

**CITY OF MIAMI
CITY ATTORNEY'S OFFICE
MEMORANDUM**

TO: Albert Dominguez, Director of Public Works
FROM: Alejandro Vilarello, City Attorney
DATE: May 29, 2003
RE: Status of Alley North of N.E. 61st Street at Approximately N.E. 5th Avenue
MIA # 03-10

Our office has been presented with the following matter for determination:

WHETHER THE ALLEY LOCATED NORTH OF
N.E. 61ST STREET AT APPROXIMATELY N.E.
5TH AVENUE WAS PROPERLY VACATED
AND/OR ABANDONED BY THE CITY OF
MIAMI IN 1968.

Our answer is in the affirmative.

A brief summary of the events, which have transgressed thus far, are as follows:

- A Corporation has applied for a building permit with the City of Miami ("City") and has been denied a permit due to an alley located at North of N.E. 61st Street at approximately N.E. 5th Avenue ("alley") next to his property.
- On or about September 25, 2002, the former Public Works Director received correspondence addressing the City's denial of a building permit on an adjoining lot to the above-referenced alley. The letter included a copy of Resolution No. 39977 that addressed the City's abandonment and vacation of the alley by disclaiming any right, title or interest it may have to the alley. (Letter attached hereto as Exhibit "A").
- On or about September 30, 2002, the former Public Works Director responded to the letter and advised that the resolution and disclaimer submitted were not sufficient evidence of the alley's closure. (Letter attached hereto as Exhibit "B")

Although not completely executed, it is our determination that the resolution and disclaimer addressing this matter are valid for the following reasons:

- The minutes of the Commission Meeting held on September 12, 1968 stated that the resolution was motioned, seconded and voted upon. There was a unanimous vote to have the resolution passed. (Minutes of meeting attached hereto as Exhibit "C").
- The City Clerk's Office has certified Resolution No. 39977 as passed and adopted by the City Commission. Furthermore, the City Clerk's Office has advised that they consider this an official resolution although it is not completely executed.
- And the concerns addressed in your predecessor's letter as to the language in the disclaimer, Resolution No. 39977 is referred to and incorporated into the disclaimer by reference, therefore allowing the City to vacate the property.
- For over 20 years, the Miami-Dade County Property Appraiser has referenced the legal description with the inclusion of the alley as follows:

Lemon City Whits PB B-32 Lots 56 & 57 & W ½ OF 20
Ft Alley Lyg E & Adj to Lot 57 Per Res #39977 Less
S4ft thereof for St Lot Size 10560 Square Feet.

Additionally, F.S. §160.061(4) provides in pertinent part that "All ordinances or resolutions passed by the governing body shall become effective 10 days after passage or as otherwise provided therein." Furthermore, there is a five-year statute of limitations to object to the validity of the resolution or ordinance. F.S. §160.041(7).

Also, the former Director of Public Works addressed concerns that the terms "closed", "vacated" and/or "abandoned" are not included in the text of the resolutions, but rather the terms "disclaim any interest" and "permit to be taken over by the owners of abutting property" was used. These words are synonymous to each other.¹

¹ Black's Law Dictionary provides for the following definitions:

- Vacate: to annul; to set aside; to cancel or rescind. To render an act void; as, to vacate an entry of record, or a judgment. To put an end to; as, to vacate a street. To move out; to make vacant or empty; to leave; especially, to surrender possession by removal; to cease from occupancy.
- Closed: to finish, bring to an end, conclude, terminate, complete, wind up.
- Abandoned: to desert, surrender, forsake or cede. Abandoned Property: property over which the owner has given up dominion and control with no intention of recovering it.
- Disclaimer: the repudiation or renunciation of a claim or power vested in a person or which he had formerly alleged to be his.

It is our conclusion that Resolution No. 39977, motioned and voted on by the City Commission on September 12, 1968, properly vacated the alley located North of N.E. 61st Street at approximately N.E. 5th Avenue. The City Commission unanimously voted to have the alley closed and the abutting owners each received one-half of the alley.

Should you have any questions, please feel free to contact me at (305) 416-1800.

AV/ive

c: Joel E. Maxwell, Deputy City Attorney
Len Helmers, Chief Professional Engineer
Vicky Garcia-Toledo, Esq.

