



Interoffice Memorandum

Minutes

Roadway Agreement Committee

May 6, 2009

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

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

Mr. Harrison called the meeting to order at 8:48 a.m.

Approval of Minutes

The Committee reviewed the minutes from the April 15, 2009 Roadway Agreement Committee Meeting and changes were requested as follows:

Page 3 line 2 Ms. Almodovar asked to add quotes around “updates to the final plans”.

Page 6 line 5 capitalize “termination”.

Page 6 lines 9 - 13 Mr. Harrison asked for clarification of Mr. Kunkel’s request, and asked to add a semicolon after the word “also” which will make the sentence read better.

Page 7 line 42 add “were” after the word “Changes”.

Page 8 line 23 Ms. Rozier asked to make a correction to “Section 28”; it should read “Section 2.8”.

Ms. Almodovar made a motion, with a second by Mr. Nastasi to approve the April 15, 2009 Roadway Agreement Committee Meeting minutes as amended. Motion carried unanimously.

Activity Update/Summary/Follow-Up Items List

OUC Alafaya Trail

Mr. Nastasi stated that additional Right-of-Way is required on the Frontage Road and Mr. Callan (OUC) would like to return to the Roadway Agreement Committee (RAC). There are still outstanding issues with OUC due to the additional entitlements associated with Trips to be provided and the additional Right-of-Way needed. OUC wants to come and discuss the modification to the draft agreement. Ms. Hammel stated that it was an Easement being discussed which is about 20 x

60 and needs to be extended another 150 feet. Mr. Harrison feels this item does not need to return to RAC until the issue is resolved.

Summerlake

Ms. Alfonso gave an update and stated that after 2 days of Mediation, they are still working with the Attorneys. Ms. Alfonso has been designated as clearing house for distribution of all future documentation. This item is tentatively scheduled to return to Mediation on July 1, 2009. Some of the surrounding property owners would like to be included in the process.

Lakeside Village - Sharp PD/Frye PD

Development: Lake Reams Neighborhood PD – Sharp Property

Developer: KB Home Orlando LLC

Road Affected: Reams Road

Present: Don Huber, Ron Campbell, Shaun McIntyre, Mohammad Abdallah

Previous RAC: 4/17/2004, 3/16/2005, 6/15/2005, 10/25/2006, 1/3/2007, 1/17/2007, 3/21/2007, 3/18/2009, 4/1/2009

County Staff Present: Juan Curi, Bob Goff, Brian Sanders, Mirna Barq

The committee reviewed the agreement page by page.

Mr. Huber stated that the Developer and the Banker have agreed to the agreement and the changes.

Page 1 Ms. Rozier stated that the Exhibits do not match up. Mr. Huber stated it was a printing format issue that they will correct.

Ms. Alfonso asked that they fill in the “Prepared By” section.

Page 2 Ms. Rozier questioned the second Whereas referring to the time frame on impact fees. Mr. Harrison responded it is 6 years and should not be an issue.

Ms. Rozier also stated that the definition of the project is not listed and that Exhibit C is unclear.

Mr. Harrison asked that an Exhibit with the typical section be added to clarify.

Ms. Almodovar stated that there are two sets of plans. One set has a different typical section than Frye, and the Right-of-Way is not the same. If one road is going to connect to the other, we need to have more than one typical section, and it needs to be clear. If not, then one set of plans will need to be redone.

There was discussion of the approval of plans and the gap between the Sharp Plans and the Frye Plans.

Mr. Harrison stated that it would make sense to make reference to the plans dated such date.

Ms. Hammel asked they add a phrase under Section 2(a) Conveyance of Lands for drainage easements over the ponds.

Page 3 Mr. Hurt asked that “Real Estate Management Manager” be changed to “Director of Administrative Services Department” in Section 2(a).

Ms. Alfonso asked that “shall be subject” be changed to “may be subject” at the top of the page; and at the end of the same paragraph, change “shall automatically terminate” to “may automatically terminate.” Also, in the same paragraph, last sentence, change “do no” to “do not”.

Page 4 Section 3 Mr. Smogor stated that APF should only apply to the Frye PD and not the Sharp PD, as Sharp PD has their own APF Agreement. This Section needs to be consistent with the Frye APF Agreement.

Mr. Nastasi stated that this Section needs to be broken down with whatever pertains to the Frye APF Acreage, i.e., Parks, Schools, etc.

Mr. Smogor asked that they attached the APF Agreement as an Exhibit.

