MEMORANDUM

DATE: January 4, 2019

TO: Joy Leggett Murphy, Property Acquisition Division Manager, Property Management Department

THROUGH: Mitchell O. Palmer, County Attorney

FROM: Pamela J. D’Agostino, Assistant County Attorney

RE: Vacation Application V-18-507; Alice Cislo, Theresa Sellmer, Yvonne Aronin, and Clayton and Diane Sutton; Application to Vacate a Portion of Roosevelt Avenue and a 10-foot Alley within the Myakka City Plat; CAO Matter No. 2018-0559

Issue Presented:

In this Request for Legal Services (RLS), you have asked the County Attorney’s Office (CAO) to review a vacation application.

Brief Answer:

I have reviewed the vacation application. At this preliminary stage in the process, portions of Sections 336.09 and 336.10, Florida Statutes, and Section 331 of the Manatee County Land Development Code (LDC) have been met. The applicants and staff will need to ensure full compliance with state and local laws as this application proceeds through the public hearing process to the Board of County Commissioners of Manatee County, Florida (Board). The decision to vacate this unimproved platted road and L-shaped alley is a business decision which the Board has the authority to make:

Recommendation:

Staff should ensure that the legal descriptions and sketches of the areas to be vacated are

* Board Certified in Construction Law

** Board Certified in City, County, & Local Government Law
correct consistent with the advice below and that all other vacation application filing requirements are met. Staff should seek clarification from the Myakka City Fire District on their position relative to this vacation application consistent with the advice below. Lastly, staff should note that one of the proposed roads to be vacated is Roosevelt Road, not Roosevelt Avenue. Care should be taken to ensure that all documentation uses the correct name for this road.

Facts:

According to the vacation application, Alice Cislo, Theresa Sellmer, Yvonne Aronin, Clayton Sutton, and Diane Sutton are requesting the Board vacate two (2) separate areas: a portion of a fifty foot (50') wide unimproved platted road and a portion of a ten foot (10') wide unimproved platted L-shaped alley both in the Myakka City subdivision plat. The former is roughly two hundred feet (200') long and runs east and west between Myakka Boulevard and Wauchula Road in an area south of Bradenton-Arcadia Road and north of State Road 70 East. It was originally called Durrance Avenue, but was later replatted and renamed Roosevelt Road. The total area is 0.23 acres in size and will hereafter be referred to as the Roosevelt Area. The later is an “L” shaped area turned clockwise ninety degrees (90°). The stem of the L is roughly one hundred forty-five feet (145') long, runs between Myakka Boulevard and Wauchula Road, and is parallel to the Roosevelt Area, but lies south of the Roosevelt Area and north State Road 70 East. The base of the L runs south and abuts to the right-of-way line of State Road 70 East. These alley, which will hereafter be referred to as Alley Area, were never named and are roughly 0.03 acres in size.

Based on a review of aerial images, it appears that a building has been constructed within a portion of the Roosevelt Area. According to the RLS, the applicants request this vacation to “complete the balance of the ROW vacation” in the area. In the application, the applicants allege that approximately one-quarter (1/4) of Roosevelt is already vacated and the Alley Area is non-buildable, not accessible from Wauchula Road and too close to a traffic light.

Discussion:

1. Authority to Vacate Platted Right-of-Way

Public places and right-of-way are held in trust by the authorities for the benefit of the public to be used for public purposes; however, this public trust concept does not prevent the abandonment, vacation or discontinuance of streets when done in the interest of general welfare. In *Sun Oil Co. v. Gerstein*, 206 So. 2d 439 (Fla. 3d DCA 1968), the Court explained: “The fact that [the] title to the public place . . . vacated or discontinued [in the interest of the general welfare] may revert to the adjacent landowner is of no consequence if the power to vacate is present and such power is lawfully exercised.”

Section 336.09, Florida Statutes, provides the Board with the specific authority to vacate
road right-of-way. According to Section 336.09(1):

[County] commissioners, with respect to property under their control may in their
own discretion, and of their own motion, or upon the request of any agency of the
state, or of the federal government, or upon petition of any person or persons, are
hereby authorized and empowered to:

....

(c) Renounce and disclaim any right of the county and the public in and to land,
other than land constituting, or acquired for, a state or federal highway, delineated
on any recorded map or plat as a street, alleyway, road or highway.

(Emphasis added.)

