

Board of Governors
Black Point Beach Club Association
March 29, 2022

Re: Letter received from a group of BPBCA Members dated March 2023

To the BPBCA Members:

The above referenced letter questioned the policy, procedures and legality by the Board in filling the vacancy on the Board of Governors. As such, Board Chairman, Janet Bonelli, asked Board Member, John Cellino, to contact the Black Point Beach Club Association's general counsel, Mark K. Branse of Halloran & Sage, to address the letter and to render a legal opinion, where necessary. Attorney Branse's response letter to Janet Bonelli, Chairman, Board of Governors (attached), has been reviewed, endorsed and voted on for distribution to the members of the BPBCA.

The Board, in summary to both attached letters, would note, as to the various issues raised, the following:

1. Procedure utilized to fill the Board's vacancy. As noted in the letters, the Board did follow the procedures granted to it in the BPBCA's Charter. The Board would also like to note, this past May 2022, four individuals ran for the Board and three were elected. In September 2022, Mr. Mastria, one of the newly elected Board Members resigned. In mid-February, it became quite evident to Chairman Bonelli, the Board was overwhelmed and needed to fill this vacant position immediately, as the days and weeks preceding Memorial Day are the busiest for the Board. The individual selected was the only other person who volunteered to run in May 2022, so it was natural for the Board to consider that individual. Additionally, this Board Member is well qualified as being a homeowner in Black Point, being in his 30's, having a wife that is active in BP, having two children who participate in BP's Kid's Club, being part of a large family that are, and have been, Black Pointers for decades, plus professionally being a practicing lawyer in Connecticut.
2. Composition of the Board. As stated in Attorney Branse's letter (item #2), family members, business associates and/or friends being involved on boards, committee's etc. is not uncommon, especially in smaller communities. In addition, there is nothing in our Charter or By-laws that preclude such.
3. Alleged "Conflict of Interest". The letter infers a real or apparent conflict between the Board's new Member, as an attorney with a firm that the Board has hired for review consultation on certain lawsuits. Please see #3 of Attorney Branse's letter. Except for voting to hire, fire and approve his firm's invoice, our new Member is free to enter into discussions, express his opinions, make and second motions, vote on motions and have

the same status as any other Board Member in relationship to any matters involving his firm.

4. Request for the Board to “unwind and reverse its actions.” Except for cause, there is no provision in our Charter and/or Bylaws that allows such an action. Further, our newest Board Member is a fine, upstanding member in Black Point. We are privileged to have such a qualified Board Member offer to donate his time to better our community.

Lastly, the Board makes themselves available and accessible to BPBCA Member’s questions and/or comments, yet, on this issue, except for one individual who signed the letter, no other signers contacted a Board Member who voted to appoint our newest Board Member for an explanation. BPBCA Members could have asked for an explanation prior to signing the letter so a more fully informed opinion could have been made considering both sides.

The Board, for complete transparency, wanted the entire BPBCA Membership to receive the Member’s letter, along with the BPBCA’s general counsel’s letter and this, the Board’s response.

Sincerely,

Board of Governors
Black Point Beach Club Association

Attachments: Halloran & Sage letter, dated March 22, 2023
Revised Member Letter received via email on March 19, 2023, (original letter received via email on March 18, 2023)

March 22, 2023

VIA Email and U.S. MailJanet L. Bonelli, Chairman Board of Governors
Black Point Beach Club Association
6 Sunset Avenue
Niantic, CT 06357Re: Letter dated March 2023, about filling of vacancy on the Board

Dear Chairman Bonelli:

Board member John Cellino has requested my legal opinion concerning a letter received by the Board of Governors from a group of residents dated March of this year. The letter questions the procedure by which the Board filled a vacancy in its ranks at its meeting of February 23, 2023. The letter raises three main points, and I will address each of them in turn.

