



# MIAMI BEACH

## COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee

FROM: Jorge M. Gonzalez, City Manager

DATE: June 28, 2012

SUBJECT: **DISCUSSION ON POLICY CONSIDERATION REGARDING THE GRANTING OF SUBTERRANEAN OR AERIAL RIGHTS OVER PUBLIC PROPERTY**

### **BACKGROUND**

At the June 6, 2012 meeting, the City Commission referred a proposal for a subsurface perpetual easement underneath 34<sup>th</sup> Street (Attachment A) to the Land Use and Development Committee (LUDC) and the Finance and Citywide Projects Committee (FCWPC) for discussion. On a similar track, a proposed revocable permit for an aerial bridge across Ocean Court (Attachment B) was referred to the LUDC. However, the City Administration believes that policy direction should be provided on the precedent created by both requested easements to use the air rights over and subsurface rights underneath public property.

At its June 13, 2012 meeting, the LUDC discussed the policy question regarding the proper method for effectuating these requests, whether by revocable permit or easement or other instrument, and possibly including financial remuneration to the City. The Committee discussed the appraisal cost, suggesting that the fee for the application could include the cost of the appraisal. The Committee discussed setting the required public hearings, sending the issue of appraisal and methodology to Finance. The Committee then discussed thresholds for future approvals, expressing that large projects should probably have a public hearing, but smaller ones might not need it. Finally, the Committee voted 3-0 in favor of advancing both of these projects.

The Waronker and Rosen firm is preparing appraisals of the proposed easements at a cost of \$5,000 for the aerial easement and \$4,250 for the subterranean easement. Estimates of their values are due to the City on July 6, 2012.

### **ANALYSIS**

To serve as a point of departure for the committees, the Administration is providing (Attachment C) as a sample of how the City of Miami regulates requests for public easements.

As an alternative, the City could require the Applicant to pay the fee simple value of the easement area as determined by a certified general appraiser.

**CONCLUSION**

The above information is provided for discussion by members of the Finance and Citywide Projects Committee.

Attachments:

- A – Sketch and Legal description of the proposed subterranean easement
- B – Sketch and Legal description of the proposed aerial easement
- C – City of Miami Code Sec. 55-14

  
JMGMGG/FHB/JFR/DW



**STONER & ASSOCIATES, INC.**

SURVEYORS - MAPPERS  
Florida Licensed Survey  
and Mapping Business No. 6633

4341 S.W. 62nd Avenue  
Davie, Florida 33314

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RECORDING AREA

**LEGAL DESCRIPTION OF:**

**A PARCEL OF LAND**

**LYING IN SECTION 26, TOWNSHIP 53 SOUTH, RANGE 42 EAST  
CITY OF MIAMI BEACH, MIAMI-DADE COUNTY, FLORIDA**

A PARCEL OF LAND BEING A PORTION OF SECTION 26, TOWNSHIP 53 SOUTH, RANGE 42 EAST, LYING WITHIN THE CITY OF MIAMI BEACH, MIAMI-DADE COUNTY, FLORIDA; ALSO, BEING PART OF 34th STREET, A PUBLIC DEDICATED RIGHT OF WAY WITHIN SAID CITY OF MIAMI BEACH; SAID PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF LOT 7, BLOCK 20 OF THE AMENDED MAP OF THE OCEAN FRONT PROPERTY OF THE MIAMI BEACH IMPROVEMENT COMPANY, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 5, PAGES 7 AND 8, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

THENCE NORTH 82°28'02" WEST, ALONG THE NORTH LINE OF LOT 7 AND ALSO ALONG THE SOUTH RIGHT OF WAY LINE FOR SAID 34th STREET, A DISTANCE OF 15.79 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUE NORTH 82°28'02" WEST, ALONG THE NORTH LINE OF LOTS 7 AND 10 OF SAID BLOCK 20 AND ALSO ALONG SAID SOUTH RIGHT OF WAY LINE, A DISTANCE OF 93.92 FEET;

THENCE NORTH 07°31'57" EAST, A DISTANCE OF 6.42 FEET;

THENCE NORTH 14°57'34" EAST, A DISTANCE OF 27.45 FEET;

THENCE NORTH 07°31'57" EAST, A DISTANCE OF 16.22 FEET TO A POINT ON THE SOUTH LINE OF LOT 17, BLOCK 22, OF SAID PLAT OF AMENDED MAP OF THE OCEAN FRONT PROPERTY OF THE MIAMI BEACH IMPROVEMENT COMPANY AND ALSO TO A POINT ON THE NORTH RIGHT OF WAY LINE FOR SAID 34th STREET;

THENCE SOUTH 82°35'19" EAST, ALONG THE SOUTH LINE OF LOTS 17 AND 10 OF SAID BLOCK 22 AND ALONG SAID NORTH RIGHT OF WAY LINE, A DISTANCE OF 89.77 FEET;

THENCE SOUTH 07°31'57" WEST, A DISTANCE OF 50.04 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE, LYING AND BEING IN THE CITY OF MIAMI BEACH, MIAMI-DADE COUNTY, FLORIDA, CONTAINING 4,555 SQUARE FEET (0.1046 ACRES), MORE OR LESS.

