



DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

SITE PLAN REVIEW AND APPEARANCE 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
May 25, 2021	2021-236-ABR-WAI	Waiver for Abandonment of Right-of-Way (Alley)
Applicant	Property Owner	Authorized Agent
Tyler Knight	The City of Delray Beach	Nicole Jaeger, Esq. Dunay, Miskel & Backman, LLP

Request

Provide a recommendation to the City Commission regarding a request to waive the requirements of LDR Section 4.4.13(J)(1)(c), Streets and Blocks, to allow the Planning and Zoning Board to consider the partial abandonment of an unimproved portion of a "T" alley totaling approximately 1,496 square feet and located adjacent to 201 and 213 SE 2nd Avenue, and 206 SE 3rd Avenue.

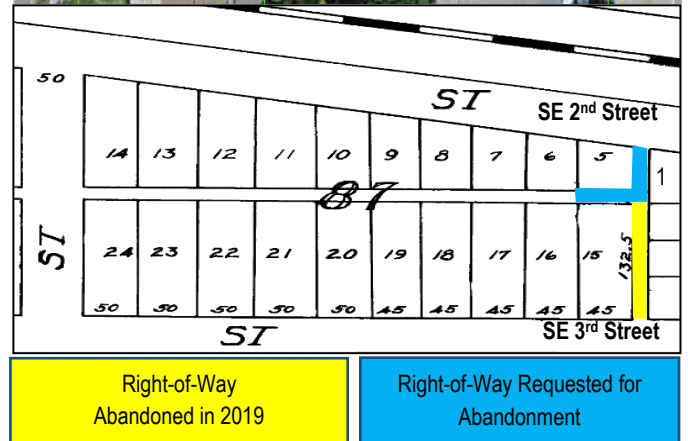
Background Information

Block 87 of the Linn's Addition to the Osceola Park Plat, recorded on March 29, 1912, includes a "T" alley. The alley was 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. On January 17, 1913, the Osceola Park plat was recorded according to the Palm Beach County Property Appraiser. The plat incorporates Block 87 and shows the alleys in the same locations as the previous Linn's Addition plat.

Historically, Block 87 has maintained a mix of commercial uses fronting onto SE 2nd Street and SE 2nd Avenue, where the current zoning is Central Business District (CBD), Railroad Corridor Sub-district, and single-family residences fronting onto SE 3rd Avenue, where the current zoning is Single-family Residential (R-1-A).

As part of feedback for the Osceola Park Neighborhood Improvements, in 2016, the City Commission discussed paving the alley with staff after receiving 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. 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 alley, which was utilized to access the rear of many properties throughout the block, remained unpaved until recent improvements were completed in 2017 through a collaborative effort between the City and CRA. In addition to the discussions held in 2016, the remaining portion of the unimproved alley was impacted by private storage of belongings on the western leg of the "T" alley. For which, A code compliance case was issued and closed after the alley was cleared. However, the alley remains unimproved.



The Community Redevelopment Agency (CRA) completed a paver parking lot improvement in 2017 on the property to the south. The existing alley vehicular connection exists through this CRA parking lot, and is unimproved in the remaining subject area.

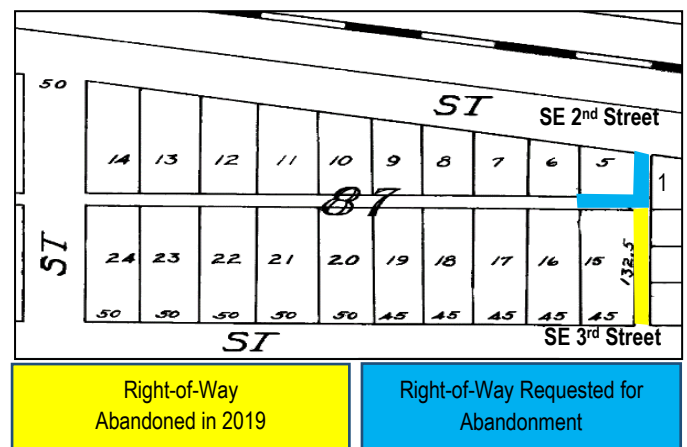
In 2018, the property owner of 206 SE 3rd Avenue (Lot 15, Block 87) requested a rezoning for the vacant lot from R-1-A to CBD; the request was approved by the City Commission on September 25, 2018. Adjacent to the property and along the north property line, was a segment of the east-west portion of the platted alley. On September 5, 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). 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.

