

## Annual Meeting Opening Statement - LHOA President

### 1. *Financial statement*

We have come a long way... our bank account is \$10k from a low of \$3k last January. This is in large part due to donations both cash and in kind and collection efforts paying off. More about that later.

That other number you see on the Balance sheet represents the real estate assets owned by Lake Hollyhill Owners Association. When you bought in here, you bought two things along with the land your house sits on - the right to live in a residential neighborhood, and a share in this lake and these parks, set up decades ago. This HOA has title to the lake and this park, several acres on the other side of the dam, two lots on the west side and two lots on the east side of the lake. It's hard to put a price tag on all that, but I figure the land alone is at something over \$450,000. We have about 184 landowners here - based on that, you can estimate your share. Now, we can either manage that asset in such a way as to add value to your property, or we can let it deteriorate to the point that it's a liability. In theory, it could be sold, but that takes a majority vote - something very hard to get - or a court order. In the meantime, we are all collectively responsible for what happens here. If someone gets seriously hurt or killed because we have neglected this asset, the lawsuit isn't against the Board. It's on all of us, because we elect the Board; we vote to set the dues; we decide to maintain it or not. The best thing we can do is get General Liability Insurance coverage. At this point, that is out of reach, but in the meantime we need to maintain the facilities, we need to put up signage, we need people to sign waivers, we need to keep an eye on things and enforce the rules within reason.

### 2. *In-kind donations. Thank you to all volunteers; remaining work needed to catch up.*

Volunteers kept the grass cut, painted the fence, cut, removed, and chipped or burned all the trees on the front of the dam of 6 inches or less, replaced rotten fence posts on the west side, sprayed alligator weed. That saved us easily thousands of dollars (in blue). I want to thank David Piercey, Chad Tietje, Juan Beltran Sr., Helen Kirsch, for help on the lake and dam, as well as my wife and teenage kids for stuffing envelopes, printing invoices, and digging postholes. We have additional help with cutting the park here going forward. To get completely caught up, we will need to clear out the spillway, and clear trees off the back of the dam next year. If you want to volunteer, we ask you to sign a liability waiver before stepping up.

### 3. *Income - Collections efforts - money raised from overdue assessments vs. current assessments collected.*

So far this year, we have collected dues from 55% of our members. That brings our number of current accounts to 103. About \$5k of our income came from 2026 dues. The other \$4500 came from 34 people paying on overdue accounts and related fees. There remain another 16 accounts that paid last year but not yet this year. If they pay, it will bring in another \$880. The bulk of the assessments owing come from accounts 3 to 5 years in arrears, owing \$12k total, much of which we are unlikely to collect unless the property is sold. Liens were placed on the most overdue accounts last year; this year we

added the step of turning them over to a collection agency with the power to report to a credit bureau. I don't like filing liens, but if we take no legal action, we are establishing the precedent that these dues are optional. They have never been optional; liens have been filed for lack of payment going back to the early 1970's.

4. *Expenses - Budget estimate - what are we going to do when most income comes from annual current assessments?*

To give a real understanding of our expenses, we included those expenses covered by donations, either cash or as volunteer work. Obviously some of it is estimated (in blue) - we don't know how much was saved by us pulling the trees off the dam because we never asked for estimates. I guarantee you these numbers are low. I believe I estimated the cutting of the parks for all of last year at \$2100. When we last had it done by a contractor, it was for sure \$3k. Beyond that, we have our electricity bill and property taxes at about \$750/year, the website at \$250, mailing costs of \$800. These are non-negotiable, although if everyone were to sign up for email delivery, we could probably save \$500 in mail and paper costs. That's not gonna happen however, and we have legal requirements for notices etc. so that number is only going up.

The rest of this might be considered discretionary on some level. I paid for a D&O insurance policy out of my own pocket. That is supposed to protect Board members from personal lawsuits. Taking on this position without some protection is frankly insane, and we shouldn't expect it. I will continue to pay this from my own pocket until the finances are stabilized because there is no other option. We paid \$433 this fall to rent a dumpster to encourage Members to clean up. We contracted with a Collection Agency, as mentioned before, something we should not have to do next year. The rest of this, and the bulk of our concern, is legal fees, which can obviously be open ended, but which we can't avoid if we want to defend our property rights. Altogether, it looks like a normal year costs us about \$15k. We took in about \$10k and the rest of it was made up for by donations. However, \$5.5k was overdue accounts and fees - these will be tapped out once they are paid off. If we project a future where the current 120 or so accounts are being paid annually and we are getting little or nothing from overdue accounts, our income will only be \$6k, less than half our expenses. It is for this reason that we put a proposal on the ballot to allow the sale of a certain number of park passes to people from surrounding areas that would gladly pay for the right to fish in the lake - I hope you will read and vote for the measure, and we will look for other ways to voluntarily raise funds in the future. Regardless, we seriously need to consider raising dues to at least \$75 (this roughly tracks with inflation). If I am still President, there will be a special vote on this issue next fall.

