

**MINUTES OF THE SPECIAL MEETING  
OF THE LADY LAKE TOWN COMMISSION  
LADY LAKE, FLORIDA  
October 23, 2014**

The Special Meeting of the Lady Lake Town Commission was held in the Commission Chambers at Lady Lake Town Hall, 409 Fennell Blvd., Lady Lake, Florida with Mayor Ruth Kussard presiding. The meeting convened at 9:00 a.m.

**1. CALL TO ORDER**

- 2. ROLL CALL:** Tony Holden, Commissioner Ward 2  
Dan Vincent, Commissioner Ward 3  
Paul Hannan, Commissioner Ward 4  
Jim Richards, Commissioner Ward 5  
Ruth Kussard, Mayor/Commissioner Ward 1

**STAFF MEMBERS PRESENT:** Kris Kollgaard, Town Manager/Town Clerk; Thad Carroll, Growth Management Director; Wendy Then, Town Planner; Chief Chris McKinstry and Lt. Jason Brough, Police Department; C.T. Eagle, Public Works Director; Jeannine Michaud, Finance Director; and Nancy Slaton, Deputy Town Clerk

**3. Public Comment**

Mayor Kussard asked if there were any comments or questions. There were no comments or questions at this time.

**4. Resolution No. 2014-119 – First/Final Reading – Vacating a Portion of Bowersox Drive Right-of-Way Between Lot 1428 and Lot 1411 of Orange Blossom Gardens – Unit No. 7, Town of Lady Lake (Thad Carroll)**

Growth Management Director Thad Carroll gave the background summary from the agenda item cover sheet which is on file in the Town Clerk's office. He stated that The Town of Lady Lake has submitted an application for the abandonment of that portion of right-of-way of Bowersox Drive located west of West Schwartz Boulevard, more particularly described as follows:

Begin at the Southwest corner of Lot 1428, ORANGE BLOSSOM GARDENS, UNIT NO. 7, according to the plat thereof, as recorded in Plat Book 27, Pages 56-65, Public Records of Lake County, Florida, thence run S 89°59'24" E along the South line of said Lot 1428, also being the North right of way line of Bowersox Drive for a distance of 65.00 feet to the beginning of a curve concave to the Northwest, having a radius of 25.00 feet, a chord bearing of N 45°00'36" E and a chord distance of 35.36 feet; thence run Northeasterly along the arc of said curve, also being the Southerly line of said Lot 1428 and the Northerly right of way line of Bowersox Drive for a distance of 39.27 feet through a central angle of 90°00'00" to a point on the West right of way line of West Schwartz Boulevard, said plat of ORANGE BLOSSOM GARDENS, UNIT NO. 7; thence run S 00°00'36" W on a Southerly extension of said West right of way line of West Schwartz Boulevard for a distance of 100.01 feet to a point of curvature on Lot 1411, said

plat of ORANGE BLOSSOM GARDENS, UNIT NO. 7, said point being the beginning of a curve concave to the Southwest, having a radius of 25.00 feet, a chord bearing of N 44°59'24" W and a chord distance of 35.36 feet; thence leaving said West right of way line run Northwesterly along the arc of said curve, also being the Northerly line of said Lot 1411 and the Southerly right of way line of Bowersox Drive for a distance of 39.27 feet through a central angle of 90°00'00" to the end of said curve; thence run N 89°59'24" W along the North line of said Lot 1411 and the Southerly right of way line of Bowersox Drive for a distance of 65.00 feet to the Northwest corner of said Lot 1411; thence run N 00°00'36" E along the West right of way line of said Bowersox Drive for a distance of 50.00 feet to the Point of Beginning.

Mr. Carroll reported that the present use of the property is unimproved right-of-way. He stated that Bowersox Drive is a paved street and was platted in 1985, and has not been improved at any course from the dedication to the present. Drawings of the right-of-way, being 50' by 115', and images showing the location in reference to Bowersox Drive and West Schwartz Blvd. were shown, as well as aerial views of the surrounding properties owned by Ron Brown and two other property owners.

