Rights of Way to the Water

I. Nature of the tool

Many communities have public rights of way (ROWs) established by virtue of neighborhood plats. ROWs often serve as valuable beach and/or water access. Often times people do not understand the legal status of ROWs, but simply know that an area that leads to the water seems to be open to the public. In some cases much of the public does not know of the existence of ROWs that they could be using to access the water.

II. Relationship to waterfronts

The only ROWs that concern us in this context are those that offer access to the water. Development plats establishing streets sometimes show streets that lead to the water. In such a case, the plat establishing the right of way for a public road vests title to such land in public hands. Cases have come light in which local governments, under pressure or in conjunction with private or development interests, have freely vacated ROWs leading to the water. Such vacation of ROWs represents a needless loss of a very valuable public resource at a time when all local governments with waterfronts keenly feel the pressure to maintain water access.

III. Legal Issues

Upon acceptance of a subdivision plat by a local government, the ROWs shown on the plat become the public property of the local government.¹ Dedication of ROWs does not mean that such ROWs are always developed in accordance with the plat. When ROWs are not developed, state law allows for petitions to vacate² the ROW. Typically, abandonment of an ROW by a local government results in reversion of the property interest to the abutting land owners.³

Thus, property owners abutting ROWs may wish to see the ROWs vacated so that they can make exclusive use of the land. State law requires a noticed public meeting prior to the vacation or abandonment of any ROWs held by a county.⁴ Some local governments have adopted procedures more stringent than statutory requirements for the vacation of ROWs.⁵

IV. Pro & Cons

The pros of maintaining ROWs clearly outweigh the cons. Prohibitions on vacation of do not cost the local government anything. However, vacation of ROWs can be politically very expensive for a local government as the local population will typically view this as cronyism in politics.

¹ FLA. STAT. § 177.081(3) (2005).
² Vacate means that the local government abandons its ownership interest in the land.
³ FLA. STAT. § 177.085 (2005).
⁴ FLA. STAT. § 336.10 (2005).
V. Best policy practice

Local governments should address two separate issues in their policies on ROWs. First, they should address the existence of ROWs that can provide water access, and second, they should grant maximum protection to such ROWs.

To accomplish the first, local governments should undertake research to identify ROWs that provide water access. The Maine Coastal Program funds the “Right of Way Discovery Program.” This program provides grants to local governments to conduct detailed research to discover forgotten or overlooked ROWs that provide public access and reassert public rights over such ROWs.

Second, local governments need to protect ROWs. A number of local governments go well beyond state law requirements for a noticed public meeting before vacating ROWs. For example, Washington, Bay, and Palm Beach counties have identical provisions in their codes of ordinances that prohibit the vacation of ROWs. These state:

No right-of-way, road, street, or public accessway giving access to any publicly accessible waters in the County, shall be closed, vacated or abandoned except in those instances wherein the petitioner(s) offers to trade or give to the County comparable land or lands for a right-of-way, road, street or public accessway to give access to the same body of water, such access to be of such condition as not to work a hardship to the users thereof, the reasonableness of the distance and comparable land being left to the discretion of the Board of County Commissioners.6

While such prohibitions offer greater protection than state law, such ordinances can still be overcome by subsequent decisions of the city or county commission. The best policy is for local governments to amend their charter to include a blanket prohibition on ROWs that either currently do, or in the future could, offer access to the water. Bradenton Beach offers an excellent example. Article IV, section 11 of the Bradenton Beach charter states that “No city right-of-way that provides direct or indirect beach, bay or water access shall be sold or vacated by the City.”7

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6 Washington County, Florida, Code of Ordinances, sec. 10.03.03; Bay County, Florida, Code of Ordinances, sec. 12.04.03; Palm Beach County, Florida, Code of Ordinances, sec. 22-45.

7 Bradenton Beach, Florida, City Charter, art. IV, sec. 11.