City of Fort Lauderdale

City Hall
100 North Andrews Avenue
Fort Lauderdale, FL 33301
www.fortlauderdale.gov

Meeting Minutes

Wednesday, April 19, 2017

1:30 PM

City Commission Conference Room

City Commission Conference Meeting

FORT LAUDERDALE CITY COMMISSION

JOHN P. "JACK" SEILER Mayor - Commissioner
BRUCE G. ROBERTS Vice Mayor - Commissioner - District I
DEAN J. TRANTALIS Commissioner - District II
ROBERT L. McKINZIE Commissioner - District III
ROMNEY ROGERS Commissioner - District IV

LEE R. FELDMAN, City Manager
JOHN HERBST, City Auditor
JEFFREY A. MODARELLI, City Clerk
CYNTHIA A. EVERETT, City Attorney

ROLL CALL

Present: 5 - Vice Mayor Bruce G. Roberts, Commissioner Dean J. Trantalis, Commissioner Robert L. McKinzie, Commissioner Romney Rogers, and Mayor John P. "Jack" Seiler

QUORM ESTABLISHED

Also Present: City Manager Lee R. Feldman, City Clerk Jeffrey A. Modarelli, City Attorney Cynthia A. Everett, City Auditor John Herbst, and Sergeant at Arms Keven M. Dupree

CALL TO ORDER

Mayor Seiler called the meeting to order at 1:40 p.m.

No e-comments were submitted for this meeting

CITY COMMISSION REPORTS

Members of the Commission announced recent and upcoming events and matters of interest.

Medical Marijuana Legislation

The Commission discussed the State Legislature's recent work on the Constitutional Amendment regarding the legalization of medical marijuana and goal of minimizing any potential abuse. Commissioner McKinzie commented that due to zoning laws, unincorporated areas near the City could be more vulnerable. Vice Mayor Roberts noted the importance of coordinating with local municipalities to determine the actual medical needs of patients requiring medical marijuana, and whether out-of-state visitors can fill prescriptions at municipal marijuana dispensaries. He emphasized the need to prevent a situation similar to former "pill mills" in South Florida. City Manager Feldman confirmed this item will be on the May 2, 2017 Commission Conference Agenda.

Metropolitan Planning Organization (MPO):

Vice Mayor Roberts gave the Commission an update on an MPO Board meeting he attended with Commissioner Rogers about the MPO's upcoming visit to Washington, D.C. The visit will address long-range transportation plans for the area, funding needs and the Congressional delegation's legislative priorities.

Vice Mayor Roberts discussed his meeting at the Executive Airport with Director of Transportation and Mobility Diana Alarcon. The meeting focused on the data and information from the Vision Zero Plan, which will be included in the MPO's recommendations for requesting federal dollars.

Commissioner Rogers discussed conversations with MPO regarding building a tunnel for the Brightline railway line. He stated it would provide an opportunity for a mile long linear greenway that would benefit residents, the boating industry, and commuters. There was a consensus it would benefit all stakeholders.

Beach Events

Commissioner Roger requested Staff put together data to give the Commission a clear picture of event requests to include the request, timeframe, setup and breakdown. This will enable the Commission to determine and control the number and types of events. Commissioner Rogers suggested putting the events out to bid, allowing the revenue generated to cover event repairs and expenses. Commissioner Trantalis concurred with the need to know the seminal events requested annually and their complete timeframes.

Provident Park Events

Commission McKinzie discussed Movie Night at Provident Park and the need to promote more attendances. He suggested enhanced publicity, including direct mailers, similar to those for concerts. He commented on the positive turnaround in Provident Park as a result of programming, stating it is now an active park utilized by the surrounding community. The community appreciates ridding this area of drugs and crime.

Northwest Economic Improvement

Commissioner McKinzie discussed the positive economic impact of Walmart in the Northwest and related development items in the area. He stated crime is down generally as a result, noting retail crime had a small increase due to the establishment of the primary retail center and its expansion due to the resolution of previous permitting issues.

Off Shore Drilling Resolution

Commissioner Trantalis discussed the possibility of the Commission passing a resolution in opposition to drilling off the east coast of South Florida, stating over 120 Florida east coast communities have passed this type of resolution. Mayor Seiler confirmed he would like to be involved in this effort only if it impacts the coastal area of the City. City Attorney Everett stated she did not know the details involved.

Commissioner Trantalis confirmed he would forward the appropriate information to City Attorney Everett.

One-Stop Shop

To address blight in the community, Vice Mayor Trantalis asked City Manager Feldman about quotes received for demolishing the One Stop Shop building. City Manager Feldman confirmed this issue is scheduled for discussion at the May 16, 2017 Conference Meeting.

Tortuga Music Festival

Commissioner Trantalis confirmed the positive feedback received on relocating the volleyball nets further north on the beach. It assisted businesses in the area and was well received by the community. Going forward, businesses in the area would like to keep this aspect of the event in place. City Manager Feldman stated this involves addressing permitting issues with the State and Staff is addressing. Mayor Seiler recommended keeping volleyball locations at both the north and the south ends of the event.

Commissioner Rogers commented on items damaged during the event, including a street light that had fallen off a pole on Sea Breeze Boulevard and a portion of a damaged seawall. He commented that the event coordinator escrow deposit should be used for those repairs.

3012 Granada Street Building

Commissioner Trantalis discussed the demolishment of the Key West Style Guest House building formerly located at 3012 Granada Street. He stated although not designated a historic building, it was listed in Florida's Master Site File and in the 2008 Architectural Resources Survey. Commissioner Trantalis said a demolition permit for the structure was issued in 2008. Code Enforcement was contacted but by the time Code Enforcement arrived, the building had already been demolished. In response to Mayor Seiler, Commissioner Trantalis confirmed the permit was not in the possession of the original requester. He asked City Manager Feldman about available enforcement proceedings against owners and developers for these types of properties.

City Manager Feldman confirmed the permit had expired, deferring to Anthony Fajardo, Director of the Department of Sustainable Development. Mr. Fajardo stated there was a subsequent permit that was not valid. Mr. Fajardo gave a brief description of what occurred, stating the matter will be brought before the Special Magistrate who would level the appropriate fines. He stated the maximum fine is $500 per day. Further discussions continued on this issue.

Commissioner Rogers confirmed there is now a Historic Preservation Officer on Staff who should address these types of situations going forward. Commissioner Trantalis reiterated the need to improve the process to protect these types of properties.

Mayor Seiler stated there should be a heightened sense of penalties and urgency for dealing with historic properties. City Manager Feldman noted the Historic Preservation Officer is working on the City's inventory, stating penalties are limited to what the State allows. Discussions continued regarding imposing penalties for these types of situations.

City Attorney Cynthia Everett noted two separate issues:

- The maximum State fines regarding code enforcement matters; and

- The issue of the interim timeframe existing prior to the historic designation of a property and application for a demolition permit.

Commissioner Rogers and Commissioner Trantalis concurred with adding an additional layer to the permit process. It would identify whether a property is or has the potential to be designated as a historic property, requiring input from the Historic Preservation Officer.

Mr. Fajardo discussed a State Statute requirement limiting penalties to $5,000 for violations that cannot be remedied. Commissioner Trantalis requested City Attorney Everett to pursue the "zoning in progress" issue, acknowledging the need to be proactive. City Attorney Everett confirmed. There was a consensus on the need to be proactive on this issue.

Bryan Homes:
Commissioner Trantalis inquired about Bryan Homes. City Manager Feldman stated things are going as planned. A new roof has been installed along with a new HVAC system. The renter is targeting a June-July opening and they are current on rent.

Joint Workshop with Board of the Broward County Commissioners
Commissioner Rogers talked about the possibility of a downtown Convention Center being a topic of discussion at the upcoming meeting with the Board of Broward County Commissioners (Board) scheduled for May 9, 2017. He stated he has spoken with some members of the Board, requesting them to have an open mind on this opportunity.

Commissioner Rogers said those conversations included the possibility of a Convention Center in the western area of the County, near Sawgrass Mills and the BB&T Center. However, hoteliers may not agree. Discussions continued on the Convention Center requiring a four-star hotel in order to be considered "convention quality". The possible relocation of the Convention Center and its impact on traffic, transportation, current restrictions at the existing location, and other opportunities were discussed. Commissioner Rogers asked the Commission be prepared to discuss this at the May 9, 2017 meeting. City Manager Feldman noted this would be an item on the May 4, 2017 Conference Meeting, prior to the May 9, 2017 Joint Workshop.

Vacation Rentals

Mayor Seiler commented on the current legislation in the State House of Representatives regarding vacation rental legislation, noting it may be losing traction. Commissioner Rogers stated local realtors are in opposition to the City Ordinance. Vice Mayor Roberts stated he received a communication from realtors in support of the reduction in registration fees.

Stranahan High School

Commissioner Rogers commented on the upcoming May 22, 2017 School Board Meeting at Stranahan Media Center to address necessary work at Stranahan High School. City Manager Feldman stated there has been no response to the Resolution regarding the City's position on this issue, using impact fees or revenue from Edgewood. As a means of follow-up, City Manager Feldman suggested the Commissioners contact their respective Broward County Commissioners. Commissioner Rogers discussed the history relating to the bond and Stranahan High School. Discussions continued on the School Board maintaining their facilities and the need to specifically address the Stranahan High School cafeteria.

17-0491 Communications to the City Commission

BEACH BUSINESS IMPROVEMENT DISTRICT BOARD

Communication to the City Commission
April 10, 2017

Motion made by Mr. Cook, seconded by Ms. McDairmid to recommend the City provide the same amount of matching funds for the BID Ambassador program, as it do for the Downtown Development Authority Ambassador program. In a voice vote, motion passed unanimously.

Motion made by Mr. Cook, seconded by Ms. Lee, to request a joint meeting with the City Commission to discuss events on the beach. In a voice vote, motion passed unanimously.

Mayor Seiler asked City Manager Feldman how much is provided to the Downtown Development Authority Ambassador Program. City Manager Feldman stated $100,000 and it comes out of the General Fund. Commissioner Rogers raised the issue of the need. Commissioner Trantalis stated he is unaware of any issue in need of being addressed on the beach.

Don Morris, Area Manager for the Beach Area Community Redevelopment Agency, stated this was discussed at the Beach Improvement District's (BID) last workshop. It is a second tier priority and there is perception on the BID Board that there needs to be more presence on the beach, both in terms of security and people to promote goodwill and assist visitors new to the City. Mr. Morris noted the Northwest Progresso Flagler Heights Community Redevelopment Agency (NWPFH CRA) also would like to have an Ambassador Program. He stated the NWPFH CRA, the Beach CRA, and the Downtown Development Authority (DDA) will come together under one Request for Proposal (RFP) and will be bringing it forward to the Board. Discussions continued on the Convention and Visitors Bureau (CVB) and the Tourist Development Tax Board as an avenue to fund this request.

There was a consensus that this request would be a topic of discussion at the BID's request for a Joint Workshop with the Commission.

CONFERENCE REPORTS

CF-1 17-0484 South Side School Update

Commissioner Rogers discussed the history of the work done by Friends of Southside (Friends), their 501C3 status, importance of having programming in place and being immediately activated. He requested City Manager Feldman to have all first floor programming activities operational prior to the ribbon cutting. It was recommended that City Manager Feldman ensure Staff and Friends work together, combining their areas of expertise to achieve this goal.

OLD/NEW BUSINESS

BUS-1 17-0425 Preliminary Canal Dredging Rate Study Presentation

City Manager Feldman gave the Commission an overview of canal management. He acknowledged work done with the Budget Advisory Board (BAB) and the consultant, Stantec Consulting Services, formerly Burton & Associates. The BAB recommended funding the dredging with an ongoing assessment. Michael Burton gave a presentation on the methodology used. City Manager Feldman noted the presentation was also given to the BAB on April 18, 2017. In response to Mayor Seiler's question, City Manager Feldman stated a presentation has not been made to the Marine Advisory Board.

Mr. Burton presented Stantec's PowerPoint presentation, noting their assessment contained only City owned canals. There are 57 miles of City-owned canals, both navigable and drainage, noting drainage canals do not connect to navigable canals. He said some canals are not owned by the City, i.e., they are owned by the County, Water Management District, or Army Corps of Engineers.

After discussions with City Manager Feldman, it was determined the cost of dredging drainage canals should be borne by the Stormwater Fund, with a transfer into this program that addresses dredging of navigable canals. The presentation only discusses the cost of dredging navigable canals. There are over 5,200 parcels that front navigable canals, benefit from the canals, and are included in the assessment program presentation. The slide presentation illustrated the following points:

2017 Rate Study Process
Revenue Requirement
Drying Site Options
Revenue Requirement Findings
Revenue Requirement with Minimum Reserve Balance
Revenue Requirement with No Minimum Reserve Balance
Method of Cost Recovery
Assessment/Fee Basis Survey
Equivalent Benefit Unit (EBU) Calculation
Monthly Assessment/Fee: Scenario 1 - Minimum Reserve Fund Balance
Monthly Assessment/Fee: Scenario 2 - No Minimum Reserve Fund Balance
Next steps

City Manager Feldman stated the BAB has recommended Scenario 2 - No Minimum Reserve Fund Balance.

In response to Commissioner Trantalis's question and City Manager Feldman's comments on the location of the current drying beds, Brandy Leighton, Public Works - Engineering Project Manager II, explained aspects of current drying beds, stating drying times range from 3-4 days up to one week. It is a constant cycle entailing drop off and pickup. The disposal process and associated costs were also discussed. City Auditor John Herbst commented on aspects of the cost recovery function for drying beds at the existing site.

In response to Commissioner Trantalis's question, Alan Dodd, Deputy Director of Public Works, confirmed canal dredging would only be in the center third of canals, down 3-4 feet to the mean water level. If necessary, adjacent property owners would be responsible for dredging the canal portion from the center of the canal to their property. The seven-year cycle was based on current silting rates, noting some areas are higher and others lower.

City Manager Feldman acknowledged previous dredging was done on an as needed basis and was based on a list not necessarily reflective of need. The proposed dredging would be done over five to six years, and year seven would reassess need. In response to Commissioner Roger's questions about engineering theory related to permitting, Mr. Dodd expounded on permits being five years in duration, establishing a new baseline, and re-permitting for the next five years. Vice Mayor Roberts commented after the initial five years, rates may be able to be adjusted downward.

In response to Mayor Seiler's question, Mr. Dodd stated the Army Corps of Engineers issues five-year permits along with the Florida Department of Fish and Wildlife. Reasons for their lengthy process and not issuing extensions were discussed and included the need to determine impact on endangered species and fish habitats.

There was consensus this issue needs to be communicated to impacted residents. City Manager Feldman noted the timeframe issues involved relating to budgeting, notices and deadlines for legal requirements. Commissioner Rogers commented on non-City owned canals and issues related to equity. Mr. Burton noted the average assessment per house would be $13-$17 per month.

Assessing City owned parcels was discussed. Commissioner Rogers voiced his concern regarding consideration of all details involved. Vice Mayor Roberts discussed concerns over the short timeline involved for following the required legal process and educating the public. He suggested waiting a year. Mayor Seiler concurred, stating it also needs to go before the Marine Advisory Board.

City Manager Feldman recommended a decision at the July 11, 2017 Commission Meeting about moving forward with adoption of a preliminary resolution, subsequent to preliminary feedback from constituents. City Manager Feldman discussed an informational document each Commissioner will use to inform the public, stating it would read ***"a special assessment on the tax bill with no minimum reserve"*.** The Commission concurred.

Mayor Seiler recognized Charlotte Rodstrom, 66 Nurmi Drive, who asked about issues relating to the property owner portion of canals, requesting the Commission be prepared to address those questions from the public. Mr. Dodd stated the City is dredging the center third of the canals in order to not impact property seawalls, the standard adopted by the Marine Advisory Board. He said property owners can make private arrangements for dredging the remaining portion of the canal up to their dock either with the City's contracted dredging company or a dredging company of their choice. Further discussions continued on this issue.

Mayor Seiler recommended moving this forward with a goal of July 11, 2017.

A copy of Mr. Burton's presentation is attached to these minutes.

BUS-2 17-0218 Discussion of Right-of-Way Issues in Riviera Isles

Mayor Seiler recognized Assistant City Attorney Lynn Solomon, who gave an overview and review of the ownership and title on the strip of land located between Sunset Lake and Riviera Boulevard. Assistant City Attorney Solomon reviewed the original Riviera Plat (Plat Book 6, Page 17) done in 1925 by the Fort Lauderdale Riparian Company (Plat), stating the strip of land at issue is not noted on the Plat.

Commissioner Trantalis clarified the point at issue illustrated by the red arrow on the handout given to the Commission was not accurate. He pointed out the strip of land at issue. Assistant City Attorney Solomon recommended filing a declaratory action, acknowledging a quiet title action could also be filed as suggested by Commissioner Trantalis. She pointed out the language on the Plat *"dedicating the land in fee simple to the public forever"*. Assistant City Attorney Solomon discussed the starting point of this analysis is to determine the intent of the dedicator when creating the 100-foot right-of-way, stating it did not designate the use of the strip of land.

Assistant City Attorney Solomon reviewed case law that would apply if

the strip of land followed the contour of the lake. The strip of land at issue does not follow the contour of the lake. She stated because the City owns the road in fee simple and the strip of land is an accretion built up over time, the City owns the land under riparian law.

Mayor Seiler recognized Dr. Nancy Gassman, Assistant Public Works Director, who stated when the land was developed, it was solid land and canals were created as part of the development. It would include Sunset Lake as indicated in historic pictures. Dr. Gassman suggested the building of the seawalls may have been for moving fill material from the creation of the canals to the house pads and as a barrier to hold that fill in place. She stated this is conjecture and there is no evidence to prove.

Mayor Seiler commented that the dock usage is under an agreement with the City. Assistant City Attorney Solomon noted in the original dedication, there was a reservation of riparian rights in favor of the abutting parcel owners. Case law indicates riparian rights take precedence over the property rights of the City, including access to the water for numerous activities such as boating, fishing, and dockage.

Commissioner Trantalis raised the issue of a prescriptive easement. Assistant City Attorney Solomon noted the difference in the *Burkart v. City of Fort Lauderdale* case was a dedication of an easement as opposed to this situation that is a dedication in fee simple.

Discussions continued on the original intent of the dedication, i.e., to benefit all owners in Sunset Lakes, not just abutting property owners, or owners without access to the water. Assistant City Attorney Solomon recommended getting a Guardian ad Litem for all property owners. Mayor Seiler discussed his concerns with this recommendation.

Commissioner Trantalis stated the current issue relates to who will pay for the replacement of the seawall. He stated the homeowners desire to have the City give them the land and they will pay for and maintain the seawall. Discussions continued on the inability to get title insurance, the recommendation to do a quiet title action, and appointing a Guardian ad Litem.

Discussions continued on the cost of addressing the seawall, those responsible for paying the costs, the high cost due to the seawall's infrastructure issues, and the necessary easements should the land be deeded to the three homeowners via a quiet title action.

Prior to a cost-benefit analysis, Mayor Seiler recommended

Commissioner Trantalis and City Attorney Everett meet with the three property owners to address the following:

- Ensuring proper construction to address existing infrastructure; and
- The legal requirements for addressing the seawall replacement, including the permanent location of the existing pump station.

Commissioner Trantalis acknowledged this had been discussed with the three homeowners. He confirmed he would coordinate a meeting with the three property owners, Assistant City Attorney Solomon and Dr. Gassman to confirm understanding and agreement by all parties. City Attorney Everett asked the meeting also include any legal representation of the three homeowners.

Commissioner Trantalis questioned the City's authority to enter into an agreement with those property owners. Commissioner Rogers recommended getting a title commitment to ascertain what is required. Further discussions ensued. Mayor Seiler noted the only party who would challenge a title would be the City as a result of adverse possession.

Assistant City Attorney Solomon stated the results of a title search determined the waterway is owned by the individual owners of the subdivision, subject to City easements. Assistant City Attorney Solomon expounded on the subsequent instructive case law. Further discussions ensued on obtaining a title policy and a viable quitclaim deed.

Ownership of Sunset Lake was discussed. Assistant City Attorney Solomon stated the State of Florida is claiming an interest in Sunset Lake as noted in the letter passed out to the Commission.

A copy of this letter is attached to these minutes.

Discussions continued on the issue of the State claiming an interest in Sunset Lake impacting a future item coming before the Commission regarding the building (located next to Riviera Towers) requesting installation of 65 foot poles into the canal. This was agreed to before the Marine Advisory Board.

A member of the public, Barbara Walker, confirmed for Mayor Seiler this was being requested in order to dredge silt caused by City pumps. Mayor Seiler stated there would be no cut off of navigation in that canal and requested City Attorney Everett to have a meeting to address this issue. City Attorney Everett confirmed.

Assistant City Attorney Soloman confirmed for Commissioner Trantalis that Four Seasons Condominium had to deal with the State on matters relating to Sunset Lake. Ryan Henderson, Assistant to the City Manager, commented on the efforts by the attorney for the Four Seasons condominium. Assistant City Attorney Soloman confirmed Sunset Lake is a navigable body of water and confirmed she would follow-up with the appropriate State personnel.

Commissioner Trantalis raised the issue and requested confirmation as to who owns the canals in Riviera Isles, noting the element of *"hostile"* may not exist as it relates to adverse possession.

BUS-4 17-0515 Economic Development & Business Engagement, Assistance, and Mentorships (BEAM) Program Update

Anthony Fajardo, Director of the Department of Sustainable Development, addressed the Commission, introducing those in attendance who partnered in this effort. Mr. Fajardo introduced Jeremy Earle, Deputy Director of the Department of Sustainable Development, who presented to the Commission. Mr. Earle acknowledged Economic and Community Investment (ECI) Division partner representatives and Staff present, thanking them for their outstanding support.

The presentation focused on the efforts of the Economic and Community Investment (ECI) Division and Business Engagement, and the Assistance & Mentorships Program (BEAMs) including :

- Economic Development Updates;
- Fort Lauderdale Business Engagement, Assistance and Mentorships Program; and
- Challenges to our economic development efforts.

A copy of the Mr. Earle's presentation with detailed information on the above is attached to these minutes.

In response to Commissioner Trantalis's question, Mr. Earle stated they have three sessions of strategic planning with Sister Cities to clarify their mission and goals. This will assist in addressing Goal 7 of the City's Strategic Plan. There is an 18-month vision plan being worked on by the City and Sister Cities and will allow the presentation of a budget to the Commission. The budget will be directly tied to the activities for promoting business development internationally.

In response to Commissioner Roger's question about the meaning of Certification for the Business Academy Pilot Programs, Mr. Earle

expounded on the three types of certifications:

Certification A applies to companies with gross revenue less than $250,000 annually that will be targeted with SCORE, Counselors to Americas Small Businesses, and Rafael Cruz, the Regional Director of Operations for the Florida Small Business Development Centers (SBDC) to assist in creating a business plan; developing a budget and financial plan; effective employee selection; customer service; and developing a sales strategy.

Certification B is a series of executive level workshops for established businesses (roughly defined as a company in business for 2+ years, with gross revenue of +$250,000). This certification, primarily presented by SBDC, will be a combination of programs that are targeted to provide the knowledge and techniques necessary for businesses to grow. Potential topics will include: Strategic Outlook; Introduction to Sales/Marketing; Relating to the Customer; and Financial Management/Capital Expansion.

Certification C is targeted for businesses engaged in international commerce, the import/export business, or businesses seeking to gain entry in the global market. Potential topics will cover five primary domains of practice: global business management; international trade development; export market planning; supply chain & logistics; and trade finance & payment terms. Participants will be introduced to State and Federal government resources.

Mr. Earle confirmed business owners completing Certification Programs will attend a Commission Meeting and a Certificate of Recognition will be awarded.

In response to Commissioner McKinzie's inquiry as how to become a partner, Mr. Earle stated there is no cost involved. However, they do not wish to duplicate existing partner services. Mr. Earle expounded on the strength of current areas of expertise, with the goal of leveraging all strengths and resources to ensure no duplication of efforts.

Commissioner McKinzie asked how his District could be involved in this infusion of expertise and how the Commission can assist in improving BEAM's participation in District III. He asked how the Negro Chamber of Commerce and the Broward Minority Builder Association are participating in this process. Mr. Earle confirmed this is a City-side program and they have spoken to Jonathan Brown, CRA Manager for the Northwest Progresso Flagler Heights Community Redevelopment Agency (NWPFH CRA) about including the NWPFH

CRA businesses as part of this program. City Manager Feldman confirmed the need to reach out to all business entities in District III, stating this will be done. Commissioner McKinzie stated he does not want businesses in District III to miss out on this opportunity. Mr. Fajardo confirmed community outreach and communication are vital to making these efforts successful.

Russell Thompson, SCORE, commented on SCORE's five session workshops, *Simple Steps for Starting a Business* held on numerous occasions at Sistrunk Boulevard's African American Research Library. Additionally, SCORE would be happy to do workshops at any location in District III. All that is required is putting together a group and contacting SCORE with a venue. Mr. Fajardo stated this coordination can happen through his department and they can also provide a venue. Further discussions ensued on business incubation sites in the City beginning to excel.

Mayor Seiler commented on the positive synergy of this program and asked if there is anything the Commission needs to implement or need for a follow-up meeting. City Manager Feldman said Staff will continue to work with the Economic Development Advisory Board on this issue. He noted their upcoming joint workshop with the Commission on June 7, 2017. Discussions continued on topics for the joint workshop.

Mayor Seiler recessed the Conference Meeting at 5:07 p.m.

EXECUTIVE CLOSED DOOR SESSION - 4:30 P.M. OR AS SOON THEREAFTER AS POSSIBLE

17-0535 The City Commission will meet privately pursuant to Florida Statute, Section 286.011(8) concerning:

Perry Wood v. City of Fort Lauderdale, Dellica Harris, Krystle Smith, Timothy Shields and Matthew Porterfield
Case No. CACE 15-015075 (14)

Christine D'onofrio v. City of Fort Lauderdale
Case No. CACE 16-004368 (12)

Mayor Seiler announced the City Commission shall meet privately to conduct discussions between the City Manager, the City Attorney and the City Commission relative to pending litigation pursuant to Section 286.011(8), Florida Statutes, in connection with the cases noted in item 17-0535.

Present at the attorney-client session will be:

Mayor, John P. "Jack" Seiler
Vice Mayor, Bruce G. Roberts
Commissioner, Robert L. McKinzie
Commissioner, Dean J. Trantalis
Commissioner, Romney Rogers
City Manager, Lee R. Feldman
City Attorney, Cynthia A. Everett

Re: Perry Wood v. City Of Fort Lauderdale, et al., Outside Counsel will be Robert H. Schwartz, Esq., of McIntosch Schwartz, P.L.,

Re: Christine D'onofrio v. City of Fort Lauderdale, Outside Counsel will be Jeffery R. Lawley, Esq. of Billing, Cochran, Lyles, Mauro & Ramsey, P.A. and a Certified Court Reporter with Daughters Reporting, Inc.

Mayor Seiler reconvened the Conference Meeting at 10:02 p.m.

BUS-3 17-0477 Broward County Historic Preservation Board 2017 Pioneer Day Event - Nomination of City of Fort Lauderdale Pioneer

The Commission discussed the nominee for the Broward County Historic Preservation Board 2017 Pioneer Day to be hosted by the City of Parkland on May 20, 2017.

