

City of Coral Gables City Commission Meeting

Agenda Item D-1 and H-1 are related

November 9, 2010

City Commission Chambers

405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Donald D. Slesnick, II

Vice Mayor William H. Kerdyk, Jr.

Commissioner Maria Anderson

Commissioner Rafael “Ralph” Cabrera, Jr.

Commissioner Wayne “Chip” Withers

City Staff

City Manager, Patrick Salerno

City Attorney, Elizabeth Hernandez

City Clerk, Walter J. Foeman

Deputy City Clerk, Billy Urquia

Public Speaker(s)

Mario Garcia-Serra, Attorney for Greenberg Traurig

D-1 [Start: 9:51:20 a.m.]

Mario J. Garcia-Serra of Greenberg Traurig, PA on behalf of the previously approved Gables Gateway Project located at 4585 Ponce de Leon Boulevard for an amendment of condition D.3, titled Attainable (Affordable) Housing of Resolution No. 2008-58.

Mr. Garcia-Serra: Good morning Mr. Mayor, Commissioners, Mario Garcia-Serra with offices at 333 Avenue of the Americas, representing today LG Coral Gables, LLC, and the owners of the property located at 4585 Ponce de Leon Boulevard and indicated on the aerial photo over here. You'll remember that's the site of the old Deal Ford Dealership. I'm accompanied today by Fabio Rodriguez, the client, as well as Robert Behar the project architect; and the reason that this project has been before you many times, you'll remember back in 2006, you originally granted approval of this mixed use project, then in 2008 we came back for an amendment to that site plan to do some design changes and also at that point in time is when the City recommended and we agreed to a condition requiring that 15 percent of the units in this building be set aside for

affordable rents. Now, as you know between that time, which was April 2008, and today the world has changed considerably, and as a result of the decline in the real estate market and the freeze in the credit market, we have had difficulties financing this project; and this affordable housing condition in particular has been one of the stumbling blocks in getting the finance commitment from a financial institution. So faced with this problem we decided how can we try to address it so as to modify this condition so that we still further the goal, providing affordable housing within the City of Coral Gables, and at the same time whatever benefit there might be from eliminating that condition, make sure that all parties involved are able to participate in it to a certain extent; and in looking at the existing condition we realize that the purpose of the condition wasn't really being served anymore by the way it was worded, because basically what was being required was that 15 percent of the units be rented at an affordable rate which was based on the Coral Gables median income, 30 percent of a 100 percent of the Coral Gables median income. What's happened in the last few years is that the Coral Gables median income, I guess gratefully we should say, has increased despite the economic difficulties, while market rental rates have gone down, and so the discount that has realized by the condition has accordingly decreased. You'll see the last line there in that chart indicates that previously a discount of \$458.00 in a one bedroom apartment and \$742.00 on the monthly rent for the two bedroom apartment was being created by this condition, but now in 2010 that's decreased to \$106.00 and \$144.00 respectively; and so we are confronted with a condition that wasn't really realized in what it was supposed to do and complicating our financing, so we decided to try to think of other ways to address the issue and in that we came across the LBW Homeowners, Foundation Inc., and as you know is dedicated to constructing and renovating various affordable housing units within the McFarlane-Homestead Historic District of the City. So we met with that Board and talked to them about what within our means we could do to help them and assist them in their efforts, and we agreed upon a \$100,000 contribution to that organization. Now, the next thing that came of course was talking to the City about actually amending the condition, and one thing which we agreed with the City was that any benefit that would accrue out of the elimination of this condition the City should have some participation in that benefit also; and so going over the numbers as far as what we thought what the benefit was, City staff was saying it was around a million dollars, they thought the elimination of the condition created a net present value, our number was closer to \$600,000, we negotiated back and forth, we considered different things that the applicant was already doing, such as a series of off-site improvements, participation in the Art in Public Places program, the payment of the affordable housing study, which was already previously done, and also the \$100,000 contribution to the LBW Foundation which we already agreed to. So, we then came down on the sum of \$200,000 as a contribution to the City in exchange for the modification of this condition. So what we feel we have done here is that we have created a difficult situation that was complicating the financing of this project and we made it not a win-win, but a triple win. The applicant, my client, is benefiting from this condition being modified and being able to finance the project, the City benefits from the

