



DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

PLANNING AND ZONING BOARD STAFF REPORT

Abandonment of Alley Right-of-Way, Adjacent to 201 and 213 SE 2nd Avenue, and 206 SE 3rd Avenue

Meeting	File No.	Application Type
November 14, 2022	2021-236-ABR-CCA	Abandonment of Right-of-Way (Alley)
Applicant	Property Owner	Authorized Agent
Tyler Knight, The Hutt, LLC	City of Delray Beach	Bonnie Miskel, Esq., Dunay, Miskel & Backman, LLP

Request

Provide a recommendation to the City Commission regarding a privately-initiated request to abandon an unimproved portion of a City-owned right-of-way (alley) totaling approximately 1,496 square feet and located adjacent to 201 and 213 SE 2nd Avenue, and 206 SE 3rd Avenue.

Background Information

The property under consideration is located adjacent to 201 and 213 SE 2nd Avenue, and 206 SE 3rd Avenue within Block 87 of the Linn's Addition to the Osceola Park Plat. The block was recorded on March 29, 1912 and included a "T" alley platted at 12 feet wide for the east-west portion, and 16 feet wide for the north-south portion. The platted alley was intended to provide access to the rear of every property within the block.

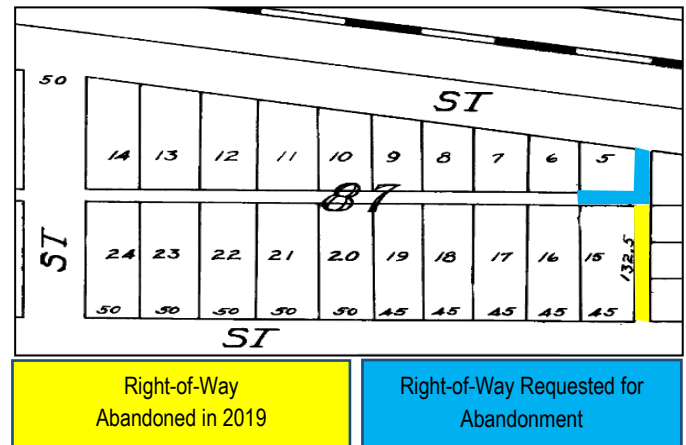
The alleyway (outlined in red) and the property immediately adjacent to it are all located within the Railroad Corridor Sub-district of the Central Business District (CBD) – shaded purple. Historically, Block 87 has maintained a mix of commercial uses fronting onto SE 2nd Street and SE 2nd Avenue, and single-family residences fronting onto SE 3rd Avenue, where the current zoning is Single-family Residential (R-1-A) – shaded yellow.

The alley, which is intended to be utilized for access to the rear of properties throughout the block, remained unpaved until recent improvements were completed in 2017 through a collaborative effort between the City and CRA. A portion of the unimproved alley was not included in this project in part because the private storage of belongings on the western leg of the "T" alley prevented that portion of the alley from being completed at that time. A code compliance case was issued and closed after the alley was cleared. In addition, there are utility conflicts within the alley that could not be addressed within the timeframe



The alley within Block 87 has been associated with or the subject of various discussions, plans, and/or requests, as follows:

