



# CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 2/21/06

**SUBJECT:** 05-350000021/PROPOSED EASEMENT VACATION – RIVERWOOD PUD PHASE II SUBDIVISION, LOT 30 (6236 YELLOWSTONE DRIVE; TAX PARCEL NO. 6338-05-00-0300)

**DEPARTMENT:** COMMUNITY DEVELOPMENT

### RECOMMENDED MOTION

To approve Resolution #~~06-18~~<sup>18</sup>, vacating 5.00 feet of the easterly rear yard 10.00-foot wide Drainage and Utility Easement located on Lot 30 of the Riverwood PUD Phase II Subdivision, per the attached legal description.

### SUMMARY

The Community Development Department has received a request to vacate a portion of the easterly rear yard 10.00-foot wide Drainage and Utility Easement located on Lot 30 of the Riverwood PUD Phase II Subdivision. The property owners have made this request in connection with a proposed pool, deck, and screen enclosure to be constructed in to the easement. The easement vacation application and legal description have been reviewed for completeness and accuracy. Total allowable lot coverage has not been exceeded and enough easement area will remain for necessary drainage. City departments have reviewed this request and have no outstanding concerns. There are no currently planned utility improvements proposed for this area in the future. Utility Company release letters have been obtained for the area of the easement described in Exhibit "A". The easement may be vacated to the extent that it is not being used.

**ATTACHMENTS:**             Ordinance             Resolution             Budget Resolution  
 Other             Support Documents/Contracts Available for Review in Manager's Office

**DEPARTMENT HEAD**

Submitted

Date

2/7/06

**FINANCE DEPARTMENT** N/A

Approved as to Budget Requirements

Date

**CITY ATTORNEY**

Approved as to Form and Legality

Date

2-10-06

**CITY MANAGER**

Approved Agenda Item For:

2/21/06

**COUNCIL ACTION:**             Approved as Recommended             Disapproved

Tabled Indefinitely             Continued to Date Certain             Approved with Modification

RESOLUTION NO. 06-18

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, VACATING A PORTION OF A PLATTED DRAINAGE AND UTILITY EASEMENT FOR LOT 30, RIVERWOOD PHASE II SUBDIVISION; AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE A QUIT CLAIM DEED; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Brian Lenois and Nancie Lenois are the record owners of Lot 30, Riverwood Phase II, according to the plat thereof as recorded in Map Book 39, Page 64, Public Records of Volusia County, Florida, and have applied for the vacation of portion of a drainage and utility easement in order to provide for construction of a swimming pool and screen enclosure; and

WHEREAS, the applicants have complied with the requirements of Section 177.101(4), Florida Statutes; and

WHEREAS, the City Council of the City of Port Orange has the power and authority to vacate easements under constitutional home rule powers, Chapter 166 and Chapter 177, Florida Statutes; and

WHEREAS, the City Council of the City of Port Orange has determined that the portion of the easement to be vacated is not presently in use and that adjoining and neighboring owners of property will not be adversely affected by the vacation of a portion of the easement and it is in the best interest and welfare of the City of Port Orange and the citizens thereof to vacate and abandon the portion of the drainage and utility easement as more particularly described hereinbelow.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

Section 1. The interest of the City of Port Orange, Volusia County, Florida, in the following described easement is hereby declared to be vacated and abandoned and any

right, title and interest of the City of Port Orange and any public rights in and to the easement hereby vacated are renounced and disclaimed. The portion of the platted easement to be vacated is more particularly described as follows:

See Exhibit "A", attached hereto and made a part hereof.

Section 2. The Mayor and City Manager are hereby authorized and directed to execute a Quit Claim Deed to the aforescribed property to effectuate the intent of this resolution.

Section 3. By accepting the above-described Quit Claim Deed, the applicants, for themselves, their successors and assigns, agree that the City shall have the continued right to perform maintenance within the drainage easement of record; and further, accept full and sole responsibility for any damage that the maintenance or that the storm water drainage may cause to any private improvements placed or constructed within the said drainage way.

