

The members of your POA Board would like to express our thanks and appreciation to those who attended last night's spirited Town Hall discussion. As mentioned last night, the intent was to engage each other as residents of our community with an open dialog and share ideas that may work within the limitations we learned and presented. The outcome resulted in some good and thoughtful questions and suggestions and we want you to know we have already begun researching their viability. The summary of the discussion we promised to post to the website will include these topics as well, therefore it may be a few more days to revise this bulletin as we first try to gather some information to include with them, seeing as it will be a reference for everyone who will continue to consider the options. Also, we listened to the general consensus from those in attendance who requested that we postpone the vote, originally scheduled to take place during the March 29th Quarterly Board Meeting, until more is learned of the path forward for those receiving a fence or wall along Cypress North Houston. Therefore, there is no need to post the absentee ballot or proxy at this time, but most certainly will be once a new voting date and topics have been determined and communicated. We are also in the process of planning to hold discussions with these 50+ homeowners to begin looking for common ground that will work for everyone. Unfortunately, with spring break upon us it appears that this will need to wait to be scheduled until afterwards, but we will continue gathering information in the meantime.

Finally, I will apologize in advance for the length of this but we felt the need to respond to the many inaccuracies that have been thrown about in various conversations concerning the topics/information presented during the Town Hall and below is a response drafted by the POA attorney:

The Board sincerely appreciates all of the constructive feedback that we have been getting from many of the residents who understand that we were merely trying to be consistent with our promise of being transparent on the fence issue and involve the residents. We also understand that the apparent shift in positions on the fence issue by members of the previous Board may have created some confusion for some folks. It is our understanding that the position of the previous Board regarding this matter was as follows:

1. This fence could be paid for by the community despite the intent to build it on County property (the analysis is the same whether the POA builds on County or Homeowner property – there are few mechanisms by which the POA can expend money to build capital improvements on land it does not own);
2. The payment for the fence could be accomplished by taking out a loan in excess of one million dollars in the POA's name;
3. The loan could be serviced by an increase in everyone's General Assessment; and, most importantly,
4. The Homeowners were not entitled to a vote in the matter.

Many of the concerns we are now seeing were addressed at the meeting last night, but we understand that not everyone could make it. That said, some of the concerns are addressed in turn below.

With Regard to the Phase 1 Lake Overlook Sale

Article 4, Section 7 of the Declarations and Covenants has no applicability to the proposed sale of the Phase 1 Overlook. This section only deals with the partition of POA property. The sale of property owned by the POA is not a partition. Partition occurs when there is co-ownership of real property and the owners in common seek to have their interests severed and take their individual share of the property. This

provision is in the covenants to prevent individual home owners from seeking to have a court assign them an ownership interest in POA property. It does not prevent the Board from selling POA property.

In fact, Article 4, Section 7 anticipates the Board's ability to do so. It provides that "any Person acquiring any interest in the Restricted Property or any part thereof" may not seek a judicial partition of the property, unless the property is not subject to this declaration. This makes sense. Prior to control of the Board being handed over to the Homeowners, the Developer had to be able to sell POA property. Everyone that lives in the neighborhood lives on Restricted Property, which was sold to them at some point. This ability to sell property did not change when the Homeowners took over the POA. Which raises another point: even assuming that the sale of this property is a partition as was claimed, that does not mean that a two-thirds vote is required to amend the covenants to sell the property.

Article 2, Section 3 of the Declarations and Covenants provides a mechanism by which Restricted Property can be de-annexed if it is determined that it will not be developed for single-family residential use. Under this section, property can be de-annexed upon written consent of the property owner and upon filing of a supplemental declaration. Nothing in this provision requires a vote of the homeowners.

The Property Code is clear on this issue. Selling the Phase 1 Lake Overlook to the MUD in order to maintain it in perpetuity is certainly something the Board has the power to do. Texas Property Code § 209.0051(h)(12) requires that it be voted on by the Board at a properly noticed open meeting, but that is the only statutory hurdle. However, instead of deciding the matter themselves, the Board has decided to put this issue before the homeowners to vote on.

Additionally, it is worth noting under the proposed sale agreement that the easements for use that the homeowners currently enjoy will be transferred to the MUD, so there will be no loss of the use or enjoyment of that property. Furthermore, under the proposed sale agreement, any development of the Phase 1 Lake Overlook will require the approval of the MUD as well as the Phase 1 and 2 homeowners, thereby protecting the park for future use and enjoyment of the residents.

Furthermore, the Board approached the MUD with the proposal to purchase the property from the POA during the MUD's organized public monthly meetings open to anyone who wishes to attend, and the agenda and subsequent minutes are both public record.

With Regard to Whether the POA Can Loan Money

Of course, the POA can loan money. The POA does this every time a homeowner fails to pay their assessment and gets put on a payment plan instead of facing foreclosure. Texas Property Code § 209.0051(h)(9) provides that the POA can lend or borrow money provided it be voted by the Board at a properly noticed open meeting. Again, instead of deciding the matter themselves, the Board has decided to put this issue before the homeowners to vote on.

Section 9.6 of the By-Laws contains no language that even remotely applies to this situation – it refers to dividends and distributions to members, directors, or officers. A dividend is a payment made by a corporation to its shareholders, usually as a distribution of profits. A dividend is not a loan or a subsidy. No one is saying that the POA can or will be paying dividends to homeowners.

With Regard to What the Board Intends to Do

The issue of the POA's ability to pay for fencing on homeowners' property was discussed at length last night. The Board was clear that the POA did not have that ability. Options were discussed, but ultimately this Board is not going to act without the approval of the Homeowners. The community has to work together to come up with a solution that everyone can live with. That said, here are some of the issues that were discussed at length:

- 1) The Board has few options when it comes to using POA money to pay for capital improvements to Homeowners' property;
- 2) The fence at issue was built to the builder's specifications at the time it was installed;
- 3) The fence at issue is not currently built to builder's specifications, because of the subsequent building of the road;
- 4) It is inherently unfair to require the Homeowners to improve the fence to meet builder's specifications when the nonconformity is not a result of anything they did or could have prevented;
- 5) The Board is pursuing having the developer subsidize bringing the fencing into conformity;
- 6) The Board is exploring other options for the fence based upon Homeowner input and Towne Lakes commitment to help;
- 7) The existence of the utility easement and the proximity of County land means that the Board's options are further limited; and, most importantly,
- 8) Any action taken by the Board on this issue will be put to the membership for a vote.

The important thing to take away from this discussion is this: Unlike previous Boards, this Board is not going to act on this issue without giving the Homeowners' the complete picture, an opportunity for input, and a say in how things go forward.