

**BZA MINUTES**

**SEPTEMBER 16, 2013**

Members present: Charles Addington, Lee Deguise, Myron Cougill, Dan Rismiller, Phil DeHaven, Bill Davis.

Members absent: Christy Starbuck.

Staff present: Jamie Stump, Recording Secretary/Executive Director.

Legal representation: Jason Welch.

Others present: See attached sheet.

The meeting was called to order by Chairman Lee Deguise at 7 PM.

Chr. Deguise: First order of business is to approve last month's minutes. Do I have any motions?

B. Davis: I make a motion to approve the minutes without reading.

M. Cougill: Second.

Chr. Deguise: All in favor signify by saying aye. "Ayes". Opposed (none). The minutes are approved.

**BZA 2013-5-CU (Apostolic Restoration Church, Union City)**

Chr. Deguise: On the agenda for tonight is the continuation of last month's meeting which is BZA 2013-5-CU, Apostolic Restoration Church. For the most part this board has heard what we went through last month and what I am going to ask for is the petitioner to, if the petitioner has additional information they would like for us to consider? Please come forward.

J. Nagy: Good evening everyone. My name is John Nagy.

Chr. Deguise: This is a recorded meeting so we need your name and your address for the record.

J. Nagy: Thank you. Good evening everyone. My name is John Nagy and my address is 110 E. Charles Street in Muncie. I am council here on behalf of the Apostolic Restoration Church Inc. My clients are here. There was about a 3 minute difference between my phone clock and your start time. They are here. As a matter of fact, that is them.

Chr. Deguise: Okay. I know you have done it before but I need you to state your name and address for the record please.

M. Payzant: Yes my name is Mark Payzant. 10480 W. Windsor Road, Farmland, Indiana.

S. Payzant: I am Susan Payzant. 10480 W. Windsor Road, Farmland, Indiana.

Chr. Deguise: Thank you both. I am sorry, go ahead.

J. Nagy: Your honor, the petitioners have had a couple opportunities already to come down and visit with the board regarding their proposal. I don't know that they have anything new to add. The situation has remained stable since the last time the board met and I think we are prepared for the board to issue its vote.

Chr. Deguise: Okay. Did you two have anything to add?

M. Payzant: Are you going to vote right away or can I say a few things here?

Chr. Deguise: No that is what you are up here for sir. Go ahead.

M. Payzant: I just want to, you guys know the history and have the minutes of the last meeting. You know everything that has been going on with all this and so we don't have to reiterate any of those things. As you know, at the first meeting, before the meeting we had contacted all the neighbors and no opposition whatsoever. The only opposition that we had that came to the meeting were those that thought they were possibly going to build a, well not build but have a restaurant across the street from the building that we currently are trying to purchase. There was only one individual that voted for us in that particular meeting and Mr. Chairman was absent at that meeting and so that was kind of the way that meeting went. Out second meeting there was no opposition from anyone and the this board decided to table the vote and so that brings us to this meeting. I did want to, apparently there was some people that think, I am under the opinion that some people think we are here to cause some problems or some things in Union City that they do not agree with what we are teaching or preaching. I am not sure what the whole story is behind that but we were a little bit discouraged by the boards decision at that last meeting, I will be quite frank with you but we have tried to do everything right. We have tried to do everything above board. We don't want, we are not here to rock the boat. We are not here to cause trouble. We are only called to Union City to help minister to that city. I want this board to be assured of that. We are not here to disrupt anything that the city is trying to do. We are here to help the citizens of Union City and regardless of what people may think, or say, we are there to help the citizens of Union City. That is all.

Chr. Deguise: Ma'am would you like to add anything?

S. Payzant: I don't think so.

Chr. Deguise: Well you don't have to I was just giving you the chance too. Anything else?

M. Payzant: No sir.

Chr. Deguise: Please be seated. Thank you. Is there anybody else present here who would like to speak for or against? Again this is a recorded meeting so please state your names and your addresses thank you.

L. Wilcox: I am Linda Wilcox. My address is 526 W. Division Street in Union City.

Chr. Deguise: Sir.

B. Conklin: Bryan Conklin, Mayor of Union City and also Economic Development member for Union City and also for Randolph County.

Chr. Deguise: Address sir.

B. Conklin: 502 W. Pearl Street, Union City, Indiana.

Chr. Deguise: Thank you. Okay continue.

