





Date: 06/06/2013		AGENDA ITEM		Item: 30
<input type="checkbox"/> Ordinance	<input checked="" type="checkbox"/> Resolution	<input type="checkbox"/> Budget Resolution	<input type="checkbox"/> Other	
Department: Public Works Division: Engineering				
Subject: Proposed Abandonment/Vacation of the Lennox Avenue Beach Approach in Daytona Beach				
John Angiulli Director Public Works 		Legal Jamie E. Seaman County Attorney 	County Manager's Office Rhonda Orr Deputy Director Financial and Administrative Services 	
Gerald Brinton Director Engineering 		Approved as to Form and Legality		
Council Action:				
Modification:				
Account Number(s): NA Total Item Budget: NA				
Staff Contact(s):		Phone:	Ext.	
Gerald N. Brinton, P.E.		386 736 5967	12294	
Jamie Seaman		386 736 5950	12951	
Summary/Highlights:				
TIME CERTAIN: June 6, 2013 at 2:15 p.m.				
<p>Glenn Storch, representing property owner 801-905 S. Atlantic, LP, pursuant to Florida Statute 336.09, petitions the county to abandon the Lennox Avenue beach approach, a 60-foot wide platted right of way lying within Oliver Terrace Atlantic City subdivision, map book 5, page 30 and Plat of Charlotte H. Oliver's Map of Sub of Lots 14 to 19 inclusive, 27 to 32 inclusive and 40 to 45 inclusive, as shown on map of C.G. Burgoyne's Subdivision of Atlantic City, FLA, map book 5, page 17. The platted beach approach is 60 feet by 240 feet.</p> <p>The petitioner is requesting this abandonment so that they can consolidate the land they own on both sides of Lennox Avenue and build a large condominium/hotel complex. The Lennox Avenue beach approach is open for pedestrian access to the beach and parking but not open to the public for vehicular access to the beach during the 10-month toll collection season.</p> <p>To comply with Section 161.55, Florida Statutes and Section 20-83, County Beach Code, the petitioner proposes granting a 15-foot wide easement to the county for a replacement pedestrian beach approach along the north boundary of their property, approximately 50 feet north of the existing Lennox Avenue. The petitioner is also proposing to convey an additional</p>				

50-foot wide easement for replacement of public parking on other land owned by a sister corporation south of Silver Beach Avenue near Wisteria Road. The pedestrian beach approach will be built concurrently with the condo/hotel complex. The existing Lennox Avenue approach will not be allowed to be closed until a temporary public pedestrian access to the beach is provided which will be signed and maintained throughout the construction phase and until the permanent beach access is completed and accepted.

Approval of the abandonment of Lennox Avenue beach approach is subject to compliance with the conditions stated in the attached resolution and summarized as follows:

- 1) Prior to conveyance of the permanent 15-foot wide easement, the applicant shall construct a walkway and walkover for public beach access and clearly demark it with county approved signage. Upon acceptance by the county of the beach walkover for maintenance, the county shall execute a county deed to release all interest in the Lennox Avenue beach approach.
- 2) Prior to conveyance of the 50-foot wide easement, the applicant shall construct a paved parking lot to be used exclusively by the county for off beach parking or other public use and a walkover to the beach on the easement. The parking lot shall have a minimum of 22 spaces plus one handicap space and two drive lanes for ingress and egress. All zoning, permitting and construction shall be the sole responsibility and cost of the applicant. All necessary approval and permits required by the City of Daytona Beach and any other permitting agency shall be secured prior to the closure of the Lennox Avenue beach approach. Any requirements for stormwater retention, landscaping, setbacks, or other regulatory requirements that would reduce the maximum number of spaces shall not be placed within the 50-foot wide easement.
- 3) Failure to meet the conditions and to obtain recordation of the County Engineer's certificate acknowledging fulfillment of the conditions within three (3) years of adoption of the resolution shall serve to automatically repeal this resolution and the vacations shall be null and void.

