

BEACH

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observation tower and restrooms about two miles away.

Donned in trousers, dress shirts with ties, sports jackets and even high heels, they stood out like exotic flora.

Such counterintuitive scenes — full dress on a beautiful stretch of sugar sand — could also be replayed along other Gulf beaches, according to officials of the state Department of Environmental Protection. The future of public and private rights on many Florida beaches appears to hang in the balance.

That's true not only in front of The Ritz, whose employees have kicked passersby off beachfront claimed as private by the hotel and as public by irate citizens, but up and down the Gulf coast, from Estero Island to Manasota Key near Englewood to Destin.

Among the cluster gathered on the sand one morning last week were Ed Staros, vice president and managing director of The Ritz-Carlton Resorts in Naples; John Iglehart, director of district management for the state DEP, who's responsible for state beaches from Collier County north through Lee and Charlotte; and a couple of state surveyors. Two residents who had previously been kicked off the beach by hotel staff wandered up, too: Mary Lou Smart and Graham Ginsberg.

Ms. Smart and Mr. Ginsberg were not the first beachgoers to suffer the indignity of rejection and ejection on this stretch of sand. The well-publicized fight of recent weeks between public and private interests on a beach with no boundary markings had been playing out for some time. Now, it was about to be concluded, at least temporarily, in front of The Ritz-Carlton.

If this had been boxing, the immediate match at The Ritz would have been judged a draw as far as it had gotten — into the middle rounds, with the final outcome uncertain and the past still vivid.

A year ago, according to Naples resident Cindy Buckley, eight high school students who were members of the band and the Junior ROTC program were kicked off the beach for crossing an "imaginary" line onto Ritz property. "These teens were all used to obeying, so they left, devastated," Ms. Buckley said. But several weeks later, she added, "They learned the rules and returned, and refused to leave."

The legal rules ensure that the Florida coastline is surrounded by a strip of public land where every American has a right to go.

But where exactly is the line between public and private on any given beach? Often, that's been anybody's guess.

Laying down the real property line

Ritz officials, standing in the sand with state DEP officials, insisted they have ejected no one from public beaches, only ordering non-guests off their private beach when hotel guests spread out and need room — which happens most frequently on major holidays.

"I'm trying to be a good neighbor, but it backfires when I need the beach," said Mr. Staros, whose resort is flanked by a multi-story public parking garage on its north side. He attempted to define the public-private relationship this way. "I have always welcomed the public to my beach — my sand. I don't own the beach, I own the sand," he explained. "However, on those 30-plus days a year when I have to have the beach for our guests, people say, 'What the hell are you doing throwing me off the beach?'"

"Well, I'm not. I'm using my own beach — my sand. For 25 years, I've been more than gracious."

Mr. Iglehart, the DEP official in white shirt and tie, said to the hotelier, "I understand." Then he explained the state's position.



Beach access crusaders Mary Lou Smart and Graham Ginsberg.



ROGER WILLIAMS / FLORIDA WEEKLY

Some public accesses are marked with small signage that sometimes gets painted over.

Traditionally, the public owns every inch of beach from "the mean high-water line" seaward, Mr. Iglehart said. But when beaches are renourished with public money — which is why the beach in front of The Ritz and beyond it is so broad and sugary — a permanent line is established that doesn't change with tides, winds, storms or lines of chairs and umbrellas.

That line is called the Erosion Control Line. To place it, state officials determine a traditional mean high-water line, survey that line on the beach and call it the ECL. Although the mean high water line can change as the beachfront topography evolves from wind and wave action, the ECL does not change once it is determined.

Money for the renourishment of beaches comes from bed taxes paid by hotel and motel guests.

The bed tax in Collier County, at 4 percent, amounted to about \$14 million in 2007. County rules required that 50 percent, \$7 million, be spent for beaches, inlets and beach park facilities, and that \$3 million, or more than 20 percent, be used to advertise Collier County tourism in North America and abroad.

To that tidy annual treasure, Mr. Staros estimates his company and its guests contribute 20 percent.

But since his sand, as he put it, came from those public funds, as well as the sand on the renourished portion of the beach to the north and south of The Ritz, the state position was unequivocal.

Another state official explained it in a recent e-mail to Mr. Staros.

"As a result of the local government-sponsored beach restoration projects on this beach, the state set an Erosion Control Line (ECL)," wrote Harold "Bud" Vielhauer, deputy counsel for the state DEP. "The ECL and not the mean high-water line is the boundary between the state-owned public beach and the hotel's private property."

