

## Ownership of Road

**Number:** AGO 2025-04

Honorable David Allbritton  
Clearwater City Council  
600 Cleveland Street, Suite 600  
Clearwater, Florida 33755

Councilmember Allbritton:

This office received your letter, dated November 14, 2025, requesting a legal opinion on two questions of Florida law.<sup>[1]</sup> You ask substantially the following questions: (1) whether the City of Clearwater (“the City”) or the Church of Scientology (“the Church”) owns the land underlying a certain section of Garden Avenue in Clearwater, Florida; and (2) whether the Church can petition to vacate that same section of Garden Avenue without paying fair market value for it.

In short, my answer to the first question is the Church most likely owns the land under the section of Garden Avenue at issue. Because the section of Garden Avenue in question was dedicated to the City through a common law dedication, the Church, as the abutting landowner, likely retained the title to the land under Garden Avenue subject to the City’s public easement. As for the second question, assuming the Church owns this section of Garden Avenue subject to the City’s easement, the Church can petition to vacate it without paying fair market value.

### **Analysis**

In order to determine ownership of the land underlying the section of Garden Avenue in question, we must determine whether the public dedication in a 1922 plat, submitted by the Church in response to your letter, was a common law or a statutory dedication.<sup>[2]</sup> “The difference between common law and statutory dedications is significant for purposes of determining who owns the underlying land.”<sup>[3]</sup> “In the absence of a clear intention to the contrary, a common law dedication ‘does not divest the owner of the title to the land, but only subjects the land and the title to the public easement for street purposes,’ with title remaining in the dedicator or his or her successors in title.”<sup>[4]</sup> By contrast, a statutory dedication divests the owner of title to the land and can occur either: when the government constructs and maintains a road continuously for four years; or when the government maintains a road, though created by a private entity, for seven years.<sup>[5]</sup>

“It is well settled that to constitute a [common law] dedication there must be an intention by the owner clearly indicated by his words or acts to dedicate the land to public use and an acceptance by the public of the dedication, and proof of these facts must be clear, satisfactory and unequivocal.”<sup>[6]</sup> “The act of [a common law] dedication is affirmative in character, [but] need not be by formal act or dedication, [it] may be by parol, may result from the conduct of the owner of the lands dedicated, and may be manifested by a written grant, affirmative acts, or permissive conduct of the dedicator.”<sup>[7]</sup> Under the common law, when a plat map shows spaces for streets, “the owner thereby evinces an intention to dedicate an easement in the streets...to the public use as such, the title to the land under the street remaining in the owner or his grantees.”<sup>[8]</sup> And “[w]hen the owner of a tract of land makes a subdivision and includes on the plat a dedication of roads..., the conveyance of the lots abutting the roads...includes title to the property subject to the easement, unless expressly reserved by the dedicator.”<sup>[9]</sup>

Here, the 1922 plat shows the section of Garden Avenue at issue and the abutting properties. The plat shows that the property owners abutting Garden Avenue designated this section of Garden Avenue as a public street. The plat contains no indication that by putting Garden Avenue on the 1922 plat map, the property owners intended anything other than a public easement. Furthermore, since the 1922 plat was recorded before the enactment of the original statutory dedication statute (1935), a statutory dedication was not possible in 1922 and thus a common law

dedication was the only option.<sup>[10]</sup> Thus, the section of Garden Avenue at issue was dedicated by a common law dedication, and, as such, title to the underlying property remained with the original owners subject only to the public easement. Finally, assuming that the conveyances of the abutting land to the Church conveyed full title to the land, the eventual conveyance to the Church of the abutting properties included title to the land underlying Garden Avenue subject to the public dedication.<sup>[11]</sup>

### Conclusion

The following conclusions are subject to the Church's ownership of the land abutting the portion of Garden Avenue in question.<sup>[12]</sup> It is the opinion of this office that the Church likely owns the land underlying Garden Avenue because the 1922 dedication of Garden Avenue was a common law dedication. Further, considering the Church's likely ownership of the land underlying Garden Avenue, and as discussed in this office's previous letter to the City, it is the opinion of this office that the Church may petition to vacate that section of Garden Avenue without paying fair market value for the land.<sup>[13]</sup>

Sincerely,

James Uthmeier

Attorney General

<sup>[1]</sup> See Letter from David Allbritton, City of Clearwater City Councilmember, to James Uthmeier, Att'y Gen. of Fla., (Nov. 14, 2025) (on file with the Office of the Florida Attorney General).

<sup>[2]</sup> "A plat map is '[a] document showing the legal divisions of land by lot, street, and block number' that may be referred to for purposes of describing the property depicted on the map in conveyances and the like." *Lehmann v. Coconut Bayou Ass'n, Inc.*, 269 So. 3d 599, 608 (Fla. 2d DCA 2019) (quoting *Plat map*, Black's Law Dictionary (10th ed. 2014)).

<sup>[3]</sup> *Id.*

<sup>[4]</sup> *Id.* (quoting *Robbins v. White*, 42 So. 841, 841–44 (1907)).

<sup>[5]</sup> See § 95.361(1)–(2), Fla. Stat.

<sup>[6]</sup> *Roe v. Kendrick*, 200 So. 394, 395 (Fla. 1941) (citing *City of Palmetto v. Katsch*, 98 So. 352 (Fla. 1923)).

<sup>[7]</sup> *Katsch*, 98 So. at 353.

<sup>[8]</sup> *Smith v. Horn*, 70 So. 435, 436 (1915); see also *Katsch*, 98 So. at 353 (explaining that a dedication can be shown by "filing a plat or map of one's property designating thereon streets"); *Robbins*, 42 So. at 843–44 (same).

[9] *Pelican Creek Homeowners, LLC v. Pulverenti*, 243 So. 3d 467, 471 (Fla. 5th DCA 2018) (citing *Smith*, 70 So. at 436); *see also Lehmann*, 269 So. 3d at 609 (explaining that “when property owners retain title to an area subject to a public use easement as a street, title to the land up to the centerline of the street is conveyed by any conveyance of the land abutting the street unless title is expressly reserved by the grantor”).

[10] *Lehmann*, 269 So. 3d at 609 (holding that because the plat was recorded before the original statutory dedication statute was enacted, the dedication was a common law dedication).

[11] *See Pelican Creek*, 243 So. 3d at 471 (holding that because the conveyances to the appellants and their predecessors did not contain a reservation of the land subject to the public dedication, the conveyances to the appellants of the abutting properties included title to the land subject to the public dedication).

[12] The City does not appear to dispute the Church’s ownership of the land abutting the portion of Garden Avenue at issue in this opinion.

[13] *See* Letter from James Uthmeier, Att’y Gen. of Fla., to Bruce Rector, Mayor of the City of Clearwater, (May 29, 2025) (on file with the Office of the Florida Attorney General); *see also* Op. Att’y Gen. Fla. 78-125 (1978) (explaining that “a municipality possesses neither statutory nor constitutional authority to exact payment for or otherwise interfere with the property rights of landowners whose property abuts a public street as conditions to or in exchange for the exercise of its power to vacate streets no longer required for public use”).