



## NEIGHBORHOOD DEVELOPMENT SERVICES DEPARTMENT

*Planning Division*

### STAFF REPORT

**5861 Brickell Drive – (Openchowski Trust) Partial Vacation, Resolution No. 2017-R-16  
(VAC-17-068)**

Vacating a portion of platted rear 20-foot drainage maintenance easement.

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**To:** Peter Lear, CPA, CGMA, Interim City Manager

**Thru:** Scott Williams, Neighborhood Development Services Director

**Thru:** Michele Norton, AICP, Planning Manager

**From:** Mary McNish, Planner

**Date:** May 19, 2017

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#### **I. GENERAL INFORMATION**

**Project:** Petition No. VAC-17-068, Resolution No. 2017-R-16, 5861 Brickell Drive (Openchowski) Partial Vacation of the platted 20-foot rear drainage maintenance easement.

**Request:** Approve Resolution No. 2017-R-16, Petition No. VAC-17-068, the request of Alexandra Openchowski to vacate a portion of the platted 20-foot rear drainage maintenance easement to allow for an existing in-ground swimming pool and deck to remain.

**Applicant:** Alexandra Openchowski (**Exhibit A, Affidavit**)

**Owner(s):** Frank J. Openchowski and Alexandra Openchowski, Trustees under the Frank J. and Alexandra W. Family Trust (**Exhibit A-1 Warranty Deed**)

**Location:** The subject property is located at 5861 Brickell Drive, North Port, Florida (Lot 20, Block 188, Second Addition to Port Charlotte Subdivision) (PID # 1004018820) (Section 34, Township 39S, Range 21 East).

**Property Size:** The subject property contains approximately  $\pm .229$  acres. The site contains  $\pm 145.80$  square feet more or less.

## **II. BACKGROUND**

The applicant, Alexandra Openchowski, owner of 5861 Brickell Drive in North Port is requesting to vacate a 4.5-foot portion of the 20-foot rear drainage maintenance easement to address the encroachment of an existing in-ground swimming pool and deck. The home was built in 1997 and the applicant has remained as owner for the past twenty years. Recently, the owner decided to sell the home. Upon investigation by the potential new owner, an open building permit was discovered. The permit was for a swimming pool which was constructed concurrently with the house but under a separate building permit. The swimming pool permit records indicate that one inspection had been done but a final inspection was never recorded. The house received all required inspections and a Certificate of Occupancy (CO) was issued.

An inquiry was made to the City Building staff regarding the open building permit. A survey from the applicant showed the encroachment of the deck and pool into the easement and rear setback. Approximately 145.80 square feet of the deck is constructed into the easement. It was then determined the applicant would need a variance and partial vacation of easement to gain clear title to the property and complete the closing on the sale of the home.

City policy for retention of records for building permits is based on the State of Florida General Records Schedule GS1-SL which requires a local government to retain residential building permits for up to ten years after a Certificate of Occupancy is issued. Although the City maintains a historical data base of building permits, paper or scanned copies of building permits issued for this property could not be located. As a result, it is not certain whether the City ever received a copy of the boundary survey (**Attachment 1**) from the applicant which would have alerted City staff to the rear setback and easement encroachment. In 1997, Building Department policy did not require a survey before issuing a Certificate of Occupancy. Because the pool had a separate building permit, the house could receive a CO even if the pool permit remained open. Recently, City staff has implemented safety measures in the construction process by requiring a survey at the time of the formation of the pool before the concrete is poured. This extra step will aid in the avoidance of these types of situations in the future.

The applicant has two options to remedy the situation. One option is to remove the rear deck from the drainage maintenance easement and rear setback. The pool is encased in a concrete deck which may not be structurally possible to remove the deck without removing the pool. The second option is to apply for a variance and partial vacation of easement as pursuant to the provisions of Chapter 177 of the Florida Statutes and Section 53-267(D) of the Unified Land Development Code which states, "platted easement shall be vacated in accordance with F.S. ch. 177".

As removing the pool and deck is not the preferable option, the applicant chose to pursue Option #2. On April 13<sup>th</sup>, 2017, the City of North Port Neighborhood Development Services Planning Division received an application for a vacation of easement from the property owner, Alexandra W. Openchowski, Trustees under the Frank J. and Alexandra W. Family Trust (**Attachment 2**). A narrative was included in the application submittal (**Attachment 3**). The request for a variance will be heard on May 12, 2017 by the Zoning Board of Appeals. The results of this meeting will be part of staff presentation at the Planning and Zoning Advisory Board hearing and made part of the public records.

