



To: Debra Herman

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

RE: Legal Opinion Regarding Constituent Jenna Kreiger residing at 7101 Old Cutler Road

Date: September 21, 2016

I speak on this topic frequently. I am attaching a recent Powerpoint. Below are the line of cases that establish that state agencies, counties, and school boards must comply with municipal law. Also, section 6.02 of the Miami-Dade County Charter applies based on its plain language. Indeed, the Third District has interpreted section 6.02 very favorably towards municipalities. See *Miami-Dade County v. The Village of Pinecrest*, 994 So. 2d 456 (Fla. 3d DCA 2008). As to the issue of right-of-way vs. county property (such as a park), I will look at the cases and let you know if any address specifically the right-of-way. I do not see how it would make any difference though; the well-established principle applies to County land in a municipality, which would encompass parkland, open space, or right-of-way:

- *Orange v. City of Apopka*, 299 So. 2d 652, 656-57 (Fla. 4th DCA 1974) **(city and county)**
- *Palm Beach County v. Town of Palm Beach*, 310 So. 2d 384, 385 (Fla. 4th DCA 1975) **(city and county)**
- *City of Temple Terrace v. Hillsborough Assoc. Etc.*, 322 So. 2d 571, 576-79 (Fla. 2d DCA 1975) **(city and state agency)**
- *Hillsborough Assoc. Etc. v. City of Temple Terrace*, 322 So. 2d 610, 612 (Fla. 1976) **(city and state agency)**
- *City of Orlando v. School Board of Orange County*, 362 So. 2d 694, 694 (Fla. 2d DCA 1978) **(city and school board)**
- *The Village of North Palm Beach v. School Board of Palm Beach County*, 349 So. 2d 683, 683-84 (Fla. 2d DCA 1977) **(city and school board)**



Subsidiarity Matters:
The Primacy of Local
Zoning in
Intergovernmental
Disputes

**City of
Coral Gables**

Craig E. Leen
City Attorney

Subsidiarity Principle

Issues should be decided
at the most local level possible

Municipal Home Rule Powers Act, Ch. 166, Fla. Stat.

- Municipalities have general police power
- May legislate to same extent as legislature except where preemption or conflict
- Superior Sovereign Principle does not Exist
- Municipalities take precedence over counties; except where county charter states otherwise and then only to that extent

Hillsborough Assoc. Etc. v. City of Temple Terrace, 322 So. 2d 610, 612 (Fla. 1976)

- Suit was brought by city and several residents to enjoin operation of respite care center on ground that home was a nuisance and was in violation of city zoning ordinance.
- Municipal zoning power is constitutionally delegated,
- Balancing of interests test is to be applied
- Local administrative proceedings provide the forum in which the competing interests of governmental bodies are to be weighed.

Temple Terrace Balancing of Interest Line of Cases

- *Orange v. City of Apopka*, 299 So. 2d 652, 656-57 (Fla. 4th DCA 1974) **(city and county)**
- *Palm Beach County v. Town of Palm Beach*, 310 So. 2d 384, 385 (Fla. 4th DCA 1975) **(city and county)**
- *City of Temple Terrace v. Hillsborough Assoc. Etc.*, 322 So. 2d 571, 576-79 (Fla. 2d DCA 1975) **(city and state agency)**
- *Hillsborough Assoc. Etc. v. City of Temple Terrace*, 322 So. 2d 610, 612 (Fla. 1976) **(city and state agency)**
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- *The Village of North Palm Beach v. School Board of Palm Beach County*, 349 So. 2d 683, 683-84 (Fla. 2d DCA 1977) **(city and school board)**
- *Pal-Mar Water Management Dist. v. Martin County*, 377 So. 2d 752, 755 (Fla. 4th DCA 1979) **(county and water management district)**

