



# DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

## PLANNING & ZONING BOARD

### Abandonment of Interest for a portion of the southwest corner of the Hungerford Canal

Meeting	File No.	Application Type
March 25, 2019	2019-110	Abandonment of Interest

#### Request

The proposed request is the Abandonment of Interest of a southwest portion of the Hungerford canal (subject area). The subject area is a dry upland portion of the canal that is located at the rear of 1300 Cormorant Road, which is Lot 14 on the Tropic Palm Plat No.2. The subject area is approximately 3,849 sf. More specifically, the request is for the City to abandon its interest in the subject area of the canal to allow the property owner of 1300 Cormorant Rd. to obtain ownership of the area and incorporate it into their Lot.

#### Recommendation

Move a recommendation of approval of the request of the **Abandonment of Interest of a southwest upland portion of the Hungerford canal**, located south of Lot 14, perpendicular to the C-15 canal, as recorded in the plat of Tropic Palms No.2, 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 criteria set forth in Section 2.4.6(M)(5) of the Land Development Regulations, subject to the following condition of approval:

1. That a maintenance easement be provided along the east property line of the requested area to be abandoned; 6' along the north property line up until 10' from the bulkhead wall and then 12' from there to the wall.

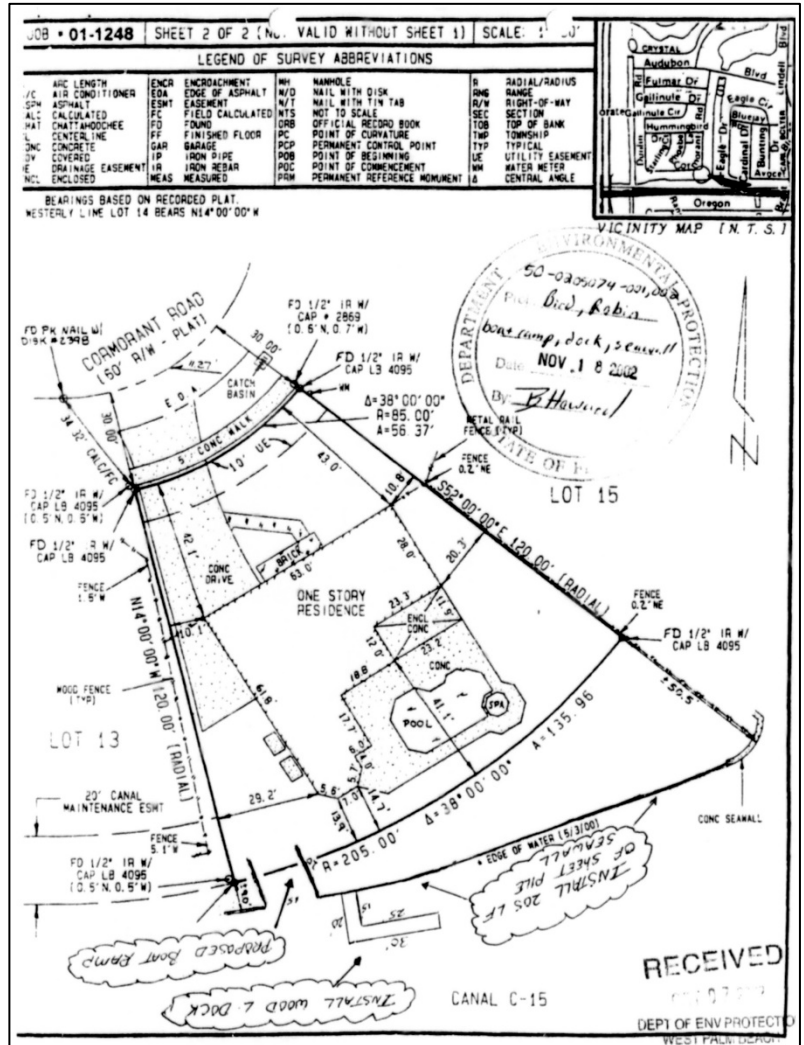


## Background Information

- On January 13, 1958, the City of Delray Beach adopted Ordinance G-277, annexing the Tropic Palms subdivision from Palm Beach County into the municipal boundary. More specifically, the areas that were annex are identified in Tropic Palms Plat No. 2, No. 3, and No. 4.
- On February 11, 1958, the Tropic Palm Plat No. 2 was recorded in Official Records Book 25, pages 135 through 136. The plat mentions that what is surveyed and platted as shown, *"does hereby dedicate to the perpetual use of the public, as highways and waterways, the Streets and Canal as shown hereon, and the use of the Easements for the construction and maintenance of Public Utilities."* As such, the plat mentions that the canal waterways were dedicated for public use.
- On October 27, 1977, a replat of the Tropic Palm No. 2 was recorded in the (ORB) 33, pages 144 through 146 of the public records of Palm Beach County, Florida. The plat was approved by the City of Delray Planning & Zoning Board (P&Z Board) on April 19, 1977, and the Delray Beach City Council on April 25, 1977. The plat mentions that the streets are dedicated to the Board of County Commissioners for the perpetual use of the public for proper purposes.
- According to the Palm Beach County property appraiser, the house at 1300 Cormorant Road was built in 1978.
- According to the Palm Beach County property appraiser, the applicant "Robin M. Bird" purchased the subject property in 1990.
