



Interoffice Memorandum

Minutes

Roadway Agreement Committee

October 1, 2008

Members Present: Jim Harrison – Growth Management (Chairman)
Joe Kunkel – Public Works Department (Vice Chairman)
Ann Caswell – Real Estate Management Division
Renzo Nastasi – Transportation Planning Division
Ruby Rozier/Christine Lofye – Traffic Engineering Division
Diana Almodovar – Development Engineering Division
John Smogor – Planning Division

County Staff Present: Roberta Alfonso – County Attorney’s Office
Julie Naditz – Highway Construction Division
Heather Brownlie – Transportation Planning Division
Brian Sanders – Transportation Planning Division
Susan Martin– Risk Management Division
Gina Segui – Risk Management Division
Robin Hammel – Public Works Engineering Division
Frank Yokiel – Public Works Engineering Division
Juan Curi – Public Works Engineering Division

Mr. Harrison called the meeting to order at 8:46 a.m.

Approval of Minutes

The Committee reviewed the minutes from the September 17, 2008 Roadway Agreement Committee Meeting and changes were requested as follows:

On Page 2 Ms. Alfonso requested that line 50 be deleted completely.

On Page 3 in line 12 the word “final” needs to be added between the words “the” and “plans”.

On Page 3 in line 25 the word “easement” needs to be included after “City Utilities”.

On Page 3 in line 26 the word “to” needs to be added before “the County”.

On Page 3 in line 29 change the last phrase to read: “the right to place a utility easement in the road right-of-way.”

On Page 4 at the end of line 14 add a period to end the sentence.

On Page 4 in line 22 change “research this issue” to “review this language”.

On Page 4 in line 37 add “describing these acreages” after the word “approximately”.

On Page 7 in line 13 add “through the DRI” after the word “vested”.

On Page 7 in line 21 change “shall” to “should”.

On Page 7 in line 41 add the word “agreement” as the second word so it reads, “This agreement...”

On Page 10 in line 7 change the word “state” to “stated”.

On Page 10 line 25 change the word “build” to “built”.

On Page 11 change the ending time for the meeting which was not 9:41 a.m. more like 1:41 p.m. and rather than “Mr. Harrison adjourned the meeting” it should read “the meeting was adjourned at...”

Mr. Smogor made a motion, with a second by Ms. Caswell to approve the September 17, 2008 Roadway Agreement Committee Meeting minutes with listed changes and other typographical corrections and grammatical omissions. Motion carried unanimously.

Special Narcoossee Road Meeting – September 22, 2008

The Committee reviewed the Minutes from the Special Meeting held on September 22, 2008 and no changes were requested.

Mr. Nastasi made a motion, with a second by Mr. Harrison to approve the September 22, 2008 Special Narcoossee Road Meeting minutes as is. Motion carried unanimously.

Activity Update/Summary

Ms. Brownlie provided information on the RAC items which have been approved and are pending BCC currently.

Mr. Nastasi indicated that the Morgran and Avalon agreements need to be moved forward soon.

Ms. Brownlie provided the Committee with an overview of the Summerlake Right-of-Way issues.

TRIP-Narcoossee Road

Development: Eagle Creek and a group of other Developments on Narcoossee Road

Developer: Lake Nona and a group of Narcoossee Road Developers

Road Affected: Narcoossee Road

Present: Craig Langley; Jim Zboril, FJ Flynn, Leigh Ann Buzyniski, Kathryn Biddle

Previous RIFCC: 9/14/2005, 1/04/2006, 1/18/2006, 2/15/2006, 3/01/2006, 4/05/2006, 4/19/2006, 5/03/2006, 5/17/2006, 6/07/2006

Mr. Langley opened the discussion by outlining the reason for the changes needed to the agreement since Lake Nona is taking over from Eagle Creek as the lead developer.

Mr. Nastasi asked that the MOU items which had been included in the agreement be memorialized in a separate Memorandum of Understanding to be completed outside of this Committee.

