Legislation Text

File #: 21-110, **Version:** 1

TO: **Mayor and Commissioners**
FROM: **Anthea Gianniotes, Development Services Director**
THROUGH: **Jennifer Alvarez, Interim City Manager**
DATE: **February 9, 2021**

RESOLUTION NO. 24-21: 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 LYING WEST OF THE INTRACOASTAL WATERWAY AND ADJACENT TO THE PROPERTY LOCATED AT 823 NE 1ST COURT, DELRAY BEACH, FLORIDA, TOTALING APPROXIMATELY FIVE THOUSAND FIVE HUNDRED AND TWENTY-THREE SQUARE FEET (5,523 SQ. FT.), AS MORE PARTICULARLY DESCRIBED HEREIN; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES. (QUASI JUDICIAL)

Recommended Action:
Review and consider the Resolution No. 24-21 for an Abandonment of interest from the City in a portion of the Canal Street right-of-way.

Background:
The request for consideration is the abandonment of any interest from the City in a portion of the Canal Street right-of-way, lying east of and adjacent to the property located at 823 NE 1st Court. The unimproved area of right-of-way proposed for abandonment consists of 5,523 square feet (0.13 acre) and measures approximately 41.86 feet wide by 137.07 feet deep. The requested abandonment is being sought to aggregate the right-of-way area to the abutting lot located at 823 NE 1st Court to increase the yard area. This portion of Canal Street can be accessed from the subject property that submitted the request (823 NE 1st Court), the abutting residential parcel to the north (824 NE 2nd Street), the Intracostal Waterway, and NE 1st Court right-of-way.

Canal Street was originally dedicated in 1986 by the plat of Town of Linton (now Delray Beach), recorded in the Public Records of Palm Beach County in Plat Book 1, Page 3, as a 50-foot right-of-way. 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 right-of-way for the Intracoastal Waterway. According to Sheet 16A (Plat Book 17, Page 16A) of the plat set for Palm Beach County, all of Canal Street north of East Atlantic Avenue was included within the proposed right-of-way for the Intracoastal Waterway.

Along this stretch of Canal Street, the west 50 feet of the ultimate right-of-way for the Intracoastal Waterway overlaps with the 50 feet that was originally platted as public right-of-way via Plat Book 1, Page 3 of the City's original plat (Town of Linton). Therefore, the west right-of-way line of the Intracoastal Waterway now coincides with the west right-of-way line of Canal Street. While the City may have right-of-way via Canal Street, the Intracoastal Waterway is dedicated to the Army Corp of

Engineers. After the replat, the City maintained its right-of-way for Canal Street in combination with the easement in favor of the United States of America. Therefore, **even if the City were to abandon its interest to the subject area, the assignment and ability to revert this right-of-way to the receiving property cannot be achieved merely by abandonment by the City of Delray Beach. Consideration of the request is currently under review by the Army Corp of Engineers.**

Other portions of Canal Street have been abandoned in the past as follows:

- March 11, 1968: The City Commission abandoned a portion of Canal Street as shown on the Plat of Las Palmas Subdivision (Plat Book 10, Page 68).

- May 4, 2004: The City Commission abandoned a portion of Canal Street located at the northeast corner of NE 1st Street and the Intracoastal Waterway via Resolution No. 34-04.

- February 3, 2009: The City Commission abandoned a portion of Canal Street located at the southwest corner of NE 2nd Street and the Intracoastal Waterway via Resolution No. 10-09.

- August 18, 2020: The City Commission abandoned any interest from the City in a portion of the Canal Street right-of-way, lying east and adjacent to Lots 28 and 29 (828 NE 1st Court) via Resolution No. 95-20.

- January 5, 2021: The City Commission abandoned any interest from the City in a portion of the Canal Street right-of-way, lying east and adjacent to the property located at 824 NE 2nd Street via Resolution No. 0-21.

Pursuant to **LDR Section 2.4.6(M)(1) Abandonment of Right of Way - Rule**, public right-of-way may be abandoned (returned) to the fee description of 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 (plat) shall be divided at the center line and returned equally to the abutting parcels).

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

Mobility Element:
Policy MBL 2.7.7: *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.*
The area under consideration does not include any utilities. The City Engineer has indicated support for the City's abandonment of interest in Canal Street (subject area) but requires approval from the U.S. Army Corps of Engineers.

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*.
The subject request is in conflict with this Comprehensive Plan Policy as the right-of-way area is located along the Intracoastal Waterway, and it is technically public, although, the area appears and has functioned as an extension of a private yard. Unfortunately, the physical configuration and previous decisions over time to abandon portions of the Canal Street right-of-way limit the potential of creating a successful public amenity from the remaining right-of-way. The physical configuration

provides a narrow link to the park at the end of NE 2nd Street however, past abandonments disconnect any potential for certain public improvements, such as bike-ped route, that could have created a link between Veteran's Park and the residential neighborhoods. Without a cohesive connection among city streets, use of the area as a passive park for recreational activities, such as, fishing, bird watching, and nature viewing could be compromised by the lack of natural oversight to ensure a safe condition.

Coastal Management Element:
Policy CME 2.6.10: *Maximize opportunities for placemaking improvements that provide or enhance public access to the Intracoastal Waterway while protecting the environment*.
Policy CME 2.6.8*: 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.*
In the Comprehensive Plan it is noted that 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. Potential grant funding from the Florida Inland Navigation District (FIND) may be available to support new street-end parks and water access improvements. New amenities, such as benches, picnic tables, trash receptacles, and launches for non-motorized vessels may be desirable additions in the community. The area proposed to be abandoned qualifies based on its location (adjacent to the Intracoastal), access, size and current conditions.

The applicant's request and justification letter is attached.

Per **LDR Section 2.4.6 (M)(5),** prior to granting an abandonment, 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.
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.

At its meeting of January 25, 2021, the Planning and Zoning Board recommended approval on a 7 to 0 vote.

City Attorney Review:
Approved as to form and legal sufficiency.

Funding Source/Financial Impact:
N/A

Timing of Request:
N/A