



To: Commissioner Vince Lago

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

A handwritten signature in blue ink, appearing to be "CL", is written over the name "Craig E. Leen".

RE: Legal Opinion Regarding Paseo de la Riviera Project

Date: February 10, 2016

I have reviewed your request for a City Attorney Opinion regarding the Paseo de la Riviera project and mixed-use site plan. I have also reviewed the transcript of the proceedings. The Commission established maximum habitable building heights of 112' for the mixed-use residential building and 126' for the hotel. See Resolution No. 2015-36; see also Transcript, pp. 225, 233. The additional "maximum height[s]" listed in the resolution merely indicate what would be the maximum possible height by operation of law when including the non-habitable elements (including the rooftop architectural element) allowed by the Zoning Code. See Coral Gables Zoning Code, §§ 4-201(Table 1)(E)(7) and 5-604(B)(1)(Table 1)(3).

It does not follow, however, that the Board of Architects should approve a design going up to the maximum possible height allowed by law. Indeed, the transcript makes clear the City Commission's intent that the total height be limited as much as feasible, while balancing the aesthetics and beauty of the project. See Transcript, pp. 161-166 (as to limiting total height) and pp. 167-171 (as to balancing with aesthetics and beauty). I would note that the Florida Supreme Court has looked to a council transcript to determine a city council's intent. See Rinker Materials Corp. v. City of Miami, 285 So. 2d 552, 556 (Fla. 1973) ("The legislative intent with regard to item 29 in particular is clarified in the record from the statements of the City Council members who passed the ordinance . . ."). The balancing mentioned in the transcript is also consistent with the Board of Architect's traditional discretion and authority as a design review board.

Accordingly, it is my opinion, pursuant to section 2-201(e)(1) and (8) of the City Code, that the Board of Architects is not required to approve a design with a total building height that is the maximum allowed by law. Indeed, based on the Commission's intent, the Board of Architects and City staff should work with the applicant to limit the total building height as much as feasible, while balancing beauty and aesthetics, and maintaining the habitable heights at 112' for the residential building and 126' for the hotel.

I will raise the issue with the applicant, as it is possible the applicant will proffer a design that meets these goals. I will also have my office attend the Board of Architects hearing to advise the Board accordingly.

CITY OF CORAL GABLES

--MEMORANDUM--



TO: City Attorney, Craig Leen

FROM: Commissioner Vince Lago

SUBJECT: Paseo de La Riviera Project Commission Intent **DATE:** February 4, 2016

During the second reading of Paseo de La Riviera on December 11, 2015 the Commission voted unanimously (5-0) on resolution no. 2015-316 (attached). The intention of this memorandum is to clarify my understanding of the heights established in resolution no. 2015-316 which state:

- i. Maximum habitable building height of the hotel shall be limited to 126.
- ii. Maximum height to the top of the rooftop architectural element of the hotel shall be limited to 151'.
- iii. Maximum habitable building height of the mixed-use residential building shall be limited to 112'.
- iv. Maximum height to the top of the rooftop architectural element of the mixed-use residential building shall be limited to 137'.
- v. The project shall have a maximum habitable building height of 47' within 50' of any property line adjacent to single-family or duplex residential land.

There have been discussions on the architectural elements significantly exceeding the agreed upon habitable building height of the proposed project. It is my view that both the Board of Architects, and the applicant, be mindful of the Commission's intent to minimize the overall height of the proposed project. I do not believe this 'intent' entailed the inclusion of an architectural feature which materially surpasses the proposed habitable building heights beyond that which is needed to hide the air conditioning unit and mechanical items from view.

By way of this memorandum, I would like to request a City Attorney opinion regarding this matter. Once an opinion is issued, please advise the applicant and Board of Architects regarding your interpretation. I expect to bring this matter before the Commission in the near future and would like all interested parties to be prepared for discussion.

