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**EXECUTIVE SUMMARY**

**To:** Mayor and City Commissioners

**From:** Larry R. Erskine, Chief Assistant City Attorney

**Meeting Date:** June 19, 2012

**Agenda Item:** **Zoning Ordinance Amendments** - Consideration of an ordinance of the City of Key West amending Chapter 122, of the Code of Ordinances titled "Zoning" of Article II, by amending Section 122-26 and adding Sections 122-33 and 122-34 to the Land Development Regulations of the City of Key West to provide for an exception for property affected by eminent domain or voluntary conveyance for public transportation or other public purpose; providing for severability; providing for the repeal of inconsistent provisions; providing for an effective date.

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**Request**

To minimize adverse impacts to private property owners affected by right-of-way or public purpose improvements by providing a waiver process for non-conformities which may result from eminent domain conveyances by an "acquiring authority" or an owner's voluntary conveyance of a portion of his or her property for public transportation or other public purposes.

**Background**

For a number of years, the Florida Department of Transportation (FDOT) has planned to completely reconstruct North Roosevelt Boulevard from Eisenhower Drive east to the "entrance triangle." Improvements are to include a new seawall and promenade, replacement of existing sewer and water lines and the addition of ADA accessible sidewalks on the south side of the roadway. To facilitate this project, FDOT indicated that it would be necessary for many of the owners of parcels abutting North Roosevelt Boulevard to execute quit claim deeds for portions of their property to FDOT to accommodate the ADA compliant sidewalks.

A number of the affected property owners expressed concern regarding the potential negative effects to their properties resulting from the reduction of the size and dimensions of their properties to the extent that non-conformities would be created. Accordingly, in order to encourage property owners to facilitate the project by conveying portions of their properties, the

City Planning and Legal Departments proposed a three-step approach to address the concerns of the property owners regarding the non-conformities created by conveyances to FDOT.

The first step in the process was the City Commission's passage of Resolution No. 11-041 on February 1, 2011. A copy of the Resolution is attached. The Resolution provides that in the event a conveyance to FDOT to facilitate the project results in the failure of the remaining parcel to comply with the City's Land Development Regulations for purposes including setbacks, parking, open space, impervious surface ratios, floor area ratios, landscaping, and signage setbacks, the remaining parcel shall be considered legally nonconforming. Stated another way, the conveyance shall not result in any detriment or limitation to the owner's existing rights. This Resolution was recorded in the Public Records of Monroe County.

The second step in the process was the April 20, 2011, Administrative Interpretation executed by the City Planner, Donald Craig, a copy of which is attached. You will note Mr. Craig indicates that the action by property owners on North Roosevelt Boulevard in "... providing the quit claim deeds to FDOT in order to allow the construction of sidewalks as a part of the project does not constitute a self imposed hardship situation if the results reduce the lot area or dimensions such that the resulting parcel retained by the adjacent landowners, their successors, assigns or heirs engenders or creates nonconformities relating to the existing or future buildings, parking, setbacks, lot coverage, impervious surface ratios, or required open spaces."

This proposed Ordinance is the third step in the process.

### **Analysis**

Currently, there exists no mechanism other than a variance request to address non-conformities that are caused by the imposition of right-of-way improvements, particularly the reduction of landscape-buffer yard and front-yard setback requirements. The application of the proposed Ordinance is not limited to North Roosevelt Boulevard and anticipates future public improvements that may directly affect other property owners. This proposed Ordinance will codify the Administrative Interpretation and help alleviate potential burdens placed upon property owners due to necessary public improvements by establishing a procedure for affected property owners to obtain written waivers for nonconformities.

### **Planning Board action**

On May 31, 2012, the Planning Board approved a Resolution recommending that the City Commission adopt the proposed Ordinance.

### **Review Criteria**

In its deliberations the City Commission shall consider the criteria stated in section 90-521.

