



To: Leonard Roberts

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

RE: Legal Opinion Regarding 6540 Marlin Drive - Park as a Permitted Use

Date: April 14, 2016

The City acts for the public interest, on behalf of Coral Gables, not for a private one. The City Commission may elect to subject itself to the zoning code in a given matter, but ultimately it is not required to do so, as it is entrusted with weighing and balancing all the competing interests and making a decision that is in the public interest of Coral Gables. Accordingly, the City may proceed with pocket parks in residential areas even if not addressed in the zoning code.

Please note, my office has previously opined as well that other governments, although clearly bound by the Coral Gables zoning code and its procedure, can be relieved of zoning requirements through a balancing of interest test conducted by the appropriate City board or official (which is based on the Temple Terrace line of cases emanating from the Florida Supreme Court and District Courts of Appeal). This approach respects both the zoning code and the interest asserted by the other government. Of course, I would note that the City of Coral Gables must have at least the same amount of authority under the zoning code as other governments would. Indeed, it clearly has more authority because only it can act in the interests of Coral Gables, and balance the Coral Gables zoning interest with other interests of Coral Gables (such as the public welfare interest in parks and open space). The City is presumed by law to act in the public interest of Coral Gables.

Here, in my opinion, the Commission has already demonstrated through its numerous actions (including the Lisbon Street Dispute Resolution Agreement, the formal prioritization of purchasing parks and open space, as well as the budgeting of funds for such purchases) and public statements at Commission meetings, that the Commission believes that pocket parks and open space are a priority and in the public interest of Coral Gables. Accordingly, they may continue to be pursued and established in the public interest without amendment to the zoning code.

Having opined in that manner, I also agree with Charles that an amendment should be added to the zoning code to formally express that pocket parks may be in residential areas. The purchase and establishment of parks need not wait for that amendment though.

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

From: [Leen, Craig](#)
To: [Paulk, Enga](#)
Subject: Fwd: 6540 Marlin Drive - Park as a permitted use
Date: Thursday, April 14, 2016 3:55:41 PM
Attachments: [image001.png](#)

Please publish.

Sent from my iPhone

Begin forwarded message:

From: "Leen, Craig" <cleen@coralgables.com>
Date: April 14, 2016 at 3:27:41 PM EDT
To: "Roberts, Leonard" <LRoberts@coralgables.com>
Cc: "Wu, Charles" <cwu@coralgables.com>, "Ramos, Miriam" <mramos@coralgables.com>, "Figueroa, Yaneris" <yfigueroa@coralgables.com>, Craig Coller <craig.coller@coller-law.com>, "Chen, Brigitte" <bchen@coralgables.com>, Vivian de las Cuevas-Diaz <vivian.cuevas@hkclaw.com>, "Trias, Ramon" <rtrias@coralgables.com>
Subject: Re: 6540 Marlin Drive - Park as a permitted use

Good afternoon,

The City acts for the public interest, on behalf of Coral Gables, not for a private one. The City Commission may elect to subject itself to the zoning code in a given matter, but ultimately it is not required to do so, as it is entrusted with weighing and balancing all the competing interests and making a decision that is in the public interest of Coral Gables. Accordingly, the City may proceed with pocket parks in residential areas even if not addressed in the zoning code.

Please note, my office has previously opined as well that other governments, although clearly bound by the Coral Gables zoning code and its procedure, can be relieved of zoning requirements through a balancing of interest test conducted by the appropriate City board or official (which is based on the Temple Terrace line of cases emanating from the Florida Supreme Court and District Courts of Appeal). This approach respects both the zoning code and the interest asserted by the other government. Of course, I would note that the City of Coral Gables must have at least the same amount of authority under the zoning code as other governments would. Indeed, it clearly has more authority because only it can act in the interests of Coral Gables, and balance the Coral Gables zoning interest with other interests of Coral Gables (such as the public welfare interest in parks and open space). The City is presumed by law to act in the public interest of Coral Gables.

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Craig E. Leen
City Attorney

Sent from my iPhone

On Apr 14, 2016, at 12:15 PM, Roberts, Leonard <LRoberts@coralgables.com> wrote:

Craig, there is a sense of urgency since this is on the 4/26 agenda, can you respond to Charles question below

From: Wu, Charles
Sent: Thursday, April 14, 2016 11:44 AM
To: Roberts, Leonard
Cc: 'vivian.cuevas@hklaw.com'; Leen, Craig; Trias, Ramon
Subject: FW: 6540 Marlin Drive - Park as a permitted use

Hi Leonard.

Our zoning code does not have a category for park use in a residential district and a land use and zoning change plus a conditional use seems like overkill.

