

City of Coral Gables City Commission Meeting

Agenda Item E-1

July 22, 2014

City Commission Chambers

405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Jim Cason

Vice Mayor William H. Kerdyk, Jr.

Commissioner Patricia Keon (via Teleconference)

Commissioner Vince Lago

Commissioner Frank Quesada

City Staff

Interim City Manager, Carmen Olazabal

City Attorney, Craig E. Leen

City Clerk, Walter J. Foeman

Cynthia Birdsill, Economic Sustainability Director

Deputy City Clerk, Billy Urquia

Building Director, William Minor

City Consultant, Merritt Stierheim

Public Speaker(s)

Steve Helfman, Esquire

Anthony Alfieri

Anna Louise Fulks

Jihad Rashid

Anthony Flexas

Lorraine Navarro

Renita Ross Samuels Dickson

Mario Garcia-Serra, Esquire

Hank Fishkind

Philip Rinaldi

William Armbrister, Sr.

Alicia Cervera

Alejandro Salazar

Henry Torres

Philip Freidin

Kate Callahan

Alicia Lamadrid

Linda Williams

Andres Navarro

Ana Lopez Quintana

Agenda Item E-1 [Start: 9:53:47 a.m.]

E.-1. 14-3224 A Resolution of the City Commission of Coral Gables pursuant to Article 3, Division 18 of the Coral Gables Zoning Code reviewing and making determination regarding the Request for City Commission Approval of Government Settlement as to the City of Coral Gables v. Astor Trolley, LLC and Merrick Manor, LLC, F/K/A 4111 LeJeune, LLC, Case No. 13-29113-CA-40 (11th Judicial Circuit, Miami-Dade County, Florida), and relating to the administrative matter proceeding before the Federal Transit Administration, Complaint No. 2013-0131; and reviewing and making determination regarding development requests as to the proposed mixed use development at 301 Altara Avenue, Coral Gables, Florida, which are part of the proposed government settlement.

Mayor Cason: OK, moving on to item E-1, I would ask the City Attorney to take the lead on this.

Craig Leen: Thank you, Mr. Mayor. This is a time certain item at 9:30 a.m. It's set for the next two hours. The -- what I thought I'd do is go over the procedure for the hearing. It's a quasi-judicial matter governed by --

Commissioner Quesada: Actually, Craig, can I interrupt you --

City Attorney Leen: Sure.

Commissioner Quesada: -- one second? I apologize. We have a lot of people in the crowd. We've asked staff to get some chairs outside so you'll be able to see it on TV (Television) as well. But I'll ask, if you're under, say, 40 years old and you're sitting in a seat, if you can stand up and give it to someone who's a little bit older, just to make it a little bit easier. I'm sorry to do that. Just -- I know this is going to be a long time -- this meeting, and this issue in particular. But anyway, we are bringing some chairs over so that it could be a little bit more comfortable. We want to encourage participation and people being present.

Mayor Cason: And as a reminder, this is a public hearing, so anyone who plans to speak needs to fill out a speaker card and leave it with City Clerk.

Commissioner Quesada: Sorry to be the bad guy, but --

City Attorney Leen: You have a right to do that.

Commissioner Quesada: -- a little bit easier.

Mayor Cason: OK, Craig.

City Attorney Leen: So this is governed by Article 3 Division 17 [sic] of the City Code. And --

Commissioner Quesada: Please don't leave empty seats, though. Sit down and (UNINTELLIGIBLE) sitting.

City Attorney Leen: Pardon me; division -- Article 3 Division 8 [sic] of the City Code, which was recently passed by this Commission at a prior meeting. What I thought I would do is go over the procedure for the meeting. We have a number of people who want to speak, both with City staff and also with different attorneys and members of the public. So the way that the hearing will -- would proceed is first I will provide an outline of the procedure under the ordinance, then the attorney for the -- because it's a quasi-judicial proceeding, you'll hear from the attorneys first; the attorney for the applicant would then speak and present their position. Then there's a couple of other interested parties, whose attorneys are present and have asked to speak. At that point, it would be turned over to the public hearing aspect of it; there will be testimony from witnesses. My understanding, it's the City Manager and Mr. Stierheim has comments that they'd like to present, so they would present them. In addition, Hank Fishkind is a consultant for the City on this matter, and he is going to be testifying as an expert witness. Henry Torres is available to speak in the audience as well; would then be opened up to public testimony. At that point, there'd be closing. The attorney for the applicant would speak and then the City Attorney would speak to close the remarks. There'll be time for everyone who needs to speak, but here is a two-hour limit on this, but we think that it will be sufficient to address everyone's comments. Now, I would like to talk briefly about the procedure of the ordinance. There's an ordinance that was passed by this Commission 2014-08. It establishes the procedure for consideration of a government settlement. Under the ordinance, the City receives an application from the City Attorney and the applicant. It's a request for government approval of the settlement. That has to be approved by

the City Manager in order to begin the process, which was done. So the process was initiated. The settlement was presented -- is being presented to the Commission today for their review. At that point, it goes to the Development Review Officer. We did receive a memo from the Development Review Officer, which is in the file, which I will go over in a second. We also received comments from City staff. At that point, the City Attorney issues a recommendation that has to be done by ordinance seven days in advance and I did provide you that ordinance seven days -- pardon me -- that recommendation seven days in advance. At that point, we met with the applicant -- this was on Thursday -- to seek to resolve a number of these issues, and that's perfectly appropriate, per the ordinance. We've also received additional comments from the City Manager's Office, which they will talk about in a little bit, and we worked to try to resolve a number of those as well. My feeling is they probably don't think they've all been resolved, but the -- but we certainly have tried. Lastly, the matter comes before the Commission for a quasi-judicial hearing. The witnesses will be sworn. It is a -- this is the first one of these that we've done solely before the Commission; hasn't gone to any other committee, and that's per the ordinance; has gone to the Board of Architects for a recommendation. The ordinance does not require the approval of any other board, though. Now, let me go over the standards for the hearing, and I'm just going to read it. "The City Commission shall weigh the following criteria in determining whether to allow waiver of or variance from the limitations on any provision of the Zoning Code outside of this division in order to facilitate approval of the government settlement." Now, some of these are not really in dispute, and I will focus on the ones -- I'll mention the ones that you have to focus on today. "A," is that the property is owned or partially owned by the City or will be owned or partially owned by the City as part of implementation of the government settlement. That is true. That's just a fact. "B," the proposed use of a property as a combined government and private use that facilitates important policy objectives that are identified in the Comprehensive Plan, including, but not limited to, improvement of mobility alternatives to the automobile as described in the mobility element. That also is present here. "C," implementation of the government settlement is designed to redress the effects of alleged discrimination on the basis of a protected classification. As you all know, this settlement involves the Federal Transit Administration as well, and that is the purpose, in many ways, of this settlement, so, yes. "D," implementation of a government settlement resolves a federal or state administrative proceeding or will be made part of the consent order. Here, both of those are true. It resolves -- we've received written assurance from the FTA (Federal Transit Administration) that this

will resolve the matter with them. In addition, it will be made part of a consent order by Judge Thornton. Implementation -- well, I mean, he always has the decision whether to grant it, but his order says that he would -- that we can ask him to retain jurisdiction over the settlement, and that is the intent. "Implementation of the government settlement will further the protection of the public health, safety or welfare, including but not limited to the remediation or provision -- prevention of allegedly discriminatory practices and the protection of the public health, environment, or natural resources." This is one of the factors that you will need to look at today. It's certainly true that this is dedicated to the remediation or prevention of allegedly discriminatory practices, but there's other portions of this factor about the public health, environment, and natural resources and what's in the public health, safety or welfare, and that's something for you to decide in your sovereign capacity. "F," implementation of the government settlement will facilitate the resolution of any potential conflict between the Zoning Code and a federal, state, or county statute or provision that preempts local regulation in accordance with Section 1-109 half of the Zoning Code. The purpose of this settlement is to satisfy Title VI of the Civil Rights Act, which is present. "G," the proposed use is compatible with the nature, condition, and development of adjacent uses, buildings and structures and will not adversely affect the adjacent uses, buildings or structures. This is one of the primary issues before you today. You will have to make this decision in your sovereign capacity. And lastly, "H," the nature of the proposed development is not detrimental to the health, safety, and general welfare of the community. Again, this is an issue for you to decide in your sovereign capacity. You do not have to make a finding of "yes" on all of these factors. You have to weigh all the factors and then make a determination. Now, I'd like to make some brief remarks, and then I will turn it over to Mario Garcia Serra to make the presentation of the applicant. This matter's been going on for almost two years, and we have an important moment today to take a look at the settlement and to determine under these procedures that the Commission has set up whether to approve it or not to approve it. Obviously, this affects a lot of people, and a many of them are in the audience today. I'm appearing before you as your legal advisor. I'm going to recommend a settlement in my legal capacity, but that's my role, and ultimately, you do not have to accept that because you have a larger role. Your role is to look at the business, operational, and legal issues and make a determination of what is best for the community. But I want you to carefully consider my legal advice today, because I do believe that it's informed by a lot of experience. I was the chief of the federal litigation section for the County Attorney's Office and was the deputy for the current

U.S. Attorney, Willy Ferrer, and then I became the chief myself. I handled 50 civil rights cases for the County and never lost one and always either resolved them favorably for the County or settled it. We're looking at a potential civil rights lawsuit here. It's not a secret. I mean, it's been told to me by a number of people. Now, my view is that you should never do something just because someone tells you they may sue you. You got to do what's in the best interest of the City, but it would not be prudent to not take a look at that claim and look at the situation and determine whether, perhaps, we do need to do something. Perhaps, we do need to settle the case. Now, as legal advisor, when I'm coming before you with a recommendation, usually it's not a really positive one. This is a really problematic case. I mean, to be plain spoken about, it is really tough medicine that we're dealing with today. None of the outcomes are good. All of them are problematic. I've provided you a recommendation that went through the three outcomes as I see them as your legal advisor. The first outcome -- and for those in the audience, what we're talking about is placing a trolley facility in the Merrick Manor mixed-use development at 301 Altara Avenue. And instead of going into a facility that was built in Coconut Grove, in the West Grove, and in a historic African-American community.

Mayor Cason: And also, this is where the current trolley garage is.

City Attorney Leen: This is where the current trolley garage is. Because of this settlement, the City will have to waive -- of course, if it's approved, the City would have to waive portions of its Zoning Code, and at the end of my remarks, I will state in the record what those waivers would be. One thing we wanted to do here, and I think we did it very well, is that we got a problem. It was presented to us. It was presented to us by the residents of Coconut Grove, by the University of Miami, Professor Alfieri, by Astor. We discussed it with them, and, you know, we recognized that there were issues, and we've gone out of our way to try to find a solution. It may not be the best solution. It may ultimately be a solution we do not choose. But we have -- I don't think anyone could say that we haven't acted in good faith and tried to resolve this and recognize the impact of this facility on the historic African-American community and also the potential impact of the new facility in Coco -- in the City of Coral Gables. Now, I do need to say at the outset, the FTA -- and I'm going to place it into the record -- does support the settlement today, and they did state that this would resolve our issue with the FTA. And for those who don't know, the FTA issued an administrative finding against Miami-Dade County, the City of Miami, and the City of Coral Gables indicating a violation of the Civil Rights Act

because of a failure to conduct an equity analysis. Do I agree as a legal matter? No. We have a lot of objections. We've raised them. But do I agree that it has an impact on the community? And has the community raised to us the issue that they felt they didn't have an opportunity to appeal? And I don't want to get into that, 'cause that's a subject of another litigation. Yes. You know, that's all been raised, and we understand that issue, and we've tried to address it. And just because something's legal early doesn't always mean you don't try to do the right thing, and I think this Commission has done that. And that's what the goal is today, to present the Commission a very complicated settlement that affects a lot of people and determine what the right thing to do is. So please understand, even if some of the Commissioners don't agree, doesn't mean they don't care about that community. It means that this building is a big building and it has a lot of effect, and they have to consider that. So basically, what the proposal is is that instead of going into the Coconut Grove facility -- and that is now the subject of another settlement, which will be discussed by the parties when they get up and speak, and there's been a limitation of the uses that will be used on that facility. So remember, there was a concern it be used for auto-related industrial or commercial use. There's been a settlement in principal by the parties to that lawsuit that would limit the uses, so it couldn't be used in that way and has some desirable uses that hopefully can maybe be used for one day, and I know that the members of the community are here today to speak in favor of that. It's contingent on our settlement today, because obviously, if we have to go into the Coconut Grove facility, it can't -- it has to be used for what we have called an auto-related commercial use, what the residents believe is an auto-related industrial use; within our lawsuit, we have alleged is an auto-related industrial use, and what Astor has opposed and argued is an auto-related commercial use. But there's no dispute that it is an auto-related use and is not desired by the community. They made that very clear, and your voices have been heard. You know, but ultimately, we entered into a contract here, and when we entered into the contract -- and I want to make this clear for the record -- we did not know, at least formally -- I'm not sure if some individual did, but we did not formally know of an objection from the residents. There was no appeal that was filed. Now, the residents had made a number -- they've raised a number of reasons why they didn't make that appeal. And in fact, one of them filed a complaint with the Federal Transit Administration, which is what led to the findings against the County, the City of Miami, and the City of Coral Gables, and it's what's led to this proceeding today, so you were heard by now, too. One other thing on the FTA matter: Although we don't agree that there was a violation of the federal Civil Rights Act, we did agree to work with the FTA, because we were

concerned by what they raised. And I think of all the government entities, we have gone the farthest out of the way to try to address those concerns. In fact, we entered into a letter agreement with the FTA, which we sent to them, indicating that we would do what's call an Equity Analysis to look at whether there's a disproportionate impact on the minority community in Coconut Grove compared to other possible sites, and we agreed to do any reasonable and feasible mitigation; and we felt that that was the right thing to do, and the Commission had supported that. And as you know, on a totally independent issue, the City Commission has also voted, which will be at issue today in a policy decision, but the Commission did vote to extend the trolley into the MacFarlane Homestead, and it could conceivably also affect the West Grove residents as well, but you'll hear about that later, and that's independent of this settlement, regardless of how it's decided today. So I do believe that the City has attempted to address this and has devoted tremendous amount of resources. At this point, I would like to just mention that we have a number of attorneys here that have helped with this settlement. That includes Steve Helfman, Ignacio Del Valle, and Ed Soto from Weiss Serota, Javier Vazquez from Berger Singerman, Kara Nichol from Stearns Weaver. They're all here today to answer any of your questions regarding this matter. I'll now read into the record what would be the waivers that you would be looking at to approve this settlement. The proposed -- this is all in the memo provided to you by the Development Review Officer. "The proposed area of the building is 354,252 square feet, or 5.39 FAR (Floor Area Ratio), which exceeds the maximum allowed area of 229,974 square feet, or 3.5 FAR. In terms of units, the proposed project includes 283 multi-family residential units. The approved project included 180 units." So there would be a waiver there related to FAR and square footage. "The proposed height achieves the maximum allowed height in two locations: along LeJeune Road, the maximum height is 72 feet and the proposed site is 110.33 feet; and along Laguna Street, the maximum height is 100 feet and the proposed height is 130.33 feet. Ground floor commercial space is 14,896 square feet, which is less than the required minimum of 18,398 square feet. There are 492 proposed parking spaces and 631 parking spaces would be required. So essentially, to approve this settlement today, you would have to grant waivers as to FAR, square footage FAR, height, the ground floor commercial space, the proposed parking, and also as to setbacks. Now, I'm going to conclude my remarks and let Mario speak so he can present --

Vice Mayor Kerdyk: Mr. City Attorney, after Mario speaks, I'm have -- I received from the City Manager -- I think we all did -- an eight-page epistle to the settlement

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As to City of Coral Gables, Florida vs. Astor Trolley, LLC and Merrick Manor LLC

agreement, you know, the analysis of it, and it's something that needs to be addressed --

City Attorney Leen: Oh, it will be.

Vice Mayor Kerdyk: Right, but I -- as soon as Mario -- after Mario speaks, then I'd like to see City staff, you know, address the situation.

Commissioner Quesada: Actually, before Mario speaks, I would address that point and another point as well.

Vice Mayor Kerdyk: OK.

Mayor Cason: Go ahead.

Commissioner Quesada: I'm sorry.

City Attorney Leen: Well, just in response to that, because it's a quasi-judicial hearing, OK, we do need to allow the applicant to speak, their attorney.

Vice Mayor Kerdyk: That's what I was saying.

City Attorney Leen: Yeah. So after that, and there is one other attorney who's asked to speak.

Vice Mayor Kerdyk: OK.

City Attorney Leen: At that point, the next person who was going to speak was Carmen, and she'll present to you her concerns. Yes.

Commissioner Quesada: Mine is procedural nature -- not substantive nature -- number one, the Commission has discussed this issue in executive session many times.

City Attorney Leen: Yes.

Commissioner Quesada: So I want to be clear -- I would imagine many of the issues that I know I'm going to be asking about, discussing today were items that we

discussed in executive session. I do not want to waive that attorney-client privilege, so I think it'd be important for you to advise us now as to what we can and cannot say. And obviously, the thoughts that we have today could be independent of that executive session. But I don't want to waive any privilege just in case this falls apart and we continue in the litigation.

City Attorney Leen: You're acting in your official capacities here, and anything that's raised at this meeting, if it doesn't result in a settlement of the litigation, that would remain exempt. It is important that we raise everything in this proceeding that relates to the development approvals, and so that's part of the reason why I'm going through this and why you're going to hear all these different people speak, because we don't want anyone to say that that part of it was done in an executive session. Now, obviously, the proprietary aspects of it or your determination over whether this is a good deal or not, that is not subject to quasi-judicial review and that would remain privileged until this case is resolved. At that point it becomes public.

Commissioner Quesada: So just to clarify it so we're clear. Whatever we discuss today, the Commissioners on the dais, we will not be waiving that attorney-client privilege pursuant to the executive session?

City Attorney Leen: Well, it's my position that it would be subject to it. Now, it doesn't mean that someone might not try to make the claim, and let me tell you, there's probably not a precedent for this particular proceeding. So we would assert the privilege, yes? Steve, what do you think?

Commissioner Lago: Mr. Helfman.

Mr. Steve Helfman: Good morning. Steve Helfman. As Craig mentioned, I worked with Craig as Special Counsel to the City. The executive session -- shade sessions are entirely confidential. Anything that was said during those conversations remains confidential until the conclusion -- the complete conclusion of the litigation, whether it be by settlement or whether it be through the litigation. So you should have no concern that what was said during those conversations is subject to any type of disclosure. If you have a concern that something you said during those conversations, you would like to remain confidential, then it should not be repeated here in this room. What I think is important and I -- in terms of the procedure -- and I don't want to get things too overlapped here, because we can begin to cross over --

is there's really actually two things that are before you today. One is a settlement agreement, and that document you have before you -- Craig has presented that to you -- and that will require one vote or action by you. Then what you really are doing as part of that settlement agreement is you'll be acting on a development proposal, which is a quasi-judicial proceeding, that is, the public hearing zoning hearing, if you will, that addresses the project. But in the first instance, what you really should be considering is the actual settlement agreement, and the settlement agreement has very basic components, OK, and you have it in front of you. The settlement agreement is, in essence, the Commission agreeing to enter into a new contract. You had one contract with the developer, which said you would transfer your property to the developer in exchange for a property in Coconut Grove. This is a new agreement that says you're going to exchange your property along LeJeune Road in exchange for a condominium unit, commercial condominium unit within a project that the developer's going to build. So this is a new contract that you're entering into under the settlement agreement.

Commissioner Quesada: Mr. Helfman, if I could stop you for a one second. It sounds like you're getting into a substantive argument, and I believe the applicant gets first --

Mr. Helfman: No, I'm not --

Commissioner Quesada: And I believe the applicant gets the first "bite of the apple".

Mr. Helfman: No, I'm not at all.

City Attorney Leen: Steve, you're -- if I may.

Mr. Helfman: Yes.

City Attorney Leen: You know, if you disagree, let me know.

Mr. Helfman: Right.

City Attorney Leen: But, you know, the thinking was -- I know that there was some issues with the settlement agreement terms as well, so the thinking was to hold the

public hearing on both, but ultimately, you're going to be asked to vote on them separately. I was going to get to that. But the proprietary aspect, which is the settlement agreement -- and that can be subject to conditions as well. You could attempt to amend it, but it has to be agreed to by Mr. Torres, and then at that point, I would ask you to approve the development agreement or approve with conditions or deny. But I do think because there are issues with the settlement agreement itself and raised by the City Manager, my understanding is that the Commissioners want to address that, and we do need to have a hearing related to that too, because members of the public want to speak on it. My thought was to hold them both at the same time at the end, one after the other.

Mr. Helfman: Well, you can do that, but it may be that you want to address the settlement agreement because without approving the settlement agreement, you never get to the zoning hearing. In other words, the settlement agreement, you need to approve the settlement agreement because that then triggers a requirement that the developer come before you with his development proposal and present to you his proposal for the waivers.

City Attorney Leen: My understanding, though, is that the applicant is fine with proceeding in this fashion, that they would waive any argument that -- they're willing to voluntarily come before you so that you can consider both at once; we would have separate votes on them. But I just don't -- practically, in two hours, I don't see how we could have a discussion of the settlement agreement and wait for the quasi-judicial review and then do that separately; it won't happen. And we are under a court order, but you'll talk about it.

Commissioner Quesada: OK, let me just cut right to it.

City Attorney Leen: OK.

Commissioner Quesada: Mr. Helfman, since we have you up there.

Mr. Helfman: Yes.

Commissioner Quesada: Mr. City Attorney, we're in a quasi-judicial setting, the Commission right now. There are issues related to ex parte communications. Do we have an issue because we received documentation from our Interim City Manager

prior to the hearing discussing substantive grounds? Does that create a problem for this hearing today?

City Attorney Leen: Well, I have some -- I don't want to get into that too much right now, but yes. There -- that is not an ex parte communication; it was sent immediately -- I sent it immediately to the other side so they could see it. It doesn't follow the procedure in our Code, because those were supposed to be provided in advance of the City Attorney recommendation. However, I did not think it was a material deviation from our code because we did get staff comments, and ultimately, the position we've always taken was that the City Manager could state her position and retains that right as a professional to present that to you. I know that the applicant is unhappy, as am I honestly, that they were provided last night because there wasn't time to address them, and there was a time in the Code for them to be provided. However, they are here. They're on the record; you have to consider them now.

Commissioner Quesada: Craig, but we --

City Attorney Leen: They can't be disregarded.

Commissioner Quesada: -- we received, I mean, albeit a shortened response, but somewhat of a response --

City Attorney Leen: From me.

Commissioner Quesada: -- from you --

City Attorney Leen: Yes.

Commissioner Quesada: -- in your conversations with counsel for the applicant.

City Attorney Leen: Yes.

Commissioner Quesada: OK.

City Attorney Leen: Yes.

Commissioner Quesada: My interpretation of the Code --

City Attorney Leen: You could consider that.

Commissioner Quesada: -- and what happened, it doesn't invalidate any part of this proceeding today.

