



# DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

## PLANNING AND ZONING BOARD STAFF REPORT

### Abandonment of Right of Public Access to Certain Old Palm Grove Open Space Tracts

Meeting	File No.	Application Type
November 18, 2024 <b>Continued from October 21, 2024</b>	2023-168-ABE-CCA	Abandonment of Right of Public Access
Property Owner and Applicant		Authorized Agent
Old Palm Grove Homeowners Association		Andrea Keiser, Esq., Keiser Legal

**Request**  
Provide a recommendation to the City Commission on Resolution No. 207-24, abandoning the right of public access to Open Space Tracts 3, 4, 5, 10, 12, and 13 of the Plat of Old Palm Grove recorded in Plat Book 99, Pages 63-67 of the Public Records of Palm Beach County.

### Background Information

Old Palm Grove was developed by New Urban/RFC Developers, LLC, who assembled eight parcels for a new residential development east of North Federal Highway, with approval provided through a series of actions (detailed below).

Old Palm Grove is within the North Federal Highway Redevelopment area. The City Commission adopted the Redevelopment Plan on March 16, 1999. The redevelopment plan implemented the following principles:

- ✚ Reconstruction of North Federal Highway utilizing traditional neighborhood principles to facilitate pedestrian movement and neighborhood connections
- ✚ Completion of the road network
- ✚ Proper connection of the existing neighborhood to future redevelopment areas
- ✚ Creation of new public places



The 1999 Plan also encouraged the creation of a neighborhood park in the area and suggested the abandonment of the alleys in the area, pending the outcome of the city-wide alley study, then underway.

The Old Palm Grove development received the following approvals from the City Commission and Planning and Zoning Board:

#### March 5, 2002.

- A Land Use Map amendment to Medium Density Residential / 5-12 dwelling units per acre (MD) from General Commercial (GC) for a 0.763-acre parcel part of the assemblage.

**Project Planner:**  
Grisel Rodriguez, Senior Planner;  
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- Attachments:**
- City Engineer's Recommendation
  - Survey
  - Plat
  - Police Report
  - Resolution No
  - Applicant's Photos of Access Easements

- The entire proposed site was rezoned Planned Residential Development (PRD) from General Commercial (GC) [0.76 acres], Multiple Family – Medium Density (RM) [1.82 acres], and Multiple Family – Low Density (RL) [2.04 acres]. A waiver to the Land Development Regulations was approved, to allow the PRD development of 4.62 acres rather than the required minimum site area of 5 acres.

**May 20, 2002.**

- New Urban/RFC Developers, LLC, received approval of a Master Development Plan (MDP) for Old Palm Grove from the Planning and Zoning Board. The MDP was approved with multiple waivers to construct 11 townhomes, 30 single-family zero-lot line homes, three conventional single-family homes and a proposed pocket park in Lot 18 of the La Hacienda subdivision in the southeast of the development (which was later supplemented by the City with the addition of the 55 northern feet of Lot 19, La Hacienda plat).

**July 16, 2002.**

- The City Commission approved Res. No. 55-02, vacating, and abandoning a 533-foot segment of Royal Palm Boulevard (terminating at Federal Highway to the west and the Estuary on the east), while reserving to the City a utility easement and an ingress/egress easement for public access over the entire area that was abandoned. The Estuary Development has right of ingress and egress through Old Palm Grove. The abandoned portion of Royal Palm Boulevard was incorporated into the Old Palm Grove plat and is currently named Estuary Way.

