

ADMINISTRATIVE MEMORANDUM NO. 18-335

TO: Planning and Zoning Board
VIA: David L. Recor, ICMA-CM, Director of Development Services 
VIA: Jennifer Gomez, AICP, Assistant Director of Development Services 
FROM: Maggie Barszewski, AICP, Planner 
SUBJECT: SIDEWALK Right-of-Way Abandonment Request located within the NE 23 Avenue Right-of-way P&Z #19-18000003/ November 18, 2018 P&Z Meeting
DATE: November 6, 2018

The following request will not involve a closure of any portion of the NE 23 Avenue roadway, and will not change the function of the sidewalks requested for abandonment. If approved, the proposed sidewalk abandonment request would provide the dedication of a public easement, and shift the ownership and maintenance responsibilities of the subject-sidewalk area to the applicant.

This is a request to abandon portions of two sidewalks included with the Right-of-Way located at NE 23 Avenue; and to abandon two small triangular parcels within the previously abandoned NE 15th Street right-of-way that should have been included with the rest of the street. These requests are being made by Graham Penn, Esq., on behalf of AMP IV – Hidden Harbour, LLC. The Applicant is requesting the NE 23rd Avenue abandonments in order to enable the 'Harborside at Hidden Harbour' Project's structural supports and building to be located within the area to be abandoned; and to provide a public easement. The Applicant has submitted a site plan that was reviewed at the July 3, 2019 DRC.

The subject property is located on the sidewalk portions of NE 23rd Avenue, just south of NE 16th Street; and two small triangular right-of-way remnants within the previously abandoned NE 15th Street Right-of-way.

CITY OF POMPANO BEACH LOCATION MAP



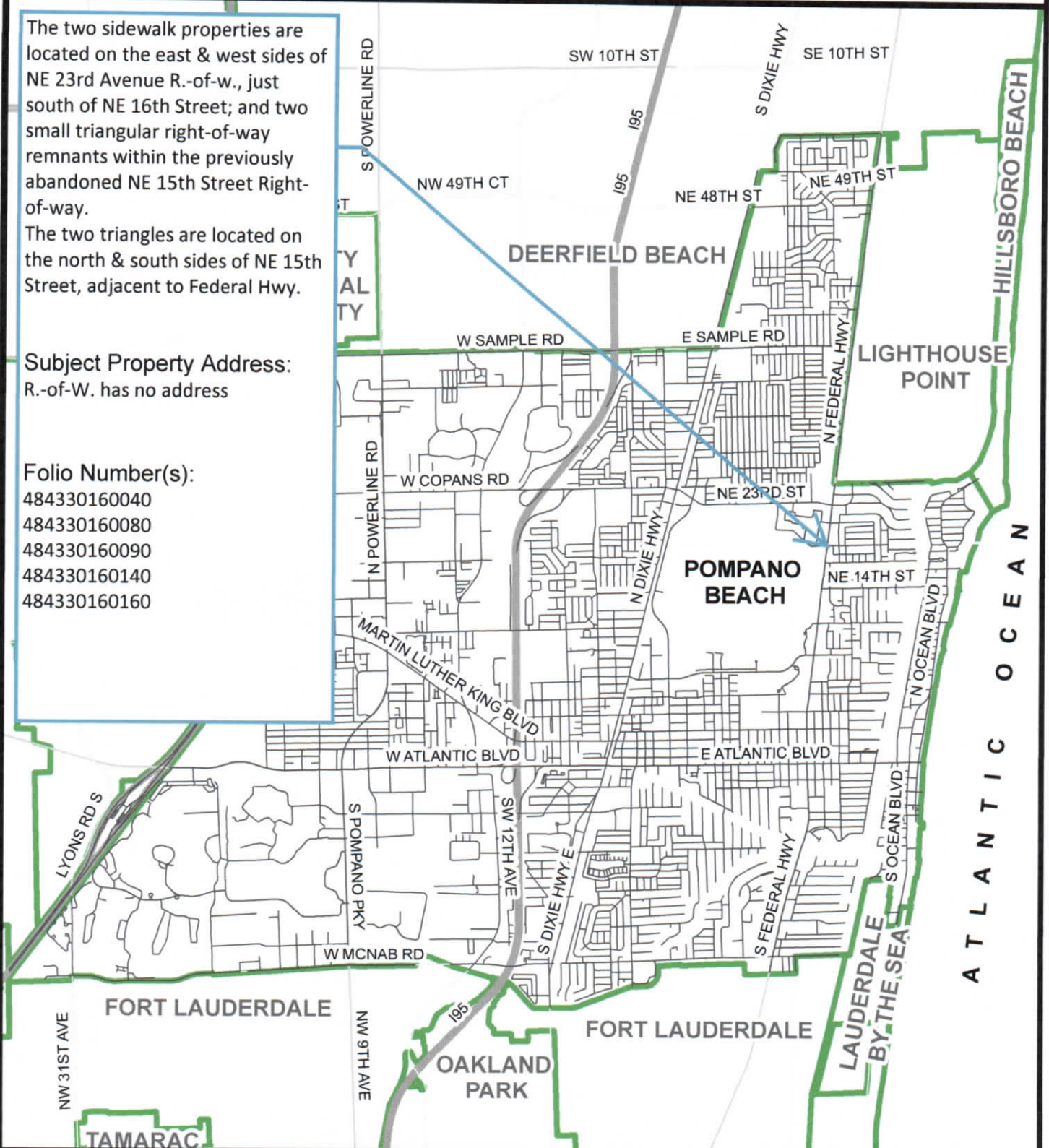
The two sidewalk properties are located on the east & west sides of NE 23rd Avenue R.-of-w., just south of NE 16th Street; and two small triangular right-of-way remnants within the previously abandoned NE 15th Street Right-of-way.