Miami-Dade County Home Rule Amendment and Charter

- Primacy of local legislation over local matters
- Local vs. State – nullification and conflict power
- Section 6.02 – Municipalities may have higher standards of zoning, regulation, and service
- *Miami-Dade County v. The Village of Pinecrest*, 994 So. 2d 456 (Fla. 3d DCA 2008)

Intergovernmental Disputes

- Chapter 164, Florida Statutes
- Commission Resolution/Possibility of Emergency Bypass
- Stay of Court Proceedings
- Staff Meeting to Resolve Matter
- Meeting of the Commissions
- Intergovernmental Agreements/Resolutions – Source of Power

Subsidiarity in Action

- Apply Zoning and Similar Police Power Ordinances to Governmental Bodies Acting within Municipality
- Ensure that any quasi-judicial or other public hearings are held before appropriate city commission or board
- Carefully analyze whether municipal zoning ordinance takes precedence over county ordinance or school board policy

Examples

- City Application of Architectural Review and Aesthetic Requirements to County
- City Nullification of Purported Polystyrene Preemption pursuant to Miami-Dade Home Rule Amendment as Local Law
- City Application of Sign and Aesthetic Regulations as to County Metrorail
- City Application of Historic Preservation Ordinance as to Federal Government
- City Application of Historic Preservation Ordinance as to School Board
- City Application of Guardhouse Ordinance to County
- City Treatment of County Ordinances regarding zoning matters
- City Primacy of Local Regulation of Property as to County

From: [Leen, Craig](#)
To: [Paulk, Enga](#)
Subject: FW: Constituent Jenna Kreiger residing @ 7101 Old Cutler Road
Date: Wednesday, September 21, 2016 4:09:09 PM
Attachments: [Subsidiarity Matters Powerpoint.pptx](#)
[image001.png](#)

Please publish.

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



CORAL GABLES
THE CITY BEAUTIFUL

Celebrating 90 years of a dream realized.

From: Leen, Craig
Sent: Wednesday, September 21, 2016 3:45 PM
To: 'Herman, Debra (CAO)'
Cc: Boberman, Bob; Gonzalez, Miguel (CAO); Cardenas, David (MDPR); Dannemiller, Brook; Kerbel, Dennis A. (CAO); Ramos, Miriam; Suarez, Cristina; Throckmorton, Stephanie
Subject: RE: Constituent Jenna Kreiger residing @ 7101 Old Cutler Road

I speak on this topic frequently. I am attaching a recent Powerpoint. Below are the line of cases that establish that state agencies, counties, and school boards must comply with municipal law. Also, section 6.02 of the Miami-Dade County Charter applies based on its plain language. Indeed, the Third District has interpreted section 6.02 very favorably towards municipalities. *See Miami-Dade County v. The Village of Pinecrest*, 994 So. 2d 456 (Fla. 3d DCA 2008). As to the issue of right-of-way vs. county property (such as a park), I will look at the cases and let you know if any address specifically the right-of-way. I do not see how it would make any difference though; the well-established principle applies to County land in a municipality, which would encompass parkland, open space, or right-of-way:

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- › *The Village of North Palm Beach v. School Board of Palm Beach County*, 349 So. 2d 683, 683-84 (Fla. 2d DCA 1977) **(city and school board)**

Craig E. Leen, City Attorney

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Fax: (305) 460-5264
Email: cleen@coralgables.com



Celebrating 90 years of a dream realized.

From: Herman, Debra (CAO) [mailto:Debra.Herman@miamidade.gov]
Sent: Wednesday, September 21, 2016 3:02 PM
To: Leen, Craig
Cc: Boberman, Bob; Gonzalez, Miguel (CAO); Cardenas, David (MDPR); Dannemiller, Brook; Kerbel, Dennis A. (CAO)
Subject: RE: Constituent Jenna Kreiger residing @ 7101 Old Cutler Road

Please send me the ones specifically addressing County right-of-way. Many thanks.

