

City of Coral Gables City Commission Meeting
Agenda Item I-2
May 26, 2015
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
Assistant Development Services Director, Charles Wu

Public Speaker(s)

George Volsky, Resident, 1008 Alhambra Circle

Agenda Item I-2

Extending tree protection plan resolution to include requests for demolition permits.

Mayor Cason: OK, so the last item is I-2, Extending Tree Protection Plan resolution to include request for demolition permits.

City Attorney Leen: Yes. Charles, would you please come up? This issue came to me through City staff. I think it was a good example of staff finding policy decision that the Commission has made in trying to implement it in a better way, and just to give you just a brief background before I turn it over to the Assistant Development Services Director, remember, the Commission

issued a direction, a very clear direction that for new developments, and actually came up in the context of a lot split once, but also, any new development that goes to the DRC and then goes to the Board of Architects, you have basically demanded, but you have required that there be a tree preservation survey. A tree survey is done with specimen trees to ensure that those trees are not interfered with. And Charles brought to me some situations and, in particularly, with demolition permits, where he would like that policy to be broadened, to apply it to this context. And I'll turn it over to Charles.

Assistant Development Services Director Wu: Thank you, Mr. Leen. We discovered there might be a loophole for a situation...someone wants to demolish a home and not rebuild. They want to maintain it vacant for a period of time. Once in a while, we do get those requests. And a developer or a homeowner who wants to demolish a home, when the entity who they get is pretty much a backhoe and a bulldozer, and that's where you can do some serious damage for a mature tree which have been there for decades; will be growing quite close to the home and have extensive limbs going over the house. So, we trying to preempt that to see whether you would like to entertain extending the Resolution you approved pertaining to requesting tree surveys and tree protection plan to demolition permits as well. Again, if there are new construction, that we can capture that as part of a new construction permit, but if it's tree demolition permit, it's going to be under the radar and we're going to miss it. Likewise, for septic tanks and drain field expansion, the similar situation. We have no inspection purview because that's strictly through the Department of Health. What they do is just come in with a backhoe, then dig additional holes in the ground, and low and behold, the tree's already damaged because the backhoe activity, because the roots being compromised. So, those are the two loopholes we see so far with respect to the resolution of trying to preserve specimen trees in the City. So, we'd like that consideration for demolition permits; and for septic tank, we'd like to request additional information from the applicant when they come through permitting process.

Mayor Cason: So basically, we had this discussion before on that lot. Was it Maggiore?- the first question was, what was a specimen tree? I think we determined that there's a definition of a specimen tree.

Assistant Development Services Director Wu: It's 18 inches.

Mayor Cason: So, will the applicant...

City Attorney Leen: I'm sorry, Mr. Mayor. Could you say that again?

Assistant Development Services Director Wu: Eighteen inches.

City Attorney Leen: Eighteen inches.

Mayor Cason: So if the trees on this lot are under 18 inches, will they just have to certify that or will they have to pay for somebody to come out and say, you don't have a tree that's over 18 inches?

Assistant Development Services Director Wu: The two things what you requested as part of the resolution is a tree survey and a tree protection plan, as applicable, because if you have a smaller demolition, they can tell us, "Well, there ain't no trees there." We don't need to go through any expense of doing a tree protection plan tree survey. But if there are trees there, we know where they are, and we see a certain activity in the vicinity of the tree, we can request a tree protection plan consistent with the City Code requirement upfront. So, with the awareness of someone coming to demolish it, we are telling them upfront we are going to watch this demolition permit construction phase. When you come through, you are not going to damage this tree, not only the roots; the limbs and the trunk.

Mayor Cason: I understand. I just want to make sure that people don't have to pay extra money, because there's a couple trees there that are palm trees, or something, that are not specimen, and not have to pay for it. Either they self-certify or somebody...I don't know how you would work it so that...

Assistant Development Services Director Wu: We accept hand-drawn on the survey. It's really a judgment call: where the activity is, how close it is to the mature tree; and I do verify it with

Google Map and sometimes we do field drive by to verify it. So, it really is a judgment call. But, we just want the information upfront.

City Attorney Leen: Charles, could you clarify 18 inches; what do you mean by that? Because I know I got a request from a Commissioner to define what is a specimen tree, and you'll be better situated to do that.

Assistant Development Services Director Wu: It's not a palm tree. It's not a fruit tree. And it's not a prohibited species. But by breast height, 18 inches diameter, we consider all those trees a specimen tree. All other trees are going to be removed also require tree removal permit. We just place a higher value on the specimen tree because the maturity of that tree. All trees removed, again, require a removal permit.

Mayor Cason: So diameter?

Assistant Development Services Director Wu: Diameter.

Mayor Cason: Right.

Commissioner Lago: Caliper. The caliper of the tree.

Commissioner Keon: Yeah. The diameter, right, yeah.

Mayor Cason: OK.

Commissioner Keon: The only question I have is with regard to septic tanks, because sometimes if it's an existing home it's a different story when we're building a new home because they can, you know, realign the drain fields and do different things, but if it's an existing home that has been there for a long time and the tree has grown up along with the house, what do you do? I mean, what happens to somebody that needs to have new drain fields done, needs to have a septic tank replaced?

Assistant Development Services Director Wu: Well, it's my understanding that...

Commissioner Keon: What would be the consequence for that person?

Assistant Development Services Director Wu: There's very limited area where they can expand a drain field.

Commissioner Keon: Right.

Assistant Development Services Director Wu: So wherever it is, probably extend it either way, either side, but that's an opportunity to explore options.

Commissioner Keon: OK.

Assistant Development Services Director Wu: Maybe if this area's not a good area expand the other side.

