

City of Coral Gables City Commission Meeting
Agenda Item F-11
March 9, 2021
City Commission Chambers
405 Biltmore Way, Coral Gables, FL

City Commission

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

City Staff

City Manager, Peter Iglesias
City Attorney, Miriam Ramos
City Clerk, Billy Urquia
Deputy City Attorney, Christina Suarez

Public Speaker(s)

Augusto Maxwell
Maria Cruz
Sheryl Gold

Agenda Item F-11 [1:38 p.m.]

A Resolution of the City Commission pursuant to section 14-214.5 of the Zoning Code approving the Amended and Restated Dispute Resolution Agreement regarding the property located at 701 & 711 Valencia and legally described as Lots 23, 24, 25, 26, 27, and 28, Block 10, of "CORAL GABLES BILTMORE SECTION", according to the Plat thereof, as recorded in Plat Book 20, at Page 28, of the Public Records of Miami-Dade County, Florida, which provides, in part, that the owner is entitled to develop the property with a maximum residential density of 65 units per acre, consisting of 25 residential dwelling units, subject to additional

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Mayor Valdes-Fauli: And now we go to the next item, which is a time certain item, F-11, at 1:30. F-11.

City Attorney Ramos: Yes, Mayor. F-11 is a resolution of the City Commission pursuant to Section 14-214.5 of the Zoning Code approving the Amended and Restated Dispute Resolution Agreement regarding the property located at 701 & 711 Valencia and legally described as Lots 23, 24, 25, 26, 27, and 28, Block 10, of the "CORAL GABLES BILTMORE SECTION", according to the Plat thereof, as recorded in Plat Book 20, at Page 28, of the Public Records of Miami-Dade County, Florida, which provides, in part, that the owner is entitled to develop the property with a maximum residential density of 65 units per acre, consisting of 25 residential units, subject to additional terms and conditions in the dispute resolution agreement. With that I turn it over to Deputy City Attorney Christina Suarez, who will take you through the history of this matter and the amendment that is proposed to you today. And then Mr. Maxwell, counsel for the property owner, will be present as well. And this is a public hearing item, Mr. Mayor.

Deputy City Attorney Suarez: Good afternoon, Mayor and Commissioners. For the record, Christina Suarez, Deputy City Attorney. The only additional term in the proposed amendment is to address the maximum density, which was not addressed in the original agreement, to allow the owner to develop an additional two units. The maximum density, as I said, was not addressed in the original agreement. And it's the City's position that the maximum density allowed is 60 units per acre. The property owner has claimed that he relied on prior communications with City staff indicating that the property qualified for Med bonuses for density and thus could be developed up to 75 units per acre. So, if you'll bear with me, I'll just give you a little bit of the history on the original agreement and where we are now. So, the original dispute resolution agreement, like I said, already addressed the maximum height allowed to be developed at the site. A 2017 City Attorney opinion had confirmed prior interpretations dating back to 2007 that the site-specific

regulations governed, and the permissible height was 150 feet. Owner claimed it relied on an official zoning verification from 2007 when purchasing the property and engaging the design professionals to design an 11-story 124-foot-high condominium project based on the opinion that the maximum height was 150 feet. The Board of Architects approved that design, and thereafter, the neighboring property, the David William Hotel Condo Association and an individual owner there, filed a lawsuit against the City regarding the development approvals related to the proposed project. Per discussions between the plaintiffs and the City and the owner, the owner agreed to redesign the proposed project to reduce the height of the building, but alleged and continues to allege that reducing the height would disproportionately and inordinately burden the owner's property rights in violation of the Bert Harris Act and Section 14-214 of the City's Zoning Code, and that was formerly Article 3, Division 17 of the old Zoning Code. So, staff initiated the procedures to settle the pending litigation and resolve the dispute. And owner agreed to reduce the height so that it will not exceed 75 feet with a limitation of 10 feet for the enclosed architectural features in exchange for an increase in FAR up to 2.7 from 2.0. The City Commission found sufficient evidence in the record to justify a settlement pursuant to Section 14-214 and the Bert Harris Act. And just to go through the terms of the original agreement, the maximum height was not going to exceed 75 feet. The addition of rooftop architectural features would not exceed 10 feet. The rooftop uses were limited to an enclosed cabana. And the maximum FAR would be 2.7. There'd be no bonuses for height, setbacks, or step backs, and all reviews would be required, including DRC, Board of Architects, anything that was required. Upon approval -- and this Commission did approve that agreement back in March of 2019. And upon approval, the owner filed with the City a permit application to build a structure less than 75 feet in height with an FAR lower than 2.7 and including 25 residential dwelling units. The owner claims that it relied on various City staff communications that it would be allowed the Med bonuses for density, thus giving them an additional 15 units per acre, for a total of 75 units per acre. And it relied on those communications, it claims and accepting the original agreement and hiring the professionals to prepare the revised plans for the project. So, City staff and current -- the City Attorney and current City staff determined that the prior interpretations regarding density were incorrect and the

