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RESOLUTION NO. 2007- 54

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 PEARL, RODRIQUEZ, AND EVERGREEN STREETS, 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, Pearl, Rodriquez and Evergreen Streets, 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 eight (28) 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 **Pearl, Rodriquez and Evergreen Streets**, as

Shelley P. Halerman
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shown in the survey that is included as **Exhibit A**, attached hereto, and incorporated herein; 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 eight (28) 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 **Pearl, Rodriquez and Evergreen Streets**, meets each of the criteria, set forth in Downing v. Bird, supra; and

WHEREAS, the public entity has been continuously using **Pearl, Rodriquez, and Evergreen Streets**, without permission of the underlying land owners for in excess of twenty eight (28) 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 **Pearl, Rodriquez, and Evergreen Streets**, for the last twenty eight (28) 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 **Pearl, Rodriquez, and Evergreen Streets**; and

WHEREAS, it is in the best interest of St. Johns County to establish its existing ownership of **Pearl, Rodriquez, and Evergreen Streets**, 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.

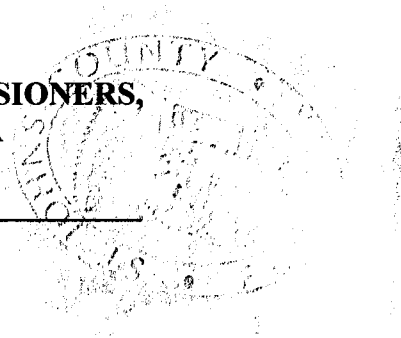
Section 2. The Chairman of the Board of County Commissioners and Clerk of the Courts are hereby authorized to file the attached **Survey Map of Pearl, Rodriquez, and Evergreen Streets**, in the Public Records of St. Johns County, Florida.

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

PASSED AND ADOPTED, this 20 day of February, 2007.

