

BZA MINUTES

APRIL 16, 2007

Members present: Charles Addington, Dale Clevenger, Gary Moore, Bill Davis, James Trautman.

Members absent: Christy Starbuck, Mike Blankley.

Legal representation: Robert C. Oliver.

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

Others present: See attached sheet.

The meeting was called to order by Vice Chairman, Dale Clevenger at 7:00 PM.

V. Chr. Clevenger: The first thing on the agenda tonight is to approve the minutes of February 26th, 2007. Do I have a motion to approve the minutes as written?

B. Davis: So moved.

J. Trautman: Second.

V. Chr. Clevenger: All those in favor say aye. "Ayes". Opposed (none).

BZA 2007-09-SP (American Electric Power)

V. Chr. Clevenger: Would you come forward and sit here at the microphone. State your name for the record and tell the board what you are wanting to do.

W. Zych: My name is Walter Zych. I am the right-of-way agent for Michiana Land Service were contracted by AEP to work on this project for the wind turbines. This is my wife Shirley. She has to do the reading. I recently had an eye operation so if you guys will bear with me I would appreciate it.

V. Chr. Clevenger: Did you receive the Article V, Conduct of Hearing? Did you get that information?

S. Zych: Conduct of Hearing? Yes.

V. Chr. Clevenger: Go ahead and explain what you are wanting to do.

W. Zych: We are asking for a temporary permit on Mr. Kerns' property for a meteorological tower to take wind speed, wind direction and temperature readings for a period of a year to two years to help in making determination in regarding the wind turbine project that we are proposing for this area.

V. Chr. Clevenger: Is there anything you want to add to that Cathy?

C. Flatter: No.

V. Chr. Clevenger: Do any board members have any questions?

J. Trautman: Once the survey is done after this two year period, you will take down this tower? This won't be one of the areas where the turbines will go up is it?

W. Zych: Well it could possibly be but in answer to your first question, it will be removed after the assessment period.

V. Chr. Clevenger: Jamie were all the notices sent out and properly received?

BZA Minutes 4/16/07

J. Stump: Yes.

V. Chr. Clevenger: But after two years the tower will come down?

W. Zych: That is right.

C. Flatter: If the studies show that this area is a good site for the turbines, how many would they possibly be setting on this site? Do you have any idea?

W. Zych: On that site or in the area?

C. Flatter: Well in that particular area? If that area....

W. Zych: I really can not tell you. That determination will be made after this assessment period then our engineers will take a look at the areas that we have committed to this project and they will make the determination as to where they will go.

C. Flatter: Okay.

V. Chr. Clevenger: But it will be a year to two year study?

W. Zych: Yes.

V. Chr. Clevenger: Do any other board members have any questions?

C. Addington: If this is approve how long will it take you to get it going? Do you know?

W. Zych: Excuse me.

C. Addington: If this is approved, how long will it take it to be in operation?

W. Zych: We would like to have it up within 30 days after approval.

C. Addington: Thank you.

V. Chr. Clevenger: Is there anyone here opposed to it or want to make comments on it? You said you were going to take the tower down right?

W. Zych: Right it will be removed.

B. Oliver: You personally or your company or American Electric Power?

W. Zych: American Electric Power Company.

B. Oliver: Okay.

V. Chr. Clevenger: He is an agent for them. Any other questions? If not I will open for a motion to take action.

B. Davis: So moved.

G. Moore: Second.

V. Chr. Clevenger: The motion has been made to take action on it. All those in favor say aye. "Ayes". Opposed (none). Now I need a motion for a roll call vote.

J. Trautman: So moved.

B. Davis: Second.

V. Chr. Clevenger: All those in favor say aye. "Ayes". Opposed (none). Jamie we are ready for a roll call vote.

A roll call vote was taken: Charles Addington, yes; Mike Blankley, absent; Dale Clevenger, yes; Bill Davis, yes; Gary Moore, yes; Christy Starbuck, absent; James Trautman, yes.

V. Chr. Clevenger: It has been approved.

S. Zych: Thank you.

W. Zych: Thank you very much. Will we receive written.....

BZA Minutes 4/16/07

C. Flatter: You just need to come in and file for the permits and if they want confirmation at that time then we will give them confirmation of it or they could call and we can verify it for them.

W. Zych: Very good. Thank you very much.

BZA 2007-10-SP (Paul Goodhew, Ridgeville)

V. Chr. Clevenger: The next petition is Paul Goodhew. State your name. Did you get the Article V, Conduct of Hearing when you applied for the petition?

P. Goodhew: Yes.

V. Chr. Clevenger: Tell us what you want to do.

P. Goodhew: I want to put like a 16' x 70'. I haven't bought it yet but at least a 16' x 70' on this piece of land that we own. Me and my brother.

C. Flatter: Paul has there ever been a house set on this piece of property?

P. Goodhew: Yes.

C. Flatter: How long as it been gone?

P. Goodhew: It has probably been more than 25 years, I would say.

C. Flatter: There is sewage and water up to the property now?

P. Goodhew: Yes.

C. Flatter: Is it going to be for you to live in?

P. Goodhew: Yes.

C. Flatter: Are you planning on buying a new home or a used home?

P. Goodhew: Probably a used home.

V. Chr. Clevenger: Have all the notices been sent out Jamie?

J. Stump: Yes.

V. Chr. Clevenger: Any of the board members have any questions to ask him?

C. Addington: Do you have to take those trees out? I noticed there was about 3 or 4 trees in there. Do those have to come out?

P. Goodhew: Yes.

C. Addington: That sits down in kind of a low place. Do you have any trouble with water in there?

P. Goodhew: No it has rained all this time and I haven't seen water standing in it or anything.

C. Addington: There is a dog kennel sitting back in there is that yours?

P. Goodhew: No that is the neighbor's.

C. Addington: That is all I have.

V. Chr. Clevenger: Is there anyone here in opposition to it? If no more board members have any questions I am open for a motion to take action.

G. Moore: So moved.

B. Davis: Second.

V. Chr. Clevenger: Thank you. All in favor say aye. "Ayes". Opposed (none). I will open it for a roll call vote.

G. Moore: So moved.

B. Davis: Second.

BZA Minutes 4/16/07

V. Chr. Clevenger: Thank you. Jamie we are ready for a roll call vote.

A roll call vote was taken: Bill Davis, yes; Gary Moore, yes; Christy Starbuck, absent; James Trautman, yes; Mike Blankley, absent; Dale Clevenger, yes; Charles Addington, yes.

C. Flatter: When you have got your home then you will just need to come in and get the Improvement Location Permit to set it.

P. Goodhew: Okay. It might be a couple of months before I find one and move it in there. But as soon as I find one I will be in to get everything I need. Is that it?

C. Flatter: That is it.

P. Goodhew: Thank you.

BZA 2007-11-CU (Paulding Towers LLC)

V. Chr. Clevenger: The next petition is Paulding Towers LLC. Please come forward and state your name for the record and tell us what you want to do.

