MIAMI BEACH CITY COMMISSION

CITY COMMISSION FILE NO. 18-001

LOWER TRIBUNAL FILE NO: DRB FILE NO. 18-0226

CONTINUUM ON SOUTH BEACH, SOUTH TOWER CONDOMINIUM, 100 SOUTH POINTE DRIVE, MIAMI BEACH, FL 33139

CITY OF MIAMI BEACH RESPONSE BRIEF TO THE APPEAL OF DRB FILE 18-0226

RAUL J. AGUILA, CITY ATTORNEY
CITY OF MIAMI BEACH
1700 Convention Center Drive, 4th Floor
Miami Beach, Florida 33139
Eve A. Boutsis, Chief Deputy City Attorney
Florida Bar No. 82538
Counsel for the City of Miami Beach

Table of Contents

1. Criteria and Scope of the Appeal[1]

The Continuum on South Beach, the South Tower Condominium ("Petitioners"), located at 100 South Pointe Drive, Miami Beach, FL, filed an appeal of a Design Review Board order ("DRB" or "Board") to the Miami Beach City Commission, pursuant to Section 118-9(c)(2)(B) of the City's Code. The Petitioner's DRB Application sought replacement of certain design elements to the balcony feature of the condominium tower. The balconies had metal horizontal element along the lowest portion of the glass balconies. The DRB denied the application request to remove the design element.

The City Commission is to review the appeal based upon three criteria: (1) whether procedural due process was afforded by the DRB to the Petitioners, (2) whether the essential requirements of the law were adhered to (did the Board adhere to the correct law in rendering the denial), and (3) whether the decision of the DRB to deny design review approval to the Petitioner's was supported by competent substantial evidence.[2] Please note, that only one section of the DRB review criteria (of 29 review criteria) is being challenged, Section 118-251(a) of the City Code relating to the "safety" of the Community is being challenged. The Petitioners argue the Board ignored safety concerns in denying the application

The Petitioner misunderstands the Board order. The Board does not reject safety concern raised. Rather, the Board rejected the Petitioner's design modification request.

On appeal, the Petitioners raise no issues relating to due process.[3] Therefore, Petitioners have conceded that due process was provided by the DRB to the Petitioners. This first appeal standard is not at issue and does not need to be addressed by the City Commission.

Petitioners' application was heard on two separate dates: first, on June 5th, 2018, at which hearing the Petitioners were represented by Jed Frankel, Esquire, of Eisinger Lewis Frankel Chaiet, P.A.[4] At that hearing, the Board denied the Petitioners' application to remove the horizontal metal band design element. The Petitioners then obtained new counsel (Neisen Kasdin of Akerman, LLP).[5] Subsequently, Petitioners filed for rehearing and an appeal of the original order. The second date, the date of the rehearing, request was October 2, 2018.

The rehearing process involves a two-step inquiry: first, whether the Board would allow rehearing, and second, to hold the actual rehearing. The Board, after some proffered argument of counsel declined to rehear the application.[6] The Board never entertained the merits of the rehearing request.[7] According to Section 118-9(c)(2)(B) of the City Code, the powers of the City Commission on hearing Design Review Board appeals, **does not include the power to hear an appeal of orders denying or granting rehearing** ["orders granting or denying a request for rehearing shall not be reviewed by the City Commission, as the City Commission lacks the authority to require the rehearing request"]. As such, any argument, or reference by the Petitioners to the rehearing should be dismissed. In fact, the City Commission is without the authority to entertain those documents or testimony, as the City Commission lacks jurisdiction to

do so. Any reference to the denial of the rehearing request is improperly before the City Commission, and should be stricken from the record. Exhibits M through T should be stricken from the record as no rehearing was granted and as these Exhibits were utilized solely at the rehearing.

