

Keri O'Brien

From: Monroe Holloway
Sent: Monday, July 25, 2022 9:26 AM
To: Cheri Smith; Keri O'Brien
Subject: FW: [EXTERNAL] Fwd: DINGHY BEACH LEGAL #2 Affidavits and Applicable Case Law for Aug. 16, 2022
Attachments: IMG_20220724_180642~2.jpg; IMG_20220724_182526~2.jpg; IMG_20220718_133050.jpg; IMG_20220724_180528~2.jpg; Screenshot_20220622-131835.png; Screenshot_20220210-194856~3.png; Screenshot_20220621-230256~2.png

Morning,

How do I fulfill this request ?

Monroe Holloway III
Executive Assistant – Mayor & City Commission
Phone: 305-809-3868
Cell: 305-240-4916
Email: monroe.holloway@cityofkeywest-fl.gov
1300 White St.
Key West, FL 33040

From: Christine E. Lininger <cheliner@msn.com>
Sent: Monday, July 25, 2022 9:23 AM
To: Monroe Holloway <monroe.holloway@cityofkeywest-fl.gov>
Subject: [EXTERNAL] Fwd: DINGHY BEACH LEGAL #2 Affidavits and Applicable Case Law for Aug. 16, 2022

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Good morning Monroe,

Please submit this email and the copy of this email specifically for Commissioner Wardlow, to the official record/public record.

Thank you,

Christine

----- Forwarded message -----

From: "Christine E. Lininger" <cheliner@msn.com>

Date: Jul 25, 2022 09:12

Subject: DINGHY BEACH LEGAL #2 Affidavits and Applicable Case Law for Aug. 16, 2022

To: districti@cityofkeywest-fl.gov, districtiv@cityofkeywest-fl.gov, districtv@cityofkeywest-fl.gov, districtvi@cityofkeywest-fl.gov

Cc: mayor@cityofkeywest-fl.gov, skaufman@cityofkeywest-fl.gov, citymanager@cityofkeywest-fl.gov, tstoughton@cityofkeywest-fl.gov, editor@thebluepaper.com, raschein-holly@monroecounty-fl.gov, abel-corie@monroecounty-fl.gov

Good morning Commissioners,

In reference to the legal qualifications of Dinghy Beach as a public beach and the prescriptive/adverse possession of Robert Spottswood's/Marriott Beachside's portion of Dinghy Beach, I'd like to draw your attention to the following Florida case laws that support Dinghy Beach's public access and are applicable in this matter - especially for August 16, 2022.

To apply and support these cases laws in reference to Dinghy Beach - I've ATTACHED a small selection of AFFIDAVITS VERIFYING UNINTERRUPTED PUBLIC BEACH ACCESS AND USE BY THE PUBLIC as required by case law listed below. Dinghy Beach has been a public beach for decades and the Public will no longer allow the City to ignore this fact. Additional affidavits will be submitted at the City Commission Meeting Agenda on August 16, 2022.

Applicable Florida case law:

City of Daytona Beach v. Tona-Rama, Inc. (1974)

"We recognize the propriety of protecting the public interest in, and right to utilization of, the beaches and oceans of the State of Florida. No part of Florida is more exclusively hers, nor more properly utilized by her people than her beaches. And the right of the public of access to, and enjoyment of, Florida's oceans and beaches has long been recognized by this Court."

"Recognized" in full detail right here - for your convenience:

<https://law.justia.com/cases/florida/supreme-court/1974/43352-0.html>

And

In the case of the 40+ year old public beach, Dinghy Beach, there has been "an open, notorious, continuous and uninterrupted use of the beach by the public, in derogation of the upland proprietors' rights, for a period of twenty years, or for any period." City of Miami Beach v. Undercliff Realty & Investment Co., 155 Fla. 805, 21 So. 2d 783 p.786 (1945) - (cited in Daytona v. Tona-Rama)

And

"In either prescription or adverse possession, the right is acquired only by actual, continuous, uninterrupted use by the claimant of the lands of another, for a prescribed period. In addition the use must be adverse under claim of right and must either be with the knowledge of the owner or so open, notorious, and visible that knowledge of the use by and adverse claim of the claimant is imputed to the owner." Downing v. Bird, 100 So. 2d 57 (Fla. 1958) - (cited in Daytona v. Tona-Rama)

