

# Minutes for Annual Meeting of the Omisol Estates Homeowners' Association Thurs, Dec 15, 2005

A special Homeowners' meeting was held at Christ Our Lord Church on the corner of Minnieville and Omisol Roads on Thurs, December 15, 2005. The meeting was called to order by Mr Jim Hart, Vice President, at 7:45 pm. Jim thanked everyone for attending this special meeting, different from the regular annual meeting we usually have each January. First, Jim introduced the board members present: Mr Richard Jessie, Kay Richardson, Lawrence Roth, himself (Jim Hart). Mr Bill Boston, President, could not attend. Also in attendance were special guests: Mr Jon Phillipe, engineer, and Lisa Cahill, President of Watershed Services, a company we have talked to in the past.

Jim Hart explained that this meeting was an important meeting dealing with the fiscal solvency of the association and the structural integrity of the dam/spillway and with that the true value of the one amenity we have in this community. Jim said the members would be asked to vote on two issues which would be presented and open for discussion. First order of business was a proposal to increase the annual dues by \$100, for a total of \$400 for the year. Jim turned the meeting over to Lawrence Roth. Lawrence explained that when the association was first formed we negotiated with the trash company to get a better rate and put the trash bill as part of the dues. We had a 5-year contract which renews for 3-years when the contract is renewed. The contract was renewed this past June. In the original contract, there were a lot of step increases which were to come into being. However, Waste Management never caught up on that --- we were paying the original amount since the beginning. We started paying for disposal fees on our home taxes a few years ago. Lawrence said he went to Waste Management and asked that the bill be lowered now that they are not paying disposal fees. The amount then went down and they never increased the fees that were built into the original contract. Now they have caught up. They are not trying to collect any of the old fees, but they have increased the fees. We were paying \$12.11 per unit/per month - \$641.83 a month (approx). The new amount is \$19.50 per unit/per month - which is probably where we would be if we had realized the escalating increases. This is an increase of \$391 a month times 12 month = \$4692 a year. That amounts to \$88.50 per year, per household. We have rounded the figure off to \$100 increase per year. That would raise the dues to \$100 per quarter vice \$75 per quarter. The Board is only allowed to raise the dues by 10% that is why we are asking the members to vote for the \$100 per year

increase. Lawrence said the treasury now has a balance of \$31,342.32 in the checking account, one C/D has \$23,989.12, and another C/D has \$18,214.15 for a total of \$73,545.59. We had a quorum and need 2/3 approval rate to pass. We had 49 homeowners represented, either in person or by proxy. There was a motion on the floor to accept the proposal to increase the dues by \$100 per year. Motion was seconded. Jim delayed the vote until later in the evening.

Second order of business was an important matter for the community. Jim said we all bought into because of the beauty and privacy afforded to us. We have benefited quite a bit in the last few years because of the value of our property. But we need to take care of our assets. We have one particular area of the community that needs to have some work – the lake, particularly the dam and the adjacent spillway. It is a value and benefit to all of us. The Board has a vision for the lake. Jim said he knows we have discussed this at all the meeting in the past and it has been controversial. With proper development and a commitment from the community, we could all benefit from it in the long run. First we have to preserve it. Jim said we bought into the community with a commitment to preserve the common areas – the lake is one of our common areas. The Board understands and appreciates the difficulties with regard to this, but we believe it is in the best interest of all the homes to move in a direction to repair this facility. The State is telling us that action needs to be taken on this. We may not like this, but they will move on this if we don't. Jim went through the outline he passed out at the meeting.

We took over full control of the association in September 1998, along with that responsibility for the common areas. The problems with the dam were documented in a letter from the State dated March 26, 1998. The problem with soil erosion began a long time ago, even before the houses were built in Omisol Estates. The problem has been exacerbated over the last several years – particularly earlier this year in March when we had two severe rain storms and the lake rose about five feet. The rains proceeded to wash away a tremendous amount of soil under the spillway. It also opened up a large hole in the spillway about 5 feet long, three feet wide, three feet deep behind Jack Salada's house, right adjacent to the spillway. It was at that point the Board got involved and realized there was a severe problem. The Board Members are not professionals in this area, so we contacted several people who have expertise in this area. We met with two engineering firms, Watershed Services, the head of Dam Safety from the State to give us some ideas of what we could do. They all stated the problem would only get worse, plus there is the issue of liability of property and life if the dam were

