

City of Coral Gables City Commission Meeting
Agenda Item I-2
September 22, 2015
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 I-2 [Start: 10:22:28 a.m.]

Request for grant of authority to the City Manager and City Attorney to take any actions necessary, including court action and/or execution of agreements, to ensure that the Solid Waste Non-Ad Valorem Special Assessment is enforced and collected by Miami-Dade County through its Property Appraiser and Tax Collector.

Mayor Cason: We are going to do, first of all, I-2.

City Attorney Leen: Thank you Mr. Mayor. Item I-2 is a request for authority from the Commission. I'll read the resolution that's being proposed just the title, it's a resolution of the City Commission of Coral Gables, Florida, authorizing the initiation of statutory governmental dispute resolution procedures with Miami-Dade County, the Property Appraiser of Miami-Dade County and the Tax Collector of Miami-Dade County over collection of the City's solid waste

assessments pursuant to the Uniform Collection Assessment Act, Section 197.3632, Florida Statutes and authorization of emergency litigation. Now obviously, I would like to preface this with saying that the City of Coral Gables and Miami-Dade County have a very good relationship, they always have and they will continue to have a great relationship, but this is an issue where we disagree with the County and we are trying to work the matter out, but in order to put the solid waste special assessment on this year's Tax Bill, as was the Commission's will, as stated in an ordinance and in an assessment resolution, we have to ask you for this authority today. Just to give a little bit of background, the City of Coral Gables is assessing for its solid waste fee for the City provides solid waste services to its residents. This comes at a cost, obviously, there are residents who have not paid this fee for many years, even though they have received the service, so this is a classic special assessment. There has been services provided and yet there has been no payment made back to the people, to the City, and that's the purpose of a special assessment. This is not a fine or a penalty, its to compensate the City for services provided. The Commission passed this several months ago, couple months ago, and we brought this to the Tax Collector and Property Appraiser to put on the tax roll and they are refusing. The issue with that and its explained in the resolution which was provided to you yesterday, and I would just like to provide you a copy, in case you want to look at it now. The issue with that is state law is very clear, it could not be clearer, if you look at the First District case, which is an Appellate Court case, looking at this issue and also an administrative rule from the Florida Administrative Code, state law could not be clearer that it's the City Commission that makes the determination of whether to assess, whether to impose a special assessment and determines the legality of that; and to that end we hired special counsel, a special counsel who does a tremendous amount of work in the area of special assessments, who gave us an opinion, which I adopted as the City Attorney opinion that this was a legal assessment, and honestly that is the decision of the City Commission and it has a presumption of validity. And as you'll remember when you imposed that assessment there was a time period for people to come here and object that they had some sort of legal or factual objection to the special assessment. And as you may recall, nobody came and objected except for one individual who was not objecting to the assessment, he was concerned about the cost, because of his financial difficulties, and we have been working with him individually to resolve that matter. But there were no objections to the special assessment

itself. So this was provided to the Tax Collector and the Property Appraiser, state law says that they are ministerial officers and are required to place this on the tax roll, that they have no discretion and are not allowed to, in a sense, go underneath the assessment to determine its legality on their own. They are not judges and they have no right to be judges in this case. So we have presented it to them, similarly to when you go to the City Clerk's office and file a document, the City Clerk is supposed to accept the document. Likewise when we provided the special assessment, the Tax Collector and Property Appraiser were obliged to proceed with the special assessment on our behalf, they are refusing to do so. We have met with them in the spirit of good faith to try to resolve the matter. The City Manager, myself, and the Finance Director went downtown yesterday, met with a representative of the Property Appraiser, met with the Tax Collector and met with the Deputy Mayor and an Assistant County Attorney in an effort to resolve the matter. However, at this time they are still refusing to place this on the tax rolls. So with that, I have to come before you today and ask for the authority to initiate a Chapter 164, dispute resolution process. In addition, I am asking for emergency authority to bring a lawsuit, if we deem it necessary, because of the time sensitivity of this matter. In order to approve the resolution it requires a three-fifths vote. In order to approve the immediate lawsuit it requires a four-fifths vote.

Mayor Cason: Let me mention what's at stake here too. We have some people who haven't paid their garbage bill for over 12 years; their properties have been liened, they know that they owe this money, I think we started off with 803 and we are down to around 500, but they still owe us \$2.5 million. We can do a lot in the City with \$2.5 million on our programs. I don't understand the position of the Tax Collector in this matter. We work with them in terms of Homestead fraud, we dedicate police to work with them. I don't understand where they are coming from on this, but I think that we've got to move forward and its important for us to get them to change their mind and I think whatever is required we should do it.

Vice Mayor Quesada: Just one thing. So moved.

Commissioner Keon: After you make the motion we can discuss.

Vice Mayor Quesada: I can withdraw...

