

BZA MINUTES

OCTOBER 16, 2017

Members present: Jim Hufford, Bill Davis, Eli Jones, Jason Hawley, Christy Starbuck and Myron Cougill

Absent: Dan Vinson

Legal Representation: Jason Welch

Staff present: Randy Abel, Executive Director, Debra Johnting, Recording Secretary

Others present: Dave Tillman, Cheryl Tillman, Ed Thornburg, Bob McCoy, Shon Byrum, Kathryn Petry

Chairman Davis: It's 7:00, I will call this meeting of the Board of Zoning Appeals to order. Tonight is Monday, October 16, 2017. The first thing I would like to do tonight is to approve the minutes from last month, September 18, 2017. Do I hear a motion? We have a motion and a second, all in favor, say aye, opposed? Minutes are approved. Tonight's first petitioner is BZA2017-24-V, David and Cheryl Tillman, will you please come forward? Please note this is a recorded meeting. Please state your name and address for the record and we'll move forward.

D. Tillman: David Tillman, Union City, 1803 N 600 E.

Cheryl Tillman, same address.

Chairman Davis: Did you receive Article V, Conduct of Hearings?

D. Tillman: I believe so.

Chairman Davis: Ok, please just state what you'd like to get accomplished tonight.

D. Tillman: We have a farm that we bought in 1984, and we're wanting to sell off 10 acres of that parcel, it's a 71 acre parcel and we want to sell off 10 acres. It would be the house, out buildings and the hog buildings are included in that. Our reason for doing that is we have rented out the hog barns and it just makes more economic sense for us to try to sell it rather than pay the upkeep on the buildings and the insurance and for what we get for rent it's going to be better for us to sell it. And it is a CFO permitted by IDEM.

Chairman Davis: Do we have any questions at this time by the board?

J. Hufford: Are you selling the whole operation and the house all in one piece.

D. Tillman: The ten acres? Yes, it would be all included.

J. Hufford: You're not selling the house off by itself?

D. Tillman: No. And we will keep the remaining farm ground to farm.

J. Hufford: Is the person who is renting it now the person who is buying it?

D. Tillman: We are in negotiations with that person, yes.

Chairman Davis: Are you able to say who that is?

D. Tillman: I'd rather not at this time, if that's ok, since we are in negotiations.

Chairman Davis: Is it the person who is renting it now?

D. Tillman: Yes, that's what Jim just said. I have a presentation, an aerial map, and she took some pictures of the house and the buildings.

Chairman Davis: I think we've got all that. I just need to say anything you drop off tonight stays with us. But I believe that we already have all that. Any further questions by the board at this time? Any discussion? Anyone in the audience that would like to speak for this, now would be the time to speak. Let the record show that no one in the audience wanted to speak so we are moving forward. Is there anybody in the audience who would like to speak against it or in any other manner? Please state your name.

B. McCoy: Bob McCoy, 196 South Tamarac Avenue, Winchester, Indiana. I am a member of the Area Planning Commission and the County Council. The biggest concern I have is the variance down to ten acres is basically what we're doing. An unknown purchaser, we don't know what type of person this is, that's a scary situation when you're talking about a concentrated feeding operation. So that would be my biggest concern, spills, and so forth. I know if somebody has forty acres, and they haven't had issues, and they want to sell down to ten and build another one, I think we've had this come up before and I think that's a different situation. But actually selling the property to an unknown person I think we may be running into a problem. And that is really all I have to say. Thank you.

C. Tillman: Would it be helpful to have some photos of the house and how it's laid out?

Chairman Davis: Just keep in mind anything you give us stays with us.

C. Tillman: That's fine.

Chairman Davis: We have another one who'd like to speak, please come forward.

K. Petry: Kathryn Petry from Lynn, Indiana. You're going to sell off this ten acres for a hog operation, right?

D. Tillman: It is a hog operation now.

K. Petry: Ok, what is this guy going to do with the manure? If he's only got 10 acres?

D. Tillman: You want me to answer that now?

J. Hufford: I can answer that for you, there's already a manure pit behind the operation that's been there for 35 or 40 years.

K. Petry: So it's a lagoon.

J. Hufford: It's a lagoon type, this operation has been in effect for a long time.

K. Petry: So when you empty that pit, what do you do with that?

D. Tillman: It's applied to my land, personally I own right at 200 acres there, and our family corporation owns another 300 that we apply.

K. Petry: Do you inject it in the ground or do you just spread it? Or what's he do, it's his problem?

D. Tillman: Well, right now we're surface applying with minimum tillage on it.

K. Petry: You're not injecting it, you're just spreading it on top of the ground?

D. Tillman: Sometimes we do and sometimes we don't. It depends on how dry it is.

Chairman Davis: Are there any further comments out in the audience? Let the record show that no one has come forward. Further discussion or questions by the board?

