

BEACH ACCESS CONFLICT CASE STUDY: SARASOTA COUNTY, FLORIDA

Location: Siesta Key, Sarasota County, Florida

Siesta Key is an eight-mile long barrier island located along the central west coast of Florida, south of Lido Key and north of Venice. It is situated between Roberts Bay to the northeast, Little Sarasota Bay to the southeast, and the Gulf of Mexico to the west. Siesta Key is a Census-Designated Place (CDP) governed by Sarasota County.

Timeframe: 1980 through 2014

Summary

Confrontations between Siesta Key property owners and public beachgoers have become common since 2006. The conflicts began with “No Trespassing” signs posted and enforced by off-duty deputies around Shell Road, located on the northwestern side of the island. Sheriff’s deputies have also responded to disputes at Point of Rocks, where a homeowner stretched “crime scene” tape across the beach to dissuade public intrusion. Additionally, time-share owners posted “Private Beach” signs, blocked the south end of Crescent Beach with deck chairs, and intimidated beachgoers with threats to call deputies as a means of restricting public access.

In 2009, the Sarasota County Commission prepared an ordinance to address the mounting tension between beachfront property owners and beach users. The proposed ordinance prohibited “signs, gates, barricades, fences, walls or physical impediments” seaward of a bluff or established line of vegetation. In December 2009, however, Commissioners voted unanimously not to proceed with regulations to ban signs and beach obstructions within 25 feet of the mean high tide line (MHTL). Faced with firm opposition from beachfront owners, the county decided to address beach access issues on a case-by-case basis, rather than with an ordinance that some feared may sweep too broadly.

Additionally, statewide legislation previously supported by the county was voted down in May 2009. This legislation involved similar prohibitions against obstructing beach access and declared the protection of “public access to beaches” as public policy of the state. In regards to both of these failed attempts to regulate the actions of property owners, Commissioners concluded that trying to design rules to fix a few sporadic beach disputes was not worth aggravating thousands of property owners.

Transferability

Similarly situated coastal jurisdictions can effectively utilize the “Best Practices” discussed below to potentially avoid or minimize many of the conflicts experienced on Siesta Key.

Best Practices

- ❖ Emphasize policies that encourage communication, agreement, and mutually beneficial solutions between private property owners, public beach users, and local governments to encourage public access to beaches. Property owners may, for example, receive a property tax reduction or a limitation on liability as incentives to allow public access.

- ❖ Develop partnerships among diverse interest groups that facilitate a collaborative approach to solving beach access conflicts.
- ❖ Develop proactive legislation and use litigation when appropriate to challenge proposed land uses that potentially conflict with public access to and along beaches.
- ❖ Empower local governments via Florida’s “Home Rule” provision, codified in the Florida Statutes Chapter 166 for municipalities and Chapter 125 for counties, to implement local regulations that effectuate fundamental objectives set forth in the State’s Comprehensive Plan. One primary objective, Fla. Stat. §187.201(8)(b)(2), seeks to “[e]nsure the public’s right to reasonable access to beaches.”

Hawaii provides an example of a state that has empowered its local governments to address beach access issues at the local level. In Hawaii, the state’s primary role in the coastal areas is to preserve and protect coastal resources within the conservation district and support public access along and below the shoreline (HRS Chap. 205A). Generally, Hawaii’s counties have the primary authority and duty to develop and maintain public access to and along the shorelines (HRS §§ 46-6.5, 115-5 & 115-7). HRS § 115-9 provides a remedy and fine of up to \$2000 if private homeowners obstruct existing public rights-of-way to or along the shoreline. Local County Planning Departments are responsible for enforcement in their jurisdictions.

In Florida, the state’s Comprehensive Plan sets an aspirational goal of assuring the public’s right of “access to beaches.” Although the state initiative is not mandatory, local governments have the power to prohibit homeowners and developers from obstructing public rights-of-way to or along the shoreline.

FULL CASE STUDY DESCRIPTION

History

Sarasota County has been involved in controversy over beach access on Siesta Key since the early 1970s. Until 1972, Shell Road was an approximately ¾-mile long unpaved road that ran along on the western edge of northern Siesta Key. At that time, the majority of Shell Road ran parallel with Higel Road (today’s main thruway in that area), connecting to Higel Road at its north and south ends. In 1972, the large, middle portion of the U-shaped road was closed to vehicular traffic due to complaints from local residents about excessive noise and danger from careless drivers. The road remained open to pedestrians and bicyclists. Many local residents who did not live along Shell Road were upset with the closure, having used the road for more than 60 years as a means of accessing the quiet and uncrowded shoreline.

