

City of Coral Gables City Commission Meeting
Agenda Item E-8
June 14, 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)

Agenda Item E-8 [11:20:05 a.m.]

An Ordinance of the City Commission of Coral Gables, Florida providing for a text amendment to the City of Coral Gables Official Zoning Code, Article 3, “Development Review,” Division 3, “Uniform Notice and Procedures for Public Hearing,” Section 3-302, “Notice” and Article 8 “Definitions” expanding the notice area from one-thousand (1,000) feet to one-thousand five-hundred (1,500) feet for certain applications; amending the definition for aggrieved party and revising procedural requirements for public hearing notifications; providing for repealer provision, severability clause, codification and providing for an effective date. (PZB recommended approval, Vote: 7-0).

Mayor Cason: E-8.

City Attorney Leen: Mr. Mayor, Item E-8 is an Ordinance of the City Commission of Coral Gables, Florida providing for a text amendment to the City of Coral Gables Official Zoning Code, Article 3, “Development Review,” Division 3, “Uniform Notice and Procedures for Public Hearing,” Section 3-302, “Notice” and Article 8 “Definitions,” expanding the notice area from

one-thousand (1,000) feet to one-thousand five-hundred (1,500) feet for certain applications; amending the definition for aggrieved party and revising procedural requirements for public hearing notifications; providing for repealer provision, severability clause, codification and providing for an effective date. The Planning and Zoning Board recommended approval, by a vote of 7-0. This is a public hearing item. I would add one legal note. Although the notice size, the radius is increasing to 1,500 feet, for some applications and I know Mr. Wu is here and can explain that more, which ones it would apply to, this does not increase the ability of someone to file suit or to appeal against the City. What do I mean? So we have a definition in the Code and I know that this has been raised by individual Commissioners in their briefings. We have a Code provision that talks about when do you have administrative standing and it basically says if you receive courtesy notice or if you are the City Manager, the City Manager also has administrative standing to appeal. So typically, if you are within 1,000 feet and you receive courtesy notices, it's been interpreted by my office and this Commission that you would have administrative standing to appeal within Coral Gables. As to appealing to court, that's ultimately up to the court, but they would look at that provision and they may give it weight in determining whether an individual is injured, has a special injury that would allow them to appeal. So in this particular instance we are increasing the notice period of 1,500 feet for certain applications, but we are not increasing the administrative standing. So now there is an amendment that will say that whether you receive courtesy notice up to 1,000 feet, anything beyond that is a true courtesy and doesn't confer any sort of standing.

Mayor Cason: I have a question on page 3, it shows the properties within 1,000 feet and 1,500 feet, what about the properties that are not in Coral Gables, this shows Miami, West Miami, does the notices goes to those people?- and do they have any kind of standing?

City Manager Swanson-Rivenbark: We can have Charles Wu come forward, but our notification requirements are to the City properties, whether or not we sent a courtesy notice to those municipalities Charles would be able to tell us. I don't know.

Mr. Wu: I believe not, just with City limits.

Mayor Cason: OK. So just City limits.

City Attorney Leen: That doesn't mean, I just want to be clear, that doesn't mean that if someone that's in Miami that's right across the border and is substantially affected, so they could show a special injury. If they came here and wanted to speak to the Commission, we might confer them standing, and a court might confer them standing, we have to as a matter of due process if it affects the property rights.

Mayor Cason: We did that with a church down around Old Cutler Bay. Remember the church wanted to do something about four years ago, I don't know if any of you remember that, but they wanted....

Commissioner Keon: Was it St. Thomas?

Mayor Cason: Yes, that was it.

City Attorney Leen: So what we've done in those cases is, my office will take a look at it, we'll make an initial determination, it will ultimately come to the Commission, particularly if they disagree and the Commission has the right to consider the evidence and determine whether you believe they should have standing or not, and then a court can make its own determination, but what they look to is whether there is a special injury. Can they show an injury to their property that is different than the general, positive or negative effect that this development has on properties; and so, usually you have to be very close to the property to be able to satisfy a special injury test.

Mayor Cason: I know that Mayor Stoddard of South Miami asked me to keep them in mind when we do things along Dixie that might affect them, so that would be an example of giving notice to City Hall, at least of neighboring cities. I would notice on Attachment (B), we are very generous; the only other cities that do much more over 1,000 feet are Miami Lakes, Palmetto, and Pinecrest out of all those surveyed.

Mr. Wu: [Inaudible]...zoning changes.

