

**Pawnee Hills Community Association
Special Board of Directors Meeting
December 4, 2006**

Meeting was called to order at 7:17 p.m.

Board members present were Tina O'Bryan, Walt Day, Patty Sward, Susan Laessig and Pam Schultz

MINUTES:

A special homeowner's meeting was called to vote to change the covenants regarding commercial activity/home occupations. A quorum was not met for this meeting; therefore a special meeting of the board of directors was called to discuss where we go from here.

Tina: A motion was made to continue with the declaratory judgment. It was seconded and we are in discussion right now. I was giving a background on what the declaratory judgment is, how we came to that. Got to the point where we get to court and the first case, we had explained to the judge that we are doing a declaratory judgment, we are just trying to figure out how to present it to the court without having to subpoena 300 and some odd homeowners because you have to subpoena each homeowner that is listed on a title. The second court case came about, again, it was alleged that the board is treating commercial activity and poultry differently. The judge asked where we are with this? We had explained to him that we are filing a class action suit. He said, "Perfect." We have had the definition of what "commercial activity" is. We have got that, which helped us to make a decision to keep going forward with it. We were hoping that there was some sort of loophole that we would come across, something that we could do. We tried, of course this fifth time for a vote, hoping that maybe we can get community members, with the new information that we had, to come out and vote so that we didn't have to go through this. What have I forgotten so far, guys? What needs to be--before I go into the next--anything?

Pam: Any questions about that part of it.

Tina: Yeah, any questions from what I have so far?

Bill Curley: Who is the judge in this matter who said that this was "perfect"?

Tina: Judge Pratt.

Bill Curley: Is he on the bench still?

Tina: He is on the bench. He is now in a different area. I can't remember where he is at now, but he was the one that heard the Haan case.

Bill Curley: Is he going to hear this case?

Tina: He is not. Judge White will be hearing the declaratory.

Bill Curley: White?

Tina: Yes, W-H-I-T-E.

Bill Curley: So White is the one that said "perfect"?

Tina: White? No, Pratt did. White will be hearing the declaratory. What had happened was we submitted it as a class action suit and Judge White turned it down. David Roth, the opposing side of the class action suit had asked for reasons why it was turned down. We received the reasons why it was

turned down and Cheryl Mulvihill who represents PHCA and David Roth who represents the homeowner's class action suit side of it got together and created a document asking for the reasons for the Judge turning it down. The two lawyers together submitted it to White and White turned around and then granted the class action suit.

Patty: So how did Pratt get involved?

Tina: Pratt was just in the beginning part of it. He was the judge hearing the chicken case.

Patty: Thank you.

Tina: It was valid to the Judge to know if the Board was treating homeowners differently. Were we going after someone with too many horses and not going after someone with too many dogs? Were we going after chickens and not going after commercial activity? So that's where the Judge wanted to know if we were treating everyone the same.

Bill Curley: Just to clarify, did we seek a declaratory judgment with respect to the covenants regarding chickens?

Tina: We didn't need to.

Bill Curley: Did the judge tell you that you needed a declaratory judgment on this matter?

Tina: No, he asked what the Board was doing to take care of this matter.

Bill Curley: This matter?

Tina: The bylaw/commercial activity matter.

Bill Curley: So you specifically asked about the anomaly between our covenants and our bylaws, specifically?

Tina: No, the homeowner brought that to the attention of the judge.

Bill Curley: He felt that the covenants were being enforced unfairly or unequal?

Tina: No. It was what the defendants in the case were saying about the board, he wanted to clarify that the board was enforcing the covenants equally.

Tina: Understand that we have a case in court, that this is moving forward. In order for us to stop it, there would have to be an agreement with Chuck Nichols and the Board of Directors at the time to get this thing stopped and, so far, we really haven't had an agreement. We would have to do a few things in order to get this thing stopped and we haven't reached a stopping point as a whole Board.

Stephen: But once they denied the class action, the lawyers went on their own before conferring with the Board or after they conferred with the Board.

Pam: They took the next step without conferring with the Board.

Tina: And it wasn't the place for the Board to be really.

Pam: I disagree.

Tina: I know, you disagree with that but it is a class action suit that--

Stephen: If a lawyer works for me, I darn well better know what the heck is going on before you start taking more of my money and just going off on your own.

Bill Curley: They don't do that.

Tina: I'm sorry what?

Bill Curley: They don't do that.

Tina: They don't do what?

Susan: He is asking--

Bill Curley: No, I'm not asking—I am saying that they don't do things on their own. Once the judge declared the judgment invalid, somebody had to make some obvious moves and the lawyer doesn't do it on their own. They don't do that.

Patty: Rolfe does not represent PHCA. He represents the homeowners. Now, what communication happened on that side of things, I am not privy too. I don't know what the scoop is there personally. The Board is represented by Mulvihill. The community member who brought the class action suit is represented by Rolfe. We cannot go to Rolfe and tell him what to do.

Stephen: But we are paying for --

Patty: I understand.

Stephen: It's all messed up.

Bill Curley: So it is my understanding that Chuck Nichols told Rolfe to go ahead and put a cease to the appeal?

Patty: I am outside of that.

Tina: I don't know.

Bill Curley: So we don't know?

Tina: No.

Bill Curley: We don't know what happened.

Tina: No. But--

Stephen: -- if he represents me, I want to be able to have a say in things.

Bill Curley: I am well aware that the board engineered this entire suit. In other words, you set the whole thing up. It is not really a case where we are being sued by anyone. We are, in fact, suing ourselves. Is everyone aware of that? Okay. That being true, PHCA Board is, in fact, in charge of this entire process.

Patty: Nobody on the Board disagrees with you and we all agree that there has been more than one stumble in communication and there is considerable unhappiness about that.

Bill Curley: The unhappiness runs far deeper than whatever peak that might be felt by the Board member's President, who from what I understand, on her own, initiated phone calls to the lawyer to make sure that things moved forward. That is my understanding from the last board meeting.

Tina: What did I do?

Patty: I didn't have that understanding.

Tina: Can you tell me what I did?

Bill Curley: You went directly to the lawyer.

Tina: You are talking about Rolfe?

Bill Curley: That's what I said. Communicated directly with the lawyer without the consent of the Board and at that meeting the Board expressed its displeasure that this happened.

Pam: He is talking about when we said we thought it was on hold and it was not on hold.

Patty: We thought it was on hold.

Bill Curley: We thought the whole thing was on hold and as I recall at the last special meeting, Pam Schultz asked the assembly how did they feel, would they like the Board simply to drop the declaratory judgment? I didn't count hands but my sense was that pretty nearly every person in the room raised their hand to say, "Yes, drop the declaratory judgment." Now, that was a majority polled...

Walt: Are you saying there were 80 people present here?

Bill Curley: There were 80 people represented by the homeowners and proxies.

Walt: Incorrect.

Bill Curley: I'm talking about the last special meeting.

Walt: He's talking about the last special meeting.

Bill Curley: Now granted, we haven't had the minutes for about 5 months so I'm not sure--

Walt: There weren't 80 present.

Tina: There wasn't 80 present.

Pam: Well, let's make sure we are all on the same page.

Bill Curley: You have a group of people that were here--

Walt: Correct. The group of people that were present was nowhere near 60 or 80.

Tina: Right.

Bill Curley: There were easily 60-odd people in person here and 80 by proxy--

Tina: No.

Walt: No.

Patty: It doesn't matter.

Bill Curley: The point is that the people clearly expressed themselves here.

Walt: The people that were present here.

Tina: The people here that were present here, like Walt said, the people that were present here expressed an opinion on something that they didn't have all the information on. We have learned stuff from that last meeting that we didn't know either. There has been--the definition of what commercial activity is, we have learned something new between that last meeting and this one. We have done additional research. We have asked more questions and we have learned a lot more from the last time than from this time.

Bill Curley: So why didn't we wait until we got more information.

Tina: And we have the information now.

Bill Curley: Then ask us, "Do we want to proceed?"

