

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. DIVISION SECTION

MICHAEL W. TIFFT

VERSUS

NEW ORLEANS CITY PARK IMPROVEMENT ASSOCIATION, INC.

FILED: DEPUTY CLERK

PETITION

NOW INTO COURT, in proper person, comes Michael W. Tift, a citizen, elector, resident and tax payer of the City of New Orleans and a frequent visitor to the New Orleans City Park (City Park) with an avocation and interest in the preservation of City Park's open green space and its accessibility to the public at large, who respectfully represents as follows:

1.

Petitioner has the right and standing to bring this action under LSA Revised Statute 42:10 (C) in that he was denied a right conferred by LSA Revised Statute 42:1 et seq. and has reason to believe that the provisions of LSA Revised Statute 42:1 et seq. were violated by Defendant.

2.

Made Defendant is the New Orleans City Park Improvement Association, Inc., a self-perpetuating, 35 member, public body within the meaning of the Open Meetings Law of the State of Louisiana, a domiciliary of the City of New Orleans, and an entity capable of suing and susceptible to suit (hereinafter the CPIA).

3.

By Ordinance No. 5547 Council Series (8/29/1881) the New Orleans City Council delegated to the CPIA the management of City Park, which is owned by the City of New Orleans and held in trust by the City of New Orleans for the citizens of the City of New Orleans, but reserved to the City of New Orleans the right to approve all development of and in City Park.

4.

The CPIA has considered, proposed and acted on the development of golf courses in City Park, North of Interstate 610, to include new facilities, larger golf courses, a new club house, concessions, etc., without obtaining or seeking the approval of the City of New Orleans through

the agencies or departments exercising Home Rule Charter functions over the development and management of public property, including by non-exclusive example the City Planning Commission, the Department of Parks and Parkways and the Department of Public Works.

5.

On or about May 26, 2009 the CPIA conducted a meeting to consider the recommendations of its staff on the proposed development of golf courses in City Park, North of Interstate 610, to include new facilities, larger golf courses, a new club house, concessions, etc..

6.

At that meeting, the 35-member Board of Directors of the CPIA unanimously adopted the recommendations of its staff and unanimously adopted a Resolution authorizing its staff to draft a Request for Proposals (RFP) for golf courses in City Park, North of Interstate 610, to include new facilities, larger golf courses, a new club house, concessions, etc., which adoption occurred without any apparent or open public discussion among the 35 members of the Board .

7.

On information and belief the staff of the CPIA had briefed small groups of the 35 members of the Board of the CPIA on the staff's recommendations and the proposed Resolution, prior to the public meeting, to avoid a quorum of the CPIA, to avoid open meeting requirements to avoid public discussion and in order to insure a unanimous vote without public discussion.

8.

At the May 26, 2009 meeting the staff of the CPIA announced that there would be no public comment. Members of the public in attendance requested and solicited the opportunity to offer public comment but were denied. Your Petitioner was also at that meeting and was denied the opportunity to offer public comment. Other members of the public were also at that meeting and denied the opportunity to offer public comment. The CPIA accepted no public comment.

9.

On information and belief the CPIA asserts that it was not obligated to accept public comment because it had conducted a "public hearing" on the issue of golf course development in City Park, some two months earlier, in March of 2009, and further asserts that its staff filtered or summarized the comments and concerns of the public to the members of the Board of Directors of the CPIA and therefore it could deny public comment at the May 26, 2009 meeting.

10.

The “public hearing” in March of 2009 was not an official meeting of the CPIA and there existed no quorum of the CPIA for the receipt of public comment. Further, the staff recommendations approved by the CPIA at its May 26, 2009 were not presented to the public at the meeting in March of 2009 for public comment and the Resolution adopted by the CPIA at its May 26, 2009 meeting was not presented to the public at the meeting in March of 2009 for public comment, but drafted at some point thereafter.

11.

LSA Revised Statute 42:5 provides:

A. **Every meeting of any public body shall be open to the public** unless closed pursuant to R.S. 42:6, R.S. 42:6.1, or R.S. 42:6.2.

B. **Each public body shall be prohibited from utilizing** any manner of proxy voting procedure, secret balloting, or any other **means to circumvent the intent of R.S. 42:4.1 through R.S. 42:8.**

C. All votes made by members of a public body shall be viva voce and shall be recorded in the minutes, journal, or other official, written proceedings of the body, which shall be a public document.

D. Except school boards, which shall be subject to R.S. 42:5.1, **each public body conducting a meeting which is subject to the notice requirements of R.S. 42:7(A) shall provide an opportunity for public comment at such meeting**, subject to reasonable rules, regulations, and restrictions as adopted by the public body.

12.

LSA Revised Statute 42:9 provides:

Any action taken in violation of R.S. 42:4.1 through R.S. 42:8 **shall be voidable by a court of competent jurisdiction.** A suit to void any action must be commenced within sixty days of the action.

13.

The CPIA’s adoption of its staff recommendations and its adoption of a Resolution authorizing the drafting and issuance of a RFP for the development of golf courses in City Park, North of Interstate 610, to include new facilities, larger golf courses, a new club house, concessions, etc. a) requires the approval of the City of New Orleans; and b) are contrary to the Open Government Clause of the Louisiana Constitution and are null and void under the above-referenced provisions of the Open Meetings Law.

14.

The Petitioner is entitled to and prays for Declaratory Judgment decreeing that: a) the development of golf courses in City Park, North of Interstate 610, to include new facilities, larger golf courses, a new club house, concessions, etc. requires the approval of the City of New

Orleans; and b) the approval of the CPIA staff recommendations and the CPIA's Resolution authorizing the issuance of the RFP are null and void and without legal effect as violative of the Open Government Clause of the Louisiana Constitution and are null and void under the above-referenced provisions of the Open Meetings Law.

15.

The Petitioner is entitled to and further prays for Supplemental Relief in the form of an award of attorney fees and court costs pursuant to LSA Revised Statute 42:11 (C).

WHEREFORE the Petitioner prays that this Petition be made the subject of citation and service on the Defendant, New Orleans City Park Improvement Association, Inc., that the Defendant be compelled to appear and answer same, and that after all due and legal delays be had there be Judgment for Petitioner and against Defendant, as prayed for above.

RESPECTFULLY SUBMITTED,

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Michael W. Tift, Bar No. 17829  
417 18<sup>th</sup> Street  
New Orleans, LA 70124  
(504) 439-8325

**VERIFICATION**

I have drafted and reviewed the forgoing Petition and the allegations and beliefs expressed are true and correct to the best of my knowledge, information and belief. I further certify that I am a frequent if not daily visitor to City Park, that I have a strong interest in the preservation of open green space accessible to the public at large and that I and others were denied an opportunity to offer public comments and concerns at the May 26, 2009 meeting of the Board of Directors of the City Park Improvement Association, Inc.

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Sworn to and Subscribe Before Me this \_\_\_\_\_ day of July, 2009

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Please Serve:

The City Park Improvement Association, Inc.  
Through its Agent for Service of Process

BEAUREGARD L. BASSICH  
1 PALM DRIVE  
NEW ORLEANS, LA 70124