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FILE COPY

February 9, 2009

Via Hand Delivery

The Honorable Charles Porter
Hennepin County District Court
300 South Sixth Street, C1811
Minneapolis, MN 55487

Subject: Brown, et al. v. Brown, et al.
Case No. 27-CV-09-2277

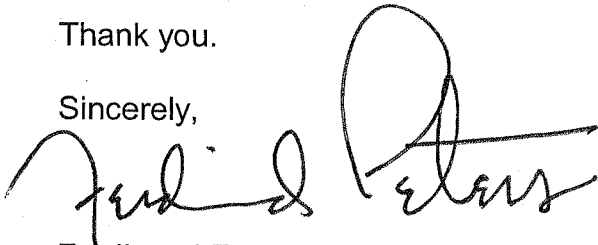
Dear Judge Porter:

As you requested, enclosed please find an original plus one copy of an Affidavit of Anne McCandless, which supports the statements of fact made by me at the hearing in the matter on February 3, 2009. I have also enclosed for your review an original plus one copy of a Memorandum of Law, which places those statements of facts into context and refreshes the basic arguments I made at the February 3, 2009 hearing.

If you need anything further from me, please contact me.

Thank you.

Sincerely,



Ferdinand F. Peters
FFP/bl

cc: Anne McCandless, Jill Clark, Esq., Albert Goins, Esq., James Moore, Esq.,
Peter G. Mikhail, Esq.

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Case Type: Other Civil

Ethylon B "E.B." Brown, Benjamin E. Myers, Robert "Bob" Scott, Shannon Hartfiel, Robert Wilson, William J. Brown, Dokor Dejvongsa, Steve Jackson, DeEtte Davis, Tamara Hardy, Lafayette Butler, Jernel McLane, Frank Essien, Kenya Weathers, and Jerry Moore,

Court File No.: 27-CV-09-2277

Plaintiffs,

v.

ANNE MCCANDLESS' AFFIDAVIT IN SUPPORT OF HER OPPOSITION TO PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER

Michael "Kip" Brown, P.J. Hubbard, Robert Hodson, Ann McCandless, Don Samuels (in his individual and official capacities), Barbara Johnson (in her individual and official capacities), Michael Martin (in his individual and official capacities), City of Minneapolis, Minnesota, Stacy Sorenson, an Unknown Minneapolis "City Attorney John Doe Defendant #1," and John Does 2-5,

Defendants.

STATE OF MINNESOTA)

)ss

COUNTY OF RAMSEY)

Comes now your affiant Anne McCandless and being first duly sworn, deposes and says:

1. I am Anne McCandless, named as a "Defendant" in this matter, but I have not been served with any process and do not waive insufficiency of process or jurisdictional defenses, or any other defense, counterclaim, or assertion that may

be made in response to the Summons and Complaint in this matter should it ever be served upon me.

2. I am a member of the Jordan Area Community Council ("JACC") Board of Directors.
3. I submit this affidavit to oppose Plaintiffs' motion for a temporary restraining order.
4. Ben Myers and all members of the JACC Executive Committee who were voted in from 2001 to 2007, were voted into their positions following the election of the new Board, and at the November Board meeting of that year, i.e., the first JACC Board meeting after the election of the new Board. Attached hereto as Exhibit A is a true and correct copy of a letter signed by Mr. Myers stating that he was elected in as officer in November 2006, after being voted onto the Board.
5. Attached hereto as Exhibit B is a true and correct copy of the purported minutes to the December 2008 Board meeting.
6. I was at the January 14, 2009, JACC Board meeting. During that meeting, Bob Scott "resigned" his position as Treasurer and from the JACC. This resignation has also been reported by news sources. Attached hereto as Exhibit C are true and correct copies of a news article from the Minnesota Spokesman Reporter, and a printout from a website of Anna Pratt, who reports the same fact.
7. At the January 14, 2009, the JACC Board voted to terminate the employment of Jerry Moore. Attached hereto as Exhibit D is a true and correct copy of the voting record of that vote, which is signed by Plaintiffs Brown, Hatfiel, Wilson, Jackson, Myers and Scott.

8. Hartfiel and Scott were present at the January 14, 2009, meeting and but did not object or vote with respect to the election of Browne, Hubbard, Hodson and McCandless. And while Myers, Brown, Jackson and Wilson voted against opening the officer elections, they all openly participated in the actual election itself, which is an action of the Board. Myers actively participated in nominating Brown for board chair, voting for Brown as board chair, and voting for himself as board vice chair. Jackson seconded Myers' nomination of Brown for board chair, voted for Brown as board chair, voted for Brown as vice chair, nominated Myers for vice chair, and voted for Myers as vice chair. Brown was nominated for board chair, voted for herself, was nominated for board vice chair, voted for herself before declining to take the position, seconded the motion for Myers to be vice chair, and voted for Myers as vice chair. Wilson voted for Brown as chair, voted for Brown as vice chair, and voted for Myers as vice chair. In addition, Myers, Jackson, Wilson and Brown also failed to vote in the election of secretary, Anne McCandless.
9. It has been the practice of the JACC, including at the most recent January 12, 2009 board election, to give voting rights to any person with legal identification indicating residence in the Jordan neighborhood, proof of employment in the Jordan neighborhood, or proof of property ownership in the Jordan neighborhood. Before the January 12, 2009 election, postcards were sent to 2,800 addresses in Jordan, plus 397 addresses outside Jordan, in an attempt to notify all those who would have the right to vote. It is estimated that there are approximately 4,500 individuals with the right to vote for the Board of the JACC.


10. Immediately following the installation of the new Executive Council on January 14, 2009, the JACC office was looted and all records removed dating back to 2006, along with office and other equipment.
11. Ben Myers, who is still a member of the JACC Board, has reportedly admitted knowing where the property is, but has not admitted who took it. Attached hereto as Exhibit E is a true and correct copy of an article from the Twin Cities Daily Planet which reported this fact.
12. According to news reports, 90% or more of the \$210,000.00 JACC received by the JACC since 2008 has been spent on salaries or administrative costs. Attached hereto as Exhibit F is a true and correct copy of an article from the Minneapolis Star Tribune.
13. Since the JACC regained control over some of the JACC finances, it has had to deal with paying such items as three months of back rent, a \$602.71 gas bill that had not been paid since May 2008, and \$1,422.00 on an overdue insurance bill.
14. A review of JACC bank records indicates that during Jerry Moore's tenure as Executive Director, and between October 27, 2006 and January 5, 2009, the JACC was charged \$6,926.24 for cell phone usage.
15. Further review of records indicates that JACC was charged between June 4, 2008 and December 22, 2008, for numerous food and beverage related charges, including Minnesota Wild Concessions, J.D. Hoyts' Supper Club, Monte Carlo Restaurant, Blondie's Sports Bar in Brooklyn Bark, three trips to Gabby's Saloon, two trips to Rix Bar and Grill, Major Sports Café in Golden Valley, and numerous other charges. The total price tag was \$886.26. In addition, other curious

charges, such as for a hotel room in Brooklyn Park at a cost of \$95.70, were charged to the JACC during this period. Trips to CVS Pharmacy between June 16, 2008 and December 16, 2008 indicate that JACC was charged \$785.68 for those trips.

16. Jerry Moore actually paid over \$400.00 in overdue electricity bills only in an attempt to have the electricity turned off at the JACC office.
17. One of the first things that Jerry Moore did after being terminated was to travel to the JACC bank with Ben Myers and convince the Bank vice president to allow he and Ben Myers to cut Jerry Moore a check to as "payroll" for Moore. Attached hereto as Exhibit G is a true and correct copy of the check, which appears to have been signed by Myers and Moore.
18. It appears that someone even attempted to change the registered office of the JACC with the Minnesota Secretary of State, to the address where Myers, Brown, Hartfiel and Scott purport to set up their office. Attached hereto as Exhibit H is a true and correct copy of a printout from the Minnesota Secretary of State website indicating that on January 23, 2009, someone attempted to change the address of the JACC to "1922 25th Avenue N, Minneapolis, MN." Attached hereto as Exhibit I is a true and correct copy of a letter from Benjamin Myers to the City of Minneapolis, attempting to announce without Board approval that the JACC has relocated to 1922 25th Avenue N Minneapolis, MN 55411."

FURTHER YOUR AFFIANT SAYETH NOT

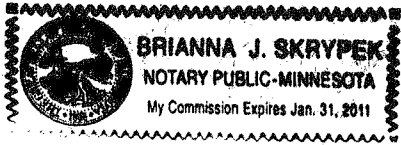
2-9-09
Date


Anne McCandless

Subscribed and sworn to before me
this 7 day of February, 2009.

Brianna J Skrypek

Notary Public



EXHIBIT

A

August 14, 2008

Mr. Bob Cooper
Development Finance Division
Crown Roller Mill, #200
105 5th Avenue South
Minneapolis, MN 55401

RE: MR. DENNIS WAGNER'S GRIEVANCES

Dear Mr. Cooper:

In your letter dated August 1, 2008, you requested responses to specific grievances filed by Mr. Dennis Wagner on May 14, 2008 and amended on May 20, 2008.

The following are the responses to each grievance listed in your letter, in the order which you requested them.

ANSWER TO GRIEVANCE #1 (regarding composition of the board):

Currently JACC is comprised of fourteen (14) Board of Directors, nine (9) of those Directors are residents of Jordan. Thus, 64% of the Board of Directors are residents of Jordan.

ANSWER TO GRIEVANCE #2:

On October 5, 2006, JACC received a letter from Bob Miller of the Minneapolis Neighborhood Revitalization Program (NRP) expressing concern about JACC's process of hiring Mr. Jerry Moore as its Interim Executive Director. [Please note that starting in September 2006, NRP withheld JACC's funding because of this issue.]

Mr. Benjamin Myers was hired by JACC executive committee members during a meeting on October 10, 2006 to represent JACC regarding its dispute with NRP. At the time of the hiring, Mr. Myers had just moved into Jordan and was not a JACC Board Director. Furthermore, Mr. Myers was not involved in the hiring process, nor was he involved in the initial drafting of the employment contract between JACC and Mr. Moore¹. Mr. Myers was not hired to represent Mr. Jerry Moore or Mr. Brian Smith individually, as alleged in Mr. Wagner's grievance.

¹ At a September 13, 2006 Board meeting, the majority of the Board voted to install Jerry Moore as interim executive director, and the Board, by majority vote, directed Brian Smith, as the Chair at that time, to "handle" Jerry Moore's employment contract.

