abandonment and closure of streets, easements and alleys by private owners and the city; application process, ” providing for the vacation of the remaining portion of Kenmare Street lying east of Harlano Street, Coral Gables, Florida; providing for a repealer provision, severability clause, and providing for an effective date. (Legal description on file). (12 14 24 PZB recommended approval, Vote 7-0)
Lobbyist: Tucker Gibbs Lobbyist: Wayne Pathman

Mayor Lago: We now move back to item time certain, E-2.

City Attorney Suarez: E-2 is an Ordinance of the City Commission approving the vacation of a public right-of-way pursuant to Zoning Code Article 14, “Process,” Section 14-211, “Abandonment and Vacations” and City Code Chapter 62, Article 8 “Vacation, abandonment and closure of streets, easements and alleys by private owners and the city; application process, ” providing for the vacation of the remaining portion of Kenmare Street lying east of Harlano Street,

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Coral Gables, Florida; providing for a repealer provision, severability clause, and providing for an effective date.

Public Works Director Diaz: Good afternoon, Hermes Diaz, Public Works Director. Nothing has changed since the item was brought here at the prior Commission meeting. If you want to see the presentation, let me know, but it's exactly the same.

Mayor Lago: We have any public comment Mr. Clerk.

City Clerk Urquia: No, Mr. Mayor.

Mayor Lago: I'll entertain a motion.

Commissioner Castro: I'll move it.

Commissioner Fernandez: I'll second.

Mayor Lago: Want to say something.

Mr. Pathman: Good afternoon Mr. Mayor, Vice Mayor and Commissioners, my name is Wayne Pathman with law offices, Pathman Law, 2 South Biscayne Boulevard, Miami, Florida. I'm not going to go through everything I went through last time, but I do want to remind all of you of one very, very important fact. You are moving to vacate the property. The vacation is subject to a plat, which was created in 1921. That plat has specific language in it. So, if you go forward with the vacation, by operation of law, the language in the plat must be followed, which means that the predecessor, an interest in this case, our client, is entitled to the property. Why? – because the language says, if the use ceases to be, in this case a street, then it goes back to the original dedicator. There is no other possibility. So, by operation of law, you should find that Mr. Fertini, the current owner of the property that abuts the roadway, his predecessor was the one who dedicated it so the city at the time that he gets the property back. If anybody else has a claim, they can file it, but nobody does. Nobody has a legitimate claim to this property other than Mr. Fertini. So, if you take the action that you are going to take today, which I assume would be to vacate the property, then you must enforce the language of the plat which gave you the property to begin with. Let's assume for a moment that Mr. Fertini was not the owner of the property, but the initial party who dedicated to the city was still there and still owned the property. Would he not be entitled to his property back? Let's assume their names are Mr. and Mrs. Smith. Would Mr. and Mrs. Smith be entitled to have their property back the city is vacating it and the answer is yes, and any real estate, any law transaction Florida Statute, that's what it requires, that the original dedicator get their property back. The law also says that any part that has a revisionary interest, that's a predecessor interest, is entitled to that property, which is Mr. Fertini, and this plat is the only document in all the records that shows how the property was acquired, when it was dedicated, and for what purpose it was dedicated. So, if the city now is abandoning that purpose or vacating that purpose, then Mr. Fertini

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should get the property back. If your concern is you don't know, you're not sure, you should give him the property anyhow. Someone else has a claim they can file it in court, but it shouldn't require a citizen of your city who has a plat that requires the property to be, in essence, given back to him as the predecessor, to now go perfect his rights and spend thousands of dollars, tens of thousands of dollars possibly in court, when there is nobody else who has a claim. Nobody has a claim to this property but him. The plat is clear, the language is clear. It says the remainder and remainders when said streets and roads needs to be used for public highways are closed or relocated in accordance with this law. So, if you are closing the street, if you are ending the vacation, I mean you are going to vacate the property and you are ending its use, it automatically by virtue of this plat reverts back to Mr. Fertini. I'm only asking that you find that, if anybody has a claim, let them file it, but why should Mr. Fertini who has that right now have to go do that.

Commissioner Castro: Because its not under our jurisdiction.

Mr. Pathman: It is. You have the plat.

Commissioner Castro: We cannot make that decision. This body cannot make that decision. You are going to have to either go to mediation or go to court for that. The most we can do right now is vacate that alley.

Mr. Pathman: But that's exactly the point I'm making. If you vacate, the plat requires you to give him his property back. That's what it says, the reverse. He has the only revisionary interest.

Commissioner Castro: Then City Attorney correct me, if I'm wrong, but that's not a decision this body can make, correct.

City Attorney Suarez: That's not a determination that's before you that is within your purview. The job of the City Commission right now is to determine whether the criteria for vacation of this street is met and whether the city is deciding to make that determination to vacate, since the city does not own the right-of-way and pretty simple, we cannot, the city doesn't have the authority to deed it or grant it to anyone.

Mr. Pathman: If I can ask a question. How did the city get the property?

Commissioner Castro: City Attorney, can you answer that.

City Attorney Suarez: The property was dedicated to the city.

Mr. Pathman: And how was it dedicated?

City Attorney Suarez: The city did not get the property. The city has a possessory interest in the property. The city is not the owner of the right-of-way.

Mr. Pathman: Who was the owner of the property?

City Attorney Suarez: So again, the Commission's role here is to determine whether the city wants to vacate this street, that's the decision that the Commission is making today.

Mr. Pathman: Without being argumentative, I submit to you that that's wrong. This plat is what dedicated it. If you no longer wish to have that property, it reverts back automatically by virtue of the plat. You can't have someone who didn't dedicate it, right, you have to have a dedicator. In this case it was the predecessor and interest of the property owner where Mr. Fertini lives. If you no longer have that use, what happens to the property? You don't actually have to do anything, other than say, you are following the language of the plat. There is no other possibility. If the City Attorney can't answer my questions, then I must be right, because the only rights that the city has is through the plat. If you are vacating, which the plat says, if you cease to use the property or vacate it, it reverts back. Who does it revert back to? The entity that dedicated it. I don't understand why the Commission can't follow that. You are causing a citizen now to have to go into the courts, he doesn't even know what would he file, and say, I'm perfecting my interest that I already have as an operation of law. Its really the reverse that should happen. If anyone else has a claim, they should go file it, not the person who has the right pursuant to the plat. So, I'm only asking to simply follow the plat.

Commissioner Menendez: Go ahead Mayor.

Mayor Lago: No, no, go ahead.

Commissioner Menendez: We are here to follow our City Attorney's advice and I'm ready to move and vote. I believe, you know obviously both parties have the opportunity to find a solution to the situation, but we follow the advice of our City Attorney's office, so I'm ready to move forward per their advice.

Mr. Pathman: Well, thank you very much.

Mayor Lago: I'll entertain a motion.

City Clerk Urquia: We have.

Vice Mayor Anderson: Yes

Commissioner Castro: Yes

Commissioner Fernandez: Yes

Commissioner Menendez: Yes

Mayor Lago: Yes
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(Vote: 5-0)

Mayor Lago: Thank you.