

DRAFT LETTER TO BE READ INTO COMMISSION RECORD AT 10/17/06

Mayor Seymour Roth
Bal Harbour Village
655 96th Street
Bal Harbour, Florida 33154

Dear Mayor Roth:

You, as well as each member of Bal Harbour Village's Commission, received a letter dated September 20, 2006, from Sam Proffitt, Chairman of the South Florida Chapter of Surfrider Foundation ("Surfrider"), addressing the current lack of beach access, including parking, in Bal Harbour that has been caused by the unlawful closure of the beach access adjacent to the Herman B. Fultz ("Baker's Haulover") Bridge, and the use of same for storage and staging associated with a WCI Communities, Inc. construction project.

In response, Alfred Treppeda, Village Manager, sent a short email on October 12, 2006, stating that a temporary beach access path "is now under construction at 102nd Street and Collins Avenue," but that no public parking will be provided. The email noted merely that the "closest public parking available is at Haulover Park or the Bal Harbour Shops." Mr. Treppeda also forwarded a letter from Michael Patrizio, Sr. Project Manager for WCI Communities, Inc. ("WCI"), in which Mr. Patrizio noted that the governing development agreement "never considered the public inconvenience created by this closure." Mr. Treppeda further stated that "a comprehensive plan regarding the closures of both the Beachwalk and Collins Avenue has been presented, reviewed and approved by all municipalities."

However, a developer and one or more municipalities may neither contract nor plan in violation of state law. In particular, Surfrider brought Florida Statute 161.55 to the attention of Village Manager Treppeda in an email dated October 3, 2006. Florida Statute 161.55 provides, in pertinent part:

(5) PUBLIC ACCESS—Where the public has established an accessway through private lands to lands seaward of the mean high tide or water line by prescription, prescriptive easement, or any other legal means, development or construction **shall not interfere** with such right of public access unless a **comparable alternative accessway is provided**. The developer shall have the right to improve, consolidate, or relocate such public accessways so long as the accessways provided by the developer are: (a) Of substantially similar quality and convenience to the public.....

(emphasis added).

Pursuant to the plain language of Florida Statute 161.55(5), the closure of the Baker's Haulover beach access and parking should never have occurred until a comparable alternative accessway had been put in place. In addition, the statute requires substantially similar convenience to the public, which requires parking. The Village and WCI are in direct violation of the statute because (1) the alternative accessway was not available at the time of the closure; (2) the alternative accessway is not currently available; and (3) even when the alternative accessway is completed, no parking will be provided for same.

Please have your attorney contact the undersigned as soon as possible regarding the Village's immediate plans for complying with State law.

Sincerely,
Jennifer Coberly

bc: Michael Patrizio