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Executive Board
Bay View Improvement Association
c/o Elizabeth Schildgen
19 Warren Street
Milford, Ct. 06460

Re Bay View Beach Rights

Dear Members of the Board:

As a follow up to the September 2021 Annual Members Meeting , I have reviewed and researched the question of Bay View beach rights. Having completed this research I would like to communicate my conclusions regarding the member's beach rights to the present area known as Bay view beach and those threats that might lessen or eliminate those rights.

As a result of my research explained in detail below, I am not aware of any circumstances or issues that would give cause to be concerned about a loss of beach access or rights in Bay View beach at the present time. However, based on the number of issues that I have identified below, I believe that the actions of the Bay View Improvement Association must be governed with caution and prudence in the future so that the Association acts without creating such adverse circumstances or issues. Further, as a citizen in a larger community, the Bay View Improvement Association must stay vigilant to protect its rights from changes coming from outside sources.

My research has uncovered the following concerns that the Bay View Association must give attention to in the future.

First, for any Bay View property owner whose lot is located and shown on the original map of Bay View as subdivided by H.C.C. Miles, those lots hold as part of their ownership rights, the deeded right to access and to use Bay View beach. Those rights are private deed covenants and run with the land. The Bay View Improvement Association is successor in ownership of the beach to H.C.C. Miles and the Association must respect the exercise of those private beach rights by any user who benefits from those deeded rights.

Second, as the real property of the Bay View Improvement Association, Bay View beach is under the control of the Association Board and its members. The Association charter adopted by the Connecticut Legislature provides the Association with the statutory right and the duty to maintain and to oversee the activities of the beach. The concern presented to me at the meeting in September is that somehow the rights of the members of the Improvement Association might be interfered with, reduced

or eliminated by some future action or event. The question presented is whether that concern is well founded in any way.

After research and analysis of the question, I must conclude while there are possible legal scenarios under which the beach rights of the Association members could be negatively affected, it is my belief that those scenarios are highly remote and the possibility of any of them taking place is very, very small. It is also my belief based on my understanding of the Bay View Improvement Association's Charter, the current state of the law in Connecticut and the current stewardship of the beach by the Association members and Board, there is nothing that I am aware of that would currently put in jeopardy or negatively impact or reduce the Association's members right to use the beach. As such, should Connecticut law and the current practice of beach management under the Bay View Charter remain the same, there is little or no likelihood of any change in the Association's member's right to access and use the beach.

Third, There do exist certain situations that might take place in the future which could negatively impact beach access and use. First, the law governing the use and access to private beaches in the State of Connecticut might change. This could happen by a legislative change in Connecticut law or by a court decision rendered by a Connecticut court that would change the way Connecticut private property rights are interpreted as they affect a private beach. In the past, the legislative bodies in the west coast states, Oregon, California and Washington have all pursued beach access changes by legislation. This potential change in Connecticut would be subject to much public scrutiny and debate. If the change came by way of a court decision, I am sure that there would be many appeals before the issue would be put to rest. Most recently this was experienced in the State of New Jersey where the New Jersey Supreme Court rendered a beach access decision that changed hundreds of years of New Jersey law. While I am aware of certain proposed legislation currently submitted to the Connecticut legislature about changing access to beaches, I am not aware of any proposals that would negatively impact the use of Bay View Beach by its members. Further I am not aware of any pending court cases in the State of Connecticut that if successful would have a material or negative impact on the use of Bay View Beach by its members.

The status of the Bay View Beach might also change if there is a change in the statewide or local Coastal Area Management public policy regarding land needed for public use by either the State of Connecticut or the City of Milford. Both the State of Connecticut and the City of Milford have eminent domain authority which if exercised for a qualified public purpose could create the basis for either governmental entity moving to acquire Bay View Beach using the right of eminent domain. Once again, this process would require the involvement of the courts and would provide the Association members with the right to be heard in the court proceedings and in any appeal. It would also require the government entity exercising the right of eminent domain to financially compensate all parties having a property right or interest in the land being taken. The State of Connecticut used this authority when acquiring the beach front properties in Silver, Walnut and Fort Trumbull beach in Milford for what is now Silver Sands State Park. More recent cases like this use of eminent domain authority include the Fort Trumbull – New London, Ct. case that was eventually decided by the U.S. Supreme Court. After a general review of the current government policy decisions on the possible use of eminent domain to acquire private beach rights, I am not aware of any pending policy changes or legislative proposals in either Hartford or Milford that would result in a use of eminent domain in Bay View's case.

Second, the status of the Bay View Improvement Association as a specially chartered improvement association of the State of Connecticut and legal owner of the beach could change either by the actions of the Association itself, a change put forward by the Connecticut General Assembly or by a court challenge to the Association and its functioning by one of its own members or an outside interest.

The Association membership have the right under Connecticut law to dissolve the Association. This issue would have to go to referendum within the Association and if approved by the percentage of members voting yes as required by State Law, the Association would cease to exist. At that point the ownership of Bay View beach would automatically revert to the City of Milford and would be under the control of the Mayor and Board of Aldermen. Such a change would have to come from the Membership of Bay View itself and would have to have sufficient support to be approved.

The Association's administration of its affairs or its compliance with State law and the Charter could be challenged in Court by one of its members or by an interest outside of Bay View. Depending on the issue creating the basis for the challenge, should a Court hold for the challenger, the Court would have the ability to reverse a disputed action of the Association, find a provision of the Charter in violation of State law or the U.S. Constitution and possibly enter orders that might materially impact the Association and its ability to perform its duties including to properly manage the beach. I know of no legal basis for the bringing of such a legal challenge at the present time. Further, I know of no cause at present that would give a Connecticut Court the legal justification for taking such action against the Bay View Improvement Association.

The Connecticut legislature could entertain and pass a law amending either the Bay View Charter or General Statutes governing the existence and functioning of specially chartered improvement associations and tax districts that would have a material effect on Bay View and the use of the beach. I am not aware of any legislative proposal before the State Legislature that would materially address that area of the General Statutes. Further I am not aware of any proposals in Hartford to change the Bay View Improvement Association special legislation .

I hope that this addresses the questions presented adequately.

Very truly yours

George F. Martelon, jr.

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