

## President's Report to the OHCA Board – August 10, 2006

### Audit:

The annual audit to be submitted to AACounty is underway and should be completed before the end of this month (August). That should be in time for delivery to the Annual Association Meeting to be held September 28, 2006. All directors, officers and members should provide Robin Gilliam with their reports and files ASAP in order for us to meet the county requirements. Some have felt such delivery inappropriate, but it is of the essence of an audit that the officials of the organization deliver all requested materials to the officials preparing for the audit submission from OHCA.

### Roads:

The repair and maintenance work conducted by Carroll Bros continues. Completion of work on Washington Drive – 3 locations, Fishing Creek Road, and the connecting drain between Howard and Washington remains to be done.

The extended and resubmitted permits for the Master Plan should be available soon. We're planning to start on Cross Road.

As voted by the Board, I have recruited a consulting ecologist to delineate wetlands in the Cross-Creek Connector – the paper extension of Creek Drive. His report is attached.

### Piers and Harbors:

The boat ramp replacement is underway. The replacement of the dock will start after the completion of the boat ramp itself. Electrical work on the Fishing Creek dock await completion of work asked for by the inspectors – additional elevation of the light and power towers and the electrical distribution box.

### Beach:

I have asked Dan Craig, 3301 Shore Drive, to be Beach Committee Chair. Dan has already honchoed the installation of the netting in the swimming area, with good results of a cleaner beach.

A substantial clean-up of the beach grounds, including removal of phragmites and other vegetation will start soon.

Security: An additional badged officer is serving the community. We still need a substantial consideration of the security program.

Proxies: I have requested a legal opinion concerning proxies of our attorney: his opinion is attached.

Resending this as an attachment. The July 13, 2006 meeting was cancelled.

President's Report to the OHCA Board  
July 13, 2006

The end date of fiscal year 2006 passed on June 30, 2006. The OHCA fiscal year 2007 has begun. We have yet to be notified or provided the final dollar numbers for FY 2007 by AACounty. On the other hand, our 2007 budget was approved by the County. We will once again carry over from FY2006 several hundred thousand dollars to the FY2007 accounts. These are not surplus dollars but funds already allocated for specific budget items including "unrestricted funds" for Master Plan, for Piers and Harbors (already contracted and in the permitting process), and dredging.

The annual audit by outside auditors has begun, with the engagement letter and the instructions letter from AACounty's auditor. Robin and I are collecting meeting minutes, invoices and vouchers and check stubs. We do have a deadline imposed by our Constitution – the Association's audit must be presented to OHCA at or before the Annual (election) meeting in September, 2006.

Roads: Carroll Brothers, Inc. has completed repair and maintenance work on Shore Drive and on OHCA owned Creek Drive right of way. Two more swales or pipes must be repaired and extended to Fishing Creek. These are on private property and require written permission to conduct the repairs. Also, vegetation Management Plans are required there and on Washington Drive to repair serious drainage flow problems on private property. Work on Washington Drive is underway and should be completed by next week-end.

The rock-fill of the newly reopened swales appears to be performing adequately – except on Shore Drive. It takes too long for storm waters to flow into the drains and out the bulkhead at the channel. The problem is the Duck Bill which will not open fully even at the maximum head of about one foot. (I can't open the bill with my hands.) The remedy is a tide gate, essentially a flapper arranged to open and close with the tide. We don't want high tides to flood, nor do we want the storm flood to drain out so slowly.

Recreation:

Yvonne Jaicks and Patty Jenkins have had two large and successful events in the last month – the beach party, and the Caribbean night affair.

Community property

The mowing is being done quite frequently. I neither see nor hear complaints. Jose Lobus is doing most of OHCA's odd jobs in a professional and satisfactory way.

Security:

The Board asked Johnnie Merrick to work with me on new security arrangements. Tom Cagle has put together a full range of options from which we can sort out an acceptable arrangement. Unfortunately, I have not been fully available in the last three weeks to work on the problem. Thus, we continue with the past arrangement.

#### Piers and Harbors

Phil Staler has been stalled by the permitting process. Mike Drum has been asked to help us get the County to keep the Master Plan permitting separate from the boat ramp permitting. The particular problem is that the Master Plan plan for the drainage along side the boat ramp parking area has been joined (by the County) to the installation of a support for the electrical box to be located at the end of the relocated dock.