Page 5 Section 4(b) Mr. Kunkel asked that the County be named as eligible to utilize mitigation.

Ms. Cummings stated that an On Site Conservation Easement was proposed and was to be recorded, which would give the permission, and it is her understanding that the Permits are being processed as such.

Mr. Campbell stated that the Sharp Property is not owned by Frye and they do not have title to the property. The developers want the option to terminate agreement if something shows up on the Environmental Report.

Mr. Harrison asked if it would be appropriate to add a sentence, stating that if remediation is on the Sharp Property, then the Developer may have the right to terminate.

Ms. Alfonso stated that as long as due diligence is used; there should not be any problem. This is a new agreement, and the other is a stand alone agreement and the Sharp owners are still bound by the old agreement which covers all the environmental concerns.

Ms. Hammel asked to move “Project Manager” to the line above so it is not confused with the County Engineer.

Ms. Martin recommended that the County be added as a third party beneficiary and that that language along with the Professional Service Contract language be moved to Section 4(c) on Page 6. Ms. Martin read the language to the applicants and the Committee.

Mr. Kunkel asked if the third party beneficiary was identified as the engineer and covered under the old agreement. Ms. Alfonso responded yes.

In Section 4 (b) Ms. Alfonso asked that it be re-worded to “the County agrees to serve as applicant for any such permits where possible and preferable.” In the next sentence change to read “The County agrees to waive its fees on the roadway improvements.

Section 4 (c) Ms. Alfonso asked that they change the language to read “in order to assure” instead of “for limited purpose of assuring”.

Mr. Harrison asked that the second sentence under (c) add “the developer shall construct the road in accordance with the approved plans”.

Section 4 (d) Mr. Kunkel stated that the County does not pay for irrigation/landscaping and asked that they strike out irrigation. Mr. Kunkel also stated that the County will not pay for installing of

cables and asked that “along with any associated utility work” be removed along with “and interest on the construction loans shall be included”.

Mr. Campbell asked about drawing it as the road is being built.

Mr. Nastasi stated that they can draw as it is being built.

Ms. Hammel asked if a construction cost estimate is needed.

Mr. Huber suggested adding language “not to exceed \$4 million”.

A meeting was requested to address Ms. Rozier’s concern pertaining to Disney Employee route on Reams Road, Spur, Signal issues, and traffic alignment.

Page 7 Section 4 (e) Ms. Hammel asked that invoices and proof of past payments (lien releases) from the general contractors be provided. Need to insert “and provide invoices copies of lien releases for the prior months”.

Ms. Rozier questioned and there was conversation regarding a possible conflict on the Change Order Section on Page 7 and Page 13; after discussing Mr. Harrison and Ms. Alfonso determined it was not a conflict.

Page 8 add a space between “Commissioners” and “Additionally”

Mr. Nastasi wanted to clarify that there is no account for this project right now. The account would be established after the approval of the agreement.

Page 8 Mr. Nastasi asked they remove “Public Works” after “Orange County” in Section 4 (g).

Page 11 Section 5 (iii) Mr. Kunkel questioned the relocation of traffic light. Add “or replacement to Lakeside Village”.

Page 11 Section 7 there was conversation relating to the Impact Fees. Mr. Nastasi stated that this money has not been earmarked. It was requested that they take out the words “from said monies”.

Mr. Campbell wants to establish the account for the money paid for capacity reservation (\$500,000) and then convert the money to impact fee credits so they can go and sell the credits.

The Committee responded no to this request.

Mr. Harrison suggested that Section 7 be the subject of a separate meeting.

Page 13 Section 9 Mr. Kunkel stated that this will not be part of the agreement unless Utilities pays for installation. We don’t need language if Utilities does not need to move. Ms. Hammel also had concerns with this section. It was determined that boiler plate language is to be used in this section.

Ms. Almodovar has concerns regarding the Bike Trail property.

A meeting was requested to address certain issues.

This project is to be rescheduled to the next Roadway Agreement Committee meeting.

Fishback PD/KB Homes

Development: Fishback PD

Developer: KB Homes

Road Affected: Ficquette Road

Present: Juli James, Jeramy Camp, Lance Bennett

Previous RAC: 12/8/2004, 1/5/2005, 1/04/2006, 1/18/2006, 2/15/2006, 3/01/2006, 3/15/2006, 8/6/2008, 10/15/2008, 11/12/2008, 4/15/2009

County Staff Present: Juan Curi, Bob Goff

Ms. James stated that changes were incorporated to the agreement in accordance with the changes requested at the last Roadway Agreement Committee meeting. Ms. James also resubmitted a clean blackline of the Drainage Easement, and the Temporary Access Easement went away.

