



# Planning Solutions

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November 6, 2020

Ms. Anthea Gianniotis, AICP, Director  
Development Services Department  
City of Delray Beach  
100 NW 1<sup>st</sup> Avenue  
Delray Beach, FL 33444

**RE: 823 NE 1<sup>st</sup> Court – Abandonment of a Portion of Canal Street Right-of-Way –  
Narrative Letter**

Dear Ms. Gianniotis:

This Narrative Letter for the Abandonment of a Portion of Canal Street Right-of-Way application is respectfully submitted on behalf of A. Richard Busscher Trust for the property located at 823 NE 1<sup>st</sup> Court, Delray Beach, FL 33483 (PCN 12-43-46-16-01-139-0020).

**Proposed Abandonment:**

The request is for the City to abandon its interest in the portion of the unimproved Canal Street right-of-way, lying east of and adjacent to 823 NE 1<sup>st</sup> Court. The area to be abandoned measures 40.56' X 137.25' and contains 5,523 square feet. The right-of-way has not been utilized for access, does not contain any utilities, and there are no plans to improve the Canal Street right-of-way for any public purpose. The right-of-way has been utilized and maintained as an extension of the side/rear yard of the abutting property for many years with landscaping (including mature trees), irrigation, fencing, patio area, lighting and seawall with minor encroachments of a corner of the house and porch (constructed in 1944) into the Canal Street right-of-way/Intracoastal Waterway easement. The east side of the proposed abandonment area contains an existing seawall, while perimeter fencing with landscaping is located along the north and south ends of the abandonment area.

The intended use of the right-of-way is to incorporate the abandoned area into the property located at 823 NE 1<sup>st</sup> Court and continue utilizing the area as the side/rear yard of the property. It is noted the Canal Street right-of-way is located within the Army Corps of Engineers Easement for the Intracoastal Waterway. The western boundary of the easement corresponds with the west right-of-way line of Canal Street. Therefore, in conjunction with the abandonment request, a Consent to Easement has been submitted to the Army Corps of Engineers (Corps) to allow the existing improvements within the easement. A seawall permit application has also been submitted to the Corps, in anticipation there are no records of the seawall on file.

### **Background:**

The 50' wide Canal Street right-of-way was dedicated 1896 via the Plat of the Town of Linton as recorded in Plat Book 1, Page 3, of the Public Records of Palm Beach County, Florida. The subject portion of Canal Street is adjacent to and east of the referenced property.

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 easement for the Intracoastal Waterway. According to Sheet 16A (Plat Book 17, Page 16A) of the plat for Palm Beach County, all of Canal Street north of Atlantic Avenue was included within the easement for the Intracoastal Waterway. The west easement line of the Intracoastal Waterway coincides with the west right-of-way line of Canal Street. There are many instances where Canal Street is either been partially or totally submerged or has been utilized as extensions of rear yards for many years.

As previously stated, the subject right-of-way is unimproved and has been utilized for many years as an extension of the rear/side yard of 823 NE 1<sup>st</sup> Court and contains landscaping (including mature trees), irrigation, fencing, patio, lighting and seawall with minor encroachments of a corner of the house and porch into said right-of-way. The seawall is located approximately 40' east of the adjacent property (823 NE 1<sup>st</sup> Court) with existing 3' high fences with landscaping on the north and south sides of the proposed abandonment area (between the seawall and the west right-of-way line of both Canal Street and the Intracoastal Waterway).

In the past, the City has abandoned its interest in Canal Street where the right-of-way is unimproved, abuts private property, and there are no plans to improve the right-of-way nor is there a need for the right-of-way. Given these circumstances and as indicated below, previous applications to abandon portions of the Canal Street right-of-way have been approved with the most recent occurring in August 2020, with another request to abandon the portion of Canal Street abutting 824 NE 2<sup>nd</sup> Street in the application process.

- On August 18, 2020 - Resolution No. 95-20 - Southwest corner of NE 1<sup>st</sup> Court and the Intracoastal Waterway (828 NE 1<sup>st</sup> Court).
- February 3, 2009 – Resolution No. 10-09: Southwest corner of SE 2nd Street and the Intracoastal Waterway.
- May 4, 2004 - Resolution 34-04: Northwest corner of NE 1st Street and the Intracoastal Waterway (Harbour House Townhomes).
- March 11, 1968 - Resolution No. 12-68: Fisher Lane properties, between NE 4<sup>th</sup> Street and NE 5<sup>th</sup> Street.

***Pursuant to LDR Section 2.4.6(M)(1), public right-of-way may be abandoned (returned) to 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 shall be divided at the center line and returned equally to abutting***

***parcels. Abandonment of right-of-way may be granted by a formal resolution enacted by the City Commission.***

This request is to abandon the City's interest in the Canal Street right-of-way, abutting 823 NE 1<sup>st</sup> Court.

**Required Findings:**

Pursuant to LDR Section 2.4.6(M)(5), prior to any right-of-way abandonment being approved, 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.***

Approximately 80% of this portion of Canal Street right-of-way is dry land with the remaining 20% being submerged. The City has no plans to improve or use this right-of-way for any public purpose. A review of the City's Comprehensive Plan was conducted. While the following policies are noted, based on the analysis below positive findings can be made that the proposed abandonment is consistent with the Goals, Objectives and Policies of the City's Always Delray Comprehensive Plan.

**Coastal Management Element Policy CME 2.6.8 of the City's Comprehensive Plan states: 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.**

**Mobility Element Policy MBL 2.7.7: of the City's Comprehensive Plan states: 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.**

**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.**

Northeast 1<sup>st</sup> Court is a dead-end street with its terminus being the Intracoastal Waterway, which provides public access to the Intracoastal Waterway as envisioned. The terminus serves as a neighborhood pocket park with enhancements consisting of a park bench and trash can. Thus, all existing public access will be maintained. As previously stated, this portion of the Canal Street right-of-way is immediately adjacent to private property, has not been accessible to the public and there are no plans to improve Canal Street for any public purpose. It is noted, public access to the Intracoastal Waterway is provided by five (5) pocket parks that exist on the west side of the Intracoastal Waterway at street ends, as well as Veteran's Park, improved Marine Way/City Marina, Knowles Park, and Mangrove Park with additional opportunities through enhancements to the Donnelly Tract and FIND parcels 645 and 650.

In addition, per the Coastal Management Element Data Inventory and Analysis section (Pg. 3), of the City's Comprehensive Plan, *"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."*

Therefore, positive findings can be made that the proposed abandonment is consistent with the City's Always Delray Comprehensive Plan.

***B) That the abandonment does not, nor will not, prevent access to a lot of record.***

No lots use the abandonment area for access.

***C) That the abandonment will not result in detriment to the provision of access and/or utility services to adjacent properties or the general area.***

As previously stated, the abandonment of the City's interest will not result in detriment to the provision of access and/or utility services to adjacent properties or the general area.

The City has set a precedent over the years as it relates to the abandonment of Canal Street, with the most recent abandonment occurring on August 18, 2020. Based upon the above, positive findings can be made with respect to LDR Section 2.4.6(M)(5) and consistency with the City's Always Delray Comprehensive Plan. Therefore, approval of the abandonment of the portion of Canal Street abutting 823 NE 1<sup>st</sup> Court is respectfully requested.

Please let me know if you have any questions or require additional information. Thank you for your consideration.

Sincerely,

Jeffrey A. Costello, AICP, FRA-RA, Principal  
JC Planning Solutions, LLC