

Excerpt of 03 12 14 PZB Board  
Meeting Minutes

Exhibit C

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MS. MENENDEZ: Marshall Bellin?  
MR. BELLIN: Yes.  
MS. MENENDEZ: Anthony Bello?  
MR. BELLO: Yes.  
MS. MENENDEZ: Eibi Aizenstat?  
CHAIRMAN AIZENSTAT: Yes.  
MS. TREVARTHEN: Thank you, Mr. Chair.  
CHAIRMAN AIZENSTAT: Thank you, Susan.  
Okay, the next item is an Ordinance of the City Commission of Coral Gables, Florida, providing for a text amendment to Article 3, "Development Review," of the City of Coral Gables Official Zoning Code, to modify existing procedures and create new procedures to resolve disputes and provide relief from the application of the Zoning Code; providing for severability, repealer, codification, and an effective date.  
MR. LEEN: Mr. Chair, I'm going to be presenting this item.  
CHAIRMAN AIZENSTAT: Okay. Mr. City Attorney, if you may, please.  
MR. LEEN: Thank you, Mr. Chair.  
So, to begin, I just want to provide the background context. It's not really before you

is the procedure that we came up with, and there's two different procedures here.  
Now, this doesn't just apply to the trolley building case, though. I just wanted to be perfectly frank with you, that's how the issue came up, but when you look at the Code right now, I felt that it was deficient in the sense that it did not have a mechanism available for a settlement of a litigation that allowed the Commission to do the appropriate land use and zoning determinations.

The other concern I had was, and this comes up occasionally, is that for a First Amendment issue, or for a RLUIPA issue -- and RLUIPA is the -- You may be aware of this, but there's a statute which basically says that cities have to sometimes make religious accommodations, for people's religion. You also know -- You know of the ADA, where you have to make modifications for people's disabilities.

There's a number of laws like this, where the cities sometimes have to make accommodations, and the concern is that a provision in the Zoning Code or the City Code or anywhere might not permit that, but yet

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today, although it is relevant, so I can discuss it. This effort to amend the Code, so that there can be a viable settlement procedure in the Code to address zoning and land use issues, comes about because of the trolley building litigation, which I'm sure you're all aware of, and in fact, I have for you, and this is just for informational purposes, but I'm going to put it in the record, because it's an interpretation I've already given, and which I'm making -- you know, it's obviously a public record, but I'm making -- I'm putting that, filing that, with the Clerk, and this is an opinion I issued under my authority under the Zoning Code, an interpretation of our current settlement procedures.  
But what we have with the trolley case is a situation where we are going to have to enter into a settlement at some point, if we decide to settle the matter. Obviously, we could continue with the litigation. But if we were to do that, we need a mechanism available by which we can bring that before the City Commission and still comply with all applicable laws related to land use and zoning, and this

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Federal law requires it, and if Federal law requires something, you've got to do it anyway. The supremacy clause requires it. But it puts us in the strange position of violating our own Code, even though we're doing it -- we're acting lawfully in doing it, because we're following Federal law or we're following State law, but yet we still have to violate the Code.

So the idea here is to create a mechanism, and there's two of them, and I'll go over them briefly, and then I wanted to get your comments. The first mechanism does exist in the Code, but it's very narrow. It's Division 17, Protection of Landowners' Rights; Relief from Inordinate Burdens. Many of you may have heard of the Bert Harris Act. What the Bert Harris Act is, is a statute -- Well, before I even get into that, you've heard of a taking, a constitutional taking, under the Fifth Amendment to the Constitution. Generally, a government cannot take property without due process and must provide just compensation when it's taking property, unless, obviously, it's been forfeited or something like that, because of a criminal violation, but if the Government

1 is going to take or do a physical invasion of  
2 someone's property, generally it has to pay  
3 just compensation. It's condemnation law, it's  
4 called.

5 Well, in Florida, there's a statute that  
6 even if you don't show a constitutional taking,  
7 like you don't show that the Government is  
8 actually taking your property, or denied you  
9 economic use of that property, so basically the  
10 Government has required you to keep your  
11 property as a park or something like that, and  
12 you can't do any development on your property  
13 at all, that would be like a Fifth Amendment  
14 taking.

15 Well, there's a statute that has a lower  
16 standard. It's called inordinate burden, and  
17 when the Government requires you to bear an  
18 inordinate share of a burden for a public  
19 benefit, that's basically how the statute talks  
20 about it, but -- so if you're having to bear a  
21 public benefit and it's burdening you, it's  
22 harming you, there's a statute that allows the  
23 City or allows the Government -- well,  
24 actually, the statute allows a claim against  
25 the City, but the statute also allows the

1 Government to resolve that problem, and even  
2 deviate from its own codes in order to do that.  
3 So sometimes that means that the City might  
4 have to give additional density, additional,  
5 you know, FAR, additional height, or other  
6 provision of the Zoning Code might have to  
7 be -- might have to not be followed, in order  
8 to comply with the Bert Harris Act.

