

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: November 17, 2009

☐ Consent ☒ Regular
☐ Public Hearing

Department

Submitted By: COUNTY ATTORNEY
Submitted For: COUNTY ATTORNEY

I. EXECUTIVE BRIEF

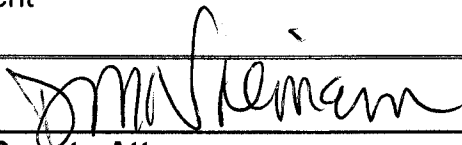
Motion and Title: Staff recommends motion to: approve Stipulated Settlement Agreement with the Department of Community Affairs, the City of West Palm Beach, and the Village of Royal Palm Beach in the case of Village of Royal Palm Beach et. al. v. City of West Palm Beach, Case Nos.: 09-1605 GM and 09-1606 GM (Roebuck Road Amendment).

Summary: The City of West Palm Beach adopted Ordinance 4179-08, as part of its 08-2.01 Round of Comprehensive Plan Amendments on December 15, 2008, which provided for a notation to the City's Appendix A "List of Required Thoroughfare Right-of-Way Setbacks and Required Street Widths (number of lanes)" to its Transportation Element. The notation stated that the City included the Roebuck Road extension, the S.R. 7 extension, and the Jog Road extension in the Appendix solely for the purpose of consistency with Palm Beach County's Comprehensive Plan, and stated that the City intends to challenge the roads on environmental grounds. The DCA filed a Notice of Intent to find the Comprehensive Plan Amendment "in compliance" on March 5, 2008. The Village of Royal Palm Beach and the County initiated the above-styled formal administrative proceeding challenging the Amendment as unsupported by data and analysis and contrary to development already approved by the City. Staff engaged in tentative settlement negotiations with the DCA and the parties have drafted a Stipulated Settlement Agreement, which provides for amendment to the notation acknowledging that the identified roads cannot be removed from the City's Plan without a comprehensive plan amendment and committing to the removal of the notation once environmental challenges over the roads are resolved. District 2 (ATP)

Continued on Page 3

Attachments:

- 1. Compliance Agreement

Recommended by:  11/10/09
County Attorney Date

Approved by: N/A _____
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2010	2011	2012	2013	2014
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	* -0-	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No _____

Budget Account No.: Fund _____ Department _____ Unit _____ Object _____

Reporting Category _____

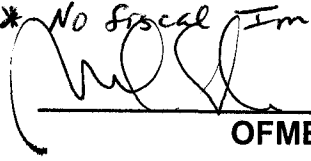
B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

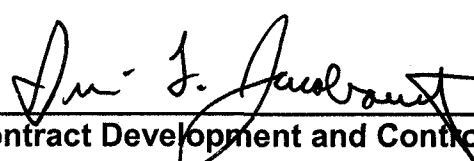
A. OFMB Fiscal and/or Contract Development and Control Comments:

* No fiscal impact



 OFMB

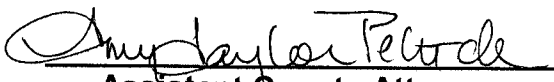
11/13/09
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 11/13/09



 Contract Development and Control

11/13/09

B. Legal Sufficiency:



 Assistant County Attorney

C. Other Department Review:

 Department Director

THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.

Background and Justification:

The City of West Palm Beach adopted Ordinance 4179-08, as part of its 08-2.01 Round of Comprehensive Plan Amendments on December 15, 2008, which provided for a notation to the City's Appendix A "List of Required Thoroughfare Right-of-Way Setbacks and Required Street Widths (number of lanes)" to its Transportation Element. The notation stated that the City was identifying the Roebuck Road extension, the S.R. 7 extension, and the Jog Road extension solely for the purpose of consistency with Palm Beach County's Comprehensive Plan, that inclusion of the roads did not reflect the City's position on future development of the roads, and that the City intends to challenge the road segments on environmental grounds. The DCA filed a Notice of Intent to find the Comprehensive Plan Amendment "in compliance" on March 5, 2008.

