Minutes from the Special Program meeting for
Deed Restriction Violations and City Code Enforcement
of the
Highland Park West Balcones Area Neighborhood Association
October 23h, 2006
Yarborough Library
Austin, Texas

The program meeting of the HPWBANA was called to order at 7:05 pm. Board members attending included: Nadene Morning, Carolyn Robinson, Sam Haddad, Blake Stanford, Tonianne Soster, Krista Saeger, Those not present: Chereen Fisher, Lurleen Ladd, Jennifer Smith. The meeting was coordinated by Tonianne Soster, Zoning Committee Chairperson.

A motion was made and seconded to approve the minutes of the August 28th, 2006 and the September 25, 2006 meetings. The minutes were approved.

The meeting was well-attended by members of the community. Those included: John Keohane, Lisa Thomas, Eric Hansen, Ed Wallace, Nancy Woolley, David Oberman, Janet Delaney, Doris Dixon, and Susan Adler. Other guests and speakers included: Dana Munguia, APD Senior Patrol Officer, Doug Baggett, COA Code Enforcement Investigator, Paul Tomasovic, COA Code Enforcement West District Manager, John Pleuthner, Real Estate Attorney.

Officer Dana Munguia fielded questions regarding the protocol for reporting citizen complaints for neighborhood nuisances. Officer Munguia stated that calls made to the City's 311 system were recorded by the city and used to identify trends and problems but these calls were not investigated. Such problems include speeding, noise and burglary. The 311 system is the center point for all reports sent to city entities. Callers must specify that they would like a call returned by the city if they wish to hear back from the city.

Officer Munguia stated that neighbors should use the 911 calls if they need an officer to come to the scene to document and/or mitigate a problem. She also clarified that the 911 call does not have to be used solely for emergency situations, and she encouraged those attending to use police services to report problems. If there are multiple complaints, the officer will document it and then the citizen can file a complaint based on that documentation and case number. Complaints must be specific and after multiple complaints, a fine can be assessed to the property owner.

It was noted that property owners are not allowed to block the sidewalks with vehicles. The process for a neighborhood opting into an enforcement program for front lawn parking was noted and the Association must reapply every two years after the initial application.

Paul Tomasovic, COA Code Enforcement West District Manager and Doug Baggett, COA Code Enforcement Investigator, were present to describe the city's workload and

the outline the structure of the zoning and code enforcement field districts. It was noted that the city was in the process of hiring and training more field staff to address code enforcement. The challenges for city code enforcement were enumerated and most focus on substandard housing, dangerous or vacant properties, trash and debris, home businesses, illegal dumping, tall weeds, and fire damage. It was stated that the city's policy was to initiate investigations of complaints, as opposed to actively seek out code violations. Calls must be made to the 311 system. The city maintains a database of complaints and these are investigated within 48 hours. Violators are usually notified by door hanger notices. Fines are not assessed although certified mail notification stipulates that items must be corrected within 7-14 days of notice.

The city notification process and failure of corrective action on the part of the violating property owner can lead to a hearing and possible trial on criminal charges in municipal court. Civil injunctions may also be imposed. A letter from the Association can be important. City council members should be copied on these letters. Up to 5 cases can be filed and may involve a jury trail. Fines may then be assessed from a $ 1 to $ 2000 penalty. Only the district courts can order a cease and desist and the courts will examine the city's efforts to resolve an issue when considering an order. The first step is remediation before a temporary restraining order is issued.

John Pleuthner, Real Estate Attorney, offered a description of the legal process for initiating legal actions for the enforcement of deed restrictions. Deed restrictions are a contract between those residing within the boundaries of a development and generally prescriptive and prohibitive in language. Copies of deed restrictions can be obtained from the title companies or the county clerk's office.

Such matters are a civil suit for the enforcement of deed restrictions. It was noted that the residential developments in HPWBANA are covered by many different sets of deed restrictions and each set was different. The difficulty of amending deed restrictions was discussed. Three fourths of all property owners must consent. A lawsuit can be filed and a notice can be placed in the property records of deed restriction violation that could block sale of the property. Such action could result in a countersuit. Asking a judge to declare that a violation has occurred is risk-free strategy because the property owner cannot countersue the courts. The court could seek an immediate injunction.

Mr. Pleuthner provided some suggestions for legal actions for enforcement, including using the injunctive process and filing suits. He also discussed the probable costs of filing suits to enforce deed restrictions ranges between $ 5,000 to $10,000. Mr. Pleuthner noted that some violations of deed restrictions were not enforceable because too much time has passed since the violation, and advised that quick action to enforce restrictions was necessary to uphold the integrity of the neighborhood. The statute of limitations is four years.

It was announced that the next meeting will be held on November 27, 2006. The meeting was adjourned at 8:35 pm.