

NORTH SHOAL CREEK NEIGHBORHOOD ASSOCIATION
BOARD MEETING

January 21, 2008 & January 27, 2008

The North Shoal Creek Neighborhood Association board meeting was called to order by President Jeff Russell at 6:36 p.m. at 8204 Sandlewood Cove, Austin, Texas, on January 21, 2008. All board members were present: Jeff Russell, Helene Maham, Claudell Migl, Roger Wines, Chris Jones, Sandy Perkins, Ken Moyer, Sherran Williams, Lynda Oakes, Jerry Horn and Betsy Todd. Guests included Jon Menegay, David & Georgia Mead, Steve Metcalf, Michele Rogerson, developer planners and architect for the developer, Mark Romberg.

After introduction of the board, Jon Menegay, co-chairman of the development committee, gave a brief overview of the plans for the Village Shopping Center followed by a presentation by Steve Metcalf for the developer of the Center, Lamy Group. It was stressed that as many as possible should attend the planning commission meeting on January 29 as well as the City Council meeting on February 14.

It was resolved to let the development committee continue to negotiate with the developer and come back to NSCNA board by the 28th. At that point, an agreement would be just a board agreement and not a neighborhood agreement. The development committee plans to have an agreement from the board or postpone the hearing before the planning commission. The development committee members are Co-Chairpersons, Betsy Todd and Jon Menegay, Roger Wines, Randy Alexis, Chip Rosenthal, Mary Arnett, Mary Jane and Kevin Wier and the Zavalneys.

Jerry Horn moved that the meeting be adjourned to Sunday, January 27, 2008, at 5 p.m. to consider the balance of tonight's agenda and recommendations of the development committee. Seconded. Motion carried (10 for 1 opposed).

The Board meeting was reconvened on January 27, 2008, at 5 p.m. at 8204 Sandlewood Cove, Austin, Texas, with all board members present except Sherran Williams. Guests included David and Georgia Mead

It was resolved to ratify the call for the special meeting on February 4, 2008, at the Village.

Without objection, it was resolved that the dates for the general meetings of the association for the year will be March 4, 2008, May 6, 2008, and October 7, 2008.

Without objection, it was resolved that the Board meetings will be held the 3rd Monday of each month, if needed, at a place to be determined. If no meeting is necessary, the meeting for that month will be cancelled.

Betsy, co-chair of the development committee, reported that she was pleased that the hearing before the planning commission regarding the Village had been postponed for two weeks, that date

being February 12, 2008. Without objection, it was resolved that the development committee be delegated to come up with a final list of considerations and recommendations.

Jeff moved to rescind the motion made at the October 16, 2007, Board meeting which reads as follows: "that the Board of Directors authorize a donation of \$2,000 to Allandale Neighborhood Association to be delivered immediately." Seconded by Helene Maham. Discussion followed and it was pointed out that the letter received from the Law Firm of Clark, Thomas and Winters advised the board that the Sept. meeting was out of order. (Copy of letter attached). Ken Moyer called for the question – for rescinding the motion: Chis Jones, Helene Maham, Jerry Horn, Linda Oakes, Ken Moyer, Sandy Perkins, Claudell Migl and Jeff Russell. Opposed: Roger Wines and Betsy Todd. Motion passed

Jeff moved to rescind the motion made at the October 16, 2007, Board meeting which reads as follows: "to add Helene back to signature card at Bank of America along with 3 other board members." Seconded by Sandy Perkins. For rescinding the motion: Chris Jones, Helene Maham, Jerry Horn, Linda Oakes, Ken Moyer, Sandy Perkins, Claudell Migl, Jeff Russell and Roger Wines. Opposed: Betsy Todd.

Roger moved that the minutes of the December 18, 2007, Board meeting be approved as corrected. Seconded by Sandy Perkins. Passed

Budget – Helene Maham, Treasurer, suggested that we postpone preparing a budget until all committee chairpersons have been selected.

Crime Watch signs – Betsy will check with Mary Arnett to see what the status is.

Pillow – Roger Wines moved that we pay for one visual presenter for \$532.00 for Pillow Elementary and continue to see if our obligation for the marquee was taken care of. Seconded by Ken Moyer, passed unanimously.

Audit committee – to be appointed
Safety - Roger Wines
Traffic – vacant
Development – Betsy Todd and Jon Menegay
By-laws – Dallas Maham
Social - Sandy Perkins
Media - Chris Jones
Beautification – vacant

No further business coming before the meeting, the meeting was adjourned at 6:45 p.m.

Respectfully submitted,

Claudell Migl

CLARK, THOMAS & WINTERS

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September 28, 2007

Mr. Malcolm St. Romain, Jr.
President
North Shoal Creek Neighborhood Association
8411 Millway
Austin, Texas 78757

Re: Action taken at the Special Meeting of Members of the NSCNA on
September 18, 2007

Dear Mr. St. Romain, Jr.:

Please be advised that the law firm of Clark, Thomas & Winters has been retained by Jeff Russell, Claudell Migl, and Chris Jones regarding the actions taken at the Special Meeting of Members on September 18, 2007 approving the expenditure of \$2,000 by the North Shoal Creek Neighborhood Association (the "NSCNA") towards legal fees incurred by the Allandale Neighborhood Association (the "ANA") while opposing the proposed Northcross Mall redevelopment (the "Action"). As you know, our clients are members of the Board of Directors of the NSCNA.