Sincerely,

Vince Lago

CC: Honorable Mayor and Members of the Commission

City Manager, Cathy Swanson-Rivenbark

CITY OF CORAL GABLES, FLORIDA

RESOLUTION NO. 2015-316 (AS AMENDED)

A RESOLUTION OF THE CITY COMMISSION OF CORAL GABLES, FLORIDA REQUESTING MIXED-USE SITE PLAN REVIEW PURSUANT TO ZONING CODE ARTICLE 4, "ZONING DISTRICTS," DIVISION 2, "OVERLAY AND SPECIAL PURPOSE DISTRICTS," SECTION 4-201, "MIXED USE DISTRICT (MXD)," FOR THE PROPOSED PROJECT REFERRED TO AS THE "PASEO DE LA RIVIERA" ON THE PROPERTY LEGALLY DESCRIBED AS THE SOUTHWESTERLY 360.000 FEET OF TRACT A, REPLAT OF PART OF CORAL GABLES RIVIERA SECTION PART 8 (1350 SOUTH DIXIE HIGHWAY), CORAL GABLES, FLORIDA; INCLUDING REQUIRED CONDITIONS; A REPEALER PROVISION, A SEVERABILITY CLAUSE, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, an Application was submitted requesting mixed use site plan review pursuant to Zoning Code Section 4-201 for the project referred to as "Paseo de la Riviera" on the property legally described as the Southwesterly 360.00 feet of Tract A, replat of part of Coral Gables Riviera Section Part 8 (1350 South Dixie Highway) according to the plat thereof as recorded in Plat Book 46 at Page 100 of the Public Records of Dade County, Florida as provided in "Exhibit A,"; and,

WHEREAS, the Application requires City of Coral Gables mixed use site plan review and public hearing consideration pursuant to the Zoning Code Mixed Use District (MXD) provisions and applicable Comprehensive Plan Mixed Use District (MXD) provisions; and,

WHEREAS, the Applicant has also submitted an application for a Comprehensive Plan map amendment from Commercial Low-Rise Intensity to Mixed-Use for the subject property, an application for Zoning Code text amendments to Appendix A, "Site Specific Zoning Regulations," Section A-83, "Riviera Section Part 8," by modifying provisions restricting FAR, height, and setbacks for the property, and an application for a Planned Area Development Site Plan, which are all necessary for the Paseo de la Riviera project to be reviewed in its totality; and,

WHEREAS, in advance of public hearing consideration, the City's staff analysis and recommendation were expressly incorporated into the record of this proceeding and are available for inspection at City of Coral Gables Planning Department and City Clerk's office and available on the City's Web page at www.coralgables.com for easy retrieval; and,

WHEREAS, after notice of public hearing duly published and courtesy notifications of all property owners of record within the one-thousand (1,000) feet of the subject property, the application was presented to the Planning and Zoning Board of the City of Coral Gables on July 29th, 2015; and,

WHEREAS, at the Planning and Zoning Board's July 29, 2015 meeting, the Board continued the proposed "Paseo de la Riviera" mixed use site plan (vote: the vote to continue to the

September 9, 2015 Board meeting failed to pass 3-2, and by default the item was continued to the August board meeting) to August 12, 2015; and,

WHEREAS, at the Planning and Zoning Board's August 12, 2015 meeting, the Board heard presentations from City Staff, the Applicant, and from a representative from the Riviera Neighborhood Association, and continued the proposed "Paseo de la Riviera" mixed use site plan (vote: 6-0) to a time certain of 6pm on September 16, 2015; and,

WHEREAS, at the Planning and Zoning Board's September 16, 2015 meeting, a public hearing was held and at which hearing all interested persons were afforded the opportunity to be heard; and,

WHEREAS, at the Planning and Zoning Board's September 16, 2015 meeting, the Board recommended approval of the proposed "Paseo de la Riviera" mixed use site plan (vote: 4 - 2) subject to conditions of approval; and,

WHEREAS, a public hearing was held before the City Commission on December 08, 2015 at which hearing this item was presented and all interested persons were afforded the opportunity to be heard; and,

WHEREAS, the City Commission was presented with the "Paseo de la Riviera" Mixed-Use Site Plan, and after due consideration and discussion, continued the item to a special Commission meeting on December 11, 2015 (vote: 5 - 0).

WHEREAS, at the Commission's December 11, 2015 meeting, the Commission Approved the Mixed-Use Site Plan (vote: 5 - 0).

WHEREAS, prior to the Commission's approval of the Mixed-Use Site Plan on December 11, 2015, the Riviera Neighborhood Association counsel declined a continuance of all four items related to the "Paseo de la Riviera" project; and,

WHEREAS, public hearings have been completed as indicated herein by the Coral Gables City Commission in consideration of a request for mixed use site plan review as required by the Zoning Code, and including careful consideration of written and oral comments by members of the public.

