

# MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

## COMMISSION MEMORANDUM

TO: Mayor Dan Gelber and Members of the City Commission

FROM: Jimmy L. Morales, City Manager

Raul J. Aguila, City Attorney

DATE: June 6, 2018

SUBJECT: **DISCUSSION: THE DEAUVILLE BEACH RESORT**

### HISTORY

On March 7, 2018, at the request of Commissioner Kristen Rosen Gonzalez, the City Commission referred the subject item to the Land Use and Development Committee for discussion (Item R9K).

On March 14, 2018 the item was continued to the April 4, 2018 LUDC meeting. On April 4, 2018 the LUDC discussed the item and continued it to a date certain of May 23, 2018.

On May 23, 2018 the LUDC discussed the item and referred it to the full City Commission for discussion and to consider all available and aggressive action to compel compliance with all applicable regulations by the Deauville. A copy of the LUDC minutes summary is attached as Exhibit 1 to this memorandum.

### ANALYSIS

The Deauville Hotel, located at 6701 Collins Avenue was constructed in 1957 and designed by noted local architect Melvin Grossman. The subject structure is an excellent example of the Post War Modern (MiMo) style of architecture and is classified as a contributing building within the North Beach Resort Local Historic District.

The hotel is currently vacant and not operating due to a fire in July, 2017. While permits have been applied for, no serious building activity is taking place.

### Maintenance of Designated Properties and Demolition by Neglect

Section 118-532(g) of the City Code provides a mechanism for the City to initiate the demolition by neglect process for a designated property. Such process may be initiated if it is determined by the Historic Preservation Board, Planning Director, or Building Official that a designated property has fallen into one or more of the following categories:

- A state of disrepair so as to potentially jeopardize its structural stability and/or architectural integrity;

- A state of disrepair, so as to potentially jeopardize the safety of the public and surrounding structures;
- A state of disrepair that results in the property failing to meet the minimum maintenance standards.

The following is a summary of the demolition by neglect process:

1. After 48 hours' notice to the owner of intent to inspect, the City may enter and inspect the property.
2. Upon completion of the inspection, a report delineating the findings of the inspection, as well as any remedial action required to address any violation of the required minimum maintenance standards, shall be immediately transmitted to the property owner. The City may require that the property owner retain a professional structural engineer to complete a structural evaluation report to be submitted to the City.
3. Upon receipt of such report, the property owner shall substantially complete any remedial or corrective action within 30 days of receipt of the report, or within such time as deemed appropriate by the Building Official, in consultation with the Planning Director. Such time may be extended at the discretion of the City's Building Official.

If the property owner refuses access to the property, and/or fails to undertake and substantially complete the required action noted above, within the specified time frame, the City may, at the expense of the owner, file an action seeking an injunction ordering the property owner to allow access to the property and/or take the required remedial and corrective action to restore the building's compliance with minimum maintenance standards. Additionally, the City may seek civil penalties (up to \$5,000 per day), for each day that the remedial and corrective action is not taken).

#### **UPDATE**

On May 8, 2018 the Historic Preservation Board discussed the Deauville Hotel, including a status report provided by the City Attorney. The Board concluded the item with no recommendation.

Building Permits for building repair were issued on April 2, 2018, and an inspection was performed on April 13, 2018. Also, the 40 year recertification was extended and will now expire on June 7, 2018. Additionally, the Building Official has been in contact with the Owner/Contractor, Engineer, and Owners Representative regarding the Deauville project, and has advised that additional access and inspections for some concealed work are still needed.

Possible violations due to Building Department knowledge or exterior inspection:

- 40 year recertification (no knowledge of roof, or individual room status)
- Upgrade electrical work
- Rebar issues/structural issues (part of the 40 year recertification)
- Fire repairs (electrical fire from November 2017)
- Mold issues (no a/c for over 8 months)

- minimal building maintenance standards
- Window and door replacement.

A "demolition by neglect" cause of action in the state of Florida appears to be a case of first impression for the Court system. Those communities (Coral Gables, St. Augustine, and Tampa) that have Historic Preservation ordinances have not created precedent for the implementation of demolition by neglect. Cities like New Orleans and New York have precedent, but, they also appear to have a funding source for conducting the repairs to private property.

To seek demolition by neglect the City will need to meet the criteria for injunctive relief: The proper issuance of a temporary injunction requires a showing of four elements: "(1) irreparable harm; (2) a clear legal right; (3) an inadequate remedy at law; and (4) that the public interest will be served." *Weinstein v. Aisenberg*, 758 So. 2d 705, 706 (Fla. 4th DCA 2000). A municipality does not have to post a bond, but, if it doesn't, the municipality may be exposed to unlimited damages. As such litigation would be a case of first impression in the state, whether preserving a private property owner's structure, is sufficient reason for an injunction<sup>1</sup>, that the City does not have an adequate remedy at law (require reconstruction). Furthermore, if the City is successful with the injunction claim, the City would need to identify a funding source to do the work. The City ordinarily needs to bid out work, publicly procure services, execute contract via City Commission authorization for work over \$50,000, and then enter the premises, assess the damage, and start the repairs. The City currently has no cost estimate to ensure that the building is brought up to a standard that would ensure that the building is not "demolished by neglect." Moreover, it is unclear whether the scope of work would require a Historic Preservation Board public hearing, and development order.

