

**1. REQUESTED MOTION:**

**ACTION REQUESTED:** Accept a Petition to Vacate a 50-foot wide County Road Right-of-Way Easement located on Lot 10, Plan of Riverside subdivision, south of and abutting 27071 S. Riverside Dr., Bonita Springs, Florida, and adopt a resolution setting a Public Hearing for 5:00 PM on the 11th day of January, 2005. (Case No. VAC2004-00057)

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

**WHAT ACTION ACCOMPLISHES:** Setting the time and date of the Public Hearing.

2. **DEPARTMENTAL CATEGORY:**  
**COMMISSION DISTRICT #:** 5

04

*C4A*

3. **MEETING DATE:**

*12-14-2004*

4. **AGENDA:**

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

5. **REQUIREMENT/PURPOSE:**  
(Specify)

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

6. **REQUESTOR OF INFORMATION:**

- A. COMMISSIONER
- B. DEPARTMENT Community Development
- C. DIVISION Development Services
- BY: *[Signature]* 11/23/04

Peter J. Eckenrode, Director

**7. BACKGROUND:**

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

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

Documentation pertaining to this Petition to Vacate is available for viewing at the Office of Lee Cares. Staff recommends the scheduling of the Public Hearing. Attached to this Blue sheet is the Petition to Vacate, Resolution to set Public Hearing, Notice of Public Hearing and Exhibits.

**8. MANAGEMENT RECOMMENDATIONS:**

**9. RECOMMENDED APPROVAL:**

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services	G County Manager
<i>[Signature]</i>	N/A	N/A	N/A	<i>[Signature]</i> 12/1/04	<i>[Signature]</i> 12/1/04	<i>[Signature]</i> 12/1/04

**10. COMMISSION ACTION:**

- APPROVED
- DENIED
- DEFERRED
- OTHER

Rec. by *CoAtty*  
Date: 11/23/04  
Time: 2:55  
Forwarded To: Admin 12/1/04 10:30 am

RECEIVED BY  
COUNTY ADMIN:  
12/1/04  
11:30 am SM  
COUNTY ADMIN  
FORWARDED TO: *[Signature]*  
12/2/04  
3pm

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

Those in Attendance:

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

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

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

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

**APPROVAL OF MINUTES:**

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

**Kathy McGrath** seconded the motion.

Motion approved unanimously.

**AGENDA CHANGES:** None

**PUBLIC COMMENT:** None

**VACATION REQUEST:** Lot 10, Riverside Drive

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Mr. Myers seconded the motion.**

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

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

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

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

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

**Mr. Steve Brookman seconded the motion.**

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

**Mr. Stead and Mr. Myers denied the motion.**

**OLD BUSINESS: None**

**NEW BUSINESS: Post Hurricane clean-up efforts**

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

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

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

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

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

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

**MEETING ADJOURNED: 11:45 a.m.**

**RESOLUTION NO. \_\_\_\_\_ TO SET PUBLIC HEARING  
FOR PETITION TO VACATE Case Number: VAC2004-00057**

WHEREAS, a Petition to Vacate was filed with the Board of County Commissioners;  
and

WHEREAS, the Petitioner seeks to abandon, discontinue, close or vacate a portion  
of a plat, easement, parcel or right-of-way legally described in the attached Exhibit "A".

WHEREAS, under Florida Statute and the Lee County Administrative Code, the  
Board must hold a Public Hearing in order to grant a vacation affecting a public easement,  
public right-of-way or platted lands.

BE IT THEREFORE RESOLVED by the Board of County Commissioners of Lee  
County, Florida, as follows:

1. A Public Hearing on Petition to Vacate No. VAC2004-00057 is set for the  
\_\_\_\_\_ in the Lee County Commission Chambers.
2. A Notice of Public Hearing on this Petition to Vacate will be published in  
accordance with the Lee County Administrative Code.

THIS RESOLUTION passed by voice and entered into the minutes of the Board of  
County Commissioners of Lee County, Florida this \_\_\_\_\_

ATTEST:  
CHARLIE GREEN, CLERK  
\_\_\_\_\_  
Deputy Clerk Signature

BOARD OF COUNTY  
COMMISSIONERS OF  
LEE COUNTY, FLORIDA  
\_\_\_\_\_  
Chairman Signature

\_\_\_\_\_  
Please Print Name

\_\_\_\_\_  
Please Print Name

APPROVED AS TO FORM

\_\_\_\_\_  
County Attorney Signature

\_\_\_\_\_  
Please Print Name

**EXHIBIT "A"**  
Petition to Vacate  
VAC2004-00057

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

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



**NOTICE OF PUBLIC HEARING FOR PETITION TO VACATE**

Case Number: VAC2004-00057

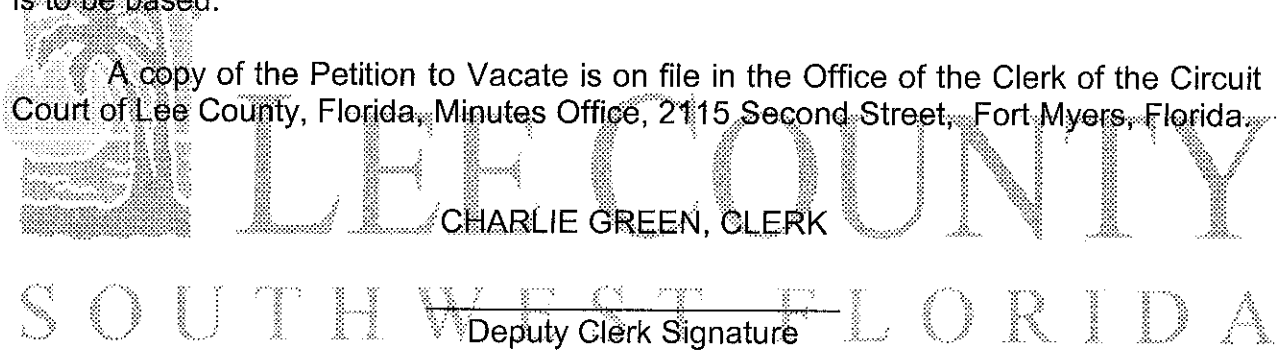
TO WHOM IT MAY CONCERN:

NOTICE is hereby given that on the 11th day of January 2005 @5:00 PM in the County Commissioners' Meeting Room, Old Lee County Courthouse, 2120 Main Street, Fort Myers, Florida, the Board of County Commissioners of Lee County, Florida, will consider and take action on a Petition vacating, abandoning, closing and discontinuing the public's interest in the right-of-way or portion of a right-of-way, legally described in the attached Exhibit "A".

Interested parties may appear in person or through a representative and be heard with respect to the Petition to Vacate.

Anyone wishing to appeal the decision made by the Board with respect to any matter considered at this meeting will need a record of the proceeding for such appeal, and may need a verbatim record, to include all testimony and evidence upon which the appeal is to be based.

A copy of the Petition to Vacate is on file in the Office of the Clerk of the Circuit Court of Lee County, Florida, Minutes Office, 2115 Second Street, Fort Myers, Florida.



CHARLIE GREEN, CLERK

Deputy Clerk Signature

\_\_\_\_\_  
Please Print Name

APPROVED AS TO FORM

\_\_\_\_\_  
County Attorney Signature

\_\_\_\_\_  
Please Print Name

**EXHIBIT "A"**  
Petition to Vacate  
VAC2004-00057

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

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



**PETITION TO VACATE (AC 13-8)**

Case Number: Vac 2004-00057

Petitioner(s), David Piper, Jr.  
requests the Board of County Commissioners of Lee County, Florida, to grant this Petition to Vacate and states as follows:

1. Petitioner(s) mailing address, P.O. Box 292, Bonita Springs, FL 34133
2. In accordance with Florida Statute (F.S.) Chapter 336 and Lee County Administrative Code (LCAC) 13-8, Petitioner desires to vacate, abandon and discontinue the public's interest in the right-of-way or portion of right-of-way legally described in the attached Exhibit "A".
3. A sketch showing the area(s) the Petitioner desires to vacate is attached as Exhibit "B".
4. Notice concerning the intent of this Petition will be provided in accordance with LCAC 13-8.
5. In accordance with letters of review and recommendation provided by the various governmental and utility entities, there is no apparent impediment to granting Petitioner's request.

Wherefore, Petitioner respectfully requests that the Board of County Commissioners adopt a Resolution granting the Petition to Vacate.

Respectfully Submitted by:

Petitioner Signature

\_\_\_\_\_  
Petitioner Signature

David Z. Piper Jr.  
Printed Name

\_\_\_\_\_  
Printed Name

RECEIVED  
OCT 25 2004

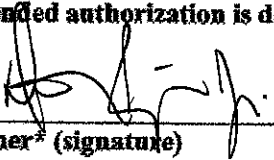
LETTER OF AUTHORIZATION

TO LEE COUNTY COMMUNITY DEVELOPMENT

PERMIT COUNTER  
7:40 PM

The undersigned does hereby swear or affirm that he is the fee simple title holder and owner of record of property commonly known as 27071 South Riverside Drive, Bonita Springs, having a STRAP number 35-47-25-B1-00600.0080 and legally described in Exhibit A attached hereto.

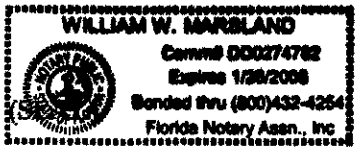
The property described herein is adjacent to real property that is the subject of a petition to vacate, and the undersigned will attain property rights in said real property upon the vacation of a right of way. I hereby designate Henderson, Franklin, Starnes & Holt, P.A. and Cody B. Vaughan-Birch, Esq. as the legal representative of the property and, as such, this individual is authorized to legally bind all owners of the property in the course of seeking the vacation. This representative will remain the undersigned's designated representative for this matter until such time as a new or amended authorization is delivered to Lee County.

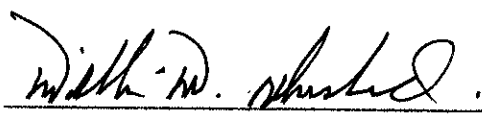
  
\_\_\_\_\_  
Owner (signature)

David T. Piper, Jr.  
\_\_\_\_\_  
Printed Name

STATE OF FLORIDA  
COUNTY OF LEE

Sworn to (or affirmed) and subscribed before me this 8TH day of OCTOBER 2004 by DAVID T. PIPER, JR., who is personally known to me or who has produced \_\_\_\_\_ as identification and who did (did not) take an oath.



