

City of Coral Gables City Commission Meeting
Agenda Item F-1 and I-3 are related
February 23, 2016
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

Public Speaker(s)

Dexter Lehtinen, Village Attorney for Palmetto Bay
Edward Silva, Village Manager for Palmetto Bay
Charles Knight, FPL

Agenda Item F-1 and I-3 are related [10:17:58 a.m.]

Status of ongoing mosquito remediation on the vacant FPL site, along with other outstanding FPL issues.

Mayor Cason: We had a almost time certain at 10 o'clock, so we are going to move onto Item F-1, and now I'll ask the City Attorney to lead off the discussion.

City Attorney Leen: Thank you Mr. Mayor. Item F-1 is also being consolidated with I-3, which is a status report implementation of emergency mosquito elimination ordinance by the City of Coral Gables and receipt of resolution from Palmetto Bay. I would just like to thank Charles Knight from FPL coming today and I would also like to thank, we have a treat, we have the Village Manager and the Village Attorney from Palmetto Bay. We really appreciate them coming to talk about their resolution, and they are going to have some time to be able to present

to you in a few minutes. So the way that I thought would be best to proceed, because this is both a policy and a legal issue, was to give you a little bit of a background regarding the ordinance and our justification for it without getting too much into the law, because the goal here today is not to make this a legal dispute. I think Mr. Lehtinen is going to talk a little bit about their perspective on the law as well, but the goal is ultimately to find a resolution. Then I was going to turn it over to Commissioner Keon to talk a little bit about her visit to Palmetto Bay. We were invitees of FPL and Palmetto Bay yesterday and we were able to go over there, she can talk about that. And then we are going to have the Village Manager and Village Attorney speak and then FPL will likely conclude. My understanding, I don't mean to speak for FPL, Charles Knight, but he is not going to get involved in the dispute between the cities, they are just trying to be a good corporate citizen and address the issues that have been raised, and we really appreciate him being here today. So as you may recall, the City recently adopted Emergency Ordinance No. 2016-07. This ordinance made it illegal to have a mosquito infestation where mosquitos came into – were either in the City of Coral Gables, or came into the City of Coral Gables. The ordinance does mention neighboring properties to Coral Gables, which I think is the source of the dispute. I want you to understand that the view of, at least my office, and I believe Code Enforcement in enforcing this is that we do believe that this is not extraterritorial, in the sense that what we are seeking to prohibit are the mosquitos coming into Coral Gables. The analogy we would use and I know Commissioner Keon has one as well that she may mention, is the situation where we've had this happen before where someone may come from outside the City and dump garbage or debris, Code Enforcement looks through it and if they see an address that's outside the City they will cite it, because they are the violator in the City. That is what this ordinance seeks to do. I know that there is a dispute over whether it does that or not, but that's what it seeks to do. I believe it does it, but what happened was, once this was adopted Palmetto Bay was concerned about it and passed a resolution under Chapter 164. We've done that as well in the past. What that means is that it initiates the intergovernmental dispute resolution process. It allows Palmetto Bay to come here and ultimately would lead to the two Commissions meeting or in an emergency circumstance to a lawsuit, and I believe they have invoked the emergency language in their Chapter 164 resolution. But the goal through Chapter 164 is to try to work the matter out without litigation, which is certainly our intent today. But I did want to make it clear that the way that the City would present this ordinance if we did have to go to court and defend it, it would not be focused on Palmetto Bay, it would be focused on the fact that mosquitos are coming into the City and it's causing harm to our residents and that's what we are seeking to prohibit. I just want to be clear about that, that's the City's focus, that's how we would defend it. So what I would propose at this time is that Commissioner Keon speak a little bit about her perspective. She was the sponsor of the ordinance. This ordinance was passed 5-0 by the Commission and it's meant to address the public safety emergency. And I know ultimately, I know this because we were out there that Palmetto Bay, City of Coral Gables, FPL we all have a

common interest here and we all agree on addressing the issue. So hopefully we can resolve all the legal issues too. With that I'll turn it over to Commissioner Keon.

Commissioner Keon: Thank you. We visited the site of the FPL site that is immediately south of Kings Bay yesterday morning, and I will tell you that it has been cleaned up, the debris has been removed.

Mayor Cason: How big is the site?

Commissioner Keon: How many acres is that site?

Mr. Knight: Including the sub-station property 82 acres.

Commissioner Keon: 82 acres. It's a huge area that I think about a third of it is mangroves and wetlands that we need to be sensitive to, the rest of it is an open field. But they have now finally cleaned it up. And our issue was, since last fall residents along that border in Kings Bay calling about the increased mosquito infestation in the area. They know that they are in a low-lying area, they know they are close to the water, they know that there are mosquitos and there are nats in the area, but it was considerably greater than it had been in the past, and we got in touch with mosquito control and working through the County came out, and it was Mosquito Control from Dade County that told us that they believed that when they got access to the FPL site is that was where the mosquitos were coming from, because there were some containers, there was standing water, there were some holes that needed to be filled because the water was puddling, and for a whole variety of other issues.

Mayor Cason: I have a question on that. Is the sudden increase of mosquitos was that something to do with your demolition of the plant there and -- why suddenly an increase?

Commissioner Keon: Well, I think there was no activity on this site because they weren't actively working on the site, on the power plant at the time, and it wasn't being maintained.

Mayor Cason: OK.

Commissioner Keon: So, I think it was for the lack of maintenance; and we have had this conversation with Mr. Knight, and you all will remember that he's been here before us a couple of times on this issue, so when we finally pass this ordinance they did finally respond, and in the last two weeks it has been cleaned up. We asked Mr. Knight to come here and to please give us, share with us their plan for mosquito control, because we said its private property, they need to control what's happening on their private property, that really isn't the role of the County to

spray individual's private properties to control mosquitos, and their plan to maintain the site so that it is not overgrown and fill the holes and do whatever. So asked could we meet yesterday morning prior to our coming here, so I could see for myself what had been done; and they have over the last couple of weeks....Mr. Knight will provide us with what their plan is so we know what their plan is going forward and I spoke to one of the residents who told me that in the last week or so it seems to be a little better. We also know that the weather this year has made it particularly difficult too with the amount of heat and the rain and everything we've had, which just speaks to having to be more diligent in the maintenance of areas where we know that's a problem.

