

April 30, 2018

Dear Friends and Neighbors,

We had all hoped that the dispute concerning the Clifton Park Trust and the protection of Resident Beneficiary rights was over when the Supreme Court found no reason to review the 8th District Appellate Court's decision that the Club's members have no legal rights under the Trust and that the Club itself has no rights greater than any other lot owner. Unfortunately, the Trustees' unilateral continued preferential treatment of the Club (the Trustees are granting the Club 224 times more Beach use rights than any other beneficiary) despite the Appellate Court decision and its clear instruction that the Trustees must adhere to the Trust, requires further legal action.

On April 24, we advised the Trustees that we will return to Court unless they commit to obtaining lot owner consent to allow Beach use by other than beneficiaries — in accordance with the Appellate Court instruction to act “pursuant to the Trust” and the Trust requirements. We even provided them with a draft complaint. (See attached letter.) Late Sunday April 29, 2018, their counsel responded with an e-mailed letter (back-dated to April 24, 2018) in which they refused to acknowledge the Resident Beneficiaries' rights. Given the current Trustees' position, we were left with no choice but to bring a second Probate Court action to enforce our rights under the Trust.

Those lot owners who are new to Clifton Park may find a recap of the issues presented in the previous lawsuit and the Appellate Court rulings useful.

In 2011, the prior Trustees inexplicably reversed the 100 year stance that only lot owners were Trust beneficiaries and claimed that the Club's members all had legal rights equal to any lot owning beneficiary. As a consequence, the Trustees would have had no authority to limit (regulate) the number of Club members using the Beach or charge the Club more for their access. Thus, when overuse of the Beach became a pressing issue, the Trustees placed additional Beach use restrictions on both the resident Trust beneficiaries and the Club's members, instead of just limiting the Club members' excessive Beach use.

A group of lot owners saw the disastrous long term consequences of the change and asked the Court to confirm the historical view that the Club's non-lot owning members had no legal rights as beneficiaries and that the Club deed could not grant it rights greater than any other lot owner.

The three Appellate Court Judges unanimously agreed and wrote (1) “...nonresident members of the Clifton Club are not beneficiaries and, as a result, have no legal rights.” [Appellate decision at ¶ 1.] and (2) that the Club's deed gave it no greater rights to use Trust property than any other lot owner. [Appellate decision at ¶ 125.] That Court also found the prior Trustees guilty of multiple fiduciary breaches including taking sides and keeping information from their beneficiaries. The Supreme Court apparently agreed.

Further, the Appellate Court confirmed that the Club members' right to use the Beach had been permissive and that in granting such use, the Trustees must follow the Trust. Last September, the Plaintiffs approached the current Trustees to discuss how to obtain the lot owner consent that the Trust requires. The Trustees dismissed our suggestions and offer to work with them and instead claimed they had full authority to grant permissive use rights unilaterally without lot owner input.

That claim stands opposite the Trust language which makes any dedication of Trust property to use by non-lot owners subject to approval by the lot owners. And that only makes sense. Trustees may always have personal, professional and business interests which benefit from liberally granting Beach

access and which are in direct conflict with their duty to hold Trust property for the sole benefit of the lot owners. The Trust grantors addressed this inescapable conflict of interest by specifically limiting the trustees' authority and requiring lot owner consent for certain acts. They thereby prevented future trustees from being subject to conflicts of interest that might threaten the grantors' deed given promise to every individual lot owner that the Beach was exclusively for the lot owners — a promise that every individual lot owner has a right to protect.

It is therefore particularly baffling that the current Trustees are attempting to twist the Appellate Court decision — which requires that the Trustees act “pursuant to the Trust” [Appellate decision at ¶ 126.] and recognizes that use by non-lot owners cannot occur without an agreement of all parties [Appellate decision at ¶ 131] — into granting them independent authority to allow Club Members to have Beach access. Further, the Trustees have even informed us on March 6, 2018, that the rules favoring the Club and its members are set for 2018 and will not be reconsidered.

This leaves us with no option but to return to the Court to require the Trustees to strictly follow the Trust, enjoining them from allowing anyone but lot owners and their guests to use the Beach unless the Trustees obtain lot owner consent to grant such permissive use. It is sad that the Trustees have ignored this requirement despite their awareness of it since last September. Without that consent, the Club would naturally be treated the same as any lot owner, in accordance with the Appellate Court decision. As always, lot owners could still bring their Club friends to the Beach as their guests.

That complaint also asks the Court to enjoin the Trustees from making rules which wrongly limit the lot owners' use of the Beach to accommodate the Club Members' access. A copy of that complaint, filed on April 30, 2018, and a copy of the Appellate decision can be found at Cliftonparkpreservation.com.

Separate from this lawsuit, the Probate Court will soon be setting the amount that the prior Trustees (not the Trust) will have to repay our supporters to compensate them for their costs (the Plaintiffs have incurred over \$500,000 of expenses). While we are grateful for the recovery of the finances, frankly, there is no way the prior Trustees can repay us for the thousands of hours that members of our team have devoted to uphold and preserve the Trust — nor is there any way for the prior Trustees to compensate the community for the deep divisions they have caused and the many damaged relationships that their irresponsible actions have left in their wake.

We are therefore totally mystified as to why the current Trustees are continuing to treat the Club and its members preferentially, against the clear Appellate Court decision and against their legal obligation to their beneficiaries. We are also perplexed as to why the current Trustees are again withholding information the Appellate Court ruled they must provide to the beneficiaries.

We do, however, pray that reason will prevail and a legally correct and fair resolution can be found without another six years of unnecessary Court conflict. However, the future of our community is at stake, and that deserves whatever time and effort is needed to defend the Trust.

We also hope that there will not be a repetition of the prior misrepresentation of the facts of the matter to our community, which has already endured a great deal of unnecessary divisive activity.

Sincerely,

Arthur Dueck MD, Paul Bjorn DO, Nancy Binder, Bill Keller

The Plaintiffs in this Case