

MACON COUNTY ZONING BOARD OF APPEALS

HEARING MINUTES – JUNE 1, 2016

MEMBERS PRESENT

Barb Lamont, Chairman
Bill Koretke, Vice Chair
Donald Wilson
Andy Freeland
Ed Leonard, Alternate Member
Dennis Hughes, Alternate Member

COUNTY PERSONNEL PRESENT

Jennifer Hoffman, Planning & Zoning Director
Tracy Sumpter, Planning & Zoning
Michael Baggett, Assistant State's Attorney

MEMBERS ABSENT

Blake Noland

MINUTES

Donald Wilson made the motion to approve the May 4, 2016 minutes, seconded by Andy Freeland. All members present answering, Aye. Motion Carried (5-0).

OLD BUSINESS:

- 4.1** V-01-05-16 a variance petition filed by Topflight Grain Cooperative Inc. requesting for a rear setback to be changed from fifty (50) feet to thirty-one (31) feet in (A-1) Agriculture Zoning.

Ms. Hoffman stated it has been suggested by the States Attorney's Office that we re-do this one due to the quorum issue last time. This is the one that is set for the special meeting held on June 3, 2016 regarding this petition. .

- 4.2** S-02-05-16 a special use permit filed by Paul Gross requesting for the use of a temporary contractor's yard in (R-1) Single Family Residential zoning.

Ms. Hoffman stated this was passed by ZBA on May 4, 2016, on May 19, 2016 EEHW passed the petition with adding a stipulation about the sign and a phone number for citizens to contact them, and it goes to the County Board on June 9, 2016.

At this time, Chair Lamont stepped down and Vice Chair Koretke took over the meeting.

NEW BUSINESS:

- 5.1** V-01-06-16 a variance petition filed by Deer Meadow Farms Inc. requesting to change the minimum lot size from 10 acres to 5 acres in (A-1) Agricultural Zoning.

Vice Chair Koretke asked for anyone wishing to speak on this matter to please stand to be sworn

in.

Ms. Hoffman stated she would like to say a few things.

She understands there has been some confusion concerning this variance. She would like to take this time to go over the procedure and notification process when we receive a petition. Per state statute 55 ILCS 5/5-12011, we have to publish the notification of hearing in the newspaper a minimum of 15 days prior to the hearing. This hearing was published in the Decatur Tribune on May 11, 2016. Signs were posted on the property off of Bantam Road by the grain bins and also off of Duroc Rd in the field, due to the high grass in the ditch, on May 17th. By state statute, letters for the notice of hearing has to be mailed to all adjoining property owners of the property in question. Those letters were mailed out of our office on May 13, 2016.

This parcel contains a total of 164.13 acres which we are only needing a variance for 5 acres of that total parcel. By State Statute, we have to post the legal description of the whole parcel that is being considered for the variance. Therefore, that is why the legal description contains all of the acres and this farm has been split and sold off different times. We do not make the landowner survey the 5 acres prior to the variance because if the variance doesn't go through then money has been wasted on a survey.

This variance is for the landowner to be able to change the minimum lot size from 10 acres to 5 acres for just one parcel, one time. She has talked with the landowner and he wants to sell off the grain bins and shed. Instead of dividing off 10 acres by the minimum lot requirements of the Macon County Zoning Ordinance and potentially taking more farm ground out of production, he wants a variance to divide off 5 acres instead.

Tom Rogers
President Deer Meadows Farms Inc
9049 Blue Sage Rd
Clinton, IL

Mr. Rogers stated the plan will be for the five acres that contains the grain bin setup and machine shed to have a new property line drawn directly from a 10 acre parcel straight out to the road and encompass the five acres where the building site is.

Due to some members of the public not being able to hear, Mr. Rogers stepped over to the map to explain.

Vice Chair Koretke asked if his intention was to sell off the upper corner where the grain bins are located.

Mr. Rogers stated yes that is correct.

Vice Chair Koretke asked if he was selling it to somebody to build a house on it.