Tina: That is what we are doing tonight. We are having a meeting tonight to discuss making a motion of what we do next with the declaratory judgment. We have a second on the motion and we are having discussion. We are voting on that tonight.

Steve Richardson: Question in point, when the Board acts on a violation-- do they just assume that the person has a violation.

Tina: No.

Steve Richardson: So you have got proof?

Pam: We send a letter to the homeowner in violation and then the homeowner responds. We wait to hear from the homeowner. We don't assume anything. It is just an allegation at that point.

Steve Richardson: If somebody wants to create havoc, they write a letter and say so-and-so has an elk in their backyard, you just assume that they do?

Pam: We write a letter asking if they do.

Tina: And to answer your question, we give the homeowner 30 days to respond to our letter. If they ignore it, we send them another letter giving them another 15 days. If they ignore that, then it gets handed over to the attorney who then writes a letter stating you have so many days to respond and if they ignore that, then we go to court.

Stephen: So if they ignore the letters, they are guilty?

Patty: No, not necessarily.

Walt: No.

Tina: No.

Stephen: You said you've got to give input back to see if it is valid or not by the homeowner's response of the letter. If they don't respond to the letter, how do you know it's valid?

Patty: That is a good point. We are grownups, Steve. At some point, you have to say you are grownup and if you can't respond twice, either we have got a wrong address, which I doubt, or they want this to go away and it just might be because they aren't taking it seriously. If that is the case, which occasionally happens, they respond to the lawyer, a letter from the lawyer. Nobody wants to go there but I think we do better with that way. We don't need to hold anybody's hand.

Tina: And we do it registered, certified, return receipt so--what happens is, we have homeowners that know it's coming and just ignore it completely and don't even pick it up from the post office but they know there is something there from us to them.

Steve Richardson: So you don't require any proof for evidence from anybody who is making a complaint.

Tina: How can we?

Steve: Well, what do you mean, "How can we?"

Walt: We don't require any proof for the person in their defense.

Steve: If somebody is going to file a complaint and you don't require any substantuary--

Pam: You are asking, do we ask them to prove the allegation?

Steve: Sure, why not? If someone is complaining about chickens, shouldn't you have to prove that there are chickens there?

Patty: Well, that is what the letter is for. It is our job to not see a lawyer. We are not investigative. We are not cops. We are not any kind of tyranny. We make an assumption that everybody is grown up. If Charlie said Sam has an elephant in their backyard, I am not going to, in any means, go spy on Sam to see if he has an elephant in his backyard. I am just going to ask him up front, "Do you have an elephant?"

Steve: Why don't you ask whoever files the complaint to take a picture of the elephant?

Pam: I think that would be an invasion of their privacy.

Tina: It is not our place.

Pam: It can get kind of sticky. We don't want people traipsing onto someone's property...

Walt: We can't ask somebody to do that nor do we ask the person, the defendant.

Steve Richardson: If something is so offensive to someone that they believe it needs rectifying, why can't we let that person take it upon himself? Why do they have to spend everybody else's money on a frivolous complaint? Does this Board have to be spending this kind of money on attorney fees after these complaints and maybe, whoever is filing the complaints should take care of it themselves.

Walt: Well, I will answer a couple of questions. The first question about the proof is that, even in the chicken case, we had individuals that were accused of chickens that simply came back to the Board and said, "I don't have chickens. I got rid of them." They were innocent. They weren't taken to court. The individual that came back to the Board and said, "Yes, we have chickens," where taken to court. So we don't ask for any proof in the allegation. We didn't ask for any proof in the defense. We take the proof in

the homeowner's word for what they are saying. So, if you were challenged with something and you came back to the Board and said, "No," it is up to your credibility, whether you lie to the Board or not. But we take you at your word, either side of that case. The other case about going-- what was the second question, about whether or not we take people to--

Tina: Why are we spending so much money taking people to court?

Walt: We didn't. There was an incident on outbuildings that was brought to the Board and we simply told the individual that we do not feel that the outbuildings are in violation and if they feel they are, they are more than welcome to take that individual to court. Now on the chickens, it was clear cut. I mean, it obviously says, "No chickens" so we had to act upon that one. But, their reading of the covenants on the buildings was one interpretation; the Board's reading of the covenants was another interpretation. Therefore, the Board did not take that individual to court. We went back to that homeowner and said, "If you would like to take them to court for that outbuilding, you are more than welcome to." And we have done that on outbuildings and some fencing issues. So we do not act on every single one. We make the decision according to what we read in the covenants to the best of our interpretation. I hope I explained that correctly.

Stephen: I have a question about covenants. Are you required to enforce the covenants?

Walt: Well, if there is a complaint made, we are required to act upon that complaint. I mean, are you talking about enforcing the covenants or going out and looking for them?

Stephen: Are you required to enforce the covenants?

Patty: As long as we have covenants and bylaws, we have to follow the statute. And the statute basically says you will do them equally across the board.

Stephen: But, if you enforce it. You have the authority to enforce them. You do not have the responsibility to do it. You can make the homeowner go after them.

Walt: We could but we would be open to a lawsuit if we did--if somebody were to say that there are chickens and they go into court and take us into court and say, "Yeah, there were chickens and you guys knew there were chickens--"

Stephen: We don't think it is good financially to spend the homeowner's--everybody else's money to take this to court. If you've got a problem with these chickens, you take them to court.

Pam: I just want to say one thing. I guess your point is, the covenants don't demand, they suggest, that the Board enforce the covenants. I personally feel that it is my job and my obligation to enforce the covenants. I think the community put them in place for a reason. That is how I feel. I feel that I am obligated. I am answering your question.

Tina: And then I would like to state that, although we are spending thousands of dollars on attorneys fees, realize that we did win the attorney's fees back for the Linda Lee case and we have won all of the attorney's fees back for the Beireis case, so, if we weren't doing what we were supposed to be doing and we were in the wrong in any way, I don't think we would be getting our attorney's fees and we are talking full attorney's fees back from the homeowner. So, we may be spending some money, but it is the money--you know--we are telling the community, "Yes, we do believe in the covenants. Yes, we do believe in treating everybody the same." We are doing our best in doing that, and we do have to take the homeowners to court but we are winning and recouping all of the money back that is being spent.

Bill Curley: I don't think that atmosphere is a winning situation.

Walt: I don't think she said the attitude of the community was winning. I think she said that we won the lawsuit.

Tina: You know what we are winning? We are winning the fact that if someone decides to have chickens in this community or buffalo or cattle, or whatever other thing that they want to do that is against the covenants, that the majority, and I am thinking this because I know I don't have a majority of the people coming back to me telling me they wanted something different than what it is. So, if the covenants state they do not want cattle, and a homeowner comes in and has cattle, that they are going to think, "You know what, the Board sent me a letter saying I need to get rid of them and I am going to get rid of them because I don't want to spend \$5,000 to have cattle." So until, and Pam has said this a lot of times and I totally agree with her, until this community gives me a different job description, then this is what we have in front of us and this is what I feel very strongly about. So, if the community wants chickens and they feel strongly about chickens, we would be having chickens today. But what this is doing is clearing up years worth of nobody doing anything about anything and coming up and cleaning up all of that and getting us back to a clean slate. Now, if I have that many homeowners that are upset about going after chickens and donkeys and everything else, we would be hearing that.

Pam: And just remember, as she stated, that we are cleaning things up. What I want to say, to make that a little more clear, is that we don't go after anybody. I know you guys know that, but I don't want that to be misconstrued. We respond only to complaints from homeowners.

Tina: Right.

Pam: Period. Nobody on this Board that I know of--we don't sit and go around looking for problems. We don't do that. That is not what she means by cleaning things up. We respond only to your complaints.

Stephen: Nobody wants these complaints and everybody said we wanted this to stop.

Walt: Not everybody.

Tina: Not everybody.

Stephen: Well it appears that--

Homeowner: No not everybody. I think you guys need to stop talking. That's ridiculous. It is not just you guys. There's other people here, okay?

