

## Report of the bylaws committee, Monte Sano Club's Board of Directors

It was more than a year ago that questions arose in the club and among nonprofit organizations in general as to whether they were still lawfully constituted in the wake of changes in Alabama laws dealing with such groups. That discussion led the board of directors of the Monte Sano Club to seek the services of Hinson & Hinson, one of the premier law firms dealing with such questions.

After studying the club's bylaws (revised 2011), Hinson & Hinson concluded that to the best of their judgment, the club's incorporation remained fully lawful. But the law firm did recommend several changes in the bylaws to correct clerical errors, to spell out ambiguities, to include provisions standard with the bylaws of nonprofits and to resolve sections that seemed to be in conflict with each other.

As a result, earlier this year, Glenn Carr, president of the club's 11-member board of directors, appointed an ad hoc committee to study both the Hinson & Hinson recommendations and several other issues that had arisen about the bylaws. The committee consisted of John Ehinger (chairman), Bob Crook, Dick Heckman, Delia Siegrist, Heidi Tyler and Greg Wright. Three on the committee were members of the board; the other three were not.

After several months of deliberation, the committee came up with a long list of proposed amendments. In addition to those suggested by Hinson & Hinson, the recommended amendments would address other outdated provisions and include sections that would lead to more participation by club members in the major decisions of the club.

Even so, when the committee looked at the package it became apparent that the changes were too numerous to be presented all at one time. Instead, the committee offers to the board and to the membership an initial list of proposed changes, including those from Hinson & Hinson, from that longer list.

Once these issues are resolved by a vote of the membership, the committee will recommend additional changes from its list for the club members to consider in 2015.

We urge members to familiarize themselves with these proposed amendments. The existing bylaws are available online on the Monte Sano Club's Website under the link "About Us."

John Ehinger, chairman,  
ad hoc bylaws committee

The following are the first proposals of the bylaws committee.

## ***Recommendations from Hinson & Hinson Law Firm:***

### **Section 5.5. Indemnification**

The Corporation shall indemnify to the fullest extent authorized or permitted by the Alabama Nonprofit Corporation Act any person, and his or her heirs and personal representatives, or was, is, or is threatened to be made, a party to any threatened, pending or completed action, suit or proceeding (whether civil, criminal, administrative or investigative) against expenses, including attorney's fees actually and reasonable incurred in connection with the defense of any action, suit, or proceeding, by reason of the fact that such person is or was a Director or officer of the Corporation, and may provide such other indemnification to directors, officers, employees and agents by insurance, contract or otherwise as is permitted by law and authorized by the Board of Directors. Nothing herein provided shall limit or otherwise affect the power of the Corporation to purchase and maintain insurance on behalf of any person who is or was a Director, officer, employee or agent of the Corporation against any liability asserted against him or her and incurred by him or her in any capacity or arising out of his or her status as such, whether or not the Corporation would have the power or would be required to indemnify him or her against such liability under the provisions of these Bylaws or any applicable law. To the extent such insurance operates to protect any person against liability, the Corporation's obligation to indemnify shall be deemed satisfied.

### **Section 5.6. Contracts**

The Board of Directors, except as otherwise provided in these Bylaws, may authorize any officer or agent to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to a specific instance; and unless so authorized by the Board of Directors, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit, or render it liable for any purpose or to any amount.

### **Article 16. Exempt Activities**

Notwithstanding any other provision of these Bylaws, no Director, officer, employee or representative of the Corporation shall take any action or carry on any activity by or on behalf of the Corporation not permitted to be taken or carried on by an organization exemption under Section 501 of the Internal Revenue Code and its Regulations as they now exist or as they may hereafter be amended.

## Article 17. Miscellaneous

### Section 17.1. Captions

The captions or headings herein are made for convenience and general reference only and shall not be construed to describe, define or limit the scope or intent of the provisions herein.

### Section 17.2. Construction

Whenever the singular number is used herein and when required by the context, the same shall include the plural and visa versa, and the masculine gender shall include the feminine and neuter genders and vice versa.

### Section 17.3. Severability

If any provision in these Bylaws or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of these Bylaws and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

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### Section 12.8. Correcting Bylaws

When misspellings, spacing problems, numbering problems, clarification of pronouns, typing errors, inconsistent fonts, or formatting style, are discovered in the Bylaws, these will not constitute amendments and can be corrected by the Secretary upon discovery and reposted to the website.

