

# MIAMI BEACH

## COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission

FROM: Eric Carpenter, City Manager

DATE: October 30, 2024 First Reading

TITLE: A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING THE RECOMMENDATION OF THE FINANCE AND ECONOMIC RESILIENCY COMMITTEE, AT ITS JUNE 28, 2024 MEETING, AND APPROVING, ON FIRST READING, AN AIR RIGHTS EASEMENT PURSUANT TO SECTION 82-37(A)(2) OF THE CITY CODE TO MMS 7 FARREY, LLC (AS TO 50%) AND FARREY LN DG MASTER PLAN, LLC (50%), AS TENANTS IN COMMON (GRANTEES), FOR USE OF A 20 FOOT AERIAL EASEMENT OVER A PORTION OF THE FARREY LANE RIGHT-OF-WAY (EASEMENT AREA) ADJACENT TO THE PROPERTIES OWNED BY GRANTEES, LOCATED AT 6 FARREY LANE AND 7 FARREY LANE (GRANTEES' PARCELS), SO THAT GRANTEES MAY CONSTRUCT A UNIFIED, MULTILEVEL SINGLE-FAMILY HOME, UTILIZING THE EASEMENT AREA AS A SKYBRIDGE BETWEEN GRANTEES' PARCELS FOR THE CONSTRUCTION OF THREE HABITABLE CONNECTING FLOORS; SAID EASEMENT AREA CONSISTING OF A BASE ELEVATION OF 17.12 FEET ABOVE THE GRADE SURFACE OF FARREY LANE TO AN UPPER LIMIT ELEVATION OF 65.56 FEET, HAVING APPROXIMATELY 36,301 CUBIC FEET OF AIR RIGHTS BETWEEN THE ELEVATIONS, AS MORE PARTICULARLY DESCRIBED IN THE SKETCH AND LEGAL DESCRIPTION ATTACHED TO THIS RESOLUTION AS EXHIBIT "A", SUBJECT TO AND CONDITIONED UPON GRANTEES (1) SECURING ALL LAND USE DEVELOPMENT APPROVALS AND OTHER REQUIRED REGULATORY APPROVALS; AND (2) DELIVERING TO THE CITY OF A VOLUNTARY MONETARY PUBLIC BENEFIT IN THE AMOUNT OF \$803,250.00; FURTHER, WAIVING, BY 5/7<sup>TH</sup> VOTE, THE FORMAL COMPETITIVE BIDDING REQUIREMENTS OF SECTION 82-39(A) OF THE CITY CODE, FINDING THAT THE PUBLIC INTEREST WOULD BE SERVED BY WAIVING SUCH CONDITION; FURTHER, AUTHORIZING THE CITY MANAGER TO NEGOTIATE AN EASEMENT AGREEMENT WITH GRANTEES, SUBJECT TO APPROVAL BY THE CITY COMMISSION; AND FURTHER SETTING THE PUBLIC HEARING FOR THE SECOND AND FINAL READING OF THE RESOLUTION, ON NOVEMBER 20, 2024.

### **RECOMMENDATION**

The Administration recommends approving the Resolution.

### **BACKGROUND/HISTORY**

At its March 13, 2024 meeting, the City Commission, at the request of Commissioner Joseph Magazine, approved a referral (C4 J) to the Finance and Economic Resiliency Committee (FERC) to discuss the possible conveyance of an air rights easement to MMS 7 Farrey, LLC (as to 50%) and Farrey Ln Dg Master Plan, LLC (50%) (collectively, "Grantees"), as owners of the properties

located at 6 Farrey Lane and 7 Farrey Lane ("Grantees' Parcels"), to allow for the connection, with habitable space, of Grantees' Parcels. As detailed in the Letter of Intent submitted on behalf of the Grantees, attached hereto as Exhibit "D", and the Concept Plan, attached hereto as Exhibit "A", the air rights will allow for unified construction on the adjacent properties which are separated by the public Farrey Lane right-of-way, without the conveyance of any floor area to either of the Grantees' Parcels.

