

## **Newscity**

By Marisa Demarco

### **Strife in Suburbia**

#### **In one tightly controlled Northeast Heights neighborhood, residents end up footing the bill for unresolved power struggles**

It's a neighborhood tying itself up in legal battles . Money issues involving thousands of dollars, concerns over free speech, what some are calling a "dictator-like" leader—these troubles and more have descended on the 485 Towne Park homes near Eubank and I-40.

A person moves to a gated community like this one for a reason, says Thomas Bercher, a member of the Towne Park Homeowners Association's board of directors. Regulations keep things nice, well-manicured and quiet. Residents value their privacy highly, and so when a neighborhood association, formed to keep an eye on the Towne Park board, began distributing a newsletter on April 6, Bercher insists it was a flagrant violation of the community's rules.

According to Bercher, it had nothing to do with the content of the newsletter, which demanded new management and took the board to task for its legal problems with landowner Sandia Foundation. "It's not a free speech issue," he says. "It's a solicitation issue. We don't permit solicitation.

"Towne Park doesn't permit a lot of things. Ugly yards, unkempt houses, open garage doors when the homeowner isn't nearby, improper parking and ... Christmas party invitations?

"Happy holidays, neighbors!" an invite from a resident reads. "I would like to invite you to drop by and say hi." Elizabeth Farlie posted the notice on her immediate neighbors' doors in December, asking them to bear with the additional cars that would be parked on the street for her party. Just a brief, neighborly note? Not to Tom Bussell, security chair on the board of directors. Two days before Christmas, he threatened to fine her for "door-to- door" solicitation.

That fine never materialized, but many others have. As the *Alibi* reported, [Newscity, "Agro Meets Urban Bliss," May 5-11, 2005; Neverending Stories, "The Ballad of Towne Park Plays On," Aug. 4-10, 2005], fines and threats to residents by the Towne Park board have been an issue for the community for some time. Socializing by the mailbox is considered "loitering" by the board, and an "out-of-control" yard, worthy of a more than \$100 fee, is defined as one with five or six weeds.

Scott Varner, a resident and founder of the Towne Park Neighborhood Association, contends those fines have been factored into the Homeowners Association's budget—to the tune of \$15,000 per year. Bercher, who is on the board, didn't divulge the actual amount, though he did acknowledge that the fines are part of the budget, if an insubstantial one.

But, according to Varner, bickering over fines and rules is just the tip of the iceberg for a board that has a "gestapo"-style hold on a largely dissatisfied but uninvolved neighborhood. "About two-thirds of the residents are about 75 and over," he says. "They do not want to participate. They moved here to enjoy life and enjoy Towne Park. To me, it really amounts to senior abuse almost, the way [the board is] manipulating the population."

### **Trouble Brewing**

The 72 acres that make up Towne Park are owned by the Sandia Foundation. Each month, residents cough up \$80 for their land lease and an additional \$70 for insurance, the running of the main office and the mowing of the grass of the common park area. The water bill for the park is prorated to the residents

as well, adding to a total of about \$175 or \$200 a month per house, depending on water usage. Before the water fee is added in, about \$73,000 goes to the Homeowners Association each month.

While the Homeowners Association handles the money forwarded to them by residents each month, they're supposed to pass on the \$80 per house monthly fee for the land lease to the Sandia Foundation. And that's where another problem enters the picture.

The Foundation contends that land lease payments have mostly been coming in late since January 2004 and sometimes didn't cover the whole rent. The Foundation also says it's owed \$25,827 in property taxes for 2004 and 2005. Additionally, Towne Park is required to carry liability insurance, and the foundation claims the association has done a poor job of maintaining it.

In response to the Homeowners Association's behavior, on April 4 the Sandia Foundation filed to appoint a receiver for Towne Park, a third party that would collect monthly land lease payments and yearly property taxes instead of the board.

