

IN THE CIRCUIT COURT FOR THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY

WILLIAM DOUGLAS MUIR, an individual.

Plaintiff,

v.

CITY OF MIAMI, a Florida Municipal Corporation,
FRANCIS SUAREZ, Mayor, City of Miami,
EMILIO T. GONZALEZ, City Manager, City of Miami,
VICTORIA MENDEZ, City Attorney, City of Miami,
KEON HARDEMON, Chairman, City of Miami Commission,
KEN RUSSELL, Vice Chairman, City of Miami Commission,
JOE CARROLLO, Commissioner, City of Miami Commission,
WILFREDO GORT, Commissioner, City of Miami Commission,
MANOLO REYES, Commissioner, City of Miami Commission

Defendants.

COMPLAINT FOR WRIT OF MANDAMUS¹
(Time Sensitive)

PLAINTIFF, WILLIAM DOUGLAS MUIR on behalf of the public seeks entry of a Writ of Mandamus against Defendants the CITY OF MIAMI, a Florida Municipal Corporation, FRANCIS SUAREZ, Mayor, City of Miami, KEON HARDEMON, as Chairman, City of Miami Commission, KEN RUSSELL, Vice Chairman, City of Miami Commission, JOE CARROLLO, Commissioner, City of Miami Commission, MANOLO REYES, Commissioner, City of Miami Commission, and WILFREDO GORT, Commissioner, and alleges:

I. JURISDICTIONAL ALLEGATIONS AND ESTABLISHMENT OF VENUE

1. The Plaintiff, an individual, bringing this action on behalf of himself and the public, is a resident of the City of Miami, and is *sui juris*.

¹ This complaint contains embedded hyperlinks. Hyperlinks contain additional facts and exhibits on which the plaintiff relies for relief. Pursuant to Fla. R. Civ. P 1.630(b) "The initial pleading shall be a complaint".

2. The public includes, but is not limited to the inhabitants of the CITY OF MIAMI.²
3. The CITY OF MIAMI (“City”) is a Florida municipal corporation in Miami-Dade County, Florida where venue resides. The City is a governmental entity created by the state. It is a public institution designed to promote the common interests of the inhabitants in their organized capacity as a local government, and its objects are governmental, not commercial. Miami Water Works Local No. 654 v. City of Miami, 157 Fla. 445, 26 So. 2d 194, 165 A.L.R. 967.
4. FRANCIS SUAREZ is the Mayor of the City of Miami, and is named only in that capacity.
5. Defendant EMILIO T. GONZALEZ (“City Manager”) is the City Manager of the City of Miami, is named defendant only in that capacity.
6. VICTORIA MENDEZ (“City Attorney”) is the City Attorney for the City of Miami, and is named defendant only in that capacity.
7. Defendants Hon. KEON HARDEMON, the Hon. KEN RUSSELL, the Hon. JOE CAROLLO, the Hon. WILFREDO GORT, and the Hon. MANOLO REYES are each duly elected Commissioners (“the Commissioners”) of single member districts of the City of Miami and are named only in that capacity.
8. Florida’s Circuit Courts have jurisdiction to issue mandamus against local entities and local officials pursuant to Fla. R. Civ. P. 1.630.

II. SUMMARY OF THE PROCEDURAL ISSUES INVOLVING THE CITY OF MIAMI CHARTER

9. The City operates under the City Charter, under which the public has clear legal rights. Central to this action are the following rights vested in the City Charter to its residents:

² City of Miami Charter, Sec. 1. Creation and existence. The inhabitants of the City of Miami, Florida, within the boundaries hereinafter designated, or within such boundaries as may hereafter be established, shall continue to be a body politic and corporate under the name the "City of Miami," and as such shall have perpetual succession and may use a common seal.

a. public notice and a prior opportunity to compete for the lease or sale of any real property or interest owned by the City.

b. a right to have the Mayor, City Manager, and City Commissioners perform their duties and exercise their power in a manner consistent with Florida Statutes, the City Charter and its municipal code; and

c. prior public notice and the prior opportunity for the public to compete for the lease or sale of any real property or interest owned by the city following the provisions of [Sec. 29-A and B](#) of the City Charter.