The two triangles are located on the north & south sides of NE 15th Street, adjacent to Federal Hwy.

Subject Property Address:
R.-of-W. has no address

Folio Number(s):

484330160040
484330160080
484330160090
484330160140
484330160160



1 in = 1 miles

PREPARED BY:
DEPARTMENT OF
DEVELOPMENT SERVICES

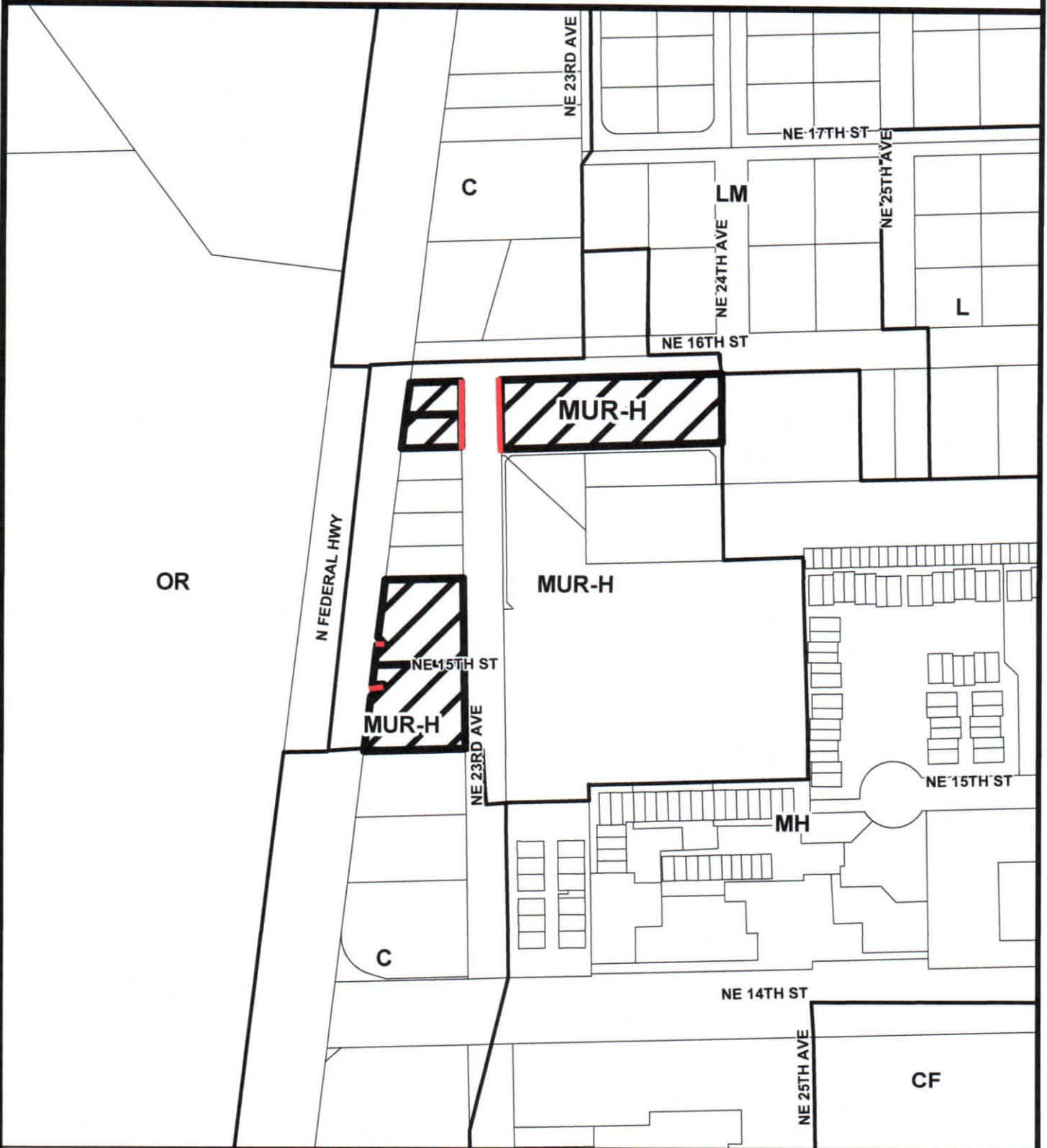
CITY OF POMPANO BEACH
AERIAL MAP



1 in = 208 ft

PREPARED BY:
DEPARTMENT OF
DEVELOPMENT SERVICES

CITY OF POMPANO BEACH
OFFICIAL LAND USE MAP



1 in = 208 ft

PREPARED BY:
DEPARTMENT OF
DEVELOPMENT SERVICES



LEGEND

FOR LAND USE PLAN		FOR ZONING MAP	
Symbol	Classification Units/ Acre	Symbol	District
		RS-1	Single-Family Residence 1
L	Low (1-5 DU/AC)	RS-2	Single-Family Residence 2
LM	Low- Medium (5-10 DU/AC)	RS-3	Single-Family Residence 3
M	Medium (10-16 DU/AC)	RS-4	Single-Family Residence 4
MH	Medium-High 16-25 DU/AC)	RS-L	Single-Family Residence Leisureville
H	High (25-46 DU/AC)		
12	Irregular Density	RD-1	Two- Family Residence
36	Irregular Density		
		RM-7	Multiple-Family Residence 7
C	Commercial	RM-12	Multiple-Family Residence 12
CR	Commercial Recreation	RM-20	Multiple-Family Residence 20
		RM-30	Multiple-Family Residence 30
I	Industrial	RM-45	Multiple-Family Residence 45
