

CITATION
PETITION FOR DECLARATORY JUDGMENT EXHIBITS

TUGWELL, WILLIAM T IV - ET AL

Vs.

LAKE AT BELLE TERRE HOME OWNERS
ASSOCIATION INC - ET AL



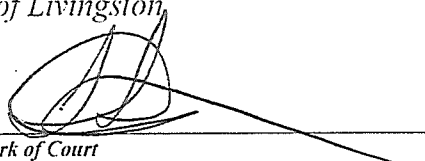
Case: 000000130608
Division: E
21st Judicial District Court
Parish of Livingston
State of Louisiana

To: THE LAKE AT BELLE TERRE HOME OWNERS ASSOCIATION INC THROUGH ITS
REGISTERED AGENT: ROBERT H. HARRISON JR
32545 LA HIGHWAY 16
WATSON LA 70706, of Livingston Parish

YOU ARE HEREBY SUMMONED to comply with the demand contained in the petition of which a true and correct copy (exclusive of exhibits) accompanies this citation, or make an appearance, either by filing a pleading or otherwise, the 21st Judicial District Court in and for the Parish of Livingston, State of Louisiana, within FIFTEEN (15) days after the service hereof, under penalty of default.

WITNESS MY HAND AND SEAL OF OFFICE AT LIVINGSTON, LOUISIANA, ON OCTOBER 20, 2010.

Clerk of Court
21st Judicial District
Parish of Livingston


Deputy Clerk of Court

Attorney
THOMAS D. FAZIO
PO BOX 40686
BATON ROUGE LA 70835

Service Information

Received on the _____ day of _____, 20____ and on the _____ day of _____, 20____ served the above named party as follows:

*Personal Service on the party herein named _____
Domiciliary Service on the party herein named by leaving the same at his/her domicile in the parish in the hands of _____, a person apparently over the age of seventeen years, living and residing in said domicile and whose name and other facts connected with this service, I learned by interrogating the said person, said party herein being absent from his/her residence at the time of said service.*

DUE & DILIGENT UNABLE TO SERVE BECAUSE: _____

Returned:
Parish of _____ this _____ day of _____, 20____.

Service \$ _____

Mileage \$ _____

Total \$ _____

By: _____
Deputy Sheriff

WILLIAM T. TUGWELL, IV, KARRI
TUGWELL, HUDSON TABOR, V,
MARGA TABOR, MARY PIKE, MIKE
DEMAREE, MICHAEL PENDARVIS
AND CHERISH PENDARVIS

VERSUS

THE LAKE AT BELLE TERRE
HOME OWNERS ASSOCIATION, INC.
and JEFF ZETTLEMOYER

13C-08 2
SUIT NO. _____ DIVISION _____

21ST JUDICIAL DISTRICT COURT

PARISH OF LIVINGSTON

STATE OF LOUISIANA

FILED
CLERK OF COURT
PARISH OF LIVINGSTON
OCT 18 PM 3:24
DEPUTY CLERK

PETITION FOR DECLARATORY JUDGMENT

The petition of William T. Tugwell, IV, Karri Tugwell, Hudson Tabor, V, Marga Tabor, Mary Pike, Mike Demaree, Michael Pendarvis and Cherish Pendarvis, through undersigned counsel, respectfully represents:

1.

Made defendants herein are The Lake at Belle Terre Home Owners Association, Inc., a Louisiana non-profit corporation domiciled in Livingston Parish, Louisiana (hereinafter the "Association"), and Jeff Zettlemoyer, individually and in his capacity as President of the Association.

2.

Petitioners, William T. Tugwell, IV, and Karri Tugwell (the "Tugwells"), are the owners of Lot Thirty-One (31), Lake at Belle Terre Subdivision. Petitioners, Hudson Tabor, V, and Marga Tabor (the "Tabors"), are the owners of Lot Thirty-Seven (37), Lake at Belle Terre Subdivision. Mary Pike is the owner of Lot Eighty-Three (83), Lake at Belle Terre Subdivision. Mike Demaree is the owner of Lot Thirty-Eight (38), Lake at Belle Terre Subdivision. Michael and Cherish Pendarvis are the owners of Lot Thirty-Nine (39), Lake at Belle Terre Subdivision. As owners of lots in this subdivision, petitioners are members of the Association.

