

BZA MINUTES

JUNE 21, 2010

Members present: James Trautman, Dale Clevenger, Bill Davis, Charles Addington, Lee Deguise.

Members absent: Christy Starbuck, Larry Amspaugh.

Staff present: Cathy Flatter, Executive Director; Jamie Stump, Recording Secretary.

Legal representation: Robert C. Oliver.

Others present: See attached sheet.

The meeting was called to order by Chairman, Bill Davis at 7:00 PM.

Chr. Davis: I will call this meeting to order and the date is June 21, 2010. I would make a note to the petitioners coming up, when you are present, please state your name and address for the record. This is a recorded meeting. I would entertain a motion to approve prior minutes as presented.

D. Clevenger: So moved.

C. Addington: Second.

Chr. Davis: All in favor of the motion signify by saying aye. "Ayes". Opposed (none).

BZA 2010-10-V (First Church of the Nazarene, Winchester)

Chr. Davis: First petition tonight will be First Church of the Nazarene, BZA 2010-10-V. It is for a variance on temporarily setting a double wide without a permanent foundation and a variance on side yard setback requirement.

A. Carpenter: My name is Arvin Carpenter. My address is 320 S. Clem, Winchester. I am a Board Member of the First Church of the Nazarene.

Chr. Davis: Okay, I will stop you right there. Did you receive an Article V, Conduct of Hearing when you applied in the office?

C. Flatter: Actually he wasn't the one that filed the petition. It was your pastor, I believe....

A. Carpenter: Right.

C. Flatter: I know that he did receive the Article V.

Chr. Davis: Jamie was it properly published in a proper time?

J. Stump: Yes.

Chr. Davis: Okay. Please continue.

A. Carpenter: Yes we are requesting a variance so we can install two modular class rooms on the property. It was originally the Diggs property.

A. Carpenter: It is a grassy strip between the existing church building and the fellowship hall and we need some more room for class rooms and we are anticipating, hopefully getting some money from the insurance company and do something better but right now we need some

class rooms and this is what we thought was our best solution. Hopefully 2 years or less we will be done with them and have different facilities.

Chr. Davis: Have you located the modulares then?

A. Carpenter: Yes the pastor has located them. One of them is a 24' x 60' and the other one is a 24' x 44'. They will be sitting side by side on the east portion of that grassy strip and over as far to the northeast as we can get them on that side. I won't say as far as we can get them, but within regulations, about 15 feet off the line.

C. Flatter: Just to clarify things for the board, when a modular home is set it is required to have the permanent perimeter foundation and since this is temporary I couldn't approve a permit without the permanent perimeter foundation. Also the rear setback is a 20 foot requirement and they are only going to be 15 feet from the rear property.

Chr. Davis: Do the members of the board have any questions they would like to ask?

D. Clevenger: Will they be fastened down at all?

A. Carpenter: Yes they will be anchored down and they will be hooked up to sewer and electricity.

C. Flatter: They are actually just setting it like a single wide mobile home set in there with the skirting around it with the concrete pads underneath it.

C. Addington: When do you plan on doing that Mr. Carpenter?

A. Carpenter: Within the next month.

Chr. Davis: Are there any members in the audience that would like to speak on this matter? Does the board have any other questions?

D. Clevenger: Are they new?

A. Carpenter: No they are not new. They are used from a school. I don't know where they were but they have been reconditioned.

Chr. Davis: Any further questions? I would like to bring this to the board. If we are entertaining a motion to take action then we need to consider that there would be a 2 year limit presented on this motion.

L. Deguise: Motion to take action.

D. Clevenger: Second.

Chr. Davis: All in favor of the motion signify by saying aye. "Ayes". Opposed (none). Okay to clarify this, this will be 2 years from the date of installation. I need a motion for a roll call vote.

D. Clevenger: So moved.

L. Deguise: Second.

Chr. Davis: All in favor. "Ayes". Opposed (none). Jamie.

A roll call vote was taken: James Trautman, yes; Christy Starbuck, absent; Lee Deguise, yes; Bill Davis, yes; Dale Clevenger, yes; Larry Amspaugh, absent; Charles Addington, yes.

C. Flatter: Okay Mr. Carpenter all you have to do is just come in and apply for permits now to actually set them.

A. Carpenter: Okay. Thank you very much.

BZA 2010-8-V (Jeremy Mullens, Winchester)

Chr. Davis: Next case will be Jeremy Mullens, BZA 2010-8-V. A variance on lot size requirement.

J. Mullens: My name is Jeremy Mullens and I live at 875 W. St. Rd. 32, Winchester.

Chr. Davis: Did you receive Article V, Conduct of Hearing?

J. Mullens: Yes I did.

Chr. Davis: Jamie was it published in a timely manner?

J. Stump: Yes.

Chr. Davis: Okay. Please continue.

J. Mullens: I am looking for a variance for livestock on my property. I did turn one of these in. Do you all have this?

C. Flatter: Yes we made copies of that for them.

J. Mullens: I also have this which is the Fair Housing Act for Emotional Support Animals in Private Housing.

Chr. Davis: Jeremy if you turn this in this will be part of the record. You will not get that back

J. Mullens: Okay. It just basically states that combinations for disabled people can be, let me read it because I can't explain it probably as good as it says it is. "A "reasonable accommodation" is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling." It says, "Since rules, policies, practices, and procedures may have an exclusionary or discriminatory effect on persons with disabilities than on other persons, treating residents with disabilities exactly the same as others will sometimes deny them an equal opportunity to use and enjoy a dwelling." It just goes on and says that courts have held local and state governments to the law, basically.

C. Flatter: Do you want to submit that?

J. Mullens: Yes.

C. Flatter: Okay. Go ahead and hand that in then.

J. Mullens: And as far as the horses are concerned, they don't leave, I have it fenced off so they stay in county property. Part of the property that I have is, about 2.87 acres of it is city.

C. Flatter: This property it is kind of different being that it is this close to the City of Winchester. You can see where it says Doris Hesser there at the top in red. That 021 indicates that this piece of property is actually in the City of Winchester and then the larger piece just south of it is 011. That indicates that it is White River Township. So there is a 5 acre requirement for animals in the ag zoning districts and that is the main reason Mr. Mullens is here tonight.

J. Mullens: I did lease the 4.87 acres that was on the other side of it.

C. Flatter: You did? You got.....

J. Mullens: Yes, I have a contract and all that. That only brings me up to like 3 1/2 acres that are in the county so I am close to the 5 but unless I can do the same thing.....

C. Flatter: So when did you lease that property Jeremy?

J. Mullens: I have been paying on it for 3 months so I leased it 3 months ago. I actually brought a copy and you weren't here. I gave it to somebody else. I can give you another copy.

C. Flatter: No, I've got it. It is here.

J. Mullens: Oh okay.

Chr. Davis: Jeremy how many horses are you planning to have?

J. Mullens: Well I was only planning on having one but we ended up with two.

Chr. Davis: You ended up with two?

J. Mullens: Somebody dumped one out on Chuck Gouker's out on Greenville Pike. I don't know, you might have read it in the paper and he couldn't keep it and nobody would take it so I have it.

L Deguise: How much total land are we talking about? I have heard all kinds of numbers thrown out and they aren't matching most of what the paperwork that we have is.

C. Flatter: I'm looking at this lease here. It is still under the 5 acres even though there is a 5 underneath that Andrew Moorehead name. That is not a 5 acre tract of ground. Like Jeremy just said, I think it is like 3.....

J. Mullens: It is actually 5 acres but there is 2.87 of it that is in the City Limits and then the additional of that 5 is in county.

L. Deguise: But in this case the city and the county have really different rules on livestock?

J. Mullens: Pardon me, can you say that again?

L. Deguise: In this case the city and the county have completely different rules regarding livestock.

J. Mullens: Oh most definitely. I think I will have to go to one of these if I want to get some sort of permit for the other 2.87 acres. Although I have it in hay, I will probably just leave it that way. But I will probably go to the city too. Half of my house is in city and half of it is in county. I have been having issues with the city over my dogs, whether I have to or whether I don't have to and it is crazy.

D. Clevenger: Is this for one horse or two horses?

J. Mullens: Two if possible, yes. They are both quarter horses. One is 15.1 and one is 14.3. The one that was brought to me is 14.3.

C. Flatter: I don't know if some of you do remember that several years ago and when I say several years ago I mean, I am talking about at least 10 years ago. There were horses on this property. That is why the building behind the house was built, was for horses, so it couldn't be grandfathered but it is just a situation that I could understand their confusion. They bought a piece of property that has a barn on it and without knowing the regulations then something like this comes up.

Chr. Davis: Any other questions by the board? Members of the audience, is there anyone that would like to speak for or against this petition?

C. Flatter: Anybody here that wants to come up and speak?

Chr. Davis: Please come forward.

J. Mullens: Do you want me to go sit down?

C. Flatter: You can take a seat in the front row Jeremy. I think there are a couple of them that want to sit down there and talk.

J. Daggett: My name is John Daggett. I live at 4237 E. 400 North, Winchester.

B. Brake: My name is Benny Brake. I live at 219 S. Main, Modoc. We own the property at 895 W. St. Rd. 32.

C. Flatter: You can go ahead.

J. Daggett: We just had some concerns. I know that at one time we were trying to sell our property and one of the gentlemen that has the old ag building on 27 had tried to, was looking at buying our property and he wanted to put livestock in the back area that is fenced in and he was told that wasn't allowed at that time and basically backed out of the deal.

B. Brake: That area that he has the two horses in, is not four acres. It is as big as somebody's back yard and there is not even a fence on the west side. We have a chain link fence on our property that is off of the line and they are using it as their horse fence. They have two horses running in it. The horses have run in there and ate all the grass down and it is only as big as somebody's back yard here in town, is where those two horses are. They are going to break out and then there is going to be a law suit when that chain link fence is broke down by the two horses because it is not on the line.