5. *Enforcement efforts - are deed restrictions legit? Focus on maintaining a residential neighborhood.*

As mentioned, a big expense bucket is legal fees. Based on our founding documents, we have no real means of deed restriction enforcement other than to take a violator to court - although we might get our attorneys' fees back if we win, it takes money to file in the first place. We obviously can't afford to satisfy everyone, so a lot of things have been let slide. The one thing we still just about have is a residential neighborhood. However, it

is hard to look at Elmer Gutierrez's 3 small lots on W Hollyhill, full of trucks and trailers and miscellaneous equipment, without coming to the obvious conclusion that he is running a commercial enterprise out of his property. After several warnings and a hearing, Mr Gutierrez refused to see the light, so the decision had to be made: either we take him to court or we have to allow anyone to run any business they like in here. And so, we filed suit against him in district court. Naturally, Mr Gutierrez has retaliated in kind. Nevertheless, I'm pretty sure that we will prevail against Mr. Gutierrez at the injunction hearing in July and whenever the full lawsuit goes to trial, because we have precedent on our side.

6. *Legal battle - are Bylaws legit? Charles et al. vs LHOA et al.*

Last year, you may recall, Members Raymond Charles and Vickie Balestrine found a lawyer to back up their position that the corporate entity, Lake Hollyhill Owners Association, Inc. officially ceased to exist in 2018, and therefore the Bylaws are null and all actions by the Board are fundamentally illegal. Our legal counsel looked at these claims last summer and dismissed them, but they persist. Soon after we filed suit against Elmer Gutierrez, he sought out the same lawyer, and, joined by another neighbor, Victor Altamirano, together they filed a lawsuit. They claim, once again, that the Association has no right to collect assessments or enforce deed restrictions. The practical implications of this dubious legal theory are pretty clear: no one would have the funds, incentive or authority to maintain the lake, turning it from an asset into a liability, and if someone wants to put a scrapyard next to your house, you are on your own. To save \$50/year, they would take away your property rights and risk your future property values. Obviously, we are going to fight this, not only because it is the duty of the Board to uphold the Bylaws, but because they made the mistake of naming myself and several other Board and former Board members explicitly as Defendants. Unfortunately, instead of your dues going toward productive things like stocking the lake, controlling the alligator weed, or building a kid's playground, they will get diverted to paying lawyers.

7. *Elections*

Besides the above, I have been taking incoming from both sides on the changes we've made to the way elections are run. Given our financial state, we are forced to interpret these statutes and codes largely without the benefit of a lawyer... As they say, "no good deed goes unpunished".

So here's why we are doing what we are doing. The Bylaws state:

***Election of the Board shall be by secret written ballot at the Annual Membership Meeting in April. An absentee ballot shall be mailed to each member unit not less than 20 days prior to the date of the Annual Membership Meeting. Ballots will also be available on request prior to and at the annual meeting.***

This means that we need to accept mail-in ballots, but somehow ballots should be hidden/anonymous. It was none other than Vickie Balestrine who pointed this out to me last year. Thus the Voter IDs and envelopes. Ideally, we could match signatures - but that would require us to have prior samples of everyone's signature to compare to - it's just not practical.

The Bylaws also state:

***No one shall be entitled to participate in the affairs of the Association or hold office therein except members in good standing as to the payment of all maintenance fee assessments.***

In the past (before my time), it was our practice to follow the Bylaws exclusively and discount votes from those who were not current on their dues. However, at some point, the State code governing POAs changed. Section 209.0059 states:

***RIGHT TO VOTE. (a) A provision in a dedicatory instrument that would disqualify a property owner from voting in a property owners' association election of board members or on any matter concerning the rights or responsibilities of the owner is void.***

It's pretty clear from this that we must allow owners to vote regardless of their standing. This was adopted by the Board last year, and this is our current practice. Elsewhere, Section 209.00591 states:

***Except as provided by this section, a provision in a dedicatory instrument that restricts a property owner's right to run for a position on the board of the property owners' association is void.***

This makes it clear that members not in good standing are allowed to run for office. It does not explicitly say that they can hold office, which, as I have pointed out before, would be a clear conflict of interest and breach fiduciary duty. If somehow someone were sworn in with the overt intention of ignoring the bylaws, the first thing the dues paying members should do is get together and sue to have them removed. So, if you elect someone who is not current on their dues, your votes will be counted as an act of protest. If their failure to pay was just an honest oversight, they will be given a chance to get current and join the Board. Otherwise, they will not be seated. This is not just us doing this, it is the position being taken by POAs all over the state.