- On August 21, 1998, permit #98-56396 was issued for a 4' fence addition to east side of the property.
- On January 3, 2003, permit #02-82763 was issued for a boat dock, boat ramp and seawall (see image below). The permitted improvements were approved by the City of Delray Beach building department, and reviewed by the Palm Beach Department of Environmental Protection (ERM).
- On April 11, 2000, permit #00-67320 was issued for a building addition.
- On April 18, 2000, permit #00-68072 was issued for a 4' high aluminum fence on the east property line. An image of the fence is shown below.
- On February 8, 2019, the Development Services Department received the proposed application requesting the abandonment of the subject area.







## Project Description

The request before the board is an "Abandonment of Interest". An Abandonment of Interest is an action where the City abandons its public interest of a specific area within the community. Furthermore, the action, which is executed by resolution, demonstrates that the City has no vested interest in the property. The proposal before the board is from the property owner at 1300 Cormorant Road. The property owner is requesting that the City abandon its interest in a 3,849 sf portion of upland canal area to the rear of their property. The legal description of the subject area is described more specifically in Appendix "A" of the attachments.

## Review and Analysis

### Application Review:

Standard application items were provided and processed for review in accordance with LDR Section 2.4.6(M) Abandonments of Right-of-Way and LDR Section 2.4.3(A) standard application items.

- The Abandonment of Interest application was submitted to the City on February 8, 2019. Included was a title with sketch and legal description, a site survey, and a title opinion. The title opinion states that the portion of area requested is a portion of real property outside the subject property that is not actual waterway. It further mentions the subject area contains a boat ramp and is protected by a seawall, which was installed by the applicant after receiving permit. Lastly, the title opinion states that it is of the opinion that the subject area requested is owned by the City of Delray Beach and the plat doesn't show any retained developer outside subject property (Lot 14 Replat, or Lot 656 plat).

Also provided was Tropic Palm Plat No. 2 ORB 25, pages 135 through 136 (the first plat), and replat of the Tropic Palm No. 2 (the replat) was recorded in the (ORB) 33, pages 144 through 146, and replat of the Tropic Palm No. 2 was recorded in the

(ORB) 33, pages 144 through 146. The first plat describes that the highways and waterways, the streets and canals, and the use of easements for and maintenance of public utilities area are dedicated for the perpetual use of the public. Therefore, it is determined that the Hungerford canal was dedicated to the public, the City of Delray Beach.

