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Walton County officials vote again for settlement in beach customary use case

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By DOTTY NIST

For the third time since Feb. 23, the Walton County Board of County Commissioners (BCC) has voted to approve a settlement agreement in connection with the county's customary use complaint in Walton County Circuit Court—a case ongoing for over

four years in which the county had been seeking to affirm the existence of recreational customary use of the beach

The latest vote took place at a May 15 BCC special meeting at Freeport Commons, with several commissioners also making brief remarks before voting.

Discussions on the settlement agreement have been mainly in closed session. The settlement agreement has remained confidential and has not been available for public disclosure. As of the May 15 meeting, there had been no announcement or official statement by the county about the settlement, and Walton County's practice is not to discuss ongoing lawsuits in public. Also, to date it has not been revealed whether the three BCC approvals on the settlement were for the same settlement agreement or a different one, or for different versions of the agreement.

After discussing the settlement agreement in closed session on May 15, the BCC heard two proposed revisions to the agreement presented by Clay Adkinson, acting county attorney. Adkinson asked for a motion to approve and transmit the settlement agreement as discussed in the previous session with those changes —and for the BCC chairman to sign the revised agreement once signatures of the lawsuit parties participating in the settlement were received.

There was a motion for approval by District 1 Commissioner Boots McCormick, seconded by District 4 Commissioner Donna Johns.

"Before we vote," said District 4 Commissioner Tony Anderson, "I want to say this. It's with a heavy heart that we have come to this point. I still think customary use is entitled on the entire beach, but I don't think we're going to get better than this, the way the court system works."

He continued, speaking of the settlement, "So it's with a heavy heart that I vote yes on this…and I believe we all do…but when your lawyers tell you this is…probably as good as it's going to get, and the rulings we've had, I think this is the best way for us to go right now."

McCormick agreed, saying, "Just for the record, I concur with the same personal feelings, I hate this. From growing up here, I hate it. It's a compromise, and I hate it."

He continued, "But for me, when you're in a situation where it's kind of made clear up front, even apparently, by the judge, that

neither party is going to get 100 percent of what they want, it pretty much forces us into just trying to get the best deal we can for our citizens, and I think we have achieved that."

"I agree," Anderson said.

"I concur with you all," said BCC Chairman Danny Glidewell, "and I would also add that there's conservatively eight million reasons that this was sort of the best way to go, and I think we did what we…or are going to do what we had to do."

"And if I may add in, Mr. Chairman," Adkinson interjected, "to put a finer point on that, your eight million reasons obviously reflect the amount of costs and fees that may be incurred in the trial—a conservative number was given to the board previously, and I'll say it in public meeting now—of $3 to $4 million to make it through an eight-week trial with expectation it may take longer than eight weeks, on top of the money that's already been spent."

Adkinson stated that, based on what had been presented to the BCC the previous week (in closed executive session), with likely more "buy-in" by property owners who had intervened in the lawsuit in opposition, he believed that "we'll secure at least two-thirds of the beaches in Walton County for some form of public access moving forward—and we hope that number is going to continue to grow with enforcement."

"So, what this board has done," Adkinson told the commissioners, "is secured approximately two-thirds of the beaches in Walton County without having to incur those trial fees."

(It was not clarified whether the two-thirds calculation includes the approximately seven miles of state park beachfront—and/or the approximately 4.85 miles along the west end with a public use area from 50 to 85 in depth lying seaward of the Erosion Control Line (ECL), varying by location. The latter is with the exception of approximately 200 linear feet in the Sand Trap Road area, where the ECL was vacated. Other than the 4.85-mile west end section, for the rest of the 26-mile-long Walton County coastline plus the 200-foot-long section, the Mean High Water (MHWL) line serves as the boundary between upland property subject to private ownership and beach property "held in trust for all people," per the Florida Constitution. In addition, some sections of the beach are county-owned or leased, and there are public dedications for other sections.)

With a vote taken, McCormick's previous motion for approval carried unanimously (4-0).

The customary use case remains open, with the trial date tentatively set for June 12.

With 1,194 beachfront parcels originally included in the county's customary use complaint, hundreds have been dismissed/removed from the lawsuit, mainly properties located on the west end where the erosion control line (ECL) boundary applies. The BCC voted at the May 15 special meeting to dismiss another parcel.

Located on Beach Lane in WaterColor, the parcel had previously contained a 75-foot-wide easement running parallel with the gulf for purposes of traverse by the public. A November 2021 federal court ruling in the A Flock of Seagirls case had invalidated the public easement in favor of the parcel owner.

Adkinson presented two options offered by attorney Sandy Sanborn, who represents as clients the owners of the parcel, which had been included in the county's customary use lawsuit.

"He has made an offer," Adkinson said, "in this case that because we had a previous easement that allowed public traversal of that property that was abolished by the federal courts, that because the county was using that as its best methodology of allowing the public to traverse the property—that the county, if they wish to… pay fees and costs back to this client, which are in excess of $150,000, they [the lot owners] will be prepared to negotiate some form of easement retention there, given that we don't have easements in those areas directly adjacent thereto, or other public beach accesses directly adjacent thereto. We have one at WaterColor that we will be taking up separately."

Adkinson outlined Sanborn's second option as "for us to dismiss his client from customary use with prejudice right now, with the agreement that his client will bear their entire fees and costs outside of what's already been awarded by the federal court."

The court had tasked Walton County with paying the lot owners' costs of litigation in connection with the federal case.

(A "with prejudice" dismissal would disallow the case for customary use on the parcel from being brought back before the court at a later date.)

Adkinson recommended the latter option offered by Sanborn and asked for a motion to "authorize your legal team to enter into that dismissal" plus have the BCC chairman sign the necessary documents.

McCormick made the recommended motion, which was seconded by Johns. It was approved unanimously.

In other business, among other action at the May 15 meeting, the BCC voted to, as discussed in a previous closed executive session, pay attorney fees in the amount of $100,768.17 in connection with the Adkison v. Walton County litigation. This is a case involving injuries that had occurred prior to 1980 to a county employee, a case that has not been fully closed.

Family members of the employee had petitioned the Office of the Judges of Compensation Claims in 2020 for benefits in connection with the incident. Walton County is being represented by an attorney furnished by the county's insurance carrier with that petition. On May 1, 2023, a family member of the employee had filed a motion for his attorney fees to be paid by the county's insurance carrier.

The commissioners voted unanimously to pay the $100,768.17 in attorney fees.



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