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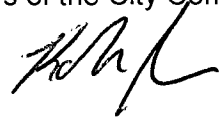
OFFICE OF THE CITY MANAGER

NO. LTC # 079-2013

LETTER TO COMMISSION

RECEIVED
2013 MAR 12 04:11:10
CITY CLERK'S OFFICE

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Kathie G. Brooks, Interim City Manager 

DATE: March 11, 2013

SUBJECT: South Pointe Park Dog Off-Leash Pilot Program Status Update

The purpose of this Letter To Commission is to provide you a status update of the South Pointe Park Dog Off-Leash Pilot Program.

As you may recall, there was a discussion held at the February 6, 2013 City Commission during the first reading of the ordinance which extended the South Pointe Park Dog Off-Leash Pilot Program through and including June 30, 2013, that focused on the Design Review Board's meeting of February 5, 2013 where the Administration's application for a hedge for the off-leash area in South Pointe Park was scheduled to be heard by the Design Review Board. Staff reported to the Commission that following a brief discussion of the item, due to the lack of a full board (4 of 7 members were present) the Administration requested the matter be carried forward to the March 5, 2013 Design Review Board. The discussion then focused on the hedge being proposed and when it was reported that the recommend height was not to exceed 24" the Commission instructed the Administration to amend the City's DRB application to state the height of the proposed hedge should be maintained at 3' - 3 1/2' tall (36" - 42" inches).

March 5, 2013 Design Review Board Presentation/ Actions

As directed by the City Commission at their February 6, 2013 meeting the Administration amended the pending application to the Design Review Board to consider the installation of a hedge around the perimeter of the South Pointe Dog Off-leash Area to state the height of the proposed hedge should be maintained at 3' - 3 1/2' tall. This application was included in the March 5, 2013 Design Review Board agenda.

The issue of the hedge was presented and discussed at the March 5, 2013 Design Review Board meeting. At the conclusion of the discussion the Design Review Board approved the City's request for a hedge, not to exceed forty-two (42') inches as stated in the following actions that will be included in the Final Order:

1. A revised landscape plan, and corresponding site plan, shall be submitted to and approved by staff. The species type, quantity, dimensions, spacing, location and overall height of all plant material shall be clearly delineated and subject to the review and approval of staff. At a minimum, such plan shall incorporate the following:
 - a. A low hedge may be provided to help delineate the perimeter of the off-leash dog area on the west, north, and east sides, with strategically located access openings on these three sides. The hedge material shall be installed in substantial accordance to the plans submitted, and shall be maintained at a maximum height of forty-two (42") inches, in a manner to be reviewed and approved by staff in consultation with the Parks and Recreation Department.

- b. An alternate appropriate landscape material, such as Fakahatchee and/or Spartina, more consistent with the landscaping used throughout the park, and in a wider planting bed, shall be explored, in a manner to be reviewed and approved by staff in consultation with the Parks and Recreation Department.
 - c. If the off-leash dog area is no longer authorized by the City in the future, the hedges approved as part of this application shall be immediately removed and the original landscape in these areas restored.
 - d. A fully automatic irrigation system with 100% coverage and an automatic rain sensor in order to render the system inoperative in the event of rain. Right-of-way areas shall also be incorporated as part of the irrigation system.
 - e. Prior to the issuance of a Certificate of Occupancy, the Landscape Architect or the project architect shall verify, in writing, that the project is consistent with the site and landscape plans approved by the Planning Department for Building Permit.
2. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
 3. At the time of completion of the project, only **Final** Certificate of Completion (CC) may be applied for; the staging and scheduling of the construction on site shall take this into account. All work on site must be completed in accordance with the plans approved herein, as well as any modifications approved or required by the Building, Fire, Planning, CIP and Public Works Departments, inclusive of all conditions imposed herein, and by other Development Review Boards, and any modifications required pursuant to field inspections, prior to the issuance of a CC. This shall not prohibit the issuance of a Partial or Temporary CC.
 4. The Final Order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.
 5. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.
 6. Nothing in this order authorizes a violation of the City Code or other applicable law, nor allows a relaxation of any requirement or standard set forth in the City Code.