From: Leen, Craig [mailto:cleen@coralgables.com]
Sent: Wednesday, September 21, 2016 3:00 PM
To: Herman, Debra (CAO)

Cc: Boberman, Bob; Gonzalez, Miguel (CAO); Cardenas, David (MDPR); Dannemiller, Brook; Kerbel, Dennis A. (CAO)
Subject: Re: Constituent Jenna Kreiger residing @ 7101 Old Cutler Road

Yes, there are a number of cases that require the County to comply with the City Code. I will send them shortly.

Sent from my iPhone

On Sep 21, 2016, at 2:55 PM, Herman, Debra (CAO) <Debra.Herman@miamidade.gov> wrote:

Hi Craig, Thanks for your email and the citations provided, and for providing us with the City's tree trimming standards and requested tree trimming schedule for the trees on County right-of-way. We are thankful for the collaborative nature of the relationship between the City and the County. Along these lines, I would appreciate it if you could provide the basis for your assertion that the City has the power to require the County to expend resources to maintain County-owned right-of-way to City standards. I assume you have authority other than what was provided?? Looking forward to hearing from you, and of course, you can feel free to call me at any time to discuss. You have all of my numbers. Best, Debra Herman

From: Leen, Craig [<mailto:cleen@coralgables.com>]

Sent: Wednesday, September 21, 2016 11:55 AM

To: Herman, Debra (CAO); Grob, Evan (CAO); Boberman, Bob

Cc: Gonzalez, Miguel (CAO); Cardenas, David (MDPR); Dannemiller, Brook

Subject: RE: Constituent Jenna Kreiger residing @ 7101 Old Cutler Road

Good morning, Debra. The City Code takes precedence over the County Code here, as it is a higher standard and is applicable to the County under section 6.02 and the *Temple Terrace* line of cases. I will send you a list of the cases shortly. The issue of the applicability of Chapter 19 was also litigated in *Miami-Dade County v. Deerwood Homeowners Assoc.*, 979 So. 2d 1103, 1104 (Fla. 3d DCA 2008). The relevant language is as follows:

“Similarly, no relevant duty is invoked by the County's allegation that Deerwood is responsible under Chapter 19 of the Miami-Dade County Code for maintaining the tree and the area in which it is planted. That ordinance does not impose upon Deerwood or Techlawn the obligation to trim the tree roots below the County sidewalk or to repair the sidewalk, nor does it create a private cause of action against the abutting landowner for a breach of any such duty.”

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

<image001.png>

From: Herman, Debra (CAO) [<mailto:Debra.Herman@miamidade.gov>]
Sent: Wednesday, September 21, 2016 11:41 AM
To: Grob, Evan (CAO); Boberman, Bob
Cc: Leen, Craig; Gonzalez, Miguel (CAO); Cardenas, David (MDPR)
Subject: RE: Constituent Jenna Kreiger residing @ 7101 Old Cutler Road

Hi Bob, Is it possible that the County's response is not being furnished to Ms. Krieger? It is difficult to understand why the constituent is asserting a lack of response on a year old request in light of the very detailed response which was furnished below. Please be sure that the response reaches her to avoid any potential miscommunication. As an additional point, please note that the resident actually has an **affirmative obligation** to maintain her swale area which is adjacent to County right-of-way. I have attached the link to the County Code, for your reference. [Sec. 19-13. - Maintenance of Lots in Residential-Zoned Districts](#). Perhaps some of the City's confusion arises from the fact that unlike the County Code, the reciprocal City Code pertaining to maintenance of City right-of-way specifically carves out tree trimming from the owner's maintenance responsibilities. [Sec. 62-131. - Streets, alleys, swale areas and rights-of-way to be kept clean and mowed](#). Regards, Debra Herman

From: Grob, Evan (CAO)
Sent: Wednesday, September 21, 2016 10:49 AM
To: 'bboberman@coralgables.com'
Cc: Herman, Debra (CAO); Leen, Craig (cleen@coralgables.com); Gonzalez, Miguel (CAO)
Subject: FW: Constituent Jenna Kreiger residing @ 7101 Old Cutler Road

Bob:

The County responded previously to this request on August 31 through an e-mail to Craig Leen. I am providing you a copy of this response for your review.

