

1. REQUESTED MOTION:

ACTION REQUESTED: Conduct a Public Hearing to adopt a Resolution on Petition to Vacate a 50-foot wide County Road Right-of-Way Easement located on Lot 10, Plan of Riverside subdivision, south of and abutting 27071 S. Riverside Dr., Bonita Springs, Florida. (Case No. VAC2004-00057)

WHY ACTION IS NECESSARY: To provide for the conveyance of ownership of the lot to the petitioner. **The vacation of this right-of-way will not alter existing traffic or drainage conditions and the right-of-way is not necessary to accommodate any future traffic or drainage requirement.**

WHAT ACTION ACCOMPLISHES: Vacates the right-of-way.

2. DEPARTMENTAL CATEGORY: 04
COMMISSION DISTRICT #: 5

5:00 #2

3. MEETING DATE:

01-11-2005

4. AGENDA:

- _____ CONSENT
- _____ ADMINISTRATIVE
- _____ APPEALS
- PUBLIC
- _____ WALK ON
- _____ TIME REQUIRED:

5. REQUIREMENT/PURPOSE:
(Specify)

- STATUTE F.S. Ch. 336
- _____ ORDINANCE
- ADMIN. CODE 13-8
- _____ OTHER

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER
- B. DEPARTMENT Community Development
- C. DIVISION Development Services
- BY: *[Signature]* 12/14/04

Peter J. Eckenrode, Director

7. BACKGROUND:

The Board of County Commissioners has adopted a Resolution to set a Public Hearing for 5:00 PM on the 11th day of January 2005.

The completed petition to vacate, VAC2004-00057 was submitted by Henderson, Franklin, P.A., and Cody Vaughan-Birch, Esq., as the agent for the petitioner, David Piper, Jr. The lot was originally conveyed by the petitioner's predecessor to Lee County to be utilized solely for roadway purposes. There have been no roadway improvements constructed within the easement and none are proposed in the future. It has therefore been determined that the roadway easement is no longer required. The easement does provide public access to Rosemary Creek and public access at the same location will be perpetuated through an "Agreement to Grant Easement and Stipulate to Buffering Requirements" document between the petitioner and City of Bonita Springs. An executed copy of the "agreement" has been provided, which will be held in trust by City of Bonita Springs pending the outcome of the Public Hearing. Additionally, an easement to Florida Power & Light providing maintenance access to existing facilities on site has been executed and is being held in trust by Lee County pending outcome of the Public Hearing. There are no objections to this Petition to Vacate. The Waterway Advisory Committee reviewed and approved the request at its September 16, 2004 meeting. (See attached Minutes.)

LOCATION: This site is located south of and abutting **27071 S. Riverside Dr., Bonita Springs, Florida**, located off of West Terry St. The County Road Right-of-Way is being described as Lot 10, a subdivision known as Plan of Riverside, lying in Section 35, Township 47 South, Range 25 East, according to Plat Book 8, Page 3, and recorded in Official Record Book 97, Page 67, of the Public Records of Lee County, Florida.

Documentation pertaining to this Petition to Vacate is available for viewing at the Office of Lee Cares. There are no objections to this Petition to Vacate. Staff recommends adoption of this resolution. Attached to this Blue sheet is the Resolution with exhibits.

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services Risk	G County Manager
<i>MAM Gibbs</i>	N/A	N/A	N/A	<i>[Signature]</i>	<i>DA 12/20/04</i> <i>OM 12/20/04</i> <i>Risk 12-20-04</i>	<i>[Signature]</i>

10. COMMISSION ACTION:

- _____ APPROVED
- _____ DENIED
- _____ DEFERRED
- _____ OTHER

Rec. by CoAtty
Date: 12/17/04
Time: 4:05
Forwarded To: *[Signature]*

12/20/04
10:00 am SLT
COMM. ADMIN
FORWARDED TO: *[Signature]*
12/20/04
4:30 pm

THIS INSTRUMENT PREPARED BY:

Department of Community Development
Development Services Division
1500 Monroe Street
Fort Myers Florida 33901

RESOLUTION NO. _____ FOR PETITION TO VACATE

Case Number: VAC2004-00057

WHEREAS, Petitioner David T. Piper, Jr. in accordance with Florida Statute (F.S.) Chapter 336 and Lee County Administrative Code (LCAC) 13-8, filed a Petition to vacate, abandon, close and discontinue the public's interest in the right-of-way or portion of a right-of-way legally described in the attached Exhibit "A"; and

WHEREAS, the Board of County Commissioners of Lee County, Florida held a Public Hearing concerning a Petition to Vacate on the 11th day of January 2005 at 5 p.m.; and

WHEREAS, a legally sufficient Affidavit of Publication regarding the Notice of Public Hearing on this Petition to Vacate was entered into the minutes of the County Commission Meeting and a copy of said Affidavit is attached as Exhibit "C"; and

WHEREAS, notice concerning the intent of the Petition to Vacate was provided in accordance with LCAC 13-8; and

WHEREAS, it appears that vacating, abandoning, closing or discontinuing the subject right-of-way or portion of right-of-way is in the best interest of the public and promotes the public's health, safety and welfare without invading or violating individual property rights; and

WHEREAS, the letters of review and recommendation provided by the various governmental and utility entities indicate granting Petitioner's request is appropriate and in accordance with F.S. Chapter 336.

NOW therefore be it resolved by the Board of County Commissioners as follows:

1. Petition to Vacate No. VAC2004-00057 is hereby granted.
2. The public's interest in the right-of-way or portion of right-of-way described in Exhibit "A" and graphically depicted in Exhibit "B" is hereby vacated, abandoned, closed and discontinued.
3. A Notice of Resolution of Adoption will be published one time within 30 days of adoption in a newspaper of general circulation. An Affidavit of Publication for the Notice of Resolution Adoption will be attached to this Resolution as Exhibit "D".
4. This Resolution will become effective upon the recording of a fully executed Resolution, including all exhibits referred to above, in the public records of Lee County, Florida.

This Resolution passed by voice and entered into the minutes of the Board of County Commissioners of Lee County, Florida, this _____ .

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

Deputy Clerk Signature

Chairman Signature

Please Print Name

Please Print Name

APPROVED AS TO FORM

County Attorney Signature

Please Print Name

EXHIBIT "A"
Petition to Vacate
VAC2004-00057

Legal Description of the Road Right-of-Way Easement to be Vacated:

Lot 10, a subdivision known as Plan of Riverside, lying in Section 35, Township 47 South, Range 25 East, according to Plat Book 8, Page 3, and recorded in Official Record Book 97, Page 67, of the Public Records of Lee County, Florida.

NORTH
ARROW

FOUNDATION LOCATION

FIELDBOOK

PAGE

LEGEND

- SET CONC. MON. W/CAP I.D.# 3553
- SET IRON PIN W/CAP I.D.# 3553
- FD. CONC. MON. W/CAP
- FD. CONC. MON.
- FD. IRON PIN
- ASSUMED ELEVATION
- △ BENCHMARK
- R RECORDED
- M MEASURED