The Administration is quite wary of taking on any obligation with respect to this building beyond the regulatory function we now perform. This is a very large, historic building. The costs of even minimal remediation could be extensive, perhaps even into the millions of dollars. Even if we had a funding source, there is no way to ensure that the owners have the financial wherewithal to reimburse the City for any work we might perform. So long as the building remains vacant, it does not pose a hazard to anyone. I think we should fully explore all other alternatives before even seriously considering taking on the financial and logistical obligation of renovating the Deauville.

### **CONCLUSION**

The Administration recommends that the City Commission discuss the item and provide appropriate policy direction.

JLM/SMT/TRM

T:\AGENDA\2018\06 June\Planning\Discussion - Deauville Beach - MEMO.docx

---

<sup>1</sup> Please note, that the City's Historic Preservation Board could require reconstruction of the exact same structure, if it deems the building to have been deteriorated without good cause.

## Item 2. Discussion regarding the Deauville Beach resort

### Commissioner Ms. Aleman:

Now I know that this one is being monitored, now and on an ongoing basis in front of the preservation board but I wanted to hear from the sponsor to see if there's anything she wants us to take action on.

### Commissioner Kristen Rosen Gonzalez:

I mean, I would like to take action on the fact that there is no action. Hahah

When you read the history, (gets interrupted)

### Commissioner Aleman:

Let's hear from the gentleman and then I can fill you in

### Commissioner Ms. Aleman:

Would you like to address Committee on this item?

Please when you come up state your name for the record:

### Blake Young

My name is Blake Young and I am the President of the Regatta Condominium Association at 6580 Indian Creek Drive.

I've watch, ahh, I lived on 14<sup>th</sup> Avenue, I've heard all the discussions here and I appreciate your attention to all that and I agree something needs to be done with that. I now live up in North Beach and that was a nice Hotel and of course it went down. About a year ago this time, with an electrical fire and it's been compounded. Hum, I've surveyed some of the vendors, the people in the different locations, the new businesses that have opened there, and talk with them about how they feel about it.

Many of them have said that they wouldn't have opened with knowing that that hotel was going to be in that state. That makes me kind of concerned as a resident of that area, because it makes me feel like the area is kind of dying behind that.

And I've heard that sentiment because I've reviewed all the different meetings you guys have had. And what I'm concerned about is, we've talked about all these incentives to help with these buildings behind here, I want to, I'm not sure, the

word on the street is, that the fines are so drastic right now, and the violations so high, that's what the residents are saying and I've heard the meetings and it seems to be to the contrary. But I'm concerned that, this is like the clash of the Titans and meanwhile the people below are going to suffer the most. Etc... And the game that may be played and they may be doing is dragging their feet so it has to be demolished. That's just going to destroy that business right there, that amount of dust and construction. I'm sorry go ahead....

Commissioner Kristen Rosen Gonzalez:

No, no go ahead and finish...

Blake Young:

It is imperative that we get that building up and running. I've talked to other building people who are pretty proficient in that, and we may be getting to a point of no return. Due to the fact that, that's been un-air conditioner since December, the amount of remediation. The cost that is going to be involved to bring that building back to standard. To safe standards.

It's time to act, it's time to do something, we could maybe offer them some incentives or do something to bring them along. It's a Historic Monument, it's a key point, we're talking about the North Beach overlay. So, we have a beautiful landmark there that is at the point of crumbling and that's definitely going to affect the North Beach Development Project because it's not where you guys are talking, it's right on the edge.

Commissioner Kristen Rosen Gonzalez:

So I would like to say something to John;

It's been more than a year that we've had it on the agenda now for 6 months and we have done nothing. I would like to make a motion to direct staff to do whatever you need to do, to possibly be most aggressive to avoid losing the Deauville to a Demolition Process, which is what we are allowing to happen. Right now with the current inaction. (Interrupted) Wait, wait. When you go into the lobby, I mean that is one of our greatest historic resources. It should be top priority. Let it roll over month to month as not just the hotel but the neighborhood deteriorates around it. And we are a party to it because we are not doing anything.

My motion is to progressively pursue some action against the Deauville beyond what we are currently doing.

Eve Boutsis:

If I may speak, I hope there isn't any disagreement from administration nor from myself or from anyone else. Since you brought it on about two months ago, as far as land use and HPB Item, we have actually had a meeting with the Planning Department, and Code. Each one of those disciplines IS taking action okay.

