

City of Coral Gables City Commission Meeting
Agenda Item F-3
September 13, 2016
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
Assistant City Manager, Peter Iglesias

Public Speaker(s)

Tucker Gibbs, Representing a Neighbor
Zeke Guilford, Representing Applicant

Agenda Item F-3 [11:51:29 a.m.]

Discussion by Commissioner Lago related to notice of historic designation appeals before the City Commission, including recent appeal related to 229 Ridgewood Drive. (Sponsored by Commissioner Lago)

Mayor Cason: Craig.

City Attorney Leen: Mr. Mayor, Item F-3. The reason I'm raising it now is we were going to hear this at the time of the City Attorney items. This is a discussion by Commissioner Lago related to notice of historic designation appeals before the City Commission, including the recent appeal related to 229 Ridgewood Drive; sponsored by Commissioner Lago. Before he begins, I just want to say a few remarks. This item relates to the Historic Preservation appeal, the historic designation appeal that occurred at the last meeting relating to 229 Ridgewood Drive. The

Commission at that time by 4-1 vote, decided not to historically designate the property overriding the decision of the Historic Preservation Board, which is well within the Commission's discretion, they have the authority to do that; and it was after an appeal where Mr. Guilford was here, he spoke, you also heard from Ms. Spain on behalf of the City, and the Commission made its decision. So after that occurred, we received, we were contacted by a neighbor, who is here today, and also eventually by Mr. Gibbs who is representing the neighbor; and Mr. Gibbs filed with you a motion for reconsideration or rehearing essentially, of the historic designation determination, and under our Code you can move for reconsideration at the meeting where a decision is made or at the next meeting, as long as the sponsor of the motion voted on the prevailing side, the second doesn't have to come from the prevailing side, but the motion does have to come from the prevailing side. Because this is a quasi-judicial matter, Miriam and I were concerned with informing a resident that they should go to each individual Commissioner trying to obtain a sponsor, because they would have to have a lot of conversations probably with the individual Commissioner to obtain that sponsor, and we were concerned based on the Jennings Rule that that would, if the Commission then, if a sponsor was obtained, and if a rehearing occurred there would need to be a significant amount of disclosures probably related to that, and there could be an argument that there is prejudice that occurs. Remember that doesn't mean, that's a legal term, its simply means that there was a lot of information provided to Commissioners outside of a hearing and not in the record and that, that could be the basis for their decision. So that's not allowed under a case called Jennings v. Dade County, and you are treated like judges, as you know, when you have a historic preservation appeal. So what I – my opinion, my ruling in a sense was that they had to present in writing their request for rehearing and provide to all of you, which was done, and if they were able to obtain a Commission sponsor then they could proceed, there would be a vote and if a rehearing occurred what we would do is we would set it for a future Commission meeting where people could be provided notice, pursuant to the Code, and then we could have that hearing, a rehearing. You are under no obligation to rehear the matter; I just want to be clear about that. But because we did not have a set process in place, and because Commissioner Lago who did vote on the non-prevailing side, so he can't make the motion, but because he was concerned about the matter, he placed the item on the agenda, which he has the authority to do, but I also felt that they needed to be allowed to present today. What we've done is, I've asked the Deputy City Attorney to prepare a procedure going forward for how we will handle the hearing request in the future on quasi-judicial matters, and what we will do is, following our quasi-judicial procedures, a party who is seeking rehearing five days in advance, at least five days in advance can submit a request for rehearing and any materials supporting that, it will be provided to the Commission, and if there is a Commission sponsor that Commission sponsor can place the rehearing item on the agenda. The only other way for a Commissioner to put it on the agenda would be as a discussion item, and it preserves your authority to do so, but I do recommend going forward now that we have a process in place, that it would be someone on the prevailing side. In this particular case, because we didn't have a

process, Commissioner Lago has placed it on the agenda. So with that what I would suggest is, Commissioner Lago, if there is anything you wanted to say regarding that item generally about notice, regarding historic designation appeals, this would be the time to say it, and then at that time, and I've spoken with the Mayor who made it very clear, he doesn't want this to be an ability to talk at length or put new things in the record, but he is allowing each side to speak for five minutes, and it's a strict five minutes; and you cannot produce any, submit any evidentiary material, because as you know, even when the Commission acted at the last hearing that was an appeal, and everything that the Commission was looking at had to be based on the record before the Historic Preservation Board. So with that I will turn it over, if it's OK Mr. Mayor, we'll turn it over to Commissioner Lago and then back to you.

