

RECORD OF PROCEEDINGS

Minutes of

Etna Township Board of Zoning Appeals

Meeting

DAYTON LEGAL BLANK CO., FORM NO. 10148

December 29,

2005

Held

19

The adjudicatory hearing was called to order by Chairman Holloway on December 29, 2005 at 6:13 p.m. in the Etna Township Hall. The meeting was audio and video taped for township records.

Roll Call: Mr. Johnson, Mrs. Rogers, Mr. Holloway, Mr. Cox, Mr. Goll, and Laura Brown present.

Steve Holloway opened the adjudicatory hearing for Philip and Jacqueline Chew of 11 Burreed Court regarding a fence. Steve Holloway explained the procedures and swore in the witnesses. Philip Chew, Steve Ferris, and Gary Burkholder were sworn in.

Philip Chew stated they moved in December of 2000 with the intent of adding a patio, shed, and a fence. In the spring of 2001 they contacted the Zoning Department to obtain the permits for the projects and at that time the only permit that was required was a shed. In the summer of 2004 it was brought to their attention by DiYanni that they had encroached on their property. The Zoning Inspector was on the property and explained to the homeowner the set back requirements in regards to the shed. He advised to either move or dispose of the shed. At that time the Zoning Inspector did not state that the fence was an issue at that time. Prior to that in September of 2002 a Zoning Inspector was on their property. Three times a Zoning Inspector visited the property.

Philip Chew submitted 6 pictures as Exhibit A into the record of his property. He wanted to know why is the fence that was established in the spring of 2001 now become an issue. He did receive a legal opinion from his counsel. He submitted paperwork to Centex homes as stated in his covenants. Philip Chew submitted 27 pictures of other properties in question in Etna Township as Exhibit B.

Jacqueline Chew of 11 Burreed Court was sworn in. The Zoning Inspector was on the property and was checking on the fence being moved to the property line. They had to move landscaping and have added more trees and money into the yard. To move this fence would be a hardship.

Steve Ferris asked if Mr. and Mrs. Chew understood the violation and the set backs. Mr. Ferris stated that in no way does the fence obstruct on either side. Steve Ferris entered Exhibit C a labeled picture of the Chew's property. Steve Ferris explained the setbacks of the fence. Steve Ferris stated he has never been on the property before.

Gary Burkholder of 254 Trail East stated the legal opinion dated December 28, 2005 from the prosecutor does answer the question regarding the enforcement of restrictive covenants did not address Planned Unit Developments at all. In Section 1302 Conflict and Interpretation it states in accordance with Section 101 of this resolution, Article 13 is declared to be the minimum requirements applicable to planned unit developments in any interpretation and promotion of the public health, safety, and general welfare of the community. Whenever the requirements of this resolution are at a variance with the requirements of lawfully adopted rules, regulations, ordinances or resolutions, the most restrictive, or that imposing the higher standard(s) shall govern. He is hoping the board at the January 3rd meeting will impose the question regarding deed restrictions to legal counsel.

Rick Cox asked if the Chew's have ever been contacted by anyone neighbor to enforce the deed restriction. Philip Chew stated he has not.

Cheri Rogers asked when they submitted to Centex if he kept copies. Philip Chew stated he can not locate the copies but did submit as required. They were given 30 days to respond and did not respond back to say they could not do it.

David Goll questioned Philip Chew on how far back they moved the fence. It was moved back to the property line. It was acceptable at the time. Rick Cox asked if DiYanni was pleased with the move of the fence. DiYanni is a declarant, they owned the property at the time and had ever right to complain about the fence.

Mable Evans of 110 Trail East was sworn in. The owners of the house DiYanni owned. They have no problem with the fences.

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~~Gary Burkholder stated that DiYanni is never the declarant in any way. Rick Cox stated as a lot~~
owner they are a declarant. Gary Burkholder stated that Cumberland Road LTD was the declarant and First Merit Bank is now the declarant. The property owner as a lot owner DiYanni had a right.

Philip Chew wanted to point out their lot was part of the first phase of construction hence their house and their fence was their since spring of 2001 and could have brought it to the attention of the township.

Mike Kerner stated that the complaints are usually acted upon.

Cheri Rogers stated if someone in Cumberland Trails wants to put up a fence there is noone to get approval from. Gary Burkholder stated there is an architectural review. The problem he feels with this is the fox is guarding the hen house. The process is DiYanni homes because Centex is no longer a developer. The deed restrictions that were passed out are correct. Gary Burkholder does believe that the Chew's were not advised during the previous visit by the Zoning Inspector's. Cheri Rogers asked if the home owner followed the proper procedures how can you fault the home owner for building the fence.

Mike Kerner of 8623 Watkins Road was sworn in. He asked if they are in violation of the township regulations or the PUD regulations. Steve Ferris stated it is Zoning Resolution Article 10, Section 1008.

Steve Holloway stated do we decide this on the Zoning Resolution, the PUD, or the deed restrictions, what instrument are we using and what authority do we have over what instrument.

Cheri Rogers moved to adjourn this hearing and make a decision within 30 days. Johnson seconded.

Roll call: Motion passed 5-0.

Steve Holloway stated that the BZA will notify the property owners on the date for the hearing.

Steve Holloway adjourned the meeting at 6:50 p.m.

Approved as read 2/28/06

Laura Brown
Laura Brown, Clerk

Approved as corrected/amended _____

Frederick M. Cox Jr 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.