- 2016: Based on feedback for the planning of Osceola Park Neighborhood Improvements, direction was provided to staff to withhold paving of the “T” portion of the alley due to potential traffic concerns, but did not provide direction regarding any abandonments. The City Commission discussed paving the alley with staff after receiving received feedback from the community regarding the possibility of commercial and industrial traffic entering SE 3rd Avenue from the now abandoned eastern leg of the “T” alley.
- 2017: The CRA completed a paver parking lot improvement in 2017 at 215 SE 2nd Avenue. A vehicular connection to the alley exists through this CRA-owned parking lot.
- 2018: The property owner of 206 SE 3rd Avenue (Lot 15, Block 87) requested a rezoning for the vacant lot from R-1-A to CBD; the request was approved by the City Commission on September 25, 2018.
- 2019: The City Commission approved an abandonment of the 12-foot-wide x 132.5-foot alley segment located between 206 SE 3rd Avenue and 206 SE 2nd Street (Lots 2 through 4, Block 87) on September 5, 2019 – see area shaded yellow. Alley rights-of-ways created through Plats are returned equally to adjacent property owners, pursuant to Land Development Regulations (LDR) Section 2.4.6(M)(1). Given that the two properties were under the same ownership, the abandoned alley has since been absorbed into the two parcels, which has also been unified as a single parcel.
- 2020: On February 11, 2020, the City Commission approved Resolution No. 30-20, adopting the *Osceola Park Neighborhood 2019 Redevelopment Plan Update*. The Plan, which was a collaboration between the City and Delray Beach CRA, stressed the importance of alleys and rear access to properties to alleviate parking in swales and provide for attractive street frontages (P. 47). The plan update defines specific characteristics of the area and identifies that commercial and industrial uses primarily exist along the corridor, aligning with the typical configuration of the development of blocks facing the railroad: “Non-residential uses are primarily located around the edges of the neighborhood, along SE 2nd Street, SE 5th Avenue, and the F.E.C. railroad corridor. Warehouses make up 68% of the non-residential uses and account for approximately 10% of all the uses in Osceola Park.” Additional analysis of the Osceola Park Neighborhood Redevelopment Plan Update is provided in the Review and Analysis section of this staff report.
- 2021/2022: The request to abandon the subject area was submitted. Given that the CBD regulations specify that “streets and alleys may not be abandoned, vacated, or closed to accommodate new development,” the applicant requested a waiver to this stipulation. Waivers of the CBD regulations require consideration by the Site Plan Review and Appearance Board (SPRAB) prior to providing a recommendation on the waiver request by the City Commission. While the SPRAB was able to make a recommendation of approval of the waiver on a vote of 7 to 0, the Board specifically offered additional comments:
 - The Board was not supportive of assemblages of land that could occur because of the abandonment.
 - The Board was supportive of redevelopment and adaptive re-use of the area; requiring easements or relocation of utilities as a requirement of the abandonment; and, the abandonment’s potential to provide more green space, albeit restrained by utility access easements required by the city.



The waiver request was ultimately approved by the City Commission via Resolution No. 97-22 on August 9, 2022. It should be noted that the waiver request was to allow the applicant to move forward with the processing of the abandonment request for consideration by the Planning and Zoning Board and City Commission.

Project Description

The request is for the abandonment of right-of-way consisting of an unimproved portion of a 12-foot to 16-foot-wide platted alley located north and east of Lot 5, south of Lot 1, and west of Lot 15, Block 87, as recorded in the plat of Linn's Addition to Osceola Park in Plat Book 1, page 133 of the Official Records of Palm Beach County, Florida. The subject area contains approximately 1,496 square feet.

The right-of-way under consideration is adjacent to 201 and 213 SE 2nd Avenue, and 206 SE 3rd Avenue. In the event that the abandonment request is granted, obligations may be incurred (i.e. additional land or additional property taxes) as the abandoned area will be split between the three abutting parcels. If approved, the receiving property owners will be obligated to maintain the area in accordance with City of Delray Beach Code of Ordinances, Land Development Regulations, and any other applicable local, state, and federal regulations.



Review and Analysis

LDR Section 2.2.2(E)(3)(e), The Planning and Zoning Board: Duties, powers, and responsibilities

The Board shall review and make recommendations to the City Commission with respect to the abandonment of rights-of-way or public easements excepting single purpose easements.

The Board's recommendation will be provided to the City Commission for consideration at an upcoming meeting; the date is pending.

LDR Section 2.4.6(M)(1), Abandonment of right-of-way: Rule

Public right-of-way may be abandoned (returned) to the fee description of adjacent property to the same degree in which it was originally obtained, i.e. property dedicated exclusively from a single parcel shall be returned to that parcel; property dedicated through subdivision shall be divided at the center line and returned equally to abutting parcels. Abandonment of right-of-way may be granted by a formal resolution enacted by the City Commission.

On March 29, 1912, the subject right-of-way (alley) was created through the Linn's Addition to Osceola Park Plat on Block 87, Book 1, Page 133 of the Palm Beach County Public Records for the perpetual public use. The abandonment of the alley would be returned equally to properties as proposed by the applicant in Exhibit A. Two of the three properties are owned by the same property owner under different LLCs - Hutt LLC, and 206 Delray Beach LLC. The third property, Lot 1, is owned by Classic Teleco Multi Services Inc.