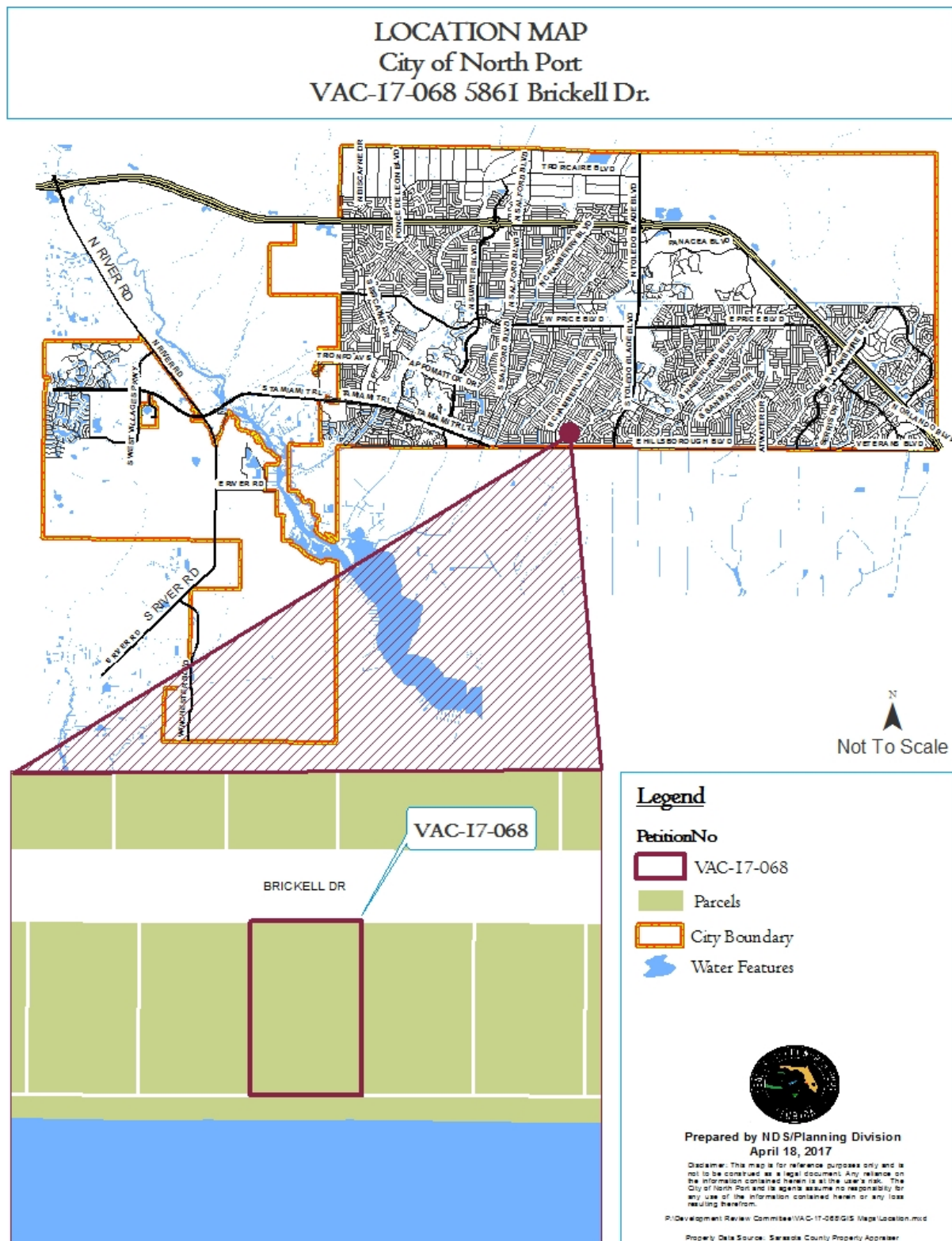
For the pool and deck to remain, it is necessary that both the variance and the partial vacation of easement of the rear 20-foot maintenance easement is granted. Upon approval, the North Port Building Division will begin the final inspection to close the swimming pool permit.

