

**City of Coral Gables City Commission Meeting**  
**Agenda Item F-1**  
**May 27, 2014**  
**City Commission Chambers**  
**405 Biltmore Way, Coral Gables, FL**

**City Commission**

**Mayor Jim Cason**

**Vice Mayor William H. Kerdyk, Jr. (Absent)**

**Commissioner Pat Keon**

**Commissioner Vince Lago**

**Commissioner Frank Quesada**

**City Staff**

**Interim City Manager, Carmen Olazabal**

**City Attorney, Craig E. Leen**

**City Clerk, Walter J. Foeman**

**Deputy City Clerk, Billy Urquia**

**Historic Preservation Officer, Dona Spain**

**Public Speaker(s)**

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F-1 [Start: 10:26:24 a.m.]

Discussion and/or action on the Board Appeals Fees  
Commissioner Pat Keon

Mayor Cason: We'll move on to City Commission Items. First one is a discussion on the Board Appeals Fees – Commissioner Keon.

Commissioner Keon: Included in your packet is a listing of the appeals fees. Now this is for any individual that may want to appeal a decision by any one of these Boards that came to my attention because someone wanted to appeal a decision from the Historic Preservation Board and when they looked at the cost of appeal for a resident. By the time you add in labels and some different fees you are well over \$1,000, and I asked Walter how many has the fees for appeals have increased?- 2006 it was \$200, 2007 it was \$600, went to \$870, now it's at \$913. The fees continue to go up and really are in excess of what the cost to the City is deal with the appeal. So all I'm asking is to have whoever is in charge of these fees, whether it's Finance or whatever to

look at these fees and if they are considerably beyond what the cost of the City is to process these fees to just come back to us with some maybe a more appropriate fee. I know that there is always, there is such aversion to raising taxes that instead often fees get raised to deal with increasing City revenues for a variety of reasons, and I think this is an individual's right to address issues within their government, I really don't think it should be excessive.

Commissioner Quesada: For the public this was an issue that came up that all the Commissioners were e-mailed and a number of staff members were e-mailed. After we received that e-mail, thank you for putting it on the agenda, I had a conversation with the City Manager about how we could address this and the idea, the thought I had was we want to make this as inclusive as possible process rather than hindering participation through excessive fees on these kinds of things. However, when it comes to a developer or a project I don't think that, that fee should change, for an appeal process when it comes to a resident trying to look out for the character of the neighborhood or the quality of life in the neighborhood, then I think there should be a special exception. So my thought was if we rewrite this portion of the Code that addresses what the fees is for any resident who is affected or who could maybe be affected by an issue within 250 feet of their home or 500 feet of their home only has to pay the cost the City has rather than any amounts, the \$913, which I don't know if it's the cost or not for the City, so if we can tailor it in a way that protects the residents that price comes down for the residents in the immediate area; however, it's not a blanket slate lowering the fee for everyone, that was my goal when I read it.

Commissioner Keon: My concern is with residents being able to have redress.

Mayor Cason: Carmen could you address the question of the cost, the components that go into cost because someone may not be clear.

Interim City Manager Olazabal: Right. Well the components that go into the cost – let me restart that. In 2010 there was a fee study that was performed by JRD and Associates and in that study they found that our fees were significantly below what our level of effort is, so they basically increased the fees by 45 percent, that included the appeals fees. In 2011 there was a 5 percent increase, which is basically adapting to inflation and the reports said that every once in a while the City needed to adapt to inflation to make sure that it was recovering cost. Basically, the level – we have Jane Tompkins and Charles Wu, who can talk a little bit more about that, but regarding cost recovery – the fee is divided among three things. You have \$913, which is the fee for the appeal. Within that fee we use \$200 for advertising of the appeal, so left for the City to cover for staff's time is about \$700. On top of that fee the applicant is responsible for a notice requirement which it's around \$300. In addition to that...

Commissioner Quesada: That notice requirement is the cost of stamps essentially?

Interim City Manager Olazabal: It's labels – right. It's the hard cost of the City so that shouldn't be waived. Also we request that when it's a Board that the transcript from the Board meetings are presented to the Commission, so the Commission has the background when that comes for an appeal and the cost of that can be around \$200 as well. So that gets in the range of \$1,000-\$1,500, or something along those lines when you add all the cost for the applicant.

