

City of Coral Gables
Virtual City Commission Meeting
Agenda Item F-1
May 26, 2020
City Commission Chambers
405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Raul Valdes-Fauli
Vice Mayor Vince Lago
Commissioner Pat Keon
Commissioner Michael Mena
Commissioner Jorge Fors

City Staff

City Manager, Peter Iglesias
City Attorney, Miriam Ramos
City Clerk, Billy Urquia

Public Speaker(s)

Paul Savage
Mario Garcia-Serra

Agenda Item F-1 [Time Certain 10:00 a.m.]

An appeal to the Coral Gables City Commission from the decision of the Historic Preservation Board at a special meeting held on Wednesday, March 4, 2020, which denied local historic designation to the property located at 1208 Asturia Avenue, legally described as Lots 13 & 14, Block 6, Coral Gables Section E, according to the Plat thereof, as recorded in Plat Book 8, at Page 13 of the Public Records of Miami-Dade County, Florida. (Ayes: 5, Nays: 4)

(5/12 City Commission meeting: motion to affirm 2-2) [Pursuant to Sec. 2-82(a)(4) of the City Code, in the event of a tie vote, the matter shall be carried over to the next meeting of the Commission. Given that the matter resulted in a tie vote, the

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appeal will be reconsidered by the City Commission, however, no additional presentation or argument shall be made by the property owner or appellant. However, either party may be present to address questions presented by members of the City Commission.]

Mayor Valdes-Fauli: Alright. And now we go to a time certain item, 10 o'clock, F-1, and I am recused from participating in this meeting. You can mute me now, Mr. Clerk.

Vice Mayor Lago: Thank you, Mayor. I'll be taking over for the Mayor for a few moments until he comes back. I just want to make sure that he has been muted and he's out of the room.

Mayor Valdes-Fauli: Yeah, and get me out...

Vice Mayor Lago: Virtually. I don't think he has to leave his office. I just want confirmation from our City Attorney that that's happened or from our Clerk, more importantly.

City Clerk Urquia: The Mayor has been muted and his video's off.

Vice Mayor Lago: Alright. I'd like to please pass it on to the City Attorney so she may provide some background in regard to where we currently stand. Thank you.

City Attorney Ramos: Thank you, Vice Mayor. Please bear with me. I need to go through several things with regard to this particular item. The first thing I'll do is read it into the record. This is an appeal to the City of Coral Gables City Commission from the decision of the Historic Preservation Board at a special meeting held Wednesday, March 4, which denied local historic designation to the property located at 1208 Asturia Avenue, legally described as Lots 13 & 14, Block 6, Coral Gables Section E, according to the Plat thereof, as recorded in Plat Book 8, at Page 13 of the Public Records of Miami-Dade County, Florida. With regard to this item, as we all know, the item was heard at the May 12th City Commission meeting. There was a motion to affirm, and

the vote was 2-2, causing the motion to fail. Pursuant to Section 2-82(a)(4) of the City Code, in the event of a tie vote, the matter shall be carried over to the next meeting of the City Commission. Given that the matter resulted in a tie vote, the appeal is being considered today. However, no additional presentation or argument shall be made by the property owner or the appellant. However, either party may be present, of course, to address questions of the City Commission. The City Commission, in addition, can ask questions of City staff. With regard to communications with the City Commission, there were a number of emails that were sent to the Commissioners prior to the May 12th meeting that were then resent to ensure that you had the ability to review them all carefully, even though they were placed on the screen last time and they were summarized by the Clerk. I need each of the four of you to please attest that at some point you have read those upwards of a hundred emails that were sent prior to the May 12th meeting.

Commissioner Keon: I read them.

Vice Mayor Lago: Yes.

Commissioner Mena: Yes.