WHEREAS, in addition to approving the Mixed-Use Conditional Use Site Plan application for Paseo de la Riviera, the Commission also first approved a small-scale amendment to the Future Land Use Map re-designating the Property to MXD and, additionally and separately approved the Zoning Code text amendment and Planned Area Development site plan for Paseo de la Riviera as more particularly described above.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF CORAL GABLES THAT:

SECTION 1. The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of the Resolution upon adoption hereof.

SECTION 2. The proposed mixed use site plan review for the mixed use project referred to as “Paseo de la Riviera” on the property legally described as the Southwesterly 360.00 feet of Tract A, replat of part of Coral Gables Riviera Section Part 8 according to the plat thereof as recorded in Plat Book 46 at Page 100 of the Public Records of Dade County, Florida, (1350 South Dixie Highway), Coral Gables, Florida, shall be and is hereby approved subject to all of the following conditions:

1. **Application/supporting documentation.** Construction of the proposed project shall be in substantial conformance with the application package submitted by the applicant, as modified through the public hearing process with the final design as approved by the Commission at the December 11, 2015 Commission meeting and final design drawings reflecting that approval submitted to the City by Jorge L. Hernandez, architect, and dated January 29, 2016.
2. **Restrictive covenant.** Within 30 days of approval, the Applicant shall submit a draft restrictive covenant for City Attorney review/approval outlining all conditions of approval as approved by the City Commission. Failure to submit the covenant within the specified time frame shall render the approval void unless said time frame for submittal of the covenant is extended by the City Attorney after a showing of good cause by the property owner as to why the time frame should be extended. It is recognized that the requirements contained in the restrictive covenant constitute regulatory conditions of approval and shall survive as regulatory conditions of approval even if the restrictive covenant is later found to be void or unenforceable.
3. **Exclusive Parking:** Parking spaces may not be sold or rented to those who are not users or residents of the Paseo de la Riviera. This condition (3) shall not be construed to prohibit approved car-sharing and ride-sharing programs authorized by the City as more particularly described in condition 9(o) below.
4. **Peer Reviews and Inspections.** Due to the large and complex scope of work, accelerated schedule and high cost of development, the Applicant shall reimburse the City for acquiring the services of an outside Peer Review Consultant. The Peer Reviewer shall ensure code compliance for all building, mechanical electrical plumbing and structural aspects of the project. The Peer Reviewer shall be identified, hired and managed by the Building Division under the direct supervision of the City’s Building Official.
5. **Construction Staging.** In accordance with City Ordinance No. 3592 (dated 4/23/2002), the General Contractor shall be required to provide a construction staging plan which provides information on how the construction activities will be managed to reduce negative off-site impacts on surrounding properties. The Plan shall provide for maintenance of traffic (MOT), pedestrian and vehicular safety, use of right of way, material delivery and equipment, hours of operation, tree protection, worker parking, etc. The Building Division will provide a checklist of requirements upon request.
6. **Written notice.** Provide a minimum of seventy-two (72) hour written notice to all properties within five hundred (500) feet of the project boundaries of any proposed partial street/alley closures as a result of the project’s construction activity.

7. **Mobility Contribution.** The Applicant has proffered to contribute funding towards improved mobility in the surrounding neighborhoods prior to issuance of the first building permit. The use of the funding shall be determined by the Directors of Planning and Zoning and Public Works, and may include an extension of trolley service to the University Metrorail Station.

8. **Open Space Contribution.** The Applicant has proffered to contribute funding towards improved access to open space in the surrounding neighborhoods prior to issuance of the first building permit. The use of the funding shall be determined by the Directors of Planning and Zoning and Public Works, and may include implementation of some portions of the Underline in close proximity to the project site.

9. **Prior to issuance of a Foundation Permit, Applicant shall:**
 - a. **On Street Parking.** Comply with Section 74-201 – 74-203 Parking Replacement Assessment, including calculation of total public parking spaces being lost as approved by the City Parking and Planning & Zoning Directors.

 - b. **Additional Reviews.** Additional review of each individual building shall be conducted by the Board of Architects, at which time staff comments and BOA comments on the function and aesthetics of each building shall be addressed. Final approval of the project by the Board of Architects is required prior to issuance of any building permit.

