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IN THE SUPREME COURT
STATE OF FLORIDA

CITY OF DAYTONA BEACH SHORES,

Appellant,

v.

STATE,

Appellee.

CASE NO. 65,912

COUNTY OF ST. JOHNS, et al.,

Appellant,

v.

BOARD OF TRUSTEES OF THE
INTERNAL IMPROVEMENT TRUST
FUND, STATE OF FLORIDA,

Appellee,

CASE NO. 66,700 4

APPELLANTS' REPLY BRIEF

(County of St. Johns, et al.)

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STATEMENT OF THE CASE

Appellants will not contest the Trustees' Statement of the Case.

STATEMENT OF THE FACTS

To the best of Appellants' belief, the County and City have never conceded that the dry sand area of the beach (the area between the mean high water line and the dune or vegetation line) has been impressed with public rights of custom and usage. In fact, the Appellants continuously insisted that the private record title owners of such land be joined as party defendants before the court announce that public rights exist on their land. (R-16, R-151) The parties did however stipulate to the following:

> " v) The area lying between the mean high water line and the toe of the beach dunes or the area between the mean high water line and the vegetation line is known as the "soft sand" or "dry sand" area.
>
> w) Except in a few isolated instances, the soft sand area or land west of the mean high water line along the Atlantic Ocean beaches in St. Johns County and the City of St. Augustine Beach is privately owned." (R-444)(A-26

Florida Special Acts (65-2178 and 21543) authorize the Appellants to regulate motor vehicles on the Atlantic Ocean beaches to the ". . .high water mark " (A-97, A-99) which, in reality is the dune line. (See photographs (R-899 et. seq.) (Attached hereto as appendix A-4,5,6) In addition, for safety reasons, ordinance 84-45 (R-544) made it unlawful to cause a motor vehicle to exit from or enter upon a county owned or controlled Atlantic beach access road at locations between the Atlantic ocean mean high water line and the Atlantic ocean dune line. Motor vehicle beach user fees are collected at County or City owned or controlled beach access ramps and any motor vehicle that lawfully enters the beach area by use of such ramps must enter upon the wet sand area below the mean high water mark.

Appellants do not charge motor vehicle beach user fees during weekdays until the summer vacation season is in full swing; that is, during June, July and August of each year (A-59) when the beaches are packed with summertime users. Appellants charge motor vehicle beach user fees during weekends from April 15th. to May 31st. each year (A-59) because of the heavy influx of motor vehicle beach users during spring weekends, and the corresponding large beach expenditures by the County. The user fees are thus charged only during such times as there is heavy motor vehicle beach use requiring extraordinary county services. The 78% "out of county" license tag percentage determined by the County poll conducted during April and May of 1984 is thus a reasonably accurate indication of the origin of the motor vehicles using the beaches during the heavy motor vehicle beach use season.

County ordinance 80-17 as amended - the regulatory motor vehicle beach user fee ordinance - provides only a civil, non criminal, fine for failure to pay the motor vehicle beach user fee.(Section 12 of 80-17)(A-60) Sections 17 and 18 of the amended ordinance (A-70,71) prohibit through driving - cruising - and motor vehicle sports on the beach during the summer beach season and have no relation to whether or not a motor vehicle beach user fee was paid. Section 18 clearly indicates that the misdemeanor penalty applies only to such motor vehicle uses and does not apply to non payment of fees.

