



To: Billy Urquia, City Clerk

From: Gustavo J. Ceballos, Assistant City Attorney for the City of Coral Gables

Approved By: Miriam Soler Ramos, City Attorney for the City of Coral Gables 

RE: Legal Opinion Regarding Resolution 2014-224 - Correction

Date: September 6, 2019

It has come to our attention that Resolution No. 2014-224, which was adopted on October 14th, 2014, has a few inconsistencies with the official record and does not properly reflect the changes discussed and adopted by the Commission. Specifically, Section 3 of the Resolution states "30 households" within 1000 ft which is contrary to the intent of the Commission, as indicated by the transcript(attached), that the threshold be "30% of households" within 1000 ft. Pursuant to the City of Coral Gables Code Section 2-252(9), attached please find the corrected Resolution No. 2014-224 to be executed and subsequently take the place of the existing version in our official records.

City of Coral Gables City Commission Meeting
Agenda Item I-2
October 14, 2014
City Commission Chambers
405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Jim Cason

Vice Mayor William H. Kerdyk, Jr.

Commissioner Pat Keon

Commissioner Vince Lago

Commissioner Frank Quesada

City Staff

Interim City Manager, Carmen Olazabal

City Attorney, Craig E. Leen

City Clerk, Walter J. Foeman

Deputy City Clerk, Billy Urquia

Assistant City Attorney, Yaneris Figueroa

Public Speaker(s)

I-2: [Start: 1:40:50 p.m.]

A Resolution of the City Commission related to criteria for waiver of appeal fees for City residents demonstrating financial hardship.

Mayor Cason: Let's move on to I-2. That's a resolution of the City Commission related to criteria for waiver of appeal fees for City residents demonstrating financial hardship

City Attorney Leen: Yes Mr. Mayor. This came up several months ago, couple of months ago, and the Commission, we talked about it a couple of times. There was a concern that you have these fees, which at the time were around \$900, it's still \$900, a little above that. It might be too expensive, particularly for residential household to appeal. **There is also a concern that sometimes you would have residents that may not have a lot of income, may have a financial hardship or may even qualify as being-having a financial hardship under certain criteria used to determine poverty levels.** So what we've attempted to do in this resolution is two things; first, and I'm going to turn it over to Assistant City Attorney Yanneris Figueroa for her first presentation to you, and she is going to make a second one too, but just briefly what it does is, it

does address a situation where someone does not have financial means and allows for a waiver in those circumstances, and then secondly, it also allows for a petition to be done, and I'll turn it over to Yaneris and then the City Manager may have some comments as well. Yaneris.

Ms. Figueroa: Good afternoon Commissioners, City Attorney. We did a survey of about 5 different municipalities and Miami-Dade County within Florida. I'm presenting before you only the ones that have waivers, either in an ordinance or actually on-I called a few municipalities and they said that in some circumstances they'll waive it, but it was discretionary so I didn't want to present that to you. I also have some supporting documentation, if you would like to review it. So in terms of appeal waivers, the only two that I could find that offered them are the City of Miami and Miami-Dade County. The City of Miami has a waiver of all appeal fees, if 60 percent of the property owners are located within 500 feet of the subject property requesting appeal in writing. In addition to that they also have an appeal procedure for any entity acting on behalf of the City of Miami or an entity within the City of Miami. Miami-Dade County on the other hand does offer a waiver for low income residents and that is 200 percent of the then current federal poverty guidelines prescribed by the United States Department of Health and Human Services, and that's similar to what is being presented to you today.

City Attorney Leen: Mr. Mayor before I turn it back to the Commission. Ultimately, what this will do is first it does not remove the Commission's discretion to waive fees. So you always retain the discretion according to this resolution to waive an appellate fee in an appropriate circumstance. Second, it allows for this sort of hardship waiver and it requires the City Attorney basically to determine that the requirements apply, that the criteria is met, and then it's done with the approval of the City Manager; and then third, there is this criteria for a waiver by petition, which is 10 households within 1,000 feet. So that's what's being presented for your discussion today.