Mayor Cason: Going back to that JRD study, which I have here. Back before my first election I read this and made this a central piece of my campaign because it was really alarming what the – it was a 2004 study and a 2010 study, and it said basically that the City was subsidizing builders and others almost to a tune of \$3 million a year because our fees were not being recovered at all, it said it's crucial that the fees be adjusted regularly critical to the fiscal health of the City and adjusted annually to CPI.

Interim City Manager Olazabal: Correct.

Mayor Cason: And I think we did that and sort of stopped the hemorrhaging, but I understand we shouldn't be charging more than it cost us to do. Otherwise, there is a cost to everything, if you end up subsidizing you are going to have maybe more people coming in, if it's easier and then you'll cut back with the same number of people the ability to service other citizens looking for permits and so on.

Interim City Manager Olazabal: Correct Mr. Mayor. So basically, we have \$700 to cover for staff's time, and that's the hard thing, it depends on the appeal, you can spend anywhere from 5 hours to 15 hours of staff's time to take an estimate, so basically those \$700 are spent on the level of effort that is put into an appeal. Having said that, if you think it's a good policy decision to make some sort of an exception for residents who are being affected by development because the fee is too high, then that's a decision that is for discussion here and we can evaluate and present something at the next Commission meeting as an alternative if you'd like.

Mayor Cason: I like Frank's mentioning of the limit of distance – because we've had people before that have come that live three miles away and complain about something on LeJeune and then you can open up to all those people coming in to appeal everything.

Commissioner Keon: My concern is more is when resident appeals a decision by one of these Boards and it's probably not Code Enforcement, but it probably could be Historic Preservation, it could be the Board of Architects. I know people that have come in and the Board of Architects has told them that you have to pay, they won't approve some color, they won't approve some whatever, and my concern is not with the developer, it's not with the builder, it is not. It is with

the resident to be able to have redress for the decision imposed upon them by their government, and I don't think it should be at such a cost that it kills that ability or desire for them to speak up. That is the piece I would like looked at and I would like the fees brought to a level that does not kill that ability of an individual resident in the City to respond to a decision that's made. How far distance is, I would trust your staff to make that decision and to look at it, but I do really think for the individual resident, I think that is what residents feel they pay taxes for, that is the shared cost of government and I think the residents in turn should have redress, and I think doing something about this gives them that opportunity.

Mayor Cason: Vince.

Commissioner Lago: Commissioner I concur, I concur with your statement. Let me just for my own edification. Carmen could you help me out and see – I'm not expecting to have this information right now, but maybe staff could find it when we review this for a second time. Do we know how many appeals happen both from developers and from residents on a yearly basis?- just to get an idea, what are we looking at.

Commissioner Keon: It's almost none at this point from residents.

City Attorney Leen: The appeals have come to you, so we've only had a few since I've been here in the three years.

Commissioner Lago: Well I haven't been here in three years.

City Attorney Leen: In the three years I've been here.

Commissioner Lago: That's why I'm asking, I haven't seen one.

City Attorney Leen: We had Dade Medical College come on a couple of appeals, I believe.

Interim City Manager Olazabal: I believe we recently had – recently maybe in a couple of years, but we had some Board of Architects appeals.

City Attorney Leen: Yes – and we had a Historic Preservation appeal, which actually...

Commissioner Lago: Maybe I can redirect my question just reframe it. Not only find out the breakdown in regards to residents and also developers, but find out, I guess that's what I'm trying to get at; I'm trying to find out if it's more of a breakdown if what you are seeing on a

continual basis is the developers who obviously are putting up these multi-million dollar projects who have a vested interest in appealing.

City Attorney Leen: Could I say something here? I took a look at this when I started as City Attorney and we have two different types of appeal provisions in our Code. We have one that relates to decisions of staff, and you can take an appeal from decisions of staff to the Board of Adjustment, basically. I have never seen that appeal occur since I've been here. You do also have an appeal from the City Architect to the Board of Architects, that's been done more informally where I see sometimes Carlos, the City Architect, say I want to take this to the Board, but I've never seen an actual formal appeal filed, I don't know if you've had from Carlos' decision to the Board of Architects. Then we have appeals from City Boards to the City Commission and we've seen a couple, and the biggest one that you had in front of you was the one on 2 Casurina Concourse, and I think it was before you were Commissioner, and that did come before the Commission and it was good that it came before the Commission because it was a major issue.