Mayor Cason: Let me ask Mr. Knight to come up before we hear from Palmetto Bay because I think its important we hear from you what you are going to do going forward about the problem, because maybe its gone away, hopefully.

Commissioner Keon: It will probably go away as long as it continues to be managed, so you'll provide us with the management.

Mr. Knight: Honorable Mayor and Commissioners, good morning, Charles Knight representing Florida Power and Light company, 4200 West Flagler Street. In response to the introduction by the City Attorney and the comments by the Commission, I just wanted to reassure everyone that FPL has implemented a proactive maintenance approach at this property. Our maintenance in the past did not include mosquito spraying and we realized that relying on the County to provide that service was perhaps not in the best interest of Coral Gables and Palmetto Bay, so we were successful in retaining a private mosquito spraying service provider and so we've been applying mosquito spraying on a weekly basis beginning in the last week of January. Shortly after the January 26th Commission meeting, we were able to get a provider on board much more quickly than I expected, quite frankly, so I was very pleased with the fact that we now have a mosquito spraying contractor on board and that mosquito spraying activity is occurring each week. We are treating the entire available property and so we've been doing everything we can to make sure that mosquitos are no longer coming from our property and affecting the residents of Coral Gables and Palmetto Bay.

Mayor Cason: Does that mean that Miami-Dade will no longer attempt to spray there, you are going to do it yourself.

Mr. Knight: We have notified Miami-Dade County Mosquito Control that we are spraying. Certainly if they would like to continue spraying we will allow them access to do that, but from our perspective there may not be a need to have both parties spray, particularly since we are

spraying on a weekly basis now going forward, that's part of our proactive maintenance program for the property.

Commissioner Keon: And you have a mowing program and everything else now.

Mr. Knight: We have mowed on the property previously, but we've decided to mow more on a scheduled basis. The mowing program involves monthly mowing in the winter months when you have less rainfall and less growth, and then bi-weekly in the summer months.

Mayor Cason: Has anyone done a study of the types of mosquitos?- are they the Zika-type of mosquitos or are they just marsh mosquitos?

Commissioner Keon: They are marsh mosquitos.

Mayor Cason: Marsh mosquitos.

Mr. Knight: My understanding based on discussions with Miami-Dade County Mosquito Control, is the type of mosquito that's commonly found in areas such as this property are the type that you see in coastal wetlands in and around the bay waters, and so, to my knowledge that particular species of mosquito is not known to carry Zika virus.

Commissioner Keon: Right. I think yesterday when we were with the Mosquito Control, or the biologist from Miami-Dade County, and we were discussing this whole issue, we wanted the public to know and we want FPL to know that this ordinance didn't only apply to FPL, or to that issue. It is also within our own community where you have homes maybe that have abandoned pools, there are fountains and everything else, and the City has gone to extraordinary means to ensure that the fountains in the City have chlorine and chlorine tablets in them. And we know that what we discussed yesterday was that particular mosquito that transmits the disease is more likely found in around homes where there is standing water and its not marsh water, but regular household type standing water, and the likely reason that we have not suffered to the extent that South American and a lot of places have is because we have screens on our porches, we have screens on our windows, we have air conditioning so people can stay inside with their windows closed. So there are a whole lot of kind of quality of life issues that have helped protect us and some socio-economic advancements and whatever that have helped us from suffering that particular Zika virus, but it could more likely within our neighborhoods to have it than within there.

Mayor Cason: But the mosquito that carries Zika normally only goes a couple hundred meters and its from where its born, it never travels more than a couple hundred – so basically most of it would then be from within Coral Gables, if we had empty pools or those sorts of...

Commissioner Keon: And I think the concern and what I think the CDC is still studying and hasn't come out with anything definitive yet is that the transmission of the disease from someone who is infected why the virus if they were out of town being bitten by a mosquito here, not the same mosquito and a potential for that type of spread. Now that is all part of their discussion, but nothing definitive has come out of the CDC on the spread of it by other insects or body fluids or whatever else.

Commissioner Lago: Mayor, if I may, I don't want to take away from the comments that Commissioner Keon just made in reference to the importance of the Zika virus, but I think above everything, this is truly a quality of life issue. You have the residents, who have contacted the City and basically stated, we can't enjoy our neighborhood, we can't go outside. So, I commend you, I commend FPL for finally taking action and starting the treating mowing on a more consistent basis, but what I want to make sure is, as Commissioner Keon mentioned before, it's been an incredibly wet few months. So what I want to make sure is that when we are monitoring, we are making sure that if it does rain excessively from one day to the next that we have somebody in your company that goes out make sure that FPL is moving that stagnant water, so it's not a breeding ground for these mosquitos. I know that's very difficult to deal with the marshes and the other areas which again are going to be wet naturally, but if we can do anything in regards to standing water, anything that's in our control, I'd really greatly appreciate it.

Mayor Cason: I think putting in the context as well, the City Manager had all of our staff go out on time and-a-half right after we became aware of Zika and the problems to declog drains. You might want to explain what we've done because this is not something alone.

Commissioner Lago: Well besides that, just going off what the Mayor just said. Over the last two years this Commission with the help of the City Attorney has been very proactive in going after abandoned homes, we even came out with abandoned property ordinance, excuse me, which has really allowed us to alleviate that issue and actually remediated homes that had been abandoned for years, not only is it an eyesore, but we had issues, a few, sporadic issues with squatters and also we had issues whether there were breeding grounds for mosquitos. We, like Commissioner Keon said, this is not only dealing with FPL, this is dealing with our own businesses, our own abandoned properties, so don't take it to heart. Thank you.

Mayor Cason: City Manager would you explain a little bit just for the context, if you've been watching and then I'll ask the Palmetto Bay representatives to come up and speak to us.

