

Hole

BOARD OF COUNTY COMMISSIONERS
1840 25th Street, Vero Beach, Florida 32960-3365



Telephone: (561) 567-8000

OFFICE OF October 10, 2001
COUNTY ATTORNEY

Paul G. Bangel* Ernest A. Cox, III, Esq.
County Attorney Gunster, Yoakley & Steward, P.A.
777 S. Flagler Drive

William G. Collins II* Phillips Point East Tower, Suite 500
Deputy County Attorney West Palm Beach, FL 33401
Facsimile 561-655-5677

Michael C. Zito
Assistant County Attorney

Re: Old Winter Beach Road

Dear Mr. Cox:

Consistent with previous correspondence, a copy of which is attached, I take this opportunity to reiterate this Office's position that an Indian River County right-of-way (Old Winter Beach Road) extends across the width of Hole in the Wall Island as well as across the southern tip of Pine Island. St. Johns River Water Management District Permit Number 4-061-0164-ERP, regarding Hole in the Wall Island, states: "Permit issuance does not relieve you from the responsibility of obtaining permits from any federal, state and/or local agencies asserting concurrent jurisdiction for this work."

The Indian River County Board of County Commissioners Resolution dated December 1, 1959, did not serve to vacate the entire subject right-of-way. Rather, Section 1.D. served to vacate only that portion of the seventy foot right-of-way lying east of Government Lots 1 and 2. (That part lying within Government Lots 1 and 2 in Section 1, Township 32 South, Range 39 East, was excepted from the vacation, and the remainder of Old Winter Beach Road was not described in the vacation.) Section 1.F. of the resolution did not apply to the subject right-of-way because, having been addressed in Section 1.D., Old Winter Beach Road was not among the "other public County roads situated within the limits of the Town of Indian River Shores" being vacated.

*Board Certified by the
Florida Bar Board of Legal
Specialization and Education
in City, County & Local
Government Law

Telephone:
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Suncom:
224-1424

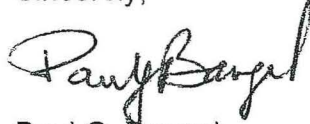
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Ernest A. Cox, III, Esq.
Gunster, Yoakley & Steward, P.A.
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If you would like to discuss this matter please feel free to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Paul G. Bangel".

Paul G. Bangel
County Attorney

Enclosure: Letter dated August 23, 1999, from Charles P. Vitunac

cc: Board of County Commissioners
James E. Chandler, County Administrator
Robert M. Keating, AICP, Community Development Director

BOARD OF COUNTY COMMISSIONERS

1840 25th Street, Vero Beach, Florida 32960

File

Telephone: (561) 567-8000



OFFICE OF
COUNTY
ATTORNEY

August 23, 1999

Charles P. Vitunac
County Attorney

Horse's Head, Ltd.
One John's Island Drive
Vero Beach, Florida 32963

William G. Collins II
Deputy County
Attorney

Re: Application #4-061-164A-ERP
Horse's Head, Ltd.

Terrence P. O'Brien
Assistant County
Attorney

Gentlemen:

It is our understanding that the St. John's River Water Management District granted the above application with a condition that the road bed bisecting Hole-in-the-Wall Island be breached to allow the free flow of water across the island.

Telephone:
Ext. 424

This letter restates the County's position that this 70' right-of-way on the island is County property as a result of action by the St. Lucie County Commission on June 2, 1923, Book 4, Page 77 of the Official records of St. Lucie County. The County has never relinquished any rights in this 70' right-of-way, which was for a number of years an active road known as State Road 508.

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It appears that your claim to title to this right-of-way is based on Resolution 108986 of the Board of County Commissioners dated December 1, 1959. This resolution purports to abandon "all other County Roads" within the limits of the Town of Indian River Shores. At the time of this resolution, the road in question was designated State Road 508. There is no record of that designation being removed; therefore, the resolution did not pertain to this property. The fact that County land lies unused for many years does not create an abandonment under Florida law.

e-mail:
cvitunac@indian-
river.lib.fl.us

In view of the foregoing, you are advised that any breach of this road bed and any incursion into the 70' County right-of-way will be viewed as a trespass by the County.

Please govern yourself accordingly.

Very truly yours,

Charles P. Vitunac
County Attorney

TPO/sw