

City of Coral Gables City Commission Meeting
Agenda Item I-3
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
City Attorney, Craig E. Leen
City Clerk, Walter J. Foeman
Deputy City Clerk, Billy Urquia

Public Speaker(s)

Mario Garcia-Serra, Representing the Client

Agenda Item I-3 [2:48:18 p.m.]

A review of Dispute Resolution Agreement among Mundomed S.A., South High Cliff Corp., and the City of Coral Gables regarding 20 acres south of Hammock Oaks pursuant to Article 3, Division 17 of the Zoning Code.

Mayor Cason: Let's do I-3.

City Attorney Leen: Mr. Mayor, Item I-3 is a review of Dispute Resolution Agreement among Mundomed S.A., South High Cliff Corp., and the City of Coral Gables regarding 20 acres south of Hammock Oaks pursuant to Article 3, Division 17 of the Zoning Code. I'm going to let Mr. Garcia-Serra present the proposed settlement. I would just give a general overview that what's being used here is what I would call the mini Bert Harris Act that we have in our Zoning Code. What that allows us to do is, in circumstances where an individual maybe suffering an inordinate burden or where the City and the individual are going to enter into a settlement or company, it doesn't have to be an individual, but the parties are going to enter into a settlement where a party

will agree to bear an inordinate burden. It gives the City the ability to grant development rights, which could be in the form of transfer development rights, it could be another type of development right or option or ability to do something on land that would not otherwise be allowed. This is all done consistently with the Bert Harris Act, which grants that sort of authority in these types of situations, but the beauty of it is it doesn't require us to be sued and go through the whole Bert Harris process, it allows us to negotiate right at the beginning to try to come to a reasonable resolution of the dispute; and even though this is a dispute in the sense that the City and the property owners or the people with the interest in the property have a slightly different view of the situation, and have different rights, which are competing with each other to some extent, it is a dispute that we want to resolve, and in particular, this is 20 acres of land south of Hammock Oaks, its land that is designated right now as single-family residential. Under our Zoning Code it could be developed into a subdivision. There are limitations on that, let's be honest about it, there are limitations; DERM will place limitations, because this is in largely a swampy area with mangroves and other areas like that. What would have to happen here for them to develop this land is they would have to basically make an application to the City and the County, they may have to sue the City and the County, would have to go through a long process, they would probably sue for a taking, or some sort of Bert Harris Act claim, and that's not the goal here. The goal here is, this is designated single-family residential, we'd like to convert it to a preservation area or conservation area, that can be held for the benefit of the public, and in exchange for that they'd be granted TDR's, which can be used elsewhere, and that would be explained after Mr. Garcia-Serra presents the basic settlement. So, why don't you start Mr. Garcia-Serra and the City Manager and I can provide our comments.

Mr. Garcia-Serra: Mr. Mayor, members of the City Commission, Mario Garcia-Serra with address at 600 Brickell Avenue, representing Mundomed and South High Cliff Corporation. These are the two orders of the 20 acre track, located just south of the Hammock Oaks subdivision indicated there in the aerial photograph. I'm joined today by members and representatives of both the Bermudez and Restrepo families who are the principals behind each of those corporations. This property has sort of been a lingering problem here in the City of Coral Gables already for some time. As Craig mentioned, and as you can see here, by looking at the appropriate section of the zoning map, it is indeed a 20-acre site, fairly significant size, zoned single-family. My clients came into ownership of this property by foreclosing on a mortgage that they had on the property, which they had entered into, in an unfortunate circumstance in which their lawyer essentially did not properly serve or represent their interest. Now that they are owners of the property, they have of course decided that they must find a beneficial use to this property. For many years, I would be approached before I even represented this client by other clients interested in potentially developing this site for single-family home use. It's not a site really that is ideal for development of single-family home use for various reasons. Number one, it's the environmental sensitivity of the property, it's surrounded on three sides by the Matheson

Hammock Preserve, it's mostly wetlands and it is indeed ground zero for sea level rise. As many of you know already, part of the issue with sea level rise is dissipating too much of the coastal wetland area that serves as a buffer from the tides coming in, either happening because of sea level rise or also happening periodically, because of the hurricanes. Another issue is managing growth, putting 27 homes sites, which is what we've estimated could potentially be accommodated here on this site, would be a considerable number of home sites for an area that's already been developed, and the policy of this Commission already for a while has been to engage in smart managed growth, in other words, to have the growth in the area of the City, such as the Central Business District, the North Ponce area, or where growth is appropriate and can be accommodated in putting additional homes here could potentially lead to just further sort of single-family homes suburban sprawl, in an area, an area that's not really expecting it or prepared for it. Lastly, another big goal of the City Commission has been preservation of open space and green space, and that is what we are proposing to do here. We will convey these 20 acres of land to the City, it will become City property, the City is intending to rezone it from single family designation to preservation designation, we would not oppose that; and in exchange pursuant to the settlement agreement we would be receiving 50,000 square feet of TDR's, something that this section of the Code permits the City Commission to grant in settlement and indeed those transferrable development rights would only be able to be used in the CBD or in the North Ponce area or in exceptional circumstances, if this City Commission sees fit, other commercial or industrial zoned areas of the City, as long as they do not abut single family or located on South Dixie Highway. I think it's a situation, it's been a difficult, long, it's been probably ten years these two families have been grappling with this situation. This is an innovative, creative solution using a section of your Code, which is meant to address this sort of situation, and indeed we are taking an area here which is not predisposed to really any further development, and we are putting that potential growth, even less so, because if you estimate how much could potentially be built, under certain circumstances and after considerable struggle, it would certainly be more than 50,000 square feet.

