



To: Ramon Trias

From: Craig E. Leen, City Attorney for the City of Coral Gables

A handwritten signature in black ink, appearing to be "C. Leen", is written over the name of the City Attorney.

RE: Legal Opinion Regarding Solar Array

Date: March 31, 2016

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I have reviewed section 163.04 of the Florida Statutes, and conducted research on Westlaw. Pursuant to section 2-201(e)(1) and (8) of the City Code, my opinion and interpretation is as follows:

Section 163.04(2) does not apply here, as the City is acting as a regulator, and is not enforcing a "deed restriction, covenant, declaration, or similar binding agreement." Instead, the City is enforcing an ordinance with the force of law. Section 163.04(2) would be more relevant to a homeowners association.

In contrast, section 163.04(1) is applicable to the City. This provision prevents the City from adopting an ordinance that "prohibits or has the effect of prohibiting the installation of solar collectors, clotheslines, or other energy devices based on renewable resources." The City has no such ordinance. Indeed, the City encourages solar panels as a matter of policy and resolution. Indeed, the City has passed a resolution (Resolution No. 2015-304) encouraging and waiving fees related to solar panel applications. The resolution is available at this link: <https://coralgables.legistar.com/View.ashx?M=F&ID=4238201&GUID=581E3C83-A30C-4984-B9E2-9BABC3F6F16F>

Here, the Board of Architects regulations are enforceable for many reasons including (1) they regulate aesthetics, which is clearly permissible under the police power, (2) the BOA seeks to work with applicants regarding solar panel applications, (3) if an applicant disagrees with the BOA, a quasi-judicial review and appeal process is available as an administrative remedy, and (4) BOA review predates section 163.04 so the City could not have "adopt[ed]" the ordinance in violation of section 163.04.

All that being said, I believe you and I should meet with the applicant to see if we can reach a resolution of this matter, or agree to an administrative process going forward, pursuant to my authority under section 2-201(e)(6) of the City Code. Also, please share this email with the applicant.

**From:** [Leen, Craig](#)  
**To:** [Paulk, Enga](#)  
**Subject:** FW: AB-15-12-5483--Pineres PV  
**Date:** Thursday, March 31, 2016 7:50:44 PM  
**Attachments:** [image001.png](#)

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Please publish.

**Craig E. Leen, City Attorney**

*Board Certified by the Florida Bar in  
City, County and Local Government Law*

City of Coral Gables

405 Biltmore Way

Coral Gables, Florida 33134

Phone: (305) 460-5218

Fax: (305) 460-5264

Email: [cleen@coralgables.com](mailto:cleen@coralgables.com)



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THE CITY BEAUTIFUL

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**From:** Leen, Craig  
**Sent:** Thursday, March 31, 2016 7:47 PM  
**To:** Trias, Ramon  
**Subject:** RE: AB-15-12-5483--Pineres PV

Ramon,

I have reviewed section 163.04 of the Florida Statutes, and conducted research on Westlaw. Pursuant to section 2-201(e)(1) and (8) of the City Code, my opinion and interpretation is as follows:

Section 163.04(2) does not apply here, as the City is acting as a regulator, and is not enforcing a “deed restriction, covenant, declaration, or similar binding agreement.” Instead, the City is enforcing an ordinance with the force of law. Section 163.04(2) would be more relevant to a homeowners association.

In contrast, section 163.04(1) is applicable to the City. This provision prevents the City from adopting an ordinance that “prohibits or has the effect of prohibiting the installation of solar collectors,

clotheslines, or other energy devices based on renewable resources.” The City has no such ordinance. Indeed, the City encourages solar panels as a matter of policy and resolution. Indeed, the City has passed a resolution (Resolution No. 2015-304) encouraging and waiving fees related to solar panel applications. The resolution is available at this link:

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Here, the Board of Architects regulations are enforceable for many reasons including (1) they regulate aesthetics, which is clearly permissible under the police power, (2) the BOA seeks to work with applicants regarding solar panel applications, (3) if an applicant disagrees with the BOA, a quasi-judicial review and appeal process is available as an administrative remedy, and (4) BOA review predates section 163.04 so the City could not have “adopt[ed]” the ordinance in violation of section 163.04.

All that being said, I believe you and I should meet with the applicant to see if we can reach a resolution of this matter, or agree to an administrative process going forward, pursuant to my authority under section 2-201(e)(6) of the City Code. Also, please share this email with the applicant.

**Craig E. Leen, City Attorney**

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City of Coral Gables

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**From:** Trias, Ramon  
**Sent:** Thursday, March 31, 2016 3:51 PM  
**To:** Leen, Craig  
**Subject:** FW: AB-15-12-5483--Pineres PV

Craig:

Please review the following request. I do not read the Florida Statute cited to apply to building permits and related processes, such as BOA approval (it speaks of deed restrictions and similar requirements). What should we tell the applicant?

Ramon

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**From:** Mark Gross [mailto:permits@suntecsolarenergy.com]  
**Sent:** Thursday, March 31, 2016 3:30 PM  
**To:** Trias, Ramon  
**Cc:** Mindreau, Carlos A.; heng@suntecsolarenergy.com  
**Subject:** RE: AB-15-12-5483--Pineres PV

Good afternoon Mr. Trias,

Thank you for the reply. However, our primary concern was not sufficiently addressed by your response. I understand that the submittal has been deferred—that was the motivating factor for my original email. We are not looking to arrange a meeting for assistance with a revision—our application complies with State Law and Florida Building Code.

