

City of Coral Gables City Commission Meeting

Agenda Item E-6

May 13, 2008

City Commission Chambers

405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Slesnick Donald D. Slesnick, II

Vice Mayor William H. Kerdyk, Jr.

Commissioner Maria Anderson

Commissioner Rafael “Ralph” Cabrera, Jr.

Commissioner Wayne “Chip” Withers

City Staff

City Manager, David Brown

City Attorney, Elizabeth Hernandez

City Clerk, Walter J. Foeman

City Clerk Staff, Billy Urquia

Assistant City Manager, Maria Jimenez

Public Speaker(s)

Andy Murai, Coral Gables Resident

E-6 [Start: 10:56:22 a.m.]

An Ordinance of the City Commission of Coral Gables amending City Code Chapter 86, entitled “Waterways”, Division 2, entitled “Anchoring, Mooring, etc.”; in particular, Section 86-59, entitled “To Abutting Property”, by restricting the placement and projection of boats or water craft when anchored, moored, or tied up to waterfront property; Section 86-60, entitled “Other than abutting property” by allowing anchoring or mooring of boats or watercraft to other during dock construction or improvements, subject to sufficient access for safe navigation; Section 86-61, entitled, “Enforcement by Chief of Police” by further authorizing Code Enforcement Officers to enforce certain provision of the Code; adding Section 86-62, entitled “Definitions”; Division 3, entitled “Ocean and Waterway Regulations”, modifying the title of Section 86-84, to “Watercraft as hazards; Unobstructed waterways”, in addition within the same section, declaring it unlawful to position a boat or watercraft in such a way to interfere with the navigation through the City waterways; and further amending Section 86-86, entitled “Hurricane Procedure – Regulations”, by declaring it unlawful to moor a boat or watercraft to private property without consent; providing for severability, repealer, codification, and an effective date. (Deferred from the December 17, 2007 City Commission Meeting).

City Manager Brown: Ms. Jimenez.

Ms. Jimenez: Thank you Mr. Manager. The proposed amendments to the City Code are the result of an opinion issued by the Third District Court of Appeal entered on October 10, 2007. In the case of Victor Bared and the City of Coral Gables Code Enforcement Board as the petitioners versus the Yife Tien, Respondent, in which the Third District Court of Appeal acknowledged that the City had no legislation protecting residents from, and I say this in quotes, “from unwanted intrusions by mega-yachts” end of quote. The initial version of this ordinance was presented at the December 11, 2007, City Commission meeting on First Reading; and required among other amendments, that the mooring of boats and watercraft required to maintain the same setbacks required for the main structure of the property. Following public input, the City Commission directed staff to hold a public meeting with affected residents, to receive input on proposed amendments to the City Code. The invitation to the public meeting was sent and distributed to the Homeowners Association affected by the Ordinance; an E-NEWS notice was sent out; and a press release was distributed for publication. Over sixty residents and City staff attended the February 19, 2008 public meeting at Fairchild Tropical Gardens. The majority of those in attendance were not in favor of the initial version of this Ordinance, but were in favor of restricting the placement of boats up to the side property line, allowing for encroachment of the side property line, so long as the adjacent property owner agreed to it. Following the public meeting, suggested modifications were made to the Ordinance, including a request received from Gables Estates Homeowners Association, which had expressed a desire for a minimum ten (10) foot side setbacks, to provide a clear visual path to the waterway. After discussing this matter with our City Attorney, the Ordinance was modified to require the ten (10) foot setbacks for properties with water front length of a hundred and fifty (150) feet or more. Such changes to the ordinance along with other minor modifications based on public input were resent to the same people, in other words the Association, the public involved in the meeting, and also those that had correspondence with our office and also the City Commission, on April 22nd and again on May 8th. As late as last Friday, we did have two more additional revisions that we’d like to share with you today. With the permission of the Commission, I’d like to go ahead and illustrate the changes to the proposed Ordinance.

Commissioner Withers: I can read draft from here.

