

**City of Coral Gables City Commission Meeting
Agenda Item E-10
March 15, 2016
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
Acting Development Services Director, Charles Wu**

Public Speaker(s)

Agenda Item E-10 [3:19:21 p.m.]

An Ordinance of the City Commission of Coral Gables, Florida providing for text amendments to the City of Coral Gables Official Zoning Code: Article 2, “Decision Making and Administrative Bodies”, Division 3 “Board of Architects”, Section 2-301, “Powers and Duties”; Section 2-302, “Membership, Terms; Vacancies; Removal”; and Section 2-303, “Meetings; Quorum; Required Vote”; Article 3 “Development Review”, Section 3-303, “Reconsideration of City Architect Administrative Determination” and Section 3-606, “Procedures for Appeals”, by updating the membership and certain procedures of the Board of Architects and requiring a conflict resolution meeting prior to a quasi-judicial hearing before the entire Board of Architects; providing for repealer provision, severability clause, codification, and providing for an effective date.

Board of Architects Rules of Procedure. Updated Rules of Procedure that govern the Board of Architects.

Mayor Cason: E-10.

City Attorney Leen: Thank you, Mr. Mayor. Item E-10 is an ordinance of the City Commission of Coral Gables, Florida providing for text amendments to the City of Coral Gables Official Zoning Code: Article 2, "Decision Making and Administrative Bodies", Division 3 "Board of Architects", Section 2-301, "Powers and Duties"; Section 2-302, "Membership, Terms; Vacancies; Removal"; and Section 2-303, "Meetings; Quorum; Required Vote"; Article 3 "Development Review", Section 3-303, "Reconsideration of City Architect Administrative Determination" and Section 3-606, "Procedures for Appeals", by updating the membership and certain procedures of the Board of Architects and requiring a conflict resolution meeting prior to a quasi-judicial hearing before the entire Board of Architects; providing for repealer provision, severability clause, codification, and providing for an effective date. The Board -- this also includes the Board of Architects Rules of Procedures, updated rules of procedure that govern the Board of Architects. This is a public hearing item and, again, it's on First Reading. I have a couple items just to mention about it. This does a few things that I think are very useful, and I would like to acknowledge, of course, Code Enforcement, Development Services and my office as well. I know all of us worked on this, special counsel also. The -- here's a couple things that are done by this. One, it does set up a -- let me talk about the main issue first. You may remember when the Segovia project, the one that was (INAUDIBLE) design project. You had the three houses on Segovia that were, you know, a modern form of architecture and there was a lot of dispute and debate over that, some controversy, and it ended up going to the -- it took a long time to resolve, and it ended up going to the Board of Architects for a quasi-judicial hearing. At some point during the Board of Architects process, you need to have a quasi-judicial -- at least the ability to have a quasi-judicial hearing, pursuant to law. There has to be some ability to do that because it is still the application of general standards to a specific property and it affects property rights. Now, traditionally, for the routine, more administrative acts of the Board, like a panel of the Board of Architects, it's not quasi-judicial. Even the full Board is not

quasi-judicial when they're acting more in an administrative capacity. But at some point, if someone is aggrieved, either the applicant or a resident that lives nearby or a property owner, they do need to have the right to bring an appeal. So, what happened in that particular case was that the hearing was before the Board of Architects, and it -- I recall it taking five hours about, something like that. It was very long. It was very contested. As I recall, the Board of Architects members were not happy about it, and it ended up coming to the Commission for an appeal. And at that point, we talked about it a little bit and it's come up sense. But who should have -- who should do the quasi-judicial hearing? When this came before you a little while ago, I remember the Commission said, well, we think that the Board of Architects should probably do the quasi-judicial and it should come to us for appeal. I raised -- now, there's two things in -- there's one thing in this ordinance that may help resolve these issues because it establishes an alternative dispute resolution process. Whenever someone's going to invoke the quasi-judicial procedures, they have to go to basically a mediation settlement conference with the Planning and Zoning and someone from my office and the two parties that are in disagreement to try to work the matter out. And it allows for a settlement that could be approved, similar to the one you did today for Tinta y Café, but through a quasi-judicial hearing, so -- before the Board of Architects. So, hopefully, that will work out most matters. But assuming it doesn't in a particular case, I still have the view -- and I just want to raise this with you that I am concerned with having the quasi-judicial hearings before the Board of Architects or before the City Commission. My concern, as the City Attorney, is that the Board of Architects may not be the best suited board to weigh public sentiment versus architectural standards. They're very good on architectural standards, but remember, you know, some of these, you have to weigh them. That's the whole idea of the quasi-judicial hearing and the effects on other properties. In many ways, the City Commission is the best suited for that. You're the elected officials, but you know, you may not want to be having -- you may not want to act as a super board of architects hearing, you know, a four-hour or five-hour hearing, and you'd probably rather have that come to you on appeal, which is how it has in that particular case. So, what I recommend -- I still recommend this -- is that there be some -- even if it's not mandatory -- ability to use a special master who is an architect appointed by the City Manager, similar to what you do with the Board of Architects, who could hear all the

