

**SUMTER COUNTY BOARD OF COMMISSIONERS
EXECUTIVE SUMMARY**

SUBJECT: Set Rehearing to Reconsider Approval of Vacation of Portion of Right-of-Way of CR 647 N (Old Istachatta Green Settlement Road) on January 11, 2011, at 5:00 p.m. – Sumter County Government Offices, 910 N. Main St., Bushnell (Board's Option).

REQUESTED ACTION: Board's Option

Work Session (Report Only) **DATE OF MEETING:** 11/23/2010
 Regular Meeting Special Meeting

CONTRACT: N/A Vendor/Entity: _____
Effective Date: Termination Date: _____
Managing Division / Dept Planning

BUDGET IMPACT: _____
 Annual **FUNDING SOURCE:** _____
 Capital **EXPENDITURE ACCOUNT:** _____
 N/A

HISTORY/FACTS/ISSUES:

This item was originally on the Board agenda on November 9, 2010. At the November 9, 2010, meeting, the Board tabled the decision as to setting a rehearing to provide an opportunity for the Hough's attorney, Mr. Johnston, to provide information from a title search regarding this issue. At approximately 9:00 a.m. on November 17, 2010, the County Attorney received an email from Mr. Johnston stating the title search material was not yet ready.

On October 26, 2010, the Board approved the petition of Danny & Joyce Clay for the vacation and closing of a portion of CR 647N. On November 1, 2010, the County received a request for rehearing of the petition from Mr. Darryl Johnston, attorney for Mr. & Mrs. Richard Hough.

Section 20-21, Sumter County Code of Ordinances, provides that after the Board approves the vacation and closing of a road there is a 30 day period in which a request for rehearing may be filed by an interested party. The following is the pertinent language from the Code:

“Any interested party shall have the right to request a re-hearing by the board during the thirty-day period [after approval of the vacation and publication of the notice of vacation and road closing] Upon submission of proof of misrepresentation or mistake of substantial fact or other error, the board may reverse the decision to close the road or easement and dismiss the petition.”

The County Attorney provided the following interpretation of Section 20-21, Sumter County Code of Ordinances:

“...if the commissioners determine that the presented evidence suggests the reasonable possibility of a misrepresentation or a mistake of fact, a new hearing should be held to allow that possibility to be proven or dispelled. The rehearing should be limited to the possible misrepresentations or mistakes alleged by the party requesting the rehearing; it is not a de novo free for all.”

On November 3, 2010, the County received information from Mr. Johnston with his assertions as to the

misrepresentation or mistake of substantial fact or other error

The setting of the rehearing in no way obligates the Board to reverse the decision to vacate and close the portion of CR 647N. Setting the rehearing provides the opportunity for the Board to reconsider the decision and reverse the decision if it finds the decision to approve was based on a misrepresentation or mistake of substantial fact or other error.

If the Board chooses to set the rehearing, then staff will provide the notice for the rehearing consistent with the notice requirements for the original public hearing to vacate and close the road.

The Board's options are:

- 1 Deny the request for a rehearing and maintain decision to vacate and close the portion of CR 647N, or
- 2 Approve the request for rehearing as requested by Mr. Johnston and set hearing for January 11, 2011, at 5:00 p.m. at the Sumter County Government Offices in Bushnell.

Attached are the two letters from Mr. Johnston.

JOHNSTON & SASSER, P.A.

ATTORNEYS AND COUNSELORS AT LAW

DAVID C. SASSER
DARRYL W. JOHNSTON

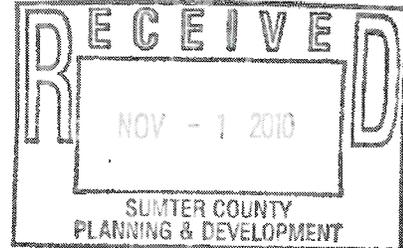
MAILING ADDRESS:
POST OFFICE BOX 997
BROOKSVILLE, FLORIDA 34405-0997
TELEPHONE (352) 796-5123
FAX (352) 799-3187

29 SOUTH BROOKSVILLE AVENUE
BROOKSVILLE, FLORIDA 34601

November 1, 2010

**VIA FACSIMILE (352) 689-4461 AND
REGULAR U.S. MAIL DELIVERY**

Brad Cornelius
Director of Planning
7375 Powell Road
Suite 115
Wildwood, FL 34785



RE: Request for Rehearing of Petition to Vacate portion of CR 647N

Dear Mr Cornelius:

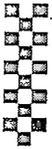
Pursuant to Sumter County Code, Section 20-21, please allow this letter to serve as the formal request of Mr and Mrs. Richard Hough for a rehearing by the Board of County Commission on the Petition to Vacate portion of CR 647N. The original hearing was held last Tuesday on October 26, 2010. It is my clients' intention to submit proof of misrepresentation or mistake of substantial fact and other errors for the Board's reconsideration.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Darryl W. Johnston".

