

City of Coral Gables City Commission Meeting
Agenda Item E-3
February 25, 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

City Manager, Patrick Salerno

City Attorney, Craig E. Leen

City Clerk, Walter J. Foeman

Deputy City Clerk, Billy Urquia

Historic Preservation Officer, Dona Spain

Public Speaker(s)

Susan Trevarthen, Attorney Representing the City

Zeke Guilford, Representing Codina CG LLC, the Applicant

E-3 [Start: 9:21:55 a.m.]

Receipt of Transfer Development Rights (TDRs). An Ordinance of the City Commission of Coral Gables, Florida requesting receipt of Transfer of Development Rights (TDRs) pursuant to Zoning Code Article 3, "Development Review", Division 10, "Transfer of Development Rights", Section 3-1006, "Review and approval of use of TDRs on receiver sites", for the receipt and use of TDRs for the mixed use project referred to as "2020 Salzedo Street", on the property legally described as Lots 13-37 and the east 7' of lot 38, Block 18, Section K (2020 Salzedo Street), Coral Gables, Florida; including required conditions providing for severability, repealer, codification, and an effective date.

Mayor Cason: Agenda Item E-3 is an Ordinance on First Reading, which is in connection of the Receipt of Transfer Development Rights (TDRs), Mr. Manager please read the title of Agenda Item E-3 into the public record.

City Manager Salerno: Thank you Mayor. Item E-3 is a Receipt of Transfer Development Rights (TDRs). An Ordinance of the City Commission of Coral Gables, Florida requesting receipt of Transfer of Development Rights (TDRs) pursuant to Zoning Code Article 3, "Development Review", Division 10, "Transfer of Development Rights", Section 3-1006, "Review and approval of use of TDRs on receiver sites", for the receipt and use of TDRs for the mixed use project referred to as "2020 Salzedo Street", on the property legally described as Lots 13-37 and the east 7' of lot 38, Block 18, Section K (2020 Salzedo Street), Coral Gables, Florida; including required conditions providing for severability, repealer, codification, and an effective date. We have Susan Trevarthen here who can introduce the item.

Ms. Susan Trevarthen: Good morning Mr. Mayor, Commission, how are you. Susan Trevarthen, Weiss Serta Helfman on behalf of the staff. Before you is an approval of a Transfer of Development Rights so that they can be used for a project, and it's been many years since the City has processed such a transaction, so I just want to take a minute to describe this process, which has been in your Code for a long, but maybe isn't right at the front of your memory from recent approvals. Transfer of Development Rights is a technique that is used to adjust the benefits and the burdens of a historic preservation program. It is used in those areas of the City in which additional FAR could be appropriate such as your CBD and that is in fact where this program is limited currently is in your CBD only; and it also is appropriate in the CBD because that's the location where you also have landmarks and significant additional development rights, but strengthability to use those on those parcels. So both on the sending site you have these additional development rights under the CBD levels and intensity, but difficulty using them and on the receiving site you have properties that are designated at the intensity of the CBD and appropriate for that use. The technique has been endorsed by the U.S. Supreme Court back in the late 1970's looking at the New York City version of this program; and what it is, is essentially a win-win-win process. The owner of the landmark in order to participate in this program and send development rights must take steps to assure the proper maintenance and preservation of that landmark, so part of this process of approving the sending rights, which has already happened through your Historic Preservation Board and your Historic Preservation Officer as regulated by your Zoning Code, is that there be this approved maintenance plan, so in exchange for the benefit of those development rights being sent that sending site gets the burden of the maintenance plan, the commitment to keep that landmark in good condition. The owner of the landmark of course also gets the benefit of the ability to sell those development rights. Today we are looking at the other side of the transaction, which is the receiving site and that is the side of the transaction that does come to you for approval. The owner of a receiving site who seeks to use development rights from a historic landmark has the burden of conditional use review, the mere act of taking on these development rights triggers the conditional use review process and it gives you that level of discretion to assure that those criteria are met. The owner of the receiving