BILZIN SUMBERG DUNN BAENA PRICE & AXELROD LLP

A PARTNERSHIP OF PROFESSIONAL ASSOCIATIONS

2500 FIRST UNION FINANCIAL CENTER

200 SOUTH BISCAYNE BOULEVARD • MIAMI, FLORIDA 33131-2336

TELEPHONE: (305) 374-7580 • FAX: (305) 374-7593

E-MAIL: INFO@BILZIN.COM • WWW.BILZIN.COM

BROWARD: (954) 356-0030

Vicky Garcia-Toledo, P.A.
Direct Dial: (305) 350-2409
Direct Fax: (305) 351-2233
E-Mail: vleiva@bilzin.com

September 25, 2002

RECEIVED
2002 SEP 25 PM 2:10
CITY OF MIAMI
6

John H. Jackson, PE
Director of Public Works
And Supervisor of Plats
City of Miami
444 S.W. 2nd Avenue
Miami, FL 33130

Re: Vacated/Abandoned Alley at NE 64th Street and Approximately 5th Avenue

Dear Mr. Jackson:

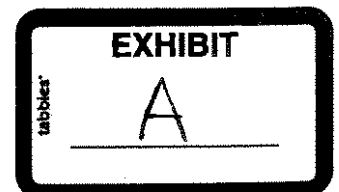
The purpose of this letter is to submit to your attention documents issued by the City of Miami that disclaimed, vacated and abandoned a particular 20-foot alley located between Lots 57 and 58 of Whites Lemon City Subdivision as recorded in Plat Book "B" at page 32 of the Public Records of Dade County Florida. Said documents as enclosed with this letter are: a disclaimer issued in 1968 by the City of Miami as well as a plat labeled R-32 page 32, and which shows the notation on the plat of said release and abandonment by the following:

"Resolution No. 39977 abandoned this alley one-half to each lot 57, 58"

Said statement followed by a line and arrow pointing to the 20-foot wide dead-end easement between Lots 57 and 58.

I have met with Mr. Len Helmers of your office and shared with him the data and information described above. I have also discussed with Mr. Helmers the question of whether based on these documents, a building permit can issue for the 10 feet of abandoned alleyway which reverted back to and are part of lot 57. Mr. Helmers instructed me to forward this letter to your attention and by copy below, I am also forwarding to him copies of the documents and this letter.

\\73277\13743\# 571898 v 1
9/25/02 9:26 AM



John H. Jackson, PE


Page 2

September 25, 2002

It is respectfully requested that you issue a letter advising us, that based on this documentation, that the 10' feet from the easement reverted back to Lot 57 and as such the client may obtain a building permit.

Thank you in advance for your cooperation in this matter.

Sincerely,



Vicky Garcia-Toledo

cc: Mr. Len Helmers
Robert Lederman, Esq.

City of Miami

JOHN H. JACKSON, P.E.
Director



CARLOS A. GIMENEZ
City Manager

September 30, 2002

Ms. Vicky Garcia-Toledo
Bilzin, Sumberg, Dunn, Baena, Price & Axelrod, LLP
2500 First Union Financial Center
200 South Biscayne Boulevard
Miami, Florida 33131-2336

Dear Ms. Garcia-Toledo:

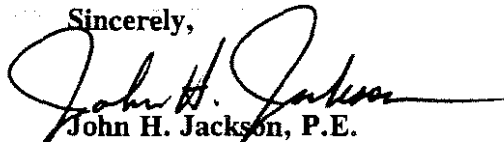
STATUS OF ALLEY NORTH OF N.E. 61 STREET AT APPROXIMATELY N.E. 5 AVENUE

I have received your documentation concerning the alley located north of N.E. 61 Street at approximately N.E. 5 Avenue and have the following comments.

City of Miami Resolution No. 39977 adopted September 12, 1968 authorizes the City Manager and City Clerk to execute a "disclaimer" on behalf of the City of Miami of "any and all right, title or interest" in the alley located between lots 57 and 58 of Whites Lemon City subdivision as recorded in plat book B and page 32. A close review of the contents of the resolution and both disclaimer documents reveals that the terms "closed", "vacated" and/or "abandoned" are not included anywhere in the text. However, the terms "taken over" and "each receiving one-half of the alley" are included in the preamble of the resolution. Additionally, since a resolution does not require a public hearing as does an ordinance, it is not certain if this action included public notice.

