

The following is the Johnson's Island Property Owners Association ("JIPOA") Trustees explanation regarding a variety of issues brought up by a few dissident homeowners on a web site called Johnson's Island News.

In their web site they (we are not sure who "they" are because their attorney from Kocher&Gillum has represented to the Trustees that they don't want to be recognized at this time) accuse past and present Trustees and members of JIIG of conspiring to disenfranchise JIPOA as the governing body for homeowners in Bayhaven and Shiloh subdivisions. Please note that JIPOA Trustees as mentioned in the President's letter offered to meet with the parties represented by Kocher and Gillum to discuss their "issues". The Trustees were turned down.

### **Deeded obligations and authority**

In 1950's our island was subdivided and a plat was created for Bay Havens estates and later Shiloh subdivision for lots now generally known as JIPOA homeowners. In this platting an entity was also created called Johnsons Island Club (JIC) for administering the common purposes, facilities, and benefit of the property owners therein. There were specific obligations and powers given to this entity as expressed in its Articles of Incorporation as filed with the state of Ohio and tied to the entire subdivision(s) upon its creation. These rights and obligations have been affirmed by the court in various cases since to "run with the land" and continue forward today administered under the legal successor to JIC, JIPOA. JIPOA's Code of Regulations is merely the operating rules set-up to administer the rights given in the platted Bayhavens and Shiloh subdivisions.

### **JIPOA and its code of Regulations**

JIPOA has modified its execution and methods of fulfilling its rights obligations through a "code of regulations" which point to the Articles of Incorporation. Think of this as the means and rules as democratically determined by the homeowners to execute the obligations and rights granted in the subdivision platted restrictions. Along the way, our

world evolved into a more litigious one. Homeowners not agreeing with the will of the majority have tested the rights of the organization to assess them in general and for specific line item purposes.

“Membership” and legal expense to prevent development were disputed in court. The results of these disputes were various rulings from the court. All these ruling pointed to the then in existence JIPOA code of regulations looking for the stated rights of JIPOA and obligations of the homeowners. Thus in the Bremenour (Bremenour v. Johnsons Island Property Owner’s Association, Ottawa County Court of Common Pleas, Case No. 23134), and Nachman (Johnson’s Island Property Owner’s Association v. Sigmund W. Nachman, et. al. Ottawa County Court of Appeals, 97-CVE-098). cases the court ruled that membership could not be required.... as the code of regulations, Articles of Incorporation, and deed restrictions did not require it. In these same cases the court affirmed that the deeded obligations to pay a “fair share” existed. Please note that no court has ever disputed that there exists a deeded (subdivision level) JIPOA restriction and homeowner obligation to Johnson’s Island Club (now JIPOA). The issues all were determined in many cases to the detriment of the general membership due to the ineffectual “rules” as determined by homeowners and expressed in our code of regulations. In fact, back as far as 1990’s in the Nachman decision the judge clearly stated that his ruling was the only course unless JIPOA reorganized (changed its Code of regulations). Based upon the ineffectual CoR we placed the court in difficult legal positions. There existed a deeded obligation for JIPOA to exist and serve the common purposes balanced against JIPOA writing a Code of Regulations that presumed choice of membership. So as most courts do, they did their best to fairly determine the issues given the legal points and the in existence “rules” we as a group established through our CoR. They key issue is that the old CoR created the opportunity for debate on what the common purposes and expenses were.

Asking for the courts to annually administer “budget line items” is not practical nor something a court will envision. As such, judges had to make a “time and place” decisions based upon the information in evidence at the time. In every ruling “hints” were given to us to change the CoR. We finally took the hint last year and wrote a code of regulations premised on the original deeded restrictions that applies to property ownership vs. a choice of membership. We stated that the

common purposes are those that are determined by the owners through democratic vote and representative execution through its elected trustees. Simply put, many of the problems of the past were created by an ineffectual code of regulations which needed revision to reflect the nature of our rights, obligations and the society we live in today. Our new CoR is the best effort of your current trustee group to protect every property owner's interest in our island.

### **History of JIPOA Collection practices**

The past due notices sent in May to folks who were 120 days past due in payments contained "harsh lawyer words" regarding "next steps". Maybe it should have been worded, handled and explained differently. But please understand that only those not paying actually receive the escalating requests for payment. Like any other bill, the longer you delay payment the more "serious" the collection process becomes. JIPOA has been filing liens on property owners not paying dues for decades. Surprised? There are several legal cases which pertain to the responsibility of Johnsons Island property owner's to financially support common expenses which provide benefit to all Islanders.