2. Procedure for Vacation of Platted Road Right-of-Way

a. Sections 336.09 and 336.10, Florida Statutes

In addition to providing the authority to vacate maintained road right-of-way, Sections
336.09 and 336.10, Florida Statutes, also provide the procedure for vacating platted road right-of-
way. According to Section 336.10, an applicant who requests that the Board vacate any right or
interest in land must make such a request in writing. Section 336.09 states that the Board “may
adopt a resolution declaring that at a definite time and place a public hearing will be held to
consider [a vacation application].” While adopting a resolution to declare a public hearing on the
matter is optional, the Board must comply with the following requirements pursuant to Section
336.10:

1) “publish notice . . . one time, in a newspaper of general circulation in [the]
county at least 2 weeks prior to the date [of the public hearing],”

2) “hold a public hearing,”

3) adopt a resolution evidencing any action of the commissioners after the
public hearing and enter such action in the minutes of the commissioners,

4) include the applicant’s written request for vacation within the minutes of
the commissioners,

5) publish notice of the adoption of said resolution “one time, within 30 days
following its adoption, in one issue of a newspaper of general circulation
published in the county,” and

6) record the following items in the deed records of the county:
   i. “proof of publication of notice of [the] public hearing,"
   ii. “the resolution as adopted,” and
   iii. “proof of publication of the notice of the adoption of [said] resolution.”

The alternative to having the Board adopt a resolution declaring a public hearing, is presenting a motion to the Board to schedule the public hearing.

b. Sections 331 and 312, Manatee County Land Development Code

Section 331 of the LDC codifies the requirements of Sections 336.09 and 336.10, Florida Statutes, within the laws of Manatee County and also provides specific legal guidelines as to the vacation application process in Manatee County. Section 331.2 of the LDC outlines the review process for vacation applications. An applicant must:

1) “complete and submit an application to the Department Director”; and
2) “furnish any additional maps, charts, surveys, legal descriptions, title opinions, and title policies as required by the Department Director for clarification to the reviewing agencies and the Board.”

Section 331.2, Manatee County Land Dev. Code. “Department Director” is defined within the LDC as “the staff person designated by the County Administrator to administer this code.” Section 200, Manatee County Land Dev. Code.

Appropriate published and posted notice of the vacation application must be provided in accordance with Section 336.10, Florida Statutes, and Section 312.7 of the LDC. If staff confirms that an applicant has complied with the vacation procedures of Sections 336.09 and 336.10, Florida Statutes, and Section 331 of the LDC, then the application will be legally acceptable and sufficiently complete for presentation to the Board. If, after review of an application and upon the close of the public hearing, the Board decides to approve the application, the Board shall adopt a resolution to that effect. Notice of adoption of such a resolution must then be published “one (1) time in a newspaper of general circulation in Manatee County, Florida, within thirty (30) days following [its adoption].” Section 331.3, Manatee County Land Dev. Code. In accordance with 336.10, Florida Statutes, and Section 331.4 of the LDC, the following must be recorded in the deed
records of the county:

1) A certified copy of the adopted vacation resolution,

2) Original proof of the one (1) publication of the notice of public hearing,

3) Location maps, survey, legal description or other appropriate data as determined by the Department Director,

4) Original proof of publication of the notice of adoption of the vacation resolution, and

5) Any applicable easements, if required.

Finally, within forty-five (45) days after the adoption of the resolution, the applicant must provide staff with a copy of all of the recorded documents. Section 331.4, Manatee County Land Dev. Code. Pursuant to Section 331.5 of the LDC, the vacation becomes effective after the required documents have been filed with the Clerk of the Circuit Court and duly recorded in the Public Records of Manatee County.

3. Legal Review of Current Vacation Application

a. Background of Right-of-Way

On April 1, 1915, the Map of Myakka City was filed in Plat Book 1, Page 334, of the Public Records of Manatee County, Florida. On August 14, 1925, Myakka City Map No. 2 was recorded in Plat Book 3, Page 12, of the Public Records of Manatee County, Florida. The face of the map alleges that it was made, filed and recorded for the purpose of correcting and extending the original plat, recorded in Plat Book 1, Page 334. Neither plat contains any formal dedication language.

According to staff a portion of Roosevelt Road and a ten foot (10') alley was vacated pursuant to Resolution R-97-157. The legal descriptions and sketches of Roosevelt Area and Alley Area provided by the applicants reference areas which have purportedly been already vacated. Close review of Resolution R-97-157, which staff failed to furnish along with this RLS submission, revealed that two (2) distinct areas were vacated: a ten foot (10') alley which runs north and south through the center of Block 61 and the easternmost quarter of Roosevelt Road lying between Block 61 and Block 75. The proposed vacation of the Roosevelt Area would vacate the balance of Roosevelt Road which lies between Block 61 and Block 75.

