

## **City of Coral Gables City Commission Meeting**

### **Agenda Item E-6 thru E-9 are related**

**August 24, 2010**

**City Commission Chambers**

**405 Biltmore Way, Coral Gables, FL**

#### **City Commission**

**Mayor Donald D. Slesnick, II**

**Vice Mayor William H. Kerdyk, Jr.**

**Commissioner Maria Anderson**

**Commissioner Rafael “Ralph” Cabrera, Jr.**

**Commissioner Wayne “Chip” Withers**

#### **City Staff**

**City Manager, Patrick Salerno**

**City Attorney, Elizabeth Hernandez**

**City Clerk, Walter J. Foeman**

**Deputy City Clerk, Billy Urquia**

**Planning Director, Eric Riel**

#### **Public Speaker(s)**

**Zeke Guilford, Attorney Representing Fairchild Tropical Garden**

**Maurice Donsky, President, Hammock Oaks Homeowners Association**

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E-6 thru E-9 are related [Start: 11:11:23 a.m.]

- **E-6 – Change of Zoning.** An Ordinance of the City Commission of Coral Gables requesting a change of zoning from Single Family Residential (SFR) to Special Use (S) District for a 25.0 acre parcel located in the southwest corner of the property of the overall 82.5 acre parcel commonly referred to as “Fairchild Tropical Garden” (10901 Old Cutler Road), legally described as Fairchild Tropical Botanical Garden Section, including Tracts 9 and 10, Avocado Land Company Subdivision, Coral Gables, Florida; and providing for severability, repealer, codification, and an effective date. (PZB recommended approval, vote: 7-0)
- **E-7 – Zoning Code Text Amendment.** An Ordinance of the City Commission of Coral Gables requesting an amendment to Zoning Code Article 4, Section 4-204, “Special Use (S) District”, providing for and listing permitted uses within a botanical garden; and providing for severability, repealer, codification, and an effective date. (PZB recommended approval, vote: 7-0)
- **E-8 – Master Site Plan.** An Ordinance of the City Commission of Coral Gables requesting an amendment to the Master Site Plan for the property commonly referred to as “Fairchild Tropical Garden” (10901 Old Cutler Road), for a 82.5 acre parcel legally described as all of Fairchild Tropical Botanical Garden Section, including Tracts 9 and 10, Avocado Land Company Subdivision, Coral

Gables, Florida; and providing for severability, repealer, codification, and an effective date. (PZB recommended approval: vote 7-0)

- **E-9 – Planned Area Development (PAD) Site Plan Review.** An Ordinance of the City Commission of Coral Gables requesting Planned Area Development (PAD) assignment and site plan review for the construction of additions to the “Science Village” buildings on the southwest corner of the property commonly referred to as “Fairchild Tropical Garden” (10901 Old Cutler Road), being an approximately 82.5 acre parcel legally described as all of Fairchild Tropical Botanical Garden Section, including Tracts 9 and 10, Avocado Land Company Subdivision, Coral Gables, Florida; and including required conditions; and providing for severability, repealer, codification, and an effective date. (PZB recommended approval, vote: 7-0)

Mayor Slesnick: We are now back to the agenda, and I think we haven't skipped anything else, so we'll go to E-6, catch me if I'm wrong. E-6 Mr. Manager.

City Manager Salerno: [Note for the record: The Manager read E-6, into the record].

Mr. Riel: I don't know if you want to read all of these because E-6, 7, 8, and 9, there is going to be one presentation on each of those, I don't know if you want to read those in the record first.

Commissioner Anderson: Whatever you like.

City Manager Salerno: Mayor?

Mayor Slesnick: Sure, go ahead.

City Manager Salerno: [Note for the record: The Manager continued to read Agenda Items E-7, E-8, and E-9 into the record].

Mayor Slesnick: Mr. Riel.

Mr. Riel: Good morning. What you have before you are four different applications, they are all related to one another. First there is a change in zoning; there is inconsistent land use and zoning on the property, it has a single family zoning on the property, make it consistent with the remainder suggesting changing it to “S” use. Zoning Code Text Amendment to allow flexibility in terms of the uses that are on the property that are used by patrons of the property. Master Site Plan Amendment and then a PAD site plan review. Given the uniqueness of this property, PAD's are typically the route to go to allowing flexibility in terms of the property. Basically what they are asking for is, new construction of the science center, which is located on the south portion of the property, it includes an addition on the east end of the existing complex that will include new offices, expanded café, and a new plant shade house. The Planning Board did review it in detail and they did recommend approval by a 7-0 vote. The department also recommended approval subject to various conditions. However, when the Planning Board did vote on it, they did add

