

Manatee County Government Administrative Center
Commission Chambers, First Floor
9:00 a.m. - January 24, 2017

January 24, 2017 - Regular Meeting
Agenda Item #15

Subject

Permanent Right-Of-Way Easement between Frank J. and Margarete Strauss, as Co-Personal Representatives of the Estate of Henry Frederick Grauf and Manatee County, for property located at 56th Avenue West, Bradenton, Florida 34207, PID 5886800109

Briefings

Briefing Provided Upon Request

Contact and/or Presenter Information

Joy Leggett-Murphy, Property Acquisition Division Manager, Property Management, Extension 3439

Larry Decker, Real Property Specialist, Property Acquisition Division, Property Management, Extension 6287

Action Requested

- Accept and Record Permanent Right-Of-Way Easement from Frank J. and Margarete Strauss; and
- Record Affidavit of Ownership and Encumbrances from Frank J. Strauss, as Co-Personal Representative of the estate of Henry Frederick Grauf; and
- Record Affidavit of Ownership and Encumbrances from Margarete Strauss, as Co-Personal Representative of the estate of Henry Frederick Grauf.

Enabling/Regulating Authority

Florida Statutes, Chapter 125, County Government.

Manatee County Comprehensive Plan Goal 9.5 addresses the potable water system.

Background Discussion

- The Suburban System Phase III Project was approved in the FY 2008-2012 CIP.
- A portion of a 20-foot strip of land known as 56th Avenue West is required for the above referenced project.
- A Memorandum was issued by the County Attorney's Office on March 9, 2015, providing recommendations for acquisition of the subject property.
- Research was performed by Property Acquisition staff to identify the personal representatives of the current owner for The Estate of Henry Frederick Grauf.
- The personal representatives were then contacted and agreed to grant an easement to the County.

- It was determined that in order for an easement to be granted, the Estate of Henry Frederick Grauf (the estate) would have to be reopened in Broward County to enable the co-personal representatives to execute the easement documents.
- Former representative counsel for the estate was contacted and agreed to perform the necessary duties to re-open the estate.
- The co-personal representatives also agreed, with the stipulation that they would incur no expenses related to the easement dedication.
- Proper authorization was then requested and given by Public Works staff, and representative counsel was formally reappointed to provide legal services in Broward County.
- A Petition and an amended Petition to Re-Open the estate were presented to the Circuit Court of Florida for Broward County by the now reappointed counsel for the estate.
- An order was issued from the Circuit Court of Florida for Broward County, and Letters of Administration were signed to re-open the estate for the specific purpose of executing the easement documents to Manatee County.
- The resulting Permanent Right-Of-Way Easement has been determined to be the appropriate method for acquisition and is hereby presented for consideration by the Board of County Commissioners.

County Attorney Review

Formal Written Review (Opinion memo must be attached)

Explanation of Other

Reviewing Attorney

Adibe

Instructions to Board Records

Please notify Larry Decker at larry.decker@mymanatee.org and Anthony Russo at anthony.russo@mymanatee.org of recording information.

CCC: AR700013

Cost and Funds Source Account Number and Name

\$98.00 Recording fee to #001-020505 Property Acquisition Core Fund.

Amount and Frequency of Recurring Costs

N/A

Attachment: [Suburban System, Ph III Grauf, Executed Right of Way Easement.pdf](#)

Attachment: [Suburban System, Ph III Grauf, Executed Affidavit of Ownership and Encumbrances, Frank Strauss.pdf](#)

Attachment: [Suburban System, PH III Grauf, Executed Affidavit of Ownership and Encumbrances, Margarete Strauss.pdf](#)

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Attachment: [Suburban System, Ph III Grauf-Order to Re-Open Estate.pdf](#)

Attachment: [Suburban System Waterline Improve - loc map.pdf](#)

Attachment: [BishopC_Memo Quiet Title 20 ft Strip-Southernair MHP for Suburban Waterlines Project_RLS-14-016.pdf](#)

Robin Toth

From: Diane Vollmer [diane.vollmer@mymanatee.org]
Sent: Monday, January 23, 2017 5:22 PM
To: Betsy Benac; Carol Whitmore; Charles Smith; Priscilla WhisenantTrace; Robin DiSabatino; Stephen R Jonsson; Vanessa Baugh
Cc: Mitchell Palmer; Vicki Tessmer; Robin Toth; Charlie Bishop; Joy LeggettMurphy; Larry Decker; Geri Lopez; William OShea; Dan Schlandt; Ed Hunzeker; John Osborne; Karen Windon
Subject: January 24 BCC Agenda - Updates

Commissioners,

Below are the updates to the January 24 agenda. These updates will be reflected on the agenda update memo and in the e-agenda as follows:

Changes to Consent Agenda:

- **Item 15 - Permanent Right-Of-Way Easement between Frank J. and Margarete Strauss, as Co-Personal Representatives of the Estate of Henry Frederick Grauf and Manatee County, for property located at 56th Avenue West, Bradenton – Deferred to February 7, 2017**
- **Item 16 - Permanent Utilities Easement between Casto Bayshore, LLC, and Manatee County, for property located at 6224 14th Street West, Bradenton - Deferred to February 7, 2017**
- **Item 24 - Substantial Amendment to the 2013/14, 2014/15, 2015/16, and 2016/17 CDBG Action Plans** – Resolution R-17-007 was corrected and replaced in the e-agenda to include "2013/14" in the resolution heading.

Diane Vollmer

Agenda Coordinator
Manatee County Government
1112 Manatee Avenue West
Bradenton, FL 34205
Phone: 941-745-3724; Fax: 941-745-3790
diane.vollmer@mymanatee.org



Florida has a very broad Public Records Law. This agency is a public entity and is subject to Chapter 119 of the Florida Statutes, concerning public records. E-mail communications are covered under such laws & therefore e-mail sent or received on this entity's computer system, including your e-mail address, may be disclosed to the public or media upon request.

From: [Larry Decker](#)
To: [Robin Toth](#)
Subject: RE: BCC Mtg 1/24/17: Item 15, Permanent Right-of-Way Easement w/Strauss
Date: Friday, January 20, 2017 12:14:41 PM

Robin,

Please refer to the section: Instructions to Board Records as it shows AR # 700013.

