

**City of Coral Gables City Commission Meeting
Agenda Item I-2
January 12, 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**

Public Speaker(s)

**Frances Guasch-De La Guardia
Edwina Prime**

Agenda Item I-2 [11:29:11 a.m.]

Status update regarding City Commission's request to the Miami-Dade County Mayor and Board of County Commissioners to resolve the lawsuit between Miami-Dade County and the Lola B. Walker Homeowner's Association.

Mayor Cason: I-4.

City Attorney Leen: Mr. Mayor, Item I-2...

Mayor Cason: I -- excuse me.

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City Attorney Leen: It's going to go I-3, I-2, I-1.

Mayor Cason: Okay, I-2.

City Attorney Leen: If you're okay with that, Mr. Mayor. Item I-2 -- and I would ask...

Cori Lopez Castro: Thank you.

City Attorney Leen: Ms. Guasch- De La Guardia...

Mayor Cason: Thank you.

City Attorney Leen: Cori, could you stay for item I-1 or do you have to leave?

Ms. Lopez Castro: No, I can stay.

City Attorney Leen: Okay. Item I-2 is a status update regarding City Commission's request to the Miami-Dade County Mayor and Board of County Commissioners to resolve the lawsuit between Miami-Dade County and the Lola B. Walker Homeowner's Association/Foundation. There's actually a Lola B. Walker Homeowner's Association, which Ms. Prime is the president of, and my understanding is there is a Lola B. Walker Homeowner's Foundation, which is the party in this case, which you're the secretary of. So, the -- and thank you, Ms. Prime, for being here. We also have Frances Guasch-De La Guardia, who is our outside counsel -- special counsel on this matter. She's involved with this matter because, one, she's an excellent appellate attorney, but also because -- and you know, it's possible this case could eventually be appealed, and we may have to appear as an amicus in the appeal. But also because -- and a good litigator as well, but in addition, Holland & Knight has -- does our real estate work, and so they've been involved with this. They've looked at the case for me, and so, she's with Holland & Knight so

we're very happy to have her here, and she's going to talk to you a little bit about what we've done with the lawsuit itself. But, what I thought would be most useful was to briefly go through the resolution, which you passed at the last meeting, and tell you what the status of each of the sections are. So, first, you authorized the City Manager and myself to take any and all actions necessary to facilitate resolution of the dispute between Miami-Dade County and the Lola B. Walker Homeowner's Foundation, including invocation of dispute resolution processes and through expediting any further reviews of the project. So, first, on the dispute resolution process, which is more my item, as the city attorney, we did offer to pay for a mediation for all of the parties to resolve this matter. In fact, we even suggested George Knox, who's a very well-known attorney and was the former City Attorney of Miami, an extremely well-respected person and an excellent mediator. At this time, we have not received a response from the County as to that request. We have received a response from all the other parties, which is that they would agree to the mediation and they appreciated that the City was willing to pay for it. The County has asked for additional time. We made this request several weeks ago, and I believe last week they asked for two additional -- well, a few additional weeks to consider it.

Frances Guasch-De La Guardia: A few additional weeks.

City Attorney Leen: I, in a respectful way, objected and let them know that it seems like a long time to agree to a mediation. Ultimately, we hope that the County will agree to the mediation. I let them know that the City Commission would like the County to agree to the mediation. Obviously, no one has to enter into an agreement at a mediation, but the idea is to try in good faith to work the matter out. Now, the second part of that is through expediting any further reviews of the project. And I would like to thank the City Manager and City staff. The matter was expedited through the Board of Architects, and that has now been approved for final approval by the Board of Architects. The community center, which is what I'm talking about, is now going through the permitting process. I'm not sure if the application has been submitted yet. Has it? Yes, Mr. Wu says it has. They are expediting it through the permitting process. Of course, they're going to do all appropriate permitting, but it's going to receive priority based on