Mayor Cason: I like the part with – I think it's an elegant solution to go with what the County is doing, \$400 is reasonable. We get to collect our hard costs, is that correct?

City Attorney Leen: That's going to be for the next item Mr. Mayor; this is just for the waiver.

Mayor Cason: OK. Just for the waiver. The only things are 10 homes.

Interim City Manager Olazabal: Even the waiver mentions that it will require payment of any hard cost of the City, right?- on Section 4?

Mayor Cason: Yes. Still require the payment of hard cost – I think it's in both, hard cost.

City Attorney Leen: Let me – wait one second.

Mayor Cason: That's under I-2, Section 4.

Interim City Manager Olazabal: It's mentioned in Section 4.

Mayor Cason: Payment of any hard cost, transcripts, publication, mail.

City Attorney Leen: There are two different types of hard cost. That's for example, we are not saying we are going to waive the cost of the transcript, if the party has to purchase the transcript; we are not going to waive the cost of mailing if they have to otherwise pay for the cost of mailing, except for an extraordinary financial hardship. I think it says that too, doesn't it?

Commissioner Lago: I don't have an issue with that at all.

Vice Mayor Kerdyk: I don't either.

Mayor Cason: I just wondered about the 10 homes, I mean, is there another way to do it, a percentage of – we are talking about within 1,000 feet radius, so you may have some homes on the golf course where there are –

Commissioner Quesada: 1,000 feet radius is pretty big.

Mayor Cason: It's pretty big – In other words only 10 homes, you could have 500 homes within that.

Commissioner Quesada: Yes, you could.

Mayor Cason: Any of you all have a problem with that number?

Vice Mayor Kerdyk: You wanted more is that what...?

Mayor Cason: Well, I was just thinking, I don't know. I'm just thinking out loud that we all know that within certain – it's pretty easy to get 10 neighbors together. I'm just wondering if you had a percentage of the homes within 1,000. I don't want to make it so that we end up having appeals all the time that just don't want to pay. That's what I mean; it's very, very easy. I'm saying that seems very easy.

Commissioner Quesada: I agree with you.

Mayor Cason: Do you do 10 percent?- do you do 50 homes? It could be another way to look at it, so that you don't get, I won't say they are frivolous, but you may get three or four of my neighbors and the City loses.

Vice Mayor Kerdyk: So basically you are waiving – you are moving the \$900 down to \$400, and then you are trying to waive that \$400 on a couple of occasions, right?

Commissioner Quesada: Correct.

Commissioner Lago: What are we talking about here? We are talking about maybe what?- half a dozen times a year?

Commissioner Quesada: Here's the thing. Let's say you had to appeal something, you could easily go around to 9 of your neighbors and get 10 votes, that's exactly what the Mayor is saying, so it's always going to happen. So now every time....

Mayor Cason: And it might be that everybody goes to an appeal not to have to pay the money and you get a lot more appeals that otherwise people would say, well you know, I'm not going...

Interim City Manager Olazabal: A possible alternative to that is something similar to the City of Miami. I think Yaneris was mentioning the City of Miami had 60 percent, was it?

Ms. Figueroa: Yes. Their Code Section 62-32 states that and I'll read the exact language for you. It will be completed by a fee unless the decision of a specific property and at least 60 percent of the property owners located within 500 feet of the subject property request appeal in writing, then no fee shall be charged.

Mayor Cason: If you get issues around the charter school, you could have anything come up with charter school and have an appeal, if you just get 10 people together, but if you have something that's a tougher standard you might have people thinking, really do I want to go through with this?

City Attorney Leen: One issue with that. Our Code recognizes 1,000 feet for courtesy notice, so I would think that my recommendation would be whatever you do it should be within 1,000 feet. It's ultimately up to you how many, if it's 10, or if it's a percentage or 20, however you would like it.

Mayor Cason: 10 homes for me are too little. I would say maybe 10 percent or 20 percent, something like that.

Commissioner Keon: I think when we came up with that number, I think we were looking at 1,000 feet; we were...50-foot lots, if it's in 50-foot lot sizes.

