

SUMTER COUNTY BOARD OF COUNTY COMMISSIONERS
EXECUTIVE SUMMARY

5. The County was also required to perform its duty to remove any cattle gaps from within CR 246 at its expense.

6. The Court made no ruling as to a statutory way of a necessity, but did rule that the non-County Defendants could not impede the Plaintiff's access to CR 475.

A copy of the final judgment is included. The important issue to note here in item number 4, is the phrase, "unless closed or abandoned pursuant to law in whole or in part." This means that the County was not permanently barred from closing or abandoning the road at any time in the future provided that it closed or abandoned the road pursuant to law.

Larry Anderson and Marion Anderson, John and Patricia Holmes, Thomas Fields, Jose and Judith Rodriguez, Arthur and Carol Appelgate v. Nichols Cemetery Association, Inc., Board of County Commissioners of Sumter County, Hurley Nichols, Rafter J. Ranch, Donald and Jennie Whitacre and Eugene and Ruth Ramsay; Case No. 1983-CA-33. Count I of the Complaint sought a judicial determination as to a statutory way of necessity across lands owned by the Nichols Cemetery Association, and Hurley Nichols. The Nichols Cemetery Association property was the property situated between the Plaintiffs property and access to CR 246 leaving the Plaintiffs with no practical ingress and egress. Count II sought to establish a prescriptive easement across land owned by Nichols Cemetery Association, Hurley Nichols and Rafter J Ranch. Count III was for injunctive relief to reopen that portion of CR 246 that had been vacated by the County upon petition by the Nichols Cemetery Association, Hurley Nichols, Rafter J Ranch, the Whitacres, and the Ramseys. The Plaintiffs asserted that the abandonment of that portion of CR 246 identified in the Resolution adopted on January 11, 1983, denied them a permanent and lawful means of ingress and egress to their land. A second final judgment was entered finding a statutory way of necessity, and requiring that the road remain open, and not vacated. It should be noted that at the time CR 246 did not make a full loop, but had a terminus at the Nichols Cemetery. A copy of the final judgment is included with the agenda.

Fla. Stat. 336.09 provides that, "The commissioners, with respect to property under their control may in their own discretion, and of their own motion, or upon the request of any agency of the state, or of the federal government, or upon petition of any person or persons, are hereby authorized and empowered to:

(a) Vacate, abandon, discontinue and close any existing public or private street, alleyway, road, highway, or other place used for travel, or any portion thereof, other than a state or federal highway, and to renounce and disclaim any right of the county and the public in and to any land in connection therewith;

(b) Renounce and disclaim any right of the county and the public in and to any land, or interest therein, acquired by purchase, gift, devise, dedication or prescription for street, alleyway, road or highway purposes, other than lands acquired for state and federal highway; and

(c) Renounce and disclaim any right of the county and the public in and to land, other than land constituting, or acquired for, a state or federal highway, delineated on any recorded map or plat as a street, alleyway, road or highway.

In addition, Fla. Stat. 336.12 provides that, "the act of any commissioners in closing or abandoning any such road, or in renouncing or disclaiming any rights in any land delineated on any recorded map as a road, shall abrogate the easement theretofore owned, held, claimed or used by or on behalf of the public

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and the title of fee owners shall be freed and released therefrom; and if the fee of road space has been vested in the county, same will be thereby surrendered and will vest in the abutting fee owners to the extent and in the same manner as in case of termination of an easement for road purposes.”

Pursuant to Sec. 20-17 of the Sumter County Code, a petition for road closing application shall include (a) a survey showing the legal description of the property to be vacated, any improvements located on or within fifty (50) feet of the boundaries of the property, existing utility improvements, and in the case of county roads, relationship to and intersection with other county roads and rights-of-way, (b) an ownership and encumbrance report prepared by a title company or a document that identifies the title or interest which the county and the public hold in the property to be vacated, and (c) a quit claim deed that transfers ownership of the proposed property to be vacated from Sumter County to the petitioner. These items are included with the agenda.

