



Interoffice Memorandum

Minutes

Roadway Agreement Committee

April 1, 2009

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

County Staff Present: Roberta Alfonso – County Attorney’s Office
Joe Perez – Highway Construction Division
Jennifer Cummings – Stormwater Management Division
Robin Hammel – Public Works Engineering Division
Heather Brownlie – Transportation Planning 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 March 18, 2009 Roadway Agreement Committee Meeting and changes were requested as follows:

Page 1 line 31 add “actual and reasonable” after the word “add”.

Page 2 line 48 delete the word “widened” and add “realigned Reams constructed through the Sharp property”.

Page 2 line 52 delete the word “everything” and add “construction of the road”; after the word “realignment” add “through the Frye PD and the Sharp PD”, and add “for” after the word “except”.

Page 3 line 3, change “looking for” to “seeking”.

Page 3 line 15 add “of the realigned Reams Road through the Sharp property” after the word “design”.

Page 3 line 18 add “for the design through the Frye PD.” at the end of the sentence.

Page 3 line 22 add “through the Sharp PD.” at the end of the sentence.

Page 4 Line 5 Delete “Ms. Alfonso will need to review.” And replace with “Ms. Alfonso stated that an Amended and Restated Agreement would be possible.”

Page 4 line 29 add “again” after the work “will” and add and “s” to “comment”.

Page 4 line 41 change “Ms. Alfonso” to “Mr. Callan”

Page 4 delete line 49.

Page 5 line 7 change “asked” to “will provide”.

Page 6 line 11 Ms. Hammel added significantly to this line turning it into a paragraph. Add after “Exhibit C” in the first sentence “and D. Ms. Hammel requested that the word “Easement” near the end of the 3rd paragraph be changed to “pond and roadway construction”. Ms. Hammel requested that the following phrase be added to the end of 3rd paragraph: “provided that the Grantor shall acquire a permit for the storage of the fill material in a timely manner.”

Page 6 line 19 add the word “acres” after “zero”.

Mr. Smogor made a motion, with a second by Ms. Caswell to approve the March 18, 2009 Roadway Agreement Committee Meeting minutes with corrections. Motion carried unanimously.

Activity Update/Summary/Follow-Up Items List

Ms. Alfonso provided an update regarding the Friedman Group lawsuit. Papers have been filed and a hearing date has been set.

Ms. Caswell asked that the Background Page be updated with 2009 as the date instead of 2/4/2008.

Ms. Alfonso also provided an update on the Florida Mall negotiations for a revised Amendment.

Mr. Harrison provided an update on the Avalon Amendment which was approved by the Committee in November 2008, but has yet to go to the Board of County Commissioners. There is a counterproposal that Orange County takeover the construction phase. Ms. Alfonso will prepare an Amendment to the 2006 Agreement to provide for Orange County to construct the road.

Ms. Hammel stated that design should be completed by April and that she has provided updated design costs to Ms. Alfonso for inclusion in the Amendment.

Mr. Kunkel asked that the Morgran Developers be kept in the loop on these developments and asked Ms. Alfonso to please review the Morgran Agreement also to see if there is any need to amend that Agreement as well.

Mr. Kunkel provided an update on Summerlake. Mediation has been scheduled for next week.

Mr. Harrison reviewed the Follow up Items List and asked that the first item be removed.

Lakeside Village - Sharp PD

Development: Lake Reams Neighborhood PD – Sharp Property

Developer: KB Home Orlando LLC

Road Affected: Reams Road

Present: Jim Fox, Don Huber,

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

The Developers have met with the lenders and Sharp owners and will be able to obtain the Right-of-Way needed for the road realignment.

Mr. Harrison reviewed the overall provisions of the agreement.

Page 1 Ms. Caswell stated that the Parcel ID # does not match the ownership and that Parcel -015 also needs to be added to the agreement.

Ms. Caswell requested Evidence of Title for all of the parcels involved. Mr. Fox is working on providing the backup documents.

Ms. Lofye asked about the old alignment and who would take ownership of that Right-of-Way if it were to be vacated.

Mr. Nastasi stated that if the property is vacated then it needs to be offset against the credits provided.

Mr. Nastasi asked if the property to be vacated would revert back to the original owners or if it would be used for future development and if so, by whom.

Page 2 Ms. Caswell asked that the Frye Property should be a separate exhibit from the Sharp property if being conveyed in two separate transactions.

Page 2 Mr. Harrison asked that a section be added to Section 2(a) that if the Sharp Right-of-Way cannot be acquired that the agreement terminates.

Mr. Huber stated that he will have control of the Right-of-Way within 30 days so it will be well before the agreement goes to the Board of County Commissioners.

The Sharp property Right-of-Way will be conveyed to the County directly by the present owners.

Mr. Perez asked about ponds for the road and that they be addressed in this agreement.

Ms. Lofye asked that an exhibit be referenced in the First Whereas on Page 2 to delineate the road improvements.

Page 4 Section 3 Mr. Nastasi asked about the APF calculations and that the numbers be provided.

