

**City of Coral Gables City Commission Meeting
Agenda Item E-2
February 5, 2013
City Commission Chambers
405 Biltmore Way, Coral Gables, FL**

City Commission

Mayor Jim Cason

Vice Mayor William H. Kerdyk, Jr.

Commissioner Maria Anderson

Commissioner Rafael “Ralph” Cabrera, Jr.

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)

Andrew Hall, Attorney Representing Applicant

Robert Gallagher, Appraiser

George Volsky, Coral Gables Resident

Susan Trevarthen, Attorney from Weiss, Serota, Helfman for the City

E-2 [Start: 10:06:56 a.m.]

Historic Preservation Board Appeal – Case File (SP) 2012-018

Cascar, LLC (Hall, Lamb & Hall, PA) Applicant has filed the following appeals to the Coral Gables City Commission from decisions of the Historic Preservation Board at its regular meeting of December 20, 2012 regarding the property at 2 Casuarina Concourse, a Local Historic Landmark, legally described as Lot 32, Block “A”, Gables Estates Number 2, according to the plat thereof recorded in Plat Book 60 at Page 37 of the public records of Miami-Dade County, Florida:

“The denial of the Applicant’s claim that the designation of its residence at 2 Casuarina Concourse, Coral Gables, Florida, as a local historic landmark has created an undue economic hardship.”

And

“The denial of the Applicant’s application for a Special Certificate of Appropriateness for demolition of the residence at 2 Casuarina Concourse, Coral Gables, Florida.”

Mayor Cason: Mr. City Manager, please present Agenda Item E-2, which is also an appeal.

City Manager Salerno: Thank you Mr. Mayor, Commissioners, let me read the item. Item E-2 is a Historic Preservation Board Appeal – Case File (SP) 2012-018. Cascar, LLC (Hall, Lamb & Hall, PA) Applicant has filed the following appeals to the Coral Gables City Commission from decisions of the Historic Preservation Board at its regular meeting of December 20, 2012 regarding the property at 2 Casuarina Concourse, a Local Historic Landmark, legally described as Lot 32, Block “A”, Gables Estates Number 2, according to the plat thereof recorded in Plat Book 60 at Page 37 of the public records of Miami-Dade County, Florida: “The denial of the Applicant’s claim that the designation of its residence at 2 Casuarina Concourse, Coral Gables, Florida, as a local historic landmark has created an undue economic hardship” and “The denial of the Applicant’s application for a Special Certificate of Appropriateness for demolition of the residence at 2 Casuarina Concourse, Coral Gables, Florida.” Dona is here to introduce the matter first of all and I’m sure the applicant will speak to the matter and has a presentation.

Mrs. Spain: Good morning. For the record, Dona Spain, Historic Preservation Officer. I’d first like to place into the record the actual application for appeal, the verbiage is in your package but this is the actual form, we’ll hand these to the City Clerk.

Commissioner Quesada: When you say the verbiage, you mean we actually have that as part of our packet?

Mrs. Spain: I don’t believe that document is part of the package, but I think it should be, that’s the appeal that he filed. All of the wording on that is in your package.

Commissioner Quesada: OK.

Mrs. Spain: And then I’d like to turn it over to the applicant and after he is through if I could answer any questions you might have and also say a few words. We also have Susan Trevarthen to handle the legal issues, and I think the applicant has a PowerPoint.

City Attorney Leen: Before you begin, one issue for the Commission is, once again this is an appeal to the City Commission, the same rules apply as the last one, you can affirm, you can override, you can affirm with conditions, you can remand, so you have the same options that you had before. I would say though that I know you are about to see a presentation, it's very important that you recognize that under our Code this is not a de nova hearing, so what you can make your decision on is the evidence in the record that you have received and reviewed, and what was decided below. You can look at that transcript as well. What you are about to hear would be in the nature of argument, so I made a decision that – they are going to present to you a PowerPoint, this PowerPoint has already been presented is my understanding, so this is not additional evidence. You may look at it for what it's worth, so that you have the same evidence, information before you that the Historic Preservation Board did previously.

Mayor Cason: Mr. Clerk do we need to swear in the witnesses on this?

City Clerk Foeman: Yes, Mr. Mayor.

City Attorney Leen: No, no you do not need to. In this proceeding there is no additional evidence that can be taken, so there is no need to swear people in under oath.

Mayor Cason: Go ahead.

Mr. Andrew Hall: Mr. Mayor, Commissioners, my name is Andrew Hall; I have the pleasure of representing the property of 2 Casuarina Concourse, which is the estate of – which is Cascar LLC. It is a single member living liability company, it is owned by the estate of B. Carlin and that in turn is the B. Carlin Foundation. The Foundation supports the arts, the medical community and the youth of Miami-Dade County, all of its funds are used for those philanthropic purposes only. We have appealed the decision of the Historic Preservation Board because we believe this meets the legal definition of undue economic hardship based upon the record that was presented. The reason we are here is we are trying to avoid what we consider to be the potential expenditure of \$8 million of City funds in the Bert Harris Act that will be coming in the event that this appeal is unsuccessful. So let's just talk about what the issue is in this case. The issue is whether or not there is an undue economic hardship and there have been an awful lot of comments in the record which are inappropriately legal standard, so I want to deal with that first issue first. The staff has used typically the language associated with the Constitutional taking, that is to say a condemnation, a due process event which gives rise to a payment of money. We on the other hand are using the language of the Bert Harris Act, which you have before you, it's part of the record. The Bert Harris Act is very different to the Constitutional Standard and the argument that has been made in connection with the merits of the designation deal with the taking standard and not the Bert Harris Act. Let me just review the information that we have. The issue in this case is this house was designed by Alfred Browning

