

January 29, 2026

**SENT VIA EMAIL ONLY**

Mr. Brian Elias, Chair  
Ms. Melissa Beattie, Vice Chair  
Mr. Jonathan Freidin, Board Member  
Mr. Yechiel Ciment, Board Member  
Ms. Elizabeth K. Latone, Board Member  
Mr. Keith Marks, Board Member  
Mr. Scott Needelman, Board Member  
City of Miami Beach  
PLANNING BOARD  
1700 Convention Center Drive  
Miami Beach, Florida, 33139

**RE: Pier Park at 1 Ocean Drive; PB25-0782.**

Dear Chair and Board Members:

Our firm represents Erika Soto, who resides at 300 S. Pointe Drive, directly southwest of the subject public park property and project referenced above.

Ms. Soto founded south of fifth (SOFI) moms group which currently has numerous members in her neighborhood. I will be at your meeting on February 3<sup>rd</sup> and I anticipate the following SOFI members to also participate: Carolyn Hurst, Lee Lentz, Claudia Lang, Erica Durst, Sonia Velasquez, Maritsa Rabie, Ambar Hanesty, Matt Gultanoff, Nathaly Lezcano- Raceanu, Liana Sangeorzan, David Geer, and Sanford Weiss. These individuals, and many more, have expressed an interest in joining the advocacy to reduce the adverse impacts of the super-sized project proposed at 1 Ocean Drive or the public lands know as “Pier Park.”

I respectfully request additional time at the public hearing to present our case, particularly since this matter has been identified by city planning staff as a “Residents’ Right to Know” item.

*Legislative intent.* It shall be the policy of the city to provide targeted neighborhood notice, timely opportunities for input, and **procedural fairness in hearings for any proposed policy, ordinance, project, or other matter that impacts residents' quality of life.**

(Emphasis supplied). City Code Sec. 2-17(a).

**Planning Board Responsibility.**

As public officials you have a duty to follow state and local laws, charter provisions, and ordinances. For example, Florida’s Community Planning Act requires that the “...governing body of each local government shall designate and by ordinance establish a ‘local planning agency’ ... [which] shall have the general responsibility for the conduct of the comprehensive planning program ... [including] the effectiveness and status of the comprehensive plan.” § 163.3174, Fla.Stat.

The city's land development resiliency code ("LDC") establishes that among its powers and duties, the Planning Board shall "... carry out its responsibilities as the local planning agency pursuant to the state and the Florida Community Planning Act (chapter 163, Florida Statutes). LDC Sec. 2.1.2.1.g.

The City's comprehensive plan is the superior document, adopted by ordinance and approved by the State of Florida, controlling development in the City. Section 163.3161, Fla. Stat, contains clear language as to the intent and purpose of the Community Planning Act:

(2) It is the purpose of this act to utilize and strengthen the existing role, processes, and powers of local governments in the establishment and implementation of comprehensive planning programs to guide and manage future development consistent with the proper role of local government.

(6) It is the intent of this act that adopted comprehensive plans shall have the legal status set out in this act and that **no public or private development shall be permitted except in conformity with comprehensive plans**, or elements or portions thereof, prepared and adopted in conformity with this act.

(Emphasis supplied).

There's a very important issue that needs to be considered by the Planning Board before you expend time and effort on the Boucher application. Specifically, the city's own planning department is informing you that the proposed commercial uses are not permitted under the current comprehensive plan.

The proposed uses identified above are consistent with the concession agreement and, as the property is zoned GU, the uses must be authorized by the City Commission. However, **Section 7.2.16.3 of the LDRs specifies that no GU property may be used in a manner inconsistent with the Comprehensive Plan. Under policy RLU 1.1.19 of the 2040 Comprehensive Plan, the uses permitted in the ROS future land use classification are limited to recreation and open space facilities.**

As the proposed uses are largely commercial in nature, **an amendment to policy RLU 1.1.19 of the 2040 Comprehensive Plan will be required**, prior to final action by the City Commission approving any of the proposed uses.