The committee reviewed the agreement page by page.

Ms. James stated that Page 2 was changed to reflect Mr. Kunkel's changes and approval.

Page 3 Section 2 (d) change "completion of the plans" to "completion of the DE&P work".

Ms. Hammel has concerns with Section 3 defining the Right-of-Way, and the pond language stating for the benefit of the road and the property, and will be reviewing the Exhibits.

Ms. James feels that we should go on with the Right-of-Way as a separate Exhibit.

Page 5 Section 4 Mr. Nastasi requested to strike out "in perpetuity" and confirm the 108 trips. Ms. James agreed.

Ms. Hammel stated that due to issues in the past it was the Engineering Division's preference that MSCW be the prime sub-consultants.

Mr. Harrison stated to let the records show that is how it is structured.

Mr. Harrison recapped the changes made to the agreement:

Page 3 changing "plans" to "DE&P Work".

Mr. Nastasi asked to strike "in perpetuity" and is to confirm the 108 trips

Ms. Hammel will review Exhibit and check reference with the text.

Mr. Nastasi made a motion second by Mr. Smogor to approve the amended and Restated Roadway Network Agreement with aforementioned changes made at today's meeting, subject to final review by the Committee; confirmation of Exhibits by the Public Works Engineering Division. Motion carried unanimously.

Avalon Park DRI

Development: Avalon Park DRI

Developer: Avalon Associates

Road Affected: Alafaya Trail

Present: Jim Pratt, Eric Marks, Duke Woodson, Kevin Walsh

Previous RIFCC: 8/04/2004, 9/1/2004, 9/15/2004, 10/13/2004, 1/5/2005, 9/28/2005, 2/20/2008, 5/7/2008, 6/4/2008, 6/18/2008, 7/2/2008, 11/12/2008, 11/28/2008

County Staff Present: Juan Curi, Sheryl Weinmann, Brian Sanders

Mr. Marks provided copies of the provisions and gave a quick overview. A draft of the proposed amendment which was from an amendment where we last left off and sent to Ms. Alfonso. Ms. Alfonso worked on a draft which started at a different spot.

The committee reviewed both Ms. Alfonso's draft and Mr. Marks provisions.

Page 1 of Ms. Alfonso's draft, change the approval of agreement date to October 25th.

Page 1 of Mr. Mark's provisions, in the 4th Whereas change "would have" to "could have".

Page 1 of Mr. Mark's provisions, Ms. Alfonso is hesitant to use the 3rd Whereas. Mr. Harrison asked that it be removed.

Section 1 of Mr. Mark's provisions, Ms. Alfonso asked to strike "other substantive reasons" in the 4th Whereas.

Page 2 (a) of Ms. Alfonso's draft, Mr. Nastasi asked to change "sole cost" to "sole initial cost"

Page 2 Mr. Harrison asked to change "anticipates submitting" to "has submitted" in Section 2 (a).

Ms. Hammel stated that the blank in Section 2(a) should read "May 5, 2009".

Ms. Alfonso asked to delete from "<ERP. ACOE . . ." to the end of the sentence; "if any."

Mr. Marks objected and asked to leave or add that the County would pay for all Mitigation costs.

Ms. Hammel explained that the County does not have a mitigation plan. The County is purchasing mitigation credits per the old agreement.

Mr. Harrison agreed to add a sentence that the County will pay cost of Mitigation.

Page 3 Section 2 (b) Ms. Hammel asked that they leave the \$1,702,369., and delete the other figure. Also, in this section Task 3.6 is missing and Task 7.62 should be 7.6.2.

Section 2 (c) Ms. Hammel stated that "engineering plans" be changed to "DE&P Work" and delete the last sentence in this paragraph (The Credits shall be available ...)

Mr. Marks proposed to go back to the provision that states that the County can look at the two sources.

After Committee discussion it was determined that the last paragraph on Page 3 will be moved to (b) and Ms. Alfonso and Mr. Marks would meet to resolve this matter.

Page 4 Mr. Kunkel requested to change "DEP" to DE&P".

Page 4 Section 3 Construction, Mr. Marks stated that the Developers would like the ability to step back into the old agreement and build the road in the event the County does not get the project done; or add the that County will use reasonable efforts to complete the road after acquiring the necessary Right-of-Way.

