BANCROFT AND OCEAN STEPS – 1501 COLLINS AVENUE

PLANNING BOARD – FILE NO. PB23-0572
HEARING ON APRIL 25, 2023 (OR ANY SUBSEQUENT DATE)

OBJECTIONS TO PLANNING BOARD APPLICATION AND TO PLANNING BOARD HEARINGS
and
MOTION FOR CONTINUANCE TO JUNE 27, 2023 MEETING OF THE PLANNING BOARD

To (via email): Planning Board Members; Planning Department; City Attorney's Office; City Clerk

CC (via email): Rory Bret Greenberg, Applicant's Representative
Tracy R. Slavens, Applicant's Counsel

April 19, 2023

Property Owner and Objector

Henry S. Stolar, Trustee of Henry S. Stolar Revocable Trust dtd. 10/13/89
("Property Owner")
and
Henry S. Stolar ("Objector")

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OBJECTIONS TO PLANNING BOARD APPLICATION AND HEARINGS
and
MOTION FOR CONTINUANCE TO JUNE 2023 MEETING

For the reasons and on the grounds stated below, the undersigned Property Owner and Objector identified on the preceding cover page (collectively, "Opponents"), hereby:

> **(1)** object to the now pending Application in Planning Board File No. PB23-0572 ("the File") pertaining to the Bancroft Hotel and Ocean Steps combined property at 1501 Collins Avenue (respectively, "the Bancroft" and "the Application"); and object to all hearings on the Application (including without limitation the hearings scheduled for April 25, 2023 and May 23, 2023) until such time as the material failings and flaws in the Application and in the File, as described below, are cured; and
>
> **(2)** move the Planning Board to continue this case until the Board's meeting on June 27, 2023, in order to allow time for the curing indicated above, followed by the time needed to comply with noticing requirements.[1]

The specific grounds for these Objections and this Motion begin on page 3 below, under the heading Substantive Claims.

Standing. For more than 18 years, the Property Owner has been the owner in fee simple of Unit 803 of the 1500 Ocean Drive Condominium Association, Inc., 1500 Ocean Drive, Miami Beach, Florida 33139 ("the Condo Building"). (For the same period of more than 18 years, the Objector and his spouse, Suzanne J. Stolar, have resided in Unit 803 of the Condo Building as their sole home.)

The Condo Building is within the 375-foot radius of the external boundaries of the Bancroft, conferring upon Opponents the standing to file these Objections and this Motion for Continuance. Indeed, the Bancroft physically abuts the Condo Building with no separating space between the two buildings.

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[1]These Objections and this Motion for Continuance are based upon Opponents' examination of two documents believed by Opponents to be the most recent documents filed: (1) Application dated March 28, 2023, filed with the Planning Board; and (2) Amended and Restated Letter of Intent dated March 29, 2023, filed with the Planning Board. If either or both of these documents have been updated, revised, or superseded, Opponents request copies of the new documents.

FACTS, BACKGROUND, AND GENERAL COMMENTS

Location and General Description of the Bancroft. The Bancroft is a large unoccupied property, which wraps around the northeast corner of Collins Avenue and 15th Street, and which has substantial frontage on both streets. The Bancroft's corner portion was once the Bancroft Hotel. The Ocean Steps portion of the Bancroft—all of which fronts on 15th Street—was once a commercial condominium. As noted, the Bancroft and the Condo Building directly abut.

The Immediate Neighborhood. The Bancroft stands across the street from two residential condominiums (Il Villaggio and the Drake) and immediately abuts the third residential condominium, the Condo Building itself. Opponents estimate that there is a total of approximately 290 residential units in the three condominiums.

The Bancroft's Conditional Use Permit. The Planning Board has authorized the Bancroft to proceed with a massive renovation of the property with extensive and intensive new uses, with heavy concentrations of people (Conditional Use Permit, File No. PB 20-0416, May 22, 2021 – "the Conditional Use Permit"), including:

a total of eight restaurants and bars;

a total occupancy load of 1,913 people; and

a total of 1,079 restaurant and bar seats, consisting of 553 outdoor seats and 526 indoor seats.

