



MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMITTEE MEMORANDUM

TO: Members of the Land Use and Development Committee

FROM: Jorge M. Gonzalez, City Manager *JMG*

DATE: June 13, 2012

SUBJECT: **ADDENDUM TO THE LAND USE AND DEVELOPMENT COMMITTEE MEETING AGENDA**

Attached, please find an Addendum to the Land Use and Development Committee Agenda.

- 7. DISCUSSION ON POLICY CONSIDERATION REGARDING THE GRANTING OF SUBTERRANEAN OR AERIAL RIGHTS OVER PUBLIC PROPERTY.
(REQUESTED BY CITY COMMISSION
JUNE 6, 2012 CITY COMMISSION MEETING ITEM C4D AND ITEM R7B)**

DISTRIBUTION

Mayor & Commission
Jose Smith, City Attorney
Jorge Gomez, Assistant City Manager
Hilda M. Fernandez, Assistant City Manager
Gary Held, First Assistant City Attorney
Richard Lorber, Planning Director




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COMMISSION MEMORANDUM

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

FROM: Jorge M. Gonzalez, City Manager  For JMG

DATE: June 13, 2012

SUBJECT: **DISCUSSION ON ADMINISTRATIVE POLICIES AND PROCEDURES REGARDING THE GRANTING OF SUBTERRANEAN OR AIR RIGHTS OVER OR UNDER (AS THE CASE MAY BE) PUBLIC PROPERTY.**

BACKGROUND

At its regular meeting on June 6, 2012, the Commission decided not to take action pertaining to a request for a revocable permit for a proposed City elevated, covered, pedestrian bridge that spans the 20 feet public right-of-way (ROW) of Ocean Court (Attachment A is a rendering of the proposed elevated pedestrian bridge). The matter was referred to the Land Use and Development Committee (LUDC) and the Finance and Citywide Projects Committee (FCWPC) for further discussion.

A referral to the LUDC and the FCWPC was also made for further discussion of a request for a sub-surface easement across the 50 feet ROW on 34th street, between Collins Avenue and Indian Creek Drive (Attachment B is a subterranean site plan and profile view).

The Administration seeks policy direction on the aforesaid requests, and other future similar requests regarding the use of sub-surface rights and/or air rights over or under public property.

DISCUSSION

- 1. Use of Air Rights Over Public Property:** The owners of the Ocean Drive/Collins Avenue property are requesting, pursuant to a grant of a revocable permit by the City, to use the air-rights over a public alley, in order to construct a bridge that would connect a property fronting Ocean Drive with their property fronting Collins Avenue. This bridge will add value to the Collins Avenue property as it will have its "entrance" on Ocean Drive; a more desirable hotel location. If this approach proves successful, it is anticipated that other properties will come forth with similar requests. Indeed, staff from the Planning Department has held preliminary discussions with a second property owner on Ocean Drive that wants to connect, with a similar bridge to a property along Collins Avenue. Currently, there are no revocable permits that have been granted for this type of proposed use.
- 2. Use of Sub-Surface Rights Underneath Public Property:** The owners of the Atlantic Hotel and other vacant property on the west side of Collins Avenue are requesting pursuant to the grant of an easement by the City, to use the subterranean rights underneath a public street in order to connect the subterranean parking between two properties on the north and south side of 34th street between Collins Avenue and Indian Creek Drive. This subterranean connection, crossing underneath 34th street, would be for the exclusive use of the Atlantic Hotel development. If this sub-surface easement request is approved, it is anticipated that similar requests would be made by other developers. Currently, there are no sub-surface easements granted underneath any City street or any public ROW.

3. ANALYSIS

Regarding air rights, the first policy question should be whether the City is willing to entertain requests by the private sector to use the air rights over public ROWs for the construction of elevated connecting bridges; and, if so, over what type of ROW's (streets vs. alleys). The Administration is concerned that the wider the ROW, the more of an impact these type structures will have. The rationale is that, through the design review process, only very light, thin structures would be acceptable. As such, since alleys are typically only 20 feet in width, it is much simpler to achieve a thin bridge when the street span is narrower. The typical street width is 50 feet and above, which would require wider and heavier bridges to ensure a safer structural solution. It is suggested that for air-rights over public alleys, a planning review be conducted under Sec. 82-38 of the City Code, but the use of air-rights over streets should require an additional hearing in front of the Planning Board.