B. Wisner: This is James Phillips and his son Grant. They are Paulding Towers. This thing that we are asking for, as I made this notice subject of hearing for a public service radio tower to be identified as part of the Hoosier Project Safe T. That is safety active for everyone together a statewide program to better link police, fire and rescue communications across the state. This pamphlet that you have on the last page, it has a map that shows each county and towers that have been built to date. It will show Randolph County and a few counties in the southern part of the state that haven't been done yet. This is a frequency for the police, fire and rescue. It is an identified thing that links everyone together.

V. Chr. Clevenger: Jamie have all the notices been sent and received?

J. Stump: Yes.

C. Flatter: Did you state your name for the record?

B. Wisner: Bob Wisner.

V. Chr. Clevenger: There is a tower just about every place but Randolph County right?

B. Wisner: No, I don't believe we are asking for a zoning variance here we are asking for what Cathy? A permit to put up a tower?

C. Flatter: A conditional use for the placement of the tower.

B. Wisner: Yes.

J. Trautman: Will this tower on the far east side of the county help any place on the west side? I mean should there be another one on the west side or is it in proximity that, would Delaware or Jay, there are two in Wayne, I see.

G. Phillips: It is too far.

B. Wisner: I don't see a tower on the west side of the county.

J. Trautman: No there isn't. I am just saying.

BZA Minutes 4/16/07

C. Flatter: So this one on the northwest corner of Wayne County, does that help with, I think what Jim is saying, being clear over on the eastern side of Randolph County, is that enough reception area.....

J. Trautman: Is the western side going to be covered by this?

B. Wisner: We were given a specific area that we could put a tower in to close up this network in the area. They told us exactly where they wanted it to be.

J. Trautman: The reason I am asking is because the west side of Randolph County is like a dead zone for cell phones so I was just making sure we wouldn't be left out on this thing too.

B. Wisner: I can't answer a cell phone question.

J. Trautman: I no, I am just saying that is the reason I am asking. This tower will cover the west side of Randolph County also because I don't want it to be a dead zone for this also on the west side of Randolph County.

B. Wisner: Right. No, I am under the impression that this is to fill in that gap.

J. Trautman: You have two things here, are you going for two different areas?

C. Flatter: I think they are actually going to narrow it down to one location but to get into this meeting they had, actually they had three locations and narrowed it down to two and so it is a possibility of one or the other but not both.

B. Wisner: We are also negotiating for another site and possibly one after that that may come in to the next meeting but we are here to introduce ourselves to you with this thing that we are trying to do and then we will agree on one location to put in a tower.

G. Moore: Agencies will have access to the tower. Is that a pay as you go thing?

J. Phillips: You know I really don't know. Motorola sets up the system. The state selected me as a vendor and I have no idea on that. I know it is a state wide issue and the people that I have talked to have been very happy. Some of the information here off of their website may answer that. I especially like the success story on the third page in and then after that map, somebody wrote this article that is called, "Hoosier Safety", and hopefully that will answer that for you sir.

C. Flatter: Well I have a question for Sheriff Harris because we were talking about this frequency today and I think you can probably answer Gary's question for Randolph County today.

S. Harris: Sheriff Jay Harris. The 800 megahertz is a State Police program that the State Police started probably 4 or 5 years ago and putting 800 megahertz towers all over the State of Indiana. The State Police have 800 radios in their cars. The Conservation Officers have them in their cars. The State Excise Police have it in their cars. Any Homeland Security Grants that are now awarded for radios are for 800 radios, 800 megahertz radios. The Emergency Management Director, from my understanding has an 800 radio portables and that is supposed to be given one to each department in the county. I have not personally seen one. I don't know if Gary has seen one.

G. Moore: I have heard that that is the case.

S. Harris: Well I have not seen them. Have you?

G. Moore: No.

BZA Minutes 4/16/07

S. Harris: That is what we have been told. Allegedly you can pick up a portable when they get all the systems up, you can pick up a portable here in Winchester and if you have a caller in Gary, Indiana, that you know is there and you know who it is, you can take this portable and talk to him directly in Gary, Indiana. At this point in time, the coverage here in Randolph County is lax. The map, I haven't seen the map but I know there is one at the State Police Post in Redkey. I heard someone say there is one in the northwest corner of Wayne County. I do not know that. If that is what it shows, I have no personal knowledge. I do know there is one in Redkey, but there is none in Randolph County. That is about all I know about the program. None of the Sheriff Department vehicles, none of the fire departments in the county have 800 radios except what supposedly the Emergency Management Director has in his possession.

G. Moore: This is to go along with the initiative that the State is taking to clear up frequencies for emergency personnel.

J. Harris: That is the way I understand. It is supposed to be 800 megahertz only. Any thing else from me?

C. Addington: I was just going to ask if there were going to be additions, since that is 300 feet tall. Are you going to put additions on it like cell phones or anything?

J. Phillips: That is a very good possibility, yes sir. In addition to that, hopefully new technology will come down to the pike and this tower will help bring them into town, bring them into the community and the county.

C. Addington: I think that is as tall as we've got isn't it? Three hundred feet? Up at the ethanol plant I think we have a 300 foot....

J. Phillips: There is a 420 that the state couldn't use for structural reasons. It wasn't structurally sufficient there and union that is owned by the cable t.v. I believe, so that is quite candidly why we are here.

V. Chr. Clevenger: You just put them up then right?

J. Phillips: Yes sir.

C. Flatter: I did hear from Rick Brown who is our Emergency Management Director today and he definitely says that this is a necessity for Homeland Security.

V. Chr. Clevenger: Any board members have any more questions? Is there anyone in the audience that wants to make a comment one way or the other? How do we do this Cathy? Vote on one and then turn around and vote on the other one?

C. Flatter: Yes. Are we still, Bob, on each petition it is actually one location per petition, is that right?

B. Wisner: Yes.

C. Flatter: Because you had marked this off and this one off and so...

B. Wisner: The one has been removed. It is this one here that we are working on. That will be the next one.

C. Flatter: This one right here and this one is not a possibility?

B. Wisner: Right and we are negotiating where a tower on both sides of this will be all on the same property.

C. Flatter: Okay, so for petition 13, what they are requesting now, if they go with this location will be one tower on this side of the ditch and one tower on that side of the ditch.

BZA Minutes 4/16/07

B. Wisner: No, one or the other.

C. Flatter: Oh, one or the other.

B. Wisner: Yes.

C. Flatter: One or the other side here and not this one.

V. Chr. Clevenger: Do I have a motion to take action on 2007-11-CU, the first one.

B. Davis: So moved.

J. Trautman: Second.

V. Chr. Clevenger: All those in favor say aye. "Ayes". Opposed (none). We will take a motion to vote on that one.

B. Davis: So moved.

G. Moore: Second.

V. Chr. Clevenger: Jamie we are ready for a roll call vote.

A roll call vote was taken: Dale Clevenger, yes; Charles Addington, yes; Mike Blankley, absent; Bill Davis, yes; James Trautman, yes; Gary Moore, yes; Christy Starbuck, absent.

