



The Village of Bald Head Island

May 19, 2010

Re: Emergency Vehicle Access

Dear Property Owners, Residents and Friends:

This letter is to inform you of the Village's desire to use a lot which the Village owns in the vicinity of Peppervine Trail for necessary emergency vehicle access. Specifically, this letter responds to the letter from Bald Head Island Limited on the subject, Exhibit A hereto. At present, the Village only has emergency beach vehicular accesses on the west side of the Island at Sandpiper Trail and two on the east side of the Island – one on East Beach at Station House Way and one on South Bald Head Wynd in the vicinity of Loggerhead Trail. The Village does not possess a vehicular access in the center of the Island. This is not only inconvenient for beach patrols but could delay emergency response times. The Village owned lot and the Village's intended use is attached as Exhibit B.

Recognizing this situation, the Village Planning Staff and the Public Safety Department began many months ago examining Village owned properties and other potential locations for a South Beach vehicular access. A thorough study was conducted, including to the detail of vehicle turning radius.

It was concluded, for a variety of factors, that the Village lot in the vicinity of Peppervine Trail presented the most useful and accessible public safety vehicular access. The Village spoke with at least some, if not all, of the adjacent property owners, and one owner even agreed to exchange a small parcel to further benefit the project. To date, only one property owner indicated an objection and suggested that objection would be waived were the Village to construct a private beach access for the person. However, that lot is not oceanfront and a beach access cannot be constructed under the zoning code.

Pursuant to the Deed by which the Village received the lot from Bald Head Island Limited in 2000, the lot usage was "restricted to use for pedestrian ingress, egress and passive recreational purposes, including pedestrian access to the Atlantic Ocean." As shown by the plans, Exhibit B, the Village intends to construct a Hatteras ramp over the dunes suitable for vehicles in addition to the existing separate walkway for pedestrian

access. The intent was not to affect, in any material respect, the pedestrian access, merely to make the lot accessible for vehicles. In fact, pedestrians would receive two usable accesses instead of one.

The Village first approached Bald Head Island Limited about the necessary public safety vehicle access in September of 2009. The Village brought to Limited's attention the Deed restriction and requested either a waiver of the restriction or an express easement. The Village and Limited communicated about this issue on numerous occasions, with no decision from Limited. On January 5, 2010, the Village requested a decision from Limited on the issue by Easter weekend of April 3-4, in order for the Village to obtain a CAMA permit and to have the vehicle access ready for the peak summer season. The Village subsequently communicated with Limited regarding this issue on several occasions. Having received no response from Limited and hoping to push the matter along, given the approaching summer season, the Village sent Limited a notice letter on April 30, 2010 of its intent to exercise the eminent domain power to obtain by contract right the emergency vehicular access.

The Village continues to believe that the vehicular access is necessary and in the public interest and will not materially affect the pedestrian use of the lot. Other than sending the statutorily required notice to Limited, the Village has not acted to obtain by eminent domain the vehicular access contract right. That decision would be taken at a duly called Council meeting. Also, written notice would be given to any affected property owners, as may be necessary or advisable.

The Village appreciates that Bald Head Island Limited "shall be satisfied with whatever outcome regarding this matter." We also appreciate Limited's statement that it "earnestly believe[s] that all persons affected by these decisions should be aware of and participate in their making." However, in this instance, the Village Council had nothing to discuss until Bald Head Island Limited, as holder of the contractual pedestrian use restriction, would take a position in this matter. That position was not known until Limited's May 6 letter, in response to the Village's April 30 notice letter. This issue will no doubt be discussed at the May 28 Council meeting.

Please contact me with any questions you may have regarding this matter.

Sincerely yours,



J. Andrew Sayre
Village Mayor

Attachments

pc: M. Kent Mitchell
Bald Head Association

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May 6, 2010

Dear Property Owners:

On April 30th Bald Head Island Limited received a Notice from the Village of Bald Head Island describing its intent to file a condemnation action to take by eminent domain the right to utilize a pedestrian beach access on Peppervine Trail for emergency services vehicles. This would involve widening of the access and installation of what is commonly referred to as hatteras ramps in order to accommodate larger motorized vehicles. Interestingly, Bald Head Island Limited does not own the property per se, having deeded it to the Village on August 1, 2000. In that deed we did reserve a pedestrian access easement and restrict use of the property to pedestrian access and passive recreational use all for the benefit of the neighboring and indeed all property owners.

We wholeheartedly support providing our emergency services personnel and volunteers with whatever rights of access they require in order to carry out essential emergency services. However, we also believe that all potentially affected property owners and the beneficiaries of the existing rights of access should be aware of the possible change in the use of the beach access on Peppervine Trail; and that the interest of protecting vested property rights should be of equal concern. Perhaps a better approach would have been to contact these property owners and solicit their consent, as well as the consent of the Bald Head Association. It also appears that the Village already owns property or possesses rights of access at various other locations along South Beach. Have these options been fully evaluated and discussed in the public forum?

We shall be satisfied with whatever outcome regarding this matter. However, we earnestly believe that all persons affected by these decisions should be aware of and participate in their making.

Sincerely,

Bald Head Island Limited, LLC

A handwritten signature in black ink, appearing to read "M. Kent Mitchell".

M. Kent Mitchell
President and CEO

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