

MINUTES

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

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

**JULY 13, 2023
5:00 P.M.**

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

MEMBERS ABSENT: Mr. Keith Spurgeon and Mr. Ron Fallowfield.

ATTORNEY BETH MCFADIN HIGGINS: The BZA is a five-member board. Statute requires a majority of the full board to approve anything. To take official action we have to have a vote of three members for or against anything. When we only have three people here, I want to make sure the applicants know that means your request for approval would require a unanimous vote by all three members who are present. When that happens, we give our applicants the opportunity to say, “I wish to have this application heard next month when more members are present”, then we allow you to do that. If you want to move forward with the three members who are here, then we can certainly move forward, and the application may be heard by the board, and we can take official action.

APPROVAL OF MINUTES FOR LAST REGULAR MEETING: Larry Droege made a motion in the affirmative to approve the minutes of the last regular meeting as emailed. Motion seconded by Mark Seib. **Roll call vote (3-0). Motion carried.**

SPECIAL USE & VARIANCE – TABLED FROM JUNE 8, 2023 MEETING:

DOCKET NO: 23-07-SU-BZA & 23-07-V-BZA
APPLICANT: SMJ International/Mark Knapek
OWNER: Linda L. Fieber
PREMISES: The Southeast Quarter of the Northeast Quarter of Section 6, Township 6 South, Range 13 West, lying in Lynn Township, Posey County, Indiana, containing a 10,000 square foot leased area more or less. More commonly known as Highway 69 South, 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) (2) of

the Zoning Ordinance of the City of Mt. Vernon, Town of Cynthiana, Town of Poseyville and Unincorporated Posey County.

Mr. Williams confirmed no board members had any conflict of interest.

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

MARK KNAPEK: (via Zoom) We are wishing to erect a cell tower on private property for Linda Fieber.

LARRY WILLIAMS: As I recall we had some questions at the last meeting which you were supposed to come back with some answers for us.

MARK KNAPEK: That is correct. One of those questions asked was if the service was going to be 5G. The answer to that is yes, with the caveat is it will be the latest and greatest available service at the time of construction. I am going to say that at a minimum it will be 5G. The second question was about the fall zone of the tower in relation to parcel line, structures and other residences. I resubmitted a file with correct measurements which should reflect the distances. There is 460' between the tower and the nearest structure which is a Linda's barn and 525' from to the nearest residence to the north which is a neighbor of Linda's. I will add that the tower is 290', so we are well under any fall zone should that happen.

LARRY WILLIAMS: Are there any questions from the board?

LARRY DROEGE: Mark, is that the only drawing that changed from what we looked at about a month ago, at the meeting. I am looking at sheet number C-1B, is that the sheet we are talking about?

MARK KNAPEK: That is, it is page 8 in the file, it is exactly that.

MARK SEIB: The 5G is the lowest level that it will have and most likely it will have something more improved than that. Is that what you are saying?

MARK KNAPEK: Yes, unless technology improves between now and the time the tower is erected, it will be something better than that.

MARK SEIB: Thank you, that is what we have made as a standard for all of the other ones. This was a free-standing tower, correct?

MARK KNAPEK: Yes, it is called a self-supporting tower, not a guided structure.

LARRY WILLIAMS: At this time, we will open up the floor to the public for any comments or concerns. Is there anyone here wishing to speak for or against this application? Hearing none we will close the public portion.

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

Mr. Williams opened the floor to the board for any further comments or action.

LARRY DROEGE: My only question was concerning the 5G service from the previous Meeting, so I don't have anything additional.

MARK SEIB: I agree with Larry that we wanted to make sure the residents in the area would get the current if not better technology. The other item being the new measurements are more accurate which also makes them safer.

LARRY WILLIAMS: Do we have a motion on the application?

Larry Droege made a motion in the affirmative for docket 23-07-SU-BZA and was seconded by Mark Seib. The Special Use Voting Sheet was read. **Roll Call Vote (3-0) Yes. Motion carried.**

MINDY BOURNE: The Special Use has been approved.

LARRY WILLIAMS: We will now move to the Variance application. Do we have a motion concerning this application?

Mark Seib made a motion in the affirmation for docket 23-07-V-BZA and was seconded by Larry Droege. The Variance Voting Sheet was read. **Roll Call Vote (3-0) Yes. Motion carried.**

MINDY BOURNE: This Variance has been approved. Both approvals expire in a year. You will receive a letter and you will also need to obtain an Improvement Location Permit from our office to erect the cell tower. You will have to start construction within 60 days of obtaining your Improvement Location Permit.

