

**MINUTES**

**POSEY COUNTY  
BOARD OF ZONING APPEALS  
REGULAR MEETING**

**THE HOVEY HOUSE  
330 WALNUT STREET  
MT. VERNON, IN 47620**

**MAY 13, 2021  
5:00 P.M.**

**MEMBERS PRESENT:** Mr. Larry Williams-Chairperson, Mr. Ron Fallowfield–Vice Chairperson, Mr. Mark Seib, Mr. Larry Droege, Mrs. Beth McFadin Higgins – Attorney, Mrs. Mindy Bourne –Executive Director, and Mrs. Becky Wolfe – Administrative Assistant

**MEMBERS ABSENT:** Dr. Keith Spurgeon

**APPROVAL OF MINUTES FOR LAST REGULAR MEETING:** Ron Fallowfield made a motion in the affirmative to approve the minutes of the last regular meeting as emailed. Motion seconded by Larry Droege. **Motion carried.**

**VARIANCE:**

**DOCKET NO:** 21-09-V-BZA  
**APPLICANT:** Bernie Gries  
**OWNER:** Bernard R. & Darla K. Gries  
**PREMISES:** Part of the East Half of the Southeast Quarter of Section 35, Township 4 South, Range 12 West, Lot 1 Gries St. Wendel Cynthiana Rd. Exempt II Division, lying in Smith Township, Posey County Indiana. More commonly known as 6200 St. Wendel Cynthiana Road, Poseyville, Indiana. Containing 7.60 acres more or less. (Complete legal description is on file at the Posey County Area Plan Commission Office).

**NATURE OF CASE:** Applicant requests a Variance for relaxation of front yard setback from 25' to 5' to build an Ag use pole barn in an A (Agricultural) Zoning District under Section 153.033 (B) (1) (b) of the Zoning Ordinance of the City of Mt.Vernon, Town of Cynthiana, Town of Poseyville and Unincorporated Posey County.

Larry Williams confirmed with Mindy Bourne that the applicant met all the requirements for notification per the statute.

**BERNIE GRIES:** 12930 Big Cynthiana Road, Evansville, Indiana. We had 38 acres and we sold the tillable ground that had a building on it. I need to build on the 7.6 acres. The

ground without trees is pretty limited. If I go with 25', it gives me 17' before the trees. I really don't care to take any more trees down. By moving that back 20', it would give me ample room to get in and out.

**LARRY WILLIAMS:** Are there any questions from the Board for Mr. Gries?

**LARRY DROEGE:** You sold 33 acres from that parcel?

**BERNIE GRIES:** No, 30 acres.

**LARRY DROEGE:** Is that the parcel that is south of the woods?

**BERNIE GRIES:** It is north of where the building was.

**LARRY WILLIAMS:** Where is your nearest neighbor to the building you are constructing?

**BERNIE GRIES:** It is Eugene Schmitt. From the road back is 400+ feet and then it goes over behind him. It would be up against his back field. I have discussed it with him and he is fine with it.

**LARRY DROEGE:** So that is not farmable ground? Mr. Schmitt doesn't farm the back part of his land?

**BERNIE GRIES:** No, he has grass on it now. Part of it is fenced in for farm animals.

**MARK SEIB:** Is this just a shed you want to build for storing things?

**BERNIE GRIES:** It will be a 32' by 40' for storage. There's no water or electric. It's just an out building.

**LARRY DROEGE:** Do you know how the water runs off that property at that point?

**BERNIE GRIES:** The center of the woods has a crown with drainage on both sides. At Gene Schmitt's it would kind of go to the east.

**LARRY WILLIAMS:** You may have a seat. We will now open this application up for public comment. Is there anyone here wishing to speak for or against this application? With no one coming forward, we will close the public portion.

Mr. Williams confirmed with Mindy Bourne there were no emails, phone calls or letters.

**MARK SEIB:** I do have an issue with the 5' setback. That is not a great amount of distance. With the neighbors not objecting I don't really have much of an issue. I just want it noted that it

is a concern that we have. If the land sells, is that an issue and does it become a liability?

