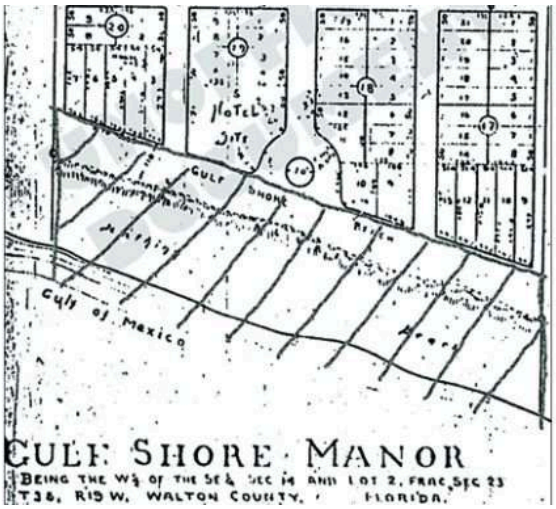
The DeFuniak HERALD Combined with The Breeze
Walton County's Oldest Business
Published Continuously Since 1888

Appeals court rules on Walton County beachfront properties from Gulf Shore Manor plat

April 10, 2024 Quinton News



A DEPICTION of the area of the 1925 Gulf Shore Manor plat containing properties which had been the subject of a 1978 declaration by the Walton County Board of County Commissioners. The declaration indicated that all property lying between the Gulf of Mexico and Blocks 17, 18, 19, and 20 of the subdivision, including a strip designated as "Gulf Shore Beach" and one designated as "Bathing Beach"' in the plat were "renounced and disclaimed" by the county. In recent years the declaration had played a key role with a Walton County Circuit Court ruling and with a November 2021 appeal of that ruling in the First District Court of Appeal (DCA). The appeals court recently affirmed the earlier Walton County Circuit Court ruling.

By DOTTY NIST

SEARCH …

WELCOME!

Welcome to the New Site! This is currently a work in progress so bear with us as we improve and organize!

Subscribe!

ADVERTISE HERE

This is a spot to advertise!

META

Log in
Entries feed
Comments feed
WordPress.org

A First District Court of Appeal (DCA) ruling has upheld an August 2021 decision in Walton County Circuit Court involving beachfront lots contained in property originally platted in 1925 as the Seagrove-area Gulf Shore Manor subdivision in south Walton County. The properties had later been replatted as part of the Jasmine Dunes and Seawalk subdivisions.

In litigation during recent years, the lot owners have stated that their property had originally been identified on the Gulf Shore Manor plat as either "Gulf Shores Beach" or "Bathing beach."

The properties had been among the 1,194 that had originally been included in Walton County's customary use court complaint, through which the county had sought to affirm a right by the public to customary use of the dry sand beach area on all privately-owned property on the beachfront in Walton County.

In an August 2021 ruling and an earlier order, then-Walton County Circuit Court Judge David Green, presiding judge for the county's customary use case, had found in favor of an argument by the owners of the Jasmine Dunes and Seawalk lots in question. The property owners had joined in a motion for summary judgment maintaining that in 1978 Walton County had abandoned customary use rights on the properties.

Judge Green's August 2021 determination had been based on a March 28, 1978, resolution approved by the Walton County Board of County Commissioners (BCC) reading: "All property lying between the Gulf of Mexico and Blocks 17, 18, 19, and 20 of Gulf Shore Manor Subdivision, including strip designated as 'Gulf Shore Beach' and a strip designated as 'Bathing Beach' according to the plat of Gulf Shore Manor recorded in Deed Book 63 at Page 603, records of Walton County, Florida, and the same is hereby renounced and disclaimed." (The resolution had not specifically referred to customary use.)

In the landmark 1974 City of Daytona Beach v. Tona-Rama (Tona-Rama) decision by the Florida Supreme Court, the court had introduced the doctrine of customary use, stating that recreational use by the public of the sandy area, "adjacent to mean high tide line," on beachfront property should not be interfered with by an owner, on the four conditions that such use had been ancient, reasonable, without interruption, and free from dispute.

As part of his August 2021 order, Judge Green had ruled that any new claim by Walton to customary use rights after the 1978 resolution would have been barred by interruption of customary use due to the resolution —and also because any new claim of this nature could have begun no earlier than the date the resolution was passed. This would have meant that customary use could not have existed longer than for the period from 1978, the date of the resolution, to 2018 when Walton County filed the customary use court complaint.

Judge Green had found that a use over such a time period was "not sufficient in length," to be deemed ancient. "Accordingly," he wrote, "the

county is also unable to prove the first element necessary for establishment of customary use rights, that of ancient use."