City Attorney Leen: No, it doesn't invalidate it. Although, they -- I -- my understanding is they are going to object to it, and you'll have to consider their objection and determine what they have to say.

Mr. Helfman: There is no -- the parties are the applicant and the City. There is no ex parte communication here. The -- you are the decision-makers as a body, the applicant is one party and the City is a second party. I don't -- I'm not hearing where the ex parte communication occurred. If there is a third party who made a communication, then we have an issue, but as far as I'm -- what I'm understanding here is that it's just communications by parties.

Commissioner Quesada: No. What I'm referring to is an e-mail (electronic) that the City Commission received directly from the City Manager.

Mr. Helfman: Who is -- who is --

Commissioner Quesada: Who is one of the parties in this case.

Mr. Helfman: -- who on behalf --

Commissioner Quesada: Right?

Mr. Helfman: -- of the City is a party. There's no ex parte communication.

Commissioner Quesada: Correct. I don't know if I can -- well, it would be an ex parte communication if the applicant wasn't copied.

City Attorney Leen: For sure. It was -- it needs to be given to the applicant, and it was.

Commissioner Quesada: But they did receive it before --

City Attorney Leen: I forwarded it to them immediately, and they have it --

Mr. Helfman: That's not ex parte. Ex parte --

Commissioner Quesada: OK.

Mr. Helfman: -- would mean a third party communicated and these are just between parties.

City Attorney Leen: It's also -- everything just needs to be in the record. It's in the record.

(MULTIPLE SPEAKERS;UNINTELLIGIBLE)

Mr. Helfman: There's no ex part communication --

Commissioner Quesada: That's all I -- that's all we needed to hear.

Mr. Helfman: -- involved here.

Commissioner Quesada: It just needs to be in the record.

City Attorney Leen: Yes.

Mr. Helfman: The question is as between two parties, the applicant, if you will, in the quasi-judicial proceeding; and the City, the other party, whether they communicated information to each other.

Mayor Cason: OK.

Vice Mayor Kerdyk: I'd like to just ask one more question. So you think that we should fragment -- discuss a settlement agreement first and then address the development agreement?

Mr. Helfman: The way this was anticipated -- although I think that we can improvise

--

Vice Mayor Kerdyk: OK.

Mr. Helfman: -- was that the settlement, which is quite simple, would be approved; and then if it's approved, great, then you move forward with the quasi-judicial proceeding, which is acting on the zoning that is necessary for the project.

Vice Mayor Kerdyk: OK.

Mr. Helfman: So the settlement, in and of itself, is a separate action. If you want to conduct the zoning hearing prior to the settlement, it's a little awkward, but you could -- I guess you could do the hearing itself --

Vice Mayor Kerdyk: The feeling --

Mr. Helfman: -- that way.

Vice Mayor Kerdyk: -- my feeling is that we have so much going on with the settlement agreement. We have this eight-page memo from the City Manager. I don't want to confuse the two issues. I mean, I'd like to get through the settlement agreement, deal with that issue, deal with all these issues with the City Manager, and then come back and readdress the development issue.

Mr. Helfman: The settle -- OK.

(MULTIPLE SPEAKERS; UNINTELLIGIBLE)

City Attorney Leen: That's up to the --

Mr. Helfman: No, I know.

City Attorney Leen: It's up to the Commission. I don't think, practically, the way that this is developed; it could be done that way because the comments relate to both. And under the Florida Law, you have to hear from the public on both. So normally, what we've done in the past is held the public hearing together --

Vice Mayor Kerdyk: OK.

City Attorney Leen: -- and then you have to vote separately on them. You could certainly -- once the applicants speak --

Vice Mayor Kerdyk: Right.

City Attorney Leen: -- you could address the settlement first.

Vice Mayor Kerdyk: Let's do that. Let's do that.

City Attorney Leen: And then --

Vice Mayor Kerdyk: Let's do that.

City Attorney Leen: -- you could talk about the -- We could do that, but I do think that we should have the hearing together or else it's not going to be feasible to do the hearings.

Vice Mayor Kerdyk: You know, and I also appreciated trying to get it in in two-hour limitation, but the fact is if we're going to discuss this and it takes longer than two hours, so be it; we have to do this.

City Attorney Leen: Of course.

Vice Mayor Kerdyk: I mean, we've been dealing --

City Attorney Leen: Of course.

Vice Mayor Kerdyk: -- with this issue for a long, long time. We want to make sure we get it right, if we move in that direction.

City Attorney Leen: So I'm going to be turning it -- if it's OK, Mr. Mayor --

Mayor Cason: I have just one question --

City Attorney Leen: Certainly.

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July 22, 2014

Agenda Item E-1 – Resolution – Request of City Commission Approval of Government Settlement
As to City of Coral Gables, Florida vs. Astor Trolley, LLC and Merrick Manor LLC

Mayor Cason: -- for the audience. We have a choice today to approve, not approve, approve with modifications. If we don't, what's the role of the judge and what's -- what are the options that could be -- what could happen?

City Attorney Leen: The judge has said -- we had a stay that was in place for a while that expired. The applicant filed a motion for summary judgment. We went back before the judge and, over their objection, were able to get 60 days, which expires July 28. My understanding, although I'll leave it to Mario -- and I'll turn it over to him after I just finish these remarks, which I'm about done with -- is that they would object to an extension; although, maybe, depending on what happens today, they wouldn't. I don't know. But at this point, I would be concerned about not proceeding today, even if it's a denial. I do think, ultimately, you should make a decision today, because we need to move on with this case. And we do have this July 28 deadline and, ultimately, you need to make the decision in your sovereign capacity.

Mayor Cason: And one of the options of the judge is to order us to go into Coconut Grove.

City Attorney Leen: Yes. In fact, that is one. So to conclude -- I know this is tough.

Commissioner Lago: Can you --

City Attorney Leen: No, no. Just to conclude --

Commissioner Lago: Do you have all the recommendations in regards to --

City Attorney Leen: I have a recommendation.

Commissioner Lago: -- from the judge in reference if we do not come to some sort of an agreement today?

City Attorney Leen: We would proceed with a summary judgment at this point. We would file response and it would be ruled on. If we win, we would be -- this building would never get built; we would stay in our old facility. If we lose, we would go into

the Coconut Grove facility and then have to face what the -- the residents' wrath, you know, and we'd have to defend ourselves and we would determine what happens, and we would do our best to work with you, but I know that that's not an outcome that they want. But we would do our best. We would always try to behave as a good government entity, which we are. So to conclude, this is a very difficult settlement. I'm your legal advisor. In my legal capacity, I believe that we need to settle this case. I think the outcomes are terrible if we don't. I think the outcome if we do is difficult as well. I understand why you wouldn't want to do it, but I believe it's ultimately in the best interest of the City and it resolves a difficult civil rights violation in a way that recognizes the interest of all the parties. The Coconut Grove residents, just like us, have a vision for their community. This helps resolve it. It resolves it in a way that reflects the vision of our community in a sense that we will have a trolley building that is better; it's not perfect, but in every sense of the word, it does address our concerns. We would have the building. We would have our trolley facility. We would end this litigation, the FTA Litigation, the lawsuit; no more attorneys' fee, and a full resolution of this matter.

Mayor Cason: Mario, before you speak, those in the audience who plan to make some comments, the speaker cards are with the City Clerk, if you want to get them and fill them out. Mario.

Mario Garcia-Serra: Good morning, Mr. Mayor and Commissioners. Mario Garcia-Serra, with offices at 600 Brickell Avenue. And I'm joined today by my clients, Henry and Peter Torres, the master of development; our project architect, Javier Font, Behar Font; as well as our civil engineer and traffic engineer to address those particular areas of expertise. The procedural question that we were discussing earlier I think could be addressed in that my comments will be centered on the settlement agreement. The settlement agreement has attached to it the development proposals and exhibit, so inevitably, I think the more important points of the development proposal are going to be discussed as part of this discussion, and we're open to, you know, whatever questions you might have. At the same time, if the settlement agreement is approved, then we move on to the development proposal vote; we can do a more detailed presentation on the actual project, you know, at that point in time. I think the best way to talk about this is going through the history of this project. You know, three years ago, we had a project which was going to involve a land swap, by which we obtained a City trolley building and built the City a new state-of-the-art trolley building on Douglas Road to last the City for 7 years and meet

all of its needs going into the future. That agreement was approved. We proceeded with construction of the new trolley building on Douglas road. And at that point in time is when the neighbors filed suit against the project. It followed shortly thereafter by a suit filed by the City essentially trying to unwind the deal based on the same sort of zoning allegations that the neighbors had put forward, in which had, at least at the trial court level, been rejected on summary judgment by the Court. As I was working through the process, the City then came up with the idea of incorporating the trolley building within the Merrick Manor project, an idea which we thought was a good way of addressing everybody's concerns and getting back to a point where it was a deal that worked for everybody involved, including now the residents of Coconut Grove, who are involved as a result of a lawsuit. That idea first came up in an executive session that this Commission had, I believe, back in November of 2013. We immediately started working on that idea then. So it's been about nine months since November of 2013 that we've been working on this settlement agreement and on these terms, and every time it's been a product of considerable negotiation. You know, your City Attorney has negotiated a good deal with you, negotiated every point on this agreement, and again, it was the subject of nine months going back and forth not only on the terms of the settlement agreement, the terms of the amended land exchange agreement, the actual facility that would be going in Merrick Manor, as well as overall discussion on the overall design of the new project. At every point, we've tried to address those concerns and come to a conclusion whereby the deal would work for everybody involved, including the neighborhoods in Coconut Grove, including the City. In the last week, there were comments that were raised by City staff in response to the submittal of the settlement agreement by the City Attorney. We met last week to discuss each of those points, and I'll be relatively brief in summarizing them. The points of Public Works, which wanted an updated traffic study and an updated sewer capacity analysis, were acceptable to us. We will commission those reports and live by whatever their recommendations are. We actually have those experts here, who have already done preliminary analysis and don't think it would be a significant additional impact as to what was already estimated previously for the previous version of the project. On the building side, there were comments there from ADA in structural, which actually had been addressed already, but not put into system, and that's been addressed also. Building also wanted more time to review the plans, and we gave them an additional 10 days, from 5 to 15, to review the existing permanent plans, which have already been processed through a great extent and also made clear that any issuance of a building permit for the existing plans would be conditional based on reviews of outside

agencies and the actual closing of the property taking place. The City also asked that when the revised building permits were submitted; that time of outside agencies reviewing those plans not be tolled against the City's time frames that are provided in the agreement for review of those plans, we agreed to that also.

Commissioner Quesada: Mario, I apologize. I'm having a little trouble hearing you; if you can just speak up a little bit.

Mr. Garcia-Serra: OK.

Commissioner Quesada: Yeah.

Mr. Garcia-Serra: Maybe that's -- that's a little bit better. And then there were comments from the Planning Department. Those comments were very much similar to the comments we received from the Board of Architects. Most of the Board of Architects' comments had also been incorporated into the project and is even an additional comment which the City pretty much asked us to get direction from the City Commission as to how big the trolley facility should be and whether that would permit for an arcade or not along the LeJeune frontage, which we are ready today to show you the two different plans and see which direction you want us to take so as to incorporate that. So to a great extent, those comments that were received a week ago have already been addressed.

Mayor Cason: One question. There was also concerns about structural and fire.

Mr. Garcia-Serra: Correct. Fire has reviewed the conceptual plans and issued an e-mail to the City Attorney saying that they had no comments and that was the extent. The fire structural and the system were still reflecting us having some comments. Due to a subsequent discussion, it was acknowledged that those comments had actually been previously addressed but not put into -----

Mayor Cason: And the use -- the \$300,000 Art in Public Places money?

Mr. Garcia-Serra: That was the subject actually of our discussion in the last couple of days, because after we received those initial comments a week ago, we received the memo, of course, last night from the City Manager at 6 p.m., which came as a surprise because we had not heard some of those comments before, and it does come at a very

late date in the process and that not exactly consistent with how the code called for this process to work out. But then again, we're trying to get to a point here where we can have a deal that works for everybody. So between last night and this morning, Craig and I had been meeting and talking on all of those issues, and indeed, one of them was this Art in Public Places issue, which an objection was that the \$300,000 right now could be incorporated into the Merrick Manor project. If the City prefers that, that money just be paid to the City so the City can use it for whatever other Art in Public Places project they deem fit, we're fine with that. We're also fine with consulting with the City beforehand before we exercise any sort of termination to make sure that the termination of the agreement, which I think was a big concern, is something that the City acknowledges is in its best interest also. Because what's happening here is, yes, there are several points in the agreement where if it's unwound because of a third-party challenge, we can back out of the agreement, but at the same time, it's in your interest, in the City's interest also to have that fallback provision, because if something happens, if there's a "monkey wrench" that's thrown in this process, then this settlement agreement can't happen. The best thing to do is to pretty much rescind the settlement agreement, go back to court with the arguments that we've had, and play that out. Again, from the beginning to the very end here, we've been trying to, as much as we can, accommodate the City, to accommodate the neighbors, to try to get to a point where we can be in agreement with this project and move forward and be a benefit to everybody. I think we are there.

Mayor Cason: One of the questions raised by the City Manager's staff was what would happen to the trolleys? Would you be building our garage as a shell first? And then build around us so we would continue to use the trolleys or would our trolleys have to go somewhere else?

Mr. Garcia-Serra: Well --

Mayor Cason: We don't know where that would be.

Mr. Garcia-Serra: No. It should be that you go from one building to the new building. You know, in a very -- and a key component of the project -- and something that it took us a long time to figure out was that we could build the Merrick Manor project in two phases. Phase one would be the leg of the property that does not include the City's existing trolley building. We would build that building, top it out to its maximum height. Have the trolley building -- the new trolley building on

the ground floor of the building. Have it fully prepared; CO (Certificate of Occupancy) issued by the City, so that the City could seamlessly move from their existing trolley building 50 feet away to their new trolley facility and commence operations there, and then we do not start construction or demo the existing City trolley building until you guys are safely in the new building.

Mayor Cason: So there would be no interruption --

Mr. Garcia-Serra: No interruption --

Mayor Cason: -- of the trolley service. No issue of whether there's hammering and banging and electricity and everything going on?

Mr. Garcia-Serra: Correct.

Mayor Cason: Separately built?

Mr. Garcia-Serra: Correct. That building -- that phase of the building will have been built out completely. There would still be some improvements needed on the interior of the units and so forth, but the overall shell of the building would have been built. And so, as I was saying, from the beginning to the end, we've tried to accommodate every issue that's come up, every objection that's come up. I sincerely believe we are to the point a settlement agreement that works, it works for the City, it works for Astor, it works for FTA, it works for the residents of the West Grove, who have entered into, at least in principal, a settlement agreement on their litigation, which is specifically contingent upon this settlement agreement being finalized and becoming effective.

Mayor Cason: Are there any items in the concerns of the City Manager that you feel you cannot address? Do you feel that you can address all of them without, you know, delaying your project?

Mr. Garcia-Serra: I would say the comments that were in the City Manager's memo yesterday were broken down into three categories. Some of those comments were already addressed as a result of the conversations we've had in the last week. Another category of comments were addressed literally between last night and tonight, the issue of the Art in Public Places, a definition for material in the

agreement, this issue of when consulting with the City before sending the settlement agreement. Then another category of comments from the City Manager are basically comments which we feel are already negotiated points; that we spent nine months negotiating this, and at this point, the City Manager has expressed questions, concerns or objections to, but to be honest with you, are part of the basic terms of the deal. And so, if those were to be changed, we don't have a deal anymore. So I do feel we've pretty much, to the extent that we can, have addressed all those comments that are capable of being addressed.

Mayor Cason: And the sewer connection issue, regardless of what it comes up with, you will --

Mr. Garcia-Serra: Regardless of we have to upgrade a line, we'll upgrade a line.

Mayor Cason: Because our other building's projects on -- probably be on that line that could find others if there is no capacity and --

Mr. Garcia-Serra: Correct.

Mayor Cason: -- that could cause a problem?

Mr. Garcia-Serra: Correct.

City Attorney Leen: Mr. Mayor, we have -- I'm going to put into the record seven stipulations that we've reached, which I e-mailed to the Commission last night. You saw those, the ones I sent you?

Mr. Garcia-Serra: Yes.

City Attorney Leen: I'm going to enter them into the record. These would -- we actually have an amended LEA now that reflects some of these, which is what you would be voting on, so I just wanted to make you aware of that.

Mr. Garcia-Serra: Like I was saying, we've come to the point that I feel a settlement agreement that works for everybody is in place here. I feel that you should follow the recommendation of your City Attorney, who is the individual who has most knowledge of what the dynamics of the litigation are, what the consequences are, if

not suddenly, the chances of success on litigation. And like we've done throughout the process, as we go through building permit review, as you know, as the project continues to evolve, we will continue to keep on working with you guys. But at this point, it's been a three-year odyssey in one respect, a nine-month odyssey in getting to the point of the settlement agreement. We need to know if the City's willing to settle or not. If they're not willing to settle, then you know, we could be civil about it and we'll resolve it in the courts, as we were on the process of doing at one point in time. But to -- but that's really to defer this another two months would really shake our confidence in waiting for the City to settle. At that point, we would start wondering whether we're just being led astray here.

Commissioner Quesada: Mario, I've got a few questions for you.

Mr. Garcia-Serra: Sure.

Commissioner Quesada: And before I go to those questions, I'm looking at the resolution, and I think it's important that we stick to standards --

Mr. Garcia-Serra: True.

Commissioner Quesada: -- as the City Attorney has specified. And for any of the Commissioners, I'm looking at the top of page 2 of the resolution. So if you look at the -- what we're supposed to weigh here today for the City Commission sitting in a quasi-judicial capacity, as we are, I think subsections "C" and "D" are clearly met, that the implementation of settlement is designed to redress the effects alleged discrimination. I think the City Attorney has pointed that out and duly noted -- and I'm obviously basing my decisions on that -- I know we all are -- and also resolved in a federal/state of administrative proceedings. Also, as well, subsection "E," related to any kind of discrimination or remediation or alleged discrimination -- discriminatory practices. I think those are all hit. I'm really going to be focusing on with you, Mario, subsection "A" and "B," related to the ownership and also the combination of government and private use. I'm looking specifically at the settlement agreement. Now, the first time I reviewed this was Thursday when we got it in our packet. So I went through -- do you have a copy of the settlement agreement in front of you?

Mr. Garcia-Serra: Sure.

Commissioner Quesada: So this is my review of the settlement agreement, and again, I want to get this done today. I do. I know --

Commissioner Keon: Can I ask one questions, please?

Commissioner Quesada: Yes, go ahead.

Commissioner Keon: Since I can't see what you're referring to, is it the government (UNINTELLIGIBLE) resolution to the trolley settlement (UNINTELLIGIBLE) from the settlement package that we got (UNINTELLIGIBLE)?

Commissioner Quesada: The -- what I'm -- the document I'm referring to with the standards, Commissioner, is the government settlement resolution that is --

Commissioner Keon: OK.

Commissioner Quesada: I'll tell you the title right now. The top of the document says, "City of Coral Gables, Florida, Resolution Number 2014 dash" and then it has a blank. And it looks like the typical resolution that we see.

Commissioner Keon: OK. I just wanted to make sure I was on the same document you gave. Thank you.

Commissioner Quesada: OK, yeah. And if you look at the second page, is what I'm referring to.

Commissioner Keon: OK.

Commissioner Quesada: OK. But now I'm jumping to the settlement agreement itself, the actual document.

Commissioner Keon: OK.

Commissioner Quesada: Mario, a few thoughts. And it's kind of tough because of the managing the documents that I received last night from Craig at 1 a.m. in the morning, and thank you for working so late on this, Craig. What is our plan -- and I

didn't see this in the settlement agreement -- to operate the trolleys during construction? Is there a plan in place? Is there something that we've discussed?

Mr. Garcia-Serra: What you're discussing is at the point of the City moving into the new trolley facility, how are things going to operate --

Commissioner Quesada: Assuming everything --

Mr. Garcia-Serra: -- (UNINTELLIGIBLE).

Commissioner Quesada: We decide to go with this plan today --

Mr. Garcia-Serra: Right.

Commissioner Quesada: -- what happens during the construction? Obviously, our current facility is there. I know we've discussed internally with staff maybe bringing it from the -- our current facility at Public Works. We know there that neighborhood is -- there had issues in the past and, obviously, they're not willing to bring us there because they have to have all the county buses that are stored there. A lot of the county buses are stored there. And I guess it's a question for staff and the City Attorney as well. Do we have a plan how to operate the trolleys during the construction of this project?

Mr. Garcia-Serra: And your question applies to both operations from the existing building while they're still there, as well as the new facility once they've moved into the new facility?

Commissioner Quesada: I'm talking about the construction time period. The moment you knock down our trolley facility, what do we do with our trolleys?

Mr. Garcia-Serra: Isn't that a question of the City Manager?

Commissioner Quesada: That's what I said; it's a question for the --

(MULTIPLE SPEAKERS; UNINTELLIGIBLE)

Commissioner Quesada: --- has it been discussed?

City Attorney Leen: It's in the settlement agreement, the facing of the plan -- What we did was, originally, we were going to go into the Coconut Grove facility on a temporary basis. The residents expressed their strong objection. It was not going to resolve any of the matter. So then there was a proposal to do a phasing, which the applicant proposed, and we agreed to ultimately, which is that we would be in our old facility while phase one is being built. Phase one will include our new facility. Then we will move into that facility and then they will knock down the trolley building.

Commissioner Quesada: And then they will be -- continue with construction above the project?

Mr. Garcia-Serra: No.

Commissioner Quesada: Explain --

City Attorney Leen: I thought (UNINTELLIGIBLE) explain, right?

Commissioner Lago: No. My understanding was -- Mario stated or -- stated that, basically, what happened was that the adjacent parcel of land, which is currently to the north of the trolley station, that would be where the primary construction would occur, a CO (Certificate of Occupancy) would be achieved for the entire building, and then the trolleys would be moved over to the new building, which would have a CO, not a TCO (Temporary Certificate of Occupancy). I want to make sure that's not a TCO and that all permits are closed. That a CO would be achieved, and then the secondary portion of the construction would commence with a demolition of the existing trolley station.

Mr. Garcia-Serra: Correct.

Commissioner Lago: So basically --

Mayor Cason: No interruption?

Commissioner Lago: -- should be no interruption.

Mr. Garcia-Serra: Right.

Commissioner Lago: Because you have your existing facility, which would be only demolished and will be taken out of line when your new facility's got a CO and the trolleys just basically move over to the new facility which is adjacent to it.

Mr. Garcia-Serra: Exactly. And that is a seamless operation.

Commissioner Lago: Is that correct?

Mr. Garcia-Serra: Yes.

Commissioner Quesada: Madam City Manager, any issues or concerns with that?

Interim City Manager Carmen Olazabal: This strategy has been discussed with staff. The staff is not completely comfortable that this phasing is achievable. And I have Bill Minor here, and he can talk about the details. I think part of the issue is that we haven't had enough time to go into -- we have identified issues. We haven't had enough time to make sure that we have real solutions, real solutions that fully resolve the matter. Because it's been characterized that this fully resolving the matter, and my fear is that this is going to be coming back to you, because the devil is on the details and those details have not been ironed out.

