

**CLIFTON PARK
TRUSTEES OF LAND RESERVED FOR PARK PURPOSES**

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TO: Clifton Park Residents, Clifton Club Members and Clifton Lagoon Residents

Clifton Park residents have received a "Hello Neighbor" letter dated April 19, 2013 from Arthur P. Dueck, Todd Gilmore, Nancy Binder and William R. Keller, who have brought a lawsuit against the Clifton Club. The letter reports that after a Judge's ruling the four plaintiffs will file an amended complaint and continue with their lawsuit even though it means that all lot owners and the Trustees will now be made parties to the lawsuit.

We are deeply troubled that this dispute has proceeded to this point. As you will recall, these four Park residents made a regrettable decision last year to sue the Clifton Club. Their goal is to eliminate the long-standing ability of the Clifton Club and its members to use Clifton Beach.

Let's recall the circumstances when the lawsuit was filed. In the Fall of 2011 the Trustees responded to complaints of overcrowding at the beach with significant Beach Rule changes, to take effect in 2012. In June, 2012, before the new Rules had been tested, the Plaintiffs filed a lawsuit asking, among other things, that the Probate Court declare the members of the Clifton Club had no legal right to use the beach property. Over the course of the 2012 beach season, the new Rules proved to be effective, reducing the overcrowding. Notwithstanding that success, the Plaintiffs have persevered with their lawsuit.

The Plaintiffs say in their letter that bringing lot owners and the Trustees into the lawsuit was "only at the Club's insistence." That is not correct. The Plaintiffs initiated the lawsuit on their own, without seeking lot owner consent or authorization. The Judge ruled that all neighbors and the Trustees should be included in the suit; the Club did not "insist" on this result.

The plaintiffs advise in their April 19 letter that "There is no requirement to respond or to become involved in the case" after the lot owners are officially served with a Summons and Complaint by the Clerk of Court. Contrary to their advice, under Ohio law, each lot owner has a legal obligation to respond to the lawsuit. We suggest that lot owners seek advice from an attorney. A ruling in favor of the plaintiffs could cause a substantial and significant increase in the lot owners' assessments if the Clifton Club were to be banned from having beach access and the Club discontinued its substantial contribution to the Trust annual expenses.

Being made a party to the lawsuit is not an inconsequential matter. There are implications for each lot owner's financial, insurance and homeowner's circumstances.

According to the Judge's order, the Trustees will also be made parties to the lawsuit. Contrary to the Plaintiffs' assertions, the Trustees have not chosen sides in this matter. The Trustees did petition the Court to include us as a party to the lawsuit because the suit involves property that we have a fiduciary duty to administer. While we have not chosen sides in the matter, we are aware of the facts, the law, and the history of the matter; for background, please see our January, 2013 answers to Frequently Asked Questions, which are also posted on our website www.cliftonparktrustees.org.

We believe the following excerpts from our January 2013 FAQs bear repeating:

- *Beneficiaries.* The beneficiaries of the Clifton Park Trust are the owners of lots in Clifton Park. The Clifton Club is a lot owner and thus is a beneficiary.
- *Access and Use.* Annually before the beginning of the summer season the Trustees publish and distribute to the beneficiaries "Clifton Beach Rules" that regulate access to and use of the beach and its facilities. As an example, for 2012 the Trustees established new rules for behavior at and access to the beach in response to issues raised by beneficiaries about overcrowding.
- *Control.* The Clifton Park Trustees control access to the privately-owned Clifton Beach by maintaining security guards at the entrance to the beach to check visitors and issuing a limited number of vehicle stickers to lot owners and permitted Clifton Club members.
- *Clifton Club Members.* The Clifton Club, which owns four lots, is a beneficiary of the Trust. The 1902 lease of the lots to the Clifton Club and the 1912 deed conveying title to the lots to the Club provides the Club with beach access rights that they have been exercising for over one hundred years. In recognition of this right, the Club annually contributes a significant amount of money to the Trust for its operations.
- *Limit of Clifton Club Members.* The Trustees establish the number of Club members who can access the beach. For the 2012 season the Trustees limited the Clifton Club beach access to 224 members (the Club has more than 224 members but only 224 were permitted to have beach access). Even if the number of Club members grew to an "unlimited" number, the Trustees can and will reasonably limit the number of Club members with beach access.

We think that a continuation of the Trust's historical practices not only benefits everyone with current access to the beach but also is consistent with the Trust document that the Trustees are obliged to follow. The Trustees have been able to maintain a beautiful private beach and recreational facilities in a park-like setting. When we filed an Amicus Brief last fall, we did so beginning with these words: "This dispute does not belong in court." After all, this is a neighborhood affair. We believe that the century-long practice of operating the beach and common areas in Clifton Park under the Trust has worked, continues to work and should continue to work in the future.

The Clifton Park Trustees