

Notes from 2006 RE Glen Lakes Roads

- Glen Lakes roads have been dedicated to the GLHOA, but the owners control those.
- In 2005 the County ruled against the developer (Ceraolo). To use Outer Banks Rd to the south of the entrance by denying an easement. This action had been spear-headed by the GLHOA.
- October 7, 2005 Memo, RE Outer Banks Dr (attached)
 1. Outer Banks Blvd owned by GLHOA
 2. Glen Lakes Blvd owned by GLHOA and of is a private Rd
 3. GLHOA can restrict use of Outer Banks Dr and GL Blvd
- Map showing Outer Banks Dr south of entrance to GL (attached)

This is not designated as a frontage road and use is restricted by GL(HOA).

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MEMORANDUM

TO: Nick Parente
FROM: Robert H. Buesing
DATE: October 7, 2005
SUBJECT: Glen Lakes
Our File No. 05-6024

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Attorney-Client Privilege -
Attorney Work Product

You have asked that we formalize our legal opinion on a number of matters. We are using this memorandum to set out our response.

1. Is Outer Banks Boulevard Available For Use By The Public?

By all accounts, the 1989 plat sets out that Outer Banks Boulevard is owned by the Glen Lakes Homeowners Association and in that sense is a private road. However, Outer Banks Drive was created at the demand of the County pursuant to Section 24-2 which was originally adopted as Ordinance No. 86-8 on May 6, 1986. This Ordinance requires developers along major highways to provide, at no cost to the County, a "Frontageroad [sic] segment." The Ordinance provides:

"Developers of property adjacent to the major arterial highway grid must provide at the Developer's expense a Frontageroad [sic] from property line to property line parallel to the arterial highway upon demonstration of need and demand by the County."

The 1989 plat for Glen Lakes shows such a frontage road and named it "Outer Banks Drive."

Under the law this is called an "exaction" meaning a taking of value from the Developer as a condition of granting governmental approvals. The United States Supreme Court has upheld the constitutionality of an exaction when the requirement has a reasonable relationship or "rough proportionality" to the nature and extent of the impact of the proposed development. *Dolan v. City of Tigard*, 512 US 374 (1994). If the agency cannot demonstrate such a reasonable relationship or "rough proportionality" then the exaction would be treated as a taking of private property for a public purpose and compensation would be due. *Nollan v. California Coastal Commission*, 483 US 825 (1987).

The Hernando County Ordinance has been reviewed in court on a number of occasions. According to press reports and conversations with the County Attorney's Office, the County has prevailed in all trial court challenges to the Ordinance as applied to particular parcels with only one exception. This means that in the majority of cases, the County has been able to establish that there is "rough proportionality" between the impact of the development and the exaction created by the Ordinance. In the one case in which they were defeated, the County simply paid the fair market value of the land. That case, *Hernando County v. Budget Inns of Florida, Inc.*,

555 So. 2d 1319 (Fla. 15 1990) turned on the fact that the County itself had to concede that there was no present need for the frontage road and that there was no need in the "reasonably immediate future." We would expect the County to distinguish the Glen Lakes situation on two grounds: First the plat itself reflects several commercial parcels adjacent to Outer Banks Drive, not even considering the commercially zoned property to the south and developable property to the north. Second, the enforceability of the ordinance, as applied to Glen Lakes, was not challenged at the time the plat was recorded; and the County could argue that any such challenge at this time is precluded by doctrines of waiver and/or estoppel.

The Ordinance expressly contemplates that the frontage road itself could be either privately owned or submitted to the County for dedication. Based upon our research, we can find no court support for the proposition that a privately owned frontage road created under an ordinance like the one involved here is not available for use by the public. Indeed, it is just exactly that type of exaction that was intended by the 1986 Ordinance and the 1989 plat.

If the Association were to restrict public traffic from traveling on Outer Banks Drive, we would expect that the County would sue the Association for interfering with its rights under the frontage road Ordinance. Note that even in the *Budget Inns* case, the end result was simply that the County took the frontage road by eminent domain and paid, according to press reports, about \$80,000 for the land. In other words, even though *Budget Inns* got the Appeals Court to find that this was an illegal exaction, the end result was not an elimination of public use of the frontage road.

