

**City of Coral Gables City Commission Meeting**  
**Agenda Item I-2**  
**June 16, 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**  
**Chief Preservation Officer, Dona Spain**

**Public Speaker(s)**

**Cory Lopez-Castro, Attorney with Kozyak Tropin, Representing the City**

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Agenda Item I-2 [12:10:12 p.m.]

Discussion and/or action related to enforcement of historic preservation regulations and the Coral Gables Elementary building local historic landmark.

Mayor Cason: I-2.

City Attorney Leen: Thank you Mr. Mayor. Item I-2 is a very important item for the City. They all are, but this one has been in the news recently and it's been something that I know each of you care deeply about it individually, the City Manager as well, and our Historic Preservation Officer. So at this point I'd like to ask our Historic Preservation Officer, Dona Spain to come up, as well as our Special Counsel, Cory Lopez-Castro, I'll just say some introductory remarks and then they are going to speak. As you all know a few weeks ago, unbeknownst to the City windows started getting pulled out of Coral Gables Elementary, which is on the National Registry of Historic Places. It's a national historic landmark. I have been informed and I can tell

just from looking at it and also from my study, that it is one of the most precious buildings in our City, it's deeply tied to the history of our City, it was commissioned by George Merrick. I'm not the best person to speak on that, so I'm going to turn it over to Dona Spain, but I know immediately when I got a call by Dona and also by the County Preservation Officer that this was a key issue and that we had to stop it. So what the City did, I spoke with the City Manager and the City Manager and I, we went forward with the Red Tag through Code Enforcement of the building, and it was my view that we had the authority to do that under the Zoning Code and the City Manager acted in her discretion, and we thought it was the right thing to do. So, the Red Tag order was issued by Code Enforcement and work ceased. I issued an opinion – we reached out to the School Board, we weren't able to talk to them initially, although eventually we did. I'm going to talk about that in a second. We spoke to the contractor though and the contractor basically told us they just want to comply with the law, and they understand that there was no Certificate of Appropriateness that was obtained, which you have to do within a historic preservation, in a historic building, a historic landmark, according to our preservation ordinance, and they said that they weren't going to take any further action until this issue was resolved. That was a good meeting. We then met with the School Board eventually, and we felt we had a good meeting as well. We are still hopeful about the meeting and we are hoping to work this out. We think that there is an ability to reach an agreement, but that agreement, at the basis of the agreement is the requirement that is satisfied the historic integrity of that building and our Historic Preservation Officer, or our Historic Preservation Board, or ultimately you approve that whatever is done through our historic preservation ordinance. I researched this issue; to me it's very clear. The Florida Supreme Court and then ultimately, the Second District, has said that the zoning regulations of a municipality apply to state agencies, and that's been extended to the school districts in two Second District cases. No contrary precedent that I've seen by any district courts and the idea which is different than other states is that in Florida, there is something called the Superior Sovereign. I don't even like the word, but there is this idea that the higher government entity in terms of how close it is to the national government, the federal government, the state government, the county government, will take precedents over a local government like a city. That doesn't exist in Florida. In fact, it's the opposite rule. In Florida the state agency is subject to and the County, are subject to local zoning ordinances because it's both by the County Charter in Article 6, which says that, you had mentioned this before Commissioner, about how we can have a higher standard in our City pursuant to the County Charter of zoning and unique aspects of our City, which includes historic preservation. In addition, because of Supreme Court precedent Second District precedent, even if that Charter provision didn't exist, the state government has to come to the local government; they have to go through our process. They can raise all of their interests, whatever interest they are trying to protect by whatever action the state agency wants to take. They can raise those in the hearing and ultimately the local government and then the courts if there is a challenge balance the interest, but they definitely take a look at our local government ordinance, and they do require, in my opinion, they do require the School

Board to obtain a Certificate of Appropriateness here. So, we raised this with the School Board. I want to be clear with you, they don't agree. They take the view legally that because they can issue their own building permits, that they do not have to comply with our historic preservation ordinance. They take the position that they can go as far as demolition of a property that's historic, if they wished. I'm not saying they are saying they would do it, but they've taken that legal position. So, in my opinion as your legal advisor, we have to take a strong position against that, because you never know where things can lead. In addition, this simple act of pulling out the windows, and this is where I'm going to turn it over to Dona Spain, is a big problem itself, and really affects the historic integrity of that building. So, that is why we've taken such a strong stand. I briefed each of you individually. The City Manager has said to take whatever action we can to protect this building. We met with the School Board and had a good meeting. They said they are going to come out and meet with us to look at the school. So, we are hopeful to work this out, but because we do not have another meeting till July, I need to ask you for the legal authority to take whatever action we deem necessary to protect this building. That could include litigation; because of the imminent danger that if work started again we might need to stop it immediately. In addition, it will lead me to send a resolution to the School Board asking them to engage in a mediation process that exists under state law. So with that I'll turn it over...

