TPOA Board Position on Maintaining the Power Line Corridor

Following discussion is the determination of the TPOA Board not to pursue mowing or maintaining the power line corridor; to include the maintenance path, for the reasons set forth below.

We realize that when purchasing their homes along the corridor, prospective owners were promised by developers that the corridor would always be mowed and that a path was available for their use. Unfortunately, that is not true; promises by real estate agents or the developers themselves are not binding on the Tampa Palms Owners Association; the TPOA is a completely separate entity from the various development corporations; none of our documents impose such an obligation on the Association.

Just as the power line corridor is not within the CDD's jurisdiction, it is also outside of the properties belonging to the TPOA. It is not our common area, and it is not our property. Just as the CDD is not permitted to spend its money on development of private land, the TPOA Board has a similar fiduciary obligation to ALL owners. There are 114 homes in 5 villages in Tampa Palms that border the corridor in question.

The power companies would allow us to mow and to re-pave and maintain their maintenance path for use by residents if we accepted ALL liability for damage to their equipment (and likely for any injury to users of the path and anyone mowing in the corridor). If we were to mow (and especially, clear or otherwise maintain the path), we would be creating/maintaining an attractive nuisance that exists in a potentially dangerous area, exposing all owners to tremendous liability (which could reach to the millions of dollars) for damage to power company equipment or facility, to any injured party.

Accepting the liability and the expense to mow the corridor for benefit of 114 of over 4,000 owners does not meet the Board's statutory fiduciary obligations to the owners who do not receive the benefit.

The power companies are required to mow by federal regulation only infrequently. On occasion Toro, which provided mowing services free to the CDD as part of their residential mowing test project, would mow – but not at the request of the CDD or the TPOA. It is something they took on themselves, at tremendous risk of liability (not only for damage as already mentioned, but harming protected tortoises and workers compensation risk).

The path is a maintenance road built by the power companies, and paved (without permission) by a developer; anyone using it without permission of the owner of the property would be trespassing. The TPOA has no obligation to enable such, or to make it convenient to do so.

Regarding complaints of sand spurs, ticks, and fleas within the corridor and especially along the path – they are pet owner problems that can be solved by the owner, and most brought to our attention were encountered while the pet owner was on property not owned by the Association. Such complaints are not a TPOA issue.

In addition, unless adversely and directly affecting nearby property owners, the use of pesticides within the corridor by the power companies is subject to federal and state regulation, and is not a TPOA issue.

Regarding repeated inquiries by some residents, here is a bit of background.

Questions regarding the power corridor mowing by the CDD was answered in email, and in person at numerous CDD meetings. As to the TPOA taking on the responsibility, the Board has discussed this issue in the past, and came to the same conclusion that the CDD Board had: The TPOA does not have a property interest in the section of the corridor that some residents insist it mow or maintain; that damage or injury from any activity in the corridor approved by the easement owner (Florida Power/Duke Energy) will be the responsibility of whoever is conducting the activity; that Hillsborough County regulations on mowing properties within 200 feet of a resident's home are superseded by Federal regulation (specifically, the rules set forth by the Federal Energy Regulatory Commission).

Some residents have posited that because the CDD permitted Toro to store its equipment in its facilities as part of its agreement with Toro (until it left), the CDD is obligated to continue to provide mowing. It is possible that some will use similar illogical argument for the TPOA Board. Such argument is based on an observation that Toro used to mow in the corridor on occasion (apparently it did so, but not under any agreement with or tasking by the CDD or the TPOA; and because of the liability concerns, the TPOA would have forbidden it being done through any contract with the Association).

Any assertion that the easement granted to the Tampa Palms Development Corporation by the original holder, Florida Power (succeeded by Duke Energy), means that Tampa Palms is obligated to perform the mowing, or to maintain or pave the maintenance path, is wrong. The Tampa Palms Development Corporation is an entirely different corporate entity from the Tampa palms Owners Association. An obligation created by agreement for one does not transfer to the other absent an agreement stating so. None is known to exist, certainly regarding mowing the power corridor or maintain the path. The power corridor easement permitted Tampa Palms' Development Corporation to build roads (Tampa Palms Boulevard, Compton Drive, and other crossings of the easement by our roads). It is also the document that says the Tampa Palms Development Corporation could apply for permission to engage in other building or activity in the easement, but would assume ALL liability. The same terms were extended via telephone to the CDD, and would be the case for the TPOA if it were to request permission. It is a risk we have already decided not to take, and there is no reason whatever to change that decision.

Copies of the 1987 easement setting out the terms above, and including maps of what the Tampa Palms development Corporation was allowed to do, are available, as are maps of the land included in the CDD. Along the power line corridor, the CDD and TPOA boundaries are the same. They differ as one proceeds south along Bruce B. Downs; the Landmark at Grayson and one other condo/apartment complex are within the CDD boundaries, but not within the TPOA lands. However, that should have no impact on the discussion above.

So, what we have argued is correct - except that it is both federal and state law that pre-empts the County's regulation. The only other hope for forcing anyone to mow more frequently than the power companies choose to under their own in-house rules would be if Burton and Naomi Walker addressed the topic when they created the Florida Power easement in 1951; and because there was no Tampa Palms, and no homes along that stretch of land, it is less than likely that it was addressed at all.

In light of the foregoing, the issue is whether Sunshine State Conservation LLC as successors at interest in the land once owned by the Burtons, can be forced by the TPOA to mow the grasses.

The TPOA would be just as subject to preemption by the state law as any local government, even if any chain of ownership would place the property within the jurisdiction of the TPOA - and such ownership has never been demonstrated, nor has the property been shown to be within the boundaries (jurisdiction) of the TPOA. If there was any delineation of responsibility to mow or maintain vegetation in the Burton's agreement, it would be incumbent on the designated party to do it - but not on the TPOA to force it, let alone do it or pay for doing it.

It is clear that the TPOA does not own the property, and is under no obligation to maintain it as common area; and it is not shown to be included within the TPOA boundaries or owned by any member of the TPOA. Thus, there is no obligation for the TPOA to mow, and no known way for the TPOA to force the current property owner to do so.

FOR THE BOARD

President + TPOA
Position

10/20/2020
Date

Note items 3, 11, 14 of the FERC guidance at https://www.ferc.gov/resources/faqs/tree-veget.asp?csrt=8410178113373829221

According to the FERC information, there would seem to be no federal rule on frequency of mowing; that would be left to local regulation. Indeed, the State of Florida regulates it, in this fashion: http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0100-0199/0163/Sections/0163.3209.html - essentially, local governments, don't even try, unless what you're addressing is outside the corridor.

The ANSI Z133.1-2000 standard referenced in the Florida statute deals with safety requirements (mainly OSHA) for workers performing tree trimming or removals, etc. and also specifies clearances between power lines and trees, shrubbery, and vegetation. Grasses are encouraged vice trees under power lines. https://www.nrc.gov/docs/ML0520/ML052080378.pdf ANSI A300 (Part I)—2001deals with the proper way to trim a tree, not much else. Neither sets height standards or mowing frequencies for grasses.