



Interoffice Memorandum

Minutes

Roadway Agreement Committee

March 5, 2008

Members Present: Roger Cain – Public Works Department (Vice Chairman)
Benj Hurt – Real Estate Management Division
Renzo Nastasi – Transportation Planning Division (Acting Chairperson)
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
Gina Segui – Risk Management Division
Joe Perez – Highway Construction Division
Heather Brownlie – Transportation Planning Division
Rita Gonzalez – Transportation Planning Division
Peter Johnstone – Transportation Planning Division
Vince Randazza – Real Estate Management Division
Jennifer Cummings – Stormwater Division

Mr. Cain called the meeting to order at 8:36 a.m.

The first order of business was to nominate an interim acting Chairperson for the Committee since Mr. Harrison was not present and Mr. Cain could only attend a part of today’s meeting.

Mr. Hurt nominated Mr. Nastasi as the acting interim chairperson for the Committee for today. The motion was seconded by Mr. Kunkel. Motion carried unanimously.

Approval of Minutes

The Committee reviewed the minutes from the February 20, 2008 Roadway Agreement Committee Meeting and changes were requested as follows:

On Page 4 lines 26-27 Ms. Alfonso asked to add “is constructed and” and to strike the parenthetical.

On Page 5 line 42 change “Alonso” to “Alfonso” and “asked to” to “suggested including”.

On Page 6 line 50 change “discusses” to “discussed”.

On Page 7 line 9 change “Mr. Long” to “Ms. Long”.

On Page 7 line 21 change “happens” to “happen”.

On Page 8 Mr. Geiger stated he did not make the comment in line 23 so it was changed to start the sentence with “It was”.

On Page 9 line 47 Mr. Hurt stated he did not make the Utilities comment, this was also changed to begin with “It was”.

Motion by Mr. Smogor, second by Mr. Kunkel, to approve the February 20, 2008 Roadway Agreement Committee Meeting minutes with listed changes and other typographical corrections and grammatical omissions. Motion carried unanimously.

Activity Update/Summary

Mr. Cain informed the Committee that the Semoran Plaza agreement was approved by the Board of County Commissioners at the 3/4/2008 BCC meeting.

Ms. Almodovar provided the Committee with an update on the status of Racetrac. They are still negotiating with the property owner and may still return to the Committee.

Florida Mall – Sand Lake Road

Development: Florida Mall DRI

Developer: Florida Mall Associates, LTD

Road Affected: Sand Lake Road

Present: Scott Thompson

BCC agreement: BCC 6/19/2001 (OR 6301/4303), JPA BCC 6/18/2002

Previous RIFCC: 11/8/2000, 12/13/2000, 1/17/2001, 3/21/2001, 4/4/2001, 5/16/2001, 6/6/2001, 4/21/2004, 5/19/2004, 12/12/2008

County Staff Present: Vivien Monaco

The applicant is returning to the Roadway Agreement Committee to get re-approved now that the two outstanding issues have been resolved with the agreement.

Ms. Monaco explained that the changes made to the Force Majeure language were requested by the County Attorney's office and that they are now satisfied with the language being included in the agreement.

The Developer remains liable for their own costs, but not County costs, and the County remains liable for its costs but not all costs.

Ms. Alfonso added that this provision would only take effect once construction begins.

Mr. Cain added that there are certain events listed which would be considered catastrophic events.

On Page 4 in Section 4(c) and 4(d) the cost overrun provisions have been re-worded.

Mr. Nastasi asked about the timeframe provided for in Section 4(a) on Page 3 and whether July 1, 2008 for commencement of construction is still feasible.

Mr. Thompson did not have a current timeline, but was willing to make any necessary adjustments if needed to the timeframe included in the agreement.

Mr. Nastasi asked for an updated timeline within the next week.

Mr. Cain asked that a realistic date be included in the Ratification Agreement.

Mr. Thompson asked for the Committee’s assistance in lifting the condition placed on the Florida Mall by DRC that they cannot get Construction Plan Approval until all the commitments under this agreement have been met.

Mr. Cain and Mr. Smogor suggested that Mr. Thompson return to DRC to get the condition lifted as soon as the Ratification is approved by the Board of County Commissioners.

Mr. Nastasi cautioned that construction needs to start before DRC should lift the condition since we have had an agreement in place since 2001.

Mr. Cain stated that the Roadway Agreement Committee cannot decide DRC issues.

Ms. Alfonso asked that on Page 6 the word “Manager” be added before “Transportation Planning”.

Mr. Nastasi did not want the Ratification Agreement to be scheduled for the BCC until a timeline has been provided.