Ms. Alfonso stated that she would add in a transition stating that “once the County has done all the above, then the County will use reasonable efforts to complete the road. This language will modify Section 3.

Mr. Nastasi had an objection to Page 4 Section 5.6. Mr. Marks suggested using the language he proposed. The committee agreed to use Mr. Marks language.

There was also discussion of who Morgran pays their contribution toward the cost of construction. Mr. Woodson, representing Morgran, stated that he would prefer to give the County the check for their contribution toward this project, and stated that he agreed with Mr. Marks proposed language in this section.

Ms. Hammel questioned the Escrow Funds and after some discussion, Mr. Harrison asked to add “Avalon shall relinquish any rights to eligible impact fees.”

There were no changes to Page 5.

Page 6 Section 13 Limitation of Remedies, there was discussion of reverting to the old agreement and/or entering into a new agreement for the construction of the roadway. Ms. Alfonso stated that there was no need for a new agreement and that will meet in good faith to negotiate whereby Avalon may do the construction. Ms. Alfonso asked that this be moved under construction and added as a provision and not a remedy.

Mr. Marks objected to Section 13. He wants to get notice and add language that states that as soon as they have cured their default then the suspension of the Development Permit is lifted.

Page 7 Section 13 (a)(iii) change “Project” to “Avalon DRI” and add notice and opportunity to cure and lift.

This project is scheduled to return to the Roadway Agreement Committee in two weeks.

International Corporate Park

Innovation Way Beachline Interchange

Development: Innovation Way/Beachline Interchange Agreement

Developer: International Corporate Park, OOCEA, Orange County

Road Affected: Innovation Way/Beachline Interchange Agreement

Present: Jim Pratt, John Florio, Lionel Rubio

Previous RIFCC/RAC: 12/14/2005, 2/1/2006, 7/16/2008, 9/17/2008, 10/1/2008, 2/4/2009, 4/1/2009

County Staff Present: Juan Curi, Frank Yokiell, Susan McCune

Mr. Rubio stated that the Expressway Authority (OOCEA) staff reviewed that latest draft of the Interchange agreement and has major issues with the new concepts. The Escrow concept and the deletion of the component concept which ties into cap amount. SLR needs to decide who will construct the Interchange. It is OOCEA preference that OOCEA constructs. OOCEA is requesting a cost estimate to see what the construction numbers are and are waiting on response to comments.

Mr. Harrison stated that the escrow component concept is a big ticket issue with the clients, and if there are still issues to be resolved then why review the agreement.

Mr. Pratt stated that they are hoping to address the OOCEA concerns regarding the escrow concept and reach an agreement. As for the component issue they are waiting to hear from their client.

Mr. Harrison asked why would there be a concern in including a cost estimate. Mr. Florio stated that they do not have a cost estimate that reflects the current configuration. Mr. Pratt believes they can cooperate with the OOCEA and provide information Engineer to Engineer.

Mr. Harrison stated that the County would prefer the OOCEA to construct the project.

Mr. Harrison questioned why the component concept was deleted.

Mr. Pratt stated that there were two reasons, 1) thought that it was agreed to at one of the meetings and 2) in keeping to the component concept, to would keep the OOCEA contribution down to a minimum without cost allocations.

Mr. Nastasi questioned when the loop would be done. Mr. Florio stated when the development schedule would be finished, several years out. Mr. Nastasi stated that the Loop was not needed for Phase I.

Mr. Florio stated that this needs further discussion on various components in relation to the \$12 mil hard cap for the OOCEA components. The loop and the widening of bridges was not a component for the OOCEA.

Mr. Pratt stated that the two easterly ramps would not be built until later and not be considered in this component.

Mr. Nastasi stated that there is a timing issue and does not know how long to come to an agreement. The goal is for the Agreement and the Development Order to go to the Board of County Commissioners in September.

Mr. Rubio stated that the OOCEA will only pay the component up to the \$12 mil.

Mr. Nastasi stated that Orange County has applications in for a new bill (ISTEA Bill) and in September should know whether the County will get additional funds. Any additional funding will go to the overall cost. Utility allocation pertaining to Orange County will go in equal amounts.

This discussion was tabled until these issues are resolved.

Innovation Way Road E Agreement

Development: Innovation Way/Beachline Interchange Agreement

Developer: Suburban Land Reserve, Inc.