Mayor Cason: In the North Gables in particular, we have 5,820 homes in North Gables within 1,000 feet you can get.

Commissioner Keon: But within 5,000 feet, but that's what we are saying, so if you did it literally in any direction.

Mayor Cason: It's a circle around it, so you could have – in the North Gables there are 5,820 homes and apartments, so within 1,000 feet you could have a couple thousand homes, just 10 out

of those will want to come to make an appeal. It seems to me we have to have a percentage number, whatever that is just to make the threshold a little bit tougher. How about 10 percent?

Commissioner Keon: You wouldn't have 1,000 if you want it in all directions, on a 50-foot lot, if you did 50-foot lots you would probably have 1,000 feet, would be 200 if you want to use north, south, east, and west you are looking at maybe 800.

Mayor Cason: It's 1,000 feet around, not linear down streets or anything.

Commissioner Keon: But how many would you likely have in that – what's the formula to figure out what that was, if you broke it up into 50-foot lots.

Commissioner Quesada: I don't think we should guess stuff.

Commissioner Keon: I thought that when we did – I thought that's why we came up with that number it was based on what...

Commissioner Quesada: Repeat to me what the City of Miami did again. I'm sorry; I know you said it like three times.

Ms. Figueroa: OK. I'll read it verbatim: Any appeal should be accompanied by a fee...

Commissioner Quesada: Wait, speak into the mic, it's kind of hard to hear you.

Ms. Figueroa: "Any appeal should be accompanied by a fee unless the decision applies to a specific property and at least 50 percent of the property owners located within 500 feet of the subject property request an appeal in writing then no fee shall be charged".

Commissioner Quesada: Why can't we start there?- why can't we start with the Miami provision and then let's see how it works out if we have issues we can revisit it. Is that a problem?

Commissioner Keon: No.

Mayor Cason: We are accepting their dollar number why not accept their...

City Attorney Leen: I would recommend 1,000 feet and it would be probably very difficult to get 60 percent within 1,000 feet, so you probably just a recommendation...

Commissioner Quesada: Well they are doing 60 percent within 500 feet.

City Attorney Leen: I know, but the issue is that within 1,000 feet our Code indicates that they are parties that can bring an appeal, because they are within 1,000 feet, so we defined 1,000 feet as our number. So we've indicated that someone 50 feet away...

Commissioner Quesada: So 30 percent in 1,000 feet.

Mayor Cason: Let's do 30 percent within 1,000 feet that's...

Commissioner Quesada: The same thing. I'll make a motion.

Vice Mayor Kerdyk: I'll second.

Commissioner Keon: Amend the third.

Commissioner Quesada: Amend the motion.

Mayor Cason: Commissioner Quesada makes the motion. Vice Mayor seconds it. 30 percent within 1,000 feet, everything else stays the same.

City Clerk

Vice Mayor Kerdyk: Yes

Commissioner Lago: Yes

Commissioner Quesada: Yes

Commissioner Keon: Yes

Mayor Cason: Yes

Mayor Cason: Thank you very much.

Commissioner Quesada: Thank you.

Mayor Cason: Good research on that.

[End: 1:51:21 p.m.]

CITY OF CORAL GABLES, FLORIDA

RESOLUTION NO. 2014-224 (AS AMENDED)

A RESOLUTION OF THE CITY COMMISSION RELATED TO CRITERIA FOR WAIVER OF APPEAL FEES FOR CITY RESIDENTS DEMONSTRATING FINANCIAL HARDSHIP.

WHEREAS, as the governing body of the City, the Commission recognizes the importance of its ability to review decisions made by City Boards through appeal; and

WHEREAS, the Commission recognizes that certain applicants may experience a substantial burden or financial hardship from the fee, thereby impairing their ability to appeal City Board decisions to the Commission; and

WHEREAS, the Commission wishes to establish a criteria whereby a request for a fee waiver may be evaluated in order to move forward with an appeal of a City Board decision;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF CORAL GABLES:

SECTION 1. That the foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption hereof.

