

RESOLUTION NO. _____

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 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.

WHEREAS, on September 27, 2016, the 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; and

WHEREAS, on February 8, 2017, the Mayor and 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; and

WHEREAS, on September 25, 2017, the Mayor and City Commission adopted Resolution No. 2017-29982, memorializing action taken by the City commission on May 17, 2017, which modified Resolutions No. 2016-29584 and 2017-29749, so that the City Manager can 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); and

WHEREAS, 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 the 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; provided, 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; and

WHEREAS, 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 floating walkways and/or the acquisition of the outlot at 2811 Indian Creek Drive ("2811 Outlot Parcel") to complete the Indian Creek pedestrian pathway; and

WHEREAS, the item was anticipated to be heard at the May 1, 2024 LUSC meeting, but it was not heard; and was also scheduled to be heard at the May 24, 2024 FERC meeting; and

WHEREAS, the referral references 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); and

WHEREAS, construction of the Indian Creek pedestrian pathway in its current iteration is reflected in the Indian Creek Greenway plan prepared by Craven Thompson, dated September 1, 2023 (Greenway Plan), a copy of which is attached to the City Commission Memorandum accompanying this Resolution; and

WHEREAS, 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:

- 28th Street near the pedestrian bridge (the City has not secured property rights to the 2811 Outlot Parcel);
- 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 not sufficient space to develop the Pedestrian Pathway; and
- 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 on water from a property owner and/or secure governmental approvals; and

WHEREAS, 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; and

WHEREAS, 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 Indian Creek Drive 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; and

WHEREAS, the Mid Beach Neighborhood Association (MBNA) has requested that the City consider the installation of floating walkways connecting the pinch points along Indian Creek Drive to allow for a continuous pathway from 26th Street to 41st Street; and

WHEREAS, the installation of the Pedestrian Walkway on water, where it could not otherwise be constructed on land, would not only provide a practical solution for pedestrians traveling north or south along Indian Creek Drive in Mid Beach but would also allow residents and visitors the ability to experience the City's natural beauty in a more intimate way; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, as noted in the referral item, sponsoring Commissioner Alex Fernández also wished to discuss the possibility of negotiating an access easement through the 2811 Outlot Parcel by negotiation with the owner or, if necessary, by eminent domain, in order to complete the Pedestrian Pathway at the 2811 Outlot Parcel location; and

WHEREAS, the 2811 Outlot Parcel is part of a property which includes a home, located at 2811 Indian Creek Drive, directly across the 2811 Outlot Parcel, and on the east side of Indian Creek Drive (the "2811 House") (collectively, the 2811 Outlot Parcel and 2811 House shall be collectively referred to herein as the "2811 Property"); and

WHEREAS, pursuant to the Zillow website, as of January 24, 2024, the 2811 Property had been listed for 451 days and had a listing price of \$2,499,000.00; a lot size of approximately 4,450 square feet; and a house with approximately 2,553 square feet of living area, containing 6 bedrooms and 5 baths; and

WHEREAS, the Property Appraiser's Office has the fair market value for the 2811 Property for 2023 as \$1,113,867.00; however, the Property Appraiser's Office valuation is historically below the fair market values for the properties sold in the community; and

WHEREAS, according to Realtor.com webpage, as of June 17, 2024, the 2811 Parcel has been on the market for 503 days and is currently listed for \$2,199,000.00; and

WHEREAS, at is 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 to prioritize funding during the 2025 budget process for a new capital project to install a walkway over water as part of the Indian Creek Pedestrian Pathway; and

WHEREAS, the FERC recommendation relating to the funding of a new capital project to install a walkway over water is the subject of a separate Resolution; and

WHEREAS, although the City has already provided alternate routes for the use of 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; and

WHEREAS, following the recommendation of the May 24, 2024 FERC meeting, the City Administration recommends taking the following actions: (1) Negotiating 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; and, in the event that negotiations are not successful, (2) studying 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 pursue an eminent domain proceeding against the 2811 Outlot Parcel, as a condition precedent to the commencement of such legal proceeding.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby accept the recommendation of the Finance and Economic Resiliency Committee, 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 authorize 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 to the 2811 Outlot Parcel, as a condition precedent to the commencement of such legal proceeding.

PASSED AND ADOPTED this _____ day of _____ 2024.

Steven Meiner, Mayor

ATTEST:

Rafael E. Granado, Secretary

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney

6/21/24

Date