



To: Cathy Swanson-Rivenbark; Carmen Olazabal

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

A handwritten signature in black ink, appearing to be "CL", is written over the "From:" line.

RE: Legal Opinion Regarding City Manager Has Authority Under Section 2-701 of The Zoning Code To Allow The Temporary Use And Structure For An Additional Year

Date: March 2, 2015

Pursuant to section 2-201(e)(1) and (8) of the City Code, along with section 2-702 of the Zoning Code, it is my opinion that the City Manager has the authority under section 2-701 of the Zoning Code to allow the temporary use and structure for an additional year, which could then be extended for an additional six months.

Here, as described below, the proposed use/research project (which is not identical to the prior research project) serves both a public and scientific purpose. It is also a temporary project that makes use of a present temporary structure. The principal restriction, found in section 4-202(F) of the Zoning Code, indicates that a **permanent research facility** cannot be permitted in this location. Consistent with that provision, the proposed facility would continue to be temporary and would not be permitted on a permanent basis.

It is also my opinion that section 5-2110 of the Zoning Code does not limit the City Manager's authority here. This provision is an affirmative grant of authority to the City Manager to allow a temporary building for one year, and also to allow for an additional six month extension as to that approval (this provision allows for the City Manager to impose conditions on the approval as well). There is nothing in section 5-2110 that limits the City Manager's authority to only granting one approval. Under principles of statutory construction, any such limitation on the City Manager's authority would have needed to be expressly stated here, particularly in light of the broad grant of authority to the City Manager in section 2-701 of the Zoning Code. Accordingly, it is my view that the City Manager may consider a subsequent application to use the temporary structure upon expiration of the prior approval, particularly when a new temporary research project is being proposed for that temporary structure. The City Manager would have the full scope of her discretion whether to approve or deny the application (and whether to impose conditions) since it is being treated as a new application.

In conclusion, it is my opinion that the City Manager has the discretion and authority to proceed as indicated herein.

Herbello, Stephanie

From: Leen, Craig
Sent: Monday, March 02, 2015 7:24 PM
To: Herbello, Stephanie; Chen, Brigitte
Cc: Figueroa, Yaneris
Subject: FW: Space request: National Science Foundation Ebola response - Denial of City's Extension

Importance: High

Please place in opinion folder.

Craig E. Leen, City Attorney

*Board Certified by the Florida Bar in
City, County and Local Government Law*
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134
Phone: (305) 460-5218
Fax: (305) 460-5264
Email: cleen@coralgables.com

From: Leen, Craig
Sent: Monday, March 02, 2015 7:24 PM
To: Swanson-Rivenbark, Cathy; Olazabal, Carmen
Subject: RE: Space request: National Science Foundation Ebola response - Denial of City's Extension
Importance: High

City Attorney Opinion

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Craig E. Leen, City Attorney

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405 Biltmore Way
Coral Gables, Florida 33134
Phone: (305) 460-5218
Fax: (305) 460-5264
Email: cleen@coralgables.com

From: Swanson-Rivenbark, Cathy
Sent: Monday, March 02, 2015 3:44 PM
To: Leen, Craig; Olazabal, Carmen
Subject: RE: Space request: National Science Foundation Ebola response - Denial of City's Extension

Excellent. I would like to grant this temporary permit if it is within my authority.

From: Leen, Craig
Sent: Monday, March 02, 2015 12:57 PM
To: Olazabal, Carmen
Cc: Swanson-Rivenbark, Cathy
Subject: Re: Space request: National Science Foundation Ebola response - Denial of City's Extension

I will have update today. After consideration, it is my opinion that this is within the CM's authority in consultation with the CA. I will have my written analysis this afternoon.

Sent from my iPhone

On Mar 2, 2015, at 12:46 PM, Olazabal, Carmen <colazabal@coralgables.com> wrote:

Any updates?

Carmen Olazabal, P.E.
Assistant City Manager for Operations
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134
Office: (305) 460-5204
colazabal@coralgables.com

From: Olazabal, Carmen
Sent: Thursday, February 26, 2015 5:44 PM
To: Leen, Craig
Subject: FW: Space request: National Science Foundation Ebola response - Denial of City's Extension
Importance: High

Craig,

As we discussed, below is the email explaining what UM is trying to do in the location where they had a "temporary" permit approved. Note that it is a new project.

