RESOLUTION NO. 2005-135

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST.
JOHNS COUNTY, FLORIDA, AUTHORIZING THE CLERK OF THE COURTS,
UNDER SECTION 95.361, FLORIDA STATUTES TO FILE THE SURVEY MAP
FOR CHURCH ROAD, CLAIMING A VESTED INTEREST IN THE ROAD
DESCRIBED IN THE SURVEY MAP, AND/OR ESTABLISHING A
PRESCRIPTIVE EASEMENT IN THE SAME RIGHTS-OF-WAY, IN
ACCORDANCE WITH THE PRINCIPLES SET FORTH IN DOWNING V. BIRD,
100 SO.2D 57 (FLA. 1958)

WHEREAS, the Board of County Commissioners of St. Johns County, Florida
have instructed staff to obtain documentation in order to justify continued County
maintenance of road that are neither dedicated to St. Johns County, nor are owned by St.
Johns County; and

WHEREAS, Church Road as described in attached and incorporated Exhibit A,
which is the Survey Map, and which is a road that County staff has documented as
warranting continued County maintenance; and

WHEREAS, Section 95.361, Florida Statutes details the procedure for a local
government to claim a vested interest in a road not constructed by the local government;
and

WHEREAS, the procedure set forth in Section 95.361, Florida Statutes, is as
follows:

1) the road has been constructed by a non-governmental entity, or not
   constructed by the entity currently maintaining or repairing the
   road;
2) the road has been maintained and/or repaired for the immediate
   past seven (7) years by the County; and

WHEREAS, under the criteria set forth in Section 95.361, Florida Statutes, such
road shall be deemed dedicated to the County, to the extent of the width of the road that
actually has been maintained or repaired for the proscribed period, whether or not such
road has been formally established as a public highway; and

WHEREAS, the filing of the Survey Map with the Clerk of the Courts of St.
Johns County, pursuant to Section 95.361, Florida Statutes, by St. Johns County serves as
prima facie evidence of ownership of Church Road; and
WHEREAS, in Downing v. Bird, 100 So.2d 57 (Fla. 1958), the Florida Supreme Court set forth separate criteria in which a public entity (such as the County), may establish, claim, and maintain a prescriptive easement on certain property; and

WHEREAS, the criteria set forth in Downing v. Bird, supra, is as follows:

1) actual, continuous, uninterrupted use by the public entity for the full prescriptive period of twenty (20) years;
2) that the use be adverse under a claim of right, and either be with the actual knowledge of the owner, or so open, notorious, and visible that knowledge of the use is imputed to the owner;
3) that such use be inconsistent with the owner’s use and enjoyment of his land, and must not be a permissive use; and
4) that such use be related to a certain limited and defined area of land, or if for a right-of-way, the use be of a definite route with a reasonably certain line, width, and termini; and

WHEREAS, St. Johns County can demonstrate that Church Road meets each of the criteria, set forth in Downing v. Bird, supra; and

WHEREAS, the public entity has been continuously using Church Road without permission of the underlying land owners for in excess of twenty (20) years; and

WHEREAS, the road lies in a different area then the easement and the County will release any rights or claims they may have in that certain easement recorded in Official Records Book 276, page 555 based on adoption of the maintenance map; and

WHEREAS, County Road and Bridge Supervisor, Rick Saffelder, has stated in an affidavit (attached and incorporated as Exhibit B) that the County has been responsible for maintaining Church Road for the last thirty (30) years; and

WHEREAS, St. Johns County can demonstrate that St. Johns County’s actions meet the criteria set forth in both/either Section 95.361, Florida Statutes, and/or Downing v. Bird, 100 So.2d 57 (Fla. 1958), with respect to establishing either statutory dedication, or a prescriptive easement over the above-noted, and described Church Road; and

WHEREAS, it is in the best interest of St. Johns County to acquire ownership of Church Road under either statutory dedication or prescriptive easement, and that such acquisition will benefit the citizens of St. Johns County.
NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, as follows:

Section 1. The above recitals are incorporated by reference into the body of this Resolution, and such Recitals are adopted as Findings of Fact.

Section 2. The Chairman of the Board of County Commissioners, and Clerk of the Courts are hereby authorized to file the attached Survey Map of Church Road in the Public Records of St. Johns County, Florida.

Section 3. The Clerk is instructed to record this Resolution in the Public Records of St. Johns County, Florida.

PASSED AND ADOPTED, this 15th day of MAY, 2005.

BOARD OF COUNTY COMMISSIONERS,
ST. JOHNS COUNTY, FLORIDA

By: ____________________________
  Bruce A. Maguire, Chair

ATTEST: Cheryl Strickland, Clerk of Court

Deputy Clerk

RENDITION DATE: 5-19-05
AFFIDAVIT

STATE OF FLORIDA
COUNTY OF ST. JOHNS

On this day before me, the undersigned authority, personally appeared Rick Saffelder, Road and Bridge Supervisor, who being first by me duly sworn, deposes and says that the County has been maintaining Church Road for the last 36 years and the public has continuously used the road during this time.

FURTHER AFFIANT SAYETH NAUGHT.

RICK SAFFELDER

STATE OF FLORIDA
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this 21st day of April 2005, by RICK SAFFELDER Road and Bridge Supervisor, who is personally known to me.

Notary

Joan E. Gurr
Commission # DD388477
Expires March 8, 2009
Bonded ($25,000.00) - Insured (None)