



Interoffice Memorandum

Minutes

Roadway Agreement Committee

February 6, 2008

Members Present: Roger Cain – Public Works Department (Vice Chairman)
Ann Caswell – Real Estate Management Division
Renzo Nastasi – Transportation Planning Division
Ruby Rozier – Traffic Engineering Division
Joe Kunkel – Public Works Engineering Division
Jay Sargent – 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 8:35 a.m.

Approval of Minutes

The Committee reviewed the minutes from the January 30, 2008 Roadway Agreement Committee Meeting and changes were requested as follows:

On Page 3 Ms. Caswell stated that Page 1 title needs to reflect Alafaya Trail.

On Page 3 line 50 Ms. Caswell asked that “will pass through” be changed to “may impact”.

On Page 5 line 12 Ms. Caswell asked the “conservation” be changed to “County”.

On Page 5 line 28 Ms. Alfonso asked that “objected to” be changed to “questioned”.

On Page 5 in line 31 add commas after “agreement” and “to”.

On Page 8 in line 28 Ms. Alfonso added a sentence, “The Committee agreed to leave the language open for now.”

On Page 8 line 31 Ms. Caswell asked to change “effected” to “affected”.

On Page 11 Ms. Caswell asked to change “wants to” to “should” and “who” to “what”.

Motion by Ms. Rozier, second by Ms. Caswell, to approve the January 30, 2008 Roadway Agreement Committee Meeting minutes with listed changes and other typographical corrections and grammatical omissions. Motion carried unanimously.

Activity Update/Summary

Windermere Gardens withdrew from Board of County Commissioners meeting yesterday and will be returning to Roadway Agreement Committee on February 20, 2008 for re-approval of the APF Agreement.

Mr. Cain reviewed the items on today's agenda.

Taurus O53B LLC - (Woodbury Rd Ext)

Developer: O53BLC (Taurus Inc.)

Road Affected: Woodbury Road Extension

Present: Jeff McFadden, Allen Peacock

Also Present: Andrew Chu (Park Avenue Development), Ana Long (LDDK&R), Udo Garbe, Elizabeth Barker, Warren Williams

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

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

Mr. Nastasi opened the discussion by providing the Committee with a brief overview of the Woodbury Road Extension project.

Two property owners are willing to provide Right-of-Way all along the roadway.

In a joint effort, College Suites and Orange County worked with the Water Management District through permitting and mitigation issues with the existing conservation easement, and came up with a property swap solution along with mitigation.

The City of Orlando is now interested in co-locating a 42-inch water re-use line in the Woodbury Road Extension Right-of-Way to the north of SR 50.

The County now needs to acquire this Right-of-Way to move forward with the road project and the City of Orlando re-use line placement.

The County will need to enter into an agreement with the City of Orlando for Maintenance of Traffic (MOT), Right-of-Way to be acquired, contribution from the City and public involvement associated with the re-use water line placement.

Mr. Cain asked Mr. Kunkel to show the land swap areas for lifting the conservation easement from the Taurus Property and moving it onto College Suites (Mandt) Property.

Ms. Long gave an overview of the agreement between College Suites and Orange County.

College Suites has been working on ecological data to be provided to the Water Management District.

Once all the items submitted to the Water Management District are returned, it should take about 30 days to proceed.

Mr. Cotter suggested a paragraph to be included in the Taurus agreement to provide for their cooperation in lifting the conservation easement.

The committee reviewed the Taurus Agreement page by page.

On Page 1 Ms. Caswell ask they take out the “<” mark. Also, where it relates to “Owner”, if it is related to the “Owner” then leave it in, but if it is related to the “Developer”, then it needs to change to “Developer”.

On Page 2 Mr. Cain asked they please remove boilerplate markings.

On Page 2 Section 2(a) Ms. Caswell asked that a specific date be filled in and “<WHATEVER OTHER EVENT TRIGGERS CONVEYANCE>”, be removed.

Mr. Kunkel asked if we are providing Road Impact Fee Credits to Taurus or if they were going to dedicate the property for no credits.

Mr. McFadden responded that there were no credits for the land, but would get credits for the \$50,000 cash contribution.

On Page 2 in the first Whereas, Ms. Alfonso asked this paragraph change if there were no credits for the dedication of the property.

Mr. Cotter asked if Taurus is still covering the costs of conveyance.

On Page 2 Ms. Caswell asked that the Real Estate Management extension language be included in Section 2 (a).

Mr. McFadden stated the need to address a temporary easement on the other side of the road.

Ms. Caswell asked that the easement be identified in Section 2 (b) and throughout.

Mr. Sanders confirmed it is a slope easement.

Ms. Caswell asked that exhibits be included to show this easement area.