The record properly before the City Commission is the record from the June 5, 2018 hearing are Exhibits A-L. At that hearing, Petitioners requested "exterior design modifications to the façade of an existing 41-story building to remove existing metal panels along the exterior glass balcony railings on all elevations of the building and retain all clear glass railings."[8] Ultimately, the Board rejected the request to alter the iconic, and world class architectural design.[9]

Please note, it is not the power of the City Commission to reweigh the evidence. Rather, the standard of review by the City Commission is to determine if there is any evidence to support the Board's action. What this means is – if the Mayor and City Commission find that there is competent substantial evidence on the record from the DRB hearing to support their decision to deny design review approval for the Petitions – then the decision of the DRB must be upheld as the correct law was applied to the application. The above appellate standard mirrors the standard used by the Circuit Court in reviewing other land development decisions – including the City's Planning Board, Board of Adjustment, and Historic Preservation Board decisions. Under case law, the appellate body is to uphold a decision [here, the DRB order] if there is competent substantial evidence in the record to support the decision.[10] The standard is not whether there is evidence in the record that would contradict the order, or would support a different decision.[11] The decision of the Mayor and City Commission is not "de novo" [meaning the review is not "new"]. The City Commission is not holding a new evidentiary hearing. No new facts can be presented to the City Commission. Rather, the City Commission is to look at the file, the transcripts, the tape of the hearing, and the exhibits on appeal to see if the record supports the decision of the DRB. The City Commission does have the authority to "reverse, amend, modify or remand amendment, modification, or rehearing the decision of the board." See Section 118-(c)(4).

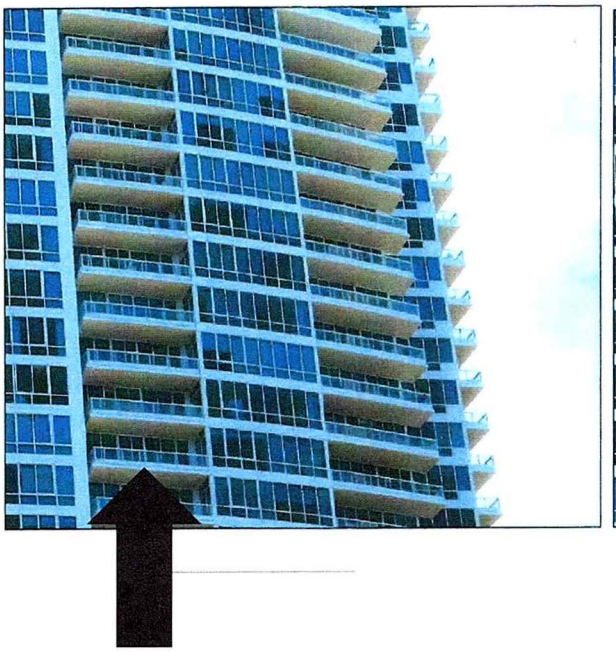
A five-sevenths (5/7th) vote of the City Commission is required to reverse or remand the decision of the DRB on appeal.[12]

Based upon the evidence presented on appeal, the City Commission is to decide whether the decision of the DRB should be upheld, modified, or overturned.

2. Relevant Facts

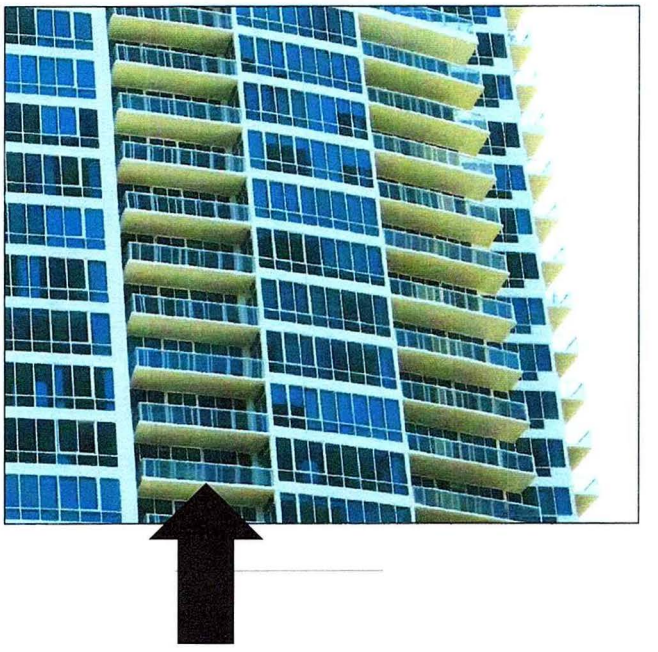
The entire appeal is over whether a horizontal band design element on 41 stories of balconies should remain.

Original Design Element



Thicker, balcony design and uniform horizontal feature.

Proposed Removal of Design Element[13]



Removed element, uneven massing.

