

City of Coral Gables City Commission Meeting
Agenda Items I-1
June 10, 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

Development Services Director, Jane Tompkins

Ramon Trias, Planning and Zoning Director

Public Speaker(s)

Mario Garcia-Serra, Attorney Representing Astor Trolley

Agenda Item I-1 [Start: 1:50:57 p.m.]

Information from City Attorney regarding Initiation of Government Settlement Review Procedures and Court Order staying all proceedings for 60 days in City of Coral Gables, Florida v. Astor Trolley, LLC, et al, Case No. 13-29113 CA 40.

Mayor Cason: We are going to move on to I-1, Mr. City Attorney.

City Attorney Leen: Thank you Mr. Mayor. Mario can you please come up?

Commissioner Quesada: Hold on a second. Why can't we just jump into – because I know that we've had residents sitting here all day.

Mayor Cason: Just a quick one.

Commissioner Quesada: It's OK.

City Attorney Leen: This is going to take a little bit of time for me to go through, is the other one short.

Mayor Cason: The bike is going to take longer.

City Attorney Leen: Well I leave it to your discretion, either way.

Commissioner Quesada: It's the Mayor's call.

Mayor Cason: Let's go with this because I think the bike one, we don't want to cut it...

Vice Mayor Kerdyk: We'll do that next.

Mayor Cason: OK. We'll do bike next. Go ahead.

City Attorney Leen: OK. Mario, please come up. Thank you Mr. Mayor. Mario and I are here to announce to the Commission and to the public that there is a proposed settlement in the Astor Trolley matter, the trolley building matter that is substantially complete, and the Commission will be receiving what's called, a Request for City Commission Approval of Government Settlement in the next week. All substantial terms have already been agreed to. Now I want to be clear for purposes of the press or for the public, it's not a final settlement yet, not a final settlement yet. It has to come to the Commission for a quasi-judicial hearing and the Commission has to approve it, and the Commission is not required to approve it. So this is not a final settlement by any means. However, it is a good faith settlement made by staff and ultimately the City Attorney with the approval of the City Manager with Astor that will be proposed to the City Commission for your review and the City Commission has ultimate authority over whether to approve it. Now the court order, there is a court order issued on July 30th, and that court order requires, basically sets a, pardon me, the court order was issued on May 31st, and it gives us 60 days in which to complete this process. Our next Commission meeting, and I know Mario is going to be asking that it be moved up, but our next Commission meeting is July 22nd. So in order to comply with the court's requirement, I have to initiate the process now or within the next week. So that there is sufficient time for staff to review the item under the Government Settlement Procedures and for the City Attorney to give a recommendation to the City Commission regarding the item. The.....ponte order of the court is helpful to the City and all parties because the court is agreeing in the motion that the parties will be able to submit a motion to the court to approve and retain jurisdiction over any settlement that's reached. So the court will have jurisdiction. It gives us added assurance that everything that is in the settlement, whatever is ultimately agreed to by the Commission will be enforced and completed and will provide protection to both parties. So the court has stayed the pending action, the Astor case, the

case that the City filed, however, Astor has filed a pending motion for summary judgment. So after the 60 days is over, if we have not been able to resolve the matter, unless the court decides on its own to extend the stay, or the request of a party, we will go into summary judgment proceedings that matter will be decided, either for the City or for Astor. If the City prevails the development at Merrick Manor will not go up, at least as far as I can tell, because the City will not have to close on the building, on the Coconut Grove facility, and so the matter won't go forward. If Astor prevails the City will be ordered likely to go into the Coconut Grove facility, and the old deal will go forward with the Merrick Manor Building as it was originally. This is a settlement of that proceeding. Now one other thing that should be mentioned before I go through the basic terms is that the FTA matter is an administrative proceeding before the Federal Transit Administration has been essentially stayed while we are seeking to resolve this matter. The reason that's important is the FTA was going to require us to do an equity analysis. As part of that equity analysis they would be assessing whether there was a discriminatory impact by the facility, which the City has objected to. The City has objected to going into this facility, but if we were to enter into the facility was there was a discriminatory impact that had to be mitigated. That finding has not been made by the equity study because the FTA understands that we may settle the matter and it would make the matter mute. So we will not have to go, under the settlement we would not have to go into the Coconut Grove facility, so we would not have any equity study finalized by the FTA, which means that there would not be any finding that we have to mitigate and it would also mute any potential nuisance claim or civil rights claim brought by the residents, and I'm not saying these are claims that would prevail, the claims brought by the residents in the Coconut Grove area, I'm not saying that at all. I think we have good defenses, but I am saying that they would likely be brought; we've been informed that they would be brought and this would mute those as well. The benefit of this settlement which I'm about to mention is that it will resolve a very difficult civil rights matter in a way where hopefully all the stakeholders will be happy with the outcome. There are issues though and so let me get into that now. What the proposed settlement would be is that at Merrick Manor, 301 Altera Avenue, Coral Gables, Florida, where the Merrick Manor development will be going. The condo development that will be there would include the City's trolley facility, a new trolley facility that would be built by Merrick Manor, by Astor, state-of-the-art, in my opinion even nicer than the one at Coconut Grove. Bigger and certainly more valuable in terms of its property value, and we believe from what staff has told me, although all this will come out through the settlement procedure process, well suited for our trolley system for many years to come. The reason why we would not have to go into the Coconut Grove facility is because the Merrick Manor project will be built in phases. So the current trolley facility will be used for a certain amount of time while one phase is built, the phase that doesn't involve knocking down our current trolley facility, and then once that phase is finished and that phase will include our new trolley facility we would move into there and then the second phase would be built. So we would never be displaced from

