

City of Coral Gables City Commission Meeting
Agenda Items E-5 and E-6 are related
March 28, 2017
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
Assistant City Manager, Peter Iglesias
City Attorney, Craig E. Leen
City Clerk, Walter J. Foeman
Deputy City Clerk, Billy Urquia
Assistant Development Services Director, Charles Wu
Planning and Zoning Director, Ramon Trias

Public Speaker(s)

Carson Bise
Mario Garcia-Serra

Agenda Items E-5 and E-6 are related [0:00:00 a.m.]

An Ordinance of the City Commission of Coral Gables, Florida, providing text amendments to the City of Coral Gables Code by amending: Chapter 2 “Administration,” Article IX “Impact Fees,” revising Impact Fees, establishing a new Mobility Impact Fee; authorizing the City Manager to adjust the impact fees based on Construction Cost Index; providing applicability, providing for a repealer provision, severability clause, codification and providing for an effective date.

City Commission Meeting
March 28, 2017

Agenda Items E-5 and E-6 are related – Ordinance of the City Commission of Coral Gables, Florida providing text amendments to establish a new Mobility Impact Fee, authorizing the City Manager to adjust the impact fees based on Construction Cost Index; and a Resolution amending the Impact Fee Schedule, as authorized by Ordinance No. 2015-17.

A Resolution of the City Commission of Coral Gables, Florida, amending the Impact Fee Schedule, as authorized by Ordinance No. 2015-17, as amended, providing applicability; providing for an effective date.

Mayor Cason: Alright, E-5 and E-6. These are ordinances and a resolution.

City Attorney Leen: So, Mr. Mayor, E-5 and E-6 are related. E-5 is an Ordinance of the City Commission of Coral Gables, Florida, providing text amendments to the City of Coral Gables Code by amending: Chapter 2 "Administration," Article IX "Impact Fees," revising Impact Fees, establishing a new Mobility Impact Fee; authorizing the City Manager to adjust the impact fees based on Construction Cost Index; providing applicability, providing for a repealer provision, severability clause, codification and providing for an effective date. There's also a resolution attached to this. It's a Resolution of the City Commission of Coral Gables, Florida, amending the Impact Fee Schedule, as authorized by Ordinance No. 2015-17, as amended, providing applicability; providing for an effective date. Both will be heard together as a public hearing. I recommend that the Commission act on Item E-5 first. Also, Mr. Mayor, I would note that Item E-5 is an ordinance on second reading, so both of these will be enacted today if you pass them. There is -- with an impact fee, there is a period of time that it does not come into effect. My recollection is it's six months. Is it 90 days? 90 days. It's a three-month period. So, this impact fee will not go into effect for 90 days, although it will be enacted today. With that, I turn it over -- it's a public hearing item. With that, I would turn it over to Mr. Wu.

Mayor Cason: Go ahead.

Assistant Development Services Director Wu: Thank you, Mr. Mayor. I'll just recap some of the key points because it's been a while since you had first reading. First, some updates on the ordinance. We received an updated study. We'd like that to reflect in the ordinance today on page 4 and 8, to update the study date from November 21, 2016 to March 16 of this year. So, we'd like that to be part of the motion. To recap also, in the ordinance, I've highlighted six or

seven points. The Commission did ask consideration for expansion of structures. On first reading, you already approved that consideration. Today, any expansion less than a thousand square feet for commercial structures are waived. We're expanding that to including commercial and residential structures. Again, expansion of commercial and residential structures less than a thousand square feet will not incur impact fees.

Mayor Cason: Let me ask you, is that for the whole project? In other words, not if it's a hundred apartments within a building that are less than a thousand square feet.

Assistant Development Services Director Wu: It's the entire structure on a per unit basis.

Mayor Cason: Got it, okay.

Assistant Development Services Director Wu: The ordinance is also amended to review -- to update -- to do periodic review from three years to expand it out from three to five years. At the first reading, the Commission asked for consideration to extend the time to appropriate the monies that we receive from impact fees. This -- the ordinance today is six years. We're going to expand that to ten years, and that's based on your first reading suggestion. Again, to date, where this ordinance is applicable, as the City Attorney mentioned, State law requires impact fee increases to not take into effect for 90 days. This gives applicants time to get their permits in the door. The effective date of when projects are vested, we have written in the ordinance that once you receive final BOA approval. That's subject for discussion and I know we have some consideration on flexibility of those dates. And let me finish and we can get into the flexibility part. After the resolution, to recap, the commercial categories were collapsed from 23 categories to 3. The new change in the residential category, the minimum threshold was 1,400 square feet. We included a new smaller threshold of 850 square feet and that gives a little break for the smallest apartment units. Again, we are imposing a new Mobility Impact Fee, which is quite new for the State of Florida and they will fund bike paths, traffic calming, corridor master plan, trolley master plan, et cetera. Again, what's new to us and the entire State of Florida, we'll

impose a new park impact fee for commercial uses. We do have ten-year projection. I can go through it, if you'd like. And parallel to the resolution on all impact fees, we're also updating the University of Miami impact fees for student dorms and academic space. And we're also updating our (INAUDIBLE) capacity fees for each meter size. All of them go up slightly. At this time, I'd like to pause and introduce Mr. Carson Bise, who is a certified planner for the principal of TischlerBise. He's here in the audience. And if you'd like, he does have a five-slide presentation for you, if you would like. We have that ready for you. At this time, I'd like to take any questions.

Vice Mayor Quesada: What is the five-slide presentation on?

Assistant Development Services Director Wu: It's just to introduce...

(COMMENTS MADE OFF THE RECORD)

Mayor Cason: Let's see the slides. Let's see the slides.

Assistant Development Services Director Wu: Okay. Let's pull up the presentation. Channel TV, the presentation, please.

Carson Bise: Good morning, Mayor and members of the Commission. I'm Carson Bise, president of TischlerBise. It's my pleasure to be here with you this morning. Charles basically did my entire presentation for me, so I'll just send the check to him. So, to give you sort of an overview -- you know, impact fees are, as you're probably already aware -- one-time payments for new development to offset their pro rata share of capital facilities. There's different types of methodologies that we can use in the calculation of fees. The way to think of it is the past, the present, and the future. We look to the past, we call that a cost recovery or buy-in method. We look to -- and the idea here is we're recouping the excess capacity in certain infrastructure categories. We look to the present, we call that a consumption based approach, and that's

basically take snapshots of your current levels of service. For instance, you know, if you have one acre of parkland per thousand residents, the idea is we're going to incrementally expand the park system based on that level of service. Then we look at the future, we call that a plan based approach. Usually it's based on some sort of adopted facility master plan or CIP. You get more bang for your buck with a plan based approach, but there's -- the downside is it does leave the general fund open to financial exposure if the growth projections aren't in line or don't occur as projected within the impact fee report. We did include several of the different methodologies within the -- our report here. This is kind of blurry. I can't see it very well.