Mayor Seiler recognized Michael Rajner, who stated Commissioner Trantalis qualifies as one of the people the Commission should consider recommending for the 2017 Pioneer Day. Mr. Rajner submitted an item to the Commission.

A copy of this handout is attached to these minutes.

Mr. Rajner expounded on the reasons Commissioner Trantalis should be considered over other nominees. In response to Mayor Seiler's question, Commissioner Trantalis accepted the nomination.

Commissioner Rogers nominated R.L. Landers, discussing Mr. Landers' contribution to the City over the years, which fit the nomination criteria. Vice Mayor Roberts nominated former State

Senator Debby Sanderson. Discussions continued on last year's nominee and this year's nominees. Mayor Seiler stated the April 7, 2017 deadline for the nominations was missed, noting the need in the future to consider nominees from all minority communities. The availability of the two nominees was discussed and there was consensus to nominate Mr. R.L. Landers as the nominee and Senator Debby Sanderson as alternate.

In response to City Clerk Modarelli's inquiry, City Attorney Everett confirmed this nomination could be added as a Walk-On item to the April 19, 2017 Regular City Commission Meeting Agenda for a vote.

Mayor Seiler confirmed there was no further business to be addressed at the Conference Meeting. Mayor Seiler announced the return to the Regular City Commission Meeting.

BOARDS AND COMMITTEES

BD-1 17-0490 Board and Committee Vacancies

See Regular Meeting item R-1.

CITY MANAGER REPORTS

None.

AJOURNMENT

There being no further business before the City Commission, Mayor Seiler adjourned Commission Conference Meeting at 10:18 p.m.

CONF 4/19/2017
CF-1 provided by
John Wilkes

MJ Matthews

From: John P. Wilkes <jwilkes@jpwpa.com>
Sent: Wednesday, April 19, 2017 12:35 PM
To: Bruce G. Roberts; Dean Trantalis; Robert McKinzie; Romney Rogers; Jack Seiler
Cc: sandycasteel@comcast.net; rosemaria@aol.com; John P. Wilkes; leakk@aol.com; myanna@bellsouth.net; kato1gin@aol.com; cwieland@bellsouth.net; Pamelamwilkes@gmail.com; Leah Brown; Eileen Reilly
Subject: South Side
Attachments: FSS Letter to Mayor 4-19-17.pdf; FSS Letter to Rogers 4-4-17.pdf

Gentlemen,
Attached please find:

1 April 4, 2017 Letter to Commissioner Rogers on City working with Friends of South Side("FSS") as conduit for community input for programming.
2 Letter April 19, 2017 to Mayor Seiler sending information requested @ February 21, 2017 Conference Hearing.

Confirming meeting and letter confirmation April 5, 2017 from City's Parks Director, FSS will work with City to gather input for recommendation for programming at South Side. Included therein will be exploring Grant and other funding sources for operation of programming at the facility. If you have any questions or, would like to provide input and recommendation for others in the community to whom you would like us to reach out to , please advise.

John P. Wilkes
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Friends of South Side, Inc.

April 4, 2017

Via email rcrogers@rmzlaw.com
Commissioner Romney Rogers
City Hall, 8th Floor
100 N. Andrews Avenue
Fort Lauderdale, FL

Re: Friends of South Side, Inc.

Dear Commissioner Rogers:

At the meeting coordinated by you on Monday, March 27, 2017, Phil Thornburg expressed that the City wanted to work with Friends of South Side, Inc ("FSS") on planning the programing for the South Side School facility. Since FSS was established at the request of the City Commission in 2004 to act as a conduit for community input, we certainly would be willing to continue to act in that capacity.

A Board meeting was held to consider the request, and how to proceed. Based upon prior dealings with the City, there obviously are questions and concerns as to acknowledgment of the request; definition of the terms of engagement; the commitment by the City to accept those recommendations; and, commitment to fund their implementation. So before once again proceeding to undertake this endeavor, and commit the time, energy and resources to do so, we would need clarification and confirmation in order to be effective. More particularly, since there was no direction provided in that meeting as to the scope and description of availability of the facilities for programming, more information and confirmation is needed before being able to proceed, more particularly:

1. An acknowledgement and clarification of the role and responsibilities of FSS in this endeavor.

2. A definitive time line as to when this information would need to be gathered and presented for implementation.

3. Access to the site and plans for inspection and analysis as to the ability to accommodate the desired programming. Acknowledgment that long term implementation may require additional appliances, equipment, and building

901 South Federal Highway, Fort Lauderdale, FL 33316
(954) 467-9200, fax (954) 467-6508, jwilkes@jpwpa.com

modifications, and due to the limitations of the City to effectuate those may require additional private funding, contribution and engagement.

4. An acknowledgement, clarification and commitment by the City of its receptiveness to the community's ideas that will be presented as a result of that site assessment, and funding to initially implement the same to be able to open the doors for public use consistent with the purposes for which the building was acquired.

Once we have received that information and commitment, FSS will re-convene by notifying not only all of those in attendance at the January 28, 2017, Public Forum conducted by the City, but the hundreds on our email list. The meeting will be conducted to gather input from the residents, artist, and businesses that care to express input on the programming and uses to be available at this unique facility. From there we will be able to proceed to work with the Parks Department for presentation to the City of concepts for the initial programming of the space made available within the facility, as well as long term objectives for expanded programming, if successful, as we fully anticipate this project will be.

Sincerely yours,

JOHN P. WILKES
Chairman

JPW/kjs

Friends of South Side, Inc.

April 19, 2017

Via Email: jack.seiler@fortlauderdale.gov
Mayor John P. Seiler
City of Fort Lauderdale
City Hall - 8th Floor
Fort Lauderdale, FL 33301

Re: Friends of South Side, Inc.
South Side School

Dear Mayor Seiler,

At the February 21, 2017 Conference meeting I and about 8 others were present to bring to the attention of the City Commission that a Public Forum had been conducted by the City on January 28, 2017, at the school site and the community's objection to the planned use of the South Side facility as a City office building. The issue was curiously absent from the Monthly update. Equally questionable were your unrelated inquiries about the financial donation history of Friends of South Side ("FSS") and the Business Plans submitted in 2010 for the operation of the facility. The deflection was particularly troubling that day as a long standing member of Friends of South Side, a concerned community activist and supporter, whom the Commission has since honored, Lu Deaner, had passed away. She had expressed to me the week before of her desire to have been there at the Conference that day to make her last civic plea for the Commission to do the right thing with South Side!

Nonetheless, if this information can be helpful in any way attached are the following:

1. Three Alternate Business Financial Plans that were prepared by FSS in April of 2010 at the bequest of the City after lengthy investigation, including review by an independent arts administrator involved with the startup and operational planning for both governmental and private non-profit cultural arts facilities. These Alternatives were submitted to the City assigned staff at the time. All three plans show no additional anticipated City subsidy after the second year.

2. The Revised Alternate C Business Plan[1] submitted August of 2010 with the complete package on FSS as requested by the City for consideration of a City operated facility in

[1] Alternative C assumes a combination of space rental and self- operation of programs.

901 South Federal Highway, Suite 101A, Fort Lauderdale, FL 33316
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conjunction with a private not-for –profit entity. This model was revised based upon advice of City assigned staff to increase the projected City subsidy to five years as a precautionary measure. The model still reflected a savings in excess of $1 Million to the City, versus the operation by the City's Parks Department as a standard community recreation facility.

3. Estimated Cost Savings Summary submitted to the City in August 2010 with the Revised Business Plan.

4. Copy of Invoice for Demolition work conducted in 2005 for South Side that was paid for by and through the members of FSS –Total $19,291.11[2]. This was done to expedite the process for bid, award etc., that would delay the assessment of the structure and ensuing anticipated completion of the project.

5. The cooperative effort as exhibited in the work done by FSS for the demolition noted above had been envisioned to be the cornerstone of the manner in which this community project would be completed and operated. The savings realized by the City in time as well as money would be significant. See attached line item budgets for Demolition approved by the City for $84,000 and $99,350 respectively.

Sincerely yours,

JOHN P. WILKES

JPW/kjs
Enclosures
CC: Friends of South Side
Commission
City Auditors office- EReilly@fortlauderdale.gov

[2] City Auditor's office also requested a copy of funds used to pay for City improvements at South Side. Note this does not include the thousands of hours of volunteer time and costs expended in clean-up, planning, programming, and development analysis, review of leases, proposals by third parties and the New Market Tax Credit program since 2003.

SOUTH SIDE CULTURAL ARTS CENTER

PROFORMA INCOME & EXPENSE STATEMENT

Altermative A

Assumes Space Rental for all rooms and the kitchen

	YEAR 1	YEAR 2	YEAR 3
Revenue:			
Class and teaching operations (1)	$252,000.00	$317,000.00	$381,000.00
Grants & Fundraising	50,000.00	$75,000.00	100,000.00
City Subsidy (2)	95,000.00	$26,000.00	0.00
Total Revenue	$397,000.00	$418,000.00	$481,000.00
Expenses:			
Personnel			
Director	$60,000.00	$65,000.00	$70,000.00
Asst. Director	$40,000.00	$45,000.00	$50,000.00
Front & Monitoring Desk (1 + persons)	$60,000.00	$65,000.00	$70,000.00
Janitorial	$40,000.00	$40,000.00	$50,000.00
Maintenance - part time	$15,000.00	$15,000.00	$20,000.00
Payroll taxes	$16,447.50	$17,595.00	$19,890.00
Health Insurance	$0.00	$0.00	$0.00
Pension contribution	$0.00	$0.00	$0.00
SubTotal - Personnel Costs	$231,447.50	$247,595.00	$279,890.00

4-19-17

Composite 1

Overhead			
Maintenance Contracts (3)	$15,000.00	$15,000.00	$15,000.00
Utilities (4)	$60,000.00	$60,000.00	$60,000.00
Phone & internet	$4,000.00	$4,000.00	$4,000.00
Professional Feess & Costs (5)	$20,000.00	$20,000.00	$20,000.00
Insurance (6)	$10,000.00	$10,000.00	$10,000.00
Marketing (7)	$25,000.00	$25,000.00	$25,000.00
Office Supplies	$6,000.00	$6,000.00	$6,000.00
Miscellaneous- Contingency	$25,000.00	$30,000.00	$35,000.00
SubTotal - Overhead expenses	$165,000.00	$170,000.00	$175,000.00
Total Expenses	**$396,447.50**	**$417,595.00**	**$454,890.00**
Net Cash Flow	$552.50	$405.00	$26,110.00

(1) Assumes a rental rate of $35 per room, per hour, 25 classes per day -48 weeks for year 1.
Based on renting class room space for all programs. Space rentals assume 60% occupancy year 1
75% year 2 and 90% year 3. **N.B.Projections for year 1 will vary depending upon date of opening !**

(2) In addition to City contribution for insurance and Buiilding & Grounds maintenance, replacemnt and repair.
Also Year I will have a 2-4 month carry subsidy between completion of construction and program opening

(3) Assumes certain specialty maintenance functions performed on a contract basis.

(4) Based on Utility costs of comparable buildings currently existing; electric, gas and water.

(5) Assumes routine legal, accounting and auditing expenses plus govermnent reporting.

(6) Assumes property damage for FSS property, workmans compensation for employees and contractors per state law, commercial and Interlocal Agreement. Plus general liability and Director coverage.
Assumes wind,flood and casualtu coverage under the City's umbrella policy.

(7) Assumes major publicity push during years 1 to 3, but a simpler program than with individual programs.

Draft April 26, 2010

SOUTH SIDE CULTURAL ARTS CENTER

PROFORMA INCOME & EXPENSE STATEMENT

Altermative B

Assumes Self Operation of all Programs

	YEAR 1	YEAR 2	YEAR 3
Revenue:			
Class and teaching operations (1)	$453,000.00	$635,000.00	$907,000.00
Grants & Fundraising	50,000.00	$75,000.00	100,000.00
City Subsidy (2)	200,000.00	$83,000.00	0.00
Total Revenue	$703,000.00	$793,000.00	$1,007,000.00
Expenses:			
Personnel			
Director	$60,000.00	$65,000.00	$70,000.00
Asst. Director	$40,000.00	$45,000.00	$50,000.00
Front & Monitoring Desk (3 + persons)	$119,500.00	$135,000.00	$150,000.00
Janitorial	$40,000.00	$40,000.00	$50,000.00
Maintenance - part time	$15,000.00	$15,000.00	$20,000.00
Teachers (non-payroll)	$242,000.00	$300,000.00	$363,000.00
Payroll taxes	$20,999.25	$22,950.00	$26,010.00
Health Insurance	$0.00	$0.00	$0.00
Pension contribution	$0.00	$0.00	$0.00
SubTotal - Personnel Costs	$537,499.25	$622,950.00	$729,010.00

Overhead			
Maintenance Contracts (3)	$15,000.00	$15,000.00	$15,000.00
Utilities (4)	$60,000.00	$60,000.00	$60,000.00
Phone & internet	$4,000.00	$4,000.00	$4,000.00
Professional Feess & Costs (5)	$20,000.00	$20,000.00	$20,000.00
Insurance (6)	$10,000.00	$10,000.00	$10,000.00
Marketing (7)	$25,000.00	$25,000.00	$25,000.00
Office Supplies	$6,000.00	$6,000.00	$6,000.00
Miscellaneous- Contingency	$25,000.00	$30,000.00	$35,000.00
SubTotal - Overhead expenses	$165,000.00	$170,000.00	$175,000.00
Total Expenses	**$702,499.25**	**$792,950.00**	**$904,010.00**
Net Cash Flow	$500.75	$50.00	$102,990.00

(1) Based upon all programs operated by FSS; having enrollment of 25% year 1, 35% year 2, and 50% year 3.
N.B.Projections for year 1 will vary depending upon date of opening !
(2) In addition to City contribution for insurance and Buiilding & Grounds maintenance, replacemnt and repair.
Also Year I will have a 2-4 month carry subsidy between completion of construction and program opening
(3) Assumes certain specialty maintenance functions performed on a contract basis.
(4) Based on Utility costs of comparable buildings currently existing; electric, gas and water.
(5) Assumes routine legal, accounting and auditing expenses plus govermnent reporting.
(6) Assumes property damage for FSS property, workmans compensation for employees and contractors per state law, commercial and Interlocal Agreement. Plus general liability and Director coverage.
Assumes wind,flood and casualtu coverage under the City's umbrella policy.
(7) Assumes major publicity push during years 1 to 3, but a simpler program than with individual programs.

Draft April 26, 2010

SOUTH SIDE CULTURAL ARTS CENTER

PROFORMA INCOME & EXPENSE STATEMENT

Altermative C

Assumes Combination of Space Rental and Self operation of Programs

	YEAR 1	YEAR 2	YEAR 3
Revenue: Ratio Projection Rental/Self Operation	32/68	17/83	14/86
Class and teaching operations - Rental	$80,000.00	$100,000.00	$100,000.00
- Self Operation (1)	$400,000.00	$500,000.00	$625,000.00
Grants & Fundraising	50,000.00	$75,000.00	100,000.00
City Subsidy (2)	100,000.00	$30,000.00	0.00
Total Revenue	$630,000.00	$705,000.00	$825,000.00
Expenses:			
Personnel			
Director	$60,000.00	$65,000.00	$70,000.00
Asst. Director	$40,000.00	$45,000.00	$50,000.00
Front & Monitoring Desk (2 + persons)	$84,000.00	$95,000.00	$115,000.00
Janitorial	$40,000.00	$40,000.00	$50,000.00
Maintenance - part time	$15,000.00	$15,000.00	$20,000.00
Teachers (non-payroll)	$207,000.00	$252,000.00	$280,000.00
Payroll taxes	$18,283.50	$19,890.00	$23,332.50
Health Insurance	$0.00	$0.00	$0.00
Pension contribution	$0.00	$0.00	$0.00
SubTotal - Personnel Costs	$464,283.50	$531,890.00	$608,332.50

Overhead			
Maintenance Contracts (3)	$15,000.00	$15,000.00	$15,000.00
Utilities (4)	$60,000.00	$60,000.00	$60,000.00
Phone & internet	$4,000.00	$4,000.00	$4,000.00
Professional Feess & Costs (5)	$20,000.00	$20,000.00	$20,000.00
Insurance (6)	$10,000.00	$10,000.00	$10,000.00
Marketing (7)	$25,000.00	$25,000.00	$25,000.00
Office Supplies	$6,000.00	$6,000.00	$6,000.00
Miscellaneous- Contingency	$25,000.00	$30,000.00	$35,000.00
SubTotal - Overhead expenses	$165,000.00	$170,000.00	$175,000.00
Total Expenses	**$629,283.50**	**$701,890.00**	**$783,332.50**
Net Cash Flow	$716.50	$3,110.00	$41,667.50

(1) Based upon some programs operated by FSS; having enrollment of 20% year 1, 30% year 2, and 40% year 3.
Rental of Assumes a rental rate of $35 per room, per hour, 7-8 classes per day-48 weeks per month for year 1.
N.B.Projections for year 1 will vary depending upon date of opening !

(2) In addition to City contribution for insurance and Buiilding & Grounds maintenance, replacemnt and repair.
Also Year I will have a 2-4 month carry subsidy between completion of construction and program opening

(3) Assumes certain specialty maintenance functions performed on a contract basis.

(4) Based on Utility costs of comparable buildings currently existing; electric, gas and water.

(5) Assumes routine legal, accounting and auditing expenses plus govermnent reporting.

(6) Assumes property damage for FSS property, workmans compensation for employees and contractors per state law, commercial and Interlocal Agreement. Plus general liability and Director coverage.
Assumes wind,flood and casualtu coverage under the City's umbrella policy.

(7) Assumes major publicity push during years 1 to 3, but a simpler program than with individual programs.

Draft April 26, 2010

SOUTHSIDE CULTURAL ARTS CENTER

PROFORMA INCOME & EXPENSE STATEMENT
Assumes Combination of Space Rental and Self operation of Programs

	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5
Revenue: Ratio Projection Rental/Self Operation	32/68	17/83	14/86	14/86	14/86
Class and teaching operations - Rental	$80,000.00	$100,000.00	$100,000.00	$ 100,000.00	$ 100,000.00
- Self Operation (1)	$300,000.00	$400,000.00	$500,000.00	$ 550,000.00	$ 600,000.00
Grants & Fundraising	50,000.00	$75,000.00	$100,000.00	$ 100,000.00	$ 100,000.00
City Subsidy (2)	200,000.00	$150,000.00	100,000.00	$ 75,000.00	$ 50,000.00
Total Revenue	$630,000.00	$725,000.00	$800,000.00	$ 825,000.00	$ 850,000.00
Expenses:					
Personnel					
Director	$60,000.00	$65,000.00	$70,000.00	$ 75,000.00	$ 75,000.00
Asst. Director	$40,000.00	$45,000.00	$50,000.00	$ 55,000.00	$ 55,000.00
Front & Monitoring Desk (2 + persons)	$84,000.00	$95,000.00	$115,000.00	$ 115,000.00	$ 115,000.00
Janitorial	$40,000.00	$40,000.00	$50,000.00	$ 55,000.00	$ 55,000.00
Maintenance - part time	$15,000.00	$15,000.00	$20,000.00	$ 20,000.00	$ 20,000.00
Teachers (non-payroll)	$207,000.00	$260,000.00	$280,000.00	$ 320,000.00	$ 320,000.00
Payroll taxes	$18,283.50	$19,890.00	$23,332.50	$ 24,480.00	$ 24,480.00
Health insurance	$0.00	$0.00	$0.00	$ -	$ -
Pension contribution	$0.00	$0.00	$0.00	$ -	$ -
SubTotal - Personnel Costs	$464,283.50	$539,890.00	$608,332.50	$ 664,480.00	$ 664,480.00
Overhead					
Maintenance Contracts (3)	$15,000.00	$15,000.00	$15,000.00	$ 15,000.00	$ 15,000.00
Utilities (4)	$60,000.00	$60,000.00	$60,000.00	$ 60,000.00	$ 60,000.00
Phone & Internet	$4,000.00	$4,000.00	$4,000.00	$ 4,000.00	$ 4,000.00
Professional Feess & Costs (5)	$20,000.00	$20,000.00	$20,000.00	$ 20,000.00	$ 20,000.00
Insurance (6)	$10,000.00	$10,000.00	$10,000.00	$ 10,000.00	$ 10,000.00
Marketing (7)	$25,000.00	$25,000.00	$25,000.00	$ 25,000.00	$ 25,000.00
Office Supplies	$6,000.00	$6,000.00	$6,000.00	$ 6,000.00	$ 6,000.00
Miscellaneous- Contingency	$25,000.00	$30,000.00	$35,000.00	$ 35,000.00	$ 40,000.00
SubTotal - Overhead expenses	$165,000.00	$170,000.00	$175,000.00	$ 175,000.00	$ 180,000.00
Total Expenses	$629,283.50	$709,890.00	$783,332.50	$839,480.00	$844,480.00
Net Cash Flow	$716.50	$15,110.00	$16,667.50	-$14,480.00	$5,520.00

(1) Based upon some programs operated by FSS; having enrollment of 20% year 1, 30% year 2, and 40% year 3.
Rental of Assumes a rental rate of $35 per room, per hour, 7-8 classes per day-48 weeks per month for year 1.
N.B.Projections for year 1 will vary depending upon date of opening !
(2) In addition to City contribution for Insurance and Building & Grounds maintenance, replacemnt and repair.
Also Year I will have a 2-4 month carry subsidy between completion of construction and program opening
(3) Assumes certain specialty maintenance functions performed on a contract basis.
(4) Based on Utility costs of comparable buildings currently existing; electric, gas and water.
(5) Assumes routine legal, accounting and auditing expenses plus government reporting.
(6) Assumes property damage for FSS property, workmans compensation for employees and contractors per state law, commercial and Interlocal Agreement. Plus general liability and Director coverage.
Assumes wind,flood and casualty coverage under the City's umbrella policy.
(7) Assumes major publicity push during years 1 to 3, but a simpler program than with individual programs.

6-Jul-16

4-19-17

2

South Side Cultural Arts Center

Estimated Cost Savings to City

City of Fort Lauderdale Operation	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Initial Capital- Equipment and Fixtures	$190,000					$190,000
Projected Wages, Utilities & Supplies (5% increase per annum)	$334,000	$350,700	$368,200	$386,600	$405,900	$1,845,400
Total Cash Outlays by City	$524,000	$350,700	$368,200	$386,600	$405,900	$2,035,400
City/FSS Partnership - Operated by FSS						
Initial Capital- Equipment and Fixtures	-$190,000					-$190,000
Operating Subsidy by City	-$200,000	-$150,000	-$100,000	-$75,000	-$50,000	-$575,000
Total Cash Outlays by City	-$390,000	-$150,000	-$100,000	-$75,000	-$50,000	
Annual Savings to City by FSS Operating Facility	$134,000	$200,700	$268,200	$311,600	$355,900	
Cumulative Saving to the City by FSS Operating I	$134,000	$334,700	$602,900	$914,500	$1,270,400	**$1,270,400**

Draft Date 7/8/2010

4-19-17
3

Las Olas Properties, Inc.

Invoice

December 9, 2005

Project: Southside High Demolition

1. Daniel James, LLC 17,141.00
2. Pacesetter Personnel Service (General Labor) 66.00
3. Barron Commercial Development (Labor & Supervision) 625.00
4. Lauderdale Lumber 43.43
5. Barron Commercial Development (Reim) 38.28
5. Able Sanitation (Port-o-Let) 112.34
6. Sunbelt Rentals (Generator) 1,265.06

TOTAL 19,291.11

1/3 of total 6,430.37

Please make check payable and remit to:
Las Olas Properties, Inc.
2900 University Drive, Suite 26
Coral Springs, FL 33065

2900 University Drive, Coral Springs, FL 33065
(954) 344-7600 Fax (954) 344-6688

11-61-4

Sub total:	$17,141.00
Tax:	
Credit:	
You pay this amount:	$17,141.00

Due to increased office work a min. service charge of $ 150.00 will be added to any invoice not paid in full within 30 days
Payment is due on completion and is the responsibility of the customer and not dependent on payment from third parties.

4-19-17
4

Table 1 – Preliminary Repair Cost Estimate

ITEM	DESCRIPTION	ESTIMATE
DESIGN	Normal Architectural fees are 7 - 10%	$270,000.00
SITE WORK	Includes storm drainage and storm water retention	$155,000.00
DEMOLITION	Interior gutting and disposal, no out buildings	$84,000.00
FOUNDATION	Allowance for changing wall configurations and minor repairs to existing	$162,000.00
ASBESTOS/LBP	Allowance for asbestos remediation	$169,000.00
WALL STRUCTURE	Patching repairing and painting exterior walls	$164,000.00
MICROBIAL REMEDIATION	Allowance for microbial remediation in bath	$15,000.00
FLOOR STRUCTURE	Repairs to first and second floor structures	$88,000.00
ROOF STRUCTURE	Repairs to roof structure	$35,000.00
WALLS EXTERIOR	New interior walls on exterior walls	$95,000.00
WALLS INTERIOR FINISH	New interior wall finishes	$70,000.00
WINDOWS AND GLAZING	New windows to meet current code	$102,000.00
EXTERIOR DOORS	New doors to meet current code	$50,000.00
ROOFING	Allowance for replacement of roofing	$60,000.00
INTERIOR WALLS	Drywall	$80,000.00
PAINT	Paint	$120,000.00
INTERIOR DOORS	New interior doors	$80,000.00
CEILING	New interior ceiling	$96,000.00
FLOORS	New interior floor finishes	$192,000.00
STAIRS	New stairs	$60,000.00
ELEVATOR	New elevator	$100,000.00
PLUMBING	New fixtures and piping	$144,000.00
HVAC	New HVAC	$180,000.00
ELECTRICAL	New electrical conduit, wiring and fixtures (no site upgrades)	$360,000.00
FIRE ALARMS & SPRINKLERS	New system per code	$120,000.00
SUBTOTAL		$3,051,000.00
CONTINGENCY (25%)	Contingency for unknowns, including complications with historical renovation	$762,750
TOTAL PRELMINARY EST.		$3,813,750.00

Comp.

