

## **ACNA Meeting Minutes October 26, 2010**

The meeting of the Allen County Neighborhood Association was held on October 26, 2010 at 7:00PM in Meeting Room "A" of the Allen County Public Library. The meeting was called to order at 7:00PM by Kris Krishnan, Co-Coordinator. Approximately 40 residents were in attendance.

Kris made introductions of ACNA officials and guests in attendance. Along with Kris were Joanne Bergman, Co-Coordinator, Rob Green (Secretary), Dee Jackson and Rob Vargo greeted the attendees. Guests included Attorneys Bob Eherenman and Charles Heiny, Mike Green, Nelson Peters, Judge Ken Scheibenberger and videographer Larry Banks.

### **Mike Green:**

Mike Green, Allen County Public Information Officer discussed the Video on Demand program on the Allen County website and the Nixle program. Mike informed the group that these ACNA meeting are now available to be viewed online on the Allen County website under the "Video on Demand" tab. The Video on Demand tab allows access to all City and County meetings free of charge. These meeting can be viewed by anyone with a computer. Simply click on the website, [www.allencounty.us](http://www.allencounty.us) and click on the Video on Demand tab.

Mike informed the group that this meeting would be broadcast on November 8<sup>th</sup> and 9<sup>th</sup> on Comcast channel 25 / Frontier channel 55 at 6:00pm and 10:00am respectively. After November 11<sup>th</sup>, the meeting will be available any time using the Video on Demand link on the county website.

Mike informed the group that many current happenings in the county can be found using the Nixle program on the internet. This site can send direct access of time sensitive data directly to residents either by email, text or through the Nixle website. Residents may opt out of certain parts of the program if those parts are not of interest to the resident. Some items posted on this program are the severe weather warnings issued three time today, traffic alerts or weather updates. Mike stated that the more residents who subscribe the more beneficial the site will be for all residents. All residents are encouraged to visit the site for more information and to sign up.

### **Joanne Bergman:**

Joanne informed the group of a book she had checked out of the library titled Safe Homes / Safe Neighborhoods by Stephanie Mann. She found many items in the book that could be of great interest to those in attendance. Joanne also stated that the ACNA was still in need of two people to step forward to take on the co-coordinator position as Kris and she are leaving that position at the end of this year.

### **Nelson Peters:**

Nelson Peters, County Commissioner, was the next speaker. Nelson told the group that these types of forums were very important to the city and the county as a way for citizens to become involved and to allow the ACNA to provide services needed by associations. He explained that in past ACNA meetings, discussions were held on how to implement suggestions. Most of those in attendance were from City of Fort Wayne associations and it would be very beneficial if more of the county associations became involved.

Nelson discussed the benefits of a joint 911 call center and joint Homeland Security Divisions. Nelson questioned if it would make sense to integrate county groups with city groups or try to have separate groups all together. He asked those in attendance to think about the future of the ACNA and where those in attendance would like to see the group go from here. Should the group be broken into County quadrants or be one entity? Members of the Northwest and Southwest CityPartnerships were in attendance. The question was asked how to grow the community together?-. There is strength in numbers. Nelson stated that the answers to these questions need to be the group's decision and that residents should think about it and be prepared to discuss this at the January meeting.

### **Bob Eherenman / Charles Heiny:**

The main focus of the meeting tonight was for Attorneys Bob Eherenman and Charles Heiny to address questions from the audience members.

Bob began the presentation by restating the three main basics of the associations: Covenants, Bylaws and Article of Incorporation.

- Covenants: Governs associations
- Bylaws: Governs corporations
- Article of Incorporation: Actually forms the Association. Make certain the association is on file in the Secretary of States Office

Covenants:

Covenants provide restrictions on property in an association and there are specific ways to enforce these restrictions. It is generally assumed that if you move into an association with covenants, you will abide by the covenants.

One item associations should check their covenants for: An Attorney Payment Provision. If there is a provision for a prevailing party, the association could be liable for ALL legal fees for both sides if they lose the case. If the association has an Attorney Payment Provision, then they would not be liable for all the fees.

If you have an older association and need to make changes to the covenants and it isn't spelled out how to do so, you will need 100% of the residents to agree to the changes. How do you get 100%? You will need to get the deed of records to find out who the official owner of the property is and have all documents regarding the changes notarized. You can usually get a fairly accurate list of deed owners from the Assessor's Office. It may be expensive to try to get the actual deeds or records.

There is a new way to have these changes made official. If the proposed changes are brought to the membership meeting and voted on at the meeting, changes can become official and you won't need all 100% members voting. It is strongly recommended that you take good, accurate meeting minutes to fully document all actions taken.

Even though covenants are legal documents, your best bet is to hire an attorney to be sure that all actions you are taking are correct.