Page 4 Section 3 Ms. Alfonso suggested using alternative language citing the statute.

The ponds used for the realignment can qualify for Stormwater APF under the terms of the APF Agreement.

Ms. Hammel stated this will be an E-Project and the County would not be able to take over the construction of the road and build it in the future since the plans were not prepared as biddable plans.

Mr. Kunkel asked Ms. Hammel and Ms. Almodovar to coordinate on this road project.

Page 4 Section 2(d)(iii) Ms. Alfonso asked that “and/or Developer” be deleted.

Page 4 Section 4 Ms. Alfonso asked that the phrase “for and on behalf of the County” be deleted.

Page 5 Ms. Hammel asked that “and approval” be added to line 2 after the word “review”.

Page 5 Ms. Martin asked to add Orange County as a third-party beneficiary to the construction contract.

Ms. Martin provided a hard-copy of additional language to be included in the agreement on indemnification.

Mr. Perez had an issue with the County serving as the applicant for obtaining permits.

Ms. Cummings stated that if Orange County is not the owner of the ROW at the time the permits are applied for that the Developer should be the applicant for permitting.

Mr. Huber will address this in the next draft as to who should apply for which permits.

Mr. Perez asked that a provision be added for a field inspection within 90 days of the start of construction to identify any changes in field conditions.

Mr. Perez asked that a construction cost estimate be reviewed and approved by the County.

Mr. Kunkel proposed adding language at the end of Paragraph 4(d) to provide for Orange County review and approval of the construction cost.

Section 4(f) Mr. Perez asked to change “Road Improvement Budget” to “Construction Contract Amount”.

Ms. Alfonso asked that Section 4(f) specify that any change orders above 10%, not just those meeting uncontrolled circumstances, be required to obtain BCC approval.

Mr. Harrison stated he was okay with the County paying for change orders necessitated by the County.

Ms. Alfonso asked for the last two sentences in the first paragraph of Section 4(f) be rewritten. Mr. Huber agreed this section needed to be changed.

Mr. Perez asked for language to be included for County Staff to review and approve all change orders.

Mr. Nastasi asked that language be included for a one-year warranty following acceptance of the road. Ms. Brownlie to research and provide standard language from previous agreements.

Mr. Huber would prefer to have monthly invoicing rather than 30/60/90/100% intervals and for credits to also be provided on a monthly basis.

Mr. Huber will add language for the payment and performance bond as well.

Mr. Perez wants to address the abandoned portion of Reams Road in this agreement in terms of the physical asphalt removal and the removal of signals, etc.

On Page 5 Mr. Huber wants to utilize Pay-As-You-Go Funds instead of Road Impact Fee Credits. Mr. Nastasi stated these are two very different funding mechanisms.

Mr. Nastasi indicated that the Frye PD may have paid Reservation fees but has not paid impact fees as of yet.

Mr. Huber asked to meet with Mr. Nastasi separately regarding this issue.

Mr. Huber is seeking to get cash back rather than road impact fee credits which he would need to sell and has no use for. Ideally, the County would provide cash reimbursement as the invoices are submitted as is being done currently with CR 535.

Mr. Harrison informed Mr. Huber that cash reimbursement was not part of the discussion at the last Roadway Agreement Committee meeting, and that it changes the concept of this agreement substantially.

Ms. Hammel asked for a cost estimate to be provided.

Mr. Perez asked that the Utilities relocation be addressed in the agreement including language that this is a County project.

Ms. Alfonso pointed out in Section 15 that this language is not standard and provides the Developer with the option to terminate.

Ms. Alfonso has additional comments which she will send in a pdf file.

Mr. Huber asked to be rescheduled to the May 6, 2009 RAC Agenda in order to be able to have time to re-draft the agreement.

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

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

County Staff Present: Juan Curi, Brian Sanders

Mr. Pratt opened the discussion by stating that all the changes requested had been made through Section 8.

Mr. Harrison suggested changing the title back to the Road E Agreement.

Mr. Nastasi asked then what would be the purpose of including the maps? The only reason the maps are included is because the scope of the agreement goes beyond Road E.

Mr. Harrison agreed that the title should remain as a road network agreement.

Page 4 Section 20 Mr. Smogor had asked to remove this section at the last meeting, but is okay with leaving it in. Mr. Nastasi concurred it should be kept in.

Page 4 Ms. Alfonso asked that the “reasonable costs” language be added at several locations as she has discussed with Mr. Pratt.

Page 6 Ms. Lofye asked if Loop D is labeled or described anywhere in any of the exhibits. Mr. Harrison suggested referring to Loop D as the Northeast Quadrant Loop Ramp.

Page 10 Mr. Kunkel asked that “a” be added before “sixty (60) foot strip” in Section 3(c)(i).

Page 10 Ms. Caswell asked that the conveyance requirements be included in the text of the document rather than as an exhibit.

Page 11 Ms. Cummings stated that the Development Order provides for planted ponds and asked if the County wants to maintain planted ponds or not.

