

STAFFORD COUNTY BOARD OF ZONING APPEALS MINUTES
June 28, 2011

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) on Tuesday, June 28, 2011, was called to order with the determination of a quorum at 7:21 p.m. by Chairman Robert C. Gibbons in the Board of Supervisors Chambers. Mr. Gibbons introduced the Board members and staff and explained to the public present, the purpose, function and process of the Board of Zoning Appeals. He asked the members of the public who planned to speak at this meeting to please stand and raise their right hand, swearing or affirming to tell the truth.

Mr. Gibbons stated the Bylaws of this Board state the applicant would be allowed up to ten minutes to state their case, the other speakers would be allowed three minutes to testify, and the applicant would be allowed three minutes for rebuttal.

Members Present: Robert Gibbons, Ernest Ackermann, Larry Ingalls, Ray Davis, Steven Apicella and Heather Stefl

Members Absent: Dean Larson and Marty Hudson

Staff Present: Melody Musante, Zoning Manager
Aisha Medina, Recording Secretary

Mr. Gibbons: Are there any changes to the advertised agenda?

Mrs. Musante: There are no changes.

DECLARATIONS AND DISQUALIFICATIONS

Mr. Gibbons: Okay, no changes. Before we hear the first case, does any Board member wish to make any declarations or statement concerning any cases to be heard before the Board tonight? Mr. Ingalls?

Mr. Ingalls: Mr. Chairman, in case SE11-02/1100177, Stafford County Board of Supervisors, the company I retired from in January; Sullivan, Donahoe and Ingalls has performed some auxiliary surveying for the Utilities Department on this project, therefore I am going to abstain from participating in the case.

Mr. Gibbons: Any other declarations by Board members?

Mr. Davis: Yes.

Mr. Gibbons: Go ahead Ray. Mr. Davis?

Mr. Davis: As you know I retired from the County four years ago. I feel that I am able to participate fairly and objectively in the public's interest in this case before the Board.

Mr. Gibbons: Thank you very much. Alright, will you read the first case please?

PUBLIC HEARINGS

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1. **SE11-02/1100177 - STAFFORD COUNTY BOARD OF SUPERVISORS** - Requests a Special Exception per Stafford County Code, Section 28-57(h)(3)a, "Flood Hazard Overlay District", to allow construction of a dam across Rocky Pen Run for the purpose of creating a reservoir. The proposed reservoir will be located on Assessor's Parcels 43-26A, 43-26B, 43-27, 43-27A, 43-28, 43-29, 43-30, 43-30B, 43-31A, 43-33A1, 43-32A1, 43-62B, 43-72A, 43-72B, 43-72A1, 43-73A, 43-75A, 43-76G, 43-76J, 43-76K, 43-76L, 43-76R, 43-76S, 43-76T, 43-76U, 43-76V, 43-76Y, 43-77, 43-77A1, 43-77A2, 43-77C, 43-77D, 43-77E, 43-77F, 43-77G, 43-79, 43-80A, 43-81A, 43-69A1, 43-69A2, 43-76D1, 43-76E1, 43-76F1, 43-76F2, 43-76H1, 43-76N1, 43-76P1, 43-76Q1, 43-74-A1, 43-74-1A, 43-74-3, 43-74-4, 43-74-5B, 43-74-6, 43-74-6A, 43-74-7, 43-74-8, 43-74-9, 43-74-10, 43-74-11, 43-74-12, 43-74-13, 43-74-14A, 43-74-14D, 43-74-15B, 43-74-15C, 43-74-16, 43-74-17, 43-74-18, 43-76-2-1B, 43-76-2-2, 43-76-2-3, 43-76-2-4B, 43-76-2-4C, 43-76-2-4D, 43-76-2-4E, 43-76-2-5, 43-76-2-6, 43-76-2-7, 43-76-2-8, 43-76-2-8B, 43-76-2-9B, 43-76-2-10, 43-76-2-11, 43-76-2-12, 43-76-2-13, 43-76-2-14A, 43-76-2-15, 43-76-2-16, 43-76-2-16B, 43-76-2-17, 43-76-2-18, 43-76-2-19, 43-76-2-20, 43-76-2-21, 43-76-2-22, 43-76-2-23, 43-76-2-24, 44-6C, 44-7C, 44-8, 44-9B, 44-11A, 44-12A, 44-13C, 44-13D, 44-17B, 44-18B, 44-18C, 44H-11A, 44J-13B, 44J-15B, 44J-16B, 44J-17, 44J-18, 44J-19B, 44J-20B, 44J-21B, 44J-21C, 44J-22A, 44J-22B, 44J-23B, 51-2, 52-1. The property is zoned A-1, Agricultural.

