From: Fredyma, John
Sent: Wednesday, August 13, 2014 8:20 AM
To: Sweigert, Rebecca
Cc: Lis, Carol; Coachman, Howard; Workman, Elizabeth
Subject: RE: Ten Mile Canal ROW easement
Attachments: 20130226141501531.pdf

Becky,

The permitting of a dock on or along Ten Mile Canal requires careful consideration insofar as it is not the same as permitting a dock on or along a platted canal that has been dedicated to the public.

The property owner(s) seeking to obtain a permit to place a dock in the Ten Mile Canal must provide you with both title work and a resulting Survey (based on that title work) to demonstrate that they have an actual right to place a dock in the canal. The right to obtain a permit must be based on their possession of a legal right to access and utilize the canal, not just of the physical proximity of the subject property to the edge of the water.

[Over the years there has been much debate about docks along the Ten Mile Canal. I know our office has consistently offered opinions based upon a legal analysis of the title and ownership issues involved. Unfortunately, DCD's history of permitting along the Ten Mile Canal has not always been consistent with that advice.]

By way of example, my most recent opinion was with respect to a permit request for a location where the property owner's legal boundary appeared to stop at the water's edge. Because of this fact it did not immediately appear the property owner possessed the legal right or authority to obtain a dock permit since the property owner did not appear to have any rights to the submerged lands within the canal channel abutting his property. As a result, there was no initial basis for issuing a permit to construct or otherwise place a dock at the requested location.

The application in this case had been submitted by Carl Landsteiner, the owner of property located at 5801 Harborage Drive. His property appeared to have frontage on the Ten Mile Canal, though it was not initially disclosed if this ownership extended into the canal in the form of ownership of submerged lands within the canal. Mr. Landsteiner subsequently provide the County with a Survey showing the subject property to consist of both dry land and additional submerged land extending within the Ten Mile Canal. A copy of that survey is attached for your benefit. However, as a caveat to this survey, a note on the face of the Survey says it is based on information provided to the Surveyor by the property owner or his agent, not actual title work - although it could be - it just doesn't say so. Subsequently, additional title information was provided to supplement the survey and the asserted claim of a legal right for this owner to place a dock within the Ten Mile Canal.

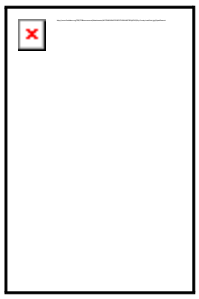
In the present case, if the owner wishes to construct or install improvements within the Ten Mile Canal, it will be necessary for the applicant to provide you with both title work and a companion Survey (based on that title work) to demonstrate ownership within the submerged lands of the canal. As noted above, the survey must be based upon actual title work (noted on the face of the Survey), and not based on "information provided by the property owner" or "based upon information provided by others."

Please let me know if you have any questions.

John

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From: Sweigert, Rebecca
Sent: Tuesday, August 12, 2014 4:02 PM
To: Fredyma, John
Cc: Lis, Carol
Subject: FW: Ten Mile Canal ROW easement

Hi John, we are currently working on an ADD for a project known as Hidden Harbor. You may or may not be familiar with it but it is a subdivision around an old borrow pit just north of the Harborage. As part of the review, the applicant is proposing docks. Some of which may be in the ten canal mile which is under control. We working on some comments asking them to clarify that any proposed docks are not within the county property. Do you have any suggestions on how to get them to address their assertion of access to ten mile canal? The applicant is claiming they have they abut (and I am using the word abut loosely) ten mile canal. I don't believe they have submitted any title work indicating the ownership of the area in question. But they have included easement information that doesn't seem to help me very much…

Becky Sweigert
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239-485-8344 (fax)

Join our online public forum at www.leecountytownhall.com

From: Workman, Elizabeth
Sent: Monday, August 11, 2014 4:04 PM
To: Sweigert, Rebecca
Subject: FW: Ten Mile Canal ROW easement

Beth Workman
Environmental Planner

Department of Community Development
Division of Environmental Sciences
239.533.8793 (office) 239.485.8344 (fax)
EWorkman@leegov.com (e-mail)

From: Workman, Elizabeth
Sent: Monday, August 11, 2014 10:40 AM
To: Coachman, Howard
Subject: RE: Ten Mile Canal ROW easement

Attached is a permit document from the Army Corps of Engineers permit from 2005 which the applicant must amend for the subject application. The second document is the proposed Master Concept Plan for the county. Each of the 53 lots will have a dock ("T" shaped symbol). Just need to know if the proposed docks along the Ten Mile are prohibited due to easement.

Beth Workman
Environmental Planner
Department of Community Development
Division of Environmental Sciences
239.533.8793 (office) 239.485.8344 (fax)
EWorkman@leegov.com (e-mail)

From: Coachman, Howard
Sent: Monday, August 11, 2014 10:13 AM
To: Workman, Elizabeth
Subject: RE: Ten Mile Canal ROW easement

Hi Beth,
I don't know where Hidden Harbour is located. Give me a STRAP number or a section, township and range to go on.

Howard Coachman
Lee County DOT

From: Workman, Elizabeth
Sent: Monday, August 11, 2014 9:14 AM
To: Coachman, Howard
Subject: Ten Mile Canal ROW easement

Hi Howard,
I am working on a zoning case for Hidden Harbour and they are proposing docks along the 10 Mile Canal. I am told that there is a maintenance easement in this location and no docks can be permitted. I guess there was a lawsuit and the County was having trouble navigating the waters to maintain access. So the ruling stated no docks/structures within the 10 Mile Canal Easement. Do you have this easement mapped to show the limits? Let me know before staff approves docks in your easement.

Beth Workman
Environmental Planner
Department of Community Development
Division of Environmental Sciences
239.533.8793 (office) 239.485.8344 (fax)

EWorkman@leegov.com (e-mail)

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