

**DRAFT**  
**PLANNING AND ZONING BOARD**  
**CITY OF FORT LAUDERDALE**  
**CITY HALL COMMISSION CHAMBERS – 1<sup>ST</sup> FLOOR**  
**100 NORTH ANDREWS AVENUE**  
**FORT LAUDERDALE, FLORIDA**  
**WEDNESDAY, AUGUST 15, 2012 – 6:30 P.M.**

**Cumulative**

<b>Board Members</b>	<b>Attendance</b>	<b>June 2012-May 2013</b>	
		<b>Present</b>	<b>Absent</b>
Patrick McTigue, Chair	P	2	1
Leo Hansen, Vice Chair	P	3	0
Stephanie Desir-Jean	P	2	1
Michael Ferber	P	3	0
James McCulla	A	2	1
Michelle Tuggle	P	3	0
Tom Welch	A	2	1
Peter Witschen (arr. 6:41)	P	2	1

It was noted that a quorum was present at the meeting.

**Staff**

Ella Parker, Acting Urban Design and Planning Manager  
D'Wayne Spence, Assistant City Attorney  
Thomas Lodge, Urban Design and Development  
Yvonne Redding, Urban Design and Development  
Randall Robinson, Urban Design and Development  
Jay Sajadi, Engineering Department  
Brigitte Chiappetta, Recording Secretary, Prototype, Inc.

**Communications to City Commission**

**Motion** made by Mr. Witschen, seconded by Ms. Desir-Jean, that the City Commission explore the possibility of allowing Staff approval for Items such as #4 and #6, which relate to approval of new signage and the conversion of a former single-family home to office use within a residential office (RO) zoning district. The process of bringing these and similar items before the Planning and Zoning Board can be lengthy and discouraging to the development process. If Staff were allowed to evaluate the criteria for these items, they would retain the option to bring that Item before the Board for approval; and conversely, if an Applicant does not agree with Staff's decision, they would also have the option to request Board approval.

In a voice vote, the **motion** passed unanimously.

**Index**

	<b><u>Case Number</u></b>	<b><u>Applicant</u></b>
1.	8P11**	Holman Automotive, Inc. / Holman BMW
2.	6Z12** *	Premiere Automobile Sales, Inc. / Hertz Rental Car
3.	45R12	Central National Bank of Broward / SunTrust Corporation Real Estate
4.	37R12**	Joyce Saunders
5.	46R12**	Paseo del Mar
6.	61R12	Pan Royal Pavilion, LLC / Aqua Hotel
7.		Communications to the City Commission
8.		For the Good of the City

1. **Holman Automotive, Inc. / Holman BMW** **Thomas Lodge** **8P11**

**Request:** \*\*      **Vacation of Right-of-Way**

**Legal Description:**      That portion of NE 7<sup>th</sup> Avenue, According to the plat thereof of PROGRESSO, as recorded in Plat Book 2 at Page 18 of the Public Records of Dade County, Florida, Bounded on the South by the Easterly Projection of the South Boundary of Lot 24 in Block 218, According to said Plat, on the West by the East Boundary of said Block 218, According to said Plat, on the North by the Southerly Right-of-Way line of East Sunrise Boulevard, as not located and constructed, and on the East by the West Boundary of Block 219, according to said Plat.

**General Location:**      Southeast corner of Sunrise Boulevard and Federal Hwy

**District:**      2

**Item deferred from June 20, 2012 meeting**

Disclosures were made, and any members of the public wishing to speak on this Item were sworn in.

Hope Calhoun, representing the Applicant, recalled that this Item had first been presented in April 2012. Since that time, the Applicant has met many times with Staff to discuss the requested right-of-way vacation. Their position and the request for the vacation have not changed, as the Applicant feels they have satisfied all City requirements and does not believe it would be safe to maintain a pedestrian right-of-way on 7<sup>th</sup> Avenue. They have also worked with the adjacent property owner, who continues to support vacation of the right-of-way.

She showed an aerial map of the property and surrounding area, noting that Staff had contended the Applicant did not satisfy Items A, B, or D of the vacation requirements, as the closure of the right-of-way would adversely affect pedestrian traffic. With regard to Item A, Ms. Calhoun asserted that the right-of-way is no longer needed for public purpose use, as few pedestrians use 7<sup>th</sup> Avenue. She characterized the area as “a right-of-way to...nowhere” and pointed out that the Applicant does not see this as a safe place for pedestrian activity.