Parker; there is a view by some that Mr. Parker's work was so excellent that it should be preserved. Our appraiser, Mr. Gallagher who is here before you will be doing the presentation which is identical to the presentation that was presented to the Historical Preservation Board will show you that in point of fact the economic value associated with having a house designed by Mr. Parker does not enhance or detract. That is to say the value of his homes are sometimes the highest in the neighborhood and sometimes absolutely below. There is nothing unique from the value standpoint that warrants you saying, this house because it is designed by this architect has a greater value than it would otherwise capture the marketplace. We then turned to what actually is happening in the marketplace and we have two things for you to consider; one of which is the actual performance of the house in the marketplace. We have presented in the record ten separate contact proposals, four of which were accepted, which demonstrates that this house when it is unaffected, that is to say whether it should be torn down and rebuilt in Gables Estates, this property has a value of approximately \$10.2 million or more. Conversely, when the house cannot be torn down in its current state it is worth less than \$5 million. Now at \$5.2 million differential is the issue who bears the burden of that?- because that \$5.2 differential occurs only because this is a historic designation. Absent the designation this house will go the way a lot of houses in Gables Estates which were originally built in undeveloped state. They get torn down, they get replaced with a more modern structure suitable for that neighborhood. A decision was made because it was Alfred Browning Parker's work that it ought to be preserved. Let me just before we go to the presentation just deal with the standards. First of all, I want to share with you a couple of legal thoughts. In a Law Review article written by John Echeverria in Stanford Oak Environmental Law Review and we provide this to you, the observation is that in 1995 this state adopted the most far reaching property rights legislation in effect anywhere in the nation and the basic objective of the Bert Harris Act, which is what we are talking about today, is to expand upon the protections provided to the property owners otherwise provided by the taking clause in the Constitution, meaning that it was designed to create cause of action separate and distinct from and lower than a Constitutional taking, and the First District Court of Appeal in this state ruled in MH Profit versus City of Panama that a claimant can demonstrate deprivation of all economically beneficial uses and that's not relevant to Bert Harris. Bert Harris is much simpler and the language is in the petition. Consequently when we prepare cases like the cases that are relied upon by staff and several of the other cases they are all Constitutional cases. The Bert Harris Act cases talk about what...has its used directly restricted or limited and is unable to obtain the reasonable investment backed expectation for the existing use of the property then that is the inappropriate burden.

Commissioner Quesada: Can I stop you for one second?

Mr. Hall: Yes.

Commissioner Quesada: The document you are referring to, I'm having trouble finding it. Can you show me what it looks like?

Mr. Hall: That is the legal analysis that was provided by staff and also in our opinion, letter R, and our petition lays out that issue starting at H-5...

Commissioner Quesada: OK. Thank you that's what I needed.

Mr. Hall: Now moving through let's deal with certain basic issues. First, the statute talks about the following: when a specific action of a governmental entity is inordinately burdened an existing use of real property or a vested right to a specific use of real property, the property owner of that property is entitled to relief which includes compensation for the actual loss or delineation in value. So the question is what is existing use? There are two standards for existing use of the statute, one of which is an activity of such reasonable foreseeable non-speculative land use which is suitable for the real property and compatible with adjacent land uses and which has created an existing fair market value in the property greater than the fair market value of the actual present use or activity on the real property. In this case that is the difference between being able to tear down the building, which we have the right to, but for this historic designation and replace it as compared to leaving this property in place which drops the value of the property by \$5 million, that standard is met; and then we talk about the inordinate burden, which is the issue and that is the action of one or more governmental entities directly restricting or limiting the use of real property such that the property owner is permanently unable to obtain the reasonable investment backed expectation for the existing use of the property or invested right to explicitly use of the real property with respect to the real property as a whole. The vested use that we are talking about is the right to alienate the property. We have a Constitutional right to sell and that vested right is being restricted and a significant portion of the property is lost by this historic designation and that meets the standard of inordinate burden. So what I'm saying to you is you have an issue before you and that is, is this house not for use by the general community?- we are not talking about creating a park, it stays a house whoever owns it; is this house in Gables Estates and the maintenance of this structure, you'll hear about this in a moment when Mr. Gallagher makes his presentation, of sufficient merit to the City to warrant the City spending approximately \$7-8 million in taxpayer dollars to pay the difference to the owner, and if your answer is yes then you ought to...if your answer is no then the burden is met.

Mr. Gallagher: Good morning Mr. Mayor, Commissioners, it's been many years since I've had the honor of addressing the City Commission of Coral Gables. Last time I was present the Coral Gables Board of Realtors was about 35 years ago, and everything was different; my presentation instead of it being a PowerPoint on your television was actually a slide show from a 35 millimeter slide projector, things were substantially different. There was one thing the same though; there was a Kerdyk behind the dais, very interesting. Anyway, I was asked – I'm an

appraiser here in Miami. My whole career was spent working in the appraisal business here in Dade County. I've been doing it for 40 years, and I was asked by the law firm to do a study to determine whether or not there is a difference in the value of this property whether or not the house has to be preserved. It's a difficult valuation question. We went about doing a bunch of research and the presentation I'm going to give you is the result of that research. I'm told this should work. The house was built in 1966, I'll run through this really quick, our whole appraiser report was given to you my understanding is, and all I'm giving you is a quick summary of that report, there is nothing new that I'm going to present this morning. It was designed by Mr. Parker, it's located on Biscayne Bay in Gables Estates. The key issue here on this slide is that the house itself has 11,000 square feet in it, sits on about a two-acre site. Over the course of his career as an architect, as you know, Mr. Parker has designed a number of houses in Coral Gables and Coconut Grove, and so we made an investigation as to where those houses are, that's what this slide shows, where those houses are throughout the Gables and on up the coast. We found some in Miami Shores, we also found a couple up in Palm Beach County, but those actually had been demolished. They had reached the end of their economic life. Some of the examples are beautiful homes, award-winning homes, here are two photographs from the record or pictures that we took of houses of Mr. Parker's that won awards; and there is this house as well that he lived in himself, which is in Gables Estates. It fronts on Biscayne Bay and the entire east space of this house is all windows opening up onto Biscayne Bay, and he had reported that each of his children had a bedroom with a view out to the Bay, unfortunately the house we are talking about in this case doesn't have that benefit, it's one of the handicaps of this home. We found 39 homes in South Florida that were designed by Mr. Parker, as I said four had been demolished, all of which were in Palm Beach County; and here is a list, this is in the data that you've been provided, it's in our appraiser report. This is a list of houses of Mr. Parker's designing that have sold and this list is in date order, the last sale – the first sale on that list is the last sale of property in February of 2012, and then going down the list you see varying price ranges and the dates go back in time. Top of this list is June 2009 on down to 2005, and these properties have all sold all varying prices, varying locations, and then the last couple there have been no sales that we were able to find in the public record. What we tried to do is to isolate the value of the Parker house, and the way we did that was to go to neighborhoods where there had been Parker sales and find sales of land at those respective locations, and thereby deduct out the land value component of each property and get a value of the house itself, break that down on a price per square foot basis and then compare that to other house prices in that same neighborhood, and what we found was a variety of information as one would expect. The test was, one of the tests we found was, did Mr. Parker actually live in it?- and did the house win any awards? If those two things had occurred then it was highly probably that those houses would have a higher value in the market as compared to the other houses in the same neighborhood. To find the relative value of the Parker homes we researched sales of homes in the same neighborhood and then we found these examples; the Crawford Avenue house and the one on 120th Street and Venita Avenue, these had relatively low values. As we went from market to market we found a wide variance into how the