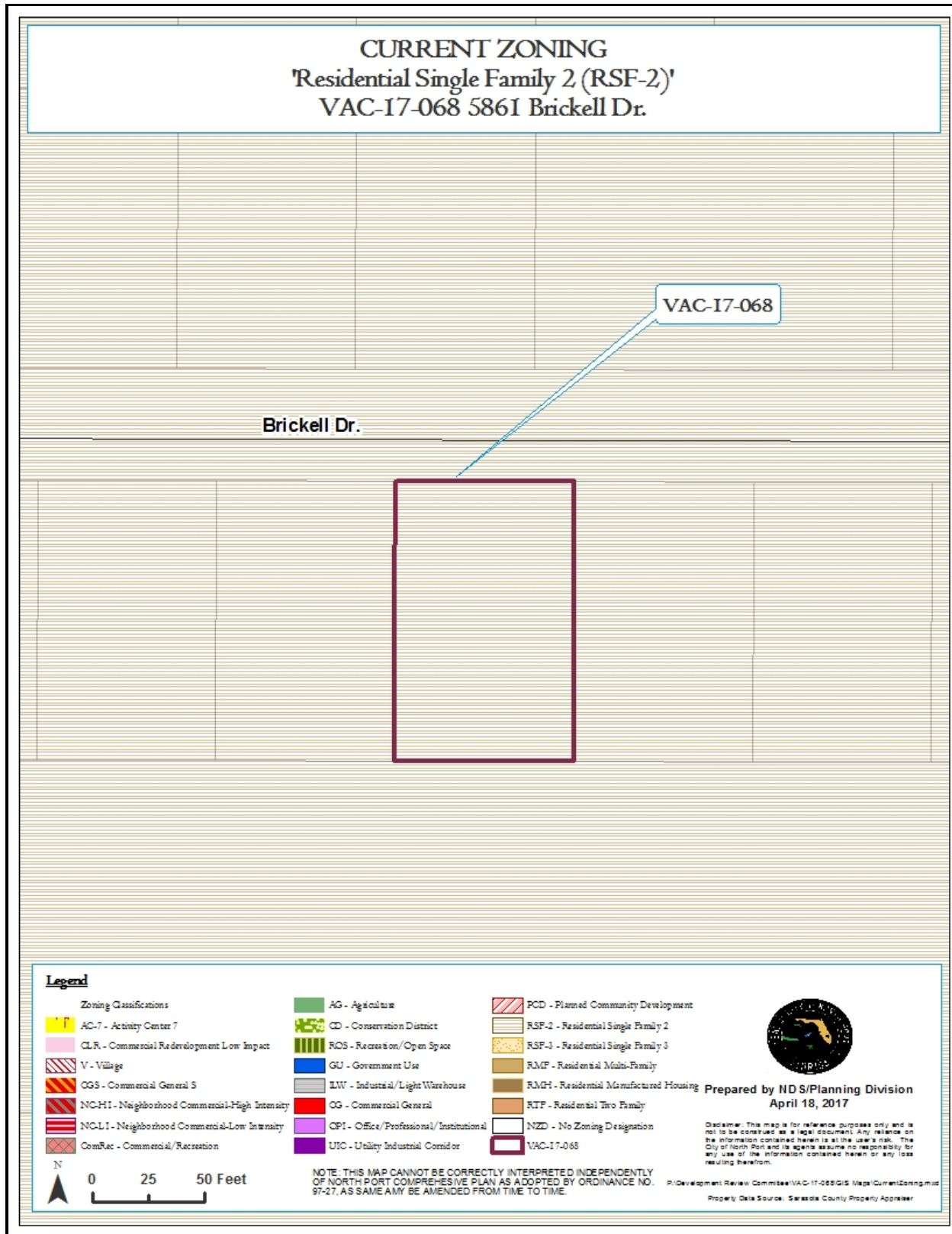
The Neighborhood Development Services, Planning Division notified all affected utilities on April 17th, 2017, of the request for a partial vacation of the rear 20-foot drainage maintenance easement. Through written response, staff received approvals from all of the affected utility agencies with the following comments:

1. Applicant is in need of immediate relief due to pending sale of home. Furthermore, encroachment of easement has not caused any concerns for Public Works since structure placed upon it in 1997. (Public Works)
2. This is to confirm/approve the vacation of only the 20-foot easement in the rear (south) end of the said property. (Florida Power and Light)
3. No objection to the request as per records do not indicate facilities within the 20' easement/vacate area. (Frontier)

