

**Westwood Landowners' Association
Board of Directors Meeting
November 14, 2019 Monthly Meeting Minutes
Magnolia, TX 77354**

Monthly Meeting: The Board of Directors of the Westwood Landowners' Association (WWLOA) convened in a meeting open to all Members of WWLOA at the WWLOA office at 7:00pm.

Board of Directors

Present: Pat Troy, President
Diana Maichetti, Treasurer
Mike Pidatella, Secretary
Toni Collins, Member-at-Large

Absent: Rob Pinell, Vice President

Open Positions: None

Quorum was present, 4/5

Call to Order: President called the meeting to order at 7:01pm.

- 1) The Board Members introduced themselves.
- 2) Consider and Approve Meeting Minutes:
The Secretary presented the meeting minutes shown below for approval.
 - a) Minutes of August 8, 2019 Monthly Meeting.
 - i) The Secretary motioned to approve the meeting minutes, the Treasurer 2nd. The motioned passed unanimously. The August 8, 2019 Monthly Meeting minutes were approved.
 - b) Minutes of August 20, 2019 Special Meeting.
 - i) The Secretary motioned to approve the meeting minutes, the Treasurer 2nd. The motioned passed unanimously. The August 20, 2019 Special Meeting minutes were approved.
 - c) Minutes of September 12, 2019 Quarterly Meeting.
 - i) The Secretary motioned to approve the meeting minutes, the Treasurer 2nd. The motioned passed unanimously. The September 12, 2019 Quarterly Meeting minutes were approved.
 - d) Minutes of the October 10, Monthly Meeting
 - i) The Secretary motioned to approve the meeting minutes, the Vice President 2nd. The motioned passed unanimously. The October 10, 2019 Annual Meeting minutes were approved.

- 3) Financial Report from the Treasurer:
 - a) The Treasurer reported that the report was not available. We are waiting for information from the CPA.

- 4) Traffic Violations Report from the Secretary:
 - a) The number of citations or warnings issued by the constables, under contract, during traffic stops while patrolling Westwood from January 01, 2019 through September 30, 2019 was 491.

- 5) Report from Constables regarding events affecting Westwood:
 - a) The constables reminded everyone:
 - i) It is holiday the season and we should watch our homes and packages that are being delivered.
 - ii) Make sure garage doors are kept down as thieves are out looking.
 - iii) There are people out approaching women in shopping center parking lots so please stay alert and aware of your surroundings.
 - iv) Ladies do not leave you purse in your vehicles even if the windows are tinted. If you need to leave something in your vehicles, lock it in your trunk when no one is watching.

- 6) Old Business:
 - a) Open ACC Positions:
 - i) The President reported that we still have an open position on the Architectural Control Committee (ACC) and we are looking for someone to volunteer to become a member.

- 7) New Business:
 - a) Appeal of Denial of Residential Application
 - i) The Landowner notified the LOA that he will not be available to attend this meeting and requested that the appeal be postponed.

 - b) Summarize Board Actions
 - i) Leavelle's lawsuit regarding denial of ACC application for a Discount Tire store.
 - (1) The President announced:
 - (a) The Leavelles filed a lawsuit against the LOA.
 - (b) If Discount Tire pulled their offer to purchase the property from the Leavelles the LOA would be in a lot of trouble because the Leavelles could show real damages.
 - (c) We were faced with a lawsuit that our attorney said we could not win because our deed restrictions are poorly written.
 - (d) We had to settle the lawsuit so there will be a Discount Tire store on the corner of 1488 and Westwood North Drive.
 - (e) The Board decided that they could not put the LOA into jeopardy for such a financial loss. The Board followed the advice of our attorney.
 - (2) The Secretary noted that as part of the settlement they did agree to leave a natural tree buffer behind the fence along the area of the retention pond.
 - (3) The President added:
 - (a) We really did try.
 - (b) We had the Special Meetings and gave everybody an opportunity to express their opinions.