LDR Section 2.4.6(M)(3)(e-f), Abandonment of right-of-way: Procedure

(e) Upon receipt of all review comments, the application with the recommendation of the City Engineer shall be forwarded for review at an advertised public hearing before the Planning and Zoning Board. The recommendation of the Planning and Zoning Board shall be forwarded to the City Commission;

The City Engineer has provided a review of the request (attached) and recommends that it be denied. The recommendation of the Board is anticipated to be forwarded for consideration by the City Commission at an upcoming meeting.

(f) If approved, the abandonment shall be evidenced by a resolution of the City Commission. After adoption, the resolution shall be recorded in the public records of Palm Beach County. Where deemed necessary by the City Engineer, an abandonment shall be consummated through the filing of a boundary plat, or replat, of the property to be abandoned and the receiving properties.

It has been determined by the City Engineer that if the City Commission approves the request to abandon the subject right-of-way, the abandonment should be consummated through the submission of a plat to include the receiving properties and the easements necessary to provide public and private utilities.

LDR Section 2.4.6(M)(4), Abandonment of right-of-way: Conditions.

Conditions may be imposed upon an abandonment to:

- (a) Insure timely consummation;
- (b) Insure compliance with required findings;
- (c) Require enhancement of the (to be) former right-of-way in order to accomplish certain objectives and policies of the Comprehensive Plan e.g., street beautification;
- (d) Require replacement easements and/or relocation of existing utilities, as may be appropriate;
- (e) Cause reversion or voiding of the abandonment in the event of a failure to comply with other conditions.

The subject request contains provisional requirements that are required to consummate the abandonment of the right of way, if the abandonment is approved. As such, the applicant must provide a plat of the subject alley abandonment, receiving properties, and reserved easements. The plat must include a General Utility Easement reserved for the City of Delray Beach and a General Utility Easement for the Florida Power and Light Company. In addition, all property owners receiving land from the abandoned right-of-way must sign the plat. The recordation of the abandonment would not occur until the plat is approved and recorded.

LDR Section 2.4.6(M)(5), Abandonment of right-of-way: Findings

Prior to granting an abandonment the City Commission must make the following findings:

- (a) That there is not, nor will there be, a need for the use of the right-of-way for any public purpose;
- (b) That the abandonment does not, nor will not, prevent access to a lot of record;
- (c) That the abandonment will not result in detriment to the provision of access and/or of utility services to adjacent properties or the general area.

Alleys are and continue to be a critical part of the City of Delray Beach, especially the CBD. The Map of the Town of Linton Plan, 1895, includes an alley on almost every block within the core area of the City. The area surrounding the alley is now predominantly the area of the CBD with many of the alleys still intact, as well as those located throughout the residential neighborhood to the east. Alleys are a critical part of the CBD, which utilizes a form-based code to position buildings along street rights-of-ways, lining sidewalks with building facades, and relegating vehicular and service areas to the rear of buildings, many accessed by alleys. Downtown uses require back of house areas to allow the fronts and sides of buildings to be the highest quality. As such, in 2015, the amendments to the downtown regulations reinforced the use of alleys to achieve the desired form and pedestrian environment. The map to the right demonstrates just one phase of the investment in this alley system throughout the Osceola Park Neighborhood. The code notes in the "Access" regulations of LDR Section 4.4.13(I) that "alleys and Secondary Streets, when present, shall be the primary source of vehicular access to off-street parking".

While the abandonment of alleys does not guarantee any adverse effects of surrendering City held property to private landowners, it does release the ability of the City to control the land and decisions made around it, at least in part. This could include traffic circulation, location of waste service or utilities, creation of redevelopment programs aimed at specific areas within the city, public art programs, and other possibilities not yet known.

Indirect impacts of abandonments of rights-of-ways do include considerations for the scale, massing, density, intensity, and layout of a given site. For example, the sketch and legal descriptions of the proposed properties to receive the land rights indicates that if the abandonment is approved, substantial consideration must be given to the ~1,496 square feet of developable area being allocated to the adjacent properties. Special consideration should be given to the zoning districts adjacent to the proposed abandonment. While the proposed receiving properties are zoned CBD, the adjacent neighborhood to the east is zoned Single Family Residential (R-1-A) and Residential Medium Density, both of which allow considerably less density and intensity than the former.



Additionally, the CRA parking lot to the south of the applicant's property may be a property suitable for redevelopment in the future. Creating a condition where the alley perpetually exits from this parking lot may create an untenable redevelopment scenario in the future. If this portion of the alley is abandoned, the CRA parking lot would be necessary to maintain two open access points to the alley. The Applicant has not proposed an access easement is not currently proposed to retain connectivity if the request is approved.

