



OFFICE OF THE COUNTY ATTORNEY

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MEMORANDUM

DATE: May 6, 2015

TO: Charles Bishop, Director, Property Management Department

FROM: Mitchell O. Palmer, County Attorney *MOP 5/8/15*

RE: **Vacation Application #V-15-503**
Applicant: BW 70 Lorraine, LLC; Request to vacate a portion of 5'
wide non-vehicular ingress/egress easement; RLS-15-104; CAO File
8003-181

Issue Presented:

Is the application for vacation of a portion of a platted 5-foot wide non-vehicular ingress/egress easement from BW 70 Lorraine, LLC (hereinafter the "Applicant"), legally acceptable and sufficiently complete for consideration by the Board of County Commissioners?

Brief Answer:

Yes. At this stage of the process, the Applicant has complied with all requisite procedures pursuant to Section 177.101 of the Florida Statutes and Section 911 of the Manatee County Land Development Code. However, the Applicant will need to follow up with staff before the public hearing on the vacation application to confirm full compliance with state and local laws. Once done, the application will be legally acceptable and sufficiently complete for presentation to the Board of County Commissioners.

Facts:

According to a Special Warranty Deed dated November 30, 2014, recorded in Official Record Book 2550, Page 5357, the Applicant owns:

* Board Certified in Construction Law

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

Lot 1, LORRAINE CORNERS SOUTHEAST, a Commercial Subdivision, according to the Plat thereof recorded in Plat Book 52, Pages 197 through 200, of the Public Records of Manatee County, Florida.

Lorraine Corners Southeast is a commercial subdivision plat that was recorded in November 2007. The property is located at the intersection of State Road 70 and Lorraine Road. The Applicant's property is currently unimproved.

The Applicant received preliminary approval of Final Site Plan FSP-14-66, by written letter dated February 2, 2015, from the Building and Development Services Department, to construct a 7,200 square foot convenience store with gas pumps. Pursuant to said letter, Bernard Salmon, Planner, Building and Development Services Department, outlines conditions and requirements which must be completed. One of the requirements states:

“The current site plan submitted for sign-off shows access to Lorraine Road over the Lorraine Corners SE Plats 5-foot non-vehicular ingress egress easement along the perimeter of Lots #1-3. Documentation will be required in writing that access to Lorraine Road over the non-vehicular ingress egress has been granted prior to construction as shown on the site plan. If the Applicant is not granted access across the non-ingress easement along the west side of the project, the Applicant shall proceed with Exhibit A as shown on the site plan. Exhibit A shows NO access to Lorraine Road.”

To comply with this condition, the Applicant has applied for vacation of a 5-foot wide by 60-foot long portion of a platted non-vehicular easement. The easement is depicted on Sheet 3 of the aforementioned plat.

Discussion:

Question #1:

1. Authority to Vacate Plats

Public places and easements are held in trust by the County 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 when done in the interest of general welfare. The fact that the title to the public place vacated in the interest of the general welfare, or discontinued, may revert to the adjacent landowner is of no consequence if power to vacate is present and such power is lawfully exercised. *Sun Oil Company v. Gerstein*, 206 So. 2d 439 (Fla. 3d DCA 1968).

Section 177.101(3) of the Florida Statutes provides the Board of County Commissioners with the specific authority to vacate easements within platted subdivisions that have been dedicated to the public. The statute states that “[t]he governing bodies of the counties of the state may adopt resolutions vacating plats in whole or in part of subdivisions in said counties, returning the property covered by such plats either in whole or in part into acreage.” § 177.101(3), Fla. Stat. (2014).

2. *Procedure for Vacation of Easement, Platted Subdivisions*

a. *Florida Statutes, Section 177.101*

In addition to providing the authority to vacate platted easements, Section 177.101(3) of the Florida Statutes also provides the procedure for vacating easements within platted subdivisions. Before the Board may vacate any plat, in whole or in part, the following factors must first be met:

- 1) The person requesting the vacation must “own the fee simple title to the whole or that part of the tract covered by the plat sought to be vacated.” *Id.*
- 2) There must be confirmation that the vacation will not affect the ownership or right of convenient access of persons owning other parts of the subdivision.

Additionally, before the Board may even consider an application for vacation of any plat, in whole or in part, an applicant must provide the following items:

- 1) Notice to the public of its intention to apply for vacation of said plat by “publishing legal notice in a newspaper of general circulation in the county in which the tract or parcel of land is located, in not less than two weekly issues of said paper.” § 177.101(4), Fla. Stat. (2014).
- 2) Proof of said publication within the vacation application.
- 3) Certificates showing that all state and county taxes on the property have been paid.

b. *Manatee County Land Development Code Section 911*

Section 911 of the Manatee County Land Development Code codifies the requirements of Section 177.101 of the Florida Statutes within the laws of Manatee County and also provides specific legal guidelines as to the vacation application process in Manatee County. As previously mentioned, Section 177.101 of the Florida Statutes requires an applicant to publish notice of its

intent to apply for vacation of a plat and provide proof of said publication before the Board may consider the application for vacation. Section 911 of the Manatee County Land Development Code requires that additional steps be taken in order to effect notice of the vacation application.

