



# Board of County Commissioners

2401 SE Monterey Road  
Stuart, Florida 34996

## Agenda Item Summary

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**File ID:** 21-0601

**PHQJ-2**

**Meeting Date:** 4/27/2021

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**PLACEMENT:** Public Hearings - Quasi-Judicial

**TITLE:**

**REQUEST ABANDONMENT OF PORTIONS OF UNOPENED RIGHTS-OF-WAY CONDITIONED UPON THE CONVEYANCE OF COMPARABLE RIGHT OF WAY LYING WITHIN GOMEZ GRANT**

**EXECUTIVE SUMMARY:**

This is a request for the Board to consider an application for the abandonment of two portions of rights-of-way and a waiver of the required privilege fee in conjunction with the abandonment. The request includes conveying right-of-way in consideration for the privilege fee.

**DEPARTMENT:** Public Works

**PREPARED BY:** **Name:** Thomas Walker, Jr., PSM

**Title:** County Surveyor

**REQUESTED BY:** Loblolly Community Service Corporation

**PRESET:**

**PROCEDURES:** Quasi-Judicial

**BACKGROUND/RELATED STRATEGIC GOAL:**

The application for this petition for abandonment, as submitted, is attached to this agenda item. It includes Letters of No Objection from the abutting property owners and those utility companies and municipalities with interest within said rights-of-way.

As the rights-of-way proposed for abandonment provide direct access to navigable waters in Martin County, this abandonment must meet the criteria set forth in Section 155 of the Martin County Code of Ordinances. Specifically, Loblolly Community Service Corporation, hereinafter called the Petitioner, is requesting the Board allow the abandonment without the approval of a majority of electors participating in a referendum election, as established in 1974 under Section 155.3.A.

“155.3.A. No public road, street, or thoroughfare in unincorporated Martin County that gives direct access to any navigable waters shall be closed, vacated, or abandoned without the approval of a majority of the electors participating in a referendum election, as provided, except in those instances wherein the person or persons petitioning the Board of County Commissioners for such closing, vacating, or abandoning of such public roads, streets, or thoroughfares giving direct access to any navigable waters offers to trade or give to the County comparable land or lands for a public road, street, or thoroughfare to give access

to the same body of water, such access to be of such condition as not to work a hardship to the users thereof, the reasonableness of the distance being left to the discretion of the Board of County Commissioners.”

On October 31, 1978, the Martin County Board of County Commissioners abandoned the right-of-way (Ninth Street) from First Avenue (now known as SE Gomez Avenue) to the Intracoastal Waterway lying between Lots 32 and 33, the plat of Gomez Grant as recorded in Plat Book 1, Page 80, Palm Beach (now Martin) County. One of the conditions of that abandonment was that the petitioner dedicate to Martin County, a parcel of land for use as a public road as required in said Section 155.3.A. Said land was described in resolution number 78-10.14 recorded in Official Records Book 472, Page 2417, and the subsequent Warranty Deed to Martin County was recorded July 10th, 1979 in Official Records Book 476, Page 2694.

On September 15, 1986, the Martin County Board of County Commissioners abandoned a portion of that land described in said Official Records Book 476, Page 2694. One of the conditions of that abandonment was that the petitioner dedicate to Martin County, a parcel of comparable land for road, street or public thoroughfare giving access to the same body of water as set forth in said Section 155.3.A. Said land was described in the Warranty Deed recorded October 20th, 1986 in Official Records Book 692, Page 2327.

The Petitioner now requests that the Board consider the abandonment of 68,281.84 square feet (Exhibit “A”) of unopened platted right-of-way, lying between Lots 36 and 37, Gomez Grant, along with 96,608.38 square feet (Exhibit “B”) of unopened right-of-way, lying in Lot 33, Gomez Grant, consisting of the remaining portions of right-of-way recorded in Official Records Book 476, Page 2417 and Official Records Book 692, Page 2327. Said rights-of-way being sought for abandonment are not, nor have they ever been open roads.

The Petitioner is the owner of said Lots 36 and 37 of Gomez Grant and upon successful abandonment would be entitled to the full portion of abandoned right-of-way described in Exhibit “A”.

Loblolly Bay Property Owners Association, Inc. is the owner of Parcel “A” and the private street SE Loblolly Bay Drive of the plat of Loblolly Bay, a P.U.D., as recorded in P.U.D. Plat Book 1, Page 14 and the private street SE Dock Street of Plat No. 2, Loblolly Bay, a P.U.D., as recorded in Plat Book 10, Page 57. The Property Owners Association has provided a letter of no objection and upon successful abandonment will be entitled to the south half of that portion of the proposed right-of-way abandonment shown on Exhibit “B” that abuts their property.