affordable housing goal still being realized, to the contribution to the LBW Foundation as well as the contribution to the City, and the LBW Foundation benefit being able to move forward with its projects to expand and renovate the affordable housing stock within the McFarlane-Homestead District. So accordingly, we would ask that you vote to approve the resolution that's been prepared and as the City Manager's item, which will modify the condition and authorize the modification of the covenant which was previously entered into also.

Vice Mayor Kerdyk: Any questions for Mario?

Commissioner Withers: I have a question for our City Attorney. On the Lola B. Walker \$100,000 Foundation, it says that it can only be released with consent of the City.

Assistant City Attorney Alfonsin: Correct.

Commissioner Withers: Mechanically, how does that work? We are not on their Board, it's in an escrow account, are we on the escrow account?

Assistant City Attorney Alfonsin: I'm not certain that we are on the escrow account Commissioner; however that was Mr. Salerno...?

City Manager Salerno: The one thing I was going...the escrow agreement is being drafted, I believe, between the foundation and the developer right now. Mario would you....

Mr. Garcia-Serra: Exactly, that's something important to emphasize. Part of the condition of this resolution is that we enter into an escrow agreement which is satisfactory both to my client and the LBW Foundation regarding the deposit and disbursement of that money. To ensure that it is going to be used for affordable housing purposes, we have an escrow agent in place and we will also be requiring that the City sign off by way of a letter to the escrow agent indicating that the proposed use of the funds is acceptable as an affordable housing project. So that will be the mechanics of how we get the....

Commissioner Withers: I understand that, but what worries me is that ten years from now or five years from now or whatever, what are the standards?- you know, what standards have to be met?- is it going to be Dade County standards?- is it going to be City standards?- what standards?- I just think we need to tighten that up a little bit.

Mr. Garcia-Serra: We are being consistent with City standards. What was required by the condition was that it serves households which are at or below 100 percent of the City's median income.

Commissioner Cabrera: Would you then say that the escrow agreement define those standards, they be included in the escrow?

Commissioner Withers: I don't know.

Commissioner Cabrera: Because I was going to kind of ask the same question, but I wasn't going to hit on the escrow as much as I was going to hit on the oversight process, which is what the escrow, I believe, does. I'm worried about the future; I'm not worried about the present.

Commissioner Withers: Yes. I mean, I like the concept and I just don't want five years from now we are arguing over whether this is acceptable to City standards as far as affordable housing, because this whole affordable housing issue is fast tracked and kind of like you said, cooled off the last couple of years, and I don't know when it is going to pick up again, and I don't know what it metamorphasizes into, you know, a year from now or two years from now.

Mr. Garcia-Serra: Part of the motivation behind wanting to change it is because it is such a difficult issue to address in the City of Coral Gables, you know, how much land cost here, cost of construction, median income, and everything else. So we figured this would be a better way to put it to use, but you know, we can agree upon within the balance of the escrow agreement criteria standards by which....

Commissioner Withers: So it's just a simple letter of consent from the City with approval from the City Commission?- or from the City Manager?

Mr. Garcia-Serra: What we were contemplating was approval from the City Manager, from the City administration.

Commissioner Withers: So the City Commission is not going to be voting on the disbursement of the fund?

Mr. Garcia-Serra: No, not as we have contemplated at least up until now.

Commissioner Cabrera: How do you feel about that?

Commissioner Withers: Well, I won't be here, so....

Commissioner Cabrera: Well let's say if you were.

