



**AVIROM & ASSOCIATES, INC.**  
SURVEYING & MAPPING

December 9, 2021

Mr. Todd Stoughton  
Assistant City Manager  
**City of Key West**  
1300 White Street  
Key West, FL 33040

*Re: Key West Marriott Beachside Hotel*  
*Surveyor's Opinion Relative to Riparian Rights and Accretion*

Dear Mr. Stoughton:

I have reviewed the pertinent materials listed (*see Reference Materials*) that you transmitted relative to the Key West Marriot Beachside Hotel's littoral rights (riparian rights) and the accretion of lands coincident with the upland and I respectfully submit my opinion below.

*Location*

The subject property is located at 3841 N Roosevelt Boulevard, Key West, Monroe County, Florida 33040 vested in SH5, Ltd. having a Parcel ID of 00064881-011400 per the Monroe County Property Appraiser website.

*Reference Materials:*

- a) Letter to Key West City Hall from Spottswood Companies, Inc. dated October 29, 2021.
- b) Letter to Florida Department of Transportation, District VI from Baker-Hostetler dated May 12, 2020.
- c) Letter to Mr. Jim Young, Director of Code Compliance, City of Key West from Florida Department of Transportation dated January 26, 2021.

*Opinion:*

- Within the third paragraph of the letter to Key West City Hall from Spottswood Companies, Inc. dated October 29, 2021, (*Item a, above*) Mr. Robert A. Spottswood stated that “The property is not in its natural state as the property was former submerged lands that were filled in accordance with the development practices permitted and encouraged at such time to facilitate economic development in our State.”.

This statement is factually and historically correct because in the 1920's Florida's legislature passed laws “to expand riparian rights, permit filling and bulkheading as a means of decreasing the coastal thicket of vegetation, reducing mosquito and reptile populations, creating panoramic views of water bodies, and providing access to deep water for navigation purposes.”<sup>1</sup>

The lands that were created by the filling of the former submerged lands are in fact man made and have no significance as a “historic beach”.

The letter to Mr. Jim Young, Director of Code Compliance, City of Key West from Florida Department of Transportation dated January 26, 2021 (*Item c, above*) further supports the fact that the land was deeded to SH5, Ltd. predecessor-in-title, Key West Improvement, Inc. in 1950 and no objection was mentioned in the letter as to the land's origin.

- Within the fifth paragraph of the letter to Key West City Hall from Spottswood Companies, Inc. dated October 29, 2021, (*Item a, above*) Mr. Robert A. Spottswood stated that “At no time did the past or current owners of the Beachside property open these areas to the public. These areas have always been made available only to the owners and guests of the property.”

This statement, if factually correct effectively bars any claims of prescriptive usage of the lands for access by the public and is further supported by the construction of the fence, the intention being to restrict the public use.

- Within the third paragraph of the letter to Florida Department of Transportation, District VI from Baker-Hostetler dated May 12, 2020, (*Item b, above*) Mr. Robert H. Gebaide stated that “In *Board of Trustees v. Sand Key*, 512 So.2d. 934, the Florida Supreme Court expressly recognized that Florida has adopted the common law rule that a riparian or littoral owner owns to the line of the ordinary high water mark on navigable waters. The Court has also held that riparian or littoral rights are legal rights and, for constitutional purposes, the common law rights of riparian and littoral owners constitute property. Riparian and littoral rights expressly include the right to receive accretions and relictions to the property.”

I concur with this statement and further in *Board of Trustees of the Internal Improvement Trust Fund v. Mederia Beach Nominee, Inc.*, “[a]ny other rule would leave riparian owners continually in danger of losing access to water which is often the most valuable feature of their

property, and continually vulnerable to harassing litigation challenging the location of the original water lines.”<sup>2</sup>

- Within the fourth paragraph of the letter to Florida Department of Transportation, District VI from Baker-Hostetler dated May 12, 2020, (*Item b, above*) Mr. Robert H. Gebaide stated that “Accretion is defined as the process in which the action of water causes a build-up over time in riparian land through the gradual accumulation of solid material, whether silt, sand, soil, or sediment. The subject area, consisting primarily of a sandy beach area, has built up gradually over time and by all accounts fits squarely within the definition of accreted lands. Florida law establishes that the riparian land owner is entitled to ownership of accreted lands. Accordingly, SH5, Ltd., as landowner entitled to the riparian rights associated with the subject property, is firmly established under Florida law as the owner of the lands at issue.”

I concur with the above paragraph in that the upland owner by nature of their riparian rights is entitled to claim the accretion of land coincident with their upland property.

*Summary:*

Based on the review of the reference materials provided and my professional opinion, I can state that the lands that were created by the filling of the former submerged lands are in fact man made and have no significance as a “historic beach”.

The claim of a prescriptive easement for public access is prevented by the actions of the owners by the restriction of public access and the exclusive use of the property for “owners and guests”.

The subject property borders sovereign submerged lands and is coincident with navigable waters, with riparian rights inuring to the upland owner. Florida common law established that the riparian land owner is entitled to ownership of accreted lands. In *Board of Trustees of the Internal Improvement Fund v. Sand Key Assoc.*, “Riparian owners have the common law right to receive accretions to their lands, so long as the deposits were not of the riparian owner’s own doing.”<sup>3</sup>

A legal argument may be made that the filling of the former submerged lands being man made created the accreted deposit; however, this is a legal matter on which I cannot opine, but I strongly feel that the upland owner would prevail in court.

Respectfully submitted,



Keith M. Chee-A-Tow, P.L.S.

Project Surveyor

Florida Registration No. 5328

AVIROM & ASSOCIATES, INC.

Licensed Business No. L.B. 3300

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<sup>1</sup> A Study of the Effect of Shoreline and Channel Geometry on the Division of Riparian Rights, A report to the Florida Department of Natural Resources under Contract #C3507 to the Department of Civil Engineering, University of Florida, Gainesville 32611, by Dr. David W. Gibson.

<sup>2</sup> *Bd. of Tr. of the Internal Improvement Fund v. Medeira Beach Nominee*, 272 So.2d 209, 213 (Fla. 2d DCA 1973).

<sup>3</sup> *Bd. of Tr. of the Internal Improvement Fund v. Sand Key Assoc.*, 512 So.2d 934, 939 (Fla. 1987).