breached. The State recommended that we clear the dam of all growth and that is being done by the end of the year. Tree roots allow voids in the dam and threaten the integrity of the dam. We asked the engineering firms to provide estimates on what their fees would be. We chose Mr Phillippe based on his fees and also on the fact that he was also the head of State Dam Safety and knows the procedures. We determined we have three options: (1) Do nothing – but if we do nothing and the State demands that some action be taken, they will then turn this over to the State Attorney General. The State Attorney General would then adjudicate it and in the end mandate that we fix it and it may be even be more expensive by then not to mention the legal fees. There would also be the chance of litigation by the people on the lake who would demand compensation for their financial loss. (2) Second option would be to drain the lake and remove the dam ourselves. We would still be open for all the possible litigation and we would be responsible for the costs of the lake which could include wetland concerns, remove debris, environmental issues. (3) Third option would be to repair the dam to meet state standards which we are out of compliance right now. In June we received a letter from the State that said we were out of compliance and needed to certified in six months. We did not complete this in time. To repair the dam is an expensive proposition, but also important to do. We do not have hard numbers at this time. Jim asked Mr Phillippe to speak on the issues.

Mr Phillippe said there were several things they needed to do, the first being to determine the class of the dam. If no one is subject to loss of life downstream, it may be considered a Class III dam. Initial indications are that this may be the case. The spillway requirements are much less for Class III dams. It may be considered a small Class II dam economically – the impact of the loss of the lake affects each lot value, anywhere from \$15,000 to \$50,000 per lot. Then they have to determine how to fix the dam – probably have to rip out the spillway and upscale it. Then there are some amenities that could be done. Could figure out ways to lower the lake levels from time to time, dredging. First they have to get to the point to determine what needs to be done.

Mr Ravinski asked if we had considered opening it up for public access and getting some assistance for the county or state. Jim said there were liability problems and asked Obie Baker if he could shed some insight on this issue. Obie said that had been discussed in the past and the county does not want responsibility for the lake. Mr Phillippe said the county has used the lake as storm water management. Jim asked Corey Stewart, County Supervisor and homeowner, about his opinion. Corey said the Board has not

asked the county to look at that – but if they did, the county would require public access to obtain funding. If that is the road the community wants to pursue, then the issue could be raised. Jessie said the county has used the lake as a watershed device, then public access should not be an issue. Jim Reeves said he helped build the lake and the lake is not part of the county maintained storm management areas.

Walt Becker asked if the dam met the standards for the state. Mr Phillippe said they would have to design it to pass the standards. Walt asked if we reduced the amount of water, would that affect it. Mr Phillippe said it had nothing to do with the size of the lake, it was the amount of water that passes through the dam.

Jane Dudley said she felt the option of doing nothing should not be considered. She also asked if there has been a formal reserve study as part of the Virginia Property Act. Reserve Study is a study to determine if enough funds are set aside for capital improvements. Obie said it had never been done.

Bill Gould asked Corey Stewart what kind of time line would be involved if we were to try to get the county's assistance. Corey said first we would have to convince the county it is their responsibility to take over. He said that would not be an easy task – we would probably have to successfully sue them. Then the county would have to get the funding. It would not be an immediate solution.

John Ravinski asked what would happen if we were to just drain the lake. Jim said there would still be a large stream running through the area. Silting would be on-going. Jim Reeves said he didn't agree that draining the lake would decrease property values – does not feel it is an asset. Mr Ravinski asked about dredging down the road which would cost hundreds of thousands of dollars and if we spend the money now to do away with the dam, then we are done. Jim said there was the possibility of litigation by 16 homeowners. Jim Holley said if we did away with the lake, there would be a stinky, swampy mess and every property value in the community would be affected. Also, Jim said he signed a contract that the common area would be taken care of and assured the homeowners that litigation would be forthcoming. Jim Reeves said the covenances he signed said all homeowners had a right to the enjoyment of the lake. Jim Hart said there is a small area that we could work with to try to make access available and that is the commitment of the board to get access to the lake. Carlos Castro said we need to have a positive attitude to get a lake to be enjoyed by everyone.

Lori Strickland asked if the dam broke, where the runoff would go. Mr Phillippe said the drainage would go downstream and there are some homes about 400-500 yards downstream. Jim Hart said there is a creek running under Old Bridge Road in the lowest point and that comes from our lake. There are some houses that sit back there, but they may be up high enough that it would not do much damage.