Contrary to the arguments of Petitioners, the DRB obtained testimony and indicated a desire to keep the horizontal design feature. At no point did the Board recommend retaining a faulty taped/glued metal panel. The verbatim transcript of the DRB hearing reflects the Board desired to preserve the iconic design of the Continuum South Tower, designed by renowned architect (SOM) Skidmore Owens and Merill. [14]

The Design – By Renowned Architect (SOM) Skidmore Owens and Merrill[15]

During the hearing the Board Members advised:

> [The architect, (SOM) Skidmore Owens and Merrill, is] iconic in the buildings that they do around the world, and, in fact, they are copied everywhere. It's fascinating. In today's New York Times there were three copies of your building shown... This building has been replicated all over the world because everyone loves it.[16]
>
> * * *
>
> [(SOM) Skidmore Owens and Merrill] a really prominent architect, creating a prominent building in the City, and particularly on points in the City that is sort of the first part that cruise ships, see, and it's sort of welcoming to Miami. It's not only Miami Beach, it's really Miami. That's how you reach the port, that's what greets you from the ocean.[17]

The Petitioners, in their design review board application to remove the panels ignores the iconic architecture.[18] Rather than specifically addressing the architecture, and the iconic design, the Petitioners argued two contrary positions: (i) that the safety of the glass would not allow the replication of the horizontal white strip design on the balconies, thus alleging that the Board violated Section 118-251(a) of the City Code [safety of the community]; and (ii) that the value engineered horizontal white metal strip design was not part of the original building design from the 1998 DRB approval. Both arguments appear to be "Red Herrings".

One member of the public, Victor Diaz, testified:

> There is a dispute in the record between the representations contained in the staff report and the statement made by the presenter that this architectural feature was integral part of the

> original exterior design of this building as approved by the Design Review Board 20 years ago. No explanation is offered by the applicant as to why, if, in fact, this was not the SOM-approved design by the DRB, it was built and has existed there for 20 years."[19]

He went on to say: "None of the proponents of the alternative design can be heard to complain that they will be aggrieved by staff's recommendation to some effort to preserve the original design be made as we all bought into the original design."[20]

(i) The Petitioners had resolved pending safety issues. As such, the Board properly questioned the sole design remedy proposed by the Petitioners – and rejected the removal of the design element as the only way to resolve the design issue.

As was correctly pointed out at the hearing the Design Review Board is **not** the Unsafe Structures Board.[21] And, the record reflects that the City's Building Official, has, on a case by case basis, allowed for the removal of panels that presented an unsafe situation. Petitioners admit over 130 panels were removed under authorization of Building Official.[22] Mr. Diaz, a resident of the building, testified "There are no reported incidents of an injury."[23] He then went on to state:

> After staff objected (to complete removal of the design without Board approval" and said, If you seek to make an exterior modification to an iconic structure of Miami Beach, merely make an application to the DRB. They then circumvented staff and went into the building department to try to get an emergency permit pulled to do a life safety repair saying there was an emergency life safety problem presented by the delamination of these panels. That permit has been subsequently revoked by the authority of the building director because this applicant grossly exceeded the scope of the permit that was granted by the building director exercising extraordinary authority in circumventing the design review process, saying, Go ahead and take off the building any panels that may pose a life safety issue and just limit your work to that, but they didn't. They went ahead and removed additional panels in order to rally community support for the fact that you would have a better view if those panels were not there. So this is being prepared at the time that they presented that to the building director, they said that the public safety threat was the delamination of the panels and, ... these panels flying off the building and decapitating someone. Today they proffer an alternative justification that the replacement of the panel, which they first said was technologically not feasible, is technologically feasible, but they would compromise the integrity of the tempered glass. No

> attempt has been made to look at alternative ways of preserving the original design without compromising the integrity of the tempered panels, for example, simply frosting the glass as to maintain the original banding horizontal appearance, which is an integral part of the streamline look and the design of the building as it was presented and as we – as it has become an iconic part of Miami Beach architecture.... There are alternative means that could have been preserved, explored by the applicant and tested by staff to make sure that the original integrity of the design would be preserved while making sure I, like every other resident of the building, want to live in a safe building and provide for safety of my community.[24]

There is no evidence on the record that there was a pending unsafe condition at the time of the Design Review Board's review of the application.[25]