Mr. Carroll stated these property owners were notified as part of the application process by certified mail return receipt requested on Tuesday, October 7, 2014, and the property was posted on Wednesday, October 8, 2014. Photos of the posting on the property were shown. He stated that to date, one property owner to the west, the Little Sumter Stormwater Facilities Property Owners Association Inc., has expressed opposition to the R.O.W. vacation. Mr. Carroll stated this is a Lake County property and that Lady Lake does not service that property in any manner.

Mr. Carroll reported the application was received on October 7, 2014 and the Technical Review Committee reviewed the application at its special meeting on Wednesday, October 22, 2014 and there were no comments from Town staff on this application. They recommended forwarding the application for Town Commission consideration.

Mr. Carroll reported that they received some utility feedback on this application as follows:

Comcast has indicated that they have cable lines along the rear of the property and that the vacation would interfere with maintenance for service, and they have requested an easement if the vacation request is granted.

In a letter received on October 14, 2014, Duke Energy expressed the opinion that they object to the vacation of that portion of Bowersox Drive and have requested that an easement be executed being ten feet in width, also being five feet on each side of the Grantee's facilities. Duke Energy has prepared the easement for execution by the Town of Lady Lake.

The Town of Lady Lake Public Works Department has reviewed the request to vacate and does not oppose the application. In addition, Century Link Telecommunications Company and The Villages Utility Department also reviewed the application and expressed that they do not oppose the vacation of Bowersox Drive.

Mr. Carroll reported that the Future Land Use and Zoning designations of the adjacent properties are as follows:

**Future Land Use**

Subject Property	<b>ROW</b>
<b>Future Land Use of Adjacent Properties</b>	
West	Lake County Urban Medium
East	ROW
North	MH-9 Manufactured Housing
South	MH-9 Manufactured Housing

**Zoning**

Subject Property	<b>ROW</b>
<b>Zoning of Adjacent Properties</b>	
West	Lake County Agriculture
East	ROW
North	MX-8 Mixed Res. 8/dupa
South	MX-8 Mixed Res. 8/dupa

Mr. Carroll reported that staff can recommend approval of this application as it meets sufficiency of the Town’s code. The Record Plat of Orange Blossom Gardens Unit No. 7 was approved on July 1, 1985 by the Town Commission. This portion of Bowersox Drive exists only as a platted “paper street” at the present time. In addition, Bowersox Drive is not improved beyond West Schwartz Boulevard to the west. Mr. Carroll stated it is not anticipated that this segment of right-of-way will be needed by the Town to alleviate traffic concerns in the future.

The summary for this item noted that it has also been confirmed that the owner of the property to the west, abutting this portion of right-of-way, has access to his residence from the west via Sumter County, which has been used as the primary means of access to the property. Therefore, no negative effects are projected if the Town's request to vacate the right-of-way is granted.

Town Attorney Derek Schroth stated that a title search was completed on all the surrounding properties and it is not in dispute that the adjacent properties identified immediately to the west of this property and noted as A and C (on the photo of an aerial view of the area) are owned by and under control of the same owner of parcel B; the parcel at issue. He noted the aerial view also showed the current access the owner uses to access that property. Mr. Schroth asked if there were any questions for Mr. Carroll. He stated the applicant now has the opportunity to cross examine, as well as present their case, and he invited Mr. Gooding to the podium.

Attorney Jimmy Gooding of 1531 SE 36<sup>th</sup> Avenue, Ocala, Florida, introduced himself; stating he represents Mr. Brown, the owner of the property marked as “B” on the aerial photo, the Little Sumter Stormwater Facility Property Owners Association, and the owner of the property marked as “A” and “C”, which is Character Oaks Real Estate (CORE). He asked Mr. Carroll why staff is making this recommendation.

Mr. Carroll replied that staff does not foresee a need for the right-of-way to alleviate traffic concerns and it has not been improved since 1985; therefore, staff does not see a need for it.