that property. Therefore we would not be required to go into the Coconut Grove facility. As part of this resolution the City would receive approximately, and this could change, the number has to be set, \$3.5 million in fees, expenses, etc. So the City is not having to come out of pocket in any way in order to do the settlement. That was one of the basic conditions was that we did not feel the City did anything wrong here. So the City shouldn't have to pay money as part of this resolution. The City should be held harmless and that was part of the goal here and in fact the City will be receiving, if the project goes forward, just for purposes of the record, the City would receive the ad valorem tax benefits from that, as well as several million dollars in fees. The matter will be expedited. We've agreed to expedite the building permits here to try to get this matter done as quickly as possible and of course it would settle the civil rights matter. Now as part of this proceeding there will be, there will have to be a review by the City Commission of the proposed development approvals for this property. The property will be larger than typical because it will include our trolley facility, and also because in order to mitigate some of the harm that's occurred in this case to Astor, we are allowing additional units to be put into the building. All of that will be discussed at a, first of all, all of that would be part of a settlement document that would be made public in advance, and all of that would be part of staff's review, and I'm going to go through that in a second as to what staff would be reviewing and what issues you'll be considering when this comes before you on July 22nd, and all these issues ultimately will have to be decided by the Commission at a quasi-judicial hearing where members of the public will be able to testify and where the Commission will be exercising its sovereign authority to determine what's in the best interest of the public in a very difficult situation and I want to be clear again, the Commission is not bound by anything we do today. So what will happen is, within the next week or so, I will issue a request for City Commission approval of Government Settlement. It will attach a proposed settlement, which is still being finalized, but been agreed to in principal and Mario is here to report that to you, and again, the reason I'm doing that at this time is because we are under a stay order and I need to make sure that this issue is brought to the Commission in a timely manner as part of my duties, I believe. There is a notice and publication requirement in our ordinance and the ordinance for – to be more interesting is Division 18, of our Zoning Code, and it's an ordinance that's been passed that addresses settlements of complicated matters where there is a government proceeding pending, like a FTA matter or administrative matter, or a court proceeding and where development approval is required as part of that proceeding. Notice will be provided to the public similar to any other sort of application. It will be provided, 10 days' notice for property owners within a radius of 1,000 feet of the property described in the request. If the request is site specific, which this is. There will also be newspaper publication, so there will be process provided. There will then be a development review officer report and recommendation. The Development Review Officer and the Development Services Department will take a look at this under the jurisdiction of the City Manager, will look at this and give a recommendation to me that I will then provide to you as

