



# **Minutes**

## **July 3, 2018**

### **Tipton County Board of Zoning Appeals**

The Tipton County Board of Zoning Appeals held its regular meeting on Wednesday, July 3, 2018, at 7:00 pm, in the 1<sup>st</sup> Floor meeting room, Tipton County Courthouse, 101 East Jefferson Street, Tipton, Indiana.

#### **Call to Order**

Chairman Mark Baird called the meeting to order at 7:02 pm.

#### **Roll Call**

Members in attendance: Mark Baird, Joe Mahaney, Gary Herrell, Jerry Acres and Bob Powell

Members absent: none

Staff in attendance: Steve Niblick, Lynlie Adair and David Langolf Smith

Staff absent: none

#### **Modifications to Agenda / Agenda Summation**

#### **Approval of Minutes**

a) June 6, 2018 minutes

Bob Powell made a motion to approve the minutes as submitted; seconded by Jerry Acres. Motion carried 5-0.

#### **Public Hearings**

a) CO-V-04-18 Hoosier Heritage Port Authority (HHPA) requests 1) a use variance for a train yard and 2) a development standard variance to allow a 7ft tall fence with barbwire. Jerry Acres made a motion to open the public hearing; seconded by Robert Powell. Motion carried 5-0.

Liz Nelson spoke as the petitioner for Hoosier Heritage Port Authority. The HHPA is requesting a variance to use the property for a maintenance yard on the railroad tracks north of 600 South (County Line). HHPA is also requesting a variance for a 7ft tall fence with barbwire. The fence will support security features for the engine, freight car, dining cars, and caboose. This train will serve northern Hamilton County as an explorer train where the HHPA would have set times for "Expeditions" where the trains would pick up passengers in Hamilton County and travel south towards Noblesville. The Nickel Plate Heritage Railroad Inc. is a charitable non-profit organization in Arcadia and would be operating the expeditions. It has been awarded a 15-year contract by the Hoosier Heritage Port Authority (management company for Noblesville, Fishers, and Hamilton County) to operate a tourism excursion railroad on 12 miles of its track in northeastern Hamilton County beginning in the summer of 2018. Excursions will take place on Saturdays and Sundays and include from 2-5 excursions per day. All the excursions will head south from Atlanta to Noblesville, approximately 12 miles. Future years will bring a variety of new patterns, but all will be between Atlanta and Noblesville only. The trains will be on existing tracks and will house all the fuel for the trains. HHPA would like to have a building in future.

President Mark Baird asked if there were any questions from the board.

Jerry Acres asked what the area of size the fence would be around the tracks. Liz Foley answered 400 – 500 sq ft.

Bob Powell asked if the ROW included the West Spur as well. Liz Foley answered yes it did. He also asked if this entrance was off of CR 600 South. Liz Foley said there would be an entrance on CR 600 South (County Line) and a gate off of CR 100 West as well.

Jerry Acres asked about having parking spaces inside the fence for employees. Wylie Brown, representing the petitioner, said there would be spots for only 2 employees.

Jerry Acres asked if they would have restrooms inside the fence area. Wylie Brown said no.

Bob Powell asked what the distance is from the center of the Rail Road to the ROW and how much room would there be for driving a car. Wylie Brown said the distance from the middle of the tracks are 20 ft with fence on the East side of the tracks leaving about 4 or 5 feet for vehicles to drive in. There was clarification on parking, driveway and employees.

Jerry Acres asked why the HHPA chose Tipton County over Hamilton County. Liz Foley said Tipton County was the most logical place to put the train.

Bob Powell asked why they couldn't move the fencing and train north of the Atlanta Crop Services. Both Wylie Brown and Liz Foley explained the track ROW is wide next to the Crop Service and there is a private driveway north of the purposed site about 430ft.

Bob Powell asked if they had thought about the dust from the fertilizer plant west of them and if the HHPA had done research on Anhydrous Ammonia NH<sub>3</sub>. Wylie Brown said that he had not thought of the dusting from the Ag Plant but was now definitely concerned by it.