B. Conklin: I have with me our Downtown Revitalization plan and the conceptual plans that we have had for the downtown. Let me start off with, we were here at the initial meeting. We were the opposition regards to laying claim regarding our plans for the downtown and the Economic Development restricts what we can do with any of the buildings, for any development. So we pled our case at that time. Then the second meeting we failed to attend because we thought it was going to be turned over to a judge for I believe it is Circuit Court, is that correct? So then we failed to realize of that meeting. That is why we are here tonight to further explain our opposition. At the very first meeting we asked that, we pointed out two churches in Union City within one block of each other that are having declining population attending. We asked at that meeting most of our churches are congregated in a couple block area. We asked that they meet with those churches to see what would be the opportunity to merge their operation with each other because typical church service will last an hour and then you have Wednesday service and children services or whatever else.

B. Conklin: Maybe they could complement each other. Then I further learned just tonight there is another church, it is the Mississinewa Congregational Christian Church on County Road 700, which is shutting its doors. It is approximately maybe a couple miles from where they currently live right now. The City of Union City allowed access to a City Building between 7 and 9 months because we were

wanting to work with them to provide a space which was closer to the churches already. We did that at no charge. There, the issue is not with who they are, what they represent because I am a God fearing man. I go to church and I don't see, I think that what they are doing is great but it is like where the other church is located, in our plans that we have for development we worked, this is our downtown park, which is we keep doing this in conjunction with an arson plan with Ball State University. We have worked with Ball State now for 18 months after we received the development of our revitalization plan to put together a comprehensive plan for the downtown. We run into Economic Development issues and be able to market and then the other buildings the way we have downtown for further development in regarding the types of business you can locate there, whether it is a restaurant that serves alcohol or other mixed units putting them closer in proximity to a church has that restriction.

L. Wilcox: Linda Wilcox. I just want to reiterate too that we appeared at the first hearing when this matter was documented because we were concerned not about the church or its doctrines or its preaching, but about the location, solely about the location. I too am a member of the Economic Development Committee and our concern is that like many other small towns particularly in the Midwest, we have to focus on reinventing ourselves and in doing so, we have really made a commitment to the artisan revitalization of the downtown area and in order to do that we can not work together with that imposed regulations that are inherent in a store front church in that vital area of the downtown. Certainly we welcome the church in the community and as the mayor said, we have numerous churches that are having financial difficulty and may be able to partner with this group in order to benefit both of them. We don't want to ostracize them from the community. We just want to make certain that where their location is doesn't negatively impact our ability to further the Economic Development of Union City. It is a critical time for us in Union City. We have worked diligently to foster these relationships with Ball State and with I U East and getting that downtown back up and breathing again is critical so that we hope that you understand you know, our reason for not being here at your last meeting was because we didn't know there was a meeting. Our assumption was that the church had filed and it would be docketed in front of Judge Toney and that we would take appropriate action at that point so we didn't realize that under the pre-trial agreement that is was to come back here, as well as, there is still some confusion in our mind. We thought that coming back here was to afford the board the opportunity to lay out their findings, not to revote on the matter again. But of course that is your decision to make. We feel very strongly that the church is welcome. They just are not welcome in the location they have chosen. We hope that they will look for other locations. We welcome them to be a part of the Chamber of Commerce and our Economic Development as are many of the other church representatives. But we need to focus on economic development and we believe that what they are offering in terms of the store front of the location is what negatively impacts our development course.

Chr. Deguise: As far as the re-voting, I just thought it was very important that we are a very transparent group. We didn't want to make it look like our minds were set and at that point in time the answer was no. But we certainly want to hear all evidence available. Again, this group here we are not elected officials. We are appointed. We represent a pretty broad ray of the entire county, not just Union City, Winchester, Parker City, Modoc and so forth. We are a broad spectrum. As far as what goes on in Union City, I do not live in Union City so I would have no reason to be for or against on that basis. I thought it was important that we got to hear all the evidence presented again.

Chr. Deguise: I myself was absent at the first meeting and I apologize for that but I wanted to hear first hand from all those involved before I was able to vote yes or no.

L. Wilcox: My reason for raising that it was just presudial. Once they had filed in front of Judge Toney, my assumption was that it was in his jurisdiction and that when Mr. Welch and their attorney got together at the pre-trial conference and determined it would come back to the board, my understanding from the minutes of the pre-trial was that it was going to be for the foundation. To lay the foundation for the Findings. That is all.

Chr. Deguise: Mr. Conklin if you could, does your overlay show the location of that building in comparison to what your plans show?

B. Conklin: No but I can give you an idea. If you are familiar with the train depot.

Chr. Deguise: Yes.