ARGUMENT

POINT I

APPELLANTS HAVE LEGAL AUTHORITY TO CHARGE MOTOR VEHICLE BEACH USER FEES

The Appellee places great emphasis on the possibility that motor vehicle beach user fees may arbitrarily be increased to speculatively high amounts - but neglects to recognize the fact that such fees may only be expended for the costs of providing beach regulation and maintenance during

the times in which they are charged and are limited in amount by ordinance section 6A (A-70) which provides that ". . .In the event the funds collected during any two consecutive years exceed the costs described in section 6 the fees shall be appropriately reduced the following year." Appellee would have this Court believe that "middle class" people who can afford to purchase or lease an automobile and drive to St. Johns County will be unable to pay $2.00 a day to help keep the beach safe for their enjoyment and will somehow be deprived of a "constitutional right" to take a motor vehicle onto a crowded beach. The Appellees' emotional reference to public use of "surf. water, air, and sand" is misplaced and inapplicable. (Saltwater and sand are not even good for motor vehicles.) Appellee ignores the fact that no beach visitor is prevented from walking onto the beach free of charge.

Again, Appellants have not conceded that the lands between the mean high water line and the dune line are impressed with public rights of custom and usage but such determination is not entirely relevant to the issues before the Court because the Special Acts (65-2178 and 21543) authorize the Appellants to regulate motor vehicles on the Atlantic Ocean beaches to the ". . .high water mark", to wit: the dune or vegetation line. (See photos A-4,5,6 of the appendix attached hereto) See also City of Daytona Beach v Toma--Rama, Inc. 294 So 2d 73 (Fla. 1974) wherein the Court recognized the private ownership of the sandy beach above the mean high water mark but nevertheless held that in that case the public had acquired a customary right of use over such land and that such public right of use ". . .is subject to appropriate governmental regulation. . ." (page 78)

Plaintiff cited Carter v Town of Palm Beach 237 So 2d 130 (Fla. 1970) for the proposition that the power to regulate and restrain (surfing) does not include the power to prohibit (surfing) unless the activity is in and of itself a nuisance. Plaintiff evidently overlooked the sentence in the opinion wherein

the Court stated that ". . .the Town may regulate surfing in a reasonable manner if it sees fit to do so. . ." The County has not prohibited motor vehicles from the beaches but has merely conditioned their use of the beach upon payment of a reasonable fee to help defray the cost of regulating the effect that such motor vehicle useage has upon the beach and upon the people who wish to enjoy the beach in safety.

The Florida Constitution permits the sale of sovereign beach lands and private use of such lands. See Article X, Section 11, Florida Constitution. Chapter 65-2178 Laws of Florida authorizes St. Johns County and the City of St. Augustine Beach to completely prohibit the operation of motor vehicles upon the beaches within their boundaries. Appellants attempt to impose a nominal motor vehicle beach user fee to recoup the cost of regulating motor vehicles on crowded recreational beaches is certainly not such an impediment to public use of the beaches as to be inconsistent with the above cited special law or the Florida Constitution.

St. Johns County and the City of St. Augustine Beach have been charging beach regulatory user fees pursuant to the Special Acts allowing them to regulate motor vehicles on the ocean beaches for 4 years. (Ordinance 80-17 was passed April 8, 1980) During a portion of that time the Florida Department of Natural Resources participated with the County in the collection of such tolls and shared in the revenue (See letter dated June 5, 1980 from the Department of Natural Resources to the Chairman of the St. Johns County Board of County Commissioners. (R-563)) The parties stipulated at trial that the following facts are true.

h) Plaintiff (the State) does not "regulate" vehicular traffic in the Atlantic Ocean beaches within the State of Florida as such term "regulate" is used in its police power sense and it does not seek to exercise police power within the confines of St. Johns County. It does not regulate traffic or other matters that are subject to local police power.

hh) St. Johns County and the City of St. Augustine Beach have the power and authority to regulate the use of the ocean beaches

for the protection of health, welfare and safety of the public.

j) The plaintiff's state wide policy is that no motor vehicles belonging to members of the general public are, or will be, allowed to drive on the Atlantic Ocean beaches east of the high water mark.

o) The Florida Department of Natural Resources charges user fees to members of the general public for their use of most State Park facilities.

