

MINUTES

WARRICK COUNTY AREA PLAN COMMISSION
Regular meeting to be held in Commissioners Meeting Room,
Third Floor, Historic Court House,
Boonville, IN
Monday,
October 10, 2022, 6:00 PM

PLEDGE OF ALLEGIANCE: A moment of silence was held followed by the Pledge of Allegiance.

MINUTES: To approve the Minutes from the last regular meeting held September 12, 2022. Doris Horn made a motion to approve the minutes as distributed, Greg Webb seconded the motion and it carried unanimously.

MEMBERS PRESENT: Jeff Willis, Doris Horn, Jeff Valiant, Amanda Mosiman and Greg Webb.

Also present were Morrie Doll, Attorney, Molly Barnhill, Executive Director, and Jen Hollander, Staff.

President Valiant said it looks like we have one primary plat on the agenda tonight, primary plats will receive final approval here.

PP-22-16: White Oak Hills: PETITIONER/OWNERS: Jeremy K. McKeethen and Stevie R. McKeethen. Approximately 20.09 acres located on the south side of Millersburgh Road. Approximately ½ mile east of the intersection formed by Millersburgh Road and Spring Lake Drive. Being Lot 2 in H & L Farms Minor Subdivision #3 as recorded in Document #2022R-002839 in the Warrick County Recorder's Office. (*Advertised in the Standard September 29, 2022*)

President Valiant said sir, please state your name for the record.

Jared Memering with Morley was present representing the McKeethens.

President Valiant asked for a staff report.

Mrs. Barnhill said the notice to the adjacent property owners, we are missing one green card but we do have the white pay receipts and they were mailed correctly. She said it is zoned "A" Agricultural, there is no floodplain. She continued the proposed development is a three lot subdivision, lots ranging in size from 4.76 acres to 10 acres. She said the Commissioners approved the request for no street plans today, and the Drainage Board approved the request for no drainage plans. She said on the septic systems...apparently the Health Department did not receive all of the of the soil tests, he had some but not all, so he is waiting for those; he said once he has them he will be willing to sign off. She continued the water will be a cistern and the Health Department has signed off on that, so the plat will be in order and would be approved subject to the septic.

Jared Memering said I forwarded those to you after we talked earlier.

Mrs. Barnhill asked you got them.

Jared Memering replied yeah, since the first meeting, I sent them to you.

Mrs. Barnhill said okay, so Aaron Franz will just have to review those and then he will sign off.

President Valiant asked do you have anything to add to the staff report.

Jared Memering said no.

President Valiant asked any questions from the Board at this time.

Amanda Mosiman asked are we just redoing for buildable lots I assume.

Jared Memering said yes.

Mrs. Barnhill said this is that property that was auctioned off, none of them were buildable.

Amanda Mosiman said okay.

President Valiant asked any other questions from the Board at this time. He said any remonstrators for or against this project if so please step forward, don't see anybody moving so we will bring it back to the Board. He asked any further questions. He said if not I will entertain a motion, just remember it will be a caveat on the septic sample.

Doris Horn made a motion to approve PP-22-16, Jeff Willis seconded the motion subject to the septic approval and it carried unanimously.

OTHER BUSINESS:

Complaint: COMP-22-03: Michael & Pam Hastings- 5268 Epworth Road. Possible zoning violation.

Mrs. Barnhill said so we had a complaint filed about operating a business, Cardinal Sign Service, out of the home. She said everything in this packet is what they filed, they have picture after picture, and there is one from the internet with the home address being used for the business. She continued there is a sign on the door, there is one to show a work truck outside of the home not done and then later you see a picture with the decals on it. She said that is what we have, Mr. Hastings is the owner of the property and he did call me last week and we decided it would be a good idea to come in here and talk to the Board.

President Valiant asked are the Hastings here. He said please approach the podium, there should be sheet up there to sign in.