evidence and either make the decision and then have it come to you, or recommend the decision to the Board of Architects, who could then make the decision based on the record presented to them and then it could come to you as an appeal.

Mayor Cason: I think if that's done, I'd like to make sure that that person is a Coral Gables resident because if they reach us at this stage, we want somebody that knows the Gables, so in other words, not necessarily just a professor from UM, but -- now if he's a resident, that's something else.

City Attorney Leen: And what you should be aware is that the Board of Architects were presented with the idea of having a special master and they did not support it. Now, they were presented with the Special Master, who would be the mandatory decision maker, as I recall, not a recommender. So, I came up with the idea of maybe having a recommender. But ultimately, it's your determination. I'm just raising it to you. I'm worried about it because I thought that, that process didn't work so well; it took a long time. And I also, just as your advisor, I would be concerned about you having to have all these hearings either. I think that there should be a quasi-judicial hearing where you get to hear all the -- you know, you get all the evidence and you get to read it and make your determination, but you don't have to hear it in a dispute that could take a number of hours. And I think the Board of Architects probably -- you know, these are people that are coming once a week, and to also add onto that a -- even though they've said they're willing to do it, to add on a quasi-judicial hearing whenever there's a dispute, I think is a concern. Anyway, that's just my concerns. Ultimately, obviously, it's your determination.

Mayor Cason: Because we've also told them to look at the context of the building within the neighborhood. That's something that came out of that example. So, I mean, we're not aesthetic czars up here either. They're the experts on architecture. So, hopefully, if you've got a special magistrate, or whatever you want to call it, that facilitates it, that they'll find a resolution and they won't have to come to us. Otherwise, we're going to have long meetings, with four or five hours more added on.

City Attorney Leen: I need to know what your...

Commissioner Slesnick: I really agree with the Mayor about having somebody from Coral Gables, and I think it's a great idea to have a person like that because the Board of Architects, with all the building going on, is so active and this would be a person that could step back from the situation and rule on behalf of the citizens and the architects, so it's more impartial.

Commissioner Keon: So it would be someone that's not on the Board of Architects.

Mayor Cason: Not on the Board.

City Manager Swanson-Rivenbark: Mr. Mayor, I haven't approached him, but it's possible that I could approach Don Sackman, who was the former chair of the Board of Architects, so he's very familiar. For eight years, he was on the board. He actually termed out. He is a Gables resident, and I could see if he would have interest, if that is the route that you wish to take.

Mayor Cason: I think as long as it's somebody that's well -- that the Board respects and their...

City Manager Swanson-Rivenbark: I think clearly they do.

Mayor Cason: That's the key thing on this.

City Manager Swanson-Rivenbark: I don't know his willingness, but you know, he very much enjoyed the Board of Architects and was disappointed when we termed him out, so I can...

City Attorney Leen: So, Mr. Mayor, just -- there's also just -- there's one other thing this does. It allows for alternates to be appointed, which I think is useful for the City Manager to be able to appoint an alternate. As to the special master, that's not in here, so you would have to determine

if you want a special master at all, and if so, whether it would be mandatory or optional, maybe based on the City Manager's decision; and then lastly, whether it would be a recommending special master or a special master would make the decision.

Mayor Cason: Well, if they made a decision and the person that's building the home or whatever, they could still appeal to us, right?

