

**Minutes of
Oyster Harbor Citizens Association Town Hall
(Special Call Meeting)
March 13, 2008**

Kathy Burk, Chair of the OHCA Board of Directors, called the Town Hall (Special Call Meeting) to order at 7:15 pm at St. Anne's School. There were 41 members present. Gail Smith, Legislative Aide to County Councilman Josh Cohen, introduced herself as representing Councilman Cohen and invited OHCA to send a representative to a meeting the next day with the new Captain of the Southern Police District.

Chair Kathy Burk explained that the purpose of the meeting was to bring the community up to date on recent developments regarding the undeveloped portion of Creek-Cross Road. Kathy explained the rules for the meeting:

- The meeting is informational only, and no motions or votes will be taken. Therefore, there will be no debate, and discussion and comments are limited to questions.
- Robert's Rules for meeting etiquette apply: 1) Limit questions to topics related to the undeveloped portion of Creek-Cross Road, 2) Address remarks/questions to the Chair, 3) Remarks and questions should be courteous and phrased neutrally.

Background

President Brooke Doswell showed maps of the undeveloped portion of the Cross-Creek area. There are 21 lots in the undeveloped area, which are privately owned. The undeveloped area includes wetlands and non-wetlands, and the wetlands are tidal and non-tidal. OHCA owns the right-of-way for the paper road between the existing Cross and Creek Roads. The paper road cannot have access to Thomas Point Road because Fishing Creek Farms owns a sliver of land between the OHCA property and Thomas Point Road, and development is prohibited on that sliver of land.

Chair Kathy Burk explained that the topic of building the paper road is not new. It has come up numerous times since 1985, but there has been no consistency in the community's stance on the road. In 1985 it appears that OHCA had the intent to build the road and got a permit (which has expired). In 1994 the Maryland Department of the Environment (MDE) granted permission for the road (that permission has also expired). In 2003 there were requests from lot owners to build the road, and the board consulted with OHCA's legal counsel. OHCA's attorney advised that OHCA has the right to build the road but is not legally obligated to do so. OHCA cannot block or impede access to the road by property owners, and would have to grant access if someone wants to build the road.

The latest round of requests for road construction began about two years ago. Recent OHCA Boards have expressed the willingness to investigate the feasibility of building the road, but have reflected the view that no action can be taken without the community's input and approval.

Joe Butcher referred to Board actions in the past on the road, as reflected in minutes of those meetings. Pat Cannon noted that she had met with the County about the possibility of a gravel road in the past, and the County said that permits and a variance would be necessary for the road to be built.

Offering his observations as a Board member, Dan Craig said it would be worthwhile for community members to go to the OHCA website and read the past Board actions on the road. They are contradictory, and this issue has gone back and forth many times. It is, therefore, important that whatever is decided be by the whole community and not just the Board.

It was brought up that before the Oyster Harbor roads were asphalted and before the sewer was built, there was a dirt road into the Cross-Creek area, but after a while, the community stopped maintaining that road. Bob Eyster said that the dirt road went to just the first bend on the paper road.

Kathy read from a 2/13/07 letter from the County to Pat Cannon that cites the permits, variances, and Federal, State and County approvals that would be necessary to build the Cross-Creek road. Kathy said that letter will be posted on the OHCA website. Joe Butcher explained that on 1/25/07 the Board asked Pat to seek a permit to build a gravel road, and Pat was acting on behalf of the Board in meeting with the County.

Kathy explained that the OHCA charter as a special tax district allows for road construction. OHCA has built some of the roads in the community and private property owners have built others. Just because the right to build roads is in our charter does not mean that OHCA has to build roads or any particular road. To date OHCA has not taken a stand on whether a property owner could build the Cross-Creek Road.

Lot 13 Owner's Application to Build Road

In December 2007, OHCA received a letter and packet advising that the owner of lot 13 had applied for a variance to develop lot 13 and construct the road. That letter and packet was forwarded to the OHCA Board in January 2008. The owner of lot 13, Daniel Butler, had signed the application as owner and also "for Oyster Harbor Citizens Association."

The variance application had already been filed at the County when the OHCA Board received a letter from the lot owner's attorney requesting that the Board sign the variance application, and sign a letter stating that OHCA ratifies and approves the filing of the variance and authorizes the owner of lot 13 to proceed

with the variance and permit applications on behalf of OHCA. When the Board reviewed that letter from the lot owner's attorney at its January 2008 meeting, it had not yet seen the variance application. For that and other reasons, the Board did not sign the application and sought legal advice.

OHCA's attorney Kurt Karsten advised that:

- The owner of lot 13 had acted within his purview to sign the variance application as property owner, but had not acted within his purview to sign on behalf of OHCA.
- That misrepresentation to the County by the lot 13 owner could be deemed malfeasance if the OHCA membership so determined.
- While OHCA is obligated to grant a property owner access to the OHCA right-of-way and is probably obligated to sign a permit for road construction, OHCA is probably not obligated to sign a variance application for the road. That is because, by definition, a variance is "acting outside the law." The Board should not sign the variance application without a community vote.

Based on the OHCA attorney's guidance and member requests, the OHCA executive committee began proceedings for an OHCA meeting to vote on a recall of Daniel Butler from the OHCA Board.

Chair Kathy Burk explained that there are three issues before the community:

1. The behavior of Daniel Butler in signing his application for a variance "for the Oyster Harbor Community Association" without the right to do so. An OHCA meeting to vote on recall of Daniel Butler from the OHCA Board is scheduled for 3/29/08.
2. Does OHCA want to sign the variance application? Kathy noted that signing the variance application does not indicate an intent by OHCA to build or fund the road.
3. Does OHCA want to pay for the road construction?

Calvin Kidd noted that the OHCA Board voted to pay for a gravel road into the Cross-Creek area two years ago if permits were granted. Joe Butcher read the minutes of the Board meeting when that vote was taken.

Kathy Burk emphasized that neither the Board nor the community association as a whole have made a decision yet on any of these matters. A question was asked about the 1/29/08 Special Call Meeting when it was decided to release the community from the requirement to follow the ten-year-old Master Plan in all particulars. President Brooke Doswell responded that the 1/29/08 Special Call Meeting did not deal with any of the above three issues.

Responding to remarks by Pat Cannon and Irving McConnell, Kathy Burk disputed statements that the Board and/or community wanted to prevent Mr. Butler from building on his lot. She reiterated that neither the Board nor OHCA has taken a position on the development of lot 13.

Phil Staller asked Mr. Butler to explain why he signed for OHCA on his variance application. Mr. Butler replied that his attorney sent him a letter saying that nothing was wrong with his so signing.

Kathy Burk read a letter from the County saying that the variance application had been received in November 2007, and the County stopped processing the application because OHCA had not signed the application.

Norm MacLeod moved for adjournment of the meeting at 8:45 p.m. The motion was seconded and the meeting was adjourned.

*Respectfully submitted,
Nancy Plaxico, OHCA Recording Secretary*