III. PROCEDURAL REQUIREMENTS UNDER THE CITY OF MIAMI CHARTER REGARDING SALE, LEASE, OR DEVELOPMENT OF PUBLIC LAND

10. [Section 29-A](#) and [Chapter 18-, Article V](#) of the City of Miami Charter delineates the manner in which City-owned property can be leased, sold, or utilized by third parties.

11. This complaint seeks to enforce mandatory provisions of the Charter relating to Defendants' consideration of an unsolicited unified development project by a private entity to convert City-owned public land to private use as further set forth herein, ignoring mandatory provisions of the Section 29-A of the City Charter.

12. To enforce the rights of the public, prior to filing this complaint, Plaintiff made a clear and unambiguous [demand](#) that Defendants comply with the unambiguous terms of the Charter and seek competitive bids for any alternative use for the publically owned Melreese property and repeated that demand in writing.

13. The public has a clear and certain legal right to public notice and a prior opportunity to compete for the lease or sale of any real property or interest owned by the City.

14. The public has a right to have the Mayor, City Manager, and City Commissioners perform their duties and exercise their power in a manner consistent with Florida Statutes, the City Charter and municipal code.

15. The City and City Commission has a clear and indisputable duty to give prior public notice and the prior opportunity for the public to compete for the lease or sale of any real property or interest owned by the city and follow the provisions of [Sec. 29-A and B](#), of the City Charter and [Chapter 18, Article V](#) of the municipal code.

16. Complainant seeks enforcement of rights belonging to himself and the public which are clearly and certainly established in law. The City Charter [Section 29-A](#) provides in part:

(b) Sales and leases of real property; prohibition. ***Except as otherwise provided in this section, there shall be no sale, conveyance, or disposition of any interest, including any leasehold, in real property owned by the city, the department of off-street parking, or the downtown development authority, unless there has been prior public notice and a prior opportunity given to the public to compete for said real property or interest.*** Any such sale, conveyance, or disposition shall be conditioned upon compliance with: the provisions of this section; such procurement methods as may be prescribed by ordinance; and any restrictions that may be imposed by the city, the department of off-street parking, or the downtown development authority, as appropriate. ***Further, no right, title, or interest shall vest in the transferee of such property unless the sale, conveyance, or disposition is made to the highest responsible bidder, as is determined by the city commission, or the off-street parking board, or the downtown development authority board of directors.***

IV. THE UNSOLICITED UNIFIED DEVELOPMENT PROJECT

17. Miami Freedom Park, LLC (the “Mas group”) is a limited liability Florida corporation.

18. Led by developer Jorge Mas, the Mas group, with minimal public transparency lobbied the commission to pass resolutions [RE. 9 and RE. 10](#), i.e. a resolution “approving, setting forth, and submitting to the electorate a proposed charter amendment, amending section 29-B of the charter of the city,” purporting to allow the Mas group to develop “a soccer stadium, public park, technology hub, art and entertainment spaces, food and beverage venues, and a hotel and

conference center with ancillary commercial uses” on the City-owned Melreese property (the “Plan”) located adjacent to Miami International Airport upon approval by a majority of voters and 4/5 City Commissioners.

19. This maneuver sought to circumvent the required vetting and public transparency of a unified development project under Section 29-A of the Charter.

20. The proposal by the Mas group, given its first public airing on [July 12, 2018](#), is [in fact](#), and as a matter of law a unified development project as defined by the City of Miami Charter. *See* [Sec. 29-A](#). Contracts for, unified development projects, and real property; safeguards.

21. [PA. 1](#) (“the pitch”) titled Special Presentation by David Beckham and Jorge Mas on Major League Soccer franchise complex at International Links Melreese Country Club came after the close of public comment on [RE. 9 and RE. 10](#).

