

BZA MINUTES

JANUARY 22, 2019

Members present: Bill Davis, Jon Peacock, Jason Hawley and Bryn Albertson

Absent: Myron Cougill, John Brutchen, and Don Calhoun

Legal Representation: none

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

Others present: Shanda Solomon, Eldon Solomon, Lance Bias, Mike Thomas, Ed Thornburg

Chairman Davis: It is 7 o'clock, and we'll call this meeting to order. It is Tuesday, January 22, 2019. The first thing on the agenda is to approve the minutes from the last meeting which was held November 19, 2018. Do I hear a motion?

J. Hawley: I will make a motion to approve the minutes as written.

Chairman Davis: It has been moved and seconded to approve the minutes as written. All in favor say aye, opposed, none. The minutes are approved as written. Next on the agenda is the reorganization of the officers for this coming year. I would like to nominate Jason Hawley as Chairman. Can I get a second? It has been moved and seconded to have Jason Hawley as Chairman. All in favor say aye, opposed, none. And I guess I will nominate myself as Vice Chairman if no one else wants to do it. All in favor say aye, opposed, none. And we will retain the same attorney, right Deb?

D. Johnting: We will vote to renew Jason's contract tomorrow night, but I do anticipate that.

Chairman Davis: Ok, next on the agenda tonight is BZA2019-2-V, a variance for Shanda Solomon on behalf of Randolph County Solid Waste Management located at Orscheln's. At tonight's meeting we do have just four members, so you will need a unanimous vote to get this variance approved. Do you wish to continue?

S. Solomon: Yes, that's fine.

Chairman Davis: Please state your name and address for the record please.

S. Solomon: My name is Shonda Solomon, and my address is 332 S Main Street, Winchester, Indiana.

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

S. Solomon: Yes.

Chairman Davis: Please proceed.

S. Solomon: The Solid Waste Management District would like to place a barrier fence around the five recycling bins that are at Orscheln's. There's a lot of trash blowing around that is going over to the ditch. The idea is to put a 12' fence that will run 60' long, and 10' out on either side that will help catch, we hope, the majority of that paper and that stuff that is flying around. So, we will use high, heavy grade fencing to put out there, but it needs to be 12' high in order to be able to catch the stuff

that's blowing around. We are working with Orscheln's, and they are open to the idea. It's going to be partly on their property but they don't see any problem. We don't see any idea that will keep that area cleaner. It's a win for them and will help. The biggest issue out there is actually the ditch which is where so much of that goes and is almost impossible to clean. So, it seems to be favorably accepted by everybody who is involved, we just need to make the fence taller.

J. Hawley: The type of fencing you are looking at, will it be like chain link fence?

S. Solomon: Yes, chain link.

J. Hawley: Ok.

Chairman Davis: Myself, I think it's a great idea.

R. Abel: Do you think it's going to be tall enough to catch most of what you're looking at?

S. Solomon: We try to teach people not to put small stuff in there. Don't put shredded paper, don't put little stuff in there, don't put plastic, cardboard. By far and away the majority is much bigger stuff and the chain link won't be any problem to hold it. We will also be working with the city. They are already helping us to keep it clean. They will be continuing to help us, and the fellows out at Pollution Solution come in and pick up crazy stuff.

Chairman Davis: I was going to ask how often the bins are picked up?

S. Solomon: They are picked up every day. They are picked up six days a week. But it's the stuff like, right now there are four tires out there.

J. Hawley: I've seen couches and TV's and all sorts of things.

S. Solomon: Couches and mattresses and TV's. The scary part for me is we'll go ahead and put this thing out here, and we're making it a little longer than what we need to give the trucks room to move the bins around. I just don't want anybody to see that extra space and think "Oh look, now we can put a couch there." But they are already doing that, so we have been working with Burtons at Pollution Solution and the city has been really good about coming and picking things up. We've got some other possibilities of using scouts and other groups to come and help us rake from time to time to get the little stuff. We have some local groups that are looking for service projects and help us to keep it clean. I think we'll just have to monitor it and it will be a work in progress.

J. Hawley: I guess my only concern, and I assume there is no plan in the works to move the bins any time in the foreseeable future. But if that should go, would the fencing still remain? Would you remove the fencing if the bins would move?

S. Solomon: If we have to move the bins, we are working out a memorandum of agreement with Orscheln's. Orscheln's is very happy with the bins there, they don't have any problem with it, so as long as Orscheln's is there we're probably in pretty good shape. If we have to move the bins, then the district is willing to take down the fence.

J. Hawley: I think that would be my only stipulation, is that if the bins are ever gone, I'd like to see the fencing taken down as well. It would just create an eyesore if the bins were not there.

