

The Madison County Board of Zoning Appeals met on the above date at 9:00 A.M. with, Mary Jane Baker, Chairman, presiding.

Members Present: Bill Maxwell, John Randall, Jr., Mary Jane Baker, and Bill Hobbs.

Members Absent: Shirley Aubrey.

Also Present: Cory Wilson, Executive Director, Judy King, Plan Reviewer, Gerald Shine, Jr., Attorney, and Beverly Guignet, Secretary.

CURRENT BUSINESS

1. Roll call was taken and one member, Shirley Aubrey was absent.

Chairman Baker introduced Cory Wilson to the board as the new Director for the Planning Commission.

2. The minutes of the previous meetings were distributed to each member prior to the meeting. Member Maxwell made a motion to approve the minutes as presented. Member Randall seconded the motion. The vote was unanimous in favor of the motion.

3. Election of Officers: It was the consensus of the board to table election of officers until the end of the hearing.

4. **Petition #549 of Duane Reavis, landowner and petitioner, for Special Use to conduct mineral extraction in a flood plain.** The property is zoned “AG” and is located on the east side of County Road 200W, approximately 1/8 mile south of County Road 1100N in Monroe Township, with no physical address being assigned. Tabled on the following dates: July 24, 2007, September 25, 2007, and November 27, 2007.

Duane Reavis, 6435 N St. Rd. 9 was present representing this petition.

Mr. Wilson stated the staff received a copy of the DNR permit on January 8th for Mr. Reavis to do the gravel, sand and borrow type excavations that was going on. However, the permits specifically states that, in no way shape or form does this permit mean that you can circumvent any local zoning laws.

In this particular situation, the type of work being done does not meet the Comprehensive Plan. There are still some outstanding permits that they need to obtain before staff thinks it’s appropriate for the board to proceed forward with this matter. My predecessor did recommend denial of the request. And in the addendum for today’s hearing it does state that staff would continue to recommend denial of this request. It does not meet the county’s Comprehensive Plan.

The development pattern that for the area is not consistent with this request. So, even with the necessary permits it is important to note the staff still recommends denial of this request. I would recommend this petition be continued until all necessary permits are obtained. At that point it allows the board to make a more sound decision on the request.

He is still required to obtain approval from the County Soil Conservation because they are disturbing more than one acre of land and therefore he would need to have a Rule 5 permit. He would also need a permit from I.D.E.M.

Mr. Reavis stated we do have the Rule 5 approval and also I.D.E.M. approval. I have given those to the Plan Commission. I did not bring those today, as I didn't think that would be an issue.

Judy King, Plan Reviewer told the board she did not have a copy of the permits on file.

Member Randall stated we knew he had those approvals we were just waiting on the DNR approval before we acted on this request.

Mr. Reavis stated there are two ponds on the property. When excavating is completed the ponds will be stocked with fish. It will be seeded and planted with trees and landscaped as per the DNR regulations. I also plan on building my house at this location. This will not be an on going excavating business.

The finished ponds will be 300' x 500'. The DNR permit is good for two years and I.D.E.M. is good for five years.

There were no remonstrators present.

Member Randall stated, I move to continue Petition #549 until the February 26 meeting and for Mr. Reavis to get the site plan to the office ten days prior to the meeting so they can be distributed to the board members to give them time to review before the next meeting.

Member Maxwell seconded the motion.

The vote was unanimous in favor of the motion. **Petition #549 of Duane Reavis, landowner and petitioner, for Special Use to conduct mineral extraction in a flood plain was tabled until the February 26, 2008 meeting.**

New Business

1. **Petition #570 of Jon & Teresa Frakes, landowners and Hallmark Homes, petitioners, for a Variance of the required 25' side yard setback to be reduced to 19'**. The property is zoned "AG" and is located on the north side of County Road 1100S, between County Road 400E and County Road 500E, with the physical address being 4098 East 1100S, Markleville.

Lilly Wilson, 433 E 53rd Street was present representing the petitioners Hallmark Homes.