SUBSTANTIVE CLAIMS

For the following <u>five reasons</u>, the Application and the File are fatally defective. Therefore, the Application cannot be heard as now scheduled for the Planning Board meetings to be held on Tuesday, April 25, 2023 and Tuesday, May 23, 2023.

1. Failure to Furnish the Two Required Disclosures of Interest

The Application form requires two separate Disclosures of Interest:

(A) Corporation, Partnership or Limited Liability Company – page 6 and the one-page attachment;[2] and

(B) Trustee – page 7.

[2] The attachment is 14 months old. It is titled "1501 Collins Avenue [Organizational] Structure as of 02-08-2022".

The Application's above-described one-page attachment lists three trusts: Barbara Rosenberg 2016 Trust I (FL); Fara Horowitz 2018 Trust (FL); and Todd Rosenberg 2016 Trust (FL).

The second of the above two Disclosures of Interest requires disclosure of the name of the Trust, and the name, address, and percentage interest of "…all trustees and beneficiaries of the trust…." (Application page 7). The Application quickly and easily disposes of that requirement simply by leaving blank the Disclosure of Interest for Trusts.

The first of the above two Disclosures of Interest requires, for each corporation, partnership or limited liability company, disclosure of the name of each such entity, and the name, address, and percentage of ownership of "…ALL of the owners, shareholders, partners, managers and/or members…." (Application page 6 – All caps in original).

In purported satisfaction of that requirement, Applicant states only "Please see attached" (page 6). The one-page attachment (identified in Footnote No. 2 on page 3 above) is as opaque and impenetrable a thicket of non-disclosure as one could possibly imagine—all in violation of the City Code, public policy, and the purpose (and name) of a Disclosure of Interest.

That one-page attachment to the Application tells us nothing more than the names of twenty owners in this more-than-complex web of ownership:

Entities	Individuals
1501 Beach, LLC (Del.)	Rick Weisfisch
RonRuss Investments I, LLC (FL)	Ryan Weisfisch
Nikea, LLC (Nev.)	George Macricostas
Ocean Five Beach, LLC (Del.)	Todd Rosenberg
1501 Collins Pref. Equity, LLC (FL)	Barbara Rosenberg
1501 Collins Holdings, LLC (Del.)	Fara Horowitz
1501 Collins, LLC (Del.)	
1501 Collins Pebb Manager LLC (Del.)	
Barbara Rosenberg 2016 Trust I (FL)	
Fara Horowitz 2018 Trust (FL)	
Todd Rosenberg 2016 Trust (FL)	
PCM Holdco LLC (Del.)	
Pebb Capital Management, LLC (Del.)	
1501 Collins Manager, LLC (Del.)	
Total: 14 entities in three jurisdictions	**Total: 6 individuals**[3]

[3]Each of these six individuals does not necessarily hold any interest or position in the entity whose name appears to the left and on the same line as the name of the individual. These individuals' and entities' respective names appear opposite each other on the same line not by

This impervious barrier to knowing who is responsible is exacerbated by the public record, as it relates to the Application and the Letter of Intent. According to the Florida Division of Corporations' *Sunbiz.org* website:

> **(A)** Bancroft Oceans Five Holdings LLC—the stated present owner—is a Florida limited liability company. The only name disclosed in the public record is the Manager, identified as yet another Florida limited liability company.
>
> **(B)** 1501 Collins, LLC—the intended new owner—is a Delaware limited liability company.

It would surely have been appropriate, candid, and forthcoming if either the Application or the Letter of Intent had said something along the lines of:

> "There is no material change in the identity of the ultimate individual beneficial owners or their respective ownership percentages."
>
> or
>
> "The only material change in ultimate beneficial ownership is that John Jones's percentage decreased from 45% to 15%, and the 30% reduction has been divided equally among Jane Smith and Jacqueline Green, each of whom now owns 15%."