Despite the Petitioner's framing of the appellate argument – it is not whether the existing panels are safe – the Building Official is allowing their removal – the argument, is whether the building design should be altered. The Petitioners have refused to explain why the architectural design should be changed (other than cost); how the design would be enhanced, if changed; and why the design options to retain the horizontal strip on the balconies could not be achieved. In fact, Steven E. Howes the Petitioners' Window/Fenestration stated: "It is my opinion, (referring to DRB staff recommendation to keep the design element) the design could be maintained by "totally replacing the current railing system with a new designed, Code Compliant, impact resistant railing system."[26] Despite the foregoing, Petitioners focused on their desired result -- the removal of the panels -- without a concern for the alteration of the iconic building design. The Petitioners do not seek to come into compliance with the current building code, which would make the entire building safer, and which would allow for the utilization of new technologies and greater safety standards.[27] Petitioners are seeking the cheaper, less safe, alternative.[28] The Petitioners desire to remain "grandfathered" under an old building Code (1999), and not bring the balconies in compliance with newer, greater safety codes under the 2018 Florida Building Code, which new code would accommodate the white horizontal design feature of the (SOM) Skidmore Owens and Merrill design.[29]

The Board offered several designs solution that would allow for the horizontal design feature to remain. The Petitioner's representative responded "[t]hat would cost the building millions of dollars in order to replace the entire railing system." Id. The Board Chair then asked the Petitioners "What would you do if it were not for money for the safety of everyone in the building and to meet code?" Petitioner's representative responded "I would remove the panels, I would take the glass out and clean it. I would put in new railings at the bottom and put the gaskets around it."[30] He then continued, "[b]ut if I didn't worry about money at all, then it has to be brought up to modern codes." It seems that although safety was the basis for the request, the Petitioner did not want to spend the money to bring the glass balconies into safety compliance with the current Florida Building Code, which would require impact glass instead of the existing tempered glass (which shatters easier than safety glass).[31] "If you're going to replace this and get

this look, the only way, but it's millions of dollars. That's an awful lot." Id. Ironically, the proposed current plan, to remove the panels and clean the glass will cost the Petitioners $10,400,000.[32] During the public hearing, Mr. Diaz cross-examined the Petitioners' expert and asked "It's the same aesthetic – could the same aesthetic appearance of the banding be preserved with tempered glass that does not have to have metal panels attached to it" The expert responded "Yes, its possible."[33]

Moreover, when the Board came up with a design that would not necessarily be an expensive alternative, the use of an "application" on the glass, like a "frost," the Petitioners stated "Can be done, yes." However, Petitioner then argued that the treatment would allow for finger prints and dirt.[34] And, that a "sandblast – is [a] terribl[e] stain."[35] The record reflects that there was no intent by the Petitioner to find a remedy that would keep the horizontal design element of the iconic, world renowned building. The Chair, concerned with safety stated "So, if you're removing and making a repair, wouldn't you have to bring it up to code or feel safely that you've recommended that they're bring it up to code and bring it to your condo associations." Ultimately, Petitioner's represented responded "If we were building a new building, then we would have to do something different."[36] The Chair then stated "But you recognize that this current reinstallation is not to code?" The expert responded "That's correct." The Chair also confirmed that the expert could agree that the "white horizontal band in that dimension can be applied to that glass and reinstalled."[37] Furthermore, after Petitioners' experts testified, Mr. Diaz advised the Board:

> I find it somewhat ironic, and I turn to my neighbors, that you would have your expert tell you that the safest design is to do the right thing and then advocate for not doing the correct thing just simply because it's cheaper. He's told you that it is not only feasible to preserve the original design, but also safer for the community as a whole to replace the existing glass system with an ungraded safety glass system, and now they're fighting that and saying, Well, we have a loophole, we're grandfathered under the old code.[38]

The record reflects that the Board seriously considered all safety concerns, including safety concerns not raised by the Petitioners, as to the installed "tempered" glass that is not being updated to safety glass.

(ii) The (SOM) Skidmore Owens and Merrill design from 1999 had the horizontal architectural feature.

