



# LAPORTE COUNTY BOARD OF ZONING APPEALS

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ANNEMARIE POLAN  
Building Commissioner

July 17, 2012

Dear Members:

The regular meeting of the La Porte County Board of Zoning Appeals was held Tuesday, July 17, 2012, at 6:00 p.m. in the Assembly Room of the County Complex.

MEMBERS PRESENT: Dwayne Hogan William Eaton  
Glen Minich Melissa Mullins Mischke  
Paul Zona

OTHERS PRESENT: Annemarie Polan, Recoding Secretary, Attorney Biege; Darlene Pavay, Secretary

The Pledge of Allegiance.

Dwayne Hogan entertained a Motion for the approval of meeting minutes from June 19, 2012.

Melissa Mullins Mischke made a Motion to approve the meeting minutes as presented. William Eaton seconded.

Dwayne Hogan asked if there were any questions, comments or concerns.

All approved. Motion carried 5-0.

- 1. The Petition for Richard Loniewski and Shirley St., Arnaud (Fee Owners), and John Burys, d/b/a Phoenix Enterprises of America, LLC ("Petitioner"), respectfully represents to the Board to operate a Gentlemen's Club. This property is located at 5906 N. US Highway 35, La Porte, Indiana, Springfield Twp., zoned Accommodation Business. (This matter was tabled from the April 17, 2012 meeting and has been postponed indefinitely.**

Dwayne Hogan asked attorney Biege if there was anything he wanted to add to that.

Attorney Biege said that the postponement was not by the decision of the Board of Zoning Appeals, it was by agreement of the attorneys involved in federal litigation and it has to do with the law suit. Attorney Biege said that although we are calling this a continuance for a

postponement, it is really suspension of the petition currently pending before the Board of Zoning because of the current pending federal litigation.

**2. The Petition for Marion & Catherine Kubazyk (owners) and Bryon & Lanette Kubazyk (buyers) to construct a new home without two hundred (200') feet of road frontage and with a fifty (50') foot easement access road. This property is located at 0429 S. 700 East, Mill Creek, Indiana, Lincoln Twp., zoned Agricultural. (This Petition was tabled from the June 19, 2012 meeting.)**

Legal work complete. Remonstrators present.

Marion Kubazyk, Sr., 205 Larson Street, La Porte.

Catherine Kubazyk, 205 Larson Street, La Porte.

Lanette Kubazyk, 4111 S. 200 E., La Porte.

Bryon Kubazyk, 4111 S. 200 E., La Porte.

Dwayne Hogan asked the Kubazyk what they wanted to do this evening.

Bryon Kubazyk said that they want to do a fifty (50') foot wide easement back to their house.

Dwayne Hogan asked if it was fifty (50') foot wide.

Bryon stated yes.

Dwayne Hogan asked how far back.

Bryon said that it is eleven hundred twenty five (1125') feet.

Paul Zona asked if there was a present home back there already.

Bryon stated no. Bryon said that it is all farm ground. Bryon said that it is eighteen (18) acres that his parents own.

Glen Minich asked Bryon to show the board on the map where exactly ---

Paul Zona asked Bryon how much road frontage they own.

Marion Kubazyk said that it is a twenty (20) acre lot. Marion said that the upper corner to the right is taken out, which makes it the eighteen (18) acres.

Bryon Kubazyk up at the bench going over the site plan with the Board Members.

Paul Zona said that it's greater than the three to one ratio.

Glen Minich said that he believes the three to one ratio was thrown out.

Paul Zona said that we're setting up a flag lot again.

Glen Minich asked why they're asking for a variance when you own the property and you could deed them two (200') feet of frontage to the house.

Marion said that they're only going to take fifty (50') feet of that. Marion said that when it's done and over with, you have a driveway and you have strip here that he owns and now you have this other spot. Marion asked how he's going to sell down the road. Marion said that he has two other children that plan to build out there.

Paul Zona told Marion that he only has one more lot to sell.

Paul Zona told Marion that more or less he should have twenty acres to build two homes.

Glen Minich said that he believes that's not true either anymore.

Paul Zona asked Glen if they took that out too.

Glen Minich said that is off. Glen said that all we need is two-hundred (200') feet of frontage.

Attorney Biege said that they reduced that down to one (1) acre on the last track that was passed.

Paul Zona said then he has eighteen acres to sell. Paul said that the biggest problem is with this board right now is flag lots. Paul said that you have a fifty (50') foot entrance. Paul said that if you sell another fifty (50') foot entrance, are you going to put lighted signs that says "here's the address of one, two, three and four), whoever is living there so that EMS and the Fire Department can find you. Paul said that you are eleven hundred (1100') feet back. Paul said if your son has a heart attack and it takes them a half an hour, forty-five minutes, is that okay.

Marion said that he agrees.