Section 4. This resolution shall become effective immediately upon adoption.

\_\_\_\_\_  
MAYOR ALLEN GREEN

ATTEST:

\_\_\_\_\_  
Kenneth W. Parker, City Manager

Adopted on the      day of

Reviewed and Approved:

  
\_\_\_\_\_  
City Attorney

## **EXHIBIT "A"**

### **LEGAL DESCRIPTION OF THE AREA TO BE VACATED**

The westerly 5.00 feet of the easterly rear yard 10.00-foot wide Drainage and Utility Easement, except the northerly 32.00 feet and southerly 8.00 feet thereof, located on Lot 30 of the Riverwood Phase II subdivision plat as recorded in Map Book 39, Page 64, of the Public Records of Volusia County, Florida (6236 Yellowstone Drive; Tax Parcel No. 6338-05-00-0300).

PREPARED BY: CITY ATTORNEY  
CITY OF PORT ORANGE  
1000 CITY CENTER CIRCLE  
PORT ORANGE, FLORIDA 32129

Parcel No. 6338-05-00-0300

This document has been prepared by the City of Port Orange without the benefit of title examination or survey; and shall not constitute a waiver of compliance with local and general laws regulating the subject property.

QUIT CLAIM DEED

THIS INDENTURE, made this \_\_\_\_\_ day of \_\_\_\_\_, 2006, between THE CITY OF PORT ORANGE, a Florida municipality, of the County of Volusia and State of Florida, Grantor, and BRIAN LENOIS and NANCIE LENOIS, husband and wife, whose permanent address is 6236 Yellowstone Drive, Port Orange, Florida 32127, Grantees.

WITNESSETH, that the said Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, in hand paid by the said Grantees, the receipt whereof is hereby acknowledged, has remised, released and quit claimed, and by these presents does remise, release and quit claim unto the said Grantees, and Grantees' heirs and assigns forever, all the right, title, interest, claim and demand which the said Grantor has in and to the following described land, situate, lying and being in Volusia County, Florida, to-wit:

See Exhibit "A", attached hereto and made a part hereof.

By accepting the above-described Quit Claim Deed, the Grantees, for themselves, their successors and assigns, agree that the City shall have the continued right to perform maintenance within the drainage easement of record; and further, accept full and sole responsibility for any damage that the maintenance or that the storm water drainage may cause to any private improvements placed or constructed within the said drainage way.

TO HAVE AND TO HOLD the same, together with all and singular the appurtenances thereunto belonging or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatever of the said Grantor, either in law or equity, to the only proper use, benefit and behoof of the said Grantees, their heirs and assigns forever.

IN WITNESS WHEREOF, the said Grantor has hereunto set Grantor's hand and seal the day and year first above written.

Signed, sealed and delivered  
in our presence:

CITY OF PORT ORANGE,  
a Florida municipality

\_\_\_\_\_

By: \_\_\_\_\_  
Mayor Allen Green

\_\_\_\_\_  
Witnesses

ATTEST: \_\_\_\_\_  
Kenneth W. Parker,  
City Manager

STATE OF FLORIDA  
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2006, by Allen Green and Kenneth W. Parker, as Mayor and City Manager, respectively, of the City of Port Orange, a Florida municipality, on behalf of said city. They are personally known to me.