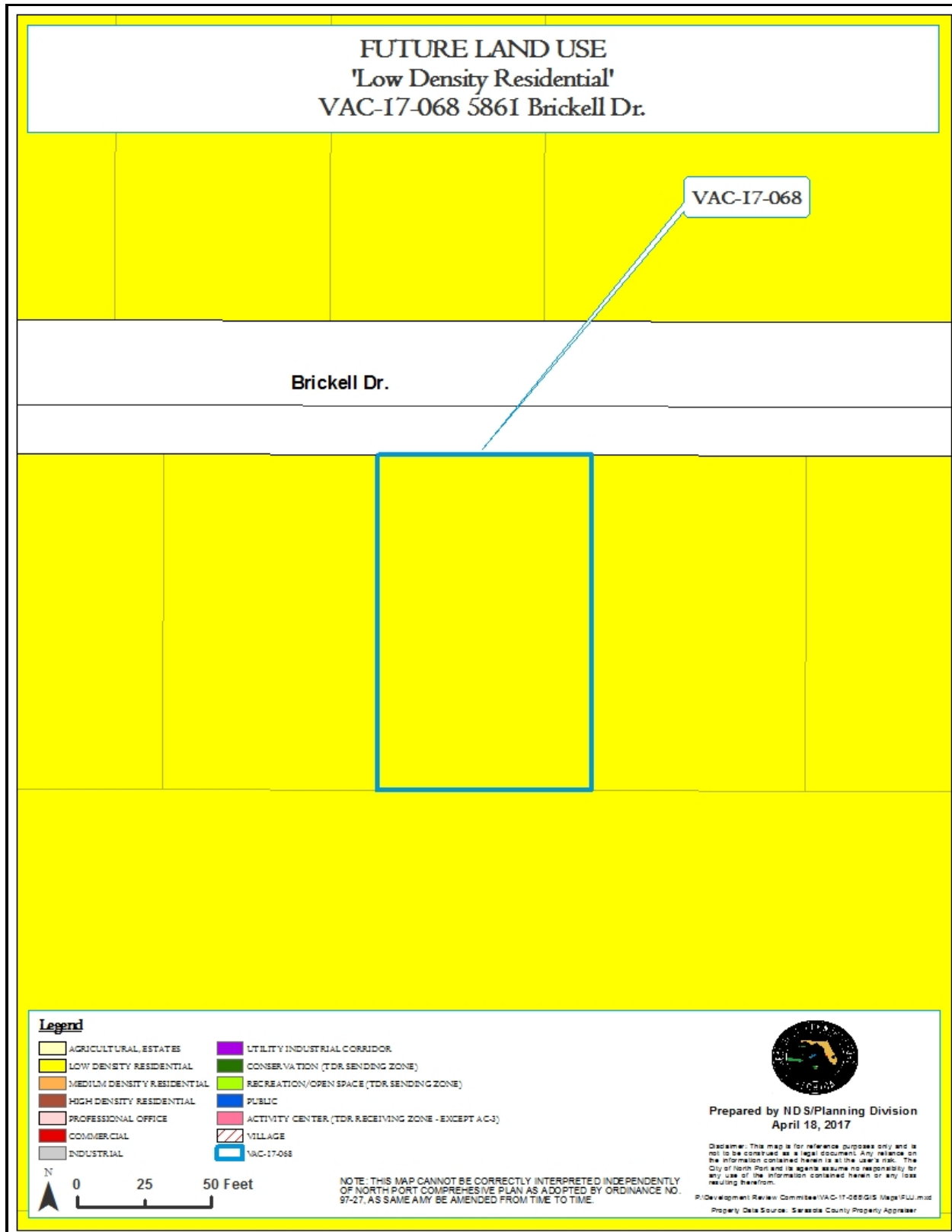
Based on the responses from the affected utilities and the requirements of Florida Statute 177-Land Boundaries; staff finds that the request to vacate a portion of the rear drainage maintenance easement:

- Will not affect the ownership or right of convenient access of persons owning other parts of the subdivision.
- The easement is not needed to provide City service to any property.
- No public utilities or City facilities are planned to be located in the area.
- The easement is not necessary to any extension of City service to any property in the future.









### III. **STAFF RECOMMENDATION**

Based on staff's evaluation and stated findings, staff is recommending approval of Resolution No.2017-R-16, Petition No. VAC-17-068, the request of Alexandra Openchowski, to vacate a portion of the rear 20-foot drainage maintenance easement located on lot 20, Block 188, Second Addition to Port Charlotte Subdivision to allow for an existing in-ground swimming pool and deck to remain.

### **PLANNING & ZONING ADVISORY BOARD RECOMMENDATION**

The Planning and Advisory Board (PZAB) at their regularly scheduled meeting of May 18<sup>th</sup>, 2017, recommended that the City Commission approve Resolution No. 2017-R-16, Petition No. VAC-17-068, the request of Alexandra Openchowski to vacate a portion of the platted 20-foot rear drainage maintenance easement to allow for an existing in-ground swimming pool and deck to remain with a unanimous 4-0 vote.

### **SITE INFORMATION**

#### **Land Use**

**Adopted Future Land Use Map Designation:** Low Density Residential

**Adopted Zoning Map Designation:** Residential Single Family 2 (RSF-2)

**Existing Land Use(s):** Residential

**Surrounding Land Uses:**

Direction	Existing Land Uses	Future Land Use Map Designation	Zoning Map Designation
North	Residential	Low Density Residential	RSF-2
South	Tract A	Low Density Residential	RSF-2
West	Residential	Low Density Residential	RSF-2
East	Residential	Low Density Residential	RSF-2

#### **Services and Facilities**

**Potable Water or Well:** City of North Port

**Sanitary Sewer or Septic:** Septic system

**Flood Zone:** Flood Zone "AE"

**Fiscal Impact**

- ☐ Not Applicable  
☒ No Impact  
☐ Fiscal Impact Confirmed

**IV. REVIEW PROCESS**

The City Attorney has reviewed and approved Resolution No. 2017-R-16 as to form and correctness.

**V. PUBLIC NOTICE**

Notice of Intent was published according to the provisions of Florida Statutes, Chapter 177, for two weeks consecutively on April 21 and April 28, 2017 (**Attachment 4**).