Bill Curley: I'd like to clarify my personal opinion on this commercial activity and that is, I am all for the lazafair and allowing people to do what they have been doing for years. If someone is running a veterinarian business out of his basement, if Steve is shoeing horses, if people are engaged in commercial activity on their property, so far it as it has not damaged their property value, which means it is not bothering their neighbors. My problem, my quarrel is with the Board acting autocratically and acting in contravention to the rules that are supposed to be governing this community and the fundamental principles of democracy.

Pam: Specifically what are we going against?

Bill Curley: You have suggested that you are required to uphold the covenants.

Patty: Well, yeah. That is the job of the Board. I don't want to blow you off Bill, but this has been a conversation that has been happening as long as I have known you and--

Tina: We could say the same thing over and over again...

Patty: What I am saying is, Bill, I've got to go to work in the morning. I don't think anybody is going to say anything that we haven't said before. I think we respectfully disagree on the job of the Board, as one of the jobs of the Board. But I would like to get into a real conversation specifically about the declaratory judgment so I can go home and go to bed.

Tina: Thank you, Patty.

Bill Curley: Okay, you are trying to give it a thought.

Patty: Well, let's get into--

Tina: Okay, and, here we go, at the last meeting or whatever, Stephen, you came to us and said, "Do this vote one more time, Board of Directors. Do this vote one more time. I will knock on doors, I will go to every house, I will call everybody, and I will get it. I will get this. Give me the chance." And did this Board not give you that chance to do so? And so I would appreciate that you would at least respect the fact that this Board did the vote for the fifth time because you asked us to do that.

Stephen: I am the one who asked and I really just talked to a lot of people who told me they would be here.

Pam: Did you make it to everybody's house pretty much?

Stephen: I didn't to everybody's house. There were a lot of houses there wasn't anybody home or anything like that.

Tina: But it is not that we are not listening to the homeowners. We heard you, Stephen and we respected what you had to say and we gave you that opportunity and that chance.

Stephen: And I told you at that meeting that I could get the vote.

Tina: So we're at the point now where we have tried it. This has been our fifth time and this Board feels that the next step, and I'll explain to everybody what the next step is, and then that is the decision that we are making tonight. So--

Stephen: I still don't like it and I said before, if I read revised statutes, Colorado revised statutes right, the declaratory judgment, unless the declaratory judgment will stop it, once and for all. The judge has to throw it out. And I'll bet you a quarter that's what will happen.

Tina: Well, I'm not an attorney, so--

Stephen: I'm not either but I can read--

Tina: Going back to what Pam had said before, Pam has said, you know, "How much more is this going to cost me? Where are we at with this situation? How much more do we have?" So, I tried to get a hold of Cheryl and I finally got a hold of her today.

Pam: That is the Association's attorney.

Tina: The Association's attorney, I'm sorry. But, what I decided to do, since I couldn't get a hold of Cheryl on Friday and I left her a message this morning, and I hadn't heard back from her, I decided to go ahead and call David Roth because I think this is a good question that needed to be asked. Said, "Where are we at?" So if tonight we do not get the vote and this Board decides this evening that we are going to go ahead with the declaratory, what is the next step? The next step is, we are going to set a date for the hearing and send out--once we get that hearing date, it is just basically a piece of paper from

the courthouse saying this is your date and time. This is where you are going to be. That will get mailed out to every homeowner. We will then set a date for what I consider the town hall meeting and they will send out an invitation to this meeting to all of the homeowners so that they can meet and answer all of the questions. David was nice enough to give me a draft of what the letter will be so that the Board can review it and make whatever additions or changes or anything like that that we would like to make to this letter going out to the community before it goes out. So, it is just a draft, he said--

Pam: Well, first of all—I would like to know if we are going to proceed before he sends--

Tina: Right, but I am just giving you the next step. Then, at this town hall meeting, basically what is going to happen, we will have Cheryl there and we will have David here and they are going to answer all of our questions so we can have 200 people here, we could have 30 people, but we are not leaving here until everybody's questions are answered and everybody is all taken care of and they will explain anything and everything that needs to be explained. After the town hall meeting, we go to court. Now, understand that anybody can attend the court case. It doesn't mean that they are going to be heard. Cheryl and David may or may not call people as witnesses. If they feel the need or want anybody to speak that will happen. We are not even sure that the judge will actually--and I want everybody to understand--we are not sure that the judge will actually want us to be in court. He may make this decision without calling Cheryl and David to speak. All he may do is say, "I want a brief from the both of you and then I will make my decision that way." So, we are not real sure how that is going to happen. Judge White is going to be the one that is going to be hearing the case. Since Elbert County is borrowing Douglas County's courthouses, most likely it is usually the first two weeks of the month for the cases that are going to be held there. So, that is what we are looking at. The really, really good news in talking to David Roth is that he will not charge us a dime for the town hall meeting. So if it takes five hours, we have got five hours of his time. So, we are looking at, from David's office, estimating around \$500, no more than \$1,000 left for the declaratory judgment for everything. So we are on the down side of the hill, almost ready to hit bottom. We have got it almost done.

Pam: I hope we don't hit bottom.

Tina: Poor choice of words, sorry! And then it would be Cheryl--as far as Cheryl goes, it would just be paying for her time for the town hall meeting and the time, if needed, to go to court. So that is what we are looking at for where we are at with the declaratory on this. Cheryl did want to clarify this and make sure everybody understands that this will give us a--how do I say this--a basis in court, so that, doing this declaratory judgment is going to--if it gets us in court, it is going to help us quite a bit. And she is hoping that it is going to keep us out of court. Right now, we have nothing. We have allowed it from 1998 until current. We have allowed commercial activity and something that we are not allowed to get.

Patty: Okay, we have allowed commercial activity or home occupations? Let's clarify that.

Pam: Probably both.

Both.

We have allowed both.

Tina: So we have allowed in this community commercial activity and home occupations which we are not allowed to do. If we get the declaratory judgment, that means that we have now a basis for this Board and future Boards to go forward with. We have something in writing that will give us a foundation.

Patty: To do what?

Tina: To say--well, we are not sure what he is going to say. So if the judge comes back and says that you guys have to go back to square one and it is no commercial activity, and I am telling you, you better

go through that whole community and let everybody know, it ain't going to happen. I am just giving this as an example. I don't know if this is going to happen so don't panic everybody. If that happens, then we are looking at, now, if we get 30, 40 people being turned in, then we know that, hey, everybody, this is what came back. We have to do our job. If we get a--which is a possibility we will get a grandfathering in. We are kind of open to all kinds of possibilities. But right now, what do we have, Patty? What do we have right now? Right now, if we drop--but if we drop this case tomorrow, we have already got one sitting in front of us. We can't ignore that. So that homeowner gets the 30 day notice, gets a 15 day notice, and then we are in court. And I will guarantee you that if we drop this, I will have 30 letters in the mail of everybody from Avon to Melaleuca to piano lessons--

Walt: Wait a minute. Which one is in front of us?

Tina: Steve Richardson.

Patty: Hold on, hold on. Let me ask this question.

Walt: He told us he didn't run any commercial business out of his house.

Patty: Let me ask my question. So, worst case scenario is basically not much worse than worse case scenario if we don't go forward?

Tina: If we go forward, we have a declaratory judgment that tells this Board and future Boards what--

Patty: That was a yes or no question.

Susan: Ask it again.

Patty: Okay, so worst case scenario, that you just defined is no different than worst case scenario if we drop the case.

Susan: Than what we have now.

Tina: No, there is. There is because what we've got is, with the declaratory judgment, that judgment is going to give us a foundation, okay? It is going to give us some sort of foundation that we can work with. If we drop it now, that means that we have the same problem that we had before. How do you tell somebody that has had a business from 1998 until 2006 you can't have it anymore when their understanding was that they could and the Boards have allowed it to happen from '98 to 2006. That's huge. How do you fight that?

Stephen: That's why the judge will throw it out. You're trying to get a lawsuit after lawsuit...