this Commission's direction. So, I'd just like to thank City staff. That has been excellent. Section three, that the City Attorney is directed to seek to appear in the litigation as amicus curiae. I'm going to come back to that so our special counsel can speak to it, but we have appeared in the case, and we've moved to intervene as an amicus curiae or as a party, and we'll explain that a little bit when the special counsel speaks. Second four is to provide a copy of the resolution to the Mayor, the Chair and each member of the Board of County Commissioners. That has been done. Section five is that the City respectfully requests a personal appearance before the Board of County Commissioners to present the City's position. I have made four requests to the Chair of the County Commission to place us on the agenda. Just so you know, under the Citizen's Bill of Rights, the City and its individual officials -- and I've mentioned it -- and specifically Commissioner Lago and Commissioner Keon, who requested to speak before the Commission, as well as the City Manager and myself -- have an absolute right to appear before the County Commission to speak on any matter within their jurisdiction. And I did receive -- and I would like to thank the Chair -- a response today that they are still considering the matter. That's what it says. It's under consideration. So, I do appreciate we got a written response today. I haven't had one before today. But, I do believe -- and I want to come to you for your guidance as to how to address that -- we have a legal right to appear before the County Commission and I think that the County Commission will want to hear from you because this is an important item that affects both of the government entities. And so, at the end of this, I would like to get your guidance on how to proceed with that. I do think that at this point after making four requests, it may be worthwhile to assert our rights, but that's ultimately up to you. Lastly, the other -- that last thing that we've done is we have sought to appear in the litigation as amicus curiae and as a party. I mentioned I would come back to that. I forwarded to each of you the motion that we filed. I thought it was very well done. I'd like to ask special counsel to speak about it.

Ms. Guasch-De La Guardia: Thank you to the City Attorney. Good morning, Commissioners. And as the City Attorney mentioned, Frances De La Guardia, from Holland & Knight, and I am also proud to be special counsel to the City and represent the City's interest in this matter and the

Bahamian Village lawsuit. What I'd like to do is give you a brief background -- and I always hesitate when I say brief because most attorneys aren't brief, but I will try to be brief starting with the lawsuit and where we're at in the lawsuit right now. July of 2015, the Bahamian Village held a declaratory action, which basically is asking the judge to determine their rights under the property, specifically whether the County has a right of reverter, which is apparently in a deed or not in a deed in which they're asking the judge to make a determination on. They're also asking for any other equitable relief that would prevent the County from coming in and retaking the parcel of land that was deeded to Lola B. Walker, who later deeded it to Bahamian Village. The County answered and, you know, usual answer, denied most of the complaints, except for the fact that there's a deed. They also cross-claimed or third-party claimed the Lola B. Walker Foundation, which was not a party to the lawsuit and no longer has an interest (INAUDIBLE) claimed the property to the Bahamian Village, LLC. The parties that represent the Lola -- well, the parties that represent Bahamian Village have also entered a special appearance to represent the Lola B. Walker and have been moved to dismiss. So, we have a pending motion to dismiss them as not being a proper party to the action, A, because they don't have an interest, and in addition, if you file a third-party complaint, you have to allege certain facts and certain legal causes of action that they have not. That has not been set for hearing. I did have a e-mail correspondence with Attorney John Palenberg (phonetic), who is representing the Lola B. Walker special appearance and Bahamian Village and he advised me once that's set for hearing, we will be notified. And as the City Attorney mentioned, we filed our notice of appearance. Therefore, we will be getting any pleadings and notices of everything coming up on that lawsuit. With respect to the City, as the City Attorney mentioned, we filed a motion to appear as amicus, or in the alternative, to appear as an intervener in the lawsuit. Pursuant to the resolution and the direction of this Commission, we first are pursuing to seek to appear as amicus, which would be not a party to the lawsuit. We would be involved in the lawsuit and be aware of what was going on and be able to inform the judge and provide our perspective, you know, with respect to the ordinances and all the covenants that run with the land and the City's interest. As an intervener, which we are asking to do an alternative basis, we would have a little bit more rights. We would be -- an intervener is more like a party, so we would be a party to the lawsuit, and we would have

