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Via email – aroddy@scgov.net

Alan W. Roddy, Esq.
Office of the County Attorney
1660 Ringling Blvd Fl 2
Sarasota, FL 34236

Re: **Siesta Promenade**

Dear Alan:

Hope all is well. Just following up on my various correspondences over the past month and to specifically request a continuation of the Planning Commission meeting coming up on November 15th.

As you know, for Siesta Promenade to exceed 35' in height or to have stand-alone residential components in the CG District, requires a Special Exception for each request. None has been asked for, nor is one going to be asked for. Applicant appears to be relying on a reference at the end of Section 6.10.1 (3) of the Critical Area Plan Ordinance to avoid the need for these two Special Exceptions. This provision reads:

“An adopted Critical Area Plan may establish a minimum setback below, and a maximum height above, that indicated in this table.”

I see three legal issues with Applicant's interpretation. First, there is nothing in this provision that says it negates the need for a Special Exception. Second, a Special Exception is a quasi-judicial determination. A CAP decision is legislative. Therefore, applicant's interpretation would eliminate all of the procedural safeguards inherent in a quasi-judicial decision and substitute in a much lower legislative review/deference standard.

Third, and most importantly, a CAP is not a development Order within the meaning of Ch. 380 or Ch. 163. It cannot permit or prohibit development. This is reflected (and repeated verbatim) in the CAP Ordinance and regulations themselves.

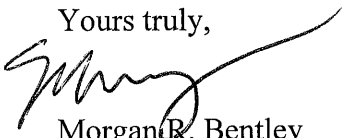
This forced interpretation is also unnecessary. The two provisions are easily reconciled by simply acknowledging that, while height and stand-alone residential can be allowed under the CAP, those requests are still subject to the normal Special Exception requirements and procedures.¹

The CAP process has never been used as a tool to make quasi-judicial decisions. If that was the case, why would one even need to do a Rezoning or Special Exception for anything within the CAP boundaries? - One would just adopt the CAP. So, again, Applicant's interpretation defies a common sense reading of the enabling ordinances.

Because this is an issue that can be avoided before we get to the appeal stage of this matter, I suggest we continue the currently scheduled hearings and ask the Applicant to simply submit the height and stand-alone residential as a Special Exception in the normal course. Alternatively, if you have case law that would allow an applicant to convert a quasi-judicial proceeding into a legislative one, please provide it to me at your earliest convenience.

As always, thank you for your time and attention to this matter.

Yours truly,



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For the Firm

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Todd Dary
Hon. Nancy Detert
Hon. Mike Moran
Hon. Paul Caragiulo
Hon. Alan Maio
Hon. Charles Hines

¹ Additional Height by Special Exception in the OPI, CG, CI and CHI Districts. When a maximum height of a structure is increased through the Special Exception process, the following restrictions shall be met:

- a. Maximum building coverage shall be reviewed as part of the Special Exception petition.
- b. Side and rear yards shall be provided at a ratio of one foot for each four feet of additional building height in excess of the permitted maximum height.
- c. Street yards shall be 25 feet or one-half of the building height, whichever is greater.