V. Chr. Clevenger: Now do you want to make any comment on the other one? BZA 2007-13-CU. Do you have any comments you want to make on that?

C. Flatter: That is this one.

V. Chr. Clevenger: That is the second one.

C. Flatter: The one I just showed you. We just voted on the one on Howard Street.

B. Wisner: Oh you did?

C. Flatter: Yes.

B. Wisner: Okay this one with the drawing on it has been removed. This is the one that has on either side of the ditch. The one on Howard Street is city property. That is the one that you just voted on?

C. Flatter: Right.

B. Wisner: Okay. There is 7 acres there that they intend to put on that 7 acres somewhere.

V. Chr. Clevenger: Now do you want to go through this one here or not?

B. Wisner: We have three.

V. Chr. Clevenger: There are just two on here though.

J. Stump: The separate petition had the two separate locations.

B. Wisner: Okay yes we just want to go forward with the second petition just like it is.

V. Chr. Clevenger: You don't have any comments or anything you want to add?

B. Wisner: No.

V. Chr. Clevenger: Okay, do we have a motion to take action.....

B. Oliver: What you have to do is have them adopt their testimony from the previous hearing to this one. What you have to do Bob is just move to have your testimony that was just presented in 13, adopted into the record and this which is 11-CU, so you just need to state that on the record.

BZA Minutes 4/16/07

B. Wisner: Okay, then I just need to state that I want that testimony to apply to this new number?

B. Oliver: Right and the location is going to be different, which will be 425 S. Howard St.

V. Chr. Clevenger: That is the one we voted on Bob. This is the one we are on now.

B. Oliver: Okay, whichever one we didn't vote on will be the 1085 St. Rd. 32 and 1125 S. St. Rd. 32. That is the one we are talking about now. The same thing only this is 13.

V. Chr. Clevenger: What?

B. Oliver: He has done it. He adopted his testimony and you ask for any opposition.

V. Chr. Clevenger: Is there any opposition on this one? Or any comments on it?

C. Flatter: We are going to need just a second here.

V. Chr. Clevenger: You are going to use just one location though right?

B. Wisner: Yes, one tower.

V. Chr. Clevenger: Okay.

B. Wisner: What we did was we were running into a time problem and we didn't know where it was going to be so we just kind of threw a blanket out there and said, "This site, this site and this site", so we could come in and possibly hit on one of them.

C. Addington: One is all you really need approved?

B. Wisner: Yes. While they are working with that, I do have a question, we don't know what it is we are asking for. Is it a permit or a variance or what is it?

C. Addington: Conditional Use.

B. Wisner: Conditional Use permit?

C. Addington: Yes it is a permit.

C. Flatter: Okay, we just wanted to double check because when the petition was filed for it was for two separate locations here and I wanted to make sure we had the legal notices covered and all the property owners covered but what you are doing is it has just been pulled from this location, even though we advertised and you notified everybody for this location, it is just the possibility of it here?

B. Wisner: Yes.

C. Flatter: One place or the other, but not both right?

B. Wisner: Yes.

C. Flatter: Okay.

V. Chr. Clevenger: Do I have a motion to take action on BZA 2007-13-CU?

B. Davis: So moved.

G. Moore: Second.

V. Chr. Clevenger: All in favor say aye. "Ayes". Opposed (none). Do we have a motion for a roll call vote on the same?

B. Davis: So moved.

G. Moore: Second.

V. Chr. Clevenger: All those in favor say aye. "Ayes". Opposed (none). Jamie we are ready for a roll call vote.

BZA Minutes 4/16/07

A roll call vote was taken: Charles Addington, yes; James Trautman, yes; Gary Moore, yes; Christy Starbuck, absent; Bill Davis, yes; Mike Blankley, absent; Dale Clevenger, yes.

C. Flatter: That is an approval. You just need to come in and apply for the permits.

J. Phillips: When would you like to have me or Bob come in?

C. Flatter: When ever you are ready to come in.

B. Wisner: We will do that when we identify a site.

J. Phillips: Thank you very much. I appreciate it.

B. Oliver: Also just for the record, before you guys leave, that is made part of the proceedings in 13 as well. That is your exhibit. Same exhibit....

J. Phillips: Yes, sir. Thank you.

BZA 2007-14-A (John McKalip, Farmland)

V. Chr. Clevenger: John McKalip would you please come forward. Have all the notices been sent out?

J. Stump: Yes.

V. Chr. Clevenger: You got Article V, Conduct of Hearing when you applied for this?

J. McKalip: Yes. Good evening my name is John McKalip and I live at 307 N. Olive Street in Farmland. I am here to appeal the informal variance granted to Mr. Leroy Duncan on the property located on Jackson Street, which he intends to be a sports bar. In all Mr. Duncan's public statements in front of the Area Planning Commission, in front of town boards, in the news, he has stated that he needs to move to this location for more space and more parking. Mr. Duncan then acquired from the Area Planning Commission a reduction in the number of parking spots required as opposed to what was stated in the Unified Zoning Ordinance, which stated that he had to have a number of parking spaces that was one per 100 square feet plus 1 per employee

for each employee on the largest shift and the sub note says, "The square foot calculations are based on the gross floor area of the building unless otherwise specified. Employee calculations are based on the largest work shift". According to his statement the building was 2,800 square feet, which was the gross floor plan, he should have at least 28 to 30 parking spots and this number was reduced, I believe, to 21. Now in his plan that shows his parking, Mr. Duncan shows a minimum of 46 seats at tables and at the bar.

C. Flatter: This should have been included in your packets and this is the drawing that he is referring to right now. I am sorry.

J. McKalip: Plus the game area and pool tables in addition to the kitchen and storage areas that he has listed and an office space. So he does not even have half the number of parking spaces shown required for the number of seats he has at the location. It is on a residential street, it does not have access to State Road 32, even though the address is listed as W. Jackson Street, the mailbox and the access to the property is on Olive Street, which is a residential street.
BZA Minutes 4/16/07

J. McKalip: Additionally when I, for example, when I built my house, I put my shed on, I put my pool on, I had to submit a drawing that showed the location on the property in relation to property lines. Mr. Duncan's parking plan does not show its relation to parking lines and since parking has been the issue with this all along, I do not believe that he has adequate space to fit the parking he shows. On the north side of the property he shows himself parking in the State Right-of-way, which he does not own and according to the aerial photograph provided by the Area Planning Office, he has parking at least 19 to 20 feet on to the State Right-of-way. The most recent documents received from them show it being between 50 and 55 feet in that area and I have those on a CD for your office from Jamie Marx at the INDOT right-of-way office. Furthermore, on the west side he shows parking and it doesn't show the length of the parking space but they should be about 16 to 18 feet based on the width and according to the manual, for anything over 70' he would need a two-lane road west of that, which would put him within 50 feet of the western property line. I brought this to Cathy's attention and she said that was only a recommendation but according to this, it says, "Dimensions of parking stalls and access aisles therefore shall adhere to the recommended specifications contained in the most current published version of architectural graphic standards and gives the author as, a copy of which is on file and according to that he would have to have a 21 foot road. He is only 82 feet on the west side of the building from the west property line. Mr. Duncan can not fit the parking required, even the reduced parking on to this property. I feel that considering the Town of Farmland, as far as I know, is still the only town that has approved the amendment to the Zoning Ordinance. Is this correct?