 - c. **Zoning Review.** The Applicant shall provide measurable floor plans of the project to City Staff for verification of Zoning requirements such as floor area ratio, setbacks, height and parking.

 - d. **Building Height.** The maximum building height – as defined by the Zoning Code - shall be as follows:
 - i. Maximum habitable building height of the hotel shall be limited to 126’.
 - ii. Maximum height to the top of the rooftop architectural element of the hotel shall be limited to 151’.
 - iii. Maximum habitable building height of the mixed-use residential building shall be limited to 112’.
 - iv. Maximum height to the top of the rooftop architectural element of the mixed-use residential building shall be limited to 137’.
 - v. The project shall have a maximum habitable building height of 47’ within 50’ of any property line adjacent to single-family or duplex residential land.

 - e. **Parking Garage Design.** The parking garage shall be designed to address the following items:
 - i. The total number of parking spaces shall be determined based on the Tim Haahs shared parking study letter dated December 10, 2015.

- ii. All parking garage openings shall be screened so that interior lights and car headlights are not visible from surrounding properties and rights-of-way.
 - iii. The ground floor of the parking garage fronting Madruga shall be screened with a liner use.
 - iv. The garage façade fronting Madruga shall have a “green wall” with landscape integrated into the architecture so that the view from Jaycee Park and the Riviera Neighborhood is a view of landscape rather than a parking garage.
- f. **Traffic Improvements.** All proposed traffic flow modifications including street design, width, sight triangles, cross walks, diverters, etc. shall require written conceptual approval of Miami-Dade County and the City prior to the issuance of the first City permit. If any components of the proposed modifications are not approved, the traffic study shall be revised and additional community involvement may be required.
- g. **Encroachment Plan.** Obtain Commission approval by resolution of an Encroachment Plan addressing special treatment sidewalks, decorative pavers, landscaping, irrigation, street lighting, landscaping lighting and any other encroachments into, onto, under and over the right of way as shown in the site plan. The above encroachments must be approved by City resolution and a Hold Harmless agreement must be executed approving the encroachments.
- h. **Encroachment Agreement and Covenant.** Execute and record a restrictive covenant regarding encroachments and utilities in, below and above the public rights-of-way, in a form acceptable to the Public Works Director, the Risk Management Division, and the City Attorney, which shall include the precise locations and dimensions of the proposed areas of all encroachments. It is recognized that the requirements contained in the restrictive covenant constitute regulatory conditions of approval and shall survive as regulatory conditions of approval even if the restrictive covenant is later found to be void or unenforceable.
- i. **Bond to Restore Project Property.** Provide to the City a surety bond, or other form of security deemed acceptable by the City, covering the estimated maximum cost of the full restoration of the Property, including installation of sod and landscaping to City Code standards, and removal of all construction fencing.
- j. **Bond for Offsite Improvements.** Provide to the City a surety bond, or other form of security deemed acceptable by the City, in the amount of 115% of the estimated total hard and soft cost of all Offsite Improvements as determined by the Public Works Director.
- k. **Construction Notices.** Provide written notice to all properties within five hundred (500) feet of the project boundaries providing a specific liaison/contact person for the project including the contact name, contact telephone number and email, to allow communication between adjacent neighbors or interested parties of construction activities, project status, potential concerns, etc.

1. **Lighting Plan.** No signs or building lights shall be permitted above the third floor along the Madruga elevation of the project.
- m. **Caballero Boulevard Improvements.** The Applicant shall continue to enhance the design for the Caballero Boulevard Improvements to include pedestrian and bicycle mobility and safety improvements, such as widened sidewalks and bicycle facilities. Final design shall require written conceptual approval of Miami-Dade County and the City prior to the issuance of the first City permit.
- n. **Madruga Avenue Improvements.** The Applicant shall enhance the design for Madruga Avenue to include pedestrian and bicycle mobility and safety improvements. Final design shall require written conceptual approval of Miami-Dade County and the City prior to the issuance of the first City permit.
- o. **Car Sharing Facilities.** The Applicant shall reserve space within the project for future car sharing facilities in coordination with the City's Parking Director. Final design shall require written conceptual approval of the Parking Director prior to issuance of the first City permit.
- p. **Bike Sharing Facilities.** The Applicant shall reserve space within the project for future bike sharing facilities. Final design shall require written conceptual approval of the Parking Director and Public Works Director prior to issuance of the first City permit.
- q. **Electric Car-Charging Stations.** The Applicant shall provide a minimum of one (1) electric car-charging station for every fifty (50) parking spaces. The electric car-charging station may be counted towards the project parking requirement.