9 So what this provision does, I think,  
10 because it says Protection of Landowners'  
11 Rights; Relief from Inordinate Burdens, it  
12 seems to me to be directed -- basically putting  
13 a provision in the Zoning Code that allows us  
14 to deal with Bert J. Harris situations, even  
15 when a Bert J. Harris Act claim has not been  
16 brought.

17 But what I found, when I looked at this,  
18 is, it's extremely narrow and it really  
19 requires the applicant to bring these sort of  
20 claims and it requires the applicant to  
21 basically come to the City, file an application  
22 to do something that violates the Zoning Code.  
23 Perhaps the applicant believes it's the only  
24 thing they can do without having an inordinate  
25 burden on their property. Then the City has to

1 review it. The City has to reject it. Then  
2 the applicant can go through this process, and  
3 it's very narrow.

4 My thought was, well, what if you're in a  
5 lawsuit, though, and you're settling the  
6 matter, and it's the City that wants to  
7 initiate this process, in order to allow a  
8 settlement of the matter. For example,  
9 perhaps, in the trolley litigation, or in  
10 another litigation. In that litigation right  
11 now, the City is the owner of the trolley  
12 building property. We have a contract, a land  
13 exchange agreement with Astor Development, but  
14 we're the owner, so they don't even own the  
15 property at this point. So it's questionable  
16 whether they could really be the applicant  
17 under this procedure. If the City is going to  
18 be able to settle this matter and use this  
19 procedure, or if the settlement is in a future  
20 lawsuit regarding land and wants to settle the  
21 matter and bring it before its own Commission  
22 to consider these remedies, the amendments that  
23 we are providing would allow the City to do  
24 that.

25 I do want to say, in Section 3-1703, A, 4,

1 that should be underlined, "Any of the remedies  
2 listed in Section 17.001(4)(c) of the Florida  
3 Statutes." Sorry about that. That's in  
4 addition to the Code. Those remedies are  
5 what's the remedies provided by the Bert Harris  
6 Act.

7 So, since this is really a Bert Harris type  
8 procedure, it seems to me, it seems like they  
9 should have the same remedies as the Bert  
10 Harris Act.

11 The other thing I wanted to say here, and  
12 you can all -- you've all had an opportunity to  
13 look at this, and I'm going to answer your  
14 questions -- and, please, ask any questions you  
15 think are helpful, or not. Whatever you want  
16 to ask, please ask me. I've put a lot of  
17 thought into this. But basically, in the end,  
18 what we're doing is, we're expanding this  
19 provision so that the City could initiate the  
20 process and so that this can be brought before  
21 the City Commission for a dispute resolution  
22 agreement. The City could make, basically, a  
23 legislative decision for a Bert Harris Act type  
24 claim or for a claim where there's an  
25 inordinate burden allegedly being placed on a

<p style="text-align: right;">Page 117</p> <p>1 property, and the City could then resolve the 2 matter. 3 Now, the second dispute resolution 4 mechanism, really the zoning relief procedure, 5 I'll give you an example where this might come 6 up. You know, sometimes with a -- particularly 7 during election season, we have a sign 8 ordinance, and I'll get a -- I'll have someone 9 call and say, "Well, I want to do this type of 10 sign," or, "I want to do something like this," 11 and it may technically be in violation of the 12 sign ordinance. And I'm not saying this 13 happens a lot. It happens occasionally. But I 14 may take a look at the case law and feel, "You 15 know what, we have to allow this anyway," and 16 basically, under my authority as City Attorney, 17 I will instruct City Staff to allow it, because 18 Federal law takes precedence over a Zoning 19 Code, even as applied. 20 Well, imagine that on a much bigger scale, 21 like a RLUIPA case or an ADA case, and perhaps 22 we're going to have to allow a building or some 23 modification to a building, perhaps, to satisfy 24 the ADA, for example, and it may have to go 25 into a setback or something like that, or you</p>	<p style="text-align: right;">Page 119</p> <p>1 notice, et cetera, but the reason why is 2 because the City is not -- This is not just a 3 private use being put in a property that may be 4 affecting surrounding property owners in some 5 way, which is quasi-judicial, generally. This 6 is a legislative decision of the Commission, 7 looking at a host of issues, perhaps settlement 8 of a lawsuit, in the trolley building case, for 9 example, a trolley building, which is for the 10 benefit of the public, a building that 11 potentially may be larger than required by the 12 Zoning Code; the effect on the surrounding 13 residents, the effect on the residents, like 14 for example with the trolley building case, in 15 Coconut Grove, who would be our neighbors. 16 That sort of decision isn't just, "Is this 17 building appropriate for this site?" There's a 18 lot of issues that the Commission is 19 considering there, and they're ultimately 20 weighing the risks of different issues and 21 making a legislative call. And the Bert Harris 22 Act already recognizes that, that that's 23 basically a legislative decision, in the Bert 24 Harris type situation. 25 So, basically, that's an overview. I'm not</p>
<p style="text-align: right;">Page 118</p> <p>1 may have to add a floor to a building, who 2 knows what the reason would be, but in order to 3 comply with Federal law, you may need to modify 4 the building, and it may not comply with the 5 Zoning Code. 6 What this procedure allows is basically a 7 hearing, where notice is given, a hearing is 8 provided, and these issues can be decided by 9 the City Commission, and they can provide 10 whatever zoning relief is necessary, in order 11 to comply with the Federal law or State 12 Statute. It's additional tools that are given 13 to the City Commission. The matter still 14 could -- It's not Staff making these decisions, 15 in either of these relief procedures. It's the 16 City Commission making these decisions, and 17 after a public hearing, whether it be -- In the 18 first provision, it's a legislative hearing, 19 but still a public hearing; it's a legislative 20 matter. The second one is similar, because 21 you're basically -- And what's the difference 22 between legislative and quasi-judicial? The 23 reason why these are ultimately legislative 24 decisions, in my view, although we're providing 25 a tremendous amount of due process, anyway, and</p>	<p style="text-align: right;">Page 120</p> <p>1 going to speak more on this right now. I'm 2 going to wait to hear your questions. There's 3 a lot here, so please -- 4 MS. ALBERRO MENENDEZ: I have a question. 5 MR. LEEN: Yes. 6 MS. ALBERRO MENENDEZ: The case that you 7 mentioned, the trolley, is outside of our City. 8 MR. LEEN: Yes. 9 MS. ALBERRO MENENDEZ: Do you think this 10 would be more appropriate under like a City 11 Code, rather than the Zoning Code, given that 12 there's cases that are not going to be 13 involving, you know, properties within our 14 City? 15 MR. LEEN: Already, the Commission has the 16 authority to resolve something that's not a 17 zoning or land use matter, just a settlement of 18 a lawsuit, because we have a settlement 19 authority resolution. It gives certain 20 authority to me to settle things, certain 21 authority to me and the Manager to settle 22 things, certain authority to the Commission to 23 settle things. 24 So sort of the twist here, the interesting 25 part of this, is there's also a land use and</p>

