



To: Ramon Trias

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 name "Craig E. Leen" in the "From:" line.

RE: Legal Opinion Regarding Re-Development of Property With Mf2 Status

Date: December 8, 2014

My office has been asked to provide a legal opinion and interpretation as to whether 1228 Anastasia Avenue can be redeveloped consistently with a Residential Multi Family Low Density land use status and MF2 zoning designation. I have reviewed the matter, including the attached letters, and have conferred with the Directors of Planning & Zoning and Historical Resources, and note their concurrences with this analysis.

Pursuant to section 2-201(e)(1) and (8) of the City Code, and section 2-702 of the Zoning Code, it is my opinion that the property can be redeveloped consistently with a Residential Multi Family Low Density land use status and MF2 zoning designation. In my view, this is a pure legal question, and not a discretionary matter, for two reasons:

(1) Article 6 of the Zoning Code relating to non-conforming uses, including improvements to non-conformities, supports continued treatment of the property as a multi-family low density/MF2 use, notwithstanding its present land use designation as single family (please note, the land use designation is inconsistent with the property's zoning designation of MF2, as well as its longstanding use; please see paragraph 2 below for further analysis as to this point). I would note that the proposal is an improvement to an existing non-conformity in that the proposed multi-family low density building has less density than the current multi-family low density building that is presently on the property. Accordingly, the proposal will reduce the impact of the non-conforming use. Section 6-101 expressly allows modifications of non-conforming uses, and encourages improvements to existing non-conformities. In addition, section 6-201 expressly allows for continuance of non-conforming uses. I would also note that the legally nonconforming use remains consistent with the zoning designation for the property. In these circumstances, it is my opinion that Article 6 permits this continuation and improvement of the non-conforming use.

(2) Even if it were not a legally non-conforming use, the record reviewed by the City indicates that the property once had a land use designation of Residential Multi Family Low Density, that the property still has a zoning designation of MF2, and that there is no basis identified in the record supporting the original change in the land use map from multi-family low density to single family, indicating that this was originally a scrivener's error that is now correctible under section 2-201(e)(9) of the City Code.

In light of the circumstances stated above, it is my opinion that the property can be redeveloped consistently with a Residential Multi Family Low Density land use status and MF2 zoning designation. This opinion is consistent with the one issued on October 28, 2014, which remains in effect, and is final with the issuance of this opinion and interpretation.

Herbello, Stephanie

From: Leen, Craig
Sent: Monday, December 08, 2014 8:50 PM
To: Parramore, Carol
Cc: Thornton, Bridgette; Figueroa, Yaneris; Herbello, Stephanie
Subject: Fwd: Final Legal Opinion Re: Re-development of Property Located at 1228 Anastasia Avenue
Attachments: image001.png; ATT00001.htm; Signed Opinion - 1228 Anastasia Avenue.pdf; ATT00002.htm; October 15, 2014 Letter.pdf; ATT00003.htm; September 5, 2014 Letter.pdf; ATT00004.htm

Please place the attached signed opinion and interpretation in the opinion folder.

Sent from my iPhone

Begin forwarded message:

From: "Leen, Craig" <cleen@coralgables.com>
To: "Trias, Ramon" <rtrias@coralgables.com>
Cc: "Spain, Dona" <dspain@coralgables.com>
Subject: Final Legal Opinion Re: Re-development of Property Located at 1228 Anastasia Avenue

City Attorney Opinion and Interpretation

My office has been asked to provide a legal opinion and interpretation as to whether 1228 Anastasia Avenue can be redeveloped consistently with a Residential Multi Family Low Density land use status and MF2 zoning designation. I have reviewed the matter, including the attached letters, and have conferred with the Directors of Planning & Zoning and Historical Resources, and note their concurrences with this analysis.

Pursuant to section 2-201(e)(1) and (8) of the City Code, and section 2-702 of the Zoning Code, it is my opinion that the property can be redeveloped consistently with a Residential Multi Family Low Density land use status and MF2 zoning designation. In my view, this is a pure legal question, and not a discretionary matter, for two reasons:

(1) Article 6 of the Zoning Code relating to non-conforming uses, including improvements to non-conformities, supports continued treatment of the property as a multi-family low density/MF2 use, notwithstanding its present land use designation as single family (please note, the land use designation is inconsistent with the property's zoning designation of MF2, as well as its longstanding use; please see paragraph 2 below for further analysis as to this point). I would note that the proposal is an improvement to an existing non-conformity in that the proposed multi-family low density building has less density than the current multi-family low density building that is presently on the property. Accordingly, the proposal will reduce the impact of the non-conforming use. Section 6-101 expressly allows modifications of non-conforming uses, and encourages improvements to existing non-conformities. In addition, section 6-201 expressly allows for continuance of non-conforming uses. I would also note that the legally non-conforming use remains consistent with the zoning designation for the property. In these circumstances, it is my opinion that Article 6 permits this continuation and improvement of the

non-conforming use.

(2) Even if it were not a legally non-conforming use, the record reviewed by the City indicates that the property once had a land use designation of Residential Multi Family Low Density, that the property still has a zoning designation of MF2, and that there is no basis identified in the record supporting the original change in the land use map from multi-family low density to single family, indicating that this was originally a scrivener's error that is now correctible under section 2-201(e)(9) of the City Code.

In light of the circumstances stated above, it is my opinion that the property can be redeveloped consistently with a Residential Multi Family Low Density land use status and MF2 zoning designation. This opinion is consistent with the one issued on October 28, 2014, which remains in effect, and is final with the issuance of this opinion and interpretation.

Regards,

Craig E. Leen, City Attorney
Board Certified by the Florida Bar in
City, County and Local Government Law
City of Coral Gables
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Coral Gables, Florida 33134
Phone: (305) 460-5218
Fax: (305) 460-5264
Email: cleen@coralgables.com<<mailto:cleen@coralgables.com>>

From: Leen, Craig
Sent: Tuesday, October 28, 2014 1:19 AM
To: Trias, Ramon
Cc: Spain, Dona
Subject: RE: Re-development Property located 1228 Anastasia Avenue
Importance: High

Good evening, Ramon. I have reviewed the matter, including the attached letters, and have conferred with you and Dona Spain, and note your concurrences with this analysis. In my view, this is a pure legal question, and not a discretionary matter. Pursuant to section 2-201(e)(1) and (8) of the City Code, and section 2-702 of the Zoning Code, it is my opinion that the property can be developed consistently with a Residential Multi Family Low Density land use status and MF2 zoning designation for two reasons: (1) Article 6 of the Zoning Code relating to non-conforming uses, including improvements to non-conformities, supports continued treatment of the property as a multi-family low density/MF2 use [and I would also note that the proposal is an improvement to any existing non-conformity in that the proposed multi-family low density building has less density than the current multi-family low density building that is presently on the property], and (2) even if it were not a legally non-conforming use, the record reviewed by the City indicates that the property once had a land use designation of Residential Multi Family Low Density, that the property still has a zoning designation of MF2, and that there is no basis identified in the record supporting the original change in the land use map from multi-family low density to single family, indicating that this was originally a scrivener's error that is now correctible under section 2-201(e)(9) of the City Code. I wanted to provide you this opinion promptly so that you could allow the application to proceed consistent with the analysis herein, as it is effective upon issuance. I will also be preparing a formal opinion that will further

elaborate on this analysis.

