

CITY OF FORT PIERCE - OFFICE OF THE CITY ATTORNEY

MEMORANDUM

TO: Nicholas Mimms, City Manager (*via email*)

FROM: Robert V. Schwerer, City Attorney

SUBJECT: 401 South Indian River Drive – City Surplus Parcel
411 South Indian River Drive – Right of Way Abandonment

DATE: March 1, 2016

Legal was previously provided with a package of documents, copy attached, from the Planning Manager by way of memorandum dated February 11, 2016 seeking review and approval of two (2) proposed right of way abandonment Ordinances. The following is an abbreviated narrative of what you and I have already discussed in detail.

After review of the City's records and certain instruments that are recorded in the public records, it is determined that the described parcel of land in the vicinity of 401 South Indian River Drive is not right-of-way, but rather, a City owned property. This has been confirmed in consultation with the City Engineer. Accordingly, the ROW abandonment process is not applicable. Instead, if it is Staffs' recommendation, the parcel may be disposed of as surplus property in accordance with the procedure set out at Section 13 of the City Charter, copy attached for reference.

Concerning the parcel located adjacent to 411 South Indian River Drive, such parcel is confirmed as platted right-of-way. Accordingly, the process for ROW abandonment would apply, and the matter can proceed accordingly but the Ordinance will need revisions as discussed below.

First, the title of the proposed Ordinance abandoning the South Second Street right of way is incorrect. It refers to the right of way as "Lying on the West Side of South 2nd Street", when in fact the ROW strip is on the East side of South 2nd Street. This needs to be corrected.

Second, there is no information in the packet of documents showing that each of these parcels have been researched as to location of utilities or other facilities such as stormwater drainage structures for which the City will need to retain an easement. Please request Staff provide documentation that each of these parcels have been researched and

Robert V. Schwerer, City Attorney

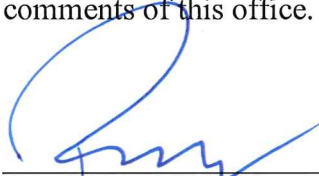
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the appropriate utility providers have been notified accordingly. It is also suggested that the City Engineer provide input as to whether a general easement should be retained for such future utilities or other underground facilities as may be needed for future use. In reference to the Second Street abandonment, the Staff Report indicates the applicant will provide a replacement easement along with property for utilities, sidewalks and lighting. The location and legal description of this easement should be identified and the proposed Ordinance abandoning the right of way should specify a reservation of such easement, or in the event the easement exceeds the width of the strip being abandoned, there should be a grant of easement document separately executed by the current owner.

As you are aware, it has been the past practice of the City as demonstrated by the right of way abandonments recently approved for the St. Andrew's and the Mosaic's projects that the City generally conditions the abandonment on the applicant or its successor obtaining site plan approval and commencing construction of the improvements on the parent parcel. In order to remain consistent with the City's past practices, it is recommended that the right of way abandonment on Second Street be subject to such condition, and that this condition be included in the Ordinance.

Please let me know if you have any questions concerning this memorandum or the comments of this office.



Robert V. Schwerer, Esq.
City Attorney

/mlp

Attachment

cc: Fort Pierce Mayor and Commissioners (*via email*)
John R. Andrews, City Engineer (*via email*)
Rebecca Grohall, Planning Manager (*via email*)

Sec. 13. - Sale or lease of certain city owned property; notice; deposit or bond.

- (a) The city commissioners of the city are hereby expressly authorized to lease or sell and convey any property, real or personal, belonging to the city and not required for public purposes, provided, however, that no lease beyond a term of one year or sale of any real property shall be made unless notice thereof shall be published once a week for two (2) consecutive weeks in some newspaper of general circulation published in the said city, calling for bids for the lease or purchase of the real estate so advertised to be leased or sold and in each case the bid of the highest bidder complying with the terms and conditions set forth in such notice shall be accepted unless the commissioners shall reject any and all bids. The city commissioners may require a deposit to be made or a surety bond to be given in such form or in such amount as the commission shall determine with each bid submitted.
- (b) In exercising the powers conferred in section 13(a) of this charter the city commissioners may lease or sell any such property, real or personal, for such price and upon such terms and conditions as the said commissioners shall deem proper provided, however, that in giving notice for the lease or sale of the real estate the terms and conditions shall be stated in such notice. In making any lease or sale or [of] property under this act, the commission is hereby authorized and empowered to lease or convey title to such property to the lessee or purchaser thereof and to execute a proper lease or conveyance thereof.
- (c) Whenever, in the opinion of the commission of the city, the city holds and possesses any real or personal property not needed for city purposes and such property may be to the best interest of the city, exchanged for other real or personal property which the city may desire to acquire for city purposes, the said commission of the city is authorized and empowered to make such an exchange; provided, however, before any exchange of property shall be effected a notice setting forth the terms and conditions of any such exchange of property shall be first published once a week for two (2) consecutive weeks in a newspaper of general circulation published in the city before the adoption by the commission of a resolution authorizing the exchange of such properties.
- (d) If the United States of America, or any department or agency thereof, the State of Florida or any political subdivision or agency thereof, or any municipality of this state should desire any real or personal property that may be owned by the city for public or community interest and welfare, then the United States of America, or any department or agency thereof, state or political subdivision[,] agency or municipality may apply to the commission for a conveyance or lease of such property. The commission, if satisfied that such property is required for such use and is not needed for city purposes, may thereupon convey or lease the same at private sale to the applicant for such price, whether nominal or otherwise, as such commission may fix regardless of the actual value of such property. The fact of such application being made, the purpose for which the property is to be used and the price or rent therefor shall be set out in a resolution duly adopted by such commission. In case of a lease the terms of such lease shall be recited in such resolution. No advertisement shall be required.
- (e)

The provisions of section 13, subsections a, b, c, and d, shall not be construed to cover the sale or disposition of those lands conveyed to the city for a specific purpose and containing a reversionary clause whereby said lands shall revert to the grantor or grantors upon failure to use said real property for such purposes.

- (f) The provisions of this section shall not apply to the sale of any public utility plant owned by the city.
- (g) The provisions of this section shall not apply to the sale or exchange by the city of any obsolete, outmoded, unusable or unserviceable piece of equipment or parts or supplies therefor.

(Laws of Fla., Ch. 65-1556, § 1)

Amendment note—Subsection (g) was added to § 13 by Ch. 65-1556, § 1.