

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: June 23, 2020

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB 20-0378 Vacation of a portion of Alton Road right-of-way, adjacent to 300-400 Alton Road.**

PB 20-0378 Vacation of a portion of Alton Road right-of-way, adjacent to 300-400 Alton Road. Approval of the Planning Board, by a 4/7ths vote, pursuant to City Charter Section 1.03(b)(4), and Section 118-51(11) of the City's Land Development Regulations, of the proposed vacation of the western half of Alton Road, adjacent to the City-owned properties located at 300-400 Alton Road, the current upland site of the Miami Beach Marina (folio nos. 02-4203-009-9210, 02-4203-000-0010, and 02-4203-009-9250) (the "Miami Beach Marina Site"), which area proposed to be vacated consists of a fifty (50) foot wide Right-of-Way containing approximately 25,500 square feet in total lot area (the "City Right-of-Way Area"), in favor of the abutting property owner, the City of Miami Beach, Florida (the "City"), for the purpose of including the City Right-of-Way Area as part of the Unified Development Site for the proposed development of the Miami Beach Marina site, which proposed development shall be limited to a maximum Floor Area of approximately 320,000 square feet, and shall include residential, retail, office, restaurant and marina uses (the "Marina Park Project"); further, providing that the proposed vacation shall be conditioned upon the City Commission's approval of (1) a Development Agreement between the City and Marina Park, LLC (or one or more affiliates thereof) ("Developer"), which agreement shall include the terms and conditions for the design, permitting and construction of the Marina Park Project, at the Developer's sole cost and expense, including resiliency and other capital improvements; (2) the City's sale to Marina Park, LLC (or an affiliate thereof) of the air parcel within which the approximately 275,000 square foot residential portion of the Marina Park Project is to be constructed ("Sale of Air Parcel"); and (3) the City's 99 year lease to an affiliate of Suntex Marina investors, LLC, of the Miami Beach Marina Site (excluding the air parcel) and associated lease of submerged lands for marina use (the "Marina Lease"); further, providing that the proposed vacation shall be subject to and contingent upon approval of the Marina Lease and the Sale of Air Parcel by a majority of the voters voting in a City-wide referendum, pursuant to Section 1.03(b)(1) of the City Charter.

BACKGROUND

Section 82-38 of the Code of the City of Miami Beach requires that any proposed sale or lease of City-owned land be analyzed from a planning perspective so that the City Commission and the public are fully apprised of all conditions relating to the proposed sale or lease. The proposal is for the following related to the Miami Beach Marina site, located at 300-344 Alton Road:

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BACKGROUND

Section 82-38 of the Code of the City of Miami Beach requires that any proposed sale or lease of City-owned land be analyzed from a planning perspective so that the City Commission and the public are fully apprised of all conditions relating to the proposed sale or lease. The proposal is for the following related to the Miami Beach Marina site, located at 300-344 Alton Road:

1. Lease agreement for the Miami Beach Marina, for a term (including renewals) of 99 years. The term includes a commitment to spend an additional \$50 million for improvements to the area.
2. Sale of a portion of the development site and air parcel within which the approximately 275,000 square foot residential portion of the Marina Park Project is to be constructed (Residential Parcel).
3. Approval of a development agreement that grants the developer the rights to use all of the available development rights from the underlying city-owned property and the to-be-vacated ROW (discussed below).
4. The vacation of the western half of the Alton Road right of way (ROW) abutting the City-owned parcels at 300-344 Alton Road, consisting of approximately 25,500 SF. Upon the vacation of the ROW, the ownership of the land would revert to the City, however, the development rights would be incorporated into the development on the abutting parcels.

Together with an amendment to the Comprehensive Plan and the Land Development Regulations, these items would allow for the Marina Park Project, which would include an approximately 385 foot tall building with approximately 275,000 gross square feet containing 60 residential units, and approximately 45,000 square feet for a new marina building and accessory restaurant, retail, office and marina uses. The proposal would also create a one-acre park which would be open to the general public, enhancements to the baywalk, and resiliency improvements.

COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA

Section 133-50(b) of the Land Development Regulations establishes the following review criteria when considering ordinances, adopting resolutions, or making recommendations:

- (1) **Whether the proposal affects an area that is vulnerable to the impacts of sea level rise, pursuant to adopted projections.**

Partially Consistent – The proposal does affect areas that are vulnerable to the impacts of sea level rise in the long term.

- (2) **Whether the proposal will increase the resiliency of the City with respect to sea level rise.**

Consistent – The proposal will improve the resiliency of the City with respect to sea level rise, due to infrastructure improvements that will be funded by the proposal.

- (3) **Whether the proposal is compatible with the City's sea level rise mitigation and resiliency efforts.**

Consistent – The proposal is compatible with and supports the City's sea level rise mitigation and resiliency efforts.