City Attorney Leen: Yes.

Mayor Cason: What's your views on this?

Commissioner Keon: I agree.

City Attorney Leen: The special master -- and just so you're aware, if it's a recommender, they would probably take the evidence and then recommend to either the Board of Architects, who would make the decision, or you, and you would make the decision. Alternatively, if you have them make the decision, the special master, they would just make the decision, it would be appealed to you.

Commissioner Keon: Well, if they appeal, if it's a resident and they appeal, is there a fee and everything else involved in their appeal?

Acting Development Services Director Wu: Yes, there's a...

Commissioner Keon: You know, I...

Acting Development Services Director Wu: But there's a waiver resolution, yes.

Commissioner Keon: Okay.

Mayor Cason: We could waive it.

Commissioner Keon: I'm more inclined to have them -- I don't think the Board of Architects really wants to do the quasi-judicial hearing.

City Attorney Leen: They didn't initially, but they did say they would -- they didn't want to lose authority to the special master. They wanted to continue having -- so then I thought, well, maybe what you could do is have it -- him or her just take the evidence, give a recommended order and then have it go to the Board of Architects. They could make the decision.

Mayor Cason: It seems to me if the person is well respected, they'd listen to it, they'd make a recommendation, probably the Board's going to go with them. And if not, it'll be appealed to us, but at least we won't have to have five hours of listening to the evidence. We can read it at home during the couple weeks, come in and...

Commissioner Lago: I don't have any issues with that at all. Can we just discuss briefly before we move on to another item what Commissioner Keon was discussing about the waiver of the fees associated with the appeal?

Commissioner Slesnick: Is this the \$900 fee that we were talking about the other day?

City Attorney Leen: Well, I've given opinions in the past that if there's a quasi-judicial requirement and you can't have to -- you shouldn't be required to pay a fee to be able to go to a hearing.

Commissioner Lago: That's -- and that's -- and we had this discussion some time.

Commissioner Keon: We've had that before.

Commissioner Lago: I think it's a little excessive. I mean, Charles, how many times would you say a year does somebody have to pay this fee?

Acting Development Services Director Wu: Well, recently, we've had a couple so...

Commissioner Lago: Like would you say, what maybe three, four times a year?

Acting Development Services Director Wu: Yeah. It wouldn't exceed three, four times a year.

Commissioner Lago: For example, one of those fees was the fee that had to be paid for Sherman's Oak, correct?

Commissioner Keon: That we reimbursed.

Commissioner Lago: That we reimbursed them.

Acting Development Services Director Wu: Yes.

City Attorney Leen: So, when F-1 comes up, which is coming up in a little bit, although you could discuss it now, if you'd like, I did do some research into -- because there -- some of the individual Commissioners had raised the issue of maybe waiving the appellate fee or reducing it, which came up a number of months ago with the Commission. At that time what you did was you approved a waiver process, and you didn't lower the fee. But if you were going to lower the fee, I checked and the fee that it cost to basically bring a original action in the Third District or file an appeal in the Third District is \$300.

Commissioner Lago: Yeah. That's what I was going to say, about one-third.

City Attorney Leen: And the -- and in addition to that, the other thing that was talked about in individual meetings, which I'm bringing out here to you as a group is perhaps if that party prevails, then they could basically receive their money back as the -- you know, they could receive their money back for the appeal fee.

Commissioner Slesnick: Can we bring that...

City Attorney Leen: This would only be for residents, by the way, not for commercial properties.

Commissioner Slesnick: Can we bring that up under F-1?

City Attorney Leen: Yes.

Commissioner Slesnick: Okay.

Mayor Cason: Okay, well, on the question of the special magistrate, should it be -- you're all in favor of a recommendation, hope that it prevails; if not, it comes to us?

Commissioner Lago: Yes.

Commissioner Slesnick: Yes.

Mayor Cason: Okay.

Commissioner Lago: Yeah, that makes sense.

Commissioner Keon: The special master recommending to the Board of Architects.

Mayor Cason: Yes.

City Attorney Leen: So the special master would hear all the evidence. They would then present it all to the Board of Architects, who would sit in a quasi-judicial hearing, but there would be no additional evidence. They would just make the determination based on the recommended order of the special master, and then that could be appealed to the City Commission.

