



# DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

## PLANNING & ZONING BOARD

### Abandonment of Right-of-Way (Portion of Old Dixie Hwy)

Meeting	File No.	Application Type
August 19, 2019	2019-153-ABR-CCA	Abandonment of Right-of-Way (Portion of Old Dixie Hwy)

#### Board Action Options:

- A. **Move a recommendation of approval** of the request for the abandonment of a 20' wide portion of Old Dixie Highway Right-of-Way totaling 6,482 sf, lying west of and adjacent to the north 20' of Lot 14 and all of Lots 15, 16, and 17, as recorded in the Delray Beach Estates plat, by finding that the request and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in the Land Development Regulations, subject to a 20.25' x 324.12' general utility easement being recorded for the abandonment area.
- B. **Move a recommendation of approval, as amended**, of the request for the abandonment of a 20' wide portion of Old Dixie Highway Right-of-Way totaling 6,482 sf, lying west of and adjacent to the north 20' of Lot 14 and all of Lots 15, 16, and 17, as recorded in the Delray Beach Estates plat, by finding that the request and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in the Land Development Regulations, subject to the following conditions of approval:
1. A 20.25' x 324.12' general utility easement be recorded for the abandonment area.
  2. (Board condition)
- C. **Move a recommendation of denial** of the request for the abandonment of a 20' wide portion of Old Dixie Highway Right-of-Way totaling 6,482 sf, lying west of and adjacent to the north 20' of Lot 14 and all of Lots 15, 16, and 17, as recorded in the Delray Beach Estates plat, by finding that the request and approval thereof is not consistent with the Comprehensive Plan and does not meet the criteria set forth in the Land Development Regulations.
- D. **Continue with direction**

#### Project Description

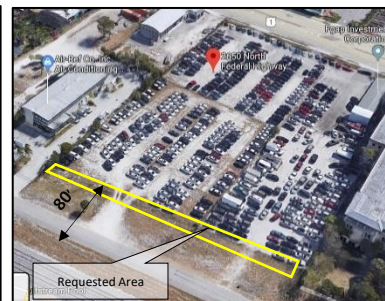
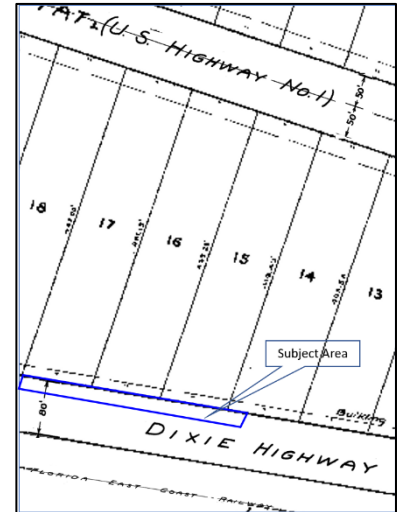
The item before the board is a privately initiated "Abandonment of Right-of-Way" request for a 20' wide portion of Old Dixie Highway right-of-way (ROW), as recorded in Plat Book 21, Page 13 of the Official Records of Palm Beach County, Florida. The legal description of the requested area is described more specifically in the attachments. The requested abandonment would allow the owner of the adjacent lots located at north 20' of Lot 14 and all of Lots 15, 16, and 17 with physical addresses 2612 & 2650 N. Federal Hwy to incorporate the portion of right-of-way into their parcel and use it for private purposes.



## Background Information

The subject area requested for abandonment is a 20.25' x 324.12' portion of Old Dixie Highway Right-of-Way totaling 6,482 sf (subject area), lying west of and adjacent to the north 20' of Lot 14 and all of Lots 15, 16, and 17 as recorded in the plat of Delray Beach Estates, approximately 415' south of Gulfstream Blvd. The plat shows an 80' ROW width of Old Dixie Highway from the Florida East Coast (FEC) right-of-way property line to the adjacent parcel Lot lines. As a result of the previously approved abandonments for certain lots, the platted portion of Old Dixie Hwy between Lot 1 (2210 N Federal Hwy) to Lot 22 (500 Gulfstream Blvd), vary between 60' to 80' in ROW width. The following are a list of actions related to the subject area:

- On July 1, 1946, the Plat of Delray Beach Estates was recorded in Plat Book 21, Page 13 according to the public records of Palm Beach County. The land platted was located in section 4, of Palm Beach County unincorporated. The plat shows an 80' wide platted portion of Dixie Highway perpendicular to subject lots.
- According to the Palm Beach County Property Appraiser, the 1,528 sf one-story office building situated on the Lot 15 was built in 1949.
- On Mar 22, 1994, the City Commission adopted Ordinance No. 11-94, annexing north 20' of Lot 14 and all of Lots 15, 16, and 17 into the City of Delray Beach municipal boundary from unincorporated Palm Beach County.
- Based on information from the property appraiser, the portion of Old Dixie Highway right-of-way requested for abandonment is owned by the City of Delray Beach.
- On September 7, 2001, the City Commission passed Resolution No. 65-04 approving an abandonment of right-of-way request for a 20' wide portion of Old Dixie Highway totaling 1,620 sf lying west of and adjacent to Lot 4 of the Delray Beach Estates plat. As a result of the abandonment, the remaining portion of right-of-way of Old Dixie Hwy adjacent to Lot 4 is 60'.
- On June 17, 2003, the City Commission passed Resolution No. 13-03 approving an abandonment of right-of-way request for a 20' wide portion of Old Dixie Highway totaling 2,025 sf, lying west of and adjacent to Lot 5 of the Delray Beach Estates plat. As a result of the abandonment, the remaining portion of right-of-way of Old Dixie Hwy adjacent to Lot 5 is 60'.
- On November 15, 2005, the City Commission passed Resolution No. 84-05 approving and abandonment of right-of-way request for a 20' wide portion of Old Dixie Highway totaling 1,240 sf, lying west of and adjacent to Lot 2 and a portion of Lot 3 of the Delray Beach Estates plat. As a result of the abandonment, the remaining portion of right-of-way of Old Dixie Hwy adjacent to Lot 2 and a portion of 3 is 60'.
- Records show that since the adjacent lots were annexed until March of 2018, the lots were used as an automobile dealership.
- On March 2018, the adjacent lots were purchased by James O'Neill and are currently used as automobile storage for new vehicle dealerships.
- On April 4, 2019, the Development Service Department received the referenced right-of-way abandonment application for a portion of Old Dixie Highway adjacent to 2612 & 2650 N. Federal Highway.



