



## MEMORANDUM

TO: Katherine Barbieri, Assistant County Attorney

FROM: Carly A. Fabien, Deputy City Attorney

SUBJECT: Mike's Organic Topsoil Variance

DATE: December 13, 2024

Marburger Ranch, LLC ("Property Owners") own the described parcel No. 4233-133-0001-000-4 ("Marburger Property") and have applied for a Variance of the road frontage requirements required by the Code, a Planned Non-Residential Development ("PNRD") Rezoning, a Road Paving Waiver, and a Conditional Use Permit in an attempt to legitimize the operation of Mike's Organic Topsoil, on the Marburger Property. Mike's Organic Topsoil is a vegetative debris recycling business—which is currently operating in violation of St. Lucie County's Land Development Code ("Code").

While the City of Port St. Lucie ("City") takes issue with the operations on the Marburger Property and opposes both the PNRD rezoning and conditional use permit for several reasons, including but not limited to the reasons stated herein; the proximity of the property to the McCarty Ranch Extension ("Water Preserve") and the fire risk which is involved with vegetative debris recycling. However, this memo serves to illustrate concerns specific to the Road Frontage Variance Request and Road Paving Waiver.

### **Applicable Code Requirements**

Section 7.02.03 of the St. Lucie County Land Development Code ("Code") requires that every permitted use in a PNRD "have access to a public street either directly or through an approved private road, vehicular accessway, a pedestrian way, or other area dedicated to public or private use." Assuming for argument the County grants the PNRD rezoning application and the Property Owners process a conditional use permit, Section 11.07.03, requires that the conditional use be served by an adequate roadway. Section 7.05.07 of the Code requires, generally, that "[a]ll new road and street construction...be paved according to standard county specifications." Finally,

7.04.01 of the Code requires AG-5 zoned properties to have a minimum road frontage of sixty (60) feet.

Section 7.05.07 of the Code provides an opportunity to apply for a waiver of the paved road requirements, which is heard by the County Board of Commissioners. Property owners have applied for both the Road Paving Waiver, pursuant to 7.05.07. as well as a variance from the road frontage requirements specified in Section 7.04.01 of the Code.

**Facts:**

The Property has no road frontage and has two (2) access points. One access point is located north of the Marburger Property. The north access point is undeveloped and likely not traversable by most vehicles. The second access point, and the one primarily used by those traveling to the Marburger Property, is a dirt path leading to the parcel located to the south and southeast of the Marburger Property. The dirt path access point is the access point at issue, as the Property Owners are relying on the dirt path as the access point to justify both the Road Frontage Variance and Road Paving Waiver. The dirt path, which provides ingress/egress from Rangeline Road to the Marburger Property, is owned by the City and maintained by the Rangeline Property Owners Association, Inc. POA ("City Property"). There is an access easement over the City Property for the benefit of the Marburger Property through an easement recorded in the public records at Book 170, Page 1348 of St. Lucie County on January 30, 1968, as enclosed herein (the "Easement").

The Easement grants and conveys to the Marburger Property "...a perpetual non-exclusive easement for constructing, using, maintaining and operating a road for traffic purposes, and for utilities over, under and upon" the City Property. While the language of the Easement does not indicate an upper limit to the use of the Easement for traffic purposes, courts clarify the ambiguity of use of easements by relying on the contemplated use of the easement at the time of its granting. *See Hillsborough Cnty. v. Kortum*, 585 So. 2d 1029, 1033 (Fla. 2d DCA 1991.) A property owner is subject to any easements established on a servient estate and while the easement holder has a right to the full enjoyment and use of the easement, that right cannot be increased to an extent "not reasonably necessary and [not] contemplated at the time the easement was created." *Id.* Further, a permitted increase in burden is not provided as a matter of right when the dominant estate substantially increases its use of its property. *See Terrill v. Coe*, 1 So. 3d 223, 224 (Fla. 5th DCA 2008)(stated that easement language evidenced perpetual use but did not permit increased

burden.) It is uncommon for easements to directly outline what would cause the easement to be overburdened, relying often on Court's to extract such scope from the plain meaning of the easement's language. *See City of Orlando v. MSD-Mattie, L.L.C.*, 895 So. 2d 1127, 1129 (Fla. 5th DCA 2005); *see also Terrill v. Coe*, 1 So. 3d 223, 225 (Fla.5th DCA 2008). Property owners cannot predict all the changes that a dominant estate will undergo which would impact how a property owner wishes to use an easement. If the scope of an easement cannot be easily ascertained from the four corners of the easement or its plain language, the legal extent of the right must be established by the intent of the parties at the time the easement was granted. *See Walters v. McCall*, 450 So. 2d 1139, 1141 (Fla. 1st DCA 1984).