Vice Mayor Quesada: And that's the resolution....

City Attorney Leen: That's the resolution you are being asked to look at today. So with that, I would first turn it over to Dona Spain and then to Cory to talk about it.

Ms. Spain: I just want to thank the City Manager. She really stepped up on this issue, and it's really important. It's a broader issue than just the windows, but the windows are important also. This school opened up in 1923, and had less than 40 students. It was prior to the incorporation of the City. It is an outstanding example of Mediterranean and Bible-style architecture. Commissioned by George Merrick because it was so important to have a school, it was the first public school in Coral Gables; it's on the National Register, and it's on the local registry. The windows that are now being put in are, in my opinion, the wrong color, the wrong pattern, grid pattern in the window. They are apparently putting in darkened glass, not clear glass, which is not appropriate, and what's really important to the Historic Preservation Board is raised... You can see when you look at it even from the street, not going on the property, that the new windows they are putting in are flat and don't have that raised profile that the historic preservation requires; and so it's a character defining feature of the school, of this building, and it impacts the historic integrity. And what's so troubling is that windows are administratively approved by my office. They did not have to go to the Historic Preservation Board; they are routinely approved by, what's called a Standard Certificate of Appropriateness, that's

administratively done, as long as they meet the requirement. So, it was unfortunate that they didn't call me.

Commissioner Lago: Dona, just a quick question. In reference to the existing schools that we have here in the City of Coral Gables, I know that probably some of them have some recent construction work done to them. Has there been any window replacements that you are aware of that maybe had similar issues or has the School Board come before our City and said, these are our plans?

Ms. Spain: Ponce de Leon Middle School a while ago, quite a few years ago, because Commissioner Kerdyk Sr. was alive, but they had plans to demolish that school and we worked very closely with the School Board and it was the administration building and also the gymnasium there, that entire campus is designated and they worked with my office and actually restored the building and kept the gymnasium and restored it also. So, there was a precedent but they have worked with us in the past.

Mayor Cason: And these windows can either be restored or new ones that fit the same design, so there are options for them?

Ms. Spain: Exactly. Exactly right. I mean it's always less expensive to restore the original windows and they have the original windows in place, but we have allowed in the past window replacement, and there are manufacturers that can do it properly.

City Attorney Leen: So Mr. Mayor, I asked Cory Lopez-Castro from Kozyak Tropin, who has represented the City in the matter we had with the Biltmore, in the Country Club matter, and in other matters too, recently in one with Deering Bay. It wasn't the exact same type of issue, but there were some similar themes with the county, and she has always represented us very well; and I'll also like to thank Detra Shaw-Wilder, her partner at the law firm and also the Managing Partner of the firm for helping us as well. So with that I'll turn it over to Cory. Look, we would prefer not to have litigation, it's still the goal here, but I brought her in because we have to protect our rights. So with that, I'll turn it over to Cory.

Ms. Cory Lopez-Castro. Good afternoon Mr. Mayor, Commissioners, City Manager, it's my honor to represent the City in connection with this matter. I think that probably this conversation should have had before the work started, but we are where we are. This resolution that's been presented to you for consideration is important because it will allow us to start their dispute resolution process that's already provided in the statute, and in the event that work does restart then we can commence litigation, if necessary that's a secondary option. I think compromise is always possible and I think there are options here, we are just having this conversation in the

middle of this process, but I think that the City has a strong position, statutory support and case law support, but we need this resolution in order to start the process, and we'll ask the Commission to approve it, and if you have any questions let me know.

City Attorney Leen: I'd like to just say one other thing. This doesn't mean we are going to immediately file a lawsuit. Obviously, if they continue not to touch the windows and they go through the dispute resolution process and we work it out, we could frankly work it out in a day or two if they would simply agree to go through the process. We actually have a Code Enforcement Board hearing tomorrow where this issue is going to come up because we did cite it as well. So hopefully, they'll come tomorrow and work it out and that's the goal; and do I think that the School Board would ever demolish a building like that?- no, of course not. Do I think that the School Board probably made a mistake here; I'm not speaking for them, but probably because in the past they've complied with our ordinance.

Ms. Spain: With this school.

City Attorney Leen: With this school.

Commissioner Lago: That's what I'm asking about here. That's why I was mentioning to you before when you mentioned about Kerdyk Senior, was I just find it kind of odd that they didn't comply at this turn around.

Ms. Spain: You know it's shocking, I have to say. I was very surprised when I heard that they were taking the windows out, because this school has applied for Certificate of Appropriateness.

