



Alachua County Attorney's Office

Michele Lieberman, County Attorney

MEMORANDUM

TO: Robert Hutchinson, Alachua County Board of County Commissioners Chair

FROM: Sylvia E. Torres, Assistant County Attorney *[Signature]*

VIA: Michele Lieberman, County Attorney *[Signature]*

DATE: May 12, 2016

SUBJECT: *Right-of-Way Trees and Utility Conflicts*

At the March 15, 2016 Board of County Commissioners' Meeting, the Board directed the County Attorney "to define clearly the lines of authority for tree planting and maintenance in County Road rights-of-way." In the context of the Board discussion which led to this motion, the Board is seeking clarity regarding what rights the County has to plant and maintain trees in the County right-of-way when there are coexistent utilities.

Short Answer

In most circumstances, the County may plant and maintain trees in its right-of-way, regardless of the existence of permitted utilities or right-of-way use permits, if both of the following, site-specific conditions are true.

1. Tree planting and maintaining does not actively interfere with permitted uses of the right-of-way; and
2. Trees are planted and maintained to provide for safe and efficient roadways.

Concurrent with the County's right to plant and maintain trees, permitted utilities have the right to use certain vegetation controls to alter or regulate normal plant growth. Utilities are permitted to trim and, with permission of the County Engineer, remove trees to ensure and maintain the safe operations of utilities.

This memorandum will examine the first condition, as stated above. The second condition should be addressed by the County Engineer on a site-by-site basis, using industry standards and good engineering judgement.

Planting and Maintaining Trees Consistent with Other Permitted Uses

The County holds most right-of-way in fee simple, obtained through plat dedication, deed or maintenance map. Most utilities are in the County right-of-way subject to utility permits issued by the County Public Works Department. Other permits, such as permits for driveways, bus stops, private irrigation, private lighting and monitoring wells, also impact County right-of-way. This memorandum examines this typical scenario.

The County's tree planting and maintaining in its right-of-way must not actively interfere with permitted uses of the right-of-way. While there is no express language in any of the right-of-way permits issued by the County that limits the County's concurrent use of the right-of-way, the issuance of the permit is an implicit agreement that the County will not actively interfere with the permitted use.

Permitted Utilities in the Right-of-Way

The County has certain authority to determine when or if to permit utilities to locate in the right-of-way, to decide where in the right-of-way they can be located, to create conditions for issuance of a permit, and to, in limited circumstances, require removal or relocation of utilities from the right-of-way. Section 337.401.401, Fla. Stat., grants authority to the County to create reasonable rules or regulations regarding utilities in the County's right-of-way. See Sec. 337.401(1)(a), Fla. Stat. The Statutes go on to say that "such rules may include, but need not be limited to, that the use of right-of-way for longitudinal placement of electric utility transmission lines is reasonable based upon consideration of economic and environmental factors, including, without limitation, other practicable alternative alignments, utility corridors and easement, impact on adjacent property owners, and minimum clear zones and other safety standards...." Sec. 337.401(1)(b), Fla. Stat.

Consistent with this statutory authorization, the County has adopted regulations governing the placement, removal or relocation of utilities in the County right-of-way. Chapter 367 (Utility Installation Regulations) defines a utility permit as "[a]n application for permission to install a system or facility in public right-of-way for intention of providing utility service. This document is a legally binding contract between the county and the permitted utility." Sec. 367.02(6), Alachua County Code. Per this definition, a permit is an agreement between the County and the utility owner.

This chapter of the Code goes on to specifically reserve to the County the right to prohibit or restrict the installation of new or additional utility facilities (to the extent of the County's authority under state or federal law) and permits the County to require removal or relocation of utilities under certain circumstances. Sec. 367.05(3), Alachua County Code. The County Public Works Department issues utility permits, pursuant to the authority granted it by the Board, see Sec. 401.20(d)(5), Alachua County Code. The Code delegates the creation of criteria for permit approval, location in the right-of-way and approved methods of installation to the "Alachua County Utility Accommodation Guide," a department-level administrative document. Sec. 367.03(a) and 367.05(2), Alachua County Code. The Alachua County Utility Accommodation Guide is Appendix VI of the

Construction and Inspection Standards of the Public Works Department (last revised September 5, 2013), attached. The County Utility Accommodation Guide adopts the standards in the 2010 Florida Department of Transportation Utility Accommodation Manual (FDOT Topic No. 710-020-001-g), with exceptions found in the local guide. Though neither the state Utility Accommodation Manual nor the local exceptions reference tree planting or maintenance, Public Works staff reports that they examine the locations of preexisting trees when determining the location of utilities in County right-of-way and the method of installation of those utilities when reviewing permit applications.