In light of these being a priority, I recommend that a zoning code amendment be made to allow all pocket parks as a permitted use in all residential districts. This is not an unusual code provision in other Zoning Code elsewhere.

I am copying Craig to see if he can find another avenue to permit it. To make it clean, a code change would be best.

Charles K. Wu, AICP, CNU-A
Assistant Development Services Director
405 Biltmore Way, 3rd Floor
Coral Gables, FL 33134

Tel: 305-460-5244
Fax: 305-476-7225

<image001.png>

From: Trias, Ramon
Sent: Thursday, April 14, 2016 11:27 AM
To: Roberts, Leonard
Cc: Wu, Charles
Subject: FW: 6540 Marlin Drive - Title Defect Notice

As requested.

From: Gonzalez, Elizabeth
Sent: Thursday, April 14, 2016 11:21 AM
To: Trias, Ramon
Subject: RE: 6540 Marlin Drive - Title Defect Notice

Good morning Ramon:

With regard to the question if a park is allowed in a residential zone by Charles:

“Did you respond whether park is an allowed use in residential district? I couldn't find it in the zoning code where a park use is permitted.”

A park is allowed in a “Special Use” district see page 4-44:

B. Permitted uses. The following uses are permitted subject to the standards in this Section and other applicable regulations in Article 5:

1. Accessory uses, buildings or structures as provided in Article 4, Table No. 2. Accessory uses, buildings or structures customarily associated with permitted uses within this Zoning District and not listed within the Table No. 2 may be permitted subject to Development Review Official review and approval.

2. Canopies, including permanent freestanding shelter canopy structure(s) or structure(s) attached to a building.

3. Botanical gardens with previously approved master plan. Allow for the placement of the following uses to solely serve the patrons of the botanical gardens:

- a. Offices.
- b. Research and technology.
- c. Retail sales and services.
- d. Restaurant.
- e. Educational

C. Conditional Uses. The following uses are permitted in the S District as conditional uses, if approved under the provisions of Article 3, Division 4, subject to the standards in this Section and other applicable regulations in Article 5:

1. Botanical gardens master plan.
2. Camps.
3. Cemeteries.
4. Country clubs.
5. Golf course.
6. Government uses.
7. Heliport and helistop.
8. Hospital and uses accessory to, and customarily associated with, a hospital, as follows:
 - a. Convenience facilities for hospital users such as: snack bar, gift shop, chapel and florist.
 - b. Diagnostic facility.
 - c. Health/fitness facilities.
 - d. Intermediate care facility.
 - e. Laboratory and research facilities.
 - f. Medical clinic and/or office.
 - g. Medical educational facilities.
 - h. Municipal facilities.
 - i. Pharmacy.
 - j. Rehabilitation facilities.
 - k. Support facilities such as: cafeteria, laundry, dietary services, childcare, administrative offices, data processing and printing.
9. Marina facilities.
10. Municipal facilities.
11. Museum.
12. Open space areas.
13. Private club.
14. Public transportation facilities.
15. Religious institutions.
16. Schools.
17. Tennis courts.

The following uses are permitted in a Residential Zone as per Zoning Code Section 4-101 (B) and (C) see page 4-5:

B. Permitted principal uses and structures. The following uses are permitted:

1. Accessory dwelling.
 2. Accessory uses, buildings or structures as provided in Article 4, Table No. 2. Accessory uses, buildings or structures customarily associated with permitted uses within this Zoning District and not listed within the Table No. 2 may be permitted subject to Development Review Official review and approval.
 3. Family day care as required and defined pursuant to Florida Statutes.
 4. Single-family dwellings.
 5. Utility infrastructure facilities.
- C. Conditional uses. The following uses are permitted in the SFR District as conditional uses, if approved under the provisions of Article 3, Division 4, subject to the standards in this Section and other applicable regulations in Article 5:
1. Private yacht basins

Please refer to Table No. 1 Zoning District Uses page 4-2

-
However in the body of the email, the question raised by Ms. Cuevas-Diaz is "Charles, do you know if the zoning or future land use changes once a privately held residential lot is converted to a City-owned passive park?"

If the property in question is the one referred to in the email 6540 Marlin Drive; currently Plate map 18 indicates residential zone and land use of Residential Single Family Low Density (6 Units-Acre).

A change in use would require public hearing. I checked with Scott and he does not recall any recent request for a change in use from residential to special use (park).

Let me know if you need anything else.

Elizabeth

From: Trias, Ramon
Sent: Thursday, April 14, 2016 9:45 AM
To: Gonzalez, Elizabeth
Subject: Fwd: 6540 Marlin Drive - Title Defect Notice

Please review.