Commissioner Withers: Well, I don't know. I think the Commission might want to be involved in something like that. I don't know how the rest of you feel about that.

Commissioner Cabrera: I was going to hit on the \$200,000 in a second, since we are approving this deal...

Commissioner Withers: If we are accountable to the County for the standards in the first place, then you know....

Commissioner Cabrera: Not only that, but we are accountable for this decision today. I was hoping that we would have oversight for both the \$100,000 as well as the \$200,000, and if I may, on the \$200,000 I would feel much more comfortable if we had the oversight, and I can give you a couple of examples; on trolleys for example, if the \$200,000 a portion of that could go to trolleys because if you think about it many of the users of trolleys are low wage earners and/or students, so this could be a great source of income to offset any potential losses or deficits with regards to the trolleys. With regards to the Hopkins-Cooper Scholarship, in spite of the fact that the Lola B. Walker Homeowners Association maybe getting \$100,000, if we support it today, Gee, I think it would be wonderful to take a portion of the \$200,000, say \$10,000 and allocate that to the scholarship program, which as you know the funding was reduced this past year because of our present budgetary constraints. So that's another opportunity there and for the five of us to be able to, or whoever is sitting here, to be able to approve it, I think would be very helpful, because after all we are the ones that are giving this approval. That's my rationale for it.

Mayor Slesnick: Well wait a minute – and you know what?- all of those are great ideas and I would love to see us use it for funding, but I just need to clarify in my own mind whether we can divert what was supposed to be going to affordable housing, and I can make the case by the way that supporting the public transportation system supports in effect affordable housing...

Commissioner Cabrera: Now are we talking about 100 or 200?

Mayor Slesnick: All the money is being diverted because of the release of the affordable housing in the building.

Commissioner Cabrera: I understand – but I don't think, maybe I'm wrong, but I understand the \$100,000 how it's...

Mayor Slesnick: Going to Lola B. Walker.

Commissioner Cabrera: Exactly – for the purposes of...

Mayor Slesnick: Of restoration of the...

Commissioner Cabrera:...funding the affordable housing initiatives, but I'm not certain, let me read you the next sentence...

Mayor Slesnick: OK, but whatever that sentence says the only reason they are diverting this money whatsoever is because we are releasing them from doing affordable housing.

Commissioner Cabrera: I got it. I'm with you. I'm with you, and they are getting a great deal, just wanted to say that, to make your client sweat a little bit. But right after the sentence that talks about the LBW Foundation and the monies going to the funding of affordable initiatives, the next sentence reads, *"We have also decided to proffer an additional contribution of \$200,000 to the City of Coral Gables period."*

Mayor Slesnick: I appreciate that, and like I said I love your ideas, I'm just curious and I don't know if it can be answered at this spot, the only reason that any of this money is flowing to the City or Lola B. Walker is because of releasing the deal on affordable housing.

Commissioner Cabrera: I understand.

Mayor Slesnick: So my question is, goes beyond the letter says, is it our obligation?- this is my question, and it will have to be referred to the City Attorney's office, is it our obligation to utilize that money whether it's to them or to us for affordable housing?- or can we use it in innovative ways as you have suggested for other things which are of great value to the citizens of the City?- and by the way, of great value to the citizens of people living in affordable housing?

Commissioner Cabrera: That would be a great question to ask and I would support you asking that question, because I would like that clarification, but I would hope that you would also support my efforts that the \$200,000 be designated, whatever the response, whatever the opinion of the City Attorney is, I would like to make sure that this Commission feels comfortable with the \$200,000 being directed by this Commission. That's more my point. Your point is a valid point because your point has legal ramifications and I think we should have that clarified as we move forward, but I just want to make certain because I heard Commissioner Withers talk about the \$100,000, and I decided to piggyback on the \$200,000, because I share his concerns.

