

# Charleston Village Homeowners' Association

Special Meeting Held on October 24, 2017

Salem Baptist Church Chapel

## Meeting Attendees

### Board Members

Bob Nagel

Tim Ruff

Gary Laramee

Dave Senko

Alex Corvin

### RS Fincher Representatives

Valarie Miller

### HoA Attorney

Henry Jones

### Also in Attendance

Patrick Warren

Kim Warren

Susan Carr

Bill Ferrell

Jeff Meier

Krystal Meier

Brian Fox

Miranda Fox

Tricia Casey

David Randle

Bryan Page

Michael Montgomery

Lisa Montgomery

Bob Gadd

Tanya Gadd

Jeff Taft

Shawn Livernois

Daniel Fulcher

### CVHoA Minutes

Frawley  
Mark McMillan  
Ryan Chung  
Eric Deans  
Rodger Stroether  
Robert Rogers  
Becky Hagedorn  
Bernice Sonstroem  
Justin Rothwell  
Rodney Overton  
Patti Nolte  
Tom Henke  
Roseann Henke  
Robin Sevio  
Bob Sevio  
Jennifer Walski  
Betty Tew  
Linda Stender  
Christopher Duke  
Charlemae Mara  
Margaret Reed  
Harold Reed  
Mary Cameron  
Hugh Cameron  
Linda Sue Oury  
Elizabeth Schmedding  
Robert Schmedding  
Jennifer Murray  
Michele Pierzga  
Thomas Hull  
Barbara Stevens  
Corbi Bulluck  
Patrick Wade  
Steve Gaines  
Pinky Jackson  
Tim Jenkins  
Georgia Martin  
John Boezeman  
Margie Boezeman  
Shearise Huizenga  
Hans Huizenga

The meeting was called to order at approximately 7:05 PM

## Presentation

### Agenda, Introductions, Ground Rules

- The meeting was started by running through the agenda for the evening, then introducing the board members, RS Fincher representative, and the HoA's attorney
- The following ground rules for the evening were presented:
  - Silence cell phones
  - Start and end on time
  - Only allow one speaker at a time
  - Listen to speakers without interrupting
  - Keep all discussions respectful
  - Accept that there will be differing opinions
  - This meeting is solely for homeowners in Charleston village and our neighborhood representatives. The discussion is to remain internal.

### Timeline of Events

To illustrate how we got to tonight's meeting, the following timeline of events was shared:

- At the November 2016 annual HoA meeting, there was mention of the neighboring property being sold. This was the first time that the board became aware of the potential development.
- The board received a completed reserve study on January 16, 2017. This specifically mentioned that all dams/ponds in the neighborhood would likely need significant maintenance over the coming years.
- Late January 2017 – the neighboring Holt property (that Charleston Village does not own) was surveyed as part of its ongoing sale. As part of this, survey markers were placed around the shared pond.
- February 2017 – the board walked the pond/dam to become familiar with the area. This was prompted by the survey being performed
- February 20, 2017 – a developer interested in building on the Holt property met with the board at the regular board meeting to discuss his interest in developing the Holt parcel
- March 22, 2017 – the board met the interested developer at the pond to discuss his intentions for developing the land
- May 1, 2017 – the HoA held a special meeting with the interested developer for him to share his intentions and assessment of our dam with the neighborhood as a whole
- May 25, 2017 – the state performed an inspection of our dam and agreed with the developer's assessment that the dam's condition is suspect
- June 2017 – the board began looking for an engineering firm to perform an independent inspection of the dam
- July 2017 – the board found and commissioned an engineering firm to inspect the dam
- August 2017 – the board received the dam inspection report
- This brings us to tonight's meeting

## Overview of Property

The board showed a series of maps illustrating the exact location of the properties under discussion at tonight's meeting. These maps are included in the presentation slides, which are available alongside this minutes document on the Charleston Village website.

## Excerpts from Dam Assessments/Reports

The board shared several excerpts from the various assessments and reports that have been received for the dam. These come from several sources: the original developer, the state inspection agency, and the independent engineering firm that the HoA commissioned. These excerpts are available in the presentation slides, which are posted alongside this minutes document on the Charleston Village website. Additionally, the full contents of the report documents are also posted on the Charleston Village website for viewing.