The Committee reviewed the revised black-line distributed by Mr. Langley at the meeting.

On Page 1 Ms. Rozier asked that Scott Property be added to the list in the first paragraph.

On Page 1 Ms. Caswell asked that Yates/Ackerman be listed as the trust entity it is today even though it was not a trust in the original agreement. She also noted that Nanki International is not listed.

Ms. Buzyniski responded that Nanki International is not a party to the agreement and that they have dedicated the Right-of-Way needed for the roadway, but are not contributing funds for the road.

On Page 1 Ms. Alfonso asked that a reference to the Clerk of the Board be made as a location for the approved original agreement to be found.

The First Amendment document will not be recorded.

On Page 2 Ms. Alfonso asked that “Schedule A” be renamed “Exhibit A”.

On Page 2 Ms. Alfonso asked who the County Representative would be since the information was blank.

Mr. Harrison nominated the County Engineer to be the Orange County Representative for purposes of this agreement.

Mr. Curi pointed out that the Schedule A Construction Schedule was very tight and calls for construction to start in March 2009 and FDOT requires construction invoices by April 2009.

Mr. Zboril stated that the bid schedule was being revised to reflect February 2009 as the bid award date.

On Page 3 in Section 3(f) Ms. Rozier asked that the section begin with “The Project Manager shall be entitled...”

Mr. Zboril explained that the original agreement provided \$500,000 for CEI and that the balance would go to the Project Manager.

Ms. Alfonso asked that Section 10(a) from the original agreement be referenced in Section 3(f) of the amendment since it refers to this concept.

On Page 3 Ms. Rozier asked that the language in Section 5(b) be modified to reflect the successful bidder rather than just a general contractor.

On Page 3 Ms. Alfonso asked if the Third-Party Beneficiary language was sufficient for Public Works. Mr. Harrison responded that the language should be sufficient.

On Page 4 Mr. Nastasi had an issue with the language at the end of Section 5 requesting modification of the FDOT TRIP Agreement.

Mr. Nastasi indicated that TRIP funding is provided for regional connectivity and a portion of the road cannot just be left off the project.

Mr. Nastasi further stated that the First Amendment language does not obligate either party to complete the road within any time certain. Eventually the missing Right-of-Way will need to be acquired and the missing piece of the road constructed.

Mr. Zboril explained that the property owners do not control the Right-of-Way at this point. Scott Property is in default of their mortgage and is going into foreclosure. MPG Boggy has tax liens on the Right-of-Way and easements and the lender will not provide partial releases until the tax liens are paid.

Mr. Nastasi asked Mr. Langley and Ms. Buzyniski for a written summary of all of the issues for these two properties and any others which may be outstanding.

MPG has not funded their portion of the road costs into the Escrow fund.

On Page 4 in Section 6 Ms. Alfonso asked if the 10-day provision was acceptable to the County for review of invoices. Ms. Naditz responded that ten days was sufficient for Highway Construction to review.

On Page 5 Ms. Alfonso asked Mr. Langley to reference the MOU document in Section 6 of the First Amendment.

Schedule B will need to be reviewed by Highway Construction and Risk Management for insurance requirements.

On Page 7 in Section 11 the phrase “County Representative will attend all meetings” implies the County Engineer will attend. Need to add “or designee” and change “shall” to “shall be entitled”.

Ms. Alfonso suggested the Project Manager and the County Representative definitions on Page 2 could be listed as “or their designee” in the definition to allow different people to act in that capacity as needed.

On Page 7 Ms. Alfonso asked that in Section 12(a) the Force Majeure language be changed to the County Standard language.

On Page 8 Indemnification is addressed in Section 13 regarding Lake Nona.

On Page 9 Mr. Nastasi asked for a provision that the Escrow Agent provide a letter to the County stating what funds have been deposited into escrow prior to the MOU being approved.

The County needs some assurances that the escrow account will cover the expected costs prior to commencement of construction.

