

ACNA Meeting Minutes
October 23, 2012

The meeting of the Allen County Neighborhood Association was held on October 23, 2012 at 7:00pm in the Omni Room in the Garden Level of the Citizen Square Building. The meeting was called to order at 7:00pm by Dan McCrea, Co-Coordinator. Forty residents were in attendance.

Dan told the attendees that the evening's agenda was for question and answers to legal issues. The speakers were Carrie Hawk Gutman and Bob Eherenman.

Carrie Hawk Gutman / Bob Eherenman

Attorneys - *Present to answer legal questions pertaining to associations.*

- Review: Covenants; By Laws; Articles of Incorporation – these documents regulate your association.
- Who pays taxes on vacated house? Short answer is “nobody”. Taxes go unpaid, the house moves to a tax sale and then hopefully is sold. If not sold, then the Allen County Development Authority steps in and they try to sell it. NOTE: There is a “Redemption Period” of one year after a tax sale where the former owner has to reclaim the property. The tax sale and all of the Right of Redemption clauses make it take up to 2 ½ years for the sale to be final.
- If a house is vacant but the taxes are still being paid, what happens? There are usually City Ordinances that would be in place at this point. The County does not usually have these Ordinances.
- Is it a requirement that snow be cleared from sidewalks? Who is responsible for sidewalks? There are City Ordinances that require it but the courts have ruled that this is a Benefit for the City and there is no recourse if it isn't done. Associations don't own the sidewalks so they can't be sued. A property owner may be responsible but not the Association unless it is a common area. This is one reason why Associations carry Property Insurance.
- By Laws state that rentals are not allowed. Is this enforceable? By Laws are not enforceable, Covenants are. If it is in the covenants, then yes, it is enforceable. Be careful though. This can hurt those in the association that may need it.
- Dues are \$12 / year, raised from \$5.00 / year per the By Laws. The By Laws were changed to allow the increase. Is this valid? By Laws do not allow collection of dues. That is in the covenants. Must read what is in the covenants to see if the increase is allowed and valid.
- Association has been voting for Directors the same way for fourteen years. This way was not how the covenants state they are supposed to be held. Is this allowed? Covenants usually don't cover voting. That is usually in the By Laws and the By Laws can easily be changed.
- What is the requirement on political signs? The covenants are stronger than the City ordinances. Can they be enforced? The covenants would over rule the City Ordinances, but the new Statute is the deciding factor on when and where political signs are allowed. The Statute rules, regardless of the covenants or ordinances.

- Are group homes allowed? The Statute over group homes supersedes covenants and Zoning Laws.
- Association doesn't feel that the Zoning Petition process is fair toward associations. Must be aware that there are three levels that the Planning Commission oversees:
 - o Recommendation on Re-zoning
 - o Plats
 - o Development Plans.
- If there is a Development Plan presented to the Commission, they must approve it. Make certain you know what level is being discussed so that you know if you are opposing a re-zoning issue, a plat issue or a Development Plan. Talk to your lawyer before appearing in front of the Commission so that you are certain to what level you are addressing. Very important!
- Development plans: two types. Primary or Secondary. Primary are valid for one year unless extensions approved. Secondary, once approved are approved for life! You have thirty days from the approval to appeal to the Commission. There is a very specific format. Having a lawyer handle this is strongly recommended.
- Covenants are over twenty-five years old. Should there be a total re-write or only revisions? If you do a total rewrite, it must be approved by the Planning Commission. If it is only a rewrite, you only need the approval of the percentage of residents spelled out in the covenants. Be aware that any amendments must be 100% correct or they are not valid. Again, hiring a lawyer is strongly recommended.
- Are there guidelines for trampolines? There are no guidelines per the County but might be in your covenants. If there is an injury on one, it would be the homeowner who is responsible, not the association. If a trampoline blew across the street and damaged a street light, can the association go after the owner for damages? Yes, if the association owns the light.
- A resident has eight cars with only five license plates. It appears they have a repair business on the property. The county has requirements on how many cars can be on a property at any time. Swapping plates is illegal so contact the Sheriff on that issue.
- Rules state that the community swimming pool is for "owners" use only. What about renters? The homeowner says the renters are guests and passed the right on to allow them to use the pool. The rules are specific as to the use. Can they be enforced? Yes, but how practical is it or how far are you willing to go to force the issue?
- Association looking at installing a private trail through the development. What are the rights and liabilities? There are always risks involved. Publicly post the risks and notify users that it is "use at your own risk".
- When persons are not in compliance with the covenants it states that they must pay legal fees. This is fully enforceable but getting the fees collected is another story. Might end up in Small Claims Court.
- Discussion on liens held. Can't file for judgment on a lien for one year and must file within five years. Typically, the mortgage holder will collect long before any

- liens are paid. Better to use the Small Claims Court for a judgment. There is a \$6000 maximum claim in the Small Claims Court.
- How much does it typically cost to change covenants? If it is a simple change, the legal fees are generally around \$1000 but each case is different.
 - Covenants state they expire after fifty years but then they automatically renew. It is a legal justification. There is no reason to change them for just that reason.
 - If you refinance your house, make sure to file the Homestead Exemption with the County.
 - An abandoned home is flooded. Probably considered an Unsafe Building Case. Contact Dave Fuller at the County Building Department.

The meeting was closed at 8:30pm. The next meeting is scheduled for January 29, 2013 at 7:00pm in the Omni Room in the Garden Level of the Citizen Square Building, 200 E. Berry.

Meeting dates for 2013: January 29; April 23; July 23; October 22