B. Conklin: This actually in a much broader scale, the street over here would be Walnut Street and then you have here is Columbia and the State Line. So it would be half way in between Columbia Street and State Line on the north side of the street on Pearl Street, so it would be over in this direction.

Chr. Deguise: The plan that you have there that you are showing the whole board and if anybody else has questions or can't see it, please say so. Distances from that area to where the proposed building will be in your speculation.

B. Conklin: Well this is only for, I just want to show you we have plans. We are moving forward with these plans. This lot right here was two buildings that were vacated many years ago and we downloaded them. What I wanted to show you is that with Ball State and what they envision, their arts department, their school of art is when you graduate from college with an art degree what do you do? You go back to school and get a Masters in something else. What we are providing is four sleeping rooms for graduates with an art degree. Ball State has taken this plan, this idea and broadened it not just for the four sleeping rooms in the downtown area, they are looking at the impact they can make on Union City as a whole. With their business department, we are providing, we have identified there are 22 vacant buildings downtown. We provided information to them in regarding what can be developed with that? So this is just to give you an idea of our plans of moving forward. We are not sitting here saying the reason we don't want it is because we don't want it. No. We have plans put together specifically.

L. Wilcox: This, I don't know if you can see, but this line here is the what we are hoping will be the continuation of that Rails to Trails, which will go behind and on across to State Line and on into Railroad Park. It is hard to envision from here but if you think about it continuing on through across Columbia where that two story ticket thing is now that we would like to move, we are hoping with Indiana Land Marks try to get enough money to move that and then take this on over and as a part of all of this, of this artisan crossing, that is what we have called this, to move across and utilize those vacant buildings for galleries, hopefully having someone doing sculptures and storefront kinds of things, which will draw people to the downtown, potters, those kinds of things. So we've got buildings along this that are within walking distance of this Rails to Trails, where you find Pearl Street, which runs right here. So the Rails to Trails comes across here and Pearl Street then becomes Elm when you cross over State Line. All along there our goal is that those empty buildings will become a part of the Artisan Crossing concept with lofts and galleries and hopefully some restaurants in there. It sounds a little far fetched, I know, but if we don't think big we are not going to revitalize Union City because we are not going to rebuild manufacturing and we are not going to bring back that kind of piece work. We have to think of some innovated way to course some blood through Union City again. That is all a part of it so yes that building is located within that walking area there.

J. Welch: If there is a specific reason why this particular church should not go in this area, that is one of the things that this does go back to the courts are. Is there a compelling government interest and not allowing the church to go in the specific spot. That is one thing the court will be considering is whether there is a compelling government interest that it not go into this spot.

L. Wilcox: Right.

B. Conklin: Two things, one is the Economic Development issue, the other would be the already available churches that are in need of being filled and third would be actually the lost revenue or for taxes.

L. Wilcox: Because that is in a vital corridor. That Pearl Street, Pearl and Columbia and Oak really that whole area is the area that we are looking at to try to revitalize, all along there so it would be as the

Mayor said, it is a three fold. Number 1 it does not fit into the plan and it creates restrictions on other use areas right up next to it that would negatively impact economic growth. It presents hardships in terms of trying to then change the economic face of that area and it eliminates some potential, not only from their space taxes but also because it impacts the surrounding areas then it eliminates the potential for a tax base in redeveloping those surrounding areas.

J. Welch: If I am not mistaken, there is a church right on the other side of the parking lot?

B. Conklin: But they have not filed.

L. Wilcox: They aren't there legally.

J. Welch: They are not zoned to be a church, they just are a church?

L. Wilcox: Yes and they realize that.

J. Welch: Okay.

Chr. Deguise: Mr. Conklin as being a member of the Economic Development Committee, Union City's Economic Development Committee it was stated at the first meeting that you are attempting to attract a restaurant/brewery to the building across the street from the subjects case. Do you have 3 compelling statement that that is actually going to come in or might come in? Apparently that was part of Mr. Toney's questioning on this.

B. Conklin: That building in question is not in play at this time. They raised the building price by over a hundred thousand dollars.

L. Wilcox: When they realized there was interest in it. I think that is the issue for us but we are looking at several other buildings. There is the Coke plant, which is if you know the milk plant is right next door to there and is available.

Chr. Deguise: Any other questions from any other board members?

