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RESOLUTION NO. 2007- 19

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 CANAL BOULEVARD, 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 roads that are neither dedicated to St. Johns County, nor are owned by St. Johns County; and

WHEREAS, Canal Boulevard, 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 twenty (20) 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 being varying in width as shown in the survey that actually has been maintained or repaired for the prescribed 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 Canal Boulevard, as shown in the survey that is included as Exhibit A, attached hereto, and incorporated herein; and

*Jack Keel - P. Halterman
M+R*

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 **Canal Boulevard**, meets each of the criteria, set forth in Downing v. Bird, supra; and

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

WHEREAS, County Road and Bridge Supervisor, **Billy Tedder**, has stated in an affidavit (attached and incorporated as **Exhibit B**) that the County has been responsible for maintaining **Canal Boulevard**, for the last twenty (20) 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 **Canal Boulevard**; and

WHEREAS, it is in the best interest of St. Johns County to establish its existing ownership of **Canal Boulevard**, 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 Canal Boulevard**, 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 23rd day of January 2007.

**BOARD OF COUNTY COMMISSIONERS,
ST. JOHNS COUNTY, FLORIDA**

By: *Ben Rich*
Ben Rich, Chair

ATTEST: Cheryl Strickland, Clerk

Patricia De Grande
Deputy Clerk

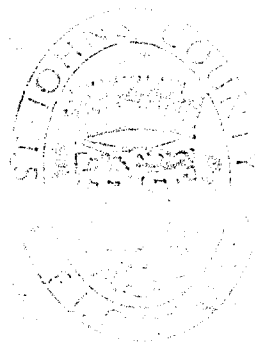


EXHIBIT "A" TO RESOLUTION

MAP SHOWING A SPECIFIC PURPOSE SURVEY OF
 CANAL BOULEVARD LYING IN SECTION 40,
 TOWNSHIP 4 SOUTH, RANGE 29 EAST OF
 ST. JOHNS COUNTY, FLORIDA.
 FOR: THE ST. JOHNS COUNTY REAL ESTATE DIVISION

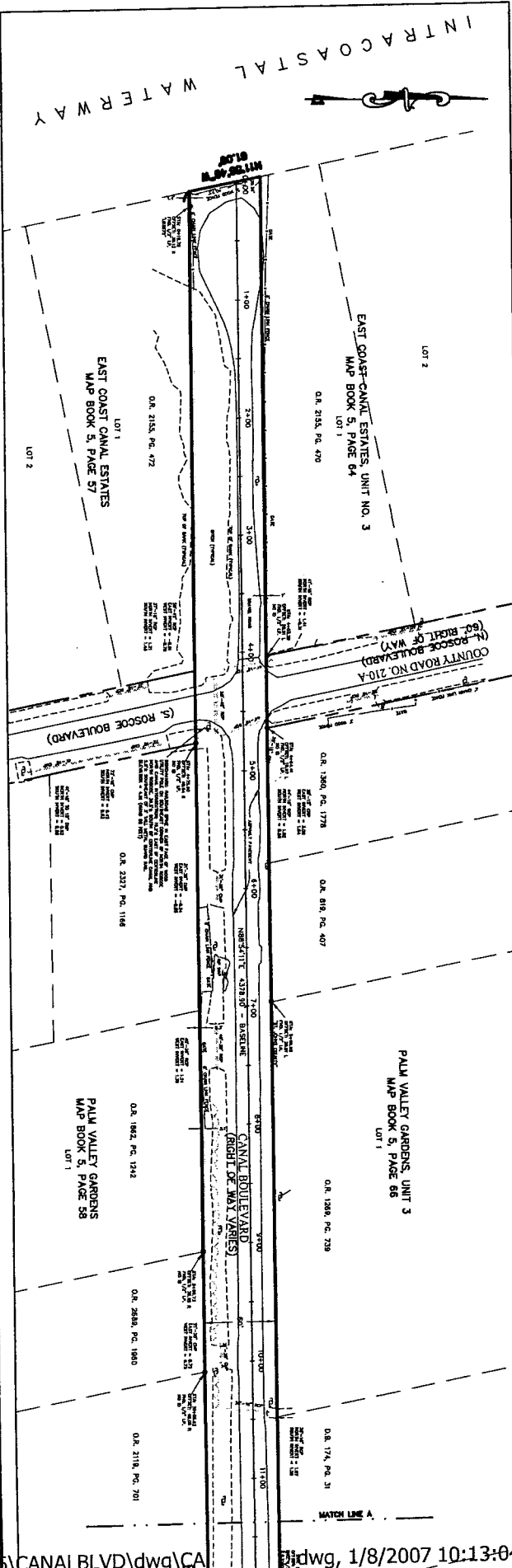
THE RIGHT OF WAY SHOWN HEREON IS VESTED IN ST. JOHNS COUNTY, FLORIDA, BY VIRTUE OF THE ACT OF THE LEGISLATURE OF THE STATE OF FLORIDA, BY SECTION 10, CHAPTER 300, LAWS OF 1989, AS AMENDED BY CHAPTER 200, LAWS OF 1991, AND CHAPTER 200, LAWS OF 1993.