applicable maximum residential density is only 60 units per acre, so it said the property's allowed a maximum of 23 units. Owner claims the loss of two dwelling units would significantly diminish its reasonable anticipated benefits and investment back expectations, constituting an additional claim for relief under the Bert Harris Act. So, the proposed restated and amended dispute resolution would resolve this additional dispute by allowing for a maximum density of 65 residential units per acre, so going from 60 to 65, and the proposed project is for 25 units instead of 23 units. All other terms of the original dispute resolution agreement are included. And if approved today, the agreement would come back before you on the consent agenda at the next meeting for ratification. I know that the owner's counsel is available on Zoom, and he's going to also make a presentation.

Mayor Valdes-Fauli: Please. Thank you very much. Thank you. Mr. Urquia.

City Clerk Urquia: He's on video. We're asking him to please turn on his microphone.

Augusto Maxwell: Are you able...

Mayor Valdes-Fauli: Mr. Maxwell, you're on.

Mr. Maxwell: I'm on, great. My name is Augusto Maxwell. I'm with the law firm of Akerman Senterfitt, on behalf of Biltmore Development. Last night, I filed a statement with your City Attorney that lays out the long history of my client's engagement with City staff, including their reliance on two letters -- among others -- that officially confirmed the property's development. On a technical level, your agenda item calls it a sworn statement. Technically, it's not sworn, but I've reviewed the documents and have certified to the best of my understanding that our client has expended close to \$4 million in purchasing these three properties, and then expending fees, both on legal counsel and on design professionals. You will note that these design professionals have now twice designed a building that meets your Zoning Code and meets the criteria that were laid

out for them in these various City confirmations. So, the reliance by the client is, as I said, close to \$4 million. And now the loss to the client, we've documented for the loss of height, had the original dispute not been settled, would have exceeded \$100,000. And the -- I'm sorry, \$1 million. And then the loss to the client currently from not having these two units exceeds \$2 million, and that's based on a conservative estimate of \$850 a square foot. We've had these conversations with David William. They have no objection. It is the exact same envelope of a building in terms of height and width that was originally agreed to, and this just clarifies the number of units that we're allowed, 25 instead of 23. I'm available to answer any questions that you might have.

Mayor Valdes-Fauli: Thank you very much, Mr. Maxwell. Comments by the -- this is a public hearing and we'll hear from the public later. But comments from the Commissioner. Commissioner Fors.

Commissioner Fors: No, I was wondering if City staff was going to give their opinion on just the additional units or not. I think I've heard it before in the past. Other than that, I have no specific comment.

Vice Mayor Lago: Yeah, I just -- I wanted to...

Commissioner Fors: No, go ahead.

Vice Mayor Lago: No, no. And my same question is -- I wanted to -- or maybe the question's going to be answered by Miriam or Christina because as of late, Christina -- the City Attorney has helped me with several residents that reached out. And I know that you were probably copied on those emails, and their concerns are about the two units and about the notification of the two units and the additional density. I mean, obviously this is settlement like any other, correct? I mean, there's no -- when you ask about going from 60 units to 65 units...

Mayor Valdes-Fauli: 62.

Vice Mayor Lago: Yeah, I know, but I think -- not, but I'm talking about per acre. I think what we really, really need to clarify is what the Mayor just said right now. It's additional only two units here.

Deputy City Attorney Suarez: Correct. The proposed project is just an additional two units.

Vice Mayor Lago: And what you're seeing here is a significantly reduction in height on the project.

Deputy City Attorney Suarez: Correct.