Commissioner Quesada: Well, let's see if we can resolve some of those. Mr. Minor, can you come on up? As you're coming up, the question for you is, what are your concerns with the -- this phasing that you just heard from Commissioner Lago and from Mr. Garcia Serra?-

William Minor: Good morning.

Commissioner Quesada: -- if any?

Mr. Minor: For the record, the name is William Minor, the Building Director for the City of Coral Gables.

Commissioner Quesada: If you can speak up a little bit, because remember --

Commissioner Keon: Yeah.

Commissioner Quesada: -- Commissioner Keon is listening on the other side of the world.

Mayor Cason: From Timbuktu.

Commissioner Lago: Good morning, sir.

Mr. Minor: We had to review this project in a very short amount of time. But regarding the specific question about the staging plan, it is conceivable that the project can be done in two phases, as the applicant has described. Our concern is that it requires a complete construction of the trolley station, three floors of parking above it, and then some housing above that; that then has to be rubber tight as a stand-alone building. The parking is not accessible at that point. Some of the utility connections are temporary connections, because most of the utilities and the access to the parking garage are in the second phase, so the building can be constructed that way. It will be a trolley station with unused floors above it, and then the second phase would have the construction of the rest of the project. This is, in essence, building two projects. It would double the construction and add costs, which --

Mayor Cason: But there's no reason why, as I understand it, we couldn't continue, until whatever date, to use the existing facility; trolleys come in and out and do their work. When you guys are ready and it's totally -- you've agreed, we move in. So what's the -- I don't understand what the phasing --

Mr. Minor: (UNINTELLIGIBLE) as the applicant has stated.

Commissioner Lago: Mr. Minor, if I can just interject one second. The only issue I have in regards to this is when we were discussing about the permitting. I mean, let's be sincere here. If you're going to do one project and it's going to have two different phases, you're not going to be able to close that permit, unless it's going to have two different permits. I mean, that's -- it's done every day, so this is something very simple. You just got to plan accordingly. You know, one of the main issues, you're going to have to get rid of temporary electric. You're going to have to get rid of many of the issues, the general condition items which come at the commencement

of the project; it had to be cleared out to be able to get a CO, Certificate of Occupancy. So I don't see this as really an issue in regards to whether it can occur, constructability. I know you want to study it further and I agree with you, you know, and I'm grateful that you're going to look into it. I think we may have to look into the fact this may have to be a two-permitted project. You understand what I'm saying?

Mr. Minor: I understand exactly what you're saying.

Commissioner Lago: Phase one and phase two. If you're going to -- because -- I don't see it -- you can't close permit one if you're going to be continuing construction on phase two. There's no way to do that, from my understanding. I mean, you have a lot more experience than I do.

Mr. Minor: Well, you're exactly right. The settlement agreement plans to have a single permit that would include both phases one and two. We would review all of it in terms of its adequacy and then the staging plan would reflect a multiple stage of --

Commissioner Lago: The only way that's possible, I mean, that it can be done is through a TCO and the City would have to accept a TCO, Temporary Certificate of Occupancy, which would allow for -- basically, for the process to be occur. If not, it can just be dealt as two separate permits.

Mr. Garcia-Serra: But what we're contemplating too is that a CO would be issued for trolley facility. We're not looking for a CO for the levels above the --

Commissioner Lago: OK.

Mr. Garcia-Serra: -- trolley facility.

Commissioner Lago: So -- All right. Now, that's a different -- that's a completely different situation, OK.

Mr. Garcia-Serra: Yeah. That's what's contemplated.

Commissioner Quesada: Mr. Minor, what we're supposed to look at -- and I'm referring to subsection "H" of the standards we're supposed to look at -- is that it's not

detrimental to health, safety or general welfare of the community. I didn't hear from you that it would be a problem to do the staging and operate the trolleys in this manner. Is it going to -- did I misunderstand you? So you're saying it can be done? In your professional experience, we can move forward with it?

Mr. Minor: Yes, you could do it. I don't think it would inherently have a life-safety issue or detrimental aspect.

Commissioner Quesada: Impact on our operations. So maybe that's not for you to say or not. I guess we have a thriving trolley program.

Mr. Minor: This is....

Commissioner Quesada: I mean, Bill Kerdyk put that together 14 years ago. The last thing we would want is to affect headway or affect service in any kind of way. In your opinion, doing this phasing -- well, what is your opinion doing this phasing?

Mr. Minor: This is a vacant lot adjacent to our existing trolley facility. If we -- if a developer wanted to build anything there on a vacant lot, he could do that. It is, in fact, two projects, as Commissioner Lago has mentioned. The project has not been designed yet. We've only received conceptual designs. In the settlement agreement there's a 90-day period in which the applicant will work out those details and will have to resolve those issues of the phasing of the project.

Commissioner Quesada: OK.

Mr. Minor: And we've not had a chance to review that.

Ms. Olazabal: My question to you is --

Commissioner Quesada: Madam Manager, do you have any thoughts on this specific issue, additional?

Interim City Manager Olazabal: No. My question to you is do you feel comfortable that with information you have, you can assure that there is no stop in service with our trolley operations, with information that you have? That doesn't mean that we can't resolve it. That means that with information in front of you, you can assure that we

don't lose trolley operations at any which point.

Mr. Minor: I'm not versed in trolley operations, but in terms of the building aspects of it, I'm assured that a building could be built adjacent to the trolley facility that we now have and that facility couldn't to operate while that project's being built.

Interim City Manager Olazabal: And you have enough level of detail to say that?

Mr. Minor: Yes, enough knowledge and information in the conceptual design to feel that that is possible.

Mayor Cason: Within 90 days, are you able to -- you think you're going to be able to work together to get --

Mr. Minor: Sure.

Mayor Cason: -- to assure us of -- that there won't be?

Mr. Garcia-Serra: The level of comments we're talking about now really can't be addressed until you have your building permit set of plans. So what the agreement calls for --

Commissioner Lago: Mario, I'm sorry to interrupt you. I mean, what we're talking about here -- and Mr. Minor has, again, a lot more experience than most people that I know. You know, you're talking about -- it's very simple. It's called coordination. And if we're not happy at any point, we can always stay in our building until the building is completed, 'because that building will not be demolished. So once we have a TCO, CO, whatever the agreement is, we'll let the attorneys hash that out. But if we're not happy in regards to ADA (Americans with Disability Act) compliance, in regards to like Commissioner Quesada has said, anything that's detrimental to health, you know, life-safety issues, air quality issues, means of ingress and egress issues, we don't pass an inspection, we can always stay in our building until those issues are corrected, and I imagine that our City Attorney will probably put some language, which we'll discuss today, which will make that airtight. I mean, it's not something ridiculous to ask from a developer to make this safe and facility useable, if that's the appropriate word. I mean, I think they're more -- they can see that. You know, I think this is one of the many -- I think we have a lot more

complex issues to discuss today. This is something that is, you know, over the top. Anybody can say that we're going to deal with this

City Attorney Leen: Mr. Mayor --

Mayor Cason: Yeah.

City Attorney Leen: -- just to address that, you know, we can't bargain away the police power. There will be a provision; you have to agree to that --

Mayor Cason: Of course.

City Attorney Leen: -- that there will be a provision that says that --

Commissioner Lago: Yeah.

City Attorney Leen: -- you know, in the resolution approving this, that ultimately, if you can't sign something because you feel that it would be illegal or would violate your professional ethics, you can't do it. And then ultimately, if they don't agree with us, they'll have to bring that to Judge Thornton and we'll present that to him, and that's why you have judges; sometimes when there are disagreements. But there is no -- it's going to say that. Legally, we cannot contract away our --

Commissioner Lago: Craig, but it's simple.

City Attorney Leen:...our powers.

Commissioner Lago: As per the Florida Building Code, that's it. It's real simple.

City Attorney Leen: Yes, and I'd like to say.....

Mr. Minor: It meets the requirements as per the Florida Code.

Commissioner Lago: We have the most stringent -- Bill, please. We have the most stringent building code in the United States, am I correct or --?

Mr. Minor: Yes, sir.

City Commission Meeting

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City Attorney Leen: The building --

Commissioner Lago: Due to hurricanes. So if we follow the Florida Building Code, which everyone here has to, you will get a building which meets our needs.

City Attorney Leen: We met with the Building Director on Thursday.

Commissioner Lago: In regards to safety and quality.

City Attorney Leen: We made a number of changes to the timing to make sure that he would have enough time, and he thought he would. We extended the time to take a conditional permit. He had the opportunity to speak to Steve Sigfreed, who is a very knowledgeable about --

Commissioner Lago: See, but that's a different story.

City Attorney Leen: No, but --

Commissioner Lago: In regards to review --

City Attorney Leen: Yeah.

Commissioner Lago: -- the staff's time to review -- staff's time to really check into the conceptual drawing before the final plans are put forth to DRC, Board of Architecture --

City Attorney Leen: Ultimately --

Commissioner Lago: -- and the forthcoming reviews, I think that we should provide staff with the adequate time to review these documents.

City Attorney Leen: We did meet, and we increased the time.

Commissioner Lago: Of course, of course.

City Attorney Leen: Just so you know, we did meet. We increased the time. We

provided more flexibility in those 90 days. It's not going to be counted against us if another agency is looking at it outside the City. And ultimately, if the comment is we can't approve it because of the structural deficiency, we don't need to approve it, OK, but we have to do our best to do this within the 90 days, and the 90 days is a fair amount of time.

Mayor Cason: I think this -- I think, on this issue --

Commissioner Quesada: I move on (UNINTELLIGIBLE)

Mayor Cason: I think we've -- it's not a (UNINTELLIGIBLE) at this point.

Commissioner Quesada: I'm moving on.

Commissioner Lago: Thank you, sir. Thank you Bill.

Commissioner Quesada: And Mr. City Attorney, you were referencing your e-mail from last night -- Subsection 4 for the other Commissioners. So the 90-day total review period and that's something Commission -- that Mr. Garcia Serra you agreed to. I don't know if you have a copy of that e-mail in front of you. And Mr. Minor, I wish you wouldn't have sat down.

City Attorney Leen: Here, let me --

Commissioner Quesada: I'm looking now -- for everyone. I'm looking at page 2, paragraph 3 of the terms and -- of Article II of the settlement agreement, as well as paragraph 4 on page 3, which ties into what Mr. Minor was just addressing and what Commissioner Lago was just addressing. And I guess I just want to be clear here, and the City Manager addressed it as well. Paragraph 3 of the development approvals, you know, I put a question here: construction docks, mechanical question mark, electrical plumbing, question mark, and then issuance of building permit. I didn't like -- in the fifth line down, Mario, I didn't like the use of the word "will issue," but I don't know if we just addressed that issue by Commissioner Lago's comments, 'cause, you know, we're with the Florida Building Code in our Code. Am I correct to assume that we've clarified my concerns related to those portions, that we are not going to be forced to issue a permit if it doesn't comply with our code and doesn't comply with the Florida Building Code? Is that implicit in this language?

City Attorney Leen: Yes.

Commissioner Quesada: OK.

(MULTIPLE SPEAKERS; UNINTELLIGIBLE)

Commissioner Quesada: All I would ask, for clarity sake, that it explicitly say -- and I think there's a minor correction that it will apply with the Florida Building Code and will apply with our Code.

City Attorney Leen: Yes.

Commissioner Quesada: If we could amend that paragraph 4 -- again, if everyone's agreeing to that, I don't see how that would be an issue.

City Attorney Leen: Mario, are you OK with that? It's an expressed statement.

Mr. Garcia-Serra: Sure. That the building permit be an issue it has to comply to Florida Building Code?

City Attorney Leen: Of course.

Commissioner Lago: Yes. Standard, standard protocol.

Commissioner Quesada: I know it's implicit in the agreement. I just think, for clarity sake, there are a lot of people paying attention to it this year and maybe you're not familiar with it, the important --

Interim City Manager Olazabal: The other thing is the conditional permit is not defined. Staff was not able to answer to me as to what that meant. You know, then we need to understand -- 'cause they're going to come to us and asking for a permit in 15 days now and the details --

Vice Mayor Kerdyk: Oh, she can't hear. Can you talk into this, and -- I'm here. You have a question.

Interim City Manager Olazabal: Right. Well, the document says that we will issue a conditional building permit. It says now five days. I think that's going to be amended to 15 days. My issue is that in my discussions with staff, they did not -- we don't issue or have issued conditional building permits in the past. The specifics of what this conditional building permit is staff doesn't know and we need -- again, we need to know all these details so that we can -- this needs to be implementable.

Commissioner Quesada: OK, got it. What's the definition of conditional building permit?

Interim City Manager Olazabal: Well, I do -- they put it on --

Commissioner Quesada: I'm asking for -- this question is to Mr. Minor, Mr. Garcia Serra, and Mr. Leen. Do we have -- have you guys discussed what that means?

Mr. Garcia-Serra: A conditional building permit, when we're talking about it, is in the context of the existing plans, so the plans that have been in the queue and being reviewed by the City over the course of about two years. So there should be very few comments left to be addressed on that. The only reason we're getting that conditional permit issued is because on the -- unfortunate, an unlikely event that if we ever have to rescind the settlement agreement and move forward with the original project, we want to know where we stand on that building permit.

Commissioner Quesada: Mr. Minor, can we issue a building permit or a conditional building permit based on what you just heard, based on the conceptual drawings that we had or dock -- do we need additional detailed documents?

Mr. Minor: No, sir. A conditional building permit does not exist in this municipality. We are currently reviewing four different permits.

Commissioner Quesada: OK.

Mr. Minor: We have a foundation-only permit that is almost fully approved and could be issued within a matter of days. That's -- that was initiated --

Commissioner Quesada: Based on the current documents we have for the applicant at this time?

Mr. Minor: Based upon the original design.

Interim City Manager Olazabal: The original.

Mr. Minor: And that is -- by some municipalities, that's referred to as a conditional permit.

Commissioner Quesada: Your use of the word "original" implies that we have a new set of plans that we're looking at now?

Mr. Minor: We have --

Interim City Manager Olazabal: The original plans are the plans that do not include a trolley facility... So you will be providing a permit for a development that is not what we're agreeing to in the settlement agreement. So it's foundations that are not related to the building --

Mr. Minor: Exactly.

Interim City Manager Olazabal: -- that we're expecting to have in place.

(MULTIPLE SPEAKERS; UNINTELLIGIBLE)

City Attorney Leen: So Mr. Garcia Serra --

Interim City Manager Olazabal: (UNINTELLIGIBLE).

City Attorney Leen: That's what we've agreed to do if you approve it and the idea behind it is what he said, and ultimately, it's a good-faith gesture on the City's part to show that we approve a building permit and that if this falls apart, that they'll be able to proceed with their building. They've waited a long time for the permit.

Interim City Manager Olazabal: Well -- and that's -- now, the definition of conditional building permit now, instead of being clarified, it had not been clarified; staff didn't know what was being agreed upon.

Commissioner Quesada: OK, that's fine.

Interim City Manager Olazabal: And that's --

Commissioner Quesada: We're trying to work through it now.

Interim City Manager Olazabal: Right.

Mayor Cason: Let me ask one thing. Before we -- I know we have a lot of questions, but we haven't had -- allowed the City yet to make a presentation as to what you've heard, what you've now got taken care of, and what are your remaining issues, so that they can --

Interim City Manager Olazabal: Perfect, yes.

Mayor Cason: -- Mario can address those so we can see what's left.

Interim City Manager Olazabal: Right. Well --

Mayor Cason: Thank you, Bill. Thank you.

Interim City Manager Olazabal: I am --

Mayor Cason: Do you want go up front and -- you want to do it from there or whatever?

Interim City Manager Olazabal: Whatever you prefer.

Commissioner Quesada: I think she's got her documents.

Mayor Cason: OK, you got your documents there.

Interim City Manager Olazabal: I'm not going to say that the list I'm going to provide is a complete list, but I'm going to tell you what I still think are the issues. The traffic engineering study hasn't been done. We think that there may be significant issues coming out of that. And we don't know to the extent that all of them can be mitigated.

Commissioner Quesada: But that was a...

[Applause].

Mayor Cason: Now, let me ask at that point for you to answer.

Interim City Manager Olazabal: So we -- no, but I would like -- and that's fine, and Mario can talk on this matter, but at some point, I would like Glenn Kephart to talk on this matter, and it may be resolvable; we just don't know yet. Regarding phasing, I still have some issues, and I would like operation to talk --

Mayor Cason: Why don't we go one by one so we can try to get some answers --

Interim City Manager Olazabal: Well, I would also like Merritt Stierheim --

City Attorney Leen: Yeah.

Interim City Manager Olazabal: -- who's looked at this with --

Vice Mayor Kerdyk: Why don't we make a presentation...?

Interim City Manager Olazabal: -- fresh eyes to talk about --

Vice Mayor Kerdyk: Why don't we make a presentation -- you make the presentation, if that's OK, Mayor, and then Mr. Stierheim come up and speak, and then you can start addressing --

Mayor Cason: Each of the issues.

Vice Mayor Kerdyk: Yeah, So that way we can look at it collectively. Go ahead. Keep on going.

Interim City Manager Olazabal: Well.

Vice Mayor Kerdyk: Your issues are traffic study...

Interim City Manager Olazabal: Traffic study, which I would like Glenn Kephart to talk in more detail about.

Vice Mayor Kerdyk: OK.

Interim City Manager Olazabal: OK. Phasing probably more from an operation standpoint as opposed to a permitting standpoint.

Vice Mayor Kerdyk: Phasing meaning --

Interim City Manager Olazabal: Phasing of operations.

Vice Mayor Kerdyk: OK.

Interim City Manager Olazabal: And how it...

Vice Mayor Kerdyk: Phasing of our --

Interim City Manager Olazabal: Our trolley operation.

Vice Mayor Kerdyk: Back to what you were talking about.

Interim City Manager Olazabal: Also, conflict resolution. You know, this is very preliminary drawings. We don't have any pieces or not construction documents inevitably they're going to be changes. You know, which happen as part of regular design. This is not something out of the ordinary, but I don't know that there's anything on the document that allows us to reach some sort of conflict resolution and right now the settlement agreement says that we will be conveying the title and leasing back from them so my fear is that without resolves this matters, we're going to be negotiating from a weaker position. So that's one concern. You know, there's the other concerns, which are regarding compatible of uses, and that's -- you know, that's up to your decision and I'll leave that up to you, but I do think there's some issues regarding having residences there and having a trolley facility particularly you're going to have some of the trolleys backing up to it. You may have some noise related to that.

Vice Mayor Kerdyk: But do you think that that's our issue or do you think that's the

developer's accepting a trolley facility there. I mean, from our standpoint --

Interim City Manager Olazabal: Well, at some point --

Vice Mayor Kerdyk: He has to disclose to his --

Mayor Cason: Condominium buyer.

Vice Mayor Kerdyk: Yeah, to buyers that that could be an adverse effect on them -- ourselves.

Interim City Manager Olazabal: Sure. No, no, you agree, and that's one way to look at it. But I do believe that maybe intent -- you know, this is a longer view of the issues and ten issues you may have residents coming back to you and telling you, oh, there's too much noise. This complaint, and then you have to address that.

Vice Mayor Kerdyk: OK. I see what you're saying.

Interim City Manager Olazabal: You know, long concern and I understand that we are in a situation so you know, we -- you guys can decide what you think is proper action but it is my responsibility to raise the issues and for you to understand that there are some short-term issues that are not clear in the contract that is not clear to staff as to what is direction is and we have to implement this.

Vice Mayor Kerdyk: OK.

Interim City Manager Olazabal: This is going to be dropped on our desk and we have to implement it.

Vice Mayor Kerdyk: OK.

Interim City Manager Olazabal: We need to understand it and we need to be and it needs to be with the direction from this Commission. But additionally, the longer term issues that I want to put on the record as to this may happen in ten years, in twenty years and you need to know.

Vice Mayor Kerdyk: OK.

Interim City Manager Olazabal: In the construction process, you may find that you're going to need a column dropping in the middle of where the trolley facility is. And I don't know this. I'm just making it up. So when something gives, how do you resolve that? But anyway, in addition to that, I did have Merritt Stierheim, because I wanted to have independent look at this matter of someone look at it with fresh eyes, and you know, provide an unbiased look and he's, you know, he's reviewed it, and you know, he would like to make some comments and I would like him to put some comments on the record, so.

Mayor Cason: Come on up.

Interim City Manager Olazabal: If you will, please.

Merritt Stierheim: Good morning, Mr. Mayor, and members of the City Commission. As the City Manager indicated, she asked me among other things to take a look at this and in an independent and dispassionate way and I've done that. And in addition, she asked me to review the process by which you got here to this public hearing. And permit me to comment on the process as to why you're here and how you got here. It is set forth as the attorney said in his opening comments by an amendment to the development review process which in any opinion is flawed. It was a mistake and it should be corrected and I'll explain why. I say that because no one would dispute the contention of the very accomplished attorney whom I have a lot of respect for. That this does involve legal considerations, lawsuits, there are certainly a legal element to the hearing and the resolution to try to solve the problem. But the issue that is before you today is fundamentally in addition to the legal concerns a business decision. There are business implications to this whole complex problem that affect fundamental governmental services, basic fundamental governmental services. And Administrative responsibilities that fall under the City Manager. And I would say to you that over the past 50 years and I get a little long on the tooth, I work closely with City and County Attorneys and have negotiated and recommended and signed virtually hundreds of complex settlements and agreements. But if I had the discretion and I was sitting in your chair or am not but in the Manager's chair, I would have serious problems signing or recommending this agreement even in its modified form and you had a flurry of changes that were presented to you last night at the zero hour trying to salvage the agreement, responding to the position of the City Manager, and appropriately so, but this

agreement in its present form clearly benefits the developer clearly.

City Attorney Leen: That's not true.

Mr. Stierheim: I -- sorry. May I speak?

City Attorney Leen: Yes.

