

ACNA Meeting Minutes October 25, 2011

The meeting of the Allen County Neighborhood Association was held on October 25, 2011 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 three residents were in attendance. Nelson Peters also attended.

The meeting began by asking those in attendance for suggestions for future meetings. Dan suggested having various City / County Department Heads attend the meetings to help smooth out the flow of information from the various departments.

Another suggestion was to hold some type of workshops to help train members in how to handle association issues. Dan said more information would be coming in the near future.

One more suggestion Dan gave was to have a representative from a management company attend a meeting to explain how they assist associations in handling their business.

Dan told the group that part of the job of an association is to be a negotiator of association issues, and try to work toward a solution, as hiring a lawyer should be a last resort.

The ACNA will continue to have the October meeting dedicated to legal questions and answers. Nick Jordan told Dan he would be happy to return to continue the discussions he had at the last two meetings. Finally, those in attendance were told that they can send emails to Nick any time with questions, and they do not need to wait for a meeting to look for answers. Nick's e-mail address is: nick.jordan@allencounty.us.

Mike Green:

Mike Green, Public Information Officer for Allen County, gave the members in attendance the dates for the 2012 meetings (see the end of the minutes for the 2012 dates). Meeting will be held on the fourth Tuesday of the month on a quarterly basis.

He also told the group that on Veterans Day (November 11th) the USAF Band of Flight would be performing at the Coliseum at 7:00pm. The concert is free to all and is a chance to honor our Veterans for their service and dedication.

Bob Eherenman and Carrie Hawk Gutman:

Attorneys Bob Eherenman and Carrie Hawk Gutman were present at the meeting to answer questions from residents in attendance pertaining to Associations.

Bob began the presentation by asking the following question. What are the three basic documents pertaining to associations?

1. Covenants: on file at the Recorder's Office. They tell what to govern.
2. By Laws: tell how to run the board; give members the right to vote
3. Articles of Incorporation: Want to know if your association has them? Check on the Secretary of State website to see if they are valid.

<http://www.in.gov/sos/business/index.htm>

The above link is to the Secretary of State's website. On the left hand side of the webpage, you'll see "Business Search". Click on that, type in your association name as

suggested in the instructions below. An annual report must be filed and make sure the Registered Agent information is current.

Questions and Answers regarding: Covenants:

Annexation

A member was told that because they were annexed into the city, their covenants are no longer valid. Is this true?

This is not true. The covenants are still valid.

Property

If the covenants state that an association can maintain a property, is that enforceable?

Bob stated it would be much better to have a Court Order prior to any action on an association member's property.

Bob discussed trespassing. Common Law allows for crossing a property with no harm but if you are told to leave, you must comply. If the property is posted "No Trespassing", then stay off.

Political Signs

The covenants say no political sign allowed. Can this be enforced?

A new ordinance was passed a few years ago that covenants can't prohibit political signs. There are rules for when they can go up and must come down, but the signs can't be prohibited.

Rental Properties

Can a covenant limit the number of rental properties in an association?

Carrie stated any rentals that are currently in an association would be grandfathered in. Have any owner of a home which is a rental, register. If they don't register, then the rental properties are not valid. If it says "No Rentals" in the covenants, it would be very complicated process to enforce. There are many provisions for rentals.

Satellite Dishes

Can your covenants restrict satellite TV dishes?

Covenants can't restrict dishes less than 1m in diameter. They can only regulate dishes over that 1m. If an owner mounts a satellite dish on the front roof of the home, but the covenants don't say if one can or cannot mount the dish at a specified place, can one do anything about having it removed?

No, if it is under the 1m diameter and not in the covenants, not much can be done.

Steps to changing Covenants

What are the steps to change your covenants?

Unless it is spelled out in the covenants, you will need 100% of the residents to agree to the amended version. You need to get a title company to see who are listed on the deed of records. The person living in a house may not be the actual owner. Signatures must be notarized allowing the amendment. Make certain to retain any written ballots. Bob states that it is strongly recommended to consult a lawyer before amending. Changes must be done correctly or a waste of time. Covenants are legal documents and should be treated by a lawyer to make sure they are correct.

What if you have been on the board for ten years and you know all the residents. Do you still need to contact a Title Company?