Parker house related to the rest of the houses in the neighborhood. These also were houses toward the low end of the range, and I'm going to go through these fairly quickly, but we also found as we sort of expected that sometimes the Parker house is the most expensive house in the neighborhood and here are examples where they are either the very highest price or they are in highest quartile or the highest range of prices in a particular neighborhood. But the bottom line to all that was that we found that the Parker houses can have greater value than others, but it's not automatic and it's not in every case. Of the nine Alfred Browning Parker homes that we did find that sold between 2009 and 2012, the average price we found, this is land and building together, was \$316 per square foot of house.

Vice Mayor Kerdyk: So let me ask you a question Bob.

Mr. Gallagher: Sure.

Vice Mayor Kerdyk: So that's including land?

Mr. Gallagher: Including land.

Vice Mayor Kerdyk: That's not extrapolating the land out, that's including land?

Mr. Gallagher: I'm glad you asked, let me step back and clarify. To do the comparison we took the sale prices and deducted out of land value and compared the houses on a price per square foot basis, and we found that sometimes the Parker house was at the high end of the range, sometimes we found it at the low end of the range. In one case we actually found that the house added no value at all, that the land value was the value of the property. We took all the sales that we found, including their land, we averaged them all together and the average price of all the Parker houses we were able to find, including their respective land was \$316 a square foot.

Vice Mayor Kerdyk: And then you took the \$316, you multiplied it by the 11,000 and you came up with the \$3.5 million, but the problem with that methodology in my opinion is, you are not taking into any account the location of the subject property.

Mr. Gallagher: There are two problems with it, two huge problems with it, and you named the first, and that's the first thing that bothered me. The sales that we found were not in Gables Estates, they are spread out through Coral Gables and Coconut Grove, and we said the same thing, they are not on the water, they are not Gables Estates, OK, we agree. We wish we had data that said, here's what it means if they are in Gables Estates. Unfortunately, there isn't enough depth of the data to say that. So we have that problem. We have the other problem being that the size of the houses typically was about 1,000-1,500 square feet, so these little tiny houses we are comparing to this 11,000 square foot house, so here's another big "elephant in the room" besides

our location issue, that's our size issue. So for our analysis we said, we are just going to let those things offset, it's simplistic, but it's all we've got.

Vice Mayor Kerdyk: But you know how I see that as not being right is the fact that in Gables Estates you have houses that sell for \$1,000 a square foot.

Mr. Gallagher: Yes you do.

Vice Mayor Kerdyk: Actually, I had my staff pull up some recent sales and the most recent sales sold for \$1,039 a square foot there. Whereas in these other areas they are not selling for that much anywhere close to that, so you would get a much bigger pop, I would think, being in Gables Estates on the waterway than you would ever have as a smaller building in a different location. I know you are trying to rationalize it, but I can't see the connection between the two.

Mr. Gallagher: I understand. Let me explain one big difference. The buyer in Gables Estates is paying \$1,000 a square foot for their house, there are some basic elements that they need in those houses; one of which is a garage, which our house doesn't have, usually it's a 3 or 4 car garage, this house has a 2-car carport. They want a nice clean modern kitchen, which this house doesn't have. They want a nice big bedroom suite, master bedroom suite with a nice big modern master bathroom none of which this house has, and they want to be able to take advantage of the beautiful views of the bay, which most of those houses have, which this house cannot take advantage of because of the way it's designed. In addition to using this data to indicate a value of \$3.5 million, we have the one offer on the property that did not require demolition of the house at \$5 million. To us those data while they are far apart in points, they say the same thing, the value of this house is \$5 million or less if we have to keep it.

Commissioner Cabrera: Can I just ask you a quick question about that?- because I don't know nearly as much as Mr. Kerdyk knows about real estate values, but something you said really hit a cord with me. During the process of your services do you bring into the calculations the ability to a) add a garage; b) add a master suite; I think you talked about a modern kitchen, a renovation of a modern kitchen, I realize the view is a difficult one to overcome, but out of those four that you mentioned I thought of three that could be easily remedied by enhancing that property.

Mr. Gallagher: That may be Commissioner Cabrera that was not our charge, we are not architects.

Commissioner Cabrera: OK. I wasn't sure.

Mr. Gallagher: That was not part of what we were asked to study.

Vice Mayor Kerdyk: But I want to answer that, can I answer you to that question?

Commissioner Cabrera: Absolutely. Absolutely.

Vice Mayor Kerdyk: Appraisals and Bob will tell you because he is a very good appraiser, the fact is you look at highest and best use and in this particular case you have a designated piece of property and you should look at highest and best use. What you can do on the property with the property existing, in my opinion, which means possibly add the components that you just mentioned. If you think about it, if you look back and take it back to the shell you could probably, and I haven't been in it, Bob have you been in?

Mr. Gallagher: Oh, I have.

Vice Mayor Kerdyk: OK, you have. I have not been in, so let me first clarify that, but the fact is that you have a beautiful piece of property of 80,000 square feet there plus or minus, you have 11,000 square foot home, it happens all the time where people come in and renovate house or add property. You could actually add value to that house because what you can do is basically to build an addition. Say you build a 4,000 square foot or 5,000 square feet, you could probably build it in the \$400 range. You see that property is selling for \$1,000 a square foot; you are creating \$600 a square foot for those 5,000 square feet. So if the City will allow, and I think the question is to our staff, if the City would allow a component to be built on there you could certainly create value in that structure there.

