

**City of Coral Gables City Commission Meeting
Agenda Item F-5
December 16, 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

City Manager, Cathy Swanson-Rivenbark

City Attorney, Craig E. Leen

City Clerk, Walter J. Foeman

Deputy City Clerk, Billy Urquia

Code Enforcement Director, William Ortiz

Public Speaker(s)

Agenda Item F-5 [Start: 12:22:17 p.m.]

Discussion regarding allowance of exterior art sculptures at 8565 Old Cutler Road.

Commissioner Lago: Let's do F-5.

Vice Mayor Kerdyk: You're afterwards.

Commissioner Lago: F-5, which is the discussion regarding allowance of exterior art sculptures at 8565 Old Cutler Road. You know, first of all, I'd like to thank my colleagues for allowing me to put this on today's Commission items. What we're going to be discussing today is and I'd like to also notify you that the gentleman who's passing out the documents is the architect, representing Mr. Manolo Valdez; and also, we have his attorney, which is present here also, just in case you want to ask him some questions. Mr. Valdez is a world-renown artist who happens

to live in our own backyard, represented by Marlborough gallery in New York, which is an art gallery which is in all of the major contemporary and modern art fairs in the world. So it's pretty impressive that we have this individual who lives in our community, whose sculptures are part of our community, so I just wanted to bring this to your attention, an issue that he's having.

Commissioner Keon: Is this the artist himself?

Commissioner Lago: Yes. The artist is not here today.

Commissioner Keon: No, but it's...

Commissioner Lago: But this is his work, as you can see here, which is...

Commissioner Keon: Right.

Commissioner Lago: The works are located in the back of his residence.

Vice Mayor Kerdyk: Back of his residence.

Commissioner Lago: In the back of the residence.

Vice Mayor Kerdyk: OK.

Commissioner Keon: You know, there's a bunch in the front. Oh, I'm sorry. There's a bunch along Old Cutler.

Commissioner Lago: I could be wrong.

Commissioner Keon: There's a bunch along Old Cutler because...

Commissioner Lago: You're right.

Commissioner Keon:...that's my walking route, because three or four days a week, I walk from Edgewater to Kendall and back. And I have to tell you, this is one of the brightest spots along my walk is the ability to see these sculptures and you know, as your hedges and things become thicker, it's harder to view, so I'm real happy the days that your gate is open so I can stand in your driveway and look at them. It is absolutely beautiful.

Commissioner Lago: So just so you're aware you've probably seen his work; his works that Art Basil, at the Armory show in New York; you know, a multitude of other art fairs throughout the world. But the reason why we're here today is not to honor Mr. Valdez, which I wish we were; we're basically here to deal with an issue where Mr. Valdez had put his home up for the Beautification Awards, which happen every year in the City of Coral Gables. His residence is spectacular, the gardens are to be envied, and obviously, the sculptures speak for themselves. But what ended up happening, he was cited by Code Enforcement. And I think during the process of the Beautification Awards, which happen every year, it's a standard policy, and correct me if I'm wrong, Will, where Code Enforcement is required to go and visit every home that is up for a Beautification Award just to just to check for certain things.

Vice Mayor Kerdyk: Right.

Commissioner Lago: And then what ended up happening was that the sculptures were cited for two reasons. Number one, they were installed in the setback in the back of the home, not the ones are that are in the front, correct? Am I correct on that or...?

Code Enforcement Director Ortiz: William Ortiz, Code Enforcement Director. The violation is for the sculptures not having Board of Architect's approval as well as permits. That includes all of them.

Commissioner Lago: OK. All right, so basically, what ended up happening was I. thank you for correcting me, I thought it was an issue of setbacks.

City Attorney Leen: There is a setback issue, because in order to get the permits, they can't be in the setback, so that's the issue, right, Will? That's my understanding.

Code Enforcement Director Ortiz: For some of the sculptures, that is correct.

Commissioner Lago: From my understanding, Mr. Valdez installed these sculptures in the back of his residence without knowingly knowing that he was, you know, breaking the Code, obviously putting some, not all, on the setback, number one. And number two, not attaining a permit for the concrete base that some of them are on. Am I correct on that so far?

Code Enforcement Director Ortiz: That's correct.

Commissioner Lago: OK. So basically, what I wanted to do was I wanted to bring this to your attention. I wanted to see what our City Attorney had to say, because I had a long conversation with him in regards to this matter, in regards to how we could proceed as a city in reference to what we currently have on hand, to hear a little bit of what Will had to tell us in regards to the background, and to hear what the architect and the attorney representing the owner have done in reference to the existing sculptures, because they've done a lot of leg work here, just so you feel a little bit more comfortable in regards to the placement and the work that was done.

Mayor Cason: Will, why don't you start with the elements of the violation and then we can see if we can figure out something.

Code Enforcement Director Ortiz: Sure. So the Code Enforcement officer had actually cited the property for the exterior wall needing some sort of maintenance, in terms of the wall was dirty, paint was scaling. The property owner did comply with that violation, but at the time that the officer went to post the property, he observed the sculptures on the property, checked; saw that there weren't any permits; and as a result, cited the property. He has been in contact with the representative of the property. I do have some information here on the file: Octavio Centurio. That's you. So the officers spoke with Mr. Centurio and explained the violation to him, and then

he actually met with the City architect, I believe, and spoke a little bit about it. And at this point, we're just waiting for the permit to be obtained.