#### Proxies:

The Maryland Law for Non-stock Corporations (relevant article and sections attached) does NOT require a non-stock corporation to have proxies. They may have them or decide not to have them. Thus, the previous Board's action to issue proxies – under threat of a law suit and with Mr. Sussman's dissertation on the subject in hand – was not necessary. Further the board's decision was not approved by the Membership of the Association.

Last week, I moved that the Board rescind the present proxies and substitute absentee ballots for them. The vote on the motion was a tie. I intend to make a new motion which I believe will be acceptable to the Board, ie will pass. In any case, it is clear that the OHCA Members have not approved the previous Board's action at a regular or special meeting, and that they should have the opportunity to do so in accordance with OHCA's Constitution. If my new motion passes, I will call a special Association meeting so that the members can vote on this issue.

#### Extension of Creek Drive and Cross Road:

There are two memoranda, one of which I intend to include in the forthcoming Newsletter and the other to send to the property owners on the paper road. These memos are attached to this report. The memos are 1) to let everyone know the score as I know it (still very much to learn), and 2) to ask the property owners and OHCA to work on wetland delineations and permits together.

The first step is to conduct a flag survey (rather than a preliminary survey). The flag survey will be checked by the US Army Corps of Engineers, among others. But the Corps's work will lead to a "Jurisdictional Determination" concerning tidal and non-tidal wetlands. There are several steps beyond the JD all of which will be specific to the properties for which building permits are sought. If we go through the process together then we will generate considerable momentum.

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March 18, 2007

Norman MacLeod, President  
Oyster Harbor Citizen's Association  
1224 Washington Drive  
Annapolis, Maryland 21403

***Re: Proxy Voting under the OHCA Constitution***

Dear President Macleod:

You have provided me with the Constitution of the Oyster Harbor Citizen's Association and have asked whether Proxy Votes are permitted at Association meetings under the Constitution. I have reviewed the Constitution and the applicable law in Maryland and it is my opinion that although Maryland Statutory Law would permit proxy voting in a non-stock corporation such as OHCA, it does not require proxy voting and the current version of the OHCA Constitution does not make any provisions whatsoever for proxy voting. Consequently, under Maryland Law and under Robert's Rules of Order, the OHCA Constitution does not currently allow the use of Proxy voting by members at Association meetings. The basis for this opinion is set forth below:

***Legal Analysis***

The legal analysis of this question is rather straightforward. Under Maryland Law, a non-stock corporation such as OHCA, is subject to certain statutory requirements as set forth in the Maryland Code Annotated. Section 5-202(b)(7) of the Corporations and Associations Article clearly states that a Maryland Non-Stock Corporation has the discretion to either provide or deny proxy voting in any election. Whereas in a Stock corporation, voting rights are tied to a defined property interest – the ownership of stock – which requires the allowance of proxy voting under Maryland law in the election of Directors, a Non-Stock Corporation is treated differently. Voting rights of the members are determined by the purpose of the organization rather than the property interest of the stockholder. For that reason, it is up to the Constitution of the Organization to define whether Proxy voting shall be allowed in any given election.

The Constitution of OHCA clearly does not provide for proxy voting. Voting rights are mentioned and defined in five separate places in the Constitution: Article III, section 1; Article V, section 8; Article X, Article XI and Article XIV. Not one of those sections provide for voting

by proxy. All five of those sections call for votes which are taken at Association meetings to be determined “by a majority of those present” or “by a majority of the quorum present.” Clearly, it is the intent of the authors of the OCHA Constitution that voting at Association meetings be decided only by the persons actually present. This is completely consistent with a deliberative body such as a Citizen’s Association, the purpose of which is to hold discussion and then make majority driven decisions for the common good of all.

Further support for this conclusion rests on the fact that the Constitution, in Article IX, specifically states that Robert’s Rules of Order shall govern all aspects of the Association meetings not clearly defined in the Constitution. Under Robert’s Rules Newly Revised, 10<sup>th</sup> Edition, proxy voting, a form of absentee voting, is not allowed in a non-stock corporation such as OHCA unless it is specifically provided for by the Constitution or Bylaws, which in the case of OHCA, it is clearly not.