22. The unified development project envisioned by the Mas Group would make improvements to public park land, and give planning, leasing, design, construction, and management of public land, to the Mas group. Accordingly, the requirements of Section 29-A of the City Charter were compelled by the presentation of the Mas Group plan, yet the Mayor, City Manager, and City Attorney ignored the provisions of 29-A and sought to amend 29-B as a procedural gadget in an attempt to deny the public their right to compete on the unified development project.

23. The Resolution asks the Commission to approve a vague question to submit to the electorate that would combine multiple subjects, a project which would require multiple amendments of multiple sections to effectuate along with specific terms of a lease and unified development project.

24. The consideration by the City Commission prior to the enactment of a Charter amendment of these specific lease terms and the details related to the planning, lease, design, construction and

unified development of the Melreese property to a private entity is premature and in contradiction with the express terms of the Charter, and municipal code.

25. Any question which loads multiple subjects, requiring multiple amendments to multiple sections into a single, stuffed ballot question cannot be brought to the voters in a single referendum.

26. Additionally, the Commission is prohibited by Charter from considering the Mas proposal, until or unless the City Commission determines it is in the interest of the City to improve the City park-land and contract with a private entity and in strict compliance with Section 29-A of the charter, as part of a competitive process, as part of which the Commission would put the Melreese property up for competitive bid, and give the public notice required of the intended sale or lease under Section 29-B.

27. The Mayor, The City Commission, The City Manager and City Attorney is prohibited by both Sec. 29-A and 29-B from entering into negotiations with a single bidder, instead of using the competitive processes compelled by the Charter.

28. The City Commission intends to consider favorably voting on Agenda items [RE. 9 and RE. 10](#) at a Special Meeting convened on July 18, 2018 at 10:00 A.M.

29. The City Commission is mandated by Charter to comply with the procedures in Section 29-A and B of the City Charter, none of which have been amended, and which even if amended would only take effect upon adoption and incorporation in the Charter of the proposed amendment and upon the condition specified in the amendment.

30. Sec. 29-B reads in relevant part:

The city commission is prohibited from favorably considering any sale or lease of property owned by the city unless there is a return to the city of fair market value under such proposed sale or lease. **The city commission is also prohibited from favorably considering any sale or lease of city-owned property unless (a) there shall have been, prior to the date of the city commission's consideration of such sale or lease, an advertisement soliciting proposals for said sale or lease**

published in a daily newspaper of general paid circulation in the city, allowing not less than ninety (90) days for the city's receipt of proposals from prospective purchasers or lessees, said advertisement to be no less than one-fourth (1/4) page and the headline in the advertisement to be in a type no smaller than 18-point and, (b) except as provided below, there shall have been at least three (3) written proposals received from prospective purchasers or lessees;

31. The City, City Manager, City Attorney, and one or more members of the City Commission have failed to perform their duties to comply with the provisions of Sec. 29- A and B of the City Charter despite an adequate request, in writing, and demand at the July 12, 2018 meeting, and has left the petitioner with no other legal method for obtaining relief.

32. Pursuant to Fla. Stat. 166.031 Charter amendments.—

(1) The governing body of a municipality may, by ordinance...submit to the electors of said municipality a proposed amendment to its charter, which amendment may be to any part or to all of said charter except that part describing the boundaries of such municipality. The governing body of the municipality shall place the proposed amendment contained in the ordinance or petition to a vote of the electors at the next general election held within the municipality or at a special election called for such purpose.

(2) Upon adoption of an amendment to the charter of a municipality by a majority of the electors voting in a referendum upon such amendment, the governing body of said municipality shall have the amendment incorporated into the charter and shall file the revised charter with the Department of State. **All such amendments are effective on the date specified therein or as otherwise provided in the charter.**

Fla. Stat. 166.031 (Emphasis added)

33. The City Commission has not published a revised proposed ballot question since the language initially proposed in the July 12, 2018 agenda and may withhold this language until the special meeting called on July 18, 2018, while attempting to vote on the same, denying public participation and scrutiny.

