

MEMORANDUM

TO: Governing Board Members

FROM: Sheryl G. Wood, General Counsel

DATE: December 21, 2009

SUBJECT: Action Required

Authorization to intervene in foreclosure lawsuit or file suit to quiet title — Seek to correct the scrivener's error present in the recorded legal description for the northern boundary of the Okeechobee Field Station located in Okeechobee County, Florida.

Background

This matter involves a dispute over the location of a boundary line between property owned by the District and a private property owner. In 2009, District staff sought to clear trees and other debris from the fence which runs along the northern border of its Okeechobee Field Station. District staff operated under the belief that the fence was placed in a parallel line south of the northern boundary line, which would allow them room to clear trees and other debris from the fence before any damage to the fence could occur. Margaret M. Froggatt, Michelle Harper, and Donnie Harper, Jr. hold joint title to the northern abutting property with rights of survivorship. The joint owners assert that the fence marks the proper boundary between the District property and their property and that the trees and other debris the District sought to clear north of the fence are on their property. As a result, the owners refused to allow the District access to the property to clear the fence line. In support of their claim, they produced a warranty deed containing a legal description that places the boundary between the two properties at the fence line. Okeechobee property appraisal and tax collection records also appear to support their claim. However, the District performed a thorough title search of the properties and discovered a scrivener's error in the recorded legal description for the property abutting the northern boundary to its Okeechobee Field Station. This scrivener's error in the title record places the northern boundary for the Okeechobee Field Station as much as 30'-60' north of the line described as the boundary line in previous deeds and the public records of Okeechobee County. The District attempted to discuss amicable resolution of this boundary issue with the northern abutting property owners but to no avail. In January 2009, U.S. Bank, N.A. filed suit against the Harpers and Ms. Froggatt jointly to foreclose on a 2005 loan for \$205,000.00 that pledged their jointly owned property as collateral. The mortgage note and complaint for foreclosure also contain a legal description for the boundary between the two parcels that is in error. To date, no final judgment of foreclosure has been entered over District owned property and no trial or hearing on summary judgment for foreclosure has been set.

The District Staff requests the Governing Board to authorize the District staff to intervene in the foreclosure suit or file original lawsuit to quiet title in order to correct the scrivener's error present in the recorded legal description for the northern boundary of the Okeechobee Field Station and prevent sale of District owned property to a third party.

How this helps meet the District's 10 year Strategic Plan

This effort directly supports the District's operations mission.

Funding Source

This litigation will be handled by the District's Office of Counsel. Any costs associated with this litigation will be paid from budgeted ad valorem funds.

This Board item impacts what areas of the District, both resource areas and geography?

The subject property abuts the Okeechobee Field Station property in Okeechobee County and impacts the District's operation of the field station.

What concerns could this Board item raise?

This matter may raise concerns about District owned property and efforts to assert its ownership interests over that property. Also, one of the joint property owners of the property in this boundary dispute is a former District employee.

Why should the Governing Board approve this item?

The Governing Board should approve this item to ensure protection of District owned property interests and correct property records which describe District owned property interests.

If you have any question, please contact me at Ext. 6976.

SGW/KW/pm