

The Architectural Control Committee

Association Governance. The Village Circle Estate Owner Association was created on July 28, 2006 by Articles of Incorporation in accordance with the Indiana Nonprofit Corporation Act of 1991.

After Federal, State, county and municipal laws, statutes, and codes, the association is governed by – in order of hierarchy – (1) Plat Survey, (2) Articles of Incorporations, (3) Declaration of Covenants, Conditions & Restrictions, (4) Bylaws, and (5) Rules & Regulations.

The governing body of the association is the Board of Directors. At Village Circle they are unpaid volunteers elected by a vote of the association members.

The board is charged the responsibility of setting the association's annual budget, establishing rate of assessment, provide for care and upkeep of the common areas, and to enforce all provisions of the governing documents.

The bylaws more clearly define the role and responsibility of the board as a whole as well as the individual officer responsibilities. When all is said, the primary duty of the board is to act in a way that benefits the community as a whole.

Architectural Control Committee. An Architectural Control Committee (ACC) is established by the governing documents in order to facilitate exterior modifications so they are in harmony with community standards; it is a vital part of maintaining the aesthetics and property values in the HOA.

Prior approval for exterior modifications is a requirement of the governing documents:

Approval Prior to Construction. No Residence or structure shall be commenced, erected or maintained on any of the Property until plans and specifications have been submitted to and approved by the Architectural Control Committee. (8.10)

Prior approval is necessary to insure that the intended modification is not only something permitted but also protects the homeowner from costs such as restocking fees, the cost to replace a fence, as well as unexpected costs such as the need to add a fence, etc. Furthermore it is important to note that unapproved structures might eventually have to be removed legally at the owner's expense, so it's better to just have them get approval in the first place.

As submissions are made, a clear pattern or set of internal approval guidelines emerge. In other words, when the ACC considers a request for the first time, the initial request may take longer to consider but over time approvals become routine. It is critical that the process is considered fairly and uniformly without "selective enforcement". But even worse is to have the board look the other way, as it can affect your HOA's ability to enforce other important rules, such as the collection of assessments.

The ACC looks out for the entire community. Not only does this keep the community looking cohesive, it also helps to keep property values up by preventing individual structures from standing out – an approval today establishes the precedent for the future.

Some homeowners mistakenly believe these standards restrict their freedom of individual expression; actually they provide a framework within which each homeowner can express individual tastes and preferences. The standards are in place to enable a balance between individual rights and property values in the Association. Another component in the ACC process is flexibility with variance requests. Modifications and change are anticipated as well as the need for the occasional variance and the mechanism for their approval is the ACC.

Allow me to close with the following: the Board has a duty to reasonably enforce the covenants, and by doing so, avoid risking liability to the board, committee members or to the association. At the same time, board members are residents with neighbors and friends in the community. Regrettably enforcement can result in personal attacks, disharmony, and polarization especially when two undercurrents collide: (1) “It is my land, and nobody can tell me how I can use it” with (2) the fact that the use of one’s land affects the neighbor’s rights, and the rights of subsequent purchasers.

Yes, enforcement can be an emotional issue but neighbors can become equally emotional when there is a lack of enforcement. The Board through its ACC has the legal obligation as agents of the corporation and is liable for their actions as well as inactions. The courts will always side against a board and the association when they fail to enforce the covenants. The legal standard most often used in weighing a board’s action is whether it used “reasonable judgment” in making a decision.

In my experience we most commonly encounter homeowners who quite simply did not know they needed prior approval or those that knew but merely procrastinated. But occasionally one encounters a homeowner that is outright defiant. In that circumstance it is always best to simply have the association’s attorney to file an injunction stopping the work.

I assure everyone that there is no ACC Police. But without casual inspections, covenant violations often go undetected which makes enforcement more difficult. A delivery of building materials is a signal that prompts calls from not only ACC members but curious neighbors. At other times the scope of work is expanded beyond what was approved. The board and its ACC should note any new construction activity and respond immediately. Understandably emotions will be elevated if a homeowner is advised that a project cannot proceed and may have to stop completely but consider the options.

Lastly, according to my reckoning at Village Circle, there have been nineteen (19) modification approvals and only one (1) denial for a shed request at a time when sheds were prohibited. The current board has not denied a single submission. I now open the floor for questions.