The resolution, if approved, will not be recorded until all of the utility providers have provided letters of no objection. Surrounding property owners were notified of the petitioner's intentions and several have either voiced or e-mailed concerns or objections.

Staff recommends approval.

Recommended Motion: Approval



Date: 5/21/13
 G:\Projects\12-030\ProjFile

Graphic Representation Only

Lennox Avenue Abandonment with Easement Exchange Areas

30 347 Proposed Abandonment/Vacation of the Lennox Avenue Beach Approach in Daytona Beach



RESOLUTION 2013-_____

**RESOLUTION VACATING AND ABANDONING
CERTAIN RIGHT OF WAY, EASEMENT OR LAND IN
VOLUSIA COUNTY, FLORIDA; PROVIDING AN
EFFECTIVE DATE.**

WHEREAS, the County of Volusia, Florida, upon the request of BAYSHORE CAPITAL, INC., a Canadian corporation, 801-905 S. ATLANTIC LP, a Delaware limited partnership, and 1405-1431 S. ATLANTIC LP, a Delaware limited partnership, did set a time and place for a public hearing pursuant to Resolution No. 93-110 and Resolution No. 93-111 to disclaim, discontinue, release, close, vacate, abandon and renounce any right of said County and Public in and to the right of way, easement or land, more particularly described as follows:

That portion of Lennox Avenue, a sixty foot wide road, as shown on the Plat of Charlotte H. Oliver's Map of Sub of Lots 14 to 19 inclusive, 27 to 32 inclusive and 40 to 45 inclusive, as shown on map of C.G. Burgoyne's subdivision of Atlantic City, FLA as recorded in Map Book 5, Page 17 of the Public Records of Volusia County, Florida which lies south and east of the southerly extension of the west line of Lot 29, Block B of said subdivision AND as shown on the plat of Oliver Terrace recorded in Map Book 5, Page 30 of the Public Records of Volusia County, Florida which lies north and east of the northerly extension of the west line of Block A of said subdivision and lying easterly of the right of way line of State Road A1A.

WHEREAS, Notice of said Public Hearing was published as required by the laws of the State of Florida; and

WHEREAS, a Public Hearing regarding the disclaiming, discontinuing, releasing, closing, vacating and abandoning of a certain right of way, easement or land, or portion thereof, was held on the sixth day of June, 2013, to determine whether or not said County Council would disclaim, discontinue, release, close, vacate or abandon the aforesaid right of way, easement or land, or any portion thereof, in Volusia County, Florida; and

WHEREAS, the County Council of Volusia County, Florida, pursuant to said hearing is now of the opinion and so finds and determines that a portion of said right of way, easement or land hereinafter mentioned, referred to and designated should be disclaimed, discontinued, released, closed, vacated and abandoned and any right, title and interest of said County and Public in and to same is hereby renounced and disclaimed, subject to conditions set forth herein.

NOW THEREFORE BE IT RESOLVED BY THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA, IN OPEN MEETING DULY ASSEMBLED AT THE THOMAS C. KELLY ADMINISTRATION CENTER, COUNTY COUNCIL MEETING ROOM, IN THE CITY OF DELAND, FLORIDA, THIS 6th DAY OF JUNE, A.D. 2013, AS FOLLOWS:

SECTION I: That the following land mentioned and referred to hereinafter and further described as follows, to-wit:

That portion of Lennox Avenue, a sixty foot wide road, as shown on the Plat of Charlotte H. Oliver's Map of Sub of Lots 14 to 19 inclusive, 27 to 32 inclusive and 40 to 45 inclusive, as shown on map of C.G. Burgoyne's subdivision of Atlantic City, FLA as recorded in Map Book 5, Page 17 of the Public Records of Volusia County, Florida which lies south and east of the southerly extension of the west line of Lot 29, Block B of said subdivision AND as shown on the plat of Oliver Terrace recorded in Map Book 5, Page 30 of the Public Records of Volusia County, Florida which lies north and east of the northerly extension of the west line of Block A of said subdivision and lying easterly of the right of way line of State Road A1A.

is hereby disclaimed, discontinued, released, closed, vacated and abandoned and any right, title or interest of the County and Public in and to said lands, as above described by deed or delineated on any recorded map or plat, is and are hereby renounced and disclaimed.

