



OFFICE OF THE COUNTY ATTORNEY

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MEMORANDUM

DATE: March 19, 2020

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

THROUGH: Mitchell O. Palmer, County Attorney Approved by *MOP 3-24-2020*

FROM: Pamela J. D'Agostino, Assistant County Attorney Approved by *PJD 3-19-2020*

RE: **Vacation Application # V-19-502; CAO Matter No. 2020-0097**

Issue Presented:

In this Request for Legal Services (RLS), you have asked the County Attorney's Office (CAO) to review a vacation application initiated by Manatee County regarding vacating an unimproved portion of 119th Street West (also known as Sarasota Drive) and 9th Avenue East, both platted pursuant to the Crampton Re-Sub of Cortez Addition to Cortez subdivision plat, recorded at Plat Book 7, Page 11 of the Public Records of Manatee County, Florida (Crampton Plat).

Brief Answer:

I have reviewed the information provided by staff. Below are my comments and advice. Provided staff proceeds consistent with my advice, I have no objection to the Board of County Commissioners of Manatee County, Florida (Board) closing and abandoning

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these roads. The decision to close and abandon these roads is a business decision which the Board has the authority to make.

Recommendation:

As explained further below, although the Manatee County Land Development Code (LDC) does not specifically address County-initiated vacations, I recommend that staff prepare a report and recommendation to the Board consistent with Section 312.5.A.5.b. of the LDC. Among other things, that report and recommendation should indicate whether closing these roads is in the best interest of the public and whether or not granting the application will result in a condition that violates any County Ordinance, the LDC, or any Public Works Department standards for roadways. Staff should also confirm that no property will be landlocked if these roads are vacated. If the vacation of a road 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).

Facts:

According to this RLS and based on my independent research, the County currently owns the land located at 4415 119th Street West in Bradenton, Florida. The County acquired this land, which is approximately, 3.8 acres in size, from James R. Sailors, as Personal Representative of the Estate of Robert D. Sailors, deceased, by virtue of the power and authority given to him in and by the decedent's Last Will and Testament. When the County accepted the deed, it agreed that the lands would be subject to the Grant Award Agreement entered into on November 2, 1999, between FCT and the County. Furthermore, if any of the covenants and restrictions of the Grant Award Agreement were violated, fee simple title to the land would be automatically transferred to the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida in accordance with the Grant award Agreement. Today the Florida Maritime Museum at Cortez Preserve is located on the site (Museum Site).

The Florida Department of Transportation (FDOT) plans to improve the intersection of 119th Street and Cortez Road West, to alleviate traffic and safety concerns, but cannot proceed forward without impacting approximately 2,890 square feet at the northwest corner of the Museum Site. To assist FDOT in improving this intersection, staff recommends and has negotiated with FCT to have the land needed in furtherance of FDOT's project released from the restrictions contained within the Grant Award

Agreement in exchange for the County agreeing that other adjacent land south and west of the Museum Site will be subject to all the terms, conditions, and restrictions of the Grant Award Agreement instead. This substitute land, for lack of a better description, is a portion of the 60 foot wide unimproved platted street named Sarasota Drive and all of the 40 foot wide unimproved platted street named 9th Avenue, pursuant to Crampton Plat.

Although not explicitly stated in the RLS, it appears that staff is under the impression that by vacating these roads, the County, as fee owner of one of the adjacent properties, will become the fee simple owner to a certain .44 acres of land, which the County will then have the ability to encumber through entering into an Amendment to the Grant Award Agreement with the FCT. Section 336.12, Florida Statutes, explains that when a county road is closed or abandoned “and if the fee of road space has been vested in the county, same will thereby be surrendered and will vest in the abutting fee owners to the extent and in the same manner as in case of termination of an easement for road purposes.” I do not recommend staff assume where the fee interest in these roads will fall post-vacation. The Manatee County Property Appraiser’s office views every document recorded in the Public Records of Manatee County, and looks to Section 177.085, Florida Statutes, Op. Att’y Gen. Fla. 78-118 (1978), and Title Standard 11.5 when processing resolutions vacating streets, roadways or alleys. Staff should wait until that office completes its work, determines whom should be assessed for the vacated streets, and redraws the boundary lines in accordance with the vacation, before finalizing any agreements with FDOT or FCT.