1 zoning decision that's part of this, and that  
2 comes about because of the land exchange  
3 agreement. We are in a situation where, if we  
4 were to lose the lawsuit, for example, we will  
5 be required, basically, by a Court order,  
6 specific performance, if we lose -- and we  
7 stand by our lawsuit. I'm just talking  
8 hypothetically.

9 MS. ALBERRO MENENDEZ: Right.

10 MR. LEEN: But if we were to lose, we would  
11 be ordered into the Coconut Grove building, and  
12 then we would have to give up our current  
13 trolley facility and there would be a building  
14 built there. That's already been approved.

15 Now, if the proposed settlement is, well,  
16 you know what, we're not going to go into the  
17 Coconut Grove trolley facility, or if we do,  
18 we're going to go there temporarily, but  
19 ultimately we're going to come back here and go  
20 into this new development, and there will be a  
21 trolley site within the building, a trolley  
22 facility within the building as a whole, then,  
23 yes, it will be a new building. It's going to  
24 have to be approved for land use and zoning in  
25 some way, and one issue here is, time is of the

1 essence, too. You know, a lot of these  
2 things -- I mean, one thing I would raise with  
3 you is that, you know, you might say, "Well,  
4 why don't you amend the Code to allow the  
5 trolley building, for example?"

6 Well, remember, this is a unique situation  
7 because this is going to be a dual government  
8 use/trolley building, and we may not want to  
9 amend the Code more generally to allow  
10 completely private uses when there's not a  
11 government use involved to be able to do that,  
12 to be able to have a higher building, for  
13 example, or increased density.

14 The whole idea here is that the Government  
15 is generally not subject to the Zoning Code  
16 when it's building a building for a public use.  
17 So the case law -- The case law talks about  
18 that. When the Government is acting -- similar  
19 in my view, when the Government is acting  
20 similar to a private entity, like, you know,  
21 the Government owns -- the City owns some  
22 property on Miracle Mile.

23 MS. ALBERRO MENENDEZ: Right.

24 MR. LEEN: We lease it out. There's  
25 private uses there. My view is, we would

1 generally follow the Zoning Code regarding  
2 those uses. But if the Government feels like  
3 there's a need and they make a policy decision  
4 that it's in the public interest to place a  
5 trolley building, let's say, for example, in an  
6 area where you wouldn't normally, maybe right  
7 near a residential area. Now, should they do  
8 that? Not necessarily, and obviously, there  
9 would be a lot of debate about it. It would be  
10 a major political issue, probably. But let's  
11 say, ultimately, the Commission believed that  
12 the need for that building, and that was the  
13 only space available, and there was a public  
14 need for it -- the Commission, in my view, has  
15 authority to do it. Similar to the power of  
16 condemnation, eminent domain, the City is  
17 allowed to take property for a public use, and  
18 they convert it to that public use.

19 So that's why I'm -- I'm not saying that  
20 the City of Coral Gables would normally do  
21 that. You know, we're very, very -- In my  
22 view, in my experience here now in three years,  
23 and you have more experience here than me,  
24 we're very careful about what we develop, I  
25 feel. The buildings that we -- the Government

1 buildings, the private buildings, are all very  
2 beautiful. They all go through our Board of  
3 Architects, generally. Now, does a City  
4 building have to, a Government building? No.  
5 Under my view, it wouldn't have to. Does that  
6 mean that the City wouldn't do it? No. The  
7 City certainly has the option to do it.

