



ALAN WILSON
ATTORNEY GENERAL

February 8, 2011

Chris Noury, City Attorney
City of North Myrtle Beach
1018 Second Avenue South
North Myrtle Beach, SC 29582

Dear Mr. Noury:

We received your letter requesting an opinion of this office concerning the City of North Myrtle Beach requiring a landowner to remove a catamaran (or other vessel) from property that is subject to an easement. Specifically, you asked “whether an exemption to section 5-24 [of the North Myrtle Beach Code of Ordinances] to allow catamarans to be stored on the beaches of the City should conflict with the easement the City has from private property owners whose property extends to the mean high water mark of the Atlantic Ocean and conflict with or interfere with the Agreement the City has with the Corps of Engineers for beach renourishment.” Additionally, you asked “whether the City has the right, via the easement, to require the landowner who own the property subject to the easement to remove a catamaran (or other vessel) from the area of the landowner’s property that is subject to the easement granted to the City.”

As background, you provided that the owner of a catamaran routinely left his boat on the beach at the foot of the dune line when the boat was not in use. This individual received a citation for being in violation of the North Myrtle Beach Code of Ordinances section 5-24.

You informed our Office that the owner of the catamaran claims he has a right to leave his catamaran on the beach because the property where he placed the catamaran on the beach is owned to the mean high water mark of the Atlantic Ocean by the home owners association, of which he is a member. You also explained that the City has an easement over the area obtained in conjunction with the federal beach renourishment project to “nourish, renourish, protect, operate and maintain a public beach thereon . . . reserving however, to the landowner, all such rights and privileges as may be used and enjoyed without interfering with the use of the project for the purpose authorized by Congress or abridging the rights and easement hereby acquired . . .”

The request letter provides that the City of North Myrtle Beach is included in Reach 1 of the Myrtle Beach Shore Protection Project which is administered by the Department of the Army U.S. Corps

of Engineers. As part of the Reach 1 Myrtle Beach Shore Protection Project, the City of North Myrtle Beach entered into the Project Cooperation Agreement Between the Department of the Army and the City of North Myrtle Beach, South Carolina for Construction of Reach 1 of the Myrtle Beach Shore Protection Project in June of 1995 (hereinafter “the Agreement”). In the Agreement, the City agreed as follows:

... [to] prescribe and enforce regulations to prevent obstruction of or encroachment on the Project that would reduce the level of protection it affords or that would hinder the operation or maintenance of the Project.

...

If at any time the Non-Federal Sponsor (City of North Myrtle Beach) fails to fulfill its obligations [in] this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless he determines that continuation of work on the Project is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the project.

Project Cooperation Agreement Between the Department of the Army and the City of North Myrtle Beach, South Carolina for Construction of Reach 1 of the Myrtle Beach Shore Protection Project, June 1995.

Law/Analysis

Generally, the owner in fee simple has all of the rights and responsibilities of maintaining property. However, when an easement is created, a small portion of the rights are given away by the grantor to the grantee. An easement is the “right to use the land of another for a specific purpose.” Steele v. Williams, 204 S.C. 124, 28 S.E.2d 644 (1944). The grantor or fee simple owner would be considered servient, and the grantee or easement owner would be considered dominant. South Carolina Jurisprudence explains the duties of each as follows:

In the absence of an agreement, the owner of the servient tenement is under no duty to maintain and repair and easement for the benefit of the dominant tenement. Ordinarily, the owner of the dominant tenement has the duty to keep the easement in repair. When both the owner of the dominant tenement and the owner of the servient tenement use the property subject to the easement, such as a gravel road, a court may equitably divide the responsibility for maintenance and repair, and may take into account such factors as the dominant tenement's duty of maintenance and repair, the burden of the easement on the servient tenement, and the extent of the servient tenement's use.

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12 S.C. Jur. Easements § 25. Op. S.C. Atty. Gen., April 27, 2010. In this instance, the Sedgefield North Homeowners Association, Inc. would be the servient tenement and the City of North Myrtle Beach would be considered the dominant tenement.

In an opinion of this Office dated June 15, 1966, we stated as follows:

In Leppard v. Central Carolina Telephone Co., [205 S.C. 1, 30 S.E.2d 155 (1944)], the Court stated ... “Whether an easement authorizes the use of land in a particular way depends upon the nature and extent of the easement.”

Op. S.C. Atty. Gen., June 15, 1966 (citing Leppard, 205 S.C. 1, 6 (1944)).

The nature and extent of the easement created by Sedgefield North Homeowners Association, Inc. for the City of North Myrtle Beach, County of Horry, State of South Carolina is articulated in the express grant of the easement.