- (c) The LOA tried to base their position on concerns with traffic and safety as expressed by many members.
 - (d) There is nothing in our deed restrictions that mentions safety and traffic.
 - (e) The LOA could not point to anything specific in our deed restrictions that supported the denial we were left with a weak case
- ii) No other Board Actions were presented.
- 8) Open Forum for those members signed-up to address the Board: (9:01)
- a) Eljo Junker stated that he recently moved to Westwood hoping to build a metal building and now believes that the rules have changed and metal buildings are no longer allowed. Many of his neighbors have a metal building.
 - i) It was determined that Mr. Junker lives in section 3.
 - ii) The President established that Mr. Junker has not turned in an ACC application and has not been denied and stated that there is a process to be followed:
 - (1) Mr. Junker needs to submit an ACC application.
 - (2) If the ACC denies the application, Mr. Junker may appeal to the ACC.
 - (3) If the ACC denies the appeal, Mr. Junker may appeal to the board.
 - iii) Mr. Junker stated that he was thinking about getting a petition for the neighbors to sign to state they are not against metal buildings.
 - iv) The President stated that the landowners in section 4 obtained signatures from 51% of the landowners, in section 4, to sign a petition authorizing an amendment to section 4's deed restrictions allowing metal buildings.
 - v) Mr. Junker continued to reference the many metal buildings throughout Westwood.
 - vi) The treasurer added that the metal buildings that were built should have never been allowed according to the deed restrictions.
 - vii) The Secretary added that the deed restriction have not changed, they are the original since the 1970s'. The amendment to section 4's deed restrictions was again noted.
 - b) Julie Vanderhorst asked what changed the LOAs attorney's mind to advise the board to settle the lawsuit pertaining to the Discount Tire store when she remembers the attorney's previous advice was to not overturn the denial of the ACC application since members expressed their desire to not allow the Discount Tire.
 - i) The President stated that the attorney gave the board legal advice but he does not recall the attorney instructing the board to vote one way of the other.
 - ii) The Treasurer noted that the attorney did advise the board that they had a fiduciary responsibility.
 - iii) The President noted that working out a settlement so that the LOA does not end up owing a million dollars due to the lawsuit was our fiduciary responsibility.
 - iv) The President further noted that the LOA notified the community by email and social media as well as held multiple meetings on the subject and gave the members every opportunity to express their concerns. The president stated that the board did their best to do what members wanted. But when faced with the facts that were presented as well as the advice from our attorney, the board felt that it would be best to settle the suit.
 - v) Julie Vanderhorst noted that the board previously decided to go with the Cagle law firm since he wrote a book on HOA law and our attorney was a member of Cagle's law firm. She asked if our attorney asked Cagle about discount tire before it got to the lawsuit stage.

- vi) The Member-at-Large pointed out that the court cases our attorney referenced, as guidelines base on the facts regarding Discount Tire, were Texas Supreme Court cases and were on point. She further noted that she was familiar with the cases and that he would not need to talk with Cagle to get the same position. The Member-at Large further noted that our attorney informed the board of the facts and the law regarding Discount Tire. Our attorney did advise that not settling could very likely drag down the community in an economically/ fiscally bad way. The Member-at Large pointed out that the board mitigated a lot in the settlement.
 - vii) Julie Vanderhorst noted that the plat maps state light commercial.
 - (1) The Member-at-Large noted that we discussed that with the attorney and our attorney stated that the plat maps did not define light commercial and there was not a legal definition of light commercial.
 - (2) The Member-at-Large pointed out that everything was looked at: the plats, the lawsuit, the facts and all of the case law.
 - viii) Julie Vanderhorst stated that she would have liked to have known what Cagle would have said.
 - (1) The Member-at-Large stated that Cagle is not our attorney.
 - (2) The Treasurer noted that our attorney is no longer with the Cagle law firm.
 - (3) Julie Vanderhorst asked why the board left Cagle to stay with our attorney after he was no longer associated with the Cagle law firm.
 - (4) The President stated that the LOA was involved with things in court with our attorney and the board decided to stay with him rather than lose the continuity that was established.
 - (5) The Member-at-Large again stated that our attorney referenced the same case law for Discount Tire that Cagle would have.
 - ix) Julie Vanderhorst expressed concern that the LOA is getting the reputation of caving if someone files a lawsuit.
 - (1) The Member-at-Large stated that lawsuits are settled only if their claims have some teeth in them.
 - x) Julie Vanderhorst expressed her concern that the LOA stayed with our attorney after he was no longer with Cagle's law firm rather than stay with Cagle's law firm.
- c) Denise Dowling stated that she heard people say that if you don't like what the board or ACC say you can sue them and they will cave. She added that since the people at the meetings stated they did not want the Discount Tire, the board should not have settled.
- i) The President stated:
 - (1) Our ACC Guidelines state that we can check with the surrounding neighbors regarding a submitted ACC application and take their input into consideration.
 - (2) If someone sends us an email or voicers an opinion we must take that into consideration.
 - ii) The President further stated that just because someone has an opinion or does not want something is not sufficient on its own, the board still needs to follow the deed restrictions. If there is not a deed restriction violation, the board cannot deny something just because some people do not want it.
- d) Denise Dowling asked about the concessions identified in the Discount Tire settlement.
- i) The following concessions were noted:
 - (1) A natural barrier of existing trees will be left along the retention pond on Weisinger.