C. Flatter: Yes.

J. McKalip: No other town has approved it. I think it is incumbent that he be held to the standard that was set when he got the ordinance changed by two people after the Area Planning Commission voted against it and the Town chose to do it anyway. The contention is the parking. He gets the parking reduced and he still can't fit it on with the reduction. I want him to have every parking space he is required to have.

C. Flatter: Okay, I am going to take my turn and explain my position and my decision. I fully understand what the Unified Zoning Ordinance states about the gross floor area of the building. It has been standard practice and this is all prior directors including myself, we have based the required parking on the gross floor area of the building that is going to be used for the public because it says in here that it must have a parking space for each employee per shift. So, I took the 14' x 14' storage area, the 14' x 18' kitchen, the 14' x 8' service entry and the 10' x 10'

office out of the gross floor area because the employees and the owner are the only individuals that will be entering into that part of the building. So by those calculations it took it down to 2,140 square feet is actually what it comes out to, which would be 22 parking spaces. That would be for customers.

C. Addington: Say it again. How much?

C. Flatter: 2,140 square feet.

G. Moore: And that would be 23?

C. Flatter: That would be 22 parking spaces. If there is one person working at Jabos then he has to have 23.

BZA Minutes 4/16/07

C. Flatter: Maximum probably at one time would be 2 employees so that would require 24 parking spaces. It says on page 24 of the Unified Zoning Ordinance that it will be a hard surface parking area and it does state dimensions of the parking stalls and access aisles therefore should adhere to the recommended specifications contained in the most current published version of the Architectural Graphic standards. It is never been and there is nothing in the Unified Zoning Ordinance that requires me to go to the site and make the property owner have certain size parking spaces. That person or that developer or whomever it may be, has to decide what size vehicles they are going to have at their business and what size they need to be. What this is saying is that they need to be marked. They are required to have a certain amount of handicap spaces. Leroy has to have one handicap space and he does have that. They have to be marked, yes but I am not going to go out and tell you that you have to have 10 spaces that are "X" amount of feet and 10 spaces that are "X" amount of feet. That is not part of my enforcement.

J. McKalip: I am not arguing the size of the parking stalls, which based on the width according to the diagrams from the book that you gave me, would be 16 to 18' long. I am saying he also has a road surfaced to the west which is approximately 20 to 21 feet wide.

C. Flatter: What I am saying is that I made my determination on the gross floor area that is going to be used for the public. Where the parking spaces go is not something that I am going to contend with now. He has given me a drawing that shows he is going to have 24 parking spaces so as far as my determination is concerned, that is what he has to have. If you see differently or feel differently that is what this hearing is about. Just about the number of parking spaces alone. That is it.

J. McKalip: And my contention is that the 46 customer seats weren't more than 22 customer spaces unless everyone is car pooling, which might not be the case.

C. Flatter: Well in restaurants you are only required to have, if you have a family sit down restaurant. . . .

J. McKalip: This isn't a restaurant though this is a bar.

C. Flatter: So we are saying in here, one per 100 square feet and I am basing it on the area of the building that the public will be located in.

J. McKalip: It is my contention that the rule states gross floor plan.

C. Addington: Tell me again what you said about the highway? You'd have to have two lanes. . . .

J. McKalip: North of his building on the map, it says, "30' right-of-way" as per Bob Antrim, that is actually incorrect. I have documents from Ron Rainy and Jamie Marx at the State Highway Department that actually in that area it is between 50 and 55 feet. I think the extreme eastern corner is 41 feet but that is where his parking lot touches Olive Street.

C. Flatter: Are you submitting documentation to that tonight?

J. McKalip: Yes I can. I have it all on disc plus I have some hard copies with me.

C. Flatter: We just need one.

G. Moore: So we are here tonight to make a determination of whether your interpretation of the code is...

C. Flatter: Of the parking spaces.

BZA Minutes 4/16/07

G. Moore: Of the parking spaces and the calculations for that are correct?

C. Flatter: Yes.

J. McKalip: This is where the area is right in here. This is the culvert and he is actually east of the culvert so this area where it is 50 to

C. Flatter: Do you have something in writing from the two gentlemen that you just stated their names?

J. McKalip: Yes I do.

C. Flatter: And what their titles are.

J. McKalip: I have their documents they forwarded to me. I don't have their e-mails with me.

C. Flatter: I don't want e-mails. I want to know what their titles are and where they are located.

J. McKalip: Ron Raney is the head of real estate and right-of-way for INDOT, the Greenfield district and Bob Antrim is the investigator out of Albany, Wayne Marx is the, I don't know what his title is, I think he is in charge of right-of-way and property out of Greenfield. He is Bob Antrim's supervisor. Jamie Marx and Dee Wills are in the INDOT record section in Indianapolis and these are the files that were sent from them, along with the copy of the grant of the right-of-way from the Pursley family to the State in 1956, which as far as they have found out as recently as this afternoon.

C. Flatter: So what is on this disc?

J. McKalip: That is the maps, the full maps. The right-of-way grant and everything on the north side of the building where he is showing parking but he doesn't own it because he only owns about 18 feet from it.

C. Flatter: So at this point I need Mr. Duncan to come forward.

L. Duncan: Okay first of all I am some what confused. I think you hit it on the head, my note says he is appealing Cathy's decision. I am Leroy Duncan, owner of Jabos. Now a little bit of twist of words here but I will make out of it what I can. Mr. McKalip has stated that I asked for a reduction of parking places, I think Cathy will agree with me on this, I came to Cathy and asked how many parking places I needed.

C. Flatter: That is how it took place. He did not come to me and ask if there was any way he could have less than what the required spaces are. I told him what was required.

L. Duncan: In that Cathy at that time gave me 21 parking places. I did a drawing for her to make sure it was acceptable with 24. With that Cathy had mentioned earlier the size of the parking places. If you look at code and I don't have it in front of me, I believe from the width standpoint, it starts at 7.6 and goes to 9.6. In the drawing that you have, every parking place is 10 foot in width with the exception of the handicap and I made it 16 feet. Now I have excessive widths for the parking places because it was convenient to do it that way. I the parking lot as I have drawn it up is not accepted, then it is a matter of redrawing the parking lot up, which trust me if I need to make them smaller, I will for the convenience of my customers I intended to go 10 feet. As Mr. McKalip started the conversation he was appealing the decision to allow me to put my business in Farmland on accordance with the parking. Help me out here but this meeting should have nothing to do with that.

BZA Minutes 4/16/07

L. Duncan: I went to the legislative body as you folks directed me I think in July of last year and got approval for that. So here nor there this shouldn't have any bearing on that, if I am correct.