A motion was made in the affirmative by Ron Fallowfield to approve Variance 21-09-V-BZA. Motion was seconded by Larry Droege. The Variance Voting Sheet was read. **Roll call vote (4-0) Yes. Motion carried.**

**MINDY BOURNE:** This application has been approved. You will need to come into our office for your permit before you start construction.

**SPECIAL USE:**

DOCKET NO: 21-08-SU-BZA  
APPLICANT: Bonnie Jean McCarty  
OWNER: Bonnie Jean McCarty  
PREMISES: NG Nettleton 46'E Side Lot 43 of Section 8, Township 7 South, Range 13 West, lying in Black Township, in the City of Mt. Vernon, Posey County, Indiana. More commonly known as 621 W. Second Street, Mt. Vernon, Indiana. Containing .148 acres more or less. (Complete legal description is on file at the Posey County Area Plan Commission Office).

NATURE OF CASE: Applicant requests a Special Use for a residential storage structure in a (R-M) Residential Multiple Family Zoning District Section 153.048 (B) (1) Use Unit 2 - Areawide Special Exception Uses and Section 153.147 (B) (14), of the Zoning Ordinance of the City of Mt. Vernon, Town of Cynthiana, Town of Poseyville and Unincorporated Posey County.

Larry Williams confirmed with Mindy Bourne that the applicant met all the requirements for notification per the statute.

**BONNIE JEAN MCCARTY:** 625 W. 2<sup>nd</sup> Street, Mt. Vernon. I want to build a garage on the lot next to my residence.

**MARK SEIB:** What type of structure are you building? Is it a pole barn, block...

**BONNIE JEAN MCCARTY:** It is just a two-car garage.

**LARRY DROEGE:** Will the garage face the house?

**ALAN MOLL:** 625 W. 2<sup>nd</sup> Street, Mt. Vernon. It faces the alley.

**LARRY WILLIAMS:** Are you going to run electricity to the garage?

**ALAN MOLL:** Yes, I am running it from my house.

**LARRY DROEGE:** So, currently there isn't a driveway into that property, correct?

**ALAN MOLL:** That is correct. It will be a concrete driveway up to the garage and in to the garage.

**LARRY WILLIAMS:** What type of material will be on the outside of the garage?

**ALAN MOLL:** Siding and then an asphalt roof.

**MARK SEIB:** What is the water flow?

**ALAN MOLL:** There isn't any. I'm going to put a garden in front of the garage after it is built. I will put rain barrels out to catch the water and then use it in my garden.

**LARRY DROEGE:** It shows another property on the other side of the alley where they will be coming out of their garage. Is there adequate room and you will not be affecting their property?

**ALAN MOLL:** No, they have a garage on the backside of their house that they go in and out of.

**LARRY WILLIAMS:** You may have a seat. We will now open this application up for public comment. Is there anyone here wishing to speak for or against this application? With no one coming forward, we will close the public portion. Were there any phone calls, emails or letters?

**MINDY BOURNE:** There was one phone call from Mary Lou Wilkey on 4/26/21. She is not opposed as long as it is just for personal storage and not used for drugs.

**RON FALLOWFIELD:** Just for my information, will they need to adjoin this to the lot the house is on and make it one lot?

**MINDY BOURNE:** That is why she is requesting a Special Use, because there is not a residence on the property. That is the only way you can put a garage on the lot.

**ATTORNEY BETH MCFADIN HIGGINS:** A garage can only be used for personal use, personal storage. No business operations, can't rent it out.

A motion was made in the affirmative by Mark Seib to approve Special Use 21-08-SU-BZA. Motion was seconded by Ron Fallowfield. The Special Use Voting Sheet was read. **Roll call vote (4-0) Yes. Motion carried.**

**MINDY BOURNE:** This Special Use has been approved and you will receive a letter from our office. You will need to come into our office to obtain your Improvement Location Permit before starting construction.

**SPECIAL USE & VARIANCE TABLED FROM APRIL 8, 2021 MEETING:**

DOCKET NO: 21-07-SU-BZA & 21-08-V-BZA  
APPLICANT: Tillman Infrastructure/Andy Loeb  
OWNER: Thomas R. & Tammy S. Schneider  
PREMISES: A part of the Northeast Quarter of Section 11, Township 7 South, Range 14 West, lying in Black Township, Posey County, Indiana, containing a 75' x 75' leased area more or less. More commonly known as Highway 62 West, Mt. Vernon, Indiana. (Complete legal description is on file at the Posey County Area Plan Commission Office).