Mike Hastings said now I'm not here to argue that there is not a business being ran, my son does run a business out of there, he does a sign business which the equipment is in our basement. He said he does wrap vehicles, so most of the time he wraps them in the garage, he does wrap off site too, so the trailers may be there a day or two days on the time it takes to be wrapped. He said but really, we were talking on the phone and what I am wanting is an in home, because he does live there, and it doesn't take up more than 25% of the house. He said as of today I have checked the web site and the Facebook and all it says as far as the address is Newburgh Indiana, I didn't see the address of the street if it is on there either we have removed it or.....I was talking with my son and he said it has never been on there that it just says Newburg Indiana. He continued as far the signage they are talking about on the door, that can't be seen from the street it basically, you almost have to be on our property to see it. He said I would almost like to see the pictures that were taken, because they were probably standing on our property when they took them...but it's just on a door, it's not in the yard, it's not lit, it is basically just across a double basement door.

President Valiant said as far as the address it looks like constructionjournal.com has Cardinal Sign Service at 5268 Epworth Road.

Mike Hastings asked construction.com has it, well then we'll....

President Valiant said constructionjournal.com

Mike Hastings said I don't even know what that is, but if we need to have it removed we can.

President Valiant said I mean it is out there to be found I guess....

Mike Hastings said okay, but the majority of the people call before they come out, it is not a retail business where people are coming in, there is not.....

Amanda Mosiman said the fact that it is a business at all being ran out of a house is a problem.

President Valiant said yeah, and he understands that.

Amanda Mosiman said that is the problem, the crunch of it is there is a business being ran out of a residence period.

Mike Hastings said well if it's a home business, what we have tried to do is, basically he has left school with a lot of loans and we are trying to help him build up. He said he is not at a point because of the loans where he could get a loan from a bank to move somewhere else.

Amanda Mosiman said our Ordinance does not allow a business in a residence like that.

Mike Hastings said I thought the home business, I mean we were going over what a home business was....

President Valiant said he could get a variance, I mean....

Amanda Mosiman said yeah.

Mike Hastings said and if I need to get a variance that's what I will do, I didn't realize I needed to get one. He said that could be done.

President Valiant said the fact that they are bringing the vehicles there and basically doing the work there so you do have "customers" coming in and out. He said it would be more than a home occupancy wouldn't it...

Mrs. Barnhill said that is the problem, you can't have people coming to your home, the only thing we could think of for him to apply for was a home office, that is literally all that it is. She said you can ship and receive goods from there, there is no signage, you can have your address listed as the home, no employees...but nobody can come to your home.

Amanda Mosiman said so he would have to find another place to do that.

Mike Hastings said well, if he could find another place to do the wraps, because that is the only time people are coming to the home is when he is doing the wraps. He said and we can find another place to do that, to where people wouldn't be bringing vehicles or he wouldn't be bringing vehicles there to wrap either. He continued a lot of times what he has been doing is going to the business that is wrapping it, picking up the car and coming back, so that people are not coming to the site just the vehicle is.

President Valiant said got it.

Mike Hastings said but if we need to find another site to do the wraps we can, that would be just finding a garage somewhere where we can wrap, so if that is the only problem to fix the variance we can work around that.

President Valiant said well, you would have to have to file and go to Board of Zoning Appeals for that, but that would be one step in the right direction. He asked Molly, would you agree.

Mrs. Barnhill said yes, that would fix it as long as nobody is coming there.

President Valiant said I think as far as the complaint, having a business in the house, is against the ordinance but like I said you can apply for a variance.

Doris Horn said as long as there is nobody coming.

Mrs. Barnhill said it will be a home occupation, nonresidential activity conducted within a dwelling, they have to live there, incidental and secondary use of the building, not occupy not over 25% of the first floor or the basement as you told me earlier, does not change the character there of, no display of goods, outside storage of goods or equipment, no exchange of goods equipment or commodity on the premise. She said so shipping, receiving, office work and then he would have to....

Mike Hastings said like I said the only part that has any of that in it is the wrapping, because he does the signage for...in fact he did the signage around the Court House so I mean he did all the work there....then he came here to install it. He said he does a lot of the hospitals their signage, so like I said everything is being made there but it is being installed somewhere else, so there is not people coming and going.

Mrs. Barnhill asked is it just him....

Mike Hastings said correct.

Mrs. Barnhill said he doesn't have any employees, okay. She said then it would fall under that.

Mike Hastings asked so to file a complaint does that have to be done before hand.

Board Members said I'm not understanding your question.

Mike Hastings said like I said the complaint here is on our business at our house. He continued my neighbor has a mowing business and his equipment is kept outside all the time, and I mean if things are going to be coming against the business out of our home, I would like the process to start on his also. He said I wasn't sure if I do that here or if that is something that is done before hand, I have pictures on my phone of his equipment being there...