Thank you,

Larry Decker

Property Acquisition Division
Property Management Department
(941) 748-4501 x6287
Larry.Decker@mymanatee.org

From: Robin Toth [<mailto:robin.toth@ManateeClerk.com>]
Sent: Friday, January 20, 2017 11:53 AM
To: Larry Decker <Larry.Decker@mymanatee.org>
Subject: BCC Mtg 1/24/17: Item 15, Permanent Right-of-Way Easement w/Strauss
Importance: High

Hi Larry,

Please advise what AR# should be used to charge for the recording fees of the documents associated with Agenda Item 15.

Thank you,

Robin Toth

Board Records Deputy Clerk
for Angelina Colonnese
Clerk of Circuit Court and Comptroller
www.manateeclerk.com
robin.toth@manateeclerk.com
941-741-4018, Ext. 4018

"Pride in Service with a Vision to the Future"



Florida has a very broad Public Records Law. This agency is a public entity and is subject to Chapter

119 of the Florida Statutes, concerning public records. E-mail communications are covered under such laws & therefore e-mail sent or received on this entity's computer system, including your e-mail address, may be disclosed to the public or media upon request.

THIS INSTRUMENT PREPARED BY:
Larry Decker, Real Property Specialist
Property Acquisition Division
Manatee County Property Management Department
1 112 Manatee Avenue West, Suite 800
Bradenton, Florida 34205

PROJECT NAME: Suburban System, Phase III
PROJECT#: 60747
PARCEL#: N/A
PID#: 5886800109

=====",,=====,,=====,,=,,=====,,=,,=====,,SPACE ABOVE THIS LINE FOR RECORDING DATA=====,,=====,,=====

PERMANENT RIGHT-OF-WAY EASEMENT

THIS INDENTURE made this _____ day of _____, 2016, between **MARGARETE STRAUSS and FRANK J. STRAUSS**, as Co-Personal Representatives of the estate of **HENRY FREDERICK GRAUF**, whose mailing address is 910 NE 10th Street, Hallandale Beach, Florida 33009-2663, as "**Grantor**," and **MANATEE COUNTY**, a political subdivision of the State of Florida, whose mailing address is Post Office Box 1000, Bradenton, Florida 34206, as "**Grantee**,"

WITNESSETH:

THAT said Grantor, for and in consideration of the sum of \$1.00 and other valuable consideration in hand paid, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and transferred, and by these presents does grant, bargain, sell, and transfer unto Grantee, **a non-exclusive right-of-way easement for ingress and egress, construction, and maintenance of pedestrian sidewalks, street lighting, surface and underground drainage and utility facilities and other roadway improvements** over, under, and across the property situate in Manatee County, State of Florida, more particularly described in **Exhibit "A"** attached hereto and incorporated herein by this reference.

THAT said Grantor reserves unto itself, its heirs, successors or assigns, the right to the continued free use and enjoyment of the property herein described, for any purposes which are not inconsistent with the rights granted herein unto the Grantee.

IN WITNESS WHEREOF, Grantor has hereunto set its hand and seal, the day and year above written.

SIGNATURE PAGES AND ACKNOWLEDGMENTS FOLLOW ON NEXT PAGES.

Signed, sealed and delivered in the presence of two witnesses as required by law:

GRANTOR:

MARGARETE STRAUSS as Co-Personal Representative of the Estate of Henry Frederick Grauf

By: Margarete Strauss
Signature
As: Co-Personal Representative
Title

Marcos A. Vasquez
First Witness Signature
Marcos A. Vasquez
First Witness Printed Name

[Signature]
Second Witness Signature
[Signature]
Second Witness Printed Name

GRANTOR:

FRANK J. STRAUSS as Co-Personal Representative of the Estate of Henry Frederick Grauf

By: Frank J. Strauss
Signature
As: Co-Personal Representative
Title

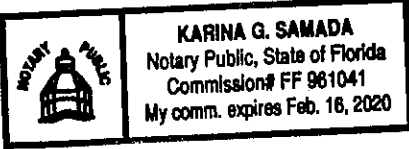
Marcos A. Vasquez
First Witness Signature
Marcos A. Vasquez
First Witness Printed Name

[Signature]
Second Witness Signature
[Signature]
Second Witness Printed Name

STATE OF Florida
COUNTY OF Broward

The foregoing instrument was acknowledged to me this 14 day of December, 2016, by Margarete and Frank J. Strauss, as Co-Personal Representatives of the Estate of Henry Frederick Grauf, who are personally known to me or who have produced FLDS 362-540-29-804-0 as identification. FLDS 362-270-30-335-0

Notary Public Seal



My Commission Expires: Feb 16, 2020

[Signature]
NOTARY PUBLIC, State of Florida
Karina G. Samada
Printed Name

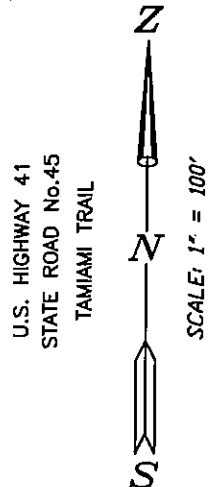
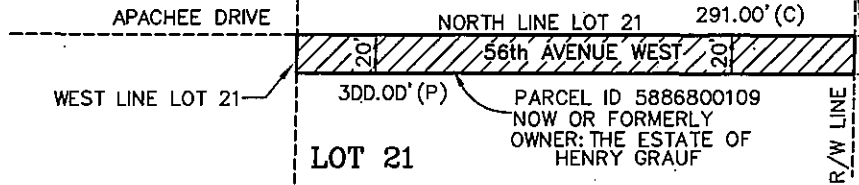


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ES 0027476 LS 0008982 LC 0000365