City Manager Swanson-Rivenbark: Certainly. So Super Bowl weekend we had all of our sewer staff on time and-a-half, so that every drain in Coral Gables, every catch basin could be cleared, and we are continuing to maintain a very proactive approach, because the leaf-blowers put the leaves out into the street and they come and they collect. So the best way to manage that was make sure everybody, every drain was checked to ensure that no other service was delayed. We did have our staff on overtime, we continue to have each of our crews monitoring when waters are pooling for catch basins, and we have now communication out to our residents on how to properly maintain the catch basins in their neighborhood to assist us. As it relates to pools, we've also communicated with our public if they are aware of standing pools, pools that are not being maintained, our Code Enforcement office will go in and we will cite them so that we can stay on top of it, and we have the right to go in and correct the violation if that violation continues to occur. So you've asked us to do a citywide approach to make sure that we are not increasing the mosquito population, in fact we are working hard to decrease it, and we've received several positive comments from our residents for the proactive measures.

Commissioner Keon: I know that inadvertently Palmetto Bay feels offended by our actions because the property is in Palmetto Bay, but with very respectfully to Palmetto Bay, this is the same as the polluter upstream. Now the prevailing breeze in that area is a southeast breeze, which blows the mosquitos and everything to the southeast which is Kings Bay and into Deering Bay. It doesn't blow them back south. So it does affect us, and in my mind it was like the polluter upstream that, if a chemical company dumps chemicals in a particular waterway or a river, it isn't just where the polluter dumps that is a problem. It is everyone along that waterway that is affected by the pollution those chemicals being absorbed into their ground water, into their lives or whatever else. I think the fact that we were most affected by it causes grave concern for us and we need an ability to address that issue. In the future I know that the Manager before we do anything that affects other neighbors, I know will pick up the phone and call. So for that, I'm sorry, it's a good lesson learned, and we will do that. But as long as it continues to be a problem we will continue to have grave concerns. But thank you for what you've done. You seem to have remediated it, in going forward I'm sure we'll work it out.

Mr. Knight: Thank you. I just wanted to add that FPL takes our commitment to social responsibility very seriously. And we are going to continue with the proactive maintenance approach of the site, including the weekly mosquito treatment, even if there is no evidence of mosquitos, we are going to continue to spray out there every week because we don't want to be in a situation where there is another recurrence and we have constituents in Coral Gables who have concerns. So we are going to do everything we can to make sure that there is no more mosquito issues that source from our property.

Commissioner Keon: Thank you.

Mayor Cason: Thank you. Let me invite the City Manager and the City Attorney for Palmetto Bay to come up. Appreciate you being here and if you can stay in case they have any questions as well.

Mr. Knight: Thank you Mr. Mayor.

Mr. Lehtinen: Thank you Mr. Mayor and Commissioners. I am Dexter Lehtinen the Village Attorney for Palmetto Bay and Ed Silva the Village is here as well, on both my behalf and his. I want to thank you for the time and willingness to discuss two really closely related issues. One of course is the mosquito issue itself, the existence of mosquitos and what threat perceived or real they create; and the second is this closely related issue of not the bulk of your ordinance, but the part of your ordinance, Section 2 that refers to neighboring property and the citations that would cite the location of the violation as being outside of your boundaries. With respect to the first, yesterday's visit was useful. Everyone has a different perspective. We had inspected FPL property many times before, but in any event I think FPL has made a commitment and a commitment that you can rely on and Palmetto Bay will enforce in terms of mosquitos and any mosquito problems on their property.

Mayor Cason: Can I ask you a question? Do you have an ordinance on your books that would do basically what ours does?

Mr. Lehtinen: Yes. Well we have a nuisance ordinance. Yours defines mosquito, active mosquito infestation as a nuisance, and we have a nuisance ordinance, don't believe its necessary to say that the mosquito infestation is one among a very long list of things that constitute public nuisances. One interesting thing about the visit yesterday is the degree to which mosquitos are in one sense state protected, because of the mangroves that exist so commonly near Deering Bay and Paradise Point and Kings Bay. Another was the comment by the Miami-Dade biologist that the bromeliads at the entrance to Kings Bay probably create more mosquito habitat, and I'm not complaining about bromeliads they are nice plants, but you know they do hold a lot of water, so there is some matters of perspective as to what you would do with all of your bromeliad owners, who I don't think should have to cut the bromeliads, but I'm just pointing out that there is a substantial variation as to what one can see as the cause of the mosquito infestation over and above the mangrove marshes. With respect to the second issue, Palmetto Bay is simply looking for and I believe adjoining municipalities would feel the same way, a resolution of what we perceive as the extraterritoriality issue and what we believe given how FPL has reacted that you might perceive as no longer necessary either that reference to neighboring property. You know the Florida Constitution specifically says Article VII Section 2, that you have all Municipal

