

Dear Breakwater Neighbors:

First, I want to begin this message by sharing that as an avid user of the Breakwater fitness center and pool, I strongly advocated to my fellow board members to keep the fitness center open as long as possible and to reopen both amenities as soon as possible. I am disappointed that I personally will not be enjoying the pool or fitness center this weekend, and have to deliver this news.

Yesterday, I had an enlightening and startling discussion with Bob Valihura of Morton, Valihura & Zerbato, an attorney who specializes in Home Owner's Association issues. The legal issues involving the liability of the Homeowner's Association, amenity use, and COVID-19 are uncharted territory. Regardless of merit, individuals have already filed lawsuits which blame different entities for their contraction of COVID-19. Whether or not cases go to court, the cost of defending against a law suit of any type is formidable.

Mr. Valihura pointed out that if a person is injured at the pool or fitness center, we have insurance to cover medical costs, legal fees and a settlement. No insurance company provides insurance applicable to COVID-19 claims so our HOA would have to pay. The statute of limitations for such claims is 2 years.

Here are the take aways:

- The current Governor's /DE Division of Public Health Guidance requires cleaning/disinfecting the pool area every 2 hours and a reduced capacity (for the size of the Breakwater pool, that means 23 people with a pool attendant, less than 10 without an attendant). Mr. Valihura cautioned against using volunteers for cleaning (even if we could find neighbors willing).
- Mr. Valihura stated the "Guidance" is mandatory and failure to do everything required could result in the DPH shutting down our facility and posting big signs that say "closed by DPH." That would adversely affect our property values. In addition, if someone sues the HOA for contracting COVID-19, and we did not follow the current DPH Guidance, that would be "Exhibit A" and we would be found negligent and therefore have tremendous exposure.
- Mr. Valihura strongly recommends that all individuals 18 and over, sign a waiver of liability each time they enter to pool and fitness center.
- To enforce the above requirements adequately, we would need to hire a pool attendant. Employing a pool attendant through our current pool vendor will cost \$23 per hour. We will likely be required to sign a contract for the entire summer. That will cost over \$18,000 (which is not in our budget). We have not ruled that out that option, but we are waiting to hear from our pool vendor as to when a pool attendant will be available for hire.
- Several developments on Gills Neck Road have opened their pools. If they do not have pool attendant or guard, and are not following the DPH Guidance, they are exposing their HOA to great risk.
- The current Governor's /DE Division of Public Health Guidance for fitness centers is even more difficult to implement. It requires sanitation of the machine after every use. To ensure and document this, a fitness center attendant would also need to be hired.

We as your Board of Directors have spent many hours investigating and deliberating the problems outlined above. We want our amenities to be opened and enjoyed by all members of the community. There is currently much pressure on Governor Carney to relax the DPH Guidance for small communities such as ours. We are monitoring Guidance revisions closely. We appreciate your patience and understanding as we are trying to find solutions that are economically feasible and minimize our HOA liability.

– Leslie Ruhe Lesko, Breakwater Board of Directors