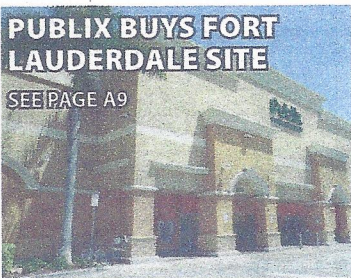


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OFFICIAL COURT NEWSPAPER OF SOUTH FLORIDA

DailyBusinessReview.com

An **ALM** Publication VOL. 89, NO. 213 \$2.00

DAILY BUSINESS REVIEW

Plan to Develop Miami Beach Churchyard Comes Under Attack



J. ALBERT DIAZ

The new development would restore the 1920 church facade on Lincoln Road, remove a wall built in 1955 and create a landscaped roof to compensate for the lost courtyard.

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A yearlong bureaucratic and political battle over a proposed Lincoln Road development has moved to court, pitting preservationists against a prominent developer with grand plans for the future.

Miami-Dade Circuit Judge Bronwyn C. Miller has scheduled arguments April 24 on a motion to dismiss the lawsuit filed by the Miami Design Preservation League Inc., which is seeking to stop development of a century-old churchyard on the southwest corner of Lincoln Road and Drexel Avenue.

The nonprofit group's complaint was filed March 23 against Miami Beach, a company controlled by developer David Edelstein and the congregation of the Miami Beach

Community Church.

The lawsuit seeks an injunction to halt construction until the resolution of another lawsuit filed by the church against the city and league in December. That lawsuit resulted in a settlement with the city, but not the league, clearing the way for the 41,300-square-foot, three-story retail building requiring demolition of a church courtyard wall.

The latest filing hardens the stances of the litigants and addresses a conflict that worked itself through the machinery of city politics, including mediation.

The fight has been brewing since last May when Miami Beach's Historic Preservation Board gave preliminary approval to plans by David Edelstein's South Beach Tristar LLC to build a sleek glass-and-limestone structure on church ground.

The city planning department noted approvingly that the new development would restore the 1920 church facade on Lincoln Road, remove the wall built in 1955 and create a landscaped roof to make up for the loss of the courtyard.

Those features failed to placate preservationists, who argued replacing an open community space with stores destroys the historic character of the corner.

A Miami New Times article last August before board review said the developer failed to disclose a \$500,000 payment to

the church. A complaint on the matter ended up before the city's zoning special master, Warren Bittner, a retired Miami assistant city attorney who was assigned to mediate the issue. He determined the \$500,000 should have been reported to the city.

The league's victory was short-lived after the church challenged the special master's report and sought additional mediation under a process governed by the Florida Land Use and Environmental Dispute Resolution Act. In that mediation led in February by former Miami-Dade County Attorney Murray Greenberg, Miami Beach explicitly rebuked its special master's decision and overruled it as part of a settlement with the developer.

'SPECIAL INJURY'

In the new lawsuit, preservationists claim the city had no right to toss out the special master's report and asked the court to stop construction stopped until a challenge to Bittner's ruling can be appealed in Miami-Dade Circuit Court.

Attorney Stuart Reed of Stuart Reed Law & Mediation in Hallandale Beach, representing the preservationists, did not respond to calls for comment by deadline.

Miami-Dade Circuit Judge Bronwyn C. Miller has scheduled arguments April 24 on a motion to dismiss the lawsuit filed by the Miami Design Preservation League Inc., which is seeking to stop development of a century-old churchyard.

The developer is represented by John Shubin of Shubin & Bass in Miami; the church is represented by Stephen Maher of Shutts & Bowen in Miami. Raoul Cantero, T. Neal McAliley and Chris Swift-Perez of White & Case in Miami are representing Miami Beach along with Deputy City Attorney Eve Boutsis.

In the motion for dismissal filed by the developer and church, the attorneys stress the city had the right to settle the challenge to its special master's report and should not be second-guessed by the court. The attorneys also claim the league doesn't have standing to bring the case because it can't dem-

onstrate "special injury" and failed to exhaust all administrative remedies.

David Sacks, a land use attorney and partner at Pathman Lewis who is not involved in the case but does substantial work in Miami Beach, echoed the preservationists' legal claim that the correct way for the developer to challenge the special master's decision would be to file a petition for writ of certiorari in circuit appellate court.

Sacks stressed, however, that engaging in possibly protracted litigation could hurt all parties.

"At some point, everybody loses if it goes on too long," he said.

Sacks pointed to a similar challenge by preservationists mounted against one of his clients who wanted to redevelop a property at 551 Lincoln Road, a historic theater building. In that case, he said the developer compromised by "preserving the old Lincoln Theater with a more modern H&M store" and restoring the terrazzo and marquee to its pre-World War II condition.

"There's a balance between the idea of preserving all things historic with keeping things modern," he said. "The balancing test will somehow find a way to resolve itself."

No compromise looks forthcoming in the battle over the churchyard.

Shubin told the Daily Business Review, "I don't believe that MDPL is interested in compromise."

As for his client, he said, "This is one of those cases where the developer wants to move forward as approved."

In his mind, Edelstein said development is imminent with construction set to start within six weeks.

"I'm not sure what it is that [the league] is seeking," Edelstein told the DBR as he lunched in the Design District near an assemblage his companies are accumulating in Miami's Wynwood neighborhood. "To me, there's a lot of just sour grapes."

"We already won, and they started a new lawsuit," he said. "The building is going to get built in the next year, year and a half."