Home Rule power, governmental, proprietary, corporate, but any extraterritorial jurisdiction must be created by Special Act or General Law. Also, 166.021, Florida Statutes says, you have full Home Rule powers. You quoted that in your new Article VII to you historically long Charter. A little difficult to understand, but kind of fun to read parts of it and Special Acts and so forth, but 166.021 says all Home Rule powers except and it specifically says, except extraterritorial powers must be created only by Special Act or General Law. Now the City of Coral Gables with its longevity has a few Special Acts, or a lot of Special Acts on the books, whether those carried over as an ordinance, or can carry over if they created extraterritorial jurisdiction is really not so much an issue. What I'm referring to is the legislature when it created a Home Rule power said that Special Acts will carry over as local ordinances. However, the main point is, look at the very few Special Acts that this City either had or still has, depending on one's interpretation of our Home Rule Charter and so forth. One of them for example, said that you could regulate for sanitary purposes slaughter pens and slaughter houses that were outside of your municipal jurisdiction if those products were sold within your City. I think what that stands for is a recognition that you both needed the Special Act, the law to do that, and the recognition that an affects test alone would never have created it to you. The fact that they have a slaughter house out there that either stinks, so to speak, or sells bad meat, without that Act you couldn't do anything about it until the meat came inside your City. You also have an Act that is no longer of consequence for a reason I'll tell you, but it said that you could provide police protection within a half-a-mile of the City's boundaries, and that was police protection not police powers, not the classic municipal regulatory police powers, but police protection, and that indicated that and that's in your Charter that was 7-KK, or something like that and 7-R was your slaughter house provision by Special Act, and then put in your Charter, but that again says that you had to have an actual law that gave you that authority. Besides that, that actual law that gave you authority for police protection within a half mile outside your boundaries, also says, but never within another municipality, never within another municipality. I know the analogy to upstream pollution is interesting, because I litigated and the fact of the matter is you have no authority against the upstream polluter until that pollution gets into Coral Gables, and you sue for what happens within Coral Gables not the upstream. I know that because Florida has always been upset about what Georgia does to the Swanney River, which is a north to south river, and it's a complicated issue, but Florida simply cannot go and inter-cross its boundary and deal with that upstream polluter for what they do there, and the citation of Florida Power and Light, granted it was a warning, but this for purposes of argument, the paper articulates FPL's potential violation or warning as being in Palmetto Bay, as being in the City, the jurisdiction of Palmetto Bay, not within Coral Gables. Another analogy is interesting. It is true that if someone drives a truck into your City and dumps trash, you have jurisdiction over them because they came into your City. You do not have jurisdiction over them if they dump that trash an inch outside of your City boundaries. Affects tests do not work. As a matter of fact, the reason we have to have development and regional impact laws and so forth that give a region some influence over a big

shopping center that's happening right across your boundaries is because you don't have any affect jurisdiction. That shopping center is going to create bad traffic, that shopping center is going to create too much lights, that shopping center is going to do XYZ. We had to pass development regional impact and regional planning authorities and all kinds of planning laws in order to get some overall view as opposed to the kind of checkerboard, chess board compartmentalization, which is a problem. So kind of in summary, we are hoping and the Village Manager, I apologize for the time, we are hoping that the mosquito issue has for legitimate or illegitimate purposes, Florida Power and Light has reacted to your concerns and we will enforce on Florida Power and Light property and make sure that they keep their commitments, the Village Manager is here for that. However, the neighboring property provision is one that – we are hoping you see it as unnecessary now, that you wouldn't have to say to us that we're right, or we say to you that we're right, that is an issue of no – not of sufficient legal concern to you to have to keep the neighboring provision in your ordinance. You may want to fight to use just a polite term, this kind of affects issue at some other time and some place when it would matter. To us and to the other jurisdictions it matters because of the apparent precedent or perception of the out-boundary or extraterritoriality application. By the way, that analogy of the guy that brings the dump truck in and dumps on your property that analogy would mean you have to cite the mosquito when he crosses your boundary, and I don't mean to be silly, I just mean that's how that analogy would work. So I know the Manager would like to make a comment. We'd be happy to answer questions, but if you could either repeal, I'm trying to find a word that doesn't require you – repeal the neighborhood section, Section 2, neighboring section because it's unnecessary not because we're right, but because of unnecessary, we'll fight that battle if necessary another day, and we would another day, or at least abate enforcement and that would allow us to continue to discuss this and it would certainly be in your interest because we do not have that claim of a immediate, what's the section Mr. Leen?- 164 says, immediate diminishment of substantial rights if you abate, but we don't have that claim. That's why we've said if you would abate, we'd go into the dispute resolution process. I'm not sure we meant to trigger that, tried to word that so we didn't trigger it, because we either would or wouldn't after we find out what you do today.

City Attorney Leen: Before the Village Manager speaks, if it's OK Mr. Mayor, I wanted to say one thing for you to think about, and then I wanted to propose some language that might address your concern which also addresses the City's. Part of this was, you know 910.05 of the Florida Statutes, that was sort of the model of what we are trying to do here, which says that – For example, the State of Florida, if you commit a crime in Georgia, but the effect is felt in Florida and that's an element of the crime Florida can enforce that. So the thought here was that we made the mosquitos coming into the City an element of the ordinance, which is what causes the violation to occur in Coral Gables. I did go down and speak to some of the residents along the border with Kings Bay, and they told us that at 5 o'clock the mosquitos come from that property,

that's where it's originating from. That's what they said. Now, Mr. Lehtinen, I understand, we would have to prove that and that may be a high standard for us, but I just wanted you to understand that was the thinking behind it, and there is some precedent for it. Obviously, if you would like to respond to that, but before you do, I just wanted to – one thought I had was maybe the concern here is just that it's so expressly talks about neighboring properties outside the City. Typically we don't mention anything about neighboring properties, the ordinance just applies in Coral Gables, and if we have an argument that it applies outside, like for example, if someone drives into the City and dumps and then we have to send them a notice outside the City, we just do it, but it doesn't cause the same issue. So one thought I had was, we could substitute both sections, your section that you are concerned about and the first section and just say, it shall be unlawful to be the source of a mosquito infestation, or the proliferation of mosquitos within the City limits. And then it doesn't expressly raise the same issue, although it allow us to reserve our rights and I think we've learned from the situation that if we are going to go into Palmetto Bay, or a neighboring city to enforce this, because we can show evidence that the source is causing the proliferation of mosquitos in Coral Gables, we would give you notice, we could even put that in a resolution, we can give you some time to act. That's just a thought. Ultimately, it's up to the Commission what to do and also to your Commission, to your Council what to do. It was just a thought. I'm trying to come up with a solution after talking to you individually.

Mayor Cason: What about the commercial angle that we discussed before?

City Attorney Leen: The Mayor had also proposed, if you wanted to focus this solely on commercial properties or FPL, we could focus it on businesses, well companies doing business in Coral Gables who allow the proliferation of mosquitos into Coral Gables, that was another alternative, that would be narrower. If there was an abandoned property, for example, although you know what?- abandoned properties are owned by banks which are commercial, so we probably could find a way to apply to them too, but that was something that was proposed by the Mayor, which is another way to address this because FPL is doing business in our City and we could just send them the ticket to their corporate headquarters or we could ticket them somewhere here. That was another idea that was raised for your consideration.