Mr. Rogers stated he cannot guarantee what his plans are, his current interest is the large functioning grain bin and the machine shed for storage. The potential buyer is a land owner in

the area, he doesn't have any improvements and he's looking to be able to put his machinery in there for the time being.

Mr. Wilson asked if he was planning on selling the other five acres.

Ms. Hoffman explained to Mr. Wilson that is not what the petitioner is asking. It is just (1) five acre lot.

Mr. Rogers stated they are just dividing 5 acres from the 164 acres, the rest will remain intact.

Vice Chair Koretke asked if he owned the acreage just to the west.

Mr. Rogers stated no, that is owned by Mrs. Kruley.

Mr. Rogers stated what is diagramed in red on the map is what Deer Meadows owns. The 3 parcels in the upper Northeast corner were previously divided into 10 acre parcels and sold off back in about 2000.

Vice Chair Koretke asked if there were any other questions.

Dennis Cordes
14077 Bantam Rd
Maroa, IL 61756

Mr. Cordes stated he would like to know where the line is going to be. Don't show me on a map; tell me, I know the property.

Mr. Rogers stated there will be no line changes, there will only be a new line that goes along the south end of the buildings. All other property lines that are currently there will stay.

Mr. Cordes stated that's what he means, where is that line going to be along the tanks.

Mr. Rogers stated it will be right in line with Kruley's south property line.

Mr. Cordes asked if that has been surveyed.

Mr. Rogers stated not yet. The surveyor should be completing that work quickly.

Mr. Cordes stated that Mr. Rogers said a possibility on the land that he may consider subdividing it later.

Mr. Rogers stated no, he did not say that.

Mr. Cordes stated that is what he understood, that Mr. Rogers only wants this parcel now, but maybe later something else.

Andy Freeland stated we are only discussing the 5 acres right now; we are not discussing the rest of it.

Mr. Cordes stated it is connected to it and he lives out there.

Mr. Freeland stated we are only talking about that 1 parcel.

Mr. Cordes stated that is all the board wants to hear about.

Mr. Freeland stated if Mr. Rogers wants to come in later on, he will hear about the rest of it.

Mr. Cordes stated he wants to know exactly what Mr. Rogers is going to do.

Mr. Freeland stated Mr. Rogers doesn't have to tell us.

Vice Chair Koretke stated to Mr. Cordes that we cannot speculate on the future, this hearing is for the purpose of that 5 acres.

Mr. Cordes asked well if you dropped dead now, who would take your place. He stated that he bought property from Mr. Rogers's father and before he returned back home, the property titles were changed, power of attorneys.

Vice Chair Koretke asked Mr. Cordes if he was done.

Mr. Cordes stated yes, for now.

Vice Chair Koretke asked if there was anybody else wishing to speak.

Chad Ruwe
14129 Bantam Rd
Maroa, IL

Mr. Ruwe stated he has been the landowner there since about 2000. He stated that he appreciates the clarification. Part of the concern he had along with many of the community was that it was unclear as to if this is a onetime motion or a onetime consideration for only the 5 acres for the bins or if it was for the larger parcel and where that comes in, there have been rumors for a while they wanted to take that whole area and turn it into a subdivision and when we look at taking 5 acres into that entire plot that is described and you say that is all going to be subdivision, lots of concerns pop up in the area because we don't have the roads, there are a lot of things that would make it very difficult to have that many homes out there. He stated that his personal opinion and what would be congruent with a lot of the landowners and neighbors in the area is that if we are talking just the one time for the 5 acres with the bins, that doesn't bother him, that makes sense, making sure we understand where the line is and where the creek goes, that type of stuff. He is ok with that. Where he would have lots and lots of concerns is how this is written such that it is recognized as just a one-time piece and this 5 acre waiver doesn't apply to the rest of the acreage and it doesn't apply to any future sales, instead it's only this one time indication and that's where

he thinks a lot of the concerns and rumors in the community are brewing up because when we read the description and they heard rumors of the past, that is really the main concern. He thinks that if this could be put to bed and say it is only for the bins, it clears up a lot of the concerns we have on this end.

