

**City of Coral Gables City Commission Meeting
Agenda Item E-11
November 18, 2014
City Commission Chambers
405 Biltmore Way, Coral Gables, FL**

City Commission

Mayor Jim Cason

Vice Mayor William H. Kerdyk, Jr.

Commissioner Pat Keon

Commissioner Vince Lago

Commissioner Frank Quesada

City Staff

Interim City Manager, Carmen Olazabal

City Attorney, Craig E. Leen

City Clerk, Walter J. Foeman

Deputy City Clerk, Billy Urquia

Public Speaker(s)

Agenda Item E-11 [Start: 11:20:51 a.m.]

Appeal of Tree Permits for 1011 and 1015 Lisbon Street; and Appeal of Board of Architects' decision on 1015 Lisbon Street: status report regarding settlement and consideration of potential action related thereto. (Continued from the October 28, 2014 Meeting).

Mayor Cason: We'll now move onto Agenda Item E-11, it's a continued matter from the October 28th Commission meeting related to the appeal of the tree permits. City Attorney.

City Attorney Leen: Thank you Mr. Mayor. This is a continuation of the appeal of tree permits for 1011 and 1015 Lisbon Street and an appeal of the Board of Architects' decision on 1015 Lisbon Street. Today we are giving a status report regarding settlement and consideration of potential action related thereto. This was continued from the October 28, 2014 meeting. All of the record from that meeting is being incorporated into the record today and on the agenda it also gives a website, if you want to click on that and see any of that. The City has been presented with a proposed dispute resolution agreement under Article 3, Division 17 of the Zoning Code. The way that Article 3, Division 17 works is that in situations where – let me actually read the

purpose into the record because I think its important. It's the purpose of this Division to provide a process for applicants to notify the City of potential litigation and invoke the exercise of the City's authority and discretion pursuant to Article 7, Section 2(b) and 60 of the Florida Constitution, Section 70.001 of the Florida Statute, Section 6.02 of the Charter of Miami-Dade County, Article 1, Section 7 of the Charter of the City of Coral Gables, and objectives ADM-1.2 and polies ADM-1.2, and F...-1.1.9 of the City of Coral Gables Comprehensive Plan. To avoid expensive and certain unnecessary and protractile litigation regarding the application of these land development regulations to individuals properties. And here's where really the important part is: the City may grant relief pursuant to this Division when it is demonstrated that the applicant for said relief has been unfairly disproportionately or inordinately burdened by a final order of the City that either denied development approval to the applicant or imposed one or more conditions of approval on the applicant. The process may also be initiated by the City, which is what's being done here, to settle litigation in order to avoid unfairly, disproportionately, or inordinately burdening a party to that litigation, such as to mitigate the burden who is party to a settlement agreement, pardon me, where party to a settlement agrees in the settlement to bear a disproportionate burden of a government use that benefits the public. This division does not apply to matters that arise from the application of the Florida Building Code. Now the important provision that's before you today is the part which indicates that where there is a settlement, the City may initiate this Division 17 in order to mitigate the burden where a party to a settlement agrees in the settlement to bear a disproportionate of burden of a government use that benefits the public. So you may apply this provision, if for example you found that maintaining the tree, this oak tree that is beloved by the community, maintaining the tree on the property is a disproportionate burden, and I think you could find, I'm not saying you will, its up to you, but you could find that because the property owner is being required basically through the settlement to maintain this tree, which benefits the public as a whole, if you reach those findings you may grant relief under this provision. Now what this provision indicates is that there is a dispute resolution agreement that is reached by the parties, including the City where warranted, and that dispute resolution is before you today to consider. Now one other thing you should know is that based on the provisions of Division 17, when you consider the dispute resolution agreement, let me just read that as well – the City Commission may approve, approve with conditions, or reject the proposed dispute resolution agreement. If the City Commission requires modification, that's the important part and that's in 3-1705(b), when the City Commission has approved the proposed dispute resolution agreement or approved the proposed dispute resolution agreement with conditions, the City Manager is authorized to execute said dispute resolution agreement as modified if applicable. So today you could depending on your decision direct that this dispute resolution agreement be signed. Finally, once executed by the City Manager, the dispute resolution agreement shall be placed on the next available Consent Agenda of the City Commission for ratification. The item shall not be pulled from the Consent Agenda, except by super majority vote of the entire membership of the City Commission. So what's before you

today is a proposed dispute resolution agreement. You have a significant amount of discretion over that agreement and any changes you would like to make to it. If you believe that it is warranted based on the record that's presented, you could direct that, that dispute resolution agreement be finalized based on any modifications you made and signed by the City Manager, I would also sign for formal legal sufficiency. At that point, it will come before you at the next meeting, but it's on the Consent Agenda and basically it has to be approved unless a super majority vote pulls it, and at that point once its approved it becomes, it's basically is the equivalent of the law for that property and it resolves this issue. Now in addition before you today, you have an appeal and the appeal, this is a proposed settlement agreement of that appeal, so in determining whether to settle an appeal you still need to hear from the applicants and you still need to exercise your discretion...

[11:26:09 a.m.]

[Note for the Record: Recorder stopped]