On October 16, 2006, JACC paid Mr. Myers a sum of \$450.00 for the above representation. On October 17, 2006, Mr. Myers did what he was hired to do by drafting a response letter to NRP as well as telephonic follow-up. *See Attachment 1.*

During his brief engagement with JACC and seeing the importance of its mission, Mr. Myers decided to run to become a JACC Board of Director. At the JACC annual meeting on October 19, 2006, the community elected Mr. Myers, among others, to become a JACC Board of Director. Mr. Myers was seated as a JACC Board of Director at the November 8, 2006 Board meeting. At that first meeting, the Board elected Mr. Myers as the Chair of JACC.

Although Mr. Myers continued to work with NRP to try to resolve the dispute between JACC and NRP, and NRP's withholding of JACC's funding, however it was in his capacity as the Chair of JACC. The only compensation Mr. Myers ever received from JACC was the \$450.00 that was paid to his law firm of Dejvongsa, Myers and Associates on October 16, 2006.

During the short period of time that Mr. Myers acted as paid legal counsel for JACC, he was not a JACC Board of Director. He was simply a resident of Jordan. He never received any additional compensation from JACC once he became a JACC Board of Director and Board Chair.

During the relevant time period, the only Conflict of Interest Policy in place was as follows:

Members of the Jordan Area Community Council Board of Directors are prohibited from voting on any matter which directly affects their own financial interest, any family members direct financial interest or the direct financial interest of any organization which the Board members or any of their family members may be a paid board member, paid office, or employee.

Here, Mr. Myers, before becoming a JACC Board of Director, was paid by JACC to resolve a pre-existing dispute between JACC and NRP and his goal was to release JACC's funds that were being withheld by NRP. Any further work with NRP regarding this issue performed by Mr. Myers after he became a Board of Director was in his capacity as the Chair and he was not compensated. The Board was kept up to date on the progress of his attempts to have NRP release JACC's funds. The issue was finally resolved and NRP released JACC's fund in July 2007.

ANSWER TO GRIEVANCE #3:

See Answer to Grievance #2, above.

Additionally, Mr. Myers was not the chair the ethics committee that investigated Ms. Debra Wagner's alleged violation of her fiduciary duties to JACC.

There was not conflict of interest.

ANSWER TO GRIEVANCE #4:

ANSWER: See Answer To Grievance #2 and #3, above.

Additionally, the law firm of Dejvongsa, Myers and Associates was hired in October 2006 to represent JACC in its dispute with NRP concerning the process of hiring Mr. Moore as its interim executive director. At that time, neither Mr. Myers or Ms. Dejvongsa were on the JACC Board. Both Mr. Myers and Ms. Dejvongsa were seated as JACC Board of Directors at the November 8, 2006 JACC Board of Directors meeting.

ANSWER TO GRIEVANCE #5:

See Answers to Grievance #2, 3, and 4, above.

ANSWER TO GRIEVANCE #6:

Mr. Moore was cited with driving without a valid driver's license in March 2007, a petty misdemeanor.

This was a private matter that had nothing to do with JACC. Mr. Moore did not use JACC funds to retain an attorney. Furthermore, Mr. Myers assisted Mr. Moore with this petty misdemeanor charge on a pro bona basis. It was a very brief representation that required very little work. Mr. Moore paid \$125.00 to the State and his driver's license was reinstated.

Even if Mr. Myers was paid by Mr. Moore in connection with this petty misdemeanor charge, Mr. Myers cannot reveal information relating to client representation to outsiders without Mr. Moore's informed consent. This would be a violation of the Minnesota Rule of Professional Conduct, Rule 1.6(a), which prohibits lawyers from "knowingly reveal information relating to the representation of a client." Comment 4 to Rule 1.6 further states:

Paragraph (a) prohibits a lawyer from revealing information relating to the representation of a client. This prohibition also applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person. A lawyer's use of a hypothetical to discuss issues relating to the representation is permissible so long as there is no reasonable likelihood that the listener will be able to ascertain the identity of the client or the situation involved.

Lastly, Mr. Myers was part of the search committee for the hiring of the new executive director. However, he was not designated as the chair or the head of that committee.

There was no conflict of interest. Mr. Myers assisted Mr. Moore with a minor traffic citation on a pro bono basis. The representation concerned a private matter that had nothing to do with JACC or the executive director appointment. Mr. Myers did not have a financial interest in assuring that Mr. Moore was successful in securing the Executive Director position. Mr. Myers' only interest was securing the most qualified person as Executive Director of JACC.

It should be mentioned that Mr. Myers got on the executive director search committee based on a recommendation of Board Member Deanna Borske during the January 10, 2007 Board meeting and the Board approved.

ANSWER TO GRIEVANCE #7:

See Answer to Grievance #6.

ANSWER TO GRIEVANCE #10:

Mr. Moore was hired as JACC's executive Director in April 2007. In July 2007, Ms. Dokor Dejvongsa appeared as Mr. Moore's attorney in a family law matter. Again, this matter had nothing to do with JACC or the executive director appointment. And, the representation was post executive director appointment.

Again, for Ms. Dejvongsa to disclose her legal representation of a client to the JACC Board on matters not related to JACC would be a violation of Minnesota Rules of Professional Conduct.

ANSWER TO GRIEVANCE #8:

Dejvongsa, Myers and Associates was hired by JACC, through its executive committee, in October 10, 2006 to assist JACC in resolving its dispute with NRP concerning the hiring of its interim executive director.

Pursuant to JACC Bylaws, Article V, Section 4: "The Executive Committee shall . . . act in place of the full Board of Directors when deemed necessary for time-specific decisions, and other duties which normally fall to Executive Committee."

Bob Miller/NRP's letter to JACC was dated October 5, 2006. In that letter, Mr. Miller required a response to that letter from JACC no later than October 20, 2006.

Under these circumstances, the Executive Committee was required to act in place of the full Board in order to meet a fast approaching deadline. The Executive Committee's action was well within the guidelines of the JACC Bylaws.



Lastly, as mentioned in Answers to Grievance #2 through #5, above, the law firm of Dejvongsa, Myers and Associates acted as paid counsel for JACC prior to Mr. Myers and Ms. Dejvongsa joining JACC as Board of Directors.

Therefore, Mr. Smith acted reasonably as the Board Chair at that time.

ANSWER TO GRIEVANCE #9:

According Mr. Moore's job description and in his capacity as Executive Director, he was authorized by the Board to make day-to-day operational decisions, including hiring and firing of staff and volunteers.

Additionally, JACC received funding from Otto Bremer for the purpose of adding a health outreach worker to the JACC staff.

ANSWER TO GRIEVANCE #11:

As mentioned above, the Board gave Mr. Smith, the Chair of JACC, authorization to draft and negotiate Mr. Moore's interim contract with NRP. Mr. Smith's chairmanship terminated in November 2006 and he was replaced by Mr. Myers.

After months of good faith discussion between JACC and NRP in attempts to resolve this issue, NRP still refused to release JACC's funds. Instead, Mr. Miller requested that additional language be inserted into the Interim contract concerning unemployment compensation. At that point in time, Mr. Myers, with the Board's authorization, filed a grievance against Mr. Bob Miller for wrongfully withholding of JACC funds.

The NRP Policy Board found that Mr. Miller's withholding of JACC funds was inappropriate and ordered the funds to be released.

In no way was Mr. Smith nor Mr. Myers acting beyond their authority.

ANSWER TO GRIEVANCE #15:

JACC filed a grievance against Mr. Bob Miller, Director of NRP, for wrongfully withholding JACC's funding in connection with the hiring of Mr. Moore as Interim Executive Director. Prior to filing this grievance, Mr. Myers received Board authorization.

ANSWER TO GRIEVANCE #16:

The allegation set forth in the above referenced grievance is a complete mis-characterization. Mr. Myers did not engage in efforts to "Save Big Stop". Mr. Myers' public statement on this

issue was in directed towards engaging the community in a discussion about other alternative uses of the Big Stop, other than simply destroying it.

ANSWER TO GRIEVANCE #17:

In his capacity as the Chair of JACC, Mr. Myers' April 1, 2008, letter to City Council Member Don Samuels was a follow-up to prior meetings and discussions with Mr. Samuels on issues relevant to JACC and Jordan. *See Attachment 2.*

The letter had a firm tone, but was not of a bullying or denigrating in nature. Mr. Myers copied the Board and others on that letter.

ANSWER TO GRIEVANCE #12:

With regard to Ms. Debra Wagners' ethics violation, the ethics committee issued a full findings of fact and recommendation. This was submitted to the Board for a vote.

ANSWER TO GRIEVANCE #13:

During the ED Search Committee, there were no individual minutes taken. A report was generated and submitted to the full board as to the recommendation made by said committee.

The applicants and the interview process was in fact discussed with the full Board. The Board voted and decided as to the direction the organization should go as it pertains to personnel.

ANSWER TO GRIEVANCE #14:

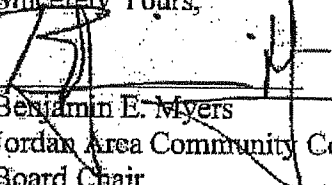
At each JACC Board meeting, as part of our agenda, JACC presents and distribute financial reports, if available, to JACC Directors and members. Mr. Wagner was a Director up until his resignation sometime in March 2007 and has attended many of the meetings held by JACC after his resignation. Typically, and as a result of Mr. Myers' administration, JACC has been proactive in having emailed copies of JACC's financial reports sent out to the Directors prior to the meetings. This is usually done by either the Executive Director, a volunteer, or an employee.

Furthermore, it should be noted that JACC recently underwent a formal financial and compliance audit. The audit was conducted by Michael Wilson and Associates. This audit and the auditing firm were at the direction of NRP. During a May 2007 JACC Board meeting copies of the audit was made available to Directors and members. Additionally, the auditing firm presented the audit and went through the audit page by page.



I hope the above responses sufficiently addresses your concerns. If you have any further questions, please feel free to contact me or Mr. Jerry Moore.

Sincerely Yours,



Benjamin E. Myers
Jordan Area Community Council
Board Chair

Cc: Jordan Area Community Council

EXHIBIT

B

Jordan Area Community Council
Jordan New Life Church
1922 25th Avenue N. Mpls. 55411
December 10, 2008 Board Minutes

Attendees: EB Brown, Bob Scott, Ben Meyers, Dan Rother, Michael Browne, Steve Jackson, Keith Reitman, Shannon Hartfiel, Lynda Baker, Chris Christenson, and Jerry Moore

Absent: Robert Wilson, John Hubbard II and Dokor Dejvongsa

The meeting was called to order at 6:07 p.m. by Ms. EB Brown.

Ms. Brown welcomed everyone and introduced herself as the new Board Chair.

She then thanked Mr. Scott for hosting the sign in table.