4-19-17
Composite 5

03- DEMOLITION AND DISPOSAL		QUANTY	UOM	UNIT COST	TOTAL COST
SCHL BUILDING SHELL RESTORATION					
03- DEMOLITION AND DISPOSAL					
	GUT-OUT ALL INTERIOR PART/FINISH	12310	SF	5.00	61,550
	30 CY DUMPSTERS DURING DEMOLIT'N	30.00	EA	600.00	18,000
	20 CY DUMPSTERS DURING CONSTR'N	12.00	EA	400.00	4,800
	HAND HAUL AND LOAD TO DUMPSTERS	500.00	CY	30.00	15,000
	TOTAL 03- DEMOLITION AND DISPOSAL	12310	SF	8.07	99,350
03- CONCRETE					
03- FOUNDATION					
	NEW REINF. CONCR FOOTING 5.5x6.5	2.00	EA	3000.00	6,000
	SAW-CUT EXISTING CONCRETE SLAB	84.00	LF	5.00	420
	STRUCTURAL EXCAVATION BY HAND	30.00	CY	45.00	1,350
	BACKFILL & COMPACTION MANUALLY	25.00	CY	50.00	1,250
	CLEAN-UP	1.00	LS	100.00	100
	TOTAL 03- FOUNDATION	12310	SF	0.74	9,120
03- COLUMNS					
	REINF. CONCRETE PEDESTAL 12"x12"	11.00	LF	100.00	1,100
	REINF. CONCRETE COLUMNS COVERS	126.00	SF	15.00	1,890
	TOTAL 03- COLUMNS	12310	SF	0.24	2,990
03- BEAMS					
	STEEL BEAM REINF. CONCRETE COVER	110.00	SF	15.00	1,650
	TOTAL 03- BEAMS	12310	SF	0.13	1,650
03- SLAB ON GRADE					
	RESTORATION OF SLAB ON GRADE	200.00	SF	10.00	2,000
	VAPOR BARRIER @ S.O.G	200.00	SF	0.25	50
	LEVELING/REPAIRS TO EXISTG SLAB	1.00	LS	7200.00	7,200
	TOTAL 03- SLAB ON GRADE	12310	SF	0.75	9,250
03- ELEVATED SLAB					
	LEVELING/REPAIRS TO EXTG SLAB	1.00	LS	3600.00	3,600
	TOTAL 03- ELEVATED SLAB	12310	SF	0.29	3,600

Canal Dredging Rate Study

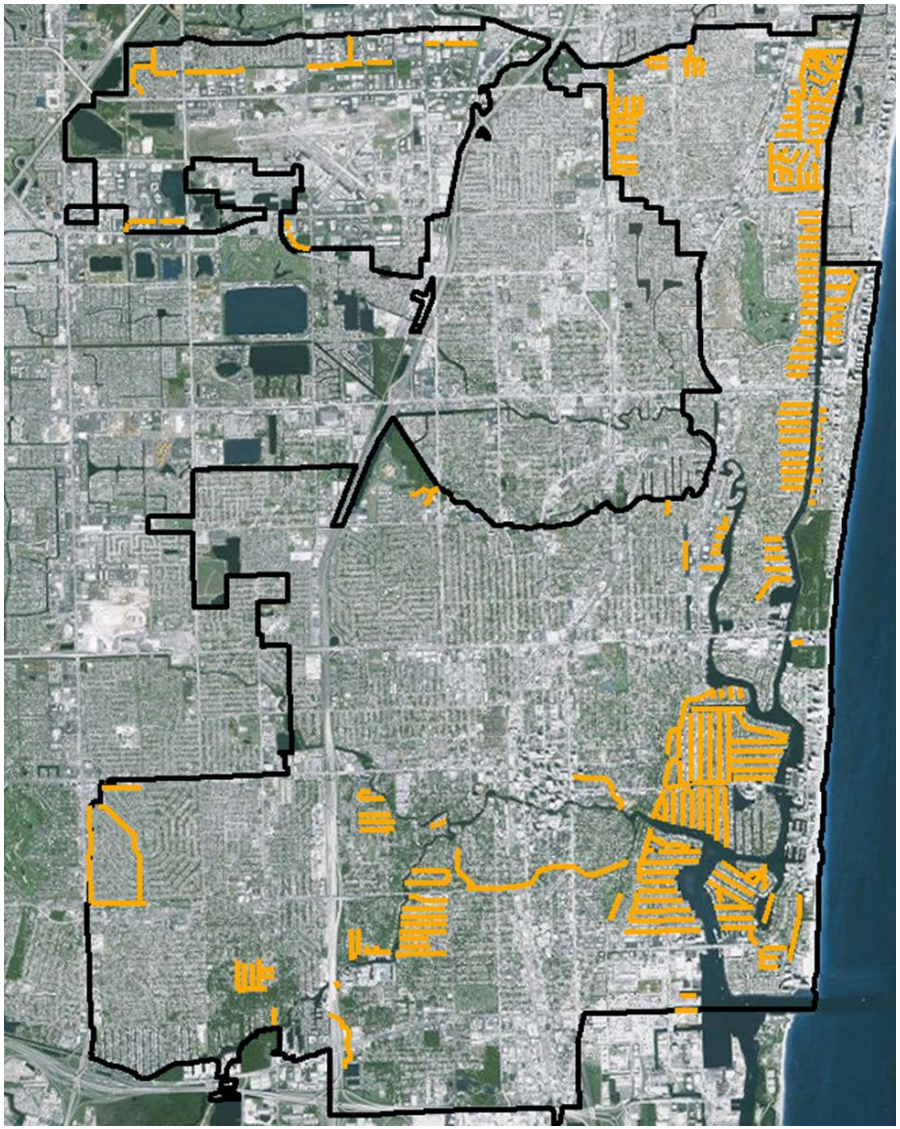
Fort Lauderdale, FL

Presentation to the City Commission

Wednesday April 19, 2017

Stantec

City Owned Canals



- 57 Miles of City owned Canals
- Two separate canal classifications navigable and drainage (cost of dredging drainage canals will be born by the stormwater fund)
- The City Marine Advisory Board established a navigable standard dredge depth of 4’-5’ below mean low water
- Over 5,200 parcels on navigable canals with beneficial access to waterways

Stantec

2017 Rate Study Process

Canal Dredging Master Plan

- Surveyed 78% of City-owned canals (2012-2015)
- Developed 2015 Canal Dredging Master Plan
- Conducted and analyzed remaining 22% of surveys (2016)
- Updating Canal Dredging Master Plan (2017)

Revenue Requirement

- Cost drivers include design, permitting, dredging, drying, disposal, and minimum reserve balance (if included)

Revenue Recovery

- Special assessments included on the property tax bill can be utilized in cases where parcels derive specific benefit from the City's activates, or fees included on the utility bill can also be utilized.

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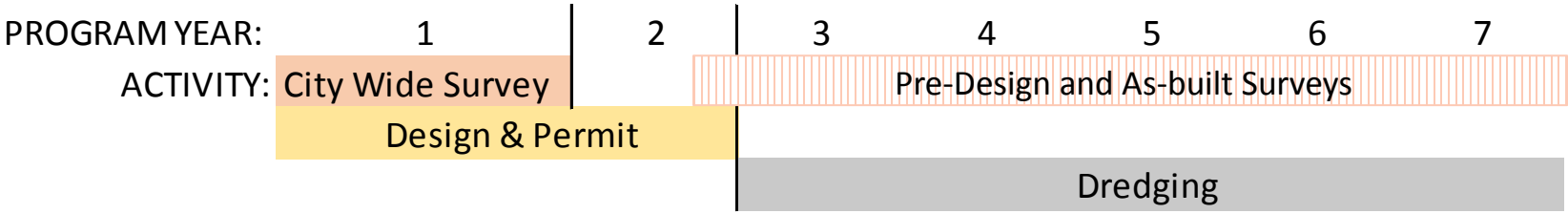
Revenue Requirement



Revenue Components

- City Wide Survey
  - Review all City-owned canals every 7 years to determine dredging needs
  - Prioritize canals requiring dredging
- Dredging Design & Permitting
  - Design and permitting of the canals to be dredged
- Dredging
  - Physical removal, drying and ultimate disposal of the dredge material

Drying Site Options

- Current drying site is expected to be sold and unavailable for the city's future dredge material drying needs
- Stantec conducted a search for viable options and their corresponding cost
- Several parcels were located with the desired proximity and zoning characteristics, a summary of those findings is included below:

Potential Drying Sites	Size in Acres	Current Asking Price
Site 1	2.50	$2,500,000
Site 2	1.65	$1,450,000
Most Conservative Option		$2,500,000
Annual Amortization		**$144,575**
Years	30	
Rate	4.00%	

Revenue Requirement Findings

- Dredging expenditures are dynamic by their nature and large year to year fluctuations in program spending are expected.
- Because there is little history upon which to base projections there is significant uncertainty as to potential unforeseen costs of the program. Therefore, we recommend considering establishing a minimum working capital reserve fund equal to one year's program revenue.
- In lieu of establishing a minimum working capital reserve fund for unforeseen costs, an alternative to consider would be relying upon an interfund loan from the General Fund to fund any unforeseen costs. This loan would be paid back out of future revenues from the Canal Dredging Program and would mitigate the need for immediate rate increases.
- These options are described in more detail on the following slides.

Revenue Requirement Options

Based on the most current information, two options have been identified:

- **Scenario 1 - Minimum Reserve Fund Balance**

  Generate $1.7M in annual revenue to provide a sufficient level of revenue to independently support the first seven year dredge cycle, while maintaining the above referenced minimum reserve fund balance of one year's revenue requirement, and any unforeseen expenses would be funded from the minimum reserve fund balance.

- **Scenario 2 - Do not Maintain a Minimum Reserve Fund Balance**

  Generate $1.3M in annual revenue provide a sufficient level of revenue to support the first seven year dredge cycle without maintaining a minimum working capital fund balance, and any unforeseen expenses would be funded by a loan from the General Fund.

Under either scenario above, material expenditure risks were identified in the following areas:

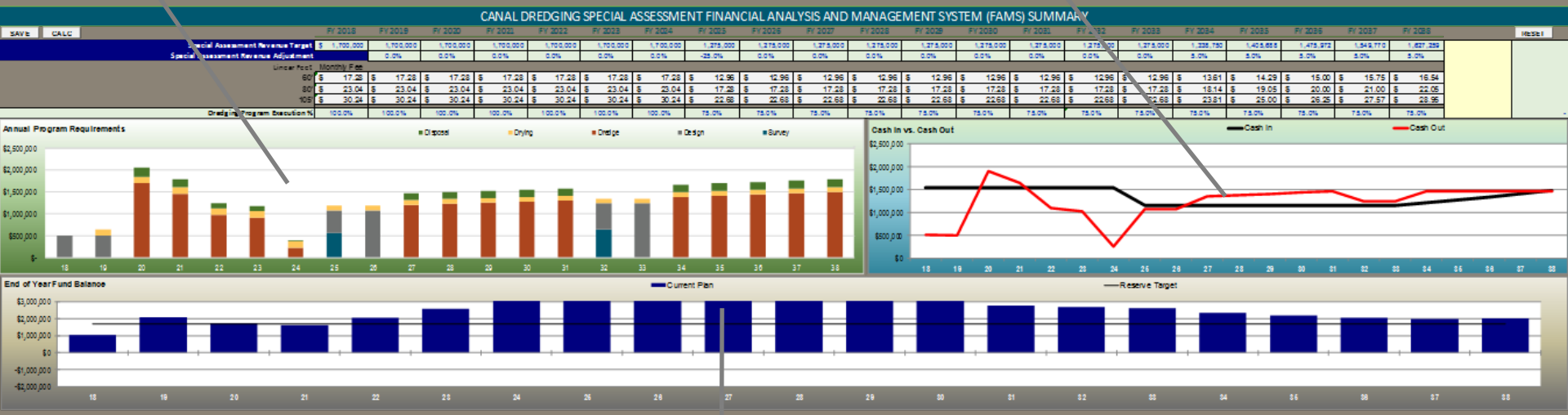
- Sea Grass mitigation cost
- Disposal cost changes
- Dredge volume (CY) changes
- Dredging method (mechanical vs hydraulic)
- Emergency dredging (hurricanes)
- Disposal cost changes

Scenario 1
Minimum Reserve Balance

- Identified all projected 7- year activity costs
- Dynamic Model used to identify and evaluate viable management options
- Current dredging requirements will need an estimated $1.7M in annual revenue

7-Year program cost requirements drive annual expenditure levels

Cash Out reflects the highly dynamic nature of annual program expenditures



Fund Balances are accumulated or spent depending on yearly program revenue and expenditures

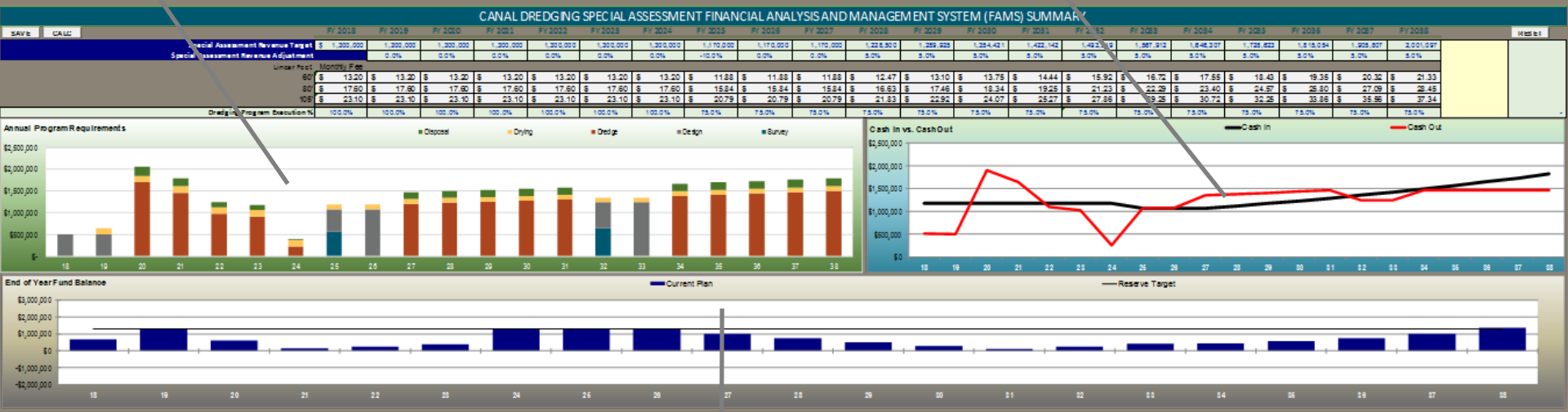
Stantec

Scenario 2
No Minimum Reserve Balance

- Identified all projected 7- year activity costs
- Dynamic Model used to identify and evaluate viable management options
- Current dredging requirements will need an estimated $1.3M in annual revenue

7-Year program cost requirements drive annual expenditure levels

Cash Out reflects the highly dynamic nature of annual program expenditures



Fund Balances are accumulated or spent depending on yearly program revenue and expenditures

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Method of Cost Recovery

- Special Assessments afford local governments the ability to assess specific parcels which benefit from a particular activity in the community.
- Assessed parcels can be billed on the annual property tax bill
- Alternatively a Canal Dredging Fee can be established and included on the utility bill

Assessment/Fee Basis Survey

Equal — Discrete

Recovery Unit Basis	Equal Per Parcel	Equal Per Parcel Per Canal	Linear Frontage Feet	Property Value	Water Access
	City of Naples, Florida – On the Gulf Manatee County Florida Santa Rosa County Florida Sanibel Florida 1974 st.petersburg www.stpete.org	St. Johns County Florida	Hillsborough County Florida	The City of North Myrtle Beach South Carolina	The Town of Fort Myers Beach Established 1995

Most Communities recover dredge expenses equal per parcel. Other options do exist that have more perceived equity.

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Equivalent Benefit Unit (EBU) Calculation

- Linear frontage feet calculated for each parcel fronting a City owned canal
- EBU is 5 linear front feet on canal (rounded down to the nearest 5 feet)

Actual Frontage Feet Fronting City Owned Canals :		503,560
Adjusted Total Frontage Feet when each parcel is Rounded Down:		492,120
Divided by 5 Linear Feet Per Equivalent Billing Unit (EBU):		5
Scenario 1		
Billed EBUs:		98,424
Revenue Requirement:	$	1,700,000
Monthly Assessment/Fee Per Billed EBU:	$	1.44
Scenario 2		
Billed EBUs:		98,424
Revenue Requirement:	$	1,300,000
Monthly Assessment/Fee Per Billed EBU:	$	1.10

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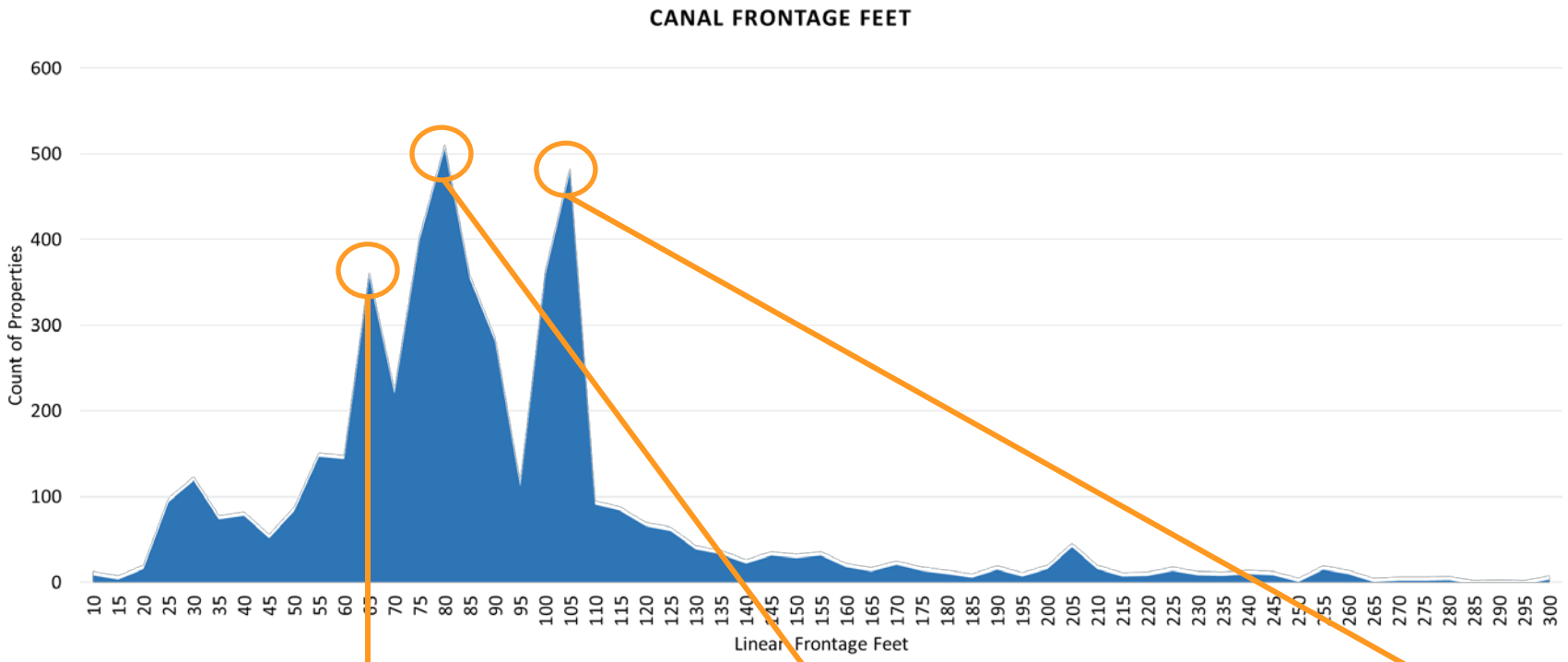
Monthly Assessment/Fee: Scenario 1 Minimum Reserve Fund Balance



Linear Feet:	60	65	70	75	80	85	90	95	100	105
Monthly Assessment/Fee:	$ 17.28	$ 18.72	$ 20.16	$ 21.60	$ 23.04	$ 24.48	$ 25.92	$ 27.36	$ 28.80	$ 30.24
Parcels in Tier	362	225	404	511	358	286	117	364	484	95
Parcels Cumulative	1,214	1,439	1,843	2,354	2,712	2,998	3,115	3,479	3,963	4,058
Percent Cumulative	23.0%	27.3%	34.9%	44.6%	51.4%	56.8%	59.0%	65.9%	75.1%	76.9%

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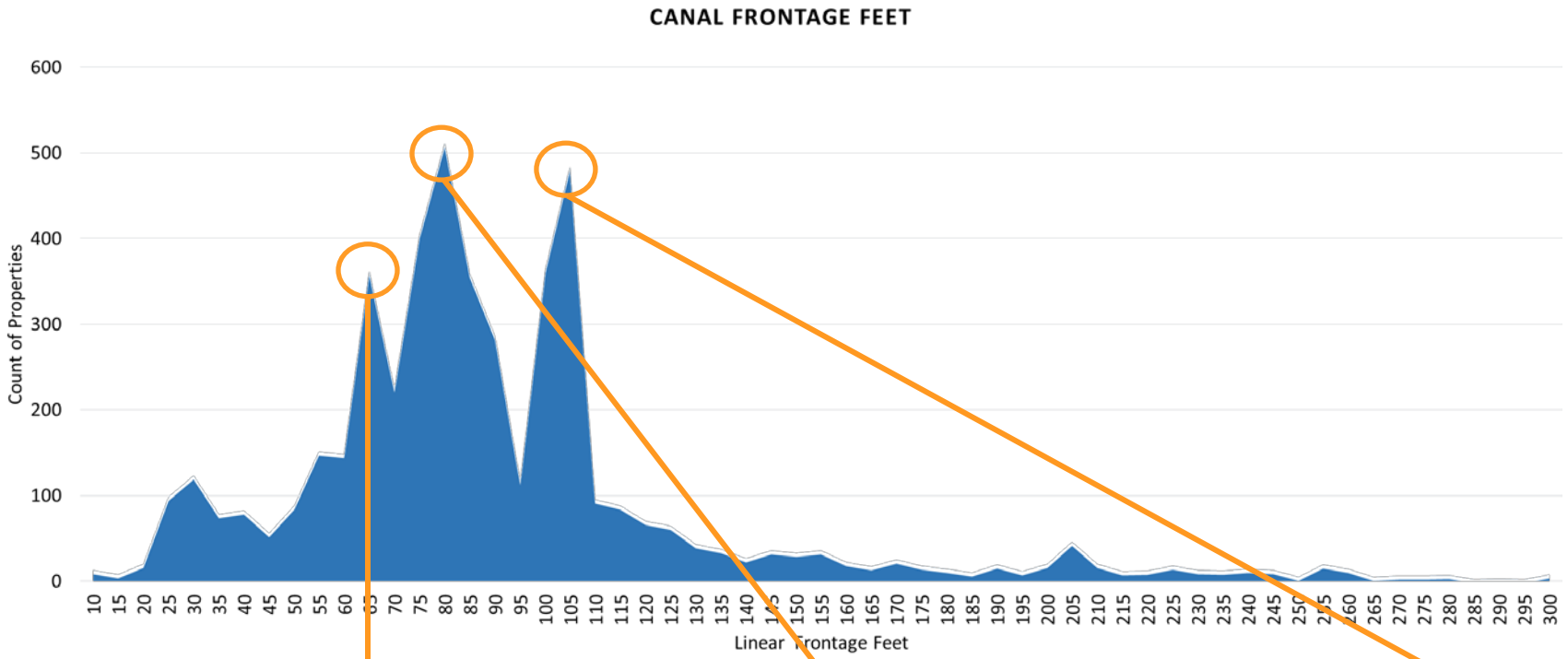
Monthly Assessment/Fee: Scenario 2 No Minimum Reserve Fund Balance



Linear Feet:	60	65	70	75	80	85	90	95	100	105
Monthly Assessment/Fee:	$ 13.20	$ 14.30	$ 15.40	$ 16.50	$ 17.60	$ 18.70	$ 19.80	$ 20.90	$ 22.00	$ 23.10
Parcels in Tier	362	225	404	511	358	286	117	364	484	95
Parcels Cumulative	1,214	1,439	1,843	2,354	2,712	2,998	3,115	3,479	3,963	4,058
Percent Cumulative	23.0%	27.3%	34.9%	44.6%	51.4%	56.8%	59.0%	65.9%	75.1%	76.9%

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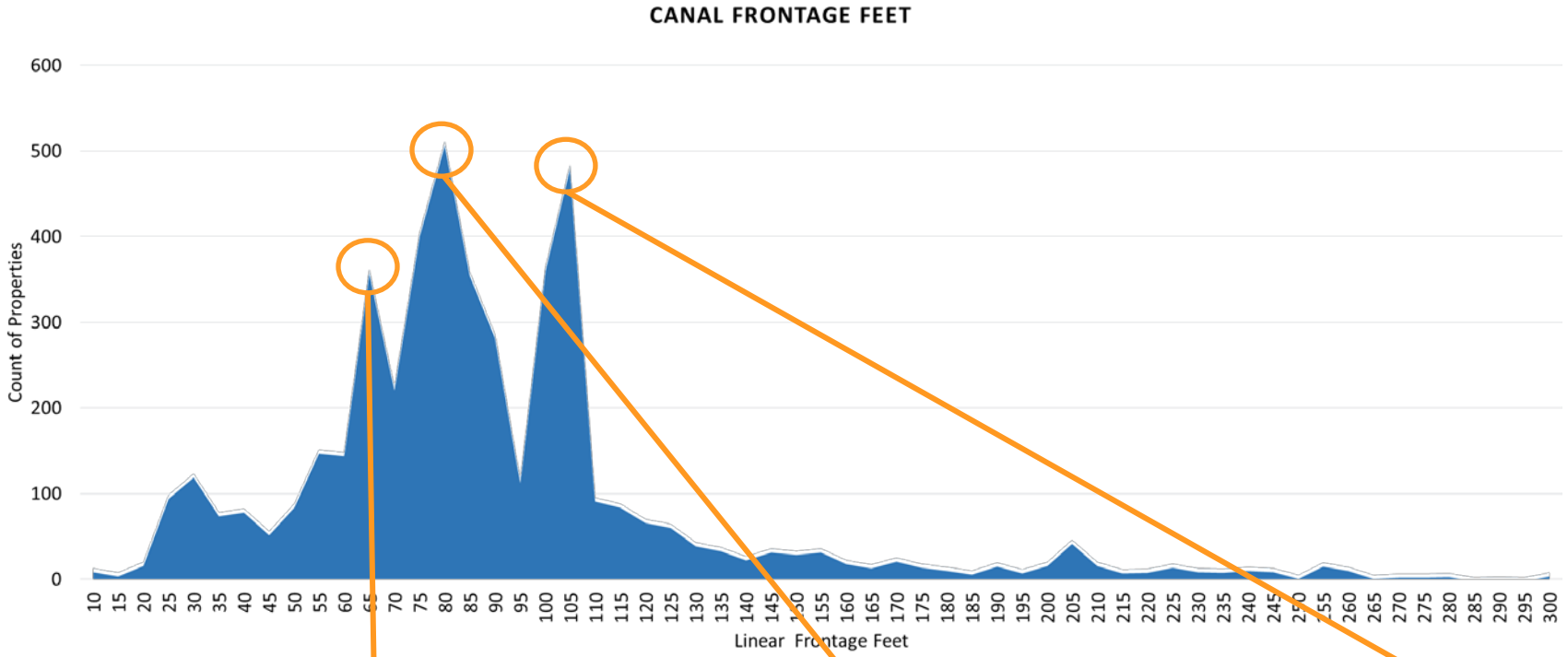
Comparison of Scenarios



Scenario1: Minimum Reserve Balance

Linear Feet:	60	65	70	75	80	85	90	95	100	105
Monthly Assessment/Fee:	$ 17.28	$ 18.72	$ 20.16	$ 21.60	$ 23.04	$ 24.48	$ 25.92	$ 27.36	$ 28.80	$ 30.24

Scenario2: No Minimum Reserve Balance

Linear Feet:	60	65	70	75	80	85	90	95	100	105
Monthly Assessment/Fee:	$ 13.20	$ 14.30	$ 15.40	$ 16.50	$ 17.60	$ 18.70	$ 19.80	$ 20.90	$ 22.00	$ 23.10

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Next Steps

If Adopted as an Assessment Program:

- Commission sets hearing for 9/13/2017.
- A Methodology Report must be delivered to the County Property Appraiser by 5/1/2017.
- A Preliminary Assessment Roll must be delivered to the County Property Appraiser by 6/2/17.
- A Draft Ordinance and Preliminary Resolution must be prepared for a Hearing to Adopt the Preliminary Resolution which will be held on either 7/11/2017 or 8/22/2017.
- The required first class mailing of the Notice of Hearing will be done through the TRIM notice.
- Hearing for Adoption will be on 9/13/2017.

