



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

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission

FROM: Raul J. Aguila, Interim City Manager

DATE: February 10, 2021

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING, ON FIRST READING OF THIS RESOLUTION, THE VACATION OF THAT PORTION OF THE SOUTHERN HALF OF 21ST STREET, GENERALLY LOCATED BETWEEN APPROXIMATELY 150 FEET EAST OF COLLINS AVENUE AND MIAMI BEACH DRIVE, AND CONSISTING OF APPROXIMATELY 6,736 SQUARE FEET IN TOTAL AREA, AS MORE PARTICULARLY DESCRIBED IN EXHIBIT "A" TO THE MEMORANDUM ACCOMPANYING THIS RESOLUTION (THE "ROW"), IN FAVOR OF THE ABUTTING PROPERTY OWNER, BHI LIMITED MIAMI CORPORATION (THE "APPLICANT"); FURTHER, PROVIDING THAT THE VACATION OF THE CITY ROW SHALL BE SUBJECT TO AND CONDITIONED UPON THE APPLICANT'S DELIVERY OF CERTAIN PUBLIC BENEFITS TO THE CITY, INCLUDING A VOLUNTARY MONETARY PAYMENT IN THE AMOUNT OF \$7,400,000.00, A MAINTENANCE AGREEMENT PROVIDING FOR THE INSTALLATION AND PERPETUAL MAINTENANCE OF ADDITIONAL LANDSCAPING WITHIN THE CITY'S BEACH ACCESS AND BEACHWALK AREA EAST OF MIAMI BEACH DRIVE AS MORE PARTICULARLY DEPICTED ON EXHIBIT "E" TO THE MEMORANDUM ACCOMPANYING THIS RESOLUTION, AND A PERPETUAL EASEMENT IN FAVOR OF THE CITY OVER THE ROW, TO ENSURE CONTINUED PUBLIC USE OF THE ROW FOR CITY ACCESS, PEDESTRIAN AND VEHICULAR TRAVEL, AND UTILITIES; FURTHER, WAIVING, BY 5/7THS VOTE, THE COMPETITIVE BIDDING REQUIREMENT, PURSUANT TO SECTION 82-38 OF THE CITY CODE, FINDING SUCH WAIVER TO BE IN THE BEST INTEREST OF THE CITY; SETTING THE PUBLIC HEARING, PURSUANT TO SECTION 82-39(A) OF THE CITY CODE, FOR THE SECOND AND FINAL READING OF THE VACATION RESOLUTION; AND, FINALLY, ACCEPTING THE RECOMMENDATION OF THE FINANCE AND ECONOMIC RESILIENCY COMMITTEE AND REFERRING THE PROPOSED VACATION TO THE PLANNING BOARD PURSUANT TO CITY CHARTER SECTION 1.03(b)(4).**

RECOMMENDATION

The Administration recommends approval of the vacation at First Reading on February 10, 2021, subject to the terms and conditions contained herein. If passed at First Reading, the proposed vacation would be referred to the Planning Board for its consideration and approval at its March

23, 2021 meeting, pursuant to Section 1.03(b)(4) of the City Charter, with the Second Reading / Public Hearing to be scheduled for the April 21, 2021 City Commission meeting.

BACKGROUND AND SUMMARY OF TERMS

BHI Limited Miami Corporation (the “Owner” or “Applicant”), is the owner of the Seagull hotel site, located at 100 21st Street, Miami Beach, Florida (the “Property”). The Property is located on the south side of 21st Street, consisting of an 8-story structure, under Folio No. 02-3226-001-0040, as more particularly described in Exhibit “B”. The Seagull hotel was constructed in 1950, and was designed by Miami Beach architect Albert Anis.

The Property consists of Lots 1, 3, and 5 of Block A of the Amended Map of the Ocean Front Property of the Miami Beach Improvement Company Subdivision recorded in Plat Book 5, Page 7 of the Public Records of Miami-Dade County. As platted, the Property fronts the south side of 21st Street (identified in the plat as Park Avenue).

The entire block to the north of 21st Street, adjacent to the Property, was platted as a City park. The platted park site has now become unified with the two blocks to the west and the land to the east of Miami Beach Drive under a single folio (02-3226-001-0370). Currently, 21st Street terminates at the edge of, and is not part of, the City property.

