

BZA MINUTES**APRIL 18, 2005**

Members present: Mike Blankley, Bill Davis, Gary Moore, Christy Starbuck.

Members absent: Dale Clevenger, Charles Addington.

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

Legal representation: Jason Welch.

Others present: See attached sheet.

The meeting was called to order by Vice Chairman, Mike Blankley at 7:00 P.M.

V. Chr. Blankley: We have 4 board members present so we can hold the meeting. First on the agenda is the approval of the minutes of the March 21st meeting. Do I hear a motion for the minutes to be approved?

B. Davis: So moved.

C. Starbuck: Second.

V. Chr. Blankley: We have a motion and a second to approve the minutes of the March 21st meeting.

C. Flatter: They need you to speak up.

V. Chr. Blankley: Okay. The minutes of the March 21st meeting have been approved as written. First thing on the agenda tonight, for all the board members I am sure you are aware that we have lost a board member about a week ago. He will be replaced I am sure some time.

C. Flatter: Yes.

V. Chr. Blankley: Is it the Commissioners?

C. Flatter: Yes.

V. Chr. Blankley: As soon as the Commissioners make an appointment. I will try to outline this meeting tonight, what will happen. We will call the petitioner up to this table. This is a recorded meeting. They will state what they want to do and when they are finished the board members will ask questions of the petitioners and then we will turn it over and if there is anyone in opposition to it they will have to come up here and speak their name and address and what you are objecting too. Everybody will get a turn to talk. If you start to repeat there is no use coming back up. The petitioner will then have an opportunity to respond to your questions and answers and we will just go back and forth until we have reached the end. Is there anything else that I left out?

C. Flatter: I would say call the petitioner up.

V. Chr. Blankley: Okay.

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BZA 2005-4-CU (James & Sally Moreland, Winchester, IN)

V. Chr. Blankley: James & Sally Moreland. Will you please come forward. Will both of you identify yourselves for the record.

J. Moreland: James Moreland.

S. Moreland: Sally Moreland.

V. Chr. Blankley: You are at 1322 E. Union City Pike, Winchester, Indiana?

S. Moreland: Yes that is correct.

V. Chr. Blankley: Would you mind telling us what you would like to do.

C. Flatter: First we need to go through and explain to them about the four board members.

V. Chr. Blankley: This is a seven member board and there are only four members here tonight and it will take 100 % of all the board members to approve your petition. Now you have an option, you can wait until the next meeting when there are more members present or you can take a chance on all 4 of us giving you a recommendation. It is up to you.

S. Moreland: When is the next scheduled meeting?

C. Flatter: It is the 3rd Monday in May which would be the 16th.

S. Moreland: We will just take our chances with you four.

V. Chr. Blankley: Did you get an Article V, when you applied for this petition? And you sent out notifications to all of your neighbors?

S. Moreland: Yes.

V. Chr. Blankley: Jamie did we get the receipts back?

J. Stump: Yes we did.

V. Chr. Blankley: Now we can proceed. Tell us what you would like to do.

C. Flatter: Speak up because your voices are going to come our way, so that everybody back there can hear what you are saying also.

S. Moreland: It is our intention to on our property, we have just under 5 acres, not including the house, we intend on the back part of the property to start a some what of a Saturday Day Camp. It would be not open to the public like Wally World at Brookville, where anybody can pull off the road and stop any time. It would be by invitation where we would send out flyers to the schools, to youth groups for churches and that type of a group. It is our intention of the ages of 8 to 14. It is my husbands dream to teach younger children, more specifically to single parent families but that would not be the only option, to teach them how to fish. He grew up with that option to fish and he loves doing it and he just wants to spread his joy to other kids that don't have that option that maybe all they know is Play-Station and Nintendo's and video games and maybe they don't have any outdoor activities available to them. He would like to open that world to them so that they can experience the outdoor enjoyments. He wants to teach them how to fish and we also plan to, when funds are available, to build a go-cart course, which will be on the back part of our property more towards Shannon's than Flemings and it would be, I don't know the exact amount, but it would cover a good portion of the back area. It would be paved, we would have tires put up for safety and we are going to take care of everything that way that we can to make it safe for the kids.

