DATE: March 19, 2019

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

THROUGH: Mitchell O. Palmer, County Attorney

FROM: Pamela J. D’Agostino, Assistant County Attorney

RE: Donation of Land by Hamm Racing Incorporated to Manatee County; CAO Matter No. 2019-0046

Issue Presented:

You have asked the County Attorney’s Office (CAO) to review a Quitclaim Deed and an Affidavit of Ownership and Encumbrances for legal adequacy and sufficiency.

Brief Answer:

I have reviewed the deed and affidavit. The documents attached to this memorandum contain my recommended changes. The decision as to whether to accept a quitclaim deed (as opposed to a warranty deed) and affidavit is a business decision which the Board of County Commissioners of Manatee County, Florida (Board) has the authority to make.

Recommendation:

Staff should attempt to secure a warranty deed from the grantor in lieu of a quitclaim deed. If the Board accepts the donation of this property, staff should record both the deed and affidavit. Staff needs to ensure that the deed and affidavit are both executed by the appropriate individual consistent with the advice below.
Discussion:

In 2017, Marita J. Hamm approached County staff and expressed an interest in donating property located at 715 33rd Street West in Palmetto to Manatee County because the land is of no value to her. The property is a quarter-circle-shaped parcel of land at the southeast corner of the intersection of 8th Avenue West and 33rd Street West and is approximately 0.18 acres in size.

According to staff, a lift station owned and operated by the County is located on the property and the property cannot be used for anything other than a lift station. Utilities Department staff has considered Ms. Hamm’s offer to donate the property to the County and is in support of the County acquiring the property. Other unnamed County departments were also consulted and staff is willing to recommend to the Board that the County accept donation of the property from the grantor.

Staff has, appropriately, attempted to intelligently revise the standard form of deed and affidavit in light of the unique facts and circumstances surrounding the proposed donation of this property to the County. The additions and modifications made were done in an effort to comply with prior advice given by the CAO relative to property being conveyed to the County from a dissolved corporation. I commend staff for its good faith efforts in attempting these revisions.

The deed I am providing staff properly describes the status of the Grantor based on the information provided. Since the Grantor took title to the property as Hamm Racing Incorporated, a Kansas corporation, which later merged into Hamm Racing Incorporated, a Florida corporation, which is now dissolved, the deed needs to accurately reflect these events. It appears that staff intended to have Marita J. Hamm, as Director of the Grantor, execute the deed. Staff is reminded that Sections 689.01, 692.01, and 692.02, Florida Statutes, pertain to how real estate is conveyed, and how conveyances are executed by corporations in order to be valid. Staff needs to ensure that this deed is executed by either the President, a Vice President, or a Chief Executive Officer of Hamm Racing Incorporated. Additionally, it must be signed in the presence of two (2) subscribing witnesses and sealed with the common or corporate seal, if any, of the grantor. I also recommend that staff request that the deed be attested by the Secretary of Hamm Racing Incorporated, if such a person exists.

Attached is an affidavit for staff’s use, but further revision may still be needed. I recommend that staff request that the affidavit be executed by the same individual who will execute the deed. Based on my review of the title work, I question whether the 1988 utility easement, as amended by the corrective utility easement recorded in 1992, (highlighted in yellow) encumbers the property. Staff should ask the County’s Survey Division Manager to identify the location of this easement, as amended and corrected, as well as the other easement listed under paragraph seventeen (17) of the affidavit to ensure that both fall within the boundaries of the property proposed to be donated. In all transactions, staff should closely review and analyze the title work
provided to ensure its accuracy. If errors in the title work are not identified by staff and inaccurate information is then incorporated into the conveyance documents and affidavits, the County may not have clear title or, even worse, the conveyance may be void.

Generally, when the County seeks to acquire real property, staff should attempt to secure a warranty deed from the grantor. When the grantor so requests and provided that there is nothing of concern in the title search for the property a special warranty deed can be utilized instead. When a grantor insists upon executing only a quitclaim deed, staff should carefully scrutinize the title work and strongly consider purchasing title insurance prior to presentation of any purchase agreement or deed to the Board for acceptance.

