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October 3, 2025

VIA EMAIL

Shari C. Wallen, Sr. Asst. County Attorney
Alachua County Attorney's Office
12 SE 1st Street
Gainesville, Florida 32601
swallen@alachuacounty.us

Re: Use of infrastructure surtax funds (EPD request)

Dear Shari:

This brief letter is to memorialize our telephone discussion earlier this week concerning the Alachua County Environmental Protection Department's ("EPD") request on September 22, 2025, to the Infrastructure Surtax Oversight Board for a pre-expenditure review. The subject of the review is EPD's desire to use surtax funds for acquisition of a conservation easement in partnership with a state agency, but to which Alachua County will not acquire rights as a grantee of the easement. Rather, Alachua County would have only enforcement rights by way of covenants and restrictions in the recorded deed.

As Special Counsel to the ISOB, I was directed by the Board to research this issue and return with a recommendation. As you are aware, the ISOB advises on whether an expenditure of surtax proceeds qualifies under Sec. 212.055, Florida Statutes, Alachua County Ordinance 2022-08 ("Ordinance"), and Alachua County Resolution 22-105.

In this instance, the crux of the issue is whether the County is acquiring a qualifying asset, here, an interest in land. Ordinance, Section 4. Use of Surtax Proceeds. The applicable portion of the Ordinance allows for surtax proceeds to be expended "to acquire any **interest in land** for conservation, public recreation and protection of natural resources…". Id. (Emphasis added).

The Florida Supreme Court approved the lower court's opinion that "restrictive covenants do not 'constitute property,'" but rather are mere contractual rights. Ryan v. Manalapan, 393 So. 2d 633, 635 (Fla. 4th DCA 1981) (quoting Bd. of Pub. Instruction v. Bay Harbor Islands, 81 So. 2d 637, 639 (Fla.

1955)), aff'd 414 So. 2d 193, 197 (Fla. 1982) (approving the principle that "restrictive covenants are not interests in real property, as are easements, but are mere contractual rights . . . ."). To further illustrate the point, note that in the context of eminent domain, such covenants are not compensable since they are not interests in property. Ryan, 414 So. 2d at 197.

Here, Alachua County's position would be no better than a water management district's requirement of enforcement rights over stormwater facilities in a subdivision's recorded covenants and restrictions—neither one acquires an interest in land.

Accordingly, the proposed surtax expenditure would not appear to qualify.

My analysis will go to the ISOB for their final determination. If there is additional information you can provide—or perhaps situate Alachua County as an easement grantee—I am certain the Board would be willing to consider that.

Thank you and let me know if I may assist further.

Sincerely,

/S/ PATRICE BOYES, ESQ.

Patrice Boyes, Esq.

cc: Gina Peebles, ISOB Liaison/Asst County Manager & Chief of Staff
gpeebles@alachuacounty.us

Encl. (Ryan v. Manalapan)

Ryan v. Manalapan

District Court of Appeal of Florida, Fourth District

February 11, 1981

No. 78-2447

Reporter
393 So. 2d 633 *; 1981 Fla. App. LEXIS 18701 **

PAUL MARK RYAN, AS TRUSTEE, Appellant, v. TOWN OF MANALAPAN, in Palm Beach County, a Florida municipal corporation; ROY W. TALMO; COUNTY OF PALM BEACH, a political subdivision of the State of Florida, Appellees.

Prior History: [1]** Appeal from the Circuit Court for Palm Beach County; Tom Johnson, Judge.

Counsel: C. Robert Burns of Burns, Middleton, Farrell & Faust, Palm Beach, for appellant.

James McCartney Wearn, West Palm Beach, for appellee/cross appellant, Town of Manalapan.

Charles Vitunac, West palm Beach, for County of Palm Beach.

Judges: MOORE, J., BERANEK and HURLEY, JJ., concur.

Opinion by: MOORE

Opinion

[*634] MOORE, JUDGE.

In a declaratory judgment action, the appellant, Ryan, sought to have the rights and obligations of the parties to this litigation determined. He appeals the trial court's orders of dismissal with prejudice in favor of the appellees, the Town of Manalapan (Town) and Palm Beach County (County). The denial of a motion to dismiss filed by the third appellee, Talmo, is not before us.

