

BEACH STEWARDSHIP COMMITTEE MINUTES

August 20, 2025 - 9:00 A.M.

PRESENT: John Stevens, Chair
John Kurzman, Vice Chair
Dan Rothenberger, Member
Bill Thompson, Member

ABSENT: Natalie Looney, Member

STAFF PRESENT: Camden Mills, Public Services Director
Ralf Brookes, City Attorney
Ginny Bodkin, Deputy City Clerk

Chair Stevens called the meeting to order at 9:00 AM. He welcomed Public Services Director Camden Mills as the new Committee Liaison. They both recognized Ayako Ruckdeschel for her years of contribution to this Committee.

1. Presentations –

a. Beach Activity Report 2025 Quarter 2

Mr. Mills explained that the full report (April 1 - June 30) was included in the meeting packet; the only item not available at time of publishing was the Keep Pinellas Beautiful report on cleanup events. They reported 13 events with 221 volunteers with over 486 volunteer hours; they collected just under 900 lbs. of litter on 12.5 miles of beach.

2. Approval of the Agenda -

Vice Chair Kurzman asked to move item 5.e., Customary Use, to 5.a.

Motion: Vice Chair Kurzman moved, and Member Rothenberger seconded the approval of the August 20, 2025 agenda as amended; the motion passed unanimously.

3. Audience Comments - There were no comments.

4. Action Items –

a. Approval of Meeting Minutes May 21, 2025

Member Thompson pointed out that ‘planning projects’ in section 4.a. should be ‘planting projects.’ The Clerk will make the change in the final minutes.

Motion: Vice Chair Kurzman moved, and Member Thompson seconded the approval of the May 21, 2025 regular meeting minutes as amended; the motion passed unanimously.

5. Items for Discussion –

a. Ordinance 2025-02: Creating Chapter 95. Beaches

Senior Planner Brandon Berry indicated that his presentation is an introduction, and the committee would be setting up separate workshops potentially prior to the November meeting, when a final draft may be presented. Today is the first of at least four public comment opportunities. There will be two readings before the City Commission, should this move forward.

Mr. Berry went on to review his presentation, which is part of the meeting record. The proposal is to bring what was one consolidated document forward as at least three separate ordinances. The first is the establishing ordinance for the beach (Chapter 95) that has been discussed for a few years. This will be for behavior, conduct and beach permitting. The content has not been significantly modified from the content that was presented in early 2025 but does not address commercial, regulatory and development related standards (those will be in a forthcoming unnamed ordinance subject to SB 180) or most marine turtle lighting standards (Ordinance 2025-16). Ordinance 2025-02 will cover maximum tent sizes; requiring public beach franchise permits for setting up of cabanas, and tents on the public beach; prohibiting smoking on the beach; unsafe fishing activity; prohibitions on unpermitted fireworks; prohibitions on wild bird, turtle, and manatee harassment; prohibiting micromobility devices and unregistered bicycles on the public beach; prohibiting requirements for organized recreational activities on the public beach; removing registration and the wristband requirements for resort cabana service areas and specifying signage and restroom requirements; and specifying penalties for violations.

The four tasks he requested for the committee were to confirm that the committee was in favor of scheduling some type of workshop to discuss content, define the format of the workshop or meeting, address any content that has not been included, and solicit public comment.

Member Thompson asked Mr. Berry if he was comfortable with what was presented, as a Senior Planner who is very familiar with the material, and Mr. Berry reiterated that he felt that it was logically laid out and was seeking input from the members if they saw anything missing. Attorney Brookes suggested adding a section with a general statement to acknowledge and recognize common law customary use in Florida as applicable.

Member Kurzman felt that reference to commercial and private interests should be added; rules should not be placed solely on the residents or public. Mr. Berry explained that the only regulations added on umbrellas/cabanas are regulations related to tent size, which will be covered at the next meeting. A stronger enabling ability for the city to remove equipment left out over night was the other addition. Mr. Berry agreed that language could be used where commercial regulation matches non-commercial regulation. The workshop can address any other pieces.

Chair Stevens suggested the addition of definitions of commercial and non-commercial - what is private and what is public. Commercial businesses anywhere on the sandy beach should be approved by the landowner as well as following regulations, the same hotels, which do so through a BTR. Consistency should exist between the two elements.

