

**City of Coral Gables City Commission Meeting
Agenda Item F-1
October 13, 2015
City Commission Chambers
405 Biltmore Way, Coral Gables, FL**

City Commission

**Mayor Jim Cason
Commissioner Pat Keon via Telephone
Commissioner Vince Lago
Vice Mayor Frank Quesada
Commissioner Jeannett Slesnick**

City Staff

**City Manager, Cathy Swanson-Rivenbark
City Attorney, Craig E. Leen
City Clerk, Walter J. Foeman
Deputy City Clerk, Billy Urquia**

Public Speaker(s)

**Andres Aloes, Representing the Applicant
Paul Savage, Representing the Aggrieved Party**

Agenda Item F-1 [Start: 10:08:47 a.m.]

Board of Adjustment Appeal – Application No. BA 12-12-3657 (4635 Granada Boulevard). Mr. Leonardo L. Cornide, applicant, has filed an appeal to the Coral Gables City Commission from a decision of the Board of Adjustment at its regular meeting of Monday, September 14, 2015, wherein it denied a variance request as outlined under the applicant’s proposal.

City Attorney Leen: Mr. Mayor, do you mind if we take F-1 out of turn.

Mayor Cason: You want to do F-1?

City Attorney Leen: Yes. The reason why I raise Item F-1 is the Mayor and I received information today that the Appellate record was incomplete that there was a transcript – there are

two hearings in Item F-1 from the Board of Adjustment that are at issue, and the first hearing transcript was not in your packet. So the Mayor and I thought that a continuance would be in order, based on the request of the applicant. However, I spoke with the aggrieved party in this case and Paul Savage represents the aggrieved party, which is the neighbor and he has objected. So what I recommend is that you briefly hear from each side for three minutes. As to this continuance request, if you decide to hear the matter today, they'll give them a little bit of time to prepare.

Vice Mayor Quesada: So the basis for the continuance is that we received an incomplete transcript?

City Attorney Leen: Yes.

Vice Mayor Quesada: And because it's an appeal it's based on the language of the transcript of what happened at the lower level proceedings, correct?

City Attorney Leen: Yes.

Vice Mayor Quesada: So if we didn't have a complete transcript how are we supposed to make a determination?

City Attorney Leen: Well in my view you can't. However, what Mr. Savage is going to argue is that it's the appellant's duty to provide a complete transcript. So that's really the issue between both of them and I recommend that you hear each of them for three minutes and make a decision.

Vice Mayor Quesada: Mr. Savage.

City Attorney Leen: I would hear from the moving party first. So the moving party is the one seeking a continuance.

Unknown Speaker: However the Commission would like to do it. I don't mind....

Vice Mayor Quesada: I misunderstood who was representing who. If you can just...

Unknown Speaker: I'm the applicant.

Mayor Cason: Come up to the mic.

City Manager Swanson-Rivenbark: You have to come up to the microphone and say your name and address.

Commissioner Lago: Why don't you introduce yourself?

Mr. Aloes: My name is Andres Aloes.

City Attorney Leen: Into the mic.

Mr. Aloes: My name is Andres Aloes; I'm here on behalf of Leo Cornide, who lives at...

Mr. Cornide: 4635 Granada Boulevard, well I don't live there yet. I haven't been able to move.

Mr. Aloes: The reason we are seeking a continuance is because it came to our understanding in the last 24 hours that the entire record have not been received by the Commission. I'm not quite sure why not. My understanding is, frankly I'm going to be calling an expert here today to get some opinions on some of the issues that we would be putting forth to the Commission and it came to her attention that although the entire package and the transcripts for two previous hearings were submitted, for some reason one of the transcripts didn't make it to you all desk. So I think it would be prejudice because these two hearings that we had prior to the subject hearing, there is a lot of "meat and potatoes" in these transcripts, especially the one that for some reason didn't get to you guys, we'd like you to have the benefit of it. So for that reason we would respectfully request a continuance.

City Attorney Leen: And Mr. Mayor, I'd recommend hearing from Mr. Savage.

Mr. Savage: Good morning Commissioners, my name is Paul Savage; I have law offices at 100 Almeria Avenue, here in Coral Gables. I represent Janet Gavarrete who resides at 4615 Granada Boulevard. They are the family who lives immediately to the north of the subject property that is the subject of the variance that the appellants have brought before you. As was mentioned, we had two hearings before the Board of Adjustment. I hear the argument about the transcript. I did want to point out, however, that in all appellate proceedings in courts or in administrative

proceedings like this one today, it's always the appellant's burden to bring a full and complete record to the tribunal, and in fact the phrase that governs today's proceeding from your Code says, the full verbatim transcript of all proceedings which are the subject of the appeal shall be provided by the party filing the petition, which would be the appellants. The transcripts shall be provided seven days prior to the City Commission meeting at which the appeal would be heard with a sufficient number of copies for the City Commission, etc. Now because of the great professionalism that I encounter in practicing in the City of Coral Gables as opposed to other places, you typically have a court reporter, some of this is done for the appellants, but ultimately and technically they do bear the burden to bring the record, it's their application, they are the ones asking for special treatment and special variance and now an appeal of that. So, I did want to put that objection on the record and if this Board should grant a continuance, I also wanted to go on the record that it should be, if you do grant it that you grant it with a condition that there will be no further so that we are not prejudiced additionally. We are bringing down an attorney and we are preparing and moving our schedule around. So, I would, number one, request you deny the continuance, and number two, if you do grant them that you stipulate that there is no further.