## Estimate of scope of repairing dam

Per the dam inspection that the HoA commissioned, fully repairing and restoring the dam and pond would require the following:

- Locate and clear the failed outlet works
- Remove all woody vegetation (trees, shrubs) from the surface of the dam
- Install a new concrete riser and other drainage works. These must be built to today's code standards
- The estimated cost for the full scope of repair work is approximately 1.2 million dollars

## Overview of Recommended Options

The board presented the following options as the two most likely paths forward:

### Option to Sell Land

This is the board's recommendation for the best solution. Under this scenario we:

- Receive an estimated market value of \$300,000 - \$450,000 for the land that we could sell. The board currently has an offer to purchase the land for \$375,000. For any offer that we would consider accepting, including the one currently made, the board would attempt to negotiate various items as conditions for the sale. These items could include, but are not limited to, a minimum buffer space between any new development and Charleston Village homes, or a requirement on what types of homes are built in the new development.
- Transfer liability for the property, pond, and dam away from Charleston Village
- Avoid a potential special assessment to Charleston Village homeowners for the purpose of paying to repair or breach the dam. A special assessment for this purpose could require all Charleston Village homeowners to pay up to \$3,800 (or more) depending on final repair cost estimates and bids.
- Gain control over what types of homes get built next to our own homes by being able to negotiate this point as a condition of the sale

### Option to not Sell Land

This option maintains the status quo. Ramifications of this decision would include:

- Incurring ongoing maintenance responsibilities and expenses for required pond and dam upkeep
- A potential special assessment requiring all Charleston Village homeowners to pay for required maintenance of the dam and pond
- Charleston Village continuing to be liable for any damage resulting from the condition of the dam and pond
- Missed opportunity to receive a significant influx of funds to be used for other financial obligations throughout the neighborhood

### Clarification of Vote vs. Approval

Prior to tonight's meeting, there were many questions asking for clarification on whether a vote would be held deciding what to do with the property. The board answered these questions by providing the following information:

- A vote implies that there is a one-time event that will be used to make a decision. If you miss this event, your opinion will not count. This is not the process that will be used to make a decision in this case.
- This decision requires an "approval" process. An amendment has been drafted that would allow for removing the property in question from the Charleston Village common land, which is a prerequisite for selling the land. This amendment would also allow for accepting an offer to sell the land through a neighborhood vote. Ratifying this amendment would require signed approval from a minimum of 75% of households in Charleston Village.
- Henry Jones, the neighborhood's attorney provided further clarification of the following:
  - The amendment can't be filed with the county to become official until 75% of households have signed the amendment. No action can be taken to sell the land until this is complete.
  - Upon filing the signed amendment, the board could then seek formal offers to purchase the land and negotiate on these offers
  - Once the board has an acceptable offer to purchase the land, a special meeting can be held. This meeting will require advance notice, and also requires a quorum of homeowners. Similar to the regular annual HoA meeting, this quorum can be established through proxies. At this meeting, a vote can be held to approve the sale. A majority of the quorum must vote to accept the sale for it to proceed.

### Frequently Asked Questions

The board compiled a list of questions that were asked prior to the meeting, as well as a set of prepared answers to these questions. The full list is available in the presentation slides, which are posted alongside this minutes document on the Charleston Village website.

## Open Forum, Q&A

The majority of the meeting was saved for an open forum discussion. The following questions were asked:

- A homeowner mentioned that they feel that the dam's condition has never *not* been suspect, and asked what potential there is for a failure to occur.
  - The board noted that there is some seepage through the dam and deterioration of the dam structure. The inspector, however, would not give us an opinion of how long it might take for the dam to fail.
  - Our reports suggest that if the dam were to fail, the water would likely overtop Castleburg Rd downstream as well as cause flooding to downstream homes.
  - A homeowner recommended getting a formal breach analysis performed to assess what would happen if the dam were to fail
- A homeowner asked what would be done to prevent runoff from a neighboring development to impact property in Charleston Village
  - The board noted that the Town of Apex would require any new development to put measures in place such as a retention pond or buffer to restrict runoff so that it does not affect neighboring properties.
  - The attorney added that in the process of approving a sale of any land for development, the Town of Apex will review the plans for retaining storm water runoff, and would not approve the sale without sufficient plans for doing so.
- A homeowner asked whether draining the pond would affect streams that are fed by the pond.
  - The board responded that other, larger, sources also feed the main stream that runs through Charleston Village, so we do not think the stream would go away.
- A homeowner noted that the issue of selling the land presents a quality of life concern to many homeowners, especially given that many of the lots that adjoin the property to be sold were originally purchased as premium lots. The homeowner asked what is the role of the board in forming its own opinion versus going with the opinions of the body of homeowners.
  - The attorney answered that the board has a fiduciary responsibility to the homeowners' association. The board must act reasonably with as much information as they can obtain. The board has made a recommendation to the homeowners, but no action can be taken without approval from the homeowners. He further noted that, under the status quo, Charleston Village can't control what happens in the neighboring property, but selling our land could give us some control over it.
- A homeowner asked what the liability to Charleston Village if we do nothing is
  - The attorney answered that, worst case, if the dam were to fail and cause damage to property or persons, then the homeowners' association, given that we have received notice of the dam's condition, would be liable for damages due to negligence.
- A homeowner asked whether Charleston Village can legally perform a controlled breach of the dam to drain the pond

