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Judge to trolley garage neighbors: Sorry, but I can't help

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Judge Ronald Dresnick claims not to have jurisdiction on the Industrial Trolley Garage that will go up on West Grove, where residents there do not want the trolley garage built in their neighborhhod on Friday July 16, 2013

While he sympathized with West Grove residents' frustration over the city of Miami's murky process for appealing a trolley garage being built in their neighborhood, a Miami-Dade circuit judge on Friday said there was nothing he could do to help them.

"I just don't have the jurisdiction," Judge Ronald Dresnick told about 30 residents after his ruling from the bench. "I'm sorry I can't help you."

Residents sued the city and developer Henry Torres this year after the city gave Torres' company, Astor Trolley, permission to build a depot and maintenance garage for Coral Gables trolleys in the 3300 block of Douglas Road without holding a public hearing.

Astor is building a luxury, 10-story mixed use condominium tower along LeJeune Road. Part of the site is now occupied by a Coral Gables trolley garage. Coral Gables agreed to swap out the land if Astor built a new garage. So in May 2011, Astor applied to build the garage in Coconut Grove, on land that backs up to a historic black neighborhood settled by some of Miami's earliest inhabitants.

The area includes some of its oldest churches and single family houses, including the home of longtime resident Dorothy Henry, who retired last year after working 46 years as a secretary at Miami Children's Hospital. Henry, one of the plaintiff's in the suit, raised five children in her pink house that now sits just feet from an 8-foot wall surrounding the nearly completed garage.

Residents say the developer initially approached two neighborhood associations seeking support. But after their requests for retail space and a trolley stop to serve the neighborhood were rejected, the groups passed resolutions opposing it. Torres, who attended Friday's hearing, declined to comment on the project.

When city staff finally approved the project in May 2012, no one appealed the decision.

Residents have said the $1,500 fee required to file an objection was too costly. In addition, the

approval was only posted online and they say by the time they found out, it was too late.

But when construction began in December, opposition mounted. Residents staged protests and started an online petition. The University of Miami law school's Center for Ethics and Public Service also began investigating how the city applied its zoning code and helped residents assemble a team of pro bono attorneys to challenge the project.

In their lawsuit, residents argued that the project not only failed to follow the city's code, but new abbreviated, administrative approvals authorized under Miami 21 violated their constitutional rights by not giving them a chance to fight the garage.

"Miami 21 has shifted the burden from the applicant, who needs to provide notification, to the homeowner, who has to have perpetual vigilance," attorney Joel Brown argued Friday. "The city of Miami did its own study and 49 percent (of residents) don't even have Internet."

Brown, along with attorneys Philip Freidin, Lowell Kuvin and Ralf Brookes, a Cape Coral land use attorney, also argued that government-run maintenance facilities are considered an industrial use under Miami 21. Warrants can only be used in existing zoning. Since the warrant issued by the city only permits a commercial garage, they asked the judge to order the developer to follow the warrant.

"They asked for commercial, judge, and they got commercial," Brown said. "This is a classic case of be careful what you ask for."

But Alan Dimond, an attorney with Greenberg Traurig who represents Astor, argued that the developer followed the city's rules, and since residents never even attempted to appeal the decision, the judge could not now step in.

"I'm certainly sympathetic to the history of the community. I've lived in Coconut Grove in eight different locations. But it's not at all relevant.

"The party cannot come to this court, to this place of decision, until the administrative process has been exhausted."

Dimond further argued that the property's use, not its ownership, determined the approval.

"The city made the decision. It took them a year to make the decision and the decision was this use was appropriate for the zoning that existed," he said.

But Kuvin and Brookes countered that if use determined the approval, and not ownership, then the use should be restricted to a commercial, not government, garage.

"The ultimate purpose of zoning is to separate potentially incompatible uses," the attorneys wrote in their lawsuit. "Under Miami 21... new development on the Douglas Road corridor 'shall promote pedestrian activity, such as porches, loggias, windows, entries, plazas and ground floor retail uses where permissible.' "

The garage, they argued, doesn't even provide a stop for residents, let alone provide business residents can use or reflect the neighborhood's history or heritage.

But ultimately, the case rested on whether or not the judge could intervene. And while he conceded he likes "the old-fashioned way on paper, I'm not going to stand in front of history.

"They are disenfranchising you. Forty percent of people don't have (Internet access)," he said. "But it's not up to me."

Freidin said attorneys would meet with residents and decide whether to appeal the judge's decision in the next few days.

"This is a Catch 22 in that the notice provisions, while the judge held were adequate, were clearly insufficient. And now because they're insufficient, we're unable to complain."

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