



OFFICE OF THE COUNTY ATTORNEY

MITCHELL O. PALMER, COUNTY ATTORNEY*
William E. Clague, Assistant County Attorney
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Pamela J. D'Agostino, Assistant County Attorney
Anne M. Morris, Assistant County Attorney
Katharine M. Zamboni, Assistant County Attorney
Alexandria C. Nicodemi, Assistant County Attorney

MEMORANDUM

DATE: March 22, 2018

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

THROUGH: Mitchell O. Palmer, County Attorney *MOP 3-23-18*

FROM: Pamela J. D'Agostino, Assistant County Attorney *PJD 3-22-2018*

RE: **Vacation Application #V-18-502/SRQ Tech Park; Applicant: 2550 TR, LLC; Request to vacate a Dedicated Conservation Easement; CAO Matter No. 2018-0105**

Issue Presented:

You have asked this office to review an application from 2550 TR, LLC, to vacate a dedicated conservation easement and advise staff on any legal issues that may exist.

Brief Answer:

I have reviewed the vacation application and supporting documentation provided. This matter should proceed consistent with advice previously provided by Sarah A. Schenk, Assistant County Attorney, relative to CAO Matter No. 2018-0096 (attached). Whether the County can release this conservation easement is largely dependent upon what factual findings are made by the Board. Whether the County should release this easement raises a myriad of land use issues which should be considered by staff under the guidance of the County Administrator. The ultimate decision to release this conservation easement to the holder of the fee is a land use decision which the Board has the authority to make.

* Board Certified in Construction Law

** Board Certified in City, County, & Local Government Law

Recommendation:

The attached Resolution and Release of Conservation Easement should both be presented to the Board for consideration. If the Board adopts the Resolution, it should then be executed by the Board. If the Resolution is adopted and provided that no appeal to the amended zoning ordinance is filed within thirty (30) days of adoption, the Release of Conservation Easement should be provided to the Chair or Vice Chair for execution. After execution, the release should be recorded in the public records.

Facts:

In this Request for Legal Services (RLS), you have referred to this vacation application as a request to vacate a dedicated conservation easement, however, that is not accurate. The conservation easement which is the subject to this application was granted to Manatee County on January 30, 2015, by deed—not dedication—and is recorded in Official Records Book 2557, Page 3606, of the Public Records of Manatee County, Florida. It was formally accepted by the Board on February 24, 2015. The granting of this easement was required in a stipulation of Manatee County Zoning Ordinance PDI-14-01(Z)(P), which also approved the Preliminary Site Plan for the SRQ Technical Park, Phase 2. That stipulation required that a conservation easement be granted to the County, in accordance with then-Section 719.8.2 of the LDC, over the areas defined as post-development jurisdictional wetlands/wetland buffers.

According to the RLS, the applicant is asking to vacate the entire 1.57 acre easement to expand SRQ Technical Park, which is located at the south east corner of the intersection of U.S. 301 and Tallevast Road, and construct a 54,000 square foot building.

Discussion:

Section 704.06(4), Florida Statutes, explains that a “conservation easement may be released by the holder of the easement to the holder of the fee even though the holder of the fee may not be a governmental body or a charitable corporation or trust.”

The formal process for vacation is not applicable in this instance as the conservation easement was not dedicated on the plat, thus a public hearing is not legally required relative to the requested release. Public comment can occur when the Board discusses this item on the agenda.

I have prepared a draft Resolution and draft Release of Conservation Easement which staff should use in the event this matter is ever presented to the Board for consideration. I express no opinion as to the merits of whether the conservation easement should be released as this falls within the purview of the Board after hearing all relevant information.

Joy Leggett-Murphy, Property Acquisition Division Manager, Property Acquisition Division,
Property Management Department

March 22, 2018

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Conclusion:

Staff may present this matter to the Board for consideration. Whether the County can release this conservation easement is largely dependent upon what factual findings are made by the Board. Whether the County should release this easement raises a myriad of land use issues which should be considered by staff under the guidance of the County Administrator. The ultimate decision to release this conservation easement to the holder of the fee is a land use decision which the Board has the authority to make. Attached to this RLS are a form Resolution and a form Release of Conservation Easement which staff should use if this matter is ultimately presented to the Board for consideration. I will continue to assist staff to revise any documents relative to this matter, if so requested.

