



COMMITTEE MEMORANDUM

TO: Members of the Land Use and Development Committee

FROM: Kathie G. Brooks, Interim City Manager 

DATE: September 19, 2012

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

Background

During the past several months the City Commission has discussed requests by two separate property owners for the granting of aerial and subterranean easements on City property. At its regular meeting on June 6, 2012, the City Commission decided not to take action pertaining to a request for a revocable permit for a proposed elevated, covered, pedestrian bridge that spans the 20 feet public right-of-way (ROW) of Ocean Court. 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 subsurface easement across the 50 feet ROW on 34th street, between Collins Avenue and Indian Creek Drive.

At the June 13, 2012 Land Use Committee meeting, it was determined that:

1. An easement was the more appropriate instrument for allowing an aerial or sub-surface use of the City right-of-way as opposed to revocable permits.
2. The value of the easement should be determined via an appraisal conducted for the City and paid for by the Applicants.
3. The Commission should consider granting these easements as a public hearing.

At the June 28, Finance and Citywide Projects Committee, several methods of appraisals were discussed. Method One is based on the fee simple market value of the parcels directly adjoining the easement adjusted for the loss of utility due to the fact that the easement could not be developed in the same manner as the adjoining parcels. Method Two is based on some reasonable portion of the added value that would accrue to the adjoining parcels as a result of the easement. Method Three is based on the fee simple market value with no deductions based on limitation for development. Method Four is a method outlined by the City of Miami in its subdivision regulations based on applying fee simple value on a per square foot basis applied to the area of the easement.

The Committee recommended to use Method Three, the fee simple methodology for valuation of the easement with flexibility to adjust the valuation when appropriate, based on recommendations from the City appraiser. It should be noted that at the Commission meeting of September 12, 2012, the Commission revisited the appraisal methodology and referred the matter to the Finance and Citywide Projects Committee.

Both Committees, while expressing general support for the requests before them, requested that the Administration formulate criteria for review of these types of requests. This was restated by the full Commission while discussing the request for the aerial easement over Ocean Court at the September 12, 2012 City Commission meeting.

To that end, the Administration has formulated the below suggested procedure when reviewing private sector requests for sub-surface or aerial easements under/over public property: This procedure incorporates prior Commission direction.

- Upon initial receipt of request for easement, staff will place a referral item in the earliest available City Commission agenda. The referral will be to the LUDC unless otherwise directed by the City Commission.
- Staff will prepare the terms of a draft Easement Agreement and provide a review of the request using the criteria found in Section 82-38 and 82-94 of the City Code (see attached)
- The City will request an appraisal of the easement which shall be paid for by the applicant.
- The Committee should determine if the magnitude of the request warrants additional review by the Planning Board in order to create an additional public forum. The Committee may also decide that if the project associated with the request has been or will be part of a broader review process no further public input may be required.
- The Committee shall also find that the request furthers a public purpose and may also identify a public benefit that may be created with the assistance of the applicant in consideration for the granting of the easement.
- The Committee shall review the valuation methodology and advise if the value of the easement is in the best interest of the City
- When the Committee is satisfied with the various issues associated with the request have been satisfied, staff will set the item for a public hearing in front of the full Commission
- The City Commission will hold a public Hearing to consider the approval of the Easement Agreement.

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

KGB/JGG

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Sec. 82-38. - Planning analysis.

For any sale of city property, or lease of city property of more than ten years (including option periods), and in order for the city commission and the public to be fully apprised of all conditions relating to the proposed sale or lease of such city property, the city's planning department shall prepare a written analysis, to be submitted to the city commission concurrent with its consideration of the proposed sale or lease, using the following criteria:

- (1) Whether or not the proposed use is in keeping with city goals and objectives and conforms to the city's comprehensive plan.
- (2) The impact on adjacent properties (if any), including the potential positive or negative impacts such as diminution of open space, increased traffic, noise level, enhanced property values, improved development patterns and provision of necessary services. Based on the proposed use of the property, the city shall determine the potential impact of the project on city utilities and other infrastructure needs and the magnitude of costs associated with needed infrastructure improvements. Should it become apparent that further evaluation of traffic impact is needed, the purchaser/lessee shall be responsible for obtaining and paying for a traffic impact analysis from a reputable traffic engineer.
- (3) A determination as to whether or not the proposed use involves a public purpose, or is in keeping with the community's needs, such as expanding the city's revenue base, reducing city costs, creating jobs, creating a significant revenue stream, and/or improving the community's overall quality of life.
- (4) A determination as to whether or not the proposed use is in keeping with the surrounding neighborhood, will block views or create other environmental intrusions, and evaluation of the design and aesthetic considerations of the proposed development or project.
- (5) The impact on adjacent properties, whether or not there is adequate parking, street and infrastructure needs.
- (6) Such other issues as the city manager or his authorized designee, who shall be the city's planning director, may deem appropriate in analysis of the proposed disposition. Notwithstanding any provision in this section 82-83, the city manager, in his/her reasonable judgment and discretion, may require the planning department to prepare a written analysis (using the criteria in subsections (1)—(6) above) on any proposed lease, regardless of the term, where the city manager determines that such analysis is in the best interest of the city.

(Ord. No. 92-2783, § 3, 6-17-92; Ord. No. 2006-3509, § 1, 3-8-06; Ord. No. 2010-3690, § 1, 9-15-10)

Sec. 82-94. - Criteria for granting/denying revocable permits.

Revocable permits shall be granted or denied based upon existence of the following criteria:

- (1) That the applicant's need is substantial.
- (2) That the applicant holds title to an abutting property.
- (3) That the proposed improvements comply with applicable codes, ordinances, regulations, neighborhood plans and laws.
- (4) That the grant of such application will have no adverse effect on governmental/utility easements and uses on the property.
- (5) Alternatively:
 - a. That an unnecessary hardship exists that deprives the applicant of a reasonable use of the land, structure or building for which the revocable permit is sought arising out of special circumstances and conditions that exist and were not self-created and are peculiar to the land, structures or building involved and are not generally applicable to other lands, structures or buildings in the same zoning district and the grant of the application is the minimum that will allow reasonable use of the land, structures or building; or
 - b. That the grant of the revocable permit will enhance the neighborhood and/or community by such amenities as, for example, enhanced landscaping, improved drainage, improved lighting, and improved security.
- (6) That granting the revocable permit requested will not confer on the applicant any special privilege that is denied by this article to other owner of land, structures or buildings subject to similar conditions located in the same zoning district.
- (7) That granting the revocable permit will be in harmony with the general intent and purpose of this article, and that such revocable permit will not be injurious to surrounding properties, the neighborhood, or otherwise detrimental to the public welfare. In order to grant a revocable permit, the city commission must make an affirmative finding with respect to each of the criteria set forth above. These findings may be made by one motion addressed to all findings or, at the request of any member of the commission, a finding or findings shall be considered separately. The findings shall be made prior to the vote on the application. The revocable permit application shall be considered as a whole unless any member of the city commission shall request that the application be considered in parts, in which event the application shall be considered in such parts as requested. In light of the particular circumstances involved with each separate revocable permit request, the grant of any revocable permit shall not constitute or be deemed a precedent for the grant of any other revocable permit.

(Ord. No. 93-2855, § 1(33-4), 6-30-93; Ord. No. 95-3028, § 1(33-4), 12-20-95)



MIAMI BEACH

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

COMMISSION MEMORANDUM

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

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

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

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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