SECTION 2. The City Attorney, with the approval of the City Manager or its designee, will consider a waiver of appeal fees where a timely appeal is filed, and an applicant for a fee waiver makes a written request to the City Attorney. The City Attorney, with the approval of the City Manager or its designee, shall grant a fee waiver where the following conditions are presented by the applicant:

- (a) The applicant resides within 1,000 feet of the property at issue in the appeal and the applicant's residential use is affected by the appeal;
- (b) The applicant's income is equal to or below two hundred percent (200%) of the then-current federal poverty guidelines prescribed by the United States Department of Health and Human Services for the size of the applicant's household or the applicant presents proof in a form acceptable to the City Attorney that the applicant would suffer an extraordinary financial hardship if required to pay the fee; and
- (c) The applicant appeared at the hearing and presented objections to the Board action being appealed or submitted written objections in advance of the hearing. This requirement should normally be present for a fee waiver to be granted except for in extraordinary circumstances where the applicant demonstrates excusable neglect for failing to do so.

SECTION 3. In addition to the provisions above, a fee waiver will be available to all applicants who present to the City Attorney a petition requesting a fee waiver signed by thirty percent (30%) of households located within a thousand feet of the subject property.

SECTION 4. In waiving the fee, the City Commission would still generally require the payment of any hard costs of the City (i.e. transcript, publication, and mailed notice). The only possible exception would be in cases of exceptional financial hardship, to be determined by the City Attorney, with the approval of the City Manager or its designee, or where the City is already bearing the cost for another reason (i.e., the transcript is already being ordered for another Board's review).

SECTION 5. The foregoing provisions shall in no way be deemed to limit the City Commission's discretion to waive any appeal fees when it deems such a waiver is appropriate.

SECTION 6. That said Resolution shall become effective upon the date of its passage and adoption herein.

PASSED AND ADOPTED THIS FOURTEENTH DAY OF OCTOBER, A.D.,
2014.

(Moved: Quesada / Seconded: Kerdyk)
(Yeas: Kerdyk, Lago, Quesada, Keon, Cason)
(Unanimous: 5-0 Vote)
(Agenda Item: I-2)

APPROVED:

JIM CASON
MAYOR

ATTEST:

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

WALTER J. FOEMAN
CITY CLERK

CRAIG E. LEEN
CITY ATTORNEY

Paulk, Enga

From: Ramos, Miriam
Sent: Friday, September 6, 2019 4:48 PM
To: Paulk, Enga
Cc: Suarez, Cristina; Ceballos, Gustavo
Subject: FW: Resolution 2014-224 - Correction
Attachments: FINAL CCMtg October 14 2014 - Agenda Item I-2 - Reso related to criteria for waiver of appeal fees for financial hardship (002).docx; R-2014-224-As Amended -Final - Corrected 09-06-2019.docx

Enga, please publish.

Miriam Soler Ramos, Esq., B.C.S.

City Attorney

*Board Certified by the Florida Bar in
City, County, and Local Government Law*

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From: Ceballos, Gustavo
Sent: Friday, September 6, 2019 4:43 PM
To: Urquia, Billy <burquia@coralgables.com>
Cc: Ramos, Miriam <mramos@coralgables.com>; Paulk, Enga <epaulk@coralgables.com>
Subject: Resolution 2014-224 - Correction

Good afternoon Mr. City Clerk,

It has come to our attention that Resolution No. 2014-224, which was adopted on October 14th, 2014, has a few inconsistencies with the official record and does not properly reflect the changes discussed and adopted by the Commission. Specifically, Section 3 of the Resolution states “30 households” within 1000 ft which is contrary to the intent of the Commission, as indicated by the transcript(attached), that the threshold be “30% of households” within 1000 ft. Pursuant to the City of Coral Gables Code Section 2-252(9), attached please find the corrected Resolution No.

2014-224 to be executed and subsequently take the place of the existing version in our official records. Please let me know if you require any additional information or documentation.

Thank you

Gustavo J. Ceballos, Esq., B.C.S.

Assistant City Attorney

*Board Certified by the Florida Bar in
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