Regarding the workshop process, Chair Stevens suggested that staff provide a draft ordinance for the workshop for review. The committee would be reviewing for content (why is this here/what problem are we trying to solve) and react to what has changed. The legal team would oversee the enforcement and whether it would hold up. A final review will follow at a later meeting.

b. Ordinance 2025-16: Amending the Land Development Code Division 44 – Marine Turtle Protection

Mr. Berry's presentation summarized that this is the second of three ordinances discussed at the July 2025 workshop and is intended to update the city's marine turtle lighting ordinance to comply with best practices for 2025. The ordinance reflects input from the Sea Turtle Conservancy and local partners but is still under review with the state. The city discussed its 2007 lighting ordinance with local and state (Sea Turtle Conservancy (STC)) partners in the recent months and feedback was that the city's ordinance has a strong framework but needs updates. Many of the needed updates are technical in nature: Removal of outdated bulb types (e.g. "bug type") in favor of long-wavelength requirements; Specified visible light transmittance standards for windows, optimally $\leq 30\%$ (2025 tint study); Mandating spectrometric tests for newly-installed lighting not on the FWC Certified Wildlife Lighting list; Adding standards for pools; Requiring full cutoff fixtures; and Standardizing what constitutes "existing" and "new" construction for compliance.

As with the previous ordinance, Mr. Berry requested that the committee confirm that they were in favor of scheduling some type of workshop to discuss content, define the format of the workshop or meeting, address any content that has not been included, and solicit public comment. Public comment is not allowed in a workshop, but staff can decide upon a meeting format that would allow it.

Public Comment –

Lisa Reich of St. Petersburg and part of the Coastal Wildlife Advocacy group commented that she has been actively involved in trying to get the lighting ordinance addressed for a long time and expressed her gratitude for the forward momentum.

Member Kurzman appreciated the redlining of the ordinance as it makes clear what is added or subtracted. He suggested adding the consideration of retrofitting for lighting. Mr. Berry stated that interior lighting is the biggest challenge across the state, particularly if window films are not used, however, there are multiple options for whatever is defined as existing construction/use, i.e., sconces or moving light fixtures. New construction will have to comply with tinting requirements.

Chair Stevens suggested that members have one-on-one meetings with FWC or the Sea Turtle Conservancy regarding technical questions or invite them to a workshop for technical guidance for more efficiency. Member Thompson inquired about enforcement. Mr. Berry stated that new building required inspections; existing lighting compliance is more of a challenge, but code enforcement does monitor. Member Thompson suggested that staff check with other municipalities and the Sea Turtle Conservancy prior to the workshop.

c. Update on dune walkover replacements at 2nd, 3rd, 4th, 6th, 7th, 51st, and 52nd Aves.

Mr. Mills reported that the city has awarded a contract for design, permitting and construction services for dune walkover placements at 2nd, 3rd, 4th, 6th, 7th, 51st and 52nd Avenues. Gulfcoast Construction was the selected vendor in the amount of \$439,000. This was funded through the city's CIP program, and some reimbursements are also expected through FEMA. The 2nd Avenue boardwalk was damaged by Helene and there is a FEMA project associated with that. A purchase order has been issued, and the vendor is in the design phase; the goal is to begin as soon as turtle season ends.

Kathleen Etxegoien of 106 5th Ave. inquired on the progress of the beach wall and the marking of pedestrian walkways at 8th Avenue and Pass-A-Grille Way. The crosswalks in PAG in general faded after storm flooding and those are safety concerns.

Mr. Mills responded that the Gulf Way wall plan is in place to install a temporary concrete barrier wall for the storm season in the next few weeks. The permanent wall is proposed as part of a capital improvement project for FY26 as part of the rehabilitation of Gulf Way from 1st Avenue to 22nd Avenue. Damaged sidewalks, curbs, roadway base, new asphalt, striping and signage will be part of that. He will report the pedestrian walkway at 8th Avenue to staff. The other crosswalks can be painted until the thermoplastic is installed as part of the CIP project. Staff are addressing the 21st Avenue intersection; lighting may be added for visibility.

Member Thompson commented on the steep slope of walkovers in PAG and the associated drainage. Mr. Mills explained that the walkovers in the agenda report are priorities for full replacement; in FY26 the walkovers at 12th and 16th will be changed due to the steep slope. The plan is to have scheduled walkover reviews for repair and replacement.

d. Update on Pinellas County Emergency Beach Nourishment Project (item heard first)

Mr. Mills introduced this item by reporting that there have been three separate public meetings on renourishment sponsored by the County; he had included that presentation in the meeting packet. There will be approximately 66,000 cubic yards at Upham Beach in a 2,000 ft. stretch of beach with an estimated cost of \$1.3 million and Gator Dredging will be the contractor; the estimated start date may be early September to October with the sand coming from Blind Pass.