Evan Grob
Assistant County Attorney
Miami-Dade County Attorney's Office
111 NW First Street
Suite 2800
Miami, Florida 33128

email: grob@miamidade.gov
tel: 305-375-1323
fax: 305-375-5611

assistant: Jessica Sanchez
email: sanchez@miamidade.gov
tel: 305-375-2853

From: Grob, Evan (CAO)
Sent: Wednesday, August 31, 2016 9:47 AM
To: Leen, Craig (cleen@coralgables.com)
Subject: FW: Constituent Jenna Kreiger residing @ 7101 Old Cutler Road

Craig:

I think the e-mail from David Cardenas is self-explanatory.

Evan Grob
Assistant County Attorney
Miami-Dade County Attorney's Office
111 NW First Street
Suite 2800
Miami, Florida 33128

email: grob@miamidade.gov
tel: 305-375-1323
fax: 305-375-5611

assistant: Jessica Sanchez
email: sanchez@miamidade.gov
tel: 305-375-2853

. If you have any further questions please don't hesitate to contact me.

From: Cardenas, David (MDPR)
Sent: Wednesday, August 31, 2016 9:31 AM
To: Grob, Evan (CAO)

Subject: Constituent Jenna Kreiger residing @ 7101 Old Cutler Road

Good morning Evan, I hope all is well.

Parks, Recreation and Open Spaces (P.R.O.S.) staff performed a field inspection of the referenced location and found healthy trees planted within the County's right-of-way (not planted by the County). Please be advised the referenced trees are within the minimum standard of vertical clearance of 10 feet over the sidewalk and 16 feet over the roadway and at this time do not meet P.R.O.S. criteria for safety trimming. Currently PROS does not provide aesthetic pruning or canopy reduction services. Homeowners are relied upon to protect their property from vegetation encroaching from public Right of Way into private property. Notwithstanding, should the property owner elect to trim the tree, the Department would have no objection; however, since the property lies within the limits of the City of Coral Gables and the trees fall under the City's jurisdictional authority/ tree ordinance, prior to initiating any pruning, the property owner should contact the City of Coral Gables Landscape Services Division (305.460.5131) for guidance on any tree trimming permits that may be required by the City.

I hope this information is helpful in addressing your concerns. Should you have additional questions or need further information, please contact the RAAM office at your convenience

Thank you

David

*David Cardenas, Chief
Miami-Dade County Parks, Recreation, and Open Spaces
Right-of-Way Aesthetic & Assets Management Division
7998 SW 107th Avenue
Miami, Florida 33173*

*Office: (305) 270-1791
Fax: (305) 270-4903
davi@miamidade.gov
"Delivering Excellence Every Day"*

From: Grob, Evan (CAO)
Sent: Tuesday, August 30, 2016 4:33 PM
To: Cardenas, David (MDPR)
Subject: FW: Constituent Jenna Kreiger residing @ 7101 Old Cutler Road

David:

Please have staff advise.

From: Leen, Craig [<mailto:cleen@coralgables.com>]

Sent: Tuesday, August 30, 2016 4:19 PM
To: Grob, Evan (CAO)
Cc: Herman, Debra (CAO); Sherman, David (CAO); Cardenas, David (MDPR); Dannemiller, Brook
Subject: RE: Constituent Jenna Kreiger residing @ 7101 Old Cutler Road

I understand that, but I assume the County limbs are projecting through the County right-of-way into the private property. If that is not the case, please advise. Thanks.

