

Agenda Item #20 for September 24, 2019

GENERAL BUSINESS

20. Consideration of a Resolution of Support for the Removal of Racially Restrictive Language in all Residential Recording Instruments
(County Attorney)

**Leon County
Board of County Commissioners**

Notes for Agenda Item #20

Leon County Board of County Commissioners

Agenda Item #20

September 24, 2019

To: Honorable Chairman and Members of the Board

From: Herbert W. A. Thiele, County Attorney 

Title: Consideration of a Resolution of Support for the Removal of Racially Restrictive Language in all Residential Recording Instruments

Review and Approval:	Herbert W. A. Thiele, County Attorney
Lead Staff/ Project Team:	Dan Rigo, Assistant County Attorney

Statement of Issue:

This agenda item seeks the Board's adoption of a resolution requested by The Task Force for the Removal of Racially Restrictive Language in all Residential Covenants in Tallahassee (the "Task Force") which expresses the Board's support for the work of the Task Force in their efforts to remove racially restrictive language in all residential recording instruments on real property in Leon County.

Fiscal Impact:

This item has no fiscal impact.

Staff Recommendation:

Option #1: Adopt the proposed Resolution (Attachment #1) supporting the work of the Task Force in their efforts to remove racially restrictive language in all residential recording instruments on real property in Leon County.

Report and Discussion

Background:

As directed by the Board at its September 17, 2019 regular meeting, this agenda item presents for the Board's consideration a resolution (Attachment #1) requested by The Task Force for the Removal of Racially Restrictive Language in all Residential Covenants in Tallahassee (the "Task Force"). The Task Force is a local group of concerned citizens that came together with several local officials and community leaders (Attachment #2) in response to the recent discovery of racially restrictive language in the original restrictive covenants of the Betton Hill subdivision recorded in 1939 (Attachment #3). The offensive language originated from a 1930's Federal Housing Administration ("FHA") grant that required certain restrictions be imposed on property owners in subdivisions being developed throughout the country before those owners could obtain FHA loans. Although the U.S. Supreme Court in 1948 found that language to be unconstitutional and unenforceable, the recorded document remains by law in the Clerk's Official Records along with all other recorded instruments. The Task Force was formed with a purpose and goal to have any such offensive language permanently removed from all residential recording instruments in the Clerk's Official Records and, thus, to prevent new home owners from reexperiencing the segregation and discrimination intended on the face of the documents (Attachment #4).

Analysis:

Beginning with their first meeting on July 9, 2019, the Task Force met several times to decide on the best course of action to accomplish their goal. The Task Force determined early on that a local ordinance was not an option because the City of Tallahassee and Leon County are precluded by statute to enact ordinances regulating the handling of real estate documents by the local title companies and the Clerk's recording and management of those documents in the Official Records. The Task Force instead decided to pursue other options including (i) seeking enactment of a statewide law through our local legislators and (ii) considering the use by individual property owners of a recording form which would effectively eliminate a discriminatory provision in a restrictive covenant and thereby be treated as stricken from the original document and removed from the chain of title for that property (Attachment #5).

In addition, the Task Force decided to make a request to several organizations for the adoption of a resolution disavowing the racially restrictive language and supporting the work of the Task Force in its efforts to have the offensive language removed through a statewide legislative enactment. Those organizations include the City of Tallahassee, Leon County, the Florida League of Cities, the local chambers of commerce, and the Alliance of Tallahassee neighborhoods. The City adopted the requested resolution as a proclamation at its regular meeting on September 11, 2019 (Attachment #6).

The County Attorney reviewed the requested resolution for legal sufficiency and format (Attachment #7). Minor revisions have been made to clarify the intent of the resolution and to make its format consistent with the form of the County's standard resolution.

Title: Consideration of a Resolution of Support for the Removal of Racially Restrictive Language
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Options:

1. Adopt the proposed Resolution (Attachment #1) supporting the work of the Task Force in their efforts to remove racially restrictive language in all residential recording instruments on real property in Leon County.
2. Do not adopt the proposed Resolution.
3. Board direction.