\_\_\_\_\_  
Notary Public, State of  
Florida at Large

Commission No. \_\_\_\_\_

C:\Legal\QCD\es vac lot 30 riverwood ph II.wpd

## **EXHIBIT "A"**

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10/26/2004 07:36 AM  
Doc stamps 1400.00  
(Transfer Amt \$ 200000)  
Instrument# 2004-268163  
Book: 5424  
Page: 2171

Prepared by  
Susan Frazier, an employee of  
Associated Land Title Group, Inc.  
555 West Granada Boulevard, Suite H-12  
Ormond Beach, Florida 32174  
(386) 673-6114

Return to: Grantee

File No.: 1061-644248

## **WARRANTY DEED**

This indenture made on **October 22, 2004 A.D.**, by

**Cesar A. Quintero and Jill A. Quintero, husband and wife**

whose address is: **3524 Bluff Point Drive, Knoxville, TN 37920**  
hereinafter called the "grantor", to

**Brian Lenois and Nancie Lenois, husband and wife**

whose address is: **6236 Yellowstone Drive, Port Orange, FL 32127**  
hereinafter called the "grantee":

(Which terms "Grantor" and "Grantee" shall include singular or plural, corporation or individual, and either sex, and shall include heirs, legal representatives, successors and assigns of the same)

**Witnesseth**, that the grantor, for and in consideration of the sum of Ten Dollars, (\$10.00) and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the grantee, all that certain land situate in **Volusia County, Florida**, to-wit:

**Lot 30, RIVERWOOD PHASE II, according to the plat thereof as recorded in Map Book 39, Page(s) 64, of the Public Records of Volusia County, Florida.**

Parcel Identification Number: **6338-05-00-0300**

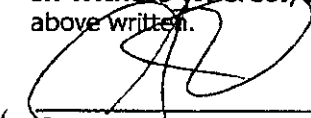
**Subject to** all reservations, covenants, conditions, restrictions and easements of record and to all applicable zoning ordinances and/or restrictions imposed by governmental authorities, if any.

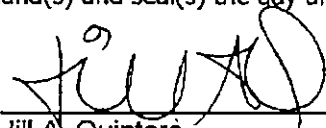
**Together** with all the tenements, hereditaments and appurtenances thereto belonging or in any way appertaining.

**To Have and to Hold**, the same in fee simple forever.

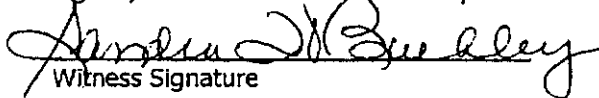
And the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; that the grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances except taxes accruing subsequent to December 31st of 2003.


In Witness Whereof, the grantor has hereunto set their hand(s) and seal(s) the day and year first above written.

  
Cesar A. Quintero

  
Jill A. Quintero

Signed, sealed and delivered in our presence:

  
Witness Signature

  
Witness Signature

Print Name: SANDRA H. BUCKLEY

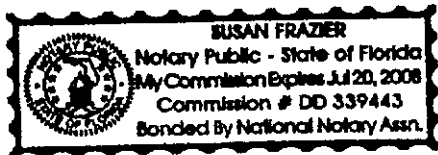
Print Name: SUSAN FRAZIER

State of **Florida**

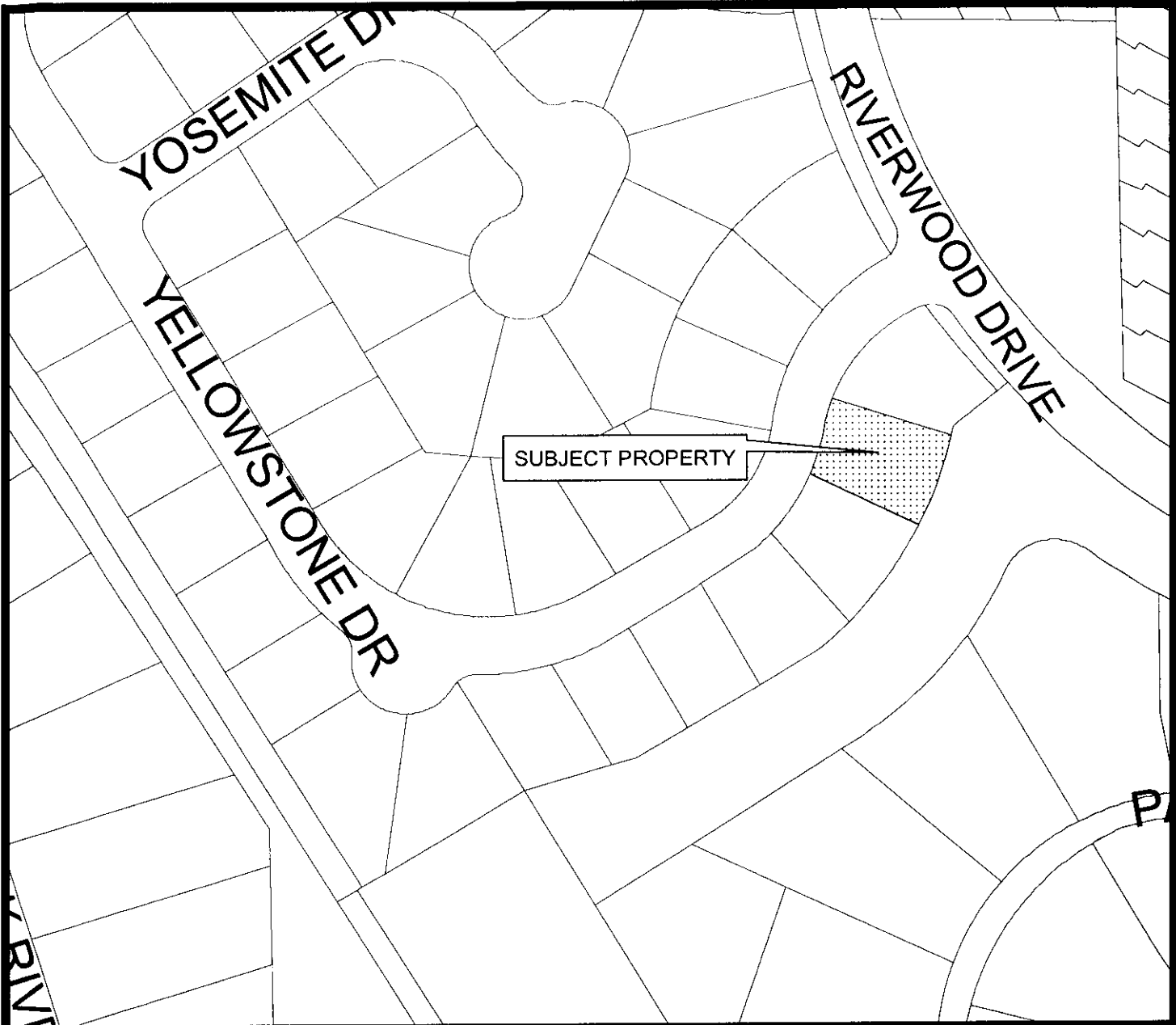
County of **Volusia**

The foregoing instrument was acknowledged before me on **October 22, 2004**, by **Cesar A. Quintero and Jill A. Quintero, husband and wife** who is/are personally known to me or who has/have produced a valid driver's license as identification.

  
NOTARY PUBLIC



Notary Print Name \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_



**Case No.:** 05-35000021

**Applicant:** Walter Lash, Artesian Pools, on behalf of Brian Lenois and Nancie Lenois, property owners

**Location:** Lot 30, Riverwood PUD, Phase II Subdivision (6236 Yellowstone Dr.)

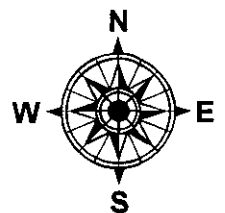
**Requested Action:** To vacate a portion of the easterly rear yard 10.00-foot wide Drainage and Utility Easement located on Lot 30 of the Riverwood Phase II Subdivision