**April 15, 2003.**

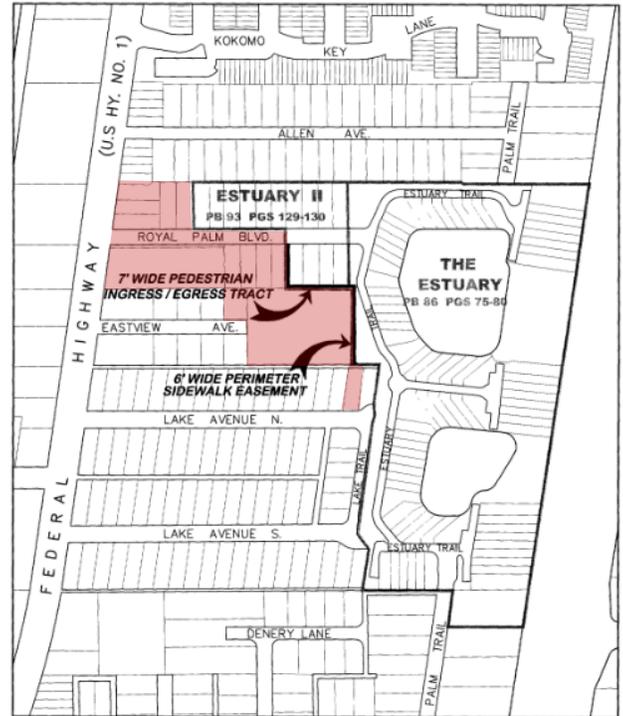
- The Old Palm Grove plat was approved, along with multiple abandonments related to the Old Palm Grove development (see table below). The plat language reflects the intent of Res. No. 55-02: “the access tract is dedicated, owned and maintained by the Homeowners association with the right of the public to utilize for vehicular and pedestrian ingress/egress.” The Planning and Zoning Board staff report for the plat stated that the plat accommodated a portion of a perimeter sidewalk / bicycle path along the western property limits of the Estuary development:

*Within the Estuary and Estuary II, a 6' wide bike path was proposed to be constructed along the southern and western limits of these two developments. A portion of this bike path, located between Royal Palm Boulevard and the northern limits of La-Hacienda subdivision will be abandoned and an alternate route incorporated as part of Old Palm Grove development. The bike path will be re-routed to run through a portion of this development and exit onto Eastview Avenue instead of Royal Palm Boulevard as previously intended.*

It is important to note, these actions implemented the North Federal Highway Redevelopment Plan, which utilizes traditional neighborhood principles to facilitate pedestrian movement and neighborhood connections. The approved road network and the re-routed pedestrian/bicycle path are consistent with the Area Plan. A connection to the path leads to La Hacienda Gardens Park on Lake Avenue North, connecting to Old Palm Trail further south.

The table below and image to the right (with Old Palm Grove shown in red) summarize the abandonments and dedications adopted concurrently with the Plat of Old Palm Grove:

Description of Action Taken	
<b>Res. No. 23-03</b>	Abandonment of a GUE on Royal Palm Boulevard that was established via Res. No. 55-02; Commission did not abandon the right of public access as part of Res. No. 55-02.
<b>Res. No. 24-03</b>	Abandonment of 7-foot-wide pedestrian ingress-egress tract on the south side of the abandoned Royal Palm Boulevard, taken from Estuary 2 Tract B PB 93 PG 129-130 (2,370 Square Feet). The expressed intent was to reroute a bike path from Estuary and Estuary 2, to run through Old Palm Grove and exit through Eastview Avenue and connect to La Hacienda Gardens Park.
<b>Res. No. 25-03</b>	Abandonment of a 6-foot wide (sidewalk/bike path) easement taken from Estuary, Tract P-2 PB 86 PG 75-60. The expressed intent was to reroute a bike path from Estuary and Estuary 2, to run through Old Palm Grove and exit through Eastview Avenue and connect to La Hacienda Gardens Park.



- **Abandonments of platted alleys.** As part of the plat, the developer requested a portion of a platted alley, 8 feet in width and 50 feet in length, containing 400 square feet (0.009 acre) be abandoned and incorporated into Old Palm Grove. The portion of alleyway to the south was dedicated with the recordation of La-Hacienda Subdivision in October of 1926 and represents the 8-foot east/west alley north of Lot 18 of La-Hacienda Subdivision.

As part of phase one of the Citywide Abandonment Project in fall of 2000, the entire 8' wide east/west alley running along the north side of La-Hacienda Subdivision was considered for abandonment. The portion of alleyway north of Lots 1-4 were excluded because it was being utilized by the adjacent commercial properties. In addition, the alley portion abutting Lots 18 and 19 was not included since it was intended to be improved as a bike path in conjunction with the Estuary townhouse development. The balance of the alley west of the subject area (Lots 5 thru 17) was abandoned as part of the Citywide Abandonment Project-Phase One in November of 2000. The alley behind Lots 11 to 17 were added to Old Palm Grove, and the alley behind Lot 18 was reserved for the pedestrian/bicycle path to connect to La Hacienda Gardens Park through Old Palm Grove.