Mr. Stierheim: I don't think there's any doubt. Anybody that reads it and understands government and understands the responsibilities of all the departments, I'm sorry. I don't think there's any question about it. And I think what it does is if it's approved, it puts the City in a weak position to deal with the myriad of issues that will come up asking the Building Director, quite candidly, I'm going to digress to comment on the operational complexities of building a massive building ultimately or building the trolley facility and operating the system while all of this construction is going on. He's not the one to give you the answer. Person that runs the system that understands and who knows what complexities you're going to deal with all the cranes and trucks, and cement mixtures and everything else surrounding that project. Very, very complex so the transition is very complex. Not something simple. The other thing I would say you should not be negotiating the terms of this on the dais. This is not completed staff work. You should be presented with a settlement agreement that answers as many questions as possible. The ordinance that you amended allows the City Attorney and outside legal counsel to unilaterally negotiate the terms of the settlement agreement without the personal participation in those negotiations face to face with the professional City Manager's Office or the several department directors that have directly affected by the settlement agreement. Unfortunately, that's exactly how the negotiations went on. It's one thing if the settlement deals exclusively with legal issues. No question about that, that don't affect the administration. But this settlement involves Permitting, Planning, Building, Public Works, utility, impact fees, Community Development, Zoning, Art in Public Places, the trolley system, the Architectural Board, City Manager staff, and several outside agencies. Like Water and Sewer, DERM (Department of Environmental Research Management) health, and so forth. I met with staff last week. I met with them again this morning and I can tell you, the Manager will tell you, no one is pleased with the settlement agreement as even as it is modified. It'll be nice -- I mean, really, what should have happened, I think is that Assistant City Manager Cynthia Birdsill, who is exceptionally well qualified. She is an attorney she is a member of the Bar in

Connecticut, Maryland, and Florida. She worked for the Rouche Company, one of the major developers in this country, that she should have been participating and stating the concerns and so forth of the administration. There's a lot more that I can say in defense of the City, recognizing that the challenges you're facing were not precipitated by the City. The developer came and knocked on the door wanted you to -- wanted the land where you have your trolley facility, and yes, it would be nice to have a new trolley facility that you don't have to pay for that allows for expansion. Nobody -- I mean, there are advantages. I'm not trying to deny that, but at what price? But I would hope happens today is that you defer any final decision and direct the City Attorney and hopefully with the attorneys for the -- they say no now, but they've got a good deal so you're going to -- they're going to hear that no, they don't want any delay or any extension. But I would hope that they would join in ask the court to stay -- to extend the stay order and allow for a resolution of what I think are legitimate concerns on the behalf of the administration. And that it would give us time to explore whether there are other locations, Fire Station Number two on US-1, may have a print big enough to accommodate the trolley facility. And if I were the developer, I don't think he'd really wants a trolley facility underneath all of these condominiums, so it may be to the developer advantage if it's taken out of the building and you have a pure facility, mixed-use facility with commercial and -- I think that's all I want to say.

Vice Mayor Kerdyk: Let me just say something. First of all, I will say I sort of feel for the developer to a certain degree, because he has been negotiating and -- what he thinks is in good faith. The issue is here is, internally, we have had a dysfunctional relationship. There is something missing here. As long as I've sat up here, when you get a development, it's wrapped very tightly; you make a decision fundamentally on whether you want it in size increase there and you're going to trade it off from moving your facility possibly in Coconut Grove over to the City of Coral Gables. I got to tell you, no matter if I want to move -- go ahead and make this deal or not, when the City Manager and an independent person with the qualifications of Mr. Merritt Stierheim says, there's a fundamental issue with regards to how this is going to interact with our City for many months to go, that gives me a real issue here, and I think that in good faith, we -- you know, a lot of us would like to see something done there to assist the developer and to get this thing litigated. But I got to tell you, fundamentally, I know there's a lot of -- it's basically the devil's in the details, and I don't think the details are addressed here.

Unidentified Speaker: That's it.

City Attorney Leen: And Mr. Mayor --

(Applause)

City Attorney Leen: Mr. Commissioner, can I at least -- you know, my professional -- I do need to at least say something. I'll be kind.

Mayor Cason: All right.

Unidentified Speaker: And also --

City Attorney Leen: I'll be kind. But I have to say, I've never quite seen anything like that. You know, Cindy Birdsill, who I respect greatly, too, as an attorney, was copied on every single version --

Interim City Manager Olazabal: She was copied --

City Attorney Leen: Let me finish, Carmen.

Interim City Manager Olazabal: -- and not asked for comments.

City Attorney Leen: Carmen, I have a right to speak.

Interim City Manager Olazabal: I do too.

City Attorney Leen: She was copied on every version of the agreement. I have a signed copy from the City Manager's Office saying I can initiate this proceeding.

Interim City Manager Olazabal: The process.

City Attorney Leen: Let me just finish.

Interim City Manager Olazabal: And it was clarified that it was --

City Attorney Leen: Let me finish.

Interim City Manager Olazabal: -- only process, not opinions.

City Attorney Leen: Let me finish.

Mayor Cason: Look, Let him finish.

City Attorney Leen: I have a right to respond

Mayor Cason:... and then you can speak.

City Attorney Leen: Mr. Mayor.

Mayor Cason: Finish up.

City Attorney Leen: Mr. Mayor, the problem here is not with the City Attorney's Office, OK. The City Attorney's Office followed the ordinance to a letter, every single part of it. The important thing I wanted to do here was to have a public process. I understood that not everyone might not like the agreement, but this was the best agreement that we could get under the circumstances. You are free to reject it, but the one thing that Mr. Stierheim and the City Manager should have done is provided these comments when they were required in the Code. I would have then met with Mario -- I might not have even given him my recommendation. But to say that I did not include them in the process is simply wrong, and you can put me under oath and I will say it under oath. They were included in the process. What happened was that for a long time in the City nothing happened on this case, and I was asked by the Commission to get involved with this. In fact, we passed an ordinance providing me with that authority so that I could do it. That's what the ordinance says. I was following your direction. And to -- I don't need an order from you to follow your direction. I will follow whatever you do. And I understand there are a lot of issues with this agreement, but to say that it is not in our best interest, that's one thing, but to say that it's totally on their side is completely wrong, Mr. Stierheim, and you did not speak to me over the last five days at all on this case. I was surprised to learn you were involved when you all invited me into the City Manager's Office last night at 6 (p.m.) and told me you would be sending this recommendation. What I would say -- because it has to be entered for the record -- is that this agreement does have benefits to the City. It allows us to have a trolley facility in Coral Gables.

The trolley facility is larger than the one in Coconut Grove. It allows Merrick Manor to be built. We are in danger of this never being built and being sued for many millions of dollars, if that's what happens and many people who are under contract to live in that agreement will not live there; potential Coral Gables residents. We have a finding by the Federal Transit Administration that we violated the Civil Rights Act. To say that we did nothing wrong, whether you believe that or not -- and I told you we have good legal objections -- but there is a finding that we are attempting to address here and to not recognize that is not right. So, ultimately, what I would say, I have great respect for Mr. Stierheim, too. Obviously, we're upset with each other right now, very upset with each other. But what I would say --

Mr. Stierheim: Not at all.

City Attorney Leen: Well, I'm upset with him. But I -- you know what, he's a legend, so what am I going to do? That's why I got to respond when a legend says that you were not involved, I need to at least say that I was, and maybe he just didn't know that. I have all the e-mails (electronic) here. But what I would ultimately say is that you have to make a determination in what is in the best interest of the City between three bad options. And if we're going to defer, if we're going to defer, we need to do it with their agreement because the Code says that you will approve, approve with modifications, or deny. And ultimately, if you agree with the City Manager -- and I do not -- but if you agree with the City Manager, you should deny. That's what you should do.

Mr. Stierheim: But you're not getting --

Vice Mayor Kerdyk: Hold on, hold on, hold on.

Mr. Stierheim: Mr. Mayor, just --

Vice Mayor Kerdyk: In my impression, you're not giving us a -- we're not getting the real option to make a decision here, because there are so many missing links here.

City Attorney Leen: You could change it.

Commissioner Lago: I kind of feel to a little bit that we're basically being forced to make a decision right now or there's going to be repercussions.

City Commission Meeting

July 22, 2014

Agenda Item E-1 – Resolution – Request of City Commission Approval of Government Settlement
As to City of Coral Gables, Florida vs. Astor Trolley, LLC and Merrick Manor LLC

City Attorney Leen: There's a court order (UNINTELLIGIBLE).

Commissioner Lago: I understand that. I understand that.

City Attorney Leen: OK.

Commissioner Lago: I think you stated the date was July 28. I understand that.

City Attorney Leen: I'm coming....

Commissioner Lago: The State comes....

City Attorney Leen: I'm required to.

Commissioner Lago: But there has to be -- we need to drill down on this.

City Attorney Leen: Sure, and that's what you should be....

Commissioner Lago: But let me explain to you. OK, I want to -- just give me one second, Madam City Manager. Just one second.

Interim City Manager Olazabal: Of course. I'm sorry.

Commissioner Lago: If you can just give me one second. Now, in regards to what Commissioner -- Vice Mayor Kerdyk said, which I agree 110 percent, in reference to the gentlemen who are in this room today, the applicant, I've only had the pleasure of serving this City for a year and a few months. I take full responsibility while we're here, even though some of these decisions were not made with some of the Commissioners on this dais. I'm embarrassed to where we stand today, not for a lack of trying, because I think that we've been -- how many executive sessions have we had, Mayor?

Mayor Cason: Five. I don't know.

Commissioner Lago: So, when anybody comes and says, the Manager, the City Attorney, Assistant City Manager, staff wasn't involved, that's not the answer. It's

impossible. 'Cause I was in those meetings, so I know how many executive sessions. Now, if we don't want to accept this agreement for "X" amount of reasons, I understand that; we can walk away from it. But in reference to the individuals who have come to the City, like the legend stated, which I have the utmost respect for, they came knocking on our door and we accepted an agreement. We signed an agreement with the applicants. We said, "Build us the following trolley station which meets the following specifications as per the City of Coral Gables needs." What did they do? They went out and built it. That didn't build it -- that didn't -- that trolley station in the City of Miami did not build itself. You may disagree with it, which I do. I'm on the record as saying I disagree with the placement, but again, that's in the past. It was built. And now we turn back and say, we don't agree with the trolley station. That's what scares me. There are no findings, nothing -- and tell me, again, I'm not an attorney. Defer to Commissioner Quesada and our City Attorney -- that states that we should not move into that trolley station. Again, is it the right thing to do? It's the wrong thing to do, in my opinion. But why are we moving into that trolley station? We signed an agreement, and we're now at this point, for the past nine months, saying that trolley station is insufficient for our needs. So what are we got to do? We're going to stand up here. We're going to squabble. We're going to make a mockery of the process, and we're going to say, the Manager against the City Attorney. That's not going to happen. That's not. That's not. I'm going to request -- because what we need to do is we need to figure this out, because they've been dragged through the mud, this applicant, the City's been dragged through the mud. The residents of the City of Miami have been embarrassed. We should have known better and for me yesterday to find out that there's been a study done by AECom -- not a study -- a preliminary draft stating that there's an option to put forth a trolley station on US-1 adjacent to the existing fire station, which is something that I had the pleasure of discussing this morning with Commissioner Chip Withers, who came up with that idea years ago. That is an ingenuous idea. I am in 100 percent in favor of that, but we have to be honest with the individuals that are here in front of us. Does the project need to continue to be as dense as proposed? Maybe not. Maybe we need to come to an agreement. They're going to spend money on making a building which is adequate to our needs; and to house the existing trolleys that we're going to have or the future trolleys we're going to buy, we need to make a decision where they're compensated for the millions of dollars that they spent. Come on. Millions of dollars that these individuals spent on an agreement that they signed with the City of Coral Gables that now we're not honoring, because we say it doesn't meet City of Miami requirements. But does the City of Miami get involved in our zoning?

No. Do we get involved in City of Miami zoning? Yes, we do. Again, I don't have any business dealings with these gentlemen here, but I think that you need to understand that they've been over three years dealing with this. And it's either the trolley station gets built underneath Merrick Manor or the trolley station gets built in another part of building, we need to request from them that this is not going to be resolved today; that we need some time.

Mayor Cason: Right.

Commissioner Lago: We need to figure out a way to make this relationship work, and there's going to be concessions -- and I think that you, with the experience that you have, which is lot more, like I mentioned, than most people in this room, understand that the City's going to have make some concessions, because we're asking for them to basically abandon a trolley station that they went to us and said, "Here are your keys. Your keys are here. You're done, as you requested, as per the plans that you accepted." Now, did the City do its due diligence? Did we fail? I think we did. I think we failed. So where do we move from there? Where do we move from now? What's the plan? Are we going to sit here and argue for two hours, three hour, four hours? No. Let's move forward. Let's -- we have no other choice but to defer this. We're going to either discuss this until we turn blue in the face. They're going to walk out. They're going to sue us. We're going to spend more money on litigation. We've spent hundreds of thousands of dollars. Let's sit in a room and discuss this and hash this out.

Vice Mayor Kerdyk: I agree. Very well said.

Mayor Cason: Mario, how much of -- how much -- if we voted to defer, say a month, does the City think in a month, having these discussions as you just --?

Commissioner Lago: I'm sorry to interrupt you, Mayor. Just -- I apologize, but we need to show these individuals who spent millions of dollars and then we said no to them, that's not what we want. What you did want at that one point, you signed a legal agreement, which I'm not privy to the document. I imagine you must have it in your records. We have to -- we have to -- again, I'm not going to accept that building permit, that -- what was it called? I'm sorry. The --

Interim City Manager Olazabal: Conditional Building Code.

Commissioner Lago: I'm not going to accept that. I'm not going to accept that, because those are based on plans of an existing building that was going to be built if the trolley station was in the City of Miami. But we need to show some good faith here. And with your expertise and the staff's, we need to show that -- I don't know if we can -- I know there's a bulge that we can -- a vote of confidence or something that we can do.

City Attorney Leen: You can vote to approve it in concept with -- subject to it being coming back to you for final approval to give them -- subject to your conditions that you've raised, which will be negotiated, and we could set it either a special hearing or we could set the --

Commissioner Lago: When you look into further detail in regards to what was shown to me yesterday at 4 o'clock by our Interim City Manager, which is a great idea, if it works, the placement of the proposed trolley station is a no-brainer. You're basically land-locked with the Metrorail behind you and you have US 1 in front of you and you have multiple options of egress and ingress. It's a great idea. But we have to make sure that if we're going go that route, that they're as comfortable --

City Attorney Leen: Commissioner, my concern -- my concern is that, you know, at some point a person should be able to trust what the government tells them. And what -- the problem here is that we didn't enter into a contract with them. We then decided that we wanted to be out of the contract. We took the position they breached the contract, but you know, they argued they didn't. A lot of this relates to the FTA. So then we tell them, well, let's do the settlement. We have them spend months and probably hundreds of thousands of dollars in attorney's fees to do the settlement, to prepare plans, to present them to the City. We tell them we're going to consider it good faith; I issue a recommendation. I follow the Commission's instructions at the executive sessions to bring this to you so that you can make the final decision, which you can deny, and it's fine for you to deny, but -- and then to tell them, well, no, now we're going to look at a third site, which, by the way, could engender additional opposition from residents. It could lead to another -- we're going to have to do another equity analysis. It could have a lot of issues with it. And whether they -- how do they know that we will go forward with that proposal, and why, ultimately as your counsel, why would they wait to see? Why not continue with the lawsuit from their perspective? Because what have we shown them that we're willing to deal with

them and to stand by what we've told them? I understand there are changes in administration. That happens. But sometimes the City has to stand by the statements that it makes, and people have to be able to rely on the government. We are not a private entity. We're a public entity, and people have relied on what we've told them. So -- and they're entitled to an up or down vote on this proposed settlement at some point.

Mayor Cason: My question is, Mario --

Commissioner Keon: Can I --

Mayor Cason: -- if we were to defer this --

Commissioner Keon: Can I speak for a minute?

Mayor Cason: -- for a -- let me finish this -- defer this for, say, a month to try to work out some of these issues and have other perhaps executive sessions, is that something that you would be willing to do based on what you've heard?

Mr. Garcia-Serra: Issues that are within the four corners of this agreement, I think we could even discuss today, to a certain extent, if we had to defer this item for later in the day and keep on discussing it. Things that go as far as potentially looking at another location so as to have the trolley building there, I think goes so far off the reservation that how do we know that this won't be another nine months that we're talking about that issue and we're stuck in this sort of situation here?

Commissioner Lago: Let's hear -- you mind if we go to Commissioner Keon?

Mayor Cason: Go on.

Commissioner Lago: -- Commissioner Keon... to say?

Commissioner Keon: Can I -- yeah. I just want to ask for clarification. Is there additional information that is going to be provided or additional testimony that's going to be provided to us before we, as a body, make a -- discuss this and make a decision?- Or are we done with the staff presentation?

City Attorney Leen: I know that as City Attorney, I will defer to Carmen regarding staff, but we do have Hank Fishkind, who is going to provide some information regarding economics and a memo. And then I know that Phil Freidin is here, who represents the residents of the Grove, and as an attorney, we did tell him that he could speak, so I know that he wants to speak.

Mr. Garcia-Serra: And for further --

Commissioner Keon:....at what point do we want to discuss this among ourselves?- or we're going to wait till everyone speaks? Or do you want to do it now?

City Attorney Leen: And there's is a public hearing, of course, too.

Interim City Manager Olazabal: I didn't understand the question.

Vice Mayor Kerdyk: No, she --

Mayor Cason: She wanted to know --

Vice Mayor Kerdyk: Go ahead. I'm sorry.

Commissioner Quesada: -- going to wait for the completion of the City presentation?

Commissioner Keon: I want to know if -- right. If there's further presentation or is they're going to discuss --?

Mayor Cason: Anything more -- I anymore from the City.

Vice Mayor Kerdyk: I think the question is do we want to defer this issue. If we're going to defer this issue, then there's no reason to listen to testimony and everything. We just make a decision to defer and then we move on from that point forward. You know....

Commissioner Lago: Can I interject in regards to that? I think we should hear from the residents. This is my opinion, because what if they can't make it next time this comes around or what if there's an issue? Not that I want to extend the meeting any

longer, trust me. We're going to be here --

Vice Mayor Kerdyk: No, I don't care.

Commissioner Lago: I know you don't care about....

Vice Mayor Kerdyk: I just --

Commissioner Lago: Look, man, I do. I don't want to be here until 2 o'clock at night.

Vice Mayor Kerdyk: We might be tonight.

Commissioner Lago: You never know. I'm just saying, it -- but maybe it's a good idea. You know, let's let them have their few moments to speak and listen to them.

Mayor Cason: Well, let's see if we have anything else from the City, anything that we want to hear -- the other lawyers, anything else from you, and then we'll open it up to the public to hear them.

Mr. Garcia-Serra: One last thing. Since it is a quasi-judicial process and we got testimony from Mr. Stierheim, I just want to ask him a couple questions for the purposes of the record, of course, in a very civil manner. In your analysis, have you reviewed the filings in the Coral Gables versus Astor litigation, meaning the complaint and the answer that were filed as one of the subsequent motions and the transcripts of the depositions that were taken?

Mr. Stierheim: What I looked at and I -- in deference to the -- to assuage the City Attorney's upset with me -- the City Manager, on late Thursday afternoon, because this was coming up, asked me if I would take an independent look at this whole thing. I worked that night. Friday I worked and spent time with the staff. I looked -- all over the weekend, I read the settlement agreement. I read prior information that I received from Cindy, 11 e-mails, but I didn't take -- I didn't look at depositions, no sir.

Mr. Garcia-Serra: Or the lawsuit and the complaint that was filed by the City or any of that?

Mr. Stierheim: I'm sorry. What?

Mr. Garcia-Serra: And the complaint that was filed by the City that initiated the lawsuit, you did not review that, right?

Mr. Stierheim: I did not get into that. I looked at it from a staff position, then I took it -- And let me just say while I have the floor. I don't disagree with a thing that you've said, Commissioner Lago. I think it was right appropriate to put that on the table, and I agree with you.

Commissioner Lago: Thank you, sir.

Mr. Garcia-Serra: And you also....

Commissioner Lago: Could I just interject one thing in regards to what City Manager's Stierheim has said? I don't want -- I hate to use the word like "dealing in bad faith," but it kind of puts the City in a position where we're coming in at the 11th hour with an option which has been in the works for I don't know how much weeks, but it's been in the works for a month. What I would have loved to have seen as a City, as a whole, when we're -- everyone knows that we're coming forth to put this on the agenda. This is going to be on the agenda, a settlement. It's going to be on the agenda. I didn't know about this until yesterday at 4 o'clock. Did you know about this? Nobody knew about this.

Commissioner Quesada: About what?

Commissioner Lago: It's a -- about the trolley, about the trolley maybe being housed on US 1, a study. If I would have known that month ago, I would have -- my immediate request would have been "Staff, I need you to contact the developer; tell him that it could be an option. We're willing to maybe increase FAR," not to the extent that we're increasing now; negotiate something.

Commissioner Quesada: Commissioner Lago.

Commissioner Lago: No, I'm not saying it was done --

Interim City Manager Olazabal: In full disclosure, we -- we're aware of the possibility maybe end of June, and I can find an exact date, if you want it. And we did the feasibility study the week of July 8.

Commissioner Lago: But this isn't --

Interim City Manager Olazabal: And we got results very recently. We don't know and can't recommend the option, although it is a feasible site, but it needs to be a further study. We think it's a -- possibly a very good solution, but until we can recommend it. My issue -- and we can go into the timing all we want, and I am happy --

Commissioner Lago: I don't want to do that. I don't want to do that.

Interim City Manager Olazabal:... and I'm happy to bring out all the e-mails and how we were not asked for comments but to approve the process moving forward, and we were advised that we didn't need to approve the terms on the settlement agreement, but that's besides the point. The point -- the issues that are not completed hashed out in the document. And you can talk about timing and you can talk about process and you can talk about everything that you want, but if it's not ironed out, we are facing a possibility of having issues down the line and not having this matter fully resolved.

Commissioner Lago: OK, Carmen, excuse me. Let me deal with that. First off, we as a Commission passed an ordinance to allow our City Attorney to negotiate with the developer. That's number one. That was passed. That was passed. So that's what he was doing. He was doing his job. Now, in reference to the document, I commend you. I commend you for finding a different option and getting our consultant, AECOM, to do a feasibility study and an inch -- simple initial feasibility study, which I saw it, three pages; it looks great. Obviously, we'll now drill down and go into further depth in regards to see if it's really feasible. What I wish you would have done is in the hope of transparency, in the hope of avoiding this on the dais; you would have said to the developer, "Listen, we have another option. Let's continue negotiating with Craig, but this may be an option that we'll bring it forth coming a week before the meeting, and then if we have to pull the item, we pull the item."

Mayor Cason: We pull the item.

Commissioner Lago: Let's just be up and up, not at 4 o'clock when I'm receiving e-mails at 1:17 in the morning from Craig in reference to answering questions from some staff, which, by the way, I commend staff for a great job. They have their concerns. A lot of the concerns are my concerns, OK? And you're hundred percent right. But I just didn't know -- we need to do things different. Let's not do things like were done in the past. We're moving away from that. We're moving away from that. We're -- we are in a different time. We're going to be transparent. We're going to represent this community. We're going to make sure that everything is done on the up and up. So now we're caught in a situation where we have to make a decision where we hope -- because I don't want to make a decision today based on the fact that the developer's going to say, OK, we're going to defer this and guess what? We're going to sue you. Because what does that revolve? Again, doesn't mean I'm going to accept this agreement here, but I don't think voting yea or nay today is the answer.

Vice Mayor Kerdyk: Yeah.

Commissioner Quesada: Commissioner.

Commissioner Lago: I don't think it's the answer.

Vice Mayor Kerdyk: I don't think so either.

Commissioner Quesada: Commissioner, respectfully, I agree and disagree with some of the things you said. I think you got to remember what brought us to this situation. Our executive sessions -- actually, I'm not going to get into conversations we had. I don't want to waive that privilege. But, you know, we're up against a court-imposed deadline. Now, every attorney who's listening to this knows that a court doesn't have to necessarily agree with any kind of continuance. We're close to the trial point of that process. We've listened to recommendations, which we heard today several times from our City Attorney, who probably has more experience in civil rights cases than anyone in Dade County, much less the state of Florida. So, obviously, we're trying to expedite this to balance all of the issues that are present.