C. Flatter: That is right.

B. Oliver: I agree with what you said factually but I think actually this would be a petition for the appeal from Cathy's decision. Cathy's decision is based on what has been custom and usage in the, by the directors when she makes a statement as to what Article V says and the footnote in Article V, which says that the gross square footage which is actually defined in Article XIII and it says, if you want to look at your text it is on page 74. It says, "floor area gross means the number of square feet space within the exterior walls of the building including halls, stairways, elevator shafts, attached garages, porches and balconies but not including spaces in cellars or basements." Then Article V says in footnote 1 on page 24, right under the blocked information, "Square feet calculations are to be based on gross floor area of the building unless otherwise specified. Employee calculations are based on the largest work shift." From the standpoint of again we go back to what Cathy said that the tradition of the board directors has been that they don't count the nonpublic area because that is not going to be utilized by the public. That is in conflict with what is said with regard to the actual ordinance so it has been an interpretation that is incorrect in the sense of if you are going to say right or wrong and I am not saying right or wrong, I am just saying that is what these people have to decide is whether the custom and usage is greater than what the verbiage says. Now the Indiana Case Law though does say that for persons that want to and this is under the enforcement provisions of the Zoning Law and it says, under Indiana Code 36-7-4-1003 and it says, "Who is an aggrieved person? An aggrieved person is somebody who is aggrieved by the decision of the, whatever, governmental body they are talking about". There is a doctrine in the law called standing and standing means are you a proper party to come before the body and this would be concerning Mr. McKalip and it says in order to have standing to seek judicial review of a Board of Zoning Appeals decision. That decision must infringe upon the legal right of the petitioner that will be enlarged or diminished by the result of the appeal and petitioners result in injury must be pecuniary in nature and a party seeking to petition for certiorari review of the decision of the Board of Zoning Appeals on behalf of the community must show some special injury other than that sustained by the community as a whole. Another couple examples of a case law says an aggrieved person who has standing to challenge the decision by the Board of Zoning Appeals is one who has suffered a substantial grievance, a denial of some personal or property right or the imposition of a burden or obligation. A person must have a legal interest in which will be enlarged or diminished as do with all the appeal and finally out of several other cases just another one quoting, it says, "The court said a party seeking to petition for certiorari review of the decision by the Board of Zoning Appeals on behalf of the community must somehow show special injury other than that sustained by the community as a whole." So I think what this boils down to right now is that you, I think Leroy were properly advised by what historically had been done and I think what Mr. McKalip is saying, he is also properly stating that this is in fact what the Zoning Ordinance says.

BZA Minutes 4/16/07

B. Oliver: Now, if having not seen the disc and my suggestion to the board would be that if you can design your parking places in such a way that you conform to whatever our Zoning Ordinance says, and I don't have that in front of me but the standards book....

C. Flatter: It would be 28 for customers and then one per employee.

B. Oliver: Okay. Then if you can design that in such a way that it is in conformity with this booklet and Cathy and I have talked about this without as far as the square footage is concerned then you likely are going to be approved because you will have met the arguments that the petitioner has here that you are not now in conformity so you may want to redraw. What I am trying to avoid here is the time and expense of everybody. A writ of certiorari for those that don't know is that the person who would not walk out of here with the decision they want this evening has to appeal to the Superior Court or the Circuit Court and then it starts a legal process about whether or not and it results in grieves. We have had other examples that included the new jail, historically we had it with the land fills. We've had it with some trailer parks and I don't know how many times we have been in court but that is what it boils down to. My suggestion would be that that disc be reviewed by Cathy and also if you can redesign, you redesign a parking that is in conformity with that and I don't think Mr. McKalip the number of seating, that has nothing to do with it. He could have 600 people in there and the statute still requires and you are correct, the 100 feet. Now if you are capable of doing that and again I think he makes a good point about how many 4-wheel gigantic GMC's are we going to have in there versus you know motorcycles or whatever, and if you conform with the handicap parking, you know, that is fine too, but if your customers can't get in there because you have ten trucks instead of little mini-vans or whatever might come. I mean that is your problem. I don't know what Farmland's position is going to be from enforcing that. I mean anybody can walk as far as they want to. I would guess that Farmland probably would take a pretty strict view of people who are not properly parking and I won't ask Sheriff Harris for his interpretation but that is in his jurisdiction too and improper parking can lead to a ticket. Am I right Mr. Sheriff?

S. Harris: Yes.

L. Duncan: They have those in Farmland also.

B. Oliver: I understand. If the board wants to go forward then go forward, but I think that the result may be that either party that leaves here may want to seek certiorari after an extension but I think if the answer is possibly here and I don't condemn Cathy and I am not doing that from the standpoint that she has a good history of saying what is in fact going to be the measure and the measure has been what the public is entitled to. Does everybody on the board understand that? As opposed to the total square footage and that is how Cathy got her 2140 or 2160. I think if we review that and set this for a continued hearing, if you have another proposed plan that you can make that conforms with the book that we are supposed to have and do you have a copy of that Mr. McKalip?

J. McKalip: Of what? I just have the pages out of the Architectural Design.

C. Flatter: That is in the Zoning Ordinance.

B. Oliver: Oh it is?

C. Flatter: We have the pages.

B. Oliver: Okay.

BZA Minutes 4/16/07

L. Duncan: Okay in reference to your quotations of the outcome and I guess the question I would have, what are we calling the harm here for his protest?

B. Oliver: Well see that has to come from a decision and then you have to go to certiorari to make that decision. He may well decide that if you come up with a plan and he may consult council of his own. I'm not advising either one of you, I am just speaking for what the action of the board is taking here but yes there are, but you have to have some special damage. Something happens to you because of result rather than just challenging the decision of the board.

L. Duncan: I have no problem with redrawing this. The continuation, I have a major issue with. I have a liquor hearing coming up. I started this process with you gentlemen back in June which reverted back to the legislative body in Farmland.

B. Oliver: That is all required.

L. Duncan: I know and we've went through all of that. The only thing at this point in question is this parking lot. Isn't there an appeal type situation, I thought there was a 15 day or a 30 day appeal process.

C. Flatter: I was just getting ready to add that and I don't know if all of you brought your Rules of Procedure with you tonight but Article III is what addresses appealing the Zoning Administrator's decision and number one: it is an appeal from an order requirement decision or determination made by the Executive Director in the enforcement of the Zoning Ordinance and it will be reviewed by the board. Number two: The appeal shall be filed with the board within 15 calendar days after the decision of the Zoning Administrator, in which that was amended on May 18, 1987. I stamped my originals that I received from Leroy. The first one I received it on January 25, the second one I received on February 16th and so my decision was made prior to either one of those so you can keep that in mind also.

J. McKalip: However, I would like to say that no one else knew that these decisions were made. We were in numerous public meetings both here and in the Town of Farmland and we were all under the understanding that it was 30 parking spaces and none of that was public until after the 5th of March. Actually until a couple of days before I came in to see Cathy concerning the matter. It wasn't like it was advertised.