Vice Mayor Lago: Significant reduction.

Mayor Valdes-Fauli: One half, yeah.

Vice Mayor Lago: And I think that's where we really need to focus here, because there is a trade-off here. And we all have seen -- everyone on the dais has seen some of the letters that went back and forth in between staff and the applicant, and there was a little bit of confusion. I'm willing to admit that, at least that's my nonlegal interpretation. So, I think that this is a very appropriate position that the City's taking, in my opinion. I think it resolves a long-standing issue. I think that it allows us to save money in regards to outside counsel and finally put to close an issue that I think is in benefit of all parties involved, where more than anything, you have a project that before was going -- and correct me if I'm wrong -- 11 stories and 124 feet and was approved by the BOA. Now, it's significantly reduced to under 70 feet -- was it 70 feet?

Deputy City Attorney Suarez: Under 75, plus architectural features, right.

Vice Mayor Lago: Under 75 feet of habitable square footage, correct?

Deputy City Attorney Suarez: Right.

Mayor Valdes-Fauli: And it provides conclusion to something that has been going on for a long time.

Vice Mayor Lago: Yeah.

Mayor Valdes-Fauli: Very satisfactory reduction. It's -- I think it's a wonderful solution.

Vice Mayor Lago: I mean, I...

Mayor Valdes-Fauli: Do I hear a motion?

Vice Mayor Lago: I hope -- I didn't want to jump in, Commissioner Fors.

Commissioner Fors: No, no, that's what I wanted...

Mayor Valdes-Fauli: Yeah.

Commissioner Fors: Staff to explain, but you explained it as I expected them to explain it.

Mayor Valdes-Fauli: This is a public hearing. Are there any members of the public that wish to be heard?

City Clerk Urquia: Yes, Mr. Mayor. We have one speaker and one comment to be read into the record. The first speaker is Ms. Maria Cruz.

Mayor Valdes-Fauli: Yes, Ms. Cruz.

Maria Cruz: Once again, Maria Cruz, 1447 Miller Road. Let me tell you, I don't know where to start. I would like some day to be able to hear the staff, the people that we pay, the Attorney's Office, the people in Planning and Zoning, all these people that the residents, the taxpayers pay because their salary comes from our taxes, to make a mistake on the side of the residents. It's amazing how every time errors are committed, mistakes are made, it so happens that at the end, the developers get what they want because don't tell me that this is a reduction. You know what, this is how we play the game. We ask for 500 units and then we settle for less. We never -- they never come back with small developments. It's always humongous and then guess what? We don't have a choice because you know our staff made a mistake. Well, you know what? If staff makes a mistake, how do we get -- the developer gets something out of the mistake. What do the residents get? What are we getting? What was the trade off? What are we getting for the mistakes that our staff makes?

Mayor Valdes-Fauli: Can I answer that, Ms. Cruz? Have you heard of private property rights? Have you heard of private property? This property was owned many, many, many years ago, and it allowed for 150 feet of height. That's 14, 15 stories. They are now building 75 feet, which is half. If we were going to confiscate the property or if we were going to reduce it, we would be liable under Bert Harris concept. It's legislation for...

Ms. Cruz: Frankly...

Mayor Valdes-Fauli: A taking. Confiscation, that's what they do in Cuba, Ms. Cruz, and we don't do that here. There has been a great...

Ms. Cruz: Frank...

Mayor Valdes-Fauli: Compromise here on the part of developers, and I think it's a great compromise. And I think our staff has done its job in a very adequate manner.

Ms. Cruz: May I please finish my three minutes? Frankly, I understand what you're saying. And the threat is, if we don't agree with this or anything -- I'm not just talking about this. It's a constant thing. If we don't agree to this, we have to take outside counsel. My goodness, every time I check, we have more attorneys now than we've ever had, and we still have to hire outside counsel any time something comes up. I'm tired of property rights. Because you know what? Property rights only apply to the big people. When the City wants something -- I'm going to tell you, the residents will tell you if the City defended the residents as well as they defend the developers, we will be living in paradise. There is not a crime that a developer doesn't go to zoning, to anywhere that the City doesn't suggest to them how much they can build as opposed to "tell me what you want and let me tell you what you can and cannot do." We're here, and I know the answer's going to be, the City Attorney's there to protect the City. Guess what? We are the City. The City doesn't live by itself. If all of us decided one day to not pay taxes, there will be no City, okay? So, we're the City and it's time for the attorney and -- stop this, the outside counsels.