City Attorney Ramos: Thank you. There have been two additional ex-parte communications that have been sent in between the May 12th meeting and today. One is a letter by Mr. Savage, which I'll be addressing in a minute; and the second was an email to the City Commissioners. Both of those items have been made part of the record and both parties are present today, and if they wish to address either of those two communications, they should be given the opportunity to do so. With that, I will turn my attention to my response to the letter from Mr. Savage, which I received on Friday afternoon, around 4:30 pm. If you've had an opportunity to address the letter, it essentially speaks to four different issues as they see. Mr. Savage seems to be representing the appellant in this particular matter. First, he speaks to would he categorizes as an improper influence on the Historic Preservation Board by virtue of a letter that was sent by the Mayor to the members of that board prior to them (INAUDIBLE) this item. As required, the Mayor's

communication at that time was disclosed to all parties. And at the Historic Preservation Board meeting, an opportunity was given to all parties to address that particular communication as is required. Board members were asked by the Assistant City Attorney Ceballos, who sits with the board, whether they felt that they could be fair despite the communication and they responded on the record that they could. It is my opinion that based on that, the process that is dictated was followed and there isn't an issue there. The second point that he makes is he claims that information given by our office to the appellant was inaccurate. In his letter, he claims that the Jennings case, which is the case that addresses ex-parte communications, does not stand for the proposition that ex-parte communications should be avoided. However, Jennings itself states that ex-parte communications are inherently improper and that quasi-judicial officers should avoid all contact where they are identifiable. The word "avoid" is actually used in the case. In either event, the concept is that those communications should be avoided when they do occur and the case acknowledges -- the board acknowledges in that case that, you know, elected officials are contacted by their -- by the people they represent. That is part of human nature. It's part of the process, and that is why the disclosure -- the ability to disclose, to dispel that particular potential for bias is there. That's exactly what was told to Ms. Cerda. The advice that I gave Ms. Cerda, which is the appellant, was to try to avoid ex-parte communications with the Commission. That is the advice that I give everyone, and I'm sure that the five -- the four of you can attest to the fact that I consistently remind the Commission that ex-parte communications should be avoided, and if they are had, that they should be disclosed. In compliance with Jennings and in order to avoid a presumption of prejudice, the communication was disclosed, and all parties had an opportunity to address the communication. The third contention made by Mr. Savage is that allegation that the City coordinated with the property owner to set the appellant -- to set the appeal over the appellant's objection. That is correct. The appellant did not want the appeal to be heard virtually. And that is completely understandable. However, our Zoning Code, at Section 3-607(b), states that once an appeal is complete and submitted, it shall be heard at the next City Commission meeting. That does not allow for us to choose when that is set. It is a "shall" not a "may." The appeal was completed on March 30th of 2020. In accordance with the Code, it should have gone to the City Commission at the April 21st meeting. The property owner asked strongly to have it placed on the

April 21st meeting. I made the decision that I could not go forward at that time because this Commission had not yet adopted Rules of Procedure for quasi-judicial meetings. For that reason, it was heard at the May 12th meeting. In order to protect the City because the property owner wanted to have the matter heard, as is his right, I had them fill out a waiver and indemnification agreement in favor of the City for any issues that could occur by the virtual nature of this meeting. That was not asked of the appellant because the appellant was not requiring that this go forward. Failure to comply with our own Zoning Code could have subjected the City to a property rights challenge by the property owner. That is the reason that the case was heard -- that the appeal was heard on May 12th over the appellant's objection. Lastly, Mr. Savage speaks to the Commission's role on appeal. The Commission's been advised of the standard and has been asked to apply the same. That is all that I can say to that. If you have any questions with regard to that, I'm happy to answer them. Otherwise, the Commission could ask questions of the parties or of staff, or a motion may be entertained at this time.

Vice Mayor Lago: Thank you, Madam City Attorney. I appreciate you providing the necessary background in regard to the Code and addressing Mr. Savage's letter. Now, let's move forward to see if any of my fellow colleagues on the Commission have any questions of staff or any of the other parties. If there are no questions, we could have further discussion amongst the Commission. And if there are no further discussions amongst the Commission, I would entertain a motion.

City Clerk Urquia: Vice Mayor, before you hear a motion, I just want to let you know there's been -- several people have requested to speak on the item. I just want to let them know that there will be no public hearing on this item because it was already heard at the 12th meeting.

Vice Mayor Lago: And I was...

City Attorney Ramos: Mr. Clerk, if either...

Vice Mayor Lago: And if I...

City Attorney Ramos: Of the two parties -- I'm sorry, Vice Mayor.