## Analysis

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". 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.

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

- Transportation Element Objective A-4: Ultimate rights-of-way shall be provided per the schedule contained in Table T-1. Setback requirements for new construction along streets shown in Table T-1 shall be measured from the ultimate property line, thus, providing protection of these rights-of-way from building encroachment.

According to table T-1 on page TR-14, local streets without curb and gutter in the City shall be a minimum of 60' feet in width. The portion of Old Dixie Highway right-of-way running parallel to the platted Lots varies between 60' to 80'. If the abandonment is granted, the remaining ROW would be 60', which meets the minimum comprehensive plan requirement.

### 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 2.4.6 (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).*

The Delray Beach Estates plat indicates that roads and highways are dedicated to the public for perpetual use. The plat shows an 80' right-of-way adjacent to the subject lots. The subject lots are owned by James O'Neill, who also owns Delray Acura and Hyundai and currently stores surplus cars from these dealerships on the site. It is important to note that automobile storage is not permitted as a primary use in the Automotive Commercial (AC) zoning district. As such, the applicant has indicated that the property owner is in the process of changing the use back to a used car dealership. The applicant has requested the abandonment of a 20' wide portion of Old Dixie ROW totaling 6,482 sf. If the abandonment is granted, the subject area would revert back to the adjacent properties and be used for private purposes. The remaining ROW would include a 24' wide, two-way paved road and a 36' wide grassed swale area, totaling 60', which meets the minimum comprehensive plan requirement.

- Pursuant to LDR Section 2.4.6 (M)(4)(d) **Conditions**, conditions may be imposed upon an abandonment to; "Require replacement easements and/or relocation of existing utilities, as may be appropriate."

Currently there are two utility service poles and one fire hydrant are located in the subject area requested for abandonment. The service poles and the fire hydrant provide service to surrounding properties. As such, if the City Commission approves the abandonment, the utilities would either need to be relocated or a General Utility Easement (GUE) would need to be provided.

- 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 portion of right-of-way requested for abandonment is an unpaved portion of Old Dixie Hwy. The roadway provides rear access to the adjacent properties. The subject area is a portion of grassy swale area that contains two utility service poles and one fire hydrant. The infrastructure contained in the subject area provides public service to the properties in the area. The City and Utility companies currently access the infrastructure in the right-of-way from Old Dixie Hwy.

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). In response a response from

FPL, the company requested an easement to access their utilities. As such, if the abandonment is granted, a GUE would be needed for the abandoned area or the utilities need to be removed. The GUE would allow the City and the utility companies to access the area to maintain their infrastructure. In the event the private properties were to redevelop in the future, coordination with the City and utility companies would occur through the site plan modification process to either maintain the GUE or relocate the infrastructure and/or provide new easement(s).

The City has no current plans to improve the right-of-way area in a way that would incorporate the subject area.

- b) That the abandonment does not, nor will not, prevent access to a lot of record.  
If the abandonment is granted, the lots will have access from Old Dixie Hwy and N. Federal Hwy.
- 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.  
As discussed above, if a GUE is provided, the proposed abandonment will not prevent the City, or the Utility companies the ability to access the utility infrastructures.

#### Review By Others

- ✓ Pursuant to 2.4.2 (C)(2)(a), utility providers were notified of the abandonment application. Responses from FPL request an easement to access their utilities; no objections have been provided to date.

#### Public and Courtesy Notices

<ul style="list-style-type: none"> <li>— Courtesy Notices are not applicable to this request</li> <li>✓ Courtesy Notices were provided to the following: <ul style="list-style-type: none"> <li>• Town of Gulfstream</li> <li>• City of Boynton Beach</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>— Public Notices are not required for this request.</li> <li><b>N/A</b> Public Notice was posted at the property</li> <li>✓ Public Notice was mailed to property owners within a 500' radius on <b>August 9, 2019</b>, at least ten days before the meeting date.</li> <li>✓ Public Notice was mailed to the adjacent property owners on <b>July 30, 2019</b>, at least twenty days before the meeting date.</li> <li>✓ Public Notice was published in the Sun Sentinel on <b>August 9, 2019</b>, at least ten days before the meeting date.</li> <li>✓ Public Notice was posted to the City's website on <b>August 9, 2019</b>.</li> <li>✓ Public Notice was posted in the main lobby at City Hall on <b>August 9, 2019</b>.</li> </ul>
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