		MH-12	Mobile Home Park
T	Transportation		
		B-1	Limited Business
U	Utilities	B-2	Neighborhood Business
		* B-3	General Business
CF	Community Facilities	B-4	Heavy Business
		* M-1	Marina Business
OR	Recreation & Open Space	CR	Commerical Recreation
W	Water	I-1	General Industrial
		I-1X	Special Industrial
RAC	Regional Activity Center	O-IP	Office Industrial Park
		M-2	Marina Industrial
LAC	Local Activity Center		
		TO	Transit Oriented
* MUR-H	Mixed Use Residential - High	PR	Parks & Recreation
		CF	Community Facilities
DPTOC	Downtown Pompano	PU	Public Utility
	Transit Oriented Corridor	T	Transportation
	Number	BP	Business Parking
		LAC	Local Activity Center
		RPUD	Residential Planned Unit Dev.
		PCD	Planned Commercial Development
		PD-TO	Planned Development - Transit Oriented
		* PD-I	Planned Development - Infill
		RM-45 HR	Multiple-Family Residence 45 High Rise-Overlay
		AOD	Atlantic Boulevard Overlay District
		CRAO	Community Redevelopment Area Overlay
		NCO	Neighborhood Conservation Overlay
		APO	Air Park Overlay
		DP	Downtown Pompano Beach Overlay

REVIEW AND SUMMARY

A. The following Service Providers commented on this request (all such comments must be received prior to City Commission unless conditioned otherwise):

