

## **MIDDLE ISLAND TRANSITION FREQUENTLY ASKED QUESTIONS**

**Can you explain what the settlement agreement includes?** Middle Island Plantation LLC (formerly Young Realty) and the Board of the Middle Island Property Owners Association (MIPOA) have reached an agreement to secure the future of Middle Island as a special community governed by its property owners through MIPOA.

The agreement calls for MIP LLC to convey the common assets and amenities to the property owners along with a generous payment of \$608,000 (minus any small preapproved credits) that - together with reasonable annual dues from property owners - will improve the roads and other assets and allow MIPOA to maintain these assets and replace them when necessary. In addition to their payment, MIP LLC is completing at its cost a significant repair of the bulkhead on Bald Head Creek and installing new aluminum gangways there and at the marina on Cape Creek. The decision on whether or not to install a gate at the entrance to Middle Island has been deferred for future discussion and is not part of the settlement agreement.

The agreement is conditioned on owners of at least 67% of the lots approving the Amended and Restated Covenants, which consolidate and restate existing provisions of our covenants and adopt the additional provisions and protections of the Planned Community Act.

The text of the agreement can be found at:

<http://www.middleislandpoa.com/resources/MIPOA%20Settlement%20Agreement%20Executed.%20pdf.pdf>

**Which assets are being transferred from the Young Entities to MIPOA in the Agreement?** The assets to be transferred under the agreement include: 1) East Beach Drive and the gravel roads, with rights of way and easements; 2) the Middle Island Beach access, parking lot and overflow parking areas south and west of the tennis court; 3) the marina and boathouse on Cape Creek; 4) the two Bald Head Creek docks; 5) the truck, tractor and equipment and leasehold interest in the maintenance building; 6) the triangle lot at the entrance to Middle Island; and 7) the scenic undeveloped areas on the marsh known as Reserve Areas 4 and 5.

The agreement does not transfer the Racquet and Swim Club, deferring action on its final status with several good options for the future. The Young Entities may continue to operate the club under the current arrangement. They can transfer the club to a group of interested property owners who agree to maintain it as a racquet and swim club predominantly for the benefit of Middle Island residents. The Young Entities also may permanently convert and sell the site as a single family residential lot, either alone or together with the lot just north of the Racquet and Swim Club.

**Okay the agreement has been reached, what happens now?** This agreement will take effect when owners of at least 67% of the lots on Middle Island vote to approve new covenants and to bring Middle Island under the North Carolina Planned Community Act. [The process of obtaining the consent of owners of at least 67% of the lots likely will begin at the end of March]

On March 10, property owners received an email from the MIPOA Board with the new proposed Covenants and summaries attached for their review. In the very near future, the Board will send by postal mail and email the proposed new Covenants with a ballot to sign and date. An affirmative vote will essentially be to approve the Amended and Restated Covenants, thereby exercising our option to bring

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Middle Island under the Planned Community Act, establishing dues and the procedures for establishing them, protecting property owners against excessive dues increases, and consolidating existing covenant provisions. Property owners will be asked to sign and return the ballot to consent to the new Covenants. The Bylaws will be adopted at the first property owners meeting after the Closing. Closing will be scheduled once we have received affirmative votes from at least owners of 67% of the lots.

**What is the Planned Community Act and why is it necessary for property owners to agree to apply it to the situation on Middle Island?** By adopting the Planned Community Act our Association will adopt a standard set of rules governing how property owners' associations act to establish and collect dues, how they can adopt and enforce certain rules, and how property owners must be involved in the process, and what protections are available for property owners. While we currently have the authority to adopt annual assessments for broad purposes, the current limits are inadequate, there are no established means to effectively collect the assessments, and it would be difficult to ensure that all property owners contribute equitably to the upkeep of the roads and other amenities.

The Planned Community Act also provides procedural protections for property owners, guarding against arbitrary acts by the Association and helping to assure accountability of the Board and the Association to the property owners.

**Am I required to pay dues if I vote against the covenants but they are approved by 67% of the lot owners?** Yes. The North Carolina Planned Community Act does provide for mandatory compliance by all lot owners covered by the Association's covenants if at least 67% of the lot owners agree to come within the PCA.

Every planned community has mandatory dues to maintain the amenities, and Middle Island is no exception. The existing covenants already have a provision for mandatory dues to fund services important to the development and preservation of attractive community appearance, and further to maintain the privacy and general safety of the Bald Head Island community. The revised covenants add a budget process with accountability, a fair way of allocating costs, and a standard way to collect the dues from all property owners in our community.

**What happens if the property owners don't approve the new covenants, by-laws and application of the Planned Community Act?**

Defeat of the agreement would mean a very uncertain future for Middle Island, with no funding or plan in place for maintaining the private roads or common assets. This could cause property values, and the appeal of Middle Island as a special community, to suffer.

