

**MINUTES of the GRANT COUNTY
AREA BOARD OF ZONING APPEALS**

October 3, 2022

AN EXECUTIVE SESSION & PUBLIC MEETING OF THE GRANT COUNTY BOARD OF ZONING APPEALS were held on Monday, October 3, 2022, with the Executive Session being at 6:00 P.M. and the regularly scheduled meeting promptly after, on the first floor of the Grant County Office Complex at 401 South Adams Street, Marion, Indiana.

The following members were present: Bill Johnson, Rex Maynard, Chip Long, Lois Jones, Ron Howe, and Ed Hartman Chairman.

Staff present: Ryan Malott, Executive Director; Brenda Harrison, Executive Administrative Assistant, Nicole Bailey, Code Enforcement Officer and Kyle Persinger, APC Attorney.

Chairman Hartman brought the meeting to order with the Pledge of Allegiance.

- Mr. Maynard motioned to accept the July 5, 2022 minutes as submitted, Mrs. Jones seconded. Mr. Johnson, Mr. Long, Mr. Maynard, and Mrs. Jones voted yes. Motion carried.
- Mr. Johnson motioned to accept the September 12, 2022 minutes as submitted, Mrs. Jones seconded. Mr. Johnson, Mr. Long, Mr. Maynard, and Mrs. Jones voted yes. Motion carried.
- Mr. Johnson asked to make a statement. Mr. Johnson stated, "I would say even though Steve's here, we'll never have another meeting where we had it there at Marion, that was terrible, we were all looking at nobody".
 - Some additional discussion was had over the meeting location at Marion High School prior to Commissioner Wright's Solar Discussion Meeting.

Finding of Facts:

1. Docket: 06BZAV-22 Taylor

- **Motion:** Mr. Maynard moved to approve the findings of fact for Docket 06BZAV-22 from the July 5, 2022 meeting and Mrs. Jones seconded. Mr. Howe, Mr. Johnson, Mr. Long, Mr. Maynard, and Mrs. Jones voted yes. Motion carried.

2. Docket: 07BZAV-22 Scott

- **Motion:** Mrs. Jones moved to approve the findings of fact for Docket 07BZAV-22 from the July 5, 2022 meeting and Mr. Maynard seconded. Mr. Howe, Mr. Johnson, Mr. Long, Mr. Maynard, and Mrs. Jones voted yes. Motion carried.

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3. Docket: 04SP-22 Ehler

- **Motion:** Mr. Long moved to approve the findings of fact for Docket 04SP-22 from the September 12, 2022 meeting and Mrs. Jones seconded. Mr. Howe, Mr. Johnson, Mr. Long, Mr. Maynard, and Mrs. Jones voted yes. Motion carried.

DISCUSSION TO INITIATE LITIGATION

The Board opened for discussion to Initiate Litigation for the BZA to sue the Grant County Commissioners.

Chairman Hartman stated they feel there is a provision in Draft #4 ordinance that is illegal. The provision in question says the Commissioners approve the development plan. The APC will have a hearing and give their recommendation (favorable, unfavorable, or no recommendation) to the Commissioners for their approval. According to the State Code the Area Plan Commission has the sole authority to approve the development plan. Another thing is on the zoning table, solar farms were previously under utilities, that is being moved to Planned Unit Development (PUD). Chairman Hartman feels that a Planned Unit Development is not the proper place for a utility. Solar farms should be with other utilities. Commissioners would be approving that process. A PUD would normally be used to plan a small community with mixed uses in it. The Board feels this is mistake and should be corrected, that is should remain with the BZA approving under a special exception. When you consider how the process totally evolved from beginning to end, with a Commissioner heading up the ordinance creation. The ordinance created giving the Commissioners sole authority in final approval and eliminating the Board of Zoning Appeals and the Area Plan Commission from their responsibilities. Therefore, they are discussing a legal option. Chairman Hartman asked if there was any discussion from the Board.

Mr. Long stated that he felt that the BZA was being eliminated completely from everything. He stated we work for the people and community. Mr. Long noted that the BZA works for the people of Grant County, he believes they have sidestepped part of that process.

Mr. Maynard stated he agreed with Mr. Long, that what he heard through the whole process was that the BZA is not elected officials and in a sense, had no brains and the Legislative body is smarter because they were elected. Mr. Maynard stated, "they're no smarter than any of us, they are just elected officials that are getting paid" and that is his opinion.

Mrs. Jones stated that we should enforce the laws the Indiana State Legislature have issued. Should we not do it, it's kind of free range for everyone to do what they want. She noted "We do not have laws so you can do what you want to. Those laws are for reasons". She noted that we need to think hard on this, if you have 20 solar panels next to your house today, it could be 2,000 the next day.