Mr. Jackson noted Mr. Wilson had called and would not be in attendance due to work emergency.

Reflections

Mr. Chris Christenson gave reflections. He has been a resident of Jordan neighborhood for the last 26 years; longtime teacher at Edison, and a previous rental property owner.

Currently, Mr. Christenson resides at 29th and Sheridan in Jordan and has for many years. At present he teaches English and Reading at Hennepin County Juvenile Detention Center through the Minneapolis School district. This has proven to be a tough go for some of the kids with 8 to 10 classrooms. As a result he is debating retirement.

Approval of the Agenda

Changes or Additions to the agenda

* Dan Rother asked to be added to the agenda to discuss his request for payment and indemnification from JACC. Consensus was to address this in a different forum.

* Motion to add the Nominating Committee report was passed.

Mr. Myers moved to approve agenda and Mr. Scott seconded and the motion passed unanimously

Approval of November Minutes

Mr. Rother noted grammatical errors to be corrected. He also noted there was no record of who was in attendance and who was absent. Suggestion was made to infuse roll call starting at the next board meeting. Mr. Rother also suggested that votes be recorded and noted in future board minutes. Mr. Reitman asked a question to Mr. Myers, in regards to special board meeting what is required when recording votes and the amount of detail included? Mr. Myers replied that to his knowledge there is no law or bylaw that requires any detail. Mr. Reitman suggested the board approve or disapprove attribution to who voted what way. Ms. Brown will wait until her time to report to share the tool that could assist.

Mr. Browne noted corrections needed to be made first, to correct the spelling of EB Brown and his name throughout the minutes. Second, on page three remove comma after comments. Lastly, on page four, fourth paragraph, sixth line to change the word he to contract. Mr. Browne requested once the changes were complete to e-mail them out to the board members.

Under nominating committee Mr. Rother referenced and should be added to the minutes JACC by-law article eight, section three, first two sentences; "Any member in good standing may become a member of any committee s/he desires. Attendance at a minimum of three meetings in a twelve month period is an expectation of an active committee member.

Under finance committee report Mr. Rother, asked if the website contract had been fulfilled?

Jerry Moore stated the contract had not been fulfilled and the contractor had not been paid all the funding. He went on to say that time has run out on the contract and there was only one task that

has not been completed. JACC only paid for items he completed for a total of \$1,800. No additional funds will be paid.

Mr. Reitman referred to finance report and questioned the \$1,000 in 2008 and again listed in 2009 budget. Was the contract completed in 2008 prior to listing an additional \$1,000 line item in 2009? Yes.

Mr. Myers noted Ms. Dejvongsa name is spelled Dokor not Dokora.

Mr. Scott made a motion to approve the minutes and Mr. Jackson seconded.

Mr. Rother added a friendly amendment that the modified minutes be approved.

The motion was passed by all except Mr. Myers declined to vote.

Ms. Brown reviewed and clarified what meeting norms are to assist the board with moving ahead.

- Start and stop on time
- Attribution of votes/vote tally
- Considerate of everyone's time/opinion
- Guided by Robert's Rules of Order
- One person to talk at a time
- Have agenda items-be true to the time listed/time keeping device/Be true to allotted times on the agenda
- No screaming, no name calling, no yelling, no profanity, no verbal threats, no disrespectful language

The norms are quoted from Roberts Rules of order.

Mr. Jackson motioned to accept and approve norms and Mr. Myers seconded

Mr. Browne stated he appreciated the tone setting, but failed to see the need to focus on norms in order for us to move forward. Mr. Browne thought that each board member should attend board training that will include the Robert Rules of Order. He felt training could eliminated the need for norms since norms can be subjective.

Mr. Browne went on to say he would not have introduced norms in this form. It is difficult to vote in favor until we do some basic training on Robert's Rules of Order.

Mr. Reitman respected the way both Mr. Browne and Ms. Brown are approaching the norms. He suggested as part of the training the board ask staff, or someone on the board to volunteer to pick some examples on a weekly basis that are relevant to what has happened in the last year. Then take those examples and cross-reference them with Roberts Rules of Order to show how the rules prove to be beneficial. Mr. Reitman suggested Mr. Browne would be a good person to could cross reference examples. Mr. Browne replied, he was not willing to do that and felt it needed to have someone that is not on this board should conduct the training. He recommended the board move forward with Ms. Hartfiel suggestion.

Ms. Hartfiel had previously commented she may know a person who would be willing to facilitate training for JACC. She said she would not hesitate to ask Mr. Stuemme he would be willing to do the training for us.

Ms. Brown called for a vote on the motion to keep the norms.

Four board members voted yes: Mr. Jackson, Mr. Myers, Ms. Hartfiel, and Ms. Brown

Three board members voted no: Mr. Scott, Mr. Reitman, and Mr. Browne,

Two board members abstained: Mr. Rother and Ms. Baker

4th Precinct Report

Representative from the 4th Precinct was unable to attend this month. They will be at the January meeting.

Old Business

Appointing of Board Secretary

Ms. Hartfiel has served since 2007 as Board Secretary and is stepping down. If she leaves now we have no one to record December's meetings. Ms. Brown asked Ms. Hartfiel to stay on until January election. Ms. Hartfiel agreed to stay on until January election. Mr. Browne stated his disapproval because the board has not received copies of minutes from June or July. This is now four months of outstanding minutes. Ms. Brown explained that between now and the next board meeting there is no reason to appoint someone else since the election is next month.

Mr. Reitman suggested all board members stay on until January 2009 election.

Mr. Browne stated new board members are not allowed to take an executive position. The reply by several that we have done it in the past. We need someone in the position throughout the year. There are some important tasks that need to get done between now and January. If the office is changing and staff will be taking minutes, then there should be consideration given as to what the office does.

Mr. Reitman motioned to accept Ms. Hartfiel's appointment to board secretary. Mr. Myers explained that we don't need board approval. It is an interim assignment. Mr. Reitman withdrew his motion

Mr. Moore did not know the reason for the delay of the four outstanding meeting minutes. Mr. Reitman reiterated that everyone knows the concern and we're not losing sleep over it, we are going to get there.

Staff cannot fulfill the functions of secretary sitting on the executive committee. If they do it does change the position with someone else taking notes and all the secretary does is review them. This could make it more attractive to board members. To appoint someone for a 30-day interim or 45-day-interim is not effective.

JACC office move

Ms. Brown stated in November's board meeting we had a discussion about moving the office from 2009 James Avenue North. We have since had a conversation with Mr. Ackerberg and there is an open door of talking about our needs based on the budget. There will be more concrete information in the near future. Ms. Brown and Mr. Scott are speaking with Mr. Ackerberg and including in the conversation his duty to abide by the lease. No conclusion needs to be drawn at this time.

Mr. Rother stated that in his opinion something as important as signing a lease must be a full board decision. The decision should not be decided by staff, executive committee, or board chair.

Ms. Brown stated that a final decision will not be made without the board or the community being fully informed.

Mr. Rother stated the community has concern that staff or certain board members will make a decision without full board

Mr. Scott stated that Mr. Ackerberg understands JACC cannot make a decision without voting and we would have to come back to him with the decision.

Mr. Browne made the motion to suspend JACC's actual move from 2009 James Ave North until discussion have been completed with Mr. Ackerberg. If an agreement cannot be reached

they should bring it back to the JACC board for approval. With notice to Mr. Ackerberg of intended action.

Mr. Rother motioned to cease the intentions to move.

Mr. Myers said I don't understand the point of the motion to cease of intentions to move the JACC office. The conversation between Mr. Ackerberg and board chair is to decide if it's in JACC's best interest to stay at 2009 James Avenue North or move.

Mr. Rother requested he wanted some kind of acknowledgment to the community and Mr. Ackerberg that JACC is not leaving from 2009 James Avenue North.

Mr. Myers said if Mr. Ackerberg does not agree to the terms we would need to be able to stay awhile longer otherwise we would have to be out by Dec. 31.

Mr. Jackson suggested we make concurrent plans on the office move otherwise what happens if we have to move.

Mr. Browne said that is a good point to multi tasks. When we talk to Mr. Ackerberg let him know that we are not moving on December 31st. When we have all the issues laid out we can have a special board meeting

Mr. Scott called the question into motion

Seven board members voted yes; Ms. Brown, Mr. Scott, Mr. Browne, Mr. Rother, Ms. Hartfiel, Mr. Reitman and Mr. Jackson.

One board member voted no; Mr. Myers

One board member abstain; Ms. Baker

The motion was passed to instruct staff to relay to Mr. Ackerberg the final decision to suspend moving from 2009 James Avenue North until negotiations are completed. However; JACC will move if appropriate but we will not be moving out next week.

Mr. Browne motioned to accept a \$400 donation from NRP and authorize the nominating committee to spend up to \$600 for printing, mailing and processing of ballots and notifications. Mr. Rother seconded the motion. NRP gave a bid of \$837 with a \$20 one time set up for a total of \$857.

Mr. Scott asked where would the money come from?

Mr. Reitman called question into motion

Eight board members voted yes; Mr. Scott, Mr. Jackson, Ms. Hartfiel, Mr. Rother, Mr. Browne, Mr. Meyer, Ms. Brown and Mr. Reitman

One board member voted no; Ms. Baker

Mr. Scott stated we have a proposed budget that needs to be approved. We will need it for our CPA however; there will be changes.

Mr. Jackson motioned to approve budget Ms. Baker seconded the motion

Mr. Rother asked why some people did not receive meeting minutes from last month's board meeting? He stated meeting notices should be sent to the entire board and JACC list.

Mr. Browne asked is the government money a projection/proposal listing 2.5 FTEs with only 1.5 for most of the year will there be additional funds there.

Mr. Scott mentioned that we can move money from one place to another.

Seven board members voted yes; Mr. Scott, Ms. Baker, Mr. Reitman, Mr. Myers, Ms. Brown, Ms. Hartfiel and Mr. Jackson

Two board members voted no; Mr. Rother and Mr. Browne

Announcement

There is an opening of JACC books Friday, December 19 from 5-7pm board and community member to look at finances. You will be able to look but no copies can be made or taken. Mr. Cooper, Ms. Brown, Mr. Scott, Mr. Moore, and Judy our accountant will be available to answer questions. Our hope is that this will solve the problems at hand. We have gone way beyond what we have done in the past.

Mr. Rother stated account numbers can be blocked out. State law says copies can be made of accounting records. Mr. Reitman asked did you look it over thoroughly? Mr. Rother replied yes, it's workable.

Mr. Browne-moved to adjourn and Mr. Jackson second

Meeting was adjourned at 7:58 p.m.