Mrs. Musante: Case SE11-02/1100177, Stafford County Board of Supervisors requests a Special Exception per Stafford County Code, Section 28-57(h)(3)a, "Flood Hazard Overlay District", to allow construction of a dam across Rocky Pen Run for the purpose of creating a reservoir. The property is zoned A-1, Agricultural. You have the application, the application affidavit, the owner's consent form, proposed conditions, 100 year flood plain map and the zoning map. We have Rishi Baral here tonight with Stafford County to answer any questions that you may have.

Mr. Gibbons: Alright, before we do that, either Dale or Harry, we'd like to know really what this is saying. This was kind of... the application wasn't very clear so if somebody would stand up and explain it.

Dale Allen: Mr. Chairman and members of the Commission, Dale Allen, Assistant Director for Engineering Department of Utilities. This is basically an exception to the stormwater ordinance. The stormwater ordinance states that you cannot raise the flood plain but you can for municipal services and water facilities. This is a municipal water facility and we are building a dam across Rocky Pen Run. This will raise the pool elevation of Rocky Pen to about 226 elevation, which is substantially above the stream elevation of 140 and therefore will increase the 100 year floodplain elevation of Rocky Pen. We are therefore asking for a Special Exception to the Zoning Ordinance.

Mr. Gibbons: For the flood?

Mr. Allen: To raise the flood elevation, the 100 year flood elevation.

Mr. Gibbons: Any Board members have questions? Okay, thank you Harry. Okay, who is going to make the presentation?

Rishi Baral: Mr. Chairman and members of the Board of Zoning Appeals, I don't have any specific presentation. I have the report related to floodplain management and I can go over read that out. Bryon Counsel with the Department of Utilities has a brief presentation he will do after I describe what it is pertaining to floodplain management. This project basically, a Conditional Letter of Map Revision was already approved for the project in 2007. At that time the foundation of the dam was being built and when the plan for the foundation came in the Department of Utilities or the County, at that time, had not acquired all the properties that the reservoir would cover. Dam construction, all the required FEMA and County approval was done for the dam and the dam was constructed. After the dam constructions is complete... I'm sorry, after the construction of the foundation of the dam was complete, now it is time to construct the dam. To construct the dam, all the properties

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that the reservoir will cover have been acquired by the County. So this is a duplicate application, at that time, the application came only for the foundation, now that application is coming for the whole dam. The only difference as far as construction of the dam is concerned; the outline of the dam is the same because the foundation was already approved. When the dam was being constructed, the County or the Department of Utilities has more knowledge of the underground condition so the design of the dam changed. According to the new design the water surface elevation had changed, it has lowered to 226 feet. The original plan was to have 230 so this plan has come in front of you for approval and the outline of the dam remains the same but now the County has acquired all the necessary property. Basically that is what it is in a nutshell.

Mr. Gibbons: Okay, so you did have permission to build a dam at the elevation flood level of what 230?

Mr. Baral: At that time, the permission was only for the foundation of the dam.

Mr. Gibbons: Right.

Mr. Baral: But as far as FEMA is concerned, FEMA had already conditionally allowed for the 230 level.

Mr. Gibbons: Okay. Any questions? Alright, thank you.

Mr. Baral: You're welcome.

Mr. Gibbons: And Mr. Counsel is going to make a presentation?

Bryon Counsel: Mr. Chairman, members of the Board, my name is Bryon Counsel and I am the project manager for the reservoir project. The presentation...

Mr. Gibbons: Now you work for Utilities?

Mr. Counsel: Yes sir, I'm sorry, I work for the Department of Utilities. The presentation that Mr. Baral spoke to was geared specifically toward specific information that I thought would be helpful regarding other permits that we have and that we will need to get as part of the project. It was not geared for a full information briefing or anything like that. I would be happy give you all the information that I have based on any questions you might have or give a more general recap of what you've already heard but that was what my presentation was going to be. It was going to be geared toward delivering some specific information I thought you may have and just based on other permits.

Mr. Gibbons: Do we have any further... Okay Bryon, we thank you very much. So I will open the public hearing. Anybody in the public that would like to speak for or against this application? Hearing none, I will bring it back to the Board and close the public hearing. I will bring it back to the Board; the Board's wishes?

MOTION:

Mr. Davis: I make a motion that we approve the application.

Mr. Gibbons: Motion by Mr. Davis to approve. Second?

Mr. Ackermann: I will second.

Mr. Gibbons: Dr. Ackermann seconds, any questions? All in favor say aye.

Mr. Apicella: Aye.

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Mr. Davis: Aye

Mrs. Stefl: Aye

Mr. Ackermann: Aye.

