


MANATEE COUNTY GOVERNMENT AGENDA MEMORANDUM

SUBJECT	License to cross County property to access damaged boat	TYPE AGENDA ITEM	Consent
DATE REQUESTED	February 24, 1998	DATE SUBMITTED/REVISED	February 18, 1998
BRIEFINGS?/WHO?	None	CONSEQUENCES IF DEFERRED	Loss of contact with property owner
DEPARTMENT/DIVISION	Planning/Ecosystems	AUTHORIZED BY TITLE	Carol B. Clarke, AICP Director C.B.C. L.B.C.
CONTACT PERSON TELEPHONE/EXTENSION	Charlie Hunsicker/JoAnne Yahres 6823/6852	PRESENTER/TITLE TELEPHONE/EXTENSION	Charlie Hunsicker, Ecosystems Administrator, ext. 6823 C.H.
ADMINISTRATIVE APPROVAL			

ACTION DESIRED

INDICATE WHETHER "REPORT or "DISCUSSION, "FORM OF MOTION, or "OTHER ACTION REQUIRED:

Authorization for the Chairman to sign license agreement with Nelson Stickler in order to cross County property to access his damaged boat for removal and demolition.

ENABLING/REGULATING AUTHORITY

Federal/State law(s), administrative ruling(s), Manatee County Comp Plan/Land Development Code, ordinances, resolutions, policy.)

Chapter 125.35, Florida Statutes

BACKGROUND/DISCUSSION

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APPROVED IN OPEN SESSION

FEB 24 1998

BOARD OF COUNTY COMMISSIONERS

MANATEE COUNTY, FLORIDA

HAS COUNTY ATTORNEY REVIEW BEEN REQUESTED? Indicate "NO" or "YES" @ right. (If "NO," proceed to 1) below; and if "YES," proceed to 2) below)

Yes

1) IF "NO" TO ABOVE.

A) PLEASE EXPLAIN BELOW: (see also following section 1B) re: contract, agreement, lease, etc.):

B) IF A CONTRACT, AGREEMENT, LEASE OR OTHER DOCUMENT WAS PREVIOUSLY APPROVED, STATE YEAR OF LAST USE @ RIGHT:

2) IF "YES" TO FIRST QUESTION IN THIS SECTION.

A) HAS ENTIRE MATTER, OR ONLY A PORTION, BEEN REVIEWED? IF ONLY A PORTION, WHICH PORTION?

Entire matter has been reviewed.

B) HAVE ALL COMMENTS/SUGGESTIONS RAISED BY COUNTY ATTORNEY BEEN ADDRESSED/INCORPORATED; IF NOT, PLEASE EXPLAIN. (A COPY OF FINAL COUNTY ATTORNEY MEMO RE THIS MATTER MUST BE ATTACHED (if comments were verbal, so indicate.)

Yes

ATTACHMENTS: (List in order as attached) 1. County Attorney Memo dated 2/16/98 2. Lease agreement	INSTRUCTIONS TO BOARD RECORDS: Return to Susan Waters, ext. 6829
COST None	SOURCE (ACCT# & NAME) None
COMMENTS None	AMT./FREQ. OF RECURRING COSTS (ATTACH FISCAL IMPACT STATEMENT) None

BACKGROUND/DISCUSSION

- An owner of a 30 ± ft tri-hull sailboat has requested permission to access his damaged boat for demolition and removal purposes, taking access to the vessel across County owned property and a portion of property owned by the Diocese of Venice. The boat rests upright on the bottom of the Manatee River, approximately 40 yards offshore of the former Riverview Point property adjacent to DeSoto National Memorial Park.
- The boat owner is Nelson Stickler, a resident of Bradenton, Florida. Responding to a request from the Board of County Commissioners, Environmental Management Department went to the site under the derelict vessel program to investigate and reported the situation to Florida Marine Patrol.
- Mr. Stickler received a notice from the Florida Marine Patrol requiring that he remove his damaged vessel from State waters. Mr. Stickler has approximately 30 days to comply with this request.
- An urgent request for legal services was submitted to determine the manner of permission required to access the boat, while protecting the County's interest under the circumstances. The opinion and recommended lease agreement is attached.



