

## MEMORANDUM

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April 7, 2014

**TO:** Honorable Mayor and City Commission

**VIA:** Kenneth Fields, City Manager

**FROM:** Kathy Bangley, Assistant Director of Planning and Development

**RE:** Ordinance 2014-06 – 2<sup>nd</sup> Reading and public hearing  
Vacation of portions of Owens and Ray Martin Roads

**SYNOPSIS:** Sunshine Agriculture Incorporated has requested the vacation of portions of Owens and Ray Martin Roads located within their property boundary. By agreement, city and county personnel will continue to have the right to use the roads for access to their facilities.

### RECOMMENDATION

Staff recommends that the City Commission adopt Ordinance 2014-06 following second reading and public hearing. Public notice requirements have been met.

### BACKGROUND

C. B. Myers, III, agent for the owner, Sunshine Agriculture Incorporated, has requested the vacation of portions of Owens and Ray Martin Roads. The segments proposed for vacation lie entirely within the boundaries of the property of Sunshine Agriculture Inc. The roads are unpaved and are not necessary for access to any other properties. Letters have been received from Duke Energy and Verizon stating no objections to the vacations.

Both Polk County and the City use the roadways to access facilities and will retain the right to continue to do so under an ingress/egress easement to be recorded under separate instrument.

The Sunshine Agriculture property was formerly known as the “Cooperative Fruit” property purchased by the city and sold to Feltrim Corporation for the proposed residential development called Mayfair. Following the downturn in the housing market, the property was sold and has been replanted with citrus. If the property is developed some time in the future, the developer will be required to construct roadways.

The right-of-way will revert to adjacent property owners; in this case, Sunshine Agriculture owns the property on both sides of the rights-of-way.

Mr. Myers has prepared and Chuck Galloway, City Attorney has reviewed the easement agreement. It is attached for information purposes and action on the agreement will be requested at the time of the second reading and public hearing for the ordinance.

#### **OTHER OPTIONS**

Decline to grant the vacation.

#### **FISCAL IMPACT**

Vacating will relieve the City of any responsibility for maintenance of the rights-of-way.

#### **ATTACHMENTS**

Ordinance 2014- 06 with Attachment A

Application Information

Easement Agreement

**ORDINANCE 2014-06**

(Vacation of portions of Owens and Ray Martin Roads, Lake Wales)

**AN ORDINANCE OF THE CITY OF LAKE WALES, POLK COUNTY, FLORIDA, CLOSING, VACATING, RENOUNCING, AND DISCLAIMING ANY RIGHTS OF THE CITY AND THE PUBLIC, EXCEPT FOR ACCESS TO PUBLIC FACILITIES BY OFFICIALS OF THE CITY OF LAKE WALES AND POLK COUNTY, TO THOSE PORTIONS OF RAY MARTIN AND OWENS ROADS AS SHOWN ON “ATTACHMENT A” AND SPECIFICALLY DESCRIBED HEREIN AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Sunshine Agriculture Inc., owner of property has requested that the City of Lake Wales, Florida (the “City”) vacate those portions of Ray Martin and Owens Roads located within their property and shown in “Attachment A;” and

**WHEREAS**, the rights-of-way to be vacated are located entirely within property owned by Sunshine Agriculture Inc.; and

**WHEREAS**, there are no public utilities within the rights-of-way; and

**WHEREAS**, under separate instrument Sunshine Agriculture Inc. shall grant easements for access to the City and Polk County for access to and maintenance of their facilities; and

**WHEREAS**, notice of hearing has been duly published for the adoption of this ordinance and the City Commission has received input from all interested parties as to the advisability of taking this action and has determined that the proposed action will not interfere with any present road system and will not deprive any person of a reasonable means of ingress and egress to his premises,

**NOW, THEREFORE, BE IT ENACTED** that the City of Lake Wales, by and through its City Commission, does hereby renounce and disclaim any interest of the City of Lake Wales and the public in those portions of Ray Martin and Owens Roads as shown on “Attachment A” and specifically described as follows:

**That portion of Ray Martin Road lying within the West ½ of the NW ¼ of the NE ¼ of Section 14, Township 30 South, Range 27 East and in the North ½ of the NW ¼ of Section 14, Township 30 South Range 27 East;**

**AND**

**That portion of Ray Martin Road lying within the SW ¼ of Section 11, Township 30 South, Range 27 East;**

**AND**

**All of Owens Road lying East of State Road 27 within the NW ¼ of Section 14, Township 30 South, Range 27 East and within the SW ¼ of Section 11, Township 30 South, Range 27 East; all in Polk County, Florida.**

This ordinance shall become effective immediately upon adoption.

**CERTIFIED AS TO PASSAGE** this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

\_\_\_\_\_  
Mayor/Commissioner

ATTEST:

\_\_\_\_\_  
City Clerk



## EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 2014, by and between **Sunshine Agriculture Incorporated**, a Florida corporation, whose address is \_\_\_\_\_ (hereinafter referred to as “Sunshine”), and **The City of Lake Wales**, a Florida municipal corporation, whose address is 201 West Central Avenue, Lake Wales, FL 33853 (hereinafter referred to as “City”), who state as follows:

### WITNESSETH

WHEREAS, Sunshine is the owner of a parcel of property located in Polk County, Florida, being further described as follows (hereinafter referred to as the “Sunshine Property”), to wit:

SEE ATTACHED SCHEDULE “A”

WHEREAS, the City has certain utilities and utility lines located on the Sunshine Property

WHEREAS, Sunshine desires to enter into this Agreement so that Sunshine may grant to the City an easement upon, over and across the Sunshine Property for the purpose of ingress and egress and maintenance and operation of the utility service lines and equipment of the City on the Sunshine Property and other adjoining property of the City as provided herein.

NOW THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Incorporation of Recitals. The above-stated recitals are true and correct, and are incorporated herein by reference.

2. Grant of Easement. Sunshine hereby grants to the City, and the City’s agents, invitees, and employees, a perpetual (unless terminated as provided herein), non-exclusive easement upon, over and across the areas of the Sunshine Property as depicted on Schedule “B” for the purpose of ingress, egress and access to and from, and for the maintenance, repair, replacement, and operation of the City’s utility service lines and equipment located on the Sunshine Property, or any other property of the City which is adjacent to the Sunshine Property. The City shall access the Sunshine Property in a reasonable manner so as to minimize the disturbance of the citrus trees and irrigation equipment located upon the Sunshine Property, and shall repair or replace any material damage directly caused by the City to any citrus trees or irrigation equipment on the Sunshine Property

3. Term of Agreement. This agreement shall have a perpetual duration. This agreement may be canceled at any time upon the mutual written consent of the City and Sunshine.

4. Indemnification. The City hereby agrees to indemnify and hold Sunshine harmless from any claims, actions, damages or suits resulting from any negligence, negligent act or omission of the City, its invitees, agents, employees and assigns related to the use of the easement.

5. Miscellaneous Provisions. The following miscellaneous provisions shall apply to this agreement.

A. This agreement shall extend to and bind the heirs, devisees, personal representatives, successors and assigns of the parties hereto

B. This agreement shall be governed by and construed in accordance with the laws of the State of Florida, and venue for any proceeding regarding this agreement shall be in Polk County, Florida.

C. This agreement constitutes the entire agreement between the parties hereto and it may only be amended in writing executed by both Sunshine and the City

F. Any written notice required to be given hereunder shall be delivered to the respective party at the address indicated above by (i) registered or certified U.S. Mail, return receipt requested, (ii) express mail or overnight carrier with a signed acknowledgment of receipt; (iii) hand delivery with a signed acknowledgment of delivery; or (iv) by facsimile transmission with confirmation of delivery. The City and Sunshine shall each notify the other in writing of the change of such address from time to time.

SIGNATURES ON FOLLOWING PAGES

In witness whereof this Easement Agreement is made and entered into as of the date first above written.

