

**City of Coral Gables City Commission Meeting
Agenda Item F-2
December 8, 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
Planning and Zoning Director, Ramon Trias
Assistant Director Development Services, Charles Wu
Assistant City Manager, Carmen Olazabal**

Public Speaker(s)

George Navarro, Representing the Applicant

Agenda Item F-2 [Start: 10:13:12 a.m.]

Board of Architects Appeal – Application No. AB-15-08-5009, in connection with the subject property located at 625 Almeria Avenue, Coral Gables, Florida 33146, legally described as Coral Gables Biltmore Sec. PB 20-28, Lots 29 and 30 of BLK 13 or 19565-2906 03/2001 1.

Dr. Richard J. Polo, applicant, has filed an appeal to the Coral Gables City Commission from a decision of the Board of Architects at a regularly scheduled meeting on September 24, 2015, wherein the Board of Architects approved the architectural design for a group of four (4) townhouses at 625 Almeria Avenue.

City Attorney Leen: So Mr. Mayor, Item F-2 is a Board of Architects Appeal, may I proceed with this at this time?

Mayor Cason: Yes.

City Attorney Leen: It's a Board of Architects Appeal, Application No. AB-15-08-5009, in connection with the subject property located at 625 Almeria Avenue, Coral Gables, Florida 33146, legally described as Coral Gables Biltmore Sec. PB 20-28, Lots 29 and 30 of BLK 13 or 19565-2906 03/2001 1. This is Dr. Richard J. Polo, applicant, has filed an appeal to the Coral Gables City Commission from a decision of the Board of Architects at a regularly scheduled meeting on September 24, 2015, wherein the Board of Architects approved the architectural design for a group of four (4) townhouses at 625 Almeria Avenue. The matter is before you with a recommendation from the City Attorney's Office to remand the matter to the Board of Architects for a quasi-judicial hearing of the full Board. You can hear from both parties, just briefly. What happened in this particular case is this design went before a panel of the Board of Architects and it was deferred. There was a request for it to be heard by the full Board, which under the rules of procedure that currently exist, the full Board can hear it as a panel and they did hear it as a panel, and they recommended approval. They actually approved it. It was an appeal and the matter is now before you today. The issue is that there is not much of a record before you today, and the problem is that typically at some point during the process you need to hold a quasi-judicial hearing where notice is given, parties attend, testimony is taken, evidence is placed in the record, and then a decision is made for you to review. That quasi-judicial hearing could happen in front of the Board of Architects, which is the current procedure or it could happen before the City Commission; and there is an item before you today, one of the ordinances, which would move the quasi-judicial hearing from the Board of Architects to the City Commission, but that is not presently the law in Coral Gables. So what was missed here, in my opinion, was a quasi-judicial hearing. So, I'm recommending to you that you remand the matter to the Board of Architects to hold the quasi-judicial hearing and then the matter will come back before you to complete the appeal.

Mayor Cason: I agree with you, because if you look through this there is no material. I have not a clue what this is about, there is no transcript, there is nothing, and generally we'd like to take a close look at these sorts of things, particularly if they involve trees, which I gather there is some consideration of trees. So, I think it's better to go back to the Board and have the hearing and then come back to us if necessary, I don't know how my colleagues think.

Commissioner Keon: When I saw it too, I couldn't figure out what we were supposed to do with this, but after looking at it, I had similar concerns about this entire application. I don't know how it got through DRC, or how it got through anything without...we have ordinances in place to

protect specimen trees, to protect native trees, there is no commentary on this at all. I don't know how that happened. I think our townhouse ordinance as far as Mediterranean design and I don't understand how that happened. I don't understand a lot of things about this, so I'd like not only to remand it, but I'd also like the Manager to look into just the whole process from its inception as to how to got to where it got without...it doesn't seem to be much information here. I don't know how it got to where it got.

Mayor Cason: Anybody else on the dais has an opinion?

Commissioner Slesnick: I just agree with Pat. I don't know how it even got this far.

Mayor Cason: You all want to say anything on this. I think we are going to vote on remanding.