For these reasons, I have determined that the alley located north of N.E. 61 Street at approximately N.E. 5 Avenue has not been "vacated/abandoned". The hand written notation on the City's copy of the Whites Lemon City plat concerning this alley cannot be substantiated by Resolution No. 39977. If you desire to further explore the intent of the terms contained in the preamble of the resolution, please contact the Plat and Street Committee's legal counsel, Ms. G. Miriam Maer, at 305-416-1832.

Sincerely,


John H. Jackson, P.E.
Director

JHJ/JRA/LJH/gc

c: G. Miriam Maer, Assistant City Attorney/w copy of documents
Frank McMahon, City Surveyor

bc: Civil Engineering
Central



EXHIBIT "A"

cms
9/3/68

RESOLUTION NO. 39977

A RESOLUTION AUTHORIZING THE CITY MANAGER AND CITY CLERK TO EXECUTE AND DELIVER DISCLAIMERS FOR A DEAD-END, 20-FOOT WIDE ALLEY EXTENDING NORTHWARD FROM N.E. 61 STREET BETWEEN BISCAYNE BOULEVARD AND N.E. 5 AVENUE.

WHEREAS, there is a 20 foot, dead-end alley extending northward from N.E. 61 Street between Biscayne Boulevard and N.E. 5 Avenue; and

WHEREAS, the alley serves no useful purpose for the City, nor does it contain any underground or overhead utilities and is not used by the Department of Sanitation for garbage or trash pickup; and

WHEREAS, it appears to be in the best interest of the City to disclaim any interest in the alley and to permit it to be taken over by the owners of abutting property, each receiving one-half of the alley, the names of said owners appearing in Section 1 hereof; and

WHEREAS, the Department of Public Works and the Zoning Division of the Building Department concur in the recommendation of the City Attorney's office that the aforementioned Disclaimers be executed and that the City relinquish any and all right, title or interest in the aforesaid alley;

"SUPPORTIVE
DOCUMENTS
FOLLOW"

"DOCUMENT INDEX
ITEM NO. 20"

CITY COMMISSION
MEETING OF
SEP 12 1968

39977

D I S C L A I M E R

THIS DISCLAIMER, made this _____ day of _____ A.D. 1968,
by and between THE CITY OF MIAMI, a Municipal Corporation of the State
of Florida, in the County of Dade, party of the first part and ROSE FATH
a widow, party of the second part:

WHEREAS, this DISCLAIMER has been authorized by Resolution
No. _____ passed and adopted the _____ day of _____ A.D. 1968,
by THE CITY OF MIAMI, a Municipal Corporation of the State of Florida,
and the terms and conditions set forth in said Resolution are made a
part hereof as though set forth in full herein, and a copy of said Reso-
lution is attached hereto as EXHIBIT "A";

WITNESSETH

THAT THE CITY OF MIAMI, for and in consideration of the sum of
ONE (\$1.00) DOLLAR paid by the party of the second part, the receipt
whereof is hereby acknowledged, HEREBY DISCLAIMS any and all right, title,
or interest to the following described parcel of land situate, lying and
being in the City of Miami, County of Dade and State of Florida; to wit:

THE WEST ONE-HALF (1/2) LESS THE SOUTH 4 FEET
OF A 20 FOOT WIDE ALLEY LYING EAST OF, AND
ADJACENT TO AND ABUTTING THE EAST PROPERTY
LINE OF LOT 57 OF WHITES LEMON CITY, AS RECORDED
IN FLAT BOOK "B" AT PAGE 32 OF THE PUBLIC RECORDS
OF DADE COUNTY, FLORIDA. THE SOUTH 4 FEET BEING
RETAINED BY THE CITY OF MIAMI, FLORIDA FOR STREET
AND SIDEWALK PURPOSES.

SUBJECT TO THE FOLLOWING:

1. That nothing in this DISCLAIMER shall divest
THE CITY OF MIAMI, FLORIDA, its successors
and assigns from that portion of the property
presently used for street and sidewalk purposes.
2. TAXES imposed against said property.
3. ASSESSMENTS imposed against said property.