Commissioner Keon: It is blurry.

Mr. Bise: Okay, so for the police, the citywide service area for all fee categories, we used a plan based approach for both police and fire. We used a consumption based or incremental expansion approach for municipal facilities and parks. We used a plan based approach for mobility fees as well as sanitary sewer. This next slide summarizes your current 2007 impact fee schedule. Charles did a fantastic job at highlighting those changes. We moved from a four-category residential schedule to a six-category residential fee schedule that doesn't vary by type of unit. It's based entirely on the size of the unit. The thinking behind that is that it helps with housing equity and affordability issues and also the proportionality is better with the fees because, you know, larger units tend to have more people, more vehicles available, higher trip rates, so the proportionality is much better in the fee schedule. I think you had 23 nonresidential fee categories. As you could see in the new fee category that's been collapsed to three different categories, one of the benefits of this is that, one, it's easier to administer. They also help from an economic development perspective because when you have the size thresholds, there's an inverse relationship between the size and the demand. So, larger, big-box retail would pay less per square foot than your smaller mom and pop businesses. So, when you collapse the fee schedule, it cuts those smaller uses a break and makes it more attractive for business expansion at the local level. And as you could see here, the fees have gone down for the smaller units and they are increasing for the larger units, starting at 1,400 square feet on the residential side. The

fees are also increasing for all three nonresidential categories. This chart here shows the projected revenue under this current fee schedule versus the old that was completed in 2007. We projected you would net about \$4 million annually compared to about \$2 million annually over the old fee schedule. And we also looked at the fees specific to the University of Miami, looking at, you know, university specific demand drivers or demand indicators. Those fees are going down on a per unit basis. And then, finally, we also updated the capacity fees, and those are also increasing on a per meter basis over the current fees. With that, I'm happy to answer any questions you have.

Mayor Cason: Thank you. When do these fees take effect? In other words, NPR, for example, Brent Reynolds projects, do we go back and put these new fees on them or is it starting like today or...

Assistant Development Services Director Wu: I can answer that.

Vice Mayor Quesada: Well, that's a conversation we've previously had on this.

Assistant Development Services Director Wu: Yes.

Mayor Cason: Yeah.

Vice Mayor Quesada: And if you recall, Commissioner Lago and I disagreed on this item. It was either at first reading or a previous meeting before that. Let me just recap the conversation. And I remember we had asked Ramon -- I had asked -- specifically asked Ramon to find out how many projects were actually in the pipeline at the time and he came back to us and he gave us a number. The disagreement originally was at what point -- I believe staff recommendation is the same recommendation you guys are making on second reading, which, I believe, should have changed after the direction of this Commission after first reading. Section 6, on page 19 of the draft ordinance, states that it's at the point of -- after final Board of Architects approval or City

Commission approval. However -- and that was the position of staff at first reading. And I guess we had one meeting prior that we discussed it. And then Commissioner Lago had a concern that he felt that a number of developers were running to try to get projects in the pipeline from the point of that first conversation. You recall that, Commissioner?

Commissioner Lago: Yeah, but basically, you're timestamping your plans.

Vice Mayor Quesada: Correct. And we agreed on first reading -- again, we've had -- this is the third time we've discussed this item. Again, one was first reading and one was -- I forget exactly which one was what -- which came first. But what we had agree -- I think we all agreed unanimously at that meeting was that if any developer had filed anything after we had started discussing this or become public, they would not be brought in and receive the benefit of sort of being grandfathered in and not be impacted by the new fees. My argument last time, which, please correct me if I'm wrong -- I believe the rest of the Commission agreed with me after we had a long, lengthy discussion on the item was if a developer has already expended funds and is in the process, that they should be grandfathered in. I believe that's what we had agreed on, correct me if I'm wrong. My concern is I hate when a government, you know, comes in and they change the rules on you when you're already in the process, and I think that's -- that was my concern. Again, I -- if I recall, we agreed to that. The issue -- my issue was final Board of Architects approval is -- when you go through Board of Architects, you could end up going four or five, six different -- on six different occasions...

Mayor Cason: Yeah.

Vice Mayor Quesada: However, the first time you arrive at Board of Architects -- hell, after you go up for Development Review Committee, there's already been substantial investments in moving forward with such project. So, that's the way I recall it. Please, anyone up here correct me if I'm wrong. So, I guess the point that I think it should say, this Section 6, rather than saying, you know, you are grandfathered in not at the point of final Board of Architects approval;

however, at the moment that you have started in the process. However, anyone that has started the process post our public discussions on this item are not included.

Commissioner Keon: What page are you on?

Vice Mayor Quesada: Page 19 of the draft ordinance.

City Attorney Leen: So, the -- first, I just want to mention, the City Attorney opinion always is defer to the Commission because you -- as I indicated in the opinion, you can basically change the impact fees up until the time of the permit being issued. There's an argument you can even do it up to the TCO or the CO, but I know that our building official is not that fond of that and there are some issues with that, but at least up to the time of permitting. So, it's just really being specific. What exactly do you want -- when do you want it to be?

Mayor Cason: Go ahead.

Commissioner Lago: I mean, again, I still stand with the same position. I think that it's -- we're not being fair enough because I'll give you a quick example. If you have anybody that comes to the City, fills out the necessary documentation, has plans that are maybe 20 percent ready for submission, pays the fee, which could be a few thousand dollars, they timestamp their documents. They're going to obviously be denied by the DOC or by the BOA, but they're in the system. They're in the process, and they could potentially be saving hundreds of thousands of dollars in fees. So, I'm just telling you the tricks of the trade that could be potentially activated or used to circumvent what we...

Vice Mayor Quesada: We had agreed -- and I understand, but...

Commissioner Lago: No, no, I'm just telling you.

