

**City of Coral Gables City Commission Meeting
Agenda Item G-8
August 29, 2017
City Commission Chambers
405 Biltmore Way, Coral Gables, FL**

City Commission

**Mayor Raul Valdes-Fauli
Vice Mayor Pat Keon
Commissioner Vince Lago
Commissioner Frank Quesada
Commissioner Michael Mena**

City Staff

**City Manager, Cathy Swanson-Rivenbark
Assistant City Manager, Peter Iglesias
City Attorney, Craig E. Leen
Deputy City Attorney, Miriam Ramos
City Clerk, Walter J. Foeman
Deputy City Clerk, Billy Urquia**

Public Speaker(s)

Agenda Item G-8 [0:00:00 p.m.]

A discussion and possible action regarding invocation of Chapter 164 of the Florida Statutes by the Coral Gables City Commission as to the Miami-Dade County School Board relating to the applicability of City land use, zoning, and historic preservation regulations to Miami-Dade County Public Schools' property and development within the City.

(Sponsored by Vice Mayor Keon)

Mayor Valdes-Fauli: Okay, Item G-8, which is -- G-8. Mr. City Attorney, will you read the item? It's a discussion item.

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Agenda Item G-8 – Discussion and possible action regarding invocation of Chapter 164 of the Florida Statutes by the Coral Gables City Commission as to the Miami-Dade County School Board relating to the applicability of City land use, zoning, and historic preservation regulations to Miami-Dade County Public Schools' property and development within the City. Page 1

City Attorney Leen: Thank you. Thank you, Mr. Mayor. This is a resolution of the City Commission of Coral Gables, Florida, authorizing the initiation of statutory governmental dispute resolution procedures with Miami-Dade County Public Schools School Board over the applicability of the City's historic and zoning regulations to School Board property and development in the City of Coral Gables. Over the course of the last several years, a number of issues have come up where the City has sought to apply its Zoning Code, its Comprehensive Plan or its historic preservation regulations to Miami-Dade County Public Schools and the position that Miami-Dade County Public Schools, both their School Board Attorney's Office and the entity itself, is that our Zoning Code, historic preservation regulations and Comprehensive Plan do not apply to them in these contexts. This is a significant issue that is recurring between both of our entities. Most famously, it came up with the Coral Gables windows, which may be talked about a little bit today. I know that Vice Mayor Keon wanted to talk about that, but that's one area where it came up. It also came up, obviously, today in a very stark format where before you the School Board essentially objected to our process on the record. So, there is a dispute. There's no denying it. I know both of our entities respect each other, but it's something that's going to continue to recur. That's been made known. So, instead of having these come up from time to time and having the argument on an ad hoc basis, it may be better to resolve this once and for all. So, with that, I...

Mayor Valdes-Fauli: What is your recommendation?

City Attorney Leen: Well, my recommendation is to proceed with Chapter 164. I think there should be a discussion, but after that, I believe it is appropriate to go forward with Chapter 164 governmental dispute resolution procedures. That would lead to a discussion of the two staffs. And, then if we can't resolve the matter -- and you would be authorizing that. So, you would be allowing us to try to resolve this matter among the staffs. If that can't be resolved, then you would meet with the School Board in a session, which could be resolve through an interlocal agreement. And, if we can't resolve the matter, then we would proceed to litigation.

Mayor Valdes-Fauli: Okay.

City Attorney Leen: Now, there is one point in this resolution, which is that in the event the School Board takes action which would require us to respond on an emergency basis -- say, for example, they violate the cease and desist order; it would authorize us to begin immediate litigation. That requires a four-fifths vote. So -- now, we're not proposing to go forward with litigation at this moment. We want to go through the Chapter 164 procedure, but that is part of the resolution as well. I want to be clear about that. One other thing I want to make mention of is in the cease and desist letter I mentioned, there is a letter explaining our position. It explains that Section 1013.35 of the Florida Statutes requires the School District to be consistent with the City's Comprehensive Plan. Our Comprehensive Plan provides, under Policy FLU-1.1.6 that reference should be made to the City of Coral Gables Zoning Code for the underlying assigned zoning classification and list of permitted uses. And then, the point that -- and then we cite to a couple of the cases that I mentioned previously that apply a balancing of interests analysis, and I want to make that point clear. We are not saying -- and no one should say that we're -- that the position of the City is that they must comply with every single provision of our Zoning Code. That's not our position. Our position is they must seek to comply with the Zoning Code, and in places where they can't, come before the Commission and a balancing of interests is applied. So, if there's a situation where they have to build something in a setback that can be approved. If there's a situation where they need to build a school in a place where we might not otherwise allow it, that can be approved. But the issue, as mentioned by Commissioner Mena previously, is that it requires them to go through the process, and then it allows the Commission to exercise its sovereign authority over the zoning of Coral Gables, which I have to say -- now, being here six and a half years -- is probably the most important power you have and it's what Coral Gables is known for, and it's something we've been fighting the state legislature for the last year and a half. So, this isn't just about the School Board. It's something we've raised with Miami-Dade County on numerous occasions. And the County has always -- at least thus far -- taken the position -- although they've resisted to some extent -- that they will -- at least on a voluntary

basis -- go through our process, and they do go through our process and we work it out by a balancing of interests. We're asking the same from the School Board. So, this is not unprecedented. This is not a focus on the School Board. We value our schools. But, this is something that we've been fighting for as a part of home rule power, and so it is very consistent that we would apply this to the School Board as well. And so, with that, Madam City Prosecutor.

Deputy City Attorney Ramos: I was asked to come up by Commissioner Lago.

Commissioner Lago: Yes.

City Attorney Leen: Oh.

