

# TOWN OF OCEAN RIDGE

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MAYOR, CHAIRMAN OF COMMISSION

KENNETH N. SCHENCK, JR.  
TOWN MANAGER



COMMISSIONERS  
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ED BROOKES  
ZOANNE HENNIGAN

February 5, 2014

## Ocean Ridge Beaches

At the February meeting the Town Commission addressed the question of private vs. public beaches and the access to these properties. Included in this article is a memo from our attorney addressing the legal aspects of private vs. public use of the beach. Also included are the Town Manager's memos indicating what some other communities do and some other information. The Commission requested that the staff gather all of the information as well as including any new comments or ideas that residents may have in a concise report. At present a Commission workshop is scheduled for some time in April to address the pertinent issues. It will be on the Commission agenda until concluded. If anyone has any comments, questions, concerns or recommendations please forward them to the Town Manager at Town Hall by letter or email ([kschenck@oceanridgeflorida.com](mailto:kschenck@oceanridgeflorida.com)). I look forward to hearing from you.

Sincerely,

Ken Schenck  
Town Manager



Reply To: West Palm Beach

## **MEMORANDUM**

TO: Kenneth Schenk, Town Manager  
FROM: Tara Duhy and Kathryn Rossmell  
DATE: February 5, 2014  
SUBJECT: Beach Access

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### **Issue**

You have requested an outline of the various rights and responsibilities that the public, private property owners, and municipalities have with respect to public beach access. Below, please find an outline of the law on this issue as a guide for the Town Commission's actions in this regard. This memorandum supplements the attached memorandum prepared by you discussing how other, similarly situated municipalities have treated this issue.

### **Discussion**

#### 1. The Public's Rights to Beach Access

In Florida, the state owns the beach below the mean high water line (MHWL). The state's protection of these areas is known as the "public trust doctrine," and is required by Article 10, §11, of the Florida Constitution. The public has bathing, fishing, and navigation rights below the MHWL. *See, e.g., Walton County v. Stop Beach Renourishment, Inc.*, 998 So.2d 1102, 1109 (Fla. 2008). Public beach access through upland land can also be secured by custom,<sup>1</sup>

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<sup>1</sup> If recreational use of the sandy area adjacent to the MHWL has been ancient, reasonable, without interruption, and free from dispute, such use, as a matter of custom, should not be interfered with by the owner. Such use, however, can be regulated and abandoned. *See City of Dayton Beach v. Tona-Rama, Inc.*, 294 So.2d 73, 78 (Fla. 1974); *Trepanier v. County of Volusia*, 965 So.2d 276, 286 (Fla. 5th DCA 2007)

dedication,<sup>2</sup> and prescriptive easement.<sup>3</sup> *See, e.g., Trepanier*, 965 So.2d at 284. Public beach access is a protected right in Florida. *See, e.g.,* § 161.021, Fla. Stat. (defining beach access as both laterally across the beach and through or between private property where such access is legal, and prohibiting construction from interfering with such access unless a comparable alternative accessway is provided); 02 Fla. Op. Att’y Gen. 38 (2002) (citing *City of Daytona Beach v. Tona-Rama, Inc.*, 294 So.2d 73, 75 (Fla. 1974) for the statement “We recognize the propriety of protecting the public interest in, and right to utilization of, the beaches and oceans of the State of Florida. No part of Florida is more exclusively hers, nor more properly utilized by her people than her beaches. And the right of the public of access to, and enjoyment of, Florida’s oceans and beaches has long been recognized by this [Florida Supreme] Court.”).

## 2. Private Landowner’s Rights

Private landowners may own the land above the MHWL. § 177.28, *Fla. Stat.* Landowners upland of the MHWL have special littoral rights that include access to water, the right to reasonably use the water, the right to accretion and reliction, and the right to the unobstructed view of the water. *See, Walton County*, 998 So.2d at 1111. But those rights cannot be exercised so as to injure others in their lawful rights, and private owners’ rights to bathing, fishing, and navigation are not superior to that of the public. *Id.*