Craig E. Leen, City Attorney

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Fax: (305) 460-5264
Email: cleen@coralgables.com

<image001.png>

From: Grob, Evan (CAO) [<mailto:GROB@miamidade.gov>]
Sent: Tuesday, August 30, 2016 4:18 PM
To: Leen, Craig
Cc: Herman, Debra (CAO); Sherman, David (CAO); Cardenas, David (MDPR)
Subject: RE: Constituent Jenna Kreiger residing @ 7101 Old Cutler Road

From my discussion with staff, it is the homeowner's responsibility to trim the subject limbs on private property. The County has already trimmed the limbs on the County's right of way.

From: Leen, Craig [<mailto:cleen@coralgables.com>]
Sent: Tuesday, August 30, 2016 2:47 PM
To: Grob, Evan (CAO)
Cc: Herman, Debra (CAO); Sherman, David (CAO); Cardenas, David (MDPR)
Subject: RE: Constituent Jenna Kreiger residing @ 7101 Old Cutler Road

My concern was that the trees are County trees in the County right-of-way. Does the County allow private property owners to trim County trees when the limbs go over private property? Also, would the County be willing, as a matter of courtesy, trim those limbs that go over private property from the point where that limb is in the County right-of-way. Thanks, Craig

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

<image001.png>

From: Grob, Evan (CAO) [<mailto:GROB@miamidade.gov>]
Sent: Tuesday, August 30, 2016 11:13 AM
To: Leen, Craig
Cc: Herman, Debra (CAO); Sherman, David (CAO); Cardenas, David (MDPR)
Subject: FW: Constituent Jenna Kreiger residing @ 7101 Old Cutler Road

Here is the response that was sent on August 12

From: Grob, Evan (CAO)
Sent: Friday, August 12, 2016 9:22 AM
To: Leen, Craig
Subject: Re: Constituent Jenna Kreiger residing @ 7101 Old Cutler Road

Hi Craig:

I spoke to staff. The County trimmed the trees in the County's right of way. The resident requested that trees be trimmed on trees limbs on private property but that it is the homeowners responsibility. Some of the low hanging limbs were on Tivoli Av. which is within the municipal right of way. In a nutshell, the County did trim the limbs on the County right of way of Old Cutler Road.

Sent from my iPhone

On Aug 12, 2016, at 9:03 AM, Leen, Craig <cleen@coralgables.com> wrote:

Good morning. Please see below. Is there any way you could address this with County staff? It is my recollection from our discussions that the County takes the position that it controls and maintains the County trees along Old Cutler. Please advise, as this would need to be part of our discussions as well.

Assuming I am correct, would you please ask the R.A.A.M. division to work on this with the resident? It would be much appreciated.

Thanks,
Craig

Craig E. Leen
City Attorney

Sent from my iPhone

Begin forwarded message:

From: "Leen, Craig" <cleen@coralgables.com>
Date: August 12, 2016 at 8:51:53 AM EDT
To: "Boberman, Bob" <bboberman@coralgables.com>
Cc: "Ramos, Miriam" <mramos@coralgables.com>, "Dannemiller, Brook" <BDannemiller@coralgables.com>, "Osgood, John" <josgood@coralgables.com>, "jenakrieger@bellsouth.net" <jenakrieger@bellsouth.net>
Subject: Re: Constituent Jenna Kreiger residing @ 7101 Old Cutler Road

Good morning. The County is responsible for maintaining the entire trees. The County and City are in discussions about a potential transfer of control but this is still in the discussions phase. I will send this to the County Attorney's Office and request that the County address this.

Craig E. Leen
City Attorney

Sent from my iPhone

On Aug 12, 2016, at 8:26 AM, Boberman, Bob <bboberman@coralgables.com> wrote:

Hi Miriam

Please see below. My opinion is that the County (the owner of the banyan trees on Old Cutler) is responsible for maintaining and trimming the entire tree.

Please advise.

PS-Ms. Krieger (copied here) has been trying for over a year to get the tree trimmed.

