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November 20, 2009

VIA REGISTERED E-MAIL

Jim Richmond, Esq.
Counsel to the Florida Building Commission
Department of Community Affairs
2555 Shumard Oaks Blvd.
Tallahassee, FL 32399-2100

Re: Petition for Declaratory Statement No. **DCA 09-DEC-259**: Malibu Lodging
Investments, LLC

Dear Jim:

I am writing to request that you forward this letter to the Commission Chairman as a request to the Commission to defer action on the above-referenced petition for declaratory statement (the "Petition") until the February 2010 meeting of the Commission with leave to withdraw the petition should the concerns with the local jurisdiction that led to the filing of the petition be resolved prior to the February 2010 hearing date.

As you and I discussed, because of "not the best language in the building code" as inherited from the IBC, a decision of the Commission to require signage to attain building permits without providing objective criteria as to which signs require permits and which do not may ultimately lead to constitutional concerns. *See, e.g., City of West Palm Beach v. State*, 30 So. 2d 491, 492 (Fla. 1947) ("When regulations are to be imposed in order to promote health, welfare, safety and morals it is necessary that exactions be fixed in the ordinance with such certainty that they not be left to the whim or caprice of the administrative agency..."). Therefore, if certain conditions inspiring the filing of the petition have either changed or are likely to change in the very near future making the need for the questions in the petition to be answered potentially moot, it seems the better chosen path to not push for a final determination on the petition until, and unless, such a determination is necessary for the Petitioner.

Therefore, I respectfully request that the Commission defer the second reading on this petition to its February 2010 meeting to allow petitioner to see if his issues "go away" and to allow Petitioner to withdraw the petition without prejudice during that time period should the issues raised in the petition become moot as to the Petitioner.

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Please feel free to contact me with any questions.

Very truly yours,



Robert S. Fine

RSF

cc: Richard Dixon
Mo Madani
John Shubin, Esq.
Malibu Lodging