She continued that Item B, which requires alternate routes with no adverse effects to the surrounding area, is satisfied by existing access on 10<sup>th</sup> Avenue and along Federal Highway. Item C, which requires that the closure of the right-of-way provide safe space for vehicles to turn around and exit the area, is addressed by a T-turnaround at the intersection of 7<sup>th</sup> Avenue and 9<sup>th</sup> Street. She reiterated that the right-of-way is not in a well-lit area and pedestrian use should not be encouraged there.

Finally, she stated again that Item D did not apply, as there is no existing pedestrian traffic that would be adversely affected by the vacation. Ms. Calhoun added that the Applicant has coordinated with all public utility providers in the area and has letters of consent to close the right-of-way.

She advised that the Applicant has met with Staff and agreed to provide a 14 ft. pedestrian access within the 7<sup>th</sup> Avenue right-of-way. An issue remains with regard to when this dedication would occur: as the Applicant is an auto dealership, their preference is for no pedestrians to walk through the dealership itself, as this could invite vandalism and/or trigger alarms on the property after hours. Ms. Calhoun clarified that the Applicant would not encourage the use of pedestrian access as long as the property is functioning as an auto dealership.

She concluded that the Applicant requests the vacation of the right-of-way with or without the pedestrian access so development of the property may continue.

Ms. Desir-Jean asked if the Applicant has a plan of development for the site. Ms. Calhoun said at the beginning of the process, the Applicant planned to develop a BMW dealership; however, at this time BMW is no longer part of the project, and no additional plan has been developed.

Ms. Desir-Jean asked if there has been no movement toward further compromise by either the Applicant or Staff since the Application was first presented. Ms. Calhoun explained that the Applicant has agreed to provide an easement, but delays occurred while a decision was made regarding the location of the easement, as well as a lack of quorum at a previous meeting. The compromise presented at tonight’s meeting represented the best possible agreement.

Mr. Witschen asked what mechanism would be used to ensure that the easement would be provided in perpetuity, as well as the reason for the urgency

to vacate the right-of-way at present and provide the easement in the future. Ms. Calhoun replied that it is a condition of the Applicant's plat approval that they vacate the portion of 7<sup>th</sup> Avenue. The Applicant has agreed to provide a "reservation of a pedestrian use," and would prepare and record a document stating that upon the sale or redevelopment of the site, the pedestrian easement would be recorded and preserved.

Mr. Witschen asked if the Applicant was willing to agree to a trigger for this use other than abandonment of the property as a prospective auto dealership. Ms. Calhoun stated that if the property is sold or no longer used as a dealership, this trigger would occur.

Chair McTigue asked what would allow access to the back of the adjacent property if the vacation is granted. Ms. Calhoun said the configuration of the road itself would not change, which meant individuals could continue to use this area. Cross-access easements have also been executed with the parties who use the back of the plaza. She noted that this area is presently used for service and deliveries.

Ms. Tuggle asked if the part of 7<sup>th</sup> Avenue to be vacated belongs to the same owner on both sides of the street. Ms. Calhoun explained that this was not the case; however, the owner of the plaza is supportive of the proposed vacation, and each owner would receive half the property when it is vacated. She added that this is why the Staff report states the Applicant will dedicate 14 ft. within their 20 ft. of vacated right-of-way. Parcels owned by the Applicant were identified on the aerial map.

Mr. Lodge stated that the request would vacate a 40 ft. portion of a NE 7<sup>th</sup> Avenue right-of-way. Should the Board approve the Application, Staff has proposed the following conditions:

1. The Applicant would provide a 14 ft. cross-access easement to the City for the benefit of pedestrians, bicyclists, and other non-motorized modes of transportation within the right-of-way. Appropriate documents would be recorded to memorialize this easement. If the existing site layout is reconfigured or the property is redeveloped in the future, a more appropriate placement of the easement may be determined and agreed upon in order to continue to provide mid-block access to the property from Sunrise Boulevard, depending upon the site layout and the design of the proposed redevelopment plan.
2. Any utilities required to be replaced and relocated will be done at the Applicant's expense and approved by the City Engineer.
3. Per the Property and Right-of-Way Committee, the Applicant shall create a cul-de-sac or T-turnaround where 7<sup>th</sup> Avenue and 9<sup>th</sup> Street intersect.
4. Also per the Property and Right-of-Way Committee, appropriate treatment must be made to 7<sup>th</sup> Avenue to create an obvious transition from public to private use. (If Condition 1 is accepted, this Condition shall not apply.)