Once located in the right-of-way, County utility permit holders must comply with the vegetative control standards in Chapter 4.6 of the Florida Department of Transportation Utility Accommodation Manual when trimming or removing trees. Section 4.6.1 states, in part, that the utility owner shall not remove, cut or destroy vegetation unless authorized by the Local Maintenance Engineer (in the County's case, the County Engineer). Section 4.6.2 (Tree Trimming) is an exception to the requirement to get County Engineer approval prior to conducting vegetation management. Section 4.6.2 requires the use of "recognized and approved methods of modern vegetation control, with emphasis on tree health." This Section also requires the utility to replace trees that die due to trimming.¹

Within this context, the issuance of a utility permit is a contract (Sec. 367.02(6), Alachua County Code) with an implicit agreement that the County will not actively interfere with the permitted use unless the permit is revoked. Active interference with a utility permit could take the form of planting a tree in a location that requires a utility to trim it in a way that kills the tree or planting a tree directly under an electrical transmission line.

Other Permitted Uses in the Right-of-Way

The County Public Works Department issues driveway and right-of-way use permits, pursuant to the authority granted it by the Board, see Sec. 401.20(d)(5)-(6), Alachua County Code. Right-of-way use permits can be for such uses as driveways, bus stops, private irrigation, private lighting and monitoring wells. As stated above, there is no express language in these issued permits that limits the County's concurrent use of the right-of-way for tree planting and maintenance. That said, the issuance of a permit is an implicit agreement that the County will not actively interfere with the permitted use. Active interference with a permitted use could take the form of planting a tree in a location where it blocks a driveway or the visibility of the user of a driveway or placing a tree where it block nearly all of the light from permitted pedestrian-scale lighting.

¹ Section 4.6.2, Florida Utility Accommodation Manual states, in relevant part: "The [utility owner] shall trim trees to ensure and maintain the safe operation of utilities. Such trimming shall employ recognized and approved methods of modern vegetation control, with emphasis on tree health. When trimming does irreparable damage or causes trees or shrubs to die, the [utility owner] shall replace this vegetation as described in UAM Section 4.5. The [utility owner] shall use mechanical tree trimming machines for routine maintenance...."

Safe and Efficient Roadways

The County should plant and maintain trees in way that provides for safe and efficient roadways. Issues, such as avoiding blocking traffic control signs and vision triangles, and planting outside of clear zones, stormwater ditches and stormwater structures, should be taken into consideration when deciding where and what to plant and determining a maintenance plan. These issues can be best addressed by the County Engineer on a site-by-site basis, using industry standards and good engineering judgement.

Conclusion

The County may plant and maintain trees in the County right-of-way, regardless of the existence of permitted utilities or other uses, so long as the County's use does not actively interfere with permitted uses. Despite this right, utilities may trim trees within the right-of-way so long as that trimming follows approved methods of vegetative control and must replace trees that die due to that maintenance. Additionally, trees should be planted and maintained in a manner which provides for safe and efficient roadways.

Attachment: Alachua County Utility Accommodation Guide – Appendix VI of the Construction and Inspection Standards of the Public Works Department (last revised September 5, 2013)

xc: Members of Board of County Commissioners
Lee Niblock, County Manager
James Harriott, Deputy County Manager

CONSTRUCTION AND INSPECTION STANDARDS
PUBLIC WORKS DEPARTMENT
ALACHUA COUNTY, FLORIDA

August 1, 2002

Revised November 5, 2015

APPENDIX VI

ALACHUA COUNTY PUBLIC WORKS UTILITY ACCOMMODATION GUIDE

Alachua County Public Works intends to utilize the Florida Department of Transportation (FDOT) Utility Accommodation Manual for installation guidelines, to the greatest extent possible. This guide shall be utilized to provide exceptions to the referenced FDOT standards.

The following items are exceptions to the FDOT Utility Accommodation Manual:

PERMITTING

- 1.) Applications shall be submitted on the Utility Permit form, Appendix A.
- 2.) Permit applications shall be accompanied by the appropriate fee as established by resolution of the Board of County Commissioners.
- 3.) All reference to the Local Maintenance Engineer, the District Maintenance Engineer, or the District Permit Engineer shall be understood to mean the County Engineer.
- 4.) All permits submitted for approval shall be originals, in triplicate.
- 5.) Pictures of the proposed work are not required, unless specifically requested during the approval review process.
- 6.) Emergency repair, initiated to protect life and property, may be initiated immediately and the County Engineer, or his designee, shall be notified immediately. A permit application must be initiated the following business day.

NON-COMPLIANCE

- 1.) Permit non-compliance will be addressed in accordance with the Utility Installation Ordinance.

ACCOMMODATION STANDARDS

- 1.) Permits for installations on rights-of-way designated as “Scenic Roads”, by act of the Board of County Commissioners, shall conform to all stipulations of the respective Ordinance for utility installations.
- 2.) Clear recovery zone dimensions shall be governed by the FDOT Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways (Green Book) when dimensions reflected in the Accommodation Manual are less restrictive.

PAVEMENT CUTTING

1.0) Cutting of the asphalt surface of an existing County maintained roadway will only be allowed in extenuating circumstances. Pavement cuts that are allowed shall have the asphalt surface replaced within 24 hours, with open cut restoration performed in accordance with FDOT Index No. 307, most current edition, using the flowable fill option. Thickness of limerock base may be replaced with Type "S" asphaltic concrete at the rate of 2.5" of asphalt for 6" of limerock base.

