

## OCTOBER 19, 2016 – CUSTOMARY USE WORKSHOP

The Board of County Commissioners, Walton County, Florida, held a Special Workshop on Wednesday, October 19, 2016 at the courthouse annex in Santa Rosa Beach, Florida for the purpose of discussing the applicability of the customary use doctrine to the Gulf of Mexico beach in Walton County.

The following Board members were present: Commissioner Sara Comander, Chairman; Commissioner Cecilia Jones, Vice-Chairman; Commissioner W. N. (Bill) Chapman; and Commissioner Bill Imfeld. Mr. Larry Jones, County Administrator, Mark Davis, County Attorney, and Assistant County Attorney, Sidney Noyes, were also present. Attorney David Theriaque, representing Walton County, was also present.

Chairman Comander called the meeting to order to hear a presentation by Dr. James Miller.

Attorney Theriaque introduce Dr. James Miller regarding his research on customary use.

Dr. James Miller addressed the Commissioners and gave an overview of his experience and qualifications. He has been researching beaches in Florida for 50 years with his focus on the Gulf Coast of Florida and is very familiar with the area. Dr. Miller has a Bachelor's Degree in Anthropology from FSU, a Master's Degree in Anthropology from Duke University, a Master's Degree in City and Regional Planning from University of Pennsylvania, and a Ph.D. in City and Regional Planning. He is a Registered Professional Archaeologist, worked as the State Archaeologist of Florida and Chief of Archaeological Research for 20 years, and is a Consultant in Heritage Planning. He has written more than 100 papers, presentations and publications including two books. (Handout of presentation in file)

Dr. Miller presented the following four elements of customary use: Ancient; Without Interruption; Free from Dispute; and Reasonable

The goals of Dr. Miller's study were as follows: understand the timing and duration of beach use; understand the location and distribution of beach use; document the types of beach use; identify the individuals, families and social networks; identify the beach communities; understand the traditions and customs related to the beach; and collect, organize, and interpret the evidence for customary use.

Dr. Miller gave an overview of the methods of study used including computer databases; geographic information systems; articles and public records; interviews of long-term residents; review of photographs, maps and videos; and construct a chronological narrative of beach use in Walton County.

Sources of evidence included the following: Archaeological site information; US Government Surveys and Patent Deeds; Walton County Subdivision Plats; Historic Maps; Newspaper Articles; Aerial Photography; Historic Photography and Video; and Interviews.

Dr. Miller stated that the Division of Historical Resources maintains a file called the Florida Master Site File which contains information regarding all of the recorded archaeological sites in Florida. He reviewed U.S. Government surveys and patent deeds which are a highly accurate representation of the land surface with cultural features from the very early time periods.

The study area ran from the Okaloosa County line to the Bay County line and north to the Intracoastal Waterway.

The archaeological site information came from: the Florida Master Site File using information from 5,000 years ago to 500 years ago, which represent broad cultural patterns and

traditions and demonstrates that the use of the dry sand areas of the Gulf of Mexico beach in Walton County has been ancient. Dr. Miller stated archaeological sites are places where people left evidence of their activities such as garbage, artifacts, tools, or pottery. He stated sites are not isolated and have long traditions and patterns.

Dr. Miller presented a map showing the Native American Archaeological Sites (3000 B.C to A.D. 1500). There are about 80 sites recorded in the peninsula. He noted the pattern of the sites being located along the water's edge. This occurs along the Gulf of Mexico beach and Choctawhatchee Bay. He spoke on the importance of the locations and stated they represent behavior for how the Native Americans gathered resources, selected the best place to live, conducted social relations and trade. Dr. Miller also spoke about the canoe and its importance as a mode of transportation. The weight of the canoe required early settlers to live near the water for easy access.

Dr. Miller presented pictures of Horseshoe Bayou, a canoe, and a painting of Santa Rosa Island depicting Native Americans' use of the Gulf of Mexico beach. In the colonial period, there were high degrees of exploration. He presented a map of the Choctawhatchee Bay in 1766. He told of a pre-historic canal dug between Horseshoe Bayou and Fuller Lake which empties into the Gulf of Mexico. The canal was used to move Native Americans from Choctawhatchee Bay to the Gulf of Mexico without going all the way to Destin East Pass, cutting 20 miles from the canoe trip.

Dr. Miller stated Florida became a State in 1845 and had been a Territory. The U.S. Government then made a push to move land out of U.S. ownership into private ownership by way of township surveys which began in 1849. Additional dependent resurveys began in 1919 to

1949. The surveys and issuance of a patent deed following a survey, wherein the land is described, were the first steps toward private ownership.