SECTION II: The effect of this resolution shall be, and is to disclaim, discontinue, release, close, vacate and abandon the above described land, to renounce or disclaim any right, title or interest of the County and Public in and to said land delineated on any public

map or plat or as described by deed to abrogate, relinquish, release any or all easements, legal or equitable title heretofore owned, held, claimed or used by or on behalf of the Public therein or thereto.

The release of the right, title or interest of the County and Public extends from South Atlantic Avenue (State Road A1A) right of way generally easterly approximately two hundred forty feet (240'). Nothing contained herein shall be construed to vacate, release, disclaim, discontinue, close or abandon the customary right or use of the beach or any right, title, interest, use or enjoyment of the public, the County or any other governmental entity in the Atlantic Ocean Beach as being shown and dedicated on the aforementioned plats.

NOTICE of the adoption of this resolution shall be published one time within 30 days of the date of the adoption of this resolution in a newspaper in Volusia County, Florida, qualified to publish legal notices.

SECTION III: The release of the right, title or interest of the County and Public provided in Sections I and II above is contingent upon the fulfillment of the following conditions and the vacation shall take effect only upon the recordation no later than 3 years after adoption of this resolution on the public records of Volusia County of a certificate acknowledging fulfillment of the conditions subsequent executed by the County Engineer and endorsed by the County Manager. The conditions are:

1. Grant to the County of Volusia a 50-foot wide irrevocable perpetual exclusive easement for replacement off beach parking in a form acceptable to the county over, through and upon property more specifically described as

The South 50 feet of that property described in Official Records Book 6541, Page 1546, of the Public Records of Volusia County, Florida,

also known as the south 12.88 feet of Lot 1, and the North 37.12 feet of Lot 2, Esther M. Williams Subdivision, as recorded in Map Book 6, Page 27, of the Public Records of Volusia County Florida.

2. Prior to conveyance of the 50-foot wide easement, the applicant shall construct a paved parking lot to be used exclusively for use by the county for off beach parking or other public use and a walkover to the beach on the easement. The parking lot shall have a minimum of 22 spaces plus 1 handicap space and 2 drive lanes for ingress and egress. All zoning, permitting and construction shall be the sole responsibility and cost of the applicant. All necessary approval and permits required by the City of Daytona Beach and any other permitting agency shall be secured prior to the closure of the Lennox Avenue beach approach. Any requirements for stormwater retention, landscaping, setbacks, or other regulatory requirements that would reduce the maximum number of spaces shall not be placed within the 50-foot wide easement.

3. Grant to the County of Volusia a 15-foot wide irrevocable perpetual exclusive easement for public beach access in a form acceptable to the county over, through and upon property more specifically described as:

The North 15 feet of Lot 29, Block "B", as shown on the plat of Charlotte H. Oliver's Map of the Sub of Lots 14 to 19 inclusive, 27 to 32 inclusive and 40 to 45 inclusive, Book 5, Page 17, Public Records of Volusia County, Florida, Less and except that portion deeded to the State of Florida for State Road A1A Right of Way, described in OR Book 549, Page 351, Public Records of Volusia County, Florida.

4. The applicant shall provide a temporary beach access for pedestrian use in a form and location acceptable to the County over, through and upon the south 15 feet of Tax Parcel 5309-15-01-0218, or such other location agreeable to the County and the applicant. Such temporary beach access shall be open and available with clearly

marked signage for public use prior to the closure of the Lennox Avenue beach approach and shall remain open until the permanent beach access is constructed and accepted by the County.