At its November 18, 2020 meeting, the City Commission approved a dual referral to the Land Use and Sustainability Committee (“LUSC”) and the Finance and Economic Resiliency Committee (“FERC”) to discuss the request from Owner to renovate the Property, the Seagull Hotel, located at 100 21st Street. The Applicant is proposing a major renovation of the existing structure in order to accommodate a new high-end luxury hotel operator, Bulgari Hotels & Resorts (the “Proposed Development”).

As set forth more fully below, the Applicant’s request for a vacation, which involves the City’s conveyance of the ROW to the Applicant, must comply with Chapter 82 of the City Code, relating to the sale or lease of City property, and Section 1.03(b)(4) of the City Charter, which requires approval by a majority 4/7 vote of all members of the Planning Board and 6/7 vote of the City Commission. As more particularly described below, the City Commission has the discretion to approve the vacation if the City Commission finds that the vacation meets the criteria established in Section 82-38 of the City Code and the public benefit proffered is compelling.

At the December 18, 2020 FERC meeting, the Applicant presented its proposed renovation of the Seagull Hotel, and the Applicant’s request for a vacation of the City’s ROW. The Applicant confirmed that it had conducted its own independent appraisal of the property proposed to be vacated, and that the appraised amount would be proffered as a public benefit for the City by way of a monetary contribution to the City, to be used as directed by the Commission. **To ensure a proper valuation of the ROW, the Administration engaged its own independent appraisal to appraise the market value for the ROW. The Applicant’s appraiser valued the ROW at \$5,000,000, and the City’s appraisal valued the ROW at \$7,400,000.00.** The Owner’s appraisal is attached as Exhibit “C” and the City’s appraisal is attached as Exhibit “D”.

On January 22, 2021 meeting, the FERC discussed the appraisal results and analysis, with the participation of Applicant’s representatives and City staff. The Acting City Attorney outlined a preliminary analysis of the proposed vacation under the City Charter, and a more detailed analysis is set forth in this Memorandum. **Additionally, at the January 22, 2021 FERC meeting, the Applicant accepted the City’s higher appraisal value for the ROW at \$7,400,000.00.** Since

the January 22, 2021 FERC meeting, the Applicant and the Administration have continued to discuss terms, including additional public benefits (in addition to the \$7.4 million appraised value) discussed below.

The proposed vacation of the ROW would be memorialized in a vacation agreement between the Applicant and the City (the "Vacation Agreement"). As part of this renovation and the City's vacation of the ROW, the Owner has proposed the following:

1. Applicant shall provide the City with a voluntary contribution of \$7,400,000 under a payment schedule to be determined in a Vacation Agreement to be executed by the Applicant and the City.
2. The vacation of that portion of the southern half of the 21st Street right-of-way, generally located between approximately 150 feet east of Collins Avenue and Miami Beach Drive, and consisting of approximately 6,736 square feet in total area ("ROW") along the front of the Seagull Hotel property. The ROW is more particularly described in the attached Exhibit "A". As permitted under Section 1.03(c) of the City Charter (discussed more fully below) and Section 118-5 of the City Code, the Applicant, upon obtaining fee ownership of the ROW, would create a unified development site, thereby permitting the aggregation of floor area ("FAR") across the unified abutting parcels.
3. As a condition of the proposed vacation, the Applicant would grant a perpetual, non-revocable easement in favor of the City, for the City's continued use of the ROW for vehicular, pedestrian and utility purposes, so that the public's use of 21st Street would not be altered or diminished in any way.
4. Applicant and the City shall enter into a Maintenance Agreement providing for installation (prior to the issuance of a Certificate of Occupancy) and perpetual maintenance of additional landscaping at the Applicant's sole cost in the portion of the City's Beach Access and Beachwalk area as depicted in Exhibit "E" that is directly to the east of the ROW and directly to the east of Applicant's Property (defined below as the "Proposed Maintenance Area").
5. Applicant shall pay all of the City's costs in connection with the proposed vacation of the ROW, including any City closing costs, recording fees, or outside legal fees that may be incurred by the City.
6. Applicant agrees that City's quit claim deed for the ROW shall contain a reverter clause, to provide for the ROW to revert back to the City in the event Applicant fails to satisfy all conditions of the Vacation Resolution prior to the completion of the Proposed Development, except the installation and maintenance of the landscape improvements depicted in Exhibit "E," which shall be governed by the Maintenance Agreement, and with such reverter being without prejudice to any other rights or remedies that may be available to the City in the event the Applicant fails to satisfy the conditions of the Vacation Resolution.
7. Applicant agrees that City shall not issue a Temporary Certificate of Occupancy or final Certificate of Occupancy (whichever comes first) for the Proposed Development until the Applicant has satisfied all conditions of the Vacation Resolution.