CONT' REVERSE SIDE

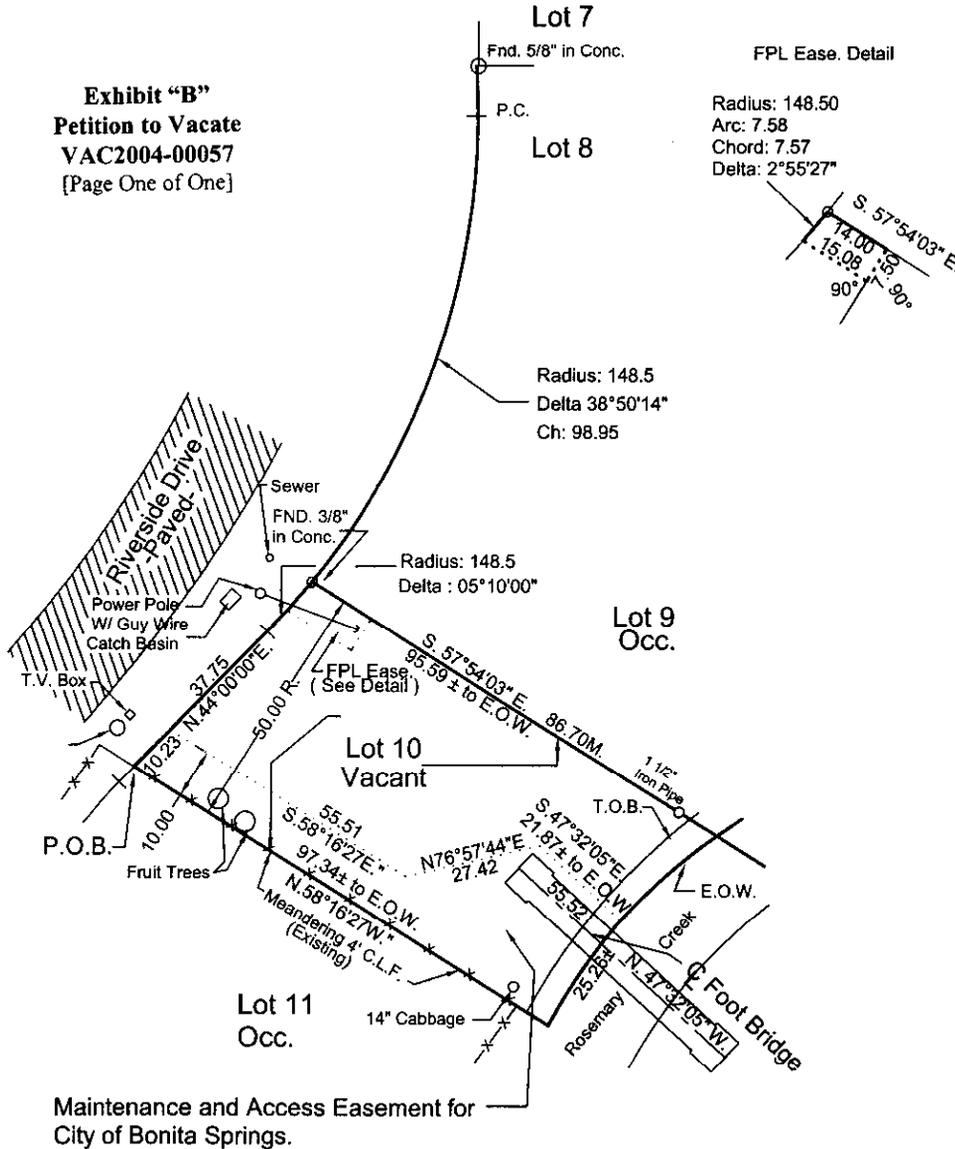
FINAL SURVEY DATE

LEGAL DESCRIPTION
(AS PROVIDED BY CLIENT)

This is a sketch of Lot 10, Plan of Riverside as recorded in Plat Book 8 Page 3 of the public records of Lee County, Florida.

SCALE
1"=30'

Exhibit "B"
Petition to Vacate
VAC2004-00057
[Page One of One]



Maintenance and Access Easement for
City of Bonita Springs.