C. Flatter: It doesn't have to be advertised.

L. Duncan: I can't quote a date but that information was available here for the zoning commission and it was also available at the legislative body meeting on March 5th.

J. McKalip: It wasn't presented and when we stated the number of parking spots in the ordinance nothing was said. No contradictory evidence was presented.

L. Duncan: And again, I have no problem redesigning this parking. I have a letter myself that I received from the Department of Transportation, Mr. Rainey that John mentioned earlier and again I can't quote you a date but 4 months ago 3 to 4 months ago, I asked Bob Antrim to make a decision for me on the right-of-way of the State and Bob came down and looked at the property and the right-of-way is 30 feet and if you look at Farmland it is all 30 feet. Now since Mr. McKalip so conveniently got involved with this, they have decided there is a discrepancy on the property line, not the right-of-way. The cement markers are in place. There is one right in front of the Friends Church that is set on 30 feet.

BZA Minutes 4/16/07

L. Duncan: Now they've pulled out a deed, this was actually prior, I'll read this and I'll let you have a copy. I would like to have a copy of this back. He also sent me some diagrams that he sent by fax but I couldn't read them. I don't know what John could get out of them but I couldn't read them. It says, "Attached is a copy of INDOT plan sheet where property was purchased and then it gives some legal description of line B, the plan sheet shows an existing line at 41 feet from the center of the road and then it says, no additional right-of-way was purchased in the 1956 acquisition. Also attached is a copy of a right-of-way grant that shows a right-of-way west of the subject area and a grant shows 50 to 55 feet", and I am going to assume west of the subject area is west of the Hubbard property but I don't know that.

C. Flatter: Then what is the subject area John?

J. McKalip: The subject area is the area east of the culvert on the map that I just gave you.

L. Duncan: There is no mention about culvert.

J. McKalip: That is how you know where the property is. This is the Auto Parts right here. These two buildings right next to the Auto Parts, to the west of the Auto Parts are no longer there. That is the vacant lot that is west of the Auto Parts. Olive Street as it exists is in this area. The area in question is marked by 111 and 111 is the right-of-way grant, which is 50 to 55 feet. That is why Mr. Rainey said that he needed to review. He said a copy of that should be on file in Randolph County Courthouse.

L. Duncan: And when did you talk to Mr. Rainey?

J. McKalip: This afternoon.

L. Duncan: Well he faxed this to me at...

J. McKalip: He faxed me a copy too.

L. Duncan: Okay. Any how I will give this to you Cathy but please ...

B. Oliver: Cathy just so we keep the exhibits and the records straight here. I have, I count 8 pages and then there were papers under the disc, alright.

C. Flatter: No those were my papers.

B. Oliver: Okay so respondent now has or remonstrator now has Exhibit 1. Okay.

L. Duncan: Also in my conversation with Mr. Rainey, is I need to get this property surveyed so I can identify that line. I may be able to make a trip to Indianapolis and find out more but at this point, in good faith again, they told me that the right-of-way was 30 feet so in my discussion with them I said, "Okay we've got 30 feet of property. I have the same thing in my farm. The county came in and bought 3 acres because they were putting a new bridge in. They put a fence around what they are calling their right-of-way, they actually own an acre and a half over in my field, that I have had crops on forever and it is a non issue and I used that as an example in my discussion with them. I said Okay, you're right-of-way is 30 feet but technically you own more property than that if all these notes are correct. I said what can I do to remedy that situation? There is such a thing as filing a petition to vacate, which I am sure is a long term situation that I don't really want to get involved in and I said what are my other options? He said, "That I could put a parking lot on top of my property if there is not a safety issue involved".

BZA Minutes 4/16/07

L. Duncan: I described the property to him and I told him there was a culvert that runs the length of the property, with that culvert there is a guard rail on the edge of the road. I said I couldn't imagine my personal beliefs that there being a safety issue because I am still 30 feet away from the road, but he said, "No but the safety people would have to come out and approve that". But I guess when it is all said and done here, Mr. McKalip and I understand his concerns, has made statements to the effect that whatever it takes, he wants to argue this to keep me from getting what I made purchase agreements on. I have been dealing with it for a year and I have went up front with Cathy and with the State and everybody else on what I am doing. I haven't made any of these decisions other than making them after the fact on what someone else told me. Now somewhere along the line this has caused me financial hardships when I should have been in this business 6 months ago at that location. I have again a liquor board hearing May the 1st and that if it gets delayed it could throw it back possibly another 90 days. People have a right to appeal that, that is justified. Now Cathy has already stated he has had his appeal process. That date has gone by. I am more than willing to do whatever I need to do to get the justified parking there gentlemen but I just from a timing standpoint there is no reason to procrastinate and take this out any further. The Hubbard family has my purchase agreement. They need to get rid of this

property. They have held it a lot longer than they should have. I can't purchase it until I go to that liquor board hearing. Our agreement is that upon approval of the liquor board, not on approval of a parking lot. If I get the liquor board approval and I don't have a parking lot approval I have a building that I absolutely don't need.

C. Flatter: Leroy, let me ask you, you have 24 spaces drawn on your drawing that you submitted back in February.

L. Duncan: Right.

C. Flatter: If the Board of Zoning Appeals tonight would vote and say that my decision was incorrect that you need 28 parking spaces for customers and one for each employee that is working per shift, would that be obtainable on this parking lot?

L. Duncan: Obtainable and realistic are two different things. Obtainable, if I want to punish my customers, yes, I can do that. Like I said, I could go to 7.6. There is nothing in the operation that says that. I have parking that is accessible to me that was given to me to use that is totally legitimate and the Auto Parts in Farmland said use it all you want. I told them I wasn't going to do that and give them the responsibility of somebody parking there and somebody getting injured. I told them I would lease that property if that was necessary. I can still do that. I don't know if that is acceptable or not. I think I can probably get 28 parking places in there or 30 but again I don't want to design parking places that if you come to my business and you stay within the lines you are going to sit in your car and I do have a carry out license if I get this approved but I am going to have to stick it in through your window because you are not going to be able to open your door.

G. Moore: But you can paint the lines in your parking lot

L. Duncan: We can put up markers yes. If that satisfies the need, that can all be done. I can lease the parking. That is not an issue to lease the parking at the Auto Parts. I planned on doing that anyway in case there was an overflow.

BZA Minutes 4/16/07

G. Moore: Is that included in this at all? Does it have to be on....

C. Flatter: It is actually supposed to be on this property, the required parking.

L. Duncan: I don't intend to put high rise parking back there. It will be one way traffic situation. I have not read anything where John comes up with the two lanes of parking. I am not aware of that and I don't see that. It will be a one way drive around.

C. Flatter: It will be marked so that your customers know that they are to enter at this area and to exit out the other area.