The Petitioners final argument is that the value engineered white horizontal line was not part of the original design of the building. This argument seems to be an effort to disclaim the value engineering efforts of the Petitioner's Contractor back in 1998.[39] Petitioners' Emergency Railing System Repair provides:[40]

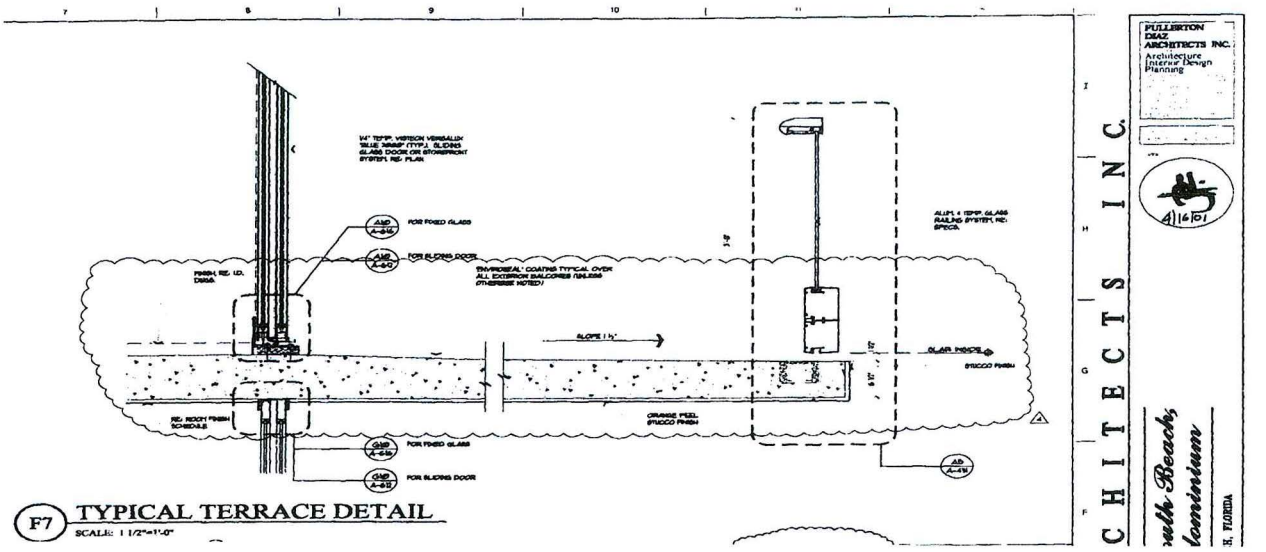
> Close up of Detail F7 From Previous Sheet A-431

- This detail clearly shows the design intension for this railing system was a metal channel at the bottom of nailing system to receive the glass segment with a metal rail cap to hold the glass in place.

- This is not what was installed currently in the building. Therefore, the design intension was not executed.

The 1988 plans approved by the Board do reflect a large, white horizontal ban.[41] The 1998 plans did not specify or call out the "gluing" or "pasting" of a metal white panel to the balconies.[42] A Board member, and practicing architect, advised that the 1988 plans did reflect the horizontal design element, at "sheet A341." "I do believe that it was intended for that band to read fatter than what you're arguing... it has a double frame at the bottom. It's not glass coming into the concrete, it has actually a thickened frame.... I'm looking at sheet A341"].[43]

Terrace Detail[44]



Simply looking at the record, it is apparent that the Petitioners are splitting hairs. They disingenuously argue the specific value engineered design element was not in the plans. But, the record did reflect that there was a horizontal feature along the balconies.

Rendering of the Horizontal Elements approved in 1998 by DRB

All the plans reflect the white strip, around the balconies, providing the horizontal alignment.

Moreover, the Board addressed time and again, the horizontal design of building:

> I'm really looking at the continuity – the only thing that draws me to the line is the continuity of the horizontal. The minute that you break the line, like in your bottom slide here, in your bottom board, the vertical becomes a prominent....The horizontal is what binds the volume together, and that's why I'm fighting to not lose it ..."[45]

During the June 5th hearing Petitioner's did not deny that the panels were value engineered.[46] The Petitioners' representative, in responding to a Board member's inquiry as to a double frame at the bottom of the balcony [the pre-value engineered element]:

> **Yes, you're correct**. And if you look at the next two pages after, it shows a section blow up of what the intention of that railing was supposed to be, somewhere between the SOM design and [final architect] taking over the project after their submissions of which at some point it had to be submitted... it was intended to be a railing system with a bottom metal channel to receive the glass."[47]

The record before the Board was clear – the horizontal metal effect was always intended by SOM, the world renowned architect. As such, the Petitioners should not now be justified in arguing that the design element was not part of the 1998 plans. It was, but probably in a more secure, and stable – non-value engineered form.