In considering an application, as set forth in Sec. 20-19, the Commission shall either adopt a resolution granting the petition and vacating the segment of the road as requested, deny the petition, or return the petition to staff for additional study and review. In its consideration of the petition, the Commission is guided by the policy set forth in Section 20-16 of the Code which provides that, “It is hereby declared to be the policy of the board of county commissioners regarding vacating of county roads, rights-of-way and easements that no vacating should take place unless this article is complied with in full by all necessary parties and that no vacating will be granted that is not in compliance with the county comprehensive plan, Chapter 13 of this Code and other established long-range trends and goals of the county. It is further the policy of the board of county commissioners of Sumter County to refuse to close or vacate any public road or easement that is being utilized by any person not a petitioner to the road closing proceeding or who does not sign a consent to the closing or evidences agreement with the road closing at public hearing.” To this end, consent of the property owners abutting the section of CR 246 that is sought to be vacated would need to be obtained.

CR 246 currently forms a loop with two access points to CR 475. The Petitioner seeks to vacate a portion of CR 246 as reflected in the attached sketch. Should the Commission approve the request to vacate, it may only do so if abutting property owners retain a right of ingress and egress to their property from the remaining portion of CR246. This can be accomplished either through unity of title among abutting property owners along that portion of the road to be vacated, or by private easement agreements between individual landowners preserving abutting property owner rights to ingress and egress to their respective properties.

With that said, there are two options for the Commission to consider with respect to the potential approvals of the request to vacate:

1. Approve the request to vacate that portion of CR246 as identified in the attached sketch and as more particularly described in the legal description contained in the attached quit claim deed(s). (Exhibit A); or
 2. In the absence of consent or private easement agreement between abutting parcel owners to address issues of ingress and ingress, approve the request to vacate only that portion of CR246
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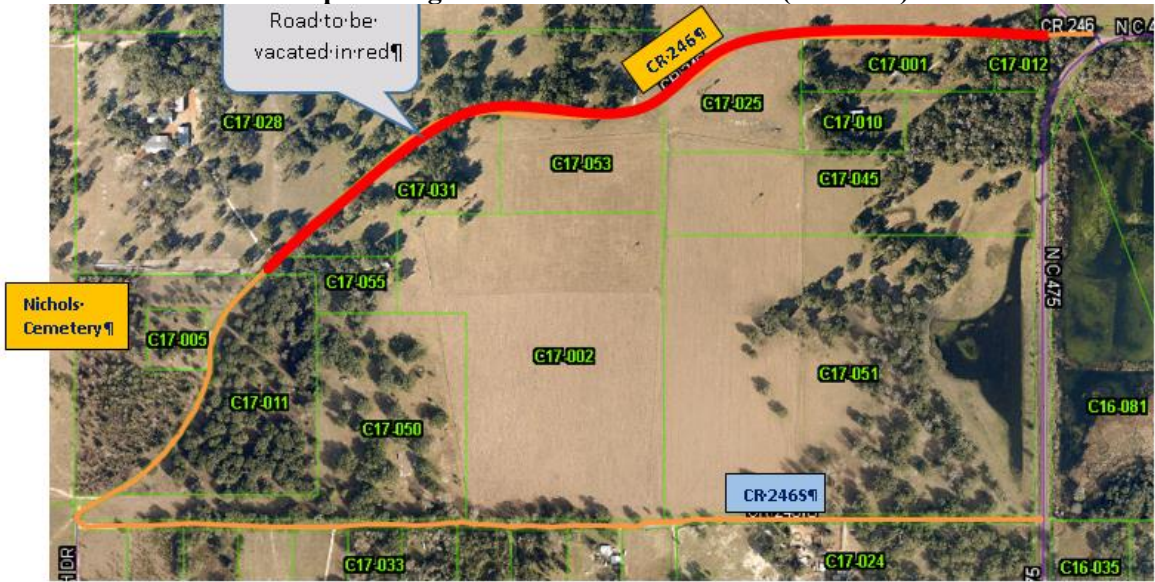
where there is unity of title on both sides of the road, as more particularly described in the legal description contained in the attached quit claim deed (Exhibit B)

Prepared by: Patricia Burgos

ProWritingAid Check

MISC2022-0003
CR 246 ROAD VACATION

Map #1 Original Road Vacation Extent (.89 miles)



Map #2 Reduced Road Vacation Extent (.2 miles)