Updated Violations Report (June 2010 – January 2013)

As previously stated, the Administration has been maintaining and reporting information related to the Dogs Off leash Pilot Project violations reported by the City's Code Compliance Division or the City's private security in South Pointe Park since the inception of the program in June of 2010. Incremental reports have been provided periodically to the City Commission and/or the Neighborhood/Community Affairs Committee. The Parks and Recreation Department has updated the information and 1,024 violations have been documented from June 2010 – January 2013 (see attached report).

Potential Future Actions

With the Design Review Board's approval for the installation of the hedge, the question of the timing of this installation must be considered. As you are aware there are issues with the design and construction of South Pointe Park that are presently the subject of litigation.

One of the primary defects at issue in this litigation relates to the Park's defective soil, sub-soil and planting conditions including, but not limited to, overly compacted soils, dying and deteriorating sod, improper drainage, and an unsuitable irrigation system. In anticipation of the need to correct various problems identified in the design and construction of South Pointe Park, the City Commission authorized a capital budget allocation of \$4,864,680, for which the City is seeking to ultimately recover in the ongoing litigation as appropriate as damages incurred to remedy the defects. In that regard, the City has retained a consultant to assist in preparing a comprehensive remediation plan to address the above-referenced issues identified at South Pointe Park.

Although the costs associated with the installation of the hedge are generally outside of the litigation, due to the overall poor soil conditions at the Park, which are one of many subjects of the pending litigation, it may be prudent to delay the installation of the hedge until the west lawn area is rehabilitated as part of the overall remediation program. As a result of the required remediation, the Administration is still attempting to determine when the installation of the hedge and/or other plant materials (originally estimated at \$54,196 and may be subject to modification depending upon the landscape materials ultimately used) will commence. As part of the comprehensive remediation plan, this area will be prioritized in the City's remediation efforts. It is important to note that the construction documents for remediation are 90% complete and still need to be finalized, bid and then awarded, which will result in missing the 2013 grow in season.

Please advise if you have questions.

C: Max Sklar, Acting Assistant City Manager
Kevin Smith, Parks & Recreation Director

KGB/MAS/KS
Attachments

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SOUTH POINTE PARK
DOGS OFF LEASH PILOT PROJECT VIOLATIONS June 2010-October 2011

Monitoring Agency

City of Miami Beach - Code Compliance/Security Alliance LLC

	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Aug-11	Sep-11	Oct-11	Totals by Category
# In the morning (during permitted hours) outside the specified area	6	3	5	2	9	17	11	2	3	9	5	13	6	5	1	8	105
# In the morning after 9 AM in the specified area	4	2	1	1	7	0	3	1	1	1	1	2	0	3	0	0	27
# In the morning after 9 AM in the unspecified area	1	2	1	1	6	1	3	0	0	3	2	3	3	2	0	1	29
# In the afternoon in the specified area	2	10	42	20	20	17	14	18	6	11	5	3	3	1	2	3	177
# In the afternoon in the unspecified area	10	3	11	4	5	18	26	29	24	17	8	4	2	4	1	8	174
# of total tickets issued	14	5	2	1	9	1	11	4	6	15	6	21	16	10	4	1	126
# of Violations noted but not issued - no identification - leave site	0	9	2	5	5	6	3	1	2	3	2	3	5	3	2	0	51
Total Violations	37	34	64	34	61	60	71	55	42	59	29	49	35	28	10	21	689

