

**CITY OF MIAMI
CITY ATTORNEY'S OFFICE
MEMORANDUM**

TO: Impact Fee Board of Review
Joseph T. Longueira, Chairman

FROM: Alejandro Vilarello, City Attorney

DATE: February 20, 2004

RE: Impact Fee Exemption; Community Development Target Areas;
Causeway Towers, 501 N.E. 36th Street.
MIA-0400001

You have asked for a legal opinion on substantially the following questions:

1. WHETHER COMMUNITY DEVELOPMENT TARGET AREAS STILL EXIST IN THE CITY OF MIAMI?
2. IF THE ANSWER TO THE FIRST QUESTION IS "NO," WHAT IS THE EFFECT ON IMPACT FEE EXEMPTION REQUESTS BASED ON SUCH PERCEIVED DESIGNATIONS?

The answer to your first question is in the negative. The City Code provides impact fee exemptions for certain development to be located in "Community Development Target Areas or their equivalent as defined within the effective community development block grant program plan as approved by the city..." Section 13-2(b)(3), Code of the City of Miami. Section 13-5 of the City Code defines *Community Development Target Area(s)* ["Target Areas"] as:

[T]hose geographical areas of the city designated as such by the city's department of community development or its successor agency or department, using guidelines and criteria established by the U.S. Department of Housing and Urban Development or its successor department or agency.

Attached hereto, as "Attachment A", is a memorandum from the City of Miami Community Development Department ("Community Development") that concludes that Community Development's current *Consolidated Plan 1999-2004* ("the Plan"), which includes the Community Development Block Grant Program ("CDBG"), was adopted and approved by City Commission Resolution No. 99-429 on June 22, 1999. The Plan concluded that as of October 1, 1999, the effective date of the Plan, CDBG Target Areas were no longer the only

distressed areas in the City of Miami. The Plan then christened a new, successor entity to Target Areas entitled "*Community Revitalization Districts*." Consequently, Community Development has decreed, CDBG *Target Areas* ceased to exist on September 30, 1999, and seven (7) *Community Revitalization Districts* ("Revitalization Districts"), "became the focus areas effective October 1, 1999."

It is also apparent from a review of maps depicting designated Revitalization Districts that the old Target Areas and new Revitalization Districts do not necessarily cover the same geographical areas. Consequently, all departments should consult Community Development Department approved maps **designating Revitalization Districts**, solely, when making Community Development Department related determinations on Impact Fee exemption requests for developments for which development applications were received **after** September 30, 1999. However, as discussed below, there may be a few situations or circumstances that require reference to the obsolete Target Area maps.

Relative to your second question: Any developer who can substantiate having submitted a "Complete Application" for development approval no later than September 30, 1999, for a project located in a then-designated "Target Area," should be allowed to obtain an Impact Fee exemption, provided they otherwise satisfy the requirements for such exemption. This Office is of the opinion that the standards and rationale utilized in the Zoning Ordinance for determining the status of development permits when the Zoning Ordinance has been amended, is appropriate in the instant situation. *See* §2105 et seq, Zoning Ordinance of the City of Miami, Florida. This is a conclusion that provides a rational and equitable determination for individuals and entities that might have prepared site development plans and structured financial aspects of developments in reliance on then-current impact fee regulations, only to have the rules changed after complete applications for development approval were submitted to the city

The owner-developers of the Biscayne Bay Tower Project (a/k/a "Blue", a/k/a "Causeway Tower"), located at 501 Northeast 36 Street, Miami, Florida ("Project), have, as you are aware, filed an appeal seeking an exemption from impact fees for their multi-family development project. The City Commission, via Resolution No. 99-307 on April 27, 1999, issued a Major Use Special Permit for the Project, prior to the Plan's termination of Target Areas. The record substantiates that the Project's location is in a then-designated Target Area. Therefore, as discussed above, this Office is of the opinion that the Project and others similarly situated, should qualify for an impact fee exemption if they satisfy all other requirements.

