



DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

PLANNING AND ZONING BOARD STAFF REPORT

Abandonment of Right-of-Way for a Portion of Canal Street

Meeting	File No.	Application Type
January 25, 2021	2021-034	Abandonment of Right-of-Way
Property Owner and Applicant		Authorized Agent
Bradley Busscher, A. Richard Busscher Trust		Jeff Costello, JC Planning Solutions

Request

Provide a recommendation to the City Commission on Resolution No. 24-21 for a privately initiated Abandonment of Right-of-Way for a portion of Canal Street located between NE 1st Court and NE 2nd Street.

Background Information

Canal Street was originally dedicated in 1986 by the plat of Town of Linton (now Delray Beach), recorded in the Public Records of Palm Beach County in Plat Book 1, Page 3, as a 50-foot right-of-way. In the late 1920's (1928, 1929 and 1930), the Florida Inland Navigational District (F.I.N.D.) surveyed the entire Florida East Coast Canal (now known as the Intracoastal Waterway) from Miami to Jacksonville for the purpose of locating certain tracts or parcels of land to be included within the proposed right-of-way for the Intracoastal Waterway. According to Sheet 16A (Plat Book 17, Page 16A) of the plat set for Palm Beach County, all of Canal Street north of East Atlantic Avenue was included within the proposed right-of-way for the Intracoastal Waterway.

Along this stretch of Canal Street, the west 50 feet of the ultimate right-of-way for the Intracoastal Waterway overlaps with the 50 feet that was originally platted as public right-of-way via Plat Book 1, Page 3 of the City's original plat (Town of Linton). Therefore, the west right-of-way line of the Intracoastal Waterway now coincides with the west right-of-way line of Canal Street. While the City may have right-of-way via Canal Street, the Intracoastal Waterway is dedicated to the Army Corp of Engineers. Currently, the subject portion of Canal Street right-of-way is unimproved and, for many years, has been utilized as additional side yard for the adjacent properties. While the City's interest is under consideration, this action does not remove any interest that may or may not be vested in the Intracoastal by other entities, i.e. the Army Corps of Engineers.



Other portions of Canal Street have been abandoned in the past.

- March 11, 1968: The City Commission abandoned a portion of Canal Street as shown on the Plat of Las Palmas Subdivision (Plat Book 10, Page 68).
- May 4, 2004: The City Commission abandoned a portion of Canal Street located at the northeast corner of NE 1st Street and the Intracoastal Waterway via Resolution No. 34-04.
- February 3, 2009: The City Commission abandoned a portion of Canal Street located at the southwest corner of NE 2nd Street and the Intracoastal Waterway via Resolution No. 10-09.
- August 18, 2020: The City Commission abandoned any interest from the City in a portion of the Canal Street right-of-way, lying east and adjacent to Lots 28 and 29 (828 NE 1st Court) via Resolution No. 95-20.

Project Planner:

Debora Slaski, Senior Planner;
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Attachments:

- Sketch and Legal of proposed ROW area
- Survey
- Resolution No. 24-21

- January 5, 2021: The City Commission abandoned any interest from the City in a portion of the Canal Street right-of-way, lying east and adjacent to the property located at 824 NE 2nd Street via Resolution No. 05-21 (formerly Resolution No. 195-20).