Commissioner Keon: Right.

Assistant Development Services Director Wu: Drain field doesn't necessarily have to go in a logical fashion.

Commissioner Keon: Right.

Assistant Development Services Director Wu: It can extend it in fingers, for example. So, that's an opportunity to see what's there and explore options.

Commissioner Keon: OK. Thank you.

Commissioner Lago: Thank you.

City Attorney Leen: So, Mr. Mayor, I would like to request a vote of the Commission to extend the resolution to apply to demolitions, consistent with what you've informed us today. And then, Commissioner Keon, would you want it to extend to septic tanks?

Commissioner Keon: As long as it gave them options. I wouldn't want to be too punitive with residents that have lived in a home for a long time, and the house is there, and there probably could be a pool there, and it's kind of a fully developed place. It's almost like we're OK, so now, where do you go when you don't have a lot of choices. I don't want them to have to move a pool or move a patio or something in order to do that.

Assistant Development Services Director Wu: But our goal is to protect the tree, not only reviewing the drain field, but when they start digging they have some awareness; that tree needs to be protected during the digging activity. So, that is a second goal we think is also important.

Commissioner Keon: All right.

Mayor Cason: Do we have a motion on that?

Commissioner Lago: Make a motion.

Commissioner Keon: I'll second it.

Mayor Cason: Commissioner Lago makes the motion; Commissioner Keon second. City Clerk.

Mr. Foeman: Commissioner Slesnick?

Mayor Cason: Sir, wait till we finish the...

George Volsky: Mr. Mayor, I believe I'm the only member of the public, so to speak, and I haven't heard one word about the property rights. I imagine that someone wants to demolish a

house, there's a tree there, tree belongs to that individual. I mean, here, we have encroachment of bureaucrats into one tree; maybe the tree's diseased; maybe the tree is just nothing. I mean, this is something ought to be discussed, public discussion, and I am speaking as property owner of bunch of trees. I had 18 coconut trees in my yard. Lethal yeallowing came and all of them went. I mean, this is something which any one of my properties and I haven't heard a word of private property.

Commissioner Keon: But it doesn't, it doesn't relate to coconut trees. The specimen tree ordinance only relates to...

Mr. Volsky: I know, but look, Ms. Keon, the other day, we discussing about the discussion of tree...

Mayor Cason: Sherman oak. We had a long discussion...

Mr. Volsky: You remember that tree?

Commissioner Keon: Yes.

Mr. Volsky: Someone said here, and I remember, that if you cut the roots 15 feet from the curve of the tree, that tree is going to die. Across from my house, actually on, maybe 5 yards, they cut very severely a tree because the roots of the tree were damaging the sidewalk. And the guy said, absolutely, 15 yards. That tree is alive. So in other words, there's a lot of misinformation about these things. But my view here is property rights. Here I hear bureaucrats telling me I cannot... on my property is his property; I resent this. And I think, if you believe that this is fine, let's make a discussion; people will know not at a time when only unfortunately, I'm the only one who speaks as a private owner of a house.

City Attorney Leen: Mr. Mayor, may I say something in response to that? Mr. Volsky, I do think the City is concerned about the private property rights. Let me explain. We have a tree

ordinance that protects specimen trees. We also have a provision which we applied in our Zoning Code that allow us to basically make modifications to that to protect private property rights, which might be affected by a taking analysis under the Fifth Amendment or the Bert Harris Act. So, we actually have a provision in our Code that allows that. We actually use that ordinance in the Sherman's Oak debate to make sure that they were able to develop a house on that premise, consistent with Federal Law and also State Law. So, I do want to make it a commitment here. I do want to assure you, all we're doing here is getting the information. This is just for the information. If, for some reason, a specimen tree prevented someone from developing on their property, a house, we would have to address that, and we would have to open up that proceeding again, and the Commission would have to reach a resolution that would allow some reasonable development on the property, and we would do that, and that's what we've done in the past.

Mayor Cason: That case of the majority lot split, I think, a couple of those specimen trees, the solution was to move them, because except for certain types of trees, all of them can be moved...

Mr. Volsky: Absolutely.

Mayor Cason:...successfully. So, this doesn't preclude moving the trees; just says we basically want to protect trees.

City Attorney Leen: This is just information.

Mr. Volsky: ... logically, if someone owning a property wants to destroy and there is a royal palm there, royal palm cost, what, \$2,000 or \$3,000? This person would move, take this out, move it, put it somewhere there, because nobody's going to destroy one's property. Now, there are some trees which are worthless. Actually, they are junk.

Mayor Cason: They're not specimen trees.

Mr. Volsky: Yeah. Well, OK. Call them bureaucratic...But, what I'm saying is, basically, property rights is very important, very important and encroachment of bureaucracy is great. And I, as many people resent it, and we know that. I mean, there's a political issue in the country that's a constitutional issue. Property rights sometimes are important, more important than the ... Of course, this relates in a way, to the discussion that we had few moments ago about the rules. Someone wants it, why not? As you know, you put a brass roof on a house and a few years, it becomes beautiful green.

Mayor Cason: Well, come back when we discuss roofs ...

Mr. Volsky: All right. Well, anyhow I want to raise the issue of property right and...

Mayor Cason: Appreciate it.

Mr. Volsky:... can someone can say, no. There is a resolution and you cannot touch it; you cannot destroy the house, and then of course, any discussion to build something new will take forever.

Mayor Cason: Thanks, George.

City Attorney Leen: Thank you.

Commissioner Lago: Thank you.

Mayor Cason: City Clerk.

Commissioner Slesnick: Yes.

Commissioner Keon: Yes.

Commissioner Lago: Yes.

Mayor Cason: Yes.