



To: Burton Hersh; Michael Kattou

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

RE: Legal Opinion Regarding Tenant Allowed On Temporary Construction Sign

Date: December 8, 2014

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After further review, the City has adopted an interpretation allowing a tenant to be on the temporary construction sign as an agent with the owner's consent, and thereby will allow the sign consistent with this interpretation. Based on this interpretation, the matter is no longer on the upcoming agenda.

## Herbello, Stephanie

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**From:** Leen, Craig  
**Sent:** Monday, December 08, 2014 8:47 PM  
**To:** Parramore, Carol  
**Cc:** Thornton, Bridgette; Figueroa, Yaneris; Herbello, Stephanie  
**Subject:** Fwd: VIXI at 374 Miracle Mile-Temporary Construction Sign

Please place in opinion folder.

Sent from my iPhone

Begin forwarded message:

**From:** "Leen, Craig" <[cleen@coralgables.com](mailto:cleen@coralgables.com)>  
**Date:** December 8, 2014 at 7:45:00 PM EST  
**To:** 'Burton Hersh' <[bhersh@burtonhersh.com](mailto:bhersh@burtonhersh.com)>, "Kattou, Michael" <[Mkattou@coralgables.com](mailto:Mkattou@coralgables.com)>  
**Cc:** "Figueroa, Yaneris" <[yfigueroa@coralgables.com](mailto:yfigueroa@coralgables.com)>, "Correa, Carlos" <[ccorrea@coralgables.com](mailto:ccorrea@coralgables.com)>, "Ortiz, William" <[wortiz@coralgables.com](mailto:wortiz@coralgables.com)>, "Tompkins, Jane" <[jtompkins@coralgables.com](mailto:jtompkins@coralgables.com)>  
**Subject:** RE: VIXI at 374 Miracle Mile-Temporary Construction Sign

Burton,

After further review, the City has adopted an interpretation allowing a tenant to be on the temporary construction sign as an agent with the owner's consent, and thereby will allow the sign consistent with this interpretation. Based on this interpretation, the matter is no longer on the upcoming agenda. Please let me know if you have any questions.

Best regards,  
Craig

**Craig E. Leen, City Attorney**  
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Email: [cleen@coralgables.com](mailto:cleen@coralgables.com)

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**From:** Burton Hersh [<mailto:bhersh@burtonhersh.com>]  
**Sent:** Monday, November 24, 2014 1:17 PM  
**To:** Leen, Craig; Kattou, Michael  
**Cc:** Figueroa, Yaneris; Correa, Carlos; Ortiz, William  
**Subject:** RE: VIXI at 374 Miracle Mile-Temporary Construction Sign

Craig,

Thank you so much it really makes sense for Commission to weigh in on this and provide clarity.

I do thank your office and Code Enforcements office to allow us to put it up pending clarification of Commission and understand it is possible for Commission to have a contrary view.

Best regards,  
Burton

Burton H. Hersh, AIA  
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**From:** Leen, Craig [<mailto:cleen@coralgables.com>]  
**Sent:** Monday, November 24, 2014 1:02 PM  
**To:** 'Burton Hersh'; Kattou, Michael  
**Cc:** Figueroa, Yaneris; Correa, Carlos; Ortiz, William  
**Subject:** RE: VIXI at 374 Miracle Mile-Temporary Construction Sign

Thank you, Burton. You raise an interesting point. I am asking that this be put on the December agenda as a City Attorney item to obtain the Commission's view. In the meantime, in the specific circumstances you have raised, you may continue to have the sign up as indicated by Code Enforcement. Please understand it is at-risk if your proposed interpretation is ultimately rejected, and may have to be taken down at that time or be subject to Code Enforcement. This also does not set a precedent for future cases, as it is only being allowed pending the discussion at the next Commission meeting.

Best regards,

**Craig E. Leen, City Attorney**  
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**From:** Burton Hersh [<mailto:bhersh@burtonhersh.com>]  
**Sent:** Monday, November 24, 2014 12:52 PM  
**To:** Leen, Craig; Kattou, Michael  
**Cc:** Figueroa, Yaneris; Correa, Carlos; Ortiz, William  
**Subject:** RE: VIXI at 374 Miracle Mile-Temporary Construction Sign

Hi Craig,

The tenant almost always pays for the construction. In this case the tenant paid for all of the construction, is already paying rent and has a way to go. I feel bad for her

because she is investing hundreds of thousands and can't even put us a Temp.Construction Sign. It seems to me it's just so inequitable it can't be correct.

I took a lot of time to design its and believes it complies with the code. I'm sure Carlos and Michael have sent you what I was relying on.

