

City of Coral Gables City Commission Meeting
Agenda Item E-3
January 14, 2025
Police and Fire Headquarters
2151 Salzedo Street, Coral Gables, FL

City Commission

Mayor Vince Lago
Vice Mayor Rhonda Anderson
Commissioner Melissa Castro
Commissioner Ariel Fernandez
Commissioner Kirk Menendez

City Staff

City Manager, Amos Rojas, Jr.
City Attorney, Cristina Suárez
City Clerk, Billy Urquia
Public Works Director, Hermes Diaz

Public Speaker(s)

Wayne Pathman
Tucker Gibbs

Agenda Item E-3 [3:37 p.m.]

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

Mayor Lago: Moving on to Item E-3.

City Attorney Suárez: E-3 is an ordinance of the City Commission approving the vacation of a public right-of-way pursuant to Zoning Code Article 14, "Process," Section 14-211, "Abandonment and Vacations" and City Code Chapter 62, Article 8 "Vacation, Abandonment and closure of streets, easements and alleys by private owners and the city; application process," providing for the vacation of the remaining portion of Kenmare Street lying east of Harlano Street, Coral Gables, Florida; providing for a repealer provision, severability clause, and providing for an effective date.

Mayor Lago: Yes, sir.

Public Works Director Diaz: Good afternoon, Hermes Diaz, Public Works Director. Billy, if we could have the presentation up.

City Clerk Urquia: If Cable TV could share my screen.

Public Works Director Diaz: All right, so we're here for the closure and vacation of a portion of Kenmare Street.

City Clerk Urquia: Hermes, I got you.

Public Works Director Diaz: Oh, you got -- you're the power. Can you get all the text in so -- sorry. So, Kenmare Street is located east of Harlano, south of Cadima, and west of Riviera Drive. It lies between the properties of 510 Cadima, 3600 Riviera Drive, 3615 Harlano, and 3616 Riviera Drive. The section of Kenmare Street no longer serves a public purpose. It dead-ends at approximately 148 feet east of Harlano Street. It is not a part of the city street network. The total area to be vacated is approximately 7,400 square feet. Next. Kenmare Street is located within the Coconut Grove Terrace subdivision. It was platted in 1921 and recorded in Plat Book 6, page 107 of the records of the City of Miami-Dade County. So, this actually predates the founding of the City of Coral Gables. The section of Kenmare Street on the west side of Harlano was actually already vacated in 1958, and you can see that in color. The red section is the area that we want to vacate. The blue section was vacated in 1958 by Ordinance 1075. In 1925, the Coconut Grove Terrace subdivision became contained where the City of Coral Gables County Club Part 6. In Plat Book 20, page 1 of the Records of Miami-Dade County, and this in a sense, it condemned Kenmare Street to be a dead road. The next slide will provide a better view. So, that is the section of Kenmare Street relative to the adjacent lots. So, I think that completes the presentation. The purpose of this, we want to abandon City interest in the streets, and the property will revert to the abutting property owners.

Mayor Lago: Okay. Do we have -- do we have any public comment?

City Clerk Urquia: Yes, Mr. Mayor.

Mayor Lago: Okay.

City Clerk Urquia: First speaker is Wayne Pathman.

Mayor Lago: Mr. Pathman, good afternoon.