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S. Moreland: The go-carts that we will have will have bumpers around them so they will be safe for the kids. Also they have an engine on them that is a Robins engine that is supposed to be one of the quietest ones for a go-cart that is being made. Like I said there will be activities that we will do. We are going to put up a couple small out buildings so that we can have shelter for the kids to go inside to do a craft that would probably take an hour at the most, hour or two. The majority of it will be outdoors at the pond and the children, we are going to limit it to like 10 children at a time so that we are not overwhelmed and they are not running loose. They will be adult supervised. We have family members that are willing to help us at first until things get started. They will be divided into 2 groups of five. I think that has all been described in the Plan of Operations that were given. They will be divided into 2 groups of five and one group would go to the fishing area and the other group would go to the go-cart so that the go-cart, it is fun enjoyment for the children plus a fact that it is eye-hand coordination which is also involved in fishing, you have to coordinate the casting with the release and the setting of the hook and all that goes together with eye-hand coordination also. During the afternoon then they would switch from fishing to the go-carts. That is pretty much the presentation at this point.

V. Chr. Blankley: Are there any board members that have any questions of the petitioners?

G. Moore: The go-cart track isn't going in right away?

J. Moreland: Not right away, no but it is going to be paved 750' long. I mean it is an engineer designed track just like the amusement parks. It will be 3 go-carts that is all that will be running.

C. Flatter: That was one of my questions, is it 3?

J. Moreland: Three yes that is it. Like she said, they have Robins motors on them, which I have been in contact with all the concession go-cart manufacturers and they say that the Robins is the most quietest that there is. They get more noise out of the cart itself running on the pavement rather than the motor itself.

C. Flatter: I guess I am going to ask a question. The "By invitation only", what if after the first year this becomes real popular and you have people that are calling you and saying, "Can I have my son's birthday party" or something like that that would come up, how.. do you plan on ever doing things like that?

J. Moreland: Well I know we had discussed it but to actually get the camp started, no we weren't going to put that on a flyer or anything as far as that goes.

C. Flatter: What kind of time frame right now as far as putting in the go-cart track? You said not right now but.....

J. Moreland: It will probably be towards the end of the year and the camp probably wouldn't even open until spring of next year. We will get the applicants during the winter time

C. Flatter: So it would be the end of the summer of 2006, is what you are thinking?

J. Moreland: The spring of '06 it would be opening.

C. Flatter: I mean the go-cart track. You said at the end of.....

J. Moreland: End of this year, 2005.

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C. Flatter: The end of this year. So it would be

S. Moreland: They would start the grading because right now it is just a hay field. They would start the designing and the grading and carrying out dirt. Which most of the dirt we will probably just keep on the property because we kind of want to bank up some of the pond.

V. Chr. Blankley: Is the pond already there?

J. Moreland: Yes.

S. Moreland: It is an existing pond.

V. Chr. Blankley: I couldn't see it.

J. Moreland: It is hard to see from the road unless you know it is back there.

C. Flatter: It is hard to see from the road because of how it goes down there. Then in your Plan of Operation, you put the first year of Saturday's only. Then you wanted to expand to Monday's, Tuesday's, Thursday's and Fridays, which I am assuming is still going to include your Saturday's also? Would you be going on the same time schedule that you put on this plan that it would be 10 hour days and.....

J. Moreland: Yes it would still be the same and like it says it is going to start when the kids get out of school for the year and then through the summer and then when they go back it would commence.

C. Starbuck: Am I looking at the drawing correctly that the go-cart track is 14 feet from the right hand side property line, is that right?

S. Moreland: Yes that is approximately where Shannon's fence is for their horses.

C. Flatter: That would be the east property line.

J. Moreland: East, yes.

V. Chr. Blankley: Board members, any more questions? Hearing none, if there is anybody in opposition would you like to come forward and then we will have you guys come back up if they have questions that you can answer. So don't run away too far. We have Mr. Cook coming up.

