


Memorandum



Date: November 14, 2023

To: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor 

Subject: Status Report and Recommendation to the Board Regarding the Miami Wilds
Development Lease Agreement

Executive Summary

This Status Report is provided pursuant to the Motion introduced by Commissioner Kionne McGhee and approved by the Board of County Commissioners (“Board”) on October 3, 2023, which directed the Mayor or designee to prepare and submit to this Board a status report and recommendation regarding the Miami Wilds, LLC (“Miami Wilds”) Development Lease Agreement (the “Lease”), including the current status of the project, including any defaults on behalf of Miami Wilds, updates on any proposals or negotiations with Miami Wilds related to amending the Development Lease Agreement, and a recommendation from the County Mayor on whether and how the Miami Wilds Development Lease Agreement should be amended.

At this time, as further detailed in this memo, it appears that the Lease will need to be rescinded to best safeguard the County's interests and our community's needs and objectives. The Lease was approved and executed subject to and contingent upon the prior approval, execution and validity of an amended release of deed restrictions with the United States Department of the Interior, National Park Service (“NPS”) on the lands to be leased to Miami Wilds and to be used for development and operation of a parking concession. While Miami Wilds and the County entered into the Lease with the understanding that the amended release of deed restrictions granted by NPS was valid, a case pending in federal court challenges the validity of the release of deed restrictions and a summary judgment hearing on the matter is to be held in December 2023. NPS has admitted that it failed to comply with applicable legal requirements prior to approving and executing the release. If the Court grants the plaintiffs’ claims for relief in that case, an action that the Court seems likely to take, the Lease will need to be rescinded and terminated as the condition precedent will have been voided and the deed restrictions prohibiting leasing of the lands and private, commercial use thereof will again be in place for portions of the land.

Further, and as outlined below, Miami Wilds has failed to fulfill multiple contractual obligations, including neglecting to provide the County with a requisite land survey in adherence to the terms of the lease, delinquent remittance of rent payments to the County, and untimely submission of the draft final site plan.

Another key concern is that Miami Wilds is required to commence construction of the waterpark and hotel by the end of 2023. However, prior to commencing the construction, Miami Wilds needs to have obtained all of its zoning and land use approvals, submit to the County a final set of design and construction plans (following the delivery and County approvals of earlier iterations of the design plans), obtained all the requisite building permits and approvals, and have secured all of its financing for the development of the

project and provided evidence of same to the County. (Lease at Section 9). As of the drafting date of this report, Miami Wilds has not: (1) submitted the necessary zoning or land use applications; (2) submitted architectural plans or construction drawings to the County; (3) entered into a construction contract with a licensed contractor; nor (4) provided evidence to the County that it has secured all its financing for the development of the project. Given that the zoning approval process – the first step of many pre-construction obligations – inherently demands a minimum of eight months, it is highly likely that Miami Wilds will default on their imminent contractual obligation to commence construction of the water park and hotel development by the end of 2023.

Considering the likelihood of the Court voiding the underlying release of deed restrictions, it is anticipated that the Lease will need to be rescinded in order to allow the NPS to undertake its required legal reviews and consultations before approving the release of deed restrictions. Accordingly, it is recommended that the County rescind the Lease upon a Court order voiding the amended release of deed restrictions on the Zoo Miami lands. Further, based on the escalating and imminent defaults of the Lease, it is recommended that – in the event the Court does not void the amended release of deed restrictions or the County’s rescission of the Lease is held invalid – the County proceed to exercise all rights for tenant defaults available to it under the Lease including but not limited to terminating the Lease in the event the defaults remain uncured following notice and opportunity to cure in accordance with the Lease. The Administration also requests the withdrawal of file #231692 which was deferred to the December 12, 2023 Board of County Commissioners meeting.

Background

On October 20, 2020, through Resolution R-1083-20, the Board approved the Lease with Miami Wilds for approximately 27.5 acres of vacant, undeveloped County land located at 12400 SW 152 Street. The Lease granted Miami Wilds rights to develop a Zoo Miami Entertainment Area with a water park, a retail development, and a family hotel for economic development purposes along with a Parking Concession Agreement to operate a large parking lot for the joint, non-exclusive use of Miami Wilds and the County, which left a smaller lot for only the County’s and Museums’ uses. The Board’s approval of the Lease, however, was subject to and conditioned on the following condition precedent: the approval, execution and validity of the Amendment No. 1 to the Release and Transfer of Terms, Conditions, Covenants, and Restrictions between the County and the NPS (the “Amended Release”), which removed land-use restrictions from part of the leased premises. The Amended Release was approved along with the Lease and it was executed by NPS on February 4, 2022. The Lease and Amended Release were thereafter executed by the County.