Mayor Valdes-Fauli: Thank you, Ms. Cruz. Thank you very, very much, Maria.

Ms. Cruz: We have enough people.

Vice Mayor Lago: Mr.

Mayor Valdes-Fauli: Thank you.

Vice Mayor Lago: Mr. Mayor, may I ask one last question for Ms. Suarez?

Mayor Valdes-Fauli: Yeah, please.

Vice Mayor Lago: Thank you, by the way. I appreciate it. Just for the record -- and I stepped out to go to the bathroom. You may have mentioned it before. How many units are we exactly talking about, not additional. You said it was two, but what are we talking about the overall magnitude of the project? So, people understand exactly what...

Deputy City Attorney Suarez: The project as proposed and the permit application that was submitted is for 25 units.

Vice Mayor Lago: Okay, so it's 25 units. We're talking about a building that's 70 feet, where the adjacent neighboring building is of what height currently?

Deputy City Attorney Suarez: The David William? I don't know the answer to that. I really don't.

Vice Mayor Lago: Mr. Trias knows it off the top of his head, for sure.

Deputy City Attorney Suarez: Mr. Trias, you know?

Planning and Zoning Director Trias: (INAUDIBLE).

Vice Mayor Lago: Okay.

Deputy City Attorney Suarez: About 150.

Vice Mayor Lago: So, this is important to put this on the record for people who are listening, okay. So, this is a tiering down from an adjacent building of 150 feet, tiering down to 70 feet. We're talking about 20 -- how many units?

Deputy City Attorney Suarez: 25.

Vice Mayor Lago: 25 units, okay. This building was almost -- this building was approved by BOA for 124 feet, 11 stories, so this is a significantly reduced building which is going to complement the neighboring -- it's going to be a step back -- step down, excuse me, into the neighboring community. Because as you go south, you have a neighboring -- I think it's a three-story building right after this one. No? Which is the building that...

Deputy City Attorney Suarez: I don't know. Do you know?

Vice Mayor Lago: Ramon, the building that goes south on the next block, how big are those, like two or three stories?

Commissioner Mena: The townhouses you mean?

Vice Mayor Lago: Yeah, the -- townhouse? Two or three stories?

Commissioner Mena: North Park?

Vice Mayor Lago: Yeah.

Commissioner Mena: I don't know.

Vice Mayor Lago: The point that I'm trying to make is that this is a more subtle, more subtle...

Deputy City Attorney Suarez: Correct.

Vice Mayor Lago: Stepping down approach into the residential neighborhood instead of having a 124-foot building towering over the adjacent properties. So, I think we need to think about that. And also, this is a -- like we said before, this is a significant resolution for a dispute that's been long-standing, where we've been spending money as a City to resolve it. So, I think that this...

Mayor Valdes-Fauli: It is easy to opine without getting the facts.

Vice Mayor Lago: No, that's why I wanted to put the facts and put everything on record so that people understand exactly what is happening here and what transpired. Ramon, I -- thank you for your time.

Planning and Zoning Director Trias: Mr. Vice Mayor, just to answer you and also Commissioner Fors, this project was reviewed extensively at the Board of Architects, and in my view, it's a very good solution. The way that it turns the corner, it creates great public space. And as the Vice Mayor very well explained, this is much lower in height than the neighboring building. So, from a design point of view, regardless of the numbers and so on, I think it's a very good solution.

Mayor Valdes-Fauli: Thank you.

Vice Mayor Lago: Thank you.

Mayor Valdes-Fauli: Any other comments?

City Clerk Urquia: Yes, Mr. Mayor.

Commissioner Keon: Could I...

City Clerk Urquia: So, the one resident that had submitted a statement is now requesting...

Mayor Valdes-Fauli: Yes, please read it.

City Clerk Urquia: To speak rather than have the statement read.

Mayor Valdes-Fauli: Alright, and this is the last member of the public. Go ahead.

City Clerk Urquia: Ms. Gold.