ANALYSIS

As set forth above, the proposed vacation is one of the main components of the Marina Park Project, which also includes a (1) Development Agreement; (2) Purchase and Sale Agreement for the sale of a portion of the Development Site and air parcel; and (3) a proposed Lease for the Miami Beach Marina. **The entire transaction, including the proposed vacation, is more fully addressed in the June 23, 2020 Planning Board memorandum for companion Agenda Item for PB 20-0376, Development Agreement for Marina Park Project at 300-400 Alton Rd.**

With respect to the proposed vacation, although the portion of Alton Road that lies north of 5th Street is considered a state road owned and maintained by the Florida Department of Transportation, the portion of Alton Road that is located south of 5th Street is a City road.

Developer has requested that the City vacate a portion of Alton Road, namely the City Right-of-Way Area which consists of the western half of Alton Road that lies adjacent to the City-owned properties that are part of the Development Site (Folio Nos. 02-4203-009-9210, 02-4203-000-0010, and 02-4203-009-9250). Currently, as to the Right-of-Way Area, the City holds a right of way dedication, which confers on the public an exclusive right of use, so long as the City Right-of-Way Area is used for the purpose of the dedication (namely, for pedestrian and vehicular access).

The vacation of a right-of-way is a legislative act within the exercise of the City Commission's discretion, if the City Commission determines the vacation is in the public interest. See, e.g., *Robbins v. White*, 42 So. 2d 841 (1907); *City of Temple Terrace, Fla. v. Tozier*, 903 So. 2d 970 (Fla. 2d DCA 2005). If approved, the vacation would be effectuated by the City Commission's adoption of a resolution authorizing the vacation. By operation of law, once the City vacates the City Right-of-Way Area, the underlying fee interest vests with the current abutting property owner. See, e.g., *Servando Bldg. Co. v. Zimmerman*, 91 So. 2d 289 (Fla. 1956); *Smith v. Horn*, 70 So. 435 (Fla. 1915); *Hurt v. Lenchuk*, 223 So. 2d 350 (Fla. 4th DCA 1969) ("When a street is lawfully vacated, title to the area vacated vests in the adjoining property owners.")

Accordingly, once the City vacates the Right of Way, the underlying fee interest in the City Right-of-Way Area reverts to the City, as the current abutting property owner of the Development Site. For this reason, the proposed vacation of the City Right-of-Way Area materially differs from prior vacations approved by the City Commission. Here, the City would be vacating a right of way *in favor of itself* as the owner of the abutting property. It is vitally important to note that under this construct the entirety of Alton Road south of 5th Street -- including the vacated City Right-of-Way Area -- would remain under the City's complete control. This remains true both before and after the vacation is effectuated. Under the terms of the contemplated transaction, the vacated City Right-of-Way Area would be a stand-alone parcel. It will carry a separate metes and bounds description designed to ensure that this area remains under the City's direct control and is separate from the Development Site. As such, the proposed vacation raises no concern about public access whatsoever, as the City would retain complete ownership and control of Alton Road at all times, and the rights of the public to the continued use of Alton Road will not be diminished or altered in any way.

The proposed vacation of the City Right-of-Way Area would result in the City vacating approximately 25,500 square feet of existing right of way. By vesting the City with the fee interest in the City Right-of-Way Area, the vacation would permit the City, pursuant to the Development

Agreement, to structure the transaction to include the vacated City Right-of-Way Area and the upland Development Site as part of a unified development site, and to aggregate the vested development rights on the unified abutting parcels through a covenant in lieu of unity of title, as permitted by Section 1.03(c) of the City Charter (without referendum) and Section 118-5 of the City Code, which provides that property owners 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.

The 25,500 square feet associated with the City Right-of-Way Area are accounted for within the appraisals set forth in **Exhibit "5"**, as each appraiser assumed a developable project of 275,000 square feet of residential, and 45,000 square feet for the commercial components of the Project, which otherwise cannot be accomplished without the City Right-of-Way Area.

The foregoing benefit to the Developer associated with the proposed vacation would only be available if the City Commission approves the Project, including the (1) Development Agreement, (2) Sale of Residential Parcel, and (3) New Lease. **In addition, as the Project cannot proceed without voter referendum approval of the Sale of Residential Parcel and the New Lease pursuant to the City's Charter, the proposed vacation would be subject to and contingent upon approval of the Sale of Residential Parcel and New Lease by a majority of the voters voting in a Citywide referendum. Accordingly, if the voters do not approve any component of the Project, the proposed vacation would not be effectuated.**

The following is the Planning Department's analysis of the proposal based on the criteria delineated in the Code:

1. Whether or not the proposed use is in keeping with city goals and objectives and conforms to the city comprehensive plan.

Partially Consistent – The proposed use would be consistent with the 2040 Comprehensive Plan as proposed to be amended. A separate companion item to amend the Comprehensive Plan and authorize Public-Private Marina Redevelopments on parcels with a "Public Facility: Governmental Uses (PF)" future land use designation is proposed. Should this amendment not be adopted, then the proposed use would be inconsistent with the Comprehensive Plan.

