



## Legislation Text

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**TO:** Mayor and Commissioners  
**FROM:** Anthea Gianniotis, Development Services Director  
**THROUGH:** Terrence R. Moore, ICMA-CM  
**DATE:** March 6, 2023

**RESOLUTION NO. 47-23:** 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 LOCATED NORTH OF WITHERSPOON LANE AND SOUTH OF BOND WAY, TOTALING APPROXIMATELY 2,062.5 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. 47-23, a privately-initiated request to abandon a portion of a City-owned right-of-way (alley) totaling approximately 2,062.5 square feet and located between Bond Way and Witherspoon Lane.

### **Background:**

The subject area is an unimproved alley right-of-way located north of 905, 907, and 909 Witherspoon Lane ("Subject Properties"). The alley was created by the First Addition to Kenmont Plat in 1945 as recorded in the Official Records Book (ORB) 22, page 24 of Palm Beach County Clerk of the Circuit Court. The alley, as originally platted, connected Palm Trail to NE 9<sup>th</sup> Avenue. The partial abandonment of the alley as recorded in ORB 1612, Page 256 abandoned portions of the alley to the west of the subject properties, disconnecting the right-of-way from NE 9<sup>th</sup> Street. The requested right-of-way abandonment is located adjacent to the prior abandonments.

The unimproved alley right-of-way contains overhead utilities, owned by the Florida Power and Light Company, to provide power to the adjacent properties. The properties surrounding the alley have either built fences up to the property line or encroached into the alley right-of-way. No City of Delray Beach utilities (stormwater, water, sewer) are located within the proposed abandonment area. The City Engineer has determined that, in the instance of an abandonment, a 6-foot wide General Utility Easement will be required to consummate the right-of-way abandonment.

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 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 alley contains areas where rights-of-ways were created both through means of a plat and dedication by single properties. Therefore, the property at 905 Witherspoon Lane may receive property based on the remaining area of the plat, while 907 and 909

Witherspoon Lane will receive land returned from the dedication by deed and by plat.

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 and recommends approval of the abandonment contingent upon the dedication of an exclusive 6-foot wide General Utility Easement to maintain the provision of utilities. The Planning and Zoning Board considered the request at its meeting of July 18, 2022. A recommendation to approve the request was made on a vote of 7 to 0.

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.*

It has been determined by the City Engineer that if the City Commission approves the request to abandon the subject right-of-way, the City shall require the creation of a General Utility Easement over the abandoned area. As the abandonment is adjacent to three separate properties, an easement shall be created over all three properties by each individual property owner. The easement agreements shall be recorded after the abandonment.

## 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.*

Further, pursuant to Policy NDC 2.2.1 of the **Neighborhoods, Districts, and Corridors Element of the Always Delray Comprehensive Plan**, the City shall *maintain and enhance the tightly gridded, interconnected street network that facilitates the dispersal of traffic and contributes to the character of Delray Beach using the following Complete Streets techniques, where appropriate:*

- *Design streets to be safe, comfortable, and attractive for pedestrians, cyclists, and drivers;*
- *Do not close or abandon streets or alleys and encourage connectivity of vehicular, pedestrian and bicycle routes.*
- *Provide links to regional bicycle/pedestrian networks;*
- *Reinvest in roadway infrastructure, such as intersections, signalization, and turning movements without increasing the number of through vehicular lanes.*

The gridded, interconnected street and alley network that facilitates the dispersal of traffic and contributes to the character of Delray Beach, especially in the Central Business District, is not impacted by this abandonment. The subject area is a dead-end, both physically *and* in connected right-of-way. The existing L-shaped alley that connects Bond Way to Palm Trail is not affected by the proposed abandonment. The portion of the alley is located between residential properties, and does not support commercial uses or provide for a separation from commercial or higher density uses. No

improvements are proposed for the area. Additionally, the proposed abandonment area does not serve any of the functions provided in NDC 2.2.1 of the Always Delray Comprehensive Plan. The following are also provided as part of the City Commission's consideration:

- The alley is not presently used by the City nor has the City identified a future need for this specific area of right-of-way aside from the provision of utilities which will be provided by a General Utility Easement.
- The alley could not be connected to a canal or other right-of-way.
- The subject abandonment area would not prevent access to a lot of record.
- The abandonment will not impact the provision of access or utilities to adjacent properties.
- The link is not identified on the Interim Bicycle and Pedestrian Master Plan.
- No roadway infrastructure is needed for reinvestment at this location.

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

On July 18, 2022, the Planning and Zoning Board, as the Local Planning Agency, formally reviewed the request at a public hearing and voted 7 to 0 to recommend approval of the abandonment.

**City Attorney Review:**

Approved as to legal form and sufficiency.

**Funding Source/Financial Impact:**

N/A

**Timing of Request:**

The Resolution will become effective upon adoption.