Please advise as to what are your thoughts,

Carmen Olazabal, P.E.

Assistant City Manager for Operations
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134
Office: (305) 460-5204
colazabal@coralgables.com

From: Swanson-Rivenbark, Cathy
Sent: Wednesday, February 25, 2015 11:23 AM
To: Olazabal, Carmen
Cc: Levi, Naomi
Subject: FW: Space request: National Science Foundation Ebola response - Denial of City's Extension
Importance: High

Carmen-- Was there an update to this? Do we need to place something on the agenda?

From: Swanson-Rivenbark, Cathy
Sent: Monday, February 16, 2015 11:45 AM
To: Kerdyk, Bill (Office)
Cc: Olazabal, Carmen
Subject: Re: Space request: National Science Foundation Ebola response - Denial of City's Extension

Thanks for bringing this to my attention. If nothing else maybe I can grant the extension with confirmation by the City Commission at your upcoming meeting. I am copying Carmen to research how an additional extension can be granted.

Cathy Swanson-Rivenbark
City Manager
City of Coral Gables
Sent from my iPhone

On Feb 16, 2015, at 11:15 AM, William Kerdyk <wkerdyk@aol.com> wrote:

City Manager,

Please read the below correspondence from a Professor at the University of Miami and resident. I am not sure of the total scope of the project but it does appear to have worthwhile intentions. Please review and provide me your feedback.

Sincerely,

Bill Kerdyk

Sent from my iPhone

Begin forwarded message:

Resent-From: <KerdykGroup@coralgables.com>
From: "Englehardt, James Douglas" <jenglehardt@miami.edu>
Date: February 16, 2015 at 11:04:56 AM EST
To: "wkerdyk@coralgables.com" <wkerdyk@coralgables.com>
Cc: "wkerdyk@aol.com" <wkerdyk@aol.com>
Subject: RE: Space request: National Science Foundation
Ebola response - Denial of City's Extension

Hello Bill,

Best greetings. First, thank you kindly for your help with our last project to develop a net-zero water system at one of our residence halls, the first urban net-zero water plant on Earth. We met 115 of 115 drinking water standards, held an international workshop of reuse professionals who toured the plant, and the National Science Foundation will release a video of the project this month. The plant was shut down at the end of December.

We have now received new support from the National Science Foundation to develop a net-zero water station that can be rolled into the jungle to provide running water at remote Ebola and other health care centers. No infectious agent will be brought to UM whatsoever, rather we will test surrogate organisms that are naturally present in the environment, and all microbiological testing will be conducted by the US Environmental Protection Agency in Cincinnati.

The new one-year project requires use of part of the existing plant, which was installed at a cost to the University of roughly a half million dollars. However, our request to the City to continue use of the equipment in the Albenga parking garage for an additional 1-2 years (the project was supposed to start February 1 and is tightly scheduled) was denied, as shown below. Without outside help, we would not have the funds or the time to re-install the equipment elsewhere. Also, we have trained almost 80 students to date on the project, mostly undergraduates who sample water and conduct laboratory testing, and locating off-campus if even possible would rule out participation of most undergraduates who don't have transportation and are tightly scheduled between classes.

What do you advise? I will try to call you about this.

With thanks always and best regards,

Jim Englehardt

James D. Englehardt, Ph.D., P.E.
Graduate Program Director and Professor of Environmental
Engineering
Civil, Architectural, and Environmental Engineering
University of Miami
PO Box 248294
Coral Gables, FL 33124-0630
305-284-5557
305-284-3492 (fax)
<http://www.miami.edu/netzerowaterdorm>
<http://www.cae.miami.edu/sunken-oil-mass/projects.html>
<http://www.cae.miami.edu/faculty/cv.php?id=32>

-----Original Message-----

From: Candelaria, Edith Ivette
Sent: Thursday, February 12, 2015 1:17 PM
To: Englehardt, James Douglas
Cc: Durante, Jim; Jones, Richard K; Abella, Irma Maria;
Gavarrete, Janet L.; Carlos A. Larrieu (clarrieu@arellanogc.com);
ken groce
Subject: Space request: National Science Foundation Ebola
response - Denial of City's Extension

Dr. Englehardt,
About one hour ago, we finally received the City's response to our
request for extension of the former Zero Water Project. The two
emails below indicate their reason for denial, as well as our options
outlined by our Director of Real Estate regulation from our
Campus Planning Department. Please review options and advise as
to how to proceed. Thanks.