R. Cook: Good evening my name is Robert Cook and I represent some adjoining property owners, Mr. and Mrs. Anderson, Mr. and Mrs. Fleming and the Shinn family. I would like to first of all establish for the record that in my opinion the Zoning Ordinance does not allow for this kind of conditional use in an agriculturally zoned district. Article XI, Section 1.01, uses listed as conditional uses in the various zoning district shall be permitted herein only upon the approval of a conditional use permit by a vote of the Board of Zoning Appeals of Randolph County, Indiana. When you look at the conditional uses under an agriculturally zoned district and that is shown at table 3.01.03, it only allows a park, playground and community center, public only, which means a public use. It is open to the public. A public park is defined in your Zoning Ordinance as a track of land designated and used by the public for active and passive recreation. This is obviously a private enterprise, which will benefit the applicants and it is my opinion that this board would go beyond its authority to grant a conditional use where the Zoning Ordinance doesn't permit this thing. So our first position and this is for the record, is that this kind of conditional use is not allowed by the Zoning Ordinance and the Board of Zoning Appeals would be prohibited from granting this kind of conditional use in an agriculturally zoned district.

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R. Cook: Going beyond that to the actual merits of the case, we take a look at Article XI and what is required as a conditional use and one of those requirements says the use adheres to the general character of and will not be substantially detrimental to the use and development in the vicinity of the property included in the request. If you take a look at the property that adjoins the property of the Moreland's, it is residential and as an agriculture as farming. Mr. Anderson farms around this property. Mr. and Mrs. Fleming are immediately to the west of the property and the Shinn's are directly across the road from the property. Their plan of development includes a go-cart track. There will be increase noise where there is not presently any noise now from this kind of activity. There will be increase noise mainly because you have children there for 10 hours a day. In the first year that is going to be from their operational plan, will be on Saturday's and then there is then the possibility in the second and third year that there will be operational hours 10 hours a day for 5 days a week. With that increased people traffic in this area there will be the resultant people trash. It is just a natural consequence. So the adjoining property owners will be suffering that kind of detriment. Their Plan of Operation show port-a-potties that are going to be there and be operational on a weekly basis during the summer. They state that if necessary they will use a generator that will run up to 4500 watts. What if this runs for 5 days a week for 10 hours per day or even if it ran for 2 hours a day? It also means increased traffic. If you went out to observe this area there is a hill you have to go up hill in both directions to gain an entry into this proposed property. It is a dangerous traffic area from about 100 East for the next 1/2 mile. If they are going to be operational for 5 days a week there is going to be an increase opportunity for traffic accidents and create a more dangerous situation that what already exists out there. In talking to the adjoining property owners they have indicated that since 1995 there have been 16 accidents in that area with, I believe, at least one fatality. This proposal is in the middle of a residential area and the proposed conditional use will be substantially detrimental to the use of the property in the neighborhood as residential. You are in fact placing a commercial use in the middle of a residential area. It is not in the general character of the property and the vicinity of the property included in the request. It is a new use, a new character and again it introduces the commercial concept into an area that is residential and farming. Your third requirement says that the use and development includes improvements and amenities necessary to minimize any adverse affects on the use and value of surrounding properties. There is really nothing here that can be done to minimize the adverse affects on the use on the adjoining property except that this proposal be denied by the Board of Zoning Appeals. So for two reasons, one I don't believe you have the authority to grant this conditional use and secondly if you feel that you do have the authority it doesn't meet the requirements of conditional use. We believe that this ought to be denied. Thank you. I will entertain any questions.

V. Chr. Blankley: Any board members have any questions? Do you have any questions?

J. Welch: No I don't have any questions.

R. Cook: There may be other people in opposition.

V. Chr. Blankley: Do you guys want to come up?

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C. Flatter: Why don't you let the rest of them come up first and then they can come back up and answer all the questions at once.

J. Fleming: I am Jo Fleming and I am 52 feet from the field that would have the camp. I think Bob has covered everything, Bob Cook, has covered everything that we are concerned about. The sheds were another thing that he didn't mention and the house trailer and then he has mentioned the outside toilets and generator. There will probably likely be odors and paper, food containers and pop cans that will blow in our yard and people will likely turn around in our driveway and then of course the wrecks which he has brought all that out. In the summer time we have our doors and windows open and we spend a lot of time out doors and we enjoy sitting on our front porch enjoying the view and it is just very disruptive to our home and our neighbors. That is all I can add to it.

