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The cost of beaches and property rights

In a strident dissent, one justice said the majority 'butchered' the law and fashioned a 'dangerous precedent.'

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It is abundantly clear that no one, save a few turtles and geologists, wants anything other than pure white sugary sand. And the cost to add a confectionary expanse of beach along the 10-mile stretch of Longboat Key will likely reach the \$50 million mark. That cost, if the taxation formula of the last beach renourishment is maintained, splits the bill with 80 percent carried by Gulf-front taxpayers and the remaining 20 percent by everyone else.

So let's analyze how that would break down using estimates for calculations. In other words, bear with my assumptions.

The assessed value of all Longboat property amounts to roughly \$6 billion. The Gulf-side properties, which include the majority of condominiums, account for about two-thirds of that total, or \$4 billion, and the Bay side properties equate the remaining \$2 million.

If the commission decides to renourish using the sugary sand, let's assume a cost of about \$50 million. As the Town Manager says, it will be bonded more than eight years and let's assume a rate of 3 percent to 4 percent thereby incurring an annual cost to Longboat taxpayers of about \$6.45 million for each of the eight years.

That would mean the Gulf side taxpayers would have to pay about \$5.15 million annually for eight years on \$4 billion in property values and the non-Gulf properties would pay about \$1.3 million every year on \$2 billion in property values. The effective millage rate would be an additional 1.29 mills for Gulf-side property owners annually and .65 mills for Bay-side owners. So, if you live in a Gulf-front home worth \$1 million, your beach will cost \$1,290 per year on top of your other town taxes and the cost to beachfront residences would be an extra \$650.

Realize that the commission only decides what kind of beach and type of sand to put up for a referendum; the voters will decide in March 2011. If the non-Gulf front owners vote "No," the plan still goes forward, but the Gulf owners then have to shoulder the entire cost of \$50 million, which would raise their beach tax to about 1.61 mills, more than their taxes for all the rest of the town's annual operations. The Gulf-front owners could, theoretically also end the plan by voting "No."

These computations are only for reference since the town may receive some state reimbursements and a Port Dolphin reimbursement of \$5 million. But cost aside, the arguments to go forward with the finest beach possible are many. Property values are likely increased, tourism benefits and the reputation of the island is boosted.

Still, the negatives are frightening: no end in sight to the escalating costs. Also, the brighter and finer the sand, the more erosion-prone the results — it literally floats away like too much powdered sugar dusted on French toast.

Beach building under assault in courts

To put a larger perspective on the dilemma, a legal battle in Destin, Fla., over renourishing the beach rose to the United States Supreme Court last fall. It followed allegations of property taking by Gulf-front owners who contend the State and municipalities gave their beachfront rights to the public through creating new beachfront via a renourishment project.

The suit, *Stop the Beach Renourishment Inc. v. Florida Department of Environmental Protection*, is convoluted, but at its core, the court is weighing ambiguous precepts of law. And legal experts do not agree.

Some homeowners in Destin say they bought privacy and exclusivity on the shoreline. The government argues the beach is eternally public. Both sentiments have legal footing. Centuries of law and governance say that a portion of the coastline is held in common trust. But that originally was interpreted to protect boating and fishing, not strolling and sunbathing.

On top of the mess is some states allow owners to restrict access, while others insist on a wide and constant corridor for public enjoyment. In Florida, the general rule is that the water belongs to the state, the uplands belong to the property owner and the ever-shifting wet area between the high and low tide lines is public. But because this boundary always moves, there are ongoing fights between the public and private.

Back at Destin, about 170 property owners formed an organization named Save Our Beaches. Their cause caught the attention of the Southeastern Legal Foundation and the CATO Institute — groups that push for property rights. The property owners sued under the premise that they have the right to restrict the public.

The idea that a new beach created through renourishment belongs to the public was upheld by Florida's State Supreme Court in 2008. Yet in a strident dissent, one justice said the majority "butchered" the law and fashioned a "dangerous precedent" that damaged the rights of Gulf-front property owners. Next, the property owners appealed to the U.S. Supreme Court saying the ruling amounted to an unconstitutional "taking" of property. The Supreme Court accepted the case.

Last December, the property owners made their argument before the Supreme Court. Several justices wondered what the property owners actually lost.

The relevance to Longboat Key and other beach communities is that its long-held interpretation of where owners' properties end and the right to create new public beaches begin may become hard to pinpoint and defend.

The Supreme Court is expected to decide the case within the next three months and if the property owners prevail, the cost of renourishing could grow yet again. It could force the government to compensate for taking owners' rights and property.

If the Government prevails, then the renourishment practice can continue unabated except for the cost. On the Cato Institute's Website, the following opinion details its take on the issue:

“Seeking to restore beaches damaged by hurricanes, the Florida Department of Environmental Protection began dredging sand from the Gulf of Mexico ocean floor and transporting it to Florida’s Gulf Coast. The expanded area of the beach became state property, depriving beachfront landowners of their littoral rights. In reviewing the landowners’ lawsuit against the state, the Florida Supreme Court departed from long-established state law principles protecting littoral property rights and held that littoral rights are an ancillary concept subsumed by the right of access. In so doing, the court discarded 100 years of property law and rewrote the definition of property. The U.S. Supreme Court agreed to review the case. The Court has never formally addressed whether state court rulings eliminating formerly established property rights can effect a taking, or violate an owner’s due process rights, under the Fifth and Fourteenth Amendments to the U.S. Constitution.”

Many geologists and erosion experts nationwide argue that it is smarter to tear down vulnerable properties rather than battle eternally against erosion. But that idea doesn’t carry much weight in places like Longboat Key or Destin, where billions are invested along the Gulf in the form of property and recreation amenities.

And yet all the above appears to be strong foreshadowing. Beyond the spiraling costs and the courtroom battles, it is growing clear beach renourishment is nearing the end of its own era. Perhaps for now the \$50 million white sand solution makes the most sense. But for everyone involved, even our Commission, it is with resignation and weariness that we throw money into the turbulent Gulf. We are acting like Job would if he had a dredge and could merely replace what God kept sweeping away.

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