Questions:

- Association formed in 1915. Records are so old even the Records office doesn't have them. What are current residents to do?
  - o It states that 2/3 of all residents must vote. You would then have to enforce a covenant that is an Amendment. An Amendment is a legal document but you will have to use a practical interpretation. Look for agreement between the board and the residents.
- What if Realtors and Title Companies are not following the rules?
  - o First step would be to inform all local real estate companies that there is a valid covenant for the association. Record this in a letter format. Most companies will then willingly comply with them. If they will not willingly comply, then going to court is the next option. Since this is a legal document, the courts will generally award in your favor.
- Can you write in a financial penalty for non compliance of rules?
  - o Both lawyers stated they had never seen that done before but that doesn't mean you can't. Since there may not have been any cases like that in the past, it would be up to the courts to decide how to enforce.
- Is there a set time frame for the calendar year?
  - o Usually in associations it is January – December. Look at specific covenants to be sure. If not stated, January – December is generally the time frame. If there isn't any spelled out time frame and you need to bring legal action, the judge's decision will be the rule.
- How do you file a lien on a homeowner?
  - o Anyone can file a lien. There are specific steps that must be followed. It is not necessary to have an attorney to file. Collecting on a lien for an association means the bank and the mortgage company will have first access to collected money. Liens are now valid for a time frame of 1-5 years.
- What if a resident sends a letter and says "sue me"?
  - o You must file suit within one year of this letter.
- Can you let the five year period end without filing a lawsuit to collect on lien and re-file?
  - o The statute is silent on this. Be very careful. You should file liens in succession if they go longer than the five year period. It would be up to the judge to decide but it seems like that is circumventing the statute. Note: If a person loses a sale of a home due to a lien being placed on the home, make sure all of your filings are in order or you would risk legal action against the association.
- Are there other ways to collect other than liens?
  - o Liens are filed against the mortgage. You can always file in Small Claims Court against a person.
- What if a home is sold during a Sheriff's auction?

- The only way the association would get any money in this case is if the sale of the house was more than the owed value. This rarely happens. Best action would be to wait until after the sale and file a lien. Banks are usually the purchasers from these auctions. They buy the house at a low price and try to sell it for a profit. If they do sell at a profit, your lien could go against the new sale price.
- Political signs and covenants. (Handout given explaining new Statute that just came out)
  - The new statute says you can't prohibit political signs for 30-days before and 2-days after an election. This went into affect on July 1, 2010.
  - You can restrict the size, location and quantity of signs. But the wording in the new statute is vague. One part of it says you can restrict these but the other side of it seems to say you can't. Even the lawyers present couldn't fully understand the wording.
- Can you restrict fences?
  - Yes, but be careful on what zoning laws and covenants say. Your covenants may state one thing but if the zoning law contradicts that, the zoning law would take precedence. Difference between these would go in front of the Zoning Commission and they would look at the zoning rules over the covenants.
- Can you restrict against above ground pools?
  - Yes, if the covenants spell out rules and they have been uniformly followed, yes, they are enforceable.
- Sidewalks: What if there are no sidewalks on a property owned by the developer?
  - Look at the covenants. Most developers exclude themselves from the covenants. The homeowner is usually the one required to put in the sidewalk. There should be specific language in the covenants on this item. There are no set rules.
- Can an association prohibit solar panels?
  - Both lawyers were unsure on this question. They seemed to think that solar panels would be covered the same way as satellite dishes (size restriction, not whether you can have them or not). Bob was going to look in to this and report back. **UPDATE:** Bob found a states statute stating that governmental units cannot adopt ordinances that unduly restrict solar energy systems, but nothing prohibiting an association from restricting it. He could also find nothing in the federal law prohibiting such a restriction.
- Signs (other than political): Can they be restricted?
  - If the covenants say no signs of any type, the statute would supersede this and they would be allowed with the same restrictions as stated earlier.
- What about religious signs?
  - The Federal Act (RLUIPA) prohibits action against religious signs. Covenants can't restrict them.
- Should associations have insurance?
  - Both agreed that yes, they should but you should talk to an agent about the specific type needed. If you have a pond or common area you should have

liability insurance. If you have a clubhouse, you would probably need fire insurance. You can also take out fidelity bonds to protect against theft or embezzlement.

- The bylaws state that the association can't be sued as a group for performing its duties. Is this legal?
  - o If the bylaw is a recorded document, then maybe. Most bylaws are not recorded. This hasn't really been tested so be very careful with this question.
- Who do you talk to about the address on a property?
  - o The Department of Planning Services can answer questions on this matter.
- Final question dealt with two neighbors and a birch tree adjoining their property.
  - o One neighbor blew the leaves that fell back over the fence to the yard with the tree. The other neighbor threw the leaves back over again. Who is right? If the branches hang over the fence, the neighbor without the tree on his property can trim it back to the fence line. But dealing with the leaves that fall is another matter. Be careful in situations like this.
- Joanne wanted to remind those in attendance that these questions do not always have a black or white answer. At the end of the day, consult an attorney in your specific case.

The meeting closed at 8:30pm.

**Next meeting: January 25, 2011 in the Omni Room of the City County Building at 7:00PM**