Community Redevelopment Agency	CRA has no objection
Code Compliance	No Comments have been received
Fire Department:	Fire Department has no objection
Public Works Department:	Public Works has no objection
Development Services Department:	No objection if perpetual public access easement is retained.
Utilities Department:	No Comments have been received
FP&L:	No Comments have been received
FDOT	No Comments have been received
AT&T:	No Comments have been received
TECO Gas:	No Comments have been received
Comcast Cable:	No Comments have been received

B. Development Services Department staff submits the following factual information which is relevant to this abandonment request:

1. The property to be abandoned is located along a portion of the east and west sides of the NE 23rd Avenue right-of-way (see Attachment 1).
2. The property to be abandoned also includes two small triangles, totaling approximately 222.7 square feet, located on the north and south sides of the NE 15th Street right-of-way (also illustrated in Attachment 1). These areas were inadvertently omitted at the time of the NE 15th Street abandonment in 1999 (see Ordinance 2000-14 attached).
3. The applicant has submitted an agreement for a "Grant of Perpetual Easement and Maintenance [for] the NE 23 Avenue Sidewalk Areas" requested to be abandoned (see attachment II). The City Attorney is reviewing it and if it is found sufficient, the agreement would be heard at the same meeting that this abandonment request would be considered.

C. Review Standards

Section 155.2431D. 1. & 2. states that an application for vacation or abandonment of a public right-of-way or easement shall be approved only on a finding that all of the following standards are met:

1. The right-of-way or easement is not now, or in the foreseeable future, of any benefit to the city or its inhabitants; and
2. Vacation or abandonment of the right-of-way or easement is consistent with the comprehensive plan.

D. Staff Analysis

The Harborside at Hidden Harbour Rezoning Ordinance was recommended for approval at the August 28 Planning and Zoning Board hearing. It is scheduled for the November 12th City Commission meeting for first reading. The Harborside project is bisected north to south by NE 23rd Avenue. The proposed Master Plan included in the rezoning depicts an elevated pedestrian bridge located over the two travel lanes off the

street. The sidewalks are proposed to be widened and developed as arcades. As mentioned in Section B, above, the applicant has submitted a Perpetual Easement and Maintenance Agreement providing a perpetual non-exclusive easement on, in, and over the sidewalk area (proposed for abandonment) for the purpose of providing public pedestrian access.

This perpetual easement is a requirement in order for the request to meet Section 155.2431D.1., mentioned above. The perpetual easement will preserve the public use and enjoyment of such sidewalks now and in the foreseeable future. The other two triangular areas requested for abandonment are viewed by Staff as having no public benefit now or in the future. These two small remnants of a previous abandonment should therefore be abandoned with no easement necessary, and are being proposed in order to clear up the title of the property.

DEPARTMENT RECOMMENDATION

Given the information provided to the Board, staff provides the following alternative motions for the Board's review.

Alternative Motions

I- Approve with conditions

Recommend approval to the City Commission; however it will not be placed on a City Commission agenda until the following conditions are met:

1. A public access easement over the subject-sidewalk areas is retained in perpetuity that satisfies the Development Services Department; and
2. A utility easement for possible assets per the Utility Department's discretion, or the provision of an agreement to relocate of any assets the Utility Department deems necessary; and
3. All other positive comments are received from each service provider, or until 60 days from the date of this recommendation, whichever occurs first.

