

DUCK KEY SECURITY ADVISORY BOARD MINUTES OF MARCH 19, 2013

BOARD MEMBERS PRESENT:

Tom Neville, Chair

A. Dennis Kulig

Billy Wagner

Merlynn Boback – leaves at 10:00 am and returns 11:10 am

BOARD MEMBER(S) NOT PRESENT BUT AVAILABLE VIA SPEAKER-PHONE:

Donna Flammang via phone 9:31 am to 10:08 am

QUORUM PRESENT:

Yes

ALSO PRESENT, NEW DUCK KEY ADVISORY BOARD MEMBERS TO BE RECOMMENDED FOR APPOINTMENT TO THE MONROE BOARD OF COUNTY COMMISSIONERS BY DISTRICT 4 COMMISSIONER DAVID RICE:

Jay Salinger

Philip Kircher

OTHERS PRESENT:

Robin Neville, Duck Key Property Owner; David Williamson, President, Duck Key Property Owners Association (DKPOA), and Duck Key Property Owner; Jim Boback, Board Member DKPOA and Duck Key Property Owner; Charlie Morse, Duck Key Property Owner; Barbara McKinney, Duck Key Property Owner; Eddie Maimo, Duck Key Property Owner; Sandy Hastings, Duck Key Property Owner; Susan Ward, Duck Key Property Owner; Simon Leird, Keys Security

Proceedings:

- Meeting called to order 9:05 am by Tom Neville
- Location of meeting: Tom and Robin Neville's home, 126 Bimini Dr., Duck Key, Fl. 33050
- Date of Meeting: March 19, 2013

Susan Ward presented to the Board the minutes of the Duck Key Security Advisory Board meeting which took place on August 4, 2011, for approval, whereupon motion duly made first by A. Dennis Kulig and seconded by Tom Neville, and unanimously adopted. The minutes were approved as presented.

General Discussion:

Tom Neville welcomed the new board members, to be recommended for appointment to the Monroe County Board of County Commissioners: Jay Salinger and Philip Kircher. Mr. Neville explained the Florida Sunshine Law.

Simon Leird questioned the Board if they wanted service on Monday nights; he has been receiving calls on Mondays. Tom Neville advised Mr. Leird to put the extra cost in Keys Security contract when the current contract is up for renewal. At this date, Keys Security patrols the island of Duck Key: Saturday 1:00 pm-5:00 am, No Mondays; Tuesday, Wednesday, Thursday, Friday 1:00 pm – 3:00 am. Tom Neville wants Keys Security employees to be trained in CPR and the use of a defibrillator (AED). Tom Neville wants a quote for the Board to purchase an AED for the security company to use in the security vehicle. Billy Wagner wants a scanner with the same frequencies used by the sheriff and fire departments of Monroe County, FL in the security vehicle. Billy Wagner will ask William Wagner, Fire Chief of Islamorada, for a scanner quote to be purchased by the Board.

David Williamson (President of DKPOA) receives calls from Duck Key residents, late at night, complaining to him regarding other Duck Key resident's making loud noises/loud music. Mr. Williamson states that Duck Key residents are confused about who to call. Tom Neville advised Mr. Williamson to contact him or Keys Security or the Monroe County Sheriff Department.

The Board next discussed a number of topics; percentage of crime on Duck Key, noise ordinances, Keys Security flashing car lights, working relationship between Keys Security and Hawks Cay, type of calls that Keys Security records. Questions were asked and answered.

Camera Installation Update:

It appears that the camera installation for Truman Bridge has not progressed as promised by Monroe County. Tom Neville advised no money has been paid out to contractor ADT (Tyco). Billy Wagner wanted to bypass Monroe County and have a Board member contact ADT (Tyco) directly. A. Dennis Kulig volunteered to contact ADT (Tyco).

MOTION – TOM NEVILLE MOVED AND BILLY WAGNER SECONDED A MOTION TO HAVE A. DENNIS KULIG CONTACT ADT (TYCO) DIRECTLY

Tom Neville: Aye

Donna Flammang: Aye

Billy Wagner: Aye

A. Dennis Kulig: Aye

Merlynn Boback: Absent from this vote.

