NOT FINAL UNTIL DISPOSITON
OF TIMELY-FILED MOTION FOR
REHEARING OR CLARIFICATION

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

MIAMI-DADE COUNTY,
Appellant,

APPELLATE DIVISION
CASE NO. 2019-167-AP-01

v.

CITY OF MIAMI,
Appellee.
_____/

OPINION

Opinion filed: July 22, 2020.

On Petition for Writ of Certiorari from City of Miami mayoral veto of City Commission Resolution R-19-0169

Abigail Price-Williams, Miami-Dade County Attorney and James Edwin Kirtley, Jr., Assistant County Attorney, for Petitioner

Victoria Méndez, City Attorney, John A. Greco, Deputy City Attorney, and Kerri L. McNulty, Senior Appellate Counsel, for Respondent

Before: TRAWICK, WALSH and ZAYAS, JJ.

WALSH, J.

Does the circuit court have certiorari jurisdiction to review a municipal mayor's veto? The Mayor of the City of Miami, Francis Suarez, vetoed a City of Miami Commission resolution quashing a decision by the Historical and

Environmental Preservation Board ("HEPB"). Miami-Dade County (the "County") has filed a petition for writ of certiorari to quash the Mayor's veto and reinstate the Commission's resolution.

Notwithstanding the substantive grounds in the County's petition, the threshold question we must decide is whether we have jurisdiction to review the City of Miami Mayor's veto. This determination hinges upon whether a City of Miami Mayor's veto is a quasi-judicial act. We find it is not a quasi-judicial act, and therefore dismiss this Petition for lack of jurisdiction.

Historical Background of the Coconut Grove Playhouse

The City of Miami owns the historic Coconut Grove Playhouse ["Playhouse"], located on Main Highway in Coconut Grove. Miami-Dade County and Florida International University currently hold a lease on the Playhouse and seek to renovate the property. Their current renovation plan, approved by the Commission but vetoed by the Mayor, would demolish the theater, build new elements and a new, smaller theater, and retain only the historic façade.

The Playhouse was designed in 1926 by the "critically important architectural firm of Keihnel and Elliott,"[1] and renovated and redesigned by architect Robert

1 2005 Report of the City of Miami Preservation Officer to the Historic and Environmental Preservation Board

Browning Parker, "considered one of the outstanding and precedent-setting architects [from] the 1950s and beyond . . . ." *Id.*

In 2005, the City of Miami initiated the process to designate the Playhouse as a historic site. The City of Miami Preservation Officer prepared a Report to the HEPB in support of historic designation. In recommending historic designation of the Playhouse, the report relied upon three factors set forth in the City of Miami Code:[2]

> 3. Exemplifies the historical, cultural, political, economical, or social trends of the community.
>
> The Coconut Grove Playhouse exemplifies the historical, cultural economical, and social trends of Coconut Grove during the twentieth century, particularly the Boom and Bust cycles that characterize the history of Miami. The theater was built as the Coconut Grove Theater during the heyday of the 1920's real estate boom. Designed in a flamboyant "Spanish Baroque" style, the theater reflects the optimism and disposable wealth of Miami's citizens and the fascination with Mediterranean architectural precedents. Reborn in 1955 as the Miami's first live, legitimate theater, the Coconut Grove Playhouse evolved into one of the most important regional theaters in the country.
>
> 5. Embodies those distinguishing characteristics of an architectural style, or period, or method of construction.
>
> The design of the Coconut Grove Playhouse embodies the Mediterranean Revival style, and featured a highly decorative entrance, enriched window surrounds, and decorative detail associated with the design. Despite a few alterations, the Playhouse still retains enough

[2] §§ 23-3, 23-4(c), City of Miami Code of Ordinances. Pursuant to Section 23-4, City of Miami Code of ordinances, designation of a site as historic requires consideration of a number of factors set by the United States Secretary of the Interior.