Mr. Jimenez: This ordinance is from our section from changes to the ordinance form to Chapter 86 of our City Code, which is entitled “Anchoring, mooring, etc.”; and what we are proposing to change in particular is – the first section is 86-59, which is entitled “To the abutting properties”; the first paragraph just gets into identifying boats or watercraft, in other words the description this in fact is an existing section of our ordinance calling for boats or watercraft anchored or moored or tied up, need to be owned by the property owner, at least leased to the person who is living in the house. That section in fact is existing and we just provided additional wordage to make it more clear. Within that same section is number two (2), item (2), which really gets into the reason we are here today; and basically this section has been added, and it reads as follows: “It shall be unlawful for any person to anchor, moor or tie up any boat or watercraft of any and every nature whatsoever to any waterfront property with less than 150 feet of waterfront length, abutting the waterways and canals within the city in such a position that the length of the boat or watercraft extends beyond the side property lines; or is of such a length that when docked or anchored adjacent to such property it extends beyond such side property lines, unless the adjoining property owner agrees to such extension”.... this is where the change comes in that

was not part of your package....”in those cases where the property/waterfront length is 150 feet or more, a minimum side setback of ten feet shall be required, or as established for the main structure permitted for the building site. Lot lines shall be extended into the waterway for purposes of the measurement.” The reason for that is that we found in the North Gables along the waterway, we had properties that exceeded 150 feet, yet they are allowed to put their docks within the same building setbacks; in other words some of them are as close as five feet to the side property; so we want to make sure we allow them to tie that boat up to their dock.

Commissioner Withers: Maria, just for a point of clarification, you are talking about the main structure; not an auxiliary structure like a boathouse or something?

Ms. Jimenez: Yes sir, yes sir.

Commissioner Withers: How about – is a swimming pool is that part of the – is the property line extend down from the swimming pool?

Ms. Jimenez: No, I believe it would be the main structure, that’s the way we would...

Mayor Slesnick: What does the word say?

Ms. Jimenez: I’m sorry?

Mayor Slesnick: What does the word say?- what’s it say?

Ms. Jimenez: Main structure – main structure permitted on each building site.

Mayor Slesnick: That is satisfactory?

Commissioner Withers: You know, but on some of the homes along the canal, the boathouses actually attach to the main structure.

Ms. Jimenez: Right, but you know, in those cases remember we are just talking about mooring a boat on the waterway...

Commissioner Withers: I understand.

Ms. Jimenez: extending the property line, so you know, in cases where there is a boathouse, I imagine the boat would be in the boathouse, not necessarily out in the waterway in front of the boathouse.

Commissioner Withers: Well, some extend into the boathouse...yes, some store in the boathouse and some with seconds boats actually store in front of the boathouse, at least what I’ve seen.

Ms. Jimenez: You know that’s a good point; we need to look at that.

Commissioner Withers: Because a lot of those boathouses are close to zero lot line; I don't think a lot of those boathouses are under five foot setback area...

Ms. Jimenez: That's a good observation.

Commissioner Withers: ... and a lot of them are less than 150 foot lots also.

Ms. Jimenez: Well then that wouldn't necessarily fit into this, if it's less 150 feet lot. This really just covers the setback for those properties that are 150 feet or more.

Commissioner Withers: I know, but this whole issue is not really a visibility issue, it's just an encroachment unto someone else's property line issue, I mean...

Ms. Jimenez: For the most part, that's correct, but the bigger lots have a concern; and it's not so much the one big boat, it's the various boats being tied up along the waterway within this one property, and then sort of like maybe extending itself beyond.

Commissioner Withers: That one Tahiti, was it Tahiti Beach, no it wasn't Tahiti Beach, it was North Gables Estates where we were looking at that corner lot and they had the pilings already in the water, I think the Powells were here because they were worried about their vista because someone could put 190 foot boat in there, they were worried about the size of the boat.

Ms. Jimenez: That's what the larger lots are concerned about.

Commissioner Withers: OK. So this issue has not a lot to do with someone looking down their dock and wanting to see the canal, and there is a twelve or fourteen or sixteen foot boat there; its someone looking out their back yard and see someone else bow protruding into their property, that's the whole issue.

Ms. Jimenez: That's correct sir, yes.

Commissioner Withers: Alright.

Ms. Jimenez: The next section we further allow, in this sections here, we allow the Code Enforcement Official to also be authorized to enforce the section of this Code; in Section 86-62, we introduce some definitions to the ordinance. There are two in particular ones here that I don't think we had addressed previously in the first version of the ordinance that was looked at in December, and that is commercial activity, and the commercial boat or watercraft, where we call out commercial activity means any and all activity involving boat or watercraft that includes but is not limited to conducting excursions, sightseeing, drift fishing, charter boat services, renting or leasing dock space for others for compensation. We have this in our Zoning Code; we felt that given that we were addressing this issue in the City Code that we need to re-emphasize it.

Commissioner Withers: So events like fueling and repair on your own boat can be done.

Ms. Jimenez: Yes, our main concern is the leasing out of dock space and creating that commercial activity which we really never allowed in our City, so we just wanted to re-emphasize it here in this ordinance.