Commissioner Lago: Mayor, I'll be brief. Thank you Craig for your eloquent explanation. The reason why I put this as a discussion item was just to simply make everyone aware that the resident who lives adjacent to this property that is up for demolition, contacted every one of us and I think several of you got back with her, and one of the items that she mentioned very clearly was that she was not properly noticed and she did not remember receiving that document. After having a thorough discussion with her, I told her listen, my hands are pretty much tied, since I was not on the prevailing side, but I will go to my colleagues and put a discussion item on the Commission, so that you could have a few moments to be heard. I implore you just to give this person, like the Mayor already said he would, just give this person two or three minutes and that way we ensure that all parties have been heard and if our decision continues to go in the same direction, I have no issues with it at all. I just want to make sure that the resident has the necessary due process and the ability to speak their mind as they are the adjacent neighbor directly to the property that will be demolished.

City Attorney Leen: Now regarding notice, I just want to be clear what the City's position is, and you'll hear from their counsel if they have a different position they can tell you. On a rehearing there are really only three issues that can be raised, those are the three issues that a court would consider if the matter is appealed to them, its what's called a writ of certiorari. The three prongs are one, whatever action the Commission took was it supported by competent substantial evidence - so was there evidence in the record supporting what you decided? Two, whether due process was followed, that's where notice comes in, which I'll talk about in a second; and three, did the Commission follow the law, the essential requirements of law - did you apply the correct law? I don't think that's in dispute here, you applied the law, the historic preservation law in the Code. Someone could disagree with you, but ultimately it's your decision and you applied the correct law. Now, I'm not telling you that the applicant may not have an issue with it as well, we'll hear from them in a second. The other thing I wanted to say though was, we did look into the notice issue, and I want you to know the City's position; the Code indicates that for an appeal the only notice that needs to be provided is newspaper publication, and I've checked with the

Clerk and there was newspaper publication. It's my understanding in addition to that, that we also did mailings, Mr. Clerk can you confirm that?

City Clerk Foeman: Yes, we did.

City Attorney Leen: And it's my understanding that the address of the neighbor who is complaining was on the list where the mailers were sent. Now, I believe that she is disputing whether she received that or not, and you'll hear from them in a second, but I just wanted you to know that. From the City's perspective, we believe that we complied with the due process provisions.

Commissioner Slesnick: And there was a sign posted?- there was a sign on the property?

City Attorney Leen: For the appeal?- for the appeal?

Commissioner Slesnick: No, no, for the hearing.

City Attorney Leen: For the initial hearing before the Historic Preservation Board, Dona Spain could you come up, Madam Manager if that's OK?

Mayor Cason: And is the neighbor going to speak within the five minutes of...?

City Attorney Leen: Both sides five minutes total, that's it.

Mayor Cason: Whoever they want to speak.

City Attorney Leen: Yes.

Historic Preservation Officer Spain: For the designation we post the property, and we actually take a photograph of that posting to verify that it was posted, and we send out notices to 1,000 feet radius and we put it in the newspaper.

Mayor Cason: How far in advance of the hearing is the notice put out?

Historic Preservation Officer Spain: The requirement is ten days, is that right?- I believe its ten days.

Commissioner Lago: Dona, if I may. When I met with the resident, I think Dona brought out the addresses, I think I'm not sure if it was you that brought the addresses in reference that were mailed out.

Historic Preservation Officer Spain: Yes.

Commissioner Lago:...and her address was on the list, but the resident states that she didn't receive that notification, even though as what our City Attorney states, were only mandated to put it in the newspaper, and like usual the City of Coral Gables on all accounts goes far above and beyond what is the minimum standard, and this being the case; we mailed it, we put it in the newspaper, posted it, put it in City Hall.

City Attorney Leen: I don't want there be confusion.

Historic Preservation Officer Spain: There are two things here. There is a designation, which is posted and the neighbors are sent notices, and is put in the newspaper for the appeal. I think the only requirement is to put it in the newspaper, but the City Clerk in fact sent it out. There is not a requirement to post the property...is that right?

City Attorney Leen: The party moving for rehearing, Mr. Gibbs.

Commissioner Lago: Thank you Dona.

Mayor Cason: Mr. Gibbs, however, you want your five minutes.

Mr. Gibbs: Thank you.

City Attorney Leen: Before you begin, I want to be perfectly clear; this does not set any precedent. The Mayor is granting you this time as a matter of discretion at the request of Commissioner Lago, because he put this item on the agenda.

Mr. Gibbs: And that is understood; and Commissioner Lago thank you very much...