*“A "proxy" is a means by which a member who expects to be absent from a meeting authorizes someone else to act in his or her place at the meeting. Proxy voting is not permitted in ordinary deliberative assemblies unless federal, state or other laws applicable to the society require it, or the bylaws of the organization authorize it, since proxy voting is incompatible with the essential characteristics of a deliberative assembly. As a consequence, the answers to any questions concerning the correct use of proxies, the extent of the power conferred by a proxy, the duration, revocability, or transferability of proxies, and so forth, must be found in the provisions of the law or bylaws which require or authorize their use.”*

Roberts Rules Newly Revised, 10<sup>th</sup> Edition pages 414-15.

Based upon the above legal analysis and the legal authorities contained therein, it is my opinion that proxies are not currently allowed for voting at Association membership meetings for the Oyster Harbor Citizen’s Association.

Very sincerely,

*/s/ Kurt D. Karsten*

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August 9, 2006

Norman McLeod, President  
Oyster Harbor  
1224 Washington Drive  
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RE: Cross-Creek Connection

Dear Mr. McLeod:

Thank you for engaging my services to assist your association in navigating the wetland issues associated with the proposed road connection between the existing Creek Drive and Cross Road. As we discussed, the field of wetland regulation and science is changing and often imprecise, with a wide variety of opinions and regulatory decisions.

We walked the apparent road extension, which is quite defined from the Creek Drive side, but is rather indistinct on the Cross Road side. One existing lot was recently survey marked on the Creek Drive side, and another was recently cleared on the Cross Road side. The entire area accessed from the roadway is forested, except in the wettest areas where common reed (*Phragmites australis*) is dominant.

The existing roadbed on the Creek Drive side was somewhat recently graded and is gradually reverting to forest. This roadbed is largely non-wetland at the present time, but its jurisdictional status will depend on the status of the surrounding area and the age of the fill. If, as I suspect, much of the area to either side is jurisdictional wetland, then the road fill may be considered to be unpermitted fill if it is of relatively recent age.

The surrounding areas appear to be quite wet, with tidal fringe wetlands dominated by phragmites to the south, with a mosaic of apparent wetlands with intermingled uplands between the roadbed and tidal wetlands. The north side of the roadbed is obvious forested wetlands with very apparent wetland hydrology. However, this area may be wetter than prior to the roadbed grading, which apparently has caused additional ponding in the area due to the raised roadbed acting as a low dam.

Based on the topography shown on the plan I viewed, it appears that the Cross Road extension area falls directly through an upper tidal gut dominated by phragmites. Lot 46 at the end of the existing Cross Road has been recently cleared of understory vegetation, most of which was apparently phragmites. Wetland hydrology was very apparent at this location, the remaining overstory trees were strongly hydrophytic, and soil samples observed at the road edge were strongly hydric. It is my opinion that this activity is occurring in a jurisdictional wetland, and that these wetland conditions continue throughout much of the Cross Road extension shown on the plat. I suspect that permits have not been obtained for this work since I noticed no posted permit or sediment control devices along the property edge.

I reviewed the Anne Arundel County Soil Survey for soil information for this area, and as I suspected much of the area is mapped as hydric soil series. Tidal Marsh (map symbol Tm) covers much of the open areas dominated by phragmites, and the adjacent forested wetland areas are Colemantown sandy loam (map symbol Cm), both designated as hydric soils by the NRCS. I have enclosed copies of the soil survey map and Maryland hydric soils list showing the Colemantown data for your information. You were to peruse additional mapped information available online for further supporting documentation.

As we discussed in the field, it is quite difficult to locate the entire length of the proposed roadway, and there may be trespass issues with some parcel owners. Therefore, I highly recommend that the association engage a surveyor to provide a field stakeout of the proposed road and entire ROW owned by the association. I would recommend that they stake the road at minimum 50 foot intervals and at major turning points on both sides with stationing provided. This will provide a clear demarcation of association and private lands and also provide a valuable visual representation of the proposed road route. Upon completion of the survey, I could then provide a more detailed delineation of wetland boundaries on association property.

I hope that this initial assessment is helpful. Please contact me with any questions or comments.

Sincerely,

Jeffrey Wolinski

Enclosure