Dr. John Bishop of Pinellas County was present via Zoom. He added that the beach at Upham will become wider with more surface area. The sand will go from Silver Sands northward to the jetty. He explained that this is a one-time project by the County; they do not intend to come back without the Army Corps of Engineers involved. All the property issues at Upham will need to be resolved eventually. The County is ensuring that the project is core compliant. Weeks Marine is the prime contractor (with subcontractors) working simultaneously with Treasure Island.

Dr. Bishop added that the County is finalizing a scope for securing a contractor for dune plantings from Pass-A-Grille to Clearwater; Upham does not have dunes and will not be planted.

e. Customary Use Conversation (heard second)

City Attorney Ralf Brookes began by providing a detailed background on the customary use doctrine. The Customary Use Doctrine deals with the dry sand area of the beach. The area below the Mean High-water line, which is considered by lay people to be the wet sand area, is subject to the Florida Constitution's public trust doctrine, which allows people to walk and fish in that area.

Mr. Brookes referred first to the Daytona Beach vs. Tona-Rama case (1974), in which they expanded where you can show recreational use of the sandy area above the mean high tide has been ancient, reasonable, without interruption and free from dispute, such as a matter of custom should not be interfered with by the owner of the property. For example, if someone is charged with trespass, a defense to trespass can be the customary use doctrine which arises from the Tona-Rama case. The court in Tona-Rama also said that the owner may make any use of the private property which is consistent with such public customary use and not calculated to interfere with the exercise of the right of the public to enjoy the dry sand area as a recreational area adjacent to the wet sand or shore area – for example, things like a lifeguard stand or a beach pavilion that wouldn't interfere generally with the public's customary use if they could show it was ancient and free from dispute.

Jumping to 2007, came the Trepanier v. County of Volusia case which qualified the Tona-Rama customary use doctrine. The 5th District Court of Appeal in that case stated “while some may find it preferable that proof of the elements of custom be established for the entire state by judicial fiat in order to protect the right of public access to Florida's beaches, it appears that the acquisition of a right to use private property by custom is intensely local and anything but theoretical”. In other words, it is sight specific to each property. The court went on, "Custom is inherently a source of law that emanates from long-term open, obvious, widely accepted, and widely exercised practice. It is accordingly impossible to precisely define the geographic area of the beach for which evidence of a specific customary use must be shown because it will depend on the geography and the particular custom use at issue” whether it is walking or something else. The court said that “the determination of customary use on a property requires the courts to ascertain in each case the degree of customary use and ancient use the beach has been subject to.”

After that case, Walton County adopted a customary use ordinance in 2016; it stated that there would be “a 15 ft. buffer zone located seaward from the toe of the dune from any permanent habitable structure owned by a private entity that is located on or adjacent to dry sand area of the beach, whichever is more seaward, except as necessary to exercise an existing or future public beach access point for ingress and egress”. They created a buffer zone that limited the private and customary use that said you cannot have customary use on this 15 ft. buffer zone, but from 15 feet across the dry sand that is privately owned down to the beach. The ordinance prohibited anyone from impeding or interfering with the public at large on the dry sand area of the beach that is owned by private entities for certain specific uses. They included traversing the beach, sitting on the sand in a beach chair or on a beach towel or blanket, using a beach umbrella of 7 feet or less in diameter, sunbathing, picnicking, fishing, swimming or surfing off the beach, staging surfing or fishing equipment, and building sandcastles. The Walton County ordinance authorized the public across Walton County to do those things on private land on dry sand areas. That case was challenged.

Subsequently, *Alford v. Walton County* went to the Federal District Court of Appeals for trial. The district ruled that the ordinance could be upheld. While that case was pending in court, the legislature met and adopted a new statute. House Bill 631 was in the 2018 regular session.