Regarding subterranean easements, the first policy question is whether this type of easement should be granted only underneath alleys or local streets that have a maximum ROW width of 50 feet, or whether this type of easement be granted also on wider streets, such as Washington Avenue.

The second policy question addresses the type of approval granted by the City in order to build over or under public ROWs. The applicant for the elevated pedestrian bridge applied for a revocable permit and the request was processed as such. However, as stated during the Commission meeting, it may be more appropriate to consider the granting of an easement for future requests, instead of a revocable permit.

The Atlantic Hotel applied for a perpetual easement; however, in their letter of intent, they cited the revocable permit as the review criteria.

The City Administration recommends that the City Commission evaluate the following administrative procedures with regard to the granting of subterranean and/or air rights easements:

1. These types of requests should be treated as easements, whether sub-surface or air-right easements. This would require the creation of an easement agreement between the City and the applicant. Such an agreement would be able to address on a case by case basis different issues such as maintenance, revocation, proffers, etc. Typically, an easement would not trigger the Charter provisions on the disposition of land and the Committee should be aware of this fact.
2. Review Criteria: Chapter 82 of the City Code requires that a Planning Analysis for the sale or lease of 10 or more years be performed. While an easement for air-rights or sub-surface use does not fall under this provision of the Code, section 82-36 does state that where such analysis is in the best interest of the City, the City Manager may require the Planning department to prepare a written analysis on any proposed lease regardless of the term. The Administration suggests that the criteria contained in 82-36 be used for these types of easements.
3. Public Hearing: Typically easements only require City Commission action. However use of the City's sub-surface or air-rights can vary and depending on the type of request, the Commission may wish to require additional opportunity for public impact. As an example, creating a bridge over an alley may be acceptable to approve with just a single public hearing. However, a bridge over a public street may warrant additional venues for public participation and consensus building prior to Commission action. The Charter further requires that the sale or disposition of specific property go through a public referendum. This requirement is limited to ocean front land, parks and certain specified properties. The Charter requires that the sale, exchange, conveyance or lease of 10 years or longer of all other property requires approval by a majority 4/7 vote of the Planning Board and 6/7 vote of the City Commission. The Administration suggests that the Commission establish the thresholds for sub-surface or air-right easements that would trigger at a minimum, a Planning Board

LUDC Referral – Underground and aerial easements

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review, duly noticed wherein the public could participate, express their views and the Planning Board could then make an advisory recommendation to the Commission. This would give the Commission one additional public process and review to help inform them of any issues of a proposed request.

The issue of compensation will be taken to the FCWPC for discussion and direction. The Commission requested that an appraisal be performed and the Administration is in the process of obtaining this and other information that will be presented at the Finance and Citywide Projects Committee meeting.

CONCLUSION

The above is provided as a starting point for discussion by members for the Committee regarding policy direction on sub-surface and air rights easements.

Attachments:

- A. 1220 Ocean Court rendering of the proposed elevated pedestrian bridge
- B. 3400 Collins Avenue subterranean site plan and profile view

