

City of Coral Gables City Commission Meeting
Agenda Item J-1
January 12, 2021
City Commission Chambers
405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Raul Valdes-Fauli
Vice Mayor Vince Lago
Commissioner Pat Keon
Commissioner Michael Mena
Commissioner Jorge Fors

City Staff

City Manager, Peter Iglesias
City Attorney, Miriam Ramos
City Clerk, Billy Urquia

Public Speaker(s)

Agenda Item J-1 [Start: 11:44 a.m.]

A Resolution of the City Commission authorizing the City Attorney to retain Thomas F. Magenheimer of Quinlivan Appraisal, P.A. to perform any appraisal work in the context of the Bert J. Harris, Jr. Private Property Rights Protection Act, that may be advisable with regard to potential zoning proposals for properties fronting Miracle Mile, under Sections 2-607(6) and (7) of the Procurement Code.

Mayor Valdes-Fauli: City Attorney Items, J-1.

City Attorney Ramos: Yes Mayor, J-1 is a Resolution of the City Commission authorizing the City Attorney to retain Thomas F. Magenheimer of Quinlivan Appraisal, P.A. to perform any appraisal work in the context of the Bert J. Harris, Jr. Private Property Rights Protection Act, that may be advisable with regard to potential zoning proposals for properties fronting Miracle Mile, under Sections 2-607(6) and (7) of the Procurement Code. As you know sir, there is a staff recommendation with regard to Miracle Mile and then there is at least one alternative proposal

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that's been put forth by the Vice Mayor. At this moment, the most current alternative proposal, the one put forth in his December memorandum does not have Bert Harris concerns, because he is leaving as an option what is currently available on Miracle Mile, so a developer can chose to avail themselves of what they have had in place since at least 2007, or alternatively, have a different option. However, should other proposals come up for consideration, we want to have an appraiser in place should it be necessary to evaluate the potential financial impact of other changes that could be suggested.

Commissioner Keon: Okay. You would have them available to us, but you are not contracting with them until its needed, is that right?

City Attorney Ramos: So, we would contract with them to use them as needed. We would have a contract in place, but it would not be necessary to actually have them do any work unless another proposal comes up, which is of concern or there is a return to the October proposal.

Commissioner Keon: Okay. I'll move it.

City Clerk Urquia: Before you vote on it, we have a member of the public who would like to speak on the item, Mr. Mayor.

Mayor Valdes-Fauli: What?

City Clerk Urquia: We have a member of the public who is requesting to speak on the item. Its Ms. Rhonda Anderson.

Mayor Valdes-Fauli: Okay.

Ms. Anderson: Good morning. I just want to make my brief comments on this item. I want to wish Commissioner for best wishes for a negative test and if it comes back positive, a speedy recovery with no complications whatsoever.

Commissioner Mena: Thank you Rhonda.

Ms. Anderson: Best wishes. With regard to having this item pushed forward, I am in favor of it. I think it's a smart decision to have more information available for this Commission to make the proper decisions with regard to zoning changes that are proposed, so that we realize what the totality of an impact is going to be on our community, both financially and as well as the quality

of life. I've also listed to speak on a couple of other items, so I'll reserve the remainder of my comments until then. Thank you, Rhonda.

Commissioner Mena: Mr. Mayor, if I may?

Mayor Valdes-Fauli; Yes.

City Clerk Urquia: That's Commissioner Mena.

Commissioner Mena: Can you hear me?

Vice Mayor Lago: Yes Commissioner.

Mayor Valdes-Fauli: Alright Commissioner.

Commissioner Mena: I just wanted to briefly, I don't want to get into too much detail and different things that are out there at the moment, but at one of our prior meetings when we discussed the zoning changes, I know that Vice Mayor Lago had a proposal at the time. I understand that since then that proposal has changed and no longer, the new proposal no longer implicates really Bert Harris concerns, which is great. I do think that its good to have the appraiser evaluate the values here the potential impact of any changes so that we have more information, because as we proceed here, we are going to be getting first and foremost, we are going to be getting community input on the upcoming community meeting, and based on the information we get at that meeting, we may want to consider some of the suggestions, or some of the items that may be discussed there. My only concern here is that, if we wait on having the appraiser do his evaluation until we vote on these items, part of the problem is going to be that then, if we want to sort of, you know, move to something that may be potentially implicates Bert Harris issues, or that maybe isn't exactly what the current proposal is, that then we'd have to hit the pause button again, have him do an appraisal, come back and we continue to sort of go back and forth. My understanding is that the amount being charged by the appraiser is pretty modest and reasonable. I think given the importance of the decision, not only to the city but to our residents, that it behooves us to, again, have more information than less, and what we end up doing with that information, we'll see. But I'd rather have a firm understanding of what the potential implications are if we were to go down a path that's either more similar to what the Vice Mayor was previously suggesting or is just not exactly what he is currently proposing, which I agree what he's currently proposing does not implicate Bert Harris and it's a good proposal for sure in that respect. I wanted to discuss with all of you what you think we should do, whether we should go ahead and have him do his analysis based on