8. In the event the foregoing conditions of the Vacation Agreement, excluding the obligations under the Maintenance Agreement, which shall be solely governed by that Agreement, are not met, following notice to Applicant and a reasonable opportunity to cure, the Vacation Agreement shall be subject to termination, and in the event of any such termination, this Vacation Resolution shall be null and void.

APPRAISAL REPORTS

As discussed above, the Owner proffered a voluntary contribution to the City for the appraised value of the ROW as part of its public benefit package, in consideration of the vacation of the ROW. On December 18, 2022, the Owner presented an appraisal performed by Walter Duke and Partners to appraise the fair market value of the ROW to be vacated. The appraisal commissioned by Owner appraised the market value "as is" at \$5,000,000. A copy of the Owner's appraisal report is attached as Exhibit "C".

In addition to the appraisal engaged by Owner, the City's Public Works Department engaged CBRE to appraise the fair market value of the ROW to be vacated. The City's independent appraisal valued the ROW at \$7,400,000. A copy of the City's appraisal report is attached hereto as Exhibit "D".

At the January 22, 2021 FERC meeting, the Owner informed the City that it had accepted the City's valuation of the ROW at \$7,400,000 and was prepared to offer this full amount as part of its public benefits package.

PUBLIC BENEFITS PACKAGE

In exchange for the vacation of the City's ROW in favor of the Owner, the Owner's initial proposal includes a public benefit package to the City consisting of a cash payment based on the City's appraised value of the ROW at \$7,400,000, and a perpetual easement in favor of the City to ensure continued public use of the ROW for pedestrian and vehicular travel and utilities, such that the public's rights to use the ROW would not be diminished.

The Owner has proposed that the cash payment to the City in the amount of \$7,400,000 would be provided in installment payments, namely:

- (i) an initial refundable installment payment of \$750,000 due 30 days following land use board approvals becoming final and non-appealable;

- (ii) a second refundable installment payment of \$3,325,000 due prior to the Building Department's issuance of a building permit for the renovation project; and

- (iii) a final installment payment of \$3,325,000 due prior to the Building Department's issuance of a Temporary Certificate of Occupancy or Certificate of Occupancy (whichever comes first) for the new construction. As proposed by the Applicant, the \$7,400,000 proposed by Applicant would become non-refundable upon the owner obtaining the temporary certificate of occupancy.

The Administration and Applicant will continue to discuss the proposed payment schedule, in an effort to improve on the terms prior to the Planning Board's consideration of this matter, as the Interim City Manager has recommended that a greater portion of the \$7,400,000 be provided up-

front, with all payments to become non-refundable at the Closing. For its part, the Applicant has expressed a willingness to work with the Administration to accommodate the Interim City Manager's request, within a framework that would permit for the Project to be financeable.

In addition to the public benefits initially proposed by the Owner, the Owner has recently proffered to the City that the Owner, at its own sole cost and expense, would maintain and repair the beachwalk area, consisting of the serpentine path and surrounding areas, located both directly to the east of the ROW and directly east of the property ("Proposed Maintenance Area"). The Proposed Maintenance Area is attached hereto as Exhibit "E". Currently, the City is responsible for the repair and maintenance of the Proposed Maintenance Area. The Public Works Department is currently reviewing the Owner's proposal to assume responsibility for the repair and maintenance of the Proposed Maintenance Area in order to identify a cost estimate for the annual net benefit associated with this proposal.