## 3. The Rights and Responsibilities of Municipalities

Municipalities may regulate beaches within their corporate limits in a reasonable manner to protect the public health, safety, and welfare. 02 Fla. Op. Att’y Gen. 38 (2002). These regulations cannot be arbitrary and capricious and must be rationally related to and be reasonably designed to accomplish a purpose necessary for the protection of the public. *Id.* Municipalities may not exercise police power in a way that arbitrarily restricts or abrogates the public trust doctrine. *Id.* For example, while municipalities may charge reasonable user fees for access to sovereign lands when the revenue is used solely for the maintenance, operation, and improvement of those lands, *City of Daytona Beach Shores v. State*, 483 So.2d 405, 408 (Fla. 1985), legislation that excludes non-residents from public beaches is probably invalid for violating the public trust doctrine, the privileges and immunities clause of the Fourteenth Amendment of the United States Constitution, and exceeds the local government’s authority. *See, 74 Fla. Op. Att’y Gen. 279* (1974). Even a lack of adequate parking can be considered a restriction on public beach access in some circumstances. *See, Daytona Beach Shores*, 483 So.2d at 408.

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<sup>2</sup> That is where the land has been dedicated to public use through “a present intention to appropriate lands to public use.” *Trepanier*, 965 So.2d at 285.

<sup>3</sup> A prescriptive easement can be obtained by continuous, actual, adverse under a claim of right, open, and visible use for more than 20 years. *Id.* at 284.

#### 4. Public Access and Beach Renourishment

There are several practical considerations relevant to the issue of providing public beach access. One such issue involves beach nourishment projects. One factor considered in funding nourishment projects is the public benefit of the beach, which necessarily implicates the issue of public access. It is also worth noting that once a beach is nourished, the erosion control line, rather than the MHWL, is the boundary of state ownership. *See, Walton County*, 998 So.2d at 1115. In other words, once the beach is nourished, it is possible for the public to have rights in the “dry sand” portion of the beach without entering onto any private property.

#### 5. Police Monitoring/Trespassing

Municipalities may not give police officers blanket authority to ask people to leave property that is known to be private. Private property owners are similarly prohibited from permanently authorizing police to remove others from their land. The police, of course, may respond to reports of trespassing<sup>4</sup> on a case-by-case basis, but may not be pre-authorized to remove possible trespassers on sight. *See*, 02 Fla. Op. Att’y Gen. 38 (2002). Such actions violate the Florida Constitution prohibition of the use of public funds for private purpose found in Article VII, § 10. In addition, to serve as requisite notice, trespass signage must meet state law requirements.

#### 6. Liability for Drowning

Concerns were raised at the February 3, 2014 Town Commission meeting regarding the Town’s liability in the event of a drowning at the beach. Specifically, it was mentioned that the City of Miami Beach had been found liable for a drowning at a public beach when a citizen was caught in a rip tide. While it is true that the City of Miami Beach was found liable for a drowning, that case has been superseded by statute.

In *Breaux v. City of Miami Beach*, 899 So. 2d 1059, 1061 (Fla. 2005), the Court held the City of Miami Beach liable for a drowning where it provided more than access to the water and actively operated a swimming area. However, subsequent to the *Breaux* case, the legislature amended § 380.276(6), *Fla. Stat.* to state:

**(6) Due to the inherent danger of constantly changing surf and other naturally occurring conditions along Florida’s coast, the state, state agencies, local and regional government entities or authorities, and their individual employees and agents, shall not be held liable for any injury or loss of life caused by changing surf and other naturally occurring conditions along**

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<sup>4</sup> To be guilty of trespass, an offender must have been given notice of trespassing. Such notice can be given verbally or by statutorily correct posting. Without warning against entry followed by willful entrance, or refusal to leave after being ordered to do so, there is no crime. § 810.09, *Fla. Stat.*

**coastal areas, whether or not uniform warning and safety flags or notification signs developed by the department are displayed or posted.**

This statute expressly limits the liability of local governments for drowning that occur at a public beach. *See Brown v. Vero Beach*, 64 So.3d 172, (Fla. 4th DCA, 2011) (stating “In short, the subsection provides that government entities may not be held liable for death or injury due to changes in surf or other naturally occurring conditions along the coast, whether or not warnings were displayed” and “the enactment of this subsection overrides the analysis in *Breaux*.”)

Therefore, the Town would enjoy sovereign immunity for any drowning or injury that occurs as a result of naturally occurring conditions at the beach, including rip-tide.

# Memorandum

**Date: September 4, 2013**  
**To: Mayor and Town Commissioners**  
**From: Ken Schenck, Town Manager**  
**Re: Private Vs. Public Beaches**

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I've spoken to the surrounding communities regarding their experiences with the conflict between public and private beaches. I've also spoken to the League of Cities to see what goes on around the state on this issue. The following is how it's handled in surrounding communities.