Commissioner Cabrera: Well to stay with you in this discussion; you and I and Mrs. Anderson and perhaps Mr. Quesada and Mr. Cason, we have seen that exact example that you are outlining where we have given historic designation to properties that have in fact enhanced the property to a point where the value of the property has increased incrementally because of these improvements that you are outlining. That's what I was trying to get at.

Mr. Hall: If you'll tolerate a comment. That comment has been made at the Board level.

Commissioner Cabrera: I know. I read it.

Mr. Hall: But that doesn't prove out in actual fact. We've engaged real estate brokers to aggressively market the property. Now an intelligent buyer, a contractor, anybody who wants to come in as an investor all know those very same possibilities that the Vice Mayor has raised as a hypothetical, and notwithstanding that possibility no one wants this house unless it goes down. The maximum they'll pay is \$5 million and this is an issue that is not a speculative issue in the sense of what might happen, the market is actually telling you what is happening by the actual effort to sell this property...

Mayor Cason: But doesn't the market change – I mean a lot of this activity took place during the worst days of the market, the market is picking up.

Mr. Hall: That would be true, except two points; number one, the high end of the market there is still aggressive sales going on there hadn't been inventory at the high end of the market for well over a year; number two, in terms of this particular marketplace what we are doing is we are creating kind of like a calculus formula – add this for...the fundamental problem of this house is incurable, the fundamental problem of this house is essentially access to bay views, and that will then result in the destruction of those same characteristics that staff is saying is essential to an Alfred Browning Parker house, so what we are doing is we are doing the following exercise, we are saying let's decide which one of those characteristics of the Alfred Browning Parker house are sufficiently immaterial to us, so it will allow them to be destroyed, meaning a garage or a master bedroom or a kitchen, etc. will allow a wing to be put on there to step up the value. All of things that could be done by any owner at any time anyway consistent with the total amount of lot availability in terms of construction; and then we are saying, but ignore the fundamental flaw in this thing, which is you live in a cave if you live in this house.

Vice Mayor Kerdyk: Can I ask you a question? If you are aggressively marketing it, why do you have a price of it as \$12.5 million, \$12.9 million and 119 at 2010, you drop it to 1021? – on October 21, 2010, to \$11 million then you don't have any buyers and then you up it again to \$12.5 million six months ago, what was that about?- if you are aggressively marketing and you are not getting any offers on it why are you now increasing the listing price on the property? Tell me; tell me, I want to hear it.

Mr. Hall: I'm glad you do. Why don't you just look at the exhibit and look at the contracts that were presented, because maybe you'll see that the asking price hasn't had a single effect on people putting offers in running from slightly under \$10 million, a few offers came in the \$9 million range, and a \$5 million offer, if I have to keep it there, so the asking price had nothing to do with the actual offers that were made. People it's a smart market, and the people that are buying at this price are smart buyers, they know how to offer, they know how to spend their money and they know how to test the market. So the asking price is a nice label, it doesn't mean a thing. What does mean a thing are two points, what's actually happening in terms of real offers, ten offers, that's real, they happen, no one was suggesting they weren't; and secondly no one wants this house unless it's a tear down for more than \$5 million. That's the point.

Mayor Cason: Have you advertised this in the historic preservation magazines and for the community people that like historic homes?

Mr. Hall: I believe the brokers have done whatever they could, but I don't....

Vice Mayor Kerdyk: Have you read the remarks in the....In prestigious Coral Gables Estates. Opportunity to restore and renovate the 11,183 outstanding waterfront properties, private peninsula, 1.96 acres with spectacular views down the length of the waterway in some bay fronts, approximately 580 on the water with dockage for a large boat, best public and private schools. I don't find it the best write-up I've ever seen, let's put it that way.

Mr. Hall: I don't think that's the standard, but if you want to make that the standard, I'll accept that, because if it is the standard it's certainly designed to attract the high end buyer, and pay the high end prices. Now the brochure is here.

Commissioner Cabrera: Do you have more than one? I didn't see it.

Mr. Hall: It's in the package...

Commissioner Cabrera: That's alright, don't worry about it, it's OK.

Mr. Hall: The one thing I can tell you is we can certainly have the right to disagree, but I'm going to confine my comment to what I think is the legal issue.

Mr. Gallagher: Andy before you do your legal issue could I take two minutes and wrap? I caught mid stream there into the argument rather than finish the presentation, so if I may?

Vice Mayor Kerdyk: Sorry about that.

Mr. Gallagher: I want to make this real short. We also did a separate investigation as to what the land was worth, if it were vacant and that value the conclusion was somewhere in the range of \$10 to \$12 million. We see the market moving up pretty substantially in the high end luxury range and we thought when we did our evaluation last May, I think it was that, that was a reasonable valued expectation for that lot where it is now because of its beautiful views, \$10 to \$12 million. So our conclusion of value was as land it was in the range of \$10 to \$12 (million) as a house. If you had to keep the house it was a range of \$3.5 to \$5 (million), \$5 million being the actual offer from a buyer who proposed to keep the home. I would strongly suggest that if you get an opportunity to go look at the house, Mr. Kerdyk as you know there is a long distance between a theory of what one can do at property and what is practical because you have such experience with property, and I think if you went and looked at it you might realize that's the case here. I spoke to prominent brokers in our market, Jeannie McCaffrey who has had the listing, Audrey Ross who is Ms. Gables Estates, Ron Sheffield who is Mr. Coral Gables Real Estate for lack of a better term, and they tended to agree that the house didn't contribute, they had no opinions as to how much detriment it was, but there was a problem with marketing that

house because of its location, because of its design. So our conclusion after looking at a depth of market data was again \$3.5 to \$5 (million) for the house, \$10 to \$12 (million) for the lot, if you could tear it down and that provides a substantial difference between the value with the house and without.

Vice Mayor Kerdyk: I just have one last comment, I apologize. As far as the land sale goes, I read through Bob's land sales and I also read through Lee Warniker's land sales, and if you take into account that several of those properties, he has 5 land sales that he notes in his package there, of those 3 are renovated homes, in other words they didn't just knock down the property, they renovated the house, which he is not giving any value to but there is some intrinsic value if you renovate the house there is some value to the shell itself; and then if you look at the ones that were knocked down they are on the lower range of the spectrum, I think the spectrum range from \$99 up to \$140, and I think the two that are on the lower range that were knocked down were the \$99 one and the \$113 one. I might be off by a dollar or two, so there is some discrepancy as far as land sales in that location.