While the language of the Easement does not expressly define what "overburdening" the easement would be, an examination of the intent and contemplated use of the easement in tandem with the property, in 1968, would indicate that the Easement was to support traffic related to agricultural purposes in existence at the time of the Easement's grant. At the time, the Easement was granted to the Marburger Property, the Marburger Property itself, as well as surrounding properties, were used for the types of agricultural purposes that do not create significant and regular traffic over the Easement. Specifically, the Marburger Property and surrounding properties were primarily used to raise cattle and grow trees or crops. While at the time of the Easement being granted the agricultural uses on the Marburger Property did create low levels of traffic, they were mostly intermittent ingress and egress of farming vehicles and the ingress and egress of those tasked with caring for the low impact agricultural operations, rather than a consistent steady flow of regular daily traffic.

The current unauthorized and intended use of the Marburger Property for vegetative debris recycling purposes, does create steady, regular, daily traffic, not intermittent traffic, and goes beyond the level of traffic contemplated by the grant of Easement. This is evidenced by high levels of traffic over the Easement since the vegetative debris recycling business has been operational, significantly a high level of truck traffic. According to data collected by the City, there are approximately 249 average daily trips along the dirt path during a five day period<sup>1</sup>, with a majority of these trips taking place between the hours of 7 a.m. to 8 a.m. and 12 p.m. and 1 p.m. A large percentage of the vehicles responsible for these trips are medium to large vehicles, including dump trucks and tractor-trailers. There have been reports to the City that

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<sup>1</sup> Monday through Friday. For a seven day period, including Saturday and Sunday, there are approximately 199 average daily trips. The reports referenced herein have not been analyzed by a licensed traffic consultant or engineer.

many of the vehicles are traveling at unsafe speeds, with clocked speeds as high, if not higher, than 55 MPH.<sup>23</sup> Additionally, according to the St. Lucie County's Amended Motion for Rehearing and Reconsideration of the St. Lucie County Code Enforcement Board, Property Owners admitted that "20 truck-loads...of material will be dumped onsite per day" and a total of "728,000 yards" will be delivered over time. Notably, during the eight (8) months that the property's operations would be in violation of County Code, an estimated three thousand two hundred (3,200) tractor-trailer trucks (eighteen (18) wheelers) would enter and exit the site, unloading approximately 132 million pounds of waste material on the site.

Per industry standards, agriculture uses typically generate low level traffic impacts, as low as single digit trips per day. As indicated in both the St. Lucie's County's Amended Motion for Rehearing and Reconsideration and the City's collected data, daily trips along the dirt path are as high as 300 trips per day, if not higher.<sup>4</sup> Additionally, the data indicates increased traffic of large, heavy vehicles, including dump trucks and tractor trailers. Typically, when providing information on a predicted increase in trips for changes to a property, factors are used which convert trips of large, oversized trucks to their trip equivalent to passenger vehicles. This often leads to a daily trip count that is even higher.

A daily trip count of this significance can damage the dirt path, as well as cause the dirt/dust on the dirt path to kick up and migrate from the path to the surrounding areas, such as collecting within the culverts or on other nearby infrastructure. This level of wear and tear is beyond what was contemplated with the original granting of an easement, when the majority of large trucks would travel the dirt path more

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<sup>2</sup>At this time, no traffic impact report has been reviewed by the City due to the Owner requesting a traffic impact report waiver on the basis that the primary access road is an easement. By not having a traffic impact report to review, the City must rely on its own collected data and the data provided by the County in the Amended Motion for Rehearing and Reconsideration to analyze the overall long-term impact this use will have on the City's property.

<sup>3</sup> The data collected and reference herein is not an official traffic impact report or study and the City reserves the right to conduct such study along the path in the future.

<sup>4</sup> While some of the traffic counted along the City owned dirt path may be vehicles to and from other properties besides the Marburger Property, a significant increase in traffic indicates that a high majority of the large trucks are traveling to the Marburger Property. The data collected and reference herein is not an official traffic impact report or study and the City reserves the right to conduct such study along the path in the future.

infrequently or even only seasonally, as is seen with agricultural parcels dedicated to growing and harvesting crops.