Darryl W Johnston

cc: Mr and Mrs. Richard Hough
DWJ/



JOHNSTON & SASSER, P.A.

ATTORNEYS AND COUNSELORS AT LAW

MAILING ADDRESS:

POST OFFICE BOX 997

BROOKSVILLE, FLORIDA 34605-0997

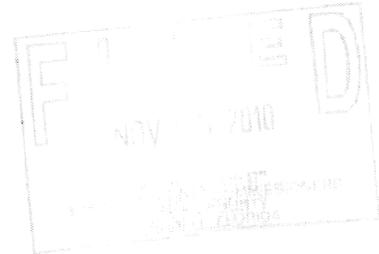
TELEPHONE: (352) 799-3123

FAX: (352) 799-3187

DAVID C. SASSER
DARRYL W. JOHNSTON

29 SOUTH BROOKSVILLE AVENUE
BROOKSVILLE, FLORIDA 34601

November 2, 2010



**VIA FACSIMILE (352) 689-4461 AND
REGULAR U.S. MAIL DELIVERY**

Brad Cornelius
Director of Planning
7375 Powell Road
Suite 115
Wildwood, FL 34785

RE. Request for Rehearing of Petition to Vacate portion of CR 647N

Dear Mr Cornelius:

Pursuant to the request of Derrill McAteer, Esq, I am forwarding information on behalf of Mr and Mrs. Richard Hough to be shared with the Board of County Commission prior to its consideration of the request for a rehearing on the Petition to Vacate portion of CR 647N. This letter will also summarize some of the misrepresentations, mistakes of substantial fact and other errors which we would want to present for the Board's consideration.

1 A Warranty Deed from Berens to Hough as recorded in O.R. Book 1408, Page 125, public records of Sumter County is attached as Exhibit 1. It was represented at the hearing and in the executive summary that the Houghs have legal access to their property over SW 70th Lane. This was also testified to as a significant difference between the current hearing and the one which occurred in 2005 because the SW 70th Lane access was not considered then. This is inaccurate.

According to the Houghs' deed, their property is subject to two right-of-way easements across their property. A copy of a drawing showing these easements is attached as Exhibit 2. These easements burden and do not benefit the Houghs' property. There is no easement granted to Houghs or for the benefit of the Houghs' property in their deed. The private road known as SW 70th Lane is not legally described anywhere in the Houghs' deed, and therefore, they have no legal right to traverse that private road.

In addition, the words "subject to an easement" have been held insufficient as a matter of law to reserve or create an easement. See Procacci v. Zacco, 324 So.2d 180 (Fla. 4th DCA 1976) and Marchman v. Perdue, 543 So.2d 1286 (Fla. 1st DCA 1989). Whether "subject to and

Copy to _____
Commr _____
Co Atty _____
Co Fin _____
Pub Wks Div _____
Plan & Dev Div _____
Admin Div _____

easement" language creates or reserves an easement is a question of fact involving the intent of the parties. Usually this means litigation. We intend to have a complete title search performed and provided to the Board prior to the rehearing date. We do not know where the statement on page 2, paragraph 7 of the Executive Summary originated, but it appears to be materially inaccurate.

2. CR 647 N was used by the Berens, the Houghs' predecessors in title, from the time they purchased the property in 1975. A barn was built on the acreage in 1981. The sole access to the 8 acre parcel since then has been over the portion of CR 647 N which the Board has voted to vacate.

3. The Clays have not approached the Houghs, let alone "many times" and have not acted as mediators. The Clays have called in complaints to the Southwest Florida Water Management District against the Houghs. The complaint was unfounded. The Clays have not contacted the Houghs about paving or maintaining the public right of way known as CR 647 N.

4. Contrary to the Mareks' testimony that heavy equipment and trucks traveled the public right of way at all hours of the night, only one vehicle (flat bed truck) has ever come in after midnight during the five years the Houghs have owned their property. This was when the antique fire truck they purchased broke down during transport to the property and had to be hauled in on a flat bed truck. It was at 1:47 a.m., it was due to a mechanical breakdown, and it was the only time it has ever occurred.