The first plat shows the lots numbered in the area from 600's to 800's, and different configurations and measurements for the roads and canals. As shown, the subject property is platted as Lot 656. Lot 656 has a northwest property line dimension of 58.55', and a southeast property line of 141.21'. The Hungerford canal is shown on the plat to be 100' wide and tapers southwest adjacent to Lot 656, into the C-15 canal. This plat shows the C-15 canal to be 209.83' from the centerline to the adjacent property lines to the North.

The replat shows a reconfiguration of lots, streets, and the canal waterways, reflecting what is built today, which is different from the first plat. Specifically, the replat shows the reconfiguring, renumbering, and addition of Lots in the area. The subject property that was Lot 656 is now Lot 14. The dimensions in the replat shows Lot 14 to have a northwest property line measurement of 56.37', and a southeast property line of 135.96'. The replat does not mention the Hungerford canal but shows the same configuration tapering southwest adjacent to Lot 14, into the C-15 canal. In addition, the replat shows the dimension from the C-15 canal from the centerline to the adjacent property line to be 100.07'. Specifically, the replat shows the dimension of the C-15 canal to be shorter in the in the replat as compared to the first plat by approximately 109'. This suggests that the Lot configuration south of Cormorant Rd. was shifted down into the C-15 canal area in order to create the new lots north of Cormorant Rd. This also suggests that there may have been un-dredged upland canal area available north of the C-15, or that it that the canal may have been partially filled in to create the properties, but records do not show.

On both plats the Hungerford canal has a similar shape and dimension. The plats show the canal abutting the subject property line. However, aerials photos from the Palm Beach County property appraiser from 1976 and 2017 both show that the canal flare was not physical dredged with the same precision as it was designed on the survey. As such, it appears that the area of land outside the subject property has always existed, even before the property was developed.