REV. AIRPORT SUBD.
P.B. 7, PAGE 66

SOUTHERNAIRE SUBDIVISION
PARCEL ID 5887500006
NOW OR FORMERLY

PARCEL ID 5886700003
NOW OR FORMERLY
LOT 20 No. 13010(117)(201)(119).252
(LESSED OUT)
9.00' R/W PER SECTION




TRY MOR ESTATES
PARCEL ID 5890103609
NOW OR FORMERLY

LOT 21
PARCEL ID 5886800109
NOW OR FORMERLY
OWNER: THE ESTATE OF
HENRY GRAUF

PARCEL ID 5886800059
NOW OR FORMERLY

REV. AIRPORT SUBD.
P.B. 7, PAGE 66

LEGEND:

- P.O.C. POINT OF COMMENCEMENT
- P.O.B. POINT OF BEGINNING
- O.R.B. OFFICIAL RECORD BOOK
- (P) PLAT
- (C) CALCULATED DATA
- ID IDENTIFICATION
- REV. REVISED
- SUBD. SUBDIVISION
- P.B. PLAT BOOK
-  SITE

PERMANENT RIGHT-OF-WAY EASEMENT
OF

THE NORTH 20 FEET OF LOT 21 OF REVISED AIRPORT SUBDIVISION AS PER PLAT THEREOF RECORDED IN PLAT BOOK 7, PAGE 66 OF THE PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA LESS THE EAST 9.00 FEET FOR RIGHT OF WAY STATE ROAD DEPARTMENT SECTION 13010 (117)(201)(119).2502

LOCATED IN
SECTION 14, TOWNSHIP 35 SOUTH, RANGE 17 EAST
MANATEE COUNTY, FLORIDA

Revised: 12/2/16 jng

NOTE:

1. THIS DRAWING IS A SKETCH ONLY AND DOES NOT REPRESENT A BOUNDARY SURVEY. (MONUMENTS HAVE NOT BEEN FIELD LOCATED OR SET)

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T:\CH2M-HILL\Parcels\56thAVE-RW.dwg_bernle Job # 00-444342

NOTE: NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

WE HEREBY CERTIFY THAT THIS SKETCH AND DESCRIPTION HAVE BEEN PREPARED UNDER OUR DIRECT SUPERVISION, THAT THEY ARE A TRUE REPRESENTATION OF THE LAND AS SHOWN AND DESCRIBED HEREON, THAT THEY ARE CORRECT TO THE BEST OF OUR KNOWLEDGE AND BELIEF AND THAT THEY MEET THE "STANDARDS OF PRACTICE FOR LAND SURVEYING IN THE STATE OF FLORIDA" CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE.

BY: 
JAMES N. GATCH, JR., P.S.M.
FLORIDA CERTIFICATE NO. LS-4295
DATE OF CERTIFICATION: 11/15/2016

**PERMANENT
RIGHT-OF-WAY
EASEMENT**

THIS INSTRUMENT PREPARED BY:
Larry Decker, Real Property Specialist
Property Acquisition Division
Manatee County Property Management Department
1112 Manatee Avenue West, Suite 800
Bradenton, Florida 34205

PROJECT NAME: Suburban System, Phase III
PROJECT#: 6074770
PARCEL#: N/A
PID#: 5886800109

=====SPACE ABOVE THIS LINE FOR RECORDING DATA=====

AFFIDAVIT OF OWNERSHIP AND ENCUMBRANCES

STATE OF Florida
COUNTY OF Broward

BEFORE ME, the undersigned notary public, personally appeared Frank J. Strauss, who being first duly sworn, deposes and says that, to the best of his knowledge and belief:

1. I have personal knowledge of all matters set forth in this affidavit.
2. I am the owner of the fee simple title to certain real property (hereinafter the **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 have full authority to sell or encumber the Property.
3. I have sole and exclusive possession of the Property.
4. Neither my 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.
5. There are no disputes concerning the location of the boundary lines of the Property.
6. I have not violated any of the restrictions, declarations or covenants in connection with the Property, nor know of any prior owner violating said restrictions, declarations or covenants.
7. 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.
8. 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 me in the courts of Manatee County, Florida, or any other courts.
9. There are no matters pending against me 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 I have 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.

10. 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.

11. 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 me during the past **NINETY (90)** days.

12. 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:

None

13. The representations embraced herein are made for the purpose of conveying an easement.

14. 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.

SIGNATURE PAGE AND ACKNOWLEDGEMENT FOLLOW ON NEXT PAGE.

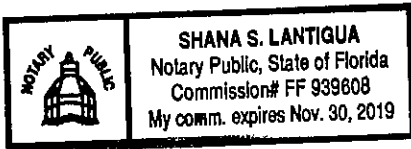
Frank J. Strauss, Co-Personal Representative of the Estate of Frederick Henry Grauf

Frank J. Strauss
Signature

Frank J. Strauss
Printed Name

Sworn to (or affirmed), acknowledged and subscribed before me this 21ST day of Dec., 2016, by Frank J. Strauss, Co-Personal Representative of the Estate of Frederick Henry Grauf, who _____ is personally known to me or _____ who has produced FL DL as identification.

Affix seal below:



[Signature]
Notary Public Signature

Shana S. Lantigua
Printed Name

FF 939608
Commission Number

NOV. 30, 2019
Expiration Date



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ENGINEERS | PLANNERS | SURVEYORS | LANDSCAPE ARCHITECTS
EB 0027476 LS 0006982 LC 0000355

CERTIFICATION OF AUTHORIZATION # LB6982
201 5th AVENUE DRIVE EAST
BRADENTON, FLORIDA 34208
(941) 748-8080
FAX (941) 748-3747

REV. AIRPORT SUBD.
P.B. 7, PAGE 66

SOUTHERNAIRE SUBDIVISION

PARCEL ID 5887500006
NOW OR FORMERLY

PARCEL ID 5886700003
NOW OR FORMERLY

LOT 20

9.00' R/W PER SECTION
No. 13010(117)(201)(119).252
(LESSED OUT)

APACHEE DRIVE

NORTH LINE LOT 21 291.00' (C)

WEST LINE LOT 21

300.00' (P)