Mr. George Navarro: That's fine. I just want to put some comments on the record about the application. Good morning, George Navarro, offices at 333 S.E. 2nd Avenue. I'd like to say that the project before you is an as-of-right project. We are not asking for any variances or any kind of special approvals. We have followed the process as required by the Code, we followed for DRC, it was publicly noticed by posting the property, went through a DRC meeting, no one had shown up. We proceeded to address staff comments. We went through two noticed Board of Architects meetings before the full Board, so you had all the seven design professionals that the City has entrusted to review these types of projects. They recommended or they approved the project 6 to 1, once again, no one had shown up. We didn't have any knowledge of any kinds of objections of issues with the application; and actually, unfortunately the first time I actually found out about this was some time last week. I saw the appeal that was submitted, it wasn't really detailed as to what the objections are, so we are still uncertain as to what the issues are, but I can assure you that we followed the process and we've tried to do everything by the book. Regarding the tree permit, we haven't....it yet, we are still working...

Mayor Cason: Please don't interrupt.

Mr. Navarro:...on the mitigation plans so that's still something that we are working toward and we understand from staff this morning that there are some concerns about some of the specimen trees, so we are going to go back to the drawing board and make sure if it's the design.

Commissioner Keon: It was my understanding before, and I can ask Ramon, before it would go to the Board of Architects and then it would have to go through those other...and those comments and those issues need to be addressed before it gets to the Board of Architects. We also ask that the specimen trees and those things be outlined on the plans that are submitted to the Board of Architects, so everyone is very aware of the issue with trees, because of the significance to them in our community.

Commissioner Lago: I remember that we had discussed, I think this was prior to Commissioner Slesnick being on the Commission, but it was the issue of the lot split and we at that moment there were so many specimen trees that weren't identified that we as a Commission requested to make sure that that was put on the plans and detailed before it got to BOA.

Commissioner Keon: Right. So it seemed that we may have missed that too.

Mr. Trias: Mayor, if I could explain. This situation is very rare and its before you because there is an appeal to the aesthetic review that the Board of Architects creates. So that's why it may appear a little bit strange. However, I would say that the project went to DRC and had a 30 page memo with comments, exactly the same comments that you are wondering about, those were in writing. In addition, there was verbal comments produced by different members of the staff. The whole discussion of the aesthetics of the Mediterranean design, etc., as you know, has been quite an issue of a lot of controversy for many reasons. So that was also a part of that conversation. So there has been an extensive conversation. What happens is that the Board of Architects reviews the aesthetics and the aesthetics only. Now that doesn't mean that if you get approved by the Board of Architects you get a building permit, in fact you don't. In fact, as of today, we got an e-mail from Brook explaining that he will not issue a tree removal permit for one of the trees, at least one of the trees. So all that is part of the process, its just that typically you don't get to see it because this usually continues, so that's why it's a little bit unusual and that is why the City Attorney's recommendation of going back to the Board of Architects makes so much sense, because they are the ones who typically see this kind of stuff and are able to put it in context.

Commissioner Lago: Let me ask you just a quick question. I know that you mentioned before this is a very rare occurrence, in the two years that I've been here I haven't seen this happen. I became aware of this because of Ms. Anderson who was here before and she left, sent an e-mail to the Commission in reference to the issue with the trees. I along with my colleagues, not together, I want to make that clear, visited 625 Almeria to see the trees. I spoke to the applicant and I made it very clear of the concern that I had in reference to the specimen trees that are on site. I know this Commission also agrees that it makes absolutely no sense, its ludicrous to cut those trees, that's an investment in the property itself and in our City. So somehow someway, and I also attained Brook's e-mail this morning that he sent out, somehow someway this slipped through the cracks. We are not here to blame anybody, I just want to make sure that moving forward we correct this issue in reference to the trees.

Mr. Trias: And what I would say is that most applicants typically deal with issues like that through redesign prior to getting to this point. In some very rare cases the applicant chooses not to do that. Now that doesn't mean that the applicant gets a building permit.

Commissioner Lago: Well let me ask you a quick question Ramon and this goes back to the lot split that we mentioned, that we approved and it had all those specimen trees, I forgot the location exactly.

Commissioner Keon: On Granada.

Commissioner Lago: On Granada. Why don't we request from staff through the Manager that before this even gets to DRC that a tree survey comes with every project or something like that.

Mayor Cason: I think we did that. It said that specimen trees would be....

Commissioner Lago: Something – so that we can make sure, I think Charles may want to say something, so that we can make sure that this type of situation doesn't happen again, because it's a convenience for both parties and the last thing we want is for someone to think that they have the right to cut a beautiful tree down and you find out about the tree being cut down too late before you can save the issue.