> integrity to convey its original Mediterranean Revival style and still exhibits its major character-defining elements.
>
> 6. Is an outstanding work of a prominent designer or builder.
>
> The Coconut Grove Playhouse is associated with two of South Florida's most prominent architects. Richard Keihnel, who designed the original building, is considered one of South Florida's most outstanding architects. Kiehnel completed much of his work during the real estate boom of the 1920s, but also went on to make contributions into the 1930s and 1940s. As editor of the publication *Florida Architecture and the Allied Arts*, Kiehnel also influenced generations of new architects. Alfred Browning Parker is considered an outstanding living architect whose work is more aptly described as "Modernist." Parker remodeled the interior of the theater, dramatically changing its style from a highly decorative Mediterranean revival tour de force to a building that reflected the "clean," unornamented, geometrically defined architecture of the era to which he belonged.

Thus, Miami's 2005 Historical Designation was based upon multiple factors set forth in Section 23-4 of the City Code, not solely the Playhouse's archetectural origins in its al design by Kiehnel. The 2005 report also cited Alfred Browning Parker's subsequent "modernist" restyling of the theater and the theater's historical significance. The **entire playhouse** was designated as one of the "[c]ontributing structures within the site." The Report specifically defined "contributing structures" to include the playhouse:

> **Contributing structures within the site include the Coconut Grove Playhouse itself**. Only the south and east facades possess architectural significance. There are no contributing landscape features. (emphasis added)

In reliance upon the 2005 report, the City of Miami passed Resolution No. HEPB-2005-60 "**designating the Coconut Grove Playhouse . . . as a historic site**, after finding that it has significance in the historical heritage of the City of Miami, possesses integrity of design, setting, materials, workmanship, feeling and association; and meets criteria 3, 5, and 6 of Section 23-4(a) of the Miami City Code." The resolution incorporated the 2005 Report of the City of Miami Preservation Officer.

The parties agree that the 2005 Resolution designating the Playhouse as a historic site (including the incorporated report) controls whether any plan of demolition or renovation proposed by Miami-Dade County may be granted a certificate of appropriateness.

2017 First Certificate of Appropriateness

In 2017, Miami-Dade County applied for a special certificate of appropriateness to the HEPB to develop the Playhouse. *See* § 23-6.2(b)(4), City of Miami Code. The application did not set forth a comprehensive plan, but rather, in broad strokes, a "Masterplan Concept." It proposed to restore only the "entire front historic building to the original 1927 Kiehnel & Elliott design," and survey the remaining interior elements, but did not propose to preserve the theater. Instead, the plan proposed to design a "new state-of-the-art theater and orient the theater on axis with the original theater and its corner entrance through the historic front building."

In other words, the "Masterplan Concept" proposed to retain only the front façade, demolish the theater, and build a new theater on the original footprint.

The 2017 staff analysis for the HEPB concluded that demolition of the theater was appropriate because the 2005 historic designation report described only the "original Keihnel structure containing the South and East facades" as requiring preservation. The 2017 staff's conclusion that the interior of the theater was not designated as historic credited only one sentence of the following paragraph contained in the 2005 historical designation report:

> Contributing structures within the site include the Coconut Grove Playhouse itself. **Only the south and east facades possess architectural significance.** There are no contributing landscape features. (emphasis added)

In so doing, the staff disregarded the 2005 report's description of the Parker Browning renovation of the interior of the theater and the *historical significance* of the entire theater and its builders. In reliance upon the staff analysis, the HEPB approved this 2017 certificate of appropriateness.

Although the City Commission passed a resolution approving the 2017 certificate of appropriateness, the Commission added requirements, including preservation of the entire Playhouse structure and protection of certain interior elements. On a petition for writ of certiorari brought by city residents, a panel of this Court held: (1) that residents had no standing to appeal and (2) the City of Miami violated due process by expanding the requirements of the certificate of approval

because, in the prior panel's view, the interior of the theater was not designated as a historical structure. *Miami-Dade County v. City of Miami,* 26 Fla. L. Weekly Supp. 800b (Fla. 11th Cir. Ct. Dec.3, 2018) ("*Playhouse I*").

Since *Playhouse I* was decided, the 2017 certificate of appropriateness has expired. *See §* 23-6.2(g), City of Miami Code of Ordinances.