34. The anticipated revised proposed amendment will attempt to log-roll multiple subjects in violation of Florida's single-subject rule as applied to municipal ordinances and resolutions, which requires that each ordinance or resolution shall embrace but one subject and matters properly

connected therewith, as provided by Fla. Stat. 166.041 Procedures for adoption of ordinances and resolutions.—

35. Regardless of the proposed ballot language, the effect of the unsolicited unified development plan and its consideration by the City Commission invokes the need for the writ sought.

36. The City Charter, Sec. 29-A – Contracts for, unified development projects, and real property; safeguards provides as follows:

Unified development projects. **A unified development project shall mean a project where an interest in real property is owned or is to be acquired by the city, is to be used for the development of improvements, and as to which the city commission determines that for the development of said improvements it is most advantageous to the city to procure from a private person,** as defined in the Code of the City of Miami, one or more of the following integrated packages:

- (1) planning and design, construction, and leasing; or
- (2) planning and design, leasing, and management; or
- (3) planning and design, construction, and management; or
- (4) planning and design, construction, leasing, and management.

So long as the person from whom the city procures one of the above-mentioned integrated packages provides all of the functions listed for that package, such person need not provide each listed function for the entire unified development project nor for the same part of the unified development project.

As many members of the public having expertise in the field of real estate development or in other relevant technical areas or who reside within the vicinity of a proposed unified development project site as deemed appropriate by the city manager shall be invited by the city manager to provide input during the preparation of documents for competitive processes of the unified development project.

If deemed appropriate by the city manager, the unified development project process shall include a request for qualifications process prior to the issuance of a request for proposals. Qualifications shall be evaluated by the city manager or designee(s) and only those deemed qualified in accordance with the specified evaluation criteria shall be invited to participate in the subsequent request for proposal process for said unified development project.

Requests for proposals for unified development projects shall generally define the nature of the uses the city is seeking for the unified development project and the estimated allocations of land for each use. They shall also state the following:

- (1) the specific parcel of land contemplated to be used or the geographic area the city desires to develop pursuant to the unified development project;
- (2) the specific evaluation criteria to be used by the below-mentioned certified public accounting firm;
- (3) the specific evaluation criteria to be used by the below-mentioned review committee;
- (4) the extent of the city's proposed commitment of funds, property, and services;
- (5) the definitions of the terms "substantial increase" and "material alteration" that will apply to the project pursuant to subsection (e)(4) hereof; and
- (6) a reservation of the right to reject all proposals and of the right of termination referred to in subsection (e)(4), below.

After public notice there shall be a public hearing at which the commission shall consider:

- (1) the contents of the request for proposals for the subject unified development project;
- (2) the selection of a certified public accounting firm, which shall include at least one member with previous experience in the type of development in question; and
- (3) the recommendations of the city manager for the appointment of persons to serve on the review committee. Said review committee shall consist of an appropriate number of city officials or employees and an equal number plus one of members of the public, whose names shall be submitted by the city manager no fewer than five days prior to the above-mentioned public hearing.

At the conclusion of the public hearing the city commission shall authorize the issuance of a request for proposals, select a certified public accounting firm, and appoint the members of the review committee only from among the persons recommended by the city manager.

The procedure for the selection of an integrated package proposals shall be as follows:

- (1) all proposals shall be analyzed by a certified public accounting firm appointed by the commission based only on the evaluation criteria applicable to said certified public accounting firm contained in the request for proposals. Said certified public accounting firm shall render a written report of its findings to the city manager.
- (2) the review committee shall evaluate each proposal based only on the evaluation criteria applicable to said review committee contained in the request for proposals. Said review committee shall render a written report to the city manager of its evaluation of each proposal, including any minority opinions.
- (3) taking into consideration the findings of the aforementioned certified public accounting firm and the evaluations of the aforementioned review committee, the

city manager shall recommend one or more of the proposals for acceptance by the city commission, or alternatively, the city manager may recommend that all proposals be rejected. If there are three or more proposals and the city manager recommends only one, or if the city manager recommends rejection of all proposals, the city manager shall state in writing the reasons for such recommendation.