our prior discussions, so that we have the benefit of that information or whether we want to wait till after the community meeting and until we discuss it again at one of our future meetings.

Mayor Valdes-Fauli: I agree with your concern, Commissioner Mena, very much so, but the situation is open today and what are we going to have him examine or discuss. I would propose to have him available, to have him look at the different proposals and then depending on what we intend to adopt after this public meeting, then have him study that proposal, as opposed to looking at 15 different alternatives that may or may not be brought forth. So, I agree with your concern, very much so, but I would have him available to study whatever one or two alternatives are proposed in the future as a result of these meetings. Other opinions.

Vice Mayor Lago: I agree with you. I think Commissioner Mena's points are well taken and I don't have any issues with it. I'd like to hear from our City Attorney and get her guidance.

City Attorney Ramos: The issue for the appraiser is that he has to work in details. So, we could give him the October proposal and have him look at that, so that a variation of that would be easier to arrive at understanding any implications that could be there. I don't think it makes sense to pay him for the December proposal, because frankly, as I mentioned, the developer under that proposal would be given the ability to do what they can do today, so there is no Bert Harris implication there. And staff's proposal of prohibiting pedestals on Miracle Mile and requiring remote parking with no other changes really, of substance, other than setbacks and step-backs, which staff has told me they do not believe are significant in terms of reducing any property values, I don't think has Bert Harris implications either. So, at this time, the only one that I could send to him is the October one, and then that would at least give you information if you wanted to branch of variations of that one.

Mayor Valdes-Fauli: Maybe we can have him study that, but I would propose having him on board and looking at the issues but waiting for them to study a specific proposal until two days from now. What is the pleasure of the Commission?

Commissioner Fors: I tend to agree with that too. I mean, I think in a perfect world I hear exactly what Commissioner Mena is saying, I'd love to do that too, obviously it's going to cost us money to do that, so it may be a luxury that we can forego, because at the end of the day we will have him ready to go, if he does need to actually analyze something. I think that's where I'm at.

Commissioner Mena: Madam City Attorney, can you remind me what the charge was that he would charge to, for example, review the October proposal?

City Attorney Ramos: Yes. He said it was \$200 per hour, for a maximum of \$4,000 for that proposal.

Commissioner Mena: Right. Here's the thing that I would just say to my colleagues is, its very hard to evaluate the alternatives if you don't know what the alternatives are.

Mayor Valdes-Fauli: Precisely.

Commissioner Mena: So, we are going to be discussing the Vice Mayor's proposal, we are going to be discussing the proposal from staff. To me, the idea behind the nexus of hiring the appraiser was to be able to say, okay, if you prohibit parking pedestals on the Mile then you provide for remote parking, what is the threshold in terms of allowable height that would work in terms of a Bert Harris analysis? I'm not saying that very artfully, frankly, but – If we have that information, its different if we are saying, well, you can prohibit parking pedestals, allow remote parking and at that point, if you were to reduce their height any less than say, six stories, you'd have Bert Harris issues. Now you're saying, okay, well that doesn't necessarily seem like a great option, but if its something different than that, you might consider it and you are not going to know whether you have that other option unless he's done his evaluation.

City Attorney Ramos: I hear where you are going. The only thing I want to clarify just for the public listening is that the Vice Mayor's October proposal had nothing about height, the height was staying at 70. It was removing Med bonus one and two for FAR. So, there is FAR implications, but not height implications as drafted.

Commissioner Fors: And I think a question is and I think this is maybe what Commissioner Mena is getting at is that, at this point we've discussed different types of proposals for Miracle Mile and we sort of know the different tools in the toolbox and really at the end of the day, the different proposals have been different combinations of that, and it would be fantastic if this appraiser, this expert could give us some, even if its possible something he can do, is not assess a specific proposal, but give us some guidance on potential combinations of tools that result in a proposal that would walk us into Bert Harris claims, obviously informed by the proposals we've kicked around in the past. I don't know if that's something he can even do. Maybe he says the only way I can give an opinion is by getting a specific proposal, but that would be helpful, if its possible, sort of have some guidance on what our constraints are. Like you definitely cannot do this, you definitely cannot do that. If you do this, you definitely – you do (A) you definitely cannot do (B).