Mr. Wilson stated the site is improved with a single-family dwelling. To the north and east are single-family dwellings zoned AG, to the west is three lots also zoned AG and improved with single-family dwellings. To the south, opposite CR 1100S (Hancock County), there is a large field/agriculture operation also improved with a single-family dwelling.

Staff has received proof of proper notification.

The dwelling exists. When the footprint for the dwelling was staked, it was improperly done, therefore resulting in the east side of the structure being located six (6) feet too close to the east property line.

In this particular case the house was staked, construction began, we had done inspection of the footers. Once the house got completed they always do a finishing survey. That's when they found out the house was sitting six feet too close to the property line.

We do not go out and see if the staking is done in the right place. In a subdivision it is very easy to tell if a house is too close. In this case it is very easy to see how a mistake would happen. It actually sits behind other existing dwellings that are located out there.

So, subsequently to the Findings of Facts, would the approval be injurious to the public health, safety, morals and general welfare of the community? Staff believes no. The nearest structures are at least 50 feet away.

Would the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner? No. The neighboring properties are all developed and zoned in the same manner and this would not affect the properties values of those lots that surround the subject site. All the properties are large lots and are zoned agricultural.

We did receive a phone call from the neighbor to the east of this stating he did not receive notice of this hearing. So therefore, the staff did review this late last week and did confirm there was no notice that was received to the east property owner. So, with that the staff would request, even though we are recommending approval of this request, this board to continue this petition to the next hearing so that additional notice could be mailed out. That way all property owners would be notified of this request.

The board was informed that the neighbors to the east who did not receive notice were, LeRoy and Mary Jo Heath. When they called in they were notified that was a meeting was today, the time and place were noticed. There was also a placard that was placed on the property. But the Heath's were upset that they did not receive notice by mail.

There were no remonstrators present.

Member Hobbs stated, I make a motion to table Petition #570 until the February meeting and that all the landowners that were previously notified along with the one in discussion, Mr. Heath, be re-notified.

Member Randall seconded the motion.

The vote was unanimous in favor of the motion. **Petition #570 of Jon & Teresa Frakes, landowners and Hallmark Homes, petitioners, for a Variance of the required 25' side yard setback to be reduced to 19' has been tabled until the February meeting.**

2. Miscellaneous:

Chairman Baker turned the meeting over to Jerry Shine for nominations of officers.

Mr. Shine asked for nomination for Chairman.

Member Maxwell made a motion, seconded by Member Hobbs to nominate John Randall as Chairman.

The vote was unanimous in favor of the motion. John Randall will be Chairman of the Board of Zoning Appeals for 2008.

The meeting was turned back to Chairman Baker for the rest of the nominations.

Chairman Baker asked for nominations for Vice Chairman.

Member Hobbs made a motion, seconded by Member Maxwell to nominate Member Chairman as Vice Chairman.

The vote was unanimous in favor of the motion. Mary Jane Baker will be Vice Chairman of the Board of Zoning Appeals for 2008.

Member Hobbs made a motion, seconded by Member Maxwell to retain Gerald Shine as Attorney for the Board of Zoning Appeals for 2008. The vote was unanimous in favor of the motion.

Member Maxwell made a motion, seconded by Member Hobbs to retain Beverly Guignet as Secretary for the Board of Zoning Appeals for 2008. The vote was unanimous in favor of the motion.

Mr. Shine stated the K.C.C.A. litigation that we have going, several weeks ago we agreed to have a special judge to hear the case over in Hamilton County. Hamilton County would not accept it until a filing fee of \$133 paid. This morning after discussion with our councilor in Indianapolis I personally advanced \$133 so we don't have to go through the claim process as that would take to long too get it done. Hamilton County was going to send it back to Madison County. Normally a county agency does not have to pay any transfer of filing fees and I do not feel as though we had to in this case as the judge himself disqualified himself here in Madison County.

We are anticipating that once the judge gets assigned he will be setting staff conference hearing and at that point in time we are going to bring to his attention that Mr. Hershman is named as a defendant and that he is no longer our Planning Director. Cory Wilson will be substituted the defendant. I will keep you posted when something comes up. We will have a public hearing on that and you will all be notified of it.