President Valiant said you are free to file a complaint just as these people have done with your son, absolutely.

Mike Hastings said okay

President Valiant said obviously we can't police every house in the county.....

Mike Hastings said no, no, no this is my neighbor...

President Valiant said we count on people in the county to bring it to our attention.

Mrs. Barnhill said that form is on line, you can fill it out....

Mike Hastings asked what is it called.

Mrs. Barnhill said Zoning Complaint...

Mike Hastings said oh...that, ok. I thought variance is what I was thinking.

Mrs. Barnhill said okay, or you can come into the office and file a complaint. She said if you mail it in it has to be notarized.

Mike Hastings asked where is your office.

Mrs. Barnhill said we are right down stairs.

President Valiant said downstairs.

Mrs. Barnhill said we are on the main level, Room 201.

Mike Hastings said okay.

Mrs. Barnhill said if he wanted to file a special use for a home occupation we passed the October filing deadline, so the next deadline is October 31 to go to the November 28th BZA Meeting.

Attorney Doll asked whose home is this.

Mike Hastings said it is mine.

Mrs. Barnhill said Mr. Hastings.

Mike Hastings said and it's my son that is running the business.

Attorney Doll asked how old is he.

Mike Hastings said 30.

Attorney Doll asked does he live there.

Mike Hastings said yes, trust me I don't want him to live there forever either, but I want him to be in a position where he can afford to move out too.

Attorney Doll said we have just never had, my recollection, the business that we have had before doesn't apply to that....have been operated by the home owner.

Mrs. Barnhill said all it says is they have to be an occupant of the dwelling.

Attorney Doll said okay.

Amanda Mosiman asked I guess once he moves out you could put that in to the variance right, once he moves out.

Attorney Doll said if he moved out, he would lose the right to operate....

Mrs. Barnhill said yes...

Mike Hastings said if he wasn't living there then I would see where there would be another problem, or it wouldn't fit.

Amanda Mosiman asked do we need to take action on this.

Attorney Doll said are you going to take action on the complaint or are you going to table it to let him file the motion with the BZA.

Amanda Mosiman asked is that what you are planning on doing.

Mike Hastings yes.

Amanda Mosiman said it looks like we have some other comments.

Mrs. Barnhill said yeah, is Mr. Brammer here.

President Valiant said please state your name for the record.

Greg Brammer was present.

President Valiant said so the complaint about them having the business, do you understand that he can apply for a variance to have that business, I'm not meaning that it is approved, but he will come before another Board just like tonight and they will question and property owners will be notified, so on and so forth. He said you will have a chance to that and say yes or no, your thoughts on it.

Greg Brammer said correct.

President Valiant said I just want to make sure you understood that part.

Greg Brammer said yes, he does have employees that come to the house. He said he has signage that can be seen away from their property, that is on the door.... and it wasn't taken on their property, it was taken from my driveway. He said they have a car port that he pulls up in so, and they have a detached garage or work space, if you want to include that it is probably over 25% of the property.

President Valiant said alright, did you get these packages.

Greg Brammer said shipping things that are dropped off at my house showing the shipping that was their house.

President Valiant said to the business name.

Greg Brammer said in the photographs you see our property in the background in some of those properties, I'm not sure which one that he had listed on the Facebook page....oh traffic is horrible. He continued as a matter of fact...parking in my yard to do work at their house, people backing into my yard to leave...we have an easement that we....our neighbors in front, it is attached to their property, it is a private easement 400 foot long, which butts up to my property and it says on the plat that they are allotted 20 feet of space to get into their property. He said so all of this is crossing my property, all of their business crosses my property to get to them....

From the audience (inaudible)

President Valiant said okay so hold on...we are not going to be yelling from the crowd, because this is being recorded and these girls have to type this up so when people are just yelling stuff from the crowd it just convolutes everything so I would ask the crowd to quiet. He continued so the nature of the complaint, is it the business in the house or is now people coming on property...so if it were just him on property without a business would that be an issue. He said I am just trying to make sure we get to the root of the actual complaint.

Greg Brammer said it is all the traffic that comes and goes because of their business there.

President Valiant said alright.

Greg Brammer said it is their sons business, but dad needs to be dad you know.