Discussion:

Authority to Vacate Right-of-Way

Public places and rights-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.

Procedure for Vacation of Road Right-of-Way Pursuant to Sections 336.09 and 336.10, Florida Statutes

According to Section 336.10, Florida Statutes, an applicant who requests that the Board vacate any right or interest in land must make such a request in writing. There is no requirement for a written request, however for a County-initiated vacation. Florida law gives County Commissioners the authority to move to close and abandon roads. Accordingly, any Commissioner can at any regular meeting of the Board move that the Board consider closing and abandoning these platted, unimproved rights-of-way.

Section 336.09, Florida Statutes 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, Florida Statutes:

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. 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
5. record the following items in the deed records of the county:
 - a. “proof of publication of notice of [the] public hearing,”
 - b. “the resolution as adopted,” and
 - c. “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. If the Board does schedule a public hearing to consider vacating these platted, unimproved rights-of-way, staff must publish notice of the public hearing in accordance with Florida law, post all notice(s) and prepare an affidavit of notice in accordance with the requirements of the LDC, prepare a report and recommendation to the Board, and prepare a resolution approving their closure and abandonment for consideration by the Board at the public hearing.

Procedure for Vacation of Platted Road Right-of-Way Pursuant to 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, it does not specify how the procedures for County-initiated vacations. Staff should consider amending the LDC to outline procedures for County-initiated vacations.

Appropriate published and posted notice of the vacation proposed must be provided in accordance with Section 336.10, Florida Statutes, and Section 312.7 of the LDC. If, upon the close of the public hearing, the Board decides to close and abandon these platted, unimproved rights-of-way, 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 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.

Legal Review of Background of Right-of-Way

According to this RLS, staff recommends that the County vacate the unimproved portion of 119th Street West (also known as Sarasota Drive) and 9th Avenue as described on the

Crampton Plat. Close review of the Crampton Plat reveals that it is a replat of a portion of Block 50 and all of Blocks 51, 52, 53, 54, 55A, 56A, and 57 of the Amended Plat of Cortez Addition to Cortez recorded in Plat Book 2, Page 59, of the Public Records of Manatee County, Florida (Amended Cortez Plat). Accordingly, the rights-of-way proposed to be vacated were not originally platted pursuant to the Crampton Plat, but instead arose from the Amended Cortez Plat. On its face, the Amended Cortez Plat does not include a written offer of dedication by the owner to the public. Additionally, it does not include a written acceptance of dedication by Manatee County of the roads shown on the plat.

This office previously opined on the issue of whether there is a valid offer of dedication to the public of the roads depicted in a recorded plat. County Attorney, Mitchell O. Palmer, in his former tenure as an Assistant County Attorney, opined that:

The Florida Supreme Court, in the case of *Indian Rocks Beach South Shore v. Ewell*, 59 So. 2d 647 (Fla. 1952), held, inter alia, "As far as the public is concerned, the filing and recording of a plat amounts to an offer of dedication. . ." In the case of *United States v. 329.22 Acres of Land, More or Less, and Marvin Lewis, Individually and as Trustee*, 307 F. Supp. 34 (M.D. Fla. 1968), a judge of the U.S. District Court for the Middle District of Florida ruled upon a 1922 subdivision plat which contained very obvious street designations, but no formal words of dedication. The Federal Judge, in construing Florida law, held that the mere filing of a plat constitutes an effective offer to dedicate the streets contained therein, even though the plat contained no formal words of dedication. The Middle District Judge's opinion was affirmed by the Fifth Circuit U.S. Court of Appeals, in *United States v. 936.71 Acres of Land, More or Less, and Sarah Walker*, 418 F.2d 551 (5th Cir. 1969).

