



Interoffice Memorandum

DATE: August 5, 2019

TO: Mayor Jerry L. Demings
and the
Board of County Commissioners

FROM: Paul Sladek, Manager *PS*
Real Estate Management Division

SUBJECT: August 20, 2019 – BCC Public Hearing
Approval and execution of an Ordinance Pertaining to Dedications and
Conveyances of Real Property to the County

Background

Florida law requires that in order for property to be validly conveyed to the County for a public use, there must be an offer on the part of the grantor, and acceptance on the part of the County – but there is no requirement that conveyances to the County be accepted by the Board.

Notwithstanding the requirements of law, instruments offering to dedicate or convey property to the County are from time to time recorded in the Public Records despite the fact that the County is not aware of such offer, such offer has not been accepted by the County, and, in some circumstances, where the County has no desire to accept such dedication or conveyance.

In order to address this situation, the Board adopted Resolution 86-M-44 on October 20, 1986, and declared that *“in order for the offer [to dedicate property to the County] to be accepted, the instrument of conveyance must be formally approved and accepted by the Board of County Commissioners in writing”*.

In at least in some situations, though, Resolution 86-M-44 is not in the best interests of the County. In recognition of the need for a streamlined property acquisition process where the County is acquiring property under the threat of eminent domain, the Board adopted Ordinance No. 92-29 on October 6, 1992, to set parameters for those “under threat” acquisitions that could be consummated at the staff level.

Among other terms and provisions, Ordinance No. 92-29 granted the Real Estate Management Division (Division) authority to purchase real property (under the threat of eminent domain, and prior to the institution of a condemnation suit) both: (i) in amounts up to \$100,000, regardless of

the appraised value; and (ii) in amounts up to \$500,000, where the purchase price is less than or equal to the appraised value. Moreover, Ordinance No. 92-29 also authorizes the Division to accept on behalf of the County the instruments of conveyance for all real property acquired pursuant to Ordinance No. 92-29.

Donations in Connection with Development

In connection with the development, redevelopment, and/or improvement of real property by persons or entities other than the County, it often becomes necessary for an interest in real property to be dedicated or conveyed to the County. As just a few examples, a utility easement may be required to be granted to the County by a permit issued by the Utilities Department, a conservation easement may be required by a conservation area impact permit issued by the Environmental Protection Division, and fee simple conveyances may be required by a roadway agreement, an adequate public facilities agreement, or a condition of approval of a preliminary subdivision plan.

These development-related conveyances are frequently routine, generally made pursuant a permit or approval issued by the County or required by a prior action of the Board, and are made as donations (or are made solely in exchange for previously approved impact fee credits). As such, these development-related conveyances do not present questions requiring a policy determination by the Board.

That notwithstanding, Resolution 86-M-44 requires such routine development-related conveyances to be approved and accepted by the Board. Resolution 86-M-44 is broad, and applies both to a \$1,000,000 purchase of five acres in fee simple for a proposed new County facility, as well as a donation of a 100 square foot utility easement that is already mandated by an issued County permit.

After accounting for the time to prepare an agenda item and depending on the Board's meeting schedule, it is not uncommon for four to five weeks to elapse between when the Division believes a development-related conveyance is ready for acceptance by the County and when it will be able to be recorded in the Public Records following Board approval. This delay has a significant impact on the development community, especially in particular situations, and may be detrimental to economic development.

Recommendation

The Division is presenting to the Board for its consideration an ordinance that would allow the Division to accept, on behalf of the County, a dedication or conveyance of an interest in real property where all of the following conditions are met:

- The conveyance is being made as a donation, or only in consideration of an award or grant of impact fee credits and/or adequate public facilities credits that has been approved by the Board; and
- The conveyance relates to development, occurs pursuant to a petition to vacate that has

Dedications and Conveyances of Real Property to the County

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been approved by the Board, or occurs pursuant to an agreement that has been approved by the Board; and

- The conveyance is already mandated by other valid County action (e.g. prior Board action or approved agreement, permits/development orders approved by departments or divisions of the County other than the Division); and
- The instrument of conveyance does not require execution by the County.

