

Monument Hill Property Owner's Association

Minutes of January 13, 2022

Board of Directors Meeting

Directors in attendance: Mark Hermes, Cleo Schneider, Mike Wallace, and (by phone) John Etue

Directors absent: Tracy Head

Visitors: None

Meeting called to order at 6:34 p.m. by President Mark Hermes.

Approval of minutes from December 14, 2021 meeting: Cleo moved, Mark seconded, motion passed.

Treasurer's Report: Mike

Checking balance (12/31/21): \$27,880.86

Extraordinary expenditures: \$3,750 to Tatonka LLC (Zoch) for esplanade maintenance

Delinquent accounts (12/31/21): \$486.98 (down from previous month of \$579.98)

Restrictions:

- (a) **Complaints (201 Richard Rd.)** for unkempt yard and nuisance. Cleo reported that per authorization from the Board on December 14, 2022, he contracted with Alfredo Martinez, on December 15 on behalf of MHPOA, to mow and remove trash from the property. Cleo reported that Alfredo had been previously hired to maintain the property by its caretaker but did not continue maintenance as he had not been paid for those services. Cleo paid Alfredo \$200 by MHPOA check for services performed in December on behalf of MHPOA. Mike moved and Cleo seconded a motion that the ordered by MHPOA and paid to Alfredo Martinez in the amount of \$200 be charged at 150% (\$300) and added to the Delinquent accounts for property dues of the Alice Rogers Estate. Motion passed unanimously.

Old business:

- (a) Although not listed on the agenda as old business, Mark reported he would develop an RFP for maintenance on esplanades and bring the matter to the next meeting for Board consideration.
- (b) **Website renewal** (split 50/50 with FCWCID): Cleo moved and Mike seconded approval to pay its 50% share of the website renewal. Motion passed unanimously.

New business:

Information within two attachments to the agenda was discussed. No action was taken. The attachments are made a part of the minutes:

Attachment A: Open Meetings Requirements

To: MHPOA Board
From: Mike G. Wallace
Date: January 13, 2022

Since joining the Board this summer, I have wondered if the board was subject to the requirements of the Texas Open Meetings Act (TOMA). I asked County Attorney Peggy Supak to provide clarification and she directed Assistant County Attorney James Herbrich to respond. Please read his email below and see if we agree that the Board is not subject to the strict requirements of TOMA regarding its board members training, conversations among members outside of a meeting in which no formal action is taken, and member participation in meetings by telephone. James' response below confirms to me that the Board's practices comply with Chapter 209 of the Texas Property Code.

Mr. Wallace,

Mrs. Supak requested that I look into this matter for you since she is tied up in court today. The short answer is that you Home Owner's Association is subject to some form of an open meetings act. Some HOA's are subject to the Texas Open Meeting Act and those that are not subject to the TOMA still have to have open meetings, the rules are very similar, but a little relaxed. It depends on how and when MHPOA was set up.

Texas Government Code Sec. 551.0015 describes the HOA's that are subject to the TOMA. Please see below. Chapter 209 of the Texas Property Code sets out the Texas Residential Property Owners Protection Act. If you HOA doesn't fall under 551.0015 then it falls under 209 of the Texas Property Code which requires open meetings with similar if not identical protections as the TOMA. Please see chapter 209 below.

I hope the statutes below answer your questions. I only attached one of many statutes in Chapter 209. The rules of how to conduct the HOA meetings that aren't subject to the TOMA can be found in Chapter 209 of the Texas Property Code.

Thanks and Good Luck,
James Herbrich

Sec. 551.0015. CERTAIN PROPERTY OWNERS' ASSOCIATIONS
SUBJECT TO LAW.

(a) A property owners' association is subject to this chapter in the same manner as a governmental body:

(1) if:

(A) membership in the property owners' association is mandatory for owners or for a defined class of

owners of private real property in a defined geographic area in a county with a population of 2.8 million or more or in a county adjacent to a county with a population of 2.8 million or more;

(B) the property owners' association has the power to make mandatory special assessments for capital improvements or mandatory regular assessments; and

(C) the amount of the mandatory special or regular assessments is or has ever been based in whole or in part on the value at which the state or a local governmental body assesses the property for purposes of ad valorem taxation under Section 20, Article VIII, Texas Constitution; or

(2) if the property owners' association:

(A) provides maintenance, preservation, and architectural control of residential and commercial property within a defined geographic area in a county with a population of 2.8 million or more or in a county adjacent to a county with a population of 2.8 million or more; and

(B) is a corporation that:

(i) is governed by a board of trustees who may employ a general manager to execute the association's bylaws and administer the business of the corporation;

(ii) does not require membership in the corporation by the owners of the property within the defined area; and

(iii) was incorporated before January 1, 2006.