Recommendation:

Option #1

Attachments:

1. Proposed Resolution
2. List of Task Force Members
3. 1939 Betton Hill Property Restrictions
4. Overview of Task Force
5. Proposed Restrictive Covenant Modification Form
6. City of Tallahassee Proclamation
7. Draft of Resolution Proposed by Task Force

RESOLUTION: 19-_____

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF LEON COUNTY, FLORIDA SUPPORTING THE WORK OF A LOCAL CITIZENS TASK FORCE IN THEIR EFFORTS TO REMOVE RACIALLY RESTRICTIVE LANGUAGE IN ALL RESIDENTIAL RECORDING INSTRUMENTS ON REAL PROPERTY IN LEON COUNTY

WHEREAS, the Federal Housing Administration created a program in 1934 that required racially restrictive language in restrictive covenants for developers to receive financial incentives for residential development; and

WHEREAS, in 1948 in the landmark United States Supreme Court case, *Shelley v. Kraemer*, the Court held that enforcement of racially restrictive covenants violated the Equal Protection Clause of the 14th Amendment of the United States Constitution and, therefore, ruled that those covenants are unenforceable; and

WHEREAS, in 1968 the Federal Fair Housing Act made the practice of writing racially restrictive covenants into recording instruments on residential property illegal; and

WHEREAS, despite being unenforceable, the racially restrictive covenants and instruments of years past still remain in the Clerk's official records and are often circulated as part of the title history to prospective purchasers of real property; and

WHEREAS, many homeowners still see the offensive language in the recording instruments of years past because the instruments run with the land and there are currently no laws in place to remove or redact the racially restrictive language from the Clerk's Official Records;

WHEREAS, because homeowners should not experience this reminder of racism and discrimination, the language should be removed or redacted from all the recording instruments on real property presented to real estate purchasers in Leon County; and

WHEREAS, in order to accomplish the task of removing this offensive language from the Clerk's Official Records, a group of local interested citizens came together to form The Task Force for the Removal of Racially Restrictive Language in all Residential Covenants in Tallahassee (the "Task Force"); and

WHEREAS, the Board of County Commissioners deems it to be in the best interest of the citizens and residents of Leon County to adopt this resolution in support of the work of the Task Force in its efforts to remove racially restrictive language in all residential recording instruments on real property in Leon County.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Leon County, Florida (the “Board”), assembled in regular session this 24th day of September, 2019, as follows:

1. That the Board hereby concurs that racially restrictive language found in recording instruments on any real property is offensive, unenforceable, illegal, and unconstitutional, and, as such, the Board hereby disavows such language.

2. That the Board hereby supports the work of the Task Force in its efforts to remove racially restrictive language in all residential recording instruments on real property in Leon County.

DONE AND ADOPTED by the Board of County Commissioners of Leon County, Florida, on this 24th day of September, 2019.

LEON COUNTY, FLORIDA

BY: _____
Jimbo Jackson, Chairman
Board of County Commissioners

ATTESTED BY:
Gwendolyn Marshall, Clerk of Court &
Comptroller, Leon County, Florida

BY: _____

APPROVED AS TO FORM:
Leon County Attorney’s Office

BY: _____
Herbert W.A. Thiele, Esq.
County Attorney

**TASK FORCE FOR THE REMOVAL OF RACIALLY RESTRICTIVE LANGUAGE
IN ALL RESIDENTIAL COVENANTS IN TALLAHASSEE NEIGHBORHOODS**

Name	Position
1. Reverend Dr. RB Holmes	Pastor, Bethel Missionary Baptist Church President, Tallahassee Chapter NAN <u>Florida House of Representatives</u>
2. Honorable Lorraine Ausley	<u>9th district</u> President of Betton Hills Neighborhood Association
3. Michael Brezin	President, Greater Tallahassee Chamber of Commerce
5. Attorney Jasmyne Henderson, Esq.	President-Elect for Tallahassee Barristers/Pittman Law Group
6. Honorable Antonio Jefferson	Big Bend Minority Chamber of Commerce
7. Adner Marcelin, Esq.	President Tallahassee Chapter NAACP
8. Senator Bill Montford	State Senator, Florida – District 3
9. Leroy Peck	<u>CONA</u> Tallahassee - Leon County Council of Neighborhood Associations
10. Dr. Larry E. Rivers	Distinguished Professor/FAMU
11. Mario Taylor	Board Member, Betton Hills Neighborhood Association
12. Katrina Tuggerson	Chair, Capital City Chamber of Commerce, Inc.
13. Barbara Wright	Real Estate Broker

