



Memorandum No: 17- 80

City Attorney's Office

To: Honorable Mayor and Commissioners

Thru: Cynthia A. Everett, City Attorney

From: Lynn Solomon, Assistant City Attorney

Date: April 13, 2017
Commission Conference Meeting April 19, 2017

Re: Riviera Isle and Sunset Lake

Issue.

The City Attorney's Office has been asked to render an opinion regarding ownership of and rights to an undesignated strip of land that lies between Sunset Lake and Riviera Boulevard within the Plat of Riviera (Plat Book 6, Page 17). Outstanding questions of fact prevent our office from rendering a final opinion on this matter; however, our Office will make a recommendation and provide an overview of the case law surrounding this issue.

Riviera Plat.

Riviera is a residential community which was subdivided in March of 1925 by the Ft. Lauderdale Riparian Company (the "Developer"). It would appear several waterways (Rio Sunset, Rio Coral, Rio Placid and Rio Idlewyld) and five rights of way (Flamingo Drive, Solar Plaza, Sunset Drive, Hibiscus and Riviera Blvd) were created when the parcel was subdivided. With the exception of lots within Blocks 8 and 10, most of the lots border one of the waterways (or canals) or Sunset Lake. Each lot and block is numbered except for the undesignated strip (the "Strip") in question which does not appear on the plat. That is, Riviera Blvd appears to abut Sunset Lake without an intervening parcel.

When the Developer created this community, the Plat contained the following dedication:

Know all men by these presents:

That the Ft. Lauderdale Riparian Company, a corporation existing under the laws of the state of Indiana, owner of the above described lands, has caused the same to be subdivided into lots, blocks, streets and avenues in the manner shown on the attached plat, the said subdivision to be known as RIVIERA. **The riparian rights in and to the waters of New River, Sunset Lake, and the canals opposite each lot or parcel of land are hereby reserved to the Ft. Lauderdale Riparian Company, its successors, legal representatives or assigns, owners of said lots or parcels of land. The streets shown hereon are hereby dedicated to the public in fee simple forever.** (Emphasis added)

Most dedications of rights of way for the public are considered easements. However, in this instance, the City holds fee simple title to Riviera Boulevard which is important in our analysis of the City's position.

Case Law.

The starting point in this analysis is to determine the intent of the dedicator with respect to this Strip of land. Assuming the City was fortunate to locate representatives of the Developer, the Developer may answer the question of property rights to the Strip assuming he could accurately remember facts and circumstances that occurred over 90 years ago. While the Developer may explain his intent with respect to the Strip, other parties may question the accuracy and credibility of his explanation. See Brickell v. Town of Ft. Lauderdale, 75 Fla. 622 (1918). Since this intervening Strip does not appear on the Plat, the City can argue the Developer intended to transfer all property rights to the City since the City's right of way is adjacent to this Strip. However, the line separating Riviera Blvd from Sunset Lake neither meanders nor undulates. Such delineation would indicate intent to convey whatever lies between the road and waterway to the City. See Brickell v. Town of Ft. Lauderdale, 75 Fla. 622 (1918). Further, it is clear from the Plat that Riviera Blvd is a 100 foot right of way and our office has confirmed with our staff surveyor that this Strip lies outside the boundaries of Riviera Blvd. If this Strip is an accretion, the City can argue that as the fee simple owner of the abutting right of way, title to the Strip inures to the City as the uplands owner. See Bonifay v. Dickson, 459 So 2d 1089 (1984). This argument and outcome would change if the City merely held an easement. See Burkart v. City of Fort Lauderdale, 168 So 2d 65 (1964). However, further research is needed to determine whether the land accumulated over time or existed at the time the parcel was platted. The rights of the City to this strip of land is clouded by the reservation of riparian rights in favor of "...owners of said lots or parcels of land". Does this reservation inure to the benefit of all lots owners within the subdivision or only the owner (i.e. the City) abutting this strip of land? Did the Developer intend to benefit only the lot owners whose property does not abut a waterway? As an owner of a "parcel of land", is the City a beneficiary of this

reservation either exclusively or jointly with other lot owners? The lot owners within Rivera can make a credible argument that the Developer "intended" to grant riparian rights (e.g., access to the water, boating, fishing) to all of the owners. It should be noted that while a voluntary association exists within this subdivision, the City Attorney's office could not find any evidence that the Developer created a homeowners association and in the absence of such an organization, it is assumed the riparian rights would inure to the individual property owners.

Finally, by what authority did the City install, operate and maintain a pump station on this strip of land? If this Strip is an accretion, then the City is in a much stronger position since the City holds fee simple title to Riviera Blvd. However, a court could find that the reservation of riparian rights was intended, at a minimum, to benefit the lot owners across the street, or take a more expansive view and hold that the reservation was intended to benefit all lot owners to provide access to Sunset Lake. If so, then the public benefit of the pump station must be weighed against the private rights of the lot owners. The City would argue that these rights are not incompatible and that the pump station is necessary to prevent flooding on Riviera Blvd. Moreover, the pump station does not impede or interfere with the lot owner's right of access to the waterway. See Brickell v. Town of Ft. Lauderdale, 75 Fla. 622 (1918) and McCorquodale v. Keyton 63 So 906 (1953). Finally, ownership and rights to Sunset Lake depends on whether the lake is a navigable body of water. As stated in City of Tarpon Springs v. Smith, 81 Fla. 479 (1921), "{t}itle to the lands under navigable waters....in the state, has been held by the state in trust for the use and benefit of its inhabitants..."

Recommendation.

To resolve the uncertainty over property rights in the Strip, the City Attorney's Office recommends the City file a declaratory action to determine the property rights of the affected parties.

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