EXHIBIT

C

Power struggle rocks Jordan neighborhood

Newly elected JACC leaders push on despite bitter rivalry with 'alternate board'

By Anna Pratt
Contributing Writer

At a January 17 press conference, Minneapolis' Jordan Area Community Council's (JACC) newly elected leaders tried to clarify recent events.

For starters, JACC's former executive director, Jerry Moore, was fired by the new board after he got into a fist-fight with neighbors.

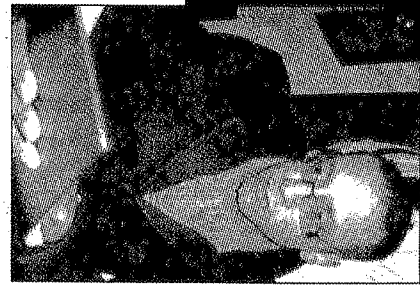
No one was seriously injured, though a majority of board members agreed it was grounds for immediate dismissal. According to one bystander who didn't want to be named, it was the mention of suspicious JACC expenditures that set him off.

Secondly, an alternate board set up shop at Jordan New Life Church, claiming that JACC headquarters had to be relocated. While its



New board: Back row (l-r) E.B. Brown, Steve Jackson, John Hubbard, Vladimir Monroe, David Haddy, Anne McCandless, Keith Reittman and Michael K. Browne
Front row (l-r) Dan Rother, Robert Hodson, Todd Heintz and Tyrone Jaramillo

Inset: JACC Board Chair Michael K. Browne



executive committee wrongly held closed-door meetings, general membership meetings were cancelled, thereby leaving the community out. Requests for information were ignored. Additionally, 70 percent of the neighborhood's funding from the Neighborhood Revitalization Program dwindled.

Fortunately, "Citizens have recourse," Monroe

players claim to be the "real" JACC, the body isn't eligible for funds from the city according to some city officials.

Meanwhile, the alternate board is operating with Jerry

Moore as its leader, according to its memos.

Around the same time, the JACC office at 2009 James Ave. N. was looted, with computers, financial records and other equipment walking off. It's currently under investigation by police. Moore ordered that the offices

utilities be shut off after being fired by the new board, sources say.

Despite the challenges, Jordan resident Vladimir Monroe, who was elected to the board on January 12, said the board's turnover is a good example of the democratic process at work. In the past, the

See JACC on page 5

St. Cloud State not a racial nightmare for everyone

Two Black student-athletes at St. Cloud thrive

Pilot program tackles low tutoring enrollment

MPS utilizes community engagement to link students with tutoring



THIS WEEK



Bobby McFerrin at Orchestra Hall

The Spot 9



Voting with our thumbs

Metro 2



Continued from page 1

will be able to focus on what matters most to Jordan, such as addressing the home foreclosure crisis, youth violence and a community/police rift, among other issues.

Old board versus new board

Benjamin Myers, the former vice chair, is claiming to be the legal vice chair of the alternate board, but he wasn't re-elected. He contended via e-mail that Michael K. Browne and his fellow executive committee members didn't follow the JACC bylaws: "This is all unfortunate because while this is a voluntary position, such positions serve a community that truly needs clear leadership..."

"[T]hose like-minded individuals committing the illegal acts they have committed show that they are not true leaders. Leaders are those that follow the rules and engage in righteous behavior, not behind closed doors and covert illegal tactics," Myers said. However, it's unclear why Myers and other skeptics didn't go through the regular grievance process to raise the issue.

At the press conference, rivals passed out a flier that characterized the recent elections as a takeover "which can only be described as mutiny," even though the board members were selected through a public process and a majority of old and new members voted for the new executive committee. Additionally, the incoming group has been recognized by NRP and City Council President Barb Johnson and Council Member Don Samuels.

Member Don Samuels.

The flier states that E.B. Brown is the legal board chair, even though she peacefully handed over the reins to Michael K. Browne at the January 14 meeting. Furthermore, E.B. Brown passed on Michael K. Browne's offer to be vice chair during the same board meeting.

It goes on to say that Myers is the legal vice chair, despite the fact that he wasn't re-elected. Robert Scott is "still Treasurer," even though he publicly resigned from the board on January 14.

Of the current JACC officers, it reads, "Though this selective group left the meeting this past Wednesday feeling they had successfully taken over this organization, they need to think again! The Executive Committee that was legally voted into office for a term of one year is not stepping down nor will [it] allow any harm to come to this organization or the neighborhood."

At the recent press conference, Michael K. Browne disputed the alternate board's allegations, saying that the elections were fair and valid. Board elections were originally to be held in October, "but they were postponed because significant issues were raised," Browne said.

On January 14, the JACC approved a motion to remove the current executive committee members and to replace them. "It was the board's prerogative to elect a new executive committee," Browne said. Additionally, "We checked with the NRP and the City. They said that the bylaws dictate a process."

A November vote regarding the makeup of the executive committee, which the E.B. Brown flier defends, was done improperly, Browne said.

Back then, the executive committee members voted to extend the committee terms. In essence: "They voted to extend their own terms," straying from protocols, Browne explained. "We applied all of the eligibility requirements to everyone."

The way things were done on the nominating committee were fair, Browne said, adding, "There were no shortcuts." Everything that happened is accounted for in the meeting minutes.

Despite the heated back-and-forth, Browne, who led the meeting, said, "We invite those who disagree with us to stick with us and to continue disagreeing with us," to ensure all voices are heard, he remarked. "Livability is the immediate issue. We will need to organize and hold community forums to develop a strategic plan that is driven by the needs in the community."

Browne continued by saying that JACC's new leadership "will be guided by principles of accountability and integrity... We can't do it alone. We need each other. To make the North Side stronger, we need to have respect for each other, even when we disagree with each other."

The group [that's complaining about the elections] isn't admitting [that] it's for their own personal agenda. It's a frustration for us and is dysfunction on the part of just a few people... It should be simple, but you have to have people agreeing that the democratic process is OK.

"We'll work with the group as constituted," Miller continued. "Hopefully, the board members will withstand the conflict over the next few months." Additionally, JACC hasn't invested the required amount in housing. "We'll work with them

to fulfill that. It might influence how much they're able to spend on public safety and youth programs. They spent a lot on salaries. There are consequences of that."

NRP could potentially stop funding JACC as a result of board decisions up until now. "Most [of the old board members] haven't monitored the funds," Miller said. A lot of money has been spent on administrative costs.

"That means there won't be much left for that for the future," Miller said. Money for programming is still available. At this point, "There are so many unanswered questions, so we can't say exactly what we would do. Clearly the new board is not responsible and they'd be the ones hammered. The board has done things to secure assets."

Anna Pratt welcomes reader responses to annapratt@journalists.com.

TUTORING

Continued from page 1

the same week, advertising the districts newly adopted recruitment campaign:

the booth and contribute prizes. Community activist Al

Community Activist Winning



35th Anniversary Gala

Saturday • 8:00 PM
MARCH 7

EYES

Continued from page 4

Prattles

Ramblings from Anna Pratt, Twin Cities journalist

Does new leadership in Jordan mean a change for the better?

[with 4 comments](#)

More on the [controversy](#) in the Jordan neighborhood on Minneapolis' North Side: On Wednesday night, the Jordan Area Community Council (JACC) approved a motion to remove the current executive committee members and to replace them. This comes on the heels of Monday night's altercation with JACC executive director Jerry Moore, who shockingly punched several neighbors after board elections wrapped up, something I was present for (I wrote about this briefly in an [earlier post](#)). Despite the fallout, Moore attended Wednesday's board meeting. The situation has also been discussed [here](#) and [here](#).

JACC has long been enshrouded by controversy, especially concerning its financial state; there's a ton of confusion about its expenses, including what went where and how much and why, with few available answers. Additionally, some people believe the community has largely been shut out of JACC decisions — something I plan to cover in more detail later.

While Wednesday's meeting was also convoluted, some JACC observers are hopeful that the newly-empowered board will improve things. But the night's leadership changes didn't come so easily. A few audience members tried to impede the passage of motions, challenging the bylaws and making off-topic remarks. Additionally, board member Bob Scott resigned — leaving that seat open to people living in Jordan.

More on this story to come. Stay tuned.

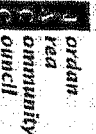
Written by annapratt

January 15, 2009 at 12:39 pm

Posted in [Uncategorized](#)

EXHIBIT

D



JACC BOARD OF DIRECTORS VOTING RECORD

Each committee or board member forwarding recommendations to the Board must complete the following form and submit with appropriate documents attached

Date of Committee Meeting: _____

Committee Name and Chairpersons: _____

Name of Committee/board member: _____

Committee Chair: _____

Co-Chair: _____

Motion:

To Remove Terry Moore as Executive Dir. of JACC.

Additional Information

1. Does this motion require financial support?

If Yes, then:

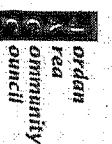
- 1. Is there a budget? (please attach)
- 2. Has a funding source been identified?

Please explain: _____

Date of Board Meeting: 1/14/09

MOTIONS BEFORE THE BOARD OF DIRECTORS

To Remove Terry Moore as Executive Dir. of JACC effective immediately.



VOICE TALLY

BOARD MEMBER	M	TOY	COMMENTS
1. Michael Reardon		Yes	Yes
2. Anne MacLennan		Yes	Yes
3. Sylvia Sporn		Yes	
4. P.J. Hunsbaker		Yes	
5. David Hood		Abstain	
6. Todd Henz		Abstain	
7. E.B. Brainin		Abstain	with explanation
8. Stephen Smith		Yes	
9. William Moore		Yes	
10. G. Deane		Yes	
11. David Rohn		Yes	
12. Robert Wilson		NO	
13. Steve Jackson		NO	
14. Bev Myers		NO	
15. Bob Green		NO	

Signed By: _____

Board Secretary

Date: 1/14/09

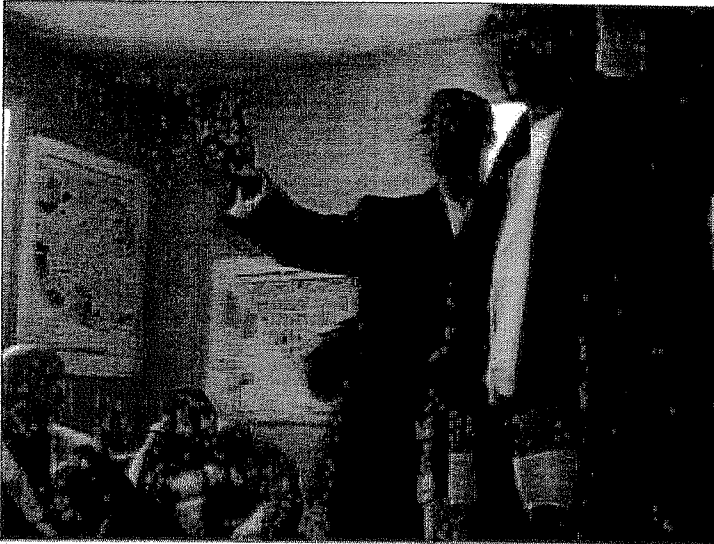
KEY:

Motion Number - M
 Type of Vote - TOY - Yes=Y and No=N
 Abstain = A Absent= AB

EXHIBIT

E

JACC Board drama continues with police calls, shouting matches



Michael K. Browne (with glasses) and Steve Jackson at January 17 press conference. (Photo by Sheila Regan)

BY SHEILA REGAN, TC DAILY PLANET
January 18, 2009

A fistfight, shouting matches, and a possible theft of JACC records and office equipment mark the latest chapter in the Jordan Area Community Council's struggles. On Saturday, January 17, two groups claimed to be the legitimate elected officers of JACC at a contentious press conference. Their claims stem from the January 14 vote of the current board for new officers, and the current board's January 14 decision to fire executive director Jerry Moore.