The Village of Royal Palm Beach and the County initiated the above-styled formal administrative proceeding challenging the Amendment as unsupported by data and analysis, contrary to prior settlement agreements between the parties regarding the development of the roads, and contrary to development already approved by the City that relies on the road segments. Staff engaged in tentative settlement negotiations with the DCA, the Village of Royal Palm Beach, and the City of West Palm Beach, and the parties have drafted a Stipulated Settlement Agreement, which provides for amendment to the notation acknowledging that the identified roads cannot be removed from the City's Plan without a separate comprehensive plan amendment and committing to removal of the notation once environmental challenges over the roads are resolved.

The Village of Royal Palm Beach is voting on the Stipulated Settlement Agreement on November 19, 2009. If the Village and the County both approve the Stipulated Settlement Agreement, the Agreement will be forwarded to DCA for approval. Once all other parties have approved the Stipulated Settlement Agreement, the City will consider the Stipulated Settlement Agreement and associated Remedial Plan Amendment at its next regularly scheduled public hearing. If the City approves the Stipulated Settlement Agreement and adopts the Remedial Plan, the parties will dismiss the pending administrative challenge.

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

VILLAGE OF ROYAL PALM BEACH,
FLORIDA and PALM BEACH COUNTY,
FLORIDA,

Petitioners,

DOAH CASE NO. 09-1605GM
09-1606GM

v.

CITY OF WEST PALM BEACH and
DEPARTMENT OF COMMUNITY AFFAIRS,

Respondents.

STIPULATED SETTLEMENT AGREEMENT

THIS STIPULATED SETTLEMENT AGREEMENT is entered into by and between Palm Beach County, the Village of Royal Palm Beach, the City of West Palm Beach, and the State of Florida, Department of Community Affairs as a complete and final settlement of all claims raised in the above-styled proceeding.

RECITALS

WHEREAS, the Village of Royal Palm Beach, and Palm Beach County (Petitioners), have filed a Petition challenging the City of West Palm Beach's Comprehensive Plan Amendment 08-2.01, as adopted by City Ordinance No. 4179-08 on December 15, 2008; and

WHEREAS, the State of Florida, Department of Community Affairs (DCA or Department), is the state land planning agency and has the authority to administer and enforce the Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Part II, Florida Statutes; and

WHEREAS, the City of West Palm Beach (Local Government) is a local government

with the duty to adopt comprehensive plan amendments that are “in compliance;” and

WHEREAS, the Local Government adopted Comprehensive Plan Amendment 08-2.01 (Plan Amendment) by Ordinance No. 4179-08 on December 15, 2008; and

WHEREAS, the Plan Amendment proposes to annotate the City’s Appendix A “List of Required Thoroughfare Right-of-Way Setbacks and Required Street Widths (number of lanes)” to its Transportation Element.; and

WHEREAS, the Department issued its Notice of Intent regarding the Amendment on March 5, 2009; and

WHEREAS, as set forth in the Notice of Intent, the Department contends that the Amendment is “in compliance”; and Petitioners contend that the Amendment is not “in compliance” as stated in their Amended Petition filed with the Department on March 27, 2009, and

WHEREAS, pursuant to Section 163.3184(9), Florida Statutes, Petitioners have initiated the above-styled formal administrative proceeding challenging the Amendment; and

WHEREAS, the Local Government and the Department dispute the allegations of the Amended Petition regarding the Amendment; and

WHEREAS, the parties wish to avoid the expense, delay, and uncertainty of lengthy litigation and to resolve this proceeding under the terms set forth herein, and agree it is in their respective mutual best interests to do so.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinbelow set forth, and in consideration of the benefits to accrue to each of the parties, the receipt and sufficiency of which are hereby acknowledged, the parties hereby represent and agree as follows:

GENERAL PROVISIONS

1. **Definitions.** As used in this agreement, the following words and phrases shall have the following meanings:

a. **Act:** The Local Government Comprehensive Planning and Land Development Regulation Act, as codified in Part II, Chapter 163, Florida Statutes.

b. **Agreement:** This stipulated settlement agreement.

c. **Comprehensive Plan Amendment or Plan Amendment:** Comprehensive Plan Amendment 08-2.01 adopted by the Local Government on December 15, 2008, as Ordinance No. 4179-08.

d. **DOAH:** The Florida Division of Administrative Hearings.

e. **In compliance or into compliance:** The meaning set forth in Section 163.3184(1)(b), Florida Statutes.