Bob Powell said the safety of the employees to build anything next to the Crop Service should be a concern for all. Bob Powell also said the ammonia would eat the trains paint and would cause rust very quickly. Liz Foley explained there were houses closer than what the trains would be to the Crop Service.

Wylie Brown asked why they were being questioned on the business if they were using their own railroad for a train if the HHPA were petitioning for a fence with barbwire.

Director Steve Niblick explained to Wylie Brown that he and Liz Foley agreed for the HHPA to petition for a Variance of Use for the railroad and if the variance was approved then the variance for the 7ft tall fence with barbwire would also be voted on. If there was not an approval for the Variance of Use for then there would not be a need to vote on the variance for the fence.

Wylie Brown questioned why the HHPA would need a variance for the trains to be stored on the property as the tracks were to be used for. Attorney David Langolf Smith stated that since the HHPA will be maintaining the locomotives and fueling them in a confined area that the use of the railroad is now changed.

Jerry Acres asked if there was any other place for the HHPA to service these trains. Liz Foley said no.

President Mark Baird asked if there was anyone from the public that would like to speak in favor or against the petition.

Roberta Heinzmann asked the board how emergency vehicles would be able to respond to the train area and pit area and would there be enough room.

Jane Meister is the owner of Atlanta Crop Services and she stated she did not mind the train but she did not want the train right next to her property. She had concerns regarding who inspect the pits. If the anhydrous was to ruin or rust a train would they be responsible? Jane Meister presented to the board a handout of names and signatures not in favor of the petitioners.

President Baird asked Jane Meister which direction the wind traveled through that area. Jane Meister said it was generally from west to east winds.

With no further public discussion, Bob Powell made a motion to close the public hearing; seconded by Jerry Acres. Motion carried 5-0.

Director Steve Niblick read the Staff report into the recorded.

President Baird asked if the petitioner had a response to the Staff Report. Wylie Brown talked about the hardship if needed to move to other areas with less room. Wylie Brown asked to see the map that was presented to the board and noted that it was not accurate.

Wylie Brown was asked if the HHPA already purchased the trains and answered they had bought equipment contingent to the board's decision.

Mark Baird asked about how the emergency personnel would be able to maneuver in this fenced in area. Wylie Brown said in any pit areas it would be hard for emergency personnel to get in the pits, he went on to say if that was the case they could always move parking for "in case" issues.

President Baird asked for final thoughts from the board.

Jerry Acres said with the train not coming to Tipton, the pits not being inspected, parking concerns, storage and it being more of a service area for the trains, he could not support the project.

Bob Powell, as the project was presented, along with his stated concerns could not support the project.

Joe Mahaney said with the project being so close to the fertilizer plant he could not support the project.

Gary Herrell said that with drifting from the fertilizer plant and with his experience of dealing with rust from ammonia that he would like to see the train moved north of the plant. If not, he could not be in favor as presented.

President Mark Baird stated given that with the staff report not supporting Criteria C that the HHPA owns property North and South of the proposed area and that HHPA failed to provide evidence as to why other areas could not be used he was not in support.

With no more discussion, Bob Powell made a motion to deny the use variance request due to the criteria A, B and C not being met; seconded by Jerry Acres. Roll call vote: Jerry Acres – Yes, Robert Powell – Yes, Mark Baird – Yes, Joe Mahaney – Yes, and Gary Herrell – Yes. Motion carried 5-0.

The requested development standard variance request was not considered.

b) CO-V-06-18 Hobbs Feed LLC requests three (3) development standard variances and one (1) use variance in order to construction a new 48 x 80 building. The three development standard variances are 1) to reduce the south property setback along CR 150 S from 75 feet to 10 feet (86.7% reduction); 2) to reduce the east property setback along Legg Street from 75 feet to 7 feet (90.7 % reduction); and 3) to reduce the north property setback from 20 to 5 feet (76% reduction). The use variance is to allow an industrial storage building within an RR zoning district.

Bob Powell made a motion to open the public hearing; seconded by Joe Mahaney. Motion carried 5-0.