Mr. Cain stated that mitigation may be needed for a slope easement as well.

Mr. Peacock stated that if it is a slope easement, then it is additional Right-of-Way you are requesting.

Ms. Long stated that if this changes the amount of the mitigation, then it needs to be addressed before finalizing everything with the St. Johns Water Management District.

On Page 2 Ms. Caswell stated that Section 2(b) was not standard boilerplate and the easement needs to be included in this section.

Mr. Nastasi asked to add a new standard Whereas recital that the Woodbury Rd Extension is a Road Impact Fee eligible road.

On Page 3 the Owner’s Policy must be the value of the land and the language should be boilerplate.

On Page 3 Mr. Nastasi asked that Mr. Hurt value the property.

On Page 3 Section 2(e) Mr. Kunkel stated that language needs to be added in identifying St. Johns Water Management District.

On Page 3 Mr. Cain asked they refer to the OR Book/Page for the Conservation Easement.

Page 3 Section 2(e) needs to be changed to a partial release.

On Page 3 Ms. Caswell requested changing 2(d) to add the value Mr. Hurt comes up with and take out the \$10 and put in the appraised value.

Mr. Cotter recommends a Whereas to define the conservation easement.

On Page 3 Section 2(e) Mr. Cain asked that the last sentence be taken out.

Mr. Cotter stated that the language is not necessary, but Mr. McFadden was concerned that during construction the County could create a liability to Taurus.

Mr. Cotter suggested contract language be added between the parties in more broad terms.

On Page 3 Section 2(f) Ms. Caswell asked to delete the last sentence following “Florida Statues”.

On Page 3 Section 3 Ms. Caswell asked that the language be changed. Ms. Alfonso will work with Mr. Kay to provide language. No credits will be provided for the donation of land, but rather for the donation of \$50,000.

On Page 4 Mr. McFadden will change some of the names in the “notices to” section.

On Page 5 Ms. Caswell asked that the last sentence in Section 5 be deleted.

Mr. McFadden would like some affirmation that the road will be built eventually.

On Page 6 Section 6 Ms. Caswell asked that everything after “Florida” be deleted since it is not boilerplate.

Ms. Caswell suggested references to the release be listed in a different section. Mr. Kay can work with Ms. Alfonso on this.

Mr. Cain asked that boiler plate ESA language be included. It is missing from the current draft.

Mr. McFadden asked who is paying for the ESA since he does not wish to provide at his cost.

Mr. Cain asked if an old Phase I is available to be updated and there is not one.

Mr. McFadden asked if he can pay out of the \$50,000 he is dedicating to the project for his costs.

Ms. Alfonso will help Mr. Kay incorporate this into language for RIFC Section to be drafted.

On Page 6 Ms. Alfonso stated that limitation on Remedies is Section 10 needs to be boilerplate.

Mr. McFadden asked again that the language in Section 5 that was asked to be deleted instead be modified to provide reasonable assurance that it will only be utilized for a road with any utilities etc., to be placed there.

On Page 9 Ms. Caswell asked that the Title block for Owner signature be updated to reflect correct ownership.

Exhibit C – Permitted Exceptions do not need to include an exhibit for exceptions.

Exhibit C should be the Temporary Construction Easement needed.

Exhibit D will be copy of the recorded conservation easement.

The Final Draft is to be provided at the next meeting on February 20, 2008.

Mr. Nastasi asked if the Legal & Sketches will be prepared by the next meeting.

Mr. Peacock asked if the survey work had been done by the County yet.

Mr. Sanders stated it could be six to nine months before we get to 90% Right-of-Way maps.

Mr. Kunkel stated the need to provide legal and sketches for the St. Johns Water Management District in order to lift the conservation easement.

Mr. Cain suggested Orange County will provide the Legal & Sketches to be included in the agreement.

Mr. Nastasi stated that the agreement presumes we get what we need from St. Johns Water Management District, otherwise we cannot move forward.

A Condition precedent will be added by Mr. Cotter/Ms. Alfonso so that St. Johns Water Management District approval is obtained or the agreement becomes void.

Mr. Cain concluded the discussion of this item and asked that it be rescheduled for February 20, 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: Jeff McFadden, Allen Peacock, Elizabeth Barker, Warren Williams

Previous RAC: 11/8/2006

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

Ms. Long and Mr. Cotter have revised the agreement and Ms. Long distributed the most recent version at the start of the discussion.

On Page 1 Ms. Caswell stated that we need a Joinder and Consent by the Owner.

Ms. Long asked if they can use St. Johns Water Management District form joinder. The Committee agreed.

Ms. Long will add a new Whereas and will add the joinder as an exhibit.

On Page 2 Mr. Cotter asked Ms. Long to reference the OR Book/Page of the conservation easements and add the complete document as an exhibit.