Acting Development Services Director Wu: Is the special master a quasi process?

City Attorney Leen: Yes.

Mayor Cason: And then otherwise, the other -- the alternate is also in here. Anything else different?

City Attorney Leen: Is there anything else, Charles?

Acting Development Services Director Wu: Let me comb this for a minute. No...

City Attorney Leen: I would like to thank -- I should recognize Charles Wu, who put a lot of time into this, he really did.

Mayor Cason: I think the alternate is really important, because if you've got a group of seven or eight people and, especially in the summer when people are away, you end up slowing the whole process down for months. If you've got an alternate, they can come in on a case by-case-basis and fill in. You'll be able to move these -- move this process along.

Acting Development Services Director Wu: Yes, sir. The key point in the Rules of Procedure, which is modified to reflect the ordinance, which will be modified again to reflect the special master, is the issue of public comment. And Mr. Leen had a suggestion that he said that worked

very well in the County, was that whoever is here for the meeting, in light of the BOA is not really equipped (INAUDIBLE) public comments. You hear all the public comments at the very beginning of the BOA meeting, and then we can dispense of the public after that entire public hearing -- public comment process.

City Attorney Leen: The concern was that you would have -- when the Board's not acting quasi-judicially and it's administrative, the concern would be, let's say 20 individuals came and they wanted to stand around the Board and make comments. We didn't want to take away their right to speak, but we thought that maybe it should be done at the beginning. Let everyone speak who wishes to speak on any matter, and then have the administrative process so that it's not -- people don't have to wait. Things don't have to be moved to a specific time and things like that.

Mayor Cason: And they could always send emails if they had comments later on that weren't...

City Attorney Leen: Yes.

Acting Development Services Director Wu: Yes, sir. So, that is the rules and procedure, the only minor thing that I wanted to point out to you.

City Attorney Leen: But I want to be clear, an aggrieved party could still appeal.

Mayor Cason: Right.

City Attorney Leen: And you could still seek the special master and they would be able to present evidence and be heard, so there would still be a quasi-judicial process for anyone who's aggrieved.

Mayor Cason: Alright, any more discussion on this?

Commissioner Keon: No, so the change on this would be in Section 2 part B. Is that where the -
-? That's the only change? Is that where that becomes inserted, the special master item?

Acting Development Services Director Wu: It will be part of 2-303, one of the procedures. We
will insert between C and D...

City Attorney Leen: Yes.

Acting Development Services Director Wu: A special master process.

City Attorney Leen: Now, in B, there probably will be some mention of a...

Commissioner Keon: Right.

City Attorney Leen: Board of Architects special master appointed by the Manager, maybe for a
certain term. It's up to -- we can discuss that with the City Manager, but...

Commissioner Keon: Yeah, so why don't we...

City Attorney Leen: We'll propose something.

Mayor Cason: A resident of Coral Gables.

Commissioner Keon: Yeah, and let's -- right. I'd rather just make sure that it's consistent
throughout the whole thing...

City Attorney Leen: Understood.

Commissioner Keon: So we don't end up with inconsistencies.

City Attorney Leen: Understood.

Mayor Cason: Alright. Do we have a motion on E-10?

Commissioner Lago: So moved.

City Attorney Leen: Well, it's a public hearing item, sir -- Mr. Mayor.

Mayor Cason: No speaker cards?

City Clerk Foeman: No, Mr. Mayor.

Mayor Cason: Okay, close the public hearing.

Vice Mayor Quesada: Second.

Mayor Cason: The Vice Mayor seconds. City Clerk.

Commissioner Lago: Yes.

Vice Mayor Quesada: Yes.

Commissioner Slesnick: Yes.

Commissioner Keon: Yes.

Mayor Cason: Yes.

(Vote: 5-0)

Acting Development Services Director Wu: And Mr. Mayor, we'll bring back the rules of procedure with the amended ordinance together to match the language.

Mayor Cason: On second hearing?

Acting Development Services Director Wu: Second Reading.

Mayor Cason: Right, second. Okay.

[End: 3:33:55 p.m.]