

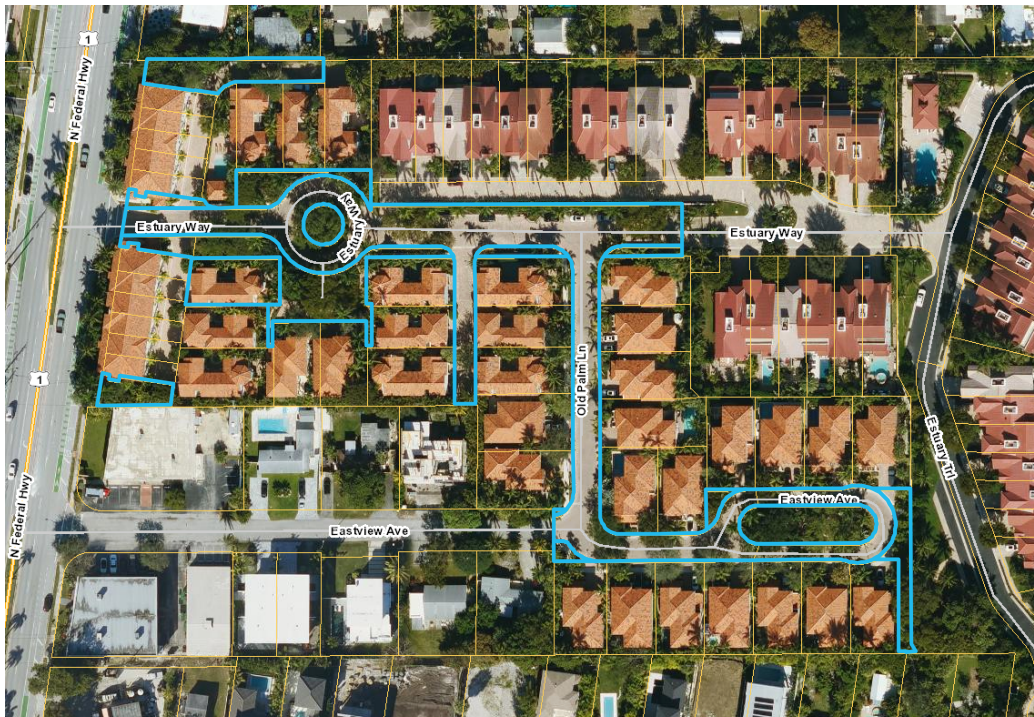


Old Palm Grove

Abandonment of Public Easement

Justification Statement

Old Palm Grove Homeowners' Association, Inc. ("Applicant") is the owner of the common areas, sidewalks, internal streets and alleys located within the Old Palm Grove community ("OPG") that is generally located east of North Federal Highway/S.E. 6th Avenue along Estuary Way in the City of Delray Beach ("City"), Palm Beach County ("County"), Florida ("Property"). The Property was platted as the Old Palm Grove Plat and recorded in Plat Book 99, Pages 63 through 67 of the Official Records of Palm Beach County on July 1, 2003 ("Plat"). The Property is designated Medium Density Residential ("MD") on the City's Future Land Use Map and is zoned Planned Residential Development ("PRD") on the City's Zoning Map. Presently, the Property is primarily comprised of private streets and alleys that serve 33 single-family homes and 11 townhomes as well as a community pool and poolside bathrooms. The Applicant is now seeking to abandon certain public easements that are platted as open space tracts and access tracts within the Property as generally depicted below and described in more detail below.





Adjacent to the Subject Property are the following land uses and zoning districts:

	<u>Land Use Designation</u>	<u>Zoning District</u>
<u>North:</u>	TRN (Transitional) and LD (Low Density)	RM (Multifamily Medium Density Residential) and GC (General Commercial)
<u>South:</u>	MD (Medium Density)	RL (Multifamily Low Density Residential)
<u>East:</u>	MD (Medium Density)	RM (Multifamily Medium Density Residential) and RL (Multifamily Low Density Residential)
<u>West:</u>	GC (General Commercial)	GC (General Commercial)