Mr. Gallagher: But when I spoke to the brokers involved in those house sales, their comment to me was those buyers were making a decision whether or not they should go ahead and renovate or they should tear down, and that decision was based on the fundamental design and structure of the house. It did have multiple garages, it did have a large master suite, they decided to go ahead and renovate rather than tear down, but that was the decision made at the time. I'd also heard that the people who bought Pat Riley's house for \$14 million was thinking about tearing it down, so in Gables Estates tearing it down is an option whereas to us mere mortals it might be a sin, but it's an option in that neighborhood because there is significant dollars to do whatever you want to do. So thank you for your time.

Vice Mayor Kerdyk: Thank you Bob.

Mr. Hall: The issue as far as we are concerned is historic designation does in point of fact impair a legal right, no question; historic designation even under the hypothetical the Vice Mayor creates, creates a lower value, because one has to invest in order to get more and what you are suggesting would be the extra profit on the invested money would mitigate against the loss.

Vice Mayor Kerdyk: I'm saying that somebody could take the property and build and add on to it to make it a house that is livable and somebody that could – yes – have you gone to the City and seen what you can build on?

Mr. Hall: Well it's historically designated.

Vice Mayor Kerdyk: No, but build on to the structure, add to the structure.

Mr. Hall: What I'm suggesting to you is your math, just following through on your math exercise using \$600 of theoretical profit per additional square foot of construction, that's great, we've got \$5 million to overcome. Now if you do the math on that, that tells you the size of structure that one would theoretically have to build and then sell and finance in order to get it done, it doesn't work, it simply doesn't mitigate. The issue that you are raising, it seems to me, we just don't agree on.

Vice Mayor Kerdyk: I don't think so.

Mr. Hall: But you get to vote, I don't

Vice Mayor Kerdyk: I respect that.

Mr. Hall: You get to vote I don't, and I appreciate that, but the fact of the matter is I'm suggesting to you that you have to decide whether or not you are willing to invest the City's resources in doing this. Now, I don't think I can add anything more, if you feel this is the way you want to go that's fine, but you are in my view, speaking for the people of this City and I hope you understand and I think the City would want to have a better use for its money than this one.

Commissioner Cabrera: Because obviously if things don't work out in your client's favor, then you are going to move forward...

Mr. Hall: I would say that my math on this tells me that a week from today we will be giving you the formal notes of Bert Harris Act.

Commissioner Cabrera: OK. Yes, you made that clear early on.

Mr. Hall: Yes, so we will be moving forward.

Commissioner Cabrera: Thank you.

Mayor Cason: Before we hear from the City, we have one more speaker, George Volsky.

Mr. Volsky: Good morning Mr. Mayor, Commissioners, City Manager, City Attorney. My name is George Volsky; I live at 1008 Alhambra Circle. I believe, first of all let me tell you that I don't know any of these gentlemen, I don't know anything about this issue except that it has by chance since I on occasion attend meetings of the Historic Preservation Board, which I think and I've written and I repeat its dysfunctional. I just happen to be when that issue came up for the first

time and I was appalled by the arbitrary way the issue was being dealt with and the issue was whether this property is historic and I believe I'm the only one, I don't know if these gentlemen, I'm sure they didn't – they did not see the building when it was very shortly after it was built. It was built in 1966. I have been to that house at least 4 may be 5 times, why?- because at that time my wife was very much involved in cultural issues, and I was involved as New York Times correspondent in covering cultural issues of Miami-Dade, then Dade County, and I knew, my wife knew very well the owner of that building and I knew Alfred Browning Parker. First time I went there and I said, how is it possible that Alfred Browning Parker would build something like this, because it was singularly unpleasant, so I asked some friends of the architect, at that time incidentally Miami had a very important group of architects known nationally, that ceased to exist, all or some of them died and others moved away; and then as a result there are no historic building of national value in the County; and I can tell you that that building, someone told me, Alfred built it because the owner, who was a lady, wanted it to be built. It was built only for parties. I walked around as I usually do being a curious individual of that house and as the gentleman mentioned, the kitchen was minute, it was not a house to be lived in, and I can tell you this, if this is a historic – if the Historic Preservation Board named this house historic, I think this is an outrage. I can tell you if someone gave me the house to live in I wouldn't. I mean with the proviso to live in it I wouldn't, if someone gave me that house and property I would tear it down, even for parties it wasn't pleasant. I recall when I was there people would just go out in the yard and have drinks and so on. It was a singularly unpleasant house built by a good architect for a lady who had very strange taste, she died some time ago and I knew her very well. So I don't know about, Mr. Kerdyk talks about the value of the property, I do know; the house by no means is historic, it's simply, I'm going to use again the adjective unpleasant, and neither of you would want to live there. Thank you.

Mayor Cason: Thank you. Mr. Manager.

City Manager Salerno: Thank you Mayor. Dona will now present the staff report followed by Susan Trevarthen of Weiss Serota.

Mrs. Spain: Good morning again. Just a reminder, this house was designated on February 16, 2012, and they appealed that designation, so you have heard the designation appeal and you upheld the Historic Preservation Board, so this is a local historic landmark, but what you are here today to rule on is whether or not it should be demolished and also a claim of undue economic hardship. I think the point, Vice Mayor Kerdyk, that they can alter the property is a good one; the ad valorem cases that come before you for tax relief all have huge additions, most of them have very large additions that have doubled or sometimes even more than doubled the size of the property that can easily be done now. They talk about the lack of a garage, they can build one, they talk about the lack of a master bedroom that fronts the bay, they can build one; there is a section of the property that blocks the view they can ask that that portion be demolished, that has

not been brought to staff; they hired an architect to say that it was not significant. What probably should have happened is they could have hired an architect to actually do plans for an addition, and then they could market it with a historic designated home with plans that have already been approved by the City. So the Historic Preservation Board has been very good about doing additions to historic properties, it's not – if you designate a property, it doesn't mean it can't be altered, and that's a misconception. It still can be used as a residence that's the use of the property now, it certainly still can be. It was built in 1966 at a cost of \$329,000, we have that on the record, so they are able to get a fair value for it now...