When a warranty deed is utilized, the grantor fully warrants title to the land conveyed and agrees to defend same against the lawful claims of all persons whomsoever, including claims arising out of the grantor’s predecessors in title. When a special warranty deed is utilized, the grantor warrants and defends with respect to paramount claims arising out of parties claiming by, through or under the grantor only. The grantee of a special warranty deed takes title subject to any paramount interests outstanding against the grantor at the time the grantor took title to the property. *Harris v. Sklarew*, 166 So. 2d 164 (Fla. 3d DCA 1964). Special warranty deeds are often used when the grantor is unwilling to warrant and defend against possible defects in title which pre-date grantor’s acquisition. A quitclaim deed contains no covenants of title. It has been best described by Robert Kratovil:

A quitclaim deed purports to convey only the grantor’s present interest in the land, *if any*, rather than the land itself. Since such a deed purports to convey whatever interest the grantor has at the time, *its use excludes any implication that he has good title, or any title at all*. Such a deed in no way obligates the grantor. If he has no interest, none will be conveyed. If he acquires an interest after executing the deed, he retains such interest. If, however, the grantor in such deed has complete ownership at the time of executing the deed, the deed is sufficient to pass such ownership. . . . A seller who knows that his title is bad or who does not know whether his title is good or bad usually uses a quitclaim deed in conveying.

Real Estate Law 49 (6th ed. 1974) (emphasis added). I have no objection from a legal standpoint to a quitclaim deed being presented to the Board for consideration and acceptance.

**Conclusion:**

Provided that staff proceeds consistent with my advice above, I have no objection from a legal standpoint to staff presenting a deed and affidavit to the Board in furtherance of this property being donated to the County. 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:
  Cheri Coryea, Acting County Administrator
  John Osborne, AICP, Infrastructure and Strategic Planning Official – Deputy County Administrator
  Charlie Bishop, Director, Property Management Department
  Mike Glenn, Real Property Specialist, Property Management Department
QUITCLAIM DEED

THIS QUITCLAIM DEED is made this ____ day of _______________, 2019, by HAMM RACING INCORPORATED, a dissolved Florida corporation, successor by merger to Hamm Racing Incorporated, a Kansas corporation, whose mailing address is 5508 31st Court East, Ellenton, Florida, 34203 (Grantor) and MANATEE COUNTY, a political subdivision of the State of Florida, whose mailing address is Post Office Box 1000, Bradenton, Florida, 34206 (Grantee).

WITNESSETH that Grantor, for and in consideration of the sum of ONE DOLLAR ($1) and other valuable consideration paid, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and transferred to Grantee, said Grantee’s heirs and assigns forever, the following described land, to wit:

See legal description in Exhibit A, attached to and incorporated in this Quitclaim Deed by reference.

TO HAVE AND TO HOLD, the same in fee simple forever.

Grantor is a Florida corporation that dissolved in 2018, and this conveyance is necessary to wind up and liquidate its business and affairs by disposing of property that will not be distributed to its shareholders within the meaning of Section 607.1405, Florida Statutes.

The individual signing below on behalf of Grantor is authorized to execute this conveyance on behalf of Grantor in accordance with Florida Law.

IN WITNESS WHEREOF, Grantor has caused this deed to be executed in its name and its corporate seal to be hereunto affixed by its proper officer thereunto duly authorized, on the day, month, and year written above.

SIGNATURES AND ACKNOWLEDGMENT APPEAR ON FOLLOWING PAGE.
Signed, sealed, and delivered in the presence of **TWO (2)** witnesses as required by law:

**GRANTOR:**
HAMM RACING INCORPORATED,
a dissolved Florida corporation,
successor by merger to Hamm Racing Incorporated, a Kansas corporation

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By: ______________________________

Signature

As: ______________________________

Title

______________________________

Signature

______________________________

As: ______________________________

Title

______________________________

Signature

______________________________

As: ______________________________

Title

______________________________

Printed Name

______________________________

Printed Name

______________________________

Printed Name

Affix corporate seal below:

Attest: ______________________________

Secretary Signature

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STATE OF ______________________________

COUNTY OF ______________________________

The foregoing instrument was acknowledged before me this _____ day of ____________, 2019, by ______________________________ as [insert either President, Vice-President, or Chief Executive Officer] of HAMM RACING INCORPORATED, a dissolved Florida corporation, successor by merger to Hamm Racing Incorporated, a Kansas corporation, who _____ is personally known to me or _____ has produced ______________________ as identification.

Affix seal below:

______________________________

Notary Public Signature

______________________________

Printed Name

______________________________

Commission Number

______________________________

Expiration Date
AFFIDAVIT OF OWNERSHIP AND ENCUMBRANCES

STATE OF ________________________
COUNTY OF ________________________

BEFORE ME, the undersigned notary public, personally appeared [NAME OF AFFIANT], who being first duly sworn, deposes and says that, to the best of her knowledge and belief:

1. I have personal knowledge of all matters set forth in this affidavit.

2. HAMM RACING INCORPORATED, a dissolved Florida corporation, successor by merger to Hamm Racing Incorporated, a Kansas corporation, (Grantor) is the owner of the fee simple title to certain real property (Property) situated in Manatee County, Florida, more particularly described in Exhibit A attached to this affidavit and by this reference made a part of this affidavit, and has full authority to sell or encumber the Property.

