

2003-0247

From: Victor_Buccola@ca5.uscourts.gov
Sent: Friday, July 11, 2003 12:04 PM
To: scpstaff@st-charles.la.us
Subject: Persons to Address the Council

PETITION TO ADDRESS THE COUNCIL

St. Charles Parish Council Chairman Today's Date:

P. O. Box 302

Hahnville, LA 70057

(985) 783-5000

Dear Chairman:

Please place my name to address the Council on:

DATE: Monday, July 21, 2003

SPECIFIC TOPIC: Unfinished business concerning many questions presented in writing to the Council/Administration earlier this year

one subject only

(*see specific _____

guidelines on

reverse and _____

refer to

Parish Charter-

Article VII., Sec. I.)

DOCUMENTS, IF ANY: NO - Written questions were previously submitted; to date, no written answers have been provided

NAME: Victor L. Buccola

ADDRESS: 123 Burguieres Lane, Destrehan, La 70047

PHONE: 985-764-6411 or 504-310-7728 (W)

SIGNATURE: This request sent via e-mail - is this sufficient? Thank you

Questions for the St. Charles Parish Council and the Administration (to be answered jointly, but preferably separately so the thoughts, beliefs and answers of the separate branches of local government can be compared).

The St. Charles Parish Council routinely accepts and approves Acts of Dedication, and the Parish President routinely allows them to become law. Question: Once any Act of Dedication becomes law, is it mandatory for the proper public officials, e.g, code enforcement officials, to enforce all of the provisions contained within the Statement of Dedication (which is contained within an Act of Dedication)? If No, a detailed explanation is warranted and please cite specific state and/or local laws which allow for the selective, non-enforcement of code provisions which seemingly indicate that the enforcement of these code provisions is mandatory.

Question: Because any Act of Dedication is mandatory and includes a Statement of Dedication which is printed on every survey as is required by parish code, isn't it true that the enforcement of the Act of Dedication, including the provisions of the Statement of Dedication, are therefore ministerial duties? Yes or No.

Question: If the enforcement of all provisions and stipulations found in the Act of Dedication are ministerial duties, then enforcement is mandatory unless the Council votes to waive the requirements and/or to do otherwise. True or False? If False, please elaborate why.

Ministerial duties are required by law. Question: Are there any penalties (civil or criminal) or other consequences for parish officials not enforcing ministerial duties? If Yes, please elaborate. If no, there should be.

Our Parish Attorney has gone on record (4/21/03) to state the Act of Dedication is mandatory because it is required in our Code, however its enforcement is left to the discretion of the Administration and/or the public officials responsible for protecting and enforcing the provisions which are designed to protect the general welfare, safety and well being of all parish citizens. Question: Is it the intent (belief) of the Council (please poll each Councilperson for his/her response) that the enforcement of any Act of Dedication is mandatory (ministerial) or discretionary?

Question: If enforcement of any of the mandatory provisions required in an Act of Dedication are discretionary, please explain what part of local code or State law authorizes the Administration to designate any Act of Dedication as a discretionary duty? Please explain why and cite legal authority why their enforcement is left up to the discretion of any public official other than the St. Charles Parish Council.

Note: state and local law allows the use of discretion, but within guidelines and specific limits of authority granted by the governing authority. Question: What are the specific limits of any discretionary power which any code enforcement official, or the Administration may wield when faced with the decision to enforce, or not enforce, any provision of an Act of Dedication?

Comment: If the act of enforcement of any part of the Act of Dedication is subject to the discretion of those responsible for enforcing the code, then the Act of Dedication, which includes the Statement of Dedication is a big joke and all the people of St. Charles Parish are the big losers. Question: True or False? If False, a detailed explanation is warranted.

An ACT OF DEDICATION is a living, legal document which is required by and made to St. Charles Parish. Question: Who is St. Charles Parish? Answer: St. Charles Parish is every legal citizen and/or resident within this parish. True or False? If False, then please clearly explain, who is St. Charles Parish?

An Act of Dedication is a mandatory, legal document which developers are required to prepare and submit to the people of St. Charles Parish wherein the developer declares that his dedications and grants shall be used for the benefit of St. Charles Parish or any successor government body of St. Charles Parish, which shall be bound by all the terms and conditions contained within the Act of Dedication. Question: Isn't this provision of the agreement a mandatory obligation, and therefore a ministerial duty of all parish employees to enforce?

Question: Can the Council or the Administration cite any example in the history of St. Charles Parish when a legal public servitude has been abandoned without Council approval? If Yes, please cite a recent example. If No, please cite any example in the history of St. Charles Parish when a legal public servitude has been abandoned with Council approval.

Question: Can the St. Charles Parish Administration, by omission or commission, convey property rights (assigned to the general public) without an ordinance by the council? If Yes, please provide specific legal authority of state and /or local law which authorizes the exercise of such power by anyone other than the governing authority. If No, is the mere conveyance (to an individual property owner) of property rights dedicated by ordinance to the public use (e.g., a drainage servitude) a legal option or a use of unauthorized power, or an abuse of authorized power? Please explain in detail.

Question: Is a legal public servitude for drainage subject to prescriptive use? If yes, please cite legal authority and provide an example of any such situation in St. Charles Parish. If No, is the Parish Administration required to ensure (maintain and police) that the legal public servitude for drainage is not used in any manner by any person or persons which is inconsistent with the purpose for which the servitude was initially dedicated to the general public?

Please cite references to all provisions in local code and state law which apply specifically to situations which allow the Administration to use any measure of discretion when determining when to enforce, or not enforce, any and all provisions of an Act of Dedication.

NOTE: The decision of the Council and the Administration to provide answers to some or all of these questions is not mandatory, i.e. it is not a ministerial duty. If any of the submitted questions can not, or will not, be satisfactorily answered for whatever reasons, please explain those reasons thoroughly and indicate at which time and date the questions will be answered for the benefit of the citizens of St. Charles Parish.