It is also important to consider that Rights-of-Way Standards have changed over time as vehicle sizes have increased, and not all alleys have the dedicated the space to accommodate larger vehicles. Some "T" alleys, like this alley, accept vehicles of various sizes while also being flexible spaces which accommodate many uses in the district. With the previous abandonment action, this alley is now effectively an "L" shape, which can limit the functionality for larger vehicles. Nevertheless, delivery services such as UPS, Fedex, USPS, and food hailing services such as Delivery Dudes and UberEats would likely still be able to use this area.

It is important to note that, if the abandonment is not approved, any additional right-of-way to meet the minimum 20-foot width would be required to be dedicated when a site plan application is submitted for additional or new development.

The applicant has proposed the provision of utilities be provided through easements. It is not anticipated that the provision of utilities will be limited through the approval of the request and development application will be required to maintain the provision of public utilities through the TAC process. Of note, no structures will be allowed within the easement area as the City will be required to maintain service on the area.

The abandonment of this right-of-way is not anticipated to create an unsafe situation as the alley will be used for private uses after being returned to property owners. If further site plans modifications are necessitated or proposed, reviews of safety issues will be reviewed at such time.

Comprehensive Plan

In addition to the findings for the abandonment of rights-of-way, the following Comprehensive Plan policies are related to abandonments of rights-of-ways (alleys):

Mobility Element

Policy MBL 2.6.1 *The City shall not abandon alley rights-of-way and recognizes the important functions alleys provide by dispersing traffic, diversifying access points to properties, providing for multimodal access, and facilitating local trips.*

The abandonment of the subject alley right-of-way diminishes the future ability to disperse traffic, provide rear access to properties which prevents additional curb cuts on CBD Streets, provides multimodal opportunities, and facilitates local trips. Additionally, many alley abandonments occurred prior to the adoption of the Always Delray Comprehensive Plan and subsequent LDR updates. These policies and regulations are intended to safeguard the City's current and future needs to ensure that all functions of alleys are considered and protected for generations to come. This includes but is not limited to, transportation of people by any mode, movement of goods including delivery vehicles large and small, provision of services and utilities, and maintaining the historic block structure of the City to maintain a "Village by the Sea" feel. The CBD continues to grow and revitalize, and alleys have been a critical part of that growth and will continue to be in the future.

Policy MBL 2.6.2 *The City shall maintain the existing network of alleys in the downtown, which provide multiple benefits that enhance the quality of the area:*

- *providing access for sanitation collection*
- *providing locations for utilities*
- *minimizing commercial deliveries from occurring in the primary street network*
- *reducing pedestrian-vehicular conflict points on the sidewalks*

The abandonment of the subject alley would affect the quality of the area based on the following topics:

- Sanitation collection would not be impacted in the area as the alley is not utilized in this section for waste collection;
- The location of utilities would not be affected as the applicant has proposed easements for both the City and Florida Power and Light, no structures shall be placed over said easement areas;
- The ability to provide a location for commercial deliveries will be impacted as development could occur which would impact vehicular service in the area. Additionally, many commercial delivery services in the downtown utilize alleys during peak

hours to circumvent traffic circulating while searching for parking spaces; and

- This section of SE 2nd Avenue does not contain complete sidewalks, and the availability of or potential for walking routes in the alley would be impacted by the abandonment.

Policy MBL 2.6.3 *Maintain and enhance the existing network of alleys in residential districts and provide for safe pedestrian and bicycle usage.*

The subject alley is currently unimproved and is adjacent to an improved alley to the south, the subject property to the west, and commercial properties to the north and east. All properties around the subject alley are zoned CBD. Single family homes facing SE 3rd Avenue have rear sides facing the alley with access into the alley. Homes are offered access to the alley, providing a route where a sidewalk does not exist on SE 2nd Avenue. Abandonment of the subject alley would impact persons exiting through the rear of their property and walking or bicycling on the alley. The abandonment would require persons walking to utilize an existing connection from the alley through the existing CRA Parking Lot but does not connect to sidewalks at SE 2nd Avenue.

