



February 8, 2021

FYI: We have attempted to review and cover a lot of territory in this correspondence. We realize it is lengthy and hope subsequent emails to the community will focus on singular and less complicated issues.

To Our Fellow BHVA Homeowners:

The community has rightly voiced concerns about the legal bills that we have been forced to incur which have resulted in two special assessments of \$400 each. We recognize that having to pay such high legal bills is painful. The BHVA board will always work to protect the interests of our community, including protecting the long-term possession and control of the beach-our most valuable asset. Unfortunately, BHVA has two choices: illegally accede to Fields Enterprises' (FE) bullying tactics allowing him to transform the docks into a commercial marina...or pay legal fees.

It appears that FE is seeking to transform the boat docks into a commercial marina with slip rentals being offered to a large number of nonresidents. The BHVA Offering Plan and the affirmed Cove Agreement clearly state that the docks are an amenity for the community, with limitations as to the number of slips and, with perhaps a very limited number of exceptions, for the sole use by residents. As such, their use is governed by the BHVA Declaration and Bylaws. It is unclear as to whether Mr. Fields read or understood these documents prior to his obtaining the boat slips from the Cooks, or if he is flagrantly ignoring them in pursuit of his goal of building a commercial marina. In either case, the BHVA board is obligated to enforce the terms of those documents.

Please note: access to the boat docks requires individuals to use BHVA assets, which include traversing sections of the beach, driving vehicles on Cliffside Drive, and using the cantilever and either the elevator or stairs. Several years ago, Mr. Fields and several members of the then BHVA board, (some of whom received financial remuneration from Mr. Fields and operating in secret,) worked out an agreement that would enable Mr. Fields to proceed with his envisioned commercial marina. This agreement called for the transfer of approximately 2,000 square feet of beachfront, (1000 square feet from the elevator to the snack shack and 920 square feet by the sluiceway), and an easement over untransferred portions would be given to Mr. Fields. This is not within the authority of the BHVA board. In exchange for that, Mr. Fields would have given BHVA various liabilities that he had, including the portions of the land he owned under the elevator and stairway, the restrooms, and the deteriorating pavement and wall at the marina parking deck. A preliminary estimate showed the parking area to require at least \$70,000 to repair and further research uncovered that BHVA already owned the stairs-related land.

Details of this proposed agreement were found out by the community and the members of that board, who were up for election, lost that election. Others resigned in what started a long string of resignations. The vast majority of our community strongly objected to the transferring of our most valuable asset – beach land, and the loss of control of most of the rest of it by exchanging an easement for expensive liabilities.

At around this time, the BHVA board decided that we had to limit access to our beach by nonresidents. This included people from outside Bristol Harbour who wished to use our private beach as a public facility. It was not aimed at Mr. Fields nonresident customers per se, but included them. FOB activated gates were installed that limited access to both the

elevator and stairway to residents. A limited number of FOBs were given to Mr. Fields. Mr. Fields responded to this by filing a lawsuit against BHVA seeking two actions. The first was for the issuance of a temporary restraining order (TRO). The second was to enjoin BHVA from enforcing its restrictions on the beach. The hearing for the second course of action has yet to be heard, but the request for the TRO was heard and a strong ruling against Mr. Fields was issued. Our insurance covered much but not all of these legal expenses and we are presently seeking damages against Mr. Fields to recover the rest of the money that we had to spend because of his suit.

Shortly after the ruling against Mr. Fields, several of his supporters, designated as the 3Bs, filed a lawsuit against individual members of the BHVA board. Their lawsuit aimed at forcing duly-elected board members to again run for election so that a total of six, rather than the required four positions would be opened on the board. Several supporters of Mr. Fields volunteered to run for the board. All former board members were reelected. The community decided it did not want to elect individuals who might interpret our governing documents in their own interests. The bylaws were written so that, in normal times, only three individuals would be up for election in a given year. In addition, anyone appointed to fill vacancies must also stand for election.

The 3Bs' lawsuit required two distinct court hearings. The judge found that the 3Bs claims lacked any merit and ruled fully in the favor of the BHVA board members. Lawsuits, especially those that go to trial, are expensive. The 3Bs lawsuit cost approximately \$108,000, or \$350 per household, to defend, even though the BHVA board negotiated a favorable rate. Had we chosen not to spend the money, the 3Bs would have effectively torn apart our governing documents. These expenses were also submitted to our insurance company, but because of the meritless nature of the 3Bs lawsuit, the insurance company found that there was no liability on the part of the BHVA directors and denied the claim. Thus, we are forced to either pay those expenses out of the pockets of our residents or attempt to get compensation from those who filed this needless lawsuit.