President Valiant said so this will... in the County a lot of people do start business in their homes and don't realize that there are ordinances against this, correct. He said so this sounds like what Mr. Hastings has done or Mr. Hastings son has done. He continued so he is allowed to apply for a variance to have a business, when that comes to Board of Zoning Appeals that is when all of this stuff can come out, so that is what I would suggest, because you will be notified as a property owner. He said when all of this comes out you come to that meeting and bring up your concerns and I'm sure that they will probably ask some other stuff, he is going to have to change some stuff anyway just from what he has found out tonight. He asked I don't know if the Board has any other things that they want to throw out, that is my feeling on it, I think Mr. Hastings has the right to apply for the variance in my opinion, not saying it's going to be approved, but he does have the right to apply for it.

Inaudible from the audience

President Valiant said whenever you get back up here, so that and all of these will be addressed then, do you see what I'm saying. He said so if he tries to apply like I said it may be approved it may not, but that is when all of those things will be addressed. He asked do you have anything to add to that.

Greg Brammer said okay.

Mrs. Barnhill said no, not to that, thank you.

President Valiant asked Morrie.

Attorney Doll said no, but there is another man who wanted to be heard.

President Valiant said yeah, we will get them up one at a time.

Attorney Doll said sorry, a lady.

President Valiant said yes.

Christy Taylor was present. She said I own 5288 Epworth Road, so I actually own the easement that he uses to get to and from his house and all the traffic, and business traffic flows onto my property. She said for over 400 feet, well basically he is using my property to run the business out of, it has caused issues all along, and it always has. She said he does and has had up to two employees at one time coming in and out, there is more than just a garage, they don't even use their garage for the business, they use their basement and a shed detached from the house. She continued the lettering on the front you can see from my backyard, you can see from several different people's backyards, 4-5 neighbors. She said the business deliveries, truck deliveries, have been so vicious that they have literally shaken my house and shaken pictures off the walls that have fallen and broken. She said it is constant and the traffic....

President Valiant asked what kind of trucks are we talking.

Christy Taylor said all kinds of delivery trucks.

President Valiant said like UPS trucks or bigger...

From the audience said semi-trucks.

From the audience boom trucks.

Christy Taylor said and more, worse. She said the vehicles coming down the drive are deteriorating my drive, tearing up the easement and he wants us to pay, he actually sued me for his business that they have hired people to come damaged our easement and he sued me for not paying for the damages. She said it goes on an on an on.

Amanda Mosiman said is this a shared use easement.

Christy Taylor said yes, me and my husband own the easement, back about 400 and something feet, then it splits off to Mr. Hastings and Mr. Brammer.

Amanda Mosiman said still it's a shared use, so everyone has equal use to it correct.

Attorney Doll said yes.

Christy Taylor said but it is residentially zoned.

Attorney Doll said but it may be....

Amanda Mosiman said yes I understand, we also have a shared easement use with our neighbor for her driveway, so I do understand, I was just clarifying to make sure that was right.

Attorney Doll said maybe that the current use exceeds the dedicated propose.

Amanda Mosiman said yes, which I was getting to.

Christy Taylor said right, so the amount of traffic that goes from our house and the Brammer's house is less than a quarter then what they use for the business. She said so when he is wrapping these vehicles it's not like he is bringing in our vehicles and putting wraps on them, there is big trucks, trailer, boats I mean huge pieces of equipment just constantly up and down the drive, up and down the drive. She continued then you have the maintenance on the drive that we are supposed to share.

Amanda Mosiman said as we have explained before that is not going to be allowed, that traffic, even if he does file the special use and gets the approval, that type of traffic will have to cease, the signage will have to stop. She said but he is still allowed to have his home office in that residence if he gets approved, so that is two big issues that would be off the plate. She said there are things that (inaudible) even if they get that variance of the home office.

President Valiant said thank you.

Christy Taylor one more thing I'm sorry, our house is about.... We are the front one so we are like 35 feet from the easement and so all of the excess traffic and all the dust...we can't keep the dust down it is just horrible with all the excess traffic.

President Valiant asked everybody on that side good before I bring Mr. Hastings back up. He asked do you want to come back up Mr. Hastings and we will come up with....

Attorney Doll said motion to table.

President Valiant said wishes of the Board.