two additional conditions asking that speakers provide an amplified sound for all special events, not just at the Science Center, all special events be directed away from the adjacent residential properties, and in addition all special events shall have off duty Police Officers. The applicant at the urging of staff did meet with the neighbors a number of times; the end result is a covenant running with the land which provides various limitations and provisions governing the development and future use of the property related to the Science Center as well as other portions of the property. Vehicle access on Campo Meadows is prohibited, only emergency access, right now access is permitted. No parking on Campo Meadows; pedestrian access is granted for the adjacent residents; beautification screen the proposal; insulation and landscaping and repair the rock wall; no construction vehicles. Then the latest one was no future structures can be located within a minimum of 250 feet of the rear property lines of the residents located on Campana. That was something that was requested as a part of the Planning Board discussion, and the applicant agreed to that. No rear windows; no increase in height; and then no amplified sound. The agreement that you have in your package is not a signed agreement; however, staff did receive the signed agreement from the HOA, and the applicant, and I'd like to enter that into the record. Again, staff is supportive; staff also has a lot of additional conditions on the property which mirror those that are in the covenant. So with that I'd be happy to answer any questions you may have.

Commissioner Withers: I have a question about the amplified sound. I'm assuming – are you talking loud speaker systems or are you talking events that might be held there at night?

Mr. Riel: Basically, its loud speaker systems. It includes both the science village as well as the visitor center.

Commissioner Withers: Are you talking about the whole property now?- or just that one area?

Mr. Riel: Well, the science center and the visitor center. The applicant has agreed on the record that any events at the visitor center, they are going to take the speakers and point them in the direction away from the residents.

Commissioner Withers: So with the addition of the science center you are now encompassing the whole campus, this agreement now goes on the whole campus.

Mr. Riel: Pretty much. Yes, yes. The agreement is to the whole Fairchild Gardens.

Commissioner Withers: So events in the evening that might be concerts or whatever, does that mean you need special consideration?

Mr. Riel: Well, the request in terms for the additional Police Officers was relative to all special events on the property.

Commissioner Withers: I understand that, I understand that, but I'm talking about the amplified sound.

Mr. Riel: In terms of the sound, I don't know, I probably have to ask the applicant, because I'm not that familiar with a lot of their events they have, maybe they can as part of their presentation comment on that.

Mayor Slesnick: Mr. Guilford welcome.

Mr. Guilford: Thank you very much, Mr. Mayor, Commissioners, for the record my name is Zeke Guildford with offices at 2222 Ponce de Leon Boulevard. It gives me great pleasure to be here representing Fairchild Tropical Garden. Before I give you a brief overview of the four applications, I'd like to introduce some of the people who are here with us this morning, Nanette Zapata, who is the Chief Operating Officer, Albert Cortivez, who is the Architect for the project, and Mr. Tim Plummer, the Traffic Engineer. Now staff has told you that we have four applications in front of you today, but really three of those four are just clean up applications, and what I'm going to do is just walk you through those four. We are doing a change of zoning from single family residential to "S", there is actually an "X" on that, which is a legally non conforming use, so in order to bring the zoning to a botanical garden which is actually classified under the "S" designation, we need to change it to be consistent. So clearly again that is a consistent application. We are also asking for a Master Plan approval and what we are doing in this case is under the "S" zoning designation. It calls out for an approved use of a botanical garden with an approved Master Plan. We had not been before you with any other buildings, so we have not provided you that Master Plan for Fairchild Tropical Garden. So by this application you are approving the first Master Plan for Fairchild Tropical Garden. The next application is a Zoning Code Text Amendment and what we are doing there, a question came up as to whether it allows a botanical garden, but does it allow a café? - does it allow a gift shop? So in order to clear up any problems of uses that have been existing on the property for many years we have now enumerated those uses. And the last application which is really not a clean-up is a PAD, and what that does is actually especially for large parcels of property, because what it does it gives you flexibility, it allows you instead of each building having to face the street it gives it....and in fact one of the purposes under the PAD which I think is exactly on point it says, the purpose of a PAD, its under Number 2, encourage enhancements and preservations of land which are unique or of outstanding scenic, environmental, cultural, and historical significance, which clearly this falls under. Lastly, staff had mentioned that they had asked us to meet with the neighbors, we met with them once, they actually encouraged us to go back and meet with them a second time, we did that, and I'm proud to say that Mr. Maurice Donsky of the Hammock Oak Homeowner Association is here, and worked very diligently with Fairchild, and we have come to an agreement and the Association supports this application. So Mr. Mayor, Commissioners, we have the recommendation of staff, we have the unanimous recommendation of the Planning and Zoning Board, and we ask here today your recommendation of approval, actually your approval of these four applications. If you have any questions, we are more than happy to answer them at this time.

Commissioner Anderson: I'll gladly make a motion and also say that I'm very happy that it got resolved with the neighbors. There were some issues in that area that were brought to my

attention before it became a planning matter, and I'm glad that the neighbors and Fairchild were able to work it out.