Thus, it is apparent that the State has in the past charged the populace for the use of the public trust lands. Appellants would also refer the Court to the affidavit of the Chairman of the County Commission attached to Appellants' Response To Motion To Vacate Stay previously filed with this Court and attached hereto as appendix A-1, wherein it is made clear that the State will charge 50¢ to each person wishing to walk upon the sovereign ocean beaches located within the Anastasia State Park in St. Johns County. (One cannot help but presume that the State believes such fees are legal.) In addition, the State has and will ban motor vehicles from the ocean beaches. (See "j" above) The State has conceded that it does not regulate the ocean beaches within the County (see "h" above) but instead has pushed that task onto the County and the City of St. Augustine Beach. Two Florida circuit courts have upheld the legality of ocean beach motor vehicle user fees[1]; one Florida appellate court has upheld the legality of ocean beach motor vehicle user fees[2]; and the Supreme Court of New Jersey has upheld the legality of beach access fees charged to pedestrians[3]. St. Johns

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1. Donald G. Nichols v City of Jacksonville and the City of Jacksonville Beach, Fourth Judicial Circuit, circuit court case #71-2502 (A-85 of Appellants' Initial Brief) and Louise Buckles v City of New Smyrna Beach, Seventh Judicial Circuit, circuit court case #73-2618-01 (A-79 of Appellants Initial Brief.)

2. Nichols v City of Jacksonville 262 So 2d 236 (Fla. 1st. DCA 1972)

3. Neptune City v Avon-By-The-Sea 294 A 2d 47 (New Jersey 1972)

County ordinance 84-46 (A-62) amended ordinance 80-17 and was enacted specifically to meet and comply with the concerns of the Fifth District Court of Appeal expressed in City of Daytona Beach Shores v State , 454 So 2d 651 (Fla. 5th. DCA 1984). Motor vehicle beach user fees are legal.

Appellees also seek to distinguish between "regulation" and "user fees" but ignore the clear holdings of the courts cited above and the holding in Chase v City of Sandford 54 So 2d 370 (Fla. 1951) wherein the court stated the following at page 372:

> "The mere fact, however, that some revenue might result to the city from the operation of the parking meters does not, ipso facto, classify the charge as a tax; and many decisions may be found in which ordinances authorizing a city to apply the revenue from parking meters not only to the narrow and restricted purpose of the mere installation, operation and maintenance of the meters, but also to the broad purposes of general traffic control, have been upheld as a valid use of revenues derived from the exercise of the city's police power."

Appellee would also have the Court substitute Appellees' conclusion that motor vehicle beach user fees are ". . .probably. . .contrary to the safety of the public . . . " for the following clear **legislative findings** of the St. Johns County Commission:

> "Section 19 (A-63)
>
> b) Approximately **96%** of the people who use the County beaches during the days and hours that motor vehicle beach passes are required (the **summer beach season**), enter upon such beaches by means of motor vehicles driven and parked on the County beaches.
>
> c) Such motor vehicles enable such persons to bring a disproportionatley larger amount of trash, alcohol, glass bottles and other non desirable items onto the beaches than do persons who enter upon the beaches by foot, thereby creating a disproportionate increase in the need for regulation concerning such items.
>
> d) Motor vehicular use on the County beaches enables a significantly larger number of people to enjoy the beaches for bathing and recreational uses and thus increases the need for **life guard** protection and trash and beach clean up and maintenance.
>
> f) The imposition of the motor vehicle beach user fee has significantly reduced the amount of through motor vehicle traffic that

merely "cruises" the beach for non bathing purposes, thus reducing the number of motor vehicles that are mixing with bathers and other recreational beach users; and has also significantly reduced the number of motor vehicle drivers that use the beaches for motor vehicular sports such as speeding, "doing wheelies" and otherwise endangering the beach recreational users.

g) The primary need for the use of law enforcement personnel and law enforcement vehicles on County beaches during the summer bathing season is to regulate the speed and direction of motor vehicular traffic and segregate such traffic from bathing and recreational areas; to control the parking of motor vehicles on the beaches; to prevent reckless and careless driving within the recreation areas; and to regulate the possession, consumption and effects of alcohol on persons who arrive on the beaches by motor vehicle.