1. Procedure followed to fill a vacancy on the Board.

The writers state that the Board didn't follow past practice in filling this particular vacancy and question the timing of the appointment. The letter expressly states, "There is no dispute that the Board has the *discretionary* authority to appoint someone to fill a vacant seat . . ." (Emphasis original). The letter makes no claim that the Board violated the Connecticut Freedom of Information Act nor any other applicable law or provision of the Association's Charter. The letter only urges the Board to follow a different procedure in the future. Since no legal issues are raised, I make no comment concerning these allegations and leave it to the Board to consider the points raised.

2. Composition of the Board.

The letter states that with the vacancy as it was filled, two members of the seven-member Board are now of the same family, and this raises "the appearance of nepotism." Again, no legal issue is raised and therefore I see no need to offer a legal opinion. I will observe that in many of our rural client towns, the number of people willing and qualified to serve on local boards is limited, and it is common for there to be family, business, or personal connections among members. In one of our smaller client towns, the Chairman of an important commission is the husband of one of the members, and they both make valuable contributions to the Town.

3. Lawyer retained by the Board serving as a member.

The letter alleges that there is “a real or apparent conflict of interest” because the new appointee is a lawyer with a law firm where another lawyer from the same firm was recently retained by the Board. This claim *does* raise a legal issue, and so I will provide a legal opinion on it. There is no conflict of interest having a member of a board or commission who is a lawyer with a firm representing that very municipality. In fact, that is not unusual. I, myself serve on a municipal committee in my town where this firm is the Town Attorney. I also serve on the Board of Directors for our local land trust, which is represented *pro bono* by my law firm. If the lawyer were representing a party that is *adverse* to the Association, or a party otherwise having some distinct interest different from the Association, that would constitute a conflict of interest *as to that particular matter*, but not as to *all matters*. To be safe, this Board member should not vote on matters related to the retention of his/her firm, termination or expansion of services and approval & payment of the firm’s invoices. Other than that, there is no conflict simply because the Board has retained a law firm at which that member is employed or is a partner and this member is entitled to express his opinions in relationship to any matters involving his firm.

The letter ends by urging the Board to “unwind and reverse its actions.” Since no legal defect has been alleged in the procedure used to fill the vacancy, I would recommend against such a reversal. The Board is free to examine its procedures and formulate policies which respond to the criticisms made, but municipal agencies should not lightly reverse decisions that were voted on at a public meeting following lawful procedures. It is bad practice for a public agency to make a decision and then reverse it because of subsequent objections that allege no legal defects, but only disagreements about policy.

I hope that these comments are of help to the Board.

Very truly yours,


Mark K. Branse *nb*

cc: John Cellino (email only)
Colleen Hayes (email only)

March, 2023

To The Black Point Beach Club Association Board of Governors

We, the undersigned members of the Black Point Beach Club Association (BPBCA), are writing to respectfully express our deep concern and disappointment about the recent actions, process and lack of transparency exercised by the Board of Governors at the February 23, 2023 Board meeting. Specifically, we refer to the manner and process by which a majority of the Board members changed the agenda at the meeting without adequate notice and later voted to appoint a replacement to serve out the unexpired term left vacant by Jim Mastria's resignation from the Board in September, 2022.

Section 6 of the BPBCA Charter provides: "Any vacancy in said board, occurring during the year, may be filled by a majority of the remaining members, and such member so appointed shall hold office for the unexpired portion of the term". (emphasis added). There is no dispute that the Board has the discretionary authority to appoint someone to fill a vacant seat; however, as it relates to filling Board vacancies, the Board recently has employed a different practice. Specifically, when Sharon Bruce and Cheryl Colangelo resigned from the Board, the Board exercised its authority to fill the vacancies prior to elections that could have been conducted at the Annual Meeting in May; however, instead of making a unilateral appointment, the Board publicly noticed its intent to fill the seat and solicited the names and resumes of interested parties. After collecting the names and resumes, the Board interviewed those candidates who expressed interest in serving on the Board and selected the replacements. There are many people who have expressed interest to serve on the Board, yet the Board did not afford any other member the opportunity to submit their resume or be interviewed for this vacancy.