Ms. Hoffman stated to follow up with that, the remark that Mr. Ruwe made, the legal notice has to show what the change is going to be in the zoning ordinance in the public notice. We cannot put a whole narrative of what the petitioner wants to do. She stated that she appreciates the feedback.

Ms. Hoffman continues with her finding of facts/recommendation.

Petition: For a Variance requesting to change the minimum lot size from 10 acres to 5 acres in (A-1) Agriculture Zoning.
Parcel Number: 01-01-12-300-005
Location: This property is commonly known as 13899 Bantam Road in Austin Township.
Zoning: A-1 Agriculture

Finding of Facts

- Petitioner wants to sell off the current grain bins located off of Bantam Road but does not want to sell off the farm ground to make the required minimum lot size of 10 acres in (A-1) Agriculture zoning.
- The variance is needed to allow one time split of the minimum lot size from 10 acres to 5 acres in (A-1) Agricultural Zoning. Under the Macon County Zoning Ordinance, Section 155.183 states minimum lot size is 10 acres in (A-1) Agriculture Zoning.

EFFECTS ON GENERAL WELFARE: None

EFFECTS ON NEARBY PROPERTY: None

EFFECT ON DEVELOPMENT OF SURROUNDING PROPERTY: None

ADEQUACY OF UTILITIES & FACILITIES: Correct

INGRESS & EGRESS: Already existing.

CONFORMITY TO REGULATIONS: With the passage of the Variance the property will conform.

STAFF RECOMMENDATION: You may vote to approve or deny this petition, or amend as appropriate. Staff has been on site and Staff recommends approval for a variance to change the minimum lot size from 10 acres to 5 acres in (A-1) Agriculture Zoning.

Andy Freeland made the motion to approve the petition and seconded by Donald Wilson. All members present voting Aye. Motion carried (5-0)

At this time, Vice Chair Koretke stepped down and Chair Lamont proceeded.

Chair Lamont called on Ms. Hoffman for the next agenda item concerning the by-laws for a quorum.

Ms. Hoffman stated it has been brought to our attention that on the zoning board by-laws you need 4 for a quorum, this has always been the big confusion on 4 votes or 3 votes, in the zoning board of appeals so after discussing this with Michael Baggett, it was suggested that we change the quorum in the by-laws to be 3. That way we have a 5 member committee and there is always just the majority. That's how it is on a lot of other committees; we just need a majority to vote. So instead of 4, I am proposing that we change it to 3 members for the quorum.

Mr. Koretke asked what it would have taken for the Topflight variance to be approved last month.

Mr. Baggett stated if the ZBA by-laws had reflected a 3 member necessity for a quorum, which is typically true in any legislative body where you have an odd number, is you have to have a majority in order to conduct any kind of business. Typically, the situation would be in a 5 member public body, you would have 3 members necessary to begin the meeting and have any business conducted. If last month, the ZBA had sat with 3 members and the by-laws had been different, under the by-laws as they existed there was a problem because 4 members were needed to conduct any business, 4 voting members to conduct any business. The Chair person could have abstained, what we did just now was not an abstention, the chair removed herself from the proceedings and that's why we have alternate members, with Mr. Hughes we had a full 5 member body and it was as though Chair Lamont was not present for the meeting.

Mr. Koretke stated in that particular case shouldn't she have made a statement.

Mr. Baggett stated she didn't have to make any statement but his understanding was that she indicated she had a potential conflict of interest and she was going to recuse herself from the case. If the by-laws had reflected that you could conduct business with 3 members instead of 4 then she could have stepped aside, you could have heard the variance petition and passed it without her being in any way, shape or form connected to the case. But because she sat on the case and ultimately voted on it, it has to be re-done because he believes there was a conflict of interest based on what he's been told and the conflict is basically absolute. As he understands, she is a part owner, stockholder; legally that makes her a part owner of the petitioner.

Mr. Koretke asked why couldn't she just simply disclose that and say...