The district court ruling that the customary use ordinance was valid was on appeal to the 11th Circuit. The 11th Circuit, after the legislature adopted HB 631, directed the district court to remove their opinion because it was moot by the legislation. They vacated the district court's order which put things back in limbo. Meanwhile, the statute required that if the county wanted to adopt an ordinance, it had to seek judicial determinations on each of the properties. The Walton Board of County Commissioners made a motion to proceed under the statute. They filed lawsuits against 1,197 beachfront property owners, who all obtained different lawyers. After five years, the cases were set for a 7-week bench trial on May 22nd, 2023. But the case settled on the courthouse steps before going to that trial. The property owners obtained a dismissal with prejudice and a finding that customary use does not exist on their beach. For some property owners, that was through motions for summary judgement where they could not establish ancient use and were able to show it was in dispute. If a case is in court, it is not free from dispute. That is a difficult hurdle to get past, and it is hard to define in the statute. The other property owners negotiated a settlement agreement allowing the public a 20-foot transitory area for walking and sitting and a finding that customary use does not exist on their beach. Some property owners obtained rulings that their beaches were not subject to customary use. The others settled and agreed that customary use was not on their beach, but they would allow in it exchange for that 20-foot area where the public could walk.

This past legislative session, a statute requiring the process to go through the judicial system for determinations on a case-by-case basis and requires local governments to sue their own property owners was repealed in Senate Bill 1622. That had the effect of repealing Florida Statute 163.035 that had an arduous process and required counties to sue their own property owners. That basically puts things back to the common law of customary use, *Tony-Rama, Trepanier v. County of Volusia*, and back to where the court would have to ascertain in each case the degree of customary and ancient use for the beach and whether it has been free from dispute.

It is back in the courts - the customary use doctrine can be used as a shield in a trespass case or a sword. Typically, as a shield if someone is charged with trespass on a private beach - a defense to that trespass charge is the customary use doctrine, but it has to be shown in court and proven that whatever they were doing has been done free from dispute for many years in that exact location of that particular property that they were walking on.

The case that was in the federal district court where they found an ordinance to be valid was vacated because the 11th Circuit found it to be mooted by the legislation. Therefore, the 11th Circuit never reviewed that Federal District Court case, but it is still out there. The city needs to be mindful of private property rights, especially when discussing an ordinance that would apply across the many miles of beach and many property owners that we have. Staff have been mindful in drafting the ordinance so that it doesn't interfere with private property rights. At one point St. Pete Beach had a customary use ordinance, not as drastic as Walton County. One of the other things to consider is that the beaches and ownership are complex with easements and plats – and there are a few cases still in court. St. Pete Beach was dismissed out of one of the cases. It is difficult to adopt a customary use ordinance that would apply across

the entire beach. The better alternative from a legal perspective is to allow the common law of customary use to exist, and if the city was going to adopt an ordinance, to keep it general - for example the city of St. Pete Beach hereby acknowledges the existence of the common law right to customary use of dry sand areas of the beach where the criteria for customary use doctrine can be established in the judicial system, where it would occur.

Attorney Brookes summarized that he believed this background would assist the boards, committees, and the city to go forward with analyzing the beach turtle lighting and beach behavior ordinances.

Resident Dave Winkler of Suncoast Water Sports, 9540 Blind Pass Road thanked the city attorney for the voluminous analysis. Has been a St. Pete Beach business owner for 47 years and has contracts with many businesses on the beach; he asked the committee and City Commission to carefully consider what was outlined today when considering ordinances that might be overly restrictive.

Committee discussion and questions followed. Vice Chair Kurzman commented that the sandy beach is not taxed to the private property owners; they are taxed as beachfront. He mentioned FS 161.021 which says “access or public access as used in these sections means the public's right to laterally traverse the sandy beaches of the state where such access exists on or after July 1, 1987, or where the public has established an access way through private lands to land seaward of the high tide or water line by prescription, prescriptive easement or any other legal means, development or construction shall not interfere with such rights of public access unless a comparable alternative access way is provided.” Mr. Kurzman contended that even though the whole customary use discussion was going on, that statute seemed to survive. The words public and private beach are so important. It is important to maintain the ability to do decide what to do about customary use. Attorney Brookes accessed FS 161.021 online regarding the definition of access or public access. He read that it also speaks in the context of beach renourishment projects, construction on the beach, development beyond the coastal construction control line and maintaining access perpendicular to the beach – for example from Gulf Blvd. to the water - and states that there are certain beach access points that arise either through a recorded easement or by prescriptive easement which may not be on paper but has been open and notorious and continued on for many years, which sometimes arise as a shield. Attorney Brookes also mentioned owners closing a beach one day of the year to circumvent continuous use, i.e., Daytona Beach. Other variances of laws were mentioned.

6. Adjournment – Next regular meeting is scheduled for November 19, 2025.

There being no further business, the meeting was adjourned at 10:45 AM.

These minutes were approved at the November 19, 2025, Beach Stewardship Committee meeting.