J. Hawley: Excuse me, I have been doing a little bit of digging on these type of topics and I am probably a little more ignorant than I should be, wasn't the original intent of being able to parcel off the ten acres more of an inheritance situation, with a father being able to sell 10 acres off to a child to get a financial footing to buy the rest of the farm? Was that the original intent for the ten acres parcel?

J. Hufford: No, I don't think so.

J. Welch: I wasn't on the committee when it was done, but there are strict criteria you have to follow.

J. Hufford: I think he's getting that confused with the Subdivision Ordinance if they own a farm and want to parcel off and build a house on it, you can only build one a year, but that's a lot different than this.

J. Hawley: Ok, thanks.

E. Jones: My question is, if we allow this, in ten acre increments, what's going to stop any other farmer from selling off ten acre increments, and putting a CFO on every ten acres?

J. Hufford: Well, then they'd have to do the same as this person here and come before us and ask whether or not they can do it.

Chairman Davis: My comment is, one of the issues we have to consider is, the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner. To be honest with you, I think this would be a financially good move for you guys.

J. Hufford: Where this is located the railroad is located down one side, across the road is the ethanol plant, and I think we rezoned Himes acreage commercial to put in a filling station a couple years ago.

Chairman Davis: Ok, last call for questions or comments.

C. Starbuck: I have a question, what is preventing you from doing the forty acres that the actual ordinance requires?

C. Tillman: Because we farm.

C. Starbuck: You just want to keep the ground.

D. Tillman: I want to keep the ground, yeah.

C. Tillman: That's our farm.

D. Tillman: I'm not retiring, and that's still our farm.

C. Starbuck: Let me ask this, if we didn't grant this variance, and you have to parcel off the forty acres, the next thing you would have to do is look at renting it from those folks, right?

D. Tillman: It's not an option to sell the forty acres. I am not going to do that.

C. Tillman: We're just getting too old, physically to raise hogs.

Chairman Davis: Any further comments or questions? Going once, twice, closed. Ok, I will entertain a motion for action. A motion has been made and seconded for a vote to take action. Debra?

D. Johnting: Bill Davis, no, Jim Hufford, yes, Christy Starbuck, no, Jason Hawley, no, Eli Jones, no, Myron Cougill, no, and Dan Vinson is absent. Motion is denied.

Chairman Davis: Steps going forward?

D. Johnting: They may reapply in six months.

Chairman Davis: That's your option, you may reapply in six months.

D. Tillman: What's going to change in six months?

Chairman Davis: The variance was not approved, so I'm not saying it will or it won't.

D. Tillman: I mean, what's going to change your mind in six months?

Chairman Davis: In six months? I mean, that's tough to answer. My point, was one of the guidelines, you'd be doing this for financial gain. That was my reasoning, plus the fact that we could set a precedent for the future and it's hard for us to do that.

D. Tillman: So, you were voting against it because I am going to get a financial gain?

C. Starbuck: No, not at all.

Chairman Davis: I am not saying you are going to get a financial gain..I am just saying that it would...

D. Tillman: I am confused I guess.

R. Abel: Number three reads "the strict application of the terms of the zoning ordinance will result in practical difficulties of the use of the property. Remember higher cost is not an adequate justification for a variance." That's what's in the guidelines for a variance.

D. Tillman: Ok, I guess I am confused, I don't understand.

R. Abel: Well, if it costs you more money to sell the forty acres that's not a reason for the variance. The added or additional cost. A variance has to be a practical difficulty. One of the rules says that your house can't be shorter than your garage. So if you have a cracker box house with seven foot walls and you've got an SUV you couldn't get in a garage that was as short as your house, then I would say that's a practical difficulty. And it has nothing to do with you making money or losing money. So, practical difficulties would be what you would have to prove. Not cost.

J. Welch: This might be something you would want to talk to counsel about if you come back again. Because I can't really give you legal advice on this, but there is a strict set of guidelines and criteria that has to be met in order for a variance to be granted. And those are all spelled out in the ordinance. And you have to put on evidence to prove each of those elements in order for a variance to be granted and that's your burden as the petitioner to do that. So that's something you may, if you do come back and do this again, you may want to talk to counsel because they can explain to you what evidence, if there is evidence, would need to be put on in order to meet your burden of proof for this type of case. They [the board] can only make their decision based on what you present. If that helps any.

D. Tillman: I guess I am a little confused on that I guess.

Chairman Davis: I think that's good advice, I think I'd get legal counsel to see if you can present a case to prove the points.

C. Tillman: Even though nothing will change, the person who is renting it is running it the same way we've run it for the last thirty some years, nothing will change in the operation if we sell it.

R. Abel: Have there been any violations with IDEM Indiana?

C. Tillman: No.

D. Tillman: No.

C. Tillman: It's not a CAFO, it's a Confined Feeding Operation.

R. Abel: But IDEM still regulates it.

C. Tillman: Right.

D. Tillman: Yes, exactly.

Chairman Davis: Any further new business by the board? I guess I will entertain a motion to close the meeting. Motion has been made and seconded to adjourn the meeting.

Bill Davis, Chairman

Debra Johnting, Recording Secretary