In transmitting his or her recommendation or recommendations to the commission, the city manager shall include the written reports, including any minority opinions, rendered to by the aforementioned certified accounting firm and review committee.

(4) all contracts for unified development projects shall be awarded to the person whose proposal is most advantageous to the city, as determined by the city commission.

The commission may accept any recommendation of the city manager by an affirmative vote of a majority of its members. In the event the commission does not accept a proposal recommended by the city manager or does not reject all proposals, the commission shall seek recommendations directly from the aforementioned review committee, which shall make a recommendation or recommendations to the commission taking into account the report of the aforementioned certified public accounting firm and the evaluation criteria specified for the review committee in the request for proposals.

After receiving the direct recommendations of the review committee, the commission shall, by an affirmative vote of a majority of its members:

- (1) accept any recommendation of the review committee; or**
- (2) accept any previous recommendation of the city manager; or**
- (3) reject all proposals.**

All contracts for unified development projects shall be signed by the city manager or designee after approval thereof by the commission. The city manager or designee shall be responsible for developing a minority procurement program as may be prescribed by ordinance and permitted by law in conjunction with the award of contracts for unified development projects. **The provisions of this charter section shall supersede any other charter or code provision to the contrary.**

37. The lack of guidance from the City attorney has led to confusion and a lack of adherence to proscribed processes. The Charter, Sec. 29-A procedures for the Commission and City Manager to follow were mandatory, not discretionary. The Hon. Ken Russell stated on July 12, 2018

[\(Transcript\):](#)

“why are we here negotiating now? Why are we here on the dais? Where have we been for 3 months? We should have been doing this. We should have had the tenaciousness to fight for our residents, and all those things considered so we could get out the rubber stamp in confidence. I am a surf board salesman. I am not a real

estate lawyer. I don't know how to negotiate these things but I am trying to get us somewhere tonight but my gut tells me that we can do better. We can do better for our residents. All I can say is let's push it and work on it a bit, and heat get -- let's get there. I know these are details that could be worked out later but until we do, i'm a no." [Sic]

38. After the "pitch", the Chairman made record comments based on the opinion of the City attorney that he would not be allowing further public comment at the July 18, 2018 Special Meeting ([Transcript](#)).

10:42 PM | You have to create a special commission meeting. So the motion actually has to be to create a special commission meeting on the meeting -- so the motion would have to be that we create a special commission meeting on the 18th of July at 10:00 to address re 9 and re 10. At that hearing, there won't be any public comment because we already had public comment. Everyone is shaking their head.
We had public comment.
Can I get a clarification from the clerk, please? I want to make sure we do everything by the book.
There doesn't have to be any more public comment. We had public comment and it was noticed. Everything was noticed. You only have -- you only have to speak once.

10:43 PM | Even if we are changing anything?
We are not changing anything that --
Can we continue?
It doesn't -- it doesn't matter.
If it's legally sound, I trust you. I'm fine with that. We've done this before on big items as well. It couldn't be the first time we ended the public comment and had the vote for the commission on a different day.

39. The purpose of due public notice is to apprise individuals or the public generally of the pendency of matters which may affect their personal or property rights and afford them the opportunity to appear and present their views. Cases construing the Sunshine law speak of the public's right "to be present and to be heard," Board of Public Instruction of Broward County v. Doran, 224 So.2d 693 (Fla. 1969), and the right of "public scrutiny and participation," City of Miami Beach v. Berns, 245 So.2d 38 (Fla. 1971). The City fails to provide due public notice pursuant to Fla. Stat. 125.001, as that term relates to the provisions of the Sunshine Law, Fla. Stat. 286.011 and interpreted by case law. *Id.*

40. The City Manager has left the public and even City Commissioners in the dark regarding this proposed unified development project which includes a 99-year lease of the City's largest undeveloped property.