10. **Prior to issuance of the first Temporary Certificate of Occupancy, Applicant shall:**

- a. **Art in Public Places.** Prior to the issuance of a Temporary Certificate of Occupancy (TCO) for the project, the Applicant shall comply with all City requirements for Art in Public Places.
- b. **Conceptual Employee Parking Plan.** Submit and obtain the approval by the City Parking Director, of an employee parking management plan to limit spillover parking impacts on residential streets.
- c. **Traffic improvements and study.** Complete all traffic improvements recommended by the Traffic Study prepared by David Plummer and Associates, and satisfactorily resolve any outstanding Traffic Study issues as identified by the Public Works Department and City's traffic consultant, subject to review and approval by the Director of Public Works.
- d. **Caballero Boulevard and Hardee Road Intersection.** This intersection shall be further studied and all traffic flow modifications shall be designed in coordination with the City, and shall require the written approval of Miami-Dade County. The Applicant

shall construct all of the traffic improvements recommended and approved by the City and County.

- e. **Madruga Avenue and Hardee Road Intersection.** This intersection shall be further studied and all traffic flow modifications shall be designed in coordination with the City, and shall require the written approval of Miami-Dade County. The Applicant shall construct all of the traffic improvements recommended and approved by the City and County.
- f. **Bicycle / Pedestrian Plan Bicycle Facilities.** The stretch of Caballero Boulevard from US1 to Hardee Road and the stretch of Hardee Road from Caballero Boulevard to Madruga Avenue shall be designed as a bicycle and pedestrian-friendly route, as recommended in the Coral Gables Bicycle / Pedestrian Plan dated April 2014, and subject to City approval. The Applicant shall construct all of the traffic improvements recommended and approved by the City and County.
- g. **Valet Operations Plan.** A valet operations plan shall be submitted to and approved by the Parking Director. The plan shall ensure that queuing of vehicles for valet during large events or peak traffic hours will not block the flow of traffic.
- h. **Taxi Management Plan.** The applicant shall submit and obtain the approval of the Parking Director, for final plans for loading, unloading and queuing of taxis for the hotel.
- i. **Traffic Flow Modifications.** All traffic flow modifications including street design, width, sight triangles, cross walks, diverters, etc shall require the written approval of Miami-Dade County in addition to the City. Prior to issuance of the first Temporary Certificate of Occupancy for the project, the Applicant shall construct all of the traffic improvements outlined in the Traffic Impact Analysis.
- j. **Right-of-way and public realm improvements.** Install all right-of-way improvements and all landscaping, public realm and streetscape improvements identified on the Applicant's approved plans, subject to review and approval by the Directors of Public Works, Landscape Services, Planning and Zoning, and Parking. Any changes to and departures from the right-of-way and public realm improvements identified on the Applicant's approved plans and associated detail plans and specifications via the permitting process shall be subject to review and approval by Directors of Public Works, Landscape Services, Planning and Zoning, and Parking.
- k. **Undergrounding of overhead utilities.** Submit all necessary plans and documents, and shall complete the undergrounding of all overhead utilities along all public rights-of-way surrounding and abutting the project boundary, subject to review and approval by the Directors of Public Works, Landscape Services and Planning and Zoning.
- l. **Utility Upgrades.** All sanitary sewer gravity lines serving the project shall be properly upgraded to handle peak flows all downstream from the points of connection through the serving pump station.