Thanks

Bob

Bob Boberman
Landscape Superintendent
City of Coral Gables

2800 S.W. 72nd Avenue
Miami, FL 33155
Office: (305) 460-5138
bboberman@coralgables.com

From: Jena Krieger
[<mailto:jenakrieger@bellsouth.net>]
Sent: Friday, August 12, 2016 7:06 AM
To: Boberman, Bob
Subject: Fwd: Constituent Jenna Kreiger residing
@ 7101 Old Cutler Road

Jena Krieger Sent from my iPhone

Begin forwarded message:

From: "RAAM_Inspectors
(MDPR)"
<RAAM_Inspectors@miamidade.gov>

Date: August 10, 2016 at
8:52:02 AM EDT

To:
"jenakrieger@bellsouth.net"
<jenakrieger@bellsouth.net>

**Subject: RE: Constituent
Jenna Kreiger residing @
7101 Old Cutler Road**

<image001.jpg>
Good morning Ms. Krieger,

Once again we have received
this request from the City of
Coral Gables (below), as per
your conversation with Mr.
Duncan on July 15th, 2016 he
explained that Miami-Dade
County did extensive tree
trimming along Old Cutler
Road (in the right of way) and
that the branches along Tivoli

Avenue are within municipal right of way, Mr. Duncan also advised that branches extending over private property fall under the home owners responsibility. You will need to reach out to the City of Coral Gables as a permit may be required, in addition as you can see from the email below we emailed City of Coral Gables Public Works Landscaping Division with the request their information/action since this no longer falls under the County's purview.

If you should need anything further or would like to speak with us please do not hesitate in contacting Mr. Duncan or myself at the number, email listed below.

Regards,

Mayra Santana

R.A.A.M. Division
*Miami-Dade County, Parks,
Recreation and Open Spaces*
**"DELIVERING EXCELLENCE
EVERYDAY"**
7998 SW 107 Avenue
Miami, Florida 33173
Raam_inspectors@miamidade.gov
(305) 270-1791<-Office
(305) 270-4903<-Fax

From: Boberman, Bob
[\[mailto:bboberman@coralgables.com\]](mailto:bboberman@coralgables.com)

Sent: Friday, August 05, 2016 7:14 AM
To: RAAM_Inspectors (MDPR)
Cc: Duncan, Steve (MDPR); Vitale,

Keith (MDPR); Leen, Craig; Silio,
Antonio;
'jenakrieger@bellsouth.net';
Dannemiller, Brook
Subject: RE: Constituent Jenna
Kreiger residing @ 7101 Old Cutler
Road

Mayra

Our resident, Jena Krieger, who is
copied here has again requested
that the tree (which is up to the
County to maintain) be trimmed.
Please advise as to when it can be
done.

Thank you

Bob Boberman
Landscape Superintendent
City of Coral Gables

2800 S.W. 72nd Avenue
Miami, FL 33155
Office: (305) 460-5138
bboberman@coralgables.com

From: RAAM_Inspectors (MDPR)
[\[mailto:RAAM_Inspectors@miamidade.gov\]](mailto:RAAM_Inspectors@miamidade.gov)

Sent: Friday, July 15, 2016 2:21
PM
To: PWlandscapeservices
Cc: Duncan, Steve (MDPR); Vitale,
Keith (MDPR)
Subject: Constituent Jenna Kreiger
residing @ 7101 Old Cutler Road

Good afternoon:

Please be advised we received a
service request for safety tree
trimming along the address
above, at the time it was observed
there are low hanging branches
along Tivoli Avenue for your
action, review.

Regards,

Mayra Santana

R.A.A.M. Division
*Miami-Dade County, Parks,
Recreation and Open Spaces*
7998 SW 107 Avenue
Miami, Florida 33173
(305) 270-1791 **Office**
(305) 270-4903 **Fax**

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<image001.jpg>

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