Adoption of the proposed ordinance, which will not result in any loss of Board policy control, is expected to reduce processing times for development-related conveyance by an average of four weeks, and is not expected to have any monetary cost to the County. To the contrary, savings may be realized from a reduction of staff time and costs associated with agenda preparation.

The proposed ordinance alters neither the County process for the acquisition of real property interests where the disbursement of County funds will be required, nor the County procedure for disposition of real property interests held by the County.

The proposed ordinance was prepared by the Division in conjunction with the County Attorney's Office, was reviewed by those County departments and divisions to be affected by the proposed change, and has been revised in response to comments received.

ACTION REQUESTED: Approval and execution of an Ordinance Pertaining to Dedications and Conveyances of Real Property to the County; Amending Chapter 2, Article VII of the Orange County Code by the addition of Division 2 regarding Routine Dedications and Conveyances; providing for conflicts; and providing for an effective date.

ORDINANCE 2019-_____

**AN ORDINANCE PERTAINING TO DEDICATIONS AND
CONVEYANCES OF REAL PROPERTY TO THE
COUNTY; AMENDING CHAPTER 2, ARTICLE VII OF
THE ORANGE COUNTY CODE BY THE ADDITION OF
DIVISION 2 REGARDING ROUTINE DEDICATIONS AND
CONVEYANCES; PROVIDING FOR CONFLICTS; AND
PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, Florida law recognizes that there can be no dedication of property to a governing authority for a public use without the essential elements of offer and acceptance; and

WHEREAS, as described in Resolution No. 86-M-44 adopted by the Board of County Commissioners of Orange County, Florida, (the "Board") on October 20, 1986, ("Resolution 86-M-44") Orange County (the "County") is aware that, in some circumstances, instruments offering to dedicate or convey property to the County are recorded in the Public Records of Orange County, Florida, despite the fact that such instruments have not been accepted by the County, and, in some circumstances, where the County has no desire to accept such dedication or conveyance; and

WHEREAS, in response to such situation, by Resolution 86-M-44, the Board declared that "in order for the offer [to dedicate property to the County] to be accepted, the instrument of conveyance must be formally approved and accepted by the Board of County Commissioners in writing"; and

WHEREAS, in recognition of the need for a streamlined property acquisition process in those situations where the County is acquiring property under the threat of eminent domain, the effect of Resolution 86-M-44 was amended by Ordinance No. 92-29 enacted by the Board on October 6, 1992, currently codified at Article VII, Chapter 2 of the Orange County Code, to set parameters for those acquisitions which could be consummated at the administrative staff level; and

WHEREAS, the authority granted to the Real Estate Management Division by Ordinance No. 92-29 included the authority to accept and approve instruments of conveyance and other related documents to the County for all real property acquired by the County pursuant to the terms of Ordinance No. 92-29; and

WHEREAS, certain routine development-related dedications and conveyances to the County do not present questions requiring a policy determination by the Board; and

WHEREAS, Resolution 86-M-44 presently requires such routine development-related dedications and conveyances to be approved and accepted by the Board; and

WHEREAS, the Board has determined that the delay caused by requiring such routine

42 development-related dedications and conveyances to be approved and accepted by the Board is
unnecessary, is detrimental to economic development, and is not in the best interest of the
County or of the public; and

44 **WHEREAS**, in order to expedite the processing of certain development-related
dedications and conveyances, the Board desires to set parameters for those development-related
46 dedications and conveyances that may be accepted and approved at the administrative staff level.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
48 **ORANGE COUNTY, FLORIDA:**

Section 1. Enactment of Routine Dedications and Conveyances Ordinance. Article
50 VII of Chapter 2 of the Orange County Code is hereby entitled “Real Estate Management” and
Section 2-251 through Section 2-257 are designated as “Division 1. Real Estate Acquisition and
52 Settlement”. A new Routine Dedications and Conveyances Ordinance, to be codified at Division
2, Article VII of Chapter 2 of the Orange County Code, Section 2-258 through Section 2-263 is
54 enacted to read as follows:

Division 2. Routine Dedications and Conveyances

56 *Section 2-258. Purpose and Intent.*

58 The purpose and intent of this authorization is to promote
economic development and avoid unnecessary delay by expediting
60 the processing of certain routine development-related dedications
and conveyances of real property to the County by persons and
entities other than the County.