Tina: Steve, you don't know. I mean--

Pam: If you have a suggestion, would you just raise your hand and wait like everybody else? That would help because I can't hear everyone at once.

Tina: I'm looking at--we've got--you know, it may not solve all of our problems. Nothing is going to solve--anything we've put out is not going to solve all of our problems. But, I'm looking at it as, how do we fix a mistake that happened in 1998 and move forward?

Patty: I get that... what is best-case scenario?

Tina: What is the best case scenario? The best case scenario to me, and this is what we are kind of asking for, is a grandfathering situation and then pray that we can get enough people's attention in this

community to actually get us a change of vote to get an actual covenant change. But right now, what we will allow is, the people that do have the activity going on right now, we will allow them to continue to have it; will keep homeowners from turning other homeowners in because they have been grandfathered in and they are kind of untouchable for now.

Walt: Why would they be untouchable? Why would a homeowner--

Tina: Well, they would be untouchable with Pawnee Hills. In other words, if--

Walt: Oh no they wouldn't, I mean, I could still--I could turn in somebody tomorrow.

Tina: I am talking PHCA. I don't care what you do. I mean, I don't care what a homeowner does against a homeowner. I am trying to protect PHCA as a community. As a Board of Director and someone turns Steve Richardson in after he has been grandfathered in, sorry Steve, I keep using you, but, if they go after you, we as a Board can--

Walt: We as a Board will be using the declaratory judgment to make our decision in the future, is what you are saying?

Tina: To say that, "Look, you're grandfathered in and this is the declaratory judgment."

Pam: Yeah, we would have to.

Walt: We've already used it in the past. I mean, how can I explain this? Steve was turned in for commercial activity, which everybody knows. Steve came to us and said, "No, I don't have commercial activity." Didn't you Steve or am I incorrect? Didn't you come to a meeting and tell us you didn't have commercial activity. We took you at your word.

Steve Richardson: I haven't responded because I haven't gotten anything.

Walt: Oh, okay. So you haven't responded back to us yet.

Tina: We haven't sent them anything. We haven't officially sent them anything at all. Nothing's been done on that one.

Walt: But let me get to what I am getting to, okay? So we go to Steve. We don't look at the declaratory judgment. We go to Steve. Steve, are you running commercial activity? If he says "yes," okay, then with will look at the declaratory judgment. If he has any common sense, he is going to say "no." It's dropped. I mean, who in their right mind would say, "Yeah, I've got commercial activity."

Tina: Come on, I mean, if it is--

Walt: Are we going to believe it? We're not.

Tina: Well, no.

Walt: Why do we need a declaratory judgment?

Tina: It is kind of like Sheila Gaston saying she doesn't have donkeys.

Walt: Well--

Tina: And then after she was brought to attention--

Walt: Kind of like Bob Rowland saying he didn't have chickens.

Pam: You know, but--I don't want to develop a kangaroo court.

Walt: Are we ever going to go back to that declaratory--I mean, do you really think we are going to have a case where we are going to have to go back to it or do you think--

Tina: Absolutely.

Walt: You think so? You think a homeowner is going to say "yeah."

Tina: You don't think that--oh, come on. You've got a homeowner with a sign on the side of his vehicle saying, "Guess what? I have a home occupation" and has his home number on it. And you don't think--

Walt: How do you know, because he has a sign outside of his truck?

Tina: With their home number on it and they actually have admitted that they have commercial activity out of their house.

Susan: Can we finish with your thought. I'm following you.

Walt: I mean, I don't think we would ever have to refer to a declaratory judgment in the future because I don't think there is a homeowner that is going to say "Yes." We don't police it. We don't go out and check and see if they do it. We don't say, "Oh, he's got a phone on his truck. He is lying to us." I mean, we don't do that. We haven't done it in the past and if we are treating everybody equally, we are not going to do it in the future. If somebody says they don't have chickens, they don't have chickens. If they say they don't have a commercial activity, they don't have commercial activity. We are not the police. We are just making a ruling as a Board.

Patty: Just from having been on the Board briefly and the level of something happening in the community at this point. I don't know that it is going to come up. I mean, Steve may be right. It may turn out in court. Tina may be right in terms of worst case, I have no idea. If this Board goes forward with it, it is a gamble.

Walt: We are talking another 4 or 5 thousand dollars.

Tina: No, we are talking another, maybe 2.

Walt: So Cheryl is going to attend the meeting for nothing? I mean, he is charging us an extra thousand dollars and Cheryl is charging us for the meeting and the court time. So--

Tina: Well, he said \$500 but I didn't want to go by what he said. He says \$500 more.

Brian: I respect your position on it. However, I do see someone or, several people if there are that many businesses in the neighborhood. An average person would want to turn this person in. Obviously if they have taken the time to turn that person in, they are going to keep going with it. As a Board, if they keep going with it, if they say, "Yeah" and he has a phone number on his truck, okay--this is if you don't get the declaratory judgment and drop it--as a Board, it is your responsibility to pursue it.

Pam: I think so too.

Brian: Now if there are a lot--if there is activity in the neighborhood, that can be a big problem, that can cost a lot of money. I mean, everybody pays for you to take care of these issues.

Pam: What I was trying to say earlier was that we, as a Board, don't go around looking for problems and that is still true. But I agree with what you are saying. If a homeowner writes a letter, and we write the homeowner a letter and the homeowner says "I didn't do it," and the homeowner writes back and says "I just saw it yesterday," then at some point we probably do need to do something differently. I agree with that. I mean--

Tina: And another example, and then I'll get to you, Stephen, another example is to tell you that--and this is just my feeling--if somebody is going to--how many did we have here? We had submitted, what, 22, 23, 24 total violations in a very, very short period of time. And if somebody is going to turn in a large receptacle which appears to be for temporary storage and collection of refuse, if they are going to turn in a dumpster, they are going to go after commercial activity with a vengeance.

Brian: They will.

Tina: So, they are counting--

Brian: Like you said, the Board has to take care of these issues.

Stephen: Well, I see what Walt is saying and everything like this and everything as a homeowner, okay. Comes back you ask the homeowner, he says "No, I don't" and everything, you've got to make sure you have followed through with your steps and everything like that, okay. I understand that part of it and everything. But it comes to the point to where, is it right to spend everybody's money to satisfy one person. They need to take them to court too but then in January of this year, the law requires that we have an alternative dispute resolution and go for a mediator. It's a lot cheaper too than taking everybody to court. You know, if they start having to face somebody, as you turn them in, you've got to look that person in the eye and sit there at a table with them and discuss it with them, you know, it is easier to write a letter. When you go to these people's houses every time knocking on that door, it is a little bit different than, sitting back on the telephone or sending somebody a letter. But you set precedence already by not doing anything and they can argue that, for one.

Pam: Not doing what?

Tina: What haven't we done?

Stephen: There are things that have not been enforced since 90--whenever it went through. It had to have been enforced. There is a precedence that has been set already in that they haven't been enforcing it and that's an argument in court.

Patty: I think that is the point.

Tina: And that's the point. But understand that--

Stephen: And every time we get the declaratory judgment, then you can do it. I got my name on my truck. I gotta have it up there by law. It doesn't matter if I'm working there in town, I have a business downtown, I've got it on my truck. I've got to have my name and number. Okay, so if somebody wants to turn me in and everything, okay. Let's say I get mad about it. I've got lots of money in my pocket. I take and sue you because I think you are going after me. I'll take it to dog-gone court. There are five other people or 15 other--like you were saying, 30 other--there are a lot of people I saw that I talked to while I was out getting votes that have got little businesses that are doing a little bit here, little bit there.

Pam: Well, let me ask you. I agree with you on everything you are saying but my question for you is, what is it you're suggesting the Board do?

Stephen: I think they, you know, after you ask them, if he says no, then tell us personally. If a guy says he doesn't have it, if you want to pursue it further, you know. We think as a Board, we don't think it is right to spend thousands of everybody's dollars. We have got enough stuff we need to do.

Pam: So how do we pick and choose? How do we pick and choose which ones we enforce if we do that and if we choose not to spend anybody's money on--

Stephen: Well we shouldn't...