Commissioner Cabrera: Mr. Guilford good morning.

Mr. Guilford: Good morning, how are you Commissioner?

Commissioner Cabrera: Good, thank you. Mr. Guilford, you mentioned Mr. Donsky and I know Mr. Donsky over the years has had a leadership role within that community that is contiguous with Fairchild Tropical Gardens. Mr. Donsky is here this morning with us, is he representing the Homeowners Association?

Mr. Guilford: That is my understanding.

Commissioner Cabrera: Would you be OK if I have Mr. Donsky come up and say a few words to get his feel for the...

Mr. Guilford: Absolutely.

Commissioner Cabrera: Mr. Donsky good morning.

Mr. Donsky: Good morning, Commissioners, Mr. Mayor, my name is Maurice Donsky, I live at 440 Rovino Avenue, Coral Gables, I'm the president of Hammock Oaks Homeowners Association.

Commissioner Cabrera: You don't have term limits? You don't have term limits?

Mr. Donsky: No.

Commissioner Cabrera: Good, good – good for you.

Commissioner Anderson: Institutional memory, that's important.

Commissioner Cabrera: Overall Mr. Donsky, I didn't mean to get you up here if you didn't have a presentation to make, but I was just curious as to the entire flavor of the neighborhood that is the neighbor to Fairchild Tropical Gardens regarding this application, if you would share that with us.

Mr. Donsky: We've had a very positive relationship with Fairchild over the years. I've been president for about twelve years, with the Homeowners Association, I've been involved with the Homeowners Association about twenty years, and our relationship with Fairchild is such that if we need a place to have a meeting, they would provide it, not only for the residents but for the Board, and we also have a picnic every year, which I think a lot of you have attended, that we hold at Fairchild Tropical Garden, and they are very, very considerate, and they provide us with

the space, they give us trams available for our families, our residents, and this relationship has gone on for a long time. Bruce Greer came to us and told us that they were going; they were thinking of doing this project, they wanted to go forward, and what comments would we have. We had a homeowners meeting in March of 2010, which was followed up by a meeting which was called by Fairchild, and at those meetings we discussed certain issues that were very important to the residents in regards to this science project, and the buildings that were going to be constructed. Those issues were somewhat contentious, but I think overall we worked out the solution for most all of the situations that were brought up. There was one thing that I think Mr. Riel brought up and that had to do with amplified sound, and as I remember, I signed the agreement; there will be no amplified sound at all from this science project area. There still will be amplified sound from the visitor's center or whatever projects they have, but there will not be amplified sound from this area, which would satisfy some of the complaints of the residents who do hear the music on occasion there are events at the Garden. So we did enter into an agreement, and I think the agreement was ratified unanimously by the Board of Directors, and we are very positive about this, and we feel that it is a very positive situation for us as neighbors. We feel that the Garden is a gem; we think it is one of the two leading Gardens in the world, and we think we are very fortunate to be living next door.

Commissioner Cabrera: I appreciate you coming up here. Thank you.

Mr. Donsky: OK, you are very welcome.

Commissioner Withers: Before you leave Mr. Donsky, I'd like to ask our City Attorney a question. Liz, are there any needs to amend or changes to the agreement that the neighbors have with Fairchild, does it have to come to us?

City Attorney Hernandez: No. That is a private agreement, it's a covenant that will be running with the land, and if they wish to have any further changes it's between whatever formula of neighborhood that they have, whether it be the Board or – the designee that is charged by the neighborhood to amend will be the one who signs off with Fairchild.

Commissioner Withers: So therefore, we would never have to rule on a disagreement between the neighbors and Fairchild.

City Attorney Hernandez: That's their issue; we've only been party to a couple of tri-party covenants, Gables One being...

Commissioner Withers: When it comes to sound, if there is an issue with amplified sound or whatever, that does not come to us even though we are voting on it today, unless it's in violation of the sound ordinance, I'm talking about amplified music.

City Attorney Hernandez: If we have a violation of our sign code or special events permit, I mean, there is a variety...

Commissioner Withers: That's understood. OK. So, hi Maurice, how are you doing? I understood that the new regulations for the amplified sound were going to be campus-wide for the entire property now, not just for the science center.

Mr. Guilford: There are actually two, I mean to confuse things, but actually under the city's conditions there is a condition of no amplified music...

Commissioner Withers: Right, I know that. That's what I was getting with Liz about. So which...

Mr. Guilford: Well actually what's going to end up happening, you will have no music at the science center, however, for parties, weddings, etc. you can have, which do not occur at the science center, inside at the visitor's center you will then be able to have amplified music.

Commissioner Withers: So they do have an agreement with us on amplified music?

Mr. Guilford: For the science center, only for the science center.

Commissioner Withers: But for the rest of the campus...?