PROPOSED USES OF OWNER'S VOLUNTARY CONTRIBUTION

At its meeting on January 22, 2021, the FERC also discussed possible uses of the proceeds from the Owner's voluntary \$7.4 million contribution, and directed the Administration to identify additional potential uses. The following summary includes uses proposed by the FERC and the Administration:

1. Replenish the City's General Fund and Resort Tax reserves

The Owner's voluntary contribution may be allocated to the City's General Fund and Resort Tax reserves, in order to mitigate the impact of COVID-19. As part of managing the negative financial impact from COVID-19, the City has planned the following use of reserves:

	General Fund Reserve Amount	Resort Tax Reserve Amount
Reserve as of 09/30/2019	\$80.6 million	\$15.2 million
Use of Reserve in FY 2020	(\$0.3 million)	(\$5.0 million)
Use of Reserve in FY 2021	(\$9.6 million)	0
Remaining Reserve	\$70.7 million	\$10.2 million

Note: use of reserves does not include COVID-19 related expenses that are considered reimbursable

Since the FY 2021 Budget was adopted, the planned use of reserves has changed due to the slower than anticipated recovery in Resort Tax and General Fund revenues from the impact of COVID-19. The preliminary first quarter projections anticipate that an additional \$21.5 million will be needed from reserves to re-balance the FY 2021 Budget. Please note that this amount does not include any potential additional costs from vaccination efforts that may be approved by the City Commission during FY 2021. To help offset this cost, the Administration recommends applying funds recently received from the Coronavirus Relief Fund under the CARES Act, through Miami-Dade County. As of January 28th the City has received \$32.8 million of which, \$31.3 million is reimbursable to the General Fund. If the \$7.4 million from the Seagull Hotel transaction is added to the reserve calculation, the General Fund reserve would total \$87.9 million.

	General Fund Reserve Amount	Resort Tax Reserve Amount
Remaining Reserve	\$70.7 million	\$10.2 million
New gap in FY 2021	(\$21.5 million)	

CARES Act funds to date	\$31.3 million	
Seagull Hotel funds	\$7.4 million	
Revised Reserve	\$87.9 million	\$10.2 million

2. Expansion of Collins Park

The Owner's \$7.4 million contribution presents an extraordinary opportunity to recapture public green space that was lost due to poor planning in the 1950's—namely, the portion of Collins Park located east of Collins Avenue, and bounded by 21st Street on the south and 22nd Street on the north.

Since the 1930s, this area was an extension of the park from the current Bass Museum all the way to the ocean. In the 1950s, this area was converted to a paved parking lot. In the early 1960s, a library was constructed just west of Collins Avenue. When Collins Park was renovated in the early 2000s, the library was removed and the center portion of the parking lot east of Collins Avenue was converted back to green space. The thinking, at the time, was that the conversion of the remainder of the parking lot back to green space would be addressed upon the completion of the Collins Park Garage.

As we have seen over the last decade and a half, the very limited central green space within the parking lot, which is not directly accessible from across Collins Avenue, is not able to be fully utilized due to its location. The surface parking areas to the north and south of the central green space, consisting of approximately 199 parking spaces, are preventing the larger Collins Park from reaching its true potential and becoming one of the signature parks in the City. Now that we have a fully operational public parking garage less than a block away (Collins Park Garage), as well as over 1,000 spaces less than 2 blocks away in the Convention Center, an opportunity is presented to complete Collins Park and replace unnecessary surface parking with much needed resilient and sustainable green space.

As depicted in the very preliminary concept plans (attached), 21st and 22nd Streets would remain as-is, with turn arounds at the eastern terminus of each ROW. This will ensure that the W and Seagull (soon to be Bulgari) hotels continue to have full access. Additionally, on-street parallel parking can remain on both sides of 21st and 22nd Street.

The re-introduction of this green space bears an important relationship to the vacation of the southern half of 21st Street in favor of the Seagull property.

The removal of the existing surface parking lot is warranted for the following reasons:

1. The area was historically open green space;
2. The re-introduction of green space can be designed as a resilient park, similar to the park proposed in connection with the 500 Alton project, on this uniquely situated oceanfront parcel; and
3. The utilization of the existing area as surface parking falls far short of the property's potential, considering the location of the property, the opportunity to expand the park, and the significant availability of nearby off-street parking (Convention Center and Collins Park Garage).

