


MIAMI BEACH

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

COMMISSION MEMORANDUM

TO: Mayor Dan Gelber and Members of the City Commission
FROM: Raul J. Aguila, City Attorney 
DATE: June 26, 2019
SUBJECT: Agenda Item R7A, Proposed Vacation of Portions of Ocean Terrace, 74th Street and 75th Street

This supplemental memorandum responds to questions relating to the legal mechanism regarding the proposed vacation of portions of Ocean Terrace, 74th Street and 75th Street, which is the subject of Agenda Item R7A on the agenda for the June 26, 2019 City Commission meeting.

First, as stated in the Commission Memorandum accompanying Agenda Item R7A, Section 1.03(b)(1) of the City Charter, which requires a referendum for any conveyance of park, recreation or waterfront property, is not applicable to the proposed vacation, because the Ocean Terrace right of way is not "park, recreation or waterfront property." Rather, in the subject area, the "waterfront property" is the separately platted public reservation area abutting the east side of Ocean Terrace, between the Ocean Terrace right-of-way and the waterfront, as depicted in Exhibit A-1 (the "Waterfront Parcel"). The separately platted Waterfront Parcel is not being vacated or conveyed by the City.

Second, a voter referendum is not required under Section 1.03(c) of the City Charter, as the Charter does not require a referendum for the aggregation of development rights on unified abutting parcels. Section 1.03(c) of the City Charter, which provides that the floor area ratio of any property shall not be increased by zoning, transfer or any other means, unless approved by voter referendum, specifically states that the foregoing provision "shall not preclude or otherwise affect the division of lots, or the aggregation of development rights on unified abutting parcels, as may be permitted by ordinance."

As permitted by Section 118-5 of the City Code, a property owner with fee simple title to abutting parcels may execute a covenant in lieu of unity of title, to aggregate its development rights on those unified abutting parcels.

Here, with respect to the proposed vacation of the City's right-of-way, if the City Commission determines it is in the public interest to vacate a right of way, then by operation of law, the right of way reverts to the current abutting property owners, who

hold the underlying reversionary fee interest in the right of way.¹ Accordingly, upon the vacation, the right of way reverts to, and vests with, the current abutting property owners, in fee simple. As provided in the proposed Development Agreement, the Developer would execute the City's covenant in lieu of unity of title, as permitted by the Section 118-5 of the City Code, and the vacated right of way areas would be developed as part of a unified development site.

Finally, the proposed amendments to the City's Land Development Regulations, to rezone from the current zoning classification of GU, "Government Use District," to the corresponding CD-2 or MXE classifications of the abutting parcels, do not require a referendum under the City Charter. Currently, the F.A.R. for GU properties is the average of the FAR in the surrounding zoning districts. Here, the average is an F.A.R. of 2.0, which is the maximum F.A.R. in the CD-2 and MXE districts. As there is no increase in zoned F.A.R., no referendum is required under Section 1.03(c) of the City Charter.

Based on the foregoing, and as stated in the Commission Memorandum accompanying Agenda Item R7A, pursuant to Section 1.03(b)(4) of the City Charter, the proposed transaction requires approval by a majority vote of the Planning Board, and a 6/7ths vote of the City Commission.

RJA/rap/ag

¹ The City is not the underlying fee simple owner of the streets. Instead, the City holds a right of way dedication to the streets, which means that when the original plat was created, the original abutting owners, who hold the underlying fee interest, dedicated the right of way for use by the public, as provided in the plat.