

AN ORDINANCE OF THE COUNTY OF SARASOTA, FLORIDA, RELATING TO RELOCATION OF THE CHANNEL AT MIDNIGHT PASS BETWEEN SIESTA KEY AND CASEY KEY IN SARASOTA COUNTY, FLORIDA; PROVIDING FINDINGS; AUTHORIZING EXCAVATION AND FILL SEAWARD OF THE GULF BEACH SETBACK LINE AND WITHIN WATERS OF SARASOTA COUNTY FOR EROSION CONTROL AND OTHER PUBLIC PURPOSES; PROVIDING CERTAIN REQUIREMENTS IN CONNECTION WITH AUTHORIZATION OF SUCH WORK; PROVIDING PENALTIES FOR VIOLATIONS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SARASOTA COUNTY, FLORIDA:

Section 1. Findings. The Board of County Commissioners makes the following findings:

(1) Due to erosion along the southern shore of Siesta Key in Sarasota County, Florida, caused by migration of the channel of Midnight Pass between Siesta Key and Casey Key, certain homes located on said southern shore of Siesta Key have been exposed to a clear and present danger of immediate destruction or damage.

(2) Due to said migration of the channel at Midnight Pass, the Pass is in danger of closing which would have an adverse impact on Little Sarasota Bay due to the cessation of flushing action of the Bay permitted by the Pass.

(3) The relocation of the channel at Midnight Pass is necessary to protect said properties from immediate destruction or damage and to maintain and improve the environmental functions of Midnight Pass.

(4) The enactment of this Ordinance will promote the public health, safety, and general welfare by authorizing measures designed to reduce the exposure to such destruction and damage and also designed to maintain and improve the environmental functions of Midnight Pass and the environmental quality of Little Sarasota Bay.

Section 2. Limited Approval of Excavation and Fill. Notwithstanding the provisions of Sarasota County Ordinance No. 79-03, as amended, Sarasota County Ordinance No. 72-84, as amended, and any other applicable County ordinances, the performance of excavation and fill in accordance with the plans and specifications set forth on Exhibit "A" attached hereto and made a part hereof by Pasco B. Carter, Sydney J. Solomon and Sonja A. Potrykus, (hereinafter referred to as "Petitioners") and their duly authorized agents, for the purpose of relocating the channel at Midnight Pass seaward of the Gulf Beach Setback Line and within the waters of Sarasota County, Florida, is hereby authorized, provided such work complies with the requirements of Section 3 below. The Petitioners are further hereby authorized to transport the material obtained from the excavation herein authorized and to deposit same at the location of the throat of the existing channel at Midnight Pass so as to close such channel to normal tidal flow. The excavation authorized herein shall not exceed a depth of six (6) feet below mean sea level. (N.V.C.D.)

Section 3. Requirements.

(1) All costs connected with the performance of the work herein authorized shall be borne exclusively by the Petitioners.

(2) Prior to the undertaking of such work, the Petitioners shall obtain all necessary Federal and State permits.

(3) Prior to the undertaking of such work, the Petitioners shall furnish to the County a duly executed easement agreement which shall provide as follows:

(a) Said agreement shall be perpetual and binding upon all successors in right or title to the Petitioners with respect to their present property located on the southern shore of Siesta Key adjacent to Midnight Pass.

(b) Said agreement shall appertain to said property and shall grant to the County and the public the right in perpetuity to use all lands in which the Petitioners presently have or may at some future time acquire an interest in by accretion, avulsion, or otherwise within the area seaward of line designated as Proposed Easement Limit on sheet No. 2 of said Exhibit "A" for open space recreational and nature preserve purposes, as well as for possible widening, relocation and stabilization of Midnight Pass. The Petitioners shall also furnish with said agreement evidence of title in their present above-referenced properties on the southern shore of Siesta Key satisfactory to the Board of County Commissioners.

(c) Said agreement shall also provide that the Petitioners agree to quit-claim to the County, upon the request of the County, the Petitioners' interest in the lands described in Subsection (b) above.

(d) Said agreement shall also provide that the Petitioners agree that if within the two (2) year period following the date of the agreement, Midnight Pass closes to normal tidal flow, the Petitioners shall re-open the Pass at their sole expense in the same general location and configuration as authorized by Section 2 above, or in an alternate location as mutually agreeable by the Petitioners and the County, subject to the issuance of all necessary Federal, State, and County permits.

(4) Prior to the undertaking of such work, the Petitioners shall furnish to the County a duly executed easement agreement by the owners of the southerly tip of Siesta Key adjacent to the Petitioners' property meeting the same requirements of (3)(a), (b) and (c) hereof.

#### Section 4. Penalties.

(1) Penalty for Violations. Violation of this Ordinance shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00) or by imprisonment in the County jail not to exceed sixty (60) days or by both such fine and imprisonment. Each day or fraction thereof that a violation continues shall be considered a separate offense.

(2) Civil Remedies. The Board of County Commissioners or any aggrieved person may have recourse to such remedies in law and equity as may be necessary to ensure compliance with the provisions of this Ordinance, including injunctive relief to enjoin or restrain any person violating its provisions and such damages as may be sustained by virtue of any such violation, together with all costs and expenses involved in the case.

Section 5. Severability. If any provision of this Ordinance is for any reason finally held invalid or unconstitutional by any court of competent jurisdiction, such provision shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining provisions.

Section 6. Effective Date. This Ordinance shall take effect immediately upon receipt of official acknowledgment from the office of the Secretary of State of Florida that this Ordinance has been filed with said office.

PASSED AND DULY ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF SARASOTA COUNTY, FLORIDA, this 5th day of October, 1983, at 12:30 A.M.

BOARD OF COUNTY COMMISSIONERS OF SARASOTA COUNTY, FLORIDA.

By: *Paul Redem*  
Chairman

ATTEST:

R. H. HACKNEY, JR., Clerk of the Circuit Court and Ex-Officio Clerk of the Board of County Commissioners of Sarasota County, Florida.

By: *Janet L. Kahlenburg*  
Deputy Clerk

STATE OF FLORIDA, COUNTY OF SARASOTA  
I HEREBY CERTIFY THAT THE EFFECTIVE DATE OF THE FOREGOING ORDINANCE IS 10/20/83  
WITNESS MY HAND AND OFFICIAL SEAL THIS DATE 10/31/83  
R. H. HACKNEY, JR. CLERK OF CIRCUIT COURT AND EX-OFFICIO CLERK TO THE BOARD OF COUNTY COMMISSIONERS. SARASOTA COUNTY, FLORIDA.  
BY: *Jusan Kay Sidell*  
DEPUTY CLERK