

B Waite

From: B Waite <bwaite@individualinitiative.net>
Sent: Friday, September 21, 2012 10:25 AM
To: 'JAM@lvpoa.org'; 'Bill@lvpoa.org'; 'dsorch@lvpoa.org'; 'clive@lvpoa.org'; 'jason@lvpoa.org'; 'donna@lvpoa.org'
Subject: Some questions for you all

Hi All,

With regards to the Lago Vista Property Owners Association, I am a private property owner, but I have a publishing company. I have some questions, and since it is in everyone's best interest that we all learn more about all the candidates, I intend to publish the responses publicly if they are worthwhile. By publish I mean put the responses on my website, emails, or share the responses in phone calls on the corporate phone list. I may, or may not, publish the responses, or indicate a lack of response, on my corporate website <http://individualinitiative.net/>. Additionally, I may, or may not, publish the responses, or lack of a response, in a company mailing list, either in email form, or direct mailings, which was established in part to share information about Lago Vista. I am not trying to be vague. I won't waste people's time. If I think it will be helpful to people, I'll publish in some form, but if I think it will not be helpful, I will not publish. I will make the commitment to you that if I do choose to publish either excerpts, or commentary on your response, or lack of response, I will also publish your complete entire response, or a statement of lack of response, on my website, so people can read and see the excerpt in its context of your complete response, exactly in the form in which you presented it, or will provide a note saying you did not respond.

You'd be answering these by 9/24/12 at the meet the candidates meeting, and it is 3 days away. So, I believe it's appropriate to request you respond by that date, 9/24/12. I'll feel free to publish responses or claim lack of response by then. There are a lot of questions but they should be easy to answer for anyone who is considering running the POA organization at the Director level. To guarantee fairness, I cc'd everyone so all would know I am asking everyone the same questions. You can cc everyone in your reply, respond just to me, or not respond at all. It is entirely up to you.

I'd like to know some specifics about how you view your role as a director should you be elected to serve on the Lago Vista Property Owners Association Board of Directors. Since you may not have been aware of prior events, or may not remember them, here is some background and context that might help, prior to asking the questions.

- There have been several attempts to take our parks public, to grant general public access to the facilities, and in some cases there has been outright denials of the fiduciary responsibilities a director has to the property owners. There have been private meetings between the Mayor and some on the Board to make one park public. One current Director admitted to a plan to take several parks public not long after he'd been elected. There are no known current plans at this time, however you need to be aware this history as it affects some questions.
- Another key concept is the word community is used in the LVPOA Articles of Incorporation. Dave Freeman and some others have interpreted it to mean we have in Dave's words a "community burden", that we had to provide public access to private parks and facilities, but that is not an accurate interpretation under Texas law. The term community is a legal term of art when used in this context. We'd been arguing common sense, but now we have proof in the Texas Property Code. You can google Chapter 206 of the Texas Property Code, to see it for yourself, or ask an attorney. It is a defined legal term in this context. The lawyer who wrote it could have substituted "Homeowners Association" or "Property Owners Association" and the document would have been identical. Replace the word community with "Homeowners Association" or "Property Owners Association" and there is no way anyone could ever say the document applies to the community at large.

- Several previous Directors claimed they did not understand or agree that while living next to a private members only parks or facilities is attractive and valuable to the homeowner/property owner neighbors, if that same entity becomes a public park or facility, it can become an undesirable nuisance. That takes something designed to attract people to certain areas, and repels many from it.
- There were several times when the Directors, and some staff, would not admit the parks and facilities were private, this occurred several times in several venues, in actual Board of Directors Meetings, in phone calls, and in emails now made public.
- There were Directors who would not admit that when you expand the number of owners without increasing the number of parks, and facilities, you put pressure on the existing parks and facilities because of the increased load. Additionally, some Directors claimed to not understand dilution of ownership when considering adding owners to a fixed base.
- There were Directors who would not admit that the property owners own the parks and facilities through the POA, and that the Board of Directors acts for the benefit of those owners, not in superiority of them. There is a hierarchy of legal constraints on the LVPOA Directors power. Some Directors liked to focus on the by-laws. They claimed the by-laws defined their powers. But, the by-laws are one of the lowest levels. Above that are the Articles of Incorporation, and the Declaration of Covenants and Restrictions, which are both organization specific. Above that are common law, state law, and federal law. The by-laws are the bottom and each level is constrained by ALL the ones above it. It's a legal thing, you don't get to choose.
- Two Lago Vista Economic Development Alliance advertisements could be a part of the reason for the frequent battles over our Lago Vista Property Owners Association LVPOA private parks. These advertisements make it appear to anyone who is not intimately involved in the area, that the POA parks and facilities are open to the public. These advertisements were used in both City of Lago Vista literature and its website, as well as the Lago Vista Economic Development Alliance literature and website. The argument is not against mentioning the POA's existence. The argument is against representing the POA parks and facilities in a way that can be misleading.
- The Board of Directors Meeting Minutes used to be much more detailed. Then some directors published minutes which did not match the meetings as provably evidenced by the tapes of the meeting or recollections of attendees, and as documented externally. This is illegal. The Directors involved were lucky they were not sued. However, the interesting thing is that once these discrepancies were pointed out to them in an open session, instead of correcting the problem, suddenly the meeting minutes became much shorter and not very informative. Correlation is not causation but you have to admit it is interesting to consider the difference between the old and new minutes, as well as the lack of information in much of the new minutes.