Zoom feed was disconnected.

VARIANCE – TABLED FROM JUNE 8, 2023 MEETING:

DOCKET NO: 23-08-V-BZA
APPLICANT: Michael J. Buente/Rev. Ed C. Schnur
OWNER: St. Wendel Catholic Church
PREMISES: Section 12, Township 5 South, Range 12 West, lying in Robinson Township, Posey County, Indiana, containing 6.23 acres more or less. More commonly known as 4725 St. Wendel Cynthiana Road, Wadesville, Indiana. (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 8.5' to build a 2-story addition that will add two classrooms to the existing St. Wendel Catholic School. The classrooms are 1,118 gross sq. feet per floor (2,236 sq. ft. total) in an A (Agricultural) Zoning District 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.

Mr. Williams confirmed no board member had any conflict of interest.

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

FATHER ED SCHNUR: Pastor of St. Wendel Catholic Church and School, 4712 St. Wendel-Cynthiana Road, Wadesville, IN 47638.

LARRY WILLIAMS: As I recall there were some items you were going to address at this meeting?

FATHER ED SCHNUR: That is correct, however we want to clarify some information before we proceed. It is our understanding that since there are only three members present tonight and all three of you would have to approve that. Is that correct? Is it typical that there would be just three members?

LARRY DROEGE: Not normally.

FATHER ED SCHNUR: So, if we come back next month and there were four members present, there would still need to be three votes.

ATTORNEY BETH MCFADIN HIGGINS: Three is the number. Regardless of how many people are here.

FATHER ED SCHNUR: With that being said, I think we would rather postpone until next month when there are potentially more members here. We feel we have a good plan here and we have taken some steps to really improve the safety with the Variance and being closer to the road. But I think we would like more members here just to be certain.

Mark Seib made a motion to table this application until August 10, 2023. Motion was seconded by Larry Droege. **Roll Call Vote (3-0) Yes. Motion carried.**

MARK SEIB: Am I correct in saying that this can only be tabled twice?

ATTORNEY BETH MCFADIN HIGGINS: Yes, twice.

MARK SEIB: So this is the second and we will have to hear it at the next meeting.

FATHER ED SCHNUR: Okay. Otherwise, it would be another whole year. If it would not be approved next month, then we would wait for another whole year to apply again?

ATTORNEY BETH MCFADIN HIGGINS: Yes, if something is denied, then it's a year before you can reapply.

FATHER ED SCHNUR: Okay. So you will put us on the agenda for August?

ATTORNEY BETH MCFADIN HIGGINS: Yes. August 10 at 5:00.

ADDITIONAL BUSINESS:

ATTORNEY BETH MCFADIN HIGGINS: You will be receiving some correspondence to check some dates for an executive session sometime next week. So just check your calendars.

BECKY WOLFE: As you know I have turned in my resignation. I wanted to thank each of you for the kindness and respect that you have shown me over the years. I greatly appreciate it.


LARRY WILLIAMS: You have done a very good job. You are going to be missed.

CITIZEN CONCERNS: None

Mark Seib made a motion to adjourn the meeting at 5:27 p.m. Motion was seconded by Larry Droege.



Mr. Larry Williams, Chairperson



Mrs. Mindy Bourne, Executive Director

VARIANCE VOTING SHEET

POSEY COUNTY BOARD OF ZONING APPEALS
Report of Findings of Fact

BZA NO: 23-07-V-BZA
SMJ educational - Leida Fielke

1. Will the granting of this variance be injurious to the public health, safety, morals and general welfare to the community?

Larry Droege	(<input checked="" type="checkbox"/>) NO	() YES*	Keith Spurgeon	() NO	() YES*	<u>YES</u>	<u>NO</u>
Ron Fallowfield	(<input checked="" type="checkbox"/>) NO	() YES*	Larry Williams	(<input checked="" type="checkbox"/>) NO	() YES*	0	3
Mark Seib	(<input checked="" type="checkbox"/>) NO	() YES*					

2. Will the use or value of the area adjacent to the property included in the variance be affected in a substantially adverse manner?

