



To: Luis M. Garcia

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

RE: Legal Opinion Regarding Applicability of Historic Preservation Ordinance and Comprehensive Plan

Date: June 5, 2015

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In preparation for the meeting tomorrow, I wanted to provide you a memorandum with my analysis as to why the City believes that its Historic Preservation Ordinance applies to the Coral Gables Elementary historic landmark, and why it is enforceable as to the School Board and its contractor. Please note, I am providing this analysis in advance so you have a chance to consider my reasons prior to when we meet. I want to emphasize again that the City sincerely hopes to resolve this matter.

There are five particular reasons I would like you to consider:

1. You indicated in your letter that the School Board takes the position that it is not subject to the City's historic preservation ordinance, which is a zoning ordinance contained in the City's zoning code. **The Florida Supreme Court has determined, however, that city zoning ordinances apply to state agencies under a balancing of interests test, and has required that state agencies submit to hearings in the appropriate city forum** (in our case, that would be the historic preservation board or historic preservation officer for the City). *See Hillsborough Assoc. Etc. v. City of Temple Terrace*, 322 So. 2d 610, 612 (Fla. 1976). Although the Supreme Court did not decide the question of whether "state agencies" included a school district (expressly reserving the question in footnote 2), **the question was later answered affirmatively by the Second District, who held that school boards were subject to municipal zoning ordinances under the balancing of interest test.** *See City of Orlando v. School Board of Orange County*, 362 So. 2d 694,694 (Fla. 2d DCA 1978) (answering certified question and holding that school boards were subject to municipal zoning ordinances); *The Village of North Palm Beach v. School Board of Palm Beach County*, 349 So. 2d 683, 683-84 (Fla. 2d DCA 1977)(ruling in favor of city against the school board while stating in majority opinion "[t]herefore, we adopt

the balancing-of-public-interests test for resolving zoning conflicts between different governmental bodies”); *id.* (discussing *Temple Terrace* in a special concurrence and stating “in the present case no statute immunizes the appellee School Board, a governmental agency, from the application of municipal zoning ordinances. Under such circumstances, as the majority opinion points out, the trial court should apply a balancing of the interests test in deciding whether the appellant Village's zoning ordinances apply to the appellee Board.”). I have found no case to the contrary (please forward to me if you have found one). As you know, a district court decision is binding statewide unless there is contrary district court precedent. **Accordingly, it is presently the law in Florida that school boards are subject to municipal zoning ordinances under a balancing of interests test, and must follow the appropriate procedure supplied by the local government entity.**

2. It is also well-settled that the School Board must comply with the City's Comprehensive Plan. *See* Fla. Stat. 1013.33. The City's Comprehensive Plan includes an entire section dedicated to Historical Resources, expressly referencing the City's historic preservation regulations contained in its Zoning Code. *See* Goal HIS-3, Objective HIS-3.1, Goal HIS-4, Objective HIS-4.1, Policy HIS-4.1.1., Policy HIS-4.1.3. The School Board's determination that it may disregard the City's historic preservation regulations in this matter would violate the City's Comprehensive Plan, which cannot be done. **Accordingly, the City's Comprehensive Plan, which clearly applies to the School Board, requires the School Board to comply with the Historic Preservation Ordinance.**
3. I would also note that the Historic Preservation Ordinance, and its certificate of appropriateness requirement, is applicable by its express terms to all locally designated landmarks in Coral Gables. *See* Sec. 3-1106, Coral Gables Zoning Code. Coral Gables Elementary was locally designated pursuant to the Historic Preservation Ordinance, and therefore the terms of the Ordinance clearly apply to the School Board. The ordinance has a presumption of validity, so the City is clearly authorized to enforce it. In addition, the City's authority to adopt this law comes from the Municipal Home Rule Powers Act, supported by Article 6 of the Miami-Dade County Charter. As you know, an ordinance adopted under the grant of authority under the Municipal Home Rule Powers Act is effective unless “expressly prohibited by the constitution, general or special law, or county charter.” *See* Fla. Stat., Sec. 166.21. I have reviewed the statutes relating to school boards and found no provisions whatsoever that would expressly preempt the City's historic preservation ordinance. Thus, the ordinance is enforceable. Moreover, Article 6 of the Miami-Dade County Charter supports the City of Coral Gables as it recognizes the City's authority to “**provide for higher standards of zoning, service, and regulation than those provided by the Board of County Commissioners in order that its individual**

**character and standards may be preserved for its citizens.”** (emphasis added). This is exactly what the City is seeking to do here, as it is seeking to maintain the historic integrity and beauty of a key building in Coral Gables’ history, thereby preserving the City’s individual character and standards for its citizens. **For all of these reasons, it is clear that the Historic Preservation Ordinance applies to the Coral Gables Elementary Building and can be enforced as to the building to protect its historic integrity.**

4. I want you to know that I reviewed *Homich v. Lake County School Board*, 779 So. 2d 567 (Fla. 5th DCA 2001), which is the case you were referring to in our phone call. In that case, the School Board was permitted to demolish two buildings that were eligible for designation on the national register of historic places. **Notably, the case did not involve buildings that were already locally designated landmarks pursuant to a municipal historic preservation ordinance.** This is key, and makes the case entirely distinguishable. The decision has no bearing on the question of whether the school board must comply with a municipal historic preservation ordinance. As mentioned in point 1, that question is determined by the line of cases holding that school boards must comply with local zoning ordinances under a balance of interests test, **and that the decision of whether to grant a certificate appropriateness or other application/remedy must be done through the process provided in the ordinance** (i.e., the historic preservation board or historic preservation officer for the City).
5. Finally, it is my understanding that the School Board never appealed or sought revocation of the local historic landmark designation for Coral Gables Elementary (please let me know if this is incorrect), and that the School Board has always complied with the historic preservation ordinance in the past. This provides the City with a clear estoppel argument as well, although I believe the City’s legal ones are sufficient. I simply bring up this point because the City does not understand why after all these years the School Board decided not to follow the Historic Preservation Ordinance at this time. Please reconsider this so we can find a solution to this issue that meets the School Board’s goals while preserving the historic integrity of the building and windows.

Of course, this is not intended as a complete set of arguments as to why the historic preservation ordinance applies, but gives you a view of the City’s central arguments. I would ask that you provide a copy of my analysis to School Board staff so they can see why the City believes its ordinance applies, even if the School Board continue to disagree. I plan to provide this analysis to the City Commission and the City Manager as well. Once again, I look forward to our upcoming meeting as we seek a resolution to these issues.

## Herbello, Stephanie

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**From:** Leen, Craig  
**Sent:** Friday, June 05, 2015 6:20 PM  
**To:** Herbello, Stephanie  
**Cc:** Chen, Brigette  
**Subject:** FW: City Attorney's Legal Memorandum as to Applicability of Historic Preservation Ordinance and Comprehensive Plan

Please publish this opinion.

**Craig E. Leen, City Attorney**  
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City, County and Local Government Law*  
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**From:** Leen, Craig  
**Sent:** Friday, June 05, 2015 1:29 AM  
**To:** Garcia, Luis M.  
**Cc:** Harvey, Walter J.  
**Subject:** City Attorney's Legal Memorandum as to Applicability of Historic Preservation Ordinance and Comprehensive Plan

Luis,

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mentioned in point 1, that question is determined by the line of cases holding that school boards must comply with local zoning ordinances under a balance of interests test, and that the decision of whether to grant a certificate appropriateness or other application/remedy must be done through the process provided in the ordinance (i.e., the historic preservation board or historic preservation officer for the City).

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**Craig E. Leen, City Attorney**

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City, County and Local Government Law*

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