  
\_\_\_\_\_

Notary Public

WILLIAM W. MARSLAND  
\_\_\_\_\_

(Name typed, printed or stamped)

**EXHIBIT "A"**  
Petition to Vacate  
VAC2004-00057

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

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

NORTH  
ARROW

FOUNDATION LOCATION

FIELDBOOK

PAGE

**LEGEND**

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

CON'T REVERSE SIDE

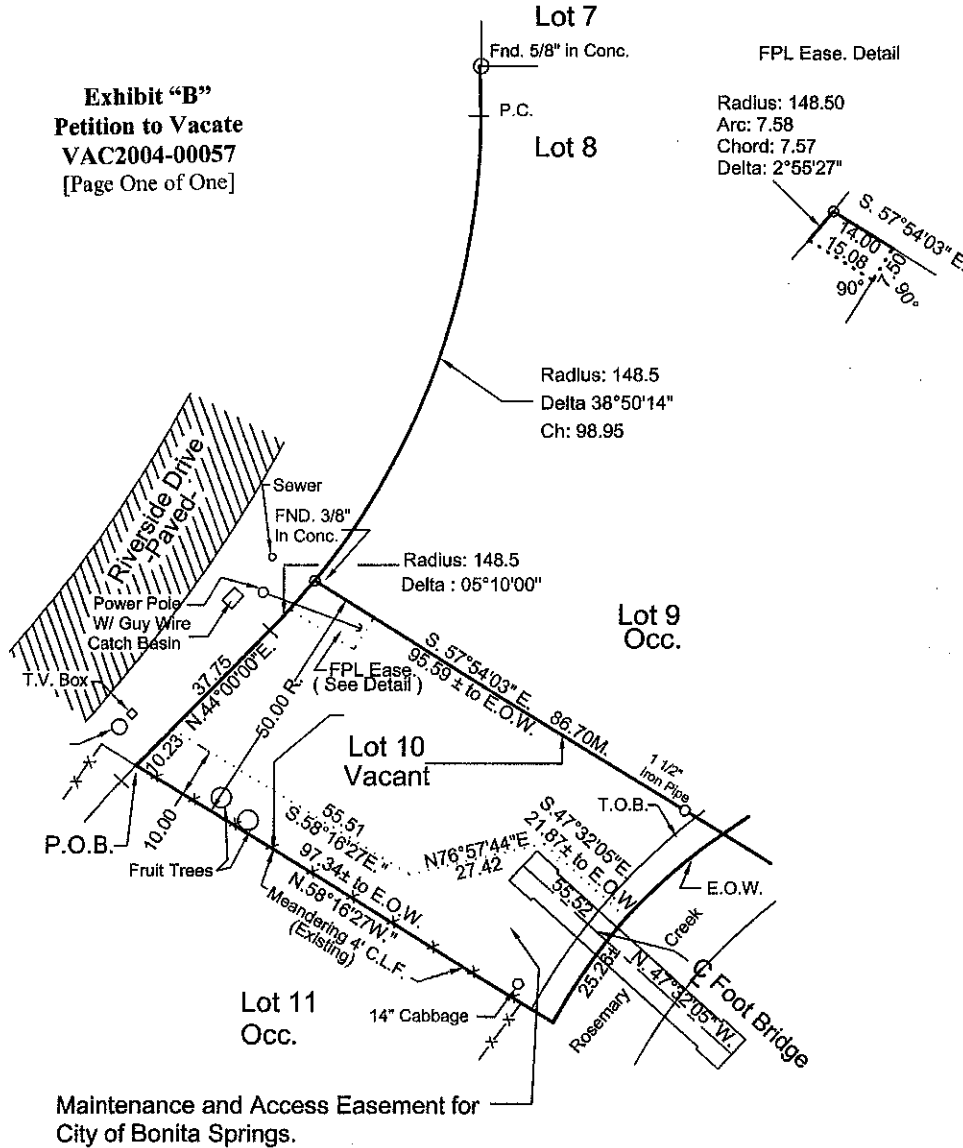
FINAL SURVEY DATE

**LEGAL DESCRIPTION**  
(AS PROVIDED BY CLIENT)

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

SCALE  
1"=30'

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



Maintenance and Access Easement for City of Bonita Springs.

**NOTES**

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

**CERTIFICATE**

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

MARK O. ALLEN  
LBS 1000

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

**MARK O. ALLEN, INC.**  
PROFESSIONAL LAND SURVEYOR

10002 WOODS CIRCLE  
BONITA SPRINGS, FL 33413

DWN. BY

CHK'D BY

ORDERED BY

SHEET 1

*Law*

*MOR*

David Piper

DWG. NO. 2004-166

276055

# This Indenture

OFFICE FILED  
97 MAR 67

Wherever used herein, the term "party" shall include the full personal representation, successors and/or assigns of the respective parties herein; the use of the singular number shall include the plural and the plural the singular; the use of any gender shall include all genders; and, if used, the term "acts" shall include all the acts herein described if necessary.

Made this 2<sup>nd</sup> day of March June A. D. 1961  
Between WILFORD JAMES PIPER, joined by his wife, ALIDA W. PIPER  
and LESTER THOMAS PIPER, joined by his wife, LUCILLE PIPER,

of the County of Lee and State of Florida, party of the first part,  
and LEE COUNTY, FLORIDA

Witnesseth, that the said party of the first part, for and in consideration of the sum of Ten Dollars and other valuable considerations Dollars in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has remised, released and quitclaimed, and by these presents does remise, release and quitclaim unto the said party of the second part all the right, title, interest claim and demand which the said party of the first part has in and to the following described lot, piece or parcel of land, situate lying and being in the County of Lee State of Florida, to wit:

Lot 10, of that certain subdivision known as PLAN OF RIVERSIDE, according to the map or plat thereof on file and recorded in the office of the Clerk of the Circuit Court of Lee County, Florida, in Plat Book 8, Page 1.

STATE OF FLORIDA, COUNTY OF LEE  
FILED FOR RECORD

This 6<sup>th</sup> day of Dec 1961 Record in CR Book 99 Page 617 and Record No. 124

H. T. FARMER, Clerk Circuit Court By E. Parkin Deputy Clerk

Said property to be used solely for road purposes.

To Have and to Hold the same, together with all and singular the appurtenances therewith belonging or in anywise appertaining, and all the estate, right, title, interest and claim whatsoever of the said party of the first part, either in law or equity, to the only proper use, benefit and behoof of the said party of the second part.

In Witness Whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

Signed, Sealed and Delivered in Our Presence:

*[Signature]*  
Esquire, Lawyer  
Witnesses as to all parties.

Wilford James Piper  
Alida W. Piper  
Lester Thomas Piper  
Lucille Piper

State of Florida,  
County of Lee

I HEREBY CERTIFY, That on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgments,

WILFORD JAMES PIPER, joined by his wife, ALIDA W. PIPER,  
and LESTER THOMAS PIPER, joined by his wife, LUCILLE PIPER,

to me well known to be the persons described in and who executed the foregoing instrument and they acknowledged before me that they executed the same freely and voluntarily for the purposes therein expressed.

WITNESS my hand and official seal at Fort Meade  
County of Lee and State of Florida, this 2<sup>nd</sup>  
day of March A. D. 1961

James R. [Signature]  
Notary Public  
By Commissioner Karpis

**Notice to Affected Property Owners**

No notices have been sent regarding this application, as the applicant as owner of Lots 8 and 9 to the north is the only "affected property owner." Access for the owners of Lot 11 to the south is not affected by this petition, and they have no interest in the parcel after vacation, as in this instance the right of way will not revert a half interest to the adjacent property owners, but will revert to the grantor. If you have questions regarding this, please contact Mr. Tim Jones of the Lee County Attorney's office.





**LEE COUNTY**  
SOUTHWEST FLORIDA

**BOARD OF COUNTY COMMISSIONERS**

239-479-8585

Writer's Direct Dial Number: \_\_\_\_\_

Bob Janes  
*District One*

November 19, 2004

Douglas R. St. Cerny  
*District Two*

Ray Judah  
*District Three*

Andrew W. Coy  
*District Four*

John E. Albion  
*District Five*

Donald D. Stilwell  
*County Manager*

James G. Yaeger  
*County Attorney*

Diana M. Parker  
*County Hearing  
Examiner*

Cody B. Vaughan-Birch, Esq.  
Henderson Franklin,  
Attorneys At Law,  
1715 Monroe Street,  
Fort Myers, FL 33901

Re: **VAC2004-00057 - Petition to Vacate a 50-foot wide County Road Right-of-Way Easement** located south of and abutting 27071 S. Riverside Dr., Bonita Springs, Florida (Lot 10) as recorded in PB 8, Pg 3 and ORB 97, Pg 67.

Dear Mr. Vaughan-Birch:

This office has received your client, David T. Piper, Jr.'s request to vacate the above referenced 50-foot wide County Road Right-of-Way Easement located south of and abutting 27071 S. Riverside Dr., Bonita Springs, Florida. The lot was originally conveyed by the petitioner's predecessor to Lee County to be utilized solely for roadway purposes. It has been determined that the roadway easement is no longer required.

An executed "Agreement to Grant Easement and Stipulate to Buffering Requirements" document between City of Bonita Springs and the petitioner has been provided, which will be held in trust by City of Bonita Springs pending the outcome of the Public Hearing. Additionally, an easement to Florida Power & Light providing maintenance access to existing facilities on site has been executed and is being held in trust by Lee County pending outcome of the Public Hearing.

Based on a review of the information provided and our subsequent research, this office has no objection to the proposed vacation.

You and your client should be aware, however that the Board of County Commissioner's approval of this petition will only extinguish the rights of the public to use the right-of-way. Private rights of use may still remain. This means that certification of fee ownership in the area being vacated will be required prior to issuance of any building permit(s) within that area of the easement as it presently exists, occupied or otherwise.

U:\200411\20040924.163\0011090\DCDLETTER.DOC

Should you have any questions, please call me at the above telephone number.

Sincerely,

DEPARTMENT OF COMMUNITY DEVELOPMENT  
Development Services Division

A handwritten signature in black ink, appearing to be 'Peter J. Eckenrode', with a large initial 'P' and a horizontal line extending to the right.

Peter J. Eckenrode  
Director

PJE/RSK

August 9, 2004

Department of Community Development  
Lee County Florida  
1500 Monroe Street  
Ft. Myers, FL 33901

Attn: Peter J. Eckenrode  
Director of Development Services


I am submitting the attached petition to regain ownership of Lot 10 Plan of Riverside as recorded in plat book 8, Page 3 of the public records of Lee County that was originally given by my grandfather and great uncle to be used for construction of a road that was never built. My predecessors in title deeded Lot 10 to Lee County June of 1961 by instrument recorded at official record book 97, page 67, Public Records of Lee County Florida.

