



## Interoffice Memorandum

### Minutes

### Roadway Agreement Committee

May 20, 2009

Members Present: Jim Harrison – Growth Management (Chairman)  
Joe Kunkel – Public Works Department (Vice Chairman)  
Renzo Nastasi – Transportation Planning Division  
Virginia Williams – 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  
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 8:46 a.m.

### Approval of Minutes

The Committee reviewed the minutes from the May 6, 2009 Roadway Agreement Committee Meeting and changes were requested as follows:

Page 3 line 21 delete “the” before “Frye” and add “they” before “do not”.

Page 3 line 37 Ms. Alfonso requested “and the Committee” be added to the end of the sentence.

Page 3 line 47 change “assuming” to “assuring”.

Page 4 line 14 remove the “t” from “Spurt”.

Page 4 line 42 change “part” to “the subject of”.

Page 5 line 12 change “Mr. James” to “Ms. James”.

Page 6 line 20 change “Page” to “Section”.

Page 6 line 22 change “submittal” to “has submitted”.

Page 6 line 35 delete the entire sentence.

Page 7 line 12 insert “Morgran” after the first “who”, and delete the second “who”.

Page 8 line 35 change “ICET” to “ISTEA”

Page 8 line 51 add an “s” to “modification” and add a period after modification, also change the next sentence to read “Mr. Pratt has made the changes but his client has not yet agreed to the changes”.

Page 9 line 14 change the first “by” to “to”.

Page 9 line 19 change “correct” to “correction”, add “that” after “made”, and add “Guideway” after “Fixed”.

Page 10 line 32 add “and” before “asked” and add “revise it to read” after “asked to”.

Page 10 line 35 add quotes around “not withstanding”.

***Mr. Smogor made a motion, with a second by Mr. Nastasi to approve the May 6, 2009 Roadway Agreement Committee Meeting minutes as amended. Motion carried unanimously.***

### **Activity Update/Summary/Follow-Up Items List**

Innovation Road E and Semoran Plaza were approved and need to be moved up to Board of County Commissioners Approval category with the pending Board of County Commissioners dates included.

Florida Mall is going to Senior Staff on June 5, 2009.

#### **Summerlake**

Ms. Alfonso gave an update and stated that there were two days of Mediation completed. The County and Summerlake will be meeting again some time in early July.

#### **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, Jim Fox, Johnny Walker, Greg Lee

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, 5/6/2009

County Staff Present: Juan Curi

The committee reviewed the changes made to the agreement page by page.

Page 2 Ms. Hammel asked that “discharge” be changed to “drainage” and change “retention” to “stormwater”.

Page 3 Section 2(a) should read “Director of the Administrative Services Department”.

Page 5 Ms. Hammel asked to make changes to the second to the last sentence in Section 4(a); to delete part of that sentence, starting with “outfall” and ending with ”ponds”, and change it to read “for the Stormwater drainage ponds and outfalls on the Sharp property.

Ms. Hammel raised the issue that the County does not have a right to terminate should the Frye owners fail to obtain the Sharp Right-of-Way.

Mr. Lee representing the Sharp owner, Berry Walker, joined the discussion and stated that Mr. Walker is willing to do whatever is needed to get the Right-of-Way conveyed so the project succeeds.

Ms. Alfonso asked if the Right-of-Way documents would be placed in escrow at any point.

Mr. Harrison asked that the County have some protection if the Sharp property is never conveyed.

Mr. Harrison asked that a statement be included that no credits be paid out until the Right-of-Way has been conveyed which means no credits or reimbursement of construction invoices.

The Developers want to start the conveyance process now and submit documents as soon as possible for review.

Ms. Alfonso will work with Mr. Walker to move forward with the process.

The Developers would like to go to construction in July 2009.

Mr. Nastasi has an issue with providing PAYGO funds if the Right-of-Way is not yet conveyed.

Ms. Alfonso asked that the Developers follow up to make sure the conservation easement requested by Ms. Cummings at the last meeting has been dedicated.

There was discussion of the one year warranty period. Ms. Almodovar stated that the Development Engineering Division does not accept warranty bonds and must have a Letter of Credit or cash escrow as surety for the one year warranty period.

Mr. Huber stated that a one year payment and performance bond should be sufficient.

Mr. Huber does not want to pay additional funds for posting a letter of credit.

Mr. Kunkel stated that there is no contractual relationship between Orange County and the contractor.