Mrs. Barnhill asked do you want to do that. She asked Mr. Hastings when he makes the signs are they vinyl, is he just printing vinyl or is he constructing.

Mr. Hastings said vinyl is what he wraps the vehicles with....

Mrs. Barnhill said yes.

Mr. Hastings said when he makes signs, there is not....well it's like the little sign there behind you....those are done on like a laser thing and they are not...I don't know, they are some sort of plastic.

Mrs. Barnhill said so, part of the complaint that was filed has a sign it looks substantial...

Mr. Hastings asked what is the...

Mrs. Barnhill said it says "Charmed".

Mr. Hastings said no, that's not....

Mrs. Barnhill asked is from....

Mr. Hastings said that is what he made, that is at a place of business.

Mrs. Barnhill said that is not at your house.

Mr. Hastings said that is not at our house.

Attorney Doll asked did he make it.

Mr. Hastings said yeah, he made it.

Amanda Mosiman said it looks like it was pulled from a Facebook page to me.

Mr. Hastings said all of the signs from his website are on there are things he has done.

Amanda Mosiman said yeah, it is just pulled from his Facebook, if you look at it up here. She said it is just a picture he put of the stuff he can do on his Facebook.

Mrs. Barnhill said as long as that is not at that house, okay.

Amanda Mosiman said no.

Mr. Hastings said there is not a sign on the house...

President Valiant said it's not the sign on the house, I think it was because this is a little more than printing vinyl in a home office, this is pretty substantial fabrication. He said so that would have been more of a use than a home occupancy, is what I think Molly is getting at, correct.

Mrs. Barnhill said yes.

Mr. Hastings said what are you.....I mean...whatever, okay. He said it's a thing you wouldn't hear, this is not a factory where if you were 20 feet away you would hear what is being done, so there is no more...

President Valiant said nobody says that it is.

Attorney Doll said yeah, because with the special use needs to be the son.

Mrs. Barnhill said yes, be the son.

Amanda Mosiman said yeah, yeah.

Mr. Hastings said that's fine ok.

President Valiant asked what are the wishes of the Board.

Amanda Mosiman said obviously there is some things that need to be fixed here, I don't want anybody to think we are being dismissive we are addressing this, but we are not the Board that makes the final decision on this. She said if he is going before and get a special use it needs to go before the BZA and all of this needs to be brought up again for that approval. She said that ultimately is the Board that has final authority here. She continued my thought is we table it, let you guys have time to do your filing, and the Board that actually has the decision making authority deal with it...deal with it.

Attorney Doll said you would give new notice to the abutting land owners.

Amanda Mosiman said yes, all of that will be refiled and re-notified, so that is my motion is to table it based on the BZA filing.

President Valiant said discussion.

Amanda Mosiman said yes.

President Valiant said how do we want to address... I mean, with the current traffic...

Mr. Hastings said let's be clear on the traffic, the traffic is not just his business. He said Mrs. Brammer they have...

President Valiant said his bringing vehicles to and from the house.

Mr. Hastings said oh, okay.

President Valiant said that traffic, where you already said you could find someplace else to wrap the vehicles.

Mr. Hastings said that's fine, your right, ok I'm sorry.

Amanda Mosiman said yeah that needs to stop.

President Valiant said I'm sorry I just wanted to throw that out there.

Amanda Mosiman said no, that's fine, you are totally right, that needs to stop it shouldn't be allowed.

President Valiant said so there is a motion on the floor to table this to let Mr. Hastings file for some type of home occupancy.

Doris Horn said I will second that motion.

President Valiant said or home workshop or...

Attorney Doll said wait a minute, how long is it continued until.

Doris Horn said oh, sorry.

President Valiant said until next month.

Amanda Mosiman said knowing what the BZA has on their next agenda, I'm going to be nice and give it 60 days.

Jeff Wills said I just want to make sure he files it before the next meeting.

President Valiant said he has to file before the 31st to make the....

Mrs. Barnhill said it got continued again.

Amanda Mosiman said yeah...wait are you telling me like....

Mrs. Barnhill said again.

Attorney Doll said yeah.

President Valiant said but still wouldn't go until the 28th.

Mrs. Barnhill said so they will go in November now, but if he files by the end of this month...

Attorney Doll said it will be the end of November.

Mrs. Barnhill said the end of November.

President Valiant said we will have another meeting before then.