I own the adjacent four lots and my home is built on lots 8 and 9. The City of Bonita Springs and myself have worked out an agreement whereby I will grant an easement that will provide Public access to the park ( Island Park - Formally the Ferrigno parcel ) and maintenance access to Rosemary Creek.

I am requesting ownership to be returned to me by the best method available which according to assistant County Attorney Tim Jones, seems to be the petition to vacate. Upon the granting of my request there will be a lot recombination which will provide better water access while creating an additional lot in a historical , eclectic neighborhood. ( See page 2 of letter to Lee County Commissioners from Gary Price dated June 21, 2004. )

For the above reasons I submit this Petition to vacate to the Board of Commissioners and request that appropriate steps be taken towards its processing and approval.

Respectfully Submitted,



David T. Piper Jr.

There is not a strap # according to the Lee County Property Appraisers office because the Lot after June 1961 was to be used for road construction.

David T. Piper Jr. P.O. Box 292 Bonita Springs, FL 34133  
Daytime Telephone # (239)498-1339

CC: Mary Gibbs, Director of Community Development - Lee County  
Timothy Jones - Chief Assistant County Attorney  
Gary Price - City Manager of City of Bonita Springs  
Cody Vaughn Birch - esq.

## Cody Vaughan-Birch

---

**From:** Chris Koepfer [KOEPECA@leegov.com]  
**Sent:** Wednesday, September 22, 2004 10:40 AM  
**To:** Cody Vaughan-Birch  
**Cc:** Joan VerVaecke  
**Subject:** Re: Lot 10 Plan of Riverside

You will receive a copy of the minutes for the meeting. This will suffice as the WAC response to your request.

Chris Koepfer  
Biologist  
Natural Resources Division  
PO Box 398  
Ft. Myers, Fl. 33902

Koepfeca@leegov.com  
239-479-8133  
FAX 239-479-8108

>>> "Cody Vaughan-Birch" <Cody.VaughanBirch@henlaw.com> 09/22/04  
10:37AM >>>

Chris,

David Cook informed me that the WAC review of the proposed vacation was approved for no objection. I was wondering who issues the letter of no objection on behalf of the WAC, and when we might receive it. Thanks for your help on this one.

Cody B. Vaughan-Birch, Esquire  
Henderson, Franklin, Starnes & Holt, P.A.  
1715 Monroe Street  
Post Office Box 280  
Fort Myers, Florida 339020280  
Telephone: 239.337.8457  
Facsimile: 239.334.4100  
Email: cody.vaughanbirch@henlaw.com

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

Those in Attendance:

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

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

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

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

**APPROVAL OF MINUTES:**

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

**Kathy McGrath seconded the motion.**

**Motion approved unanimously.**

**AGENDA CHANGES: None**

**PUBLIC COMMENT: None**

**VACATION REQUEST: Lot 10, Riverside Drive**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

**Mr. Myers seconded the motion.**

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

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

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

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

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

**Mr. Steve Brookman seconded the motion.**

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

**Mr. Stead and Mr. Myers denied the motion.**

**OLD BUSINESS: None**

**NEW BUSINESS: Post Hurricane clean-up efforts**

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

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

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

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

Waterway Advisory Committee  
September 16, 2004

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

**Ken Stead motion to pursue the purchase Pineland Marine.**

**Kathy McGrath seconded the motion.**

**Motion approve unanimously.**

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

**MEETING ADJOURNED: 11:45 a.m.**

**LEE COUNTY**  
SOUTHWEST FLORIDA  
BOARD OF COUNTY COMMISSIONERS

Vac 2004-00057  
**RECEIVED**  
NOV 09 2004  
PERMIT COUNTER  
(239) 479-8386  
JG

Writer's Direct Dial Number: \_\_\_\_\_

November 2, 2004

Bob Janes  
District One

Douglas R. St. Cerny  
District Two

Ray Judah  
District Three

Andrew W. Coy  
District Four

John E. Albion  
District Five

Donald D. Stilwell  
County Manager

James G. Yaeger  
County Attorney

Diana M. Parker  
County Hearing  
Examiner

Cody B. Vaughan-Birch  
Henderson Franklin  
Attorneys at Law  
1715 Monroe Street  
Fort Myers, Fl. 33901

**Re: Lot 10 of that certain Subdivision known as Plan of Riverside, according to the map or plat thereof on file and recorded in the office of the Clerk of the Circuit Court of Lee County, Florida, Plat Book 8, Page 3.**

Dear Mr. Vaughan-Birch:

Lee County DOT has reviewed the request to vacate Lot 10 Plan of Riverside. Based upon research in the public records DOT has determined that Lee County was granted a deed for Lot 10 solely for road purposes. The Grantors were Wilford James Piper, Alida Piper, Lester Thomas Piper and Lucille Piper. The deed was recorded on December 6<sup>th</sup> 1961 in Official Record Book 97 page 67. Lot 10 currently is a vacant lot that appears to have been given to Lee County in 1961 to provide road access to a parcel adjacent to Rosemary Creek as shown on the Plan of Riverside Plat. The City of Bonita Springs recently purchased the parcel to the east of Lot 10 known as the "Ferringo" property for the purposes of a City park. The City of Bonita Springs constructed a bridge on a portion of Lot 10 to provide pedestrian traffic to the new City park. The City of Bonita Springs has asserted in a letter written by the City attorney dated May 4, 2004 that the maintenance of Rosemary Creek and the utilities that may be on or near Lot 10 are uniquely the responsibility of the City of Bonita Springs. There still remains a question of maintenance access to Rosemary Creek pursuant to an interlocal agreement with Lee County Division of Natural Resources. Natural Resources will address the question in their letter of Review for the Petition to Vacate. The request to vacate Lot 10 was approved by the Waterways Advisory Committee.

Lee County Department of Transportation does not object to the vacation of Lot 10 Plan of Riverside. Lee County Department of Transportation further asserts that if the Lee County Board of County Commissioners approves a Resolution to vacate Lot 10 Plan of Riverside, Lee County DOT will not enter into or be a party to any pending or future agreements contemplated by the City of Bonita Springs pertaining to Lot 10 Plan of Riverside.

Vac 2004-00057  
**RECEIVED**  
NOV 09 2004  
PERMIT COUNTER *JM*

**Mr. Cody B. Vaughan-Birch**

Page -2-

November 2, 2004

---

Sincerely,

DEPARTMENT OF TRANSPORTATION

*Scott M. Gilbertson*  
Scott M. Gilbertson, P.E., Director

MAL/kb

Enclosures

cc: Jim Lavender, Director, Public Works  
Paul Wingard, Deputy Director, LCDOT  
Don Chamblee, Manager, LCDOT, Operations  
Roland Ottolini, Director Natural Resources  
John Fredyma, Assistant County Attorney  
Gary Price, City of Bonita Springs Manager  
Audrey Vance, City of Bonita Springs Attorney  
Mary Gibbs, Director Community Development  
Ruth Keith, Development Review  
DOT PTV File Lot 10 Plan of Riverside



**LEE COUNTY**  
SOUTHWEST FLORIDA

**BOARD OF COUNTY COMMISSIONERS**

Writer's Direct Dial Number (239) 479-8124

Bob Janes  
District One

Friday, November 05, 2004

Douglas R. St. Cerny  
District Two

Ray Judah  
District Three

Mr. Cody Vaughn-Birch  
Henderson Franklin  
9900 Coconut Road  
Bonita Springs, FL 34135

Andrew W. Coy  
District Four

John E. Albion  
District Five

Donald D. Stillwell  
County Manager

James G. Yaeger  
County Attorney

Diana M. Parker  
County Hearing  
Examiner

Re: Petition to Vacate a variable width right of way traversing Lot 10, Plan of Riverside Subdivision as recorded in Plat Book 08, Page 03, in the public records, Lee County, Florida. (Revised)

Dear Vaughn-Birch:

Based on the review of the documents submitted with your request, Lee County Division of Natural Resources has no objection to the vacation of a portion of the subject right of way provided the following:

1. As requested by the Waterway Advisories Committee, the City of Bonita Springs is to obtain an access easement across the subject property.
2. The easement shall also provide access for future drainage maintenance obligations.

Should you have any questions, please call me at the above telephone number.

Regards,

LEE COUNTY PUBLIC WORKS DEPARTMENT

Allen L. Davies, Jr.  
Natural Resources Division

S:\NATRES\SURFACE\DOCUMENT\vac449a.doc

**RECEIVED**  
NOV 10 2004

PERMIT COUNTER  
VAC 2004-00057



**LEE COUNTY**  
SOUTHWEST FLORIDA

**BOARD OF COUNTY COMMISSIONERS**

Writer's Direct Dial Number (239) 479-8124

Bob Janes  
*District One*

Thursday, September 02, 2004

Douglas R. St. Cerny  
*District Two*

Ray Judah  
*District Three*

Mr. Cody Vaughn-Birch  
Henderson Franklin  
9900 Coconut Road  
Bonita Springs, FL 34135

SEP - 3 2004

Andrew W. Coy  
*District Four*

John E. Albion  
*District Five*

Re: Petition to Vacate a variable width right of way traversing Lot 10, Plan of Riverside Subdivision as recorded in Plat Book 08, Page 03, in the public records, Lee County, Florida.

Donald D. Stilwell  
*County Manager*

James G. Yaeger  
*County Attorney*

Dear Vaughn-Birch:

Diana M. Parker  
*County Hearing Examiner*

Based on the review of the documents submitted with your request, Lee County Division of Natural Resources has no objection to the vacation of a portion of the subject right of way.

Should you have any questions, please call me at the above telephone number.

Regards,

LEE COUNTY PUBLIC WORKS DEPARTMENT

Allen L. Davies, Jr.  
Natural Resources Division

S:\NATRES\SURFACE\DOCUMENT\vac449.doc



10/25/04 To Vacation  
File  
cc: Pete  
Ruth  
Jim Jones

October 20, 2004

LEE COUNTY  
RECEIVED

04 OCT 22 PM 1:00

The Honorable John E. Albion  
Chairman  
Lee County Board of County Commissioners /  
P.O. Box 398  
Fort Myers, Florida 33902  
PUB. WRKS. CNTR.  
SECOND FLOOR

*City of  
Bonita Springs*

9220 BONITA BEACH ROAD  
SUITE 111  
BONITA SPRINGS, FL 34135  
TEL: (239) 390-1000  
FAX: (239) 390-1004  
www.cityofbonitasprings.org

**Jay Arend**  
Mayor

**Wayne P. Edsall**  
Councilman  
District One

**Alex Grantt**  
Councilman  
District Two

**R. Robert Wagner**  
Councilman  
District Three

**John Joyce**  
Councilman  
District Four

**David T. Piper, Jr.**  
Councilman  
District Five

**Ben L. Nelson, Jr.**  
Councilman  
District Six

**Gary A. Price**  
City Manager

**Audrey E. Vance**  
City Attorney

RE: Lot 10, Plan of Riverside, File Number VAC2004-00057

Dear Chairman Albion:

This letter is sent in support of David Piper's application for the vacation of the County's interest in that property known as Lot 10. The date when the Board is scheduled to hear this matter has not yet been set.