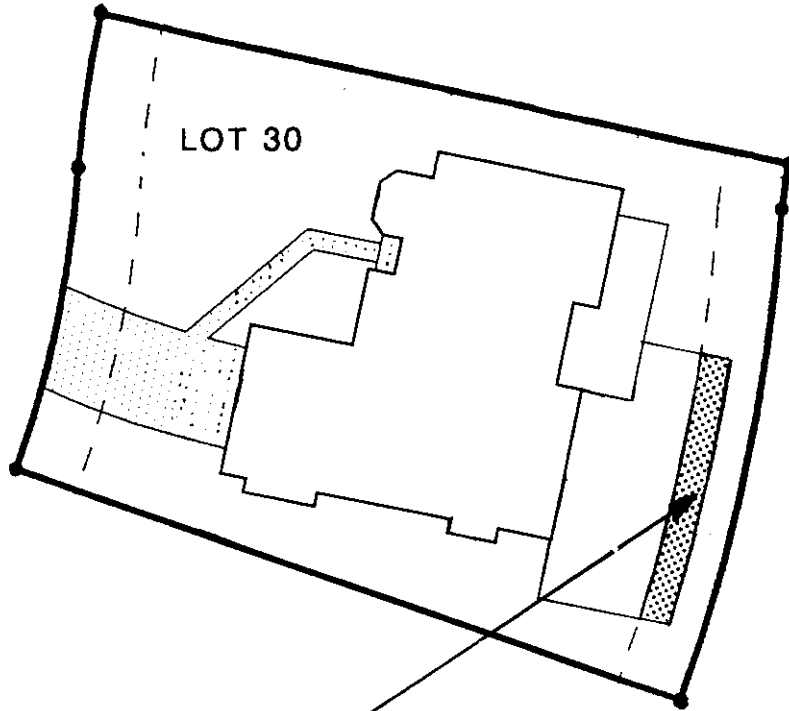


Location Map

**CITY OF PORT ORANGE**

DEPARTMENT OF COMMUNITY DEVELOPMENT





PROPOSED EASEMENT VACATION

**Case No.:** 05-350000021

**Applicant:** Walter Lash, Artesian Pools, on behalf of Brian Lenois and Nancie Lenois, property owners

**Location:** Lot 30, Riverwood PUD, Phase II Subdivision (6236 Yellowstone Dr.)

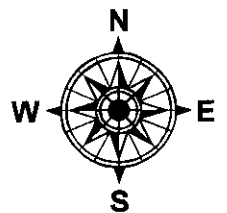
**Requested Action:** To vacate a portion of the easterly rear yard 10.00-foot wide Drainage and Utility Easement located on Lot 30 of the Riverwood Phase II Subdivision



Location Map

**CITY OF PORT ORANGE**

DEPARTMENT OF COMMUNITY DEVELOPMENT



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**BellSouth Telecommunications, Inc.**  
900 North Nova Road  
Daytona Beach, FL 32117

**January 10, 2006**

**Brian Lenois**  
6236 Yellowstone Drive  
Port Orange, Florida 32127

**RE: Release of easement Parcel # 6338-05-00-0300**

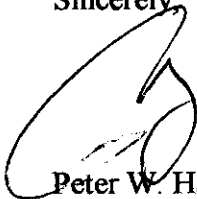
**To Whom It May Concern:**

**BellSouth respectfully releases any and all rights of the utility easement exactly as described:**

**The westerly 5.00 feet of the easterly rear yard 10.00 feet wide Drainage and Utility Easement, except the northerly 32.00 feet and southerly 8.00 feet thereof, located on Lot 30 of the Riverwood Phase II, subdivision plat as recorded in Map Book 39, Page 64 of the Public Records of Volusia County, Florida.**

**If you have any questions please contact Rebecca S. Cochrane @ 386 252 0662.**

**Sincerely,**



**Peter W. Hassett**  
Area Manager



Nov 20, 2005

City of Port Orange  
Community Development Dept.  
1000 City Center Cir.  
Port Orange, FL 32129

Re: Easement Vacation  
Lot: 30  
Address 6236 Yellowstone Dr.  
Subd: Riverwood Phase II Subdivision  
Map book 39, page 64, of the Public records of Volusia County, Florida.  
Tax Parcel No. 6338-05-00-0300

Please be advised that FPL does not object to the vacation of the utility easement described as follows:

The westerly 5.00 feet of the easterly rear yard 10.00 feet wide drainage and utility easement, except the northerly 32.00 feet and the southerly 8.00 feet thereof.