Ms. Tuggle asked if the adjacent property owners, with whom the right-of-way would be divided, were aware of the potential obligation to give this back. Mr. Lodge explained that the 14 ft. portion dedicated to the easement would be part of the portion belonging to the Applicant. The existing right-of-way is 40 ft. in width, which meant each owner would retain 20 ft.

Vice Chair Hansen commented that if the right-of-way is divided between the Applicant and the owner of the adjacent Office Depot, the half would not be useful to the adjacent owner. He suggested that this portion might be sold to the Applicant. Mr. Witschen observed that this could be considered undue enrichment resulting from the vacation.

Chair McTigue asked if it would be possible to give up the 14 ft. easement for the portion between the two property lines only, so it did not include the area behind the Office Depot property; this portion could remain a City right-of-way. Ms. Calhoun observed that this could be achieved by providing pedestrian access on Sunrise Boulevard to the west of the Applicant's parcel, extending down to 9<sup>th</sup> Avenue.

Ms. Parker noted that this alternative had not been previously considered, but stated that the intent has consistently been to protect the future needs of the public. This was one reason Staff had agreed that the Applicant could record a public record ensuring that the easement would be granted to reserve appropriate pedestrian access. Upon redevelopment of the property, the physical location of the easement would be finalized.

Ms. Parker asked if the Applicant was willing to consider vacating only a portion of the right-of-way to provide alternative access. Ms. Calhoun stated that the Applicant was still requesting that the length of 7<sup>th</sup> Avenue be vacated, and only the location of the pedestrian access was being discussed at present.

Chair McTigue asked how the vacation of the entire portion was justified. Ms. Calhoun said the Applicant will provide a T-turnaround at the intersection of 7<sup>th</sup> Avenue and 9<sup>th</sup> Street if they proceeded as proposed; if only a portion was vacated, another type of turnaround would have to be provided, such as a U-turn in a different location.

There being no further questions from the Board at this time, Chair McTigue opened the public hearing. As there were no members of the public wishing to speak on this Item, Chair McTigue closed the public hearing and brought the discussion back to the Board.

Vice Chair Hansen remarked that the Chair's suggestion to vacate only the section of the right-of-way between the two properties owned by the Applicant was more typical of most vacation requests granted by the Board. He added that

the Application is also unusual in that the vacation would have no effect at present. He also expressed concern with the open-ended nature of the request, and added that although there is a need for pedestrian access in this area, it was not possible to know what could happen in the area in the future.

He concluded that there would be no benefit to the City, monetary or otherwise, in granting the vacation, particularly if more development occurs in the future. He advised that he was willing to grant the vacation of the right-of-way from the north end of the Office Depot property to Sunrise Boulevard, but remained hesitant about the balance of the requested area.

Mr. Witschen advised that he had two concerns: both the uncertainty of future development, and the creation of more value at the public's expense through connecting the two properties. He pointed out that the City would not be compensated for creating this additional value.

Vice Chair Hansen stated he would be less concerned if he could see more of a concrete benefit to the City from the vacation. He observed that there is typically a "good purpose" associated with a vacation of this nature, such as alleviating a detrimental situation; however, he did not feel there was evidence that this would occur in this case.

Mr. Ferber commented that in order for the Applicant to plat the property, the Florida Department of Transportation (FDOT) was requiring that 7<sup>th</sup> Avenue must be removed; he added that he did not believe FDOT would permit a curb cut on Sunrise Boulevard in this location at the future. Ms. Parker clarified that FDOT's intent was that no vehicular access be granted onto Sunrise Boulevard.

Mr. Ferber continued that in the future, the optimum location for pedestrian access from Sunrise Boulevard could be through this site, although it is not yet known how the site may be redeveloped; City Staff would have the discretion of placing the 14 ft. access easement through the site. He concluded by asking Staff if they had adequate assurance that they would "have what they need to acquire that 14 ft. easement through the property."

Attorney Spence clarified that Staff is requesting the easement to be granted at the time of the vacation; he noted that there has also been discussion of creating a separate instrument to provide for the reservation of an easement at a future time. Both mechanisms can accomplish the same goal. Staff would prefer immediate pedestrian access, while the Applicant has suggested it would not be safe to grant this access until the property is redeveloped or another use is proposed for it instead of an auto dealership.

