City, Georgia Tech Foundation reach settlement in Crum & Forster suit

The almost half-decade long fight for the Crum & Forster building brought together lawyers for the Georgia Tech Foundation (GTF), private citizens who believe the City of Atlanta is bypassing its own preservation regulations, as well as outside counsels for both the City and the City's Board of Zoning Adjustment (BZA) to Fulton County Superior Court on Tuesday.

For much of the battle over the Midtown Landmark building, a series of actions and designations by agencies and the City had prevented the GTF from continuing with its plans to demolish all or parts of the Spring Street structure near Tech Square.

That was not the case Tuesday, though. After hearing from lawyers from all four parties involved in the complex case, Fulton County Superior Court Judge John J. Goger accepted a final-minute amended consent order settlement between the Georgia Tech Foundation Real Estate Holding Corporation and the City and BZA, while denying a Motion to Intervene from a group of five concerned citizens who wished to have direct standing in the litigation.

It would appear now the path is much clearer for the GTF to continue further with its plans at the 771 Spring St. property for a High Performance Computing Center for Modeling and Simulation, a 24-story, 680,000 square-foot private and public development that would support the economic development of area through creating jobs, new tax revenues and a technology cluster.

The City has said that GTF is competing with other cities for a $100 million investment in the high performance computing center.

The three-story Crum & Forster, designed in 1926 and opened two years later, was built in the Italian Renaissance Revival style and its most striking architectural feature is a façade with three soaring arches, supported by two columns that accentuate the front entrance. Many argue that in a city where so many buildings have been torn down in the name of progress, this one is worth saving.

"We worked for weeks and finally negotiated the final terms this morning," attorney ***Richard L. Robbins***, representing GTF, told Patch after Goger's ruling. "It was the BZA and the City acting very aggressively to protect their interest. The BZA was concerned about protecting the front third, which was not in the original consent order. We explicitly said we would not use (the building/lot) as its primary purpose for parking, which was the basis for the original denial. So we put in here those two points that were very important to the BZA and not in the original order."

The Fight for Crum & Forster

That original consent order had been signed in September 2012, but a quick history on how the parties reached Tuesday is necessary here.

The Crum & Forster was purchased by the GTF in December 2007. The Foundation applied for a Special Administrative Permit, a pre-requisite for applying for a demolition permit, with the intent to use the site for surface parking. This was denied by the Office of Planning in July 2008.

The GTF's appeal of this decision made it to the BZA and was also denied. This prompted the GTF to sue the City and the BZA challenging the BZA's decision. The case remained pending in Fulton County Superior Court until this past September when the City and the GTF reached a settlement on the lawsuit.

Then in November, the issue came before the BZA as to whether it should ignore the court order or not. The GTF argued no, with its attorney stating that all parties must oblige to a court order. But lawyers for historic preservationists argued that the BZA should reject the court order since the BZA had not been included during settlement talks. In the end, the BZA found the consent order to be invalid.

Back to Court

In court Tuesday were around 15 or so preservation supporters there to watch attorney Mary Huber represent the five citizens wishing to become parties in the litigation.

The case was delayed for approximately 20 minutes, which was later revealed because attorneys for the GTF, and the independent attorneys for the City and the BZA, were busy hammering out the final details of the amended consent order settlement. Huber remarked to the judge that she had only a few minutes to review the amended consent order on Tuesday morning.

But for the most part, she stressed the point that the public and legal process was not being honored.

"This is a decision to bypass a procedure set about by the city ordinance and state law for the lawful order of resolution of zone cases," Huber said. She later added that the BZA was lot a litigate and therefore "can't take part in a compromise settlement."

Charging that the appellate process had been negated, Huber said, "This is the public duty that we seek to enforce that when you have zoning laws, that those laws are to be acted on by a duty authorized quasi-judicial body and they will be reviewed according to the rules that were set out to doing so by the Superior Court."

Robbins countered that the issue of process had been rendered moot because the BZA had retained outside counsel. "This is the BZA with its counsel agreeing to certain facts and legal conclusions," Robbins said. Later he added, "Ultimately, the BZA has the right to decide its own destiny and has done so in this courtroom."

Attorney Kyle Williams represented the BZA and reminded the court that none of its current five members were on the board when the BZA originally denied the GTF's appeal.

"The settlement respects the process, respects the BZA," Williams said.

The independent counsel for the City, attorney Simon Bloom, also argued that a process was undertaken. With Deputy City Attorney Eric Richardson in the courtroom, Bloom said the parties involved in the settlement

had thoroughly reviewed, debated and negotiated the facts.

“We made sure to cross all the T’s, and all the I’s were dotted to resolve the case with the decision our clients had chosen,” Bloom said.

His contention that there were no set of specified procedures “for a quasi-judicial entity to adhere to when making a decision for itself about how to resolve a piece of litigation” was later refuted by Huber.

But Huber was unable to sway the judge to allow her clients to have direct standing in the litigation as Goger denied the motion and accepted the amended consent order. The judge remarked that it is “time to bring this case to a conclusion.”

Whether that’s the case remains to be seen as Huber told Patch afterwards, “A motion to intervene is a matter in the discretion of the court, which is to say that an appellate court gives lead way to trail court.

“Whether this can or should be appealed is a matter for some consideration. You have to go through all the factors involved.”

Robbins expressed hope that Tuesday’s ruling would signal a time to move on.

“It took a long time, but it’s an important project for Georgia Tech, it’s an important project for the city,” he said. “Georgia Tech has always tried to be a good citizen. We were patient and the judge was extraordinarily patient in giving the parties time to work this out.”