In 2005, when Robert Spottswood submitted the application for the landscaping permit (attached) to the City, he clearly defined his property line between Marriott Beachside and public property with the fence and natural landscaping he set in place - a boundary line in which he (see attached photo) places the fence where he is, with full "knowledge", openly giving full public use of a portion of his property (see attached survey) which allowed for the state-mandated land access to the public beach as is defined in, and required by, FL Stat. 161.55(5). Robert Spottswood KNOWINGLY left the original 2005 Marriott Beachside beach-delineating fence in place from 2005-2020, a period of approximately fifteen (15) years - actual, continuous and uninterrupted fifteen (15) years - before removing the City-permitted beach-delineating portion of the original fence in January 2020 and placing it - without City permit - directly on not only the now prescriptive-possession public property, but also, again - without City or other govt. permit - on public property, both fence placements blocking access to the public beach in full and blatant violation of FL Stat. 161.55(5).

Dinghy Beach was, is, and we expect it to be again, an open public beach - for the public.

Sincerely,

Christine Lininger

Attachments

Dinghy Beach Affidavits:

Michael LeQuire (1983-2021)

Jeff Wilenski (2013-2020)

Christine Lininger (2013-2021)

Aron Barta (2018-2021)

Marriott Beachside 2005 Landscaping Permit City of Key West

Google photos 2019 of Dinghy Beach

Reece Associates Survey 2022

Affidavit for Dinghy Beach (1983-2021)

I have known Dinghy Beach to be a public beach since 1983. From 1983-2021, I saw members of the public accessing the original Marriott Beachside/public property fence to engage in recreational activities such as locals playing and swimming with their dogs, tourists swimming and locals and tourists having drinks on the beach at sunset.

I used the beach for exercise for my dog, swimming and socializing on the beach, maintaining my dinghy and participating in beach/mangrove cleanups from 1983-2021. Then, I met Donald, a fellow military veteran and the man who gave Dinghy Beach its name, and frequently used the beach to visit his hut on Salt Pond Key while also seeing him fisherman, boaters and other locals. I used the beach prior to the 2005 original Marriott Beachside fence being erected, saw that fence stay up and public access open uninterrupted until 2020 and was present when Marriott Beachside management removed the 2005 original Marriott/public beach fence and placed the new fence on public access and public property in January/February 2020. I saw no permits for the 2020 Marriott Beachside fence which blocks me from accessing the beach from land at the time the fence was erected or anytime since.

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Signed Michael D. Lequire Executed on 7/20/22
Address: 701 PALM AVE KEYWEST FL
MICHAEL D LEQUIRE
(Date)

AFFIDAVIT FOR DINGHY BEACH (2013-2020)

I first went to Dinghy Beach in 2013. Lots of people were there enjoying it for recreational and public water access. I have talked and met with many locals and tourists who used the beach to swim and kayak there. It's a neat and cool water access who may visit and enjoyed.

Then in 2020 access was restricted as someone put a fence up blocking me and others from accessing the public water access there.

I declare under penalty the foregoing statement is true & correct.

JEFF WILENSKI

JULY 14, 2022

400 WHITEHEAD ST #6643

KEY WEST FL, 33040

DINGHY BEACH AFFIDAVIT

(2018 - 2021)

I HAVE KNOWN DINGHY BEACH TO BE A PUBLIC BEACH SINCE BEING STATIONED TO WAS KEY WEST IN SEPTEMBER 2018. FROM 2018-2021, IN PASSING THE BEACH ON MY WAY TO AND FROM WORK ON BASE AND SHOPPING IN TOWN, I SAW MEMBERS OF THE PUBLIC ACCESSING THE BEACH FROM LAND ALONG THE 2005 ORIGINAL MARIOTT BEACHSIDE / PUBLIC PROPERTY FENCE TO ENGAGE IN DAILY RECREATIONAL ACTIVITIES. USUALLY PEOPLE BEEN PLAYING WITH THEIR DOGS OR KAYAKING. I WITNESSED THE TIMELINE WHEN THE JANUARY-FEBRUARY 2020 ILLEGAL, UNPERMITTED FENCE WAS ERECTED AND BOUGAINVILLEAS PLANTED TO HIDE THE FENCE BY MARIOTT BEACHSIDE STAFF. NO PERMIT FOR THE FENCE WAS POSTED. ADDITIONALLY, I SAW DEDICATED MEMBERS OF THE PUBLIC PERFORM BEACH AND AREA CLEANUPS ON AN OCCASIONAL BASIS AS LATE AS MID - AUGUST 2021.