J. Daggett: The south fence is tied into our fence.

B. Brake: They tied another fence into it and they have thrown horse manure over on our fence that is not even on the line.

J. Daggett: The horses are actually already on the property.

B. Brake: The horses are on the property.

C. Flatter: Do you want to submit the photos?

J. Dagget: Sure.

Chr. Davis: They will stay part of the record.

B. Brake: It stinks real bad.

C. Flatter: You can submit those

B. Brake: Stinks real bad with two horses out there and throwing manure as close as they can on the chain link fence.

J. Daggett: The manure is right on the fence.

B. Brake: There is one of the horses and the other is standing right there. You know, if that is the case, anybody in town could have a horse in their back yard, it looks to me like because that is all the ground they are on is the same as somebody's back yard. Nothing else is fenced off.

Chr. Davis: John we have a question for you. The gentleman that the ag, Phil is it?

J. Daggett: Yes Benny actually dealt with him on it.

Chr. Davis: Okay. Did that issue change his mind from purchasing that property then?

B. Brake: Yes, he was going to buy it if he could put a cow in there.

J. Daggett: He thought it was a better location being on the

B. Brake: Let's say it is in the city. The property they are talking about is in the city also because we are south of them and we are totally in the city so that property has to be in the city also.

C. Flatter: Well, like it was said, it is a strange situation because, this is a picture of his property. This little piece right here is actually in the City of Winchester but where the barn is located and the little bit of pasture that he has besides this that he has leased over here, this is actually in White River Township.

B. Brake: See that barn does not have horses in it. That barn has cars and lawn mowers and they are working on them in there and stuff. There are not any horses in that barn. The only area those horses are is back in that little grassy area that is as small as a back yard.

C. Flatter: I was just saying that was why the barn was built originally.

B. Brake: It stinks there. We are zoned commercial. There could be a restaurant or anything there. We don't know one of these days what it could be used for.

J. Daggett: We actually came up and had it all to C-3 so that we could put basically.....

B. Brake: If you are standing there with two horses and manure over there, it stinks so bad that nobody can stand it there. You can't do anything.

Chr. Davis: Benny what would guess the, where the horses are right now, the numbers of acre?

B. Brake: Oh there is not even a 1/4 of an acre.

Chr. Davis: Half an acre or an acre?

B. Brake: They might be at half.....

C. Flatter: It is actually seven tenths of an acre.

B. Brake: There is not much at all.

C. Flatter: it is.7650.

B. Brake: But they don't even have a fence on the west side of that property.

J. Daggett: They just are using our fence.

B. Brake: If our fence comes loose or we take our chain link down, those horses are going to be on the road because there is not even a west line there. The fence is no fence at all and the back fence is nothing but 3 pieces of rope and that is tied to our fence to.

C. Flatter: And you made them aware that that is part of your property? The fence does not belong to them.

B. Brake: Yes but they want to argue about that all the time. Every time we go up there they want to argue about that.

J. Daggett: Benny has actually, there have been a few confrontations with them and he is actually in the process, we knew where the rods were at when we put the fence up. We got our permits and did everything the way that we were supposed to but since they have moved in there has been a lot of confrontations between them and Benny when he is up there doing work so we've actually went to the expense of what? \$900.00 to have it resurveyed and put up a privacy fence.

B. Brake: Had it resurveyed, that we shouldn't have had to pay since we already knew where it was.

C. Flatter: So the property line, since you have had it surveyed, is where

J. Daggett: They've put the front, this time, since they have resurveyed, they put the front post in and said they would be back this week to finish the back post but when we originally had it surveyed what 4 years ago, we had actually put the fence on the inside of our line.....

B. Brake: We put the fence a couple feet over on us so we

C. Flatter: That is why I always recommend to people to put it on the property line because you end up having issues like this that people.....

B. Brake: It cost us an extra \$900.00.

C. Flatter: There is always an assumption that a fence is the property line.

B. Brake: And it cost them to go over and dump a bunch of oil on the property also. They took buckets of oil and dumped over on our land and the police are in the process of getting the EPA out on them over that. They are not a good bunch to deal with, I know that.

Chr. Davis: Any other questions by the board? Are there any other members in the audience that would like to speak for or against? Jeremy do you have anything else you want to say to this? Either pull a chair up....

C. Flatter: Do you guys have anything else to say? If not I would ask for you to go back and if you have anything else you might come back up.

J. Mullens: As far as the manure pile he is talking about, it is 2 feet away from the fence. I did not know, I was not informed that that wasn't the property line. I was kind of told that's what it was where the fence was and it has been a dispute. He said he was going to get it surveyed and put a fence up and I figured that would take care of the problem. It is not actually a manure pile, it is a mulch pile. I took horse manure and mixed it with saw dust and you turn it over every so often. That is what we used to put around our house. I didn't dump any oil on his property. He had cars in there that he tore apart and hauled out with a roll off a couple weeks ago. He took a whole car and turned it upside down and stuck it on a roll off.

Chr. Davis: Any other questions from the board?

J. Trautman: I have a question on this. He gave us this thing about the disability thing that post traumatic stress disorder, this is not on you? It's on.....

J. Mullens: No, it is on my wife.

J. Trautman: On your wife and how long has she been diagnosed with post traumatic stress disorder?

J. Mullens: A couple years.

J. Trautman: A couple years.

J. Mullens: I have four disabled kids too with the same thing.

J. Trautman: They are all disabled with post traumatic?

J. Mullens: Yes. As far as he was talking about the back yard, I can't spend \$1,000.00 to go put the fence up if I don't know if I can keep my horses. As soon as they say it is alright, I am going to make the lot a little bigger, especially since I leased that other land. I've actually moved a building. If you look in your picture all the way to the back, well I guess you can't see it, but

there was a building back there and I moved it up so the horses wouldn't have to be in that very front barn so they could stay in the back.

L. Deguise: Where is your long term for a fence if Mr. Brake and his partner can prove that it is there fence?

J. Mullens: Well if he puts it on the property line then it is not his fence. My lawyer says half of it would be mine and half of it would be his.

C. Flatter: No.....

J. Mullens: He said I would be liable for costs on the fence. That is what they said Indiana Law was.

C. Flatter: Of course that is a legal issue but.....

J. Mullens: Right, personally and I'm not meaning any disrespect, I don't see right now what the property line has to do, you know what I'm saying? I think they are two separate issues. I have a lawyer about Mr. Daggett anyways, but that is a situation. Of course if it says I have to put a fence up then I will put a fence up. If he would have come over and told me that he owned 2 feet on the other side of the fence, I would have just run three hot wires like I did and put fence up so the horse wasn't on his fence but he has a 6 foot chain link fence and my horse can't reach over it to get in the grass. My horse eats grass up to the fence and then goes somewhere else.

L. Deguise: My question was, it really didn't have to do with the fence, it was more the long term plan if he does prove it is his fence and it is on his property.

J. Mullens: Then I will just have to put my own fence up.

L. Deguise: That was my question.

J. Mullens: Right, I'm sorry, I didn't understand what you meant. I'm hoping to move them and they won't be anywhere around his fence.

C. Flatter: It is understandable why you wouldn't want to put one up until after tonight's hearing to know whether or not you have been approved for this.

Chr. Davis: Any other questions? Any other comments in the audience.

B. Brake: The only thing I'd like to say is I have been very.....

J. Stump: Can you come back up here please. I have to be able to record it.

B. Brake: Okay. He has not been very truthful on things. He's sitting there telling you it is a mulch pile. Well the police have been out there and they know it is a manure pile. You have pictures right there that prove it's a manure pile. It is all the way against the fence. It is not 2 feet away from it. It is on the chain link fence. Manure is going to eat the chain link fence up. He's telling you that he has a hot wire fence up back in there and he doesn't have a hot wire fence up, he has three little ropes up and them horses are going to be out in town and somebody is going to end up getting hurt.

J. Mullens: My horses have been in that for two months and haven't gotten out.

B. Brake: Well they have had grass and grass is eaten down. You are down to nothing.

J. Mullens: I have a round bale sitting in there right now.

B. Brake: As soon as horses get down to no grass, I know what horses do. They will push through that chain link fence to get over to the grass. That is a nature of horses.

Chr. Davis: Okay. I think we have heard.....

D. Clevenger: Is the fence sitting on the line or off the line?

B. Brake: We set it off the line.

C. Flatter: It is 2 feet inside his line.

B. Brake: Two feet inside the line.

D. Clevenger: That doesn't make sense to me.

J. Mullens: Well it doesn't to me either.

B. Brake: When we put it up we put it 2 feet inside that way we could keep it trimmed out and keep the trees out of it and be able to keep it painted.

C. Flatter: You would be surprised Dale how many people actually do that. If they come in and ask us about it and talk to us about it, I normally tell them that to avoid issues in the future that it should be set on the line as long as the post don't go over on the other persons property but there are a lot of people that want to do that so that they can maintain it without having to get on somebody else's property.

B. Brake: And most of them will tell you to stay 4 or 5 feet over a lot of times. I don't know why but that is what they do so you don't get on somebody else's property when you take care of it.

L. Deguise: I set quite a bit of chain link and that is pretty common. Customers do ask to be put off the line.

C. Flatter: It is very confusing though when whoever put the fence up and it is 15 years down the road and that person is not there to clarify it any longer, that is it or is it not and that is why people have to go out and have survey after survey after survey done.

D. Clevenger: I think out in the country it has to set on the line.

L. Deguise: Right.

C. Flatter: And that is why I tell them even in town, I mean as long as they go and approach their neighbor's first.....

D. Clevenger: If he mows all of his lot, he has to go on the other side of his fence to mow it.

L. Deguise: You are right. It is just in the city. Out in the country it is right on the line but in the city a lot of people ask to be put off the line.