Pam: Let me finish. If we decide not to spend anybody's money on any of it, then we are basically throwing the covenants down the trash, aren't we?

Walt: That's right.

Stephen: Well, no.

Pam: Yeah, we are.

Stephen: We can go to small claims court and do this, I can go to mediation. It would cost us 100 bucks. But when we start spending 5 to 6 thousand dollars--

Pam: Wait a minute. What mediator have you found that mediates for \$100? I'd love to have that name. One hundred dollars an hour, maybe.

Tina: And do you also realize that mediation is not binding it does not stand up in court.

Stephen: It was effective in January.

Pam: What was said in January, Stephen, was that homeowner associations needed to adopt an ADR, an alternative dispute resolution. It does not say that it has to have mediation or arbitration in it.

Stephen: Yes in some way--

Pam: And we have one that we are putting in place. But it encourages us to speak with the homeowner, the homeowner to speak with us about the problem and that is what we would like to do and would like to have more of. That is how we are approaching the ADR.

Stephen: But I mean if you've got somebody in violation there is small claims court.

Tina: We have done small claims court, yes.

Stephen: It's just like, you set a precedent by not enforcing something and that is an argument in court.

Pam: I think they look at it differently, Stephen, from the standpoint that if somebody had chickens or whatever and the Board said we are just going to ignore it, that is one thing. But, you understand that the Boards from '98 until now thought that it was correct to allow commercial activity. They didn't ignore it. They misunderstood it. And those are two very different things.

Stephen: Okay. I moved in here a couple, three years ago. I read the covenants when I moved in. Very, very clear to me.

Pam: Did you read the bylaws?

Stephen: Yes, I read the whole thing.

Pam: Didn't it confuse you that the bylaws said that you could have commercial activity? Why not?

Stephen: No, because covenants take precedence over the bylaws.

Pam: Well maybe your--

Stephen: What I read right there was a bylaw change that they left a place that the Architectural Control Committee, anything that refers to the covenants was superseded by the covenants.

Pam: If you understood all that, and I don't doubt that you did, then that would make you a much more educated homeowner than a lot of people. A lot of people, if they read it when they moved in, it said you can have commercial activity and they went, "Yee haw, I can have it" because they read it. So everybody doesn't understand the same things you understood.

Stephen: Well, if that's true, if the Board let them do it, you know. Tina has said before that the Board, the people on the Board didn't understand it. At least I want the person on the Board to be able to read and understand something.

Pam: Well, this sitting Board certainly understands it. That is why we--

Walt: I didn't understand when I got on the Board. And I bet future Board members may not.

Patty: Can I kind of summarize what I think I have heard commented? And this is kind of what I'm picking up from everybody. So, we've got a declaratory judgment that, if anything, might, at worst case, might just get us some kind of a, almost a level playing field where we can say, you know, as far as the court is concerned, this is bad. Best case might be, okay, we are grandfathering existing homeowners. There it creates a separate class that can say, "Look, you folks, you know, you are now a separate class."

Tina: And I don't want to interrupt you other than just to make sure that people understand the reason why I think the town hall meeting is so important is that you are going to have both attorneys explain things probably 10 times better than I have ever explained anything and be able to answer questions that I can't.

Patty: Okay. So that is one point. The other point is, if we drop the declaratory judgment, I think there was a good argument in terms of dropping it. Unfortunately, what I think we are doing is--in either case, how I perceive it, is we are doing some gambling because we will probably have a group of folks that are doing as much boat rocking as possible who are going to come back out of the woodwork. I truly believe they are just sitting there waiting for whatever is going to happen to happen. So the question is, going forward, how are we going to address that because we have tried very very hard to treat everybody the same. The last thing anybody in this community wants is small business people in any way damaged. I think that these folks are the glue that hold our community together and they need to be supported to the best of our ability. I'm at this point, personally, leaning a little bit more toward going forward if we know we are going to be around the \$2,000 mark. We have already spent, what, five grand on this puppy?

Tina: \$5,200.

Patty: \$5,200. I just don't know--

Tina: We've spent \$5,200 and to just stop, you know, if you are stopping and you are just setting that aside and if we decide that after all of the mess we end up going, "We should have done a declaratory."

Bill Curley: What a declaratory judgment in that case, the judge does exactly what he wanted to do. Best case, just to clarify, all it does is grandfather in the people who at this point register with the community that they have businesses. Best case scenario and for everybody else who does not register now with this community would be grandfathered in. For everybody else from now until perpetuity unless the covenant gets changed. Commercial activity is still a violation of covenants. In short, it doesn't solve the problem.

Walt: Just delays the lawsuits.

Bill Curley: Worst case is, the judge says--second point here is, I would just like clarification. At this town hall meeting where the lawyers are going to answer all of our questions, will the community have any real input?

Tina: That is what this is for. Yes. They will have--

Bill Curley: I mean, will the community be able to say at that meeting it doesn't make sense to me let us just drop it?

Patty: That's a good point--

Tina: Everybody will be able to speak.

Bill Curley: Will they will able by vote?

Pam: No, there won't be a vote.

Tina: There won't be a vote.

Bill Curley: There will not be a vote to drop it?

Tina: No, there won't be a vote.

Bill Curley: Then what is the point?

Pam: Well, it is to answer questions, I think.

Walt: Should our vote be postponed until after the town meeting?

Tina: Well, we have to vote to go forward with this. That's what we are doing--

Walt: Should our vote be postponed until after the town hall meeting?

Tina: But our vote is to go to the next step which is--

Susan: Can we just vote to go to the town hall meeting and at the town hall meeting let the community vote whether or not they wish to go forward.

Pam: Well, what if we have 10 people there?

Susan: Well, at that point then we vote to go forward or not. All we are doing is splitting out the vote. All we are going is splitting the vote into two halves saying we are going to go forward at the town hall meeting.

Pam: I still have that basic Elbert County question that is still bothering me.

Homeowner: The question I have is, what takes precedence here, zoning or covenants?

Walt: Zoning.

Homeowner: If the complaint is in violation of zoning, how come they don't complain to the county?

Walt: The County does not allow commercial activity.

Susan: The County does not allow commercial activity.

Pam: You are leading in to my question. However, they do allow home occupations.

Patty: And they have a very broad definition of home occupations.

Walt: Do you want to hear my statement or do you want to hear Steve's question?

Patty: Steve's question.

Steve: I think you ought to just pursue it. But at the same time, if you are talking about something that you don't have a clear definition of, I will argue that I believe that taking your work truck home that has somebody's name on it is in violation anywhere.

Pam: Right.

Walt: Right.

Steve: Right. So in point, just to stand here and talk about people, I feel like--because somebody--just because I sat on the Board and somebody who is mad started this on my behalf, I'm costing the community a lot of money and I am not comfortable with it.

Tina: Well, it's not you, Steve. I will tell you that the only reason that--I don't know how to put this. It stopped--that one violation that was turned in for you, that whole thing--the reason why we didn't get 30 others behind it is because we had started the declaratory. I will guarantee you that if we stop this declaratory today, in two days, I bet you I have at least 30. Now, whether they are valid or not, I have no idea. But there will be 30 letters that have to go out that have to be followed through.

Steve: Some on me?

Tina: No, no no. Thirty different. I bet I have 30 different people.

Steve: Nobody has actually asked me, "Are you running commercial activity in your home."

Susan: Did we every address--

Tina: Because we are not really using any--

Steve: Because I would be able to return and say whether I have commercial activity or not.

Walt: Right.

Steve: And whether the answer is yes or no I could at least make any changes, I can make changes to come into compliance.

Tina: And I apologize for using you as an example because it is not really--

Walt: And I thought you had already responded to us.

Tina: With County, we still have a problem. Okay, but even if you take that piece out. Take out the piece of the problem children. Take that piece out. This Board still has--what do you do with the 1998 problem?