f. **Notice:** The notice of intent issued by the Department to find the plan amendment in compliance.

g. **Petition:** The amended petition for administrative hearing and relief filed by the Petitioners in this case.

h. **Remedial Action:** A remedial plan amendment, submission of support document or other action described in this agreement as an action which must be completed to bring resolution to the issues in the pending action and bring the plan amendment into compliance.

i. **Remedial Plan Amendment:** An amendment to the plan or support document, the need for which is identified in this agreement, including its exhibits, which the local government must adopt to complete all remedial actions. Remedial plan amendments

adopted pursuant to this Agreement must, in the opinion of the Department, be consistent with and substantially similar in concept and content to the ones identified in this Agreement or be otherwise acceptable to the Department.

j. Support Document: The studies, inventory maps, surveys, data, inventories, listings or analyses used to develop and support the Plan Amendment or Remedial Plan Amendment.

2. Department Powers. The Department is the state land planning agency and has the power and duty to administer and enforce the Act and to determine whether the Plan Amendment is in compliance.

3. Negotiation of Agreement. The Department issued its Notice of Intent to find the Plan Amendment in compliance. Petitioners filed a petition challenging the consistency of the Plan Amendment. Subsequent to the filing of the Amended Petition, the parties conferred and agreed to resolve the issues in the Amended Petition through this Agreement. It is the intent of this Agreement to resolve fully all issues between the parties in this proceeding.

4. Dismissal. If the Local Government completes the Remedial Actions required by this Agreement, the Department will issue a Notice of Intent addressing the Remedial Plan Amendment. The Department will file the Notice of Intent with DOAH. The Parties will also file a request to relinquish jurisdiction to the Department for dismissal of this proceeding or for realignment of the parties, as appropriate under Section 163.3184(16)(f), Florida Statutes.

5. Description of Provisions not in Compliance and Remedial Actions; Legal Effect of Agreement. Exhibit A to this Agreement is a copy of the Notice of Intent, which identifies the Plan Amendment as being in compliance. Exhibit B contains Remedial Actions needed for resolution of the issues herein and compliance. Exhibits A and B are incorporated in this

Agreement by this reference. This Agreement constitutes a stipulation that if the Remedial Actions are accomplished, the Plan Amendment will be in compliance.

6 Remedial Actions to be Considered for Adoption. The Local Government agrees to consider for adoption by formal action of its governing body all Remedial Actions described in Exhibit B no later than the time period provided for in this Agreement.

7 Adoption or Approval of Remedial Plan Amendments. Within 60 days after execution of this Agreement by the parties, the Local Government shall consider for adoption all Remedial Actions or Plan Amendments and amendments to the Support Documents. This may be done at a single adoption hearing. Within 10 working days after adoption of the Remedial Plan Amendment, the Local Government shall transmit 5 copies of the amendment to the Department as provided in Rule 9J-11.011(5), Florida Administrative Code. The Local Government also shall submit one copy to the regional planning agency and to any other unit of local or state government that has filed a written request with the governing body for a copy of the Remedial Plan Amendment and a copy to Petitioners and any party granted intervenor status in this proceeding. The Remedial Plan Amendment shall be transmitted to the Department along with a letter which describes the remedial action adopted for each part of the plan amended, including references to specific portions and pages.

8. Acknowledgment. All parties to this Agreement acknowledge that the "based upon" provisions in Section 163.3184(8), Florida Statutes, do not apply to the Remedial Plan Amendment.

9. Review of Remedial Plan Amendments and Notice of Intent. Within 30 days after receipt of the adopted Remedial Plan Amendments and Support Documents, the Department shall issue a Notice of Intent pursuant to Section 163.3184, Florida Statutes, for the

adopted amendments in accordance with this Agreement.

a. In Compliance: If the adopted Remedial Actions satisfy this Agreement, the Department shall issue a Notice of Intent addressing the Remedial Plan Amendment as being in compliance. The Department shall file this notice with DOAH and shall move to have this proceeding dismissed.

b. Not in Compliance: If the Remedial Actions do not satisfy this Agreement, Petitioners reserve the right to proceed to hearing in this matter.