J. Mullens: Of course when I bought the property, I wasn't, Mrs. Hesser said that that was the line. She said that two of her husbands feet beside the barn, the big pole barn that he built before he died, was the line. That is basically where the fence is at so I thought that was where the line was.

C. Flatter: Well and you know a lot of times when somebody has lived someplace for so many years and there has never been a survey done and they assume a lot of things and that is why surveys are very important.

J. Trautman: I have a question for you. How long have you owned this property?

B. Brake: Five or six years.

J. Trautman: Five or six years? I remember this property came up, I don't know, it might have been 5 or 6 years ago....

C. Flatter: It was a zoning change, right.

J. Trautman: It was a zoning change back then and there was a woman who did live at that house that did have horses there. I know what you are saying but there was some reason that the guy, the guy that was up here that owned the tire company that went out of business. He was the one that wanted it and I noticed he didn't move down there or he was going to build. Then there was some kind of issue about hazardous material.....

C. Flatter: I had forgotten about that. Team Tire. They filed for a zoning change and were successful in the zoning change.

J. Mullen: Yes Team Tire. I worked there. I worked for him.

J. Trautman: Yes there was something wrong with the property that he couldn't get it because it was a hazardous material problem or something....

C. Flatter: Oh that is right.

B. Oliver: Dry Cleaners.

C. Flatter: I forgot that. They weren't sure.....

J. Trautman: I just remember that was property that had been up here, it could have been 5 years ago.

C. Flatter: Mr. Brakes property and John's is zoned C-3, which is a commercial zoning that wouldn't allow animals and that is what the problem was with that, why the person couldn't put animals on it.

J. Trautman: Okay. I just wanted, you know, now they say that property had been cleaned up but I remember there was something to do with hazardous material or something and that property there, any way.....

Chr. Davis: Any questions by the board or audience? With that being said....

C. Flatter: Now Melanie wants to come up. She is behind the pole.

M. Robinson: I just have a couple questions since I am the animal control for the City of Winchester. My question is.....

Chr. Davis: Melanie please speak into the mike.

M. Robinson: Okay, I'm sorry. Melanie Robinson, 412 Short Street, Winchester, Indiana. Animal Control for the City of Winchester. One of my concerns is where is all the manure from these two horses going to be put?

Chr. Davis: Jeremy.

J. Mullens: I told you we would make mulch out of it.

M. Robinson: You can't mulch out two horses and not create a problem this close in town.

J. Mullens: I'm sorry. I didn't think we had an issue. I have 5 acres to put it on that has hay on it.

M. Robinson: Part of that 5 acres is in town isn't it?

J. Mullens: Yes.

M. Robinson: I don't believe you can spread manure on that that is in town.

J. Mullens: Then I will take it out to Chuck Gouker's house then. He makes mulch too. It is not an issue.

M. Robinson: Okay that is one of my concerns.

J. Mullens: It doesn't stink. That is what is crazy.

M. Robinson: And the possibility of them getting out. He said we have had problems with their dogs. They can't even keep their dogs off the highway so.....

J. Mullens: That problem is rectified too.

Chr. Davis: Anyone else?

B. Brake: I would like to ask one more question. Do you have anything showing that the property is even in their name? This property hasn't actually been sold

J. Mullens: Oh yes it has.

B. Brake: Other than on the contract. It's....

J. Mullens: It doesn't....

B. Brake: You let me talk. I am talking this time. It is under a contract and is still in Doris Hesser's name. It is not legally over into their names.

J. Mullens: It is.

B. Brake: Keep interrupting.

J. Mullens: I even have the taxes in my name.

C. Flatter: What is it that you have there Jeremy? Is that something that can be submitted or....

J. Mullens: A record for search case no: Y-201003-34. Yes here.

Chr. Davis: Jeremy I'm assuming without looking at that that is a recorded contract.

J. Mullens: Yes. This is the buyers closing statement to, if you would like to have a copy of that.

Chr. Davis: That will be with this all right?

J. Mullens: Yes.

Chr. Davis: Okay.

L. Deguise: You said sir that this is recorded at the Courthouse?

J. Mullens: Yes most definitely and so is that lease that she has a copy of, of the other 5 acres.

L. Deguise: I have a question for Mr. Oliver. Would we have to have proof that the property is in the name or under contract in the name to the applicant to rule upon an applicant's application?

B. Oliver: No he's in ownership interest in it then he is a party that can bring forth. Sometimes it will join in both the owner but I'm not sure what he's.....

L. Deguise: My question is Bob, would we as a group, the Board of Zoning Appeals, have to have proof of that before we can even rule on it?

B. Oliver: No. We take whatever testimony that we have and then if there is any court proceedings or certiorari's or anything taken from our decision then it's always better to bring forth the record but no we do not require that in the written procedure.

L. Deguise: Okay.

Chr. Davis: From the documents that he has presented, in my opinion, that it appears that it is properly recorded which is irrelevant but it appears that he has taken the right steps to get that in his name. Is that fair to say Bob?

B. Oliver: No, actually it says record owner is Doris C. Hesser. You don't have a deed to this property?

J. Mullens: No, she holds the deed because I still make payments to her. She is the bank and I am the buyer.

B. Oliver: Okay, you have a contract with her?

J. Mullens: Yes and it is recorded at the courthouse because all the taxes are in my name now.

C. Flatter: It comes to you Doris Hesser, % Jeremy Mullens?

J. Mullens: Actually it goes to her because I pay her the taxes every month, but my exemptions, I will have a disability exemption on mine so I put it in my name so it is cheaper taxes.

C. Flatter: And I have to tell you that it was an oversight on our part. We should have had something in the file. When he brought the land lease contract in we should have also had, we got the one from Moorehead's, but we should have the one from Doris Hesser in there also, but we didn't have that.

J. Mullens: Do you have a copy of the original contract? You know what I mean, where I bought it? Did I give you a copy of that?

C. Flatter: I don't know.

J. Mullens: Because if I did, it actually says on there that we were going to have a horse. I mean, she knows all that.

C. Flatter: I have the one from Andrew Moorehead, which is the property to the east.

J. Mullens: Okay. I'm just saying that it said on that contract, even when we purchased it that we were going to have a horse because it also said that I was going to work on small engines out of the shop or whatever. I've only got the purchase agreement. I don't have a copy of the contract with me, unfortunately.

C. Flatter: Jamie is going down to the office. Jeremy had filed to have the hearing, I don't know if it was April or May now and didn't get the notices sent out in time and so there may be, the contracts in that file and she meant to get it and copy it with this petition but I will tell the board that we haven't heard anything from Ms. Hesser, one way or the other, negative or positive, about Jeremy and the horses.

Chr. Davis: Jeremy, just for the record, I want to clarify my last statement. After speaking with Bob and reviewing this, it looks like the deed is just in, right now, Doris's name.

C. Flatter: It is a contract purchase....

Chr. Davis: It's a contract purchase.

C. Flatter: So there would not be a deed until the contract was completed.

Chr. Davis: Right, okay.

J. Mullens: What you are saying basically is like the deed would have a lean on it from a bank until you paid the bank off. Is that what you mean? Same thing right?

C. Flatter: Yes, right. Other than when you have a mortgage with the bank, the property is automatically put in your name. You own the property but you are still paying for it, which is opposite with a contract. A contract stays in the original property owner's name. It is not put into your name until you have finished out the full contract.

J. Mullens: So do I have any other lesser rights that way?

C. Flatter: I can't answer that. I am not an attorney so I can't answer that.

J. Mullens: Because I didn't think I would but...okay.

C. Flatter: But when you have a contract, I mean as long as that original property owner agrees with whatever it is that you are wanting to do, that is the main thing.

L. Deguise: In this case, you said Doris has made no comment whether she agrees or doesn't agree to her land?

C. Flatter: No, I have heard nothing from her one way or the other.

C. Flatter: So I am assuming that Doris knows the horses are there. I shouldn't assume things but I am assuming that she knows that they are there and that she doesn't have a problem with it because she still lives here in Winchester.

Chr. Davis: Okay, I think we've got that some what figured out. I would entertain a motion to take action.

C. Addington: So moved.

D. Clevenger: Second.

Chr. Davis: All in favor of the motion signify by saying aye. "Ayes". Opposed (none). Now I need a motion for a roll call vote.

J. Trautman: So moved.

D. Clevenger: Second.

Chr. Davis: All in favor of the motion signify by saying aye. "Ayes". Opposed (none). Jamie we are ready for a roll call vote.

A roll call vote was taken: Charles Addington, no; Bill Davis, no; Dale Clevenger, no; Larry Amspaugh, absent; Lee Deguise, no; Christy Starbuck, absent; James Trautman, yes.

C. Flatter: Okay Jeremy that is 4 – no and 1 – yes so the petition has not been approved.

J. Mullens: Okay. Where do we go from here? Because....

C. Flatter: I will let our attorney address that.

J. Mullens: You are breaking Federal Law so I just want to know where I go from here.

B. Oliver: You have a right to appeal to the Circuit or Superior Court under writ of certiorari within 30 days of the decision.

J. Mullens: Okay.

B. Oliver: So it will be 30 days from today's date.

J. Mullens: So I can leave everything like it is then until we go to court?

B. Oliver: Well I can't advise you what to do.

J. Mullens: Right, but I'm just saying is somebody going to come out and write me tickets? Or....from having my horses there? Where do we go from here?

B. Oliver: You will have to contact your attorney.
J. Mullens: What is the boards power to come and take my horses away from me?
B. Oliver: Well I don't know that that would be done but.....
J. Mullens: Okay. I will talk to my lawyer.
C. Flatter: If you don't have anything filed within 30 days from today's date.....
J. Mullens: I'm going to pay the money tomorrow and he will take care of it....
C. Flatter: Then we would have to file a
B. Oliver: For injunctive relief, I suppose....
C. Flatter: Right and go through that process.
J. Mullens: That's fine. So is that it?
C. Flatter: Okay. That is it.
J. Mullens: Thank you very much.