Vice Mayor Quesada: But does that resolve your concern? And I agree with that. We don't want people that were just running in to beat it. So, the moment we started talking about this, none of those people should get the benefit of being grandfathered in to the original fees.

Commissioner Lago: Do we know if that occurred?

Vice Mayor Quesada: I don't know.

City Attorney Leen: So, the date of the grandfathering is the first date that this was discussed? Is that the date you want to use?

Mayor Cason: That could be...

(COMMENTS MADE OFF THE RECORD)

Mayor Cason: Yeah, that could be – we got to have the specific date. I mean, I think we don't want, for example, the Agave project or others that years ago we've been discussing, they've planned these fees and...

Vice Mayor Quesada: Of course.

Mayor Cason: And then suddenly, now we come, because they may have to go back to the Board of Architects or something and then say we got a whole new set of fees for you.

Assistant Development Services Director Wu: I'd like...

Mayor Cason: Sorry.

Assistant Development Services Director Wu: To give you an example. The 405 South Dixie project got preliminary BOA review and approval in April of 2016. They have not received final BOA approval yet. So, if -- to Commissioner Lago's point is if we use that as an example, if they got their foot in the door, one year later, they still don't have final plans. They can proceed -- take another year, so that is what I'm trying to...

Vice Mayor Quesada: I don't...

Assistant Development Services Director Wu: What I suggest is...

Vice Mayor Quesada: Do you think it's fair that...

City Manager Swanson-Rivenbark: Charles, allow the Commission to...

Vice Mayor Quesada: They're already -- I mean, they're way into the process.

City Manager Swanson-Rivenbark: Charles, allow the Commission to argue through this point.

Vice Mayor Quesada: Let me ask...

Commissioner Lago: We're not arguing. We're discussing.

Vice Mayor Quesada: Oh, no, I'm arguing.

City Manager Swanson-Rivenbark: Allow them to have creative conversation.

Mayor Cason: I think what we don't want is...

Commissioner Lago: (INAUDIBLE) argue with you.

Mayor Cason: We don't want frivolous...

Vice Mayor Quesada: Correct.

Mayor Cason: We don't want frivolity. We don't want people coming in throwing it in...

Vice Mayor Quesada: But someone that's genuinely been in the system, I hate to change the rules on someone halfway through the process.

Mayor Cason: Me too.

Commissioner Lago: Listen, again...

Mayor Cason: Me too.

Commissioner Lago: I understand your point. We've probably had the discussion three or four times. I'm not going to change your opinion. You're not going to change my opinion on this matter.

Vice Mayor Quesada: I don't think we disagree, though.

Commissioner Lago: But give me one second. Craig, please, just one second, okay. I also want to make a point. What happens with projects, for example, Collection Residence. For example, the Roney Mateu modern building, which I didn't vote in favor of, but it was approved. What about projects that have been approved and were scrapped, which are -- there's probably about a handful of projects that are not going to be built in this community that, you know, again, they were as per construction prices, you know...

Vice Mayor Quesada: For whatever reason.

Commissioner Lago: Whatever reason there may be, you know, partnerships have broken up, whatever the reason may be, they're not going to be built. If those projects are sold to other developers, other interested parties, whatever it may be, there has to be a cutoff point in reference to...

Vice Mayor Quesada: Agreed.

Mayor Cason: Yeah.

Commissioner Lago: Where those...

Vice Mayor Quesada: Agreed.

Commissioner Lago: Entitlements are no longer active.

Vice Mayor Quesada: I would agree with that.

Mayor Cason: Yeah.

Commissioner Lago: And I don't think that we addressed...

Vice Mayor Quesada: I don't disagree with you.

Commissioner Lago: That right now. And I think...

Vice Mayor Quesada: Because that buyer...

Commissioner Lago: Yeah. And I think that we need to be very clear because that buyer is also selling that development to an interested party, basically representing that these entitlements are in place and they continue to keep those entitlements active by some pretty simple measures in the City, which are not, in my opinion, appropriate. I think even one of them is kept alive based on the Governor's -- what was it? We had a conversation about this a few months ago. The Governor had come down. There was a natural disaster.

City Manager Swanson-Rivenbark: Oh, Hurricane Matthew.

Commissioner Lago: Hurricane Matthew. Over Hurricane Matthew, and we know how effective Hurricane Matthew was. I think I lost a palm frond. But -- so we need to really...

Vice Mayor Quesada: It was a really nice palm frond.

Commissioner Lago: We really need to look into this because, again, I don't want to, you know, circle anybody or, you know, deal with one certain project. But again, let's clarify that issue and I want staff to take a look into that because if we're doing something different than other cities are doing, then let's analyze what those cities are doing. But if we fall in line with every other city, then fine, okay, I don't have an issue.

Mayor Cason: City Attorney.

City Attorney Leen: Mr. Mayor, one issue, though, is that the actual impact fees don't go into effect...

Commissioner Lago: Yeah, but -- well, Craig, but you're going away from what I'm -- my statement I made. I want to make sure that we address this issue and then we'll deal with that question right now.

Assistant City Manager Iglesias: Commissioner, I want to say that the Building Code -- we grandfather the Building Code with a final BOA approval...

Commissioner Lago: Okay.

Assistant City Manager Iglesias: So this would be consistent with the way we grandfather in the Florida Building Code.

Commissioner Lago: But I'm also talking about Commission approvals and recommendations in regards to projects. I'll give you an example. The Collection Residence is almost an as-of-right project. The only issue that we did there, we granted a height increase, not in floors, but we granted a height increase for better units. It was a 5-0 vote on this Commission, okay, and it was so that the units could be ten feet in height and it would be a lot more luxurious product. But they did not get additional floors. They did not get additional FAR, density or intensity. But that project now is scrapped. Again, I don't want a different iteration of a project to come in here or, for example, the Roney Mateu modern building, which is also scrapped. There has to be, you know, a slate -- clean slate that's started. I want to understand that more because I don't think that we -- you know, I don't think we have really our hands around that issue.

Vice Mayor Quesada: Well, I've just written it out. I think I can simplify it, I mean, if there's...

Mayor Cason: Yeah.

Vice Mayor Quesada: Agreement. So, you are grandfathered in if you have submitted to the City -- now, like I don't know construction, so I don't know what the proper term is. I just say submission, but I don't know how to properly define that. Can you help me define that word?