The responsibility of the Design Review Board is to review design elements. The Board does not review the specific mechanics of construction. Those specifics are the purview of the Building Official under the Florida Building Code. Construction plans are not ordinarily included in the Board package. Nor are they developed at the time of Board approval. The construction plans submitted to the Building Official is the document that would reflect the value engineering (reducing the construction costs for the building), and where the balconies with a bottom metal channel with glass above, would be value engineered into glass with a glued metal panel. The 1998 Design Review Board approved the building design, at a design development stage that depicted thickened balcony slab edges to match the horizontal stucco banding that ran along all elevations of the building. The inclusion of the panels at the time of permit, to address building and construction cost saving value engineering requirements, were to ensure compliance with the approved DRB design (the horizontal elements), while saving the Contractor money.[48]

All the plans reflect the white strip, around the balconies, providing the horizontal alignment.[49] Further, the June 5, 2018 staff report and recommendation indicated:

> As stated in the 1998 staff recommendation for the project, *"the elevations have been simplified...a more straightforward array of painted concrete and glass balcony rails has been combined with elegantly stepped exterior walls".* The emphasized horizontality offers a visual relief for the eye and breaks up the vertical scale of the tower.[50]

[White panel along balcony bottom edge]

The applicant is requesting to remove these architectural metal panels without replacing them. As proposed, the balcony panels would be full glass, thus eliminating the continuity of the horizontal banding. *Although the original developer and contractor failed to secure the metal panels in a method that meets code for windload,* ***such panels can and should be reintroduced with a code compliant method of installation, such as an epoxy adhesive.*** The metal panels are an integral design detail of the building's façade and is a driving feature of the architectural anchor of the south end of the peninisula of Miami Beach.

Additionally, as specifically noted in the 1998 DRB report, *"Given the size of the tower and its massing, the key component for this project to be truly successful will be the color chosen for the structures, as well as the color and variety of fenestration and balcony rails."* The architecture features floor to ceiling windows within the units throughtout all façades. If the architect intended the baclonies to have full transparency, like the floor to ceiling windows, they would have designed the balcony railing without the low metal component. Instead, *due to the overwhelming verticality of the tower on the acreage, a horizontal repitition is necessary to*

> *scale down the enormity of the building. The permament removal of the 12" x 36" panels will disrupt the horizontal harmony of the building since the banding is a key archtiectural feature.*
>
> Indeed, the exhibits submitted by the applicant clearly show the impact of removing the panels on the iconic, continuity of the architecture. The balconies, as proposed by the applicant, are more akin to coastal Cities that do not place a strong emphasis on architecture and urban design.
>
> Staff **STRONGLY** recommends that the applicant be required to reintroduce the architectural metal panels into the balcony system, in a manner that meets all structural and wind load codes. There is no doubt that this can be accomplished in a code compliant manner.[51]

The Planning Staff report recognized the design element. Planning staff testimony and their staff report is considered competent substantial evidence.[52]

During the hearing, the Board Chair then made several additional recommendations on addressing the design element that don't all cost millions of dollars: (a) the use of a frosting coat;[53] (b) sandblasting;[54] (c) having the metal attached to the slab instead of the glass;[55] (d) replace the glass with impact glass, with a horizontal strip coloring";[56] or (e) "frit the exterior."[57] Petitioners' representative rejected each suggestion.[58] The Board, at no point, stated these metal panels need to stay. Rather, the Board pointed out at **least five (5) different** methods for providing the horizontal design element. Several of which Petitioner conceded could work. The Petitioner elected not to entertain any of alternative mechanisms of creating the design element. In an effort to facilitate the Petitioners review of the various design options, the Board offered to continue the application so that the design options could be explored. The Petitioner, instead, chose to obtain a denial.[59]

As no other criteria were challenged by the Petitioners, it is clear that these other criteria are not on appeal.

3. There Is Abundant Competent Substantial Evidence To Support The Decision Of The DRB.

Based upon the foregoing, the only real question before the City Commission is whether there is competent substantial evidence to support the decision of the DRB to deny the design review approval to the Petitioners' application.

Courts have interpreted what is substantial competent evidence, and have determined that such a finding requires two separate inquiries: (1) whether the evidence "will establish a substantial basis of fact from which one fact can be reasonably inferred;" and (2) whether the evidence is "sufficiently relevant and material that a reasonable mind would accept it as

adequate to support the conclusion reached."[60] In reviewing the transcripts, exhibits, videos of the public hearings, and arguments of counsel, the City Commission should take into consideration this standard in determining whether the DRB approval of the design was substantiated by competent substantial evidence in the record.