Craig E. Leen, City Attorney
Board Certified by the Florida Bar in
City, County and Local Government Law
City of Coral Gables
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Phone: (305) 460-5218
Fax: (305) 460-5264
Email: cleen@coralgables.com<<mailto:cleen@coralgables.com>>

From: Trias, Ramon
Sent: Friday, October 24, 2014 4:31 PM
To: Leen, Craig
Subject: FW: Re-development Property located 1228 Anastasia Avenue

Craig:

What should be the next step on this? Thanks.

Ramon

From: Trias, Ramon
Sent: Tuesday, October 21, 2014 5:00 PM
To: Leen, Craig
Subject: FW: Re-development Property located 1228 Anastasia Avenue

Craig:

I have received the attached information. Please review and advise. Thank you.

Ramon

From: Oscar Roger [<mailto:oroger@rogerdevelopment.com>]
Sent: Tuesday, October 21, 2014 4:57 PM
To: Trias, Ramon
Cc: Jorge Navaro; lucia dougherty
Subject: Re-development Property located 1228 Anastasia Avenue

Dear Mr. Trias,

Thank you again for taking the time to meet with us today regarding the redevelopment of the property located at 1228 Anastasia Avenue with a 3-story 10-unit multi-family residential project (the "Project"). This email is written to request your confirmation from earlier today that a scrivener's error exists in the City's Future Land Use Map and that the Property can be redeveloped as of right in accordance with the existing Multi-Family 2 District (MF2) zoning regulations. Specifically, based on your review of the documentation presented in our correspondences dated September 5, 2014 and October 15, 2014, you have determined that the Property is incorrectly shown as being Single Family Residential rather than Multi-Family Residential on the City's Future Land Use Map. This determination is supported by the hearing

minutes, maps, agendas and staff reports on file with the City Clerk's office.

We appreciate your assistance with this matter and look forward to receiving your confirmation that the Project can be built in accordance with the Property's existing Multi-Family Residential land use and MF2 zoning regulations.

Sincerely,

Oscar Roger

[cid:image001.jpg@01CA36AD.852F9290]

Roger Development Group, Inc.

Ocean Bank Building

782 NW 42nd Avenue, Suite 550

Miami, Florida 33126

Tel 305-448-4091

Fax 305-448-4916

Email oroger@rogerdevelopment.com<<mailto:oroger@rogerdevelopment.com>>

Web www.rogerdevelopment.com<applewebdata://E20EC1AA-5B11-40F9-ADCE-870AC62BDE42/www.rogerdevelopment.com>

Parramore, Carol

From: Leen, Craig
Sent: Tuesday, October 28, 2014 12:48 AM
To: Parramore, Carol
Cc: Thornton, Bridgette; Figueroa, Yaneris
Subject: FW: Re-development Property located 1228 Anastasia Avenue
Attachments: September 5, 2014.pdf; October 15, 2014.pdf

Please place in the opinion folder.

Craig E. Leen, City Attorney
*Board Certified by the Florida Bar in
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From: Leen, Craig
Sent: Tuesday, October 28, 2014 12:47 AM
To: Trias, Ramon
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Subject: RE: Re-development Property located 1228 Anastasia Avenue

Good evening, Ramon. I have reviewed the matter, including the attached letters, and have conferred with you and Dona Spain, and note your concurrences with this analysis. In my view, this is a pure legal question, and not a discretionary matter. Pursuant to section 2-201(e)(1) and (8) of the City Code, and section 2-702 of the Zoning Code, it is my opinion that the property can be developed with an MF2 status for two reasons: (1) Article 6 of the Zoning Code relating to non-conforming uses, including improvements to non-conformities, supports continued treatment of the property as an MF2 use [and I would also note that the proposal is an improvement to any existing non-conformity in that the proposed MF2 building has less density than the current MF2 building], and (2) even if it were not a legally non-conforming use, the record reviewed by the City indicates that the property once had a land use designation of MF2, that the property still has a zoning designation of MF2, and that there is no basis identified in the record supporting the original change in the land use map from MF2 to single family, indicating that this was originally a scrivener's error that is now correctible under section 2-201(e)(9) of the City Code. I wanted to provide you this opinion promptly so that you could allow the application to proceed consistent with the analysis herein, as it is effective upon issuance. I will also be preparing a formal opinion that will further elaborate on this analysis.

Craig E. Leen, City Attorney
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City of Coral Gables
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Phone: (305) 460-5218
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What should be the next step on this? Thanks.

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To: Trias, Ramon
Cc: Jorge Navaro; lucia dougherty
Subject: Re-development Property located 1228 Anastasia Avenue

Dear Mr. Trias,

Thank you again for taking the time to meet with us today regarding the redevelopment of the property located at 1228 Anastasia Avenue with a 3-story 10-unit multi-family residential project (the "Project"). This email is written to request your confirmation from earlier today that a scrivener's error exists in the City's Future Land Use Map and that the Property can be redeveloped as of right in accordance with the existing Multi-Family 2 District (MF2) zoning regulations. Specifically, based on your review of the documentation presented in our correspondences dated September 5, 2014 and October 15, 2014, you have determined that the Property is incorrectly shown as being Single Family Residential rather than Multi-Family Residential on the City's Future Land Use Map. This determination is supported by the hearing minutes, maps, agendas and staff reports on file with the City Clerk's office.

We appreciate your assistance with this matter and look forward to receiving your confirmation that the Project can be built in accordance with the Property's existing Multi-Family Residential land use and MF2 zoning regulations.

Sincerely,

Oscar Roger



Roger Development Group, Inc.
Ocean Bank Building
782 NW 42nd Avenue, Suite 550
Miami, Florida 33126
Tel 305-448-4091
Fax 305-448-4916
Email oroger@rogerdevelopment.com
Web www.rogerdevelopment.com

September 5, 2014

VIA HAND DELIVERY

Mr. Craig Leen, Esq.
City Attorney
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134

Mr. Ramon Trias
Planning & Zoning Director
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134

Re: Request to Correct Scrivener's Error in the City's Comprehensive Plan Future Land Use Map for a Property Located at 1228 Anastasia Avenue in Coral Gables, Florida (Folio No. 03-4118-003-1010)

Dear Messieurs Leen and Trias:

On behalf of Gables on the Green II, LLC. ("GOGII"), the contract purchaser of the above referenced property ("Property"), please accept this letter as our formal request for the correction of a scrivener's error contained in the City's Future Land Use Map. Specifically, GOGII is requesting that the boundaries of the Property, as depicted in the City's Future Land Use Map, be corrected to accurately reflect and conform to the Property's existing "Residential Multi-Family Low Density" land uses and "Multi-Family 2 Zoning District" designation. As discussed below, we believe the City's Future Land Use Map contains drafting errors which incorrectly show that the Property is designated "Residential Single Family Low Density" when the historic uses and land use designations clearly demonstrate that the Property has always been intended and authorized for low-density multi-family residential uses.