It is our clients' position that the Action violates Texas state law and the organizational documents of NSCNA, and is further rendered null and void under Robert's Rules of Order. First, the Action violates state law as it exceeds the scope of powers afforded to the NSCNA under the Texas Non-Profit Corporation Act, TEX.REV.CIV.STAT.ANN., art. 1396-2.02 (A)(13)(2007). Art. 1396-2.02(A)(13) reads "each corporation shall have the power...[t]o make donations for the public welfare or for the charitable, scientific, or educational purposes." This limited scope of power is reiterated in the Bylaws for the North Shoal Creek Neighborhood Association (the "Bylaws"). Under Article XI of the Bylaws the scope of powers afforded to the NSCNA's relating to the expenditure of funds by the NSCNA is outlined as follows:

"The Association's net earnings shall be devoted only to charitable, educational, or recreation purposes that are within the stated purposes for this Association."

Because the NSCNA can only lend money for a "charitable, educational or recreational purpose" under Article XI, an action voting to expend funds on legal fees incurred by the ANA exceeds the scope of powers afforded to the NSCNA under the Texas Non-Profit Corporation Act. TEX.REV.CIV.STAT.ANN., art. 1396-2.02 (B)(2007) states that the "[a]uthority of officers and director to act beyond the scope of the purpose or purposes of the corporation is not granted by any provisions of this Article." Paying the legal fees owed by another neighborhood association clearly violates the limited scope of power afforded to the NSCNA's relating to the expenditure of funds and is not authorized under Texas state law. Therefore, even if the membership elected to expend the funds, the Board of Directors is prohibited from doing so under Texas state law.

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Second, it is our clients' position that the Action should have been construed only as a vote towards association policy and not a vote authorizing the expenditure of funds. Article VII, paragraph 8 of the Bylaws clearly provides that "[e]xpenditures of twenty-five dollars (\$25.00) or more shall be approved by the Board of Directors." The Bylaws do not grant the membership the right to vote on the expenditure of funds—such power is clearly vested only in the Board of Directors. If the Board of Directors is not allowed to vote on this issue, then the Action shall have violated the Bylaws. Regulations such as the one provided in Article VII, paragraph 8 are put into place so that the Board—the NSCNA entity charged with reviewing and approving the NSCNA's budget—is provided the opportunity to assess each material expenditure before it is made, to ensure that it makes financial sense for the NSCNA. Therefore, not ensuring that the Action is reviewed and approved by the Board before the expense is made could potentially expose the board members to the claim that the Board failed to exercise ordinary care in providing for this expenditure to be made, as well as to the claim that the Action violates the requirements set out in Article VII, paragraph 8 of the Bylaws.

In addition, TEX.REV.CIV.STAT.ANN., art. 1396-2.11(A)(2007) states that written or printed notice of a special meeting must be delivered "not less than ten (10) days before the date of the meeting, not "one week" as required by Article VI(3) of the Bylaws. This statutory notice requirement cannot be amended by an association's bylaws. Statutorily the notice of the special meeting was required to be sent by September 8, 2007. As shown in attached email from Mary C. Arnett, notice of the special meeting was not sent until September 9, 2007. Because the Special Meeting of Members on September 18, 2007 was not noticed properly, any action taken at the meeting is void.

Finally, the Action taken is rendered null and void under Robert's Rules of Order. Further, the Action is troubling in that special rules of procedure for the Special Meeting were utilized with no formal adoption of those rules. Without a formal adoption of the special rules of procedure, the procedure followed during the Special Meeting is suspect and subject to legal challenge. Article XII, Parliamentary Authority of the Bylaws provides that Robert's Rules of Order shall govern, and, whether properly modified by special rules or not, Robert's Rules of Order still apply. Robert's Rules of Order, Chapter 10—*Improper Motions* states that any action taken which violates the Bylaws is null and void. As outlined above, a vote to expend NSCNA funds outside of the limited scope afforded to the NSCNA in Article XI of the Bylaws, or an effort to make the expenditure without Board approval, as required by Article VII, paragraph 8 of the Bylaws, violates the Bylaws, and thus according to Robert's Rules of Order renders the Action null and void.

For the reasons outlined above, it is our clients' position that the Action taken by vote of the Special Meeting on September 18, 2007 is null and void. Further, any action taken in furtherance of this improper action is a breach of the Board's fiduciary duty and therefore could potentially subject each member of the Board of Directors to individual liability and the NSCNA to an action under TEX.REV.CIV.STAT.ANN., art. 1396-2.02(B)(2)(2007). As you know Article

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XIV of the Bylaws states that "no indemnification shall be paid" for actions which create personal liability on each of the directors.

Our clients would like to receive written confirmation from the Board of Directors by October 5, 2007 that no action in furtherance of the vote at the Special Meeting on September 18, 2007 shall be taken. If such written confirmation is not received by said date, our clients reserve the right to exercise their legal rights to the full extent of the law.

Sincerely,



Dowe Gullatt

CC: Jeff Russell, North Shoal Creek Neighborhood Association
Claudell Migl, North Shoal Creek Neighborhood Association
Chris Jones, North Shoal Creek Neighborhood Association
Helene Maham, North Shoal Creek Neighborhood Association
Mary Jane Weir, North Shoal Creek Neighborhood Association
Mary Arnett, North Shoal Creek Neighborhood Association
Sandy Perkins, North Shoal Creek Neighborhood Association
Trey Hamilton, North Shoal Creek Neighborhood Association
Roger Wines, North Shoal Creek Neighborhood Association
Laura Zimmerman, North Shoal Creek Neighborhood Association
Jennifer S. Cook, Clark, Thomas & Winters, PC