Planning Department recommended that the design not be approved, as presented. Staff recommended modifications to the design. Please note, that the staff report and recommendation of the City's Planner (and his planning staff) are considered "competent substantial evidence."[61] Petitioners' Window/Fenestration expert admitted there were ways to keep the horizontal design "kick plate."[62] The City relies on the entirety of the record below as to competent substantial evidence.

As the staff report is competent substantial evidence, and is accompanied by copies of the 1998 design review board plans, that shown the white band around the balconies; there is competent substantial evidence in the record to support the decision of the Board to maintain the horizontal design. Moreover, the testimony of the Petitioners[63] supports the Board's finding.

4. The Board Complied With the Essential Requirements of Law.

Petitioners argue that the Board ignored Section 118-251(a), which states, in relevant part:

> Design review encompasses the examination of architectural drawings for consistency with the criteria stated below, with regard to the **aesthetics, appearances, safety, and function of any new or existing structure and physical attributes of the project in relation to the site, adjacent structures and surrounding community**.

It is clear that safety concerns were not ignored. Neither were the aesthetics or physical attributes of the project. In fact, the Board Chair stated: '"What would you recommend if we want to keep that dimension, the white portion at the lower portion of the glass? We all agree the metal is a bad solution."[64] Further, as stated by Board Member Delgado: "Obviously safety is one them" [one the important issues]."[65] And, the record reflects that the dangerous panels were removed under the authority of the Building Official.[66] In fact, the Board was concerned with the Petitioner removing, cleaning and re-installing the existing glass that does not meet the current Building code: "[you are reinstalling the tempered glass] even though a projectile hitting the glass would make it shatter." Petitioner's representative added "Even birds" would "Break it."[67]

The Board complied with all the criteria of Section 118-251 of the City Code, and did focus a lot of effort on maintaining the world class and iconic SOM architecture. The Building Official did not come to the hearing or send the Petitioners to the Unsafe Structure Board for a demolition order due to an unsafe condition. The Petitioners did not have the Building Official testify. And, the record reflects that the immediate danger was resolved by the Building Official allowing the delaminating panels to be removed. While allowing the security measures to proceed, the

Building Official also recognized the design element and required DRB approval for any permanent substantive changes to the design.

In fact, the Board, tried to find different methods for obtaining the horizontal effect, without requiring the retention of the actual metal panels. The Board pointed out at **least five (5) different** methods for providing the horizontal design element. Several of which Petitioner conceded could work. The Petitioner elected not to entertain any of alternative mechanisms of creating the design element. In an effort to facilitate the Petitioners review of the various the design options, the Board offered to continue the application so that the design options could be explored. The Petitioner, instead, chose to obtain a denial.[68]

As the correct law was applied, and safety was taken into consideration, the decision of the DRB should be upheld.

5. Conclusion

The Petitioners appeal should be denied as (1) Petitioners never raised a concern over procedural due process; (2) competent substantial evidence supports the decision of the DRB; and (3) if the City Commission agrees that there is competent substantial evidence to support the design, then, the argument relating to the failure of the DRB to apply the correct law (adhere to the essential requirements of law) is moot. If the Mayor and City Commission support the DRB's decision, and that there was competent substantial evidence at the June 5, 2018 DRB hearing to deny the Petitioner's application to modify the design, then then the Petition should be denied.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the forgoing was emailed this 20th day of November, 2018 to:

Neisen O. Kasdin
Primary Email: neisen.kasdin@akerman.com
Secondary Email: diana.perez-gata@akerman.com

Joni Armstrong Coffey
Primary Email: joni.armstrong.coffey@akerman.com
Secondary Email: maria.y.gonzalez@akerman.com

Kristofer D. Machado
Primary Email: kristofer.machado@akerman.com
Secondary Email: blislainey.pascual@akerman.com

