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**MOTION** was made by Carla Coleman and seconded by Willie Miller to recommend approval of the Flex PZ# 18-05000008 subject to the 5 conditions as described in the staff report. All voted in favor of the motion.

**(1:24:35)**

**H. ABANDONMENT**

**4. AMP-IV HIDDEN HARBOUR, LLC/ HIDDEN HARBOUR ROW VACATION**

**Planning and Zoning No. 19-18000003**

**Commission District: 1**

Consideration of the RIGHT OF WAY VACATION submitted by **ANDREW STURNER** on behalf of **AMP-IV HIDDEN HARBOUR, LLC**, is requesting to abandon portions of two sidewalks included within the right-of-way located at NE 23 Avenue; and to abandon two small triangular parcels within the previously abandoned NE 15th Street right-of-way to enable the 'Harborside at Hidden Harbour' Project's structural supports to be located within the area to be abandoned; and to provide a public easement. All parcels are legally defined as follows:

AKA: 1500 N. Federal Highway

ZONED: B-3 (General Business)/PCD & M-1/PCD

(Currently in the rezoning process to PD-I)

STAFF CONTACT: Maggie Barszewski, AICP (954) 786-7921

Ms. Jean Dolan, Principal Planner, presented herself to the Board. She explained that some right-of-way needs to be abandoned in order for the applicant to effectuate their PD-I. The proposal is to abandon sidewalks and replace them with easements. There are also two small clean-up aspects included in this request. She reminded the Board that the project includes walkways connecting the buildings and parking garages and stated that the City Attorney determined that these portions of land need to be removed from the public right-of-way and become private property. She explained that the circulation will remain the same. She then gave a summary of Hidden Harbor's reviews and approvals and explained that staff is attempting to bring several matters related to the project to the December 10<sup>th</sup> Commission meeting so that they can match up with the 2nd reading of the PD-I.

Given the information provided to the Board, staff provides the following alternative motions for the Board's review.

**I- Approve with conditions**

Recommend approval to the City Commission; however it will not be placed on a City Commission agenda until the following conditions are met:

1. A public access easement over the subject-sidewalk areas is retained in perpetuity that satisfies the Development Services Department; and

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2. A utility easement for possible assets per the Utility Department's discretion, or the provision of an agreement to relocate of any assets the Utility Department deems necessary; and
3. All other positive comments are received from each service provider, or until 60 days from the date of this recommendation, whichever occurs first.

*(Ms. Dolan commented that the Utility Department has since determined that they have no concerns since all utilities are within the street.)*

**II- Table**

Table this abandonment request to allow time for the Applicant to address any objections raised by the affected parties or to get additional information.

**III- Denial**

Recommend denial to the City Commission as the Board finds that the easement serves a public purpose and should not be abandoned.

Staff recommends alternative motion number I.

Ms. Coleman asked if there are no private utility easements in the area.

Ms. Dolan responded that there are none currently because it is right-of-way.

Ms. Coleman stated that if there are easements, the language in the staff condition regarding 60 days should be removed since this project is so complex and important.

Ms. Dolan responded that both staff and the applicant are diligently seeking any comments from the service providers and that it is rare to not get responses before going to the Commission.

Ms. Growblewski asked what happens if this abandonment is approved but the overall project is not approved.

Ms. Dolan responded that they would have to redesign the project.

Mr. Stacer clarified that the Board is only a recommending body and that ultimately the Commission would have to approve both the abandonment and the rezoning.

Ms. Coleman asked if the abandonment would be permanent even if the overall project for whatever reason failed to happen.

Ms. Dolan responded that this abandonment matter wouldn't have the chance for its required 2nd reading until January.

Mr. Graham Penn (200 S. Biscayne Boulevard, Miami) presented himself as the applicant's attorney. He says that the request in essence is to remove the dedication of the

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sidewalk as public ROW and to place an easement in its place. He provided the Board a powerpoint presentation and began by stating that if they had known from the outset that this abandonment was going to be required they would have made the request when they were previously in front of the Board. He explained that the license agreement is needed for the 10' wide pedestrian bridge that spans the two buildings and that this requested abandonment is needed for the pedestrian sidewalks that pass through arcades underneath the pedestrian bridge. He stated that there will not be any utilities in this abandoned area. He stated that they have already submitted to the City Attorney a draft of this public access easement. He pointed out that the two small areas that will be cleaned-up are leftover from when 15th Street was previously vacated.

Mr. Stacer commented that the survey shows 24' and not 35'.

Mr. Penn responded that the surveyor has made corrections and clarified that the word version of the legal description that will govern the agreement will state 35'.

Mr. Stacer asked if the building takes up the entire area that is subject to this abandonment.

Mr. Penn responded that the edge of the description is the subterranean edge of the footer, so the building might be slightly farther back but is basically the same.

Mr. Stacer asked if anyone from the audience wished to speak.

Mr. Jonathan Karsfeld (address) presented himself as managing partner of an adjacent property. He stated that he is challenged to understand why the City is giving this land away in both the abandonment and then also the right to build above the right-of-way. He says that the density of the project is a huge issue. He how the calculations for the allowable density for the project have been determined.

Mr. Penn responded that it is just the airspace because the ground space is being dedicated back to the City through a public easement. He stated that there are units in the airspace above.

Mr. Karsfeld asked if it has been determined that units can go above public right-of-way.

Mr. Penn responded that the license agreement will be considered by the Commission at their upcoming meeting.

Mr. Karsfeld stated that he is against this because of the density issue.

Ms. Coleman clarified that the request before the Board today is only for the abandonment and not the air rights issue.

Mr. James Saunders, Assistant City Attorney confirmed this.



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Mr. Stacer commented that page 13 of the PD-I indicates that there would be no ROW vacations.

Mr. Penn responded that this was written before the City Attorney determined that they needed to obtain this abandonment. He stated that they can correct this before 2nd reading.

Mr. Saunders confirmed this.

Mr. Stacer commented that the PD-I language also speaks to “limited structures in the right-of-way”, but that 13,000 square feet of building space is not “limited”.

Mr. Penn responded that this language intends to relate to limited structures at the ground level, which refer to the columns.

Mr. Stacer referred to the review standards for ROW abandonments and stated that he failed to see how this request satisfied either of the standards, since it is and will be used by the public and because it’s not supported by the Comprehensive Plan. He stated again that he thinks it is a terrible precedent to allow living space above public rights-of-way.

Ms. Moor says that she appreciates Mr. Stacer’s comments and agrees with them.

Mr. Saunders responded to counsel’s earlier statements and commented that he does not believe that this request is being proposed by the City’s attorney’s office.

Mr. Penn clarified that he does not mean to imply that the City Attorney is advocating for this request, but that it was their conclusion that the best way to proceed, should the City deem to approve it, would be to vacate the portion where units would be located and provide an easement in return along the walkway.

Mr. Stacer commented that the City should look to avoid creating a tunnel effect, and stated that he brought this up during the site plan hearing.

**MOTION** was made by Willie Miller and seconded by Darlene Smith to recommend approval of the Abandonment PZ# 19-18000003 per the 3 conditions as described in the staff report. All those voted in favor with the exception of Ann Marie Growblewski, Molly Moor, and Fred Stacer; therefore, the motion passed by a vote of 4 to 3.

**(2:30)**

**MOTION** by Carla Coleman and second by Molly Moor to heard agenda item #5 out of order. All those voted in favor.

**I. TEXT AMENDMENTS**