Commissioner Lago: Don't thank me, thank the Commission.

Mr. Gibbs: And thank you all for having me able to speak. I'm representing Diana Buchard who lives at 219 Ridgewood Road, which is next door to the property. I'd like four minutes and then I'll take a minute for rebuttal. My client would like you to reconsider the granting of the appeal of the historic designation of the property at 229 Ridgewood Road, and that's the meeting you

had on August 23rd, where you essentially denied the historic preservation designation. Our position is that the applicant has a burden to present competent substantial evidence that the Historic Preservation Board incorrectly applied the designation criteria when it voted to designate the property, and that is really important. The two designation criteria that the Historic Preservation Board relied on when they make the designation were that the house portrays an environment in the era of history characterized by one of more distinctive architectural styles; and number two, that it embodies those distinguishing characteristics of an architectural style period, or method of construction. It was clear that the Board found that met both of them, they found there was competent substantial evidence that both of these were met, and according to the record of the Historic Preservation Board and the City Commission, the applicant focused on its argument that the City Commission meeting on August 23rd, on houses alleged failure to have met all elements of what is called the minimal traditional building, which was the building style that was being discussed as set forth in the Janus Report in 2000 and 2004. That the applicant claims that because the house did not include those attributes, it does not meet the required criteria and you all agreed, but the criteria, and this is very important, does not require that all elements must be included to warrant the historic designation, and no evidence was placed in the record that shows this house does not portray the environment in an era characterized by one or more architectural styles. It was made very clear and nobody disagreed with the fact that this was a style that was apparent between the Depression and the 1950's; nobody disputed that, which is the first criteria. The second criteria required that the house embodied distinguishing characteristics of an architectural style, period method, or construction. Now the applicant interprets this, and this is where it gets down to the competent substantial evidence, the applicant interprets this to require that his particular definition of what a distinguishing characteristic is, is the operative definition, and the applicant's definition requires that all attributes of a minimal traditional building must be included to warrant compliance with the provision, and that is in the Janus Report, it has eight characteristics and of those eight characteristics Mr. Guilford spoke about one, which was the detailing. He didn't deal with any of the other ones, he only dealt with detailing and said, because it didn't meet every single one of these, it only met seven of the eight, that meant that this should not be approved; and an example of the misapplication in all this was, when the criteria the applicant statement that those, the house is not a Tudor or Colonial, which was a style; and in the Janis Report it specifically says that those are, it says here that minimal traditional shall still reflect the cognition of influence of some earlier traditional house styles, such as Tudor or Colonial. It doesn't require it to be Tudor or Colonial, and that is a distinct era, and not all minimal traditional houses have all the sited characteristics, and this was placed on as evidence and Mr. Leen is going to say I can't really bring this up, I'm going to, and that is the Historic Preservation Board did, sorry Mr. Leen, the Historic Preservation Board did consider this issue and did make a determination based on that issue. I understand it can be any competent substantial evidence in the record; my position is there is none on this. So because there is no competent substantial evidence in the record that the Historic Preservation Board incorrectly

applied these two criteria, and therefore there is no competent substantial evidence that supports the approval on August 23rd, and because of that my client is merely requesting that a member of the Commission who was not on the prevailing side make a motion to reconsider the approval of the appeal, and set the reconsideration for a quasi-judicial hearing at your first meeting in October. The bottom line here is, is that there is no competent substantial in the record, that is does not meet the requirements and that was stated by the Historic Preservation Officer at your meeting. Thank you.

Mayor Cason: Zeke.

Mr. Guilford: Good morning Mr. Mayor, Commissioners, for the record Zeke Guilford, offices at 400 University Drive, representing Frederic Kent, the owner of property at 229 Ridgewood Road. And I just want to point out that Tucker only has five seconds left of his five minutes, be quick on his rebuttal. Mr. Mayor, Commissioners, this is about notice, and the item on your agenda talks about notice. The fact of the matter is there were two hearings; one before the Historic Preservation Board that no one got up and spoke at. You also had the City Commission that your City Attorney said was properly noticed, you have your City Clerk saying that notices were sent. There is no question for me, appears on the role of people obtaining a mailed notice, which is not even required by your Code. So she had her bite at the apple. What Mr. Gibbs did here today was basically made the argument that should have occurred at Historic Preservation Board and at the City Commission and not here before you today. This is nothing more than a second bite at the apple is what he's trying to do. The real question is, we received, the broker received an e-mail after the City Commission hearing where the neighbor says, I don't want a spec house next to me. The truth of the matter is, whether you designate this house as historic or you overruled it and as you did, and set it to be demolished, the truth of the matter is there is going to be a spec house here. The record showed, and was put into the record five contracts all were with builders. You have a less than a 2,000 square foot house on a 16,000 square foot lot. Something is going to be built there. So I ask you to uphold your decision, it's the correct decision, there were hundreds of pages of documents that were submitted, and I ask that that is more than competent substantial evidence and we ask that you uphold your findings of the last Commission meeting. Thank you.