Mr. Zboril will be happy to provide this information prior to the award of the contract once the final bid figures have been determined.

Mr. Nastasi agreed that in the interim the escrow agent would provide a status update on the accounting for the project.

Mr. Nastasi stated that the original agreement provided vesting based on all Right-of-Way conveyances being made and all funds being provided to the escrow account. No vesting can be provided until all of the Right-of-Way and escrow funds are supplied by the developers as required.

Mr. Flynn asked for a copy of the escrow funding update and suggested that perhaps the City could assist in helping out with the issues some of the property owners are experiencing in order to provide resolution and move this project forward.

On Page 8 Section 14(a) discusses the defaulting party issues and how recovery can be made if a party decides to advance the funds to cover a defaulting parties' costs.

On Page 9 in Section 14(b) Ms. Caswell asked why the terms have changed from the original agreement regarding condemnation responsibilities. The word "shall" in the last sentence should be changed to "may" so the County has an option to pursue condemnation, but is not responsible for it.

Mr. Nastasi wants to hold off on this provision until the issues with MPG and Scott can be reviewed.

Mr. Curi agreed that another resolution other than condemnation is a necessity in order to meet the project schedule.

On Page 10 in Section 16(b) Ms. Alfonso questioned the detail of the Resolution of Disputes section regarding panelists and being screened and who would organize the panel and who would screen.

Mr. Zboril explained that the Project Manager would organize the panel.

Ms. Alfonso will follow-up by reviewing the Resolution of Disputes language further.

On Page 11 Ms. Rozier noted that Section 18(d) needs to be title case rather than all capital letters and should be re-formatted.

Ms. Martin requested the following changes from Page 5 of Schedule B: In the Certificate of Insurance Section, Item (a) should read: "Must list the Project Manager and Orange County as additional insured for all coverage except Workers' Compensation."

Ms. Martin also requested that the Indemnification language in Section 12 be revised to state: "The Contributing Parties...shall defend, indemnify, and save the Project manager and Orange County, and its agents, employees, directors and officers harmless from..."

On Page 22 Ms. Caswell stated that the signature block needs to be revised.

Mr. Nastasi will coordinate review of the property owner issues once he receives the summary of the issues from the attorneys.

Ms. Alfonso will research the Resolution of Disputes language.

Mr. Zboril asked if he can re-bid the project now while these other items are being worked on.

Mr. Harrison stated it would be at Lake Nona's risk for the cost of re-bidding.

Mr. Nastasi wanted to resolve the property owner issues since there cannot be an option not to build a portion of the road only in the bid package. The road must be completed by a date certain in the future.

Mr. Zboril does not want to proceed with the re-bid if the County will not support their alternatives but he does want to get the project into construction as soon as possible.

Mr. Harrison asked that this item be rescheduled for the October 15, 2008 Roadway Agreement Committee Meeting.

Village F – APF Road

Development: Bridgewater

Developer: Summerlake Development LLC

Road Affected: APF Road

Present: Daniel O’Keefe, Olan Hill, Eric Warren and Joe Tramell

Previous RAC: 6/4/2008

County Staff Present: Kirsten Warren, Bob Goff

Mr. Hill distributed the Village F map and cross sections along with a table of acreages by property owner and a list of total acreages depending on which roads were deemed impact fee credit eligible.

Mr. Hill discussed how all of the Right-of-Way to be dedicated was considered APF Credit Eligible, but not all of the Road Right-of-Way to be dedicated was considered Road Impact Fee Credit eligible.

Mr. O’Keefe stated that he felt the SAP required that all Right-of-Way to be dedicated should be eligible for \$22,500 per acre in Road Impact Fee Credits.

Mr. Nastasi stated that only roads which meet the impact fee eligible criteria can be eligible for Road Impact Fee Credits.

Mr. Nastasi stated that the SAP defines roadways as arterials, collectors and major collectors and none of the internal roads A, B or C qualify. Road A is a connection to a school only.