8 MS. ALBERRO MENENDEZ: Thanks.

9 CHAIRMAN AIZENSTAT: Marshall?

10 MR. BELLIN: A question with respect to the  
11 trolley station. Apparently, the City has come  
12 to an agreement with the developer --

13 MR. LEEN: I'd like to make something clear  
14 here. The City -- I know that it said in the  
15 Herald that there was an agreement. I want to  
16 tell you, I never told the Herald that. I'm  
17 not sure who told them that, but there is no  
18 agreement.

19 MS. ALBERRO MENENDEZ: Oh, there is no  
20 agreement?

21 MR. LEEN: There is no agreement in place.

22 MR. BELLIN: Okay.

23 MR. LEEN: There's no agreement. We are  
24 in --

25 CHAIRMAN AIZENSTAT: But we're not here

1 because of --

2 MR. LEEN: Yes. We are in negotiations,  
3 and that's all I can really say at this point.  
4 But there is no agreement in place. We are  
5 doing our best to try to resolve the matter,  
6 but ultimately, it's going to take all the  
7 different parties to agree, and I don't want to  
8 get into the specific negotiations.

9 MR. BELLIN: That's fair, but a question in  
10 general terms. You get involved in a lawsuit,  
11 and the way to solve that, the way to always  
12 solve lawsuits, is money. So, therefore,  
13 you've got to come to a monetary agreement with  
14 the party that's suing you. How do you  
15 determine or who determines what that monetary  
16 award will be?

17 MR. LEEN: Normally, that would be the --  
18 Depending on how large it is, it would be  
19 either the City Commission, the City Manager,  
20 or myself. If it's within \$25,000, it's  
21 myself. If it's up to \$100,000, it's the  
22 Manager or me. Above that, it's to the  
23 Commission, unless it implicates insurance, and  
24 then the Manager and I have authority again.

25 MR. BELLIN: What happens if the City says,

1 "I'll give you a million dollars," and the  
2 developer says, "I want 10"?

3 MR. LEEN: That sort of thing, that all has  
4 to be decided by the City Commission, those  
5 sort of decisions.

6 MR. BELLIN: But that's a final decision?

7 MR. LEEN: Yeah, the Commission has the  
8 authority to settle matters.

9 Now, the issue here, though, is that  
10 there's a land use and zoning component, and by  
11 the way, it may not happen in this particular  
12 case, we may decide to go forward with our  
13 lawsuit, but what I found when I was trying to  
14 determine if we could settle the case, was that  
15 there was not a mechanism available to readily  
16 bring this issue before the Commission. It  
17 really stymies, in my opinion, the Commission's  
18 ability to settle matters.

19 CHAIRMAN AIZENSTAT: And this gives you a  
20 vehicle or a tool in which to do so?

21 MR. LEEN: Yes, while still providing the  
22 public with notice, with the ability to come  
23 and if they don't like the settlement, they'll  
24 have to know about it, because there will be a  
25 public record. They can speak against it.

1 They can be on the record. The Commissioners  
2 will have to vote. It could be a tough vote.  
3 They'll have to consider all the different  
4 issues. But they have that authority,  
5 ultimately, in my view, as the governing body  
6 of the City and as the elected officials, and  
7 then I have to give them my best recommendation  
8 regarding that settlement, whatever it may be,  
9 and they have to hear from Staff, and then they  
10 have to make the decision, but I think  
11 ultimately the power should be with them. They  
12 shouldn't be prevented from being able to do it  
13 because there's so many different procedures  
14 that they would have to go to, to ever have it  
15 come before them.

16 CHAIRMAN AIZENSTAT: The public to come and  
17 give their voice, what is the procedure for  
18 that? Does this spell out any time frame or  
19 any procedure, legally? Can you go over that,  
20 just briefly?

21 MR. LEEN: Yes. They're both a little  
22 different. So, first, the zoning relief  
23 procedure, it's more similar to what you're  
24 probably used to, but there's a notice  
25 provision provided in there. Take a look at

1 3-1801(c).

2 MR. GRABIEL: What page?

3 MR. LEEN: It's on Page 6.

4 MS. ALBERRO MENENDEZ: Page 6.

5 MR. LEEN: So the City displays a notice of  
6 the request for zoning relief on the City's  
7 public notice bulletin board, maintains copies.  
8 The location, date and time of the public  
9 hearing is included in the notice. The  
10 notification containing the information should  
11 also be mailed by the City Clerk at least 15  
12 days prior to the public hearing, to the  
13 property owners of record, as well as property  
14 owners within a radius of 1,000 feet of the  
15 property described in the request, that the  
16 request is site-specific. So that's pretty  
17 similar to the types of provisions you're used  
18 to.

19 CHAIRMAN AIZENSTAT: Right.

20 MR. LEEN: Now, the other provision, I did  
21 not alter at all the notice provisions in  
22 there. Let me see -- Forgive me, real fast,  
23 while I -- This is treated more like a purely  
24 legislative decision, so it's placed on the  
25 agenda.

CHAIRMAN AIZENSTAT: Correct.

