



Office of
**MANATEE COUNTY
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MEMORANDUM

DATE: November 14, 2012

TO: Charles Bishop, Director, Property Management Department

THROUGH: Mitchell O. Palmer, County Attorney *MOP 11-20-12*

FROM: Rodney C. Wade, Assistant County Attorney *Rodney Wade*

RE: **Vacation Application #12-299-V**
Applicant – Golf Cart Outlet, LLC
Application to Vacate a Portion of the 19th Street East Right-of-Way
RLS-12-305, Received October 25, 2012; CAO File 8003-116

Golf Cart Outlet, LLC, located in Ellenton, Florida has requested that Manatee County vacate an improved portion of 19th Street East/US Highway 301, described as a portion of Blocks 10 and 11, Phillips & Allen's Subdivision, Plat Book 1, Page 308-A, containing 11,048 square feet (27.62 x 400 feet) to be used for expansion of the existing business.

FACTS:

The Applicant's business is located on Old U.S. 301 in Ellenton, with the road dead ending approximately 350 feet east of the Applicant's property. The existing right-of-way is no longer a part of the State or Federal Highway system and was transferred to Manatee County on March 28, 1981. Manatee County has previously vacated an equal amount of the right-of-way lying east of the Applicant's property to a neighboring business, Furniture Warehouse, with the passing of Resolution R-10-84-V on June 8, 2010. The existing right-of-way width is 84.65 feet with the portion proposed for vacation being 27.62 feet wide, leaving a width of 57.03 feet of the public right-of-way.

DISCUSSION:

Section 177.101(3), F.S., provides the County the authority to vacate easements or rights-of-way that are dedicated by plat for a public purpose. Further, § 336.09(1)(b), F.S., states:

*Board Certified in Construction Law

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

[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:

(b) Renounce and disclaim any right of the county and the public in and to any land, or interest therein, acquired by purchase, gift, devise, dedication or prescription for street, alleyway, road or highway purposes, other than lands acquired for state and federal highway.

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. 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).

Before a vacation application can be brought before the Board of County Commissioners, a jurisdictional review is required by various Manatee County departments/entities and by private utilities to uncover possible issues which would prevent the vacation application from going forward.

While no objections were noted, several County departments gave conditional approval. Public Works requested Manatee County require a permanent easement for drainage indicating drainage structures in "pipe" be entered into by the parties. Public Works further cautioned that if the Applicant decided to build a fence on the north side of its property, the fence could compound the existing visibility issue faced by vehicles entering 19th Street East from 18th Street East. Public Utilities also requested that a public drainage/utility easement be provided. Finally, the Survey Division requested that the Description and Sketch for the proposed vacated area identify the source of the right-of-way being vacated (FDOT map section number 1302-(104)-202, transferred to Manatee County in Road Plat Book 10 Page 135) be included, and that the reference in the drawing "proposed R/W to be vacated" be changed to "R/W Vacated."

From review of the case file, it appears that all conditions have been met. The file contained an executed (partially undated) Permanent Easement between Golf Cart Outlet, LLC and Manatee County, and the sketch enclosed contained the additional information requested by the Survey Division. However, no further discussion was noted regarding the visibility issue and any future fence.

CONCLUSION:

The Applicant has fulfilled all the requirements necessary to submit an application for vacation to the Board, therefore Vacation Application #12-299-V is proper to be presented to the Board of County Commissioners for review.

Charlie Bishop, PMP, Director
Property Management Department
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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

RCW/pan

cc: Ed Hunzeker, County Administrator
Joaquin Servia, Manager, Property Acquisition Division
Lynn Willis, Real Property Specialist, Property Acquisition Division

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