98 SE 7th Street, Suite 1100
Miami, Florida 33131
Phone: 305.374.5600
Fax: 305.374.5095
Counsel for Petitioner

Eve A. Boutsis
Chief Deputy City Attorney
Florida Bar No. 0082538

---

[1] All citations to authority shall be placed in endnotes so as not interfere with or distract from the review of factual arguments.
[2] Section 118-9(c)(4) of the City Code.
[3] Pursuant to Section 118-9(c)(4)C.(i) of the City Code, the appeal shall be in writing, and include all record evidence, facts, law and arguments necessary for the appeal (this appellate document shall be called the "brief").
[4] Ex. J, at Pg. 1.
[5] Petitioners' Brief.
[6] Ex. R, T, pg. 33.
[7] *Id.*
[8] Ex. J, pg. 3.
[9] Ex. J, pg. 50.
[10] *Metropolitan Dade County v. Blumenthal*, 675 So.2d 598, 605 (Fla. 3d DCA 1996)(*en banc*)("The legal issue for the circuit court to consider was whether or not there was substantial competent evidence to support [the Board's] resolution.")

[11] It is not the role of the [City Commission on appeal] to reweigh the evidence before the board, but instead to determine whether the evidence: (1) "will establish a substantial basis of fact from which one fact can be reasonably inferred;" and (2) is "sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached." *De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957). It cannot be gainsaid that the evidence before the board met that standard. See *City of Fort Lauderdale v. Multidyne Med. Waste Management*, 567 So. 2d 955 (Fla. 4th DCA 1990) (court may not re-weigh evidence presented by competing expert witnesses). When the facts in the record give the board a "choice between alternatives," it is up to the board to make that decision, not the appellate panel. *Metro. Dade County v. Blumenthal*, 675 So. 2d 598, 606 (Fla. 3d DCA 1995).

[12] Section 118-9(c)(4) of the City Code.

[13] Ex. F, pg. 38.

[14] Ex. J, pg. 39.

[15] Ex. F, pg. 10.

[16] Ex. J, pg. 39.

[17] Ex. J, pgs. 27-28.

[18] Ex. G, pg. 6.

[19] Ex J, pgs. 18-19.

[20] Ex. J, pg. 19.

[21] Ex. J, pg. 46.

[22] Ex. J, pgs. 25-30.

[23] Ex J, pg. 20.

[24] Ex. J, pgs. 20-23.

[25] Ex. B, G, pg. 6.

[26] Ex. I.

[27] Ex. I, J, pg. 29.

[28] Ex. J, pg. 29.

[29] Ex. J, pg 28-29.

[30] Ex. J, pg. 31

[31] *Id.* pg. 31-39

[32] Ex I, AIA Change Order.

[33] Ex. J, pg. 26.

[34] Ex. J, pg. 32-33

[35] *Id.* at Pg. 33.

[36] Ex. J, pg. 32.

[37] Ex. J, pg. 33.

[38] Ex J, pg. 43.

[39] Ex. J, pg. 42.

[40] Ex. I, pgs. 2 and 13.

[41] Ex. J, pg. 28.

[42] Ex. I, pg. 14.

[43] Ex. J, pg. 28.

[44] Ex. I, pg. 14.

[45] *Id.* at pg. 41.

[46] Ex. J, pg. 42
[47] Ex. J, pgs. 28-29.
[48] Ex. J, pg 42.
[49] Ex. F.
[50] Ex. G, pg. 6.
[51] Ex. G, pgs. 6-7.
[52] Under Florida law, the opinion of professional staff generally is deemed to constitute substantial competent evidence. See, e.g. *Hillsborough County Bd. Of County Comm'rs v. Longo*, 505 So.2d 470 (Fla. 2d DCA 1987).
[53] Ex. J, pgs. 32-33.
[54] *Id.* at pg. 33-34.
[55] *Id.* at pg. 36.
[56] *Id.* at pg. 38.
[57] *Id.* at 39.
[58] *Id.*
[59] Ex. J, pgs. 48-50.
[60] *De Groot v. Sheffield*, 95 So.2d 912, 916 (Fla. 1957).
[61] Under Florida law, the opinion of professional staff generally is deemed to constitute substantial competent evidence. See, e.g. *Hillsborough County Bd. Of County Comm'rs v. Longo*, 505 So.2d 470 (Fla. 2d DCA 1987).
[62] Ex. I, and J, pg. 29.
[63] Ex. J
[64] Ex. J. pg. 35.
[65] Ex. I, pg. 27.
[66] See supra, at section (i), starting on page 4.
[67] Ex. J, pg. 17.
[68] Ex. J. pgs. 48-50.