

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ROBERT A. MASON,)
)
 Petitioner,)
)
 vs.) Case No. 03-1113VR
)
 CLAY COUNTY,)
)
 Respondent.)
 _____)

FINAL ORDER

Pursuant to notice, the Division of Administrative Hearings, by its designated Administrative Law Judge, Richard A. Hixson, held a final hearing in the above-styled case on April 23, 2003, in Green Cove Springs, Florida.

APPEARANCES

For Petitioner: Dale S. Wilson, Esquire
Post Office Box 1808
Green Cove Springs, Florida 32043

For Respondent: Mark Scruby, County Attorney
Clay County
Post Office Box 367
Green Cove Springs, Florida 32043-0367

STATEMENT OF THE ISSUE

The issue for determination in this matter is whether Petitioner, Robert A. Mason, has demonstrated, pursuant to the Vested Rights Review Process of Clay County, Florida, that a vested rights certificate to undertake development of certain

real property located in Clay County should be issued by Clay County, notwithstanding that part of such development will not be in accordance with the Clay County Comprehensive Plan.

PRELIMINARY STATEMENT

On or about March 5, 2003, an Application for Vested Property Certificate for Claims of Equitable Vested Rights Pursuant to Future Land Use Policy 1.8, Clay County Comprehensive Plan, was filed with the Clay County Department of Planning and Zoning by Petitioner, Robert A. Mason, as owner of a development named Cypress Landing. Petitioner also filed supporting documentation with the Application. On or about March 25, 2003, Respondent, Clay County, referred the Application and supporting documentation to the Division of Administrative Hearings for the assignment of an administrative law judge.

Pursuant to written notice, a hearing was held on April 23, 2003, to afford Petitioner the opportunity to offer the Application and supporting documentation into evidence and to supplement the record with additional evidence. The hearing also afforded the Respondent an opportunity to be heard and provide evidence to supplement the record. Finally, the hearing was held to give the undersigned an opportunity to ask questions concerning the Application.

The hearing was conducted in accordance with the Vested Rights Review Process of Clay County, Florida, as adopted by Clay

County Ordinance 92-18, and as amended by Ordinances 92-22, 92-29, 93-26, 94-25, and 96-21. At the hearing, Petitioner offered six exhibits which were accepted into evidence without objection: Exhibit 1 is the composite Application and supporting documentation which consist of the Application and 18 supporting documents; Exhibit 2 is a survey of the property prepared by McKee, Eiland & Mullis, identifying specific trees on the Cypress Landing property; Exhibit 3 is Petitioner's summary of expenses related to Cypress Landing; Exhibit 4 is a 1950 plat of the Hollywood Forest Subdivision; Exhibit 5 is a copy of pictures which appeared in Southern Living magazine; and Exhibit 6 is a composite of two pictures of the Cypress Landing sign.

Petitioner presented the testimony of Keith Joseph McCammon, a certified arborist and member of the International Society of Arboriculture; Petitioner, Robert A. Mason; and Petitioner's wife, Marilyn Mason. Respondent presented the testimony of Shawanda Watson, Planner II with the Clay County Department of Planning and Zoning. Also in attendance at the hearing was Thad Crowe, Planning Director with the Clay County Department of Planning and Zoning.

No transcript of the hearing was ordered by the parties. On May 8, 2003, Petitioner filed a Motion for Extension of Time in which to file a Proposed Final Order, which motion was granted without objection. On May 19, 2003, Petitioner and Respondent

filed Joint Post Hearing Stipulations. On May 19, 2003, Petitioner filed a Proposed Final Order. The Proposed Final Order and Joint Post Hearing Stipulations have been fully considered in entering this Final Order. Respondent did not file a Proposed Final Order; however, at the conclusion of the presentation of the evidence at hearing, the Respondent stated that Clay County did not object to the approval of Petitioner's Application for Equitable Vested Rights.