Susan: Zoning takes precedence. Have we asked, and this is just a question because, have we--I have the zoning and I did research for everybody--have we clarified with Elbert County because as I look at their zoning, yeah, it is not real clear. But have we checked with Elbert County? What is your true written definition of commercial activity versus home occupation? Do we have that in writing? I am just asking, do we have it from Elbert County because if zoning takes precedence over covenants, do we actually know what those things are?

Pam: They have a very good definition of home occupations. That is what we have been trying to say.

Susan: Well, this is the part--yeah, right. Exactly. Which is what I am looking at.

Pam: What Susan's point is and the point I was going to make is that Elbert County defines commercial activity and home occupations separately, so my question was, couldn't we allow home occupations but not commercial activity regarding the definition? That was my question and that is what I still haven't had answered.

Tina: And that is what we tried to do and we are looking at commercial activity as being, and I hate using this because I don't want to really use--you know, it is as simple as someone selling Avon out of their house. That is as simple as it is.

Walt: I guess my question is, okay, the covenants don't address home occupations. Obviously our attorney has given us an interpretation of commercial activity as including home occupations. But if people are turning in violations addressing commercial activities, those violations should be turned over to the county because the county should handle commercial activity. We don't handle commercial activity.

Tina: Well, we do because--our covenant says--

Walt: Let me finish.

Tina: No commercial activity.

Walt: The County supersedes--

Pam: No, but the County does not allowed commercial activity in the subdivision per the County.

Walt: Right.

Pam: They do not allow it.

Walt: So if in the incident--

Patty: We are on the same page.

Walt: So, if in the incident, somebody were to turn in home occupation, it is not addressed in our covenants. We would not handle that. They have to turn it in as commercial activity and that goes to the

County. We don't even have to deal with it. I mean, it doesn't even come on to us because it is commercial activity. I mean it is like any other town in violation, it doesn't come to us.

Tina: See, and I don't think that counts because our covenant says commercial activity.

Walt: Commercial activity.

Pam: But you can have home occupations, though, and that is where I get hung up.

Walt: We can't approve home occupations either.

Pam: We can't disapprove them because the covenants are restrictive.

Walt: Well, exactly, they have to be--

Pam: The covenants don't say everything in there that you are allowed to have.

Walt: So, according to our attorney, everything is commercial activity. If everything is commercial activity, it goes to the County.

Pam: But I prefer the County's definition of commercial activity and home occupation.

Walt: It doesn't matter what their definition is. Everything that comes to us has to come in as commercial activity.

Pam: I think that lets the Board off the hook.

Tina: But since we specifically say no commercial activity, it is part of us. If we didn't have no commercial activity, it would go right to the County. We would just throw it over there because we don't cover it, but because our covenants specifically say no commercial activity, we are stuck with it. It is a hot potato.

Walt: We say no 10-story buildings. Let's say we don't allow 10-story buildings on your property. Now, if somebody turns in somebody for having a 10-story building on their property, do we handle that or do we turn it over to the County?

Pam: We handle it. If it says in the covenants that you can't have it.

Tina: The County allows chickens. We don't, but they do.

Walt: But they have commercial activity.

Tina: I mean, I understand where you are coming from. The strongest prevail, whatever the strongest is. But, I think that if I turned around and I said, "We have--"

Pam: We are more restrictive because our covenants go with the umbrella definition. The umbrella definition is commercial activity. That is a big word. Had they also addressed--

Walt: You're saying we are more strict than the county?

Pam: Yes.

Walt: I guess I don't see it that way.

Pam: Yeah, we are allowed to restrict further but can't expand. We can't say you can have something and they say you can't but we can say you can't have something that they say you can.

Patty: And we don't have that subdivision of commercial activity defined. That's where we are screwed.

Tina: We don't have home occupations defined but the County does.

Walt: So the County's definition is more restrictive than ours is.

Pam: No.

Susan: No.

Walt: Ours is broad. Ours covers everything. They have broken out home activity underneath commercial activity so theirs is more defined than ours is.

Tina: Home occupation is separate from the commercial activity. But commercial activity in our world covers home occupation so you cannot have--

Walt: We're making that call.

Pam: That's what I don't agree with.

Walt: We are making that call.

Tina: That's because I've got an attorney that says commercial activity is defined by that.

Walt: The attorney made that call. I can get an attorney that says it is not that way.

Tina: I wish you would because I'm going by--

Pam: Why can't we just go with Elbert County's definition? I still haven't had that explained to me.

Patty: Can we kind of go back to Walt's original thought because I think it is not a bad one. I want to refine what Susan suggested. Can we table what to do with the declaratory judgment until we have a special meeting, homeowners and the Board having the opportunity to ask appropriate questions of both the lawyers and at that point the Board can make whatever decision at a Board meeting following that special meeting?

Pam: I want to hear this. I want to know what you guys are--I mean, I want to know what you have to say.

Steve Richardson: I'm just saying, we are both saying that you need to pursue this to get the definition. We have to find a definition and then at the annual meeting try to get a covenant change vote and hope enough people will come. You know, without pursuing it, without going ahead, and I know I originally said to stop this, but you've got to have some definition.

Walt: It is really unclear, isn't it?

Patty: I agree.

Pam: I guess I'm just not getting all of it because I don't disagree with anything you just said but I'm still not understanding. I feel like I need my question answered before I can proceed with the rest.

Patty: Which is?

Pam: Which is, why can't we accept Elbert County's definition of home occupations? If that were the case, then we might not even need this. That's my point.

Patty: And that is what the covenant change is trying to do.

Walt: I don't think we have to--

Pam: I'm saying, covenants don't prohibit home occupation, they prohibit commercial activity. If they are defined differently, we can allow the definition of home occupations because it is not commercial activity. We can allow that. It is not disallowed. The covenants only disallow, they don't permit.

Walt: Isn't home occupation underneath commercial activity?

Tina: I thought they were separate. Okay, well let me ask you this. Just--I've done a motion on the table. I've got a second and I am just curious. This doesn't have to happen but I just want to hear--

Walt: A tentative vote?

Tina: A tentative vote. Thank you. Okay, tentative vote. Patty.

Patty: Yes. Okay, regarding--

Tina: We go forward with the declaratory.

Patty: At this point, my pencil vote is to go forward.

Tina: Susan.

Susan: At this point, I still need some clarification.

Pam: Me too.

Susan: And I'm not saying, you know, I am trying to--I am trying to clarify because Patty, your point is that home occupation is a subdivision of commercial activity. It is not within this zone that I am looking at.

Pam: And if it is this RA-1 that you gave me Susan, it says non-commercial, not intent, non-commercial and then they have home occupation under non-commercial.

Patty: Cool.

Pam: Right. So that's why I'm having a struggle.

Tina: And I'm thinking, and this is just my point of view. I'm thinking that if judges and attorneys have just not figured out the loophole, we're either asking the wrong questions or we are going in the wrong direction and I'm looking at--I need to have a clarification. I need to--I mean, the declaratory judgment is going to assist us in, instead of us going around, "I think it says this and I think it means this and I think it means this," that the declaratory judgment is going to give us what it means.

Pam: Well, tell me this, Tina, why can't we as a Board say we are going with Elbert County's definition? They say home occupation is non-commercial.

Walt: It really is our decision. It is not our attorney's decision.

Tina: I understand that.

Pam: Why can't we say, we disallow commercial but, according to Elbert County guidelines, we allow home occupation. Why can't we say that?

Walt: You're right.

Tina: What was that?