ANALYSIS

1. PROPERTY INFORMATION.

The Property, which directly abuts the Biltmore Hotel, is comprised of approximately 0.70 +/- acres of land and is currently improved with a 12 unit multi-family residential building and an ancillary surface parking lot. The Property is currently shown as "Residential Single Family Low Density" on the City's Future Land Use Map and is zoned "Multi-Family 2 District"

in the City's Zoning Map (See EXHIBIT A and EXHIBIT B respectively).¹ Accordingly, both the existing zoning and current uses on the Property are inconsistent with the land use reflected in the City's Future Land Use Map. As explained below, we believe this internal inconsistency was the result of a mapping error made by City staff at the time the Future Land Use Map was prepared.

2. ZONING AND LAND USE HISTORY.

A. Zoning Designations.

The Property has always been used for either hotel or multi-family residential uses. As evidenced by the attached 1931 aerial photograph from the Miami Metropolitan Archives, the property was originally constructed and operated as a hotel (See EXHIBIT C). In 1941, the Property was redeveloped with a 12 unit multi-family residential project according to the Miami-Dade County Property Appraiser's Office (See EXHIBIT D).² Subsequent to the construction of the multi-family residential development on the Property, the City Commission adopted a revised Zoning Ordinance in 1951 which amended certain provisions of the City's land use regulations in an effort to provide clarity for future development within the City (the "1951 Zoning Ordinance"). The 1951 Zoning Ordinance designated the Property as part of the "CFA 12" Zoning District which was specifically intended for apartment, lodging and hotel uses (See EXHIBIT E).

B. Land Use Designations.

As discussed above, the Property is currently shown as "Residential Single Family Low Density" on the City's Future Land Use Map. This designation is inconsistent with the existing and historical uses on the Property. However, the requested correction of the Property's designation under the Future Land Use Map to "Residential Multi-Family Low Density" is consistent and compatible with the current uses and existing zoning on the Property. The "Residential Multi-Family Low Density" designation allows for residential development up to a density of 20 units per acre. Accordingly, this designation would permit a total of 13 units per net acre on the 0.70 +/- acre parcel which is in line with the existing 12 unit multi-family residential development on the Property.

3. MAPPING ERRORS.

As evidenced by the historic aerial photographs, the documentation from the Property Appraiser's Office, and the City's zoning regulations, the Property has always been used and intended for multi-family residential uses rather than for single family. However, under the current version of the City's Future Land Use Map, the Property is incorrectly shown as being

¹ The MF-2 zoning district specifically permits the existing multi-family residential uses on the Property.

² The Miami-Dade County Property Appraiser's Report previously attached as EXHIBIT D, further confirms that the Primary Land Use for the Property is "Multi-Family" and not "Single-Family."

“Residential Single Family Low Density” rather than “Residential Multi-Family Low Density.” We believe the discrepancy is the result of a scrivener’s error which occurred at the time the Future Land Use Map was prepared by City staff. Specifically, during the drafting of the City’s Future Land Use Map the boundaries of the adjacent “Residential Single Family Low Density” land use designation were incorrectly extended into the boundaries of the Property (“**Mapping Errors**”). Due to the small size of this property, which consists of only 2 platted lots, the Property was likely inadvertently filled with a color representing a “Residential Single Family Low Density” designation rather than the corresponding “Residential Multi-Family Low Density” designation. Therefore the existing and historically authorized low density multi-family residential land uses were not properly documented on the Future Land Use Map.

The interrelation and consistency between the City’s previous “CFA-12” District under the 1951 Zoning Ordinance and the current “Residential Multi-Family Low Density” designation is further demonstrated by the manner in which the adjacent and similarly situated parcel of land identified as Block 30 on **EXHIBIT F** (“Block 30”) was treated in subsequent editions of the City’s Future Land Use Map. A review of the development history for Block 30 confirms that the parcel was originally zoned “CFA-12” District under the City’s 1951 Zoning Ordinance previously attached as EXHIBIT E and has been used for multi-family residential uses. However, unlike the Property, Block 30 was correctly identified and referenced as being “Residential Multi-Family Low Density” when the City’s Future Land Use Map was originally prepared.

4. AUHTORITY TO CORRECT MAPPING ERRORS.

The City Attorney and the City’s Planning and Zoning Director are expressly authorized under the City’s Zoning Ordinance to make the changes necessary to correct errors and inconsistencies in the City’s Future Land Use Map. Specifically, the Director of the Planning Department is designated with the power over Comprehensive Plan Text and *Map Amendments* under Section 2-704 of the City Code (emphasis added). Additionally, Section 2-702 of the City’s Zoning Ordinance provides that the City Attorney has “the final authority with regard to legal issues involving interpretation and implementation of these regulations.” Section 2-201 of the City Code further provides that the City Attorney has the authority to “make corrections to the City Code and Zoning Code where appropriate to address scrivener’s errors and typographical errors.” The City Attorney and City Planner are therefore expressly granted with the authority necessary to make changes on the Future Land Use Map to correct scrivener’s errors, such as the aforementioned Mapping Errors.

CONCLUSION

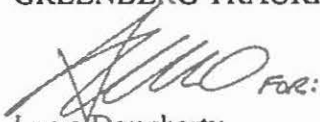
We are hereby writing to you in your respective capacities under the City’s Zoning Ordinance and Code to correct the Mapping Errors in the City’s Future Land Use Map and allow us to build under the current “Multi-Family 2 District” zoning designation. This change will

cure the inconsistencies between the designation shown on the Future Land Use Map and the historical uses and existing zoning on the Property. Additionally, the correction of the aforementioned Mapping Errors will further the following policies in the City's Zoning Ordinance and Comprehensive Plan identified in EXHIBIT G.

We appreciate your assistance with this matter. Should you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,

GREENBERG TRAUIG

 For:
Lucia Dougherty

October 15, 2014

VIA HAND DELIVERY

Mr. Craig Leen, Esq.
City Attorney
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134

Mr. Ramon Trias
Planning & Zoning Director
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134

Re: Supplemental Submittal / Request to Correct Scrivener's Error in the City's Comprehensive Plan Future Land Use Map / Property Located at 1228 Anastasia Avenue, Coral Gables, Florida

Dear Messieurs Leen and Trias:

Thank you for taking the time to meet with us and our client, Gables on the Green II, LLC ("GOGII"), regarding the redevelopment of the above referenced property ("Property") with a 3-story, 10 unit multi-family residential project ("Project"). As discussed in our meeting, we believe that the City's Future Land Use Map contains a drafting error ("Scrivener's Error") which incorrectly shows that the Property is designated Residential Single Family Low Density ("Single Family Residential") when the historical uses and land use designations clearly demonstrate that the Property has always been authorized for Residential Multi-Family Low Density ("Multi-Family Residential") land uses.

This letter is intended to supplement our original correspondence dated September 9, 2014 on behalf of GOGII, which requested confirmation of your initial determination that a Scrivener's Error exists in the City's Future Land Use Map and that the Property can be redeveloped in accordance with the existing Multi-Family 2 District ("MF2") zoning regulations. Since our meeting last week, our office has undertaken an extensive review of the Property records on file with the City Clerk's office. Specifically, our office has reviewed the following documents (collectively referred to as the "City Records"):

1. Minutes of the June 22, 1988 Special Workshop Meeting of the 1989 Comprehensive Plan.

2. Minutes of the August 19, 1988 City Commission Meeting of the 1989 Comprehensive Plan.
3. Minutes of the February 14, 1989 Public Hearing on First Reading of the 1989 Comprehensive Plan, attached as Exhibit "A" ("Hearing Transcripts").
4. Minutes of the February 16, 1989 Public Hearing on Second Reading of the 1989 Comprehensive Plan, attached as Exhibit "B".

