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Court issues final judgment on customary use case, authorizes closing file on the case

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WALTON COUNTY'S customary use court complaint has been concluded with a Feb. 15 final judgment granting motions by the county seeking to affirm a right by the public to limited customary use of the beach on 81 parcels. (Photo credit: Joe Burton)

By DOTTY NIST

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Walton County's lengthy customary use of the beach court complaint has come to a close with a Feb. 15, 2024, final judgment, and the outcome of the case promises to be even more long lasting.

The lawsuit had been filed in Walton County Circuit Court over five years ago, in December 2018, with notification provided to owners of 1,194 beachfront parcels. The court filing had been in line with requirements for affirmation of recreational customary use of the beach that went into effect with House Bill 631, legislation which had also been interpreted as negating Walton County's customary use ordinance.

Hundreds of parties, mainly beachfront property owners, had opted to intervene in the lawsuit in opposition to the county court effort.

The vast majority of the 1,194 parcels have been dismissed with prejudice (on a final basis) from the lawsuit, and the owners of a smaller number of parcels have agreed to a settlement agreement with the county providing for limited public use of those parcels during certain hours.

For 81 other parcels, the court has made a finding indicating that Walton County has been successful in affirming a right by the public to the customary uses of traversing the beach and sitting on the beach.

Walton County Circuit Court Judge David Green, presiding judge in the case, had been reluctant to put off the seven-week trial that had been set to begin on May 22, 2023. He had done so on May 15, 2023 at the request of Clay Adkinson, acting county attorney, who had asked for a continuance so that the county and intervening parties could pursue a settlement.

Walton County was able to avoid the trial through the dismissals, along with reaching a settlement agreement with some of the intervenors and the filing of motions for summary judgment regarding parcels that had not intervened while the litigation was pending.

The Feb. 15, 2024, final judgment issued by Judge Green dealt with those remaining parcels, the owners of which had not intervened in the lawsuit.

In the judgment, Judge Green granted eight motions for summary judgment filed by Walton County applying to specific parcels in the

general beach areas of Grayton Beach, Blue Mountain Beach, Santa Rosa Beach, Seacrest Beach, Seagrove Beach, Beach Highlands Beach, Eastern Lake Beach, and Inlet Beach. There were a total of 81 parcels listed in the eight motions.

Judge Green made the finding that Walton County had "demonstrated the existence of customary use on the dry sand beach," of the properties listed in the motions, for the uses of traversing/walking and sitting.

This was based on the court's determination that the county had met the burden for the granting of summary judgment, with the court agreeing with the county's contention that evidence presented had established the elements for customary use that had been adopted as standards in the landmark 1974 City of Daytona Beach v. Tona-Rama, Inc. decision. These elements are that the recreational use of the sandy area adjacent to the mean high tide has been ancient, reasonable, without interruption, and free from dispute.

In the final judgment, the court determined a limited right of customary use on the 81 parcels in line with conditions previously agreed to by the county in the partial settlement agreement document that had been signed by the judge in June 2023.

These conditions included a specific area for public use extending 20 feet landward of the wet-dry sand line (known as the Transitory Zone), the specific uses of walking, running, jogging, access to the wet sand for swimming, surfing, surf fishing, and skim boarding, sunbathing on the sand, a towel, or chair privately owned by the user, and hours for the public use beginning at 9 a.m. and extending to 4 p.m.

Additional terms state that the rights of beach parcel owners are "superior" to the general public's rights in the Transitory Zone (TZ) and that sunbathing-related uses are only allowed when the property owner is "not actively using that area," with other such use by the general public to be considered "an act of trespass."

Other conditions provide for a property owner to exclude members of the public from the TZ who are "not respectfully conducting themselves…," and set a maximum density of one member of the public per five feet of beach frontage.

The conditions of use for the 81 parcels are consistent with those for the several dozen properties who had previously entered into a settlement agreement with Walton County, as the settlement

agreement document had pledged that, in seeking to establish customary use rights on parcels that had not intervened in the lawsuit, the county would be limited to establishment of such rights consistent and not greater than those provided for in specific sections of the settlement agreement.

The terms of the settlement agreement have already proved challenging, as the owners of a beachfront parcel on Eastern Lake who had entered into the agreement had recently filed a motion to withdraw, charging that Walton County had failed to enforce the terms of the agreement. On Feb. 27, the Walton County Board of County Commissioners voted to allow for the property owners to withdraw from the settlement agreement and be dismissed from the lawsuit without prejudice.

William J. Dunaway of the Clark Partington law firm, an attorney representing the Eastern Lake parcel owners and other beachfront property owners intervening in lawsuit, provided the following comment on Judge Green's final judgment:

"The rule of law and the constitutional protections of private property were upheld by Judge Green's Final Judgement. While the County sought in its years-long litigation to convert all private beach fronting property in Walton County to public use without compensation, Judge Green followed the law and ruled that no customary use exists on the private beach fronting properties that disputed the establishment of customary use. It was only on those isolated properties that did not dispute customary use that the County was able to show, without opposition, that the transitory use by the public was ancient, reasonable, without interruption, and free from dispute. Our clients are pleased that Judge Green's rulings judicially establish that there is no customary use on their private property and they look forward to the County properly and promptly communicating this fact by signage and outreach to all beachgoers."

As part of the communications referenced, the Walton County Tourism Department recently began circulating an interactive map aimed at distinguishing between dry sand sections of the beach that are open to public use and private beach areas. The map may be viewed online at the link: **https://www.visitsouthwalton.com/beach-bay-access-locations/**

The tourism department has also indicated plans to place signage along the showing usage for the various sections and including a QR code linking to the interactive map.

In all sections, beach areas seaward of the mean high water line—essentially the wet sand portions—are held in trust for the public based on the state constitution, as are beach areas seaward of the erosion control line that exists along much of the west end as the boundary between state sovereignty beachfront and upland property subject to private ownership.

The Surfrider Foundation is a nationwide non-profit organization dedicated to protection and enjoyment of the beaches, one of its missions being ensuring "full and fair" beach access. Staley Prom, senior legal associate for the foundation, provided the following comment from Surfrider about the final judgment:

"Surfrider is pleased that the court ruled correctly here, and agreed that the County plainly established that public use at these beaches has been ancient, reasonable, without interruption, and free from dispute. However, Surfrider remains concerned with the County's prior settlement agreement, and is dismayed that the public's customary access and recreational rights will be constrained by that agreement on these beaches. The public's rights under the agreement are alarmingly more restrictive than the public's historic use, and the agreement creates significant ambiguities."

Judge Green, who served his last day in office before retirement on Feb. 29, 2024, on that day authorized the closing of the file on the customary use case by the Walton County Clerk of Courts, also noting that any party would be able to have the file re-opened "to request enforcement of the Settlement Agreement by the court."



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