

ITEM DEFERRED

3/7/17

Manatee County Government Administrative Center
Commission Chambers, First Floor
9:00 a.m. - March 7, 2017

March 7, 2017 - Regular Meeting
Agenda Item #47

Subject

Permanent Utilities Easement between Mandarin Development, Inc., and Manatee County for property located at San Miguel Cove, at Riva Trace Subdivision, University Park, Florida; PID 1918915359.

Briefings

Briefing Provided Upon Request

Contact and/or Presenter Information

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

Tim Cristello, Real Property Specialist, Property Acquisition Division Management, Extension 6284.

Action Requested

- Accept and Record Permanent Utilities Easement from Mandarin Development, Inc.; and
- Record Affidavit of Ownership and Encumbrances from Pete Logan, as Vice-President for Mandarin Development, Inc.; and
- Record Joinder and Consent from Braden River Mortgage, LLC, a Florida limited liability company.

Enabling/Regulating Authority

Florida Statutes Chapter 125. Manatee County Comprehensive Plan-Goal 9.1-9.2 addresses sanitary sewer, and Comprehensive Plan Goal 9.5 addresses the potable water system.

Background Discussion

- The Board of County Commissioners adopted Resolution R-16-116 on December 1, 2016, to vacate a portion of improved right-of-way at San Miguel Cove.
- Mandarin Development, Inc., is required to dedicate a 600 square foot permanent utilities easement per Public Works request over the area vacated. This easement addresses the concerns noted during the Jurisdictional Review process for the vacation.
- This easement is needed for access to inspect and maintain the potable water and sanitary sewer system.

County Attorney Review

Formal Written Review (Opinion memo must be attached)

Explanation of Other

Reviewing Attorney
Schenk

Instructions to Board Records Original interofficed to Larry Decker 3/8/17

Please email recorded documentation to Tim Cristello at Tim.Cristello@mymanatee.org, Scott Rudacille at Srudacille@blalockwalters.com, and Pete Logan at petel@medallionhome.com

CCC Charge Account: AR700003

Cost and Funds Source Account Number and Name
\$64.00 Recording fee. 001-0020505 Property Acquisition Core Fund

Amount and Frequency of Recurring Costs
None

Attachment: [Mandarin Development Inc Permanent Utilities Easement.pdf](#)
Attachment: [Mandarin Development Inc Affidavit of Ownership and Encumbrances.pdf](#)
Attachment: [Mandarin Development Inc Joinder and Consent.pdf](#)
Attachment: [RLS-15-078 & RLS-15-197.pdf](#)
Attachment: [RLS Matter 2016-0624.pdf](#)
Attachment: [Mandarin Development Inc. Location Map.pdf](#)

THIS INSTRUMENT PREPARED BY:
Tim Cristello, Real Property Specialist, Property Acquisition Division
On Behalf of: Division Manager, Property Acquisition Division
Manatee County Property Management Department
1112 Manatee Avenue West, Suite 800
Bradenton, Florida 34205

PROJECT NAME: Mandarin Development San Miguel Cove Vacation
PROJECT N/A:
PARCEL # N/A
PID # 1918915359 (a portion of)

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

JOINDER AND CONSENT

THIS JOINDER OF MORTGAGEE is given this ____ day of _____, 20__, on behalf of **BRADEN RIVER MORTGAGE LLC**, a Florida limited liability company, mailing address is 1651 Whitfield Avenue, Sarasota, Florida 34243 (hereinafter referred to as the "**Mortgagee**"), being the owner and holder of that certain mortgage dated January 21, 2011, made by **RIVA TRACE, LLC**, a Florida limited liability company whose mailing address is 1651 Whitfield Avenue, Sarasota, Florida 34243 (hereafter referred to as the "**Mortgagor**"), in favor of Mortgagee, which Mortgage has been recorded in Official Records Book 2369, Page 3190, of the Public Records of Manatee County, Florida (the "**Mortgage**"), and encumbers, among other things, the hereinafter described real property.

WHEREAS, MANATEE COUNTY, a political subdivision of the State of Florida, for good and valuable consideration, has or will obtain from the Mortgagor a non-exclusive Permanent Utilities Easement for ingress, egress, construction, and maintenance of surface and/or underground drainage and utility facilities, over, under, and across the property situate in Manatee County, State of Florida, more particularly described as portion of Parcel Number 1918915359 in Exhibit "A" attached hereto and incorporated herein by this reference; and

WHEREAS, MANATEE COUNTY has requested the Mortgagee to join and consent to the Permanent Utilities Easement referenced above, and the Mortgagee has agreed to join and consent to the same.

NOW THEREFORE, in consideration of the premises and the recitals and covenants herein set forth, the Mortgagee agrees as follows:

1. **Recitals.** The above recitals are true and correct and incorporated herein by reference.
2. **Joinder and Consent.** The Mortgagee hereby joins and consents to the terms and conditions of the Permanent Utilities Easement recorded or to be recorded among the Public Records of Manatee County, Florida, and further agrees, this Joinder and Consent may be recorded among the Public Records of Manatee County, Florida, as part and parcel thereof for the purposes herein set forth.

IN WITNESS WHEREOF, the Mortgagee has duly executed this Joinder and Consent as of the day and year first above written.