Paul Zona said that he's asking for a two-hundred (200') foot wide frontage and then you can do whatever you want.

Bryon asked if that meant they have to go back eleven hundred twenty five (1125') feet.

Paul said no. Paul told him to go back fifty (50') feet and come back in.

Paul Zona said that he thinks the board could be lenient with less than two hundred (200') feet.

Dwayne Hogan said we could split the three hundred four point seven six feet.

Glen Minich said that it is about traffic and driveways. Glen said that if you wanted to make a sub-division, you would ask for that, but otherwise, what we're trying to do is for uniformity for county residences and for safety for numbers of driveways along these roads. Glen said that they all agreed that two hundred (200') feet is a number and we could vary from that some, but that's the main reason we do it.

Marion said that he understands now that they go one hundred fifty (150') feet and then down the road if one of the other kids wants to build we go another one hundred fifty (150') feet.

Paul Zona told Marion that they would have to come back to this board, but the board is more lenient looking at one hundred fifty (150') feet versus fifty (50') feet.

Dwayne Hogan said that is for the safety, neighbors and everything else that is there. Dwayne said that there have been plenty of written remonstrations about not even approving that.

Marion asked about building the house.

Dwayne Hogan said the fifty (50') foot road frontage.

Paul Zona said that he's still learning what the new rules and laws are. Paul said that he has the book and he thought he read it good enough, but he guesses not.

Marion asked if he could go one hundred fifty (150') feet back and come back in.

Paul Zona said come back in and you will have the one-hundred fifty (150') feet of road frontage used up so that way you will have plenty down the road so you can see when you come out.

Dwayne Hogan asked if there were any remonstrators here this evening for Petition No. 2.

Susan Klibinski, 0477 S. 700 E., Mill Creek.

Claude Klibinski, 0477 S. 700 E., Mill Creek.

Susan said that they don't want people behind them; they don't want a drive beside them; they don't want a subdivision behind them. Susan said that they moved out in the country to keep it country. Susan said that they don't want a subdivision period.

Paul Zona asked Susan go give him a statute why they can't build. Paul said that coming up in front of this board saying "I don't want it" no. Paul said that it isn't right.

Susan said if they don't have enough frontage.

Paul Zona told Susan that's what they're working on.

Dwayne Hogan said that they are trying to increase that. Dwayne said that fifty (50') foot is not acceptable. Dwayne said that there has to be some type of a compromise because there is only three hundred and some feet there.

Susan said that she doesn't understand what he means; she is just telling you her point of view and the neighbors. Susan said that she has talked to all the neighbors and none of us want anybody building back there. Susan said that she knows that is their property, but you asked for my opinion and everybody else's opinion around there, which everybody's opinion wasn't gotten; Susan said that no one was notified; Susan said that she got a letter by mail the Saturday before the Tuesday this was put on the calendar. Susan said that she talked to all the other neighbors and there was one little old lady that was notified and she did agree; there was another gentleman down the road that said he was approached, but he was told the access was going to be on 750, not 700 E.

Susan said that she doesn't like the way it was gone about or anything like that. Susan said that she has already had a hole shot in her house five (5) years ago and she can see the deer stand from her kitchen window. Susan said that she never did anything about that; that was an accident, but what about her safety and her grand kids playing out on her deck and stuff.

Susan said that she moved out there for peace, quiet and serenity too. Susan said that if they don't have enough frontage, she doesn't think they should be able to build. Susan said that they knew years ago when this was handed down; they knew years ago that they didn't have enough frontage. Susan said that they could have bought their house when it was up for sale and had that property and plenty of frontage, but they didn't. Susan said that they bought it; they live there and we want to keep it peaceful and rural, period.

Dwayne Hogan asked if there were any other remonstrators here tonight for Petition No. 2.

Marion Kubaszyk said that the shooting as she said on the house; he has a wagon that is all filled with holes; he's not pointing fingers, but the house is here and the wagon is over there and the bullets go through that way. Marion said that he has a car that was out there and its gone now---

Paul Zona told Marion that is civil.

Melissa Mullins Mischke asked Marion if they hunt on the property. Melissa also asked if they allow other people to hunt on their property.

Catherine Kubaszyk said that they have had to call the DNR to come in and remove people from Chicago out of there.

Paul Zona said that his next question is about people not being notified properly. Paul asked if that was true.

Bryon said how were they not notified properly when there is a certified letter up there showing that they were notified and the meeting was last month, which was tabled because they didn't have enough time to notify them. Bryon said that he doesn't understand where that comes from.

Paul Zona said that everyone was notified; he has the cards.

William Eaton said adjoining property owners only.

Paul Zona said not down the road; not two miles away. Paul said adjoining property owners.

Susan Klibinski said that she has all the names of all the neighbors that touch the property and she sent it in with all of their signatures that they were not notified.