II- Table

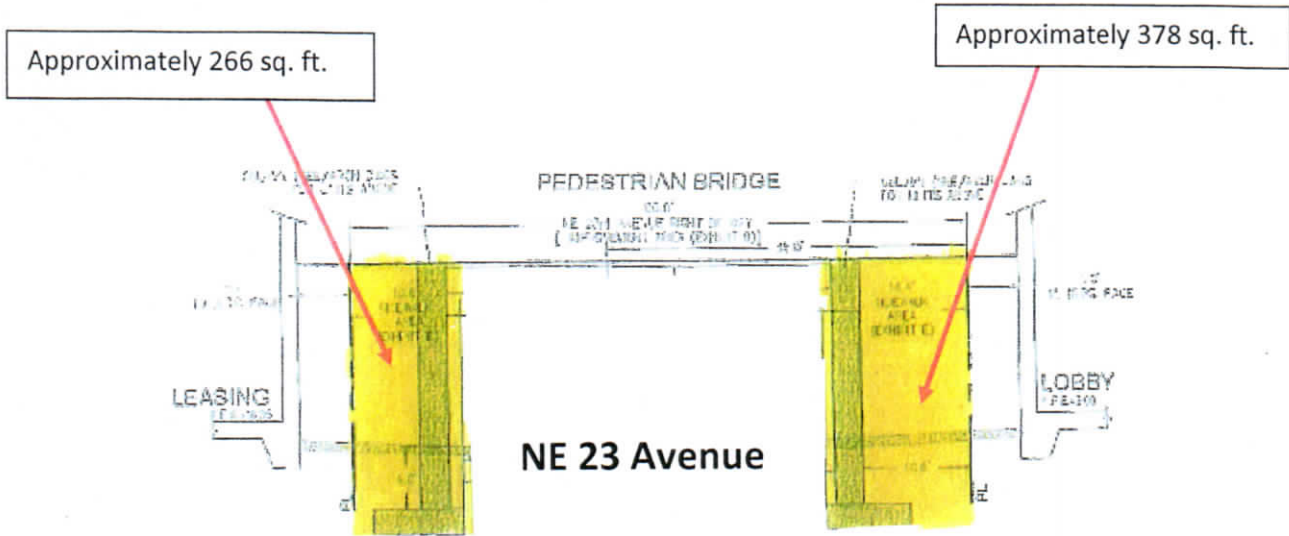
Table this abandonment request to allow time for the Applicant to address any objections raised by the affected parties or to get additional information.

III- Denial

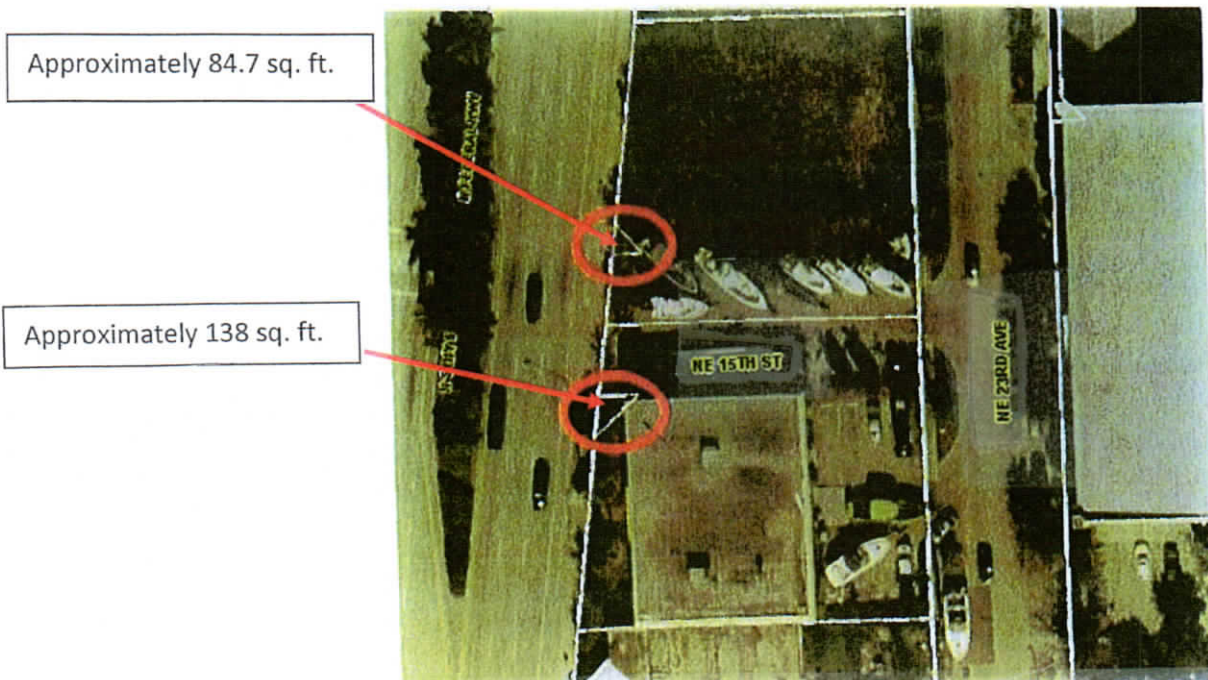
Recommend denial to the City Commission as the Board finds that the easement serves a public purpose and should not be abandoned.