Sent from my iPhone

Begin forwarded message:

From: "Wu, Charles" <cwu@coralgables.com>

Date: April 14, 2016 at 8:48:58 AM EDT
To: "Trias, Ramon" <rtrias@coralgables.com>
Subject: FW: 6540 Marlin Drive - Title Defect Notice

Did you respond whether park is an allowed use in residential district? I couldn't find it in the zoning code where a park use is permitted.

Charles K. Wu, AICP, CNU-A
Assistant Development Services Director
405 Biltmore Way, 3rd Floor
Coral Gables, FL 33134
Tel: 305-460-5244
Fax: 305-476-7225

-----Original Message-----

From: vivian.cuevas@hklaw.com
[<mailto:vivian.cuevas@hklaw.com>]
Sent: Wednesday, April 13, 2016 12:30 PM
To: Roberts, Leonard
Cc: Wu, Charles; Leen, Craig;
Monsi.Montalvan@hklaw.com;
Yandra.Hernandez@hklaw.com;
Rebecca.Mendez@hklaw.com
Subject: Re: 6540 Marlin Drive - Title Defect Notice

Leonard as for any special requirements the association documents if any should show this. Please send us the invoice that shows the \$1,637.

Any update on the use from residential to park?

Vivian de las Cuevas-Diaz | Holland & Knight Partner
Holland & Knight LLP
701 Brickell Avenue, Suite 3300 | Miami, FL 33131<x-apple-data-detectors://2/1>
Phone 305.789.7452<<tel:305.789.7452>> | Fax
305.789.7799<<tel:305.789.7799>>
vivian.cuevas@hklaw.com<<mailto:vivian.cuevas@hklaw.com>>
| www.hklaw.com<<http://www.hklaw.com>>

Add to address book<<http://www.hklaw.com/vcard.aspx?user=videlasc>> | View professional
biography<<http://www.hklaw.com/id77/biosvidelasc>>

On Apr 12, 2016, at 4:07 PM, Roberts, Leonard
<LRoberts@coralgables.com<<mailto:LRoberts@coralgables.com>>>

wrote:

Vivian/Craig, this property is in a special taxing district and is taxed \$1637 annually for the guard house entrance; are there any special requirements (e.g. neighborhood vote)?

Charles, do you know if the zoning or future land use changes once a privately held residential lot is converted to a City-owned passive park?

From:

Yandra.Hernandez@hklaw.com<<mailto:Yandra.Hernandez@hklaw.com>>
[<mailto:Yandra.Hernandez@hklaw.com>]

Sent: Friday, April 8, 2016 3:06 PM

To: sp@persaudlaw.net<<mailto:sp@persaudlaw.net>>;

Rebecca.Mendez@hklaw.com<<mailto:Rebecca.Mendez@hklaw.com>>

Cc: Roberts, Leonard;

vivian.cuevas@hklaw.com<<mailto:vivian.cuevas@hklaw.com>>;

Monsi.Montalvan@hklaw.com<<mailto:Monsi.Montalvan@hklaw.com>>;

melissaamigo@gmail.com<<mailto:melissaamigo@gmail.com>>;

lissette@persaudlaw.net<<mailto:lissette@persaudlaw.net>>;

Monsi.Montalvan@hklaw.com<<mailto:Monsi.Montalvan@hklaw.com>>

Subject: RE: 6540 Marlin Drive - Title Defect Notice

Please see attached.

Please note that we are waiting for additional lien search from the City of Coral Gables.

Thank you

Yandra Hernandez | Holland & Knight

Paralegal

Holland & Knight LLP

701 Brickell Avenue, Suite 3300 | Miami, FL 33131

Phone 305.349.2170 | Fax 305.679.6393

yandra.hernandez@hklaw.com<<mailto:yandra.hernandez@hklaw.com>>

| www.hklaw.com<<http://www.hklaw.com>>

From: Sam Persaud [<mailto:sp@persaudlaw.net>]

Sent: Friday, April 08, 2016 1:29 PM

To: Mendez, Rebecca L (MIA - X27464)

<Rebecca.Mendez@hklaw.com<<mailto:Rebecca.Mendez@hklaw.com>>>

Cc:

LRoberts@coralgables.com<<mailto:LRoberts@coralgables.com>>;
de las Cuevas-Diaz, Vivian (MIA - X27452)
<vivian.cuevas@hklaw.com<<mailto:vivian.cuevas@hklaw.com>>>;
Montalvan, Monsi (MIA - X22177)
<Monsi.Montalvan@hklaw.com<<mailto:Monsi.Montalvan@hklaw.com>>>;
Hernandez, Yandra M (MIA - X22170)
<Yandra.Hernandez@hklaw.com<<mailto:Yandra.Hernandez@hklaw.com>>>;
melissaamigo@gmail.com<<mailto:melissaamigo@gmail.com>>;
Lissette Santiago
<lissette@persaudlaw.net<<mailto:lissette@persaudlaw.net>>>

Subject: RE: 6540 Marlin Drive - Title Defect Notice

Ms. Mendez, can you send over the lien search?