Next Steps

If Adopted as a Fee to be Billed on the Utility Bill:

- Accomplish cross reference of Canal Dredging Fee Property Roll with the Utility Billing System Customer Database.
- Prepare Rate Ordinance and Resolution.
- Advertise for adoption of the Ordinance and Resolution.
- Conduct first and second reading for adoption of the Ordinance and Resolution prior to October 1, 2017.

Issues to be Resolved

- Secure a drying site
- Obtain an Agreement with County to dredge a small County owned portion of canal system
- Policies regarding dredging of privately owned canals and other non-City owned canals
- Other

Questions/Discussion

4/19/17 CONF BUS-2 Provided by CAO

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
TITLE AND LAND RECORDS SECTION
BOARD OF TRUSTEES LAND DATABASE SYSTEM
WORKSHEET SHORT FORM (FOR INTERNAL DEP USE ONLY)

WORKSHEET ID:	107815
COUNTY:	Broward
FILE NUMBER:	06-351780-001
APPLICANT:	WALTER CASSEL, PRES.
COMPANY:	THE FOUR SEASONS CONDO ASSOC.
SITE:	THE FOUR SEASONS CONDO; 333 SUNSET DR. FORT LAUDERDALE; PIDPID 5042 12 AB 0020
TYPE OF ACTIVITY:	DOCKING FACILITY
PROJECT LOCATION:	12 50S 42E
AQUATIC PRESERVE:	N/A
WATER BODY:	SUNSET LAKE

DETERMINATION STATEMENT: OUR RECORDS INDICATE THAT SUNSET LAKE WAS A NATURAL LAGOON THAT EXISTED PRIOR TO ALTERATIONS IN THE AREA, AND THE LANDS LYING BELOW THE MEAN HIGH WATER LINE AT THE LOCATION OF THE PROPOSED ACTIVITY ARE STATE OWNED.
TO DANIELLE SATTELBERGER, SLERP/SE
MJK 3/23/2017

PREPARER:	KNAPP_M
DATE APPROVED:	03/24/2017
WORKSHEET STATUS:	Approved

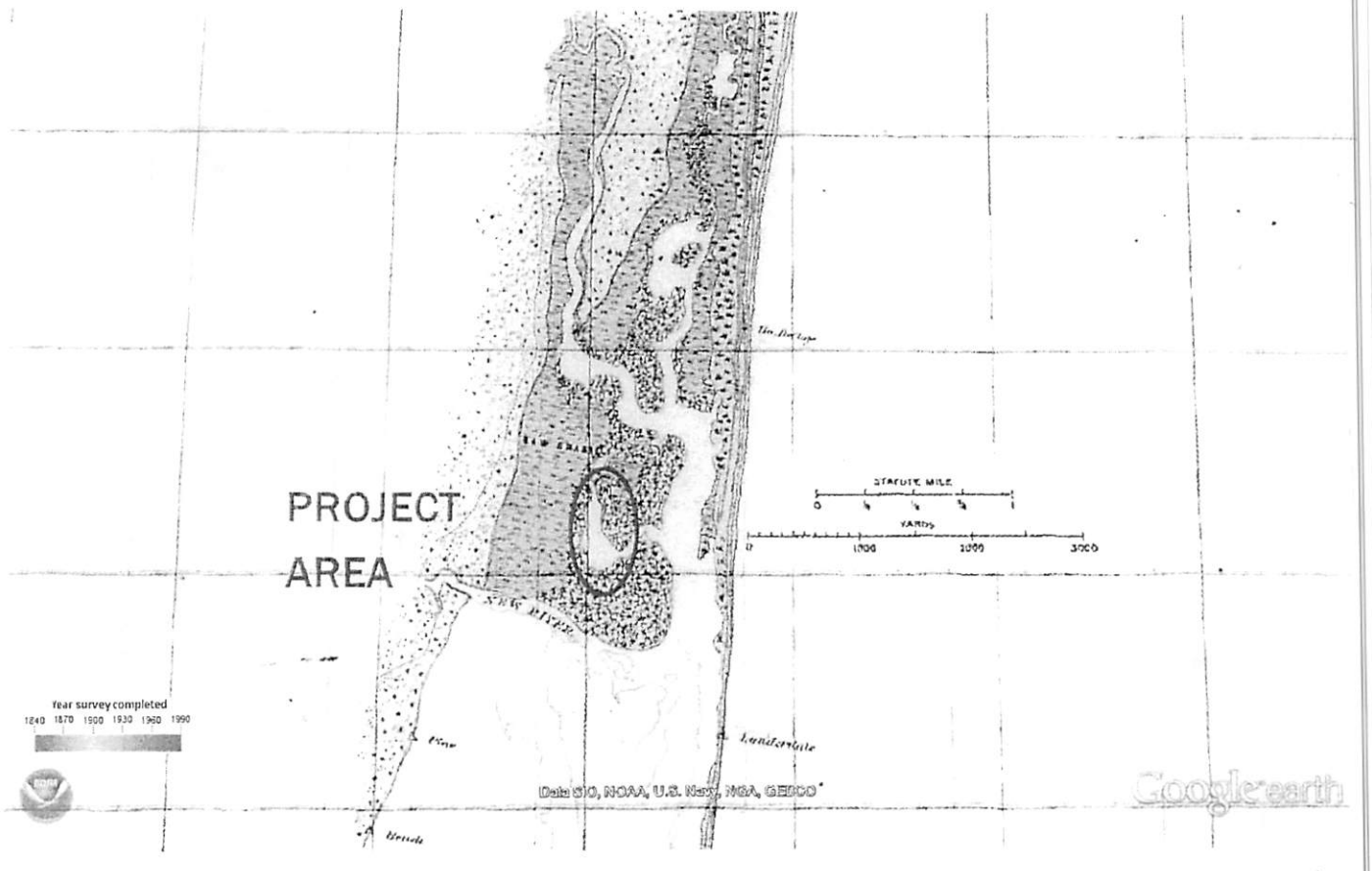

Chart No. 1656 (1884)

NO BOT conveyances or encumbrances at stie

March 23, 2017

- Public Land Survey System 2006
- State Land Records (BTLDSR)

1:9,028

0 0.1 0.2 0.4 mi

0 0.175 0.35 0.7 km

FDEP
Esri HERE DeLorme MapmyIndia, © OpenStreetMap contributors
Esri HERE DeLorme MapmyIndia, © OpenStreetMap contributors, and the GIS user community
Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics

81 Fla. 479
Supreme Court of Florida.

CITY OF TARPON SPRINGS et al.

v.

SMITH et al.

April 7, 1921.

Rehearing Denied June 10, 1921.

Bill by H. J. Smith and another against the City of Tarpon Springs and others. Decree for complainants, and defendants appeal.

Affirmed.

West Headnotes (5)

[3] **Water Law**
Who are riparian owners, and what is riparian land

Where a dedication plat shows that a street line at some points extends to and along the water line of navigable water, and at other points the street lines depart from the water line and again return thereto, there may be riparian rights incident to the street easement at the points where the street line and the navigable water line join, but there may be under appropriate circumstances no riparian rights incident to the street where the street and water lines do not intersect; it appearing that the space between the water line and the street line was not dedicated.

9 Cases that cite this headnote

[4] **Judgment**
Judgment Against One or More Coparties

Where a municipality apparently has rights in an easement in land that is in controversy between private parties, but the record affords no sufficient data for a proper decree as to the city, the rights of the other parties may be expressly adjudicated without prejudice to the municipality, nor is the state prejudiced by the decree.

Cases that cite this headnote

[5] **Equity**
Presumptions and burden of proof

A party asserting a counterclaim in equity, as permitted by Acts 1915, c. 6907, has the burden of proof as to such counterclaim seeking affirmative relief upon averments of new matter.

2 Cases that cite this headnote

[4] **Water Law**
Who are riparian owners, and what is riparian land

Riparian rights generally are incident to a street easement only when and at the points where the street, by express provision or by intendment, extends to a navigable body of water.

9 Cases that cite this headnote

[5] **Water Law**
Rights as Riparian Owner to Bed and Banks of Water Body in General

Lands not covered by navigable waters, and not included in the shore space between ordinary high and low water mark immediately bordering on navigable waters, are the subject of private ownership, at least when the public rights of navigation, etc., are not thereby unlawfully impaired.

5 Cases that cite this headnote

Syllabus by the Court

Lands not covered by navigable waters nor included between ordinary high and low water mark subject to private ownership. Lands not covered by navigable waters and not included in the shore space between ordinary high and low water mark immediately bordering on navigable waters are the subject of private ownership, at least when the public rights of navigation, etc., are not thereby unlawfully impaired.

Riparian rights are incident to street easement where street extends to navigable water. Riparian rights generally are incident to a street easement only when and at the opints where the street, by express provision or by intendment, extends to a navigable body of water.

Riparian rights incident to street easements held to exist at junction of water line and street line. Where a dedication plat shows that a street line at some points extends to and along the water line of a navigable body of water, and at other points the street lines depart from the water line and after encompassing considerable space again return to the water line, there may be riparian rights incident to the street easement at the points where the line of the street and the navigable water line coincide or join; but there may be, under appropriate circumstances, no riparian rights incident to the street where the street and water lines do not interest, when it appears that the space delineated between the water line and the street line was not dedicated.

Though record insufficient for proper decree as to one party, rights of others may be expressly adjudicated. Where a municipality apparently has rights in an easement in land that is in controversy between private parties, but the record affords no sufficient data for a proper decree as to the city, the rights of the other parties may be expressly adjudicated without prejudice to the municipality. Nor is the state prejudiced by the decree.

Party asserting counterclaim by answer in equity has burden of proof. A party asserting a counterclaim by answer in equity, as permitted by statute, has the burden of proof as to such counterclaim seeking affirmative relief upon averments of new matter.

**614 *480 Appeal from Circuit Court, Pinellas County; O. K. Reaves, judge.

Attorneys and Law Firms

Whitaker, Himes & Whitaker, of Tampa, for appellants.

James F. Glen, of Tampa, and Leroy Brandon, of Clearwater, for appellees.

A bill was filed October 19, 1917, by H. J. Smith against William Powell Wilson and Lucy L. W. Wilson, his wife, and the city of Tarpon Springs, a municipal corporation, in which it is in substance alleged that the Lake Butler Villa Company, a corporation, being the owner of certain real estate, on April 28, 1883, 'made a plat of Tarpon Springs which was duly recorded'; 'that prior to the filing of the said plat the said Lake Butler Villa Company caused the premises platted to be surveyed and marked with stakes on the ground, identifying the various blocks and lots as shown by the said plat, and block 54 was subdivided into various lots, as shown upon the said plat, including lot 2 on the north of said block, which is the one particularly involved in this controversy; that the said plat, among other things, shows a street called Anclote boulevard, 40 feet wide, and to the north of said Anclote boulevard it shows a parcel of land intervening between the said boulevard and the Anclote river, which land, at the time of making the said *481 plat, was low and swampy land, but land not covered by water at high tide, and intervened between the said Anclote boulevard as staked on the ground and the southern bank of Anclote river, the said strip of land so intervening between the northern boundary of Anclote boulevard and the high-water mark in Anclote river extending about 9 feet in width at the eastern extremity of the said lot 2 and 525 feet in width at the western extremity thereof;' that after the plat was filed for record, the Lake Butler Villa Company conveyed in fee simple to William Powell Wilson and Jessie Wilcox Wilson, his wife, lot 2, block 54, according to the plat, 'together with all the contiguous marsh on the Anclote river front'; that said conveyance constituted the grantees, husband and wife, 'tenants by entireties in the said property'; that the wife, Jessie Wilcox Wilson, died, so that the husband became the absolute owner in fee of the property; that William Powell Wilson afterwards subdivided lot 2, block 54, into lots and blocks, and caused a plat of said subdivision to be duly recorded, 'which plat * * * shows that the said strip of low and swamp land intervening between Anclote boulevard and the said Anclote river'; that after the recordation of the latter plat, William Powell Wilson made conveyances of

lots 'by reference to said plat, but did not convey to such purchasers, or to any one, the low marsh land to the north of Anclote boulevard, or any portion thereof'; that in 1913 conplainant 'bargained with the said William Powell Wilson to purchase from him all of the lots in the said plat of which he continued to be the owner, including the low marsh land to the north of the said Anclote boulevard, and the said William Powell Wilson agreed to sell the said lots, together with the said marsh land, to your orator for the sum of *482 $1,500, which was paid to the said William Powell Wilson, and thereupon the said William Powell Wilson, joined by his then wife, Lucy L. W. Wilson, for the purpose of conveying the said property to complainant, executed a warranty deed of conveyance embracing the lots of which he then remained the owner, included in the plat hereto, and in order to convey to complainant the low marsh land aforesaid to the north of Anclote boulevard, repeated in the said deed of conveyance the same words used in the deed of conveyance from the Lake Butler Villa Company to him, namely, 'together with all the contiguous marsh on the Anclote river front,' and by the use of the said words it was the intention and purpose of complainant and the said William Powell Wilson and Lucy L. W. Wilson, his wife, to convey to complainant in fee simple all the marsh land fronting on the Anclote river, which had been conveyed to the said William Powell Wilson and Jessie Wilcox Wilson by the aforesaid deed of conveyance from the Lake Butler Villa Company, and not merely to convey to complainant the low or marsh land on the Anclote river front contiguous to the lots remaining unsold described **615 in the said deed of conveyance from the said William Powell Wilson and wife to complainant, a certified copy of which is hereunto annexed as 'Exhibit C' hereto, and hereby made by reference a part of this bill of complaint; that it was solely by reason of a mistake in the scrivener in drawing up the deed of conveyance last mentioned that the low or marsh land embraced therein was described as contiguous to the property described in the said deed of conveyance, and it was the mutual intention and purpose of your orator and the said William Powell Wilson and Lucy L. W. Wilson, his wife, that complainant by his purchase should acquire title to all of the low or marsh *483 land on the Anclote river front contiguous to lot 2 of block 54 as the same was conveyed by the Lake Butler Villa Company to the said William Powell Wilson and Jessie Wilcox Wilson, his wife, and it was the intention and purpose of all parties that the words used in the deed to complainant should convey the same to complainant; that thereafter, to wit, on the 18th day of October, 1917, the Lake Butler Villa Company executed and delivered to complainant a deed of conveyance whereby it conveyed to complainant all of its right, title, and interest in that portion of Anclote boulevard abutting lot 2 of block 54 according to the original plat of Tarpon Springs, and also all riparian property to the north of Anclote boulevard in front of the said lot 2 of block 54; that complainant is now the owner of all the property and rights conveyed to him by the deed of conveyance last mentioned, and also in equity the owner of all contiguous marsh on the Anclote river front in front of lot 2 of block 54, according to the original map of Tarpon Springs; that in the year 1916 the city of Tarpon Springs caused Anclote boulevard to be curbed and paved and located the same by reference to the original stakes placed on the ground at the time the original map of Tarpon Springs was made, and the said street as so permanently located by the city of Tarpon Springs is shown by the plat, and leaves a strip of low or swamp land north of the north boundary of the said street outside the limits thereof as shown on the said plat, and the said city of Tarpon Springs in assessing the property abutting on the said street for the cost of such paving and curbing recognized that the property to the north of the north boundary of said street was property held in private ownership by assessing one-third of the cost thereof against such abutting property; that *484 afterwards, to wit, on the 12th day of January, 1917, the defendant city of Tarpon Springs procured the defendants William Powell Wilson and Lucy L. W. Wilson, his wife, to execute and deliver to it a quitclaim deed undertaking to convey to it the tract of land lying and situated between the north boundary of the Anclote boulevard and the Anclote river, extending from the intersection of the east boundary of Athens street and the Anclote river in a westerly direction along the bank of the Anclote river to a point north of the intersection of the west boundary of Cross street and the Anclote river, together with all riparian rights thereto; also, any land, marsh and riparian, rights thereto on the south bank of the Anclote river not heretofore conveyed by the said Wilson to any other parties, which property is a portion of the property intended to be conveyed by the deed of conveyance from the said William Powell Wilson and wife to complainant, 'Exhibit C' hereto, and your orator avers that the said deed to the said defendant city of Tarpon Springs was made by defendants William Powell Wilson and his wife without any consideration, and is a mere quitclaim deed and the execution thereof was procured by certain representations made to the said

William Powell Wilson by the city of Tarpon Springs of the nature of which complainant is not informed, except that complainant is advised that the same were untrue, and your orator avers that by reason of the fact that the said quitclaim deed was made without consideration, and by reason of the fact that the same is a quitclaim deed, the defendant city of Tarpon Springs stands in the shoes of the defendant William Powell Wilson, and complainant is entitled to the same relief, as against it, to which he is entitled as against the said William Powell Wilson; and complainant further alleges *485 that the defendant city of Tarpon Springs, at the time it secured the said quitclaim deed, was fully advised of your orator's rights in the premises.'

The prayer is that the deed of conveyance from William Powell Wilson and wife to the complainant be reformed to cover the locus in quo pursuant to the mutual intent of the parties thereto.

By stipulation the Lake Butler Villa Company was made a co-complainant with H. J. Smith.

The defendants William Powell Wilson and his wife conceded the claims of the complainant H. J. Smith.

The answer of the city of Tarpon Springs contained, among other things, the following allegations as abstracted by counsel for appellant:

That the Lake Butler Villa Company, at the time of the making of its original map of the town of Tarpon Springs, was not owner of that part of the property now embraced within the corporate limits of said city and covered by said map, which constituted the bed and shores of certain navigable waters, including the Anclote river, wherein the tide then, since, and now ebbs and flows; that along said navibable waters within the limits of said town, as laid out upon the map, at some points the bank was so abrupt as to leave no land covered with water at high tide that was not covered at low tide, whereas **616 at other points there existed a considerable shore space covered at high tide which was not covered at low tide, and forming a marsh area; that a complete copy of the original map of Tarpon Springs was attached to the answer; that the Lake Butler Villa Company on said map laid out certain streets along the shores of the navigable waters in *486 the town, including Anclote river of an irregular course or direction, but conforming to the meanders of the high water mark thereof, and which had the high water mark for the boundaries thereof on the side next thereto, one of which said streets was Anclote boulevard: that said Lake Butler Villa Company, at the time of filing said map, was not the owner of the bed or shores of said navigable waters, or the space along the same between the high and low water mark thereof, and had therein and thereto only such riparian rights as appertained to its ownership of property abutting on said navigable waters; that the presence of said navigable waters, and the availability thereof for commerce, navigation, boating, and fishing was one of the chief inducements which led the Lake Butler Villa Company to locate the town of Tarpon Springs in the locality selected; that Anclote boulevard extended to, and had for its boundary, on its side next to the Anclote river, the high water mark of said river throughout its entire length; that Anclote boulevard, as laid out and designated on the original map, provided and indicated on the said of said street next to Anclote river, that said street should extend to the waters of said river; that where the line of the high water mark and the low water mark practically coincide, the map employed only a single line to designate the edge of the water constituting the street boundary, but where a considerable shore space existed between the high water mark and the low water mark, the map attempted to delineate the location of both the high water mark and the low water mark, so as to indicate the intervening shore space; that where Anclote boulevard forms the northern boundary of lot 2 of block 54, for a portion of the distance, there was no substantial difference between the location of the high water mark and the low water mark of the *487 river, and it so appeared upon the map; whereas, for the remainder of the distance there was a considerable divergence between the high water mark and the low water mark between which intervened a shore space of low marsh land (the locus in quo), the boundaries of which were delineated upon said map, and by which along the shore space last mentioned, said boulevard was laid out to extend and project to and along the high water mark of said river, which shore space constitutes the subject-matter of the present litigation; that after the filing of said map, the Lake Butler Villa Company conveyed all of the property platted hereon into lots and blocks by reference to said map, and thereby dedicated to and for the public use said Anclote boulevard, together with all the rights which said company had in and to all the shore space along said boulevard between it and the channel of the river, where said boulevard formed one of the boundaries of lot 2 of block 54 of the town, and that said dedication to remain in full force and effect; that it was untrue that there existed any intervening parcel of land between Anclote

boulevard and the Anclote river, as asserted in the bill of complaint, and on the map attached thereto as 'Exhibit B' thereof, or that any such intervening land existed between said boulevard, as staked out on the ground and the said river; that it was untrue that William Powell Wilson and Jessie Willcox Wilson acquired by their deed from the Lake Butler Villa Company the ownership of the alleged strip of land in the bill of complaint referred to, or thereby acquired any title therein and thereto; that the plat of William Powell Wilson's subdivision of lot 2 of block 54 showed that Anclote boulevard on its northern boundary extended to the high water mark of the Anclote river, and that the alleged intervening strip of land was a part *488 of the shore of the river, extending between its high water and low water mark; that it was untrue that at the time of the execution by William Powell Wilson to the complainant of the first deed in the bill of complaint mentioned, William Powell Wilson was the owner of the alleged marsh land lying north of the Anclote boulevard, as in the bill of complaint asserted; that the defendant was without knowledge of any mistake in the execution of the deed mentioned, and strict proof was demanded of the allegations of the bill with respect thereto; that it was untrue that the complainant owned or had any interest in the premises, or right to the premises sought to be embraced in his deed by reformation thereof; that it was untrue that any strip of land as alleged in the bill of complaint, intervened between Anclote boulevard, as laid out and established, and the Anclote river, as asserted in the bill of complaint, and on the map thereto attached, or that the city had ever recognized the existence of said strip by assessing any portion of the cost of paving against the same, or otherwise; that it was untrue that the city had obtained its quitclaim deed by any false representations, and it was further untrue that the city stood in the shoes of the defendant William Powell Wilson, or that the complainant was entitled to the same relief against the said city to which he might be entitled as against William Powell Wilson; that by virtue of the facts stated in the answer, there had been an irrevocable dedication by the Lake Butler Villa Company to and for the use of the public, including the inhabitants of the town of Tarpon Springs, of the streets shown upon **617 the original map of the town, including Anclote boulevard, together with all riparian rights to and over the shore of said river projecting outward to the channel of said river from the northern boundary of Anclote boulevard, *489 where said boulevard formed the boundary of lot 2 of block 54; that said dedication had been accepted, and that the public and the inhabitants had continued to use and enjoy the rights and privileges so dedicated; that upon the incorporation of the defendant as a municipal corporation, under the laws of Florida, it succeeded to and held in trust for use and benefit of the public, including the inhabitants of said municipality, the rights so dedicated; that the chief commercial industry, which for 20 years has been located in the city of Tarpon Springs, was the sponge industry, the carrying on of which had resulted in a great number of sponging vessels bringing sponges from the Gulf of Mexico through the Anclote river to use the shore space of the Anclote river up to the edge of Anclote boulevard in front of lot 2 of block 54 in docking, loading, and discharging their cargoes, and that the public for a long time had freely enjoyed access from the waters of the Anclote river to and over Anclote boulevard without any attempt on the part of the Lake Butler Villa Company, William Powell Wilson or the complainant to deprive the public from the enjoyment of such rights, and without any claim that any intervening strip of land privately owned existed, as asserted in the bill of complaint; and that there had been no assessment of said intervening strip for taxation, as alleged in the bill; that the complainant asserted an adverse of estate, or interest in and to the said shore space, riparian rights, and right of access which the defendant held in trust as aforesaid, and claimed to own in private ownership the strip of land in the bill of complaint referred to; and that it was the purpose and intent of the complainant, and those acting in his behalf, to undertake to cut off and deprive the public, including the inhabitants of the city of Tarpon Springs *490 from the aforesaid shore, riparian rights, and the right of access from Anclote boulevard to and from the shores of the waters of the Anclote river in front of lot 2 of block 54, which had been dedicated to the public.

The said answer prayed for the following affirmative relief:

That the defendant be decreed to have and hold in trust for the public, including the inhabitants of the city, the dedication for street purposes of Anclote boulevard in front of lot 2, block 54, of the town, as laid out upon the original map, and said street to have as its northern boundary the high water mark of the Anclote river, and the said city to be invested with and to have in trust for the public the dedication of all riparian rights in and to the shore space of the Anclote river in front where Anclote boulevard forms one of the boundaries of said lot 2 of block 54, as well as of the free and unrestricted

right of access from said boulevard for the said distance outward and over the shores and waters of said river to the channel thereof; that the adverse estate claimed by the complainant to the alleged strip of intervening land in the bill of complaint mentioned, be determined, adjudicated, and declared to be without legal right or foundation and to be null and void; and that the complainant, his agents, servants, and employees, be perpetually enjoined and restrained from imposing any obstacle which would obstruct the free and unrestricted right of access by the public, and the inhabitants of the city, from Anclote boulevard, where same forms the northern boundary of lot 2 of block 54 of the town, outward to and over the shores of the waters of the Anclote river to its channel.

***491** Neither the propriety of having determined in the present suit the counterclaim set forth in the answer of the city, nor the defendant's rights upon the facts alleged to have the affirmative relief prayed for in its answer, was challenged by the complainants by motion to strike, or otherwise. And without any reply to the counterclaim embodied in the answer of the city, the cause was treated by the parties to the suit as being at issue upon the allegations contained in the bill and the answers, and testimony was taken upon the merits, and the cause submitted and heard, and final decree entered. The final decree, as originally entered is:

'This cause coming on to be heard upon the pleadings heretofore had, the Lake Butler Villa Company having been by consent joined as a complainant with H. J. Smith, and upon the testimony as reported by the master, and having been argued by the solicitors for the respective parties and submitted to the court, and the court being advised of its opinion in the premises, it is ordered, adjudged, and decreed that the equities are with the complainants and that the deed of conveyance, 'Exhibit C' to the bill of complaint from the defendants William Powell Wilson and Lucy L. W. Wilson, his wife, to H. J. Smith the reformed, as against the said defendants as well as against the defendant city of Tarpon Springs, so as to correctly and truly express the mutual intention of the parties by substituting for the works 'together with all the contiguous marsh on the Anclote river' the following words: 'Together with all the marsh on the Anclote river front contiguous to lot 2 of block 54 in the town of Tarpon Springs as shown by the original map thereof, being the contiguous marsh on the Anclote river front mentioned in the deed of conveyance from the Lake Butler Villa Company to William ***492** Powell Wilson and Jessie Wilcox Wilson, his wife, dated March 4, 1884, and recorded in Deed Book P, page 79, of the Public Records of Hillsborough county, Florida.'

'It is further ordered, adjudged, and decreed that the equities are not with the defendant city of Tarpon Springs, on its claim for ****618** affirmative relief as set forth in its answer filed in the above stated cause, and that the said claim of the defendant city of Tarpon Springs for such affirmative relief be and the same is hereby denied and the said counterclaim is hereby dismissed.

