



## Interoffice Memorandum

### Minutes

### Roadway Agreement Committee

February 20, 2008

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

County Staff Present: Roberta Alfonso – County Attorney’s Office  
Diana Almodovar – Development Engineering Division  
John Geiger – Environmental Protection Division  
Susan Martin – Risk Management Division  
Julie Naditz – Highway Construction Division  
Heather Brownlie – Transportation Planning Division  
Peter Johnstone – Transportation Planning Division  
Vince Randazza – Real Estate Management Division  
Brian Sanders – Transportation Planning Division  
Rita Gonzalez – Transportation Planning Division

Mr. Cain called the meeting to order at 8:44 a.m.

### Approval of Minutes

The Committee reviewed the minutes from the February 6, 2008 Roadway Agreement Committee Meeting and changes were requested as follows:

On Page 2 line 26 add "College Suites and Orange County".

On Page 4 line 47 Ms. Alfonso requested to add "help Mr. Kay".

On Page 5 line 25 change "Mr. Kunkel" to "Orange County will provide".

On Page 5 line 46 change to "Orange County will provide".

On Page 5 line 3 change "if" to "it".

On Page 9 in line 5 change to add "current" and "and replaced with amended language".

On Page 10 line 31 – 33 after the words "City Code." change it to read; "The City should be inspecting their facilities. In addition, Orange County Utilities (a separate entity) would be inspecting their facilities. Remove the word "anyways".

***Motion by Mr. Nastasi, second by Mr. Harrison, to approve the February 6, 2008 Roadway Agreement Committee Meeting minutes with listed changes and other typographical corrections and grammatical omissions. Motion carried unanimously.***

**Special Meeting Minutes 2/18/2008 –Woodbury Road Extension**

Mr. Nastasi had a question regarding the 7<sup>th</sup> paragraph and asked that the tape be reviewed to clarify the sentence.

No other changes were requested.

*Motion by Mr. Smogor, second by Mr. Kunkel, to approve the February 18, 2008 Woodbury Road Extension (College suites at Woodbury Road) Special Roadway Agreement Meeting minutes with listed changes and other typographical corrections and grammatical omissions. Motion carried unanimously.*

**Special Meeting Minutes 2/18/2008 – CR535 Segment A**

Page 1 change Cain to Curi in the 8<sup>th</sup> paragraph.

Page 2 “consistent” has one “s”.

Page 2 place \$ before 960k.

Page 3 add “t” to “easmen”, should read easement.

*Motion by Mr. Cain, second by Mr. Smogor, to approve the February 18, 2008 CR 535 Segment A Special Roadway Agreement Meeting minutes with listed changes and other typographical corrections and grammatical omissions. Motion carried unanimously.*

**Activity Update/Summary**

Mr. Cain informed the Committee that Downey Property PD was approved by the Board of County Commissioners.

Mr. Harrison requested to change RAC pending approval heading to reflect correct years, 2006/2007/2008

**Windermere Gardens APF**

Development: Windermere Golf Academy  
Developer: Windermere Golf Academy, LP  
Road Affected: Winter Garden Vineland (CR 535)  
Present: Marion Skilling  
Previous RAC: 11/8/2006, 5/16/2007

The applicant is coming back to Roadway Agreement Committee to get re-approved and start the process over since they still need additional items to take to the Board of County Commissioners.

Mr. Cain informed the applicant that they need to return to Development Review Committee to get confirmation from the Development Review Committee regarding the rate.

Ms. Alfonso stated that the Mayor’s signature block should be on the same page as the Clerk of the Board and that the Owner’s signature page needs to be on a separate page.

Ms. Skilling stated they would change the property owner name from Le Royal on Page 5.

***Mr. Smogor made a motion, seconded by Mr. Cain, to approve the APF Agreement with the changes requested at today's meeting, subject to final review by the Committee. Motion carried unanimously.***

**Taurus O53B LLC - (Woodbury Rd Ext)**

Developer: O53BLC (Taurus Inc.)

Road Affected: Woodbury Road Extension

Present: Jim Kay, Jeff McFadden,

Previous RAC: 11/13/2002, 9/1/2004, 10/12/2005, 2/01/2006, 3/01/2006, 6/07/2006, 6/21/2006, 8/16/2006, 2/6/2008

County Staff Present: Tony Cotter, Jennifer Cummings, Frank Yokiell, Abdul Azim, and Brian Sanders.

Page 1 first line change "Owner's Agreement" to "Right-of-Way Agreement"

Page 2 first line, first Whereas, change "will to" to "willing to".