Mr. Gibbons: Aye. All opposed? Okay and we thank you for waiting out the storm for us okay. Thank you very much.

VOTE:

The motion to approve the Special Exception passed 5-0.

Mr. Ackermann – Yes

Mr. Apicella – Yes

Mr. Davis – Yes

Mr. Gibbons – Yes

Mr. Hudson – Absent

Mr. Ingalls – Abstained

Dr. Larson – Absent

Mrs. Stefl – Yes

UNFINISHED BUSINESS

Mr. Gibbons: Unfinished business, let me ask you, is there any applications for next month?

Mrs. Musante: We have no applications for July.

Mr. Gibbons: Okay, other business, I will cover something in a minute.

ADOPTION OF MINUTES

1. May 24, 2011

Mr. Gibbons: Adoption of the minutes of May 24. Do I have a motion? Is there any additions or deletions?

MOTION:

Mr. Apicella: I move for adoption as written.

Mr. Gibbons: Mr. Apicella moves.

Mr. Davis: I second.

Mr. Gibbons: Mr. Davis seconds. All in favor say aye

Mr. Apicella: Aye.

Mr. Davis: Aye

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Mrs. Stefl: Aye

Mr. Ackermann: Aye.

Mr. Gibbons: Aye. All opposed? Any abstentions?

VOTE:

The motion to approve the minutes of May 24, 2011 as written passed 5-0.

Mr. Ackermann – Yes

Mr. Apicella – Yes

Mr. Davis – Yes

Mr. Gibbons – Yes

Mr. Hudson – Absent

Mr. Ingalls – Abstained

Dr. Larson – Absent

Mrs. Stefl – Yes

ZONING ADMINISTRATOR REPORT

Mr. Gibbons: Zoning Administrator's report.

Mrs. Musante: We don't have a Zoning Administrator report this month.

Mr. Gibbons: Because we won't have a Zoning Administrator.

Mrs. Musante: Correct.

Mr. Gibbons: At the end of this week.

OTHER BUSINESS

Mr. Gibbons: Okay, now on unfinished business, we are in the process of drafting?

Mrs. Musante: Correct.

Mr. Gibbons: Now I asked if we could have like a subcommittee and I will ask again. Would anybody like to volunteer so we can get it written so we can work with the staff? So when we bring it back in the end of August, anybody volunteer?

Mr. Apicella: I would be happy to serve.

Mr. Gibbons: Okay, Steven would. Would you give us a hand on that Larry?

Mr. Ingalls: Yeah, I will work with you.

Mr. Gibbons: Okay, so we will appoint a committee of Mr. Apicella and Larry to work with the staff and bring a report back.

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Mrs. Musante: Okay.

Mr. Gibbons: Now the other thing that I wanted to bring up, I have asked for permission to go back to the Board Chairman... I have asked Mr. Chandler if we couldn't have, like a, an offsite. Not to leave the community but to bring him up and give a four hour seminar some Saturday morning where we can go over all the new changes and what we feel is the do's and don'ts of what this Board is supposed to do. We have been at one meeting down in Fredericksburg and it was very fruitful and we have had two more just graduate from the course.

Mrs. Stefl: Yes. Steven and I are graduates, we got our certificates.

Mr. Gibbons: And so what I would like to do is get permission and I will come up with some dates and I am going to request that above the visitor center at the Belmont, there is a nice little conference room. It is quiet and it is conducive to work.

Mr. Davis: Is that large enough if we add the other BZA's?

Mr. Ingalls: Are you going to invite any other jurisdictions?

Mrs. Stefl: Like Fredericksburg or Spotsy?

Mr. Gibbons: That is a good point, they invited us last time so don't you think it would be right for us to sponsor it? Okay, that would be good.

Mr. Apicella: Is it a training session or is it a retreat?

Mr. Gibbons: I really want to have a retreat. I wanted that so we could all talk, I know he can train.

Mr. Ingalls: If it is going to be more like a retreat then it probably ought to be, if you want all of us to talk and not...

Mr. Gibbons: Yeah.

Mr. Ingalls: But if you...

Mr. Gibbons: Yeah, that is what I really wanted. So we could sit down with him and pick his mind, take everything and then talk amongst ourselves. That is what I really wanted.

Mr. Ingalls: I wouldn't invite them if that is the case.

Mr. Apicella: I would agree. I think it kind of internal too to the Stafford BZA if we are trying to hold a retreat.

Mrs. Stefl: Right.

Mr. Apicella: And look at our operations and ways to improve it.

Mr. Ackermann: So you are saying that we don't need to invite the other jurisdictions.

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Mr. Gibbons: Right.

Mr. Apicella: I don't think it would be prudent to bring in others if it is not training and it is about working together. It would be better if we just do it in-house.