Staff has not provided much information within this RLS as to the background of the right-of-way sought to be vacated. This memorandum and the opinions expressed herein are premised
upon the assumption that the information provided by the applicants providing their reasons and justification supporting the vacation request is accurate.

Staff should confirm that no property will be landlocked by virtue of granting this vacation application. If the vacation of a street serves to significantly impair access to one or more private properties, the government may be liable in inverse condemnation. *Pinellas County v. Austin*, 323 So. 2d 6 (Fla. 2d DCA 1975).

b. **Compliance with Sections 336.09 and 336.10, Florida Statutes**

In review of the subject application, the applicants provided a written application for vacation in compliance with Section 336.10, Florida Statutes. Prior to vacation, the Board must hold a public hearing and publish notice of same “one time, in a newspaper of general circulation in [the] county at least 2 weeks prior to” the date of the public hearing. Section 336.10, Florida Statutes. Staff must ensure compliance with this requirement that legal notice of the vacation application is provided to the public.

c. **Compliance with Sections 312 and 331, Manatee County Land Development Code**

Based on the documents provided with this RLS, it appears that some, but not all of the relevant and applicable portions of the LDC have been met. While this RLS includes a memorandum from the Director of Building and Development Services to the Board recommending that the vacation move forward to a public hearing, it does not contain a “report and recommendation” to the Board as required by Section 312.5.A.5.b. of the LDC. Staff must prepare a report and recommendation for presentation to the Board. The applicants have paid the $200 application fee, but have not yet demonstrated that all of the applicants are current on all property taxes and assessments. Staff should ensure all applicants furnish receipts of tax payments for all property in their name and that the minimum filing requirements of the vacation application have been met. Due to the timing of the RLS staff taxes for the year 2018 should be paid prior to presentation of this application to the Board.

Section 312 of the LDC requires that the applicants post notice of the public hearing and that the staff person designated by the County Administrator publish notice of the public hearing. In addition, affidavits affirming that the required notices have been made must be filed with staff at least five (5) days prior to the date of the hearing. This matter should not be presented to the Board unless staff is certain that all of the requirements of the LDC relative to posted and published notices have been met.
d. Other Considerations

This application was reviewed by more than twenty-five (25) reviewing entities, both within and outside of County government. Although staff reports in the RLS that all responded indicating their lack of objection to the vacation application, closer review of the response from the Myakka City Fire District is recommended. The correspondence from the Fire Inspector/Administrative Assistant states that the district “has no issues with the application to vacate the platted 10’ alley that was a portion of Roosevelt Avenue.” This response evidences a misunderstanding of the nature of the request. Staff should contact the fire district again and explain that the alley (Alley Area) and Roosevelt Road (Roosevelt Area) are two (2) separate rights-of-way and ask fire district staff to reanalyze the vacation application accordingly.

Prior to presenting this vacation application to the Board, staff should ensure that the legal descriptions and sketches for the Roosevelt Area and Alley Area are correct. The Roosevelt Area legal description and sketch purports that a ten foot (10’) alley running south of the Roosevelt Area was previously vacated, but there is no evidence of this vacation provided within this RLS or in Board Records, the Official Records, or the Public Records based on the search I conducted. The Roosevelt Area legal description and sketch also references a ten foot (10’) alley running north of the Roosevelt Area which was, in fact, vacated by Resolution R-97-157. The Alley Area legal description and sketch also purports that a ten foot (10’) alley running north of the Alley Area was previously vacated, but I have found no evidence to support this assertion. Staff should not allow legal descriptions and sketches to be presented to the Board which are factually inaccurate.