Listing on the National Register of Historic Places

In 2018, the City of Miami applied for and obtained a listing for the Playhouse in the National Register of Historic Places. In describing the historical significance of the interior, the report in support of the national registry listing stated:

> While the levels of architectural integrity vary depending on the portion of the building examined, the Playhouse still retains a high degree of associative integrity with the events that occurred at that location.
> The theater's auditorium retains a high level of integrity from the period of significance associated with George Engles and Zev Buffman and the productions they coordinated and sponsored.
> * * *
> The Coconut Grove Playhouse retains to a high degree its integrity of feeling. The building clearly conveys a sense of early twentieth-century glamor, which Kiehnel and Elliott built and Parker maintained. While the interior has been altered and degraded, it still maintains its historic feeling as well.
>
> Overall Integrity
>
> The building retains sufficient integrity of location, setting, design, materials, workmanship, association and feeling for listing on the National Register of Historic Places.

Second Certificate of Appropriateness -- Current Demolition and Development Plan

The County applied again to the HEPB for a special certificate of appropriateness to develop the property. The County's new plan proposed to preserve only the front structure of the Playhouse, demolish the existing theater, build a new 300-seat theater and additional structures, attempt to preserve certain interior elements and redesign new elements to echo the original 1927 theater. After a hearing, the HEPB denied this application.[3]

The City of Miami Commission reversed the denial in a 3-2 vote in Resolution R-19-0169—Coconut Grove Playhouse Appeal.

On May 17, 2019, the City of Miami Mayor vetoed the Commission's resolution.

In his veto, the Miami Mayor stated:

> We must uphold historic preservation requirements in our community, and the Coconut Grove Playhouse should be no exception. The Playhouse is "a signature building reflecting the heyday of Coconut Grove." *See* City of Miami Preservation Officer 2005 Report. The HEP Board recognized this fundamental truth and I seek to reinstate that decision.[4]

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3 The County argues that it was denied due process at the HEPB proceeding because of ex parte communications involving the chair of the HEPB, in addition to other due process challenges. We decline to address these claims.

4 The Mayor cited several other grounds in his veto. The Mayor opined that the appeal was premature. The Mayor considered that subsequent to the 2017 certificate of appropriateness, the Playhouse was listed on the National Register, and demolishing it could disturb its prestigious listing. The Mayor expressed concern

The Mayor further stated, "[t]he County's current plan that cannibalizes the historic structure will not meet my approval." But the Mayor suggested that the County could immediately build the parking garage structure and restore the 1927 façade while resubmitting an amended certificate of appropriateness for a more suitable plan to the City.

The County sought an override of this veto pursuant to Section 4(g)(5) of the City Charter which failed by a Commission vote of 3-2. The County then filed this petition seeking to quash the mayoral veto.

Jurisdiction

Generally, we have jurisdiction to issue writs of certiorari. Art. V, § 5(b), Fla. Const. ("The circuit courts . . . . shall have the power to issue writs of . . . certiorari"). "Common-law certiorari has been made available to review quasi-judicial orders of local agencies and boards not made subject to the Administrative Procedure Act when no other method of review is provided." *Haines City Community Development v. Heggs*, 658 So.2d 523, 530 (Fla. 1995), *citing De Groot v. Sheffield*, 95 So. 2d 912 (Fla.1957).

In *Teston v. City of Tampa*, the Supreme Court of Florida explained:

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that the plan contemplating demolition violated Section 267.061(2)(b), Florida Statutes because it failed to ensure that no "feasible and prudent" alternative exists to demolition. And the Mayor opined that the application is fatally flawed because it does not make a request for demolition.

> In the absence of specific valid statutory appellate procedures to review the particular order, it becomes necessary to ascertain whether the order is quasi-judicial or quasi-legislative. If the order is quasi-judicial, that is, **if it has been entered pursuant to a statutory notice and hearing involving quasi-judicial determinations**, then it is subject to review by certiorari.

Citing DeGroot v. Sheffield, 95 So. 2d 912 (Fla. 1957); *Bloomfield v. Mayo*, 119 So. 2d 417 (Fla. 1960) (emphasis added).