UPDATE – January 19 – NRP certifies that January 12 board election and January 14 election of executive committee were properly conducted.

Computers, financial information, and checkbooks were taken from JACC's offices at some time on the night of January 14 or the morning of January 15. Police are investigating. Police are also investigating a physical fight after the January 12 meeting that, according to the police report, involved executive director Jerry Moore and John G. Hubbard.



For a photo gallery of the January 17 press conference, [click here](#).
For other viewpoints, stories and photos, see the blogs of reporter Anna Pratt and blogger "Johnny Northside."

The officers elected by the board on January 14, including chair Michael (Kip) Browne, are recognized by the City of Minneapolis (see attached PDF) and the Neighborhood Revitalization Program (NRP). Other officers include P.J. Hubbard as Vice Chair, Robert Hudson as treasurer, and Ann McCandless as secretary. For the sake of clarity, the executive committee chaired by Michael Brown will be referred in this article as the 2009 executive committee. They have majority support of the board, as well as NRP and City Council recognition.

A second group, chaired by E.B. Brown, claims that it is the true executive committee. This group held office before the January 12 election of new board members and the January 14 election of new board officers, and they will be referred to in this article as the 2008 executive committee. Ben Myers spoke for this group at the January 17 press conference, and E.B. Brown was not present.

In addition to electing new officers at the January 14 meeting, the board also fired JACC's executive director Jerry Moore, according to statements Michael (Kip) Browne made at a press conference on Saturday, January 17. At that press conference, Browne said that it was possible that the JACC computer, checkbook, and other items now missing could have been taken during the board meeting itself.

Ben Myers, former chair of JACC, and current vice chair on the 2008 executive committee, said at the January 17 press conference that he knew who had possession of the missing items, but wouldn't say where they were.

The 2008 executive committee claims that the Wednesday officer elections were a coup. In a written statement that was passed out at Saturday's press conference, E.B. Brown wrote that a selective few board members have "chosen to ignore due process" and "are illegally representing themselves as the Executive Committee."

Shannon Hartfiel, secretary of the 2008 executive committee, shouted at the Saturday press conference: "Why is there a division of people that live in one community? It is a sin! Enjoy your power

Who are the JACC Board members?

According to the City Council letter, the board members and officers are:

- Michael Browne—Chair
- P.J. Hubbard—Vice Chair
- Robert Hodson—Treasurer
- Anne McCandless—Secretary
- Monroe Vladimar
- Tyrone Jaramillo
- Todd Heintz
- Dave Haddy
- Daniel Rother
- Benjamin Myers—ex officio member
- Shannon Hartfiel***
- Keith Reitman
- E.B. Brown
- Steve Jackson
- Robert Wilson

According to the 2008 executive committee, its members are:

of insanity!"

The Wednesday night officer elections followed a general election on Monday, January 12. At that general election, six new board members were elected: Dave Haddy, Todd Heintz, Robert Hodson, Vladimir Monroe, Ann McCandless, and Tyrone Jaramillo.

During the January 12 meeting, a community member, Catrice Champion, asked State Senator Linda Higgins, who attended the meeting, where all the money had gone for youth programs, according to Megan Goodmundson, another JACC member.

In response to Catrice Champion's question, said Goodmundson, former board member Dan Wagner told Champion that she should be asking those questions of Jerry Moore, JACC's executive director. Moore is a central figure in the current schism, and in controversies that stretch back more than a year and include lawsuits, heated arguments at meetings and accusations of financial improprieties.

After Monday's meeting, Goodmundson said Catrice Champion did speak to Moore, and Wagner approached them and said "Jerry, you can show her where the money is. You have the documents," and patted him sarcastically three times on the back.

Then, said Goodmundson, "Jerry swung at him." Goodmundson said she rushed over, and Moore began pushing and swiping at her. Then, said Goodmundson, "A couple guys saw [Moore] turning his rage toward a woman." She said board member P.J. Hubbard and another man rushed in. Then P.J. Hubbard and Moore got into a fistfight.

The police report for the incident names both Moore and Hubbard as victims of bodily harm.

Following the executive elections on Wednesday, the board voted to fire Jerry Moore. But the 2008 executive committee, as well as some other community members, question the validity of the executive officer elections.

Dokor Djvongsa, a former JACC board member and the law partner of Ben Myers, said at the Saturday press conference that the officer elections didn't follow the JACC bylaws. She handed out a copy of the bylaws and circled language that stated that an officer can only be removed "with cause."

Megan Goodmundson, also a past board member, said that the general elections were supposed to take place in October, but they got postponed. In November, the board voted to extend the terms of some of the officers whose board tenure had expired. That extension was considered "just cause" for those officers to be removed from their positions.

Michael K. Browne spoke at the Saturday press conference of consensus, but there seemed to be anything but consensus. Browne couldn't even get through his opening statement without interruption. Al Flowers shouted from the audience: "I had four residents say you were illegal!" and "You don't control this" and "I live in this neighborhood, I get to ask questions," and "Black Power, Man! Black Power!" (Flowers was eventually escorted out by police).

Browne said that following the disappearance of computers, office equipment and organization records, the 2009 board changed the locks to the JACC building. Browne would not comment on who currently has control of the JACC bank account. Benjamin Myers said that Shannon Hartfiel, former chair Ben Smith, and Jerry Moore currently are the financial signers of the organization.

Board member Keith Rightman, said he feels he is in the middle group. He said that he liked E.B. Brown's brief tenure as Chair. "She had a very pleasant, unique style," he said. "The third side is the people who feel they are in the middle of a very polarized situation."

Adam Smith, a three-year Jordan neighborhood resident Jordan, said "Why doesn't everybody just come together and work it out?" At this point though, it hardly seems possible without some sort of outside mediation.

Sheila Regan is a theater artist based in Minneapolis. When not performing or writing, she serves as educational coordinator for Teatro del Pueblo.

<p>E.B. Brown—Chair Ben Myers—Vice Chair Robert Scott— Treasurer** Shannon Hartfiel —Secretary</p> <p>A statement issued by the 2008 executive committee on January 17 also listed "Sergeant at Arms Steve Jackson" as a member of the executive committee.</p> <p>**Robert Scott is not listed as a board member in the City Council letter. ***Shannon Hartfiel is listed as Shannon Hartfield on some documents. The JACC website and the City Council letter both use the spelling of "Hartfiel."</p>

Attachment	Size
JACC board recognition 20091016.pdf	53.28 KB

EXHIBIT

F

StarTribune.com | MINNEAPOLIS - ST. PAUL, MINNESOTA

Neighborhood power struggle on North Side is getting pretty nasty

By **PATRICE RELERFORD**, Star Tribune

February 2, 2009

Physical skirmishes, alleged theft and two groups claiming to be the legitimate board officers characterize the latest round of battles within a troubled north Minneapolis community group.

The Jordan Area Community Council's (JACC) infighting comes as the area, which witnessed more than its fair share of drug activity and violent crimes in recent years, grapples with one of the city's highest home foreclosure rates.

"It's a mess, it's getting very ugly, and I'm tired of it," said Anne McCandless, JACC's newly elected board secretary. "The Jordan area has a lot better things to do."

The North Side council is one of more than 70 neighborhood groups recognized by Minneapolis' nationally recognized Neighborhood Revitalization Program (NRP). It allows neighborhoods to use taxes from city-assisted development for priorities they set.

The NRP has received more than \$300 million in public money since 1991. City Council members Barbara Johnson and Don Samuels recognized McCandless and three other new board officers -- chair Michael Browne, vice chair P.J. Hubbard and treasurer Robert Hodson -- as JACC's official board officers in two letters dated Jan. 16.

Still, the former board officers -- led by former chair E.B. Brown and former vice chair Ben Myers-- have continued to challenge the legitimacy of the Jan. 14 officer elections.

"We have some rogue individuals who believe they've taken over [JACC]," Myers said. "They've made significant moves in trying to alter the course of the organization."

Myers, Brown and other former JACC board officers filed a temporary restraining order last week against the new board officers, Johnson, Samuels, NRP official Stacy Sorenson and Minneapolis police Inspector Mike Martin.

'Cease and desist'

Myers said the officer elections weren't on the agenda of the Jan. 14 meeting and that JACC bylaws regarding the "removal" of board members weren't followed.

Brown and Myers sent two letters written on JACC stationery on Jan. 17. The first letter ordered the new officers to "cease and desist" and declared their intent to set up a new office. The second letter rescinded the firing of former executive director Jerry Moore.

Several months ago, Myers sued three Jordan residents -- Megan Goodmundson, McCandless and Dennis Wagner -- while serving as JACC board chair for harassment

and making "slanderous and libelous statements" against him. The lawsuit is still pending.

"I just hope I don't get sued again," said McCandless, in light of the recent controversy.

Bob Miller, city director of NRP, said the ousted board officers have no legal standing with his office or the IRS as a nonprofit entity, and can't take actions in the group's name.

"The problems started with a group of folks who weren't happy with the way things turned out," Miller said. "They're calling themselves the JACC but they have no authority to do that."

Miller said NRP officials noticed a pattern where the council spent more than 90 percent of the \$210,000 it has received since 2008 on staff salaries and other administrative costs.

Things get physical

On Jan. 12, the day of the group's general election in which six new board members were elected, Moore, the former JACC executive director, and board member P.J. Hubbard were involved in an argument at Jordan New Life Community Church that turned physical.

The Minneapolis Police Department is investigating the incident. A police report lists both men as victims. Witnesses said some bystanders, including women, were shoved.

