

RESOLUTION NO. 96- 54

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY DELEGATING AUTHORITY OF THE BOARD OF COUNTY COMMISSIONERS TO THE COUNTY ADMINISTRATOR TO WITHDRAW FROM CASES 95-006156 AND 95-005308 FILED WITH THE FLORIDA DIVISION OF ADMINISTRATIVE HEARINGS.

WHEREAS, St. Johns County is the owner of a certain drainage easement located on and near Lots 10 and 11, Secret Oaks Subdivision as recorded in Plat Book 20, pages 48 and 49; and

WHEREAS, the Secret Oaks Association ("Secret Oaks") claims entitlement to a pedestrian easement, as recorded in Official Records Book 745, beginning at page 702, over, along, and across those portions of Lots 10 and 11 which are subject to the County's drainage easement; and

WHEREAS, Secret Oaks has an application before the Florida Department of Environmental Protection for permits to construct a dock on the St. Johns River; and

WHEREAS, St. Johns County has initiated or intervened in certain cases (95-006156 and 95-005308) before the Florida Division of Administrative Hearings ("DOAH") to object to the permits in order to ensure protection of the County's drainage easement; and

WHEREAS, the Director of Public Works has reviewed an updated design plan submitted from Secret Oaks for said dock, and issued an opinion finding no technical objections to the design plan and no aspect of the design plan which would interfere with the County's drainage easement.

NOW THEREFORE, BE IT RESOLVED by the Board of County Commissioners of St. Johns County that:

1. The agreement with conditions and requirements set forth in Exhibit A, as advised by the County Attorney's Office, adequately protect the County's interest in the above said drainage easement.

2. The County Administrator is authorized to withdraw the County's interests in DOAH cases 95-006156 and 95-005308 through an agreement substantially similar to Exhibit A, attached.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, State of Florida, this 26th day of March, 1996.

BOARD OF COUNTY COMMISSIONERS  
OF ST. JOHNS COUNTY, FLORIDA

By: *Donald Jordan*  
Its Chair - Donald Jordan

ATTEST: CARL "BUD" MARKEL, CLERK

By: *Rosemary Lewis*  
Deputy Clerk

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AGREEMENT

This agreement is made and entered into between the Board of County Commissioners of St. Johns County ("County") and the Secret Oaks Owners' Association, Inc., ("Secret Oaks"). In consideration of the mutual promises and considerations herein set out, the parties hereto agree as follows:

CONDITIONS AND REQUIREMENTS

1. Based upon the agreement of Secret Oaks to satisfy and adhere to conditions and requirements 5 through 12 below, County hereby agrees not to object to the construction by Secret Oaks of a dock located in the St. Johns River and off that certain County drainage easement located at the Secret Oaks subdivision in St. Johns County, Florida and more specifically described as follows, to wit: (legal description)

2. Based upon the agreement of Secret Oaks to satisfy and adhere to conditions and requirements 5 through 12 below, County hereby agrees to withdraw its Petition for Administrative Hearing, and agrees to withdraw as a party in State of Florida Division of Administrative Hearings ("DOAH") Case Number 95-006156. Furthermore, Based upon the agreement of Secret Oaks to satisfy and adhere to conditions and requirements 5 through 12 below, County hereby agrees to withdraw as a party in DOAH Case Number 95-005308. County retains the right to seek appropriate administrative and judicial relief if any of the following conditions and requirements are not satisfied or followed by Secret Oaks.

3. Based upon the agreement of Secret Oaks to satisfy and adhere to conditions and requirements 5 through 12 below, County hereby agrees not to object to Secret Oaks' use of the County drainage easement for pedestrian ingress and egress to and from the St. Johns River and for the construction and maintenance of any dock constructed on said easement and of the pedestrian pathway located in said easement provided that such uses do not damage or interfere with County's use of the easement for drainage purposes.

4. The County's decision not to object to the Secret Oaks permit application does not constitute endorsement or support of the Secret Oaks permit application or possible future construction of the dock.

5. Secret Oaks hereby agrees that the final design plan of the dock, and any associated structures or appendages, if any, must be reviewed and approved in writing by the St. Johns County Director of Public Works ("Director") prior to commencement of construction.

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6. Secret Oaks hereby agrees that the actual dock constructed must be in strict compliance with the plan approved by the Director. The Director must also approve changes, if any, to the approved plan prior to constructing such changes.

7. Secret Oaks hereby agrees that no additional structure, facility, or improvement shall be built on or added to the dock, dock area, or easement by Secret Oaks or a member of Secret Oaks without prior written approval by the Director in addition to any other permit requirements.

8. Secret Oaks hereby agrees that the construction, operation and maintenance of the dock which is the subject of the pending administrative hearing, or any structure, facility, improvement or activity associated with that dock shall not damage or interfere with the drainage function of the easement. Secret Oaks further agrees that if the Director shall reasonably conclude that such construction, operation, or maintenance activities by Secret Oaks or its members should damage or interfere with the drainage easement, Secret Oaks will be responsible for any and all costs involved to correct the damage or interference, and for making the needed corrections or repairs. The County reserves the right to repair the damage or correct the interference at the expense of Secret Oaks should Secret Oaks fail to do so within a reasonable time. The parties expressly understand and agree that the liability of Secret Oaks does not extend to the acts of trespassers or vandals. Secret Oaks agrees to take all reasonable steps to limit access to the easement and dock by unauthorized persons.

9. Secret Oaks agrees to keep the drainage easement free and clear of any litter, debris, or any other materials which may interfere with the operation or maintenance of the drainage easement. This condition shall not be construed include naturally caused, organic substances.

10. Secret Oaks agrees that County's easement has priority over any easement rights Secret Oaks may have, and expressly acknowledges that County does not waive any rights or interests in the easement by withdrawing its pending Petition for Administrative Hearing or by withdrawing as a party to any other administrative or judicial proceedings relating to the use of the easement in the construction of the proposed dock. Furthermore, County fully retains its rights to repair, maintain, and improve its drainage facilities along the entire length and width of the easement.

11. Secret Oaks hereby agrees that any dock design reviews and approvals by County are solely for the purpose of determining whether interference to the drainage easement exists, and are

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expressly not reviews or approvals relating to safety or any other concern, which are strictly the responsibility of Secret Oaks.

12. Secret Oaks hereby agrees to (1) hold harmless the County for any actions the County may take to repair, maintain, and improve its drainage facilities, (2) defend the County against any legal action initiated related to the use or presence of the dock, and (3) indemnify the County for any and all damages, fees, or costs incurred by the County in any legal action related to the use or presence of the dock.

13. Secret Oaks hereby agrees that this AGREEMENT shall be incorporated by amendment in the permit application in DOAH Case Number 95-005308. This requirement shall be a condition precedent to County's promise to withdraw from that case.