Mayor Cason: Let me ask the City Manager. Normally the City provides the transcripts, at least my recollection, one of them were there, was this an oversight or do we know?

City Manager Swanson-Rivenbark: I was just conversing with the City Clerk. The City Clerk confirmed that it had been received by the City and that it was inadvertently not included in the packet.

Mayor Cason: And the second question is, is there any chance that you and the applicant will be able to work something out between now and the next meeting?

Vice Mayor Quesada: Respectfully, I don't think that's the issue.

Mayor Cason: Well generally we've been able to if we granted some more time and then work some things out, but I don't know.

Vice Mayor Quesada: The way that this issue has come before us, I don't believe it's an issue that can be worked out in a typical fashion, correct me if I'm wrong Mr. City Attorney.

City Attorney Leen: In terms of working it out, there has been some indication that there may be an attempt to work it out. That's not something that would be before you on the merits, you wouldn't consider that. For a continuance you could consider that as well, although I have a feeling that the parties would disagree as to the likelihood of an agreement. One thing I will say is that if there is an agreement made between the parties, it still has to come before you and you will have to hear evidence on it then, at least some to support competent substantial evidence to support the...you could also remand it to the Board of Adjustment.

Commissioner Lago: The reason it will come before the Commission will be due to the fact that it would still be encroaching on the setback.

City Attorney Leen: Yes. Any variance – any variance that you would grant can't just be by settlement, there has to be supported...

Vice Mayor Quesada: Now, I look at my agenda online so I had the transcript, but if the other members of this body did not have access to the entire transcript and considering this is an appeal that we have to base our opinion on the lower level transcript, I'm inclined to grant and consider what we heard from the City Manager that it was a staff error providing it, I'm inclined to grant the motion for continuance. I move to grant the continuance, that this be the only continuance granted for either side so that this matter can be scheduled on a day mutually convenient for both sides.

Commissioner Lago: I agree with the Vice Mayor, but can we also see if we can get both parties to sit down and just really try to hash this out somehow, some way. I know it has to come before the Commission because we are discussing something that this property is encroaching on the...Commissioner Keon, how are you? Hello?

Mayor Cason: I think South Africa is going to be hard to communicate with.

Commissioner Lago: Briefly, see if we can sit down and try to hash this out with staff and both parties.

Mr. Aloes: I will reach out to him...

Vice Mayor Quesada: As part of my motion will require that you two sit down informally to try to work out whatever differences you may have.

Mr. Aloes:....I'll do that.

City Attorney Leen: Because there is going to be no further continuances granted, I think we should be clear the next meeting is November 10 meeting?

City Manager Swanson-Rivenbark: Well our next meeting is October 27 and after that it's November 10; November 10 is the only meeting you have in November.

City Attorney Leen: So it's October 27th or November 10th, so you should make sure you are available. You need to make sure you are available on those dates.

Commissioner Keon: Can you hear me?

Vice Mayor Quesada: Yes, we can hear you.

City Attorney Leen: So it's October 27th and November 10th.

Mayor Cason: Commissioner Keon the Vice Mayor has made a motion to continue this until the October 26th meeting when we can have the missing transcript.

City Manager Swanson-Rivenbark: Excuse me Mayor, it's October 27th.

City Attorney Leen: And Commissioner Keon cannot vote on this particular item.

Commissioner Keon: Yes...[Inaudible]...to vote anyway, so thank you.

Mayor Cason: OK. So we have a motion, do we have a second.

Commissioner Lago: I'll make the motion.

Mayor Cason: Vice Mayor has made the motion and seconded by Commissioner Lago.

City Attorney Leen: Mr. Mayor were the dates OK with both of you?

Mr. Savage: I'll make myself available.

City Attorney Leen: Mr. Savage you are the non-moving party, is the date OK with you?

Mr. Savage: It's OK. It's November 10 or...?

City Attorney Leen: Or October 27th. Do you have a preference for the Commission?

Mr. Savage: I would prefer the November 10th.

City Attorney Leen: Is that OK Mr. Mayor?

Mayor Cason: The motion then that it be continued to November 10th with no more continuances and you try to talk and...

Vice Mayor Quesada: Required informal mediation prior to.

Mayor Cason: City Clerk.

City Attorney Leen: By mediation we are not requiring them to actually hire a mediator.

Vice Mayor Quesada: No.

Commissioner Lago: No. Can they get back to the City and say; we met on the following day...

Vice Mayor Quesada: A mandatory meeting confer, if you want to be technical.

Mr. Savage: Understood.

Commissioner Lago: Thank God for the Vice Mayor.

Mayor Cason: City Clerk.

Commissioner Lago: Yes

Vice Mayor Quesada: Yes

Commissioner Slesnick: Yes

Mayor Cason: Yes

(Vote: 4-0)

Mayor Cason: See you on the 10th.

Mr. Savage: Thank you Mr. Mayor, City Attorney.

[End: 10:19:17 a.m.]