41. The City [cannot show that there](#) has been unreasonable delay in the filing of this complaint, as information known to the City for weeks, in the form of a draft [term sheet](#) has just been released. (Term sheet embedded in hyperlink, released July 17, 2018). See [Transcript](#) July 12, 2018, City of Miami Commission Regular Meeting, comments by Commissioner Manolo Reyes:

Yes. I do agree with Commissioner Gort . During the site, I mean, it is what? There hasn't been a single committee meeting in any area. The only thing that I have questions but let me tell you something. You see, we come from families. I had a dream also. You see? I don't know if you remember but I ran seven times. That is seven times. After the seventh time, I won against all odds, against all odds. When I ran, I was dreaming. I was living by a dream to bring transparency to the city of miami. **This process up to today has not been transparent. We are receiving piecemeal information. I have heard more than from our city managers.** How can I go? I agree that we should let the people decide. But, we have a process. There is a process that is weakened right? It is a process in 29 be, it says the city owned property, okay, the commission is prohibited from favorably considering the lease of the property owned by the city unless there is a return to the city over fair market value of the sale. They are prohibited for considering the sale of the commission. It is for such lease. They have lease policy and a daily newspaper or in the city no less than 90 days for proposals for perspective purchases or leasing. I can keep on going. Then after, you see, they say it is subject to the approval of the majority of the votes cast in by the electorate at the referendum. What people? **I want the due process. The only thing that it does is open it. Maybe that would be a good way to see the real value.** There are people, you know that, there is the possibility of building and that area.

(Emphasis added)

42. The City of Miami, and City of Miami Commission has not provided notice to the public of their intent that 29-A be circumvented or that Chapter 18, Article V be amended.

43. The City Commission has not held the public hearing, blocking “participation and scrutiny” and failed or refused to put out a request for proposal as required by 29-A, or solicitation of proposals as required by [29-B](#).

44. [Sec. 29-A\(a\)](#) spells out in detail the procedures the City, and City Manager would have to follow to consider the Mas Group's proposal. The City has a duty to hold a public hearing and

issue a request for proposals under the section. An amendment or consideration of an amendment to amend Sec. 29-B does nothing to remove the requirements to adhere to 29-A.

45. [RE. 9 and RE. 10](#), i.e. a resolution “approving, setting forth, and submitting to the electorate a proposed charter amendment, amending section 29-B of the charter of the city,” speaks only to Sec 29-B of the Charter and provides no notice to the public that the City intends to put a question to voters which would deprive them of the right to compete for the land, public hearing, and the process required by the City to follow pursuant to 29-A and Chapter 18, Article V of the City Code.

46. A favorable consideration of the resolution in RE. 9 and RE. 10 by the Commission would call upon the City to take actions which are in direct conflict with the superseding and unamended Sec. 29-A, and also Chapter 18, Article V of the Municipal Code, on the largest undeveloped parcel of public land in the City of Miami.

47. The proposed question purports to grant monopoly bidding and negotiation rights with the City for the planning, lease, design, construction and unified development of the property to a private entity, the Mas Group, in contradiction with the express terms of the Charter, and municipal code, combining multiple subjects, that would require multiple amendments into a single, stuffed ballot question.

48. The City Commission, purporting to act on behalf of the City of Miami is precluded by its Charter from putting the question to voters, as Sec. 29-A supersedes the proposed amendment to the City Charter to amend Sec. 29-B.

49. If the City administration submits to the Mas Group’s terms a contract could be brought before the Commission for approval by 4/5 Commissioners, rather than being awarded to the highest responsible bidder as required by 29-A.

50. Like, Florida House of Representatives v. Crist, “[t]he case presents particular circumstances in which “the functions of government could be adversely affected absent an immediate determination by this Court. Florida House of Representatives v. Crist, 999 So. 2d 601, 607 (Fla. 2008), quoting Chiles v. Phelps, 714 So. 2d 453, 457 (Fla. 1998).

WHEREFORE, the court should exercise its discretion to grant this writ to order defendant Commissioners to allow public comment in response to the personal appearance of the Mas group and to comply with the terms of its Charter.

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