



Legislation Text

File #: 19-379, Version: 1

TO: Mayor and Commissioners
FROM: Tim Stillings, Development Services Department
THROUGH: Neal de Jesus, Interim City Manager
DATE: May 7, 2019

RESOLUTION NO. 70-19: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, PROVIDING FOR THE ABANDONMENT OF INTEREST OF A SOUTHWEST PORTION OF THE HUNGERFORD CANAL TOTALING APPROXIMATELY THREE THOUSAND EIGHT HUNDRED AND FORTY-NINE (3,849) SQUARE FEET, LOCATED PERPENDICULAR TO THE C-15 CANAL, ABUTTING THE SOUTH PROPERTY LINE OF LOT 14, AS RECORDED IN THE REPLAT OF TROPIC PALM PLAT NO. 2, BOOK 33, PAGES 144 THROUGH 146 OF THE OFFICIAL RECORDS OF PALM BEACH COUNTY.

Recommended Action:

Motion to approve Resolution No. 70-19 formally abandoning the City's interest of upland area located at the southwest corner of the Hungerford canal, perpendicular to the C-15 canal, abutting the south property line of Lot 14 (1300 Cormorant Road), as recorded in the replat of Tropic Palm Plat No. 2, Book 33, Pages 144 through 146 of the Official Records of Palm Beach County, Florida, and as more particularly described in exhibit "A".

Background:

The property owner of 1300 Cormorant Road (Property) requests the abandonment of a 3,849 sf portion of upland canal area (Subject Area), contiguous to the Property. The Subject Area is located at the southwest corner of the Hungerford canal.

On January 13, 1958, the City of Delray Beach adopted Ordinance G-277 annexing the Tropic Palms subdivision. On February 11, 1958, the Tropic Palm Plat No. 2 was recorded in Official Records Book (ORB) 25, pages 135 through 136 (refer to page 5 of the staff report). The plat affirms 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...". In other words, the canal is dedicated for public use. It is important to note, the Property was platted north of its current location and at that time only the eastern portion of the Hungerford Canal was dredged (refer to page 4 of the staff report). On October 27, 1977, an approved replat of the Tropic Palm No. 2 was recorded in ORB 33, pages 144 through 146 of the public records of Palm Beach County, Florida, which reaffirmed the dedications (refer to page 5 of the staff report), but also reconfigured the area of the plat associated with the Property and a portion of the canal to the south of the subdivision.

In 1978, the existing house was built on Lot 14, whose address is 1300 Cormorant Road, as configured by the 1978 Replat Tropic Palm No. 2. In 1990, the property owner/applicant purchased the home. On April 18, 2000, permit #00-68072 was issued to build a 4' high aluminum fence on the east property line which intersects the proposed abandonment area. On January 3, 2003, permit #02-

82763 was issued for a boat dock, boat ramp, and seawall. The permitted improvements were approved by the City of Delray Beach building department and reviewed by the Palm Beach Department of Environmental Protection (ERM). The seawall "enclosed" the Subject Area in its present configuration and has been used for private purposed since the home was built in 1978.

On February 8, 2019, the Development Services Department received the proposed application requesting the abandonment of the Subject Area. The application was reviewed in accordance with LDR Section 2.4.6.(M). Abandonment of rights-of-way (ROW). In accordance with the City of Delray Beach Land Development Regulations (LDR) Section 2.2.2.(E)(6)(e), the Planning & Zoning Board shall review and make recommendations to the City Commission with respect to abandonment of right-of-way. On March 25, 2019, the Planning & Zoning Board considered the request and voted to recommend approval (5-0) of the request for abandonment; the property owner/applicant and also Board Chair Robin Bird recused himself from the vote.

LDR Section 2.4.6.(M)(5)(a)-(c) requires the City Commission must make the following findings prior to granting approval of an abandonment:

- 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 to service a 12" outfall pipe that is located along the northern property line of the Property. However, the City can only access the portion of the pipe from the subject canal area. If the subject canal area is abandoned, an easement will be provided by the applicant along the entire property line allowing the City full access to maintain the pipe.

With the exception of the referenced outfall pipe, there is no proposed need currently or proposed for the Subject Area. The canal flow is south to east; this corner of the canal is the backwater side of the flow. Any improvement to the canal and its function would not compel the removal of the existing improvements. With the recording of an easement as referenced, a positive finding is made.

- b) That the abandonment does not, nor will not, prevent access to a lot of record;

A positive finding is made as the abandonment does not, nor will not, prevent access to a lot of record. Access to the lot is provided from Cormorant Road.

- 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 stated in finding a), the Subject Area is currently utilized to maintain a portion of an existing outfall pipe. The proposed abandonment will not result in detriment to the provision of access and/or of utility services to adjacent properties or the general area with the provision of an easement along the northern property line for the referenced outfall pipe with the provision of the proposed easement. Therefore, a positive finding is made.

The LDRs provide that conditions, such as replacement easements, may be imposed upon an

abandonment. To satisfy the City's needs for access and maintenance of the referenced outfall pipe, an easement is required to be recorded prior to the recordation of the proposed abandonment, if approved.

City Attorney Review:

Approved as to form and legal sufficiency.

Funding Source/Financial Impact:

N/A

Timing of Request:

N/A