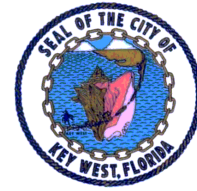


Executive Summary



To: Patti McLauchlin, City Manager

From: Todd Stoughton, Assistant City Manager

CC: Shawn Smith, City Attorney

Date: 7/6/2022

RE: N. Roosevelt Blvd 'Dinghy Beach'

Action:

Respectfully request the City Commission direct staff on their desired course of action related to 'Dinghy Beach'.

Background:

There is a dispute between residents, the City, and the owners of SH5 LTD, dba Key West Marriott Beachside Hotel and Beachside Key West Resort Condominium Association, Inc., (SH5) on the ownership of what has been called 'Dinghy Beach'. Detailed background on the development of the accreted lands can be found in Attachment (A) in a letter written by Mr. Robert Spottswood to the Mayor and Commissioners dated October 29, 2021.

There are several cases within the State of Florida regarding riparian lines, and accreted lands. In most cases reviewed, the accretion or reliction to soil passes with the title to the land to which accretions are appurtenant. Beachside Marriott has provided background information on the development of their property which included the addition of soil to their property from dredging near the Cow Key Channel. This land has continued to grow in accumulation from their property towards the west along North Roosevelt and it is assumed that additional soil will continue to accrete over time to the west. FDOT and FDEP have both denied ownership of the accreted lands, Attachments (B & C). Multiple surveys have been conducted starting with the Frederick H. Hildebrandt survey on April 12, 2007, attachment (D), followed by a study and opinion letter from Avirom & Associates dated December 9, 2021, attachment (E), and lastly Reece & Associates completed a boundary Survey on June 13, 2022, attachment (F). All three surveys demonstrate riparian lines, and the abbreviated Reece & Associates survey clearly demonstrates a property line on the sea wall that denotes City property lines on the upland side.

On March 2, 2020, a Code Case was opened due to fencing being placed without a permit by SH5 that resulted in a Settlement Agreement between the City and SH5. In the agreement, attachment (G), it states that the fence '...closed off a stretch of property that

is owned by SH5 and an additional stretch of property that is accreted land whose ownership is unknown.’ Notably is section 4.(a), which states that the respondent to the Code Violation believes they are the owner of the entire piece of property on which the fence currently sits.

A few concerns regarding ‘Dinghy Beach’:

- Resolution 15-230, attachment (H), was created to provide for a prohibition for standing, sitting, climbing, etc., on seawalls as stated in Exhibit A of the resolution, paragraph 10. Although Dinghy Beach is not considered a park, under Sec 26-96 of the City code specifically states ‘any public open space owned by city, county, state or federal government...’. This would cover the Dinghy Beach accretion.
- 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.’

Financial Impact:

Financial Concerns are stated within the options presented below.

Options:

1. Allow SH5 to apply for an easement agreement of approximately 1,753 square feet of accreted lands with the City, authorizing the City Manager to execute all documents consistent therewith with the consent and advice of the City Attorney. The issuance of an easement would bring small revenue to the City.
2. Require SH5 to remove or redirect their fence towards their property. This would most likely result in litigation for the City as outlined in the *Board of Trustees v. Sand Key*, 512 So.2d. 934, in which 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 water.
3. Require SH5 to remove or redirect their fence towards their property and develop the property to be usable which would require an ordinance update/change. This option could result in litigation with the City as described in option 2. Development of Dinghy Beach would be costly and require substantial construction and ordinance changes.

Recommendation:

Staff recommends option 1, allowing for SH5 to apply for an easement with the City due to the major administrative and financial changes that would be required to make ‘Dinghy Beach’ a functional pocket park or public beach.