Mr. Ramon: And the other issue is, I really object to the use of term "by-right" in practically any context and when applicants say that to you, they can say whatever they want, but that is not accurate, there is no such thing as a "by-right" project when you have to go through all of these different levels of review, including the trees, including the aesthetics, including some issues with setbacks that are unique to MFSA.

Commissioner Lago: But in this case the only issue remaining for approval was just the period where someone could request before the Commission a review of the project, correct?- that was the only remaining issue, correct?- they didn't have to go back to P&Z, they didn't have to go to BOA.

Mr. Trias: It needs to get zoning review and it has a couple of outstanding issues with zoning that had not been resolved yet before you get a building permit. So there are several steps that take place after the Board of Architects reviews the aesthetics.

Commissioner Lago: Well were the trees in question was that an issue that needed to be dealt with?

Mr. Trias: Yes.

Commissioner Lago: I'm trying to get my hands around it.

Mayor Cason: Well it's very unclear because this says an appeal, an appeal of what? I think it's aesthetics.

Mr. Trias: Right.

Mayor Cason: We only have about a few minutes because we have a 10:30 time certain, but if you would...

Dr. Richard Polo: Sir, I'm the one who wrote the appeal.

Mayor Cason: Right. I understand.

Dr. Polo: I'm Dr. Richard J. Polo and I live at 647 Almeria, not far, as a matter of fact almost next door to this particular project. I obtained the plans for the project and I have to go through very difficult circumstances in order to do that; and the project is just absolutely not in keeping with the rest of the properties in the area. The trees would be an enormous loss. There are four cars for each of the many apartments in there. There will be no place for those cars to park once they exit and it will make a lot, it would be dangerous for children to play in the street. It would change the character of the area, it would be dangerous to the children. The rights of a developer are trumped by the rights of the people who live there. A developer can't come in and just completely change the character of the place that the building is going to be put up in, and that's why I objected to this particular project and the reason why I filed the appeal.

Mayor Cason: OK – appreciate that. So we have your recommendation, do we have a motion to remand?

Mr. Navarro: If I just may, I'd like to just procedurally object to take any new testimony on this item here today, that's just a procedural matter. I just want to put that on the record.

Mayor Cason: It needs to go back to the Board of Architects and the Board of Architects is only looking at the aesthetics, if I'm not mistaken, the trees are a separate issue.

Dr. Polo: I have about 40 people in the area that sent me e-mails and messages that support what I just said.

City Manager Swanson-Rivenbark: Excuse me Mr. Mayor. So Dr. Polo what the City Attorney is saying is, this project needs to go back to the Board of Architects. I will ask staff to make sure that you are notified and that I am notified, so together we can watch those presentations, we can make our comments regarding the project and then depending on how the Board of Architects recommends, there may or may not be an appeal to follow.

City Attorney Leen: Well the Development Director, pardon me, the Director of Development Services has asked that you actually set a time certain for the Commission Meeting for when it comes back. Its your choice. You can remand and then leave it to the party to determine if they want to appeal again, although I have to say, I don't think it would be fair to make the applicant file another filing fee, since he's already paid approximately \$1,000 to appeal this time. The other thing you could do is you could ask for the fact-finding by the Board of Architects and

instruct that the matter come back before you at a time certain January 26th, you have that choice. You can just send it back, and have a hearing, and have it be appealed again, without the filing fee for the applicant, or you can, pardon me, for the appellant since he's already appealed and paid the money, or you can have the matter come back to you.

Mayor Cason: Well if it comes back, I don't think you should have to pay again, because we are basically sending it back, so I think that's a given.

City Attorney Leen: Its up to you.

Mayor Cason: We don't know when it goes back to the Board of Architects what they are going to say, so if it does come back, there won't be a charge and we'll make sure that everybody knows and put it on a time certain, that's fine.

Mr. Navarro: That would be great. And Mr. Mayor the only thing that we ask is that it be handled expeditiously. I believe the appeal was filed in October, unfortunately they didn't find out until recently about it, but we are here to move the project forward. I haven't had a chance to meet with the neighbors, so we hope between now and the time that we do go to this quasi-judicial hearing that we hopefully have a chance to speak beforehand. So we would have no objections.

Commissioner Lago: Madam City Manager, when is the next BOA meeting?

City Manager Swanson-Rivenbark: They meet every Thursday, but because its quasi-judicial, I'm sure that there will be certain noticing requirements. We understand the desire to have it done expeditiously, but I think that we must make sure that the noticing, the advising to the neighbors is properly done.