Moore had been criticized recently by residents for not being transparent about the council's finances. McCandless said the scuffle was the "last straw" for many board members and led to his firing. Moore declined an interview request for this article.

"It's just sad; it should have never escalated to that level," said Catrice Champion, a Jordan resident.

Champion, sister-in-law of state Rep. Bobby Joe Champion, DFL-Minneapolis, said she attended the meeting to ask questions about the council's work with young people. JACC was recently awarded a \$10,000 grant from the General Mills Foundation to help Hennepin County create juvenile detention alternatives.

"[At the JACC meeting] I said, 'Who are you people? I don't know you, the kids don't know you ... You all are some nobodies sitting in here arguing over money,'" she said.

McCandless said the controversy and the fact that computers and financial records were taken from the office recently have made the transition process difficult. According to a police report dated Jan. 15, there was "no forced entry evident" and "the alarm was not triggered" during the theft.

"I'm just trying to put out fires here," McCandless said.

Miller said the NRP will work with the recognized JACC board to protect its assets and move forward with neighborhood initiatives. JACC's recent problems, he said, are unusual and the public shouldn't assume that it's difficult for city residents to work together and improve their neighborhoods.

"I've had literally hundreds of elections in neighborhoods and nothing like this before," Miller said. "Instead of having an orderly transition of power, they're dealing with chaos."

Patrice Relerford • 612-673-4395

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EXHIBIT

G

JORDAN AREA COMMUNITY COUNCIL

2009 JAMES AVE N
MINNEAPOLIS, MN 55411-1926
(612) 886-3202

EXPLANATION	AMOUNT
<i>Payroll</i>	1542.00

3753

17-114-910

PAY AMOUNT OF

One thousand five hundred forty-two dollars and 00/100

DOLLARS

CHECK AMOUNT

DATE	TO THE ORDER OF	DESCRIPTION	CHECK NUMBER
1/12	<i>Jerry Moore</i>	FRANKLIN NATL BANK WASHINGTON AVE	3753

\$1542.00

JAN 16 2009



Franklin Bank
The Leader in Improving Our Urban Community
(612) 874-6000 • www.franklinbankmn.com

#2
17-114

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NO SIGNATURES REQUIRED FOR AMOUNTS OVER \$1,000

DDA Debits - 01/16/2009

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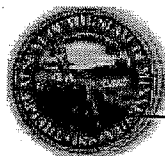
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DDA Debits - 01/16/2009

EXHIBIT

H



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BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

Filing Number: F-780 **Entity Type:** Non-Profit Corporation
Original Date of Filing: 10/22/1965 **Entity Status:** Active
Duration: PERPETUAL **Good Standing:** 2009
 (date of last annual filing)

Name: Jordan Area Community Council
Registered Office Address: 2009 James Ave N
 Mpls, MN, 55411

Agent Name: No Agent Filed

Click here for [Filing Type Code definitions.](#)

[REGISTERED AGENT](#) [FILING HISTORY](#) [OFFICERS](#)

View Image	Document Number	Type	Filing Date	Comment
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N/A		CN		Jordan Area Action Committee
N/A	O-33 134	CN	1/21/1970	Jordan Area Community Council
N/A		RO		2901 Emerson Ave N Mpls
N/A	T-34 290	AM	8/17/1970	
N/A	RI-519290	RO	11/21/1990	1819 Lowry Ave N Mpls MN 55411
N/A	RI-176330	RO	10/5/1995	1922 25th Ave N Mpls MN 55411
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N/A	WEB	RO	1/29/2009	2009 James Ave N Mpls MN 55411
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EXHIBIT

I



January 16, 2009

City of Minneapolis
Attention: Bob Cooper
Senior NRP Specialist
105 fifth Ave South
Minneapolis, MN 55401
bob.cooper@ci.minneapolis.mn.us


RE: Relocation of Corporate Office

Dear Mr. Bob Cooper and To Whom it may concern,

Due to recent events the Jordan Area Community Council has been forced to relocate our to 1922 25th Ave. N. Minneapolis, MN 55411. Please forward all mail and correspondence to this address until notified otherwise.

If you have any questions please feel free to contact me Jerry Moore, or Mrs. E.B. Brown.

Sincerely Yours,



Benjamin E. Myers, Esq.
Jordan Area Community Council
Board Vice Chair

Cc: Bob Miller NRP
Judy Gallas, Accountant
Jerry Moore, Executive Director

1922 25th Ave. N
Minneapolis, MN 55411

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT
Case Type: Other Civil

Ethylon B "E.B." Brown, Benjamin E. Myers, Robert "Bob" Scott, Shannon Hartfiel, Robert Wilson, William J. Brown, Dokor Dejvongsa, Steve Jackson, DeEtte Davis, Tamara Hardy, Lafayette Butler, Jernel McLane, Frank Essien, Kenya Weathers, and Jerry Moore,

Court File No.: 27-CV-09-2277

Plaintiffs,

v.

**ANNE MCCANDLESS' OPPOSITION TO
PLAINTIFF'S MOTION FOR A
TEMPORARY RESTRAINING ORDER**

Michael "Kip" Brown, P.J. Hubbard, Robert Hodson, Ann McCandless, Don Samuels (in his individual and official capacities), Barbara Johnson (in her individual and official capacities), Michael Martin (in his individual and official capacities), City of Minneapolis, Minnesota, Stacy Sorenson, an Unknown Minneapolis "City Attorney John Doe Defendant #1," and John Does 2-5,

Defendants.

INTRODUCTION

As this Court has requested, Anne McCandless ("McCandless") submits this Memorandum and accompanying Affidavit in opposition to Plaintiffs' motion for a temporary restraining order.¹ No matter how thin you slice it, there is only one class of

¹ Anne McCandless does not submit this memorandum and accompanying affidavit as a "Defendant" because she has not yet been served with the Summons or Complaint in this matter. All references to "Defendants" are purely for the sake of convenience, since no lawsuit has been commenced and no Defendants yet exist. By opposing Plaintiffs' strong arm tactics and attempts to feel out the opposition and seek relief without suing anyone, McCandless does not waive the jurisdictional defects of failed service of

“rogues” in this lawsuit, and it is Plaintiffs. Plaintiffs’ rogue status is not sufficient to garner them a TRO, injunction or any other requested relief. The reasons to deny Plaintiffs their requested relief are numerous, but one reason will do. For good measure, the Court may choose between either of these reasons: (1) Plaintiffs have stated no claim for which relief may be granted; and (2) Even if anyone was interested in allowing Plaintiffs to pursue their cause on a dubious complaint, Plaintiffs’ own logic precludes the relief they seek.

ARGUMENT

Plaintiffs seek a TRO pursuant to Minn. R. Civ. P. 65. The court considers the factors applicable to a motion for a temporary injunction in the context of a motion for a TRO. Eakmon v. Brutger, 285 N.W.2d 95, 97 (Minn. 1979). Those factors are as follows:

(1) the relationship between the parties before the dispute arose; (2) the harm plaintiff may suffer if the injunction is denied, compared to the harm inflicted on defendant if the injunction is granted; (3) the likelihood that the party will prevail on the merits; (4) public policy considerations; and (5) administrative burdens imposed on the court if the injunction issues.

Dalhberg Brothers, Inc. v. Ford Motor Co., 137 N.W.2d 314, 321-322 (Minn. 1965). A temporary injunction is an extraordinary remedy. Miller v. Foley, 317 N.W.2d 710, 712 (Minn. 1982). “Its purpose is to preserve the status quo until adjudication of the case on its merits.” Id. The grant of a temporary injunction does not establish the law of the case or constitute adjudication on the merits. Metro Sports Facilities Comm’n v Minnesota Twins P’ship, 638 N.W.2d. 214, 220 (Minn. App. 2002), review denied (Minn. Feb. 4, 2002).

process, or any other defenses that McCandless reserves the right to raise by motion or answer should Plaintiffs actually serve this Complaint and expose themselves to further

Plaintiffs' motion for a TRO is based on a purported claim under Minn. Stat. § 317A.751, for which no relief may be granted. With no claim, Plaintiffs have no likelihood of success on the merits. Without a claim, there is no irreparable harm. Plaintiffs have also failed to satisfy the remaining factors required for a TRO to issue. Plaintiffs' TRO motion must be denied.

I. The Merits.

The merits, almost entirely unaddressed by Plaintiffs, show that likelihood of success on the merits is nonexistent. Plaintiffs' motion for a TRO is predicated entirely on their requested relief under section 317A.751, subd. 1, of the Minnesota Statutes. (Ptf. Mem. at p. 15.) That subdivision reads as follows:

A court may grant equitable relief in an action by a director or at least 50 members with voting rights or ten percent of the members with voting rights, whichever is less, when it is established that . . . the directors or those in control of the corporation have acted fraudulently, illegally, or in a manner unfairly prejudicial toward one or more members in their capacities as members, directors or officers.

Minn. Stat. § 317A.751, subd. 1 (emphasis added). To be entitled to relief, Plaintiffs must assert some wrongful act by "the directors or those in control of the corporation."

First, Plaintiffs fundamentally misunderstand that an Executive Committee of officers does not control any corporation, including JACC. Boards control corporations, and a board controls JACC. Plaintiffs have not alleged any wrongdoing, or any abdication of duty, by the JACC Board or JACC. Indeed, neither the JACC nor the JACC board is named as a defendant in this matter. Therefore, Plaintiffs' requested relief is something that this Court is not empowered to give. Second, even if it was assumed that a claim was stated against the JACC Board, Plaintiffs' own allegations

threat of sanctions and penalty for abuse of process.

preclude their requested relief. For either of these reasons, Plaintiffs' motion for a TRO should be denied.

A. Plaintiffs have failed to state a claim for relief for which relief may be granted under Minn. Stat. § 317A.751.

- 1. To state any claim under Minn. Stat. § 317A.751, Plaintiffs must allege that the JACC board caused them harm, and Plaintiffs have only alleged harm by four individuals who are not “the directors” and are not “in control” of JACC.**

To state a claim under Minn. Stat. § 317A.751, Plaintiffs were required to allege that their harm was caused by “the directors or those in control of the corporation.”

Minn. Stat. § 317A.351(emphasis added). “The directors” of a corporation are those who control the corporation. Minn. Stat. § 317A.201 (“The business and affairs of a corporation must be managed by or under the direction of the board of directors”). Even the JACC Bylaws, upon which Plaintiffs rely, state that

The Board of Directors shall be responsible for appointing officers of the corporation, overseeing day-to-day business, setting and reviewing policies, preparing meeting agendas, approving expenditures within the limits of the budget, approving plans of work for standing and special committees, and other duties which normally fall to a Board of Directors.