10. Effect of Amendment. Adoption of any Remedial Plan Amendment shall not be counted toward the frequency restrictions imposed upon plan amendments pursuant to Section 163.3187(1), Florida Statutes.

11. Purpose of this Agreement; Not Establishing Precedent. The Parties enter into this Agreement in a spirit of cooperation for the purpose of avoiding costly, lengthy and unnecessary litigation and in recognition of the desire for the speedy and reasonable resolution of disputes arising out of or related to the Plan Amendment. The acceptance of proposals for purposes of this Agreement is part of a negotiated agreement affecting many factual and legal issues and is not an endorsement of, and does not establish precedent for, the use of these proposals in any other circumstances or by any other local government.

12. Approval by Governing Body. This Agreement has been approved by the Local Government's governing body at a public hearing advertised at least 10 days prior to the hearing in a newspaper of general circulation in the manner prescribed for advertisements in Section 163.3184(15)(c), Florida Statutes. This Agreement has been executed by the appropriate officer as provided in the Local Government's charter or other regulations.

13. Changes in Law. Nothing in this Agreement shall be construed to relieve either

party from adhering to the law, and in the event of a change in any statute or administrative regulation inconsistent with this agreement, the statute or regulation shall take precedence and shall be deemed incorporated in this Agreement by reference.

14. Other Persons Unaffected. Nothing in this Agreement shall be deemed to affect the rights of any person not a party to this Agreement. This Agreement is not intended to benefit any third party.

15. Attorney Fees and Costs. Each party shall bear its own costs, including attorney fees, incurred in connection with the above-captioned case and this Agreement.

16. Effective Date. This Agreement shall become effective immediately upon execution by the Petitioners, the Department and the Local Government.

17. Filing and Continuance. This Agreement shall be filed with DOAH by the Department after execution by the parties. Upon the filing of this Agreement, the administrative proceeding in this matter shall be stayed by the Administrative Law Judge in accordance with Section 163.3184(16)(b), Florida Statutes.

18. Retention of Right to Final Hearing. The parties hereby retain the right to have a final hearing in this proceeding in the event of a breach of this Agreement, and nothing in this Agreement shall be deemed a waiver of such right. Any party to this Agreement may move to have this matter set for hearing if it becomes apparent that any other party whose action is required by this Agreement is not proceeding in good faith to take that action.

19. Construction of Agreement. All parties to this Agreement are deemed to have participated in its drafting. In the event of any ambiguity in the terms of this Agreement, the parties agree that such ambiguity shall be construed without regard to which of the parties drafted the provision in question.

20. Entire Agreement. This is the entire agreement between the parties and no verbal or written assurance or promise is effective or binding unless included in this document.

21. Governmental Discretion Unaffected. This Agreement is not intended to bind the Local Government in the exercise of governmental discretion which is exercisable in accordance with law only upon the giving of appropriate public notice and required public hearings.

22. Multiple Originals. This Agreement may be executed in any number of originals, all of which evidence one agreement, and only one of which need be produced for any purpose.

23. Captions. The captions inserted in this Agreement are for the purpose of convenience only and shall not be utilized to construe or interpret any provision of this Agreement.

In witness whereof, the parties hereto have caused this Agreement to be executed by their undersigned officials as duly authorized.

Village of Royal Palm Beach

By: _____
[Name]

[Title]

Date

Approved as to form and legality:

Counsel for Village of Royal Palm Beach

Date

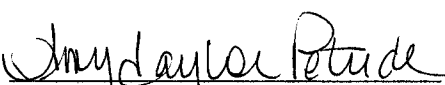
Palm Beach County

By: _____
[Name]

[Title]

Date

Approved as to form and legality:


Assistant County Attorney
11/12/09

Date

DEPARTMENT OF COMMUNITY AFFAIRS

Approved as to form and legality:

By: _____
Director, Division of Community Planning

Assistant General Counsel

Date

Date

CITY OF WEST PALM BEACH

Approved as to form and legality:

By: _____
[Name]

[Title]

City Attorney

Date

Date



STATE OF FLORIDA

DEPARTMENT OF COMMUNITY AFFAIRS

"Dedicated to making Florida a better place to call home"