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

By: Ben Rich
Ben Rich, Chair



ATTEST: Cheryl Strickland, Clerk

Dan Halterman
Deputy Clerk

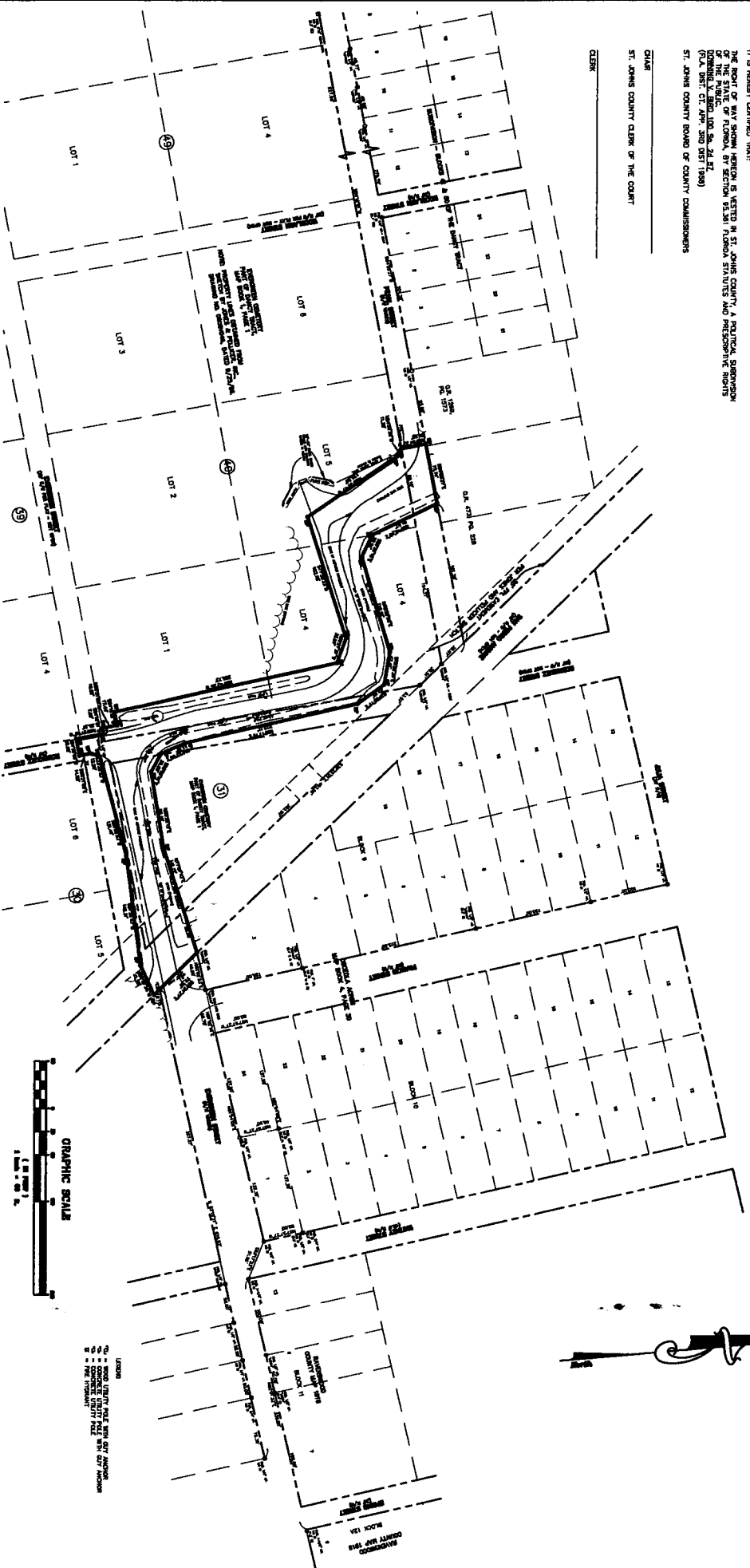
REVISION DATE 2/22/07

EXHIBIT "A" TO RESOLUTION

MAP SHOWING A SPECIFIC PURPOSE SURVEY OF A PART OF THE DANCY TRACT AS RECORDED IN MAP BOOK 1, PAGE 1 OF THE PUBLIC RECORDS OF ST. JOHNS COUNTY, FLORIDA TOGETHER WITH A PART OF PEARL STREET, RODRIGUEZ STREET, AND EVERGREEN STREET ALL LYING IN SECTION 41, TOWNSHIP 7 SOUTH, RANGE 29 EAST OF ST. JOHNS COUNTY, FLORIDA FOR THE ST. JOHNS COUNTY REAL ESTATE DIVISION

IT IS HEREBY CERTIFIED THAT:
 THE RIGHT OF WAY SHOWN HEREON IS KEPT IN ST. JOHNS COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, BY SECTION 63.301 FLORIDA STATUTES AND RESPECTIVE RIGHTS OF DONORIAL V. 880, 100, 50, 21, 12,
 (FLA. DIST. CT. APP. 580 DIST 1989)
 ST. JOHNS COUNTY BOARD OF COUNTY COMMISSIONERS

CLERK
 ST. JOHNS COUNTY CLERK OF THE COURT



1. ALL DISTANCES SHOWN ON THIS MAP ARE TO BE CONSIDERED AS APPROXIMATE UNLESS OTHERWISE NOTED.
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ST. JOHNS COUNTY LAND MANAGEMENT SYSTEMS
 SURVEYING AND MAPPING DIVISION
 4000 LARS SPEDOVIA - P.O. DRAWER 348
 ST AUGUSTINE, FLORIDA 32084
 Phone (904) 209-0764

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PEARL STREET, RODRIGUEZ STREET,
 AND EVERGREEN STREET
 MAINTENANCE MAP
 SPECIFIC PURPOSE SURVEY
 FILE NUMBER: 2-944


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 Pearl Street, Rodriquez Street and Evergreen Street as shown on the attached map for the last 28 years and the public has continuously used the road during this time. This maintenance includes digging ditches, mowing, and road and right-of-way maintenance.

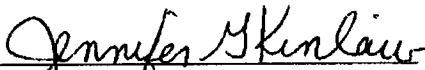
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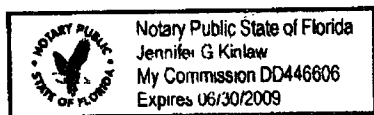
Billy Tedder