part of a City Attorney recommendation taking a look at both the development issues that are part of this proposal as well as the lawsuit and all of the issues and give you a recommendation as to what I believe you should consider or what you should do in resolving this matter. That will be given to you at least seven days in advance of the hearing so you can consider it. There will then be a Commission Hearing, at that hearing there will be evidence presented. We will be having an expert discuss this particular proposal to make sure that the City is not, and I say this with all respect to make sure that there is no windfall here being provided to the developer. We will have an expert, Hank Fishkind, who testified earlier today, come and speak about, he's taken a look at the development to make sure that the return on investment that would occur here is something that is reasonable. So we want to make sure that there is no windfall, that the public and the City are being treated fairly. Of course we also want to make sure Astor is being treated fairly as well as we are government. So it is very important this is fair to all parties, this resolution, and that was why we specifically asked that Hank Fishkind review this and give his opinion, that will be provided at the Commission meeting and you can question him. You do not have to agree with him, you have to make findings as to whether you believe you agree with him or not, but you will receive testimony from one of the best experts in the State of Florida. Then the Commission will be able to hear from residents. They'll be able to hear from Astor, they'll hear from City staff, they will hear from residents. At that point the Commission will begin its debate and the Commission will weigh the following criteria and there are a number of them. One, whether the property is owned or partially owned by the City or will be owned or partially owned by the City as part of implementation of the government settlement. I won't read them verbatim, I'll just describe them. Two, whether there is a combined government and private use here that facilitates the objectives of the comprehensive plan, which would include objectives about transit which this is the one here we are dealing with a transit issue. Third, you'll look to see whether this government settlement is designed to address the effects of alleged discrimination on the basis of a protective classification. No need to find that discrimination has occurred, you just need to find that there is basically a callable allegation and that we are seeking to address it. You will then be able to assess whether the government settlement resolves the federal or state administrative proceeding or will be made part of the consent order, which will occur here because part of the goal here is to have the FTA sign off on this, everybody sign off in the court. Then you will look at whether the implementation of the government settlement will further the protection of the public health, safety or welfare, included but not limited to remediation or prevention of allegedly discriminatory practices and protection of public health, environment or natural resources, that's ultimately a decision for the Commission in its sovereign authority. You will have to make that decision looking at everything, and I cannot tell you which way to go on that you are almost like a jury in that sense. You have to look at everything and make your conclusion, but I will give you a recommendation and I'll tell you about what sort of things you should consider, then whether the implementation of the

government settlement will facilitate the resolution of a potential conflict between the Zoning Code and a federal, state, or county statute or provision that pre-empts local regulation. Then you will look at whether the proposed use is compatible with the nature, condition, and development of adjacent uses, building and structures and will not adversely affect the adjacent uses, buildings, or structures, so you can consider the properties surrounding, and whether you think that this is appropriate or not for where it is; and finally, you can look at the nature of the proposed development and ensure that it is not detrimental to the health, safety, and general welfare of the community. None of these issues by themselves are dispositive, you will weigh them all, and then you will make a decision in your sovereign capacity. Once you make that decision, it's a quasi-judicial proceeding, people have their due process rights, they have the rights to appeal, there are issues related to standing. We have tried to make this process as open and as process-filled, I don't mean to be circular, but we are trying to make sure everyone has all the process they need, so that ultimately we can address this settlement and make the best determination for Coral Gables. If the Commission decides not to approve it, and you are not bound to approve it, we will go back to the litigation, we will do our best. If you decide to approve it, we will resolve the matter, and we will go forward, but either way is perfectly fine for this Commission, you can decide it either way, but we do think that this choice has to be made by the Commission because there are a lot of proposed benefits here for the City and it needs to be considered. Now there is going to also be the increased development, so that also has to be considered by the Commission. You have to make the sovereign choice. Do you have anything to add?

Mr. Garcia-Serra: First let me say my name, Mario Garcia-Serra with offices at 600 Brickell Avenue, representing Astor Development, and indeed I agree with the City Attorney's description and analysis of where we are. We've reached between staff and my client an agreement as to the settlement agreement document, which can be proposed to you for your review and approval, and indeed we are interested now in ending this litigation phase, which we feel has lasted way too long in settling this matter and moving forward with the new project, which we can all be proud of and benefit from, and like any settlement agreement are we 100 percent happy?- no, but it's good enough to resolve this issue and move forward; and as far as moving forward we would appreciate if you would consider a Special City Commission meeting so as to consider the item and be able to approve and move forward considering the amount of time that has past. I realize it's the summer session schedule and many of you are going to be out of town, at least to have some consideration.

Mayor Cason: It's going to be on the agenda for the 22nd? Craig, it's going to be on the agenda?

City Attorney Leen: It will be on July 22nd. I know that there is a request to make it earlier. I have informed Astor that there is a concern that not everyone is going to be there. I don't think

there is going to be a date where all five are available, maybe there is, but it's very difficult to find, and we've looked for it already once. So I don't want to promise that there is not, but it would be very difficult; and two, we need to make sure there is enough time for all these reviews to be done and so the Commission can consider it. July 22nd not all of our Commissioners are available then too, but it's a set date and I'm going to be having another item asking that Commissioner Keon be allowed to participate by teleconference or phone, which will be the next item after this, but the thing is we can't go beyond. If we don't do within the 60 days ordered by the court, I know Astor is taking the position that they want to proceed with the summary judgment and they are doing that and they told us, and I believe them because they are eating a lot of cost every day and they'd like to proceed. So my goal as City Attorney is to present this to you fairly in how you make your decision.

Commissioner Quesada: When is the 60-day period up?

City Attorney Leen: The 60-day period is up – it started May 31st, so it would be July 30th.

Commissioner Quesada: So we are cutting it close on July 22nd if we want to send a package or something out.