BZA 2010-11-V (Mark & Mary Ellen Keever, Farmland)

Chr. Davis: Our next petition is Mark and Mary Ellen Keever. BZA 2010-11-V, a variance on height requirement for a fence. Please state your name and address please.

M. Keever: Mark Keever, my address is 3578 SE Indian Trail Lake Road, Farmland, Indiana.

Chr. Davis: Mr. Keever, did you receive Article V, Conduct of Hearings?

M. Keever: Yes.

Chr. Davis: Jamie was it properly sent out and received?

J. Stump: Yes it was.

Chr. Davis: Okay. Please proceed.

M. Keever: Well I think we had an understanding from a phone conversation that we had placed to the Area Planning Commission last fall, last September and asked what the requirements for putting a fence on our property and we were told a 6 foot fence could be at the rear and a 4 foot fence in the front so based on that we proceeded to remove an existing 5 ½ - 6 foot fence on our property and replace it with a 6 foot board fence to match the existing 6 foot board fence that we installed on the north side of our property last fall and the primary reason we did is because we had planned to install a swimming pool in the location up by where the 6 foot fence is right now and reading the codes and stuff we assumed we were in compliance with the 6 foot fence requirement in the back and also protecting and securing our swimming pool.

C. Flatter: I'm not and we get lots of inquiries about fences and 9 times out of 10 when we tell a person from the front line of the house out to the street right-of-way 4 feet, from the front line of the house back 6 feet, but there are extenuating circumstances and I'm not saying that you might not have been misinformed. That happens. We are human beings. Once I received information on the fence and started looking into the rules and regulations, as a matter of fact, Bob and I had a conversation about it today, with it being lakefront and road frontage, everybody at Indian Trail Lake is stuck with two front yards. So this would be an issue for anybody at Indian Trail Lake that would want to put up a fence. The way our Zoning Ordinance is written today and after looking through your restrictions and covenants, which doesn't address it, anybody that would want to put up a privacy fence would have to file for a variance, whether it be on the lake side, whether it be on the road side. I don't know if it was myself that talked to you or if it was office staff but I am saying you could very well have been misinformed because circumstances like this don't arise very often and I apologize for that.

M. Keever: We just had some other issues with it to. We have a dog that has some severe allergy problems and he was prone to climb the other fence and so this one has assisted us in

being able to protect our dog from being able to get out and then we just didn't think, reasonably anyone would put a 6 foot fence up on the lakeside of their property.

C. Flatter: Well that makes sense.

M. Keever: Just almost assume that.....

C. Flatter: I don't think that anybody that is facing the lake would want to put up a fence that would block their view of the lake.

M. Keever: But most lakes just have a small access road. We have a one lane private road around the lake.

C. Flatter: But under planning and zoning that is what we have to consider your street frontage because that is your only access.

Chr. Davis: Mr. Keever do you have anything else you would like to add to this?

M. Keever: Well concerning the swimming pool that we plan to erect, we didn't go ahead and proceed with that because it is 5 foot deep and the fence would only be 4 foot high and when we looked up the State Statute on that it said that you had to have a minimum of 5 foot surrounding your pool.....

C. Flatter: Sometimes your home owners insurance requires more of a fence than that 4 foot fence also.

M. Keever: Also it should be 4 foot above the grade which actually would make it a 9 foot fence if we complied with that and then we looked at the Randolph County Ordinance and it said to secure the pool or the entire yard and so I guess we thought we were complying with that and protecting ourselves because we have now a public easement on one side of our property, which is just increase traffic and curious people, so that is where we came from.

Chr. Davis: Board members do you have any questions at this time? With that I will take that as a no and I am sure there are some folks in the audience and if you guys would like to grab a front row seat. Who would like to come up and speak in favor or against? One at a time.

R. Sharp: My name is Rick Sharp and I live at 3382 Indian Trail Lake Road. I am one of the property owners out here at the lake. First of all, I would like to point out that we have the set of by-laws out there at the lake and I know this board isn't here to enforce by-laws out there on the lake but I would just like to read a couple of the by-laws to let your board know what sort of violations out there that have already been violated. It says here, "No building shall be erected or located near to the front or rear property line than the building lines that are designated as such on the plat of said addition. No building shall be erected near the side property line than 10% of the width of the building plot at the building line and no building or other structure shall be erected, built or located upon any easement as designated on the plat of said addition." First of all, we had it surveyed because the association has an easement that runs down the north side of Mr. Keever's property. After we had it surveyed, he built the fence over the line into the easement about an inch up by the road. Down by the lake, the fence, you couldn't get anything between the fence and the certification pin. We've also, one of the other rules, "No building shall be erected, placed or altered on any building plot in said addition until the building plans, specifications on plot plans showing the location of the buildings has been approved in writing by the Board of Directors and the Randolph County Planning Commission." Mark Keever did not contact the Building Board Committee there on the lake before he built his fence. He also has a shed on the south side of his property which he did not contact the Building Committee or the Association to notify us of him building it and I also believe that it is too close to the property line as stated by this 10% of the width of the building plot stated here in this rule.

R. Sharp: I would also like to point out that I measured the fence going down the north side of the property and it is 6.5 in some spots. He has got the posts that are sticking up close to about 8 foot and his plans are to put lattice on top of the 6.5 fence which is going to put it up around 8 feet tall. He also did not pay any attention to the triangle rule. He has created a blind

spot. That easement, anyone that decides that they are going to use the easement and they don't want to carry their trolling motor battery down to the lake, if they pull in there, well it is so close to the road that if they go to pull out there is a curve in there and with that not observing the triangle rule, well if they pull out they may get hit. There is also one other rule I would like to read here. Also, it states, "The structure it shall be in conformity in harmony of the exterior design with the existing structures in said addition". There is no other fence like it on that lake. No one has a fence that has got such a tall, boxed in all the way up by the road. No one that I have talked to approves of it and if everyone out at the lake would decide to build a big fence like that, it wouldn't look good and it probably wouldn't do much for our property value either. That is about all I've got to say, if you have any questions.

Chr. Davis: I have a real simple question for you. At the end of the day, your issue is safety and not complying with the by-laws?

R. Sharp: Safety, not complying with the by-laws and not being in harmony with the rest of everybody's property out there.

Chr. Davis: I will add to that, Bob correct me if I am wrong, the by-laws may not effect our decision here, however you did bring in a point

C. Flatter: Rick mentioned a clear-sight triangle and it's in our definitions. A clear-sight triangle means a triangular area, within which nothing can be erected, parked, placed, planted or allowed to grow in such a way as to materially impede drivers' vision between 2 ½ feet and 8 feet above grade, row crops excluded. A clear-sight triangle shall be established as one of the following: The first two does not pertain to this issue but number 3) "On a lot which has a driveway, abuts an alley or which is next to a lot which has a driveway, the two clear-sight triangles are formed by the street right-of-way line, both sides of either the alley right-of-way or of the surface edge of the driveway, and the line connecting points ten feet from the intersection of the street right-of-way line and driveway or alley lines extended." Basically you just have to get in your mind it is a triangular area. If you have a perfect rectangular lot wherever that alley or that easement or that right-of-way abuts to that corner of that rectangle than it is a 10 foot triangle coming in so that there is no obstruction of view for anybody coming in and out of that easement, drive, street or whatever it may be.

Chr. Davis: This shed or so may be in violation.

C. Flatter: The shed, the permit was issued quite a while ago for the shed. That was not a part of anything that I had done. They came in and did get a permit for the carport also. I took the information from the previous permit, added the carport on there and they were still far enough away from it and I could issue the permit based on that. After going out there and looking, you can see that there is a utility pole. I'm not sure where the survey markers are, so I can't answer that. You can ask them when they come back up.

Chr. Davis: I will bring that up, just to let you know that we appreciate you, you know missing the by-laws but.....

C. Flatter: I can't enforce restrictions and covenants for all the different sub-divisions that there are in Randolph County. What I am in charge of is enforcing the Zoning Ordinance and so it is up to the Lake Association to handle this situation however you think it should be handled but I can not enforce those.

R. Sharp: Is that it?

Chr. Davis: Well yes for a moment. Bob, help me out on this too. Mr. and Mrs. Keever we will let you speak on this behalf here but I would want to add, if there are others out there in the audience, I'm not sure if we really need to hear any more information about by-laws.....

C. Flatter: If there is anything different other than what Rick has brought up and somebody wants to address something different than that then you are more than welcome to come up.

Chr. Davis: Okay. We will let you guys come up. Mr. Sharp, would you grab a seat in the front row.

R. Sharp: Yes.

Chr. Davis: Thank you.

J. Trautman: You have another guy in the front row who wants to speak.

Chr. Davis: He will but I am going to let them entertain the

C. Flatter: Address what Rick has brought up.

Chr. Davis: Address what Rick has mentioned. Okay Mr. Kever you can proceed.

M. Kever: I guess I didn't really quite understand all he meant about the easement and you know, the triangulation stuff there is that an issue? Is he saying that the fence is in violation?

C. Flatter: I think I had told your wife that if there is any obstruction to a driveway, because you do have an easement on the north side, if there is an obstruction of view of somebody coming out of that easement then that is when the clear-sight triangle applies to your property or if somebody has a driveway or whatever it may be, if your fence is obstructing the safety of those vehicles coming in and out of that easement, that is when this applies.