Section 9B: Ordinance 80-17 as amended is enacted in conjunction with and as a necessary adjunct to the other County beach ordinances, such as, but not limited to, the County ordinances regulating traffic direction, alcohol possession, peddling, the dumping of trash, animal control, camping and other activities as they pertain to the regulation of such activities on County beaches." (A-69)

Appellees cite Section 253.03(5) and 196.199 Florida Statutes for the proposition that the Board of Trustees shall not be required to pay taxes or assessments on state lands (253.03(5)) and that all property of the state shall be exempt from ad valorem taxation (196.199(1)(b)). St. Johns County ordinance 80-17 does not impose a tax or assessment on the lands of the state. It charges a user fee to drive a motor vehicle onto a crowded recreational beach and requires that the revenue be used to defray the costs created by such motor vehicle.

Appellees also complain that the County had no scientific proof - other than the photos - that 96% of the persons entering the beaches during the time and dates that user fees are charged enter by motor vehicle. The burden in this case is upon the plaintiffs to prove that the legislative findings of the County Commission are wrong. Harkow v McCarthy 126 Fla. 433, 171 So 314 (Fla. 1936). The Plaintiffs offered no proof as to what the percentage should be. They merely speculate in their brief that people who live in nearby condominiums walk to the beach to join the crowds that arrive by motor vehicle.

In reality, the condominiums have swimming pools which serve as the center of condominium social life during the day. The condominium people enter upon and stroll the beach in the early morning and evening hours when the motor vehicle crowds are not present - before and after the times that user fees are collected.

Thus, for the reasons stated above and in Appellants' Initial Brief, Appellants' motor vehicle beach user fee ordinances are lawful and are enforceable in accordance with their terms.

POINT II

THERE IS A DEFINITE RELATIONSHIP BETWEEN VEHICULAR USE OF THE BEACH AND THE BEACH SERVICES PROVIDED BY THE COUNTY

Appellants do not request this Court to accept the findings of the subject ordinances ". . .in the same faith a literal - minded religious purist believes his own interpretation of the holy scriptures. . ." as was suggested on page 22 of Appellees brief. Appellants merely request the Court to take cognizance of the legislative findings of the Board of County Commissioners of St. Johns County described on pages 6 and 7 above and to apply the law of Smithers v North St. Lucie River Drainage District, 73 So 2d 235 (Fla. 1954) that legislative findings are presumptively correct and the law of Lewis v Chas. C. Mathis, Jr., 345 So 2d 1066 (Fla. 1977) that ". . .if any state of facts can reasonably be conceived that will sustain a classification attempted by the Legislature, the existence of that state of facts . . .will be presumed by the courts."

Appellants also request this Court to favorably consider the findings of the Circuit Court of Duval County in Donald G. Nichols v City of Jacksonville, Circuit Court/Duval County Civil Case No. 71-2502, (A-85) affirmed Nichols v

City of Jacksonville, 262 So 2d 236 (Fla. 1st. DCA 1972) showing the correlation of beach user fees to beach regualtion; to wit:

> ". . .Although Ordinance Number 6674 (the city ordinance exacting a charge of $1.00 from the operator of every motor vehicle before such motor vehicle is granted ingress to the public ocean beach) (A-90) is designed to raise funds for limited purposes associated with the use and enjoyment of the beach, yet it is regulatory in nature, and the exaction for the ingress of a motor vehicle to the beach has not been shown to be so unreasonable as to require the Court to strike it down. In this connection, if the exaction of $1.00 was for parking a vehicle on the beach while the occupants enjoyed the sun, sand and surf, or fished, it probably would not be more than required for parking on a private lot. And for those who merely wish to ride on the beach in motor vehicles, the charge of $1.00 for ingress to the beach will serve as a deterrent, and the consequent decrease in the movement of vehicles should aid those who do desire to sun, surf and fish to do so with greater enjoyment and less danger from traffic. (A-86)
>
> It is, therefore, ADJUDGED that the CITY OF JACKSONVILLE BEACH has the authority under its Charter to reasonably regulate and control moving traffic and the parking of vehicles on the public ocean beach within its limits, and that by Ordinance Number 6674 it has not exceeded such authority." (A-89)

