

City of Coral Gables City Commission Meeting
Agenda Item E-8
September 11, 2014
City Commission Chambers
405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Jim Cason

Vice Mayor William H. Kerdyk, Jr.

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

Finance Director, Diana Gomez

Public Speaker(s)

E-8 [Start: 6:09:36 p.m.]

A Resolution of the City of Coral Gables, Florida relating to the provision of Fire Protection Services, Facilities and Programs in the City of Coral Gables, Florida; reimposing fire protection assessments against assessed property located within the City, for the Fiscal Year beginning October 1, 2014; approving the rate of assessment; approving the assessment roll; and providing an effective date.

[Note for the Record: The Regular Commission meeting was continued after the First Budget Hearing was completed].

Mayor Cason: We will now move back into a couple of items quickly if we can. Starting with E-8, which we have to do today. It's a Resolution – Mrs. City Manager, are you going to read that or City Attorney?- why don't you read it. I'll read it. E-8 is a Resolution relating to the provision of Fire Protection Services Facilities and Programs, so if you'd read the title.

Interim City Manager Olazabal: Yes. A Resolution of the City of Coral Gables, Florida relating to the provision of Fire Protection Services, Facilities and Programs in the City of Coral Gables, Florida; reimposing fire protection assessments against assessed property located within the City, for the Fiscal Year beginning October 1, 2014; approving the rate of assessment; approving the assessment roll; and providing an effective date.

Mayor Cason: OK.

Finance Director Gomez: This resolution is to reimpose the Fire Assessment Protection Program. There is no rate increase in the Fire Protection Assessment rates for the upcoming Fiscal Year. There is a change to the program in order to clarify the treatment of government leasehold properties that are wholly exempt from ad valorem taxes under Florida law. Section 3 has been revised to state that, to provide that a government leasehold whose building use is wholly exempt from ad valorem taxation under Florida law shall also be exempt from the Fire Protection Assessment Program. That's the only change from the program moving forward.

Mayor Cason: Discussion?

City Attorney Leen: It's a public hearing.

Mayor Cason: Anyone here wants to speak on this item? If not, we'll close the public hearing portion.

Commissioner Quesada: I'll make a motion.

Commissioner Keon: Can I ask for clarification of that again. Could you say that again with regard to publicly held...

Finance Director Gomez: Government leasehold properties are the properties that we own that we lease...

Commissioner Lago: To private companies.

Finance Director Gomez:...to others like retail who are wholly exempt from ad valorem taxation will not be paying the fire fee. So we are clarifying it that government leasehold whose building use is wholly exempt from ad valorem taxation under Florida law shall be exempt from the fire fee.

Commissioner Lago: Can you give me an example?

City Attorney Leen: Let me answer this question. This applies to the Biltmore. The prior resolution, there has been some dispute as to how it should apply. It's been my view that if you have an ad valorem exemption by state law based on a finding that you have a municipal purpose or a governmental purpose that the same logic should apply to the fire fee. Now we have asserted the fire fee claim against the Biltmore up to this date as part of a special assessment, we have been specially assessing them. It's my view that I think – we are going to work that out with the Biltmore. In fact, we are meeting with them tomorrow to try to resolve that, but going forward it's my opinion that it probably should match the ad valorem. Well it's not just probably, I believe it should match the – however it's treated as a matter of ad valorem taxation is how I believe it should be treated as a matter of the fire fee, because the whole issue is, does it serve a governmental purpose?- and the legislature has found that the Biltmore does and that's why they have the ad valorem exemption and the same logic which supported having a fire fee exemption based on all the other exemptions in the fire fee. That's how it came up. I think it's the right thing to do. I wouldn't be recommending it as you legal advisor if I didn't, but I do think we need to work out what's happened in the past.

Commissioner Lago: What are the fees that are owed?

Finance Director Gomez: Each year the Biltmore has a fire fee of approximately, I'm sorry, about \$20,000 a year. So in total – the last time it was \$130,626 is what is their past due amount, without including if we bill them this year.

Commissioner Lago: Eight years, let's say.

Finance Director Gomez: Well as long as the Fire Fee Program has been in place, so...

Mayor Cason: Quite a few years.

Vice Mayor Kerdyk: Four or five years...

Finance Director Gomez: Nine. In the first couple of years it was a little bit higher and then there is interest and penalties that Miami-Dade County puts on it.

Commissioner Lago: Let me ask you a question. OK. That's probably it. Through this resolution if we are clarifying this finding that they are exempt due to their classification, what happens to those older, excuse me, those past due monies?

City Attorney Leen: They have been specially assessed for them. My opinion – let me just be honest with you, I don't think they should have been specially assessed for them. I do stand by my opinion that they should have that exemption, however, we have talked to outside counsel and the resolution was not clear on this issue, and they were specially assessed, and when we resolved the matter with the Biltmore we did reserve our claim. We are going to work it out with them and they are going to agree – because they do have a pending debt to the City, however the legal – by the way, it doesn't mean that we couldn't assert the claim, there is a legal argument behind it, I'm just giving you my best point.

Commissioner Lago: The reason why I'm asking the question is that, I want to make sure that if we are going to pass this resolution saying one thing, but we have an outstanding debt of \$140,000, I want to make sure that we clarify it. We are not basically talking from both sides of our mouth.

City Attorney Leen: In fact, the change makes it clear it doesn't apply going forward.

Commissioner Lago: So they are going to come back and say, listen you found this, this new finding in regards to a law, we need to....

Commissioner Quesada: It's not retroactive.

Commissioner Keon: It's not?

City Attorney Leen: Not retroactive

Commissioner Keon: It's not.

Mayor Cason: So when you say you are going to work it out, you are going to work it out in terms of the past due?

City Attorney Leen: Here's what I told them exactly. I told them that my interpretation is it shouldn't apply to you, however, because we have assessed you. I would bring that to the Commission and the Commission will have to make that decision, because I'm not going to waive such a large debt, and there is a legal argument to be made in favor of it which you could chose to do and I would be happy to pursue that because – do you understand what I'm trying to say? If I were the judge I might think this way, but we can make the argument and we may prevail.

Commissioner Lago: Commissioner Quesada cleared it up when he said it's not retroactive.

Commissioner Keon: Can I ask you also then like Coral Gables Country Club that is a City-owned facility; it's operated under a lease agreement to a private entity.

Finance Director Gomez: So they are not only exempt from property taxes, so it wouldn't apply to them.

City Attorney Leen: It would not apply to them.

Commissioner Keon: It would not apply to them because of their use. They are...

City Attorney Leen: There is a statute that the legislature has passed which says in its finding that the Biltmore...

Commissioner Keon: It's specific to the Biltmore.

City Attorney Leen: It doesn't say the Biltmore, but it defines it in a way that applies to the Biltmore, and it's basically a building that's basically given or sold by the federal government to a City with the right....where there is a historical asset.

Commissioner Keon: I just wondered if there were any other properties in our City that...

City Attorney Leen: No.

Commissioner Keon: So it really only applies to the Biltmore.

Finance Director Gomez: Exactly.

Commissioner Keon: OK. Thank you.

Mayor Cason: Do we have a motion on E-8.

Commissioner Quesada: I'll move.

Commissioner Lago: Second the motion.

Mayor Cason: Commissioner Quesada makes the motion, Commissioner Lago seconds.

City Clerk

Commissioner Lago: Yes
Commissioner Quesada: Yes
Commissioner Keon: Yes
Vice Mayor Kerdyk: Yes
Mayor Cason: Yes
(Vote: 5-0)

[End: 6:17:21 p.m.]