- The attorney answered that this issue is complicated by the fact that Charleston Village owns only a portion of the dam and pond, so doing so would require cooperation from the neighboring property owners.
- A homeowner asked whether the dam inspection report was shared with the neighboring property owner
  - The board answered that we have not done so because we don't want to give them more information and therefore leverage over us
- A homeowner made a formal motion to appoint a committee of homeowners to commission an independent agency to perform the process of obtaining signatures approving the amendment.
- A homeowner commented that the board appears to be biased. They also commented that they feel that more options could be presented by the board, giving homeowners more information. Specifically, they want information on options of performing a controlled breach of the dam, doing nothing, etc.
  - The board responded that we feel that we can't present several options as doing so would reduce the likelihood of approving any of them. We know that there are more options, but based on the financial information and inspections we've received, the two options presented are the most feasible.
- A homeowner asked how long we will wait to get the necessary approvals to ratify the amendment, and what happens if we don't get approval
  - The attorney answered that, if we don't get approval a special assessment would likely be required. Approving a special assessment requires a special meeting with two thirds of 60% of homeowners voting to approve. If 60% of homeowners are not present, then another meeting can be held no sooner than 30 days later. At this second meeting, a special assessment can be approved by a two thirds vote of 30% of homeowners.
- The board commented that the original request from the first developer was for us to allow them to drain the pond for us and grant them a sewer easement into our neighborhood. The developer would compensate Charleston Village \$5,000 for this easement. This request caused the board to have to assess the condition of the dam. We are currently liable for any damage that the dam or pond cause.
- A homeowner commented that they like that the option of selling the land gives us some control over a potential new development, but that they dislike not knowing all options available or what would be done with funds from a potential sale.
- A homeowner asked whether, if they vote to approve the sale but the sale doesn't proceed, would they still be required to pay a special assessment to address the condition of the dam.
  - The board answered yes. All homeowners would be required to pay a special assessment.
- A homeowner asked what happens if a special assessment is performed, but a homeowner does not pay it
  - The board answered that a lien can be placed against their home, requiring them to pay the assessment.

- A homeowner asked whether we have considered selling only a smaller portion of the land, allowing for the remainder to be kept as natural area.
  - The board answered that much of the property that could be sold is likely not suitable for building on. Additionally, we could negotiate for a larger buffer space as part of the sale, effectively keeping much of the land to be sold as natural area.
- A homeowner asked what would happen if the dam were to fail and cause damage while we are in the process of obtaining approval to sell the property
  - The attorney answered that Charleston Village would still be liable if this were to occur
- A homeowner commented that, according to the inspection report, the engineering firm classifies the dam/pond as low hazard
- A homeowner asked whether there is a process through which the process of approving the amendment can be stopped
  - The attorney recommended getting a petition signed by 25% + 1 of homeowners asking to permanently halt the process of approving an amendment to allow for the sale of the land, then presenting this petition to the board.
- A homeowner commented that there are many ongoing questions. They would like to see a report from a boring taken from the dam to assess the structural condition. They further noted that the ongoing development question isn't likely on an extended time frame, and offered their expertise as a developer to the homeowners' association.
- A homeowner asked what the cost of repairing the second dam/pond in Charleston Village (not on land to be sold) would be
  - The board responded that this second pond is in worse condition than the one that we are discussing selling. Repairing it would cost roughly an equal amount to the first. The report on the condition of both dams will be posted to the Charleston Village website alongside these minutes.
  - Fixing both dams could cost each homeowner up to \$7800 (or more) in the form of a special assessment.
- A homeowner asked why we aren't more seriously considering the option of performing a controlled breach of the dam
  - The board answered that this is an option, but is more hypothetical. It's definitely a better option than spending the money to repair the dam, but the board believes that the best option for the neighborhood is to sell the land.
- A homeowner commented that the second dam/pond should be a higher priority for the homeowners' association given its larger potential liability
- A homeowner asked what happens to the approval process if homeowners move away before it is finalized
  - The attorney commented that they would verify that 75% of homeowners at the time that the amendment is ratified and recorded have signed the amendment. Furthermore, they recommend setting a time limit on how long the approval process will last.



## Closing Comments

The board closed the meeting with the following comments:

- The presentation and minutes from tonight's meeting will be made available on the Charleston Village website.
- The board has implemented a new method of making official communications to homeowners via email. The link to sign up for this email list is in the presentation slides. It is also on the Charleston Village website home page, and will additionally be posted to the neighborhood Facebook page.
- The board reminded the homeowners of the annual meeting to be held on November 13<sup>th</sup>. The board asked that homeowners make an effort to attend or complete and send in completed proxy forms.
- The board called for homeowners to volunteer to help with various committees.

Meeting adjourned at approximately 9 PM.