site gets the benefit of being able to acquire these additional square footage, in this case about 53,000 square feet from five sending sites that can be used within the envelope of the otherwise applicable development standards. So it's not that the Code's development standards go away, it's simply the ability to use additional FAR in the property, all the other kinds of regulations of bulk and location on the site, height and so forth, they remain in effect and are unaffected by this transaction. What is the City's benefit in this process?- well we get the benefit of being assured that these landmarks are being maintained appropriately. We also get the benefit of seeing the additional development rights from the site of the landmark being used in a proper way subject to your discretion because of that conditional use review process in the CBD to enhance projects that could be built there. So this particular item before you this morning as I mentioned is the use of about 53,000 square feet from five landmarks. It also is being looked at with an additional level of discretion because the using site or the receiving site is located within 500 feet of a historic landmark that's been looked at by your staff, that's been looked at by your Historic Preservation Board, Historic Preservation Officer, and they've judged that the use of the development rights on this site is appropriate even though it is within 500 feet of another landmark. The site is under your Comp Plan future land use map, it's designated commercial high intensity, it has availed itself of your Mediterranean bonus program and it's been approved for level two bonuses and so those 53,000 square feet will be used toward this project within those applicable limits under the commercial high intensity level two Mediterranean bonus development standards. So that's what I have to share with you about the TDR transaction. I'm happy to answer any questions you may have at this time.

Mayor Cason: Is there a list or sort of inventory of possible sending TDR sites?- in other words can they only be used one time in the history of that building for one project, so they decide to fix the roof and later on something else needs to be done, too bad, right?- it's one shot?

Ms. Trevarthen: Yes. Those development rights exist and they are unique, so once they've been sold they are sold and they no longer exist on the site of the historic landmark, so it is a one shot deal that's a form of protection on the sending sites. There is also a form of protection on the receiving sites where your Comp Plan and your Zoning Code have said, the acquisition of development right can only take you to 25 percent over the FAR that would otherwise be available to you under the Comp Plan.

Mayor Cason: And does each site have a square footage that adds up to the 53,000 or...?

Ms. Trevarthen: Yes. Yes. There are different square footages and it's in your backup, I don't have it right in front of me, but together they add up to 53,000 square feet from five landmarks, a couple are along Alhambra, they are generally in the vicinity of the project.

Mayor Cason: So the receiving property puts money into an account which is then administered to carry out the preservation and overseen by whom?

Ms. Trevarthen: The sending site – it's not really our program specifically requires them to take those dollars that they receive from selling the developing rights and spend them that way, but we just put that obligation on that, so they get a source of income and they use that income or other income to support their maintenance plan and that is recorded and approved and overseen by your Historic Preservation Program.

Vice Mayor Kerdyk: Just to quantify a little bit more. Basically on the sending site the FAR is 3.0 on the sending site, which is what you determine the TDRs at, so if you have a 10,000 square foot building on a 10,000 square foot lot, 10,000 times 3 is 30,000, you would have 30,000 subtract the 10,000 building, 20,000 to send to another site. The receiving site again, would have that same 3.0 FAR, if they build Mediterranean they would have 3.5 FAR, and this would add on and I think the maximum is, what you said would be 4.275 FAR, which is what is being proposed by the applicant here.

Ms. Trevarthen: It's 25 percent over the applicable allowed and actually what's being used here is under the maximum.

Commissioner Quesada: Its 4.23.

Vice Mayor Kerdyk: 4.23, yes.

Mayor Cason: So it's only on the density side?

Ms. Trevarthen: It's not on density, it's only on FAR or square footage, the whole TDR program is focused on square footage, so density and height and setbacks and all those other things are unaffected by this process.

Vice Mayor Kerdyk: I'd like to mention one other thing as far as the TDRs goes. It would be really good if we can have a list of what sites are TDR driven as far as what could be sender sites. The one issue that we had just for your knowledge is one time we had the School Board that wanted to engage us in the possibility of selling their TDRs, which they have an astronomical amount of TDRs on the Coral Gables Elementary site, so we fought that vigorously because the fact is that they would just send all sorts TDRs into the Central Business District and the thought process was when we implemented this program was to save the older buildings and not to allow a free-fall of money to other entities, but just for your knowledge it would be good

to see the possible sender sites and keep that in the back of your mind because that may come up again.

Ms. Trevarthen: Mr. Vice Mayor, your staff does have a list that they can share with you.