Because the proposed redevelopment would allow for significant resiliency enhancements to be built on the site for the benefit of the surrounding community, the proposal is consistent with Principle 1: Developing a Resilient Future, of the Resilient Land Use Element of the 2040 Comprehensive Plan, which states the *"The City shall encourage redevelopment that contributes to community resiliency by meeting all required peril of flood mitigation and storm hazard standards for on-site development and shall also prioritize energy efficient development that provides stormwater mitigation, and co-benefit features that contribute to the City's resiliency as a whole."*

Since the proposal will allow for the development of a new waterfront park, the proposal is consistent with Objective ROS 1.1: Waterfront Parks, which requires that the City *"preserve beach and waterfront parks and continue to improve park access to water-related uses."*

Since the developer will build a one-acre park, it is consistent with Objective ROS 1.4:

Open Space which is *"to requires open space in conjunction with every new public and private sector development project (measurability dependent upon development applications) to maintain levels of service, as well as for increased pervious area to support natural stormwater collection during extreme rain events."*

Since the development will enhance and improve pedestrian access to the baywalk, the proposal is consistent with Policies ROS 1.1.5 and ROS 1.1.6, which call for waterfront and pedestrian access to Biscayne Bay and the shoreline.

2. **The impact on adjacent property, including the potential positive or negative impacts such as diminution of open space, increased traffic, noise level or 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 proponent shall be responsible for obtaining a traffic impact analysis from a reputable traffic engineer.**

Consistent – No negative impacts are anticipated by the proposal. Ownership of the ROW being vacated by the City will remain with the City and function in the same manner. The C-PS4 zoning district allows for a maximum floor area ratio (FAR) of 2.5. Vacation of the 25,500 SF of ROW will allow approximately 63,750 SF of additional floor area to be developed within a unified development site with the adjacent City-owned parcels.

- Though a ROW is proposed to be vacated, no construction is being proposed within the vacated ROW; therefore, there will be no diminution of sidewalks or vehicle travel lanes. While it would not be considered a dedicated ROW, the fee interest in the ROW will held by the City and the ROW will continue to operate in the same manner, for public pedestrian and vehicular uses.
- Vacation of the ROW will not affect the transportation network, as vehicular access will be maintained.
- The use of the floor area that is made available from the vacation of the ROW could potentially generate up to approximately 21 peak hour trips if used for residential purposes. This does not represent a significant increase in peak hour volumes from what is otherwise permitted on the site. A traffic study will have to be provided as part of the design review process. Additionally, the development will be subject to the payment of Mobility Fees which are used to improve the City's transportation network.
- No noise level impacts are anticipated from the proposal. The anticipated commercial uses on the site should have fewer noise impacts than those existing on the site today.
- The appearance of the property will improve with a public park, an iconic residential building, and better urban design. These improvements should enhance surrounding property values.
- The proposal is not expected to impact adopted levels of service for public infrastructure. The development contains several enhancements that can improve levels of service related to recreation and open space and stormwater management. However, compliance with concurrency must still be determined and mitigated in

conjunction with the building permit process.

3. **A determination as to whether or not the proposed use is in keeping with a public purpose and community needs, such as expanding the city's revenue base, creating jobs, creating a significant revenue stream, and improving the community's overall quality of life.**

Consistent - This proposal expands the City's revenue by increasing the lease payments and adds additional taxable area to the tax rolls. The sale of the Residential Parcel will provide significant revenue to the City. The improvements to the site serve a public purpose and serve a community need by creating a new park, enhancing access to the waterfront, and providing infrastructure for the mitigation of sea level rise and improved stormwater management.

4. **A determination as to whether or not the development is in keeping with the surrounding neighborhood, will block views or create environmental intrusions, and evaluation of the design and aesthetic considerations of the project.**

Consistent - The surrounding neighborhood will not be negatively affected. The development will contain large side yard setbacks so views from surrounding buildings will be minimally impacted. No environmental intrusions will be created.

5. **The impact on adjacent properties, whether or not there is adequate parking, street and infrastructure needs.**

Consistent – Vacation of this ROW will not affect the parking needs, as parking for the site will continue to be provided in the same manor and parking requirements must be met. Infrastructure impacts will be beneficial to adjacent properties, as the proposal calls for making many improvements to the City's stormwater system.

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.**

Not applicable - The Planning Department has no other issues it deems appropriate to analyze for this proposal.

CONCLUSION

The proposed long-term lease, sale of the Residential Parcel, development agreement, and vacation of a portion of the Alton Road right of way is supported the Goals, Objectives, and Policies of the Comprehensive Plan based on the proposals for the property, and the use will be consistent with the Comprehensive Plan as proposed to be amended. The proposal should generate no negative impacts for the surrounding area. The property would continue to serve a public purpose, as a 1.0 acre park will be created for the benefit of the general public, the baywalk will be improved, and new infrastructure will be provided.

RECOMMENDATION

In view of the foregoing analysis, staff recommends that the Planning Board approve the proposed ROW vacation, pursuant to Section 118-51(11) of the City Code and Section 1.03(b)(4) of the City Charter.