Edith I. Candelaria
Project Manager
Real Estate & Facilities
Facilities Design & Construction
University of Miami
1535 Levante Avenue
Coral Gables, FL 33146
Office (305) 284-5179
Cell (786) 236-3661
e.candelaria@miami.edu

-----Original Message-----

From: Abella, Irma Maria
Sent: Thursday, February 12, 2015 12:10 PM

To: Candelaria, Edith Ivette
Cc: Gavarrete, Janet L.
Subject: FW: Research facility

As you can see, the City of Coral Gables has denied our request for an extension of the use of a portion of the Albenga Garage for our Ebola research project. The following are the alternatives I believe are now open to us:

1. Appeal the decision of the Planning Director. I believe there is a very low probability of success of an appeal, since the decision is based on sections of the zoning code that (a) prohibit the establishment of a research facility as a permanent use in the University Village Campus Core subarea; and (b) prohibit the extension of a "temporary building" permit beyond the 12 months with a 6 month extension period.

2. Apply for a new permit, on the basis that the Ebola research project is a totally different use from the previous use of the property for the Water Zero project. This would require commencing the permit request anew with the additional time and expenses that this would entail. I would recommend following this path, provided that we are well aware that we will be only obtaining a permit for a period of twelve (12) month, with the possibility (not the certainty) of obtaining a six (6) month extension at the end of the initial period. I would certainly not pursue this option if the Ebola Project cannot be completed in a period of eighteen (18) months.

3. Seek a different location outside of the University Village Campus Core subarea for the Ebola project. This alternative carries added costs and time considerations, but would be the only one feasible if the Ebola project will take longer than eighteen (18) months to complete.

Let me know which way you would like to proceed.

-----Original Message-----

From: Trias, Ramon [<mailto:rtrias@coralgables.com>]
Sent: Thursday, February 12, 2015 10:38 AM
To: Abella, Irma Maria
Cc: Tompkins, Jane; Gonzalez, Elizabeth
Subject: RE: Research facility

Dear Ms. Irma Maria Abella:

In response to your request for the continued use of the research/laboratory facility located within the Albenga Garage (1525-1545 Albenga Avenue) located within the University Village, the original permit #BL 12058204 issued on June 22, 2012 was issued for a temporary building including equipment or

accessories as allowed by Zoning Code section 5-2110. A temporary use as defined in the Zoning Code states the following:

Temporary use means a non-permanent use permitted for a period of time by these regulations. See Article 5, Division 21.

Article 5, Division 21 section 5-2110 states the following:

Section 5-2110. Temporary buildings.

Temporary buildings are permitted in all districts except the Single-Family Districts, subject to receipt of a building permit and approval of the City Manager for a period of twelve (12) months. The City Manager may extend the twelve (12) month period for an additional six (6) months and may impose reasonable conditions on any approval in order to mitigate the impact of such building on the immediate area.

Your request for an additional two years cannot be approved in accordance with Zoning Code Section 4-202 (F) Permitted and conditional uses, a research/laboratory facility is not a permitted permanent use in the campus core subarea. University Village is located within the Campus Core Subarea.

If you should need further assistance, please contact me.

Regards,

Ramon Trias
Director of Planning and Zoning

-----Original Message-----

From: Abella, Irma Maria [<mailto:iabella@miami.edu>]
Sent: Thursday, February 12, 2015 10:33 AM
To: Trias, Ramon
Cc: Tompkins, Jane
Subject: FW: Research facility

Hello Mr. Trias,

Have you had a chance to prepare the response regarding the water research facility at the University Village parking garage? Thank you for your help regarding this matter.

Irma Abella
Director of Development Regulations

-----Original Message-----

From: Tompkins, Jane [<mailto:jtompkins@coralgables.com>]
Sent: Friday, February 06, 2015 5:39 PM
To: Abella, Irma Maria

Subject: Research facility

Dear Irma

My apologies for not responding sooner regarding your email about the water research facility. Ramon Trias is preparing your response. I don't think he's sent it yet but I'll make sure you get it early next week.

Thank you,
Jane

Sent from my iPhone

Please Note: Florida has a very broad Public Records Law. Most written communications to or from State and Local Officials regarding State or Local business are public records available to the public and media upon request. Your email communications may therefore be subject to public disclosure.

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