Mr. Kunkel sent a letter to Mr. O’Keefe, which Mr. O’Keefe has not yet seen, stating the County’s position on which roads are impact fee eligible and which are not.

Mr. O’Keefe read from the Policy from the SAP which provides a definition of APF lands and how the dedication of APF lands should be eligible for \$22,500 per acre in Road Impact Fee Credits.

Mr. Nastasi explained that credits cannot be granted for the dedication of Right-of-Way but not construction. Eligible roads would then be entitled to credits for both and there is no distinction.

Mr. Nastasi further explained that Road Impact Fee Credits are tied to the function of the road both in the SAP and the Orange County Code.

Mr. O’Keefe would like an opportunity to review Mr. Kunkel’s letter further.

The Committee reviewed the APF Deficiency Owners Form page-by-page.

On Page 1 Ms. Caswell asked that the County address be changed to the P.O. Box address.

On Page 1 Ms. Rozier asked that SAP be spelled out as “Specific Area Plan”.

Ms. Caswell asked that Evidence of Title be submitted for all property owners for whom APF agreements are being submitted.

On Page 2 Ms. Warren asked that “Park” be changed to “Park or Park(s)”.

Ms. Alfonso asked for a citation of the update to the APF/TDR Ordinance if it has been approved.

Mr. O’Keefe stated that Mr. Testerman was working on updates to the APF/TDR ordinance and that it had not yet been approved by the Board of County Commissioners.

Mr. O’Keefe is willing to wait for the ordinance changes to be completed before these agreements move forward since the revisions contemplated need to be in place to allow for property owners to purchase APF credits from one another.

Mr. Smogor will follow up with Mr. Testerman at Mr. Harrison’s direction and get an update on the changes proposed to the APF/TDR Ordinance.

On Page 4 Ms. Caswell explained that joint-use ponds would require a separate agreement. Mr. Harrison asked that a sentence be added to require a separate agreement for any joint-use ponds.

On Page 6 in Section 6 Mr. Harrison asked that the valuation needs to state \$22,500 per acre for road impact fee credits so there is no confusion with APF credit values.

On Page 6 Ms. Rozier asked that the reference to Section 5 be changed to Section 7.

On Page 8 Mr. Kunkel in Section 8 objected to the owner’s right to export fill or grade the property once conveyed without obtaining a permit from the County to do so and providing the County an opportunity to review.

On Page 7 in subsection (vi) Ms. Rozier asked that the ESA language be switched to the boilerplate to identify the Phase I and Phase II requirements.

On Page 9 in the last sentence of Section 10 change the word “and” to “an”.

On Page 10 in Section 15.1 the Remedies need to match for the County and the applicant. A subsection (iv) needs to be added to the Remedies for the County providing for any combination of the foregoing.

On Page 10 the Committee asked that the word “conveying” be changed to “any” in Section 13.

On Page 10 Ms. Alfonso asked that the recording statement be changed to match the boilerplate providing for thirty days in which to record.

Ms. Alfonso will also follow-up with Mr. O’Keefe on the Assignment language.

The Committee asked that these same changes be made to the APF Surplus Owners Form.

Ms. Alfonso outlined the sections which were different between the two documents.

Mr. Harrison asked Mr. O’Keefe to revise both documents with the changes requested at today’s meeting and for this item to be rescheduled to the October 15, 2008 Roadway Agreement Committee meeting.

CR 535 Segment A – Interlocal Agreement with the City of Winter Garden

Road Affected: CR 535

Present: Ed Williams, Kurt Ardaman, Art Miller, Don Cochran, Mark Black

Previous RAC: 5/16/2007, 6/20/2007, 11/07/2007, 1/30/2008, 2/6/2008, 2/20/2008, 9/17/2008

The Committee reviewed the blackline version of the agreement drafted by Mr. Ardaman page by page.