[SIGNATURE PAGE AND ACKNOWLEDGEMENT FOLLOW ON NEXT PAGE]

Signed, sealed, and delivered in the presence of:

BRADEN RIVER MORTGAGE LLC, a Florida limited liability company, BY MARCO OF MANATEE, ITS MANAGER

Heather Von Uhlit
Witness
Heather von Uhlit
Printed Name

By: Charles Tokarz
Printed Name: CHARLES TOKARZ

Jill A Harlow
Witness
Jill A Harlow
Printed Name

Title: VP
ATTEST: [Signature]
Secretary Signature

(Signature of two witnesses required by law.)

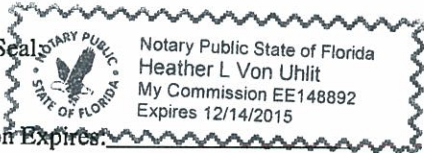
Printed Name: Carlos Beroff
(CORPORATE SEAL)

STATE OF Florida

COUNTY OF Manatee

The foregoing instrument was acknowledged before me this 7th day of October, 2015 by Charles Tokarz, as Vice-Pres for Braden River Mtg, who is personally known to me or () who has produced _____ as identification.

Notary Public Seal



My Commission Expires: _____

Heather Von Uhlit
NOTARY PUBLIC, State of
Heather L von Uhlit
Printed Name

SKETCH OF LEGAL DESCRIPTION

"NOT A BOUNDARY SURVEY"

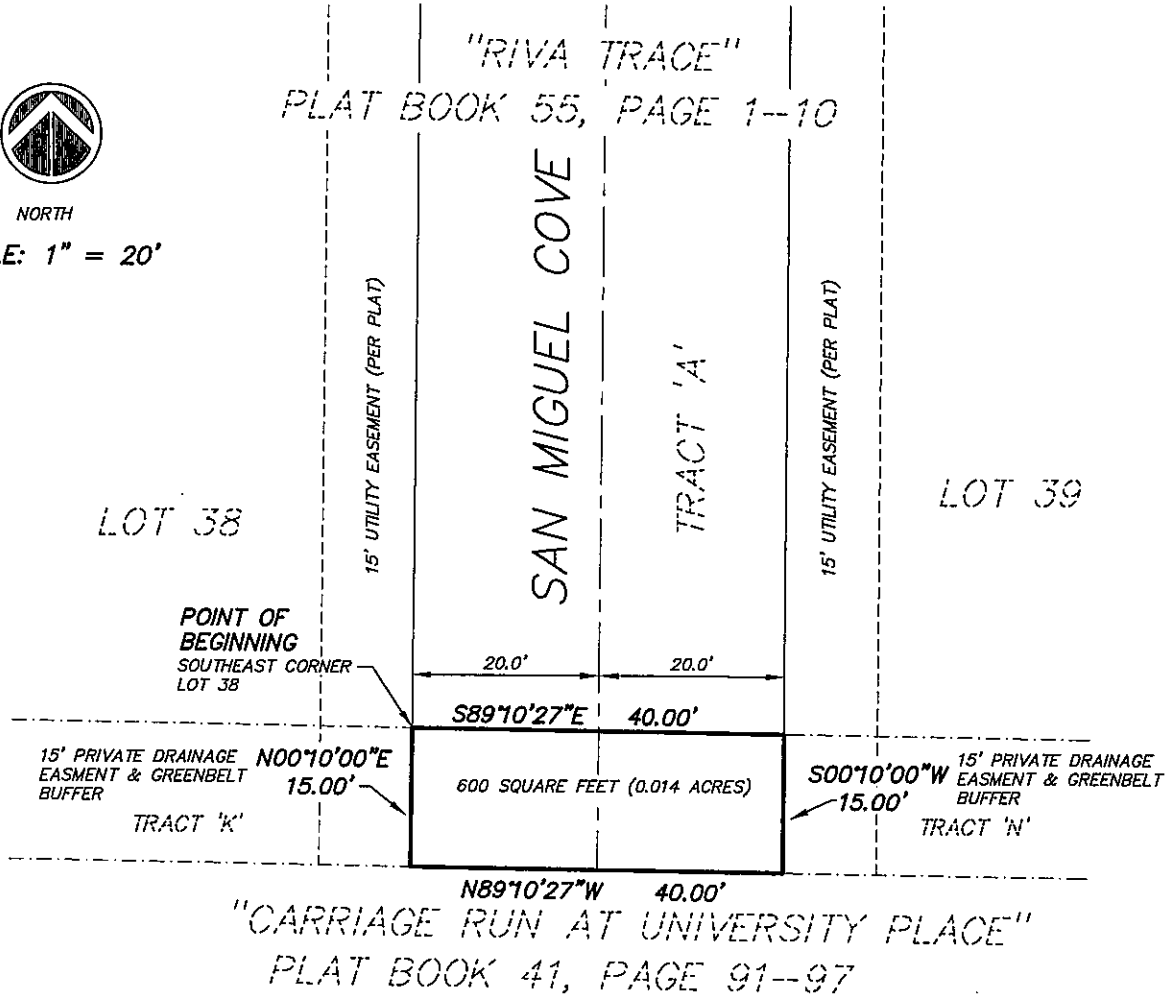
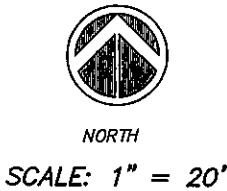
EXHIBIT "A"

LEGAL DESCRIPTION: (AS PREPARED BY THE CERTIFYING SURVEYOR AND MAPPER)