On February 11, 2020, the City Commission approved Resolution No. 30-20, adopting the **Osceola Park Neighborhood 2019 Redevelopment Plan Update**. The Plan was a collaboration between the City and Delray Beach Community Redevelopment Agency (CRA) and stressed the importance of alleys and rear access to properties to alleviate parking in swales and provide for attractive street frontages (P. 47). The update replaced the 2006 Master Plan, which had a goal "... to identify the specific deficiencies and assets of the area, evaluate the existing and potential uses, and identify specific measures for arresting decline, facilitating new development, and enhancing the quality of life for the neighborhood." The plan update further defines specific characteristics of the area and identifies commercial and industrial uses primary existing 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.

Description of Request

The request is for the abandonment of right-of-way for a portion of a platted alley within Block 87 (subject area). The subject area is 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 sf. The legal description of the subject area is described more specifically in Appendix A.

Attached are the proposed sketches and legal descriptions of the properties' division to adjacent lots – Lot 5 to the south and west of the alley, Lot 1 to the north of the alley, and Lot 15 to the east of the alley.



Review and Analysis

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. This area is now predominantly the CBD with many of the alleys still intact. 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, with more information provided below. 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". Additionally, **LDR Section 4.4.13(J), Streets and Alleys**, was also added in the same update, echoing established Comprehensive Plan policies in the LDR to prohibit street and alley abandonments in the downtown, specifically:

(c) Streets and alleys may not be abandoned, vacated or closed to accommodate new development.

(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.



Rights-of-Way Standards have changed over time as vehicle sizes have changed 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 limits 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, when a site plan application is submitted, any additional right-of-way to meet the minimum 20-foot width would be required to be dedicated at that time.

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.

The Planning and Zoning Board are charged with making recommendation regarding proposed abandonments of rights-of-way to the City Commission, who have the ultimate authority to approve or deny such requests. The authority to make a recommendation regarding a waiver to the CBD regulations is with Site Plan Review and Appearance Board. The waiver request must be processed prior to the consideration of the actual abandonment. The findings for each consideration must be based on the findings required within the Code and are presented below. A summary of relevant comprehensive plan policies are also presented for board consideration.

Waiver to Prohibition of Abandonment of Street and Alley Rights-of-Ways in the Central Business District (Determination of SPRAB)

Pursuant to Section 4.4.13(E)(5), the SPRAB is responsible for considering waiver request for applications with the CBD, which are not within the purview of the Historic Preservation Board. **The applicant has requested a waiver to LDR Section 4.4.13(J)(1)(c) “streets and alleys may not be abandoned, vacated or closed to accommodate new development.”** The applicant does not have a site plan associated with this request, as they are primarily seeking abandonment of the alley. The applicant also owns the property to the rear, 206 SE 2nd St, which would receive a benefit of the alley right of way abandonment.

The SPRAB will consider the waiver request and forward their recommendation to the City Commission for final consideration, pursuant to 4.4.13 (K) (5) (a). The recommendation is based on the findings identified in both 2.4.7(B)(5)(a) through (d) and 4.4.13 (K) (5) (B) 2, which are provided below with analysis.

Section 2.4.7 (B) – General Waiver Conditions

(a) Shall not adversely affect the neighboring area;

The abandonment is not anticipated to directly impact the neighboring area. 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.

(b) Shall not significantly diminish the provision of public facilities;

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 waiver or subsequent abandonment 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. To maintain two open access points to the alley, the CRA parking lot will be required to maintain the through access, which limits its redevelopment potential – or could result in a dead end alley.

(c) Shall not create an unsafe situation; and,

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.

(d) Does not result in the grant of a special privilege in that the same waiver would be granted under similar circumstances on other property for another applicant or owner.

Abandonments of right-of-way have occurred numerous times in recent history within the City of Delray Beach, primarily for the purposes of alley abandonments. This alley had a partial abandonment of right-of-way which returned land to the adjacent property owners on the opposite side of this alley. However, the community's dissatisfaction with the changes that result in character and scale of redevelopment are why the code has been updated to prohibit future abandonment actions in the downtown area.

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.

Section 4.4.13 (K) (5) (B) 2. – CBD Specific Waiver Conditions

a. The waiver shall not result in an inferior pedestrian experience along a Primary Street, such as exposing parking garages or large expanses of blank walls.

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. Indirectly, base development standards including FAR, intensity, density, etc., may be increased on receiving properties of the abandonment area, or provide additional setback lines. If the abandonment is approved, the City will reserve an easement General Utilities over the abandonment area. This would preclude the placement of structures over the abandonment area. Florida Power and Light has also requested an easement to continue to provide the provision of utility services in the alley. The applicant has agreed to both such easements being requested.