Mr. Lehtinen: If I could just briefly say, suggestions like that which I understand in good faith, both of them or perhaps one has been discussed with the Mayor. I would suggest that that should be discussed in a longer proceeding, not a real long proceeding, but I mean those are matters that we could discuss. In such a proceeding I would probably point out that with a crime of final element of the offense occurs within Florida, or within your City, there is no crime without that final element occurring. It's not like there is a crime already in Georgia and we can prosecute for it because of an effect, you actually have that final element occur, just like a tort. You could probably sue people for nuisance because there is no jurisdictional boundary on your ability to

sue for a nuisance, but the final element of a nuisance tort is the action itself, plus the latter one about commercial, I believe there would be a lot of commercial concerns there, but especially because the incident that's being cited is still entirely outside of the boundaries of the City of Coral Gables. Now the person cited has no control over which direction the mosquitos fly, so the act would be complete outside of your boundaries, and then it would be an inadvertent direction in which the mosquito flies would give you jurisdiction. Actually, I mean to mention those kinds of discussions only because that's why we in Palmetto Bay think that going into, it's called dispute resolution under the statute, that's the only reason we call it dispute resolution, I mean I say discussions, just talk about it, but we would urge – actually you could accomplish everything you are saying by keeping Section 1 and not keeping Section 2 because under Section 1, you can make the argument that you've made. If I'm wrong and you're right I think you can do them under Section 1.

City Attorney Leen: The issue with 1 is, because this was structured and be in the City and out the City, but outside the City does have an element that's in the City, which is the mosquitos coming into the City, but it mentions specifically in the City of Coral Gables in 1, typically we don't put that in our ordinances.

Mr. Lehtinen: If I may? You believe that the mosquitos coming into the City makes it in the City? Of course, I've argued that, that's not true, but what I'm saying is, if it is true, so to speak for purposes just kind of like discussion, if I'm right putting that in Section 1 won't help, but if I'm wrong it's already in Section 1, and you don't need it. But if we could encourage you, being the Commission, to abate enforcement while this is discussed then we have no need and we have no ability even to claim that there is a diminishing...of substantial rights. However, absent an abatement, we believe the regulatory authority is in question and we would seek a resolution or repeal Section 2...and not go to abatement because I don't think you are going to repeal Section 2, at least not today.

Commissioner Keon: I don't want to interrupt you, I'm sorry. If you are finished, can I ask a question?

Mr. Lehtinen: Certainly.

Commissioner Keon: When you were talking it seemed that you were saying that we couldn't be assured that those were the mosquitos that were affecting the people in Palmetto Bay?- is that what you were saying?- that were coming from the FPL site.

Mr. Lehtinen: What I meant to say, and I've argued in court and been told later that I said something....

Commissioner Keon: Well you may be speaking in a very lawyerly manner, and I'm listening in a very non-lawyerly manner.

Mr. Lehtinen: The FPL property was inspected.

Commissioner Keon: Right.

Mr. Lehtinen: And we are not trying to say we inspected it, and we didn't find any problem. So I'm just saying it was inspected and we would continue to inspect it, and the Village Manager commits to doing that. They are elected like you are, so they're more sensitive to me saying well we commit to you to do something. They'll say, well legitimately, they will say, well we were always doing that and that's the position of Palmetto Bay. But given that Coral Gables residents have complained, which they didn't complain to us, but they have complained and we take note of that, and we will act on that to make sure Florida Power and Light carries its desires, which seems to us that the mangroves are a big problem and the bromeliads, but anything FPL contributes to it, we are confident, are we not, Mr. Manager that we won't accept FPL contributing to a mosquito problem.

Commissioner Keon: We relied on the County's Mosquito Control, who we believe to have the expertise in the issue as to where the mosquitos were germinating, and the NOAA website will tell you that the prevailing breeze is a southeast breeze and that's the direction. They'll also tell you, the Mosquito Control, that the mosquitos do move with the wind. So based on those things, it wasn't until we knew all of that, that we continued our discussion a little more vigorously with FPL. I'm not sure I understand everything phrase you used when you speak because you are speaking as an attorney and I'm not, but I'm speaking as a non-trained attorney, an ordinary resident. So I just want to make sure that you understood that.

Mr. Lehtinen: When we walked to that chain link fence, for example, we are saying that within Palmetto Bay all of that mode area of FPL was Palmetto Bay that we will continue to make sure nothing happens in that area. It is true that Miami-Dade said, they also said some things about that mangrove area on the other side of the chain link fence, which is Coral Gables, but I'm not...

Commissioner Keon: And not having been aware of it, we have asked, the Manager has asked our Public Works Department and we talked to Deering Bay to go in and clean that out. The things along that fence come into the mangrove, its stuff that's floating out in the bay and because of the breeze and the tides and whatever else, it all gets stuck in the mangroves. And so we will make a real effort to ensure that it stays cleaned up.

Mayor Cason: Let me ask your City Manager, I'm sure you want to weigh in right now.

Mr. Lehtinen: By the way, the reason I sometimes turn away from you is I don't hear well out of the left ear...

Commissioner Keon: That's OK.

Mayor Cason: Its alright. Don't worry about it.

