

WHAT GIVES THE COUNTY THE RIGHT TO DIG UP MY FRONT YARD?

Increasing urbanization has led to many roadway reconstruction projects in built-up areas. Some residents do not understand that the public right of way extends into what they consider to be their private property.

The Florida Department of Transportation (FDOT) publication entitled “Manual of Uniform Minimum Standards For Design, Construction and Maintenance For Streets and Highways” (Greenbook) includes the following definition of the term right of way:

“A general term denoting land, property or interest therein, usually in a strip, acquired for or devoted for transportation purposes. More specifically, land in which the State, the Department, a county, a transit authority or a municipality owns the fee, or has an easement devoted to or required for use as a public road.”

During roadway construction projects, many public agency officials or contractors are mistakenly blamed for trespassing onto private property. Even if the public agency does not own actual fee simple title to property, it may acquire the right to the property when the public agency has maintained a roadway for a period of at least four (4) years. This type of right of way is known as prescriptive right of way.

Florida Statutes, Section 95.361, presents information on when roads are presumed to be dedicated through the prescriptive right concept. This section states: “When a road, constructed by a county, a municipality, or the Department of Transportation, has been maintained or repaired continuously and uninterruptedly for 4 years by the county, municipality, or the Department of Transportation, jointly or severally, the road shall be deemed to be dedicated to the public to the extent in width that has been actually maintained for the prescribed period, whether or not the road has been formally established as a public highway. The dedication shall vest all right, title, easement, and appurtenances in and to the road in ...”

Most public agencies such as counties and cities require a permit for any work within the county right of way. This includes driveway connections and culvert/utility installations. The reason for controlling work within the public right of way is to insure that hazardous objects are not installed too close to the roadway. Also, the maintaining agency officials must insure that installations in the right of way do not obstruct the view of road users.

The area of the public right of way for a road usually varies from 50 feet for a local road with curb and gutter to 300 feet for an interstate highway. To determine the right of way width for a road, a citizen may contact the Engineering Department (Right of Way Section) of the maintaining agency of the roadway.