Mr. Smogor made a motion to approve the Ratification Agreement subject to Final Review by the Committee, seconded by Mr. Nastasi with discussion.

Mr. Nastasi stated that there may still be a Utilities issue outstanding which could delay the construction start date from the July 1, 2008 date listed in the agreement.

Mr. Nastasi suggested a friendly amendment to Mr. Smogor’s motion to add a condition of approval that the timeline be firm and a meeting scheduled between the Florida Mall, their consultants, Orange County and Orange County Utilities to discuss this further. Mr. Smogor accepted the amendment to his motion.

Mr. Cain restated the motion by Mr. Smogor which was seconded and amended by Mr. Nastasi to approve the Ratification Agreement subject to Final Review by the Committee and subject to final approval by Mr. Nastasi and Mr. Kunkel pending a meeting with the Developer regarding the timeline to be included in the agreement. Motion carried unanimously.

[Mr. Cain departed the meeting at 9:27 a.m.]

Taurus O53B LLC - (Woodbury Rd Ext)

Developer: O53BLC (Taurus Inc.)

Road Affected: Woodbury Road Extension

Present: Jeff McFadden, Allen Peacock

Also Present: Joe Wallace

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, 2/20/2008

County Staff Present: Frank Yokiel, Abdul Azim, and Brian Sanders.

Mr. Nastasi indicated that the Committee would review the revised agreement page-by-page.

Page 1 Ms. Alfonso asked that “thereafter defined” be deleted and that Woodbury Road be defined.

On Page 2 Mr. Nastasi pointed out that it should be “County Engineer” in the first Whereas clause.

On Page 2 Ms. Alfonso asked that “the Roadway” be a defined term identifying Woodbury Road Extension.

On Page 8 Ms. Alfonso asked that “Owner’s Contribution” be a defined term also.

On Page 2 in the fourth Whereas clause, Ms. Alfonso asked that the language match the language used in the College Suites agreement. She has provided this information to Mr. Kay.

On Page 3 in line 7 Mr. Kunkel objected to the Buildable Area language. Mr. McFadden offered to add the 2.190 acres as the area rather than using the defined term “Buildable Area”.

Mr. Kunkel stated he would need to research the plat.

Mr. McFadden offered to add their survey of the property as an Exhibit to the agreement to define the 2.190 acres which make up the Buildable Area.

On Page 4 in Section 2(c) Mr. Randazza asked that “accepted by” be changed to “acceptable to” the County.

On Page 4 the title of Section 2(d) should be changed to “Donated Land”.

On Page 5 in Section 2(c) in the top line on the page Ms. Alfonso felt “County shall pay all out-of-pocket costs” was too broad and asked that this be changed to “reasonable and applicable costs”.

On Page 5 at the end of Section 2(c) there needs to be additional boilerplate language added back in to identify that taxes must be paid pro-rata unless paid in November or December, then paid in full.

On Page 5 in Section 2(d) Ms. Alfonso asked that a missing remedy where both parties negotiate needs to be added back in which was taken out of the boilerplate language.

On Page 5 Ms. Alfonso asked to add “if not already paid or reimbursed” so there is no danger of paying twice for the same item.

On Page 6 Mr. Randazza asked that “accepted by” be changed to “acceptable to” the County.

On Page 6 in Section 2(f) Mr. Hurt asked that “Roadway” be changed to “Donated Land”.

On Page 6 in Section 2(h) Mr. Kunkel asked that the agencies involved be listed specifically.

On Page 7 Mr. Kunkel asked that 42 months be changed to “60 days after substantial completion of construction”.

On Page 7 Mr. Randazza asked that the term “special warranty deed” be changed to “County deed” since the County can only convey by County deed and not by warranty deed of any kind.

On Page 7 continuing onto Page 8 Ms. Martin asked for changes to Section 2(i) and provided Mr. McFadden with a copy of the language to be included.

The Committee discussed whether Taurus should receive \$50,000 in Road Impact Fee Credits or the amount less costs to be provided in Road Impact Fee Credits. The Committee agreed that the full \$50,000 should be awarded in Road Impact Fee Credits.

Mr. Nastasi questioned the provision of making credits available immediately upon payment. Mr. McFadden indicated that had always been the agreement all along.

On Page 10 Mr. Peacock stated that some of the email contacts listed would be changed.

On Page 10 Mr. Randazza objected to the County recording the agreement since there is no mechanism for the County to record at their expense. Mr. McFadden offered to pay the recording costs out of the \$50,000 amount as part of the reasonable costs.

On Page 10 Section 6 needs to end after the word “Florida” with the remainder of that sentence being deleted.

