

State of the Neighborhood

The authority of a homeowners' association in

Historic Indian Village

Mar 30, 2022



Co-authored by Indian Village residents
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Documentation and other resources collected from public sources
and volunteer residents of Indian Village.

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Introduction

Dear Indian Village Neighbors,

The single most important fact of this entire document that you should remember is Indiana **House Bill 1107** which passed the Indiana General Assembly on July 1, 2014, and modified **Indiana Code 32-21-2-3.5**.

The current **Organizer Board** is working from a false assumption. When Solomon Lowenstein was hired to take over for Robert Aplin, Lowenstein rightly began research at the county recorder's office. There he found the 1991 covenants. It is true that the 1991 covenants do say the neighborhood has been consolidated. Steve Hays at the informational meeting held **October 14, 2020**, stated that after this discovery he reviewed Grant Shipley's memorandum and did not find reference directly to the 1991 Covenants and assumes that means Shipley missed them. The 91 covenants are not and were not new information to Shipley, and it shouldn't be to anyone else living in this neighborhood at the time.

The simple explanation as to why Shipley does not directly reference them is because they are not valid. This was due to restrictions in Indiana state law that did not allow for consolidation of covenants for multiple neighborhood sections. On **page 5, Section IV** of Shipley's memorandum, he goes into detail about how the board started to resolve this issue with the help of State Representative Dan Leonard. Leonard was able to pass HB 1107 which modified Indiana Code 32-21-2-3.5, which would allow for the legal consolidation of our neighborhood covenants on July 1, 2014.

July 1, 2014, is an important date. Every covenant prior to 2014 that mentions any form of consolidation is not valid. According to the recorder's office, no new covenants have been filed since that bill was passed. The Board of Governors in 2014 valiantly tried to fulfill the signature requirement but came up short. That was the last legal attempt to resolve this challenge. This should be the end of the argument. Those facts are available to anyone through both the county recorder's office and the Indiana General Assembly's website.

What follows this letter is an extensive breakdown of the history of our neighborhood and events in the last decade as they pertain to the defunct homeowners' association and its current status.

With Respect and Appreciation,

Paul Forbing

Monica Hadsall

William Bourhill

Supporting and contributing neighbors of this document and supporting content.

<ul style="list-style-type: none">• Paul Forbing• William and Cynthia Bourhill• Monica Hadsall and Kelly Tellef• Ben and Kathryn Williams• Virginia Smith• Jason Etter• Melinda Ambrose• Pam and Ken Hull• Kelsey and Isaac Saxton• Keith Daughtery	<ul style="list-style-type: none">• Steve McMurray• James Adams• Theresa Thomson• Linda Alvarez• Josh and Shanna Bradley• Samantha Freed• Kipp Force• Ian Smith• Melinda Ambrose
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On or around February 26, 2022, homeowners received a letter from a group of residents claiming authority as a homeowners' association. Those individuals are listed here.

- Steve Hays – 3832 Hiawatha Blvd, Section A
- Ben Cramer - 2129 Owaissa Way, Section A
- Dean Kinter - 4035 Mound Pass, Indian Hills
- Stan Robinson – 3651 Hiawatha Blvd, Section A
- Sally Williams – 4101 Meda Pass, Section D

The listed residents will be referred to as “**Organizer Board**” throughout this document.

Objectives

- Demonstrate **Organizer Board** has not proven the legitimacy of their authority.
- Demonstrate **Organizer Board** are not following the 2014 (Nov) bylaws they claim to be in force.
- Demonstrate **Organizer Board** are ignoring newer 2015 bylaws legitimately passed by the organization that they claim to represent, Indian Village Community Association, Inc..
- Demonstrate that all Covenants, Conditions & Restrictions (CC&Rs), Protective Covenants, or Restrictive Covenants created prior to 2014 are either expired or null and void.

Publicly available evidence is attached to this document to support each section. Some documentation includes redactions to protect the privacy and safety of the mentioned homeowner(s). Please note that nothing in this document is intended to support or oppose *legal* efforts to establish a new homeowners' association or neighborhood association.