V. Chr. Blankley: Thank you. Is there anybody else?

J. Fleming: Yes I am sure there is.

A. Coon: I am Ardith Coon and we live catercorner across from this property.

J. Coon: Our address is 1247 E. Union City Pike.

A. Coon: We have some concerns we would like to give to you.

J. Coon: I have 5 objections that I would like to present to you for this. First, it is my opinion that anything like he has just described will sharply reduce the value of my property. We moved out there in 1959 after we had our home built. We have lived there for 45 years. Everyone knows when there is a point in time when it will have to be sold and I feel like if something like this is created across the road, it will reduce the value, in my opinion, reduce the value of my property by about 20%. Now, to confirm that I thought I should get some professional advice so I went to a realtor here in Winchester, Max Helms. I presented him with, I told him what I wanted to know was what was his opinion. He looked it over and he has written an affidavit which I want to present to the board that he agrees with me completely. I think in his statement, that you may read, he says that it will reduce the value of my property 15 to 20 %. Now that is my first objection. May I give this to the board?

V. Chr. Blankley: If you do it is ours to keep.

J. Coon: I beg your pardon.

V. Chr. Blankley: If we accept it you don't get it back. It is ours to keep.

J. Coon: You're welcome. You may have it. Second, he mentioned accidents, I have had in the 45 years that I have lived out there, I have had two cars in my yard. I saw one in Mr. Fleming's yard that tore his fence out. I saw one car hit the end post in Mr. Moreland's field and take it out and right east of me in Shinn's, I don't know how many cars have gone into their yard and gone through the fence. To confirm that I went to the sheriff and asked if he had a record of those accidents and he said that he didn't but the State Police have. He got me the record from the Indiana State Police of the accidents which I will give to you from 1995 to this year, 2005. There have been 16 accidents in the ½ mile beginning at County Road 100 which is just west of this property to a point ½ mile east of County Road 100 which goes by the property. There has been 16 accidents and they have listed them here. My vision is not very good and I am going to ask her for some information. What is the next one?

A. Coon: There are 8 injuries. One fatality and 7 property damages.

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J. Coon: Would you like to have this copy from the State Police?

V. Chr. Blankley: We will accept it but you don't get it back.

J. Coon: That is fine.

C. Flatter: Anything that is presented tonight is left as part of the record.

J. Coon: I have something else for you too.

G. Moore: That is fine.

J. Coon: I have an affidavit from the sheriff to confirm what I have just said to you. You may have this affidavit too. Third, on the sewage problem, I am not knowledgeable but there is a question in my mind that portable potties is suitable sewage disposal for something like this that is going on week after week after week. I understand for just 3 or 4 days if they use them but for something that is going on and on, I think, in my opinion, maybe a more permanent sewage system should be established. My fourth objection is the cemetery. Right across the road from this property is a cemetery that is over a hundred years old. Shinn's, my neighbor right east of me have kept that cemetery up for 50 years. Never received any compensation for it. They have cleaned it up and mowed it. There are 5 graves there and the stones are still there and on one of the stones the date is 1892. I have seen people visit that cemetery. How are people visiting the cemetery going to feel if there is a go-cart race going on across the road or something like that? I think they deserve more respect. My last objection, my neighbor Bob Fleming is a veteran of the Korean War two years. My neighbor Kent Shinn is a veteran of the Vietnam War over two years. He got hit in Vietnam. He was awarded the bronze star for his service in Vietnam. His father who built the home where he lives was a veteran of World War II. He was a veteran of over three years. He is long gone. I am a veteran of World War II. We feel like we have had enough noise in our life, we would like to continue to enjoy the peace and quiet that we have had out there in the country. Thank you.

V. Chr. Blankley: Any body else? Since there is nobody else, would you like to come back and rebut anything that was brought up?

J. Moreland: Let me start by saying that in my opinion I do believe that this board does have the authority to authorize this because it is zoned A-1. It is not zoned commercial.

S. Moreland: As far as us making a profit off of this, that is not our intention at all. Our intention is to help the children find a different world and to find enjoyment, maybe even some kids that don't have the attention from their parents to find some way to show that someone cares. We have no intention at all to get rich from this. If that happens then fine but that is not our intention at all from it. Personally we have go-carts anyway. Our children ride the go-carts daily. They have a louder engine on them then the ones we are planning to get. We are not going to limit our children, I should say this first, we don't have any intention of alienating our neighbors. We want to be good neighbors too. That is why we were going through the efforts of finding quiet go-carts that are safe for the children so that there wouldn't be any accidents. We are putting in a parking lot so that it wouldn't have any effect on the neighbors driveways so they can pull into the parking area and it would only be in the morning when they drop the kids off and in the evening when they pick the kids up.