If you have any questions regarding this matter, please contact Wayne A Wagner, FPL's local representative at 322-3464.

Thank you,

*Bill Water*

Construction Supervisor

**STATE OF FLORIDA AND COUNTY OF VOLUSIA**

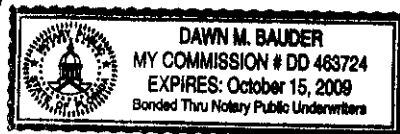
The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of December, 2005 by Bill WATER who is personally known to me and did not take an oath.

My Commission number and

**RECEIVED**

DEC 12 2005

**Community  
Development Dept.**



*Dawn M. Bauder*

Notary Public, Signature

**PEOPLES GAS**

**Release of Easement**

PEOPLES GAS SYSTEM, INC. having its principle place of business at 1722 Ridgewood Avenue, Holly Hill, Volusia County, Florida, for and in consideration of certain benefits accruing to it, does hereby release and cancel all of its right, title, interest, claim, easement and demand, if any, it may have in, over, above, under, and across the public utility easement shown in The Riverwood Phase II Subdivision, a subdivision according to the plat thereof recorded in Map Book 39, page 64, of the public records of Volusia County, Florida being more particularly described as follows:

The westerly 5.00 feet of the easterly rear yard 10.00 feet wide Drainage and Utility Easement, except the northerly 32.00 feet and southerly 8.00 feet thereof, located on Lot 30 of the Riverwood Phase II subdivision plat as recorded in map book 39, page 64 of the Public Records of Volusia County, Florida.

Physical Address - 6236 Yellowstone Drive  
Port Orange, FL 32127  
Tax Parcel No. 6338-05-00-0300

This release applies only to that public utility easement hereinabove specifically described and in no way affects other lands covered by said public utility right-of-way.

WITNESS: Beauche Stone  
DATE: 2/07/06

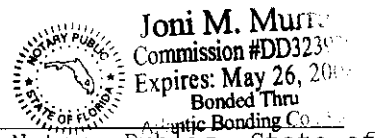
By: George C. Smith  
George C. Smith  
Construction Coordinator

STATE OF FLORIDA, COUNTY OF VOLUSIA

I hereby certify that on this day, before me, personally appeared George C. Smith, and known to me to be the person described in and who executed the foregoing instrument of the corporation names therein, and acknowledged before me that they executed the same in the name and on behalf of said corporation.

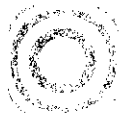
WITNESS MY HAND AND OFFICIAL SEAL IN THE COUNTY AND STATE AFORESAID THIS 7<sup>th</sup> day of February, 2006

My Commission Expires: MAY 26, 08  
JM. Murray  
Notary Public, State of Florida at Large



211 St. Joe Plaza Drive  
Palm Coast, FL 32164

**bright  
house**  
NETWORKS



+

November 28, 2005

Chip Glor  
City of Port Orange  
Community Development Dept.  
1000 City Center Circle  
Port Orange, FL 32129

**RE: Proposed Easement Vacate: Riverwood Plantation, Lot 30, 6236 Yellowstone Drive.  
Parcel#: 6338-05-00-0030**

Gentlemen:

This letter is in response to a request to Bright House Networks to vacate the above referenced utility easement as described as Lot 30, Riverwood Phase II, according to the plat thereof, as recorded in Map Book 39, Page(s) 64, of the Public Records of Volusia County, FL.

We have reviewed the request and find that we do not presently maintain cable plant in this easement and have no plans to utilize it in the future. **Bright House Networks has no objection to the vacation of this easement.**

If you have any questions regarding this, please contact the undersigned.

