

Howell Point v. FREI / Froschauer / Bullseye Construction Lawsuit Settled

In February, the Howell Point Board of Trustees entered into a Settlement Agreement with FREI (Jeff Froschauer) / Bullseye Construction to end the 2 lawsuits regarding the Pole Barn built by Mr. Froschauer. The Pole Barn will remain as it currently is constructed. The lawsuit by the Association against FREI is dropped. The lawsuit by Mr. Froschauer against the Association and the Board is dropped. Both sides are responsible to pay their own legal fees.

Lessons Learned:

If the members of the Association want to maintain Howell Point as originally envisioned nearly 100 years ago, we must be vigilant. The Pole Barn project was approved by Penn Township without regard to our Deed Restrictions. And Penn Township refused to help enforce our Deed Restrictions saying that they are not the Township's concern. So it is up to us, all of us, to be alert to projects as they are planned.

Mr. Froschauer claimed he was unaware of our Deed Restrictions, that it was "an oversight." Once they were pointed out to him, and he was asked to take his Pole Barn project elsewhere, his comment was: "Anyone could have bought those lots and built a house on them. I bought those lots and I'm going to build my building."

Subsequently, the Board voted unanimously to sue Mr. Froschauer, hired our law firm, and sent him a Cease and Desist letter telling him we would sue if he moved forward with his project. His response was: "Go ahead and sue me."

Since this all began, every new project that has been initiated in Howell Point has been submitted to the Board for its review and approval, in keeping with the terms of the Deed Restrictions.

Why We Settled:

Put simply, we are out of money to fund the legal fees required to see the lawsuit through to completion. The lawsuits never reached a trial date.

The reason our lawsuit never reached a trial date was due to Mr. Froschauer's attorneys filing their countersuit against the Board and the Association. This was a stalling tactic that worked. We were supposed to have an expedited trial date in front of Judge Dobrich in November, 2020. The countersuit was combined into the Association's suit and turned our trial date into a hearing. The result of that hearing was that the Judge refused to issue a restraining order to stop construction of the Pole Barn. The trial date for both suits was set for February, 2023 under a new judge. But we ran out of money before we could get to the finish line.

What is Howell Point Association and Why Did We Sue?

Howell Point Association was incorporated by residents of the subdivision August 3, 1956, with the following purpose stated in the Articles of Incorporation:

To promote the general welfare of the subdivision called Howell Point, Diamond Lake, Cassopolis, Michigan.

The Association is concerned with more than Willow Beach and Howell Point Park. It is required to safeguard the residential nature of the entire subdivision.

It also is expected that the membership will abide by the rules and regulations of the Association, the By-Laws, and the Deed Restrictions. Mr. Froschauer chose to ignore his responsibility to abide by these covenants. That is why the lawsuit was initiated.

The Deed Restrictions

The Deed Restrictions were originally recorded by the developers of Howell Point Subdivision in 1938. Are they antiquated? In some regards, yes. But one of the fundamental requirements in the Restrictions is this phrase:

Provided the design and location on the lot conform to and are in harmony with existing structures in the subdivision.

Simply put, this means that the exterior appearance of any of the homes built here must be residential in nature. Mr. Froschauer's Pole Barn is completely in violation of this standard.

The Board will be proposing amendments to the Deed Restrictions to make them more compatible with today's residential building standards. Pole Barns will be prohibited.

The Current By-Laws

Among provisions in the current Howell Point By-Laws that the Board is required to enforce and members are required to follow are these:

Aesthetics: The appeal of properties in the Howell Point Subdivision to owners, visitors, and prospective buyers.

Persons who purchase property in Howell Point Subdivision are in agreement with the Restrictions of the Subdivision by the very act of ownership, and this becomes one of the expectations of those who live here....

It appears that Mr. Froschauer was unaware of these requirements as well as the Deed Restriction requirements.

Finances

The Board asked for contributions of \$250 to fund the legal expenses from each member household:

- 61 members (and a couple of non-members) contributed a total of \$17,100.00 to the fund.
- 70 members did not contribute to the fund. (Had they all contributed, we would have raised an additional \$17,500.00.)
- Five members loaned a total of \$13,000 to the Association to stay current with the legal fees up to a certain point. The Association is obligated to repay these 5 member loans.
- \$8,346.65 of Association funds have been used to pay the balance due the law firm.
- Total Association legal expenses for the suit were \$38,446.65.

Had Mr. Froschauer's attorneys not filed their countersuit, and the expedited trial date been held, the Association's legal fees would have been about \$25,000.

You also should know that the cost of defending the Association and Board against the Froschauer countersuit was covered by Auto Owners Insurance Company, which carries our liability and errors and omissions coverage.

Going Forward

Our Howell Point website has been updated with a clear notice that ours is a Deed Restricted community. Anyone purchasing property in Howell Point who wants to know more about the neighborhood will likely visit the website and see this notice.

We are contacting all the real estate offices that work in the neighborhood regarding the Deed Restrictions and the need to notify potential buyers of these requirements.

We are contacting Penn Township to help improve their communication with the Association whenever someone comes seeking building permits in Howell Point.

We need to raise funds to pay off our legal expenses. This probably will be done in the form of a Special Assessment levied against all membership interests. Those who have made voluntary contributions will have their assessment adjusted to recognize this previous payment.

And if you would like to help support our efforts by making a voluntary contribution, please send your check to our Treasurer, Teresa Dahlgren, 21670 Shiawassee Dr., Cassopolis, MI 49031.

On behalf of the Howell Point Board of Trustees,
Pete Trotter, President

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