

## **THE STORY of BID-A-WEE BEACH**

On December 22, 1926, under The Homestead Act, President Calvin Coolidge granted Lots 1, 2, and 3, of Section 28 in Township three [3] south, Range sixteen [16] west containing one hundred forty and fifty-two one hundredths acres more or less [140.52] to Harry Cailey of Bay County. On January 25, 1927 Mr. Cailey filed the title to the property, which can be found in Deed Book 49 page 503, in Bay County, Florida. On February 27, 1929, he sold 140 acres of the land to Ms. Eula C. Miller by Warranty Deed (making no mention of the 52 hundredths acres). In January, 1930, after acquiring title to the property, Ms. Miller subdivided and platted a portion of the land and named it BID-A-WEE Subdivision. The subdivision consisting of fourteen blocks lettered A-N can be found in Deed Book 2 page 23 Bay County.

Presently on the western portion of the rest of the property, the Fountainbleau Condominiums, recently sold Georgian Motel and others sit on about 1900 feet, leaving 2,500 feet of beach which Ms. Miller named Bid-A-Wee (Scottish for "Bide your time, rest [or stay] awhile").

In the early 1930s, Ms. Miller diligently tried to sell lots in her new development but found few takers. Snakes, mosquitoes, horseflies, no sewage or paved roads and a host of other reasons made it a difficult task to convince people to purchase a lot in Bid-A-Wee. In 1938, as an incentive, she dedicated 'forever' the beach portion of the property to be used for "park purposes only," to those owners of property in the subdivision. For \$10 and other considerations, Ms. Miller actually conveyed the property to lot owners but at that time, no one had the forethought to file the title with the Bay County Courthouse. Although amended, the original dedication to property owners in blocks A-N remains intact today and is considered a "highly restrictive covenant."

Eventually lots began selling and a community began to evolve. The county started paving roads; the city began installing water and later sewage lines and sales of Ms. Miller's beach property picked up dramatically.

Much later, Ms. Miller became elderly, was living in a nursing home in Lynn Haven, FL and was considered senile. In 1970, Mr. Leonard Graham, a Realtor and relative by marriage, bought two lots from Mr. Miller, located in Block G, behind where the Pizza Hut once stood (Nautilus & Front Beach Road). Before Graham filed the title, he allegedly inserted an additional one line sentence between the description of the lots and house with furniture and fixtures. The added line read, "all interest in the property lying south of US 98, between Crane and Nautilus Street, in said subdivision." Ms. Miller signed the title transfer. Graham thought he had described the location of the beach property. Following the death of Ms. Miller, Graham tried relentlessly to rescind the dedication, develop the beach or sell it for a huge profit.

His efforts were unsuccessful with both Bay County and the State of Florida. He tried several times using different approaches to rescind the dedication but was never successful. After learning of Graham's ongoing efforts, the property owners formed an organization called Save-Our-Beach, Inc. (SOB). The purpose of the organization was to protect the dedication from being rescinded, build and maintain crosswalks, protect the

beach and sand dunes, keep the beach in a pristine condition and pay the annual taxes on the beach. The main reason Graham was never successful in rescinding the dedication was the struggle against his efforts put forth by the SOB organization.

In 1985, a frustrated Leonard Graham sold and financed the two lots for ten-years to Mr. Frank Schilleci who owned the Fiesta Motel adjacent on the east end of the dedicated beach. Schilleci also owned several other beach motels. After Schilleci paid off the property, he also tried unsuccessfully to rescind the dedication. When Schilleci installed a drainage system under the east end of the beach to catch runoff water from the Fiesta and pipe it onto the beach and into the Gulf, SOB brought a lawsuit against Schilleci to stop him. The Judge ruled Mr. Schilleci had a right to protect his property by installing pipes under the beach. The lawsuit pertained only to his right to install the drainage system and did not contest his ownership of the beach property. Schilleci contracted with locals to rent Ski Doos behind his Motel allowing them to drive their pickup trucks onto the beach crossing the drainage pipes. The trucks created deep ruts combined with weather eroded the beach and truck traffic eventually broke the pipes. Later, Hurricane Opal (1995) destroyed the beach and the drainage system leaving a huge gully along side Front Beach Road.

