



To: Mayor and City Commissioners, for the City of Coral Gables

From: Miriam Soler Ramos, City Attorney for the City of Coral Gables *MSR*

RE: Legal Opinion Historic Preservation and the LaSalle Dry Cleaners Building

Date: July 6, 2018

On September 16, 2016, an application for a letter of historic significance was received by the Historical Resources and Cultural Arts Department (the Department) for the property located at 2341 and 2345 LeJeune Road, known as LaSalle Dry Cleaners (LaSalle). The application was presented to the Historic Preservation Board (HPB) on November 10, 2016 as a discussion item and the HBP adopted a motion directing staff to prepare a designation report and for the matter to be taken back to the Board to decide whether to designate.

On February 16, 2017, the HPB was presented with: "CASE FILE LHD 2016-020: Consideration of the local historic designation of LaSalle Dry Cleaners located at 2341 LeJeune Road," after proper notice was sent and published. A full hearing was held which included competent substantial evidence. Members of the Historical Resources and Cultural Arts Department provided a lengthy presentation of the case for designation based on the building's historical, cultural, architectural, and aesthetic significance. The owner of LaSalle and her architect spoke in opposition of the designation and the architect provided a presentation arguing why the criteria for designation were not met. One resident spoke about the significant alterations to the building, another resident spoke in opposition to designation, and staff reiterated the criteria for designation. At the conclusion of the hearing, based on the significant alternations made to the building over time, the HBP determined, by a 7-1 vote, that the property not be designated historic.

In accordance with the Section 3-1104(C)(7) of Zoning Code, appeals from decisions of the HPB may be taken to the City Commission within ten (10) days from the date of the HPB's decision, "otherwise the Resolution will be final." If any appeal is taken, it shall then be heard by the City Commission at its next meeting, provided at least ten days have passed between the time of the filing of the Notice of Appeal and the date of the meeting. The City Commission's review shall be based on the record of the hearing and shall not be a de novo hearing. The City Commission is authorized to affirm, affirm with conditions, override the decision of the HPB, or remand for further proceedings. Any decision by the HPB can only be reversed by a majority vote of the City Commission. The granting of any appeal by the City Commission shall be by resolution. See Sections 3-605 and 3-606, City of Coral Gables Zoning Code. In the instant

matter, no appeal was filed within the prescribed time period, and no appeal has been filed as today's date.

On March 27, 2018, the City Commission adopted: A Resolution Authorizing the City of Coral Gables to Enter into a Parking Lease with MML Properties, LLC, as a Tenant, with regard to the Property Located at 2341-2345 LeJeune Road, Coral Gables, Florida for a period of Five (5) Years. As of July 11, 2018, the lease agreement has not been executed.

In recent days individuals and organizations interested in historic preservation, who did not participate in the HPB hearing, have expressed to the City their disappointment with the idea of demolishing the building and their belief that the building should be preserved as historic. As a result, a discussion item has been placed on the July 10, 2018 City Commission meeting agenda by Commissioners Mena and Lago. In anticipation of that discussion, this opinion seeks to provide the City Commission with options regarding the property.

As discussed above, the Zoning Code provides an appeals process that may be used by an aggrieved party to appeal a decision of the HPB to the City Commission. As with all appeals, a time period is prescribed so as to provide finality to the decision at a point in time. After the February 16, 2017 HPB determination not to designate the LaSalle Building based on the extensive alteration, no party appealed. Consequently, the decision of the HPB became final on February 26, 2017. Having no appeal before it, the City Commission has no procedural avenue under which to vote to overrule the determination of the HPB, and doing will likely subject to the City to a significant claim under the Bert J. Harris Private Property Rights Protection Act (Bert Harris), Section 70.001, F.S.

The City Commission has two options. First, it may adopt a resolution ordering the Historical Resources and Cultural Arts Department¹ to determine if there has been a substantial change in circumstances from February 2017 to today that would now support a local historic designation. It is unlikely that such a change has occurred because the alterations that were the basis for the denial have not been removed and restoration has not occurred. A designation by the HPB, absent competent substantial evidence that a substantial change in circumstances has occurred, could also subject the City to a challenge under Bert Harris.

In addition to the potential Bert Harris challenge that could result from a decision to designate the LaSalle property, such action could have larger implications to the City's Historic Preservation Ordinance (the Ordinance) under Bert Harris. The City was recently successful in defeating a Bert Harris challenge to the Ordinance, which is now on appeal. The City's exposure on that particular case was approximately \$7 million. More important, however, is upholding the integrity of the Ordinance. Action by the City Commission that is contrary to the Ordinance may subject the entire Ordinance to challenge, which could have significant implications on the City's robust and significant history of and commitment to historic preservation.

¹ Sec. 14 of the City Charter allows the City Commission to give orders to any subordinate of the Manager in open session.

Second, the City Commission may provide different direction on how it wishes for the City to interact with the property and its owners. For example, the Commission may vote to rescind its previous Resolution authorizing the City Manager to enter into a Parking Lease agreement at the property. The Commission may also direct the City Manager to research and evaluate the property for purchase in order to allow the City to restore the building and make the substantial investment necessary to restore it.² The City Commission, however, does not have the option of directly designating the property as historic under the Zoning Code; that power has been delegated to the HPB.

This opinion is issued pursuant to Section 2-252(e)(1) and (8) of the City Code and Section 2-702 of the Zoning Code.

July 6, 2018

² In fact, during the February 16, 2017 HPB meeting, one member of the HPB suggested that the best way to preserve the building would be for the City to purchase the property and restore the building to its original condition.

CITY OF CORAL GABLES
CITY ATTORNEY'S OFFICE

OPINION REGARDING HISTORIC PRESERVATION AND THE LASALLE DRY CLEANERS BUILDING

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