3.

All lots in Lake at Belle Terre Subdivision are subject to Restrictive Covenants ("Restrictions") dated May 16, 2001, and recorded as COB 784, Page 860, Entry No. 466912 of the official records of Livingston Parish, Louisiana. The subdivision contains one hundred twelve (112) residential lots.

4.

The organizational documents of the Association are Articles of Incorporation dated May 16, 2001, filed with the Louisiana Secretary of State on May 17, 2001, and Bylaws dated May 17, 2001.

5.

The Restrictions established annual assessments for membership in the Association at Fifty and No/100 (\$50.00) Dollars per year, due and payable in advance on January 1 of each year. The Restrictions further provide that the assessment may be increased from time to time as provided in the Bylaws. Nevertheless, the Bylaws contain no specific provision establishing a procedure for increase of annual assessments.

6.

Article 10 of the Articles of Incorporation of the Association provides that in order to be eligible to vote, a member shall be required to pay such annual assessments and/or membership dues as established in the Bylaws of the Association or which may be fixed, from time to time, by the Board of Directors.

7.

At a neighborhood meeting held on March 30, 2008 at a different location than that set forth in the notice of the meeting, fourteen (14) members of the Association allegedly voted in favor of increasing the annual assessments to One Hundred Fifty and No/100 (\$150.00) Dollars. Apparently only twenty (20) members out of one hundred twelve (112) were present at the meeting. Petitioners aver there was not a quorum as established in the Bylaws to lawfully conduct Association business. A copy of the minutes of this meeting is attached hereto as Exhibit "A".

8.

Further, at the March 30, 2008 meeting, Board members were appointed by Jay Faust rather than elected. Petitioners aver that the Board of Directors was improperly constituted and did not have the legal right to approve an increase in the annual assessments. Thereafter, the Board sought to impose the assessment increase upon the members of the Association.

9.

The annual meeting of the members of the Association was held on November 5, 2008. In advance of this meeting, the Board of Directors caused one or more notices to be sent to the members of the Association indicating, among other resolutions to be considered, that a vote would be taken to nullify or ratify the annual assessments increase to \$150.00 that was allegedly approved at the March 30, 2008 neighborhood meeting.

10.

Thereafter, the actual ballot disseminated to the members for the meeting purported to allow the members to select one of three options: (a) keep the annual dues at \$150.00; (b) reduce the annual dues to \$100.00; and (c) reduce the annual dues to \$50.00. The purported results of the votes on the various resolutions were reported to the members of the Association by letter dated December 10, 2008, a copy of which is attached hereto as Exhibit "B".

11.

The ballot results in the possession of petitioners are conflicting, but indicate that a quorum of the membership of the Association, as provided in the Bylaws, was not present and voting at this meeting. The ballot results show that three (3) officers were elected at this meeting and sets forth two (2) different results of voting on the issue of annual dues increase as follows: First vote results: 22 in favor of \$150.00; 11 in favor of \$100.00; 13 in favor of \$50.00. Thus, more residents voted against the \$150.00 dues amount than voted in favor of it.

12.

The ballot results further set forth a purported second vote with results as follows: 21 in favor of \$150.00; 12 in favor of \$100.00; and 15 in favor of \$50.00. Again, the number of votes against the \$150.00 dues amount exceeded the vote for those in favor.

13.

Petitioners aver that the vote taken at the November 5, 2008 annual meeting did not result in a properly constituted Board of Directors. Thereafter, the improperly constituted Board of Directors sought to impose the \$150.00 annual dues amount on the members of the Association.

14.

