

RESOLUTION NO. 2005- 135

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AUTHORIZING THE CLERK OF THE COURTS, UNDER SECTION 95.361, FLORIDA STATUTES TO FILE THE SURVEY MAP FOR CHURCH ROAD, CLAIMING A VESTED INTEREST IN THE ROAD DESCRIBED IN THE SURVEY MAP, AND/OR ESTABLISHING A PRESCRIPTIVE EASEMENT IN THE SAME RIGHTS-OF-WAY, IN ACCORDANCE WITH THE PRINCIPLES SET FORTH IN DOWNING V. BIRD, 100 SO.2D 57 (FLA. 1958)

WHEREAS, the Board of County Commissioners of St. Johns County, Florida have instructed staff to obtain documentation in order to justify continued County maintenance of road that are neither dedicated to St. Johns County, nor are owned by St. Johns County; and

WHEREAS, Church Road as described in attached and incorporated **Exhibit A**, which is the **Survey Map**, and which is a road that County staff has documented as warranting continued County maintenance; and

WHEREAS, Section 95.361, Florida Statutes details the procedure for a local government to claim a vested interest in a road not constructed by the local government; and

WHEREAS, the procedure set forth in Section 95.361, Florida Statutes, is as follows:

- 1) the road has been constructed by a non-governmental entity, or not constructed by the entity currently maintaining or repairing the road;
- 2) the road has been maintained and/or repaired for the immediate past seven (7) years by the County; and

WHEREAS, under the criteria set forth in Section 95.361, Florida Statutes, such road shall be deemed dedicated to the County, to the extent of the width of the road that actually has been maintained or repaired for the proscribed period, whether or not such road has been formally established as a public highway; and

WHEREAS, the filing of the **Survey Map** with the Clerk of the Courts of St. Johns County, pursuant to Section 95.361, Florida Statutes, by St. Johns County serves as prima facie evidence of ownership of **Church Road**; and

Frank P. Seguardi  
BCC Secy

**WHEREAS**, in Downing v. Bird, 100 So.2d 57 (Fla. 1958), the Florida Supreme Court set forth separate criteria in which a public entity (such as the County), may establish, claim, and maintain a prescriptive easement on certain property; and

**WHEREAS**, the criteria set forth in Downing v. Bird, supra, is as follows:

- 1) actual, continuous, uninterrupted use by the public entity for the full prescriptive period of twenty (20) years;
- 2) that the use be adverse under a claim of right, and either be with the actual knowledge of the owner, or so open, notorious, and visible that knowledge of the use is imputed to the owner;
- 3) that such use be inconsistent with the owner's use and enjoyment of his land, and must not be a permissive use; and
- 4) that such use be related to a certain limited and defined area of land, or if for a right-of-way, the use be of a definite route with a reasonably certain line, width, and termini; and

**WHEREAS**, St. Johns County can demonstrate that **Church Road** meets each of the criteria, set forth in Downing v. Bird, supra; and

**WHEREAS**, the public entity has been continuously using **Church Road** without permission of the underlying land owners for in excess of twenty (20) years; and

**WHEREAS**, the road lies in a different area then the easement and the County will release any rights or claims they may have in that certain easement recorded in Official Records Book 276, page 555 based on adoption of the maintenance map; and

**WHEREAS**, County Road and Bridge Supervisor, **Rick Saffelder**, has stated in an affidavit (attached and incorporated as **Exhibit B**) that the County has been responsible for maintaining **Church Road** for the last thirty (30) years; and

**WHEREAS**, St. Johns County can demonstrate that St. Johns County's actions meet the criteria set forth in both/either Section 95.361, Florida Statutes, and/or Downing v. Bird, 100 So.2d 57 (Fla. 1958), with respect to establishing either statutory dedication, or a prescriptive easement over the above-noted, and described **Church Road**; and

**WHEREAS**, it is in the best interest of St. Johns County to acquire ownership of **Church Road** under either statutory dedication or prescriptive easement, and that such acquisition will benefit the citizens of St. Johns County.

**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, as follows:**


**Section 1.** The above recitals are incorporated by reference into the body of this Resolution, and such Recitals are adopted as Findings of Fact.

**Section 2.** The Chairman of the Board of County Commissioners, and Clerk of the Courts are hereby authorized to file the attached **Survey Map of Church Road** in the Public Records of St. Johns County, Florida.

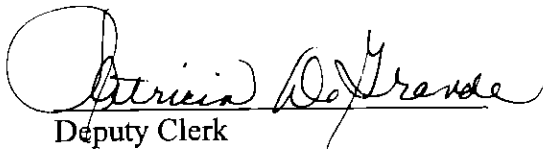
**Section 3.** The Clerk is instructed to record this Resolution in the Public Records of St. Johns County, Florida.

**PASSED AND ADOPTED, this 15<sup>th</sup> day of MAY, 2005.**

**BOARD OF COUNTY COMMISSIONERS,  
ST. JOHNS COUNTY, FLORIDA**

By:   
**Bruce A. Maguire, Chair**

**ATTEST:** Cheryl Strickland, Clerk of Court

  
Deputy Clerk

**RENDITION DATE 5-19-05**





EXHIBIT "B" TO RESOLUTION

AFFIDAVIT

STATE OF FLORIDA  
COUNTY OF ST. JOHNS


On this day before me, the undersigned authority, personally appeared **Rick Saffelder**, Road and Bridge Supervisor, who being first by me duly sworn, deposes and says that the County has been maintaining **Church Road** for the last 30 years and the public has continuously used the road during this time.

FURTHER AFFIANT SAYETH NAUGHT.

  
\_\_\_\_\_  
RICK SAFFELDER

STATE OF FLORIDA  
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of April 2005, by **RICK SAFFELDER** Road and Bridge Supervisor, who is personally known to me.

  
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Notary



Joan E. Gurr  
Commission # DD388477  
Expires March 6, 2009  
Bonded Troy Felt - Insurance, Inc. 620-266-7010