Policy MBL 2.7.7 *Do not grant abandonment of right-of-way unless conclusively demonstrated that there is not, nor will there be, a need for the use of the right-of-way for any public purpose.*

The abandonment of the subject alley would impact the use of the public right-of-way for people walking, bicycling, and driving. The abandonment may also impact the provision of service and access to the properties from the rear; an access easement was not proposed as a condition of development. The applicant has proposed a utility easement be reserved for Florida Power and Light to provide electrical service. The applicant would also be required to reserve a General Utility Easement over the subject area to maintain an 8-foot gravity sewer line.

Policy MBL 3.2.3 *Use traffic calming solutions to limit vehicular traffic volumes and speeds and discourage the closure of existing streets and alleys.*

The abandonment and ultimate closure of the alley is discouraged through this policy as it eliminates the ability to provide an alley connection. Alleys distribute trips throughout the network, a noted traffic strategy to reduce the volume of trips on streets. It is noted that the alley is currently unimproved and not accessible by vehicular traffic.

Neighborhoods, Districts, and Corridors Element

Policy NDC 2.2.1 *Maintain and enhance the tightly gridded, interconnected street network that facilitates the dispersal of traffic and contributes to the character of Delray Beach using the following Complete Streets techniques, where appropriate:*

- *Design streets to be safe, comfortable, and attractive for pedestrians, cyclists, and drivers;*
- *Do not close or abandon streets or alleys and encourage connectivity of vehicular, pedestrian and bicycle routes.*
- *Provide links to regional bicycle/pedestrian networks;*
- *Reinvest in roadway infrastructure, such as intersections, signalization, and turning movements without increasing the number of through vehicular lanes.*

The gridded, interconnected street and alley network that facilitates the dispersal of traffic and contributes to the character of Delray Beach, especially in the CBD, would be impacted by the abandonment of the subject alley. Additionally, the following are provided for review:

- The alley is not presently used for people to navigate the area, however there is no guarantee the use would be more suitable than an unimproved alley in the future.
- The abandonment of the subject alley would discourage connectivity of pedestrian, bicycle, and vehicular routes in the area;
- The link is identified on the Interim Bicycle and Pedestrian Master Plan as an alley, while the plan does identify this alley it is not currently used for such purposes as it is unimproved; and
- The reinvestment of infrastructure is impacted as the City intends to improve all alleys in the future.

Policy NDC 2.2.2 *The City shall not abandon alleys, especially those located in the downtown area and within the Old School Square Historic District, to help mitigate the intensity and massing of new development, provide for access and service functions, and contribute to the street network, expanding their function to include multimodal use throughout neighborhoods, districts, and corridors.*

The alley is in the CBD and Southeast 2nd Street is a Primary Street. The requested abandonment area is not located adjacent to this street and would not directly impact the characteristics of that street. As a result, the intensity (Floor Area Ratio – FAR) and density may have a greater impact given the resulting larger lot size and development potential on receiving properties of the abandonment area. The abandonment of the subject alley also limits the service and functional access contributions to the street network.

Open Space Preservation and Enhancement

Policy OPR 3.4.5 *Evaluate the role of the alleyway systems and their potential as a part of bike trails, recreation and open space, and sustainable systems.*

The following additional requirements items were reviewed in accordance with **LDR Section 4.4.13 (J)(1)(D)**:

“Alleys provide an important tertiary support system. Alleys may be relocated provided access and service is maintained to all properties and the reconfigured alley maintains public access and has at least two separate access points for entry and exit within the same block. Alleys that are identified routes in the City’s adopted bicycle and pedestrian master plan may not be relocated. Dead-end service courts are not permitted. To meet the City’s sustainability goals, alleys that are improved as a result of redevelopment are encouraged to use permeable paving such as porous asphalt or concrete, subject to approval by the City Engineer. Development on property alongside an alley shall provide street lights as set forth in Section 6.1.5.”

In 2014, the City adopted an interim Pedestrian and Bicycle Master Plan, which is in the process of being updated with the intention of being a formally adopted non-interim Plan. The new Plan will evaluate and update the role of alleyways as it pertains to people walking and bicycling. A Parking and Curbside Management Plan is also underway; the consultant has noted in presenting findings at public meetings that the alley system is vital to providing the provision of goods and services and serves as a secondary street network when needed.

