

Lissette Carey

From: Cheri Smith
Sent: Monday, June 1, 2020 12:22 PM
To: Lissette Carey
Subject: FW: June 2nd City Commission Meeting
Attachments: DOC.PDF

Please post on agenda items.

From: Todd Santoro <todd@toddsantoro.com>
Sent: Friday, May 29, 2020 12:16 PM
To: Cheri Smith <csmith@cityofkeywest-fl.gov>
Cc: Teri Johnston <tjohnston@cityofkeywest-fl.gov>
Subject: June 2nd City Commission Meeting

Dear Mayor Johnston and City Commissioners c/o City Clerk:

I noticed on the City's website that the next City Commission hearing on June 2, 2020, is to be a virtual meeting. It is my understanding that Agenda Items 14 and 15 postponed from the May 5th and April 7th and March 3rd City Commission meetings will be heard with the meeting being held as a virtual meeting conducted using CMT. As to these two agenda items we originally received the attached March 10, 2020 notice when they were scheduled for the April 7, 2020 City Commission meeting, at which these two agenda items were to be heard. However, that notice was sent before it was known that the City Commission meetings were to be heard as virtual meetings. The attached notice does not mention the fact that the meeting at which these two agenda items are to be heard would be a virtual meeting using CMT and requiring the citizens to undertake onerous preconditions in order to speak in opposition to those agenda items at either the April 7th meeting or May 5th or June 2nd meetings.

With less than 7 days to go the Agenda and details of the June 2nd meeting have not yet been disclosed to the public, including those to whom statutory notice and notice under the applicable emergency executive orders must be given. As you may be aware and can see from the attached the "initial" notice advised that the agenda items would be heard at City Hall at the April 7th Commission meeting. It does not contain the information required under City of Key West Notice ordinances or under the State of Local Emergency Directive 2020-04 (the "Order"). Section II D of the Order requires:

"...the City shall provide notice in the same manner required by a non-CMT meeting, shall plainly state that such meeting is to be conducted using CMT, and identify how the public can access and participate in the meeting. The City will initially provide notice describing how interested persons may attend including..."(emphasis added.)

At the time the attached statutory notice the City of Key West was provided for a hearing there was then no Covid-19 pandemic declared. The City Commission has since decided to hold a meeting on those two applications using only CMT, at which meeting the affected neighboring property owners are no longer allowed to participate in person to testify, but must do so remotely, and they must secure their own notary public to oppose these agenda items under entirely new complicated and onerous Commission rules and procedures.

Regardless of whether the City has a right to hold such a meeting by CMT, the prior notice is not an effective statutory notice for the two applications to amend zoning and the Comprehensive Plan for 806 Whitehead. As

can be seen Key West's Directive 2020-04 requires what the City of Key West must provide in the initial notice, "The City will initially provide notice describing how interested persons may attend including provide all the details of the CMT...." The City of Key West's notice that was sent does not comply with that requirement because of the changed meeting procedures. Therefore, the City must either allow testimony at an actual meeting of the Commission as provided in the initial notice, or the City must give a new statutory notice that complies with the statutory notice requirements and Directive 2020-04. As the City is aware Directive 2020-04 is intended to implement the Governor's EO 20-69. However, that order was limited to the following:

Section 1. I hereby suspend any Florida Statute that requires a quorum to be present in person or requires a local government body to meet at a specific public place.

Section 2. Local government bodies may utilize communications media technology, such as telephonic and video conferencing, as provided in section 120.54(5)(b)2., Florida Statutes.

Section 3. This Executive Order does not waive any other requirement under the Florida Constitution and "Florida's Government in the Sunshine Laws," including Chapter 286, Florida Statutes.

As you will note the EO did not affect the statutory notice requirements or the strict application of the Directive 2020-04 mandate that all information about a CMT meeting must be in the initial notice. Since the notice that was sent is now defective given exclusive use of CMT and brand new procedures for participation by affected property owners, the City must provide all required notices and continue those agenda items to a future meeting to consider these applications, so that the required statutory notice can be given to the affected neighbors.

Also, I noticed that the City Attorney responded to Todd Santoro's email inquiry that the reason for the continuance of the April 7th meeting was related to notarizing testimony. However, a notarization process, whatever is used, should only apply to the application seeking to amend the zoning, as that is the only one of the two applications that is quasi-judicial. Therefore, any affected person should be able to provide comments in opposition to the application to amend the Comprehensive Plan and FLUM without first having been sworn, because that application is not quasi-judicial, but legislative in nature. I am aware of no requirements under state law, or under Key West ordinances, policies, regulations or the comprehensive plan, that would require comments in opposition to an amendment of the Comprehensive Plan by an affected neighbor to be under oath.

I object to any such oath requirement imposed by the City for my making oral comments at the City Commission meeting in opposition to the application to amend the Comprehensive Plan. This is especially so if the City Commission intends to use anything like the onerous and unworkable process required by the Planning Board for public comments. As to either of the two agenda items I believe I should be able to make a statement under the penalty of perjury as allowed under Florida law that can then be read at the meeting. The City Commission requiring affected persons and property owners to locate a notary public to swear the person in at the City Commission meeting so the neighbor can speak in opposition to these agenda items is unreasonably burdensome and violates the neighbor's rights to be heard and to due process. As recognized in Directive 2020-04 the Florida Constitution continues in force during this period.

These agenda items should be postponed until such time as they may be heard in an orderly process at a live Commission meeting at which affected property owners and residents can be heard. The FLUM and zoning affecting these parcels has been in place since July 3, 1997 and there is no emergency requiring these agenda items to be heard in a virtual meeting during the pandemic national emergency.

Please make this part of the Public Record comments on these two applications, Items number 14 and 15.

Best,

Todd Santoro
818 Whitehead St #4

tel :: 305.699.3515

email :: todd@toddsantoro.com



Cheryl Smith, MMC, CPM
City Clerk

THE CITY OF KEY WEST
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City Hall
1300 White Street
(305) 809-3831
csmith@cityofkeywest-fl.gov

March 10, 2020

Dear Property Owner:

SUBJECT: AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING THE BOUNDARIES OF THE OFFICIAL ZONING MAP CATEGORIES OF THE HISTORIC MEDIUM DENSITY RESIDENTIAL (HMDR) AND THE HISTORIC NEIGHBORHOOD COMMERCIAL DISTRICT (HNC-3) PURSUANT TO CHAPTER 90, ARTICLE VI, DIVISION 2 OF THE LAND DEVELOPMENT REGULATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

AND

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING THE CITY'S COMPREHENSIVE PLAN, CHAPTER 1, ENTITLED "FUTURE LAND USE ELEMENT", AMENDING BOUNDARIES OF THE HISTORIC RESIDENTIAL (HR) AND HISTORIC COMMERCIAL (HC); PURSUANT TO CHAPTER 90, ARTICLE VI, DIVISION 3 OF THE LAND DEVELOPMENT REGULATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR INCLUSION INTO THE CITY OF KEY WEST COMPREHENSIVE PLAN; PROVIDING FOR AN EFFECTIVE DATE.

The above referenced matters will be heard at the April 7, 2020, City Commission Meeting at 5:00 P.M. or as soon thereafter as the matters may be heard, at City Hall, 1300 White Street, Key West, Florida.

Please call the Planning Department with any questions regarding these matters; 305-809-3764.

Sincerely,

Cheryl Smith, MMC, CPM
City Clerk

Key to the Caribbean - Average yearly temperature 77° F.