

Minutes of the January 10, 2006
Regular Meeting of the
Marshall County Board of Zoning Appeals
Second Floor Commissioner's Meeting Room, #203
Marshall County Building
112 West Jefferson Street
Plymouth, IN 46563

MINUTES

Vice-Chairman Don Ecker, Sr. called to order the January 10, 2006 meeting of the Marshall County Board of Zoning Appeals at 7:30 p.m. Present were Board Members Gary Davis, Don Ecker, Robert Flora, Harold Van Vactor, Zoning Administrator, Ralph Booker, Secretary, Leesa Kolter and interested parties. Absent was member Foster Davenport.

The first item of business was the Election of Officers. Mr. Ecker moved and Mr. Van Vactor seconded a motion to nominate Mr. Davenport as Chairman. Mr. Ecker moved and Mr. Flora seconded a motion to close the nominations. Mr. Davenport was elected Chairman by acclamation.

Mr. Flora moved and Mr. Van Vactor seconded a motion to nominate Mr. Ecker as Vice-Chairman. Mr. Davis moved and Mr. Flora seconded a motion to close the nominations. Mr. Ecker was elected Vice-Chairman by acclamation.

Mr. Flora moved and Mr. Van Vactor seconded a motion to nominate Mr. Davis as Secretary. Mr. Flora moved and Mr. Van Vactor seconded a motion to close the nominations. Mr. Davis was elected Secretary by acclamation.

The second item of business was the review of the minutes of the December 13, 2005 meeting. Mr. Flora moved and Mr. Davis seconded a motion to approve the minutes as written. The motion passed by acclamation.

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The third item of business was case, 05-BZA-49, John & Judy Schmidt and Dean Sarber, A Tabled request for an Appeal of an Administrative Decision. Mr. Schmidt and Mr. Sarber were present to represent the request. Mr. Booker gave an update, reading a letter from County Attorney, Ken Lukenbill, dated December 29, 2006 with recommendation that he did not find evidence to support Mr. & Mrs. Schmidt and Mr. Sarber's claim that Mr. Booker made an inappropriate decision in determining the setback for the tower. Mr. Booker presented letter's that had been forwarded to him by Attorney Ken Lukenbill from: Department of Labor and Occupational Safety & Health Administration, EET, Limited Liability Corp., and Valmont; all stating that they measure setbacks from the center of the tower. Mr. Booker stated that he believed the letters were the result of correspondence to each party by Mr. Don Feece.

Mr. Booker stated that he had been asked what his interpretation of Mr. Lukenbill's letter was. He stated that the tower ordinance regulates towers and the other part of the ordinance regulates other parts of zoning, his decision would be correct under the tower ordinance.

Mr. Ecker read correspondence into the record from Lynn Stull, Polk Township Trustee, stating that he was in support of the placement of the tower.

Mr. Sarber stated at the last meeting it had been stated that the board would let the attorney's make the decision. Mr. Ecker stated that the board's decision was to consult with the County Attorney. Mr. Sarber asked if the board would allow time for them to consult with their attorney before a decision was made. Mr. Sarber asked if the towns measured towers differently from the County. Mr. Booker stated that the tower ordinance would not have any impact on the towns. Mr. Sarber asked how the County would normally measure the towers, were they all measured from the center? Mr. Booker stated that was correct. He stated that there hasn't been a question up to this point, as most towers are set so far out in a middle of a field, the set backs are more than adequate.

Mr. Sarber stated that he would like to clear up some paperwork. He asked if the sheet he had would be the proper paperwork for the variance. Mr. Booker stated that the legal advertisement for the matter would be the determining factor of legal requirement.

Mr. Sarber asked about the tower in Tippecanoe. Mr. Ecker stated that the matter had not come to completion, as the contract had not been agreed upon.

Mr. Flora moved and Mr. Davis seconded a motion to open the public hearing. The motion passed by acclamation.

- John Stone, stated that he owns a tower business and the FAA requirements are more strict than the County requirements, were for all measurements to be from the center of the tower. He also stated that there are many towers of equal size with the city.
- Lynn Stull, Polk Township Trustee, stated that he represents the township, taxpayers and the fire department; he stated that the tower would do good things for the residents and he was in support. He stated that Mr. Schmidt was on the fire department when they placed the current tower, which was on his fence line.
- Don Feece, stated the tower placement was fine and the County should not spend an additional \$20,000 to move it. He stated that the measurements were correct.
- Kevin Overmyer, County Commissioner, stated that he would like to give a favorable recommendation for moving forward with the tower.
- John Grolich, stated that he would like to thank the board for being diligent in making a decision on the tower. He stated that he had given Mr. Kiefer the paperwork for the request, and Mr. Kiefer stated that he would take care of it. He stated that Tippecanoe Township had requested the board receive a copy of the contract.

There was no one else to speak either for or against the request. Mr. Ecker moved and Mr. Van Vactor seconded a motion to close the public hearing. The motion passed by acclamation.