At its May 24, 2024 meeting, FERC members opened the item for discussion. The Public Works Department presented the appraisal results and favorable recommendation of the air rights easement request, provided that the applicant contributed a public benefit in the total monetary amount of \$803,250.00, based upon an appraisal secured by the City Administration. Inquiries arose from FERC members on whether the surrounding property owners were in favor of the air rights easement (it was commented that last year, the Belle Isle Residents Association, Inc. ("BIRA") was not in favor of this initiative when presented with a similar discussion at Committee). Before proceeding with a motion, FERC members requested that staff gather feedback from the neighboring property owners and come back the following month.

At its June 28, 2024 meeting, FERC members opened the item for Discussion. As part of the Committee Memorandum, the Grantees' representative provided letters of support from neighboring Farrey Lane property owners, a copy of which are attached hereto as Exhibit "F". FERC members made a motion to proceed to the City Commission, provided that Grantees engaged BIRA members with respect to Grantees' proposed air rights easement.

## **ANALYSIS**

Pursuant to Section 82-37(a)(2) of the City Code, Grantees are seeking an aerial easement ("Easement"), with an Easement Area consisting of a base elevation of 17.12 feet above the grade surface of Farrey Lane to an upper limit elevation of 65.56 feet, having approximately 36,301 cubic feet of air rights between the elevations ("Easement Area"), as more particularly described in the sketch and legal description attached to the Resolution attached hereto, to allow for the construction of a skybridge, connecting Grantees' Parcels, with habitable space, at Grantees' sole cost and expense.

The City has previously approved pedestrian bridge connector projects, such as the connectors for the Tides and the Betsy Hotel. In this case, however, the Grantees will be developing three levels of habitable improvements within the skybridge connector, having a total of approximately 1,841.57 square feet, which will include a private balcony, decorative architectural features, a portion of a lap pool and roof terrace. Grantees will be responsible for the costs associated with the construction and maintenance of the improvements within the Easement Area as well as any ad valorem real estate taxes which could be assessed in connection with said Easement.

Pursuant to Sections 82-38 of the City Code, any proposed sale or lease of City-owned land is required to be analyzed from a Planning perspective so that the City Commission and the public are fully apprised of all conditions related to the proposed sale or lease. On October 2, 2024, the City's Planning Department prepared a Planning analysis, a copy of which is attached hereto as Exhibit "B", finding that the proposed Easement is consistent with the criteria in Section 82-38 of the City Code, as follows:

## **PLANNING ANALYSIS:**

The proposed Easement is consistent with the criteria in Section 82-38 of the City Code, as outlined below:

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

**Consistent** – The Easement will not impede the use of the right of way as it exists today, as it will remain open below 17.2 feet NGVD. The use will be for residential purposes, which are consistent with the Comprehensive Plan.

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. The Easement will not impede the functioning of the alley, nor will it result in additional development rights for either of the adjacent properties. Additionally, the following is noted:

- The alley will continue to remain open at the ground level.
- The existing alley terminates on the west, at the Standard Hotel property, and does not provide any through connectivity.
- The proposed Easement will not increase traffic as vehicular and pedestrian access will be maintained. The use of the air rights above the alley will be to provide amenities to the proposed buildings on the adjacent lots, allowing both lots to be utilized as a singly residential building, thereby reducing the potential number of units that would be built. No additional floor area is proposed to be transferred between the adjacent lots, and no increase in peak hour traffic volumes is expected.
- No noise level impacts are anticipated from the proposed Easement, as the use of the air-rights will be for residential purposes.
- The proposed Easement is not expected to impact adopted levels of service for public infrastructure. Compliance with Water, Sewer, Stormwater, and Parks will be determined as part of the building permit process.
- The proposed Easement will not impact utilities, such as electric, water, sewer, and stormwater transmission, because the alley will remain open at ground level.

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 base by adding untaxed public property to the tax rolls. In addition, the applicant is proposing to pay the City for the Easement.

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 and the location of the Easement is not expected to block views to Biscayne Bay. No environmental intrusions will be created by the proposal.

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

**Consistent** – The Easement will not affect the parking or infrastructure needs of adjacent properties. Surrounding properties are not dependent on the area of the Easement for parking, and the ground level will continue to function as is it does today.

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.

