



To: Iglesias, Peter, Assistant City Manager
Eduardo Santamaria, Public Works Director

From: Cristina M. Suárez, Assistant City Attorney for the City of Coral Gables

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

RE: Legal Opinion Regarding "The Plaza Coral Gables" and Encroachments Above the Right-of-Way

Date: October 6, 2017

An issue has been raised regarding proposed encroachments over the right-of-way as depicted in the project plans for "The Plaza Coral Gables," f/k/a Mediterranean Village ("The Plaza") to be located at 2801, 2901, and 3001 Ponce de Leon Boulevard. The subject encroachments consist of commercial retail space on the second level of the project over Palermo Avenue, a public right-of-way.

This project has a long history, with approvals for the original project known as "Old Spanish Village" under prior ownership dating as far back as 2007. Subsequent to the approval of that project, there was an economic downturn and the project was never developed. Thus, the site has been undeveloped for at least ten years, impacting the surrounding neighborhood.

The current owner, Agave Ponce, LLC, acquired the property in 2011 and obtained approvals for "Mediterranean Village" in 2015, pursuant to a Planned Area Development Ordinance and site plan approval process, which required a quasi-judicial hearing. The developer and the City also entered into a Development Agreement with the City. The subject encroachments were part of that original site plan and were expressly approved in the 2015 Development Agreement. In March 2017, the City Commission by resolution approved in concept minor amendments to the site plan and approved an Amended Development Agreement for the project now known as "The Plaza Coral Gables." The Commission directed staff to further review and administratively approve the site plan. The Amended Development Agreement and revised site plan also include the subject encroachments and the Amended Development Agreement states in Section 8.1 (same provision that is in the 2015 Development Agreement) that:

The City finds that the construction of encroachments in, above, and under the public rights-of-way will not unduly restrict the use of such public rights-of-way

and is a necessary and essential element in the future construction of pedestrian walkways or commercial uses above such public rights-of-way as generally depicted on Exhibit K attached hereto.

Thus, the subject encroachments have been approved by the City Commission since 2015 after a quasi-judicial hearing and the City has made an express finding in the Amended Development Agreement that they are a necessary and essential element. The time for any appeal has lapsed and thus, the approval is final and cannot be revisited. See Mills v. Laris Painting Co., 125 So. 2d 745, 748 (Fla. 1960) (recognizing that while administrative agencies have an inherent or implied power to rehear or reopen a cause and reconsider its action or determination where the proceeding is in essence a judicial one, “the power to rehear or reconsider must be exercised before an appeal from the original order of the administrative body has been lodged or before such order has become final by lapse of time without a timely appeal”). Additionally, because this project has such a long history and involves such a large parcel of land being undeveloped for so long, development of the The Plaza Coral Gables will provide a much awaited public benefit.

Therefore, it is the opinion of this office, that (1) based upon the unique circumstances of this case; (2) given that the project, including the subject encroachments, provide a public benefit; (3) because the project, including the subject encroachment, was approved after a quasi-judicial hearing and that the time for any appeal has run; and (4) because the parties entered into a Development Agreement which included an express finding by the City that the subject encroachments are “a necessary and essential element in the future construction of pedestrian walkways or commercial uses above such public rights-of-way,” this matter is closed and procedurally barred and the site plan should be administratively approved by City staff, as directed by the City Commission.

This opinion is issued pursuant to section 2-201(e)(1) and (8) of the City Code and section 2-702 of the Zoning Code.

From: [Suarez, Cristina](#)
To: [Paulk, Enga](#)
Cc: [Leen, Craig](#)
Subject: FW: Opinion Regarding "The Plaza Coral Gables" and Encroachments Above the Right-of-Way
Date: Friday, October 06, 2017 11:20:42 AM
Attachments: [Draft Opinion re The Plaza encroachments.docx](#)
[image001.png](#)

Please publish when finalized.

Thanks,
Cristina

Cristina M. Suárez

Assistant City Attorney

City of Coral Gables
405 Biltmore Way, 3rd Floor
Coral Gables, Florida 33134
Main Phone: (305) 460-5218

Direct Dial: (305) 476-7231

Email: csuarez@coralgables.com



Celebrating 90 years of a dream realized.

Public Records: This e-mail is from the City of Coral Gables – City Attorney’s Office and is intended solely for the use of the individual(s) to whom it is addressed. If you believe you received this email in error, please notify the sender immediately, delete the e-mail from your computer, and do not copy or disclose it to anyone else. The State of Florida has a broad public records law. Most written communications to or from State and Local Officials regarding State or Local business are public record available to the public upon request.