Vice Mayor Lago: No, no. I was going to pass it back to the City Attorney. I want you to be -- I want to be very clear on this issue, and I want it to come from the City Attorney in regard to public comment. So please proceed. Excuse me for the interruption.

City Attorney Ramos: Mr. Clerk, if either of the two parties wish to address the two ex-parte communications that were received between the 12th and the 26th, they should be given a chance to do so. Otherwise, whether to hold a whole 'nother public hearing is entirely within the discretion of the Commission. That is something that Commission can decide to do or not to; it is not required.

Vice Mayor Lago: If those two individuals that had the ex-parte communication would like to address their statements, you know, we can move forward in that direction. If not, we can move forward to have the Commission discussion. Like I said before, we can entertain a motion to move forward on this item.

Commissioner Mena: Can the Clerk confirm whether the individuals asking to speak are the parties or...

City Clerk Urquia: They are not. And we've unmuted Mr. Savage and Mr. Garcia-Serra in case they would like to make any comments.

Vice Mayor Lago: Any comments, Mr. Savage, Mr. Garcia-Serra, for the record?

Paul Savage: Okay, thank you, gentleman. I appreciate this opportunity. And I thank the City Attorney...

Vice Mayor Lago: Can you provide -- Mr. Savage, would you...

Mr. Savage: Yes.

Vice Mayor Lago: Good morning. First off, thank you for being here, I appreciate it.

Mr. Savage: Yes, sir.

Vice Mayor Lago: Would you be so kind to put your name and obviously your address for the record, please? Thank you.

Mr. Savage: Yes, yes, sir. My name is Paul Savage. I have law offices at 2555 Ponce de Leon Boulevard, and I'm here on behalf of Maria Vicki Cerda, who lives -- who is an aggrieved property owner and who lives to the immediate west and owns the property to the immediate west abutting the subject property that is up for historic designation at 1208 Asturia Avenue.

Vice Mayor Lago: Do you have any comments that you'd like...

Mr. Savage: And...

Vice Mayor Lago: Go ahead. Please move forward.

Mr. Savage: Sure. Thank you so much. I appreciate the time and I apologize for the late date and time of my submission. I was hired very late in this process, although I will say that I -- upon my review of the record as quickly as I could, I did blanch at some of the occurrences in the proceedings. I explained in my letter that I don't think it is appropriate for the Mayor who sits in a quasi-judicial appellate capacity to make submissions to a lower tribunal that he will in turn sit in appellate judgment of any decisions of that tribunal and also while he holds appointment authority over the members. And at that time, we did not know that the Mayor intended to recuse

himself. Also, I don't agree that this proceeding should be held via Zoom. I don't think that the Zoom and COVID-19 national and international emergency that we find ourselves in is a place and a time to obtain rezonings, site plan approvals, and in this case, a historic preservation determination when we have a true life and death emergency on our hands with more Americans now deceased than were killed in the Vietnam War. This matter can wait. This matter was deferred twice in the beginning, in November and December of 2019 at the request of the owner. There's not an emergency. This tribunal or this Commission I think would benefit from having members of the community before them in person, so I did request that this entire proceeding be reset and the Code does contemplate the delay of appeals in the Code provision after the one that was read by the City Attorney. And again, I don't think that -- you have to ask yourself why this particular matter received so much attention and also why there was so much umbrage directed at the fact that it was not an old Spanish home when, in fact, our Code contemplates art deco homes, pioneer farmhouses, which we have one designated in the City, and mid-century modern and homes like this one. Lastly -- and I'll be brief and I do appreciate the time and I will remain here if you have any questions -- I discussed in my letter that the competent, substantial evidence in the form of a 23-page document prepared by your now retired historic designation officer and also worked on by the new interim historic designation officer or historic preservation officer rather, presents competent substantial evidence. And there's nothing in the record below that would counter that competent substantial evidence. We had six pages of testimony about the (INAUDIBLE) presented to the owner and economic problems and things like that, but none going to the Code based factors, which of course is what the case law requires. So, those are a summary of my points. I think that also -- I don't think that my client should have been told that they could not communicate with their Commissioner; they could with full disclosure. Just about every significant matter I've been involved with or worked on, applicants have communicated with, you know, duly filed lobbyist registrations and things like that. They have communicated with the Commission and they have disclosed it in the beginning as Jennings contemplates. The City Attorney's Office is in every way correct to discourage and let everyone know that that is discouraged by the decision, but they're not at all barred. And so, with that, I'm here. I'm available. I appreciate the submission of my letter into the record, and I urge you to either A, move this item

