

## Frequently Asked Questions

### The Eagles Master Association (EMA) v. Vizzi (pick-up truck parking case)

The purpose of this FAQ sheet is to answer anticipated questions homeowners at The Eagles may have with respect to the above matter which ended July 23, 2010, when the judge awarded attorney fees and court costs to Mr. and Mrs. Vizzi.

1. *Why did the EMA file suit?*

The defendant was in violation of a recorded EMA Covenant Restriction - parking a pick-up truck in a driveway. Many warnings had been issued. And attempts to mediate the matter had resulted in an impasse. The Board of Directors (BOD) had an obligation to enforce the governing documents of the Association. Three separate attorney firms plus the founding Developer (also an attorney) looked over this covenant at various times and all determined that it was enforceable and therefore had to be enforced. This was not a rule adopted by the BOD that could be changed with a directors' vote; it was a Developer created covenant restriction that could only be changed by a vote of the full membership.

2. *Why didn't the EMA just amend the Covenant Restriction relative to parking?*

The EMA did not go to court without major attempts to amend the covenant first. On two occasions prior to the filing of the case, an amendment to the parking restriction was proposed to the membership. On both occasions it failed to pass (affirmative votes from more than half of the membership are required to pass). A third attempt, involving the formation of a new committee explored a third vote, but consensus could not be reached.

3. *Why did the Vizzi's win this seemingly simple covenant enforcement case? And did the EMA think that it would lose the case from the beginning?*

It was totally unanticipated that the judge would look at the Windsor Park Village (WPV) parking covenant and decide that because it was silent with respect to non-commercial pick-up truck parking that it was in effect granting permission for this activity. This was the central part of the judgment and it blindsided many people – attorneys and non-attorneys alike. This idea, coupled with the fact that there was no conflict provision in the WPV documents that would establish the EMA's covenant to be the prevailing one, led the judge to indicate that the court would have to decide which would prevail. And for the final piece to determine which would prevail, the judge found that US Homes, the WPV builder, had special rights granted by the Developer, which included the ability to create content for the WPV Declarations at its sole discretion.

4. *Why did the EMA Appeal the matter?*

Legal counsel supported the view that there should be a better than average chance of reversal. The reason for the view was the belief that the appellate court would not let stand the judgment that silence in a covenant could mean that permission was given. Additionally, the EMA's counsel handled the appeal at no charge making the decision much easier. An appeal normally costs in the range of 15K to 25K. So the cost of the appeal was very small, relative to the possible reward, if there had been a reversal.

5. *How much did the EMA spend on legal fees?*

\$138,485. For the same period the Defendant incurred \$221,461 (\$187,443.37 was awarded). It is with a great deal of understatement to say that the legal expense for this case topped all initial expectations, especially in the amount of spending done by the defendant.

6. *Why did this case cost so much?*

The defendant's various defenses, including a counterclaim. Additionally, both sides had to prepare for a trial (very expensive) that never took place.

7. *Why didn't the EMA accept any of the settlement offers made by the defendant prior to the judge's decision in December of 2008?*

Any settlement offer made prior to the judge's decision in favor of the defendant that allowed for the continued violation of the covenant could not be accepted because there remained the responsibility to enforce the covenant. Also, there was no reason to accept a settlement offer to include the payment of a certain amount of money to the defendant when the EMA had every reason to believe it was going to prevail in the case.

8. *Why didn't the EMA grant an exception for the defendant to park his pick-up truck in his driveway as he requested?*

In the time before Turnover in 2005, the Developer made some exceptions (variances) to allow certain pick-up truck owners to park their pick-up trucks outside of their garages because their garages were not large enough. Variance capability expired with the transition from the Developer to the homeowners. This capability has never been available to the EMA for this or any other covenant.

9. *How is the EMA going to pay the awarded attorney fees?*

The EMA is able to fund the award with no need to special assess the homeowners.

11. *Are the dues going to be increased for the upcoming year?*

At the Budget Meeting held August 9, 2010, the Board of Directors adopted the Budget for the fiscal year October 1, 2010 through September 30, 2011 with no increase in dues.

12. *Is the EMA going to continue enforcing the parking Covenant Restriction?*

The EMA is now bound by the Court's Order. On a case by case basis it may decide that the situation warrants its involvement. Therefore, in general, the Villages should plan to enforce their own parking covenants as stated in their individual Village Declarations going forward.