After submitting an application, an applicant must provide notice to all owners of land who own property that is contiguous to the property in question. Such notice shall be made by way of first class mail at least fifteen (15) days before the public hearing on the application. § 911.3.4, Manatee County LDC. Additionally, an “applicant shall post a notice on a sign furnished by the Director on the affected property not less than fifteen (15) days nor more than thirty (30) days in advance of the scheduled hearing date.” § 911.3.5, Manatee County LDC. Lastly, fifteen (15) days before the public hearing, an applicant is required to file an affidavit affirming its compliance with the mailing and posting of notices as required under Sections 911.3.4 and 911.3.5 with the Director. The “affidavit shall be accompanied by a complete list of the names and last known addresses of the persons entitled to notice and the method by which notice was delivered.” § 911.3.6, Manatee County LDC.

If staff confirms that an applicant has complied with the vacation procedure as stated in Section 177.101 of the Florida Statutes and Section 911 of the Manatee County Land Development Code, then the application will be legally acceptable and sufficiently complete for presentation to the Board of County Commissioners. If, after review of an application, the Board decides to vacate all or part of a recorded plat, it shall adopt a resolution to that effect. Said vacation shall become effective after it is recorded with the Clerk of the Circuit Court and duly recorded within the public records of the County.

3. *Legal Review of Current Vacation Application*

a. *Background of Subject Tract*

Sheet 3 of the recorded plat depicts a “5-foot wide non-vehicular ingress/egress easement” along the outer perimeter of Lots 1, 2 and 3. It is only a small portion of this easement (326 square feet) on platted Lot 1 that the Applicant is asking the County to vacate.

The area to be vacated is nevertheless 60 feet in length, thus presumably allowing for a commercial driveway connection to Lorraine Road.

b. *Compliance with Florida Statutes Section 177.101(3)*

In review of the subject application, the Applicant provided a validly executed and recorded Special Warranty Deed dated December 30, 2014. The deed is evidence that the Applicant owns the subject property.

c. Compliance with Florida Statutes Section 177.101(4)

Pursuant to Section 177.101(4) of the Florida Statutes, the Applicant must first publish notice of its intent to apply for the vacation in a newspaper of general circulation in Manatee County for at least two (2) weeks before the Board of County Commissioners may consider its application. The Applicant has yet to provide legal notice of the vacation application to the public; however, it will be able to do so upon the recommendation and directive of the Property Management Department.

All taxes on the property for the year(s) 2014 were paid by Applicant. The Applicant has provided a receipt as proof of payment along with the application.

d. Compliance with Manatee County Land Development Code Section 911.3

Section 911.3 requires that Applicant mail and post notice of the public hearing and provide an affidavit to the Director affirming notice has been given before the hearing. The Applicant has provided a list of the names and addresses of those entitled to notice within the application. Once the public hearing is scheduled, the Applicant will need to attach this list to the affidavit submitted to the Property Management Department prior to the actual public hearing on the application.

e. Other Considerations

Further, before a vacation application can be presented to the Board of County Commissioners, a jurisdictional review is required by various Manatee County departments and agencies and by private utilities serving the area to uncover possible issues which would prevent the vacation application from going forward.

Conditional approval was noted by Bryan Lantz of Verizon Florida, LLC, a private utility provider. Mr. Lantz finds no objection with the stipulation that an acceptable easement is granted. The Applicant should work with staff to obtain the requested easement prior to submission to the Board of County Commissioners.

Disapproval was noted by the Highway Engineering Division of the Public Works Department when staff stated, "Approval would go against the LDC, Comp Plan, Plat and Dev Order Condition." This disapproval appears to be moot based on the previously mentioned letter from the Building and Development Services Department. Said letter states the Final Site Plan, "...is found to be in compliance with the Manatee County Land Development Code and Comprehensive Plan."

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Property Management Department
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Conclusion:

The Applicant has fulfilled all the requirements necessary for Vacation Application #V-15-503 at this stage of the process. Upon the directive of the Property Management Department, the Applicant must make sure to comply with the publication and notice requirements set forth in Section 177.101 of the Florida Statutes and Section 911 of the Manatee County Land Development Code. Once it has done so, the application will be legally acceptable and sufficiently complete for presentation to the Board of County Commissioners.

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.

MOP/ams

Attachments

Copies to:

Ed Hunzeker, County Administrator

John Agostinelli, Manager, Property Acquisition Division

Larry Decker, Real Property Specialist, Property Acquisition Division

Bernard Salmon, Planner, Building and Development Services Department

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