- m. **Publicly Accessible Open Spaces Easement.** Execute and record a Publicly Accessible Open Spaces Easement Agreement between the City and the Owner.
 - n. **LEED.** Prior to the issuance of the Temporary Certificate of Occupancy for any individual building, such individual building must achieve LEED or equivalent certification.
11. **Following issuance of the first Temporary Certificate of Occupancy, Applicant shall:**
- a. **Neighborhood Traffic Calming.** At the Applicant's expense, the City shall perform traffic calming studies one year from the issuance of the first Temporary Certificate of Occupancy at locations in Riviera Neighborhood to be determined by the Public Works Director. If the Public Works Director determines that traffic calming is warranted on any of these roadways, the Applicant shall construct or pay for any physical traffic calming improvements required by these studies within one year of the completion of these studies, as approved by the Public Works Director.
 - b. **Traffic Monitoring.** At the Applicant's expense, the City shall perform annual traffic monitoring for a period of five years commencing six months from the issuance of the first certificate of occupancy. The traffic monitoring shall include a study of the number of external vehicular trips generated by the project during the morning and afternoon peak periods. Should the actual number of external vehicular trips during either of these periods result in a 10% increase in the number of external vehicular trips generated by the development above that which was projected during the original traffic impact analysis, the City will conduct traffic impact studies, at the Applicant's expenses, to determine appropriate mitigation. The Applicant shall construct or pay for any improvements in the traffic impact studies within one year of completion of these studies.
12. **Modifications to US1.** Obtain FDOT approval for curb cut, landscaping and any other modifications to State of Florida right-of-way.

SECTION 3. The proposed mixed use site plan review for the mixed use project referred to as "Paseo de la Riviera" on the property legally described as the Southwesterly 360.00 feet of Tract A, replat of part of Coral Gables Riviera Section Part 8 according to the plat thereof as recorded in Plat Book 46 at Page 100 of the Public Records of Dade County, Florida, (1350 South Dixie Highway), Coral Gables, Florida, shall be and is hereby approved subject to the approval of Ordinance No. 2015-36 for the Comprehensive Plan Map Amendment, Ordinance No. 2015-37 for the Zoning Code Text Amendment, and subject to all of the conditions of approval required in the Ordinance No. 2015-38 for the Planned Area Development for the subject property.

SECTION 4. That the Applicant, property owner(s), their successors or assigns shall further be required to comply with all applicable zoning regulations and any changes to the application herein granted shall require a recommendation from the Planning and Zoning Board and approval by the City Commission.

SECTION 5. This development permit by the City of Coral Gables does not in any way create any right on the part of an applicant to obtain a permit from a county, state or federal agency. Likewise, this development permit does not create any liability on the part of the City of Coral Gables for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a county, state or federal agency, or if the applicant undertakes actions that result in a violation of county, state or federal law. In addition, as a condition of this approval, all county, state and federal permits must be obtained before commencement of the development.

SECTION 6. That this Resolution shall become effective upon the date of its passage and adoption herein.

PASSED AND ADOPTED THIS EIGHTH DAY OF DECEMBER, A.D., 2015.

(Moved: Quesada / Seconded: Keon)

(Yeas: Slesnick, Keon, Lago, Quesada, Cason)

(Unanimous: 5-0 Vote)

(Agenda Item: 4)

APPROVED:



JIM CASON
MAYOR

ATTEST:



For WALTER J. FOEMAN
CITY CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:



CRAIG E. LEEN
CITY ATTORNEY

Exhibit "A"

Legal Description

The Southwesterly 360.00 feet of Tract A, REPLAT OF PART OF CORAL GABLES RIVIERA SECTION PART 8, according to the plat thereof as recorded in Plat Book 46 at Page 100 of the Public Records of Dade County, Florida.

Also Known As:

All that part of tract A (which said Tract A includes areas indicated as Parking Area and Unloading Area, containing 8.4 acres, more or less) as shown on plat entitled REPLAT OF PART OF CORAL GABLES, RIVIERA SECTION PART 8 and recorded in Plat Book 46, at Page 100 of the Public Records of Dade County, Florida, that lies Southwesterly of the following described line:

Commence at a point where the Southeasterly line of Miami-Homestead Highway (U.S. 1) intersects the Northeasterly line of Hardee Road; thence Northeasterly along the Southeasterly line of Miami-Homestead Highway a distance of 360 feet to the Point of Beginning of the line being described; thence Southeasterly parallel to and 360 feet Northeasterly at right angles to the Northeasterly line of Hardee Road a distance of 325 feet to a point located on the Northwesterly line of Avenue Madruga, said point, being 303.70 feet Northeasterly from a point where the Northwesterly line of Avenue Madruga intersects the Northerly line of Hardee Road.

