CAO 2015-085

To: Craig Coller

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

RE: Legal Opinion Regarding Art Sculptures in Segovia Circles

Date: August 18, 2015

After consideration of the matter, there are two separate issues that need to be addressed: the County right-of-way (Segovia and Coral Way Circle) and the City right-of-way (Segovia and Biltmore Way Circle). As it is my understanding that the County has indicated that there is no traffic safety issue present here for either Circle (i.e. installation would be safe), it is my opinion that the City may proceed with installing the art on the City right-of-way without further permission from the County. I do not see how the County could have authority to require a variance be granted by a County zoning board that does not have jurisdiction in the City with regards to a City right-of-way. The County does not have any zoning or variance jurisdiction in the City. The board with variance jurisdiction in the City is the Board of Adjustment (non-historic properties) or the Historic Preservation Board (historic properties), with the City Commission having ultimate jurisdiction (typically, by appeal). Here, the City Commission has already authorized the sculpture in the City right-of-way. See Resolution 2014-259. Accordingly, that issue is resolved in my view.

The County right-of-way poses a more difficult question. It is my understanding that the County would grant approval in its proprietary capacity but for the potentially applicable regulatory requirement of a variance by the Community Zoning Appeals Board (as discussed, it may not be an applicable requirement because it may apply only to private parties, not to the County or other government entities acting with the County's permission). If the regulation applies, there must be a way for the City to seek the variance. Otherwise, the ordinance would arbitrarily treat incorporated areas worse than unincorporated areas, which would undermine the ordinance itself, and be inconsistent with Article 6 of the County Charter, which gives municipalities the benefit of County laws as a minimum standard. That could not be the intent of the County Commission in passing the ordinance. In such circumstances, the City would be willing to seek the variance from a County board designated by the Mayor, County Attorney, or the Board of County Commissioners. Alternatively, the City would be willing to have the City Commission or Historic Preservation Board consider the variance as a quasi-judicial matter (as this is an

historically designated circle, and the Historic Preservation Board has jurisdiction over variances for such properties in the City, with the City Commission maintaining ultimate jurisdiction, typically by appeal). Of course, if desired, the County could retain the ability to seek review by the Board of County Commissioners, as the County has proprietary control over the circle.

There is one other possible solution. The Historic Preservation Board has already granted a special certificate of appropriateness for allowing the sculpture in the County circle (which is a historically designated circle). This is a quasi-judicial determination, which became final, as it was never appealed. Perhaps the County could recognize this quasi-judicial approval as granting the regulatory approval necessary for allowing the sculpture in the County circle.

Ultimately, it is in the mutual interests of the City and the County that these art sculptures be placed in these circles for the enjoyment of the public. It is also consistent with the goals of Art in Public Places and comity among local governments.

This opinion and interpretation is issued on behalf of the City pursuant to section 2-201(e)(1) and (8) of the Zoning Code, as well as section 2-702 of the Zoning Code.

Herbello, Stephanie

From: Leen, Craig
Sent: Tuesday, August 18, 2015 6:07 PM
To: Herbello, Stephanie
Subject: FW: Art Sculptures in Segovia Circles

Please publish.

Craig E. Leen, City Attorney
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CORAL GABLES

Celebrating 90 years of a dream realized.

From: Leen, Craig
Sent: Tuesday, August 18, 2015 6:01 PM
To: 'Craig Coller'
Subject: Art Sculptures in Segovia Circles

Craig,

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