**VI. PUBLIC HEARING SCHEDULE**

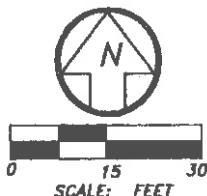
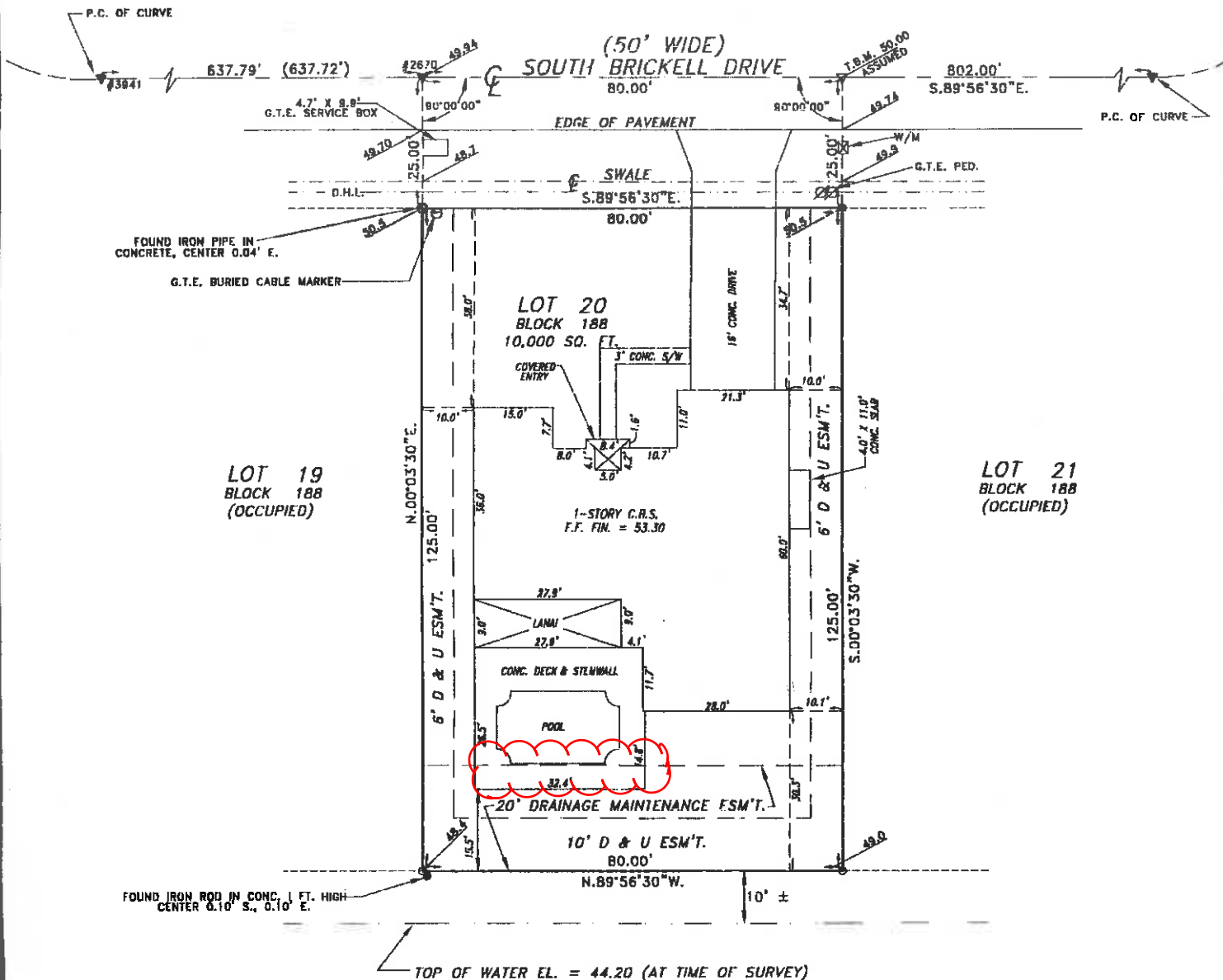
**Planning and Zoning Advisory Board  
Public Hearing**

May 18, 2017  
9:00 AM or as soon thereafter

**City Commission  
Public Hearing**

June 13, 2017  
1:00 AM or as soon thereafter

# ATTACHMENT 1



COCOPLUM WATERWAY

## DESCRIPTION OF REAL ESTATE

LOT 20, BLOCK 188, SECOND ADDITION TO PORT CHARLOTTE SUBDIVISION, PER PLAT THEREOF RECORDED IN PLAT BOOK 11, PAGES 30 AND 30A THRU 30G, PUBLIC RECORDS OF SARASOTA COUNTY, FLORIDA.