Dr. Miller presented information regarding U.S. Government Patent Deeds stating the first deed issuing ownership to the land occurred approximately 1890-1893 to Captain Gray at Grayton Beach. Patent Deeds represented the first opportunity to settle and build. There were 4,417 acres analyzed in 120 beachfront deeds.

Photographs from Grayton Beach for the late 1800s were presented showing some of the first families who settled there and still have descendants in the area. The pictures imply various uses of the Gulf of Mexico beach, including riding a horse parallel to the water.

Newspaper articles were used as part of the research. Some examples from 1906 to 1954 were presented including articles from the DeFuniak Herald and Pensacola Journal. The articles provide dates, number of people, names, and activities occurring at the Gulf of Mexico beach that document use and related cultural patterns and traditions.

Seagrove Beach was another area of early development. Dr. Miller presented pictures from the 1920s to 1950s and spoke about continuity to our timeframe. He presented a map of the Walton County coast in the 1930s which shows the coastal features and ownership of patent deeds. Dr. Miller explained the road system of Grayton Beach in the 1940s and spoke about travel during that time.

Aerial photography was included as part of the research. Aerial photos from Florida DOT, University of Florida, and USGS can be found. Photos as far back as 1941 show chronology, patterns of land use and development. They reveal beach paths used for beach access and parked cars, as well as dirt roads and trails to the beach.

Dr. Miller explained the beach paths and presented a photo from 1974 at Stewart Lake. He explained how many beach paths there were and the distance between each path. He told about the beachfront subdivisions that existed during the 1940s and stated the properties located adjacent to the Gulf of Mexico beach started becoming full and changing to more intense uses like townhomes in the 1970s.

Information was also found in the Walton County Subdivision Plats from the County Clerk's Plat Books from 1890 to present. The information provided location, boundaries, lots, roads, and dedications; beach access reservations and seaward lot lines; and chronology and pattern of available places to live.

Copies of plats from 1949 for Seahighland and Seagrove Second Addition and from 1960 for White's Gulfview Estates, were presented. A photo of Dune Allen in the 1950s was included, showing people using the Gulf of Mexico beach. Dr. Miller commented on how people used the beach at that time which may be different than our use today.

Dr. Miller presented a photo of Grayton Beach from 1949 showing it was an established community and growing; a 1960s map showing more trails and subdivisions; and additional photos of Walton County's coast in the 1970s. Walton County was becoming more populated by the 1970s. He spoke about various beach uses in the early 1900s and how it was used for horses and cattle herding. Driving was unregulated on the Gulf of Mexico beach from County line to County line until the 1970s.

A photo of a house being moved across the beach shows the beach was used as a highway at that time. Photos showing various uses of the beach since the 1950s were also presented.

Dr. Miller presented four pages of information showing documented uses of the Gulf of Mexico beach, as revealed in historical documents and personal interviews. Documentation was found showing the beaches were used for fishing throughout time. He spoke about the many different uses of the beach and how it was also used to pass on family traditions and to teach values to children and families.

In reviewing the elements of customary use, the information shows that use of the Gulf of Mexico beach began about 5000 years ago with about 3500 years of Native American occupation into the 1830s. The first private ownership was in the 1890s, and, by 1950, there were 10 subdivisions in Walton County. Dr. Miller reviewed the element of use without interruption stating the word interruption does not need to be continuous use in order to be customary. Historical research from the 1890s to the 1900s revealed no interruption in the right or exercise of use of the beach. It appeared through research and interviews of long-time residents and visitors that use of the beach was a normal, expected human activity and is reasonable. Visiting the beach was universally viewed as a healthful, enjoyable and relaxing experience. Use of the beach sand was not suitable for agriculture or building a home.

The Commissioners recessed at 5:00 p.m. and called the meeting back to order at 5:11 p.m.

Chairman Comander opened the floor for public comments.

Ms. Beverly Humphrey asked the Board to protect private property ownership rights. She stated private ownership was either by purchase or land grant from the government. Ms. Humphrey stated compensation is required under the 5<sup>th</sup> and 14<sup>th</sup> Amendments of the U.S. Constitution. She requested they give no further consideration to the draft ordinance for customary use.

Ms. Sissie Canale, owner at Seaside, presented a petition to Board.

Mr. Allan Lege submitted a Warranty Deed for Gulf Pines which specifies exclusive, perpetual use of 1,400' of beach. He felt more discussion should be taking place for a solution rather than hearing the history.