Commissioner Lago: Thank you Zeke.

Mr. Gibbs: I want to make sure I have my five seconds. I understand.

Mayor Cason: I'll give you fifteen seconds.

Mr. Gibbs: Pardon me.

Mayor Cason: I'll give you fifteen seconds.

Mr. Gibbs: Pardon me.

Mayor Cason: I'll give you fifteen seconds.

Mr. Gibbs: Oh, bless you. Thank you very much. Two issues: there is no requirement that a request for reconsideration be limited to what is on the agenda and that's in 272; and today you heard absolutely no argument from their side that the evidence was competent and substantial. Thank you very much.

Mayor Cason: Zeke anything you want to say? Alright. So what needs to occur either Pat Keon, Commissioner Slesnick, I can't make a motion.

City Attorney Leen: You would have to turn over the gavel.

Mayor Cason: Vice Mayor Quesada is not here.

City Attorney Leen: You could make the motion, but you have to turn over the gavel to do that.

Mayor Cason: And I'm never turning over my gavel.

[Laughter]

Mayor Cason: He's not here; I would if he were here. So the question is, if someone wants to make a motion and there is a second, it can be reconsidered, if not, the matter dies. So does anyone want to make a motion to reconsider? If not, the matter dies. Thank you.

Commissioner Keon: I'm not going to make a motion to reconsider, but I would like to direct our Building Department to – I have grave concerns that I have talked about often from this dais about spec homes in our City, and the amendments to our Code that need to be made in order to address what we are seeing being built as spec homes in our City; and I know that there is a committee that is working with Ramon at this time to make recommendations with regard to that. I would ask that when any plans come in for this lot or for this home that we ensure that there is a tree survey, that we ensure that if there are trees on that site, specimen trees on that site that they are noted, that the 25 foot radius around them that is required to protect them is set up and is honored with any plans that come on that site. This whole issue of carports is addressed when there are no garages. I really strongly feel now that we are seeing lots of homes being built with

carports instead of garages, because the carports don't count toward the FAR, and it gives them an opportunity and a platform to build on, on a second level. I would like a writer to go with every single property that does that, that knows that their FAR is maximized and these garages cannot be closed in ever, ever, because I think that that's what's going to happen. I have a lot of concerns about this issue and I really think the primary concern that was raised about it was the issue of the spec house as opposed to the historical value of this home. So, I'm asking that we would please pay particular note to what is being built there, and not allow what we have seen happen in the past happen at that site.

City Manager Swanson-Rivenbark: Mr. Mayor if I can. Assistant City Manager Iglesias, do we have the capability of putting on this address a file so that when it comes through the permitting process the conditions that Commissioner Keon has just elaborated are immediately included so that the reviewers, whether it's through DRC, or whatever that process is, we quickly in advance of doing any type reviews to make sure that we honor the conditions that have just been discussed.

Assistant City Manager Iglesias: Yes Madam Manager, we can flag the site.

Commissioner Keon: Thank you.

Assistant City Manager Iglesias: Commissioner, we'll do so.

Commissioner Keon: Thank you.

City Attorney Leen: The other thing is that at the Board of Architects that's typically when the plan itself is reviewed. We now have this whole new process where we have a quasi-judicial proceeding before a Special Master, if necessary, if there is any dispute; we have a dispute resolution process. All that is available just so the Commission knows.

City Manager Swanson-Rivenbark: And we'll pass it back the zoning review as a part of that, a knowledgeable zoning person at the table.

Commissioner Keon: And the tree survey, the specimen tree survey has to be on the site plan as its reviewed by the Board of Architects, is that correct?

Assistant City Manager Iglesias: We will always review the trees on the site, especially specimen trees, so all those will be reviewed and make sure...

Commissioner Keon: And the distance it needs to be built from those trees to maintain and protect those trees needs to be honored.

Assistant City Manager Iglesias: We need to check the compatibility of the development with the existing trees.

Commissioner Keon: OK. Thank you.

[End: 12:13:40 p.m.]