56th AVENUE WEST

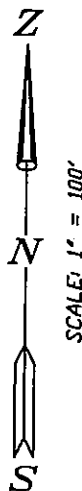
PARCEL ID 5886800109
NOW OR FORMERLY
OWNER: THE ESTATE OF
HENRY GRAUF

LOT 21

PARCEL ID 5886800059
NOW OR FORMERLY

REV. AIRPORT SUBD.
P.B. 7, PAGE 66

U.S. HIGHWAY 41
STATE ROAD No. 45
TAMIAMI TRAIL



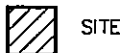
SCALE: 1" = 100'

TRY MOR ESTATES

PARCEL ID 5890103609
NOW OR FORMERLY

LEGEND:

- P.O.C. POINT OF COMMENCEMENT
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- P.B. PLAT BOOK



PERMANENT RIGHT-OF-WAY EASEMENT
OF

THE NORTH 20 FEET OF LOT 21 OF REVISED
AIRPORT SUBDIVISION AS PER PLAT THEREOF
RECORDED IN PLAT BOOK 7, PAGE 66 OF
THE PUBLIC RECORDS OF MANATEE COUNTY,
FLORIDA LESS THE EAST 9.00 FEET FOR
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SECTION 13010 (117)(201)(119).2502

LOCATED IN

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MANATEE COUNTY, FLORIDA

Revised: 12/2/16 jng

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BY: *J. N. Gatch, Jr.*
JAMES N. GATCH, JR., P.S.M.
FLORIDA CERTIFICATE NO. LS 4295
DATE OF CERTIFICATION: 11/15/2016

PERMANENT
RIGHT-OF-WAY
EASEMENT

THIS INSTRUMENT PREPARED BY:
Larry Decker, Real Property Specialist
Property Acquisition Division
Manatee County Property Management Department
1112 Manatee Avenue West, Suite 800
Bradenton, Florida 34205

PROJECT NAME: Suburban System, Phase III
PROJECT#: 6074770
PARCEL#: N/A
PID#: 5886800109

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AFFIDAVIT OF OWNERSHIP AND ENCUMBRANCES

STATE OF Florida
COUNTY OF Broward

BEFORE ME, the undersigned notary public, personally appeared Margarete Strauss, 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. I am the owner of the fee simple title to certain real property (hereinafter the **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 have full authority to sell or encumber the Property.
3. I have sole and exclusive possession of the Property.
4. Neither my 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.
5. There are no disputes concerning the location of the boundary lines of the Property.
6. I have not violated any of the restrictions, declarations or covenants in connection with the Property, nor know of any prior owner violating said restrictions, declarations or covenants.
7. 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.
8. 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 me in the courts of Manatee County, Florida, or any other courts.
9. There are no matters pending against me 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 I have 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.

10. 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.

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13. The representations embraced herein are made for the purpose of conveying an easement.

14. 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.

SIGNATURE PAGE AND ACKNOWLEDGEMENT FOLLOW ON NEXT PAGE.

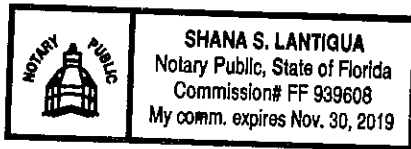
Margarete Strauss, Co-Personal Representative of the Estate of Frederick Henry Grauf

Margarete Strauss
Signature

Margarete Strauss
Printed Name

Sworn to (or affirmed), acknowledged and subscribed before me this 21st day of Dec, 2019, by Margarete Strauss, Co-Personal Representative of the Estate of Frederick Henry Grauf, who _____ is personally known to me or who has produced FL DL as identification.

Affix seal below:



[Signature]
Notary Public Signature

Shana S. Lantigua
Printed Name

FF 9 396 08
Commission Number

Nov. 30, 2019
Expiration Date



ZNS ENGINEERING

ENGINEERS | PLANNERS | SURVEYORS | LANDSCAPE ARCHITECTS
EB 0027476 LS 0006982 LC 0000365

CERTIFICATION OF AUTHORIZATION # LB6982
201 5th AVENUE DRIVE EAST
BRADENTON, FLORIDA 34208
(941) 748-8080
FAX (941) 748-3747

REV. AIRPORT SUBD.
P.B. 7, PAGE 66

SOUTHERNAIRE SUBDIVISION

PARCEL ID 5887500006
NOW OR FORMERLY

PARCEL ID 5886700003
NOW OR FORMERLY

LOT 20

9.00' R/W PER SECTION
No. 13010(117)(201)(119).252
(LESSED OUT)

APACHEE DRIVE

NORTH LINE LOT 21 291.00' (C)

WEST LINE LOT 21

300.00' (P)

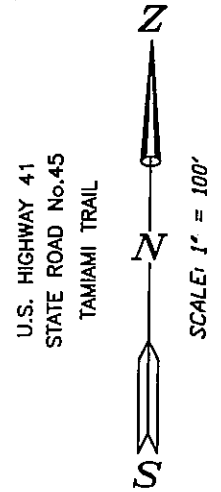
56th AVENUE WEST

PARCEL ID 5886800109
NOW OR FORMERLY
OWNER: THE ESTATE OF
HENRY GRAUF

LOT 21

PARCEL ID 5886800059
NOW OR FORMERLY

REV. AIRPORT SUBD.
P.B. 7, PAGE 66



U.S. HIGHWAY 41
STATE ROAD No.45
TAMIAMI TRAIL

TRY MOR ESTATES

PARCEL ID 5890103609
NOW OR FORMERLY

LEGEND:

- P.O.C. POINT OF COMMENCEMENT
- P.O.B. POINT OF BEGINNING
- O.R.B. OFFICIAL RECORD BOOK
- (P) PLAT
- (C) CALCULATED DATA
- ID IDENTIFICATION
- REV. REVISED
- SUBD. SUBDIVISION
- P.B. PLAT BOOK



PERMANENT RIGHT-OF-WAY EASEMENT OF

THE NORTH 20 FEET OF LOT 21 OF REVISED
AIRPORT SUBDIVISION AS PER PLAT THEREOF
RECORDED IN PLAT BOOK 7, PAGE 66 OF
THE PUBLIC RECORDS OF MANATEE COUNTY,
FLORIDA LESS THE EAST 9.00 FEET FOR
RIGHT OF WAY STATE ROAD DEPARTMENT
SECTION 13010 (117)(201)(119).2502