## LEGEND

- FOUND 4" X 4" CONCRETE MONUMENT (DISK NUMBER NOTED, IF ANY)
- SET 4" X 4" CONCRETE MONUMENT WITH L.S. 3941 DISK
- FOUND #4 OR #5 IRON ROD (CAP NUMBER NOTED, IF ANY)
- SET #4 IRON ROD WITH L.S. 3739 CAP.
- FOUND 1/2" TO 1" IRON PIPE (NUMBER NOTED, IF ANY)
- ▽ FOUND NAIL OR NAIL & DISC (NUMBER NOTED, IF ANY)
- ▽ SET NAIL & DISC, L.S. 3739
- ( ) PARENTHESES INDICATE RECORD BEARING OR DISTANCE IF DIFFERENT THAN MEASURED
- UTILITY POLE & GUY ANCHOR
- LIGHT POLE
- OVERHEAD UTILITY LINES
- WIRE FENCE
- SPOT ELEVATION (POST CONSTRUCTION)
- WATER METER
- HYDRANT
- CHAIN LINK FENCE
- WOOD FENCE
- P.C. POINT OF CURVATURE
- P.T. POINT OF TANGENCY
- P.O.B. POINT OF BEGINNING
- P.O.C. POINT OF COMMENCEMENT
- P.R.M. PERMANENT REFERENCE MONUMENT
- P.C.P. PERMANENT CONTROL POINT
- T.P.M. TEMPORARY BENCH MARK
- ± CENTERLINE
- ± BASELINE
- FOUND FOUND
- L.P. IRON PIPE
- L.R. IRON ROD
- B.M. BEARING
- C.M. CONCRETE MONUMENT
- ELEVATION
- F.F. FINISH FLOOR
- B. BACK OF CURB
- F. FLOW LINE OF CURB
- P.R.C. POINT OF REVERSE CURVATURE

## NOTES:

- 1) BEARINGS ARE BASED ON AN ASSUMED MERIDIAN. A BEARING OF S.89°56'30"E WAS ASSIGNED TO THE CENTERLINE OF SOUTH BRICKELL DRIVE PER RECORD PLAT.
- 2) EASEMENTS SHOWN ARE FROM RECORD PLAT DEDICATIONS OR TITLE INFORMATION SUPPLIED TO OR ACQUIRED BY THE SURVEYOR AT TIME OF SURVEY. THE PROPERTY MAY BE SUBJECT TO OTHER RESERVATIONS, RESTRICTIONS, EASEMENTS OR AGREEMENTS AFFECTING TITLE NOT DEPICTED ON THIS SURVEY. UNDERGROUND UTILITIES HAVE NOT BEEN LOCATED.
- 3) D & U : DENOTES DRAINAGE AND UTILITY EASEMENT.
- 4) ENCROACHMENTS AS DETERMINED BY THE SURVEYOR IF ANY, ARE AS NOTED ON THE DRAWING.
- 5) DESCRIPTION OF REAL ESTATE TO BE SURVEYED WAS FURNISHED BY CLIENT.
- 6) PROPERTY LIES WITHIN F.E.M.A. ZONE 8 REF.: F.I.R.M. MAP 120279 00108 EFFECTIVE: SEPTEMBER 2, 1981.
- 7) ELEVATIONS SHOWN ARE RELATIVE TO SURVEYED LOT ONLY AND ARE NOT BASED ON N.G.V.D. OF 1929.
- 8) INFORMATION CONCERNING ANY VARIANCE TO DRAINAGE MAINTENANCE EASEMENT NOT AVAILABLE AT TIME OF FINAL SURVEY.

## CERTIFICATE

I, hereby certify that this Record of Survey of the Real Estate as shown and described herein represents the results of a Field Survey performed under my supervision, that it is true and correct to the best of my knowledge and belief and meets the requirements of "The Minimum Technical Standards for Land Surveying in the State of Florida"; Chapter 61G17-6, F.A.C. pursuant to Section 472.027, F.S. Subject to all notations as shown herein.

A.L. Van Baskirk Engineers and Planners, Inc.

By:

Alan K. Fish, P.L.S.  
Florida Registered Land Surveyor No. 3941

Date of last Field Survey: 9/19/96

"Not valid without Embossed Seal of the Surveyor"; additions or deletions to Survey Drawings by other than the signing party is prohibited; (Chapter 61G17-6.006, (8), F.A.C.).

## REVISIONS:

ADDED CONC. FOUNDATION LOCATION 3/5/97 - HM  
FINAL SURVEY & NOTE B 5/13/97 - HM

FOR:  
SUNTRUST BANK GULF COAST, IT'S IMMEDIATE SUCCESSORS AND/OR ASSIGNS; FRANK J. AND ALEXANDRA OPENCHOWSKI; BATSEL, MCKINLEY, ITTERSAGEN & BERNTSSON; ATTORNEYS TITLE INSURANCE FUND, INC.;

RECORD OF BOUNDARY SURVEY OF  
LOT 20, BLOCK 188, 2ND ADDITION TO  
PORT CHARLOTTE SUBDIVISION  
CITY OF NORTH PORT, SARASOTA COUNTY, FLORIDA

**A. L. Van Baskirk**  
Engineers and Planners, Inc.  
Civil Engineers / Land Surveyors

14224 Tamiami Trall • North Port, Fl. 34287 • (813) 426-0681

DWN.: JM DATE: 9/20/96  
CHK'D.: DATE:  
FIELD BOOK: 237 PAGE: 16  
PROJECT NO.: 96-770

## Attachment 2



**CITY OF NORTH PORT**  
Neighborhood Development Services  
Planning Division  
4970 City Hall Boulevard  
North Port, FL 34286-4100  
www.cityofnorthport.com  
Phone (941) 429-7156

DATE RECEIVED – DATE STAMP

CITY OF NORTH PORT  
RECEIVED  
APR 13 2017

### VACATION OF PLATTED LOT LINES & EASEMENTS APPLICATION

Upon making any application to the City for any reason, the applicant agrees to comply with all the requirements of the Unified Land Development Code and further agrees to allow authorized city staff and personnel to enter and inspect the property during normal business hours

Date Application Received: 4-13-17 Accepted by: RA Project No: VAC-17-68

*Above to Be Completed by Planning Staff*

P.P. MM

Project Name: 5861 Brickell Dr., North Port, FL

Name of Applicant: Alexandra Openchowski

Name of Corporation/LLC (If Applicable): \_\_\_\_\_

Street Address: 2125 Floribanna St.