See Planning Board Staff Report, Page 2 (emphasis supplied). To be clear, as the agency legally responsible for the city's comprehensive plan, you are being asked to recommend approval of a project that is obviously inconsistent with the comprehensive plan, which is a violation of state law cited above.

Any amendment to the comprehensive plan to legalize this project would by state law have to come to you first as the local planning agency. Without knowing what that comprehensive plan amendment is, why would you take action on an illegal project? Isn't it more logical to wait for that amendment to avoid an inconsistency challenge and any other unknown consequences?

This is a serious issue that staff identified but unfortunately seems to downplay. A text amendment to the comprehensive plan is not a quick process. (See FS 163.3184 - Process for adoption of comprehensive plan or plan amendment). What this text amendment says and does to ROS designated lands needs to be understood before any decisions are made, and that text amendment ordinance should probably travel with the Boucher applications for total transparency. Also, it seems fundamental that the underlying land use issues are worked out before the design of the project is heard.

If this project goes on to be approved by the DRB and the City Commission, those decisions would be considered final development orders and subject to an inconsistency challenge pursuant to § 163.3215,

Fla.Stat. It's your job to ensure that "... no public or private development shall be permitted except in conformity with comprehensive plans." § 163.3161(6), Fla. Stat.

You should also consider that the powers and duties of the Planning Board under the LDC is to review leases of 10 years or longer of city property and the first of 7 criterion is consistency with the comprehensive plan.

To review the **sale, exchange, conveyance or lease of ten years or longer of certain city-owned property**, as provided in City Charter, subsection 1.03(b)4, entitled, "Disposition of city property," which requires approval by a majority (four-sevenths) vote of all members of the planning board. In reviewing such an application, the planning board shall consider the following review criteria, when applicable:

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

(Emphasis supplied). LDC Sec. 2.1.2.1.k.1.

The applicant will attempt to characterize its project as something other than a "sale, exchange, conveyance or lease" which is less than 10 years because the underlying solicitation or RFP at paragraph 13 states that

A PROPOSAL THAT CONTEMPLATES A LEASE OF THE PROPERTY FOR A TERM OF TEN (10) YEARS OR LONGER WILL REQUIRE APPROVAL BY A MAJORITY VOTE OF THE VOTERS IN A CITY-WIDE REFERENDUM PURSUANT TO SECTION 1.03(B)(1) OF THE CITY CHARTER. IN ADDITION, ANY LEASE OF THE PROPERTY WILL REQUIRE APPROVAL BY A MAJORITY OF THE RESIDENTS RESIDING IN VOTING PRECINCTS ANY PART OF WHICH IS WITHIN 1 MILE OF THE PARK AUTHORIZE SUCH SALE OR LEASE BY MAJORITY VOTE IN AN ELECTION PURSUANT TO SECTION 7-02 OF THE MIAMI-DADE COUNTY CHARTER.

A PROPOSAL THAT CONTEMPLATES A MANAGEMENT OR CONCESSION AGREEMENT HAVING A TERM OF TEN (10) YEARS OR LONGER (INCLUDING OPTION PERIODS) FOR THE PROPERTY WILL REQUIRE APPROVAL OF A MAJORITY 4/7 VOTE OF ALL MEMBERS OF THE PLANNING BOARD AND A 6/7 VOTE OF THE CITY COMMISSION PURSUANT TO SECTION 1.03 (F) OF THE CITY CHARTER.

The applicant conveniently executed a concession agreement giving them exclusive control over the subject property for 364 days and 23 hours and 59 minutes plus at least 2 to 3 years to demolish the existing structures and construct the new structures, all together much more than 10 years.

### **Pier Park.**

The applicant is working very hard to convince you that the subject property is not a public park because intense commercial development projects are not only impermissible on ROS designated lands in the comprehensive plan, but also public park lands in general.