Commissioner Lago: And that's good that the Mayor mentioned that because sometimes it's been brought to our attention that we are not properly notifying the residents in reference to projects that are forthcoming, and this is showing that out of 34 municipalities in the County we are at the top tier of that. My only question is in regards to the budget, are there any additional costs, significant additional costs that may impact your department in reference to those notifications?

Mr. Wu: That was a consideration. The fact that when you expand the boundaries by 1,000 to 1,500, you double the amount of properties required to be noticed; and what we'd like to do in this ordinance is to request the applicants to do the notices moving forward. As you can see in the summary, we have a couple of examples where the applicant is required that's South Miami and Miami. It's not unusual for the applicant to prepare the notices and to mail it out. What we will do is we'll provide the envelopes and we'll review the one page notice that goes out for sufficiency.

City Manager Swanson-Rivenbark: And just for clarification. When a developer or an applicant has to do that, they have to submit to you a certified mailing list to confirm that those letters actually went out by address, correct?

Mr. Wu: Correct – and we will get a copy of the labels as a hard copy to demonstrate which addresses have gotten the letter.

Mayor Cason: OK. Good.

Commissioner Keon: So we provide them with the envelopes and the labels?

Mr. Wu: No. We get a copy of the labels that they mail out, we just want a hard copy for our files.

Mayor Cason: And they pay for it, they pay for the mailings, so no extra cost.

Commissioner Keon: But we give them the names, we give them the addresses that the letters have to be mailed out to. How do they determine?

Mr. Wu: [Inaudible]

Commissioner Keon: Pardon me?

Mr. Wu: They can get the 1,000 feet on the Property Appraisers.

City Manager Swanson-Rivenbark: I'm sorry sir. So what will happen is, they will give us a radius map, they will show the area that receive notification, they will give the backup on the hardcopy of all of the mailings that went out, and they will certify by affidavit that everyone that was within that radius receive notice.

Commissioner Lago: That was my question. How do we ensure the fact that they comply, that everybody's been notified or at least they've received something, they've attempted to send them something?

Commissioner Keon: Because we have notice requirements as to when things can be heard and published and whatever else, so we have dates then...

Mr. Wu: Ten days.

Commissioner Keon: ...we've set up to ensure that we receive whatever that is back, because up until now we've done all the notice. So in addition, this amendment is now shifting it to the applicant.

Mr. Wu: Correct.

Commissioner Keon: Although the applicant paid for it before, so there was a – OK, and the fee that is now being, that the applicant has to pay is just to cover the cost of the envelopes, is that right?

Mr. Wu: Envelopes and our review for the one page notice to make sure it covers the basic information in the notice.

Commissioner Keon: Oh, you review their notice that they are sending out?

Mr. Wu: Yes.

Commissioner Keon: So we don't do anything about what the addresses that have to be noticed are not – we don't know anything about that until they certify that with us. Do we then go back and check that?

Mr. Wu: No, we keep it for the file. Any questions that come up, we can look into the hardcopy to make sure the address claim they did not get it, whether we have a copy of that address.

Mayor Cason: OK. Alright. Do we have any speaker cards on this?

City Clerk Foeman: No Mr. Mayor.

Mayor Cason: So we'll close the public hearing part.

Commissioner Keon: Are you not at all concerned that 1,000 feet has standing, the other 500 feet doesn't?- it is only a courtesy notice.

Mr. Wu: That's something the City Attorney wanted to discuss with you. We wanted to have a limitation of who resides within 1,000 feet and whether you reside outside of 1,000 feet whether you have standing outside the 1,000 feet.

Mayor Cason: The 1,000 feet has been the traditional...

Commissioner Keon: Is traditional. Why has that been traditional?- is that just what we've always done and that's just a practice?- is there something in the law that gives you 1,000 feet?- or what's 1,000 feet based on?

City Attorney Leen: We talked about this at one point – 1,000 feet is more than some cities, but its not, there are cities that do 1,000 feet, as I recall.

Mr. Wu: There are cities that actually do 250 feet, and we understand the City does have a lot of interest in what's going on in the surrounding neighborhoods, so we are comfortable in keeping the 1,000 feet, that's how the Code is today. The question is whether that's sufficient to let people know what's going in the surrounding and outside...

Mayor Cason: Again, if you look at Attachment (B), there are cities like Miami 500 feet, Aventura 330 feet, South Miami 500 feet, Key Biscayne 300 feet.

Commissioner Keon: In the letter that's going to go out, do you tell people if you are outside of this boundary this is only a courtesy notice, you have no standing? How do you tell people that we are noticing you, but its for informational purposes only.

Mr. Wu: Its all for informational purposes until someone wants to challenge then we will verify where they live that its within 1,000 feet.