However, Judge Green had declined in the August 2021 order to find the customary use doctrine as set forth by the Florida Supreme Court "void by vagueness," as argued in a counterclaim by the Jasmine Dunes and Seawalk property owners. He had cited a prohibition contained in the Florida Supreme Court's 1974 Gilliam v. Stewart ruling stating that "The constitution system of courts in this State contemplates that only the Supreme Court may overrule its own decisions."

In November 2021, Walton County had filed an appeal of Judge Green's decision on the Jasmine Dunes and Seawalk subdivision property owners' motion for summary judgment to the First District Court of Appeal.

On Oct. 25, 2023, oral arguments in the appeal case had been presented in Tallahassee, with Adam Tanenbaum, Bradford Thomas, and M. Kemmerly Thomas, DCA judges, hearing the arguments.

At the Oct. 25 oral arguments, attorney David Theriaque had spoken on behalf of Walton County, noting that the appeal applied to just seven beachfront parcels in Walton County. He had maintained that the BCC's adoption of the resolution in 1978 could not legally constitute an abandonment of the public's right to customary use of the beach on the properties.

Speaking on behalf of the property owners, attorney Kent Safriet had continued with contentions related to the property owners' counterclaim, which had been presented in a cross appeal to the DCA on behalf of the property owners.

Safriet had asked the appeals court to answer the question whether or not the discussion of customary use in Tona-Rama had been binding as a legal precedent. maintaining that the discussion had instead been "dicta," or non-binding individual views by the author of the opinion. Safriet also asked for an answer to the question whether, if not dicta, customary use was unconstitutional either as a "taking" or a due process violation.

In a March 27, 2024, ruling, the three DCA judges concurred in simply affirming the lower court decision (Judge Green's August 2021 order).

As of April 8, the DCA ruling was not final pending the disposition of any potential motion or motions for rehearing that may be filed with the appeals court in a timely manner.

Upon becoming final, the DCA ruling would dispose of the remaining parcels originally contained in the customary use lawsuit that had been awaiting a determination.

Walton County had opted to avoid the case going to trial—and had succeeded in doing so through a settlement, motions for summary judgment, and dismissals of the vast majority of the lawsuit parcels.

Of the original 1,194 parcels, several dozen had entered into agreements with the county providing for conditional public use within a Transitory Zone (TZ) extending 20 feet landward of the wet-dry sand line during the hours between 9 a.m. and 4 p.m. Those parcels had been dismissed with prejudice from the lawsuit, meaning that Walton County would not be allowed to bring them back before the court at a later date seeking to affirm customary use on the properties.

In a motion for summary judgment, Walton County had included 81 parcels whose owners had not opted to intervene in opposition to the county's customary use affirmation effort as hundreds of other property owners had done. The county had asked for a customary use ruling on the 81 non-intervening parcels.

Judge Green had found that the county had met the burden of proof to affirm customary use on the 81 parcels.

Due to terms agreed to by Walton County as part of the settlement agreement document, which had been included with the Feb. 29, 2024, final judgment on the customary use case, the conditions applying to the parcels entering into the agreement for public use in the TZ are also to apply to the 81 parcels.

Apart from the 81 parcels and the few contained in the DCA appeal, prior to Judge Green having authorized the closing of the customary use case file on Feb. 29, 2024, Walton County had dismissed with prejudice (on a final basis) all parcels that had been part of the original customary use lawsuit. This had included parcels previously dismissed without prejudice.

The customary use case has now been reopened with the filing of several notices of appeal of the final judgment to the DCA. The appellants are property owners, with both Walton County and the several dozen settlement agreement property owners named as appellees in the notices.

As of April 8, no additional information on these new appeals was available.

« PREVIOUS
April 10, 2024 Legals

NEXT »
WCEDA discuss contracts, executive director review, and the trustee ballots:



Defuniak Herald
740 Baldwin Ave
Defuniak Springs, FL 32435

Phone: (850) 892-3232
Hours: Open 8:00 AM — 4:00 PM

Need Assistance? Contact us!

SECTION NAVIGATION

Legal Notices
Local News
Photos of the Week
Sports
Outdoors
Advertise Here
Online Editions

The heritage of DeFuniak Springs, its founding, the establishment of winter home of the Chautauqua Assembly, and the Herald – Breeze newspapers are entwined so thoroughly, they cannot be separated…

» Read More

© Copyright, Defuniak Herald-Breeze — All Rights Reserved | Designed @ Beach Web Design & IT