Commissioner Lago: Can I say -- can I ask you a question?

Commissioner Quesada: And I'm not -- yeah, go ahead. No, you can't.

Commissioner Lago: What if we were to run both options concurrently and we would have gone to the --?

Commissioner Quesada: Commissioner, respectfully, we have the opportunity of coming up with that idea.

Commissioner Lago: No, I didn't come up with that -- I didn't know --

Commissioner Quesada: We didn't come up with the idea.

Commissioner Lago: I'm the first one that says, listen -- when I heard it yesterday, I said, wow, that's a great idea.

Commissioner Quesada: We sat with staff and we all put our heads together to try to come up with a solution that resolved everyone's problem.

Mayor Cason: And we were told --

Commissioner Quesada: We got to this point and we gave our City Attorney a direction because we felt we came up with an idea that resolved everyone's problem.

Mayor Cason: And we were told from the beginning that there was no other place in Coral Gables feasible to put a trolley station.

Commissioner Quesada: And we all --

Mayor Cason: In fact --

Commissioner Quesada: We all broke our heads. We all sat down and we tried to think of different -- all the different scenarios.

Vice Mayor Kerdyk: Yep.

Commissioner Quesada: And at that point --

Commissioner Lago: But there was a scenario which is, again, detailed by AECOM, which is a different option

Commissioner Quesada: Which --

Commissioner Lago: And we knew about that a month ago.

Commissioner Quesada: Hold on a second.

Commissioner Lago: We knew about that a month ago.

Commissioner Quesada: But hold on a second. Our staff has a responsibility to research --

Commissioner Lago: Of course.

Commissioner Quesada: -- certain proposals before they present it to us. They need to fully vet it before it comes to us. They -- she -- you know, our City Manager can't say, "You know something? You know, maybe we can put it in that facility, but it hasn't been fully studied so we're going to bring it before the Commission." She can't do that. She has a professional and ethical responsibility to fully vet something. I do not blame them for not presenting to that us because it wasn't fully vetted until a few days ago. We got the comments -- and I understand we got the comments from staff, the detailed, on Friday, because if you look at the signed settlement agreement, it's signed July 8th. It takes -- we have a lot of different issues pending before the City of Coral Gables. It takes a long time to really analyze a settlement agreement, sit down with the schedules of our outside counsel to really analyze all the different potential issues a week ahead. I'm not faulting staff at all. They're moving a mile a minute. We have a lot of different issues --

Commissioner Lago: But nobody here is faulting staff.

Commissioner Quesada: -- especially during budget time. But however, your comments go to the fact that we need to be more transparent.

Commissioner Lago: No.

Commissioner Quesada: We have been transparent.

Commissioner Lago: No, what I'm saying --

Commissioner Quesada: We've been rushing to get through everything --

Commissioner Lago: Commissioner, what I'm saying --

Commissioner Quesada: -- to resolve all the pending issues.

Commissioner Lago: Call me naïve. Call me naïve, OK. But I think that if we would have sat in a room, staff with the developer and said, listen, we need to go forth and speak with a judge because there may be another option. I can't speak for the for the applicant, but --

Commissioner Quesada: We cannot assume that the judge --

Commissioner Lago: Maybe the judge would have -- maybe the judge would have, you know, been more amicable in regards to the July 28th deadline. But again --

Commissioner Quesada: Commissioner --

Commissioner Lago: -- should've, would've, could've. We're here on the dais discussing the issue.

Commissioner Quesada: We cannot assume that the judge will grant another continuance.

Mayor Cason: It's a gamble. It's a gamble. Because what could very well happen is they just say, you're not going to decide; you had your chance. We're going to decide for you. And they could decide that we have to move into Coconut Grove --

Commissioner Lago: You're right, you're right.

Mayor Cason: -- which we don't want to do.

Commissioner Lago: Yep.

City Commission Meeting

July 22, 2014

Agenda Item E-1 – Resolution – Request of City Commission Approval of Government Settlement
As to City of Coral Gables, Florida vs. Astor Trolley, LLC and Merrick Manor LLC

Mayor Cason: We all like to find a way to make this particular project work, even on the alternate site. That may take a couple years to build. In the interim, what happens to -- if we lose in court, you build your original building, whether is our trolley garage? We don't have one.

City Attorney Leen: Mr. Mayor -- my legal advice is that you're going to have to -- if you defer it, you should treat that as a denial, because ultimately -- here's the reason why. We have the FTA who's told us they would approve the settlement, and they've been staying our equity analysis. We don't have to finish yet because of this, and they've stated pending this settlement negotiation. We have the judge who has a date that's coming up shortly. My understanding is -- and you know, maybe they'll agree to defer it, but at this point, they have not agreed to do that. They've put that in writing. We have the residents of the Grove, whose settlement is contingent on the settlement today. So it's fine to defer it if you -- but ultimately, that's really a denial, because what you're saying is that this settlement as presented is not sufficient and, you know, maybe we can start again, if they let us. But the problem is, I think ultimately, my feeling is they're probably not going to do it, although we can ask them and maybe they will, but I don't see -- the problem they've been raising with us the whole time is that we went through the whole settlement process. We went through the initial, you know, Grove facility. We went up near the end of it. They built it, in fact, and we didn't take it. And now we went with this one and we've had them do everything, and they've presented it and now we're right here and it looks like it may get -- you know, it could get denied and then, now they do this third one. What do they -- how do they know that we're going to proceed with that? I mean, there could be public opposition to that. There could be a lot of issues with that. It's open -- here's the issue. I mean, here's the issue in a nub. We have to resolve this matter or we have to deny it and go forward with the litigation and that's really the choice before you. If you want to defer it, it has to be with their agreement. If it's without their agreement, it's a denial.

Mayor Cason: Let me suggest we take a 10-minute break --

Vice Mayor Kerdyk: Fifteen.

Mayor Cason: Fifteen-minute break. Let's have some possible side discussions. We'll come back.

Vice Mayor Kerdyk: Yeah, OK.

[Note for the Record: Commission in recess at 11:39:12 a.m.]

[Commission meeting resumed 12:15:26 p.m.]

Mayor Cason: We'll listen to the public and then we'll go forth from there.

City Attorney Leen: OK, first, we have Phil Freidin here, who's representing the residents in the Coconut Grove matter. He's -- and Tony Alfieri is a professor at UM (University of Miami). They asked to have this opportunity to speak. They are in one of the three proceedings, so he'll take the opportunity now.

Philip Freidin: Well, hi. My name is Philip Freidin, and I have the privilege of representing the three individual plaintiffs who brought the claim against the City of Miami and re-litigated with Astor with regard to whether or not the building in Coconut Grove is acceptable and within zoning priorities and we are on appeal on that case. We also, in a way, I think unofficially represent the neighborhood and the residents, because this has been a collective experience. Even though we technically represent those three, we've had meetings with the neighborhoods. And after all the litigation, last week we met at Greenberg Traurig, who represents Astor, and we have had a number of the neighbors there, including a number of our plaintiffs, and we agreed to a settlement in a mediation. It is in the process of being reduced to writing; about 90 percent of it is in writing that is acceptable to both sides, maybe a little bit more. And our position is that if we -- if our agreement -- and I think Mr. Garcia Serra tells me that he agrees with this -- if our agreement is acceptable as being -- is it acceptable to them and to you, to the Commission, as being rolled into this overall agreement, so that we have enforceability and so that we have the ability to know that if your agreement succeeds, then our agreement will be enforced as part of it. It doesn't require more, I think, than -- more than this Commission in agreement here verbally. I would love to see it in writing in the agreement, but the bottom line is if we can roll it in and make it conditioned upon -- make their -- the Astor/Coral Gables agreement include our agreement being followed through on as a condition, then we fully urge and support this agreement, which takes the trolleys out of Coconut Grove, which is really the number-one priority. But so you understand, the settlement also relates to the second part of this, which is a building was created, and that building

represents possibilities of all types. It represents a kind of facility which would be obnoxious to the community, like a muffler shop or a vehicle repair shop or a tattoo parlor or -- I could go on and on, and it also represents potentially a community center or an Urgent Healthcare Center, which would be positive. Our settlement agreement deals with as many of those possibilities as we could deal with. We want to make sure -- so part one is we want the trolleys out forever, but part two is we want that building used as inoffensively as possible and hopefully as positively as possible, and that's what our agreement is an attempt to do, the settlement agreement. So that's basically my position. And I hope that the Astor people will endorse what I've just said, that they're willing to tie the two agreements together.

Mayor Cason: Thank you.

Anthony Alfieri: My name is Professor Tony Alfieri. I'm the director of the Center for Ethics in Public Service at the University of Miami, School of Law. The center is an education research and policy project that works in partnership with nonprofit groups and low-income communities of color, like the east Gables and West Grove and in other communities across the county. I simply want to speak briefly to three points that Mr. Leen raised regarding Title VI of the 1964 Civil Rights Act. The first point is simply this. Based upon our research and our work with the litigation team in this matter, we have concluded that there is a good faith, colorable basis for a Title VI action in federal court, in the event that trolleys are moved into the West Grove site. Number two; we also believe, on the basis of our research, that the U.S. Department of Justice would have a good faith, non-civilist [sic] basis to intervene to enforce the findings and conclusions of the Federal Transportation Agency regarding violations of Title VI by the City of Coral Gables and the City of Miami. And third, as you've heard from Mr. Freidin, as you will hear from members of nonprofit groups and other individual residents from the West Grove, there are absolutely no circumstances under which the West Grove and east Gables community would agree to the location of Coral Gables trolleys in their communities. Indeed, so you understand how important this is to the community, we have been asked as a partner in the community to explore the formation of a legal defense team to prepare for acts of civil disobedience by the community in the event that trolleys started to roll into that site. So we endorse Mr. Leen's analysis of Title VI. We may differ on his conclusions, but we endorse his analysis, that Title VI is more than a sort of Damocles hanging over the City of Coral Gables in this matter; that the U.S. Department of Justice, we believe, has good-faith grounds for intervening to enforce the findings

and conclusions of the Federal Transportation Agency; and we again echo the residents and the other nonprofits in the community in opposition to any, any location of trolley garages, even for a brief interim period in the West Grove.

Mayor Cason: OK, thank you.

Commissioner Quesada: Just real quick, first, it's nice to finally see you in person. We've heard your names so many times, both of you. It's a pleasure to finally put a face to a name. And I think everything you've said, both of you, is consistent with what we've been advised by the City Attorney on several occasions, including this morning, so thank you for that.

Mr. Freidin: Is there some way for us to formalize our request that the two agreements be rolled in together or something verbal?

Commissioner Quesada: I think we need to see how this Commission votes today and where we are.

Mr. Freidin: Right.

Commissioner Quesada: I don't -- assuming things move forward, I don't see it being a problem. I'll leave it to our City Attorney, who's analyzed these issues further than I have. But I don't see it being a problem, again, if we decide to move forward today.

City Attorney Leen: You know, from what I hear ultimately, if this Commission does approve this and doesn't go into the Grove, I think they would be happy to have that, but we just have to remember this is a settlement agreement, and that means that Astor has to agree too. We can't impose that requirement, but we can say that we're -- well, it's up to the Commission, but they could say -- Commission could say they're supportive of it. And if Astor agrees, it could be made a part of the settlement or condition.

Mr. Freidin: Well, hopefully. Thank you.

Mayor Cason: Yeah, thank you.

Commissioner Lago: Thank you both.

City Commission Meeting

July 22, 2014

Agenda Item E-1 – Resolution – Request of City Commission Approval of Government Settlement
As to City of Coral Gables, Florida vs. Astor Trolley, LLC and Merrick Manor LLC

Mayor Cason: Craig, does another lawyer want to speak?

City Attorney Leen: Well, to be --

Mayor Cason: Another expert.

City Attorney Leen: Yes. Hank Fishkind. Hank, could you come up briefly? Is he here still? Well, let me put into record, then, his -- we have an economic analysis from Mr. Fishkind. One issue that came up in this matter, just for everyone's information, was whether -- and this is probably going to be -- you know, it depends on what happens in this hearing. At some point, this may be addressed directly with questions from the Commissioners, but just to put into the record. We have a memo from Mr. Fishkind -- Dr. Fishkind, a PhD. He's an economist. He's taken a look at this proposal, the Coco -- the Merrick Manor project, with the additional units, and including the trolley facility, and he's made a conclusion that the -- you know, one issue that the City had -- and we've been very strong on this -- is we did not want the developer to come in here and receive a windfall and take advantage of the City. I'm not saying that you would take advantage of the City, but you know, ultimately, they're a private entity, so they're looking out for the bottom line; and we're a public entity, so we wanted to make sure that everything was fair to the public. And they were kind enough to agree, and we asked them to agree, and we were thankful they did, that we could take a look at their -- we could have Mr. -- Dr. Fishkind meet with Henry Torres; go over their numbers. He also did due diligence and looked at the background documents, and he'll testify to that whenever he's here. And ultimately, he did a memo which indicates that the return on investment in this particular project is less than the one in Coconut Grove, so they're not receiving a windfall, and it's within the reasonable bounds, between 25 and 35 percent a return on investment, and he says that it's 28 percent here. So there's -- in my mind, and ultimately it's for the Commission to determine that when they look at the whole issue, but I felt that this was not a government give-away or a windfall, at least from a legal perspective, and that it could be presented to the Commission, and I'm going to put this into the record and Dr. Fishkind can talk about it later, if he comes.

Mayor Cason: OK. I think we'll take two minutes maximum, please, the public that have put in requests to speak, and then we will discuss among ourselves what we're going to do. First, Anna Louise Fulks. She here?

City Commission Meeting

July 22, 2014

Agenda Item E-1 – Resolution – Request of City Commission Approval of Government Settlement
As to City of Coral Gables, Florida vs. Astor Trolley, LLC and Merrick Manor LLC

Anna Louise Fulks: Good afternoon, everybody.

Mayor Cason: Hi.

Ms. Fulks: My name is Anna Louise Fulks, and I live at -- have lived in Miami for 75-plus years, and at 717 Santander Avenue in Coral Gables, in the same house for 45 years. Of concern to me has been the lack of doing our homework regarding the construction of the 12-bay garage housing a fleet of six Coral Gables trolley cars from an industrial area where their diesel fumes to a residential neighborhood of black and Bahamian ancestors from the 1800s who helped build our City Beautiful. Others have signed off on this development with total disregard for the residents who did not have the financial means to protect their quality of life from the development. Enter Anthony Alfieri, Miami law professor, Dean's Distinguished Scholar, and Director of the University of Miami/School of Ethics and Public Policy, who put together a four-member, pro bono legal team to fight the placement of the trolley garage in the this long-established Grove residential neighborhood. As it was not only a public health and environmental issue, but it also violated a landmark United States civil rights law and Miami Zoning Codes were up ended. The Grove trolley depot now stands empty. Considering the settlement, Astor Trolley parent company, which is the Astor Companies, has now proposed to construct a trolley depot underneath a 283 unit condominium tower, 283-unit condominium tower. The original condo building was to have been 180 units, 180 units. But the trade-off for the developer to have a trolley depot built underneath the condos was an additional 103 units on LeJeune near the village of Merrick Park. The proposal being presented today is more than a massive and taller building with its diesel fumes, repair shop, and trolley depot underneath the condo building. But it is also stretching our natural resources and is exacerbating traffic woes. To my way of thinking, this is a very bad proposal by all parties concerned. Lastly, I would like to take a moment and ask the City Commission, respectfully, to take a hard look at all of the construction that is presently being built, as well as the future development in the City of Coral Gables. Zoning laws have been changed, which has transformed the whole topography of Coral Gables. Do we really want a caverness city? Isn't the quality of life more important than squeezing in hundreds of people into a small area? I don't believe this is the vision that George Merrick had for his City Beautiful. Thank you --

Mayor Cason: Thank you.

City Commission Meeting

July 22, 2014

Agenda Item E-1 – Resolution – Request of City Commission Approval of Government Settlement
As to City of Coral Gables, Florida vs. Astor Trolley, LLC and Merrick Manor LLC

Ms. Fulks: -- so much for listening.

Mayor Cason: Thank you.

(Applause)

Mayor Cason: Dr. Kate Callahan.

Kate Callahan: Hello. My name is Dr. Kate Callahan. I live at 2111 Tigertail Avenue, Coconut Grove. I've lived in Coconut Grove for 23 years. I'm also a member of the Coconut Grove Village Council, and I'm also a member of the Trolley Steering Committee. I'm also a member of the Coconut Grove Village Council, a member of the Trolley Steering Committee. It wasn't really Attorney Alfieri who brought this case to you. It was the people of Coconut Grove who brought the case to Attorney Alfieri. And so there's really been an egregious situation that has been talked about at length, so I won't go into it. So just really briefly, I really like to commend the City Attorney for trying to get his point across. On the 28th of July, there's a deadline. We don't know what's going to happen after that deadline or if you'll get a continuance. So I ask that you strongly listen to your City Attorney, who you employed to do his job. And second of all, I ask you to please sign the settlement agreement with the contingency that Astor settle with the award plaintiff based on the language that came out of the mediation with Astor and its plans. Thank you very much.

Mayor Cason: Thank you. Phil Rinaldi.

(Applause)

Philip Rinaldi: My name is Phil Rinaldi. I live at 513 San Esteban in Coral Gables. I've lived there for 18 years. I actually spoke at the Planning & Zoning meeting when the original project was endorsed and was representing a number of residents who were concerned about the scale of the project, and this project will be, more or less, 70 percent larger yet again and create the urban tunnel effect on LeJeune. But what I'd like to say or make a three points this morning. First, I think I'm hearing that the -- we're being asked to trust Astor to do the right things to close the gaps in the agreement or understanding. This is the same Astor that led us to this fiasco in

Coconut Grove. It was in their power to execute correctly to get the right approvals and endorsements before constructing the garage and being willing to turn the keys over to us, so I think caution is advised. The second is the City Attorney was quoted in the Miami Herald as saying he thought that this was an agreement that was fair to all parties. It may be fair to the residents of Coconut Grove, who were imposed upon; it certainly may be fair in resolving the legal issues confronting our City government; it's incredibly fair and generous to Astor -- and I'll come back to that -- but it is certainly not fair to the residents -- the citizens and residents of Coral Gables who now will be confronted with an albatross on a main thoroughfare of our City. And so I think this Commission, in trying to make the right decision for the City, needs to consider the impacts on the residents of the City, not just today but a legacy for the future. The third point is, per the analysis by an economist -- I happen to be not an economist, but spent my years in financial planning for a major U.S. corporation. The (UNINTELLIGIBLE) is a very reasonable not -- return, not a windfall. First of all, none of us could expect to get 28 percent return on investment, OK. Forget about the times; none of us would expect -- my corporation's return on investment expectation was 12 to 16 percent, OK, for high-risk projects, OK. But more importantly, Astor's return is after recovering essentially the cost of the existing trolley garage that they built and the additional cost of building the project. All of this is borne on the backs of us Coral Gables residents, OK. In closing, I guess my biggest concern for you to consider is -- and I think this was expressed by various members on the Commission; certainly, Bill Kerdyk -- that there is a rush to decide. Certainly, we have this court stay hanging over our heads, but there's a rush to decide while there's a lot of t's and I -- t's not crossed, i's not dotted, and you're going to rush to decide and stipulate that if it doesn't work, we can reopen it. But once you -- we will still be back on our heels defensively negotiating, OK. It's time for the Commission to say we made a mistake in 2012 by getting into this agreement with Astor. Astor has to confront their liability in not adequately researching the cost of the construction of that project and not drag us further into bed with them in a deal that will be a bad legacy for all our City. Thank you very much.

Mayor Cason: Thank you. Alicia Lamadrid.

Alicia Lamadrid. Good afternoon and thank you. I, too, have lived in Coral Gables almost all my life. I went to St. Teresa, the University of Miami, and now a resident of 5510 Riviera Drive, so I'm close to the site. I go there often. I have to tell you that I've heard Astor's name thrown around here a lot. And having had the privilege

of representing them at the Merrick Manor job for over two years now, I have seen an honorable family, hard-working business people, thoughtful developers be dragged through a very painful process that no one, including the City of Coral Gables or the City of Miami or their collection of attorneys, could have possibly anticipated. I have seen them go through that process with incredible patience and generosity to all of the people that have worked with them, but mostly with the hope of citizens of the United States who count on our City officials to do the right thing and resolve things. Two years later, it is unconscionable that anyone could think that they have not been patient. We have over 50-some million dollars in sales. We have been telling our buyers to be patient; that the City will do the right thing and that this project will get built. We have been telling them that their families will be able to move in; that their deposits will be fruitful in the end and that they can count on the City of Coral Gables and the United States of America to ultimately protect the citizens that they represent. As a citizen of this City for a very long time, I urge you to make a decision, for no decision is the worst decision in this case. You need to decide. We need to move this process along. Please do not continue spending our City's hard-earned tax dollars that, yes, we all contribute to, our intellect, our time, the time of all of the citizens that have become here today to hear you make a decision, and let us move forward with a business of doing business in Coral Gables, which although may not be perfect, as life usually isn't, and I painfully understand what a tough decision this is for all of you. I know that you have integrity, that you will do the right thing, and let us move forward. Thank you.

Mayor Cason: Thank you.

[Applause].

Mayor Cason: Jihad Rashid.

Jihad Rashid: Good morning. Good afternoon. My name is Jihad Rashid, 3628 Grand Avenue, Coconut Grove. I'm here as the President of the Principal Economic Development Agency in that area, Coconut Grove, the Collaborative Development Corporation. I also serve as the President of the Coconut Grove Village West Homeowners and Tenants Association. First off, I want and I urge this Commission to move forward to sign the settlement agreement with the contingency that Astor settle with the Ward plaintiffs based on the language that came out of the mediation with the Astor plaintiffs. I think we have a body of work fraught with good

intentions, and we know that the path to perdition is paved with good intentions. I think everybody has operated in good faith. And I'm more and this community's more focused on solutions. And now we've rather place -- we came here with heightened anticipation that we're going to have some resolution today, and there's a little bit more complication. But as a layperson -- I'm not an attorney, but I see three parts that could be dealt with separately, and we could move forward with the settlement agreement, and there's some legitimate issues that be raised but should not impinge upon moving this settlement agreement forward. We have crafted a win-win-win situation where the community can get a facility that is -- fulfills their aspirations to have economic revitalization. My agency has led the revitalization economically in the Village West of Coconut Grove, a great facility, and we have crafted a public-private buyout for that facility that could be jeopardized by lack of resolve on this Commission. And so the issue that was raised about the impact on the City of Coral Gables is a -- actually is a separate issue. So I'm asking you to look at it on all its parts, because there's no guarantee that if you punt at this juncture, that you still have a clear pathway to -- so we will actually isolate the other liabilities and contingents by moving forward to settlement and deal with the other issues separately. So I thank you for giving me the opportunity to express, on behalf of our community, our desires and our aspirations. And we, too, would like it to be a "City Beautiful" or "Community Beautiful" like you, and we do have definite ideas about how we would like to live our lives, and we've been on hold for a great period of time. Thank you.