Although the Town and the County have cross-appealed "… to preserve for appeal consideration the additional grounds upon which it may have been proper to dismiss the complaint," [1] the main issue before us is whether a public body which acquires an interest in land by means other than eminent domain is bound by private restrictions governing the use of the land. On the authority of *Board of Public Instruction v. Town of Bay Harbor I.* ***[**2]*** *, 81 So.2d 637 (Fla. 1955)*, we answer the question in the negative and affirm the orders dismissing the suit against the Town and the County. Accordingly, it is not necessary for us to consider the propriety of the cross-appeal or the points raised in it.

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[1] Appellees' brief.

Assuming the facts alleged in the complaint to be true, as we must, the appellant is the owner, as trustee, of a strip of land consisting of several contiguous lots which comprise approximately 1044 feet of ocean frontage. The strip is bounded on the west by the Intracoastal Waterway (Lake Worth), on the east by the Atlantic Ocean, and is dissected by State Road AIA, which runs north and south. Immediately contiguous to the north is Talmo's Lot 1 with the same east and west boundaries and 300 feet of ocean frontage. The deed to appellant's property contains restrictive covenants limiting construction to single family dwellings on lots which have both a minimum of 150 feet of ocean frontage and which extend westerly to the **[**3]** Lake. After these covenants were established, the lot now owned by Talmo was conveyed subject to the same restrictions.

Until May, 1978, the Town had a comprehensive zoning plan which contained virtually the same restrictions. In the spring of 1978, however, Talmo, the Town and the County negotiated a land use plan which affected Talmo's property for the common benefit of the three parties. The plan provided that the County would release its dedicatory rights to the north 66 feet of Talmo's property for $ 70,000 to be paid by the Town and Talmo. Talmo agreed to convey to the County a pedestrian easement over the north 10 feet from AIA to the ocean. He also agreed to convey to the Town a strip of land consisting of a portion of the north 230 feet lying east of AIA and west of a proposed multi-family housing development. This site would be used for a town hall, fire or police station, or other municipal use. The Town agreed to re-zone the eastern half of the north 230 feet to be used by Talmo for multi-family housing and the south 70 feet east of AIA to permit construction of a one-family house.

After the agreement was substantially consummated, the appellant filed suit **[**4]** alleging that the land use plan for Talmo's property violated the restrictive covenants applicable to it. The appellant contended that each of the following uses constituted a violation:

(1) The use by the County of the north 10 feet for purposes other than single-family dwelling,

[*635] (2) The use by Talmo of the eastern portion of the north 230 feet for multi-family housing rather than using the whole property east and west of AIA for single family dwelling,

(3) The use by Talmo of the east portion of the south 70 feet for single-family dwelling rather than using the whole property east and west of AIA and observing the 150 feet of ocean frontage requirement, and

(4) The use by the Town of a portion of the property for municipal purposes rather than single-family dwelling.

As stated earlier in this opinion, the sole issue before us is whether a public body which acquires an interest in lands by means other than eminent domain is bound by private restrictions governing the use of the land. Although *Board of Public Instruction v. Town of Bay Harbor I., supra*, involved land acquired by eminent domain, we see no distinction when the land is acquired by agreement **[**5]** or purchase. In either case the restrictive covenants do not "constitute property in those in whose favor such restrictions exist for which compensation must be made…." *Id. at 639*, and thus, the covenants are not enforceable against the public body. Accordingly, the trial court correctly dismissed the suit as to the public bodies and his orders should be affirmed.

Nevertheless, we consider the difference between acquisition by eminent domain and acquisition by agreement or purchase to warrant consideration of this question by the Supreme Court, and we therefore certify to the Supreme Court the following question as one of great public importance:

> DO RESTRICTIVE COVENANTS AFFECTING THE USAGE OF LAND APPLY TO A PUBLIC BODY WHICH ACQUIRES THE LAND BY PURCHASE AS OPPOSED TO ACQUISITION BY EMINENT DOMAIN?

AFFIRMED and QUESTION CERTIFIED.

BERANEK and HURLEY, JJ., concur.