"Waterward of the (ECL) is state-owned public beach," Mr. Vielhauer continued. "The public has the right to put down

chairs, towels and blankets, swim and sunbathe and otherwise use the beach for recreation."

So where exactly was this illusory-seeming Erosion Control Line?

In short order the state surveyors did their work, verifying the location of the ECL — the arbitrary boundary based on where the mean high water mark once was before public sand was spread on the beach. They demonstrated that the Ritz's beach ownership extends seaward about 70 feet from each of its four boardwalks, covering roughly 200 yards of beachfront. But it doesn't extend all the way to the water.

Beyond that 70 feet of white sand, hotel employees will no longer be able to stretch a long unbroken line of signature blue beach chairs and umbrellas, as they have done in the past, according to many beachgoers, effectively forming a corral that excludes the public.

The public, meanwhile, is left with 25-30 feet of beach seaward of hotel property, according to state officials — and that Erosion Control Line extends north and south of the Ritz, too.

Although Collier officials say they will post a sign describing public rights and the location of public property at the public entrance to Vanderbilt Beach, near a multi-story county parking garage, for now it remains difficult to tell exactly where public land ends and private land begins.

That's true not just at The Ritz, but from Clam Pass northward past Delnor-Wiggins State Park and all the way to Barefoot Beach and the Lee County line.

An ECL debate, in effect, is resonating north of that line, too.

In Lee County, Fort Myers Beach residents are debating public and private beach rights as they decide whether to allow government to renourish the shoreline. If they choose to go forward with renourishment in some places, it could give the public a greater right to beachfront butted up against private claims, Mr. Vielhauer says.

Some residents on Fort Myers Beach are advocating strongly against that outcome.

"I have only one request for this council," Fort Myers Beach resident David Tezak wrote last month, in www.fortmyersbeachtalk.com. "Show me the erosion rather than draw imaginary lines on a map. Physically go out onto the beach and place flags or use some other means to identify these areas that are eroding along this five-mile renourishment proposal..."

"Also, explain to the tax-paying public why in these very tough economic times is this council wasting so much time, money and resources on this ill-conceived plan."

The larger debate

As the contest between Ritz managers and public gadflies built to a head in recent weeks, Ms. Smart and Mr. Ginsberg — two of the gadflies in question — decided to jumpstart an organization called Keep Our Beaches Open dedicated to protecting public beaches. (The organizers can be reached either by telephone or email at: (239) 287-1196 or smartiehl@earthlink.net, and at (239) 404-4221 or callgraham@yahoo.com.)

Both are ardent beachgoers. Ms. Smart, a Naples Park resident and freelance writer, has walked the beach for many years.

"This is a lot of work," she said of the effort to force officials to defend public rights on the beach, and private owners to acknowledge them. "But when they kicked me off a beach that should be open to everybody, I decided it would be worth it. We've lost so much of what the beach used to be, and the least we can do is try to keep the rest — for everybody, not just for some."

Mr. Ginsberg, a Naples real estate agent and native South African who served as a lifeguard in the rough seas off the South African coast in his youth, frequently brings his children to skim board, swim, windsurf and walk along the North Naples beaches.

The Ritz debate is only the tip of the iceberg in a struggle over public rights on beaches, public access to beaches and fair taxation of the beachfront that extends back many years, they both say.

At many private properties up and down the beach, owners who may insist on privacy and who may benefit financially from the aesthetic allure of beachfront property, are taxed on it only nominally since they can't build on it.

Mr. Ginsberg maintains that such a tax policy on beachfront isn't fair and that it should be reconsidered. Long-standing public use of a beach also provides a legal precedent for public rights, he argues.

"I'm not saying there shouldn't be private property or private ownership on the beach," he said. "I'm saying that if they own the beach and (exclude the public), they should pay taxes on it. It should be the most highly taxed land in Florida. How is it possible to own land that served as roadways for generations and that has been enjoyed by the general public for decades and you get to own it for free?"

"And if they don't want to pay taxes on it, they should deed it to the public."

Lost opportunities, last chances

Mr. Ginsberg and others also insist that access to the beaches has been sold down the proverbial river by officials.

Frank Halas, the Collier County commissioner whose District 2 includes all the North Naples beaches, has tried to claim that a county-built water park might make up for the loss of access to the beaches, including the beach at the old Vanderbilt Inn, according to Mr. Ginsberg. That inn, near Delnor-Wiggins State Park, was a long-time watering hole that might have offered a great deal of public access, which is why Mr. Ginsberg and others asked the county to consider buying it when it became available about four years ago, Mr. Ginsberg said.

But that didn't happen. Today, a condominium high-rise, Moraya Bay, sits on the