Commissioner Lago: You want to explain a little bit about...

Mr. Carrerasgo: Well, basically, I did exactly that. I met with the City architect. He also mentioned to me that the sculptures, there was nothing in the code that referred to sculptures, as far as being a piece of art on the lawn, which is what we intended Mr. Manolo, when he installed them, didn't know about it. These sculptures, I provided calculations for the Wind Gloves (phonetic), the way they are assembled on the floor, on the ground themselves. When they meet code, they exceed (UNINTELLIGIBLE) structures have the winds over 150 miles an hour and they don't present a safety issue at all. It's just that they were located without any permit or anything. But there's nothing in the code that will tell you that "I want to install a sculpture" and we research it...

Commissioner Lago: And I think that's the main point in question.

Mr. Carrerasgo: The main issue.

Commissioner Lago: The issue, the confusion on what the code dictates about a sculpture, its placement, and the permitting in reference to that because obviously, there is a component to it, I mean, and Will will tell you: when you're going to pour a concrete slab, you need to have a permit on that, but this is not a structural issue where someone's going to be living on it. This is a structural member which is going to be holding a sculpture. So I think that's where kind of there's a little ambiguity and we need to look into this.

Vice Mayor Kerdyk: Can I just add something? I mean, these are beautiful sculptures. I mean, I don't think anybody will ever say that these are not fantastic, and these are great for the City of Coral Gables. We've had some not-so-great sculptures before and some that met the wind tolerance levels, and let me tell you something: very controversial issues here in the City, so

that's why we have a process like this. And I'll tell you, though, do you see an issue from the City that you will not be able to obtain a permit on this?

Octavio Valdez: The problem is that the base is not concrete pour. They're actually big plates of steel. You know, that area, you excavate six inches, you have lime rock.

Vice Mayor Kerdyk: Right.

Mr. Valdez: So they actually excavated that, and they place the statute there with anchors to the lime rock and they just backfill it.

Vice Mayor Kerdyk: And our structural people won't give you --

Mr. Valdez: I met with Manny Lopez, because they asked me to go see the Building Official.

Vice Mayor Kerdyk: Right.

Mr. Valdez: And they said that if -- it's like a paver. If it's on sand and that, it's like a paver, so it's temporary. You know, you can remove it, you know.

Mayor Cason: Are they going to be permanent? Are they going to be permanent there or are they going to be moved around?

Mr. Valdez: The structures are there and yes they can be moved, but again, you have to bring a big crane.

Vice Mayor Kerdyk: So basically, Manny said he wouldn't support this as it is installed right now, as far as getting a permit?

Mr. Valdez: It's self-supporting. Yeah.

Vice Mayor Kerdyk: That's what he said; he said he won't.

Mayor Cason: So I guess one element is, you got a code violation. That's something that we can remove. I mean, we can...

Commissioner Keon: Well, I think it's addressing it.

City Attorney Leen: Well, I gave an opinion that you could, this is a claim. There is an issue here. It's very unique. I feel this is a unique situation based on the size of the art work, the amount of the art work; some of the statements here that if we view it as there being some public benefit to this, even if it's not a huge public benefit. So I feel like it can properly come before you. I'm not saying that every Code Enforcement matter should come before you, but this is sort of a unique situation. You may not want to draft the code to address this amount of art work in someone's backyard. And in some ways, it's a little more onerous to have to actually come to the Commission to get an approval. Now, the one thing and I spoke with the City Manager about this, the concern that we had is that, at least with the setback, we want to make sure that whatever is done here could be reversed by the City one day if a neighbor was unhappy with that being in the setback, because, you know, the setback is there, in part, for the neighbor. That's part of the legal reason. Now, my understanding is, we asked you to check with your neighbors to see if they would be OK with placing these in a setback and to give us something in writing to that effect. And then ultimately, assuming that's true, what we could do, if the Commission wishes it would be up to the Commission, within your sovereign power, but you could direct me to enter into a settlement with them, in conjunction with the City Manager, and we could work out some conditions by which they could continue to have these, but it's something that could be revoked in the future, and we would also probably require that they not add additional sculptures at this point. You're basically, in a sense, grandfathering it.

Commissioner Lago: Have you been able to get in contact with the neighbors? I know it was short notice; we met, I think, three days ago.

Mr. Valdez: Yes. One of the neighbors, I think I have a letter from, and he seems to indicate that there would not be any problems. The other neighbor I still have to contact.

Commissioner Lago: OK.

Mr. Carrerasgo: Also, I'd like to point out, this property is quite large. It's like three acres. This is where Dona Shalala used to live. The artist bought it from her.

Mayor Cason: So the issue is not the art itself.

Mr. Carrerasgo: Location.

Mayor Cason: It's the location. And if it was entirely in the backyard and they had foundations, there would be no issue. Is that right? They would get a permit and...