3. I am the [TITLE OF AFFIANT] of Grantor and I make this affidavit with the authority of and on behalf of Grantor.

4. Grantor is a Florida corporation that dissolved in 2018, and conveyance of the Property is necessary to wind up and liquidate its business and affairs by disposing of property that will not be distributed to its shareholders within the meaning of Section 607.1405, Florida Statutes.

5. Grantor became the successor by merger of Hamm Racing Incorporated, a Kansas corporation, on November 1, 2002, and as the surviving corporation possess title to any real estate or any interest therein vested, without further act or deed as indicated in the Plan of Merger and Reorganization on file with the Florida Department of State, Division of Corporations, filed on December 4, 2002.

6. Grantor has sole and exclusive possession of the Property.

7. Neither Grantor’s title to nor possession of the Property has ever been disputed or questioned and I am not aware of any facts by reason of which the title to or possession of the Property or any part of it or any personal property located on it might be disputed or questioned or by reason of which any claim to the Property or any portion of it or any personal property located on it might be adversely asserted.

8. No person or entity other than Grantor claims or is presently entitled to the right to
possess or is in possession of the Property and there are no tenancies, leases, or other occupancies that affect the Property.

9. There are no disputes concerning the location of the boundary lines of the Property.

10. Grantor has not violated any of the restrictions, declarations or covenants in connection with the Property, nor knows of any prior owner violating said restrictions, declarations or covenants.

11. There are no outstanding or unpaid taxes or assessments (pending or certified) due to any governmental agency for improvements to or for the benefit of the Property for which the Grantor is responsible or any unpaid or unsatisfied mortgages, claims of lien, or other matters that constitute or could constitute a lien or encumbrance against the Property or any improvements on it or any part of it or against any personal property located on it. Should any bill be found which relates to the period of Grantor’s possession, Grantor shall pay such bill upon demand. No notice has been received regarding future pending zoning by any government instrumentality.

12. There are no security agreements, financing statements, title retention contracts or personal property leases affecting any materials, fixtures, appliances, furnishings or equipment placed on or installed in or on the Property or the improvements located on it.

13. There are no actions, proceedings, judgments, bankruptcies, liens or executions recorded among the Public Records of Manatee County, Florida, or any other county in Florida or pending against the Grantor in the courts of Manatee County, Florida, or any other courts.

14. There are no matters pending against the Grantor that could give rise to a lien that would attach to the Property or cause a loss of title or impair the title between the effective date of the title insurance commitment and the recording of the interest to be insured by the title insurance company, and the Grantor has not and will not execute any instrument that would adversely affect the title or interest to be insured in the Property, including but not limited to mortgaging or conveying the Property or any interest in it or causing any liens to be recorded against the Property or the Owner.

15. There has been no labor performed or materials furnished on or to the Property during the past NINETY (90) days, or, if labor has been performed or materials furnished during such NINETY (90) days, all persons performing or furnishing the same have been fully paid and there are no unpaid bills for labor or materials for which valid liens could be filed.

16. No notice of commencement concerning the Property has been filed in the past NINETY (90) days, nor are there any unsatisfied construction liens of record concerning such Property, nor have any notices to owner been received by the Grantor during the past NINETY (90) days.

17. There are no outstanding, unrecorded deeds, unsatisfied liens, leases, contracts for sale, judgments, easements or rights-of-way for users, conveyances, mortgages or adverse interests affecting title to the Property, except the following:
Utility Easement in favor of Manatee County, a political subdivision of the State of Florida, dated March 31, 1986, and recorded June 4, 1986, in Official Records Book 1147, Page 1460, of the Public Records of Manatee County, Florida; and


18. The Grantor’s Taxpayer Identification Number is 48-1075246.

19. The representations embraced herein are made to induce Manatee County, a political subdivision of the State of Florida, to accept the Property as a donation.

20. This affidavit is made and given by affiant with full knowledge of applicable Florida laws regarding sworn affidavits and the penalties and liabilities resulting from false statements and misrepresentations therein.

[NAME OF AFFIANT]

______________________________
Signature

Sworn to (or affirmed), acknowledged, and subscribed before me this ______ day of __________, 2019, by [NAME OF AFFIANT], who ______ is personally known to me or has produced ____________________________ as identification.

Affix seal below:

______________________________
Notary Public Signature

______________________________
Printed Name

______________________________
Commission Number

______________________________
Expiration Date