a little bit more of a stake in the -- a stakeholder claim. There are certain limitations to that, but not many; less of a party, but more than an amicus. I believe -- and as I've told the City Attorney, that under either of those, if we're granted the right to come in, I think we can preserve the City's interest and represent the City's interest in the parcel of land. With respect to the mediation, we mentioned in the motion, which was copies to all the Commission, we mentioned that we have offered mediation and that all the parties have accepted, except we have not received a response from the County. And as the City Attorney pointed out, we just recently received -- I think it was last week, maybe Thursday -- that they needed a couple more weeks through the holidays to consider the mediation request. In a nutshell, the court require -- the court will be aware, pursuant to the motion, of the City's interest, the fact that we've reached out to the County in order to provide a mediation to the County and to all the parties at our charge and they will know the status of what the City's interests are. Additionally, we have requested from the judge, as of yesterday, by letter, which is the protocol required by this particular judge, that we file a letter with him requesting a special set hearing to argue our motion. And the City Attorney and I will both be present at that hearing when it's set. We're hoping to hear back from the judge sometime this week with what potential dates are available so we can get it on the calendar as soon as possible.

City Attorney Leen: And just to -- before I turn it back over to the Commission, just to add two other points. We would like to thank Commissioner Suarez's office. I know that Commissioner Suarez came here last time and he mentioned to you that he was limited to some extent of what he could say because he has not been -- he was not designated as the representative of the County Commission to negotiate on this matter. It's my understanding that he has asked the County Attorney's Office to prepare a resolution appointing him the designee of the County Commission. That may be -- I don't know this; I'm just speculating, but that may be part of the reason why there's a delay in putting us on the agenda because they may want to do that in conjunction. I know that -- I remember that he had asked -- my understanding is that he had asked that that be heard at the same time that we speak. So, you know, there may be a legitimate reason for why it's taking more time. What I would like from the County, though, and what I

think that we should receive is, at the very least, an assurance that we will be put on the agenda when that comes up, and that that will be relatively soon so that we can still have an impact on this matter and so this community center can be built. And I'd like to say one other thing. Frances and I went over to Leona Cooper's (phonetic) to see her, to tell her what we were doing. And I've never seen someone so appreciative of what the City Commission has done in this case. She wants to see -- if I may say as a matter of personal privilege -- that community center built during her lifetime. It is so important to that community for that to be built, and they are so appreciative of what the City is doing. And I just wanted you to know that because she's not here today. I wanted to pass that message.

Mayor Cason: When is the next County meeting to discuss this? Should we ask to be on a specific -- the agenda of a specific meeting, the next one coming up?

City Attorney Leen: We asked to be put on the January 20 agenda. We have not received a response.

Ms. Guasch-De La Guardia: We have not received a response.

City Attorney Leen: As to that specific request.

Mayor Cason: And our next meeting's on the 28th, right?

City Attorney Leen: Yes.

Mayor Cason: So, we would have time, if it were not on, to look at other options?

Ms. Guasch-De La Guardia: Right.

Mayor Cason: So, what would you like from us now in terms of this?

City Attorney Leen: I would like a vote of support again, and then what I would like to do is go back to the County and let them know that the Commission would like to be placed on the agenda and that, you know, we're asserting our rights under the Bill of Rights. Another thing we've done is we've also sent out some public records requests to find out what HUD's position is. The County has sent us public records requests, and I want to assure you we have been responding on an expedited basis. We've waived certain fees. There is a very large pending request involving -- was it 1,400 emails?

Ms. Guasch-De La Guardia: Yeah, 1,400 emails.

City Attorney Leen: Which would be expensive for us to review, so we've asked them to see if they could narrow their request before we provide them an estimate. But otherwise, we'll provide them the estimate and then they can decide whether or not they want to pay that or not.