5. All the equipment on the Houghs' eight acres is allowed to be there, and there are no code violations. The code enforcement complaint that was mentioned at the hearing had already been investigated and the investigation was completed. The report had simply not been signed off. There was no code enforcement violation and staff knew or should have known this.

6. There was a misrepresentation that the Houghs did not do anything to maintain the public right of way. In 2005, the Houghs requested permission to trim trees and even offered to pave the right-of-way, but were told by County officials that they could not because it was public property. They asked me to write then County Attorney, Randall Thornton. A copy of my letter is attached as Exhibit 3. Mr. Thornton advised that the property would be put into the maintenance plan. The only tree trimming that has been done was the removal of trees by the Mareks and/or Clays which was directly contrary to the instructions not to trim or remove trees from the public right of way.

These are some of the misrepresentations and inaccuracies for the Board to consider in granting the request for rehearing. The CR 647 N access is the only historical access to the 8 acre parcel and is the only viable access. There is also a stub out further down Magnolia Drive (CR 657 W), however, use of that access would require a driveway being cleared through 6 acres of heavily wooded property. That is unreasonable. Stub outs are typically required at the end of subdivisions for connectivity to adjacent property which may or may not be developed in the future. The 8 acre tract could be split into two four acre tracts and the public roads would serve as the direct access to those tracts. It makes no sense to eliminate the only public access ever used by the owners of the 8 acre tract.

We respectfully request the rehearing.

Sincerely yours,



Darryl W Johnston

cc. Mr and Mrs. Richard Hough
Derrill McAteer, Esq.
Bradley Arnold

enclosures
DWJ/

Prepared by and return to:
Lawrence J. Marchbanks, Esq.
Attorney at Law
Lawrence J. Marchbanks P.A.
112 Cleveland Avenue
Wildwood, FL 34785
352-748-3888
File Number: 05-0937
Will Call No.:

9.00
9.50 T.F.
1995.00 Doc
2013.50

Grantee S.S. No.
Parcel Identification No. L24-022

[Space Above This Line For Recording Data]

Warranty Deed

(STATUTORY FORM - SECTION 689.02, F.S.)

This Indenture made this 11th day of July, 2005 between WILLAMAE F. BERENS, a single woman whose post office address is 7110 CR 657 W., Bushnell, FL 33513 of the County of Sumter, State of Florida, grantor*, and Richard B. Hough and Carol Ann Hough, his wife whose post office address is P.O. Box 5307, Clearwater, FL of the County of Pasco, State of Florida, grantee*,

Witnesseth, that said grantor, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable considerations to said grantor in hand paid by said grantee, the receipt whereof is hereby acknowledged, has granted, bargained, and sold to the said grantee, and grantee's heirs and assigns forever, the following described land, situate, lying and being in Sumter County, Florida, to-wit:

See attached

Subject to all applicable Declarations of Restrictions, Covenants, Conditions and Easements of record.

and said grantor does hereby fully warrant the title to said land, and will defend the same against lawful claims of all persons whomsoever and that said land is free of all encumbrances, except taxes accruing subsequent to December 31, 2004.

* "Grantor" and "Grantee" are used for singular or plural, as context requires.

In Witness Whereof, grantor has hereunto set grantor's hand and seal the day and year first above written.

Signed, sealed and delivered in our presence:

[Signature]
Witness Name: Spencer Egbert
[Signature]
Witness Name: Christina Adkins

[Signature] (Seal)
Willamae F. Berens

State of Florida
County of Sumter

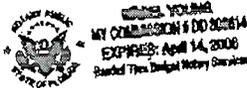
The foregoing instrument was acknowledged before me this 11th day of July, 2005 by Willamae F. Berens, who [] is personally known or [X] has produced a driver's license as identification.

[Notary Seal]

Notary Public

Printed Name: _____

My Commission Expires: _____



SUMTER COUNTY, FLORIDA DDC \$1,995.00
GLORIA HAYWARD, CLERK OF CIRCUIT COURT

07/14/2005 #2005-24021
08:39:39AM B-1408 P-125



DoubleTime

EXHIBIT A

Parcel 1:

Parcel # L24A149

Lot 79, RIVER RETREATS, according to the map or plat thereof as recorded in Plat Book 3, Page(s) 42, Public Records of Sumter County, Florida.