DOGS OFF LEASH PILOT PROJECT VIOLATIONS November 2011-January 2013

Monitoring Agency

City of Miami Beach - Code Compliance/Security Alliance LLC

	Nov-11	11-Dec	Jan-12	Feb-12	Mar-12	Apr-12	May-12	Jun-12	Jul-12	Aug-12	Sep-12	Oct-12	Nov-12	Dec-12	Jan-13	Totals by Category
# In the morning (during permitted hours) outside the specified area	6	4	1	1	0	13	7	3	6	4	3	5	3	3	1	60
# In the morning after 9 AM in the specified area/10-am April on	0	0	0	0	0	3	0	1	2	0	5	0	1	2	0	14
# In the morning after 9 AM in the unspecified area /10-am April on	3	3	3	1	1	5	0	1	0	1	2	0	5	0	0	25
# In the afternoon in the specified area	3	1	0	2	0	2	4	4	5	6	11	5	12	2	3	60
# In the afternoon in the unspecified area	2	2	7	2	4	7	5	10	14	10	14	2	1	4	7	91
# of total tickets issued	0	0	1	0	0	5	6	6	7	5	2	3	3	4	5	47
# of Violations noted but not issued - no identification - leave site	5	0	1	0	0	5	6	2	1	3	6	3	3	2	1	38
Total Violations	19	10	13	6	5	40	28	27	35	29	43	18	28	17	17	335

SOUTH POINTE PARK

SOUTH POINTE PARK DOGS OFF LEASH PILOT PROJECT VIOLATIONS SUMMARY June 2010-January 2013

Monitoring Agency

City of Miami Beach - Code Compliance/Security Alliance LLC

# In the morning (during permitted hours) outside the specified area	165
# In the morning after 9 AM in the specified area/10-am April on	41
# In the morning after 9 AM in the unspecified area /10-am April on	54
# In the afternoon in the specified area	237
# In the afternoon in the unspecified area	265
# of total tickets issued	173
# of violations noted but not issued - no identification - leave site	89
Total Violations	1024

DESIGN REVIEW BOARD
City of Miami Beach, Florida

MEETING DATE: March 5, 2013

FILE NO: 22955

PROPERTY: 1 Washington Avenue –
South Pointe Park

LEGAL: 10 54 42 16.50 AC M/L BEG W/MOST COR LOT 6 BLK 4 PB 6- 77 S65
DEG E1476.52FT TO EROSION LINE SELY630.14FT TO M/H/L GOVT
CUT NWLY2207.25FT N 31 DEG W375.17FT E473.67FT
SELY151.63FT

IN RE: The Application for Design Review Approval for the installation of a low hedge surrounding an off-leash dog area within the western portion of South Pointe Park.

ORDER

The applicant, the City of Miami Beach, filed an application with the City of Miami Beach Planning Department for Design Review Approval.

The City of Miami Beach Design Review Board makes the following FINDINGS OF FACT, based upon the evidence, information, testimony and materials presented at the public hearing and which are part of the record for this matter:

- A. Based on the plans and documents submitted with the application, testimony and information provided by the applicant, and the reasons set forth in the Planning Department Staff Report, the project as submitted is consistent with Design Review Criteria in Section 118-251 of the Miami Beach Code.
- B. The project would remain consistent with the criteria and requirements of section 118-251 if the following conditions are met:
 - 1. A revised landscape plan, and corresponding site plan, shall be submitted to and approved by staff. The species type, quantity, dimensions, spacing, location and overall height of all plant material shall be clearly delineated and subject to the

review and approval of staff. At a minimum, such plan shall incorporate the following:

- a. A low hedge may be provided to help delineate the perimeter of the off-leash dog area on the west, north, and east sides, with strategically located access openings on these three sides. The hedge material shall be installed in substantial accordance to the plans submitted, and shall be maintained at a maximum height of forty-two (42") inches, in a manner to be reviewed and approved by staff in consultation with the Parks and Recreation Department.
 - b. An alternate appropriate landscape material, such as Fakahatchee and/or Spartina, more consistent with the landscaping used throughout the park, and in a wider planting bed, shall be explored, in a manner to be reviewed and approved by staff in consultation with the Parks and Recreation Department.
 - c. If the off-leash dog area is no longer authorized by the City in the future, the hedges approved as part of this application shall be immediately removed and the original landscape in these areas restored.
 - d. A fully automatic irrigation system with 100% coverage and an automatic rain sensor in order to render the system inoperative in the event of rain. Right-of-way areas shall also be incorporated as part of the irrigation system.
 - e. Prior to the issuance of a Certificate of Occupancy, the Landscape Architect or the project architect shall verify, in writing, that the project is consistent with the site and landscape plans approved by the Planning Department for Building Permit.
2. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
 3. At the time of completion of the project, only **Final** Certificate of Completion (CC) may be applied for; the staging and scheduling of the construction on site shall take this into account. All work on site must be completed in accordance with the plans approved herein, as well as any modifications approved or required by the Building, Fire, Planning, CIP and Public Works Departments, inclusive of all conditions imposed herein, and by other Development Review Boards, and any modifications required pursuant to field inspections, prior to the issuance of a CC. This shall not prohibit the issuance of a Partial or Temporary CC.
 4. The Final Order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.
 5. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.