Given the cost involved in converting the parking lot to greenspace, City budget constraints, as well as the significant benefit to nearby residents and businesses (including the Seagull Hotel) by

expanding the park, serious consideration should be given toward utilizing some or all of the Owner's voluntary contribution to convert the remainder of the surface parking lot to resilient green space.

3. Byron Carlyle Redevelopment

After the Byron Carlyle Theater was declared unfit for occupancy and the deteriorating property conditions became too costly to repair, the City Commission authorized RFP-2019-KB for development of a mixed-use project that would deliver a comparable cultural component for public use. The City is currently in negotiations with the sole remaining proposer and the Administration intends to present a final term sheet to the City Commission in late February. The proposed revenue could be used in one of three (3) ways in relation to the Byron Carlyle site:

- (1) Renovate and rehabilitate the existing structure. The most recent independent analyses estimated repairs and upgrades to bring the building into compliance with building regulations would be several million dollars. These estimates do not include enhancements or adaptations for new uses including the significantly low elevation of the building, which leaves it susceptible to periodic flooding;
- (2) Partially fund construction of a brand-new facility entirely owned and operated by the City; or
- (3) Defray costs associated with building out the cultural component proposed by the private developer in negotiations with the City. The proposer intends to build and deliver a grey shell for a cultural facility, which may require additional construction buildout and unidentified financing by the City in order to be operational (depending on the outcome of negotiations).

4. Barclay Plaza

The Barclay Plaza Apartments is currently an abandoned, dilapidated historic building located immediately to the east of the Miami Beach Convention Center, at 1940 Park Avenue. Boarded up for the last 5 years, this building has become an eyesore and safety hazard. This building, located within one block of Miami Beach Senior High School and in the heart of the Collins Park neighborhood, is dynamically located along major bus routes, and can become a vibrant and much-needed community center. The property could be rehabilitated to house non-profit agencies (including the Intergenerational Child Care) that provide key economic support services to our community's workforce, families, and elderly. This could include agencies currently located in the South Shore Community Center, which will be replaced with the new Fire Station #1, as well as agencies that have left the City because of rising rent costs (such as Florida Department of Children and Families). The City has identified up to \$5 million through HUD's Section 108 Loan Program for rehabilitation costs but is still short of funds needed to complete this project (including design, rehabilitation and subsequent implementation). In addition to safeguarding key non-profit partners, the Barclay can also house an expanded childcare program that offers services for individuals who cannot currently obtain professional childcare after work hours, and who form the backbone of the City's entertainment, cultural and hospitality industries.

5. Recommendation

The Administration recommends that the City Commission discuss and evaluate the foregoing potential options for the use of the Owner's voluntary contribution. The above options are the

primary options the Administration would propose for purposes of discussion, and there may be other options for projects that are underfunded, such as the 72nd Street Civic Complex, or a Fleet Management Facility at Terminal Island.

Due to the impacts of the COVID-19 pandemic on the City's finances, the Administration's primary recommendation is to allocate some or all of the Owner's contribution to the City's reserves. However, the significant value of the Owner's contribution presents a unique opportunity to expand Collins Park, a project for which no funding has otherwise been identified. This would be transformative for the Collins Park neighborhood, providing a significant public amenity to area residents, businesses, and visitors, and connecting the Cultural Campus to the oceanfront. If the City Commission elects to allocate a portion of the Owner's contribution to the City's reserves, I would therefore recommend that the remaining funds be dedicated to the expansion of the park.

PLANNING ANALYSIS

The Planning Department's analysis, as required pursuant to Section 82-38 of the City Code, will be completed before the required Planning Board meeting on this item.