On Page 2 refer to “partial” release.

Mr. Kunkel questioned providing Road Impact Fee Credits for the dedication of property.

Ms. Long stated that not everything is being donated.

Mr. Garbe stated that the total project is 11 acres and that they are dedicating a total of almost 6 acres which is almost 49% of the project.

Mr. Garbe stated that Bill Heard received Road Impact Fee Credits and that they should get Road Impact Fee Credits for Right-of-Way dedicated, but not for the pond or the mitigation substitution.

Mr. Cain stated that you cannot use the same value from the Heard agreement since there may be different value.

Ms. Long stated they will donate the pond and conservation easement swap, but would like credits for the Right-of-Way dedication.

Mr. Cain asked why we should give credits to College Suites and not to Taurus.

Mr. Garbe expressed his time and effort and cost over the last 2 years.

Ms. Long suggested compensation for the valuation prior to re-zoning.

Ms. Long will revise that section to reflect this.

On Page 3 Section 2 (a) Ms. Caswell suggested boilerplate language and to add the extension of time for conveyance.

On Page 3 Section 2(b) Mr. Nastasi stated that the County will pay all costs for substitution for conservation easements.

Mr. Cotter felt the language was too broad because it could require College Suites to pay mitigation costs.

Ms. Long and Mr. Cotter will work on this language to make it work.

On Page 4 Section 2 (d) Mr. Nastasi stated the need for the boilerplate language to go back into the agreement and for the \$10 per square foot value to come out.

Page 4 Section 2(e) needs to be boilerplate and need to include ASTM language per Ms. Martin.

On Page 4 Section 3 needs to be changed. Remove the plat language if conveying by deed.

Page 5 Section 4 adds new language drafted by Ms. Long and a legal description will be added as an Exhibit.

Mr. Cotter explained that the volume for the pond needs to be identified and Ms. Long will add language to the second paragraph on Page 6.

There was discussion of who will pay for the operation, repair and maintenance of the joint use pond.

Mr. Cotter suggested an added provision would be needed because the County usually requires the Developers to pay.

Mr. Nastasi feels that the County should pay for maintenance and if the Developer uses more than their allotted volume agreed to, then the Developer will be responsible.

Mr. Cain suggested that the County could maintain the pond.

Mr. Sanders stated that the joint permit is being applied for, so we will know what volumes the Developer requests.

On Page 6 Ms. Long has added new sections to discuss permitting through the St. Johns Water Management District so that if a permit is needed to move forward and the County not moving fast enough, then the Developer can permit the roadway on behalf of the County, if the County is not ready to move forward.

On Page 7 Mr. Nastasi did not feel the road would be built in 2 phases as described in the last paragraph of Section 5. The road is a short road, less than 1.5 miles.

Mr. Cotter stated if the Developer is going to build the road, then the Developer needs to build the whole 4-lane section of the entire road.

Mr. Nastasi stated that the Developer can build safe and adequate access for 2 lanes to get to their project if the County has not built by that point, but must be built to County Standards at the Developer's sole cost and option.

Ms. Long asked, so if we build 2 lanes to County standards then no compensation?

Ms. Long stated that they want to build all 4 lanes up to the northern point for future cash reimbursement once the road connects.

Mr. Cain stated that the County cannot provide Road Impact Fee Credits for a non-connecting road, but if the Developer builds the entire 4-lane section then they can get credits. If they build only a portion then once the County finalizes the connection and the road is open, then they can get credits at that time but not until then.

Ms. Long stated that they need cash back not credits since they would have paid their proportionate fair share already.

Mr. Garbe asked about timing for the project for design and construction. Mr. Garbe wants a better understanding of the process of building the road. Does not have that kind of money to build a 4-lane roadway.

Mr. Kunkel stated that Kimley-Horn is going to finish the design plans in 6-9 months. The funding for this project was connected to the Legacy projects and that funding is uncertain.

Mr. Nastasi stated that there are funding sources available from separate agreement plus a contribution from City of Orlando should provide enough to construct.

Mr. Kunkel stated that construction could begin as early as January 2009 and potentially be completed by June 2010.

Mr. Nastasi added presuming permitting is completed.

Mr. Garbe stated it must be open by July 1, 2010 or they will lose the student market for the entire year, and this impacts the project.

Ms. Long and Mr. Cotter will discuss separately to ensure that they are reimbursed for permitting or construction if they go ahead with the road.

Mr. Cain suggested internal discussion to make sure of the timing.

Mr. Cotter asked that Section 5 on Page 6 the 90-days and 120-days timeframes need to be revised to be consistent with our plans.

Mr. Cain asked if 2 months from when permits are obtained if construction could begin and Mr. Kunkel said absolutely not. It takes 6 months to go through the bid process.