Commissioner Keon: I think in talking with Craig about the issue and I think that the reasoning that's been given by the County for the objection to putting or placing this item in this form on the Tax Bill is not for them to collect the fees associated with, to collect our garbage fees in total. I think feel that maybe they are being placed in a position where they are acting as a collection agency for delinquent fees, which is not something that they have traditionally done, so you know, I think the resolution is for us to going forward is to place the garbage fees or waste fees on the Tax Bill instead of our sending out a bill to homeowners or whatever else that they just be included on the Tax Bill annually when it goes out, and that way you will pick up all of the fees even that have not been paid to date because it is all of the fees owed by every folio that would go on the Tax Bills, which is the issue I think has been talked about here before about adding this to the Tax Bill, I mean those are one to two percent collection fee that goes with it. So, I have some feeling for the County in not wanting to be a debt collector and for people that just haven't paid fees. Whereas, I think what they feel and I think what they have expressed is that they are willing to place the entire Bill on all of our fees, on the Tax Bill, but to only place those fees that are in arrears so that they are become a collection agency is generally not the position or they don't really see themselves in that position. So, I think that, I know that there has to be if you are looking to go forward to have this discussion with them or whatever, I mean I think is rather than challenging anybody, our regional government, I think again, if this is the means by which you have this conversation and work through this issue so that, I guess you said that maybe they will do it this one time and then going forward we will place these on the Tax Bill and I think that, that's a very appropriate way to deal with this. I have some concerns.

City Attorney Leen: Mr. Mayor the reason why we are pursuing the suit is because they told us that this has to be done by early October, so that's why we are asking for the emergency authorization to sue. In terms of placing this on the Tax Bill in the future, that is something that they have raised. They have raised it in the context of not proceeding with the assessment this year and placing everything next year, including past dues under the theory that, that's similar to something they did with their prior fire fee assessment. The issue for us and I just want to raise that is that, although they are calling these delinquent fees, this is an imposed special assessment this year for work that has been done by the City over the past 7, 8, 9 years that has never been

paid for. So we view it as a proper assessment this year, but I understand their concern. What they proposed and what I suggest is that the City Manager and I and the Finance Director discuss it with them and consider all the positives and negatives of any such issue related to that, just so you are fully aware and since you've raised the issue. What they have proposed is that – one thing you need to understand Section 54-185 of the City Code authorizes and standard practice in the City right now is that you can pay quarterly for your fees and you can pay before, I believe its October 1st and you receive a discount, that's by the Code, that's separate from any discount you would receive for the assessment, as far as I understand it. So we would have to, if we were going to proceed with something like this and again, this is subject to discussion with administrative staff, because it's a significant issue. What I would say is, what we would need to do is we'd have to give a date by which someone could pay their special assessment going forward, their garbage fee, and then they'll be taken off the roll going forward so they could get the discount and everyone else would be assessed. Well you know there are issues with assessing people as opposed to just sending them a letter and giving them a fee, which I know that the City Manager and the Finance Director wanted to consider, I'm just putting that out there. This particular resolution does give us the authority, the City Manager and I, to enter into any agreements with the County that we deem necessary to resolve this matter, and in my opinion that would include this. Now we may have to come back to you and amend the Code in some way, but that would be subject to the settlement. So what I would suggest is, if the Commission has any thoughts on that, on what I just raised, is provide them, obviously you are the governing body of the City and we do want to settle the matter, but I do know that there may be some, we want to make sure that what we do is good going forward for years to come.

Commissioner Keon: There is a provision on our taxes that if you pay them by a certain time you get a reduction in the taxes, does that include the fees that are on the Tax Bill, because they are cumulative, put this on the Tax Bill?

Mayor Cason: It doesn't include things like a pass-through bid assessment, it doesn't include fines that people haven't paid. I think there are alarm fees, there are four or five things that have gone into – at one point it was almost \$3.8 million of back monies owed to the City. I don't

know how if you put it on the Tax Bill that it would take care of the bid, the alarm fees, the code fees that people haven't paid.

City Attorney Leen: What they have raised is placing the solid waste fees on the Tax Bill. Now again, they would not proceed with the assessment this year, in my professional judgment I don't think we should agree to that, because its up to you obviously, ultimately, but it seems to me that if we were ever to agree to something like that it should be that they will put this assessment on the Tax Bill this year and going forward we will use them to assess the solid waste fee, subject to the administrative issues I've raised and resolving that issue, and that we will hold them harmless for the assessment this year. Under the theory that their ministerial officers, so they are not responsible for the legality that's the position we've taken, which is true, that's what the law says, so we would be if that assessment is challenged we would defend the suit, we would be responsible for the suit, indemnification, etc., and they would simply be a ministerial officer, so I propose that as well.

Mayor Cason: I think we should approve this resolution and give you the authority to move forward and negotiate. What we do next year, we can discuss that at another meeting, but we need to collect this money now, the 500 citizens that no matter what we said are not about to pay, this will get the money that we've been paying to subsidize their garbage collection for up to twelve years. So, I think we have a motion from Vice Mayor and we have a second...

Commissioner Lago: Second the motion.

Mayor Cason: City Clerk.

Commissioner Slesnick: Yes

Commissioner Keon: Yes

Commissioner Lago: Yes

Vice Mayor Quesada: Yes

Mayor Cason: Yes

(Vote: 5-0)

Commissioner Keon: Do you need authority to enter into that agreement with them that if they do it this year that we will then continue that's a condition of their agreed to do it?- or do you not want that?

City Attorney Leen: You've already granted us that authority.

Commissioner Keon: Oh, you have that authority under this resolution. OK.

City Attorney Leen: You've granted us full authority to resolve the matter. Madam City Manager did you want to say anything about it?

City Manager Swanson-Rivenbark: We appreciate the authority. We do want to be careful with policies that are established for future Tax Bills and we would want to bring that back to you all, so that you all are able to vote individually on that matter.

Commissioner Keon: So if that was a decision it will come back to us?

City Manager Swanson-Rivenbark: It would be my recommendation, but I need to follow direction from the City Attorney.

Commissioner Keon: Oh, OK.

[End: 10:37:35 a.m.]