2017 Aerial Photo

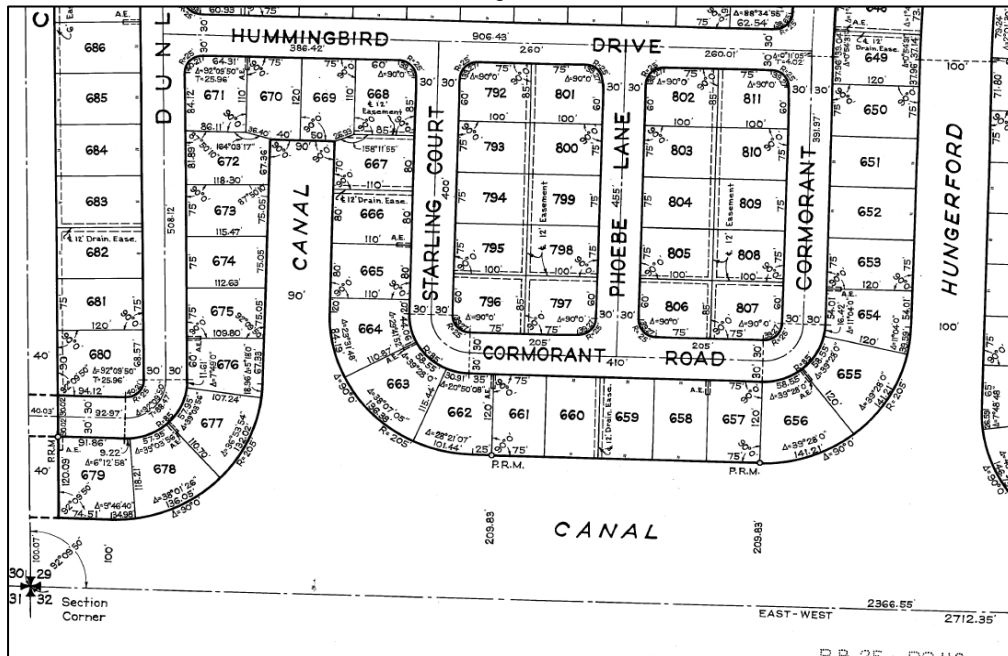


1976 Aerial Photo

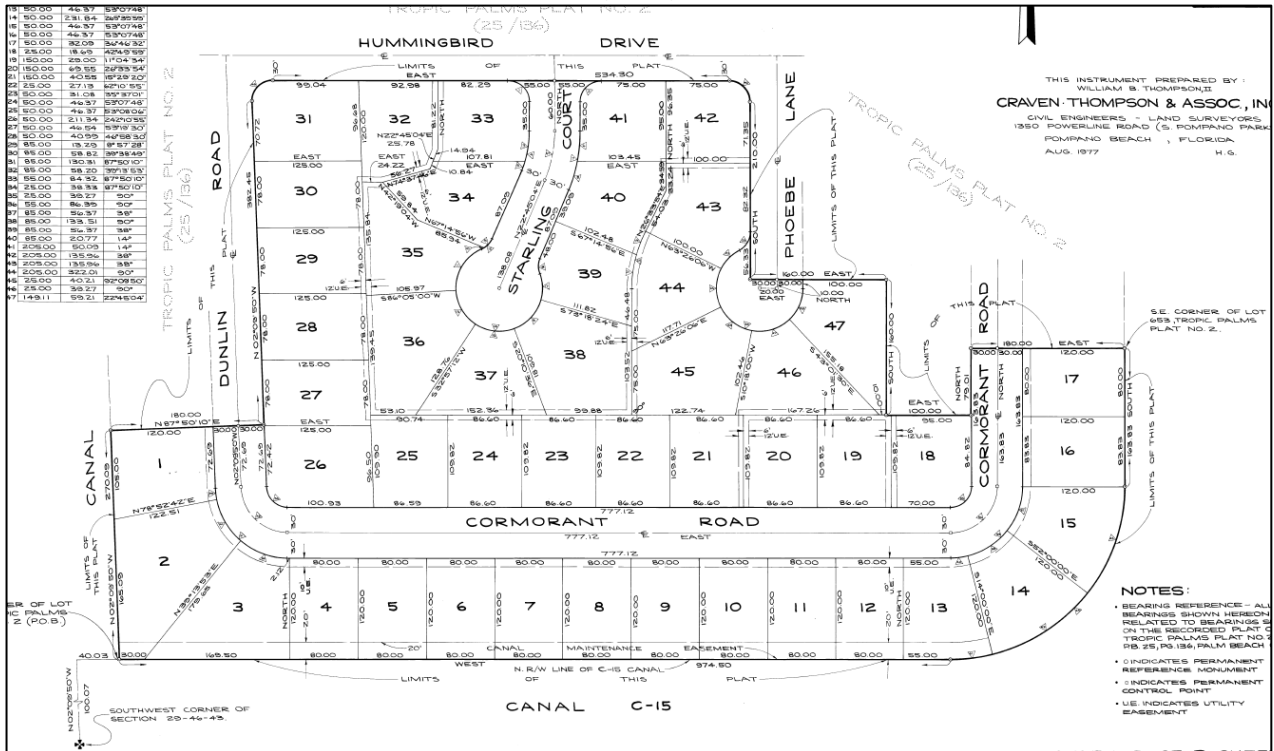




Tropic Palm Plat No.2 ORB 25, pages 135  
through 136 (1958)



Replat Tropic Palm No. 2 (ORB) 33, pages 144 through 146  
(1978)



The following items were reviewed in accordance with the Abandonment of right-of-way requirements listed in Land Development Regulations section 2.4.6 (M).