ST. JOHNS COUNTY BOARD OF COUNTY COMMISSIONERS

DATE

CLERK

- LEGEND
- 1/8" I.R.
 - CONC. MON.
 - WOOD UTILITY POLE
 - WOOD UTILITY POLE WITH GUY ANCHOR
 - WOOD POLE
 - WOOD POST
 - WOOD LIGHT POLE



ST. JOHNS COUNTY LAND MANAGEMENT SYSTEMS
 SURVEYING AND MAPPING DIVISION
 4090 LARUE SPEEDWAY - P.O. DRAWER 349
 ST. AUGUSTINE, FLORIDA 32004
 Phone (904) 200-0764

CANAL BOULEVARD
 SPECIFIC PURPOSE SURVEY

SHEET 1 OF 2
 THE NUMBER

DATE: 1/8/2007
 TIME: 10:13:04 AM

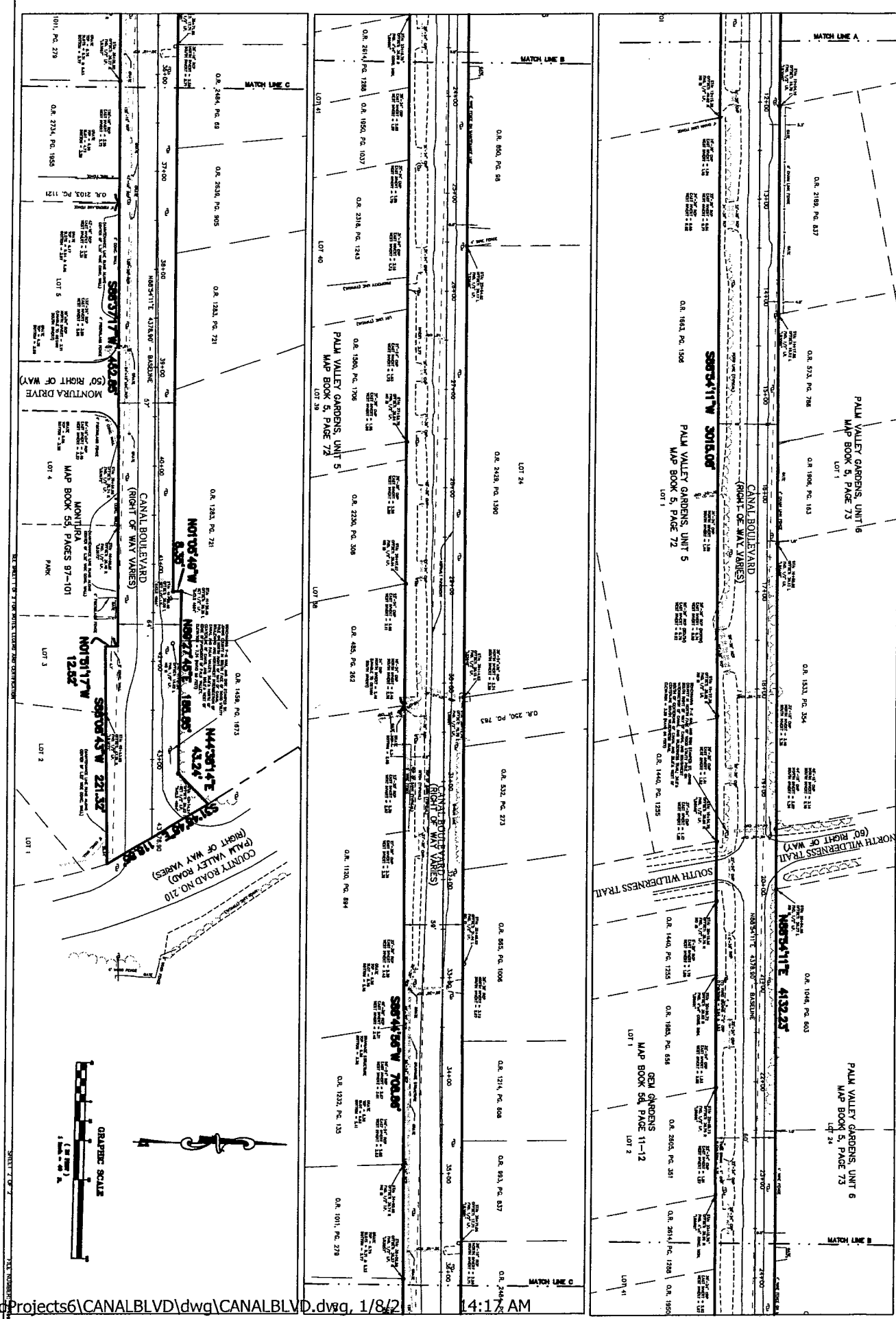


EXHIBIT "B" TO RESOLUTION

AFFIDAVIT

STATE OF FLORIDA
COUNTY OF ST JOHNS

On this day before me, the undersigned authority, personally appeared Billy Tedder Road and Bridge Supervisor, who being first by me duly sworn, deposes and says that the County has been maintaining Canal Blvd. as shown on the attached map for the last 20 years and the public has continuously used the road during this time. This maintenance includes digging ditches, mowing, road grading and stabilization.

FURTHER AFFIANT SAYEITH NAUGHT.

Billy Tedder

Billy Tedder

STATE OF FLORIDA
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this 9th day of January, 2007 by Billy Tedder Road and Bridge Supervisor, who is personally known to me.

Jennifer M Kinlaw
Notary Public