Mr. Gooding cross-examined Mr. Carroll at length (audio is available in the Clerk's Office). At the end of his questions, he requested to make a presentation to the Commission.

Mr. Gooding stated he was concerned he may be wasting his time as it was his understanding from his colleague Mr. Waugh that this application was discussed at some length by the Commission at Monday's meeting, and it sounded like the Commission may have made their minds up. He stated that he thought the Commissioners are supposed to base their decision today on what they hear at today's hearing; not what they have been told before or misconceptions heard before today, including the misconception that the streets in this subdivision were private roads. He stated they are not; they are public roads.

In summary (audio version available in the Clerk's office), Mr. Gooding stated there are several reasons they believe this vacation application should be denied, and that they have sent a letter to Mr. Schroth outlining their position. He reviewed the reasons outlined in the letter and they included: 1) procedural and substantive defects in the resolution and that the Town is equitably estopped; 2) the ordinance is questionable as to discretion; and 3) condemnation, due process and Bert Harris Act. Mr. Gooding commented that he believed the Town proceeded in undue haste on this matter, and could be responsible for punitive damages even if the resolution was passed and was not repealed.

Commissioner Richards commented on the procedural problems mentioned by Mr. Gooding. He stated this is a case where the adjacent owners are asking for the plat; there is no provision in there if the Town determines to vacate something through the Town Manager's recommendation.

Mr. Gooding agreed, but stated this deals with that situation. He stated that The Villages owns the two lots on either side, and they might sign a petition, but they do not have to, and the Town needs to abide by its own ordinances.

Commissioner Richards asked Mr. Schroth if The Villages requested a vacation of that property back in 2013 and then backed away from it when there were concerns about a lawsuit and worries about it being landlocked.

Mr. Schroth replied that The Villages, through a deed restriction, attempted to extinguish the public's right to this portion of Bowersox, which they cannot do by an amended deed restriction. He stated their intent was to try to eliminate the public's right to that portion of Bowersox.

Mr. Gooding continued with his presentation and explained what his client was attempting to do with this project on his property. He stated that The Villages Hospital is expanding and needs additional parking, so they are putting a parking lot on property they already own north of US Hwy 441 and this was the location of their existing retention area. The hospital then purchased property from CORE to relocate the DRA, and they have a proposed plat that has been approved with a two lot subdivision; one for Mr. Brown's residence and the other for the drainage retention area which is in the process of building.

Mr. Gooding stated that if the Town vacates this right-of-way, the process is in jeopardy as the improvement plans were based upon the assumption that the client would have access from

Bowersox, and the improvement plans requires that the client build a road from Bowersox to his residential lot. He stated the reason for that is you cannot have a lot without legal access, and Lake County is requiring them to build that road. Mr. Gooding stated that if his client cannot get the final plat recorded because of the legal access issue, it will have a cascading effect that will be disastrous to his client and harmful to the public. He stated they have discussed this with the County, and a variance may be requested, but if it is not granted and Bowersox is vacated, then the client will not have legal access and the final plat will not be recorded; which would result in the DRA not being used, Sumter County would not approve the parking lot, CORE may have to pay damages to the hospital, and the hospital employees will not have a place to park. Mr. Gooding stated this would violate his client's constitutional and property rights, and would have cascading effects that would be harmful to the community. He stated that Mr. Brown currently uses a dirt road which goes across the undeveloped commercial property to the west, owned by CORE, to access his property, but Bowersox would be the only legal access as CORE will be developing the commercial property and they do not like a residential street serving only one resident going through the middle of it. Mr. Gooding stated that the property will still not front on a public road and most local governments require frontage on a public road in order to build or repair improvements. He stated the right of access is a property right and if a road is vacated lawfully, the local government would still have to compensate the owner if there is a total deprivation of access and could result in a lawsuit.

Mr. Schroth asked Mr. Gooding if he wanted to make the October 22, 2014 letter from Mr. Waugh part of the public record.

