



## Interoffice Memorandum

### Minutes

### Roadway Agreement Committee

July 15, 2009

Members Present: Jim Harrison – Growth Management Department (Chairman)  
Joe Kunkel – Public Works Department (Vice Chairman)  
Renzo Nastasi – Transportation Planning Division  
Benj Hurt – Real Estate Management Division  
Ruby Rozier – Traffic Engineering Division  
John Smogor – Planning Division  
Diana Almodovar – Development Engineering Division

County Staff Present: Roberta Alfonso – County Attorney’s Office  
Julie Naditz – Highway Construction Division  
Robin Hammel – Public Works Engineering Division  
Susan Martin – Risk Management Division  
Frank Yokiel – Public Works Engineering Division  
Heather Brownlie – Transportation Planning Division  
Rita Gonzalez – Transportation Planning Division

Mr. Kunkel called the meeting to order at 8:41 a.m.

### Approval of Minutes

The Committee reviewed the minutes from the July 1, 2009 Roadway Agreement Committee Meeting and changes were requested as follows:

Page 2 line 48 add a period at the end of the sentence.

*Mr. Smogor made a motion, with a second by Mr. Kunkel to approve the July 1, 2009 Roadway Agreement Committee Meeting minutes as amended. Motion carried unanimously.*

### Activity Update/Summary/Follow-Up Items List

Ms. Hammel updated the Committee on the Whispering Pines – Ocoee Golf property stating that Mr. Wheeler from the City of Ocoee called Ms. Naditz and stated that the City will be taking care of everything; the City would either burn or remove the debris left on the property.

Ms. Hammel sent a letter to Mr. Terry Hagen stating that they were in default of the agreement and that Orange County would be building the road. Ms. Hammel held a meeting with Mr. Hagen who requested road impact fee credits for clearing tasks performed by Mr. Hagen.

Mr. Harrison asked about the status of OUC.

Mr. Harrison asked for an update of Friedman litigation.

Ms. Alfonso provided an update on Summerlake.

Mr. Kunkel approved the Summerlake design invoices and sent a letter to Mr. Evans regarding the construction invoices.

The Florida Mall bid opening will be held on Friday, July 17, 2009.

There was discussion on Innovation Way Road E and when construction is to begin. There is an outstanding issue with Utilities and getting a Permit, and also EPD regarding the Impact Permit.

Groundbreaking is scheduled for September 2, 2009.

Mr. Kunkel asked about the Village F Legals and Sketches.

Mr. Hurt stated there were a number of issues still outstanding.

Karl Corporation has submitted Legals and Sketches showing a Conserv II Easement over a portion of the Right-of-Way.

Mr. Harrison asked to include a category for follow-up items with issues on the Activity Summary.

Committee Discussion:

The discussion item was combined with the Vistana discussion.

**Florida Mall – Sand Lake Road**

Development: Florida Mall DRI

Developer: Florida Mall Associates, LTD

Road Affected: Sand Lake Road

Present: Scott Thompson

County Staff Present: Luis Alvan, Christa Gandenberger

BCC agreement: BCC 6/19/2001 (OR 6301/4303), JPA BCC 6/18/2002

Previous RIFCC/RAC: 11/8/2000, 12/13/2000, 1/17/2001, 3/21/2001, 4/4/2001, 5/16/2001, 6/6/2001, 4/21/2004, 5/19/2004, 12/12/2007, 3/5/2008, 5/21/2008, 7/16/2008, 11/14/008, 2/4/2009, 4/10/2009

Mr. Thomson stated that the project is moving forward to construction with the bid opening on Friday.

Mr. Thomson stated that the Ratification Agreement needs a start date later than July 1, 2009 and that it has been changed to September 10, 2009.

The MOU is completed as well as the Utilities Agreement.

Mr. Kunkel pointed out that it was almost a year ago that Florida Mall came to the Development Review Committee and the Development Review Committee ruled that no Certificate of Occupancy would be issued until Construction of the Sand Lake Road improvement begins and that decision stands so he would like to see that construction begin as soon as possible according to the new schedule.

Mr. Alvan asked about FDOT plans update requirements.

Mr. Nastasi stated that the plans can be changed during construction if necessary.

***Mr. Kunkel made a motion second by Mr. Smogor to approve the Florida Mall Ratification Agreement with the change of Construction start date made at today's meeting. Motion carried unanimously.***

**Vistana Villages/Benson PD**

Development: Vistana Villages/Benson PD

Developer: SVO Vistana Villages, Inc.

Road Affected: Westwood Boulevard Extension/Wildwood Avenue

Present: Jim Kattelman, Hal Kantor, Joe Gamb

Previous RAC: 12/12/2007, 3/19/2008, 4/2/2008

County Staff Present: Raymond Williams, Bill Muscatello, Sheryl Weinmann

Ms. Hammel opened by outlining the issues which surround obtaining Right-of-Way “free and clear” and how the County deals with easement issues as they arise. She stated that some areas get releases, and some areas provide subordinations.

