



City of Miami Springs, Florida

The Miami Springs City Council held a **SPECIAL MEETING** in the Council Chambers at City Hall on Monday, October 2, 2006, at 6:45 p.m.

1. Call to Order/Roll Call

The following were present:

Mayor Billy Bain
Vice Mayor Rob Youngs
Councilman Bob Best
Councilman Paul C. Dotson
Councilman Xavier Garcia

Also Present:

City Manager James R. Borgmann
Assistant City Manager Ronald K. Gorland
City Attorney Jan K. Seiden
City Planner Richard E. Ventura
City Clerk Magalí Valls

2. Invocation: Councilman Dotson offered the invocation.

Salute to the Flag: The audience participated.

3. Resolution – A Resolution of the City Council of the City of Miami Springs Instituting an Administrative Building Moratorium in Regard to the Construction of New Single Family Residences and Additions to Existing Single Family Residences in all the Single Family Residential Zoning Districts of the City; Prohibiting the Issuance of Building Permits; Establishing Moratorium Study; Directing the City Clerk to Schedule a Public Hearing on this Resolution; Requiring Public Hearing on Propriety of the Moratorium by City Council; Issuing Further Resolutions as may be Determined by City Council; Exception to Building Permit Prohibition; Term of Moratorium; Effective Date

City Attorney Jan K. Seiden read the resolution by title.

City Attorney Seiden stated that to enact the moratorium, the provisions in Code of Ordinance Section 150-116 would be followed. The purpose of the meeting is to pass the resolution, which in effect institutes a moratorium as of the enactment of the resolution and it stops the issuance of building permits immediately upon adoption.

Attorney Seiden explained that in Section 1, Council is approving the institution of an Administrative Building Moratorium for the construction of new single family residential structures and for additions to existing single family residential structures located within all the single family residential zoning districts of the City. In accordance with Section 1, Section 2 prohibits the issuance of any building permits for the construction of new residential structures or for additions.

Attorney Seiden said that Section 3 provides the scope of the moratorium and what activities will be conducted during the moratorium. Basically, Council shall review, study, consider, discuss and debate the various issues, topics and areas of concern set forth in Code of Ordinance Section 150-116 (A) as it relates to “McMansions” within the City. However, nothing contained herein shall be interpreted to be a restriction of limitation in the discussion.

Part of the process that is dictated in this provision of the Code requires that a public hearing be held, according to Attorney Seiden. Council would be instituting the moratorium as a “stop gap” emergency measure until they study the matter further. Section 4 requires the public hearing to be held at the next Regular Council meeting, but unfortunately due to public notice requirements (10-days notice) the matter will be scheduled for the October 23, 2006 Regular meeting, and the Resolution should be amended to reflect this change.

Section 5 states: The City Council will conduct the aforesaid public hearing on the propriety of the Administrative Building Moratorium instituted by this Resolution, in accordance with the provisions of Code of Ordinance Section 150-116 (E), at the October 23, 2006 Regular Council meeting.

Attorney Seiden explained that in a litigation situation if he had a case where he needed something to be enjoined because there is a potential for irreparable injury, he would go to the court to request that an injunction be issued against some type of conduct by filing litigation and getting the court to issue an injunctive order. By operation of law and by the rules of court, the injunctive order would require that a subsequent hearing be held so that the other side could be heard before the court to determine the propriety of the issuance of the order and whether or not the order should continue. In effect, that is what Council would be doing on October 23rd when the public is invited to present their arguments and make suggestions.

Attorney Seiden explained that Section 6 references the remaining ordinance provisions, which are 150-116 (F) (G) (H) (I) and (J) that outline what happens at the hearing, following the hearing and during the study, extensions and all the procedural matters that would be involved in the study by the City Manager and his Staff. The information is presented to Council and the Zoning and Planning Board. It is very possible that Council would be entering into another resolution that would modify, supplement, or further describe it after the October 23, 2006 Council meeting. A parameter would be set as to time and area at the next meeting.

Attorney Seiden stated that Section 7 references Code of Ordinance Section 150-118, which provides that during the moratorium the City Manager may authorize building permits that are determined to be non-deleterious to the focus of the moratorium. Notwithstanding anything contained herein to the contrary, the City Council retains the authority to grant exceptions from the building permit prohibition established by this Resolution should the City Council determine, upon presentation by a building permit applicant, that the requested building permit is unrelated to the subject, issues, topics and areas of concern of the moratorium. The City Clerk shall place all requests for exemption upon an upcoming City Council regular agenda and provide an appropriate order on each request following City Council action.

Section 8 provides that the moratorium established by this Resolution shall remain in full force and effect unless and until reversed, modified, superseded or terminated by subsequent City Council Resolution. Section 9 states that the Resolution shall become immediately effective upon adoption.

Attorney Seiden stated that moratoriums are not necessarily a favored remedy and Council is in effect impacting the residents' property rights. Section 7 and Section 150-118 are meant as "stop gap" measures to protect the City and the ability to grant an exemption if the circumstances are proper for the issuance of a building permit.

Attorney Seiden advised Council that the Resolution is not specific enough and Council, with the help of the Administration, must secure a definition of what a "McMansion" is and establish, with specificity, what is to be prohibited in the next Resolution that Council enacts. It could be the establishment of a residential floor area ratio (FAR) or a percentage of usage of a particular lot or property. He said that standards, rules and regulations must be established so that a property owner would know whether they fall within the framework of the moratorium.

