

**City of Coral Gables City Commission Meeting
Agenda Item G-6
July 11, 2017
City Commission Chambers
405 Biltmore Way, Coral Gables, FL**

City Commission

**Mayor Raul Valdes-Fauli
Vice Mayor Pat Keon
Commissioner Vince Lago
Commissioner Frank Quesada
Commissioner Michael Mena**

City Staff

**City Manager, Cathy Swanson-Rivenbark
Assistant City Manager, Peter Iglesias
City Attorney, Craig E. Leen
Deputy City Attorney, Miriam Ramos
City Clerk, Walter J. Foeman
Deputy City Clerk, Billy Urquia
Historic Preservation Officer, Dona Spain**

Public Speaker(s)

Agenda Item G-6 [12:14:24 p.m.]

A discussion regarding Coral Gables Elementary and update as it pertains to the proper window installation.

(Sponsored by Vice Mayor Keon)

Mayor Valdes-Fauli: Alright, let's take two or three more issues here. Discussion regarding Coral Gables Elementary and update as it pertains to the proper window installation. Vice Mayor Keon.

City Commission Meeting
July 11, 2017

Agenda Item G-6 – Discussion regarding Coral Gables Elementary and update as it pertains to the proper window installation.

Vice Mayor Keon: The...

City Attorney Leen: Yes.

Vice Mayor Keon: School. Go ahead.

City Attorney Leen: So, I'm going to turn this over to the Vice Mayor, but I wanted to ask Dona Spain to come up.

Mayor Valdes-Fauli: Of course.

City Attorney Leen: And with the current situation, just to remind everyone, is a couple years ago, Coral Gables Elementary, the School District, started to put in windows that had not been historically approved through our Historic Preservation regulations in Coral Gables Prep. In addition to not having been approved, I had been informed through knowledgeable sources, such as Ms. Spain, that they are historically inappropriate. Dona.

Historic Preservation Officer Spain: Yes.

City Attorney Leen: They're historically inappropriate windows, is...

Historic Preservation Officer Spain: Yes.

City Attorney Leen: My understanding. So, the City objected to that. The City Manager and I sent a -- as I recall, a red tag. The City Manager authorized to red tag...

Historic Preservation Officer Spain: You did. It was very impressive.

City Attorney Leen: And we sent a -- basically, we ordered them to cease and desist, both the contractor and the School District. We then brought a Chapter 164 resolution to the Commission, which my recollection is the Commission adopted. And, then we met with -- we also issued Code Enforcement citations and fines. Those are accruing and are approximately \$180,000 for both the School District and also, for the contractor, and those continue to accrue, and I'm going to ask you about that a little bit later in the conversation because we have not recorded any liens related to those...

(COMMENTS MADE OFF THE RECORD)

City Attorney Leen: Or sought to enforce them. What?

Unidentified Speaker: One hundred and eighty-five thousand.

City Attorney Leen: One hundred and eighty-five thousand as to both. Now, typically, with government property, you can't lien government property, but you can seek to enforce or seek mandamus as to government property. And obviously, one of them is a private contractor, so a lien could be recorded against them. We haven't done so yet. Anyway, the City Manager and I met with representatives of the School District, and Ms. Spain was there as well. We had worked out a way forward. It wasn't a formal settlement agreement, but we had worked out a way forward whereby the City would contribute up to \$250,000 to resolve this matter and the School Board would comply with our requirements, at least by meeting with Ms. Spain, having her agree to windows that could be installed in Coral Gables Elementary. And, then it was going to -- those windows were going to be used in West Lab, the current ones, and we would be reimbursed some amount. Anyway, that's never really occurred. So, the money has never been spent. The West Lab expansion's going to be before you next time. I haven't heard anything about the windows in relation to it. So, -- and I'm going to turn it over to Ms. Spain, but at this point, that hasn't really gone forward. And so, what's happened is, because obviously, the City didn't want to -- you know, there were a number windows with wood in them and the School

Board was telling us -- the School District was telling us that they needed to put windows in because of the children, the City allowed that, reserving all its rights. And, -- but this issue has not been resolved. So, we're bringing it back because Vice Mayor Keon has, on a number of occasions, asked us, what is the status. We have been hoping to resolve the matter, but it hasn't. And so, now there's a choice and we have some information for you regarding the windows, which are quite expensive. So, what we're asking for is to get guidance from the Commission. Did you want to say anything, or should I turn it over to Ms. Spain?

Vice Mayor Keon: No. Go ahead. I mean, I'm just -- I really believe that Coral Gables Elementary School is a very, very significant historic building. It is on the National Register of Historic Places. It is an exceedingly, you know, significant building in the City of Coral Gables. It was -- Merrick himself is the one who directed the building of it, hired the architects in his Mediterranean Revival style and everything else. And, you know, the fact that they had no regard for this particular school, I think is terrible. I mean, Miami High was built by the same architects.