LOCATED IN

SECTION 14, TOWNSHIP 35 SOUTH, RANGE 17 EAST
MANATEE COUNTY, FLORIDA

Revised: 12/2/16 jng

NOTE:

1. THIS DRAWING IS A SKETCH ONLY AND DOES NOT REPRESENT A BOUNDARY SURVEY. (MONUMENTS HAVE NOT BEEN FIELD LOCATED OR SET)

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T:\CH2M-HILL\Parcels\56thAVE-RW.dwg bernie Job # 00-444342

NOTE: NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

WE HEREBY CERTIFY THAT THIS SKETCH AND DESCRIPTION HAVE BEEN PREPARED UNDER OUR DIRECT SUPERVISION, THAT THEY ARE A TRUE REPRESENTATION OF THE LAND AS SHOWN AND DESCRIBED HEREON, THAT THEY ARE CORRECT TO THE BEST OF OUR KNOWLEDGE AND BELIEF AND THAT THEY MEET THE "STANDARDS OF PRACTICE FOR LAND SURVEYING IN THE STATE OF FLORIDA" CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE.

BY:
JAMES N. GATCH, JR., P.S.M.
FLORIDA CERTIFICATE NO. LS-4295
DATE OF CERTIFICATION: 11/15/2016

PERMANENT
RIGHT-OF-WAY
EASEMENT

IN THE CIRCUIT COURT FOR THE 17TH JUDICIAL DISTRICT
IN AND FOR BROWARD COUNTY, FLORIDA

IN RE: THE ESTATE OF

HENRY FREDERICK GRAUF PROBATE DIVISION

Deceased

Case No. PRC 78-1905 (62J)

PROBATE
2016 OCT 24 AM 10:12

ORDER TO RE-OPEN ESTATE

On the Amended Petition of MARGARETE STRAUSS and FRANK J. STRAUSS to re-open the Estate of HENRY FREDERICK GRAUF, deceased, the Court finding that:

1. The Petitioners were previously appointed by this Court Co-Personal Representatives of the Estate of Henry Frederick Grauf on May 18, 2001; and on September 18, 2002 were discharged from that office; and
2. There remains an unimproved parcel of real property in Manatee County, of de minimus value, of the decedent, subject to the administration of this Court;
3. Manatee County Public Works Department intends to access an easement over the unimproved parcel of real property and needs the approval of the property owner to facilitate the easement; and
4. Only the Personal Representative of the Estate of Henry Frederick Grauf has the authority, as property owner, to execute the requisite documents to approve the easement; and Petitioners have agreed to assist Manatee County in that endeavor; and
5. There being no other interest or purpose of the Petitioners in the re-opening of this Estate; it is:

ORDERED and ADJUDGED that the Estate of Henry Frederick Grauf is re-opened for the purpose stated in the Petition; and

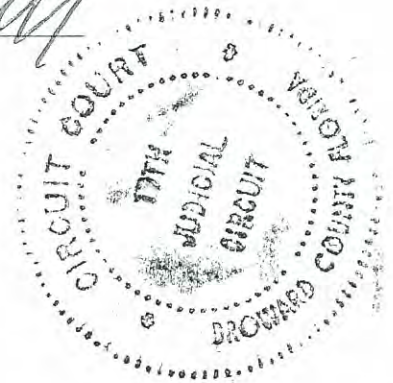
Estate of Henry Frederick Grauf
Case #: PRC 78-1905 (62J)

ORDERED FURTHER that Letters of Administration be issued to the Petitioners, Margaret Strauss and Frank J. Strauss, authorizing them to execute and deliver to Manatee County Public Works the instruments required to effectuate the granting of the said easement; and

ORDERED FURTHER that upon delivery of all of the requested documents to Manatee County, this estate be closed and the Petitioners discharged from their duties as Co-Personal Representatives, without requiring the further authorization of this Court.

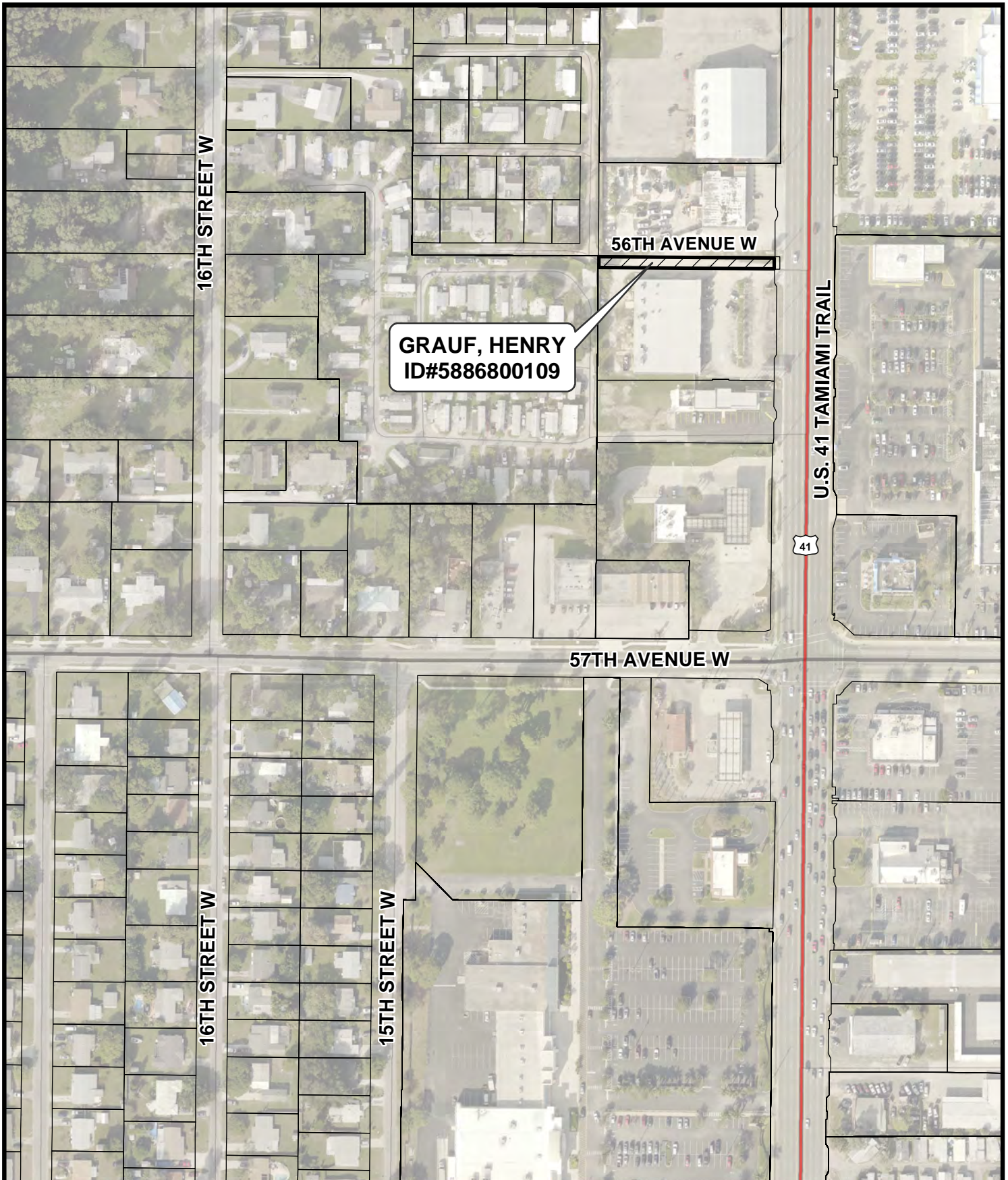
Done this 24 day of October, 2016.