As summarized below, our research supports the existence of the Scrivener's Error and confirms that the Property is designated for Multi-Family Residential land uses under the City's Future Land Use Map.

ANALYSIS

1. COMPREHENSIVE PLAN APPROVAL HISTORY.

A. 1980 Comprehensive Plan.

On April 29, 1980, the City Commission adopted the "City of Coral Gables Comprehensive Plan 1978-2000" pursuant to Ordinance No. 2345, attached as Exhibit "C" ("1980 Future Land Use Map"). Pursuant to the 1980 Future Land Use Map, the Property was designated for Apartment uses at the time the Comprehensive Plan was originally adopted by the City. However, under the current version of the City's Future Land Use Map, the Property is incorrectly shown as being Single Family Residential rather than Multi-Family Residential. Based on a review of the City Records, we believe this discrepancy is the result of a scrivener's error made by City staff when the 1989 Future Land Use Map was prepared.

Specifically, due to the small size of the Property, the Property's historical Multi-Family Residential land use designation was inadvertently changed by City staff during the drafting of the 1989 Future Land Use Map.¹ This Scrivener's Error has in turn been replicated in subsequent reiterations of the City's Future Land Use Map and has never been corrected. Accordingly, the existing and historically authorized Multi-Family Residential land uses on the Property are not properly documented on the current version of the City's Future Land Use Map.

B. 1989 Comprehensive Plan.

On February 16, 2014, the City Commission adopted certain amendments to the 1980 Comprehensive Plan pursuant to Ordinance No. 2827, attached as Exhibit "D" ("1989 Comprehensive Plan Amendments"). As evidenced by the City Records, the proposed changes to the 1980 Future Land Use Map that were adopted by the City Commission as part of the 1989 Comprehensive Plan Amendments did not include the Property or affect its original Multi-

¹ The Property is comprised of 2 platted lots and is less than 1 acre in size.

Family Residential land use designation. Additionally, any purported changes to the Property's Multi-Family Residential land use designation under the 1989 Comprehensive Plan Amendments would be void for defective notice and thus tantamount to a taking of the owner's property rights without due process of law.

- i. *The City Records confirm the Property was not the subject of any Future Land Use Map changes made during the 1989 Comprehensive Plan Amendments.*

The City Records for the 1989 Comprehensive Plan Amendments clearly indicate that the Property's Future Land Use Map designation was not intended to be changed from Multi-Family Residential to Single Family Residential. First, as evidenced by the Map attached as Exhibit "E", the Property was not identified as one of the areas that were recommended to be changed by the Land Use Task Force as part of the 1989 Comprehensive Plan Amendments. Secondly, the Hearing Transcripts, previously attached as Exhibit "A", demonstrate that the Property was not the subject of any Future Land Use Map changes considered as part of the 1989 Comprehensive Plan Amendments. The Property is not referenced in any of the City Records and is not identified in any of the Maps showing the changes proposed under the 1989 Comprehensive Plan Amendments.

Additionally, the Hearing Transcripts establish that the City Commission was not in favor of "downzoning" any properties and actually intended to maintain the "status quo" of existing development rights within the City.² The City Commission expressed several concerns throughout the Public Hearing over the "downzoning" of properties within the City and consistently voted against those Local Planning Agency recommendations that resulted in a taking of private property rights, as evidenced by the Summary of Final Actions attached as Exhibit "F". In effect, the 1989 Comprehensive Plan Amendments were intended to preserve the density and number of units permitted in areas designated Apartment District, such as the subject Property.³ Accordingly, the legislative intent of the City Commission, as expressed in the Hearing Transcripts, is directly contrary to a purported change in the Property's Future Land Use Map designation from Multi-Family Residential to Single Family Residential.

- ii. *The Notice provided during the 1989 Comprehensive Plan Amendments was insufficient to effectuate a Change in the Property's Future Land Use Map Designation.*

During the adoption of the 1989 Comprehensive Plan Amendments, the City published a Legal Notice of Public Hearing in the Miami Herald, attached as Exhibit "G" ("Notice of Hearing"). Chapter 163 of the Florida Statutes provides specific requirements that must be met with respect to the notice of public hearing provided in connection with the adoption of a

² See Hearing Transcripts, 69 – 74 (1989).

³ See Hearing Transcripts, 73-74 (1989).

Comprehensive Plan Amendment. Additionally, Section 27-7 of the City Zoning Ordinance in effect at the time of the adoption of the 1989 Comprehensive Plan Amendments provided additional notice requirements and procedural safeguards, attached as Exhibit "H". This Section not only required that an advertisement be placed in a newspaper of general circulation, but also required that the City post each property that was the subject of a Comprehensive Plan amendment.

Based on the Notice of Hearing that was published in the Miami Herald, it is difficult for one to ascertain which properties were affected and what changes were being proposed. The Notice of Hearing simply included a small illegible map which neither provided references to any cross streets nor adequately identified the affected parcels by property address or legal description. Additionally, the Hearing Transcripts state that the properties were not posted as required by Section 27-7 of the City Code.⁴ Therefore, the requisite notice was not provided and any action taken with respect to amending the land use designation for the Property would be void as a matter of law. An interpretation to the contrary would substantially impair the Property owner's rights without due process of law.

C. 1995 Comprehensive Plan Amendment Application

On September 8, 1995, the then owner of the Property pursued a Comprehensive Plan Amendment on the Property in an attempt to correct the internal inconsistencies between the Property's existing multi-family zoning and the single-family land use designation currently shown on the City's Future Land Use Map. The Staff Report prepared by the City in connection with this application incorrectly assumed that the Property's land use designation was changed from Multi-Family Residential to Single Family Residential as part of the recommendations made by the Land Use Task Force during the 1989 Comprehensive Plan Amendments.⁵ As discussed in the preceding Section, the re-designation of the Property to Single Family Residential was neither considered as part of the changes recommended by the Land Use Task Force nor adopted by the City Commission as part of the 1989 Comprehensive Plan Amendments. The City Records clearly shows that the Property was never intended by the City to be anything other than Multi-Family Residential and that the assumptions made under the Staff Report were unfounded.

2. CORRECTION OF SCRIVENER'S ERROR.

As discussed in our original correspondence dated September 9, 2014, the City Attorney and the City's Planning and Zoning Director are expressly authorized under the City's Zoning

⁴ See *Hearing Transcripts*, at 69 (1989).

⁵ The Staff Report expressly provides that the record is void of any reasons in support of the purported change in the Property's designation from multi-family to single family residential and is based solely on assumptions by City staff that it was the Committee's intention to make this change.

Mr. Craig Leen, Esq.
Mr. Ramon Trias
Page 5

Ordinance to make the changes necessary to correct errors and inconsistencies in the City's Future Land Use Map. Specifically, the Director of the Planning Department is designated with the power over Comprehensive Plan Text and Map Amendments.⁶ Additionally, the City Attorney has "the final authority with regard to legal issues involving interpretation and implementation of these regulations" and is empowered to "make corrections to the City Code and Zoning Code where appropriate to address scrivener's errors and typographical errors."⁷ Accordingly, the City Attorney and City Planner are expressly granted with the authority to make the changes necessary to correct the Scrivener's Error.