- Pursuant to LDR section 2.2.2 (E)(6), (e), *Duties, power and responsibilities*, the Planning & Zoning Board shall review and make recommendations to the City Commission with respect to abandonment of right-of-way.
  - ✓ The following abandonment application has been brought forth to the Planning & Zoning board for review and subsequent recommendation to the City Commission, in accordance with the aforementioned LDR section.
- Pursuant to LDR section 2.4.6 (M)(1) **Abandonment of right-of-way**, *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).*
  - ✓ Tropic Palm Plat No. 2 ORB 25, page 135 (the Plat) mentions that waterways are dedicated for the perpetual use of the public. More specifically, the Hungerford canal was dedicated to the City of Delray Beach and the C-15 canal remains under the ownership of the South Florida Water Management District (SFWMD). The plat shows the subject property (Lot 656) to be platted with a 141.21' arc along the southeast portion of the Hungerford canal. The subsequent replat (ORB 33, page 144-146), shows the now Lot 14 to have a 135.96' arc along the canal. Furthermore, the plats show the Hungerford canal to be separate from the individual lots. Since the subject area is a part of the canal and doesn't appear to be exacted like a traditional right-of-way, the subject area could not be returned to the adjacent property in same degree in which it was originally obtained and would therefore require an abandonment of interest from the City of Delray Beach.

The applicant is requesting the abandonment of an approximately 3,849 sf upland area of the Hungerford canal as measured from the wet face of the seawall. Additionally, the subject area was dedicated to City of Delray Beach. The abandonment of interest (the Abandonment) in this case would not be taken from the center line of a right-of-way, but from the area requested. As such, a positive finding can be made in regard to the intent of this LDR section.

- Pursuant to LDR section 2.4.6 (M)(3), *the following procedures shall be followed under the direction of the City Engineer:*
  - a) Certification that the submittal is complete and accurate;
    - ✓ Based on the information submitted, staff determined that the information submitted is complete in accordance with the LDR.
  - ✓ Distribution of the application and survey to all utilities who have or may have facilities within the easement or adjacent to it;
    - ✓ Notices of the application and surveys were sent to the utility providers: American Telephone & Telegraph (AT&T), Comcast, Florida Public Utilities Company (FPUC), and Florida Power and Light (FPL). Responses were provided by the utility companies and no objectionable comments or easement requirement were made, thus complying with this LDR section.
  - ✓ Distribution to appropriate City departments who may have an interest in the property.
    - ✓ Distribution of plans were provided to the City's Technical Advisory Committee (TAC). TAC is comprised of staff from various City departments who review the plans for compliance with the LDR. Comments from the engineering staff are included in this report in accordance with LDR section 2.4.6 (M)(3)(e).
  - ✓ Notification pursuant to Section 2.4.2(B)(1)(i), **Right-of-way abandonments notices**.
    - ✓ Public notices was provided in accordance with LDR 2.4.2 (B)(1)(i)-(i),(ii),(iv)(v) and (vi). More specifically, (i) a written notice was provided to property owners within 500 of the subject site on March 13, 2019, (ii) a notice was posted on the City's website at least 10 days before the meeting (posted on March 13, 2019), (iv) notice was posted at City Hall on March 13, 2019, (v) notice was mailed to adjacent property owners 20 days prior to hearing (mailed on March 5, 2019), and (vi) advertisement in the legal section of the Sun Sentinel was provide at least 10 days before the meeting (advertised on March 14, 2019).

