



CITY OF CLEARWATER

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CITY ATTORNEY'S OFFICE

Opinion of Title

As part of the City of Clearwater's (the "City") § 253.12(6) application for quitclaim deed to clear title to formerly sovereign lands over property commonly referred to as 302 Seminole St., Clearwater, Florida (a. k. a. the "Seminole Boat Ramp," also referred to herein as the "Property" or "Subject Property"), the undersigned attorney hereby submits this Opinion of Title on behalf of the City.

It is the opinion of the undersigned attorney that the City of Clearwater has claim to title of the Property under Fla. Stat. § 253.12 as detailed below. This Opinion of Title is submitted as part of the City's application, formally requesting that the State recognize the City's interests in the Property and execute a quitclaim deed as contemplated by § 253.12(6) and Rule 18-21.019 F.A.C.

We look forward to your favorable response.

I. Factual Background

The City's interest in the Property has long been recognized by the State of Florida and is evidenced by historical records. The Seminole Boat Ramp as it exists today was constructed with State and Federal funding provided in 1967 with no known issues raised at that time regarding the City's ownership of the site. Presumably because the City's use and improvement of the Property for the benefit of the Public goes back much further in time.

In 1915, the City of Clearwater electorate voted to amend the City Charter, giving women the right to vote. In the first act of municipal suffrage for women on October 23, 1916, the City's voters approved the issuance of a \$10,000 bond to aid in the construction of a two-mile bridge across Clearwater Bay from Seminole Street out to the barrier island. The entrance to said bridge was located at the Subject Property. Sue Barco was stated as being the first woman to cast her ballot in favor of the bond. ¹

Four years prior, in October 1912, Ms. Barco platted her land, which included the waterfront properties immediately north of Seminole St. and east of the current day boat ramp property, which was submerged lands at the time. *See* Exhibit E1. As you can see from the original Plat, the western lots are platted to the mean high water line, which is represented by the meandering lines representing the western edge of lots 19-23.

¹ "A History of Clearwater, Florida" By: The Women's Club of Clearwater, Published March 1917, The Clearwater Evening Sun; available here: <https://www.clearwaterhistoricalsociety.org/history/documents/>

Mark Bunker, Councilmember
Kathleen Beckman, Councilmember

Brian J. Aungst Sr., Mayor



David Allbritton, Councilmember
Lina Teixeira, Councilmember

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The City began acquiring property in this area in 1910, presumably as part of its plans to construct a bridge from Seminole Street out to the beach. *See* E2. Ms. Barco later conveyed several lots to the City by reference to her Plat in 1915 as well as others who purchased lots from Ms. Barco around that time. *See* Exhibit's E3-E5. By 1915, the City had perfected its ownership of the waterfront property east of the subject area, and just before the referendum was put to voters to issue the bond for construction of the bridge. Since the deeds reference the Plat, and the Plat shows the property lines as the water's edge, the City obtained the riparian rights to those properties in these conveyances.

In 1917, the first public bridge to Clearwater Beach was completed and in active use. An aerial from 1926 shows the location of that bridge as well as the beginnings of construction of the newer bridge to the South. *See* E6. By 1942, the Seminole Street Bridge was no longer in use having been severely damaged by a hurricane, an aerial from that time shows that portions of the bridge remained in use as a pier. *See* E7.

A more detailed aerial from 1954 confirms that the bridge-turned-pier remained in use at that time, with the area in question clearly being filled-in and functioning as a public beach and boat access area in essentially the same footprint as the 1967 improvements that make up what is in place today. *See* E8.

The undersigned attorney interviewed and obtained an affidavit from 97-year-old Donald Heiser, who was employed by the boat yard next door, Clearwater Bay Marine Ways, Inc. for many years beginning in 1955. He authenticated the 1954 aerial as an accurate depiction of the property at that time by confirming that the City filled in the area at that time, prior to 1957. *See* Application Exhibit F.

In 1957, the City began to acquire title to other areas of previously submerged lands receiving a deed from Clearwater Bay Marine Ways, Inc. for a northern portion of the Property (*See* E9), and later in 1965, deeds from both Belleair Bayou, Inc. (*See* E10) and the Trustees of the Internal Improvement Fund of the State of Florida. *See* E11.

Subsequently in 1967, the City would receive funding from the State of Florida's Outdoor Recreational Development Council for the "construction of four modern boat launching ramps, car and trailer parking, picnicking facilities, a concrete bulkhead, catwalks and landscaping." *See* E12.

As an aside, Perpetual Canal Right of Way Easements recorded in Official Record Book 1104, page 532, and Book 1113, page 717, of the Public Records of Pinellas County, Florida, dated February of 1961 - both refer to the Subject Property as "Seminole Fill" in their descriptions for easements in the adjacent channel.