Vice Mayor Lago: Yes. And I think what Commissioner Fors and Commissioner Mena are mentioning, I'm on board with it, 110 percent. And also, let's be honest, a \$200 an hour fee to

review this with a maximum of \$4,000, I think it's a wise investment, and I'm always very skiddish about spending money, I try to be as careful as possible, especially in these times, but it's a wise investment to really have a third party, and I have the utmost faith in our City Attorney, just provides a little bit more cover and it gives a little bit more comfort. I want to listen to the attorneys on the Commission, this is not my area of expertise, but I want to be careful, and I don't want to put the city in any liability or provide any further exposure if we can avoid it.

Commissioner Fors: And I want to be clear too that our City Attorney can, she can tell us what's definitely an issue and definitely not an issue.

Vice Mayor Lago: Of course.

Commissioner Fors: So really, it's the stuff that might be an issue, might not be an issue.

City Attorney Ramos: Right – which is really the October one. The December one, not an issue, staff's not an issue. The October one is the one that could potentially be an issue. So, I think what we do is, what I'm hearing at least, although I haven't heard from Commissioner Keon is, we send him the October proposal and ask him if there is a way that assuming he says, you know maybe removing Med 2 is a problem, but removing Med 1 isn't, or where is that gap where it tilts to be...[inaudible]...I think that's what Commissioner Mena is looking for, is where the balance tilts and it becomes – because its not any burden that is the standard for Bert Harris, its inordinate.

City Manager Iglesias: Commissioner Fors, I do think that if we are going to look at multiple alternatives, what this contract provides is over 20 hours-worth of work and I don't think that would be sufficient to look at multiple options. I do think that if we do look at multiple options, we should double the hours on this contract.

City Attorney Ramos: That is a good point. He quoted me at a maximum of \$4,000 to review one proposal, but if we are going to start looking at larger parameters, maybe we raise that amount, or we eliminate the maximum.

Commissioner Fors: Or do we think that having him analyze the October proposal will be sufficiently informative to guide the rest of potential permutations of it?

City Attorney Ramos: It will give you more information than you have now, will it give you exactly what Commissioner Mena is looking for? – I don't know. And I will be perfectly honest, one of the challenges he is going to have, he and the other two that I interviewed explained that to me is, there are currently no parking pedestals on Miracle Mile. So, finding comps for purposes of the

appraisal is going to be a challenge for him, and again, I think that the evaluation will be helpful. Its not going to be, as black and white as we would like it to be, because he doesn't have comps available.

Mayor Valdes-Fauli: What is the pleasure of the Commission?

Commissioner Keon: I'd like to ask Commissioner Mena.

Commissioner Mena: Yes.

Commissioner Keon: I guess I'd like you to help me talk through this issue of what are as opposed to the proposals, what are the elements of any one proposal that would be studied. So rather than a proposal, I would ask or help me think this through, because I'm not an attorney either. Is it the denial of Med bonus or the denial of transfer of development rights, is it...?

Commissioner Mena: I'm trying to understand you. So, I'm less looking for opinion on those specific issues, I think our City Attorney can already opine on those.

Commissioner Keon: Okay.

Commissioner Mena: I'm more looking for valuation. What is if you prohibit a parking pedestal that has a, presumably financial impact on the property owner, now you allow say, remote parking, where does that value out? Because you are impacting value with providing a pedestal, but you are providing remote parking, what's the value impact on the property owner?

Commissioner Keon: That would be my – those are the two elements that I have the most concern about, because I think they seem to be the ones that people are expressing opinions on. So, I would like to know that. I would like to know if we deny parking pedestals on the Mile and then we prohibit remote parking is that...?

City Attorney Ramos: So, you couldn't do both because then there would be no parking. Staff's proposal is, prohibit pedestals on Miracle Mile and require remote parking period. No changes to TDR, no changes to Med bonus.

Commissioner Keon: Okay. And I understand that. But if we deviate from that proposal, that's what I want to know is that going to place us in legal jeopardy?

City Attorney Ramos: That's the question. If the October proposal that the Vice Mayor has put forth, places us, pushes it into an inordinate burden category. The TDR removal, I have stated, and he agrees with me and I've also consulted with other Bert Harris attorneys, attorneys who specialize in Bert Harris litigation, is not of concern because TDR's have always been conditional use.