On Page 11 Ms. Alfonso asked that the termination language be made into its own Section, a new Section 7 perhaps, and that recordation be listed at Owner’s expense.

Ms. Alfonso also noted that the amount of all costs must be limited to a maximum total of \$50,000.

On Page 11 Section 9 Ms. Alfonso objected to the language “and deemed reasonably acceptable by the party requested to execute” and asked that this be deleted.

On Page 12 the first paragraph at the top of the page is redundant and expressed earlier in the agreement and Ms. Alfonso asked that it be taken out of this section or deleted entirely.

On page 15 Ms. Alfonso asked that the Mayor’s signature be on a separate page from the Owner’s signature.

Mr. Nastasi asked if there was a motion to approve or if the Committee wanted to see this again at the next meeting.

Motion by Mr. Smogor, second by Mr. Kunkel, to approve the agreement with changes requested at today’s meeting, subject to final review and approval by the Committee, subject to Ms. Alfonso and Mr. Kay working out any remaining language issues, and subject to the final review and approval of the exhibits by the County Surveyor . Motion carried unanimously.

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, 2/20/2008

County Staff Present: Frank Yokiell, Abdul Azim, Brian Sanders.

Ms. Long provided the Committee with a revised redline version with additional changes.

Exhibit A will be the parent tract parcel.

On Page 2 in the second Whereas Ms. Alfonso asked that “Taurus” be changed to “O53B, LLC”.

On Page 2 in the fourth Whereas Ms. Alfonso asked that the word “the” be deleted before “use”.

On Page 3 Mr. Hurt asked Ms. Long to check the Exhibit labels which may be off. She agreed to review and fix any issues.

On Page 4 in Section 2(b)(ii) Ms. Alfonso asked that “simultaneously” be changed to “contemporaneously”.

The Committee discussed the fact that there is no mechanism for the County to pay for recording fees and taxes due on the property.

Ms. Alfonso and Ms. Long will research recoding requirements further.

On Page 5 in Section 2(b) Ms. Alfonso asked that the language be changed to read “may grant one extension of time for up to 120 days for closing to take place.”

On Page 6 in Section 2(d) Mr. Hurt asked who was performing which appraisal. Mr. Chu stated that College Suites is hiring an appraiser to appraise the Trisman property and that Orange County is appraising the Mandt property.

On Page 6 in Section 2(d) in the third paragraph Mr. Nastasi objected to “any and all” language for the County to pay monitoring costs.

Ms. Alfonso was okay with the language if the County was planning to pay the monitoring costs and Ms. Cummings and Mr. Kunkel agreed that was the plan.

On Page 6 at the end of Section 2(d) there is an extra period which needs to be removed.

On Page 9 Mr. Randazza asked about Exhibit E which seems to encompass more than one parcel.

On Page 8 Ms. Long had added a note for Committee discussion about the timing of the proportionate fair share agreement payment which will be due prior to the Developer’s closing date with the owner.

Mr. Nastasi asked that this item be discussed in a separate meeting with Ms. Long. Ms. Long asked that Ivelisse Torres and Mirna Barq be present at the meeting also.

On Page 10 Mr. Randazza asked that the Exhibit labels be checked.

On Page 10 at the beginning of Section 6 add “O53B, LLC” before “Property”.

On Page 11 in Section 7(b)(i) Ms. Alfonso asked if the timeframe was acceptable to the Committee. This information was provided by Mr. Kunkel.

On Page 11 Mr. Sanders asked that the word “sufficient” be added back in which was deleted.

On Page 11 Mr. Hurt asked that the word “the” be removed before the word “all”.

The Committee discussed the timeframes included since Mr. Kunkel had provided certain timeframes which Ms. Long has changed.

Mr. Nastasi asked that these issues also be resolved at the separate meeting to be planned.

On Page 14 Mr. Randazza questioned not recording until closing. Generally all BCC-approved agreements get recorded within thirty days.

Mr. Garbe indicated that he could not cloud the owner's title by recording the agreement, so it cannot be recorded until Mr. Garbe takes title on or before October 15, 2008.

This issue will delay going to the BCC if the agreement cannot be recorded until late September.

Mr. Garbe stated he cannot get his zoning approval until this agreement is approved at the BCC and he cannot close until he gets his zoning approval so he is in a Catch-22 position.

On Page 18 Ms. Alfonso questioned the additional language included in the Effective Date clause.

Mr. Nastasi asked that Ms. Long organize the separate meeting with County Staff to resolve the outstanding issues and that this item be rescheduled for the March 19, 2008 RAC Meeting.

Mr. Nastasi adjourned the meeting at 11:10 a.m.