Mayor Slesnick: I think that – I do. Let me ask you this Mario. I know that anytime you come here and bring your client that you'd like resolution to the issue, is this something that if we ask the Manager to look into the issues and the City Attorney to look into the issues we have raised here, is there something that can wait for our final approval till next meeting?

Mr. Garcia-Serra: Well we've actually been anxious to – you next meeting is when you said?

Mayor Slesnick: It's a month away.

Commissioner Anderson: Actually December 14th.

Mayor Slesnick: Well there is the chance that the Manager is going to ask us for a special meeting on some other issues.

Vice Mayor Kerdyk: Can I ask him a question before – Mario, this project started how long ago?

Mr. Garcia-Serra: This project was originally approved in 2006, actually.

Vice Mayor Kerdyk: 2006 – and it didn't get built based on the fact that the economy changed on it.

Mr. Garcia-Serra: Well in 2006-2007, it was then sold to the current owner who had the plan modified in 2008, and then after that a series of different issues, you know, delay in permitting, the economy then took a dive, all those things conspired to prevent the project from being built.

Vice Mayor Kerdyk: When do you have to have your building permit pulled?

Mr. Garcia-Serra: April 28, 2011.

Vice Mayor Kerdyk: And that's a hard date, correct?

Mr. Garcia-Serra: Yes.

Vice Mayor Kerdyk: So you really need to get this thing going now as opposed to waiting any longer?

Mr. Garcia-Serra: And what I was going to propose is that we go forward with the resolution as its worded right now, and perhaps addressing the issues of how the money is disbursed and under what criterion, and who has to OK it before it gets disbursed, we can even agree, we can basically say that before that money gets disbursed it has to come before the City Commission perhaps as a City Manager item.

City Manager Salerno: Mayor if I could add. The \$100,000 to the foundation that payment into the escrow account occurs before at the time you receive your permit....

Mr. Garcia-Serra: Correct.

City Manager Salerno:...and it will sit in that escrow account until such time as there is a valid purpose of affordable housing, and then you will release it...

Mr. Garcia-Serra: Correct.

City Manager Salerno:...which can be subsequent to April 28th.

Mr. Garcia-Serra: Exactly.

City Manager Salerno: The condition is that you have to put the money into there by that time following getting a permit; you don't get a permit to build by the 28th, you are not putting the money into the escrow, correct?

Mr. Garcia-Serra: Exactly.

City Manager Salerno: The subsequent \$200,000 which unrestricted funds as anticipated by the City, those are cities (funds) that would flow into the City and are not anticipated, the Commission can designate it as part of a budget appropriation process, I cannot, no staff person can appropriate those funds for a particular purpose, it is just your agreeing that they will pay at the same time \$200,000 to the City. The Commission can set how they want to spend it at that time, we're just turned into the new fiscal year, I would suggest that budgetary decisions should be considered at that particular time, you shouldn't try and my suggestion is sit here and allocate those dollars in the absence of know, for instance, how the first quarter financial report is going to look. Those are the prudent things to do. Hopefully, you will be in a position to use those dollars for something else, but certainly at this particular time the deal is, is it acceptable to the City Commission to take in lieu of that restriction to receive \$100,000 dedicated specifically to the foundation for affordable housing, and to receive \$200,000 in consideration, how those dollars will be spent would be made by the Commission at a later date.

Vice Mayor Kerdyk: I think the key word you said was unrestricted \$200,000. Mario just one last question since you pretty much gave me my answer as far as how quickly this needs to be expedited. Have you done any projections on how much the fees would be to the City for Art in Public Places, permitting fees and all that? What does that come out to?

Mr. Garcia-Serra: Yes. Permitting just short of \$3 million; there is about I believe six different offsite traffic improvements that we are doing which also is going to be somewhere about half a million dollars; we already paid the \$10,000 for the City to update its affordable housing study; and then also participation in the Art in Public Places program is also going to be somewhere around \$400,000.