Bylaws, Article V, Section 1(a).

Plaintiffs, however, make no allegation that any harm was caused to them by the JACC Board, which Plaintiffs agree is duly constituted. Instead, Plaintiffs attempt to pigeonhole themselves into relief by mischaracterizing the power of the JACC officers. Stripped of that mischaracterization, Plaintiffs allege that their harm was caused by four individuals, who are not sued in their official capacity, but who happen to be *some*, and not a majority, of the directors of the JACC. But Minn. Stat. § 317A.751 does not provide an avenue for a claim based on alleged misconduct by four individuals who do

not control the corporation or constitute the board. Since Plaintiffs' claim is based on mischaracterization, Plaintiffs fail to state a claim for relief.

Plaintiffs claim that a "rogue team" has "staged a coup and unlawfully claimed to be "Officers," and the Executive Committee" of the JACC. (Compl. at p. 3 and ¶¶ 17-20.) According to Plaintiffs, "[o]ne of the first acts of the rogue "officer(s)," was to unlawfully remove the Executive Director, Jerry Moore, in breach of his written employment contract." (Compl. at p. 2.) Plaintiffs seek a declaratory judgment under Minn. Stat. § 317A.751 that "the rogue team are unlawfully claiming authority over the corporation," and that "all actions taken while claiming to be Officers and/or the Executive Committee of JACC, were *ultra vires* and null and void *ab initio*." (Compl. at p. 2.) This alleged "rogue team" is first identified on pages 7 and 8 of the Complaint as Michael Browne, John Hubbard, Robert Hodson and Anne McCandless. (Compl. at pp. 7-8, ¶¶ 17-20) (identifying these individuals as those who are claiming to be Officers and who staged a coup, and whose actions were "ultra vires."). Browne, Hubbard, Hodson and McCandless are all sued as individuals. (Id.)

Plaintiffs' sole allegations about a coup/*ultra vires* acts purportedly occurred during the January 14, 2009 JACC Board meeting. According to the Complaint, "[d]uring that meeting, *ultra vires*, and in violation of the bylaws, Michael Browne and Anne McCandless led a coup and takeover of JACC." (Compl. at p. 14, ¶12.) The sole coup referenced was a purported "call for an immediate voice vote to oust the Chair, Vice Chair, Treasurer and Secretary," which "did not comply with the Bylaws." (Compl. at p. 15, ¶¶12-13) Then, the "rogue group" began to claim that it had authority to take action for the JACC." The Complaint then details various actions taken by the "rogue

team.” (Compl. at p. 15, ¶¶ 13-14.) In other words, Plaintiffs allege that their sole harm is due to the acts of Browne, Hubbard, Hodson and McCandless, “the four on the rogue takeover team,” the only individuals in the Complaint who are alleged to have acted without authority, i.e., *ultra vires*. (Compl. at p. 19, ¶ 26.)

Despite their failure to allege that “the directors or those in control of” the JACC have caused them any harm, Plaintiffs’ purported cause of action under Minn. Stat. § 317A.751 states that “Plaintiffs were prejudiced because those in “control” (albeit without authority) of the corporation have acted fraudulently, illegally, or in a manner unfairly prejudicial toward one or more members of in their capacities as members, directors or officers.” (Compl. at p. 18, ¶ 21.) By these allegations, Plaintiffs are referring to Browne, Hubbard, Hodson and McCandless, the only individuals alleged to have acted without authority. These four individuals, sued in their individual capacities, are neither the JACC Board nor the individuals who control JACC. Plaintiffs’ cause of action is not supported by the allegations.

Plaintiffs further confirm that they are not entitled to relief by their request for relief. Plaintiffs seek a declaratory judgment that E.B. Brown, Ben Myers, Bob Scott and Shannon Hartfiel are the lawful officers of the JACC Executive Committee, and “rightfully in charge of the corporation.” (Compl. at p. 18, ¶ 22.) Plaintiffs “seek a declaratory judgment that “the rogue interlopers are unlawfully claiming authority over the corporation,” and “that all actions taken while claiming to be Officers and/or the Executive Committee of JACC, were *ultra vires* and null *ab initio*.” (*Id.*) By this suggestion that any four individuals may be “rightfully in charge of the corporation,”

Plaintiffs further betray their misunderstanding of who controls the JACC; it is the Board, and not, as Plaintiffs suggest, the Executive Committee.

2. Even if it was possible to construe the allegations in the Complaint as against the JACC Board, Plaintiffs do not sue the JACC Board, or the JACC, as would be required to state a claim for relief.

Even if it would be possible to construe any allegations in the Complaint as indicating wrongdoing by the Board, instead of as allegations of wrongdoing by four individuals, Plaintiffs have failed to name the proper parties in their Complaint.

No Defendant is sued in his or her capacity as a member of the JACC Board. No majority of the Board present at the January 14, 2009 meeting is even named as Defendants. And, to the extent that it would be possible to bring a claim under Minn. Stat. §317A.751 by merely naming the corporation as a Defendant, Plaintiffs have failed to do so. JACC is not named in the caption as a Defendant. Moreover, even if Plaintiffs tried to argue that they had sufficiently named JACC as a Defendant by purporting to do so in the body of the Complaint, they qualify the statement by saying that JACC “is a defendant for the purposes of Jerry Moore’s breach of contract claim” but “is a nominal defendant for the purposes of declaratory judgment under Minn. Stat. § 317A.751.” (Compl. at p. 7, ¶16.) A “nominal” Defendant is not one who is alleged to have done anything wrong. See Janssen v. Best & Flannagan, LLP, 704 N.W.2d 758, 766 (Minn. 2005) (expressing disbelief that a nominal defendant really has any claim asserted against it); Blacks Law Dictionary (5th Ed.) (Defining a nominal defendant as “a person who is joined as a defendant in an action, not because he is immediately liable in damages or because any specific relief is demanded as against him, but because his connection with the subject matter is such that the plaintiff’s action would be defective,

under the technical rules of pleading, if he were not joined.”). In order to state a claim, Plaintiffs have to name the Defendants who have caused them harm, and Plaintiffs have not named either the JACC or the JACC Board as the cause of any harm. Rather, Plaintiffs request relief as against Browne, Hubbard, Hodson, and McCandless, as individuals. Minn. Stat. § 317A.751 does not provide for that relief. The TRO must be denied.

B. Even Plaintiffs’ own arguments, self-serving reading of the bylaws, and omitted facts preclude the relief Plaintiffs seek.

Even Plaintiffs’ own arguments and suggestions fail to support their cause. Simply taking a handful of Plaintiffs’ arguments to their logical conclusion shows that Plaintiffs will not be entitled to relief even if they fix their pleadings. And, once Plaintiffs’ obvious misstatements of fact are removed, the weakness of Plaintiffs’ other arguments are sorely exposed. Finally, Plaintiffs are estopped from making their arguments by their own participation.

First, Plaintiffs’ own arguments miss the point. Ben Myers and all members of the Executive Committee who were voted in from 2001 to 2007 were voted into their positions following the election of the new Board, at the November Board meeting of that year. (McCandless Aff. at ¶ 4 and Ex. A.) According to Plaintiffs’ argument, no Executive Committee from 2001 to 2007 has ever been legitimate, since they were not voted in during the October Board meeting and prior to the October election of the Board. Though Plaintiffs attempt to sidestep this issue by claiming that they merely continued the October 2008 Board meeting until November, Plaintiffs provide no evidence for this dubious fact. In other words, if Plaintiffs are correct in their resolution

of the bylaws, and they come clean about their "October meeting in November," even Plaintiffs do not compose a legitimate Executive Committee.

And, even if Plaintiffs were believed that they held an October Board meeting in November, the fact remains under Plaintiffs' argument that Ben Myers is not "ex officio" of anything, since he was never part of a properly constituted Executive Committee in 2006 or 2007. His position on the Board expired in October 2008. One cannot obtain a position on the Board by virtue of his status as outgoing Chair if he was never the duly elected Chair. And, one who is not on the Board cannot be an officer. Therefore, regardless of whether the November 2008, purported officer installation was valid as to E.B. Brown, Hartfiel or Scott, it could not have been valid as to Ben Myers. His own allegations and construction of the Bylaws defeat his claim.

Defendants, on the other hand, and in accordance with at least seven years of tradition that all the Plaintiffs participated in themselves, were voted into office at the first Board meeting following the Board elections. Plaintiffs' core allegations, therefore, rest on contrived and insincere arguments that they have waived and are estopped from making based on their past acts and participation in the very scheme that they purport to be wrong when done by anyone else.

Second, and despite Plaintiffs' attempt to plead around the facts, Plaintiffs cannot truthfully deny that two more of their purported Executive Committee, Hartfiel and Scott, outwardly and openly gave up their claim to any seat on the Executive Committee. It is widely reported that Bob Scott publically "resigned" his position as Treasurer and from the JACC, at the January 14, 2009 Board meeting. (McCandless Aff. at ¶16 and Exs. C and D.) Contrary to Shannon Hartfiel's proposition in the pleadings, she was, even

according to herself as Secretary, merely filling in until the January Board meeting. As the purported minutes to the December 2008 Board Meeting declare, "Ms. Hartfiel has served since 2007 as Board Secretary and is stepping down." (Ex. B. to McCandless Aff.) After some discussion with respect to a "temporary appointment" until January, "Mr. Myers explained that we do not need board approval. It is an interim assignment." (Id.) An officer must be elected by the Board, not assigned in the interim without Board approval. Therefore, Hartfiel has no claim to be Secretary. This is good example of how Plaintiffs blatantly invent facts to support their cause when no such facts are found in reality.

In sum, according to uncontestable facts and Plaintiffs own arguments, three of the four members of Plaintiff's version of the Executive Committee concede they are not part of any Executive Committee, and all four were purportedly elected in violation of the Bylaws, at a November board meeting.

Third, Plaintiffs Myers, Brown, Jackson, Wilson, Hartfiel and Scott have waived their right to make a contest out of these positions. Under section 317A.251 of the Minnesota Statutes, "a director who is present at a meeting of the board when an action is approved by the board is presumed to have assented to the action approved, unless the director: (1) objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, and does not participate in the meeting . . . ; or (2) votes against the action at the meeting. Minn. Stat. § 317A.251, subd. 3.