The City of Bonita Springs supports the vacation as the first step in the implementation of an agreement made between the City and Mr. Piper, whereby the City will obtain perpetual pedestrian access over a portion of Lot 10 leading to its Island Park. That grant of easement is being held in trust, and will be released for recording upon the vacation of the County's interest in the land which is the subject of the vacation request.

The City is aware that there has been an ongoing dispute among the attorneys for the County, the City, and Mr. Piper regarding the rights and obligations of these three entities with respect to the subject property and that there still may be disagreements among the attorneys as to the legal consequences of the vacation. However, the City Council chose to negotiate an access agreement with Mr. Piper to save everyone from the risks of litigation, which will be unavoidable if the vacation request is denied. The City is satisfied the public interest is best served and protected through implementation of the agreement it made with Mr. Piper. The City, therefore, respectfully asks for your cooperation in this matter by granting the vacation request.

Respectfully,

  
Gary A. Price  
City Manager

cc: Mayor and City Council  
David Piper, Jr.  
Audrey E. Vance, City Attorney  
Mary Gibbs, Director, Community Development, Lee County  
Don Stilwell, County Manager, Lee County



October 20, 2004

The Honorable Ray Judah  
Commissioner, District Three  
Lee County Board of County Commissioners  
P.O. Box 398  
Fort Myers, Florida 33902

*City of  
Bonita Springs*

9220 BONITA BEACH ROAD  
SUITE 111  
BONITA SPRINGS, FL 34135  
TEL: (239) 390-1000  
FAX: (239) 390-1004  
www.cityofbonitasprings.org

**Jay Arend**  
Mayor

**Wayne P. Edsall**  
Councilman  
District One

**Alex Grantt**  
Councilman  
District Two

**R. Robert Wagner**  
Councilman  
District Three

**John Joyce**  
Councilman  
District Four

**David T. Piper, Jr.**  
Councilman  
District Five

**Ben L. Nelson, Jr.**  
Councilman  
District Six

~  
**Gary A. Price**  
City Manager

**Audrey E. Vance**  
City Attorney

RE: Lot 10, Plan of Riverside, File Number VAC2004-00057

Dear Commissioner Judah:

This letter is sent in support of David Piper's application for the vacation of the County's interest in that property known as Lot 10. The date when the Board is scheduled to hear this matter has not yet been set.

The City of Bonita Springs supports the vacation as the first step in the implementation of an agreement made between the City and Mr. Piper, whereby the City will obtain perpetual pedestrian access over a portion of Lot 10 leading to its Island Park. That grant of easement is being held in trust, and will be released for recording upon the vacation of the County's interest in the land which is the subject of the vacation request.

The City is aware that there has been an ongoing dispute among the attorneys for the County, the City, and Mr. Piper regarding the rights and obligations of these three entities with respect to the subject property and that there still may be disagreements among the attorneys as to the legal consequences of the vacation. However, the City Council chose to negotiate an access agreement with Mr. Piper to save everyone from the risks of litigation, which will be unavoidable if the vacation request is denied. The City is satisfied the public interest is best served and protected through implementation of the agreement it made with Mr. Piper. The City, therefore, respectfully asks for your cooperation in this matter by granting the vacation request.

Respectfully,

Gary A. Price  
City Manager

cc: Mayor and City Council  
David Piper, Jr.  
Audrey E. Vance, City Attorney  
Mary Gibbs, Director, Community Development, Lee County  
Don Stilwell, County Manager, Lee County





October 20, 2004

The Honorable Doug R. St. Cerny  
Commissioner, District Two  
Lee County Board of County Commissioners  
P.O. Box 398  
Fort Myers, Florida 33902

*City of  
Bonita Springs*

9220 BONITA BEACH ROAD  
SUITE 111  
BONITA SPRINGS, FL 34135  
TEL: (239) 390-1000  
FAX: (239) 390-1004  
www.cityofbonitasprings.org

**Jay Arend**  
Mayor

**Wayne P. Edsall**  
Councilman  
District One

**Alex Grantt**  
Councilman  
District Two

**R. Robert Wagner**  
Councilman  
District Three

**John Joyce**  
Councilman  
District Four

**David T. Piper, Jr.**  
Councilman  
District Five

**Ben L. Nelson, Jr.**  
Councilman  
District Six

~  
**Gary A. Price**  
City Manager

**Audrey E. Vance**  
City Attorney

RE: Lot 10, Plan of Riverside, File Number VAC2004-00057

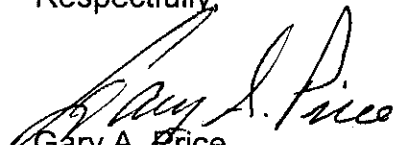
Dear Commissioner St. Cerny:

This letter is sent in support of David Piper's application for the vacation of the County's interest in that property known as Lot 10. The date when the Board is scheduled to hear this matter has not yet been set.

The City of Bonita Springs supports the vacation as the first step in the implementation of an agreement made between the City and Mr. Piper, whereby the City will obtain perpetual pedestrian access over a portion of Lot 10 leading to its Island Park. That grant of easement is being held in trust, and will be released for recording upon the vacation of the County's interest in the land which is the subject of the vacation request.

The City is aware that there has been an ongoing dispute among the attorneys for the County, the City, and Mr. Piper regarding the rights and obligations of these three entities with respect to the subject property and that there still may be disagreements among the attorneys as to the legal consequences of the vacation. However, the City Council chose to negotiate an access agreement with Mr. Piper to save everyone from the risks of litigation, which will be unavoidable if the vacation request is denied. The City is satisfied the public interest is best served and protected through implementation of the agreement it made with Mr. Piper. The City, therefore, respectfully asks for your cooperation in this matter by granting the vacation request.

Respectfully,

  
Gary A. Price  
City Manager

cc: Mayor and City Council  
David Piper, Jr.  
Audrey E. Vance, City Attorney  
Mary Gibbs, Director, Community Development, Lee County  
Don Stilwell, County Manager, Lee County



October 20, 2004

The Honorable Bob P. Janes  
Commissioner, District One  
Lee County Board of County Commissioners  
P.O. Box 398  
Fort Myers, Florida 33902

*City of  
Bonita Springs*

9220 BONITA BEACH ROAD  
SUITE 111  
BONITA SPRINGS, FL 34135  
TEL: (239) 390-1000  
FAX: (239) 390-1004  
www.cityofbonitasprings.org

**Jay Arend**  
Mayor

**Wayne P. Edsall**  
Councilman  
District One

**Alex Grantt**  
Councilman  
District Two

**R. Robert Wagner**  
Councilman  
District Three

**John Joyce**  
Councilman  
District Four

**David T. Piper, Jr.**  
Councilman  
District Five

**Ben L. Nelson, Jr.**  
Councilman  
District Six

~  
**Gary A. Price**  
City Manager

**Audrey E. Vance**  
City Attorney

RE: Lot 10, Plan of Riverside, File Number VAC2004-00057

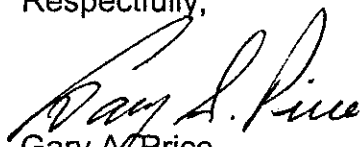
Dear Commissioner Janes:

This letter is sent in support of David Piper's application for the vacation of the County's interest in that property known as Lot 10. The date when the Board is scheduled to hear this matter has not yet been set.

The City of Bonita Springs supports the vacation as the first step in the implementation of an agreement made between the City and Mr. Piper, whereby the City will obtain perpetual pedestrian access over a portion of Lot 10 leading to its Island Park. That grant of easement is being held in trust, and will be released for recording upon the vacation of the County's interest in the land which is the subject of the vacation request.

The City is aware that there has been an ongoing dispute among the attorneys for the County, the City, and Mr. Piper regarding the rights and obligations of these three entities with respect to the subject property and that there still may be disagreements among the attorneys as to the legal consequences of the vacation. However, the City Council chose to negotiate an access agreement with Mr. Piper to save everyone from the risks of litigation, which will be unavoidable if the vacation request is denied. The City is satisfied the public interest is best served and protected through implementation of the agreement it made with Mr. Piper. The City, therefore, respectfully asks for your cooperation in this matter by granting the vacation request.

Respectfully,

  
Gary A. Price  
City Manager

cc: Mayor and City Council  
David Piper, Jr.  
Audrey E. Vance, City Attorney  
Mary Gibbs, Director, Community Development, Lee County  
Don Stilwell, County Manager, Lee County



October 20, 2004

The Honorable Andy W. Coy  
Commissioner, District Four  
Lee County Board of County Commissioners  
P.O. Box 398  
Fort Myers, Florida 33902

*City of  
Bonita Springs*

9220 BONITA BEACH ROAD  
SUITE 111  
BONITA SPRINGS, FL 34135  
TEL: (239) 390-1000  
FAX: (239) 390-1004  
www.cityofbonitasprings.org

**Jay Arend**  
Mayor

**Wayne P. Edsall**  
Councilman  
District One

**Alex Grantt**  
Councilman  
District Two

**R. Robert Wagner**  
Councilman  
District Three

**John Joyce**  
Councilman  
District Four

**David T. Piper, Jr.**  
Councilman  
District Five

**Ben L. Nelson, Jr.**  
Councilman  
District Six

~  
**Gary A. Price**  
City Manager

**Audrey E. Vance**  
City Attorney

RE: Lot 10, Plan of Riverside, File Number VAC2004-00057

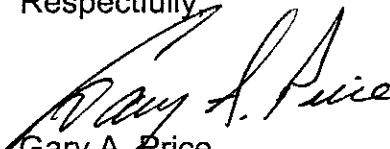
Dear Commissioner Coy:

This letter is sent in support of David Piper's application for the vacation of the County's interest in that property known as Lot 10. The date when the Board is scheduled to hear this matter has not yet been set.

The City of Bonita Springs supports the vacation as the first step in the implementation of an agreement made between the City and Mr. Piper, whereby the City will obtain perpetual pedestrian access over a portion of Lot 10 leading to its Island Park. That grant of easement is being held in trust, and will be released for recording upon the vacation of the County's interest in the land which is the subject of the vacation request.