Commissioner Lago: Let me just speaking a little bit on what the Vice Mayor just stated. I've been looking when this came up in reference to the agenda, I was studying a little bit about what's going on in the City of Miami, which TDRs are playing a major focal point in the Nebo design area. You are able to notice huge projects that have a significant historic value to the City of Miami, for example, one of them being the Vagabond Hotel, which was a blight on the City for many, many years and I think, correct me if I'm wrong, it was close to \$4 million were raised in TDRs and those \$4 million are being put back into the historic preservation of that property. So not only does it benefit the property as a whole and the historic nature and salvage that property, but it also benefits that neighborhood as a whole, and you are seeing a Renaissance in that area and people are taking advantage of those TDRs, when I say taking advantage, I mean it in the best way, because TDRs not only help the developer, but it also helps the site that's selling their TDRs. I want to ask Mrs. Spain a question in reference to historic preservation, but I appreciate it thank you. Mrs. Spain, do we have any program in place and I think it goes back to what the Mayor was saying, once those TDRs are purchased from a historic site, do we have any program in place to make sure, not to make sure, but maybe just to keep track of the improvements that are being made?- because like the Mayor said, what if they take the money and they make minimum improvements and then a year later the owner doesn't have the money to pay for a brand new roof, if the roof is 40 years old?

Mrs. Spain: They file a restrictive covenant and that's on file with the City. We send the maintenance plan and in this case actually the Historic Preservation Board added to the maintenance plan certain conditions on the building that they have to send that to Code Enforcement, that's really basically the way we handle that.

Commissioner Lago: And to your knowledge this is the first time in some time that we've had a TDR transfer development rights?

Mrs. Spain:....I believe is the last time.

Commissioner Lago: That's great. OK. Thank you.

Mayor Cason: Do we have many properties left do you think in the Central Business District that could be...?

Mrs. Spain: I maintain a list along with the available TDRs, I'd be happy to share that, I don't have that with me today, but I certainly can get that to you.

Mayor Cason: Please, it would be nice to see what's....

Mrs. Spain: And there may be potential properties out there since it's a moving target, historic preservation that can be designated in addition to the ones that are on this list.

Commissioner Lago: And the price of TDRs is always in flux, correct?

Mrs. Spain: We don't get involved in what they sell for that's market value.

Mayor Cason: Market value – OK. Thank you.

City Attorney Leen: Mr. Mayor couple of points. Before you use the ordinance just to be aware that Exhibit “B” is a resolution for the site plan the conditional use approval, all of the conditions in Exhibit “B” are incorporated into Exhibit “A”, so you will be in a sense passing those today on First Reading. All this will come back before you on Second Reading as well.

Mayor Cason: Thank you. This is a public hearing, so I would assume the developers would be the first to make a presentation. Welcome Zeke.

Mr. Guilford: Good morning Mr. Mayor, Commissioners, for the record, my name is Zeke Guilford with law offices at 400 University Drive. It gives me great pleasure to be here today representing Codina CG LLC, the owner of the property at 2020 Salzedo. Now Mr. Mayor, the site plan is coming before you next month, so we are not going to give you a full presentation today because it's really not before you, so we are going to be very brief. Susan did an excellent job of telling you explaining the TDRs that is what is before you today. So really what I want to do is just very briefly is essentially you have the five sites on the middle board, again two are from Alhambra, there are two on Ponce, and one on Miracle Mile. This board here is actually the site plan the receiving site, it is fronted on Salzedo, we have Minorca to the south and Navarre to the north. Again....the site plan, and essentially what we have there which we will go over in more detail next month is the rendering of the project looking at the corner of Minorca and Salzedo. I think it's important to point out a couple of things; number one, this project has no variances, it's also important to point that it has already been reviewed by multiple Boards, the Board of Architect has looked at it from an aesthetic standpoint, the Historic Preservation Board has looked at it not only from the sending sites, but also as a receiving site because its located within 500 feet of another historic structure, so what they do in their job was to say, does this project have an impact on another historic property?- and the answer was no, they unanimously

approved it. We also went to the Planning and Zoning Board; the Planning and Zoning Board recommended unanimously in favor of both the site plan and the TDR transfer. With that Mr. Mayor, Commissioners we are here, Mr. Codina is here, we have the architect, Larry Cohan of BC Architects, if you have any questions, but again since we are really just dealing with the TDR you will have people speak when the resolution is before you.

Mayor Cason: Any discussion?

Commissioner Keon: No.

Vice Mayor Kerdyk: I'll make a motion.

Commissioner Keon: I'll second it.

Mayor Cason: Vice Mayor makes the motion, Commissioner Keon seconds it.

City Attorney Leen: Mr. Mayor was there any public comment?

Mayor Cason: Any other speaker cards...?

City Clerk Foeman: No Mr. Mayor.

Mayor Cason: Then we'll close the public hearing portion.