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:

Ed Hunzeker, County Administrator

Dan Schlandt, Deputy County Administrator

Charlie Bishop, Director, Property Management Department

Chris Munyon, Real Property Specialist, Property Acquisition Division, Property
Management Department

Robert Brown, Environmental Protection Division Manager, Parks and Natural
Resources Department

Michael Elswick, Resource Management Division Manager, Parks and Natural Resources
Department

Robert Knable, Planning Section Manager, Environmental Planning Section Division,
Building and Development Services Department

Fred Goodrich, Development Services Division Manager, Building and Development
Services Department

Kenneth Kohn, P.E., Project Engineer II, Public Works Department

William E. Clague, Assistant County Attorney

Sarah A. Schenk, Assistant County Attorney

Pamela DAgostino

From: Sarah Schenk
Sent: Friday, March 09, 2018 11:48 AM
To: Fred Goodrich
Cc: Mitchell Palmer; William Clague; Pamela DAgostino; Nicole Knapp; Robert Knable; Stephanie Moreland; Bobbi Roy
Subject: FW: Process re: vacation of conservation easement and amendment to Zoning Ordinance (Matter No. 2018-0096)-Supplemental Response

Fred,

Please see revised Paragraph No. 5 below. Thank you.

From: Sarah Schenk
Sent: Thursday, March 08, 2018 4:14 PM
To: Fred Goodrich <Fred.Goodrich@mymanatee.org>
Cc: Mitchell Palmer <mitchell.palmer@mymanatee.org>; William Clague <william.clague@mymanatee.org>; Pamela DAgostino <pamela.dagostino@mymanatee.org>; Nicole Knapp <nicole.knapp@mymanatee.org>; Robert Knable <robert.knable@mymanatee.org>; Stephanie Moreland <stephanie.moreland@mymanatee.org>; Bobbi Roy <bobbi.roy@mymanatee.org>
Subject: Process re: vacation of conservation easement and amendment to Zoning Ordinance (Matter No. 2018-0096)

Fred,

The above referenced Matter Number requested legal review of the appropriate process concerning a pending application to amend a preliminary site plan and accompanying request to vacate a conservation easement prior to March 16, 2018. The CAO provides the following in response:

1. The conservation easement proposed to be vacated is required in a stipulation of a zoning ordinance: Ordinance No. PDI-14-01(Z)(P) adopted on June 5, 2014.
2. The conservation easement was provided pursuant to Section 704.06, Florida Statutes and accepted by the BOCC on February 24, 2015. A conservation easement may be released by the holder of the easement to the holder of the fee even though the holder of the fee may not be a governmental body or charitable corporation or trust. Section 704.06(4), Florida Statutes. (Note: Pamela DAgostino will be responding by a separate memorandum to Matter No. 2018-0105 concerning the subject vacation application).
3. The issue has arisen as to whether the BOCC should act on whether to vacate the conservation easement prior to the Planning Commission public hearing on the amended preliminary site plan. The proposed improvements on the amended preliminary site plan would impact the area within the conservation easement.

4. The Applicant should submit an application to amend the existing Zoning Ordinance No. PDI-14-01(Z)(P) to delete Stipulation No. D.4. which currently requires the conservation easement. At present there is only a preliminary site plan application pending. The amended preliminary site plan application and the request to amend the Zoning Ordinance could then be heard by the PC at one public hearing. Any motion made by the PC to approve the preliminary site plan would be expressly made contingent upon the conservation easement being vacated.

5. At the BOCC level, the agenda would first list the Amended Zoning Ordinance and secondly list the Vacation of the Conservation Easement consecutively for public hearings on the same day.

There were no specific legal issues raised in the above referenced matter Number, other than those expressly addressed above. The CAO has not commented upon the merits of whether the conservation easement should be vacated, as this would be within the purview of the BOCC after receiving all pertinent information.

Conclusion:

This response concludes the CAO response to the above Matter Number.

Sarah A. Schenk
Assistant County Attorney
Manatee County Attorney's Office
1112 Manatee Ave. W., Ste. 969
P.O. Box 1000
Bradenton, FL 34206-1000
Phone: (941) 745-3750

RESOLUTION R-18-_____

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF
MANATEE COUNTY, FLORIDA, RELEASING A CONSERVATION
EASEMENT PURSUANT TO SECTION 704.06(4), FLORIDA STATUTES.**

WHEREAS, an application has been made by 2550 TR, LLC, a Florida limited liability company (Applicant), to release a Conservation Easement, as recorded in Official Records Book 2557, Page 3606, of the Public Records of Manatee County, Florida, located in Section 31, Township 35 South, Range 18 East, and more particularly described in Exhibit A attached hereto and by this reference provided herein; and

WHEREAS, Section 704.06(4), Florida Statutes, authorizes the release of a conservation easement by the holder of the easement to the holder of the fee even though the holder of the fee may not be a governmental body or a charitable corporation or trust; and

WHEREAS, the Applicant owns fee simple title to the area sought to be vacated; and

WHEREAS, the Board has been fully advised and informed in the premises.