City Attorney Leen: Yes. But remember, it's not in effect for 90 days. So, right now, if someone has to pay an impact fee, we can't require them to pay the higher impact fee.

Vice Mayor Quesada: I understand that.

City Attorney Leen: Right now because they're not in effect, and it can't be in effect for 90 days. So, that has to be factored into the -- so, if anything comes up and has to pay an impact fee at this time, they have to pay the lower fee. The issue...

Vice Mayor Quesada: Well, I'm talking about Section 6.

City Attorney Leen: Comes up after 90 days.

Vice Mayor Quesada: Yes.

Vice Mayor Quesada: This is the new definition for Section 6 on page 19 of the draft ordinance, which I don't know what exhibit it is because I pulled it off the -- electronically, so I apologize. It's the last page of that ordinance. And what I would say is Section 6 gets replaced with -- you know, this ordinance shall not apply to those applications that have submitted to the City their project -- and I need help defining submitting -- prior to November of 2016 -- I'd like to have the exact date of that first meeting that it was discussed. However, that grandfathering is lost if the project is sold, transferred, or otherwise takes on...

Mayor Cason: Abandoned.

Vice Mayor Quesada: New ownership interest, it loses its grandfathering.

Mayor Cason: Can you put that into...

Vice Mayor Quesada: That's the way I would define it.

City Attorney Leen: Yeah, we can...

Commissioner Slesnick: Yeah, that's a good idea.

City Attorney Leen: We can work on that.

Mayor Cason: That's a good idea.

Vice Mayor Quesada: I think it addresses all the points...

City Attorney Leen: Yeah, and I'm not sure...

Vice Mayor Quesada: Commissioner Lago, your facial -- your nonverbal language tells me you're not happy with that. Tell me why. It addresses all the points that you've brought up.

Commissioner Lago: We have a long agenda today. We could be here a while.

City Attorney Leen: If one has submitted...

Assistant City Manager Iglesias: The final BOA approval is good for 18 months, and that would grandfather you in the Building Code for six months. So, that BOA approval -- the Building Code works 180 days, in a six-month period. The final BOA approval's good for 18 month. At 18 months, that BOA approval is gone and anything that was done at that time is -- it can be extended, but that extension...

Vice Mayor Quesada: So, what are you trying to say? If the -- for example, modern Roney Mateu project or the Collection Residences, if they had Board of Architects approval and it is transferred within those -- a month later, to a new owner, are you saying we cannot...

Assistant City Manager Iglesias: I'm just saying that that Board of -- final approval is good for 18 months from the Board of Architects. That, from the Building Code perspective, it's only good for six months.

Vice Mayor Quesada: But this is outside of the Building Code.

Assistant City Manager Iglesias: This is outside of the Building Code.

Vice Mayor Quesada: This is related to the impact fees and with the application.

Commissioner Lago: But my question -- and Mayor, if I may, you know, is what does the developer have to do to continue to make sure that after 18 months, those approvals continue active?

Assistant City Manager Iglesias: He would have to obtain an extension from the BOA. The extension may or may not be granted.

Commissioner Lago: How many extensions are granted by the BOA?

Assistant City Manager Iglesias: I am not sure.

Assistant Development Services Director Wu: The architect has a six-month extension.

Assistant City Manager Iglesias: One six-month extension.

City Attorney Leen: There's a section in the Code...

Vice Mayor Quesada: And it's got to remain the same owners and it can't transfer and they can't sell or...

City Attorney Leen: It's 1-111. And what it says is that an approval -- and that applies to Board of Architects and other approvals of the City, variances, things like that, are applicable for 18 months and then could be extended one time for six months. It's also been interpreted that in extraordinary circumstances, it can be interpreted -- it can be extended again.

Commissioner Lago: When you say extraordinary...

City Attorney Leen: So, the Commission could allow further extensions, if that's what you're willing.

Commissioner Lago: When you say extraordinary circumstances, would Hurricane Matthew be an extraordinary circumstance?

City Attorney Leen: Yes.

Commissioner Lago: See, I disagree wholeheartedly. And I think to me...

City Attorney Leen: But that's by state law.

Commissioner Lago: I think -- yeah, but I disagree. I disagree with a lot of things that happen at the State.

Vice Mayor Quesada: Okay, now, I'm understanding your position a little bit better. I apologize. I misunderstood it. So, your concern is that if a developer continues to push off a project...

Commissioner Lago: Yes.

Vice Mayor Quesada: They should not receive the grandfathering.

Commissioner Lago: Of course.

Mayor Cason: Is there a way to write that?

Vice Mayor Quesada: Yeah, of course there's a way to write that.

Mayor Cason: Yeah. I mean...

Vice Mayor Quesada: But the question is, what's your concern with them pushing it off?

Commissioner Lago: Well, I mean, my concern is the fact that there comes a point where a project is going to be built or not be built.

Vice Mayor Quesada: Okay. But if it's the same group that received the approvals, why does that bother you? I'm not trying to challenge you. I'm curious. I'm trying to understand you better. Why is that a bad thing.

Commissioner Lago: I just don't think it's appropriate to have approvals hanging out there for years and years and years and there isn't any action taken.

Vice Mayor Quesada: Okay.

Commissioner Lago: We, as a City, don't do that.

Vice Mayor Quesada: How often does that happen? So, the Matthew example...

Commissioner Slesnick: What happened with the Aloft Hotel, that the zoning stayed in place...

Commissioner Lago: No, but the zoning changed. The zoning changed in 2012. There was a vote that occurred and it was...

Commissioner Slesnick: But then they came back and used that same vote years later.

Commissioner Lago: No, but it became...

Vice Mayor Quesada: How many years later?

Commissioner Lago: An as-of-right project. When the zoning changed in 2012, I think -- excuse me, 2012 or -- no, no, I apologize, not 2012.

Mayor Cason: 2007.

Commissioner Lago: 2007.

Mayor Cason: 2007.

Commissioner Lago: 2007, the zoning was changed going from residential to commercial. That building immediately became an as-of-right project, and then it was sold in 2012 to a new developer, but that's a zoning change.

Vice Mayor Quesada: Yeah, so, no, that wouldn't...

Commissioner Lago: That wouldn't apply.

Vice Mayor Quesada: Yeah, that doesn't apply here.