On Page 3 the word “Authority” is misspelled in the last recital.

On Page 3 in Section 2(a) Mr. Kunkel requested that the County have an opportunity to review and comment on the City’s utility plans.

On Page 4 Mr. Ardaman asked to add after “following:” the phrase “provisions shall be included”.

On Page 4 Mr. Ardaman will add a comma after “Utilities” and remove the comma after the word “widening” in the same sentence.

On Page 4 Mr. Smogor asked to add “or longer if mutually agreed upon by both parties” to the 120-day provision.

On Page 4 the word “utility” needs to be added after “County” in subsection (i).

On Page 4 the County cannot agree to a reverter clause if it can kick-in once construction has already begun. Mr. Ardaman agreed to add language to include an abandonment provision and an outside date of seven years.

On Page 5 the 120-day timeframe needs to be changed to 180 days for the County to complete the environmental audit and cemetery audit.

On Page 7 Mr. Kunkel raised the issue of the \$136,600.34 figure for pond mitigation.

Mr. Kunkel asked if these costs were for mitigation or if they related to the phosphorus issue which had to do with secondary impacts.

A discussion of the figures provided and a review of Ms. Cummings memorandum on the figures provided was included in the discussion.

An offer was made to split the difference between the County’s estimates of \$101,000 and the City’s estimates of \$131,000 at \$116,000; however the City representatives did not want to accept this compromise.

On Page 7 in Section 4(c) Mr. Curi asked Mr. Ardaman to add language to state where the fence would be located and when it would be constructed.

The County agreed to the fence cost proposal provided by the City of Winter Garden.

Mr. Nastasi asked that a cap amount be placed in the agreement for the cost of the fence and the figure of \$75,000 was agreed upon by both parties.

On Page 8 the word “and” needs to be changed to “which includes a portion of” in Section 5(b) in the second sentence.

On Page 9 Ms. Alfonso asked that in Section 6(b) there needs to be a reference to the cost cap at \$960,000 for the Utilities work.

On Page 10 Mr. Nastasi asked if a separate agreement in Section 6(c) is still appropriate and Mr. Ardaman suggested leaving the language in the agreement.

Mr. Nastasi had a concern that if the Utilities plans were not completed before construction by the County begins it could delay construction and the County would not meet the target dates specified in the agreement. Mr. Nastasi asked that a sentence be included to extend the 2011 date if the City Utilities plans are not yet completed by the time the County is ready to construct.

On Page 10 in Section 6(d) the City shall be responsible to direct the County’s contractor with respect to the City’s Utilities work and would have a City inspector inspect the project.

On Page 11 Mr. Kunkel stated that any future work would require a ROW Utilization Permit from the County and should be included in Subsection 6(e).

On Page 12 the check should be made payable to the City for the homeowner’s wall and not the HOA as stated in Section 7.

On Page 12 Section 7 needs to provide for access easements for maintenance of the wall to be constructed for the HOA.

On Page 12 both parties agreed that \$90,000 would be the cap amount for the HOA wall.

On Pages 15-16 Ms. Caswell asked that the signature blocks each be on a separate page.

Motion by Ms. Almodovar second by Mr. Smogor to approve the agreement with the changes made at today’s meeting, subject to final review by the Committee, subject to final review of the exhibits by the County Surveyor, and subject to the City agreeing with the \$116,000 figure as a compromise for the mitigation amount being placed into the agreement. Mr. Ardaman will ask the City Manager if this is acceptable to the City of Winter Garden. Motion carried unanimously.

Mr. Ardaman will prepare a final version of the agreement with all of the exhibits and send it to Ms. Brownlie for distribution in to final review.

If the City of Winter Garden cannot agree to the \$116,000 figure then this item will need to return to the Roadway Agreement Committee for further discussion.