'It is further ordered, adjudged, and decreed that the defendant city of Tarpon Springs do pay all of the costs of these proceedings to be taxed by the clerk of this court.

'Ordered, adjudged, and decreed in chambers, at Bradentown, Florida, on this the 17th day of November, 1919.

'O. K. Reaves, Judge.'

The following is the 'Amendatory Decree':

'This cause coming on to be heard upon the petition of the city of Tarpon Springs for a rehearing, upon consideration thereof it is ordered, adjudged, and decreed that the said petition be and the same is hereby denied, upon modification of the decree heretofore rendered by adding thereto the following paragraph, which is to be taken and read as a part of the said decree, viz.:

"This decree is without prejudice to the rights of the city of Tarpon Springs as to that portion of the premises where the original plat of Tarpon Springs shows the northern boundary of Anclote boulevard to be coincident with the southern boundary of Anclote river.'

***493** 'In denying relief to the city of Tarpon Springs under its counterclaim the court is of the opinion that under the original plat, where a space is shown thereon to intervene between the northern boundary of Anclote boulevard as delineated thereon and the Anclote river, the property shown on the plat between such northern boundary and the Anclote river remained the private property of the Lake Butler Villa Company, and was not dedicated to the public. Where the northern boundary line of Anclote boulevard is shown on the plat to be coincident with the southern boundary of the Anclote river, the court is of the opinion that the case is within the rule announced in Brickell v. Fort Lauderdale [75 Fla. 622] 78 South.

681, but there is no definite evidence in the record to fix such location so that a decree might be rendered, and the prayers of the city's counterclaim relate to the entire premises.

'Ordered, adjudged, and decreed in chambers at Bradentown, Florida, on this the 16th day of December, A. D. 1919.

'O. K. Reaves, Judge.'

An appeal was taken in the names of all the defendants.

The locus in quo is claimed to be covered by a patent issued by the United States to the state of Florida under the swamp and overflowed land grant act of Congress, approved September 28, 1850 (U. S. Comp. St. §§ 4958-4960). The patent conveyed to the state 'the whole fractional section twelve,' township 27 south, range 15 east, 'according to the official plats of survey.' The official play of survey shows that a portion of the said fractional section 12 is on each side of the Anclote river, and that between the meander lines in the section and the Anclote river there is considerable ***494** marsh land. It further appears that the river flows from east to west through the north half of said section 12, and that the surveyed portions of the north half of the section is divided into lots. South of the river the lots are numbered 1, 2, and 3. Lot 1 contains 56.18 acres; lot 2, 48.63 acres, and lot 3, 51.80 acres. The surveyed portion of section 12 on the north side of the river is a long narrow strip containing 17.84 acres. The south half of the section contains 323.16 acres. The entire surveyed area of the fractional section numbered 12 as shown 'by the official plats of survey' aggregates 497.67 acres. As a full section usually contains about 640 acres of land, it thus appears that somewhat more than 140 acres of the section as meandered are unsurveyed and are covered by the waters of the Anclote river and by marsh lands; the latter being apparently the greater part of the unsurveyed space. The official plat of survey shows that there is perhaps more marsh land north of the river than south of it in section 12. The claimant assumes that the patent conveyed to the state all the land in the section including that covered by the meandered marsh on both sides of the river, and in effect claims that the state conveyed all of the lands, including the marsh lands, within section 12 to his predecessor in interest. As presented, this appeal must be disposed of without adjudicating whether the patent conveyed the marsh lands to the state, or whether the deed from the state through its agency covering 'all of fractional section twelve,' conveyed the title to the unsurveyed marsh lands in that section to its grantee, as the state is not a party to this suit, and is not represented on the record or by counsel.

The following is chapter 3941, Acts of 1889:

'An act declaring Anclote river navigable.

***495** 'Be it enacted by the Legislature of the State of Florida:

'Section 1. From and after the passage of this act the Anclote river, in the counties of Hillsborough and Pasco, shall be and is hereby declared navigable from the mouth of said river to where it is intersected by the line dividing sections 1 and 2, in township 27 S., R. 15 E.
'Sec. 2. That it shall be unlawful for any person or persons to blockade or obstruct in any way said river.

'Sec. 3. That all laws and parts of laws in conflict with the provisions of this act are hereby repealed.

'Approved June 4, 1889.' Chapter 3941, Acts of 1889.

Opinion

WHITFIELD, J. (after stating the facts as above).

In a suit between individuals for reformation of a deed of conveyance to include 'all the marsh on the Anclote river ****619** front contiguous to lot two of block 54 in the town of Tarpon Springs,' the city was made a defendant, and by answer demanding affirmative relief under the statute the city claimed a public easement over the marsh lands which lie between a dedicated street, 'Anclote boulevard,' in the city, and the line of the river as shown by the dedication map. As to this affirmative relief predicated upon averments of new matter, the city had the burden of proof. See 16 Cyc. 401; Griffith v. Henderson, 55 Fla. 625, 45 South. 1003; 21 C. J. 577. Neither the propriety nor the legal sufficiency of the counterclaim of the city as interposed in this suit was challenged.

The reformation was not resisted by the other defendants, the plaintiffs' grantors, and the chancellor decreed the reformation prayed, but denied the claim of the city to an easement in the premises. On a petition for a ***496**

rehearing the chancellor amended the decree, making it 'without prejudice to the rights of the city of Tarpon Springs as to that portion of the premises where the original plat of Tarpon Springs shows the northern boundary of Anclote boulevard to be coincident with the southern boundary of Anclote river,' the amendatory decree further stating that--

'There is no definite evidence in the record to fix such location (where the street and river lines coincide) so that a decree might be rendered, and the prayers of the city's counterclaim relate to the entire premises.'

On appeal the city alone contests the decree.

The dedication plat shows a space of considerable size, that includes the locus in quo, lying between a street of the city and the river, which space, shown to be salt marsh more or less covered by growing vegetation, is delineated on the plat by the north line of the street and the line that purports to show the south boundary of the river. The river is shown to be navigable and to be affected by the tides. At high tide the waters from the river cover some and perhaps nearly all of the lands referred to.

Chapter 3941, Acts of 1889, set out in the statement, declared Anclote river to be navigable from its mouth to the dividing line between sections 1 and 12 in township 27 south, range 15 east, for the purpose of forbidding the river to be blockaded or obstructed. But the river is shown to be in fact navigable as it passes through section 12 where the locus in quo is situated. The statute does not declare the river to be nonnavigable above the point mentioned in the act, and no intent appears in the statute to affect riparian rights above the point mentioned in the act.

When by 'Treaty of Amity, Settlement and Limits Between the United States of America and the Kingdom ***497** of Spain, concluded February 22, 1819, ratification exchanged at Washington, D. C., U. S. A., February 22, 1821, proclaimed February 22, 1821,' there was ceded 'to the United States, in full property and sovereignty, all the territories known by the name of East and West Florida,' the United States took title to the lands under the navigable waters within the territory for the benefit of the national public; such lands to go to a future state embracing the territory for the use and benefit of all the people of the state. Ex parte Powell, 70 Fla. 363, 70 South. 392; Brickell v. Trammell, 77 Fla. 544, 82 South. 221; Shively v. Bowlby, 152 U. S. 1, 14 Sup. Ct. 548, 38 L. Ed. 331.

The lands not under navigable waters that passed to the United States under the treaty were held for disposition by Congress. This includes swamp and overflowed lands within the territory ceded by Spain.

By an act of Congress approved March 3, 1845 (5 Stat. 742), the state of Florida 'was admitted into the Union on equal footing with the original states, in all respects whatsoever.' Thereafter the title to the lands under navigable waters, including the shore or space between ordinary high and low water marks, in the state, has been held by the state in trust for the use and benefits of its inhabitants, subject to the power of Congress in the premises, under the Constitution of the United States and to appropriate regulation by the state. State ex rel. Ellis v. Gerbing, 56 Fla. 603, 47 South. 353, 22 L. R. A. (N. S.) 337; Broward v. Mabry, 58 Fla. 398, 50 South. 826; Shively v. Bowlby, supra; Brickell v. Trammell, supra; Port of Seattle v. O. & W. Ry., 254 U. S. --, 41 Sup. Ct. 237, 65 L. Ed. 500, decided Jan. 31, 1921. See also, Mann v. Tacoma Land Co., 153 U. S. 273, 14 Sup. Ct. 820, 38 L. Ed. 714, and Baer v. Moran Bros. Co., 153 U. S. 287, 14 Sup. Ct. 823, 38 L. Ed. 718; San Francisco City and County v. Le Roy, 138 U. S. 656, 671, 672, 11 Sup. Ct. 364, 34 L. Ed. 1096; 28 A. & E. Enc. Law (2d Ed.) 206; ***498** 27 R. C. L. 1330; Dumas v. Garnett, 32 Fla. 64, 13 South. 464; State v. Black River Phosphate Co., 32 Fla. 82, 13 South. 640, 21 L. R. A. 189; 1 Farnham on Waters, p. 220.

While the navigable waters in the state and the lands under such waters including the shore or space between high and low water marks are held by the state for the purpose of navigation and other public uses, subject to lawful governmental regulation, yet this rule is applicable only to such waters as by reason of their size, depth, and other conditions are in fact capable of navigation for useful public purposes. Waters are not under our law regarded as navigable merely because they are affected by the tides. The shore of navigable waters which the sovereign holds for public uses is the land that borders on navigable waters and lies between ****620** ordinary high and ordinary low water mark. This does not include lands that do not immediately border on the navigable waters, and that are covered by water not capable of navigation for useful public purposes, such as mud flats, shallow inlets, and low lands covered more or less by water permanently or at intervals, where the waters thereon are

not in their ordinary state useful for public navigation. See 32 Fla. 64, 76, 13 South. 464.

[1] Lands not covered by navigable waters and not included in the shore space between ordinary high and low water mark immediately bordering on navigable waters are the subject of private ownership, at least when the public rights of navigation, etc., are not thereby unlawfully impared. Clement v. Watson, 63 Fla. 109, 58 South. 25, Ann. Cas. 1914A, 72. As to what may be included in a patent, see Lord v. Curry, 71 Fla. 68, 71 South. 21; Niles v. Cedar Point Club, 175 U. S. 300, 20 Sup. Ct. 124, 44 L. Ed. 171; Producers' Oil Co. v. Hanszen, 132 La. 691, 61 South. 754; *499 Producers' Oil Co. v. Hanzen, 238 U. S. 325, 35 Sup. Ct. 755, 59 L. Ed. 1330; Chapman & Dewey Lumber Co. v. St. Francis Levee Dist., 232 U. S. 186, 34 Sup. Ct. 297, 58 L. Ed. 564; French-Glenn Live Stock Co. v. Springer, 185 U. S. 47, 22 Sup. Ct. 563, 46 L. Ed. 800; 9 C. J. 182, 193.

In this case the land in controversy is claimed by the complainants to be covered by a patent issued by the United States to the State of Florida under the act of Congress approved September 28, 1850, granting to the state all swamp and overflowed lands in the state not theretofore disposed of by the United States. The patent includes 'The whole of fractional section' 12, township 27 south, range 15 east, 'according to the official plats of survey.' These plats show considerable marsh land between the meander lines and the river, in section 12. The locus in quo is seemingly not embraced within the meander lines of the fractional section 12, portions of which section 12 lie on both sides of Anclote river, a narrow but navigable stream. The controversy is apparently concerning a part of the marsh lands between the meander line and the south side of the navigable river. Assuming this marsh land to be swamp and overflowed land within the meaning of the act of Congress, and that the patent gave the state title extending over the marsh lands from the meander lines to the waters of the river bed, at a point where the state's title by virtue of its sovereignty to lands under navigable waters including the shore, reaches; and assuming, without deciding, that the conveyance by the state gave the title to its grantee covering the marsh lands to high-water mark on the shore of the river bed, the rights of the city are to be determined by the dedication 'map' or plat, if it substantially delineates the location of the body of the navigable stream with reference to the streets dedicated.

*500 The state through its designated agency conveyed 'all of fractional section 12,' township 27 south, range 15 east, to complainant's predecessor in claim of title. A subsequent grantee of the land included it in a 'Map of the Town of Tarpon Springs, Hillsborough County, Florida,' recorded in 1885. The map delineates lots and blocks and numerous streets, with one street marked 'Anclote Boulevard,' which is 40 feet wide and runs along a portion of the northern part of the town where Anclote river is. At some places the north line of the boulevard for some distance coincides with or is merged into a line that indicates the south side of Anclote river. At other places the two lines denoting 'Anclote Boulevard' depart towards the south from the delineated south line of the river, and after encompassing considerable spaces to the south of the river line with no designation on such spaces, the street lines turn to the north, and the north line of the boulevard again coincides with or becomes the same as the south line of the river, as it extends in a westerly direction.

The locus in quo is shown by the defendant city to be salt marsh with filled-in places. It is represented on the dedication map as a space in irregular form between the designated north line of Anclote boulevard and the delineated south line of Anclote river. Apparently Anclote boulevard was designed to run along the river side at some points, and to encircle considerable spaces leaving land in supposedly low places between the boulevard and the river line, at other points. The definitely outlined spaces thus shown by the dedication map to be intentionally left between the street and the river were obviously not dedicated expressly or as an incident to the street easement if the dedicator own such spaces. There is nothing on the map to indicate that at the dedication *501 the waters of the body of the river extended over the locus in quo. The dedication plat shows a canal running into the river through the space that includes the locus in quo, thus indicating the space to be low lands and not a part of the river bed. The fact that the spaces contain no numbers or other designations indicates a reservation rather than a dedication. See Florida East Coast R. Co. v. Worley, 49 Fla. 297, 38 South. 618.

The dedicator conveyed the locus in quo to Wilson in 1884, who platted it showing the same spaces between the boulevard and the river, and this was done before the town was established, thus showing that the spaces were not intended to be included in the dedication. See Kirkland v. City of Tampa, 75 Fla. 271, 78 South. 17;

**621 City of Miami v. Florida East Coast Ry., 79 Fla. 539, 84 South. 726; Florida East Coast R. Co. v. Worley, supra. If the spaces are owned by the state, its title thereto is not affected by this suit. The city shows no authority the assert the rights of the state in lands covered by navigable and tide waters.

The dedication by the owner under the particular town plat, showing streets, etc., manifestly did not give any easement or other rights beyond the expressly designated limits of the streets and the incidents that are appropriate thereto. Wherever the street, Anclote boulevard, as delineated by line and stated width, touches or approximately touches the body of the Anclote river, the riparian rights that are appropriate to a street easement were also impliedly dedicated as an incident; there being no express or implied reservation by the dedicator of such riparian rights. See Brickell v. Town of Fort Lauderdale, 75 Fla. 622, 78 South. 681.

[2] [3] *502 An easement in the marsh lands including the locus in quo, lying between the specifically designated north line of Anclote boulevard and the line indicating the open body of Anclote river, obviously was not, by the use of this particular map or plat, dedicated to the city. A right to use such marsh lands for purposes of access to the river did not pass as incidental to the dedicated street. Riparian rights generally are incident to a street easement only when and at the points where the street, by express provision or by intendment, extends to a navigable body of water. In this case, there are no express terms or intendments to extend the location or the width of the street beyond the line definitely fixed; and where the designated north line of the street does not extend to or approximately to the river, as shown by the dedication plat, no easement was dedicated over the space on the plat between the designated north line of the street and the line indicating the body of the river. The fact that the spaces are covered by tidewaters, or by the waters of the river at high-water periods, does not give an easement over the land, under this dedication plat, even if high water extends to the boulevard as indicated. It does not appear that any rights in the wide spaces between the designated lines of Anclote boulevard and the body of the river were granted or dedicated to the public or to the city. Nor does it appear that the space including the locus in quo is in fact a part of the main body of the navigable river. On the contrary, a canal running through the space into the river indicates lowlands not the river bed.

[5] The city shows no rights superior to those accorded by the dedication. Affirmative relief was sought by the city through its answer, as is permissible under the statute. Chapter 6907, Acts 1915.

[4] *503 It is assumed, but not decided, that the dedicator owned the locus in quo and also the land dedicated for the street easement. The state is not prejudiced by the decree herein. There is no sufficient definite data as to the places where the north line of the street and the south line of the river coincide, so that a decree may be rendered on that point; therefore the amended decree properly made the adjudication of the rights of the other parties to be without prejudice to the city as to the points where the said street and the river lines do coincide.

Affirmed.

TAYLOR, ELLIS, and WEST, JJ., concur.

BROWNE, C. J., concurs in the conclusion.

All Citations

81 Fla. 479, 88 So. 613

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168 So.2d 65
Supreme Court of Florida.

Oliver R. BURKART and Mabel C. Burkart, husband and wife, Petitioners-Appellants,
v.
CITY OF FORT LAUDERDALE, a municipal corporation, Respondent-Appellee.

No. 33107.
|
Oct. 7, 1964.
|
Rehearing Denied Nov. 6, 1964.

Subdivider's successors brought suit against city to be declared owners of accretions and to enjoin the city from interfering with their use or disposal of the accretions. The Circuit Court, Broward County, entered a decree for the city, and the subdivider's successors appealed. The District Court of Appeal, Second District, 156 So.2d 752, affirmed the decree by a divided court, and the subdivider's successors filed their petition in Supreme Court for writ of certiorari. The Supreme Court, Mason, Circuit Judge, held that where subdivider's recorded subdivision plat dedicated street along navigable body of water to public but provided that riparian rights were reserved to subdivider and its successors, and thereafter there were accretions formed along street, subdivider's successors had fee interest in accretions, but accretions were subject to street easement, and general public had right to use accretions as way of ingress to and egress from body of water.

Decision of District Court of Appeal quashed, and District Court of Appeal directed to enter its decision consonant with views expressed by Supreme Court and to command Circuit Court to reinstate cause and enter final decree in accordance therewith.

West Headnotes (4)

[1] **Courts**
Florida

Where part of decision of District Court of Appeal in case dealing with riparian rights was in direct conflict with prior opinion and decision of Supreme Court, Supreme Court had jurisdiction to review that part of decision of District Court of Appeal on petition in Supreme Court for writ of certiorari. F.S.A.Const. art. 5, § 4.

2 Cases that cite this headnote

[2] **Dedication**
Extent of Dedication

Water Law
Conveyance or lease of riparian or littoral land as including accretions

Where subdivider's recorded subdivision plat dedicated street along navigable body of water to public but provided that riparian rights were reserved to subdivider and its successors, and thereafter there were accretions formed along street, subdivider's successors had fee interest in accretions, but accretions were subject to street easement, and general public had right to use accretions as way of ingress to and egress from body of water.

3 Cases that cite this headnote

[3] **Water Law**
Title to Land Formed by Accretion or Lost Through Reliction;Effect on Adjacent Owners' Boundaries

Accretions generally belong to owner of upland to which they attach.

Cases that cite this headnote

[4] **Water Law**
Conveyance or lease of riparian or littoral land as including accretions

Title to accretions, unless excepted, passes with land to which they are appurtenant.

Cases that cite this headnote

Attorneys and Law Firms

*65 Patterson & Maloney, Fort Lauderdale, for petitioners.

C. Shelby Dale, James E. Edwards and William J. Lee, Fort Lauderdale, for respondent.

Opinion

MASON, Circuit Judge.

Petitioners, plaintiffs in the trial court and appellants in the District Court of Appeal, Second District, filed their petition in this court for a writ of certiorari to be directed to the latter court to have reviewed a decision of that court affirming a decree of the Circuit Court in and for Broward County, in equity, in favor of respondent herein, defendant and appellee below. We granted the writ both on jurisdiction and *66 merits, being of the view that the petition reflects possible conflict between the decision of the District Court of Appeal and a prior decision of this court insofar as the decision affirmed that part of the lower court's decree which lodges exclusive riparian rights in the respondent-defendant City of Fort Lauderdale.

The facts of the case are extensively set out in the majority opinion below and no good purpose will be served to repeat them here, except as is necessary to point up the problem which confronts us in determining whether there is conflict between the decision below and prior holdings of this court, and if such conflict exists, to assist us in deciding the case on the merits. For a statement of such facts we refer the reader to the decision and opinion of the District Court of Appeal, Second District, 156 So.2d 752, filed October 9, 1963.

For the purposes of this review it is sufficient to relate that in 1921 the owner of certain property located on New River Sound, a navigable body of water in Broward County, recorded a subdivision plat of the land, which plat contained a dedication with pertinent portions as follows: 'The *riparian rights* in and to the waters of New River and New River Sound opposite each lot or parcel of land fronting or abutting upon Ocean View Drive are *hereby reserved* to the New River Development Company, its successors, legal representatives or assigns, owners of said abutting lots or parcels of land. The streets, avenues and Ocean View Drive, shown hereon are hereby dedicated to the perpetual use of the public as thoroughfares, reserving to the New River Development Company * * * the reversion or reversions thereof, whenever discontinued by law.' (Emphasis supplied)

Petitioners, through mesne conveyances from the subdivider, obtained various lots, with the reserved riparian rights, in the subdivision. These lots face east and abut the west side of Ocean View Drive, which runs along and borders upon New River Sound lying to the east of said Drive. This street runs generally in a north and south direction.

Petitioners' complaint below asserted ownership of riparian rights in respect of the lands subsequently formed by accretion and lying easterly across Ocean View Drive opposite their lots in the subdivision, by virtue of their ownership of the underlying fee in Ocean View Drive, and by virtue of the reservation of riparian rights in the dedication by the dedicator to itself and its assigns. The complaint further alleges that under the provisions of the Riparian Rights Act of 1856, and amendatory and supplementary statutes enacted thereafter, petitioners have the rights to fill in the submerged land lying in front of their lots and to the east of Ocean View Drive, to the channel of the Sound. The petitioners prayed that they be declared the owners of this land, free and clear of any claim, right or title of the respondent City, and that the City be enjoined from interfering with their use or disposal of said land. Petitioners also allege that at the time of the recording of the plat there existed a certain parcel of land between the street and the water fee title to which was in the dedicator and which passed to them by mesne conveyances, and that as to this parcel they have outright ownership, and that the City of Fort Lauderdale has no rights therein, riparian, or otherwise. The City answered and asserted that there was no such land lying east of the Drive when the plat was recorded and that the dedication of the street to the public by petitioners' predecessor in title operated to relinquish to the public, and to merge in the public right, the dedicator's, and its assigns' individual and private rights and right of access to the open navigable waters in front of the dedicator's uplands. It also contended that under its charter it has the power to regulate and control all the streets, waterways and public ways within the City *67 limits, and has adopted ordinances to that effect.

The suit was filed in 1946 but was not determined until 1960. The chancellor dismissed the suit upon final hearing,

denying the petitioners the relief sought. The District Court of Appeal affirmed, one member dissenting. In affirming the court first concluded that the chancellor was correct in holding that the 'easterly boundary of Ocean View Drive, as shown on the plat, was intended to be and was the waters of New River Sound' and that any accumulated deposits against Ocean View Drive were a part of the dedicated street. The District Court of Appeal found 'the words on the face of the plat, dedicating the Drive as a public thoroughfare and reserving riparian rights, when considered in the light of all the circumstances * * * are clearly inconsistent' and 'therefore, the plat and its dedication must be construed in favor of the public and against the reservation by the subdivider and his successors in title.' Hence, the court construed the dedication as 'operating to relinquish to the public, and to merge in the public right, the dedicator's individual riparian rights to the navigable waters.'

As to the holding of the District Court of Appeal that the 'easterly boundary of Ocean View Drive, as shown on the plat, was intended to be and was the waters of New River Sound,' we find no conflict, as applied to the facts in the case, between it and the decisions of this court in Brickell v. Town of Ft. Lauderdale, 75 Fla. 622, 78 So. 681, or that of this court in Earle v. McCarty, Fla., 70 So.2d 314, relied upon by petitioners to give this court jurisdiction on the ground of conflict. In both of these cited cases the principle was set forth that where a street is shown on a plat of a subdivision to run along a navigable stream, and the plat itself shows the side of the street furthest from the stream to be denoted by a straight line, while the side nearest the stream is marked by undulating or wavy lines, presumably indicating the irregular line of the waters of the stream, these facts are taken to define a street lying on the water, with nothing between it and the water, in the absence of anything appearing to the contrary on the plat or in the dedication. The chancellor below resolved an apparent conflict between the oral testimony taken at the final hearing and the lines of the street as shown on the plat, and concluded that the latter was intrinsic evidence in the plat itself indicating that the maker of the plat showed no land lying between the street and the water at the time the plat was made and recorded. And having so resolved this conflict, he concluded that the easterly boundary of Ocean View Drive, as shown on the plat, was intended to be and was the waters of New River Sound. The District Court of Appeal held that the chancellor in resolving this issue of fact ahd applied the correct principle, as stated in the prior decisions of this court now relied upon by petitioners to establish a conflict. With this portion of the opinion and decision below we agree, and therefore cannot assume jurisdiction because of any such alleged conflict.

[1] However, having concluded, as did the chancellor below, that the 'easterly boundary of Ocean View Drive, as shown on the plat, was intended to be and was the waters of New River Sound,' the District Court of Appeal went on to hold, as also did the chancellor below, 'that if any deposits have accumulated against Ocean View Drive, such accumulations are a part of the dedicated street.' The court below then stated that 'Where a street is laid out so that it is bounded on one side by navigable waters, the dedication of the street to the public operates to relinquish to the public, and to merge in the public right, the dedicator's individual right of access to the open navigable waters in front of the dedicator's uplands,' and then held that a reservation of riparian rights by the dedicator is inconsistent with and must give way in the face of such dedication. We are of the opinion that this latter *68 holding of the court below is in direct conflict with our opinion and decision in City of Tarpon Springs v. Smith, 1921, 81 Fla. 479, 88 So. 613, and because of such conflict we have jurisdiction to review that part of the decision below which deals with the question of riparian rights of these petitioners as against the right and authority of the City over the waters of the New River Sound abutting upon Ocean View Drive opposite petitioners' uplands.

In City of Tarpon Springs v. Smith, supra, although we held that '[w]herever the street * * * touches or approximately touches the body of the * * * river, the riparian rights that are appropriate to a street easement were also impliedly dedicated as an incident; there being no express or implied reservation by the dedicator of such riparian rights,' there is implicit in our holding in that case the principle that riparian rights do not pass as an incident to the street easement where there is an express reservation by the dedicator of such riparian rights, and since the record herein reflects that there was an express reservation of riparian rights by the dedicator, petitioners' predecessor in title, there is a direct conflict between the holding of the District Court of Appeal on this issue, and the holding implicit in our decision in City of Tarpon Springs v. Smith. We therefore have authority and do assume jurisdiction by virtue of Section 4, Article V of the Florida Constitution, F.S.A. See: Sunad v. City of Sarasota, Fla. 122 So.2d 611.

We now pass to the merits of the case. The majority opinion below held that the record in the case before the chancellor justified the chancellor's finding that there was no land lying east of the Ocean View Drive at the time of the recording of the plat, and that therefore there existed then no such land to which petitioners hold the absolute fee title as claimed by them, but that any land now so lying accumulated by accretion subsequent to the recording of the plat. With this holding we are in accord. However, we are of the opinion, as was the author of the minority opinion below, Judge White, that the majority opinion affirms a misapplication of the doctrine of merger indulged by the chancellor below to effectuate a divestiture and transfer of reserved property rights.

