

ACNA Meeting Minutes October 22, 2013

The meeting of the Allen County Neighborhood Association was held on October 22, 2013 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-eight residents were in attendance along with Nelson Peters, County Commissioner.

Dan began the meeting by explaining that the October meeting was dedicated to Q&A with our two local Attorneys, Bob Eherenman and Carrie Hawk Gutman.

Joanne Bergman asked the group to state where they had heard about the meeting. A show of hands was taken for: email; newspaper; mailed card or website.

Bob Eherenman and Carrie Hawk Gutman:

- Review of the three main documents pertaining to associations: Articles of Incorporation; By-Laws and Covenants.
- Associations are required to file both State and Federal income tax returns. Strongly recommended to have an Accountant do this. If an Association is not listed as Incorporated on the Secretary of State website you must file the tax returns before trying to become incorporated. If the returns are not on file, you could lose your Not for Profit status (if you have one).
- According to the By Laws, all common land must be insured. Can this be deleted? Yes, but why would you? Any common area, retention pond or trail area needs to be insured to protect the association in case someone gets injured. Why would you risk not having coverage?
- Are changes to covenants and By Laws made the same way? The proper method required to make changes to each of these documents is spelled out in the document. You must read each one and act according to how they are written. If a percentage of residents needed to make changes is not spelled out in the covenants, it is then 100% required. Be careful to not try to use the By Laws to get around what the covenants say. These changes would not be enforceable.
- Questions related to Management Companies (MC): Who is responsible for seeing that there are checks and balances between the MC and the residents? The MC has a contract with the Board, therefore the direct communication would be between these two groups. The residents vote for the Board, so residents would deal with the Board.
- Snow plowing company damaged a concrete driveway. The issue would be dealt with between the resident and the snow plowing company.
- Bid process is not spelled out but most places try to get three bids.
- A copy of the contract between the MC and the Board is available for any resident requesting it.
- If the County (or City) issues a permit but the covenants does not allow said project, which one is enforceable? The Building Department enforces State and

County Ordinances, not association covenants. If a covenant is more restrictive than the County ordinance, you can sue to enforce the covenant.

- An association wants to enforce a No Renter / Lease clause. Is this enforceable? As of now, it is valid but the devil is in the detail. If you say “No Renters” is that truly what you want? There are cases where this could backfire against the association. Be very careful on how it is worded!
- If an outbuilding is already built, what can be done? If there are architectural controls in your documents and the resident did not follow these, you can sue for enforcement. If approval is required before construction and none was given, you can sue to have it removed.
- Who is required to give covenants and By Laws to the homeowners? Nobody is required but the Title Company should give a copy to the resident and the realtor. Ultimately, the person buying the house is required to know and understand what restrictions they are governed under. Some associations are proactive and hand these documents out to new owners. Treasurers are asked for dues letters prior to the sale so they know who the new owner is going to be. Audience member: when you purchase a house, your realtor is required to tell you about dues and covenants but they don’t always do this.
- If you have to file suit, where do you go? Small Claims Court for claims under \$6000. The Circuit or Superior Court is used for larger claims. Note – associations can’t represent themselves in court cases.
- Association has several troublemakers who try to take the wording of the By Laws and twist them. Both lawyers stated that the wording that was presented was not being interpreted correctly by the troublemakers.
- If you are going to rewrite your covenants, have an attorney do the work. Try not to make the requirements of your covenants stricter than the County / State.
- What options do residents have if the Board does not enforce the covenants? A resident can enforce the covenants but it is difficult and could be costly. An individual resident suing for cause might not be able to collect attorney fees against the other resident whereas many times a covenant spell out that the Board can. Be careful! The resident would be responsible for any costs. The best course of action would be to vote out the board members who are not acting properly.
- Both lawyers stated that using legal means should be the LAST step in the process. Much better to try to work the issues out between the neighbors. Nobody wins in a legal battle.
- Association of 620 homes has many renters. Who is responsible for dues? The homeowner is responsible. The homeowner may collect the dues from the renter (see what the lease says) but the homeowner is responsible to pay the Association. Can the association put a lien on a landlord’s personal property? You can only file a lien on that person’s personal property, not all of them (if they own multiple rentals). If a renter is partaking in illegal activities, can the association force action against them? Most times this would fall under the lease agreement so it would be between the renter and the landlord. An association might be able to help the landlord by contacting the police, but this is generally not an association issue.

- Filing taxes: what forms? Homeowners Association Tax and Federal Form 1120H.
- Zoning questions: R1 = Single Family (City); RS1 = Single Family (County). The zoning will tell you what is permitted (by the City / County) but the covenants will give you more restrictions than the Zoning Board.
- Can rooms be rented out to college students? No, this becomes a Boarding House and is not permitted under R1. Proving that renting rooms is occurring might be difficult.
- Dog parks allowed in associations? No, not if you are charging entrance fees (per recent BZA case). If an association wants to use common land and put up an area where access is free, that would be allowed.
- If fences are not specifically spelled out in the covenants but in the By Laws there is a process for architectural approval, it more than likely means they are allowed. The best bet would be to modify the covenants so that it is clearly spelled out.
- Resident has eight vehicles in various states of repair on property, even blocking the sidewalk. What is allowed? Gray area, not fully spelled out. Check with police for help with the sidewalk being blocked and with the Department of Planning Services with the multiple vehicle issue. There may be ordinances against junk yards. Be careful on seeking remedy for this.
- Fence material requirements. Tough to remedy. Subjective.
- Retention pond is shared between two associations. Do both associations need to have signs for no trespassing, no fishing, no swimming, etc? It would be a very good idea for both to have them marked so that if any issues arise, both are covered.
- Association only has nineteen homes, no retention pond and no common areas. Do they still need insurance? Cost for liability insurance is probably very cheap. It would be smart to have some coverage.
- Can you levy fines for non-compliance of covenants? Covenants are contracts and contracts don't allow for fines. Be very careful if you try to levy fines.
- Covenants require post light to be on from dawn to dusk. Resident does not have one. Can this be enforced? It would be tough to enforce it and is it really worth the fight over a light? Be careful to not have items in the covenants that are too restrictive.
- Any reason why a Board member can't be a Notary? No, and it would be good to have a Board member who is one! Can be beneficial.
- Need to have Fidelity Insurance? Yes
- Need to have Errors and Omission Insurance? Yes
- If the Board is sued, are the individual board members being sued? Not if they are acting inside the scope of the covenants.
- Pools: County and State requirements are different. Which to use? The City / County are currently trying to rewrite their ordinances to be in line with the State.

The meeting was closed at 8:30pm. The next meeting is scheduled for **January 28, 2014** at 7:00pm in the Omni Room on the Garden Level of the Citizen Square Building, 200 E. Berry St.