THE CITY OF NEW SMYRNA BEACH - PLANNING & ZONING

ORDINANCE NO. 29-21: CONDUCT THE FIRST READING OF AN ORDINANCE, WHICH IF ADOPTED UPON THE SECOND READING AND PUBLIC HEARING, WOULD VACATE A PORTION OF BOOKER AVENUE AND CONNER AVENUE.

June 22, 2021

Background:

Applicant: V. "Buddy" LaCour, 220 Charles St., Port Orange, FL 32129

Request: Vacation of two separate portions of platted right-of-way (r/w) totaling 0.665 acres, the majority of which is within an 2 acre total property in which most of the previous plat has already been vacated. That same 11.2 acre property is also currently proposed for a residential subdivision by a concurrent and separate application to the City (as # S-11-18, Old Mission Cove).

Right-of-Way Information: The two subject right-of-way areas are bounded by Ingham Road to the east, Mission Drive to the south, CR 4137/Old Mission Road to the west, and SR 44 to the far north. Map and survey exhibits are listed below and attached to this report to show graphically where the subject area is located.

Exhibits:

1. **Exhibit A** - Location Map/Area 1
2. **Exhibit B** - Aerial Map/Area 1
3. **Exhibit C** - Location Map/Area 2
4. **Exhibit D** - Aerial Map/Area 2
5. **Exhibit E** - Sketch of Survey with Legal Descriptions (3 pages)
6. **Exhibit F** - Boundary Survey, Old Mission Cove, with subject r/w areas noted
7. **Exhibit G** - Plat of underlying Lockhart's Subdivision (now largely vacated)
8. **Exhibit H** - Proposed Old Mission Cove plat, Phase 1
9. **Exhibit I** - Proposed Old Mission Cove plat, Phase 2
10. **Exhibit J** – UCNSB Letter of No Objection
11. **Exhibit K** - Letter of Request from Applicant

Tax Parcel Information:

- Area 1 – within 7419-00-00-0060 (south, within Old Mission Cove boundaries) & 7419-00-00-0050 (north, within # 501 Old Mission boundaries)
- Area 2 - within 7419-00-00-0042 (all within Old Mission Cove boundaries)

Findings:

The proposed request is for vacation of two areas of currently platted rights-of-way which are a total 0.665 acres in area, within the Lockhart Subdivision plat that was originally recorded in 1926 (shown in Exhibit G), and with most of that plat area since vacated by the Volusia County Council in 2003 (as Resolution # 2003-07). The exceptions to that prior plat vacation are the remaining two right-of-way areas that are now the subject of this application, and shown on the various maps and surveys attached as **Exhibits A-F**. The applicant requests vacation of these right-of-way remnants in order to develop this property for a proposed 11.2 acre residential subdivision, per the proposed plats attached as **Exhibits H & I**. Those two proposed plats will include 12 townhouse lots and 2 single family (SF) lots in Phase 1, and 23 single family lots in Phase 2, for a total of 37 total units/lots consisting of 25 SF lots and 12 townhouse lots.

There is one other portion of existing platted r/w proposed to be vacated in this application that is outside of the proposed Old Mission Cove residential subdivision boundaries. That portion is the northern extension of Booker Avenue shown on Exhibits E and F, indicated there as being 136' long x 50' wide and just east of the platted Lots 17 & 18. This northern Booker Avenue r/w extension is within a separately owned parcel (501 Mission Dr., PID # 7419-00-00-0050), and under agreement with the applicant will then become part of that same separate neighboring ownership upon approval of this vacation request. In addition, as part of that same agreement (which was submitted to staff for documentation), the adjacent areas shown on all surveys as being 100' wide Florida East Coast Railroad (FEC RR) right-of-way (and not part of the original Exhibit G underlying Lockhart's Subdivision plat) has been purchased by the applicant, and will also either be conveyed to that same neighboring property owner or will be included within the pending Old Mission Cove plat boundaries.

Section 305.03 of the City's Land Development Regulations (LDR) requires the following items for a street vacation:

- Completed application form
- Receipt of application fee payment
- Plat of survey, including legal description and acreage of street or alley proposed to be vacated
- List of all abutting property owners
- Letter from Utilities Commission indicating:
  - No objection to the vacation,
  - No utilities are within the right-of-way proposed to be vacated; or
  - If utilities exist with right-of-way, then letter must indicate what utilities are located in the right-of-way,
  - If utilities exist in right-of-way, then letter must indicate easements required
- Letter from applicant explaining how the vacation is in the interest of the public good

The Utilities Commission has provided a letter indicating no objection to the vacation, and that no utilities are within the right-of-way proposed to be vacated, which is attached as **Exhibit J**. The required Letter from the applicant explaining how the vacation is in the interest of the public good is attached as **Exhibit K.**

Section 305.03 C. of the City LDR calls for:

305.