L. Duncan: Right. Enter here and exit here and the other side of that, there is 47 feet at the south end of the building. In the case that I find out there is a property line issue on the north end, which John questions, that the State may or may not own, I don't know, if there is an issue there, I had made a commitment, and I wish the gentleman was here tonight, I don't know if you know Joe Green or not, which is my closest neighbor that has not protested this at all. I talked to him before I started this plan and Joe had come over and we looked at the property and I asked him what I could do to work this out with him because his front door will be the closest to anyone. Joe told me there is not a problem until a problem happens. He told me he would feel comfortable that I would deal with it. I told him that to make it better for him I will use that for parking but I will establish parking where I will block it off directly in front of his house. Now I can use that and it will be legal by the zoning variance that we achieved. I will do that but I had preferred not to put parking directly, volume parking, on that south end. I can move the north end of that drawing to the south end of the drawing and be done with it. I have given the man my word.

C. Addington: How many feet did you say you had on the south end?

L. Duncan: Forty-seven feet from the building. Now it adjoins

C. Flatter: Commercial zoning.

L. Duncan: Commercial zoning not residential. The variance we achieved was 50 feet....

C. Flatter: The amendment.

L. Duncan: The amendment, I am sorry, but the amendment we achieved was 50 foot from the closest residential area. But that particular area is commercial.

C. Flatter: And so the parking if you need to use that south side of the building, you are still going to be 50 feet from Mr. Green's residential zoning.

L. Duncan: Right. Exactly. That is correct. So what I would like, I would like to make this decision this evening and as I read the notes that were sent to me, that the decision of the appeal is against the decision of Cathy, the Zoning Inspector. I guess rather than a continuance or delay that will affect me in any other hardship forms for myself or for the other family, let's make, if we can make a decision on this appeal, if I need to rewrite, the ball is in my court folks to put the parking out as it needs to be.

C. Flatter: So if you are saying tonight that you could come up with 28 customer parking spaces and one for each employee of the most employees that you would have per shift, then if the Board of Zoning Appeals, if you want to take a vote tonight then he is obligated to meet the requirements of the ordinance.

BZA Minutes 4/16/07

C. Flatter: You are just saying that my decision based on the square footage was incorrect, you are going to go with the 100 square feet gross floor area and then Mr. Duncan is allowed to continue on with his plans as long as he submits the parking plan to me of the required parking spaces.

L. Duncan: And do you want to allow an appeal after the fact, after the 15 day process?

B. Oliver: Well that is a decision that he would have to make because all the issues are still on the table under the certiorari rules.

L. Duncan: Right.

B. Oliver: And we can't stop that procedure.

L. Duncan: I understand that.

B. Oliver: That is 30 days after any decision with regard to the certiorari. Now he can file his petition certiorari and I am not going to get into all that but if he would seek injunctive relief....

L. Duncan: I know but I guess where have I been wrong in all of this? Have I been given information.....

B. Oliver: It sounds to me like everybody has gotten different information from the State, which is really harmful.

L. Duncan: Well in all honesty Bob I've gotten....

B. Oliver: But we have a 55 and a 41 and a 30 and that is the same guy talking if I followed the record here.

L. Duncan: That is exactly right and it is who he is talking to.

B. Oliver: Nobody is saying, we are not here to carry you or hurt anybody else. All I am saying is that it is up to the board to make the decision but anybody that wants to take issue with you the statute allows.

L. Duncan: Exactly. My point is in good faith Cathy has given me an amount of vehicles to park there and I am sure she has done that in other situations with other businesses and now all of a sudden her word to me three months ago is not any good and my wallet is hung out on this.

G. Moore: What Bob is saying though is that it could be hung out farther.

L. Duncan: Right.

V. Chr. Clevenger: What does the board members want to do?

C. Flatter: So what I wanted to go ahead and say, just for the last time is to simplify it for the decision that needs to be made here tonight, the board can go ahead and vote either direction that they want to go. If they would vote in favor of Mr. McKalip's appeal, then that requires Mr. Duncan to have 28 customer spaces plus his employee spaces. If the board would vote against Mr. McKalip's appeal and he decides to take it on and file it in court then it is going to be tied up in the court process and I think that is the point that Bob is trying to make here tonight.

G. Moore: I think we can ask him the question then, if he is going to accept the 29 parking spots and drop his appeal. That is what you are saying, is that right?

C. Flatter: Well you make a vote and the appeal is dropped. He would just have to file again if he, he can't appeal what is written in the Zoning Ordinance.

BZA Minutes 4/16/07

C. Flatter: That is not appealing my decision because that would be based on the absolute fact of what is written in the Zoning Ordinance.

L. Duncan: So the question at hand is will John accept it if I put 29 parking places there?

C. Flatter: No, it is up to the Board of Zoning Appeals to decide whether I was right or wrong.

L. Duncan: That is what I thought.

C. Flatter: That is what it is.

G. Moore: So if we take action we accept the appeal or deny the appeal.

V. Chr. Clevenger: We deny it. Right?

G. Moore: Well that would be your vote. If I make a motion to take action on this we are either going to accept his appeal or deny his appeal.

C. Flatter: If you say yes you are saying that you agree with the appeal. If you say no then you are in disagreement with the appeal.

V. Chr. Clevenger: Do I have a motion to take action on this?

C. Addington: I believe we need more information before we do that. That is my opinion.

L. Duncan: What information?

C. Addington: Just what Mr. Oliver was saying about the state giving conflicting.....

G. Moore: No that is not what we are voting on.

C. Addington: I know it is about the parking. I understand that but still it is something that is part of it, I think.

B. Oliver: I think if the board wants to go ahead on this that is there decision. The information that these gentlemen have worked off of is varied and we don't know....

C. Flatter: Mr. Duncan knows that if he can not use these spaces up here then he has to find those spaces on the south end of his building.

L. Duncan: Exactly.

C. Addington: I understand that.

J. McKalip: For Mr. Duncan's benefit the section on parking requirements that she has in her office says that if you have a space of more than 70* angle you have to have a two lane aisle. Not one lane.

L. Duncan: But if it is straight parking it doesn't make a difference.

J. McKalip: Well if it is straight off the building then you have to have two lanes.

L. Duncan: Okay John I am not sure what those things are I didn't measure them I just wanted to show that they were angled parking.

J. McKalip: I am not talking the angles. I am talking about right here, you have to have a two lane road off of this on the west side. I would just like to ask would the plan that is submitted at least show distances to property lines?

C. Flatter: Parking spaces are not required to show distances from property lines.

J. McKalip: But the parking issue....

C. Flatter: Because parking can go to the property line.

J. McKalip: Not in this case. It has to be 50 feet from a residential property line.

BZA Minutes 4/16/07

C. Flatter: Except for Mr. Green's and we know where that 50 feet is. He is not going to be allowed.

J. McKalip: Also on the west side.

C. Flatter: He is going to be required because of the drainage. The county ditch. He is going to be required to prove to the surveyor that he is far enough away from that ditch with his parking. I believe the surveyor's office told him he could put his parking basically anywhere on the west side of the building as long as he keeps in mind that if they ever need to come in there they may have to tear up some of the pavement to work on the ditch.