Mr. Cotter will work with Mr. Kunkel to revise the language.

On Page 6 Section 5 Ms. Cummings questioned who is taking the lead in permitting.

On Page 8 Section 8 and 9, Mr. Cain stated these provisions need to be resolved along with previous discussions.

On Page 8, Section 11 was added by Ms. Long, and Mr. Cotter objected to the word “cheerful”.

On Page 9 Ms. Caswell asked Section 12 revert back to boilerplate.

On Page 11 Mr. Cotter asked that the current Force Majeure Section be removed and replaced with amended language.

Ms. Alfonso and Mr. Cotter will look at the County Force Majeure language.

On Page 13 need a signature line for Udo Garbe and need a joinder for the owner added.

Mr. Cotter asked for a resolution from College Suites LLC that Udo Garbe is authorized to sign on behalf of the corporation.

Ms. Long discussed ecological values with Mr. Kunkel for the property swap parcel.

Ms. Long will add pages for Exhibits E and F.

Ms. Long would like to refer to OR Bk/Pg 5940/533 which is the Avalon Sunflower Amendment for an additional section.

Ms. Caswell asked that the Drainage Easement be included also for access to the pond.

Mr. Cain asked that this item be rescheduled for the February 20, 2008 RAC Meeting.

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

County Staff Present: Juan Curi, Sheryl Weinmann

Mr. Cain suggested starting where they left off in the last meeting at Section 6 on Page 8.

Mr. Ardaman stated that they had changed the items on Pages 1 – 7 and added changes to Sections after that as well.

Ms. Naditz asked about the Utilities costs in Section 6.

Mr. Ardaman will add clarification that the County is only paying for County relocation in a new subsection (h).

On Page 9 Section 6 (b) Mr. Kunkel asked to include “and future Right-of-Way to be obtained by the City”.

Mr. Williams stated this was in the agreement in a different Section but couldn’t find it so Mr. Ardaman will add this in.

Mr. Kunkel asked that in Section 6(b) “including without limitation” be changed to “consisting of”.

There was discussion of the acquisition of the Winn-Dixie Right-of-Way and timing for acquisition of that parcel.

Mr. Ardaman will add same language as in CR 545.

Mr. Nastasi stated that if we don't have all the Right-of-Way we cannot build the road and the agreement needs to state this.

Mr. Nastasi and Mr. Williams will meet separately to discuss acquisition of OOCEA Pond 6A.

Mr. Cain asked for a provision that the County will not construct in any location where Right-of-Way is not conveyed.

Mr. Williams stated that the City is under no obligation to acquire the Winn-Dixie property, but once they apply, the property will be acquired at the point.

Mr. Nastasi stated that the easement for Pond 6A needs to be included.

Mr. Curi stated that Legal and Sketches of the easement area were prepared.

Mr. Kunkel asked that "Cemetery" be changed to "Lake Butler Blvd".

On Page 9 Section 6(e) need to change CR545 to CR 535.

On Page 8 Section 6(b) Mr. Curi questioned the City's review and approval of the County's construction plans since the City needs to provide plans and permits for City relocation.

On Page 8 Ms. Naditz wanted to make sure that the permits are being provided to the County.

On Page 9 Section 6(d) Ms. Naditz questioned the County inspections to City Code since the County Inspectors are not familiar with City Code. The City should be inspecting their facilities. In addition, Orange County Utilities (a separate entity) would be inspecting their facilities. .

Mr. Cain asked that special provisions include that the City will inspect and he, Mr. Miller and Mr. Ardaman would work out the language.

Mr. Nastasi stated that inspection cannot delay time frame or increase cost of the project.

On Page 10 in the end of Section 6(f) take out extraneous "convey" language in several places.

Mr. Cain stated that we need to send a copy of the agreement for provision 6 (g) to Andres Salcedo and Jason Herrick.

Ms. Alfonso asked for OR Book/Pg for Territorial Agreement referenced in Section 6(g).

Mr. Nastasi stated that any costs over \$960,000 are not the County's responsibility even if delays or cost overruns.

Mr. Miller and Mr. Ardaman will re-work the language to accommodate the request.

On Page 11 Section 7(f) Ms. Martin has problems with the language in that Section; cannot indemnify for tort liability of contractors.

Ms. Martin will send remedies to Mr. Ardaman.

Change Notice to County Administrator with copy to Transportation Planning; and take out Real Estate Management.

The Remedies section needs to be boilerplate per Ms. Alfonso.

Ms. Caswell asked to take out “first” in Witness Whereof.

Mr. Cain asked that this item be rescheduled for February 20, 2008 for at least an hour.

Mr. Cain adjourned the meeting at 12:14 p.m.