Bob used an analogy: would you pay a person for the sale of a house without knowing for sure if the title is valid? Then be certain of who is on the title!!!

By-Laws

An association has a copy of the By Laws but can't find the original. Is the copy valid?

Yes; it probably is valid, unless somebody else can provide an original that is different. Bob reiterated that By Laws tell **how** to govern and Covenants tell **what** to govern.

A new board is being formed and the members need to get a bank account. They found out that the former association was dissolved by the Secretary of State. What should they do?

Forming a new Association is much easier than trying to revive the dissolved one. Create it with a name very similar to the dissolved one. The covenants will need to be amended to reflect the new name though.

Dues

What if you have a resident that refuses to pay dues? What can you do? Filing a lien doesn't seem to get the money.

An association can always file suit in Small Claims Court. Yes, you can file a lien, but that lien won't be satisfied until the property is sold and even then you have to get in line behind larger creditors. There is usually a provision that allows Small Claims action and that you as the association can also collect legal fees. It may even state if there are provisions for garnishing bank accounts or wages.

If the house in question might be sold in the near future, a lien is a good way to go. The lien will prevent the sale of the house, prevents any refinancing and goes on that person's credit score. If you don't think the house will be up for sale soon, then the Small Claims Court is a better option.

At this point there were more discussions on trying to not be antagonistic. Try to communicate in a friendly manner. Don't "tell" a resident what they must do. Try to be proactive. Get involved before situations arise. Good communication is the key.

Newsletter vs. websites

Discussions were held on newsletters vs. websites. Several residents stated that there are local companies that will help you get a website started. Innovations in Motion was one such company. The group was suggested to check out www.caribecolony.com or to set up a secure Facebook page. www.Neighborhoodlink.com was a free site to use. The City of Fort Wayne offers a site www.fencepost.com to post items in your area.

Group Homes

Can group homes be restricted?

No, they can't be restricted, but members of an association can question if a group home fits a true definition of a group home before allowing it in the association.

Contracts

Can a lawn service agreement be terminated?

Yes, it can be terminated but it depends on the wording of the contract as far as how and should be looked at by a lawyer, as it may or may not be a contract. Let the lawyer decide and then actions can be taken.

A newer sub was controlled by the developer. The developer signed a ten year contract with a lawn service sixty days before turning the association over. Is this valid?

Try to deal with the lawn service. If they want to play hard ball, look at the contract, as there might be ways out of it. A lawyer should look at the contract first so that you know going in what are your rights.

Transfer Association from Developer to Homeowner

What are the steps to transfer from the developer to the homeowners?

The homeowners should meet with the developer, and set up By Laws. Try to have a 6-12 month period of transitioning. There is a lot to figure out for the accounting, dues and collections and any current issues.

Auditing Books

Are you required to have your books audited by an outside source?

Not unless the By Laws specifically require it.

As a Not for Profit Corporation, is there any limit to how much money they can have in the bank? There is no limit.

Home Businesses

Can home based businesses be restricted?

They can be restricted if the covenants say single family homes – no businesses allowed.

Trees

There is a dead tree on private property that overhangs the sidewalk and the street. What can the association do about it? A letter was sent to the homeowner and the homeowner says they are not liable if it falls because it would be an “act of God” if it fell.

In this case, the city can be contacted first to see if it's over a public right away and then action can be taken. Bob then talked about the two types of liability. If a condition exists on your property but it isn't known, there is no liability. If an issue is known, then one is liable for actions that occur. He stated that if one got it in writing to the homeowner about the tree, then it is known and the person can be held liable. He cautioned the association in getting involved. Check the covenants regarding trees. If there nothing in the covenants, then this isn't an association issue. The association has no authority to intervene. Trees are often an area of many issues in associations with roots and sidewalks, right of way issues, etc.

At this point a suggestion from the audience was brought up. Before sending a letter, the President should try talking to the resident. Treat them as a friend, don't try to alienate them.

This audience member suggested the President and Vice President walk the neighborhood to look at the trees. Try to meet with the resident to see if they might join the association in getting a group discount in addressing the trees issues.

The meeting was closed at 8:30pm.

The next meeting of the ACNA will be on January 24, 2012 in the Citizen's Square Omni Room, 200 E. Berry, starting at 7:00pm. Future meeting dates for 2012 are April 24, July 24 and October 23.