Wayne Pathman: Good afternoon, Mr. Mayor. Good afternoon, Vice Mayor and staff and Commissioners. My name is Wayne Pathman with Pathman Law, located at 1 Biscayne Tower, 2 South Biscayne Boulevard, Miami. I'd like to point out that this is not a simple vacation because there are a number of parties, or at least two, that are claiming an interest in the action you might take today. But there are three things that you must consider in a vacation. First thing is the plat, as your Public Works Director alluded to. The second is the law. And three, how is the law interpreted? I'm going to walk you through those in a very quick presentation. I represent Mr. Filippo Fertini (phonetic), who lives at 3615 Harlano Street in Coral Gables. Mr. Fertini is the only one that has a legal claim to the vacation of Kenmare Street. Why? As the plat that your Public Works Director showed you is the one legal controlling document that deals with the vacation, which was a plat that was done prior to the City becoming incorporated. But what's important that he didn't show you is the language in the plat, which says that Kenmare Street was dedicated for the perpetual use of the public, reserving however to the said Monterey Corporation its heirs, assigns all revision and revisions, remainder and remainders, when said streets and roads cease to be used as public highways, are closed or vacated in accordance with law. So, it's a standard process under Florida law under Section 177.085 and 336.12 that you can only have a revisionary interest if you were a part of the original dedication. Under this plat, which is the only legal document in the City records, shows that the predecessors of Mr. Fertini are the ones who dedicated the roadway for City purposes back in 1921. And it has in that language the revisionary right that Mr. Fertini is indicating to the City through us, his counsel, that he has the only right to receive the property back once you vacate it. Your Public Works Director Hermes Diaz also wrote a letter to the City Attorney's Office wherein he stated that only someone with a revisionary interest can take ownership of Kenmare Street. Technically, the City of Coral Gables, through its Public Works Director, has already made a determination that only someone who dedicated property can receive the revisionary interest. Now imagine if you claim that you're entitled to the property as you might hear today but you have never dedicated it. You could do that anywhere in the city. I could come to your house and say -- apply to the City, I want to vacate the street, and I want an interest in that property even though I have no legal right to it. The other important -- some of the other important issues that I think you should consider is under Florida Statute, the revisionary interest in streets, roadways, alleys or similar strips of land are reserved for the dedicators, as I previously mentioned about the plat. And that section in Florida Statutes is 177.085. The revisionary interest as defined is a revision in a future interest that is kept by the grantor and that becomes possessory when one of the several specific present possessory interests

given to the grantee by the grantor expires, which is what's happening here. Your Public Works Director has recognized the City no longer needs the street, you should vacate it, and it reverts back to the dedicator. The only dedicator of the property was Mr. Fertini's predecessors. In Bouvier Law Dictionary and Webster's Dictionary states, revisionary interest is a future interest in property left in the control of a grantor or the grantor's successors. Black's Law Dictionary says revisionary interest is a future interest left in the transfer or successor an interest, which is exactly what the plat says when you go back to 1921. Only those who dedicated or whose predecessor dedicated the street for public use holds a revisionary interest. There is no evidence or proof in any other dedication that any other dedication was made for Kenmare Street besides Mr. Fertini's predecessor. Mr. Fertini owns the property abutting the vacation -- the street to be vacated, with a viable claim to Kenmare Street. The City received from outside counsel a memo. In the memo, the attorney cited to one section of the Florida Statute, but not both, and he left out the plat, never recognized that there's an existing plat which has revisionary language in the plat. And he never cited Section 177, which I just read, the revisionary interest in streets, roadways, alleys, or similar strips of land are reserved to the dedicators. And that's the essence of the law. That's the essence of the case law. The case law that is cited by your outside counsel, and also cited by my law firm in a memo that we sent you, reads as follows. In this case it's Emerald Equities versus Hutton. The fee and the abandoned roadway reverts to the abutting estates in the same portion that these estates were reduced in order to create the roadway. Again, revisionary interest, dedication. You must have one before you have the other. The first is to have the dedication, which entitles you to a revision -- a reversion if in fact the City vacates the property. I also think it's important to look at what your Public Works Director has put into the record in his memo that he wrote to the City Attorney's Office because it was the -- the memo dates back to January of 2023 before the City took upon itself to vacate this property. In the memo, he identifies that, again, only a dedicator could receive the property back. So, you have a professional opinion from a City director indicating exactly what would happen if the City takes action today and vacates the property. I would like to just emphasize again, if anyone else comes up here today and speaks, ask them, what is their legal authority for seeking a portion of this property? Do they have a revisionary interest? Did they or any of their predecessors ever dedicate any of the property that you're seeking to vacate today? And the answer will be no. The memo that you received, unfortunately, is bad law. It was not written correctly. It does not include the plat language. It does not interpret the state statute correctly. I would ask that you find that Mr. Fertini and his family is the proper owner of this property once you make the vacation, and it should revert back to him. I would ask that I be given five minutes for rebuttal if necessary.

Mayor Lago: Thank you.

Mr. Pathman: And I have copies -- I have copies if you'd like to see the plat and you want to see the language because it wasn't given to you. If you'd like to see it, I can hand them out. I think that's the most important document that you should consider today.

Mayor Lago: Thank you, Mr. Pathman.

Mr. Pathman: Thank you.

City Clerk Urquia: Tucker Gibbs.

Mayor Lago: Mr. Gibbs, how are you? Good afternoon, sir.

