



## COMMITTEE MEMORANDUM

TO: Land Use and Development Committee

FROM: Jimmy L. Morales, City Manager

DATE: January 22, 2014

SUBJECT: **DISCUSSION REGARDING THE CODE SECTION GOVERNING UNITIES OF TITLE AND COVENANTS IN LIEU OF UNITY OF TITLE.**

### **BACKGROUND**

On June 5<sup>th</sup>, 2013, at the request of Commissioner Tobin, the City Commission referred a discussion item to the Land Use and Development Committee, pertaining to the section of the City Code governing Unities of Title and Covenants in Lieu of Unity of Title.

### **ANALYSIS**

On March 1, 2013, the Board of Adjustment granted an appeal of an Administrative Decision of the Planning Director, which denied a proposed transfer of Floor Area (FAR) for a project on a multi-property site. The Administrative Determination, dated April 10, 2012, concluded that a proposed unification of three subject properties through the use of a proposed 'Covenant in Lieu of Unity of Title' was not a true "unified development site" as required by Section 118-5 of the City Code, and the proposed transfer of development rights did not conform with the applicable Charter provision 1.03(c) or the Land Development Regulations.

The following is a summary of the relevant instruments pertaining to a Unity of Title and a Covenant in Lieu of Unity of Title:

#### **Miami Beach City Charter:**

Section 1.03(c) of the City of Miami Beach Charter explicitly prohibits the floor area ratio of any property from being increased by zoning, transfer, or any other means from its current zoned floor area ratio as it exists currently, without being approved by a public referendum. This underlying principal has been a critical component in the overall policymaking of the City, the protection of the historic character of the City's historic districts, and the careful planning regulation of growth and development.

This Charter provision does include an exception for the division of lots, or the aggregation of development rights on unified abutting parcels, as may be permitted by ordinance. The ordinance referred to is Section 118-5 of the Land Development Regulations of the City Code, which discusses covenants in lieu of unity of title, for multiple buildings proposed for a single lot or for single or multiple buildings proposed for a unified development site consisting of multiple lots.

Section 118-5 - Unity of Title; Covenant in Lieu Thereof

In accordance with Section 118-5.a of the Code, a Declaration of Restrictive Covenants, also called a Covenant in Lieu of Unity of Title, must contain the following elements:

1. That the subject site will be developed in substantial accordance with the approved site plan, after one has been submitted and approved under the city's land development regulations. That no modification shall be effectuated without the written consent of the then owner(s) of the [phase] or portion of the property for which modification is sought, all owners within the original unified development site, or their successors, whose consent shall not be unreasonably withheld, and the director of the city's planning department; provided the director finds that the modification would not generate excessive noise or traffic, tend to create a fire or other equally or greater dangerous hazard, or provoke excessive overcrowding of people, or tend to provoke a nuisance, or be incompatible with the area concerned when considering the necessity and reasonableness of the modification in relation to the present and future development of the area concerned. Should the director withhold such approval, the then owner(s) of the phase or portion of the property for which modification is sought shall be permitted to seek such modification by application to modify the plan or covenant at public hearing before the appropriate city board or the city commission of Miami Beach Florida, (whichever by law has jurisdiction over such matters). Such application shall be in addition to all other required approvals necessary for the modification sought. Proposed modifications to the property's use, operation, physical condition or site plan shall also be required to return to the appropriate development review board or boards for consideration of the effect on prior approvals and the affirmation, modification or release of previously issued approvals or imposed conditions.
2. That if the subject property will be developed in phases, that each phase will be developed in substantial accordance with the approved site plan.
3. That in the event of multiple ownerships subsequent to site plan approval that each of the subsequent owners shall be bound by the terms, provisions and conditions of the declaration of restrictive covenants. The owner shall further agree that he or she will not convey portions of the subject property to such other parties unless and until the owner and such other party or parties shall have executed and mutually delivered, in recordable form, an instrument to be known as an "easement and operating agreement" which shall contain among other things:
  - a. Easements in the common area of each parcel for ingress to and egress from the other parcels;
  - b. Easements in the common area of each parcel for the passage and parking of vehicles;
  - c. Easements in the common area of each parcel for the passage and accommodation of pedestrians;
  - d. Easements for access roads across the common area of [each] parcel to public and private roadways;
  - e. Easements for the installation, use, operation, maintenance, repair, replacement, relocation and removal of utility facilities in appropriate areas in each such parcel;
  - f. Easements on each such parcel for construction of buildings and improvements in favor of each such other parcel;

- g. Easements upon each such parcel in favor of each adjoining parcel for the installation, use, maintenance, repair, replacement and removal of common construction improvements such as footings, supports and foundations;
- h. Easements on each parcel for attachment of buildings;
- i. Easements on each parcel for building overhangs and other overhangs and projections encroaching upon such parcel from the adjoining parcels such as, by way of example, marquees, canopies, lights, lighting devices, awnings, wing walls and the like;
- j. Appropriate reservation of rights to grant easements to utility companies;
- k. Appropriate reservation of rights to road right-of-ways and curb cuts;
- l. Easements in favor of each such parcel for pedestrian and vehicular traffic over dedicated private ring roads and access roads; and
- m. Appropriate agreements between the owners of the several parcels as to the obligation to maintain and repair all private roadways, parking facilities, common areas and common facilities and the like.

The aforementioned March 1, 2013 Board of Adjustment decision concluded that the plain reading of Section 118-5 did permit the proposed unification of the three (3) subject properties through the use of the proposed Covenant in Lieu of Unity of Title. Immediately subsequent to this decision, though, the Board of Adjustment expressed some concern with the current language of Section 118-5 and recommended that the City further study the definition of, and criteria for determining, a 'Unified Building Site'.

### **CONCLUSION**

The Administration recommends that the Land Use Committee discuss the matter further and provide appropriate policy direction.

JLM/JMJ/TRM

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# MIAMI BEACH

OFFICE OF THE MAYOR AND COMMISSION

## MEMORANDUM

**TO:** Jimmy Morales, City Manager  
**FROM:** Ed Tobin, Commissioner  
**DATE:** May 29, 2013  
**SUBJECT:** Agenda item for June 5, 2013 City Commission Meeting

Please place on the June 5<sup>th</sup> City Commission Meeting a referral to the Land Use and Development Committee to discuss the code section governing unities of title and covenants in lieu of unity of title. "Discussion concerning Covenants in Lieu."

If you have any questions please contact, Dessiree Kane at Extension 6274

ET/dk