5. Prior to conveyance of the permanent 15-foot wide easement, the applicant shall construct a walkway and walkover for public beach access and clearly demark it with County approved signage that it is unequivocally available and accessible for public use.
6. Upon acceptance by the County of the off beach parking and the replacement beach walkover for maintenance pursuant to the section 20-83 of the Beach Code and upon recordation of the permanent irrevocable easements granted to the County as set forth herein, the County shall execute all documents, including a county deed, to release and relinquish any and all interest of the County and public in and to the Lennox Avenue beach approach.
7. Failure to meet the conditions and to obtain recordation of the County Engineer's certificate within 3 years of adoption of this resolution shall serve to automatically repeal this resolution and the vacation in Sections I and II above shall be null and void ab initio.

DONE AND ORDERED IN OPEN MEETING.

COUNTY COUNCIL
COUNTY OF VOLUSIA, FLORIDA

ATTEST:

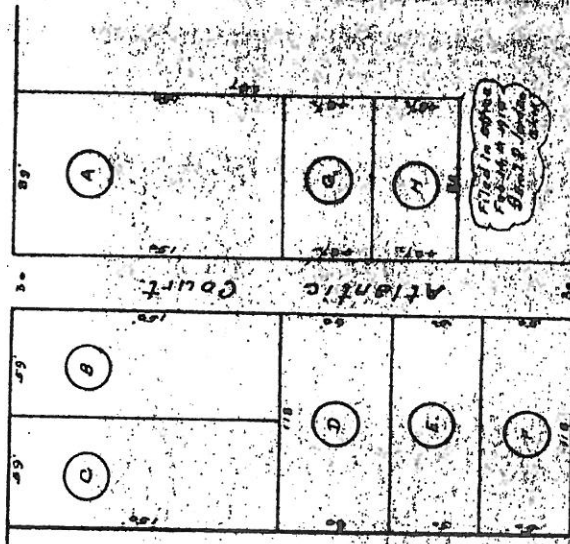
Jason P. Davis, County Chair

James T. Dinneen, County Manager

Resolution 2013-____
Page 5 of 5

Revised Plat of
BARRETT SUB
 of Lot 20 and part of Lot 19 and 21, Blk. C of the City of Deland, in Volusia County, Florida - 1912. Scale 1 inch = 40 ft. - surveyed and certified carried by Alfred Howard. Revised, 19th June, 1913.

Minnesota Ave.

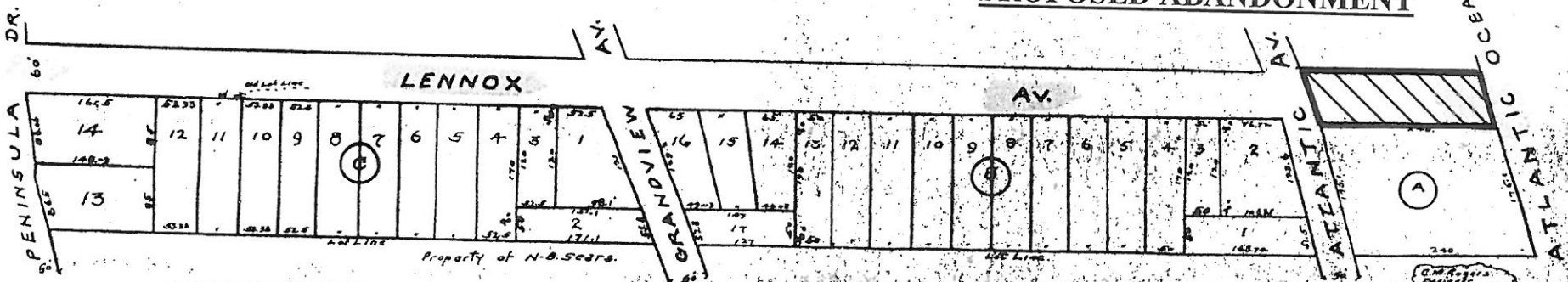


Filed in Office
 Feb 27 1915
 S. D. Jordan
 Clerk

State of Florida
 Volusia County
 William J. Graddock being duly sworn
 says that the above plat is true and correct
 and that he files same for record
 in Volusia County
 this 20th day of February, 1915
 My Commission Expires February 1917

5 30
 BOOK 17 PAGE 153

PROPOSED ABANDONMENT



Filed in Office Feb 27, 1915
 Sam'l. D. Jordan, Clerk,
 H. Clifford Smith - B.C.