Tucker Gibbs: Good afternoon. My name is Tucker Gibbs, law offices at 3835 Utopia Court in Coconut Grove. I'm here today representing Hillary and Javier Rodriguez. I just wanted to start off by addressing Mr. Pathman's argument. There's a section that he cited in Florida Statutes, platted streets, reversionary clauses. There are two sections of that. Section 2 says, as to all plats of subdivided lots heretofore recorded in the public records of each county, the holder of any interest in any revision or rights in streets in such plats other than -- other than owners of abutting lots -- abutting lots shall have one year from July 1st 1972 to institute a suit in court of competent jurisdiction in this state to establish or enforce the right. And the failure to institute the action within the time shall bar any right, title, or interest, and all right of forfeiture or reversion shall thereupon cease and determine and become enforceable. That's kind of in the parlance, it's use it or lose it. You have to -- if you have a reversionary interest and you did not file that suit, you're out of luck. You have no reversionary interest. So, the only interest that they're talking about is the interest -- only that they can talk about under the statute, is their interest as an owner of an abutting lot. My clients also are an abutting lot. They filed this application initially, and the City accepted it. So, let me get back to my main point and that is my clients. My clients have owned their home on 510 Cadima Avenue since 2002 and this property abuts Kenmare Street. On October 24th, the Rodriguez's met with City staff to review with them their application to vacate Kenmare Street. The applicant's application sought to vacate Kenmare to annex -- and this is a direct quote -- "to annex half the width of the street to 510 Cadima Avenue, which is the north side of Kenmare Street and half to 3615 Harlano Street, which is the half on the south side. That's Mr. Fertini's property. Mr. Fertini did not join in in the application, but my client still said it's 50-50 and they told this to staff. Staff said they understood that. The basis of their request, however, was a 1958 vacation from the Kenmare Street west of Harlano. The one today is east of Harlano. And the ordinance said that portion of Kenmare Street lying west of Harlano Street and adjoining and abutting the following described property. And I have a board I'd like to show you. I just forgot to bring it up.

Mayor Lago: Okay.

Mr. Gibbs: The board. Sorry. And I don't know if I'm able to walk around with this, but I wanted to show you, and you've seen it, you've seen all this in your staff report.

Commissioner Menendez: Be careful there.

Mr. Gibbs: Let me go do this so whoever's taping this can get it. Let's see here. Kenmare Street has a north side and a south side. My clients are -- this is Mr. Fertini's property, it's to the south down here, the two lots -- three lots. My client has two lots and that's to the north side. And so, you're going to see a lot of this legal stuff. I'm just going to say the north and the south sides to try to get this -- keep moving with this. So, it said that the portion of Ken -- and this is in 1958. It said the portion of Kenmare Street lying west of Harlano and adjoining the abutting following described property. One was the south side, which Mr. Fertini owns now, and the other one was the north side, which among other people, my clients have an interest, own. And so, it says -- let's see, it says, be and the same hereby vacated subject to certain reservations. And they have a series of reservations about utility easements and about when you -- and it describes when you abandon the property, what can you do with it? And that is Section 3, and Section 3 specifically says that you can only use it for the zoned use of the neighbors to the north and the neighbors to the south. They actually give the legal description. So, it's very clear, and I'll get to that in a second. So, my clients -- oh, I'm looking for my...

(COMMENTS MADE OFF THE RECORD)

Mr. Gibbs: Oh, it's all yours. I want to hand you out something, and I'm going to describe it to you all. But you can look at it. I said, now my clients understand the City's taken over their application, but they submit the following proposed approval language, which actually comports with the City's past practices in vacating properties and Florida Statutes. Section 1, you'll see this -- and this is literally the same ordinance that was approved in 1958 for the other side of Kenmare. And what we've done is we have -- we're trying to -- what we're doing here is we're trying to keep it very simple, to follow the City Attorney's position on this, that an abandonment or a vacation is not an apportionment of property, and that the City has no authority to apportion the property. And all we're interested in, all my clients are interested in is assuring that you're doing the right thing. And the right thing, according to Holland and Knight, which is the -- which was the special counsel or whatever to the City, the advisor to the City on this particular issue, and that's what we're trying to look at. And so, the Holland and Knight opinion -- and I want to read this to you so you understand what it means. It says, Holland denied opinion requested by the City Attorney states, based on past practice, which I assume is the 1958 vacation, and that's one example of it, and Florida Statutes and case law, each abutting property owners take title to half the vacated right-of-way up to the centerline which abuts their property, regardless of which plats the property owners and the right-of-way are located in. This would be consistent with what the City of Coral Gables did under Ordinance 1075, which is that 1958 ordinance. And that's all I'm asking you all to do when I handed that to you is today pass that -- on first reading, pass that particular proposed -- what I call it the proposed ordinance, it's just proposed language for the ordinance. So, it would be consistent with what the City of Coral Gables did under the 1958 ordinance, which vacated the west side of Kenmare and -- excuse me. And my clients and I believe that the proposed ordinance responds to a key issue that has been articulated by the City Attorney and staff that it vacates Kenmare Street without transferring the vacant parcels. This is not anything that is going to be shocking to staff who has said this to us. And so, we respectfully

