



155 F Road Loxahatchee Groves, FL 33470

Agenda Item # 7

TO: Town Council of Town of Loxahatchee Groves
FROM: Elizabeth Lenihan, Town Attorney
VIA: Francine L. Ramaglia, Town Manager
DATE: November 7, 2023
SUBJECT: Discussion on Prescriptive Easements

Background:

At its last regular meeting, Town Council requested information regarding prescriptive easements. In addition to the information provided at that time, the information herein is provided to Town Council.

Prescriptive easements are a form of adverse possession. In Florida, acquisition of another's property through use or possession is not favored and will be decided in the interests of the property owner over the claimant if the required standard is not met. For a claim of prescriptive easement, the claimant must prove the following:

1. Actual, continuous, and uninterrupted use by the claimant or any predecessor in title for the required 20-year period.
2. During the whole 20-year period, the use has been either with actual knowledge of the owner or so open, notorious, and visible that knowledge of the use is imputed to the owner.
3. That the use is related to a certain limited and defined area of land or, if for a right-of-way, the use was of a definite route with a reasonably certain line, width, and termini; and
4. That during the whole 20-year period the use has been averse to the lawful owner, that is,
 - a. The use has been made without the permission of the owner and under some claim of right other than from permission of the owner.
 - b. The use has been either exclusive of the owner or inconsistent with the rights of the owner of the land to its use and enjoyment; and
 - c. The use has been such that, during the whole 20-year period, the owner had a cause of action against the user for the use being made.

Dana v. Eilers, 279 So.3d 825 (Fla. 2d 2019).



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Claims for prescriptive easement may be made by individuals or by the government with jurisdiction over the use of the prescriptive easement being claimed. While the private individual may only rely on his or her own use and that of his or her predecessor in title in making a claim, the government entity in such circumstances relies on use by the public. Either way, the criteria must be met, and the evidential proof must be clear and convincing. That is to say, the evidence for each and every element of the required criteria must be more than loose, uncertain testimony or conjecture; it must be credible, clear and without confusion, and must be of sufficient weight to convince the trier of fact without hesitancy.

Recommendation:

Discussion by Town Council, if desired, and provide staff direction.