Attorney Doll said it will be the 4th Monday of November at 6 PM.

President Valiant said so you want to go to the December meeting.

Amanda Mosiman said I'm tableing off our agenda for 60 days.

President Valiant said okay.

Amanda Mosiman said that is what I'm doing.

Mrs. Barnhill said 60 days.

Amanda Mosiman said right.

Mrs. Barnhill said okay.

Amanda Mosiman made a motion to table Comp-22-03 until the December 12, 2022 APC meeting to allow a special use to be filed, Doris Horn seconded, the motion carried unanimously.

Attorney Doll said to be clear, the complaint has not been ruled upon it has been tabled until the December meeting which is....

Mrs. Barnhill said 12th.

Attorney Doll said in the meanwhile the Court procedure would be if you are trying to make this a home occupation, you file for a variance with the BZA.

Mr. Hastings asked Building Zoning Committee.

Attorney Doll said no, it's the same office.

Amanda Mosiman said Board of Zoning Appeals.

Attorney Doll said Board of Zoning Appeals, downstairs.

Mr. Hastings said ok, everything is at the same place.

Attorney Doll said and you have to send notice to all the abutting land owners. He said and it will be heard, if you do it quickly, it will be heard the last...the 4th Monday of November.

President Valiant said the Monday after Thanksgiving.

Mrs. Barnhill said the 28th.

Mr. Hastings asked so when do I have to do it...what is my deadline to file.

President Valiant said the 31st of October, right.

Attorney Doll said Halloween, Halloween is your deadline.

President Valiant said Halloween.

Mrs. Barnhill said the application is online or you can come into the office and we can go over it with you.

Mr. Hastings said okay.

Mrs. Barnhill said and they are 200 to file.

Mr. Hastings asked do you get that back if you don't get accepted.

Attorney Doll said no.

Mrs. Barnhill said nope, no refunds.

President Valiant said thank you Mr. Hastings.

Mr. Hastings said oh, thank you.

OTHER BUSINESS:

President Valiant said other business, do you want to do the...

Mrs. Barnhill said wait, what...the...do it under other business, yeah.

Attorney Doll said yes.

Mrs. Barnhill said Stahl Landing is a primary plat that we approved last month, I have an aerial but I don't have the plat, Attorney Wischer is here tonight to talk about it. She said they have ran into an issue and he is here with a proposal.

Attorney Wischer said I apologize for hitting you last minute here this was a primary approval for the plat, it was approved last month and this is a 2-lot subdivision. He continued, actually the division of this property happened 25 years ago, I can't remember the dates but the ITT building was sold and it has been sold since but they didn't do a plat at the time so it is technically not in compliance. He said so the owner has been the same of the lot 2 in the plat, it's the lot up by the highway. He said since then he has a buyer for the back lot so they need the final plat approved and recorded in order to close, when the primary plat was submitted if you recall they kinda held a lot of the requirements until the actual development happens... drainage will happen when they decide to build, the road that goes in will happen then... this is about sewer so I think it's an oversight, I got a call on Friday. He continued I represent the seller of the lot and I also represent Newburgh Sewer but the idea here is there is sewer at Stahl Road far at the North boundary of the property, there is a RPUE that extends from Stahl Rd down to the second lot, a public utility easement. He said normally your ordinance requires that the sewer department certify that there is sewer in place on the lot or a letter of credit in place on the lot for the extension to happen. He said at this point there is not the final building that the buyer is going to build is not decided and that's why everything was held until late so as far as what sewer they might build, it has not been designed. He continued there is only one potential user here, a lot of your subdivisions you would be concerned about someone selling lots and then those owners not having a sewer and needing a letter of credit. He said what I am asking is if the commission would allow a waiver to allow the plat to move forward to final plat and recording in its current state without a letter of credit on the sewer. He said your ordinance has some language that would be beneficial to be on there with the buyer and seller acknowledging that they understand there is sewers at Stahl Road and they are going to have to satisfy the sewer department and have the sewer extended before they build. He said your ordinance language says a plat could read utility will not sell sewer, water taps for any lot in the subdivision until the sewer water lines servicing the subdivision are installed and deemed substantially complete by the utility or county will not issue a Improvement

