



MIAMI BEACH

OFFICE OF THE CITY MANAGER

NO. LTC # 313-2008

LETTER TO COMMISSION

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: City Manager Jorge M. Gonzalez
City Attorney Jose Smith

DATE: December 5, 2008

SUBJECT: Update on Public Baywalks

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The purpose of this LTC is to respond to certain questions recently asked about the status of the public baywalk from 5th Street to Lincoln Road.

1. What are the addresses of properties subject to development orders or final orders containing the term "baywalk" or derivatives thereof?

- a. 1100 West Avenue (Mondrian)
- b. 1228 West Avenue (private condominiums; order allows city to do baywalk segment in the future)
- c. 1330 West Avenue (Waverly)
- d. 1500 Bay Road (Flamingo)
- e. 1491 Lincoln Terrace (Mae Capri)

Others:

- f. 6950 Indian Creek Drive (Church of Jesus Christ Latter Day Saints)
- g. 7100 Tatum Waterway (order has expired)
- h. 6700 Indian Creek Drive - Nobe Bay
- i. 6650 Indian Creek Drive - Regatta II
- j. 6801 Indian Creek Drive - BelAire Bay (order has expired)

2. Does the city have a map of these properties?

City has aerially mapped the area from 5th Street to Lincoln Road.

3. Which have a c.o. or t.c.o., and which do not?

All have t.c.o.'s, p.c.o.'s or c.o.'s, except:

- a. 7100 Tatum Waterway Drive (expired)
- b. 6700 Indian Creek Drive - Nobe Bay (under construction)
- c. 6650 Indian Creek Drive - Regatta II (in permitting)
- d. 6801 Indian Creek Drive - BelAire Bay (expired)

4. Which properties are contesting/blocking public access in what venue and on what grounds?

a. 1500 Bay Road (Flamingo). The owners of the Flamingo filed a complaint in state court, which the City removed to federal court, claiming that (1) the DRB condition does not require that its baywalk be open to the public; (2) that the DRB condition is an illegal exaction, and (3) that if the baywalk is required to be open to the public, and is not an illegal exaction, that it is a taking for which compensation must be paid. The City has responded that the baywalk condition requires it to be open to the public (like the identical Waverly condition, on which a court has so ruled); that the Flamingo owners' claims are beyond the limitations period and have expired, and that the DRB condition is consistent with applicable law, and that no compensation is required, or because of development approvals enhancing the value of the property

compensation has already been provided. The case is in the early pleadings stage and mediation is scheduled in January 2009.

5. Which properties have erected barriers and been fined?

The Waverly (a predecessor developer to the association) and Flamingo both erected barriers to the baywalk. The Waverly's barrier has been removed and it is now open to the public. Fines have not been imposed on either property. As to the Waverly, the successor association claimed it was not aware of the requirement, and while challenging the requirement worked towards completing expensive modifications and improvements necessary to the opening of the baywalk. The City Attorney's Office and the Administration worked towards achieving compliance. As to the Flamingo, we presently believe the dispute will be resolved in court and therefore pursuing fines before the Special Master is premature.

6. Which properties are before the special master?

The Waverly was before the Special Master, but those cases are now closed, due to compliance.

7. Which properties have open permits and for what?

- a. Mondrian – conversion from apartment to hotel, including major building renovations and modifications.
- b. Waverly – installation of a fence to separate upland pool deck from baywalk.
- c. Flamingo – new building construction and existing building renovations.
- d. Mae Capri – new building construction, multi-family.
- e. NoBe Bay – new building construction, multi-family.

8. Who is the city's lead agency in promulgating baywalk policy?

The Planning and Public Works Departments and the City Attorney's Office are monitoring progress and working to achieve the proposed baywalk connections.

9. Do they have a schedule of completion dates?

- a. Mondrian – No. Permitting will take a number of years, if feasible.
- b. Waverly – Yes. Baywalk opened on November 20, 2008.
- c. Flamingo – No. In litigation.
- d. Mae Capri – Yes. Baywalk opened on September 22, 2008.
- e. NoBe Bay – No; construction active and ongoing.

10. When will South Pointe baywalk be open?

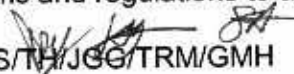
Upon completion of the park, which is projected for February, 2009

11. What has city done to fix this process?

We are confronted with these issues because we are addressing as-built conditions over private property. The Administration and City Attorney's Office have studied and continue to study the implementation of the full baywalk from 5th Street to Lincoln Road. Public Works has hired a consultant to evaluate the full implementation of this effort. Existing condominium projects and other properties are being evaluated for over-water baywalks parallel to their seawalls, for future baywalk connections from public rights-of-way or other baywalk segments. Public Works and its consultant are preparing a conceptual plan and exploring funding alternatives for a prototypical over-water baywalk segment.

As part of the overall development review process for bayfront projects, the City's Planning and Legal Departments have drafted conditions and requirements for establishing and allowing public access to the bay, as part of the review and approval of such projects. These conditions and requirements are made part of the Final Order, recorded in the public record and enforced prior to the issuance of Certificates of Occupancy or Certificates of Completion. Existing developments are reviewed when approvals for renovations are sought to determine whether an upland or in-water baywalk can be implemented as part of the renovation project, and approval for the City to interconnect the baywalk with the private project is sought. Recently this was accomplished at 1228 West Avenue, where approval for a dock renovation was evaluated to ensure that a future public baywalk connection in the water (no upland space was available) could be designed compatible with the replacement docks being constructed.

The Administration and City Attorney's Office are evaluating other opportunities, programs and regulations to advance the implementation of this baywalk effort.


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