Commissioner Withers: So if there is no money exchanged is that considered leasing?

Ms. Jimenez: No.

Commissioner Withers: So someone could have a friend keep their boat there if they wanted to? I just wanted to point that out.

Ms. Jimenez: It's hard to enforce, we are not, you know, in reality we are not.... we are just concerned with it becoming a commercial activity. Forgive me; it's just that these weren't placed in order. We've also added the definition of mooring which was a new one that we came up with on Friday because it was brought to our attention that that was missing from our ordinance, which has to do with a section here, which is our last section that we revised, which is Section 86-86, Hurricane Procedures. We've always had this section in our Code, but we worked hard with Marine Patrol to provide some language that would make clear that it is the responsibility of our boat owners to secure their boats and properties during a hurricane; and one issue that did come up to our attention was the issue of, it is unlawful for anyone when an emergency or hurricane is called out, to tie up or moor a boat or watercraft to a private dock, seawall, piles, etc.; so we feel that this was one issue that we had during Hurricane Andrew that we wanted to address in our Zoning Code, actually in our City Code. At the December 11th City Commission meeting, our Vice Mayor had also mentioned or requested that we survey the waterways and provide information on the actual waterway link to determine the impact if any setback requirements would have on our residents; and I'd like to show you a board that illustrates that. And as you can see...what we did with this chart is we've identified the number of properties in the various subdivisions, the average length of the waterfront, and then we gave you the smallest to the largest; and then in the next column we put the 50 foot or less, we put 51' to 149', that's again the length of the waterfront, and then 150' or more; and as you can see a majority of our waterfront lots fall within that 51' to 149' foot, but we still have quite a number that is over 150 feet. So that's also provided for your information in your consideration of this ordinance. And last we also wanted to show you what other cities have as far as regulation. Other Cities such as Miami Beach, and what this chart shows is who has mooring regulations, in other words who regulates the mooring of boats and watercrafts; and we have the local government identified here, Miami Beach, Marco Island, Boca Raton, Cocoa Beach, Dania Beach, Deerfield Beach, Delray Beach, Golden Beach, Key Colony, Key West and then our City. We have identified who regulates it, in other words who mentions it in their Code, and then actually who provides the setback, and as you can see in most cases based on the cities I've mentioned, they don't really regulate the mooring of watercrafts. We do have those exceptions like Miami Beach that provides or requires a seven and-a-half (7 ½) foot side setback; Marco Island provides fifteen percent (15%) of the seawall length; and then Deerfield Beach is another area that requires it be consistent with the main structure of the building; and then our City, which I put in red, of course is now requiring setbacks for those properties that are 150 feet or more. That concludes our presentation, we'll be glad to answer any questions you may have.

Commissioner Withers: Can I just make one suggestion? I like the idea of getting approval from the neighbor. I think boaters are a special group of people and they usually can work issues out amongst themselves, but it would be great if we could standardize the format of that, so that maybe the City would put together the form that's acceptable to us, and let that form be used, so that we are not dealing with e-mails or letters or notes scribbled on napkins, just something we are comfortable within.

Ms. Jimenez: OK, we'll work with our City Attorney's office to get that.

Mayor Slesnick: I think that that should be included in Second Reading in the ordinance when it says, by approval of the neighbors in a form acceptable to the City.

Ms. Jimenez: OK, thank you.

Mayor Slesnick: I understand too, I was down at Gables-by-the-Sea on Saturday, and was with the Homeowners Association, they seemed to be satisfied with the results of the negotiations to make this amenable to them, and they were the group that showed up with such anxiety with the first effort; and I understand that Gables Estates is satisfied with this. OK, we have one public speaker, Any Murai.

Mr. Murai: Andy Murai, 200 Solano Prado; Mr. Mayor the other statement that I have is this new requisite of 150 feet or more, they requested Gables Estates, which is fine for Gables Estates, are all the property owners that have more than 150 feet outside of Gables Estates been notified of this change?

Mayor Slesnick: We notified all the communities for the meeting down at Fairchild Tropical Park.

Mr. Murai: But this change at this late date, and those property owners outside of Gables Estates...

Mayor Slesnick: Andy, this has been discussed for six months now.

Commissioner Withers: What's your concern?

Mr. Murai: My concern is those lots outside of Gables Estates that have more than 150 feet, they might not be aware that there are going to be restrictions of ten feet either way. That's my concern.

Mayor Slesnick: Who did we notice for the meeting at Fairchild, didn't we notice homeowners?