A PARCEL OF LAND BEING A PORTION OF TRACT 'A', 'SAN MIGUEL COVE', "RIVA TRACE", PLAT BOOK 55, PAGE 1 THROUGH 10, AS RECORDED IN THE PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHEAST CORNER OF LOT 38, SAID "RIVA TRACE"; THENCE SOUTH 89°10'27" EAST 40.00 FEET TO THE EAST LINE OF SAN MIGUEL COVE; THENCE SOUTH 00°10'00" WEST ALONG THE AFOREMENTIONED EAST LINE, 15.00 FEET TO THE SOUTH LINE OF "RIVA TRACE"; THENCE NORTH 89°10'27" WEST ALONG THE AFOREMENTIONED SOUTH LINE, 40.00 FEET TO THE WEST LINE OF SAN MIGUEL COVE; THENCE NORTH 00°10'00" EAST ALONG THE AFOREMENTIONED WEST LINE, 15.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 600 SQUARE FEET (0.014 ACRES) MORE OR LESS.



SURVEYOR'S NOTES:

- BEARINGS SHOWN HEREON ARE RELATIVE TO THE STATE PLANE COORDINATE SYSTEM (FLORIDA WEST ZONE, 1983 / 90 DATUM), DERIVED FROM THE SOUTH LINE OF "RIVA TRACE" PER PLAT BOOK 55, PAGE 1-10.
- THIS IS A SKETCH ONLY AND DOES NOT REPRESENT A FIELD SURVEY.



CLIENT	medallion	<p>DECEMBER 17, 2014</p> <p>ALEXANDER G. DUCHART PROFESSIONAL SURVEYOR & MAPPER FLORIDA REGISTRATION NO. 5998</p>	<p>A. DUCHART LAND SURVEYING, INC.</p> <p>2403 VERMONT AVENUE EAST BRADENTON, FL 34208 aduchart@gmail.com 1-800-402-8768</p> <ul style="list-style-type: none"> • Boundary • Construction • Platting • ALTA • Topographic
JOB NO.	10-14-14		
ACAD FILE	RIVA-TRACE		
FIELD DATE			
DRAWN BY:	SD		
REVISIONS		<p><small>Reliable, On-Time Surveys. www.legaldescriptions.net</small></p>	

"UNLESS IT BEARS THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER, THE BOUNDARY SURVEY IS FOR INFORMATION ONLY AND IS NOT VALID".

THIS INSTRUMENT PREPARED BY:
Tim Cristello, Real Property Specialist, Property Acquisition Division
On Behalf of: Division Manager, Property Acquisition Division
1112 Manatee Avenue West, Suite 800
Bradenton, Florida 34205

PROJECT NAME: Mandarin Development San Miguel Cove Vacation
PROJECT # N/A
PID # 1918915359 (a portion of)

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

AFFIDAVIT OF OWNERSHIP AND ENCUMBRANCES

STATE OF Florida
COUNTY OF Manatee

BEFORE ME, the undersigned authority, this day personally appeared Peter R. Logan, as Vice President for MANDARIN DEVELOPMENT, INC., a Florida profit corporation, whose mailing address is 1651 Whitfield Avenue, Sarasota, Florida 34243 who, being first duly sworn, deposes and says:

1. That the undersigned, hereinafter called the "Grantor," is the owner of and has full authority to sell or encumber the property situate in Manatee County, State of Florida, more particularly described as **portion of Parcel Number 1918915359 in Exhibit "A"** attached hereto and incorporated herein by this reference (hereinafter "Property").

2. That the Grantor plans to convey an easement to **MANATEE COUNTY**, a political subdivision of the State of Florida, whose mailing address is Post Office Box 1000, Bradenton, Florida 34206 (hereinafter "Grantee").

3. That to the best of my knowledge, the only mortgages, liens, or encumbrances including, but not limited to, any leasehold interest.
Mortgage recorded in O.R. Book 2369, Page 3190

Corrective Private Dedication in Plat of Riva Trace, a Subdivision recorded in O.R. Book 2421, Page 5628.

4. That there has been no labor, material, or service furnished for improvement of the Property which remains unpaid, except as set forth in paragraph 3 of this Affidavit.

5. That there are no claims, demands, liens, or judgments outstanding against the Property and that the Grantor is not indebted to anyone for any such property, except as set forth in paragraph 3 of this Affidavit.

6. That the Grantor makes this Affidavit for the purpose of assisting the Grantee in the acquisition of the Property.

MANDARIN DEVELOPMENT INC., a Florida profit corporation

By: [Signature]
Printed Name: Peter R. Logan
Title: VP

SWORN to (or affirmed) and subscribed before me this 7th day of October, 2015, by Peter R Logan, as Vice-Pres for Mandarin Development, who is personally known to me or () who has produced _____ as identification.

Notary Public Seal: 
My Commission Expires: _____

[Signature]
NOTARY PUBLIC, State of Florida
Heather L Von Uhlit
Printed Name

THIS INSTRUMENT PREPARED BY:
Tim Cristello, Real Property Specialist
On Behalf of: Division Manager, Property Acquisition Division
Manatee County Property Management Department
1112 Manatee Avenue West, Suite 800
Bradenton, Florida 34205

PROJECT NAME: Mandarin Development San Miguel Cove Vacation
PROJECT#: N/A
PARCEL#: N/A
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PERMANENT UTILITIES EASEMENT

THIS INDENTURE made this ____ day of _____, 2015, between, **MANDARIN DEVELOPMENT, INC.**, a Florida profit corporation, whose mailing address is 1651 Whitfield Avenue, Sarasota, Florida 34243, 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 *nonexclusive, permanent easement for ingress, egress, construction, and maintenance of surface and/or underground drainage and utility facilities* over, under, and across the property situate in Manatee County, State of Florida, more particularly described as **portion of Parcel Number 1918915359** 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.