Office of
**MANATEE COUNTY
ATTORNEY**

PLANNING

* Board Certified City, County & Local Government Law
† Board Certified Civil Trial

DEPARTMENT

Teddy N. Williams, Jr., County Attorney
Mark P. Barneby, Chief Assistant County Attorney *
Paul G. Bangel, Senior Assistant County Attorney *
William C. Henry, Senior Assistant County Attorney for Risk Management
Patricia McVoy, Senior Assistant County Attorney *
James A. Minix, Senior Assistant County Attorney
Mitchell O. Palmer, Senior Assistant County Attorney
Jeffrey N. Steinsnyder, Senior Assistant County Attorney *

February 16, 1998

MEMORANDUM

TO: Carol B. Clarke, AICP, Director, Planning Department

THRU: Teddy N. Williams, Jr., County Attorney *TNW 2/16/98 H 2/16/98*

FROM: William C. Henry, Senior Assistant County Attorney for Risk Management

RE: **ACCESS TO DAMAGED BOAT**
URGENT RLS-98-44
CAO FILE: 1150-012

QUESTION PRESENTED:

You asked us what manner of permission, insurance or waiver of liability should the County require to allow Nelson Stickler to use the County-owned "Riverview Point" property to demolish and remove his sailboat which sank in the Manatee River.

SHORT ANSWER:

Federal and state law controls removal and salvage of shipwrecks and derelict vessels.

The County has no authority to grant Mr. Stickler permission to cross or use land which is the property of the United States or the Diocese of Venice.

The Board of County Commissioners may grant him a license to cross its property for removal and demolition purposes, and may impose whatever conditions it deems appropriate.

DISCUSSION:

I. Abandoned Vessels:

Article III, §2 of the United States Constitution vests jurisdiction of admiralty cases in the federal courts. Congress made such jurisdiction exclusive of state

courts. 28 U.S. Code §1333. However, it then ceded "ownership" of "embedded" wrecks (i.e. those stuck in the bottom) to the states. 43 U.S. Code §2105.

Under Florida law, the titled owner is liable for removing derelict vessels from public waters or must reimburse the government its costs of removal. §705.103, Florida Statutes. Failure to remove a derelict vessel is a first degree misdemeanor. §823.11, Florida Statutes. It may also lead to civil fines of up to \$50,000 per day. §376.16, Florida Statutes. The Division of Marine Resources of the Department of Environmental Protection has the power to remove or order removal (*id.*) or can delegate its authority to counties. §376.15, Florida Statutes.

If Mr. Stickler does not remove his vessel, as ordered by the Marine Patrol, he faces criminal charges and civil fines, and will have to reimburse the State (or if so delegated, the County) for the cost of removal.

II. Non-County Property:

You did not provide us with the exact location of the sunken sailboat. But, you do indicate it is off the beach owned in various parts by the County, the Diocese of Venice and the National Parks Service. You also indicate Mr. Stickler plans to use the shell road across the County parcel to bring in equipment and then remove the demolished boat parts.

The diagrams in the appraisal indicate the shell road crosses the Diocese's property as well as the County's, particularly at the road's closest approach to the beach.

The County may allow Mr. Stickler to cross its land and use its part of the shell road. But, the County has no authority over the property of the Diocese and the National Parks Service. The fact some members of the public may cross the Diocese's or federal land is immaterial. Mr. Stickler will have to obtain separate permission from those entities.

III. License to Cross/Use County Land:

The Board of County Commissioners has authority to sell or lease its real property. §125.35, Florida Statutes. It logically follows that the Board may grant others the right to temporarily use its property. Such permission is called a "license." This power has not been delegated by the Board.

A license may be conditioned on a variety of contractual promises from the licensee to the licensor. What conditions should the Board require in this case?

Carol B. Clarke, AICP
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You indicate the County's interests are in setting a time limit and avoiding damage to the beach, the shell road and the tree canopy. We also want assurance that no debris is left on land or in the river which might injure other people later. I see no reason to charge Mr. Stickler a license fee unless the County will incur costs. For example, you may think a County employee should be on-scene when Mr. Stickler is working on the demolition. If so, a fee to off-set the County's cost may be appropriate.

I have attached a draft license agreement which you may wish to use. The Board of County Commissioners will have to grant its approval to the license after Mr. Stickler executes it.

WCH/tlm
attachment

cc: Ernie Padgett, County Administrator
Charles A. Hunsicker, Ecosystems Administrator, Planning Department