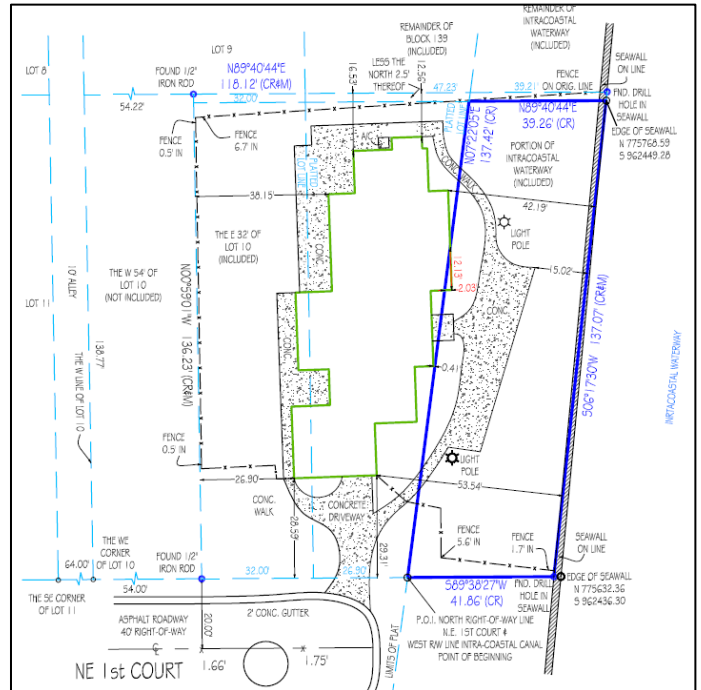
Abandonment Description

The request for consideration is the abandonment of any interest from the City in a portion of the Canal Street right-of-way, lying east of and adjacent to the property located at 823 NE 1st Court. The unimproved area of right-of-way proposed for abandonment consists of 5,523 square feet (0.13 acre) and measures approximately 41.86 feet wide by 137.07 feet deep.

The legal description of the area being considered is as follows:

A portion of Canal Street, as shown on the Plat of Town of Linton, Florida, according to the plat thereof, as recorded in Plat Book 1, Page 3, of the Public Records of Palm Beach County, Florida being more particularly described as follows:

Beginning at the point of Intersection of the North right-of-way line "NE 1st Court" and the west right-of-way line of the intracoastal canal "Seestedt-Stevens Subdivision", according to the Plat thereof as recorded in the Plat Book 18, Page 3 of the Public Records of Palm Beach County, Florida; thence S.06°17'30"W., a distance of 137.07 feet to a point on the easterly extension of the north right-of-way line said "NE 1st Court" thence S.89°38'27"W. along said extension, a distance of 41.89 feet to the point of beginning.



The requested abandonment is being sought to aggregate the right-of-way area to the abutting lot located at 823 NE 1st Court to increase the yard area. This portion of Canal Street can be accessed from the subject property that submitted the request (823 NE 1st Court), the abutting residential parcel to the north (824 NE 2nd Street), the Intracoastal Waterway, and NE 1st Court right-of-way.

Review and Analysis

Pursuant to **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 the 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 (plat) shall be divided at the center line and returned equally to the abutting parcels).*

The subject right-of way was originally dedicated via plat to the Town of Linton (now Delray Beach), Plat Book 1, Page 3, which created the right-of-way for Canal Street. However, as stated in the Background Section of this report, in the late 1920s F.I.N.D. surveyed the entire Florida East Coast Canal (now known as the Intracoastal Waterway) for the purpose of locating certain tracts or parcels of land to be included within the proposed right-of-way for the Intracoastal Waterway. Ultimately, the United States of America obtained a judgment thereby obtaining an easement over the area formerly known as Canal Street for this purpose. After the replat, the City maintained its right-of-way for Canal Street in combination with the easement in favor of the United States of America. Therefore, even if the City were to abandon its interest to the subject area, the assignment and ability to revert this right-of-way to the receiving property will not be achieved merely by the abandonment by the City of Delray Beach.

The Planning and Zoning Board recommendation is based on determining if the request, and approval thereof, is consistent with the Comprehensive Plan and meets the criteria set forth in the Land Development Regulations, which include Section 2.4.6(M)(5) "Abandonment of rights-of-way" as listed below. Pursuant to LDR Section 2.4.6 (M)(3), *the recommendation of the City Engineer shall be forwarded for review at an advertised public hearing before the Planning and Zoning Board.* The City Engineer's comments are attached for the board's review, which states that the ultimate abandonment of Canal Street right-of-way must be granted by the U.S. Army Corps of Engineers.

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

Mobility Element:

- **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 area under consideration does not include any utilities. The City Engineer has indicated support for the City's abandonment of interest in Canal Street (subject area) but requires approval from the U.S. Army Corps of Engineers.