Historic Preservation Officer Spain: Yes.

Vice Mayor Keon: The school system later, a few years after Coral Gables Elementary -- but the school system thought it appropriate to restore Miami High and spend \$15 million on the restoration of Miami High. I think for us to expect that they -- even if it's a million dollars -- that they replace the windows with appropriate windows that are at least, you know, approved by our Historic Preservation Department is not too much to ask. And it's -- you know what, the conversation has gone nowhere with the school system.

City Attorney Leen: And I should add, before turning it over to Ms. Spain, that our legal position -- the City's legal position is very strong on this particular matter. There's no question that the School District should have come to the City and raised with us that they were going to replace the windows. It is a local historic landmark. This would have gone to Ms. Spain, who

would have looked at it as our historic preservation officer. She would likely have brought it to the Historic Preservation Board. It may have come to the City Commission. After the School District acted without coming to us, where we had to respond to the situation that arose, we also offered to them the possibility of creating a more abbreviated process, where it would still come to Ms. Spain, however, and she would be involved. And, the whole thinking behind this is that there is a Florida Supreme Court precedent called Temple Terrace, and then a couple additional District Court of Appeal precedents applying that precedent to the School Board, which say that government entities in Florida, such as counties, school boards, even state agencies, are required to comply with municipal zoning under a balancing of interests framework, which is decided by the city, the local government applying the balancing of interests. And if there's a dispute, it can then go up to the circuit court of appeals through a certiorari proceeding, but there's no question we have that authority. And, the reason why we've asserted it here and would continue to assert it in the future is that Coral Gables has a very strict and impressive historic preservation ordinance that we seek to protect. This building, as was mentioned, is actually in our Zoning Code as a comparator, as an example property for Coral Gables Mediterranean architecture. It's very important to the City. And, the problem is -- and I'm not saying the School District would ever do this -- I'm not, and I want to be very clear about that. But, the power to be able to change the historic structure is also the power to be able to destroy the historic structure, and we can't allow that for any historic structure in the City without it coming to the Coral Gables City Commission for your approval. That's what the law says. And, even though the School Board wouldn't do that, they've obviously acted to change the historic structure without our approval, which is in clear violation of the Code. And, all we're saying is that we want to be able to have a balancing of interests. We would look -- our legal position is we will look at the fact that they -- this might be expensive. We would look at the fact that they need to change these windows, if that's what they're saying. But, we would also look at the fact that it's an historic landmark and that it needs to be preserved as such, and we would balance the interest with them. That did not occur here, and that is the underlying problem.

Historic Preservation Officer Spain: Okay. A couple of things about windows. Typically, if it's in a private home, we administratively approve the replacement of windows and we, you know, just require them to use high-profile muntins, so they go back to the original style of the windows, if they've been changed. Just to bring back the issue about the Biltmore Hotel. They're actually going to the expense of manufacturing wood impact windows that match the originals, because they've fallen into disrepair. And so, they're going for a one-time product approval at the County in order to do that. So, they are really taking a lot of care in the windows. Windows are very important to historic structures. They're character defining. It's very important that they get the right color originally, and we've actually paid a laboratory to take a portion of the windows that they removed at Coral Gables Elementary School. They've done the analysis. It was a green color. They put in inappropriate white windows that are not the right type of windows nor are they the right color or the right profile, so it's a big deal in historic preservation. I contacted Hope's Windows. That is a company that manufactures -- that can manufacture custom windows that can be in the same profile as the original and be impact resistant. It's really the only company that can bring it back to the same profile. There are other companies -- at Miami High, they used Andersen Windows, but that was -- at Miami High, the original windows were steel, and so it was a much smaller profile, and so Andersen was an appropriate choice for that. I don't believe that Andersen would be appropriate to replace the Coral Gables Elementary School windows. So, the Hope's Windows installed in all of the windows that have now been replaced, because they've taken all of the original historic fabric out, that all the windows are gone of the original historic windows. They've been replaced with inappropriate aluminum white windows. In order to have them installed with Hope's Windows, it's over a million dollars. It's \$1,245,500, that's installed.

City Attorney Leen: Can you explain the two other options? No, at least for the Commission's knowledge. I understand that you're not...

Historic Preservation Officer Spain: Well, I'm not in favor of...

City Attorney Leen: (INAUDIBLE).

Historic Preservation Officer Spain: Either of the other two options, but there obviously are less expensive options. There's a main courtyard, that's the Eunice Merrick courtyard that's in the center. It's not visible from the street, so you would still have the inappropriate windows on the street, but that's a very important space. In order -- and I asked Hope's to give us an estimate to do that, just the courtyard, and that would be \$200,000, approximately, a little less, installed. I don't know what the other option is.

City Attorney Leen: I think -- isn't there a proposal to -- one other one that's somewhere in between those two?

Historic Preservation Officer Spain: Well, they were talking about just doing what's visible from the street.

City Attorney Leen: Yes.