Mr. Baggett stated there are instances where it's less clear cut, where it's more discretionary as to whether or not. For example, say she has a neighbor who is petitioning, not a next door neighbor, doesn't connect to her land, it's just they live in the same neighborhood or maybe she went to high school with the petitioner, that's a discretionary conflict of interest and she can say this isn't going to affect my decision making but in this case, she's a part owner of the petitioner, that is a clear cut conflict of interest. She cannot take part in that discussion or vote and that's what happened so we need to redo it.

Mr. Koretke stated that our real problem was, in his opinion, if it was 2-1, in other words we only had 3 votes, now what would we do because we are not making a recommendation to the County Board.

Mr. Baggett stated it would have been fine and the reason why is, in general, when you have legislative bodies such as the ZBA here and you're a quasi-legislative body but, this portion is legislative in nature. I will use the general assembly or congress as a good example. You have 435 members of the United States house of representatives, you only need 218 to show up and have a quorum, of that 218 (and let's say that's the bare minimum), they show up, those are the only people voting, you only need 110 of them to pass something, so 110 vote yay, you've got a law. Even though 110 is not half of 435.

Mr. Koretke stated so we need 3, 4 out of the possible 5.

Mr. Baggett stated you need a majority of a quorum, of a legitimate quorum. The ZBA by-laws right now, the quorum is 4 and that's a problem. The exception is when the ZBA sits as a quasi-judicial body when it is hearing appeals of a zoning administrator decision, which doesn't come up often in Macon County, but there are situations where the person has the right to appeal Jennifer's decision to the ZBA. In those situations, the law says, and this is state law, says that in order to overturn the decision of the zoning administrator you have to have 4 votes. So in those very limited circumstances, we have a state law which overrides any by-laws that we have. So in those cases, if you only showed up with 3 members you would have a quorum to conduct business, but you wouldn't have a sufficient number of people in order to take up that particular issue because you need a minimum of 4 in order to even take action. If you had 4 show up and one of them voted no, then you don't win. That's a very limited circumstance.

Mr. Koretke asked so if the landowner says well you didn't have enough people there to give me a fair vote. Well if I was Topflight and I was turned down, I'd be saying well wait a minute, they would have gone back and dug this out.

Mr. Baggett stated if last month, what could have happened, and we wouldn't have to re-do it is 4 people were here, you had a quorum to conduct business, the case could have been heard and then Barb could have abstained and so it would have been a vote of 3 to 0 to 1, basically she votes present, and it would have passed because you have the majority of a quorum.

Mr. Koretke stated so if it came to 2-1 and Barb hasn't voted yet, so we have 2 for and 1 against, now does she have to step in or would you say we can't.....

Mr. Baggett stated no, she doesn't have to step in and it fails because it's a majority of a quorum. A quorum is 4, so if it had been 2-1-1....

Mr. Koretke stated so if we change this to 3, we need a minimum of 2 votes

Mr. Baggett stated if you only have 3 members voting, yes. But granted you've got a 5 member public body with 2 alternates so last month was an aberration and I've attended enough of these to know in general, we tend to have 5 people here and a lot of days we have 6 and every once in a while we have 7 and that's great so last month was unfortunate everything kind of came together at once to create your perfect storm. It doesn't happen often and that's a good thing. If you change your by-laws to reflect that you only need a 3 member quorum, the only time you could ever get hung up, well I don't want to say only, but in general the time you're going to get hung up are when you have to overturn, or when you're being asked to overturn something Jennifer has done.

Mr. Koretke stated the real problem was that she said she was abstaining and then went ahead and voted.

Mr. Baggett stated ultimately she did not abstain. That was the problem. Her direct financial interest is a statutory conflict.

Mr. Koretke asked because she is a present owner.

Mr. Baggett stated yes, that is a clear statutory conflict it cannot be waived.

Mr. Koretke asked so in the present case the reason for abstaining was what?

Chair Lamont stated Tom Rogers and herself worked together on Maroa Township Board.

