



OFFICE OF THE COUNTY ATTORNEY

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MEMORANDUM

DATE: July 19, 2016

TO: Chad Butzow, Deputy Director – Field Operations Services, Public Works Department

THROUGH: Mitchell O. Palmer, County Attorney *MOP 7-19-16*

FROM: Pamela J. D'Agostino, Assistant County Attorney *PJD 7-19-2016*

RE: **Request for Vacation of Maintained ROW, Along a Portion of Pope Road; CAO Matter No. 2016-0560**

Issues Presented:

In this Request for Legal Services (RLS), you have posed a series of questions which I have restated as follows:

1. Can portions of the maintained right-of-way known as Pope Road be vacated in the same manner as platted right-of-way?
2. Can the County sell this maintained right-of-way instead of vacating it?
3. Can a value be collected by the County in exchange for the sale of this maintained right-of-way?

Brief Answers:

1. Yes.
2. No.
3. No.

* Board Certified in Construction Law

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

Recommendation:

Staff should process the vacation application submitted by Neal Communities of Southwest Florida, LLC, (the Applicant) to vacate a portion of Pope Road, in compliance with Sections 336.09, 336.10 and 336.12, Florida Statutes, and Section 331 of the Manatee County Land Development Code. Staff should not pursue any sale of the interest Manatee County holds in and to Pope Road. Staff should review Article XII of the Manatee County Code of Ordinances.

Discussion:

On December 5, 1978, the Board of County Commissioners of Manatee County (the Board) approved the certification of an official right-of-way map depicting the limits of maintenance for Pope Road. This map is recorded in the Public Records of Manatee County, Florida in Road Plat Book 8, Page 138. Today, by operation of law under Section 95.361(1), Florida Statutes, all right, title, easement and appurtenances in and to the County-maintained portions Pope Road are vested in the County.

According to the Applicant, Pope Road is a county-maintained dead-end road that has historically provided access from State Road 64 to large agricultural tracts and residences that are located south of State Road 64 and north of 44th Avenue East. The Applicant is seeking to vacate portions of Pope Road which are no longer needed for access to the property in light of the plans to develop Phases 6 and 7 of the Indigo Subdivision. The Applicant alleges that this vacation will benefit the community by eliminating costs associated with public maintenance of approximately 3.26 acres of roadway which is no longer needed.

According to staff, this section of Pope Road is in conflict with future land plans of owners of surrounding properties with development plans that relate to the new roads.

The mechanism by which the County may vacate these portions of Pope Road and renounce any right of the County and the public in any land in connection therewith is through the process outlined in Sections 336.09, 336.10 and 336.12, Florida Statutes, and Section 331 of the Code. Article XII of the Manatee County Code of Ordinances specifically states that “[c]losing and abandonment of roads is governed by Sections 336.09 through 336.125, Florida Statutes” and not the Manatee County Surplus Lands Ordinance, which does permit the sale of surplus real property owned by Manatee County under certain circumstances.

This is not the first occasion that the Office of the County Attorney has provided guidance on the County’s options when vacating and abandoning County roads. In an opinion memorandum dated December 30, 1993, addressed to former Land Acquisition Division Manager Jim Staples, then-Senior Assistant County Attorney Mitchell Palmer opined, after discussing relevant case law, as follows: “In a nutshell, the manner in which the County originally acquired the road (whether

by deed, easement, dedication, eminent domain or maintenance) has no bearing on the County's vacation or abandonment of the road. *The only manner in which a County can divest its interest in a public road is through the statutory vacation process.*" (Emphasis supplied.) Mr. Palmer's conclusions are equally applicable today.

Conclusion:

The maintained right-of-way known as Pope Road, or any portions thereof, can be vacated in the same manner as platted right-of-way. The County cannot sell nor collect any value in exchange for a sale of this maintained right-of-way as an alternative to vacating it.

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 to:

Ed Hunzeker, County Administrator
Dan Schlandt, Deputy County Administrator
Karen Windon, Deputy County Administrator
Ron Schulhofer, Director, Public Works Department
Charlie Bishop, Director, Property Management Department
Margaret Daniell, Interim Property Acquisition Division Manager, Property Acquisition
Division, Property Management Department