One searches in vain for any such candor, disclosure, or transparency.

2. City Code Provisions

Without limiting Opponents' right to rely upon other City Code provisions or other authorities, the following two Code provisions have immediate bearing:

> **(A) The "Complete Application" Requirement and the City Attorney's "Certification" Requirement.** The City Code requires the following for applications to the Planning Board:
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> > "No application shall be considered complete until all requested information has been submitted and all applicable fees paid." (Section 118-193, last sentence – emphasis added).

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reason of any connection between the individual and the entity; any such connection would be coincidental. Rather, this arrangement of entities' and individuals' names is only for the purpose of presenting the information in columnar form.

There is no ambiguity in the word "all". Additionally, the same point is made by the Planning Department's own standard Board Application Check List form; it advises applicants right up front in bold face (page 1):

> "Incomplete, or submittals found to be insufficient will not be placed on a Board agenda."

In the two Disclosures of Interest, Applicant plainly has not complied with the "completeness" requirement. Applicant's non-compliance is described above in Section 1, Failure to Furnish the Two Required Disclosures of Interest (pages 3-5), and will be seen again throughout the balance of these Objections and Motion for Continuance.

These deficiencies in the Application trigger a core Administrative Law precept: A governmental agency is bound by its own rules, procedures, and requirements. It cannot waive them on an individual basis—especially here, where the public interest in disclosure is compelling.

Commendably, the City Attorney's Office has long recognized and complied with the obligations that flow from the above requirements and principles that apply to Land Use Board applications:

> "As to whether [the City Attorney's Office] sign[s] off on the HPB's jurisdiction to hear applications, the answer is YES." (CAO June 3, 2022 email – all caps in original).

In view of the Application's failure to make the disclosures required by the Code and the Application form, the City Attorney cannot "sign off" on this Application.

(B) The 5% Provision – City Code Sec. 2-482(c). In previous Bancroft proceedings, the City has relied upon this provision as the basis for non-disclosure, by Land Use Board applicants, of names and addresses of entities' and trusts' individual owners.

That reliance has been misplaced. That provision is part of City Code Sec. 2-482 ("Registration; Disclosures") of Division 3 ("Lobbyists") of Article VII ("Standards of Conduct"). Division 3 deals with lobbyists and Sec. 2-482 deals with lobbyists' registration requirements. Nothing in these provisions has anything to do with Land Use Board applicants.

The express terms of the second sentence of Sec. 2-482(c) make equally clear that it is only lobbyists to which the 5% provision applies. The lobbyist is required to include, in the lobbyist registration application, the following:

"…the lobbyist shall also identify all persons holding, directly or indirectly, a five-percent or more ownership interest in such corporation, partnership, or trust." (emphasis supplied).

That under-5% disclosure exemption for lobbyists simply has nothing to do with Land Use Board applicants or applications.

The Application eloquently demonstrates the mischief of contorting the lobbyist under-5% disclosure exemption into an applicant exemption. Here, we have fourteen owning entities (spread out over three jurisdictions). If those entities' corporate veils or trust veils were pierced, we might find, for example, that one individual has ownership interests in four of those fourteen entities. In that instance, it may be the fact that, when his or her four ownership interests are aggregated, they may total 5% or more of the total ownership of the Applicant.

3. The Application Form and Public Policy

The City's public policy is clear from the Application form used, as required, by the Applicant:

"If the owners consist of one or more corporations, partnerships, trusts, partnerships [sic] or other corporate entities, the applicant shall further disclose the identity of the individual(s) (natural persons) having the ultimate ownership interest in the entity." (Application, pages 6 and 7 – emphasis supplied).

That same Application form was in use when Objector was appointed to the Planning Board on January 8, 2008; continued to be used, without change, throughout the six-year period of his service as a Planning Board member; and continues to be used, without change, today.

