



Interoffice Memorandum

Minutes

Roadway Agreement Committee

April 15, 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
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
Heather Brownlie – Transportation Planning Division
Marc Buonanni – Transportation Planning Division

Mr. Harrison called the meeting to order at 8:45 a.m.

Approval of Minutes

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

Page 1 Ms. Hammel is not in Development Engineering, it should read Public Works Engineering Division.

Page 3 line 26 Ms. Almodovar questioned the dedication of the Sharp Right-of-Way. Mr. Harrison asked for the recording of the last meeting to be checked on this.

Page 5 line 5 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.

Page 5 line 46 should be Section 3(c)(i) instead of 3(c)(iii).

Page 6 line 10 should read “Ms. Hammel informed that if it was the Orange County Utilities (OCU) easement, Public Works and OCU had agreed to coexist.

Page 8 line 11 need to add dollar signs and the word “is” after “SLR”.

Mr. Harrison made a motion, with a second by Ms. Almodovar to approve the April 1, 2009 Roadway Agreement Committee Meeting minutes with corrections. Motion carried unanimously.

Review of Special Florida Mall Meeting Minutes 4/10/2009

Mr. Nastasi asked to add that Florida Mall is willing to provide a Letter of Credit.

Mr. Nastasi made a motion, with a second by Mr. Kunkel to approve the April 10, 2009 Special Florida Mall Meeting minutes with corrections. Motion carried unanimously.

Activity Update/Summary/Follow-Up Items List

An update was provided by Mr. Nastasi stating that Florida Mall is moving forward, but there are still some Utilities issues being discussed.

An Avalon update was provided by Ms. Alfonso, who is working with Mr. Marks to draft a new amendment.

Ms. Alfonso provided an update of the Friedman Group settlement options being discussed.

Semorán Plaza

Road Affected: East-West Road

Present: Greg Woulfe

Previous RAC: 8/15/2007, 9/12/2007, 9/26/2007, 1/16/2008, 1/21/2009

County Staff Present: None

Ms. Lofye commented that a new parcel number was added.

Mr. Woulfe responded that the Property Appraiser carved out an additional parcel for Right-of-Way. Mr. Hurt confirmed this.

Mr. Hurt explained his calculations for arriving at the reduced easement value.

Page 3 Mr. Hurt asked that the “Manager of Real Estate Management Division” be changed to “Director of Administrative Services”.

Mr. Kunkel made a motion second by Ms. Almodovar to approve the amendment with changes made at today’s meeting, subject to final review by the Committee; subject to final review of exhibits by the County Surveyor. Motion carried unanimously.

Fishback PD/KB Homes

Development: Fishback PD

Developer: KB Homes

Road Affected: Ficquette Road

Present: Juli James

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

County Staff Present: Juan Curi

The Committee previously approved the Amended and Restated Agreement on 11/12/2008.

Page 1 of the blackline adds in the Legal and Sketches for Exhibit A.

Page 2 final plans reference should be “updates to the final plans” for title and strike the date reference.

Page 2 Mr. Kunkel asked for additional language to be included at the end of Section 2(a): “The mitigation for the road improvement shall be made available for County use as applicable”.

Ms. Cummings stated that the on site mitigation is contemplated, and conditioned in the permit, but there is no timeframe for the conservation easement to be recorded. If Orange County goes first, then it would not have access to this mitigation.

Mr. Kunkel asked to add a provision that this mitigation requirement be included as part of the DE&P work.

Ms. Hammel stated that no road impact fee credits can be provided until all mitigation and permitting requirements are completed.

Ms. Alfonso suggested adding language to Section 2(d) to not provide credits until all mitigation is completed.

Ms. James would like to leave this issue open for the moment to discuss the conservation easement with the client.

Ms. Hammel asked if there was a cost estimate for the DE&P work for Segment F and asked that an exhibit be included with a cost estimate.

Page 3 paragraph 2 was added to provide an easement to the County over joint use ponds, and there was discussion of the fill dirt.

Ms. Alfonso asked to add a requirement that a fill dirt permit be applied for.

Page 3 paragraph 3 Ms. Hammel asked to strike “and the County’s use and exercise...” up to “Drainage Easement Area or the Drainage Facilities”

Page 4 the Committee asked that (i) not be stricken. The Developer must pay all costs for conveyance.

Page 4 Subsection (iv) the County is to pay for the ESA Phase I Report.

Page 5 Mr. Kunkel stated that even with a Temporary Access and Utilities Easement, Right-of-Way Utilization Permit is still required.

Ms. Hammel suggested eliminating the easement altogether and just using the Right-of-Way Utilization Permit.

Ms. James will put substantial completion language in.

Open issue – Ms. James will look at Right-of-Way Utilization Permit and would like to keep this an open issue for discussion.

Page 5 Mr. Smogor raised the issue of why the Section 4 language was changed to request vesting in addition to credits and stated that concurrency can be given on the segment being dedicated, but not anything else.