It must be emphasized that the BHVA board did not seek and does not wish any of these conflicts that have torn apart our community. The lawsuits by the Fields and the 3Bs were filed against us. Thus far, we have prevailed in those lawsuits. Clearly the constant noise from the plaintiffs is an attempt to distract residents that we are in a position of strength as per the signaling of the judge.. Regardless, we recognize that the legal costs are very high and painful. We ask you to remember that the BHVA board members are paying the same fees as everyone else. We do not like them any more than you do. How much more will these cost grow? We do not know. Mr. Fields is continuing his actions against the community. You recently received a letter indicating that the beach will be closed for the 2021 season because of Mr. Fields actions. In addition, he continues to park boats illegally within our PUD and has failed to perform necessary repairs on his property that can adversely affect Condominium 1. Sadly, the sitting bench outside of the parking garage needed to be removed because of large chunks of concrete falling on it.

A question that is often raised is why we cannot just compromise with Mr. Fields. An alternative question is whether or not we can just submit this dispute to mediation. The answer is fairly simple.

1). First, we acknowledge that anyone who owns the boat slips should receive a just return on that investment. This has been the case for the past 50 years. According to our estimates, based on the reported cost of the boat docks and related property to Mr. Fields from his work for the Cooks at the Lodge (and the revenue coming in from the rental of those slips), Mr. Fields should have gotten a total return on his investment within the period during which he has owned the boat docks. With that being said, the establishment of a commercial marina is incompatible with the residential nature of our community. Most, if not all of us, purchased in Bristol Harbour so that we could enjoy the tranquility of being in a relatively secluded portion of Canandaigua Lake. Our acquisition of property within Bristol Harbour, including the boat docks, is subject to our governing documents. Those documents are designed to protect our interests in this community. They are public record and are no secret to anyone buying into Bristol Harbour Village.

2). Second, according to the offering plan, the Cove Agreement, and the recent ruling in Fields' lawsuit regarding the TRO, the establishment of a commercial marina and the proposed increase in the number of boat docks is illegal. This is separate from the handful

of nonresident slip renters previously allotted to the developer only. The board cannot negotiate to allow something that is against the law. Moreover, some of the demands by Mr. Fields, such as the granting of easements and the exchange of property, are not within the powers authorized to the BHVA board under the bylaws.

3). The costs to our community.:

a). The value of our property is strongly influenced by our ability to access Canandaigua Lake. Absent that ability, our property values would greatly diminish. It would be imprudent to give those rights away, even if we could.

b) The costs of maintaining common elements are significant. The present repairs for the elevator, due to wear and tear associated with its use, is \$200,000. Every year, there are minor repairs and maintenance expenses. The community also maintains the roads, the beach, the stairs, and the cantilever. The amount of maintenance is directly related to the amount of use these common elements receive. How much more do you want to spend to allow those who are not part of our community to use our facilities? Also remember there are liability issues. Do you want to be faced with a lawsuit because a nonresident slips on the wet cantilever? What happens if there is a traffic accident or a pedestrian is struck walking along Cliffside Drive? Do you even want to risk having individuals who would have no business being on our property except to enrich Mr. Fields being injured?

4) There are quality of life issues. The beach is crowded enough, especially since Mr. Fields entered our water right-of-way and removed the swim platforms. Do you want the beach to become even more crowded? And how about the noise and commotion caused by additional barges and maintenance equipment, more illegal jet skis and outside renters of additional boat docks? It is important to note how overflow parking issues will infringe on the condo residents. Were these not exactly the concerns that resulted in the Cove Agreement?

Yes, we would very much prefer to negotiate a reasonable settlement with Mr. Fields so that we can all enjoy the peaceful and lawful use of our property – a use that Mr. Fields is presently denying us. Absent such an accord, which does not seem likely considering the diametrically opposing requirements of Mr. Fields and the BHVA community, legal bills will continue to accrue.

Our village has lived in relative harmony for decades with the original developers who respected our rules, allowed us on access roads, contributed towards our amenities and allowed us to repair our infrastructure. We must have long-term assurances that bind FE and all subsequent owners so that our community's rights will never be impinged upon again.

Kind regards,

BHVA BOD