Mr. Jim Bagby asked the Board to consider taking a step back on the issue. Most beachfront property owners do not mind people walking along the beach. The concern was for individuals who behave badly. He questioned if the issues would be addressed parcel by parcel or a blanket assessment. There needs to be common ground and he recommended going back and drafting something everyone can agree on.

Mr. Jerry Kalish spoke about people who bought property in Walton County and the language on their deeds when they purchased it. He voiced opposition to the bad activity occurring on the beach.

Mr. Richard Brightman, an attorney from Tallahassee was present to represent property owners who want to protect their property. He stated the evidence Dr. Miller presented was from a personal perspective and would not be admissible in a court of law. He felt adopting an ordinance is taking a shortcut. He suggested the county take it to court and let a judge decide the issue of customary use if the facts support it.

Ms. Tiffany Hughes questioned how her liability would be affected if customary use is granted.

Ms. Sue Bennett stated she is a new property owner and was not told her property could be used by anyone for any purpose. She previously appeared before the Board regarding signs on the beach. Once the signs came down she had to pick up trash from the beach. She stated she needs to protect what they purchased.

Mr. Bob Gelardi stated he has owned beachfront property since 1992. He stated private property rights are a key element and the one element the county provided is a 25' buffer. He asked to give consideration to people who bought here and if this will be in the interest of integrity of the County, the Commission, and the United States.

Mr. John Crunk, Blue Mt. Beach resident, stated he has public access beside his property. He felt there are more options available to resolve this issue than being considered. This issue is costing a lot of money on attorney fees. He stated there should be some protection when you own the property. He requested the Board find a better solution.

Ms. Annie Briggs is from California where the public owns the beach. She stated there were no signs when she moved here. She felt that vendors are out of control. She also asked for other solutions to be sought and does not want to be blocked from using the beach.

Mr. Jimmy Kuhn, resident of the Eastern Lake area and a member of the Surf Riders Foundation, addressed the Board. Beach access is a universal right necessary for the public's enjoyment of the beach. The Surf Riders Foundation promotes the rights of the public to enjoy beach access and use of the beach. Members live, work, recreate and own property near the beaches. They encourage groups to balance their interests and work cooperatively with residents and decision makers to maximize coastal access for all persons. He felt the proposed ordinance protects the public's customary use rights to county beaches based on historic and traditional use. He encouraged the Commissioner's support and voiced concern with the 25 foot buffer.

Mr. Bill Bullock stated there are a lot of people who do not want to preclude others from using the beach, but that is not true the entire length of beach. One question raised was if the lots were properly measured. He explained some research he performed and provided an example using a lot that was transferred by government patent in 1954 and contained 1.95 acres. After



changing ownership several times, that lot now shows it to be 3.7 acres; the increase being southward of the mean high water line. He asked the County Appraiser how that happened and was told the changes occur as new deeds were filed. He suggested the property may not be legally/privately owned and suggested that issue be researched.

Ms. Brenda Rich stated her family has owned property here since 1954. She is the 4<sup>th</sup> generation in her family using Blue Mt. Beach. Florida is late in looking at this issue and gave an overview of other states who apply customary use: Oregon; Hawaii; New Jersey and Texas who use the Public Trust Doctrine; and North Carolina. Walton County advertises the beaches and if tourists cannot use the beach they will not come.

Ms. Maddie Savoie stated she likes having tourists here. She voiced concern with Section 2 (1) which speaks about no one impeding or interfering with use of beach owned by private entities. She also voiced concerned with the 25 foot buffer zone. She wants a legal right to her property and not be liable for others on her property. She questioned how the public would know where the buffer is and how will it be enforced. She would like to find common ground. The boundaries of private property owners with a legal deed should be upheld. She asked to not make this permanent, but allow communications to occur to find solutions.

Mr. Scott Covell stated he is a gulf front property owner in Grayton Beach and wants a more palatable way to solve the problems. Grayton Beach has a unique history and he does not know of anyone opposed to use of the beach in Grayton Beach. There was a large portion of beach property set aside for public use by the Butler family which has State owned land on either side. He spoke briefly to patent deeds and the distinction that some deeds granted ownership to the mean high water mark and some expressly reserved public access. He also commented on

vehicle permits and the changes in Grayton Beach when the County stopped people from driving on private beaches.

Ms. Sharon Logue-Higgins commented on the notice of hearing for this meeting. She spoke about liability on her property and having to pick up trash on the beach. She spoke about having to pay to get onto beaches in other states.