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Section 1 – 2022 Meeting Notification

“Notice of ANNUAL MEETING OF INDIAN VILLAGE COMMUNITY ASSOCIATION” | postmark 24 FEB 2022

In reference to The **Organizer Board**'s citations of bylaws. The letter references bylaws passed in 2004. They are likely referring to bylaws passed in 2014 since no bylaws from 2004 exist. The organizers have not verified this typo. On February 27, 2022, Monica Hadsall emailed ivca46809@gmail.com and requested a copy of the 2004 bylaws referred to in the letter, and in reply, they sent the bylaws dated November 2014 without comment. The following assumes they are referencing 2014 (Nov) bylaws.

Article V Section 2 requires board members to be members of the Association, and Article III requires homeownership to qualify for membership.

Correct, however, **Article II Section 1** of the 2014 bylaws state that they only apply to sections A&B of the neighborhood disqualifying two board members.

Article V Section 1 the board shall have five members and that they shall serve till their successors are elected.

The organizers claim Sally Williams is the only remaining board member qualified to continue since being (re)elected in 2016, and eligible to call the meeting. Sally Williams resides outside sections A&B and is ineligible.

There is also one other 2016 board member residing in the neighborhood. This has been verified using public tax records of current property owners in the neighborhood.

Article VI Section 10 gives the board the right to fill board vacancies from the membership to serve until organizational meeting after the next election

This is correct but ignores **Article V Section 3** which requires the President or Secretary to call a meeting. Evidence has not been provided that Sally Williams held either of these positions, which means she lacks the authority to call a meeting without another board member and without a quorum. **Article V Section 4:** A majority of the Board shall constitute a quorum for the transaction of business.

Sally Williams, lacking a quorum to hold a board of Governors meeting and 50% of the vote is not a majority, additionally lacks a majority to appoint any new members to the board.

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Organizers acknowledge 2014 (Nov) bylaws, which state that only owners of lots in sections A&B **Article II, Section 1**- shall *automatically be members of the Association and shall remain a so long, but only so long, as such ownership continues [Article III]*.

Without any stated provisions to allow for membership outside sections A&B, both Dean Kinter and Sally Williams are ineligible to hold board seats or membership in the association. **Article V Section 2**, No one shall be eligible to election to the Board of Governors except a member of the Association.

Indian Village Community Association, Inc. adopted a new set of bylaws governing sections C&D on January 14, 2015, retroactive to January 1, 2015. These bylaws are entirely ignored by the organizers. **Article IV Section 2** of the 2015 bylaws states "In no event shall a Director hold over after the expiration of his or her term by more than one year, except as may be authorized by a Special Meeting of the Board of Directors at which the affected Director does not participate." Sally Williams would no longer be a board member after 2019.

Section 2 – State of CC&Rs, Restrictive and Protective Covenants

In early 2014 the association, with the help of Grant Shipley, attorney-at-law, lobbied with State Representative Dan Leonard who sponsored House Bill 1107. You can find this referenced in meeting minutes and the Smoke Signal publications in 2014. Sarah Didier wrote a Letter from the Editor distributed in December 2014 explaining the law and what it means for the neighborhood. This bill became law on July 1, 2014, modifying Indiana Code 32-21-2-3.5. This now allows homeowners associations that are not all subject to the same covenants, the opportunity to record new replacement covenants to consolidate. This still requires two-thirds majority signatures' approval from homeowners of each section.

What does that mean? No new CC&Rs have been successfully established since the passing of this bill, meaning any CC&Rs established prior to July 1, 2014, that claims authority over more than one section of the neighborhood are null and void.

The claim that the 1991 Covenant united the neighborhood is not and was not valid. State law at the time did not allow for merging of multiple covenants. This was thoroughly understood by the Board of Governors in 2014 and why they spearheaded a signature campaign to merge the sections.

Section 3 – The Shipley Memorandum

Grant F. Shipley, attorney-at-law, on October 13, 2014, wrote an in-depth history of the neighborhood from May 1, 1927, to the time of the memo. This memo has the most complete summary of the historical covenants since Section “A” was platted in 1927 to the final Section “E” plat in 1953. It should be especially noted that Shipley worked with the Board of Governors to correct the lapses that occurred over the history of the neighborhood through present day. This memo was sent to residents when the Board of Governors began their efforts to collect signatures of two-thirds of residents in each section.

Section 4 – Historical Timeline 1927 to present

1927-June-16 | City Suburban Building Company Plats Section “A”,

1929—Circa | City Suburban Building Company goes out of business at the start of the Depression.

1930s—Remaining land held by The City and Suburban Land Company, but no further development occurs.