Property Restrictions for All Lots in Betton Hill Subdivision

THIS INDENTURE, Made and entered into this the 26th day of April, A. D. 1939, by and between Gertrude C. Winthrop, a widow, individually and as executrix of the estate of Francis B. Winthrop, deceased, of the County of Leon and State of Florida, Guy L. Winthrop, an unmarried man, of the same County and State, and Evelyn W. Randolph, an unmarried woman, of the County of Duval, and State of Florida, as parties of the first part, and hereinafter referred to as the Grantors, and J. W. Perkins and Geraldine Gillis Perkins, his wife, James A. Stripling and Ida D. Stripling, his wife, Leslie C. Abstein and Evelyn B. Abstein, formerly Evelyn Bowen, his wife, Frank A. Albert and Dorothy F. Albert, his wife, Dempsey B. Mayo and Annetta T. Mayo, his wife, Lucy Jane Lane and Gordon Lane, her husband, Greene S. Johnston, III, and Alvirde F. Johnston, his wife, Alfred L. Oliver and Virginia W. Oliver, his wife, Thomas W. Jennings and Frances Jennings, his wife, Loulie H. Dowling and J. H. Dowling, her husband, all of the County of Leon and State of Florida, parties of the second part, and hereinafter referred to as the Grantees:

W I T N E S S E T H:

That Whereas, at various times the Grantors have conveyed or contracted to convey to one or more of the Grantees, hereinabove named, lots in "Betton Hill" subdivision a map or plat of which appears of record in Plat Book "2" on page 80, sheet 1 and sheet 2, of the public records in the office of the Clerk of the Circuit Court of Leon County, Florida; and

Whereas, no restrictions were embodied in any of said deeds or in the contracts for the sale of any of said lots; and

Whereas, it has since been required by the Federal Housing Administration that certain restrictions in said deeds executed or to be executed, pursuant to the contracts hereinabove referred to, be imposed on property owners in said subdivision before they can obtain loans from said Federal Housing Administration on said property, and it is also deemed desirable by the Grantors to impose such restrictions in all deeds hereafter to be made conveying lands in said subdivision;

Now, Therefore, in consideration of the sum of One (\$1.00) Dollar by the Grantors paid to the Grantees, the receipt of which is hereby acknowledged by said Grantees, and in further consideration of the covenant on the part of the Grantors to include in all deeds issued hereafter to property in "Betton Hill", a subdivision as aforesaid, each, all and every of the restrictions hereinafter mentioned, the said Grantees agree to the imposition of and do herein and hereby adopt as part and parcel of the respective deeds heretofore issued to them as to their respective holdings in said "Betton Hill", a subdivision as aforesaid, the following restrictions which shall apply to each and every lot in said subdivision, and which shall also be embodied in each and every deed subsequently executed and delivered by the Grantors, or those claiming under them, passing title to property in said subdivision, to-wit:

Property Restrictions for All Lots in
"Betton Hill" Subdivision.

(a) All lots and tracts in said subdivision shall be known and described as residential lots and no residential structure other than one detached single family dwelling, not to exceed two stories in height, shall be erected on any lot in "Betton Hill"; no garage larger than a two car garage shall be erected on any lot in "Betton Hill"; and no building erected on any lot in "Betton Hill" shall be used for any commercial purpose.

(b) No building shall be erected on any residential building lot nearer than forty (40) feet to the front line thereof, nor nearer than five (5) feet to any side line thereof. The side line restrictions shall not apply to a garage located on the rear one-quarter of a lot, except that on corner lots no structure shall be permitted nearer than twenty (20) feet to any side street line. No main residential structure shall be erected on any lot in "Betton Hill" so that the front of such residential structure is farther than sixty (60) feet from the front line of such lot, unless such lot be more than two hundred (200) feet in depth.

(c) No residential lot shall be resubdivided into building lots other than those shown on the recorded plat heretofore referred to, nor shall any building be erected on any residential building lot other than shown on said recorded plat.

(d) No noxious or offensive trade shall be carried on upon any lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

(e) No person of other than the Caucasian race shall own, use or occupy any property in said subdivision except that this covenant shall not prevent occupancy by domestic servants of a different race or nationality employed by an owner or tenant.

(f) No trailer, basement, tent, shack, garage, barn or other outbuilding erected in said subdivision shall at any time be used as a residence temporarily or permanently, nor shall any residence of a temporary character be permitted.

(g) No structure shall be moved on to any lot in said subdivision unless it meets with the approval of the Committee hereinafter referred to, or if there be no such Committee, all structures moved on any lot in said subdivision shall conform to and be in harmony with existing structures in said subdivision.

(h) No building shall be erected on any lot in said subdivision unless the design and location of such building have been approved in writing by a Committee appointed by the Grantors hereinbefore named, their heirs and assigns, or by a Committee elected by a majority of the owners of lots in said subdivision; however, in the event such Committee is not in existence or fails to approve or disapprove such design or location within fifteen (15) days after the same has been submitted to such Committee, then such approval by such Committee will not be required provided the design and location of such building conform to and are in harmony with existing structures in said subdivision. In any case, either with or without the approval of the Committee, no dwelling costing less than Four Thousand (\$4,000.00) Dollars shall be permitted on any lot in said subdivision, unless the ground floor square foot area of such dwelling be not less than one thousand (1000) square feet in the case of a one story structure or not less than seven hundred (700) square feet in the case of a one and a half or two story structure.