Vice Mayor Kerdyk: They probably bought the lot for \$17.5, I think at that time....around the \$20,000 range; they got two lots maybe they paid \$40,000. OK, sorry.

Mrs. Spain: That's a fairly good return on their investment. I'm not a realtor, but the contract's there, I know they've said they've only received the \$5 million offer, if it is to remain, but those contracts I went through them, I could not find where they were contingent on demolishing the property, maybe that's something verbal, some of them even have written "as is", so I'm just not sure about that. I have a PowerPoint, but you've all already seen it when it was designated, I don't think it is necessary to show it to you again. I'm more than happy to answer any questions.

Mayor Cason: The house could also be rented.

Mrs. Spain: Yes, yes, that was brought up by one of our Board members, it could very well be.

Mayor Cason: Is there any maximum on the amount of tax relief they could get to bring the house up to...?

Mrs. Spain: You mean if there is a cap on that?- no, there is not. There needs to be restoration as part of it, but as long as there is the entire value of the addition could be at zero for ten years. That's an incentive.

Commissioner Cabrera: What's your professional opinion about the opportunity to take a property like this and enhance it with the exception of the view? I haven't been to the property, so there is no way for me to confirm whether the view is a good view or a bad view.

Mrs. Spain: There is a section of the home that juts out, that blocks the view that is not a major portion of the home. I honestly believe that, that section can be demolished, so that they can get a better view of the bay without affecting the significance of the property.

Commissioner Cabrera: And that was confirmed, that was confirmed not only in the minutes of the Historic Preservation Board meeting, but it was also discussed amongst this Commission that

auxiliary structure, I think it was some sort of storage area, some sort of storage shed that's architecturally the same as the house at the same time has no merit to it.

Mrs. Spain: That's right and this house is not on the open bay, it's on the canal.

Commissioner Cabrera: Right.

Mrs. Spain: There is like an angle that you can possibly...

Commissioner Cabrera: What about the aspect of taking a house like that and enhancing it by creating a master suite, modernizing the kitchen?- even though when we talked about the kitchen once before there were some discussions relating to the cabinetry.

Mrs. Spain: We don't designate the interior of a property.

Commissioner Cabrera: So that really doesn't even come to play....

Mrs. Spain:...they can easily upgrade the kitchen.

Commissioner Cabrera: OK – and then how about the ability to enhance the property with a 2, 3, or 4 car garage?

Mrs. Spain: Absolutely. Any of that can be done; it has been done over and over again on historic properties.

Mayor Cason: Craig, could you talk to the legal issues?- the question of Bert Harris versus the standard that we've been using?

City Attorney Leen: Yes. I have some thoughts on that, but I might suggest that you hear from the City's counsel first, because I know that she is prepared to talk on that issue and then I have my own thoughts that I can share with you.

Mrs. Spain: We have Susan Trevarthen here. I'll be happy to come up and answer any questions.

Ms. Susan Travarthen: Mayor, Commissioners good morning, Weiss, Serota, Helfman for the City. Can you hear me?

Mayor Cason: Yes.

Ms. Travarthen: I have a statement I'd like to read about my review of the proceedings in this matter which address the question that you are raising Mr. Mayor, so I'd like to proceed with them, if I might – thank you. The first thing I'd like to remind the Commission, because we have had the ability to have individuals who were present at the Historic Preservation Board here today to recreate some of the things that they said in that hearing, but I want to first remind you that this is an appeal and it is a review of the record. It is not a fresh taking of evidence and making a fresh decision. The issue before you is whether the Historic Preservation Board made the appropriate decision in denying the right to demolish this property and not finding that there was an undue impact. I was asked by the City to review the record and the hearing on the application for certificate of appropriateness for demolition, and that record as you know include all of the materials that were presented on designation as well as in December 2012 in relation to demolition. At the hearing as today, the applicant presented evidence of undue economic hardship in support of the request for demolition and argued that the current property value without demolition was \$3.5 million to \$5 million. However, there are various contracts and offers in the record presented by the applicant and they are in your backup today. Among those is a particular contract, which I think is worthy of note. It is a June 2010 offer from High Park Investments LLC, and that's at your record at 7-C, that is an offer of \$9 million for this property, and it is an "as is" contract; it contains no contingencies for demolition.

Commissioner Cabrera: What's the date of that contract?

Ms. Trevarthen: It is June 2010. What's also interesting about that is that, that same person had previously made an offer on the property at an earlier time, and so it's clear from the chain of records and the backup that this was an offeror who knew of the potential issues with Historic Preservation, the complications of dealing with a landmark on the property, and yet still in June 2010 this offer was made "as is", not contingent on demolition for \$9 million. So, I think that's important to point out in the record and has not been pointed out to you previously, it was also evident that was before the Historic Preservation Board and may have contributed to their decision. The City at the Historic Preservation Board also presented evidence countering the claim of undue economic hardship and just as the applicant presented to you this morning and did at the Historic Preservation Board various thoughts about what the value of the property was and you have an appraisal report in your backup. The City also offered expert appraisal testimony responding to the analysis that you've heard this morning, and while that expert is not here today that analysis is in your backup and in general that expert offered evidence that the methodology of the expert analysis valued by the applicant's appraiser was flawed because it omitted key comparable sales demonstrating that the property even with the home remaining retained greater value than was alleged by the applicant's expert; and I'll also note this morning as you've noted in some of your questions the applicant has conceded the limitation of the analysis and that the uniqueness of this location, uniqueness of the size of this home in relation to much of the data that is being drawn from and they've also conceded that they have failed to