1945 | John R Worthman, Inc. purchases land

1945-July-30 | Section “B” is platted.

1947-May | Section “C” is platted.

1950-April | Section “D” is platted

1952-May-1 | Section “A” covenants expire according to Section 12 in the 1927 covenants.

1953 | Section “E” is platted.

1954-March | Indian Hills is platted,

1956-February | Indian Hills Extended is platted.

1991-September-23 | Covenants written and recorded while ignoring state restrictions that do not allow merging multiple sections in a neighborhood.

1993-May-11 | Allen Circuit Court approves new 1991 Restrictive Covenants for Section “A”. Other sections are not mentioned in the ruling. Cause No. 20C01-9207-CP-571

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1994 | Indian Village Community Association passes new constitution (bylaws) specifically only applies to sections A&B as outlined in **Article II Section 1** of said constitution.

1998 | Amendment written and recorded to update 1991 Covenant. The only change was an increase in maintenance fees.

2012-December-14 | Indian Village Community Association, Inc, incorporated as a non-profit entity by Sarah Didier. Incorporation documents claim to govern 497 homes.

2014-July-1 | Indian Village Community Association, Inc. along with Grant Shipley, attorney-at-law, support State Representative Dan Leonard who successfully pass HB 1107, modifying Indiana Code 32-21-2-3.5. This would allow all the neighborhood sections the opportunity to merge legally under a unified covenant. Subject to meeting signature requirements of two-thirds of residents in each section.

2014-August-14 | Indian Village Community Association, Inc. organizes an effort to collect signatures to merge the neighborhood, which is now allowed by Indiana Code 32-21-2-3.5.

2014-October-13 | Shipley Memorandum written and distributed explaining the consistent lapses in the history of the neighborhood, culminating in no valid covenants or restrictions over any of the neighborhood sections. He also details the solution of collecting the requisite signatures to properly and legally address neighborhood unity.

2015-January-15 | Indian Village Community Association, Inc. fails to collect the requisite signatures to legally merge all the sections. A letter to residents acknowledges this and limits the association to Sections C&D, while offering voluntary application by the rest of the neighborhood. As a result, the association passes a new set of bylaws, retroactive to January 1, 2015, superseding previous bylaws for the association.

2016-March-9 | It is noted in the meeting minutes that Sarah Didier attempted to file to record Section B signatures to merge the neighborhood. She was told by the county recorder that signatures for all sections would have to be submitted at the same time.

2017 | Board of Governors over sections C&D attempt to rewrite protective covenants to include all Indian Village sections.

2018-August-28 | An informational meeting was held that many neighbors were unaware of and unable to attend, which included reference to study groups that many neighbors were unaware of and not a part of. Robert Aplin, an attorney hired by the association, was at this meeting, where it was made clear that the neighborhood was still broken into sections. A video recording of this meeting is available on Facebook.

2019 | Mark Leonhardt, acknowledged as the lone Indian Village Community Association board member, announces his resignation due to the sale of his home. He is no longer qualified to be

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a member of the association. Robert Aplin request 10 owners to move forward to establish new covenant.

2019-October-14 | A group of 10 owners met with Robert Aplin and Mark Leonhardt to establish a single covenant for the neighborhood. The group decided to call itself the Organizing Committee, since it could not act as a board of Indian Village Community Association. The group includes the list below and referred to as “**Organizing Committee**” in this document.

Dan Jones – 2123 Wawonaissa Trail	Karen Gilb - 2211 Indian Village Blvd
Matt Densel - 2320 Wawonaissa Trail	Steve Hays – 3832 Hiawatha Blvd
Dean Kinter - 4035 Mound Pass	Stan Robinson – 3651 Hiawatha Blvd
Katherine Fawcett – 2122 Indian Village Blvd	Sally Williams – 4101 Meda Pass
Don Hayden – 4115 Hiawatha Blvd	Jill Brown – 3721 Nokomis Rd

2020–June-15 | Robert Aplin is released as the association’s attorney. A new attorney, Solomon Lowenstein, is hired by the **Organizing Committee**.

2020-August-17 | Solomon Lowenstein reports to **Organizing Committee** that the 91/98 covenants are valid, and disregards the Shipley Memo conclusions and, despite state law overriding the 91/98 covenants, insists these make the association legitimate and consolidation of the neighborhood covenants legitimate. The organizing committee moves forward based on this information.