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S. Moreland: Union City Pike, everybody in Randolph County knows that Union City Pike is a highly traveled road anyway. There is going to be accidents regardless of us being there or not. The port-a-potties they are talking about, they are supposed to be chemically, he knows more about them because he has looked into them, but they are chemically regulated.

J. Moreland: They are not outhouses.

S. Moreland: It is not a hole, a bucket in the ground where they sit on it and do their business in a bucket. They are chemically taken care of. We have already made arrangements and looked into the price of having them taken care of weekly if it is needed. It is our property and we don't want the smell in our house either. We take pride in our land. We are not going to let the trash blow around. There is not going to be that much trash and cans and all that stuff. If there was we would go around and pick it up ourselves because like I said we take pride in our land. We don't want to be a shame on them and we don't want to be a shame on the neighborhood or on the county or anybody going down the road looking at a trashy house. It is not our intention to be that way.

J. Moreland: We have four horses to our east and two to our south so I mean, if that smell doesn't bother the neighborhood then the port-a-potties to me are not even a consideration as far as stinking up the neighborhood.

S. Moreland: I feel that by us opening our house to children that need attention or just want some place to go would be more of a benefit to the neighbors for people knowing that they have allowed something like that into the neighborhood to be a place, an alternative for instead of kids running the streets or not having any attention at all, that it would be, like I said, a benefit that would be a good to the community.

J. Moreland: I know I have checked in with, I have been working with Camp YALE out there and they just don't have the counselors. They have to turn kids away because they don't have enough counselors for the amount of kids that actually apply to go to Camp YALE, so this will actually help out the community in that sense to not having to turn kids away. We have been working with them to make it as much educational as we can. It is not just a playground to send your kids. It is an educational day.

S. Moreland: It is not our intention to have shoddy equipment. We are not just going to just put anything in there because like I said, it is our property. It is our house and we aren't going to put something in there that is going to degrade our property and our house. We would only put something in there that would upgrade it or make it stay at least the same value. We are not just going to put anything in there.

J. Moreland: I can see if we were going to start a hog farm or something, that might lower real estate values but I can't see this really doing that much.

S. Moreland: He mentioned about the cemetery across the street, I don't think there would be any effect to that because all of the camp and everything would be behind our house. There would be no effect that way to traffic or anyone across the street.

J. Moreland: Chances are we have, the parking lot is big enough to turn a semi and a trailer around in it so chances are they would be parking over there any way and walking over to the cemetery.

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S. Moreland: We would have no objection to that if they wanted to do that it would be perfectly fine. The neighbors, I am sure, probably have known my parents Chelsea and Natalie Cook and if they know them and they know my father, excuse me, there would be no way that I would tarnish their name in any way at all. My father was a veteran just like they were. I am sorry I just lost my mom last year. There would be no way I would tarnish their memory by doing anything that would soil the reputation that my father had in the community. I take pride in that name and I take pride in my father and my mother. So I would not do anything that I thought would tarnish their memory.

J. Moreland: I know they mentioned about the generator. That generator was just mentioned for like because it is going to be primitive with no electricity but if the need come that we needed electricity for something, that is the only reason why we would even have the generator running. There is no way it is going to run for 3 or 4 hours a day.