6. Nothing in this order authorizes a violation of the City Code or other applicable law, nor allows a relaxation of any requirement or standard set forth in the City Code.

IT IS HEREBY ORDERED, based upon the foregoing findings of fact, the evidence, information, testimony and materials presented at the public hearing, which are part of the record for this matter, and the staff report and analysis, which are adopted herein, including the staff recommendations which were adopted by the Board, that the Application for Design Review approval is GRANTED for the above-referenced project subject to those certain conditions specified in Paragraph B of the Findings of Fact (Condition Nos. 1-6, inclusive) hereof, to which the applicant has agreed.

PROVIDED, the applicant shall build substantially in accordance with the plans approved by the Design Review Board, as determined by staff, entitled "South Pointe Park Improvements", as prepared by the City of Miami Beach, dated 1-24-12, and revised 10-11-12, along with Addendum 1 with a proposed substitute plant material, modified in accordance with the conditions set forth in this Order and staff review and approval.

No permit may be issued unless and until all conditions of approval that must be satisfied prior to permit issuance as set forth in this Order have been met. The issuance of Design Review Approval does not relieve the applicant from obtaining all other required Municipal, County and/or State reviews and permits, including final zoning approval. If adequate handicapped access is not provided on the Board-approved plans, this approval does not mean that such handicapped access is not required.

When requesting a permit, the plans submitted to the City for permit shall be consistent with the plans approved by the Board, modified in accordance with the conditions set forth in this Order.

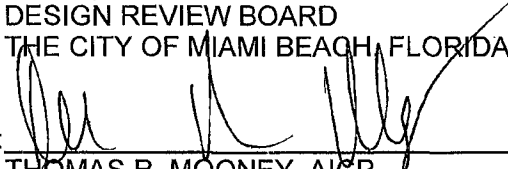
If the Full Permit for the project is not issued within eighteen (18) months of the meeting date at which the original Design Review Approval was granted, the Design Review Approval will expire and become null and void, unless the applicant makes application to the Board for an extension of time, in accordance with the requirements and procedures of Chapter 118 of the City Code; the granting of any such extension of time shall be at the discretion of the Board. At the hearing on any such application, the Board may deny or approve the request and modify the above conditions or impose additional conditions. If the Full Permit should expire for any reason (including but not limited to construction not commencing and continuing, with required inspections, in accordance with the applicable Building Code), the Design Review Approval will expire and become null and void.

In accordance with Section 118-264 of the City Code, the violation of any conditions and safeguards that are a part of this Order shall be deemed a violation of the land development regulations of the City Code.

Dated this 6th day of MARCH, 2013.

DESIGN REVIEW BOARD
THE CITY OF MIAMI BEACH, FLORIDA

BY:


THOMAS R. MOONEY, AICP
DESIGN AND PRESERVATION MANAGER
FOR THE CHAIR



STATE OF FLORIDA)
)SS
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 6th day of MARCH 20 13 by Thomas R. Mooney, Design and Preservation Manager, Planning Department, City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the Corporation. He is personally known to me.



TERESA MARIA
MY COMMISSION # DD 928140
EXPIRES: December 2, 2013
Bonded Thru Budget Notary Services

Teresa Maria

NOTARY PUBLIC
Miami-Dade County, Florida
My commission expires: 12-2-13

Approved As To Form:
Legal Department:

g. Reed (3-6-2013)

Filed with the Clerk of the Design Review Board on Walter J. Haddis (3-6-2013)

TH