Commissioner Lago: And I heard that in most schools that are historic, they take the time. They are very considerate before they jump the gun and offer any contracts and allow a contractor to set up on site and actually touch it, touch any part of the school. I am not in favor of litigation. I want to make sure, again, I will support the resolution, but I want to make sure that we exhaust every opportunity that we have; the School Board is our partner. We've been involved in several issues with them in the past and we've come out on the right side, thank God, and especially one of them that Commissioner Keon lead so eloquently over the past year and-a-half, but I want to make sure that we exhaust every opportunity. I don't want to have continuing back and forth with the School Board. I don't think it's good for business, in my opinion. I don't know what the rest of my colleagues say, but I think that we really need to exhaust all opportunities.

City Attorney Leen: One thing I wanted to say about that was, when we are working with them on a lot of issues, that the concern I have, which I know the Manager shares, is that they took the

position that, instead of saying it's a mistake and complying, they took the position that our law does not apply, and that's a big issue.

Commissioner Lago: I think that was, again, I'm not an attorney, but it's a lot of posturing by them because again, if you already have in the past an opinion, like Dona had just stated, where you have followed certain criteria in the past, why are you not following that criteria now? What is the difference in reference to what you've done in the past, especially with historic property? To me, it doesn't make any sense. I think it was just a mistake, an oversight which hopefully in tomorrow's meeting will be corrected, but I think we should do everything in our power like you said to try to mitigate this issue and come to some sort of accord where we can resolve the issue without having to go to litigation full fledged.

Ms. Lopez-Castro: Commissioner Lago you and I don't know each other at all because we haven't worked with each other, but I can assure you that the City Attorney and I who have worked on pretty high profile matters, we always look for a solution short of litigation, because litigation is expensive, there are delays associated with it, but I think for purposes of efficiency authorizing that now, if absolutely necessary is the right way to go.

Commissioner Lago: I have no issues with that. My issue is not the expense. Again, at the end of the day I want to save as much money for the residents as possible, but my issue is not money here. I want to make that clear. My issue is the thousands of kids that come to our schools and I want to make sure that we continue and we are heading in the right trajectory, in my opinion. I think we are heading in the right trajectory in reference to our relationship with the School Board and I think that I don't want to have any hiccups, because there will be some significant tasks forthcoming in reference to the City of Coral Gables, be it West Lab, be it other projects that are in the works. I want to make sure that we are on good footing with them.

Mayor Cason: I think this sends a signal that on principal we take historic preservation very seriously, so I think it's a bigger issue and we are going to take a stand.

City Manager Swanson-Rivenbark: And if I can Mayor, I attended the meeting Friday and I felt that it was respectful and we were beginning a dialogue. Unfortunately, due to a family death that one of the members could not come on Monday, so the meeting had to be cancelled that was going to be on site.

Ms. Spain: Yes, it's actually scheduled – I'm meeting the architect and representatives of the School Board next Monday.

City Manager Swanson-Rivenbark: I genuinely believe that we, your City, is acting in good faith to reach an appropriate agreement and I'm confident the School Board will want to join us in that discussion, but having this resolution will give the City Attorney additional tools in order to make sure that we move and address this as quickly as possible.

Mayor Cason: So with that said, do we have a motion?

Commissioner Lago: I'll make a motion to set the resolution set forth by City Attorney in reference to potentially having entering into litigation with the School Board, exhausting every opportunity to mitigate the issues in reference to the school that currently had the windows replaced at Coral Gables Elementary.

City Attorney Leen: This one is a four-fifths vote based on the...

Commissioner Slesnick: Discussion – I've seen the windows and they are 92 years old, but the majority of them are in excellent condition.

Ms. Spain: I think they are in better condition than the ones in this building to tell you the truth.

Commissioner Slesnick: Yes, they are in great condition and I really like our relationship with the School Board and I want it to continue on a great basis, because we have a wonderful working relationship, but I think – there are also plans to do central, I mean air conditioning and a lot of other things that they can be doing, and I understand they want to do them during the summer, but the window issue really talks to the integrity of the building and I think we should...

Ms. Spain: You know the Secretary of Interior Standards always talks about restoration first and then replacement, and I brought that up in our meeting and I'll bring it up again. They said we could restore....

Commissioner Slesnick: There are companies right here in town that do that.

Ms. Spain: And one of the companies offered to do an assessment for nothing, for free, to go out there and see what it would cost to restore....

Commissioner Slesnick: Can we get them out there?

Ms. Spain: I don't think they are interested in that.

Mayor Cason: So do we have a second?

Commissioner Slesnick: I seconded.

Mayor Cason: Ms. Slesnick seconded.

City Clerk

Commissioner Keon: Yes

Commissioner Lago: Yes

Vice Mayor Quesada: Yes

Commissioner Slesnick: Yes

Mayor Cason: Yes

(Vote: 5-0)

Mayor Cason: Thank you.

Ms. Spain: Thank you so much.

[End: 12:26:46 p.m.]