Commissioner Lago: I ask that question and I agree with you, but I just want to make sure that during the holiday season, there are a lot of people who are out of town, so you may not have a quorum, so it all depends.

Mr. Wu: For the record, Charles Wu, Assistant Director. We are missing two BOA meetings because the holidays fall on a Thursday, and we have to pick up the workload. We request it be continued to January 26th to allow the BOA to catch up on their workload and to schedule a special quasi-judicial meeting just for this case. So I'll ask you for a time certain for January 26th, to hear it again, if its not resolved.

City Attorney Leen: I think Mr. Mayor what he's asking is that you, even if they don't appeal that you at least set a time for the Commission to rehear this. If there is an appeal, so that they don't have to re-notice, you can do that, if you essentially continue this.

Mayor Cason: That's fine. Let's vote on the remanding, if it comes back on the 26th time certain. Do we have a motion?

Commissioner Keon: I'll make the motion.

Dr. Polo: I requested that my comments be a matter of record, will that be the case based on my comments here?

City Attorney Leen: You will need to come to the Board of Architects and testify.

Dr. Polo: No, no. I meant what I said here this morning.

City Attorney Leen: Yes, its in the record. Yes sir.

Mayor Cason: Commissioner Keon made the motion, second?

Commissioner Slesnick: Second.

Mayor Cason: Commissioner Slesnick seconds. City Clerk

Commissioner Slesnick: Yes

Commissioner Keon: Yes

Commissioner Lago: Yes

Vice Mayor Quesada: Yes

Mayor Cason: Yes

(Vote: 5-0)

Mayor Cason: Thank you very much.

Commissioner Keon: Can I just ask one question of Ramon. I know we have a 10:30 (a.m.). Ramon, if the trees are surveyed and if there is a question about the removal of a tree, and you happen to have a building where that is, how can it go to the Board of Architects where a building is built on top of where a tree can't be removed? Why wouldn't that have to be addressed before it could come to the Board of Architects for design approval, because the design would have to change? Why would that happen?

Mr. Trias: It is addressed at DRC prior to the Board of Architects in the form of a comment to the applicant; the applicant needs to design the project according to those comments. In some rare cases...

Commissioner Keon: OK. So this was an anomaly?

Mr. Trias: Yes.

Commissioner Keon: It should have been redesigned before. OK. Thank you.

Mr. Trias: Yes, typically that's what happened.

Commissioner Keon: OK.

Mr. Navarro: With this project – so we submitted a tree mitigation plan and a tree survey and a landscape plan in connection with the DRC. We went to the Board of Architects based on that plan as we worked with staff and there is a period between preliminary Board approval and final Board approval, where if there is an issue with the tree permit, which is a separate process, that comes up, then you do get remanded back to the preliminary...

Commissioner Keon: Were yours preliminary approval?

Mr. Navarro: Correct.

Commissioner Keon: This is only a preliminary approval, it is not a final approval.

Mr. Navarro: Correct. It's a preliminary approval and we'll come back for final approval.

Commissioner Keon: It didn't seem to indicate that on the record either. OK. Thank you.

Mayor Cason: Carmen, anything you want to say?

Assistant City Manager Olazabal: Yes. I'll try to propose an alternate way of explaining it. There is a little bit of the chicken and the egg problem...

Commissioner Keon: I understand.

Assistant City Manager Olazabal:...where the DRC provides kind of the general comments regarding the project. For example, if they are proposing to build within the setback, they first go to the Board of Architects to see if the aesthetics are fine, and then they can go to the Board of Adjustments to ask for the appeal, but they need to go to the Board of Architects first before they ask for the appeal.

Commissioner Keon: For preliminary.

Assistant City Manager Olazabal: So if they continue to propose that they want to remove the tree that doesn't mean that it will be approved, but there is a process for it where they would apply for the permit and it may be denied, it could be appealed, so it's just the chicken and the egg while you are still working all those elements.

Commissioner Keon: OK.

Assistant City Manager Olazabal: They didn't decide to go with the recommendation of staff and incorporate that at this time because maybe it turns into an appeal or go unmitigated or...

Commissioner Keon: So its early in the process. OK. Thank you.

Mayor Cason: I think its clear. Thank you very much.

Commissioner Lago: Thank you.

[End: 10:32:32 a.m.]