Parcel 2:

Parcel # L24-022

Begin at the Northeast corner of the NE ¼ of NW ¼ of Section 24, Township 21 South, Range 20 East, Sumter County, Florida, run South 81° 39' 10" West along the North line of said Northeast ¼ of Northwest ¼ a distance of 264.00 feet, thence South 0° 51' 50" East parallel to the East line of said Northeast ¼ of Northwest ¼ a distance of 1328.0 feet, more or less to the South line of said Northeast ¼ of Northwest ¼ thence Easterly along the South line of said Northeast ¼ of Northwest ¼ 264.0 feet, more or less to the East line of said Northeast ¼ of Northwest ¼, thence North 0° 51' 50" West along said East line of Northeast ¼ of Northwest ¼ 1328.0 feet, more or less to the Point of Beginning.

Subject to:

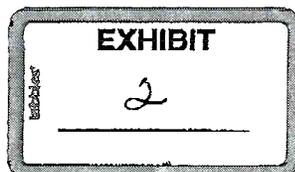
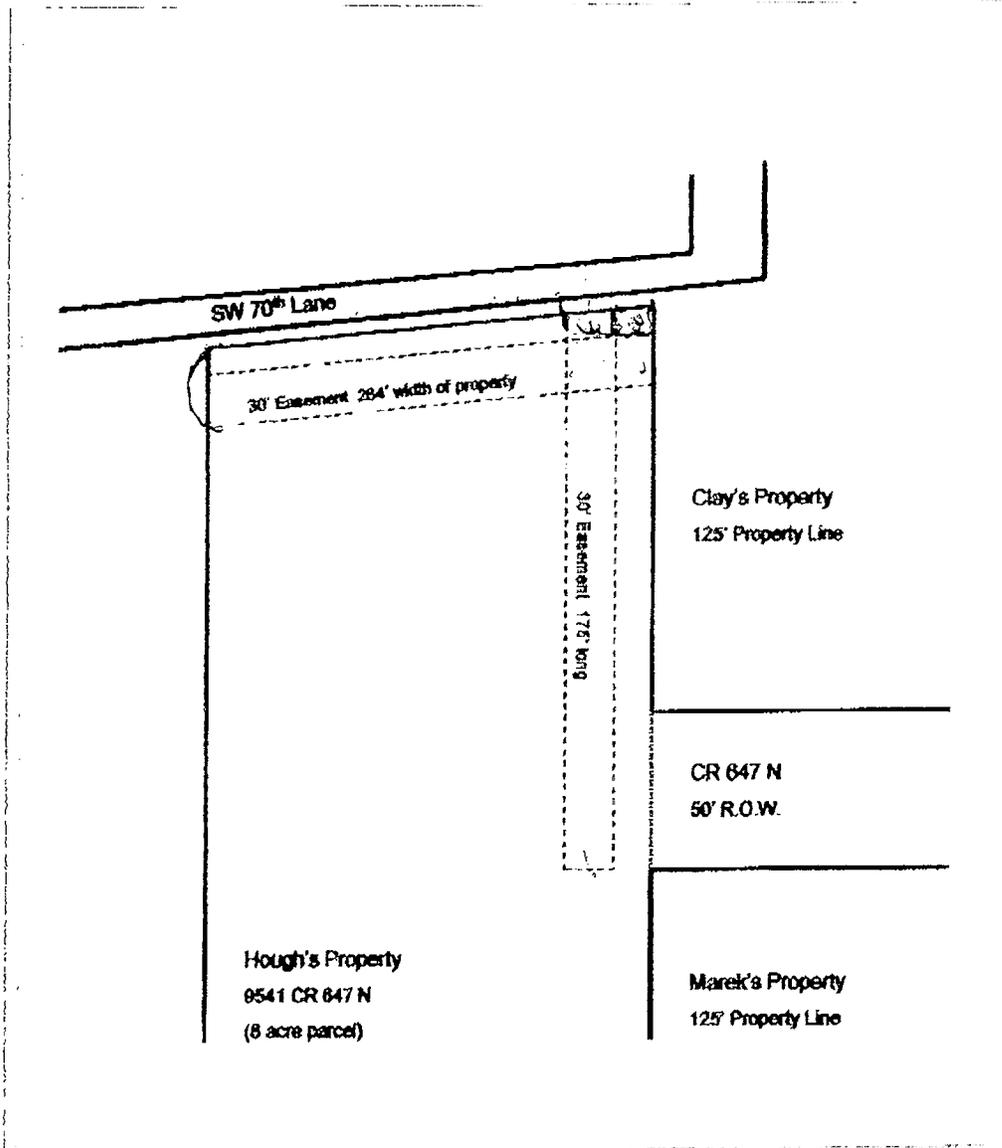
Subject To a right-of-way easement in common with Grantors their heirs and assigns over ½ across the South 30 feet of the North 50 feet: and (the West 30 feet of the East 50 feet of the North 175 feet) and (the East 20 feet of the North 50 feet of the North 175 feet) of the NE ¼ of the NW ¼ of Sec. 24, Township 24 South, Range 20 East

