

HARRISON, SALE, McCLOY & THOMPSON

CHARTERED
ATTORNEYS & COUNSELORS AT LAW

CARLOTTA APPLEMAN-MONIZ
MICHAEL B. DUNCAN
FRANKLIN R. HARRISON
ROBERT C. JACKSON
ROSS McCLOY
KEVIN D. OBOS
AMY E. ROSS
DOUGLAS J. SALE
ALAN THOMPSON

304 MAGNOLIA AVENUE
POST OFFICE DRAWER 1579
PANAMA CITY, FLORIDA 32401

TELEPHONE (850) 769-3434
TELECOPIER (850) 769-6121

October 1, 2004

Mr. Frank Taylor
President, Laguna Beach
Property Owners Association
P.O. Box 7436
Panama City Beach, FL 32413

Re: Dedicated Beach

Dear Mr. Taylor:

You have requested answers to a number of questions regarding the proposed sale and annexation of the "Beach Reserved" property shown on the plats of Laguna Beach dated January 1, 1937 and April 26, 1941. After some litigation, including an opinion by the Florida Supreme Court, Circuit Judge E. Clay Lewis, Jr., on June 8, 1949 entered an Order determining the meaning and uses of the "Beach Reserved" under those plats. I am enclosing a copy of both the Florida Supreme Court decision as well as the subsequent Order entered by Judge Lewis.

The Court determined that the "Beach Reserved" is "reserved as a beach for the use of the owners of lots in the said subdivision for recreational and bathing purposes without interference or hinderance by the defendant and without any buildings or structures being built or erected thereon." The defendant was Gulf Properties of Alabama, Inc. The Court further stated that the "... said area shall be kept open and no buildings or structures of any kind shall be built or erected thereon."

The answers to the questions posed are as follows:

1. *What impact will the sale of the reserved beach, placed in a trust, have on the Laguna Beach Property Owners Association members?*

Any conveyance by the owners of the reserved beach will be made, by operation of law, subject to the terms and conditions of the June 8, 1949 Order. It makes no difference if it is deeded outright or is placed in trust, the use of the property will still be subject to the Court's Order.

2. *Will we retain the right to pay taxes on the property if it changes owners?*

A conveyance will not change the relationship between the parties as far as the payment of real estate taxes. I don't have the history on why the Laguna Beach Property Owners Association began paying the real estate property taxes on the property. My guess is that Mr. Lahan did not intend to continue to pay them if he couldn't use the property as he wanted to and, therefore, the property owners got together and started making payments so that the property would not be sold to a third party on a tax deed.

3. *Will taxes still be levied against the reserved beach property in light of recently passed Florida legislation dealing with real and personal property taxation?*

I am unable to answer this question without further information regarding the statute.

4. *Will Boothby et al. be affected?*

A conveyance will not have any effect whatsoever on the Court's Order.

5. *Will the property owners in the subdivision still be able to cross over the property (which will have a new owner) to get to the water's edge if the reserved beach property is voluntarily annexed into the City of Panama City Beach by the new owner?*

The property owners of the subdivision will have the same rights they have had since 1949 on the property. A conveyance will not change those rights. The personalities may change, which could make it more difficult to assert those rights but the rights will remain in effect no matter who owns the property.

6. *Is there a "sunset law" in effect in the State of Florida which would enable the new owners to build on the property after a given number of years?*

There is no "sunset law" that would terminate the property owners' right under the 1949 Court Order.

7. *How can we insure that the property, placed in a trust by the new owner, will be protected against development for perpetuity?*

A new property owner can take any action with the property that is not inconsistent with the 1949 Court Order. If the new owner wanted to place the property in trust to further ensure that it would not be developed, it would certainly have the power to do so.

8. *Do we, the Laguna Beach property owners, have any rights regarding the sale of the property on which we have paid taxes since 1982? Does case law or court precedence in Florida require that we give our permission for the sale since we have been granted "perpetual access" to the property?*

The only rights the Laguna Beach property owners have are those set forth in the 1949 Court Order. The underlying fee owner does not have to consult with the property owners regarding the sale of his interest in the property. As I have said before, any sale of his interest in the property would be subject to the rights of the property owners.

9. *Can the Laguna Beach Property Owners Association or its officers and board members be sued by property owners in the Laguna Beach subdivision for failure to protect the reserved beach if the sale negatively impacts property owners access to the beach? Are we liable if we have not been made aware of the sale before it occurs? Do we have informed consent rights regarding the sale?*

The rights to the dedicated beach are vested in the individual property owner within the subdivision. Each property owner has the right, on their own, to enforce their rights to use and the restrictions on the dedicated beach. The Property Owners Association was not formed when the plat was recorded and there is no requirement that a property owner be a member of the Association. I have not seen the charter or by-laws of the Association and don't know if the Association has accepted an affirmative duty to "protect the reserved beach". Absent language to that effect on which property owners could arguably say they relied, I don't think there is any liability of the Association. However, if the Association takes on the responsibility of protecting the reserved beach and does something to cause a diminution of those rights, they could be held liable. I don't see that happening because the Association, on its own, has no ability to bind individual property owners on any action and therefore any change in status of the dedicated beach must be agreed upon by every property owner in the subdivision.