- b. *The waiver shall not allow the creation of significant incompatibilities with nearby buildings or uses of land.*

The abandonment of a right-of-way is not anticipated to create significant incompatibilities with nearby buildings or uses of land. The abandonment is an administrative process which affects private property owners and returning of land previously dedicated to adjacent property owners. Nevertheless, the historic block structure of Delray Beach encouraged a certain massing and scale of buildings and properties via smaller lots. Abandonments of rights-of-ways which create larger lots and higher base development standards erodes the historic character of the City.

- c. *The waiver shall not erode the connectivity of the street and sidewalk network or negatively impact any adopted bicycle/pedestrian master plan.*

The connectivity of the streets, alleys, and sidewalks in the CBD is important to both current and future generations of employees, visitors, residents, and to the character of the downtown. The vision for this downtown is yet to be completed and continues to grow and be redefined as infill development and redevelopment occurs. The City has partially improved this alley and the CRA has invested in a parking lot that utilizes the access. The City intends to improve all unimproved alleys in the future as resources becomes available. This is a similar approach to constructing sidewalks throughout the City. The alley is included on the City's Interim Bicycle Pedestrian Master Plan, although the plan does not specifically call out this route for utilization similar to others identified for "Art in the Alley" in the Osceola Park Redevelopment Master Plan, for example. To maintain two open access points to the alley, the CRA parking lot will functionally provide the through access, which will either impact its redevelopment options or eventually result in a dead end alley.

The City is undergoing an update to the interim master plan. The Plan will evaluate and update the role of alleys as it pertains to people walking and bicycling. The Parking and Curbside Management Plan is also underway and is yet to be adopted, yet 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.

- d. *The waiver shall not reduce the quality of civic open spaces provided under this code.*

The Civic Open Space requirement for development is not anticipated to directly impacted as part of this abandonment. The use of Alleys as open spaces has been well defined within the Osceola Park "Art in the Alley" Program located on Block 103, located between Southeast 5th Avenue and Southeast 4th Avenue behind the Aloft Hotel. The Civic Open Space provisions will be required if the site is proposed for redevelopment if certain conditions of the LDRs are met.

Comprehensive Plan Review

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. This could include either residential access points, or food-hailing services such as Delivery Dudes or UberEats from providing expedient service in the downtown area.

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 or cruising; and
- This section of SE 2nd Avenue does not contain complete sidewalks. The subject property also contains back-out parking and no sidewalk, indicative that walking routes in the alley may 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 and 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 affect the use of the public right-of-way for people walking, bicycling, and driving. The abandonment may also affect 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 of the subject alley contrasts this policy by closing a planned alley connection. Alleys distribute trips throughout the network, a noted traffic strategy to reduce the volume of trips on streets. Additionally, the closure is discouraged through this policy. It should be noted, the alley is unimproved and not currently 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. While the applicant has expressed the intent to establish a restaurant with outdoor seating, there is no guarantee that the development would not be utilized to accommodate the intensity and massing of development in the future. 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 City has an interim Pedestrian and Bicycle Master Plan underway to update the interim master plan. The Plan will evaluate and update the role of alleys as it pertains to people walking and bicycling. The Parking and Curbside Management Plan is also underway and is yet to be adopted, yet 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. This update to the 2004 Plan 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 which discuss the parking and improving the community. Without carefully considering the preservation and protection of alleys, the resulting abandoned public spaces which provide connections to and through blocks will likely result in more drastic changes in communities not prepared for changes.

“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).”

Review By Others

The subject property is located within the CRA area, Sub-Area 7 (Osceola Park Neighborhood Improvement area). The CRA was notified of the request in January 2022.

Alternative Actions

- A. Move a recommendation of **approval** of a request to waive the requirements of LDR Section 4.4.13(J)(1)(c), Streets and Blocks, to the City Commission, to allow the Planning and Zoning Board to consider the partial abandonment of an unimproved portion of a "T" 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 is consistent with the Comprehensive Plan and Land Development Regulations.
- B. Move a recommendation of **approval** of a request to waive the requirements of LDR Section 4.4.13(J)(1)(c), Streets and Blocks, to the City Commission, to allow the Planning and Zoning Board to consider the partial abandonment of an unimproved portion of a "T" 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 is consistent with the Comprehensive Plan and Land Development Regulations, **as amended**.
- C. Move a recommendation of **denial** of a request to waive the requirements of LDR Section 4.4.13(J)(1)(c), Streets and Blocks, to the City Commission, to allow the Planning and Zoning Board to consider the partial abandonment of an unimproved portion of a "T" 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 is consistent with the Comprehensive Plan and Land Development Regulations.
- D. Continue with direction

Public and Courtesy Notices

☒ Courtesy Notices are not applicable to this request.

☒ Public Notices are not required for this request.

NOTE: If the waiver is approved by the City Commission, all requirements to provide Courtesy and Public Notices will be followed.