Circuit Judge



STATE OF FLORIDA
BROWARD COUNTY
I DO HEREBY CERTIFY the within and foregoing is a true
and correct copy of the original as it appears on record
and file in the office of the Circuit Court Clerk of Broward
County, Florida, and that same is in full force and effect.
WITNESS my hand and Official Seal at Fort Lauderdale
Florida, this the 24 day of October, 2016


Howard G. Forman
Deputy Clerk



GRAUF, HENRY
ID#5886800109

16TH STREET W

56TH AVENUE W

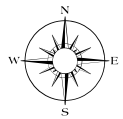
U.S. 41 TAMiami TRAIL

41

57TH AVENUE W

16TH STREET W

15TH STREET W



1 inch equals 208.33 feet

PROJECT NO 412-6074770
SUBURBAN SYSTEM PROJECT, PHASE III
WATERLINE IMPROVEMENTS
(Cedar Hammock Fire and Rescue District)
District 4 - COMMISSIONER ROBIN DISABATINO





Office of
**MANATEE COUNTY
ATTORNEY**

Mitchell O. Palmer, County Attorney*

James A. Minix, Chief Assistant County Attorney
Maureen S. Sikora, Assistant County Attorney**
Robert M. Eschenfelder, Assistant County Attorney
William E. Clague, Assistant County Attorney
James R. Cooney, Assistant County Attorney
Sarah A. Schenk, Assistant County Attorney**
Andrea A. Adibe, Assistant County Attorney

MEMORANDUM

DATE: March 9, 2015

TO: Charles H. Bishop, Director, Property Management Department

THROUGH: Mitchell O. Palmer, County Attorney *MOP 6/10/15*

FROM: Andrea A. Adibe, Assistant County Attorney *AA 3/9/15*

RE: **Quieting Title on a 20-Foot Strip of Land Known as 56th Avenue West (Southernaire Mobile Home Park); RLS-14-016; CAO File 8003-021-A**

Issues Presented:

1. How can Manatee County be certain that there are no existing liens or encumbrances on the 20-foot strip of land known as 56th Avenue West, other than what are shown on the recent title search prepared by Signature Title Company?
2. Can Manatee County proceed with a legal action to quiet title regarding the subject property so that the water line project can be constructed?

Brief Answer:

1. Obtaining an updated title search on the subject property is the best way to determine the existence of recorded encumbrances such as mortgages or liens. However, title searches typically do not uncover unrecorded interests in property which may also exist.
2. According to Chapter 65 of the Florida Statutes, the County does not possess sufficient evidence to support a quiet title action in this matter for the reasons specified below.

* Board Certified in Construction Law

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

Recommendations:

1. It is recommended that staff obtain an updated title search that goes back at least 50 years to determine all recorded encumbrances on the property. A title search may not determine all of the unrecorded encumbrances located on the property.
2. It is recommended that the County determine the actual owner and negotiate a deal to acquire the property, condemn the property pursuant to Chapters 73 and 74 of the Florida Statutes or perform continuous maintenance of the right-of-way for the statutory period of time pursuant to Section 95.361 of the Florida Statutes.

Discussion:

The Public Works and Utilities Departments currently seek to acquire a 500-square foot utility easement along the north 20 feet of Lot 21 of the Revised Airport Subdivision Plat for construction and maintenance of a water line as part of the Suburban Water Line Project. This project will benefit the Southernaire Mobile Home Park as it will improve water quality within the area. According to staff, the County has owned, operated and maintained a subterranean 4-inch water line pipe underneath Lot 21 since the 1960s. However, with this current project, staff seeks to improve the current infrastructure by installing a 6-inch water line pipe in the same location to achieve consistency in the size of water lines located within this area.

Although staff asserts that the existing water line has been located underneath Lot 21 for several decades, the County does not possess a written easement or fee title to the property. It is questionable as to whether the subject property (also known as 56th Avenue West) is a public road. The road is not a platted roadway; it is not depicted on the Revised Airport Subdivision Plat; and it was never dedicated to the County. While the road is improved with shell material, such improvements were not completed by the County and the County does not currently maintain the road.

