



# 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: Jimmy L. Morales, City Manager

DATE: March 19, 2014

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

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

- 1. DISCUSSION REGARDING THE CODE SECTION GOVERNING UNITIES OF TITLE AND COVENANTS IN LIEU OF UNITY OF TITLE.  
(CONTINUED FROM THE JANUARY 22, 2014 LUDC MEETING  
ORIGINALLY REQUESTED BY COMMISSIONER EDWARD L. TOBIN  
JUNE 5, 2013 CITY COMMISSION MEETING, ITEM C4N)**



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DATE: March 19, 2014

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

**REVISED CITY ADMINISTRATION VERSION – March 17, 2014**

### HISTORY/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.

On January 22, 2014, the Land Use Committee discussed the item and continued it to the February 19, 2014 meeting in order for staff to properly address the definition of a 'Unified Development Site'. The item was moved from the February 19, 2014 agenda to the March 19, 2014 agenda.

Subsequent to the issuance of the original report for the March 19, 2014 meeting, the Administration has refined its previous recommendation for action, as noted in the 'Analysis' section herein.

### 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 properties on Collins Avenue 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 Board of Adjustment concluded that the language of section 118-5 did not restrict the proposed unification, granted the appeal, and then the Board suggested that refinements be considered to more clearly restrict the unification of unrelated properties for transfer of floor area.

The following is a summary of the relevant Charter and City Code provisions, and 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 unities of title, or 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

When a development is proposed over multiple lots, or multiple buildings are proposed for single or multiple lots, certain documents must be executed to combine the lots or buildings for zoning purposes. As stated above, these documents may have floor area implications.

Under Section 118-5(a), a Declaration of Restrictive Covenants 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 provides for easements between the parcels. These can 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.

### **SUMMARY**

A Unity of Title, and Covenant in Lieu of Unity of Title are used for various purposes, and do not always have floor area implications. In some instances they are just for the unification of properties of multiple ownerships for easement purposes. However, when floor area is implicated, it becomes important to examine the charter language, where the phrase "unified abutting parcels" becomes pertinent.

When the phrase "unified abutting parcels" is used, along with the covenant in lieu of unity of title, it becomes possible to transfer floor area between different ownerships of abutting parcels. The term "abutting parcels" usually refers to parcels that have lot lines that touch, not separated by a street or alley. However, since streets and alleys are actually easements over private property, and the streets and alleys are actually extensions of the private properties they are adjacent to, then it is conceivable that the centerlines of the streets and alleys actually represent the common lot lines of the adjacent private properties.

The Administration believes that the current language in the Ordinance is an effective planning tool in terms of providing flexibility for the distribution of allowable floor area within

a defined site. Moreover, the existing code does not permit a net increase in overall FAR, should multiple sites be combined through either a covenant in lieu, or other legal mechanisms. In order to address the varying policy issues associated with a unified development site that are not present in the current ordinance, the Administration would recommend the following:

- That the term “unified abutting parcels” should be interpreted to cross a street or alley.
- That the term “unified development site” should be defined as follows:
- A site where development is proposed comprising multiple buildings or lots”.

Additionally, the Land Use Committee may wish to discuss the impact and applicability of ‘Development Agreements’ as it relates to the charter language regarding the transfer of FAR.

### **CONCLUSION**

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

JLM/JMJ/GMH/TRM