CONCLUSION

Under the current version of the City's Future Land Use Map, the Property is incorrectly shown as being Single Family Residential rather than Multi-Family Residential. Based on the supplemental information obtained from the City's Clerk's office and the history of the Comprehensive Plan approvals for the Property, we ask that you please confirm the existence of the Scrivener's Error and verify that the Project can be built on the Property in accordance with the Multi-Family Residential and MF2 development regulations.

We appreciate your considerate attention to this matter. Should you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,

GREENBERG TRAURIG



Jorge L. Navarro

⁶ See Section 2-704, City Code.

⁷ See Section 2-702, City Zoning Ordinance; See also Section 2-201, City Code.

CITY OF CORAL GABLES

OFFICE OF THE CITY ATTORNEY

- LEGAL OPINION AND INTERPRETATION -

**TO: RAMON TRIAS
DIRECTOR OF
PLANNING & ZONING**

DATE: December 8, 2014

**FROM: 
CRAIG E. LEEN
CITY ATTORNEY**

**SUBJECT: 1228 ANASTASIA
AVENUE**

My office has been asked to provide a legal opinion and interpretation as to whether 1228 Anastasia Avenue can be redeveloped consistently with a Residential Multi Family Low Density land use status and MF2 zoning designation. I have reviewed the matter, including the attached letters, and have conferred with the Directors of Planning & Zoning and Historical Resources, and note their concurrences with this analysis.

Pursuant to section 2-201(e)(1) and (8) of the City Code, and section 2-702 of the Zoning Code, it is my opinion that the property can be redeveloped consistently with a Residential Multi Family Low Density land use status and MF2 zoning designation. In my view, this is a pure legal question, and not a discretionary matter, for two reasons:

(1) Article 6 of the Zoning Code relating to non-conforming uses, including improvements to non-conformities, supports continued treatment of the property as a multi-family low density/MF2 use, notwithstanding its present land use designation as single family (please note, the land use designation is inconsistent with the property's zoning designation of MF2, as well as its longstanding use; please see paragraph (2) below for further analysis as to this point). I would note that the proposal is an improvement to an existing non-conformity in that the proposed multi-family low density building has less density than the current multi-family low density building that is presently on the property. Accordingly, the proposal will reduce the impact of the non-conforming use. Section 6-101 expressly allows modifications of non-conforming

uses, and encourages improvements to existing non-conformities. I would also note that the legally non-conforming use remains consistent with the zoning designation for the property. In these circumstances, it is my opinion that Article 6 permits this continuation and improvement of the non-conforming use.

(2) Even if it were not a legally non-conforming use, the record reviewed by the City indicates that the property once had a land use designation of Residential Multi Family Low Density, that the property still has a zoning designation of MF2, and that there is no basis identified in the record supporting the original change in the land use map from multi-family low density to single family, indicating that this was originally a scrivener's error that is now correctible under section 2-201(e)(9) of the City Code.

In light of the circumstances stated above, it is my opinion that the property can be redeveloped consistently with a Residential Multi Family Low Density land use status and MF2 zoning designation. This opinion is consistent with the one issued on October 28, 2014, which remains in effect, and is final with the issuance of this opinion.

October 15, 2014

VIA HAND DELIVERY

Mr. Craig Leen, Esq.
City Attorney
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134

Mr. Ramon Trias
Planning & Zoning Director
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134

**Re: Supplemental Submittal / Request to Correct Scrivener's Error in the City's
Comprehensive Plan Future Land Use Map / Property Located at 1228 Anastasia
Avenue, Coral Gables, Florida**

Dear Messieurs Leen and Trias:

Thank you for taking the time to meet with us and our client, Gables on the Green II, LLC ("GOGII"), regarding the redevelopment of the above referenced property ("Property") with a 3-story, 10 unit multi-family residential project ("Project"). As discussed in our meeting, we believe that the City's Future Land Use Map contains a drafting error ("Scrivener's Error") which incorrectly shows that the Property is designated Residential Single Family Low Density ("Single Family Residential") when the historical uses and land use designations clearly demonstrate that the Property has always been authorized for Residential Multi-Family Low Density ("Multi-Family Residential") land uses.

This letter is intended to supplement our original correspondence dated September 9, 2014 on behalf of GOGII, which requested confirmation of your initial determination that a Scrivener's Error exists in the City's Future Land Use Map and that the Property can be redeveloped in accordance with the existing Multi-Family 2 District ("MF2") zoning regulations. Since our meeting last week, our office has undertaken an extensive review of the Property records on file with the City Clerk's office. Specifically, our office has reviewed the following documents (collectively referred to as the "City Records"):

1. Minutes of the June 22, 1988 Special Workshop Meeting of the 1989 Comprehensive Plan.

2. Minutes of the August 19, 1988 City Commission Meeting of the 1989 Comprehensive Plan.
3. Minutes of the February 14, 1989 Public Hearing on First Reading of the 1989 Comprehensive Plan, attached as Exhibit "A" ("Hearing Transcripts").
4. Minutes of the February 16, 1989 Public Hearing on Second Reading of the 1989 Comprehensive Plan, attached as Exhibit "B".

As summarized below, our research supports the existence of the Scrivener's Error and confirms that the Property is designated for Multi-Family Residential land uses under the City's Future Land Use Map.

ANALYSIS

1. COMPREHENSIVE PLAN APPROVAL HISTORY.

A. 1980 Comprehensive Plan.

On April 29, 1980, the City Commission adopted the "City of Coral Gables Comprehensive Plan 1978-2000" pursuant to Ordinance No. 2345, attached as Exhibit "C" ("1980 Future Land Use Map"). Pursuant to the 1980 Future Land Use Map, the Property was designated for Apartment uses at the time the Comprehensive Plan was originally adopted by the City. However, under the current version of the City's Future Land Use Map, the Property is incorrectly shown as being Single Family Residential rather than Multi-Family Residential. Based on a review of the City Records, we believe this discrepancy is the result of a scrivener's error made by City staff when the 1989 Future Land Use Map was prepared.

Specifically, due to the small size of the Property, the Property's historical Multi-Family Residential land use designation was inadvertently changed by City staff during the drafting of the 1989 Future Land Use Map.¹ This Scrivener's Error has in turn been replicated in subsequent reiterations of the City's Future Land Use Map and has never been corrected. Accordingly, the existing and historically authorized Multi-Family Residential land uses on the Property are not properly documented on the current version of the City's Future Land Use Map.

B. 1989 Comprehensive Plan.

On February 16, 2014, the City Commission adopted certain amendments to the 1980 Comprehensive Plan pursuant to Ordinance No. 2827, attached as Exhibit "D" ("1989 Comprehensive Plan Amendments"). As evidenced by the City Records, the proposed changes to the 1980 Future Land Use Map that were adopted by the City Commission as part of the 1989 Comprehensive Plan Amendments did not include the Property or affect its original Multi-

¹ The Property is comprised of 2 platted lots and is less than 1 acre in size.