"SUPPORTIVE
DOCUMENTS
FOLLOW"

STATE OF FLORIDA)
)
COUNTY OF DADE)

I, an officer duly authorized to take acknowledgments and administer oaths, HEREBY CERTIFY that on this _____ day of _____ A.D. 1968, personally appeared before me, M. L. Reese and F. L. Correll, known to me to be the City Manager and City Clerk, respectively of THE CITY OF MIAMI, a MUNICIPAL CORPORATION in and under the Laws of the STATE OF FLORIDA, and known to me to be the persons who executed the foregoing instrument, and that they severally acknowledged the execution thereof to be their free and voluntary act and deed as such officers, for the uses and purposes therein expressed, and that they affixed thereto the official seal of the said MUNICIPAL CORPORATION, all by and with authority of Law and of the City Commission, and that said instrument is the free and formal act of the said MUNICIPAL CORPORATION.

WITNESS my hand and official seal in the said CITY OF MIAMI, COUNTY OF DADE and STATE OF FLORIDA, the day and year aforesaid.

THIS INSTRUMENT IS EXECUTED
PURSUANT TO RESOLUTION NO. _____
PASSED AND ADOPTED
_____.

APPROVED AS TO FORM & LEGALITY

City Attorney

Notary Public, State of Florida

My Commission Expires

APPROVED AS TO DESCRIPTION

Director, Department of Public Works

This instrument was prepared by
Ernest C. Geiger
Department of Public Works
City of Miami, Florida

"SUPPORTIVE
DOCUMENTS
FOLLOW"

IN WITNESS WHEREOF, THE CITY OF MIAMI, a Municipal Corporation
of the State of Florida, has caused this instrument to be executed in
its name and its corporate seal to be affixed hereto, by its City Manager
and City Clerk, both whereunto duly authorized this _____ day of
A. D. 1968

Signed, Sealed and Delivered in the
presence of:
WITNESSED TO BOTH SIGNATURES

BY: _____
M. L. Reese, as City Manager

ATTEST: _____
F. L. Correll, as City Clerk

"SUBJECTIVE
DOCUMENTS
FOLLOW"

STATE OF FLORIDA)
)
COUNTY OF DADE)

I, an officer duly authorized to take acknowledgments and administer oaths, HEREBY CERTIFY that on this _____ day of _____ A.D. 1968, personally appeared before me, M. L. Reesc and F. L. Correll, known to me to be the City Manager and City Clerk, respectively of THE CITY OF MIAMI, a MUNICIPAL CORPORATION in and under the Laws of the STATE OF FLORIDA, and known to me to be the persons who executed the foregoing instrument and that they severally acknowledged the execution thereof to be their free and voluntary act and deed as such officers, for the uses and purposes therein expressed, and that they affixed thereto the official seal of the said MUNICIPAL CORPORATION, all by and with the authority of Law and the City Commission and that said instrument is the free and formal act of the said MUNICIPAL CORPORATION.

WITNESS my hand and official seal in the said CITY OF MIAMI, COUNTY OF DADE and STATE OF FLORIDA, the day and year aforesaid.

THIS INSTRUMENT IS EXECUTED
PURSUANT TO RESOLUTION NO. _____
PASSED AND ADOPTED _____

APPROVED AS TO FORM & LEGALITY

City Attorney

Notary Public, State of Florida

My Commission Expires

APPROVED AS TO DESCRIPTION
W. J. Geiger

Director, Department of Public Works

This instrument was prepared by
Ernest C. Geiger
Department of Public Works
City of Miami, Florida

"SUPPORTIVE DOCUMENTS FOLLOW!"

DISCLAIMER

THIS DISCLAIMER, made this day of A.D. 1968 by and between THE CITY OF MIAMI, a Municipal Corporation of the State of Florida, in the County of Dade, party of the first part and JOHN T. ROSETTI and MARY R. ROSSETTI, his wife, parties of the second part:

WHEREAS, this DISCLAIMER has been authorized by Resolution No. passed and adopted the day of A.D. 1968, by THE CITY OF MIAMI, a Municipal Corporation of the State of Florida, and the terms and conditions set forth in said Resolution are made a part hereof as though set forth in full herein, and a copy of said Resolution is attached hereto as EXHIBIT "A";

WITNESSETH

THAT THE CITY OF MIAMI, for and in consideration of the sum of ONE (\$1.00) DOLLAR paid by the parties of the second part, the receipt whereof is hereby acknowledged, HEREBY DISCLAIMS any and all right, title or interest to the following described parcel of land situate, lying and being in the CITY OF MIAMI, County of Dade and State of Florida; to wit:

THE EAST ONE-HALF (½) LESS THE SOUTH 4 FEET OF A 20 FOOT WIDE ALLEY LYING EAST OF, AND ADJACENT TO AND ABUTTING THE WEST PROPERTY LINE OF LOT 58 OF WHITES LEMON CITY, AS RECORDED IN PLAT BOOK "B" AT FACE 32 OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA. THE SOUTH 4 FEET BEING RETAINED BY THE CITY OF MIAMI, FLORIDA FOR STREET AND SIDEWALK PURPOSES.