So, for at least more than fifteen years, the Application form has been used with the same instructions as are quoted above. The public policy enshrined in those instructions is nothing more than the well-known and generally-accepted principle of **piercing the corporate veil**—i.e., looking through the entity to identify the real live people who own the entity. That is the only way in which human responsibility for the entity's actions and inactions can be ascertained.

During a time when the Land Use Boards took no August vacation, Objector attended, during his Planning Board service, 71 out of the 72 scheduled meetings. Using a conservative estimate of an average of two Applications per meeting, Objector sat on perhaps 144 Conditional Use Permit cases. Objector cannot recall any case in which an applicant tried, as the Applicant does here, to erect an impenetrable wall between entities and the individuals who own them.

Throughout that six-year period, the City Attorney's Office was represented at Planning Board meetings by Gary M. Held, First Assistant City Attorney. In Objector's view, Mr. Held would never have allowed the violation of core principles of transparency, openness, and disclosure

reflected here in this Application's opaque and inscrutable non-disclosure of ultimate beneficial ownership by real live people.

4. The Proposed New Separation of Owner and Operator

The present Conditional Use Permit provides:

> "This Conditional Use Permit is issued to Bancroft Oceans Five Holdings, LLC, as owner/operator…." (Paragraph 1 – emphasis added).

So, from the outset, both the owner and the operator have been unified in a single entity. But, now, the Application and Letter of Intent seek to separate those two functions and assign them to two separate entities, so that the above provision would be revised to read:

> " 'This Conditional Use Permit is issued to 1501 Collins, LLC as owner and LDV Hospitality as operator….' " (proposed amendatory language - Letter of Intent, page 2 – emphasis added).

With this proposed bifurcation of owner and operator, the operator must be directed to file its own separate Planning Board application:

> "Any change of operator **or** 50% or more stock ownership…shall require review and approval by the Planning Board as a modification to this Conditional Use Permit." (Paragraph 1 – emphasis added).

This requirement of a separate application by the proposed new operator is clear enough by its own terms. But, if more were needed, this case makes that requirement especially urgent. Here is everything that the public record discloses about the proposed new operator, who will be responsible for a total occupancy load of 1,913 people and eight restaurants and bars with 553 outdoor seats and 526 indoor seats:

> The only similarly-named entity found by Objector in a search of the Florida Division of Corporations' *Sunbiz.org* website is LDV Hospitality Holdings, LLC. It is a Delaware limited liability company. The only individual named is the Manager, one John Meadow, whom one can find on the 7th Floor of 130 West 25th Street in New York City.

The Planning Board should not be approving a new operator for this massive establishment on the strength of claims in the Letter of Intent (e.g., "LDV is a renowned hospitality group….").

There is always a strong public interest in knowing who owns and who operates commercial real estate. That public interest is especially compelling here, where the Bancroft's massive and heavily-populated operations will occur in close proximity to approximately 290 residential

condominium units. If there is a problem at the Bancroft, one can be assured that it's the operator of the eight restaurants and bars that the City or a citizen wants to reach.

5. Failure to Furnish Multiple Other Items Required in the Application

Both Disclosures of Interest in the Application form (pages 6 and 7) require the addresses of the individual owners. Applicant has omitted their addresses in both places and on the attachment.

Objector recalls that, at one of the previous hearings on the Bancroft, its representative argued that there is no requirement in the City Code for disclosure of addresses.

That argument ignores another principle of administrative law. Administrators are always authorized to adopt procedures and forms for the implementation of legislation, unless a procedure or form is plainly beyond the legislative language and intent. The latter cannot be claimed here.

Here, in the exercise of its administrative authority, the Planning Department, long ago, adopted the Application form, and continues to require the use of that form to this day. Requiring disclosure of owners' addresses is clearly within the scope of the Planning Department's authority.

Actually, Applicant had no difficulty complying with the Applications' multiple other requirements that addresses be furnished. There are eight places where addresses are required (Application pages 1, 2, and 8). Applicant furnished addresses for all eight of those places. So, Applicant has conceded that the Planning Department can require addresses to be furnished.