62 *Section 2-259. Conveyances Required by Development.*

64 The Real Estate Management Division (“Division”), acting
through its Manager or such Manager’s designee, is hereby granted
66 the authority to accept and approve of a dedication or conveyance
to the County of an interest in real property (a “Conveyance”)
where all of the following four conditions are met as to such
68 dedication or conveyance:

70 (a) such Conveyance: (i) relates, directly or indirectly,
to the development, redevelopment, and/or improvement of real
property by a legal person or legal entity other than the County; (ii)
72 occurs pursuant to a petition to vacate that has been approved by

the Board; or (iii) occurs pursuant to an agreement that has been approved by the Board, including but not limited to agreements within the purview of the County’s Roadway Agreement Committee, the County’s Development Review Committee, or another committee or board of the County; and

(b) such Conveyance is required by, provided for by, or is being made in satisfaction of at least one of the following: (i) a contract, agreement, ordinance, resolution, or any other action that has been approved by the Board (a “Board Action”); (ii) a permit, approval, plat, or “development order” (as defined in Section 163.3164, Florida Statutes (2018)) issued, approved, and/or made by a department, division, committee, or board of the County, other than the Division, pursuant to the lawful authority of such other department, division, committee, or board; or (iii) a condition or provision of the County’s comprehensive plan (as defined in Section 163.3164, Florida Statutes (2018)), any zoning approval, any preliminary subdivision plan, development plan, or equivalent, or development order (as defined above); and

(c) such Conveyance is being made to the County either: (i) solely as a donation, without consideration on the part of the County; or (ii) solely in consideration of an award or grant of impact fee credits and/or adequate public facilities (APF) credits, which award or grant has been approved by a Board Action; and

(d) the deed, easement, or other instrument of dedication or conveyance to be recorded does not require execution by the County.

Section 2-260. Authorization to Accept and Approve Instruments.

The Division, acting through its Manager or such Manager’s designee, is hereby authorized to accept and approve instruments of dedication or conveyance to the County, and other related documents, for all interests in real property acquired by the County pursuant to the terms of this Article (collectively, “Conveyance Instruments”). The acceptance and approval of any such Conveyance Instrument shall be evidenced by the Manager of the Division (or such Manager’s designee): (i) stamping such Conveyance Instrument as “Accepted and approved by the Real Estate Management Division, on behalf of Orange County, Florida, pursuant to Division 2, Article VII of Chapter 2 of the Orange County Code”; and (ii) affixing his or her signature to such Conveyance Instrument within such stamp.

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Section 2-261. Authorization to Record Instruments.

The Division and the Official Records Department of the Orange County Comptroller’s Office are hereby authorized to record Conveyance Instruments accepted and approved by the Division pursuant to the terms of this Article.

Section 2-262. Authorization to Disburse Funds.

The Division and the Finance and Accounting Department of the Orange County Comptroller’s Office are hereby authorized to make disbursements for any Conveyances accepted and approved by the Division pursuant to the terms of this Article – including recording fees, title searches, title insurance premiums, closing costs, and other similar costs and expenses, as well as any disbursements that may be required or provided for by any Board Action governing or relating to such Conveyance – subject to the receipt of such documentation as may be reasonably necessary to verify compliance with the terms of this Article.

Section 2-263. Optional Procedure.

For avoidance of doubt, this Article provides an optional procedure for the acceptance and approval of certain Conveyances, as described herein. Notwithstanding anything in this Article to the contrary, the Division may, where it deems it appropriate, decline to exercise any authority granted to the Division herein and instead submit such matter to the Board for its consideration.

Sections 2-264 -280 Reserved.

Section 2. Conflicts. All previous ordinances or resolutions of the County which conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict, except as provided herein.

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Section 3. Effective Date. This ordinance shall take effect pursuant to general law.

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ADOPTED THIS ____ DAY OF _____ 2019.

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ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

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By: _____
Jerry L. Demings
Orange County Mayor

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ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

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By: _____
Deputy Clerk

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