Mr. Gibbons: And have him there and have all of the information brought up, case studies.

Mrs. Stefl: Okay. Are you hoping to do this in July, August?

Mr. Gibbons: No, I just want... I would like to do it, maybe, either the first week or two in September, after the holiday season. Is that good with everybody?

Mr. Apicella: Yeah, that works for me.

Mrs. Stefl: I am fine. I mean, are we talking weekends or...

Mr. Gibbons: No, it would be a weekend; it would just be a four (4) hour session on Saturday.

Mr. Ingalls: You think he is going to do it on a weekend?

Mr. Gibbons: I think so, yes. He has been good about that. I will ask him, maybe we can do it some evening and start at five and knock off at around nine o'clock at night. So let me see what time he has available and I will send the email out to everybody.

Mrs. Stefl: Okay.

Mr. Gibbons: Then we can choose but I think it is hard to do it during the summer.

Mrs. Stefl: Okay, so it is just talking and we are really just going over the new legislation.

Mr. Gibbons: No, the whole thing.

Mrs. Stefl: Or are we just going to have, sort of, a refresher course for all of us.

Mr. Gibbons: It is for all of us, so we all understand what we should be, not what we should be doing but make sure we have all the changes.

Mrs. Stefl: That's good.

Mr. Gibbons: I just thought it would be good because we get along good and we work good together. I just thought, bring the master up.

Mrs. Stefl: Yeah, Steven and I got a lot out of that training. I think we both...

Mr. Ackermann: We have all gotten a lot of it.

Mr. Gibbons: Sure.

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Mr. Apicella: Would there be a public notice requirement since we are all getting together or since we are not addressing any specific matter?

Mrs. Musante: There should not be as long as it is not a specific matter to Stafford County, you should be fine. But I will check into that.

Mr. Gibbons: Yeah, will you check with the lawyer?

Mrs. Musante: Yes I will.

Mrs. Stefl: Publish they are having a retreat?

Mr. Ingalls: You would have to publish it if somebody says you have to do it.

Mr. Gibbons: Well we will publish it if we have too. If not... Okay, anything else? I think the only thing we got on the table now is that the committee will work with you on that.

Mrs. Musante: Okay.

Mr. Gibbons: And then any lose ends Melody?

Mrs. Musante: Nothing. I do have a request though. With Rachel leaving, they have appointed an acting Zoning Administrator. Her name is Andrea Hornung, which is currently the Principle Planner in our office.

Mrs. Stefl: Horner?

Mrs. Musante: Hornung. Truthfully, I am not sure how versed she is with the Zoning part of our office so if you have questions regarding the staff reports or anything that we send to you for case, if you could either call me or shoot me an email before the meeting so if it is something that I have to research because she will not be attending the meetings, I would appreciate that. That way, I don't sit here with a deer in the headlight look at you so...

Mr. Gibbons: Good suggestion.

Mrs. Musante: Please, I would appreciate it.

Mr. Gibbons: The other thing I want to thank you all for going down for Rachel's dinner tonight; that was very thoughtful. Larry, again, I want to thank you for taking the gift on as a project. I gather that she really liked that.

Mrs. Musante: She did.

Mr. Gibbons: So we have nothing on for next month so we won't meet in July.

Mrs. Musante: No meeting in July and as of right now I don't know of anything that is coming up for August.

Mr. Gibbons: Well, we have to wait for the day of the announced meeting?

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Mrs. Musante: Yes.

Mr. Gibbons: So, we will not meet in July. Anything else for the good?

Mrs. Stefl: So the report will be in August for the new variance or are we looking at taking that to the retreat?

Mr. Ackermann: If it is close enough to the retreat... I mean, it doesn't matter.

Mr. Gibbons: Let's see what date...

Mr. Ingalls: Maybe we could work on it and have it so we have something to talk about.

Mr. Gibbons: At the retreat.

Mrs. Stefl: Because there is a chance we probably won't have an August meeting.

Mr. Ingalls: Maybe, if we come up with something and you all can comment and then we can...

Mrs. Stefl: Throw darts at it.

Mr. Gibbons: Then Mike is there is give it a needle eye too.

Mr. Ingalls: That would be...

Mr. Apicella: Larry, do you want to, just for formality sake, chair the subcommittee?

Mr. Ingalls: I can but it doesn't make any difference.

Mr. Apicella: Well, I mean, you could just...

Mr. Ingalls: I can, I am a member, okay, and yes I will be the Chairman.

Mr. Gibbons: Okay. Anything else?

ADJOURNMENT

With no further business the meeting adjourned at 7:43 P.M.

Robert C. Gibbons, Chairman
Board of Zoning Appeals