(i) A perpetual easement is hereby granted and reserved over the rear five (5) feet of each lot in said subdivision for utility installation and maintenance.

(j) These covenants and restrictions are to run with the land and shall be binding on all parties and all persons claiming under them until January 1, 1970, at which time said covenants and restrictions shall terminate.

(k) If the parties hereto, or any of them, or the heirs or assigns of any of them, shall violate or attempt to violate any of the covenants or restrictions herein before January 1, 1970, any other person or persons owning lots in "Betton Hill" shall have the right to have enjoined any such violation or attempted violation of any of said covenants or restrictions, and shall also have the right to recover any damages or other losses sustained on account of any such violation.

(l) Invalidation of any of these covenants by judgment or court order shall in no wise affect any of the other provisions and such other provisions shall remain in full force and effect.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals this the day and year first above written.



THE TASK FORCE FOR THE REMOVAL OF RACIALLY RESTRICTIVE LANGUAGE IN ALL RESIDENTIAL COVENANTS IN TALLAHASSEE

Thursday, September 5, 2019 - 1:30 PM - Bethel Family Life Center

CONTENTS

1. *Task Force Membership*
2. *Background*
3. *Copy of a racially restrictive covenant that runs on 213 properties in Leon County*
4. *Resolution (Template)*

BACKGROUND

In 1934 the Federal Housing Administration created a program that required racially restrictive language in restrictive covenants in order for developers to receive financial incentives for residential development. As a result of this program, suburbs or neighborhoods were created that restricted any race, except Caucasians, to reside in those neighborhoods. In 1948, in the landmark United States Supreme Court case, *Shelley v. Kraemer*, the Court held that enforcement of racially restrictive covenants violate the United States Constitution and ruled that those covenants are unenforceable. In 1968, the Federal Fair Housing Act made the practice of writing racially restrictive covenants into recording instrument on real property illegal. However, to this day, these documents are still in the public record, because restrictive covenants run with the land. Property owners are still experiencing the implicit racial discrimination because they are given these documents at the closing table when they purchase their homes. Because this information is on the public records, title companies distribute the restrictive covenants, with the offensive language, to potential buyers for them to review before purchasing their property.

A Task Force was created by Reverend RB Holmes, Ph.D., of Bethel Missionary Baptist Church in Tallahassee, Florida, to remove this offensive language from the public record and to prevent new home owners from re-experiencing the segregation and discrimination intended on the face of the recording instruments. The Task Force is comprised of concerned citizens, local officials, attorneys, realtors, chambers, and members of the clergy. They have developed a resolution to disavow the language as well as proposed legislation that would remove or redact this offensive language.

**“NO PERSON OF OTHER THAN THE CAUCASIAN RACE SHALL OWN, USE OR OCCUPY ANY PROPERTY IN SAID SUBDIVISION EXCEPT THAT THIS COVENANT SHALL NOT PREVENT OCCUPANCY BY DOMESTIC SERVANTS OF A DIFFERENT RACE OR NATIONALITY EMPLOYED BY AN OWNER OR TENANT.”
(1939)**

Parcel ID Number
Leon County Property Appraiser's Parcel
Identification Number(s)

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL DOCUMENT TO:

NAME:
STREET ADDRESS:
CITY, STATE & ZIP CODE:

THE SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY
Restrictive Covenant Modification

I (we) _____ own the real property located
at _____, _____, in Leon County, Florida, as evidenced by the recorded document
described below. The following referenced original written instrument described below contains one or more discriminatory
provisions based on race, color, national origin, sex, handicap, familial status, or religion which are void, unenforceable, and violative
of state and federal laws. This document is being recorded solely for the purpose of eliminating the discriminatory provisions in the
restrictive covenant (restrictive covenants) as shown on page(s) _____ of the document recorded on _____,
_____ (date) in book _____ and page _____, of the Official Records of Leon County, Florida or as Leon County Property
Appraiser's Parcel Identification Number(s) _____, such that they shall be treated as stricken from the
original written instrument and removed from the chain of title for this property.

The effective date of the terms and conditions of this Restrictive Covenant Modification document shall be the same as the
effective date of the original document referenced above.

Executed on Month Day, 20__

Print Full Name
Street Address
City, Florida Zip Code

Print Full Name
Street Address
City, Florida Zip Code

Signed in the presence of:

Print Name: Name of Witness A

Print Name: Name of Witness B

Two witnesses as to Record Property Owner Name

STATE OF FLORIDA
COUNTY OF LEON

I HEREBY CERTIFY that on this day, the foregoing instrument was acknowledged before me by _____, who
is personally known to me ___ or, who has produced _____ as identification, and who executed the
foregoing instrument and acknowledged before me that he/she executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this ____ day of _____, 20__.