In respect to precedents, BrickTops did a large sign just for them but went to commission for that. Seasons put up numerous signs but went to commission for that. Both had to go to Commission because they did not comply with a Temporary Construction sign which is limited to 16 square feet.

The code is clear that a Temporary Construction Sign may be done and indicates the owner, architect and contractor may be on the sign. My understanding is Code Enforcements definition of the Owner is not the Owner of the business.

However in Chapter 8 the Owner is defined as:

**Owner** means any individual, firm, association, syndicate, co-partnership, corporation, trust or any other legal entity having sufficient proprietary interest in the land

How is it possible that the tenant does not have a propriety interest in the land if they are investing hundreds of thousands of dollars to open a business and are in fact a proprietor?

Michael was kind enough to call me earlier to tell me to go ahead and put up the sign (no permit or review is required) pending the City's study.

Thanks for your email and Im looking forward to your findings.

Best regards,  
Burton

Burton H. Hersh, AIA  
[bhersh@burtonhersh.com](mailto:bhersh@burtonhersh.com)

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**From:** Leen, Craig [<mailto:cleen@coralgables.com>]  
**Sent:** Monday, November 24, 2014 12:22 PM  
**To:** 'Burton Hersh'; Kattou, Michael  
**Cc:** Figueroa, Yanneris; Correa, Carlos; Ortiz, William  
**Subject:** RE: VIXI at 374 Miracle Mile-Temporary Construction Sign

Good afternoon, Burton,

I am looking into this. Are you aware of any precedents where a tenant was allowed to be on a construction sign where the tenant was paying for part or all of the construction work? I have asked staff to determine if there are any such precedents, but I would like to know if you are aware of a comparable situation as well.

Best regards,  
Craig

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**From:** Burton Hersh [<mailto:bhersh@burtonhersh.com>]  
**Sent:** Monday, November 24, 2014 11:40 AM  
**To:** Burton Hersh; Kattou, Michael  
**Cc:** Figueroa, Yaneris; Correa, Carlos; Leen, Craig  
**Subject:** RE: VIXI at 374 Miracle Mile-Temporary Construction Sign

Hi Michael,

Just wondering if you have any update for me regarding the sign?

Thanks,  
Burton

Burton H. Hersh, AIA  
[bhersh@burtonhersh.com](mailto:bhersh@burtonhersh.com)

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**From:** Burton Hersh [<mailto:bhersh@burtonhersh.com>]  
**Sent:** Sunday, November 23, 2014 7:00 PM  
**To:** 'Kattou, Michael'  
**Cc:** 'Figueroa, Yaneris'; 'Correa, Carlos'; [cleen@coralgables.com](mailto:cleen@coralgables.com)  
**Subject:** RE: VIXI at 374 Miracle Mile-Temporary Construction Sign

Michael, please call me Burton as we have known and worked with each other for years. I appreciate the time extended on a Sunday.

In my view this issue is of extreme importance and will establish precedence. That said I appreciate the need to get it right and meeting with counsel makes sense. That said there have been far too many

instances in the past where City staff has used its legal counsel (whose opinion may only be overturned by a court of law) as a vehicle to avoid interpretation of the code by the Board of Adjustment.

When you get down to its essence a "construction sign" is meant to celebrate the coming of new things and advise the public of its coming and the parties that made it happen. Most notably, the new stakeholder, the proprietor.

Warmest regards,  
Burton

Burton H. Hersh, AIA  
[bhersh@burtonhersh.com](mailto:bhersh@burtonhersh.com)

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**From:** Kattou, Michael [<mailto:Mkattou@coralgables.com>]  
**Sent:** Sunday, November 23, 2014 6:25 PM  
**To:** Burton Hersh  
**Cc:** Figueroa, Yeneris; Correa, Carlos  
**Subject:** RE: VIXI at 374 Miracle Mile-Temporary Construction Sign

Good evening:  
Mr. Hersh,

I along with Ofc. Correa will be meeting with city council tomorrow hopefully in the morning and will advise.

Best regards,

Michel Kattou  
Code Enforcement Field Supervisor  
427 Biltmore Way, Suite 100  
Coral Gables, Florida 33134  
Phone: 305-460-5268  
Fax: 305-460-5348  
[Mkattou@coralgables.com](mailto:Mkattou@coralgables.com)  
[www.coralgables.com](http://www.coralgables.com)

----- Original message -----

From: Burton Hersh <[bhersh@burtonhersh.com](mailto:bhersh@burtonhersh.com)>  
Date: 11/23/2014 12:04 PM (GMT-05:00)  
To: "Correa, Carlos" <[ccorrea@coralgables.com](mailto:ccorrea@coralgables.com)>