All of this takes the pluses of the POA and turns them into a negative for many of us. All of this is factual. All of this was covered either in the North Lake Travis Log, or my website at the time, along with others petitions, and at several meetings in the local area, and POA Board of Directors Meetings. I think that should be enough information to provide context and background for the questions, but if you want proof or more detailed background you can refer to old North Lake Travis Log, talk to locals, or visit my website where the emails and documentation originally published remains published.

One could say all of the above is history, but the past is prolog. One should learn from experience and ask the correct questions so history is not repeated, correct?

- 1) Do you understand that a directors power is constrained, that directors have fiduciary duties to the shareholders? If not why not?

- 2) Are you familiar with Chapter 206 of the Texas Property Code, and do you agree with the interpretation that "community burden" is a legal term of art which is a synonym for "Homeowners Association" or "Property Owners Association", that our POA has no legal obligation to provide for a "community burden"?
- 3) If you are going to be a director of a corporation you should be familiar with the relevant laws. Have you read "Texas Homeowners Association Law" by Gregory S. Cagle, a legal expert on the subject in the state of Texas?
- 4) Do you agree, or disagree, with each of these 4 facts as asserted in the 2010 edition of "Texas Homeowners Association Law" by Gregory S. Cagle? If so, how do you interpret each of the 4 of them? If not, why not?
 - a. "The imposition of fiduciary duties upon Directors and Officers of Nonprofit Corporations arises under both Texas common law and Texas statutory law, and the scope of such duty and the application of the "Business Judgment Rule" will be determined by the source of such duty" Pages 124, 125.
 - b. "under long established Texas common law, Directors and Officers of Nonprofit Corporation HOAs are considered fiduciaries of the corporation, who owe certain fiduciary duties to the Nonprofit Corporation HOA and its Member-Homeowners." Page 125
 - c. "These duties are also commonly described as the duties of obedience, loyalty, and, due care. The duty of loyalty requires that Directors and Officers must act in good faith and must not allow their personal interest to prevail over the interest of the Nonprofit HOA". Page 125
 - d. Such duty of loyalty is often described as requiring an extreme measure of candor, unselfishness, and good faith on the part of Directors and Officers" Page 125.
- 5) Do you understand that taking a park or facility public will change it from being a nice attraction to a probable nuisance for the homeowner/property owners with property near any park or facility taken public? If not, why not?
- 6) We already host a number of public events, geared to the general public, such as the 4 of July event and a few others. Few mind having the occasional guests, but there are limits to hospitality since the primary payers and owners are private residents who are paying for and deserve private use parks and private use facilities. So, other than allowing for the typical classic annual events which we're already hosting, will you commit to limit public access so that the paying residents can continue to enjoy primarily private use of the parks and facilities? If not, why not?
- 7) If you compare a Board Of Directors Monthly Meeting Minutes from the last few months to one of a year or so ago, you can see the current Meeting Minutes are basically worthless because they provide very little information. For example they indicate something was brought up for discussion but not who brought it up, how many spoke, what opinions were raised etc. You can see this on the ones from this Summer of 2012. Not all of us want to attend each and every monthly meeting. Some live far away and cannot attend every monthly meeting. In the old format, one could easily tell far more details, while these contain nearly no useful information. Will you commit to providing full and open disclosure in the Meeting Minutes if you are elected as a director?
- 8) Do you have any plans, at any stage of discussion, for taking any parks or facilities public, and will you commit now to resigning if we later find out you do now have plans for taking anything public?
- 9) Do you have any conflicts of interest to disclose between the yourself, the POA, and any other entities?

- 10) There were private meetings, some call them secret meetings, between the Mayor and some on a prior Board which resulted in discussions on taking a park public. In the past there were No such meetings. After these were discovered and disclosed there was a sudden need announced by some Directors to continue these holding these meetings despite the fact there had been no need for them prior for many years. Both the City and POA are supposed to be acting in with full disclosure, yet there are no minutes taken at these current meetings. If the City needs use of a POA park or facility they can ask publicly, as they did for years, and the reverse is true for the POA to the City. It could be as simple as a letter but at least it would be a public notice, and the subsequent meetings could be limited to the topic of the letter whereas currently, it could be any topic of any significance. Will you commit to having only limited scope public meetings with tapes and minutes kept when meetings occur between the City and the POA?
- 11) A director has a fiduciary responsibility to the owners. Representing a private access and privately owned concern where it could lead people to consider it as a public access entity is obviously against the best interest of the owners. Would you commit to asking the Lago Vista Economic Development Alliance to change its two advertisements to reflect the actual private access and ownership of the POA, and ask them to refrain from publishing potentially misleading advertisements in the future? And ask the City of Lago Vista to do the same since the City was using the same ads?
- 12) Some see Lago Vista primarily as a quiet, laid back, peaceful, bedroom community. Others see Lago Vista as a place for growth and development, with lots of bustle like Cedar Park, or Round Rock. Is your vision one of those, or do you have a different vision?
- 13) I've asked a lot of questions. Now it is your turn. Is there anything you would like to say?

Thanks in advance. May the best persons win.

Sincerely,
Brad Waite