Mr. Koretke asked but not together today.

Chair Lamont stated correct.

Mr. Baggett stated this was a discretionary abstention.

Chair Lamont stated especially when she knows people on both sides. She doesn't want anybody to think she is hiding anything.

Mr. Baggett stated he understands that sentiment but he will say this to everyone here, if you're ever faced with either a statutory conflict where it can't be waived or if you have a discretionary conflict to where you're thinking I probably shouldn't sit on this case: A. I'm available for consultation and I can advise you as your legal counsel whether I think it's something that you don't have a choice but to do or if it's something you can make your decisions known. If you ultimately decide to abstain from a vote, you don't have any obligation to inform to the public or the remaining committee members of what your reason is. You only have to say "I abstain." People can ask you, and if you want to answer you can, but you have no obligation to.

Mr. Koretke stated you do have an obligation to disclose....

Mr. Baggett stated if you have a conflict of interest, you have an obligation to abstain if you have a conflict of interest. Those are the kinds of things that if you don't mention it and you go ahead and vote on something and you get caught later, that's when everything starts to get real bad.

Mr. Koretke asked this case here?

Mr. Baggett stated it could have potentially been.

Mr. Koretke stated you could tell that some people were not satisfied.

Mr. Baggett stated that when you've got a 5 member board present or a 4 member board present even if 1 of you walks away from the discussion and the vote, do a head count when you walk in. If it's at all iffy in your mind, if you think it could be at all iffy down the road, the safest course is to walk away from the situation. The last thing you want to be is a defendant in a lawsuit or somebody makes a complaint about you to the states attorney's office for official misconduct which is a felony. I'm not saying you would necessarily be prosecuted but you don't want that complaint lodged.

Ed Leonard asked about the reasoning of the 4 currently in the by-laws. Does that surface anywhere?

Mr. Baggett stated at his best guess, but because it's such an unusual thing, it's probably based on the state law which requires 4 votes to overturn a zoning administrator decision. It was either a misunderstanding that ZBA has always had to have 4 votes or 4 persons in order to conduct business or it was a well if we make the quorum 4 we'll at least always have the minimum necessary to decide on issues of zoning administrator appeals. It comes up so rarely that my advice to you is that you amend the by-laws to be consistent with what normal legislative bodies use so that you can conduct most of your business without it ever being an issue on those very rare circumstances where we have a lack of quorum or we have a lack of 4 members and you're trying to appeal something on Jennifer then yes, we just set it over a month.

Mr. Hughes asked if we make this change or does the County Board.

Mr. Baggett stated no, it is a ZBA by-law so it's something that is done by your body.

Chair Lamont asked so all we have to do is make a motion and vote on it?

Mr. Baggett stated yes.

Mr. Koretke stated with the understanding that it now takes only 2 votes to approve something if you only have 3 members present.

Mr. Baggett stated yes.

Mr. Koretke stated you can tell just by what's gone on the last 3 or 4 hearings, there are people coming in and I always want to know, give me a reason to vote against it, a good reason. I'm prepared to vote against it as much as I am for it.

Mr. Baggett stated variances obviously stop here, you are the final decision, but let's say it's a special use permit and you are making a recommendation to the full board, full board has 21 members and only 11 are necessary to conduct business so if the full board gets it, it only takes six people to pass it ultimately out of 21. That's just the way the system is set up.

Chair Lamont asked for a motion to change the by-laws to revise them.

Bill Koretke made the motion to revise the by-laws and seconded by Donald Wilson. All members present voting, Aye. Motion carried (5-0).

Chair Lamont asked Ms. Hoffman if there were any petitions for the next hearing to which she responded we have one on Friday which is a special meeting for Topflight and we have one for next month.

ADJOURNMENT: Donald Wilson made the motion to adjourn; Andy Freeland seconded. All members present voting, Aye. Motion Carried. (5-0). Meeting adjourned at approximately 9:00 AM.

Minutes submitted by Tracy Sumpter, Macon County Planning and Zoning Dept.