Vice Mayor Kerdyk: So you all qualify for the Art in Public Places because when you started in 2006, you didn't qualify, is that correct?- we didn't have it in place basically.

Mr. Garcia-Serra: The ordinance for Art in Public Places was adopted in December of 2007; this project was approved in April of 2008. The way that the ordinance was originally worded is that it wasn't effective until the art master plan was approved. The art master plan took awhile to be approved and was I think was approved a couple months ago, and then prior to that in January of this year you changed the ordinance so that everybody who didn't have a building permit would have to comply. So while we've gone back and forth with the City, it looks like we fall into that...

Vice Mayor Kerdyk: Alright, that's good. So basically over \$3.5 million dollars is what the City is going to get when you start pulling. OK, that's all I need.

City Manager Salerno: Mayor if I could add. I think – this is an excellent project and they are going to need that entire time, they've asked for a commitment from staff that we will work with them in an expedited fashion to meet those deadlines. I have on behalf of staff have said, we will do our best provided they do their best to get this project done by the April 28th deadline, and I think they have expressed to staff on several occasions both through counsel, through their architectural firm, through the owner that this is a very ambitious schedule for them. I think it is important that the Commission give direction if they are willing to today to this particular issue, so that we can have the best chance of meeting that deadline. It's going to take the City, it's going to take them, mostly them to meet all the obligations that they have to do in order to pull a permit by that date, but I certainly would not want to see us miss this opportunity for the community to benefit and for a very good project that will be a great addition to the City.

Mr. Garcia-Serra: I would have to agree too, it's a miracle that the project is still alive. We have to be grateful that it is and be able to move forward.

Commissioner Cabrera: I realize that today is not the forum in which to talk about some of the things that your project potentially will be doing for the immediate area, but my ears perked up when you answered Mr. Kerdyk's question with regards to traffic improvements. At some point in time will that be coming to us so we can see some of those traffic...because I know that area

badly is in terrible, terrible need of improvements to – Mr. Garcia-Serra we don't have to do it today, so I don't want to bog you down and I don't want to take away from the focus of the \$300,000, but at some point in time is that coming before us for approval?

Mr. Garcia-Serra: No, that actually – the list of improvements is part of the condition of the 2008 approval.

City Manager Salerno: Already approved.

Commissioner Cabrera: The reason I think it's important that it be publicized it's simply because it's such a good thing for the area, not only for the industrial area, but for the neighborhood, the adjacent neighborhood of the area, and incidentally speaking of neighborhoods, any outreach to the contiguous or adjacent neighborhoods?

Mr. Garcia-Serra: Well when the approval was originally done in 2008 we had several neighborhood meetings which were attended and so the presentations were done.

Commissioner Cabrera: I know, I know the past, I'm just asking now about the present, has anything been done in terms of updating those citizens?

Mr. Garcia-Serra: Other than the meeting we had with the LBW Board of Directors, the neighborhood across the street now.

Commissioner Cabrera: You might want to consider reaching out.

Mr. Garcia-Serra: And two of those six traffic improvements which are already improved are for the neighborhood, the single family home neighborhood west of...

Commissioner Anderson: I remember that when you brought that before us originally that was one of the conditions that the Commission discussed.

Mayor Slesnick: Chip.

Commissioner Withers: Yes. I understand the \$100,000 and \$200,000 are separate issues, but on the escrow agreement, and again maybe I'm just ignorant on escrow agreements, I thought that when you go into an escrow agreement both the people putting the money in and the people taking the money out have the say-so of what happens to the money. So in this escrow agreement your group putting the money in will still have say-so over how the money is spent? - or do you relinquish that and now just allow the group and the City to make that decision.

Mr. Garcia-Serra: No. When the request comes in, we review the request for disbursement, it has to comply with the purposes of the agreement, which is for the advancement of affordable housing, and with that it also requires the...

Commissioner Withers: So there is a three party agreement then, the City, you, and the Homeowners Association all have to agree on how the money is to be spent?