Commissioner Lago: I just have a quick -- just one quick question for clarity and for my colleagues and for the individuals who are watching today. Can you clarify that I can act on this issue, whatever decision that we make right now?

Deputy City Attorney Ramos: Yes, sir. In the opinion that I issued, I addressed all three matters, this being the second, Chapter 164 regarding Miami-Dade County Public Schools. You do not have a voting conflict based on the fact that you do not have one of the enumerated relationships in 2-11.1(d) of the Miami-Dade County Code as it relates to Miami-Dade County Public Schools. Furthermore, any effect would be way too attenuated on BDI and even further attenuated on you given the broadness of this item. This item relates to the City's position with regard to Miami-Dade County Public Schools and any school of Miami-Dade County Public Schools that's in the City of Coral Gables, not West Lab directly. In fact, without West Lab, we've been contemplating 164 action with regard to Coral Gables Prep and other schools in the community.

Commissioner Lago: And, I just want to be clear because something that I forgot to mention before, my firm has been doing business with the School Board for over 13 years. We've done over 150 projects with the School Board. Just in the City alone, Coral Gables, we've done Ponce Middle. We've done Coral Gables Senior. So, we have an extensive -- we are school builders, and we're proud to be school builders. Some people build high-rises. We do medical and we also do schools, so...

Mayor Valdes-Fauli: Thank you. Thank you very much. Is there a motion to follow the recommendation of our City Attorney?

Commissioner Quesada: I'll make...

Vice Mayor Keon: This is to go and do 164.

Commissioner Quesada: Yeah, I'll make that motion. My only concern here is, again, we really got to think about this because what if we come out of that 164 meeting at a stalemate. I don't think that there's any kind of law or precedent that says where to go from there.

City Attorney Leen: At that point...

Commissioner Quesada: You know, because I'm just trying to be practical about this. I think we're going to go into the meeting, we're going to maintain our position and they're going to maintain their position, and then what happens at that point?

City Attorney Leen: Well, so what would happen is if we're unable to reach a resolution, that's when we can proceed with a declaratory judgment action, but that would come back to you. If we're going to...

Commissioner Quesada: And obviously, that's a last resort. We don't...

City Attorney Leen: Yes.

Commissioner Quesada: Want to get into that, but...

City Attorney Leen: We will not -- I'm not asking for authority to file declaratory judgment action today. That would require me to come back to you. The only issue is that in case an emergency comes up, under our Code, presently, I would go to the City Manager. And, if we agree, we would file and then notify the Commission. I'm asking you in advance to approve that. So, say, for example, the School Board proceeds, violates the cease and desist order and we need to seek an injunction to prevent them from continuing, based on the Commission's action today, I would want you to grant me authority to be able to do that. That requires a four-fifths vote.

Commissioner Quesada: Okay.

Mayor Valdes-Fauli: Okay.

Commissioner Lago: If I may.

Commissioner Quesada: Yeah, go ahead.

Commissioner Lago: And I agree with what Commissioner Quesada's stating, but I want to go back to what Commissioner Mena mentioned while I was listening and I was outside of the chambers. I think that we really need to push for today -- and I know that we're talking about 164 -- Chapter 164 -- is that we need to have our Mayor really sit down with Superintendent Carvalho and try to hash these issues out, because there has to be an understanding.

Mayor Valdes-Fauli: Absolutely.

Commissioner Lago: There has to be an understanding. We've got -- this is the second time that we have an issue here. Again, I don't want to get into who's right and who's wrong, but I think that we need to hash this out for once and get -- come to common ground, because we're here for the students, at the end of the day. I mean, these are -- and we're striving for better education for the residents in this community, so I think that there has to be an understanding, and the Mayor can bridge that gap.

Mayor Valdes-Fauli: No. I was -- we had a meeting yesterday at 3, and right before we were going to leave, the City Manager -- we got a call that he had had an emergency and couldn't meet with us. I'm willing to meet anytime in the spirit of conciliation, because that's what's best for Coral Gables and what's best for the students.

Commissioner Lago: Of course.

Mayor Valdes-Fauli: Do I hear a motion? Commissioner, you made a motion.

Commissioner Quesada: Well, I have (INAUDIBLE). So moved.

Mayor Valdes-Fauli: Yeah, second?

Vice Mayor Keon: I'll second it.

Mayor Valdes-Fauli: Commissioner -- Vice Mayor Keon. Will you call the roll, please?

Vice Mayor Keon: Yes.

Commissioner Lago: Yes.

Commissioner Mena: Yes.

Commissioner Quesada: Yes.

Mayor Valdes-Fauli: Yes.

(Vote: 5-0)

Commissioner Quesada: I just want to add one thing. Just make sure we can schedule it as soon as practical.

Mayor Valdes-Fauli: Pardon?

Commissioner Quesada: Just for everyone's sake. To schedule the meeting as soon as practical.

Mayor Valdes-Fauli: Yeah.

City Attorney Leen: Yes. We will do that. And also, we will -- the Deputy School Board Attorney is here. He heard your request. I'm sure he'll tell the Superintendent. We can make that part of the process. We do have a degree of control over the Chapter 164 process, assuming both parties are acting in good faith. You only have to go to court to enforce a 164 if there's a dispute. But, I assume that we'll work together in good faith...

Mayor Valdes-Fauli: Yeah, we'll work together.

City Attorney Leen: To have this go forward.

Mayor Valdes-Fauli: Hopefully. Thank you. I'd like to take...

Vice Mayor Keon: I think it's really important that the school system would recognize that they have a superintendent that enacts the policies set by their School Board and we have a manager that does the same thing. And, the relationship between our manager and the superintendent should be a very open and a very close relationship. And, the ability to pick up a phone and ask for a meeting and be granted that meeting should never ever come into doubt.

Mayor Valdes-Fauli: Thank you.