



## Legislation Text

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**TO: Mayor and Commissioners**  
**FROM: Anthea Giannotes, Development Services Director**  
**THROUGH: Terrence R. Moore, ICMA-CM**  
**DATE: June 18, 2024**

RESOLUTION NO. 104-24: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, PROVIDING FOR THE ABANDONMENT OF INTEREST IN A PORTION OF RIGHT-OF-WAY BISECTING 2001 S. FEDERAL HIGHWAY, TOTALING APPROXIMATELY FIVE THOUSAND THREE HUNDRED AND TWO SQUARE FEET, AS MORE PARTICULARLY DESCRIBED HEREIN; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES. (QUASI-JUDICIAL)

### **Recommended Action:**

Review and consider Resolution No. 104-24, a request to abandon a 20-foot-wide portion of City-owned Right-of-Way bisecting 2001 South Federal Highway, totaling approximately 5,302 square feet in area.

### **Background:**

The alley right-of-way under consideration for abandonment is requested to accommodate the expansion of the Delray Mazda facility located at 2001 South Federal Highway. The right-of-way bisects the property, which consists of Lots 1-13, Block 38 and a portion of Avenue "A" of the Plat of Del-Raton Park (recorded in 1926 in Plat Book 14, Pages 9 and 10), and Lots 15-28, inclusive, Lot 30, and parcel designated as "Parking Area" in Tract B of the Gateway Shopping Center Plat (recorded in 1957 in Plat Book 25, Page 76). The alley is depicted on the Gateway Shopping Center Plat as a 20-foot right-of-way south of Tract B.

A plat exemption is being simultaneously processed to legally combine the lots referenced above (which are only combined for tax purposes). The requested abandonment is a necessary precursor to the approval of the plat exemption and site plan consideration (submitted for concurrent consideration as an appealable item), due to the proposed configuration of the building.

### **LDR Section 2.4.9(B)(4)(d), Public Right of Way and Easement Abandonments**

*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.*

On April 20, 2024, the **Planning and Zoning Board** reviewed the subject request and recommended approval on a vote of 5-0. The Planning and Zoning Board recommendation is based on a determination that the request, and approval thereof, is consistent with the Comprehensive Plan and meets the criteria set forth in the Land Development Regulations. The City Engineer also recommends the approval of the subject request.

**LDR Section 2.4.9(B)(1), Abandonment of right-of-way: General**

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

The subject Right-of-Way was dedicated in perpetuity as a public street (alley) in the Plat of Gateway Shopping Center as recorded in Plat Book 25, Page 76 of the Public Records of Palm Beach County, Florida. In the event that the abandonment request is granted, the abandoned area will become part of Tract B.

**LDR Section 2.4.9(B)(4)(f), Abandonment of right-of-way: Procedure**

*If approved, the abandonment shall be approved 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.*

It has been determined by the City Engineer that if the City Commission approves the request to abandon the subject right-of-way, the abandonment should be approved concurrent with a general utility easement agreement to provide public and private utilities. The easement is also under consideration by the Commission concurrent with the abandonment request. The proposed general utility easement is provided as a separate agenda item, as well as a hold harmless agreement, right-of-way dedication, and sidewalk easement, all of which are necessary agreements related to the requested site plan modifications.

**LDR Section 2.4.9(B)(5), Abandonment of right-of-way: Conditions.**

*Conditions may be imposed upon an abandonment to:*

- (a) Ensure timely consummation.*
- (b) Ensure compliance with required findings.*
- (c) Require enhancement of the right-of-way proposed for abandonment in order to accomplish certain objectives and policies of the Comprehensive Plan e.g., street beautification.*
- (d) Require replacement easements and/or relocation of existing utilities, as may be appropriate.*
- (e) Cause reversion or voiding of the abandonment in the event of a failure to comply with other conditions.*

The applicant has provided a general utility easement (GUE) agreement for consideration. If approved, the abandonment will be recorded concurrently with the GUE.

**LDR Section 2.4.9(B)(6), Abandonment of right-of-way: 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;*
- (b) That the abandonment does not, nor will not, prevent access to a lot of record;*
- (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 the 20-foot-wide City-owned Right-of-Way has not been useable for its initially intended purpose

for several decades due to the building and site improvements, staff does not anticipate that the granting of the abandonment would further impede the use of the right-of-way for public purposes more than it already has been. As noted above, a GUE will be recorded, granting the City of Delray Beach a perpetual exclusive easement for the purpose of the construction and maintenance of public utilities/drainage facilities with full and free right to enter upon and to install, operate and maintain such facility.

The abandonment of this right-of-way is not anticipated to create an unsafe situation, as there is no existing ingress/egress to the alley, and the necessary utility infrastructure can still be provided. If further site plans modifications are necessitated or proposed, reviews of safety issues will be reviewed at such time.

**City Attorney Review:**

Resolution No. 104-24 is approved as to form and legal sufficiency.

**Funding Source:**

N/A

**Timing of Request:**

Approval of the abandonment is required prior to consideration of the general utility easement, hold harmless agreement, right-of-way dedication, and sidewalk easement.