look at the possibility of modifications and not proven or provided evidence that such modifications would not be possible. The Board in December concluded based on all of that evidence presented that the applicant had failed to establish that the inability to demolish the home would create an undue economic hardship or would meet the other criteria of the Code that would justify demolition. The applicant also allege that the cost of significant repairs required to make the structure habitable and of additional investments required to make it livable were prohibitively expensive and you've heard some of that this morning as well. The Board however, found that, that allegation that those costs supported demolition was then supported by the evidence and that the applicant had failed to consider alternate approaches to rehabilitate and use the home. So we are here today in an appellate capacity looking at the record that was reviewed by the Historic Preservation Board and deciding whether there was error in their decision or not and based on my review of the proceedings below in the record, the decision of the Board to deny the demolition permit is consistent with the Code and is supported by the evidence. Now specifically to the Harris Act claim, and the reason I'm addressing this last is intentional. The applicant's attorney is attempting to engraph upon a code criteria, which has a very specific definition in your Code, a different concept. It is true and I'm very familiar with the law surrounding the fact that there is a statute known as the Harris Act. I won't repeat what was stated by the applicant's attorney about that statute that it was adopted in 1995, that it was intended to provide an opportunity to receive relief for interferences with property value that fell short with what would be a normal constitutional taking standard that you've have to meet in federal court. Those things are just a fact that the law exists. What's being argued here and what I believe is very problematic and is not really the relevant issue before you, you are being asked to look at whether your Code was properly applied; your Code says undue economic impact, your Code has a specific definition of undue economic impact, which is tied to the taking standard and otherwise talks about a reasonable return on investment. That's not a bad definition in any way, it's very appropriate, it's very common that you see this in many historic preservation ordinances. My response to the various arguments that have been made on the Harris Act is that this is not the forum for making those arguments. Those who seek relief under the Harris Act has a very clear prescribed method for obtaining that relief that has not been invoked at this time. It begins with submitting an appraisal and a letter which makes a claim under the Harris Act and there is a period of time that the City has to look at that and to talk about in return to that letter what if anything the City would do with the property, that might be a time you would look at whether the property could be altered and specify what the City believes is the maximum possible use of that property. At the conclusion of that phase, which is pre-court if the property owner is still unsatisfied, then the property owner has to go to local circuit court and file litigation, and then it's up to a judge to determine what's an inordinate burden and what is not, and there is not a lot of case law on that, and I've been involved in several of the cases and I'm very familiar with it. There is even less law on Harris Act claims as applied to historic preservation, a very rare kind of claim; and my assessment of the situation is that it's by no means as clear a case as has been presented to you by the applicant's attorney. There are two

aspects, at least a couple of aspects that I would bring to your attention on these allegations regarding potential Harris Act claim on the property; one is that your Historic Preservation program predates the existence of the Harris Act. The Harris Act by its very terms recognizes that many regulations were in place prior to its effectiveness in 1995, and it says that those regulations are basically safe from challenge under the Harris Act because they predated the existence of this liability. This is not something that was brought to your attention. Also, I would also point out that even in the language that was read to you inherent in these concepts of the right to use the property being limited, the language of the statute itself uses the word non speculative, and here one could certainly argue whether the desired course of action that the applicant has laid out is completely non speculative, knowing as they do that it's a significant property knowing for many years that there was a potential for designation failing as they had to go through the City processes to obtain whatever relief they may want in order to rehab and continue to use the property. It's already been pointed out to you that there was only a, by my math, \$370,000 investment in this property, and the relevance of that is that a concept inherent in taking law as well as inherent in the Harris Act cases is, what is your investment back expectation?- right here you are dealing with essentially a straight line of possession the evidence that's been presented by the applicant and notes there has been no transactions since it was built, and the investment back expectation here was a single family home that is backed by the \$330,000 in the investment in the house that's of record; and today there was mention to the land price being about \$40 (thousand) whatever it was it was, but it certainly is several magnitudes less than even the \$5 million, which the applicant concedes could be obtained on the market. I would also note that the record contains the statement, it's not necessarily highlighted, but on some of these offers the answer was not that the offer contract was cancelled because of the inability to demolish, in the record the applicant's representative admitted that certain of the offers simply were refused because it wasn't enough money, it didn't meet their preset expectation of what they could obtain for the property, and that's certainly their right, but that goes far from establishing that the property is unmarketable. Turning away an offer is different from saying no offers are available or that no offers can come to closure. So in conclusion, I would say this Commission is not a court, this is not the place to determine damages claims. This is not the place to argue damages claims. This is a place to look at the City's Historic Preservation program and evaluate whether it was handled appropriately and more narrowly because as was properly pointed out by your staff person Mrs. Spain previously, this is not the designation. The designation was already appealed that's been resolved, it hasn't been challenged, we are here solely on the question of whether they made the case, they put in the evidence necessary to support demolition, and your Historic Preservation Board made the decision, well not unanimously, almost unanimously that they had not made that case and they denied the right to demolish and the question before you is whether it was a correct decision. So that was a long way around, but Mr. Mayor does that answer your question?

Mayor Cason: I think so. Thank you.

Commissioner Quesada: I have a few follow up questions. The procedural act portion of the Bert Harris Act, and I'm looking at Florida Statute 70.001, subsection 4-A, which reads, "not less than 150 days prior to filing an action under this section against a governmental entity the property owner who seeks compensation under this section must present the claim in writing to the head of the government entity"; and you had mentioned that there was a timing issue. They sent the letter to the Historic Preservation Department outlining....

Ms. Trevarthen: Actually no, I'm not saying it's a timing issue, what I'm saying is we have not received a Harris Act claim at the City, I've certainly have not seen one and I've handled Harris Act claims for the City before. It's a separate kind of filing. What you have received is applications to proceed under your Code Historic Preservation program related to the designation and related to the demolition.

Commissioner Quesada: So you are saying the September 5th letter from Hall, Lamb and Hall does not satisfy 70.001?

Ms. Trevarthen: No.

Commissioner Quesada: OK.

City Attorney Leen: I would just say there that they are following our proper procedure for raising undue economic hardship.

Ms. Trevarthen: I agree.

City Attorney Leen: We did inform the applicant, I informed the applicant that we would not hear the undue economic hardship at the time of designation because that would basically – the general view in this area is that the designation itself does not cause the undue economic hardship, if there is one. It's the inability to demolish is what they are claiming. So there was a process in our Code; and I do want to make it clear to the Commission, our Code does allow demolition of historic properties, it also allows modifications of those properties, so it cannot be that the historic designation alone can cause an undue economic hardship. So now they've properly brought before you the issue of whether they were denied the ability to demolish under our City Code and our Zoning Code, and they have properly brought before you the issue of whether that causes them undue economic hardship.