Finally, there are additional infrastructure concerns such as the need for a turn lane to and from the dirt path and a general unanticipated increase in the level of traffic in that area which affects not only the City but any other nearby property owner.

Summarily, this increase on a dirt path not only has the possible impacts of damaging the roads, it can also be dangerous for those traversing on the pathway, either for those travelling to and from the Marburger Property or the properties which abut the path.

The data and evidence proffered by the City showcases a clear overburdening of the Easement granted to the Marburger Property. In addition to the heavy large vehicular traffic, advertising by Mike's Organic Topsoil suggests the Easement may also be used as ingress/egress for customers visiting the business. This substantial increase of traffic on the dirt path over the Easement creates significant concerns, including to but not limited to a risk of damage to culverts located beneath the path, a lack of any fire safety instruments, such as fire hydrants, which would be necessary if a fire starts related to the traffic, and concern for the safety of those individuals traveling to and from the property or visiting the property. The dirt path is not large enough to support traffic traveling both directions simultaneous and an instance of a broken-down vehicle on the road could create a traffic pattern that makes it difficult for emergency vehicles to traverse the dirt path or any property located along the path.

It cannot be overstated that the Marburger Property is currently operating in violation of Sections 3.01.03, 11.05.00, 7.10.12 of the Code, therefore already overburdening the Easement granted by the City. However, granting the variance, road paving waiver, and subsequently the conditional permit, would further the continued overburdening of the dirt path, perpetuating risks of property damage and life safety concerns. These concerns not only impact the City but the POA, any property owner or additional dominant estate granted an easement over the City Property where the dirt path is located, as well as those using the dirt path to access any of the properties served by the Easement. Further, as aforementioned, the City has continuing concerns of the impacts this increased traffic could have on the Water Preserve, including but not limited to water pollution, overuse of the water supply subject to a fire incident, and an overall decrease in the overall quality and quantity of the City's water supply.

The City respectfully requests that the County deny the Road Frontage Variance and subsequent road Paving Waiver and consider the lack of appropriate access to the Property, as it relates to the current business operations, when deciding the Variance request.

Thank you.

cc.

J. Merejo, City Manager

M. Verillo, Senior Executive Administrative, City Manager

J. Padova, Executive Assistant, City Manager

R. Berrios, City Attorney

E. Hertz, Senior Deputy City Attorney

A. McClure, Paralegal

K. Matyjaszek, Utility Systems Director

D. Spriggs, Assistant Director, Public Works

B. Grubbs, Senior Planner, Planning and Zoning

D. Rhoden, Special Assistant to Chief Assistant City Manager, Utility Systems

J. Eason, Assistant Director, Utility Systems

EASEMENT AGREEMENT

THIS AGREEMENT, Made this 30<sup>th</sup> day of January, 1968, by and between MABEL CORPORATION, a Florida corporation, having offices at 141 West Jackson Blvd., Chicago, Illinois, (hereinafter referred to as MABEL CORPORATION); CENTER LAKE CORPORATION, a Florida Corporation, having offices at Orlando Florida, (hereinafter referred to as CENTER LAKE); SHAWNEE GROVES CORPORATION, a Florida Corporation, having offices at Daytona Beach, Florida, (hereinafter referred to as SHAWNEE); and GRANADA GROVES CORPORATION, a Florida Corporation, having offices at Orlando, Florida, (hereinafter referred to as GRANADA GROVES), their respective successors and assigns,

W I T N E S S E T H:

WHEREAS, all of the parties hereto are the owners and holders of property lying in Township 37 South, Range 38 East, Sections 25, 26, 27, 28, 33, 34, 35 and 36, St. Lucie County, State of Florida; and,

WHEREAS, all of the parties hereto and GEM FRUIT COMPANY, INC., a Florida Corporation, have heretofore entered into a certain Grant of Easements and Agreement dated January 7, 1966, and recorded April 12, 1966, in Official Records Book 143, Page 113, Public Records of St. Lucie County, Florida, whereby certain rights of way and utility easements were granted to provide access for all of said parties to their respective properties; and,

WHEREAS, title to the property owned by GEM FRUIT COMPANY, INC., at that time has now passed to MABEL CORPORATION by virtue of that certain Warranty Deed dated May 3, 1967 and recorded May 19, 1967 in Official Records Book 166, Page 1180, Public Records of St. Lucie County, Florida; and,

A strip of land fifty feet (50') in width running parallel and adjacent to the North right-of-way line of Canal C-23 extending East/West over Sections 35 and 34, and the East quarter (E $\frac{1}{4}$ ) of Section 33 in Township 37 South, Range 38 East.