Commissioner Lago: Craig what you are talking about there, you are talking about a multi-million dollar property in regards to whether that historic home could be demolished or not. We are talking about individuals, Commissioner I don't want to put words in your mouth, but what we are probably talking about is a resident who has an issue in regards to a window replacement.

City Attorney Leen: But the point I wanted to make was that I don't...

Commissioner Lago: But the window doesn't cost \$1,213, when you add the \$300.

City Attorney Leen: I know, but for purposes of the record here and the fee do give cost recovery to the City, because there is a lot of time spent by staff. However, my own opinion is people are not appealing probably like residents because it's \$900 and we haven't really seen a resident do that. So, I would assume that part of the reason – citizens come and they say they don't like something, but they don't appeal because, in part because of the fee; however...

Commissioner Lago: But at the end it's not \$900, at the end its \$913 plus \$300, so its \$1,213, because the \$300 is the stamps and the envelopes.

City Attorney Leen: I thought that was included in the \$900.

Commissioner Lago: No.

City Attorney Leen: Are you sure.

Mayor Cason: Carmen?

City Attorney Leen: Mr. Clerk that they are not included in the \$900?

City Clerk Foeman: That is correct. My actual cost from the last appeal we did was roughly \$113 for the ad and roughly about \$140 for the mailings. We get a bulk rate for the mailings, for this particular last appeal I think it was 360 notices that were sent out.

City Attorney Leen: But Mr. Clerk, what I meant was, my understanding of the fee was that they pay the fee and that the only additional cost they pay is for the transcript later. I didn't think that you charged them separately for the mailings.

City Clerk Foeman: Well if you include the mailings inside the \$913...

City Attorney Leen: I guess the question is what is our practice?- what have we done in the past?

City Clerk Foeman: The applicants have to buy the labels.

City Attorney Leen: But the labels are not \$300, it's the stamps.

City Clerk Foeman: The labels are \$300.

Commissioner Keon: The address labels.

City Clerk Foeman: The address labels.

Commissioner Lago: The address labels, the stamps.

Mayor Cason: The envelopes.

City Attorney Leen: We need to look into this a little more. When I spoke with the City Clerk about this, my understanding was that the mailing is the expensive part, providing the notices not the labels.

City Clerk Foeman: The labels are included.

Commissioner Lago: That's the whole point, that's why Commissioner Keon brought this up to clarify.

Commissioner Keon:... With not killing the residents right to appeal a decision, so I would like you to go back and – I can't tell you what the appropriate cost is or whatever, but I would like you to look at this and maybe come back with a discussion as to what would be appropriate that would maybe help recover some of the City's cost and that would not deter a resident from an appeal.

Mayor Cason: And one other thing too Craig, apparently there are no mechanisms for somebody that wants, I think we discussed this recently, with somebody that did not have a lot of money that came in for a paid permit and had the paint and wanted to go through the right process, but couldn't afford the \$125. Apparently there is nothing in our Code that allows for staff or others to make an exception administratively on hardship, is that correct?

City Attorney Leen: Well in that particular case the Code Enforcement Board requested, basically made a decision requesting that it be, that the City not charge it based on the economic hardship that existed. I then resolved the matter under my own authority and requested that staff waive the fee, which they did do, but we don't have a policy in place. The thing we don't have is a policy in place for economic hardship request or for request from residents; we don't have a process in place to determine whether to waive the fee in part or in full.

Mayor Cason: Well why don't you look into it and come back to us and follow up on Commissioner Keon's.

Commissioner Lago: Just to give you an idea Mayor, in reference to St. Mary's Baptist Church, I paid those fees, and we should have been able to at that point offer them the ability. I along with Danette, Danette paid some of those fees too, she went up there and took care of some of the permits that we pulled, but I think I agree with exactly what you are saying in reference to the hardship, because there are some cases where individuals cannot fix their roofs, not only because of the cost of the roof, but also because of the permit and I think I've run into that on two occasions.

Mayor Cason: Why don't you look into it and come back and we can continue the discussion when Bill's here, but I think you've got some good marching orders.