(b) The governing body of the association, a committee of the association, and members of the governing body or of a committee of the association are subject to this chapter in the same manner as the governing body of a governmental body, a committee of a governmental body, and members of the governing body or of a committee of the governmental body.

Sec. 209.0051. OPEN BOARD MEETINGS. (a) This section does not apply to a property owners' association that is subject to Chapter 551, Government Code, by application of Section 551.0015, Government Code.

(b) In this section, "board meeting":

(1) means a deliberation between a quorum of the voting board of the property owners' association, or between a quorum of the voting board and another person, during which property owners' association business is considered and the board takes formal action; and

(2) does not include the gathering of a quorum of the board at a social function unrelated to the business of the association or the attendance by a quorum of the board at a regional, state, or national convention, ceremonial event, or press conference, if formal action is not taken and any discussion of association business is incidental to the social function, convention, ceremonial event, or press conference.

(c) Regular and special board meetings must be open to owners, subject to the right of the board to adjourn a board meeting and reconvene in closed executive session to consider actions involving personnel, pending or threatened litigation, contract negotiations, enforcement actions, confidential communications with the property owners' association's attorney, matters involving the invasion of privacy of individual owners, or matters that are to remain confidential by request of the affected parties and agreement of the board. Following an executive session, any decision made in the executive session must be summarized orally and placed in the minutes, in general terms, without breaching the privacy of individual owners, violating any privilege, or disclosing information that was to remain confidential at the request of the affected parties. The oral summary must include a general explanation of expenditures approved in executive session.

(c-1) Except for a meeting held by electronic or telephonic means under Subsection (c-2), a board meeting must be held in a county in which all or part of the property in the subdivision is located or in a county adjacent to that county.

(c-2) A board meeting may be held by electronic or telephonic means provided that:

(1) each board member may hear and be heard by every other board member;

(2) except for any portion of the meeting conducted in executive session:

(A) all owners in attendance at the meeting may hear all board members; and

(B) owners are allowed to listen using any electronic or telephonic communication method used or expected to be used by a board member to participate; and

(3) the notice of the meeting includes instructions for owners to access any communication method required to be accessible under Subdivision (2)(B).

(d) The board shall keep a record of each regular or special board meeting in the form of written minutes of the meeting. The board shall make meeting records, including approved minutes, available to a member for inspection and copying on the member's written request to the property owners' association's managing agent at the address appearing on the most recently filed management certificate or, if there is not a managing agent, to the board.

(e) Members shall be given notice of the date, hour, place, and general subject of a regular or special board meeting, including a general description of any matter to be brought up for deliberation in executive session. The notice shall be:

(1) mailed to each property owner not later than the 10th day or earlier than the 60th day before the date of the meeting; or

(2) provided at least 144 hours before the start of a regular board meeting and at least 72 hours before the start of a special board meeting by:

(A) posting the notice in a conspicuous manner reasonably designed to provide notice to property owners' association members:

(i) in a place located on the association's common property or, with the property owner's consent, on other conspicuously located privately owned property within the subdivision; or

(ii) on any Internet website available to association members that is maintained by the association or by a management company on behalf of the association; and

(B) sending the notice by e-mail to each owner who has registered an e-mail address with the association.

(f) It is an owner's duty to keep an updated e-mail address registered with the property owners' association under Subsection (e)(2)(B).

(g) If the board recesses a regular or special board meeting to continue the following regular business day, the board is not required to post notice of the continued meeting if the recess is taken in good faith and not to circumvent this section. If a regular or special board meeting is continued to the following regular business day, and on that following day the board continues the meeting to another day, the board shall give notice of the continuation in at least one manner prescribed by Subsection (e)(2)(A) within two hours after adjourning the meeting being continued.

(h) Except as provided by this subsection, a board may take action outside of a meeting, including voting by electronic or telephonic means, without prior notice to owners under Subsection (e), if each board member is given a reasonable opportunity to express the board member's opinion to all other board members and to vote. Any action taken

without notice to owners under Subsection (e) must be summarized orally, including an explanation of any known actual or estimated expenditures approved at the meeting, and documented in the minutes of the next regular or special board meeting. The board may not, unless done in an open meeting for which prior notice was given to owners under Subsection (e), consider or vote on:

- (1) fines;
- (2) damage assessments;
- (3) initiation of foreclosure actions;
- (4) initiation of enforcement actions, excluding temporary restraining orders or violations involving a threat to health or safety;
- (5) increases in assessments;
- (6) levying of special assessments;
- (7) appeals from a denial of architectural control approval;
- (8) a suspension of a right of a particular owner before the owner has an opportunity to attend a board meeting to present the owner's position, including any defense, on the issue;
- (9) lending or borrowing money;
- (10) the adoption or amendment of a dedicatory instrument;
- (11) the approval of an annual budget or the approval of an amendment of an annual budget;
- (12) the sale or purchase of real property;
- (13) the filling of a vacancy on the board;
- (14) the construction of capital improvements other than the repair, replacement, or enhancement of existing capital improvements; or
- (15) the election of an officer.