S. Solomon: There would be no reason for it if the bins were not there, so it would come down.

J. Hawley: That would be my only hesitation.

Chairman Davis: Do you want to change the motion, or make that a requirement? Is there anyone else who would like to speak or act a question?

J. Peacock: I just wondered if the fencing will be framed? I know 12 feet high is a long way. I am taking care of a dog right now and they didn't put framing at the bottom and the fence is a waste. You need good support.

S. Solomon: Yes, they are using the heavy duty grade pipe on the sides as well as the top and across the middle.

Chairman Davis: Good question Jon. Is there anyone else who would like to speak for or against? Let the record show that no one else requested to speak. So, we'll take Jason's recommendation to add a condition that if the bins go, the fencing goes. All in favor say aye, all opposed, no. Motion approved. Roll call vote please.

D. Johnting: Bill Davis, yes, Bryn Albertson, yes, Jon Peacock, yes, and Jason Hawley. Don Calhoun, John Brutchen and Myron Cougill are absent. Motion approved.

Chairman Davis: Ok, good luck.

S. Solomon: Thank you very much, I appreciate your time.

Chairman Davis: Ok, next on the agenda tonight is BZA2019-3-V, another variance, for Mike Thomas. If you could state your name and address for the record tonight?

M. Thomas: Yes, my name is Mike Thomas, address is 5968 S 400 W, Modoc.

Chairman Davis. Ok, once again, there are only four members here tonight so you must have all four yeses in order to have a favorable outcome.

M. Thomas: I understand that.

Chairman Davis: Did you receive Article V, Conduct of Hearings? Ok, please state what you would like to do.

M. Thomas: I'd like to expand an existing garage.

J. Hawley: Is this just for cars and things like that?

M. Thomas: Yes, just strictly personal storage.

R. Abel: There is an existing garage there that is 6 and a half feet off the property line. I might add that you might consider that if the adjacent farmer does damage to this addition because it's so close to the property line, the farmer wouldn't be held liable. If he's running a combine along and a corn cob flips out and damages the siding on the barns that might be a consideration. I don't know how much

strength the corn cobs come out of the back of a combine, but at 6 feet would it do damage to a window?

J. Peacock: Yes, it probably would.

M. Thomas: Well, there's no window there and I'm not planning on putting one in the addition either, so for me that would not be an issue. I don't know what the next guy would do, I don't know.

R. Abel: And these conditions, by the way, go with the property, so the next owner has to maintain the same conditions. So, I think it would be wise for us to do something like that so the farmer wouldn't be held liable. And the BZA wouldn't be held liable for letting you do it.

D. Johnting: I did have a call from the Beck's, and they did not have a problem with it. No contact from the neighbor right next to it.

J. Hawley: Yes, I think we need to look at property damage.

J. Peacock: Just a point of clarification, so Randy, were you suggesting that if this is approved, we put a stipulation that a farmer would not be liable ...

R. Abel: Would not be liable for any damage done because the building is so close to the line there.

M. Thomas: It puts the liability on the home owner.

R. Abel: Which your insurance should cover that anyway.

J. Hawley: Yes, it's clearly homeowners but just in case.

J. Peacock: Mike, are you ok with that?

M. Thomas: It doesn't bother me. I don't have an issue with the way I'm going to do it, I understand you guys have to cover all your paths.

J. Hawley: I am a handshake kind of guy, but the way the world works sometimes, I just don't know.

Chairman Davis: You can live with that?

M. Thomas: Yes.

Chairman Davis: Would anyone in the audience like to make a comment on this either for or against. Let the record show no comments. Myself, I will make a motion to approve this variance on the condition to keep farmers and all others from any liability from damages caused to homeowner as a result of this variance.

J. Hawley: I will second this motion.

Chairman Davis: Debra?

M. Thomas: What would "all others" be? I guess I don't understand that part of the statement.

Chairman Davis: I'm just trying to make the wording, for clarity, how we should word it.

R. Abel: It would be the adjacent landowner.

J. Peacock: Randy, one other question, the word “reasonable”. If I’m the guy who comes in there, say the farmer, and I have no regard for this structure that is 6’ away. That’s kind of blatant back on me if I have no regard for my neighbor’s building structure. I think if we could put the word “reasonable”. I know that’s a very gray area, if I was this person and you had somebody in the field next to you and was intentionally doing damage.

M. Thomas: Very good, you’d like to think that nothing like that would ever happen, but...

J. Peacock: Someday I might be the guy farming there and we might get mad and that opens up the door for the other person to take advantage of this during operation. So how can we word this so that it’s not so open?

Chairman Davis: Is that something that we can get Jason to adjust? The authority to properly word, and still make this motion tonight?