For years, residents of the Southernaire Mobile Home Park have utilized the subject 20-foot strip of property for access to and from the mobile home park. In January 15, 2014, the Property Acquisition Division requested an updated title search for the subject property, and it was determined that in a June 23, 1966, warranty deed, Hazel Sindelar, the widow of Arthur Sindelar, conveyed the north 20 feet of Lot 21 of the Revised Airport Subdivision Plat recorded in Plat Book 7, Page 45, of the Public Records of Manatee County, Florida, to Henry and Foy Grauf, as husband and wife. On February 1, 1980, Juanita M. Grauf and Frieda Verschure, as Personal Representatives of the Estate of Henry Fredrick Grauf, conveyed a Deed of Personal Representatives as to Lot 21 *less the north 20 feet* and all of Lot 22 of the Revised Airport Subdivision Plat to Diosdado M. Tatlonghari, Richard N. Jeffries, Richard B. Jordahl, and

Benjamin Delgado pursuant to the Last Will and Testament of Henry Fredrick Grauf. This Will presumes to leave Lot 21 *less the north 20 feet* and all of Lot 22 of the Revised Airport Subdivision Plat to the brothers and sisters of Mr. Henry Fredrick Grauf. The Deed of Personal Representatives purposely lesses out the north 20 feet of Lot 21. In short, according to the most recent title search and the documents presented as part of this Request for Legal Services, the actual owner of the subject property, the north 20 feet of Lot 21, is currently unknown.

This office previously opined on this subject matter in a memorandum dated, August 20, 2008. The issue involved in that request for legal services was whether the County could claim legal access by prescriptive easement or otherwise for the north 20 feet of Lot 21 in the Revised Plat of the Airport Subdivision as recorded in Plat Book 7, Page 45, of the Public Records of Manatee County, Florida, otherwise known as 56th Avenue West. Please find the memorandum attached for your referenced. While the legal question for that memorandum was slightly different than the present issue, the purpose for the request is still the same. In the 2008 memorandum, former Assistant County Attorney Rodney C. Wade opined that “[t]he area known as 56th Avenue West is not a public road and is not maintained by the County; therefore, . . . the County cannot perform right-of-way improvements and install sewer to Southernaire Mobile Home Park.” He also stated that while a prescriptive easement was not the appropriate interest to acquire in this case, it was recommended that the County maintain the right-of-way and subsequently claim the maintained property pursuant to Section 95.361 of the Florida Statutes, condemn the property pursuant to Sections 73 and 74 of the Florida Statutes, or negotiate a deal with the actual owner to obtain a right-of-way easement or a quitclaim deed for the property. As a result of the 2008 opinion memorandum, staff decided to abandon the sewer line project.

Question #1: How can Manatee County be certain that there are no existing liens or encumbrances on the subject parcel other than what are shown on the recent title search prepared by Signature Title Company?

According to Black’s Law Dictionary, a title search is “[a]n examination of the public records to determine whether any defects or encumbrances exist in a given property’s chain of title. A title search is typically conducted by a title company or a real-estate lawyer at a prospective buyer’s or mortgagee’s request.” BLACK’S LAW DICTIONARY 1495 (7th ed. 1999). An encumbrance is “[a] claim or liability that is attached to property or some other right and that may lessen its value, such as a lien or mortgage; any property right that is not an ownership interest. An encumbrance cannot defeat the transfer of possession, but it remains after the property or right is transferred.” *Id.* at 547.

Encumbrances impact marketable title to property as they appear as a cloud on title of property and can make it difficult for property to be transferred. Encumbrances on property are typically recorded in the official records of the county where the property is located. An

encumbrance typically appears in a title search if it has been recorded. However, sometimes encumbrances are not always recorded.

Chapter 712 of the Florida Statutes, otherwise known as the “Marketable Record Title Act” was enacted by the Florida Legislature “to simplify and facilitate land title transactions [and] eliminate all stale claims to real property, with certain enumerated exceptions, unless notice of these claims is filed in a procedurally proper manner.” *City of Jacksonville v. Horn*, 496 So. 2d 204, 206 (Fla. 1st DCA 1986).

Essentially, the Marketable Record Title Act (hereinafter, “MRTA”) “provides for a clear, marketable title for any landowner who can demonstrate that a title transaction which occurred at least thirty [30] years ago created an estate in either the current landowner or the predecessor in interest.” *Clipper Bay Investments, LLC v. State Department of Transportation*, 117 So. 3d 7, 10 (Fla. 1st DCA 2013).

Chapter 712 helps to eliminate stale unrecorded encumbrances that are 30 years old or older and it also helps to preserve old encumbrances, such as unrecorded easements, that are owned by the County. However, this chapter does not affect those unrecorded encumbrances that have existed for less than 30 years.

In the current matter, to determine the existence of recorded encumbrances located on the property, it is recommended that staff obtain an updated title search that goes back at least 50 years on the subject property. However, as previously noted, title searches typically do not uncover unrecorded interests located on property which may also exist.

Question #2: Can Manatee County proceed with a legal action to quiet title regarding the subject property so that the water line project can be constructed?

The legal action of quieting title is covered under Chapter 65 of the Florida Statutes. These actions are typically initiated to cure legal title defects and perfect title to real property. Pursuant to Section 26.012(2)(c) of the Florida Statutes, quiet title is an equitable remedy that falls under circuit court jurisdiction. These actions

provide for removing clouds from titles in proceedings that may be brought by any person or corporation, whether or not in actual possession, that claims legal or equitable title to real estate against any person or corporation that, although not in actual possession, either has or appears to have or claim an adverse legal or equitable estate, interest, or claim in the real estate.

The Florida Bar, FLORIDA REAL PROPERTY LITIGATION, 1-A-3, (7th ed. 2013).

Essentially, the major purpose behind the statute

to enable a rightful owner to secure relief against one not a rightful owner, who asserts a claim or pretends to have a right in the land, and to afford means by which an existing record title may be extinguished as a cloud on title of the one who acquired title by adverse possession.

Day v. Benesh, 139 So. 448, 452 (Fla. 1932) (quoting *McDaniel v. McElvy*, 91 Fla. 770, 108 So. 820, 51 A. L. R. 731.).

According to case law,

in suits to quiet title the burden of proof rests on the plaintiff to show with clearness, accuracy and certainty not only the validity of his own title but the invalidity or inferiority of the defendant's title or claim, unless such invalidity or inferiority be admitted by the defendant.