Commissioner Lago: Doesn't apply here. We are granting -- we're granting -- the Commission, in one of the projects that we discussed before, granted -- I don't want to say a variance, but they granted a -- how would you -- what's -- Mr. Director, what is the appropriate word or description for the approval that we granted for...

Assistant Development Services Director Wu: Entitlement?

Commissioner Lago: Yeah, an entitlement, would that be -- in reference to the additional height so that the floor -- I think it was an additional eight or nine feet or ten feet that we granted for that building.

Planning and Zoning Director Trias: There was a change in the Code that would apply throughout that district.

Mayor Cason: Industrial area.

Planning and Zoning Director Trias: So, we changed the Code and they took advantage of that.

Mayor Cason: To that industrial -- it was zoned industrial.

Commissioner Lago: Yeah.

Planning and Zoning Director Trias: That was a text...

Mayor Cason: Yeah.

Planning and Zoning Director Trias: A text change.

Mayor Cason: Yeah. Let me ask Mario Garcia-Serra, who is the one person I think that's put in a card -- speaker card, and then we'll continue our discussion.

Mario Garcia-Serra: Good morning, Mr. Mayor and Commissioners. Mario Garcia-Serra, with offices at 600 Brickell Avenue, not representing any one particular client, but I represent various different developments in the City, several of which have an interest of course in this issue. My recollection of your discussion on first reading was you basically started from the premise you wanted to do what was fair. In other words, when a project is far along enough in the process, where is that point in time at which you shouldn't be changing the rules in the middle of the game and increasing the impact fees on them. Final Board of Architects, I think, is sort of clear one point in time. That's a very -- point in time that's very advanced sort of, we're already at the stage of building permit plans. What you had also discussed was that there's many projects that come to the City Commission, the more significant larger projects that ultimately come to the City Commission and are approved at public hearing. These projects are quite often the subject of other sort of contributions or obligations that are entered into more so than as-of-right project; you know, outside improvements, additional contributions to the City, those sort of obligations are entered into. And I think it was the consensus at least -- maybe not unaimoius, but at least the majority of this board was -- that those projects that come to City Commission and are approved at City Commission, at public hearing, should also sort of be vested in the impact fee arrangement that was in place when it came to City Commission. It sort of is incorporated in the ordinance that's before you right now in an interesting way because you mentioned final Board of Architects approval or development agreement. Now, the development agreement is used in two different ways here in the City. There's a development agreement pursuant to Article 3 of the City Zoning Code, which is what we've entered into with the very large projects, such as Mediterranean Village, or where projects have a City component, such as the Palace at Coral Gables, which has -- you know, which is on City land. Development agreement, though, is also used by your Building Department to refer to that covenant which we need to proffer within 30 days after approval at the City Commission at a public hearing, entering into our obligations, whether they be contributions, outside improvements, whatever they might be. So, my thinking

coming into this meeting was, by development agreement, that you mean also that other document that is entered into by the projects that go to public hearing that is a covenant that they enter into agreeing to the conditions of approval and the additional contributions or improvements that they're doing off-site. I was thinking that was one way of improving those sort of agreements as the definition of development agreement here that would then exempt those projects. That still leaves open the idea of how long is that exemption good for. You know, right now, every approval, in general, pretty much expires within 18 months. Some of them might be a year, some of them might be two years, depending on exactly what type of approval you're getting, and it's subject to an extension. Maybe you can say it's good for that original period of validity or whatever period of validity they're in right now because there are some that may have already been in those extensions that we've discussed before that are granted by the legislature otherwise.

Vice Mayor Quesada: In your experience -- sorry to cut you off. In your experience, because I know you represent a lot of projects in the City, what's the longest time that you've seen -- because I would ask Ramon, but Ramon, you've been here four, five years? Five years. What's the longest -- because I believe you've been doing work in the City for ten years?

Mr. Garcia-Serra: It's been about 15 years now.

Vice Mayor Quesada: Fifteen years now. What's the longest that you've seen a developer receive an approval -- maybe it's a better question for our City Manager -- from receiving an approval to actually a project being built, you know, the concern that Commissioner Lago raised.

Mr. Garcia-Serra: In my experience, off the top of my head, three years. And that happened during the circumstance of the Gables Ponce I project, which was approved prior to the recession and the crash in the market, which was around 2008 when it received its approval, and it started construction in 2011.

Vice Mayor Quesada: Got it.

Mr. Garcia-Serra: Three years later. In the meantime, there were several acts of the State Legislature which basically stated because of the economic crisis, that active building permits would be extended -- or active approvals could be extended pursuant to us submitting notice, and we probably took advantage of one of those, aside from the extensions that the City grants also.

Vice Mayor Quesada: Got it.

Mr. Garcia-Serra: And indeed, that was the situation where I think everybody would agree the crisis was such that it was justified in permitting that extension.

Vice Mayor Quesada: Is that consistent with your recollection, Madam City Manager?

City Manager Swanson-Rivenbark: I am not an expert on this side of the shop with Planning...

Vice Mayor Quesada: Yeah, that's true.

City Manager Swanson-Rivenbark: But I believe that the information that he is providing is consistent with my recollection.

City Attorney Leen: You know...

Vice Mayor Quesada: So, is there an unintended consequence, Commissioner Lago -- is there an unintended consequence if we limit that timeframe? And is that unintended consequence that we're forcing -- no, because if it can't be done, then it's just not going to get built. Okay, I don't have a problem with that.

City Attorney Leen: Mr. Mayor...

Vice Mayor Quesada: It's the first time I thought about it, though.

Commissioner Lago: You see, we're not arguing. You see, we're compromising.

Vice Mayor Quesada: We never were.

City Attorney Leen: There is a section in the Code...

Vice Mayor Quesada: I was hoping you understand your thoughts.

City Attorney Leen: 3-203 that talks about applications, which is a defined term. It's an actual term. An application, once it's filed, there are certain things it needs to do for completeness. And if it isn't complete, the Development Review official can bring that up with the applicant, and then it gets withdrawn if they haven't cured it within 120 days. At that point, every approval that's obtained is good for 18 months. So, there is a recognized application date and there is a -- the way that it proceeds. So, what you could say is, obviously, any impact fee comes up right now when the impact fee's not in effect, they pay the current impact fee.

Vice Mayor Quesada: The moment it's withdrawn either voluntarily or by effective law...

City Attorney Leen: Yes.

Vice Mayor Quesada: Then they lose the grandfathering.