Discussion to Talk to Hawks Cay Resort for Gate/Guard House

David Williamson would like the Board to begin communications with Hawks Cay Resort to discuss a gate/guard house. Tom Neville asked Billy Wagner if he would set up a meeting.

MOTION – TOM NEVILLE MOVED AND A. DENNIS KULIG SECONDED A MOTION TO HAVE BILLY WAGNER CONTACT HAWKS CAY RESORT TO DISCUSS GATE/GUARD HOUSE

Tom Neville: Aye

Billy Wagner: Aye

A. Dennis Kulig: Aye

Merlynn Boback: Absent from this vote.

Discussion to Merge Duck Key Property Owners Association (DKPOA) with Duck Key Security Advisory Board

Jim Boback advised that the island of Duck Key's deed restrictions have expired. DKPOA has contacted Franklin D. Greenman, P.A., Attorney at Law, to review and respond. There are 3 options for the residents and owners of property on Duck Key, per the letter from Mr. Greenman. Mr. Boback suggests Option 3 is the best solution.

Attached: Franklin D. Greenman, P.A., Attorney at Law, letter dated February 12, 2013

Tom Neville would like the Board to meet with Mr. Greenman to understand the proposed merger of DKPOA and Duck Key Security Advisory Board. David Williamson gave approval for DKPOA to pay the attorney fee.

MOTION – BILLY WAGNER MOVED AND TOM NEVILLE SECONDED A MOTION FOR THE BOARD TO DISCUSS WITH MR. FRANKLIN GREENMAN, P.A., ATTORNEY AT LAW THE PROPOSED MERGER WITH DKPOA. DATE OF MEETING TO BE ANNOUNCED

Tom Neville: Aye

Billy Wagner: Aye

A. Dennis Kulig: Aye

Merlynn Boback: Aye

MOTION – TOM NEVILLE MOVED AND A. DENNIS KULIG SECONDED A MOTION TO RECOMMEND JAY SALINGER AND PHILLIP KIRCHER FOR APPOINTMENT TO THE DUCK KEY SECURITY ADVISORY BOARD, BY WAY OF DISTRICT 4 COMMISSIONER DAVID RICE TO PRESENT TO THE MONROE BOARD OF COUNTY COMMISSIONERS FOR APPROVAL

Tom Neville: Aye

Billy Wagner: Aye

A. Dennis Kulig: Aye

Merlynn Boback: Aye

Meeting closed 11:16 am

Attached: Franklin D. Greenman, P.A., Attorney at Law, letter dated February 12, 2013

Attached: Financial Report, Emie Coughlin, Monroe County BOCC, Fund – 152 – Duck Key Security Dist

Next meeting TBA – David Williamson will contact Franklin Greenman to see dates of availability to present his review of Duck Key deed restrictions to the Duck Key Security Advisory Board

Minutes submitted by: Susan Ward, 258 W Seaview Dr Duck Key Fl – susaneward@gmail.com 305.393.7157

Franklin D. Greenman, P.A.

Attorney at Law

Franklin D. Greenman, P.A.
(305) 735-4910
(305) 735-4913 Fax

Gulfside Village, Suite 41
5800 Overseas Highway
Marathon, FL 33050
greenmanlawpa@gmail.com

February 12, 2013

Mr. David Williamson
222 Corsair Road
Duck Key
Marathon, FL 33050

Re: Review of Duck Key Deed Restrictions

Mr. Williamson,

You have requested me to review and respond to your questions about the Duck Key Deed Restrictions as recorded at Official Record Book 339, page 111-116 and amended at Official Record Book 362, page 604, both in 1965 and amended again at Official Record Book 428, pg 1061-1063 in 1969. I also reviewed the deed restrictions pertaining solely to Hawk's Cay, recorded in 1989, at O.R. 1082, page 2386-2396, and those filed in the DKLS to Brenner deed, recorded in 1980 at O.R. 805, page 85-86.