"SUPPORTIVE
DOCUMENTS
FOLLOW"

SUBJECT TO THE FOLLOWING:

1. That nothing in this DISCLAIMER shall divest THE CITY OF MIAMI, FLORIDA, its successors or assigns from that portion of the property presently used for street and sidewalk purposes.
2. Taxes imposed against said property.
3. Assessments imposed against said property.

IN WITNESS WHEREOF, THE CITY OF MIAMI, A MUNICIPAL CORPORATION OF THE STATE OF FLORIDA, has caused this instrument to be executed in its name and its corporate seal to be affixed hereto, by its City Manager and City Clerk, both there unto duly authorized this day of A.D. 1968.

Signed, Sealed and Delivered
in the Presence of:
WITNESSED TO BOTH SIGNATURES

THE CITY OF MIAMI, FLORIDA
By _____
M.L. Reese, as City Manager

ATTEST:

F. L. Correll, as City Clerk

"SUPPORTIVE
DOCUMENTS
FOLLOW"

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)
CITY OF MIAMI)

I, Priscilla A. Thompson, City Clerk of the City of Miami, Florida, and keeper of the records thereof, do hereby certify that the foregoing pages numbered 1 through 8, inclusive, constitute a true and correct copy of a resolution and minutes passed and adopted by the City Commission at the meeting held on the 12th day of September, 1968.

SAID RESOLUTION WAS DESIGNATED RESOLUTION NO. 39977.

IN WITNESS WHEREOF, I hereunto set my hands and impress the Official Seal of the City of Miami, Florida, this 5th day of September, 2002.

PRISCILLA A. THOMPSON
City Clerk
City of Miami

By 
Deputy Clerk



32. ALLEY CLOSING - NE 61ST ST NORTH, BETW'N BISCAYNE BLVD & NE 5TH AVE:

The following resolution was introduced by Mrs. Range, who moved its adoption:

RESOLUTION NO. 39977

A RESOLUTION AUTHORIZING THE CITY MANAGER AND CITY CLERK TO EXECUTE AND DELIVER DISCLAIMERS FOR A DEAD-END, 20-FOOT WIDE ALLEY EXTENDING NORTHWARD FROM NE 61ST STREET BETWEEN BISCAYNE BOULEVARD AND NE 5TH AVENUE

(Here follows body of resolution, omitted here and on file in the City Clerk's office)

Upon being seconded by Mr. Kennedy the resolution was passed and adopted by the following vote - AYES: Messrs. Christie, Ferre, Kennedy, Mrs. Range and Mayor Clark. NOES: None.

Prior to roll call on the resolution W. T. Eefting, Director of Public Works, stated that this alley had never been opened by the City; that it "starts nowhere and goes nowhere" and that the abutting property owners had been maintaining it.

Mr. Ferre expressed the opinion that this would permit the property to be added to the City's tax rolls and would relieve the City of any liability for damages suffered by anyone in connection with the property and from the obligation to maintain it.

33. SE 12TH STREET STORM SEWER - PROVIDING FUNDS & NOTICE FOR BIDS:

The following resolution was introduced by Mr. Christie, who moved its adoption:

RESOLUTION NO. 39978

A RESOLUTION ALLOCATING \$14,000.00 FROM STORM SEWER BOND FUND - 1958 GENERAL OBLIGATION BOND ISSUE, AND AUTHORIZING THE CITY MANAGER TO ADVERTISE FOR SEALED BIDS FOR SE 12TH STREET STORM SEWER OUT-FALL - 1968

(Here follows body of resolution, omitted here and on file in the City Clerk's office)

Upon being seconded by Mr. Kennedy the resolution was passed and adopted by the following vote - AYES: Messrs. Christie, Ferre, Kennedy, Mrs. Range and Mayor Clark. NOES: None.

34. URBAN RENEWAL PUBLIC WORKS PROJECT #2 - PROVIDING FUNDS & NOTICE FOR BIDS:

The following resolution was introduced by Mrs. Range, who moved its adoption:

9-12-68

EXHIBIT

C

tabbles