NOTES:

1. THE PROPERTY SHOWN HEREON WAS NOT ABSTRACTED FOR OWNERSHIP, RIGHTS-OF-WAY, EASEMENTS OR OTHER MATTERS OF RECORD BY STONER & ASSOCIATES, INC..
2. THIS SKETCH DOES NOT REPRESENT A FIELD SURVEY. (THIS IS NOT A SURVEY).
3. THIS SKETCH OF DESCRIPTION WAS PREPARED BY THIS FIRM WITHOUT THE BENEFIT OF A TITLE SEARCH. AND WAS BASED ON:
  - A. AMENDED MAP OF THE OCEAN FRONT PROPERTY OF THE MIAMI BEACH IMPROVEMENT COMPANY, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 5, PAGES 7 & 8, MIAMI-DADE COUNTY, FLORIDA.
  - B. STONER & ASSOCIATES, INC. PROJECTS NUMBER 04-6545, 08-7228, 11-7613, 11-7729
  - C. SKETCH PROVIDED BY CLIENT.
4. THE BEARINGS SHOWN HEREON ARE BASED ON N.29°57'53"E., ALONG THE BASELINE OF STATE ROAD A1A (INDIAN CREEK DRIVE), AS SHOWN ON FLORIDA DEPARTMENT OF TRANSPORTATION PROJECT NETWORK CONTROL SHEET, FINANCIAL PROJECT ID. 414641-1-52-01, BETWEEN BASELINE STATIONS 51+40.33 AND 53+97.73.

**CERTIFICATE:**

THIS IS TO CERTIFY THAT THE SKETCH AND LEGAL DESCRIPTION SHOWN HEREON IS ACCURATE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. I FURTHER CERTIFY THAT THIS SKETCH AND LEGAL DESCRIPTION MEETS THE MINIMUM TECHNICAL STANDARDS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.07, FLORIDA STATUTES.

REVISIONS	DATE	BY
1 REVISE EASEMENT PER CLIENT	03/07/12	WDLR

**WALTER DE LA ROCHA**

PROFESSIONAL SURVEYOR AND MAPPER NO. 6081 - STATE OF FLORIDA

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DATE OF SKETCH:	DRAWN BY	CHECKED BY	FIELD BOOK
02/22/12	WDLR	JDS	N/A

**SEAL**  
NOT VALID UNLESS  
SEALED HERE WITH  
AN EMBOSSED  
SURVEYOR'S SEAL

SHEET 1 OF 2

SKETCH NO.  
11-7735 UGE



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CITY OF MIAMI BEACH, MIAMI-DADE COUNTY, FLORIDA**



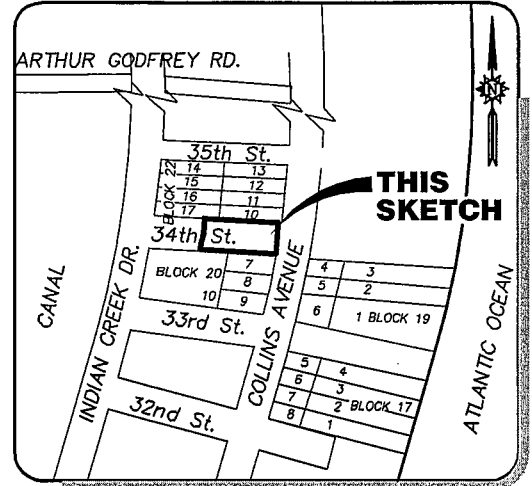
SCALE: 1" = 40'