Page 2 Ms. Alfonso stated the need to refer to "donate" rather than "convey" throughout the agreement since they are not getting Road Impact Fee Credits for Right-of-Way being dedicated.

Ms. Alfonso stated that two Whereas statements need to be included: 1) Whereas referring to the easements and 2) Whereas stating it is an impact fee eligible road.

Page 3 Section 2 Mr. Nastasi questioned the last sentence where it states, "County shall be solely responsible for any off-site mitigation". Mr. Harrison suggested rephrasing this to state that the owner is not responsible for any mitigation rather than the County shall be solely responsible for all mitigation.

Page 3 Section 2 (iii) (1) change "Buildable Area" to "Owner".

Page 3 Section 2 (iii) (3) Ms. Alfonso questioned "the Estoppels" language. Ms. Alfonso stated that this is not standard and want to make sure this is okay with the Committee.

Taurus will need to cooperate and sign the release which will be obtained. This language will be placed before the Estoppels and Mr. Cain will review. Mr. Kay will send language to Ms. Brownlie.

Ms. Alfonso asked to insert boilerplate environmental language for ESA Phase I.

Mr. Kay restated that the ESA report costs would come out of the \$50,000 to be paid.

Ms Alfonso and Mr. Kay negotiated specific language to be included.

Page 4 Section 2 (c) and (d) add "acceptable to the County"

Page 4 Section 2 (e) \$10 is not the correct number, it was requested that this number be taken out of subparagraph (e) and replaced with the value given by Mr. Hurt from Real Estate Management.

The County will be responsible for the recording expenses and the County will pay the cost of conveyance, but the owner is responsible for Title Insurance.

Mr. Cain asked Mr. Hurt to let Ms. Caswell know that we are doing this and why.

Page 4 Section 2 (f) Mr. Nastasi objected to the liability clause which states “shall do nothing”.

Page 4 Mr. Harrison asked that Section 2 (f) be deleted completely.

Mr. Kay asked for changes to the language to prevent liability. The Committee felt this was not something they could work with.

Page 5 Section 2 (g) (ii) Mr. Sanders stated that one year for construction was not realistic.

Page 5 Section 2 (h) Mr. Smogor asked they use “substantially complete” rather than “open for traffic”.

Page 5 Section 2 (h) need to change 6 months expiration for easement to expires 60 days after substantial completion. This language will be determined later, Mr. Kunkel to give timeframe.

Page 6 Risk Management has an issue with waiving sovereign immunity at the end of Section 2 (h).

Ms. Alfonso stated that they must include disclosure of beneficial interest statement clause which was taken out.

Page 7 Mr. Nastasi stated that no credits will be given until the road is constructed and connects. Mr. Cain was okay with the timing of providing credits within 60 days of conveyance.

They get \$50,000 in credits even though part of that money is lessed out for the ESA and other costs.

Page 7 Ms. Alfonso stated that the Estoppel Statement needs to be changed to a letter from the County.

Page 9 Section 5 first paragraph, last sentence relating to Agreement with the City of Orlando needs to be deleted.

Page 9 Section 6 Recordation Clause needs to be boilerplate. Mr. Kay wants the opportunity to record the termination. He will work with Ms. Alfonso on this section.

Page 9 Section 9 has added language to the boilerplate; Ms. Alfonso will look at this and determine if it is okay to leave it in.

There were no changes to Page 10.

Page 11 Section 10 (b) (v) Mr. Nastasi objected to the language. Mr. Kay will send revised language for Ms. Alfonso to review.

The signature pages need to be boilerplate.

This item is rescheduled for March 5, 2008.

**College Suites at Woodbury - (Woodbury Rd Ext)**

Developer: College Suites at Woodbury, LLC

Road Affected: Woodbury Road Extension

Present: Udo Garbe, Andrew Chu, Anna Long

Also Present: Warren Williams

Previous RAC: 11/8/2006, 2/6/2008

County Staff Present: Tony Cotter, Jennifer Cummings, Frank Yokiell, Abdul Azim, and Brian Sanders.

Ms. Long provided a 2-page handout with changes she made after they met with County staff on February 18, 2008.

Ms. Long did not want to include the Force Majeure language but the County wants to include it.

Mr. Harrison stated that the Force Majeure language is not an option. It either goes in the agreement or we do not have an agreement.

Ms Long wants to make sure the Force Majeure language is included in the Taurus Agreement also.

The owner will not sign the joinder and consent. The Developer is willing to put a date for closing and then so many days after, they will convey.

Ms. Alfonso stated that the Committee usually requires a joinder and consent, but it is up to the committee to decide if we can proceed without the joinder.