The east end of Bid-A-Wee Beach (BAWB) was an unsightly mess and again SOB brought a lawsuit against Schilleci. Although the Judge again ruled in Schilleci's favor, he additionally ruled that Schilleci must, in accordance with the dedication, make necessary repairs and maintain the system keeping the beach in pristine condition. It was during that lawsuit that Schilleci discovered the description on the title did not describe the beach. Schilleci had his attorney amend the description from "in said subdivision," to read "**south of** said subdivision." A Judge had twice ruled the beach property belonged to Schilleci and he had strengthened his title by changing the language in the property description.

In 1992, the Attorney for SOB proposed a strategy for the organization to gain ownership of the beach. He advised them that since the property belonged to Schilleci, they should stop paying property taxes on the beach for a three-year period and only buy the tax certificates. After the three-year period, the property would be auctioned on the courthouse steps. SOB, would advise potential bidders that all they would be purchasing, like Graham and Schilleci, were the right to pay taxes on the beach. SOB would bid on and purchase the property and the Board of Directors approved a bid of up to \$45,000.

Precedent for rescinding dedications of beach property had previously been established by Long Beach and Edgewater Beach. A few members of SOB did not agree with the strategy, believing a strong possibility existed of a wealthy individual or corporation successfully out-bidding SOB at the tax auction for the beach. An entity other than SOB would gain ownership and eventually rescind the dedication. Consequently those few split from SOB and formed another beach organization naming it Bid-A-Wee Dedicated Beach, Inc. (BAWDB).

The three-year period was coming to an end and both organizations were plotting their strategy. On the last day of the three year period, Ms. Judy Keeton, a member of the

BAWDB organization and a Eula Miller like entrepreneur, wrote a check for over \$17,000 to pay the delinquent taxes and penalties on the property preventing it from going to auction. At one time she owned over twenty lots in Bid-A-Wee subdivision, some with rental units.

Several months later, a local property developer told members of BAWDB that they had spoiled his opportunity to bid on the beach. When asked how much he had planned to bid, he told them he would have bid in the mid-six figures and as high as one million dollars. Everyone from both organizations were doing what they truly believed would keep the beach and the dedication from being rescinded.

Ms. Keeton, in an effort to recover her money, brought a lawsuit against SOB. Bid-A-Wee became a community torn apart by the two organizations. The date of the hearing arrived and Ms. Keeton's attorney, citing a misunderstanding of the court date, did not show up. The somewhat disgruntled judge ruled in favor of SOB. Ms. Keeton did not recover her money and was ordered to pay attorney fees and court cost for SOB. Ms. Keeton personally spent more than \$20,000 doing what she thought was right.

Following Hurricane Opal (1995) and the courts favorable ruling for Schilleci, he had a concrete cantilevered seawall constructed to add stability to the foundation of his motel. The over one-hundred foot seawall was illegally located twenty-three feet onto the dedicated property. BAWDB discovered Schilleci had failed to secure a building permit and contacted the City of Panama City Beach. The City of PCB corrected itself by issuing an after-the-fact permit. BAWDB brought a lawsuit against Mr. Schilleci over his breach of the dedication and this time, added his questionable ownership of the beach property. The presiding judge, in his infinite wisdom, stated ***“you people have been fighting over this beach for fifty years and I'm bringing in a Mediator from Tallahassee to settle the issue once and for all.”***

In February 1997, the mediator and all concerned parties met at the office of Schilleci's attorney. BAWDB invited officers of the SOB organization along with their attorney to attend. After over eight hours of mediation, no agreement was reached and nothing had been accomplished. Finally, the Mediator asked if anyone had anything else to add. BAWDB had previously presented several documents to their attorney, including the location description and other documents. However, the attorney did not feel any of the information was relevant and believed it would have no bearing on mediation. Therefore, the attorney for BAWDB did not present any of the documents as evidence.

The non-attorney spokesperson for BAWDB told the Judge he had something to say.

Prior to the mediation, representatives of BAWDB went to Mr. Graham and had a long discussion with him about the beach property. They told Graham they were going to bring a lawsuit against Mr. Schilleci and was also including he and his wife in the lawsuit. Graham was taken aback and in an astounding statement told them he had never claimed ownership of the beach. He said he had never paid a dime, nor had he received a dime for the beach property when he sold it to Schilleci. Graham also said that he had never paid the taxes on the beach property. He closed with "I don't want property that I can't do anything with but pay the taxes." Per BAWDB representatives' request, Graham

put his statement in writing, had it witnessed and notarized. Later, Graham sent Ms. Keeton a hand-written letter apologizing to her, restating the same thing he had written and told BAWDB. At the mediation hearing, BAWDB had Mr. Graham's written statement.

