

**Bay Pointe Village Homeowners Association**  
**Mailing Address**  
**46 Bay Pointe Drive Extension**  
**Buzzards Bay, MA 02532**

To: Town of Wareham Planning Board

From: Bay Pointe Village Homeowners Association  
George Salem - President

Re: File # 36-21 Bay Pointe Club

Date: May 6, ,2022

Dear Planning Board Members,

I apologize for not being able to submit this letter by the deadline for the May 9th meeting. After returning home from vacation, my schedule would not allow me to do so. As I mentioned, I was not able to attend the May 2nd meeting. I did listen to the first half of it on Zoom. The meeting started off with Mr. Fay giving a presentation on our 2014 Sewer Agreement between Bay Pointe Village (BPV) and Bay Pointe Club. His comments regarding this Agreement were published in the Wareham Weekly. There were a number of inaccuracies in his presentation and BPV feels the need to rebut. I apologize again, this time for the length of this letter.

First, the 2014 Sewer Agreement never states Mr. Fay is the owner of the existing Pump Station. BPV has always been considered the owner of the pump station by previous owners of the golf course, banks that acquired the golf course after two of the previous owners defaulted on their loans, and the Town of Wareham. BPV has documents from the Town of Wareham and other entities to back this up. The most ironic part of this subject is that there have been two recorded meetings between Mr. Fay, myself, and our two attorneys in which I offered to cede ownership to Mr. Fay because with ownership comes great responsibility: We have carried the Liability Insurance on this station for thirty years and never included it in the cost sharing process because we were declared by the golf course owner/original condo developer and the Town of Wareham Board of Health as the owners. Again, we have documentation on this. If this system fails, and there is a lawsuit, the owner will bear most of the responsibility. However, so will the entity in charge of maintenance. I have asked Mr. Fay to show me the Insurance he is carrying on the existing Pump Station for the past three years and we will cede ownership. He has yet to do so. Secondly, We have never charged anyone for time

to administer the cost sharing or meeting with maintenance personnel. Many times I have been woken up late at night or early in the morning on a cold or stormy winter night because the pumps stopped working mostly due to water flooding into the pump house because Mr. Fay removed the Berms. Just two weeks ago, I received an emergency call from National Grid. I had to leave in the middle of a meeting so National Grid could fix the problem. There is also the matter of Adverse Possession. Suffice it to say this matter will have to be settled in a Court of Law.

The 2014 Sewer Agreement was initiated by BPV, took over a year to draft, and cost BPV over \$10,000. Mr. Fay only agreed to the easement if it included that he could add his planned condo units in Phase 1 of Windward Pines. Not even Mr. Fay thought he was the owner of the Pump Station at that time. Otherwise, why would he even have to bargain for the inclusion of additional units. And why would the Agreement give BPV all Operational and Maintenance control, require our written consent in certain situations, and give us the ability to sign contracts and answer Town requirements? The reason Mr. Fay did not charge us a dollar for the Agreement was because he thought we were the owners of the pump station. Not because he is altruistic. The Agreement was a Quid Pro Quo and monetarily, Mr. Fay received more than he gave.

Regarding comments made about our original attorney withdrawing due to a conflict of interest: Our original attorney had been representing us for many years. On this particular matter, he was representing us for over a week and was fully aware we were dealing with Mr. Fay. On December 19, 2021, Mr Fay offered BPV a plan similar to the one presented to the Planning Board now. This was a Sunday afternoon. Our attorney said that's great, give them my contact information, and we will get this done. On Monday morning, he had to recuse himself and Mr. Fay withdrew the offer. The coincidence is remarkable.

The most important inaccuracy to the Planning Board is when Mr. Fay said he did not have to provide us with notifications, engineering reports, and other materials until **after** he received permits from the Town. This is inaccurate. There are two sections in the Agreement that pertain to this. Section 6B is for the additional connections that will not affect BPV service (and now Phase 1). An example would be the addition of the eight units from Phase 2. In these cases, BPV does not need to be notified until after permits and Town authorizations are granted. This section is written in the past tense - The Club shall provide the Village with documents "as **have been** approved by the Town."

Section 6C on the other hand, is for the additional connections that **will or may** affect BPV service. An example would be the addition of 60 units (52 units from Phase 4 plus eight units from Phase 2). It specifically mentions cases where an engineering report is required or if an additional pump station is built. This section is written in the future tense. The Club is to provide the Village with materials "**to be** submitted to the Town for purposes of obtaining permits and other governmental authorizations." In other words, permits have not been acquired yet. Further on in this section it specifically states if an additional pump station is constructed, unless BPV gives its written consent, such pump station shall only service Club

Structures. If BPV sewage goes through the Phase 2 Pump Station, they need our written consent. Earlier in this process, it is documented that Mr. Rowley asked for an Engineering Report from Mr. Fay or Chris Reynolds. Instead, they submitted a letter from Boydco. Boydco is a very respectable company, but they are not engineers. When I called Mr. Fay on this at one of the recorded meetings I mentioned above, his response was "yes, but he's an expert." Mr. Fay knew the Boydco representative did not have an engineering degree.

At one point in the May 2nd meeting, Mr. Fay told Chairman King that BPV and The Club maintain the existing Pump Station **jointly**. *That is absolutely not true.* BPV maintains the pump station **solely!** There is a cost-sharing process for that maintenance. But to say we maintain it jointly is inaccurate. The only maintenance Mr. Fay is in charge of is the landscaping. Yet, BPV paid Mr. Fay for the Berms to prevent flooding. Mr. Fay tore them down less than a year later, and the flooding has returned (see attachment). Before the Berms, there was an incident where flooding caused the pumps to fail during the winter for multiple days. The residents of Bay Pointe Village could not use their water during this period. The person in charge of our pump station maintenance tried to pump the groundwater off the land and onto the road first and then the land across the street. Mr. Fay yelled at him and tried to prevent that because the water was going onto his property. Does this sound like the owner of the pump station? Or as Mr. Fay has tried to claim that he is vested if the pump station fails and we will all suffer equally?

There was a question as to whether there is a streetlight on the corner of Bay Pointe Dr. Ext. and Cahoon Rd. BPV has a personal Streetlight near that corner. We were surprised Mr. Fay was not aware of this when asked as he tore down our next streetlight with a backhoe (and probably no electrician present) at the same time he tore out our hedges. As I mentioned in the past, this knocked out electrical service to all of our street lights in one section of our village for over a year creating a safety hazard. Why he thought he had the right to take down our personal streetlight, no one knows. It was not in the way of anything. He still refuses to reimburse us for our missing streetlight, torn-down hedges, and torn-up frontage after three plus years. He treated our property as if it were his property and part of the construction project. Mind you, we were all very friendly until last December.

There was a statement that all of Phase Two was going into the new additional pump station. However, eight units from Phase 2 will be going into the existing Pump Station. This will require extra work on our part (and the Onset Water Department's part) to administer as Phase two will be the fourth entity we will have to calculate and bill quarterly.

Most of the above is a moot point, because as mentioned, BPV will agree to the diversion of our Force Maine Line if Mr. Fay will agree to the four provisions stated in our previous statement. These four provisions really require nothing more than the 2014 Sewer Agreement.. They just extend the same conditions to the new arrangement. As of the time of this writing, we have not heard back from Mr. Fay. But because Mr. Fay made the statements on May 2, we felt we had to address them for the sake of accuracy.

Please enter this in the record of #36-21.

Sincerely,

Bay Pointe Village Homeowners Association,  
George Salem - President