In summary, three decades of litigation have provided pretty clear guidelines as to how JIPOA is to proceed regarding membership and requirements for financial contribution. This guidance has been finally adopted as your JIPOA Trustees took on the task to amend the Code of Regulations over the past year. We have codified with the regulations that: 1) membership in JIPOA cannot be mandated 2) we as Islanders all have a "common expense" responsibility to financially contribute to operating costs. 3) operating expense categories are clearly stated 4) actual annual amounts of dues are voted on by the owner's of Bay Haven Estates and Shiloh subdivisions.

### **BHOA vs JIPOA and Formation of the Road Commission**

Baycliffs Homeowner's Association (BHOA) sued Johnson Island Property Owner's Association in 2004 claiming that the Baycliff's Corporation had deeded to each BHOA owner/member unencumbered access over Gaydos Dr., the Causeway, and Confederate Dr. and, simply,

they had free access to get to their homes. (Baycliffs Home Owner Association v. Johnson Island Property Owner's Association et.al., Ottawa County Court of Common Pleas, case 04-CUH-202). BHOA further argued that JIPOA's operation of the toll gate constituted an impediment to BHOA's unencumbered access.

In a series of ruling during 2006, the court rendered their decisions:

- 1) BHOA members/owners had been granted an easement over Gaydos Drive, the Causeway, and Confederate and Memorial Shoreway.
- 2) JIPOA's imposition of a toll interfered with BHOA's easement.
- 3) BHOA's easement rights extended to their "guests, invitees, and licensees and assigns".
- 4) BHOA is entitled to a permanent injunction preventing JIPOA from charging any of its guests, invitees or licensees a toll to access Baycliffs subdivision.
- 5) JIPOA was found in contempt of the May 26, 2006 court ruling as a result of requiring tolls for individuals wishing to attend the all-island garage sale. JIPOA incurred approximately \$15,000 in fines for this contempt citation.
- 6) BHOA had a fair share obligation to maintain roads over which it enjoyed easement rights. In an October 2006 Judgement Entry, the judge stated "the sole dispute between the parties is the extent of each parties obligation to contribute to maintenance, repair, and improvement of Gaydos Dr., the Causeway, Confederate Dr. and Memorial Shoreway. However, the issue is not before the court at this time".

On November 29, 2006 a meeting was held the office of Vorys, Sater, Seymor and Pease to confer with JIPOA's counsel on the merits of appealing the decisions that had been rendered over 2006 and were overwhelmingly against JIPOA. Attending the meeting were the officers and legal committee members of JIPOA.

In brief, JPOA was advised that continuing an appeal would be costly, an additional \$50,000 to \$100,000 to the approximately \$400,000 that had been spent in the BHOA v. JIPOA, Pfeister-Manifold v. JIPOA, and the Metzker v. JIPOA lawsuits. Further prospects for prevailing in appeal were 50-50 at best. Efforts throughout the summer of 2006 then were focused on settling the case. In the autumn an appointment of an All Island negotiation team consisting of BHOA and JIPOA residents resulted in the formation of the Road Commission.

### **Gillum vs. JIPOA**

At the annual JIPOA meeting last September two proposals were made that in 20/20 hindsight required more input from JIPOA property owner's. First, was the amending of our Code of Regulations; and second, was the trash proposal. We listened to JIPOA owners and rescinded the trash proposal. We also moved to a more transparent process to amend the Code of Regulations. We listened and conducted an all-island vote, in spite of the fact that the Trustees had the authority to amend the code themselves with a simple majority vote. The island voted, and by 156-9 we had a new code.

It appears to us that a certain few islanders are exploiting the ill will generated over trash and the Code of Regulations, among other issues, to create mistrust among Islanders. Bizarre conspiracy theories have been concocted which impune the integrity of fellow islanders. What is particularly confounding is that this group of dissidents will not identify themselves, will not articulate their requests, and will not engage in discussions with the Trustees after repeated attempts to do so. All we know is that there is a group of Islanders who are delinquent in paying their dues. If this dispute is over financial support of Johnsons Island, all Islanders should please take note:

- 1) Johnsons Island is being run on a frugal basis. See the budget projections in the current newsletter.
- 2) All budgets are approved by a vote of the membership each September.

What these dissidents are intimating is that they should get some preferential treatment in dues calculations. The courts have repeatedly stated that all owners have a fair share responsibility to financially support the Island. Even if there wasn't the case law, this attitude violates any sense of community.

### **Where does this leave us?**

Peace is breaking out all over JI except within JIPOA. Our preliminary budget for JIPOA in 2010 is around \$240, down from \$ 420 last year.. a 44% reduction. We encourage all islanders to review the budget detail in the newsletter before acting rashly and ask a simple question.... What am I seeking to gain by joining this group and is this good for my island? For the vast majority of JIPOA residents who have come out in support with kind words and emails... we say thank you. We are doing our best to represent your interests.

Respectfully Submitted:  
Trustees of Johnson's Island