Mr. Harrison stated that Orange County is a Third Party Beneficiary by the terms of the agreement.

Mr. Kunkel stated that without a contractual relationship with the contractor for workmanship or materials then the County has nothing to fall back on.

Ms. Alfonso explained the difference between obtaining funds from a bond and Letter of Credit. The County needs to be able to access the funds.

Mr. Kunkel stated that as long as the County has privity and can access the bond, then a bond is ok.

Ms. Hammel asked for a construction cost estimate. Ms. Hammel pointed out there is no provision requiring a competitive bid process. Mr. Huber offered to provide the cost estimate for Ms. Hammel's review.

Page 8 Section 4(g) Ms. Hammel pointed out there is a 10-day review timeframe for change orders. Need to clarify that anything over 10% would not be automatically approved and would need to go to the Board of County Commissioners for approval.

Page 7 Ms. Alfonso asked to add to Section 4(e) "and acceptance of the roadway by County".

Page 8 Section 4 (g) add a "comma" after "Commissioner" and change the "Additionally" to a lower case "a".

Page 11 Mr. Nastasi stated there may be a need to keep the existing Reams Road connection opened even after the realignment is completed.

Mr. Huber stated that unless the existing Reams Road connection is closed their commercial site does not work. The Traffic Study submitted supports this closure.

Mr. Nastasi is comfortable with the traffic study and it has been approved.

Ms. Rozier is not happy with closing an existing connection.

Mr. Huber asked that on Page 11 the word “cul-de-sac” be changed to “turnaround” in Section 6, sub-section (ii).

Mr. Harrison summarized that the only outstanding issue is making sure that the Right-of-Way is conveyed before credits are provided.

Page 12 Section 8 Ms. Alfonso added language to resolve this issue.

Ms. Almodovar stated that realignment removes the roundabout and shifts the road to stay on Sharp-owned property.

All plans must be brought back to the Development Review Committee for re-approval with the new alignment.

***Mr. Nastasi made a motion second by Mr. Smogor to approve the Frye Agreement with changes made at today’s meeting, subject to final review by Committee and final review of exhibits by the County Surveyor, also subject to construction cost estimates being reviewed by the Public Works Engineering Division.***

***Ms. Rozier stated that she does not support the realignment since it impacts the existing neighborhood.***

***Motion carried with 6 members voting yes and Ms. Rozier voting in the negative.***

### **Avalon Park DRI**

Development: Avalon Park DRI

Developer: Avalon Associates

Road Affected: Alafaya Trail

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

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, 5/6/2009

County Staff Present: Damian Czapka, Sheryl Weinmann

Page 3 a stray quotation mark at the top needs to be deleted.

Page 3 Mr. Pratt suggested changing the second sentence of the second paragraph of Section 2(a) to read: “Any mitigation required in connection with the road improvement project shall be paid and performed by the County”.

Page 4 Ms. Hammel added to 2<sup>nd</sup> paragraph of Section 2(b) “less any of the limiting amount tasks not performed”.

Mr. Marks asked that his proposed language as agreed to at the last meeting be included in its entirety. Ms. Alfonso agreed to add this back in. Mr. Marks language is as follows: “Upon County approval of 100% plans and receipts of permits, the County shall look solely to the Project Engineer.”

Page 4 Ms. Rozier asked to remove the word “additionally” in Section 2(b) in the first paragraph.

Page 4 Section 2(b) add a comma between “3.6” and “5.4”.

Avalon expects the County to coordinate exclusively with MSCW once 100% plans are delivered.

Mr. Kunkel raised the issue of escrowed impact fees and how the County needs to preserve these.

Change Orders 1-6 total almost \$200,000. Mr. Marks wants to be paid escrowed impact fees for these items. He then is willing to split the remaining design costs 50-50 between credits and escrowed impact fees.

\$1,312,289 were paid out so far for the design project.

Ms. Hammel estimated \$370,000 remaining to be paid out.

The Committee agreed that all the payments from now on be split 50-50 between the road impact fee credits and the escrowed impact fees.

Mr. Marks raised the issue of the final design negotiations and \$84,000 of additional Right-of-Way costs are what Avalon expected. \$52,000 is what is included in the agreement for additional Right-of-Way.

Page 4 Mr. Pratt asked to change the reference in Section 2(b) to Exhibit A to “Scope of Work” after the word “Aforementioned”.