request that you adopt the proposed language that we've made after your consideration of the vacation application. And I thank you all very much.

Mayor Lago: Thank you.

Mr. Gibbs: If you have any questions, I'm happy to answer them.

Mayor Lago: Thank you very much. Mr. Clerk, anyone else?

City Clerk Urquia: No, Mr. Mayor.

Mayor Lago: All right, we'll close the public comment. So, Mr. Director.

Public Works Director Diaz: Yes, just to give a little bit of a back story. The property to the north, which I believe is who Mr. Gibbs represents, started application for the vacation of that street. When this came to my attention and based on my experience with platting, I remember having a conversation where it was my understanding of the platting process that the property to the south will be entitled to the whole thing. And I told them you're more than welcome to proceed with the process, but there's a cost and time associated with it, you know, like it didn't really make a lot of sense to me, right? Through this process, we also learned that the property owner to the south, at some point in the past, had attempted to do the same thing. It never came to fruition. And in discussions with the City Attorney's Office and given the fact that we don't have any real interest, the City doesn't have any real interest (INAUDIBLE) we decided to, you know what, maybe we're going to make this a City application to close and vacate this street. But the code doesn't really spell out that we're determining who gets what. Regardless of what my professional opinion is, or the fact that the off-site counsel from the City Attorney's Office has a different opinion, all we're asking is for the vacation of the right-of-way, the City's abandoning all interest in the right-of-way. If there's a dispute as to how that right-of-way is to be divided, unfortunately, the property owners will have to sort that out through legal means. But I don't -- through this -- so, through what we are proposing, we're not making a determination as to who gets what, regardless of whether my opinion is or whatever the opinion of the off-site counsel is.

Mayor Lago: Okay.

Commissioner Castro: I will move to vacate the alley. Two seconds, please. And we don't have any -- this body doesn't have any jurisdiction to decide who takes the alley, so that would be out of the...

Public Works Director Diaz: I don't know if you have jurisdiction or not. I'll leave that to the City Attorney's Office, but that's not what we're proposing.

Mayor Lago: Yeah, Commissioner, just if you could just wait one second. We want to have some con -- some further conversation. I want to ask our City Attorney for a little guidance on this -- on this issue. So, Madam City Attorney, could you give me a little background legally in regards to this issue? What is your opinion on this matter? What do you feel, as we have two neighbors who are battling over this piece of property? At the end of the day, the options are either one ends up with the property, they split the property, but the last thing we want is to see two neighbors be at each other's throats. When, at the end of the day, if you cannot depend on your neighbor to have a good relationship, you know, that...

City Attorney Suárez: Understood, Mayor.

Mayor Lago: Goes against everything you want in a community.

City Attorney Suárez: Understood, Mayor, but ultimately, that is not...

Mayor Lago: Again...

City Attorney Suárez: A determination for the Commission to make.

Mayor Lago: I understand.

City Attorney Suárez: So, the Commission's role in this matter is to determine whether to vacate the alley. As you know, Mayor, the City does not own the right-of-way. It was dedicated to the City for the public purpose. So, we have a possessory...

Mayor Lago: We can't make money on the right-of-way. I understand that.

City Attorney Suárez: We have a possessory interest in the right-of-way. And so, once we determine that it's no longer needed for the public use, and no longer serves its dedicated purpose, the Commission can relinquish its interest in the right-of-way, but because we do not own it, we cannot determine who would get the -- who would get ownership of the right-of-way.

Mayor Lago: So...