4. SHAWNEE hereby grants and conveys unto all of the other parties hereto their successors and assigns a perpetual non-exclusive easement for constructing, using, maintaining and operating a road for traffic purposes, and for utilities over, under and upon the following described property in St. Lucie County, Florida, to-wit:

A strip of land fifty feet (50') in width running parallel and adjacent to the North right-of-way line of Canal C-23 extending East/West over the East half (E $\frac{1}{2}$ ) of the West Three Quarters (W-3/4) of Section 33, Township 37 South, Range 38 East.

5. All of the parties hereto for themselves and their successors and assigns hereby covenant and agree, as a covenant running with the land, that all of the easements herein granted shall be only for the use and benefit of the owners of property located in Sections 25, 26, 27, 28, 33, 34, 35 and 36, Township 37 South, Range 38 East, St. Lucie County, State of Florida, or their lessees, successors and assigns.

IN WITNESS WHEREOF the parties hereto have executed this instrument as of the day and year first above written.

Signed, Sealed and Delivered in the presence of:

Lorraine Hendrix  
Edward J. Dink

MABEL CORPORATION

By: James H. Hendrix Vice President

ATTEST: James T. Givins

By: James T. Givins Assistant Secretary

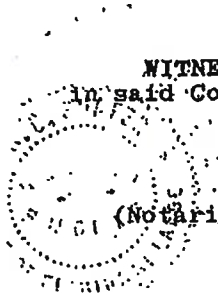
CENTER LAKE CORPORATION

By: Joseph M. Starnes Vice President

ATTEST: Philip J. Caruso

By: Philip J. Caruso Secretary





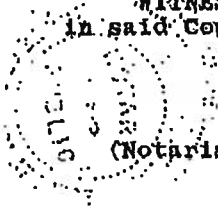
WITNESS my signature and official seal at Orlando, Florida,  
in said County and State, on this 30<sup>th</sup> day of January, 1968.

J. G. Stager  
Notary Public, State of Florida

My Commission Expires:  
Notary Public, State of Florida at Large.  
My Commission Expires Oct. 15, 1968.

STATE OF FLORIDA )  
COUNTY OF VOLUSIA ) ss:

I HEREBY CERTIFY that on this day, before me, an officer duly  
authorized in the State and County aforesaid to take acknowledg-  
ments, personally appeared CHARLES I. MOORE, JR. as  
Vice President and PHILLIP M. BAUGH as  
Secretary of SHAWNEE GROVES CORPORATION, a corpora-  
tion under the laws of the State of Florida, to me known to be the  
persons who signed the foregoing instrument as such officers, and  
acknowledged the execution thereof to be their free act and deed  
as such officers, for the uses and purposes therein mentioned, and  
that the said instrument is the act and deed of said corporation.



WITNESS my signature and official seal at Daytona Beach, Florida  
in said County and State, on this 23<sup>rd</sup> day of January, 1968.

James E. Dyer  
Notary Public, State of Florida

My Commission Expires: Nov. 15, 1971

STATE OF FLORIDA )  
COUNTY OF ORANGE ) ss:

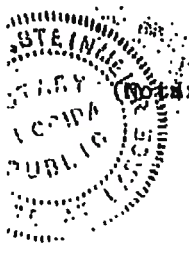
I HEREBY CERTIFY that on this day, before me, an officer  
duly authorized in the State and County aforesaid to take acknow-  
ledgments, personally appeared W. J. JAMES as  
Vice President and GEORGE BORYSEWICH as  
Treasurer of GRANADA GROVES CORPORATION, a corporation  
under the laws of the State of Florida to me known to be the persons  
who signed the foregoing instrument as such officers, and acknowledged  
the execution thereof to be their free act and deed as such officers  
for the uses and purposes therein mentioned, and that they affixed  
thereto the official seal of said corporation, and that the said  
instrument is the act and deed of said corporation.

WITNESS my signature and official seal at Orlando, Florida,  
in said County and State, on this 26<sup>th</sup> day of January, 1968.

Helena L. Steinman  
Notary Public, State of Florida

My Commission Expires:

Notary Public, State of Florida at Large.  
My Commission Expires Mar. 23, 1968.



FILED AND RECORDED  
ST. LUCIE COUNTY, FLA.  
RECORD VERIFIED

164266

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R. Barrett  
CLERK CIRCUIT COURT 5

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