Ms. Jimenez: Yes, I have...[inaudible – off mike]...I would also like to point out that the waterfront properties on the south; typically their docks are constructed within the building setbacks.

Commissioners Withers: They are right in the middle, most of them.

Ms. Jimenez: Right, so, but...

Mayor Slesnick: Just to answer Mr. Murai's question, didn't we notify residents?

Ms. Jimenez: We notified the Homeowners Associations, yes.

Mayor Slesnick: And Andy, we'll be back for Second Reading if you have...

Commissioner Cabrera: But your concern....no, no, I don't want you to go away without clearly understanding your concern. Mr. Murai, your concern deals with proper communication?

Mr. Murai: With owners that have 150 feet or more on the water, they should at least receive a letter from the City saying this is what is proposed there is a second hearing, come and say what you have to say.

Ms. Jimenez: We can certainly do that if that's the wish of the Commission.

Vice Mayor Kerdyk: Between First and Second Reading.

Commissioner Cabrera: I think that's a very legitimate request.

Mr. Murai: Thank you Mr. Mayor.

Mayor Slesnick: Thank you Andy.

Commissioner Withers: Now boats can tie up, they just can't be moored there overnight is that how it reads.

Ms. Jimenez: Well, it's an enforcement issue, I mean obviously if they are there overnight – the issue here is if it's extending beyond the ten feet.

Commissioner Withers: And if they don't have neighborhood approval.

Ms. Jimenez: Well, even for the 150 foot lot we don't the provision for neighborhood approval.

Commissioner Withers: Why was that?

Ms. Jimenez: It's just not something that we've added to it, I mean, typically again...

Mayor Slesnick: The residents of Gables-by-the-Sea pushed that because of their small lots, and Gables Estates pushed strictly enforcing the setbacks.

Vice Mayor Kerdyk: And we can't do it on a site specific basis, right Maria, the setback requirements?

Ms. Jimenez: That's my understanding; I think the preference was to keep it all in the City Code given that we were addressing the mooring of boats in our City Code. Additionally we thought of the site specific issue.

Vice Mayor Kerdyk: Because I know Gables Estates has other site specific allocations, and this seems logical to do specific neighborhoods; the reason that we decided not to look at the site specific City Attorney?

Assistant City Attorney Alfonsin: Yes, there are site specifics for all of the subdivisions in the south on the waterway, and there are site specifics are from 5 feet to 20 feet, and that's only for dock space its not for the length of the boats.

Ms. Jimenez: Mr. Mayor, I'm going to have to get back to Mr. Murai on that issue. We did again notify all of the Homeowner Associations, I happen not to have it here right now.

Mayor Slesnick: OK.

Ms. Jimenez: Thank you.

Mr. Murai: At the meeting that you referred to down at Fairchild, I was there and I don't recall the 150 foot provision being discussed, this came after that.

City Manager Brown: That's correct.

Ms. Jimenez: That's correct. The 150 foot was a result of our discussion at the meeting where the Gables Estates, who were present, had spoken up and said we want setbacks.

Mr. Murai: That's fine for Gables Estates; but there a lot of property owners there's fifty-three owners in Old Cutler Bay that I'm sure is not aware of this provision.

Mayor Slesnick: Andy, we said we would notify them.

Mr. Murai: OK.

Vice Mayor Kerdyk: Between First and Second Reading.

Ms. Jimenez: That's correct.

Vice Mayor Kerdyk: Alright.

Commissioner Withers: Is that a substantive change where we would have to come back for another reading?

Assistant City Attorney Alfonsin: No.

Commissioner Withers: So we can resolve that at the...

Ms. Jimenez: Thank you.

Vice Mayor Kerdyk: Thank you.

Commissioner Withers: You need a motion on this?

Mayor Slesnick: Yes.

Commissioner Withers: I'll move as presented here.

Vice Mayor Kerdyk: I'll second it.

Mayor Slesnick: Been moved by Mr. Withers seconded by Mr. Kerdyk; and I'd like to say before voting that I appreciate all of the people who came out to the meetings, and all the people who came out to the first public hearing that we had here at this Chambers to inform us of the fact that there was a great deal of consideration given to all the aspects of this. Anything else?

Mr. Clerk.

Commissioner Withers: Yes

Commissioner Cabrera: Yes

Commissioner Kerdyk: Yes

Mayor Slesnick: Yes

(Vote: 4-0)

Commissioner Anderson: Absent

Mayor Slesnick: Thank you.

[End: 11:19:30 a.m.]