

Anne Dalton, Esquire
2044 Bayside Parkway
Fort Myers, Florida 33901
(239) 337-7900

Memorandum

To: LPA Chair, Vice Chair, and LPA Members
CC: Town Manager, Community Development Director, Town Clerk
Date: April 9, 2009
Subject: Ownership Interest in Water Accesses

The question of ownership of beach and bay accesses has come before Town Council on several occasions and also is the subject of current litigation in which the Town is a defendant. As a result of the LPA hearing of the draft Ordinance concerning vacation of Town-owned property, the LPA has determined to review this matter as well.

Water accesses within the Town are a combination of easements, and rights-of-way. Some are owned by the Town; some are owned by the County, some are owned jointly by the Town and County and some are owned (or claimed) by private parties.

At the time that the Town was incorporated, Lee County conveyed its ownership of rights-of-way within municipal limits to the Town, except for Estero Boulevard. The County also retained various beach accesses north of the Sky Bridge. To the extent that water accesses are located within Town rights-of-way, the Town owns that property in fee simple.

Although an easement is an interest in real property, it is not a fee ownership. Accordingly, the process for relinquishing an easement providing access to the water should be less onerous than the process for vacating a right-of-way, which is a fee ownership of property.

It is also important to consider the provisions of the Comprehensive Plan, specifically Comprehensive Plan Objective 5-E and its attendant policies:

OBJECTIVE 5-E ACCESS TO THE WATER — Increase the number of well-maintained accesses to beaches, bays, and navigable waters to serve the existing and future population and visitors.

POLICY 5-E-1 Ensure the continued maintenance of existing beach access points, currently provided by Lee County with funds from the Tourist Development Council.

POLICY 5-E-2 Evaluate the need for expanded parking areas and the potential for revenue generation from metered parking as a funding source for additional public access amenities.

POLICY 5-E-3 The town encourages Lee County to continue its program of improving beach access points that are not currently marked.

POLICY 5-E-4 The town shall identify any water access points that are hidden, fenced off, or blocked by encroachments, and then ensure that appropriate public access is restored.

POLICY 5-E-5 The town shall attempt to acquire one or more beach access points at the southern end of the island.

The only clear way to determine the exact location and clear ownership of many water accesses is to commission a survey and title work and proceed accordingly.

Thank you.