Open Space Preservation and Enhancement Element:

- **Policy OPR 2.3.4:** *Prohibit the abandonment of existing public rights of-way along the Intracoastal Waterway to maintain public access to this waterway for current and future generations.*

The subject request is in conflict with this Comprehensive Plan Policy as the right-of-way area is located along the Intracoastal Waterway, and it is technically public, although, the area appears and has functioned as an extension of a private yard. Unfortunately, the physical configuration and previous decisions over time to abandon portions of the Canal Street right-of-way limit the potential of creating a successful public amenity from the remaining right-of-way. The physical configuration provides a narrow link to the park at the end of NE 2nd Street however, past abandonments disconnect any potential for certain public improvements, such as bike-ped route, that could have created a link between Veteran's Park and the residential neighborhoods. Without a cohesive connection among city streets, use of the area as a passive park for recreational activities, such as, fishing, bird watching, and nature viewing could be compromised by the lack of natural oversight to ensure a safe condition.

Coastal Management Element:

- **Policy CME 2.6.10:** *Maximize opportunities for placemaking improvements that provide or enhance public access to the Intracoastal Waterway while protecting the environment.*
- **Policy CME 2.6.8:** *Retain all existing public access to the Intracoastal Waterway, including street ends, and enhance these areas with placemaking improvements, such as pocket parks with reasonable use restrictions including limited hours of operation.*

In the Comprehensive Plan it is noted that no additional water-dependent sites are needed relative to meeting level of service needs of the Coastal Planning Area; however, the City desires to provide additional water access through continued enhancement of Intracoastal Waterway and beach access opportunities, including enhancement of street ends that abut the Intracoastal Waterway. Potential grant funding from the Florida Inland Navigation District (FIND) may be available to support new street-end parks and water access improvements. New amenities, such as benches, picnic tables, trash receptacles, and launches for non-motorized vessels may be desirable additions in the community. The area proposed to be abandoned qualifies based on its location (adjacent to the Intracoastal), access, size and current conditions.

The applicant's request and justification letter is attached.

Per **LDR Section 2.4.6 (M)(5)**, 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 supports the City's abandonment of interest in Canal Street (subject area); however, approval from the U.S. Army Corps of Engineers is required. While future public use of the area is supported by the adopted Comprehensive Plan, the public use area at the end of the adjacent street (NE 1st Court) will be retained and not compromised.

- 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.

- 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 area under consideration does not include any utilities. The proposed abandonment of interest will eliminate the potential for public access within this area to the Intracoastal Waterway.

Review By Others

The proposal is not in a geographic area requiring review by the Pineapple Grove Main Street (PGMS), Historic Preservation Board (HPB), Downtown Development Authority (DDA) or the Community Redevelopment Agency (CRA).

Pursuant to **LDR Section 2.4.2 (C)(2)(a), Utility Companies**, utility providers for gas, electricity, cable television and power were notified of the abandonment application; no objections were made.

Pursuant to **LDR Section 2.4.6 (M)(3), Procedure**, the request shall be evidenced by a resolution (Resolution No. 24-21) of the City Commission. The request is anticipated to be considered by the City Commission on February 9, 2021

Board Action Options

- A. Recommend **approval** of Resolution No. 24-21 (2021-034), a privately-initiated abandonment of right-of-way request for a portion of Canal Street, by finding that the Abandonment of Right-of-Way 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. 24-21 (2021-034), a privately-initiated abandonment of right-of-way request for a portion of Canal Street, by finding that the Abandonment of Right-of-Way 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)

✓ Courtesy Notice was provided to the following: • Palm Trail Association	N/A Public Notice was posted at the property ✓ Public Notice was mailed to property owners within a 500' radius on January 15, 2021, at least ten days before the meeting date. ✓ Public Notice was mailed to the adjacent property owners on January 5, 2021, at least twenty days before the meeting date. ✓ Public Notice was published in the Sun Sentinel on January 15, 2021, at least ten days before the meeting date. ✓ Public Notice was posted to the City's website on January 15, 2021. ✓ Public Notice was posted in the main lobby at City Hall on January 15, 2021.
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