Osceola Park Neighborhood Redevelopment Plan Update (2019)

The first Osceola Park Redevelopment Plan was adopted on December 6, 2004. The 2019 update identifies the current and future needs for the Osceola Park Neighborhood. The Plan identifies assets of the area, evaluates the existing and potential uses, and identifies specific measures to facilitate new development and enhance the quality of life for the neighborhood.

This Plan specifically identifies strategies and uses for alleys, and as strategic assets not just for the City, but also for property owners in the neighborhood. Strategy 5.7: Allow for More Parking Off-Street specifically encourages stakeholders, to “provide grants to encourage the use of paved spaces in backyards that are accessed by the alleys”. This could include the CRA, City, or private organizations who could seek private moneys to accomplish active back yard and rear of house uses.

Additionally, the Plan provides two sections that discuss parking and community improvement:

“It is important to reduce excessive parking along residential roadways, particularly in the swales, and in many instances in front yards to provide a more aesthetically pleasing and improved pedestrian safety by limiting vehicles backing out over sidewalks. The Plan Update encourages the use of alleys to access parking in the rear. With more utilization, the alleys are activated spaces with natural surveillance in the area to help deter criminal activity. Another focus of the Plan Update is to address the need for additional parking for businesses in the railroad corridor area (p. 17).”

“To accomplish this, it was recommended by the Osceola Park Neighborhood Improvement Project study that selected alleys be paved to provide enhanced access to the rear yards. Although some properties already utilize the unpaved alleys to access parking in the rear, this improvement will make this option much more attractive. With more utilization, the alleys will become an important component of the public space and more eyes in the area will help to deter criminal activity (p. 47).”

Without carefully considering the preservation and protection of alleys, the resulting abandoned public spaces that provide connections to and through blocks will likely result in drastic changes to how the community manages vehicular traffic, without an alternative to the vital function that alleys provide.

Board Considerations

The following should be considered by the Board in making a recommendation to the City Commission:

- Whether the request meets the findings for abandonments, including:
 - (a) *That there is not, nor will there be, a need for the use of the right-of-way for any public purpose*
 - (b) *That the abandonment does not, nor will not, prevent access to a lot of record;*
 - (c) *That the abandonment will not result in detriment to the provision of access and/or of utility services to adjacent properties or the general area.*

Review By Others

The subject property is located within the CRA area, Sub-Area 7 (Osceola Park Neighborhood Improvement area). The CRA has been notified of the request.

Alternative Actions

- A. Move a **recommendation of approval** to the City Commission regarding a privately-initiated request to abandon an unimproved portion of a City-owned right-of-way (alley) totaling approximately 1,496 square feet and located adjacent to 201 and 213 SE 2nd Avenue, and 206 SE 3rd Avenue, by adopting the findings of fact and law contained in the staff report, and finding that the request and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in Section 2.4.6(M)(5) of the Land Development Regulations, **with the recordation on hold until the submittal of the requisite Plat containing a General Utility Easement is determined ready for approval by the City Commission.**
- B. Move a **recommendation of approval, as amended**, to the City Commission regarding a privately-initiated request to abandon an unimproved portion of a City-owned right-of-way (alley) totaling approximately 1,496 square feet and located adjacent to 201 and 213 SE 2nd Avenue, and 206 SE 3rd Avenue, by adopting the findings of fact and law contained in the staff report, and finding that the request and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in Section 2.4.6(M)(5) of the Land Development Regulations, **with the recordation on hold until the submittal of the requisite Plat containing a General Utility Easement is determined ready for approval by the City Commission.**
- C. Move a **recommendation of denial** to the City Commission regarding a privately-initiated request to abandon an unimproved portion of a City-owned right-of-way (alley) totaling approximately 1,496 square feet and located adjacent to 201 and 213 SE 2nd Avenue, and 206 SE 3rd Avenue, by finding that the request and approval thereof is not consistent with the Comprehensive Plan and does not meet the criteria set forth in Section 2.4.6(M)(5) of the Land Development Regulations.

Public and Courtesy Notices

☒ Courtesy Notices were provided to the following:

- Osceola Park Neighborhood Association

☒ Public Notice was mailed to property owners within a 500' radius on November 4, 2022, ten days before the meeting date.

☒ Public Notice was mailed to the adjacent property owners on October 25, 2022, twenty days before the meeting date.

☒ Public Notice was posted to the City's website on November 4, 2022.

☒ Public Notice was posted in the main lobby at City Hall on November 4, 2022.