The City is aware that there has been an ongoing dispute among the attorneys for the County, the City, and Mr. Piper regarding the rights and obligations of these three entities with respect to the subject property and that there still may be disagreements among the attorneys as to the legal consequences of the vacation. However, the City Council chose to negotiate an access agreement with Mr. Piper to save everyone from the risks of litigation, which will be unavoidable if the vacation request is denied. The City is satisfied the public interest is best served and protected through implementation of the agreement it made with Mr. Piper. The City, therefore, respectfully asks for your cooperation in this matter by granting the vacation request.

Respectfully,

  
Gary A. Price  
City Manager

cc: Mayor and City Council  
David Piper, Jr.  
Audrey E. Vance, City Attorney  
Mary Gibbs, Director, Community Development, Lee County  
Don Stilwell, County Manager, Lee County

to: Ruth



LEE COUNTY  
RECEIVED

OCT 20 PM 1:00  
October 18, 2004

AEV/  
PUBLIC WORKS CNTR.  
SECOND FLOOR

*City of  
Bonita Springs*

9220 BONITA BEACH ROAD  
SUITE 111  
BONITA SPRINGS, FL 34135  
TEL: (239) 390-1000  
FAX: (239) 390-1004  
www.cityofbonitasprings.org

**Jay Arend**  
Mayor

**Wayne P. Edsall**  
Councilman  
District One

**Alex Grantt**  
Councilman  
District Two

**R. Robert Wagner**  
Councilman  
District Three

**John Joyce**  
Councilman  
District Four

**David T. Piper, Jr.**  
Councilman  
District Five

**Ben L. Nelson, Jr.**  
Councilman  
District Six

**Gary A. Price**  
City Manager

**Audrey E. Vance**  
City Attorney

Timothy Jones, Esquire  
Chief Assistant County Attorney  
2115 Second St.  
P. O. Box 398  
Fort Myers, FL 33902

RE: Lot 10, Plan of Riverside  
Grant of Easement held by Michael Ciccarone

Dear Tim:

Enclosed is the letter received from Mike Ciccarone with the Grant of Easement signed by his client. Gary Price on behalf of the City of Bonita Springs already received a copy directly from and has found it satisfactory, consistent with its agreement with David Piper.

As previously advised, the City of Bonita Springs does not have any objection to Lee County conveying the property to Mr. Piper pursuant to the vacation process. Thank you for your attention to this matter, and I look forward to the vacation being completed so that the Grant of Easement may be recorded.

Sincerely yours,

Audrey E. Vance  
City Attorney

AEV/  
Enclosures

- cc: Bonita Springs City Council
- Gary A. Price, City Manager
- Kamala Corbett, Assistant City Attorney
- Barbara Barnes-Buchanan, Assistant City Manager
- Daryl Walk, P.E., Public Works Manager
- Dianne Lynn, City Clerk
- Mary Gibbs, Director, Community Development
- ✓ Pete Eckenrode, Director, Development Services  
(Above with enclosures)

# Goldstein, Buckley, Cechman, Rice & Purtz, P.A.

## Attorneys At Law

Ray Goldstein  
Stephen W. Buckley  
John B. Cechman \*  
J. Jeffrey Rice \* +  
Richard L. Purtz \*

1515 Broadway, Fort Myers, Florida 33901  
Mailing Address:  
P. O. Box 2366, Fort Myers, Florida 33902-2366  
(239) 334-1146  
Fax (239) 332-6508  
E-Mail: mciccarone@gbclaw.com

Mary G. Jack  
Michael J. Ciccarone  
A. Paul Mollé

\* Board Certified Civil Trial  
+ Board Certified Business Litigation  
Writer's Direct Line:  
(941) 332-9413

October 14, 2004

Audrey E. Vance, City Attorney  
Bonita Springs City Attorney's Office  
Post Office Box 367029  
Bonita Springs, Florida 34136

2004 OCT 18 PM 8 36

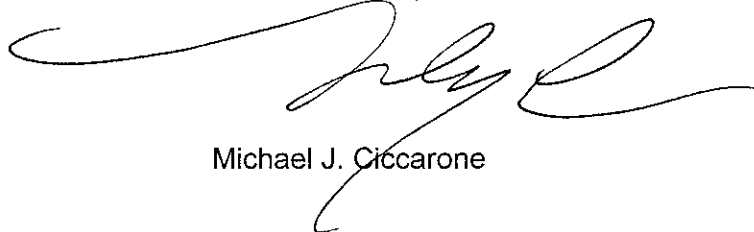
**RE: David T. Piper, Jr. v. Lee County**

Dear Audrey:

Enclosed is a copy of the original GRANT OF EASEMENT signed by David T. Piper, Jr. I am holding the original in escrow with instructions to release it to you for recording upon the County's completion of the vacation process. I am not involved in that process and, so, you will have to monitor it. I think that Tim Jones was concerned that this GRANT OF EASEMENT be executed before the vacation occurred so that the City of Bonita Springs would not have to risk litigation to require Mr. Piper to specifically perform his obligation to convey the easement. If it makes a difference to you or Tim, we can always release it for you to hold in trust. Presumably, this should keep everyone happy. I believe that David Cook is actually handling the vacation and, so, I will copy him on this letter so that he knows what is happening.

Sincerely,

GOLDSTEIN, BUCKLEY, CECHMAN,  
RICE & PURTZ, P.A.



Michael J. Ciccarone

MJC:alr

cc: David Cook, Esq.  
Mr. David T. Piper, Jr.

### OTHER OFFICES

CAPE CORAL  
(941) 574-5575

LEHIGH ACRES  
(941) 368-6101

NAPLES  
(941) 262-4888

PORT CHARLOTTE  
(941) 624-2393

Prepared by and Return to:  
Michael J. Ciccarone, Esquire  
Goldstein, Buckley, Cechman  
Rice & Purtz, P.A.  
Post Office Box 2366  
Fort Myers, Florida 33902

2004 OCT 10 PM 8 36

Property Identification Number:

GRANT OF EASEMENT

This Grant of Easement made the 8<sup>TH</sup> day of OCTOBER 2004, by DAVID T. PIPER, JR., whose mailing address is P.O. Box 292, Bonita Springs, Lee County, Florida 34133-0292, hereinafter called the GRANTOR, to CITY OF BONITA SPRINGS, a municipal corporation existing under the laws of the State of Florida, whose mailing address is P.O. Box 367029, Bonita Springs, Lee County, Florida 34136-7029, hereinafter called the GRANTEE:

(Wherever used herein the terms "Grantor" and "Grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations.)

**Witnesseth:** That the Grantor, for and in consideration of the sum of Ten and 00/100 (\$10.00) Dollars and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, and transfers unto the Grantee, Grantee's heirs and assigns forever:

A Maintenance and access easement being part of Lot 10, Plan of Riverside as recorded in Plat Book 8, Page 3 of the public records of Lee County, Florida, and more particularly described as follows:

Commencing on the Easterly Right-of-way of Riverside Drive and the Common Corner of Lots 10 and 11 of said Plan of Riverside; thence N44°00'00"E along said Easterly Right-of-way for 10.23 feet; thence S58°16'27"E 10.0 feet from and parallel with the Southerly line of said Lot 10 for 55.51 feet; thence N76°57'44"E for 27.42 feet; thence S47°32'05"E for 21.87 feet more or less to the waters of Rosemary Creek; thence Southwesterly along said waters for 25 feet more or less to an intersection with the Southerly line of Lot 10, Plan of Riverside; thence N58°15'27"W along said south line for 97 feet more or less to the point of beginning.

Together with all the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining.

To Have and to Hold, the same for so long as Grantee complies with the continuing obligation it assumed in Paragraph 5 in that "Agreement to Grant Easement and Stipulate to Buffering Requirements" which is attached hereto as Exhibit "1", provided that Lee County shall have vacated its rights in said Lot 10 and recorded same in the Public Records of Lee County, Florida prior to the recording of this Grant of Easement. Should it be determined by a court of competent jurisdiction that Grantee has failed to fulfill its continuing obligation under Exhibit "1" hereto, Grantee's rights hereunder shall be extinguished and revert to Grantor and his successors in title to Lot 10.

In Witness Whereof, the said Grantor has hereunto set his hand and seal the day and year first above written.

Signed, sealed and delivered in the presence of:

*Lee Alexander*

Witness Signature

*Lee Alexander*

Printed Name

*Linda Chouinard*

Witness Signature

*Linda Chouinard*

Printed Name

*David T. Piper, Jr.*

David T. Piper, Jr.

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 8TH day of OCTOBER 2004, by David T. Piper, Jr., who is personally known to me or who has produced \_\_\_\_\_ as identification.

NOTARY RUBBER STAMP SEAL  
OR EMBOSSED SEAL

*William W. MARSLAND*

Notary Public

*William W. MARSLAND*

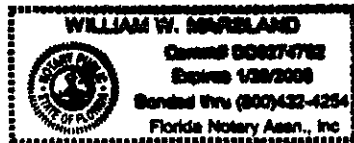
Printed Name

DD0274782

Commission No.

1-26-2008

Expiration Date





*City of  
Bonita Springs*

9220 BONITA BEACH ROAD  
SUITE 111  
BONITA SPRINGS, FL 34135  
TEL: (239) 390-1000  
FAX: (239) 390-1004  
www.cityofbonitasprings.org

**Jay Arend**  
Mayor

**Wayne P. Edsall**  
Councilman  
District One

**Alex Grantt**  
Councilman  
District Two

**R. Robert Wagner**  
Councilman  
District Three

**John Joyce**  
Councilman  
District Four

**David T. Piper, Jr.**  
Councilman  
District Five

**Ben L. Nelson, Jr.**  
Councilman  
District Six

**Gary A. Price**  
City Manager

**Audrey E. Vance**  
City Attorney

August 3, 2004

Mr. David Piper, Jr.  
Post Office Box 292  
Bonita Springs, FL 34133

RE: Lot 10 "Vacation"

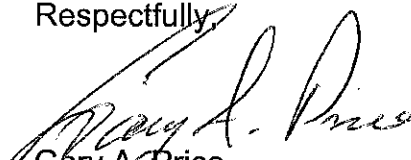
Dear David:

I talked to Lee County Community Development Department about the need for you to obtain letters from all the utility companies. When we removed Ferrigno's dwelling, after his death, we also removed all the service lines that supplied his house. There were no distribution lines, and the lot's dead end configuration against Rosemary Creek would make additional services for other residents unnecessary.

