



To: Peter Iglesias, City Manager

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

RE: Legal Opinion Regarding Gables Station / Status of Underline Construction and Relation to Issuance of TCO

Date: December 3, 2018

In the attached letter, you explain that there has been a delay in the design and permitting processes as well as the construction schedule for the Underline due to the inclusion of the dog park that the City requested.

I have reviewed the language in paragraph (6)(n) of the Declaration of Restrictions that reads as follows:

“Underline Improvements. Owner shall complete the improvements proposed pursuant to the Underline Improvement Plan prior to issuance of the First Temporary Certificate of Occupancy. Notwithstanding anything in this paragraph, City shall issue a Temporary Certificate of Occupancy if the City Manager, at his/her reasonable discretion determinates that the improvements proposed pursuant to the Underline Improvement Plan are substantially complete *and* that completion for the improvements has been delayed due to force majeure or modifications required or delays caused by the City, the County, or the Underline Design Advisory Committee.”

It is my opinion that the use of the word “and” instead of “or” is a scrivener’s error as any other interpretation would defy logic. A project cannot be substantially complete and, at the same time, delayed. The paragraph should be understood to read that the City Manager may issue a Temporary Certificate of Occupancy when the project is substantially complete *or* if the project is delayed due to force majeure or delays cause by the City, County, or the Underline Advisory Committee. In addition, it should be noted that Sec. 1.2 of the Development Agreement also allows for an extension to the Underline project deadline if the inability to meet the deadline is due to “unavoidable delays.”

This opinion is issued pursuant to Sec. 2-252(e) and (8) of the City Code.



November 27, 2018

VIA ELECTRONIC MAIL

Mr. Peter Iglesias
City Manager
City of Coral Gables
405 Biltmore Way
1st Floor
Coral Gables, Florida 33134

**Re: Gables Station / Underline Improvements / Request for Confirmation that
Deadline for Completion of Improvements Moved to Final Certificate of
Occupancy**

Dear Mr. Iglesias:

On behalf of 251 S Dixie, LLC, the owner and developer of the Gables Station project, we hereby would like to provide you with an update on the status of the planning and construction of the portion of the Underline adjacent to the Gables Station project (the County and City right-of-way between Grand Avenue to the southwest and Ponce de Leon Boulevard to the northeast). The planning for these Underline improvements is proceeding at an aggressive pace; however, the inclusion of a dog park in the Underline Plan—at the City's request—has delayed the design and permitting processes as well as the overall construction schedule.

Fortunately, the conditions of approval governing the timing of completion of the Underline Improvements provide some flexibility with regards to the interrelationship between the completion of the Underline improvements and the issuance of the Temporary Certificate of Occupancy for the Gables Station project. The Declaration of Restrictions by and between 251 S Dixie, LLC and the City, dated December 29, 2017 and recorded in Book 30815, Page 1893 of the Public Records of Miami-Dade County, Florida, (the "Zoning Covenant") provides in paragraph (6)(n) that "the City shall issue a Temporary Certificate of Occupancy if the City Manager, at his reasonable discretion, determines that the improvements proposed pursuant to the Underline Improvement Plan are substantially complete and that completion of the improvements has been delayed due to force majeure or modifications required or delays caused by the City, the County, or the Underline Design Advisory Committee." The request by the City to include the dog park within this portion of the Underline, along with the delay it caused the permitting process is exactly the sort of "modification required or delays caused by the City" anticipated by this clause within the Zoning Covenant. The Zoning Covenant also states in

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paragraph (4) that the developer shall “complete the work pursuant to the terms of its Development Agreement with Miami-Dade County.” The Development Agreement between Miami-Dade County and 251 S Dixie, LLC recorded in Book 30990 at Page 4359 of the Public Records of Miami-Dade County, Florida (the “Development Agreement”) requires, pursuant to Section 1.2(c), that the Underline improvements be completed “on or before December 31, 2020, subject to extension because of Unavoidable Delays,” which include among other things, delays related to compliance with local laws and ordinances. At present, we anticipate that the project will be ready for the issuance of a Temporary Certificate of Occupancy in July of 2020 with significant but not all work having been completed for the Underline improvements. As mentioned above, both the Zoning Covenant and the Development Agreement anticipate unforeseen delays in both the permitting and construction of the Underline and the Zoning Covenant and grants you the discretion pursuant to which you may issue the Temporary Certificate of Occupancy, prior to completion of the Underline improvements, given that the City requested the dog park be incorporated as part of the Underline improvements, which has delayed the permitting process.

Accordingly, we request written confirmation that, in light of the above, the Temporary Certificate of Occupancy for the project will be issued at the time at which the project is otherwise eligible for a Temporary Certificate of Occupancy regardless of the status of the Underline construction at that point in time. We do acknowledge that the Final Certificate of Occupancy will not be issued for the project until the Underline improvements are complete. If you need any further information or would like to discuss this matter further, please contact me at 305-376-6061 or mgarcia-serra@gunster.com. Thank you for your attention to this matter and for your continued assistance and support in helping to make this promising project a reality.