Conclusion

As of October 1, 1999, the City of Miami's current Community Development *Consolidated Plan* for Fiscal Years 1999-2004 replaced the designation of Community Development Target Areas with new entities designated *Community Revitalization Districts*. Said districts may or may not occupy the same geographical areas as the predecessor Target Areas. Target Areas ceased to exist on September 30, 1999 and *Community Revitalization Districts* succeeded Target Areas as the basis for certain Impact Fee Exemption determinations

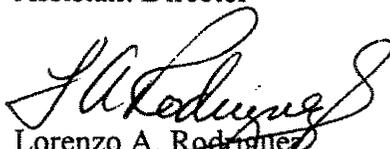
Legal Opinion/Impact Fee Exemption; Community Development Target Areas;
Causeway Towers, 501 N.E. 36th Street
MIA-0400001

unless an applicant proves that a "complete application" for the development project at issue was on file with the proper city department, or a development permit for the project had been approved no later than September 30, 1999. Impact Fee board Of Review Appellant, Biscayne Bay Tower, LLC, has submitted information into the record to prove that it satisfied those requirements. Consequently, this Office respectfully recommends that Biscayne Bay Tower's appeal be granted. Applications for development approval complete or otherwise submitted on October 1, 1999, **or thereafter**, must be located in a Community Development designated Revitalization District as a condition precedent to qualifying for the related impact fee exemption.

Attachments

- c: Joe Arriola, City Manager
Linda M. Haskins, Deputy City Manager
Alicia Cuervo Schreiber, Chief of Neighborhood Services
Barbara Gomez-Rodriquez, Director Community Development
Hector Lima, Director, Building Department
Ana Gelabert-Sanchez, Director Planning and Zoning Department
Teresita Fernandez, Executive Secretary, Hearing Boards
Lourdes Slazyk, Assistant Director, Planning and Zoning Department
Francisco Garcia, Zoning Administrator

INTER-OFFICE MEMORANDUM

TO :	Daniel A. Rosemond Assistant Director	DATE :	February 17, 2004	FILE :
FROM :	 Lorenzo A. Rodriguez Contract Compliance Manager	SUBJECT :	Community Revitalization Districts and CDBG Target Areas	
		REFERENCES :	Resolution 99-429	
		ENCLOSURES:		

As per your instructions I researched the resolutions and Ordinances associated with the approval of the City of Miami Consolidated Plan 1999-2004.

The City Commission approved the City of Miami Consolidated Plan for 1999-2004 and its submission to U.S. Department of Housing and Urban Development (HUD) on June 22, 1999 via Resolution #99-429. The Resolution is not specific as to the policies approved. However, the City Manager's memorandum to the Mayor and the City Commission was made part of the resolution as it presented the policies recommended by the Consolidated Plan (see attached copy of Resolution #99-429).

The memorandum makes reference to the Public Participation process undertaken: public meetings conducted by the Citywide Community Development Advisory Board and public hearings conducted by each City Commissioner in each of the City's five (5) districts.

The memorandum pointed out that the composition of the City of Miami had changed dramatically over the 24 year history of the entitlement programs. Up to 1999, the City had funded programs that were conducted in the City's eight (8) Community Development Block Grant (CDBG) Target Areas. The designated target areas included: Edison Little River, Model City, Allapattah, Wynwood, Overtown, Downtown, Little Havana and Coconut Grove. These target areas had remained basically the same since their designations.

The Departments of Community Development, Planning and Development and Real Estate and Economic Development were part of a group that studied the history of HUD funding in the Target Areas and the conditions throughout the City. The study group recommended the need to reassess and reevaluate the distribution of entitlement funds. The pockets of poverty in the City had expanded and that it was time to focus on areas that had previously been neglected in the allocation of HUD funding.

The Consolidated Plan recommended that in order to reduce the isolation of economic groups within areas by increasing housing opportunities for low- and middle-income persons and revitalizing deteriorating neighborhoods through quality of life enhancements and economic revitalization, the concept of Community Revitalization

ATTACHMENT A

Districts was developed. The plan concluded that the designated CDBG target areas were no longer the only distressed areas in the City of Miami.

With the approval of the Consolidated Plan 1999-2004, the CDBG target areas ceased to exist on September 30, 1999. The Community Revitalization Districts became the focus areas effective October 1, 1999.

C: Barbara Gomez-Rodriguez, Director

ARTICLE I. IN GENERAL

Sec. 13-1. Short title.

This chapter shall be known and cited as the "City of Miami development impact fee ordinance."

(Ord. No. 10426, § 2, 4-28-88; Code 1980, § 13-1)

Sec. 13-2. Findings.

(a) The city commission of Miami, Florida (hereinafter "commission") hereby finds and declares that:

- (1) Development, other than single-family residential and certain other development as specifically defined herein, imposes excessive demands upon city public facilities and services and requires additional facilities and services.
- (2) The potential for development of properties is a direct result of city policy as expressed in the city comprehensive plan and as implemented via the city zoning ordinance and map.
- (3) To the extent that such development places demands upon the public facility infrastructure of the city, those demands should be satisfied by shifting the responsibility for financing the provision of such facilities from the public at large to the developments actually creating the demands.
- (4) The amount of the "impact fee" to be imposed shall be determined by the cost of the additional capital improvements needed to support such new development, which public facilities shall be identified in a capital improvement program, and by the gross square footage of development.