Contrary to Appellees brief, the Appellants did not stipulate that they had no knowledge of how many people walk on the beach during the times in which user fees are charged. The parties hereto stipulated to the following:

> " 17. The beach collectors estimate that on an **average** approximately **2 to 3 people** are **in each motor vehicle** that enters the beach during the beach fee collection season. There was no poll of beach users. Beach fee collectors do not have knowledge of the number of people who enter the County beaches by foot.
>
> 18. No poll was taken in arriving at the percentages contained in Sections 19 and 6 of County Ordinance 80-17 as amended. The sheriffs deputies, life guards and beach user fee supervisor and fee booth collectors relied on their beach experiences at arriving at the percentages presented to the County Commissioners." (A-44)

The photographs (A-1, 2, 3) show approximately 1.25 persons per vehicle - indicating that 100% of the people in the photographs plus whatever people are swimming outside the photos in deep water or are sitting in the motor vehicles entered the beach by motor vehicle.

In addition, plaintiffs never pled facts that placed in issue the legislative findings contained in the ordinances. Appellants continuously objected to raising such issues at trial. See Transcript of the pretrial hearing (R-799) and of the trial (R-914). See also (R-925) ". . . . These stipulations of facts shall not be deemed to create any issues that were not raised by the pleadings." The Trustees never moved to amend the pleadings to conform to the evidence. The parties did not try those issues by consent. And - even more importantly - the Trustees did not present competent evidence to overcome the ordinances presumption of correctness. See State v Ocean Highway and Port Authority, 217 So 2d 103 (Fla. 1968) wherein the Florida Supreme Court held:

> "Appropriate respect for the authority of a coordinate branch of the government impels us to accord presumed validity to an act of the Legislature. To disturb it on constitutional grounds, invalidity must be demonstrated beyond a reasonable doubt. A legislative decision regarding the public need and welfare of a particular area should not be disturbed unless it can be demonstrated that the conclusion is clearly unwarranted or is prohibited by some express constitutional limitation . . ." (page 105)

POINT III

APPELLANTS MOTOR VEHICLE BEACH USER FEE REVENUES ARE USED TO DEFRAY COSTS GENERATED BY THE TAKING OF MOTOR VEHICLES ONTO THE BEACH DURING SUCH TIMES AS THE FEES ARE CHARGED

Section 19 of ordinance 80-17 as amended (A-63) defines **summer beach season** as the days and hours that motor vehicle beach passes are required. Section 6 of the ordinance (A-64) provides that the revenues from the motor vehicle beach user fees be spent **only** to defray the motor vehicle beach costs as defined in the ordinance **during the summer beach season.**

Appellees critize the accuracy of Appellants' percentages but again

offer no proof of their own to meet their burden of proving the County Commission findings wrong. Harkow v McCarthy 171 So 314 (Fla. 1936) held that ". . . The Courts will not seek to avoid an ordinance by nice calculations of the expenses of enforcing police regulations. . ." (page 317) See also Pinellas Apartment v City of St. Petersburg 294 So 2d 676 (Fla. 2nd. DCA 1974) and Town of Palm Beach v Palm Beach County, 460 So 2d 879 (Fla. 1984).

