

**ORDINANCE NO. 05-2009**

**AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, ABANDONING A PORTION OF A PLATTED FIVE (5) FOOT UTILITY EASEMENT LOCATED ON A PORTION OF 612 FEDERAL HIGHWAY WITHIN THE TOWN OF LAKE PARK, FLORIDA, AND WHICH IS MORE PARTICULARLY DESCRIBED AS A PORTION OF THE FIVE FOOT UTILITY EASEMENT LOCATED ON THE WEST SIDE OF LOTS 29, 30, 31 AND 32, BLOCK 34 AS DEPICTED ON THE PLAT RECORDED IN PLAT BOOK 8, PAGE 15 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY; PROVIDING FOR THE RECORDING OF THIS ORDINANCE IN THE PUBLIC RECORDS OF PALM BEACH COUNTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, a right-of-way easement for the construction and maintenance of public utilities which is located in the Town of Lake Park, Florida (“Town”), was dedicated pursuant to the Plat of Kelsey City in March of 1921, and recorded in Plat Book 8, Page 15, of the public records of Palm Beach County, Florida (the “Platted Easement”); and

**WHEREAS**, Pierre Latuberne (the “Owner”), purchased the real property located at 612 Federal Highway, Lake Park, Florida (“Property”) in 1979; and

**WHEREAS**, the Property was purchased together with a main building and a cottage; and

**WHEREAS**, the Owner has recently discovered that the existing cottage is located over a portion of the Platted Easement, which is located on the west side of Lots 29, 30, 31 and 32, of Block 34, Plat Book 8, Page 15 of the public records of Palm Beach County, Florida, and that the subject portion of the Platted Easement is in conflict with

Lake Park Town Code which prohibits the placement of buildings within a utility easement; and

**WHEREAS**, there are currently no utilities located within the portion of the Platted Easement to be abandoned; and

**WHEREAS**, the Owner has provided the Town with a legal description and sketch of the portion of the Platted Easement to be abandoned, a copy of which is attached hereto as **Exhibit “A”** and made a part hereof; and

**WHEREAS**, the Owner has also provided the Town with “Letters of No Objection” from all existing utility providers, including AT&T, Florida Power & Light, Comcast Cable, Florida Public Utilities, and the Seacoast Utility Authority; and

**WHEREAS**, the Town Commission heard the matter of abandonment of the subject five foot portion of the Platted Easement in a public hearing after published notice of the hearing was given at least two weeks prior to the duly noticed hearing, and the Commission has considered the evidence presented; including the recommendations of Town Staff, has heard the comments of the Owner, Town Staff, other interested parties, and members of the public; and has otherwise been fully advised in the premises of this matter; and

**WHEREAS**, at the conclusion of the public hearing on this abandonment request and after considering the weight of the evidence, the Town Commission determined that the abandonment of the Platted Easement described herein, will not materially interfere with the provision of utilities within the Town, will not materially deprive any person or entity of access to utilities, or otherwise adversely affect other property owners within the Town; and

**WHEREAS**, at the hearing the Town Commission also considered whether the proposed abandonment of the Platted Easement complies with the Town’s regulations for the abandonment of utility easements and other public rights-of-way; and

**WHEREAS**, at the hearing, the Town Commission determined that the subject five foot portion of the Platted Easement is no longer necessary or needed by the public; and

**WHEREAS**, the Town Commission has no objection to the abandonment of the five foot portion of the Platted Easement on the west side of Lots 29, 30, 31 and 32, of Block 34 , Plat Book 8, Page 15 of the public records of Palm Beach County, Florida as depicted on **Exhibit “A”**, attached hereto.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK:**

**Section 1. Recitals.** The whereas clauses are incorporated herein as true and correct findings of fact and conclusions of law of the Town Commission.

**Section 2. Abandonment of easement.** Pursuant to the police powers granted to the Town Commission by Florida law to close public rights-of-way, the Town Commission hereby approves the abandonment of the subject portion of the five-foot platted utility easement located on a portion of the west side of Lots 29, 30, 31 and 32, Block 34, Plat Book 8 Page 15 of the public records of Palm Beach County, Florida, as depicted on **Exhibit “A”** and located at 612 Federal Highway in the Town.

**Section 3. Recording.** After the abandonment is effective and all conditions set forth herein are fully satisfied to the sole and complete satisfaction of the Town, the Town Clerk shall provide notice of adoption of this Ordinance within 30 days in a

newspaper of general circulation in Palm Beach County, and shall forward proofs of publication of notices to be recorded in the deed records of the Clerk of the Circuit Court, in and for Palm Beach County, Florida.

**Section 4. Severability.** If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

**Section 5. Repeal of Laws in Conflict.** All Ordinances or parts of Ordinances in conflict herewith are hereby repealed to the extent of such conflict.

**Section 6. Effective Date.** This Ordinance shall take effect immediately upon adoption.

**Attachments: Exhibit "A"- Legal description & survey of subject property.**

**Exhibit "B" - Location map of subject property.**

# Exhibit A

Legal description for Ordinance 05-2009 Abandoning Utility Easement at 612 Federal Highway.

## **LEGAL DESCRIPTION**

THE WEST 5 FEET OF LOTS 29, 30, 31 AND 32, BLOCK 34, LESS THAT PORTION OF LOT 32, LYING NORTH OF THE SOUTH LINE OF A 5 FOOT UTILITY EASEMENT SOUTH OF AND CONTIGUOUS TO THE NORTH LINE OF LOT 25, BLOCK 34, AND LESS THE SOUTH 4.00 FEET OF SAID LOT 29, BLOCK 34, ACCORDING TO THE PLAT OF KELSEY CITY, AS RECORDED IN PLAT BOOK 8, PAGE 15, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

# Exhibit B

## LOCATION MAP





Upon First Reading this 18 day of March, 2009, the foregoing Ordinance, was offered by Commissioner Balius who moved its approval. The motion was seconded by Commissioner Carey, and being put to a vote, the result was as follows:

	AYE	NAY
MAYOR DESCA DUBOIS	<u>/</u>	_____
VICE MAYOR ED DALY	<u>/</u>	_____
COMMISSIONER CHUCK BALIUS	<u>/</u>	_____
COMMISSIONER JEFF CAREY	<u>/</u>	_____
COMMISSIONER PATRICIA OSTERMAN	<u>/</u>	_____

**PUBLISHED IN THE PALM BEACH POST THIS 22 DAY OF March, 2009**

Upon Second Reading this 1 day of April, 2009, the foregoing Ordinance, was offered by Commissioner Daly who moved its adoption. The motion was seconded by Vice-Mayor Carey, and being put to a vote, the result was as follows:

	AYE	NAY
MAYOR DESCA DUBOIS	<u>/</u>	_____
COMMISSIONER ED DALY	<u>/</u>	_____
COMMISSIONER KENDALL RUMSEY	<u>/</u>	_____
VICE-MAYOR JEFF CAREY	<u>/</u>	_____
COMMISSIONER PATRICIA OSTERMAN	<u>/</u>	_____

The Mayor thereupon declared **Ordinance No. 05-2009** duly passed and adopted this 1 day of April, 2009.

TOWN OF LAKE PARK, FLORIDA

BY: Desca DuBois  
Mayor, Desca DuBois

ATTEST:

Vivian M. Lemley  
Town Clerk, Vivian M. Lemley  
(Town Seal)



Approved as to form and legal sufficiency:

Thomas J. Baird  
Town Attorney, Thomas J. Baird