Commissioner Keon: Right. Right. Those don't concern me either. It really is the – if you prohibit the pedestal and you don't allow remote parking, is that an inordinate burden? That's my question.

Commissioner Fors: Can the general question be answered by him before getting into a specific proposal. The question of, well, some folks say that remote parking actually represents a cost-savings. I've heard other people say that not necessarily. That's a big question.

City Attorney Ramos: That's exactly what he would be evaluating. The cost of building a garage versus...

Commissioner Fors: Give us guidance on that without getting into a specific proposal.

Commissioner Keon: That's the issue.

City Attorney Ramos: Yes, and that's the October proposal.

Commissioner Keon: Okay. Then use the October proposal. I don't know the elements...

Mayor Valdes-Fauli: I hope you realize that we are struggling with what this person is going to study. Let's have him study the October proposal and that's fine, but to have him out there studying different proposals that may or may not come up, I think is not constructive and not conducive to anything. Let's have him study the October proposal.

City Attorney Ramos: Have him study staff's proposal which is what both of you are speaking about right now and then the October proposal which talks about the...

Commissioner Fors: We could also just vote on this now, authorize his hiring and then you go ahead, Ms. City Attorney, tell him what Commissioner Mena and some of us here said might be helpful to us and see if he has any ideas of what's the best way of doing it, whether its just evaluating the October proposal, or if he can give us some general parameters on things.

City Attorney Ramos: I think I have direction. The only thing I would say to the Manager's point, he had proposed a maximum of \$4,000. I would remove that and just have it be \$200 an hour, because I don't know that he can do it for \$4,000.

Commissioner Keon: Okay.

Commissioner Fors: Okay.

City Manager Iglesias: I think there are so many things that we are looking at to evaluate and we can't forget that certain things are inter-related. If you allow height but not FAR, then there is inter-relation between all these parameters. So, I do think that limiting it to 20 hours, I don't think would be appropriate to get a true number and a true evaluation of what we have.

City Attorney Ramos: Also, to the Manager's point, I think he's going to have to give you all of that with the current parking standards and then all of that with the new parking standards, but that's a huge piece of this puzzle also. Obviously, building or buying, paying in lieu 100 spots is not the same as 25 spots. So that's going to have to play in also to the valuation.

Commissioner Keon: Right.

Commissioner Fors: It's a big decision, so as informed as we can be before making it, the better.

Commissioner Keon: Okay.

Mayor Valdes-Fauli: Do I hear a motion?

Commissioner Keon: I will make that motion.

Mayor Valdes-Fauli: What motion?

Commissioner Keon: That you evaluate staff's proposal and the October proposal.

City Manager Iglesias: But not limit it to 20 hours, Commissioner.

Mayor Valdes-Fauli: Right.

Commissioner Keon: Yes – and not limit it.

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City Attorney Ramos: But I also need a motion on the actual resolution to send the attorney.

Mayor Valdes-Fauli: Is there a second?

Vice Mayor Lago: Second.

Mayor Valdes-Fauli: Will you call the roll please.

Commissioner Keon: Yes

Vice Mayor Lago: Yes

Commissioner Mena: I'm here. I apologize, I had some technical difficulties. Just for clarity, we are voting to analyze the October proposal.

City Attorney Ramos: And staff's proposal also.

Mayor Valdes-Fauli: With no limit.

Commissioner Mena: Understood. I'm a little reluctant to say no limit.

Vice Mayor Lago: Put a limit on it, Commissioner. Whatever you feel comfortable with.

Commissioner Keon: On the fees you mean?

Commissioner Mena: Yes.

Commissioner Keon: Okay.

City Attorney Ramos: You want to make it ten maybe?

Vice Mayor Lago: \$10,000 seems pretty reasonable.

Commissioner Mena: Yes. Make that the limit, that's fair. And if its an issue come back to us.

Commissioner Keon: Okay.

City Manager Iglesias: \$10,000 with 50 hours which is more reasonable than 20 for all the evaluations that we have to do.

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Commissioner Mena: Right.

City Attorney Ramos: And I'll add further direction of what to evaluate to the resolution before its signed.

Commissioner Fors: Okay.

Commissioner Keon: Okay.

Commissioner Mena: With that change I'm a yes.

Commissioner Fors: Yes.

Mayor Valdes-Fauli: Yes.

(Vote: 5-0)

Mayor Valdes-Fauli: Alright. Thank you very much.