

CITY OF COOPER CITY

MEMORANDUM NO. 2020-004

TO: Mayor Greg Ross
Members of the City Commission

CC: Joe Napoli, City Manager
Kathryn Sims, Assistant City Manager / City Clerk
Mike Bailey, City Engineer / Utility Director
Matt Wood, Growth Management Director

FROM: Jacob G. Horowitz, City Attorney *JGH*
Michael D. Cirullo, Jr., Assistant City Attorney *MDC*

DATE: March 9, 2020

RE: City of Cooper City ("City") / Flamingo Gardens Canal Maintenance

The City Attorney's Office has been requested to review the issue of whether the City is responsible for maintaining the canal in Flamingo Gardens. In furtherance of our review, the City's professional staff has provided the City Attorney's Office with a number of documents related to this issue. Our office, with the concurrence of the City Manager's Office, has also obtained title work on the subject property in an effort to reconfirm ownership and maintenance obligations for the canal.

After reviewing the operative documents and legal authority, it is our opinion that the canal is owned by the Flamingo Gardens Lake Maintenance Association (the "Association"). Based on our further legal research and the documents provided, it is also our opinion that the Association is responsible for the canal maintenance.

I. Public Record Documents Reviewed

The City Attorney's Office has received and reviewed the following documentation:

- 1) June 2, 1977 (Maintenance Agreement) – Agreement between the Central Broward Water Control District and PCH Corp. (the "Developer"), related to maintenance of lakes, canals, swales, and drainage channels.
- 2) December 6, 1977 (Ordinance No. 77-12-1) – Ordinance of the City Commission accepting and approving the Flamingo Gardens – Poinciana Section Plat. The plat expressly states that the City, by adoption of said ordinance, accepts the park, canal, and all thoroughfares except the Stirling Road right-of-way.
- 3) March 29, 1979 (Declaration of Covenants and Restrictions for Flamingo Gardens) – Restrictive covenants for Flamingo Gardens prepared by the Developer, providing for the

creation of the Association and establishing procedures and responsibilities for lake area and canal area maintenance.

- 4) July 5, 1979 (Release of Maintenance Agreement) - Agreement between the Central Broward Water Control District and the Developer, releasing the parties from all obligations established by the June 22, 1977 maintenance agreement and rendering the same null and void. This release agreement references the March 29, 1979 Declaration, stating that the Developer “has established an incorporated association to be comprised of waterfront lot owners and has set forth therein covenants and restrictions to insure proper maintenance of the lake and canal areas within the Flamingo Gardens development.”
- 5) February 22, 1980 (Ordinance No. 80-1-4) – Ordinance of the City Commission accepting and approving the Flamingo Gardens – Tamarind Section Plat.
- 6) December 9, 1981 – Warranty deed from the Developer to the Association formally conveying ownership of the canal.
- 7) August 31, 1983 (Letter to City from Senior Engineer) – A correspondence from Senior Engineer W.A. Johnson to then-City Manager Chris Farrell regarding the City’s potential future acceptance of a 40’ x 105’ portion of the canal in Flamingo Gardens. This letter references the City’s prior acceptance of the canal pursuant to the Flamingo Gardens – Poinciana Section Plat. This letter further states, as follows:

The City should receive some form of assurance that this portion will be maintained by the Flamingo Gardens Lake Maintenance Association and be subject to the same maintenance conditions regarding the Central Broward Drainage District as the rest of the canal.
- 8) August 21, 2014 (Letter to the Association from Legal Counsel) – This correspondence is a legal opinion from Gian Ratnapala, Esq. to the Association advising that the Declaration of Covenants and Restrictions for Flamingo Gardens, dated March 29, 1979, has been extinguished pursuant to the Marketable Record Title Act, and advising the Association of the process of revitalizing the declaration in accordance with Ch. 720, F.S.
- 9) October 1, 2017 (Declaration of Covenants and Restrictions for Flamingo Gardens) – This declaration appears to be a revitalization of the declaration dated March 29, 1979. In accordance with Section 720.404, F.S., the revived declaration cannot be more restrictive than the previous declaration.

In addition to the foregoing, the title search report also detailed the ownership history of the canal property going back to 1972, along with all restrictions and easements encumbering the subject property. The chain of title, as confirmed by the title company, indicates that ownership of the canal was conveyed from the Developer to the Association in 1981. At no point was title ever conveyed to the City.

II. Summary of Current Information and Further Analysis

The Broward County Property Appraiser (“BCPA”) identifies the City as the owner of the canal as a result of the dedication referenced on the Poinciana Plat, which was accepted by the City pursuant to Ordinance No. 77-12-1. In our opinion, this is legally incorrect.

A common-law plat has no effect as a conveyance. *City of Miami v. Florida East Coast Ry. Co.*, 84 So.2d 726, 730 (Fla. 1920). Further, the effect of a dedication does not operate as a grant of the dedicated property. See *AGO 90-62, dated August 7, 1990* and *AGO 78-118, Dated September 27, 1978*. Legal title remains in the grantor while the public takes the beneficial use of the property. The public acquires only a right of easement in trust so long as the dedicated property is used for the intended purpose of the dedication. *Id.* Based on the foregoing, it is our belief that the BCPA records are in error and, notwithstanding the Poinciana Plat dedication and acceptance by the City in 1977, title to the canal property remained vested with the Developer at that time.

This legal conclusion is confirmed by the actions of the parties at the time. As referenced above, subsequent to the dedication of the Poinciana Plat, the Developer executed the Declaration of Covenants and Restrictions for Flamingo Gardens, which referenced the Developer as the “sole owner of the Canal Area.” Then, in 1981, the Developer formally conveyed the canal to the Association by warranty deed. At no point did the Developer or the Association ever convey title to the City.

In the August 31, 1983 letter from W.A. Johnson, to then-City Manager Chris Farrell, reference is made to acceptance of the canal by the City through the execution of the plat by the then-Mayor, Russell Setti. This letter also references the City’s potential future acceptance of a dedication of the 40’ by 105’ portion of the property that the Association was seeking to remove from its property taxes. Our office has not received any other information about this subsequent dedication. Nevertheless, as noted, the acceptance of these dedications by the City does not legally convey ownership of the subject properties.

As previously noted, Mr. Johnson wrote that the City should receive some form of assurance that this 40’ by 105’ portion will be maintained by the Association and be subject to the same maintenance conditions regarding the Central Broward Drainage District as the rest of the canal. This correspondence reconfirms to the City that, in 1983, the Association was clearly intended to maintain the canal.

Finally, as previously noted, the City Attorney’s Office has been provided with a copy of the Declaration of Covenants and Restrictions for Flamingo Gardens Lake Maintenance Association, Inc., dated March 29, 1979, and the “revitalized” Declaration dated October 1, 2017. The revitalized Declaration appears to have been adopted and approved pursuant to Chapter 720, Part III, “Covenant Revitalization,” whereby an association can revive declarations that have expired so long as the terms are no more restrictive than the original declaration. The revitalized Declaration states the Association owns and shall maintain the canal. However, since it is a “revitalized” Declaration, it is likely that this language is a restatement from the original

March 9, 2020

Declaration. Nevertheless, there is no other document or agreement which suggests that the City owns or is obligated to maintain the canal.

III. Conclusion

Based on the foregoing, the Association is the record owner of the canal. As the owner, the Association is legally obligated to maintain the canal. In an effort to correct the public record, the City Attorney's Office will contact the BCPA to clarify their records as to the canal ownership.

Please contact our office if there is any additional information that we can provide.