

# MIAMI BEACH

## COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission

FROM: Eric Carpenter, City Manager

DATE: September 11, 2024

TITLE: A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING THE RECOMMENDATION OF THE LAND USE AND SUSTAINABILITY COMMITTEE, AT ITS SEPTEMBER 5, 2024 MEETING, WITH RESPECT TO THE COMPLETION OF THE INDIAN CREEK PEDESTRIAN PATHWAY ALONG/NEAR THE 28 STREET PEDESTRIAN BRIDGE, AND AUTHORIZING THE ADMINISTRATION TO WORK WITH THE CITY ATTORNEY TO NEGOTIATE WITH THE OWNER OF THE OUTLOT LOCATED AT 2811 INDIAN CREEK DRIVE (2811 OUTLOT PARCEL) TO SECURE AN EASEMENT OR OTHER PROPERTY RIGHTS DEEMED ACCEPTABLE BY THE CITY ATTORNEY, GRANTING THE CITY THE RIGHT TO DEVELOP AND MAINTAIN, AT THE CITY'S SOLE COST, A CONNECTING PEDESTRIAN PATHWAY ALONG THE 2811 OUTLOT PARCEL (TRANSACTION), WITH THE TERMS OF SUCH TRANSACTION BEING SUBJECT TO APPROVAL BY THE CITY COMMISSION; PROVIDED, HOWEVER, THAT IN THE EVENT THAT NEGOTIATIONS ARE NOT SUCCESSFUL WITHIN A REASONABLE AMOUNT OF TIME, THE ADMINISTRATION SHALL SEEK DIRECTION FROM THE CITY COMMISSION, WHICH WITH THE ADVICE OF THE CITY ATTORNEY, WILL DETERMINE THE NEXT APPROPRIATE STEPS, WHICH MAY INCLUDE THE COMMENCEMENT OF AN EMINENT DOMAIN PROCESS AGAINST THE 2811 OUTLOT PARCEL.

### **RECOMMENDATION**

The Administration recommends approving the Resolution.

### **BACKGROUND/HISTORY**

On September 27, 2016, the Mayor and City Commission (City Commission) adopted Resolution No. 2016-29584, which authorized the City Manager to accept the transfer to the City, via quit claim deeds of approximately 4,000 linear feet of seawall along Indian Creek Drive from private property owners adjacent to Indian Creek Drive, so that the City and the Florida Department of Transportation (FDOT) may undertake the construction of a 5.7 NAVD elevation seawall barrier wall to improve street drainage and raise the road elevation for Indian Creek Drive between 26th Street and 41st Street.

On February 8, 2017, the City Commission adopted Resolution No. 2017-29749, which authorized the City Manager to accept quit claim deeds with an easement agreement, providing the upland property owners the ability to build a dock, or similar structure, in the future, on the water-ward side of the seawalls. On September 25, 2017, the City Commission adopted Resolution No. 2017-29982, memorializing the action taken by the City Commission on May 17, 2017, which modified Resolutions No. 2016-29584 and 2017-29749, so that the City Manager could accept the transfer to the City via quit claim deed, easement agreement, or cross-easement agreement, and extending the original authorization to include the area between 23rd Street and 26th Streets so that the City and FDOT may extend the construction of the seawall barrier wall from 23rd Street through 41st Street (Project Site).

The City approached property owners of the outlots located along Indian Creek Drive/Lake Pancoast within the Project Site during the design phase of the seawall installation project, requesting that property owners either provide an easement through their outlot parcel or transfer the property to the City via quit claim deed, permitting the City to install a new seawall at no cost to the property owners and permitting the City to construct a connecting walkway and other public facilities at the outlot properties; providing, however, that in the case of a deed transfer of the outlot parcel to the City, the property owner would retain an easement through the outlot for access and construction of a dock in the future, subject to the property owner securing the requisite regulatory approvals.

At its March 13, 2024 meeting, the City Commission approved a dual referral (Item C4 I) to the Finance and Economic Resiliency Committee (FERC) and the Land Use and Sustainability Committee (LUSC) to consider the creation of a new capital project to install an extended seawall cap and/or the acquisition of the parcel directly west of Indian Creek Drive and owned by the property located at 2811 Indian Creek Drive ("2811 Outlot Parcel") to complete the Indian Creek pedestrian pathway. The item was anticipated to be heard at the May 1, 2024, LUSC meeting, but it was not reached. The item was heard at the May 24, 2024, FERC meeting.

The referral referenced a March 18, 2020 City Commission Resolution (Resolution No. 2020-31210), approving one (1) of two (2) concept plans prepared by landscape architect Craven Thompson & Associates, Inc. ("Craven Thompson"), based on community feedback, to restore landscape removed during the construction of the seawall that extends from 24th Street to 41st Street on the east side of the Indian Creek Canal/Waterway (i.e., on the west side of Indian Creek Drive).