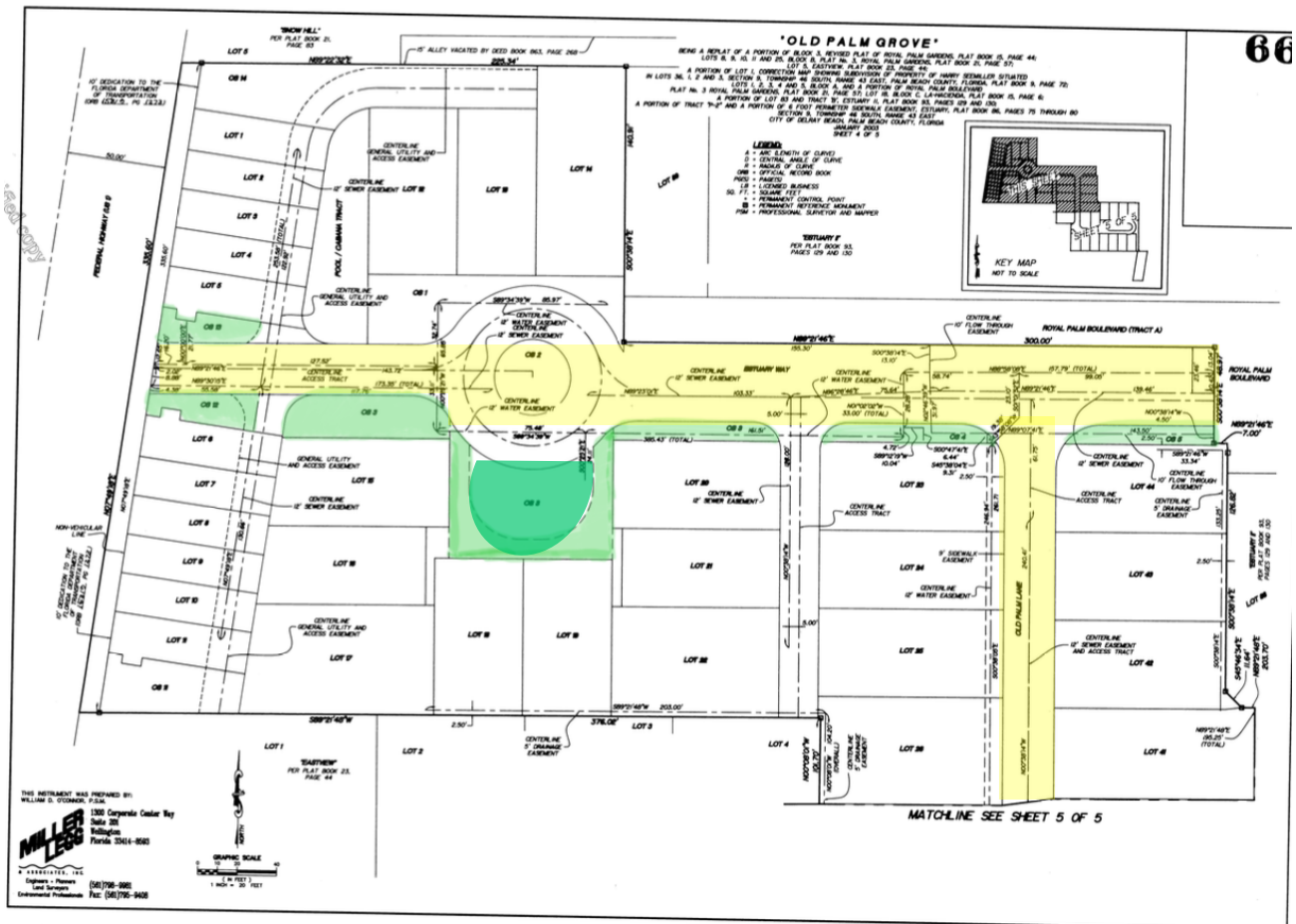
Property History

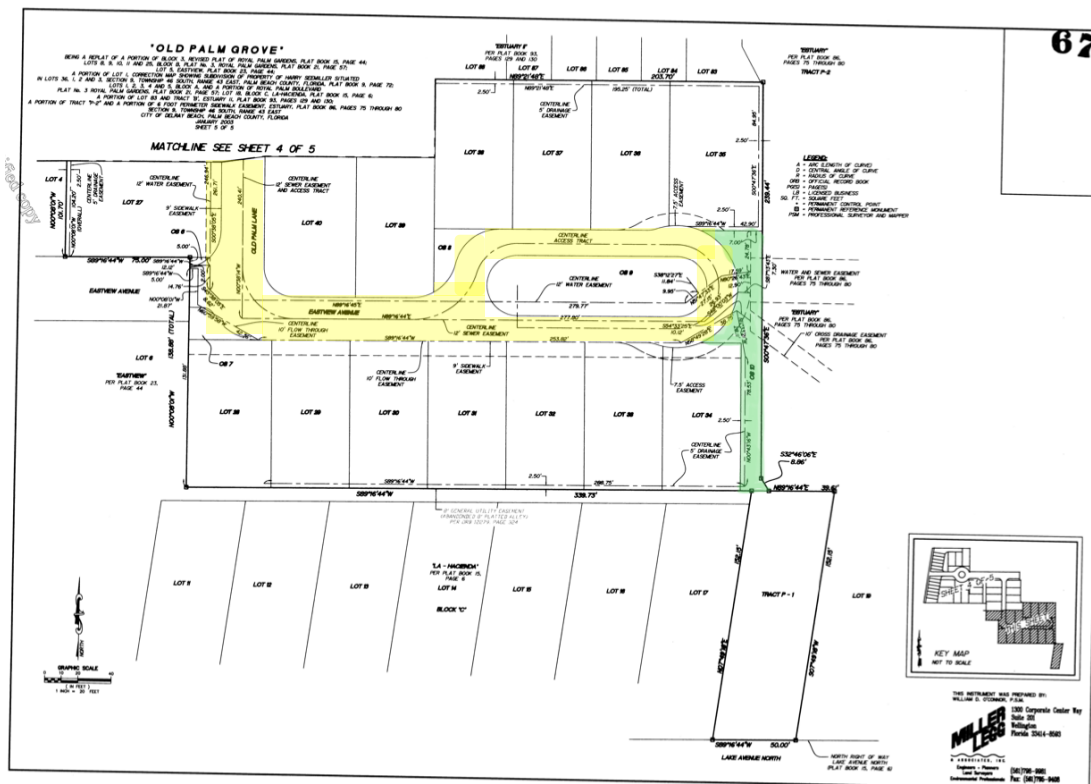
The Property was originally developed with a +/- 2,363 square foot restaurant that was constructed in 1968, two single family homes that were constructed in 1948 and 1950, and a landscape nursery. On February 19, 2002, the City Commission approved a Future Land Use Map Amendment for the restaurant portion of the Property and changed the land use designation from General Commercial (“GC”) to MD along with a rezoning from GC to PRD. The City Commission also approved a waiver to section 4.4.7(F)(2)(c) of the City’s Land Development Regulations (“LDRs”) to allow a total development area of +/- 4.62 acres rather than the required minimum site area of 5 acres for a PRD development. Subsequently, on May 20, 2002, the Planning and Zoning Board approved a master development plan for OPG, a forty-four (44) lot subdivision containing thirty-three (33) single family homes [thirty (30) single family zero lot line homes and three (3) conventional homes] and eleven (11) townhomes (“Master Development Plan”). The Planning and Zoning Board also granted relief in the form of internal adjustments for reductions in required setbacks and common open space as well as waivers for reductions in required lot area, width, frontage, and depth; pavement width, and site visibility triangle requirements as well as a waiver to provide a sidewalk on only one side of the street.

On April 15, 2003, the City Commission approved the Plat, which included the dedication of certain open space and access tracts for public use. More specifically, the Plat dedicated tract P-1 to the City of Delray Beach for park and recreation purposes. Tract P-1 is now La Hacienda Gardens, which is open to the public and is directly accessible from North Federal Highway and the communities to the south via North Lake Avenue. The Plat also dedicated open space tracts to the Applicant with the right of the public to access and utilize some of those open space tracts for pedestrian only ingress and egress. In the illustration below, the public was granted the rights



of pedestrian ingress and egress to specific open spaces tracts: OS 3, OS 4, OS 5, OS 10, OS 12, and OS 13 (highlighted in green). The Plat also dedicated the following access tracts for pedestrian and vehicular ingress and egress: Estuary Way, Old Palm Lane, and Eastview Avenue (highlighted in yellow).