Again, the Appellees failed to plead or prove facts showing that the County spent motor vehicle beach user fee revenues in violation of its own ordinance. Plaintiffs' post trial memorandum to the trial court (R-1150) questioned whether or not the County beach user fee proceeds were being used to underwrite beach related services but then candidly stated at page 30 that the answer was unknown to plaintiff. Plaintiffs' reply brief concedes at page 30 that they haven't found a way to prove the County violated its ordinance. The fact of the matter is that the County did not violate its ordinance. Appellees failed to carry their burden to plead and prove facts to the contrary.

Appellees attached a publication entitled "St. Augustine and its beaches" that was not a part of the Record nor otherwise brought to the attention of this Court or the trial court. The publication was not approved or sanctioned by either of the Appellants but is merely a promotional device paid for by the private businesses whose ads appear therein. The Court is requested to note that the tourist dollars described in Appellees' brief generate sales taxes which go directly to the State. In the absence of beach user fees, County ad valorem taxes are the sole source of providing beach services. The Court is requested to take judicial notice that St. Johns County is often referred to as the "potato capital of the world" - in short - it is a rural county whose farmers pay ad valorem taxes - tourists do not. In any event,

tourist dollars aside, the parties stipulated to facts showing that the beach user fees were spent only for beach purposes (A-42, 43) and the State offered no evidence to rebut their stipulation.

POINT IV

MOTOR VEHICLE BEACH USER FEES ARE NOT DISCRIMINATORY

Appellees' brief would have the Court believe that there are only two types of beach goers - those who enter by foot and those who enter by motor vehicle - and that it is wrong to require the 96% who enter by motor vehicle to pay 87% to 96% of the costs of regulating and maintaining the beach during the days and times they are charged. The cases cited in Appellants' Initial Brief show that Appellants' ordinances are legal. Appellants would like to point out, however, that if beach user fees are struck down, there will still be two distinct classes of people who use the beach - those St. Johns County ad valorem tax payers who use the beach and whose taxes contribute toward the costs of the beach regulation and maintenance - and- those people from within and without St. Johns County who do not pay ad valorem taxes within the County and who thus do not contribute toward the costs of the beach regulation and maintenance that they enjoy and demand. There will also be a third class of people connected with the beach - those St. Johns County ad valorem tax payers who do not use the beach and yet must pay the bill for the beach users' fun and recreation.

Appellees reliance on City of Maitland v Orlando Bassmasters, 431 So 2d 178 (Fla. 5th. DCA 1983) is misplaced. Unlike the City of Maitland, Appellants do not give preference to County motor vehicle users. Appellants merely require that all motor vehicle beach users - 22% from St. Johns County and 78% from other Counties - help pay the costs of motor vehicle beach

regulation.

Appellees' answer brief also appears to imply that the motor vehicle beach user fee somehow infringes upon a fundamental right to travel. Stating the obvious: the beach **is not** a roadway used for commerce; it **is not** a roadway used for travel - to get from "here" to "there"; it **is** a **destination recreational area.** The width of the driving and parking area of the beach varies greatly from hour to hour depending on the tides and the winds - roadway widths do not. Beach users expect to use the beach for games, sports and a place to "spread their towels", lie down, and sunbathe. They do not expect to use streets for such purposes. Beach users request that the County provide life guards and port-o-lets for the length of the beach. They request no such services for streets.

Appellees again failed to carry their burden to plead and prove facts showing invidious discrimination.

POINT V

WHETHER ST. JOHNS **COUNTY** AD VALOREM TAX PAYERS HAVE THE **DUTY** TO PROVIDE **FREE EXTRAORDINARY** POLICE AND SAFETY PROTECTION AND FREE MAINTENANCE FOR ALL OTHER PERSONS THROUGHOUT THE WORLD WHO WISH TO ENJOY **STATE** OWNED BEACHES LOCATED WITHIN THE COUNTY

St. Johns County is a rural county with 580 miles of county roads. If the County were to spend the same ratio of dollars to regulate and maintain all county roads as it does the 20 miles of beaches - the yearly County road expenditures would be $8,504,270 ((240,026 + 53,225) ÷ 20 x 580) which is more than the entire countywide general ad valorem tax revenue ($8,218,308) collected by St. Johns County in 1984 for all county purposes. The beaches obviously receive an extraordinarly high amount of County police and safety protection when compared with the general revenue needs of the rest of the County. The question is - are the ad valorem tax payers of St. Johns

County required by law to provide these extraordinary services on state owned property free of charge - and with no other help - to all persons from throughout the world who wish to use them. Appellants respectfully contend that they are not.