NATURE OF CASE: Applicant requests a Special Use and a Variance to erect a cell tower in an A (Agricultural) Zoning District Section 153.032 (B) (3) Use Unit 3 – Public Protection and Utility Facilities Section 153.148 (B) (9) and 153.033 (C) of the Zoning Ordinance of the City of Mt. Vernon, Town of Cynthiana, Town of Poseyville and Unincorporated Posey County.

Larry Williams confirmed with Mindy Bourne that the applicant met all the requirements for notification per the statute.

**ANDY LOEB (VIA ZOOM):** 1080 Holcomb Bridge Road, Roswell, Georgia. This is an application to build a 260' self-support tower off West Highway 62. It will have the ability to accommodate up to three carriers. AT&T Mobility is the anchor carrier. They will be at the top of the tower. There will be a chain linked fence surrounding it with security devices and a landscaping plan to go around the fenced area. The last time I was asked a couple of specific questions that I would like to address first. One member of the Board asked if DOT had approved the driveway. We usually don't apply for a DOT permit until after the Special Use is approved. However, because that was a question we went ahead and applied. Because of the processes, we are not fully approved. On April 29 Mr. Randy Carrie of Indiana DOT sent us an email saying we are Design approved, which approved a 12' wide gravel road. He said it is not officially approved, but right now it is with Hydraulics Department. I'm not sure what they will have to do with this gravel driveway. But it has to go through all the departments in the process before it is totally approved. Another question we were asked was about lease negotiations with the nearby SBA tower. On the attached economic hardship affidavit that was emailed to everybody, section 8 on page 2 there is a description that AT&T has requested tower rent reductions with SBA, but SBA has resisted. Section 7 also shows that basically within a certain amount of time, in this case 20 years, they will be well over \$2 million of beyond economic hardship for AT&T. This is basically why they are looking for a new tower in this area. I was also asked about the type of technology that will be on the tower with AT&T. I can't speak for any future carriers that would be on the tower. As of right now, it is up in the air. With more money that can be allocated, as in the letter of support which was sent to you, AT&T will have more money to fund not only 5G technologies and any other new technologies that may

come down the road, but to also work on their agreement with Firstnet. This is kind of a nationwide emergency response system. Again, this is a Variance for agricultural property to erect a self-support telecommunications tower.

**LARRY WILLIAMS:** Does the Board have any questions for Mr. Loeb? With none, we will open this application up for public comment. Is there anyone here wishing to speak for or against this application?

**CRYSTAL WILDEMAN:** I am the attorney for SBA and my business address is 25 NW Riverside Drive, Evansville. I appreciate the opportunity to come back from the meeting we had in April where this was tabled. Just before the meeting started this evening, I obtained a copy of the Mr. Brenner affidavit that was provided to the Board and I reviewed that. I think that after listening to Mr. Loeb's comments, it is clear that the motivation for the tower is simply economics. I would say that is not sufficient under the ordinance as a reason of necessity for you all to approve the Variance. The lease that is on the current Weilbrenner tower was just renegotiated with AT&T less than a year ago. The parties were able to negotiate that lease mutually. AT&T had to agree with it and there were no concerns at that time or comments on them planning to go and have a new tower with more favorable terms. SBA is willing to talk about it. We haven't even been approached since this last meeting about doing that. We are here to suggest that the Variance be denied because you are asking Posey County to have another tower within 2200' of the original tower simply because AT&T thinks the current tower costs too much. The current tower accommodates three other tenants. I think Mr. Loeb just told us they have no other planned tenants as of right now. They certainly would have room, he says. This is simply for AT&T and AT&T is currently on the Weilbrenner tower. If you review the affidavit, I think the affidavit also says that AT&T would immediately delocate from the Weilbrenner tower. You could potentially end up with two towers within 2200' of each other, AT&T on one and all of the other carriers on the other. I don't think there is good reason for that. I think that is exactly why this Board exists is to make sure if we are going to have a 270' tower we need to have a good reason for that. The Board asked some questions specifically of SBA last time as to capabilities of our current tower and I have brought with me a representative from SBA that is very familiar with the current tower and can answer those questions and would briefly like to address the Board. I've provided to her some screen shot copies of the affidavit. I think there are a few points that she would like to make. Erica Clanton is with us via Zoom. She is the Site Marketing Manager for SBA for Tennessee, Kentucky and Southwest Indiana and Ohio markets. She's held that position for six years and she's the primary contact on towers in the region and she works with carriers like AT&T and customers on new and existing projects. She's been in the business for 15 years and, like I said, is very familiar with this tower specifically as well as SBA's ongoing relationship with AT&T.