Mayor Cason: We are going to have a long meeting on the 22nd unlike today.

Commissioner Keon: We might not resolve it on the 22nd.

City Attorney Leen: If we don't resolve it on the 22nd and its continued to the next date, we could either, one, set a special meeting or two, with Astor's – remember we have to reinitiate the process, which Astor did last time by filing the motion for summary judgment. If we have an agreement of the parties at the hearing we could always ask for an extension of the stay or agree not to reinitiate litigation, so that's open to the Commission. What do you say Mario?

Mr. Garcia-Serra: Imagine it's a difficult situation for us. We started a year and-a-half, we've been in litigation, seven months I think negotiating this particular agreement. We are certainly hoping July 22nd at the latest, sooner if possible, but you know I think we basically need to finalize things and really get them ready for presentation, maybe a two or three-week period, which then takes us to early July, so we can present them in July.

Commissioner Quesada: I wouldn't be opposed to a Special Meeting; I know this is something we've been working on a long time.

Mayor Cason: Why don't you check and see if like the 20th, 21st if those dates – I'm going to be out of the country until the 19th, from the 9th to the 19th, but I'll be back on the 20th, 21st, I'm available if...

Vice Mayor Kerdyk: The 21st of....

Mayor Cason: July.

Vice Mayor Kerdyk: What day?

Mayor Cason: Why don't you check with Craig...?

Mr. Garcia-Serra: We'll be doing that accommodation, just to make sure there is a line on another agenda that's already busy.

Commissioner Lago: The 20th, 21st.

Commissioner Keon: If those go into the first week in August you would oppose that?

Mr. Garcia-Serra: I think right now, yes. You know we feel that really its time already to figure it out and the thing is we would never reach agreement or a formal agreement and so forth. My client doesn't sleep well at night and we don't feel it's assured until you guys take your vote, and you know it's done. That's really when we have some finality to this. Like I told you, it's been – by July it already would have been a year and eight months, I think since we've been involved in this; and as you know every day that passes carrying cost on the property, you know the market is strong right now. Who knows how much longer the market will be strong. Every day that passes complicates that situation.

Mayor Cason: We'll make the best effort, I think – we can hold a Special Meeting, find a time, let's try to do it. OK.

Commissioner Keon: Is the building itself subject to review by our Planning and Zoning?

City Attorney Leen: No. This whole procedure only goes to the Commission. Now the Commission has the authority. You have the sovereign authority to send it to them, although they are not going to necessarily agree, but the thinking behind this was that, so you understand the thought, was that it's not solely a development issue, it's also there is a lawsuit issue. There is a civil rights issue, so only the Commission is the only body of the City that has the authority to resolve all of those issues at once and weigh them. So even if there was a finding that this development is not great, you still may decide to approve it because of these other issues or you may not, but the thinking was that the Planning and Zoning Board could not really opine on that because they don't have that authority.

Commissioner Keon: I'm not as concerned with, I mean I would like to go to the Planning and Zoning Board, but what I am more concerned with is that we already know that this is a bigger, taller, when you say bigger, you know it's important that you say not bigger, but taller, much

taller building, much more massive building that currently exists in that area, and under the regulations they've had, it is a much bigger, more massive building than anything that's there, and the sad thing is that area was planned as a...so that it would – there was an aesthetic to that, we will disrupt the aesthetic to that area by doing what we are doing, and not having – you know I'm not a planner, I'm not an architect, I'm not a designer. I can tell you, I think it looks – I don't think it looks good, I don't think it looks good at all, but I'm willing accept that we may have to sort of go against our own regulations that are in place there in order to settle this case, but I want to do it with the most attractive building we could probably put there, which I would like our professional staff to opine on or to work with the architect to do. You would end up with the same amount of...

Commissioner Quesada: Hasn't that already been happening?

Commissioner Keon: No. No. Not at all.

Commissioner Quesada: Not at all?

Commissioner Keon: Not at all. No. Can you ask Ramon to come – is Ramon here?- Trias?- please ask him to come here.

Mr. Garcia-Serra: Let me also interject on that because now and then there is going to be time to further elaborate the plan and improve it.

Commissioner Keon: But what you are asking us to do is to – I mean can we approve based on the design that will come to us later?- or do we have to approve based on what is presented to us on that day?

City Attorney Leen: It's going to be presented to you as part of the package that I give you and the reason I use the word bigger was because – we are going to have the documents, we are going to present them to you, everything will be disclosed fully at this hearing, I promise. We are going to go through each change of the Zoning Code that we are going to have to do, each deviation in order to do this. There is going to be a site plan, the public will know everything. The issue was though, I also didn't want – before I had the documents and go through it exactly, I just wanted to make clear it's bigger....