Subsequent to the Board’s approval and the County’s final execution of the Lease and the 2022 Amended Release, three environmental groups sued NPS in federal court seeking to void the 2022 Amended Release. Plaintiffs in the case allege that NPS failed to complete certain legal requirements involving environmental reviews prior to approving and executing the 2022 Amended Release. NPS and the other federal defendants have admitted most of the allegations and concede that they did not undertake the reviews required by federal law prior to approving and executing the 2022 Amended Release.

Prior Recommendations Status

In recognition of the deed restriction issues with the 2022 Amended Release, and a desire to mitigate potential impacts on the Florida Bonneted Bat, the County administration and Miami Wilds agreed to present an amendment to the Lease to the Board and propose recommendations to the Board that would achieve the following:

1. Approval of the Rescindment Agreement, which would rescind the 2022 Amended Release and allows NPS to comply with its legal obligations prior to entering into another amended release of deed restrictions with the County.
2. Approval of the Lease Amendment, which delays Miami Wilds' ability to secure a leasehold interest in the County property, and to occupy or develop the property, until one of two conditions occurs: (a) NPS completes its legal obligations and approves and executes another amended release of restrictions for the leased premises; or (b) two years pass without a release from NPS, and Miami Wilds elects to instead develop the project on the lands that are not subject to deed restrictions.
3. Through the Lease Amendment, revision of the terms and conditions of the Lease, including but not limited to the removal of Miami Wilds' obligation to build a hotel on the leased premises; instead, the Lease Amendment facilitates and extends the time for Miami Wilds to develop a hotel and new affordable housing on the Coast Guard Housing Site, which is the option parcel identified in the Lease.
4. Approval of the First Amendment to the Parking Concession Agreement to conform to the reimposed restrictions on County land that will occur upon the approval of the Rescindment Agreement.
5. Through the Lease Amendment, revision of the terms and conditions of the Lease to include the requirement for Miami Wilds to provide to the County, along with the draft of the final site plan, a detailed noise and lighting plan, subject to approval by the County. The noise and lighting plan shall include, but not limited to, any lighting and use requirements resulting from consultation with FWS and incorporates certain restrictions on nighttime lighting and use after the commencement date.
6. Through the Lease Amendment and First Amendment to the Parking Concession Agreement, revise certain maps to remove an area of designated Pine Rocklands that was inadvertently shown on the maps as part of the proposed parking areas.

This item was presented to the Board at its September 6, 2023, meeting as Item 8(H)(1), at which time the item was deferred to the September 19, 2023, Board meeting. At the September 19, 2023, Board meeting, the item was subsequently deferred to the December 12, 2023, Board meeting. The Administration now seeks the withdrawal of the item.

Current Project Status

Pursuant to Section 9.1.1 of the Lease, the County received the draft final site plan from Miami Wilds on September 10, 2023. The County reviewed and returned comments related to the draft site plan for Miami Wilds to review. Additionally, and in accordance with Section 9.1.1 of the Lease, the County is currently holding monthly pre-design meetings with Miami Wilds to discuss various site plan comments and any adjustments that may need to be made pursuant to the Lease, and will continue to review all progress drawings, as applicable.

Miami Wilds' Contractual Obligations Based upon Commencement Date of June 23, 2022:

- a) Due Diligence Period expiration date (June 23, 2023 @6:00 pm): Per Section 7.1.1 of the Lease, "Tenant shall have until the expiration of the Due Diligence Period [*i.e.*, June 23, 2023] to perform all inspections and investigations of the Premises (the "**Inspections**"). Tenant shall, no more than two (2) Business Days after the expiration of the Due Diligence Period [*i.e.*, June 25, 2023], deliver written notice to the Landlord as to whether Tenant intends to proceed with the Lease or terminate the Lease.
- b) Documents for the Site Plan: Per Section 9.1.1 of the Lease and corresponding subsections 9.1.1.1 and 9.1.1.2, "[w]ithin sixty (60) days of the expiration of the Due Diligence Period [*i.e.*, August 23, 2023], Tenant shall submit to the County the initial draft of the Final Site Plan, which shall be based on the Conceptual Site Plan attached [to the Lease] as Exhibit "C"."
- c) Rent Obligations:
 - 1) Per Section 4.1 of the Lease, Landlord's Fee, "[w]ithin five (5) Business Days of the Commencement Date [*i.e.*, June 28, 2022], Tenant shall pay directly to Landlord a fee in the sum of **\$110,000.00**.
 - 2) Per Section 4.2 of the Lease, Land Rent, "[a]s the initial annual base land rental for the Lease and use of the Premises, the Tenant shall pay the amount of **\$3,100.00** per gross acre of the Land (e.g., assuming the Land is 27.5 acres, the initial Land Rent for the Land shall be \$85,250.00 annually, payable in equal monthly installments of \$7,104.17). The Land Rent shall increase annually on the anniversary of the Commencement Date by two and one-half percent (2.5%) over the immediately prior Lease Year, and shall be paid in currency of the United States of America and without billing and demand, and at the offices of the Landlord as set forth in **Section 4.9** (Address for Payments).
- d) Security Deposit: Per Section 4.5 of the Lease, "[w]ithin sixty (60) days of the Commencement Date [*i.e.*, August 23, 2022], the Tenant shall pay to the Landlord the Security Deposit. Pursuant to Section 1.115 of the Lease, the amount of this Security Deposit is \$14,200 until Substantial Completion of the Water Park Development, and thereafter, \$142,000.
- e) Pre-Existing Environmental Conditions/Environmental Baseline Audit:
 - 1) Per Section 13.5 of the Lease, "[i]f during the Due Diligence Period, the Tenant determines that there are any Pre-Existing Environmental Conditions, the Tenant shall advise the Landlord of same and shall provide the Landlord with a copy of all environmental reports and assessments[.]"
 - 2) Per Section 13.5.4 of the Lease, "[p]rior to the expiration of the Due Diligence Period [*i.e.*, June 23, 2023], the Tenant shall cause the completion of and pay for a licensed environmental engineer, consultant and/or auditor as approved by the Landlord, such approval not to be unreasonably withheld, to complete a Baseline Audit. The acoustic survey of the Florida bonneted bat required as part of the Baseline Audit must be completed prior to the expiration

of the Due Diligence Period. The Tenant shall provide the Landlord with a copy of the Baseline Audit and all other environmental assessment reports undertaken of the Premises or the Parking Development.”

- f) Land Survey: Per Section 7.2.3 of the Lease, by or before the end of the Due Diligence Period [*i.e., June 23, 2023*], “Tenant shall order, pay for, and obtain a Survey of the Land, which Survey must be acceptable to Tenant and Landlord in each Party's reasonable discretion and which must depict the three separate Areas of Land for the Hotel Development, Water Park Development and Retail Development.”
- g) Pre-Construction Obligations: Per section 9.2 of the Lease, Tenant is required to complete the following obligations prior to commencing any construction of the improvements; (for the hotel and water park that means the following has to be completed no later than December 23, 2023):
- 1) Tenant shall have submitted to the Landlord the final set of approved and permitted construction plans with respect to the Improvements, and shall have received approval from the Landlord to proceed with same.
 - 2) Tenant shall have entered into a valid and binding construction contract for the construction of the Improvements to be constructed on the Premises for the Water Park Development, Retail Development and Hotel Development, as applicable. Tenant shall remit to the Landlord, in electronic format and as a hard copy, copies of such construction contract(s) prior to their execution.
 - 3) All Governmental Authorities shall have given their development approvals necessary for commencement of construction of the Improvements, and shall have issued all required permits for the construction of same. Tenant shall remit to the Landlord, in electronic format and as a hard copy, copies of such granted approvals.
 - 4) Tenant shall have provided evidence acceptable to the Landlord that Tenant has the financial ability (including financing resources) to complete the development of the Improvements to be constructed on the Premises.
- h) Commencement of Construction: Per Section 1.21 of the Lease, “shall mean the later of (a) the filing of the notice of commencement under Florida Statutes, Section 713.13 and (b) the visible start of construction work on the applicable Area, including on-site utility, excavation or soil stabilization work (but specifically excluding any necessary testing or ceremonial groundbreaking).” As further set forth in Section 8.1 of the Lease, the following timelines apply:
- 1) Water Park: Eighteen (18) months after the Commencement Date (*i.e., December 23, 2023*);
 - 2) Hotel Development: Eighteen (18) months after the Commencement Date (*i.e., December 23, 2023*) for the first 100 rooms and keys (*54 months later for second 100 rooms and keys*);
 - 3) Retail Development: Twenty-two (22) months after the Commencement Date (*i.e., April 23, 2024*); and
 - 4) Parking Development: Twenty-two (22) months after the Commencement Date (*i.e., April 23, 2024*).

Notes: 1) Extensions due to delays as a result of Force Majeure or County delays may be extended by the length of such delay, pursuant to Section 8.3 et seq.

2) Additional timeline requirements come into effect upon Commencement of Construction as enumerated in the Lease. *See* particularly Sections 8, 9, and 11.