NOW THEREFORE, BE IT RESOLVED, by the Board of County Commissioners of Manatee County, Florida, that:

1. The findings set forth in the preamble above are hereby adopted as findings of the Board and are incorporated herein by reference.
2. Upon request of the Applicant, the Board conditionally agrees to release the conservation easement described in Exhibit A, incorporated herein by reference, subject to the following terms and conditions:
 - a. That the Board of County Commissioners of Manatee County, Florida, by separate ordinance has approved an amendment of Manatee County Zoning Ordinance PDI-14-01(Z)(P) to delete Stipulation No. D.4. which required the granting of this conservation easement; and
 - b. That no timely appeal or other lawful challenge to the approved amended zoning ordinance is filed.
3. Provided no timely appeal or other lawful challenge to the approved amended zoning ordinance has been filed, the Chairperson or Vice Chairperson of the Board is hereby authorized to execute the Release of Conservation Easement, attached as Exhibit B, on the thirty-third (33rd) day after the adoption of this resolution.
4. If any timely appeal or other lawful challenge to the approved amended zoning ordinance is filed, the request to release this conservation easement shall be deemed

withdrawn by the Applicant.

5. This resolution shall be effective immediately upon adoption.

DULY ADOPTED with a quorum present and voting this [Date] day of [Month], [Year].

**BOARD OF COUNTY COMMISSIONERS
OF MANATEE COUNTY, FLORIDA**

By: _____
Chairperson

ATTEST: ANGELINA COLONNESO
CLERK OF THE CIRCUIT COURT AND COMPTROLLER

By: _____
Deputy Clerk

THIS INSTRUMENT PREPARED BY:
Pamela D'Agostino, Assistant County Attorney
Office of the County Attorney
Manatee County Government
1112 Manatee Avenue West, Suite 969
Bradenton, Florida 34205

PID NO. 2005500459

SPACE ABOVE THIS LINE FOR RECORDING DATA

RELEASE OF CONSERVATION EASEMENT

THIS RELEASE is made this _____ day of _____ 2018, between **MANATEE COUNTY, a political subdivision of the State of Florida**, whose mailing address is Post Office Box 1000, Bradenton, Florida 34206 (County), and **2550 TR, LLC, a Florida limited liability company**, whose mailing address is 7978 Cooper Creek Boulevard, University Park, Florida 34201 (Fee Holder).

WHEREAS, Fee Holder warrants that it holds legal title to certain land situated in Manatee County, Florida, as described in Exhibit A, which is attached hereto and made a part hereof; and

WHEREAS, County was granted a Conservation Easement by Fee Holder over the lands described in Exhibit A that is recorded in Official Records Book 2557, Page 3606, of the Public Records of Manatee County, Florida; and

WHEREAS, Fee Holder has applied for a release of said Conservation easement which encumbers the lands described in Exhibit A in accordance with Section 704.06(4), Florida Statutes, and the Manatee County Land Development Code; and

WHEREAS, County has determined that the Conservation Easement serves no public purpose; and

WHEREAS, County, as the holder of the Conservation Easement, may release the easement to the holder of the fee even though the holder of the fee may not be a governmental body or a charitable corporation or trust.

NOW, THEREFORE, for good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, County does hereby release the premises described in Exhibit A from all easement rights and interest acquired by the County pursuant to the Conservation Easement granted and recorded in Official Records Book 2557, Page 3606, of the Public Records of Manatee County, Florida.

IN WITNESS WHEREOF, County has caused these presents to be executed in its name by its Board of County Commissioners acting by the Chair or Vice Chair of said board, the day and year aforesaid.

SIGNATURE AND ACKNOWLEDGMENT APPEAR ON FOLLOWING PAGE.

COUNTY:

BOARD OF COUNTY COMMISSIONERS OF
MANATEE COUNTY, FLORIDA

By: _____
Chairperson

ATTEST: ANGELINA COLONNESO
CLERK OF THE CIRCUIT COURT AND COMPTROLLER

By: _____
Deputy Clerk