City Attorney Leen: Yes. And so you just need to pick...

Vice Mayor Quesada: Which is 18 months.

City Attorney Leen: You need to pick an application date, so if they've applied by this date.

Vice Mayor Quesada: Well, we -- that first meeting in November, I believe is what Commissioner Lago's...

City Attorney Leen: That would be the...

Vice Mayor Quesada: I don't have the exact date.

City Manager Swanson-Rivenbark: November 15. My question, though -- the clarification that Mr. Garcia-Serra said was development agreement.

City Attorney Leen: Yes.

City Manager Swanson-Rivenbark: And the development agreement -- clearly, Agave, we already said to you is exempt from this process because they...

Vice Mayor Quesada: Yeah, I would say it's an exemption to the rule because it's a settlement agreement.

City Manager Swanson-Rivenbark: Absolutely.

Vice Mayor Quesada: Right.

City Manager Swanson-Rivenbark: But the other comment that he brought up was what about other items that are brought to the Commission you all impose valid conditions and you all enter into an agreement on those conditions; is that type of development agreement also included? I think it's an interesting discussion for you all.

City Attorney Leen: I mean, my thought would be any sort of agreement where the City is reaching it with the applicant that's binding, you could treat that as a development agreement for purposes of this interpretation.

Mayor Cason: Yeah, because the point is I want to know what this...

City Attorney Leen: I have no issue with that. Do you, Mr. Iglesias?

Mayor Cason: I want to know what their costs are and...

Mr. Garia-Serra: Exactly.

Mayor Cason: When we make a final resolution up here, that's -- for me, that should be the date that's the cost I know they're going to have to pay.

City Attorney Leen: So, what it would be right now is if you pass this today, they would know -- let's say you choose applied by November 15. Anyone applying after November 15, they're going to be subject to the new ordinance once it takes effect, assuming they have to pay the impact fee at that time. If they have to pay the impact fee and they applied before November 15, they're going to be subject to the old ordinance.

Vice Mayor Quesada: I'm going to make -- I move this dais on Item E-5.

Mayor Cason: First of all, let me close the public hearing. No other speaker cards? Okay.

City Clerk Foeman: No, Mr. Mayor.

Mayor Cason: Go ahead.

Vice Mayor Quesada: Alright, so I move this body for Item E-5 to approve staff recommendation as to the ordinance. However, with a modification to Section 6, revising it not from final Board of Architects' approval; however, the -- okay, let me just -- work with me here, Craig.

City Attorney Leen: So, applications...

Vice Mayor Quesada: So, Section 6, consistent with City Attorney Opinion 2016-087, this ordinance shall not apply to those applications that had been submitted prior to November 15...

Commissioner Lago: Fifteenth.

Mayor Cason: Fifteen.

Vice Mayor Quesada: 2016. However, if a project is sold or its ownership is transferred, or the entity that is the holder has a -- more than a 51 percent change in ownership, it loses its grandfathering. Further, the grandfathering for the original impact fees will be lost either if it's voluntarily withdrawn or by operation of law pursuant to our Code after 18 months and the extension that is -- that may be granted by the Board of Architects.

City Attorney Leen: I would think -- I would prefer if you would word it by saying that the grandfathering applies to the original applicants who applied by this date and is not transferrable.

Mayor Cason: Not transferrable.

City Attorney Leen: The grandfathering is not transferrable.

Mayor Cason: Not transferrable.

Vice Mayor Quesada: I like that language better.

Mayor Cason: Alright.

Vice Mayor Quesada: Well, the reason I said the 51 percent ownership because that's a trick sometimes attorneys use that it's still the same entity, but now it's got whole new ownership.

City Attorney Leen: Yes.

Vice Mayor Quesada: So, I want to make sure that -- and actually, our last agreement that we had with the Codina Group that I actually voted on earlier today, that's in that contract actually preventing that. So, it's a common contractual term that gets worked in.

City Attorney Leen: Yes. And then we would also include that it doesn't apply to development agreements. It doesn't...

Vice Mayor Quesada: Correct. That's an exception.

City Attorney Leen: Apply to any other -- like the one today it doesn't apply to, the one that was approved today because that has an actual impact fee waiver...

Unidentified Speaker: Yes.

City Attorney Leen: So, we're not going to be charging (INAUDIBLE)...

Vice Mayor Quesada: Obviously, development agreements are considered a settlement agreement, so yes, that would be excepted.

Commissioner Lago: And just to answer your question that you had posed before, why am I -- why do I feel so strongly about this. Because if you look around the City, there's probably about two or three properties -- and I'm not going to mention who they -- what they are and who they are -- but they've been left derelict for such a long time.

Vice Mayor Quesada: Okay.

Commissioner Lago: And that will push the developer to take action.

Vice Mayor Quesada: Got it. Or...

Mayor Cason: Alright.

Vice Mayor Quesada: Or move on.

Mayor Cason: Or move on.

Vice Mayor Quesada: Yeah.

Commissioner Lago: Yeah, it's okay to move on.

Vice Mayor Quesada: Yeah.

Commissioner Lago: That's perfectly fine. If you have a better -- you know, (INAUDIBLE) business and we're not going to get involved in that. But again, action needs to happen.

Vice Mayor Quesada: Yeah.

Mayor Cason: So, is that your -- that's your motion?

Vice Mayor Quesada: That's it.

Mayor Cason: Do we have...

Commissioner Keon: Could you repeat the motion? I'm very sorry.

Mayor Cason: He's going to say all that again?

Commissioner Slesnick: Maybe the City Attorney could (INAUDIBLE)...

Mayor Cason: Everything you said.

City Attorney Leen: Yeah, so you're moving to approve this with the change to Section 6...

Commissioner Keon: That says what?

City Attorney Leen: Which will now indicate that the ordinance shall not apply to those applications that were submitted after -- pardon me, prior to November 15 -- including November 15?

Mayor Cason: Prior to.

Vice Mayor Quesada: I mean, did anything happen November 15?

Mayor Cason: No, prior to.

City Attorney Leen: Prior to or including November...

Vice Mayor Quesada: Prior to, yeah.

City Attorney Leen: So, it'll include November 15...

Vice Mayor Quesada: Include November 15.

City Attorney Leen: So, November 15 or before, it will not apply to those submissions. It also will not apply to applications that are subject to a development agreement or obviously, applications that have to pay their impact fees before the 90 days takes effect.