Cc: [melissa@vixigelateria.com](mailto:melissa@vixigelateria.com), Marina Foglia <[mfoglia@shopcoralgables.com](mailto:mfoglia@shopcoralgables.com)>, Vanessa Estrada <[vestrada@burtonhersh.com](mailto:vestrada@burtonhersh.com)>, "Ortiz, William" <[wortiz@coralgables.com](mailto:wortiz@coralgables.com)>, "Kattou, Michael" <[Mkattou@coralgables.com](mailto:Mkattou@coralgables.com)>

Subject: RE: VIXI at 374 Miracle Mile-Temporary Construction Sign

Dear Carlos,

I have reread you attached ordinance, which of course I reviewed prior to designing the sign. Respectfully we disagree with your interpretation of the parties allowed on the Temporary Construction Sign

From Chapter 8:

***Temporary construction signs (nonresidential use districts and Special Use District).***

6. The sign text may only identify the property, the owner or agent, contractor, or professional affiliations, property address and telephone numbers who are involved in the construction of improvements on the property.

From Chapter 8 of the Coral Gables Zoning Code, Definitions:

**Owner** means any individual, firm, association, syndicate, co-partnership, corporation, trust or any other legal entity having sufficient proprietary interest in the land sought to be developed or subdivided to commence and maintain proceedings to develop or subdivide the same under these regulations.

Definition of PROPRIETARY (from Webster's Dictionary)

- 1 one that possesses, owns, or holds exclusive right to something; specifically : proprietor

Certainly VIXI has a sufficient proprietary interest in the land.

Clearly, a Temporary Construction sign is an announcement and celebration of new things to come and allows for the Owner/Agent, Contractor and Architect to be a part of the sign.

Accordingly, I respectfully request you to reconsider your decision.

Monday our office will advise the Contractor to install the sign (as no permit or municipal review is required for this type of sign).

In the event you disagree and "cite" the property, we will request the BID (as it affects all future projects in the District), or the Owner will appeal the citation to the Board of Adjustment as set forth in Section 3-606 of the Coral Gables Zoning Code:

Please advise how you wish to proceed.

Best regards,  
Burton

**Burton H. Hersh, AIA**  
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**From:** Correa, Carlos [mailto:[ccorrea@coralgables.com](mailto:ccorrea@coralgables.com)]  
**Sent:** Friday, November 21, 2014 12:55 PM  
**To:** 'Burton Hersh'  
**Cc:** [melissa@vixigelateria.com](mailto:melissa@vixigelateria.com); Marina Foglia; Vanessa Estrada; Ortiz, William; Kattou, Michael  
**Subject:** RE: VIXI at 374 Miracle Mile-Temporary Construction Sign

Mr. Hersh,

Please see attached code section for building site signs. Please refer to subsection 6 in the code where it states what information is allowed on the sign. As for the policy in dealing with the BID, we have had several meetings with the BID and do have open dialogue with the businesses and property owners as well. Michael and I were driving by this morning, saw the sign, and stopped to speak to the persons installing the sign. We informed them that the sign would be in violation if installed because it identified the business, which as you may see in the code section attached, is not included in what is allowed on the sign.

## *Carlos F. Correa*

Code Enforcement Officer  
City of Coral Gables  
Direct: (305) 569-1823  
Fax: (305) 460-5348

Please visit the Code Enforcement Website here <http://coralgables.com/index.aspx?page=397>

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**From:** Burton Hersh [mailto:[bhersh@burtonhersh.com](mailto:bhersh@burtonhersh.com)]  
**Sent:** Friday, November 21, 2014 12:31 PM  
**To:** Correa, Carlos; Kattou, Michael  
**Cc:** [melissa@vixigelateria.com](mailto:melissa@vixigelateria.com); Marina Foglia; Vanessa Estrada  
**Subject:** VIXI at 374 Miracle Mile-Temporary Construction Sign

Dear Carlos,

Today I received a call from my client regarding the attached Temporary Construction Sign which I believe complies with the requirements of chapter 8 of the Coral Gables Zoning Ordinance.

My client has advised me that you had indicated that the sign is not legal and may not be installed.

Accordingly, I would appreciate your providing a code citation specifying what you are relying on for telling her the sign is illegal. Please advise as soon as possible so that we can move forward with the sign. The owner has invested hundreds of thousands of dollars in our downtown and we need to be with her.

Additionally, in respect to Code Enforcements overall policy in dealing with our citizens, guests and business owners, I believe there should better policies established between the BID and Code

Enforcement. It is my observation and recommendation that the model used by the Ambassadors from the Parking Division may be adapted by Code Enforcement to result in a more harmonious and businesslike atmosphere.

Michael, perhaps we can arrange a meeting with the BID to begin this dialog.

Best regards,  
Burton

Burton H. Hersh, AIA  
[bhersh@burtonhersh.com](mailto:bhersh@burtonhersh.com)

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