It is important to note that although the alleys were allowed to be abandoned in the early 2000's, the Always Delray Comprehensive Plan, adopted by Ordinance No. 19-19, now stresses the preservation of alleys. By including the bicycle / pedestrian amenity in the plat, the City recognized the importance of other mechanisms to support pedestrian and bicycle connections.

**May 27, 2020.**

- A Class II Site Plan modification application (2020-182) was submitted by Old Palm Grove for the installation of two security gates located at Estuary Way and Eastview Avenue that open automatically as vehicles approach. On May 27, 2020, the City Commission approved Res. No. 164-20, granting a waiver to the required stacking distance for the gate on Eastview Avenue. At the hearing, the issue of public access was discussed, and the gates were characterized as "traffic calming" and required to open upon vehicle approach.

**Current Request**

The Applicant is requesting to remove the right of general public access for Open Space Tracts 3, 4, 5, 12, and 13 of the Plat of Old Palm Grove, as recorded in Plat Book 99, Pages 63-67 of the Public Records of Palm Beach County.

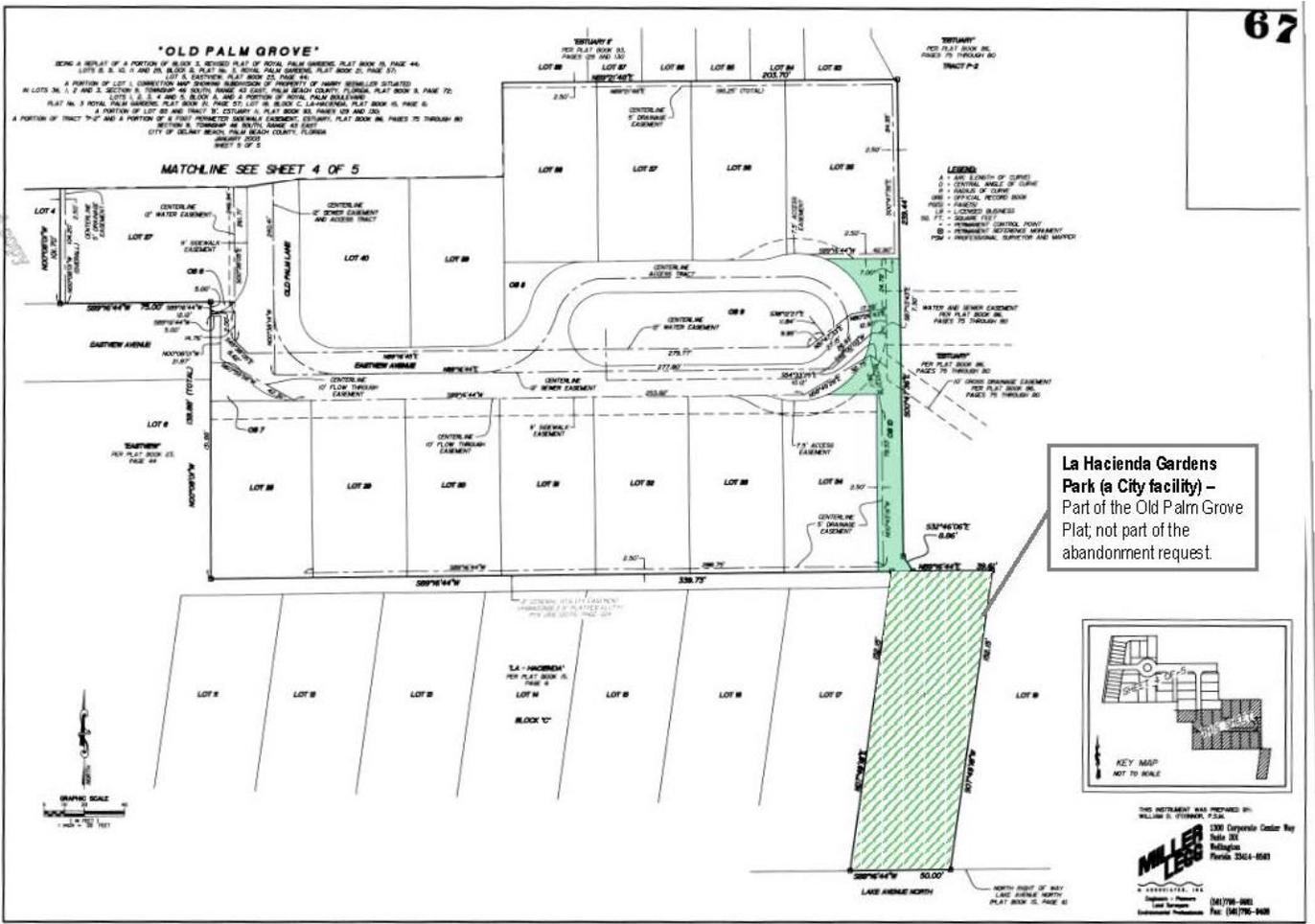
The request is to eliminate east / west public access and to eliminate the north / south pedestrian and bicycle path on the east side of Old Palm Grove to La Hacienda Gardens Park (images on the following page). The access easement allows pedestrians and bicyclists to travel through Old Palm Grove, out to La Hacienda Gardens Park to the south, from where pedestrians and cyclists could continue south to Palm Trail without travelling out to Federal Highway, which is a hostile pedestrian environment.