We have other concerns as well:

- This vote was taken three months shy of the Annual Meeting in May, and the seat has been vacant for six months. Why the urgency to fill this seat now as opposed to allowing the full membership to express its desire in May? From all appearances, the Board has operated efficiently and without issue even in light of this vacancy. Why the pressing need to quell

member input when the Annual Meeting is just around the corner?

- With only seven positions on the Board and two of those seven occupied by members of the same family, there certainly is a risk that this decision may have the appearance of nepotism given the influence that these two votes have now.
- As a practical matter, the new appointee is a lawyer in a law firm that recently was retained by BPBCA. This creates a real or apparent conflict of interest such that the appointee should be required to recuse himself from engaging in any legal matter as a member of the Board. Given the important issues that face the Board, this is unfortunate and needs to be addressed. The practical result is that we, again, have only six voting Board members with regard to those issues.

As Board Members, you are vested with the responsibility of objectively representing our community and all of our interests. We believe that the actions taken by the Board at its February 23 rd meeting conflict with that obligation. We respectfully request that the Board immediately initiate action to unwind and reverse its actions so that the entire membership of BPBCA is afforded the opportunity to express their respective desires and wishes to fill this vacant Board seat at the annual meeting in May.

Sincerely,

Joseph Acito	52 Sea Spray
Scott Ahern	8 Sea Crest
Pat Bayne	2 Osprey
William Bayne	2 Osprey
Barb Beauchene	20 East Shore
Steve Beauchene	20 East Shore
Alyssa Bigay	52 Sea Spray
John Bourget	1 Osprey
Wendy Bourget	1 Osprey
Carolyn Boyle	4 Sea View
Stephanie Brandon	15 Billow

Charles Bruce	53 Sea Spray
Charlie M. Bruce	53 Sea Spray
Sharon Bruce	53 Sea Spray
Beth Brucker	28 South Trail
Kim Buckley	6 Waterside Ln
Tom Buckley	6 Waterside Ln
Monica Burnett	35 Bellaire
Mary N. Cahill	39 Indianola
Kevin Callahan	22 Sea Crest

Cheryl Callahan	22 Sea Crest
Marianne Campolongo	52 Sea Spray
Frank Carmon	98 East Shore
Taryn Carmon	98 East Shore
Lynn Ciociola	49 Indianola
Art Ciociola	49 Indianola
Cheryl Colangelo	39 Whitecap
Brian Comer	52 Whitecap
Nancy Comer	52 Whitecap
Larry Connors	50 Indianola

Mary Ellen Connors	50 Indianola
Glorena Consedine	47 Indianola
Steve Consedine	47 indianola
Kim Craven	46 East Shore
Angela Dallas	3 Sea Breeze
Joe Daly	7 Brightwater
Susan Daly	7 Brightwater
F. Daniel Deknis	32 Whitecap
Kathleen C. Deknis	32 Whitecap
Judy Della Rippa	18 Whitecap

Gary Della Rippa	18 Whitecap
Rick Diachenko	25 Sunrise
Lil Diachenko	25 Sunrise
Joanne DiResta	23 Whitecap
Leslie Doherty	42 Nehantic

Amanda Doyle	14 Sea Crest
Robert Earley	33 Sea Breeze
Janice Earley	33 Sea Breeze
Cindy Etienne	46 Nehantic
Belma Ferreira	75 East Shore
Anthony Ferreira	75 East Shore
John Fleet	17 Cottage Lane
Nancy MacLaglan Flynn	9 Indianola
Sara Flynn	9 Indianola
Steve Fogarty	37 Billow
Kathleen Foley	56 Sea Spray
Kerry (Kathleen) Foley Spignesi	56 Sea Spray
Patty Foley DeAngelis	56 Sea Spray
Suzanne Foley Coffey	56 Sea Spray
Cindi Fountain	31 Whitecap
Brendan Fox, Jr.	43 Indianola
Ellen Fox	43 Indianola
David Frchette	71 East Shore
Al Galati	21 Whitecap
Kim Galati	21 Whitecap
Chris Giamalis	10 Sea Breeze
Paul Gordon	7 Bellaire
Carole Green	43 Sea View
Anna Greenwood	56 Whitecap
Bill Greenwood	56 Whitecap
Skip Guzy	17 Woodland
Nancy Guzy	17 Woodland
Andrea Hagaman	49 Nehantic
Phil Hagaman	49 Nehantic
Bonnie Hanley	8 Woodland
Joan Hayes	51 Whitecap
Tom Hayes	51 Whitecap
Dan Hennessey	28 Billow
Jennifer Hennessey	28 Billow