Staff recommends alternative motion number I.

Attachment I



Yellow indicates sidewalk-abandonment Area



Two triangular abandonment areas are shown within red circles.

ORDINANCE NO. 2000 - 14

CITY OF POMPANO BEACH
Broward County, Florida

INSTR # 99698521

OR BK 30028 PG 2011

RECORDED 11/18/1999 08:34 AM

COMMISSION

BROWARD COUNTY

DEPUTY CLERK 1032

**AN ORDINANCE ABANDONING THAT CERTAIN
PORTION OF THE RIGHT-OF-WAY FOR NORTHEAST
15TH STREET LYING IMMEDIATELY EAST OF NORTH
FEDERAL HIGHWAY; PROVIDING FOR SEVERABILITY;
PROVIDING AN EFFECTIVE DATE.**

WHEREAS, pursuant to law, fifteen (15) days' notice has been given by publication in a paper of general circulation in the City notifying the public of this proposed Ordinance and of a public hearing in the City Commission Chambers of the City of Pompano Beach; and

WHEREAS, a public hearing before the City Commission was held pursuant to the published notice described above, at which hearing the parties in interest and all other citizens so desiring had an opportunity to be and were, in fact, heard; and

WHEREAS, the City Commission has received a request for the abandonment of that portion of the right-of-way for Northeast 15th Street lying immediately East of North Federal Highway as recorded in Plat Book 38, Page 37, of the Public Records of Broward County, Florida; and

WHEREAS, the Planning and Zoning Board has made its recommendation upon said request; now, therefore,

BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1: It is hereby found and determined by the City Commission that the public health, welfare, safety and necessity no longer require retention of any interest by the public in that certain right-of-way as more fully described below.

DEFERRED ITEM
Return Document To
Business Operations

(2)

SECTION 2: It is hereby further found and determined that abandonment and vacation of that certain right-of-way will not have a detrimental effect upon the surrounding property or area.

SECTION 3: That the City of Pompano Beach does hereby abandon and vacate the following described right-of-way:

See Attachment "B" attached hereto and incorporated herein as if set forth in full.

SECTION 4: That the City Clerk is hereby instructed to record this Ordinance in the Public Records of Broward County, Florida.

SECTION 5: The City of Pompano Beach reserves for its own purposes, and for the purposes of all recognized public utility companies offering public utility services in the City to its customers including, but not limited to, Florida Power Light Company, Southern Bell, Peoples Gas System, and Continental Cablevision, the reservation of an easement forever for the construction, operation and maintenance of overhead and underground electric facilities (including wires, poles, guys, cables, conduits, buried cables, cable terminals, markers, splicing boxes and pedestals, manholes, amplifier boxes, pipes, gas transmission lines, water and sewer lines and all appurtenant devises and equipment) to be installed from time to time; with the right to construct, reconstruct, improve, add to, enlarge, change the voltage, change pressure, as well as the size of, and to remove such facilities or any of them, together with the right to permit any other person, firm or corporation to attach wires to any facilities hereunder and lay cable and conduit within the easement and to operate the same for communication purposes, the right of ingress and egress to said premises at all times; the right to clear the land and keep it cleared of all trees, undergrowth and obstructions within the easement area; the right to trim and cut and keep trimmed and cut, all dead, weak, leaning or dangerous trees or limbs outside of the

easement area which might interfere with or fall upon the lines of systems of communication or power or telephone or gas transmission or distribution; and further reserves to the fullest extent, the right and power to grant, if at all, the rights herein granted on the land heretofore described, over, along, under and across the roads, streets or highways adjoining or through said property. The easement is described on Exhibit "A" attached hereto and incorporated herein by reference as if set forth in full.

SECTION 6: If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 7: This Ordinance shall become effective upon passage.

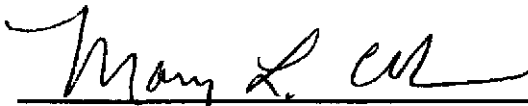
PASSED FIRST READING this 28th day of September, 1999.

PASSED SECOND READING this 26th day of October, 1999.



