



MIAMI BEACH

OFFICE OF THE CITY MANAGER

NO. LTC # 213-2013

LETTER TO COMMISSION

RECEIVED
2013 JUN 21 PM 3:02
CITY CLERK'S OFFICE

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

FROM: Jimmy L. Morales, City Manager

DATE: June 21, 2013

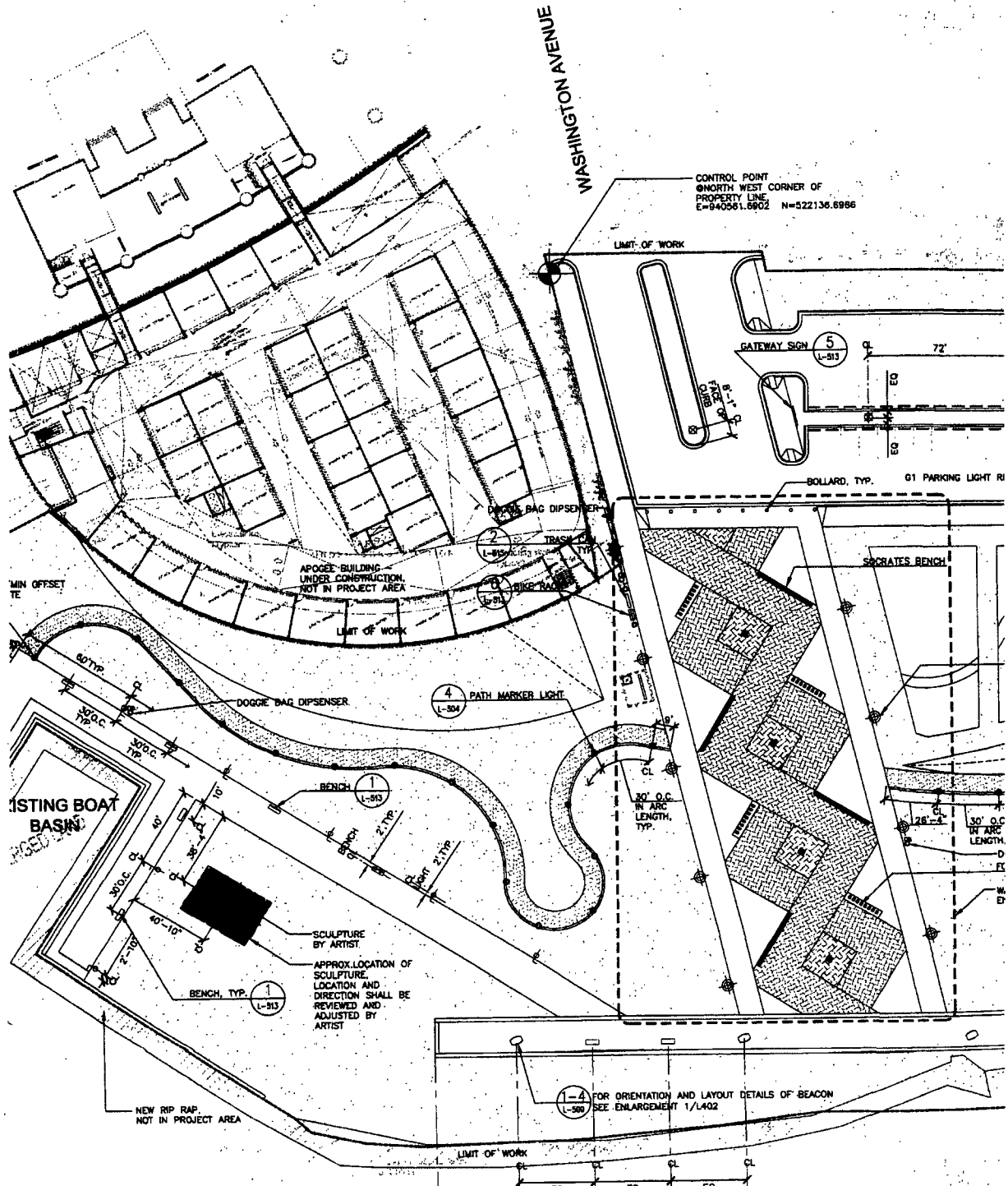
SUBJECT: **Art in Public Places Committee Motion Against Off-Leash Dog Area Surrounding "obstinate lighthouse"**

The purpose of this Letter to Commission (LTC) is to inform you of a motion passed unanimously by the Art in Public Places Committee at its regular meeting on June 18, 2013, opposing the creation of an off-leash dog area surrounded by a landscape buffer in the area of the "obstinate lighthouse" sculpture located at the southwestern portion of South Pointe Park.

The Art in Public Places (AiPP) Committee purpose is to recommend to the City Commission on legislation concerning public works of art in the city. On June 18, 2013, the AiPP Committee met and a motion was seconded and passed unanimously advising the City Commission of the following:

1. The Committee unanimously supports the Design Review Staff Report, Design Review File No. 22977, 1 Washington Avenue – South Pointe Park, which is in opposition to an off-leash dog area surrounded by a landscape buffer in the area of the "obstinate lighthouse" sculpture. The Art in Public Places Committee would like to express its resistance to any changes in the physical site and intent of South Pointe Park that compromises the integrity of the "obstinate lighthouse."
2. The AiPP Committee would like the City Commission to note that the Artist was originally provided with a site plan that depicted an "open lawn" setting (Exhibit 1). Enclosing the sculpture with landscaping as proposed would compromise the Artist's intent and concept. On May 20, 2013, the Artist officially notified the City of Miami Beach Planning Department that if he had been made aware that the South Pointe Park Project was going to be made into an off-leash dog park, he would not have considered the invitation (Exhibit 2).
3. The City of Miami Beach needs to be aware that it could potentially be in violation of federal law and vulnerable to a lawsuit by the Artist as stated in the Visual Artists Rights Act of 1990 (VARA) (Exhibit 4), 17 U.S.C. § 106A, which provides intellectual property protection to artists.