Mr. Shine submitted the following letter from Heather Willis Neal, Public Access Counselor concerning the Mallard Lake Landfill and the Board of Zoning Appeals. (Also on file in the Plan Commission office).

It was the consensus of the board to adjourn.

Adjournment: 9:54:55 A.M.

Mary Jane Baker, Chairman

Beverly Guignet, Secretary

Mr. Shine submitted the following letter from Heather Willis Neal, Public Access Counselor concerning the Mallard Lake Landfill and the Board of Zoning Appeals. (Also on file in the Plan Commission office).

2008 10:28 FAX 3172333091

PUBLIC ACCESS

002



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
HEATHER NEAL

Indiana Government Center South
402 West Washington Street, Room W460
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

January 4, 2008

William Kutschera
Killbuck Concerned Citizens Association
PO Box 143
Chesterfield, Indiana 46017

Re: Your informal inquiry regarding the Madison County Board of Zoning Appeals

Dear Mr. Kutschera:

This is in response to your informal inquiry dated August 16, 2007. I apologize for the delay in the response. I took office July 1 of this year and found a backlog of informal inquiries. I am currently endeavoring to address the backlog and issue opinions in response to the inquiries, pursuant to I.C. §5-14-4-10(5).

BACKGROUND

In your inquiry you ask whether the Madison County Board of Zoning Appeals ("BZA") violated the Open Door Law ("ODL") (Ind. Code 5-14-1.5) by conducting an executive session with no notice to the public. You include copies of several letters between you and the attorney for the Madison County Planning Commission ("Commission"), Gerald Shine. You allege that at the April 24, 2007 meeting of the BZA, Mr. Shine asked the BZA for approval to hire an attorney to represent the county due to an impending legal event. You contend that the BZA's lack of discussion on the issue before voting indicates a secret meeting must have been held at which Mr. Shine discussed the matter with the BZA.

In Mr. Shine's correspondence to you dated July 9 and August 3, he contends no executive session was held to discuss the issue. While I am uncertain whether Mr. Shine engaged outside counsel prior to or after the April 24 meeting, that fact is irrelevant to the issue at hand.

ANALYSIS

It is the intent of the ODL that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. I.C. §5-14-1.5-1. Except as provided in section 6.1 of the ODL, all meetings of

2008 10:40 FAX 01/23/08

PUBLIC ACCESS

0003

the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them. I.C. §5-14-1.5-3(a). Executive sessions may only be conducted for the enumerated instances listed in the ODL. I.C. §5-14-1.5-6.1.

A "meeting" means a gathering of the majority of the governing body of a public agency for the purpose of taking official action upon public business. I.C. §5-14-1.5-2(c). "Official action" means to receive information, deliberate, make recommendations, establish policy, make decisions, or take final action. I.C. §5-14-1.5-2(d). "Final action" means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order. I.C. §5-14-1.5-2(g).

Public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting, shall be given at least forty-eight hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. I.C. §5-14-1.5-5(a). Public notice of executive sessions must state the subject matter by reference to the enumerated instance or instances for which executive sessions may be held under subsection (b). I.C. §5-14-1.5-6.1(d).

You contend that the BZA must have held an executive session to discuss hiring outside counsel. As evidence of your assertion, you point to the lack of discussion by the BZA at the April 24 meeting when Mr. Shine raised the issue. I do not find sufficient evidence to support this assertion. Nothing in the ODL prohibits some discussions by members or between the attorney and individual members outside of a public meeting. When a majority of members of a governing body gather for the purpose of taking official action on public business, the gathering is a meeting. I.C. §5-14-1.5-2(c). Aside from the serial meeting law (I.C. §5-14-1.5-3.1), which does not appear to be at issue here, nothing in the ODL provides that a meeting occurs when less than a majority of the members gather or otherwise discuss an issue, for instance by telephone. Further, nothing in the ODL prohibits the attorney for the Commission from speaking to members on an individual basis regarding issues to come before the BZA.

For the foregoing reasons, it is my opinion the BZA has not violated the ODL.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Gerald P. Shine, Jr., Attorney, Madison County Planning Commission