The approved concept plan provided connectivity for pedestrians between three (3) anchor points: (1) 41st Street; (2) the pedestrian bridge at 28th Street; and (3) the south end overlooking Lake Pancoast. The plan proposed varied layers of landscaping between the anchor points and the connectivity, to buffer the barrier wall, to screen and open some views, and plant large shade trees at the road intersections with Indian Creek Drive ("ICD") to limit traffic related light pollution into the residential neighborhoods. As part of the Resolution, the City Commission directed the Administration to work with Craven Thompson to increase the pathway and landscaping in as many areas as possible.

Construction of the pathway in its current iteration was completed in 2023 ("Pedestrian Pathway") and is reflected in the Indian Creek Greenway Plan prepared by Craven Thompson, dated September 1, 2023 (Greenway Plan), a copy of which is attached hereto. As highlighted in red in the Greenway Plan, the following areas currently do not permit continuous passage over the Greenway ("Unconnected Pedestrian Pathway") for a number of reasons; to wit:

- (1) 28th Street near the pedestrian bridge (the City has not secured property rights to the 2811 Outlot Parcel);
- (2) 31st through 35th Street (the City owns or has property rights to this segment of the Unconnected Pedestrian Pathway; however, there may be a City structure blocking use of the Pedestrian Pathway; the City may need consent to develop the Pedestrian Pathway on water/land from a property owner under its agreement and/or secure governmental approvals; or there is insufficient space to develop the Pedestrian Pathway; and
- (3) Approximately from 37th Street to 39th Street (the City owns or has property rights to this segment of the Unconnected Pedestrian Pathway; however, the City may need consent to develop the Pedestrian Pathway over water from a property owner and/or secure governmental approvals.

For the segments of the Unconnected Pedestrian Pathways in which the City has a property interest in the land along the Pedestrian Pathway pursuant to an easement or a Quit Claim Deed

with a cross easement flowing to the property owner, the City Attorney's Office would have to review the City's property rights, depending upon whether the path would be developed on the land or on water, and determine whether or not a consent would be required from the property owners.

For the segments of the Unconnected Pedestrian Pathway, Craven Thompson created pedestrian starts/stops at certain pinch points where the pathway would otherwise end; there are crosswalks at these pinch points to enable pedestrians who wish to walk along the west side of ICD to cross over to the east side temporarily, until the next crosswalk that can connect them back to the pathway; and this is less than ideal as pedestrians are forced to cross ICD and cross back several times to get from 26th Street to 41st Street.

The Mid Beach Neighborhood Association (MBNA) requested that the City consider the installation of a walkway over water connecting the pinch points along ICD to allow for a continuous pathway from 26th Street to 41st Street. The installation of a walkway over water would provide a safer solution for pedestrians traveling north or south along ICD in Mid Beach. An additional benefit is that the continuous pathway would also allow residents and visitors the ability to experience the City's natural beauty in a more intimate way.

At its May 24, 2024 FERC meeting, Committee members discussed the item at length and made a favorable motion to proceed to the City Commission, directing the Administration to work with the City Attorney to negotiate an access easement at 2811 Indian Creek Drive or begin an eminent domain process, and prioritize, during the 2025 budget process, a new capital project installing a walkway over water as part of the Indian Creek Pedestrian Pathway.

On June 26, 2024, the Mayor and City Commission adopted Resolution No. 2024-33109, accepting the recommendation of the FERC, at its May 24, 2024 meeting, and authorizing the Administration to prioritize funding during the 2025 budget process for a feasibility study, estimated at \$100,000.00, to determine the design and construction costs associated with a new capital project to develop a walkway over water for the Unconnected Pedestrian Path, so that funding for the design and construction may be determined for those segments of the Unconnected Path for which the City, on its own or by securing the requisite consents or other property rights, may proceed to complete the Indian Creek Pedestrian Pathway.

At the July 12, 2024 FERC Budget Workshop, FERC members funded the \$100,000.00 for the feasibility study, plus an additional \$400,000.00 to cover design costs, under Project No. 21026 (Over-Water Indian Creek Pedestrian Pathway), for a total amount of \$500,000.00. Construction costs for this project would be funded after the feasibility study is completed.

#### **2811 Indian Creek Drive Outlot Property:**

On June 26, 2024, the City Commission adopted Resolution No. 2024-33108, accepting the recommendation of the FERC, at its May 24, 2024 meeting, with respect to the completion of the Indian Creek Pedestrian Pathway along/near the 28th Street pedestrian bridge, and authorizing the Administration to: (1) work with the City Attorney to negotiate with the owner of the outlot located at 2811 Indian Creek Drive (2811 Outlot Parcel) to secure an easement or other property rights deemed acceptable by the City Attorney, granting the City the right to develop and maintain, at the City's sole cost, a connecting pedestrian pathway along the 2811 Outlot Parcel; and, in the event that negotiations are not successful, (2) study the possibility of pursuing an eminent domain proceeding against the 2811 Outlot Parcel, including securing appraisals and any other information deemed relevant by the City Attorney in connection with providing the City Commission with a recommendation as to whether or not to pursue an eminent domain proceeding against the 2811 Outlot Parcel, as a condition precedent to the commencement of such legal proceeding.