Accordingly, it is our conclusion that Outer Banks Drive is available for public use under the frontage road Ordinance.

2. Is Glen Lakes Boulevard Available For Use By The Public?

Again, by all accounts, the 1989 plat sets out that Glen Lakes Boulevard is owned by the Glen Lakes Homeowners Association and is a private road. The 1989 plat provides in pertinent part:

"[The Glen Lakes Partnership] has caused said land to be divided and subdivided as shown hereon; do hereby dedicate and convey in perpetuity all road and street rights-of-way shown thereon to the Glen Lakes Homeowners Association, Inc. hereinafter referred to as the Association, for the protection and privacy of its members and for their use for private road purposes to provide ingress and egress for them and their guests and invitees to and from the lots, parcels, tracts and easements shown hereon, subject to the Declaration of Covenants, Restrictions and Conditions of Glen Lakes, as recorded in Official Record Book 751 at pages 1030 through 1052 of the Public Records of Hernando County, Florida . . . which rights-of-way and all roads and streets constructed thereon shall be the maintenance obligation of the Association."

Unlike *Outer Banks Drive*, which was created at the demand of the County pursuant to Section 24-2 of the Hernando County Ordinances, it is our opinion that *Glen Lakes Boulevard* is not subject to the same public use.

First, the frontage road Ordinance itself provides only for dedication of a "Frontage road [sic] segment," the definition of which is reproduced above. The Ordinance makes no reference to – and we believe cannot be reasonably construed to cover – private roads that are built perpendicular to and between the frontage road and the arterial. Thus, we would argue that the Ordinance does not even purport to create a public use for such segments.

Second, we would argue that the language of the 1989 plat unambiguously provides that *Glen Lakes Boulevard* is a private road (an argument that the Board of County Commissioners acknowledged to be valid with its denial of the Ceraolo Petition).

Note that the neighboring property owner has formally taken the position that it believes commitments were made prior to the execution of the plat to the effect that the portion of *Glen Lakes Boulevard* between *Outer Banks Drive* and U.S. 19 would be available for public use. It is the opinion of the Hernando County Legal Department, and we concur, that the specific language cited for this statement is not clear. We also find it significant that the language in question is contained in a document that predates the plat itself; in our view, it is the plat itself which is the operative legal document, and the plat is not ambiguous on this point.