Mr. Harrison stated that since they are not receiving other entitlements the Committee should be okay with the termination language.

This agreement will only be recorded after closing so it is not a cloud on the title.

Page 2 Ms. Long wants differential of credits to be provided as an offset to proportionate fair share.

Mr. Garbe made a case for getting credits to offset proportionate fair share and stated that the Bill Heard agreement provided for this.

Ms. Alfonso reviewed the Bill Heard agreement and said that there is nothing in that agreement providing any road impact fee credits for proportionate fair share.

Mr. Harrison stated that he does not recall this ever being done and he has been with this Committee since its commencement.

Page 4 Ms. Alfonso suggested including in lieu of condemnation language if the committee agrees.

Ms. Long changed the extension language and added that Real Estate Management shall extend the timeframe rather than at their option.

Mr. Harrison suggested that the Real Estate Management language be taken out completely. If it doesn't close then they come back to the Roadway Agreement Committee.

There were no changes to Page 5.

Page 6 Ms. Long added language for costs on mitigation related to environmental costs being paid by County. She stated that College Suites wants to provide the best possibility to get the best ratio.

Mr. Cotter suggested changes through this section and including different language stating that there could be a lot split. Ms. Long and Mr. Cotter had a conversation about this section.

Ms. Long stated that they do not want to be responsible for any long-term maintenance or monitoring which may be required for the pond site by the Water Management District.

Mr. Curi stated that as long as there is monitoring there will not be a lot split.

Page 7 “Special” warranty deed to be used.

Ms. Long referred to Section 4 on Page 7 and referenced changes made as indicated in her handout. Ms. Long expressed her concern on getting access over the remaining parcel after conveying to the Water Management District for conservation.

Page 8 in the last paragraph Mr. Cain had concerns and requested the words “data” be change to “calculations” and asked they strike the word “expected” after the word “stormwater”.

Page 9 Section 5 change “Permit” to “period”.

Page 10 Section 6 the last sentence Mr. Cotter wants to make clear that these are costs incurred after the effective date of the agreement which will cover the caveat.

Ms. Alfonso informed Ms. Long that the effective date is when the Mayor signs the Agreement.

Mr. Harrison stated that we have agreed to up to \$10,000 after the effective date of the Agreement.

There was discussion to delete Section 5 except for the expiration language – delete after the 5<sup>th</sup> line. Clarification to follow.

Ms. Long requested a timeframe for construction and Mr. Cain responded that the County would need a minimum of 2 years, since we do not have construction plans or final design yet.

Mr. Kunkel stated that the concern would be coming back and tearing out a part of what College Suites constructs if it does not match up to our road design plans.

Mr. Cain stated we do no have a problem with College Suites building the road, but we cannot provide any credits until the road is connected.

Mr. Cain has concerns with the costs related to demolishing the 2 lanes which would increase the County’s cost to construct.

Mr. Kunkel explained that if the safe and adequate access is provided through a utilization permit it would be able to meet with future road plans at that time.

Mr. Cain agreed and thinks a new section is needed in the agreement to cover this.

Ms. Long explained that they had discussed a second plan, and were willing to build a portion of the road to County standards if the County would reimburse College Suites on a linear per-foot basis.

Mr. Cain stated we cannot reimburse any construction costs until the road connects.

Ms. Long stated that they would have enough to submit for a permit to the Water Management District by October 2008; they would submit 60 days thereafter (December 2008); construction could commence 150 days from receipt of all permits and completion would be 12 months from date of commencement.

Ms. Long stated that College Suites would go back and discuss these terms with Mr. Garbe and work on Section 8 and return to the Committee.

Mr. Harrison stated that he would rather tie to the date of the agreement rather than a date certain but would go with decision of the Committee.

Mr. Cotter stated that a sentence guaranteeing that the county would meet the timeframes could be included. Mr. Cotter will provide Ms. Long with language.

Mr. Kunkel suggested looking at and revising the number of days and going back and sending information to Mr. Chu and Ms. Long.

Ms. Long will provide Ms. Alfonso information as to if it does not happen within the timeframe.

Ms. Long questioned the recording language and will delete the wording after Florida.

Page 14 there may be changes needed to the remedies.

Mr. Harrison questioned Mr. Garbe on the closing date. Mr. Garbe responded October 15, 2008.

Mr. Harrison has concerns with the timing in Section 7 because this agreement may terminate. We have to make sure we have not gone out too far if we are going with a date certain and not a joinder.

Mr. Kunkel stated that there will be thresholds in effect.