In the following years, new disputes arose between Shell Road residents and members of the public over pedestrian and bicycle use of the area. Tensions also mounted due to parking along the north and south Shell Road access points, both of which connect Higel Road to the shoreline to this day. “No Parking” signs began to appear along the Shell Road access points, as well as “No Trespassing” signs along the unpaved right-of-way that had been closed only to vehicular traffic. By 1980, the issue came to a head. Many Shell Road residents had begun claiming the right-of-way as their private property by building walkways and swimming pools across the former roadway. Pedestrians and cyclists complained of harassment from residents, while the residents complained of trespassing, littering, thefts, and vandalism.

The County Commission responded to the controversy with a plan to establish public ownership by constructing a nature trail along the former roadway. The Shell Road residents

filed suit, claiming the land had never belonged or been dedicated to the Sarasota County in the first place. At most, they argued, the county had received a limited license to use the roadway while it was open to vehicular traffic. Now that vehicular traffic was prohibited, the county's license had essentially been revoked. Many of the residents argued that the land comprising the former road was identified within their warranty deeds and thus was property for which taxes had been levied and paid for years. To the contrary, the county maintained ownership of full title to the right-of-way, claiming it did not have to be used as a roadway to be of beneficial use for the public. Although the county ultimately prevailed and the nature trail exists today, property line disputes subsequently began to shift from perpendicular access, or access *to* the beach, to lateral access, or access *along* the shoreline.

The Florida Constitution establishes that the wet sand portion of the beach, or all land seaward of the MHTL, is owned by the state and held in trust for the public. However, the dry sand portion of beach, or all sand landward of the MHTL, is often privately owned by the beachfront property owner. In early 2006, "No Trespassing" signs began to appear at the beach along Shell Road, posted by owners of new luxury homes. The beachfront owners also hired an off-duty deputy to patrol the area and threaten "trespassers" with arrest. At that time, County Commissioner Nora Patterson warned that the no-trespassing trend could spread unless the county took a stronger stand for the public. The county failed to do so, however, and within a year or two the conflict reached Siesta Key's much larger and more popular Crescent Beach.

In 2008, "No Trespassing" signs began to emerge on the southern end of Crescent Beach. The signs were supplemented with a line of deck chairs extending from time-share properties down to the MHTL to discourage public use of the private dry sand. Several incidents were reported in which time-share owners intimidated beachgoers with threats to call deputies for trespass violations. Further south, a property owner at Point of Rocks beach stretched "crime-scene" tape across the beach after confrontations with members of the public who had attempted to laterally traverse the beach. As the name suggests, Point of Rocks is a section of rocky coastline on Siesta Key with little or no dry sand beach. Instead, large rock outcroppings and a few seawalls line the water and serve as the only means of establishing the MHTL. People walking along the publicly owned wet sand beach are faced with a choice: walk across a small area of private property to reach the next section of wet sand, or swim around the rocks and seawalls. Deputies frequently responded to calls when the public chose to cross private property.

Concerned about potential adverse tourism impacts due to the conflict, Sarasota County began considering a more aggressive approach to protecting public beach use. Crescent Beach draws thousands of tourists to its white sands every month, but much of the dry sand portion of the beach remains private property. In terms of public beach area, Sarasota County is one of the lowest ranking coastal counties in Florida. With only about 20 percent of their sandy beaches in public ownership, the county falls significantly short of the statewide average of approximately 40 percent. In 2009, the Sarasota County Commission prepared an ordinance to address the mounting tension between beachfront property owners and beach users. In December 2009, however, Commissioners voted unanimously not to proceed with regulations to ban signs and beach obstructions within 25 feet of the mean high tide line (MHTL). Faced with firm opposition from beachfront owners, the county decided to address beach access issues on a case-by-case basis, rather than with an ordinance that some feared may sweep too broadly.

To exacerbate the problem, Siesta Key is particularly vulnerable to erosion, with a reported average of 5.3 feet of beach lost yearly between 1987 and 2001. During a two-month period in the winter of 2004/2005, roughly 40-50 feet of beach width, and three to five feet of beach elevation eroded from south Siesta Key beaches. Furthermore, tropical

Storm Debby brought erosion to crisis levels in June 2012. Although over 200 miles from land with maximum sustained winds of only 45 miles per hour, Debby caused severe beach and dune erosion due to the storm's slow movement, location, heavy rainfall, 3-5 foot storm surge, and steady winds. At least 20-30 feet of beach was lost in several regions of Siesta Key in less than 48 hours.