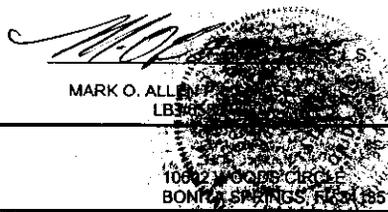
NOTES

1. REPRODUCTION OF THIS SKETCH IS NOT VALID UNLESS SEALED WITH AN EMBOSSED SURVEYOR'S SEAL.
2. NO INSTRUMENTS OF RECORD REFLECTING EASEMENTS, RIGHTS-OF-WAY, AND OR OWNERSHIP WERE FURNISHED THIS SURVEYOR EXCEPT AS SHOWN.
3. NO UNDERGROUND INSTALLATIONS OR IMPROVEMENTS HAVE BEEN LOCATED EXCEPT AS NOTED.
4. BEARINGS SHOWN HEREON ARE BASED ON
Centerline of foot Bridge being N. 47°32'05\"W.
5. THIS PROPERTY LIES IN FLOOD ZONE AE EL. 11.00. PER F.I.R.M. PANEL NO. 125124 0510C DATED 11/03/89
6. LAST DATE OF FIELDWORK 8/06/04
7. ALL DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.

CERTIFICATE

I hereby certify that the above described property was surveyed under my direction and the sketch of survey is true and correct to the best of my knowledge. This survey meets or exceeds the minimum technical standards set forth by the Florida Board of Land Surveyors, pursuant to Rule 61G17 - 6 Florida Administrative Code, and pursuant to Section 472.027 Florida Statutes. There are no visible encroachments other than those shown hereon.

MARK O. ALLEN
LBS#



MARK O. ALLEN, INC.
PROFESSIONAL LAND SURVEYOR

FAX: (239) 992-6070
TELE: (239) 992-8900

SHEET 1 OF 1
DWG. NO. 2004-166

DWN. BY

CHK'D BY

ORDERED BY

David Piper

**LEE COUNTY
WATERWAYS ADVISORY COMMITTEE
MINUTES OF September 16, 2004
DEPARTMENT OF PUBLIC WORKS
1500 MONROE STREET, FORT MYERS, FL 33901**

Those in Attendance:

Lee County Staff: Chris Koepfer, NR, Steve Boutelle NR, Margaret Lawson LCDOT, Tim Jones LC Attorney, Fred Johnson Parks & Recreation, Pete Eckenrode Lee County DCD, John Fredyma LC Attorney, Kris Kroslack LC Attorney.

Members: Roger Bradley, Kathy McGrath, Steve Brookman, Tom Myers, and Ken Stead,

Others in attendance: Gary Price City of Bonita Springs, David Cook Henderson, Franklin, Starnes & Holt, P.A., Sydney Schafer, and David Piper

CALL TO ORDER: Roger called the meeting to order 9:35 am.

APPROVAL OF MINUTES:

Ken Stead motioned for approval of Minutes from September 2, 2004.

Kathy McGrath seconded the motion.

Motion approved unanimously.

AGENDA CHANGES: None

PUBLIC COMMENT: None

VACATION REQUEST: Lot 10, Riverside Drive

Chris Koepfer noted that Lot 10, along Riverside Drive, appears that it will be split more or less in half, and allow half of lot 10 to go to lots 8 and 9 and the other portion with the footbridge would go to the City of Bonita Springs, as a pedestrian access across Rosemary Creek to City property.

Mr. David Cook, legal counsel representing Mr. David Piper who is the owner of lot 8 and 9. Mr. Cook states that this is a unique situation, where this committee is always concerned about giving up access to the water for the public. In actuality, your approval or recommendation of this matter today, will actually enhance public access to the water.

Mr. Cook gave a history of behind lot 10 and how it ended up being owned by the County and why we are now asking it to be vacated. Back in the early 60's Mr. Pipers, great grandfather, and great uncle donated lot 10 to Lee County, conveyed it by deed, that on the deed it said "solely for road purposes. The only use that lot 10 has ever saw, since that time, was a private access for Mr. Fregino, who bought that property that is now owned by the City, for the Park. There was a

footbridge not a road bridge, over Rosemary Creek to get to his house. Through Mr. Cook's review of the title, he never had title to lot 10 or even an easement to lot 10, Mr. Fregino just used it through the years without objection from anyone. Shortly before Mr. Fregino died, the City bought all of his property.