CHARLIE CRIST
Governor

THOMAS G. PELHAM
Secretary

March 4, 2009

The Honorable Lois Frankel
Mayor, City of West Palm Beach
200 2nd Street
West Palm Beach, Florida 33401

Dear Mayor Frankel:

The Department of Community Affairs has completed its review of the City of West Palm Beach Comprehensive Plan Amendment (DCA Number 08-2ER), adopted by Ordinance Numbers 4127-08, 4179-08, 4180-08, and 4181-08, on December 15, 2008, and determined that it meets the requirements of Chapter 163, Part II, Florida Statutes, for compliance, as defined in Subsection 163.3184(1)(b), Florida Statutes. The Department is issuing a Notice of Intent to find the Comprehensive Plan Amendment in compliance. The Notice of Intent has been sent to the *Palm Beach Post* for publication on March 5, 2009.

The Department's Notice of Intent to find a plan amendment in compliance shall be deemed to be a final order if no timely petition challenging the amendment is filed. Any affected person may file a petition with the agency within 21 days after the publication of the Notice of Intent pursuant to Section 163.3184(9), Florida Statutes. No development orders, or permits for a development, dependent on the amendment, may be issued or commence before the plan amendment takes effect. Please be advised that Section 163.3184(8)(c)2, Florida Statutes requires a local government that has an Internet site to post a copy of the Department's Notice of Intent on the site within 5 days after receipt of the mailed copy of the agency's Notice of Intent.

Please note that a copy of the adopted City of West Palm Beach Comprehensive Plan Amendment and the Notice of Intent must be available for public inspection Monday through Friday, except for legal holidays, during normal business hours at the Planning and Zoning Department, City Hall, 200 Second Street, 5th Floor, West Palm Beach, Florida 33402.

2555 SHUMARD OAK BOULEVARD • TALLAHASSEE, FL 32399-2100
850-488-8466 (p) • 850-921-0781 (f) • Website: www.dca.state.fl.us

• COMMUNITY PLANNING 850-488-2356 (p)
• HOUSING AND COMMUNITY DEVELOPMENT 850-488-2357 (p)

FINES TRUST 850-922-2207 (p) 850-921-1747 (f) •
(p) 850-922-5623 (f) •

EXHIBIT

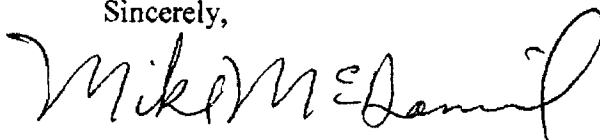
A

The Honorable Lois Frankel, Mayor
March 4, 2009
Page Two

If this in compliance determination is challenged by an affected person, you will have the option of mediation pursuant to Subsection 163.3189(3)(a), Florida Statutes. If you choose to attempt to resolve this matter through mediation, you must file the request for mediation with the administrative law judge assigned by the Division of Administrative Hearings. The choice of mediation will not affect the right of any party to an administrative hearing.

If you have any questions, please contact Richard W. Post, AICP, Senior Planner, at (850) 922-1813.

Sincerely,

A handwritten signature in black ink that reads "Mike McDaniel". The signature is fluid and cursive, with the first name "Mike" and last name "McDaniel" clearly distinguishable.

Mike McDaniel, Chief
Office of Comprehensive Planning

MM/rwp

Enclosure: Notice of Intent

cc: Mr. Charles Wu, AICP, Director, Planning and Zoning Department
Mr. Michael Busha, AICP, Executive Director, Treasure Coast Regional Planning Council

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS
NOTICE OF INTENT TO FIND
THE CITY OF WEST PALM BEACH
COMPREHENSIVE PLAN AMENDMENT
IN COMPLIANCE
DOCKET NO. 08-2ER-NOI-5038-(A)-(I)

The Department gives notice of its intent to find the Amendment to the Comprehensive Plan for the City of West Palm Beach, adopted by Ordinance Nos. 4127-08, 4179-08, 4180-08 and 4181-08 on December 15, 2008, IN COMPLIANCE, pursuant to Sections 163.3184, 163.3187 and 163.3189, F.S.