for a full hearing with full public participation in person, and in the alternative, based on the record before you and the transcript before you, to reverse the Historic Preservation Board and have this item historically preserved in conformity with the staff recommendation, which constitutes substantial competent evidence under the law. With that, I thank you again for the time you've given me. I'll remain here and available for questions. Thank you again.

Vice Mayor Lago: Thank you, Mr. Savage. I appreciate your comments. I want to remand this back to our City Attorney. I think she may want to address your comments in regard to when we're hosting this actual hearing. Madam City Attorney, would you like to address some of his -- some of Mr. Savage's comments...

City Attorney Ramos: Sure.

Vice Mayor Lago: For the record?

City Attorney Ramos: Sure. I'll simply repeat, Vice Mayor, that, you know, we're not the only municipality holding virtual meetings. In fact, I meet every Friday with the city attorneys for the city -- for the Miami-Dade County League of Cities. There's about 30 or 40 of us on this call, and we routinely talk through these issues. Cities are moving forward with virtual quasi-judicial meetings, whether we like it or not. People have the right to move their projects forward. We have criteria for which we apply and the criteria here was met for the reasons that I explained in the Zoning Code. So, with that, if Mr. Garcia-Serra wishes to address the ex-parte communication, he certainly should have the right to do so. Also, we ran a search of the emails I think through Thursday of last week or Friday, the Clerk did. However, if there were any emails received by any of you or if you were contacted by anyone in those intervening days, you should please disclose that on the record now.

Vice Mayor Lago: Before -- I was contacted by two individuals, one by email, and one by phone call. One by -- was Mr. Bond, very respected member of our community, along with Marlin

Ebbert, who sent me an email and I responded to her in regard to this issue. If I may, I want to have the Clerk make sure to see if Mr. Garcia-Serra would like to have a moment on the record. If not, we can move forward.

Mario Garcia-Serra: Good morning, Mr. Vice Mayor, members of the City Commission. This is Mario Garcia-Serra, with offices at 600 Brickell. First, let me confirm that the audio is sufficient and that you hear me fine?

Vice Mayor Lago: Yes, sir, please.

Mr. Garcia-Serra: I'm here on behalf of the property owner of 1208 Asturia, Ms. Lourdes Valls, and her family. Mr. Vice Mayor, members of the City Commission, what the applicant -- what the appellant is attempting to do here is procedurally inappropriate and substantively wrong. After three public hearings where all parties had ample opportunity to make their arguments, after it was made clear that the time for comments and arguments had concluded, and after the City Attorney stated that ex-parte communications, whether they are in writing or verbal are not permitted, the appellant violates all three procedural rules and submits his very lengthy submittal, hoping to essentially have a do-over. This is wrong. My client and I have complied with the procedural rules and the Vice Mayor's procedural order. The appellant should have to do the same and they have not. Instead they have attempted to gain an unfair advantage with this inappropriate last-minute submittal. The City has complied with the correct procedure here and on all fronts. If either party is unhappy with the results of a hearing, the proper course to take is to proceed to the next level of appeal, not to violate the rules of procedure and try to get a do-over. Electronic hearings are an absolute necessity during the circumstances we're facing, and even the courts are utilizing them. Otherwise, think of the perpetual limbo in which my clients (INAUDIBLE), a situation which they have not created, which they have been thrust into, in which if we are to wait until in-person meetings are safe as far as public health is concerned and not allow a virtual hearing, who knows when they would ultimately have their day in court. With regards to the burden of proof, a clear pattern is emerging. The appellant and her supporters have made a