Memorandum from Mitchell O. Palmer to Timothy Spence (July 19, 1990) (on file with CAO). With that said, it appears that the roads within the Amended Cortez Plat were validly offered as dedicated platted roads. Staff has provided nothing which indicates that Manatee County ever objected to the dedication.

The Amended Cortez Plat is available online through the Manatee County Clerk of the Circuit Court and Comptroller's website. That website contains a comment to see several other Official Records of the Public Records of Manatee County, Florida, specifically Deed Book 205, Page 489, Deed Book 271, Page 201, Deed Book 352, Page 550, Deed Book 379, Page 481, Official Records Book 6, Page 378, Official Records Book 215, Page 582,

Official Records Book 270, Page 475, Official Records Book 151, Page 396, and Deed Book 389, Page 462. I examined each of those instruments.

Deed Book 205, Page 489, is a resolution adopted by the Board in March of 1945 refusing any offer of dedication as to, among other things, that part of 9th Avenue between Bradentown Street and Sarasota Drive contained in the Amended Cortez Plat and abandoning, closing, and vacating that public way, road, or street and the proposed easement, and refusing and returning to the fee simple owners the same as if the plat had never been made or recorded. The Crampton Plat was recorded in April of 1945. Based on my review of the relevant documents and factual events, it appears that roadways proposed to be vacated originate from two separate plats. The unimproved portion of what is today known as 119th Street West was platted pursuant to the Amended Cortez Plat and is labeled Sarasota Drive on the face of that plat. The unimproved portion of 9th Avenue East was platted pursuant to the Crampton Plat. Staff needs to ensure that the resolutions, legal description of the area to be vacated, and other instruments drafted to effectuate vacating these rights-of-way accurately describe the respective plats where these rights-of-way originated. The legal description currently refers only to the Crampton Plat and not the Amended Cortez Plat.

Legal Review of Compliance with Sections 336.09 and 336.10, Florida Statutes

Prior to closing and abandoning any road, 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 proposed vacation is provided to the public.

Legal Review of 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 the Building and Development Services (BADS) Department 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. A report and recommendation must be prepared for presentation to the Board.

Section 312 of the LDC requires that notice of the public hearing be posted and that the

staff person designated by the County Administrator also publish notice of the public hearing. In addition, an affidavit affirming that the required notices have been made must be filed with staff at least five 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.

Legal Review of Jurisdictional Reviews

It appears that eight entities, both within and outside of County government, were asked to review this proposed vacation. Staff should use these to form its report and recommendation to the Board. Staff should also confirm that no property will be landlocked if these rights-of-way are vacated. 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).

Other Considerations and Observations

There is a scrivener's error in the location map which needs to be corrected, specifically, the word initiated is misspelled. The seventh exordial clause in the draft Amendment to Grant Award Agreement between FCT and the County (Agreement) is problematic in that it alleges how many square feet of land will fall into County ownership in the event that these rights-of-way are vacated. If the Board ultimately adopts a resolution vacating these rights-of-way, staff should seek legal review of this language and the Agreement as a whole after the Manatee County Property Appraiser's office has completed its work, determined who should be assessed for the vacated streets, and redrawn the boundary lines in accordance with the vacation.

Conclusion:

At this preliminary stage, portions of Sections 336.09 and 336.10, Florida Statutes, and Section 331 of the LDC have been met. Staff must address all of the matters identified above and ensure that the procedures required by the applicable statutes and the LDC are met if this proceeds to a public hearing. The decision to vacate right-of-way is a business decision which the Board has the authority to make. This completes my response to your RLS. Please contact me if you have any questions or if I can be of further assistance.

Joy Leggett-Murphy, Property Acquisition Division Manager

March 19, 2020

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Copy to:

Cheri Coryea, County Administrator

John Osborne, AICP, Infrastructure and Strategic Planning Official – Deputy
County Administrator

Karen M. Stewart, CECD, Economic Development Official – Deputy County
Administrator

Charlie Bishop, Director, Property Management Department

Victoria Rosenbecker, Real Property Specialist, Property Management
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Katharine M. Zamboni, Assistant County Attorney