LEGAL EFFECT OF A RIGHT-OF-WAY VACATION

The City is currently **not** the underlying fee simple owner of the 21st Street ROW, and does not hold legal title to the ROW. Instead, the City holds a right of way dedication, which confers on the public an exclusive right of use, so long as the dedicated right of way is used for the purpose of the dedication (namely, for pedestrian and vehicular access). The Owner, as the successor to the original abutting property owners who dedicated the ROW when the plat was created, holds the underlying reversionary fee interest in the dedicated ROW. See *Robbins v. White*, 52 Fla. 613, 42 So. 841, 841-44 (Fla. 1907) (a dedication "does not divest the owner of the title to the land, but only subjects the land and the title to the public easement for street purposes," with title remaining in the dedicator or his successors in title); *Coral Gables v. Old Cutler Bay Homeowners Corp.*, 529 So. 2d 1188, 1189-90 (Fla. 3d DCA 1988) ("[A] common law dedication does not pass the fee in land. The interest acquired by the municipality is generally held to be in the nature of an easement, with the public having a right of use and nothing more.")

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, and the City thereafter quit claiming any right, title and interest it has in the ROW, (thereby extinguishing the dedication). **By operation of law, once the City vacates the ROW, the underlying fee interest in the ROW vests with the current abutting property owners.** 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").

Based on the foregoing, under the current structure of the transaction, at the Closing when the City delivers its quit claim deed to the Owner, the Owner will be fully vested with its underlying fee interest in the vacated ROW. **Importantly, at the Closing, Owner will simultaneously encumber the vacated ROW, by granting the City an irrevocable, perpetual easement, in favor of the public, for the continued public use of the ROW. The easement runs with the**

land, and has a scope that is similar to the interests the City currently has in the ROW dedication. Accordingly, by requiring the Owner to deliver the easement as a condition of Closing, the transaction is expressly structured to address concerns about public access, and to ensure that the rights of the public to the continued use of the ROW will not be abandoned, diminished or altered in any way.

Finally, by vesting the Owner with the fee interest (subject to the easement in favor of the public), the structure of the transaction would permit the Owner to include the vacated ROW as part of a unified development site, and to aggregate its vested development rights on unified abutting parcels through a covenant in lieu of unity of title, as permitted by Section 1.03(c) of the City Charter (without a referendum) and Section 118-5 of the City Code, as discussed more fully below. Of course, the benefit to the Owner would only be available if the Owner complies with the terms and conditions of the Vacation Resolution (including, among other terms, the requirement to deliver to the City the irrevocable, perpetual easement for the continued public use of the ROW).

APPLICABILITY OF SECTION 1.03(b)(4) OF THE CITY CHARTER

As with every transaction involving a conveyance of property, the City Attorney's Office has evaluated the relevant provisions of Section 1.03 of the City Charter, which governs the disposition of City property. Consistent with prior City interpretation and action on other similar right-of-way vacation applications, **the proposed vacation requires approval by a majority 4/7 vote of the Planning Board and 6/7 vote of the City Commission.**

Analysis of Relevant Charter Provisions

1. ***Section 1.03(b)(1) of the City Charter: Does the vacation involve a sale, exchange, conveyance or lease of ten years or longer of City-owned Park, Recreation, or Waterfront Property, which would require voter referendum approval?***

No. The proposed ROW vacation, which would vacate the southern half of 21st Street, is located outside the boundaries of Collins Park. No portion of Collins Park is proposed to be transferred. Further, the ROW itself is not "park" or "recreation property." The ROW serves as a public street, and no part of it is used for park or recreation purposes. This issue was previously addressed as part of the Ocean Terrace vacation, wherein the City Attorney previously opined as follows, an opinion which is directly applicable to the instant matter as well:

The Right of Way was dedicated by plat expressly for public street purposes and for no others. See *Florida E.C.R. Co. v. Worley*, 49 Fla. 297, 38 So. 618, 621 (Fla. 1905) (the placement of streets on a plat map "evinces an intention to dedicate the streets to public use as such. This is true although there is no formal written dedication accompanying the map"). Were the City to convert the Right of Way to a "park"—a use inconsistent with the plat dedication—the Right of Way would revert to the abutting property owner by operation of law, without any payment or contribution to the City. See *Woodlawn Park Cemetery Co. v. City of Miami*, 104 So. 2d 851 (Fla. 3d DCA 1958) (portion of right-of-way parcel dedicated to municipality for street purposes was held to be abandoned and reverted to landowner when used for other purposes). For these reasons, the Right of Way is purely a public street and does not function

as, and cannot be deemed, “park” or “recreation” property within the meaning of Section 1.03(b)(1) of the City Charter.