MR. LEEN: So, now, that may be something, if you think that notice should be provided, it can be. That would be expanding the notice provisions currently in the Code, though.

MS. ALBERRO MENENDEZ: Well, but you have here a thousand feet.

MR. LEEN: Where is that?

MR. GRABIEL: That's for the zoning.

MR. LEEN: No, that's for the zoning relief procedure.

MS. ALBERRO MENENDEZ: Oh, you're the other one?

MR. GRABIEL: Yeah.

CHAIRMAN AIZENSTAT: So when it's placed on the agenda --

MR. GRABIEL: The other one is City-wide. You can't send notices City-wide.

MR. LEEN: Well, the idea behind it is that, because it's a legislative decision, it affects everybody. But you could, just like with the zoning relief one, which is also legislative, in my view.

Do you have a difference of opinion, Susan?  
Do you think that it's -- either of these are

that difficult to do, but the Fair Housing Act and the Americans with Disability Act protect that use and come into play as a supervening Federal law.

All of the cases that I'm familiar with, that we've used it for, have been quasi-judicial in nature. They've been very site-specific.

MR. LEEN: And, you know, what's interesting is, when you look at the second settlement procedure, which is what we took from Sunrise -- I made some additions to it, to make sure it would apply in our particular situation, but I mean, there's an argument you could make, though, that if you're required to do it based on Federal supremacy, it's really not quasi-judicial. In fact, it's compelled. So --

MS. ALBERRO MENENDEZ: Yes.

MR. LEEN: But I think that, you know, you heard what Ms. Trevarthen said, also, it's obviously constructed in a way that gives notice to people and lets them come and appear and object. But, you know, ultimately, in my mind, sometimes these things are compelled.

quasi-judicial, in your view?

I mean, the first one, before you -- Division 17 says it's not quasi-judicial.

CHAIRMAN AIZENSTAT: Right.

MR. LEEN: But Division 18 -- and I should actually give some credit to Susan Trevarthen, as well. Susan -- This has been altered to some extent by myself; I've looked at it and I've amended it, but there's a similar type of procedure in Sunrise, which Susan was instrumental in working on. So I appreciate it and I appreciate her help with that.

So would you talk about how you view the procedure?

MS. TREVARTHEN: Yes. What we have done in other cities, many other cities, is the basic zoning relief, and we do treat that as quasi-judicial, because in every case that I've been involved with, it is site-specific. A church wants to use its premises in a way that the Zoning Code permits, but they believe they have the right to do it under the Religious Land Use and Institutionalized Persons Act. Somebody wants to set up a sober home, where there are aspects of the Zoning Code that make

You have to allow, for example, an ADA compliance issue or an accommodation.

MS. TREVARTHEN: And then --

MR. LEEN: Sometimes you could do it in different ways, though, you know, so -- Yes?

MS. TREVARTHEN: In our standard procedure, it's only pre-litigation, and so the applicant is coming forward and saying, "I'd like to see my Federal rights protected before I go to court."

MR. LEEN: That's true.

MS. TREVARTHEN: And so it works differently than what you've developed here.

MR. LEEN: I modified it so that it could be done during litigation, and that brings a different issue into play, too, because if we're sued, for example, under Section 1983, or under, you know, Title VII, or if we're sued or if we're -- In this particular case, there's a Title VII issue with the FTA. But let's say we were sued under Title VII or something like that. At least when I was at the County Attorney's Office and I had those type of cases where there was a Section 1983 case, our view was that we could settle them as long as there

1 was a colorable 1983 claim, and for example,  
 2 they weren't bound by the State statutory caps  
 3 on liability, because it was based on Federal  
 4 law. So we took the view, and I take the view,  
 5 that if it's required or if it allows us to  
 6 comply with the Federal law, then it's  
 7 supremacy. So I don't think it's  
 8 quasi-judicial in the same way. I think there  
 9 you could make a very good argument it's  
 10 legislative. But, you know, it's been set up  
 11 in this way, and I have no issue with that. I  
 12 think it's perfectly fine for the public to be  
 13 able to come and to speak. I think that that  
 14 was the -- That's the view of Coral Gables.  
 15 That's the way that we -- That's why we have a  
 16 public hearing in front of you and two public  
 17 hearings in front of City Commission, in many  
 18 matters.

19 So I think that it's better than just  
 20 settling the matter and saying, "Well, so we  
 21 settled it," the City Manager or City Attorney  
 22 signs the settlement, gets the Commission's  
 23 approval, no public hearing, under the theory  
 24 that this is compelled by Federal law. I think  
 25 it's better to provide the public the ability

1 to come and make their voices known. They may  
 2 be in favor of it and they may be against it.

3 Now, the reason why we didn't change the  
 4 other provision, to add all those notices, now  
 5 that I recall, is that it was already created  
 6 as a legislative decision and it's based on the  
 7 Bert Harris Act, which is a legislative  
 8 decision. So I haven't modified that.

9 Now, if you think that we should provide  
 10 additional notice provisions, we can, but the  
 11 Bert Harris Act doesn't require that.

12 MR. BELLIN: Craig, I have a question.  
 13 Maybe it's a stupid question, but I really  
 14 don't know the answer to it. If this Board  
 15 says no, then what happens? Does it go to the  
 16 Commission, anyway?