Signed, sealed, and delivered in the presence of:

MANDARIN DEVELOPMENT, INC., a Florida profit corporation

Heather Von Uhlit
Witness
Heather von Uhlit
Printed Name

By: [Signature]
Printed Name: Peter R. Logan

Jill A. Harlow
Witness
Jill A. Harlow
Printed Name

Title: VP
ATTEST: [Signature]
Secretary Signature

(Signature of two witnesses required by law.)

Printed Name: Carlos Beruff

(CORPORATE SEAL)

STATE OF Florida
COUNTY OF manatee

The foregoing instrument was acknowledged before me this 7th day of October, 2015, by Peter R Logan, as Vice-Pres for Mandarin Development who is (X) personally known to me or () who has produced _____ as identification.

Notary Public Seal: 

My Commission Expires: 12/14/15

Heather Von Uhlit
NOTARY PUBLIC, State of Florida
Heather L von Uhlit
Printed Name

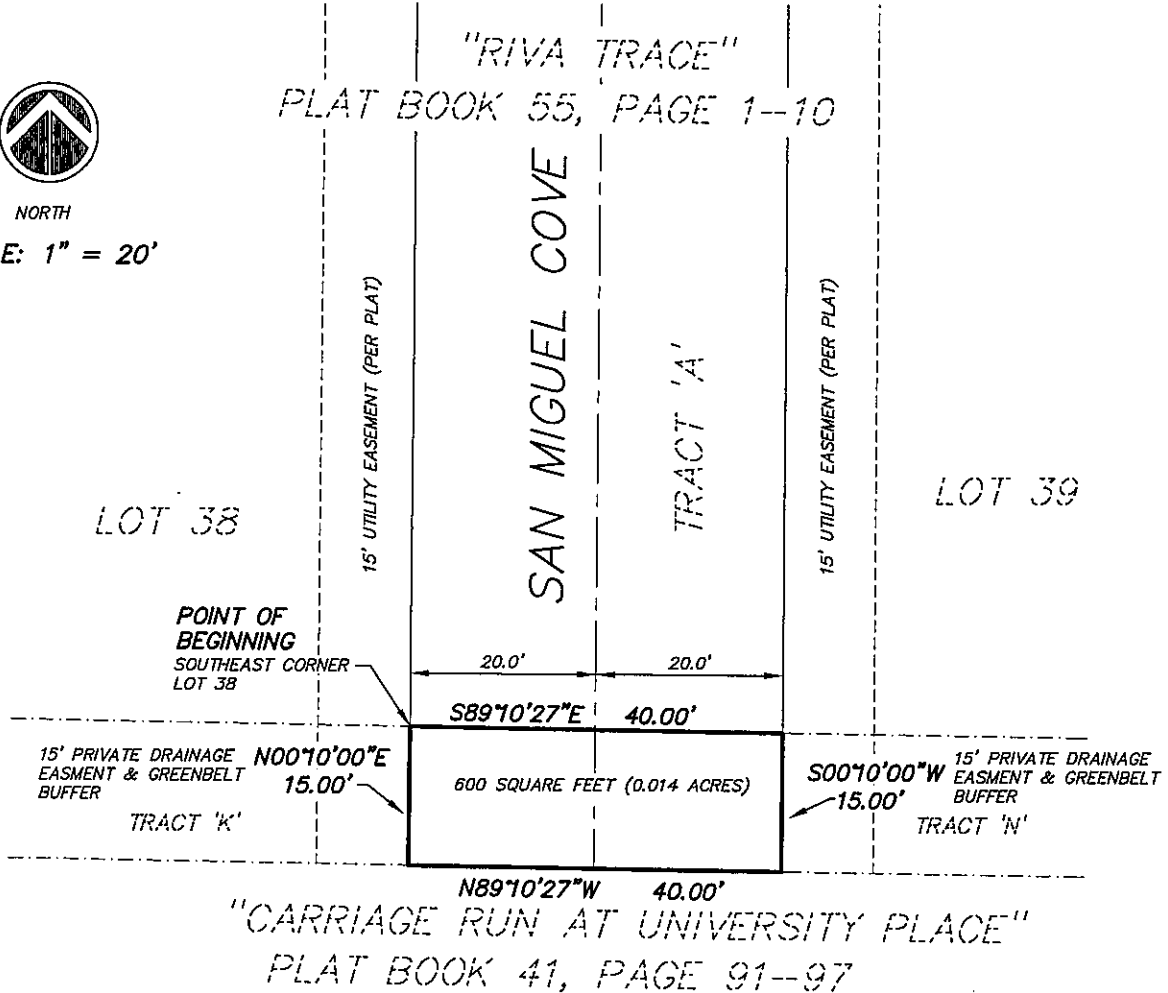
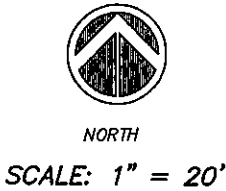
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"NOT A BOUNDARY SURVEY"
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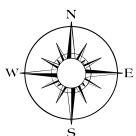


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JOB NO.	10-14-14	<p><i>"UNLESS IT BEARS THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER, THE BOUNDARY SURVEY IS FOR INFORMATION ONLY AND IS NOT VALID".</i></p>		<p><i>Reliable, On-Time Surveys.</i></p>	
ACAD FILE	RIVA-TRACE				
FIELD DATE					
DRAWN BY:	SD				
REVISIONS				<p>www.legaldescriptions.net</p>	