Susan Houlihan	52 Sea Spray
Mike Johnson	45 Bellaire
Roberta Jordan	25 Sea View
Elise Joyce	10 Sea Spray
Michael Joyce	10 Sea Spray
Dave Kenney	56 Nehantic
Margaret M. Kiernan	13 Indianola
Betsy Klemmer	7 Saltaire
Diana Kycia	35 Sunset
Helen Kycia	14 Woodland
John Kycia	35 Sunset
Cathleen Laffin	23 Sunrise / 40 Indianola
Fran Laffin	23 Sunrise / 40 Indianola
Anne Lisashek	3 Waterside Ave
Peter Liashek	3 Waterside Ave
Ray Lillis	39 Whitecap
Mark Loalbo	48 Indianola Road
Phil Lombardo	3 East Shore
Carol Lombardo	3 East Shore
Robert Lorenzo	12 East Shore
Dorothy Lustig	45 Bellaire
Jeanne Lynch	51 Bellaire
Roberta Martin	27 Woodland
Carmella Mastria	8 Bellaire
Charlene Mastria	14 Nehantic
James Mastria	8 Bellaire
Greg McMahan	13 Indianola
Kathy Miller	10 Woodland
Jason Moran	6 Bellaire
Jessica Moran	6 Bellaire
Dave Murray	39 Sea Breeze
Sue Murray	39 Sea Breeze

David Ogle	15 Park Court
Kathy Ogle	15 Park Court
Jan Orsini	21 Sea Spray
Tony Orsini	21 Sea Spray
Bonnie Parry	15 Sea Spray
Kay Parulis	22 Billow
Margaret Pillion	13 Whitecap
Annie Pulaski	15 Sea Spray
John Pulaski	15 Sea Spray
Mary Pulaski	15 Sea Spray
Stephen Pulaski	15 Sea Spray
Phyllis Quinlan	5 Nehantic
Roger Redfield	144 Old Black Point Rd
Steve Resnisky	3 Sea Breeze
Maribeth Sheehan Ricketson	74 East Shore
Ed Rowe	49 Sea Spray
Anita Schepker	46 Indianola Road
Jim Schepker	46 Indianola Road
Fran Shea	11 Sea Crest
John Shea	26 Sea Crest
Tim Shea	9 Saltaire
Sandy Sheehan	18 Indianola
Tom Sheehan	18 Indianola
John Skala	10 East Shore
Donna Skala	10 East Shore
Sharon Sklar	20 Sunrise
Joseph Spalluto	12 Indianola
Ellen Spalluto	12 Indianola
Maura Stamm	44 Indianola
Newel Stamm	44 Indianola
Sue Vignoti	22 East Shore
Mike Walsh	5 East Shore
Kathy Walsh	5 East Shore
David Weiss	1 Blue Heron Ct

Sherrie Weiss	1 Blue Heron Ct
Kathy Wentworth	13 Sea Spray
Ned Wentworth	13 Sea Spray
Alexander Wichowski	15 Brightwater
Joseph Wichowski	15 Brightwater
Larry Wichowski	15 Brightwater
Marghie Wichowski	15 Brightwater
David Williams, Executor for The Estate of Robert Shea	31 Sea Breeze
Ed Zito	57 Nehantic
Pat Zito	57 Nehantic
Diane Zukowski	36 Sunrise