This information coupled with the fact that the Trustees only conveyed a small portion of the formerly submerged land in 1965 prior to the State funding the improvements indicates that the State likely assumed the City's ownership of the area in question back in 1967 when funding was provided for construction of the boat ramp.

Fast forward to 2018, and the City began developing a new master plan for the boat ramp with plans for improvements that included an expanded floating dock area on the south side of the parcel. A diligent title search at that time revealed that a private entity, Belleair Bayou, Inc., may



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not have conveyed all of its interests in submerged land due to a discrepancy in legal descriptions. *See* E13, "Gatliff Title Report".

The City inquired with the State at that time as to its ownership interests and was provided a letter from Marcus J. Ashman, which concluded that "the lands lying above the current mean high water line at the subject site are not state owned sovereignty lands." *See* E14.

It was also identified that the City may have conveyed an interest in a small portion of the Property to West Coast Inland Navigation District ("WCIND"), which no longer has jurisdiction over the area. As such, WCIND conveyed back to the City its interests. *See* E15.

As part of the City's efforts to clear title and move forward with repairs and improvements, the City filed a quiet title action against Belleair Bayou, and received an Order confirming that the City had a prescriptive easement to the areas of formerly submerged land where Belleair Bayou may have had a claim due to errors in legal descriptions. *See* E16.

In early 2023, the City discovered that the existing boat ramp was in need of replacement, so the City put its larger plans on hold in order to repair the existing facilities. Having completed plans to replace the existing boat ramps, the City submitted to FDEP for approval and permitting. However, the district office informed the City that there was no showing of "sufficient upland interests" in the upland area adjacent to the boat ramp in order to justify the issuance of a permit to replace the existing facilities.

Based on that, FDEP informed the City that it was unable to authorize the repair work until the City completed the § 253.12(6) application.

II. Legal Analysis

The Florida legislature, in 1856, enacted the Riparian Act, in which the State of Florida "divested" itself of:

"[A]ll right, title and interest to all lands covered by water, lying in front of any tract of land owned by a citizen of the United States ... lying upon any navigable stream ... as far as to the edge of the channel, and [the state] hereby vest[s] the full title to the same in and unto the riparian proprietors, giving them the full right and privilege to build wharves ... and to fill up from the shore, bank or beach, as far as may be desired, not obstructing the channel, but leaving full space for the requirements of Commerce, and upon lands so filled in, to erect warehouses or other buildings ... also confirming to the riparian proprietors all improvements which may have heretofore been made upon submerged lands, for the purposes within mentioned."

Mark Bunker, Councilmember
Kathleen Beckman, Councilmember

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Ch. 791, § 1, Laws of Florida (1856)(emphasis added).

The 1856 Riparian Act was later repealed in 1921, and replaced by the Butler Act; however, the Butler Act similarly granted to upland or riparian owners “full title” to the submerged lands which were and thereafter filled in or otherwise permanently improved. The Butler Act was expressly repealed in 1957, and replaced with the Bulkhead Act, which confirms title for upland riparian owners in “all lands heretofore filled or developed”. *See* § 253.129.

The purpose of the Butler Act was “to stimulate and encourage the improvement of submerged lands and to improve the foreshore in the interest of commerce and navigation.” *Duval Eng'g and Contracting Co. v. Sales*, 77 So.2d 431, 433 (Fla.1954).

The Butler Act permitted upland riparian owners to obtain title to submerged lands abutting land owned by them, provided that the submerged land was “actually bulk-headed or filled in or permanently improved continuously from high water mark in the direction of the channel.” *City of W. Palm Beach v. Bd. of Trustees of Internal Imp. Tr. Fund*, 714 So. 2d 1060, 1062 (Fla. Dist. Ct. App. 1998) (footnote omitted), *approved sub nom. City of W. Palm Beach v. Bd. of Trustees of the Internal Improvement Tr. Fund*, 746 So. 2d 1085 (Fla. 1999).

Based on the factual summary discussed above, the City’s use and improvement of this area dates back as early as 1915 with the construction of the original Seminole Street Bridge, and the use and maintenance of the Property continues through to today. While the City could potentially show that at least some areas of the Property may have been filled or permanently improved prior to 1951, the 1954 aerial photo along with the affidavit of Mr. Heiser are the most persuasive pieces of evidence to show conclusively that the Subject Property was “filled in” sometime around 1954.

As such, the City has claim to the area, and thereby requests a quitclaim deed pursuant to § 253.12(6) to clear title to the Property. A survey, sketch, and legal description have been prepared in conjunction with this effort.

III. Conclusion

Thank you for your courtesy and thoughtful consideration in this Matter, we look forward to resolving this with you as soon as possible, so that we can repair the boat ramps and keep them open for the Public’s use and enjoyment.

Jerrold D. Simpson

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