City: North Port State: FL Zip Code: 34287

Phone: 941-391-1357 FAX No. \_\_\_\_\_ E-mail: fawopen@hotmail.com

Name of Property Owner: (if different from the applicant above) \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Phone: \_\_\_\_\_ FAX No. \_\_\_\_\_ E-mail: \_\_\_\_\_

Name of Engineer: (If Applicable) \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Phone: \_\_\_\_\_ FAX No. \_\_\_\_\_ E-mail: \_\_\_\_\_

Name of Attorney: (If Applicable) \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Phone: \_\_\_\_\_ FAX No. \_\_\_\_\_ E-mail: \_\_\_\_\_

Name of Surveyor: (If Applicable) \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Phone: \_\_\_\_\_ FAX No. \_\_\_\_\_ E-mail: \_\_\_\_\_

**Property Description:** (Please list additional PID's on a separate sheet of paper) (Information can be found at <http://www.sc-pa.com/testsearch/>)

Parcel I.D. No(s): 1. 1 0 0 4 - 0 1 - 8 8 2 0 2. \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

Legal: Lot(s): 20 Block: 188 Addition: to Port Charlotte Tract or Parcel: \_\_\_\_\_

Subdivision: \_\_\_\_\_

Section: 34 Township: 39S Range: 21E Acreage: 0.2295

Street Address: 5861 Brickell St., North Port, FL 34286

**Purpose of Application:** Please briefly state what the intended use of the property will be or why you are making this application (e.g. general project description).

This application is being made because there is apparently a 4.5' encroachment of the pool deck into the 20' drainage maintenance easement. This issue was not raised when the original pool permit or CO was issued back in 1997. The property is now under contract for sale.

**Has this property undergone previous City development review and approval?**

No: \_\_\_\_\_ Yes: X If yes, when? (Month/Date/Year) CO issued 6/9/97

**Has this property this property received variance, waiver or special exception use permit approval?**

No: X Yes: \_\_\_\_\_ If yes, please describe: \_\_\_\_\_

**Existing land use (e.g., house, commercial structure, vacant):** \_\_\_\_\_

**Surrounding existing land uses/zoning of adjacent properties:**

North: \_\_\_\_\_

South: \_\_\_\_\_

East: \_\_\_\_\_

West: \_\_\_\_\_

**Adopted Future Land Use Map Designation:** \_\_\_\_\_

**Adopted Zoning Map Designation:** \_\_\_\_\_

**Is the property located in an Activity Center or Town Center?** Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, please indicate which one \_\_\_\_\_

**STORMWATER:** Please contact the City Stormwater Manager/Environmental at (941) 240-8321.

(Flood Information can be found at <http://www.cityofnorthport.com> Search: Flood Update)

Is the application site in a FEMA Hazardous Flood Zone? No: ✓ Yes: \_\_\_\_\_

If yes, what zone? \_\_\_\_\_

Is the application site in the Big Slough Watershed Flood Zone? No: \_\_\_\_\_ Yes: \_\_\_\_\_

If yes, what is the 100-year 1-day flood elevation? \_\_\_\_\_ ft. NGVD

**\*All of the information provided on this application is true and correct to the best of my knowledge.**

  
Signature of Applicant

4/13/17  
Date

ALEXANDRA OPENCHOWSKI  
Print Applicant Name



CITY OF NORTH PORT  
Neighborhood Development Services  
Planning Division  
Planninginfo@cityofnorthport.com

Project Name: 5861 Brickell Drive  
Name of Applicant: Alexandra Openchowski (assisted by Randy McLendon)  
Name of Corporation/LLC (if Applicable):  
Street Address: 5861 Brickell Drive  
City: North Port State: FL Zip Code: 34286  
Phone: 941-391-1357 FAX No. E-mail: fawopen@hotmail.com  
Randy McLendon: 941-504-5675 and randymclendon@michaelsaunders.com

### **Checklist of Required Submittal Items:**

#### **PLAT VACATION**

☒ **Exhibit A: Project narrative**

Written by Randy McLendon

This variance /plat vacation request is being made to correct a problem that was overlooked 20 years ago when this home was originally built. The builder at the time was Pete McNabb from Arthur Rutenberg homes. The buyers were Frank (now deceased) and Alexandra Openchowski. They were living out of state during the time the home was actually being built.