FINDINGS OF FACT

A. The Property

1. The Applicant, Petitioner Robert A. Mason, is the owner of real property located in Clay County, Florida. The Applicant's property is known as "Cypress Landing," containing 5.977 acres, which consists of a rectangular tract 200 feet by approximately 841 feet in the Hollywood Forest Subdivision, bounded on the east by the west shore of the St. Johns River, and on the west by the right-of-way for Peters Avenue, now known as Harvey Grant Road.

2. The Applicant acquired the property on July 25, 1958, by warranty deed from Victor M. and Ruth C. Covington recorded in Official Records Book 3, page 250, public records of Clay County, Florida. The property was the south 1/2 of Lot 12, Lot 12-A, and Lot 13, and the north 1/2 of Lot 14 of Hollywood Forest, a platted subdivision on Fleming Island in Clay County. At the

time Petitioner acquired the property, the applicable zoning district permitted the development of the property for single-family residential at a maximum density of three units per acre.

3. When the Applicant originally acquired the property in 1958, he and his wife had intended at some future time to live on the property and use the property for their own purposes, including recreation, keeping horses, and retirement. At the time the Applicant acquired the property there was an existing dock extending from the property into the river.

4. Due to subsequent changes in his employment circumstances, the Applicant did not build a residence on the property. The Applicant is a registered forester who retired from the Georgia Forestry Commission after 32 years of service. The Applicant and his wife currently reside in Georgia.

5. Cypress Landing contains a multitude and variety of trees, including magnolia, Florida holly, live oak and cypress, many of which are more than 200 years old and have diameters in excess of 36 inches. The Applicant has taken great care and followed specific conservation measures to identify and preserve the historic trees on the property.

B. Development of the Property

6. In 1982-1983, the Applicant prepared a development plan for the Cypress Landing property which comprised a single-family residential development. The planned development consisted of a

total of seven single-family lots, two of which faced the river, and the other five which were 122 feet by 200 feet and lay side by side between the road and the waterfront lots. The development plan included an easement (the "Road Easement") for ingress, egress, drainage and utilities along the northern waterfront lot into the southern waterfront lot. From the east end of the Road Easement, an additional pedestrian easement was provided along the northern ten feet of the southern waterfront lot for pedestrian access to the river.

7. The Applicant employed a surveyor, McKee, Eiland & Mullis, Land Surveyors Inc., of Orange Park, Florida. The Applicant instructed the surveyor to plat the property in accordance with the development plan and all existing codes. The property was thereafter subdivided into seven lots, identified as Lots A, B, C, D, E, F, and G. Lots A through E are the inland lots and each measure 122 feet by 200 feet with a 30 feet non-exclusive easement for ingress, egress, drainage and utility purposes. Lots A through E are inland lots. Lots F and G are the waterfront lots which are slightly larger than the other five lots and not as uniform in configuration. Lot F has approximately 116 feet of water frontage and Lot G has approximately 97 feet of water frontage.

8. In 1984, relying on the applicable zoning regulations, the Applicant contracted with Robert Bray to install a roadway

which is 30 feet in width and 866 feet in length running along Lots A through E and ending at Lot F. The roadway was constructed with specific concern for the protection and preservation of the trees on the property. A pre-cast concrete curb running the entire length of the roadway was installed to protect the trees from runoff. Porous rock was used as the foundation of the roadway to promote proper drainage. The roadway was also constructed with an ellipsis at Lot C to protect a historic tree. The design of the roadway, as well as the materials used in building the roadway, met all Clay County code requirements at the time of construction.

9. In 1984, the Applicant reconstructed the dock on the property. The dock had previously been damaged due to storms. The dock was reconstructed by Duke Marine Construction in accordance with all appropriate regulations. Covenants have been executed to allow for use of the dock as a community dock for all lot owners. The community dock is 300 feet in length.

10. Also in 1984, the Applicant erected a sign indicating the entrance to Cypress Landing. The sign was later vandalized and removed.

