

TALLAHASSEE-LEON COUNTY PLANNING COMMISSION

TIMBER HOMEOWNERS'
ASSOCIATION, INC., BRIAN
MORAN, and CHRISTY
BALDWIN,

Petitioners,

vs.

Case No. 07-2467

CITY OF TALLAHASSEE and
DEPARTMENT OF ENVIRONMENTAL
PROTECTION,

Respondents.

FINAL ORDER

This matter came before the Planning Commission on the attached RECOMMENDED ORDER entered by J. Lawrence Johnston, Administrative Law Judge, Division of Administrative Hearings, acting as the Hearing Officer for the Planning Commission in this matter. The record of the proceeding before the Administrative Law Judge has been filed with the Clerk. There were no exceptions to the RECOMMENDED ORDER filed.

FINDINGS OF FACT

1. The Findings of Fact in the RECOMMENDED ORDER are hereby accepted, adopted and incorporated herein by reference, except as expressly provided below:

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DIVISION OF
ADMINISTRATIVE
HEARINGS

A. Paragraph 15 of the RECOMMENDED ORDER which is contained as a Finding of Fact in the Recommended Order is hereby found to be a Conclusion of Law and not a Finding of Fact.

B. Paragraph 16 in the Findings of Fact section of the RECOMMENDED ORDER is hereby found to contain both Conclusions of Law and Findings of Fact.

Therefore, Paragraph 16 in the Findings of Fact shall read as follows:

Notwithstanding Paragraph 1 of City Commission Policy 410, the evidence was clear that the City abandons rights-of-way that are in use, either explicitly or implicitly waiving Paragraph 1. Over 90 percent of the abandonment applications processed by the City have been for rights-of-way that are currently being used, including some that were being used heavily. The actual standards for determining whether to abandon a road have been found in the other parts of Policy 410, especially in Paragraph 2. Although Policy 410 had a sunset date of March 25, 1997, it has not been replaced, and the Planning Department continued to use it as a guide for review of abandonment applications.

The remainder of Paragraph 16 in the Findings of Fact of the RECOMMENDED ORDER is found to be a Conclusion of Law and shall be set forth in the Conclusions of Law as Paragraph 81 of the Final Order and will read as follows:

City Commission Policy 410 has been used as a guide for reviewing abandonment applications. Policy 410 provides:

1. The City of Tallahassee will not consider any application for right-of-way abandonment, if the subject right-of-way is currently being used by the City, or if the City has any plans to use the right-of-way at some point in the future.

2. Abandonment of a right-of-way must be demonstrated to be in the best interest of the general public. Neither abandonment of a right-of-way solely for the purpose of placing it on the tax rolls in its current state, nor abandonment of a right-of-way solely to benefit an abutting property owner, is considered to be sufficient to meet the test of “in the public’s best interest”.

3. Abandonment of right-of-way automatically reverts only to abutting property owners with one-half of the right-of-way going to each owner by operation of law upon adoption of a City ordinance.

4. Provide applicant with a Quit (sic) Deed for recording, if the right-of way is abandoned.

Unlike ordinances, policies can be waived.

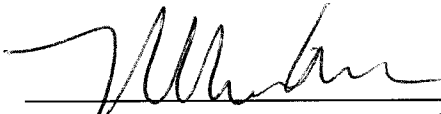
CONCLUSIONS OF LAW

2. The Conclusions of Law in the RECOMMENDED ORDER are hereby accepted, adopted and incorporated herein by reference except as provided hereinafter. As discussed above, that part of Paragraph 16 of the RECOMMENDED ORDER which has been found to be a Conclusion of Law will be incorporated in CONCLUSIONS OF LAW in this Final Order as Paragraph 81. Further, the last sentence of Paragraph 80 of the Conclusions of Law in the RECOMMENDED ORDER shall be amended to read as follows: “With those conditions, the application clearly meets the new policy criteria for abandonment of right-of-way and it is in the best interest of the general public.”

WHEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, and the record of this proceeding, it is ordered that the Planning Commission recommends

to the Tallahassee City Commission that DEP's application for abandonment of right-of-way be granted.


APPROVED by the Commission on this 2nd day of September, 2008.



Maribel Nicholson-Choice, Chairperson
Tallahassee-Leon County Planning
Commission
City Hall
300 South Adams Street
Tallahassee, Florida 32301-1731

CERTIFICATE OF FILING AND CERTIFICATE OF SERVICE

I hereby certify that this Final Order was filed in the Office of the Clerk of the Planning Commission and that a copy was sent this 2 day of September, 2008; and a copy has been furnished by U. S. Mail to Linda Hudson, Assistant City Attorney, and Jonathan P. Sandford, Esq., City Attorney's Office, City Hall, 300 S. Adams Street, Tallahassee, Florida, 32301; William H. Davis, Dobson, Davis & Smith, 610 North Duval St., Tallahassee, Florida, 32301; and Lisa M. Raleigh, Esquire, Office of the Attorney General, The Capitol, Plaza Level 01, Tallahassee, Florida, 32399, on this 2 day of September, 2008.



Russell Snyder
Planning Commission Clerk
Tallahassee - Leon County Planning
Commission
City Hall
300 S. Adams Street
Tallahassee, Florida 32301-1731