Mayor Cason: Thank you very much. Linda Williams.

Linda Williams: Good afternoon.

Mayor Cason: Hi.

Ms. Williams: I'm Linda Williams, a life-long resident of Coconut Grove, past 60 years, born and reared. I'm an active member of our community, and I'm presently Secretary of Homeowners and Tenants, Secretary of the Coconut Grove Village Council, participate as member of Community Action Agency, and I work with the Coconut Grove Collaborative Development Corporation. I'm also an advocate for several other organizations in Coconut Grove. I listened to my community. They've spoken to me, and I've stood very firm with what they believe in because it's, too, what I believe in. It's our home, and we cherish that that our parents and

foreparents built. Coconut Grove has never -- pardon me -- infringed upon Coral Gables, the City Beautiful, and we don't want this project that belongs to the trolley that is Coral Gables, to continue to infringe upon us. Therefore, I do ask that this Commission sign the settlement agreement with the contingency that Astor settle with Ward plaintiff based on the language that came out of the mediation with Astor and the plaintiffs. Resident and activists of Coconut Grove Village West community. Thank you.

Mayor Cason: Thank you very much. Williams Armbrister, Sr.

Williams Armbrister, Sr: Yes, sir. Good afternoon, wonderful people, each and every one of you. My name is Williams Armbrister. I currently live at 3260 Thomas Avenue. I'm the third generation Armbrister fighting for the people in this community and for the community. I just want to say, first of all, Commissioner Lago, where you made a statement about the involvement with the developer, and I read your -- through your contract where the contract states that your agreement was for a trolley in substance but not in location. The agreement was not to say build a trolley in Coconut Grove. And we're here right now because of the neglect on part of the City of Miami, HOTA, Coconut Grove Homeowners and Tenants Association. I'm going to say what's true, and I'm not trying to step on anyone's toes, but I'm going to say what's true and if -- you cannot dispute what I say. And the Collaborative, West Grove Homeowners and Tenants Association: Those two entities were notified of the public hearing at the beginning, and of course, the president of HOTA and the president of the Collaborative, they are one in the same. Even before he was president of HOTA, he was in charge, and the president we had was just there. He's a -- my first friend, and I -- Pierre Sands, I love him very much, as I love you all. And so we're only here to -- what they're here for is to get a settlement agreement approved by you which looks like this: It's blank. They had a meeting with proposals that were made by the two developers that are part of the Steering Committee and a few other folks that don't live in the community being infected with this trolley and the community that has been there for generations have been kept out of the negotiations. So the Steering Committee is, in essence, exactly what it says: It's steering the community to agree with something without providing all the information, all the details, as in yourself. You weren't provided all the details of what you were agreeing to on the location. That's why you -- you went along with the process. So I'm asking that we have agreement that's been drawn up with this community at this time, because they're offering items from "A" to "S," which would

be covered under the current zoning for the City of Miami, the SD-2. You know, it's a NSD, Neighborhood Conservation District; and NSD-2, which would remove most of the elements that they are saying that we should be happy that we're getting. That's like if you come to my party, I'll give you an arm. No; you got an arm. So all the things that they're trying to do to our community -- even the trolley, in its inception, should have never been agreed upon, because it goes against the current zoning in West Grove. So until they can come up with a final document that they'd like for you to -- until they could come up with a final document as agreed to by the community as a whole and not by developers or organizations, which, my personal opinion, do not -- and is true -- do not represent the entirety of the community they propose to represent. I would say just recommend that they bring their final document as is agreed upon and at that time for you to consider. That's what your responsibility is, to consider everything that comes before you, not to agree because of persons, places, or things, and consider the impact this trolley is going to have in this community that's being ripped apart with each zoning decision made by elected officials in the City of Miami. And I want to thank you for allotting me this time to speak to you. And --

Mayor Cason: Thank you very much.

Mr. Armbrister: -- appreciate it. Have a good one.

Mayor Cason: Emily Gimblett. Is Emily Gimblett here? OK. Anthony Fuxas.

Anthony Flexas: Flexas.

Mayor Cason: I can't pronounce that. F -- I don't want to say it wrong.

Mr. Flexas. Good afternoon. First name, my name is Anthony Flexas. I do not reside in Coral Gables. I reside in the area of Kendall, but I've been born and raised in the area, and I personally -- when people have asked me about Miami, I'm a real estate agent myself. I always have Coral Gables pretty much as a state board pinnacle of how everything is done. I can tell you, I've been with the Astor Company, like Alicia said. They've definitely gone out of the way to try to work things out, but at this point, we just feel that things just keep delaying. So we support the decision being done today, so hopefully, we can move forward. We have about 130 buyers that constantly keep calling; what's going on? Is it going to move

forward? So I know it's a hard decision on your part. I know you guys want to do the right thing, and we'll do the right thing. So I really appreciate if we can get a resolution today. OK?

Mayor Cason: Thank you.

Mr. Flexas: Thank you.

Mayor Cason: Alicia Cervera

Alicia Cervera: I – I was up and I spoke.

Mayor Cason: OK, fine. Jesse Ottley. Not here? OK. Lorraine Navarro.

Lorraine Navarro: Good afternoon. My name is Lorraine Navarro. I'm also a resident of Coral Gables. I live at 6331 San Vicente Street. I've been a resident of Coral Gables for over 20 years. I've also had the pleasure of being the manager of Merrick Manor in fending off angry buyers; that we haven't started our construction. Our first contract was signed in December of 2012. We should have been topping off the building now in May of this year and delivering all these units at the end of this year. So I urge you to make a decision today in terms of this development. I think that the trolley station that we have today is an eyesore for the area. I think it's the right project at the -- in the right place at the right time. So I urge you to move forward and make a decision today. Thank you.

Mayor Cason: Thank you. Andres Navarro.

Andres Navarro: Hello. I was also a resident of Coral Gables for many years, most of my life. And I'd also just like to urge you guys to come up with some sort of an agreement here. We've all worked this project for many years and would like to see something built, you know. So just urging you guys to come up to agreement as soon as possible; would be ideal for -- an agreeable decision to all parties, no.

Mayor Cason: Thank you. Alejandro Salazar

Alejandro Salazar: Like Andres, my name is Alejandro Salazar. I grew up in Miami; been a resident of Coral Gables as well. I side with the Astor group, Lorraine

and Andres and Alicia, as making a decision today. Feel like this has gone long enough. City Attorney seems like he's made a point that I hope you guys will agree to. Thank you.

Mayor Cason: Thank you. Ana Ralvera (phonetic). Ana Ralvera (phonetic). Ana Lopez Quintana

Ana Lopez Quintana. Yes. Good afternoon. Thank you for the opportunity to speak. I have been a resident of Coral Gables all my life; went to school at DearBorn High School, which is now the Mercedes Benz dealership, but it was there once -- once upon a time. I'm speaking to you just like a resident of Coral Gables, and I'd like to say that integrity is a very important word for me. And honestly, I'm embarrassed for you. I'm embarrassed for you that you made a mistake and you're not owning up to it. I advise you to take the advice of your attorney and accept the agreement today. I think that when you make a mistake, you come up with solutions; and even if those solutions are not perfect, you take your loss when you make a mistake. So I urge you to move forward today with the agreement. Thank you.

Mayor Cason: Thank you.

(Applause)

Mayor Cason: Cecilia -- I think it's Seloney (phonetic). I can't read the handwriting. No? OK. And finally, Mrs. Samuels Dickson.

Renita Ross Samuels Dickson: Good afternoon now.

Mayor Cason: Yes.

Ms. Dickson: My name is Mrs. Renita Ross Samuels Dickson. I'm a life-long member of greater -- of Coconut Grove, and I reside at 3506 Solana Road. To the Honorable City of Coral Gables Mayor, Vice Mayor, the distinguished Coral Gables Commissioners, and the attorney -- the City Attorney. On behalf of the late Reverend Solomon Merrick and son George Merrick, pioneers and founders of Coral Gables; on behalf of pioneers, Mr. and Mrs. Melvin Aura and Hattie A. E. Jackson, my grandparents, who were proprietors in the 1920s here in Coconut Grove and active members of the Coconut Grove Slum Clearance Committee in the 1940s; and on

behalf of the NAACP (National Association for the Advancement of Colored People), the Miami-Dade branch, whose local chapter was once led by Father Theodore R. Gibson, of which my mother, Mrs. Cathona (phonetic) J. Ross, was a life member; and through its current president, Odura (phonetic) O. B. (UNINTELLIGIBLE). The NAACP wants to consider -- to continue seeking approval of the settlement agreement as stated in its resolution to the City of Coral Gables, but it notes the settlement agreement, as written, is being voted upon solely and in an effort to resolve all claims related to the land exchange: the Astor property trolley station; the City action, and the Ward final judgment. If the settlement agreement is approved today by the Commission. The settlement does not currently assure Astor Trolley or its proposed owners at a later date and time of the parcel at 3220 Southwest 37th Avenue; will be a cultural and social benefit to West Coconut Grove community; and it also implies that the City of Coral Gables' reputation is tied to the Astor Trolley building until an economically, socially, cultural conscience buyer is found. Referencing the terms and condition of the settlement agreement, if you look at your agreement on pages 8 and 9, the item deals with the good-faith agreement and the Ward final judgment. The NAACP asks that the proposed settlement agreement, in good faith, include the City of Coral Gables' pledge to assist the owner, Astor, in finding an appropriate buyer, use, or tenant for the building, respective of the City of Miami's Zoning Code, while implementing Twenty-First Century global, socially, cultural conscience initiatives. More specifically, the Miami-Dade branch of the NAACP ask the City of Coral Gables to utilize its influence with Astor to ensure the building and the parcel is not sold without Astor or the buyer rescinding the City of Miami's final warrant decision that was decided on May of 2012. And the NAACP recommends that the City of Coral Gables support Astor Trolley in its efforts to solely seek out buyers economically interested in enhancing the Neighborhood Conservation District guidelines pertaining to the preservation of the historic nature of West Coconut Grove, while simultaneously promoting its global and social conscience. Lastly, we ask the City Commissioners to pledge, amend, or append the government settlement agreement between the City Beautiful and the developer with the understanding that the City of Coral Gables' reputation is tied to the Astor Trolley until a socially, culturally conscience buyer is found. Now, we also realize that all of us are disturbed about what has happened, and we know mistakes have been made beyond comparison. When the groups get together, if we can amend the settlement agreement, that we include all of these issues that have been brought up within the statements from the NAACP, and we thank you.

Mayor Cason: Thank you.

(Applause)

Mayor Cason: Craig, can you address those issues about -- and I don't know if Mario wants to -- have something to say about that before we move on to --

City Attorney Leen: Like I said, ultimately, it's up to the Commission. My understanding is that the Commission is supportive of the settlement, assuming this is approved, but, you know, we've always taken the position that it doesn't, out of respect for Astor because you're the property owner; that we would not put that in as a condition unless you agree.

Mr. Garcia-Serra: That's all right.

City Attorney Leen: But you know, it -- so ultimately, it's your position.

Mr. Garcia-Serra: Let me tell you what we are willing to do. What we are willing to do is put on the record here that as part of this process of settling with the City, we're also settling with the Ward litigants and obtaining, you know -- we already have agreed upon terms memorializing in writing. Also pending, a release for the City of Miami as part of that process, since they were also one of the named parties in the litigation. And so we're pledging here that this part of the process that we're going through right now, part of this -- let's call it now "global settlement" that would address all parties' concerns. But as to whether we actually amend the Coral Gables' settlement agreement so as to put their, you know -- make the Ward plaintiffs a party to that settlement agreement, we can't agree to because, again, as Craig mentioned, these have been two separate actions. We're settling them in a coordinate manner, but it's not like we're making new part of that settlement agreement.

City Attorney Leen: And Mr. Mayor, what I would tell you is, you know, my legal view of this -- and I would defer also to your attorneys, and you should talk to them about it. But my view is is that if they pledge this on the record and we act based on it, I view that as something -- basically, they've proffered that. So they've agreed to that settlement in principle now, and I would think that would be enforceable in court. So I don't think you need to actually amend the agreement, and I don't know if we can, because that would add additional complications to this matter. But he's saying it on

the record in front of -- in a quasi-judicial proceedings and a Commission would act based on that proffer, I would think it would be enforceable.

Mayor Cason: OK. All right, let's start with Frank. Do you have any --?

Commissioner Quesada: Yeah, I have a lot more. Look, I -- what I want to do is -- you know, we've had conversations -- and again, I'm not waiving any privilege in the executive sessions -- that we wanted to get to this point. We've had votes to get us to this point. We've been discussing it for nine months in our executive sessions. We've discussed it publicly as well.

City Attorney Leen: Commissioner, to be clear, we did not vote in the executive session.

Commissioner Quesada: I'm sorry.

City Attorney Leen: We talked about it.

Commissioner Quesada: No, but I'm saying the vote --

City Attorney Leen: Read the resolution -- yes, you're absolutely right.

Commissioner Quesada: The one in public. I'm referring -- we've had discussions in executive sessions. We've had those in the public, at public hearings, where we wanted to put this behind us, you know. I think it's clear that this entire Commission wants to move forward. We want this to be done, absolutely. I don't think there's any disagreement on it. Obviously, the hesitation right now is -- are some of the details in the settlement agreement. We want to do what we believe is right in the sense of keeping our facility out of the Coconut Grove. I think that's clear. I think that's been communicated several times and we want them to get done. As far as whether this was a mistake or not, this is an interpretation by the City of Miami that I don't think anyone could have anticipated when this agreement was signed in 2012. We had outside counsel. We had in-house counsel. We had a lot of different people analyzing this. So I don't think it's possible that anyone could have seen what was coming. And again, it took a long time to put to -- to reach that agreement. If Mr. Garcia Serra, you -- I don't think you'll agree. It took several months to work on an agreement that blew up based on interpretation that no one ever saw coming. So

what I want to do is -- and I -- before I go into these details, at the beginning of this meeting, you -- at least, I started by going item by item, if we can correct certain provisions in this settlement agreement. I know that staff has certain issues. We have detailed breakdown of what their issues are. I know we heard from Merritt Stierheim saying it's inefficient or impractical up here on the dais to go item by item. I realize that, but the way I weigh it is it's a greater good for us. The way I see it is, let's finish this. Let's get this settled. Let's execute this. I understand there's some concerns. And Vice Mayor, I see it on your face that it might be a daunting task to go item by item. That's why I feel, but obviously, I want to hear from you guys before I open up some of those additional issues.

Mayor Cason: OK. Let's have a general statement by Vince, where you stand? and what you want to do?

Commissioner Lago: Well, I agree with Commissioner Quesada's statements, but I have a little bit of a different perspective in regards to a plan of action that I would take at this moment, and it would entail having the developer testing his appetite in regards to if he's willing to hold hands any further -- any longer. I would ask for the developer to come to the forefront and take a leadership position, and I know you've been around for three years. I know that they've not been the best three years at a certain point, but this is what I would propose, OK, obviously, with some tweaking. Before -- I would propose we sell the property to you for the appraised value. Then the next step would be, obviously, we would continue to have ownership or a leasing right of some sort until we had a new trolley station built, so we would never, under any circumstances, enter the trolley building in the City of Miami. We would do everything in our power to explore a different option of building the trolley site in the City of Coral Gables, which is what I saw in -- that was represented in that document by AECom. Astor Development will commence construction on the north site, leaving the station open and functioning for the City use. That's point number two. Number three; commence construction/design on new trolley depot on US-1. Point number four, demolish existing depot once new station has been obtained -- has obtained a CO. Number five, my understanding is that from what the developer has told me, what is the exact cost of construction, if you don't mind divulging in reference to the City of Miami trolley station?

Henry Torres: The City of Miami trolley station, the exact cost is \$3.6 in change now. I don't remember the exact number.

Commissioner Lago: Do you have an idea in regards to the valuation right now, if you were to sell that property?

Mr. Torres: We thought we'd probably get about a million five.

Commissioner Lago: About a million five?

Mr. Torres: Right.

Commissioner Lago: OK, because of obviously the square foot, usage --

Mr. Torres: Exactly.

Commissioner Lago: -- the whole thing. So we're looking at around \$2.1 million in potential loss revenue there.

Mr. Torres: And more.

Commissioner Lago: And more OK, obviously, because we would have to -- you would have to buy the existing trolley station property from the City of Coral Gables so we could fund our forthcoming new trolley station. One of the individuals that stood up here recently said that we should take responsibility for our actions and that we should take the lumps. We're going to take some lumps, and we're going to take some responsibility. I don't think that we as a City can ask a developer to pay another \$4 million to build a new trolley station. I think what we need to do is find out what the appraised value and -- Mr. Manager, I don't know if you have a reasonable appraised value. Do we have one or no? Or we're still looking for it?

Interim City Manager Olazabal: Cindy, would you mind?

Cynthia Birdsill: We have an appraised value, but it's very dated, so we would really need to do an update one. The old one was -- they were both around 1.8.

Commissioner Lago: How long ago was that?

Ms. Birdsill: I think 2010.

City Commission Meeting

July 22, 2014

Agenda Item E-1 – Resolution – Request of City Commission Approval of Government Settlement
As to City of Coral Gables, Florida vs. Astor Trolley, LLC and Merrick Manor LLC

Commissioner Lago: No. That doesn't -- Again, I go to the Vice Mayor with that. I mean, obviously, you've seen a massive upswing in regards to property, and I think the developer would understand that.

Vice Mayor Kerdyk: I will tell you that she could tell you that there was an appraisal done on a piece of property right down the road from them. I don't know if you have those figures, that it has to do with Gables rental, Gables Residential -- yeah --

Commissioner Lago: I think you're right.

Vice Mayor Kerdyk: -- that we did within the last six months from MAI (Member of the Appraisal Institute) appraiser. But, you know, those are things that we can discuss --

Commissioner Lago: Wait a minute. But those are final details.

Vice Mayor Kerdyk: (UNINTELLIGIBLE).

Commissioner Lago: Now, this is -- and my final point on -- then I'll pass it on to the Vice Mayor. Removing the trolley, the proposed trolley station from underneath the Astor building -- right now is, I guess you call it, the second option that we've come up with -- would allow for the height of the building to be reduced, to a certain extent. We would have to negotiate with you based on some sort of compensation for FAR, for additional FAR and additional height. There's no way around that. What I would -- my objective would be to have a free-standing building that would not have any issues in regards to tenants, calling the City, Code enforcement issues, noise issues, whatever it may be. That's number one. Number two, I want to limit the height and the size of the project. By limiting -- by removing the proposed trolley station from underneath your building, obviously it would reduce it, but we would have to come -- and I'm amicable to coming and negotiating with, obviously, staff negotiating with the developer in regards to proposing an increase in FAR. I think there's -- I think that's the right thing to do. So I don't know how the rest of the Commission feels. I think that -- I'm not a hundred percent behind the settlement. I feel the same way as the Vice Mayor does. But I think that we really need to, again, hold hands with the developer, request for additional time -- I know you've given us sufficient time -- go back to the judge and ask for a stay. I think if the developer,

along with the City, speak to the judge and say, can we have an extension from July 28 or maybe 30 to 60 days and we'll show in good faith, I think we can get this done.

Mr. Torres: Commissioner, a few thoughts.

Commissioner Lago: Yes, sir.

Mr. Torres: Can I have the floor, please?

Mayor Cason: Go ahead.

Mr. Torres: I have no intention of extending this.

Commissioner Lago: OK.

Mr. Torres: OK.

Vice Mayor Kerdyk: Can I just say a couple of words?

Mayor Cason: Yeah, go ahead.

Commissioner Lago: Go ahead.

Vice Mayor Kerdyk: First of all, let me just say, since we heard -- 'cause I was going to ask Mr. Helfman to come up and ask -- and answer the question of whether we could prolong it, but he pretty much --

Mayor Cason: Answered that question.

Vice Mayor Kerdyk: Just answer the question as far as with the -- could we extend the stay with the judge? Would that be possible?

Mr. Helfman: No. The -- we have a mutually agreed upon stay which was agreed to by the Court while we explored the possibility of a settlement. I believe that we have now gone through that process. And without both parties agreeing to a further stay, I don't think that the court will do that. And the case would simply proceed forward and there's -- we would move forward in the normal course of litigation. That

doesn't mean, certainly, I would hope, that they -- conversation would end, but that'll certainly be up to --

Commissioner Lago: Maybe Astor -- maybe that's the only mechanism we have in the sense of where -- again, hopefully the conversation wouldn't end and we could bring different options to the table and that would allow us -- buy us more time, actually look --

Vice Mayor Kerdyk: Defer it and then --

Mr. Torres: And Commissioner -- but Commissioner, (UNINTELLIGIBLE) option in front of you to go with a settlement agreement. If there are issues with it, let's take care of them now. I mean, we're wasting a lot of time. We should have taken Commissioner Quesada's idea and going through the settlement agreement, and if there's issues, let's talk about them right now.

City Attorney Leen: Commissioner, if I could -- one issue is that if we -- if they don't agree to a deferral, I don't -- they're not agreeing to a settlement, so I can't imagine the court would stay it again. But what happen is they have a pending motion for summary judgment; we would file a response and ask for a summary judgment; there would be a ruling probably in the next couple months; and then let's say that they were to win, we would be ordered into the facility, so we would go into Coconut Grove. If we lose -- pardon me. If we win, we would not go into Coconut Grove. Forgive me. We would -- the building wouldn't get built. You know, this would be it. We would just stay in our current facility.

Mr. Torres: Right.

City Attorney Leen: If we -- and they would suffer significant loss. If we win -- if we lose, then we'll be ordered to go into the Coconut Grove facility and then we won't have to deal with the impact of that.

Vice Mayor Kerdyk: So let's talk about that. If that was the case, we could look at other options then occupying that space. We would be remanded into that space, but the Commission could make other arrangements --

City Attorney Leen: Of course.

Vice Mayor Kerdyk: -- if possible. OK.

City Attorney Leen: There would be a time period, though, where we would have to find where to put the trolleys. And one thing you should be aware of is that the FTA, any facility that's not the current place -- that's what they've agreed to. If we keep it in the current location --

Vice Mayor Kerdyk: Right.

City Attorney Leen: -- and even right next door, they're not going to require this siting study, but anywhere else would require that. In addition, we do have a place on 72nd Avenue, but that would require approval of the County, and we have a settlement with the County related to that area and that -- I have to tell you honestly, I don't see that happening, based on the residents' disputes with what we currently have there. It would be as big a hearing as this one today, and we'd have to get the County Commission to approve it.

Commissioner Quesada: And considering Commissioner Lago's out-of-the-box idea, which would -- I applaud him for coming up with the idea -- we would have to do the FTA analysis at that site --

City Attorney Leen: Yes.

Commissioner Quesada: -- on US-1? How long does that take? Do we have an idea how long that analysis would take?

City Attorney Leen: Well, they've done part of it already. But we'd have to do it based on alternatives to that location. Steve, would you like to talk about it? He's done a lot of discussion.