Mr. Ed Billeaud stated he was born and raised here. He stated money spent protecting freedom is money well spent. He was in favor of customary use and felt his customary rights are being taken away. People want to continue blocking others from the beach. Disorderly conduct on the beach should not be condoned, but is not a reason to block everyone. He commented that people who live on the beach knew the beaches were public when they bought it.

Ms. Kristen Nostrand agrees with Dr. Miller's presentation, but those activities can take place below the mean high water line. She asked to discontinue trying to gain public use of the beaches. The efforts are costly to the County. Owning property is a constitutional right. She stated most property owners are willing to share the beaches to the mean high water line.

Mr. Bill Hackmeyer stated this is a taking of private property for public use. He suggested helping beach front property owners instead of fighting them.

Ms. Garner Chandler stated beaches belong for public use. However, historically, customary use prevents anyone from building a structure in front of yours. It does not mean no one can have access to the beaches. There are activities happening on the beach that do require better enforcement. She said people go to use the beach, not look at it, and asked the Board to pass the proposed ordinance.

Ms. Kelly Anderson thanked the Board for holding the workshop and stated she has been using the beaches since the 1990s and helps keep the beaches clean and safe. She commented on

bad behavior from both beach owners and the beach goers. She asked the Board to do the right thing and continue on their current path.

Mr. Mike Sturdivant, resident in Blue Mt. Beach, commented on the importance of discussing this issue. He felt there are a few vocal minorities who oppose customary use and will threaten lawsuits, but asked the Board to keep in mind they represent all of the people in the county. Mr. Sturdivant reminded the Board of the County Seal that includes conservation, preservation, and pride.

Ms. Brenda Reese asked the Board to stay the course and pass the ordinance. Her family has been here since the territorial days. Ms. Reese reflected on a time in 2001 when state representatives held a hearing on customary use. One of the points they brought up was “something that was public was public in perpetuity”.

Mr. Leonard Anderson stated he moved here in 2003, but has owned on the beach since 1991. He stated people no longer look at what many fought for in this country. Beaches should be held in the same context as National and State Forests and anyone should be allowed to use them as long as they do it respectfully. He does not understand the attitude of those who say they own the beach. His deed says he owns the beach, but questioned where that right came from. He felt it probably came from a realtor or developer which is where the problem lies.

Mr. David Hewins stated he is in favor of public beach use, but suggested viewing it as a public utility. Regulation is a problem, but with any utility it needs to be regulated. More enforcement is needed. He stated customary use of the beach for public use needs to be preserved. As an illustration, he stated even private property rights under a warranty deed are not absolute. Utility companies have an easement to access your property. Although private rights are important, they are not absolute.

Mr. John Boushy pointed out what he feels are inconsistencies. He stated he owns to the mean high water line and that deed goes back to U.S. government issuance. He stated the Judiciary is the best place to make the decision. Mr. Boushy felt there are false arguments being made and spoke about beach owners stating they are not trying to restrict access. He commented on occurrences by both beach front owners and beach users that are not being addressed, resolved, or enforced by current laws. Mr. Boushy asked the Board to discuss a solution that is more mutual than what the ordinance provides today. He asked the question, "have we done enough" to find a solution for locals, tourists, and people who legally own to the mean high water line.

Ms. Julie Hilton spoke to the issue of owning to the mean high water line and stated Dr. Miller explained the government sold property to private owners. She stated it would be unfair for the County to take private property without compensation. She commented on the problem with tourists who believe they can do what they want on private property. She requested for legal counsel to explain how customary use will be used across the board without addressing the individual property before they end up in court.


Mr. Jack Hanes, President of the HOA for Sanctuary by the Sea Condominiums, was told their deed has 650 feet of beach front deeded to the mean high water line. He stated they paid \$20 million for the property and this issue will be expensive for the county to pursue. He questioned how many miles of public beach exist in Walton County through accesses and state parks and encouraged the Board to buy more land and make it public rather than using the money to fight the issue in court.

Mr. Lee Padgett thanked the Board and voiced concern with setting precedent. He spoke about the need to study customary use along the Choctawhatchee Bay and other areas that would fall under the same doctrine.

Ms. Lisa Boushy asked the Board to consider appointing a committee to help solve this in a peaceable way. She felt appointing constructive/compassionate people from both sides of the argument would help.

Chairman Comander announced a Public Hearing on Tuesday, October 25th to consider this issue further and to review the draft ordinance. The ordinance will be available by noon on Friday on the county's website.

There being no further comments, the meeting adjourned at 6:30 p.m.

Approved:   
Sara Comander, Chairman

Attest:   
Alex Alford, Clerk of Court and County Comptroller