Mayor Cason: Alright, so...

City Manager Swanson-Rivenbark: Mr. Mayor, the next meeting is the 26th, not the 28th.

Mayor Cason: Twenty-six.

City Manager Swanson-Rivenbark: And if you want, I'm certain the City Clerk can put it as a placeholder so that we can be sure to have space for the item.

Ms. Guasch-De La Guardia: I think it's also important just to -- I didn't mention in the motion for the amicus, they did not agree. The County did not agree to allow us. Usually with amicus motions, you ask the parties to the lawsuit whether they are in agreement and allow us and usually that holds a lot more with the court if the parties are in agreement. Bahamian Village

agreed, but the County did not agree without providing a reason. They just said they would object to it.

City Attorney Leen: And just so I can say, Mr. Mayor, I didn't understand that because the City does have a planned area development for this parcel and the City has a restrictive covenant, a regulatory restrictive covenant on this parcel. In my view, we have a right to intervene and I'm surprised that the County didn't agree. I think they should have agreed. But regardless, we're putting that all aside because ultimately our goal is to work with the County to resolve this matter. And to the extent that you can reach out to Commissioner -- the County Commissioners -- I do know that Commissioner Sosa's office has indicated that they would support us being put on the agenda and they would put us on the agenda. And I also know Commissioner Suarez's office -- and these are both of our district commissioners -- would also put us on the agenda because this is in his district. He's the one that will be -- he's the main Commissioner that the City is interacting with.

Mayor Cason: Alright, so...

Commissioner Lago: I just...

Mayor Cason: A motion (INAUDIBLE)...

Commissioner Lago: Yeah, I make the motion. I just want to be clear. I spoke to both Commissioner Suarez and Commissioner Sosa, and I explained the gravity and how time sensitive this is, and they're both in incredible support of what's going on at Lola B. Walker. And I also wanted -- and I also explained to them that we're moving forward as a city. I mean, the process in regards to the community center has, I think, received BOA approval -- correct me if I'm wrong.

City Attorney Leen: Yes.

Commissioner Lago: Has received BOA approval...

Commissioner Keon: And it's in permitting.

Commissioner Lago: It's in permitting right now, so I mean, we should see this building, hopefully, breaking ground within the next few months if everything works accordingly.

Commissioner Keon: Right. But can we...

Commissioner Lago: That's where I'm going.

Commissioner Keon: We can't construct that building while this matter is being litigated.

Ms. Guasch-De La Guardia: Unless there is a motion filed to stay construction, I can't see why not.

Commissioner Lago: And that's what the owners -- the partners of...

Ms. Guasch-De La Guardia: I can't foresee the County wouldn't, you know, considering that they're seeking -- they're objecting to our presence, they're probably going to move for that.

City Attorney Leen: But that's why our involvement in this case is so important because usually you probably wouldn't build when there's a pending lawsuit. But, you know, the -- I know that Bahamian Village believes that they have a very strong position, particularly as to building the community center. And my understanding is they're going to go forward and build it themselves. They're going to self-finance is my understanding, and you know, some of this is really -- these are just -- I can't assure you of that. These are just things I've heard. But they're proceeding and we've agreed to expedite it. And my hope is that the County, which I'm hoping

they're listening to this, but that the County will understand that we're acting in good faith. We're trying to get this thing built. And what we don't want is for the Lola B. Walker Homeowner's Foundation and Association to completely lose their interest in this or to lose the ability to build the community center because that was the purpose of this whole thing to begin with, and we're so close to achieving it.

Ms. Guasch-De La Guardia: And I think it's important to note that this is -- the Bahamian Village filed a declaratory action, so they're the ones who are seeking the court to weigh in and let them know what their legal rights are as far as the right of reverter in the County so.

Commissioner Keon: And the County is telling them that they want to...

Ms. Guasch-De La Guardia: They have the right of reverter.