Should the City in the future wish to extend any kind of utility services to the park, we would use the 10' easement. I would still check with Florida Power & Light because while there are no lines on Lot 10, the pole on the northwest corner is guided toward Lot 10. Call Mona Beach at Florida Power & Light at 947-7340. Also, the drainage relocation has been scheduled. See enclosed letter to Sheard & Sons, Inc.

Please feel free to submit this letter with your application.

Respectfully,

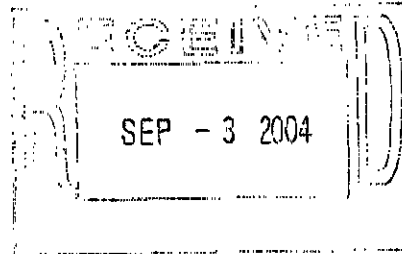
  
Gary A. Price  
City Manager

GAP/kw

Enclosure

cc: Audrey E. Vance, City Attorney





**City of  
Bonita Springs**

9220 BONITA BEACH ROAD  
SUITE 111  
BONITA SPRINGS, FL 34135  
TEL: (239) 390-1000  
FAX: (239) 390-1004  
www.cityofbonitasprings.org

**Jay Arend**  
Mayor

**Wayne P. Edsall**  
Councilman  
District One

**Alex Grantt**  
Councilman  
District Two

**R. Robert Wagner**  
Councilman  
District Three

**John Joyce**  
Councilman  
District Four

**David T. Piper, Jr.**  
Councilman  
District Five

**Ben L. Nelson, Jr.**  
Councilman  
District Six

**Gary A. Price**  
City Manager

**Audrey E. Vance**  
City Attorney

September 1, 2004

Mr. David Cook  
Windels Marx Lane & Mittendorf, LLP  
9990 Coconut Road, Suite 101  
Bonita Springs, FL 34135

RE: Lot 10, Plan of Riverside

Dear Mr. Cook:

The maintenance and responsibility for both South Riverside Drive and Rosemary Creek are the City's. Neither Lee County Department of Transportation nor Florida Department of Transportation are involved.

Furthermore, Lee County Department of Natural Resources is on a contract with the City of Bonita Springs to perform those tasks as requested. As such, the 10' wide public pedestrian access contemplated in the agreement along with the widened access at the creek frontage is more than ample for the City and the Lee County Department of Natural Resources to access the Rosemary Creek and the City's Island Park.

I trust this information will clarify the City's position with regard to the responsibility of these three agencies. If not, please let me know.

Respectfully,

Gary A. Price  
City Manager

GAP/kd

cc: David Piper, Jr.  
Audrey Vance, City Attorney

Pete



LEE COUNTY  
RECEIVED

04 AUG -4 AM 11:35

August 3, 2004

DEV/  
PUB. WORKS. CNTR.  
2004-08-03 11:00R

*City of  
Bonita Springs*

9220 BONITA BEACH ROAD  
SUITE 111  
BONITA SPRINGS, FL 34135  
TEL: (239) 390-1000  
FAX: (239) 390-1004  
www.cityofbonitasprings.org

**Jay Arend**  
Mayor

**Wayne P. Edsall**  
Councilman  
District One

**Alex Grantt**  
Councilman  
District Two

**R. Robert Wagner**  
Councilman  
District Three

**John Joyce**  
Councilman  
District Four

**David T. Piper, Jr.**  
Councilman  
District Five

**Ben L. Nelson, Jr.**  
Councilman  
District Six

~

**Gary A. Price**  
City Manager

**Audrey E. Vance**  
City Attorney

Michael J. Ciccarone, Esquire  
Goldstein, Buckley, Cechman, Rice & Purtz, P.A.  
P. O. Box 2366  
Fort Myers, FL 33902-2366

and

David L. Cook, Esquire  
Henderson Franklin Starnes & Holt, P.A.  
9990 Coconut Road, Suite 101  
Bonita Springs, Florida 34135-8488

RE: Lot 10, Plan of Riverside: Agreement to Grant  
Easement and Stipulate to Buffering Requirements

Dear Messrs. Ciccarone and Cook:

I am in receipt of Michael Ciccarone's July 14, 2004 letter received by the City of Bonita Springs on July 26, 2004. The letter enclosed the Agreement to Grant Easement and Stipulate to Buffering Requirements ("Agreement"). I am making the assumption that by receipt of this letter and agreement, as David Piper's attorneys, you and your client are satisfied that all of the real estate transactions contemplated in the Agreement are in keeping with Florida Statutes §112.313(3).

Enclosed is the scheduling document ("greensheet"), scheduling this matter for City Council's review and approval on August 18, 2004. By copy to those below, I am advising them that I have scheduled this matter for Bonita Springs City Council's consideration.

Michael J. Ciccarone, Esquire  
David L. Cook, Esquire  
August 3, 2004  
Page 2

RE: Lot 10, Plan of Riverside: Agreement to Grant  
Easement and Stipulate to Buffering Requirements

---

Kindly advise if you need any further information prior to the meeting.

Sincerely yours,



Audrey E. Vance  
City Attorney

AEV/dfg

Enclosures

cc: Bonita Springs City Council  
Gary A. Price, City Manager  
Barbara Barnes-Buchanan, Assistant City Manager  
Daryl Walk, P.E., Public Works Manager  
Dianne Lynn, City Clerk  
Mary Gibbs, Director, Community Development  
Pete Eckenrode, Director, Development Services  
Jack Campbell, Parks & Recreation Manager  
Timothy Jones, Chief Assistant County Attorney  
(Above with enclosure)

**AGENDA ITEM SUMMARY**

**REQUESTED MOTION:**

Review the agreement to grant easement and stipulate to buffering requirements for Lot 10, Plan of Riverside.

**MEETING DATE:** August 18, 2004

<b>AGENDA:</b>		<b>REQUIREMENT/PURPOSE: (Specify)</b>	<b>REQUESTOR OF INFORMATION:</b>
<input type="checkbox"/>	PRESENTATIONS	STATUTE	Audrey E. Vance City Attorney
<input type="checkbox"/>	CONSENT	ORDINANCE	
<input type="checkbox"/>	PUBLIC HEARING	ADMIN. CODE	
<input type="checkbox"/>	APPEALS	X OTHER	
<input type="checkbox"/>	MAYOR AND COUNCIL MEMBER'S REPORTS		
X	CITY ATTORNEY		
<input type="checkbox"/>	CITY MANAGER		

**BACKGROUND:**

On March 17, 2004, Bonita Springs City Council provided direction to staff as to Lot 10, Plan of Riverside, currently owned by Lee County, with the adjoining property owner, David T. Piper, Jr., asking Lee County to return the land through the vacation process. During discussion at that meeting, David Piper advised City Council that he would be satisfied if the City obtained an easement so as to run from Riverside Drive across the Southern boundary of Lot 10 to the bridge. He would have no objection to this easement, provided he obtained the property back from Lee County.

Attached is an agreement for David Piper to grant the easement and both parties to stipulate to certain buffer requirements. Under the terms of this agreement, David Piper will make an application to Lee County to vacate Lot 10. The City will consent and raise no objection to the vacation, provided he grants the City a ten (10') foot wide pedestrian, bicycle and service equipment access easement that will extend from the footbridge and run ten (10') feet on the southern boundary. The City will replace the existing metal storm drain on the northwest portion of the property, of which David Piper will contribute \$1,000. towards the cost. After the City obtains the easement, it will install the walkway and fence in such a way that it is aesthetically pleasing and undisruptive to the Piper's use of the remainder of Lot 10. As additional consideration, the City agrees to process a City initiated lot recombination of Lot 10 and a portion of Lot 9 to make Lot 10 a buildable lot. Relocation of the power line will be done by David Piper or successor at time of placement of a home.

The easement will only be provided if David Piper obtains the land and has the ability to grant the easement. In the interim, the City has access via the County deed.

Attachment: Agreement to Grant Easement and Stipulate to Buffering Requirements

**STAFF RECOMMENDATIONS:**

Discuss and if the agreement to grant easement and stipulate the buffering requirements is satisfactory, approve the agreement.

**REVIEWED BY:**

**City Manager:** \_\_\_\_\_

**City Attorney:** \_\_\_\_\_

**City Clerk:** \_\_\_\_\_

**COUNCIL ACTION:**

- APPROVED**
- DENIED**
- DEFERRED**
- OTHER**

Pete



LEE COUNTY  
RECEIVED  
MAR 22 AM 11:52  
CIVIL DEV/  
PUB. WORKS. CNTR.  
SECOND FLOOR

Via facsimile and U.S. Mail

March 18, 2004

City of  
Bonita Springs

9220 BONITA BEACH ROAD  
SUITE 111  
BONITA SPRINGS, FL 34135  
TEL: (239) 390-1000  
FAX: (239) 390-1004  
www.cityofbonitasprings.org

Paul D. Pass  
Mayor

Wayne P. Edsall  
Councilman  
District One

Jay Arend  
Councilman  
District Two

R. Robert Wagner  
Councilman  
District Three

John C. Warfield  
Councilman  
District Four

David T. Piper, Jr.  
Councilman  
District Five

Ben L. Nelson, Jr.  
Councilman  
District Six



Gary A. Price  
City Manager

Audrey E. Vance  
City Attorney

Michael J. Ciccarone, Esquire  
Goldstein, Buckley, Cechman, Rice & Purtz, P.A.  
Attorneys at Law  
P. O. Box 2366  
Fort Myers, FL 33902-2366

RE: Lot 10, Plan of Riverside: Agreement to Grant Easement and  
Stipulate to Buffering Requirements

Dear Mike:

As a result of your March 9, 2004 letter to Jim Yaeger, City Council scheduled this matter for discussion at its March 17, 2004 meeting. The City of Bonita Springs is very much concerned in that its only access is through Lot 10. After much discussion, Mr. Piper advised City Council that he would be satisfied if the City obtained an easement so as to run from Riverside Drive across the southern boundary of Lot 10 to the bridge. He would not have objection to this easement, provided he obtained the property back from Lee County pursuant to Florida Statutes §255.22 and would be able to use Lot 10 via a lot recombination with Lot 9. He also agreed that while the City would pay the expense of engineering and preparing the legal documents (easement and agreement), he would not seek additional compensation.

Attached is an agreement which is to grant the easement and stipulate to buffering requirements. The document follows much of the same document that was prepared by David Cook in December, 2003, but in lieu of a conveyance of the parcel, the City would only use a minimal portion and Mr. Piper could use the remainder portion for potentially buildable lot through the recombination process.