Commissioner Keon: Is that what you said?

Mayor Cason: Okay.

Vice Mayor Quesada: Yes.

Mayor Cason: Alright, so do we have a second?

Assistant Development Services Director Wu: If I can add one clarification. We'd like to change the date in the ordinance. We had an old study date. We'd like to update it in the ordinance to say March 16, 2017 in the ordinance, please.

Mayor Cason: Okay.

Vice Mayor Quesada: In the ordinance.

Vice Mayor Quesada: You're saying the actual -- at the introduction on the first page?

Mayor Cason: Yeah.

Assistant Development Services Director Wu: And throughout. There are a couple citations in the ordinance (INAUDIBLE)...

Vice Mayor Quesada: Okay, but it has nothing to do with the grandfathering date.

Mayor Cason: No.

Assistant Development Services Director Wu: It does not. Thank you.

Mayor Cason: Okay. Alright, do we have a second to that?

Commissioner Keon: I'll second that.

Mayor Cason: Commissioner Keon second. You had another question?

Vice Mayor Quesada: You have a question?

Commissioner Keon: No, I -- yes. I had one question with regard to the park impact fees where -- in a discussion with the Manager the other day, when a -- these are more in the commercial buildings or commercial properties when they present a plaza or they give us whatever open space that's included in the project, are they given credit for the park impact fee?

Commissioner Lago: I never thought about that. I mean, I don't think any of us thought about that. What I'd like to see...

Commissioner Keon: And it's like the, you know, art impact fee or whatever is if they include it in the building...

Commissioner Lago: Well, let me give you my thoughts...

Commissioner Keon: Okay.

Commissioner Lago: Let me give you my thoughts on that.

Vice Mayor Quesada: Are you saying whether a plaza can be...

Commissioner Keon: Well, I don't...

Commissioner Lago: No, like for example, if an impact fee for parks had already been in place in reference to the recent project that we approved that has a corner lot, which has about a 10,000 square...

Commissioner Slesnick: Villa Valencia.

Commissioner Lago: Oh, yeah, Villa Valencia. If they would have been exempt from that additional -- I think it was 0.5 for the parks fee, correct?

Mayor Cason: Right.

Commissioner Lago: The point being is I don't have an issue with that as long as it's at the discretion of the Commission and that this good Commission makes the final decision and that that park or that allocation of open space -- like I've said before, I'm not looking at plazas. I think plazas are great. I think they serve their purpose, but when we're talking about near the neighborhoods and we can get open green space, I would prefer that.

Commissioner Keon: Right. Because I think so often in the downtown, it will be very difficult for us to purchase property for parks, just because of the availability of land and the cost of land.

Where if someone will provide that park space or some level that you can determine of park space within their project, you know, should they be given credit to incentivize that park space within projects in the downtown.

Commissioner Lago: I mean, that's one of the reasons why I proffered -- and the Manager can tell you I proffered -- and it came before the Commission already once is the discussion of that park impact fee that would be dedicated just to raising funds for downtown to the tune of around \$21 million. I mean, the whole purpose there is to activate funds so that we could potentially buy a significant swath of land in the downtown area. Again, I mean, that's coming. I know that's being worked on by staff and that'll hopefully be coming.

Vice Mayor Quesada: If I recall correctly, there was unanimous support for that.

City Manager Swanson-Rivenbark: This is the park impact...

Commissioner Lago: Yeah, I know, I know, I know.

Commissioner Keon: This is.

City Manager Swanson-Rivenbark: (INAUDIBLE) 21 million for all of the commercial. It is 21 million projected in the next ten years...

Commissioner Lago: Yes, ten years.

City Manager Swanson-Rivenbark: For all park impact fee...

Mayor Cason: So, that's this.

Commissioner Keon: Next ten years. This is your park impact fee.

Commissioner Lago: Yeah, I know, I know, I know.

Commissioner Keon: This is it.

Commissioner Lago: But I'm saying -- but...

City Manager Swanson-Rivenbark: This is the change you asked for, sir.

Commissioner Lago: But weren't we just going to dedicate it just to downtown, correct?

Commissioner Keon: No.

City Manager Swanson-Rivenbark: It's the...

Commissioner Lago: That was my understanding.

City Manager Swanson-Rivenbark: Okay, it's my understanding -- and we have consultants and staff here -- that park impact fee, it has to be a legitimate relationship with what's causing the impact to what's receiving the benefit. That being said, you have ample opportunity to raise money for the downtown with the projects that are happening in the downtown.

Mayor Cason: Yeah, because you have fees on residential construction too, so you would assume you'd have a park in that area.

Commissioner Keon: Right. But there has been -- the impact fee -- the park impact fee has been on residential for a long time. It hasn't been on commercial. It's newly applied to commercial.

Commissioner Lago: No, but that's my point. That's why I wanted to make sure that commercial was just, you know, spent toward the downtown area.

Commissioner Keon: But being commercial and they're paying an impact fee for parks...

Commissioner Lago: I understand that it has to have a relationship...

Commissioner Keon: What is -- and there needs to be a nexus between the impact and the expenditure of the fee. So, our ability to purchase park space in the downtown is -- you know, I don't know what that ability is because of just the cost of land in the downtown.

Commissioner Lago: And the other question was how are we going to leverage these monies to hopefully take best effect now versus in ten years.

Commissioner Keon: Right. So, what I'm asking you is do you -- can you waive the park impact fee or is there an ability to prorate or something the impact fee based on green space included in the project? Like you have now -- let's say this is, you know, just starting now. You have in the Columbus Center project, that -- the third building that is being developed now -- what is it, 1 Alhambra? What's the number on that?

Vice Mayor Quesada: We know which one it is.

Commissioner Lago: Next to La Palma.

Commissioner Keon: Yeah, adjacent to La Palma. Is it -- is that commercial or residential?

Mayor Cason: 50?

Vice Mayor Quesada: Residential.

Commissioner Keon: Oh, it's residential, so it would already be -- it would already apply. But, you know, for them, they are going to -- I thought that whole plaza, they were going to redo as a grassy area with trees and all of that sort of thing. So, do they get a credit toward the impact fee because they're providing or including it in their project when there isn't really the ability to use that impact fee -- I don't know where else -- where are we going to use it?