Vice Mayor Kerdyk: OK. I'll make a motion.

Mayor Cason: OK. Vice Mayor makes the motion, Commissioner Keon seconds it.

City Clerk.

Commissioner Keon: Yes

Vice Mayor Kerdyk: Yes

Commissioner Quesada: Yes

Mayor Cason: Yes

(Vote: 4-0)

Commissioner Lago: Absent

Commissioner Quesada: I know we are here on the TDRs, but I just want to mention that from the size that were in our package and what we've seen today, I think it's going to be a nice project for the area.

Commissioner Keon: Can I ask one question?- can I ask a question of Historic Preservation?- regards to TDRs, but it has nothing to do with that project as long as you are here. Dona? Just a question quickly about TDRs. I know that when they are sold and the individual property owner from the sending site is paid a particular dollar amount they have to provide you with a preservation plan for that building. When that building is sold is there a covenant that goes with it because of that?- or it's over?- if they receive the dollars, they have a plan, whatever, and the building is then sold...

Mrs. Spain: We don't track the money and that was a big discussion. When we first did this program we were trying to figure out a way to somehow control that so that the building is protected, but we don't track the money.

Commissioner Keon: But there is no way to protect it – and once it's sold and the air-rights have been sold then that remains that's a covenant on that property so that they couldn't use that property maybe to assemble a site to create a larger building, is that right?

Mrs. Spain: That's right. That's a flaw. Some properties out there that haven't sold all of it so they have some left over to sell and there is a property actually within this group that wants to do an addition to the property, so they saved that portion so they can do an addition to the property.

Commissioner Keon: That's a shame.

Mayor Cason: So on the Vice Mayor's example of 10,000 square feet times 3, you have 30,000, so you can sell 3,000 and keep 27,000 and use it again later on?

Commissioner Keon: And you can continue to sell.

Mrs. Spain: And particularly on the one property they knew that they wanted to expand, so they went to the Historic Preservation Board and got the addition approved and then sold that portion that was left over.

Vice Mayor Kerdyk: It really hurts the marketability of the property when it goes back on the market and you have no TDRs, but that's a decision that the owner makes; the owner makes the decision and....

Commissioner Keon: They don't have to maintain that property any longer either, so when it's a property that's costly to maintain...

Mrs. Spain: This is a discussion that the Preservation Officers throughout the State of Florida had, I belong to an e-mail group and it's going back and forth on how to somehow correct that.

Vice Mayor Kerdyk: The other issue that we discussed a lot in that area is whether we would allocate the 3.0 for the FAR or we were going to allocate the 3.5 for the FAR because mostly these were Mediterranean bonus, we opted to go the more conservative route and stay at the 3.0 FAR.

City Attorney Leen: I gave an interpretation that we went with the 3.5...

Vice Mayor Kerdyk: Oh really?

City Attorney Leen:...based on the wording of the Zoning Code, it was recommended by staff and I agreed with their interpretation.

Vice Mayor Kerdyk: That's interesting because you know that's a very interesting situation. Now that you bring that up, not to go back and bring Mr. Codina here by any means, but the fact is there are a lot of sites out there that were at 3.0 Mr. City Manager, and so you better – those were all recorded deeds, I'm dealing with one right now, right now and they think they have 1,500 square feet left and if you just interpreted like that, that's a 5,000 square foot space, 5,000 times 3.5 is 17,500. They probably have another 2,500 square feet, so you need to instruct staff to go back and see which sites have allocated and then have them talk to the owners and go through that again. That's the first time I've ever heard that to be interpreted the other way last time.

City Attorney Leen: The way that the issue came up was that for the first time my office was asked basically under 2-702 of the Code to look at the wording of the Zoning Code to interpret whether it's based on 3.0 or 3.5. The way I read the language and staff was recommending 3.5 and our outside counsel recommended 3.5. I looked at the language myself, I did my best legal interpretation, the way I viewed it, it was looking at what the potential on the site was, and because of that it seems to me that the better interpretation was 3.5. Now it did come up that there were prior properties at 3.0. The interpretation I gave is only going forward because it was the first time it was ever raised to me. The general rule of statutory construction and *res judicata* and different principles like that, are when you give the interpretation it's generally not retroactive. Now whether the Commission wants to make it retroactive is a separate issue.