Village Manager Silva: Good morning Mayor, Commissioners, Village Attorney and Village Manager. It's a pleasure being here, I wish it was under different circumstances. I'm Edward Silva, the Village Manager of Palmetto Bay. Quality of life and the safety of our residents is just as important as it is to our residents as it is to this Commission. The biggest issue that we have here is a failure of communication. We had nobody reach out to us and asked us what we were doing. If that would have been done you would have found out that we have been monitoring our drains, we have been monitoring our sites, we have been going onto our foreclosed properties and treating. We have started this quietly because we did not want to have a conversation about a virus that there has not been one single virus, Zika virus mosquito found in Florida, number one. In fact of the 21 cases that have been found they are all travel related. Number two, if you would have asked us to look at this, if you would have asked to please enforce, we would have absolutely gladly done so. As to what Commissioner Keon just said about the property that's to the east of our property, which is at Deering – no we didn't ask your Public Works Department to do anything. Let me finish please. We pointed that out yesterday. What we have done, which is what neighbors should do with each other is, I have some of my Public Works Department out there right now and we are cleaning up Coral Gables side. I will also tell you that if you go and look at your drains in Deering, if you go look at your drains in Kings Bay, you will find tree cuttings, tree trimmings and that they are again filled with water and they have not been treated, because now we are starting to look on the other side of the property. Now what I will do, unlike what this Commission has done, is I will send the information that we found to your Village Manager, so that you can act and protect your residents. Additionally, if you would have asked Miami-Dade County's biologist that was out there yesterday, you would have found out that they actually have traps around that area because they are trying to figure out which mosquitos are there. They understand that the majority of these are salt water mosquitos, that are born from the mangroves. Usually that mosquito carries no diseases whatsoever. Are they a nuisance?- yes they are. Everybody that lives out there understands that they are a nuisance. However, it's being monitored. Just like Coral Gables, Palmetto Bay when we get a complaint about mosquito infestation we call the County and they come out and spray. That is what we do. FPL has gone above and beyond and have now started and commenced their own spraying program. Above

that the County for many, many months and many, many years have been going onto the FPL property. You can ask Mr. Knight this as well, and they have sprayed. One of the other things that we found out about your residents from Kings Bay is that you have some of the people in Kings Bay that have actually put drainage waterlines, that is bringing their water from their property and dumping it onto the FPL property. That's not very neighborly. That's not something that should be happening. Absolutely not. This should never ever have gotten here. If we would have had that conversation, we wouldn't be here. If we would have been neighbors, we wouldn't have been here. If we would have been grandstanding, we wouldn't be here. We are responsible residents of South Florida. I pride myself on the fact that I have reached out to my sister cities and we are trying to do a coalition of cities. I regret the fact that I haven't reached out to Coral Gables, I really should have, I'll take that. But we are in this together and the responsibility of all our residents and the responsibility of everybody that lives in this area falls on us. We shouldn't be making laws that we are now going to have to waste tax payer dollars both yours and ours on a lawsuit that we believe is frivolous and we will defend it. However, we have offered now, and it's the third time we offer it, either rescind this law, abate it and we'll take it to mediation, because we at the end of the day do not want to end up in court with Coral Gables. We think this is a very bad precedent of a law, we don't believe that Coral Gables would like to have anybody interfering within their jurisdictional boundary lines, just like we don't want anybody interfering in our jurisdictional boundary lines. So with that I will answer any questions that you may have.

Vice Mayor Quesada: When did you become aware? – I was going one way completely and after you spoke I've gone completely the other way. Did you ever know of the standing water and the issues there were on the FPL property?

Mr. Silva: We had never gotten any complaints. Did we know that they were tearing down a power plant and they were going through construction and getting rid of that stuff?- absolutely, we knew that. But like everything else, it takes some time to get yourself through a cycle, which is what FPL has done, and we have been monitoring.

Commissioner Lago: Let me ask you a quick question sir, and first off thank you for being here. My next question to you, you were mentioning about construction, did FPL pull the necessary permits in reference to the construction?

Mr. Silva: Commissioner Lago, absolutely they did. They pulled a demolition permit .

Commissioner Lago: So you were aware that there was something going on during this time process?

Mr. Silva: Absolutely – and we are also aware that every time there was a mosquito call done, we would call the County and the County would come and spray.

Commissioner Lago: Let me give you a little background. My background is in construction management. I have a Master's Degree in Construction Management from the Engineering School at FIU. One of the first things they teach you when you are in the construction business is that you need to make sure that during a heavy rain you need to be on site, preparing your site before you have any major issues. Just simple neighborly efficiencies, it has to do with safety, it has to do with a multitude of issues that we won't get into today. I understand your concern and I understand why you are a little bit upset, but I think there were many, many, many opportunities and I find it hard to believe that none of your neighbors have been griping or have been calling your City like they've been calling me personally; and I know that Commissioner Keon has received calls, I receive them all the time, and like she was saying in reference to the wind and we are not going to get very technical, and I know that Vice Mayor Quesada probably wants to get into more lawyerly discussions, but this is simple common sense in my opinion. If you have a massive property, 82 acres and you are surrounded by mangroves, wetlands, there has to be a major issue, and I understand and I agree with a lot of your points, a lot of them, but we can't depend on the County to come out and spray, I mean it's a fact. They are over-extended in regards to their resources, so when I have residents calling me in regards to this issue and you compound it with the 21 cases, even though none of them were found to be transmitted by mosquito, they've been transmitted by other ways. This Commission has to take action. And the last thing that I want to see, is have an adversarial relationship with a neighbor, that's not the point of this decision, I want to make that clear. I know that Frank, our Vice Mayor probably wants to make some other comments, but I don't want to go in that direction. I think that we've been in that direction long enough. But you are seeing action because the residents have called me already and told me that, obviously something that FPL is doing, some of the maintenance that your City has done, that our City has done, some of the things that you pointed out that we need to deal with right now with the water runoff that maybe some of the residents may be doing. I am not aware of that. I'm going to ask the City Manager to look into that, and she'll look into it immediately. If that's the issue we need to remediate that immediately. Its obviously working. Something is working, because the only two phone calls that I've gotten have been positive phone calls, and by the way, I think it has rained three or four days in the last two weeks. So if you told me it was dry, I'd say, OK, fine. Something is driving – the necessary conditions are not there to proliferate the mosquitos, but there's a lot of water. Something is working. So again, I don't have an issue with maybe amending the ordinance that the City move forward, so that we can be more neighborly, so we can move in a different direction, but I think that maybe we got off on the wrong foot five minutes ago.

Village Manager Silva: And Commissioner Lago, I agree, something is working. It's a shame that we've gotten to the point where we are at right now, but at least we are communicating, which is something that should have happened...

Commissioner Lago: Yes, it's great.