This significant erosion, endangering private properties as well as public infrastructure, has resulted in shoreline armoring. As is common with hard stabilization measures, this armoring has simply reflected erosive ocean patterns to nearby beaches, increasing erosion on neighboring beaches and properties. As such, the county's interest in protecting beach tourism, as well as coastal properties and infrastructure, has made beach renourishment its preferred means of combating erosion. Nevertheless, many beachfront owners resolutely oppose beach renourishment projects. Although adding sand to increasingly narrow beaches may serve to protect private properties, the existing MHTL is definitively established (as the "construction control line") prior to a renourishment project and does not change when sand is artificially added to widen the beach. Thus, many beachfront owners prefer a narrower beach, of which their ownership extends across the entire dry sand down to the MHTL, rather than a wider beach with new dry sand open to public use.

To this day, the conflict persists as some beachfront property owners continue to prevent the public from recreating or passing across the dry sand areas above the MHTL. Although many of Siesta Key's beaches such as those at Crescent Beach and Shell Beach are privately owned, the public has used these beaches for recreation for decades. Florida law has yet to establish a clear guiding principal on the subject of public beach access.

Nature of Legal Dispute

The heart of the legal dispute at Siesta Key revolves around the conflict between private property rights, specifically the right to exclude, and the public's interest in access to beaches. To promote their right to exclude, beachfront owners have utilized "No Trespassing" signs and police enforcement to restrict public access to privately owned dry sand.

The County Commission is concerned with public access to and along Siesta Key's beaches due to the large number of tourists drawn to the region for the beaches. In fact, in the past Siesta Key has been voted best beach in the country. In order to maintain a steady flow of beach tourism, and protect development on critically eroding beaches, the Commission favors renourishment projects that create wider beaches.

Many beachfront property owners oppose beach renourishment projects that add large swaths of sand to the narrow beaches abutting their properties. Although private property lines are established by the MHTL, renourishment projects establish a "construction control line" along the previous MHTL, then deposit sand on the state's wet sand beach and submerged coastal land. This creates a wider, publicly-owned beach that draws public beachgoers, and, in doing so, establishes a barrier of sand and tourists between waterfront property and the ocean.

Actions and Approaches

Legislation

Sarasota County has proposed an ordinance and supported statewide initiatives to address the issue of public beach access, both of which were tabled. These include the following:

- ❖ ***Proposed Ordinance*** (Draft Ordinance – December 2009):
rejected – Sarasota County proposed an ordinance to address beach access that prohibited “signs, gates, barricades, fences, walls or physical impediments” seaward of a bluff or established line of vegetation. The ordinance was rejected due to opposition from property owners.
- ❖ ***Public Access to Beaches*** (Senate Bill 0488; House Bill 527 – July 2009)
died in committee – A statewide bill with similar objectives to the proposed county ordinance died in committee on May 2, 2009, having failed to garner the necessary support in the legislature for approval. ([FL Senate](#); [FL House of Reps.](#)).

Police Powers

On Siesta Key, many beachfront property owners rely on local sheriff enforcement of state trespass laws to prohibit public encroachment on private property. Private owners have also hired off-duty deputies to patrol their private beaches, making arrests for trespassing more than an idle threat.

Public Projects

In April 2014, the Sarasota County Commission approved a parking renovation plan for the popular North Shell Road beach access. In support of the plan, residents claimed beachgoers were vandalizing their property, littering, excessively drinking, using illegal drugs, playing loud music and committing other acts of public indecency. The approved plan will create 17 parking spots along the road, which currently has no defined parking spots, and will eliminate a pedestrian sidewalk to add six parallel parking spots.

Resolution

Within the past few years, commissioners have included a handful of new waterfront measures, described as cutting-edge protections for public access to Florida beaches, in Sarasota County’s comprehensive plan. Some of these measures make public beach access a required part of any coastal development project and establish an official policy to use county funds to purchase beach and waterfront property.

Key Stakeholders

- ❖ Sarasota County
- ❖ Siesta Key Residents
- ❖ Private Beachfront Landowners
- ❖ Public Beach Users (residents and visitors)

Contacts

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