Now, the normal process that we have is, once they starting taking action, there is a Special Master. I'm just going to lay it out. There are often delays, because the Special Master has Independents, they are Quasi-Judicial, they can sometimes give extensions of time for compliance you also have, you know, the violations from the building department which can lead to unsafe structure process, which we all know which ultimately means that if they don't want to fix, it's gets a Demolition Order. And that's what we are all trying to prevent. So what I have asked for is enforcement from the various department so that, can I finish, I'm sorry... I'd like to then go with the direction of the Commission, once we have a record to do what is in our CODE, for this Demolition by neglect, which is in this agenda. The problem is that without that record, and saying that we've tried the different efforts to get an injunction, of course going to say what have you done? Why are you coming to me? why are you changing the process now? We've never used that process. I wanted to clear the record before going in, to say, look we've tried. We've tried to work the property owner; we have these various violations. If I take it the normal route and go to unsafe structure at that point, I will lose the building. But then you have to commit to funding, we have to go in and actually do the assessment because if they are not going to do it, then we have too.

And there's going to be a need for a financial commitment and that is what I'd have to come to you all for.

Commissioner Kristen Rosen Gonzalez:

So if you wanted extra information, I can show you several emails that I sent to the owner that went unanswered and phone calls that I had with the City Manager. I think it has been on the agenda for longer than just two months. At least four to six months, and HPB too.

I think we have an established recorded here.

Commissioner Ms. Aleman:

We need to have this meeting organized and just casual conversations.

Eve Boutsis:

I'm sorry the only thing I would just like to get in a couple of violations adjudicated, so that I have a record to take to court that can substantiate the actions we are trying to take for the first time.

Commissioner Ms. Aleman:

It sounds like Commissioner Gonzalez is considering in her mind considering to pursue demolition by neglect process. Who would take that action? Land Use Committee, HPB?

Eve Boutsis:

City Commission, I'm sorry there's an HPB part to it, then the City Commission for the authorization of funds.

Commissioner Kristen Rosen Gonzalez:

I want to file a lawsuit against the Deauville. What? Why are you looking at me like that?

Eve Boutsis:

I'm not, I'm just thinking ma'am. I'm trying to give you a look.

Commissioner Kristen Rosen Gonzalez:

We need to proceed with BOTH, lawsuit and demolition. This had been going on for a year.

Commissioner Mr. Gongora:

They are playing games with the city, keep permits open, do the bare minimum, etc.

We can do something more drastic, it's declared an unsafe structure. We can fix it and lien them, but we don't want to spend city money, it's their responsibility. So the original motion is perfect, take aggressive action to force them into compliance.

Commissioner Ms. Aleman:

We're not asking the lawsuit to be triggered at this moment.

Commissioner Kristen Rosen Gonzalez:

We are leaving that up to Eve to decide what that is, etc... She'll come back to us.

Commissioner Ms. Aleman:

But Eve can't decide to file a lawsuit.

At our next land use meeting, we can discuss. What are our most aggressive options?

Eve Boutsis:

The only other option is that the Manger can make a recommendation to the city Commission at the next meeting of the City Commission whether he wants to do that or not. That above my pay grade.

Commissioner Ms. Aleman:

So the motion is that the City Manager come back with the most aggressive action plan.

Mr. Mooney

It will be on the Agenda as an R9 Discussion Item.

Commissioner Ms. Aleman:

Mr. Cohen, do you have a comment?

Mr. Cohen

Different perspective to this, the Deauville is an important asset for North Beach. It has a historical importance and financial importance. Shows how fragile our area is. The amount of money is like starting from scratch.

I spoke to the owners... myself and Daniel Veitia and we had a meeting with them and they were very frustrated. Things just started to snowball... The city and the City manager to meet with these owners and find a way to get this hotel back online...

So we can do this quickly and give them as much assistance as we can.

Commissioner Ms. Aleman:

I agree. So maybe we can hand holding and assist them. Make an amendment to the Motion, etc.

Mr. Mooney:

The Building Official has been meeting with their engineering team

Commissioner Kristen Rosen Gonzalez:

The property is on the market right now, right?

Eve Boutsis:

Yes, I understand that for a very large price on the market for sale, yes.

Commissioner Kristen Rosen Gonzalez:

We were here last month with the owners, correct?

Eve Boutsis:

Yes, they were here.

Commissioner Kristen Rosen Gonzalez:

Yes, they were here and Ana Salgueiro, Building Director. They were giving them the temporary permit for the electric. And they are not doing the work that they could. My fear is a head on demolition and the Deauville is gone.

Commissioner Ms. Aleman:

Okay, I think we're done.

We got our motion.

By acclamation. This concludes our agenda.

The May 23<sup>rd</sup>, Land Use Meeting is adjourned.

Note:

Only Blake Young's and Eve's testimony is verbatim.

Typed by: Emily Ana Fuentes

Done on: 5/30/2018