1 inch equals 50 feet

**RIVA TRACE
PERMANENT UTILITIES EASEMENT
AT SAN MIGUEL COVE
(Mandarin Development)**



DISTRICT 5 - VANESSA BAUGH



OFFICE OF THE COUNTY ATTORNEY

MITCHELL O. PALMER, COUNTY ATTORNEY*
Robert M. Eschenfelder, Chief Assistant County Attorney**
William E. Clague, Assistant County Attorney
Sarah A. Schenk, Assistant County Attorney**
Christopher M. De Carlo, Assistant County Attorney
Geoffrey K. Nichols, Assistant County Attorney
Pamela J. D'Agostino, Assistant County Attorney
Anne M. Morris, Assistant County Attorney
Katharine M. Zamboni, Assistant County Attorney

MEMORANDUM

DATE: August 26, 2016

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

THROUGH: Mitchell O. Palmer, County Attorney *MOP 8-26-16*

FROM: Pamela J. D'Agostino, Assistant County Attorney *PJD 8-26-2016*

RE: Vacation of 15-foot portion of San Miguel Cove Platted Roadway in Riva Trace Subdivision; Review Revised Staff Report Recommending Approval and Supporting Materials; CAO Matter No. 2016-0624

Issue Presented:

The County Attorney's Office (CAO) advised staff that further legal review of this vacation application was warranted based on staff's revised comments and revised recommendation that the vacation application be approved. At the August 2, 2016, land use meeting, the CAO requested that the Board of County Commissioners (Board) open and continue the public hearings on this vacation application and the companion zoning ordinance amendment to the September 1, 2016, land use meeting of the Board to enable this second legal review.

Brief Answer:

At this stage in the process, the applicable portions of Section 336.09 and 336.10, Florida Statutes, and the Manatee County Land Development Code (LDC) have been met. Mandarin Development, Inc., a Florida corporation (Applicant), and staff will need to ensure that the remaining procedures required by both of these statutes and the LDC are met as this application proceeds through the public hearing process to the Board. The decision to vacate this improved right-of-way is a business decision that the Board has the authority to make.

* Board Certified in Construction Law

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

Recommendation:

Various departments and divisions, including Building and Development Services (BADs), Survey, Public Safety, Emergency Management, Public Works and Transportation Planning, originally opposed this vacation application, but are now no longer objecting. Staff from these respective departments and divisions should be prepared to explain to the Board the factual circumstances supporting the modification of their recommendation, and how emergency response will not be negatively impacted by this vacation. Several of the staff recommendations are contingent upon confirmation by either the BADs Department or the CAO that the street vacation is consistent with the LDC and project stipulations. As this is primarily a planning determination, BADs should be prepared to provide this confirmation.

Although the Fire District initially responded as having no objection to the vacation application, on November 3, 2015, the Fire District objected to the vacation as an emergency access connection at this location was desired. That jurisdictional review is not attached to the Vacation Application Review Log. Staff should revise the log to reflect whether or not the Fire District still objects and be prepared to explain to the Board its recommendation despite any such objection.

Discussion:

This vacation application was originally submitted in October of 2014. The Applicant is the owner and developer of an eighty-six (86) lot single-family development. The 41.2 acre development is known as Riva Trace and is located west of I-75, east of Honore Avenue and bordered on the south by Carriage Run Subdivision of University Place. The platted road right-of-way is known as "San Miguel Cove" as shown on the plat of Riva Trace, recorded in Plat Book 55, Page 1, of the Public Records of Manatee County, Florida. It connects to "Meeting Street" in Carriage Run to the south. This private road is currently improved. On October 29, 2014, the Applicant requested vacation of a fifteen (15) foot by forty (40) foot portion of San Miguel Cove to eliminate an emergency connection between Riva Trace and Carriage Run. The total area sought to be vacated is approximately six hundred (600) square feet or 0.014 acres.

According to the vacation application, when the Riva Trace Project was considered by the Board, the neighboring property owners living in the adjacent community to the south (University Place) objected to the inclusion of an inter-neighborhood tie. The purpose of the application is to (1) "effect the wishes of both neighborhoods in eliminating an imaginary access point between the two neighborhoods," (2) "allow for the Riva Trace Homeowners Association to have the future opportunity to provide a landscaped buffer in this area" and (3) allow "the Riva Trace community to eliminate the ongoing expense of maintaining an unnecessary remote-operated access gate."

Joy Leggett-Murphy, Land Acquisition Division Manager, Property Acquisition Division,
Property Management Department

August 26, 2016

Page 3 of 4

Jurisdictional reviews were conducted by the various appropriate entities. In July 2015, Assistant County Attorney Sarah A. Schenk reviewed this vacation application. She noted that there were concerns regarding the vacation of this right-of-way and public safety. She instructed that prior to submitting the application to the Board, staff needed to prepare a report addressing the public safety concerns and containing a recommendation to the Board. In November of 2015, during the public hearing on the matter, the Applicant withdrew the vacation application. Subsequently, in June of 2016, the Applicant sought re-initiation of the vacation application.