**(1) *Consistency with plan.* Whether the proposed Ordinance is consistent with the comprehensive plan, including the adopted infrastructure minimum levels of service standards and the concurrency management program.**

Because the proposed Ordinance does not impact density or intensity, it will have no impact on minimum levels of service or concurrency determinations as established by the Comprehensive Plan. Further, this proposed Ordinance would permit the continued Floor Area Ratio calculations to remain for the purposes of redevelopment.

**(2) *Conformance with requirements.* Whether the proposed Ordinance is in conformance with all applicable requirements of the Code of Ordinances.**

The proposed Ordinance is in conformance with the Code and the procedures for amending the Land Development Regulations will be followed and are supported by this Executive Summary.

**(3) *Changed conditions.* Whether, and the extent to which, land use and development conditions have changed since the effective date of the existing regulations, and whether such changes support or work against the proposed rezoning.**

This is not an act to rezone any particular zoning district, but, rather, will be effective city wide. This proposed Ordinance is intended to provide allowances for necessary improvements to avoid the effect of a "taking" of private property for the public welfare.

**(4) *Land use compatibility.* Whether, and the extent to which, the proposed Ordinance would result in any incompatible land uses, considering the type and location of uses involved.**

This proposed Ordinance is meant to address potential non-conforming setbacks, lot-coverage and other requirements such as buffer yards resulting from the conveyance of taking of private property for the public welfare.

**(5) *Adequate public facilities.* Whether, and the extent to which, the proposed Ordinance would result in demands on public facilities and services, exceeding the capacity of such facilities and services, existing or programmed, including transportation, water and wastewater services, solid waste disposal, drainage, recreation, education, emergency services, and similar necessary facilities and services.**

Excessive demands on public facilities will not result from the proposed Ordinance.

**(6) *Natural environment.* Whether, and to the extent to which, the proposed Ordinance would result in adverse impacts on the natural environment, including consideration of wetlands protection, preservation of groundwater aquifer, wildlife habitats, and vegetative communities.**

In the case of North Roosevelt Boulevard, the road and other amenities do abut environmentally sensitive lands, waters or wildlife habitat, particularly the Gulf of Mexico.

**(7) *Economic effects.* Whether, and the extent to which, the proposed Ordinance would adversely affect the property values in the area or the general welfare.**

The proposed Ordinance is not expected to have an adverse effect on the property values in the area or the general welfare. In fact, this Ordinance is proposed to protect property values while allowing for improvements benefitting the public welfare.

**(8) *Orderly development.* Whether the proposed Ordinance would result in an orderly and compatible land use pattern. Any negative effects on such pattern shall be identified.**

The proposed Ordinance will not have a negative effect on the existing land use pattern.

**(9) *Public interest; enabling act.* Whether the proposed Ordinance would be in conflict with the public interest, and whether it is in harmony with the purpose and interest of the land development regulations in this subpart B and the enabling legislation.**

The proposed Ordinance does not appear to be in conflict with the public interest. It will enhance the public welfare by providing ADA accessible sidewalks on both sides of North Roosevelt from Eisenhower Drive to the entrance triangle and other similarly affected properties.

**(10) *Other matters.* Other matters which the City Commission may deem appropriate.**

Other matters have not been identified at this time.

**Options / Advantages / Disadvantages:**

**Option 1.** Approval of the Ordinance as recommended by the Planning Board.

1. **Consistency with the City's Comprehensive Plan, Strategic Plan, Vision and Mission:** The adoption of this Ordinance will prevent adverse consequences to property owners and promote the orderly design and completion of sidewalks associated with transportation projects which protect the health, safety, and welfare of the public.
2. **Financial Impact:** Passage of the proposed Ordinance will not have a financial impact on the City.

**Option 2.** Deny passage of the proposed Ordinance.

1. **Consistency with the City's Strategic Plan, Vision and Mission:** Denial of the proposed Ordinance could result in adverse consequences to property owners and could inhibit the orderly design and completion of sidewalks associated with transportation projects which protect the health, safety, and welfare of the public.
2. **Financial Impact:** Denial of passage of the proposed Ordinance will not have a financial impact on the City.

**RECOMMENDATION**

To pass the proposed Ordinance.