

Quiroz, Lillian

From: Leen, Craig
Sent: Monday, March 03, 2014 5:51 PM
To: Quiroz, Lillian
Subject: FW: City Attorney Interpretation Re: Use of a 3.5 FAR in Determining Hypothetical Development Rights for a Historic Landmark in a Commercial Zone

Please make the forwarded emails below an exhibit to Item I-1.

Craig E. Leen
 City Attorney

From: Leen, Craig
Sent: Monday, March 03, 2014 5:40 PM
To: Commissioners
Cc: Salerno, Patrick; Foeman, Walter
Subject: City Attorney Interpretation Re: Use of a 3.5 FAR in Determining Hypothetical Development Rights for a Historic Landmark in a Commercial Zone

Mayor and Commissioners,

At the last Commission meeting, the issue was raised whether a 3.0 FAR or a 3.5 FAR should be used to determine the "maximum gross floor area permitted in that site's zoning designation," when calculating the hypothetical development rights for a historic landmark in a commercial zone (in determining the amount of development rights that can be transferred). I informed you that my office received a request from City staff to issue an interpretation on this issue, and that my interpretation was that a 3.5 FAR figure should be used based on the language of the Zoning Code. I would note that the interpretation was also consistent with the view of City staff and outside counsel. The interpretation that I issued is in the forwarded email below.

Based on the request I received at the Commission meeting, I will be prepared to discuss the past history of this subject at the next Commission meeting, as well as the issue of retroactive application. I look forward to presenting to you on these topics.

Please do not respond to this email, and please call me with any questions.

Best regards,

Craig E. Leen
 City Attorney

From: Leen, Craig
Sent: Friday, February 07, 2014 4:08 PM
To: Tompkins, Jane; Trias, Ramon
Cc: 'Susan L. Trevarthen'
Subject: City Attorney Interpretation

CITY ATTORNEY INTERPRETATION

I have been asked to interpret the provisions governing the transfer of unused development rights from local historic landmarks to other properties located in the Central Business District (CBD). This matter is governed by Division 10 of

Article 3 of the Zoning Code, and works as follows. The existing development on the site of the historic landmark, referred to as the sending site in the Zoning Code, is calculated, and compared with the hypothetical development rights available if the landmark were not present and the property was instead built out to the maximum extent permitted by the Zoning Code. The difference between these two numbers establishes the amount of development rights that can be transferred to enhance the development rights of a receiving site in the CBD.

In calculating the maximum hypothetical development rights under the Zoning Code, section 3-1004 states that this calculation is based on "the difference between the existing gross floor area on the property and the maximum floor area permitted on the property by the applicable zoning district." (emphasis added). The "calculation of unused development rights" required by subsection 3-1004.B.3. is defined in Article 8 of the Zoning Code as "the formula used to determine the maximum amount of underdeveloped floor area that may be transferred from a designated historic property. That figure is determined by calculating the difference between the existing gross floor area in the designated structure (sending site) and the maximum gross floor area permitted in that site's zoning designation." (emphasis added).

Nearly all property in the CBD is zoned Commercial. A sending site that is zoned Commercial is permitted two allocations of floor area ratio by the Zoning Code: 3.0 FAR by right (Section 4-302.D.4.), and 3.5 FAR if Level 2 Mediterranean design bonuses are approved for the property (Section 5-604.C. and D.).

Accordingly, for applications going forward, I conclude that the "maximum gross floor area permitted in that site's zoning designation" for a sending site includes both the FAR allowed as of right as well as the additional FAR available as Level 2 Mediterranean design bonuses. Using the example of a Commercially zoned sending site, the maximum would be 3.5. This interpretation is limited to the conclusions stated herein.

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