Commissioner Keon: You are going to notice somebody and then you are going to tell them when they come forward that you don't have standing?

Mr. Wu: That is when there is an official challenge.

City Attorney Leen: What would happen is when they receive the notice, it doesn't typically talk about their rights to appeal, so what would happen is if they came to the meeting and spoke, and we allow everyone to speak, its not like we've limited it to just people within 1,000 feet, and also we sometimes differentiated between people within 1,000 feet. So like, if you were the neighbor sometimes the Mayor has given more time to that individual or if there is an attorney and they can show a cognizable, which really means, if they can point to a specific interest that's being harmed, we've given them more time, because by law they are specially injured, so they need to be able to present their case in case, and as a matter of due process we have to give them that opportunity.

Commissioner Keon: But that wouldn't make a difference if its 1,500 feet or 2,000 feet, it wouldn't make any difference how far they were if they could show that they were harmed. You know I am really supportive of having people know what's happening in the City and let people be aware of whatever. I'm concerned about extending it beyond 1,000 feet when there isn't any – you don't have standing.

Mayor Cason: But it doesn't mean they can't come and voice their opinion on something. The farther away they are the less for me its...

Commissioner Keon: OK.

Commissioner Lago: I agree with what Commissioner Keon is saying, but I also agree with what the Mayor is saying. We go already above and beyond what any other city does anyone adjacent to us. For example, City of Miami, they have over a million people that live in the City of Miami and they get, I think you said 500 feet was the notice.

Mayor Cason: 500 feet.

Commissioner Lago: 500 feet. So I think we are doing a good job, but again, we can always be more inclusive, I guess.

Mayor Cason: I think the word in here is courtesy. This is a courtesy to people around a major development.

Commissioner Keon: OK. As long as its clear that its only a courtesy notice, I'm comfortable with it. If it is portrayed to people as being giving them more than courtesy, I think that we are being duplicitous.

Commissioner Lago: But it's a good opportunity, maybe when we send out the notice we can put like a very simple disclaimer.

Mr. Wu: We can do that.

Commissioner Lago: We can put a simple disclaimer notifying the individual, obviously if you are within 1,000 feet your rights are different than 1,500 feet.

Mayor Cason: Remember we have an ordinance that we passed, if somebody lies to the Commission about where they live. We've had a case that I won't go into right now, where we had somebody that came and lied to us or didn't tell the truth that lived within, said they lived

with 1,000 feet and they lived a mile away. So you give more deference to people that live closer, but sometimes you have people who live three or four miles away that come and have a strong opinion on something when it's nice to know how far away from this project do you live. So I think this is good. This is going five times more than many cities do in terms of the courtesy.

City Attorney Leen: And I'd like to add from a legal perspective, it is courtesy and even though you have standing if you would receive courtesy notice, whether you actually receive it or not, let's say there is a mistake and you don't receive it, that does not affect your standing. Also, if you don't receive the notice, the reason why its important that it be courtesy, if let's say there is a mistake and for some reason you don't receive it, that doesn't give you the right to challenge the approval in court and say that you were denied due process. That would be viewed on a case-by-case basis and we would take a look at it, but the fact alone that you do not receive a courtesy notice, which is just courtesy should not affect your legal rights, so it doesn't affect your right to challenge the matter and it also doesn't affect your standing. Its still going to be within 1,000 feet.

Mayor Cason: Also, I think in terms of major projects, this would not be the only way we'd let people know. It would be on the E-NEWS, it would be on the Miami Herald, all the ways we do it.

Vice Mayor Quesada: I agree. I'm not disagreeing, but I like it for the fact that, for example, the Mediterranean Village Project, we had, I think it was 26 meetings that Ramon outlined, people still felt that they didn't get enough notice. I think its another proactive approach for us to ensure that everyone even if they don't have standing to pursue, they can be informed.

Mayor Cason: Exactly.

Vice Mayor Quesada: Like follow along, just another way.

Commissioner Keon: There are two other elements of this I just would like to bring up. One is the issue of mail all affected property owners and tenants is what was added to it, and tenants, but yet it's based on the tax roll. Tenants are not included on the tax roll, so the only time a tenant is included on the tax roll in general is if it is a City, or public piece of property that belongs to a not-for-profit that is being leased for a for-profit entity would then be on the tax roll because then the property is taxable. Other than that, we have no – tenants are not on the tax roll. We can look at every property along Miracle Mile, every property downtown where – unless the owner is the tenant in their property that the will not, this is another element. I think it's a wonderful, it looks good on paper, but you know you are telling people you are going to notify

tenants when in reality we are not notifying any tenants, if they are not on the tax roll. So I think you need to – you know its fine, as long as we are very clear that that’s what we are doing, because it’s not going to happen, and we know that going in.