Sincerely,

Larry Henderson  
Construction Manager  
386-446-1420

Larry Henderson acknowledged the foregoing instrument before me this 28<sup>th</sup> day of May, 2004. He is personally known to me, and did not take an oath.

Signature

Raylene Frassrand

**RECEIVED**

DEC 01 2005

**Community  
Development Dept**





# CITY OF PORT ORANGE

Department of Community Development  
Engineering Division

CASE NO.
<u>05-35000021</u>
DATE APPLICATION RECEIVED
<u>12/15/05</u>

1000 CITY CENTER CIRCLE, PORT ORANGE, FLORIDA 32129 (386) 506-5600 FAX: (386) 506-5699

## EASEMENT VACATION APPLICATION

Property Owner: BRIAN AND NANCY LENOIS

Address: 6236 YELLOWSTONE DR. PORT ORANGE FL 32127

Phone: 386-258-8641

Applicant's Name (if other than owner): WALTER LASH

Address: 1118 MEDITATION LOOP PO. H 32119 Phone: 386-868-4371

W 258 8641  
F 255 7264

Property Address/Location: SAME AS ABOVE.

Subdivision Name: RIVERWOOD PHASE II

Lot Number(s): 30 Parcel No.: 6388-05-00-0300

Legal Description of proposed easement vacation: \_\_\_\_\_

Purpose for proposed easement vacation: 5' OF EASEMENT TO CONSTRUCT AND BUILD A IN GROUND SWIMMING POOL WITH SCREEN ENCLOSURE.

### REQUIRED ATTACHMENTS

1. Sealed property survey showing all structures, easements, area of proposed easement vacation;
2. Legal description of proposed easement vacation;
3. Copy of recorded deed for the property;
4. Application/recording fee of \$250 (payable to the City of Port Orange); and
5. Completed application form (signatures required on reverse side of application form)

Applicant's Signature: Walt Date: 12/01/05

I HEREBY GRANT AUTHORIZATION FOR THE ABOVE LISTED APPLICANT TO ACT IN MY BEHALF:

Owner's Signature: Brian Lewis Date: 12/02/05

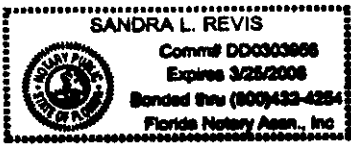
Nancie Lewis Date: 12/02/05

STATE OF FLORIDA  
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ~~12th~~ 01<sup>st</sup> December by BRIAN AND NANCIE LEWIS, who is personally known to me or who has produced \_\_\_\_\_ as identification and who did (did not) take an oath.

Sandra L. Revis  
(Signature)  
Sandra L. Revis  
(Name of Notary typed, printed or stamped)

Notary Public, Commission No. DD0303956



BRIAN R LENOIS  
NANCIE JO LENOIS  
6236 Yellowstone Dr.  
Port Orange, FL 32127  
386-763-5613

11/28/05  
Date

8259

63-751/831  
BRANCH 00342

Pay to the  
order of

City of Port Orange

\$ 250<sup>00</sup>

Two Hundred Fifty dollars and 00/100

Dollars

Security Features Details on Back



**WACHOVIA**

Wachovia Bank, N.A.  
wachovia.com

For

Construct / Easement Vacation app.

*[Signature]*

MP

W City of Port Orange  
\*\*\*\* CUSTOMER RECEIPT \*\*\*\*  
Oper: IWCNKK Type: OC Drawer: 1  
Date: 12/15/05 01 Receipt no: 60846

Description	Quantity	Amount
DV DEVELOPMENT RELATED FEES	1.00	\$250.00

EASEMENT VACATION LOT 30  
RIVERWOOD II

Tender detail		
CK CHECK	8259	\$250.00
Total tendered		\$250.00
Total payment		\$250.00

Trans date: 12/14/05 Time: 15:22:34