



## Legislation Text

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**TO:** Mayor and Commissioners  
**FROM:** Anthea Gianniotis, Development Services Director  
**THROUGH:** Terrence R. Moore, ICMA-CM  
**DATE:** January 17, 2023

**RESOLUTION NO. 15-23:** 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 ALLEY LOCATED ALONG THE EASTERN AND NORTHERN PROPERTY LINES OF 213 SOUTHEAST 2ND AVENUE, TOTALING APPROXIMATELY 1,496 SQUARE FEET, AS MORE PARTICULARLY DESCRIBED HEREIN; RETAINING GENERAL UTILITY EASEMENT; REQUIRING THE SUBMITTAL OF A PLAT TO CONSUMMATE THE ABANDONMENT; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES. (QUASI-JUDICIAL)

### **Recommended Action:**

Review and consider Resolution No. 15-23, a privately-initiated request to abandon an unimproved portion of a City-owned right-of-way (alley) totaling approximately 1,496 square feet and located adjacent to 201 and 213 SE 2nd Avenue, and 206 SE 3rd Avenue.

### **Background:**

The request is for the abandonment of right-of-way consisting of an unimproved portion of a 12-foot to 16-foot-wide platted alley located north and east of Lot 5, south of Lot 1, and west of Lot 15, Block 87, as recorded in the plat of Linn's Addition to Osceola Park in Plat Book 1, page 133 of the Official Records of Palm Beach County, Florida. The subject area contains approximately 1,496 square feet.

The right-of-way under consideration is adjacent to 201 and 213 SE 2nd Avenue, and 206 SE 3rd Avenue. In the event that the abandonment request is granted, obligations may be incurred (i.e. additional land or additional property taxes) as the abandoned area will be split between the three abutting parcels. If approved, the receiving property owners will be obligated to maintain the area in accordance with City of Delray Beach Code of Ordinances, Land Development Regulations, and any other applicable local, state, and federal regulations.

The City Commission initially evaluated the requested alley abandonment on August 9, 2022 when a waiver to Central Business District (CBD) regulations that specify, "*streets and alleys may not be abandoned, vacated, or closed to accommodate new development*," was considered. The waiver request was ultimately approved by the City Commission via Resolution No. 97-22. The approval of the waiver request allowed for the application and full evaluation of the abandonment request for consideration by the Planning and Zoning Board and City Commission.

As required by Land Development Regulations (LDR) Section 2.4.6(M)(3)(e), Abandonment of right-of-way: Procedure, ... *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.*

The City Engineer has provided a review of the request (attached) and recommends that the abandonment be denied. The Planning and Zoning Board considered the request at its meeting of November 14, 2022. A recommendation to deny the request was made on a vote of 4 to 2 (Chris Brown was absent, Christina Morrison and Julen Blankenship dissented).

*As required by LDR Section 2.4.6(M)(3)(f), if approved, the abandonment shall be evidenced 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 consummated through the submission of a plat to include the receiving properties and the easements necessary to provide public and private utilities.

## Findings

Pursuant to **LDR Section 2.4.6(M)(5), 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.*

Alleys are and continue to be a critical part of the City of Delray Beach, especially the CBD. The Map of the Town of Linton Plan, 1895, includes an alley on almost every block within the core area of the City. The area surrounding the alley is now predominantly the area of the CBD with many of the alleys still intact, as well as those located throughout the residential neighborhood to the east. Alleys are a critical part of the CBD, which utilizes a form-based code to position buildings along street rights-of-ways, lining sidewalks with building facades, and relegating vehicular and service areas to the rear of buildings, many accessed by alleys. Downtown uses require back of house areas to allow the fronts and sides of buildings to be the highest quality. As such, in 2015, the amendments to the downtown regulations reinforced the use of alleys to achieve the desired form and pedestrian environment.

While the abandonment of alleys does not guarantee any adverse effects of surrendering City held property to private landowners, it does release the ability of the City to control the land and decisions made around it, at least in part. Indirect impacts of abandonments of rights-of-ways do include considerations for the scale, massing, density, intensity, and layout of a given site. Special consideration should be given to the zoning districts adjacent to the proposed abandonment. While the proposed receiving properties are zoned CBD, the adjacent neighborhood to the east is zoned Single Family Residential (R-1-A) and Residential Medium Density, both of which allow considerably less density and intensity than the former. The abandonment of this right-of-way is not anticipated to create an unsafe situation as the alley will be used for private uses after being returned to property owners. If further site plans modifications are necessitated or proposed, reviews of safety issues will

be reviewed at such time.

A full analysis of the request is provided in the attached Planning and Zoning Board Staff Report.

**City Attorney Review:**

Approved as to legal form and sufficiency.

**Funding Source/Financial Impact:**

N/A

**Timing of Request:**

If approved, the abandonment will not take effect until documented within a new plat.