

**STATE OF FLORIDA
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS**

**IN RE: PETITION FOR DECLARATORY
 STATEMENT**

GARY SMITH

Agency Clerk No.: B47655

FINAL ORDER DENYING PETITION FOR DECLARATORY STATEMENT

On April 14, 2024, Gary Smith ("Petitioner") filed a Petition for Declaratory Statement pursuant to section 120.565, Florida Statutes, with the Board of Professional Surveyors and Mappers (the "Board"). This matter came before the Board at a meeting held on May 7, 2024, in Deerfield Beach, Florida. Petitioner was not present at the meeting.

Upon consideration of the Petition for Declaratory Statement, and being otherwise fully advised of the premises, the Board makes the following findings:

Findings of Fact

1. Petitioner is a professional surveyor and mapper licensed under chapter 472, Florida Statutes.
2. Petitioner filed a Petition for Declaratory Statement ("Petition") on April 14, 2024. The Petition is attached herein as "Exhibit A."
3. Petitioner stated that he had recently prepared a replat of part of a recorded plat and submitted it for review under the review process outlined in chapter 177, Florida Statutes. He stated that the reviewer was requiring that the easements on the original plat go through the vacate process before the replat could be approved even though that part of the original plat had not been

developed. Petitioner requested a declaratory statement applying section 177.101(2), Florida Statutes, to his circumstances.

Conclusions of Law

4. The Board is the state agency responsible for administering chapter 472, Florida Statutes.

5. Section 177.101(2), Florida Statutes, states:

Whenever it is discovered that after the filing of a plat subdividing a parcel of land located in the county, the developer of the lands therein and thereby subdivided did cause such lands embraced in said plat, or a part thereof, to be again and subsequently differently subdivided under another plat of the same and identical lands or a part thereof, which said second plat was also filed at a later date; and it is further made to appear to the governing body of the county that the filing and recording of the second plat would not materially affect the right of convenient access to lots previously conveyed under the first plat, the governing body of the county is authorized by resolution to vacate and annul so much of the first plat of such lands appearing of record as are included in the second plat, upon application of the owners and developer of such lands under the first plat or their successors, grantees, or assignees, and the circuit court clerk of the county shall thereupon make proper notation of the action of the governing body upon the face of the first plat. The approval of a replat by the governing body of a local government, which encompasses lands embraced in all or part of a prior plat filed of public record shall, upon recordation of the replat, automatically and simultaneously vacate and annul all of the prior plat encompassed by the replat.

6. Rule 28-105.001, Florida Administrative Code, states, “A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority.”

7. Section 177.101(2), Florida Statutes, vests authority to vacate prior plats and approve replats in the local governing body.

8. The Board does not have authority over section 177.101(2), Florida Statutes.

9. The Board cannot issue a declaratory statement applying a statute over which it does not have authority. *See Fla. Admin. Code R. 28-105.001.*

Wherefore, for the reasons set forth herein, it is ORDERED that:

A. The Petition for Declaratory Statement is **DENIED**.

DONE AND ORDERED this 16 day of May, 2024.

patricia compton
Patricia Compton, Executive Director
Florida Board of Professional Surveyors and Mappers
For Christopher McLaughlin, Chair

Filed with the Clerk, this 17th day of may, 2024.


Agency Clerk

NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order has the right to seek judicial review pursuant to section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a notice of appeal with the Agency Clerk of the Department of Agriculture and Consumer Services and a second copy, accompanied by any filing fees prescribed by law, with Florida's First District Court of Appeal or with the District Court of Appeal in the appellate district where the party resides. The notice of appeal must be filed within thirty (30) days of rendition of the order to be reviewed.

Copies to:

Gary W. Smith
5166 E. Arbor Street
Inverness, Florida 34452

Exhibit A

Petition for Declaratory Statement Before the Florida Department of Agriculture and Consumer Services, Board of Professional Surveyors and Mappers

April 14, 2024

Gary W. Smith, PSM, LS 4577

5166 E. Arbor Street

Inverness, Florida, 34452

Phone Number 352-201-6372

Email – gsmith50@tampabay.rr.com

Florida Statutes Chapter 177.101(2)

I recently prepared a Replat of a part of a recorded plat. Even though the that part of the original plat had not been developed and no utilities were installed the third party reviewer has insisted the easements located on the original plat has to go through the vacate process before the Replat could be approved. I recited the Statute listed herein yet the reviewer would not waiver from his decision that he would not "sign off" on the review without the vacate process.

I prepare multiple Re-plats per year and this is the first time I have been confronted with this problem. As opinions obviously differ within our profession, I would like a Declaratory Statement from the Board that governs us.

Thank you

Sincerely



Gary W. Smith, PSM

**Gary W
Smith**

Digitally signed by Gary
W Smith
Date: 2024.04.14
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