Because the 1965 and 1969 deed restrictions are more than 30 years old, they are extinguished by the Marketable Record Title Act, specifically Fla. Stat. 712.03. The Marketable Record Titles to Real Property Act (MRTA) extinguishes subdivision restrictions placed on lots when the original recorded restrictions are over 30 years old, and the amended restrictions filed within the 30 year window, did not refer by book and page number to the instruments which imposed the original restrictions.¹

If deeds, filed for record within the 30 year window, had a specific reference to the book and page in the public records where the restrictions can be found, or by reference to the name of a recorded plat that imposed the restriction, they would have revived the deed restrictions as to that lot only. Interestingly, the Brenner deed, which only impacts on certain lots, does make specific reference to the 1965 restrictions, and has revived them, at least as to the lots referenced in that deed, until 2010, when those restrictions were extinguished also.

¹ *Berger v. Riverwind Parking, LLP*, 842 So.2d 918 (5th DCA 2003).

Therefore, based on the 30 year statute of repose in Florida's Marketable Record Titles to Real Property Act, the Duck Key Deed Restrictions of 1965 and 1969 are extinguished and are unenforceable.

That leaves at least 3 options for the residents and owners of property at Duck Key.

The first is to do nothing with the understanding that there are no deed restrictions on any residential property on Duck Key. The greatest loss will be the ability to preserve the residential nature of the island. The duplex lots can become multi-family, and subject to county zoning restrictions, the existing single family lots could become multi unit, or commercial. The ability to have architectural standards is lost. Fence and hedge control is lost (the county has fence height regulations, but none for hedges). While many of the restrictions are supported in the common law (nuisance, animals, drainage, etc), now any violation may only be enforced by an individual lot owner, or tenant, who is damaged by the act. There is no association to act for the homeowners as a group.

The second option is to revive the existing restrictions, and amend them as necessary. The deed restrictions may be revived by the Covenant Revitalization Act, Fla. Stat. 720, Part III. The existing restrictions can be revived if:

- (1) All parcels to be governed by the revived declaration must have been once governed by the previous;
- (2) The revived declaration must be approved a majority of the affected parcel owners, in writing.
- (3) The revived declaration may not contain covenants that are more restrictive on the parcel owners than the covenants contained in the previous declaration, except that the declaration may:
 - (a) Have an effective term of longer duration than the term of the previous declaration;
 - (B) Omit restrictions contained in the previous declaration;
 - (c) Govern fewer than all of the parcels governed by the previous declaration;
 - (d) Provide for amendments to the declaration and other governing documents;
 - (e) Contain provisions required by the Revitalization Act for new declarations that were not contained in the previous declaration, primarily notice and due process provisions.

After the revised and revived deed restrictions are approved by a majority of the parcel owners, the governing documents and revived deed restrictions must be reviewed and approved by the Department of Economic Opportunity, formerly the Department of Community Affairs (DCA).

The downside of this is that it is procedural burdensome, and ineffective if a majority of lot owners do not agree, in writing (with the formalities of a deed) to revive the restrictions. Additionally, the revived restrictions still do not include Harbor Isle, or

the lots sold before the 1965 deed restrictions were recorded. And the revived restrictions would need to be amended to give necessary enforcement authority, as described in Fla. Stat. 720, to assess, lien, and enforce violations of the restrictions.

The third option is to use the existing entity, the Duck Key Security District to protect, maintain, and improve Duck Key. This has a number of advantages. First, it is a guaranteed source of revenue, under the supervision of the Clerk of Court to assure transparency for the owners. Second, with appropriate amendments it could not only pass, but enforce reasonable restrictions on the property it includes, and create opportunities for planned improvements, such as landscaping or lighting, on an island wide basis. Third, the Security District jurisdiction already includes Harbor Isle, and the pre-1965 lots, so it would be more representative than the deed restrictions. Lastly, to amend the ordinance creating the Security District for these expanded purposes would only require a majority of the registered voters on Duck Key, not the majority of property owners (but all subject to the approval of the County Commission).

The DKSD is governed by the County Commission, who accepts input from the Security District's Advisory Board.

The procedure would be to develop an amendment to the Ordinance that created the Security District (Ordinance No.005-1992) that expands the purposes of the Security District to better suit your current and future needs. A petition would be submitted, by the Advisory Board or DKPOA or both, to the County Commission requesting the amendment to the original ordinance (it has previously been amended, twice) and requesting that the Supervisor of Elections hold a referendum on the amendment, similar to the original procedure. Hopefully, the BOCC would grant the petition, pass the ordinance, and direct that an election on the amendment be held on Duck Key. The amended ordinance would go into effect upon its approval by the registered voters in Duck Key.