E. PAT LARKINS, MAYOR

ATTEST:



MARY L. CHAMBERS, CITY CLERK

GBL:amd
8/5/99
L:ord\99-431a

ATTACHMENT "A"

That portion of NE 15 Street lying adjacent to Lot 1 in Block 2 of SEABARGE YACHT CENTER, according to the plat thereof, recorded in Plat Book 38, Page 27, of the Public Records of Broward County, Florida. Together with that portion of NE 15 Street lying adjacent to Block 3 of SEA BARGE YACHT CENTER, according to the plat thereof, recorded in Plat Book 38, Page 27, of the Public Records of Broward County, Florida.

ATTACHMENT "B"

That portion of NE 15 Street lying adjacent to Lot 1 in Block 2 of SEABARGE YACHT CENTER, according to the plat thereof, recorded in Plat Book 38, Page 27, of the Public Records of Broward County, Florida. Together with that portion of NE 15 Street lying adjacent to Block 3 of SEA BARGE YACHT CENTER, according to the plat thereof, recorded in Plat Book 38, Page 27, of the Public Records of Broward County, Florida.

Attachment II

This instrument prepared by:

Name: Graham Penn, Esq.
Address: Bercow Radell Fernandez & Larkin, PLLC
200 S. Biscayne Boulevard, Suite 850
Miami, FL 33131

GRANT OF PERPETUAL EASEMENT AND MAINTENANCE AGREEMENT **(NE 23 AVENUE SIDEWALK AREAS)**

THIS GRANT OF EASEMENT (this "Easement") is made this day of _____, 2019, by AMP IV Hidden Harbour, LLC, a Florida limited liability company (the "Owner") having its principal place of business at 2890 NE 187 Street Aventura, Florida 33180 in favor of the CITY OF POMPANO BEACH, a Florida municipal corporation (the "City"), having its principal place of business at 100 West Atlantic Blvd. Pompano Beach, Florida 33060.

WHEREAS, the Owner owns that site known as the "Hidden Harbour" development situated, lying and being in Broward County, Florida, located generally south of NE 16 Street and east of Federal Highway, which is legally described in Exhibit "A" attached hereto (the "Property"); and

WHEREAS, the Property fronts both sides of NE 23 Avenue from approximately NE 15 Street to NE 16 Street; and

WHEREAS, at its regular meeting on _____, 2019, the City Commission approved Ordinance No. 2019-XXXX, rezoning the Hidden Harbour site to "Planned Development – Infill" (PD-I) zoning district and approving the Planned Development Master Plan to allow for the development of a mixed-use project on the Property (the "Planned Development"); and

WHEREAS, at its regular meeting on _____, 2019, the City Commission approved Resolution No. 2019-XXXX, approving a right of way vacation for certain portions of the NE 23 Avenue right of way; said Resolution is attached and incorporated as Exhibit "B" hereto; and

WHEREAS, the Owner has agreed to grant to the City a perpetual easement for the purpose of providing public pedestrian access through and over a portion of the existing road

right- of-way for NE 23 Avenue, which is more particularly described in Exhibit "C" attached hereto (the "Sidewalk Areas") in exchange for, among other things, the City vacating its rights in and to the Sidewalk Areas and the issuance of development permits and approvals in order to develop the Planned Development.

NOW THEREFORE, in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owner by these presents hereby grants, sells, and conveys to the City, its successors and assigns, a perpetual non-exclusive easement on, in, and over the Sidewalk Areas for the purpose of providing public pedestrian and vehicular access through and over the Sidewalk Areas.

The Owner and the City further agree to the following:

1. The Owner hereby grants to the City its employees, contractors, or representatives, the permanent right and license for purposes of ingress and egress to and from the Sidewalk Areas for the purposes of inspecting, maintaining, repairing, and replacing the public sidewalks and all related public pedestrian improvements to be constructed on the Sidewalk Areas.

2. Following Owner's completion of the Planned Development in a manner consistent with the Master Plan approved through Ordinance No. 2019-XXXX (as may be amended by the City), the Owner shall have the sole responsibility and shall bear the total cost for the repair and maintenance of same, except for any repairs and maintenance arising from the negligence of the City or any successor thereto.

3. The Owner shall provide the same level of maintenance on the Sidewalk Areas and the improvements thereon as the City currently provides for its public sidewalks. The Owner must also include the Sidewalk Areas in a uniform security system for the Property.