S. Moreland: Chances are we wouldn't even use it at all. It was just there if the need arise.

J. Moreland: I think we pretty well answered their questions.

V. Chr. Blankley: Any more questions from the board?

B. Davis: Cathy I just have one for you.

C. Flatter: Yes.

B. Davis: I am not really updated on, Bob made a statement, Mr. Cook did, about the Article XI.

C. Flatter: I was going to explain Bill. I am just going to say this in general about anybody that comes into the office and wants to put this type of operation any where in the county, or any other type of business in an agriculture zone. It does specifically list in a commercial zoning district any kind of amusement type operation in a C-2 zoning district. What I do is look at the agricultural zoning district and I looked under the Conditional Use and the Special Exception Use and I know that changing the zoning, actually changing the zoning of the property is not something we would want to do because that is spot zoning and then it allows all the other multiple uses that are allowed in those commercial zoning districts so I looked under both of these tables and read through the uses that are listed and I am not going to have every single use listed under these tables, we are going to find things that are going to come up just like this right here, and I thought the Conditional Use is the closest I could come to that would allow us to keep it in agricultural zoned piece of property but allow just that use and that use alone. No it is not specifically listed under this table, but it says, country club, golf course, driving range, miniature golf, the park, playground, and Bob is right, it does say public only but schools, colleges, universities are allowed in an agricultural zone under a Conditional Use so upon my urging is why they decided to go under the Conditional Use because if they petition to rezone, then they would be able to have any kind of restaurant, bar, tavern, live entertainment and that is not something that we want out on the Union City Pike. If they decided to sell the property 5 years from now and it is zoned commercially, who knows what somebody might want to do with it next.

V. Chr. Blankley: They could do anything.

C. Flatter: So that is why I decided. A lot of times it is left up to a matter of interpretation.

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C. Flatter: No I am not an attorney but I am saying that if it is similar or close to the uses that are listed, I am going to recommend to an individual that that is the way they need to go rather than rezone it.

S. Moreland: May I make one more comment? My husband and I are Christians and I guess we did leave that out but we do plan to make this kind of a Christian Camp too. There will be, in fact the camp is called God's Camp Fish & Fun because we feel that God has given us this house and this property and we wanted, in order for my husband to fulfill his dreams. That is another thing, we would not do anything that would go against God or anything of that nature too.

C. Flatter: For those of you board members that have your Zoning Ordinance with you tonight, you need to look under the Article XI, under the Conditional Use Findings of Fact. And Bob read through these at separate times, all construction development is in conformance with the area and the use adheres to the general character of and will not be substantially detrimental to the use and development and the vicinity of the property included in the request, the use and the development includes improvements and amenities necessary to minimize any adverse affects on the use and value of surrounding properties. So, you need to keep those things in mind when you are making your vote this evening. Also, 11.03 does say, Conditions of Approval, it says the board may impose reasonable conditions upon its approval of a Conditional Use to ensure that the authorized use and improvements therefore conform to the intent of this ordinance and the findings of a Conditional Use permit and such conditions shall become enforceable as if they were provisions of the ordinance.

V. Chr. Blankley: Is there any thing else to come before this board? If not I would entertain a motion to take action on this.

B. Davis: Can we as a group ask questions to each other?

J. Welch: Well it would be discussion. You could hold discussion on it.

C. Flatter: Yes if you are going to discuss I guess you can.

B. Davis: Just discuss? Okay. My thought is, as a group, good intentions, I respect both sides. If the noise if an issue, I mean they already have the rights to use their go-carts out there right now or whatever, whether this gets approved or not they can still have, the neighbors could still deal with the noise issue.

V. Chr. Blankley: Yes and there is only going to be three. I don't know how many they have now but they did say there was only going to be three on the track at a time.

J. Moreland: If this gets approved and we do start the camp, then our go-carts will not be able to be run on that property because it will be incorporated for the camp. So as far as insurance reasons, we won't be able to run our farm go-carts, so to speak, on the camp facilities. To me, it would actually benefit the neighborhood to accept it because if not, like he said, we are allowed to run our go-carts free will now to latter ones and it would be a lot quieter with the three Robin's than it would be for the normal ones.

J. Welch: Cathy the setbacks are determined by the BZA on an issue like this is that right?

C. Flatter: You can condition that. That would be a condition if that is something that you would want to add to it. If you feel like what they have suggested on the plan would not be appropriate then you could request that.

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C. Starbuck: Fourteen feet just seems kind of close when a residence is required to be 15 feet back for a go-cart track is my only comment.

C. Flatter: Did you hear what Christy said?

G. Moore: Yes I heard her.

S. Moreland: These things that we just turned in, they are just a starting point, they are not etched in stone. We had to have something to start with.

