



WEISS SEROTA HELFMAN COLE & BIERMAN

AT THE CROSSROADS OF BUSINESS, GOVERNMENT & THE LAW

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March 15, 2017

Via U.S. Mail & Email

Mr. Edward Silva
Village Manager
Village of Palmetto Bay
9705 East Hibiscus Street
Palmetto Bay, Florida 33157

Re: Zoning Opinion Relating to Development Bonus,¹ Reserve Residential Unit,² and/or Transfer Development Right (TDR)³ Unit Application (Collectively, the "Application") Determinations Pursuant to Section 30-50.23.1 of the Village Code of Ordinances (the "Village Code")

Dear Mr. Silva:

You have requested that our Firm provide a zoning opinion regarding whether it is within the discretion of the Mayor and Village Council to grant or deny an Application filed pursuant to the Village Code. As further discussed below, it is our opinion that the Mayor and Village Council's decision on an Application is not discretionary, but instead shall be based upon substantial competent evidence. In support of our opinion, we relied on the plain language of the Village Code, which provides, in part, that:

¹ Bonuses come in the form of additional building height (stories), not to exceed the maximums as provided for in the eligible districts.

² Reserve Residential Units are defined as "the residential units identified within the Comprehensive Plan, which are available for allocation by the Village, beyond that permitted by the Base Maximum Density within a given sector of the DUV."

³ Transfer Development Rights are defined as "the procedure by which development rights to construct residential units may be transferred from one lot within the Downtown Urban Village (DUV) zoning district to another lot within the Downtown Urban Village (DUV) zoning district."

(1) The granting of a development bonus, reserve residential unit, and/or TDR unit application is permitted, subject to public hearing review before the Mayor and Village Council; and

(2) Certain criteria as provided in the Village Code must be met in order for the Mayor and Village Council to grant the Application.⁴

In further support of our opinion, we have relied upon applicable case law, which provides that:

(1) An Application would be considered quasi-judicial in nature. *See Park of Commerce Associates v. City of Delray Beach*, 636 So. 2d 12, 15 (Fla. 1994), holding that a local governing board's action on building permits, site plans, and other development orders are quasi-judicial in nature;⁵

(2) The determination by the Mayor and Village Council in its quasi-judicial capacity will be upheld only if it is supported by substantial competent evidence.⁶ *De Groot v. Sheffield*, 95 So. 2d 912 (Fla. 1957);⁷ and

(3) Substantial competent evidence is “evidence that will establish a substantial basis of fact from which the fact at issue can be reasonably inferred.” *Id.* Substantial competent evidence may be seen as competent when it is “sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached.” *Id.* Examples of substantial competent evidence include, but are not limited to, official Village records (charter, codes, ordinances), expert testimony, application materials submitted by the applicant, staff reports, pictures, photographs, and fact based citizen testimony.⁸). It should be noted that, during the review and consideration of an Application, the Mayor and Village Council must weigh the credibility of the evidence presented and testimony received from both experts and lay witnesses.

⁴ For example, in order to grant a development bonus, the proposed development would, in part, need to be “located within the Downtown Village (DV) and Downtown General (DG) Sectors.” By comparison, in order to approve reserve residential or TDR units, the proposed development would need to demonstrate, in part, that “the receiver site shall be evaluated for its viability as an area of increased development and shall be reviewed pursuant to Section 30-30.5, as reflective of the intended development.

⁵ In addition, it should be noted that, Section 2-106 of the Village Code, defines a quasi-judicial hearing as “a public proceeding on...any other land development permit...or any other matter in which the village is required by law to give notice and an opportunity to be heard to parties and adversely affected persons, to investigate facts, and to make findings of fact and conclusions of law.”

⁶ In addition, Florida courts also require that the local government afford due process and observe the essential requirements of the law.

⁷ It should be noted that evidence to the contrary is irrelevant. *See, e.g., Dusseau v. Metro. Dade Bd. of Cty. Com'rs.*, 794 So. 2d 1270, 1276 (Fla. 2001) (“[e]vidence contrary to the agency’s decision is outside the scope of inquiry at this point, for the reviewing court above all cannot reweigh the ‘pros and cons’ of conflicting evidence”). (emphasis added).

⁸ Generalized statements and opinions from neighboring residents or from other objecting parties cannot be relied upon as a basis to deny or grant a development application. *City of Apopka v. Orange County*, 299 So. 2d 657 (Fla. 4th DCA 1974)

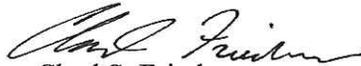
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Based upon the foregoing, the Mayor and Village Council's decision on an Application is quasi-judicial in nature, and the Mayor and Village Council are to apply the Village Code criteria against the substantial competent evidence presented into the record. After a public hearing and review and consideration of the substantial competent evidence presented into the record, the Mayor and Village Council may grant, grant with reasonable conditions, or deny an Application.

The foregoing opinion is subject to the following qualifications, limitations, and exceptions:

1. We are not aware of any governmental requirements or laws that are in effect that would conflict with or alter the opinions expressed in the letter.
2. We render no determination or opinion with respect to other approvals, permits or compliance with any governmental requirements or the laws of the State of Florida except those specifically set forth above.
3. In rendering this opinion, we are assuming that the Village ordinances, including the Land Development Regulations and the Village Comprehensive Plan, are duly enacted and enforceable.

Very truly yours,


Chad S. Friedman

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