Commissioner Keon: You know, that reverter clause, and they...

City Attorney Leen: Correct. They counterclaimed and exercised the reverter.

Commissioner Keon: They want to exercise the reverter.

Ms. Guasch-De La Guardia: And they filed a counterclaim to quiet title.

Commissioner Lago: And that's what makes this issue so, to me, complex because we're not talking about a private development, which is not going to, you know, bear fruit for the residents in that area. I mean, this is a significant endeavor that the residents for the past, I think, ten years have been fighting to get off the ground, so I mean...

Commissioner Keon: More than ten years.

Commissioner Lago: More than ten years.

Ms. Guasch-De La Guardia: Yeah, more than ten years, 2003 was when the recommendation...

Commissioner Lago: The owner...

Ms. Guasch-De La Guardia: Was passed by the County.

Commissioner Lago: The partners of Ms. Prime and the other residents of the Lola B. Walker Foundation has made it very clear to me that they're moving forward. They will break ground once they have a permit in hand and all the necessary approvals...

Commissioner Keon: Right.

Commissioner Lago: From the City of Coral Gables. And again, I'm willing to support them. I know this Commission is willing to support them and I'm going to reach out again to the County Commissioners and hopefully do everything in our power to get a place on the agenda.

Commissioner Keon: We -- I was an aide to Commissioner Jimmy Morales and worked with the community to convey this property to the Lola B. Walker Homeowner's Association in 2003, so it's -- I couldn't believe it when I came to office here and continued to hear, you know, what was happening when we had started so long ago down this road.

Commissioner Lago: And it's interesting, when you worked on that -- and I'm sorry -- and you got -- you achieved that, that was a property that nobody wanted and now...

Commissioner Keon: Well, actually, it was held by the Coconut Grove Development Corp., and what they were proposing to develop there, the neighbors were not in support of and they were not holding meetings with the neighbors at the time as to what would be developed there. And

so -- and they couldn't get funding, but they were making a proposal and so the community came to Commissioner Morales and said, you know, we don't want them to build there and I said we need to go out and hold some meetings in the community to see what the community wants. And it was -- they were not in agreement. And so, it, again, had been held so long by the Coconut Grove Development Corp. that the County did take the property back and we worked with them to convey it to the Lola B. Walker Homeowner's Association. And what's really important to know with the Lola B. Walker Homeowner's Association is that we also helped them apply for and receive some CDBG administrative dollars so that they could become a 501(c)(3), with their own attorney and whatever else and they did. And they are a 501(c)(3) that has the capacity to be the recipient and to do this project, and they have demonstrated how responsibly they have acted in dealing with this. This is a very, very legitimate local 501(c)(3) that can -- has the capacity to do this project. And we need to do whatever we can to help see that they -- that we see this project through.

Mayor Cason: Alright, Commissioner Lago has made the motion to support the efforts of the Attorney. Do we have a second?

Commissioner Keon: I'll second it.

Mayor Cason: Commissioner Keon seconds. City Clerk.

Vice Mayor Quesada: Yes

Commissioner Slesnick: Yes

Commissioner Keon: Yes

Commissioner Lago: Yes

Mayor Cason: Yes

(Vote: 5-0)

City Attorney Leen: I think, Mr. Mayor, Ms. Prime, I think, wanted to say something.

Edwina Prime: Okay. I would like to take this opportunity to personally thank our Mayor and Commissioners and staff of the interest that you've taken in this project. Our community is delighted, and we hope that it will be successful. And I know with your help it should be. So, thank you again for all of your work and your effort. We may not have that many comments, but we appreciate what's going on.

Mayor Cason: Thank you.

Commissioner Keon: Thank you.

Commissioner Lago: Thank you.

Vice Mayor Quesada: Thank you.

Mayor Cason: Thank you very much.

Commissioner Lago: Appreciate it.

[End: 11:49:49 a.m.]