Mr Jessie said he has always been vocal about people not having access to the lake. The homeowners on the lake are enjoying the privileges, but not allowing others to get there. Need to resolve this in some manner. He said economically it makes sense to do something now -- \$125,000 divided by 53 is what it would cost to fix it. It would cost more than that not to do anything. Mr Ravinski said if there were some commitment that all the homeowners can get to the lake, he would be more inclined to vote in favor.

Lisa Cahill said removal of dams is something many customers have explored. It is a reasonable option to explore – the water has to be drawn down, silt has to be stabilized properly so it doesn't go downstream, soils have to be tested for contaminants, then grade at elevations to avoid smelly swamps and could conceivably be a common area. Community Association Institute says people who live on the lake can lose 40% of their property values. The institute also says other homeowners in the community do derive value from the lake – it's a community asset, but not a community resource. Removing the dam is an option, but it can be expensive. It does not avoid maintenance in the future – there are erosion problems. The dam does require maintenance in the future also.

Jim said the funding from T-Mobile was coincidental. He said the status of the T-Mobile is still awaiting permits from the county, but they have assured us that the project will be completed in the spring. Chuck Richardson asked if Corey Stewart could check with the county on the status of the T-Mobile approval process. Corey said it was an administrative process and he would look into it.

Kathy Holley said she was in favor of getting access for all homeowners, but she didn't want people wandering through her backyard anymore than other homeowners would want others picnicking in their backyard.

Paul Nichols said we are going to have to pay money one way or the other. The option to remove the dam would mean we would pay a lot of

money and then have nothing to show for it. We have a real liability problem if a child falls in the hole.

Jack Salada said there is a precedent of an incident happening about 12 years ago where a child fell into a precipice. There is a possibility of serious injury with the situation now. With the winter freezing and thawing, this may cause further damage. There is a cavern under the spillway and the whole spillway could give way at any time.

Dawn Matthews said there is a serious liability issue. If we know about the problem and don't take care of it, we can be considered at fault if there were serious problems occurring.

Mr Ravinski thinks there should be a way to make public access for everyone in the community and believes there should be a commitment from the Board to make this happen in order to be able to vote for the improvements. He thinks that spending the \$125,000 is just the beginning of expenses and we will have more in the future. Said we should just pay the lawsuits and we wouldn't have to continue to pay for dredging and all the other problems in the future – it would be done.

Ted Blofeld wanted to know what we get for the \$125,000 we plan to spend. Is there a guarantee that we won't have to spend another \$125,000 in another few years? Do we have a time frame?

Jim Hart said the \$125,000 is for the repair of the spillway – an emergency situation that needs to be repaired. Except for normal maintenance, we wouldn't have to worry about the spillway again for some time. Lisa Cahill said we should form a Lake Committee to oversee the condition of the spillway/lake so that we won't have a huge expense down the line.

Lawrence said there has not been an money spent on the lake in ten years. We did spend money building the bridge in an attempt to provide access to the lake. Eventually, it will become part of the trail to the other side of the lake. We have not spent any money on dam maintenance, other than cutting down the trees.

Mr Blofeld also asked if there was a way to deed the lake to the 16 homeowners on the lake.

Bill Gould would like to see the figures of what it will cost to do this right.

Brian Evans asked about escalating costs. What is the lake gets filled in by all the silting – the silt continues to come downstream from all the developments upstream. Lisa said the developers are required to post a bond against erosion and siltation. If someone can identify where it is coming from, the County could hold them liable. The developer doesn't get his bond back. She said the natural process of a lake is to turn back to a meadow.

Kristy Graff said there is a lot of trash in the lake and she said the silt has built up considerably in the last few years. Lisa also said we could construct a submerged dam at the head of the lake to collect silt and keep it from migrating down into the lake. Then clean out the area every few years.

Jane Dudley asked what the Board was asking for. Jim Hart said the Board needs authority to borrow money.

Lisa said she has some pictures of the cavern that she will pass around.

Jim Reeves asked if the Board was going to ask for a vote and how can the homeowners vote on the costs if we don't know what the final cost will be. Can we postpone the vote until we know the design costs.

Lawrence said we have an estimate on what the cost will be. Lisa said her initial estimate was to fill the voids on the spillway. The State now requires, as a result of changes in the law in 2002, an alteration permit in order to do that work. With an alteration permit, you first have to determine how big the spillway should be. Have to determine how the watershed changes have affected how the water flows down there. If the determination is just fix the spillway, they will hold to their estimate. Lisa said she couldn't actually assess the dam because of the tree growth, but once it is cleared, she could make a better assessment.