Mr. Sarber presented a picture of a tower with a thirty five foot antenna. Mr. Ecker stated that it was not relevant. Mr. Sarber stated that he had a recording from WTCA of a conversation involving Mr. Grolich; in which he stated that before the County could use any of the towers all nine would need to be in place. Mr. Sarber stated that he called Mr. Grolich and asked if Polk Township's tower could be last. Mr. Sarber asked if they wanted to listen to the tape. Mr. Ecker stated that he did not want to listen to the tape. Mr. Flora asked if the tower was inevitable, what makes the difference in the placement. Mr. Sarber stated that all nine towers would never be placed. Mr. Flora stated that he saw it as a win/win situation for everyone involved.

Mr. Van Vactor moved and Mr. Davis seconded a motion to approve Mr. Booker's decision of the measurement from the center of the base of the tower and allow the tower to be completed. The motion passed by a unanimous vote of approval.

The fourth item of business, case 06-BZA-01, Micheal Elbert, A request for a Variance of Development Standard to reduce the front yard setback from thirty feet (30') to fifteen feet (15') in order to construct a new dwelling on property located on Arrowhead Trail, Lake Latonka, in an L-1, Lake Residential District, Section 21 of West Township. Mr. Elbert and Mr. Laverne Hostetler of Mohr & Mohr Housing were present to represent the request. Mr. Booker reviewed the details and presented the Findings of Fact. He stated that the goal was to place the septic system in the rear of the lot and the house towards the front.

Mr. Hostetler stated that the fifteen foot setback would meet Lake Latonka's requirements. He stated that the proposed location for the septic would be the only suitable place. Mr. Hostetler stated that the sewage would need to be pumped upgrade.

Mr. Flora moved and Mr. Davis seconded a motion to open the public hearing. The motion passed by acclamation.

- Ron Goldsmith, Chairman of the Lake Association, stated that he was in favor of the request.

Mr. Booker read correspondence into the record:

Thomas & Sharon Spindler, 12431 Arrowhead Trail, against the request.

Ivan Amor, 13254 6C Road, in favor of the request.

Jerry Bennett & Linda Richter, in favor of the request, as long as the home would not be built to HUD code.

- Joe Zakutansky, 12438 Arrowhead Trail, asked what type of septic system would be placed, would he have water problems because of it?

There was no one else to speak either for or against the request. Mr. Flora moved and Mr. Van Vactor seconded a motion to close the public hearing. The motion passed by acclamation.

Mr. Hostetler stated that septic systems have to be placed by strict code. He would not be able to change the grade. It should not change the flow of water.

Mr. Flora asked how the front setback had been measured. Mr. Hostetler stated that the measurement was from the right-of-way, there would be an additional ten foot to the edge of the road.

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Mr. Flora moved and Mr. Davis seconded a motion to approve the request, siting Finding of Fact #3. The motion passed by acclamation.

Mr. Booker stated that there were changes proposed for the next Plan Commission meeting which would change the way that Special Exceptions would be approved/denied. He stated that it would also be proposed that Special Exceptions be brought before the BZA only and would not be heard by the Plan Commission. Also, it would be reviewed whether operations requiring an IDEM Permit would be classified as needing a Special Exception.

The fifth item of business was the Violation Report. Mr. Booker stated that he had received information that he had a violation report to present and had also been presented with a violation request. He stated that he had started receiving calls that Mr. Zehner had been taking loads of wood material on his property. Upon a visit to the property, he stated that he is taking in old air conditions. Mr. Booker stated that he would call to check on requirements for freon. Mr. Zehner stated that he is taking the wood as a favor and would mulch it and spread on the property. Mr. Booker stated that he has talked to Mr. Zehner's attorney.

Mr. Booker stated that he needed to get in contact with the Fink's regarding the manufactured home on the property. He stated that he had sent a letter and has yet to hear from them.

Mr. Plummer had made progress from the Court's perspective in that the manufactured homes had been moved from the property, although, there were items on the property that would still need to be cleaned up.

Mr. Booker stated that Connie Millers case had been dismissed as it appeared that she or her dogs were no longer living on the property.

Mr. White had made progress, but per Court Order would need to have all junk and cars removed from the property by March 15th, or be in contempt of Court. Mr. Booker stated that there would be discussion of the property at the Plan Commission meeting as there was a situation regarding the road which accesses the properties.

Jaqueline Edwards was an on going case regarding the operation of a mining facility without a permit. He stated that he had invited the owner to show proof that it had been in existence since before zoning.

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Mr. Booker stated that he had received a violation request for Mr. Schmidt's property. The board advised Mr. Booker to send Mr. Schmidt a letter.

The last item was Other Business. Mr. Booker stated that he had received approval from the County Council to consolidate the Secretary position with the position in the Auditor's office. Mr. Booker stated that Mrs. Kolter would continue to work part time taking minutes for the Plan Commission and BZA meetings, as well as filling in the office as needed. He stated that Lori Lowry would be the full time secretary. He stated that by consolidating the positions the County would be saving substantial monies. The change had been approved through April 1st, at which time it would be evaluated.

There being no further business, a motion was made to adjourn and seconded. The motion was passed by voice vote.

Respectfully submitted,

Gary Davis
Secretary