City Attorney Suárez: And that would happen either by operation of law, or the parties would have to get some kind of determination in court on that or reach an agreement. There's, you know, multiple ways they can handle that.

Mayor Lago: Through mediation, or one form or another.

City Attorney Suárez: That would be -- it becomes then a private property matter.

Public Works Director Diaz: And I want to clarify, it's not an alley, it's a street.

Mayor Lago: A street.

City Attorney Suárez: Apologies. I said alley, my apologies, it's a street.

Mayor Lago: Perfect, perfect.

Public Works Director Diaz: It looks like an alley.

Mayor Lago: Mr. Pathman, you said you wanted a few minutes to rebuttal.

Mr. Pathman: Yes. I think this is actually more simple than what's being portrayed here today. And like I said earlier, there's one legal document that controls; it's the plat. The plat language is very clear, there's a revisionary interest in my client's predecessor. I agree with the Public Works Director what he said, but there's also an email where -- and I'm not saying it's a legal opinion -- where he concluded that if the property is vacated, it goes back to the original dedicating property. I would also tell you that what Mr. Gibbs said, with all due respect...

Mayor Lago: Can I interrupt you -- can I interrupt you for one second?

Mr. Pathman: Yeah. Sure, please.

Mayor Lago: So, based on the gentleman's points, because he made that point before, what is your opinion on that matter?

City Attorney Suárez: It's not -- it's not a determination the City makes. I don't -- we don't dictate that. We don't make that determination. And so, that is something that either -- if they're so confident that it would revert to them, then that might happen perhaps by operation of law, or he can get a declaration that's the case, but it's not a determination for the City to make.

Mr. Pathman: Along the lines of what you're encouraging, Mr. Mayor, is we don't want to end up in court over something like this. This is very straightforward. It's really by operation of law. It happens in every city in Florida. When there's a dedication to create city streets, and so on, when the city no longer needs that property for its intended purpose, it reverts back. Just simple operation of a reverter. The only document that's been presented here today is the plat that shows my client's predecessor dedicated this property to the City. By operation of law in the plat, it says it must revert back. When Mr. Tucker Gibbs said, Section 177, that we didn't act timely, he misread it. It only says that you have to make a claim if you're not an abutting property owner. We are an abutting property owner. We dedicated it. So, Section 177 is irrelevant. Holland and Knight's opinion does not include a review of the plat, and it's only following a mistake the City made in 1958 by vacating the entire street and people just didn't say anything. They didn't do the

homework that we did to look at the plat to see who actually gets it. Doesn't mean you should follow a bad law or a bad decision. I would tell you that the only thing, again, that's absolutely 100 percent correct is the plat. There has to be a revisionary interest. That's by operation of law everywhere. This is not the first time the City will have done this. And it should only go back to Mr. Fertini because he's the only -- his predecessor is the only one that dedicated. If there's any claim that the other residents have, they should go to court and say to the court, we have some entitlement or right and interest, and I guarantee you they will not win. But there's no reason you should force Mr. Fertini, who's already spent a lot of money, to go and exercise, you know, more time, spend more money to get something that he's already entitled to. I would ask anybody here, your City Attorney, your Public Works Director, Mr. Tucker Gibbs, do you have a legal document? What is your best evidence to show that anybody besides Mr. Fertini should get this property?

Mayor Lago: Thank you.

Mr. Pathman: Okay, thank you.

Mayor Lago: Madam Vice Mayor.

Vice Mayor Anderson: So, I'm going to make some respectful suggestions to you all because I had a discussion earlier today about, you know, what this body has authority to do and not to do, and we have been advised that we don't have that authority to make that determination. It looks like whether we have the authority or not is irrelevant because you're going to agree to disagree. You could engage in pre-suit mediation as a way to try to resolve the issue. There's other means to it, but it looks like you're going to be heading down that road anyway. So, I only say that to you as, you know, as some people call it, a public service message, as a way to try to resolve this thing. We have a motion. I'll second it to just approve the...

Commissioner Castro: Vacation.

Vice Mayor Anderson: The vacation and you all can take your next steps.

Mayor Lago: All right. We have a motion and a second.

Vice Mayor Anderson: Yes.

Commissioner Castro: Yes.

Commissioner Fernandez: Yes.

Commissioner Menendez: Yes.

Mayor Lago: Yes.

(Vote: 5-0)