

# STARKE COUNTY BOARD OF ZONING APPEALS

53 EAST MOUND STREET

KNOX, IN 46534

PHONE: 574-772-9176

## MINUTES

**July 11, 2022**

Chairperson Troike opened the meeting at 6:30 p.m.

**I Pledge of Allegiance-** led by Chairperson Troike.

**II Roll Call-** Bob Troike (Chairperson), Mark Allen (Vice-Chairperson), Denise Cultice (Executive Secretary) absent, Gwen Rentz (Member), Jason Downs (Member), Justin Schramm (Attorney), Wallace Williams (Boz) (Building Commissioner) absent, Pamla Starkey, Planning Commission Administrator, Tina Holley, Secretary

**III Review of the meeting minutes for – June 13, 2022.** Mark Allen made a motion to approve the minutes as written. Gwen Rentz seconded that motion. Motion carried 3-0.

**IV Public Hearing-** Chairman Troike opened the floor to discuss the Moynihan case. Atty Schramm spoke that he drafted the Settlement and Release Agreement along with the Restrictive Covenant which will need to be approved this evening. The high points of the Settlement and Release Agreement obviously is the Restrictive Covenant Document which states the Grantor agrees to restrict any further expansion, alteration, or modification of the deck, excepting routine repair and maintenance. A penalty fee of \$15,000 has been assessed along with a few other points. The documents were provided for review. Atty Schramm stated he was also able to convince the County to set up a “Home Rule Fund” This will allow the use of the fee’s collected to be at the discretion of the Board to be used as the Board feels appropriate. An email was already sent to the State Board of Accounts so this fee will not revert back to the County itself. Going forward this will be the case as fines are assessed. It is not the intent to allow people to just skirt through and just pay a penalty but whenever future fees or penalties that are assessed will be able to be deposited into this account where the Board can use where it see’s fit. The original request back in 2021 was a use variance which therefore caused the situation above.

Once this has been completed, it will be taken in front of Magistrate Cox and dismiss the case. Magistrate Cox is very anxious for the Board to come to an agreement and avoid any lengthy litigation. With the approval of the Board this can get this settled.

Mark Allen asked where the fee was stated upon which Atty Schram responded that the Board needs to pass a resolution to establish the Home Rule Fund. Upon receipt of the check for \$15,000 it will be deposited into that fund. The County will have to pass this as well once approved and get this to them. The time-line for payment is within 14 days of the grant of variance so that would be 14 days from today’s date since they have

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already signed the document. Atty Schramm will have it mailed to his office and will be held until the County has set up the Home Rule Fund to avoid any mix-up of these funds.

There was some discussion as to increasing the fines. Mark Allen mentioned we are currently limited as to the amount of the fines. Attorney Schramm stated that yes this is a growing problem and will need to be addressed. The only way to solve this is for us to dig our heels in for litigation and hefty fines to get some control of this.

Jason asked what if the Moynihan's breach this agreement; Atty Schramm stated that if we are quick enough, we can institute a Stop Work Order on it. If that isn't the case then we can file a lawsuit for breach of contract and some type of injunction; whatever the judge decides.

Chairman Troike requested a motion. Mark Allen motioned approval of the Settlement and Release Agreement and Restrictive Covenant giving Bob Troike the authority to sign and to grant the variance (which goes hand in hand with the Settlement Agreement). Seconded by Jason Downs. Voting was 3-0.

Mark Allen brought up the need to address the language for Fines/Fee's in our Zoning Ordinance. Attorney Schramm stated that this is governed by the Planning Commission and that he will plan to attend the next meeting. The wording and some of the procedures need addressed as to the maximum allowed. If we are going to get some type of control over this issue of homeowners/contractors building with no permits, ignoring Stop Work Orders and just paying a fine as the penalty then we need to move forward. Attorney Schramm stated there are avenues we can take when this occurs; i.e., Temporary Restraining Order. Value of the properties has gone up; therefore, the fines need to increase as well with the refusal to comply with ordinances. Mark Allen expressed a question as to who how the fee's will be updated per our current request. He suggested a fine of \$50,000 for breaking the ordinance. Atty Schramm stated that he will take our concerns to the Commission.

Mark Allen motioned to adjourn; seconded by Gwen Rentz. Voting was taken with 3-0 decision.

With no further business, the meeting was adjourned.

Respectfully submitted,

Tina Holley  
BZA Secretary