Mr. Gooding replied that he did, and he also turned in a copy of the Town's Municode process for the ordinance, as well as the plans that were shown during the meeting.

Mr. Schroth stated he also had a copy of the letter the Mayor referenced from The Villages dated July 22, 2013 for the record.

Commissioner Richards asked if there is an easement for the 5' diameter pipe the Little Sumter Stormwater Facilities Property Owners Association ran a quarter mile to drain the retention area which crosses Mr. Brown's property and CORE's property, and if so, how wide is it.

Mr. Gooding replied that there is a drainage easement of approximately 40' and it is for drainage only and for maintaining the pipe, and does not extend to the Brown parcel. He stated that CORE currently allows golf cart access across their property from The Villages to access Lowe's, and Mr. Brown was considering allowing golf cart access through Bowersox and it would benefit CORE. He stated there is no immediate plan for it.

Commissioner Richards interjected that he believes there is a 60' right-of-way which goes all the way to the CORE property and totally encircles the Brown property.

Mr. Gooding stated that the road would end at the Brown residence.

Commissioner Hannan stated that he does not agree with everything presented this evening and would prefer discussing things with Mr. Brown rather than his lawyer.

Mr. Gooding stated that his client is exasperated and worn out, but he will ask him if he would like to speak.

Mr. Schroth stated the meeting will be re-opened to the public in that event.

Commissioner Hannan stated that he and two other members of the Commission live in The Villages, and that he wanted to talk about golf cart access. He stated that he would understand if Mr. Brown cut off access to golf carts through his property to Lowe's if this was passed, but that he pays amenity fees to access the facilities in The Villages and he does not want more golf carts coming into The Villages from outside of The Villages.

Ron Brown stated he understood and respected Commissioner Hannan's position, but anyone who came in through there would be coming into Lady Lake public roads, not The Villages. He stated he does not believe the amenity fees residents of The Villages pay go toward maintaining public roads. Mr. Brown stated he has owned the property at Bowersox for 16 years and has let everyone go across his private land without payment of fees as it is good for the whole community, but that he has not let anyone go through Bowersox to access the public streets. He stated he does not like this action, and believes The Villages is behind it as they purchased the two properties on either side of the right-of-way prior to the right-of-way vacation request.

Commissioner Hannan commented that The Villages has purchased about 40 other properties in the area and that his main concern is golf cart access.

Mr. Brown stated his lawyer sat down with the Town Manager and Mr. Schroth to try to work this out, and that he offered to put in a security gate at his expense for his access to Bowersox.

Town Manager Kris Kollgaard commented that, during the meeting Mr. Brown referred to, it was her understanding that the offer of a security gate was to restrict the vehicles, but to open it up to golf cart access.

Mr. Gooding replied that they were willing to talk to the Town about it, but they were not planning on giving up on golf carts forever at that time.

Commissioner Richards commented that at the time of the Berlin Wall incident, The Villages came in with a vacation request for this area with the idea of building a house there and there was concern that Mr. Brown would be landlocked. He stated that now that the land swaps have been made and the easements have been done, Mr. Brown has landlocked himself with the utility district and CORE completely encircling him. Commissioner Richards stated that it is his opinion that the best use of that vacant lot would be a house lot, where someone would pay taxes; living and contributing to the Town of Lady Lake. He stated Mr. Brown has another form of access, and he was concerned about the flow of water to low spots on West Schwartz Boulevard when they filled in the retention pond, but he did not consider that Mr. Brown was landlocked once he saw the plans showing the easements and right-of-ways. He stated he was in favor of it.

Mr. Schroth asked if there was any public comment at this point, and seeing none, closed the public comment portion of the hearing.

Mayor Kussard stated she has driven Bowersox on a number of occasions and that it is nothing more than a paper road; there have been two posts with a wire strung across it to prevent access in the past, and recently, two signs have been put up in their place. She stated the owner of the property to the west is not landlocked as he has two other areas of ingress and egress; from the west via Sumter County, which has been used as the primary means of access to his residence, and neither of these two areas go through a residential area.