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Mr. Maynard stated that we are supposed to follow State Law unless we make our rules stricter. He asked why are we not following the State Law? We were told by our Director there are two boards and we were to follow our rules and the State rules. We can make the rules stricter, but not less. Why is our Commissioners doing away with one of the State Rules?

Director Malott stated that as far as variances are concerned, variances will still go through BZA, BZA is not being eliminated from the process. Some of these projects may be 20 to 30 tracts of land and need variances on every tract. Mr. Malott stated that the BZA will still be very much involved.

Director Malott explained that he was also stuck on the 1400 Series of Indiana Code back in March 2022 with Draft #5 & Draft #6. He explained that the 1500 Series of Indiana Code allowed Solar to be treated like a PUD. He also explained that he had discussed this issue with other Directors. Planned Unit Development with an overlay zoning district would allow each development to become its own ordinance.

- Chairman Hartman asked if variance thru the BZA would have to be written into the Ordinance, Director Malott noted that the BZA is always responsible for any special exception, variance, or appeal.
- Chairman Hartman noted that the BZA doesn't agree that this is the way to go. He stated that it sounds like a far over complication and you're then creating another ordinance, as well as making further rules on it as to whether the BZA is involved.
- Director Malott noted that the BZA is involved by right. Chairman Hartman stated he felt that development was different from an initial special exception allowing the project to move forward. He continued, there would still be variances needed after a special exception to allow it on AG land is approved, if it's turned down then there is no project.
- Chairman Hartman noted the BZA does have final authority for projects such as special exceptions & whether or not they would go forward. He also noted that the BZA is a discretionary semi-judicial board that can weigh harms to residents nearby, not just view the facts, whether or not it complies with regulations.
- Chairman Hartman noted that the BZA does play a big part in that process (special exceptions) and most counties do use their BZA. He noted that some counties are allowed to build their solar farms by right, Director Malott noted 19 Counties. According to Chairman Hartman some counties that have done that have found they're seeing great pushback after a solar company exercises that plan.
- Chairman Hartman noted there was a decision by the Indiana Court of Appeals in Pulaski County over the Mammoth Solar Farm, he noted it's on hold because of the decision made by the BZA, they did not follow the application process (ordinance) to the "T". He noted that a group of citizens got together to get this sent back to the BZA.

Open Public Forum

Chairman Hartman opened the meeting to the Public:

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Raymond Bair. Mr. Bair stated that he believes that everyone involved is doing what they think is right for Grant County. He stated for the Citizens of Grant County, they would like to see us get along, figure something out, and make it work. Mr. Bair also stated that monocropping is terrible for our soil & is not good for the environment, noting erosion. He noted that all the pesticides & herbicides that the farmers put on their fields run into the ditches, it's not good for water. Overall, he just wants everyone to get along better, he believes "we" should set an example.

Deborah Cain. Mrs. Cain stated that there is a way to work together, but she believes that the way Mr. Bardsley did it, is not the way. She stated that "you need to listen to the people and not shut them down, be able to hear them, and be at every meeting and study what's being said". She believes the BZA was taken out of the process, that BZA, APC, and Commissioners are here for a reason. She believes the BZA was here & heard the citizens.

- Mrs. Cain asked Director Malott a question. She asked how the BZA would still be involved in every application put forth? If they would be in the process from the beginning to the end?
 - Director Malott noted that even if we did it as a special exception, the BZA would not be involved until the end of the process.
 - Director Malott noted the way the Ordinance reads right now, they are responsible for all variances. He noted they would be responsible just like the Drainage Board would be responsible for the Drainage Plan, the Highway Department would be responsible for the Road Use Agreement, EMA is responsible for the Emergency Plan, the BZA would be responsible for all variances.
 - Director Malott brought up Posey County, he noted that he has been reviewing a Solar Application currently underway in that county. He noted this project had 8 pages of variances for that 200 MW Solar Project.
 - Director Malott stated again, the BZA is still going to be heavily involved.
 - Mrs. Cain said if they are going to be that important, why can't they be in the Ordinance? She believes they should be in the Ordinance.
- Mrs. Cain stated that she does not agree with the Setbacks, Draft #4, she wished the Commissioners would have listened and put a moratorium in place. She stated that Draft #7 was highly favored, and she thought Commissioner Wright voted for it. She believes that a moratorium should still be put in place.
- Mrs. Cain noted that a farmer had stated that, what if in 25 years the farmer's children need to put additional drainage in the farm field but there was a solar farm there blocking it, they could lose acres of farmland. She is wondering if we are really looking far enough ahead.