11. In 1988, the Applicant contracted with Jacksonville Electric Authority for the installation of an underground electric distribution system in Cypress Landing. The underground utilities distribution system was designed specifically to

protect and preserve the existing trees on the property, and was installed by boring under the trees to place a conduit to protect the established roots. The underground electrical distribution system was installed in accordance with the Clay County code at that time.

12. On May 29, 1987, the Applicant sold Lot A to Robert M. and Mary Wasdin. Clay County issued a building permit for the construction of a residence on Lot A. A house has been constructed on Lot A.

13. On September 1, 1989, the Applicant sold Lot E to Robert G. and Marva Lou Widhalm. Clay County issued a building permit for the construction of a residence on Lot E. A house has been constructed on Lot E.

C. Applicant's Expenses

14. The applicant expended approximately \$4,609.45 on topographical surveys, tree location surveys, and engineering plans which were prepared for the mapping and platting of Cypress Landing. The surveying expenses were paid prior to the adoption of the Clay County 2001 Comprehensive Plan.

15. The Applicant incurred significant expenses in the design and construction of the roadway. Additional costs were incurred by the Applicant for the construction of the roadway in an environmentally sensitive manner which protected and preserved the historic trees on the property. The total amount expended in

1984 by the Applicant for the construction of the roadway was \$6,880, all of which was paid prior to the adoption of the Clay County 2001 Comprehensive Plan.

16. The Applicant expended \$19,540 for the reconstruction of the community dock in 1984, which was paid prior to the adoption of the Clay County 2001 Comprehensive Plan.

17. The Applicant expended \$7,101.87 for the installation of the underground electrical distribution system in 1988 and 1989. This amount included an additional cost of \$1,209.87 paid to JEA, which was the difference in cost between the underground system and an equivalent overhead electrical distribution system. This amount also included a cost of \$5,502 paid to Allstate Electrical Contractors, Inc. of Jacksonville, Florida, for the boring and installation of the PVC conduits to protect the historic trees on the property. The expenses were paid prior to the adoption of the Clay County 2001 Comprehensive Plan.

18. The Applicant expended \$363.58 for costs associated with the Cypress Landing entrance sign and a security fence. The expenses were paid prior to the adoption of the Clay County 2001 Comprehensive Plan.

D. Rights that will be Destroyed

19. In 1991 Clay County originally adopted the Clay County 2001 Comprehensive Plan pursuant to Chapter 163, Part II, Florida Statutes. The Clay County 2001 Comprehensive Plan is now known

as the Clay County 2015 Comprehensive Plan. Under the Comprehensive Plan, Cypress Landing was designated with a land use designation in the plan of "Rural Fringe."

20. Policy 2.10 of the Clay County 2015 Comprehensive Plan provides that if land is divided into three or more lots, any three of which are 9.9 acres or less in size, then such land must be platted in accordance with the County's regulations, and all lots must be provided access to a road improved to meet County paved road standards. The County's Subdivision Regulations were amended after 1990. Section 16(1)(d)1.a.i. thereof now requires a minimum width for subdivision streets of 60 feet. The regulations further require that such streets be paved. The Cypress Landing Road Easement is only 30 feet wide. Moreover, new surface water runoff requirements require retention areas for rainwater. To comply with the post-1991 Clay County land use regulations would require a reconfiguration of the lots in Cypress Landing. Reconfiguration is not possible because two of the lots have been sold to new owners.

21. Policy 2.9 of the Clay County 2015 Comprehensive Plan restricts any easement that provides access to multiple lots to a length of 1,000 feet, and limits to five the number of lots that may utilize the same for access. While the Cypress Landing Road Easement is less than 1,000 feet in length, the number of lots

within the Cypress Landing development exceeds the maximum that can access the Road Easement.

22. The Petitioner would be precluded from selling or developing the remaining lots within the Cypress Landing development without reconfiguration and loss of one or more lots. Moreover, because Lots "A" and "E" have already been sold, the Petitioner cannot add additional right-of-way width to the Road Easement in order to comply with the County's Subdivision Regulations regarding minimum right-of-way width.