Signed, Sealed and Delivered  
in the Presence of:

**Sunshine Agriculture Incorporated,**  
a Florida corporation

\_\_\_\_\_  
Witness:

By: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_  
Witness:

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

I HEREBY CERTIFY that on this day, before me, a Notary Public duly authorized in the State and County above named to take acknowledgments, personally appeared \_\_\_\_\_ as \_\_\_\_\_ and on behalf of Sunshine Agriculture Incorporated, who is personally known to me or who has produced \_\_\_\_\_ as identification.

WITNESS my hand and official seal in the county and state named above this \_\_\_\_ day of \_\_\_\_\_, 2014.

(SEAL)

\_\_\_\_\_  
Printed Name:  
Notary Public  
My commission expires:



EXHIBIT "A"

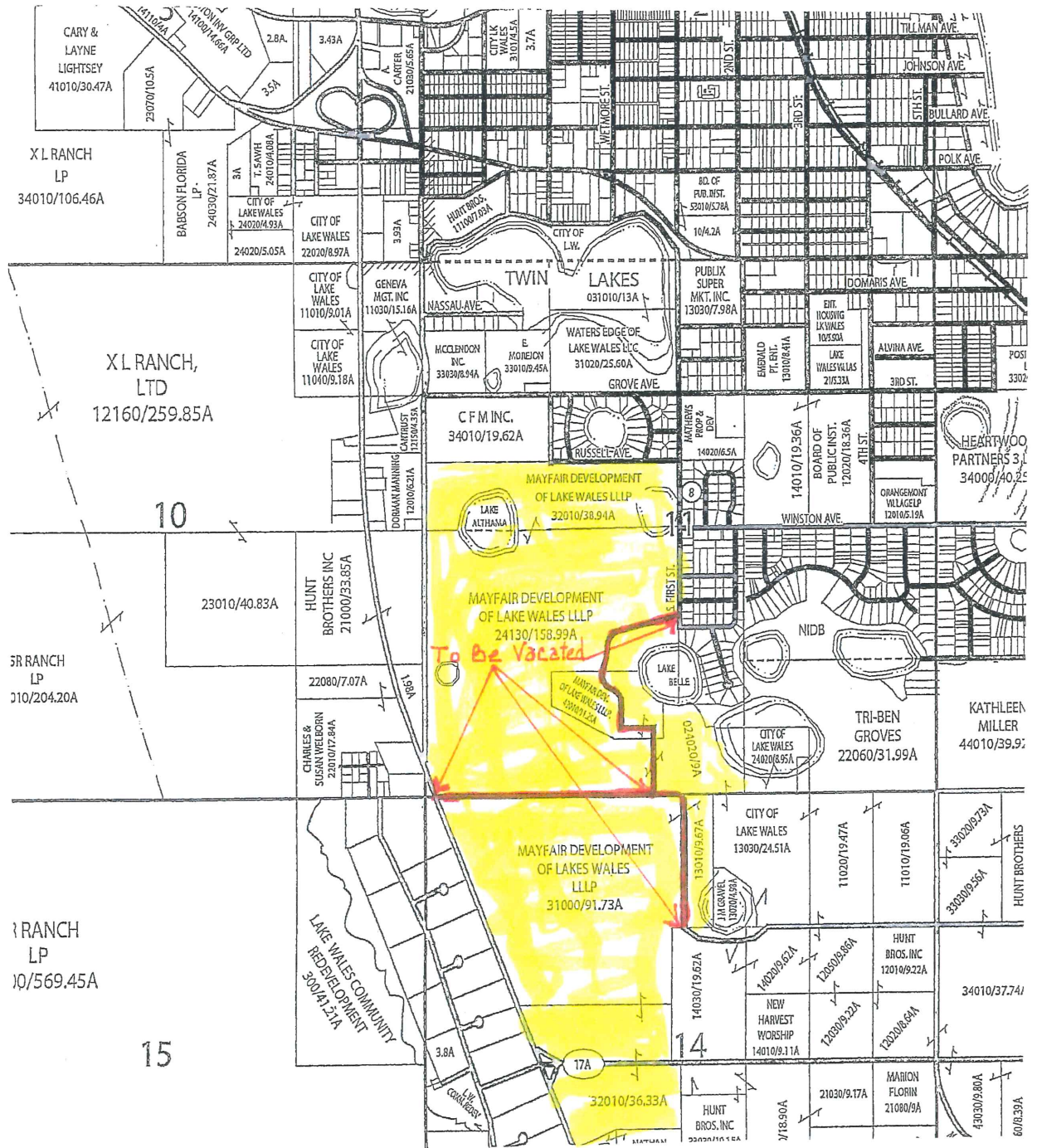
That portion of Ray Martin Road lying within the West  $\frac{1}{2}$  of the NW  $\frac{1}{4}$  of the NE  $\frac{1}{4}$  of Section 14, Township 30 South, Range 27 East and in the North  $\frac{1}{2}$  of the NW  $\frac{1}{4}$  of Section 14, Township 30 South, Range 27 East;