4. The Owner reserves unto itself, its successors and assigns, the perpetual right and privilege of:

- a. Right of ingress and egress to and from the Sidewalk Areas for construction access to the Property, and Owner shall bear the cost for repairing any damage to the Sidewalk Areas, resulting from such construction;

- b. Unrestricted vehicular and pedestrian access to, over, across and in the Sidewalk Areas, provided that such use does not materially interfere with the continued use of the Easement Parcel as permitted herein by Grantee and the public; and
- c. Using and occupying, and granting to any parties providing utility service, telephone service and to other similar parties, the right to use and occupy the subsurface of the Sidewalk Areas for any utility or drainage or other use or purpose which does not materially interfere with the non-exclusive rights herein granted to Grantee, and its authorized invitees, agents, employees, guests lessees and licensees, including, without limitation, the right to construct, install, maintain and operate therein electrical, telephone, telegraph, telecommunication, gas, gasoline, sewer, water, and drainage fixtures.

5. The parties agree that in connection with each of their respective rights to install and maintain utilities in the subsurface of the Sidewalk Areas pursuant to this grant of easement, each party (i) shall notify the other of its intention to install, repair or otherwise maintain such utilities, (ii) shall cooperate fully with the other party and take such steps as may be necessary to insure that any such installation, maintenance or repair of said utilities will not interfere with the use or functioning of existing utilities, (iii) shall, to the extent feasible, integrate any proposed installation, maintenance or repair with any proposed work of a similar nature by the other party, and (iv) shall not unreasonably interfere with the use of the Easement Parcel by the other party as permitted under this grant of easement.

6. The City shall not construct or permit to be constructed any structure or obstruction on or over or interfering with the construction or any other aspect of the Planned Development located upon the Sidewalk Areas Parcel.

7. The Owner covenants, warrants and represents that it is the fee simple owner of the Sidewalk Areas and has the right, title, and capacity to grant the perpetual easement granted herein.

8. This grant of perpetual easement shall inure to the benefit of and be binding upon the heirs, legal representatives, successors and assigns of the parties hereto, as applicable.

9. Any notices required or permitted to be given under this Easement shall be in writing and shall be deemed to have been given if delivered by hand, sent by recognized overnight courier (such as Federal Express) or mailed by certified or registered mail, return receipt requested, in a postage prepaid envelope, and addressed as follows:

FOR CITY: Gregory P. Harrison, City Manager
City of Pompano Beach
Post Office Box 1300
Pompano Beach, Florida 33061-1300

FOR OWNER: AMP IV Hidden Harbour, LLC
2890 NE 187 Street
Aventura, Florida 33180

WITH COPIES TO: Graham Penn, Esq.
Bercow Radell Fernandez & Larkin, PLLC
200 S. Biscayne Blvd., Suite 850
Miami, Florida 33131

Notices personally delivered or sent by overnight courier shall be deemed given on the date of delivery and notices mailed in accordance with the foregoing shall be deemed given three (3) days after deposit in the U.S. mails. The terms of this Section shall survive the termination of this Easement.

10. Construction.

- a. This Easement shall be construed and governed in accordance with the laws of the State of Florida. All of the parties to this Agreement have participated fully in the negotiation and preparation hereof; and, accordingly, this Easement shall not be more strictly construed against any one of the parties hereto.
- b. In construing this Easement, the use of any gender shall include every other and all genders, and captions and section and paragraph headings shall be disregarded.
- c. All of the exhibits attached to this Easement are incorporated in, and made a part of, this Agreement

11. Severability. In the event any term or provision of this Easement be determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or construed as deleted as such authority determines, and the remainder of this Easement shall be construed to be in full force and effect.

12. Litigation. In the event of any litigation between the parties under this Easement for a breach hereof, the prevailing party shall be entitled to reasonable attorney's fees and court costs at all trial and appellate levels. The terms of this Section shall survive the termination of this Easement.

13. Time of Essence. Time shall be of the essence for each and every provision hereof.

14. Entire Agreement. This Easement, together with the documents referenced herein, constitute the entire agreement and understanding among the parties with respect to the subject matter hereof, and there are no other agreements, representations or warranties other than as set forth herein. This Easement may not be changed, altered or modified except by an instrument in writing signed by the party against whom enforcement of such change would be sought.

15. Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, riot, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform, excluding the financial inability of such party to perform shall excuse the performance by such party for a period equal to any such period of prevention, delay or stoppage.

[EXECUTION PAGES FOLLOW]