R. Abel: I don’t know. When you say reasonable damages, no matter what words you put in there you open up a debate on what that means.

J. Peacock: On the other hand we just say that they are not liable at all, that completely opens up for the farmer to do any damage at all, I’m not sure that’s right either.

R. Abel: No, but I like the word “reasonable” that you put in there.

J. Peacock: Then is that OK?

R. Abel: I think so, and then if there’s any question you’re going to come back to the minutes of this meeting. To pick up on the discussion and know what the intent of that was.

M. Thomas: If something is clearly an accident then I don’t have any problem with that. Under normal farming conditions. If he turns the combine and backs up as close as he can and peppers the side of it just because we’ve had a difference of opinion, I would have an issue that way.

J. Peacock: And that’s where the word “reasonable” could be added?

E. Thornburg: You’re all thinking about combine shrapnel, you’d have as big a chance of having an issue with somebody who is inexperienced with a field cultivator coming through and hitting it, and that would come back on that operator. As far as wear and tear from a combine going through I think you’ve got that nailed down. But a combine operator should be able to miss a building six and a half feet away.

M. Thomas: And the way the building lays, it would take a pretty careless act to be able to swing into it and hit it.

E. Thornburg: You’re absolutely right, he should be driving carefully enough not to hit a building on your property. That’s where the word “reasonable” comes in, it wouldn’t be reasonable for someone to back their field cultivator into your building. But it would be reasonable for him not to do any careless damages.

Chairman Davis: So we will put in the wording “reasonable damage” and that would cover our intent with this condition? Ok, Debra, roll call vote please.

D. Johnting: Jason Hawley, yes, Bill Davis, yes, Jon Peacock, Bryn Albertson, Don Calhoun, John Brutchen and Myron Cougill are absent.

J. Hawley: Congratulations, sir.

M. Thomas: Thank you for your time.

Chairman Davis: Next on the agenda, BZA2019-4-SP, a Special Exception, for Mr. Lance Bias. Please state your name and address for the record, please.

L. Bias: Lance Bias, 7371 N 200 E, Ridgeville.

Chairman Davis: Once again, there are only four members present tonight, so when we take a vote you will need a unanimous vote to pass your special exception. And did you receive Article V, Conduct of Hearings?

L. Bias: I understand, and yes I did.

Chairman Davis: Please proceed.

L. Bias: I own a rental property at 302 S Evans St. in Saratoga. I have owned it for a few years. A couple of years ago I was going to remodel it and it’s a 1960’s trailer and it’s just dilapidated, so I want to pull that one out and pull in a newer one, the same size. It’s a shotgun lot, there’s no way to build on it, so it would be just as easy to put a new trailer on it and be done with it.

J. Hawley: Well, if it’s the same size that answers my question.

Chairman Davis: Anything anybody else would like to ask? Members of the audience? Let the record show there was no comment or question from the audience. I will take a motion for a roll call vote.

J. Peacock: Did any of the neighbors have any comments?

D. Johnting: No, I didn’t hear anything from anyone.

L. Bias: The neighbors are actually tickled about this.

Chairman Davis: Roll call vote please.

D. Johnting: Jon Peacock, yes, Bryn Albertson, yes, Jason Hawley, yes, Bill Davis, yes, and Don Calhoun, John Brutchen and Myron Cougill are absent.

Chairman Davis: Congratulations.

Lance Bias: Thank you.

Chairman Davis: Ok, is there any old business we need to discuss?

R. Abel: Make sure everybody read your Chapter Two, Board of Zoning Appeals Basics. It’s the citizen planner guide put out by Indiana. We’re going to put out a lot of training here in the next few

months. This is part of it. Debbie Luzier is going to start having steering committee meetings for the new Unified Developmental Ordinance. So, that will be more reading, that's all I can say is a lot of reading. So, the steering committee meets the 31st, that's our first meeting for that. There are still things going on with the Sign Ordinance, which I am not going to go into. That's still alive. And, as part of the whole UDO, Debbie Luzier has also redrafted the BZA Rules and Procedures, and also the By-Laws for Area Planning so, there's two things in there from this first draft that we're going to change so we'll bring those back next month.

D. Johnting; You might notice that I am changing the order when I call a roll call vote—the new Rules and Procedures require that you change the order called, so if you're wondering why the order is different on each vote that's why. Thank you all very much for being here, Don couldn't be here tonight, Myron called with the flu, and at the last minute John was called to serve as a chaperone for the students from Willard's Academic team. So I am very thankful each of you were able to make it so we could have a quorum.

Chairman Davis: If there's nothing else, we are adjourned.

Jason Hawley, Chairman

Debra Johnting, Recording Secretary

Bill Davis, Vice Chairman