An annual meeting of the members of the Association was held on November 4, 2009. In advance of this meeting, the Board of Directors caused one or more notices of this meeting to be sent to the members containing a sample ballot with proposed resolutions and recommendations, including a choice as to whether or not annual dues would be \$150.00 or \$100.00. The purported results of the various votes on the resolutions at this annual meeting were reported to the members of the Association by letter dated January 6, 2010, a copy of which is attached hereto as Exhibit "C". Allegedly, annual dues were kept at \$150.00; however, no ballot results have been provided. Thereafter, the purported Board of Directors sought to impose the \$150.00 annual assessment amount on the members of the Association.

15.

The Tugwells received a dues invoice from the Association dated February 1, 2010 which arrived after the Tugwells attempted to tender an agreed amount as to prior claimed amounts, which tender went unclaimed/refused.

16.

The Tabors received a dues invoice dated April 1, 2010 which arrived after the Tabors attempted to tender payment of a judgment rendered after contest against them in the First Ward Justice of the Peace Court, which tender went unclaimed/refused.

17.

Petitioner Mary Pike has paid to the Association annual assessments as follows: \$125.00 for the year 2008; \$150.00 for the year 2009; and \$150.00 for the year 2010.

18.

Petitioner Mike Demaree has paid annual assessments to the Association as follows: \$125.00 for the year 2008; \$150.00 plus \$20.00 in late fees for the year 2009; and \$150.00 for the year 2010.

19.

Michael and Cherish Pendarvis have paid annual assessments to the Association as follows: \$150.00 for the year 2008; \$150.00 for the year 2009. Although these petitioners have received an invoice for annual assessments for the year 2010, petitioners refuse to pay this invoice.

20.

Petitioners further show that the purported Board of Directors of the Association have also promulgated, and have sought to enforce, without the proper approval of all, or even a majority, of the members of the Association certain amendments to the recorded Restrictions of the subdivision which petitioners contend are illegal, invalid and unenforceable. The illegal amendments are set forth in the exhibits attached to this petition and may be itemized as follows:

- (A) *Dogs, when outside of their fenced area, or owner's lot, must be kept on a leash not exceeding 6 feet in length, and held by a person capable of controlling the animal* - this attempts to amend or modify the provision of the Restrictions relating to Livestock and Poultry. See Exhibit "B".
- (B) *Mailboxes must have a new appearance and be maintained with black paint* - this attempts to amend the provision of the Restrictions relating to Mailboxes. See Exhibit "B".
- (C) *Imposes late fees on annual dues at \$10.00 after 30 days, and another \$10.00 after \$60.00* - this establishes a late fee when none is set forth in the provision of the Restrictions relating to assessments. Further, the power to impose late

fees is not established or provided for in either the Articles or Bylaws of the Association. See Exhibit "B".

- (D) *Trailers/boats that are in the front of the lot and/or visible from the road will be fined \$10.00 daily for every day after the 7th day - this attempts to amend the provisions of the Restrictions entitled "Miscellaneous" addressing the storage of boats and trailers, among other things, and does not allow for the imposition of fines. This attempts to establish a fine for a specific restriction violation not established or provided for in the Restrictions, the Articles of Incorporation or Bylaws of the Association. See Exhibit "B".*
- (E) *Any restriction violations will first be addressed by written warning. After allocated time to adhere to restriction a fine will be assessed up to \$10.00 per day. The fine will be determined by the Board based on violation severity and will accumulate until the violation is corrected - this purports to establish fines for restriction violations, none of which are established or provided for in the Restrictions, the Articles of Incorporation or the Bylaws of the Association. See Exhibit "C".*

21.

Petitioners dispute that the Association has the power to enforce the above listed resolutions which improperly attempt to amend certain restrictions of the subdivision and purport to establish new ones where none existed before. Petitioners dispute that the vote of a quorum of the members of the Association was properly taken on the issues presented in the resolutions set forth above.

22.

Further, these purported amendments and modifications of the recorded Restrictions are not set forth in any properly executed or recorded amendment to the Restrictions. Thus, new members who purchase homes in the subdivision are not properly made aware of the purported amendments and modifications of the recorded Restrictions.