Road Affected: Innovation Way/Beachline Interchange Agreement

Present: John Florio, Jim Pratt, Wayne Rich

Previous RIFCC: 7/16/2008, 9/17/2008, 1/7/2009, 1/15/2009, 3/4/2009, 4/1/2009, 4/15/2009

County Staff Present: Juan Curi, Brian Sanders, Joel Prinsell, Vivien Monaco

Mr. Prinsell provided a new version of the agreement with modifications. Mr. Pratt has made changes but the client has not yet agreed to the changes.

Mr. Prinsell stated that there were change to Recitals 18, 19 and 20.

Mr. Smogor stated that he had comments on these Recitals.

Ms. Alfonso stated that a recommendation from Regional Planning Council on the Development Order put the onus on SLR for use.

Mr. Florio stated that it is limited only to the water included in the pond related to the road.

Ms. Monaco stated that Mr. Lowndes is fine with this change, since it is only related to the stormwater.

For the record, Mr. Harrison has a highlighted version of the agreement provided to Orange County by the Regional Planning Council.

Page 1 states that there have been amendments to the ICP Development Order since 1986.

Page 2 Recital 8 a correction was made that changed “Fixed Guideway Transit” to “Mass Transit”.

Page 3 Recital 13 regarding the Expressway Authority, was rephrased to say “is anticipated to give its final approval.”

Page 4 Recital 18 changes were made to reflect that SLR is requesting the revision to the Development Order in order to make the DRI compatible with the Innovation Way Vision and that SLR anticipates negotiating certain agreements, etc.

Recital 19 a clause (in the middle) was deleted that stated that SLR was relying on certain things happening which the County had some concerns about.

Recital 20 was deleted entirely.

In the definition section, on Page 6, Fixed Guideway Transit was deleted.

Page 5 SLR made a change to the definition of BRT/Multimodal to make the sentence more understandable.

Page 9 Section 3(a)(v) was reworded to be more specific to the policies in the Comp Plan.

Mr. Nastasi objected to this change and stated that it should be taken out. He stated that design policies should not be in the Comp Plan. Mr. Nastasi had specifically asked that this clause be deleted.

Ms. Cummings also had concerns in that there are other environmental restrictions in the new Innovation Way policy and those include a higher level of environmental restrictions than is currently in our code, and feels we should have the old language.

After further discussion, it was decided to keep the original language in (v).

Page 10 Section 3(b) 4th line, insert “in good faith employ commercially reasonable diligence to” after “shall obtain all necessary permits.”

Section 3 (c)(i) Ms Monaco suggested changing “The Road E Right-of-Way may contain a conceptual location ...” to “the Road E Right-of-Way plans will contain locations for stormwater ponds.’, and strike the rest of the sentence.

Page 13 3(g) the last sentence of the first paragraph is a new sentence.

Page 14 3(k) strike out the parenthetical addition, and after “solely due to breach by County” add in “of material restrictions, covenants, or obligations of County, under this agreement”.

In Section 4 Mr. Florio (in reference to Chapter 23) wants to make clear that the intent is to get impact fee credits for all expenses between the ultimate facility and cost of building a two lane road.

Section 5(a) the County is fine with the revision in adding the word “material” in the 4th line down, deleted the word “other” and added the words “then be entitle to invoke” further down.

In Section 9, 5th line down, after the word “Project” add a comma and “subject to the Development Order as it may be amended from time to time” and again 4 lines up from the bottom of the same paragraph after the word “Project” add the same sentence “subject to the DO as it may be amended...”

In Section 8 County preference was to remove Section 8 and SLR wants to keep it. The County has a problem with the word “the” in “the vision” and after further discussion it will be changed to read “a vision”.

Mr. Nastasi had concern with Exhibit M and stated that when we work through the DO, and as we adopt the policies, there will be 2 maps; an overall network map and the Regional map.

Ms. McCune gave Mr. Florio the notation (language) and a copy of the map.

Recital 8 on Page 2, (objective 8.8) Mr. Nastasi still has concerns as it pertains to “Innovation Way” and asked to revise it to read “the Innovation Way Area”.

Mr. Harrison asked Mr. Kunkel if he was ok with the construction part. Mr. Kunkel’s response was “not withstanding”.

Mr. Smogor made a motion second by Mr. Kunkel to approve the Innovation Way Road E Agreement with changes made at today’s meeting, subject to final review of exhibits by the County Surveyor, sign off by the Chairman of the Roadway Agreement Committee, and initialing of changes made on the agreement by Counsel present.. Motion carried unanimously.

Mr. Harrison adjourned the meeting at 12:51 p.m.