Commissioner Quesada: Actually, before we even get into that, we would have to know if the developer would even be amenable to that kind of scenario, considering you just heard it for the first time now. Before we even dive into it further, whether we would be willing to consider it --

Mayor Cason: And is it feasible in terms of the construction, you would be doing

there at that --

Commissioner Quesada: Yeah. Is that something you would be open to?

Mr. Torres: Listen, I'm not willing to sit around and wait to see if you guys can get approval on the FTA on US-1. I know it's going to take a long time and to set plans and to move everything in motion; that takes a tremendous amount of time. It's not going to happen overnight. I've been at this now for three years. Before I came here today, I made a decision: If I didn't get a settlement agreement -- I mean, it's affecting my family. It's affecting everything. It's affecting my business. It's cost us a tremendous amount of money. I don't plan to throw any more money at this thing. It either happens today -- I get a settlement agreement out of the City Commission today or I'm not willing to go any further. I just -- I'm done.

Mayor Cason: Let me ask Pat Keon to give us her observations, because she hasn't spoken throughout this, and then we can continue. Commissioner Keon, are you there? Can we get her back? OK. If you wanted to say something --

Mr. Garcia-Serra: The one thing that I would add, also, if this settlement agreement is approved today and in the future there is a need to amend it for whatever reason that we both agree is necessary to amend it, we would, of course, entertain the --

Vice Mayor Kerdyk: Let me just -- hold on one second. We just asked for (UNINTELLIGIBLE) for 30 minutes, and you sat with our City Attorney -- our City Manager was not even part of that discussion? Is that possible? Isn't that -- you just met 30 minutes ago with our City Attorney? Did our -- did City Manager -- is his staff -- was part of that?

Interim City Manager Olazabal: No, we were not.

Vice Mayor Kerdyk: Wait. Aren't -- this is -- wait. Part of this whole issue is is that we received a memo, sir, of eight pages last night, OK? So whatever way I was leaning, this memo all of a sudden changed the dynamic substantially. And listening up here, I -- you know, first of all, we have never impeached your reputation; quite to the contrary. Anybody who asked me about -- in a situation, I've already said that the -- you have acted in a gentlemanly manner and held yourself high, and I've had the top esteem for you, but the fact is is we're in a box here, let's face it. I mean, this is

a very difficult situation here. These are issues that are very, very concerning when you're sitting on this side of the dais. We understand the complexity of this case. We need to -- I mean, either you -- we just stop this and you guys go talk to the City Manager and the City Attorney and try to come up with something. But Commissioner Quesada, this would take a yeoman's task to go through on the dais today, I'm telling you. You can pick one --

Mr. Torres: I went through it this morning with my attorney; it took me 20 minutes to go through it.

Vice Mayor Kerdyk: OK. So why don't we -- if that's going to take -- why don't you just -- let me -- readdress it with our City Manager.

Commissioner Quesada: Why don't we address it during lunch?

Mayor Cason: Let me just say that from my perspective, obviously, this is a mess. This is not something that we ever anticipated when we originally -- I don't think anybody did. I agree with Commissioner Quesada. When we got into this, we wanted a clean site, no problems, and we would make the transfer. The difference is over-interpretation of whether it's a commercial facility, industrial. I don't want the courts to decide that and take it away from us, the rights. So I don't want it to go -- I don't want the court to decide it, and I don't want move to Coconut Grove for all the reasons, so.

Mr. Torres: I've taken that off the table. I've taken it off the table.

Commissioner Lago:... No.

Mr. Torres: The agreement is off the table; you don't have to go to Coconut Grove.

Mayor Cason: No, I understand. What I'm -- and what I'm saying is that we -- I don't know -- as long as we continue operating the trolley, where we would put a trolley if we went to an alternate site? It would take one or two years to build it, and in the interim, you've got to start building your building, unless you tell us you could build it in a way that we could keep our trolley garage. But I don't know how we could -- wherever we put --

Mr. Torres: The way we proposed building the building, OK, if we do Phase One, and Phase One will be your trolley and everything above it, OK?- so it would be no interruption. Once we were finished with that portion of the Phase One, it would be no interruption. Then we would take your facility, knock it down, and build the rest of the building.

Mayor Cason: I understand that. What I'm saying is that Commissioner Lago's idea of building it at the fire station, even if we did that, what would we do with our trolleys while you presumably take back -- we give you the land and you start building your building? Where would --

Commissioner Lago: I don't think it's far-fetched.

Mayor Cason: I mean, could it be -- is it a way that you would do the construction; we could continue to lease -- keep our --? No.

Mr. Torres: No. At this point I wouldn't do that. I wouldn't enter another agreement...

Commissioner Lago: What I would do -- what I would recommend is that you buy the property outright; the City builds the facility. How long did it take you to build your facility in Coconut Grove?

Mr. Torres: Seven months.

Commissioner Lago: Seven months. And that's all prefabricated or it's CMU unit?

Mr. Torres: We had several documents, and I -- I mean, the time frame would be seven months. We both did it in seven months, actually.

Commissioner Lago: OK.

Commissioner Quesada: Well, let me see how much -- let me just insert for one second.

Commissioner Lago: OK.

Commissioner Quesada: Commissioner Keon is back on, if she could speak. She's not back on. All right, this is what I would suggest. I'm going to make a motion on this.

Commissioner Keon: Hi....

Commissioner Quesada: Oh, OK. Pat.

Commissioner Keon: I am on. But there is a problem (UNINTELLIGIBLE) coming over your Skype. There's a play over from the earlier part of the meeting too, so I'm getting bits and pieces of -- just for the last couple of minutes of both. I can begin to tell you what I think if you're ready for me to speak, but if you want to keep talking and whatever you want -- whatever works for you all.

Mayor Cason: Why don't -- we haven't heard from you, so what are your views on where we are?

Commissioner Keon: You know, I -- you all can continue your discussion. I think it would be better, while Alex is attempting to figure out why those things are coming through.

Commissioner Quesada: OK, here's what I'm thinking. And I won't make a motion since Commissioner Keon has sort of been in and out. What I want to do --

Commissioner Keon: You can wait for -- just for Alex, to see if they can fix it.

Commissioner Quesada: OK.

Mayor Cason: Do you want to -- are you going to propose that we try to do...?

Commissioner Keon: In addition to you, I'm also hearing the firefighter's thing from earlier this morning.

Mayor Cason: Technology doesn't work.

Commissioner Quesada: It worked well in the beginning.

Mayor Cason: Yeah.

City Attorney Leen: All right, just for purpose of the record, Commissioner Keon is out of the country. This was preplanned long before this was set up, so that's why she's not able to be here. I know that she wanted to be here.

Commissioner Quesada: It worked well this morning.

Mayor Cason: Well, Frank, what were you going to say?

Commissioner Quesada: What I was going to say is I'm not going to make a motion at this point, 'because I want to make sure Commissioner Keon can hear. But what I want to do is I want to designate a meeting to occur immediately. I'm saying starting later today. I want Cindy Birdsill present or whoever else the City Manager would like to be involved in that. I would like the City Attorney present, and I would like to -- this is not something I -- I think I've seen before happen here with this City Commission. I would like to appoint one of our members of the City Commission to be -- required to be a part of that meeting, so that we can work through these issues that were presented. Again, no binding decision will come out of that, but I think it will facilitate this process so that we can resolve this before the 28th, the end of that deadline. I know we're putting additional stresses, considering all the different things we have going on. And I would nominate the most senior member of this Board, which is Vice Mayor Kerdyk, to sit in that meeting and -- because you were on vacation recently, I think this is well suited for you to get back to work. That's something that I'm thinking right now. What I'm trying to do is I'm trying to see if we can resolve all the issues that we saw in this document that we received recently from staff, as well, at the same time, best interest in moving forward.

Commissioner Keon: You know why? Because it's --

Vice Mayor Kerdyk: I have no problem with that.

Mayor Cason: Commissioner Keon, can you hear us?

Commissioner Quesada: And in that same breath --

Commissioner Keon: (UNINTELLIGIBLE). Sorry. Let me try to get that. OK.

City Commission Meeting

July 22, 2014

Agenda Item E-1 – Resolution – Request of City Commission Approval of Government Settlement
As to City of Coral Gables, Florida vs. Astor Trolley, LLC and Merrick Manor LLC

Mayor Cason: Are you proposing --

Commissioner Keon: Hi.

Mayor Cason: -- like right now today, start?

Commissioner Quesada: It couldn't start today because we have a 5 o'clock meeting. Yes, Commissioner.

Mayor Cason: Yes, Commissioner.

Commissioner Keon: I -- or Mayor -- I'm sorry. Mayor Cason, yes, they seem to have been able to eliminate the other audio feed that was coming through at the same time. I'm sorry that it's been so disturbing, and I'm very sorry that I'm not there with you. It's a very, very important decision. I go back to -- and give my e-mail, whatever, go back to the very beginning before Vince or I were elected to office you know there was an agreement between the City and Astor Development that was at risk to Astor Development to find a way to build a trolley garage and, you know, complete it, you know, as long as it met all of the local, state, federal regs et cetera, the City of Coral Gables, you know, would then take over that site; would turn over the property and we all know that story. We know that it didn't work. We know that it didn't work. And I think that we attempted to find a solution to this because we didn't want to move the trolley into the Grove, because we didn't believe it met the zoning requirements of the City of Miami, although the City of Miami do warrant -- gave them the right to do that, but we were very uncomfortable with it, so we've gotten to the point we are now. You know, the best solution -- because we were told there was no other place to be able to put the trolley, was to try and incorporate it into the building with Astor so that they could then have this -- the land to be able to build their project on, because without our partnership, they also....with theirs. Now, looking at what is requires in order for us to have the trolley on that site in that development, I can't support. I would go against this recommendation. I think that it is -- it's too big. It has gone -- there's an additional hundred units. The density is too high -- is too great. The height is -- LeJeune is 40 feet higher than what is allowed. On Laguna, it's 30 feet higher than what is allowed. The FAR is -- you know, it is far more than what is acceptable there. The setback on LeJeune is not acceptable. It no longer maintains the same look as Merrick Park, where there is

some development, there's room to plant some trees, there's some foliage, whatever. There is no setback, practically, now on LeJeune. They've also taken out the paseo. They've take, you know, the -- the arcade, the pedestrian arcade is no longer a part of it, from what I can see. In other words, architects would not approve it, the Planning & Zoning Board are not happy with it. Never before in this City have we ever gone forward with a building, even to begin to think about giving permits to develop under these circumstances. We cannot do that. Now, I fully understand and have great sympathy for Astor also, and they have been exceedingly well represented through their attorneys and they understand all of the issues, the business issues that are a great concern to them. But as an elected official and Commissioner in this City, in addition to the concerns about people that do business with them, I need to be concerned about our City itself. I think that so many operational issues have conformed today with the trolley being rolled into this project, and I don't think it makes it viable. I think -- I have grave concerns about our being condo minimized and being subject to the assessments or whatever of that condominium. We don't know the condominium documents. We haven't seen the condominium documents. And I have to agree with the Acting City Manager that although the noise or whichever disruption it -- that the trolley may eventually be to the residents living in that building, it's between the condominium member and the association. So we will always, always be a party and have the answer for whatever issues that arrive that are being placed in that building. That will never be Astor's issue. Astor will build this building, these condos. They will sell them. They will take their money, put it in the bank and reinvest someplace else, and they will be gone. All of the issues that will exist will be ours to deal with, and I think that there are too many. I don't think this is a good idea. I don't think we should move forward with this. If we can find another place to put the trolley, if the -- if station -- Fire Station Number Two is a possibility and we can move there, I would go back, redo the deal with Astor, we'll deal with the land swap and move forward. With regard to the property that is in the Grove, it is my understanding -- and please correct me if I'm wrong -- it's my understanding that that property belongs to Astor, so that is an agreement that will take place between Astor and the City of Miami or other interested parties, but it is not a decision that we -- I don't think we have the right to put on Astor Development. You know, we don't -- we either not accepted that building, we're not going to accept that building. We are not a party to that building. That building belongs to Astor. And what happens with it and how it works is really -- it's a business decision that we will make. So I will not be supportive of the recommendation that is before us today.

Mayor Cason: Let me ask you, Commissioner Keon.

Commissioner Keon: Thank you.

Mayor Cason: Where would you propose putting the trolley station if we don't approve this? What do we do with the trolley --?

Commissioner Keon: Well, I think that there was some discussion, or what has come forward is that their -- potentially, the site of Fire Station Number Two on the highway is a possible site. I think we need to be able to have the time to afford that.

Mayor Cason: Well, I --

Commissioner Keon: But if it means that if we deny the settlement, if it goes to court, if we continue to do our own due diligence in finding another site and we find one where it works, where we don't have all of these other issues, then, you know, we can come back to Astor and we can do the land swap, and we can do the land deal, and they can build the building that they originally had planned to build, you know, under the requirements that exist for that area now...That is appropriate in regards to size, setback, FAR, and everything else. They can build as of right. We can give the land up and we work out an agreement with them as to the cost of that property that we will use then to build, you know, a trolley depot ourselves, and the property that is existing in the Grove is Astor's. And it is up to Astor to make a decision as to what they want to do with that property or how they're going to use that property, sell that property, or whatever else.

Mayor Cason: Craig, a question. If we were to -- if this goes to the court and we were to lose, would we be required to turn over the property immediately and what do we would do with our trolley. My question is, what do we do with our trolley for the next seven months to two years while we build something or look for something? We're gambling that this new idea around the fire station would work, but what if it doesn't. What do we do with our trolley? Do we stop serving the trolley --?

City Attorney Leen: If we receive -- if we lose the summary judgment and we receive an order, Astor will ask the Court to order us into the facility. They'll ask for a specific...if they've said that. They would be most likely entitled to that, unless there's some additional condition of approval that hasn't been met in the agreement.

But assuming -- you know, this is the major issue. So if we're ordered into the facility, we would go into the facility. At -- there would be -- going into the facility would not cause a problem with the trolley system. What would cause a problem with the trolley system is if we get a lawsuit from the residents based on Title VI; seek an injunction seeking to stop us from using the facility. They're not bound to the FTA's interpretation. They can bring their own suit. In addition, we could have a nuisance lawsuit. In addition, anything in the future, you know -- you know, I have to be -- look, I don't like saying these things, OK. I'm not -- you know, I'm not happy with the settlement either, OK, and I'm -- you know, I feel bad about what happened today. You know, I do. I want to be clear about that. And Merritt, I'm sorry for saying I was upset with you. But the -- but this is upsetting, in a sense that -- you know, there's no good solution. But the thing is -- the thing I know, the thing I know that is if we settle the case, we settle the case, the FTA case will end, the lawsuit will end, the building will be built. We will receive a new facility. These issues will be worked out. So here's what I suggest, just a suggestion. You know, maybe it would not be easy to do this in one day, as you're mentioning, Commissioner, but perhaps, what you could do is you could approve this conditionally. You could require us to go over the next month and meet with them to try to work out the finer points. In the meantime, our staff can start working on that conditional building permit, because the time's not going to run because we're not going to have a final agreement. They can start looking at the plans. They can have 45 days instead of 15 because it's going to be effective when we finally approve that agreement. And we can start executing -- acting on the agreement. But it will give you additional time and one more meeting at which to look at these issues and ultimately, if they can't be resolved, then we go our separate ways and we go forward with the lawsuit. I'd like you all to think about that.

Mayor Cason: Because -- I don't like the idea of rolling the dice.

Commissioner Keon: I'm sorry, Mayor. Go ahead.

Mayor Cason: I just don't like the idea of rolling the dice and the judge says, you've got to take the Coconut Grove facilities, which we won't take.

City Attorney Leen: What we --

Mayor Cason: I would say we're not going to go into it. And we would have to

compensate, I suppose you, but we then would have to look for another spot and we don't have a spot.

City Attorney Leen: But, you know -- I'll turn it over to Steve. I know you want to hear from Steve.

Vice Mayor Kerdyk: Yeah, I want to hear Steve.

City Attorney Leen: But Mr. Mayor, Mr. Mayor, if we do not approve -- I have to be perfectly clear. If we do not approve the settlement today, we're going to approve it with modifications they agreed to today, that's what we're doing. And I understand that there's -- these other alternatives, but frankly, they should have been brought to the table long ago. And frankly, these comments should have been brought to the table a week ago when I gave my recommendation with comments from the Building Department and from Public Works and then we met and we worked with them and Bill Minor, the Building Director, told us this could be built.

Commissioner Quesada: Mr. City Attorney?

City Attorney Leen: Yes.

Commissioner Quesada: We're beyond that.

Mayor Cason: Yeah, we are.

City Attorney Leen: I understand.

Mayor Cason: Let's hear from --

Vice Mayor Kerdyk: Let's hear from Steve.

Mayor Cason: Yeah, let's hear from Steve.

Interim City Manager Olazabal: We've got to hear from Steve, Craig. Won't -- just don't go there. Do you want to go there? Let's go with the whole --

City Attorney Leen: You should have told me about this before....

Mayor Cason: Let's not -- you know what? I don't want to have this --

Vice Mayor Kerdyk: This is ridiculous.

Ms. Olazabal: We got it Tuesday.

Vice Mayor Kerdyk: This is ridiculous.

Interim City Manager Olazabal: It's ridiculous.

Mayor Cason: Let's just --

Ms. Olazabal: And my staff has been working really hard, and I can't believe that you're saying that we did not...

City Attorney Leen: You didn't even tell me.

Interim City Manager Olazabal: -- with our responses.

City Attorney Leen: You didn't even tell me.

Mayor Cason: All right, look, stop, stop. No more. Stop, stop. Listen, I want to hear from you. We understand the different points of view. We're trying to resolve something now. What are we going to do? We can't just hope that someday a trolley garage is going to appear somewhere. We're going to end up not having a place to put our trolleys. We need to decide what can we do in a short period of time to resolve this. We, in our discussions, had been focused in on this building. We knew it was a pig. We're trying to put as much lipstick on it as we can. It's not -- it's not something we would normally approve, but that's what we've been focused on for months and months and months. Now we know there are some technical issues and process issues. I think we can work them out. But I want to hear what you have to say and then we'll have a motion.

Commissioner Keon: Mayor Cason, may I ask that also we can ask Mr. Helfman to address the issue if we -- if this goes back to the court and the court is to make a decision, what weight the FTA opinion or ruling will have on the court's decision. If

he could also answer that. Thank you.

Mayor Cason: All right.

Mr. Helfman: OK. Let me see if I can help bring some clarity, and I know this is not the optimum situation, and we have worked to try to avoid a court decision. But it's important to understand that a court decision is not immediate. There is time here to deal with the circumstances and the alternatives. The -- there is still pending, as you understand, a challenge to this facility that keeps Astor from selling the property to us. So whether a judge even tomorrow entered an order that said you must move there, they cannot deliver title to us. They still have a pending claim against the property which keeps them from delivering title to us. So it's not just our lawsuit that keeps this property from being delivered to us. Now, I don't know; they may settle with them in spite of this, but I don't know that that's the case. If, as Craig suggests, there is a threatened Title VI action, if there is a threatened Title VI action, we will not be moving into that property no matter what the judge says, because Astor has to deliver good, clear, legal title to us. So long as there is a challenge by this community to that site, we will not be moving into that property, OK. And so this is -- it's not as simple as you're being -- you will be forced to move in, OK. There is another party here who has direct effect on that impact. I just -- I want you to understand that it's not as simple as you will be compelled to move in. There are other elements to this now.

City Attorney Leen: But Steve --

Mr. Helfman: I -- so now, with that all said, the -- I was hopeful that what we would hear from Henry Torres is that he would work with us with -- to try to resolve at least this agreement or an alternative. But if that's not the case, again, it is -- we are -- we -- it's not the end of this process, unless they refuse to speak to us, and then it may well be the end of this process. If what he's telling you is that he wants an up-and-down vote and he is no longer going to deal with the City of Coral Gables, then maybe we do need to look at our legal alternatives and go forward, OK. I'm hopeful that that's not the case, because I sense from this Commission a desire that while this may not be acceptable, there is some acceptable solution.

City Attorney Leen: Mr. Mayor, just -- with -- you should also hear this advice as well, because I don't completely agree with Steve, and you got to listen to him; he's a

very experienced attorney. But you know, Astor's position is that the FTA issues were the responsibility of the City and not their responsibilities, and we have a tolling agreement with them that protects us. So if, for example, we lose the lawsuit and are ordered into the facility, and if the judge doesn't agree with us that this Title VI case is a -- prevents the closing -- he doesn't agree, which he -- that's what they're going to argue, is my understanding -- and we lose, and we're ordered into the facility anyway, or have to go to another facility and let them close, if that's what the judge decides, if we don't do it, we are also subject to money damage suit.

Mr. Helfman: I'm not --

City Attorney Leen: We are --

Mr. Helfman: Yes. I'm not suggesting that, Craig, at all.

City Attorney Leen: OK, OK.

Mr. Helfman: What I was suggesting was that there would be an independent lawsuit.

City Attorney Leen: OK, I understand. But the -- but that has to be understood. And I know you -- you know, I know it's hard to say, but you need to understand this. That's why I'm recommending this. Is because if we don't -- if we go into the -- if we're ordered into that facility and don't go and appeal or fight that order, we lose the safe harbor of our litigation tolling agreement, which says that they cannot sue us for money damages. That was one of the major things that Steve and I negotiated, to protect the City so we could go through this process. Because the worst-case scenario here -- there is a worst-case scenario, and it's a horrible scenario, which is that we're ordered into that facility. We are then prevented from using the facility. We are then homeless with our trolley facility.

Mayor Cason: That's my point. That's been my point.

City Attorney Leen: Number two -- and I think it's -- I think it's possible. And number two, the other worse-case scenario is that we don't take the facility and they end up suing us for money damages for the entire profit related to the Merrick Manor facility. We will have defenses. We will argue them. But -- you know, we're

talking about something very serious here or -- this is a business deal that we entered into, and we do not have to accept this settlement. I think you should. And with everything I've heard, I'm still going to recommend it. And I'm sorry. I'm going to recommend it, 'because I think it's the best of a lot of horrible alternatives. But if you don't accept it, I'm fine going forward with the lawsuit. We'll go forward with the lawsuit, we'll finish it, we expedite it, out of respect for you, and we'll get an order from the judge and then we will act.

Commissioner Quesada: I'm going to make a motion.

Vice Mayor Kerdyk: Well --

Mayor Cason: Hold on. Mario.

Mr. Garcia-Serra: I think what your motion is and what I'm going to propose should be somewhat similar, but let's talk about it, you know, beforehand.

Mayor Cason: OK. What do you have in mind?

Commissioner Quesada: I've already expressed what it's going to be, so you know it's coming.

Mr. Garcia-Serra: Right. There's issues out there, some of which I think, realistically, are not able to be resolved, such as potentially considering another site and moving to that site because of how long it will take for us to go. There are other issues, especially those listed in this memo here, which I think are capable of being addressed or at least talked about more so we get a better understanding of where everybody's coming from....

Mayor Cason: Speak up a little bit.