23.

The purported Board of Directors of the Association has actually filed legal action to collect fines from the Tugwells for alleged violation of item D above.

24.

The purported Board of Directors of the Association and its agents have asserted since May, 2008, that the Board of Directors has the power to increase annual assessments of the members at any time and for any amount, apparently without regard to a standard of reasonableness. Therefore, a dispute exists between petitioners and the purported Board of Directors of the Association as to the right of the Association to pursue the enforcement of alleged subdivision restrictions that have been

modified or added to the recorded Restrictions of the subdivision and the proper interpretation of the Articles of Incorporation and Bylaws of the Association, such that a declaration of the rights and obligations of the petitioners as parties to these contracts is necessary.

25.

Petitioners further aver, based upon the facts set forth above with respect to the various alleged appointments/elections of the Board of Directors/officers of the Association, that the Board of Directors is improperly constituted and has no lawful authority to act on behalf of the members of the Association.

26.

Since District Courts have the authority to determine whether boards are legally constituted and to issue such orders necessary to enforce an organization's compliance with its own organizational documents (*Smith v. Riley*, 424 So.2d 1166, 1170 (La. App. 1st Cir. 1982)), petitioners seek a declaration that the Board of Directors has been improperly constituted and an Order of this Court vacating all seats on the Board of Directors of the Association and ordering that a proper election be held under Court supervision if necessary.

27.

Petitioners further seek an Order of this Court that board officer Jeff Zettlemyer be barred serving as a director or officer of the Association for the following reasons:

- (A) Jeff Zettlemyer has authorized the expenditure of Association funds for improper and wasteful purposes which amount to self-dealing, and willful and wanton misconduct, specifically:
- (i) spending at least \$11,936.65 of Association funds for the installation of a fountain, and lights in the subdivision lake which benefits only 32 lots that front on the lake;
 - (ii) completing a culvert installation on the property of one owner at the expense of the Association in violation of the Restriction entitled "Building Construction";
 - (iii) spending at least \$1,191.40 to install a decorative fence around the Modad sewer treatment plant when it was Modad's obligation to install a fence around the sewer treatment plant without cost to the Association, said fence also being located on the property of Jeff Zettlemyer and his neighbor;
 - (iv) spending at least \$1,774.00 of Association money to pay Rice Sutton to paint street lights and stop sign posts in the neighborhood when such work should be done by local authorities based upon taxes and fees that are paid to the Parish and utility companies to cover this type of maintenance; and
 - (v) other wasteful spending that will be proved upon the trial of this matter.

- (B) Denying members the right to vote on Association resolutions because of unpaid dues, said dues not being paid based upon protests to the Board for attempting to enforce illegal dues assessments;
- (C) Jeff Zettlemoyer violating Restrictions at will while attempting to enforce those same Restrictions on other members, specifically:
 - (i) keeping a utility trailer on his property for several days including the same day that the Tugwells received a letter warning about a trailer temporarily in their driveway;
 - (ii) Zettlemoyer posting signs in his yard advertising work on his home being done by Rice Sutton painting in violation of Restrictions; and
 - (iii) installing a porch cover with a tin or metal roof on the rear of his residence in violation of Restrictions.
- (D) Upon information and belief, discriminately taking action against certain members of the Association without taking actions against other members for the same violations;
- (E) At the neighborhood meeting held on March 30, 2008 at which no quorum was present to vote, spearheading a motion to hire Community Management, LLC (a for profit organization) to assume management of Association affairs in violation of the Restrictions which vest all management functions in the nonprofit Association;
- (F) Waiving dues for some members while seeking to enforce payment of dues against others; and
- (G) Other discriminatory actions to be shown upon trial of this matter.

28.

Petitioners further seek an Order of this Court that the Association reimburse them for the difference between the lawful annual assessment of \$50.00 and the illegal assessment imposed of \$150.00, as well as refund of any late charges paid to the extent that any illegal assessment amounts may have been paid by any of petitioners.