Family Residential land use designation. Additionally, any purported changes to the Property's Multi-Family Residential land use designation under the 1989 Comprehensive Plan Amendments would be void for defective notice and thus tantamount to a taking of the owner's property rights without due process of law.

- i. *The City Records confirm the Property was not the subject of any Future Land Use Map changes made during the 1989 Comprehensive Plan Amendments.*

The City Records for the 1989 Comprehensive Plan Amendments clearly indicate that the Property's Future Land Use Map designation was not intended to be changed from Multi-Family Residential to Single Family Residential. First, as evidenced by the Map attached as Exhibit "E", the Property was not identified as one of the areas that were recommended to be changed by the Land Use Task Force as part of the 1989 Comprehensive Plan Amendments. Secondly, the Hearing Transcripts, previously attached as Exhibit "A", demonstrate that the Property was not the subject of any Future Land Use Map changes considered as part of the 1989 Comprehensive Plan Amendments. The Property is not referenced in any of the City Records and is not identified in any of the Maps showing the changes proposed under the 1989 Comprehensive Plan Amendments.

Additionally, the Hearing Transcripts establish that the City Commission was not in favor of "downzoning" any properties and actually intended to maintain the "status quo" of existing development rights within the City.² The City Commission expressed several concerns throughout the Public Hearing over the "downzoning" of properties within the City and consistently voted against those Local Planning Agency recommendations that resulted in a taking of private property rights, as evidenced by the Summary of Final Actions attached as Exhibit "F". In effect, the 1989 Comprehensive Plan Amendments were intended to preserve the density and number of units permitted in areas designated Apartment District, such as the subject Property.³ Accordingly, the legislative intent of the City Commission, as expressed in the Hearing Transcripts, is directly contrary to a purported change in the Property's Future Land Use Map designation from Multi-Family Residential to Single Family Residential.

- ii. *The Notice provided during the 1989 Comprehensive Plan Amendments was insufficient to effectuate a Change in the Property's Future Land Use Map Designation.*

During the adoption of the 1989 Comprehensive Plan Amendments, the City published a Legal Notice of Public Hearing in the Miami Herald, attached as Exhibit "G" ("Notice of Hearing"). Chapter 163 of the Florida Statutes provides specific requirements that must be met with respect to the notice of public hearing provided in connection with the adoption of a

² See Hearing Transcripts, 69 - 74 (1989).

³ See Hearing Transcripts, 73-74 (1989).

Comprehensive Plan Amendment. Additionally, Section 27-7 of the City Zoning Ordinance in effect at the time of the adoption of the 1989 Comprehensive Plan Amendments provided additional notice requirements and procedural safeguards, attached as Exhibit "H". This Section not only required that an advertisement be placed in a newspaper of general circulation, but also required that the City post each property that was the subject of a Comprehensive Plan amendment.

Based on the Notice of Hearing that was published in the Miami Herald, it is difficult for one to ascertain which properties were affected and what changes were being proposed. The Notice of Hearing simply included a small illegible map which neither provided references to any cross streets nor adequately identified the affected parcels by property address or legal description. Additionally, the Hearing Transcripts state that the properties were not posted as required by Section 27-7 of the City Code.⁴ Therefore, the requisite notice was not provided and any action taken with respect to amending the land use designation for the Property would be void as a matter of law. An interpretation to the contrary would substantially impair the Property owner's rights without due process of law.

C. 1995 Comprehensive Plan Amendment Application

On September 8, 1995, the then owner of the Property pursued a Comprehensive Plan Amendment on the Property in an attempt to correct the internal inconsistencies between the Property's existing multi-family zoning and the single-family land use designation currently shown on the City's Future Land Use Map. The Staff Report prepared by the City in connection with this application incorrectly assumed that the Property's land use designation was changed from Multi-Family Residential to Single Family Residential as part of the recommendations made by the Land Use Task Force during the 1989 Comprehensive Plan Amendments.⁵ As discussed in the preceding Section, the re-designation of the Property to Single Family Residential was neither considered as part of the changes recommended by the Land Use Task Force nor adopted by the City Commission as part of the 1989 Comprehensive Plan Amendments. The City Records clearly shows that the Property was never intended by the City to be anything other than Multi-Family Residential and that the assumptions made under the Staff Report were unfounded.

2. CORRECTION OF SCRIVENER'S ERROR.

As discussed in our original correspondence dated September 9, 2014, the City Attorney and the City's Planning and Zoning Director are expressly authorized under the City's Zoning

⁴ See *Hearing Transcripts*, at 69 (1989).

⁵ The Staff Report expressly provides that the record is void of any reasons in support of the purported change in the Property's designation from multi-family to single family residential and is based solely on assumptions by City staff that it was the Committee's intention to make this change.

Mr. Craig Leen, Esq.
Mr. Ramon Trias
Page 5

Ordinance to make the changes necessary to correct errors and inconsistencies in the City's Future Land Use Map. Specifically, the Director of the Planning Department is designated with the power over Comprehensive Plan Text and Map Amendments.⁶ Additionally, the City Attorney has "the final authority with regard to legal issues involving interpretation and implementation of these regulations" and is empowered to "make corrections to the City Code and Zoning Code where appropriate to address scrivener's errors and typographical errors."⁷ Accordingly, the City Attorney and City Planner are expressly granted with the authority to make the changes necessary to correct the Scrivener's Error.

CONCLUSION

Under the current version of the City's Future Land Use Map, the Property is incorrectly shown as being Single Family Residential rather than Multi-Family Residential. Based on the supplemental information obtained from the City's Clerk's office and the history of the Comprehensive Plan approvals for the Property, we ask that you please confirm the existence of the Scrivener's Error and verify that the Project can be built on the Property in accordance with the Multi-Family Residential and MF2 development regulations.

We appreciate your considerate attention to this matter. Should you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,

GREENBERG TRAUIG



Jorge L. Navarro

⁶ See Section 2-704, City Code.

⁷ See Section 2-702, City Zoning Ordinance; See also Section 2-201, City Code.

Lucia Dougherty, Esq.
doughertyl@gtlaw.com
(305) 579-0603

September 5, 2014

VIA HAND DELIVERY

Mr. Craig Leen, Esq.
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405 Biltmore Way
Coral Gables, Florida 33134

Mr. Ramon Trias
Planning & Zoning Director
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134

Re: Request to Correct Scrivener's Error in the City's Comprehensive Plan Future Land Use Map for a Property Located at 1228 Anastasia Avenue in Coral Gables, Florida (Folio No. 03-4118-003-1010)

Dear Messieurs Leen and Trias:

On behalf of Gables on the Green II, L.L.C. ("GOGII"), the contract purchaser of the above referenced property ("Property"), please accept this letter as our formal request for the correction of a scrivener's error contained in the City's Future Land Use Map. Specifically, GOGII is requesting that the boundaries of the Property, as depicted in the City's Future Land Use Map, be corrected to accurately reflect and conform to the Property's existing "Residential Multi-Family Low Density" land uses and "Multi-Family 2 Zoning District" designation. As discussed below, we believe the City's Future Land Use Map contains drafting errors which incorrectly show that the Property is designated "Residential Single Family Low Density" when the historic uses and land use designations clearly demonstrate that the Property has always been intended and authorized for low-density multi-family residential uses.