Confidentiality: The information contained in this transmission may be legally privileged and confidential, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited.

From: Suarez, Cristina
Sent: Friday, October 06, 2017 10:38 AM
To: Paulk, Enga
Cc: Leen, Craig; Iglesias, Peter; Santamaria, Eduardo
Subject: Opinion Regarding "The Plaza Coral Gables" and Encroachments Above the Right-of-Way

Enga:

Please finalize the attached opinion for Craig's signature.

Thanks,
Cristina

Cristina M. Suárez

Assistant City Attorney

City of Coral Gables

405 Biltmore Way, 3rd Floor

Coral Gables, Florida 33134

Main Phone: (305) 460-5218

Direct Dial: (305) 476-7231

Email: csuarez@coralgables.com



CORAL GABLES
THE CITY BEAUTIFUL

Celebrating 90 years of a dream realized.

Public Records: This e-mail is from the City of Coral Gables – City Attorney's Office and is intended solely for the use of the individual(s) to whom it is addressed. If you believe you received this email in error, please notify the sender immediately, delete the e-mail from your computer, and do not copy or disclose it to anyone else. The State of Florida has a broad public records law. Most written communications to or from State and Local Officials regarding State or Local business are public record available to the public upon request.

Confidentiality: The information contained in this transmission may be legally privileged and confidential, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited.

City of Coral Gables

City Attorney's Office

**Opinion Regarding "The Plaza Coral Gables" and
Encroachments Above the Right-of-Way**

An issue has been raised regarding proposed encroachments over the right-of-way as depicted in the project plans for "The Plaza Coral Gables," f/k/a Mediterranean Village ("The Plaza") to be located at 2801, 2901, and 3001 Ponce de Leon Boulevard. The subject encroachments consist of commercial retail space on the second level of the project over Palermo Avenue, a public right-of-way.

This project has a long history, with approvals for the original project known as "Old Spanish Village" under prior ownership dating as far back as 2007. Subsequent to the approval of that project, there was an economic downturn and the project was never developed. Thus, the site has been undeveloped for at least ten years, impacting the surrounding neighborhood.

The current owner, Agave Ponce, LLC, acquired the property in 2011 and obtained approvals for "Mediterranean Village" in 2015, pursuant to a Planned Area Development Ordinance and site plan approval process, which required a quasi-judicial hearing. The developer and the City also entered into a Development Agreement with the City. The subject encroachments were part of that original site plan and were expressly approved in the 2015 Development Agreement. In March 2017, the City Commission by resolution approved in concept minor amendments to the site plan and approved an Amended Development Agreement for the project now known as "The Plaza Coral Gables." The Commission directed staff to further review and administratively approve the site plan. The Amended Development Agreement and revised site plan also include the subject encroachments and the Amended Development Agreement states in Section 8.1 (same provision that is in the 2015 Development Agreement) that:

The City finds that the construction of encroachments in, above, and under the public rights-of-way will not unduly restrict the use of such public rights-of-way and is a necessary and essential element in the future construction of pedestrian walkways or commercial uses above such public rights-of-way as generally depicted on Exhibit K attached hereto.

Thus, the subject encroachments have been approved by the City Commission since 2015 after a quasi-judicial hearing and the City has made an express finding in the Amended Development Agreement that they are a necessary and essential element. The time for any appeal has lapsed and thus, the approval is final and cannot be revisited. See Mills v. Laris Painting Co., 125 So. 2d 745, 748 (Fla. 1960) (recognizing that while administrative agencies have an inherent or implied power to rehear or reopen a cause and reconsider its action or determination where the proceeding is in essence a judicial one, "the power to rehear or reconsider must be exercised before an appeal from the original order of the administrative body

has been lodged or before such order has become final by lapse of time without a timely appeal”). Additionally, because this project has such a long history and involves such a large parcel of land being undeveloped for so long, development of the The Plaza Coral Gables will provide a much awaited public benefit.

Therefore, it is the opinion of this office, that (1) based upon the unique circumstances of this case; (2) given that the project, including the subject encroachments, provide a public benefit; (3) because the project, including the subject encroachment, was approved after a quasi-judicial hearing and that the time for any appeal has run; and (4) because the parties entered into a Development Agreement which included an express finding by the City that the subject encroachments are “a necessary and essential element in the future construction of pedestrian walkways or commercial uses above such public rights-of-way,” this matter is closed and procedurally barred and the site plan should be administratively approved by City staff, as directed by the City Commission.

This opinion is issued pursuant to section 2-201(e)(1) and (8) of the City Code and section 2-702 of the Zoning Code.