

RESOLUTION NO. 2022- 2936

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA; APPROVING AN AMENDMENT TO RESOLUTION NO. 14-Z-2269 FOR THE SHUL LOCATED AT 9540 COLLINS AVENUE, SURFSIDE, FL, TO AMEND CONDITION NO. 19 OF SECTION IV. REGARDING UNDERGROUNDING OF UTILITIES IN THE ALLEY; RATIFYING ALL OTHER REQUIREMENTS AND CONDITIONS OF THE ORIGINAL APPROVAL IN RESOLUTION NO. 14-Z-2269; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Commission of the Town of Surfside adopted Resolution No. 2014-Z-2269 (“Original Approval Resolution”) which approved a site plan application and special exception with conditions by The Shul (“Applicant”) for development of the property located at 9540 Collins Avenue, Surfside, FL 33154 (the “Property”), to allow the development of a preschool and related uses; and

WHEREAS, Condition No. 19, of Section IV., of the Original Approval Resolution required that the Applicant take certain steps and make payments towards undergrounding of electrical and other utilities in the Alley behind the Property; and

WHEREAS, since the development order was approved in October 2014, The Shul has investigated this requirement and it was determined that undergrounding of utilities in the Alley was not feasible by a private entity due to the nature of the plat and ownership of the Alley, and the need to obtain numerous easements and approvals; and

WHEREAS, The Shul notified the Town on May 6, 2020, that it could not complete Condition 19, and moved forward with the alternative detailed in Condition 19.A (a) & (b) in which The Shul would replace the wooden poles with concrete ones and provide the Town with \$350,000 towards undergrounding if the Town moved forward with undergrounding within ten (10) years of the development order approval, with \$150,000 budgeted towards the Alley hardening and a total of \$500,000 budgeted towards undergrounding/hardening of the Alley; and

WHEREAS, as the Town is now moving forward with a Town-wide undergrounding of utilities project approved by voter referendum, the Town notified The Shul shortly after the March 2022 referendum vote of this intent and to cease the replacement/hardening of the wooden poles located in the Alley; and

WHEREAS, as of the notification by the Town, The Shul had incurred expenses primarily paid to FPL in the amount of \$61,424 towards the obligations in Condition No. 19, with a remaining budgeted balance for the undergrounding of \$438,576; and

WHEREAS, at the request and initiation of the Town, and with the consent and cooperation of The Shul, this amendment revises condition No. 19 of the Original Approval Resolution to modify The Shul's obligations and clearly provide for the payment from The Shul due the Town in the amount of \$438,576 to be used towards the Town-wide undergrounding of utilities project; and

WHEREAS, the Town of Surfside Commission and Administration wish to amend Condition No. 19 as herein provided and to amend the obligations and payments due from The Shul in light of the Town-wide undergrounding utilities project; and

WHEREAS, on October 12, 2022, the Town Commission, at a duly noticed quasi-judicial public hearing, reviewed the matter and hearing from its professional staff, the Applicant, and members of the public, the requirements of the Town Code and consistency with the Town of Surfside's Comprehensive Plan, and substantial competent evidence presented at the hearing.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPLICABLE TO APPLICANT, ITS SUCCESSORS AND/OR ASSIGNS, AS FOLLOWS:

SECTION 1. RECITALS AND FINDINGS OF FACT.

1. All recitals set forth above are incorporated into the body of this Resolution as if same were fully set forth herein.
2. The Town Commission finds that the Town-initiated request to amend Condition No. 19, of Section IV., of the Original Approval Resolution, regarding undergrounding of utilities in the Alley behind the Property has no impact on the development and Site Plan and Special Exception approved in the Original Approval Resolution.

SECTION 2. APPROVAL OF AMENDMENT TO CONDITION NO. 19, SECTION IV, UNDERGROUNDING OF UTILITIES IN THE ALLEY.

The Town-initiated request to approve an amendment to Condition No. 19, Section IV., of the Original Approval Resolution, regarding undergrounding of utilities in the Alley behind the Property is hereby approved to: (i) amend the requirement that the Applicant undertake undergrounding of utilities in the Alley and/or remove/harden wooden poles and replace with concrete poles, and (ii) provide for a payment by the Applicant to the Town in the amount of \$438,576 (which equals \$500,000 less a credit for the sum of costs in the

amount of \$61,424 previously incurred by the Applicant primarily to FPL for undergrounding of electrical utilities in the Alley), for the Town-wide utilities undergrounding project. Condition No. 19, Section IV., of the Original Approval Resolution, is hereby amended as follows:

19. A. It is the intent of the Town and agreed to by The Shul that the utilities in the alley shall be undergrounded. Undergrounding of utilities, including but not limited to phone, cable, electric and street lighting conductor, including providing any necessary easements on the Alley and/or the Property (under the control and ownership of the Applicant) to place the transformers where necessary. The Applicant shall be responsible for improvements that serve its ~~p~~Property, but shall not be responsible for the connections and securing easements for those connections from all properties on the east and west side of the alley on properties the Applicant does not own or control at the time of site plan approval. The Applicant will allocate a sum not exceeding \$500,000 for this project.