The majority opinion conceded that the petitioners own the fee of Ocean View Drive but held that petitioners' ownership of the underlying fee does not vest them with riparian rights to the exclusion of the riparian rights accruing to the easement in the dedicated street, and that the riparian rights attached to the streets easement and accrued to the public and were not the property of the owner of the fee in the street, the petitioners herein. With this holding we cannot agree, for it overlooks, or does not give validity to, the riparian rights expressly reserved by the dedicator to itself and its assigns. In laying out the subdivision, including petitioners' lots, the dedicator specifically reserved to itself and to its assigns 'the riparian rights in and to the waters of New River and New River Sound opposite each lot or parcel of land fronting or abutting upon Ocean View Drive.' The dedicator, New River Development Company, constructed streets, pavements and sidewalks and sold lots according to the plat. Petitioners, plaintiffs below, in their complaint traced title to their lots back to New River Development Company and asserted title to the accreted tract lying opposite their lots between the Drive and the water, and claimed the right to fill the submerged lands so appurtenant to their lots so long as they did not obstruct the navigable channel. In their deraignment of title it appears that riparian rights were granted by a chain of conveyances culminating in the deed to the petitioners. The City in its answer claimed for itself the ownership of the street and of the increment between it and the water by reason of the dedication.

[2] [3] [4] The petitioners undoubtedly own the fee to the street, but we agree with the chancellor and the District Court of Appeal that it would be inconsistent with the easement ***69** to permit petitioners to fill the submerged land. The plat, by placing the eastern boundary of the street contiguously along the water's edge, evinces an intent that the easement therein would continue to extend to the water's edge notwithstanding future accretion or erosion. We agree that it is correct to hold that the accretions attaching to the fee in the street became subject to the street easement and are a part of it. But, the fee interest remains in the petitioners, since accretions generally belong to the owner of the upland to which they attach. Ford v. Turner, Fla.App., 142 So.2d 335. Title to the accretions, *unless excepted* passes with the land to which they are appurtenant. American Mortgage Co. v. Lord, Fla.App., 132 So.2d 40.

The decree below goes further than merely to deny petitioners' right to fill these submerged lands or to appropriate to themselves full dominion over the accretions, for it denies petitioners all riparian privileges incident to the reservation of rights in the plat and, in effect, confers the totality of such rights upon the City. This cannot be, for such a holding is inconsistent with the petitioners ownership of the fee and is consistent only with the City's ownership of it, which it does not have. The City owns neither the fee to the street nor to the accretions appurtenant to the street.

We concur in the views expressed by Judge White in his dissenting opinion wherein he says:--

'The city clearly has the right to enter and use all portions of the easement for road maintenance purposes. For such purposes the easement continuously extends to the highwater mark of New River Sound and should not be infringed; but I find no controlling law or overriding public policy that requires the lodgment of exclusive riparian rights in the city contrary to the recorded intent of the dedicator. It is elementary that only such dedicatory rights may be accepted as are actually or impliedly given. Contrarily the instant holding permits the city to accept the benefits of dedication and at the same time wholly reject the reservation of rights; and, further, the decree virtually takes the entire package of rights reserved and confers them upon the defendant, a public corporation having proprietary as well as governmental powers.

'Under the decree as entered the city, in its proprietary capacity and as exclusive owner of riparian rights, conceivably could erect a marina or establish a public beach with auxiliary facilities along the easement. Assuming that these facilities would not conflict with

plaintiffs' privileges possessed in common with the public, they would certainly conflict with the plain intent of the dedication, the private right of the plaintiffs to unobstructed view and enjoyment of the waterfront, anchorage and wharfage privileges and unimpeded right of ingress and egress to and from their lots and the water. The value of plaintiffs' lots is significantly involved. Since the easement was dedicated only as a street, it was not intended that the city should have riparian rights extending past the land's edge.'

Also,

> 'The rights of a riparian owner are property rights which cannot be taken without just compensation. See Thiesen v. Gulf F. & A. Ry. Co., 1918, 75 Fla. 28, 78 So. 491, 506-507, L.R.A.1918E, 718, and cases cited therein;'

In Thiesen v. Gulf, supra, we stated:
'The fronting of a lot upon a navigable stream or bay often constitutes its chief value * * *. The right of access to the property over the waters, the unobstructed view of the bay, and the enjoyment of the privileges of the waters incident to ownership of the bordering land would not, in many cases, be exchanged for the price of an inland lot in the same vicinity. In many cases, ***70** doubtless, the riparian rights incident to the ownership of the land were the principal, if not the sole, inducement leading to its purchase by one and the reason for the price charged by the seller.'-78 So. page 507.

In the Tarpon Springs case, supra, this court predicated its decision, which held that the riparian rights involved there were incident to a street easement, upon the fact that there was no reservation of such rights by and in the dedicator. The same reasoning is expressed by the District Court of Appeal, Second District, in Feig v. Graves, Fla.App.1958, 100 So.2d 192, 195, wherein the court held:

> 'A dedicator may reserve all riparian rights appurtenant to the land encumbered by the easement dedicated. Florida East Coast Ry. Co. v. Worley, 1905, 49 Fla. 297, 38 So. 618. Riparian rights were not reserved in the case at bar. In the absence of such a reservation whether these rights are included within the scope of a 'dedication' depends upon the purpose for which the easement was granted and the location of the property burdened with the easement.'

We conclude that because of the express reservation of riparian rights by the dedicator herein to itself and assigns, contained in the plat herein, these rights did not pass to the public as an incident to the street easement in Ocean View Drive. A contrary holding, in the words of Judge White in his able dissent below,

> '* * * unreasonably advances the servitude over the principal estate, materially prejudices the plaintiffs in the use and value of their property and is contrary to manifest intent.'

The City's easement in the street and accretions thereto may be protected for the benefit of the general public without ascribing to it rights, privileges and properties over and beyond those reasonably incident to its prescribed use; which use is not limited solely to travel upon the street, but includes the general public's right to use the accreted property as a way of ingress and egress to the waters of New River Sound. The petitioners should be adjudged owners of the fee title in and to the subject land with such riparian rights and privileges as have been reserved in the dedication, and which do not burden the easement dedicated, all in accordance with the purpose of the dedication and in recognition of the riparian rights herein held to have been reserved to petitioners as successors in title to the dedicator.

We conclude that the decision of the District Court of Appeal should be quashed, and that court is directed to enter its decision consonant with the views herein expressed, and to command the chancellor below to reinstate the cause and enter a final decree in accordance herewith, in accordance herewith.

DREW, C. J., and ROBERTS, THORNAL and HOBSON (Ret.), JJ., concur.

All Citations

168 So.2d 65

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75 Fla. 622
Supreme Court of Florida.

BRICKELL

v.

TOWN OF FT. LAUDERDALE.

April 26, 1918.

Appeal from Circuit Court, Broward County; H. Pierre Branning, Judge.

Suit by the Town of Ft. Lauderdale against Mary Brickell. Decree for plaintiff, and defendant appeals. Affirmed.

West Headnotes (3)

[1] **Appeal and Error**
Effect in Equitable Actions

The findings of the chancellor on the evidence will not be disturbed unless such findings are clearly shown to be erroneous.

11 Cases that cite this headnote

[2] **Dedication**
Weight and Sufficiency

On issue whether a street bordering a river, which street had been dedicated in laying out a town site, extended to river, evidence *held* to show that such was the intention of the dedicators.

5 Cases that cite this headnote

[3] **Dedication**
Public Authorities

Where dedication is made of street or roadway, and same is used by public, it is the duty of city, as trustee of the public rights in streets within whose corporate limits they are, to maintain public uses against encroachments, and this applies to territory taken into corporate limits after dedication as well as to territory included at time of dedication.

9 Cases that cite this headnote

Syllabus by the Court

The findings of the chancellor on the evidence will not be disturbed unless such findings are clearly shown to be erroneous.

On the facts in this case, it is held that the dedication of the streets extends to the waters of New river.

Where a dedication to the public use is made of a street or roadway, and the same is used by the public, it is the duty of the city, as trustee of the public rights in and to the streets within whose corporate limits they are, to maintain the public uses against encroachments, and this applies to territory taken into the corporate limits after the dedication as well as to territory included in the corporate limits at the time of the dedication.

Attorneys and Law Firms

***622** ****681** McCaskill & McCaskill, of Miami, and E. O. Locke, of Jacksonville, for appellant.

J. F. Bunn, of Ft. Lauderdale, for appellee.

Opinion

***623** BROWNE, C. J.

The suit brought in the circuit court for Broward county by the city of Ft. Lauderdale, the appellee herein, against Mary Brickell, is in effect an action to enjoin the defendant below from obstructing North and South River streets in the city of Ft. Lauderdale by erecting buildings, providing wharves, docks, boatways, and other obstructions on such parts of those streets as are contiguous to and bordered by the waters of New river, a navigable stream which extends through a part of the city.

On the 20th of April, 1896, Mary Brickell and William B. Brickell, her husband, owned certain lands on which they laid out a town site, subdivided into blocks or lots

with streets and avenues, and caused the subdivision to be platted. The plat was duly recorded in the records of Dade county, and contained this inscription:

> 'Know all men by these presents that we, William B. Brickell and Mary Brickell, his wife, have caused to be made the following attached map of the subdivision of the south half of the south half of section 3 and the north half of the north half of the south half of section 10, in township 50 south, range 42 east, in Dade county, state of Florida, to be known as Ft. Lauderdale; and that we do hereby dedicate to the perpetual use of the public the streets or highways shown thereon, reserving to ourselves, our heirs, personal representatives, successors, or assigns, owning lands abutting or adjoining the same, the reversion or reversions thereof whenever discontinued by law.'

**682 A demurrer to the bill was overruled and the defendant filed her answer. Testimony was taken on behalf of both parties, and the chancellor in his final decree held that William B. Brickell and Mary Brickell were owners in fee simple of the land platted as the town of Ft. Lauderdale, *624 and that they dedicated to the perpetual use of the public the streets and highways shown thereon, and that they confirmed such dedicating by making deeds of conveyance to land described therein by reference to such plat, and that by virtue of such dedication there was vested in the public an easement into and over the streets and highways, and that North River street as shown on the plat is not of uniform width, and that its south or southerly boundary is the waters of New river, and that South River street as shown on the plat is not of uniform width and its north or northerly boundary is the waters of New river; that the fee in the land over which North and South River streets are laid out and dedicated is vested in Mary Brickell or her heirs, personal representatives, successors, or assigns, subject to the easements aforesaid, and that 'the owners of the fee and the public have a coexistent right, the owner to use the land and the public to use the street, and one does not destroy the other. The owners' right to use the land is limited to such pruposes as do not interrupt or interfere with the free use by the public for all proper and lawful street purposes,' and 'that the town of Ft. Lauderdale has the right through its proper officers and agents to regulate, improve, maintain, and control said streets and highways for the use of the public, for all proper lawful street and highway purposes;' and enjoined the defendant Mary Brickell from doing or attempting to do any act, thing, or deed that would in any wise interrupt or interfere with the town of Ft. Lauderdale in exercising its lawful power and right to regulate, improve, maintain, and control the streets and highways aforesaid, to wit, North River street and South River street as construed to be shown on said plat of the town of Ft. Lauderdale, *625 and that 'all other matters and things in and by complainant's bill of complaint prayed are hereby denied.'

Upon the entry of appeal by the defendant, the complainant filed cross-assignments of error to the effect that the final decree is ambiguous, in that it does not clearly and specifically find and decide whether the riparian rights pertaining to the banks of New river at the points in question were an incident of or appurtenant to the public easement, or whether they were an incident of or appurtenant to the legal title or fee of the respondent.

There are four assignments of error by appellant, the first based on the overruling of the defendant's demurrer, and the second, third, and fourth present the same propositions of law and are discussed together by appellant, and will be so treated by this court.

In the discussion of the first assignment the appellant covers several propositions not raised by the demurrer, and will not be discussed by us. Neither is it necessary for us to discuss those grounds of the demurrer which are contended for by appellant, as the bill contains equity, and is sufficient to support the decree of the chancellor upon the issues presented by the pleadings and testimony, and we find no error in the order of the chancellor overruling the demurrer.

The vital questions presented by the assignments of appellant and cross-assignments of appellee are whether North and South River streets have a river boundary, and, if so, do the riparian rights in such streets accrue to the public, or are they reserved to the owner of the fee in the streets?

It is not questioned that there was an express dedication of the streets and highways shown on the plat, but appellant contends that the plat is ambiguous with reference to the width of North and South River streets. *626 The meandering line of New river through the town of Ft. Lauderdale is something over a mile, and at two points on South River street as dedicated on the plat the figure 40 appears, and appellant contends that because of these figures there is an ambiguity in the plat as to the width of both South River street and North River street, and that she should be permitted to offer extrinsic evidence of the intention of the dedicators. This she was permitted to do, and the chancellor, after hearing all the testimony and considering the same in connection with the plat and the dedication, found that both North River street and South River street were bounded by the waters of New river.

[1] This court is committed to the doctrine that the findings of the chancellor on the evidence will not be disturbed unless such findings of fact are clearly shown to be erroneous. Waterman v. Higgins, 28 Fla. 660, 10 South. 97; City of Jacksonville v. Huff, 39 Fla. 8, 21 South. 774; Sarasota Ice, Fish & Power Co. v. Lyle & Co., 58 Fla. 517, 50 South. 993; McMillan v. Warren, 59 Fla. 578, 52 South. 825; Viser v. Willard, 60 Fla. 395, 53 South. 501; Dixon Lumber Co. v. Jennings, 63 Fla. 405, 57 South. 615; Barnes & Jessup Co. v. Williams, 64 Fla. 190, 60 South. 787; Baggott v. Otis, 65 Fla. 447, 62 South. 362; Guerra v. Guiterrez, 66 Fla. 570, 64 South. 232; Farrell v. Forest Inv. Co., 73 Fla. 191, 74 South. 216; Simpson, Trustee, v. First National Bank of Pensacola, 77 South. 204; and Smith v. O'Brien, 78 South. 13, decided at the June, 1917, term of the court.

There is ample testimony to support the findings of the chancellor that the southerly boundary of North River street and the northerly boundary of South River street were intended to be the waters of New river.

**683 It is contended by the appellant that she intended *627 North River street and South River street each to be only 40 feet wide. That plat is drawn to a scale. There are some streets 40 and some 50 feet wide, and others of less width. Measured by the scale to which the plat is drawn, the width of North and South river streets as shown by the plat is generally about 40 feet, but it apparently varies according to the meanderings of the river. The lines marking the side of the North and South River streets away from the river are all straight lines, while those which mark the side next to the river are undulating and apparently follow the contour of the river. A single undulating line is usually used for marking a water boundary not affected by tides, while several parallel waved lines are used to mark a water boundary where tides ebb and flow; and where these are found on a plat they should be taken to define a lot or street lying on the water, with nothing between it and the water, in the absence of anything appearing to the contrary on the plat or in the dedication.

It was proven on the trial that the appellant had given several warranty deeds which contained the words 'with all riparian rights and privileges.' These were conveyances to lots which abutted on the side of North River street or South River street farthest from the river. It has sometimes been held that where a lot is separated from navigable waters by a public roadway the riparian right to the part of the waters lying in front of his lot is in such lot owner, and the grantor may have had this in mind when she granted the riparian rights to upland lots which were separated from the river only by a street whose boundary was the river, for, clearly, if there had been a strip of land between the street and the river, as *628 now contended by appellant, the riparian right attached to that. The acts of the dedicator in granting riparian rights to owners of lots lying on the side of the street furthest from the river is repugnant to her present contention that she retained a strip of land between these streets and the river.

There is intrinsic evidence in the plat itself from which the true intention of the appellant at the time she made the dedication can almost conclusively be established-at least more certainly than the testimony of witnesses given after a lapse of nearly 20 years, subject as such testimony is to mistakes caused by defective memory, personal interest, however slight, and the confusion of after-acquired information or later impressions with memory. The town of Ft. Lauderdale as laid out by Mary Brickell and William Brickell was a mile square; New river ran almost through the center of the plat. The cross streets that ran towards the river and into North and South River streets show an opening where they enter the side of these streets away from the river causing a break in that line of the street, but the line of the streets on the river is continuous. If, as contended by appellant, there was a strip of land between the river and the south line of North River street and the north line of South River street, the cross streets would doubtless have been shown on the plat as

extending across this strip to the river. The cross streets on both sides of the river bear the same names, are of the same width, and are on the same lines; showing an intention to make them continuous streets extending from one side of the town across the river to and through the other side of the town. If there was reserved to the appellant a strip of land on the river side of North River street and South River street, the inhabitants of one side of the city were entirely *629 cut off from intercourse with the other, for there is no point shown on the plat where ingress and egress to and from the river was possible without permission from the owner, or by becoming a trespasser. It is so highly improbable that a party owning a large tract of wild land whereon she was desirous of founding a town would locate it on both sides of a river, and by reserving to herself a strip along both its banks between the street and the river bar for all time the inhabitants of half the town from communicating with the other half, except upon permission from her, that the proof to establish such a contention ought to be of the strongest character. It has been repeatedly held that where a town is laid out upon the bank of a navigable river, even in the absence of an express dedication of the streets, it is sufficient evidence of its extending to the water, unless a contrary intention is manifestly indicated; and some courts have intimated that even where a map shows a strip of land between the river and the line of the street nearest the river, in the absence of anything to the contrary, it would be presumed that the space between such line and the river was thus discriminated for the use of the town, if not for a street. See Webb v. City of Demopolis, 95 Ala. 116, 13 South. 289, 21 L. R. A. 62; Village of Brooklyn v. Smith, 104 Ill. 429, 44 Am. Rep. 90; Davies v. Epstein, 77 Ark. 221, 92 S. W. 19. Thus in the case of Rowan's Executors v. Town of Portland, 8 B. Mon. (Ky.) 232, the map showed a strip of land lying between the river and the line of the street nearest the river, and the court said:

> 'That the town extended to the Ohio river, leaving no space between the town and the water, is a position which, in our opinion, does not admit of question. There is no line dividing or separating the town from the river. And if there were, it should rather be presumed that the space *630 between such line and the river was thus discriminated for the purpose of showing that it was intended for some use of the town different from that of the ordinary streets and public grounds (or that the cross streets, at least, were intended to be extended to the river **684 at some future day), than that a town located upon the bank of such a river, and at a point selected for its commercial advantages, should be wholly shut out from free and common access to the river. The unreasonableness of this latter presumption has been more than once declared by this court, and the fact that a town is laid off upon the bank of a navigable river has been held to be sufficient evidence of its extending to the water, unless a contrary intention is manifestly indicated. And we say it extends to, and is bounded by, the river, not only because this is to be presumed from its location on the bank, but because there is no other northern boundary but the river. A location on the river has been held to be sufficient evidence that the town so located extends to the water in the cases of the Trustees of Mayville v. Boon, 2 J. J. Marsh. 224; Giltner v. Trustees of Carrollton, 7 B. Mon. 680; City of Louisville v. Bank of United States, 3 B. Mon. 144.'

In the case of City of Louisville v. Bank of United States, supra, the court said:

> 'It would be almost as reasonable to sell and appropriate as private property the river itself, as the ground lining its margin, the occlusion of which would obstruct the communication between the city and the river. The object of locating a town on the river was to enjoy the benefit of its facilities as a highway.'

This reasoning applies with even greater force to a situation such as exists in the instant case, where the river flows through the town and cuts it into two parts.

In Haight v. City of Keokuk, 4 Iowa, 199, the court *631 said:

> 'The same reasoning applies to Water street. No other reasoning than the foregoing will answer; for it impossible to suppose that the proprietors, in laying off a commercial town upon a great navigable river, intended to cut off from free access to that river all but those who owned the front lots, and thus take away that which constitutes the greatest value of them all. What makes the land of this town of more value than a common farm? It is its adaption to commerce and trade, through its accessibility to a large navigable stream, and thence its communication with the rest of the world.'

Whatever ambiguity may have been caused by the insertion of the figures 40 on two places on the plat of South River street, no such ambiguity can be claimed as to the width of North River street. The appellant, however, says:

> 'At the extreme east end of South River street we find '40' and in South River street, between Cunningham and Metcalf avenues, '40,' which the engineering and legal professions both take to mean 40 feet, and it would give rise to the construction that North River street and South River street are only 40 feet wide.'

We cannot follow this method of ratiocination and apply a conclusion reached in determining the intention of a dedicator where an ambiguity exists to that part of an express dedication where there is no ambiguity. It would be more logical to apply the facts of the latter situation to that part of the plat which needs explanation. Thus, as there was no ambiguity in the plat as to the width of North river street-it being perfectly clear from the plat and the dedication that it extended to the waters of New river-the logical conclusion would be that it was the intention to have the same condition exist in South River street; otherwise there would have been this situation: The public residing on the north side of Ft. Lauderdale *632 would have access to the river, and could cross over it to that part of the city which lay south of the river, but they would not land without becoming trespassers. Those living on the south side of the river having no access to the river would have to stay on their side.

The plat shows a street on each side of the river by a single line denoting the line between the river and the street on each side of the river, with nothing to indicate that the street on each side was not intended to extend to the waters of the river. The sides of the streets furthest from the river are denoted by straight lines, while the sides of the streets next to the river are marked by irregular lines, presumably indicating the irregular lines of the waters of the river.

The courts have frequently said, and we find the same expressions in the text-books, that it is 'inconceivable' and 'preposterous' to contend that a town would be located on the banks of a navigable river and the inhabitants deprived of the right of access to the river. The unreasonableness of this contention is more pronounced in this case than any which we have been able to find, for here we have the owners of land laying off a city through which runs a navigable stream, a natural highway, now claiming that they intended to so isolate the inhabitants on each side of the river that they could not have intercourse with those on the other side, or have access to the natural highway which flows through the city without becoming trespassers or first getting permission from the owners of the strip reserved on the banks of the river.

We do not say that the owner of land desiring to lay off a city through which flows a navigable river might not do this, and in effect erect a barrier on each bank of the stream and cut off intercourse between the two sections *633 of the city, but the unreasonableness of such a plan for a city, and the improbability of one so situated becoming populated, is so great that such intention on the part of the dedicators would have to be very clearly established before it should be accepted by the courts, and where there is any doubt as to such intention it should be resolved against it. As was well said in the case of City of Denver v. Clements, 3 Colo. 484:

> 'If there exist an actual intent to reserve any portion of the lands so platted into streets, otherwise than by express reservation on the plat, certainly it should be made manifest in some

> manner, not only of equal certainty, but of equal publicity as the plat, otherwise an actual intent cannot be permitted to avail against an intent on which the law will and must insist, as being shown by unequivocal acts upon which the public had a right to rely.'

**685 See, also, City of Indianapolis v. Kingsbury, 101 Ind. 200, 51 Am. rep. 749.

[2] This disposes of the question of the width of North and South River streets which the chancellor found extended to the navigable waters of New river, which finding is approved.

[3] Where a dedication to the public use is made of a street or roadway, and the same is used by the public, it is the duty of the city, as trustee of the public rights in and to the streets within whose corporate limits they are, to maintain the public uses against encroachments, and this applies to territory taken into the corporate limits after the dedication as well as to territory included in the corporate limits at the time of the dedication.

The decree is affirmed.

TAYLOR, WHITFIELD, ELLIS, and WEST, JJ., concur.

All Citations

75 Fla. 622, 78 So. 681

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63 So.2d 906
Supreme Court of Florida, Division B.

McCORQUODALE et al.

v.

KEYTON et al.

March 31, 1953.

Suit to enjoin obstruction of park allegedly dedicated to owners of lots in subdivision by developers thereof. The Circuit Court, Bay County, E. Clay Lewis, J., granted the relief sought, and defendants appealed. The Supreme Court, Drew, J., held that whenever the owner of a tract of land subdivides the same into lots and blocks, lays off streets and other public ways and designates portions of said lands to be parks, playgrounds or similar facilities or uses similar words calculated to encourage prospective purchasers to buy said lots, and actually sells lots with reference to the plat, he becomes bound to his grantees by the plat and the representations thereon.

Affirmed.

West Headnotes (4)

[1] **Evidence**
Weights, Measures, and Values

Court had judicial knowledge of fact that access to and use of beach was extremely valuable right to owners of land paralleling beach.

1 Cases that cite this headnote

[2] **Easements**
Severance of Ownership of Dominant and Servient Tenements

Where developer of land bordering on Gulf of Mexico recorded plat showing oceanside area to be park and made, on plat, dedication of said park to property owners of subdivision, purchasers of lots sold according to plat acquired, by implied covenant, a private easement in the park appurtenant to the premises granted and conveyed to them, and developers were bound not to use land designated as park for any other purpose.

37 Cases that cite this headnote

[3] **Dedication**
General Rules of Construction

Plat will be construed against developer who is maker thereof and person selecting words used thereon.

6 Cases that cite this headnote

[4] **Easements**
Injunction

If a person's rights are invaded, degree of such invasion is unimportant; and therefore, fact that building obstructing easement in area of 3,000 by 200 feet was only 12 by 16 feet in area would not be ground for denying injunction against obstruction of easement.

3 Cases that cite this headnote

Attorneys and Law Firms

*907 F. S. Browne, Panama City, for M. E. McCorquodale and Mary Emma Mccorquodale.

Liddon, Isler & Welch, Panama City, for J. M. Webb.

J. M. & H. P. Sapp, Panama City, for appellees.

Opinion

DREW, Justice.

The title to fractional NE ¼ of Section 9, Township 3 South Range 17 West, was acquired by M. E. McCorquodale in 1927. The sought boundary of this property is the Gulf of Mexico.

In 1935 McCorquodale and wife platted the land. On the plat there appeared the following dedication, duly acknowledged:

'State of Florida

County of Bay.
Know All Men By These Presents That M. E. McCorquodale the owner of fractional Northeast Quarter of Section Nine, Township Three South, Range Seventeen West, Bay County, Florida, hereby make and adopt this plat as a true and correct plat of said lands and hereby dedicate for public use and public ways, to be used as such, all parcels and parts of land indicated on said plat as streets, and also dedicate that parcel and part of said land lying between the Gulf Coast Highway and the Gulf of Mexico as 'Sunnyside Park' for use of property owners of said plat.
In Witness Whereof the said M. E. McCorquodale has caused these presents to be executed and has affirmed his signature hereto, on this 3rd day of May, A.D. 1935.

Witnesses:

S/ J. O. Devone

S/ S. Humphries

Owners

S/ M. E. McCorquodale (Seal)

S/ Mary Emma McCorquodale (Seal)'

The plat was presented to, approved and accepted by the Board of County Commissioners of Bay County June 3, 1935.

Some time after the same was platted and subdivided and lots sold to various purchasers according to the plat, a small (12# x 16#) building was constructed by the McCorquodales on the land lying between the Gulf Coast Highway (known as U. S. Highway 98 and sometimes referred to in the record as such) and the Gulf of Mexico (the rights of the public in and to the beach between high and low water is not involved in this case), where principally sandwiches and cold drinks were sold. They operated the business for a number of years without objection from the lot owners in the subdivision and then sold the building to J. M. Webb, who was operating said business when this suit was instituted July 27th, 1951, by Grover Keyton and C. P. Hayes, owners of lots in the subdivision. The complaint charges that the use of the building by Webb for his private business purposes ***908** deprives the lot owners in said subdivision of the common use and enjoyment as a park of all that tract and area dedicated as Sunnyside Park and boldly marked on the plat as such.

