



To: Thomas Robertson; Cathy Swanson-Rivenbark

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

RE: Legal Opinion Regarding PBA Lease

Date: March 1, 2016

I have reviewed the opinion and agree with its analysis. I adopt it as a City Attorney Opinion pursuant to section 2-201(e)(1) and (8) of the City Code. The PBA lease has been abandoned and terminated by operation of law and the terms of the agreement.

Thomas Robertson:

I have had the opportunity to look over the PBA Lease, the sublease with the Coral Way Ventures, the proposed but not executed Amended Sublease and the payment schedule of rent for the lease. My opinion, which I will elaborate on below, is that the lease has been abandoned and therefor is terminated without any action on the part of the City. In addition, it has terminated by its terms in that the sub lease has also terminated. The City is entitled to retake possession. (It already has in reality)

This matter results from a lease entered into with the PBA dated June 27, 2002. The lease specifically recognized a sublease between the PBA and Coral Way Ventures. From the lease and sublease, it is clear that the purpose of the lease and sublease was for Coral Way Ventures to construct a self-storage facility on part of the property and construct a shooting range and conference area for the PBA on another part of the property. The city was to receive rents from the PBA and the storage facility. The PBA paid its base rent in 2002, 2003 and 2004 but no other years.

In 2004 an amended and restated sublease was negotiated and submitted, but was never approved or executed. This amended and restated sublease also had the self-storage facility and the other facilities for the PBA. This restated lease included a provision for the recording of a memorandum of lease. A review of the public records shows that the memorandum was never recorded. Nothing was ever constructed. In as much as the stated purpose of the lease was the construction of a "training facility, gun range and clubhouse" and that has not occurred in 14

years, the stated purpose of the lease has not been accomplished nor attempted. Interestingly, the PBA's payment of rent coincides exactly with the negotiation of the amended and restated sublease and the apparent death of that effort.

Throughout the 14 years, the City has maintained the property. This maintenance of the property is a direct exertion of possession of the property even to the extent that the City has installed and maintains a fence that actually denies the use of the property to the PBA.

Looking at the totality of the circumstances, non-payment of rent for 12 years, failure of the purpose of the lease and sublease for 14 years, the City entering upon the property on a consistent basis to maintain the property, the lease is and has been abandoned. The City need not take any further action with respect to the lease. Clearly, the "deal" with Coral Way Ventures fell through and the City is justified to move forward with the use or development of the property as it sees fit.

Please remember there is the inter-local agreement with the County for the provision of parking for the neighboring park. As currently configured, that parking is not in the designated area and so could be moved so as to allow the use or leasing of the property as Coral Way fronting property.

Hope this helps. I am available to discuss this if necessary. If you would like copies of the documents, Leonard Roberts has them or I can provide them.

Thanks

Tom

From: [Leen, Craig](#)
To: [Paulk, Enga](#)
Subject: FW: PBA Lease.
Date: Tuesday, March 01, 2016 3:36:46 PM
Attachments: [image002.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: Tuesday, March 01, 2016 3:36 PM
To: 'Thomas Robertson'; Swanson-Rivenbark, Cathy
Cc: Roberts, Leonard; Ramos, Miriam
Subject: RE: PBA Lease.

I have reviewed the opinion and agree with its analysis. I adopt it as a City Attorney Opinion pursuant to section 2-201(e)(1) and (8) of the City Code. The PBA lease has been abandoned and terminated by operation of law and the terms of the agreement.

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



Celebrating 90 years of a dream realized.

From: Thomas Robertson [mailto:trobertson@brzoninglaw.com]
Sent: Monday, February 01, 2016 3:11 PM
To: Swanson-Rivenbark, Cathy
Cc: Leen, Craig; Roberts, Leonard; Ramos, Miriam
Subject: PBA Lease.

I have had the opportunity to look over the PBA Lease, the sublease with the Coral Way Ventures, the proposed but not executed Amended Sublease and the payment schedule of rent for the lease. My opinion, which I will elaborate on below, is that the lease has been abandoned and therefor is terminated without any action on the part of the City. In addition, it has terminated by its terms in that the sub lease has also terminated. The City is entitled to retake possession. (It already has in reality)

This matter results from a lease entered into with the PBA dated June 27, 2002. The lease specifically recognized a sublease between the PBA and Coral Way Ventures. From the lease and sublease, it is clear that the purpose of the lease and sublease was for Coral Way Ventures to construct a self-storage facility on part of the property and construct a shooting range and conference area for the PBA on another part of the property. The city was to receive rents from the PBA and the storage facility. The PBA paid its base rent in 2002, 2003 and 2004 but no other years.

In 2004 an amended and restated sublease was negotiated and submitted, but was never approved or executed. This amended and restated sublease also had the self-storage facility and the other facilities for the PBA. This restated lease included a provision for the recording of a memorandum of lease. A review of the public records shows that the memorandum was never recorded. Nothing was ever constructed. In as much as the stated purpose of the lease was the construction of a "training facility, gun range and clubhouse" and that has not occurred in 14 years, the stated purpose of the lease has not been accomplished nor attempted. Interestingly, the PBA's payment of rent coincides exactly with the negotiation of the amended and restated sublease and the apparent death of that effort.

Throughout the 14 years, the City has maintained the property. This maintenance of the property is a direct exertion of possession of the property even to the extent that the City has installed and maintains a fence that actually denies the use of the property to the PBA.

Looking at the totality of the circumstances, non-payment of rent for 12 years, failure of the purpose of the lease and sublease for 14 years, the City entering upon the property on a consistent basis to maintain the property, the lease is and has been abandoned. The City need not take any further action with respect to the lease. Clearly, the “deal” with Coral Way Ventures fell through and the City is justified to move forward with the use or development of the property as it sees fit.

Please remember there is the inter-local agreement with the County for the provision of parking for the neighboring park. As currently configured, that parking is not in the designated area and so could be moved so as to allow the use or leasing of the property as Coral Way fronting property.

Hope this helps. I am available to discuss this if necessary. If you would like copies of the documents, Leonard Roberts has them or I can provide them.

Thanks

Tom

	Bio	Vcard
TOM ROBERTSON BOARD CERTIFIED IN CITY, COUNTY & LOCAL GOVERNMENT LAW		
Bercow Radell & Fernandez 200 South Biscayne Boulevard, Suite 850 Miami, FL 33131 305.377.6226 Office 305.527.8726 Cell 305.377.6222 Fax trobertson@brzoninglaw.com		
 BERCOW RADELL & FERNANDEZ ZONING, LAND USE AND ENVIRONMENTAL LAW		
www.brzoninglaw.com		

The information contained in this electronic message is privileged and confidential and is intended only for the use of the individual named above and others who have been specifically authorized to receive it. If the recipient is not the intended recipient, you are hereby notified that any dissemination, distribution or duplication of the communication is strictly prohibited. If you have received this communication in error, or if any problems occur with transmission, please immediately notify us by telephone (305) 374-5300.