23. The Applicant would have been entitled to statutory vested rights if 50 percent of the lots had been sold prior to 1992.

E. Procedural Requirements

24. The procedural requirements of Vested Rights Review Process of Clay County, adopted by Clay County Ordinance 92-18, as amended, have been met.

CONCLUSIONS OF LAW

A. Jurisdiction.

25. The Division of Administrative Hearings has jurisdiction of the parties to and the subject matter of this proceeding. Section 120.65(9), Florida Statutes (1997), and Clay County Ordinance 92-18, as amended by Clay County Ordinances 92-22, 92-29 and 94-25, and 96-21.

B. General Requirements of Article VIII of the Clay County Land Development Code.

26. Pursuant to Section 163.3167, Florida Statutes, Clay County was required to prepare a comprehensive plan governing the use and development of land located within Clay County. In compliance with Section 163.3167, Florida Statutes, Clay County adopted its Comprehensive Plan by Ordinance 92-03 on January 23, 1992.

27. In order to ensure that existing rights to develop property of Clay County property owners created by the Constitutions of the State of Florida and the United States are not infringed upon by the application of the Comprehensive Plan, Clay County promulgated Article VIII of the Clay County Land Development Code (hereinafter referred to as the "Code.") The intent of Clay County in adopting Article VIII of the Code is included in Section 20.8-3(b) of the Code:

(b) It is the intent of this Article to provide the standards and administrative procedures for determining whether a person has a vested right to undertake development activities, notwithstanding the fact that all or part of the development is not in accordance with the requirements of the Clay County 2001 Comprehensive Plan or land development regulations.

28. There are two general types of circumstances pursuant to which vested rights to develop property may be found to exist pursuant to Article VIII of the Code: (1) "statutory vested

rights" pursuant to Section 20.8-6 of Article VIII of the Code; and (2) "equitable vested rights" pursuant to Section 20.8-7 of Article VIII of the Code.

29. Applications to determine if development rights are vested are initially reviewed for technical correctness by the Clay County Planning and Zoning Department. Section 20.8-8(c)(1) and (d)(1) of Article VIII of the Code.

30. In the case of an application for equitable vesting no determination on the merits is made by Clay County. The Director of the Planning and Zoning Department, after determining that an application for equitable vesting is complete, is required to coordinate a hearing to consider the application. Section 20.8-8(d)(3) of Article VIII of the Code. Hearings on equitable vesting applications are to be held within 60 days after the Director of the Planning and Zoning Department determines that the application is complete. Id.

31. Pursuant to a contract entered into between Clay County and the Division of Administrative Hearings, administrative law judges of the Division of Administrative Hearings may be authorized by Clay County to conduct hearings to consider appeals on applications of statutory vesting and to make the initial decision on applications for equitable vesting. Section 20.8-9(b) of Article VIII of the Code.

32. The manner in which hearings are to be conducted is governed by Section 20.8-10 of Article VIII of the Code. At the conclusion of a hearing, the administrative law judge is required to issue a written decision approving, denying, or approving with conditions the application. Section 20.8-10(a)(4) of Article VIII of the Code.

C. Equitable Vested Rights.

33. Section 20.8-7 of Article VIII of the Code governs the determination of whether an applicant's development rights in property have been vested pursuant to the equitable vested rights definition of Article VIII of the Code. The criteria for determining whether the property is equitably vested are as follows:

(b) Criteria For Determining Equitable Vested Rights. Developments shall be deemed to have Equitable Vested Rights pursuant to this Section if it is shown by substantial competent evidence that a property owner or other similarly situated person:

(1) has acted in good faith and in reasonable reliance;

(2) upon a valid, unexpired act or omission of the government; and

(3) has made such a substantial change in position or incurred such extensive obligations and expenses that it would be inequitable or unjust to destroy the rights such person has acquired.