The Florida Inland Navigation District is the owner of all that portion of Lot 34, said Gomez Grant, abutting the proposed right-of-way abandonment shown on Exhibit “B”. They have provided a letter of no objection and upon successful abandonment will be entitled to the north half of that portion of the proposed right-of-way abandonment shown on Exhibit “B” that abuts their property.

Jonathan Taylor and Virginia Lovelace are the owners of Lot 63, of said Plat No. 2, Loblolly Bay, abutting the proposed right-of-way abandonment shown on Exhibit “B”. They have provided a letter of no objection and upon successful abandonment will be entitled to the south half of that portion of the proposed right-of-way abandonment shown on Exhibit “B” that abuts their property.

Section 139.2 of the Martin County Code of Ordinances requires a privilege fee for abandonment and vacation of County property and roads; however, the Board may waive the privilege fee required upon a showing of good cause. The Petitioner has requested that the privilege fee be waived. The

Petitioner will convey the property described in the attached Exhibit "C", totaling 164,887.94 square feet, to Martin County for right-of-way as a showing of good cause.

The proposed right-of-way dedication shown on Exhibit "C" is directly north of and abutting the Martin County owned property known as Gomez Preserve Nature Trail. The proposed access is of a similar condition as the proposed abandonment and as such not causing further hardship to the users thereof. The reasonableness of the distance between the proposed right-of-way dedication and the proposed abandonment is at the discretion of the Board of County Commissioners. The proposed right-of-way dedication depicted on Exhibit "C" is approximately 2,000 feet north of the right-of-way depicted on Exhibit "A" and 4,000 feet north of the right-of-way depicted on Exhibit "B".

### **ISSUES:**

The Petitioner has requested that the privilege fee be waived with the conveyance of property for right-of-way as a showing of good cause as provided in Section 139.2.D. of the Martin County Code of Ordinances.

The Petitioner has requested that by conveying comparable land for right-of-way for access to the same body of water, that the board consider this abandonment to be an exception to the requirement to receive the approval of a majority of electors participating in a referendum election as provided in Section 155.3.A. of the Martin County Code of Ordinances.

There are FPL poles within the unopened right-of-way described in Exhibit "B". Loblolly Bay Property Owners Association, Inc. has agreed to provide an easement to FPL upon completion of the right-of-way abandonment.

### **LEGAL SUFFICIENCY REVIEW:**

Because this request involves the application of a policy to a specific application and site, it is a quasi-judicial decision. Quasi-judicial proceedings must be conducted with more formality than a legislative proceeding. In quasi-judicial proceedings, parties are entitled - as a matter of due process - to cross-examine witnesses, present evidence, demand that witnesses testify under oath, and demand a decision that is based on a correct application of the law and competent substantial evidence in the record.

### **RECOMMENDED ACTION:**

#### **RECOMMENDATION**

1. Move that the Board receive and file the Agenda Item Summary and all of its attachments for the record as Exhibit 1;
2. Move that the Board adopt the Resolution abandoning portions of unopened platted rights-of-way, lying within Gomez Grant, as described in Exhibits "A" and "B", subject to the following conditions precedent:
  - a. conveyance of land described in Exhibit "C" to Martin County for right-of-way dedication; and
  - b. proper publication of a Notice of Adoption of this Resolution;
3. Move that the Board finds the conveyance of the parcel to Martin County by the Petitioner as good cause and therefore agrees to waive the privilege fee;

4. Move that the Board agrees to grant an exception to the requirement that the Petitioner receive the approval of a majority of electors participating in a referendum election, finding that the Petitioner has conveyed to the County comparable land for access to the same body of water as the lands being abandoned, said access is in such condition as not to work a hardship to the users thereof and that the Board finds the distance between the conveyed land and abandoned lands reasonable; and
5. Move that the Board authorize the Chair to execute all documents necessary to complete the transaction.

**ALTERNATIVE RECOMMENDATIONS**

None

**FISCAL IMPACT:**

**RECOMMENDATION**

None

**ALTERNATIVE RECOMMENDATIONS**

None

**DOCUMENT(S) REQUIRING ACTION:**

- |  |  |   |
|--|--|---|
| <input type="checkbox"/> Budget Transfer / Amendment | <input type="checkbox"/> Chair Letter          | <input type="checkbox"/> Contract / Agreement |
| <input type="checkbox"/> Grant / Application         | <input type="checkbox"/> Notice                | <input type="checkbox"/> Ordinance            |
| <input type="checkbox"/> Other:                      | <input checked="" type="checkbox"/> Resolution |   |

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