Commissioner Keon: Taller.

City Attorney Leen:...and there is more FAR and it's taller, we should be specific, can you tell us the specific stats since it's been brought up?

Mr. Garcia-Serra: You know one thing I'm also hesitant to do is we don't want to do the hearing that we are going to do July 22nd.

Commissioner Keon: But the concern I have is, is that in addition to all of these other conditions we are actually, we are approving a site plan, we are approving architectural drawings, we are approving everything and I'm not comfortable doing that.

Mr. Garcia-Serra: And sort of the way I'm responding is between now and whenever that meeting is July 22nd or sooner or later, we will continue to be working on that plan with your staff and also as part of Craig's recommendation to you it has to go through the rest of City staff, so as part of that process Planning and Zoning, Building, the usual sort of review individuals and entities will review it.

City Attorney Leen: And just for the record, it's a taller building, it's a more massive building, it is not the tallest or most massive building in the City...

Commissioner Keon: But...

City Attorney Leen:....but it is taller and more massive than what could go there, but see the thing I didn't want to get into the specifics right now because I don't want people to think it's going to be some humongous building either. We are not going to recommend a building that we don't think fits into the aesthetic there. Obviously, there could be room for disagreement and perhaps there is, but staff has looked at this, I've looked at it, we believe that it does fit within the aesthetic in the sense that it could be something that you could approve. It should be presented to you and debated; and we wanted it all to be presented to you as part of the hearing where it could be presented, so you could see exactly the height, the massing study, see how it's compared to the other buildings. You've all seen that individually in an Executive Session, but we need to show it to you as part of the hearing and ultimately you are going to be judges, so I don't want to prejudge it too much because once I issue the government settlement letter Jennings will apply, and you are going to be judges, so I want to just make sure that everything comes into the hearing that we have that's why I didn't get too much into it.

Commissioner Keon: OK. I'm asking you if Ramon Trias and Charles Wu have reviewed the design.

Mr. Garcia-Serra: Plans were submitted for approval.

Commissioner Keon: Have they....

Interim City Manager Olazabal: Jane Tompkins is here and she can...I had a question for Craig regarding the process. As part of the settlement agreement, I know it has to go through the trades because it's part of this process, but does it have to go to Board of Architects?

City Attorney Leen: It's up to you whether you want to send it to them or not, but...

Interim City Manager Olazabal: Is it up to me or is it up to the Commission?

City Attorney Leen: The development review officer determines what reviews they believe are appropriate. The Board of Architects cannot be a mandatory review, and it's ultimately up to the Commission to decide. The only mandatory review is the Commission's review.

Interim City Manager Olazabal: So Jane was this reviewed already by staff and what type plans did we get?- because they are probably preliminary.

Ms. Tompkins: Good afternoon, Jane Tompkins, Development Services Director. Staff has received some, I would describe as preliminary or sort of conceptual plans for the proposed building. In my opinion they are not what we would expect to see to take to the Board of Architects, they lack the coloring, the detail that we would expect to see for the Board of Architects, and staff has not prepared a recommendation on the aesthetics. We have done sort of a cursory zoning analysis based on the limited information that we have, that's as far as our review has gone at this point.

Mayor Cason: Do you have time between now and – how much time do you need to feel comfortable?

Ms. Tompkins: I understand that we are going to feel comfortable by the next Commission meeting.

Commissioner Keon: But I'm asking you is that really adequate time to review a building that's going to be here for a very long time?- if it's not, please say so because we can deal with the issue of moving whether – if Astor won't agree to this, then we'll go back to court. You go back to court and it happens, but you can't be held hostage by someone's desire to have something happen and in a period of time that you cannot realistically deal with for the benefit of this community.

Ms. Tompkins: I believe we need a more complete set of documents...

Commissioner Keon: Thank you.

Ms. Tompkins:...in order to complete a review.

Commissioner Keon: Thank you.

City Attorney Leen: I have to say something here. We have a court order, it's 60 days. I told the court on the record that we will do our best efforts to try to resolve this matter, so you know ultimately any Commissioner can vote no on this, but I need to present this to you. I feel it's part of my obligation to present this to you because it's a resolution of an extremely difficult matter,

and it's OK if you vote no on it, and then we'll go back to court, but it needs to be presented to you and I'm concerned, I'm very concerned that we will run out of time and that we will have to litigate this matter, that we will lose, I'm concerned about that, and then we'll be forced to go into that building and have civil rights lawsuits for a long time to come, and if we do that that's fine, and we will defend them to the best of our ability, but this Commission in public has to make a choice.

Vice Mayor Kerdyk: Craig, let me ask you a question. We've had several Executive Sessions here...