herculean effort to ram through this historic designation and have been frustrated so far due to their inability to do so, so frustrated that they have started attacking the integrity and intelligence of those who disagree with them. At the last hearing, they were attacking the integrity of the Historic Preservation Board members. Now, Mr. Savage is submitting -- he starts attacking the reputation of our expert witness, Mr. Ramon Pacheco. Mr. Pacheco is the only person who has been involved in this process that has over 40 years of experience practicing architecture and practicing at a very high level. Mr. Pacheco is the person involved in this matter who has had the most experience working directly with Mr. Pancoast and has had the most experience renovating and replacing Pancoast-designed homes. Somehow, Mr. Pacheco's testimony is not good enough because they disagree with it. And the report and presentation which was submitted into the record by our side should also, according to the appellant, be disregarded. And according to the appellant, any fact based testimony by the public opposing the designation, such as the testimony that was very well done, in fact, placed by Mr. (INAUDIBLE) and Ms. (INAUDIBLE), apparently, according to the record -- according to the appellant, should also be disregarded. Enough is enough. Just because one side disagrees with the other does not make that side incompetent or evil or poorly motivated. The appellant should not be allowed to subvert the process. If either side is not satisfied with the result, there is another avenue available, but don't subvert the process because you don't like the result. That's all I have to say for now. I'm of course available for question as are Mr. Pacheco, my client, who are also on the call.

Vice Mayor Lago: Thank you, Mr. Garcia-Serra. Mr. Clerk, if there's anything else, I think that closes the public hearing, correct?

City Clerk Urquia: There's one more person that requested to speak, but like I said, there's no public hearing at this point. He's not one of the affected parties.

Vice Mayor Lago: Okay. Now, I pass it forward to my colleagues on the Commission. Do you have any further comments, any discussion, any requests from staff that you'd like to put on the record at the present moment?

Commissioner Keon: I'd like to address the issue with regard to -- it deals with the Historic Preservation Board. You know, I...

Vice Mayor Lago: Commissioner, you're - we're having issues...

Commissioner Keon: Can you hear me now?

Vice Mayor Lago: But it's a little choppy. It's a little choppy, I'll be honest with you.

Commissioner Keon: Alright. If it continues to be choppy, I'll talk about it (INAUDIBLE), okay? I -- you know, I have some concerns over all of what has gone back and forth with regard to the Historic Preservation Board and, you know, a lot of the comments that have been made about Dona Spain also. And Dona Spain is a very long-time employee of the City. I think that, you know, now she is a private resident and she has the right to speak and to offer her opinion and she deserves to not be so disparaged either. And reading the minutes of the Historic Preservation Board, I have to agree with her in that I was surprised at the lack of discussion by some members of the Historic Preservation Board, my own appointee included, as to the report that was provided by the staff on this project. Because -- and I'd like Miriam to please clarify for me, it is my understanding that the role of the Preservation Board is to determine not necessarily whether it deserves to be, you know, historic or not, but it is to affirm that the record that has been provided and compiled by the staff, you know, meets the criteria or doesn't meet the criteria. It really isn't that they judge maybe the historic value of the property or the item or a home or a monument or whatever it may be, but it really is to ensure that before any designation goes forward, that there is -- a case has been built and that it is factual, it is reliable, it is reflective of the criteria that has been set down by ordinance for designation. And you know, I really -- I don't see that in the minutes of the meetings. I don't see that discussion or the questioning for the most part of the Historic Preservation staff by the Board, you know, as to the actual staff report, which is really their role. So, I don't know that that has...

City Attorney Ramos: Yeah, so the job of the Historic Preservation Board is to apply the criteria.

Commissioner Keon: Right.

City Attorney Ramos: The criteria is what sets forth what something that should be designated looks like, right? So, applying the criteria, if you applied it and said, yes, it checks all these boxes would result obviously and ultimately in the designation, so a little bit one in the same, but yes, their job is to apply the criteria. And as Kara had explained at the last meeting, only one criteria is required for designation to be had.

Commissioner Keon: Right. So, I think, you know, in support of Dona Spain, you know, she -- as the prior director, did really not believe that they were doing what or maybe understood fully what their role is in this designation process, and it's not to -- it's not regardless of the application of these criteria they don't agree. It's whether it meets the criteria. And the record doesn't really -- one of them I watched and didn't see it. And I read the other minutes because they're included in this agenda packet. And reading it, you know, I don't see it. So, going forward, I really -- I think that there needs to also be a discussion with the members of the Historic Preservation Board going forward as to what their role is as members of that board. And I don't -- you know, no, I don't want to see board members disparaged publicly. I also don't want to see the former director of a department than has served the City very well, for a very long time, disparaged either. So thank you. I mean, and as to the item, I will -- you know, I'll move the item, if that's what you would like, Vice Mayor Lago.