1. City staff to review the application package for consistency with the City Comprehensive Plan and Land Development Regulations, to also determine whether or not the proposed vacation would be in the interest of the public good, and to then make a recommendation to the Planning & Zoning Board.
2. The Planning & Zoning Board to consider staff's recommendation, and then make a following recommendation to the City Commission concerning this application, which may include attached conditions "including, but not limited to, access and utility easements, construction of any facilities, or exchange of other property for the vacation."
3. The City Commission to review the above recommendations and application for consistency with the City Comprehensive Plan and Land Development Regulations, to also determine whether or not the proposed vacation would be in the interest of the public good, and to not approve the request for the sole reason of providing a benefit for the applicant or adjacent property owners. The Commission can also attach any conditions "including, but not limited to, access and utility easements, construction of any facilities, or

exchange of other property for the vacation."

Staff has determined this application for street vacation is consistent with the City Land Development Regulations, as it complies with all matters outlined in the City of New Smyrna Beach Land Development Regulations. Staff also determined this application for street vacation is consistent with the City Comprehensive Plan, for these reasons:

1. This vacation does not impact any level of service indicated within the Transportation Element of the Comprehensive Plan.
2. The proposed vacation will allow a land use pattern that meets the life-cycle and socio-economic needs of City residents, which is consistent with the Future Land Use Element of the Comprehensive Plan.

In regard to how this action would be in the interest of the public good, staff believes vacating these currently unopened and unused small platted r/w areas would allow for the adjacent property to be fully developed. It also appears these two small remnant portions (totaling 0.665 acres or just under 29,000 SF) of currently unvacated rights-of-way may have been mistakenly omitted from the prior 2003 plat vacation approved then by the Volusia County Council, and serve no real purpose by their exemption.

It should also be noted that the proposed Old Mission Cove intends to dedicate a total of 1.98 acres (or just over 86,000 sq. ft.) of public right-of-way by its proposed plat. That proposed future plat dedication includes a similar 50' wide public right-of-way within that 11.2 acre site, constructing a proposed public roadway connection from Mission Drive to the west to Ingham Road to the east. In addition to that new road, the same proposed plat would dedicate additional public road r/w area for the two surrounding and currently inadequate collector roads, providing 10' of additional r/w along its 205' of Mission Drive frontage and another 15' wide area of additional r/w along its 814' of Ingham Road frontage.

Given those proposed public right-of-way dedications that improve these surrounding collector roads, staff believes "the public good" is much better served by those surrounding r/w dedications than would be by retaining the subject two r/w portions now remaining within the largely vacated Lockhart's Subdivision plat. In addition, approval of these two concurrent applications (vacation and plat) would also be serve as

a de facto “exchange of other property for the vacation” as listed in the possible conditions of approval, with the public receiving much more additional new public right-of-way area than this application is requesting be vacated.

At its regularly scheduled meeting on June 7, 2021, the Planning and Zoning Board voted, **6-0**, to recommend the City Commission **approve** the requested street vacations.

STAFF RECOMENDATION

Staff recommends the City Commission **approve** the proposed street vacations.

Fiscal Analysis:
N/A

Strategic Plan Item:
No

Staff Report Created By: Kelly McQuillen - City Clerk

Attachments:

Exhibit A - Area 1 Location Map SV-1-20.pdf
Exhibit B - Area 1 Aerial Map SV-1-20.pdf
Exhibit C - Area 2 Location Map SV-1-20.pdf
Exhibit D - Area 2 Aerial Map SV-1-20.pdf
Exhibit E - Sketch of Street Vacation areas - 2 areas & Legal.pdf
Exhibit F - Boundary Survey of OLD MISSION COVE showing 2 Subject r-w areas.pdf
Exhibit G - Plat of underlying Lockhart's Subdivision (largely vacated).pdf
Exhibit H - Plat of OLD MISSION COVE PH 1 Signed.pdf
Exhibit I - Plat of OLD MISSION COVE PH 2 Signed.pdf
Exhibit J - Letter from UCNSB re No Objection for Mission Oaks -Booker Connor St ROW Vacation.pdf
Exhibit K - Letter of Request from Applicant.pdf
ORD 29-21 Booker and Conner Ave ROW Intent to Vacate.pdf