Ms. Long stated that they would go back and make revisions to Section 7 and Section 8.

This item will be rescheduled to March 5, 2008.

**CR 535 Segment A – Interlocal Agreement with the City of Winter Garden**

Road Affected: CR 535

Present: Ed Williams, Kurt Ardaman, Art Miller

Previous RAC: 5/16/2007, 6/20/2007, 11/07/2007, 1/30/2008, 2/6/2008

County Staff Present: Juan Curi, Sheryl Weinmann

There were no changes to Pages 1, 2, and 3.

On Page 4 Mr. Ardaman stated that they are waiting for a number from Real Estate Management.

Mr. Harrison questioned the Cemetery language and everyone seemed to be okay with the language.

Ms. Alfonso requested that on Page 4 Section 3 (c) 3<sup>rd</sup> line down to change “may” to “shall” be conducted.

There are typographical errors, “landss” in the agreement which Mr. Ardaman will correct.

Page 5 subsection (e) should read “as this parcel redevelops”.

Mr. Curi questioned Page 5 subsection (c); which states remediation after the study is finished. We can conduct a cemetery audit and a County audit.

Page 5 subsection (e) Mr. Harrison asked to change 30 to 45 (4<sup>th</sup> line from the top).

Page 8 Mr. Engineer was happy with the changes made. He stated that the Utilities refer to the City of Winter Garden Utilities and the Territorial Agreement which is included by reference.

Ms. Alfonso objected to the last sentence in Section 6 (c). Following Committee discussion of this language, Mr. Harrison determined it was okay to leave it as is.

Page 9 Section 6 (d) need to add “60%” to the first sentence and switch City and County in the second sentence where it states “County shall provide the City” with “City shall provide the County”.

It was asked if the utility plans and construction plans could be tied together. Since the construction plans are at 90% it would not hold up the utility plans.

Mr. Kunkel stated that it should not be a problem since the construction plans are scheduled for 2011.

Mr. Sanders has concerns with full exposure for cost. He stated that in the letter to the City outlining terms of the agreement it was stated both parties would share the cost.

Page 13 Ms. Martin handed out the indemnification language to be included in the agreement.

Mr. Williams asked that someone be assigned to work with the Exhibits.

Mr. Harrison responded Heather would be the contact person.

***Mr. Smogor made a motion, seconded by Mr. Cain, to approve the Agreement with changes requested at today’s meeting and subject to final sign off from our Legal Department, subject to verification of Exhibits and final review by the Committee. Motion carried unanimously.***

**Avalon Park DRI**

Development: Avalon Park DRI

Developer: Avalon Associates

Road Affected: Alafaya Trail

Previous RIFCC: 8/04/2004, 9/1/2004, 9/15/2004, 10/13/2004, 1/5/2005, 9/28/2005  
(Morgran)

Attendees: Beat Kahli, Eric Marks, Jim Pratt and Carol Conner

County Staff Present: Damian Czapka

The Amended Agreement is to revise the Board of County Commissioners approved Agreement dated October 25, 2005 that is outdated to provide an opportunity to do things in a better way.

Mr. Kahli stated that he is willing to perform on the existing agreement but asked in the spirit of partnership how he can make it better. The road is needed for East Orlando, and he wants to do what is right for both sides. He wants the Committee to know that Avalon is flexible and willing to work together with the County to get this road done.

Mr. Harrison asked how will all this get done; the construction, the financing and the design?

Mr. Cain gave Mr. Kahli a copy of a letter in response to a meeting that was held prior in the week and asked that in the spirit of cooperation the County is trying to move the acquisition of Right-of-Way forward as fast as we can. We need to acquire the Right-of-Way in the process we normally do.

Mr. Hurt stated as soon as we get Legal and Sketches to acquire the Right-of-Way that process can begin.

Mr. Czapka stated that they were holding an HOA meeting that night with the Stone Forest community.

Mr. Marks stated that the County is being advised that it needs to acquire Right-of-Way and Avalon is offering to help speed up the process.

Mr. Cain stated that as a governmental entity the County has to do this in the normal fashion.

Ms. Alfonso stated that the County cannot allow Avalon to serve as our Agents in legal transactions.

Mr. Khali stated that Avalon cannot be responsible to pay for the Right-of-Way, but feels they can convince owners to donate the Right-of-Way.

Ms. Alfonso stated that we need to proceed in our methods since this is our road project.

Mr. Cain stated that we cannot accept the offer; since it could delay the process.

Mr. Cain stated that we need legal descriptions and that is what is holding things up.

Mr. Harrison asked how is design and permitting to be accomplished?

