

HARRIS & HILTON, P.A.

NELSON G. HARRIS
Nharris@hfhlaw.com

ATTORNEYS AT LAW
7320 SIX FORKS ROAD, SUITE 100
RALEIGH, NORTH CAROLINA 27615

Facsimile: (919) 848-6918

September 12, 2016

**BY EMAIL: Frush@emeraldisle.nc.org
AND FIRST CLASS MAIL**

Mr. Frank A. Rush, Jr.
Town Manager
Town of Emerald Isle
7500 Emerald Drive
Emerald Isle, NC 28594

Re: Proposed Closure Of A Segment Of Crew Drive

Dear Mr. Rush:

Our law firm represents Emerald Plantation Partners, LLC ("Emerald Plantation"), the owner of real property in Carteret County, North Carolina commonly known as "Emerald Plantation Shopping Center" ("the Shopping Center").

The Shopping Center is adjacent to 4 tracts (collectively "the Adjacent Property") that C4 Emerald Isle, LLC ("the Developer") proposes to purchase from LRH Trust Properties, LLC (3 tracts) and Lawrence Spell and wife, Daisy H. Spell (1 tract), to develop for retail and other commercial uses. The Developer has not, as of yet, purchased the Adjacent Property.

As part of its development plan, to "achieve the desired site layout" the Developer proposes that Town of Emerald Isle ("the Town") agree to permanently close that portion of Crew Drive extending from Emerald Landing Drive to the West edge of the Shopping Center ("the Road").

If the Town agrees to permanent closure of the Road, title to the Road will pass to the adjacent landowners, in this case LRH Trust Properties, LLC and Lawrence Spell and wife, Daisy H. Spell; or to the Developer if and when the Developer purchases the Adjacent Property.

The Developer proposes, in place of the public road that is the Road, that it grant a Road Easement Agreement over a designated easement area ("the Easement"), and enter into an Agreement Setting

Forth Obligations Upon Closing Of Portion Of Crew Drive ("the Road Maintenance Agreement").

It must be noted that Food Lion, Inc. ("Food Lion") leases a space on the West end of the Shopping Center, and because of their size, its trucks must use the Road to access its loading dock at the rear of the Shopping Center.

Food Lion's tenancy is reflected in a Memorandum of Lease recorded in Book 578, Page 383 of the Carteret County Registry ("the Memorandum of Lease").

Furthermore, other tenants of the Shopping Center also benefit from public access through the Road. Those other tenants have less desirable access (for customers coming from the West) through Emerald Plantation Road; however, two (2) other tenants (on the West end of the Shopping Center) may have to use the Road for deliveries.

Emerald Plantation is not enthused about the prospect of exchanging a road currently open and maintained by the Town, with a public easement over property owned by an adjacent Shopping Center owner with little interest in providing attractive and unobstructed access to its competitors. Furthermore, Emerald Plantation must note that a private owner might have less interest in maintaining the Road, or have less financial ability to maintain the Road, than the Town.

Given the foregoing, Emerald Plantation will oppose closure of the Road. To the extent that it is necessary under Rule 5 of the Town of Emerald Isle Rules and Procedures, please consider this letter to be a request to be on the agenda to address the Council on all matters relating to the Developer's proposed development, including closure of the Road.

On September 7, 2016, you sent an email to Lynne Worth attaching a certified letter to "Emerald Plantation Partner LLC" dated August 23, 2016. In spite of the date of the letter, in your email to Ms. Worth you noted that "[y]ou will receive a hard copy of this letter in the next day or two"; and it appears likely that the certified letter was not sent until on or about September 7, 2016. The certified letter includes a copy of the Resolution Of Intent To Close A Segment Of Crew Drive dated August 9, 2016 ("the Resolution Of Intent").

Ms. Worth was out of the country on September 7, 2016 (returning to the United States yesterday); however, fortunately, she was checking her email and forwarded the same to my office on September 8, 2016.

Ms. Worth relates that she was aware in a general sense that the Road might be closed as part of the development; however, she was unaware of the effect of closure of the road, nor had she seen the Resolution Of Intent.

Upon receipt of Ms. Worth's email, on the afternoon of September 8, 2016, I called my contact with Food Lion, Inc., a Texas attorney who is counsel for Delhaize. Counsel indicated that, although Food Lion was aware that the Adjacent Property was to be developed for a Publix anchored shopping center, it was not aware that the Developer proposed to close the Road.

North Carolina General Statutes § 160A-299 permits a municipality to close a public street or alley if it first adopts a resolution declaring its intent, and calls for a public hearing on the question. As previously noted, the Town passed the Resolution Of Intent on August 9, 2016.

N.C.G.S. § 160A-299 further requires that the Resolution Of Intent must be published once a week for four consecutive weeks prior to the hearing (which I presume for purposes of this letter was done); that a sign be posted on the street to be closed; and that a copy of the resolution be sent by registered or certified mail to all owners of property adjoining the street or alley.

Those notice provisions are to ensure that any interested individuals or entities are apprised that a public road servicing their property is to be closed, and that they have a sufficient time to prepare for the hearing, and object to the proposed closure if they contend it is not in the public interest or detrimental to their property rights. The formality of the notice requirements ensures that the matter is given appropriate attention in a timely fashion.

Emerald Plantation notes that they did not have legal notice of the intent to close the Road until September 7, 2016. Emailing and mailing a certified letter with the Resolution Of Intent, on September 7, 2016, does not comply with N.C.G.S. § 160A-299, because, although not clearly stated in the statute, the structure of the statute, and due process considerations, make it clear that the certified letters should be mailed at or earlier than the first newspaper publication, so that the adjacent owners have somewhere on the close order of a month to prepare for hearing.

Emerald Plantation respectfully asserts that the procedural requirements for closure have not been met, and will ask that hearing on the Resolution of Intent be continued for at least thirty (30) days, or until the second Tuesday of October, 2016; or denied for failure

to meet the required procedural requirements for closure.

If the Town concludes that the procedural requirements for closure under N.C.G.S. § 160A-299 have been met, Emerald Plantation respectfully asserts that it was not fully aware of what the Developer proposed to do with the Road until it received a copy of the certified letter and the Resolution Of Intent until September 7, 2016; that it has not had adequate time to prepare; and respectfully requests that hearing on the proposed closure of the Road be continued for at least thirty (30) days.

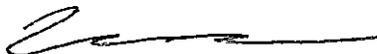
While I do not represent Food Lion, I note that its Texas counsel has indicated to me that they would like to oppose closure of the Road; that they were looking on Friday for North Carolina counsel to appear at Tuesday's hearing; and that they are clearly the tenant at the Shopping Center, likely to suffer the most injury from closure of the Road. It would be appropriate for the Town to give Food Lion notice, as well as time to prepare and be heard.

I will also note that Food Lion's real property interest is of record, and if I were Food Lion's counsel, I would probably assert that they were an owner entitled to notice of the proposed closure of the Road, within the meaning of N.C.G.S. § 160A-299, or entitled to notice on due process grounds.

Thank you for your attention to this matter.

Very truly yours,

HARRIS & HILTON, P.A.



Nelson G. Harris

NGH:tsm

cc: Ms. Lynne Worth (by email)
Mr. Frederic Chang (by email: FChang@hunton.com)
Mr. Steve Wilson (by email: Steve.Wilson@delhaize.com)