M. Kever: We are 12 feet back from the road.

M. E. Kever: The trees gone.

M. Kever: This has all been cleared now by the corporation out there.

M. E. Kever: They removed everything.

M. Kever: It is a clear shot. You can see through there clear down around this bend. You can see the road back in here.

C. Flatter: That is the view looking from the south looking north, that picture is?

M. Kever: Yes.

M. E. Kever: Those things are gone now.

C. Flatter: That is one that has been submitted.

Chr. Davis: Mark how long have you guys been there?

M. Kever: Twenty-four years.

Chr. Davis: Okay, thank you.

M. Kever: Again, I guess our concern was more about our swimming pool and being able to protect ourselves from liability situations in that that we clearly see that as our backyard. That is where the garbage cans are and where we park and it is not a typical neighborhood with a street front. When people go to the lakes, no that is just kind of an access road back there and it is not really considered the front of your property.

Chr. Davis: So at the end of the day, if this is granted and you have the 6 foot fencing, what does that do to your neighbor's though? Is that going to disrupt their view?

M. Kever: Well the neighbor that lives in back of us, Andy Cline, was notified and we talked to him and he has no problem with it at all. The people on the other side of us, the Small's, they have never said anything to us about it.

C. Flatter: Do they have a home on the property?

M. Kever: No, it is an empty lot.

L. Deguise: Because the property is empty, we are granting a variance on a fence that will remain beyond you and I don't mean offense to that but you could easily sell or whatever. The property that the Small's currently own today, they may not own tomorrow or somebody in the near future, may or may not.

M. Kever: They couldn't see the fence from their property.

L. Deguise: But I'm looking at the plot or the layout that we were given and I am looking at the south corner, not the north corner and the south corner, I don't see a photograph of it but can you tell me how far that 6 foot fence is

C. Flatter: It is not on the south. They have trees and shrubs.....

L. Deguise: On the south.....

C. Flatter: That basically is their fencing on the south side.

R. Sharp: They have a fence down by the lake on the south side.

M. Keever: Yes.

L. Deguise: Okay, it is just hard to see. I can't see all of it.

C. Flatter: But it is not a privacy fence.

L. Deguise: That is the nearest property line that I could see to the road.

M. Keever: Up there where you are talking about, we don't have a fence there.

M. E. Keever: It is shrubbery.

Chr. Davis: Okay, I'm going to interrupt for just a moment here. Unless you are up here, please zip it. Thank you. Mr. Keever did you want to proceed with anything else?

M. Keever: No.

Chr. Davis: Okay, thank you. Board members do you have any other questions at this present time? I will entertain the next audience member.

G. Swank: My name is Gary Swank and I live at 3277 SE Indian Trail Lake Road, Farmland, Indiana. I am a property owner out there at Indian Trail and I have been out there about 5 years and in the past 2 years I have been Secretary/Treasurer for the Association and basically I can't give you exact numbers but all the time this fence and the easement situation was going on, I have been aware of and when the fence went up, I can't recall talking to anyone that had any complaints about the fence.

G. Swank: I didn't talk to everybody but in my being the Secretary/Treasurer of it, I had occasion to talk to several of them and a lot of people aren't close enough to it to have any concern about it. No one raised any complaint to me about it. The people that own the property immediately to the north of that fence, bought that property well aware of that high fence there.

C. Flatter: So it was a recent purchase?

G. Swank: Yes very recent.

C. Flatter: Elwell?

G. Swank: Elwell moved out and it is Speice that are in there now. I think he is a Master Commissioner in the Courts of Delaware County. They had no qualm about the fence. They have a little qualm about the easement, which I will attest that it is not being maintained by the committee out there. I don't think that easement is built or designed to have any traffic coming in and out of it. Maybe foot traffic, but not for any vehicles of any kind. Never was set up that way.

C. Flatter: Still grassed area?

G. Swank: Right and it is very rough terrain and now that committee out there isn't even maintaining it to look good for the neighbors that just bought the place. There are other issues.....

C. Flatter: Did they come to the meeting tonight? I'm sure that they have heard that there was a meeting tonight, the new property owners.

G. Swank: I don't know. I didn't know anything about it until I received a registered letter. I was not notified to come out here and speak....

C. Flatter: Because it is just the abutting property owners that are required to be notified.

G. Swank: Okay, well maybe the Association out there may have gotten notice to some of the other property owners out there to appear here. I don't know. I didn't get notified for it.

C. Flatter: I am sure that the letter that was sent out was sent, it was still listed under John and Jenny Elwell at that address, whether those people, I don't know if Elwell's signed the certified letter...

J. Stump: Yes.

C. Flatter: but sometimes things like that happen. When something is sold and it is not transferred, we have to send it to who we have listed as the property owner.

G. Swank: That should have been the new people there anyway, irregardless of that.

C. Flatter: It sometimes takes a while for a deed to be recorded after a person has actually purchased a property.

G. Swank: I don't know how this fence directly affects any body out there except the adjoining properties. That would be the one to the south, the one to the north and then the one to the east. Again, like I said, I have talked to several people around there and yes it is viewable and so far as a traffic hazard, they recently cut down a large tree right there on that corner and made it a little more visible for traffic, but anyway, no one has voiced any opinion against the fence that I know of. And I feel like it should be there for their own privacy, for their dogs and for their pool or whatever.

Chr. Davis: It looks like the property owner to the east would be Cline. Is that correct?

G. Swank: Yes I believe that is correct.

Chr. Davis: Are they here tonight? Are they present?

C. Flatter: Andy Cline?

Chr. Davis: Members of the board any questions or comments? Thank you. Would anybody else, Gary you can stay there for a moment, that would like to entertain that discussion right here with him? With Gary?

H. Sharp: I would like to say something.

Chr. Davis: In reference to what Gary is talking about?

H. Sharp: Yes.

Chr. Davis: Okay.

H. Sharp: My name is Hubert Sharp and my address is 3475 SE Indian Trail Lake Rd., Farmland, Indiana. My property is just north of Mr. Keever's and I can tell you right now that that fence is an eyesore and a nuisance and it is a detriment to other people that own property out there. I'm sure it'll bring down the price if you wanted to sell your property. Mr. Swank doesn't seem to understand that, but that is up to him. That is all I have to say if that is okay.

C. Flatter: You might as well continue with opposition then they can address everything.

Chr. Davis: We are going to continue with this then you can

C. Flatter: Then you can address everything at the end. If you want to take notes or whatever.

M. Keever: Okay.

Chr. Davis: Okay, next.

R. Penix: Ronald Penix and I live at 3646 SE Indian Trail Lake Road. I live at the third property down from Keever's.

C. Flatter: South of them?

R. Penix: South of them and I also think that it is an eyesore. Mr. Keever has wood piled up against his fence that he has there now. His firewood, I guess, with a tarp over it is an eyesore. Everybody is supposed to mow across the street from their property and weeds are 4 foot high. He is not taking care of that and I just think it is an eyesore and also think that the property value will go down on everybody's properties around him. That is all I have to say.

C. Addington: Are you an abutting property owner?

R. Penix: Yes I am. Well three houses down.

C. Flatter: It's just beyond the bottom of this picture here.

J. Trautman: On this map you have to at least be four.

R. Penix: The third house but there is a property in between.

J. Trautman: Do you live next to Reddin's?

R. Penix: Yes.

J. Trautman: Then there is Cook, then the Small's.....

R. Penix: Yes but the Small's there is no house or anything.

J. Trautman: It doesn't look like there is one for Cook either, is there?

C. Flatter: Yes there is. It is just further out toward the lake.

J. Trautman: Okay, well we have a very small picture here. Of a very big lake.

R. Penix: And they are talking about Clines' living east of there and that is not even on the lake property.

C. Flatter: Yes but the property abuts their property, well the association property.

R. Penix: The association property right.

Chr. Davis: Does the board have any other questions or comments? Thank you Ron.

Second row.

J. Etchison: My name is Jan Etchison II and my address is 3642 SW Indian Trail Lake Road. I know you don't want us to refer to our corporation rules or by-laws. I know these are recorded in our plat with the county. The only reason I am going to refer to these is because I'd like for the purposes of this hearing that we all be considered abutting property owners because the easement that is in question that is directly north abutting their property is considered part of Out lot 1 and we as a corporation pay dues to pay the taxes on that property and as such we are all shared owners of Out lot 1, so we are all technically abutting owners because we all do pay dues. In fact, Rick Sharp referred to a survey, we spent more than \$5,600.00 with Beals & Moore Associates last year to have our whole property surveyed. The lake, all accesses, all easements and all common ground because the property behind the Cline residence was in question on who actually owned that, whether we should maintain it or whether it was his property. Part of the reason for that was there was a rumor that he was going to extend his leech field and we wanted to make sure that didn't come onto our property. We did spend that money but the other reason for that survey, and it was voted on at our annual meeting, was to figure out exactly where the lot line was on the easement in between the Keever and the Elwell property. It turns out that the bushes that directly near the bushes that are currently there now on the south side of the property were planted in the middle of that easement by the previous owner, unbeknownst to the Keever's and we went through in Judge Toney's Court, a 2 day trial concerning three branches being cut on those bushes approximately 6 feet long, it was like a 36 count law suit that cost us over \$12,000.00 to defend ourselves. The Keever's did sue our association so before we removed any bushes, cut any more limbs or anything, it was voted on by our association that we have a professional come out so that we didn't get the whole, "The fence is the line". When I buy property, I get a survey and I get it recorded. I have done that with every property that I have purchased. We wanted to make sure that we knew where the property was on the north side of our dam so that if we had any issues with the DNR and if we needed to widen the outlet pipe we could do that. Another thing I would like to point out in our by-laws is number 10. I guess this goes to what Mr. Swank was saying is that nobody uses that. This is under Building Codes, Rules and Restrictions. "Easements of the respective width and respective locations designated in the plat are primarily meant for the owners of lots not adjacent to the lake but available to other owners if needed to launch vessels." Based on that and based on that is part of Out lot 1, if you take your aerial photo and go see Fred at the Courthouse and have him zoom in far enough, our plat number appears on that 10 foot wide easement. We do pay taxes on that as a shared association.