C. Flatter: Somebody back there wants to say something again Mike.

V. Chr. Blankley: You will have to come up and speak into the microphone.

S. Romack: I am Steven Romack and I live at 1470 E. Union City Pike. If this, Mr. Cook says this is in fact inappropriate for you to even be considering this, what is your own opinion on that? Then secondly, if this were to be approved and this is zoned, it is not going to be zoned commercial or is it going to be conditional commercial, or how is that going to be? Because you brought up the thing I wanted to bring up is if it is zoned commercial and in 5 years they sell the house and move on, which is not uncommon and now the commercial property is already there, someone could move in and do something else with it and it is already done. So I think those are things that you should consider but if it is not legal, why go any further? Thank you.

C. Flatter: I guess I'll explain about the zoning again. That is what I was bringing up to the board members earlier was that it is not a changing of the zoning. It is allowing this use in the agricultural zone versus where it does specifically state under the commercial zoning district, actually I believe it is under C-2, it says: amusement establishment including bowling alley, billiard room, dance hall, skating rink, swimming pool, and other similar recreational facilities. That is listed in a C-2 zoning district, which is a community zoning. That is why I did not want them to file for a zoning change because if they would file for a zoning change and they were granted that, it would allow all of the other uses that are also listed in that commercial zoning district besides what they are wanting to do versus this, coming to the Zoning Board is just for this particular use and if they would sell it 5 years down the road or whenever, nobody else is going to be able to do anything other than what they have requested, as far as the camp for the kids. Again, I am not an attorney. I look at the Zoning Ordinance and I read through it and I interpret it the way that I read it. Now whether or not that is the way a judge would interpret it, I don't know.

G. Moore: How does our legal counsel advise us on that as far as if we can act on?

J. Welch: Well it doesn't fit neatly in, but I think Cathy is right if she is trying to limit it in this particular situation. That would be the way to do it if it is going to be approved because if it is denied and they come back to ask for a zoning change and that would be approved then you have a C-2 zoning area out there for one, second would be, if you look at the intent or the spirit of the conditional uses, you have municipal sewage disposal facility that would be allowed in that area, which would seem to be a little more extreme than this. It doesn't fit neatly in, I agree with Mr. Cook on that. It is a gray area.

G. Moore: So if this request is denied than they have recourse to come back and ask for it in a different way and if it is approved.....

C. Flatter: When you say they, you are saying the petitioners?

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G. Moore: The petitioners. If this is denied tonight, they have leeway to come back and ask for a difference variance?

C. Flatter: No, if they are denied tonight, they could come back into my office tomorrow morning and say, "Well we've decided since we weren't approve by the Board of Zoning Appeals, let's file a petition that will go to the Area Planning Commission and request a zoning change to C-2". Then the Planning Commission would hear their petition and then they would make a recommendation to the County Commissioners because they are the legislative body for this unincorporated area. Then the County Commissioners have the final say. If the zoning were to be changed, again, you look in your zoning ordinance and see all those multiple uses that would be allowed in that commercial zoning district.

G. Moore: If it is approved, then their recourse is court action, legal action?

C. Flatter: Yes. Remonstrators can file in Circuit Court for a writ of certiorari against our decision.

V. Chr. Blankley: Am I correct in saying that if they change the zoning to commercial, then if they would sell it, it would still be there?

C. Flatter: The zoning runs with the ground. That would never change unless somebody would petition the Planning Commission again to change the zoning back to agricultural.

V. Chr. Blankley: When you put the conditional use on it then your are slowing it way down.

R. Cook: I have a couple comments Mr. Chairman.

V. Chr. Blankley: Okay.

R. Cook: I think that as you take a look at the Zoning Ordinance, it is your authority on which to act. When you try to define what your authority is to act, you have to take a look at the written ordinance. It is a legislative act. It is not subject to your interpretation. It is subject to what is actually there and I don't see where this conditional use, obviously I disagree with Cathy and her approach, but I don't see where this conditional use is in fact there and is allowed for you to act on. That is even by State statute. The second issue is you make an assumption that if they apply for rezoning that it is going to be granted. That is just another body that it goes before. They have to give notice, we have to be here, we can voice our objections, the Planning Commission is a recommending body and it goes to the County Commissioners. It is in fact true that if it is rezoned, that zoning follows the real estate. Just like this conditional use is, but that is not a reason for you to grant this conditional use. That is beyond the scope of what you are supposed to be looking at. What you are supposed to be looking at is right in the Zoning Ordinance on what can we do this conditional use and can we do this based on the factors of what we have in the Zoning Ordinance. Our contention of course is that you don't have the authority to do it and even if you think you have the authority to do it, the facts aren't there for you to do it. I have a question for the board. If you grant a conditional use, what exactly are you going to be granting? If you grant this are they going to have to build the track exactly where it is proposed? Are you going to have to put the trailer exactly where it is proposed? Because isn't that what a conditional use is all about?