Alexandra Openchowski has had a life change which prompted her to consider selling her home. Her husband died one year ago and she now needed to move in with her mother who is in need of her care. As such, the home was placed on the market on 1/31/2017. The home went under contract on March 13 with a closing scheduled for April 11. Seeking an answer to a last minute question from the buyer about an abandoned permit started the process that uncovered this need for a variance request.

The title company doing the closing is Stewart Title. According to Stewart Title, their original search of the North Port database that title companies typically use did not reveal any open permits, so no red flag was raised. However, a permit search of the address 5861 Brickell showed a pool permit issued on 3/13/1997 (97-00000517) was abandoned. There is obviously a pool on the property, hence the question. The pool was not a later addition, but was put in during the original construction of the home. This is not only per the owner's knowledge, but a contract and draw schedule from the builder shows the pool to be included.

The North Port building department was contacted about the abandoned permit issue to see what needed to be done to correct this obvious discrepancy between an abandoned permit and a completed pool. We (Alexandra Openchowski and Randy McLendon) were told that first we had to make a request for a permit search to see what information was on that document. To correct the problem, Ms. Openchowski was told she would need to re-apply for a pool permit so a permit could be issued and appropriate inspections made. This re-application was done immediately.

However, no original permit could be found due to off-site data conversion being done between microfiche to digital for permits during that time period. The building department personnel were very helpful and were going work out the situation for us. They did ask if we had a survey they could look at. A survey was provided to them. Expecting we were going to get the pool permit changed from abandoned to closed, we were shocked when they came back saying a big issue was discovered that would have to be corrected first.

The big issue was that, according to the survey, the pool deck encroached 4.5' into the 20' Drainage Maintenance Easement. The edge of the actual pool was at the edge of the 20' easement, but the deck extended 4.5' into the easement. Following the instructions of the Building Department and the Planning Department, this Variance/Plat Vacation process has been started in the hope of correcting this problem.

Obviously this has delayed the closing on this property as the title company cannot give clear title to a buyer until this issue is cleared up.

While I certainly understand the need to get this situation corrected, I must say this raises several questions in my mind.

1. I would assume that the original pool permit application would have included a site plan. Since the survey was done prior to the pool permit being issued, why was this problem not discovered then? The current building department thinks maybe the pool contractor knew he had built it wrong and that is why he let the permit get abandoned instead of getting it completed. However, that begs the question of how the permit was issued to start with. The only thing a final inspection to close the permit would accomplish would be to ensure all was done correctly, right?
2. There was a pool cage permit issued and closed out. Why was it not discovered then?
3. A Certificate of Occupancy was issued in June of 1997. I would assume this would include a search of the permits to ensure everything was done. Why was not the discrepancy noted between a pool existing and a permit being abandoned?
4. How could such a reputable builder as Arthur Rutenburg builder Pete McNabb make such a mistake?
5. How could the original title company not see the legal description did not match the survey.
6. Why is the process to correct a 20-year-old problem the same as getting approval for a new project? Should there not be a different, more streamlined process?

## Attachment 4



PUBLISHER'S AFFIDAVIT OF PUBLICATION  
STATE OF FLORIDA  
COUNTY OF CHARLOTTE:

Before the undersigned authority personally appeared Sierra Civin, who on oath says that she is legal clerk of the Charlotte Sun, Englewood Sun, and North Port Sun, a newspaper published at Charlotte Harbor in Charlotte County, Florida; that the attached copy of advertisement, being a Notice of Intent to Consider, was published in said newspaper in the issues of:

April 21, 28, 2017

Affiant further says that the said newspaper is a newspaper published at Charlotte Harbor, in said Charlotte County, Florida, and that the said newspaper has heretofore been continuously published in said Charlotte County, Florida, Sarasota County, Florida and DeSoto County, Florida, each day and has been entered as periodicals matter at the post office in Punta Gorda, in said Charlotte County, Florida, for a period of 1 year next preceding the first publication of the attached copy of advertisement; and affiant further says that he or she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

(Signature of Affiant)

Sworn and subscribed before me this 28th day of April 2017.

(Signature of Notary Public)

(Print Name of Notary Public)

Personally known ☒ OR Produced Identification ☐

Type of Identification Produced \_\_\_\_\_

**NOTICE OF INTENT  
CITY OF NORTH PORT,  
SARASOTA COUNTY, FLORIDA  
TO WHOM IT MAY CONCERN:**

Notice is hereby given pursuant to the provisions of Section 177.10(4), Florida Statutes, that Frank J. Openchowski and Alexandra W. Openchowski, Trustees under the Frank J. and Alexandra W. Family Trust, the property owners, intends to petition the City of North Port to vacate a portion of the 20-foot platted rear drainage maintenance easement for lot 20, Block 188, Second Addition to the Port Charlotte Subdivision, according to the plat thereof as recorded in Plat Book 11, Pages 30, 30A-30G, of the Public Records of Sarasota County, Florida. All of the above lying and being in the City of North Port, Sarasota County, Florida. Publish April 21, 2017 and April 28, 2017

396035 3444996