The staff report dated April 15, 2003, explains that an alternate bike path was created as part of the plat in place of abandoned tracts from Estuary 1 and Estuary 2 developments (image at right). The alternate path was designed to run through Old Palm Grove and was rerouted to exit on Eastview Avenue on the east side and south to the pocket park in La Hacienda Gardens.

Total Area Requested for Abandonment			
Parcel Name	Area in sf +/-	Area in Acres +/-	Direction
OS 3	7,363.90	0.169	East-West
OS 4	779.660	0.018	East-West
OS 5	684.650	0.016	East-West
OS 10	2,356.700	0.058	East-West
OS 12	1,119.980	0.026	East-West
OS 13	931.650	0.021	North-South
<b>Total Area</b>	<b>13,236.54 sf</b>	<b>0.31 acres</b>	







The applicant's request and justification statement are attached.

**Review and Analysis**

**LDR Section 3.1.1 – Required Findings**

Prior to the approval of development applications, certain findings must be made in a form which is a part of the official record. This may be achieved through information on the application, written materials submitted by the applicant, the staff report, or minutes. Findings shall be made by the body which has the authority to approve or deny the development application.

These findings relate to (A) the Land Use Map, (B) Concurrency, (C) Consistency with the Comprehensive Plan, and (D) Compliance with the LDR. (C) and (D) are applicable, and are discussed below.

**(C) Consistency.** A finding of overall consistency may be made even though the action will be in conflict with some individual performance standards contained within Article 3.2, provided that the approving body specifically finds that the beneficial aspects of the proposed project (hence compliance with some standards) outweighs the negative impacts of identified points of conflict.

**Policy NDC 2.7.9** Review and update the North Federal Highway Redevelopment Plan to include new development and other improvements that have occurred since the Plan's adoption in 1999, and re-evaluate the vision for the North Federal Highway Redevelopment Area; new development shall comply with the provisions of the adopted Plan until an updated plan is adopted.

The adopted North Federal Highway Redevelopment Plan emphasizes the following principals:

- Reconstruction of North Federal Highway utilizing traditional neighborhood principles to facilitate pedestrian movement and neighborhood connections; Completion of the road network;

- ✚ Proper connection of the existing neighborhood to future redevelopment areas;
- ✚ Creation of new public places;

The following Comprehensive Plan policies are related to open spaces and public rights-of way:

### **Open Space Parks and Recreation Element**

Policy OPR 1.4.1 *Continue to require the provision of sufficient open space in public and private development projects through the Land Development Regulations.*

Policy OPR 1.4.5 *Maximize public accessibility to open space, parks, and recreational facilities provided by requiring them to be strategically planned and located within new development.*

Policy OPR 2.2.5 *Plan interconnected greenway corridors (trails) that link native ecosystems, parks, golf courses, canals, and natural areas throughout Delray Beach.*