Page 7 Mr. Kunkel clarified that the County gains access to escrowed impact fees upon completion of the DE&P work.

Mr. Marks asked that any subsequent change orders requested by the County be paid out at 100% of the escrowed impact fees rather than in credits beyond the first six change orders which have already been approved. Add language to Subsection (d) on Page 5 to reflect this change.

Page 6 Ms. Alfonso asked that the last sentence of Section 3 be modified to strike the language starting with “which agreement” to the end of the section.

Mr. Harrison asked Mr. Woodson if Morgran was okay with the agreement so far and he responded that he was.

Page 8 Section 11 Mr. Pratt asked to change the last word from “Agreement” to “Amendment”.

Page 8 Ms. Alfonso asked to change “Agreement” to “Amendment” in Section 9 as well.

Page 9 Mr. Marks objected to including a remedy for the County to withhold permits since it was not part of the original agreement and asked to strike Section 13(a)(iii).

Mr. Harrison understood Mr. Marks position and agreed to remove the remedy at Section 13 (a)(iii) for withholding permits since the road project was never a requirement for Avalon DRI. Also need to strike all blackline language included at Section 9.

Mr. Harrison and Mr. Pratt re-capped the changes made at today's meeting.

***Mr. Kunkel made a motion second by Mr. Nastasi to approve the Avalon Amendment to Roadway Network Agreement with changes made at today's meeting, subject to final review of exhibits by the County Surveyor, and final review of the Roadway Agreement Committee. Motion carried unanimously.***

**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, 5/6/2009

Mr. Pratt explained that SLR is still reviewing the request that SLR waive their option to construct. The County agrees with OOCEA's request to remove SLR's option to construct.

Mr. Pratt explained that SLR is not comfortable with giving funds directly to OOCEA rather than putting all parties' funds in escrow. If there is a dispute, then trying to get money back from the party the dispute is with would put SLR in a difficult position.

Mr. Pratt asked that all funds be placed in escrow with an escrow agent and provide favorable escrow terms to OOCEA so the money can be easily accessed.

It does not matter to Orange County if the funds go directly to OOCEA or into escrow. This issue needs to be worked out by Mr. Pratt and Mr. Rubio.

Mr. Kunkel stated that the County has been in the same situation and has requested similar provisions from private partners in the past.

Mr. Harrison asked Mr. Pratt and Mr. Rubio to discuss further.

Mr. Pratt explained that if the project comes in at a lower cost than anticipated, then savings obtained should be split between SLR and OOCEA and that the County contribution should remain the same.

Mr. Pratt's argument is that funds provided by the County are from previous DRI payments and should remain fixed.

Mr. Harrison feels that the Orange County contribution was based on construction costs and if the cost is less, then the contribution should be less.

Mr. Snyder at OOCEA has suggested a proposal that each party contributes the expected amount.

\$12.0 Million	OOCEA
\$12.5 Million	SLR
<u>\$ 6.5 Million</u>	<u>Orange County</u>
\$31.0 Million	Total

Then if the bids come in at less than \$31 million, each party's contribution is reduced proportionately.

If the change orders or costs are over the \$31 million then each party contributes additionally (up to the caps for OOCEA and Orange County) leaving SLR to pay anything over the \$31 million. Mr. Pratt stated that if SLR loses road impact fee credits this becomes a big issue.

Mr. Nastasi stated that as other developments come in they will need to pay their share of costs for the interchange.

Mr. Nastasi explained that the interchange is just one of the roads which will be constructed and require reimbursement with other owners benefiting from the road.

Mr. Florio asked if SLR can get road impact fee credits for any reduction in the amount of Orange County paying if only \$6 million then give SLR \$500 thousand in credits.

Mr. Kunkel suggested possibly entering into an MOU.

Mr. Nastasi asked about timelines. Since Road E is going to the Board of County Commissioners on June 2, 2009, and the Interchange is tied to the Development Order approval; is this going with the Development Order?

Mr. Florio stated that it is going to LPA shortly and then the Comp Plan Amendment has to go to Tallahassee and back, so we are looking at August or September for Board of County Commissioners approval.

Mr. Nastasi stated that the County has not even reviewed the Development Order and that the process needs to start.

Mr. Nastasi reminded Mr. Florio that the Development Order needs to go through the Development Review Committee process which also takes time.

This project is rescheduled for the next Roadway Agreement Committee to be held 6/3/2009.

Mr. Harrison adjourned the meeting at 11:21 a.m.