C. Addington: I was wondering, that was published on time wasn't it Jamie?

J. Stump: Yes.

C. Addington: So you guys had a chance to see that?

J. Stump: Yes they did. It was published and the abutting property owners were sent letters like before.

C. Addington: So you guys had a chance to be notified of that if you had read the notice.

L. Wilcox: Where does the notice come?

C. Addington: In the paper. Ten days before.

J. Stump: I publish it in the News Gazette 10 days prior to the meeting. Now this one we didn't have to publish in the paper because it was just continued from last month. But last month when we were here it was published in the paper.

L. Wilcox: I didn't realize that was how the notice was served. So they serve as your legal notification?

J. Stump: Yes. Then the abutting property owners, when the petitioners file, have to notify the property owners by certified mail.

Chr. Deguise: In which case, I don't believe you are an abutting property owner.

L. Wilcox: No. I just assumed that when we had testified last time if there was new hearings that we would have received notice since we signed in.

J. Stump: No it is still just the abutting property owners.

J. Welch: There is a procedure for that. If you go to the Area Planning you have to sign to do that. This is a transparent board. They want to hear from everybody that is why they wanted to have another meeting to make sure everybody got to have their say before their decision was made.

Chr. Deguise: We are a broad spectrum of the county we are not just any particular city so our goal is to do what is in the best interest of all of Randolph County. Not just a particular city that is why we are from everywhere.

L. Wilcox: Certainly.

Chr. Deguise: Do you have anything else to add?

L. Wilcox: No I just appreciate your listening.

Chr. Deguise: I appreciate you coming. Thank you. Does anyone else have anything new? No. Any questions or discussion amongst the board? No. Any motions to take action?

C. Addington: So moved.

Chr. Deguise: Second?

B. Davis: Second.

Chr. Deguise: All those in favor signify by saying aye. "Ayes". Opposed (none). Ready for a motion. Any motions from anyone.

P. DeHaven: I will make a motion that the petition be denied.

Chr. Deguise: Do I have a second?

D. Rismiller: Second.

Chr. Deguise: All those in favor signify by saying .....do we want to do roll call?

J. Stump: Just a second.

Chr. Deguise: I think we should do a roll call vote don't you Jamie?

J. Stump: Yes we need to do a roll call vote.

A roll call vote was taken: Phil DeHaven, no; Christy Starbuck, absent; Dan Rismiller, no; Charles Addington, yes; Bill Davis, yes; Lee Deguise, abstain; Myron Cougill, no.

J. Stump: We don't have our 4 votes. We have to have four votes the same for the petition to be denied or approved.

Chr. Deguise: Why don't we clarify the votes. I want to run a clarification on votes as to what everybody meant. Let me tell you what the motion was. The motion was to deny the application. Your votes of yes is to agree with that. Meaning you agree to deny the application. If you vote no then you are voting in reverse. Meaning you do not agree to deny the application. I will restate that. The motion was to deny the application so when Jamie asks your name and you say yes then that means you are agreeing with that vote.....

J. Stump: To deny.

Chr. Deguise: To deny. If you say no, meaning you disagree with that motion and meaning that you think it should be approved. I want to make sure we didn't make that mistake.

J. Stump: I need to make sure those votes are what you are wanting.

Chr. Deguise: I am voting no because I think we should approve.

C. Addington: I am going to vote no too then because I didn't understand it.

Chr. Deguise: That is why I am reiterating this.

J. Stump: That is why we are going over this.

B. Davis: Do you just want to recall that?

J. Stump: Yes let me do this again.

A roll call vote was taken: Charles Addington, no; Bill Davis, no;.....

P. DeHaven: Let's go through this again. I made a motion to deny.

J. Stump: Yes that is what the vote is for. The vote is if you do agree to deny or you don't agree to deny that.

Chr. Deguise: Mr. Addington is correct. I think we should start over and make this motion either just to vote on it to either deny or approve. When Jamie calls the roll call vote we are either going to say deny or approve.

P. DeHaven: So my original motion should start?

Chr. Deguise: Your original motion should be reworded.

P. DeHaven: I made a motion to deny.

Chr. Deguise: Correct and that was seconded. To vote on that we have to vote yes or no. We can't deny or approve. Understand?

J. Welch: Just say deny or approve. Vote deny or approve.

J. Stump: Okay.

J. Welch: Deny the petition or approve the petition. He has made a motion to deny but for clarification just say deny or approve the petition. Even to approve the petition it needs to be granted if you vote to deny that means it should not be granted. Is that fair?

Chr. Deguise: That is a fair motion.