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.*

### **Mobility Element**

**GOAL MBL 2 MOBILITY INFRASTRUCTURE ACCOMMODATE THE EXISTING AND FUTURE MOBILITY AND ACCESSIBILITY NEEDS OF ALL USERS BY PROVIDING A SUPERIOR MULTIMODAL SYSTEM.**

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.*

Policy MBL 3.1.4 *Future development shall provide right-of-way for the trail network described in Policies MBL-2.2.2, MBL-2.2.3 and MBL 2.2.4. Pedestrian and bicycle connections to the trail network shall be provided.*

The Always Delray Comprehensive Plan Open Space, Parks and Recreation Data and Analysis report states that disconnected streets and a lack of sidewalks and pedestrian crossings present difficulties for pedestrians, deterring walking to parks. The Board should consider the conflict with the Comprehensive Plan created by removing a route for pedestrians and bicyclists to access La Hacienda Gardens Park. In addition, the Always Delray Comprehensive Plan Policy policies OPR 1.4.5 and Policy MBL 2.7.7 encourage the creation and preservation of greenway corridors, trails and recreational spaces, and Policy NDC 2.7.9 which states “new development shall comply with the provisions of the adopted Plan until an updated plan is adopted.”

The right of public access on the sidewalks in Old Palm Grove allows pedestrians and bicyclists to move from Federal Highway, through the neighborhoods to Palm Trail, and then on to the barrier island and beach. Further, Eastview Avenue remains a public right-of-way from Federal Highway to Old Palm Grove. Disconnecting bike/ped access through Old Palm Grove to the City park and beyond would force the occupants and residents of 10 properties along the public portion of Eastview Avenue to walk or bike west to Federal Highway, south to Lakeview Avenue (biking in the wrong direction), and then east to the park.

The number of commission-approved actions in connection with the Plat of Old Palm Grove reflects the deliberate implementation of the approved Master Development Plan and the adopted Redevelopment Plan and demonstrates an early implementation of the qualities that helped define current Comprehensive Plan policies with respect to the Mobility and Open Space Elements. The record reflects that it was the intention of the Commission to provide for public access to serve as pedestrian and bicycle trails. The open space tracts in Old Palm Grove incorporated access easements that were approved and are part of a network of walking and bicycle trails that connect south to Old Palm Trail. The Board should consider whether the abandonment of those public access spaces is consistent with the Comprehensive Plan policies. The removal of the public access through Old Palm Grove is not supported by the Comprehensive Plan pursuant to Policy NDC 2.7.9 that new development shall comply with the provisions of the adopted Plan until an updated plan is adopted.

The applicant states that because the public is allowed to access the Old Palm Grove neighborhood, the community is vulnerable to criminal activity (see attached justification statement) including police incident reports of crimes within the community. A more recent copy of police crime reports for Part One crimes between January 1, 2021, and May 25, 2023, for Old Palm Grove and three comparison communities is provided at right for the Board's review. It is important to note that perception of safety is not an abandonment finding; however, impact on the public is a finding.

		Kokomo Key	Old Palm Grove	Del Ida Park	La Hacienda
OFFENSE	Burglary	1	1	7	1
	Auto Burglary	3	2	11	4
	Auto Theft	2	1	1	0
	Robbery Home Invasion	0	0	1	0
	Bicycle Theft	1	0	3	0
	Other Thefts	2	1	11	2

**(D) Compliance with LDRs.** *Whenever an item is identified elsewhere in these Land Development Regulations (LDRs), it shall specifically be addressed by the body taking final action on a land development application/request. Such items are found in Section 2.4.5 and in special regulation portions of individual zoning district regulations.*

Due to unique circumstances associated with the request, the request is being processed pursuant to the requirements for both abandonment of right-of-way and abandonment of easement.

**LDR Section 2.4.9(B)(1), Abandonment of rights-of-way. General.**

*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.*

**LDR Section 2.4.9(C)(1) Abandonment of public easements. Rule**

*A general utility easement dedicated to the City or to the Public may be abandoned. Abandonment of such easements may be granted by a formal resolution enacted by the City Commission.*

The City Commission approved abandoning the General Utility Easement over a portion of Royal Palm Way (Res. No. 23-03) on the condition that it retains an ingress-egress easement for public access over the entire area described in Res. No. 55-02. Both parcels were then incorporated into the Plat of Old Palm Grove to provide ingress-egress public access for pedestrians and bicyclists. Due to the potential impact on mobility and pedestrian and bicycle infrastructure, the right-of-way abandonment criteria is also applied.