City Manager Swanson-Rivenbark: So, I think it's an excellent question, Commissioner. I don't think that we have flushed that kind of question out. I will say that the discussion on plaza and trees and landscaping was an effort to satisfy the Art in Public Places component of that, but I'm sure staff can work on working through those different alternatives.

Commissioner Keon: Okay. I mean, it's particularly in the downtown. We know that we have been able to -- in the residential areas, we have been able to buy five pocket parks, space for pocket parks. We haven't -- I don't know that we've been able to do that in the downtown in the commercial area...

City Manager Swanson-Rivenbark: The prices...

Commissioner Keon: Or that we will because of the cost of it.

City Manager Swanson-Rivenbark: And the availability.

Commissioner Keon: So, you know, if we're talking about in the downtown, you know, we need to -- maybe we need to be flexible in the application of park impact fees in the commercial areas, even for residential properties, unless it can be used, you know, to upgrade a particular park, like Philips Park or something -- or, you know, to include an open plaza within the -- or an open space, you know, that is open to the public within the project itself, particularly in the downtown area.

Commissioner Lago: I don't have an issue with it at all. I agree with you. It's fine. But I think that the final decision needs to come to the Commission and the developer needs to show, just like we did with the project on Valencia, there's a tangible result.

Commissioner Keon: Right.

Mayor Cason: Yeah. That's the way to handle it.

Commissioner Lago: That's it.

Commissioner Keon: Okay.

City Attorney Leen: So, Mr. Mayor, just one more time, just so there's no confusion. Here's the components. I wrote them down, so I'm just going to read them. So, what you would be doing is you would have a grandfathering provision. Until the impact fee -- if the impact fee is due over the next 90 days, they're going to pay the current impact fee because this hasn't taken effect. Once this takes effect, if their application was submitted on November 15, 2017 (sic) or before that date and it has not lapsed, they will receive a grandfathering, although this grandfathering is not transferrable.

Mayor Cason: That's correct.

City Attorney Leen: Number two...

Assistant Development Services Director Wu: I'm sorry, Craig. You mentioned...

City Attorney Leen: Yes.

Assistant Development Services Director Wu: 2017. I think it's 2016.

Mayor Cason: 16.

City Attorney Leen: Oh, 2016. Forgive me, thank you. That would have been a terrible date. Application -- let me say it again. I'm sorry, forgive me. Application -- so, there'll be a grandfathering provision -- applications submitted November 15, 2016 or before, the grandfathering would apply to, as long as it hasn't lapsed and it's not transferrable from the original applicant. Number two, for development agreements or similar agreements, those continue to take precedence, and so the older provision can apply to them and that is the entire grandfathering clause.

Vice Mayor Quesada: Or the expiration. I guess you don't need to repeat it, but it's already in the Code, and I don't know if you feel like it's necessary to repeat it in the ordinance or not.

City Attorney Leen: The expiration of...

Vice Mayor Quesada: I'll leave it up to you.

City Attorney Leen: The expiration...

Vice Mayor Quesada: Yeah, what we discussed with Commissioner Lago's concern...

City Attorney Leen: Yes.

Vice Mayor Quesada: That you clarified for us.

City Attorney Leen: Yes. I understood that.

Mayor Cason: Alright, so we have a motion by the Vice Mayor and Commissioner Keon seconded. City Clerk.

Commissioner Keon: And there is a provision -- did we add a provision about the application of park impact fees in the downtown?

Mayor Cason: To be the...

Commissioner Keon: Or no? I mean, who has that discretion?

Assistant Development Services Director Wu: I can help.

Commissioner Keon: Or is that just...

Assistant Development Services Director Wu: I can help. Today's impact fee already has provisions on a process for refunds. So, there is that avenue to seek impact fee relief.

Commissioner Keon: Okay, so they can -- then they do have some...

Assistant Development Services Director Wu: Yes.

Commissioner Keon: Redress. And there's...

Mayor Cason: Okay.

Commissioner Keon: A method for it.

Assistant Development Services Director Wu: I'm sorry?

Commissioner Keon: And there's a method, then? There's a process.

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

City Attorney Leen: Yes, there is. And you made it clear that you want us to look at that.

Commissioner Keon: Yeah. Thank you.

Mayor Cason: City Clerk.

Commissioner Slesnick: Yes.

Commissioner Keon: Yes.

Commissioner Lago: Yes.

Vice Mayor Quesada: Yes.

Mayor Cason: Yes.

(Vote: 5-0)

Commissioner Keon: I think this issue, though, of allowing projects to continue on for a long time is a problem in the City. I know that when we had that one -- that home on San Rafael, you know, and the expectation they were supposed to be providing plans and they never provided plans and the construction fence remained up, you know, for two years or something because they never did. And you can call for a -- I don't know, an inspection and that triggers the time to start over. We really need to be much more careful in the Building Department on extensions that they're not being used to delay projects, but they're really being extended to address specific issues within a project. And I don't know who makes that determination...

City Attorney Leen: It's them. Our building official is Peter Iglesias and he and I have spoken on this issue. He's taking a very strict look at these. There are certain requirements he has by law, as he's informed me on numerous occasions, but the -- and I agree with him. But we are

trying our best. Where he can, he's been exercising his discretion so that we can enforce our abandoned property ordinance and things like that, as we did in, I think, the case you mentioned.

Commissioner Keon: Yes.

Mayor Cason: Alright, we're going to do H-3...

Commissioner Keon: But that's also for permits too, okay.

Mayor Cason: And H-4, and then we're going to take our lunchbreak.

Assistant Development Services Director Wu: Mr. Mayor, there's a resolution.

Mayor Cason: A lunch break.

Assistant Development Services Director Wu: There's a resolution.

City Attorney Leen: E-6 needs a vote as well.

Mayor Cason: Yeah, okay. We'll have a vote on E-6. Do we have a motion?

City Attorney Leen: It's subject to the same -- E-6 is subject to the same grandfathering...

Vice Mayor Quesada: So move.

City Attorney Leen: Provision as...

Commissioner Lago: Second.

City Attorney Leen: E-5.

Mayor Cason: Vice Mayor makes the motion. Commissioner Lago seconds. City Clerk.

Commissioner Keon: Yes.

Commissioner Lago: Yes.

Vice Mayor Quesada: Yes.

Commissioner Slesnick: Yes.

Mayor Cason: Yes.

(Vote: 5-0)