Mayor Kussard stated she has listened to complaints from residents who feel their quality of life and peace of mind will be greatly reduced if this right-of-way vacation is not passed, and she feels she has no choice but to agree to the vacation of the right-of-way. She stated her reasons are: 1) that the lot has never been improved; 2) the right-of-way will not be needed by the Town to alleviate traffic concerns and has no present or future benefits to the Town; 3) no negative effects are projected if the request to vacate the right-of-way is granted; and 4) it is in the best interest of the Town and its residents, and promotes the health, safety and welfare of the Town's residents.

*Commissioner Hannan made a motion to table the decision on Resolution No. 2014-119 – Vacating a Portion of Bowersox Drive Right-of-Way Between Lot 1428 and Lot 1411 of Orange Blossom Gardens – Unit No. 7, Town of Lady Lake until the next Commission meeting to allow more discussion, and Commissioner Holden seconded the motion.*

*After discussion and upon further clarification by the Town Attorney, the motion was denied by the following roll call vote:*

<i>HOLDEN</i>	<i>NO</i>
<i>VINCENT</i>	<i>YES</i>
<i>HANNAN</i>	<i>YES</i>
<i>RICHARDS</i>	<i>NO</i>
<i>KUSSARD</i>	<i>NO</i>

*Upon a motion by Commissioner Richards and a second by Commissioner Holden, the Commission voted to approve Resolution No. 2014-119 – Vacating a Portion of Bowersox Drive Right-of-Way Between Lot 1428 and Lot 1411 of Orange Blossom Gardens – Unit No. 7, Town of Lady Lake, by the following roll call vote:*

<i>HOLDEN</i>	<i>YES</i>
<i>VINCENT</i>	<i>NO</i>
<i>HANNAN</i>	<i>YES</i>
<i>RICHARDS</i>	<i>YES</i>
<i>KUSSARD</i>	<i>YES</i>

**5. Ordinance No. 2014-09 – First Reading – Medical Marijuana Moratorium (Derek Schroth)**

Town Attorney Derek Schroth stated for the public that this ordinance is for a moratorium on medical marijuana, and that he had drafted a memorandum for the Commission. He explained

that Amendment 2 will essentially legalize the cultivation, distribution and prescription of medical marijuana. Mr. Schroth read the ordinance by title only.

The background summary for this agenda item (on file in the Clerk's office) states that in the event that the Florida Right to Medical Marijuana Initiative, Amendment 2, is passed after the November 4, 2014 general election, this ordinance will allow the Town time to observe what other communities are doing and to see what is working, and will allow the Town time to thoughtfully draft ordinances regulating medical marijuana. The second reading of this ordinance is scheduled for consideration on Monday, November 3, 2014, and will be in place just prior to the election on November 4, 2014 if passed.

Commissioner Richards commented that he would follow the advice of the Town Attorney on this issue.

Town Manager Kris Kollgaard reported that second/final reading is scheduled for the November 3, 2014 Commission meeting.

Mayor Kussard asked if anyone in the public would like to comment on this ordinance. There were no comments.

*Upon a motion by Commissioner Hannan and a second by Commissioner Richards, the Commission voted to approve Ordinance No. 2014-09 – First Reading – Medical Marijuana Moratorium, by the following roll call vote:*

<i>HOLDEN</i>	<i>YES</i>
<i>VINCENT</i>	<i>YES</i>
<i>HANNAN</i>	<i>YES</i>
<i>RICHARDS</i>	<i>YES</i>
<i>KUSSARD</i>	<i>YES</i>

**6. ADJOURN:** There being no further discussion; the meeting was adjourned at 10:08 p.m.

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Kristen Kollgaard, Town Clerk

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Ruth Kussard, Mayor

Minutes transcribed by Nancy Slaton, Deputy Town Clerk