with

SUMTER COUNTY, FLORIDA
GLORIA HAYWARD, CLERK OF CIRCUIT COURT
DOC \$1,995.00

07/14/2005 #2005-24021
08:39:39AM B-1408 P-126

Property Easement



November 7, 2005

Randall Thornton, Esquire
P.O. Box 58
Lake Panasoffkee, FL 33538-0058

RE: Mr and Mrs. Richard Hough

Dear Mr. Thornton:

It was a pleasure talking with you last week, and it is my hope that this matter will be able to resolve itself without much more of our involvement.

I represent Mr and Mrs. Richard Hough who own Lot 79 in River Retreats subdivision. The River Retreats plat was recorded in 1963 in Plat Book 3, Page 42, public records of Sumter County, Florida. The Houghs also own 8 acres behind Lot 79 and west of the River Retreats subdivision.

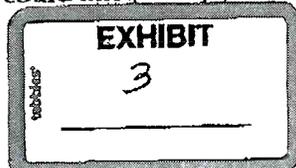
The Houghs' only access to their eight acres is across the platted streets shown on the plat as Old Istachatta and River Drive. Both of these streets stub out into my clients' eight acres. The roads are not paved at the stub outs. I have highlighted in yellow the street access to my clients' property and have highlighted in green my clients' lot and property. My clients are unable to use both public streets, but for different reasons.

The River Drive access is blocked by what appears to be hurricane debris. Since the debris is being stored on a platted street, it makes sense for it to be removed by the Sumter County Department of Public Works. The blocked road makes it impossible for my clients to access the southern part of their property and also impedes access for the owners of Lots 43 and 44 in River Retreats.

The Old Istachatta access is partially blocked by a mailbox, two palm trees and a shrub/tree located in the middle of the right of way. A copy of photographs showing the encroachments are enclosed for your review. It is impossible for the Houghs to access their property without scraping the shrub/tree closest to their gate. I believe all of the encroaching items were placed there by the Mareks, owners of Lot 78 in River Retreats. The items in the right-of-way prevent access to the north part of my clients' property and also impedes access for the owners of Lots 52 and 53 in River Retreats.

Although I have not seen it, I am aware of a civil order between the Mareks and the Houghs' predecessor in title that permits use of the public right of way (Old Istachatta) for the Mareks' mailbox and parking on part of the right of way. I do not believe it was proper for the Court to enter such an order without due process to Sumter County. I also do not believe a Judge would knowingly impair use of a public right-of-way, especially if it was needed for access by owners west of River Retreats subdivision and within River Retreats.

The purpose of this letter is to request that the Sumter County Department of Public Works place the clearing of these two right of ways into the scheduled of maintenance. My clients do not request or care whether the right-of-way is paved, but only that it be cleared so their vehicles, travel trailer and/or motor home could adequately pass over the right-of-way



My clients have a gate located at the north entrance to their property, and the gate opens into the right of way. My clients agree to change the gate opening to open into their property, and they will immediately effect that change on the weekend after the right-of-ways are cleared.

You expressed concern about the civil court order, and perhaps that issue can be resolved by asking the Court to reconsider the Order. However, parking within 3 feet of their property should not affect my clients' access, however, the Mareks routinely park five to ten feet from their property line. I have enclosed a copy of a picture that shows this. The mailbox, however, is a hindrance for my clients to make a right turn onto Holly Drive with any kind of trailer attached to their vehicle. If the mailbox is located in front of the Mareks' home (like most everyone else), it becomes a non-issue. We need to have the mailbox removed from the right-of-way.

Please let me know if we can resolve these encroachments onto the right-of-way as suggested in my letter. If you would like to discuss it further, or if I can be of help in the process please let me know.

I look forward to hearing from you.

Sincerely yours,

Darryl W Johnston

enclosures

cc: Mr. and Mrs. Richard Hough
DWJ/