**ERICA CLANTON:** In reference to the business terms they are referencing, in terms of not hearing back from SBA in regards to negotiations, as Crystal had mentioned, they have been a tenant on this tower since 2002. We most recently amended this lease for them in July of 2020. The rent increase at that time was \$1,500 for that upgrade to equipment, which was fair market

value. For the price of that equipment, terms of the location of equipment on our tower and how much space that takes up. Those are elements that are involved in the pricing of that. At the time they filed the amendment application and since that time, we have not heard anything from them in terms of questioning the rent or any concerns regarding the structural. I know this from other sites that we work with them on. The Kentucky market is my territory that I cover. We have worked with them on the other sites where they did have questions about the rent increase or the structural and we do address that. We do take that into consideration in terms of how to work with them to get something that would be agreeable.

**LARRY WILLIAMS:** Are there any questions from the Board?

**LARRY DROEGE:** You talked about an amendment they filed. Can you explain what that amendment is?

**ERICA CLANTON:** The original lease that was signed between AT&T and SBA would have been in April 2002. Since that time, they have amended that lease an additional seven times. Each time they go to change the equipment on the tower or on the ground, they file an application with us. Once we have that application, we have to run a structural analysis to make sure the tower is ok structurally with those changes. We provide them a draft of a lease agreement that will have a rent increase based upon the amount of equipment they are adding. We get the structural back and say that the structure passes and there's no issues, if the structural were to go over its capacity, there might be modifications involved with that. But we wouldn't know that unless we run a structural and again an application. So I think that's been one of the arguments they are proposing for this new tower is that the existing tower doesn't have the bandwidth of the space, so to speak, to accommodate future equipment. We disagree with that because we would not know until we have an application to see whether or not any new equipment would affect the tower structurally.

**LARRY DROEGE:** So the latest amendment was filed in July of 2020 when they signed the agreement? Is that correct?

**ERICA CLANTON:** Yes, the last amendment was executed with us on July 29 of 2020. They would have filed their application a few months before then for processing. Once that went through, we generated a draft. The rate increase at that time was \$1,500 for the equipment they are proposing. We didn't get any pushback from them at that time or any questions on that. The tower did pass structurally with that modification as well.

**LARRY DROEGE:** Were either of you part of that negotiation back in July of 2020?

**CRYSTAL WILDEMAN:** I was not. Erica were you?

**ERICA CLAYTON:** I would have been a part of that. I would have approved the application that came through. I would be involved in the processing of the amendment. In terms of

negotiation on the pricing at that time, we priced it based upon fair market rate for what the equipment was they were going to be adding. Then we sent that over to AT&T and again we didn't get any feedback from that and it was executed, it was processed.

**ANDY LOEB (VIA ZOOM):** If I could respond. First, I forgot about one question asked at the last meeting that wasn't asked to me, but it was basically about traffic. One Board member was asking another applicant about traffic. This tower is unmanned and there is someone who comes once a month for technical troubleshooting reasons. I forgot to bring that up at the beginning of my statement. I apologize. Tillman has alerted me that there have been two other parties that have been interested in the tower. No one has signed an agreement and nobody has gone beyond that. But, I have been told of two other parties. One is a high speed internet and one is a carrier. It is 2200 feet, depending on the area. Anybody can tell you that can be a very big distance. It just depends on where you are. Just because it is 2200 feet does not mean that it is very close or even very far, but that can be substantial. As also stated in the economic hardship affidavit, part of the economic hardship cost is the application fees and running structural with the SBA tower. Every time they have to apply and update, they have to keep running those and that is part of it. In addition, the state law of Indiana does allow economic hardship to be an excuse to build a tower near another existing tower.