Thereafter the Advisory Board would need to adopt operating procedures that would coincide with, and confer authority to, carry out the expanded purposes. Those procedures would be similar to that of a condominium association, with its due process protections, administrative procedure, and operating regulations.

The difficulty would be drafting an appropriate amended ordinance that would achieve the expanded purpose, and garner public support. I would assume if the Advisory Board or DKPOA requested the BOCC to pass the amending ordinance, they would do so. The more important vote would be obtaining the approval by a majority of voters. That would require a substantial marketing/political effort to assure success.

In consideration of the loss of Duck Key's deed restrictions, and the difficulty in protecting and improving the island without an association, or with a limited association through the Covenant Revitalization Act, the option of improving the Security District is the simplest procedure to the most effective outcome.

I hope this is an adequate response to your inquiry. If you have other questions, or wish to discuss this with me further, please contact my office.

Respectfully,

Franklin D. Greenman

FDG/ms

From: Coughlin-Emie <Coughlin-Emie@monroecounty-fl.gov>

Subject: Duck Key Security District

Date: March 18, 2013 4:28:02 PM EDT

To: "Tom Neville (tomlift1@gmail.com)" <tomlift1@gmail.com>

1 Attachment, 32 KB

Hi Tom,

Please see the attached Financial report showing the year to date expenditure of \$32,840.00. The balance of the account is \$241,671.00.

Emie Coughlin

Sr. Budget Analyst
Monroe County BOCC
Office of Management & Budget
1100 Simonton St, Ste. 2-213
Key West, FL. 33040
Phone# 305-295-4315 Fax#305-292-4515
Email: coughlin-emie@monroecounty-fl.gov

SUNGARD PENTAMATION - FUND ACCOUNTING
DATE: 03/18/13
TIME: 16:15:16

MONROE COUNTY BOARD
DETAIL EXPENDITURE STATUS REPORT

PAGE NUMBER: 1
EXPSTA21

SELECTION CRITERIA: expledgr.key_orgn in ('04501','85527')
ACCOUNTING PERIOD: 6/13

SORTED BY: FUND,FUND/COST CT,ACCOUNT
TOTALLED ON: FUND,FUND/COST CT
PAGE BREAKS ON:

FUND - 152 - DUCK KEY SECURITY DIST

	BUDGET	PERIOD EXPENDITURES	ENCUMBRANCES OUTSTANDING	YEAR TO DATE ENC + EXP	AVAILABLE BALANCE
152-5200-5290-1000-04501 510120 DUCK KEY SECURITY SP	.00	.00	.00	.00	.00
152-5200-5290-1000-04501 510210 DUCK KEY SECURITY SP	.00	.00	.00	.00	.00
152-5200-5290-1000-04501 510220 DUCK KEY SECURITY SP	.00	.00	.00	.00	.00
152-5200-5290-1000-04501 530340 DUCK KEY SECURITY SP	224,458.00	.00	16,996.00	32,740.00	191,718.00
152-5200-5290-1000-04501 530410 DUCK KEY SECURITY SP	500.00	.00	100.00	100.00	400.00
152-5200-5290-1000-04501 530490 DUCK KEY SECURITY SP	.00	.00	.00	.00	.00
152-5200-5290-1000-04501 530498 DUCK KEY SECURITY SP	.00	.00	.00	.00	.00
TOTAL FUND/COST CT - DUCK KEY SECURITY SP D	224,958.00	.00	17,096.00	32,840.00	192,118.00 ✓
152-5100-5130-1000-85527 590990 RESERVES 152 RESERVE	32,457.00	.00	.00	.00	32,457.00 ✓
152-5100-5130-1000-85527 590991 RESERVES 152 RESERVE	64,914.00	.00	.00	.00	64,914.00
TOTAL FUND/COST CT - RESERVES 152	97,371.00	.00	.00	.00	97,371.00
TOTAL FUND - DUCK KEY SECURITY DIST	322,329.00	.00	17,096.00	32,840.00	289,489.00
TOTAL REPORT	322,329.00	.00	17,096.00	32,840.00	289,489.00

640 24,575
+ 17,096