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R. Cook: If they don't have their plans firmly in place, how can you grant a conditional use? Thank you.

G. Moore: I think that has come up before in a previous meeting, if we grant a conditional use who do they answer to to maintain the conditional use? Is that coming out right? If we grant them a conditional use for something other than agriculture A-1, is that what it is zoned for?

C. Flatter: Yes.

G. Moore: Who do they answer to or are they getting free reign to do anything with that property within that camp?

C. Flatter: No. What you are voting on tonight is what they have presented in their petition tonight.

G. Moore: Who enforces that?

C. Flatter: I do.

G. Moore: You do?

C. Flatter: Yes. So what is in their Plan of Operation is all that they are going to be allowed to do.

G. Moore: Okay. You answered my question.

C. Starbuck: I have one more question because I am not sure that I understand. If this is turned down tonight, you say they can go to the Commissioners next for a rezoning?

C. Flatter: Actually it would be a petition with the Area Planning Commission. It is a two step process when a zoning change is requested. The Planning Commission just makes a recommendation to the legislative body which is the County Commissioners, so there are two public hearings.

C. Starbuck: So if this is turned down tonight as it was presented, they don't have the capability to come back and just present the pond fishing part?

C. Flatter: Not to the Board of Zoning Appeals. Not until 6 months from now. Once you are denied a petition you have to wait 6 months before you can refile.

J. Coon: May I make some more comments about the first point that I made, the value of my home. I am not only speaking about my home, I am speaking about all the homes in the neighborhood. They are going to have the same problem that I have in my mind. Their homes are going to be affected by that too, not just one home. At first I would like to ask a question. Why did I move to the country 45 years ago? The same reason many other people move. First I wanted a little more room, I wanted a little more privacy and I wanted to have some of the things that you can have in the country that you can't have in town. I have had people that have asked me if I ever wanted to sell would I let them know? I tell them that I am not interested in selling now but I am not ignorant of my age. I told them I would let them know. They have all said the same thing, that they would like to live in the country and have a little room and you can have a few things in the country that you can't have in town and you would like to have a little more privacy. I would like to emphasize that. Something like that is going to negate all those reasons not for just me, but for Bob Fleming who lives right beside them and for Kent Shinn who lives across the road and maybe others that are not here that live in the neighborhood. Thank you.

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V. Chr. Blankley: Are there any more questions? I would entertain a motion to take action.

B. Davis: So moved.

G. Moore: Second.

V. Chr. Blankley: It has been moved and seconded that the board take action on BZA 2005-4-CU. I would entertain a motion to take a roll call vote.

G. Moore: So moved.

C. Starbuck: Second.

V. Chr. Blankley: It has been moved and seconded to take a roll call vote on BZA 2005-4-CU. Jamie.

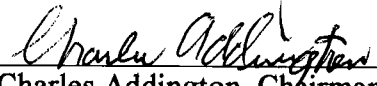
A roll call vote was taken: Charles Addington, absent; Dale Clevenger, absent; Mike Blankley, yes; Bill Davis, no; Gary Moore, no; Christy Starbuck, no.

V. Chr. Blankley: Your petition has been denied. You have an option of changing zoning or you can come back in 6 months and file again. Anything else to come before the board?

C. Flatter: I don't have anything.

The meeting adjourned at 8:00 P.M.

THE NEXT REGULARLY SCHEDULED MEETING WILL BE HELD MAY 16, 2005
AT 7:00 PM IN THE COMMISSIONERS CONFERENCE ROOM OF THE
RANDOLPH CENTER FOR FAMILY OPPORTUNITY, WINCHESTER, INDIANA.


Charles Addington, Chairman

Mike Blankley, Vice Chairman


Jamie Stump, Recording Secretary