Section 20.8-7(b) of Article VIII of the Code.

D. Cypress Landing/Robert Mason's Application.

34. Equitable vesting under Article VIII of the Code contains the same elements of proof required for the doctrine of equitable estoppel to apply. The doctrine of equitable estoppel has been described as follows:

The doctrine of equitable estoppel will limit a local government in the exercise of its zoning power when a property owner (1) relying in good faith (2) upon some act or omission of the government (3) has made such a substantial change in position or incurred such excessive obligations and expenses that it would be highly inequitable and unjust to destroy the rights he has acquired.

Smith v. Clearwater, 383 So. 2d 681, 686 (Fla. 2d DCA 1980). See also Key West v. R.L.J.S. Corporation, 537 So. 2d 641 (Fla. 3d DCA 1989); and Harbor Course Club, Inc. v. Department of Community Affairs, 510 So. 2d 915 (Fla. 3d DCA 1987). The undersigned has been guided in this case by the case law applying the doctrine of equitable estoppel. See Section 20-8.10(a)(5) of Article VIII of the Code.

35. The Applicant presented substantial competent evidence demonstrating that all of the elements of equitable estoppel and, therefore, equitable vesting as defined in Article VIII of the Code exist in this case.

36. Based upon the evidence presented in this matter, the Applicant in the development of Cypress Landing has acted in good faith to comply with the appropriate Clay County Code

requirements. The subdivision was surveyed and platted, the roadway was constructed, the underground utilities were installed, the dock was reconstructed, two of the lots were sold, two building permits were issued, and two houses were constructed on the property. Each development action was approved and carried out in compliance with applicable code requirements. The Applicant relied on the continuous approval of each development activity over a period of years. See Equity Resources, Inc. v. County of Leon, 643 So. 2d 1112 (Fla. 1st DCA 1994). It is therefore concluded that the first two criteria for equitable vesting have been proven: the Applicant acted in good faith and in reasonable reliance upon a valid, unexpired act or omission of Clay County.

37. Substantial competent evidence was presented at hearing to conclude that the Applicant has made extensive expenditures to develop Cypress Landing in an environmentally responsible manner which complied with all requirements prior to the adoption of the Clay County Comprehensive Plan. In light of the extensive expenditures of the Applicant and the adverse impact of complying with the Comprehensive Plan, it is concluded that the third criterion for equitable vesting has also been proven: the Applicant has made a substantial change in position or incurred such extensive obligations and expenses that it would be highly

inequitable or unjust to destroy the rights the Applicant has acquired.

38. Based upon a review of the evidence presented at the hearing held before the undersigned on April 23, 2003, it is concluded that the Applicant has proved that the elements of equitable vesting apply.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is

ORDERED that the Application for Vested Property Certification for Claims of Equitable Vested Rights dated March 5, 2003, is APPROVED. A Vested Property Certificate should be issued to Robert A. Mason for the remaining five lots of Cypress Landing which are owned by Robert A. Mason.

DONE AND ORDERED this 23rd day of May, 2003, in Tallahassee, Leon County, Florida.

RICHARD A. HIXSON
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 23rd day of May, 2003.

COPIES FURNISHED:

Dale S. Wilson, Esquire
Post Office Box 1808
Green Cove Springs, Florida 32043

Mark Scruby, County Attorney
Clay County
Post Office Box 367
Green Cove Springs, Florida 32043-0367

Shawanda Watson, Planner
Clay County Vested Rights Coordinator
Clay County
Post Office Box 367
Green Cove Springs, Florida 32043-0367

Thad Crowe, AICP, Planning Director
Clay County
Post Office Box 367
Green Cove Springs, Florida 32043-0367

NOTICE OF RIGHT TO JUDICIAL REVIEW

This Final Order is subject to judicial review in the Circuit Court, Fourth Judicial Circuit, in and for Clay County, Florida.