Village Manager Silva: Absolutely should have happened and I said it to your Village Manager and I'll say it now, it's a shame that we've met this way, but there are a lot of things that we as Palmetto Bay can learn from Coral Gables and I hope there are a few things that maybe or maybe not you can learn from us. To your answer on mosquitos. There are over 3 million, I believe that my Vice Mayor stated that it's over 3 million square feet of mangroves down the coast. There is always going to be a mosquito problem there. Directly east of our property there is Deering with their mangroves. So even if the prevailing southeast wind, I would subject that some of these mosquitos are coming from there, but it's not a point as to where the mosquitos are coming from or where they are going to, it's a point of how we both our cities, yours and ours, can get together and address this.

Commissioner Lago: Resources are scarce across the board, resources are scarce, so let's work together.

Village Manager Silva: That is exactly what I'm asking for. Just to work together, and not have to do it through an ordinance.

Mayor Cason: I'm happy that you indicated made clear that you have an ordinance that could address this and that you will address and follow FPL in the future, because this whole thing when we discussed it, really the focus was on those 82 acres, FPL. We were not thinking about any neighbors that had homes with green water in pools. That never crossed anybody's mind, which is probably why we made the mistake of not calling you up and telling you because we weren't thinking about – we are not like invading Crimea, that was never our thought. The idea was, what are we going to do, FPL told us they were going to do it and asked us just in case...

Commissioner Lago: Again, FPL has taken action, but we were waiting.

Commissioner Keon: Five months.

Commissioner Lago: When the issue keeps compounding and the residents keep calling and your answer is, that's outside the City limits, we are running out of options. I'm going to tell you what I do. I lean on Craig Leen and I lean on the Vice Mayor, who are the two attorneys on this panel and I say listen, on this dais, excuse me, how do we find a way out legally.

Village Manager Silva: That's understandable. It's the same dynamics that we all have, however, we are here, we want to be neighbors, we want to work, that's the reason why we are out there today trying to actually figure out how we can jump a fence to be able to clean out some of the containers that are on the Coral Gables side. It's not a Coral Gables jurisdictional, it's a Palmetto Bay, I'm going to go back to what Commissioner Keon said, it's a quality of life situation. We are both facing it, working together we can accomplish it. I just subject it the way that we are doing it and going about it now is not the right way to go about it. I wish we would have known, because we would have stepped in. So that you know what my background is, I'm an architect and I also have a general contract, a residential contractor's license.

Commissioner Lago: So you know what they teach us?

Village Manager Silva: I think so, little bit.

Commissioner Lago: You know how it works.

Vice Mayor Quesada: So just a few thoughts. I have some positive and negative comments on this. The first is, as far as the legal aspect of it, the extraterritorial application, I believe because the impact hits us – I was doing some lexus/nexus on West Law research right now, which I think our City Attorney's position and what we put into play, I'm very comfortable with it. But Mr. Lehtinen what you said, we've never really had any issues with Palmetto Bay, as far as I've been on the Commission. I don't know about before then, if there were any issues positive or negative, I'm not sure so I didn't want to rock the boat. I would have had no problem in repealing or making a motion to repeal that Section 2, because if we can work it out and have conversations and be open, I'd have no problem. However, Mr. City Manager when you came up to speak, you turned me completely against you. I don't appreciate the aggressive posturing up here, and I understand you need to represent your City, but we need to do the same. We are getting phone calls and e-mails and residents calling us concerned what they are seeing on the news and in the paper and the Zika virus and you are seeing every sundown and every sunrise, you are seeing all these mosquitos if you live in that area, and I grew up in that area. So experience it and it causes that concern, whether its based on something or not. As you mentioned the 21 cases are from travelers and its not being born of mosquitos here. It's still a concern. We as the elected representatives of our City have to do something, have to be aggressive in what we do. The fact that we noticed that there was an issue coming from the FPL property, FPL has been spectacular with us in this regard, and the fact that we didn't see that Palmetto Bay had done anything. Now, I wasn't aware that staff didn't reach out to Palmetto Bay ahead of time. I want to make sure we have a good relationship, I want to make sure it's an amicable relationship, but my concern is, is it going to be an aggressive posturing coming

forward. You are making the business decisions for the City on a daily basis. What Mr. Lehtinen said, he drew me in and it was very rational, but my concern is, are we going to have aggressive posturing moving forward, or are we going to be able to work together? So that has sort of affected me, your tone has affected me and my position in that regard, and I understand you are protecting your residents, but we are doing the same on our side. So, I guess at this point I'd be OK with the abatement aspect of it, but I hope we can have an amicable relationship and being able to communicate staff to staff, because I realize the majority of communication would probably be with Cathy Swanson. But if we feel something is not happening, and I'll be the first one to say that we need to aggressively make sure that we are protecting our citizens.

Mayor Cason: I would agree with abatement. I think that FPL has assured us that they have a program to address it, you've assured us that you are going to implement your nuisance law, which will make sure this problem doesn't come from there. We are not going to be patrolling your homes looking at your pools and seeing if mosquitos are coming over, really the focus was on FPL. So I think the problem, hopefully we work together in a cooperative spirit will be resolved and we won't have any other reason to implement this. Craig and anybody else want to...

Commissioner Keon: I would just like to let the attorney, I'd like to see the attorneys go back and some language I think we want to preserve our position to the best we can. We want to be respectful of Palmetto Bay. I apologize to you most sincerely yesterday, I'm telling you again today, it was never an intent to offend you in any way. In the future, I said to you, it is a good lesson learned, before we take any action we will certainly, if there is an issue with neighboring municipalities we will certainly pick up the phone and we will certainly call. You have taught us a very good lesson. So thank you.

City Attorney Leen: Can I ask Charles Knight, FPL. If the City abates, which it sounds like it's being considered, would you agree or consent to continue, obviously we would not be enforcing...abating and Palmetto Bay has indicated they would; would you agree to continue basically more as an agreement with the City you do business here, would you agree to continue enforcing, bringing that into compliance?- doing what you are doing, would you continue?

Mr. Knight: Yes. FPL is prepared to make that commitment. We are going to continue to implement our proactive maintenance approach, which includes spraying, which includes mowing, which includes trimming of vegetation, preventing any overgrowth. We are going to continue to do those things going forward that's our commitment to you, that's our commitment to Palmetto Bay, that's our commitment to the residents of South Florida.