Paul Zona said that he's sorry, but he said that they got certified letters.

Attorney Biege said that he either has certified letters cards right here and he has signed petitions from the neighbors; the adjoining property owners. Attorney Biege said that those adjoining property owners were determined by the Building Commissioner's Office. Attorney Biege said that those are the names that the petitioners are required to give notice. Attorney Biege said that there are four families that were required to be notified under the law. Attorney Biege said that we are talking about the legal standard.

Susan said certified letter. Is that correct.

Attorney Biege said not just a certified letter. Attorney Biege said that if they sign in lieu of a certified letter, that's acceptable. Attorney Biege said that it is only adjoining property owners.

Dwayne Hogan said that they've been notified.

Susan Klibinski said that she would like to know how he obtained these signatures.

Attorney Biege told Susan that is not the legal standard. Attorney Biege said that if you have evidence as to whether or not these signatures are not correct or falsified, then there is something you can present to the board.

Dwayne Hogan told Susan to come back to the microphone so he can capture this.

Susan Klibinski said that she has the signatures, which she faxed.

Dwayne Hogan asked Susan if she is challenging that in fact those aren't the signatures.

Susan Klibinski said yes she is. Susan said that she has talked to these people in person. Susan said that she spoke to every neighbor connecting to this property. Susan said that their signatures are all on that paper.

Glen Minich said that in essence even what you've done is give them notice of this meeting. Glen said that these people were even notified through you of this meeting.

Susan said they were, but they weren't before.

Paul Zona asked Susan if she talked to them yesterday.

Susan said that she spoke ----

Attorney Biege said that the names on this list are not the same names that were required by the Building Commissioner's Office.

Susan said okay. Susan asked what names are required, because that is the people that are connecting to that property.

Attorney Biege said Susan Delapaz, 0477 S. 700 E.

Susan said that is her.

Attorney Biege said okay that's you. Robert & Judy Robinson, 7552 E. 75 S, Noah Wiltfong, 0633 S. 700 E

Susan said that is the one who was told it was on a different road and she has a letter there that states that he was told differently. Susan said he signed it and she faxed it over.

Glen Minich said again, he was notified to come to this meeting.

Paul Zona said that as long as you're notified, that's what that is pertaining to.

Susan said that he signed against this variance.

Dwayne Hogan said that's okay, he was notified and he knew about it.

Attorney Biege said that we're not talking about whether they approve or not, they just need to know about it.

Susan said that he wasn't notified until after the fact.

Attorney Biege said that he has a signature dated 6-10-12.

Susan asked who were the others ones that were notified.

Attorney Biege said it was Lesley Cochran at 0452 S. 75 E. Attorney Biege said those are the four that the Building Commissioner's Office identified that needed to be notified.

Susan said that Lesley did fax in a letter also stating that she wasn't notified because she doesn't live there. Susan said that her sister lives at that address and Lesley didn't get notification until later because the mailman would not deliver it to her sister.

Attorney Biege said that the requirement of notification is to be sent to the address listed in the county records. Attorney Biege said that if they made an attempt at that address that is sufficient.

Dwayne Hogan said that they have satisfied that.

Susan asked if it matters that nobody wants houses back there.

Dwayne Hogan said your opinion does matter and it does count, but the question was if they were notified that there was going to be some activity there. Dwayne said that the answer is yes.

Melissa Mullins Mischke told Susan that they have the opportunity just like you guys to come to the meeting, hear exactly what they are presenting to the board and hear the discussion and give input on why you think it should go in or shouldn't go in.

Susan said that she guesses they didn't because they signed her letter stating that they were against it.

Dwayne Hogan said that the fifty (50') feet is not acceptable so we are working on the safety issues on this thing and working out a solution that is best for all. Dwayne said by widening that you have eliminated those hazards.

Susan said so they can still build back there and everything.

Paul Zona said yeah. Paul said the easiest way to put what you're getting at, is why you didn't buy that acreage off of him.

Susan said it wasn't for sale.

Paul Zona said that if he doesn't offer it for sale and you can't buy it, it's up to him; he owns it and you can't condemn the man for doing something for one of his children.

Susan said that they moved out there and we want serenity and not a subdivision back there.

Paul Zona said that it is one house and not a subdivision.

Susan said so far.

Melissa Mullins Mischke said that we can make a stipulation.

All board members speaking at the same time.

Susan said you asked for her opinion and that is her opinion. Susan said that she has lived there for twenty five years.

Dwayne Hogan asked if there were any other questions, comments or concerns of the board.

Paul Zona made a Motion that the Petition for Marion & Catherine Kubazyk (owners) and Bryon & Lanette Kubazyk (buyers) to construct a new home with the stipulation that they are under two hundred (200') feet of road frontage, but they are going to maintain one-hundred fifty (150') feet of road frontage from fifty (50') feet, with an address to be posted and no further subdividing. This property is located at 0429 S. 700 E., Mill Creek, IN, Lincoln Twp., zoned Agricultural.