(b) The city commission hereby finds and declares that the impact fee imposed herein upon all new nonresidential and all new residential development as further described below, in order to finance specified public facilities, the demand for which is uniquely created by such new development, is in the best interest of the city and its residents, is equitable, and does not impose an

unfair burden on such development. Specifically exempted from such imposition and payment of said impact fees are:

- (1) All single-family residential development;
- (2) Any development of less than 1,000 square feet not resulting in a net increase in the number of residential dwelling units;
- (3) All duplex and multiple family residential development located in the city's designated community development target areas or their equivalent as defined within the effective community development block grant program plan approved by the city and accepted by the U.S. Department of Housing and Urban Development, as may be amended;
- (4) All duplex and multiple family residential development, outside of the community development target areas or their equivalent as stipulated hereinabove, which is certified by the city department responsible for housing as low and/or moderate income housing;
- (5) Any development which is a nonprofit joint venture with the city, or a city-owned or operated facility;
- (6) Any development for which complete building plans have been filed as prescribed by the city's zoning ordinance, as amended, before the effective date of this chapter, providing that the building permit for such development is obtained within 45 calendar days from the effective date of this chapter; and
- (7) Any development of regional impact (DRI) (excluding the downtown DRI and the Southeast Overtown/Park West areawide DRI) for which development orders have been issued by the city before the effective date of this chapter, provided that the building permit for such DRI is obtained within 15 months of the effective date of this chapter.
- (8) As of November 19, 2002, the first three residential projects that include 201 or more units of multiple family, owner-occupied housing valued for purchase by

Capital improvement projects shall mean all projects valued at \$5,000.00 or more that are proposed to be initiated during the six-year period of the capital improvements program and may include any or all of the following: acquisition of land, construction, improvements, equipping and installing of same and all other work auxiliary thereto, including administrative, engineering, architectural and legal work performed in connection with a public facilities project:

- (1) Public safety facilities and equipment.
- (2) Parks and recreational facilities and equipment.
- (3) Streets and highways, including such ancillary facilities as sidewalks, street lighting, curbs, gutters, signalization, signage, landscaping and storm sewers.
- (4) Solid waste collection facilities and equipment.
- (5) Other general government facilities and equipment.

Central business district means properties having the zoning classification of "CBD" (Central business district) as November 19, 2002.

City shall mean the City of Miami, Florida.

Commission shall mean the city commission of Miami, Florida.

Community development target area(s) shall mean those geographical areas of the city designated as such by the city's department of community development or its successor agency or department, using guidelines and criteria established by the U.S. Department of Housing and Urban Development or its successor department or agency.

Comprehensive plan shall mean the city's plan for future development adopted by city Ordinance Number 10544, and as may be amended and updated from time to time.

Cost shall mean amounts spent or authorized to be spent in connection with the planning, financing, acquisition and development of a capital improvement project including, without limitation, the costs of land, construction, engineering, legal services, financial services and certain administrative costs.

Development shall have the meaning given it in F.S. § 380.04, subject to exclusions contained herein.

Development subareas shall mean geographically defined areas of the city which conform to the city's established planning districts.

Duplex residential development shall have the meaning given it in city Ordinance Number 11000, as amended, the city zoning ordinance for the City of Miami.

Gross floor area shall mean the total square footage of a building, excluding parking areas, on a particular site.

Impact fee shall mean a fee, to be imposed at building permit issuance, and calculated based upon the cost of impact-fee-related capital improvements in proportion to new development creating the need for such facilities.

Impact fee coefficient shall mean the charge per square foot of development as calculated for each subarea and building type by dividing total impact-fee-related capital improvement project costs by the gross square footage of projected new development starting at time of adoption of this chapter through September 31, 2005.

Impact-fee-related capital improvements shall mean those capital improvements necessary to support and uniquely attributable to new development as herein defined and which facilities are identified in the impact-fee-related capital improvement program to be financed by the imposition of an impact fee.

Impact-fee-related improvement program shall mean the listing of impact-fee-related capital improvement projects.

Low- and moderate-income housing shall have the meaning given it by the city department of development and housing conservation.

Multiple-family development shall have the meaning given it in city Ordinance Number 11000, as amended, the city zoning ordinance for the City of Miami.

Nonresidential development shall mean all development other than residential development as herein defined.