JGG/FHB/JJF/RWS

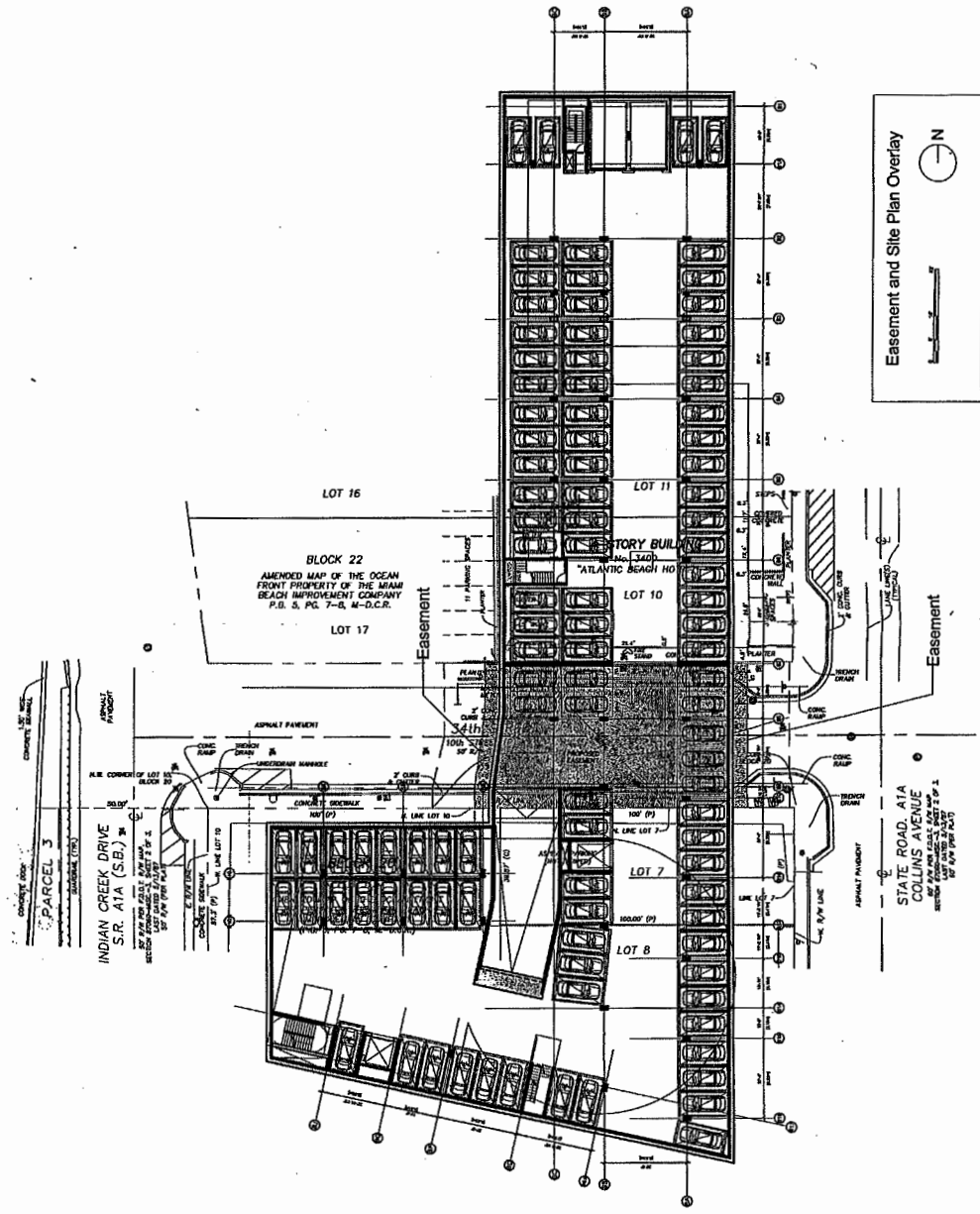
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NEW YORK, NY 10017
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CHECKED BY: J. B. BROWN
APPROVED BY: J. B. BROWN