The BAWDB spokesperson opened with the statement, "Mr. Schilleci does not, nor has he ever owned the beach property, and I can prove it." Schilleci screamed, cursed and acted as if he wanted to physically hit the BAWDB spokesperson. Schilleci's attorney also had choice words for him.

The spokesperson showed the documents to the mediator and read the described property off the original title and told him he had spoken with the Florida Department of Transportation for an interpretation of the described property. The DOT told him the described property in the title is located in Bid-A-Wee subdivision, not the beach. The DOT agreed to testify in court. He also pointed out to the Mediator where Schilleci had the description changed to "south of said subdivision" from "in said subdivision." The DOT said the location of the beach property was either south of US Highway 98A (alternate), Front Beach Road or State Road 10, as described on state records; not US Highway 98 which is PC Beach Parkway or Back Beach Road.

The Mediator said BAWDB had very tangible evidence to take to court and although BAWDB would likely win, the case could last 3-5 years and cost the organization up to \$500,000. Exactly what they would win was in question. The Mediator suggested a settlement. Although it was the contention of BAWDB that Schilleci never owned the beach, to free the title without further legal action, Schilleci would transfer the recorded title to the beach to BAWDB and the organization would allow him to keep the seawall. All lawsuits would be dropped.

At the time of settlement, Mr. Schilleci owned all five lots on Front Beach Road in block A, beginning at Crane Street. After more deliberation his attorney said he would agree to the transfer if BAWDB would allow him to keep the beach property directly across the street in front of those lots. Most of the members from both beach organizations wanted to accept that proposal but a couple delegates held out. Eventually they too gave in and accepted the proposition with the stipulation the dedication would remain in tact and that Schilleci would have to abide by the dedication. Schilleci would transfer approximately 2220 feet of beach to BAWDB. Schilleci would retain the 30 feet of Crane Street and the 250 feet next to his Fiesta Motel, giving him a total of 280 feet. Schilleci insisted the two beach organizations dissolve and form one beach organization. He did not want to transfer the title to one organization and the other one continue to bring lawsuits against him. After the two organizations merge, he would then transfer the title to the new organization. The beach organizations did so by merging into Bid-A-Wee Beach Park, Inc. (BAWBP). In July of 1997, after a long delay and more fighting with Schilleci, the title was finally transferred to BAWBP.

In 2003 Schilleci sold the Fiesta Motel and his Bid-A-Wee beach property to BAB Developers. Mr. Bob Blackerby of BAB immediately made an effort to establish and maintain a relationship with BAWBP. In March of 2004, in an exceptional gesture of goodwill, Mr. Blackerby transferred the portion of the beach owned by Schilleci back to

the beach organization. Presently, Bid-A-Wee Beach Park, Inc. holds title to the entire 2,500 feet of beach that Ms. Miller had originally conveyed to them. Throughout all the legal struggles, the neighborhood organizations paid the taxes, built, replaced, repaired and maintained the crosswalks and installed a chain link fence to protect the sand dunes.

In 2002 BAWBP began negotiating with the Bay County Tax Assessors office to waive taxes on the beach property in accordance with Florida Statute. In 2004 Bay County granted the waiver, declaring Bid-A-Wee Beach as an amenity to the residents of the community and subsequently removed the beach property from the tax role.

Bid-A-Wee Beach remains a beach dedicated to the owners, residents and inhabitants of the Bid-A-Wee Community. BAWBP, Inc. is committed to insuring the dedication will be preserved forever. The revised By-Laws of BAWBP state that one hundred percent of the residents of the dedicated area (Blocks A-N) and two-thirds of the remainder of the community must vote to change the dedication or sell the beach property. This requirement helps to insure the dedication of the beach, for park purposes only, will remain for future generations.

Contrary to it's Scottish name to "Bide Your Time, Rest-A-While," the residents and members of BAWBP have not and will not rest and will continue to ensure the dedicated beach is protected, maintained and kept in pristine condition for them, their children and grandchildren to enjoy forever.