City Attorney Leen: Yes.

Vice Mayor Kerdyk:....numerous – I thought there was still one or two...

Commissioner Quesada: Mr. Vice Mayor can you speak into the mic, I can't hear you.

Vice Mayor Kerdyk: OK. We've had numerous Executive Sessions done on this, I thought there was one or two issues that were still out there that we had discussed at the last one and all of a sudden we are getting this in front of us, are we expecting to go to another Executive Session and talk about this amongst ourselves?

City Attorney: Leen: No – only individually.

Vice Mayor Kerdyk: What?- just individually.

City Attorney Leen: I'll be speaking with you individually about it.

Vice Mayor Kerdyk: OK.

Commissioner Quesada: Mr. Vice Mayor the last item that was outstanding was related to some additional details, additional numbers. The City Attorney briefed me on that item with the additional information, I understand you were speaking with everyone, so maybe he hasn't had a chance to speak to you about it, I got additional clarity.

Vice Mayor Kerdyk: There are questions on those...

Commissioner Quesada: Oh, so you have additional problems. OK.

Vice Mayor Kerdyk: How did we get those numbers?- there are all sorts of issues that we are talking internally about, but you're right, I haven't had a real chance to drill down on these things. I'll be glad to talk about it in public.

City Attorney Leen: We decided to go with the quasi-judicial route, and I'm sorry if – I really don't want to lose the chance for you to agree to the settlement and that's what I'm concerned about here, not whether you settle, I'm really not trying to bind you to any settlement, but I want you to have, I'm sorry, but I want you to...

Commissioner Keon: What may turn out to be a very good settlement, as long as we have all the information we need, and it has the proper reviews and you have the ability to look at where the numbers come from and whatever else. I don't want to turn something down because I'm not comfortable with it when in reality it may be a very good thing, but I'm telling you your professional staff has told you the likelihood there is not enough time. They'll need some more time to really look at those numbers and talk about those numbers, because when we make a decision it's over, there is no more review, you apply for permits and that's the end of the story.

Commissioner Quesada: Commissioner Keon we have until the end of July pursuant to a court order. I don't want to get into the details what we discussed in Executive Session because I don't want to waive that privilege, but we've had extensive discussions on everything, particularly what I'm trying to, I guess remind the rest of you of is our feelings on the potential outcomes and issues we may be dealing with, with many years to come – let me finish, let me finish, hold that thought. I understand Craig's feeling at this point. We have to discuss this at the next meeting there is no other way about it, because of the court order that's in place. What I suggest is all the details that we have discussed from the massing to all the other details we discussed those various multiple hour meetings that we've had really hashing this out to get to where we are today, because remember we weren't at this point six months ago. It's taken a long time to get to this point, a lot of hours racking our brains and thinking outside the box to try to get to where we are at. Because the court order is in place, because of the way we feel with relation to the lawsuit what I think is, and I feel like we are always doing this to staff, but we need to do this, to push them to ask them to divert some resources to help get some additional comfort with the design to be able to report back to us on July 22nd or whenever that meeting is, so that we can at least have an informed discussion. If on the 22nd it falls upon we can't come to an agreement so be it, but with the timing in place with the court order it is incumbent upon us that we do need to make a genuine effort to either blow up the settlement agreement or resolve this issue on the 22nd.

Mayor Cason: Mario are you going to be able to provide staff what they would need to make the kind of decision that we...

Mr. Garcia-Serra: We've already discussed getting together with staff based on the plans we have right now to get their comments and see what further elaboration.

Commissioner Keon: They've already told you that the plans that they have, the plans are not developed enough for them to do their review...

Mayor Cason: But that's my question, we know that, the question is going forward.

Commissioner Keon:...so what they have now isn't good enough, so when can you get them the plans to the quality or level or what is the word for it that you need?

Commissioner Lago: It all depends on the comments put forth by the reviewer.

Commissioner Quesada: My understanding is that the applicant was not going to put the final designs together until they knew there was a settlement or not in place.

Commissioner Keon: That's what they are saying.

Mr. Garcia-Serra: There are different levels of design. I'd say what you have right now is conceptual. The most elaborate plans would be building construction plans which certainly we are not going to do because it's a tremendous amount of cost to go that way, but there could be some improvement over what we have right now as far as type of plan so as to better address what staff's comments are and we haven't really had....

Commissioner Quesada: Hold on a second. I think there is some confusion as to what we would be voting on, on the 22nd...

Commissioner Keon: That's what I'm saying to you. You are voting on a plan.

Commissioner Quesada: But we are not voting on the final detailed aspect of it, we are voting on the conceptual, is that correct?

City Attorney Leen: On July 22nd you are approving the development, but there is still going to go through all the trades and things like that to get their building permits.