- (2) The LOA is released of all liability and the law suit is dismissed even if Discount Tire changes their mind and, for whatever reason, decides to not complete the purchase of the property from the landowners.
- ii) It was noted that:
 - (1) There will be a fence, similar to the one at Aldi, along the property line between Discount Tire and the house on Weisinger.
 - (2) There will be a 10 foot chain link fence around the remainder of the retention pond.
 - (a) The board, through their attorney, asked for this this portion of the fence to be only 4 feet high as that was thought to be less visually unappealing.
 - (b) Discount Tire insisted on the 10 foot chain link fence and stated that not having it would be a deal breaker and threatened to back out of the deal with the landowner. If that happened, the LOA would have been facing the lawsuit brought against the LOA by the landowner.
 - (3) The final submitted and now approved ACC application with all plans and drawings is included in the settlement.
- e) The President followed up on the concern that was raised about the LOA caving if someone files a lawsuit against the LOA.
 - i) The President stated:
 - (1) The LOA has filed lawsuits and have taken people to court and have won in court, we've won some and we've lost some.
 - (2) One problem that was going on for 10 years under previous boards was taken to court and with the help of neighbors, being there in court, the LOA won the case.
 - (3) The LOA filed a lawsuit today.
 - (4) We are not backing down from lawsuits. Having poorly written and vague deed restrictions positions the LOA in an unlikely position to win some potential cases and would likely result in significant financial loss to the community based on the legal advice obtained.
 - ii) The Treasurer stated, to be transparent, there have been law suits against the LOA that we have backed down on.
 - (1) The President asked the Treasurer if she was referring to the case that the LOA was forced into mediation. The President added that in that case neither side got everything they were seeking.
 - (2) The Treasurer added that after we settled this case, it became evident in an unrelated case with the landowners, not involving the LOA; the landowners did lie about specifics in the case the LOA brought against them.
- 9) The President confirmed that all those that signed up to address the board have addressed the board with their comments and/or questions and opened the meeting to any other members that would like to make a comment or ask a question.
 - a) A member commented that only a handful of people expressed concerns, regarding the Discount Tire store on Facebook, in email to the office or directly during an LOA meeting. He noted that if you ask people that live in section 1 or section 2 you will find that many are in favor of having the Discount Tire store. He stated that the reasons people did not want it were not good reasons, they were just excuses. None are legal issues or violations against the deed restrictions.

- b) A member commented that in the Discount Tire meetings, it was brought up that there was not a traffic study conducted by TXDOT. The member stated that Westwood North Drive is a county road and asked if a traffic study was performed by the county.
 - i) The Secretary noted that the county approved the driveways for Discount Tire on Westwood North Drive.
- c) A member added that one of the concerns that were raised about having the Discount Tire was that it would negatively impact the property value of the houses near the stores location.
 - i) The Secretary commented that the lots are permitted to be used for commercial use in the deed restrictions. This is how the developer defined the use of these lots when Westwood was initially developed. This was in the deed restrictions and known when people purchased the lots nearby for residential use.
- d) A member commented that he knows some people are disappointed to see a Discount Tire store at that location. He added that you won't find a better corporate neighbor than Discount Tire in his opinion.
- e) A member stated that when they moved to Westwood seven years ago, they were told by the LOA office that the lots, where the Discount Tire store will be located, were commercial or residential.
 - i) The President stated that is true and added that there are locations in Westwood where houses were built on lots there are identified as commercial or residential.
 - ii) The Secretary noted that article 2 of the deed restrictions specifically identify the lots that may be used for ether commercial or residential purposes.

10) The President asked if anyone else would like to say something. No one replied.

11) The Treasurer made a motion to adjourn, the Member-at-Large 2nd. The motioned passed unanimously. The President adjourned the meeting at 8:08 pm.