We know the immediate costs of defeating the transition plan - the \$608,000 provided by the Young Entities for remediating the gravel roads, and maintaining the other assets, will disappear. Title to the roads, docks, beach access, and other properties would not transfer to the Association. Young Entities have reiterated their intent to cease operations as Developer; there will be no organized maintenance efforts after that point. The condition of the roads is likely to deteriorate rapidly. The beach access stairs would not be replaced when they wash away and the access will be closed because the Village Dune

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Protection Ordinance prohibits crossing the frontal dune. Other assets such as the docks would deteriorate at a slower pace.

The long-term effects are equally dismal. Protracted litigation is a possibility. Perhaps most importantly, without a means to maintain the gravel road, the value of forest properties would likely decline further, rather than becoming attractive properties in a unique and well-maintained environment. The gravel roads could not be conveyed to the Village for maintenance and care because of their low elevation, their too-narrow right of way, and the lack of funds necessary to pave the roads for turnover. East Beach Drive potentially could be conveyed to the Village but it would become a public road with no restrictions, altering the special nature of Middle Island and precluding our ability to install an entrance gate or otherwise restrict cart traffic. Once East Beach Drive is made public, the Village would have the right to seize the beach access for public use sometime in the future, using its eminent domain authority. In short, it would be a mess.

The MIPOA Board unanimously believes that approval of this agreement and adoption of the Planned Community Act are in the best interest of all property owners. We strongly believe this will support and strengthen Middle Island property values and help to secure our future as a special community with unique beach-marsh environments and rare common amenities.

**How has the Board addressed the different perspectives and interests of the beachside lot owners versus forest lot owners?** The MIPOA Board has proposed a tiered dues structure that balances the community spirit and solidarity of all Middle Island property owners with the reality that forest lot owners are much more dependent on the gravel roads. The proposed dues structure embodies a 3:1 ratio for allocating the maintenance costs of the gravel roads between forest and beachside lot owners. This ratio would apply to any special assessments for the gravel roads as well. All Middle Island property owners would share the costs of the other assets and amenities equally, with a special charge for those utilizing the Cape Creek dock (formerly the marina) for boat dockage or storage.

**What is the dues ratio for improved versus unimproved lots?** The Board believes dues should be tiered based on whether a lot has a completed home on it or is unimproved. Again, this balances the community spirit we all want to foster with the reality that unimproved lot owners typically use the assets and amenities less frequently, and, in many cases, have not made a decision whether or not to build and remain on Middle Island. The Board has proposed a 2:1 ratio for improved vs unimproved lot owners. This will be applied in combination with the 3:1 ratio discussed above with respect to the gravel roads. Like the forest home owners, unimproved forest lot owners will benefit greatly from gravel road and canopy maintenance services that are essential for maintaining and enhancing their property values.

**How many improved versus unimproved lots are there on Middle Island?** There are a total of 108 lots, 37 improved and 71 unimproved. There are 14 improved lots on East Beach and 23 in the forest.

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**What will my dues be if the covenants/ transition plan is approved?** The proposed dues for 2015 are:

	Improved	Unimproved
Maritime Forest Lot	\$2,041	\$1,021
East Beach Lot	\$1,576	\$ 788

These amounts will be pro-rated for the time remaining in the 2015 calendar year after the Covenants are approved and the closing takes place.

Each year the Board will propose the following year's annual budget and dues structure by October 15. That proposed budget will be circulated to all property owners and discussed at a meeting open to everyone. The budget is approved unless it is rejected by a majority of property owners who are MIPOA members.

The covenants explicitly restrict annual dues increases to no more than 5% per year. Any special assessments, or any regular dues growth beyond 5%, must be approved in advance by 2/3 of the property owners voting on the issue.

**Why isn't the Middle Island Racquet and Swim Club being transferred as part of the transition agreement?** The agreement does not transfer the Racquet and Swim Club, deferring action on its final status with several good options for the future. The Young Entities may continue to operate the club under the current arrangement. They can transfer the club to a group of interested property owners who agree to maintain it as a racquet and swim club predominantly for the benefit of Middle Island residents. The Young Entities also may permanently convert and sell the site as a single family residential lot, either alone or together with the lot just north of the Racquet and Swim Club.

**What assumptions are reflected in these projected dues for maintenance and eventual replacement costs for the assets and amenities?** Led by a professional engineer with 37 years of experience with road and infrastructure projects, the MIPOA Board painstakingly assessed the condition of every asset and amenity on Middle Island. We solicited and received professional independent estimates for repair and maintenance, as well as the remaining useful life and eventual replacement costs, for each asset.