It should be noted that open space tracts OS 3, OS 4, OS 5, OS 12, and OS 13 provide for east-west public pedestrian ingress and egress from North Federal Highway along the south side of Estuary Way to the gate of the Estuary community to the east of OPG. There is no right of general public access through the Estuary community utilizing the open space tracts. Open space tract OS 10 provides for north-south public pedestrian ingress and egress from La Hacienda Gardens along the eastern property line of OPG terminating at the eastern edge of Eastview Avenue. As such, the grant of pedestrian ingress and egress rights on the Plat does not provide for public access from the open space areas along Estuary Way to the open space area at the southeastern edge of the community. The grant of public pedestrian ingress and egress rights was very limited and specific. It is also worth noting that, regardless of the proposed abandonment, a private easement agreement between the Applicant and the Delray Estuary Homeowner's Association ensures the rights of vehicular and pedestrian ingress and egress remain through OPG from North Federal Highway to the Estuary residents and their guests.



Old Palm Grove: Abandonment of Public Easement

For the last twenty (20 years), a historical police report has revealed that OPG experienced types of criminal activity that are inviting when public access is available, including but not limited to:

<u>Date</u>	<u>Crime</u>
3-20-2021	Burglary Vehicle
2-28-2021	Vandalism
11-6-2020	Larceny
9-13-2020	Stolen Vehicle
5-11-2018	Stolen Vehicle
1-12-2018	Burglary Vehicle
8-9-2017	Vandalism
7-26-2017	Burglary Vehicle
2-22-2017	Larceny
2018 – 2021	Variety of Traffic Complaints

Furthermore, there are several adjacent and nearby communities that are gated and not open to the public such as The Estuary, Kokomo Key, and Windsor at Delray Beach. As such, the Applicant now desires to remove public access to the platted open space and access tracts on the Property (“Project”). In so doing, these common areas would only be accessible to OPG residents and guests as well as the adjacent neighborhood, The Estuary, pursuant to a separate easement agreement recorded in Book 14830, Page 1637 of the Official Records of Palm Beach County (“Easement Agreement”). To achieve this, City staff advised Applicant to submit the following application:

- (1) Abandonment of Public Easement: To terminate the rights of the public to platted access tracts and open space tracts OS 3, OS 4, OS 5, OS 12, and OS 13, inclusive of all private roads located within the Property, which are owned and maintained by the Applicant;



Justification Analysis for Abandonment of Public Easement

Required Findings

Pursuant to the City's LDR Section 2.4.6(N)(5)(a), the City Commission must make the finding, prior to granting an abandonment of a public easement, that the abandonment will not result in the detriment for the provision of utility services to adjacent properties or the general area. As discussed above, there is no legitimate public purpose for the existing public easements. The existing public easements lead to no particular location and no specific use. It is located entirely within a private community and not a part of an interconnected pedestrian network. Any impacts to the adjacent Estuary community are mitigated by an existing easement agreement between the owners of both properties. No other property within the adjacent area is required to provide the same type of public access. Furthermore, property owners within this private community have been impacted by criminal activity, where the criminals entered the property legally due to the public access rights. Most importantly, the rights of the City to access all of the easements proposed for abandonment are preserved for the provision of utility services to adjacent properties or the general area.

Additionally, pursuant to the City's LDR Section 3.1.1, prior to the approval of development applications, certain findings must be made in a form which is part of the official record which include:

(A) Land Use Map.

As noted above, the Property has a MD land use designation and is zoned PRD. The proposed Project has no impact on the intended land use and density for this Property or for OPG.

(B) Concurrency.

The proposed Project does not impact facilities in any way.

(C) Consistency.

LDR Section 3.1.1(C) provides that overall consistency may be found even if there is some conflict with the performance standards enumerated in LDR Article 3.2 as long as the benefits of the Project outweigh any negatives. LDR Section 3.2.1 provides that the performance standards set forth in LDR Section 3.2.3 and compliance with LDR Section 2.4.5(F)(5) are the bases for determining consistency. As demonstrated below, The Project does not conflict with any performance standards enumerated in LDR Article 3.2.



- **Section 3.2.3- Standards for site plan and/or plat actions.**

- A. Building design, landscaping, and lighting (glare) shall be such that they do not create unwarranted distractions or blockage of visibility as it pertains to traffic circulation.*

The Project does not impact building design, landscaping, and lighting; thus, this criterion is inapplicable.