Vice Mayor Kerdyk: I think in my opinion for fairness issue that we should have a discussion later on so that we can address that. We can see what the ramifications are with these properties, I think that it's only fair that if we have now moved the bar from 3.0 to 3.5 that we go back and revisit that issue with those site senders that have only had the 3.0.

Mrs. Spain: There are properties that would benefit from the additional .5.

Mayor Cason: Are there many of them that we've used in the past?

Mrs. Spain: Well, I should know the answer to that off the top of my head, but there are.

Vice Mayor Kerdyk: There are – I mean Zeke could probably tell you, but there are several out there that we've used it; we've used it for the Fink Building on Ponce, we've used it...

Mrs. Spain: Some on Miracle Mile.

Vice Mayor Kerdyk:....some on Miracle Mile.

Mrs. Spain: La Palma Hotel.

Vice Mayor Kerdyk: What?

Mrs. Spain: La Palma Hotel.

Vice Mayor Kerdyk: La Palma Hotel used a lot of them, there are probably 5-6 sites out there that we've used that 3.0.

Mrs. Spain: And they still like to benefit from the monies, spend that amount of time to sell off.

Commissioner Keon: At that point how do you resolve that?- how do you give them the money?

Vice Mayor Kerdyk: I don't think you give them the money, but I think you give back the TDR.

Commissioner Keon: You give them back these TDRs so they could sell the additional TDRs at the market value.

Vice Mayor Kerdyk: So the one that I'm talking about right now has a recorded deed saying that they only have 1,500 TDRs left, so now they have 2,500 more, you would give them that and you'd say, hey we are going to give you....

Commissioner Keon: Could we bring this back as a discussion item maybe at the next Commission meeting?- so that Craig can explain why he interpreted the way he did. I also would like to maybe – I really have some concerns about these maintenance plans when people get ready to sell them what happens to the buildings, because they – the reason in the City of Miami the TDR ordinance works so well is because those buildings, the amount of money that was required to rehab those buildings was far beyond the market value of those properties, so the ability to sell the TDRs is what allowed them to do what they are. I guess when the Vagabond resells or something its gone so you hope that somebody loves it and maybe get enough, I don't know, that it can be maintained for some period of time until whatever, but I think that our hope in this City was that in selling these TDRs from historic properties it gave us, it gave the property owner the ability to maintain that historically significant building, so we kept those buildings scattered throughout our City, which we will lose that ability with the sale of those TDRs and we have no way to....

Mrs. Spain: It's an issue. The maintenance issue can go out 20 years on the replacement of a roof.

Mayor Cason: Why don't you come up with – why don't you let us know which buildings carry these and have the 3.0 rather than the 3.5, come back, so we know the number and then your discussion of why you went from 3.5 to 3.0, and discuss it and what we might do to tweak it.

Commissioner Keon: And also what we could do to enhance the....

City Attorney Leen: One thing I would suggest is I'll come back and I'll present to you the language and why it was interpreted that way. If the Commission wishes because there is a policy component to that, if the Commission wishes I can make the interpretation retroactive or the Commission could direct me to by resolution. I would be happy to do that. The concern I had was that it was not legally required to make it retroactive; it was not, because it was an interpretation that invoked a process in our Code, these issues were settled matters in the past, but it doesn't mean you can't make it retroactive, you are certainly able to make it retroactive if you wish.

Mayor Cason: Well why don't you bring back all the elements, so we can make a determination in the future.

City Attorney Leen: Of course.

Mayor Cason: One last question. These TDRs can only be on privately owned buildings?- can it be on city-owned buildings?

Mrs. Spain: No, it's available on city-owned buildings. The historically designated city-owned buildings within the Central Business District, the Coral Gables Museum are a good example of that so is the Miracle Theater.

Mayor Cason: So we have those that have not been used yet?

Mrs. Spain: That's right.

Commissioner Lago: And unlike the City of Miami the TDRs here in the City of Coral Gables can only be used from historical buildings, correct?

Mrs. Spain: That's right.

Commissioner Lago: And in the City of Miami you have non-historic buildings which can also donate their TDRs.

Mayor Cason: And when you come back if you could take a look and see which other city-owned historic buildings might also have unused.

Mrs. Spain: Because it has to be within the Central Business District.

Mayor Cason: Just those two, we don't have any other buildings that we rent to others that are covered? – OK.

Commissioner Lago: Would the Theater fall in that?

Mrs. Spain: Yes.

Mayor Cason: OK. Thank you.

Commissioner Keon: Thank you.

[End: 9:48:02 a.m.]