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## Mission Statement:

The KBay Mentor is not approved by nor associated with the Kissimmee Bay Home Owners Association. I provide the membership of the Kissimmee Bay HOA a place to voice and share opinions and facts concerning conditions at Kissimmee Bay.

The Editor: Michael Di Marco serves as Captain for a major airline, has served as an officer in the U.S. Air Force, trained 747 pilots around the world for the Boeing Company and was a Senior Specialist Engineer in the design effort for the Boeing 777.



## Our Board Members:

Ruth Connors  
[connorscj@aol.com](mailto:connorscj@aol.com)

Jeri DeVore  
(prefers no contact)  
[jdevore607@aol.com](mailto:jdevore607@aol.com)

Ray Glueck  
[rayglueck@hotmail.com](mailto:rayglueck@hotmail.com)

Dan Kane  
[fishdoctor@cfl.rr.com](mailto:fishdoctor@cfl.rr.com)

Jerry Wiltse  
[jerry@grwiltse.com](mailto:jerry@grwiltse.com)

## The State of Florida Friendly in Kbay

This continuing saga began November 2006 when someone (any guesses) decided it was a good idea to drive a dump truck laden with pond muck through my yard....twice. Left with the rut marks and dead grass from another bad drought season, I decided it was time to look into Florida Friendly landscaping. That's where you replace thirsty St Augustine turf with drought tolerant plants.

I sued the HOA for trespass and they sued me for going Florida Friendly without approval. The trespass case was settled without the HOA admitting wrong doing but guaranteeing they'll never do it again. I argued that my going Florida Friendly was protected by statute stating "HOA governing documents...may not prohibit a homeowner from engaging in Florida Friendly landscaping...". Mr. Slaten - HOA attorney - successfully argued that the HOA does not prohibit Florida Friendly landscaping, has the right to regulate exterior changes to property, and ALWAYS requires an application and approval prior to an exterior property change. Based on that, the court agreed with the HOA. I paid almost \$24,000 for the HOA attorney.

But wait! There's more! I was ordered to return my property to its previous condition or to an approved condition. I hired a Landscape Architect that day. I applied for and received approval for a new plan. I, my wife, and my brother-in-law worked in grueling conditions to - basically - reverse the landscape. Move inside to outside and visa-versa as instructed by Mr. Collins. Doing the work revealed a number of errors made by the Landscape

Architect. After informing Mr. Collins of differences and inviting him to take a look, he called from Alaska offering an appointment with Mr. Nelson. Mr. Nelson and I discussed the need for him to look at the differences and that my wife and Randy would be leaving in a couple of days back to Washington State. Yes, Yes. My wife lives in Puyallup. The life of an airline pilot isn't as glamorous as movies make it out to be.

Mr. Nelson came out the next day all be it after a reminder phone call. He walked the entire property and in the presence of myself and Randy proclaimed that everything looked fine and he saw no problems. He also complimented the work done and thought we had done more than the DRB required as they just wanted us to move the turf from inside to outside. Six days later while still in Alaska Mr. Collins tells me that from what he "sees" I'm still not done. So begins a series of emails, a second inspection of the property (after wife and Randy have left), and no notice of any kind until I receive a copy of a Motion to Show Cause. What that means is the HOA wanted me found in contempt of court and jailed if further failing to comply.

Despite repeated attempts, Mr. Collins would not tell me what they wanted me to do until the hearing was scheduled. Then he told me the landscape had to be exactly as shown on the plan. I already had an approval of differences for Mr. Nelson. So I made another application. Disapproved. After listening to Mr. Collins' deposition I made another application. Disapproved. Still adding more turf in a third application - to a

water conservation plan mind you - it was disapproved for lack of "flow" between properties. Finally a forth application in June that tore out a flower bed in the back of the house was approved. Nonsense. Pure Nonsense.