Ms. James stated that the client feels they should have always had concurrency on this section of Ficquette Road (from Lake Hancock to Winter Garden-Vineland Road).

Mr. Nastasi would not agree to vest open-endedly and stated the need to cap the number of trips for vesting on a specific segment only. Mr. Nastasi requested to please confirm the number of trips.

Mr. Harrison stated that vesting is limited to capacity on the number of trips approved.

Mr. Smogor stated that the trips are limited to the current PD approval.

Ms. Hammel asked for additional language to be included in Section 4 for Right-of-Way conveyed first and DE&P work finalized and approved along with mitigation and permitting.

Mr. Nastasi stated the need for a traffic study to confirm the final number for any vesting to be provided.

Page 6 Section 11 Remedies Ms. Hammel asked for boilerplate remedies language to be included. Ms. James and Ms. Alfonso will work out the Remedies language.

Mr. Harrison did not want to review the exhibits and asked Real Estate Management to review separately.

The open issues were reviewed by Mr. Harrison to summarize the discussion.

Mr. Harrison asked to reschedule this item for the May 6 Roadway Agreement Committee meeting.

The revised agreement and materials are due by April 24, 2009 at 10 a.m., for Roadway Agreement Committee distribution.

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

County Staff Present: Juan Curi, Brian Sanders, Jon Weiss (FDOT)

Mr. Harrison opened the discussion outlining two issues:

1. Termination language for Interchange and/or Development Order
2. Conflict between maps

Mr. Pratt stated that Section 3(g) is the Section at issue Development Order. Section 11(h) is the Section for the Interchange.

Mr. Nastasi asked for valuation of Right-of-Way to determine the amount of road impact fee credits available and relates to whether 60 ft or 130 ft conveyed based on contingency discussion.

Mr. Pratt stated that the client is not willing to discuss this agreement further at this time beyond what was already provided.

Mr. Harrison held a separate meeting since the 4/1/09 meeting to discuss the maps.

Mr. Nastasi stated that Orange County staff should go through the agreement one more time and recommend a final draft to the applicant.

Mr. Nastasi distributed the Roadway Network Map for the Innovation Way MMTD.

The map provided includes items in green to accommodate certain requests from SLR.

The map will be presented to LPA as part of the MMTD and will go to the Board of County Commissioners on May 19, 2009.

The Eastern most loop is shown as a transit corridor.

SLR has requested Phase I/II/III transit corridors and Orange County is showing it all in Phase III.

Mr. Nastasi states that these are the maps incorporating all requested changes and this is the final map to be included in the MMTD.

Mr. Florio asked if the green areas will then become the new plan. Mr. Nastasi confirmed it will be depicted as provided.

Mr. Florio stated that the new map will then replace the previous MMTD maps. Mr. Nastasi confirmed.

Mr. Pratt asked if this map was to be used as Exhibit 4 to Section 8 of the Agreement. Mr. Nastasi confirmed.

Mr. Nastasi stated that the SLR map has been included in the staff report for LPA consideration.

Mr. Florio asked if the proposed green ever becomes blue actual and Mr. Nastasi state it does not change – the entire road network cost is approximately \$1 Billion and these changes are not going to impact the overall cost by much.

Mr. Pratt stated that in Paragraph 8 exhibit 4, the map by Mr. Nastasi will be provided as this exhibit.

Page 13 Mr. Kunkel discussed Section 3(g) and proposed new language to insure that Right-of-Way dedication survives termination.

Ms. Alfonso suggested this language may be needed in several places in the agreement.

Mr. Kunkel asked Mr. Pratt to check the Section references and exhibit references as well.

Mr. Kunkel wants the County to be able to go in and finish the road construction or at least get the Right-of-Way in place for Orange County to construct in the future as designed.

Mr. Harrison stated that the reference to Section 2.4 should be changed to Section 3 which covers the conveyance of the Right-of-Way.

Mr. Pratt will take Mr. Kunkel's language as provided in the handout back to the client for further consideration.

Ms. Alfonso asked that Mr. Kunkel's language be included in Section 5(a), in Page 10 Subsection (b), Page 22 Remedies, and Page 24 Subsection 11(h).

Ms. Alfonso also offered a new separate section as a stand alone paragraph entitled Termination. Mr. Pratt asked if the conveyance of Right-of-Way will still be required in the event of a County default since that will be an issue.

Mr. Kunkel stated Section 3(c) also refers to Right-of-Way and needs termination in that paragraph also; add as 3(c)(iii).

Mr. Harrison feels Section 3(c) and Section 11 (h) are most important to be addressed with this new language.

Ms. Alfonso stated that Section 3(c) and 5(a) need to include this language.

Mr. Nastasi stated that the County wants assurance that Road E gets built pending the Development Order (DO); this should include Right-of-Way requirement for Road E to resolve the issue.

Mr. Nastasi commented that all of the items taken out of Section 8 were mostly included in the MMTD Study.