International Corporate Park

Development: Innovation Way/Beachline Interchange Agreement
Developer: International Corporate Park, OOCEA, Orange County
Road Affected: Innovation Way/Beachline Interchange Agreement
Present: John Florio, Jim Pratt, Lionel Rubio
Previous RIFCC: 12/14/2005, 2/1/2006, 7/16/2008, 9/17/2008

Mr. Pratt outlined the major issues to be discussed at today's meeting:

- 1) County Contribution Amount
- 2) Impact Fee Credits
- 3) Remedies
- 4) Fees to be paid for Environmental Permits
- 5) Surplus Capacity
- 6) Impact Fee Zones
- 7) Change Orders

Mr. Nastasi explained that construction costs can be allocated to allow SLR to pay their portion of the costs for construction work performed in the Zone they want the most credits in. Road Impact Fee Credits are provided for construction costs incurred in that impact fee zone area.

Mr. Nastasi stated that in the future there will be an agreement with all other property owners in the area. The County should pursue reimbursement of their cash contribution from future property owners just as the developers will.

Mr. Nastasi would like to add language to this agreement to reflect a future reimbursement.

Mr. Harrison asked Mr. Kunkel and Ms. Hammel to determine what the County Contribution is by looking at the past Development Order requirements and calculating a figure.

Mr. Nastasi asked for a firm cost for improvements to be provided in order to arrive at the County's contribution.

Mr. Pratt offered to submit electronic copies of the Development Orders for the County's review.

Mr. Nastasi stated that any excess capacity created by the applicant would be controlled by the County and not the applicant.

Mr. Nastasi asked that the DRI be finalized before a refined study can be submitted to determine what the excess capacity will be.

Mr. Nastasi's preference is that this agreement goes to the BCC with the Development Order rather than before it since it could require amending this agreement in the short term.

Mr. Harrison asked Mr. Florio what the timeframe for the DO was. Mr. Florio responded that it would be March or April of 2009 realistically.

Mr. Florio explained that timing is the biggest issue since the developer is spending a lot of money already and has no agreements in place.

Mr. Nastasi stated he would rather see this agreement and the Road E agreement go with the DO in the Spring of 2009 as a package which would be the best possible approach.

Mr. Nastasi asked for a total construction cost and a breakdown of who would pay for which tasks. Mr. Florio stated this is a large request and that the task will take some time since OOCEA is raising the profile for their mainline improvements.

Mr. Pratt explained that capacity will be consumed by others prior to SLR being built out and that there is a concern regarding the level of service and not just vested rights. SLR would like some assurance that if additional improvements are needed later on that funding is in place for those improvements.

Mr. Nastasi stated that with the Multi-Modal Transportation District being planned for Innovation Way there would not be a problem on the surface roads. The problem would be with the Beachline Interchange itself.

Mr. Pratt asked to discuss the change order issue. His original proposal was that if a change order was necessary it would be made without review. If a discretionary change order was requested it could only be made if all three parties agreed and the asking party paid for the change order amount. OOCEA is now stating they have a \$12,000,000 cap on their total costs regardless of change orders.

Mr. Pratt asked that if a change order was needed to the flyover the County would need to review the information which was not the case in the original scenario.

Mr. Kunkel will review the original interchange agreement and determine the County's position on change orders.

Mr. Rubio submitted comments from OOCEA to Mr. Pratt for inclusion in the next revised draft of the amendment.

Mr. Harrison reviewed the follow-up items needed for this item:

- 1) Ms. Alfonso will follow up with Mr. Pratt regarding the Remedies language
- 2) Mr. Geiger will provide the Environmental Permit Fee information requested
- 3) Mr. Nastasi will work on the surplus capacity issues once Mr. Pratt redrafts
- 4) Mr. Kunkel will research the change order provision
- 5) Mr. Kunkel and Ms. Hammel will finalize the County Contribution figure

Mr. Pratt asked to be rescheduled to the November 12, 2008 Roadway Agreement Committee meeting so he can have additional time to re-draft the agreement.

Mr. Harrison adjourned the meeting at 12:48 p.m.