The first hearing - scheduled for 30 minutes - lasted an hour and was spent mostly with Mr. Collins describing one-by-one each difference Mr. Collins disapproved of. Yes, the same ones Mr. Nelson inspected and approved. The next hearing was conducted in a court room and lasted 3 and a half hours. Remember the lawyers are each collecting over \$200/hr for the hearing and transportation time from Orlando and back. The complaint was that I had A) not replaced the sod in the Sidewalk Easement, and B) had not placed turf as shown in the approved April 08 plan, in numerous areas. After Mr. Collins testified that a homeowner was only responsible for their property (Sidewalk Easement is common (HOA) property) and with no evidence I had ever agreed to replace that turf, that part of the argument was over. Remember, I have been insisting the HOA maintain the Sidewalk Easement as required by section 14.9 since April 05. I had the letters with me just in case.

So it was then on me to show I had substantially complied with the court's order. I did that by showing numerous attempts to get an approved plan. That I had two approved plans with the second requiring little more turf than the first, that there is no continuity of "flow" between properties, and that substantial work had been done to alter the property. The court agreed



## Litigation News Continued

and found that Mr. Collins had relied upon the information provided by Mr. Nelson and that Mr. Nelson – as a member of the DRB – had approved of the work done.

The short version is I won and the HOA wasted more than \$10,000 in the process.

In the process, I found that the HOA has NOT ALWAYS required an application and approval for exterior property changes. So, I have filed a Motion for Relief of Judgment Based on Fraud. Now getting any court to reverse itself is a major undertaking. I cannot win arguing "see they did not require an application here." But what about five "here is", or ten, or a dozen, or over two dozen, over 4 dozen?

Do you remember Hurricane Charlie five years ago and all the damage? Do you remember all the houses built on Elsie Park and Bridget's Court from the summer of 2004 thru 2006? Do you know how many pools were installed without application or approval (not to mention the landscape change as result)? Do you remember the landscaping and fencing around the portable toilets? I think you're getting the picture.

So what will this cost the HOA? Or better asked, what will this cost you? You can start with

another \$10,000 or so for the hearing. Then should the court agree it was defrauded (and how can it not with over 4 dozen examples of how it was), I will claim damages for all my attorney's fees, reimbursement of the HOA's attorney's fees I paid, and the cost (subject to triple damages) to return my property to the condition it was in or a condition I approve of. Don't forget Mr. Slaten's fees. Bottom line? My guess is well over \$80,000 out of the HOA budget. And for what? Grass and plants.

Oh by the way, the law changed July 1<sup>st</sup> and now an HOA cannot prohibit nor enforce as to prohibit a homeowner from engaging in Florida Friendly landscaping. But Mr. Slaten still insists the HOA has the right to regulate. How exactly to they plan on enforcing a regulation when the law prohibits them for doing so? More money to be wasted? It is time for you to decide and let the HOA know your decision. I'll settle getting back for my \$24,000 and the cost of defending a frivolous contempt motion. Ms. Connors believes no feedback means you agree with all they are doing. Send her a note.

Help me protect our property rights. Tell the board you do not approve of their actions.

## So When Will this Get Fixed?

I come home from a wedding in Washington State to find these big highway notice signs saying something about Kissimmee Bay. What the heck happened? Oh. A meeting about yet higher taxes or fees for something.

You probably have received your 2009 Notice of Proposed Property Taxes by now. Take look at the section labeled

what the meetings were all about. No this is a new tax/fee that we'll get a notice about on or before August 18<sup>th</sup>.

In a nutshell, add \$48 for the general maintenance, \$8.38 for pond maintenance per home per year. The general maintenance fee can be reduced by 19% if the property owner (Mr. Stein and the golf

course) maintains the drainage system and applies for the credit. The pond maintenance fee can be waived if Mr. Stein chooses to continue to maintain the ponds (as a side note he hasn't been doing that, the HOA has and has not been reimbursed). Otherwise, he can contract with the county to maintain the ponds and we pay the \$8.38/year. His costs are different in that he has a

commercial property and a parking lot used to determine his Equivalent Runoff Units (ERUs).

The short version is that we can save money on our taxes and our HOA dues if the HOA acts in conjunction with Mr. Stein to make the appropriate applications. They do nothing – we pay more. Send the HOA a note.