Location Permit or Building Permit for any lot in the subdivision until sewer, water, and tap for the lot is issued by the utility. He said in other words they can't get a permit without a tap and they can't get a tap without satisfying the sewer department so there doesn't appear to be the risk for either party that if this lot is allowed and the seller is allowed to sell and the buyer takes possession that someone will be standing there saying hey we thought there was a sewer we need sewer built which is why you have the letter of credit. He said I talked to your attorney about it before the meeting with the idea that both parties, the buyer and seller, would sign off on it with that language and it would go on the plat so they would acknowledge the sewers at Stahl Road and they won't be able to get a building permit without a tap and they can't get a tap without sewer and then they would have to satisfy the sewer department in order to get their sewer tap. He said we talked about having a Hold Harmless for Warrick County and the town that both parties would sign or at least the seller so it could be recorded so everyone is on notice that there would not be, that the sewer is at Stahl Rd and there is a number of ways you can handle that from the Sewer Department standpoint, we just have one user down there that is a commercial lot, if both parties sign off I don't think there is risk to anyone that the letter of credit would come... the town policy at the time they are ready to build they would have to have their sewer plans reviewed and approved by the town engineer, they would have to enter into a sewer agreement with the town and they would have to post a letter of credit, but that would come at the time, we self-permit in Newburgh so they wouldn't get a construction permit for their sewer until they satisfied all of those requirements so that's at this point... this would have been presented this way last month but it was an oversight.. I'm characterizing it as a waiver of your requirement to allow the final plat to be required subject to those terms and conditions...

President Valiant asked are there any questions of the Board, what's your feelings.

Amanda Mosiman asked have we done anything like this before.

Attorney Doll said umm Molly and I had that conversation downstairs.

Mrs. Barnhill said well we did one not that long ago, it was a little different for storage units, we had them do a commitment, and that's....

Attorney Doll asked is that the one who didn't have sewer and had water.

Mrs. Barnhill said yea they didn't have sewer and they didn't want to run sewer and for storage units you don't need it so they did a commitment that's in writing, it gets recorded and that is how that one was done.

President Valiant said and I think we are talking about a similar whether it's a commitment or hold harmless where they would acknowledge that they are going to have to satisfy those and they wouldn't be able to build without it so...

Attorney Doll said you are going to give notice and yea it would have been subject to at the last monthly meeting.

President Valiant asked issues of the Board.

Attorney Doll said there is a timing element and that is the reason why you are doing this. Attorney Wischer said right the only reason we are here is because the sale of the lot ends October 25th so they are anxious to get the plat recorded so they can close. He states if the plat doesn't get recorded they can't close and its possible the deal unravels and I don't know I'm not involved in the actual transaction. He said I was hired a while a couple years that we were working on it to try to facilitate getting this plat approved and we thought we were there until the end of the week but I don't... like I said I'm looking at it from 2 perspectives and I have talked to the folks at Newburgh Sewer and acknowledged to them that I'm working...

Amanda Mosiman said so basically we are asking for the final plat with the conditions there is a Hold Harmless agreement and what all was that....

Attorney Wischer said a Hold Harmless to the County and the Town of Newburgh acknowledging sewer is at Stahl Rd and there wouldn't be a building permit without a tap and there won't be a tap without sewer being installed per Newburgh standards... that's good enough and I will seal it in blood if I have to.

Amanda Mosiman said and you have everything you need, what is this a motion to make it a final plat or I don't know.

Mrs. Barnhill said a motion for the waiver, I can't record the plat until I know that the lines are in and this is a request for the waiver of that, subject to that hold harmless.

Attorney Wischer said the language from the ordinance could go on the plat, I mean the real waiver here is that we don't have a letter of credit in place for the sewer but that language in the ordinance could still go on the plat that I read.

Mrs. Barnhill said yea that would make sense.

Attorney Wischer said its written in the reverse of what I will say at this point but you can't have a building permit without a tap and you can't have a tap without a sewer, it's not the legalities that I would use but...

Attorney Doll said but it makes sense.

President Valiant said it covers it. He asked Amanda was that a motion or no...

Amanda Mosiman said yea if everyone understands it, do you want me to try to get all of this out in a motion.

President Valiant said no we understand it, so there is a motion on the floor.

Doris Horn seconded the motion and it carried unanimously.

Attorney Wischer said thank you for you indulgence since I wasn't on your agenda.

President Valiant said you are welcome Christopher.