Code Enforcement Director Ortiz: Correct. You said it, Mr. Mayor; they would need the permit.

Mayor Cason: OK.

Code Enforcement Director Ortiz: So that's the real heart of issue, why they were cited.

Mayor Cason: And there's nothing in the code that mentions anything special for art, other than - because we have snails in front of the Biltmore, for example. We had horses or something else there. I wondered if those were permitted and had the...

Vice Mayor Kerdyk: They were temporary.

Mayor Cason: They were all over the City, if I recall.

Vice Mayor Kerdyk: They're gone.

Mayor Cason: Right. I think it's one around.

Vice Mayor Kerdyk: Is that “thank goodness, they’re gone”?

Commissioner Lago: I think the move here and I don't want to speak for the whole Commission, but I think what we need to do here is move in the direction of have our City Attorney negotiate with the representative for Mr. Valdez, have them come to an agreement, which, again, protects the City.

Vice Mayor Kerdyk: Right.

Commissioner Lago: But also allows these stunning sculptures, which, I mean, hundreds of people go by boat to see on a weekly basis. So I think that's my opinion. If you want to support that.

Commissioner Keon: Yeah, absolutely.

Commissioner Lago: All right. And plus, we already have one letter from the neighbor, and we can get the other letter once they respond to you. I imagine the neighbor's, you know, probably out of town or then she respond back to you. But if they do, we get that letter and we enter it into the record as if they're in compliance.

Vice Mayor Kerdyk: And I just want you to make sure, though, is again, I'm always concerned with precedence.

Commissioner Keon: Right.

Vice Mayor Kerdyk: And this is great because it's a two-acre, five-acre tract of land. I forget how much it is. But it's different when it's a hundred-foot piece of property. If it is some structure up on Country Club Prado that you're not so crazy about next to you, I want to make sure that we have the right, somehow at this level, to be able to modify it.

Commissioner Lago: Yeah, and that's why I said the key thing is that we're always protecting, you know, the City.

Mayor Cason: And the Board of Architects will always look at art pieces that need permits; is that correct? I mean, in other words, if somebody wanted to put an 80-foot orange elephant in their...

Commissioner Lago: That already exists.

Mayor Cason: I mean Architects would look at it...

Commissioner Lago: It actually does.

Commissioner Keon: It does exist. On Edgewater. They do.

Unidentified Speaker: I believe it's purple.

Commissioner Keon: Orange elephants.

Commissioner Lago: You're actually both wrong; it's pig.

Commissioner Keon: Yeah, I was going to say yeah, it's pink.

Commissioner Lago: And it's not one; it's multiple.

Commissioner Keon: Yes.

City Attorney Leen: I mean, and seriously, we have to be careful about that. You know, any time we do allow art work, we can't really be picking between the different artwork too much. Obviously, if it's a huge piece and it's affecting people, causing a harm, it's causing a shadow, or

it's a safety concern, or it's extremely large and bothering the neighbor, I think you can consider that. But the appearance itself, you do have to be careful. In this particular case, it's more about the fact that it's hard to draft a code provision that will address this situation with so many pieces of art work, some that are already there. The Commission obviously would like to do something here. But I think, ultimately, it's a matter of prosecutorial discretion, so you do have to give us the authority, ultimately, to revoke this at a later time if we decided we needed to.

Commissioner Lago: I'd like to make a motion to have our City Attorney make a settlement offer, get into negotiations with the representatives for Mr. Valdez in an effort to come to an agreement that satisfies both Code Enforcement and, more importantly, meets the City's needs, and takes into account what the Vice Mayor said about not setting a precedent where we lock ourselves into not having the ability to revoke something in the near future.

Mayor Cason: All right. We have a second?

Vice Mayor Kerdyk: I'll second.

Commissioner Quesada: When you do a settlement agreement, we're not establishing a precedent.

Commissioner Lago: Yeah, I know. I just want to make sure. I want to be very careful.

City Attorney Leen: Do you want the agreement to come back to you or do you want me --?

Commissioner Lago: No. This is not -- this is --

Mayor Cason: You do it.

City Attorney Leen: So I will do this in conjunction with the City Manager. She'll handle obviously, the structural issues, all that. I'll get the agreement put together and we'll approve it.

Mayor Cason: OK. City Clerk, we have a second already. Commissioner Lago made the motion; the Vice Mayor seconded it. City Clerk.

Vice Mayor Kerdyk: Yes.

Commissioner Lago: Yes.

Commissioner Quesada: Yes.

Commissioner Keon: Yes.

Mayor Cason: Yes. Let's try to do C-6, which was pulled.

Commissioner Keon: They're just beautiful, I have to tell you. They're such a gorgeous it's beautiful.

Commissioner Lago: Beautiful.

Commissioner Keon: You can trim your bushes any time you'd like.

Mr. Valdez: Oh, thank you. Thank you very much.

Mr. Valdez: Appreciate it.

Mayor Cason: Thank you.

Commissioner Lago: Thank you.

Mr. Valdez: Thank you, Commissioner Lago.

Mayor Cason: Thank you.

[End: 12:36:55 p.m.]