GRAPHIC SCALE

**LEGEND:**

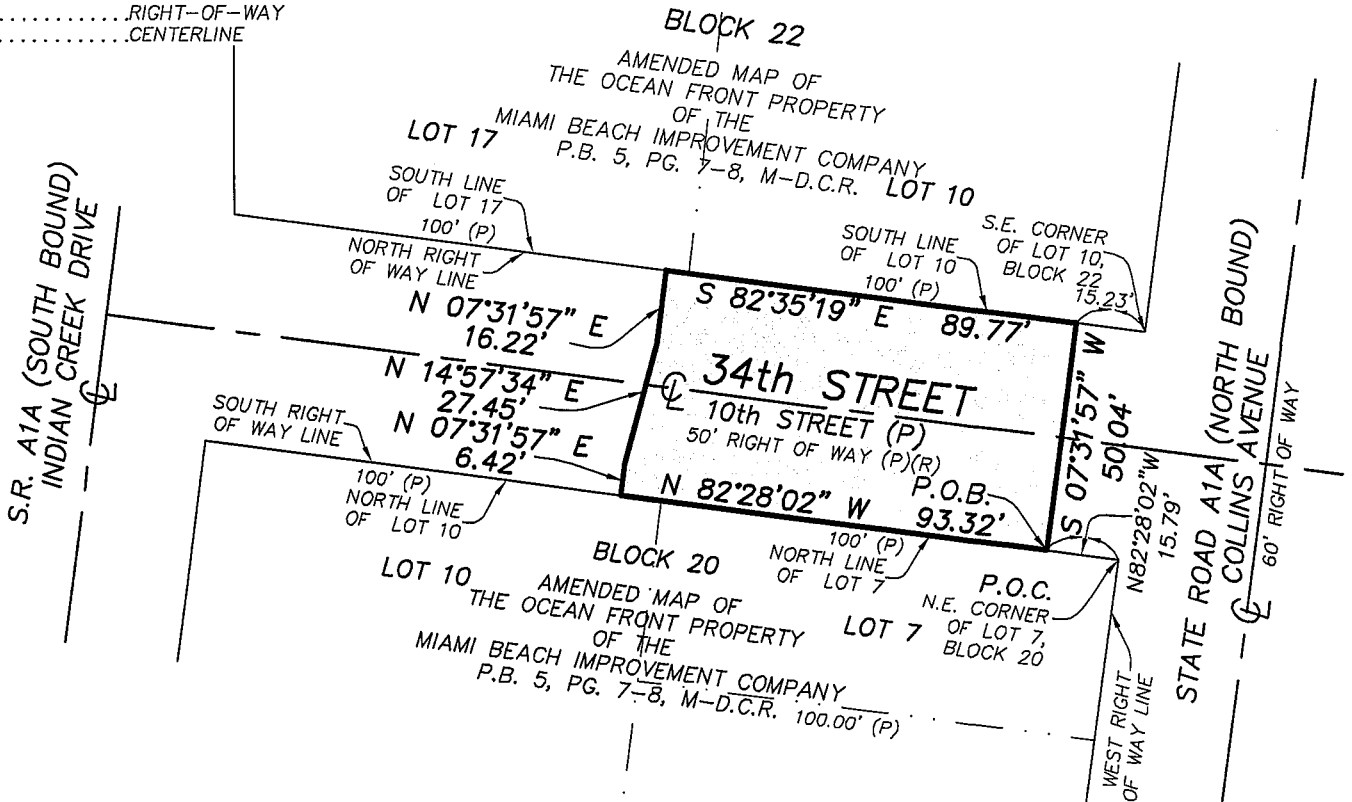
- P.B..... PLAT BOOK
- PG..... PAGE
- M-D.C.R..... MIAMI-DADE COUNTY RECORDS
- P.O.C..... POINT OF COMMENCEMENT
- P.O.B..... POINT OF BEGINNING
- (P)..... PER PLAT
- (R)..... PER RECORDS
- R/W..... RIGHT-OF-WAY
- Ⓢ..... CENTERLINE



**VICINITY MAP**

(NOT TO SCALE)

NOTE:  
SEE SHEET 1 FOR THE LEGAL DESCRIPTION OF  
THE SKETCH GRAPHICALLY SHOWN HEREON.