Mr. Kahli stated that he could get a schedule to Ms. Brownlie and believes they can go to St. Johns Water Management District in June. He stated that there are no changes in the design or permitting.

Ms. Conner stated that they are ready to submit; that they have made adjustments to the submission.

Mr. Harrison asked about construction, once all the Right-of-Way is acquired and conveyed.

It was stated that construction would need to go out for public bid.

Mr. Kahli stated that they would look at the cost for building a similar road. The County would have the ability to review the agreement. He has no interest in making money; he wants to get the road built. Mr. Kahli proposed to handle the public bidding process. The County would reimburse him for construction costs amortized over a 6-year period

Mr. Kahli will take the Morgran payment and apply it to construction costs.

Mr. Kunkel would prefer 30 years – 18% divided by 30. Mr. Kunkel explained that the original Agreement states the County would arrive at construction costs by looking at current projects. We would then apply the 3.2 million which is allocated for construction costs from the Morgran Agreement and some other amount which will come from escrow. After all this we will still be short 17.5 mil and who will cover this cost.

Mr. Kahli stated that they are fully vested – why should they come in and take on the burden.

Mr. Cain stated that there is nothing in this agreement that authorizes us to pay for anything other than for hard construction costs.

Mr. Harrison stated that there are other agreements that the County has successfully negotiated a linear foot clause with hard construction.

Mr. Kahli asked what the County wants to do with this agreement. Mr. Harrison responded to negotiate the agreement as is was intended and perform under the terms.

Mr. Harrison stated he did not grasp Mr. Kahli's point, since we have a legal agreement and now there is talk about a broad concept to change everything. The county has two agreements with the same two parties, same language and same concept, it would be reasonable to expect that it be interpreted the same way in both agreements. The pivotal point is what constitutes construction costs and whether that includes the administration and overhead Mr. Kahli is proposing.

Mr. Marks stated that they see ambiguity in this. What Avalon is proposing now provides more certainty and reduces the overall construction costs.

Mr. Harrison did not agree and was not convinced of the benefit to the County.

Mr. Cain asked if there was an opportunity to adjust our internal program.

Mr. Kunkel stated that there may be a way that the County can do some short term financing with OMB.

Mr. Kunkel feels that there are items in the agreement that the County can look and reduce some of the costs depending on the way the bid is set-up.

Mr. Harrison stated that the fundamental question is whether the County can provide cash reimbursement as opposed to road impact fee credits, either through short term financing or what Avalon is proposing. There was discussion regarding the mechanism in which we arrive at the cost, and the advantage of negotiation in reaching an agreement right away due to the perception of the issue.

Mr. Kahli feels that it is not good for the County for him to flood the market with all of his impact fees credits; he wants to work with the County as a partner. Mr. Kahli is seeking to put some certainty into the agreement for both parties.

Mr. Harrison asked Mr. Kahli if he was comfortable with road impact fee credits for the full cost of construction. Mr. Kahli responded yes.

Mr. Harrison stated but you do not want an account full of impact fee credits, you would prefer to get cash reimbursement instead.

Mr. Khali stated he would prefer, if we could agree to work with the County, to request that over a period of time, each year to get those fees into the market or from the county as cash. We will receive less for the impact fees credits since they would be sold at a lesser value and cash flows much faster.

Mr. Harrison asked Mr. Kunkel if it would work better for him as a cash flow process.

Mr. Kunkel offered another option and asked if there was an opportunity to provide cash funding if we realign or restructure some of our projects and instead of paying 100% impact fee credits, the County would pay for part and developer pay for part.

Mr. Harrison asked Mr. Kunkel to get with OMB to see if that would be possible.

Mr. Harrison stated that we could look at it as 100% or some portion and talk about if we want to go out to bid.

Mr. Kunkel advised the Committee and those present that he would be meeting with OMB and would check with them on this issue.

Mr. Harrison stated that we need to agree on a general concept and then iron out the language.

Mr. Cain stated that we are still discussing a conceptual agreement

Mr. Kunkel stated that he would break down what he found out from OMB and forward to Ms. Brownlie for distribution to the Committee.

Mr. Khali asked how they deal with the road impact fee credits.

Mr. Kunkel responded it is a 2 year budget and OMB has a model for the funding and they would decide over a 5 year period with a balance to our expenditures. There is a reserve and we can go back and tie into the reserve to try and make the project work.

Any questions regarding the distribution of impact fee credits can be discussed after the meeting.

This item is scheduled to return in 2 weeks.

Mr. Harrison adjourned the meeting at 12:55 p.m.