2. **Defaults by Miami Wilds, LLC:**

- a) **Rent Payments:** On September 22, 2023 and October 10, 2023, notices of default were issued by the Office of the Mayor to Miami Wilds, advising Miami Wilds of their failure to timely remit rent payments for the period from January 2023 through October 2023 and owing pursuant to the terms of the Lease, with such past due payments totaling \$79,869.44. As of October 13, 2023, this payment default was substantially remediated by Miami Wilds through wire transfer to and receipt by the County of these arrearages.

Additionally, payments for November 2023 rent (\$7,281.77) and the Security Deposit (\$14,200.00) remain outstanding despite repeated requests to Miami Wilds by PROS for remittance of same. Accordingly, a Notice of Imminent Default of Development Lease Agreement was delivered to Miami Wilds on November 14, 2023 addressing these arrearages. The current arrearage interest calculation for the outstanding Security Deposit is \$964.23, bringing said amount due to \$15,164.23. Interest continues to accrue on the November 2023 rent payment, as that payment was not received by November 10, 2023.

(Note: Arrearage calculations may be subject to change based upon revised statutory interest rates as may be set forth by the Office of the Chief Financial Officer of the State of Florida.)

- b) **Land Survey:** Per Section 7.2.3 of the Lease, by or before the end of the Due Diligence Period [*i.e.*, June 23, 2023], “Tenant shall order, pay for, and obtain a Survey of the Land, which Survey must be acceptable to Tenant and Landlord in each Party's reasonable discretion and which must depict the three separate Areas of Land for the Hotel Development, Water Park Development and Retail Development.” Provision of this land survey by Miami Wilds remains unfulfilled. This item was also included in the Notice of Imminent Default of Development Lease Agreement delivered to Miami Wilds on November 14, 2023.
- c) **Documents for the Site Plan:** Per Section 9.1.1 of the Lease and corresponding subsections 9.1.1.1 and 9.1.1.2, “[w]ithin sixty (60) days of the expiration of the Due Diligence Period [*i.e.*, August 23, 2023], Tenant shall submit to the County the initial draft of the Final Site Plan, which shall be based on the Conceptual Site Plan attached [to the Lease] as Exhibit “C”.” The draft Final Site Plan was submitted by Miami Wilds on September 10, 2023 instead of August 22, 2023.
- d) **Commencement of Construction:** As of the date of this report's drafting, it has been confirmed that Miami Wilds has not yet submitted the necessary zoning applications or other documentation required to fulfill the conditions set forth at Section 9.2 of the Lease. The applicable zoning approval processes are known to take a minimum of eight months, making it unfeasible for Miami Wilds to meet the prescribed commencement of construction deadlines. Specifically, the deadlines for the water park and hotel development, which are due on December 23, 2023, and for the retail and parking development, due on April 23, 2024, are highly likely not to be met.

3. **Notice of Rescission of Lease:**

- a) Concurrent with the above-referenced notices of default for non-payment of rent, the Office of the Mayor also issued a Notice of Rescission of Development Lease Agreement dated September 22, 2023 to Miami Wilds, advising Miami Wilds of the County's intent to rescind the Lease should the Amended Release be declared void, set aside, or otherwise disposed of by a court of competent jurisdiction, since the approval, execution and validity of the Amended Release was an express condition precedent to the approval and execution of the Lease.

Recommendation

It is therefore recommended that the County rescind the Lease if the deed restrictions are reimposed on any portion of the leased lands. Alternatively, if no Court order is entered voiding the Amended Release and the deed restrictions are not reimposed on the leased lands, it is recommended that the County enforce all of its rights under the Lease for Tenant's defaults including but not limited to terminating the Lease if Tenant fails to timely cure its defaults following notice and an opportunity to cure. This course of action is recommended to safeguard the County's interests and our community's needs and objectives.

This Memorandum will be placed on an agenda of the full Board, without committee review, pursuant to Rule 5.06(J) of the Board's Rules of Procedure, on December 12, 2023. If additional information is needed, please contact Maria I. Nardi, Director, Miami-Dade County Parks, Recreation and Open Spaces Department, at 305-755-7903.

- c: Geri Bonzon-Keenan, County Attorney
Jess McCarty, Executive Assistant County Attorney
Gerald Sanchez, First Assistant County Attorney
Monica Rizo-Perez, Assistant County Attorney
Melanie Spencer, Assistant County Attorney
Sophia Guzzo, Assistant County Attorney
Office of the Mayor Senior Staff
Maria I. Nardi, Director, Parks, Recreation and Open Spaces Department
Basia Pruna, Director, Clerk of the Board Division
Jennifer Moon, Chief of Policy and Budgetary Affairs
Yinka Majekodunmi, Commission Auditor
Eugene Love, Agenda Coordinator