"They just haven't done what they're supposed to do," says Pat Glennon, executive director of the Foundation. "Why they [haven't], I don't know. We have 'x' number of dollars that are due to us each month for rent payments. We're asking for an explanation."

"It's about money," Bercher says, responding to the Sandia Foundation's action. "They want us to collect money and pay it to them when we don't have a legal obligation to. Delinquent land rents and taxes are really what the issues are. The rest is just, you know, to sort of fill up the bucket. The central issue is they would like us to bill homeowners for money that homeowners should not be paying.

"Varner agrees that it's all about money—residents' money that is going to legal fees for issues that were theoretically settled years ago. "We're going to pay," he says. "We're already paying. My feeling is that Sandia is correct in their suit. Therefore, they're going to likely win. We're going to pay for Sandia's cost, and we're going to pay for our attorneys."

A management firm, Cauwels and Associates, handled the management of Towne Park for about five years. But since Oct. 31, 2003, the Towne Park Homeowners Association has elected to self-manage. The association is responsible for overseeing what the management company used to--the enforcement of rules, the day-to-day operations of the place, the maintenance of the parks' irrigation, in addition to financial dealings with the Sandia Foundation. Seven members make up the board, including President Ripley Harwood.

The trouble started with the shift in general management, says Glennon. The Sandia Foundation didn't have any problems with Towne Park finances before the board opted for self-management. "The documents that govern the relationship between the Towne Park Homeowners Association and the Sandia Foundation clearly state that there needs to be a professional management company managing the property," Glennon says.

Until February of this year, Varner says, Harwood was the only elected member of the board for about seven months, with all the other members having been appointed by him. "I tried to tell the Towne Park people to be patient," Varner says. Two members of the Neighborhood Association, a 130-member group Varner established in 2001 as a watchdog for the Homeowners Association, were elected to the board. But at the board's first meeting on Feb. 28, the Neighborhood Association members, Judi Richardson and Mario Guggino, were dismissed by a majority vote of the board. Two other members were appointed by the board in their place without the neighborhood's vote.

Richardson says her dismissal was explained to her by the board. "They told me exactly what it was for me," she says. "It was a letter I had written to the board of directors before the election of Towne Park officers. Their complaint about that letter was that I copied the Sandia Foundation on [it], putting doubt into the Sandia Foundation's mind about their ability to run Towne Park. I wasn't the least bit surprised.

"That's how things are in the corporate world, according to Bercher. "We're a corporation, not a governmental entity," he says.

### **Your Fees Are Going Toward ...**

Varner says he drafted a newsletter to inform the community about the lawsuit, which he felt was not well-publicized by the Homeowners Association. Richardson, with her young grandson in a stroller, took a stack of the newsletters and began handing them out on her street on April 6. "Next thing I know," she says. "I have a letter saying I was being fined for distributing an unknown number of newsletters."

The Homeowners Association has previously threatened Varner with a fine of about \$120 per newsletter, which means if he got around to all 485 residences, he would be out more than \$58,000.

After Richardson received her fine, the Neighborhood Association decided to seek arbitration. The lawyer representing the Neighborhood Association, Hess Yntema, says the fine is inconsistent with the governing documents of the Homeowners Association. "It was done without notice and a hearing," he says. "And it also violates Ms. Richardson's free speech ability, to speak freely and communicate with her neighbors about political matters."

But Bercher says it's no such thing. She could send an e-mail, he says, or mail the newsletter out to the neighborhood. "She had previously engaged in a similar activity and was written a letter asking her not to. We prohibit politicians [from] going door to door. She was well aware of that. In spite of that, she chose to do it."

And a couple legal tangles later, the saga of Towne Park continues. The real issue, according to Varner, is an increasing number of residents are beginning to feel they have no recourse for fines and no say in how their money is being spent when the neighborhood's voice isn't heard and lawyers are brought in to settle disputes. "I refuse to live like that," he says. "That's not the way this is supposed to be."

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