Appellees cited A1A Mobile Home Park Inc. v Brevard County, 246 So 2d 126 (Fla. 4th. DCA 1971) as holding that the County has a duty to clean the State's beaches free of charge. The case does not so hold. The question before the court was whether or not the construction and operation by the County of a sewage disposal plant was a "governmental" as distinguished from a "proprietary" function. It is true that in deciding that the County was acting in its "governmental" capacity rather than a "proprietary" capacity, the Courts' opinion contained dicta from other State Courts concerning a duty to provide such services. The Florida court, however, did not reach that question. The Florida court held only that ". . .the operation of a sewage . . .plant is not a nuisance per se; that such activity is deemed to be a governmental activity; and in the performance of such activity a governmental body need not comply with its own zoning ordinances." Nowhere did the Court hold that Brevard County had a duty to provide countywide sewage service nor did it suggest that the homeowners and businesses whose sewage was treated could not be charged for the sewage treatment services provided to them by the County. Appellant would also suggest that if there were a governmental duty to clean the States' beaches the State would be the logical governmental entity upon which such duty should be imposed.

Appellee also cited City of Tampa v Easton, 145 Fla. 188, 198 So 753 (Fla. 1940) which is a case concerning the negligent operation of a city owned vehicle in which the Court confirmed that ". . .a municipality is a legal entity. . .with such governmental functions. . .as may be conferred by law in

a charter. . ." The court then stated that "The maintenance of appropriate and reasonably safe streets. . .is a municipal corporate authority or duty under controlling statutes;. . ." The Court then held in reference to the City of Tampa that ". . .it is a duty of the municipality (Tampa) to be diligent in keeping **its streets** in a safe condition as to their lawful use as well as their surface requirements."

Appellees have cited no statutory or charter law imposing a duty upon the City of St. Augustine Beach or the County of St. Johns to maintain the **Trustees' beaches** in a safe condition as to their lawful use as well as their surface requirements. If such duty does in fact exist, Appellants respectfully suggest that Florida Statute 253.03 which charges the Board of Trustees with the supervision, protection and conservation of lands owned by the State places that duty squarely on the Board of Trustees who have stipulated in this case that they do not "(h). . .regulate vehicular traffic on the Atlantic Ocean beaches within the State of Florida as such term is used in its police power sense and it does not seek to exercise police power within the confines of St. Johns County. . ." (A-24) and that they "(i). . . exercise (their) authority over the Atlantic Ocean beaches. . . pursuant to Florida Statute sections 253.03(1). . .in a "proprietary" and not "regulatory" capacity." (A-24)

Appellees should not be heard to assert that the City and County have a duty to regulate and maintain State owned beaches free of charge when the State has not even performed its proprietary function of providing sufficient beach nourishment to provide a driving or bathing surface during high tide. See photographs (R-899 et seq.) (Attached hereto as appendix A-4, 5, 6)

CONCLUSION

Appellants motor vehicle beach user fee ordinances are legal and are enforceable in accordance with their terms.

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was delivered to Stephen L. Boyles, State Attorney, to Clyde E. Shoemake, Assistant State Attorney, attorneys for plaintiff, 440 South Beach Street, Daytona Beach, Florida, 32014, by U.S. Mail and to Lee R. Rohe, Esquire, Assistant General Counsel, 3900 Commonwealth Blvd., Suite 1003, Tallahassee, Florida, 32303 by Federal Express, this 19th. day of April, 1985.

James G. Sisco