The complaint concluded with a prayer to enjoin McCorquodale and wife from granting or conveying to J. M. Webb or any other person any portion of the land between the highway and the Gulf or from contracting to sell and deliver possession to any part of said area to any person, excluding the plaintiffs and other owners of land within the subdivision and the public, from the common use and enjoyment of said land. As to the defendant Webb, plaintiffs asked that he be enjoined from the further exclusive possession of the part held by him and that he-Webb-be required to permit the common use and enjoyment of said property by plaintiff and other owners in said subdivision.

Webb, in his answer, denied that the Board of County Commissioners had accepted the lands as a public park and averred said lands were for the use of the property owners of said plat and that none of the owners of lands in said subdivision were being deprived of any portion of the park area as dedicated except a space of about 12 x 16 feet in the area of 3000 x 200 feet, south of the highway, and that his use of said small tract was not inconsistent with the rights of the lot owners.

In their answer the McCorquodales allege that the effect of the dedication was to create a private easement in the owners of the lots in the subdivision and that they hold full legal title to the dedicated lands subject to the easement and have a right to deal with the land in any manner not unreasonably interfering with the enjoyment of said easement.

Testimony was taken and on final hearing the Chancellor below entered the following final decree.
'This cause coming on to be heard by the Court on final hearing and after receiving and hearing the evidence and testimony for the respective parties and the argument of the attorneys for the respective parties, and after due consideration of the cause, the Court being advised of its opinion finds as follows:

'That the equities in the case are in favor of the plaintiffs, Grover Kayton and C. P. Hayes and they are the owners in fee simple of property in Sunnyside Subdivision in Fractional Section 9, Township 3, South, Range 17 West; that Grover Keyton is the owner in fee simple of lots 1 and 2 in Block 1, according to the sub-division and plat as amended by Sunnyside on the Gulf of Mexico in the NE ¼ of Section 8, Township 3 South, Range 17 West, and that C. P. Hayes is the owner in fee simple of Lot 4, Block 4, according to the subdivision and plat of Sunnyside on the Gulf.

'That the defendant, M. E. McCorquodale, originally owned in fee simple all of said fractional Section 9, Township 3 South, Range 17 West, and as such owner subdivided and platted fractional NE ¼ of said Section 9 and dedicated as a park for the use of the lot owners in the subdivision of Sunnyside on the Gulf of Mexico, that part and portion of Fractional NE ¼ of said Section 9, Township 3 South, Range 17 West lying between the Gulf of Mexico and U. S. Highway No. 98, and that the plaintiffs as owners of lots in said subdivision were and are vested with the right to use said described area jointly and in common with all other lot owners in said subdivision.

'That the dedication of Sunnyside Park by M. E. McCorquodale and Mary Emma McCorquodale in the following language: 'And also dedicate that parcel and part of said land lying between Gulf Coast Highway and the Gulf of Mexico as Sunnyside Park for the use of property owners of said plat' constituted the granting of an easement only, and vested all property owners of said plat with an easement for the common use of said parcel and part of land as a private park.

'That the defendant, M. E. McCorquodale, and the defendant J. M. Webb, prior to the institution of this ***909** suit, had withdrawn and had been withholding from the plaintiffs and other lot owners in the said subdivision, the joint and common use as a park of a small undescribed portion of said park area, which said defendants have no right to do, and that the defendant, M. E. McCorquodale has no right or authority to sell and convey the fee simple title to any part or portion of said area.

'It is therefore, Ordered, Adjudged and Decreed, and it is the judgment of the Court, that the defendant, M. E. McCorquodale be, and he is hereby, enjoined from conveying and deeding to J. M. Webb, or any other party, the fee simple title to all or any part of that part and portion of fractional NE ¼ of Section 9, Township 3 South, Range 17 West lying between the Gulf of Mexico and U. S. Highway 98, which has been dedicated as a park for the use of the lot owners in said subdivision, and said defendant is permanently enjoined from conveying and deeding any right, title and interest in and to any part or portion of said park area, except it be conveyed subject to the rights of the owners of lots in said subdivision to use the same as a park and that the defendant, J. M. Webb, be and he is hereby, permanently enjoined from withholding any part or portion of said park area from the joint and common use of the plaintiffs and other owners of lots in said Sunnyside subdivision.

'It is further Ordered, Adjudged and Decreed, and it is the judgment of the Court, that the dedication of Sunnyside Park by the platters of fractional Northeast quarter of Section Nine, Township Three, South, Range seventeen west, is not a dedication to the 'Public' but created and granted to the then and all subsequent property owners of the plat, including the plaintiffs, Grover Keyton and C. P. Hayes, an easement and right, appurtenant to the property of the plat, to use said park area in common with all other such property owners as a private park, for the use and benefit of all of the property owners, owning and possessing lands within said sub-division.

'It is further Ordered and Adjudged, that the plaintiffs, Grover Keyton and C. P. Hayes, have and recover of and from the defendants, M. E. McCorquodale and J. M. Webb, their Court costs herein expended and taxed by the Court in the sum of $62.25 to be levied of goods and chattels, lands and tenaments of said defendants and to the plaintiffs rendered, and that the plaintiffs have execution therefor.'

For the foregoing decree both Webb and McCorquodale and wife have appealed. Webb complains that the Court erred in not decreeing that the dedication heretofore set forth was a nullity because it purported to create private rights in a limited group by dedication, and that-even if the Court's decree holding the purported dedication vested in the owners of lots in the subdivision an easement for common use, the use of a parcel 12# x 16# for the purpose and under the condition shown on the record, was not inconsistent therewith and had caused no damage to the

other lot owners. He also complains that the Court should not have assessed the costs against him.

McCorquodale and wife present three questions for our consideration. The first question is whether the lower Court abused its discretion in enjoining them from conveying the fee simple title to the lands when the decree itself held they did not own the fee simple title. Second, that the Court erred in enjoining the conveyance of said park area in the absence of proof of an attempt or threat to do so; and third, that the assessment of costs against them was not proper when the record fails to justify any decree against them.

[1] [2] [3] [4] The contention of the appellants that the declaration is a nullity because it attempted to create private rights in a limited group by dedication has no application here. Considered, however, with the plat itself, upon which the land in question was clearly marked 'Sunnyside Park', the evidence of the plaintiffs that they and others bought their lots relying upon said land being a park and the lot owners having ***910** the unrestricted use thereof, together with the fact-of which this Court takes judicial knowledge-that access to and use of the beach is an extremely valuable right to the owners of land such as is involved here, the effect-by whatever name it may be called-was to forever bar the developer from denying the owners that which he led them to believe they had.

While the cases of Florida East Coast R. Co. v. Worley, 49 Fla. 297, 38 So. 618; City of Miami v. Florida East Coast R. Co., 79 Fla. 539, 84 So. 726, and Boothby v. Gulf Properties of Alabama, Fla., 40 So.2d 117, are not directly in point, the reasoning in those cases clearly supports the decree of the Chancellor below. In this connection it is interesting to note that in the Annotation in 7 A.L.R.2d commencing on page 648, we find a Section labeled 'Theory that private right arises from and is blended with public right.' In this Section we find the following observation:

'Some courts have given effect to the broad view that a grantee to whom a conveyance is made by reference to a map or plat upon which a park or other open area is laid out acquires a private right of the user of, or easement in, such designated area by blending public rights resulting from dedication with private rights created by estoppel, implied grant, or implied covenant.

'Florida-Florida East Coast R. Co. v. Worley (1905) 49 Fla. 297, 38 So. 618; City of Miami v. Florida East Coast R. Co. (1920) 79 Fla. 539, 84 So. 726 (dictum recognizing rule). And see Boothby v. Culf Properties of Alabama, Fla., (1949) 40 So.2d 118.'

Whenever the owner of a tract of land subdivides the same into lots and blocks, lays off streets and other public ways and designates portions of said lands to be parks playgrounds or similar facilities or uses similar words calculated to encourage prospective purchasers to buy said lots, and actually sells lots with reference to the plat, he becomes bound to his grantees by the plat and the representations thereon. As the maker of the plat and the one who selects the words used thereon it will be construed against him. Common honesty requires that he perform that which at the time of conveyance he represented he would perform.

We approve the following language from the case of Lennig v. Ocean City Association, 41 N.J.Eq. 606, 7 A. 491, 493, 56 Am. Rep. 16, in speaking in this principle:

'From this doctrine, it, of course, follows that such distinct and independent private rights in other lands of the grantor than those granted may be acquired, by implied covenant, as appurtenant to the premises granted, although they are not of such a nature as to give rise to public rights by dedication. The object of the principle is, not to create public rights, but to secure to persons purchasing lots under such circumstances those benefits, the promise of which, it is reasonable to infer, has induced them to buy portions of a tract laid out on the plan indicated.'

See also the cases annotated on pages 654 to 659, Vol. 7 A.L.R.2d, under subtitle 'Theory that private right exists independently of public rights.'

To summarize, we hold that when McCorquodale and wife, Mary Emma McCorquodale, platted the land as they did, recorded the plat with the dedication thereon and the symbols 'Sunnyside Park' on the land in question and sold lots according to the plat, the purchasers acquired, by implied covenant, a private easement in said Sunnyside Park as appurtenant to the premises granted and conveyed to them and that they thus became bound to the grantees not to use the land designated 'Sunnyside Park' other than as a park.

The argument that Webb's use of the small (12# x 16#) tract is not inconsistent with the use of said land as a park

is wholly without merit. The easement of the purchasers extends to all of the park, not all except the parcel occupied by Webb. If a person's rights are invaded-as they were here-the degree of such invasion is unimportant.

***911** We construe the lower court's decree to enjoin McCorquodale from conveying the fee simple title to any of said park lands 'except it be conveyed subject to the rights of the owners of lots in said subdivision to use the same as a park.' As thus construed, we find it to be free from error so far as the McCorquodales are concerned.

We find no abuse of discretion in the manner in which costs were taxed against Webb and McCorquodale.

Affirmed.

ROBERTS, C. J., and THOMAS and HOBSON, JJ., concur.

All Citations

63 So.2d 906

459 So.2d 1089
District Court of Appeal of Florida,
First District.

Barry BONIFAY, City of Pensacola, Daniel Thomas Bowen and Mary Catches Bowen, Appellants,
v.
Barry E. DICKSON and John R. Williams, Appellees.

No. AZ–138.
|
Nov. 1, 1984.
|
Rehearing Denied Nov. 30, 1984.

Purchasers of real estate brought quiet title action. The Circuit Court, Escambia County, Jack H. Greenhut, J., quieted title in purchasers, and appeal was taken. The District Court of Appeal, Barfield, J., held that: (1) map drawn in 1893 dedicated disputed property which had accumulated through accretions between a roadway indicated on the map and waterfront, and public authorities had accepted the offer of dedication; (2) subdivision lot owner, whose deed referenced the 1893 map, had an implied private easement of access across the disputed property; (3) purchasers could not claim title to the disputed property based upon their chain of title; and (4) even if purchasers showed color of title to the disputed property, they failed to establish title to the property by adverse possession as they failed to show that they had been in continuous, exclusive, open and notorious, adverse possession of the disputed property for at least seven years prior to filing of the quiet title action.

Reversed and remanded.

West Headnotes (16)

[1] **Dedication**
Nature and essentials in general

Common-law dedication, one of several processes by which an owner of an interest in land can transfer to the public either ownership or a privilege of user for a public purpose, requires an intention to dedicate the property to use of the public, acceptance by the public, and clear and unequivocal proof of these facts; however, there are no specific formalities necessary to constitute an effective common-law dedication.

2 Cases that cite this headnote

[2] **Dedication**
Intent to dedicate

An intention to dedicate may be implied from the acts of the landowner, including the filing of a map or plat of the property designating the roadways thereon or the platting of the land and the selling of lots pursuant to the plat, which indicates thereon places for parks, public grounds, and streets.

2 Cases that cite this headnote

[3] **Dedication**
Designation in Maps or Plats, and Sale of Lots
Dedication
Improvement and repair

Map drawn in 1893 constituted an offer of dedication to public use of roadways platted thereon as well as a strip of property between the roadway and waterfront which developed through accretions over the years, and the grading and paving of the original wagon trail into a boulevard coupled with installation and maintenance of culverts under the boulevard constituted acceptance by public authorities of the dedication, even though the map was not recorded until after the conveyance of certain lots abutting the roadway.

2 Cases that cite this headnote

[4] **Dedication**
Improvement and repair
Dedication
User by public

Acceptance of an offer of dedication may be expressed or may be implied from acts showing an intention to accept, including, among other things, use by the public or

maintenance and improvement by the proper authorities of part of the land dedicated.

1 Cases that cite this headnote

[5] **Dedication**

Presumptions and burden of proof as to dedication

Statute establishing a presumption of dedication of a road maintained by public authorities for four continuous years to extent and width that has actually been maintained for the prescribed period does not limit operation of common-law dedication. West's F.S.A. § 95.361.

Cases that cite this headnote

[6] **Dedication**

Title or Right Acquired

Common-law dedication leaves ownership of the land in the dedicator, giving to the public rights of easement only.

1 Cases that cite this headnote

[7] **Dedication**

Rights and Liabilities as to Control and Care of Property

Estoppel

Title or claim to property

Under doctrine of estoppel in pais, the dedicator is precluded from exercising any right in the dedicated property which conflicts with rights of the public.

Cases that cite this headnote

[8] **Dedication**

Abutting owners

On acceptance of a dedication of roadways by the public, the public rights of easement take precedence over any title to the roadways acquired by purchasers of abutting lots.

Cases that cite this headnote

[9] **Municipal Corporations**

Title and Rights of Abutting Owners in General

Water Law

Title to Land Formed by Accretion or Lost Through Reliction;Effect on Adjacent Owners' Boundaries

Generally, abutting lot owners own fee title to the middle of a dedicated street; however, where the dedicated street runs along a navigable body of water, abutting lot owners own fee title to the entire width of the dedicated land, as well as title to accretions formed along the street.

1 Cases that cite this headnote

[10] **Dedication**

Persons entitled to benefit of dedication

In addition to public rights which may be created by dedication and acceptance, conveyances in reference to a plat may also create private rights in purchasers of subdivision lots to have public places described in the plat maintained for their designated uses.

1 Cases that cite this headnote

[11] **Deeds**

Construction in general

Purchasers of property, which included a conveyance of property between the road and a waterfront which had accumulated through accretion over the years, obtained title over portion of waterfront property directly across the street from the lots they purchased, even though language in their warranty deeds conveyed more of the waterfront property, where the language in the warranty deeds was in the nature of a quitclaim deed as it conveyed only that interest which the grantor held in the property.

Cases that cite this headnote

[12] **Adverse Possession**

Property Dedicated to or Acquired for Public Use

Adverse Possession

Nature and Extent of Title or Right

Easements

Adverse possession

Although adverse possession cannot operate to divest the public or a governmental unit of rights in a dedicated plat, fee title may be acquired and private rights of easement extinguished by adverse possession.

Cases that cite this headnote

[13] **Adverse Possession**

Character and elements of adverse possession in general

In order to acquire rights by adverse possession, the possessor must prove seven years of continuous, exclusive, open and notorious, adverse possession under color of title. West's F.S.A. § 95.16.

Cases that cite this headnote

[14] **Adverse Possession**

Good faith and diligence

Doctrine of color of title, for purposes of establishing adverse possession, is available only in cases where the instrument purporting to be a conveyance is accepted in good faith and in the honest belief that it vests title in the claimant. West's F.S.A. § 95.16.

2 Cases that cite this headnote

[15] **Adverse Possession**

Good faith and diligence

Question of whether a quitclaim deed establishes color of title, for purposes of establishing adverse possession, depends upon circumstances under which the deed is given and received.

2 Cases that cite this headnote

[16] **Adverse Possession**

Evidence

Although purchasers of disputed property may have shown color of title to the property pursuant to deeds conveying the property, purchasers failed to establish that they were in continuous, exclusive, open and notorious, adverse possession of the disputed property for at least seven years prior to filing of quiet title action, where they had paid taxes for the last two years, had maintained the property for the last two years, but presented no evidence regarding any acts of possession by their predecessors, and other parties testified that they had continuously maintained the property since the 1940's. West's F.S.A. § 95.16.

1 Cases that cite this headnote

Attorneys and Law Firms

***1091** John B. Carr of Barnes & Carr, Pensacola, for appellant Bonifay.

John W. Fleming, Asst. City Atty., Pensacola, for appellant City of Pensacola.

John P. Welch of Jones & Welch, Pensacola, for appellants Daniel Thomas Bowen and Mary Catches Bowen.

Artice L. McGraw of Cetti, McGraw, Bearman & Eddins, Pensacola, for appellees.

Opinion

BARFIELD, Judge.

Appellants challenge a final judgment quieting title in Dickson and Williams who, it is asserted, have failed to show the validity of their title. In addition, appellants contend that the trial court failed to recognize public and private interests in the disputed property. We agree and reverse.

This case is another in a series of disputes over the ownership of sections of a strip of waterfront property in a residential development known as East Pensacola Heights.[1] The disputed property is located between Bayou Boulevard, a street that runs along the western

perimeter of the development, and the waters of Bayou Texar. In 1909, the East Pensacola City Company conveyed the lots in Block 59, which are located across the street from the disputed strip, in deeds which referenced a plat of the subdivision made by J.E. Kauser in 1893. The Kauser map shows the development subdivided into lots and blocks and also shows an unnamed strip of land running along the western boundary of the subdivision between the platted lots and the shoreline of Bayou Texar. At the turn of the century there was apparently a wagon trail along this strip which became more extensively used over time until it was finally paved by the county and officially designated as Bayou Boulevard. [2]

Appellants Daniel and Mary Bowen purchased lots in the southwest portion of Block 59 in the early 1940's, at which time ***1092** the shoreline of Bayou Texar ran alongside the dirt road now known as Bayou Boulevard. According to the Bowens, the land now in dispute was at that time covered with water. By 1946 it had become a boggy area, covered with thick brush and potholes of standing water. At some time in the early 1950's, a road contractor working in the area received permission from the Bowens to dump sand onto the disputed property. The Bowens thereafter planted grass, trees and a garden, and have maintained and used the property up to the present time. In 1957 the Bowens gave the City of Pensacola an easement across the disputed property for installation of a sanitary sewer line.

As early as 1941, the county installed culverts under Bayou Boulevard to carry storm water runoff. These storm sewers, and the areas surrounding them, were maintained by the City after the subdivision was annexed in 1953. According to the Bowens, much of the accretion which has occurred since 1953 has been caused by sand washed onto the disputed area by the storm drains from Stanley Avenue and Lee Street.

In 1976 Charles and Ellen Lea and Julia Tait purchased the lots in the northwest section of Block 59 by warranty deed which contained a legal description of the lots and included the following language:

> ... together with the Grantors' right, title and interest, including riparian rights, in and to all or any part of the land and water bounded by a westerly extension of the South line of Lot 9, Block 59, running to the waters of Bayou Texar, and a northerly extension of the East line of Lots 9, 10, 11 and 12, Block 59, running to the waters of Bayou Texar.

On May 26, 1977, the Leas and Tait obtained a quit-claim deed from their neighbors to the north for an area of waterfront property which included not only the land directly across the street from the lots owned by the Leas and Tait, but also for part of the property directly across the street from the Bowens' lots. This latter portion of the waterfront property is the land in dispute.

On July 28, 1977, the Bowens filed a petition for injunction to restrain the Leas from erecting a fence along the northern border of the waterfront property claimed by the Leas; this case was dismissed without prejudice. In the spring of 1978, the Bowens obtained a survey of the waterfront property directly across from their lots and a building permit to erect a fence along the northern border of this property. When Mr. Lea tore down the fence erected by the Bowens, Mrs. Bowen had him arrested. [3] Thereafter, the Bowens obtained a quit-claim deed from Agnes Leaman, their neighbor to the south, for the waterfront property directly across from their lots.

On March 30, 1981, appellees Dickson and Williams purchased the waterfront property claimed by the Leas. On July 28, 1981, Dickson and Williams filed suit to quiet title to the disputed parcel, claiming record title based on a chain of title from October 18, 1963, coupled with a claim of title by adverse possession; a second count sought damages for slander of title. The City of Pensacola was allowed to intervene, claiming the sanitary sewer easement from 1957 and claiming also that portions of the subject property are dedicated public street rights-of-way. Barry Bonifay, a subdivision lot owner whose deeds referenced the Kauser map, was also allowed to intervene, claiming an implied private easement of access across the disputed property.

At trial, Williams testified that the property appeared well kept at the time of the 1981 purchase, that he paid property taxes for 1981 and 1982, and that he hired a lawn care agent to maintain the property from March, 1981 to the present, but that he does not know who maintained it prior to his purchase. The Bowens defended the action,

testifying to their use and possession of the property for forty years, but did not seek by counterclaim to quiet title in ***1093** themselves. In his final judgment, the trial judge found, inter alia, that the accreted property in dispute is adjacent to property delineated on the Kauser map; that the intent of the original owners of the undesignated strip of land west of the blocks and lots may not be deduced from the plat as a roadway; that the City has permitted buildings to be constructed on portions of the undesignated part of the property; and that the proof of acceptance of a public dedication was insufficient. [4]

[1] In order to determine the interests of each of the parties in the disputed property, it is necessary to examine its history, starting with the map drawn by J.E. Kauser in 1893. The first issue to be determined is whether this map, with respect to which the lots in the development were conveyed by the East Pensacola City Company, constitutes an offer of dedication to public use of the platted roadways. Common law dedication, one of several processes by which an owner of an interest in land can transfer to the public either ownership or a privilege of user for a public purpose, requires an intention to dedicate the property to the use of the public, acceptance ***1094** by the public, and clear and unequivocal proof of these facts. [5]

[2] An intention to dedicate may be implied from the acts of the landowner, including filing a map or plat of the property designating the roadways thereon, or platting the land and selling lots pursuant to the plat, indicating thereon places for parks, public grounds, and streets. *City of Palmetto v. Katsch*, 98 So. 352 (Fla.1923). Although it appears that the Kauser map was recorded subsequent to the conveyance of the subject lots in 1909, an offer of dedication may be implied from the fact that these conveyances were made with reference to the Kauser map.

[3] The next question is whether the dedicator intended to dedicate the unnamed strip of land in dispute, as well as the named streets designated on the map. Construing the plat as a whole and resolving any ambiguity regarding the extent of the dedication against the dedicator and in favor of the public, *Florida East Coast Ry. Co. v. Worley*, 38 So. 618 (Fla.1905), we construe the map as evidencing the owner's intention to dedicate the disputed strip, as well as the named streets.

It must also be determined whether the owner intended to dedicate for public use the entire strip, or only so much of it as was required for a public road, leaving an irregular strip of undedicated land on the water side of the road. In *Brickell v. Town of Ft. Lauderdale*, 78 So. 681, 683 (Fla.1918), the court observed: [6]

> A single undulating line is usually used for marking a water boundary not affected by tides, while several parallel waved lines are used to mark a water boundary where tides ebb and flow; and where these are found on a plat they should be taken to define a lot or street lying on the water, with nothing between it and the water, in the absence of anything appearing to the contrary on the plat or in the dedication.
>
> We construe the map as indicating an intention to dedicate the entire width of the undesignated strip, from the lot lines to the water's edge, for public purposes. [7]

[4] Acceptance of an offer of dedication may be expressed or may be implied from acts showing an intention to accept, including, among other things, use by the public or maintenance and improvement by the proper authorities of part of the land dedicated. [8] In *City of Pensacola v. Walker*, 167 So.2d 634 (Fla. 1st DCA 1964), this court noted that a wagon trail existed along the disputed strip in the early 1900's and that as it became more extensively used, it was graded and paved by the county and officially dedicated as Bayou Boulevard. The record reflects that in the early 1940's the county installed culverts under Bayou Boulevard to carry storm water runoff, and that these culverts were maintained by the City after the subdivision was annexed in 1953. These acts of the public authorities in maintaining and improving the road and the storm sewer lines may be construed as indicating acceptance of the entire strip offered for dedication. [9]

***1095** [5] The Florida Supreme Court held in *Indian Rocks Beach South Shore, Inc. v. Ewell*, 59 So.2d 647 (Fla.1952), that public acceptance by use of the main thoroughfare of a platted subdivision constituted an acceptance of the offer to dedicate the entire system of streets appearing on the plat. A similar result was reached in *Waterman v. Smith*, 94 So.2d 186 (Fla.1957), in which it was held that an offer to dedicate two contiguous alleys was wholly accepted by the City's action in paving one of them. In *Smith v. City of Melbourne*, 211 So.2d 66 (Fla. 4th DCA 1968), the court held there was a completed dedication of a 30-foot road right-of-way although the

City had not paved the full width of the roadway. And in *Dade County v. Harris,* 90 So.2d 316 (Fla.1956), use of a portion of a highway right-of-way as a "grass parkway" was held not incompatible with dedication and user of the whole for highway purposes. Section 95.361, Florida Statutes (1977), which establishes a presumption of dedication when a road has been maintained by public authorities for four continuous years, but only to the extent in width that has actually been maintained for the prescribed period, does not limit the operation of common law dedication as discussed in the cited cases.

City of Pensacola v. Walker, supra, in which this court affirmed the chancellor's finding that the evidence affirmatively established a lack of acceptance by the public of an offer to dedicate the disputed strip of land to public use, except as to the right-of-way of Bayou Boulevard, is distinguished from the instant case on its facts and should not in our opinion be extended to control the determination of ownership and other property rights with respect to land not involved in that litigation. [10]

[6] [7] [8] Although section 95.361, Florida Statutes provides for acquisition of fee title to the "dedicated" road, *Madden v. Florala Telephone Company,* 362 So.2d 475 (Fla. 1st DCA), *appeal dismissed,* 367 So.2d 1125 (Fla.1978), common law dedication leaves ownership of the land in the dedicator, giving to the public rights of easement only. [11] Under the doctrine of estoppel in pais, the dedicator is precluded from exercising any right in the dedicated property which conflicts with the rights of the public. [12] On acceptance of the dedication by the public, the public rights of easement take precedence over any title to the street acquired by purchasers of abutting lots. [13]

[9] The general rule is that the abutting lot owners own fee title to the middle of a dedicated street, *Burns v. McDaniel,* 140 So. 314 (Fla.1932). However, where the dedicated street runs along a navigable body of water, the abutting lot owners own the fee title to the entire width of the dedicated land, as well as title to the accretions formed along the street. *See Burkart v. City of Fort Lauderdale,* 168 So.2d 65 (Fla.1964), in which a recorded subdivision plat dedicated a street along a navigable body of water to the public, but provided that the riparian rights were reserved to the subdivider and its successors. The court held that the subdivider's successors held the fee interest in the accretions which formed along the street, but that the accretions were subject to the street easement, ***1096** so that the general public had the right to use the accretions for access to the water.

