

Dale Smith

From: Judd Austin, Jr. <jaamex@hoaf.com>
Sent: Wednesday, May 11, 2022 7:25 PM
To: Dale Smith
Subject: Mustang Park Owners Association, Inc. - Special Purpose Assessment

Mr. Smith,

Based on the chronology of events below, we have been requested to opine on the validity of a special purpose assessment (herein so-called). Our opinion is based on the information provided as well as the governing documents of Mustang Park Owners Association, Inc. (the "Association"). While we have reviewed the governing documents of the Association we have not verified any of the information provided and, therefore, reserve the right to alter our opinion in the event our understanding of the facts is incorrect.

FACTS.

It is our understanding that a meeting of the members of the Association was called for the purpose voting on a Special Purpose Assessment. It is also our understanding that 30% of all the votes of the members of the Association were not present at this meeting and, as such, a lack of quorum prevented a vote on the Special Purpose Assessment from taking place. Subsequently, the Board of Directors of the Association approved posting a video explaining the need for the Special Purpose Assessment on the Association's website. The members were then allowed to vote for or against the Special Purpose Assessment on the Association's website which allows for electronic voting. It is also our understanding that 39% of all the votes of the Association have voted in favor of the Special Purpose Assessment via electronic voting.

ANALYSIS.

This matter is governed by the Bylaws of the Association (herein so-called) and the Declaration of Covenants, Conditions and Restrictions for Mustang Park Phase Five recorded as Instrument No. 2013-46826 in the Official Public Records of Denton County, Texas, including Supplemental Declarations (collectively, hereinafter referred to as the "Declaration").

According to Article V, Section 5.03 of the Declaration, a Special Purpose Assessment may be approved but such approval is subject to the provisions of Article V, Section 5.05 (d) of the Declaration. A Special Purpose Assessment, pursuant to Article V, Section 5.05 (d) of the Declaration, requires the affirmative approval of a Special Quorum of the members at a meeting as provided in Article IV, Section 4.05 (b) of the Declaration. Article IV, Section 4.05 (b) of the Declaration sets forth the requirements for a Special Quorum which is the presence of members at a meeting entitled to cast 30% of all the votes. The initial meeting called for the purpose of voting on the Special Purpose Assessment could not go forward due to a lack of Special Quorum.

Article IV, Section 4.05 (d) of the Declaration, however, reads in pertinent part as follows: "*As an alternative to the procedure set forth in this **Section 4.05**, any action may be taken without a meeting upon obtaining the assent given in writing and signed by Members . . . who hold more than (i) thirty percent (30%) of the outstanding votes eligible to be cast by Members . . . for actions referred to and requiring a Special Quorum as provided in **Section 4.05 (b)** hereof, . . .*" Moreover, Article III, Section 3.11 of the Bylaws of the Association reads, in pertinent part, as follows: "*Subject to board approval, any action which may be taken by vote of the members at a meeting of the Association may also be taken without a meeting by written consents. The board may permit members to vote by any method allowed by the Texas Business Organizations Code, which may include hand delivery, United States mail, facsimile, e-mail electronic ballots or any combination of these.*" The Texas Business Organizations Code allows the transmission of a consent by a member to the taking of an action, and is considered a signed writing or consent, if the transmission contains or is accompanied by information from which it can be

determined: (i) that the electronic transmission was transmitted by or on behalf of the member; and (ii) the date on which the electronic transmission was transmitted by or on behalf of the member. Furthermore, the Texas Property Code considers an electronic ballot to be a ballot given by posting on an Internet website for which the identity of the member submitting the ballot can be confirmed. In addition, the Texas Property Code specifically states that electronic ballots constitute written and signed ballots. Finally, it should be stated that Article XIII of the Bylaws provides that in the case of any conflict between the Declaration and the Bylaws, the Declaration will control.

CONCLUSION.

After failing to achieve a Special Quorum at the initial meeting to vote on the Special Purpose Assessment, the Board apparently determined to allow the members to take action without a meeting with respect to the Special Purpose Assessment, as allowed and provided for both in the Declaration and the Bylaws. The Board posted a video on the Association's website explaining the need for the Special Purpose Assessment. The Board also allowed the members to vote for or against the Special Purpose Assessment on the Association's website. As allowed by the Texas Property Code, members voted using an electronic ballot which was posted on an Internet website, which constituted a signed written consent or ballot both under the Texas Property Code and the Texas Business Organizations Code. Article IV, Section 4.05 (d) of the Declaration provides that members can take action without a meeting, for actions referred to and requiring a Special Quorum as provided in Section 4.05 (b), if at least thirty percent (30%) of the outstanding votes eligible to be cast by Members vote in favor of the proposal. It is our understanding that 39% of all the votes of the Association have voted in favor of the Special Purpose Assessment and, accordingly, the Special Purpose Assessment passed.

Regards,



Judd A. Austin, Jr. - Shareholder

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