Mr. Pratt wants an opportunity to re-review the MMTD Study to see if that covers the SLR concerns and if the remainder is covered in the DO.

Mr. Pratt stated that they also need an opportunity to review the new maps provided at this meeting.

Mr. Nastasi asked that potential amount of road impact fee credits for Road E be indentified by Real Estate Management and provided to the Committee.

Ms. Alfonso stated that the County is willing to add language “other than solely a material default by Orange County”.

Mr. Smogor made a motion second by Mr. Nastasi to approve with changes made at today’s meeting, subject to final review by the Committee; subject to final review of exhibits by the County Surveyor.

Discussion:

Mr. Nastasi asked in terms of process, how to proceed to the Board of County Commissioners.

Mr. Harrison stated that if SLR is content with the agreement, then we go to the Board of County Commissioners, if no, then we outline the remaining issues at the Board of County Commissioners meeting.

Mr. Pratt stated that all of the exhibits have been provided.

Mr. Harrison restated the motion and second on the table.

Mr. Kunkel agreed to limit the use of his new language to Section 3(c), Section 5(a) and Section 11(h).

Ms. Alfonso stated that without SLR executing, this cannot be an approval item for the Board of County Commissioners only as a discussion item. Mr. Harrison concurred.

Mr. Kunkel asked if Mr. Smogor's motion needs to be modified to allow for this to go to the Board of County Commissioners without SLR approval. Mr. Harrison stated that it is not necessary.

Motion carried unanimously.

Mr. Pratt asked if the Board of County Commissioners could consider the SLR executed version they have completed. Mr. Harrison will not send their version forward.

Ms. Alfonso to redraft the agreement for final review by the Committee.

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, Wayne Rich

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, Jon Weiss (FDOT), Frank Yokiell, Susan McCune

Mr. Pratt reviewed the substantive changes. Mr. Rubio noted that OOCEA has not had a chance to review this version.

Mr. Pratt has removed the concept of component parts and used fixed amounts for each party's contribution.

All contributions are to be paid up front into escrow.

Deferment of paving the two eastern most ramps until the toll facilities are completed.

OOCEA is willing to fund 48% of capital costs but capped at \$12 million. SLR is net between total contribution and \$12.5 million soft cap with an option to discuss further.

OOCEA requires additional Right-of-Way on the mainline for drainage and want credits for this Right-of-Way.

A provision was added addressing reimbursements.

Changes were made to reduce options for termination once funds in escrow.

Change order provision revised with deminimus concept and party optional change order paying for it.

The Force majeure clause has been reduced since the County standard describes options for not funding but cash will already be in escrow.

Added a Development Order provision for contingency.

Mr. Harrison suggested just discussing the changes made and the issues that are outstanding.

The County is contributing \$6.5 million – Mr. Kunkel concurred.

Mr. Rubio confirmed OOCEA wants to hold out the paving of the two ramps. Mr. Florio stated OOCEA has offered to pave later at their cost.

Mr. Harrison asked Mr. Kunkel if escrow is acceptable to the County. Mr. Kunkel will check with OMB and Mr. Rubio is to review further.

OOCEA is still reviewing the removal of component parts.

OOCEA has a separate exhibit for Right-of-Way Utilization Agreement.

Mr. Harrison stated that extra lands are required for the widening of the mainline from SLR. The value for this is included in the SLR proportionate share.

Mr. Nastasi has an issue regarding other property owners not paying their share for the mainline widening.

Mr. Florio stated that if the County is not willing to give proportionate share credits, then the County needs to add Right-of-Way costs to the project construction costs.

Mr. Harrison stated that Section 2.8 Reimbursement of Other Benefiting Owners will be discussed at a later date.

Mr. Harrison stated that on the Change Orders we need to review specific language. Mr. Pratt may use a different procedure. The Section 7 issue also needs further review.

Escrow provisions agreed to by all parties.

The Force Majeure needs further discussion amongst the parties.

Mr. Nastasi asked to discuss Section 6.4. The County cannot agree to allow the Developer to sell trips; the County can only vest a certain number of trips, not blanket.

Mr. Nastasi stated that the Level of Service should not be an issue with the MMTD.

Mr. Pratt will take this issue back to his client.

Ms. Lofye also had an issue with the term Surplus Capacity in Section 6.4.

Mr. Harrison asked that Mr. Nastasi and Mr. Pratt meet on the Surplus Capacity issue.

Mr. Nastasi will not allow SLR to own excess trips. Mr. Pratt asked that excess trips be used in the same area for the same road network.

Mr. Harrison asked for the Development Order and the Road contingencies not to be placed in this agreement at all.

Comments are needed back by next Friday by 10:00 a.m. in order to provide blackline for the May 6, 2009 meeting.

Mr. Nastasi asked for the Roadway Agreement Committee to review the Development Order.

Mr. Harrison adjourned the meeting at 12:10 p.m.