Samuel A. Persaud, Esq.
PERSAUD LAW GROUP
9100 s. Dadeland Boulevard
Suite 400
Miami, FL 33156
Miami Tel: (305) 273-4200 ext. 1
Key Largo Tel: (305) 367-3300

Pursuant to the Fair Debt Collection Practices Act, it is required that we state the following to you: "This document is an attempt to collect a debt and any information obtained will be used for that purpose."

THE INFORMATION CONTAINED IN THIS TRANSMISSION IS ATTORNEY PRIVILEGED AND CONFIDENTIAL. IT IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPY OF THIS COMMUNICATION IS STRICTLY PROHIBITED.

Copies of this Email are not valid unless sender's written signature is affixed hereto.

From:
Rebecca.Mendez@hklaw.com<<mailto:Rebecca.Mendez@hklaw.com>>
[<mailto:Rebecca.Mendez@hklaw.com>]
Sent: Thursday, April 07, 2016 3:33 PM
To: Sam Persaud
<sp@persaudlaw.net<<mailto:sp@persaudlaw.net>>>
Cc:
LRoberts@coralgables.com<<mailto:LRoberts@coralgables.com>>;
vivian.cuevas@hklaw.com<<mailto:vivian.cuevas@hklaw.com>>;
Monsi.Montalvan@hklaw.com<<mailto:Monsi.Montalvan@hklaw.com>>;

Yandra.Hernandez@hklaw.com<<mailto:Yandra.Hernandez@hklaw.com>>;
melissaamigo@gmail.com<<mailto:melissaamigo@gmail.com>>

Subject: FW: 6540 Marlin Drive - Title Defect Notice
Importance: High

Mr. Persaud, attached please find a copy of our title objection letter with respect to this matter. We look forward to working with you. Thank you and feel free to contact me should you have any questions.

Regards,

Rebecca Mendez | Holland & Knight
Associate
Holland & Knight LLP
701 Brickell Avenue, Suite 3300 | Miami, FL 33131
Phone 305.789.7464 | Fax 305.789.7799
rebecca.mendez@hklaw.com<<mailto:rebecca.mendez@hklaw.com>>
| www.hklaw.com<<http://www.hklaw.com/>>

Add to address book<<http://www.hklaw.com/vcard.aspx?user=rlmendez>> | View professional biography<<http://www.hklaw.com/id77/biosrlmendez>>
From: Mendez, Rebecca L (MIA - X27464)
Sent: Wednesday, April 06, 2016 6:14 PM
To: 'Melissa Talavera-Amigo'
<melissaamigo@gmail.com<<mailto:melissaamigo@gmail.com>>>;
'info@inspectionsflorida.com<<mailto:info@inspectionsflorida.com>>'<info@inspectionsflorida.com<<mailto:info@inspectionsflorida.com>>>>

Cc: 'Leen, Craig'
<cleen@coralgables.com<<mailto:cleen@coralgables.com>>>;
de las Cuevas-Diaz, Vivian (MIA - X27452)
<vivian.cuevas@hklaw.com<<mailto:vivian.cuevas@hklaw.com>>>;
'Roberts, Leonard'
<LRoberts@coralgables.com<<mailto:LRoberts@coralgables.com>>>;
Hernandez, Yandra M (MIA - X22170)
<Yandra.Hernandez@hklaw.com<<mailto:Yandra.Hernandez@hklaw.com>>>>

Subject: 6540 Marlin Drive - Title Defect Notice
Importance: High

Good afternoon, attached please find our title objection letter together with the related enclosures for the above-referenced transaction. An original letter will be delivered to the address listed in the purchase agreement as well.

We understand that Seller may engage counsel, however, at this time we have not been provided any such contact

information. Therefore, this letter is being delivered to you directly in accordance with the terms of the purchase agreement.

Once Seller engages counsel, please let us know and we will forward a copy of this transmittal letter to the attorney as well.

Thank you,

Rebecca Mendez | Holland & Knight
Associate
Holland & Knight LLP
701 Brickell Avenue, Suite 3300 | Miami, FL 33131
Phone 305.789.7464 | Fax 305.789.7799
rebecca.mendez@hklaw.com<<mailto:rebecca.mendez@hklaw.com>>
| www.hklaw.com<<http://www.hklaw.com/>>

Add to address book<<http://www.hklaw.com/vcard.aspx?user=rlmendez>> | View professional biography<<http://www.hklaw.com/id77/biosrlmendez>>

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