JLM/KGB/MAS/GF/dl



Tobias Rehberger Lindleystr. 12 60314 Frankfurt T +49-069-62700275 F 62700276 M info@tobiasrehberger.de

May 20, 2013

Mr. William Cary
Assistant Planning Director
City of Miami Beach
1700 Convention Center Drive
Miami Beach, FL 33139

c: Art in Public Places Committee

RE: Off Leash Dog Park So. Pointe Park location site public art project "obstinate lighthouse"

Dear Mr. Cary,

I am writing in regards to Design Review Board Meeting on locating an off leash dog park surrounding the site specific public art project in South Pointe Park.

When invited by Miami Beach to participate in this Call to Artist and based on the plans for the location as shown in below drawings done by George Hargreaves, Hargreaves Associates (the City's Architecture and Engineering consultant for the South Pointe Park Project) the location of the artwork was not identified as a dog park. If the public art project was for a dog park I would not have considered the invitation.

Sincerely,


Tobias Rehberger

USC › Title 17 › Chapter 1 › § 106A

17 USC § 106A - RIGHTS OF CERTAIN AUTHORS TO ATTRIBUTION AND INTEGRITY

Current through Pub. L. 113-9. (See [Public Laws for the current Congress](#).)

(a) Rights of Attribution and Integrity.— Subject to section [107](#) and independent of the exclusive rights provided in section [106](#), the author of a work of visual art—

(1) shall have the right—

(A) to claim authorship of that work, and

(B) to prevent the use of his or her name as the author of any work of visual art which he or she did not create;

(2) shall have the right to prevent the use of his or her name as the author of the work of visual art in the event of a distortion, mutilation, or other modification of the work which would be prejudicial to his or her honor or reputation; and

(3) subject to the limitations set forth in section [113](#) (d), shall have the right—

(A) to prevent any intentional distortion, mutilation, or other modification of that work which would be prejudicial to his or her honor or reputation, and any intentional distortion, mutilation, or modification of that work is a violation of that right, and

(B) to prevent any destruction of a work of recognized stature, and any intentional or grossly negligent destruction of that work is a violation of that right.

(b) Scope and Exercise of Rights.— Only the author of a work of visual art has the rights conferred by subsection (a) in that work, whether or not the author is the copyright owner. The authors of a joint work of visual art are co owners of the rights conferred by subsection (a) in that work.

(c) Exceptions.—

(1) The modification of a work of visual art which is a result of the passage of time or the inherent nature of the materials is not a distortion, mutilation, or other modification described in subsection (a)(3)(A).

(2) The modification of a work of visual art which is the result of conservation, or of the public presentation, including lighting and placement, of the work is not a destruction, distortion, mutilation, or other modification described in subsection (a)(3) unless the modification is caused by gross negligence.

(3) The rights described in paragraphs (1) and (2) of subsection (a) shall not apply to any reproduction, depiction, portrayal, or other use of a work in, upon, or in any connection with any item described in subparagraph (A) or (B) of the definition of “work of visual art” in section [101](#), and any such reproduction, depiction, portrayal, or other use of a work is not a destruction, distortion, mutilation, or other modification described in paragraph (3) of subsection (a).

(d) Duration of Rights.—

(1) With respect to works of visual art created on or after the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990, the rights conferred by subsection (a) shall endure for a term consisting of the life of the author.

(2) With respect to works of visual art created before the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990, but title to which has not, as of such effective date, been transferred from the author, the rights conferred by subsection (a) shall be coextensive with, and shall expire at the same time as, the rights conferred by section [106](#).

(3) In the case of a joint work prepared by two or more authors, the rights conferred by subsection (a) shall endure for a term consisting of the life of the last surviving author.

(4) All terms of the rights conferred by subsection (a) run to the end of the calendar year in which they would otherwise expire.

(e) Transfer and Waiver.—

(1) The rights conferred by subsection (a) may not be transferred, but those rights may be waived if the author expressly agrees to such waiver in a written instrument signed by the author. Such instrument shall specifically identify the work, and uses of that work, to which the waiver applies, and the waiver shall apply only to the work and uses so identified. In the case of a joint work prepared by two or more authors, a waiver of rights under this paragraph made by one such author waives such rights for all such authors.

(2) Ownership of the rights conferred by subsection (a) with respect to a work of visual art is distinct from ownership of any copy of that work, or of a copyright or any exclusive right under a copyright in that work. Transfer of ownership of any copy of a work of visual art, or of a copyright or any exclusive right under a copyright, shall not constitute a waiver of the rights conferred by subsection (a). Except as may otherwise be agreed by the author in a written instrument signed by the author, a waiver of the rights conferred by subsection (a) with respect to a work of visual art shall not constitute a transfer of ownership of any copy of that work, or of ownership of a copyright or of any exclusive right under a copyright in that work.