**Sec. 55-14. - Encroachments on or in rights-of-way, public easements, private easements or emergency access easements; exceptions.**

- (a) No building or any other type of structure shall be permitted on or in any right-of-way, public easement or emergency access easement, except required or approved utility installations, or as may be permitted under the Florida Building Code or chapter 54.
- (b) The city commission, by resolution, may permit an encroachment which does not unduly restrict use of the right-of-way, public easement or emergency access easement area where such encroachment is a necessary essential element in the construction of an otherwise authorized pedestrian and/or vehicular overpass above or underpass below said right-of-way, public easement or emergency access easement area subject to payment of a one time user fee in accordance with subsection (c) hereinbelow and to the recording of a covenant to run with the land executed by the property owner in accordance with subsection (d) hereinbelow, with the payment by the owner of the requisite user fee including, but not limited to, the preparation and recording of said covenant.
- (c) Calculation of user fee. The user fee shall be calculated as follows:
  - (1) Property owner must obtain a certified appraisal for the land value of the two properties from a certified general appraiser approved by the city. The land value per square foot of building shall be determined by dividing the total market value of the land comprising the entire project site by the maximum amount of building square footage that can be constructed by right as permitted by the applicable city zoning ordinance(s).
  - (2) The estimated value of the aerial or subterranean rights shall be determined by multiplying the land value per square foot of building determined in subsection (c)(1), by the total square footage of the proposed passageway(s) including multiple levels.
- (d) Covenant to run with the land. The covenant to run with the land (covenant) shall be in a form acceptable to the city attorney. The provisions of the covenant shall include but not be limited to:
  - (1) Maintenance of the overpass or underpass by the property owner in accordance with the Florida Building Code and the City Charter and Code.
  - (2) Restoration or removal of the encroachment by the property owner within 30 days of written notification by the director of the department of public works to properly maintain, restore, or remove the overpass or underpass, as applicable.
  - (3) In the event of failure of the property owner to restore, maintain or remove the overpass or underpass, when notified, the city manager may contract for the restoration or removal of the overpass or underpass, and place a special assessment lien against the owner's abutting private property for the unpaid cost of the restoration or removal. These unpaid costs and expenses incurred by the city or its agents shall constitute, and are hereby imposed as, special assessment liens against the abutting private real property of the owner, and until fully paid and discharged, or barred by law, shall remain liens equal in rank and dignity with liens of city and county ad valorem taxes and superior in rank and dignity to all other liens, encumbrances, titles and claims in, to or against the real property involved. Such fees shall become delinquent if not fully paid within 60 days after their due date. The total outstanding balance of delinquent fees and related charges shall bear an interest charge of one percent per month, on any and all of the outstanding balance of the fees due, and if not fully paid with all accrued interest by the due date will continue to accrue interest at the rate of one percent per month. Unpaid and delinquent fees, together with accrued interest, shall remain and constitute special assessment liens against the private property owner's abutting real property involved which is deriving a benefit under this chapter. Such special assessment liens for the repair, maintenance, removal or restoration costs and interest and costs thereon may be enforced by any of the methods provided in F.S. ch. 85, or in the alternative, foreclosure proceedings may be instituted and prosecuted under the provisions of F.S. ch. 173, or the collection and enforcement of payment thereof may be accomplished by any other method authorized by law. The owner shall pay all costs of collection, including reasonable attorney fees, court costs, and abstracting and related lien expenses imposed by this chapter.
  - (4) Provision of an insurance policy, in an amount determined by the city's risk manager, naming the city as an additional insured for public liability and property damage. This insurance shall be in effect as long as the encroachment exists in the right-of-way, public easement or emergency access easement. If the property owner fails to continue to provide the insurance coverage, the city shall have the right to secure a similar insurance policy in its name and place a special assessment lien against the owner's abutting private property as set forth above in subsection (c)(3), for the total cost of the premium.
  - (5) The property owner shall hold harmless and indemnify the city, its officials and employees from any claims for damage or loss to property and injury to persons of any nature whatsoever arising out of the use, construction, maintenance or removal of the overpass or underpass and from and against any claims which may arise out of the granting of permission for the encroachment or any activity performed under the terms of the covenant.
- (e) The city manager or designee may permit an encroachment into a private easement, where said encroachment is not a safety hazard, subject to receipt by the city of written consent of the holder(s) of the private easement(s), written releases from all benefited specified individuals or public or private entities, or a certification that no such benefited individuals or public or private entities exist within the easement, recommendations of approval from the departments of police, public works, fire-rescue, general services administration, planning, building and zoning, and an executed hold harmless and indemnification agreement for the benefit of the city in a form acceptable to the city attorney, with the herein exceptions being subject to compliance with all other requirements of law.
- (f) The user fee required under this section shall not apply to governmental entities and agencies, including state, county and city departments or instrumentalities that are exempted from payment of this user fee.

(Ord. No. 9584, § 1, 3-24-83; Ord. No. 10367, § 1, 1-14-88; Ord. No. 10730, § 1, 5-24-90; Ord. No. 11008, § 2, 10-8-92; Code 1980, § 54.5-15; Ord. No. 13060, § 2, 3-12-09)