(i) This section applies to a meeting of a property owners' association board during the development period only if the meeting is conducted for the purpose of:

(1) adopting or amending the governing documents, including declarations, bylaws, rules, and regulations of the association;

(2) increasing the amount of regular assessments of the association or adopting or increasing a special assessment;

(3) electing non-developer board members of the association or establishing a process by which those members are elected; or

(4) changing the voting rights of members of the association.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1026 (H.B. 2761), Sec. 3, eff. January 1, 2012.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. 1168), Sec. 8, eff. September 1, 2015.

Acts 2021, 87th Leg., R.S., Ch. 951 (S.B. 1588), Sec. 12, eff. September 1, 2021.

Sec. 209.0052. ASSOCIATION CONTRACTS. (a) This section does not apply to a contract entered into by an association during the development period.

(b) An association may enter into an enforceable contract with a current association board member, a person related to a current association board member within the third degree by consanguinity or affinity, as determined under Chapter 573, Government Code, a company in which a current association board member has a financial interest in at least 51 percent of profits, or a company in which a person related to a current association board member within the third degree by consanguinity or affinity, as determined under Chapter 573, Government Code, has a financial interest in at least 51 percent of profits only if the following conditions are satisfied:

(1) the board member, relative, or company bids on the proposed contract and the association has received at least two other bids for the contract from persons not associated with the board member, relative, or company, if reasonably available in the community;

(2) the board member:

(A) is not given access to the other bids;

(B) does not participate in any board discussion regarding the contract; and

(C) does not vote on the award of the contract;

(3) the material facts regarding the relationship or interest with respect to the proposed contract are disclosed to or known by the association board and the board, in good faith and with ordinary care, authorizes the contract by an affirmative vote of the majority of the board members who do not have an interest governed by this subsection; and

(4) the association board certifies that the other requirements of this subsection have been satisfied by a resolution approved by an affirmative vote of the majority of the board members who do not have an interest governed by this subsection.

(c) In addition to the other applicable requirements of this section, an association that proposes to contract for services that will cost more than \$50,000 shall solicit bids or proposals using a bid process established by the association.

Added by Acts 2013, 83rd Leg., R.S., Ch. 863 (H.B. 503), Sec. 2, eff. September 1, 2013.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 951 (S.B. 1588), Sec. 13, eff. September 1, 2021.

Attachment B: Funding for Hurricane Harvey Mitigation Projects Halted

**Federal funding halted for Hurricane Harvey assistance
The Associated Press**

HOUSTON (AP) — The U.S. Department of Housing and Urban Development has halted the distribution of \$1.95 billion that was approved for flood mitigation projects in Texas following Hurricane Harvey. A news release from HUD said the Texas General Land Office failed to provide paperwork detailing how the money would be spent to help people and communities at risk of natural disasters and climate change and said the state has 45 days to provide the information. “We look forward to receiving and reviewing Texas’s submission of the additional information needed for approval,” the Friday statement said. “We are hopeful that Texas will take the steps needed to begin muchneeded, forward-looking mitigation projects in the state.”


Brittany Eck, spokesperson for Land Commissioner George P. Bush, told the Houston Chronicle that the agency provided a 628-page document to HUD that satisfied the required paperwork. “The partisan political game being played by the Biden Administration is putting Texans at risk,” Eck said. “HUD must approve this funding now, before the next storm hits.”

Congress in 2018 approved about \$4.3 billion in mitigation funding to Texas following Hurricane Harvey, which struck in 2017 and caused an estimated \$125 billion in damage in the state, largely in Houston and Harris County.

The next regular meeting is scheduled for Thursday, February 10, 2022, at 6: 30 p.m., at the Association office, located at 100 Country Club Drive, La Grange, Texas.

Cleo moved and Mark seconded to adjourn the meeting.

The meeting was adjourned at 7:05 p.m.



Mike Wallace, acting on behalf of Secretary



Mark Hermes, President