Jessie said we are going to spend money to do either option. If we are going to spend the same amount of money, why take away the lake. If however there were a big difference, then we should go with that option. He said he thinks we should have a couple estimates: get the costs for draining and one for the lake. There are probably hidden costs. But while we are getting the estimates, what is our liability if something happens.

Jon Phillippe said if we keep the dam, the spillway is undersized. Rather than simply regrouting the spillway, thinks we should redesign the spillway.

Brian Evans asked how long it would take to get the design completed. Mr Phillippe hoped to have something completed by March. Lisa said they could not do construction in the winter anyway. Jessie asked again, what if something happens to the spillway before we have a chance to complete the project. Lisa said after Hurricane Gaston hit the Richmond area, about 75 dams were breached. You have two years to reestablish the dam, otherwise you get into a lot of issues, i.e., Corps of Engineers, wetlands, etc – a two year grace period so to speak. You have to actually get a whole new dam approved and it would be expensive. If our spillway failed when it is not a flood event, it would not be difficult to prove that the silt problem originated from our lake – we could be fined.

Chuck Richardson said we are talking about spending \$125,000 for repair of the spillway. That expense is different from the additional future expenses such as dredging, etc, and wondered where the money was going to come from. It will take a lot of money, but Jim said it could be done with a commitment and desire from the community and if people want to volunteer to put forth the effort, it can be done. A lot will require professional help.

John Ravinski said we should look at the whole dam/spillway. Thinks we should get info and get back to the community in the spring. Jim said the \$125,000 estimate includes Mr Phillippe's fees, construction and incidental expenses to repair property.

Obie Baker said the homeowners need to authorize the Board to move forward. If we wait until spring, the costs could go up. The Board needs the power to engage someone to get the money.

Jessie said he would like to make a motion. His motion was to not spend the money until we get two cost estimates, one to fix the lake/dam to include access to the lake and another estimate to drain the lake. Motion was open for debate. Jim Reeves said he would be happy to assist since he is a contractor and developer. He said engineer estimates are different than contractor estimates. Chuck Kreinar said that by not having the lake would cause everyone's property values to go down. Lawrence asked who in the community was willing to put in their time to get all the contracts and

estimates, from the county. He said the Board has worked hard to get where we are now. Paul Nichols said he was against the motion. He said he did not want to spend money trying to get estimates, environmental studies, etc – we would spend \$20-30,000 and it would just be a waste of money. Jane Dudley said the Board does not have the authorization to spend money to do away with the lake. A vote was taken on the motion to look at both issues and get cost estimates to fix the dam/spillway with access and a cost to drain the lake. There were 41 names on the sign in list and we had 11 proxies. (It was later determined that there were 49 homeowners represented either in person or by proxy.) There were five votes in favor of the motion. Motion was defeated.

Jim Hart said the situation is very serious matter. The Board realizes the seriousness of the situation. The community elected the Board to represent the best interests in the community. The Board has put in a lot of hours and that should give everyone confidence that the Board is not going to squander money. Based on that, Jim offered a motion that the Board of Directors be permitted to obtain financing that will supplement our current resources to pay for the repair of the dam and spillway only to the degree that it brings the facility into compliance with state and local regulations as soon as possible. Motion was seconded.

Lori Strickland asked if we could include something at the high end of the lake to stop the silt. Lawrence said the issue right now is the spillway. Jim said Mr Phillippe's estimate comes in at approx \$15,000. We are estimating repairs costs of \$100,00, which includes \$77,000 that Ms Cahill's firm has quoted us to repair the spillway. We have also included additional funds for other miscellaneous expenses that might come up – what the Board thinks is a reasonable amount. Brian Evans asked if we could put a cap if we find the costs are considerably more. Lawrence said we wouldn't have the funds to do it anyway. The Board would have to come to the homeowners to approve any additional money – the Board is only asking for \$125,000 at this time, not an open credit line. Jim said we talked to the bank and came up with the estimate that was within our budget to pay back for an eight-year period without any additional assessment. John Ravinski asked why the board couldn't wait to get more firm estimates. Paul Nichols said we need to have confidence in the board and will use good judgment. Jim reminded everyone there is a motion on the floor. We needed 2/3 voting members to pass. Vote was taken on the motion by a show of hands. 35 in favor. Motion passed.

Another vote was taken to increase dues by \$100 (from \$300 to \$400 per year.) Motion passed.

Jim thanked everyone for attending. Meeting was adjourned at 9:45pm.

Respectfully submitted,

Kay Richardson  
Secretary