(EXCEPTION TO 1.0) FOR THE REPAIR OF LOCAL ROADWAY CUTS (SUBDIVISIONS)

The following described specifications shall be considered as minimum specifications for the repair of any cut or repair necessitated by damage to roadway pavement. Consideration should be given to local conditions and the type and depth of cut, or damage to the roadway surface. The advice and recommendation of the Alachua County Department of Public Works should be sought on any condition not strictly covered by these specifications. Directions on repairing those situations not covered by these specifications should be obtained from the department in writing. It is suggested that the field supervisor assigned to oversee the completion of the repair of the cut discuss the procedure with the Alachua County Department of Public Works Inspection Office prior to beginning work. It is, however, the contractor's responsibility to see that these specifications are met. Subsequent determination that the repair was not done according to these minimum specifications will result in the necessity of the repair being done again to meet the specifications at the permittee's expense.

- 1.1 Method of subgrade fill will be in accordance with Section 125-8.3 of the Florida D.O.T. Specifications, most current revision.
- 1.2 Compaction density will be 98% of AASHTO T-180 for all subgrade materials.
- 1.3 The upper 12 inches of fill will be two (2) 6-inch lifts of limerock base, compacted to 98% of AASHTO T-180. Limerock replacement shall be the width of the trench plus three feet, and 6 inches outside the existing edge of pavement (if applicable).
- 1.4 All density testing will be performed at the expense of the permittee.
- 1.5 Density tests will be required at one foot over the pipe and every other 1' lift thereafter in the subgrade. One density test will be required on each lift of the limerock base.
- 1.6 The pavement section will be replaced with asphaltic concrete from a D.O.T. approved supplier equal to thickness and type of asphalt on the existing roadway. Friction course shall be required as necessary to be consistent with existing surface.

- 1.7 Dimension of pavement replacement will be the width of the ditch plus four (4) feet.
- 1.8 The street or road will remain open for traffic during construction.
- 1.9 The County Engineering Inspection Department will be notified by calling 352-374-5245 ext. 244, prior to start of excavation.
- 1.10 Traffic control will be according to pertinent sections of the current edition of the FDOT Roadway and Traffic Design Standards.
- 1.11 Pavement will be replaced within 24 hours of limerock completion.

LOCATION CRITERIA

- 1.) All underground installations shall be placed parallel to the roadway, or right-of-way, as far back from the edge of the roadway as possible. Congestion due to existing facilities will not be grounds for approval of any installation detrimental to the roadway integrity.
- 2.) No underground utilities, installed parallel to the roadway, shall be installed in the shoulder area of a rural roadway or within 4' of the back of curb on a curb and gutter roadway.
- 3.) All underground utilities installed within Alachua County Right of Way will be installed to a depth meeting the minimum requirements of this manual however; never less than the minimum depth of 36" below finished grade when installed beneath the pavement and 30" below finish grade when installed outside the limits of the pavement.

UNDERGROUND CROSSINGS

- 1.) Underground crossings of existing roads may be installed by jacking, boring, or directional bore. Directional boring will be restricted from areas known to contain flint rock of enough concentration to deflect the true plane of the installation. Crossing of existing roadways with any pressurized line will require that the utility line be placed in a casing. On new construction, all service lines of any utility will be in a casing, however water mains may be installed without a casing when the main is constructed of ductile iron pipe (DIP).
- 2.) All crossings installed either by direct bury or by boring, will have the ends of the casing no closer than 8' from the edge of the pavement on rural roads with paved shoulders, 13' on rural roads without a paved shoulder, and no closer than 5' from the back of the curb on a curb and gutter roadway. Casing lengths may be required to be longer in order to facilitate known future widening or reconstruction. All jacked, bored, or directional bored crossings are subject to require pressure testing to a minimum of 20 psi for 24 hours, prior to the installation of the utility line, if there are any concerns about the integrity of the casing after installation.
- 3) Alachua County Construction Inspections shall be notified 24 hours prior to the start of a

roadway crossing by directional bore or by jack and bore. The assigned inspector and the utility contractor making the crossing shall meet on site prior to the excavation of any bore pits. The area shall be evaluated to prevent damage to any underground drainage structures, under drain, sidewalk, or any other structural portion of the roadway.

ACCESS TO UTILITY FACILITIES

1.) Any utility facility which requires frequent access, such as communication huts, lift stations, junction boxes, or any other similar facility, shall have permanent driveway access constructed. Such driveway access shall be permitted in accordance with the Alachua County Access Management Ordinance prior to construction.

THIS DOCUMENT MAY BE REVISED AS NECESSARY IN ORDER TO PROMOTE TECHNOLOGY, ADDRESS SITE SPECIFIC CIRCUMSTANCES, OR TO IDENTIFY FURTHER DIFFERENCES WITH THE FDOT UTILITY ACCOMMODATION MANUAL AS THEY OCCUR OR ARE IDENTIFIED.

CURRENT DATE OF THIS REVISION NO. 3 IS SEPTEMBER 5, 2013.