From: [Leen, Craig](#)
To: [Paulk, Enga](#)
Subject: FW: Memorandum Re: Paseo de La Riviera Intent
Date: Wednesday, February 10, 2016 2:42:17 PM
Attachments: [Sent from the Coral Gables City Attorney Office.pdf](#)
[img-202144334-0001.pdf](#)
[image001.png](#)
Importance: High

Please publish with the attachments.

Craig E. Leen, City Attorney

*Board Certified by the Florida Bar in
City, County and Local Government Law*
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134
Phone: (305) 460-5218
Fax: (305) 460-5264
Email: cleen@coralgables.com



Celebrating 90 years of a dream realized.

From: Leen, Craig
Sent: Wednesday, February 10, 2016 2:37 PM
To: Lago, Vince
Cc: Commissioners; Swanson-Rivenbark, Cathy; Foeman, Walter; Ramos, Miriam; Figueroa, Yaneris; Paz, Evelyn; Granell, Chelsea; Ochoa, Martha; Chen, Brigitte; Paulk, Enga
Subject: RE: Memorandum Re: Paseo de La Riviera Intent
Importance: High

Commissioner Lago,

I have reviewed your request for a City Attorney Opinion regarding the Paseo de la Riviera project and mixed-use site plan. I have also reviewed the transcript of the proceedings. The Commission established maximum habitable building heights of 112' for the mixed-use residential building and 126' for the hotel. See Resolution No. 2015-36; see also Transcript, pp. 225, 233. The additional "maximum height[s]" listed in the resolution merely indicate what would be the maximum possible height by operation of law when including the non-habitable elements (including the rooftop

architectural element) allowed by the Zoning Code. See Coral Gables Zoning Code, §§ 4-201(Table 1)(E)(7) and 5-604(B)(1)(Table 1)(3).

It does not follow, however, that the Board of Architects should approve a design going up to the maximum possible height allowed by law. Indeed, the transcript makes clear the City Commission's intent that the total height be limited as much as feasible, while balancing the aesthetics and beauty of the project. See Transcript, pp. 161-166 (as to limiting total height) and pp. 167-171 (as to balancing with aesthetics and beauty). I would note that the Florida Supreme Court has looked to a council transcript to determine a city council's intent. See Rinker Materials Corp. v. City of Miami, 285 So. 2d 552, 556 (Fla. 1973) ("The legislative intent with regard to item 29 in particular is clarified in the record from the statements of the City Council members who passed the ordinance . . ."). The balancing mentioned in the transcript is also consistent with the Board of Architect's traditional discretion and authority as a design review board.

Accordingly, it is my opinion, pursuant to section 2-201(e)(1) and (8) of the City Code, that the Board of Architects is not required to approve a design with a total building height that is the maximum allowed by law. Indeed, based on the Commission's intent, the Board of Architects and City staff should work with the applicant to limit the total building height as much as feasible, while balancing beauty and aesthetics, and maintaining the habitable heights at 112' for the residential building and 126' for the hotel.

I will raise the issue with the applicant, as it is possible the applicant will proffer a design that meets these goals. I will also have my office attend the Board of Architects hearing to advise the Board accordingly.

I am requesting that my office publish this response as a formal City Attorney Opinion.

Craig E. Leen, City Attorney

Board Certified by the Florida Bar in
City, County and Local Government Law
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134
Phone: (305) 460-5218
Fax: (305) 460-5264
Email: cleen@coralgables.com

-----Original Message-----

From: Granell, Chelsea
Sent: Thursday, February 04, 2016 7:30 PM
To: Leen, Craig
Cc: Swanson-Rivenbark, Cathy; Foeman, Walter; Cason, Jim; Quesada, Frank; Keon, Patricia; Slesnick, Jeannett; Paz, Evelyn; Lago, Vince
Subject: Memorandum Re: Paseo de La Riviera Intent

Good Evening Mr. City Attorney,

Please find enclosed a memorandum on behalf of Commissioner Lago along with supporting documentation. Let me know if you should have any questions.

Vice Mayor and Commissioners, kindly do not reply all, thank you.

Regards,

Chelsea Granell Lindsey,MPA
Commission Liaison
City of Coral Gables
405 Biltmore Way
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cgranell@coralgables.com