Manalapan: They only have two public entrances. These are at either end of the Town. They do patrol the beach four times a shift on a vehicle. It's easier to patrol the whole beach as they don't have the groin interference that we do. Once the beach nourishment is complete this problem may go away. They ask people to move to the water's edge if they are on the private part of the beach. The largest problem is the northern end with people walking from the Lantana beach south onto the hotel property. They do allow dogs if they are on a leash. However, owners of private property don't have to have a leash if the dog is on their property. This does create some confusion at times. Manalapan also has an ordinance that prohibits alcohol on the beach except by private owners on their property. They have a lot less private owners on the beach than we do so these regulations are easier to control.

Delray Beach: Delray has a large public beach. The private areas at the north and south ends don't have any public accesses. Therefore, they don't have the same problem we're trying to address.

Gulfstream: They only have one public access to the beach. This is not advertised or well known. They do patrol it for parking and try to keep people off the adjacent private areas. They don't have a real problem with this area. It's gotten a little more popular recently as a local citizen has made note of it on his website.

Juno: Juno's beaches are all public and therefore they don't have a problem.

South Palm Beach: Their beaches are all behind condos with seawalls so there are no private entrances. They have some intrusion with people walking down the beach from the Lantana Beach. For the most part these people are walking along the water's edge and don't present a problem.

Palm Beach: They have had problems similar to ours in the past but don't have as much now. They do have public crossovers. If the private owners want people off their property they provide the Town with a letter stating so. The police use this letter to ask people to move to the water's edge or to the public beaches. They don't require the residents to post signage.

Highland Beach: Highland Beach doesn't have any public crossovers.

Boca Raton: They don't have a big problem with this. Their walkways are between condos and the condo security people monitor any trespassers. They do make the beachgoers stay at the high water mark.

Jupiter: Most of Jupiter's beaches are owned by the Town or the County so they don't have a similar problem. They do have some private crossovers that give them some problems with trespassers but it's not the same situation we have.

League of Cities: I also contacted the League of Cities to see if they've run into this type of problem elsewhere in the State. They didn't have anything specific that would give us any ideas.

State FDEP-Bureau of Beaches and Shores: I contacted the Bureau to see if they had any experience with this issue. They try to stay out of private concerns and haven't been involved with these issues. They concurred that the monopost signs don't require a permit through the State but do require Town approval. The sign must meet State and Town design requirements to be enforceable. However, if the resident wants to put up signs connected by a rope or the like to set boundaries that does require a permit as it's considered a structure. It is very unlikely the DEP will issue a permit for this due to turtle access and other problems. They also said that in Walton County some people were arrested for trespassing but they felt this was extreme.

# Memorandum

**Date: January 28, 2014**  
**To: Mayor and Town Commissioners**  
**From: Ken Schenck, Town Manager**  
**Re: Signage for Woolbright Rd. / Beachway Drive  
and A1A**

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As part of the discussions on the beach crossovers I met with the resident committee's representatives to discuss signage at Woolbright Rd. and A1A.

There is an existing sign on the south side of Woolbright Rd. and west of A1A that indicates where the public beaches are located. Because of the size of the sign and the considerable information on it, the sign is essentially useless. It's impossible to read it unless you stop in the road. We discussed replacing that sign with a larger more readable sign. We also talked about putting a similar sign on the north side of Woolbright Rd. and west of A1A. These signs would have arrows pointing north and south with mileages to the public beaches of Boynton Beach and Gulfstream. As these signs would likely be in the County's right of way for Woolbright Rd. I've contacted the County to see what their requirements would be to construct the signs. I have not heard back from them as of this memo.

Another sign we discussed was a sign hanging off the traffic light wires on A1A. This sign would also have arrows pointing north and south to the public beaches. I spoke to FDOT and they are looking into the feasibility of allowing this sign.

It is hoped that these signs will direct people to the existing public beaches and away from the private beaches.

# **Memorandum**

**Date**      **February 1, 2014**  
**To:**        **Mayor and Town Commissioners**  
**From:**     **Ken Schenck, Town Manager**  
**Re:**        **Questions to Consider Regarding Public  
                  Access to the Beach**

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I recommend the Commission review the information provided and then have a discussion at the March meeting on any changes they would like to make. This will provide time to consider the options.

The following are two of the questions that have been discussed for the Commission to consider. Based on the information provided and other discussions the Commission may want to address additional questions or concerns.

1. Should all of the public beach access signs have the wording "Public Access".
2. Should all of the beach access signs have the wording "Please Respect Private Beach Property".