OLIVER TERRACE
 Subdivision of Property
 Daytona Beach,
 Florida.

State of Florida
 County of Volusia
 Elmer Oliver and Josephine Norris being duly sworn
 say that they are owners of lots 21, 22, 23, 24, and the S 70 of lots 20, 25, and 26
 of Cadogan's Addition, being a portion of Lot 8, Sec 9, T. 15 S. R. 32 E. Surveyed
 by D. J. Rogers Civil Engineer in 1897. That Josephine Norris is owner of that part
 of above said lots 21, 22, 23, 24, 25, 26, Block C, and that Elmer Oliver
 is owner of lots 21, 22, 23, 24, 25, 26, Block C, and that they have
 caused this plat to be made in the public interest and filed for record.

Elmer Oliver
 Josephine Norris
 Signed, sworn to and acknowledged before me this
 20th day of February, 1915.
 H. Clifford Smith
 Notary Public
 My Commission Expires Feb 11-17.

A TRUE COPY OF MAPS
 IN BOOK NO. 5
 PAGE NO. 30
 H. Clifford Smith
 CLERK

PETITION FOR THE ABANDONMENT OF RIGHT OF WAY

TO: THE HONORABLE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA:

The Petitioner, **801-905 S. Atlantic, LP**, by and through its undersigned counsel, respectfully requests your Honorable Body to renounce and disclaim any right of the County and the Public in and to the following right of way, land or interest therein, legally described as:

ATTACHED AND INCORPORATED AS EXHIBIT "A"

and the rights of the Public thereto be relinquished.

The reasons for requesting this abandonment of the above-described right of way are:

Petitioner requests that the Lenox Avenue right of way be vacated between S.R. A1A and the Atlantic coastline for the purposes of building a mixed-use development. The Petitioner intends to enter into an agreement with the County to exchange the vacated easterly portion of the Lenox Avenue right of way for certain parcels of land, easements and improvements, which will provide an equal or better opportunity for public beach access than existed previously at Lenox Avenue.

WHEREFORE, we pray that your Honorable Body adopt a Resolution setting forth a time for public hearing for the purpose of considering and taking appropriate action in compliance with Section 336.09(1)(b), Florida Statutes, and any amendments thereto and/or Volusia County Resolution No. 90-161, as amended.

The Petitioner, being the owner of the property bordering the subject street or land or interest therein, hereby deposits the required sum for processing this request as established by the Volusia County Council.

Signed this 26 day of April, 2013.

Glenn D. Storch, Esq.
Storch and Harris, LLC
420 South Nova Road
Daytona Beach, Florida 32114
Phone: 386-238-8383
Florida Bar #302228
Attorney for Petitioner, 801-905 S. Atlantic, LP

TAX PARCEL I.D. # 5309-27-02-0290
5309-26-01-0010



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EXHIBIT "A"

Legal Description of Lennox Avenue Right-of-Way

That portion of Lennox Avenue, a sixty foot wide road, as shown on the Plat of Charlotte H. Oliver's Map of Sub of Lots 14 to 19 inclusive, 27 to 32 inclusive and 40 to 45 inclusive, as shown on map of C.G. Burgoyne's subdivision of Atlantic City, FLA as recorded in Map Book 5, Page 17 of the Public Records of Volusia County, Florida which lies south and east of the southerly extension of the west line of Lot 29, Block B of said subdivision AND as shown on the plat of Oliver Terrace recorded in Map Book 5, Page 30 of the Public Records of Volusia County, Florida which lies north and east of the northerly extension of the west line of Block A of said subdivision.