



To: City Commission

From: Craig E. Leen, City Attorney for the City of Coral Gables 

RE: Legal Opinion Regarding Zoning Code Interpretation

Date: February 11, 2014

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1. This Opinion is being written pursuant to Section 2-201 ( e )(8) of the City Code, which authorizes the City Attorney "[t]o interpret the City Charter, City Code, and Zoning Code on behalf of the City," as well as section 2-702 of the Coral Gables Zoning Code, which establishes that "[t]he City Attorney serves as the final authority with regard to legal issues involving interpretation and implementation of these regulations."

2. Astor Development has proposed ("Development Proposal") to upgrade the existing Coral Gables Trolley Facility ("Facility") at its current location and as a part of Astor's planned condominium development at the location. Under the Development Proposal, the facility in Coconut Grove, which was built at Astor's expense, and is currently the subject of litigation, would be replaced by a state of the art Facility at the present trolley location in Coral Gables. The Development Proposal presents a possible resolution [O the ongoing lawsuit between Coral Gables and Astor Development regarding the Coconut Grove Trolley Facility and land exchange agreement ("Lawsuit"), as well as the matter with the Federal Transit Authority. The Proposal would also resolve the concerns of the community in whose neighborhood the Coconut Grove facility was constructed. For Astor's Development Proposal to be feasible, it would require relief from several provisions in the City Zoning Code, including limitations on FAR, height, and parking, in order to accommodate the planned condominium development and the required government Facility. Under the present Zoning Code, the City would be required to deny the Development Proposal.

3. This memorandum analyzed two mechanisms by which the City Commission may consider and evaluate Astor's Development Proposal as a potential basis to resolve the ongoing lawsuit and any dispute arising out of a denial of the Development Proposal.

4. The first mechanism by which the City can evaluate the Development Proposal is through the dispute resolution procedure outlined in Sections 3-1701 through 3-1707 ("Dispute Resolution Procedure") of the Zoning Code of the City of Coral Gables. The Dispute Resolution Procedure invokes the City's authority and discretion "to avoid expensive, uncertain, unnecessary, and protracted litigation regarding the application of these land development regulations to individual properties." Zoning Code § 3-1701. "The City may grant relief pursuant to this Division only when it is demonstrated that the applicant for said relief has been unfairly, disproportionately and inordinately burdened by a final order of the City that either denied development approval to the applicant or imposed one (1) or more conditions of approval on the applicant." *Id.*

5. If Astor submits its Development Proposal to the City and the Proposal is denied, Astor may then submit an application approved by the City pursuant to Section 3-1702(A), seeking relief through the Dispute Resolution Procedure from the order denying its Development Proposal. Astor's application may take into account in seeking review of its Development Proposal any alleged unfair, disproportionate, or inordinate burden resulting from the denial, may consider the entire circumstances of the matter in assessing the scope of any burden, and may include allegations that the Development Proposal and the requested relief from the City's Zoning Code were compelled by the City of Miami's contested zoning approval of the Coconut Grove facility (which is the subject of the declaratory judgment lawsuit between the City of Coral Gables and Astor, as well as a pending appeal from a dismissed action brought by residents living near the Coconut Grove facility), as well as the Federal Transit Authority's expansive assertion of its jurisdiction, and retroactive application of guidelines/instructions contained in its October 1, 2012 circular (the City of Coral Gables has taken exception to the FTA's findings and determinations while agreeing to conduct an equity analysis as part of a plan to resolve the matter; the City has also requested that Astor assume responsibility for any alleged non-compliance). Ultimately, Astor may ask the City to consider the totality of the circumstances involving the lawsuit and the unique factual circumstances of this case in determining whether the threshold is met, as that would be in conformity with the purpose of the Dispute Resolution Procedure, which is "to avoid expensive, uncertain, unnecessary, and protracted litigation," (§ 3-1701), and instead resolve disputes in the public interest.

6. The application would seek to resolve the ongoing Lawsuit and any litigation resulting from a denial of the Development Proposal. The City can consider the application along with the City Manager's report and recommendation on the application and any proposed dispute resolution agreement (§ 3-1704(D)) at a public hearing to decide whether to make an offer to resolve the dispute with Astor. Zoning Code § 3-1705 (A). Any decision to grant relief to Astor pursuant to the Dispute Resolution Procedure is in the sound discretion of the City Commission in the exercise of its inherent sovereign powers to settle legitimate disputes and pursuant to the factors outlined in Section 3-1703 (B). Of course, this Opinion takes no

position at this time as to whether Astor could ultimately demonstrate the prerequisites for relief under the Dispute Resolution Procedure. Instead, this Opinion simply establishes, consistent with the plain wording of the Zoning Code, that the Dispute Resolution Procedure is an available process that can be invoked by Astor (or a similarly situated applicant) in seeking possible resolution of its dispute.

7. The second mechanism by which the City Commission could consider approving a version of Astor's Development Proposal is through a stipulation for entry of a final judgment in the Lawsuit. Upon agreement by the parties and the Court, a stipulated final judgment can adopt a version of the Development Proposal agreeable to the parties. This process was approved by the Third District Court of Appeals in *Zoning Board of Monroe County v. Hood*, 484 So. 2d 1331 (Fla. 3d DCA 1986). In *Hood*, the applicants sought a zoning change to accommodate a development. The development plan was disapproved by the County, and resulted in litigation in state and federal court. The parties stipulated to entry of a final judgment that required the zoning board "to ' review and approve the final development plan.'" *Id.* at 1332. The zoning board conducted public hearings, approved the development plan, and ordered rezoning. The County Commission, however, overruled the approval. The trial court then enforced the stipulated final judgment, reinstating the approval of the development plan, and the Appellate Court affirmed. *Id.* This decision was cited with approval by the Fourth District Court of Appeals in *Stranahan House, Inc. v. City of Fort Lauderdale*, 967 So. 2d 1121, 1126-27 (Fla. 4<sup>th</sup> DCA 2007). Accordingly, the parties could stipulate to a settlement and ask the Court to enter a final judgment implementing that settlement. Consistent with analysis in *Hood*, the final judgment could also include the establishment of an expedited process for review, public hearing, and approval of the Development Proposal.



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