

RECORD OF PROCEEDINGS

Minutes of

Etna Township Board of Zoning Appeals

Meeting

DAYTON LEGAL BLANK CO., FORM NO. 10148

December 29,

2005

~~Held~~ Steve Ferris asked if anyone tell them that their fence encroached when they closed on sidewalk. Steve Ferris asked if anyone tell them that their fence encroached when they closed on their home, the Thompson's replied no. The Myers Surveying Company stated on the survey that the fence was not in conformance with legal description.

Mark Thompson asked Steve Ferris how many violations the township has had in regards to fences in the past four years. Steve Ferris replied "103 Arrow Wood Court was the first, yours is the second and the Chew's is the third." Mark Thompson asked "Is it not part of the zoning office to enforce the outline of 1008?" Steve replied 95% of the violations are generated by citizen contact with the office. Mark Thompson asked in his opinion does it make it ok that all of these properties have been overlooked? Steve Ferris replied he wished he had more time and more people.

Rick Cox stated it is his understanding that the PUD text becomes zoning. The deed restrictions we do not handle we found out by legal opinion. Now if you read the limitation text it states it started out as R-3 and then it goes through the changes with setbacks and be handled by the final development plan. If the limitation text is the only piece that we are concerned with. He asked if they have ever been approached by any other home owners. Mark Thompson replied not in the 2 1/2 years that we have lived there nobody has made a single comment regarding the fence. Steve Holloway asked if they have received any letters from a neighbor. Mark Thompson stated absolutely not. Rick Cox would like to state for the record it is every one of your neighbor's legal right to enforce his fence situation, that not being done is brought up for reference and he has not been approached by any of the home owners.

Steve Ferris stated that the fence does not obstruct any intersection in anyway. Steve Holloway asked if he considered it unsightly at and Steve Ferris replied no. Rick Cox asked Dallas Maynard if he had any conversations with the previous homeowners regarding the fence. Dallas Maynard did not recall any conversation with the homeowners at that address.

Donna Augustine of 115 Trail East was sworn in. She discussed the two properties and their fences.

Steve Holloway stated the PUD, deed restrictions, and the Zoning Resolution. From what Steve Holloway can find on fences are all deed restrictions. He needs to decide what authority the BZA has depending on if they are covered under deed restrictions or under the PUD. The BZA discussed this in more detail regarding homeowner's association and enforcing deed restrictions. Steve Holloway stated the BZA needs to find out if the BZA has the authority to enforce this issue with the fences.

Gary Burkholder was sworn in, 254 Trail East. He wanted to state that he recognizes how difficult this issue is. Gary Burkholder asked if there was a legal opinion regarding enforcing deed restrictions. Do the covenants supersede the township zoning? Gary Burkholder does not feel that deed restrictions supersede township zoning in general. Steve Holloway feels the PUD is a separate zoning.

Mike Kerner feels the most restrictive shall apply.

Steve Holloway moved to close the hearing, to deliberate and make a decision at a later date. Cox seconded. Discussion: The BZA has thirty days to make a decision. The BZA will contact the property owners with the date of the decision. Roll call: 5-0 passed.

Steve Holloway adjourned the meeting at 6:12 p.m.

Approved as read 2/28/06

Laura Brown  
Laura Brown, Clerk

Approved as corrected/amended \_\_\_\_\_

Frederick M. Cox  
Frederick M. Cox

2/28/06 APPOINTED 1/06

Steve Holloway, Chairman

Steve Holloway's appointment was up December 31, 2005 and Frederick Cox was appointed Chair on January 12, 2006.