Then, working closely with Pat and Charlie Young, Middle Island's long time developers, the Board reached a settlement agreement that will fund substantial improvements to the gravel roads, immediate repair and maintenance work for other assets, specific reserve funds based on the condition of other assets, and a general reserve fund for the future. This is in addition to remediation work on the Bald Head Creek bulkhead and the installation of new aluminum gangways, there and at the Cape Creek dock, which the Youngs have also agreed as part of an overall package. Using prudent and appropriate accounting standards, the proposed dues structure includes funding for annual operating costs and necessary annual reserve contributions for all of the assets and amenities, as well as for reasonable administrative expenses such as insurance, legal advice, and accounting.

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**How do we know our dues won't increase dramatically over time? How will property owners be protected against large special assessments?** The proposed covenants include reasonable and equitable limits on future dues increases or assessments, with significant input from the property owners. The covenants explicitly restrict annual dues increases to no more than 5% per year. Any special assessments, or any regular dues growth beyond 5%, require that ample advance notice be given to property owners and that the dues increase or special assessment is approved by 2/3 of the property owners voting on the issue. Special assessments earmarked for specific assets – like the gravel roads – will be allocated in the same ratio that annual expenses for that asset are allocated. (i.e. the 3:1 assessment ratio for the gravel roads between forest and beachside lot owners).

**How does MIPOA's proposed dues structure compare with other property owners associations on Bald Head Island?** It's important to remember that Middle Island property owners have paid little or nothing over the years for the maintenance and repair of the assets and amenities, other than dues for the Racquet and Swim Club and Cape Creek Marina. Given the unique amenities of Middle Island – a private maritime forest with over 3 miles of gravel roads leading to the nature preserve and the Cape Creek Dock, two additional docks on Bald Head Creek, and a private beach access for property owners – exact comparisons are difficult.

We believe the proposed dues structure for Middle Island is fair and comparable to the other Bald Head Island POAs. For example, the association for Flora's Bluff and Killegray Ridge charges \$1,971 for landscaping, insurance, overhead and management costs, maintenance, the beach access, the boardwalks, and short stretches of paved side roads in Flora's Bluff. Keepers Landing charges \$2,531 for insurance on the amenities, grounds keeping, retaining walls, entrance and signage, boardwalks, dock and pier, irrigation and lighting fixtures, annual tree trimming, and reserve funds for asset replacement. The proposed MIPOA dues of \$2,041 for an improved forest lot and \$1,576 for an improved beachside lot seem reasonable by comparison, particularly given the special amenities and unique nature of Middle Island.

A full comparison of the proposed Middle Island dues with other BHI POAs can be found at: (<http://www.middleislandpoa.com/resources/MIPOA%20BHI%20dues%20comparison.pdf>)

**What insurance will the Association carry?** With regard to liability insurance, the Association is required under the proposed covenants to carry limits of at least \$2,000,000 of liability insurance. With regard to insuring our amenities against damage and loss, after months of research the Board has concluded that insurance to replace the roads, docks, and other amenities is not reasonably available at an affordable, economically rational price. The insurance section of the restated covenants specifically states that these amenities cannot reasonably be insured and are not subject to the mandatory replacement provisions of the Planned Community Act. The assets may be repaired or replaced using operating funds, reserve funds, or special assessments approved by 2/3 of the owners. Obviously, the community will face difficult questions in the unlikely event of very serious storm damage; because it is impossible to anticipate all eventualities, our intent is that property owners will be able to make thoughtful decisions about funding these amenities after considering the alternatives. Finally, the Association already carries insurance for acts and omissions by Board members and will carry Workers Compensation for employees and other insurance customarily carried or required by law.

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**Are there any actions that property owners should take with regard to insurance?** The Board suggests that property owners discuss with their insurance broker whether to add loss-assessment coverage to their homeowner's policy. This is an inexpensive rider that provides additional protection for the homeowner in the unlikely event that a claim exceeds the Association's insurance coverage.

**What decisions can the MIPOA board make without a vote from the property owners – for example can the Board just decide to put up a gate at the entrance to Middle Island?** The Board is committed to including property owners in the decision as to whether or not to install a gate. In addition, the Board is committed to input from property owners on all major decisions affecting Middle Island.

The proposed covenants and the Planned Community Act have provisions assuring Board accountability. Financial accountability is a key component, and our covenants have provisions limiting Board initiatives that require funding. The proposed covenants explicitly require the presentation of an annual budget for property owner consideration. Annual dues increases are limited to 5%, and any larger dues increase or special assessments must be approved by 2/3 of the property owners voting on the issue.

The Board also recognizes that some decisions are more than just budget decisions, such as the possibility of installing a gate at the entrance to Middle Island. Although a gate may enhance property values, reduce road traffic, reduce potential liability, reduce road maintenance costs and deter vandalism, there are practical questions about how it would operate and broader questions, such as whether being a "gated community" on the island is desirable. The question has been deferred until a decision has been reached about the covenants and the transition. This kind of proposal will be adopted only after extensive and broad consultations with property owners.