

COMMISSION MEMORANDUM

TO: Mayor Dan Gelber and Members of the City Commission
City Manager Alina T. Hudak

FROM: Rafael A. Paz, City Attorney



DATE: June 22, 2022

SUBJECT: DESIGN REVIEW BOARD APPEAL – 5333 COLLINS AVE.
APPEAL, FILED BY THOMAS HAHN, JACQUELINE REBHURN, DAVID SEBBAG, CARRIAGE HOUSE CONDOMINIUM ASSOCIATION, INC., AND THE AMETHYST CONDOMINIUM ASSOCIATION, INC., OF A MIAMI BEACH DESIGN REVIEW BOARD ORDER ISSUED ON FEBRUARY 3, 2022, APPROVING A DESIGN REVIEW APPLICATION FOR NEW CONSTRUCTION OF 100 RESIDENTIAL UNITS IN A 17-STORY TOWER LOCATED AT 5333 COLLINS AVENUE, MIAMI BEACH, FLORIDA 33140 (CITY COMMISSION FILE NO. SM-2022-01) (DESIGN REVIEW BOARD FILE NO. DRB21-0694).

A. Summary of Design Review Board approval.

This matter relates to an appeal of a Design Review Board ("DRB") order, dated February 3, 2022, approving a design review application for new construction of 100 residential units in a 17-story tower located at 5333 Collins Avenue (the "Property") (altogether, the "Appeal").

Petitions seeking review of the DRB Order were filed by W. Tucker Gibbs, Esq., on behalf of The Carriage House Condominium Association and The Amethyst Condominium Association; and Paul C. Savage, Esq., on behalf of Thomas Hahn, Jacqueline Rebhuhn, and David Sebbag.

B. *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 Nick Kallergis at nickkallergis@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.

C. Conduct of hearing.

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

1. Argument of **Appellants** The Carriage House Condominium Association and The Amethyst Condominium Association; and Thomas Hahn, Jacqueline Rebhuhn, and David Sebbag – 5 minutes per counsel
2. Argument of Respondent **5333 Collins Acquisitions, LP** – 5 minutes
3. Argument of Respondent **City of Miami Beach** - 5 minutes
4. Rebuttal by **Appellants** – 3 minutes per counsel
5. Deliberation by City Commission

There is no public hearing associated with this Appeal. The City Commission's decision must be based on the record before the DRB, and no new evidence may be taken.

D. 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.

E. Attachments.

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

- Appellants' Petitions for Administrative Appeal
- Response Brief of 5333 Collins Acquisitions, LP
- Response Brief of City of Miami Beach (in support of DRB approval)
- Appellants' Reply Briefs
- Appendices