Mr. Garcia-Serra: The actual signatories to the escrow agreement will be my client and the foundation, the LBW Foundation, the City will express its consent through way of its letter to the escrow agent, myself, OK-ing the release of the funds.

City Manager Salerno: The staff has not asked to have that decision authority, so if the Commission wants it we've never had discussions with Mario and the clients about who would give that, it was just the City, and I think it's perfectly appropriate for the Commission to give the approval on the release, that's fine.

Commissioner Withers: OK.

Mayor Slesnick: OK. We have H-1. This is a resolution of the City Commission of Coral Gables, Florida providing for an amendment to a previously approved mixed-use project (approved via Resolution No. 2008-58) referred to as "Gables Gateway", located on property legally described as Lots 1-23 and Lots 76-88, Block 17, Industrial Section (intersection of LeJeune Road, Granello Avenue and Ponce de Leon Boulevard), Coral Gables, Florida; providing for an amendment to the previously required attainable/affordable housing condition; providing for an alternative condition of approval; providing for severability, repealer, codification, and an effective date. Can I have a motion?

Vice Mayor Kerdyk: So moved.

Commissioner Anderson: Second.

Mayor Slesnick: Mr. Kerdyk moves and Mrs. Anderson seconds; is there any further discussion?

Mr. Clerk

Vice Mayor Kerdyk: Yes

Commissioner Withers: Yes

Commissioner Anderson: Yes

Commissioner Cabrera: Yes

Mayor Slesnick: Yes

(Vote: 5-0)

Mr. Garcia-Serra: Thank you very much Mr. Mayor, Commissioners.

Mayor Slesnick: Thank you, and Mr. Manager we will come back to the details of working out the escrow and all that kind of stuff?- I mean, we approved the item.

City Manager Salerno: The escrow will be worked out between the developer and the foundation, the release of the funds will be subject to Commission approval.

Commissioner Cabrera: The \$200,000 too?

Mayor Slesnick: The \$200,000, right?

City Manager Salerno: No, the \$100,000 release; the \$200,000 just gets received and it's going to be up to the Commission at an appropriate budget time to determine how to release those funds.

Commissioner Cabrera: No, no, wait; wait, you asked the City Attorney's office to give you an opinion...

Mayor Slesnick: Madam City Attorney....

City Attorney Hernandez: Yes?

Mayor Slesnick: If you would please work with the applicant and the City Manager's office, we have approved those certain monies that are going to flow to the Lola B. Walker Homeowners Association and to the City in lieu of the building of affordable housing in this project. The question that has risen is that Commissioner Cabrera had suggested some very appropriate meaningful ways which we might spend some of the funds to help the citizens of Coral Gables, particularly his ideas related to people who would live in affordable housing and who live in the area of Lola B. Walker Homeowners Association, my question is because we are releasing the project from actually building affordable housing and taking this money in lieu of, would we have to use this money for something directly related to affordable housing?- or could we use it for other worthy expenditures which relate to things like public transportation which help people in affordable housing? So that's the question we can work on it later, OK.

Commissioner Cabrera: Well just a number of projects; I just use that, number one, I just use that to solicit support, political support for my idea, and secondly, I did think it would be worthwhile that we look at the Hopkins-Cooper Scholarship as a way to fund some of those dollars, funnel some of those dollars toward it, and then of course to support the efforts of the trolley which is primarily in my opinion used by many of our City's low wage earners and those that work in our City that are low wage earners as well as students as a way to help fund any deficits the trolley may be undergoing.

Mayor Slesnick: And in addition, the Manager did properly raise the idea that there might be other things the City would need using the \$200,000, so all that needs to be addressed.

City Attorney Hernandez: OK – very good.

Mr. Garcia-Serra: Thank you very much.

Mayor Slesnick: Thank you all. Thank you.

[End: 10:18:10 a.m.]