A careful examination of the *Burkart* opinion, and application of the principles enunciated therein to the facts of the instant case, leads to the conclusion that the Bowens hold fee title to the disputed property, since it lies directly across the street from their lots. However, this fee title is subject to the public easement, including the riparian rights incident to that easement. We make this statement by way of observation only, since the Bowens have not requested the trial court to quiet their title to the disputed property, nor has the City claimed a public easement encompassing the entire parcel. The foregoing and following analyses of the competing interests of the parties in the subject property are intended as a guide for future determinations regarding ownership of and easement interests in this and other similarly situated property.

[10] In addition to public rights which may be created by dedication and acceptance, conveyances in reference to a plat may also create private rights in the purchasers of subdivision lots to have the public places described in the plat maintained for their designated uses. [14] In *McCorquodale v. Keyton,* 63 So.2d 906, 910 (Fla.1953), the court stated the rule that when lots are sold with reference to a recorded subdivision plat, the purchasers acquire by implied covenant a private easement in lands of the grantors other than those specifically deeded, the purpose of the rule being "not to create public rights, but to secure to persons purchasing lots under such circumstances those benefits, the promise of which, it is reasonable to infer, has induced them to buy portions of a tract laid out in the plan indicated." Appellant Bonifay asserts such a private easement across the disputed property. A similar claim was asserted in *Bonifay v. Garner,* 445 So.2d 597, 603 (Fla. 1st DCA 1984), in which this court found that the evidence presented "would support a finding that appellant, and others similarly situated, have an implied easement of access to the waterfront property west of Bayou Boulevard, unless these private easements have been extinguished by adverse possession, abandonment, nonuser, estoppel, or some other basis." Bonifay's deed and the referenced Kauser map support his claim of an implied easement across the property in dispute in this case, absent a finding that the easement has been extinguished.

[11] This leaves for determination the rights of appellees Dickson and Williams, plaintiffs in the quiet title action. Appellees' claimed title to the disputed property appears to be based upon two theories: record title based upon a chain of title beginning with a conveyance in 1963, and title by adverse possession under color of title. We will treat the claim based upon chain of title first. Our earlier analysis leads to the conclusion that the Leas and Tait held fee simple title to the waterfront property directly in front of their lots, which title they conveyed to Dickson and Williams in 1981, subject to the public and private easements thereon. However, the language in appellees' chain of title [15] does not give them any title to the disputed property, which lies directly in front of the Bowens' lots. Although found in "warranty deeds", this language, with respect to the disputed property, is in the nature of a "quit-claim" deed, conveying only that interest which the grantor holds in the described property. Appellees' claim to the disputed property based upon their chain of title therefore fails.

[12] [13] The final issue is whether appellees have shown valid title by adverse possession under color of title. Although adverse possession cannot operate to divest the public or governmental unit of rights in ***1097** a dedicated plat, *Laube v. City of Stuart,* 107 So.2d 757 (Fla. 2d DCA 1958), fee title may be acquired and private rights of easement extinguished by adverse possession, *Bonifay v. Garner, supra.* In order to acquire rights by adverse possession, appellees were required to prove seven years of continuous, exclusive, open and notorious, adverse possession under "color of title". Section 95.16, Florida Statutes (1977).

[14] [15] Seven years prior to the initiation of this quiet title action the lots in the northwest section of Block 59 were owned by one Kirkpatrick, whose deed contained language similar to that already quoted. This raises the question of whether a quit-claim deed may be used to establish color of title where the grantor had no interest in the property allegedly conveyed. This question was answered in the affirmative in *Deverick v. Bailey,* 174 So.2d 440 (Fla. 2d DCA 1965), in which the court reversed a summary judgment, finding that the allegations and affidavits as to adverse possession were sufficient to create a genuine issue of material fact. However, in a later appeal, *Deverick v. Bailey,* 224 So.2d 361 (Fla. 2d DCA 1969), the court affirmed the lower court's finding that appellant had not proven title by adverse possession, where her color of title was based upon a warranty deed from her daughter, pursuant to a quit-claim deed from Shannahan, in which Shannahan's only basis of title was a sales agreement or option to purchase which was more than twenty-five years old and which the court found had long since become void. Since the doctrine of color of title is available only in cases where the instrument purporting to be a conveyance is accepted in good faith and in the honest belief that it vests title in the claimant, *Simpson v. Lindgren,* 133 So.2d 439 (Fla. 3d DCA 1961), the question of whether a quit-claim deed establishes color of title depends upon the circumstances under which it is given and received. Although the original 1963 deed upon which appellees' chain of title is based may not have constituted good faith color of title, the ensuing series of deeds could be found to constitute color of title, as long as the grantees did not know that their grantors had no interest in the disputed property.

[16] Although appellees may have shown color of title, the record does not support a finding that they and their predecessors in interest have been in continuous, exclusive, open and notorious, adverse possession of the disputed property for at least seven years prior to the filing of the quiet title action. Appellees testified that they have paid taxes for 1981 and 1982, and have engaged a yard maintenance service to maintain the property since their purchase. However, their possession dates from March 30, 1981. Appellees have presented no evidence regarding any acts of possession by their predecessors in interest prior to 1976, and insufficient acts by the Leas to constitute "adverse possession". On the contrary, the Bowens testified that they have continuously maintained the property since the 1940's.

Because appellees, plaintiffs in the quiet title action, have failed to establish valid title to the disputed property, we must reverse the judgment of the trial court. We recognize that our decision regarding the parties' interests in this section of the waterfront property bordering Bayou Texar will have implications for future determinations of property rights to other sections of the strip, including the trial court's further consideration of the issues in *Bonifay v. Garner, supra.* [16] We do not resolve the issues raised by our observations and analyses, as they pertain to possible claims by appellants and others to property rights in the disputed parcel. Our decision is ***1098** limited to the finding that Dickson and Williams did not carry their

burden of showing valid title to the subject property. The judgment is REVERSED and the cause is REMANDED to the trial court for issuance of an order that the plaintiffs take nothing by the quiet title action.

JOANOS and WIGGINTON, JJ., concur.

All Citations

459 So.2d 1089

Footnotes

1 See *Bonifay v. Garner*, 445 So.2d 597 (Fla. 1st DCA 1984) and cases cited therein.

2 See *City of Pensacola v. Walker*, 167 So.2d 634, 635 (Fla. 1st DCA 1964).

3 Lea later won a $10,000 judgment against Mrs. Bowen for malicious prosecution.

4 The Court's specific findings are as follows:

1) This cause was heard by the Court in an action filed by the Plaintiffs to quiet title to property created through accretion, which accreted property is adjacent to property delineated on a revised map of East Pensacola from a resurvey made in 1893 by J.E. Kauser, C.E.

2) That the map or plat contained no dimension thereon as to the width of the lots or streets. The blocks and lots do not extend on the map to the water body. Depicted on the map is a meander line of the water body in the front of said blocks, which line is not designated on said map as a roadway or by any other designation. The map or plat was not recorded until 1915.

3) That the evidence adduced at Final Hearing revealed that several homes and structures had been erected on the undesignated portion of property adjacent to the water body in the near proximity of the subject property impeding vehicle travel of that portion of the roadway.

4) That evidence additionally indicates that the original owners of the entire tract did not convey any of the property which is the subject of this suit. It is apparent from the testimony that the original owners did not exercise dominion over said property in question nor did they pay taxes on same.

5) That the map or plat pertaining to the subject property was a resurvey of the property by J.E. Kauser, C.E., made in 1893, which survey was not recorded until August 30, 1915. The subject property, lying and being to the West of Block 59, is an undesignated strip of property meandering along the Bayou. That the intent of the original owners of the property may not be deduced from the plat as a roadway inasmuch as there is no designation as such or even any distances reflected on the plat from the property line to the body of water.

6) That the City has permitted buildings or structures to be constructed on a portion of the undesignated part of the property which lies adjacent to the waterbody impeding any vehicular traffic on said undesignated strip. As was determined in *City of Pensacola v. Walker*, 167 So.2d 634, "The proof of acceptance by the public of an offer of dedication must be 'clear, satisfactory and unequivocal'." The proof of acceptance by the public falls far short of the standard set by the rule in *Mumaw*, therefore, it is hereby:

ORDERED AND ADJUDGED:

1. That this Court has jurisdiction over the subject matter hereof and the parties hereto, and that the equities of this cause are with the Plaintiffs.

2. That the title of the Plaintiffs, BARRY E. DICKSON and JOHN R. WILLIAMS, in and to the following-described lands in Escambia County, Florida, to wit:

That portion of land lying West of and adjacent to Block 59 and to the waters of Bayou Texar, according to map of East Pensacola Heights, by J.E. Kauser, dated 1893, and recorded in Deed Book 77, at Page 520, of the public records of Escambia County, Florida, described as follows: Beginning at the Northwest corner of Lot 9 of said Block 59; thence run North 41°00#40# West for 156 feet more or less to the waters of said Bayou, hereinafter referred to as Point "B"; thence beginning again at the Point of Beginning run South 49°39#20# West along the Northwest line of said Block for 38.87 feet; thence run North 90° > 00# West for 81.30 feet; thence run North 49°00#40# West for 106 feet more or less to the waters of said Bayou; thence meander Northeasterly along said waters to aforesaid Point "B" for the end of this description, less Bayou Blvd. right-of-way.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, be and the same is hereby, confirmed in and to the Plaintiffs, BARRY E. DICKSON and JOHN R. WILLIAMS, as a good and valid fee simple title, free and clear of any and all rights, titles or claims of the Defendants

named herein, and the said Defendants named herein, be and they are hereby, forever barred and foreclosed of all rights, titles, interests and claims in and to said land.

5 However, there are no specific formalities necessary to constitute an effective common law dedication. 2 R. Boyer, Florida Real Estate Transactions § 30.02 (1984).

6 See also *Earle v. McCarty,* 70 So.2d 314 (Fla.1954); *Burkart v. City of Fort Lauderdale,* 168 So.2d 65 (Fla.1964), and *Feig v. Graves,* 100 So.2d 192 (Fla. 2d DCA 1958).

7 Attached to the motion for rehearing filed by the City and Bonifay was a copy of a portion of a survey of the area by Waring Chapman and Farquhar made in January, 1889, with reference to which Block 53 (not involved in this dispute) was conveyed in 1890. This survey shows a roadway along the disputed strip, indicated by two parallel lines and designated as "Lake Boulevard South." There is no indication that this survey was ever recorded or that any other lots were conveyed with reference to it. We consider the recorded 1893 Kauser map controlling in this cause.

8 2 R. Boyer, Florida Real Estate Transactions § 30.05 (1984).

9 For the most part, the strip of land in dispute (the parties are not claiming an interest in the land under Bayou Boulevard) did not exist at the time of acceptance by the county, but is a product of accretion over the past forty years.

10 The question is not before us at this time. However, we would find that although the chancellor's findings in *Walker* may have been justified by the unique circumstances of that case, the *Walker* court's reliance upon *Mumaw v. Roberson,* 60 So.2d 741 (Fla.1952) was inappropriate, in that *Mumaw* was factually totally distinguishable from *Walker.*

It remains a mystery to us that the appellate court characterized one of the chancellor's findings as "the recording of the plat might be held to be an implied offer to dedicate the disputed strip of land to public use" and did not determine the question of whether there was intention to dedicate. Since the court apparently held that there was an *acceptance* of a part of the *offer* to the extent of the right-of-way of the public street, it is only logical that acceptance followed an offer. To think that there could be an *acceptance* in the absence of an offer is illogical.

11 2 R. Boyer, Florida Real Estate Transactions § 30.07 (1984).

12 Id.

13 Id.

14 Id. § 30.05.

15 Except for the 1981 deed conveying the waterfront property to appellees, which describes the property by metes and bounds, the deeds in appellees' chain of title, starting with the 1963 conveyance, use language similar to that used in the 1976 conveyance to the Leas and Tait, quoted in the text.

16 *Bonifay v. Garner,* 445 So.2d 597 (Fla. 1st DCA 1984), involved a claim of title based on deeds to appellee and his predecessors in interest conveying "any right that (grantors) may have to the riparian rights belonging to any of the foregoing lots or blocks". The claim of title was also based upon adverse possession, where "color of title", not possession, was the issue. The trial court's holding that there had been no public dedication of the undesignated strip was not challenged on appeal.

End of Document

Photos of the property shown below were taken Tuesday 21 February 2017.

Along property lines, red arrow points north.

Looking East

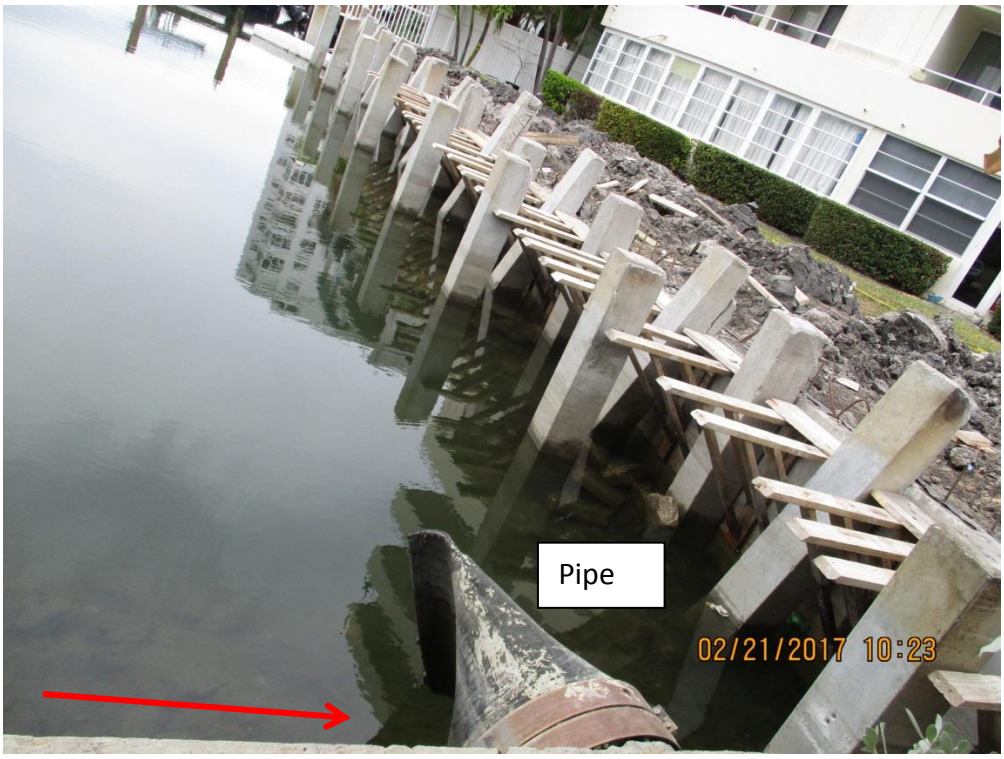
Same line looking West

Looking South by the sidewalk

Looking south by the sea wall

Looking West on the North property line.

Closer look of NE area



Views of the farthest north pier

View from the end of the pier looking East.

Views of the middle pier

View from the middle pier looking east.

Views of the farthest south pier


APC
02/21/2017 10:28


02/21/2017 10:29

Pump station between the south and middle piers


02/21/2017 10:35


02/21/2017 10:37

DID YOU KNOW BROWARD COUNTY ....

- Enforces a local ordinance to protect your rights in housing transactions, regardless of your sexual orientation?
- Employers cannot deny you training opportunities or promotions solely based on your transgendered status?
- Public businesses cannot refuse you service because you dress differently than others of your gender?
- Investigates discrimination complaints based on sexual orientation and gender identity or expression?

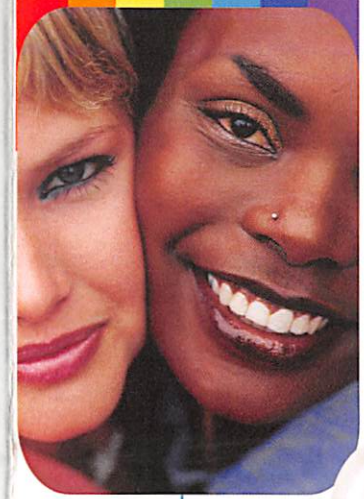
In 1995, the Broward County Board of County Commissioners voted to expand the Broward County Human Rights Act to include **sexual orientation** as a protected classification in Broward County. In 2008, the Board unanimously voted to amend the ordinance to include **gender identity or expression.**

BROWARD COUNTY FLORIDA

Human Rights Section
Office of Intergovernmental Affairs and Professional Standards
115 S. Andrews Ave., Suite 427
Fort Lauderdale, FL 33301
954-357-7800 • 954-357-6181 (TTY)
broward.org/HumanRights

A SERVICE OF THE BROWARD COUNTY BOARD OF COUNTY COMMISSIONERS

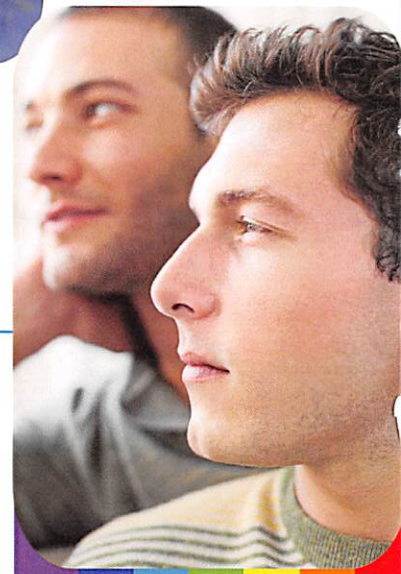
This public document was promulgated at a cost of $195.00 or $0.39 per copy



BLS-3
COUF 4/19/17
Provided by Michael Rajner

BROWARD COUNTY FLORIDA

Lesbian Gay Bisexual & Transgender Protections



Human Rights Section
broward.org/HumanRights

LESBIAN, GAY, BISEXUAL AND TRANSGENDER PROTECTIONS

As covered under the Broward County Human Rights Act

Individuals living, working and/or operating a business in Broward County should be aware that the Broward County Human Rights Act now prohibits discrimination against individuals because they are lesbian, gay, bisexual or transgender as it relates to employment, housing and public accommodations.

These additional protected classes are defined as:

Gender Identity or Expression: Gender identity or expression relates to the appearance, expression or behavior of an individual regardless of the individual's assigned sex at birth.

Sexual Orientation: Sexual orientation refers to being or perceived as being heterosexual, bisexual or homosexual. Sexual orientation discrimination also covers individuals who are perceived to be associated with individuals who are heterosexual, bisexual or homosexual.

AREAS OF DISCRIMINATION

Under the jurisdiction of the Broward County Human Rights Act

Employment: Unlawful discrimination in employment includes any unequal, differential or disparaging treatment of any employee or job applicant such as to refuse to hire, to discharge, or to adversely affect an individual's terms and conditions of employment because of a protected category.

Housing: Unlawful discrimination in housing includes any unequal, differential or disparaging treatment in the sale, rental, occupancy or financing of real estate, such as to refuse to sell or rent, using preferential statements in advertising, or engaging in predatory lending because of a protected category.

Public Accommodations: Unlawful discrimination in public accommodations includes denying, withholding or refusing an individual or group the full and equal enjoyment of goods, services or facilities that may occur in a place of public accommodations or establishment because of a protected category. The law covers any establishment which is supported directly or indirectly by government funds.

Note: Specific exemptions may apply within each area noted above. Please contact the Human Rights Section for more information.

City of Fort Lauderdale
Economic and Community Investment Division Update & Business Engagement, Assistance & Mentorships Program (BEAMs)

Jeremy Earle, Ph.D., AICP, Deputy Director
Department of Sustainable Development

Today we will briefly discuss

- Economic Development Updates.
- Fort Lauderdale Business Engagement, Assistance and Mentorships Program.
- Challenges to our economic development efforts.

Press Play Strategic Vision Plan 2018

- Goal 7: Be a well-positioned City within the global economic and tourism markets of the South Florida region, leveraging our airports, port, and rail connections.
  - Objective 1: Define, cultivate, and attract targeted and emerging industries.
- Initiatives
  - Work with partners to implement a City Economic Development Strategy that will include Economic Development Profile Report, Entrepreneurial Development and Empowerment Strategy, and a Targeted Industry Growth Strategy.
  - Objective 2: Facilitate a responsive and proactive business climate.
- Initiatives
  - Implement a Small Business Development Program to enhance long-term viability of our local economy.

Economic Development Strategic Action Plan 2016

- Collaboratively enhance and cross-support business training programs.
- Utilize the resources of the regional institutions of higher learning to expand the workforce skill sets.
- Sponsor a training program targeting Qualified Target Industries workforce.

ECI 2016-2017 Update

The Economic and Community Investment Division (ECI) was created in February 2016 out of the separation between the CRA and the Department of Sustainable Development.

- Created a draft Economic Development Action Framework Plan. Condensed 8 years worth of plans into something that we can actually implement.
- Structured/drafted the framework of comprehensive package of CRA incentives that are now being utilized.
- Developed a comprehensive package of collateral/marketing materials and current statistics/data to support the retention and expansion of businesses and the attraction of businesses to the City.
- Worked with Greater Fort Lauderdale Sister Cities in order to revamp their entire organization whose purpose is to assist the city with our international engagement and outreach.

ECI 2016-2017 Update

- ECI was the initial point of contact with Triangle Services, Inc. and influenced their continued interest in Ft Lauderdale. This resulted in their acquisition of a building in the CRA and capital investment of $6.4 million. They will create +300 jobs over five years.
- On the recommendation of the Economic Development Advisory Board, we became active promotors of our city and our business retention, expansion and attraction initiatives by attending, partnering and co-sponsoring such events such as:
  a. **Broward County Capacity Building Conference** – Allowed us to actively engage our own businesses
  b. **The Fort Lauderdale International Boat Show** – Allowed us to actively engage businesses and visitors from around the world.
  c. **Florida International Trade and Cultural Expo-** Hundreds of representatives including numerous consul generals ambassadors from over 33 nations attending this premiere event in our city. Our goal in partnering with the county on this program is to ensure that Fort Lauderdale is seen as the number one business destination in the state for international companies.

ECI 2016-2017 Update

- Partnered with the Greater Fort Lauderdale Chamber of Commerce on developing our joint Business1st program. Includes: joint collateral materials, business surveys, a new jointly run website that will greatly expand our ability to attract new businesses to our city.
- Aggressively collaborated with the Greater Ft Lauderdale Alliance on nine Qualified Targeted Industry Projects (QTI) projects, creating 1,600 committed jobs that will generate over $141 million of annual wages ($61,304 average wage per job). We are particularly proud of the fact that although between the years 2011-2017, the City generated approximately 2,300 committed QTI jobs, approximately 1,600 of those jobs occurred in just the past year under ECI's guidance.
    a. ECI was the initial point of contact with two of the QTI projects (Hotwire and Triangle Services, representing 600 jobs).

CITY OF FORT LAUDERDALE

BEAMs

BUSINESS ENGAGEMENT ASSISTANCE & MENTORSHIPS

The City of Fort Lauderdale's Economic and Community Investment Division (ECI) created the Business Engagement, Assistance and Mentorships Program (BEAMs) as a way of promoting business retention, expansion and attraction within our community by providing support to business at varying levels, from start-up to expansion. Our goal is simple: we want to make Fort Lauderdale the number one place in South Florida to start a business, expand an existing business, and attract new businesses.

Things to Consider

- There are over 500,000 small businesses created every month in the United States (US).
- Small businesses are the lifeblood of the US economy and account for 65% of employment growth.
- In Broward County, 81% of all businesses have less than ten employees, 67% have less than five.
- On average in the US, 50% of small businesses will close within the first five years.
- Our city licenses approximately 17,000 businesses (2015 U.S Census states that we have approximately 32,000 businesses).
- Although we will continue to aggressively pursue large companies and hundreds of high paying jobs with our partner the Greater Fort Lauderdale Alliance, we cannot forget the majority of our businesses are smaller companies that also need our support.

Fort Lauderdale BEAMs Program

There are four major components of Fort Lauderdale BEAMs

1. Business Academy – Three certification training programs
2. Business Visitations – Weekly or bi-weekly small business visitations.
3. One-on-One Mentorships – Place our business with an advisor from our partner agencies that can assist them.
4. International Business Engagement-Focus is to promote the City of Fort Lauderdale as a hub for global commerce.

Business Academy Program (Pilot Program)

- Certification “A” will provide a solid foundation on which new and start-up businesses can grow. This certification will be a combination of programs presented by SBDC and/or SCORE, with topics that include: Creating a Business Plan; Developing a Budget and Financial Plan; Effective Employee Selection; Customer Service; and Developing a Sales Strategy.

Business Academy Program (Pilot Program)

- Certification “B” is a series of executive level workshops for established businesses (roughly defined as a company in business for 2+ years, with gross revenue of +$250,000). This certification, primarily presented by SBDC, will be a combination of programs that are targeted to provide the knowledge and techniques necessary for businesses to grow. Potential topics will include: Strategic Outlook; Introduction to Sales/Marketing; Relating to the Customer; and Financial Management/Capital Expansion.

Business Academy Program (Pilot Program)

- Certification “C” is ideal for businesses engaged in international commerce, the import/export business, or seeking to gain global market entry. Potential topics will cover five primary domains of practice: Global Business Management; International Trade Development; Export Market Planning; Supply Chain & Logistics; and Trade Finance & Payment Terms. Participants will be introduced to State and Federal government resources.

Business Visitation Program

- On a weekly or bi-weekly basis ECI and representatives from various organizations including SBDC, SCORE, The Greater Fort Lauderdale Alliance, the Greater Fort Lauderdale Chamber of Commerce, The Broward Office of Economic and Small Business Development (OESBD), and members from the City's own Economic Development Advisory Board (EDAB) as schedules permit, conduct monthly visitations to our local small businesses.

(Lime Design was our first business visitation)

Business visitation with Chuck Bergwin of TacoCraft.

One-on-One Mentorships

- The BEAMs program will facilitate one-on- one mentoring relationships between City businesses and SBDC. The purpose of the mentoring will be to enhance the business' ability to grow (jobs and profitability).

International Business Engagement

- ECI will promote the city as a world-class international business center and one of the most desirable locations for new, expanding, or relocating businesses. ECI will reach out to businesses engaged in internal trade and determine the best ways in which to support them. Furthermore, ECI will participate in events and programs that position the city and/or the region as a center for international commerce.

Summary Points

- Greater visibility for the City of Fort Lauderdale and our business community.
- Strengthened our relationships with existing and new partners.
- Approximately $141 million in annual wages and over $50 million in capital investment.
- 1,600 in new committed high wage jobs within the last year.
- Support of a strong Economic Development Advisory Board (EDAB).
- Worked to raise Fort Lauderdale's profile as leading job producing city in the state.
- Worked to raise Fort Lauderdale's international profile as a place to do business through our outreach efforts (FITCE, GFLSCI).
- Worked to strengthen and support our small businesses.
- Created an Economic Development Action Framework.
- Created a major Economic Development Program (BEAMs).

Challenges to Economic Development

- HB 7005, HB 9- House bill to eliminate Enterprise Florida and severely restrict Visit Florida Funding-Passed House (80 Yeas, 35 Nays). Bill is now with Senate.
- If Enterprise Florida is eliminated, so are the QTI's that we have successfully been using to create thousands of jobs in our city.
- If Visit Florida is eliminated or its funding is restricted, it would be extremely detrimental to tourism statewide and our own city locally.

Fort Lauderdale ECI Program Partners