ANALYSIS

1. PROPERTY INFORMATION.

The Property, which directly abuts the Biltmore Hotel, is comprised of approximately 0.70 +/- acres of land and is currently improved with a 12 unit multi-family residential building and an ancillary surface parking lot. The Property is currently shown as "Residential Single Family Low Density" on the City's Future Land Use Map and is zoned "Multi-Family 2 District"

in the City's Zoning Map (See EXHIBIT A and EXHIBIT B respectively).¹ Accordingly, both the existing zoning and current uses on the Property are inconsistent with the land use reflected in the City's Future Land Use Map. As explained below, we believe this internal inconsistency was the result of a mapping error made by City staff at the time the Future Land Use Map was prepared.

2. ZONING AND LAND USE HISTORY.

A. Zoning Designations.

The Property has always been used for either hotel or multi-family residential uses. As evidenced by the attached 1931 aerial photograph from the Miami Metropolitan Archives, the property was originally constructed and operated as a hotel (See EXHIBIT C). In 1941, the Property was redeveloped with a 12 unit multi-family residential project according to the Miami-Dade County Property Appraiser's Office (See EXHIBIT D).² Subsequent to the construction of the multi-family residential development on the Property, the City Commission adopted a revised Zoning Ordinance in 1951 which amended certain provisions of the City's land use regulations in an effort to provide clarity for future development within the City (the "1951 Zoning Ordinance"). The 1951 Zoning Ordinance designated the Property as part of the "CFA 12" Zoning District which was specifically intended for apartment, lodging and hotel uses (See EXHIBIT E).

B. Land Use Designations.

As discussed above, the Property is currently shown as "Residential Single Family Low Density" on the City's Future Land Use Map. This designation is inconsistent with the existing and historical uses on the Property. However, the requested correction of the Property's designation under the Future Land Use Map to "Residential Multi-Family Low Density" is consistent and compatible with the current uses and existing zoning on the Property. The "Residential Multi-Family Low Density" designation allows for residential development up to a density of 20 units per acre. Accordingly, this designation would permit a total of 13 units per net acre on the 0.70 +/- acre parcel which is in line with the existing 12 unit multi-family residential development on the Property.

3. MAPPING ERRORS.

As evidenced by the historic aerial photographs, the documentation from the Property Appraiser's Office, and the City's zoning regulations, the Property has always been used and intended for multi-family residential uses rather than for single family. However, under the current version of the City's Future Land Use Map, the Property is incorrectly shown as being

¹ The MF-2 zoning district specifically permits the existing multi-family residential uses on the Property.

² The Miami-Dade County Property Appraiser's Report previously attached as EXHIBIT D, further confirms that the Primary Land Use for the Property is "Multi-Family" and not "Single-Family."

"Residential Single Family Low Density" rather than "Residential Multi-Family Low Density." We believe the discrepancy is the result of a scrivener's error which occurred at the time the Future Land Use Map was prepared by City staff. Specifically, during the drafting of the City's Future Land Use Map the boundaries of the adjacent "Residential Single Family Low Density" land use designation were incorrectly extended into the boundaries of the Property ("Mapping Errors"). Due to the small size of this property, which consists of only 2 platted lots, the Property was likely inadvertently filled with a color representing a "Residential Single Family Low Density" designation rather than the corresponding "Residential Multi-Family Low Density" designation. Therefore the existing and historically authorized low density multi-family residential land uses were not properly documented on the Future Land Use Map.

The interrelation and consistency between the City's previous "CFA-12" District under the 1951 Zoning Ordinance and the current "Residential Multi-Family Low Density" designation is further demonstrated by the manner in which the adjacent and similarly situated parcel of land identified as Block 30 on EXHIBIT F ("Block 30") was treated in subsequent editions of the City's Future Land Use Map. A review of the development history for Block 30 confirms that the parcel was originally zoned "CFA-12" District under the City's 1951 Zoning Ordinance previously attached as EXHIBIT E and has been used for multi-family residential uses. However, unlike the Property, Block 30 was correctly identified and referenced as being "Residential Multi-Family Low Density" when the City's Future Land Use Map was originally prepared.

4. AUTHORITY TO CORRECT MAPPING ERRORS.

The City Attorney and the City's Planning and Zoning Director are expressly authorized under the City's Zoning Ordinance to make the changes necessary to correct errors and inconsistencies in the City's Future Land Use Map. Specifically, the Director of the Planning Department is designated with the power over Comprehensive Plan Text and *Map Amendments* under Section 2-704 of the City Code (emphasis added). Additionally, Section 2-702 of the City's Zoning Ordinance provides that the City Attorney has "the final authority with regard to legal issues involving interpretation and implementation of these regulations." Section 2-201 of the City Code further provides that the City Attorney has the authority to "make corrections to the City Code and Zoning Code where appropriate to address scrivener's errors and typographical errors." The City Attorney and City Planner are therefore expressly granted with the authority necessary to make changes on the Future Land Use Map to correct scrivener's errors, such as the aforementioned Mapping Errors.

CONCLUSION


We are hereby writing to you in your respective capacities under the City's Zoning Ordinance and Code to correct the Mapping Errors in the City's Future Land Use Map and allow us to build under the current "Multi-Family 2 District" zoning designation. This change will

cure the inconsistencies between the designation shown on the Future Land Use Map and the historical uses and existing zoning on the Property. Additionally, the correction of the aforementioned Mapping Errors will further the following policies in the City's Zoning Ordinance and Comprehensive Plan identified in EXHIBIT G.

We appreciate your assistance with this matter. Should you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,

GREENBERG TRAUERIG


Lucia Dougherty

Lucia Dougherty, Esq.
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(305) 579-0603

September 5, 2014

VIA HAND DELIVERY

Mr. Craig Leen, Esq.
City Attorney
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405 Biltmore Way
Coral Gables, Florida 33134

Mr. Ramon Trias
Planning & Zoning Director
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134

Re: Request to Correct Scrivener's Error in the City's Comprehensive Plan Future Land Use Map for a Property Located at 1228 Anastasia Avenue in Coral Gables, Florida (Folio No. 03-4118-003-1010)

Dear Messieurs Leen and Trias:

On behalf of Gables on the Green II, LLC. ("GOGII"), the contract purchaser of the above referenced property ("Property"), please accept this letter as our formal request for the correction of a scrivener's error contained in the City's Future Land Use Map. Specifically, GOGII is requesting that the boundaries of the Property, as depicted in the City's Future Land Use Map, be corrected to accurately reflect and conform to the Property's existing "Residential Multi-Family Low Density" land uses and "Multi-Family 2 Zoning District" designation. As discussed below, we believe the City's Future Land Use Map contains drafting errors which incorrectly show that the Property is designated "Residential Single Family Low Density" when the historic uses and land use designations clearly demonstrate that the Property has always been intended and authorized for low-density multi-family residential uses.