Hartfiel and Scott were present at the meeting and but did not object or vote with respect to the election of Browne, Hubbard, Hodson and McCandless. (McCandless

Aff. at ¶ 8.) They are therefore deemed to have assented to the action. And while Myers, Brown, Jackson and Wilson voted against opening the officer elections, they all openly participated in the actual election itself, which is an action of the Board. Myers actively participated in nominating Brown for board chair, voting for Brown as board chair, and voting for himself as board vice chair. (McCandless Aff. at ¶ 8.) Jackson seconded Myers' nomination of Brown for board chair, voted for Brown as board chair, voted for Brown as vice chair, nominated Myers for vice chair, and voted for Myers as vice chair. (Id.) Brown was nominated for board chair, voted for herself, was nominated for board vice chair, voted for herself before declining to take the position, seconded the motion for Myers to be vice chair, and voted for Myers as vice chair. (Id.) Wilson voted for Brown as chair, voted for Brown as vice chair, and voted for Myers as vice chair. (Id.) In addition, Myers, Jackson, Wilson and Brown also failed to vote in the election of secretary, McCandless. (Id.) They are therefore deemed to have assented to that election.

In sum, all six of the purported director-Plaintiffs in this matter either assented to the elections by failing to vote, or they participated in the election by casting votes and making nominations. They have no cause to bring any claim alleging impropriety, since they fully participated and only protest now because they are not in agreement with the result of the process they participated in. As a result, moreover, six of the fifteen purported Plaintiffs are estopped from bringing any claim under Minn. Stat. § 317A.751. No purported Director-Plaintiff has standing to assert any claim under Minn. Stat § 317A.751. That leaves eight purported "voting member" Plaintiffs, which is insufficient considering that Plaintiffs allege there to be up to 100 voting members in the JACC.

Eight is not ten percent of 100. Therefore, it is unnecessary to point out that there are actually as many as 4,500 JACC members with voting rights in the JACC, which would mean that Plaintiffs are short by at least forty-two Plaintiffs. (McCandless Aff. at ¶ 9.)

For all these reasons, Plaintiffs' motion for a temporary restraining order should be denied, and the Plaintiffs should be encouraged to participate as either members of the board of directors of JACC or as members of JACC.

II. The relationship between the parties before the dispute arose favors Defendants.

To accurately assess this factor, the time when the dispute arose must be identified, and one must also identify what the dispute is. This is difficult to do, since Plaintiffs' Complaint and supporting documents deliver little indication of the basis for their claims. Plaintiffs merely proclaim and declare, without taking their arguments to their conclusions, that Brown, Myers, Hartfiel and Scott should be the officers. Plaintiffs allege various facts, but they never put them together. An initial review, moreover, shows that Plaintiffs are mistaken in their facts. (See McCandless Aff.) Nearly all alleged facts rely on the self-serving affirmations of Ben Myers, who could not even get re-elected to the Board and must rely on his purported "ex officio" status, and Jerry Moore, who was terminated by a majority of the Board, a Board that Plaintiffs do not dispute is the proper and legal JACC Board. (McCandless Aff. at ¶ 8 and Ex D.)

In the rare event that Plaintiffs rely on documentary or other evidence to support their claims, that evidence is not what it is proclaimed to be. Plaintiffs just invent facts and then cite to nonexistent evidence. For example, Plaintiffs repeatedly proclaim that Ben Myers' "ex officio Vice Chair" role is created because he is the "immediate past chair." (Def. Mem. at pp. 6 and 16; Compl. at ¶ 2; Myers Aff. at ¶2). Plaintiffs then cite

to the "Bylaws," Article II, section 2. The plain language of the cited text, however, says nothing about Mr. Myers, or any outgoing Chair, being a Vice Chair. It merely states that an outgoing Board Chair may remain on the Board for one year as a result of the outgoing status. Plaintiffs misrepresent and distort facts, hoping that they can on short notice put in place a TRO and thereby solidify their efforts to control an organization that chose not to have them lead.

In this manner, Plaintiffs have failed even to identify the dispute they want to have resolved. Plaintiffs' failure to identify the dispute is an effort to place Defendants at an unfair disadvantage, and this favor weighs against Plaintiffs. In reality, the relationship between the parties before the purported coup was one in which every year, for at least the last seven years, the newly elected Board members voted for new officers in November, at the first Board meeting following the election of the new Board. Now, at the first meeting following the election of the new Board, the new Board voted for new officers. Plaintiffs, who previously participated in this very system, including to get elected themselves, now protest that the sky is falling. The TRO should be denied.

III. Balance of Harms

The balance of harms favors Defendants. Plaintiffs are seeking an order from this Court placing Benjamin Myers, E.B. Brown, Robert Scott and Shannon Hartfiel as the Executive Committee and Officers of the JACC. They claim great harm in being kept out of a role as officers of the JACC. However, all indications are that Ben Myers, Jerry Moore, and those sympathetic to them, exploited and/or abdicated their positions to harm the JACC. For example, 90% or more of the \$200,000.00 granted to the JACC since 2008 has been spent on salary or administrative costs. (See Ex. F to McCandless

Aff.) The future of the JACC is really what is at stake here, and the JACC membership and Board have given a resounding reply to this exploitation and abdication. Allowing Plaintiffs to again exploit the organization could be a fatal blow.

Plaintiffs have shown themselves to be poor managers of money. Since regaining control of the JACC finances, the new Executive Committee has had to deal with paying such items as three months of back rent, a \$602.71 gas bill that had not been paid since May 2008, and \$1,422.00 on an overdue insurance bill. (McCandless Aff. at ¶ 13.) Further review of records indicates that JACC was charged between June 4, 2008 and December 22, 2008, for numerous food and beverage related charges, including Minnesota Wild Concessions, J.D. Hoyts' Supper Club, Monte Carlo Restaurant, Blondie's Sports Bar in Brooklyn Park, three trips to Gabby's Saloon, two trips to Rix Bar and Grill, Major Sports Café in Golden Valley, and numerous other charges. (McCandless Aff. at ¶15.) The total price tag was \$886.26. (Id.) In addition, other curious charges, such as for a hotel room in Brooklyn Park at a cost of \$95.70, were charged to the JACC during this period. (Id.) Trips to CVS Pharmacy between June 16, 2008 and December 16, 2008 indicate that JACC was charged \$785.68 for those trips. (Id.)

Plaintiff Jerry Moore's concern for the JACC, and fiscal responsibility, are represented by the fact that after he was terminated as the Executive by the properly constituted board, Moore actually paid over \$400.00 in overdue electricity bills only in an attempt to have the electricity turned off at the JACC office. (McCandless Aff. at ¶ 16.) One of the first things that Jerry Moore did after being terminated was to travel to the

JACC bank and convince the Bank vice president to allow him and Ben Myers to cut Jerry Moore a check to as "payroll" for Moore. (McCandless Aff. at ¶ 17 and Ex. G.)

Immediately following the installation of the new Executive Council, the JACC office was looted and all records removed dating back to 2006, along with office and other equipment. (McCandless Aff. at ¶10.) Ben Myers, who is still a member of the JACC Board, has reportedly admitted knowing where the property is, but has not admitted who took it. (McCandless Aff. At ¶ 11 and Ex. E.) It appears that someone even attempted to change the registered office of the JACC with the Minnesota Secretary of State, to the address where Myers, Brown, Hartfiel and Scott purport to set up their office. (See ¶ 18 to McCandless Aff., and Exs. H and I.)

Changing the location of the JACC office would certainly be the type of action that would have to be approved by the JACC Board, but actions like these illustrate, consistent with Plaintiffs' allegations in their Complaint, that Plaintiffs think it is proper and responsible for them, a minority of the JACC Board, to do what these please and without receiving permission from the Board. This type of "rogue" behavior is the type of behavior that will cause great harm to the JACC. The Defendants, on the other hand, along with the JACC Board, are intent upon getting the JACC back on its feet and out of harm's way. Indeed, Plaintiffs' Complaint contains no allegation that any Defendant is not fiscally responsible or that any Defendant has engaged in any managerial impropriety. Plaintiffs simply want to be given back the opportunity to exploit their positions. This factor favors Defendants.

IV. Administrative Burdens

The administrative burdens of granting Plaintiffs' motion for a TRO would be great. Plaintiffs ask this Court to impose itself upon the JACC, subvert the direction desired by the Board (without even suing the Board or the JACC), and to give Plaintiffs more power than they would have even if they were entitled to be officers. Plaintiffs are not asking for negative relief, but for positive supervision. This factor favors Defendants.

V. Public Policy

Public policy weighs heavily against Plaintiffs' requested relief. A TRO is an extraordinary remedy granted only in the face of irreparable harm. Even Plaintiffs must admit that they are essentially asking this Court to install Brown, Myers, Hartfiel and Scott into positions as officers on a Board where they are the minority, to use this Court to subvert the JACC and achieve more than they are able to achieve through the political process. They are asking this Court to inject itself into intensely political neighborhood issues, and to disenfranchise the voting public of the Jordan Community, who voted to install the current Board, and who have entrusted the current board with setting the direction of the JACC. Plaintiffs may think their ideas are better, but there is no public policy that favors quelling the voices of the many so that the ideas of the few will prevail by virtue of Plaintiffs continuing to freeze out the community. This process should be left up to the JACC Board, none of whom Plaintiffs claim has been illegitimately seated. Until Plaintiffs (and enough of them) can bring a cognizable cause of action before this court, which alleges cognizable harm, Plaintiffs should be left to use

the legal processes already at their disposal: participation like grown-ups in their community's futures, not frivolous lawsuits.

CONCLUSION

Based on the foregoing, Plaintiffs' motion should be denied. In the rare event that Plaintiffs' motion is granted, then a bond of \$100,000.00 should issue as this Court may conclude. The JACC bank account currently holds thousands of dollars, and based on Plaintiffs' past acts, there is little hope of protecting it after a TRO unless Plaintiffs post an appropriate bond. Moreover, this Court will recognize that the proposed TRO, to the extent that it seeks resolution of contested questions of fact, and affirmation of false facts, is wholly inappropriate. Quite simply, the request for relief is without merit. No TRO should issue, and the Plaintiffs should be encouraged to dismiss their Complaint voluntarily before serving it on Defendants, before this lawsuit is actually commenced, and before Defendants would be compelled to serve Rule 11 motions and move for dismissal and sanctions.

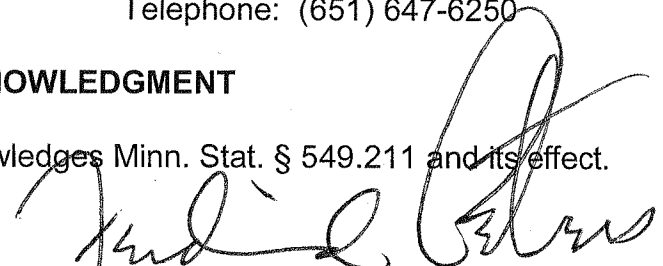
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Ferdinand F. Peters