

May 11, 2018

Dear Friends and Neighbors,

Despite our sincere hope that letters containing factual misrepresentations would not be sent to our community, such letters have started to fly. The Trustees' letter raises the specter of increased lot owner assessments and is written to mislead lot owners to believe that the Trustees have a Trust derived "regulatory authority" empowering them to unilaterally grant "permissive rights" for use of our Beach to non-lot owners. The latest letter from the Club falsely accuses us of publishing lies and misrepresentations to foment community divisions, despite the fact that the Club has not once identified any false statement made by the Plaintiffs. Remember that it was the Club's threatening letter to the Trustees insisting that their members be treated as equal beneficiaries in 2011 that started this community conflict. The irony, that it is actually the Club that is once again aggravating community tensions with its libelous letter, has not escaped the lot owners whose supporting comments we are receiving.

Let's all just take a deep breath. As adults, we should be able to discuss our differences, examine solutions, turn for advice to our peers and mentors, and seek legal counsel if needed. We should be searching for "the correct thing to do", rather than "how can I get what I want". We should avoid unnecessarily inflaming tensions between opposing groups by spreading false claims. We have written to the Club and Trustees on May 8<sup>th</sup> pointing out and clarifying the misleading and false claims in their recent mailings asking the Club and Trustees to publicly correct them. (Those letters can be found under "Letters" at [Cliftonparkpreservation.com](http://Cliftonparkpreservation.com))

We cannot escape the reality that there are different interests and rights between and even among the lot owners and the Club Members. Club Members want to have equal rights to lot owners and full Beach access without the expense associated with owning a Clifton Park lot and incurring a perpetual assessment for Trust expenses. (Interestingly, the Trustees are still charging each Club Member, who has no rights under the Trust, less than the average lot owner assessment). Some of the lot owners want a very private Beach while others want their friends and families to have direct Beach access. However, despite all of our differing and conflicting interests, we are all bound by the terms of the Trust, which we must all respect and follow.

The terms of the Clifton Park Trust are clear. The 204 Park lot owners all must pay the calculated assessment or have a lien placed on their property. In exchange for that inescapable and perpetual obligation, the lot owners are the sole beneficiaries of the Trust. The Trust and our deeds promise all lot owners **exclusive** Beach access in common with the other lot owners. All lot owners have an equal right to share in the use of Clifton Beach. The Club has the same right to a single family access as any other lot owner. No one else has any right to Beach access. Trustees are charged with maintaining the Beach for the sole benefit of the lot owners. They have authority to make rules only for Beach use by the lot owners — no more.

The recent Appellate Court decision clarified that Club Members have no rights under the Trust. They can only be admitted by permission in a manner that is in accordance with the Trust. The Trust does not grant the Trustees any authority to allow anyone but a lot owner to access the Beach without lot owner consent.

The Appellate Judges saw this, and, in a concurring paragraph, Judge Gallagher wrote "It is my hope that, on remand, the parties negotiate a fair and equitable agreement that **would grant** members of the Clifton Club access to the Beach on a permissive basis". [Appellate Decision at ¶

131.] That says it all. All of the lot owners were parties and an agreement of the parties is needed to allow the Trustees to grant anyone else Beach use.

The Plaintiffs have been trying to find such a fair and equitable path for years. We approached the Club a number of times in 2012 with ideas that would have avoided a lawsuit if the Club abandoned its quest to make all its members equal Trust beneficiaries. The Club's leaders refused.

In a pretrial mediation in 2015 we suggested a negotiated multi-year period of time in which the Club would have been grand-fathered with its current number of Club members maintaining access, followed by Trustees periodically requiring lot owner approval on two key parameters — the number of Club Members allowed to have Beach access and the minimum cost for each. We were willing to negotiate a lot owner approval of less than 100%. During the grand-fathered phase, the rules would have been set such that lot owner use would not have been limited. The grand-fathered years would have allowed the Club to adapt and develop programs that benefitted the lot owners as it reintegrated itself back into our community prior to requiring lot owner consent for Beach access. The Club rejected that offer outright and chose to further pursue the Club's claim of equal beneficial rights for all its members — a claim now proven utterly wrong.

Last September, we offered to work with the current Trustees on a solution similar to the above. They rejected our offer and claimed they were given the right to grant permissive use under their regulatory authority, despite the absence of any Trust language to back them. Even their counsel has been unable to answer where the Trust gives trustees any such power. The Trustees then chose to support the Club, effectively making it a "super user", by unilaterally granting it Beach access for 224 more families than any other lot owner is allowed — as if the Appellate decision had not happened. That is obviously outside of their Trustee authority and their mandate to manage the Beach for the sole benefit of the lot owners.

No resolutions that adhere to the Trust have ever been suggested by the Trustees or the Club.

Last week we proposed, to the Trustees, that the Club be allowed to keep 224 members with Beach access in 2018 if the Trustees committed to follow the Trust from next year onwards. That proposal has been ignored. Accordingly, we were left with no option but to file a motion today asking for (1) an immediate restraining order preventing Trustees from granting Beach access to non-lot owners without lot owner consent and (2) a restraining order preventing the Trustees from enforcing rules which restrict lot owners' Beach use beyond those rules which would be required if only lot owners used the Beach. (Available at [Cliftonparkpreservation.com](http://Cliftonparkpreservation.com))

Finally, we commit ourselves to communicate factually, fully and clearly to all of you. If we ever get things wrong, we will publish a correction and an apology. Discord in our community would be minimized if the Club and the Trustees would do the same.

Respectfully,

Arthur Dueck MD, Paul Bjorn DO, Nancy Binder, and William R. Keller, Captain, USN (Ret.)

The Plaintiffs