Bob Kelly spoke as the petitioner for Hobbs Feed LLC as this variance for a new pole building with these specific setbacks would allow them to grow their business and meet specific rules for USDA and FDA regulations. At this time, they were not able to keep specific feeds due to possible cross contaminations.

President Baird asked if there were any questions from the board.

Bob Powell asked if there would be ingredients would be hazardous. Bob Kelly said no there would not be. He also asked if the feed would in bags or in bulk. Bob Kelly said the ingredients would be stored in totes.

Joe Mahaney asked if the west side of the property would also be used for future growth of a pole building. Bob Kelly said yes and their hopes were to mirror the building petitioned tonight.

Clarification on setbacks and requirements for a RR zoning and permitting process.

Director Steve Niblick read into the record the staff report.

President Mark Baird asked if anyone from the public would like to speak for or against the petitioner.

James Leffler spoke in favor of the petitioner.

Thomas Miller, property owner north of purposed project, spoke in favor of the petitioner. However, Thomas Miller had concerns with the setback on the north side being to close to his

property because he has an old tree and would not want to cause damage to the new building. Thomas Miller would like to see the setback increased from 5ft to 10ft.

Dennis Henderson spoke in favor of the petitioner as well and he also reminded the board of when there was an active lumber yard there the set backs for the lumber yard were closer than the 10ft Hobbs Feed LLC was requesting.

Steve Niblick read a letter from Timothy Clouser, Madison Township Trustee (fire station west of purposed building), stating he was in favor of the new building.

With no further public comments, Bob Powell made a motion to close public hearing; seconded by Joe Mahaney. Motion carried 5-0.

Joe Mahaney asked where the feed mill was from this purposed site. Bob Kelly stated it was on the proposed site.

Mark Baird asked if the lumber yard was in the area where this purposed building is to go. Bob Kelly said the property is all cleared now.

Gary Herrell asked about orientation of the doors on the purposed building. Bob Kelly said one will face south toward CR 150 South with overhead doors and Kip Achenbach, speaking for the petitioner, said 2 possible service doors for after hour times.

Board discussed speed limits on CR 150 South and Legg Street.

Gary Herrell asked what type of vehicles would be there after hours. Bob Kelly said no semi tractors; only personal trucks.

Joe Mahaney asked what the actual size of this new pole building would be. Bob Kelly replied 48 x 80.

Gary Herrell asked would the building still be 48 x 80 with the setbacks required by the board. Bob Kelly answered that the mission for this building is for all of the product to be in storage and locked down and if needed, it would be slightly smaller.

Director Steve Niblick read the staff report into record.

The use variance is to allow an industrial 48 x 80 storage building within an RR zoning district.

With no more discussion, Joe Mahaney made a motion to approve the use variance; seconded by Gary Herrell. Motion carried 5-0.

The three development standard variance requests were then discussed.

Bob Powell questioned the 48 x 80 building being about half of the property. Bob Kelly stated that Hobbs Feed would later like to be approved for an additional building that would mirror this specific building.

During discussion on building size with required setbacks, corner clearance for stopped traffic and east property line setbacks, Joe Mahaney suggested having all sides of the new pole building 10ft setback.

With no more discussion, Joe Mahaney made a motion to approve the development standard variance requests with the conditions that the setback from the north, east and south property boundaries each be ten (10) feet; seconded by Gary Herrell. Motion carried 5-0.

### **Old Business**

a) CO-SE-05-18 McGaffney Findings of Fact. Robert Powell made a motion to approve the findings of facts as presented by staff; seconded by Jerry Acres. Motion carried 5-0.

### **New Business**

None.

### **Staff Report**

Steve Niblick also informed the members of available training entitled “Running Effective Meetings” scheduled for July 19, 2018 at 6:00 pm at the 4H Fairgrounds.

### **Adjournment**

There being no further business, Jerry Acres made a motion to adjourn the meeting at 8:42 pm; seconded by Bob Powell. Motion carried 5-0.

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**Chairman**

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**Executive Director**

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**Date**

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**Date**