- ✓ 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.
  - ✓ Attached is the City Engineer's comments in accordance with this LDR section.
- ✓ 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.
  - ✓ Attached with this report is a draft copy of the resolution for review by the City Commission. If approved by the City Commission, the City will abandon its interest in the subject area and have no vested right, thus the it would be up to the applicant at the receiving property to claim the area by any means necessary.
- Pursuant to LDR section 2.4.6 (M)(4)(d) **Conditions**, conditions may be imposed upon an abandonment to; (d) Require replacement easements and/or relocation of existing utilities, as may be appropriate.
  - ✓ Currently, a 12" outfall pipe exists along the east property line of the subject property. An outfall is a discharge point of a drain or sewer into a body of water. Specifically, the pipe spans the private property into the upland canal area. Currently, the City has no maintenance easement on the property to maintain the pipe. Therefore, staff has recommended that if the City Commission approves the item, a condition be added to requiring maintenance easement be provided along the easternmost boundary of the subject area. In addition, although not required and up to the property owner, staff is recommending that the applicant provide a maintenance easement along the east property line of the subject property. In addition, it is recommended that the City request an easement from the neighboring property at Lot 15 as well.
- Pursuant to LDR section 2.4.6 (M)(5)(a)-(c) **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.
    - ✖ Currently, the City uses the subject area for maintenance purpose. The subject area currently contains a segment of the 12" outfall pipe. The outfall pipe is in need of repair and the City is actively seeking a contractor to repair it. Currently, the City can access a portion the pipe through the upland canal area, thereby demonstrating a need. However, if the subject area is abandoned and an easement is provided, the City can still maintain the pipe, thereby satisfying the need.
  - b) That the abandonment does not, nor will not, prevent access to a lot of record.
    - ✓ The purpose abandonment will not prevent access to a lot of record, thus a positive finding can be made.
  - 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.
    - ✓ If a maintenance easement is provided, the proposed abandonment will not prevent the City the ability to access the outfall pipe, thus a positive finding can be made.

#### Review By Others

- ✓ Pursuant to 2.4.2 (C)(2)(a), utility providers were notified of the site plan submission and no objections have been provided to date.

#### Assessment and Conclusion

The proposed request is for the City to abandon its interest in a southwest portion of upland area of the Hungerford canal. Based on the information provided, a positive finding can be made in recommending approval of the application with conditions. Specifically, in discovering that requested area outside subject property has existed since before the land was developed, that the replat shifted properties closer into the canal, and that property owner has received permits for improvements to the subject area. However, the City has demonstrated that it may have use for the subject area. If the subject area is abandoned, the City would have no access to maintain the outfall unless maintenance easements are provided. In accordance 2.4.6 (M)(4)(d), the City can require a maintenance easement for the abandoned area only, which allows access to the pipe from the water only. In addition, the City can recommend the property owner (at the owner's discretion) provide an easement for the remainder of the outfall pipe along the private property. As

such, staff is recommending approval of the abandonment application for a southwest upland portion of the Hungerford canal with the provision of an easement.

#### Alternative Actions

- A. Move to continue with direction
- B. Move a recommendation of approval, as amended, of the request of the **abandonment of interest of a southwest upland portion of the Hungerford canal**, located south of Lot 14, perpendicular to the C-15 canal, as recorded in the plat of Tropic Palms No.2, 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 criteria set forth in Section 2.4.6(M)(5) of the Land Development Regulations, subject to the following conditions of approval:
1. The easement be provided 6' along the north property line up until 10' from the bulkhead wall and then 12' from there to the wall.
- C. Move a recommendation of denial of the **abandonment of interest of a southwest upland portion of the Hungerford canal**, located south of Lot 14, perpendicular to the C-15 canal, as recorded in the plat of Tropic Palms No.2, by adopting the findings of fact and law contained in the staff report, and finding that the request and approval thereof is not consistent with the Comprehensive Plan and does not meets criteria set forth in Section 2.4.6(M)(5) of the Land Development Regulations

#### Public and Courtesy Notices

☐ Courtesy Notices are not applicable to this request

☒ Courtesy Notices were provided to the following:

- Bass Creek – 03/15/19
- Tropic Palm – 03/15/19
- Lake Delray Apartments – 03/15/19

☐ Public Notices are not required for this request.

N/A Public Notice was posted at the property on

- ☒ Public Notice was mailed to property owners within a 500' radius on **March 13, 2019**, at least ten days before the meeting date.
- ☒ Public Notice was mailed to the adjacent property owners on **March 5, 2019**, at least twenty days before the meeting date.
- ☒ Public Notice was published in the Sun Sentinel on **March 14, 2019**, at least ten days before the meeting date.
- ☒ Public Notice was posted to the City's website on **March 13, 2019**.
- ☒ Public Notice was posted in the main lobby at City Hall on **March 13, 2019**.