

PAM and GARY ROATS

March 24, 2011

Dear Board Members and BIMC membership:

In response to the pending resolutions to amend the Blakely Island Maintenance Commission's (BIMC's) Articles of Incorporation and By-Laws, we write to reiterate our concerns over the economic and liability risks of BIMC's operating a marina and gas dock. We are not suggesting that either of these facilities should not exist, only that there is no reason for BIMC (or a subsidiary) to operate them and many good reasons for them not to do so.

As you know, we also believe that that BIMC lacks the authority to do so, a question that will ultimately be decided as a matter of law by the Court of Appeals--which will consider the entire issue anew with no deference at all to the ruling of the lower court. This is a pure issue of law. We believe the current resolutions demonstrate that BIMC is concerned about the outcome on this issue and is therefore seeking to obtain member approval to change the governing documents. This vote gives the members the opportunity they should have had before BIMC assumed marina operations--that is, to decide whether to allow such operations via a two-thirds vote approving a basic change in the governing documents.

This evening's vote is an opportunity for the board to correct the BIMC's dangerous course of action. Two different law firms have analyzed the issue and agreed that BIMC's operation of the marina and fuel dock is risky and entails serious potential liability to the members in the event of a fuel spill, fire, accident, and/or personal injury. As it was getting underway in the early stages of marina operation, BIMC's subsidiary reached the same conclusion and recommended that BIMC stop selling fuel. But that did not happen. (See attached letter from the BCF Committee on 8/4/08 and the two letters of 7/11/08 and 7/29/08 from the law firms, attached as Exhibits A, B and C.)

Since the 1960s, the Blakely Island marina was operated by a private party. BIMC was formed in 1961 as a maintenance association—its purpose was to maintain the infrastructure of the subdivision—the roads, water supply, fire protection, and the like. Article III of the Articles of Incorporation (as currently drafted) is consistent with this *maintenance* function for the BIMC. Its statement of limited powers and purposes should not now be altered--because operating a marina and gas dock is a bad idea and an unnecessary idea: both can exist without the members' assuming liability for the operations.

After BIMC took over operations of the marina, BIMC Member Sig Rogich requested the legal opinion of Danielson Harrigan Leyh and Tollefson, LLP (DHLT) on the potential of liability to BIMC and individual members, in the event of an oil spill. It was DHLT's opinion that BIMC and members could face *significant liability* from any oil leaks into Puget Sound. If oil leaked into navigable waters, the State would require reimbursement of all clean-up costs plus any damage to the natural marine habitat. See Exhibit B.

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In response to an inquiry from the BCF, DHLT's opinion was confirmed from the law firm of Lane Powell. Lane Powell attorneys agreed that individual members would face significant liability for clean up costs related to an oil spill. Lane Powell went even further than DHLT, adding that damages and penalties could amount to \$20,000 *per day* for any "negligent" spills and \$100,000 *per day* for any "intentional or reckless" spills. *See Exhibit C.*

In reaction to these legal opinions, BCF wrote to BIMC, explaining that "potential liability related to operating a marine fueling facility is considerable." It recommended that the "sale of marina fuel be discontinued after the 2008 boating season." *See Exhibit A.*

When BIMC did not discontinue its marina operations and fuel sales, we informed BIMC about its lack of authority to do so and to remind it of the significant liability that BIMC—and the members--faced. *See Exhibit D, a letter from our attorneys to the BIMC of March 25, 2009.*

Until BIMC took over, the marina and fuel dock had always been operated by an independent party that has assumed the risks described above. That was the status when we purchased our property on Blakely Island in the 1980s and that should have remained the status today. But it has not. Tonight there is an opportunity to reverse this unwise course by making it clear that two-thirds of the members do not support a risky commercial enterprise entailing potentially substantial environmental and other liability, and do not support the amendment of governing documents that would be necessary to give BIMC the power to engage in these activities.

We agree that Blakely Island should have a marina—we do not agree, however, that BIMC must, or should, operate it. Instead, the marina should be operated by an independent party, as has been the practice throughout the history of the San Juan Aviation Estates.

We therefore encourage the membership to vote *not* to approve these resolutions to amend the BIMC's Articles of Incorporation and By-Laws. The resolutions are nothing more than an attempt to expand the BIMC's authority beyond that which was intended at the time we--and you, our neighbors--purchased our properties on Blakely.

Sincerely,

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