He advised that some Board members had identified an issue that also concerns the City: whether or not it is possible for the property's use as an auto dealership to continue in perpetuity. Attorney Spence stated that this means the remaining

question is when the public will receive its pedestrian easement. He suggested that perhaps the Board could resolve this point of contention through further discussion.

Mr. Witschen asked if a member of the public could use this right-of-way at present. Ms. Parker confirmed that they could. Mr. Witschen asked why the vacation could not be activated once the easement is granted, either today or in the future, as there is no more of a safety issue in the future than today. Attorney Spence replied that this question would have to be answered by the property owner and/or developer.

Chair McTigue asked how pedestrians would be able to use the easement, recalling the Applicant's concern for the security of the proposed dealership. He pointed out that a building is currently located in this area, and the easement would not be usable until that building has been demolished.

Ms. Calhoun read from the County plat report, which stated that the openings east of 7<sup>th</sup> Avenue are permitted by FDOT, contingent upon the vacation of NE 7<sup>th</sup> Avenue, which must be completed and recorded prior to the recordation of the plat. She read from a letter provided by FDOT as well, which also referred to the vacation of NE 7<sup>th</sup> Avenue. Mr. Witschen pointed out that these documents do not address the length of the area to be vacated. Ms. Calhoun said the discussions on this issue referred to the entire length of 7<sup>th</sup> Avenue.

Ms. Parker requested clarification of whether the Applicant had suggested this language to FDOT, noting that FDOT does not typically recommend the vacation of rights-of-way. Ms. Calhoun said the Applicant had met with FDOT, which required the closing of the 7<sup>th</sup> Avenue right-of-way in order to maintain two other openings on the property. Ms. Parker asked if this referred specifically to the closing of vehicular access on 7<sup>th</sup> Avenue. Ms. Calhoun replied that this is not part of the letter's language.

**Motion** made by Mr. Witschen that the vacation be granted subject to the following conditions: that the vacation wouldn't be activated until such a time as a minimum 14 ft. pedestrian easement be established and usable by the public.

He added that this easement could be either a straight line or a dogleg to the west; in either case, it would require the demolition of a building.

Ms. Tuggle requested that the **motion** be **amended** to include Staff's four recommended conditions, as stated during the Staff Report. Ms. Parker noted that Conditions 1 and 4 would require amendment if the **motion** is accepted. Mr. Witschen agreed to the **amendment**.

Ms. Calhoun requested clarification of whether the **motion** meant only the dogleg easement would be acceptable. Mr. Witschen said while his preference was for

the dogleg, this would ultimately be dependent upon what Staff and the Applicant determined was acceptable.

Vice Chair Hansen suggested that there should be an additional condition: if City Staff decided that the pedestrian easement is no longer necessary, the other stated conditions would not apply. Mr. Witschen said he was amenable to this condition as well.

Ms. Desir-Jean **seconded** Mr. Witschen's **motion**.

Ms. Calhoun requested clarification that the **motion** would allow for modification or relocation of the easement upon redevelopment. Mr. Witschen confirmed this. Ms. Calhoun asked for further clarification that while the City would still have public rights to the right-of-way until the easement is granted the location of the easement can be reassessed if redevelopment occurs. Attorney Spence said the vacation of the right-of-way would be granted, contingent upon the Applicant providing one of two 14 ft. pedestrian easements, subject to the conditions applicable to the alternative routes.

Mr. Witschen added that if granting public access to the site at present was not desirable to the Applicant, they would have the alternative of providing the easement and making it accessible to the public.

Attorney Spence pointed out that it was still necessary to state which Staff conditions were applicable to the project according to the **motion**. Mr. Witschen said the redevelopment trigger would no longer be necessary; however, the utilities would still need to be relocated, subject to the City Engineer's guidelines and approval. Ms. Parker suggested that the second portion of Condition 1, which refers to the redevelopment or reconfiguration of the property and more appropriate placement of the easement, would still apply; the first portion of this condition was included in Mr. Witschen's **motion**.

Ms. Tuggle stated that she would like to ensure the Board included all necessary Staff recommendations and stipulations in the **motion**. Ms. Parker clarified that only the second portion of Condition 1 would apply; Condition 4 would not be included, and Condition 3 would be subject to the City Engineer's approval.

In a roll call vote, the **motion** passed 6-0.