L. Duncan: Also John's overlooking the fact that I own 84 feet on one corner, 82 feet off the other corner west to my property line but that is adjacent to the creek which I believe, and don't quote me on this, is a 50 feet span there that the county owns before my western neighbor's property line starts. Had you overlooked that John?

J. McKalip: No I am talking from the west side of the building, the 82 feet.

L. Duncan: 82 on one end and 84 on the other corner.

J. McKalip: Two lane row plus length of parking.

L. Duncan: Then you are talking another 50 feet of county ditch that is owned by the county which I actually....

J. McKalip: No their property line is right where the property line is. The ditch is irrelevant to it.

L. Duncan: That

C. Flatter: The ditch right-of-way goes in there and the property lines are located, this is the property line but the county ditch right-of-way may be on each side of your property line and then this person....

L. Duncan: Right. I can go against the county driveway is what I am saying.

G. Moore: If I am understanding Cathy right, to the board members, if we accept this gentleman's appeal and this gentleman puts in 29 parking places it is perfectly acceptable to do and there is no other problem. If we deny it, his appeal, and he still wants to go forward and put 24 in then he can tie it up in court. So if we accept his appeal and he agrees to put 29 parking places in, it stops here?

C. Flatter: Or 28 parking spaces for customers and then your maximum amount of employees at one time. And that is all that has to be done.

V. Chr. Clevenger: I know you are hoping for the best but what is the odds that you think all those parking spaces will be full?

L. Duncan: Very slim.

G. Moore: So all you have to do is design the parking lot with that number.
V. Chr. Clevenger: Yes.
L. Duncan: That is the whole point of this.
V. Chr. Clevenger: You hope that it is full.
G. Moore: Then you wouldn't have to come back before us....
L. Duncan: I apologize that this is even going on.
G. Moore: Do you understand what we are saying though?
L. Duncan: Right.

BZA Minutes 4/16/07

G. Moore: If we accept his appeal, all you have to do is design the parking lot according to the code and you don't have to come back here.

L. Duncan: And is that for Cathy's decision?

C. Flatter: It is written in the Zoning Ordinance those requirements. There is nobody that can appeal what is written in the Zoning Ordinance. I mean you could file for a variance but John is not going to be able to file for an appeal on my decision on that because I am basing it on exactly how it is written in the Unified Zoning Ordinance.

L. Duncan: Then the only question I have is and I think Cathy made mention of this, I am allotted parking spaces if they are skyscraper parking, that would be legal but there is a mention about my leasing parking. I guess I am confused on that.

B. Oliver: Your leasing parking can not be included in your 28 plus employee.

L. Duncan: But I am allowed to use that for parking?

C. Flatter: Of course. We can't tell you where your customers can and can not park. We are just saying that the requirement is for the parking on your property.

B. Oliver: Right. Basically what this will do is this will do away with the tradition of the director saying, "We are talking about customer area. We now have to go to gross foot area."

C. Flatter: I honestly think it is something we will probably need to take to the Planning Commission and talk about possibly amending it.

L. Duncan: And your satisfied John with

J. McKalip: If you can fit 30 on there.

G. Moore: I make a motion that we take action.

B. Davis: Second.

V. Chr. Clevenger: All those in favor say aye. "Ayes". Opposed (none). Do I have a motion for a roll call vote?

J. Trautman: I want to understand one more thing, if we vote yes we agree with the....

C. Flatter: With the appeal.

J. Trautman: You are wrong.

C. Flatter: Yes.

G. Moore: As long as he designs his parking lot for 30 places he is okay too.

V. Chr. Clevenger: We vote no we are for Leroy.

C. Flatter: As long as....

B. Oliver: You have to come up here and get on the record if you are going to talk. Identify yourself.

C. Flatter: The Zoning Ordinance says one per 100 square feet of gross floor area.

V. Chr. Clevenger: Make a motion for a roll call vote.

J. Trautman: I make that motion.

G. Moore: Second.

C. Addington: Hold on a second.

L. Duncan: I do have one question and I meant to bring this up earlier. I have a verbal commitment on that building for 800 square feet for a food chain. Actually a major pizza business. Haven't had a chance to sign the paperwork. He wants to lease carry out. We would be selling carry out and within my building.
BZA Minutes 4/16/07

L. Duncan: No seating, 800 square feet on the south end. Which I wish I would have known a year ago because that would have, his part of arguing would have been outside of mine. Now if that comes to be, that changes this whole picture. My point, then it becomes 2000 square feet of my business and 800 square feet of his and it is 3 parking places he will be required if it is carry out.

V. Chr. Clevenger: We have a motion for a roll call vote. Cathy will you explain that again.

C. Flatter: If you vote yes you are saying that I was incorrect in the way that I figured the parking spaces so if you say yes, that is the way it is and if you say yes then Leroy is required to have 28 parking spaces for customers and 1 to 2 for employees.

L. Duncan: In the event that I get this signed agreement does that change? My required parking space, if I have that agreement before I give you, if I have that agreement in hand, that would change it to 22 parking spaces plus 3. I don't know whether I will change it, I am just asking that question.

J. Trautman: Restaurant drive-up only, no seating is 3 plus 1 per employee. The restaurant fast food without drive-up is 1 employee plus 1 per 3 customer seats.

C. Flatter: So there will be no seating?

L. Duncan: Right.

J. McKalip: This isn't the issue on the table though.

L. Duncan: I am asking a question.

C. Flatter: If you come into me with a signed lease from whoever it would be, and you have a drawing showing that you know, this is your part of the building and this is going to be the bar and your restaurant and then you are going to have the pizza area here, pick-up only, then I have to base whatever that building is going to be used for, I have to base my determination on the parking on what is exactly written in the Zoning Ordinance.

L. Duncan: Okay.

V. Chr. Clevenger: Okay Jamie.

A roll call vote was taken: James Trautman, yes; Gary Moore, yes; Christy Starbuck, absent; Bill Davis, yes; Dale Clevenger, no; Mike Blankley, absent; Charles Addington, no.

C. Flatter: The appeal has been denied because we don't have a majority of BZA that voted yes.

J. McKalip: Thank you.

V. Chr. Clevenger: Is there anything else?

B. Oliver: Just for the record, Leroy, we are going to make this exhibit 2 for you because apparently that was not included in the packet.

L. Duncan: I have a copy of that.

B. Oliver: No I mean just so you know what is in the record, in case this goes to court.

L. Duncan: Okay.

B. Oliver: That is all record besides testimony.

BZA Minutes 4/16/07

The meeting adjourned at 8:30 PM.

THE NEXT REGULARLY SCHEDULED MEETING IS MAY 21, 2007 AT 7:00 PM IN THE COMMISSIONERS CONFERENCE ROOM OF THE RANDOLPH CENTER FOR FAMILY OPPORTUNITY, WINCHESTER, INDIANA.

Mike Blankley, Chairman

Dale Clevenger, Vice Chairman

Jamie Stump, Recording Secretary