Attorney Biege asked the Kubazyks if they are asking the board to amend this petition from fifty (50') feet to one hundred and fifty (150') feet.

Kubazyks stated yes.

Bryon Kubazyk said that he's not going to build a subdivision back there and if he was going to do that he would live in the city.

Dwayne Hogan said that he has a Motion and asked if there is a second.

William Eaton seconded.

Dwayne Hogan asked if there were any other comments, questions or concerns.

Attorney Biege said that the address listed on the Petition was 0429 S. 700 E. will be the new parcel.

Lanette Kubazyk stated yes.

All approved. Motion carried 5-0.

**3. The Petition for Chris Kolasa & Connie Kolasa to operate a recycling business.**

This property is located at 10673 W. 300 N., Michigan City, Indiana Coolspring Twp., zoned Agricultural. **(This Petition was granted on January 17, 2012 and was tabled to July 17, 2012 meeting at 6:00 p.m.)**

Legal work complete. No remonstrators present.

Dwayne Hogan asked for name and address for the record.

Chris Kolasa, 10673 W. 300 N., Michigan City.

Connie Kolasa, 10673 W. 300 N., Michigan City.

Paul Zona said that it looks good. Paul told Mr. Kolasa that he's doing a hell of a job.

Dwayne Hogan asked if there has been a lot of clean up.

Chris said that he has been working in the evenings and he is thinking about putting a business here in the next couple of years and he's going to try something different. Chris said that he's going to clean everything up. Chris said that you go by whenever you want and you will see more improvement.

Paul Zona said that sounds good.

Chris asked the board if there is any way he can get a copy of the agreement between Waste Management and the county because they've suffered a big property value and no banks would help them with nothing. Chris said that their property was a one-hundred thirty thousand (\$130,000.00) dollar loss when it burned down years ago.

Melissa Mullins Mischke asked Chris if he has contacted the Solid Waste District.

Chris said that he called IDEM and they haven't called him back.

Melissa Mullins Mischke told Chris that she recommends that he calls Solid Waste District and speak with them since they're the recycling facility for the county and they should have information on that.

Chris said that they have to pay eleven (11%) percent interest to live there. Chris said that they just paid it off for ten years living there. Chris said that they paid one-hundred fifty nine (\$159,000.00) dollars for special needs. Chris said that a friend put up a bond for the remainder of seventy-two (\$72,000.00) dollar payment and it took their interest down to three point

something percent. Chris said that they don't give them any water. Chris said that the water has never been tested but one time.

Melissa Mullins Mischke said that she can certainly sympathize with that, but we don't have any information on that.

Chris said that they are also getting tortured by mosquitoes with the lake being there.

Dwayne Hogan asked if there were any comments, questions, or concerns.

Dwayne Hogan said lets entertain a motion on this one.

Paul Zona made a Motion that the approval of the continuation of the Zoning Variance be granted. Glen Minich seconded.

Dwayne Hogan asked if there were any questions, comments, or concerns.

All approved. Motion carried. 8-0.

Dwayne Hogan told Chris that it looks nice and to keep it up.

Chris said that his daughter was sick and he couldn't keep up with it.

Dwayne Hogan said all three petitions being heard this evening, is there any other business before the BZA this evening.

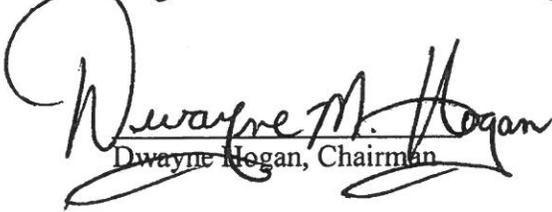
Attorney Biege said that for the board's edification, on the federal law suit they're going to engage in settlement conference in front of Magistrate Nuechterlein within a few weeks by agreement of the attorneys and we'll see what the result might be. Attorney Biege said that is the first status litigation at this point.

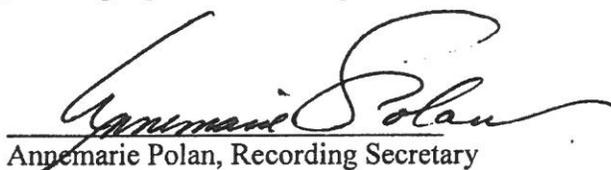
Dwayne Hogan asked if there was any public comment.

Dwayne Hogan said that he would entertain a motion to adjourn.

Melissa Mullins Mischke made a motion to adjourn. Glen Minich seconded. All approved. Motion carried 5-0.

There being no further business this evening, meeting adjourned at 6:35 p.m.

  
Dwayne Hogan, Chairman

  
Annemarie Polan, Recording Secretary