



Bristol Harbour Village (BHV) is an idyllic community, founded about 50 years ago and located on the west side of Canandaigua Lake. BHV is described in its offering plan and comprises condominiums, single family homes, duplexes, and town homes. Unique to the village are the private beach and boat slips, the former being a common element of the village and the latter, as described in the offering plan, being an amenity available for rental primarily to BHV residents. These features give the residents direct access to the lake and are important features in determining the value of our homes. Indeed, homes having access to the west side of Canandaigua Lake frequently cost millions of dollars. It is this access that has drawn many of us to the BHV community.

Recently, tranquility in our community has been shattered and unnecessary antagonism has erupted between residents. One source of the recent antagonism has arisen from the transfer of the boat slips to Fields Enterprises by Todd and Laura Cook. Fields Enterprises has, on numerous occasions, let known their intent to add additional boat slips and rent many of these to non-residents, even though legal documents such as the offering plan, permit applications to NYS agencies, and the Cove Agreement restrict such rentals to very nominal numbers, if any. In addition Fields Enterprises has constructed a kayak storage facility. Access to the kayak storage facility requires traversing the BHV beach and launching a kayak has to be done from BHV property.

The reader is referred to the *Beach and Water Advisory Committee Community Overview (BWAC)* of December, 2019, as well as the Cove Agreement and the legal documents, including the decision of Judge Odorisi on July 21, 2020. The legal documents and Cove Agreement are posted on the Bristol Harbour Village Association (BHVA) website. Interested readers are urged to read those documents rather than relying on the often inaccurate or incomplete statements of various individuals that have been posted on social media.

<https://www.croftoninc.com/bristolharbour-village-association>. The information is in the password protected area section (PW: BHVA2020)

It appears from the documentation that Fields Enterprises (FE) sought the transfer of BHVA beach property to FE and sought easements on other portions of BHVA property in order to enable the proposed rentals of slips and kayak storage to outsiders. Either of these would have resulted in our loss of our ability to control and maintain the beach. Moreover, anyone seeking access to the beach would have to traverse Cliffside Drive and the use of the cantilever, elevator, or stairway from Cliffside Drive to the beach. These are all common elements for which we pay for the maintenance and upkeep and for which we have liability in case of any accident or injury.

Several years ago, the BHVA Board restricted access to the beach by installing locking gates and requiring the use of FOBs. FE attempted to negotiate with former BHVA Board members to transfer the property rights and easements of the beach to FE. As discussed by the BWAC report and is apparent from the BHVA Declaration and Bylaws, the BHVA Board does not have the authority to make any such transfers. Nonetheless, several BHVA board members attempted to do so at that time. The community found this out and the outrage was such that those board members running for reelection lost and others shortly thereafter resigned. We now have a BHVA Board whose members are dedicated to protecting the interests and assets of our community. Suffice-it to say, the deal negotiated by the previous board fell through and the new board restricted the number of FOBs issued to FE.

FE shortly thereafter filed a lawsuit comprising two actions against BHVA. The first action in the lawsuit sought a temporary restraining order (TRO) against BHVA requiring BHVA to issue more FOBs to FE. This TRO action was heard this past summer and Judge Odorisi ruled against FE on every demand. The second action sought a preliminary injunction to force BHVA to accede to the demands of FE. The second part of the lawsuit has not yet been heard, so there is not yet any final ruling. However, from the opinion written by Judge Odorisi in his decision on the preliminary action, it appears that he is not sympathetic to the arguments raised by FE.

In order to increase community participation in the BHVA annual meeting, this past summer the board chose to hold the meeting in August rather than in October. This is fully within their authority to do. As required by the bylaws, four directors were up for election. All had been appointed by the BHVA board to

fill vacancies.

Three members of our community, hereafter referred to as the 3Bs, two of whom had been on the previous board, filed a lawsuit. Among the assertions were: 1) prevent the board from moving the date of the annual meeting; and 2) require that an additional 2 directors, who had been previously elected and whose terms had not expired to also stand for election. It should be noted that the lawsuit did not name the BHVA board as a defendant, but, rather, named the specific board members as defendants. This subjected each board member to the stresses and legal expenses of having to defend against this lawsuit.

Judge Odorisi ruled against the 3Bs on all points. The judge found that the BHVA Board acted totally within the law and within its authority under the bylaws. It should be noted that this required two separate hearings. It should also be noted that, unlike the first part of the lawsuit filed by FE, the BHVA insurers asserted that there was no liableness on the part of the board with respect to the 3Bs lawsuit. Accordingly, the director's insurance would not cover the legal expenses of the defendants.