ANALYSIS

1. PROPERTY INFORMATION.

The Property, which directly abuts the Biltmore Hotel, is comprised of approximately 0.70 +/- acres of land and is currently improved with a 12 unit multi-family residential building and an ancillary surface parking lot. The Property is currently shown as "Residential Single Family Low Density" on the City's Future Land Use Map and is zoned "Multi-Family 2 District"

in the City's Zoning Map (See EXHIBIT A and EXHIBIT B respectively).¹ Accordingly, both the existing zoning and current uses on the Property are inconsistent with the land use reflected in the City's Future Land Use Map. As explained below, we believe this internal inconsistency was the result of a mapping error made by City staff at the time the Future Land Use Map was prepared.

2. ZONING AND LAND USE HISTORY.

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As discussed above, the Property is currently shown as "Residential Single Family Low Density" on the City's Future Land Use Map. This designation is inconsistent with the existing and historical uses on the Property. However, the requested correction of the Property's designation under the Future Land Use Map to "Residential Multi-Family Low Density" is consistent and compatible with the current uses and existing zoning on the Property. The "Residential Multi-Family Low Density" designation allows for residential development up to a density of 20 units per acre. Accordingly, this designation would permit a total of 13 units per net acre on the 0.70 +/- acre parcel which is in line with the existing 12 unit multi-family residential development on the Property.

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As evidenced by the historic aerial photographs, the documentation from the Property Appraiser's Office, and the City's zoning regulations, the Property has always been used and intended for multi-family residential uses rather than for single family. However, under the current version of the City's Future Land Use Map, the Property is incorrectly shown as being

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“Residential Single Family Low Density” rather than “Residential Multi-Family Low Density.” We believe the discrepancy is the result of a scrivener’s error which occurred at the time the Future Land Use Map was prepared by City staff. Specifically, during the drafting of the City’s Future Land Use Map the boundaries of the adjacent “Residential Single Family Low Density” land use designation were incorrectly extended into the boundaries of the Property (“**Mapping Errors**”). Due to the small size of this property, which consists of only 2 platted lots, the Property was likely inadvertently filled with a color representing a “Residential Single Family Low Density” designation rather than the corresponding “Residential Multi-Family Low Density” designation. Therefore the existing and historically authorized low density multi-family residential land uses were not properly documented on the Future Land Use Map.

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cure the inconsistencies between the designation shown on the Future Land Use Map and the historical uses and existing zoning on the Property. Additionally, the correction of the aforementioned Mapping Errors will further the following policies in the City's Zoning Ordinance and Comprehensive Plan identified in EXHIBIT G.

We appreciate your assistance with this matter. Should you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,

GREENBERG TRAURIG

 *for:*
Lucia Dougherty

September 5, 2014

VIA HAND DELIVERY

Mr. Craig Leen, Esq.
City Attorney
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134

Mr. Ramon Trias
Planning & Zoning Director
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134

Re: Request to Correct Scrivener's Error in the City's Comprehensive Plan Future Land Use Map for a Property Located at 1228 Anastasia Avenue in Coral Gables, Florida (Folio No. 03-4118-003-1010)

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ANALYSIS

1. PROPERTY INFORMATION.

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in the City's Zoning Map (See EXHIBIT A and EXHIBIT B respectively).¹ Accordingly, both the existing zoning and current uses on the Property are inconsistent with the land use reflected in the City's Future Land Use Map. As explained below, we believe this internal inconsistency was the result of a mapping error made by City staff at the time the Future Land Use Map was prepared.

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B. Land Use Designations.

As discussed above, the Property is currently shown as "Residential Single Family Low Density" on the City's Future Land Use Map. This designation is inconsistent with the existing and historical uses on the Property. However, the requested correction of the Property's designation under the Future Land Use Map to "Residential Multi-Family Low Density" is consistent and compatible with the current uses and existing zoning on the Property. The "Residential Multi-Family Low Density" designation allows for residential development up to a density of 20 units per acre. Accordingly, this designation would permit a total of 13 units per net acre on the 0.70 +/- acre parcel which is in line with the existing 12 unit multi-family residential development on the Property.

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As evidenced by the historic aerial photographs, the documentation from the Property Appraiser's Office, and the City's zoning regulations, the Property has always been used and intended for multi-family residential uses rather than for single family. However, under the current version of the City's Future Land Use Map, the Property is incorrectly shown as being

¹ The MF-2 zoning district specifically permits the existing multi-family residential uses on the Property.

² The Miami-Dade County Property Appraiser's Report previously attached as EXHIBIT D, further confirms that the Primary Land Use for the Property is "Multi-Family" and not "Single-Family."

“Residential Single Family Low Density” rather than “Residential Multi-Family Low Density.” We believe the discrepancy is the result of a scrivener’s error which occurred at the time the Future Land Use Map was prepared by City staff. Specifically, during the drafting of the City’s Future Land Use Map the boundaries of the adjacent “Residential Single Family Low Density” land use designation were incorrectly extended into the boundaries of the Property (“**Mapping Errors**”). Due to the small size of this property, which consists of only 2 platted lots, the Property was likely inadvertently filled with a color representing a “Residential Single Family Low Density” designation rather than the corresponding “Residential Multi-Family Low Density” designation. Therefore the existing and historically authorized low density multi-family residential land uses were not properly documented on the Future Land Use Map.

The interrelation and consistency between the City’s previous “CFA-12” District under the 1951 Zoning Ordinance and the current “Residential Multi-Family Low Density” designation is further demonstrated by the manner in which the adjacent and similarly situated parcel of land identified as Block 30 on EXHIBIT F (“Block 30”) was treated in subsequent editions of the City’s Future Land Use Map. A review of the development history for Block 30 confirms that the parcel was originally zoned “CFA-12” District under the City’s 1951 Zoning Ordinance previously attached as EXHIBIT E and has been used for multi-family residential uses. However, unlike the Property, Block 30 was correctly identified and referenced as being “Residential Multi-Family Low Density” when the City’s Future Land Use Map was originally prepared.

4. AUHTORITY TO CORRECT MAPPING ERRORS.

The City Attorney and the City’s Planning and Zoning Director are expressly authorized under the City’s Zoning Ordinance to make the changes necessary to correct errors and inconsistencies in the City’s Future Land Use Map. Specifically, the Director of the Planning Department is designated with the power over Comprehensive Plan Text and *Map Amendments* under Section 2-704 of the City Code (emphasis added). Additionally, Section 2-702 of the City’s Zoning Ordinance provides that the City Attorney has “the final authority with regard to legal issues involving interpretation and implementation of these regulations.” Section 2-201 of the City Code further provides that the City Attorney has the authority to “make corrections to the City Code and Zoning Code where appropriate to address scrivener’s errors and typographical errors.” The City Attorney and City Planner are therefore expressly granted with the authority necessary to make changes on the Future Land Use Map to correct scrivener’s errors, such as the aforementioned Mapping Errors.

CONCLUSION

We are hereby writing to you in your respective capacities under the City’s Zoning Ordinance and Code to correct the Mapping Errors in the City’s Future Land Use Map and allow us to build under the current “Multi-Family 2 District” zoning designation. This change will

cure the inconsistencies between the designation shown on the Future Land Use Map and the historical uses and existing zoning on the Property. Additionally, the correction of the aforementioned Mapping Errors will further the following policies in the City's Zoning Ordinance and Comprehensive Plan identified in **EXHIBIT G**.

We appreciate your assistance with this matter. Should you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,

GREENBERG TRAURIG

 FOR:
Lucia Dougherty