In January 2015, this office advised staff that Chapter 177, Florida Statutes, authorizes a developer to dedicate areas of land to government entities by plat, but does *not* authorize a developer to convey lands to a private party (such as a homeowners association) by plat. Because the 2012 Riva Trace Plat purports to “convey and transfer” the roads to the Homeowners Association (HOA), the ownership of the streets by the HOA is legally questionable. This does not affect the right of the Applicant to request vacation of this street under Sections 336.09 and 336.10, Florida Statutes, nor does it affect the authority of the County to grant the request under those statutory provisions. The CAO cannot, however, offer title opinions as to the current ownership of the subdivision streets or the ultimate ownership of the vacated street in the event the request is granted.

The County is currently defending a lawsuit filed by the Applicant relative to this same development, as related to wetland buffers. Legal review of this vacation application was conducted, in part, to ensure that any action taken by the Board with respect to this vacation application would not negatively impact the County’s defense in the pending lawsuit.

Under Florida law, homeowners that purchase properties within a platted subdivision do so in reliance on the plat, and may, in some circumstances, acquire a private implied easement in areas described as access routes in the plat. *Bonfay v. Garner*, 445 So. 2d 597, 603 (Fla. 1st DCA 1984). Nevertheless, Sections 336.09 and 336.10, Florida Statutes, authorize the County to vacate streets in platted subdivisions in accordance with those provisions. Accordingly, the Board and County staff should recognize that the approval of this application may give rise to a legal dispute between the Applicant and the homeowners concerning those private rights. As the legal representative of County Government, the CAO is not in a position to render legal advice to private property owners as to the likely outcome of such a private dispute.

Conclusion:

There were few specific legal issues raised in this Request for Legal Services. Therefore the CAO has limited this legal review to identifying any errors or omissions that could give rise to a legal claim or case against the County. Except for matters that fall into the previous category, the CAO has not reviewed the vacation application, jurisdictional reviews or other documentation

Joy Leggett-Murphy, Land Acquisition Division Manager, Property Acquisition Division,
Property Management Department
August 26, 2016
Page 4 of 4

provided for accuracy, thoroughness, typographical errors, compliance with administrative procedures or requirements or commented upon the policy merits of the staff recommendation.

At this stage in the process, the applicable portions of Section 336.09 and 336.10, Florida Statutes, and the LDC have been met. The Applicant should be prepared at the public hearing before the Board to demonstrate how emergency access to Riva Trace would be achieved if the application is granted. If the vacation application is approved, Ordinance No. PDR-04-14(P)(R) must be amended to approve an amended preliminary site plan and amended stipulations related to the emergency access. The decision to vacate this improved private right-of-way is a business decision that the Board has the authority to make.

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:

Ed Hunzeker, County Administrator
Karen Windon, Deputy County Administrator
Dan Schlandt, Deputy County Administrator
Charlie Bishop, Director, Property Management Department
Tim Cristello, Real Property Specialist, Property Acquisition Division, Property
Management Department
John Barnott, Director, Building and Development Services Department
Robert Smith, Director, Public Safety Department
William E. Clague, Assistant County Attorney, County Attorney's Office
Sarah A. Schenk, Assistant County Attorney, County Attorney's Office



OFFICE OF THE COUNTY ATTORNEY

MITCHELL O. PALMER, COUNTY ATTORNEY*
Robert M. Eschenfelder, Chief Assistant County Attorney
Maureen S. Sikora, Assistant County Attorney**
William E. Clague, Assistant County Attorney
Sarah A. Schenk, Assistant County Attorney**
Christopher M. De Carlo, Assistant County Attorney
Geoffrey K. Nichols, Assistant County Attorney
Pamela J. D'Agostino, Assistant County Attorney
Anne M. Morris, Assistant County Attorney

MEMORANDUM

DATE: July 17, 2015

TO: Charlie Bishop, Director, Property Management Department

THROUGH: Mitchell O. Palmer, County Attorney

FROM: Sarah A. Schenk, Assistant County Attorney

Amly FOR MOP 7/17/15
7.17.15

**RE: Vacation Application #V-15-502
Applicant, Mandarin Development, Inc., 15-foot portion of San Miguel Cove
Platted Roadway in Riva Trace Subdivision; RLS 15-078 & RLS-15-197; CAO
File 8003-179 & 8003-195**

Issue Presented:

You have asked this office to review an application from Mandarin Development, Inc. to vacate a portion of an improved platted right-of-way known as San Miguel Cove pursuant to § 177.101, Florida Statutes and § 911 of the Manatee County Land Development Code.¹

¹ Since the filing of this application, the Manatee County Land Development Code has undergone revision. On June 4, 2015, the Board of County Commissioners adopted an Amended and Restated Land Development Code, including text of what was formerly § 911. All applications for street vacations received by the County prior to June 5, 2015 will be evaluated under § 911 of the old Manatee County Land Development Code. The amended and restated Land Development Code will be used for all applications received on or after June 5, 2015. The sections applicable to vacation applications in the amended and restated code include §§ 312, 331 and 332.

* Board Certified in Construction Law

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

Brief Answer:

At this preliminary stage in the process, portions of §§ 336.09 and 336.10, Florida Statutes, and § 911 of the Manatee County Land Development Code have been met. The Applicant and Staff will need to ensure that the remaining procedures required by both of these statutes and the Manatee County Land Development Code are met as this application proceeds through the public hearing process to the Board. The decision to vacate this improved right-of-way is a business decision that the Board of County Commissioners has the authority to make.

Facts:

Mandarin Development, Inc., a Florida corporation (hereinafter the “Applicant”) is the owner and developer of an 86-lot single-family development. The 41.2 acre development is known as Riva Trace and is located west of I-75, east of Honore Avenue and bordered on the south by Carriage Run Subdivision of University Place.