Commissioner Quesada: I understand that, but you are saying that they have improperly brought a Bert Harris claim, it's improper. So we are sitting in our capacity today, we cannot consider their argument as to the Bert Harris Act.

Ms. Trevarthen: Well its argument and it's intended to influence you, but what I'm saying is what's relevant before you is the City's procedures and the City's Code which uses a specific term, undue economic impact, it's not inordinate burden under the Harris Act, and it has a specific definition in your Code, you have a memo of law in your backup from your City Attorney's office that gives even greater depth to what that means.

Mayor Cason: Could you summarize again undue economic hardship.

City Attorney Leen: If I may. Once they finish our administrative process they have a year under the Harris Act to bring their, to do this, to enact this, do you agree?

Ms. Trevarthen: Yes.

City Attorney Leen: So we are not saying that they have to have brought the Harris Act, that's not what we are saying, we are saying since they haven't brought one they are trying to engraph a standard and the only reason this has come up is because they've argued that this should be the standard that you apply; however, our Zoning Code applies a different standard, it applies the taking standard basically, and I can read what the standard is, "an undue economic hardship is to find as an exceptional financial burden that would amount to the taking of property without just compensation or failure to achieve a feasible economic return in the case of income producing properties"; and the inordinate burden standard is a different one, and there is a way to bring that up because under the Harris Act if we apply this standard in a way that we apply the standard, in a way that causes an inordinate burden to their property then they can go to the procedural mechanism of the Harris Act, present their claim, at that point we would have the opportunity to look at it and try to resolve the matter with them and that very well could come back before your through that forum, and that's where the Harris Act standard would apply. I would note what Ms. Trevarthen said is that there is a date where regulations before that date and our Historic Preservation Ordinance was enacted before that date, if the ordinance is enacted before that date it cannot be the basis for a Harris Act claim. Now if there has been an amendment since then, that amendment can, but even that the Harris Act says it's only as to that specific amendment, and here I don't want to get into the Harris Act, because that may be the subject of litigation, but I'm comfortable that this is based what's being argued here is based on provisions in our Historic Preservation Ordinance that predate the Harris Act. So I'm comfortable that it probably doesn't even apply, but even if it does apply you have to show an inordinate burden on the use and the use here is a single family residence, we've done nothing to change that use.

Mayor Cason: And reasonable doesn't mean highest?

City Attorney Leen: It does not mean the highest and best, that is well established.

Ms. Trevarthen: And if I might, the appraiser's definition of highest and best use has an element that's legal, which means subject to all existing ordinances as they may apply to the property.

City Attorney Leen: I would like to say one other thing though. Remember this decision that you make is potentially subject to judicial review as well under our Code and also under the general common law, the law of Florida. It's important just for purposes of the record, this discussion of the Harris Act was raised by the applicant that's why there has been no response, but I think they opened the door to that and there can be a response, but my legal opinion is that our standard, the wording in the Code uses the taking standard, so that's the issue before you and the issue that would be on appeal eventually, and so these other things that have been said although you can certainly think about them and it's good to know, that should not be the basis for your decision, it should be based on the taking standard.

Mayor Cason: Any other...

Vice Mayor Kerdyk: Let me just say one quick comment. You know, I know how I feel in my heart, but I govern with my head and I want to make the right decision. So what you are saying is basically you feel very confident in our position as it stands here through our Historic Preservation Code, correct?

City Attorney Leen: I feel confident that we will be able to successfully defend the Bert Harris action. I think the issue of whether this satisfies the taking standard or not or shows an undue economic hardship or whether it should be demolished is up for this Board to decide on appeal and you do have the authority to affirm or override, but I don't think you should consider the fact that we may be used in the future and we will defend that, and I feel comfortable with our position.

Ms. Trevarthen: And through the Chair, if I might, I believe Craig you also mean not only under the Harris Act, but also under any takings claim.

City Attorney Leen: Say again.

Ms. Trevarthen: You are comfortable under either theory?

City Attorney Leen: Yes. I do believe though – you do have the authority here to rule either for or against them; they have presented their evidence, remember you are reviewing the evidence that was presented below, but you do have the authority to affirm or to overrule. All I want to state is that I believe that whatever you decide to do, we can defend; I don't think this is a case

where it's so one-sided. If it was so one-sided in their view I would let you know, I definitely think you can make this decision and feel comfortable that we will defend the City vigorously.

Commissioner Cabrera: Can I ask Bill a question?

Vice Mayor Kerdyk: Yes sir.

Commissioner Cabrera: Hey Bill, when you looked at the appraisal, you saw how comparable sales were not calculated or brought into that process, because....

Vice Mayor Kerdyk: As far as...?

Commissioner Cabrera: Well, as the property was getting appraised.

Vice Mayor Kerdyk: As far as the land sales go?

Commissioner Cabrera: No, as far as property sales go.

Vice Mayor Kerdyk: Oh, OK. I mean as far as recent sales in the market. His appraisal probably took place, what?- in the spring time of last year?- yes, so in fairness to him they didn't take into account a lot of sales that had transacted, not a lot, but I mean...I think I saw four or five sales over the last few months that were part of the...

Commissioner Cabrera: Right.

Mayor Cason: Alright – thank you. Unless we have any other discussion, I close the public hearing part; anybody wants to make a motion? I guess we are going to have to have two motions.

Commissioner Anderson: I'll gladly make the motion to uphold the Historic Preservation Board's decision.

Mayor Cason: Commissioner Anderson makes the motion to uphold the Historic Preservation Board's decision.

City Attorney Leen: So in this are you upholding both of their motions or do you want to handle them separately?- you could do it either way.

Commissioner Anderson: Whatever you think is right.

City Attorney Leen: That's fine you can uphold the decision. Is there any objection from either counsel as to that, as to the form? No, so you can.

Commissioner Anderson: Thank you.

Mayor Cason: Do I have a second?

Vice Mayor Kerdyk: I'll second it.

Mayor Cason: Vice Mayor makes the second and this is on both together.

City Clerk

Commissioner Quesada: Yes

Commissioner Anderson: Yes

Commissioner Cabrera: Yes

Vice Mayor Kerdyk: Yes

Mayor Cason: Yes

(Vote: 5-0)

Mayor Cason: Thank you very much.

[End: 11:15:30 a.m.]