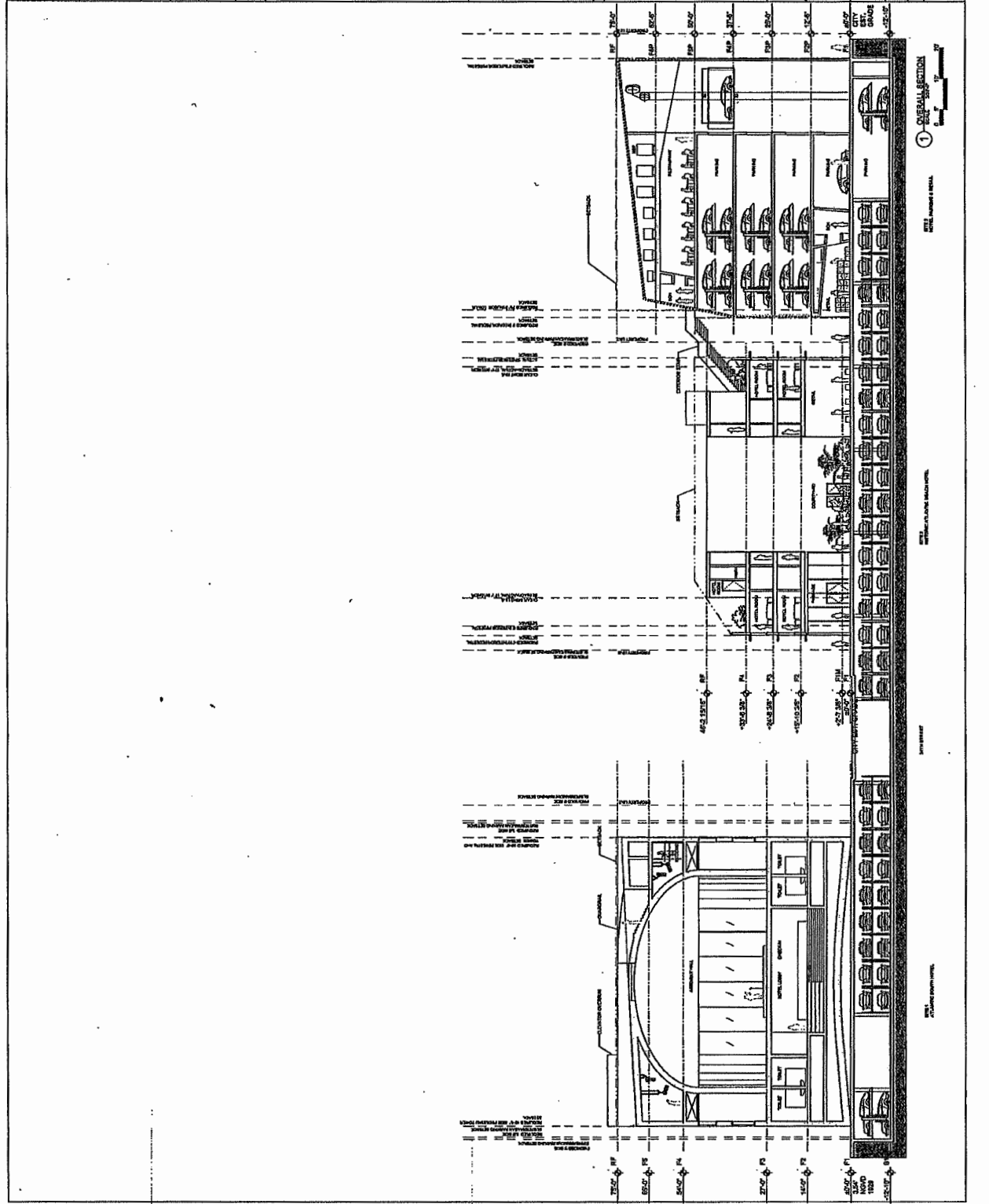
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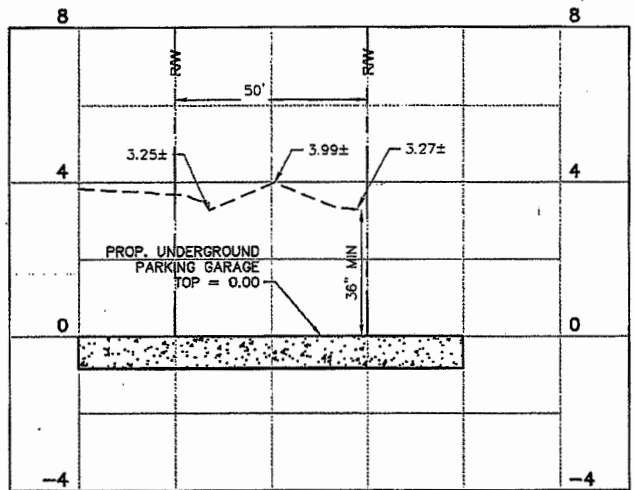
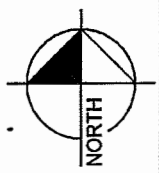
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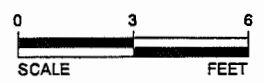
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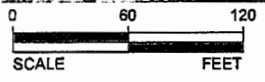
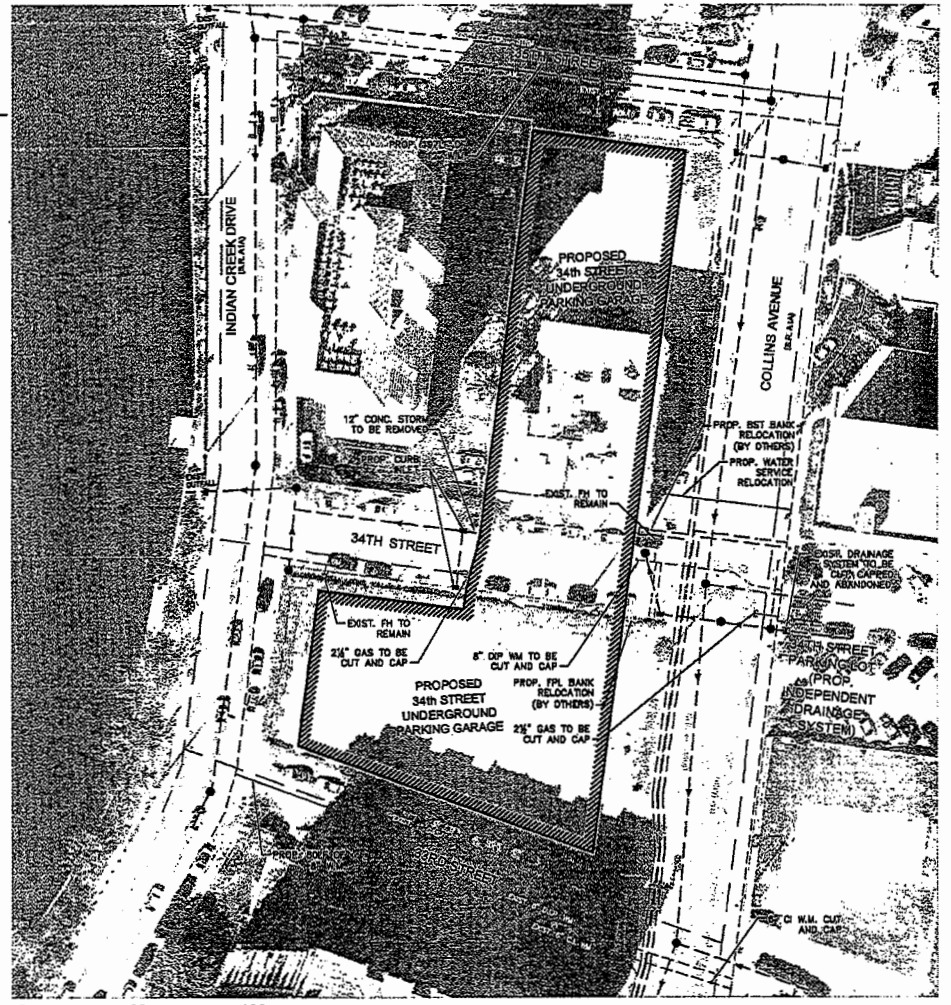
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SECTION A-A



- NOTE:**
- EXISTING AND PROPOSED GRADE ELEVATIONS ARE BASED ON NATIONAL GEODETIC VERTICAL DATUM, 1929 (NGVD 29).



PLAN

NO. REVISIONS DATE BY	DESIGNED BY DRAWN BY CHECKED BY	Kimley-Horn and Associates, Inc. 3912 KIMLEY-HORN AND ASSOCIATES, INC. 1201 BRIDGELL AVE SUITE 400L MIAMI, FL 33131 PHONE 305-475-3025 FAX 305-433-7783 WWW.KIMLEY-HORN.COM CA 0000098	DATE 02.07.2012	ATLANTIC HOTELS EXHIBIT C	DESIGN ENGINEER JORGE L. FERNANDEZ FLORIDA REGISTRATION NUMBER 71682	SUBTERRANEAN PARKING GARAGE AND 34TH STREET	SHEET NUMBER EX-C
	PROJECT NO. 043512000		MIAMI-DADE FLORIDA		DATE:		