Mr. Cook added that Rosemary Creek fluctuates in depth, and size depending on the rains, but it is waterfront. However, the property itself, lot 10 has never been used for public access to anything, because there was no public property around it. Now there is a City park across Rosemary Creek, and one of the concerns the City has had, is accessing that. When the City bought the park property, they thought they had legal access to that property, although the title insurance policy does not insure that. Mr. Piper, heiress to the original dedicators, or donators of this lot, would like to get this lot back because the property was never used for the purpose that it was donated for, that is road purposes. Therefore, the reason Mr. Piper donated the property to the County was never fulfilled, so Mr. Piper as the heiress to the original donators is simply asking for it back.

In order to get this matter resolved in an amicable manner, Mr. Piper has entered into an agreement with the City; that if he gets lot 10 back he will simultaneously grant them an easement that will fulfill their needs to get access to the park, thus it will create public access to a piece of property that has a lot of water frontage. By recommending this to the Board of County Commissioners, hopefully approving it later you will take a situation where the public has no historical access now and create legal access to a park that surrounded by water.

Mr. Roger Bradley asked if there was other land access to this park property. Mr. Price answered that the railroad is sensitive about using their property for an access. Mr. Gary Price adds that they have received notice of a grant from the State to build a fishing/footbridge parallel with the railroad from the south side crossing the river, so there would be pedestrian and park access. Currently, without that access, the only other access would be across the river.

Mr. Steve Brookman asked if there was a time restriction on the original deed to turn it into a road. Mr. Cook responded that the County Attorney & himself have a difference of opinion on that, there wasn't a time restriction on the deed, there is a statute that exists, up until the 80's said that if you dedicate land and it's not used for it's intended purpose for 5 years you can ask for it back and the County must give it back.

Mr. Tim Jones added that for many years, the statute 255.22, it's orientated towards properties that have been donated to any local government for a specific purpose. If the property is not used for that purpose for a period of 60 months, the adjoining landowners can ask for it back, but it was discretionary with the County as to whether they gave it back. The principle reason for having this statute is to avoid the petition to vacate process and other bidding/sales requirements on Counties transferring properties. In the late 80's the legislator amended the statute and added some provisions and one of the provisions they added made it mandatory, the discretionary aspect of giving it away from the County. The legislator re-amended it again, to take the mandatory language out and make it discretionary again.

Mr. Sydney Schafer voiced his concerns regarding that the County, back in 1949, between lots 14 and 15 there was an easement there for water egress, at that time the County vacated those premises, which took away the only public waterway access at that time. Mr. Schafer's concerned that if it is agreed upon the way it is proposed, we would be taking away the only access. Mr. Schafer states that there are many boaters that come down with their canoes/kayaks.

Mr. Koepfer noted that on the agreement between Mr. Piper and the City of Bonita Springs, it specifies in #4 that the easement will be 10' wide, which differ from what the letter says. Mr. Cook responded, that another attorney for David drafted the agreement, before they actually went out and walked the property and had a surveyor.

Mr. Ken Stead voiced his concern that the impact to the residents in this subdivision may have felt that they have historical access to Rosemary Creek. Residents may have purchased in the area thinking they had that access, whether it was improved with a parking lot or a place where they could wheel their canoe/kayak and launch off the shore.

Mr. David Piper stated that he is a citizen but also a City Councilman for Bonita Springs, and abstained from anything that had to do with lot 10.

Mr. Roger Bradley asked if the bridge that exists there now, has the City improved it or built it. Mr. Price responded that Mr. Fergino had an old fallen down concrete bridge built on railroad ties, before he passed away we replaced the bridge.

Mr. Cook noted that the concern for loosing public access for kayaking is concern that would contravene the promise that was made, that it would be used solely for road purposes, we are expanding that limitation now allow kayaking, pedestrian, etc., along the easement area. It is a lot more expansive then the lot was to be used for. That was a two-way promise between the County and Mr. Piper's grandfather, the County got something free and did not fulfill their end of the promise, in Mr. Cook's opinion.