Palmer v. Greene, 159 Fla. 174, 176-77, 31 So. 2d 706, 708 (1947)

In other words,

[t]o state a claim to quiet title in Florida, Plaintiff must not only allege plausible facts showing his title to the land at issue, but also plausible facts showing that a cloud on that title exists. *Stark v. Frayer*, 67 So. 2d 237, 239 (Fla. 1953). "Not only must the matter which constitutes the alleged cloud be shown, but facts must be alleged which give the claim apparent validity as well as those which show its invalidity." *Id.* (citations omitted). See also *McDaniel v. McElvy*, 91 Fla. 770, 108 So. 820, 830 (1926) ("Thus, if the suit is brought to remove a particular cloud, the facts which show the existence—actual, apparent, or potential—of that cloud are essential parts of the complainant's cause of action, and must be alleged.") (citation omitted).

Kaan v. Wells Fargo Bank, N.A., 981 F. Supp. 2d 1271, 1273 (S.D. Fla. 2013)

According to Section 65.061(2) of the Florida Statutes, *GROUNDS*:

When a person or corporation not the rightful owner of land has any conveyance or other evidence of title thereto, or asserts any claim, or pretends to have any right or title thereto, which may cast a cloud on the title of the real owner, or when any person or corporation is the true and equitable owner of land the record title to which is not in the person or corporation because of the defective execution of any deed or mortgage because of the omission of a seal thereon, the lack of witnesses, or any defect or omission in the wording of the acknowledgment of a

party or parties thereto, when the person or corporation claims title thereto by the defective instrument and the defective instrument was apparently made and delivered by the grantor to convey or mortgage the real estate and was recorded in the county where the land lies, or when possession of the land has been held by any person or corporation adverse to the record owner thereof or his or her heirs and assigns until such adverse possession has ripened into a good title under the statutes of this state, such person or corporation may file complaint in any county in which any part of the land is situated to have the conveyance or other evidence of claim or title canceled and the cloud removed from the title and to have his or her title quieted, whether such real owner is in possession or not or is threatened to be disturbed in his or her possession or not, and whether defendant is a resident of this state or not, and whether the title has been litigated at law or not, and whether the adverse claim or title or interest is void on its face or not, or if not void on its face that it may require extrinsic evidence to establish its validity.

This subsection is somewhat convoluted. However, it can be broken down into three distinct grounds. A plaintiff seeking to quiet title is required to plead at least one of these grounds in a complaint in order to bring a quiet title action in circuit court. The three grounds are as follows:

1. The plaintiff is not the rightful owner of property; however, he/she has a conveyance or evidence of title or can assert a claim to have a right of title of said property, which casts a cloud on the real owner's title to the property;
2. The plaintiff is the true equitable owner of the property; however, title to the property is clouded due to a defective deed or mortgage; and
3. The plaintiff adversely held possession of property that is legally the property of another person for the statutory period of time.

Based on the facts of this case, the County is not in a position to pursue a quiet title action for the subject 20-foot strip of land identified in this case.

First, while the County may be able to produce evidence to support a claim of an ownership interest in the 4-inch water line that it has maintained since the 1960s pursuant to Chapter 712 of the Florida Statutes, it will not be able to claim an interest in the additional property needed to install the new 6-inch water line. A portion of the property required for the 6-inch water line is new land; land that was never maintained by the County as a result of the existing 4-inch water line. For that reason, the County will not be able to claim an interest in the new land which it did not have an interest in before.

Next, the County is not the equitable owner of the property pursuant to a defective deed or mortgage in favor of Manatee County or any other property owner in this area. After conducting a title search of the property in January 2014, no evidence of a defective deed, mortgage, or other instrument was obtained to support a claim that the County is the equitable owner of the subject 20-foot strip of land.

Lastly, as previously mentioned, the subject property does not appear on the Revised Airport Subdivision Plat; it was never dedicated to County; and the County has never maintained it in the past. It is important to remember that “[i]n either prescription or adverse possession, the right is acquired only by actual, continuous, uninterrupted use by the claimant of the lands of another, for a prescribed period.” *Downing v. Bird*, 100 So. 2d 57, 64 (Fla. 1958). In this case, the County has never had actual, continuous, uninterrupted possession of all of the land needed for the installation of this 6-inch water line.

For the above-mentioned reasons, it is not recommended that the County pursue a quiet title action in this case. However, if the County seeks to increase the 4-inch water line to a 6-inch water line on private property, it is recommended that the County:

- 1.) Condemn the property under Chapters 73 and 74 of the Florida Statutes;
- 2.) Maintain and subsequently acquire the property under Section 95.361 of the Florida Statutes; or
- 3.) Negotiate a deal to acquire the property with the actual owner of the property.

Any of these methods would provide the County with a stronger chance of acquiring the property than pursuing a quiet title action.

It is worth noting that although condemning property can be an expensive process, the County could acquire the property much quicker by eminent domain instead of pursuing acquisition of the property after seven (7) years of continuous maintenance under Section 95.361 of the Florida Statutes. It is also worth noting that acquiring the property through eminent domain would clear all recorded or unrecorded encumbrances that currently cloud title to the property.

Conclusion:

It is recommended that staff obtain an updated title search that goes back at least 50 years to determine all recorded encumbrances on the property. A title search may not determine all of the unrecorded encumbrances located on the property.

Charles H. Bishop, Director
Property Management Department
Page 8
March 9, 2015

The County is not in a position to pursue a quiet title action for the subject 20-foot strip of land identified in this case as previously mentioned above. For that reason, it is recommended that the County condemn the property pursuant to Chapters 73 and 74 of the Florida Statutes, perform continuous maintenance of the right-of-way for the statutory period of time pursuant to Section 95.361 of the Florida Statutes, or determine the actual owner and negotiate a deal to acquire the property.

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.

AAA/slm
Attachment

Copies with attachment to:

Ed Hunzeker, County Administrator

John Agostinelli, Manager, Property Acquisition Division

David Schofield, Superintendent, Utilities Water Distribution

Brian Bates, Project Manager, Public Works Department

CA_USB-drive\BishopC_Memo Quiet Title 20 ft Strip-Southernair MHP for Suburban Waterlines Project_RLS-14-016.docx