Ms. Hammel stated that some areas cannot be dedicated “free and clear” in which case the value of the property must be reduced.

A standard Progress Energy Subordination is not really a Subordination at all since Orange County has a few if any superior rights.

Ms. Hammel then looked at the present case of Vistana and how the Progress Energy easements impact the ability to take title “free and clear”.

Mr. Kunkel stated that in a previous meeting it was determined the County will deal with the utilities crossing the road.

Ms. Hammel states the current draft of this amendment call for a \$44K reduction but does not address the power poles on Wildwood Avenue.

Mr. Kantor explained that originally the Vistana representatives were asked to dedicate Right-of-Way for Westwood Blvd Extension and then Wildwood Avenue came up.

Mr. Kunkel stated that \$313,000k is the value for the Wildwood Avenue Right-of-Way and the developer is providing a slope easement for no additional compensation.

Mr. Kantor stated that Vistana cannot agree to a reduction in road impact fee credits.

Mr. Kattelman had to provide Progress Energy with another easement in order to get the partial releases.

Mr. Harrison asked about the history of the project.

Mr. Kattelman responded that Vistana Phase 3 could not move forward, per Development Review Committee comments, until a road agreement was entered into for Westwood Blvd. Extension and Wildwood Avenue.

Mr. Kantor stated that there was mutual mistake of fact by both parties.

Mr. Nastasi stated that accrual of Right-of-Way from the area for both roads by agreement requires “free and clear” title.

The County cannot know what is out there until we receive title work by the applicant during conveyance.

Ms. Hammel stated that the other 5 poles in the Right-of-Way exist by Right-of-Way Utilization Permit and will have to move when the roadway construction begins.  
Progress Energy acquired the existing 10 foot easement by eminent domain for \$13,000 in 1991.

Mr. Harrison stated that the Committee needs to be clear with the applicants that ““free and clear”” means no encumbrances.

Ms. Hammel stated that there are many other utilities out there besides Progress Energy.

Ms. Alfonso stated that Real Estate Management has requested title work up front several times to try to avoid this issue.

Mr. Nastasi stated that then agreements would take alot longer to get through the process and many times the Development Review Committee is referring projects to Roadway Agreement Committee for resolution which need to move forward.

Mr. Harrison asked about the status of the Vistana Villages project.

Mr. Kantor replied that construction is not planned for a while but mass grading was completed.

Mr. Nastasi stated that the goal of the committee is to acquire the necessary Right-of-Way for road improvement projects and that the agreement clearly states that Right-of-Way is to be provided ““free and clear””.

Mr. Nastasi stated that having roads and better access to the property benefits the developer.

Mr. Kantor stated that they don't need this road but that the County does.

Mr. Nastasi explained that the applicant would be getting another access point which is a benefit.

Mr. Harrison stated that the agreement is in place and now we need to see what the options are for the structure of the Amendment.

Mr. Harrison stated that we need to be more stringent with future agreements.

There were three (3) alternatives discussed.

1. To go back to square 1 and call it a null agreement.
2. Litigate the approved agreement for specific performance.
3. Compromise somewhere in the middle.

Ms. Hammel explained that the Right-of-Way is needed for the roadway. One compromise would be for Mr. Hurt to devalue the property by the value of the easement encumbering property (50% of the fee value).

Mr. Hurt did some quick mathematical calculations and arrived at \$17,000 roughly as a deductible amount for the property.

Mr. Harrison stated that this will provide us with a solution for this agreement and expressed the need for a policy to be put in place for future projects.

Mr. Harrison asked to change the last black-lined paragraph on Page 4 to read “a reduction as a result of ... easement... in the amount of the value of the Progress Energy Transmission Easement encumbrance which has been determined and agreed to be roughly \$17,000.

Mr. Harrison went through the Amendment page by page.

No changes to page 1.

Mr. Nastasi asked about the values in the original agreement and asked if they would be the same value today.

Mr. Harrison and Mr. Hurt stated that the original agreement should stand since it was based on a current appraisal at that time.

Page 3 Mr. Kattelman will combine deduction of the \$44,000 and then the \$17,000 for Wildwood to arrive at the final figure for the road impact fee credits.

Ms. Alfonso asked about the Subordination Agreement since Orange County does not execute. Ms. Alfonso will work on specific language with Mr. Kattelman.

There were no other changes requested by the Committee.

Mr. Nastasi asked if this Amendment needed to be approved today.

Mr. Kunkel stated that in looking at the Wildwood Area Road Network and whether or not there needs to be a road south of I-Drive at all in which case we may not wish to acquire the Wildwood Avenue portion at all to relieve ourselves of the obligation to pay credits for Right-of-Way.

Mr. Harrison asked if more time was needed to review the situation for the road network.

Mr. Nastasi responded, just want an opportunity to look at the road network and see if access can be provided within the Right-of-Way acquired.

Mr. Harrison asked to reschedule to the next Roadway Agreement Committee meeting on August 5, 2009.

Mr. Kantor asked if the county makes any different determination to please let him know right away.

Mr. Harrison adjourned the meeting at 10:17 a.m.