City Attorney Ramos: If there's a motion, you need to state what the motion is to do. You have several options. You could either remand it to the Historic Preservation Board for further proceedings, or you can reverse or affirm the decision of the Historic Preservation Board. You could also reverse with conditions.

Commissioner Mena: I have a quick comment before we...

Vice Mayor Lago: Yeah.

Commissioner Mena: If you don't mind, Commissioner Keon or Vice Mayor Lago, before we...

Vice Mayor Lago: Go ahead, please.

Commissioner Mena: Make any motions.

Vice Mayor Lago: Please, go ahead. Go ahead, Commissioner Mena.

Commissioner Mena: There's something with your volume, by the way, Vice Mayor. Your voice sounds extremely deep, very...

Vice Mayor Lago: Yeah. Billy notified me that there seems to be an issue. You seem to be a little frozen.

Commissioner Mena: It's better now, it's better now.

Vice Mayor Lago: Okay.

Commissioner Mena: It's better now. I -- look, I just want to echo Commissioner Keon's comments actually. You know, I appreciate some of the concern about comments being made about specific votes or members of the board. You know, I don't think anybody should be disrespected, but at the same time, I think people should be able to express their opinion. And I'm okay with that. You know, the part of this that is most troubling to me is the fact that although the Mayor has recused himself from our vote, the Historic Preservation Board voted after the Mayor communicated his feelings about the issue and that's troubling. That's troubling when we're sitting

here having to affirm that decision, and particularly, when we have to affirm that decision without comments from some of those board members as to why. You know, I -- to me, the process has been disappointing in that respect. I understand the Mayor has recused himself and I respect and appreciate the fact that each member of the board attested to the fact that their opinion was not swayed in any way, and I take them at their word on that. But you know, this really can't happen. We, as elected officials, should not be contacting and communicating our opinions to the boards before they vote, especially when we're going to be sitting in a quasi-judicial capacity on an appeal after the fact, potentially. And to me, I'm here in a position now having to weigh the decision that was made -- and I'm conscientious of the influence that some of us have when we are very vocal about our opinion on a matter before residents who volunteer on these boards take action. So, you know, my vote hasn't changed since last time. I'll be voting the same today, and we'll move forward with the process. But again -- and it sort of dovetails with my comments earlier about how we changed the process a little bit, but you know, we can't have that happen. And I understand the process has been for the Mayor to recuse himself from this vote, but you know, it puts us in a very difficult situation.

Vice Mayor Lago: Commissioner, I appreciate your comments. Am I coming through okay now or is it fine?

Commissioner Keon: Yes.

Vice Mayor Lago: Okay. No, I agree with you wholeheartedly. You know, and having served on this Commission for a little over seven years now, I think this is the first time that I can remember that something like this occurs, and I know that all my colleagues on the Commission are very careful. I've never contacted -- I know that none of you have ever contacted one of your appointments on a board to exert any influence in regard to an upcoming vote. And you know, I think that this puts this Commission in a tough situation. And again, I know that's why we're here. We're the final arbiter in these issues and the Mayor has recused himself. But I agree that I think that we need to be increasingly a little bit more careful in regards to our overreach because this is

an example where a decision is going to be rendered now in the next five to ten minutes and a cloud will always be looming as a result of certain communications that occurred. And you know, that should never happen. In regard to the comments about our esteemed past Historic Preservation Officer, Dona Spain, exceptional employee with the City, exceptional resident here in the City. She's done very good things. She continues to do that. You know, we're a community that rallies around everyone. We're very respectful. That's what sets us apart from other cities, not only during the Commission, but also on a day-to-day basis. So, you know, sometimes the passions -- and that's what I'm equating it to, our passions get the best of us. But I think that moving forward, you're going to see the best light come out in regard to the City of Coral Gables and its residents. So, you know, I think it's only a one-time incident. I haven't seen anything quite like that happen in the City, but the passions got the best of us at that instance. So, moving forward, I'm ready to take a vote. I know we have a motion that hasn't been defined yet, as our City Attorney stated. If Commissioner Keon would like to define her motion, we can move forward.