Commissioner Keon: Thank you.

Commissioner Lago: Can I ask you a quick question?

Mayor Cason: Commissioner Slesnick first.

City Attorney Leen: I wanted to follow up on that, but I'll wait.

Commissioner Slesnick: Mr. Silva and Mr. Lehtinen, at least this is open lines of communication and maybe we were not as respectful in contacting you all before when this came up, but people are listening and this maybe a win-win situation for everyone, where we are eradicating mosquitos. One thing I have found since this came to the attention of the public through our last Commission meeting, maybe on TV or wherever people are finding out about this information, several people have written because we talked about stagnant pools or other stagnant water issues and ponds and fountains, even in the City where people have written letters and I forward them to the City Manager or they've talked about their neighbors having algae-filled pools. So it has come to everyone's attention, so hopefully we are eradicating a lot of these mosquitos for the betterment of all. So I'm sorry that – I'm glad you're here today and let's see if we can solve this issue.

Mayor Cason: Vince.

Commissioner Lago: I just have a quick question. I've spoken to many of the neighbors and there is a little bit of misunderstanding in regards to what are the future plans for FPL for this site?

Mr. Knight: This site is not currently listed for sale. We do plan to put the property on the market next year. I don't know exactly when that would be, but the ultimate goal would be to divest of the property.

Commissioner Lago: Let me just make one simple request and the Manager being here, our Manager, that before you do that you sit down with the two adjacent cities that neighbor this property, to see if we can just have a discussion in reference to where that property is going to be heading for the near future.

Commissioner Keon: Well, I think that's...

Commissioner Lago: I know. I know, but again there are a lot of opportunities...

Village Manager Silva: I do want to say a couple of things. Number one, I'm sorry, if I was passionate...

Commissioner Lago: Do you understand why I made that comment right now...?

Village Manager Silva: Absolutely.

Commissioner Lago:...because I think that is such a beautiful open green space of property, that I think it would be spectacular.

Village Manager Silva: Commissioner Lago, I'm going to get there, but I will agree with Commissioner Slesnick, at the end of the day I think it's a win-win, we've opened up lines of communications that we can protect all of our residents and if I'm being passionate it's because we have been doing our job, and I kind of feel that this was – I wish we would have had the communications and we would have been able to explain what we have done. I can tell you in the last couple of weeks, we've had a couple of pools also turned into us and we'd actually taken steps to take care of that as well. So there is in communications that getting this out there is some good to it. Commissioner Lago, I see your question when that zoning case comes through the system, of course the residents of Kings Bay and Deering will be made aware of what's going on and they will be able to at least voice their concerns or what's going to happen. Just like anybody that would come into Coral Gables and want to do something, we would expect that somebody else would come and talk to this Commission and have that conversation. That's an area and that's a big parcel of land that's going to impact everybody in that area, and that's the other thing that we want to do, is make sure that at the end of the day what happens on that property is something that Palmetto Bay residents want and can live with, and by definition the people around us as well.

Mayor Cason: And let's end on a positive note, on future let's be talking sea level rise together as well, many things we need to do on that.

City Attorney Leen: So here's your options and it's up to you what you would like to do. We could, number one, we could abate as to Palmetto Bay; two, you could instruct me to come back with an amendment to the emergency ordinance after conferring with Mr. Lehtinen at the next meeting; and three, I do think that if an emergency arises or if no progress is made, we would give them notice at the end of the abatement. You would decide how many days. The second option, you could amend it today. I gave you language that would be sufficient, you take out the first two sections and substitute it, and then they could decide what they want to do. I would think they would take that back to their council, because it is a new ordinance then, and it does take out the express language that's outside the City, even though again, there is an element

that's within the City and we don't believe its extraterritorial; and then three, you could decide to just allow the ordinance to remain as it is, but agree to provide them notice going forward. I don't know if they would accept that, but you could do that as well, and those are the options I see, or any option you think of.

Vice Mayor Quesada: I move to abate enforcement with the requirement that staff, the Mr. City Attorney meets with Mr. Lehtinen and Madam Manager meets with Palmetto Bay City Manager, to see if we can work on any additional language and make sure there is an open line of communication there, and if there is additional language, any of you propose some language now...

City Attorney Leen: That would be option 1.

Vice Mayor Quesada: Yes, but the additional language that you proposed earlier, I'd like to see it in writing and think about it a little bit more if we were to vote, and bring that back before us, after you've had a meeting and after we've had a chance to mull it over a little bit.

City Manager Swanson-Rivenbark: And Vice Mayor your move for the abatement is because of the reliance you have on FPL to continue to do their proactive mosquito movements of trimming, spraying, mowing and assurances that our friends at Palmetto Bay will help us in making sure that that enforcement is honored.

Commissioner Keon: I'd like to second it. Thank you.

City Attorney Leen: Mr. Vice Mayor, we'd be abating us to Palmetto Bay, instructing me to come back after meeting with Mr. Lehtinen and after the City Manager meets with the Village Manager, try to reach an agreement. Are you OK including, if there is no progress we would give them notice, do you want this to come back to you.

Mayor Cason: Let's hold that until...so we have the Vice Mayor made the motion and Commissioner Keon seconds. City Clerk.

Commissioner Keon: Yes

Commissioner Lago: Yes

Vice Mayor Quesada: Yes

Commissioner Slesnick: Yes

Mayor Cason: Yes

(Vote: 5-0)

Mayor Cason: Thank you for being here today.

Mr. Lehtinen: I would point out probably for the benefit of all of you that we assume the Vice Mayor was not referring to abating any of that within your City.

City Attorney Leen: No, just Palmetto Bay.

Mr. Lehtinen: Thank you.

Vice Mayor Quesada: Thank you for the clarification.

Mr. Knight: Just one last comment just to clarify for the record. There is a transmission sub-station on the property today that sub-station is operational, that sub-station will continue to operate going forward. It would not be included in any potential future transaction.

Mayor Cason: OK. Thank you.

Commissioner Keon: Thank you very much.

[End: 11:22:12 a.m.]