Mr. Garcia-Serra: That there are issues listed in this memo here that are capable of being discussed and figured out. Let's meet one more time, meaning, let's have City staff meet with us tomorrow, hopefully, with whoever else we think is necessary there; Manager and Attorneys certainly have to be there; maybe if a member of the Commission was there also be helpful, and take it from there, and if indeed there's no solution, there's no solution. But we're looking sort of at a time frame of trying to

get this wrapped and in agreement by July 28, which is...

Commissioner Quesada: I'm going to make a motion. My motion -- and Commissioner Keon, I don't know if you were on the phone last time to hear it, so I will reiterate it so that you can understand it.

Commissioner Keon: Thank you.

Commissioner Quesada: I'm going to make a motion that in the next few days, whatever is convenient for everyone, prior to the 28th of July, prior to that deadline, that we have a meeting or that we arrange a group comprised of a representative from the City Manager's Office, whether it's her or someone else she wants to designate, the City Attorney, and one of the members of the City Commission. I had suggested Vice Mayor Bill Kerdyk. However, I'm also thinking, because of Commissioner Lago's construction experience --

Vice Mayor Kerdyk: That's good.

Commissioner Quesada: -- maybe he's the right person, but I'll let you guys decide that.

Vice Mayor Kerdyk: That's OK.

Commissioner Quesada: And whatever other staff members that that group being fit -- that needs to be present, whether it's Steve Philips from Automotive or it's Mr. Minor, whoever it is, that those representatives from the City decide any other staff members that need to be there. They're going to meet -- meeting to address these outstanding items to see if we can get any closer -- and again, in a tight time frame, because obviously, there are a lot of considerations -- everyone wants to put this behind us -- and also to consider that proposal that Commissioner Lago brought up early on this meeting with a new site. And I also would ask that AECOM provides a -- maybe they'll have a representative there, but that's for the City Manager to decide. That is my motion.

Mayor Cason: And I think we may need to have -- notice another special meeting now so that we could call a special meeting --

Commissioner Quesada: The morning of the 28th.

Mayor Cason: -- whenever you --

Interim City Manager Olazabal: What time --

Mayor Cason: You work out as much as you can.

City Attorney Leen: What I would suggest is if this is the motion and you're agreeable to it, we should ask the Court -- I mean, honestly, there are a lot of comments, so it's going to take us a little while. We should ask the Court for a two-week extension.

Mayor Cason: Well, get through as many of them as we can, because we....

Commissioner Quesada: My motion -- and my motion --

City Attorney Leen: (UNINTELLIGIBLE) final.

Commissioner Quesada: -- my motion is not inclusive of requesting a two-week extension. I want to see what comes of it. And then at the end of this week, they see where they are; everyone's going to know how close we are to getting this done.

Vice Mayor Kerdyk: Yeah.

Commissioner Quesada: But I think keeping the pressure on to get it done is going to be necessary to flush out all the potential issues.

Mayor Cason: And direct the staff to put all necessary resources highest priority to get this --

Commissioner Quesada: Again, the net decision is up to the City Manager, who else should be present.

Commissioner Lago: Right. But if -- if they're going to entertain even looking at the possibility of building a new trolley station on US-1, I mean, you're going to have to get -- like Vice Mayor stated, you're going to have to get a new appraisal, which is

going to take a few days, you're going to have to do due diligence to find out what the number is.

Mr. Torres: The problem with that idea is that eventually it will be homeless for a certain amount of time. That's the problem with that -- Anyone in particular?

Commissioner Lago: Well, let me explain to you. That'll be my problem to deal with. That'll be -- I'd rather be homeless than have 1,000 residents at my front door with pitch forks and knives trying to come at me because I built a facility they're not happy with. So I'm willing to negotiate with you and understand the fact that the City is going to take its lumps, going to take its lumps and it's going to probably have to come out with some money to make you whole, because you already built a facility that we didn't accept that was with -- within the requirements of the City of Coral Gables three years ago, and we didn't make -- we didn't accept it because we made mistakes as a whole, so that's beyond us now. So I'm in your corner in a sense that I want to get this deal done, but in -- my opinion is that I don't think it's in the best interest of your building to do that building, to do that trolley station underneath the bottom of your building. So we have to come to some sort of agreement.

Mr. Torres: I'm not real crazy about it either.

Commissioner Lago: I'm just trying to say, you got to -- listen --

Mayor Cason: None of us are crazy about it, but we didn't have any other alternatives, other than being homeless.

Commissioner Lago: If somebody would have come -- if somebody would have -- we had five executive sessions. Some would have come and said, listen, I have this opportunity -- I had this option three months ago, I mean, we would have all jumped on it.

Mr. Torres: Yeah.

Vice Mayor Kerdyk: Remember, when we did this, we were in an executive session. We tried to come up with solutions that were viable for everybody. We didn't think that you had to put another hundred units in, which would expand the FAR from 3.5 to 5.3. I mean, we didn't think that was going to happen, but we thought it was going

to be something that we could work with. So things -- dynamics have changed a lot. We've done this all in good faith and now we're trying to --

Commissioner Lago: And that's --

Vice Mayor Kerdyk: I mean, we're in a bad situation.

Commissioner Lago: And I think what the Vice Mayor -- and I just want to end at least what I've had to say, and I think I've spoken enough -- is the issue of -- I'm not trying to be the "bait and switch" and just prolong this and not make a decision.

Mr. Torres: Right.

Commissioner Lago: I want to make a decision that benefits this City, benefits you. You've been here enough, OK; benefits the residents of the City of Miami; benefits everyone involved, and I think this may be an actual viable option.

Mayor Cason: Well, one of the things that the City staff is going to have to look at is how can we not be homeless if we go to your suggestion? That's the crux of it. Otherwise, we have no place to put trolleys from seven months to two years, depending on the whole process, either in the trolley service, which affects 5,000 people a day. We just can't go put it in 77nd Street 'because you already told us we have FTA issues there. Even this one, we have FTA issues. We say there is no easy solution, other than to try to work -- see, if -- when we discussed this building, we knew it was going to be bigger and bulkier and it was not going to be the kind of building that we would normally approve, but that was the price we had to pay to get out of this mess. And so I don't think it's any surprise to any of us that it turned out to be bigger and bulkier and more FAR and all of this, but that's what we got. And I think the issues that we got from the City staff were technical issues about process and speed and could they do it and could they reach agreement. I think we -- let's give them a try and see whether between now and the 28th they can narrow the gap down so that we can have a special meeting and give you an up or down vote.

Commissioner Quesada: One last final point on my motion. Whatever -- whether it's the Vice Mayor or whatever other Commissioner attends the meeting, that that individual does not have binding authority over the Commission; still got to come before us.

Mayor Cason: Of course.

Vice Mayor Kerdyk: Sure, sure.

Commissioner Quesada: I wanted to be clear on that. And also, Mr. Rinaldi brought up some good points that I think are -- should be considered as well, but I -- I'll speak to staff and make sure that all the comments that were stated will be incorporated.

Mayor Cason: Will you be able to be in that meeting? 'Cause you can't tomorrow. We want to start right away.

Commissioner Lago: Do we start -- We have a budget meeting tomorrow?

Vice Mayor Kerdyk: Yeah, we have a budget meeting.

Mayor Cason: That's right; we have a budget meeting tomorrow.

Vice Mayor Kerdyk: Yeah. Why don't we --

Mayor Cason: But that's not going to be all day.

Vice Mayor Kerdyk: Why don't we -- the appointment come through the City Manager's Office --

Mayor Cason: Yes.

Vice Mayor Kerdyk: -- which one of us, so that she can talk to us.

Commissioner Quesada: It makes sense with whoever decides to go.

Mayor Cason: Right. Do we have a second for your motion?

City Attorney Leen: Commissioner?

Commissioner Quesada: I'm sorry. Does the City Attorney have --?

City Commission Meeting

July 22, 2014

Agenda Item E-1 – Resolution – Request of City Commission Approval of Government Settlement
As to City of Coral Gables, Florida vs. Astor Trolley, LLC and Merrick Manor LLC

City Attorney Leen: You know, under the court's order, we have to move to reopen or give a notice of reopener. I really think that if we're really going to resolve these, we should -- at least give us flexibility into early August under the thinking we do have a special meeting, I believe -- I will defer to the City Manager

Mayor Cason: August 4.

City Attorney Leen: August 4.

Interim City Manager Olazabal: We do.

City Attorney Leen: That's a potential date whereby we could notice this. We already know it's cleared with your schedules and we could try to get this all resolved before then with the -- they would have to agree on the record not to reopen the case, and the judge's order allows for that, so --

Commissioner Quesada: Mr. City Attorney, respectfully, I --

City Attorney Leen: I understand.

Commissioner Quesada: -- for my consideration on my motion, I do not want to include that --

City Attorney Leen: I understand.

Commissioner Quesada: -- unless I hear from the Commission representative that attends that meeting, whoever it may be, recommends that to this Commission at a later date, but at this point, that's not part of my motion.

City Attorney Leen: But when would be the meeting that we approve this thing?

Commissioner Quesada: I think we got to look at having a meeting on -- a special meeting on Monday morning, the 28th.

City Attorney Leen: OK.

Mayor Cason: Are you available to work all the way through the weekend, if necessary, on this?

Mr. Torres: I will -- I am now.

Mayor Cason: OK, all right.

Commissioner Quesada: We have a motion.

Commissioner Keon: (UNINTELLIGIBLE).

Mayor Cason: Yes.

Commissioner Keon: Before you --

City Attorney Leen: Mr. (UNINTELLIGIBLE), I have jury duty.

Commissioner Keon: -- make your motion, can I ask is -- if it is acceptable, the height of this building, the FAR of this building, the setback to this building, the deduction of parking for this building, the fact that we are going to be subject to -- we have a City service that we regard as a very essential service, the operation of the trolley and its home, it's going to be subject to all rules and regulations of this condominium association. Is all of that acceptable to you?

Commissioner Quesada: Who's that question directed to?

Commissioner Keon: To my fellow Commissioners.

Commissioner Quesada: I know -- I'll be --

Commissioner Lago: I'll be the first one to answer that question. No, it's not. And that's why I'm striving to see if there's an alternate, if there's an alternate option.

Commissioner Keon: OK.

Interim City Manager Olazabal: I --

Commissioner Keon: It is not to me and that's why I would vote --

Commissioner Lago: But I'm also --

Commissioner Keon:.... the settlement agreement because of that.

Commissioner Lago: But Commissioner --

Commissioner Keon: And then we can go forward with whatever else is going to happen, because I don't know what you're going to come to by this special meeting that's going to make this building -- the height better, the setback better, the FAR better, working better. I don't know what you're going to achieve by that.

Mayor Cason: That's what -- I think that's the crux of the issue. When we've had our meetings, we knew this was going to be ugly, bigger -- I mean, not ugly, but I mean it's going to be bigger than we want, more FAR. We knew all this was a price we'd have to pay.

Commissioner Keon: Not to this extent. Not to this extent.

Mayor Cason: Well, I'm not sure how much more can be negotiated now in terms of reducing it. I think that to move forward, we're going to have to -- That's one of the prices we're going to have to accept, and we have to decide that, I think, now. Otherwise, I agree it's not worth moving forward.

Commissioner Keon: I mean, to me, they're not compatible uses, so I am prepared for you to make a motion on the settlement and I'll tell you that I can't support it. And then consider --

Commissioner Lago: Commissioner, but can I ask you a quick question.

Commissioner Keon: Then we would be able to go forward with Astor, if we can identify another site and, you know, restart another agreement. The original agreement under which they acted when they built the trolley station on Douglas Road was an at-risk agreement that, you know, sadly, maybe it wasn't the best thing to go forward. It was done under a City Manager that is no longer there. You know, things have changed. It's now resolved by a Commission that wasn't entirely the

Commission that started it, there was -- enough things have changed in this process that I don't think the solution for the agreement that you have on the table is a good agreement in the long term for our City, for our City. So I do think that Astor will build a great product, and I think that it has been -- it's very difficult thing for them. I know it is inexpensive for them. But I have to believe that they still would like to build there. If not, if we move our trolley depot, you know -- they didn't sell their land; we'll make another deal with the somebody else, and we'll all go forward. It's just been a very -- it has not been a good -- it's not been a good process -- not process, but it's not been a good outcome, regardless of the process. But you know, I can't approve something that I don't think is in the best interest of our City.

Commissioner Quesada: Commissioner Keon, your points are well taken. And, obviously, you've been in and out all day today on the Skype, so unfortunately, it's been a little difficult for you to follow. But all the points that you raised, I think came out clearly through the other Commissioners, as well as the comments from the audience. I specifically pointed out Mr. Rinaldi because he brought out some of those same points that you're addressing right now, as well as Ms. Fulks addressed some of those same points. That's why I specifically mentioned it in my motion for -- that -- I guess it's the last final push to try to make this happen, and I think having a representative of the Commission at that special meeting will ensure that these points are addressed at the -- you know, the audience's concerns, the public's concerns, and also as was discussed by the other Commissioners are brought up and negotiated and attempted to work out. I see a lot of good faith on both sides here. I think we've heard from Mr. Torres and Mr. Garcia-Serra that they're willing to work to make this a reality. I think we've heard the same thing from the Commission and from staff. Obviously, the point is that there are some unresolved items, which I'm hoping we can resolve. Now, obviously, no one wants an urban tunnel. No one wants some of these issues that you brought up, Commissioner Keon, so let's see if we can work through it one last final push. Again, the idea is not to --

Commissioner Keon: Again, I just feel -- I feel as though Astor, in order for them to get a return on investment that they need in order to develop, this is what it's going to require, because the consequence of having the trolley there.

Commissioner Quesada: OK.

Mayor Cason: Alright.

City Commission Meeting

July 22, 2014

Agenda Item E-1 – Resolution – Request of City Commission Approval of Government Settlement

As to City of Coral Gables, Florida vs. Astor Trolley, LLC and Merrick Manor LLC

Commissioner Keon: I don't know even if that's going to change. I mean, I don't know if that's going to change. I mean, I don't think Mr. Torres is going to... -- you know, instead of 28, I'm willing to take 15 percent on return, and irregardless of what, you know, other people have said, you know, that -- you know, that's been excessive return on investment. (UNINTELLIGIBLE) return on investment for the developers (UNINTELLIGIBLE) that is because it's a risky business and after watching this, I think, what you will agree, it is risky business. (UNINTELLIGIBLE) on investment, you know, for a developer, and that's why it's a good thing sometimes they lose, but that is the extreme. They're allowed to do that -- when we work out the condition, but it's just -- it's the wrong place, it's the wrong building (UNINTELLIGIBLE) in this City at this time.

Commissioner Quesada: Well, I still want to give it a shot.

Commissioner Keon: (UNINTELLIGIBLE) to find another solution, but I don't think that's the solution.

Mayor Cason: OK, all right. Well, we'll get a chance to vote on that when we come back on -- we'll do it on the 4th, taking everything into consideration, all the progress we've made, what other options they might have come up with, but let's give it a shot.

Commissioner Quesada: Last point of clarity for the motion. I just want to -- so it's clear, whatever the scheduling permits between everyone so that everyone's accommodated, whoever needs to be at that meeting.

Vice Mayor Kerdyk: OK.

Commissioner Quesada: That is my motion.

City Attorney Leen: Mr. Mayor?

Mayor Cason: Do we have a second? Do we have a second to that?

Commissioner Lago: I'll second the motion.

Interim City Manager Olazabal: Could I add something to that?

City Commission Meeting

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Agenda Item E-1 – Resolution – Request of City Commission Approval of Government Settlement
As to City of Coral Gables, Florida vs. Astor Trolley, LLC and Merrick Manor LLC

Mayor Cason: Yes.

Interim City Manager Olazabal: I would like to just, for the record, state that -- well, hopefully, that -- you're assigning this as the highest priority for staff at the moment?

Mayor Cason: Yes.

Interim City Manager Olazabal: And also that the Manager's Office can hire whatever consultants needed to accomplish this?

Mayor Cason: Yes, yes.

Commissioner Quesada: Yes.

Interim City Manager Olazabal: And that may include legal counsel, as well.

Mayor Cason: Yes.

Commissioner Quesada: Yes.

Commissioner Lago: And make sure that -- and make sure that AECOM --

City Attorney Leen: No, wait, wait, wait. You know -- I mean, what is that, Carmen? You know, I object. You know, to hire legal counsel? You know the Code, by law, requires -- our Code says that the City Attorney hires legal counsel. I have no problem having Steve Helfman work with Carmen or having Javi Vazquez, or one of our other four counsels on this matter, work with Carmen on this matter if she feels like she needs an attorney and I'm representing the Commission. That's fine. I have no objection to that, but she does not -- the law does not permit her to hire outside counsel, not our -- the City Code does not.

Commissioner Quesada: Mr. City Attorney, it has been the practice of this City that the City Manager has hired outside counsel when it needs.

City Attorney Leen: Our Code --

Commissioner Quesada: Hold on, hold on, hold on. I'm not done. Respectfully, I'm not done. Something that's very clear -- a part of my motion -- as my -- as part of my motion, the way I'm going to propose it to be seconded on and voted on is pursuant to that request as part of my motion. Someone wants to -- if it doesn't pass and you want to amend it, that's up to everyone else. But what's also definitely clear -- I want to put this on the record -- is we need to sit down between the City Attorney's Office and the City Manager's Office so that we can be -- communicate a little bit better so that we move forward in a more cohes -- as a more cohesive unit, but I think that's a conversation that the City Manager's Office and City Attorney's Office needs to have immediately --

Mayor Cason: OK.

Commissioner Quesada: -- after this.

City Attorney Leen: I -- Mr. Mayor, if I may?

Commissioner Quesada: And at that point, I'm calling the question.

Mayor Cason: All right, call the question.

Mr. Helfman: I just want to make sure. This should be a motion to continue so that you do not have to --

Mayor Cason: Right.

Mr. Helfman: -- re-advertise all of the special advertising --

Commissioner Quesada: Yes, sir.

Mayor Cason: That's correct.

Mr. Helfman: -- as opposed to -- OK.

Mayor Cason: OK, very good.

Mr. Helfman: Motion to continue --

City Commission Meeting

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Agenda Item E-1 – Resolution – Request of City Commission Approval of Government Settlement
As to City of Coral Gables, Florida vs. Astor Trolley, LLC and Merrick Manor LLC

Mayor Cason: Motion to continue.

Mr. Helfman: -- to a date certain.

Interim City Manager Olazabal: Actually -- right. Well -- and what I would like to ask is what are your expectations of us coming back to you?

Commissioner Quesada: To try to make --

Interim City Manager Olazabal: I will move heaven and earth as much as I can until we get answers as soon as possible, but I don't know that anything before August 4 is --

Mayor Cason: Do what you can, the best you can.

Commissioner Quesada: Our expectations --

Interim City Manager Olazabal: Well, it's our expectations just so that --

Commissioner Quesada: Our expectation is that staff has addressed these points and can determine whether we've reached an agreement acceptable to staff to recommend this project based on these terms. If that can't be the case, then it's not the case. The point is to --

Commissioner Lago: But also, you know, please include in your motion a caveat which deals with -- I want to make sure that we explore everything possible with regards to the alternative option, which AECom has given a brief synopsis of. I want them to expand on the three-page document that they provided.

Commissioner Quesada: That was previously stated that that is included in the motion.

Commissioner Lago: Thank you, Commissioner.

Mayor Cason: So you second the motion?

Commissioner Lago: Yes, sir.

Mayor Cason: City Clerk.

City Clerk Walter J. Foeman: Commissioner Quesada?

Commissioner Quesada: Yes.

Mr. Foeman: Commissioner Keon?

Commissioner Keon: You know, I will only vote yes on this, in deference to Commissioner Quesada to give one more opportunity to have the discussion.

Mayor Cason: OK.

City Clerk Foeman: Continuing roll call. Vice Mayor Kerdyk?

Vice Mayor Kerdyk: Yes.

City Clerk Foeman: Commissioner Lago?

Commissioner Lago: Yes.

City Clerk Foeman: Mayor Cason?

Mayor Cason: Yes.

Mr. Garcia-Serra: OK, we will meet.

Mayor Cason: Thank you. Do you --

Commissioner Keon: When is the meeting?

Mayor Cason: -- do I agree with that?

Commissioner Keon: Is it August 4?

Mayor Cason: Yes.

City Attorney Leen: Do you agree with that?

Mayor Cason: On the 4th.

City Attorney Leen: Do you agree?

Mr. Garcia-Serra: The understanding is we meet this week and then a Special City Commission meeting Monday morning to assess where we are and how we move forward.

Mayor Cason: Yes.

Commissioner Quesada: I'll prepare for the scheduling of parties, if everyone's available.

Commissioner Keon: There will be a Special Commission meeting.

City Attorney Leen: Cause, Mr. Mayor -- Mr. Mayor, just so you know, I have jury duty on Monday, which I -- I'll let you know, so -- and also, I'm going to come -- I'm supposed to go on my one vacation to the FMAA, which I'm going to come back from now, but I have to speak on -- I was named to their Steering Committee, which is an honor, so -- and I have to speak on Wednesday -- I mean, pardon me, on Thursday morning there; I have to. I gave a commitment to speak on civil rights and litigation matters, not this one. So I will be -- you know, I'll leave my family there and come back, but I'm not sure what -- this is interesting.

Commissioner Quesada: As we stated, you guys -- we'll all work it out. We're all professionals here. We can work on the scheduling. You guys can work it out.

Commissioner Keon: Even if we can't do this on the 4th after we have the budget hearing meeting and then all of these other conflicts will be...?

Mayor Cason: Thank you, guys.

Mr. Garcia-Serra: OK.

City Commission Meeting

July 22, 2014

Agenda Item E-1 – Resolution – Request of City Commission Approval of Government Settlement
As to City of Coral Gables, Florida vs. Astor Trolley, LLC and Merrick Manor LLC

Mayor Cason: Thank the audience for --

Commissioner Lago: Thirty-minute recess?

Mayor Cason: Thirty-minute recess for lunch.

Commissioner Lago: For lunch.

Commissioner Keon: OK. Tell me again when the meeting is. It's Monday, the 28th?

Mayor Cason: It's -- on the 4th is the FPL (Florida Power Light) meeting and then we'll discuss this.

Commissioner Keon: OK. But is there going to be a meeting on the 28th?

Commissioner Quesada: Commissioner Keon, can you hear me?

Commissioner Keon: Yes.

Commissioner Quesada: The way we left it open, they were going to discuss scheduling and get back to us. So Mario will talk to Craig and they will get back to us on the scheduling.

Commissioner Keon: OK. I will be back on the -- I will be back at the meeting on the 4th...

Commissioner Quesada: OK, OK. Well, I'll let everyone know when we get started again.

Commissioner Keon: (UNINTELLIGIBLE) before then, but -- 'cause I come back over that weekend.

Commissioner Quesada: OK. I will let everyone know once we get started again, OK?

Commissioner Keon: OK. Thank you very much.

Commissioner Quesada: All right, we're taking a 30-minute break so why don't you come back in 30 minutes.

Commissioner Keon: OK, I will. Thank you

Commissioner Quesada: OK, yeah. Thank you.

[Meeting ended at 2:01:50 p.m.]