Commissioner Quesada: OK. So they still have to go through everything.

Commissioner Keon: No – to get permits, not to get design approval. This is not going to the Board of Architects...

City Attorney Leen: This will be design approval.

Commissioner Keon: You are voting on design approval. You're going to say this is the building you can build there, the only thing you can change if there's an issue with electric, there is an issue with plumbing, there is an issue with structural, those things – yes, because they have to go through the trade and they have to meet the Code and the requirements. You will never opine again, you will never look at again the design of this building.

Commissioner Lago: Or the increase in density.

Commissioner Keon:...nobody else will ever look at this again – the Board of Architects won't look, the Planning and Zoning Board will not look – nothing. You have never ever have we ever put a building in this City that is bigger, more massive, outside of what is required without having the opportunity to look at that building. You are giving up that right to look at that building and I'm saying to you, with all due respect to your client and to you Mario, if you want to hold us hostage for one month for that then so be it, because I think that what you've said, although your order may be July 31st, if you agree not to take any action it will give us an extra month, it would give you a month, it would give them the time for us to really tell exactly what department to tell them what they need for us to know that, that day that they copy for us we have a building not only are we approving the settlement, we are also approving a building.

Mayor Cason: Ramon what do you need?

Mr. Ramon Trias: Mayor and Commissioners, the architect has submitted the more developed drawings as of yesterday, I believe, they have not been reviewed by staff, but we do have elevations and floor plans, and we do have enough information to look at the building as of today, but that hasn't been done yet as soon as I get a chance to talk to the staff and talk to the different individuals that could give us an opinion, I think we can give you an informed opinion on the design issues.

Commissioner Keon: Would you be comfortable on July 22nd telling us that this is a good building although it may violate what is there. We already know it's going to, but is it the best building we could have including the design with consideration that we already know it is going to violate it, but it is the best we can do because of design to mitigate that size and that height and whatever else?- can you do that by July 22nd?

Mr. Trias: What I've already done, what I've already told the attorney and also the City Attorney is that it is not the best building yet. That it should be designed a little bit better and that there is an opportunity to improve the design from now till the next month or so, and as far as I can tell they've said, you're right and we are going to work with you.

Commissioner Keon: OK. But I'm saying to you on July 22nd we approve that building, are you comfortable that by July 22nd you'll be able to?

Mr. Trias: It's up to the applicant to be able to produce the drawings. I've given them some input, I hope that the rest of the staff can give additional input and if the architects work fast enough certainly you will have revised drawings that will be of better quality.

Commissioner Keon: But we are approving, that's what's important you understand, is on that day you are approving a building.

Commissioner Quesada: Or deny.

Commissioner Keon: Or deny. You know what it is?- you've worked this hard, I really would rather see, I would really prefer to not deny than go into some litigate metigious process only because of time limits.

Mayor Cason: We'll look around for the time and the resources.

Commissioner Keon: I'm not going to be held hostage by those time limits. What I'm asking is 30 days, but that's a decision that you will make.

Commissioner Quesada: But Commissioner Keon that date is approved by the court. We don't know if the court will say yes or no to the extension of time.

Commissioner Keon: What did I ask you? I asked you if that date can be extended and you said yes....

Commissioner Quesada: Commissioner Keon, I'll tell you from my experience of being a trial attorney....

Commissioner Keon: Yes...

Commissioner Quesada:...even if we agree and they agree, the court could say no. I understand that, he can't guarantee anything.

City Attorney Leen: Commissioner Quesada is correct. What it says is that – you are both correct, it says that if you both agree to extend the stay – what the order says is that if we both agree to extend the stay we can ask for a status conference and asks the court to extend the stay, but still it's the court's decision.

Commissioner Keon: OK.

City Attorney Leen: I think if we both went to the court and asked that it's likely it would be granted.

Commissioner Keon: Ask a stay for 30 days.

City Attorney Leen: However, here's the issue. This was a contested discussion – Astor asked for a shorter stay, they wanted the period to be, I believe 30 days. We were asking for more and the court...gave us 60 days, then we said we would do our best to try to get it resolved during that time or at least determine whether we were going to proceed with the litigation or not, and so I just – and the court is agreeing to take jurisdiction over this, which I want, I'm very happy

that the court has agreed to do that, because I think it will help the parties get this matter finally resolved.

Mayor Cason: So if staff is not ready by the 22nd, we could then go to the court and say extend it, that's an option right?

City Attorney Leen: Honestly staff is going to need to be ready by – they are going to need to provide me at least an evaluation of those criteria a week in advance because I have to provide an opinion to you seven days in advance, which I'm prepared to do.