Therefore, we have jurisdiction to hear a petition for writ of certiorari to review a municipality's quasi-judicial act, but none to review a quasi-legislative act. To determine whether an act is quasi-judicial, we must determine whether the act in question was made subject to notice, hearing and fact-finding. "[A] judgment becomes judicial or quasi-judicial, as distinguished from executive, when notice and hearing are required, and the judgment of the board is contingent on the showing made at the hearing. In such cases, certiorari, not mandamus, should be employed as the proper method of review." *Anoll v. Pomerance*, 363 So. 2d 329, 331 (Fla. 1978), *citing Davies v. Howell*, 192 So. 2d 43 (Fla. 2d DCA 1966).

Certiorari Review of a Mayoral Veto

Under the City of Miami Charter and City of Miami Code of Ordinances, the HEPB's denial of the County's certificate of appropriateness and the City of Miami Commission's review of the HEPB denial are undoubtably quasi-judicial acts. But under the same charter and ordinances, the nature of a mayoral veto is quite different.

Section 23-6.2, of the City of Miami Code of Ordinances governs applications for certificates of appropriateness to the HEPB. To review applications for certificates of appropriateness, the HEPB is required to abide by a host of procedural requirements, including:

- The right to public hearing and provisions for rehearing
- Notice by mail to the applicant at least ten days prior to the hearing
- An advertisement shall be placed in a newspaper of general circulation at least ten days prior to the hearing.
- Additional notice deemed appropriate by the board.
- The right to appeal to the City Commission

Id. The HEPB decision at issue here denying a certificate of appropriateness was made subject to required notice, the opportunity to be heard, a public hearing, and the right to appeal. This decision by the HEPB was therefore quasi-judicial in nature.

The City Commission's decision overruling the HEPB denial was similarly quasi-judicial in nature. Under section 23-6.2(e) of the City Code of Ordinances, the Commission's review of the HEPB decision is also girded by a number of procedural safeguards:

- Right of any aggrieved party to appeal to the Commission
- Right to public hearing
- Right to notice and opportunity to be heard
- Final decision of the Commission is appealable to the courts[5]

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5 It should be noted that there is no right of *appeal* to the circuit courts granted by this final provision in section 23-6.2(e), City of Miami Code of Ordinances. Appeals, under Article V, section 5(b), may only be reviewed by the circuit courts as provided by *general law*. A municipality may not confer jurisdiction upon the circuit courts.

§ 23-6.2(e), City of Miami Code of Ordinances. As set forth in this section, "[t]he decision of the city commission shall constitute final administrative review, and no petition for rehearing or reconsideration shall be considered by the city." *Id.* Thus, the Commission's resolution reviewing the HEPB constitutes a final, quasi-judicial act reviewable in this Court by certiorari.

But the Commission's decision overruling the HEPB is not before us on review. The Mayor's veto is. And a mayoral veto is quite a different thing.

Powers are granted to municipalities by the Florida Constitution and by general law. Article VIII, section 2(b) provides:

> **SECTION 2. Municipalities. –**
> * * *
> (b) POWERS. Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law. Each municipal legislative body shall be elective.

Section 166.021, Florida Statutes (2018) provides:

> (1) As provided in s. 2(b), Art. VIII of the State Constitution, municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law.

Pleasures II Adult Video, Inc. v. City of Sarasota, 833 So. 2d 185, 188 (Fla. 2d DCA 2002). The only avenue of circuit court review of a quasi-judicial decision is by petition for writ of certiorari.

Section 4(a) of the City of Miami Charter distributes the City of Miami's municipal powers between the Commission, Mayor and City Manager:

> (a) General description. The form of government of the City of Miami, Florida, provided for under this Charter shall be known as the "mayor-city commissioner plan," and the city commission shall consist of five citizens, who are qualified voters of the city and who shall be elected from districts in the manner hereinafter provided**. The city commission shall constitute the governing body with powers (as hereinafter provided) to pass ordinances adopt regulations and exercise all powers conferred upon the city except as hereinafter provided. The mayor shall exercise all powers conferred herein** and shall appoint as provided in section 4(g)(6) of this Charter a chief administrative officer to be known as the "city manager."