The platted road right-of-way is known as “San Miguel Cove” as shown on the plat of Riva Trace, recorded in Plat Book 55, Page 1, of the Public Records of Manatee County, Florida. It connects to “Meeting Street” in Carriage Run to the south. The road is currently improved.

Applicant has requested vacation of a 15-foot by 40-foot portion (containing approximately 600 square feet or 0.014 acres) of San Miguel Cove to eliminate an emergency connection between Riva Trace and Carriage Run.

Ordinance No. PDR-04-14(P)(R) passed and adopted by the Board on May 25, 2010, approved a revised Preliminary Site Plan for the Riva Trace Project and at the request of the then Applicant, Riva Trace LLC, contains a finding to support Specific Approval in Section 1, Findings of Fact, Subparagraph E, regarding a road design allowing a dead end street to exceed 800 feet in length. This Specific Approval is predicated upon a finding that emergency vehicles will have adequate access. Additionally, the stipulations for the revised preliminary site plan contain in Section 2, Subparagraph E.2, a requirement that any gates or emergency access points within or to the project shall be accessible to emergency service providers by either a remote control or a siren activated system in accordance with Manatee County Ordinance 04-30.

Discussion:

1. *Authority to Vacate Platted 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 of County Commissioners with the specific authority to vacate road rights-of-way within platted subdivisions that have been dedicated to the public. According to § 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:

....

(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; and

(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*.

(Emphasis added.)

2. *Procedure for Vacation of Platted Road Right-of-Way*

a. *Sections 336.09 and 336.10, Florida Statutes*

In addition to providing the authority to vacate platted road rights-of-way, §§ 336.09 and 336.10, Florida Statutes, also provide the procedure for vacating road rights-of-way within platted subdivisions. According to § 336.10, an applicant who requests that the Board vacate any right or interest in land must make such a request in writing. Before the Board may vacate any platted road right-of-way, in whole or in part, it “may adopt a resolution declaring that at a definite time and place a public hearing will be held to consider [a vacation application].” § 336.09, Fla. Stat. While adopting a resolution before conducting a public hearing on the matter is optional, the Board must comply with the following requirements pursuant to § 336.10:

- 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) include the applicant’s written request for vacation within the minutes of the commissioners,²
- 5) 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
- 6) record the following items in the deed records of the county:
 - i. “proof of publication of notice of [the] public hearing,”
 - ii. “the resolution as adopted,” and
 - iii. “proof of publication of the notice of the adoption of [said] resolution.”

b. Section 911, Manatee County Land Development Code

Section 911 of the Manatee County Land Development Code codifies the requirements of §§ 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 911

² Note that under § 336.10, the Board has the authority to vacate property upon its own motion.

requires that additional steps be taken in order to effect notice of the vacation application. In order to submit an application for vacation, an applicant must:

- 1) file a completed vacation application with the Public Transportation Department³ and pay the required filing fee (§§ 911.2.1 and 911.2.3, Manatee County Land Dev. Code),
- 2) provide title documentation and tax payment certification (§ 911.2.2, Manatee County Land Dev. Code), and
- 3) show that “the ownership or right of convenient access of persons owning other parts of the subdivision” will not be affected by the vacation requested (§ 911.2.2, Manatee County Land Dev. Code).

After the application has been submitted to the Public Transportation Department, staff must “within a reasonable time . . . prepare a written report and make a recommendation to the Board as to what action should be taken on the application.” § 911.2.4, Manatee County Land Dev. Code. This report should be “based upon the report and recommendation of the reviewing agencies.” § 911.2.4, Manatee County Land Dev. Code.

After the application is transmitted to the Board, staff must schedule a public hearing for consideration of the request for vacation. §911.3.1, Manatee County Land Dev. Code. Once the public hearing has been scheduled, the Applicant must:

- 1) provide notice by first class mail at least fifteen (15) days prior to the scheduled public hearing (excluding Sundays and legal holidays) to all land owners whose property is contiguous to the parcel sought to be vacated (§ 911.3.4, Manatee County Land Dev. Code),
- 2) “post a notice on a sign furnished by the [Public Transportation] Director on the affected property not less than fifteen (15) days nor more than thirty (30) days in advance of the scheduled hearing date” (§ 911.3.5, Manatee County Land Dev. Code), and

³ Section 911 of the Manatee County Land Development Code requires that vacation applications be furnished to the “Public Transportation Department.” Furthermore, applicants must work with the “Director” of that department to fully comply with the application process. Presently, no “Public Transportation Department” exists within Manatee County. Today, the Property Management Department and the Property Acquisition Division within that department is responsible for processing all vacation applications. All further references to the “Public Transportation Department” or “Transportation Department” or its “Director” fall upon the responsibility of the Property Management Department, its Property Acquisition Division and directors within same.

- 3) file an affidavit⁴ with the Public Transportation Department Director fifteen (15) days prior to the scheduled hearing affirming compliance with the mailing and posting of notices as required under §§ 911.3.4 and 911.3.5 (§ 911.3.6, Manatee County Land Dev. Code).

If after the conclusion of the public hearing, the Board grants the application, the Applicant must publish the appropriate notice of adoption pursuant to § 911.4 of the Manatee County Land Development Code and file the appropriate documents with the Clerk of the Court within thirty (30) days pursuant to § 911.5 of the Manatee County Land Development Code. If staff confirms that an applicant has complied with the vacation procedures above, as stated in §§ 336.09 and 336.10, Florida Statutes and § 911 of the Manatee County Land Development Code, then the application will be legally acceptable.