I am in receipt of Timothy Jones memorandum dated today regarding Mr. Piper obtaining the property back from Lee County pursuant to Florida Statutes §255.22. Consequently, I added to the agreement that "the City has no objection to his request, **or any other legally available method for return of the property**, provided that

Michael J. Ciccarone, Esquire  
March 18, 2004  
Page 2

RE: Lot 10, Plan of Riverside: Agreement to Grant Easement and Stipulate to Buffering Requirements

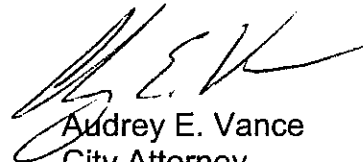
---

the City of Bonita Springs obtains an easement subject only to the terms of this agreement.”

Please review the agreement with your client (who pursuant to his request I am also sending a copy of the agreement to him directly) and advise me of any changes or whether we need to have further discussion. By copy to Lee County, I am advising them conceptually of the intent of the City of Bonita Springs and your client, as I understand it during their discussion at the March 17, 2004 City Council meeting. I hope that this resolves any potential litigation and creates a win-win situation for not only the parties involved, but also for the public seeking use of the facility.

I look forward to your response and assistance in getting this matter resolved.

Sincerely yours,



Audrey E. Vance  
City Attorney

AEV/dfg  
Enclosure

cc: Bonita Springs City Council  
Gary A. Price, City Manager  
Barbara Barnes-Buchanan, Assistant City Manager  
Daryl Walk, P.E., Public Works Manager  
Dianne Lynn, City Clerk  
Mary Gibbs, Director, Community Development  
Pete Eckenrode, Director, Development Services  
Jack Campbell, Parks & Recreation Manager  
James Yaeger, Esquire, County Attorneys Office  
Timothy Jones, Chief Assistant County Attorney  
John Fredyma, Assistant Lee County Attorney  
(Above with enclosure)

**AGREEMENT TO GRANT EASEMENT AND  
STIPULATE TO BUFFERING REQUIREMENTS**

**DRAFT**

**THIS AGREEMENT** dated this \_\_\_\_ day of \_\_\_\_\_, 2004 is between the City of Bonita Springs, a municipal corporation of the State of Florida, P. O. Box 367029, Bonita Springs, Florida, 34136-7029 ("City") and David T. Piper, Jr., whose address is P. O. Box 292, Bonita Springs, Florida, 34133-0292 ("Piper").

**WHEREAS**, the City has acquired the property described in Exhibit "A" attached hereto, which it intends to use for a City park ("park property"); and

**WHEREAS**, Piper is an elected City Councilman for the City of Bonita Springs; and

**WHEREAS**, Piper is the owner of Lots 8 and 9, Plan of Riverside, according to the plat thereof recorded in Plat Book 8, Page 3, Public Records of Lee County, Florida ("Lots 8 and 9"); and

**WHEREAS**, Piper has his personal residence Lots 8 and 9 and constructed in such a manner that there is additional side property above and beyond a normal side setback on the southern portion of Lot 9; and

**WHEREAS**, Piper's predecessors in title in June of 1961 deeded Lot 10 to Lee County Board of County Commissioners by instrument recorded at Official Records Book 97, Page 67, Public Records of Lee County, Florida, "to be used solely for road purposes"; and

**WHEREAS**, Piper now seeks to obtain the property back from Lee County pursuant to Florida Statutes §255.22 from Lee County Board of County Commissioners; and

**WHEREAS**, the only method of access to the City's park property is through Lot 10, across a bridge constructed to handle pedestrian traffic and small equipment such as golf carts, lawn mowers, etc.; and

**WHEREAS**, City seeks to formalize this access through obtaining a written easement, to be located on Lot 10 in such a manner so that the remainder portion of Lot 10 can become a buildable lot should it be recombined with a minor portion of land from Lot 9 to cover the difference in size to make it a buildable lot; and

**WHEREAS**, Piper will grant the City the applicable easement, consistent with the terms of this agreement, provided that he is able to retain a buildable lot when the property is returned from Lee County; and

**DRAFT FOR DISCUSSION PURPOSES**

18-Mar-04

1 OF 4

**DRAFT**

WHEREAS, the parties agree that this Agreement is in the public interest to resolve the access issue without the need for litigation or condemnation proceedings.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein and Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The above recitals are incorporated herein as if repeated in their entirety.
2. City will request from Lee County and "Piper" an easement that will extend from the existing foot bridge parallel to the southeastern boundary (Rosemary Creek) of Lot 10 and running parallel ten (10') feet on the Southern boundary of Lot 10 to Riverside Drive. A sketch of the easement and legal description is attached hereto as Exhibit A.
3. After obtaining the easement, the City will create walkway on the easement and install a fence to run the perimeter of Lot 10, so as to avoid interference with the remainder of Lot 10. The City will also be permitted to post a sign requiring pedestrians to stay on the walkway so as not to disturb the remainder of the lot. The City will maintain the area of its easement in an aesthetically pleasing manner, safe and undisruptive to the remainder of Lot 10.
4. Pursuant to Section 255.22, Florida Statutes, Piper will request that Lee County reconvey Lot 10 to Piper. The City has no objection to his request, or any other legally available method for return of the property, provided that the City of Bonita Springs obtains an easement subject only to the terms of this agreement.
5. In the event that Lee County reconveys the property to Piper, Piper will provide the easement to the City in accordance with the terms of this agreement.
6. In the event that Lee County does not reconvey the property to Piper, the City of Bonita Springs may obtain the easement from Lee County. The City of Bonita Springs will still be obligated to Piper to construct the easement in the same location and manner as the terms of this Agreement. Piper will not object to Lee County providing title to the easement property only and will execute any documents at no cost to the City, except for costs as otherwise provided herein, necessary for effectuating the easement.

**DRAFT FOR DISCUSSION PURPOSES**

**18-Mar-04**

**2 OF 4**



**DRAFT**

7. As further consideration of this agreement, City agrees to a city-initiated lot recombination of Lot 10 and a portion of Lot 9 so as to make Lot 10 a buildable lot of record. The City will be responsible for preparing the application for the lot recombination to the Director of Development Review, and will be responsible for the cost of application and waiver of fees. Cost of application includes any survey necessary for creation of the Lot 9/10 recombination.
8. Responsibility for relocating the power line will be done by the fee owner (Piper or successor in title) prior to any building permits for Lot 10.
9. The square footage of land taken from Lot 9 to create Lot 10 will be the minimum amount necessary so as to accommodate the portion of property that was granted in the easement to the City. For purposes of whether the lot is nonconforming, this Agreement shall constitute a voluntary sale any buildings shall be deemed conforming, with setbacks measured from the property line prior to this Agreement.
10. The parties agree that both the City and Piper have had substantial input in the terms of this agreement, and therefore, this agreement shall not be more strictly construed against either party.
11. This agreement is binding upon and inures to the benefit of the parties, heirs, successors and assigns.
12. This agreement is intended to be construed in accordance with the laws of the State of Florida and the City of Bonita Springs.
13. This agreement is the entire agreement between the parties and cannot be amended or modified, except by written instrument executed by all parties hereto with the same formality. If Piper terminates this agreement, City retains the easement at no additional cost to City.
14. In the event litigation arises as a result of any party of this agreement is required to enforce the rights of litigation, the prevailing party may be entitled to an award of attorney's fees and costs from the non-prevailing party upon award from a court of competent jurisdiction.
15. In witness of the above, the parties execute this agreement.

**DRAFT**

**DRAFT FOR DISCUSSION PURPOSES**

**18-Mar-04**

**3 OF 4**

David T. Piper, Jr.

\_\_\_\_\_  
Witness

By: \_\_\_\_\_

\_\_\_\_\_  
Witness

STATE OF FLORIDA     ]  
COUNTY OF LEE        ]

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2004 by David T. Piper, Jr., an individual. He is personally known to me or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
(Print Name)

My Commission Expires:

**CITY OF BONITA SPRINGS**

ATTEST  
CITY CLERK

CITY COUNCIL OF BONITA SPRINGS

By: \_\_\_\_\_

By: \_\_\_\_\_

Mayor Jay Arend

APPROVED AS TO FORM

By: \_\_\_\_\_

City Attorney

**DRAFT FOR DISCUSSION PURPOSES**

**18-Mar-04**

**4 OF 4**



26430 Old Us 41  
Bonita Springs, Florida 34135  
Fax: 1-239-947-7345

September 20, 2004

Henderson Franklin  
Attorneys at Law  
Mr. Cody B. Vaughan-Birch  
P.O. Box 280  
Fort Myers, FL 33902

RE: Request for a letter of Review and Recommendation on a proposed right-of-way vacation at the following location:  
Lot 10, Plan of Riverside, as recorded in Plat Book 8, Page 3, of the public records of Lee County, Situated in Section 35, Township 47 S, Range 25 E, Block 1 Lee County, Florida. This parcel is situated between 27071 and 27111 S. Riverside Drive, Bonita Springs, FL.

Dear Mr. Vaughan-Birch:

Florida Power & Light Company will have no objection to the vacation of the public interest in the right-of-way at the location identified above and in your letter dated August 23, 2004. This no objection comes with the stipulation that an easement is secured for the existing electric pole, down guy and anchor that is described on the survey done by Mark O. Allen, Inc. dated August 6, 2004.

If you have any questions, please contact me at (239) 947-7340.

Sincerely,

A handwritten signature in black ink that reads "Mona Beach". The signature is written in a cursive, flowing style.

Mona Beach  
Customer Project Manager

cc: David Piper  
P.O. Box 292  
Bonita Springs, FL 34133

Work Request No. 1163465

Sec. 35, Twp 47 S, Rge 25 E

Parcel I.D. n/a (Lot 10 Plan of Riverside)  
(Maintained by County Appraiser)

Form 3722-A (Stocked) Rev. 7/94

# EASEMENT

This Instrument Prepared By

Name: Mona Beach  
Co. Name: Florida Power & Light Company  
Address: 26430 Old 41 Road  
Bonita Springs, FL 34135  
pg 1 of 2.

The undersigned, in consideration of the payment of \$1.00 and other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, grant and give to Florida Power & Light Company, its licensees, agents, successors, and assigns, an easement forever for the construction, operation and maintenance of overhead and underground electric utility facilities (including wires, poles, guys, cables, conduits and appurtenant equipment) to be installed from time to time; with the right to reconstruct, improve, add to, enlarge, change the voltage, as well as, the size of and remove such facilities or any of them within an easement \_\_\_ feet in width described as follows:

Reserved for Circuit Court

An FPL Company anchor easement more particularly described on Exhibit B attached hereto and made a part hereof. Said easement prepared by Mark O. Allen, Inc. Professional Land Surveyor.