17 MR. LEEN: It's going to go to the  
 18 Commission no matter what, but I --

19 MR. BELLIN: Then what's the purpose of it  
 20 coming here?

21 MR. LEEN: Because it's an amendment to the  
 22 Zoning Code and because the Commission cares  
 23 very much about what you say, and I do, as  
 24 well.

25 MR. BELLIN: It just seems to me, it should

1 go directly to the Commission, if that's the  
 2 case.

3 MS. ALBERRO MENENDEZ: I think we look at  
 4 all zoning amendments.

5 MR. BELLIN: Right, I agree, and I think  
 6 that's the way it should be, but it just seems  
 7 like --

8 MS. ALBERRO MENENDEZ: Even if we say no,  
 9 it goes to them and then --

10 MR. BELLIN: -- if our opinion doesn't  
 11 matter, then why would we give it?

12 MR. LEEN: Well, legally, it has to go to  
 13 you. This has to go to you.

14 MS. ALBERRO MENENDEZ: Yeah.

15 MR. LEEN: We're required to have a public  
 16 hearing in front of you, but it's a real public  
 17 hearing. If you have any thoughts regarding  
 18 these changes or ways to make it better, I  
 19 would be -- I would love to hear them.

20 CHAIRMAN AIZENSTAT: Jeff?

21 MR. FLANAGAN: I'd just suggest that I  
 22 think, Craig, under 3-1801(c), the notice --

23 MR. LEEN: Yes.

24 MR. FLANAGAN: -- that I think it should  
 25 be -- My notes ask whether it should be

1 advertised, because it looks like we're just  
 2 giving notice to property owners, and I think  
 3 under the quasi-judicial stuff, we publish in  
 4 the paper, we advertise, and I know there's a  
 5 quasi-judicial and not quasi-judicial, but if  
 6 somebody is seeking relief from the zoning  
 7 procedure, I think, as you were saying, in this  
 8 City and the way we operate, I think it's  
 9 better that we basically advertise, as we would  
 10 for a zoning application.

11 MR. LEEN: Okay.

12 MR. FLANAGAN: And then I can  
 13 differentiate, I think, between this aspect,  
 14 where there's a Federal law that allows  
 15 somebody to do something that the Zoning Code  
 16 may not be able to do, versus what I understand  
 17 of the trolley issue.

18 So, hypothetically speaking, if the City  
 19 prevailed in its lawsuit, that would terminate  
 20 the agreement for the swap?

21 MR. LEEN: Hypothetically speaking, if the  
 22 City prevails in its lawsuit, that means that  
 23 the City -- that the site in Coconut Grove is  
 24 not zoned correctly, or violates the FTA -- we  
 25 have a number of different counts -- or



1 violates the Comp Plan. I believe that we have  
2 three different counts.

3 Hypothetically speaking, then, Astor would  
4 not have complied with the contract to provide  
5 us a site that we can go into. Now, they have  
6 a certain amount of time in which to do that,  
7 so I don't think that automatically terminates  
8 the agreement. I think we would still have to  
9 look at that. But that's what we've been  
10 presented. Astor has presented us that site.  
11 We've objected, we've raised a number of  
12 grounds for objection, and that's what's before  
13 the Court.

14 MR. FLANAGAN: And I think I differentiate,  
15 maybe, that issue, which to me is -- I'll call  
16 that almost a self-created problem, and if  
17 we're looking at that as a project or a  
18 building bearing an undue burden for the public  
19 benefit, I guess I would -- I don't see it that  
20 way, because that project was premised on  
21 something happening, a new garage somewhere  
22 else, and if that can't happen and the building  
23 can be redesigned -- and so it's sort of  
24 self-created.

25 MR. LEEN: I hear what you're saying, and I

1 in front of the Planning and Zoning Board?

2 MR. LEEN: No, this would go straight to  
3 the Commission. The theory behind that -- and  
4 of course, the Commission can always send it to  
5 you if it wishes. The theory behind that is,  
6 ultimately, the reason the Commission can do  
7 this is because it has the sovereign power to  
8 settle these matters and to make these public  
9 judgments. So the idea is that it can go right  
10 to them, and they can make that decision.  
11 They're not changing the Zoning Code. And I  
12 think that's a benefit of this provision.  
13 They're not -- you know, this is a difficult  
14 case. They're not changing the Zoning Code to  
15 deal with the difficult case, which might make  
16 the Zoning Code worse.

17 MR. FLANAGAN: Right.

18 MR. LEEN: Instead they're dealing with  
19 this specific case and the problems caused by  
20 it, be they under Federal law, State law, or  
21 whatever a law may be.

22 I did want to suggest one other change.  
23 The provision in Division 17, on Page 4, D, at  
24 the top, I am going to recommend to the  
25 Commission that it say -- instead of what it

1 think the response to that would be that the  
2 Commission would have to decide that, because,  
3 you know, the Commission might reject the  
4 settlement, and they're allowed to, under this  
5 procedure, by saying, for example, "That's  
6 self-caused. We don't believe that we should  
7 do this."