Sheryl Gold: Yes. Good afternoon, Mayor and Commissioners. I have a very brief question. Actually, I had submitted some comments earlier, but this question probably could be addressed to Mr. Maxwell. And that is on the current website of the developer/builder, it shows a building that's nine stories and has one unit per floor, so I'm a little confused about what this project actually is at this point. Could you address that?

Mayor Valdes-Fauli: Yes, Mr. Maxwell. Mr. Maxwell, are you on?

City Clerk Urquia: He is on. Would you please unmute, sir?

Mr. Maxwell: Yes. There I go. I'm not quite sure which project you may have seen on the website. The idea though is we originally had a project approved for 11 stories with one unit on each building -- on each floor rather. And David Williams and others objected to it, and so the compromise was to bring this down to five stories. And I don't know whether or not those plans are on the website. The plans for the second building have been submitted to the City. The Board of Architects has given a tentative approval subject to resolving this issue with the units.

Mayor Valdes-Fauli: Alright.

Ms. Gold: Alright, well...

Mayor Valdes-Fauli: Thank you.

Ms. Gold: I appreciate that. It's just pretty confusing to go to...

Mr. Maxwell: I understand.

Ms. Gold: The developer's website, which is current, that says this is the building at 701, and it talks about nine stories. Now, I'm trying to figure out how does that jibe with 75 feet height restriction and then one story per floor instead of what you're asking for is an additional two units. Pretty confusing.

Mr. Maxwell: Yeah, it doesn't jibe. So, just to be very clear, the record and our statements and what's in the record with the City, it is for the 75-foot version that was approved and has been caught up with these controversies.

Mayor Valdes-Fauli: Thank you.

Ms. Gold: So, the intention is for the developer to move forward if these amendments signed for this proposed building?

Mr. Maxwell: That's what's -- that is what's been approved.

Mayor Valdes-Fauli: Thank you.

Ms. Gold: Thank you.

Mayor Valdes-Fauli: Thank you very much, ma'am. Thank you, Mr. Maxwell.

Commissioner Keon: Can I...

Mayor Valdes-Fauli: Alright. Do I hear a motion?

Commissioner Keon: I would move it, but I -- could I ask Christina a question? Christina...

Mayor Valdes-Fauli: You can do whatever you want, of course.

Commissioner Keon: Well, thank you, considering its Women's month. Christina, how did the -
- why did this happen? Tell us about -- and it's important, I think, for the public to understand how
these things happen.

Deputy City Attorney Suarez: So...

Commissioner Keon: We know that the zoning was for 150 feet.

Deputy City Attorney Suarez: There was a site...

Commissioner Keon: And it was site specific.

Deputy City Attorney Suarez: Site specific was 150 feet.

Commissioner Keon: Right.

Deputy City Attorney Suarez: There was a City Attorney opinion confirming that, and prior
interpretations, even back to 2007, zoning verification letters had said 150 feet. It is a sight-

specific regulation. We've analyzed it, and our position is it would govern. When David William sued the City based on those approvals and those interpretations, the City met with the owner and the David William to try to reach a compromise, and that's how the original agreement came to be to resolve any potential Bert Harris claims and so forth. And the current issue with the density is because the property owner believed that it was entitled to Mediterranean bonuses for density, and it had also communications from staff that it claims, you know, they relied on and that provided that interpretation. But staff today has determined that the density for -- the bonus for density does not apply, that the maximum density for this property is 60 units. And so, they thought they could get 75; City's saying 60. They're claiming Bert Harris, as you heard Mr. Maxwell state. And so, this is a resolution of that, of any of those potential claims.

Commissioner Keon: Thank you.

Mayor Valdes-Fauli: Thank you.

Commissioner Keon: I'll move it.

Mayor Valdes-Fauli: Will you make a motion?

Commissioner Keon: Yeah, I'll move it.

Mayor Valdes-Fauli: Motion has been made. Is there a second?

Commissioner Mena: Second.

Mayor Valdes-Fauli: Will you call the roll, please?

Commissioner Fors: Yes.

Commissioner Keon: Yes.

Vice Mayor Lago: Yes.

Commissioner Mena: Yes.

Mayor Valdes-Fauli: Yes.

(Vote: 5-0)

Mayor Valdes-Fauli: Thank you very much everybody.

Vice Mayor Lago: Thanks, Ms. Suarez.

Mayor Valdes-Fauli: Thank you, Christina.