(emphasis added)

The Mayor's powers are set forth in Sections 4(b) and4(g) of the Charter. Among the powers reserved to the Mayor is veto power:

> (5)**The mayor shall, within ten days of final adoption by the city commission, have veto authority over any legislative, quasi-judicial, zoning, master plan or land use decision of the city commission,** including the budget or any particular component contained therein which was approved by the city commission; provided, however that if any revenue item is vetoed, an expenditure item in the same or greater dollar amount must also be vetoed. The city commission may, at its next regularly scheduled or special meeting after the veto occurs, override that veto by a four-fifths vote of the city commissioners present, notwithstanding any provisions to the contrary contained in the Charter and city code. Said veto power shall include actions pursuant to sections 29-B through 29-D of the Charter.

§ 4(g)(5), City of Miami Charter. (emphasis added).

Unlike the HEBP decision and the City Commission appeal, a mayoral veto contains no hallmarks of a quasi-judicial act. A mayoral veto requires no notice, no

opportunity to be heard, no public meeting. Nor is there any avenue for review, except for a Commission override.[6] Absent the hallmarks of quasi-judicial action, clearly then, a mayoral veto is not a quasi-judicial act.[7]

Instead, a veto is an act which *prohibits.* The word "veto" comes from the Latin "vetare" which means to forbid or prohibit.[8] The meaning of the word veto has not changed over time. It was first used in 1629 as a noun to describe an ecclesiastical censure. *Id.* In the context of politics and government, the word "veto" is defined as "the power to refuse to allow something to be done, or such a refusal."[9] The word veto is commonly known and understood to mean the sole, discretionary exercise of power to prohibit a legislative act, a power which is generally unreviewable. *See, e.g., Brown v. Firestone*, 382 So. 2d 654, 664 (Fla.1980)

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6 The County's attempt to secure a Commission override failed by a vote of 3-2.

7 Is a mayoral veto therefore quasi-legislative? Or is it executive? Section (4)(g) of the City of Miami Charter does not describe the Mayor as an "executive" in the way that the Constitution describes the Governor as the "supreme executive power." *See* Article IV, section 1, Fla. Const. *See, e.g., Citizens for Reform, etc. v. Citizens for Open Government, Inc.*, 931 So. 2d 977 (Fla. 3d DCA 2006) (Amendment to Miami-Dade County Charter increasing administrative power of County Mayor did not create separate executive function for County Mayor). But neither does mayoral veto power fit neatly in the description of "quasi-legislative" power, because it **negates** the power of the Commission. But no matter how veto power is described, it is not quasi-judicial and therefore, not properly reviewable by certiorari.

8 WATSON, RICHARD A. "Origins and Early Development of the Veto Power." *Presidential Studies Quarterly*, vol. 17, no. 2, 1987, pp. 401–412. JSTOR, www.jstor.org/stable/40574459. Accessed 9 July 2020.

9 *Cambridge Academic Content Dictionary*, Cambridge University Press, https://dictionary.cambridge.org/dictionary/english/veto.

(governor's constitutional "veto power is intended to be a negative power, the power to nullify, or at least suspend, legislative intent. It is not designed to alter or amend legislative intent").[10]

Accordingly, we conclude that we have no jurisdiction to review the Mayor's veto.[11] Therefore, we may not address the merits of this petition.

This Petition is therefore dismissed.

TRAWICK AND ZAYAS, JJ., CONCUR.

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10 By analogy, there is no judicial review of a Governor's veto absent a violation of Article III, section 8(a) of the Florida Constitution, which is the sole limitation of a gubernatorial veto of a legislative appropriation. *See Chiles v. Children A, B, C, D, E, and F*, 589 So. 2d 260, 265 (Fla.1991) ("[I]t is well settled that the executive branch does not have the power to use the veto to restructure an appropriation."). But absent such a constitutional violation, a "governor may exercise his veto power for any reason whatsoever." *Firestone*, 382 So. 2d at 668.

11 In *McMullen v. Bennis*, 20 So. 3d 890, 892 (Fla. 3d DCA 2009), the court observed that a trial court is not authorized to issue advisory opinions.