I DECLARE UNDER THE PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

ARON BARTA

Aron Barta

EXECUTED ON

17 JULY 2022

ADDRESS: 2764 NORTH ROOSEVELT BLVD. #2208
KEY WEST, 33040

Dinghy Beach Affidavit (2013-2021)

I have known Dinghy Beach to be a public beach with -uninterrupted- public access for eight (8) years. From 2013-2021, I saw members of the public accessing the beach -unimpeded- from land at the beach entrance along the 2005 original black metal Marriott Beachside fence that divided Marriott Beachside property from public property all the way from the sidewalk to the water. I saw people engaged daily in recreational activities such as: Local parents teaching their children how to swim, tourists from the hotels across the street drinking their morning coffee and sunset cocktails on the beach and locals gathering for socializing and exercising their dogs in the water and on occasion, are locals even kayaking.

I also saw other members of the public perform regular beach and area cleanups as late as mid-August 2021.

I used the beach recreationally - with clear, free and uninterrupted access from land - from 2014-2021 on a regular basis, often daily, for swimming, aquatic rehab therapy water activities and socializing with friends in the area.

In January-February 2020, I saw Marriott Beachside staff erect the fence on public property and cover the fence with grown, flowering bougainvilleas which later died. I was the subject of threats, harassment and intimidation by Marriott Beachside management and City of Key West police from March 2020-February 2022 when being on the public beach, Dinghy Beach, for socializing or beach cleanups. I participated in the semi-annual North Cow Key boaters cleanups and occasionally cleaned up the area myself in my free time until mid-August 2021.

At no time did I see a City permit for the illegal fence posted anywhere at the time the fence was erected or any time since it has blocked off access to the public the beginning of 2020.

