

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR WALTON COUNTY, FLORIDA**

In re: **Affirming Existence of Recreational
Customary Use on 1,194 Private Properties
Located in Walton County, Florida**

Case No.: 2018-CA-547

**AMENDED ORDER ON MOTION TO DETERMINE JURISDICTION
AND ON MOTION TO STAY**

This amended order is issued by the court to correct a scrivener's error in paragraph E)1 of the order entered by the court on October 25, 2019.

This cause came before the court for hearing on a Motion to Determine Jurisdiction and to Extend Time filed by Sunset Beach Homeowner's Association, Inc., and Villas at Sunset Beach Owner's Association, Inc., on February 28, 2019, later joined by other owners of property along the Gulf beachfront in Walton County, and on a Motion to Stay and for Case Status Conference filed by numerous landowners on May 20, 2019, and later joined by others. The court, having considered the motions and the argument of counsel, finds that:

- A) The court has jurisdiction over the subject matter of this action pursuant to the provisions of Section 163.035, Florida Statutes (2018) and Chapter 86, Florida Statutes (2018).
- B) It is appropriate that this action be stayed temporarily pending the hearing on several important motions scheduled for November 12, 2019.
- C) The parties who appeared either specially or generally do not have standing to assert claims or objections concerning the jurisdiction of the court on behalf of other parties who have not appeared in the action.

D) By filing motions without any objection to in personam jurisdiction, those parties who have sought to intervene in the actions have waived any objections they might have had to the jurisdiction of the court over them. Those parties who have appeared specially to challenge the court's jurisdiction have not waived the right to make such challenges.

E) Statutes related to service of process, which is used to confer jurisdiction of the court over persons and their property, interests, must be strictly construed. Section 163.035, Florida Statutes (1918) includes provisions which describe the method by which persons and property are to be brought within the jurisdiction of the court for determination of the rights of the public to use of portions of their property. The statute requires that notice of the filing of the complaint be provided in the same manner as required in Section 163.035 (3) (a). Subsection (a), infra, requires that the notice must identify:

1. The specific parcels of property, or the specific portions thereof, upon which a customary use affirmations is sought;
2. The detailed, specific, and individual uses of the parcels of property to which a customary use affirmations is sought; and
3. Each source of evidence that the governmental entity would rely upon to prove a recreational use that has been ancient, reasonable, without interruption, and free from dispute.

The statute further provides that the county must provide verification of the service of the mandated notice, and that the owners of property subject to the complaint must allow the owner receiving notice to intervene in the proceeding within 45 days after receiving the notice.

F) The notices provided to the owners who have not intervened in this action did not

contain the information specifically required by the statute. Additionally, the requirement that the owners be given 45 days after receipt of the required notice has not been met for those who have not received notice by certified mail, since no date of receipt of notice or final date for intervention was established in the notice published in the newspaper. Accordingly, the court finds that, the requirements of the statute have not been met.

It is therefore

ORDERED AND ADJUDGED that:

- 1) The court has jurisdiction over the subject matter of this action and the motion of this action and the motion to dismiss for lack of subject matter jurisdiction is denied.
- 2) The court lacks jurisdiction over the person of all persons or entities who have moved to intervene in the action.
- 3) The court lacks jurisdiction over the person of all persons and entities who have appeared in this action for the purpose of challenging the jurisdiction over their persons and have taken no other actions which would submit them to the jurisdiction of the court.
- 4) The stay previously entered in this action shall remain in effect until the further hearings scheduled to be heard on November 12, 2019, and thereafter as may be determined by the court at the November 12 hearing.

DONE AND ORDERED in Chambers at DeFuniak Springs, Walton County, Florida, this
30th day of October, A.D. 2019.


eSigned by DAVID GREEN
on 10/30/2019 14:49:50 -XMC31DD

DAVID W. GREEN, CIRCUIT JUDGE

Copies to:

All parties included in E-filing portal

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