Commissioner Fors: Vice Mayor, if I can just (INAUDIBLE).

Commissioner Mena: (INAUDIBLE).

Vice Mayor Lago: Of course, of course.

Commissioner Fors: Yeah. Before we go to a vote, I'll reiterate that our hands are tied, I believe, to a certain degree and that all we can do here is apply the appellate standard. I heard Mr. Savage say that there's substantial competent evidence for designation in the Historical Resources Department report. I agree with that. The question though, when we apply the standard, is whether there was competent substantial evidence set forth by the non-appellant, the appellee. That's the way the appellate standard is applied. I think in order to reverse the board's ruling, we'd have to find that the record is completely devoid of substantial competent evidence in support of the board's decision not to designate. If the board had decided to designate it as historic, I don't think I'd be able to reverse their decision under those circumstances either. In my experience in appellate

proceedings, it's very difficult to arrive at the conclusion that there's no substantial competent evidence in the record. Here we had the testimony of an expert witness (INAUDIBLE) report that was presented by the non-appellant. Weighing that evidence, interjecting my opinion into it is simply not my function sitting in an appellate capacity. That's the main reason why I'm not going to be changing my vote today.

Vice Mayor Lago: Thank you, Commissioner. There's a motion on the floor.

Commissioner Mena: Vice Mayor.

Vice Mayor Lago: Go ahead.

Commissioner Mena: My request was just going to be -- and I'll defer to Commissioner Keon if she wants to do it differently, but my suggestion was going to be if we could make the same motion we made last time and vote -- sort of take the same vote the second time, unless Commissioner Keon...

Commissioner Keon: Yeah. That's exactly...

Commissioner Mena: Had a different idea.

Commissioner Keon: Yes. And the motion previously was?

City Attorney Ramos: Motion to affirm the decision of the Historic Preservation Board.

Commissioner Keon: I -- okay. I'll make that motion to affirm the decision.

Vice Mayor Lago: Is there a second?

Commissioner Fors: Second.

Commissioner Mena: Second.

Vice Mayor Lago: Billy, if you could read the roll.

City Clerk Urquia: Commissioner Keon?

Commissioner Keon: No.

City Clerk Urquia: Vice Mayor Lago?

Vice Mayor Lago: I'm sorry. Could you -- Miriam, could you -- I'm losing here a little. Can you hear me?

City Attorney Ramos: Yes, I can hear you.

City Clerk Urquia: Yes, we can hear you.

City Attorney Ramos: Now you're muted.

City Clerk Urquia: He muted himself.

City Attorney Ramos: Okay. Now we can hear you.

Vice Mayor Lago: I apologize. So please read -- I missed some of the audio. I'm having a little bit of a connection issue.

City Attorney Ramos: The motion is to affirm the decision of the Historic Preservation Board. It received a second, and now we're calling the roll.

City Clerk Urquia: So...

Commissioner Keon: It's a motion to affirm so it followed the motion at the prior meeting, so we have some consistency in the record.

Vice Mayor Lago: Okay.

Commissioner Keon: I voted no.

Vice Mayor Lago: Yes.

Commissioner Mena: No.

Commissioner Fors: Yes.

(Vote: 2-2)

City Clerk Urquia: Vice Mayor, it's a tie motion -- a tie vote.

City Attorney Ramos: In accordance with the Code...

Vice Mayor Lago: Madam City Attorney.

City Attorney Ramos: Yes. In accordance with the same section of the Code, which I'm looking for -- give me one second -- Section 28 -- 2-82(a)(4) of the City Code, if the tie vote -- if a tie vote results again then the decision below stands.

Vice Mayor Lago: Okay, perfect. So, I think we can now bring in the -- back the Mayor into the room so we can continue with the meeting.

Mayor Valdes-Fauli: Hello, hello?

Vice Mayor Lago: Mayor, do you hear us?

Mayor Valdes-Fauli: You know, I was very sad when you guys (INAUDIBLE) me and excluded me but now I'm back so now I'm happy again.

DRAFT