C. Flatter: We have that and it shows on here....

J. Etchison: So it is and for the purposes of this hearing, I would like for that to be considered a driveway because even though right now it is not maintained, we need to bring dirt in there. We haven't brought dirt in there because there is two great big boulders sticking out past Mr. Keever's fence that he has built around that and based on the de-litigation that happened and the cost that was involved, everybody has wanted to just make sure we do this so nobody went to the Secretary of the Board and made a complaint or said, "We have a problem with this".

We thought we would go through legal channels, ask about the fence and find out what was going on and tonight is our night, I guess, in court, so to speak.

Chr. Davis: Jan question for you. Has the survey been performed and when?

J. Etchison: Yes it was performed and paid for last fall.

Chr. Davis: Do you have your answers?

J. Etchison: Yes.

Chr. Davis: I'm just trying to

J. Etchison: In fact, we started cutting on the bushes the very next day after the pins had been driven and the Keever's called the sheriff and tried to get the Randolph County Sheriff Department to tell us to stop. The officer talked with them and then we talked with the officer and we said, "Officer we will stop right now if you tell us to. We've been to court. We went through the whole thing about getting the survey"....

C. Flatter: So this was after court?

J. Etchison: Yes in fact, the court date was in the spring and we didn't get our survey until late fall so we cut those bushes down in the fall and that was the 5 foot fence Mr. Keever was referring to. It was a metal expanded wire, kind of green plastic coated fence that was behind the bushes and actually attached to it. When we removed the bushes we made sure that we did not disturb that and so that his dogs would not get out, attached it back up there. Any way, I told the deputy that we would stop and he said, "Sir I have no jurisdiction here. You do whatever you need to do". So we proceeded to cut the bushes down. Then the fence came into play. The shed did appear and the plans for that, I guess there is a permit on file. When Mr. Keever stated that his fence was 12 feet back, I maintain that is not the case. We know where the survey marker is and for the purposes of this hearing, I would like the survey pin to be considered the front of his property because anything beyond that is the 40 foot roadway....

C. Flatter: How far is he from the pin?

J. Etchison: The post is right on the pin and I would like the clear-sight triangle to start from there back.

C. Flatter: Right on the pin and so that is marking his northeast property line that you are referring to?

J. Etchison: Correct the northeast property line. In fact, where he parks his car currently right now is.....

C. Flatter: In the right-of-way?

J. Etchison: About 4 feet of his car is in the

M. Keever: Everybody's is.

L. Deguise: May I ask a question sir? Are you an officer of the association?

J. Etchison: I am a past president, yet. I have lived at Indian Trail Lake for 10 years. I am not currently an officer but I was an officer.

C. Flatter: And who is the current president?

J. Etchison: Rick Sharp.

L. Deguise: Now when, I hate to go this direction, but I would like to keep this flowing correctly so I know where I am going.

C. Flatter: Rick if he is going to ask you some questions, could you come back up here please.

R. Sharp: Sure.

C. Addington: There is room for both of you there.

J. Etchison: We like each other too.

L. Deguise: Just for the record, the comments that Mr. Sharp made, are you speaking for your association?

R. Sharp: Well, mainly as a property owner but as in reference to the comment that the easement was not up kept, we have been waiting on the rain to slack up. I have a dump truck lined up ready to dump dirt and to spread it all out. I also, there is no sense in keeping it mowed you have to weed eat it because it is all rocky and after we took those bushes out and stumps, we have to fill it in, but I would also like to let the board know the association was contacted through our Secretary/Treasurer Swank through a certified letter and he would not notify the association of this meeting. We had to hear about it in the paper. He set on that letter and wouldn't let that information out.

L. Deguise: Well as far as this part, I hate to interrupt you, but I don't want to go on with this, the repetitive over and over with the same things. What we have on file, respondent, for lack of better terms, we send it to who the association is deemed to be the recipient of....

R. Sharp: Yes and at that time he was the Secretary/Treasurer....

L. Deguise: Right but that is up to the association to change that with the county if they so want to.

C. Flatter: We brought that to Rick's attention that address notification would need to be changed.

R. Sharp: I would also just like to make one thing else known, the previous owner's John and Jenny Elwell, I was very good friends with them and they were horrified with this fence that has been put up and I have not talked to one person out on that association that likes that fence. It is an eyesore and it looks ridiculous.

L. Deguise: The reason I asked you to come up here, this gentleman asked that we consider the out lot 1 to be common property and therefore, I mean, you are asking that and therefore you are asking that all be considered abutting property owners...

R. Sharp: It is.

L. Deguise: Then I am asking you, are you speaking for your association?

R. Sharp: Yes I am. I am standing behind these by-laws right here because that easement is reserved for the people that do not live adjacent to the lake which is also my dad plus fortunately.....

L. Deguise: Unfortunately the by-laws, I am also a developer and I have also developed properties and written by-laws myself, they really don't have much bearing on us. They are more of a civil document than a legal document in this manner as far as zoning goes. You can sue them by all means in Civil Court. Correct me, if I'm wrong Bob, you probably don't need to, but those unfortunately gentlemen don't have a whole lot of bearing on what we have to decide. We have to decide county rule.

J. Etchison: Yes. I only brought that up because you said is anybody an abutting property owner? We all own that and so as a private owner.....

L. Deguise: Right and since you said that I wanted to hear from him that he is representing them all.

J. Etchison: My little 57, because there are 57 property owners, my 57th piece of that lot, I would like for that to be considered an easement or a driveway or an access and that it is there for launching vessels and that is start at the pin. I would also like that, I don't think the post office delivers to somebody's backyard. Your mailbox is at the front of your house. Mr. Keever's mailbox is at the front of his house, not at the back of his house.

R. Sharp: The fence goes all the way to the water.

J. Etchison: Nobody delivers mail on an alley. They deliver it to the front of the property. That is where you are supposed to have your mailbox, is at the front of your property.

C. Flatter: Have you had an association meeting and discussed this issue? At an association meeting? I'm asking, not that we can enforce anything there, but what is it, if there

was a meeting and this was discussed, what was the general opinion of the people that were attending the meeting?

R. Sharp: Well we didn't have a meeting on it because we didn't know about this until the last minute because.....

J. Trautman: You knew about the fence.

R. Sharp: Pardon.

J. Trautman: You knew about the fence.

R. Sharp: Well yes.

J. Trautman: Well didn't you call an association meeting then about the fence and ask them not to put it up or whatever, because it is your association. You don't have annual meeting or.....

J. Etchison: Yes, we have one annual meeting.

J. Trautman: One annual meeting but you have I don't know how many pages or rules and regulations there that you've got, that it is just nothing, as far as I can see because you don't enforce them yourself. You don't have a meeting to enforce them. If somebody is going to do something wrong. How many fences are out there?

J. Etchison: I am going to say probably 4, 5 or 6 chain link fences.

J. Trautman: Well all I'm saying is.....

R. Sharp: There is nothing like that out there.

J. Trautman: Well be that as it may, I've got a fence on my side yard that the fence is six foot but the slope of the land is probably seven.

C. Flatter: You can vary with the grade up to 2 feet.

J. Trautman: It's going to vary. What I am getting at is they're asking for a variance from the county for a fence. You are asking us not to do it because of your law or your by-laws whatever.

J. Etchison: I'm asking this to be a guideline.

J. Trautman: I want you guys to understand that if we make a decision one way or the other, it has nothing to do with those by-laws.

J. Etchison: This was in rebuttal to what Mr. Swank and some other people had said, not to sway your decision or anything.

J. Trautman: Well, I'm just.....

J. Etchison: When Mr. Swank said he didn't know about any of that whatever, I mean did you not receive something, was our association notified?

C. Flatter: Yes.

J. Etchison: Can you tell me who signed for that.

C. Flatter: Yes he had to sign for it. Somebody signed for it.

R. Sharp: Is there a signature on that?

C. Flatter: We will see whose signature is on it.

J. Stump: Gary's.

J. Etchison: Gary Swank, well he just sat up here and he said he didn't even know about it.

C. Flatter: He did sign for it.

J. Stump: June 10th.

J. Etchison: So, I guess the only other

J. Trautman: All I'm asking is you have, I only have one page here and it goes D) to O) and then you said something about number 10. It sounds like you have almost a constitution there for regulations.

J. Etchison: We do and I moved in there and it is what was in place and I try to follow it as a property owner.

J. Trautman: I'm not arguing those points or arguing against you or your association or anything, but it seems like your association should have stopped the thing to begin with by just being.....

J. Etchison: To be quite honest, everybody is afraid to do anything because of the \$12,000.00

R. Sharp: That we just spent.

J. Etchison: That we just spent .

J. Trautman: But if you are right you're right and if you're wrong, you're wrong.

J. Etchison: That is why we are here. We thought let's do it the right way. We came and talked to Cathy and said, "What about this fence? What do you think? Can it be done?" and she said, "I will go out and look and if I find it in violation I will notify the Keever's and they have two weeks to deal with it". We did do what we were supposed to do. Rather than get into the Hatfield and McCoy type situation, we thought we would do this the right way. Let's handle it and your ruling is going to be your ruling. I am just pointing out.....

C. Flatter: Then, you have your ability to file something in court if this decision is and you know that because you've

J. Etchison: I heard Mr. Oliver say that and hopefully we won't have to do that because that is going to bring about what everybody was afraid of. More litigation, more cost, court cost and attorney fees and all that.