3. May The Association Restrict The Use of Glen Lake Boulevard?

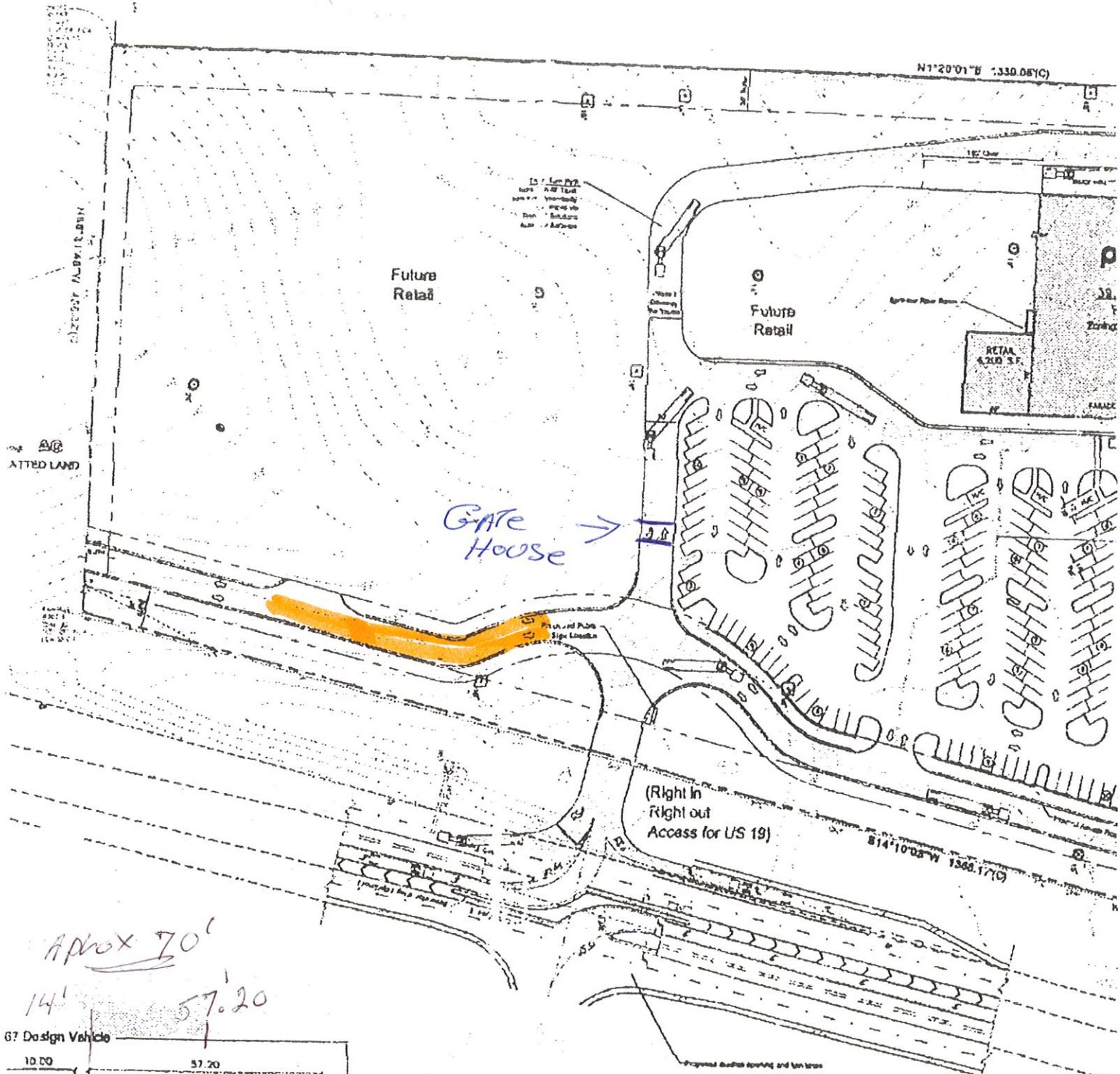
In our opinion, it can be reasonably argued that the Association has the legal right, pursuant to the 1989 plat and the Master Declaration of Covenants and Restrictions for *Glen Lakes*, to restrict the use of *Glen Lakes Boulevard* to the following groups:

- a. The residents of *Glen Lakes*, and their guests and invitees.
- b. The present and future owners of the eight commercial parcels shown on the plat, together with their tenants, guests and invitees.

In addition, it should be noted that property to the north of the land currently comprising *Glen Lakes* (the "Northern Parcel") was reserved for possible expansion of *Glen Lakes* under the Master Plan for *Glen Lakes* and the Northern Parcel. Under the terms of the Master Declaration of Covenants and Restrictions, the developer has the right to annex into *Glen Lakes* additional property from time to time, in the developer's discretion. Thus, the Northern Parcel could be annexed into *Glen Lakes* and thereby acquire full access to and use of *Glen Lakes Boulevard* without creating any additional entry roads for the Northern Parcel. (In this regard, the Northern Parcel is easily distinguishable from the Ceraolo parcel to the south, which is not covered by the Master Plan for *Glen Lakes* and the Northern Parcel, and was never owned by the developer of *Glen Lakes*.)

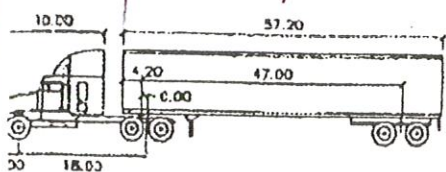
Zoning **P2P (M)**
R-67-64

7. EN LACES PHASE ONE LOTS ONE SIX EN LACES VILLAS



Approx 70'
14'
57.20'

67 Design Vehicle



-57

feet

Truck Width	: 8.50	Lock to Lock Time	: 6.00
Truck Height	: 8.50	Steering Angle	: 28.10
Truck Track	: 8.50	Articulating Angle	: 70.00
Truck	: 8.50		