City Attorney Leen: Could you make an estimate of that.

Mr. Garcia-Serra: Well in trying to maximize it, you know taking those 27 home sites and seeing how much we could potentially put on those homes pursuant to today's Zoning Code, remember its single-family you don't have a FAR limitation, you are just limited by height, setback, open area, we estimated you could be somewhere around 160,000 square feet.

City Attorney Leen: Just for the Commission's information, because this has been settlement negotiations, could you let them know what your initial proposal was approximately.

Mr. Garcia-Serra: It was or around 187,000.

City Attorney Leen: This has been heavily negotiated; we've brought them down to 50,000 and we've also limited where those TDR's could be transferred; they could be transferred to more than the CBD, but they've been limited, as you heard him say, so it's basically North Ponce, CBD, it can be elsewhere in commercial areas where approved by the Commission, but it can't be in certain areas as well, including along U.S.-1 – Madam City Manager.

City Manager Swanson-Rivenbark: Just as clarification. There original offer had cash in mind in the conversations, which we appreciated their willingness to switch to TDR's.

City Attorney Leen: Absolutely correct.

City Manager Swanson-Rivenbark: We also had with 50,000 square feet it could also be viewed as unit counts and I believe we agreed to 50 units or the 50,000 square feet of TDR's, whichever is less.

Mr. Garcia-Serra: Correct.

City Attorney Leen: So, the important part of the settlement from my view, from a legal perspective is we are getting a substantial amount of property in an area that is sensitive that we want to protect, and we have heavily negotiated it. At some point they have to get a fair return and I feel the 50,000, I believe the City Manager does too is fair to them, but it also protects the City's interest. So, I believe that we are getting a good outcome here, because if we don't settle this then we can't control the outcome. At some point they are going to have to take action, they have to protect their property rights and we would be engaged in long term litigation with them and potentially with the County as well. We thought that it would be better to come to a mutually agreeable way forward, it also protects Hammock Oaks from a subdivision right under it, and allows us to protect the environment and is consistent with what we've been doing with sea level rise.

Mayor Cason: And it also allows us potentially to take those 20 acres and negotiate elsewhere.

City Manager Swanson-Rivenbark: Yes, but we are not ready.

Mayor Cason: To talk about that, right, OK – got ya.

Commissioner Lago: Again Mario, I commend you and your client for getting to where we are today. I know it's been a long arduous task. We met probably half a dozen times in regards to this issue.

Mayor Cason: Over several years.

Commissioner Lago: I think that this is an important example of what we are trying to do here in the City, and I think what Dade County as-a-whole should really be doing, investing in density in the corridors, in the areas where you want more people to live and stop spending money, unnecessary money on infrastructure on the outside of the City or the community, which are not going to get the same amount of use as the other corridors would; and again, building these 20-something odd residential homes, I think would have been extremely detrimental to an area, which now will be preserved in perpetuity. I think that this Commission hopefully, we may not realize what we've done today, but I think that in the near future we'll be able to make sure that this is built on and that we save that wildlife that's there and we keep it wild, which is important. It's going to pay dividends – sea level rise, keeping congestion down, I'm very happy to get this done today.

Mr. Garcia-Serra: That's how growth should be in cities in the future. You know not everybody should be necessarily living in a single-family home with a backyard; the future is perhaps multi-family development, closer to areas of transit areas of work, to address some of the issues that we deal with today.

Mayor Cason: Anymore discussion on I-3?

Commissioner Keon: What are TDR's valued at today in the market?

Mr. Garcia-Serra: TDR's – from recent discussions that I've had with realtors somewhere around \$25 a square foot is what...

Commissioner Lago: But, that number is always in flux either up or down, the market dictates.

City Attorney Leen: So, I'd just like to talk a little bit about the process. This is a very special process, but what happened now is you would vote on the settlement, assuming you accept it, which of course is within your discretion, but if you accept the settlement, we will then finalize the terms, the City Manager and I sign it, along with the other party. At that point it goes on your next Consent Agenda and it cannot be pulled except for by a four-fifths vote, is it four-fifths or five-fifths? - by a four-fifths vote. So, it would just be approved at the next Consent Agenda, that's the special procedure that's in our Code. So, today you would be voting to settle the matter and the final agreement will come back to you on the Consent Agenda.

Vice Mayor Quesada: So moved.

Mayor Cason: OK. Vice Mayor makes the motion, seconded by Commissioner Keon – City Clerk.

Commissioner Lago: Yes

Vice Mayor Quesada: Yes

Commissioner Slesnick: Yes

Commissioner Keon: Yes

Mayor Cason: Yes

(Vote: 5-0)

Mr. Garcia-Serra: Thank you very much.

Mayor Cason: Thank you.

Commissioner Lago: Mario, how long have you been working on this?

Mr. Garcia-Serra: This is going to be almost two years.

Mayor Cason: I'm sure the family is very happy.

Mr. Garcia-Serra: It was a very trying situation for both of these families and it's a very happy day and a day of great relief.

Mayor Cason: The albatross is gone.

Mr. Garcia-Serra: Indeed.

Mayor Cason: Thank you.

[End: 3:00:09 p.m.]