~~The Applicant took will take all necessary steps to secure the approval from Florida Power and Light ("FP&L") to underground utilities in the Alley and will provided the Town with copies of all applications and written communications with FP&L. The Applicant itself was not able to secure approval to underground all utilities in the Alley. The Town and FPL have entered into agreements for a Town-wide project to underground electrical utilities, as approved by the Town Commission at the June 14, 2022 Commission meeting. Upon written authorization of the undergrounding by FP&L and the Town, within ten (10) days, the Applicant shall deposit the sum of \$150,000 with the Town which shall be exclusively utilized by the Town for all costs and expenses for the future utility connections to all properties within the alley bordered by 95th Street and 96th Street between AIA and Harding Avenue, which are not owned or controlled by the Applicant at the time of site plan approval. Within 30 days of approval of this amendment to Resolution No. 14-Z-2269, Applicant shall remit the sum of \$438,576 to the Town (which equals \$500,000 less a credit for the sum of costs in the amount of \$61,424 previously incurred by the Applicant primarily to FPL for undergrounding of electrical utilities in the Alley), for construction of the Town-wide utilities undergrounding project. In the event that the Town-wide project does not proceed, the monies shall be used for improvements to harden utilities in the Alley between 95th and 96th Streets.~~

~~In the event that the undergrounding of utilities is not approved by FP&L within twelve (12) months, or a longer period agreed to by The Shul and the Town, of the Applicant receiving its first vertical building permit:~~

- ~~a. The Applicant will set aside in an interest bearing escrow account the sum of \$350,000 for the Town to underground utilities no later than ten~~

~~(10) years from the date of Resolution approval. If the Town does not decide to underground utilities within that time, the \$350,000 shall be used by The Shul to prepay The Shul's obligation to the Parking Trust Fund pursuant to paragraph 30 herein.~~

~~b. The Applicant shall remove all existing wooden poles from the alley and replace same with concrete poles which meet the specifications of FP&L and the Town Manager. The Applicant will take all appropriate steps to insure a clean and aesthetic appearance for the concrete poles and associated infrastructure within the alley. It is anticipated that upwards of \$150,000 will be expended to construct and engineer the proposed concrete poles.~~

~~B. Potentially relocating utilities, including water and gas lines as necessary to accommodate the undergrounding project.~~

~~C. Performing a drainage analysis and implement the necessary drainage improvements.~~

~~D. Performing a pavement analysis and implement the necessary pavement improvements.~~

~~E. Analyzing the water line in the alley and determine if line needs to be repaired, replaced or upsized.~~

~~F. Providing street lighting.~~

~~G. Providing a traffic evaluation of operations in the alley (including a no left turn sign).~~

SECTION 3. ALL OTHER REQUIREMENTS AND CONDITIONS OF THE ORIGINAL APPROVAL SET FORTH IN RESOLUTION NO. 14-Z-2269 RATIFIED AND IN FULL FORCE AND EFFECT.

All requirements and conditions of the Original Approval Resolution, and all other aspects of Resolution No. 14-Z-2269 not expressly modified or amended by this Resolution, are hereby ratified and continue in full force and effect and are incorporated into this approval by reference as if fully restated herein.

SECTION 4. VIOLATION OF CONDITIONS. Failure to adhere to the terms and conditions of this Resolution and/or the Original Approval Resolution shall be considered a violation of the Town Code and persons found violating the conditions shall be subject to the penalties prescribed by the Town Code, including but not limited to, the revocation of any of the approval(s) granted in this Resolution and the Original Approval Resolution. The Applicant understands and acknowledges that the foregoing approval in this Resolution may be revoked by the Town at any time upon a determination by the Town Commission, following a public hearing, that the Applicant is in non-compliance with the Town Code or the conditions of this Approval and has failed to cure, or to provide an acceptable plan to timely cure, the non-compliance.

SECTION 5. SEVERABILITY CLAUSE. In the event any portion or section of this Resolution is determined to be invalid, illegal or unconstitutional by a court or agency of competent jurisdiction, such decision shall in no way affect the remaining portions of this Resolution, which shall remain full force and effect.

SECTION 6. EFFECTIVE DATE. This Resolution shall become effective upon adoption.

PASSED AND ADOPTED this 12th day of October, 2022.

Motion by: Vice Mayor Rose

Second by: Commissioner Landsman

FINAL VOTE ON ADOPTION

Commissioner Fred Landsman	<u>Yes</u>
Commissioner Marianne Meisheid	<u>Absent</u>
Commissioner Nelly Velasquez	<u>Absent</u>
Vice Mayor Jeffrey Rose	<u>Yes</u>
Mayor Shlomo Danzinger	<u>Yes</u>




Shlomo Danzinger, Mayor

ATTEST:



Sandra McCready, MMC, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY
FOR THE TOWN OF SURFSIDE ONLY:**

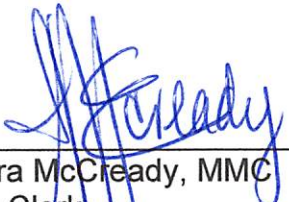


Weiss Serota Helfman Cole & Bierman, P.L.
Town Attorney

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

I, Sandra McCready, Town Clerk of the Town of Surfside, Florida, do hereby certify that the above and foregoing is a true and correct copy of Resolution No. 2022-2936 adopted by the Town Commission at its meeting held on the 12th day of October 2022.

Issued: October 19, 2022



Sandra McCready, MMC
Town Clerk