**LARRY WILLIAMS:** Is there anyone else that would like to speak?

**EARL SCHROEDER:** Marrs Township. How tall is the existing tower? I understand that the new one was scheduled to be 270 feet. I fly airplanes and I am very interested in the height.

**MARK SEIB:** It is the same height.

**CRYSTAL WILDEMAN:** I also forgot to mention in my remarks that Erica Clanton sent a letter of support that we submitted to the Board in advance of the meeting tonight. She summarized essentially the comments that she made a few moments ago.

**MARK SEIB:** So, the lease was done in July of last year and at that time there was no indication of any excessive charges, hardships or anything such as that?

**CRYSTAL WILDEMAN:** No sir, that is correct.

**LARRY WILLIAMS:** We will now close the public portion.

Mr. Williams confirmed with Mindy Bourne there were no emails, phone calls or letters.

**LARRY WILLIAMS:** We will now open this up to the Board for discussion.

**LARRY DROEGE:** We certainly have conflicting letters here. Some are of support and some are nonsupport.



**RON FALLOWFIELD:** I guess I don't see the issue with two towers and no one complaining. I understand cell towers have been close together, but this is the first one that there hasn't been some kind of comments.

**LARRY WILLIAMS:** This is my first cell tower issue since I have been on the Board. This time I don't hear any public reaction to that. I don't see what the issue is with two towers. It also seems like AT&T is trying to make the best deal for themselves. I'm not sure we should get into the middle of this.

**MARK SEIB:** I guess I agree. Whenever they were ready to negotiate the lease, it should have been known at that time there was a hardship or that it was too expensive. There should have been something said at the renewal of their lease. I'm not sure they have proven the case that there truly is a hardship for putting up another tower.

**LARRY DROEGE:** It says the current rent charge by SBA to collocate on the SBA tower is over two times what Tillman will charge AT&T to collocate on the Tillman tower pursuant to the agreement between AT&T and Tillman. It looks like they have a 20 year plan and they would save over \$2 million with their lease.

**LARRY WILLIAMS:** It comes down to whether they made the case that this is absolutely necessary. I don't see where there is a lot of benefit to the residence of Posey County as opposed to saving AT&T some money. Is that a good enough reason to bring in another cell tower?

A motion was made in the affirmative by Ron Fallowfield to approve Special Use 21-07-SU-BZA. The motion died for lack of a second, no action taken. Because of that, the Variance 21-08-V-BZA was not heard.

**ATTORNEY BETH MCFADIN HIGGINS:** Normally we would take a second and then take a vote. If there is not a second, the motion dies. Potentially that is a non-action. The question that would come up is currently your ordinance provides that if it is denied, then they can't come back for a year. If there is no motion, then no final action was taken. It is not an approval and it is not denial, it is a non-action. So, I am not sure that would close the door if they wanted to amend an application, then that probably allows them to come back.

**MARK SEIB:** I think with no action taken, that gives the opportunity for these two to work out any misunderstandings, grievances or whatever. If that can't be worked out, then they can certainly make an application again.

**ATTORNEY BETH MCFADIN HIGGINS:** It can be refiled since it was not denied. The current ordinance would allow for it to be refiled with additional information that is required or requested.

**LARRY DROEGE:** The big question for me is how will the County be better off after we move from one tower to another? I think both sides have a chance to explain themselves. For me it is how will this benefit the County.

**MARK SEIB:** Supposedly, they have 6600 cell towers that they (AT&T) are currently tenants of. If that is the case, I don't think that is a client they want to lose. I think it is open for negotiation.

**RON FALLOWFIELD:** I want to hear something from AT&T and more than just I'm saving money.

**LARRY DROEGE:** That doesn't tell how it is going to benefit the County.

**ADDITIONAL BUSINESS:** None

**CITIZEN CONCERNS:** None

**ADJOURNMENT:** Mark Seib made a motion to adjourn the meeting at 5:57 p.m. Larry Droege seconded the motion.



Mr. Larry Williams, Chairman



Mrs. Mindy Bourne, Executive Director