Commissioner Keon: Maybe you can also look at – I know we've had somebody that has come into our Historic Preservation Department to do some renovations a census track in our neighborhood that is eligible for that type of funding. I would hope that they wouldn't be charged, I mean we should look at what the permitting fee is for that would be also, so that the

money, as much as the money is available will go directly to the repair and restoration of the properties and not...

City Attorney Leen: I can put together in conjunction with the City Manager, because she is going to be dealing more with what is the cost recovery?- what is the policy of staff as to how much do we need to be able to do these appeals? What I can tell you is legally and I'll work with her to do this, what you are able to waive, because if we are going to put together a policy it generally has to have standards that make sense and that can be supported by the Commission, but ultimately right now what we are doing with a particular request that we receive. I've asked them to present a motion to waive the fees, to provide good cause and then that would probably be presented to you at some point for your decision. You do not have to waive the fees, you can waive the fees in my opinion, because of the reasons Commissioner Quesada said, because you have residents that live very close to this, it's quite a hardship for one resident to have to bear the fee for their entire community, maybe they could chip in and put it together, but really in the end it's the idea of the citizen being able to come to the Commission in that sort of circumstance, so I understand why you'd want to do it. In my opinion you could waive it in those circumstances.

Mayor Cason: OK.

Commissioner Quesada: So, I guess our request right now is for you guys to go back, take a better look and come back with a suggestion for us.

Mayor Cason: A proposal.

Commissioner Quesada: However, what about in the interim with the current applicant, how are we going to handle that situation?- does anyone have any ideas?

Mayor Cason: We don't know what the basis of the cost recovery, what would be reasonable?

Commissioner Quesada: Their appeal Ms. Manager is pending right now. I know they've expressed an intent to appeal, but have they yet?- have they filed the required documentation?

City Attorney Leen: I looked into this for the City Manager, she asked me to look into this with the City Clerk and the issue is that they have filed a letter, sort of informally, which I view as jurisdictionally sufficient. There has not been a formal resolution issued by Historic Preservation Board yet, so technically we are still waiting for that to issue and then it will become right.

Commissioner Quesada: OK. So the letter right now...



City Attorney Leen: Do you have it?

Mrs. Spain: [Inaudible – off mic]

City Attorney Leen: No that was a letter.

Mrs. Spain: The resolution is done.

City Attorney Leen: Oh, when did that get issued?- I'm sorry. I've seen the letter. I saw a letter issued.

Mrs. Spain: When the Historic Preservation Board passes a resolution it's signed by myself, by the City Attorney's office and also by the Chair of the Board and the Chair did sign it on Friday. I've e-mailed it to the person that would like to.

City Attorney Leen: So Mr. Mayor there has now been a resolution issued on Friday.

Mrs. Spain: And in that case since it's going to the Planning and Zoning Board. My department has ordered the transcript so they would not have to pay the cost of the transcript.

Commissioner Quesada: So the current procedure that they are following, now it goes to the Planning and Zoning Board, did they have to appeal to the Planning and Zoning Board?

City Attorney Leen: No.

Mayor Cason: It's part of the process.

Commissioner Quesada: That's part of the process.

City Attorney Leen: It's a site plan review so it's going to come to you no matter what.

Commissioner Quesada: So the issue of the \$913 is not yet right at this point, so we could have another Commission meeting where we vote on it and then apply it to this group?

City Attorney Leen: Yes, but in this particular case you may be in a position where you could have waived most or all of the fee because it's going to have to be noticed for the Commission anyway.

Commissioner Quesada: But the point is we don't need to make a decision yet.

City Attorney Leen: No, we don't.

Commissioner Quesada: Let's wait so then our request to...

Mrs. Spain: It's all going to come to you together.

Commissioner Keon: It's going to come to us anyway and they can be advised that it is going to come to the Commission and they can make their appeal here without there being any cost.

Commissioner Quesada: So Ms. Manager, Mr. City Attorney, if you guys can please work together and give us an idea by the next meeting.

Interim City Manager Olazabal: Will do.

Commissioner Quesada: Thank you.

Commissioner Keon: At least before we construct a budget we should have that settled, because it's a budgetary item.

Commissioner Quesada: We'll discuss it at the next meeting.

[End: 10:47:32 a.m.]