Mr. Guilford: Yes. We are going to adhere to turning the speakers and of the off-duty Police Officer to make sure of enforcement of the noise ordinances of the City of Coral Gables.

Commissioner Withers: Let's say they want to have a Bach Festival or Beethoven Festival or Mozart Festival where the Chijuli was set up on the southeast side of the property that borders you, who manages that amplified sound?- the city or your agreement?

City Attorney Hernandez: It depends.

Mr. Guilford: Well, if it's not around the science center it would be the city.

Mr. Donsky: Mr. Withers, I think it was also our understanding it includes the science center and the café.

Mr. Guilford: Right – that's correct, that's correct.

Mr. Donsky: The café as well. So there will not be any amplified sound coming out of the café or the café area.

Mr. Guilford: What the goal was is not to have any music coming from the back porch toward the neighbors.

Mr. Riel: Actually the condition reads, no fixed amplified speaker announcement within 200 feet of Campana Avenue or the south...[inaudible]...

Mayor Slesnick: So it's ours to enforce.

Mr. Riel: So 200 feet the entire property.

Mayor Slesnick: So Chip, its part – its ours to enforce.

Commissioner Withers: OK. Just want to make sure I'm clear on that.

Mayor Slesnick: Maurice, I'm so happy that you came to an agreement, because I really want to come to the next picnic.

Mr. Donsky: Well you are all invited, I'd love to see all of you come, and you have come on various occasions.

Commissioner Anderson: I'll try this year to go.

Mayor Slesnick: I come every year.

Commissioner Withers: Don wants to participate in the sack race (laughter)

City Attorney Hernandez: That was a vision.

Mayor Slesnick: Except they didn't understand why I put the sack over my head. OK, thank you Maurice, thank you Mr. Guilford. Do I have a motion on E-6?

Commissioner Cabrera: So moved.

Mayor Slesnick: Moved by Commissioner Cabrera.

Commissioner Anderson: Second.

Mayor Slesnick: Seconded by Ms. Anderson.

Commissioner Anderson: I think we already have one, right?

Mayor Slesnick: Oh, Ms. Anderson moved it?

Commissioner Cabrera: Yes, she did, and someone may have seconded.

**Mayor Slesnick: Alright Mr. Clerk, Ms. Anderson moved E-6 and Mr. Cabrera seconded. We have any more discussion. Again, for those watching, this comes to us from a unanimous recommendation of the Planning and Zoning Board and the public discussion**

**that you've heard has been the agreements of the local residents to the application hereto. Mr. Clerk, if you'll call the roll on E-6.**

**Commissioner Cabrera: Yes**

**Vice Mayor Kerdyk: Yes**

**Commissioner Withers: Yes**

**Commissioner Anderson: Yes**

**Mayor Slesnick: Yes**

**(Vote: 5-0)**

Mayor Slesnick: On **E-7**, would like to have Mr. Kerdyk move it, Mr. Withers seconded it.

Commissioner Withers: Yes.

Mayor Slesnick: OK. We have a motion and a second. Mr. Clerk

**Vice Mayor Kerdyk: Yes**

**Commissioner Withers: Yes**

**Commissioner Anderson: Yes**

**Commissioner Cabrera: Yes**

**Mayor Slesnick: Yes**

**(Vote: 5-0)**

Mayor Slesnick: How about on **E-8**, Mr. Cabrera, you want to move that?

Commissioner Cabrera: Sure.

Mayor Slesnick: And Madam Anderson you want to second that?

Commissioner Anderson: That sounded a little dicey, but I will accept the challenge. Yes, I will second.

Mayor Slesnick: OK, we've got a motion and a second. Mr. Clerk

**Commissioner Withers: Yes**

**Commissioner Anderson: Yes**

**Commissioner Cabrera: Yes**

**Vice Mayor Kerdyk: Yes**

**Mayor Slesnick: Yes**

**(Vote: 5-0)**

Mayor Slesnick: And you know what?- to pass it around, I'm going to give the gavel to Kerdyk, and I'm going to move **E-9**.

Vice Mayor Kerdyk: And a second? Madam Anderson seconds. Alright Mr. City Clerk, call the roll please.

**Commissioner Anderson: Yes**

**Commissioner Cabrera: Yes**

**Commissioner Withers: Yes**

**Mayor Slesnick: Yes**

**Vice Mayor Kerdyk: Yes**

**(Vote: 5-0)**

Mayor Slesnick: Let me add to the record, I'll give my copy, but we each got a copy of a letter from Bruce Greer, President of the Board of Trustees of course supporting the item, and asking our support. So I'll submit mine to the Clerk.

Mr. Guilford: Thank you all very much.

Commissioner Cabrera: Good job.

Commissioner Anderson: Thank you.

[End: 11:32:24 a.m.]