Let us now address comments that have been made by members of our community. First, some members of our community have voiced concerns about how much these lawsuits will cost us. That is certainly a valid question. As previously mentioned, most of the expenses of the lawsuit, filed by FE will be covered by insurance. BHVA is seeking recovery of any legal expenses not covered by insurance in a fee-shifting counterclaim against FE, as outlined in a cost-recovery provision in our declaration.

However, the approximately \$108,000 cost of the directors defending themselves in the 3Bs lawsuit, since not covered by insurance, would have to be paid by the community. As we have to indemnify the directors, this amounts to approximately \$350 per household. How much more legal expense will we face is not possible to know at this time. There have been questions about the expense of hiring a law firm out of New York City. The BHVA board was able to negotiate rates with that firm that are comparable to the rates charged by local law firms. We thank the BHVA board for obtaining excellent legal representation at a competitive rate.

The BHVA board did not institute any of these suits and, from the rulings on the first FE and the 3Bs lawsuits, the board's actions were totally proper. Let us turn this question around. How much would it cost us if the board did not defend against such lawsuits? Losing the ownership, access to, or control of the beach would certainly drive down home prices. Rendering the board impotent to act because of a fear of lawsuits would be disastrous for our community, as would be an inability to attract good people to be willing to serve on the BHVA board.

A question has been raised about negotiating or mediating a settlement with FE. That would be appropriate if it were possible. However, FE has stated that they want to increase the number of docks and rent them to numerous non-residents. In light of the ruling from Judge Odorisi, this is not legal.

Let us also consider the actions allegedly done by FE. These include, but are not limited to the removal of the swim platform, which had been in place for years, the erection of concrete barriers on BHVA property to prevent access to the docks and swim platform, and the prevention of BHVA to repair the elevator and stairs, thereby denying residents the lawful and peaceful use of their property. If these allegations are correct, they hardly seem to be consistent with an entity that desires to interact well with and serve the community from which it would obtain most, if not all, of its customers. It seems highly unlikely that any meaningful settlement could be obtained considering the present disconnect between FE and BHVA.

There has been concern about the number of people who have quit the board. Again, this is a valid concern, but the blame should not fall upon those individuals who continue to serve. Considering being named in a lawsuit, the attacks on social media by some members of our community, and the stresses of having to deal with all the other issues facing the board, we should be thankful that we presently have six individuals who are strong enough and sufficiently dedicated to the well-being of our community to continue to serve as they do.

There have been comments that it is not appropriate for the board to place liens on BHV property owners' homes. Please be aware that liens are commonly placed by HOAs throughout this country against homeowners who are in arrears. This is necessary as the only source of revenue required to meet expenses comes from the residents.

In this particular instance where liens were placed on the homes of the three individuals who filed the 3Bs lawsuit, the community has suffered major financial damage because of that lawsuit even though the members of the board won it entirely. Now BHV residents will have to pay out of pocket for the legal defense. Hopefully, by placing liens on their property, we will recoup that money and will deter needless and damaging lawsuits in the future. Again, please remember that the board did not seek this suit and, as evidenced by Judge Odorisi's ruling, acted totally within the law and within its authority.

Recently, a petition has allegedly been sent out to request a special meeting to recall the BHVA board. It is questionable whether or not that petition meets the legal requirements, as stipulated in the bylaws, to mandate such a meeting. It is beyond question that the recent attempt at recalling the BHVA board, the attempts by members of our community to derail last fall's annual meeting, and the lawsuits filed by FE and the 3Bs are all interrelated. Whether BHVA winds up granting to FE the rights to operate a marina whose goal is to rent to non-residents who would access that marina using BHVA property will be up to all of us. It is our opinion that establishing such a marina is not in the best interests of BHV. In addition, it will be up to all of us whether to seek restitution for the legal expenses to which we have been

unwillingly subjected and to discourage such needless and unfounded lawsuits in the future.
The BHVA board is currently evaluating the situation and will keep the residents posted. If a special meeting is called, please do not sign any proxies that would give voting rights to anyone other than a Board member or someone designated by the Board. And, if a special meeting is called, we urge you to follow the directions that the BHVA Board will provide.

Greg Trass
President, Condo 1

Marcus Colosimo
President, Condo 2

Don Rimai
President, Condo 3