Mayor Cason: There will be two elements of that; one if you are renting a home the mail comes to the house, you can get it, unless it was to the owner.

Commissioner Keon: It would be addressed to the owner.

Mayor Cason: Maybe it should say owner or...

Commissioner Keon: Or current resident. I don’t know, or current resident. I don’t know.

Mayor Cason: There is no way of knowing who rents unless – certainly for apartment houses you can request that the manager provide the notice.

Commissioner Keon: We can do all those things, but as it stands now, nobody other than who now gets the notice is going to get the notice.

Mayor Cason: Just as it is with 1,000 feet, the same argument.

Commissioner Keon: OK. So its just important I think that people understand that, because I know we’ve got e-mails from people representing tenants wanting us to notice tenants and this isn’t doing that, so.

Mayor Cason: Which is why its important that this is not the only way to notify on the other things that we do.

Commissioner Keon: OK. The other issue in here is that there is, included here are changes, the notification of an additional area to receive courtesy notice on any application that this is up to the Development Review Officer. I really would like there to be some a little bit of more guidance on this. I know now, like particularly for the Planning and Zoning Board, if something is continued to the next meeting, it isn’t noticed, because it is a continuation, and the cost to re-notice now will also fall to the applicant. So the applicant will have to re-notice, so you are going to have to notify the applicant that they have to re-notice, you have to give them the time to re-notice, and you have to be very careful that you don’t reschedule without that re-notice. I think that there are reasonable times to expect to re-notice. I think if something is delayed beyond 90 days it probably needs to be re-noticed. If there is a substantial change to an item it probably needs to be re-noticed, but short of that, I don’t think it needs to be re-noticed.

Mayor Cason: I agree, because otherwise...

Commissioner Keon: So, I'd like to put some, a little bit to amend this to be 90 days or substantial change. I don't even care if it's to the next agenda and its substantially changed, it needs to be re-noticed.

Commissioner Lago: I like the idea of through the Mayor, you just mentioned right now in regards to an actual timeframe, 90 days, 60 days, because if we have a continuation sometimes we have two and three continuations.

Mr. Wu: Correct.

Mayor Cason: And it could limit the time you could do the next continuation because you can't get the mailer out.

Commissioner Keon: Because you can't get the mailers out.

Mayor Cason: Slows business down.

Commissioner Keon: I also know there ends up being a lot of pressure on staff and on the development officer from the public to – and a lot of times it's to create delays is to pressure you do to grant continuances when they don't really serve a public interest, when their intent is simply to delay.

City Attorney Leen: You could meet your goals by putting factors that would inform his discretion. So for example, you would say that you should look to substantial change in over 90 days from the last hearing, or whatever the amount of days is.

Mayor Cason: How about a suggestion of between now and the Second Reading come up with those triggers that we could then...

City Attorney Leen: Just so you know, the issue that came up was with Villa Valencia. I know that staff did want them to re-notice and Villa Valencia took the position that because the Code only required them to notice the first time, that they had no duty to, and there was a dispute. So this sort of language would be helpful in that circumstance where there's been a substantial delay between the onetime it went and then another time, or it doesn't go. I think with that one it actually got continued before it actually was even heard, so in those sort of circumstances it would give the Development Services Director the authority to basically direct them to do it. It

shouldn't come up that often, I don't think this would come up very often, but it would come up occasionally.

Mr. Wu: Yes and when you have projects that's evolving that's particularly so, and there are changes.

Commissioner Keon: OK. So between now and Second Reading, we'll look at the renotification issue.

Mr. Wu: Yes.

Commissioner Keon: OK – and the issue of tenants...this part of it, I think we just should know it.

City Attorney Leen: One thing about tenants, I assume that the Commission's will is that you are not conferring standing on tenants, just because they receive courtesy notice.

Commissioner Keon: No.

City Attorney Leen: OK. So, I think we need to also, since now they would be entitled to courtesy notice in limited circumstances, we should indicate in the definition it only applies to property owners.

Commissioner Keon: It only applies to property owners.

Mayor Cason: Alright. So we had no speaker cards, we close the public hearing on E-8. Do we have a motion?

Commissioner Lago: So moved.

Mayor Cason: Commissioner Lago makes the motion, Commissioner Slesnick – City Clerk.

Commissioner Keon: Yes

Commissioner Lago: Yes

Vice Mayor Quesada: Yes

Commissioner Slesnick: Yes

Mayor Cason: Yes

(Vote: 5-0)

[End: 11:40:56 p.m.]