Mr. Nastasi asked that at some point the Committee compare the Road E Agreement to the Development Order so that they match and resolve any issues such as the planted pond issue.

Page 12 Ms. Alfonso questioned the last three lines of Section 3(c) which requires the County to get permission from SLR before consumptive use of stormwater.

Mr. Harrison stated there is not that much water at issue.

Page 13 Ms. Alfonso asked that Real Estate Management confirm the ownership of the easement at the end of Section 3(d). Ms. Hammel informed that if it was an Orange County Utilities (OCU) easement, Public Works and OCU had agreed to coexist.

Page 14 Mr. Nastasi objected to the last sentence of Section 3(g) beginning with “Notwithstanding” since it allows SLR to move forward without constructing Road E potentially.

Mr. Florio stated that if the Development Order is never approved then it gives them an option to move forward.

Mr. Kunkel suggested changing Section 5(a) on Page 15 from “subject to” to “notwithstanding” SLR’s right pursuant to Section 3(g) above.

Mr. Nastasi asked if the intent was to move the Road E Agreement ahead of the Development Order or take this agreement with the Development Order to the BCC in the fall?

Mr. Florio pointed out that there would be no road impact fee credits provided until construction of Road E was completed.

Mr. Florio further explained that if the land use change was not approved then Road E does nothing for industrial use. Unless the amended Development Order is approved along with the MMTD requirement of 130 feet then the same road could be built in 60 feet of Right-of-Way for access utilizing three lanes, two through lanes and a dedicated turn lane.

Mr. Nastasi suggested dedicating only 60 feet at first and then dedicating the remainder of Right-of-Way after the Development Order is approved.

Mr. Kunkel wants to insure that the road gets built, either by the developer or by the County.

Mr. Harrison stated that certain points may not be able to be agreed upon and if that is the case then the agreement can move forward as a discussion item and those points at issue can be discussed with the Board of County Commissioners.

On Page 21 Ms. Caswell stated that Section 10 terms refer to Section 8.

Page 17 Section 8 Mr. Nastasi stated that the vision needs to reflect the Development Order and not the other way around.

Page 17 Section 8 Mr. Smogor suggested referencing Recital 8 on Page 2 after Innovation Way Vision. Mr. Nastasi agreed this would resolve his concern.

Page 21 Ms. Alfonso questioned the last sentence of Section 9.

Page 21 Mr. Kunkel asked to add “SLR” before “construction” at the end of the 8th line in Section 9.

Page 21 Mr. Nastasi asked to strike most of Section 9 as was discussed at the last RAC meeting.

Mr. Kunkel would like to make entitlements to SLR contingent upon execution of the Interchange Amendment and payment of a deposit.

There was discussion of the changes made to Section 11(h) which were distributed just before the meeting.

Mr. Kunkel stated that if the Road E Agreement is terminated then Orange County has no right to construct Road E. The County needs the ability to be able to construct Road E should the Developer fail to do so.

Ms. Alfonso suggested making the ROW conveyance a condition of termination under this section. Mr. Pratt would not agree in all sections which call for termination.

Mr. Nastasi wants to make sure that the Development Order could not be amended again at a later date. Mr. Smogor said that DRC and Planning would notify County Staff of any filing for future changes to the Development Order.

The maps and exhibits were briefly looked at by the Committee Members.

Mr. Harrison asked that this item be rescheduled for the next RAC Meeting on April 15, 2009.

Mr. Nastasi pointed out that Exhibit 4, the Transit Vision Network Map, conflicts with the Comp Plan.

Mr. Florio stated that the Orange County maps provided as handouts do not match the Vision map that he had provided months ago to Orange County and this is the first he has seen of the Orange County maps.

Mr. Nastasi would prefer to use the Vision Map included with the MMTD. The MMTD Amendment is going to the BCC on May 19 with the Innovation Way Roadway Network Map and should be consistent with the agreement.

Mr. Harrison asked for further coordination between the SLR maps and the Orange County maps so they are consistent.

Mr. Florio stated that the Roadway Vision map prepared by the County does not match what they have proposed and does not include rail.

Mr. Harrison proposed including both sets of maps and if that is not agreeable then setting a separate meeting for the review of the maps.

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
County Staff Present: Juan Curi, Brian Sanders

Mr. Pratt provided a brief update on the status of the Interchange Amendment as there was no revised draft presented to the Committee.

\$12 million dollars is the cap on contribution from OOCEA. This is a hard number and is fixed which means that OOCEA will not even pay for their own necessitated change orders.

SLR has agreed in principal with OOCEA on all major points including tolls.

The proposal is that all costs be provided up front to avoid one party bearing all costs or fronting another party's contribution.

County funds fixed at \$6.5 million. OOCEA funds fixed at \$12 million and SLR is willing to contribute up to \$12 million.

Mr. Pratt has redrafted the Interchange Amendment, but his client still needs to review.

SLR would like to bring the Interchange Amendment back to RAC on April 15, 2009.

Mr. Kunkel adjourned the meeting at 12:17 p.m.