

ACNA Meeting Minutes October 28, 2021

The fourth 2021 quarterly meeting of the Allen County Neighborhood Association was held on October 28, 2021 in the Omni Room on the Garden Level of the Citizen Square Building. It was called to order at 6:30 by Dean Embrey, ACNA Co-Leader. Twenty-three residents were in attendance. Dean asked for a show of hands for those who had previously attended any ACNA meetings. Dean also asked for volunteers to act as greeters for the future ACNA meetings. Marvel Embrey was introduced as a ACNA Co-Leader and was the greeter for tonight's meeting.

Dean turned the floor over to Nelson Peters, Allen County Commissioner. Nelson stated that the ACNA was begun in 2004 and the first meeting was attended by only 5-6 people. The group evolved from that humble beginning under the leadership of Kris Krishnan and Joanne Bergman. The ACNA was formed to be an educational resource for association presidents and residents, to be able to network amongst other leaders and to get to know other leaders better.

Nelson called Kris and Joanne to the podium, thanked them for all of the years of service as leaders on the ACNA and presented each of them with a plaque showing the appreciation of the Commissioners for their service. Kris and Joanne turned over the leadership of the ACNA to the Embrey's in 2021.

Joanne thanked Commissioner Peters for allowing Kris and her to lead the ACNA for the past fifteen years. She mentioned the help that they had both received over those years from Mike Green, Public Information Officer for Allen County and Larry Banks, who records all of the meetings for the public access channel. Joanne thanked a number of other people who were instrumental in the ACNA over the years. The purpose of the ACNA was to help draw neighbors together to discuss common concerns, present ideas and to help maintain active and safe neighborhood environments.

Bob Eherenman and Josh Neal; Attorneys

- The October meeting is dedicated fully to allow legal questions and concerns that pertain to associations to be addressed by the legal representatives.
- Terminology:
- Covenants and Plat: Property rights of the association
- By Laws: How the association governs the corporation and its officers
- Articles of Incorporation: Legal method to form a corporation, on file with the Indiana Secretary of State.
- Questions: (Note: these minutes are not intended as legal advice – consult a lawyer before proceeding with association legal matters)
- An association has three sidewalks on common property that lead to a school. Is the HOA liable for the sidewalks? Yes, they are and would be required to handle snow shoveling. Associations should have liability insurance for common property.
- Can metal roofs be prohibited? Yes, would require modifications to the covenants. They would have to be very specific but today's metal roof technology has really changed so prohibiting them might not be necessary.
- How is it best to word prohibiting sheds? Shed are common issues and wording is pretty general: no temporary structures, buildings, sheds, etc.

- How to properly word collecting legal fees? Requires a simple clause – can collect legal fees if the matter goes to court. Note: if there is no prevailing party clause, you could be liable to pay the opponents legal fees if the case is lost.
- Can Zoom meeting be used for association business? Yes, there is nothing in the State Statutes against Zoom. Need to publicize the meeting and give out the link info.
- What percentage is used for changing covenants? There is no set amount, some are 75%, some 90%, some 55%. Changing should not be easy but not too difficult. Note – if the percentage is not stated, it defaults to 100%.
- Questions on notarization for covenant changes. Have gotten different advice from these meetings. The legislature made a change to the HOA Statute a few years ago where “or” was changed to “and” and it caused disarray for changes. That was changed back again to the previous version. Refer to your covenants and follow what you have in them. Maintain detailed records.
- Can credit cards be used for HOA dues payments? Yes, becoming more popular. Some add the credit card fee to the dues. Do not use PayPal or ApplePay. Use credit card.
- A developer turned over collected money from two accounts in a villa / residential combined HOA. Can these monies be split up between villa fees and the general fund? Yes, as long as commitments are met, the overage can be used in the general fund.
- A villa resident does not want to pay dues. Can they opt out? No.
- Can an association exist without being incorporated? Technically, yes, but it is not advised. There would be personal liability to the board if not incorporated.
- Do you need an attorney to change covenants? By-laws? Not required for covenants but strongly recommended to use one. Not needed to change By-Laws.
- How long are HOA records required to be kept? Tax paperwork is generally seven years. Assessment info if no liens usually 2-3 years. Minutes should be kept permanently for any future legal issues that may arise.
- Who is responsible for a cracked sewer line that flooded a condo basement? This is a very complicated question that would require more info to properly answer.
- What is the weight limit of a bridge in an association? Is the bridge public or private? If public, the Highway Department is responsible for the bridge and would know. If the streets are private, it would be up to the HOA to have it determined.
- Does the HOA receive any past due money after a tax sale? Generally, no. There is usually not overage money after a tax sale.
- If there is an existing lien against a property and it goes to a tax sale, can you sue for judgement? Yes, if the lien is still valid.
- Do courts generally uphold covenants? Yes. Make sure you are uniform in your matters. If a shed was allowed years ago and a new one is denied, you would have a hard time stopping a new one.
- Covenants state owner-occupied. If a person sells to a company that wants to rent it, can that be stopped? Yes.
- Generally, courts should be the last resort for HOA. They are very costly.
- What is the basic process if you want to change your covenants? Suggested that the board highlight the areas of change with what changes they want and then present it to the lawyer who can handle it from there.

- Can solar panels be restricted? Yes, at the current time but expect changes to that as the technology changes and solar becomes much more popular.
- A resident thanked the legal team for all of the advice they have given over the years!
- Can cell tower placement be restricted? No, there are State policies on cell towers that override HOA.
- Can an association go dormant if there are no residents willing to be on the board? If the HOA doesn't file with the Secretary of State after two years, it would not be incorporated any longer. It can be re-established easily. If dues have not been collected for a number of years, getting them collected would be very difficult. This question has many sub categories and is very difficult to provide a simple answer.
- Are Management Companies a good way to go? With a Management Company, the HOA still needs to have a functioning board to pay bills and make rules.
- A resident stated that the association has been inactive for 15 years. What steps do they take to re-establish? Start with a business entity search with the Secretary of State. The results of this search will point you in the next direction.
- A homeowner on a property that abuts a major road wants to get out of the covenants and sell the property for commercial use. Can they? It would require vacating the plat, would require the buy in of the other neighbors and might be possible. Again, more info would be required to answer this question.
- A development started as villas, added houses, had two separate covenants that the developer combined into one. Can the residents split the two apart after they take control of the development? Yes, but you would still have to meet the required percentage stated in the covenants.

Open:

Dean closed the meeting at 8:00 PM.

The next meeting will be January 27, 2022 at 6:30 pm in the lower-level Omni Room in Citizens Square. The remaining 2022 meeting dates are April 28th, July 28th and October 27th.