Attached is a diagram to illustrate (1) the areas which have already been vacated, pursuant to Resolution R-97-157, in blue; (2) the areas which are the subject of this vacation application, in green; and (3) the area which is purported on the legal descriptions and sketches to have already been vacated, but for which no proof of such vacation has been provided, labeled Remnant Alley, in orange. If the areas proposed to be vacated pursuant to this application (Roosevelt Area and Alley Area) are vacated, then there will remain a Remnant Alley, which is inaccessible. If the applicants want to proceed with only vacating the Roosevelt Area and the Alley Area, then staff should request that the applicants provide evidence supporting the accuracy of their legal descriptions and sketches. Such evidence would establish that the Remnant Alley has actually been vacated. If no such evidence is produced and if the applicants or staff or both are of the opinion that the better course of action would be to vacate the Remnant Alley as well, a legal description and sketch of the Remnant Alley needs to be created. Even if the applicants are not requesting that the Remnant Alley be vacated, staff should closely review the matter of the Remnant Alley and determine whether vacation of this area might be in the best interests of the County. The County Surveyor should be consulted and asked to closely review all legal descriptions and sketches for accuracy.
Conclusion:

At this preliminary stage in the application process, portions of Sections 336.09 and 336.10, Florida Statutes, and Section 331 of the LDC have been met. The applicants and staff will need to address all of the matters identified above and ensure that the procedures required by the applicable statutes and the LDC are met as this application proceeds to the Board for consideration. The decision to vacate these areas is a business decision which the Board has the authority to make.

This completes my response to your Request for Legal Services. Please contact me if you have any questions or if I can be of further assistance.

Copies with attachments to:
- Edwin Hunzeker, County Administrator
- Dan Schlandt, Deputy County Administrator
- Cheri Coryea, Deputy County Administrator
- Charles Bishop, Director, Property Management Department
- Charles Meador, Real Property Specialist, Property Management Department
- Todd Boyle, County Surveyor, Property Management Department
Request evidence supporting accuracy of this.
SKETCH OF DESCRIPTION

EXHIBIT "A"

WAUCHULA ROAD
RIGHT OF WAY VARIES

LOT 5
BLOCK 75

LOT 6
BLOCK 75

LOT 7
BLOCK 75

LOT 13
BLOCK 75

LOT 15
BLOCK 75

LOT 16
BLOCK 75

LOT 17
BLOCK 75

LOT 10
BLOCK 75

LOT 12
BLOCK 75

P.I.D. # = 190300004
"NOW OR FORMERLY"

LOT 9
BLOCK 75

LOT 11
BLOCK 75

P.I.D. # = 199800006
"NOW OR FORMERLY"

LOT 8
BLOCK 75

LOT 14
BLOCK 75

NOTE: THIS IS NOT A SURVEY

GRAPHIC SCALE: 1" = 30'

LEGAL DESCRIPTION:

A PORTION OF A PLATTED 10' ALLEY, AS RECORDED IN MYAKKA CITY SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 1, PAGE 334, OF THE PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF LOT 17, BLOCK 75, OF SAID MYAKKA CITY SUBDIVISION; THENCE S. 89°56'50" E, 145.00 FEET TO THE NORTHWEST CORNER OF SAID LOT 12, BLOCK 75; THENCE S. 00°00'00" W, ALONG THE WEST BOUNDARY LINE OF SAID LOT 12, BLOCK 75, A DISTANCE OF 17.16 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF STATE ROAD 70, PER RIGHT OF WAY MAP SECTION 13050-2555 (MANATEE COUNTY); THENCE N. 89°56'50" W, ALONG SAID NORTHERLY RIGHT OF WAY LINE OF STATE ROAD 70, A DISTANCE OF 12.65 FEET TO A POINT ON THE EASTERN BOUNDARY LINE OF LOT 7, BLOCK 75, OF SAID MYAKKA CITY SUBDIVISION, THENCE N. 00°00'00" W, ALONG SAID EAST BOUNDARY LINE OF LOTS 7 AND 8, BLOCK 75, A DISTANCE OF 18.46 FEET TO A POINT ON THE EAST BOUNDARY OF SAID LOT 8, BLOCK 75, THENCE N. 89°56'50" E, ALONG THE SOUTH BOUNDARY LINE OF LOTS 13, 14, 15, 16, AND 17, BLOCK 75, OF SAID MYAKKA CITY SUBDIVISION AND ITS EXTENSION, A DISTANCE OF 145.00 FEET TO THE POINT OF BEGINNING.

This Description and Sketch was prepared without the benefit of a title search and is subject to all easements, Rights-of-way, and other matters that can be found in the public records of Manatee County, Florida.

Digitally signed by
Alan E Rozon Jr.
Date: 2018.08.06

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Digitally signed by
Alan E Rozon Jr.
Date: 2018.08.06
Request evidence supporting accuracy of this.
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Vacated by R-97-157

Proposed Vacation V-18-507

Remnant Alley

Suspected right-of-way line for State Road 70 East