

## RESOLUTION NO. 04-50

**Whereas**, the Collier County Board of Commissioners has been petitioned to consider issues pertaining to public beach ownership and access on Marco Island, and

**Whereas**, the Board of Commissioners and the Marco Island City Council have asked their respective legal counsels to review the information furnished in the petition and render legal opinions, and

**Whereas** the Office of the Attorney General has also reviewed the information provided in the petition and rendered a legal opinion by their letter of May 21, 2004.

**Now, therefore** be it resolved:

**Section 1.** That City Council acknowledge that the Deltona Corp. lawfully deeded the 1,000 foot upland beach front known as Residents' Beach to the Marco Island Civic Association to maintain the premises for the use and enjoyment of Marco Beach Subdivision residents and other residents of Marco Island, Florida.

**Section 2.** That, on September 15, 1981, the Collier County Board of Commissioners lawfully acted in its declaration that the deeding of approximately 2,600 feet of beach front property, know as Tigertail Beach by the Deltona Corporation to Collier County, fulfilled the beach access requirement as provided in Collier County Ordinance 76-20 adopted on the 27th day of April, 1976. While some may disagree with the decision, the action was neither illegal nor unconstitutional.

**Section 3.** That throughout the history of development on Marco Island until incorporation of the City in August, 1997 Collier County had ample opportunities to acquire additional public beach access, either through negotiated purchase, condemnation, or through the development review process, but elected not to do so in recognition that sufficient beach access had been granted to Collier County.

**Section 4.** That the Marco Island City Council recognizes that the only public beach accesses are located at Tigertail Beach and Collier County's "South Beach Access" adjacent to the Cape Marco PUD. Any claims of additional public beach accesses perpendicular to the beach, through the legal theories of "prescriptive easements" or "customary use" shall not be recognized unless a citizen files a suit against the record title holder of property and the public is granted an easement by the courts.

**Section 5.** That opening of the 15-foot public beach access reserved for the City of Marco Island by the Massachusetts Mutual Life Insurance Company as a part of the Marriott PUD shall be upon the sole determination of the Marco Island City Council by majority vote.

**Section 6.** That the Marco Island City Council recognize and accept the findings of the Office of the Attorney General, in their letter of May 21, 2004 to Mr. James Ciolino.

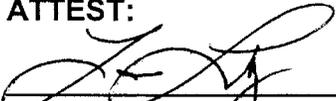
**Section 7.** That the City Council, as representatives of the residents, property owners and voters of Marco Island, acknowledge that recognition of these beach access policies and decisions best serve the interests of the community.

**Section 8.** That the City Council Chair communicate in writing to the Collier County Board of Commissioners: a summary of this Resolution; a request that the Board of Commissioners recognize that, while one may question the policy of previous decisions regarding perpendicular beach access and the dedication of beach front properties, such policies were lawfully enacted, and the citizens and property owners on Marco Island have in good faith relied upon these lawful decisions.

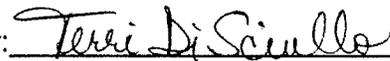
**Section 9. Effective Date.** This Resolution shall take effect immediately upon its adoption.

Passed in open and regular session through roll call vote by the City Council of the City of Marco Island, Florida this 18<sup>th</sup> day of October 2004.

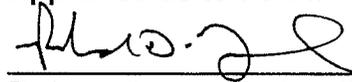
**ATTEST:**

  
\_\_\_\_\_  
Laura Litzan, City Clerk

**CITY OF MARCO ISLAND, FLORIDA**

By:   
\_\_\_\_\_  
Terri DiSciullo, Council Chairwoman

**Approved as to Form:**

  
\_\_\_\_\_  
Richard D. Yovanovich, City Attorney