Historic Preservation Officer Spain: But, you know I'm not comfortable with that, because those really large windows in that courtyard are just horrible. They really -- that courtyard should be restored.

Vice Mayor Keon: Right. And you know what, the building isn't only designated historic as to what can be seen from the street. The entire building is...

Historic Preservation Officer Spain: No, totally.

Vice Mayor Keon: Designated historic.

Historic Preservation Officer Spain: And it's a public building.

Vice Mayor Keon: And all the windows that were replaced need to be re-replaced with an appropriate window. And the windows -- the wooden windows that were there were destroyed in the process of having them removed and taken out and whatever else, so there is no option to go back and --- you know, I don't -- the burden of actually making them recreate wooden windows and whatever, you know, we believe is an extraordinary burden, but to go back and replace them with, you know, a metal window that has the right profile, that is of the right color, you know, is a good...

Commissioner Lago: Option?

Vice Mayor Keon: Option for the City as -- or to settle that they can do that.

Commissioner Mena: Who...

Vice Mayor Keon: And so, I would like us to direct -- I would like to see that we direct the City Attorney to move forward, along with the Manager and our Historic Preservation Officer, to take whatever action we need to have this done.

Commissioner Mena: Who paid for the inappropriate white windows?

Vice Mayor Keon: The school system.

Historic Preservation Officer Spain: The School Board.

Commissioner Mena: So, why are we then paying for -- in other words, if we're taking the legal position that they came in and did that without the authority to do so...

Vice Mayor Keon: Yeah. We're not paying for the new windows. We want the school system to pay for the new windows, too.

Commissioner Mena: Okay, well, that's an important...

City Attorney Leen: Yeah. The School Board's...

Commissioner Mena: Distinction.

City Attorney Leen: Position -- just so you're aware, the School Board's position was they don't have a duty to do this, which we disagree with, and that also, if we want a higher standard of zoning, that we should pay for it ourselves. So, this was the resolution we reached with them in conjunction with the West Lab expansion as well, which is where these windows were going to be used there, and we get reimbursed by the School Board as they use the windows. So, the idea was that we would -- they said they didn't have money to do it. So, we could say whatever we wanted, but they had a bond that had to go forward and it was this amount of money, and they were limited to being able to do this. This was the resolution we reached, which the Commission -- we raised with the Commission and the Commission was supportive of it at the time. The issue is it just hasn't happened...

Vice Mayor Keon: They haven't done it.

City Attorney Leen: And, it's caused a lot of frustration for the Vice Mayor and for other Commissioners, Ms. Spain, the City Manager, and myself were all very frustrated with the situation. So, what we would do -- if the Commission decides to go this way, which will create a dispute -- I mean, there is a dispute -- create a greater dispute, but what we would do is we have a -- we would seek to enforce our Code Enforcement decisions, which have been decided. There was a quasi-judicial proceeding. The Code Enforcement Board ruled in our favor. There was no appeal that was filed, so that's done. So, we would seek to enforce that. We would also go

forward with Chapter 164. We have special counsel on this matter, Cori Lopez-Castro, who worked with me to prepare a Chapter 164 resolution. We would send that to the School Board again. We'd probably have you readopt it at the August meeting. We would send it to the School Board. There would be a meeting between the School Board and the City Commission, where you would try to resolve this matter. If you couldn't resolve this matter, we would go forward with a court proceeding. We would ask for an injunction, and we would ask for them to be required to pay for it.

Historic Preservation Officer Spain: I can have a representative from Hope's Windows be at that meeting. They said they could be here today, but I just thought it was a discussion item and it wasn't necessary.

City Attorney Leen: And, the School Board will be here in the August meeting. Representatives of the School District will be here, because the West Lab expansion is on the Commission's agenda for a conditional use review, so we would have that item heard at the same time. You know, I'm sure the School District will want to comment on that and provide you their position, and you may want to see if there should -- there could be some resolution reached or not. You may direct -- at that point, you may decide to vote on the Chapter 164 resolution. But, if you vote for this today, we would go ahead and prepare that Chapter 164 resolution and look at going forward to enforce the Code Enforcement decision, so that's your decision.

Mayor Valdes-Fauli: What's your pleasure then? You want to move forward?

Vice Mayor Keon: I would like us to go to move forward...

Mayor Valdes-Fauli: Okay.

Vice Mayor Keon: With the 164.

Mayor Valdes-Fauli: You made the motion. Second?

Commissioner Mena: Second.

Mayor Valdes-Fauli: Mr. City Clerk.

Commissioner Mena: Yes.

Commissioner Quesada: Yes.

Vice Mayor Keon: Yes.

Mayor Valdes-Fauli: Yes.

(Vote: 4-0)

Mayor Valdes-Fauli: Alright, let's take one more, and then we'll adjourn until 1 o'clock.

Historic Preservation Officer: Thank you very much.

Mayor Valdes-Fauli: Thank you.