Chairman Hartman made a clarification on Variances, noting that if the solar companies do apply for a variance, it will not stop a project if the BZA says no, it would only, possibly, send them back to the drawing board to make them comply. He then noted that with a special exception, it is one of the first things that has to be done or the project doesn't move forward. That is the authority that the BZA would normally have if considered a Utility.

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- Director Malott noted that only 23 of the 47 Solar Ordinances in the State go thru the BZA. Mr. Hartman disagreed. Mr. Malott stated that he would send Mr. Hartman the Purdue Snapshot Survey which indicates what each counties order of approval is.
- Mr. Maynard noted that he sits on both the APC & BZA boards. He stated that when things are changed like they did, he believes that some things that go to the APC should be in with the BZA. He believes that we are constantly changing rules, he believes that we are only doing that because somebody wants it in their favor. He suspects the Commissioner did it this way so that they could make the decision. He would like to see it stay with past practices and the way we've always done it in this county. He stated that he can appreciate all the money that is going to come to the county, but why should it be them making the decision.
- Chairman Hartman noted there is a question of money. He stated that we have asked if there has been a study of what funds this will really bring. We have not been able to get an answer on that. He believes that that would be one of the foremost things that the Commissioners would want to put forward. He also noted that some studies say that it is not good for the overall economy.
 - Chairman Hartman then noted that it is not good for the overall economy to shut down one business, such as farming, and put on another business which is a utility.
 - Chairman Hartman noted the money that farmers spend stays in the county and has a multiplier effect, from person to person, job to job, many companies support farming.
 - Chairman Hartman noted there may be additional property taxes, but tax abatement might also affect that, if they are passed.
 - Chairman Hartman noted that the electricity sold off of these solar farms does not stay in Grant County.
 - Chairman Hartman noted that these are not Grant County Companies that are promoting these projects, money will not stay in these banks, we will not see a multiplier effect, money will go to the home offices.
 - Chairman Hartman noted that rental payments will be paid to the farmers and these companies do have a significant amount of money it seems when they are willing to pay three times the normal rent for farmland. This will reduce the amount of farmland and possibly driving it up in price for what is left to be rented by farmers.
 - Chairman Hartman stated that if there is a winner here, it seems like it is county government if taxes go up but for the overall economy it seems like a loser.

Dennis Carter. Mr. Carter noted he lives in the area of where one of the solar farms will be going. He noted that he has been coming to the meetings since January. He stated that he has listened to the BZA & APC discuss it, and he heard Mr. Malott state in January that it didn't matter what you did, the Commissioners were not going to accept it. He believes that it should be in the BZA & APC hands, it doesn't belong in the Commissioners hands. He noted ~~the~~ Carter believes as soon as the government money runs out & politics change, & green energy corrects

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itself, they are going to bail and take the money and run. He believes we are going to be left with a mess to clean up. Mr. Carter discussed generational farmland that is now signed up for Solar. He fears that Farmers are not going to be able to afford to farm. Mr. Carter hopes to see the BZA maintain some type of authority to oversee some of this stuff and not let the Commissioners do it. He noted that the Commissioners shut down people in their meetings, giving only two minutes.

Chairman Hartman asked to let the record show that the BZA did vote for Three Solar Farms in Grant County. He noted they are all small, and we haven't heard too many objections to them.

Don Wright. Mr. Wright noted that he has attended several APC & Commissioner's Meetings. He believes that the BZA, APC, and Commissioners have roles to play in establishing ordinances. Mr. Wright stated that he wasn't sure what a variance was, Mr. Maynard explained. Mr. Wright stated the APC is the only one that really listened (note, I believe he meant both BZA & APC). He could not recall a Commissioner's meeting where they solicited input from the community. He didn't see the Commissioner's, other than Commissioner Wright, at the APC meetings. Mr. Wright stated that he supports the litigation, especially if it means getting these groups to fulfill their responsibilities.

Chairman Hartman moved forward from Public Discussion to addressing the BZA for a closed discussion.

- Mr. Johnson asked why the solar farms have to go on tillable land, he would like to see a survey of what is available.
- A motion was made by Mrs. Jones to approve litigation against Commissioners, Mr. Long 2nd. Mr. Howe, Mr. Johnson, Mr. Long, Mr. Maynard, and Mrs. Jones voted yes. Motion carried.

ADJOURNMENT

Motion made by Mrs. Jones and seconded by Mr. Long.
There being no other business, meeting adjourned at 7:32 PM.



Ed Hartman, Chairperson