Pursuant to Section 82-39(b) of the City Code, an appraisal was conducted and received on March 19, 2024 (Attached) in order to form an opinion of the market value of the aerial Easement. Based on the analysis contained in the report, the fee simple market value of the subject air rights and land value concluded as follows:

MARKET VALUE CONCLUSION			
Appraisal Premise	Interest Appraised	Date of Value	Value Conclusion
Air Rights	Fee Simple Estate	February 16, 2024	\$595,000
Land Value	Fee Simple Estate	February 16, 2024	\$850,000
Compiled by CBRE			

**PUBLIC BENEFIT:**

Grantees and the City Administration have reached agreement as to the monetary value of the Easement in the form of a public benefit, as follows: \$595,000 + 35% (median range of 20-50%) range above market value as suggested on the appraisal report, attached hereto as Exhibit "C", for a total monetary contribution of \$803,250.00. Grantees will pay the City the public benefit in installments, as follows: (1) \$267,750.00 upon the earlier of: (i) issuance of Design Review Board (DRB) approval or (ii) June 30, 2025; (2) \$267,750.00 upon the earlier of (i) receipt a building permit to construct the project on Grantees' Parcels or (ii) September 30, 2025; and (3) \$267,750.00 on or before December 31, 2025. In the event Grantees do not secure DRB approval by November 25, 2025 and the building permit for the construction of the project by May 25, 2026, subject to possible extensions for good cause, at the discretion of the City Manager, the Easement shall be null and void.

**BIRA's FAVORABLE RECOMMENDATION OF AIR RIGHTS EASEMENT AND REQUEST FOR THE PUBLIC BENEFIT:**

Grantees contacted BIRA and Grantees in their Letter of Intent, attached hereto as Exhibit "D", represent BIRA and Grantees' position, as follows:

- BIRA acknowledges Grantees' right to develop Grantees' Parcels per current zoning rules and to seek the proposed Easement.
- BIRA and Grantees are requesting that the public benefit resulting from Grantees' prospective Easement should benefit the entire Belle Isle community; and
- BIRA and Grantees are requesting that the public benefit be allocated as follows, subject to the approval of the City Commission:
  - 69% in favor of Belle Isle; and
  - 31% in favor of Farrey Lane

Although FERC, at its June 28, 2024 meeting, requested that BIRA be notified of the possible approval of the Easement, in that, BIRA is concerned with matters which could impact its neighborhood, BIRA is a voluntary neighborhood association and Grantees' Parcels are not governed by any homeowners' association covenants. As such, BIRA's consent to the proposed Easement is not legally required and allocation of the public benefits proffered by Grantees remains at the discretion of the City Commission. The City Administration recommends that the public benefit be utilized at the discretion of the City Manager in connection with Public Works projects or as may otherwise be determined by the City Commission.

Pursuant to Section 82-40 of the City Code, Grantees are responsible for all costs associated with the purchase of the Easement including, without limitation, the appraisal. The parties will next negotiate an Easement Agreement, which Easement Agreement, among other essential terms, will include a prohibition against short term rentals and which will be presented for approval to the City Commission on November 20, 2024 during, the second reading, public hearing for the approval of this Easement.

Based upon the foregoing, and the fact that only the Grantees could benefit from the use of the proposed Easement Area, the Administration recommends that the Mayor and City Commission waive, by a 5/7<sup>th</sup> vote, the formal competitive bidding requirement, as permitted under Section 82-39(a) of the City Code, as being in the best interest of the City.

#### **FISCAL IMPACT STATEMENT**

No fiscal impact.

#### **CONCLUSION**

The Administration is supportive of the granting the proposed Easement to Grantees, subject to and conditioned upon Grantees (1) securing all land use development approvals and all other required regulatory approvals; and (2) delivering to the City of a voluntary monetary public benefit in the amount of \$803,250.00.

#### **Applicable Area**

South Beach

**Is this a "Residents Right to Know" item, pursuant to City Code Section 2-17?**

**Is this item related to a G.O. Bond Project?**

Yes

No

**Department**

Public Works

**Sponsor(s)**

Commissioner Joseph Magazine

**Condensed Title**

1st Rdg, Approve Conveyance of Air Rights Easement, MMS 7 Farrey Lane. (Magazine) PW  
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