J. Stump: It will make it easier to do so I understand what way they are voting.

Chr. Deguise: Do I have any motions to go with Mr. Welch the boards attorney's motion?

D. Rismiller: I'll make the motion.

Chr. Deguise: Second?

M. Cougill: Second.

Chr. Deguise: All those in favor signify by saying aye. "Ayes". Opposed (none).

Roll call vote: Bill Davis, approve; Charles Addington, approve; Lee Deguise, approved; Myron Cougill, approved; Phil DeHaven, deny; Christy Starbuck, absent; Dan Rismiller, deny.

J. Stump: We have 4 votes to approve and 2 to deny. The petition has been approved.

J. Welch: If it is going to be approved then their Findings of Fact, which were presented by the petitioner which the board should consider and approve as appropriate.

J. Stump: So now we are going to do a vote of the Findings of Fact?

B. Conklin: In regards to the acceptance is this a recommendation from the county to the city?

J. Stump: No.

J. Welch: No.

J. Stump: This is a final decision. Only the Area Planning Commission for rezoning is a recommending board. This board makes the final decisions.

J. Welch: I would say it is a final appealable decision.

J. Stump: Right.

B. Conklin: So it's an appeal to the original decision?

J. Welch: It is a reversal of the original decision. There is a re-consideration and a further hearing of Finding of Fact. The reason it came back to another hearing is I don't think the petitioners felt like they were able to present their whole side without council. They came back and wanted to give their pitch to the board and the board did not make any findings the first time so that needed to be done as well. That's why it came back to the board. To try to cut to the chase, instead of playing games, let everyone come in and say their peace. The board could listen to it and make a decision and make findings one way or the other. So it is a re-hearing is what it really was.

J. Stump: So should he just read the Finding of Facts that they brought it?

J. Welch: That is what has been presented by the petitioners. The other ones were to deny.

J. Stump: I just gave him the one from the petitioners. Should he read that?

J. Welch: Yes.

Chr. Deguise: This boards Finding of Facts. These were Findings of Fact that were submitted to this board by the petitioner. BZA 2013-5-CU (Apostolic Restoration Church, Incorporated) Findings of Fact for Conditional Use permit. The Randolph County Area Board of Zoning Appeals now finds as follows: 1. Applicant, Apostolic Restoration Church, Incorporated, requests a conditional use permit to operate a church on property located at 212 W. Pearl St., Union City, Indiana, which is classified in the C-2 zoning district under the Randolph County Unified Zoning Ordinance. 2. Applicant has submitted its

Plan of Operation. 3. No exterior structural construction or development is planned. Any future construction or development must conform with the development standards of the C-2 district. 4. The use of the property as a church adheres to the general character of and will not be substantially detrimental to the use and development in the vicinity of the property. 5. The use includes improvements and amenities necessary to minimize any adverse effects on the use and value of surrounding properties. These Findings of Fact for a Conditional Use are adopted September 16, 2013 by a vote of 4 in favor and 2 opposed. Do we have to adopt them Jason?

J. Welch: Yes.

Chr. Deguise: I need a motion to adopt the Finding of Facts that I just read.

B. Davis: So moved.

C. Addington: Second.

Chr. Deguise: All those in favor signify by saying aye. "Ayes". Opposed (none). It shows the board 4 for this and 2 against. They are adopted.

L. Wilcox: Can you tell me when we can get a written copy of your Finding? We will need that to file.

J. Welch: It will be.....when will you have them prepared?

J. Stump: If she just wants a copy of this is what she is asking, of what we just read?

L. Wilcox: Yes. I need a copy of your finding in order for us to file.

J. Stump: I can do that. I will have to change the dates but I can get a copy for you.

Chr. Deguise: I read it correctly but the date on the piece of paper has to be changed.

L. Wilcox: Can you mail that to me with the address I put on there? Or should I pick it up somewhere or what would be the best.....

J. Welch: The Area Planning office would be the place to pick it up.

Chr. Deguise: Mr. Payzant your application has been approved.

M. Payzant: Thank you sir.

The meeting adjourned at 7:45 PM.

THE NEXT REGULARLY SCHEDULED MEETING WILL BE HELD OCTOBER 21, 2013 AT 7:00 PM IN THE CONFERENCE ROOM ON THE SECOND FLOOR OF THE RANDOLPH CENTER FOR FAMILY OPPORTUNITY, WINCHESTER, INDIANA.

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Lee Deguise, Chairman

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Christy Starbuck, Vice Chairman

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Jamie Stump, Executive Director/Recording Secretary