Mr. Jones stated that roads are just not for vehicles; roads are for pedestrians, horses, trains, bicycles, people carrying canoes/kayaks, etc., roads are for communication, you don't have to have a paved vehicle use for that property for it to be used for road purposes. This was a donation with a condition, that condition does not have a reverter clause in it, it is a contract. If we were to use it for something other than the road, the successor in interest to whoever gave it to us would have the right to stop us from that use, that would not mean that they would not have the right get it back. You have not seen the agreement between Mr. Piper and the City of Bonita Springs, the crooks of the agreement are; Mr. Piper will end up with another buildable lot made of part lot 9 and 10. Mr. Jones added that the County could donate this land to the City of Bonita Springs and let them do what they want with it and the County would be out of this entirely.

Mr. Stead motioned that the committee recommend with approval with the modification that an agreement is reached that the easement extends in some fashion all across the frontage of Rosemary Creek on lot 10.

Mr. Myers seconded the motion.

Ms. McGrath added that the public is going to get from the bridge and a canoe/kayak launch. What the City is going to benefit now from this is positive and the people will still have access to the river, which is more important than Rosemary Creek from Depot Park and from the footbridge.

Mr. Stead commented, if you have the entire front parcel in water access, it's precluded it becoming a parking lot, and it becomes a neighborhood access point.

Mr. David Cook stated that the agreement between Mr. Piper and the City of Bonita Springs now states that as soon as Mr. Piper obtains title he will grant this easement. Mr. Cook added if there is any concern that this obligation will not be fulfilled, Mr. Piper could grant this easement before he obtains title, which will be recorded immediately upon the vacation hearing.

Mr. Ken Stead withdrew his previous motion and Mr. Myers withdrew his second of the motion.

Ms. McGrath motioned to approve this vacation as presented, contingent that Mr. Piper delivers the easement prior to the vacation hearing.

Mr. Steve Brookman seconded the motion.

Mr. Brookman, Ms. McGrath and Mr. Bradley approved the motion.

Mr. Stead and Mr. Myers denied the motion.

OLD BUSINESS: None

NEW BUSINESS: Post Hurricane clean-up efforts

Chris Koepfer noted that the week after Charley came through, a lot of damage assessment was done, as far as waterways are concerned. Countywide County owned channel markers - 24-30 channel markers are missing, and an additional 30 or 40 that have significant damage that require repairs.

Chris also noted that funding (\$500,000.00) has been applied for from the USDA to clean up debris in the waterways. Chris added the number to the Request for Assistance, for waterway clean up is 239-694-3334.

Chris Koepfer added that the Manatee Protection Plan has been approved by the State.

Steve Boutelle stated that most of the discussion in the last 2 years has been related to boat facility sightings, essentially it defines, that allowed us to get Federal endorsement, it defines the number of slips that can be built as ratio to your shoreline length. The plan also defines how many slips you get per 100' of shoreline depends how the property scores in a matrix, of manatee risk or benefit. There are also additional considerations for funding of law enforcement, as an enhancement.

Waterway Advisory Committee
September 16, 2004

Ken Stead asked if it was appropriate as a committee to do a resolution in support of Commissioner Janes position to pursue the purchase of Pineland Marine aggressively. Ken added that the Wells' lost their dock & boathouse and he lent them floating docks so a staging area could be set up for the outer islands. (Note: 9/21/04 – No previous Resolution performed by WAC regarding purchase of Pineland Marina within the last few years. CK)

**Ken Stead motion to pursue the purchase Pineland Marine.
Kathy McGrath seconded the motion.
Motion approve unanimously.**

NEXT MEETING: October 14, 2004 at 9:30 a.m.

MEETING ADJOURNED: 11:45 a.m.