As you know, Miami-Dade County is the oldest "charter county" in Florida. Charter counties typically have greater authority than non-charter counties, and frequently preempt powers of the municipalities within their jurisdiction. For example, Miami-Dade's charter states

SECTION 6.02. MUNICIPAL POWERS. Each municipality shall have the authority to exercise all powers relating to its local affairs **not inconsistent with this Charter**. Each municipality may provide for higher standards of zoning, service, and regulation than those

provided by the Board of County Commissioners in order that its individual character and standards may be preserved for its citizens.

(Emphasis supplied).

Recently amendments were adopted in the County's charter related to "parks, aquatic preserves and preservation lands." At the top of Article 7 it is noted that "This Article **does not apply to** municipal property in Coral Gables, Hialeah, Hialeah Gardens, Miami, Sweetwater and West Miami. See Section 7.04." (Emphasis supplied). Miami Beach is not mentioned, however Sec. 7.04 states:

Except as otherwise provided herein the provisions of this Article **shall apply to all County and municipal parks**, aquatic preserves, and lands acquired by the County for preservation now in existence or hereafter acquired, **provided that if this Article was not favorably voted upon by a majority of the voters voting in any municipality at the time of the adoption of this Article the municipal parks of such municipality shall be excluded from the provisions of this Article.**

(Emphasis supplied).

I raise this issue because Sec. 7.01 states in part that

[Parks] shall be protected from commercial development and exploitation and their natural landscape, flora and fauna, and scenic beauties shall be preserved. In lands acquired by the County for preservation and in parks along the Ocean or the Bay the public's access to and view of the water shall not be obstructed or impaired by buildings or other structures or concessions which are in excess of 1500 square feet each.

If this provision does in fact apply to Pier Park, the commercial development proposed by Boucher is in violation of the County Charter. The Boucher conceptual design refers to the property at "Pier Park" and "Pier Park Revitalization" multiple times. Miami Beach City Commission Resolution No. 2023-32825 approving the concession agreement with Boucher refers to the subject property as "also known as Pier Park." Finally, the planning department's staff report states "on October 18, 2023, the Mayor and City Commission adopted Resolution No. 2023-32825 approving a concession agreement with Boucher Brothers Pier Park, LLC for the operation of a beach establishment **within Pier Park located at 1 Ocean Drive.**" (Emphasis supplied).

### **Litigation.**

I confess, I don't know the entire history of how the concession agreement for this public park was awarded to the Boucher Brothers Pier Park, LLC ("Boucher") or why the Nikki Beach owners ("Penrod") were excluded, but I am aware there is a complicated litigation over this between the City, Boucher and Penrod, the outcome of which could make your time spent and decision on the Boucher application moot and a waste of government resources. See case number 2023-016657-CA-01 in the 11<sup>th</sup> Judicial Circuit for Miami-Dade County.

### **Conclusion.**

The City Commission approved the concept plan and concession agreement for a much less intensive project to renovate the existing structures at Pier Park. That's what the public, including my client and her neighbors, anticipated. Now Boucher is proposing a complete demolition and enlarged structures for commercial uses at the park which are not in keeping with the original approvals or the neighborhood fabric south of 5<sup>th</sup> Avenue. The project introduces dramatically more traffic, alcohol sales, and intensification of the neighborhood space known as Pier Park. Both the County and City Charters are at odds with this proposal, and there's no debate that the proposal would be inconsistent with the city's comprehensive plan, in fact city staff says as much in its report to you. You are the local planning agency for the city responsible

for ensuring that development orders are consistent with the goals, objectives and policies of the comprehensive plan. Do not ignore your responsibilities. Insist that the contemplated text amendment to the comprehensive plan is presented to you before recommending approval of a known inconsistent project.

I reserve the right to supplement my comments. Thank you for your time and attention.

Sincerely,

DICKMAN LAW FIRM

/s/ Andrew Dickman

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Andrew Dickman, Esq., AICP

cc: Jessica Freking ([jessicafreking@miamibeachfl.gov](mailto:jessicafreking@miamibeachfl.gov))  
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