We understand that your time is valuable, but we would appreciate a direct response to the problems we are facing in the City and the confliction between Florida Statutes and City Ordinances with respect to solar projects. I look forward to your response.

Warm Regards,  
Mark Gross  
Permitting Manager  
LSCI, Inc. d.b.a. SunTec  
19321-C US Hwy 19 N STE 500  
Clearwater, FL 33764  
P: 727-571-4141 x230  
F: 727-683-9958  
[permits@suntecsolarenergy.com](mailto:permits@suntecsolarenergy.com)

“Compassion is Contagious”

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**From:** Trias, Ramon [mailto:rtrias@coralgables.com]  
**Sent:** Monday, March 28, 2016 7:50 AM  
**To:** 'Mark Gross' <[permits@suntecsolarenergy.com](mailto:permits@suntecsolarenergy.com)>  
**Cc:** Mindreau, Carlos A. <[cmindreau@coralgables.com](mailto:cmindreau@coralgables.com)>  
**Subject:** RE: AB-15-12-5483--Pineres PV

Dear Mr. Gross:

Thank you for your email. The Board of Architects reviews all exterior projects for aesthetics. Your request has been deferred, which means you have the opportunity to address any concerns. In addition to issues relating to placement and orientation mentioned in your email, the board also requested photographs, to better review existing conditions, and a different design for wiring.

If you are interested in revising the request, I will be happy to meet with you and assist, prior to the next BOA meeting. If the request is denied some point in the future, you may choose to appeal the BOA decision, as provided by the Zoning Code.

Thank you for your patience with this important process of review.

Ramon Trias  
Director of Planning and Zoning

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**From:** Mark Gross [<mailto:permits@suntecsolarenergy.com>]  
**Sent:** Friday, March 25, 2016 5:18 PM  
**To:** Trias, Ramon  
**Subject:** AB-15-12-5483--Pineres PV

Good afternoon Mr. Trias,

I am writing you in an attempt to resolve an issue with a BOA review of the Solar Photovoltaic project above. On 3/3/2016, our plan was deferred by the BOA. We were told that the solar array must be moved to the rear of the home—however, the rear of the home faces WNW. Unfortunately, this determination is in violation of Florida Statute 163.04(2). I have attached a copy of FSS163.04 for review and paraphrased sections below.

Per FSS163.04(2):

“...A property owner may not be denied permission to install solar collectors or other energy devices based on renewable resources by any entity granted the power or right in any deed restriction, covenant, or similar binding agreement to approve, forbid, control, or direct alteration of property with respect to residential dwellings not exceeding three stories in height. For purposes of this subsection, such entity may determine the specific location where solar collectors may be installed on the roof within an orientation to the south or within 45° east or west of due south provided that such determination does not impair the effective operation of the solar collectors.”

By requiring that the solar collectors be installed on the rear of the home, the BOA is determining the specific location be oriented to the WNW—which is not allowed under Florida Law. A WNW exposure would **severely** lessen the efficient operation of the solar system to the detriment of the homeowner. The most feasible location for a solar system, based on the orientation of the home, would be over the garage facing SSW. As that roof plane does not have enough area to accommodate the number of collectors proposed, the next best location is the ESE facing roof (front

of the home). It is a gable roof with only the sole south exposure in a small area over the garage.

As part of the report given me by the two LSCI, Inc. representatives who were present for the BOA review, it was suggested by the BOA that we add more collectors to cover the loss of incident solar energy collection. With respect to that statement—who is carrying the cost of those extra collectors? Even if the homeowner were to agree to pay for additional collectors, what happens when the rear of the house is filled and the homeowner still wants to add more collectors? They would have no choice but to add them in the front of the home.

Lastly, one of the final statements made by the BOA to our representatives who were at the BOA meeting on 3/3/2016 should also be noted. The comment was to the effect of: [There are many levels of law—federal, state and city law. While the City has to follow all levels of law, City law supersedes state and federal statutes]. While City Ordinances do indeed overrule Florida Building Code, they do not negate state statutes. I will end this message with a passage from FSS163.04(4) as I believe this section sums up the position of the State regarding renewable energy and reinforces our desire to not increase the system cost for the homeowner:

**“The legislative intent in enacting these provisions is to protect the public health, safety, and welfare by encouraging the development and use of renewable resources in order to conserve and protect the value of land, buildings, and resources by preventing the adoption of measures which will have the ultimate effect, however unintended, of driving the costs of owning and operating commercial or residential property beyond the capacity of private owners to maintain. This section shall not apply to patio railings in condominiums, cooperatives, or apartments.”**

Please comment.

Warm Regards,  
Mark Gross  
Permitting Manager  
LSCI, Inc. d.b.a. SunTec  
19321-C US Hwy 19 N STE 500  
Clearwater, FL 33764  
P: 727-571-4141 x230  
F: 727-683-9958  
[permits@suntecsolarenergy.com](mailto:permits@suntecsolarenergy.com)

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**Solar Water Heater - Solar Pool Heater - Solar AC - Photovoltaic**  
Please Note: Florida has a very broad Public Records Law. Most written communications to or from State and Local Officials regarding State or Local business are public records available to the public and media upon request. Your email communications may therefore be subject to public disclosure.



Solar Water Heater - Solar Pool Heater - Solar AC - Photovoltaic