Attorney Seiden said that he used the specifics of single family residences in single family districts and additions and new structures as a framework to give basic notice, but there is a lot more work to be done for it to be enforceable should the City be attacked from a legal perspective. The City must give due process and notification to people. Establishing the standards is most important, and a lesser concern would be defining the study, the length of time and how it is to be accomplished.

Attorney Seiden reiterated that moratoriums impact the vested property rights of property owners. When people who own property learn about the moratorium they might not be happy and threaten action against the City. The definition of a "McMansion" is most important, as well as the specifics as to what construction is prohibited and what Council is looking to do to correct what is perceived to be a problem and the purpose of the study.

Attorney Seiden explained that adopting this resolution is only a preliminary step and there is a lot of work to be done before the next meeting in order to be fair to both sides.

Councilman Youngs asked if the proposed definition and standards concerning residential FAR and percentage of uses needed to be ready before the next meeting in order to be published to provide notice to the public in anticipation of the public hearing on October 23rd.

Attorney Seiden said that standards would not necessarily have to be ready. Council has a framework to work from that was provided by Manuel Perez-Vichot, which can be made available to the public. He emphasized that Council must start thinking about the regulations because they must be established by the end of the October 23rd meeting.

Councilman Youngs suggested preparing a packet of information that the public could pick up and Attorney Seiden agreed.

Attorney Seiden said that the public must realize that Council does not intend to hurt or to unduly restrict or burden anyone. The Resolution is basically stating that more time is needed to study the matter further because there is a potential problem that is not getting better. He explained that it is a prudent course of action, that is in the best interest of the entire City and although some people might not be happy, as long as it is reasonable with due process notice, and everyone is allowed an opportunity to speak to the issues, the City should have a defensible position.

Councilman Best asked if the 120-days would be the time limit for the moratorium.

Attorney Seiden stated that the ordinance states that the moratorium shall be for a period not to exceed 120-days, but it could be less and there are provisions for extensions, and this is one of the issues that must be determined. Council will be dealing with the provisions included in Section 150-116 (E) through (J) at the next meeting.

Attorney Seiden encouraged Council to call him with any questions they might have. He said that the format is not intended to be complicated. He could not stress enough how important it is to be able to have a legally defensible moratorium by giving proper notice as to what is going to be restricted, how it will be restricted and what constitutes what will be restricted.

Vice Mayor Youngs moved to adopt the resolution and Councilman Best seconded the motion.

Councilman Youngs stated that Council realizes that moratoriums are extraordinary, it is a bold step for Council and he appreciates the consensus to do it. He knows that Council will find the right compromise with good faith, energy and hard work.

Mayor Bain was concerned that the moratorium would restrict additions because the "McMansion" issue would only apply when a home is demolished and a new one is built.

City Manager Borgmann clarified that there are multiple situations where huge additions were made to existing homes that have created the same type of situation.

Attorney Seiden referred to the recent case on Pinecrest Drive. He asked to consider if the construction of a 10,000 square foot home constitutes a “McMansion”, if currently permitted by the current Code. Those people who want to apply for additions must know what is considered over building so they know if they are eligible for an exception to the Resolution.

To answer Councilman Best’s question regarding 22 Pinecrest Drive, Attorney Seiden stated that he was not aware of any historic designation process.

Councilman Dotson stated that Council does not want to unnecessarily restrict the property rights of people who want to build but the property rights of the neighbors must also be considered in order to best reflect the character of the City. It is not an effort to harm anyone that wants to build on their property and he would like people to realize that Council is not trying to deprive anyone of their rights, just to find some sort of equilibrium to satisfy the concept that is Miami Springs.

To clarify Vice Mayor Garcia’s question, City Attorney Seiden stated that residents who want to build a small addition would have to receive approval from Council once the Resolution is passed in the current form, or Council could further modify the Resolution before the next meeting, but standards must be provided. The purpose of the moratorium is to stop what is considered to be a potential influx of an activity that is determined to need further regulations and the end result is to enact new legislation to modify the current district boundary regulations for all the residential districts of the City.

City Manager Borgmann clarified that any applications that were submitted today are not covered by the moratorium.

Attorney Seiden further explained that as of the next morning no permits should be issued for new construction or additions to homes subject to the exception provisions in the Resolution. The Building Department Staff should be instructed to consult with the City Manager if any applications are received so that they are submitted to Council for review.

The motion carried 5-0 on roll call vote (Resolution No. 2006-3333).

City Manager Borgmann reminded Council to confirm their reservations for the Miami-Dade County League of Cities Installation Dinner on Saturday, October 7th.

City Manager Borgmann stated that he had not received final confirmation of compliance with the National Incident Management System (NIMS) courses for some Council members. He asked them to contact him.

4. Adjourn.

There being no further business to be discussed the meeting was adjourned at 7:10 p.m.

Billy Bain
Mayor

ATTEST:

Magalí Valls, CMC
City Clerk

Approved as written during meeting of: 10/9/2006.

Transcription assistance provided by S. Hitaffer

Words ~~stricken through~~ have been deleted. Underscored words represent changes. All other words remain unchanged.