*If the above is passed, that will take care of the following problems summarized below:*

3.1 Typo: line 2, insert **a**: “shall serve for **a** one...”

4.1 Typo: insert **a**: The Officers of the Corporation shall be a President, a Vice President, **a** Secretary,

4.3 Clarification: delete **he**: In addition, the Vice President **he** shall perform such

4.4 Typo, clarifications: **comma** to be removed after “meetings”, **He** to be replaced by **The Secretary** for clarity, **and** to be inserted: Secretary: **He The Secretary** shall also keep minutes of members' and Directors' meetings, **and** shall give the required notice of all meetings,. **He The Secretary** shall have custody of or access to all books,

7.3 Typo:line 2 insert space in “**memberand**”

7.5 Typo: Insert period in title after 5

7.5 Typo: Membership shall be transferable, provided that such dues and assessments on such membership are current and that the proposed transferee meets **are** the

requirements of membership set forth herein above and is acceptable to the Board of Directors.

“...meets **are**” should be **all**

7.11 Typo: “...failing to pay dues **of** membership fees...” should be **or**

7.13 Typo: Section title needs period after 13

7.13 Typo: second line correct spelling of **specific**

9.4 g. Typo: remove “)” at the end

9.4 i. Typo: Naming an Audit Committee or otherwise providing for an outside review of the

Corporation's books and records at last least annually.

Remove **last** in “...**last** least annually”

11.5 Typo: All disbursements of the funds of the Corporation shall be made by checks signed by two of the **Directors , provided**, however,...

line 2 remove space between Directors and comma

12.1 Typo: Section 1 should not be bold type

12.5 Typo: Section title. Insert period after 5

12.6 Typo: Section title. Insert space in Section6

12.7 Typo: Section title. Insert period after 7

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## **Addition of Nominating Committee Sections**

### **PROPOSAL**

#### **3.2 Nominating Committee**

Prior to October 1st of each year, a Nominating Committee consisting of the current Board will find the necessary nominees to fill the openings on the next Board. Any member may also make a nomination (via email to a Board member) prior to October 10th of each year.

#### **3.3 Communicating the Ballot**

On, or about, October 15th of each year, the Nominating Committee shall prepare and communicate via email to the general membership the ballot of nominees. Members may vote on the number of openings, plus a provision for write-in votes. No more than one member of a household shall serve on the Board of Directors at any given time. The terms are for the two subsequent fiscal years from the elections (November 1st - October 31st).

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## **Treasurer section**

### **CURRENT**

#### **Section 5. Treasurer**

The Treasurer shall have oversight of all funds, securities, fiscal papers and other intangible assets of the Corporation and shall interface with the Club's accountant. He shall insure that the revenues of the Corporation are deposited and that the bills as authorized by the Board of Directors, are paid in a timely manner. He shall provide and maintain full and complete records of all the assets and liabilities of the Corporation. He shall prepare and submit at each regular meeting of the Board of Directors a financial statement of the condition of the Corporation. He will oversee the preparation of such tax reports as local, State and Federal agencies may require.

### **PROPOSED**

#### **Section 4.5. Treasurer**

The Treasurer shall insure that the books are properly maintained for all Corporation finances. The Treasurer shall see to it that all funds received and disbursed by Corporation are handled in a timely manner. All disbursements of funds shall be authorized by the Board of Directors within annual budget guidelines. The Treasurer will oversee the timely preparation tax payments, filings and reports as local, State and Federal agencies may require. The Treasurer shall prepare and present financial statements at each regular meeting of the Board of Directors. These reports must convey the current financial condition verses approved annual budget of the Corporation. The Treasurer with Board of Directors approval may designate and delegate a competent bookkeeper to maintain the Corporation's books.

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## **Audit/Review proposal**

### **CURRENT**

#### **Section 11.8. Annual Audit**

The accounts of the Corporation shall be audited annually by a method to be specified by the Board of Directors. The report of this audit is to be presented at the annual meeting of the members. The auditor, as named by the Audit Committee, shall not be either an Officer of the Corporation or a member of the Board of Directors.

### **PROPOSED**

#### **Section 11.8. Annual Financial Review of Transactions and Procedures**

The accounts of the Corporation shall be reviewed annually by a Review Committee. The members of the Review Committee shall be selected by the majority of board and shall consist of at least one member of the board and two club full club members in good standing that are not currently serving on the Board of Directors. This select review committee shall review all procedures for depositing and disbursing funds. They

will additionally assure that monthly bank reconciliations are being performed properly using bank statements and printed reconciliation reports. The committee at a minimum shall take a random sampling of at least one dozen transactions and review all documentation pertaining to those transactions. A report from this review committee is to be presented at the annual meeting of the members and may be made available to all members in good standing.

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### **New Section Proposed 11.9**

#### **PROPOSED**

#### **Section 11.9. Maximum Capital Expenditure**

Any one Capital Expense exceeding 20% of annual dues budgeted to be collected from voting members shall require a two-thirds (2/3) majority vote cast by the entire membership through electronic or U.S. mail or at a general membership meeting.