10. *What rights, if any, does the Association have since we have paid the taxes on the reserved beach property since 1982? Is there anything we can or*

should do at this time to protect our rights to access to the reserved beach and preclude the possibility of our being sued by disgruntled property owners for failure to act?

Payment of taxes on the property, in and of itself, does not give the Property Owners Association any rights other than what it had under the 1949 Court Order. The only way to eliminate any discussion would be for the Association to purchase the property. However, with the Order, I think the owners are adequately protected.

11. *What effect would annexation have on Laguna Beach property owners' rights to the reserved beach?*

An annexation by the City of Panama City Beach would not change the rights of the property owners in the dedicated beach. It would subject the property to the police powers of the City of Panama City Beach and their ordinances and rules and regulations would apply.

12. *Would the annexation of Lahan's property create an enclave causing the rest of Laguna Beach to be annexed by force?*

The proposed annexation would not cause the rest of Laguna Beach to be annexed. Individual property owners have a right to appear at a public hearing and express their concerns regarding annexation.

13. *Do Laguna Beach property owners have any say about whether the dedicated beach can be voluntarily annexed? Would this make it an involuntary annexation? Are we interested parties with stand to object to such annexation?*

Any owner of real property can request a voluntary annexation. As stated above, any individual may appear at the public hearing and object.

14. *Do property owners of Laguna Beach have any legal standing to object to the sale of the reserved beach or insist that the sale include the Supreme Court decision as declarations to proposed owner?*

The property owners of Laguna Beach do not have any legal standing to object to the sale of the reserved beach. You have the right to enforce your right under that 1949 Court Order regardless of whom the owner is of the real property. No other action is required.

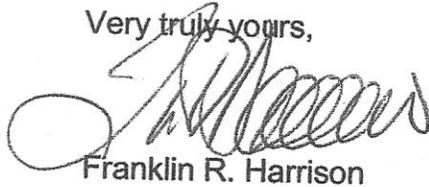
I hope that I have answered the questions which you have raised concerning the reserved beach. As I told you in our meeting, we represent the City of Panama City Beach

Mr. Frank Taylor
October 1, 2004
Page 5

which has historically acted favorably toward any request for voluntary annexation. For that reason, I cannot represent the Association in any action opposing an annexation by the City.

Thank you for this opportunity to represent you. If you have any further questions concerning these matters or would like further clarification, please feel free to give me a call.

Very truly yours,

A handwritten signature in black ink, appearing to read "Franklin R. Harrison", written over a circular stamp or mark.

Franklin R. Harrison

FRH:jfk
Enclosures

Laguna Beach Property Owners Association, Inc.

P.O. Box 7436

Laguna Beach, Fl. 32407

BEACH RESERVED

The meaning of the words, "Beach Reserved", on the plats of Laguna Beach, a subdivision in Section 11, Township 3 South, Range 17 West, in Bay County, Florida, which plats were made by Gulf Properties of Ala., Inc., and dated January 1, 1937 and April 26, 1941 and are on file in the office of the Clerk of the Circuit Court of said County:

In 1947 there seemed to be a misunderstanding between the Property Owners and Gulf Properties of Ala., Inc.

The result was that a group of property owners took the case to the Supreme Court of Florida. The court having considered the said Opinion and Mandate of the Supreme Court of Florida, it is now, therefore, Ordered, Adjudged, and Decreed as follows: That the Final Decree dated the 10th day of December 1947 be, and the same is, hereby vacated and set aside.

That the meaning of the words "Beach Reserved" on the plats of Laguna Beach were made by the Defendant, Gulf Properties of Ala., Inc.; That the area is reserved as a beach for the use of the owners of lots in said subdivision for recreation and bathing purposes without interference or hindrance by the Defendant, and without any buildings or structures being built or erected thereon, and said area shall be kept open.

That the Defendant, Gulf Properties of Ala., Inc., a corporation, and its servants, agents and employees, and each of them, be, and each of them are, hereby perpetually enjoined and restrained from erecting or building or causing to be erected or built any structures or building on said area.

After this decree, one of the Plaintiffs set up a fund to pay the taxes or see that they were paid. After the death of this Plaintiff, another Plaintiff took up a collection to pay the taxes. After his death in 1977, there were two Tax Certificates issued on this beach area between 1977 and 1982. On September 8, 1982, the Laguna Beach Property Owners Association, Inc. was born. Since then, we paid off two Tax Certificates and, on occasion, paid the taxes. We check each year to be sure the taxes are paid. Gulf Properties of Ala., Inc. holds the deeds to this Beach Reserved. But the owners of a lot or lots in Laguna Beach have the rights to it.

We are well aware of what could happen if we do not show an interest in this Beach Reserved area.

We must and we will be a perpetual organization.