J. Trautman: The only thing I can see is there is a safety thing if this triangle of view....i forget....

C. Flatter: Clear-sight triangle.

J. Trautman: Clear-sight triangle, if that is an issue, then I can see that being a safety issue...

C. Addington: That's not part of our code though is it?

C. Flatter: Yes it is. Clear-sight triangle.

J. Etchison: Yes it is and I would like to say that we need to go with the natural slope of the land or at least the way it is now because on the south side of Mr. Keever's fence, if you measure from where his garden is to the top of the fence, it is only about 4 feet because he's built all that property up, hauled dirt in.....

J. Trautman: It has to go with the slope of the land outside his fence. I mean that is the true slope of the land.

J. Etchison: Okay. I guess the only other thing that

J. Trautman: If he builds up his property on the inside with horrible gardens or whatever, that can't be considered.....

J. Etchison: I just don't want the height started from in there but that is your decision.

J. Trautman: All I am saying is, you said something about it being 8 foot at one point, well if the land buckles up there, because you said it is kind of rocky in that particular

J. Etchison: Well the rocks were brought in and the dirt was brought in.

R. Sharp: As soon as the easement issue was opened up to get that opened, he hauled in a truck load of rocks and built up the foundation over into the easement and then built the fence on top of the big rock garden, which if you stand in the road, you will be looking at about 7 or 8 feet.

J. Etchison: I have two young children and my wife walks around the property with our dog and unfortunately even though we have a 15 mph speed limit and our by-laws say 19 ½ and we used to have a sign that said that and it was a catchy thing and everybody looked at that, people's guests will go 35 or 40 and there are several blind corners there. I would like to, you mentioned the Small's property, there currently isn't a house on there, if that property ever does

sell, there will be a driveway there and I would like it that you look at the shed and maintain a clear-sight triangle on both sides of it, please.

Chr. Davis: Quick question for you. In your by-laws, fences are allowed?

J. Etchison: I don't see anything in there that says they are not allowed.

Chr. Davis: Okay, and I think at the end of the day, it boils down to, they are petitioning a 6 foot fence as a variance.

C. Flatter: Yes, they are requesting the variance because this is basically classified as a front yard. Normally a front yard can only have a 4 foot fence.

J. Etchison: And isn't that from the front corner forward?

C. Flatter: From the front of the house.....

J. Etchison: Their house is built on an angle on the lot so there would be two different 4 feet measurements. I mean, it is not going to go back 60 and 60. It would be 60 and 30 if the house doesn't sit square to the road.

L. Deguise: Correct me if I am wrong, we have to go by the lot itself, how it faces the road and not how the house is on the property?

C. Flatter: It says from the front line of the house.

J. Etchison: I read it and it says the front corner.

B. Oliver: Building line.

C. Flatter: The building line.

B. Oliver: It just happens to be a little peculiar when it talks about the front line when it is the road and also, excuse me, the front yard for the water of course and for the abutting street. Actually this needs to be redone. I don't know that we have ever encountered this since....

C. Flatter: We haven't.

B. Oliver: Since they have put this together.

C. Flatter: Well I can say in 25 years it has not been encountered.

B. Oliver: I think the other thing is, that if there is a clear-sight triangle issue and the variance, you have authority under Article XVIII to condition the fence by the removal of that for it to become compliant if you were going to grant the variance from that standpoint. That is just something additional. It is just the Ordinance is very peculiar in the way that it is written because it speaks also where you have a through lot, which means, street to street, no alley on either side. The Ordinance again talks about each front yard so it is just something the APC is going to have to take up and amend or at least that would be after Cathy and my discussions regarding that but it is from the front building line Lee. So you go from the front building line.

C. Flatter: So if it is set at an angle, like they are saying, the front corner and another front corner

L. Deguise: Right it would be the furthest corner whether it was angle or not an angle.

C. Flatter: The closest corner.

J. Etchison: Okay so they don't do that so you don't block your neighbor's view. You don't go from the corner of the house?

C. Flatter: Right.

L. Deguise: Right and Indian Trail Lake I am assuming is a dead end lake. It doesn't have a major tributary of access to it.

C. Flatter: No, it is off of Indian Trail Road and there is an access.

L. Deguise: No, the lake itself, water.

C. Flatter: No.

J. Etchison: No, you can't get to it any other way.

L. Deguise: So it would be difficult to consider the lake side an actual front of a house because it can not be accessed from anywhere but the property itself.

C. Flatter: And that is why Bob is saying the Ordinance is, the way that it is written, both yards, on the lake side and the rear of the home, are frontage.

C. Flatter: It has to be classified as a frontage. So anybody at Indian Trail Lake that would want to put up a 6 foot fence based on the way that it is written today would have to file for a variance.

J. Etchison: Right because if I am up at the lakeside and I want to look across, the 6 foot could be, and I apologize if I have been excited or out of order, this has gone on and on and on and we just want to make sure that we are heard and that we do things the right way. It's not....

C. Flatter: Mr. Swank, I see that you have the letter in your hand.

G. Swank: Yes, it was sent to me. It had nothing to do with the Lake Association.

C. Flatter: It should have been sent – Indian Trail Lake Corp. % Gary Swank.

G. Swank: That is the way that it came.

C. Flatter: Okay because that is how it is listed in the tax records and I am assuming you have gotten that changed or you are going to be getting that changed?

R. Sharp: I've already done that.

J. Etchison: He never informed us.

C. Flatter: Okay but it does say Indian Trail Lake Corporation % Gary Swank.

J. Etchison: The board was never informed of the receipt of that letter.

C. Flatter: Okay. At the time the letters were sent out, was Mr. Swank still on the board?

J. Etchison: Yes ma'am.

R. Sharp: He gave it up, surrendered the office one day and picked up the letter the next.

C. Flatter: Okay.

M. E. Keever: Did you surrender?

M. Keever: Did you surrender Gary?

G. Swank: No I didn't give up the office. It was taken away by the President.

J. Etchison: We just want to make sure that the easement considers...you don't want to get into all that.

C. Flatter: Yes, that really doesn't have anything to do with it.

R. Sharp: Various reasons.

J. Etchison: Several people have almost rear-ended Mr. Keever in the morning when they leave because of the shed. It is a blind spot still. Oh what I want to say is that we did vote as an association to remove a cottonwood tree, we contracted with Hunt Tree Service. They did remove that tree two or three weeks ago and part of the reason was that is a blind spot. If that fence was not there at the part that goes along the road and his driveway and down the easement, if that clear-sight triangle was made, you would be able to see about 150 yards around that corner. Currently right now....

C. Flatter: It is blinded.

J. Etchison: You can not see. You can see better now that the tree is gone but it is still impeding your vision.

C. Flatter: Okay.

J. Etchison: Thank you very much. Do you have any questions for me?

Chr. Davis: No I am good unless the board does.

C. Penix: My name is Carol Penix and I live at 3646 SE Indian Trail Lake Road and I just would like to speak on the issue of safety. We live four properties down from the Keever's and we happen to work at the same place. We work pretty much the same work hours so I am leaving the same time he is leaving in the morning. He has built a shed and a carport and as you come down the road, the shed blocks where his cars are parked, which is partly on lake owners property anyway but he jumps in his car in the morning and cuts right out onto the road. I can't see him. I can't see him until I am right up on him where he cuts right out onto the road and it is

a definite safety issue. We've lived at the lake now, I believe, for 6 ½ years. The Keever's have complained since the day we moved there about the Lake Association not following the rules. You must follow the rules to a "T". You must follow the rules but they blatantly ignore the rules and do whatever they wish without going to any of our committees about what they intend to do and so I just believe they should follow the rules also.

J. Trautman: The issue is not the shed. That has already been approved. You are bringing up a safety thing. The only thing we can really consider is the fence and that is all we can consider. I mean, if they have the shed and the carport, that has been there. They got approval for that

C. Penix: No, it was just built in the last year or so.

J. Trautman: But they got a....

C. Flatter: Based on the information that was provided to us by the Keever's, they were within the regulations of the Zoning Ordinance. Now if a survey has been done and that is proven differently than

J. Trautman: That is what I'm saying.

C. Flatter: But I didn't have that information.

C. Penix: The same goes for coming the opposite direction on the lake road with not being able to see their cars parked back in there. It goes the same one way or the other.

J. Etchison: I just have an informational question. I understand the point of this variance is only for the north side of the fence. If we as an association do have a meeting and do want that south side of the property to be considered and that shed is impeding a clear-sight triangle, what are our options? Can we petition you to take that under

C. Flatter: Actually and Bob I am going to clarify this with you as I am saying this, they could appeal my decision on issuing the permit for the carport if they have a meeting and decide that the permit was issued in violation of the Unified Zoning Ordinance, they could appeal my decision?

B. Oliver: How long ago was that?

C. Flatter: I'd have to ask Keever's to find out.

J. Etchison: We called Mr. Bogard and he came out and deemed that it was under \$500.00 in value because Mr. Keever did all the labor himself and it wasn't....

C. Flatter: It was in the fall but my department, the Area Planning Department did issue a permit for it and that was last fall sometime.

J. Etchison: I believe it was last fall. It was right after we took the bushes down. It was almost, it seemed as if it was a retaliatory act. Again, seeming and assuming and that.....is there a time....

J. Trautman: It seems to me you guys need to have more meetings than just once a year.

J. Etchison: Have you ever tried to get 10 kids to decide what they should eat off a menu together? That is kind of what we got.

J. Trautman: Yes but.....

J. Etchison: You give them hot dogs or hamburgers. We probably should have another meeting and we are going to but we just want to know if we want that to be considered, is there a time limit?

J. Trautman: Well all I'm saying.....

L. Deguise: Again, further discussion on things that really have nothing to do with the fence won't be helpful at all.

C. Flatter: And Jan what you can do is call me tomorrow or the next day. Give me a little bit of time to look it all up with the time frame and everything and I'll let you know more.

J. Etchison: Thanks for your time. Thank you.

Chr. Davis: Any other.....