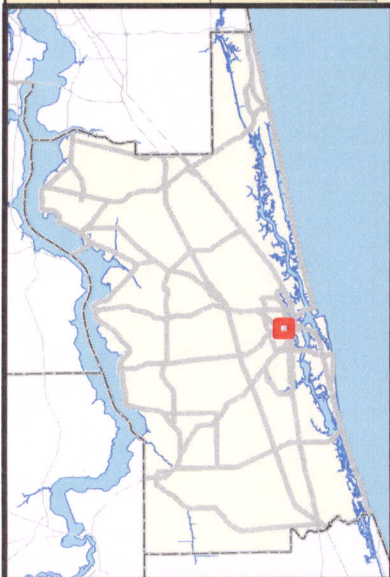
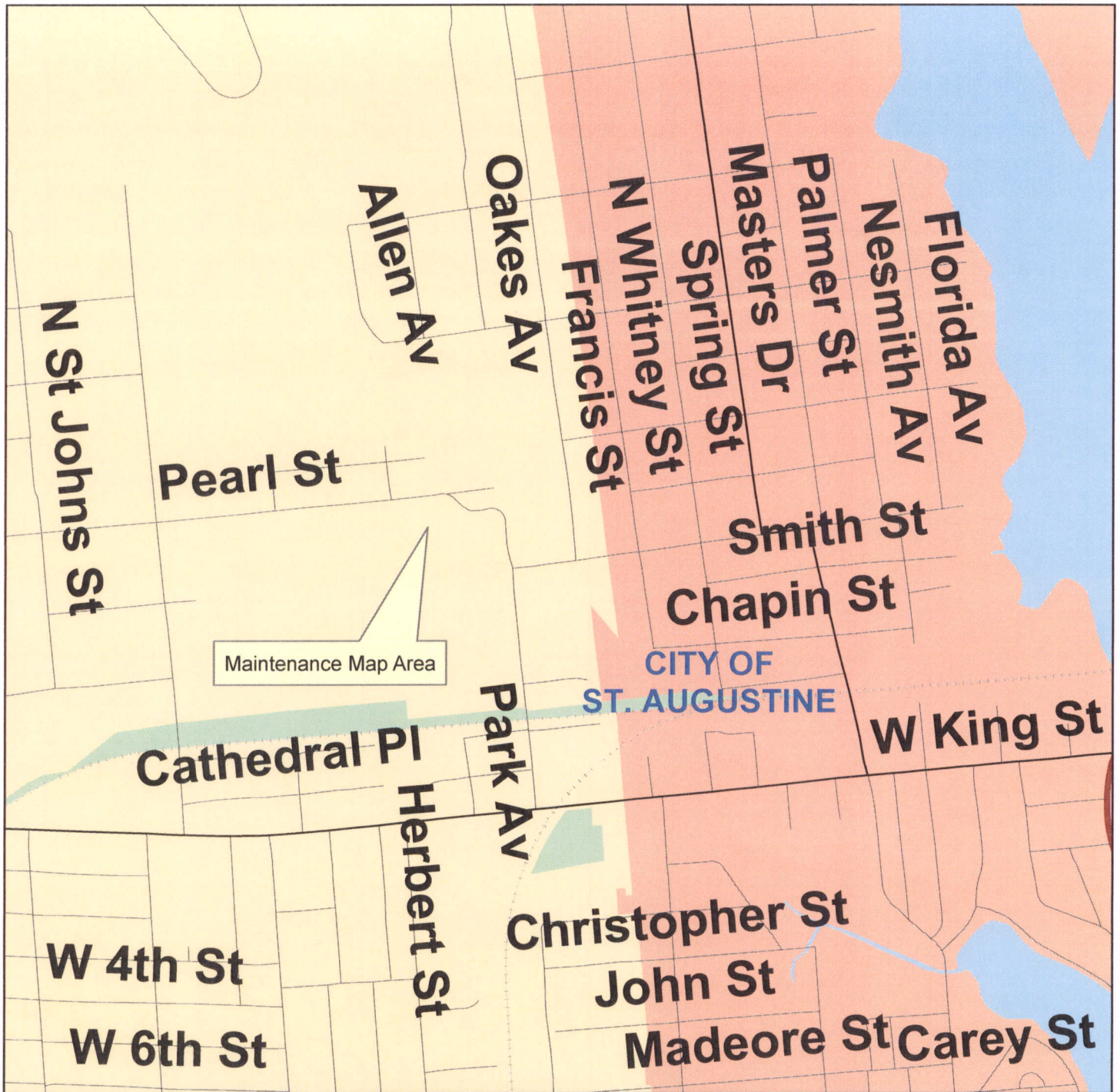
STATE OF FLORIDA
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this 30th day of January 2007 by Billy Tedder Road and Bridge Supervisor, who is personally known to me.

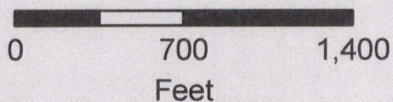


Notary Public





**2005 COLOR AERIAL
IMAGERY MAP**



Map Prepared: 2/2/2007

*Depicts General Project Boundary

**Maintenance Map
for
Pearl Street
Rodriquez Street and
Evergreen Street**

File:



St. Johns County
Land Mgmt. Systems
Real Estate