In other places in the Application, Applicant has also attempted to arrogate to itself the right to pick and choose what it will disclose and what it will not disclose. The Application simply ignores and blows past five places where cell phone numbers are required (Application – pages 1-2). And, the Applicant simply ignores and blows past six sections seeking Project Information (page 2).

Accordingly, Applicant cannot be permitted the luxury of selectivity—i.e., to pick and choose those items that are furnished and those items that are withheld. One cannot imagine—and, in fact, there probably isn't—any City application form to any Department for any purpose in which directly interested and affected individuals and/or entities are not required to include their addresses. Other than the applicant's name, what could be more basic than the applicant's address?

Conclusion

For the reasons stated in these Objections and in this Motion for Continuance, the Application and the other components in Planning Board File No. PB23-0572, in their present form and

substance, are fatally flawed under the City Code. Therefore, the Planning Board lacks jurisdiction to hear or consider the Application on its merits. In that posture, if a hearing or decision were nonetheless to occur, it:

(1) would be contrary to law and the public interest; and

(2) would create precedents for violations by other applicants.

Request for Confirmation from the City Attorney's Office and the Planning Department. Opponents respectfully request a brief email acknowledgment, from each of the City Attorney's Office and the Planning Department, of their respective receipt of these Objections and this Motion for Continuance, and of the entry of these Objections into the Planning Board's File No. PB23-0572 and into the Planning Board's online Agenda for its April 25, 2023 meeting and for all subsequent Planning Board meetings until the present case is fully resolved.

Opponents request confirmation that any official record or transcript of any action seeking the appeal or review of the Planning Board's decisions on this Application and/or these Objections and Motion for Continuance will include these Objections and Motion for Continuance as proper components of the official record or transcript.

Respectfully submitted,

HENRY S. STOLAR REVOCABLE
TRUST DTD. 10/13/89

By: /s/ Henry S. Stolar, Trustee

"Property Owner"

Respectfully submitted,

/s/ Henry S. Stolar

"Objector"

APPENDIX

The HPB Case – Status of the Order and Preservation of Combined Objections' Claims

For purposes of making a complete record, the following further information and statement of Opponents' positions are furnished concerning the other of Applicant's two cases, namely, the case before the Historic Preservation Board ("HPB"):

Shortly before the opening of business on April 10, 2023, Opponents filed Objections to both Applications and to both Hearings concerning the Bancroft in the following two cases ("the Combined Objections"):

(1) the above Planning Board File No. PB23-0572; and

(2) HPB File No. HPB22-0559.

In the HPB case, the Application dated January 4, 2023 lists "1501 Collins, LLC" as both the Property Owner Name and the Applicant Name. However, the above pending Planning Board case only now seeks to name 1501 Collins, LLC as the owner.

Therefore, 1501 Collins, LLC is a stranger to the HPB record—just as John Jones, Mary Green, or Eleanor Rigby would be a stranger to the HPB record. Accordingly, 1501 Collins, LLC did not have standing to submit an application or to present its purported application to the HPB at the Board's meeting on April 11, 2023.

No standing means no jurisdiction. Opponents submit that the forthcoming Order resulting from the HPB meeting on April 11, 2023, approving the purported application, is void *ab initio* for want of jurisdiction.

The two previous HPB Orders are no help to the purported applicant. The initial Order was issued to Bancroft Oceans Five Holdings, LLC (File No. HPB 20-0444). The subsequent Consolidated Order was issued to 1501 Collins LLC (File No. HPB 22-0504), but that Consolidated Order is void for the same reason that the forthcoming Order from the April 11, 2023 meeting is void, as set forth above.

In its April 11, 2023 meeting, the HPB decided the case adversely to the Opponents' above position as set forth in the Combined Objections—and did so silently, without expressly recognizing Opponents' objection, or even acknowledging that the Combined Objections had been filed. Opponents hereby expressly preserve the portions of the Combined Objections that are applicable to the HPB case.

[End of Appendix]