Walt: He said it is not really the Board's decision, it is the homeowner's decision as 112 people, but obviously they haven't voiced their opinions. Okay, first let me tell you, this is one continuous sentence. These are not two different sentences. This is one sentence. "No store, office, or other place of business of any kind shall be erected or permitted upon any of the residential lots or any part thereof and no commercial activity shall be permitted." That's the covenants. Now there is not a separate sentence saying no commercial activity. It is written in the same sentence as the buildings, the offices, and the storefront, so--

Steve Richardson: Can you give me examples of commercial--

Susan: Okay. I'm looking at Elbert County Zoning Regs and looking at Part 2, Section 13 which defines commercial. It says "The intent is areas for wholesale and service related commercial uses with minimal assembling or manufacturing activity such as automobile service stations and gasoline pumps, amusement and general recreational facilities, all uses permitted by right of business district." And then it is under a different section. ATVs and motorcycle self-servicing and repair. It is very specific. Bakery, colleges and universities, convenience stores, hospitals, office buildings, food lockers, shopping centers. There could be uses by special permit but this goes on further to state for a special permit like caretaker residence, airport, and heliport. Okay? So, that is--

We are looking at this County as the County in a separate section. Section 22, defines home occupations. It does say, "To provide for the operation of limited commercial activity such as tutoring, music lessons, and artist studio within established residential zones which are zones such as RA-1 and PUD zones which is how this subdivision is defined. The home occupation shall be allowed." That is what you guys just voted on tonight. So I'm not going to read through the other seven. We are zoned RA-1 and we are zoned and part of our subdivision is zoned PUD. Within RA-1, it does say "The intent of RA-1 areas for low density residential development, non-commercial agricultural uses." It does say that home occupations are allowed in RA-1 subdivisions. In PUD subdivisions, per the county, some commercial activity is allowed, however, those lots must be defined at the time of filing, so that in 70s when this was filed, and here is where we have a glitch. Here is where we have a glitch within the county. PUDs, in my opinion, is if there had been allowances for--this would be like, okay, we are going to let you have a corner store in your subdivision. We are going to allow for this. The lot has to be specified. In my opinion that that would have been done back in the 70s when all of these were built. That would have been one of the purchasing probably had been built. The glitch here is that Elbert County does not have our PUD on file and they haven't--

Pam: However--This doesn't impact us in what we are trying to do.

Susan: That is a simple glitch but it is my opinion and the lady I spoke with said that typically those are the things, inclusions of fire stations, you guys have done a lot better than I do. It seems that you would typically put in that they are not residential but to have service to that subdivision. So, they do define home occupation separately from commercial activity.

Tina: Okay, can you read that one part where you said they will allow home occupations within commercial activity. The first sentence was “we will allow these commercial activities within home occupations.

Pam: Non commercial.

Walt: Limited commercial activity.

Susan: Limited. It is limited commercial activity.

Tina: But they are calling some of these--they are calling home occupations commercial activity.

Susan: But when you go--when you research further and you go to RA-1 residential as--

Tina: I see.

Susan: Agriculture one, it does say areas for low density residential development of non-commercial uses. Home occupations, microwave dishes without towers, public parks, playgrounds, those types of things that are allowed.

Pam: So what I am asking you is, can't we go with their definition and--

Susan: Why can't we?

Stephen: So what you are saying is, it is all back in the 70s. The covenants were done in the 70's and you know what that says to me? That the developer was trying to prevent a storefront from being put in here.

Pam: That is how it reads to me.

Susan: That's what they were doing.

Tina: Well, we can talk intent forever and I am just going to say this one thing. I am driven by the opinion that we asked our attorney to give to us -- the definition of commercial activity as it relates to residents of Pawnee Hills. This is us. In our attorney's opinion, “any operation for a profit business or activity is prohibited”. Period.

Walt: The key phrase there is ‘opinion.’

Tina: Absolutely. But I am driven by--

Susan: This Board is trying to figure out--

Patty: Let me ask a question. Can we rephrase the question in the point that Pam just made which I think is an excellent point on how home occupation is defined in the county because I don't think we asked that question.

Tina: Okay, we can talk for another four hours, I can guarantee it. Let's take this piece meal. Is the town hall meeting going to help with the decision on whether we go forward with the declaratory?

Patty: It would help me.

Pam: See, what I'm saying is, if the Board tonight, which isn't going to happen, but if the Board tonight said, you know what? We are good with Elbert County's definitions. We don't allow commercial activity

because we aren't allowing a storefront, so we are going to allow home occupations, then we have no need for it. That is my thinking.

Patty: I don't think the Board can make that resolution. I think it would have to be the vote of the community.

Susan: We can't say that we are going to allow home occupations.

Patty: Home occupations is not addressed whatsoever in covenants or the bylaws.

Pam: Right it's not--

Patty: I don't think we have the right to make that decision for the community.

Pam: You can do anything that is not restricted in the covenants. We can do anything that is not listed as a restriction. You are looking at it backwards, I think.

Susan: Can we define commercial activity, as a Board, saying that this Board chooses to define commercial activity per Elbert County rules and regs using the zoning and commercial activity that we have? I'm just asking. I don't know.

Pam: Right.

Walt: I would say that we can't do that. We can decide to pass commercial activity to the--

Patty: As a what, resolution? Because we can't just do it as a bylaw.

Pam: We will have to define it.

Susan: Per Elbert County, Douglas County, that is specified in within home occupations. It actually goes into details and it says--let me just go over this. "A home occupation shall be allowed as permitted use in all residential zones provided that such use be conducted only by residents with a principle dwelling and only within the principle dwelling or accessory use building. Such use shall be clearly incidental and secondary to the use of the dwelling or accessory use building as dwelling unit and shall not change the character thereof." So that answers that. You could not do that for a home occupation. No buildings inconsistent within the character of the zone are allowed. If you go outside of this, then you are considered commercial activity per the County. The County doesn't allow commercial activity in the subdivision. They said that they will actually go after people doing "what they consider commercial activity." Fines are up to \$1,000 a day to begin with. That is what I was told and I had a lengthy discussion with the County.

Stephen: Can't the Board say, okay, you say you've got one person coming out of the woodwork and turning everyone in and everything. Shouldn't we say in there that you've decided, okay, this is what we think commercial activity is and everything and that's what you guys are supposed to do. We are going to go with this. Okay, if you want to pursue this more, you take that person to court. We don't think it is prudent for us to spend everybody's money over something that we think the County might think is a County decision.

Walt: I guess, my answer to your thing would be, I'm not educated enough to make a decision on what is commercial activity and what isn't commercial activity. So, I would have to defer a commercial activity ruling to the County.

Pam: No. You can accept it. We have to have some definition.

Stephen: So if those who want to pursue it--

Pam: We have to have some definition of commercial activity. That's our problem. We can either take Elbert County's definition, we can take somebody else's definition. We can take the attorney's definition. But we need to come up with a definition and I like the County's. That's my point.

Bill Curley: Yeah, I like the direction that this is taking. The reason I like it so much is that you are allowing yourself the room to assess what your role is. In other words, you are saying, maybe it is up to us to determine, maybe it is up to us to interpret like the exception is me and that is what you are driving at here, it seems to me, I think that you do have that discretion. I believe you have already exercised it a number of times in the way you have approached the covenant violations that have been brought to you. You have chosen to interpret the violations. You will represent a more amicable solution for the community. And I believe you need to correct your misjudgments in interpreting these things for the better good of the community. In other words, somebody comes up to you who you know is a troublemaker and turning in nuisance complaints, you can ignore them. You can interpret initially what the specifics are to the community and that judgment is based upon the good of the community.

Tina: I'm saying we need to make a good decision here and I'm saying that I tend to use professionals who give us that information. I'm not saying I would always agree. Walt, I didn't hear from you whether or not you believe we need to stop the declaratory. And I am saying to you, you say I'm not ready to make that decision yet because you don't have enough information and you are saying--

Pam: I'm saying I would like the Board to define commercial activity before I make that decision.

Tina: Wait a minute. I haven't heard from Walt. I want to hear what Walt has to say.

Walt: If I had to decide right now, it would be a flat no.

Tina: Yes to drop it or no, not to drop it.

Walt: Yes to drop it.

Tina: Yes, to drop the declaratory judgment.

Walt: Because we don't have enough information.

Susan: And I'm asking this. And this is my question. Did our attorney have a copy of Elbert County's zoning? Did somebody get them a copy of the zoning because you can't get it on-line. You have to drive down and purchase it. You have to have it. Do they have Elbert County Zoning Rules and Regs in their office? Did we use them? Did we question them? They didn't use it in the definition, Tina. They only used case law in the definition. They did not ever reference Elbert County and we asked for a definition. I wasn't there when you guys decided to do that but my understanding is you asked for it as it pertained to the Pawnee Hills subdivision. So, I would think that they would also, in addition to looking at case law, they would additionally have to look at Elbert County zoning.