The deed for the easement was created on November 7, 1995 and was defined as follows:

This easement is a perpetual and assignable easement and right of way in, over and across the hereinafter described lands to nourish, renourish, protect, operate and maintain a public beach thereon, including the right to provide use and access to the public; to deposit sand; to accomplish any alterations of contours on said land . . . and to perform any other work necessary and incident to the construction and maintenance of the Myrtle Beach Shore Protection Project; together with the continuing **right to clear and remove any** brush, debris, vegetation, **structures and obstructions** which, in the opinion of the City of North Myrtle Beach, its representatives, agents, contractors, and assigns may be detrimental to the project; and further reserving to the landowner the right to construct a wooden walkway access structure across said easement, provided construction and location of the walkway is first approved in writing by the representatives of the City of North Myrtle Beach; **reserving, however, to the landowner all such rights and privileges as may be used and enjoyed without interfering with the use of the project for the purposes authorized by Congress or abridging the rights and easement hereby acquired**; provided that no excavation shall be conducted, no landfill placed on the land, and that **no additional structures shall be constructed by the landowner**; subject, however to existing easements for public roads and highways, public utilities, railroads and pipelines.

Sedgefield North Homeowners Association, Inc./City of North Myrtle Beach Deed; created November 7, 1995. The intended purpose of this easement is to permit the City of North Myrtle Beach to nourish, protect, and perform any other work on the designated areas of the beach necessary and incident to the construction and maintenance of the Myrtle Beach Shore Protection Project. Such purpose includes the city’s right to remove any obstruction which may be detrimental to the project.

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It is recognized in the deed granting the easement that the landowners retain a right to use the easement area, but only to the extent that such use does not interfere with the project.

In other words, one is permitted to use the designated area within the reasonable scope of the easement. Op. S.C. Atty. Gen., September 13, 2010; 12 S.C. Jur. Easements § 20; Hill v. Carolina Power & Light Co., 204 S.C. 83, 28 S.E.2d 545 (1944). Since the easement specifically states that the City of North Myrtle Beach may, in its discretion, clear or remove any structure or obstruction which is detrimental to the Myrtle Beach Shore Projection Project, one could logically conclude that the City of North Myrtle Beach could rightfully issue a citation to the owner of the catamaran because the catamaran was an obstruction. Therefore, to comply with the scope of the easement, the property owner should remove the catamaran or any other obstruction from the beach. Creating an exemption to allow catamarans to be stored on the beach may be in the discretion of the City of North Myrtle Beach, but is not advisable considering the restrictions of the Project Cooperation Agreement Between the Department of the Army and the City of North Myrtle Beach, South Carolina for Construction of Reach 1 of the Myrtle Beach Shore Protection Project (“the Agreement”). Future performance under the Agreement may be suspended by the Assistant Secretary of the Army if the City of North Myrtle Beach fails to fulfill its obligations to prevent obstruction of or encroachment on the project.

At the time the catamaran owner received his citation, Section 5-24 of the North Myrtle Beach Code of Ordinances provided as follows:

Except for municipal beach service equipment, it shall be unlawful, between the hours of 10:00 p.m. and 7:30 a.m. for any person to leave upon, put, place or set any equipment including but not limited to, chairs, umbrellas, windbreakers, surfboards, air floats, life rafts, tents, cabanas, pavilions, volleyball nets, etc. or to build or erect any fence or other obstruction on the beach, so as to obstruct, impede or retard the free and unconstrained use and occupancy of the public beach by the public or so as to interfere or obstruct any maintenance operation of the beach.

North Myrtle Beach Code of Ordinances, Section 5-24. On December 6, 2010, an ordinance was passed repealing the language of 5-24 and replacing it with text that regulates the placement of shading devices such as tents and cabanas on the beach. As explained in the request letter, the ordinance also contains language in the section titled Other Obstructions which provides:

It shall be unlawful to build or erect any fence or other obstruction on the beach so as to obstruct or impede the free use of the public beach or to interfere with or obstruct any maintenance operation of the beach.

North Myrtle Beach Code of Ordinances, Other Obstructions.

While this Office is not a fact-finding entity, one could reasonably find that a catamaran or similar object would be considered an obstruction that interferes with or is detrimental to the Myrtle Beach Shore Projection Project. The grant of easement expressly states that the City of North Myrtle Beach has a “right to clear and remove any brush, debris, vegetation, structures and obstructions which, in the opinion of the City[,] . . . may be detrimental to the project.” Even though the easement reserves a right for property owners to use and enjoy the easement area, such use is conditional. For example, if the property owner places a structure or obstruction in the easement that interferes with the project, the property owner would be in violation of the easement agreement. Therefore, the City of North Myrtle Beach would be acting within the scope of the easement by removing the catamaran or issuing a citation for the owner to move the catamaran. Providing an exemption for catamarans to be stored on the beach may jeopardize the Agreement, so the City of North Myrtle Beach should not make such an exemption or should proceed with extreme caution before doing so.

Conclusion

Question 1

The scope of the easement is plainly articulated and should be given effect. Therefore it is the opinion of this Office that a court would likely find that an exemption to section 5-24 of the North Myrtle Beach Code of Ordinances allowing catamarans to be stored on the beach could conflict with the easement the City has from private property owners and interfere with the Agreement the City has with the Corps of Engineers for beach renourishment.

Question 2

It is the opinion of this Office that a court would likely find that, under the express language of the easement, the City has a right to require landowners who own property subject to the easement to remove a catamaran or other vessel causing an obstruction.

Sincerely,



Leigha Blackwell
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General