29.

The purported officers of the Association have further ignored the various requests made by the petitioners to review the books and records of the Association as permitted by Louisiana R.S. 12:223.

WHEREFORE, PETITIONERS PRAY that after all due proceedings had there be judgment rendered herein as follows:

- I. Declaring that the annual assessment of One Hundred Fifty and No/100 (\$150.00) Dollars IS illegal, invalid and unenforceable;
- II. Declaring that the attempted amendments to the Restrictions of the subdivision as itemized in Paragraph 20 hereof are illegal, invalid and unenforceable;
- III. Declaring that the Board of Directors of the Association has been improperly constituted, that an Order be issued vacating all seats on the Board of Directors of the Association and ordering that a proper election be held;
- IV. An Order that Jeff Zettlemyer be barred from serving as a director or officer of the Association.
- V. An Order that the Association refund to the petitioners the difference between the original annual assessment of Fifty and No/100 (\$50.00) Dollars and the illegal assessment of One Hundred Fifty and No/100 (\$150.00) Dollars, as well as refund of any late charges paid to the extent that any illegal assessment amounts may have been paid by any of petitioners;
- VI. An Order directed to the purported officers of the Association to allow the petitioners to review the books and records of the Association as permitted by law; and
- VII. For all general and equitable relief appropriate in the premises.

By Attorneys:

McCOLLISTER, McCLEARY & FAZIO
A Professional Law Corporation
11616 Southfork Avenue, Suite 302 (70816)
Post Office Box 40686
Baton Rouge, Louisiana 70835
Telephone: (225) 292-8898

BY: 

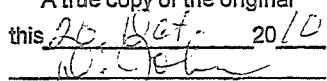
Thomas D. Fazio - Bar Roll No. 16911

PLEASE SERVE:

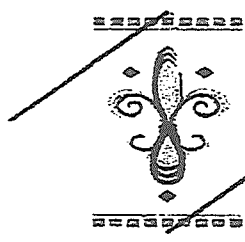
- 1) The Lake at Belle Terre Home Owners Association, Inc.
through its registered agent:
Robert H. Harrison, Jr.
32545 La. Highway 16
Watson, Louisiana 70706

AND

- 2) Jeff Zettlemyer
37744 Rue de Voir
Denham Springs, LA 70726

21st JUDICIAL DISTRICT
PARISH OF LIVINGSTON, LA
A true copy of the original
this 20 10 of 20 10

Deputy Clerk of Court

A



Lakes at Belle Terre

Minutes
March 30, 2008

Jay Faust

- Called meeting into order – Gave Business Report
- Told Residents about not being able to do fountain work with the dues being this low.
- Mo-Dad is not answering phone messages to get culverts filled in.
- Explained current board members are resigning.

Melissa Alphonso

- Thanked Mr. Zettlemoyer for helping with the Nutria Rat problem around the lake
- Introduced Community Management

Community Management

- Explained the purpose of Community Management and how it would benefit the neighborhood.
- Answered questions regarding services provided

Mr. Zettlemoyer motioned for dues to increase to \$150 per year and for us to obtain services provided by Community Management. Mr. Jarreau seconded the motion. Residents voted in favor of increasing the dues to \$150 per year and to hire Community Management. Fourteen out of twenty households voted in favor.

Jay Faust

- Appointed new board members

- Jason Davis – President
- Mr. Zettlemoyer – Vice President
- Emily Varnado – Secretary
- Melissa Alphonso – Treasurer
- Architectural Control Committee – Jay Faust

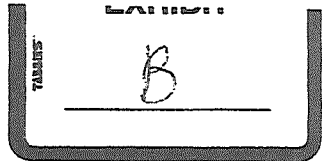
Jason Davis adjourned meeting

FILED
CLERK OF COURT
PARISH OF LIVINGSTON

2010 OCT 18 PM 3:24

[Signature]
DEPUTY CLERK

THE LAKES AT
Belle Terre



December 10, 2008

Michael Demaree
9158 Rue De Vieux Carre
Denham Springs, LA 70706-1513

VOTE 102

Residents of Lakes at Belle Terre,

As of January 10, 2008, the results of the Homeowners Association ballot will take effect and be enforced. The results of the ballot were collected and announced at the annual Homeowners Association meeting on November 5, 2008, and are as follows:

2009 Board of Directors

Jason Davis – President
Jeff Zettlemoyer – Vice President
Carol Harrison – Secretary
Emily Varnado – Treasurer

FILED COURT
CLERK OF LIVINGSTON
PARISH
2010 OCT 18 PM 3:24
DEPUTY CLERK
P. MOORE

Passed - By-Laws as presented with the ballot.

Failed - Fines for dog owners for failure to promptly and sanitarly dispose of feces left by dogs when being walked through the neighborhood.

Passed - Dogs, when outside of their fenced area, or owner's lot, must be kept on a leash not exceeding 6 feet in length, and held by a person capable of controlling the animal.

Passed - Mailboxes must have a new appearance and be maintained with black paint.

Passed - 3 Way STOP signs at the corner of Rue de Fleur and Rue de Voir. (The board is in the process of having them installed. Possibly early January.)

~~Passed - Annual dues \$150.00 (Invoices will be sent out on January 10, 2009 and due on February 10, 2009).~~ *K.C. due Jan 1st*

Passed - Late fees on annual dues \$10.00 after 30 days, and another \$10.00 after 60 days.

Passed - Trailers/boats that are in the front of the lot and/or visible from the road will be fined \$10.00 daily for every day after the 7th day.

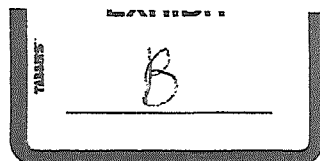
Failed - Trash bins are to be stored in a place that cannot be viewed from the road.

Should you have any questions regarding the vote results or any other matter, please contact Jay Davis, your association president.

Carol Harrison
Secretary

Lakes at Belle Terre Homeowner's Association • P.O. Box 1021 • Watson, LA 70786

THE LAKES AT
Belle Terre



December 10, 2008

Michael Demaree
9158 Rue De Vieux Carre
Denham Springs, LA 70706-1513

VOTE 102

Residents of Lakes at Belle Terre,

As of January 10, 2008, the results of the Homeowners Association ballot will take effect and be enforced. The results of the ballot were collected and announced at the annual Homeowners Association meeting on November 5, 2008, and are as follows:

2009 Board of Directors

Jason Davis – President
Jeff Zettlemyer – Vice President
Carol Harrison – Secretary
Emily Varnado – Treasurer

FILED
CLERK OF LIVINGSTON
PARISH
2010 OCT 18 PM 3:24
DEPUTY CLERK
P. R. ...

Passed - By-Laws as presented with the ballot.

Failed - Fines for dog owners for failure to promptly and sanitarly dispose of feces left by dogs when being walked through the neighborhood.

Passed - Dogs, when outside of their fenced area, or owner's lot, must be kept on a leash not exceeding 6 feet in length, and held by a person capable of controlling the animal.

Passed - Mailboxes must have a new appearance and be maintained with black paint.

Passed - 3 Way STOP signs at the corner of Rue de Fleur and Rue de Voir. (The board is in the process of having them installed. Possibly early January.)

~~Passed - Annual dues \$150.00 (Invoices will be sent out on January 10, 2009 and due on February 10, 2009):~~ → K.C. due Jan 1st

Passed - Late fees on annual dues \$10.00 after 30 days, and another \$10.00 after 60 days.

Passed - Trailers/boats that are in the front of the lot and/or visible from the road will be fined \$10.00 daily for every day after the 7th day.

Failed - Trash bins are to be stored in a place that cannot be viewed from the road.

Should you have any questions regarding the vote results or any other matter, please contact Jay Davis, your association president.

Carol Harrison
Secretary