2020-October-14 | The **Organizing Committee** holds informational meeting to restart the homeowners' association, similar to meeting 2018-August-28. Due to a failed live stream, parts but not all of a video recording of this meeting are available on Facebook.

2021-June-5 | Indian Village Community Association, Inc. is administratively dissolved by the State of Indiana.

2021-August-24 | The **Organizing Committee** sends a copy of incomplete bylaws to homeowners and informs them of the meeting to vote to confirm them, and subsequently to elect board members. The meeting was ended early when it was made clear that the organizers had no authority to legally hold any such meeting in the first place, much less collect any votes.

2021-November-29 | The **Organizing Committee** holds a secret meeting to self-appoint the board of Governors by referencing certain pieces of the 2014 bylaws to utilize what they think are loopholes to try to justify their authority, and completely ignore the 2015 bylaws.

2021-December-20 | The **Organizer Board** holds unauthorized meeting in secret to conduct business.

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2022-January-24 | The **Organizer Board** holds unauthorized meeting in secret to conduct business.

2022-February-07 | The **Organizer Board** holds unauthorized meeting in secret to conduct business.

2022-February-26 | without justification or authority, **Organizer Board** notify homeowners via mailer that an annual meeting is being held and voting for nominees will occur.

2022- March-7 | The newly self-appointed **Organizer Board** attempts to have elections to legitimize their authority. The meeting is canceled due to the venue's concerns over safety since a prior HOA meeting at this location (Indian Village Elementary School) ended in physical altercations in 2014.

Section 5 – Conclusions and Solutions

Contrary to current rumors on his motivations and intentions, Grant Shipley, attorney-at-law, was actively trying to help Indian Village Community Association. He worked with State Representative Dan Leonard to pass HB 1107 in the Indiana General Assembly (2014 session) specifically to address the challenges the neighborhood is currently facing. Once the bill was signed into law, he laid out to the Board of Governors in 2014 what they had to do to legally continue, and that it was now possible with the new law on the books. Dismissing his memorandum in the current situation is a mistake.

Dismissing concerns by residents because it's not the way you want to do it, or you think they are going to destroy the neighborhood, is also a mistake. These people are your neighbors and want a safe and comfortable neighborhood. Listening and properly addressing the feedback is critical to a successful association.

Continuing in the manner the **Organizer Board** has chosen will lead to liabilities the neighborhood cannot afford and eventually a lawsuit as soon as they try to enforce their authority on an unwilling resident of the neighborhood. Is the **Organizer Board** ready to assume that liability as individuals when they find out they are in the wrong?

Do you still want a homeowners' association? If you do, then it needs to be done the right way. Propose a fair and equitable set of CC&Rs and Bylaws and walk door to door and make your case to your neighbors. Once you have received authorized signatures of two-thirds of homeowners in each section of the neighborhood, you will then have your homeowners' association and united covenants.

Section 6 – Supporting Documents and Evidence

The following are documents and resources citing in this document. URLs are included for those that cannot be attached to this document.

- "Notice of ANNUAL MEETING OF INDIAN VILLAGE COMMUNITY ASSOCIATION" | postmark 24 FEB 2022 by Organizing Committee
- Frequently Asked Questions Indian Village Community Association reactivation plan, Fall 2020 by Organizing Committee
- Bylaws and Adopted Rules by Indian Village Community Association, Inc.
 - IVCA/ Constitution (March 1, 1994) modified November 2014
 - Bylaws of Indian Village Community Association, Incorporated, Effective January 1, 2015 | Adopted January 14, 2015
- Invoice for 2015 Regular Member Maintenance Fee (identity redacted for privacy)
- Smoke Signals 2014-12 Letter from the Editor
- Memorandum by Grant F Shipley, attorney-at-law, October 13, 2014
- Indiana HB11007.03 (2014 Session) – (<http://iga.in.gov/documents/1058e751>)
- IC 32-21-2-3.5 Homeowners association covenants - (<http://iga.in.gov/legislative/laws/2021/ic/titles/032/#32-21-2-3.5>)
- Restrictive Covenants 1991
- Allen County Tax Info - (<https://lowtaxinfo.com/allencounty>)
- Assessors Map - (<http://acimap.us/assessors.html>)
- Neighborhood Covenant Search - (<https://inallen.fidlar.com/INAllen/WebSenseCustom/Default.aspx>)
- Information Meeting Video