The adopted City of West Palm Beach Comprehensive Plan Amendment and the Department's Objections, Recommendations and Comments Report (if any) are available for public inspection Monday through Friday, except for legal holidays, during normal business hours, at the City of West Palm Beach City Hall, Planning and Zoning Department, 200 Second Street, 5th Floor, West Palm Beach, Florida 33402.

Any affected person, as defined in Section 163.3184, F.S., has a right to petition for an administrative hearing to challenge the proposed agency determination that the Amendment to the City of West Palm Beach Comprehensive Plan is In Compliance, as defined in Subsection 163.3184(1), F.S. The petition must be filed within twenty-one (21) days after publication of this notice, and must include all of the information and contents described in Uniform Rule 28-106.201, F.A.C. The petition must be filed with the Agency Clerk, Department of Community Affairs, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100, and a copy mailed or delivered to the local government. Failure to timely file a petition shall constitute a waiver of any right to request an administrative proceeding as a petitioner under Sections 120.569 and 120.57, F.S. If a petition is filed, the purpose of the administrative hearing will be to present evidence and testimony and forward a recommended order to the Department. If no petition is filed, this Notice of Intent shall become final agency action.

If a petition is filed, other affected persons may petition for leave to intervene in the proceeding. A petition for intervention must be filed at least twenty (20) days before the final hearing and must include all of the information and contents described in Uniform Rule 28-106.205, F.A.C. A petition for leave to intervene shall be filed at the Division of Administrative Hearings, Department of Management Services, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060. Failure to petition to intervene within the allowed time frame constitutes a waiver of any right such a person has to request a hearing under Sections 120.569 and 120.57, F.S., or to participate in the administrative hearing.

After an administrative hearing petition is timely filed, mediation is available pursuant to Subsection 163.3189(3)(a), F.S., to any affected person who is made a party to the proceeding by filing that request with the administrative law judge assigned by the Division of Administrative Hearings. The choice of mediation shall not affect a party's right to an administrative hearing.



Mike McDaniel, Chief
Office of Comprehensive Planning
Division of Community Planning
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

EXHIBIT B
REMEDIAL ACTIONS

1. Adopt a Remedial Plan Amendment amending the Note that is the subject of the administrative challenge to read as follows:

APPENDIX A

**LIST OF REQUIRED THOROUGHFARE RIGHT-OF-WAY SETBACKS AND
REQUIRED STREET WIDTHS (NUMBER OF LANES)**

...

Notes:

1. The City does not support the widening of Australian Avenue, north of Banyan Boulevard, beyond its existing 4 lane section due to the impacts that it would have on the quality of life of the residents along this road.

2. The future development of Roebuck Road, State Road 7, and Jog Road will be is subject to all necessary environmental permitting processes. Roebuck Road, State Road 7, and Jog Road are included in this table solely for the purpose of consistency with the Palm Beach County Comprehensive Plan Maps TE 1.1 and 14.1 and the Palm Beach MPO Long Range Transportation Plan. This inclusion does not reflect the City's position on the future development of these roads. This inclusion does not restrict the City's right to amend this table if environmental permits for such roads are not issued. The City acknowledges that removal of these roads from this Appendix requires a comprehensive plan amendment.

The City is presently challenging the future development of Roebuck Road on environmental grounds. There is a 1994 interlocal agreement (and the 1999 amendment to the Agreement) between the County and the City regarding the alignment for a future Roebuck Road, and a related 2007 Stipulated Settlement Agreement between the City and the County which provides that the "City shall have the right and full opportunity to participate in the permitting aspects of the Roebuck Road Project, including environmental permitting, and to object to the issuance of any and all permits necessary for the construction of the roadway improvements" and "in the event the County is unable to obtain all necessary permits, including environmental permits required to complete this Project, the deeds being held in escrow shall be null and void and returned to the City within fourteen (14) days of being informed in writing that the County was unable to obtain the required permits." If the County receives environmental permits for the Roebuck Road Project, the City will amend its Comprehensive Plan to remove references to Roebuck Road from Note 2 of this Appendix. If the County or the State receives environmental permits for the State Road 7 project, the City will amend its Comprehensive Plan to remove references to State Road 7 from Note 2 of this Appendix. If the City transfers property interests sought by the County for the Jog Road extension to the County, then the City will amend its Comprehensive Plan to remove references to Jog Road from Note 2 of this Appendix.