- B. All development shall provide pedestrian, bicycle, and vehicular interconnections to adjacent properties, where possible, and include accessible routes from the entry points of publicly-accessible buildings to the sidewalk network in accordance with the Americans with Disabilities Act (ADA).*

The Project maintains all pedestrian, bicycle, and vehicular interconnections to adjacent properties where possible, including accessible routes. The only change is that the pedestrian and vehicular network on the private common areas of OPG will only be open to residents of OPG and The Estuary, but not to the public.

- C. Open space enhancements and recreational amenities shall be provided to meet Objective OPR 1.4 and other requirements of the Goals, Objectives and Policies, as applicable, of both the Open Space, Parks, and Recreation Element and Conservation Element.*

The Project does not impact the existing open space enhancements and recreational amenities; thus, this criterion is inapplicable.

- D. Any proposed street widening or modifications to traffic circulation shall be evaluated by the City, and if found to have a detrimental impact upon or result in the degradation of an existing neighborhood, the request shall be modified or denied. [Amd. Ord. 13-99 3/16/99] (Ord. No. 23-20, § 12, 9-10-20)*

The Project does not propose any street widening or modifications to traffic circulation; thus, this criterion is inapplicable.



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- E. Development of residentially zoned vacant land shall be planned in a manner consistent with adjacent development regardless of zoning designations.***

There is no vacant land at issue; thus, this criterion is inapplicable.

- F. Property shall be developed or redeveloped in a manner so that the use, intensity, and density are appropriate in terms of soil, topographic, and other applicable physical considerations; encourage affordable goods and services; are complementary to and compatible with adjacent land uses; and fulfill remaining land use needs.***

The Project does not propose development or redevelopment; thus, this criterion is inapplicable.

- G. Development shall provide a variety of housing types that accommodates the City's growing and socio-economically diverse population to meet the Goals, Objectives, and Policies the Housing Element.***

The Project does not propose development and maintains existing development; thus, this criterion is inapplicable.

- H. Consideration shall be given to the effect a development will have on the safety, livability, and stability of surrounding neighborhoods and residential areas. Factors such as but not limited to, noise, odors, dust, and traffic volumes and circulation patterns shall be reviewed and if found to result in a degradation of the-surrounding areas, the project shall be modified accordingly or denied.***

As mentioned above, the Project does not propose development; however, the proposed change does increase the safety, livability, and stability within the OPG community and surrounding neighborhood by limiting its use to OPG residents and adjacent neighbors, the Estuary.

- I. Development shall not be approved if traffic associated with such development would create a new high accident location, or exacerbate an existing situation causing it to become a high accident location, without such development taking actions to remedy the accident situation.***



The Project does not create a high accident location nor does it exacerbate an existing situation; thus, this criterion is inapplicable.

- J. Tot lots and recreational areas, serving children, teens, and adults shall be a feature of all new housing developments as part of the design to accommodate households having a range of ages. This requirement may be waived or modified for residential developments located in the downtown area, and for infill projects having fewer than 25 units.***

The Project does not propose any new housing development; thus, this criterion is inapplicable.

- K. Development shall not exceed the maximum limits established in the Table NDC-1, Land Use Designations: Density, Intensity, and Implementing Zoning Districts, of the Neighborhoods, Districts, and Corridors Element or specific standards established in the zoning districts that limit density (dwelling units per acre) or intensity (floor area ratio) and must adhere to whichever limit is lower. Development in areas included in density or incentive programs (i.e. workforce housing programs specified in Article 4.7-Family/Workforce Housing) may exceed the Standard density limit, up to the specified Revitalization/Incentive density established for the program: development in all other areas shall not exceed the Standard density.***

The Project does not propose any changes to density or intensity; thus, this criterion is inapplicable.

(D) Compliance with LDRs.

- **Section 2.4.6(N) – Abandonment of Public Easements.**

Addressed above.

- **North Federal Highway Redevelopment Plan**

The City Commission adopted the North Federal Highway Redevelopment Plan (“Plan”) on March 16, 1999. The goals of the Plan include improving the appearance of the redevelopment area, providing for increases in permitted residential densities adjacent to Intracoastal Waterway, and stimulating the



revitalization of the North Federal Highway Corridor by encouraging new residential development within the redevelopment area that will in turn help to stimulate commercial development along North Federal Highway by creating demand for goods and services in this area.