In addition, the ROW is not waterfront property. 21st Street terminates at the eastern edge of platted Miami Beach Drive. Immediately to the east, there is a separate property that is part of Folio No. 02-3226-001-0370, which is waterfront property. Because no portion of the separate waterfront property is at issue here, the application therefore does not involve waterfront property. The above analysis is analogous to the Ocean Terrace vacation, where the vacated right-of-way was separated from the waterfront by a separately platted parcel which, as in this case, was not proposed to be transferred.

2. ***Section 1.03(b)(2) of the City Charter: Does the application involve a sale, exchange, conveyance or lease of ten years or longer of the Cultural Campus (all city-owned property bounded by 22nd Street on the North, Park Avenue on the West, 21st Street on the South, and Miami Beach Drive on the East), which would require voter referendum approval?***

No. The Cultural Campus boundary ends at the northern boundary of 21st Street and does not include any part of the 21st Street ROW. Moreover, the application includes only the southern half of 21st Street and does not abut the southern boundary of the Cultural Campus. Accordingly, Section 1.03(b)(2) of the City Charter is not implicated, as the street is located outside the boundaries of the Cultural Campus, as referenced in the City Charter.

3. ***Section 1.03(d) of the City Charter: Does the application involve a sale, exchange, conveyance, lease, or any other transfer of any City interest in a public beach right-of-way (extending eastward from Collins Avenue/Ocean Drive to the erosion control line), which would require voter referendum approval?***

No. The ROW itself extends eastward from Collins Avenue but merges and continues onto Miami Beach Drive. As the survey of the area confirms, 21st Street does not reach the erosion control line. Section 1.03(d) therefore does not apply to the proposed vacation.

4. ***Section 1.03(e): Does the application involve a sale, exchange, conveyance, lease, or any other transfer of any City interest in any public street-end bordering on land designated “Government Use”, “Golf Course” or Waterfront land, which would require voter referendum approval?***

No. Even though the eastern-most parcel of Collins Park is zoned GU, the application does not include a “street end,” consistent with prior City interpretations. As with the Ocean Terrace vacation, no portion of the ROW is a street end. Miami Beach Drive is a through street running north/south, which continues onto 21st Street on the south. 21st Street merges and continues onto Miami Beach Drive. 21st Street is therefore distinct from City rights-of-way that “dead end” (i.e. are surrounded by private property and do not connect to other streets). Moreover, only the southern half of 21st Street is proposed to be vacated. Accordingly, public access to the waterfront is neither disrupted nor eliminated, and public access to the waterfront is maintained.

5. ***Section 1.03(c) of the City Charter: Does the application involve the aggregation of development rights on unified abutting parcels, as may be permitted by ordinance, such that the referendum requirement of Section 1.03(c) does not apply?***

Yes. Section 1.03(c) of the City Charter specifically does not apply to the “aggregation of development rights on unified abutting parcels, as may be permitted by ordinance.” Section 118-5 of the City Code permits a property owner with fee simple title to abutting parcels to aggregate development rights through a covenant in lieu of unity of title. The requested vacation, by vesting the fee interest in the ROW with the abutting property owner, would allow the property owner to create a unified development site and join the vacated right-of-way with the abutting property. Accordingly, Section 1.03(c) of the City Charter, by its express terms, permits this aggregation.

Accordingly, based on the above analysis, and consistent with prior interpretations on similar projects, the very heightened approval requirements of Section 1.03(b)(4) of the City Charter would apply to the proposed vacation. In order for the vacation to proceed, the vacation requires approval by a majority 4/7 vote of all members of the Planning Board and 6/7 vote of the City Commission.

CONCLUSION

The Administration recommends approval of the vacation at First Reading on February 10, 2021, subject to the terms and conditions contained herein, and recommends scheduling a Second Reading/Public Hearing on March 17, 2021.

Attachments:

Exhibit A – ROW

Exhibit B -100 21 Street Legal

Exhibit C - Seagull Appraisal by Applicant

Exhibit D - Seagull Hotel Appraisal by City

Exhibit E - Maintenance Area