8 What this allows, though, is -- you know,  
9 and let's say, for example, hypothetically, in  
10 order to build this building, the City, in  
11 order to settle the case, is saying, "Well, we  
12 want you to put a public use in the building,  
13 and we're going to benefit from that."  
14 Obviously, you're going to have a burden by  
15 that public use. Now, you're agreeing to it,  
16 in order to settle a case, so it's a little  
17 different than us imposing it. But  
18 nevertheless, you are bearing this additional  
19 burden, so we're going to mitigate that burden  
20 by basically allowing relief from different  
21 zoning provisions. As long as there's some  
22 relation to them, I believe that we could do  
23 that.

24 MR. FLANAGAN: And my last -- Relief here  
25 goes straight to the Commission, does not come

1 says right now, that it say, "All relief  
2 granted pursuant to this Division shall be  
3 consistent with the City of Coral Gables  
4 Comprehensive Plan, except as permitted by  
5 Federal or State law," comma, "and shall not  
6 violate any controlling Federal law, State  
7 statute or Miami-Dade County ordinance," the  
8 theory being that it would have to be based,  
9 though, on something above, above our law.

10 CHAIRMAN AIZENSTAT: I think that's good.

11 MR. LEEN: Okay.

12 MS. ALBERRO MENENDEZ: Yeah.

13 CHAIRMAN AIZENSTAT: Any other comments?  
14 Would anybody like to make a motion?

15 MR. BELLIN: I'll make a motion.

16 MS. ALBERRO MENENDEZ: I'll second it.

17 CHAIRMAN AIZENSTAT: The motion is with the  
18 changes that Craig has requested?

19 MR. BELLIN: Yes.

20 CHAIRMAN AIZENSTAT: And what about --

21 MR. LEEN: The suggestion about  
22 advertising.

23 CHAIRMAN AIZENSTAT: -- the suggestion  
24 about advertising by Jeff?

25 MR. LEEN: I'm fine with that, that



advertisement.

Susan, was there any reason why it didn't have advertisement in the one in Sunrise?

MS. TREVARTHEN: No.

MR. LEEN: I think that's perfectly fine.

CHAIRMAN AIZENSTAT: Marshall, is that your motion, is with those?

MR. BELLIN: Yes.

CHAIRMAN AIZENSTAT: And Maria, your second is --

MS. ALBERRO MENENDEZ: Yes. Yes, sir.

CHAIRMAN AIZENSTAT: Any other comments, questions?

Call the roll, please.

MS. MENENDEZ: Julio Grabiell?

MR. GRABIEL: Yes.

MS. MENENDEZ: Maria Menendez?

MS. ALBERRO MENENDEZ: Yes.

MS. MENENDEZ: Alberto Perez?

MR. PEREZ: Yes.

MS. MENENDEZ: Marshall Bellin?

MR. BELLIN: Yes.

MS. MENENDEZ: Anthony Bello?

MR. BELLO: Yes.

MS. MENENDEZ: Jeff Flanagan?

MR. FLANAGAN: Yes.

MS. MENENDEZ: Eibi Aizenstat?

CHAIRMAN AIZENSTAT: Yes.

All right, this adjourns the meeting. The next meeting is on April 9th. Thank you, everybody.

MS. ALBERRO MENENDEZ: Thank you.

(Thereupon, the meeting was adjourned at 8:26 p.m.)

# CERTIFICATE.

STATE OF FLORIDA:

SS.

COUNTY OF MIAMI-DADE:

I, JOAN L. BAILEY, Registered Diplomate Reporter, Florida Professional Reporter, and a Notary Public for the State of Florida at Large, do hereby certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

I further certify that all public speakers were duly sworn by me.

DATED this 17th day of March, 2014.

SIGNED COPY ON FILE

JOAN L. BAILEY, RDR, FPR

Notary Commission Number EE 083192.  
My Notary Commission expires 6/14/15.

CITY OF CORAL GABLES  
OFFICE OF THE CITY ATTORNEY

March 12, 2014  
DATE INITIALS

-INTERPRETATION-

TO: CITY COMMISSION

DATE: February 11, 2014

FROM:



CRAIG E. LEEN  
CITY ATTORNEY

SUBJECT: Zoning Code Interpretation

1. This Opinion is being written pursuant to Section 2-201(e)(8) of the City Code, which authorizes the City Attorney "[t]o interpret the City Charter, City Code, and Zoning Code on behalf of the City," as well as section 2-702 of the Coral Gables Zoning Code, which establishes that "[t]he City Attorney serves as the final authority with regard to legal issues involving interpretation and implementation of these regulations."

2. Astor Development has proposed ("Development Proposal") to upgrade the existing Coral Gables Trolley Facility ("Facility") at its current location and as a part of Astor's planned condominium development at the location. Under the Development Proposal, the facility in Coconut Grove, which was built at Astor's expense, and is currently the subject of litigation, would be replaced by a state of the art Facility at the present trolley location in Coral Gables. The Development Proposal presents a possible resolution to the ongoing lawsuit between Coral Gables and Astor Development regarding the Coconut Grove Trolley Facility and land exchange agreement ("Lawsuit"), as well as the matter with the Federal Transit Authority. The Proposal would also resolve the concerns of the community in whose neighborhood the Coconut Grove facility was constructed. For Astor's Development Proposal to be feasible, it would require relief from several provisions in the City Zoning Code, including limitations on FAR, height, and parking, in order to accommodate the planned condominium development and the required government Facility. Under the present Zoning Code, the City would be required to deny the Development Proposal.