Sincerely,



Mario J. Garcia-Serra

cc: Miriam Ramos, Esq., City Attorney

MIA_ACTIVE 4812408.1

From: [Ramos, Miriam](#)
To: [Paulk, Enga](#)
Cc: [Suarez, Cristina](#)
Subject: FW: Gables Station / Status of Underline Construction and Relation to Issuance of TCO
Date: Monday, December 03, 2018 4:49:24 PM
Attachments: [image006.png](#)
[Letter Regarding Underline Improvement Completion Deadline.pdf](#)
[image001.png](#)
[image004.png](#)

Enga, please publish.

Thank you,

Miriam Soler Ramos, Esq., B.C.S.

City Attorney

*Board Certified by the Florida Bar in
City, County, and Local Government Law
City of Coral Gables*

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From: Ramos, Miriam
Sent: Monday, December 3, 2018 4:49 PM
To: 'Kahn, Lauren' <LKahn@gunster.com>; Iglesias, Peter <piglesias@coralgables.com>; Garcia-Serra, Mario <MGarcia-Serra@gunster.com>
Subject: RE: Gables Station / Status of Underline Construction and Relation to Issuance of TCO

Good afternoon Lauren and Mario,

In the attached letter, you explain that there has been a delay in the design and permitting processes as well as the construction schedule for the Underline due to the inclusion of the dog park that the City requested.

I have reviewed the language in paragraph (6)(n) of the Declaration of Restrictions that reads as follows:

“Underline Improvements. Owner shall complete the improvements proposed pursuant to the Underline Improvement Plan prior to issuance of the First Temporary Certificate of Occupancy. Notwithstanding anything in this paragraph, City shall issue a Temporary Certificate of Occupancy if the City Manager, at his/her reasonable discretion determinates that the improvements proposed pursuant to the Underline Improvement Plan are substantially complete and that completion for the improvements has been delayed due to force majeure or modifications required or delays caused by the City, the County, or the Underline Design Advisory Committee.”

It is my opinion that the use of the word “and” instead of “or” is a scrivener’s error as any other interpretation would defy logic. A project cannot be substantially complete and, at the same time, delayed. The paragraph should be understood to read that the City Manager may issue a Temporary Certificate of Occupancy when the project is substantially complete or if the project is delayed due to force majeure or delays cause by the City, County, or the Underline Advisory Committee. In addition, it should be noted that Sec. 1.2 of the Development Agreement also allows for an extension to the Underline project deadline if the inability to meet the deadline is due to “unavoidable delays.”

This opinion is issued pursuant to Sec. 2-252(e) and (8) of the City Code.

Miriam Soler Ramos, Esq., B.C.S.

City Attorney

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From: Kahn, Lauren <LKahn@gunster.com>
Sent: Thursday, November 29, 2018 10:19 AM
To: Ramos, Miriam <mramos@coralgables.com>; Iglesias, Peter <piglesias@coralgables.com>; Garcia-Serra, Mario <MGarcia-Serra@gunster.com>
Subject: RE: Gables Station / Status of Underline Construction and Relation to Issuance of TCO

Hi Miriam,

Please find attached our letter regarding the Underline improvements completion deadline, the referenced Zoning Covenant and excerpts from the referenced Development Agreement. I have highlighted the relevant portions of the Zoning Covenant (Paragraph 4 and 6(n)) and the Development Agreement (Section 1.2(c)). Please let me know if you need any further information with respect to this matter.

Thank you,
Lauren



Lauren L. Kahn | Attorney
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Miami, FL 33131
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gunster.com | [View my bio](#)

From: Ramos, Miriam [<mailto:mramos@coralgables.com>]

Sent: Thursday, November 29, 2018 9:05 AM
To: Iglesias, Peter; Garcia-Serra, Mario
Cc: Kahn, Lauren
Subject: RE: Gables Station / Status of Underline Construction and Relation to Issuance of TCO

Mario, please send me the agreement and point out any language that you believe grants the City Manager this authority and I will review.

Thanks,

Miriam Soler Ramos, Esq., B.C.S.

City Attorney

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From: Iglesias, Peter
Sent: Tuesday, November 27, 2018 10:19 PM
To: Garcia-Serra, Mario <MGarcia-Serra@gunster.com>
Cc: Ramos, Miriam <mramos@coralgables.com>; Kahn, Lauren <LKahn@gunster.com>
Subject: Re: Gables Station / Status of Underline Construction and Relation to Issuance of TCO

Mario,

I would like the City Attorney to review our agreement concerning my allowed discretionary authority. If not we can amend the agreement as I have no issue with the issuance of a TCO because of Underline issues.

Best regards,

Peter J Iglesias, P.E.
City Manager

Sent from my iPhone

On Nov 27, 2018, at 1:35 PM, Garcia-Serra, Mario <MGarcia-Serra@gunster.com> wrote:

Dear Peter,

Hope that the week has been treating you well thus far. As you discussed with Brent Reynolds, of NPI, last week, attached is a letter providing you with a summary of the status of the permitting for the portion of the Underline abutting the Gables Station project along with a request that you confirm that you can and will exercise your discretionary authority with regards to the issuance of a TCO for the Gables Station project, at the appropriate time, due to the delays which have been beyond the developer's control in the planning and permitting of this portion of the Underline.

Best regards,

Mario

<image001.png>
Mario Garcia-Serra | Shareholder
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Brickell World Plaza
Suite 3500
Miami, Florida 33131

P 305-376-6061 F 786-425-4104
gunster.com

<201811270949.pdf>

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