Pam: We didn't because we didn't ask that question.

Tina: We didn't ask the question but I'm also thinking whatever is the strongest, so Colorado State may be stronger than Elbert County. That is what I am saying.

Patty: No. Nah-uh.

Tina: Well then, either we didn't ask the right questions--

Patty: We didn't ask the right question because Federal law, State law, County, County cannot be looser than either--

Pam: I think the attorneys know where we live. So I don't think we should have to ask that question.

Tina: I will tell you this. That I have asked this Board on several occasions, do you feel the need to meet with David Roth, to meet with Cheryl, to get clarification on this. And you are like, no, no, no, no, no. But you didn't say, "I don't have enough information."

Patty: You are in left field. The question is only this and it is the same one I asked a few minutes ago. I would like to have that question regarding commercial activity, asking in the light of how this County defines home occupation as a non-commercial entity under the title it is in the County regulations.

Pam: Why can't we just read it ourselves? Why are you wanting her to read it and charging more money to tell me what it says?

Patty: Okay, here is my question. I don't know--

Bill Curley: Why do you have to have an attorney to tell you something?

Pam: I mean, if it is defined--

Patty: Can I answer the question. I don't know that this Board has the right to create that resolution.

Tina: Exactly.

Patty: That's my question. That is what I have been asking.

Pam: What resolutions?

Patty: We would be creating a resolution--

Pam: No we wouldn't. We would be defining what we have.

Patty: Let me finish my question. Allow me to finish my sentence. We would be saying this is how we are defining commercial activity. That is a resolution from this Board because we are creating something.

Tina: Creating a definition.

Patty: There's a good definition here. I think it is a great definition. I love this definition. I am just not sure that we as a Board have the right to do that.

Pam: Well who would have the right?

Tina: The community.

Patty: And I might be wrong. I might be--

Pam: They elected us to define things.

Tina: Yeah, but we can't create a resolution that goes against our covenants.

Pam: It doesn't.

Patty: I'm just asking a simple question--

Pam: It is simply to define what commercial activity is.

Patty: If it doesn't go against it.

Pam: How does that go against it?

Susan: I think it defines our covenants.

Pam: And I don't want to do anything on it tonight, by the way.

Tina: I'm looking at--okay, you just flat out don't want to do this at all. You are saying we need to just stop it in its tracks. We've got a case in court right now. This is what I am looking at going--

Patty: We know...

Tina: Stop saying what you know you know because--

Patty: We are just going over the same information.

Tina: Okay. Listen. I am telling you guys we have a situation and you guys keep coming back going, "I know, I know." And I am telling you, help me solve this problem. And you are going, "I don't know what to do." So what I am saying is, I can't go a year and a half of postponing something. So, I need some assistance from you guys. I need to know that when I say, "What is the next step?" that you guys don't keep telling me, "I don't know" and six months go by and I'm stuck with--we've got a case in court that is going forward and how this train gets stopped is the declaratory. The case in court is the declaratory. That is ongoing. If you guys aren't sure about it, it is still going on whether we make a decision right now or not. It is still going forward.

Patty: I have a couple of questions.

Tina: I just need help from you guys.

Patty: I think I have made it clear what my questions are. My questions are, does this Board, in fact, have the right to create that resolution because if we do, I am extremely happy with the definition of the county.

Tina: And who do we ask?

Susan: Tina, at one point, and just clarify this. One conversation that we had and this is totally off the wall, but you said at one point that Cheryl said that we can set rules and regulations as this Board and we could say that--you said that Cheryl told you and I am quoting you as closely as I can, that if we wanted to make a rule that says everybody had to have wind chimes, we could do that.

Tina: No, that could not have wind chimes.

Susan: Could not have wind chimes. Okay, excuse me. Could not have wind chimes. So why can't this Board in turn, make a rule and regulation defining something? Why can't--

Walt: We can make it stricter. We can't make--

Pam: We are not really creating a covenant. We are only defining the covenants that are written.

Tina: We are changing the covenants because it states "no commercial activity".

Homeowner: Two things. You know, does anybody here know who wins, the lawyers --

Homeowner: There is not a lot of accounting or a covenant that we as the Homeowner's Association or the Constitution interpretation now and forever. So we can redefine all these things but that won't change it. It will still be up to interpretation in the future.

Patty: I'm leaning more and more--I am really getting convinced on this because this is the way to go. I just want to make sure that we are not overstepping our boundaries and creating a whole separate can of worms that's going to come back and bite us. I just want it to be a wise decision.

Tina: I do not want to set up the future Boards or the future of Pawnee Hills by a mistake or an assumption that I made making it even worse than what we have started with. So, I understand what everybody is saying. But it says in our covenants - commercial activity shall not be permitted within Pawnee Hills.

Pam: What commercial activity--

Walt: It doesn't say that. I just read it.

Tina: It specifically says the words "commercial activity." So if this Board decides that it is going to create what we feel the definition of commercial activity is, okay, and we are not going to catch it all. We are never going to catch it all. There is still going to be a covenant violation that is going to come up that we didn't define--

Susan: We are not defining it. We are just saying we are using the County's--

Homeowner: Why can't you just say we are going to accept what the County says is commercial activity and what the County says that--

Pam: Here's the point. If we go forward with the declaratory judgment which, maybe we should--if we do that and the judge says no commercial activity, I ask you once again, how do you define that? We still don't have a definition of commercial activity.

Patty: If we go forward with the declaratory judgment, we better damn well have a definition because I'll bet you anything that is going to be what happens.

Brian: What you are trying to accomplish here is the transfer of liability for now and into the future for the Board and for the homeowners of an Association.

Walt: Right

Brian: So, as a definition, I think you have the definition here, the attorney's definition.

Tina: Okay, let me ask you this. If we get somebody turned in, and I'm just using Avon because it is easy. We get somebody turned in for Avon and we say we are so sorry. We don't define it as a commercial activity because Elbert County defines it as a different thing, that is somebody else's problem, and that person says, "Excuse me but your covenants specifically say that this and this and this is what the law is and you guys are wrong."

Walt: What would they say?

Tina: I don't know.

Walt: Okay, so what are they going to say? The covenants say you can't have a storefront. Do they have a storefront? They will say no. Do they have an office? Office building? No. I mean, we have a pretty good basis. I mean, unless they've got a flashing neon sign in their front yard that says "Avon."

Tina: Well, I don't know.

Walt: My biggest problem with the declaratory judgment is that the people that move into this community in the future are going to have the same lawsuit as the people who live here now. So we are just postponing the lawsuit until later.

Pam: Well, if we take Elbert County's definition, we are fine. That is why I like their definition. It allows the little guy to do a little bit of stuff without setting up a big storefront without a lot of traffic.

Tina: I have a motion on the table.

Pam: I will repeat myself and I'm sorry for doing this but if we go forward with the declaratory and the judge says no commercial activity, no one has told me, given me a definition that I accept telling me what that is. That doesn't tell you what it is. It just says you can't have it. It doesn't tell you anything about what it is. Not a word. It doesn't solve it. We still have to define it whether we go forward or not. We still have to define it.

Patty: And we better define it before we go forward if we go forward.

Pam: Absolutely.

Tina: I just don't feel like we are educated enough as a Board to stop the declaratory and that is my opinion and I am one and I know that and I can get out voted and this whole thing could come to a screeching halt and if it does, it does. I can't help it. But, there is a reason why we are doing this and I don't think we are educated enough to make that decision.

Tina: Okay. – So I still have my motion on the table to put the declaratory judgment on hold. Do I have a second?

Pam: I second.

Tina: All in favor? Five Ayes, 0 No. Motion passes.

Motion was made to adjourn, motion was seconded and passed. The meeting is adjourned at 9:25.