NOTARY PUBLIC/DEPUTY CLERK

Printed Name: _____
My Commission expires:

THIS INSTRUMENT WAS PREPARED BY:

Name:

Address Line 1:

Address Line 2:

**Agenda Item Details**

Meeting	Sep 11, 2019 - City Commission Meeting
Category	5. PRESENTATIONS
Subject	5.03 Presentation of proclamation for Removing Racial Language in the City of Tallahassee-- John Dailey, Mayor
Type	Presentation

MEMORANDUM

TO: Office of the City Manager

FROM: Courtney Thomas, Director of External Affairs

DATE: September 6, 2019

RE: Presentation of Proclamation – for Removing Racial Language in the City of Tallahassee

Presentation of proclamation for Removing Racial Language in the City of Tallahassee--Mayor John Dailey.

The Task Force for the Removal of Racially Restrictive Language in All Residential Covenants in Tallahassee will be in attendance to accept the proclamation.

Thank you.

[Proclamation.pdf \(128 KB\)](#)

WHEREAS, the Federal Housing Administration created a program in 1934 that required racially restrictive language in restrictive covenants for developers to receive financial incentives for residential development; and

WHEREAS, in 1948 in the landmark United States Supreme Court Case, Shelley v. Kraemer, the court held that enforcement of racially restrictive covenants violated the Equal Protection Clause of the 14th Amendment of the United States Constitution and, therefore, ruled that those covenants are unenforceable; and

WHEREAS, in 1968, the Federal Fair Housing Act made the practice of writing racially restrictive covenants into recording instruments on residential property illegal; and

WHEREAS, despite their unenforceability, racially restrictive covenants and instruments are still common and are being circulated to prospective purchasers of real property; and

WHEREAS, racially restrictive language is offensive and is a painful reminder of this country's shadow of racial inequality and division; and

WHEREAS, many homeowners and business owners still see the offensive language in the recording instruments because the language runs with the land and there are currently no laws in place to remove or redact the racially restrictive language; and

WHEREAS, homeowners and business owners should not experience this reminder of racism and discrimination, the language should be removed or redacted from all the recording instruments on real property presented to real estate purchasers in the City of Tallahassee; and

WHEREAS, it to be in the best interest of the citizens and residents of the City of Tallahassee to adopt this resolution.

NOW, THEREFORE, be it resolved that racially restrictive language found in all recording instruments on real property in Tallahassee is offensive, unenforceable, illegal, unconstitutional, and hereby disavowed.

Draft Resolution Proposed by Task Force

RESOLUTION FROM _____ ON THE REMOVAL OF RACIALLY RESTRICTIVE LANGUAGE IN ALL RESIDENTIAL RECORDING INSTRUMENTS ON REAL PROPERTY IN THE CITY OF TALLAHASSEE AND LEON COUNTY, FLORIDA

WHEREAS, the Federal Housing Administration created a program in 1934 that required racially restrictive language in restrictive covenants for developers to receive financial incentives for residential development.

WHEREAS, in 1948 in the landmark United States Supreme Court case, Shelley v. Kraemer, the Court held that enforcement of racially restrictive covenants violated the Equal Protection Clause of the 14th Amendment of the United States Constitution and, therefore, ruled that those covenants are unenforceable.

WHEREAS, in 1968, the Federal Fair Housing Act made the practice of writing racially restrictive covenants into recording instruments on residential property illegal.

WHEREAS, despite their unenforceability, racially restrictive covenants and instruments are still common and are being circulated to prospective purchasers of real property.

WHEREAS, racially restrictive language is offensive and is a painful reminder of this country's shadow of racial inequality and division.

WHEREAS, many homeowners and business owners still see the offensive language in the recording instruments because the language runs with the land and there are currently no laws in place to remove or redact the racially restrictive language.

WHEREAS, homeowners and business owners should not experience this reminder of racism and discrimination, the language should be removed or redacted from all the recording instruments on real property presented to real estate purchasers in the City of Tallahassee and Leon County.

WHEREAS, the _____ deems it to be in the best interest of the citizens and residents of the City of Tallahassee to adopt this resolution.

NOW, therefore, be it resolved by the _____, of Leon County, Florida, that racially restrictive language found in all recording instruments on real property in Tallahassee is offensive, unenforceable, illegal, unconstitutional, and hereby disavowed.

Date _____