R. Sharp: I just have one last small thing and this is on the northeast corner of the property. Here is the property, the survey pin on the northeast corner that is the northeast corner of Mark Keever's property but it is also the west side of the road right-of-way. One day we might widen that road a little bit. That fence is that close to the road right-of-way. It is right on the edge of the road right-of-way. It is not 12 feet back from the road right-of-way. It is that close to the road right-of-way and it is a curve and it is kind of a straight away curve like a bow and some people go fast around there and that fence is a blind spot right there and it is mainly blind when Mark Keever pulls out because he has the corners out and the car points towards the road. It is parked parallel with the road and he comes out like that right there and in a split second he is right there in that blind spot. That is all I have to say.

C. Flatter: Anybody else?

Chr. Davis: Does anybody else want to make a comment or two?

M. Keever: I would like to counter a couple of things. Mr. Etchison's comment about the Post Office delivering to our neighborhood is basically a courtesy provided by the U.S. Postal Service because they are not required to deliver mail to private roads like that. I discussed that with the Post Master in Farmland. That really isn't an issue. Mr. Sharp's comment that our fence exceeded the height is basically due to the terrain of the land adjacent to our property, which he said they were going to bring in 4 or 5 loads of dirt and fill in. I have left the post that supports that 6 foot fence on the north side of our property up because if they bring in 4 or 5 loads of dirt, they are obviously are going to raise that elevation on that side 6 inches or more so I just wanted to protect myself and make sure I have at least a minimum of a 6 foot fence there. I think all those issues, our little barn that we put up over a year ago and the fence that we put up on the north side of our property.

M. Keever: They really have nothing to do with our request to have a 2 foot variance on the height of the fence on what we consider the back side of our property, simply because we want to secure a swimming pool and keep our pets contained in our yard like the by-laws require and provide a degree of privacy and security for my family and I. That is all we are really asking is that that 2 foot fence height be considered.

C. Flatter: The posts that are still there, are you going to saw those off? That goes 2 feet above the existing fence now. Somebody mentioned lattice work.

M. Keever: Yes. That is all speculation. I mean, a lot of the stuff said here tonight to you folks is just rumors and speculations and opinions. Someone doesn't like my fence, I can go around that lake and look at a lot of peoples properties and find fault with them and things I don't like so I don't think someone's personal opinion is really an issue here. The issue is rather we can have the security and the privacy that we think we are entitled to in our home to be able to enjoy it and be able to enjoy our swimming pool.

Chr. Davis: Mark, quick question. It was brought up that if the fence goes up or already up, the thought of you putting additional lattice up or so, is that.....

C. Flatter: I just asked him about that.

M. Keever: I don't know where that came from. That is just.....

C. Flatter: He is going to cut off the extra.

Chr. Davis: Okay. Thank you. Board members any questions or comments?

C. Addington: I was wondering what is the height of the fence? I've heard a lot of different things.

M. Keever: It is just 6 foot.

C. Addington: Exactly?

M. Keever: Yes.

M. E. Keever: There are pictures of it.

R. Penix: The fence is higher than 6 foot because he built a wall with rocks and then put the fence on top of that. It is not 6 foot from the ground to the top. It is more like 8 feet. Mr. Keever said something about putting.....

B. Oliver: Mr. Penix, correct? You just need to re-identify yourself because we have a girl that types the minutes and needs

R. Penix: My name is Ron Penix again. 3646 SE Indian Trail Lake Road. Want me to repeat what I said again?

C. Flatter: No, just....

B. Oliver: No we've got that

C. Flatter: Just continue with what you were saying.

B. Oliver: Sorry to interrupt you but she has to figure out who is speaking.

R. Penix: He says he is going to put a swimming pool in there? Does the county have anything to do with how big a pool he can put in there since he has all of this other stuff in his yard?

C. Flatter: We don't have a size requirement. I mean, he can put as big a pool in there as he can fit in to meet the setback requirements. He would have to obtain a permit to put the pool in.

C. Flatter: The pool has to be 5 feet from the side property lines and 5 feet from whatever we would consider the rear property line, which that comes into question again. Pump and filter have to be 20 feet from the property line. So size doesn't come into play.

R. Penix: And if he doesn't do that, doesn't put in a pool, if he's just saying he's going to put in a pool to get the variance....

C. Flatter: That still doesn't have anything to do with the variance that was requested tonight even though that was one of the reasons for them to put the fence up, we are still just considering placement and height of the fence tonight.

R. Penix: But the fence is approximately 8 foot if not higher.

M. Keever: It's not. Come and measure it.

R. Penix: On top of the rocks. On the outside.

C. Addington: See we have two different answers on that.

R. Penix: No, it is a 6 foot fence and then he built a wall up probably that high and then put the fence on top of that. On the outside of that fence if you measure it from the ground to the top of that fence, it is over 8 foot tall.

C. Addington: A lot of it is artificial then you are saying? It is not natural? It is artificial?

R. Penix: Exactly.

C. Addington: Mr. Swank has something else.

Chr. Davis: Please come forward.

G. Swank: Just a comment that the fence won't be any higher than 6 foot, it won't be 6 foot tall.....

Chr. Davis: I'm sorry. Please identify yourself again.

G. Swank: Gary Swank. 3277 SE Indian Trail Lake Road. The fence is probably close to 6 foot. I never measured. Nobody seemed to complain about it before but if the association trucks in 2 or 3 loads of dirt and puts along side of it, he can build it up higher yet. So it is just a big conglomeration of a mess out there and like the man said over here, the rules and the by-laws are a sham and this is an individuals request for a 6 foot fence or a variance on the fence for their privacy that should not affect 90% of the people at the lake.

Chr. Davis: Thank you. I think I have heard enough. Board members have you, have we heard enough?

L. Deguise: Yes.

Chr. Davis: I entertain a motion to take....

J. Trautman: Motion to take action.

L. Deguise: Second.

Chr. Davis: Let me back up here on this. I don't know what the votes are going to be but we may want to have a condition as a clear-sight triangle to be in compliance with the zoning codes. Please take that into consideration when you are voting.

C. Flatter: For that northeast corner, where the lake association easement comes along Keverer's property. What I read from the clear-sight triangle, if they are going to put in gravel and people could be accessing the lake from the Indian Trail Lake Road then you might want to consider this clear-sight triangle.

C. Addington: Do you need to separate votes on that?

C. Flatter: No, you would just include it in your motion to take action.

B. Oliver: Here is what Article XVIII says with regard to that. "If authorizing a variance, the board may attach thereto such conditions regarding the location, character and other features of the proposed structure or use, as it may deem necessary in the interest of the furtherance of the purposes of the Zoning Ordinance and in the public interest. In authorizing a variance with attached conditions, the Board shall require such evidence and guarantee of bond, as it may deem necessary, that the conditions attached are and will be complied with." What Cathy has stated as far as clear-sight triangle on the northeast corner doesn't have anything to do with by-laws. She was giving you the ordinance there.

Chr. Davis: I just want the board to take that into consideration.

C. Flatter: And that does have to be in the motion to take action.

Chr. Davis: The motion to take action.

J. Trautman: Can I ask one question then? In this picture, the one that has the vehicle in it, is this the northeast corner? With the tree and....

C. Flatter: Yes.

M. Keverer: That tree is gone.

J. Trautman: That tree is gone?

M. Keverer: It has all been cleared.

J. Trautman: All this is cleared out from the fence to the street?

M. Keverer: Yes.

C. Flatter: That is the northeast and I'm thinking that is the tree that Mr. Etchison was talking about.

Chr. Davis: Once again, I would entertain a motion to take action.

J. Trautman: So moved.

L. Deguise: Second.

C. Flatter: Okay.

Chr. Davis: Based on? I don't need a based on....

C. Flatter: If they don't consider the clear-sight triangle, that would still be in violation of the Zoning Ordinance if that is not made a condition, that is still a violation.

Chr. Davis: All in favor of the motion. Ayes. "Ayes". Opposed (none). I would entertain a motion for a roll call vote.

D. Clevenger: So moved.

L. Deguise: Second.

Chr. Davis: All in favor. Ayes (ayes). Opposed (none). Jamie.

A roll call vote was taken: Christy Starbuck, absent; Dale Clevenger, yes; Lee Deguise, no; James Trautman, yes; Larry Amspaugh, absent; Charles Addington, no; Bill Davis, yes.

6/21/10

C. Flatter: We have 3 – yes, 2 – no. It takes a majority of the entire membership to be approved so the petition has been denied. You have the same opportunities as the other petitioner that was here earlier this evening, 30 days from the day of the vote.

M. Keever: So we can't put our pool up that is in our garage? I can't go ahead and put it up?

C. Flatter: Actually the variance was denied on the height of the fence.

M. Keever: Right so we can't put our pool up?

C. Flatter: That doesn't have anything to do with your pool. This has to do with the height of your fence. You could still come in and get a permit for your pool. The height of the fence has not been, we are saying you can't have a 6 foot fence. That is what was denied tonight.

M. Keever: It was my understanding that in the State of Indiana it says that you have to secure....

C. Flatter: I don't, I go by the requirements in the Unified Zoning Ordinance and I can still issue the permit for your pool even if you have a 4 foot fence.

M. Keever: Even though that would be in violation of the State Code?

C. Flatter: I enforce the Unified Zoning Ordinance not what is written in State Law.

Chr. Davis: Does the board have any other comments or issues for tonight's meeting? Hearing none I would entertain a motion to adjourn.

The meeting adjourned at 8:56 PM.

THE NEXT REGULARLY SCHEDULED MEETING IS JULY 19, 2010 AT 7:00 PM IN THE CONFERENCE ROOM OF THE RANDOLPH CENTER FOR FAMILY OPPORTUNITY, WINCHESTER, INDIANA.

Bill Davis, Chairman

Christy Starbuck, Vice Chairman

Jamie Stump, Recording Secretary