3. This memorandum analyzed two mechanisms by which the City Commission may consider and evaluate Astor's Development Proposal as a potential basis to resolve the ongoing lawsuit and any dispute arising out of a denial of the Development Proposal.

4. The first mechanism by which the City can evaluate the Development Proposal is through the dispute resolution procedure outlined in Sections 3-1701 through 3-1707 ("Dispute Resolution Procedure") of the Zoning Code of the City of Coral Gables. The Dispute Resolution Procedure invokes the City's authority and discretion "to avoid expensive, uncertain, unnecessary, and protracted litigation regarding the application of these land development regulations to individual properties." Zoning Code § 3-1701. "The City may grant relief pursuant to this Division only when it is demonstrated that the applicant for said relief has been

unfairly, disproportionately and inordinately burdened by a final order of the City that either denied development approval to the applicant or imposed one (1) or more conditions of approval on the applicant.” *Id.*

5. If Astor submits its Development Proposal to the City and the Proposal is denied, Astor may then submit an application approved by the City pursuant to Section 3-1702(A), seeking relief through the Dispute Resolution Procedure from the order denying its Development Proposal. Astor’s application may take into account in seeking review of its Development Proposal any alleged unfair, disproportionate, or inordinate burden resulting from the denial, may consider the entire circumstances of the matter in assessing the scope of any burden, and may include allegations that the Development Proposal and the requested relief from the City’s Zoning Code were compelled by the City of Miami’s contested zoning approval of the Coconut Grove facility (which is the subject of the declaratory judgment lawsuit between the City of Coral Gables and Astor, as well as a pending appeal from a dismissed action brought by residents living near the Coconut Grove facility), as well as the Federal Transit Authority’s expansive assertion of its jurisdiction, and retroactive application of guidelines/instructions contained in its October 1, 2012 circular (the City of Coral Gables has taken exception to the FTA’s findings and determinations while agreeing to conduct an equity analysis as part of a plan to resolve the matter; the City has also requested that Astor assume responsibility for any alleged non-compliance). Ultimately, Astor may ask the City to consider the totality of the circumstances involving the lawsuit and the unique factual circumstances of this case in determining whether the threshold is met, as that would be in conformity with the purpose of the Dispute Resolution Procedure, which is “to avoid expensive, uncertain, unnecessary, and protracted litigation,” (§ 3-1701), and instead resolve disputes in the public interest.

6. The application would seek to resolve the ongoing Lawsuit and any litigation resulting from a denial of the Development Proposal. The City can consider the application along with the City Manager’s report and recommendation on the application and any proposed dispute resolution agreement (§ 3-1704(D)) at a public hearing to decide whether to make an offer to resolve the dispute with Astor. Zoning Code § 3-1705 (A). Any decision to grant relief to Astor pursuant to the Dispute Resolution Procedure is in the sound discretion of the City Commission in the exercise of its inherent sovereign powers to settle legitimate disputes and pursuant to the factors outlined in Section 3-1703 (B). Of course, this Opinion takes no position at this time as to whether Astor could ultimately demonstrate the prerequisites for relief under the Dispute Resolution Procedure. Instead, this Opinion simply establishes, consistent with the plain wording of the Zoning Code, that the Dispute Resolution Procedure is an available process that can be invoked by Astor (or a similarly situated applicant) in seeking possible resolution of its dispute.

7. The second mechanism by which the City Commission could consider approving a version of Astor’s Development Proposal is through a stipulation for entry of a final judgment in the Lawsuit. Upon agreement by the parties and the Court, a stipulated final judgment can adopt a version of the Development Proposal agreeable to the parties. This process was approved by the Third District Court of Appeals in *Zoning Board of Monroe County v. Hood*, 484 So. 2d 1331 (Fla. 3d DCA 1986). In *Hood*, the applicants sought a zoning change to accommodate a development. The development plan was disapproved by the County, and resulted in litigation in state and federal court. The parties stipulated to entry of a final judgment that required the zoning board “to ‘review and approve the final development plan.’” *Id.* at 1332. The zoning

board conducted public hearings, approved the development plan, and ordered rezoning. The County Commission, however, overruled the approval. The trial court then enforced the stipulated final judgment, reinstating the approval of the development plan, and the Appellate Court affirmed. *Id.* This decision was cited with approval by the Fourth District Court of Appeals in *Stranahan House, Inc. v. City of Fort Lauderdale*, 967 So. 2d 1121, 1126-27 (Fla. 4<sup>th</sup> DCA 2007). Accordingly, the parties could stipulate to a settlement and ask the Court to enter a final judgment implementing that settlement. Consistent with analysis in *Hood*, the final judgment could also include the establishment of an expedited process for review, public hearing, and approval of the Development Proposal.