

MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMISSION MEMORANDUM

TO: Mayor Dan Gelber and Members of the City Commission

FROM: Rafael A. Paz, Acting City Attorney 

DATE: March 17, 2021

SUBJECT: **Appellate Hearing; City Commission File No. 2020-001**
Beach Legal Properties, Inc. v. the City of Miami Beach Design
Review Board

Lower Tribunal File No: DRB File No. 19-0398

Address: 301-317 71st Street, Miami Beach, FL 33141

1. Background on Design Review Board application

This matter relates to an appeal of a Design Review Board (“DRB”) decision relating to the concrete pylon structure, an architectural postwar modern spire (the “Pylon”), located at 301-317 71st Street (the “Property”). Beach Legal Properties, Inc. (“Petitioner”), which is the owner of the Property, sought DRB approval to remove the Pylon.

Following a public hearing on July 7, 2020, the DRB voted to deny, without prejudice, Petitioner’s application to remove the Pylon, until such time that a replacement proposal for the Pylon is submitted for DRB review. Petitioner then filed this Appeal, alleging that the DRB failed to observe the essential requirements of law; the DRB’s decision was not supported by competent substantial evidence; and the DRB failed to provide procedural due process.

2. *Ex parte* communications

Given that the City Commission will be sitting in an appellate capacity on this matter, any *ex parte* communications by members of the City Commission regarding the Appeal must be disclosed, and City Commissioners are subject to cross-examination regarding any such communications. An *ex parte* communication is any communication conducted outside of the public hearing.

While not prohibited under our Code, our office discourages members of the City Commission from engaging in *ex parte* communications. However, if you do engage in any *ex parte* communications relating to this Appeal, please send an email to Paul Saca at paulsaca@miamibeachfl.gov, including the name of the individual with whom you communicated. If you send or receive any emails relating to the Appeal, those should also be forwarded. They must be disclosed on the record prior to the commencement of the hearing.

3. Conduct of hearing

Consistent with prior appeals heard by the City Commission, the schedule of the hearing will be as follows:

- I. Argument of Appellant Beach Legal Properties, Inc. – 5 minutes
- II. Argument of Respondent City of Miami Beach Design Review Board – 5 minutes
- III. Rebuttal by Beach Legal Properties, Inc. – 3 minutes
- IV. Deliberation by City Commission

There is no public hearing associated with this appeal.

4. Voting requirement and standard of review

A five-sevenths (5/7) vote of the City Commission is required to reverse or modify the decision of the DRB. In order to reverse or modify, the Commission must first find that the DRB either

- (i) failed to provide procedural due process;
- (ii) failed to observe the essential requirements of law; and/or
- (iii) failed to base its decision upon competent substantial evidence.

If the City Commission votes to reverse or modify the DRB's decision, the City Commission must, as part of its motion, clearly articulate which of the three criteria were not satisfied.

5. Record and Briefs

Enclosed for the City Commission's review are the following:

- Petitioner's Initial Brief
- Petitioner's Appendix
- City's Response Brief (in support of the DRB decision)
- Petitioner's Reply Brief