The 2811 Outlot Parcel is the only segment of the Unconnected Pedestrian Walkway in which the

City does not have a property interest to develop the Pedestrian Walkway and, in its current design, a pedestrian who crosses the 28th Street pedestrian bridge over Indian Creek must walk north to the crosswalk at 29th Street, then use the sidewalk on the east side of Indian Creek Drive to head south. As noted in the March 13, 2024 referral item, sponsoring Commissioner Alex Fernandez also wished to discuss the possibility of acquiring the 2811 Outlot Parcel.

The City has previously reached out to the property owner of the 2811 Outlot Parcel during the design phase to either obtain a perpetual easement or acquire the 2811 Outlot Parcel, with the property owner retaining the option of building a dock in the future; however, both options were rejected, which required the City to modify the design for the 2811 Outlot Parcel to the one currently in place.

Although the City has already provided alternate routes for the use of an Unconnected Pedestrian Pathway segment near the 28th Street bridge, due to the fact that the public is not able to continue the Indian Creek Pedestrian Pathway along the 2811 Outlot Parcel, it is reasonable and necessary for the City to consider improving the efficiency and safety of this segment of the Unconnected Pedestrian Pathway.

Pursuant to the direction from the May 24, 2024 FERC and June 26, 2024 City Commission meeting, the City's outreach team made contact with the owner of 2811 Outlot Parcel during the first week of August to discuss the possibility of granting the City title or easement rights to the 2811 Outlot Parcel for the development of a pedestrian pathway. The owner was again not receptive to either of these options. In connection with its due diligence related to a possible acquisition through negotiation or eminent domain proceeding, if needed, for the purchase of an easement, to develop a six-foot connecting pathway ("Walkway Project"), the City Administration will order an appraisal of the proposed six-foot easement area.

The 2811 Outlot Parcel was discussed once more at the September 5, 2024 LUSC meeting. The City's Public Works and the Legal Departments provided a status update to Committee members, and at the end of the discussion, the item was closed with a recommendation to direct the Administration to work with the City Attorney to negotiate with the owner of the 2811 Outlot Parcel to secure an easement or other property rights deemed acceptable by the City Attorney, granting the City the right to develop and maintain, at the City's sole cost, a connecting pedestrian pathway along the 2811 Outlot Parcel (Transaction); provided that in the event the parties could not reach agreement, that the City Commission could authorize the commencement of an eminent domain process. The terms of any negotiated Transaction would still be subject to approval by the City Commission, and in the event the parties could not reach agreement as to the Transaction within a reasonable amount of time, the Administration would seek direction from the City Commission, which with the advice of the City Attorney, will determine the next appropriate steps. Additionally, if ultimately the City Commission directs/approves the commencement of an eminent domain process, the Administration and the Owner of the 2811 Outlot Parcel would need to comply with applicable law, including but not limited to Florida Statutes §73.015.

### **FISCAL IMPACT STATEMENT**

No fiscal impact

### **CONCLUSION**

The Administration recommends accepting the recommendation from the Land Use and Sustainability Committee, at its September 5, 2024 meeting, with respect to the completion of the Indian Creek Pedestrian Pathway along/near the 28 street pedestrian bridge, and authorizing the Administration to work with the City Attorney to negotiate with the owner of the 2811 Outlot Parcel to secure an easement or other property rights deemed acceptable by the City Attorney, granting the City the right to develop and maintain, at the City's sole cost, a connecting pedestrian pathway along the 2811 Outlot Parcel (Transaction), with the terms of such Transaction being subject to

approval by the City Commission; provided, however, that in the event that negotiations are not successful within a reasonable amount of time, the Administration shall seek direction from the City Commission, which with the advice of the City Attorney, will determine the next appropriate steps, which may include the commencement of an eminent domain process against the 2811 Outlot Parcel.

**Applicable Area**

Middle Beach

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

Yes

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

No

**Was this Agenda Item initially requested by a lobbyist which, as defined in Code Sec. 2-481, includes a principal engaged in lobbying?** No

If so, specify the name of lobbyist(s) and principal(s):

**Department**

Public Works

**Sponsor(s)**

Commissioner Alex Fernandez

**Condensed Title**

Accept the LUSC recommendation to begin negotiations for outlot parcel 2811 Indian Creek Drive