AND

That portion of the Ray Martin Road lying within the SW  $\frac{1}{4}$  of Section 11, Township 30 South, Range 27 East;

AND

All of Owens Road lying East of State Road 27 within the NW  $\frac{1}{4}$  of Section 14, Township 30 South, Range 27 East and within the SW  $\frac{1}{4}$  of Section 11, Township 30 South, Range 27 East; all in Polk County, Florida.



X L RANCH LP  
34010/106.46A

X L RANCH, LTD  
12160/259.85A

10

5R RANCH LP  
310/204.20A

HUNT BROTHERS INC  
21000/33.85A

CHARLES & SUSAN WELBORN  
23010/17.84A

To Be Vacated

MAYFAIR DEVELOPMENT OF LAKE WALES LLLP  
31000/91.73A

3 RANCH LP  
10/569.45A

15

LAKE WALES COMMUNITY REDEVELOPMENT  
300A/1.21A

14

HUNT BROS. INC  
14030/19.62A

NEW HARVEST WORSHIP  
14010/9.11A

HUNT BROS. INC  
32010/36.33A

HUNT BROS. INC  
12010/9.22A

MARION FLORIN  
21080/9A

HUNT BROS. INC  
43030/9.80A

HUNT BROTHERS  
33030/9.35A

HUNT BROTHERS  
34010/37.74A

HUNT BROTHERS  
60/0.39A

C. B. MYERS III, P.A.

ATTORNEY AT LAW

202 E. Stuart Avenue  
P. O. Box 1410  
Lake Wales, FL 33859-1410

(863) 679-5337 • FAX (863) 679-5215

November 27, 2013

City of Lake Wales  
Planning & Development Department  
PO Box 1320  
Lake Wales FL 33859-1320


Re: Vacation of a Portion of Owens Road and Ray Martin Road

This letter shall serve to request that those portions of Ray Martin and Owens Road as set forth and described on the attached exhibit be vacated.

The property owner shall grant easements to the City of Lake Wales and Polk County for access and maintenance of their facilities. In the event Verizon has facilities in the area an easement shall also be granted to them.

Should you have any questions concerning this matter, please feel free to contact me at your convenience.

Sincerely,



C. B. Myers III

Attachment

## IMPACT OF CLOSURE


Owens Road and those portions of Ray Martin Road which are requested to be vacated lie entirely within the boundaries of Sunshine Agriculture Incorporated. The current road is a clay stabilized road and is not currently being maintained. It does not impact access to any person's property other than the party requesting the vacation and should have minimal impacts.

LETTER OF AUTHORIZATION

August 12, 2013

The undersigned hereby authorizes C. B. Myers, III and/or Ellis Hunt, Jr. to represent it in any and all matters pertaining to that certain vacation of right of way of Ray Martin Road and Owens Road located in Lake Wales, Polk County, Florida.

Sunshine Agriculture Incorporated

By:   
Charles Allison, its president