**LDR Section 2.4.9(B)(6)**

*Prior to granting an abandonment, the following findings must be made:*

- a) *That there is not, nor will there be, a need for the use of the right-of-way for any public purpose.*

The City Engineer does not support the City's abandonment of public access through the plat of Old Palm Grove. Bicyclists and pedestrians would lose the northern access to the park if the abandonment is approved.

- b) *That the abandonment does not, nor will not, prevent access to a lot of record.*

The request will not prevent access to a lot of record; the subject area is not needed for access to properties or lots. However, the abandonment will limit public access to the pedestrian and bicycle trail.

- 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.*

The City Utilities Department reports that the plat has a utility easement to access public and private utilities.

**LDR Section 2.4.9(C)(6)**, *Prior to granting an abandonment the City Commission must make a finding that the abandonment will not result in a detriment for the provision of utility services to adjacent properties or the general area.*

The abandonment of the right of public access will not result in detriment for the provision of utility services to adjacent properties or the general area. However, the request will eliminate one of the access points to the park.

The current configuration of Old Palm Grove is the result of a purposeful strategy, and significant effort, to maintain bicycle and pedestrian access in both Old Palm Grove and the surrounding neighborhoods. The success of Old Palm Grove is largely due to its traditional neighborhood design qualities: a compact neighborhood with diverse housing types arranged to provide for both an aesthetic appeal and to create a superior public realm with narrow, tree-lined streets. These same qualities, which also afford a natural oversight of the streets by the residents, are reflected in low crime statistics. By allowing for the reconfiguration of the previous rights-of-way to create Old Palm Grove, the City played a part in its implementation, requiring amenities to the public in the form of access and a park. The Board should consider if the effort and intentionality that brought about the current configuration is worth undoing to help the residents of Old Palm Grove overcome a non-factual perception about crime and safety.

**Board Considerations**

As part of the review, the Board should consider if there a valid reason to restrict public access to the bicycle and pedestrian amenity in Old Palm Grove.

**Review By Others**

The proposal is within the North Federal Highway Development Plan Area and falls within the Community Redevelopment Agency (CRA) area.

Pursuant to **LDR Section 2.4.9 (M)(3), Procedure**, the determination shall be recorded by a resolution of the City Commission. The request is anticipated to be considered by the City Commission in November 2024 as Resolution No. 207-24.

**Board Action Options**

- A.** Recommend **approval** of Resolution No. 207-24, a privately-initiated abandonment of the right of public access for 13,236.54 square feet (0.31 acres) in the Plat of Old Palm Grove, by finding that the Abandonment of Right-of-Way and public access easement is consistent with the adopted Always Delray Comprehensive Plan and meets the criteria set forth in the Land Development Regulations.
- B.** Recommend denial of Resolution No. 207-24, a privately-initiated abandonment of the right of public access to 13,236.54 square feet (0.31 acres) in the Plat of Old Palm Grove, by finding that the Abandonment of Right-of-Way and public access easement is not consistent with the adopted Always Delray Comprehensive Plan and does not meet the criteria set forth in the Land Development Regulations.
- C.** Continue With Direction.

**Public and Courtesy Notices – LDR Section 2.4.2(B)(1)(i)**

<p>✓ Courtesy Notice was provided to the following:</p> <ul style="list-style-type: none"> <li>• Palm Trail Association</li> <li>• Estuary and Estuary 2 Homeowner Associations</li> </ul>	<p>The following Public Notices were provided:</p> <ul style="list-style-type: none"> <li>✓ Public Notice was mailed to property owners within a 500' radius on 9/30/2024, at least ten days before the meeting date.</li> <li>✓ Public Notice was mailed to the adjacent property owners on 9/30/2024, at least twenty days before the meeting date.</li> <li>✓ Public Notice was published in the Sun Sentinel on 10/11/24, at least ten days before the meeting date.</li> <li>✓ Public Notice was posted to the City's website on 10/11/24.</li> <li>✓ Agenda was posted 10/4/2024, 7 calendar days prior to meeting.</li> </ul>
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