3. *Legal Review of Current Vacation Application*

a. *Background of Subdivision and Subject Lot*

In general, road rights-of-way dedications within Manatee County are maintained and held in trust by the County for the benefit of the public. The plat for the Riva Trace subdivision was recorded in 2012. On its face, the plat includes a written offer of dedication by the developer to the public. Additionally, the plat does include a written acceptance of dedication by Manatee County of the road rights-of-way 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

⁴ “[A] complete list of the names and last known addresses of the persons entitled to notice and the method by which notice was delivered” must accompany the affidavit. § 911.3.6, Manatee County Land Dev. Code.

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 Office of County Attorney). San Miguel Cove was validly offered as a dedicated platted road. Manatee County did not object to the dedication.

b. Compliance with Florida Statutes Sections 336.09 and 336.10

In review of the subject application, the Applicant provided a written application for vacation in compliance with § 336.10, Florida Statutes. Prior to vacation, the Board of County Commissioners 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. Staff, under the direction of the Property Management Department, must ensure compliance with this requirement that legal notice of the vacation application is provided to the public.

c. Compliance with Manatee County Land Development Code Section 911

The Applicant has filed a vacation application and paid the appropriate fees. Proof of such payment has been attached to the application. Copies of recorded deeds for the adjacent property were also included in the application confirming Applicant ownership.

This Request for Legal Services does not include a copy of the written report and recommendation by the Property Management Department which must be presented to the Board pursuant to § 911.2.4, Manatee County Land Dev. Code. Staff is advised to prepare this report for presentation to the Board.

Section 911.3 requires that the Applicant mail and post notice of the public hearing and provide an affidavit to the “Transportation Director”⁵ affirming that it has provided said notice before the hearing. Currently, the Applicant has not provided proof of compliance with either notice requirement. Additionally, the Applicant has not submitted an affidavit affirming its compliance with §§ 911.3.4 and 911.3.5 of the Manatee County Land Development Code. However, the Applicant could not have provided mailed or posted notice given that the hearing has yet to be scheduled. Staff must ensure that the Applicant ultimately complies with these requirements, once the public hearing has been scheduled.

⁵ See footnote 2 above.

Fifteen (15) days prior to the public hearing on the application, the Applicant will need to furnish staff with “a complete list of the names and last known addresses of the persons entitled to notice and the method by which notice was delivered” along with the required Affidavit of Notice. § 911.3.6, Manatee County Land Dev. Code.

d. Other Considerations

Listed below by reviewing entity are the responses which were received from the various agencies that are relevant to consideration of this application.

- 1) Building and Development Services. Robin Meyer, Development Services Division Manager/Zoning Official, submitted comments indicating that Ordinance No. PDR-04-14(P)(R) – Riva Trace, LLC./Riva Trace contains Findings of Fact in Item E concerning the need for the emergency access point since it was a part of a specific finding of fact when the Board of County Commissioners approved the revised Preliminary Site Plan for the Subdivision. The Staff of the Building and Development Services Department is not recommending that the requested street vacation be approved.
- 2) Public Works Department. Clarke Davis, Manager, Transportation Planning Division, raises concerns regarding the street design.
- 3) Property Management Department. Todd Boyle, Registered Surveyor, requested additional comments on fire emergency access prior to signing off on the street vacation request.
- 4) Emergency Medical Services. Steve Simpson, FPED, Emergency Management Officer, comments that EMS requires the powered gate in compliance with the applicable County Code (Section 2-28-2, Emergency Access through Automatic Security Gates; Remote Control Access System) in order to maintain emergency response to that segment of the neighborhood. The distance from the entrance boulevard on Honore Avenue to the roadway terminus without the emergency access point intervening is approximately 2,500 feet.

As mentioned earlier and explained in greater detail above in the respective comments of County Staff, there are concerns regarding the vacation of this public right-of-way and public safety. Prior to submitting this application to the Board, Staff needs to prepare a report which

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Property Management Department
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sufficiently addresses the public safety concerns and contains a recommendation to the Board pursuant to Section 911.2.4, Manatee County Land Development Code.

Conclusion:

At this preliminary stage in the application process, portions of §§ 336.09 and 336.10, Florida Statutes, and § 911 of the Manatee County Land Development Code have been met. The Applicant for this privately initiated street vacation, should be prepared at any future public hearing before the Board to demonstrate how emergency access to the Riva Trace subdivision would be achieved if the application is granted and the requested portion of San Miguel Cove is vacated. The Applicant would need to submit an application to amend Ordinance No.PDR-04-14(P) (R) if the street vacation application is approved and there are substantial modifications required to the previously approved preliminary site plan or the stipulations contained therein.

Applicant and Staff will need to ensure that the remaining procedures required by the applicable statutes and the Manatee Land Development Code are met as this application proceeds to the Board for final approval. The decision to vacate this improved right-of-way is a business decision that the Board of County Commissions has the authority to make.

This concludes my response to this Request for Legal Services.

Copies to: Ed Hunzeker, County Administrator
John Barnott, Director, Building and Development Services
John Agostinelli, Manager, Property Acquisition Division
Stephen Krivjanik, Chief, Emergency Management Services
Tim Cristello, Real Property Specialist, Property Acquisition Division
Clarke Davis, Transportation Planning Manager
Robin Meyer, Development Services Division Manager/Zoning
Pamela J. D'Agostino, Assistant County Attorney