Attorney Business:

Attorney Doll said you all have a copy of the October 5th correspondence from the Attorney Max Fiester about the Warrick County with Nellies Restaurant, he said we filed suit well we wrote a letter in May advised them of their violation, you will recall they built an outside deck without an improvement location permit over Newburgh Sewer line and under now CenterPoint's now transmission power line and one of the Commissioners of the county swears there is also a high pressured gas transmission line buried in that vicinity. He said we heard nothing...

Amanda Mosiman laughed and said we don't know if there is a high powered....

Attorney Doll said I do not know

President Valiant said you think that is something you would know where it is at...

Amanda Mosiman said yea you would think.

Attorney Doll continued we heard nothing back and I filed the law suit and the property owner called me and I told him he probably needed to get counsel and we wanted the deck removed, the reimbursement to the county of its cost and expenses in pursuing this and right after that Max Fiester was hired and come to find out the property owner is not the owner of Nellies Restaurant, he is the landlord for Nellie's Restaurant and they have filed a cross-suit against their tenant for violating the terms of their lease which was not to modify the property without the consent of the landlord. He said so now it is a triangle case and this letter that is in your packet tonight arose last week, Max Fiester contacted me and had a general discussion. He said I told him I could not approve a settlement without bringing it back to the Board. He said he wrote me this letter, I sent it to Molly and that is how it got to you. He continued I will take issue with a couple points in this letter... in the second paragraph he talks about having his tenant remove the concrete pad in question referred to by the APC as a structure... that is not true.. in the complaint we referred to the outside patio as a structure and I want to be really clear with Max that we are not agreeing to just removing the concrete pad... I am not really sure what that is... I mean I know what a concrete pad is I'm not really sure what he is referring to... but we want the entire outside deck to be removed. He said he also in this says... and the fees are about right I looked it up, but he also said that the removal... we would dismiss this lawsuit within 20 days from when the removal of the structure begins. He said I do not recommend that, I recommend we create this as a consent decree... all of the parties would sign it, it would be filed with the court and it is a judgement with the court as to how this is to be corrected and one of the important things of this complaint was a injunction to keep future violations like this from occurring at this site. He said I added this as a caveat to the complaint I don't want us to agree to let this down, he takes it down and turns around and tries to build it back in the same location. He said I can't see unless Molly can correct me, any way that it will ever be possible to give an Improvement Location Permit over the top of a Newburgh Sewer easement and underneath Center Pointes high tension power line easement in that location so I don't see how he can ever make this legal so for all those

reasons I am bringing it to you to give me instructions. He continued do we have I think we want to settle this and get it done so do you accept Mr. Fieters terms or do you agree that you want me to insist on the removal of the entire outside patio and that it be in the form of a consent decree. He said I would be happy to answer your questions.

Doris Horn said I feel like the whole structure should be totally taken out, concrete and the wood structure...

Amanda Mosiman said the entire patio is in violation so the entire patio goes.

Attorney Doll said ok, what about just dismissing it or do you want me to get the protectoral consent decree.

Doris Horn said no I don't want it dismissed it has went too long, that's my opinion.

Attorney Doll said if you would make a motion someone.

Doris Horn said I make that into a motion.

Amanda Mosiman seconded the motion and it carried unanimously.

Attorney Doll said thank you.

Amanda Mosiman said so they are going to start on this tomorrow morning.

Attorney Doll said I am going to start on this tomorrow morning,

Amanda Mosiman said so, we can all have coffee down there at eight...
(Laughing among the Board)

Attorney Doll said I have been waiting to see my picture up on the wall over there but it hasn't happened yet.

President Valiant said if you pay attention to social media, they have been throwing everybody under the bus except the right people who are at fault.

Amanda Mosiman said there is one person who I would want to take and buy coffee for, she has tried to help us. She asked did the Commissioners approve a statement Molly, were you working on a statement.

Mrs. Barnhill said I did but they didn't bring it up at the meeting or anything but there is a statement drafted.

President Valiant asked anyone else have anything, if not I will entertain a motion to dismiss.

Doris Horn made a motion to adjourn at 6:51p.m. Greg Webb seconded the motion and it carried unanimously.

EXECUTIVE DIRECTOR BUSINESS:

ATTEST:

Molly Barnhill, Executive Director

Jeff Valiant, President