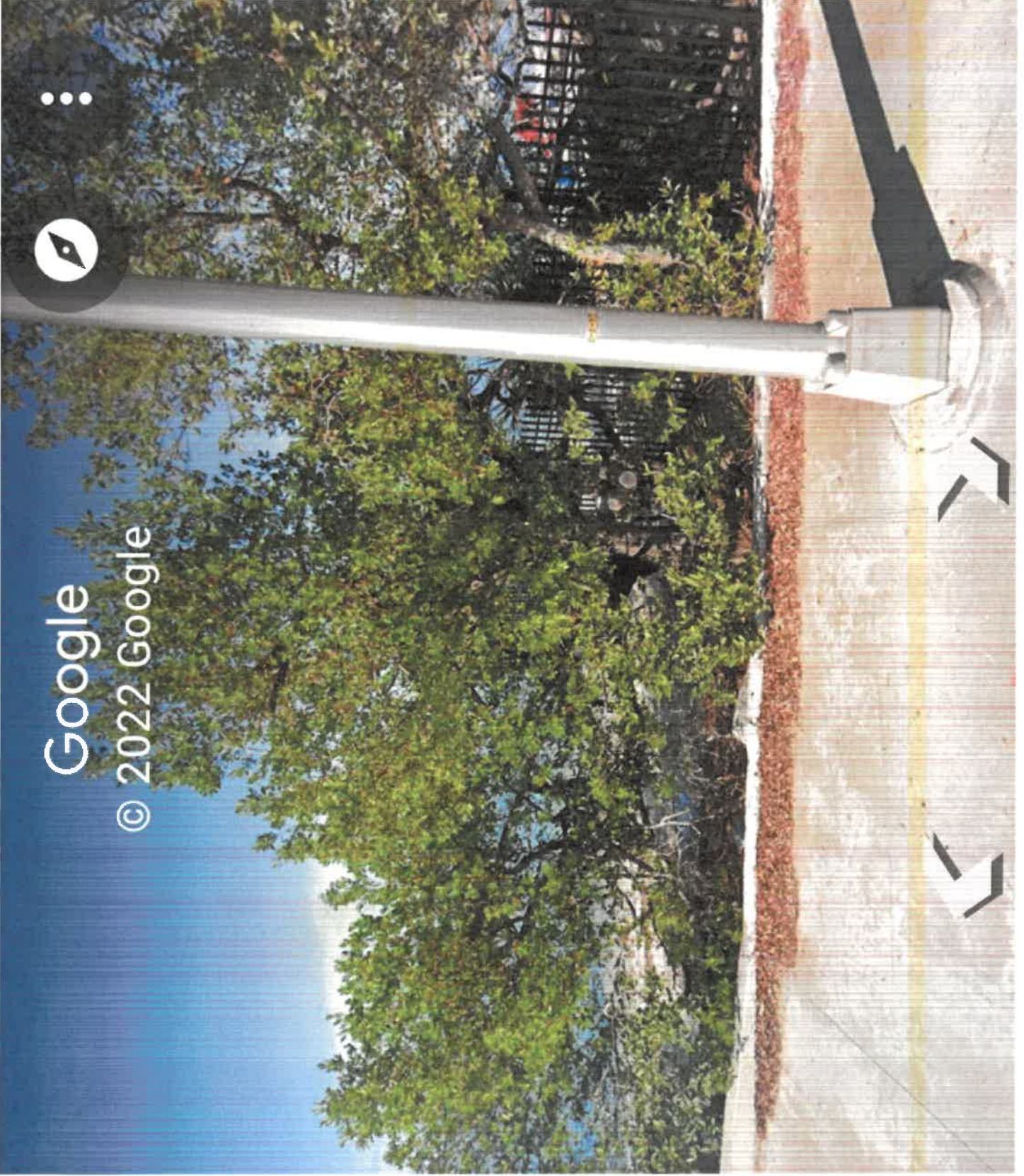
I declare under penalty of perjury that the foregoing is true and correct.

Name CHRISTINE LUNGER

Signed Christine Lunger

Executed on July 27, 2022 (date)

Address: 400 Whitehead Str. B, Key West, Florida 33040



Google
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Todd C. Stoughton
FW: [EXTERNAL] RE: Survey Request
June 21, 2022 at 4:08 PM EDT
To: Patti McLaughlin; Shawn D. Smith
Patti/Shawn,

Attached is the survey from Reece & Associates. The PDF 'Survey Area' is an extract from the 3 page survey that highlights the accretions that make up 'Dinghy Beach'.

A few concerns regarding 'Dinghy Beach':

- Resolution 15-230 (attached) was created to provide for a prohibition for standing, sitting, climbing, etc., on seawalls as stated in Exhibit A, paragraph 10. Although Dinghy Beach is not considered a park, under Sec 28-96 of our code specifically states 'any public open space owned by city, county, state of federal government...'
- Beaching or tying off a dinghy is also prohibited in our code under Sec. 82-31 'It is unlawful to tie, moor, anchor, beach or attach in any way a vessel to public or private property, including seawalls, structures, other vessels, waterway markers, signposts or fence posts, vegetation (trees, bushes, plants) and submerged lands, without prior written permission from the owner within the city limits.'

At this point there is nothing else I can do and request guidance on how you would like to proceed.

Respectfully,

Todd

From: info@reeceurveying.com <info@reeceurveying.com>
Sent: Thursday, June 16, 2022 12:18 PM
To: Todd C. Stoughton <tstoughton@cityofkeywest-fl.gov>
Cc: Portia Navarro <pnavarro@cityofkeywest-fl.gov>
Subject: [EXTERNAL] RE: Survey Request

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.
Please see attached. I will get hard copies in the mail.
Thanks, Shawn

image001.png image002.png image003.png 22062306_NIRoo saveit...urvey.pdf Survey Area.pdf