Together with the right to permit any other person, firm or corporation to attach wires to any facilities hereunder and lay cable and conduit within the easement and to operate the same for communications purposes; the right of ingress and egress to said premises at all times; the right to clear the land and keep it cleared of all trees, undergrowth and other obstructions within the easement area; to trim and cut and keep trimmed and cut all dead, weak, leaning or dangerous trees or limbs outside of the easement area which might interfere with or fall upon the lines or systems of communications or power transmission or distribution; and further grants, to the fullest extent the undersigned has the power to grant, if at all, the rights hereinabove granted on the land heretofore described, over, along, under and across the roads, streets or highways adjoining or through said property.

IN WITNESS WHEREOF, the undersigned has signed and sealed this instrument on Oct. 19<sup>th</sup>, 2009.

Signed, sealed and delivered in the presence of:

Lee Ackerman  
(Witness' Signature)

Print Name: Lee Ackerman  
(Witness)

Emilia Gonzalez  
(Witness' Signature)

Print Name: Emilia Gonzalez  
(Witness)

By: [Signature]  
(Grantor's signature)

Print Name: David T. Piper Jr.  
Print Address: P.O. Box 292  
Bonita Springs, FL 34133

By: \_\_\_\_\_  
(Grantor's signature)

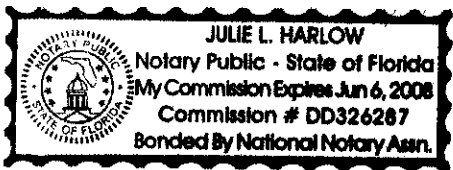
Print Name: \_\_\_\_\_  
Print Address: \_\_\_\_\_

STATE OF FLORIDA AND COUNTY OF LEE. The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of OCT, 2009, by LEE ACKERMAN, and EMILY GONZALEZ, who is(are) personally known to me or has(have) produced N/A as identification, and who did (did not) take an oath.  
(Type of Identification)

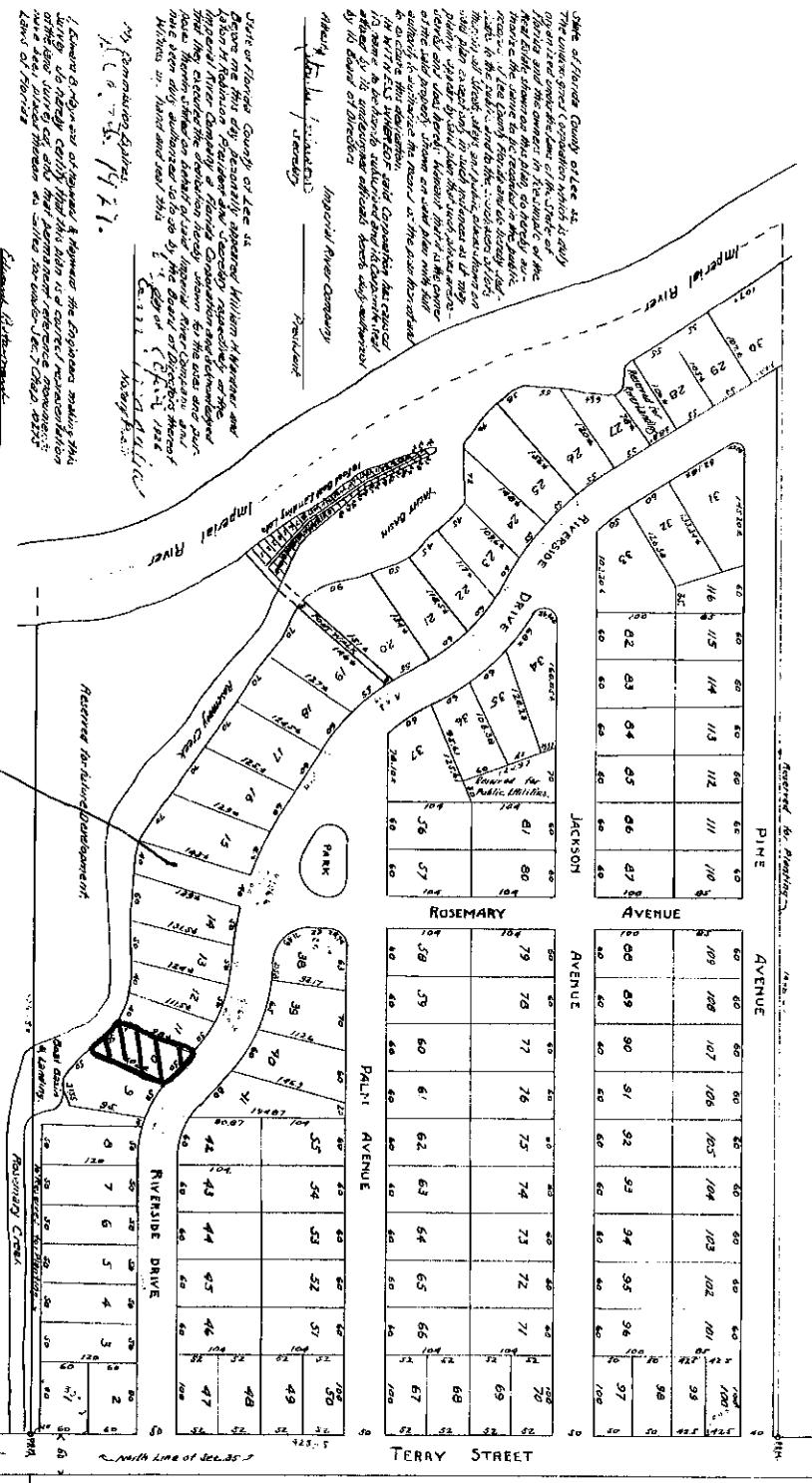
My Commission Expires: 6/6/08

[Signature]  
Notary Public, Signature

Print Name JULIE L. HARLOW



P/B 8, P.C.E. 3



State of Florida County of Lee ss.  
 I, Walter G. Hester, Secretary of the Imperial River Company, do hereby certify that the above and foregoing is a true and correct copy of the original record of the Imperial River Company, as the same appears on the books and records of said company, and that the same is a true and correct copy of the original record of the Imperial River Company, as the same appears on the books and records of said company, and that the same is a true and correct copy of the original record of the Imperial River Company, as the same appears on the books and records of said company.

Walter G. Hester  
 Secretary  
 Imperial River Company

Subscribed and sworn to before me this 28 day of February 1930  
 My Commission Expires Feb. 4, 1930  
 Notary Public

This certifies that the plan was presented to the Board of Directors of the Imperial River Company on the 19th day of February 1930 and that the same was approved by the Board of Directors of said company on the 19th day of February 1930.

Chairman of the Board  
 Chairman  
 Clerk

Petition to Vacate  
 Petition No: 88-06  
 Description: 10ft wide parcel; See CCMB  
 Date of Approval: 05/03/88  
 Resolution No: 88-5-21  
 CCMB: 192 Page: 30

Revised by Resolute East  
 By Co. Resolute East June 9, 1992  
 See C.C.M.B. 11 Page 50  
 Revisited by Resolute East  
 Vacation by resolution  
 Date of Approval: 6/8/49  
 CCMB: 17 Page: 50

RIVERSIDE  
 A SUBDIVISION OF LOTS 10, 11 AND 12  
 PLAN OF BENTLEY FARMS NO. 1  
 SEC. 25 T. 54 N. R. 25 E.  
 LEE COUNTY, FLORIDA  
 OWNED BY THE  
 IMPERIAL RIVER COMPANY.  
 Scale: 1 inch = 100 Feet  
 Hayward & Meyers, Civil Engineers  
 Daytona Beach, Florida

42630  
 42630  
 42630

State of Florida County of Lee ss.  
 The undersigned Corporation which is duly organized under the laws of the State of Florida and the owners in fee simple of the Real Estate shown on this plan, do hereby authorize the same to be recorded in the public records of Lee County Florida and do hereby dedicate to the public and to the purchasers of lots therein all streets alleys and public places shown on said plan except only in such instances as it may plainly appear by said plan that such places are reserved and does hereby warrant that it is the owner of the said property shown on said plan with full authority to authorize the record of the plan thereof and to execute this dedication.

IN WITNESS WHEREOF said Corporation has caused its name to be hereto subscribed and its Corporate Seal affixed by its undersigned officials hereto duly authorized by its Board of Directors

Attest: John M. Robinson Secretary  
William H. Wardner President  
 Imperial River Company

State of Florida County of Lee ss.  
 Before me this day personally appeared William H. Wardner and John M. Robinson, President and Secretary respectively of the Imperial River Company a Florida Corporation and acknowledged that they executed the dedication hereby shown for the uses and purposes therein stated on behalf of said Imperial River Company and have been duly authorized so to do by the Board of Directors thereof  
 Witness my hand and seal this 6<sup>th</sup> day of April 1926

My Commission Expires  
Dec 26, 1927.  
Carl Magalia Notary Public

I, Edward B. Hayward of Hayward & Hayward the Engineers making this survey do hereby certify that this plan is a correct representation of the land surveyed and that permanent reference monuments have been placed thereon as called for under Sec. 7 Chap. 10275 Laws of Florida

Edward B. Hayward

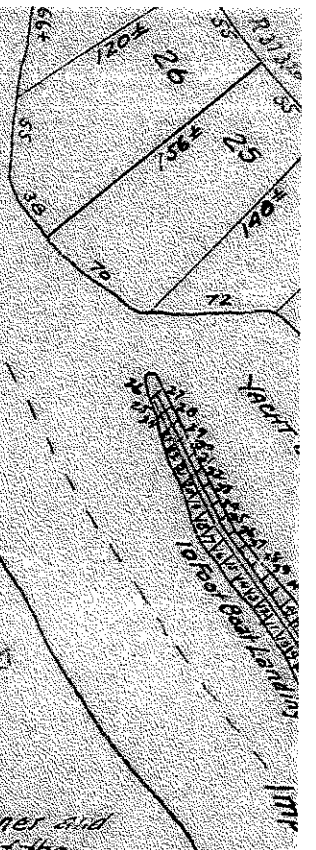
Subscribed and sworn before me this 22 day of February 1926  
H. E. Hobson

My Commission Expires Feb. 13<sup>th</sup> 1930 Notary Public

This certifies that this plan was presented to the Board of County Commissioners Lee County, Florida and approved by them for record this 9<sup>th</sup> day of April 1926.

John C. Morris  
 Chairman

I, Clerk of the Circuit Court of Lee County Florida do hereby certify that this plan conforms to the provisions of Chapter 10275 Laws of Florida and was filed in my office on the \_\_\_\_\_ day of \_\_\_\_\_ 1926 in Plat Book Page \_\_\_\_\_







Area to be vacated (Lot 10)