Mayor Cason: 35 days – in 35 days you think working diligently to try to come up with what we have been discussing...

Vice Mayor Kerdyk: I don't think it's really up to him, it's up to the applicant and I would think that the applicant, if he doesn't work with us as far as that's concerned, that would consider extending it 30 days if there are some issues there.

Mr. Garcia-Serra: Throughout my career and throughout this process, which has been a difficult one, we've been collaborative and collegial and trying to resolve things the best way possible and so the way I feel about this particular issue right now is, hey, let's get to work, let's shoot for a July 22nd meeting, depending on what progress we've made as we get closer and we decide how to proceed you might have the comfort.

Vice Mayor Kerdyk: I think that's the way to do it.

City Attorney Leen: With respect to Mario, I want to tell you one other thing, my view of how Judge Thornton would handle this, I don't know, I mean he's a very good Judge. He's one of the best, but if we actually have the hearing on the 22nd, and you feel you need more information and you order a continuance and you request it, I have a very good argument to the Judge that he should extend the stay, because we are in the process of almost dealing it, but if we don't have even a hearing and I go to the Judge they are going to have a decent argument that we are not doing something, so you do have the right to continue the matter...

Mayor Cason: So that's a road map going forward. We are only meeting on the 22nd, you guys work as diligently as you can, get the resources as you can, and if we find that need a little bit more time, fine, if we find that we can't reach that it's terrible and it can't work, we can't put lipstick on a pig, then we make a decision then.

Commissioner Quesada: Can you have the group present before the Board of Architects next Thursday with the current design you have in place.

Mr. Trias: We can do that with the drawings that I have in my office, yes.

Commissioner Lago: That way you could at least incorporate some of the comments in the next BOA meeting.

Commissioner Quesada: So you get the Board of Architects input there and then you'll have another opportunity maybe the Thursday prior to the 22nd to go before them again if there is additional thoughts, and I don't know when the next meeting of the Planning and Zoning Board is to go before there as well, to try, I'm just saying try, I don't know if it's going to be possible, I'm just saying keep it in mind there are other meetings between now and then.

Mr. Garcia-Serra: Our hesitation of course from our side Commissioner is that going to all these Boards can be productive, might not be productive if it takes too much time also.

Mr. Trias: My recommendation is to go at least before the Board of Architects that's always a very useful thing to do and it could be informal and they give us good ideas, and I think we can do that immediately.

Commissioner Quesada: OK.

Interim City Manager Olazabal: If we don't reach a conclusion say by July 22nd, would we be able to put a requirement that, even though they don't have to go to Planning and Zoning, they are required to work with the Board of Architects and get that approval?- because that way we still have some control over the aesthetics. We may not have control regarding the massing, regarding the number of apartments, regarding the height, but regarding how you deliver that – you still are keeping some of that control.

City Attorney Leen: Yes, the Commission can impose any condition it wishes at the hearing, so you could require them to do anything, they don't have to accept it, and they may walk away from the settlement, but you can require anything and you are not forced to approve anything.

Mr. Trias: Mayor what I'll do is I'll schedule this for the Board of Architects on Thursday for an informal review to see where it goes and based on their input then we'll take the next step, hopefully we'll be able to work on a better design immediately with the architect and then bring it to you.

Mayor Cason: Anything else Craig?

City Attorney Leen: No. I appreciate all your help on this.

Mayor Cason: OK. Thank you very much.

Commissioner Keon: I think that we need to keep in mind is that in the redesign of this building and the additional units that you are being allowed, your return on investment isn't terribly

different than what it was initially, so you walk away although you have had some time and whatever else. Essentially, you will build your project, you will make your money and you will move on. That building stays and remains in this City in that area for a very long time.

Mr. Garcia-Serra: We are committed to doing a good project as always despite the situation.

City Attorney Leen: My understanding and this will come up at the Commission meeting is that the new project, at least as Hank's evaluated it and I'll be meeting with you each individually. The return is lower than the original project, is my understanding, but you have to look at that and see how you waive it. One other thing I should say, because this has been a little bit of a back and forth discussion. We do hope this shows how seriously we treat this both from our own planning and zoning perspective, but also as a civil rights matter and trying our best to resolve this in a way that satisfies all the stakeholders. If we can't, sometimes it's impossible, but it shows our good faith. We do believe ultimately we will prevail in litigation, I know that you disagree. We also believe that we haven't committed a civil rights violation here, but we want to show that we are acting in good faith and dealing with these hard difficult challenges.

Mr. Garcia-Serra: As are we. We are just anxious to get the deal done already.

Mayor Cason: OK. Thank you.

Commissioner Keon: Thank you.

[End: 2:36:17 p.m.]