Larry Droege	(<input checked="" type="checkbox"/>) NO	() YES*	Keith Spurgeon	() NO	() YES*	<u>YES</u>	<u>NO</u>
Ron Fallowfield	(<input checked="" type="checkbox"/>) NO	() YES*	Larry Williams	(<input checked="" type="checkbox"/>) NO	() YES*	0	3
Mark Seib	(<input checked="" type="checkbox"/>) NO	() YES*					

3. Does the need for this variance arise from conditions peculiar to the property included in the variance?

Larry Droege	() NO*	(<input checked="" type="checkbox"/>) YES	Keith Spurgeon	() NO*	() YES	<u>YES</u>	<u>NO</u>
Ron Fallowfield	() NO*	() YES	Larry Williams	() NO*	(<input checked="" type="checkbox"/>) YES	3	0
Mark Seib	() NO*	(<input checked="" type="checkbox"/>) YES					

4. Are these conditions general in the same zone?

Larry Droege	(<input checked="" type="checkbox"/>) NO	() YES*	Keith Spurgeon	() NO	() YES*	<u>YES</u>	<u>NO</u>
Ron Fallowfield	(<input checked="" type="checkbox"/>) NO	() YES*	Larry Williams	(<input checked="" type="checkbox"/>) NO	() YES*	0	3
Mark Seib	(<input checked="" type="checkbox"/>) NO	() YES*					

5. Will the strict application of the applicable Ordinance constitute unusual and unnecessary hardship if applied to the property in question?

Larry Droege	() NO*	(<input checked="" type="checkbox"/>) YES	Keith Spurgeon	() NO*	() YES	<u>YES</u>	<u>NO</u>
Ron Fallowfield	() NO*	() YES	Larry Williams	() NO*	(<input checked="" type="checkbox"/>) YES	3	0
Mark Seib	() NO*	(<input checked="" type="checkbox"/>) YES					

6. Will the granting of this variance interfere substantially with the comprehensive plan or materially increase street congestion?

Larry Droege () NO () YES* Keith Spurgeon () NO () YES* YES NO
Ron Fallowfield () NO () YES* Larry Williams () NO () YES*
Mark Seib () NO () YES*

***If any one of your answers above is followed by an asterisk, under the statute you must deny the application.**

DECISION: It is therefore the decision of the Board, that the variance:

is hereby granted _____ ()

is hereby denied _____ ()

subject to any conditions stated in the minutes of the Board, and incorporated herein and made a part of the decision. Adopted this 13th day of July 2023

(date)

minutes
COPY

POSEY COUNTY
SPECIAL USE VOTING SHEET

Posey County Board of Zoning Appeals
Report of Finding Fact

BZA NO: 23-07-56-32d
OMS International - Paula Fisher

HAS THE APPLICANT PROVEN BY SUBSTANTIAL EVIDENCE THE FOLLOWING:

1. The Zoning Ordinance authorizes the Special Use.

Larry Droege	<input checked="" type="checkbox"/> YES () NO*	Keith Spurgeon	() YES () NO*	<u>YES</u>	<u>NO</u>
Ron Fallowfield	() YES () NO*	Larry Williams	<input checked="" type="checkbox"/> YES () NO*	3	0
Mark Seib	<input checked="" type="checkbox"/> YES () NO*				

2. The proposed Special Use is essential or desirable to the public convenience and welfare.

Larry Droege	<input checked="" type="checkbox"/> YES () NO*	Keith Spurgeon	() YES () NO*	<u>YES</u>	<u>NO</u>
Ron Fallowfield	() YES () NO*	Larry Williams	<input checked="" type="checkbox"/> YES () NO*	3	0
Mark Seib	<input checked="" type="checkbox"/> YES () NO*				

3. The proposed use at the particular location requested is necessary or desirable to provide a service or a facility which is in the interest of public convenience and will contribute to the general welfare of the neighborhood or community.

Larry Droege	<input checked="" type="checkbox"/> YES () NO*	Keith Spurgeon	() YES () NO*	<u>YES</u>	<u>NO</u>
Ron Fallowfield	() YES () NO*	Larry Williams	<input checked="" type="checkbox"/> YES () NO*	3	0
Mark Seib	<input checked="" type="checkbox"/> YES () NO*				

4. Granting the proposed Special Use is consistent with the public interest/welfare and the Comprehensive Plan in regard to the location, size, use, that nature of intensity of the operation and the site layout with relation to existing or future traffic patterns.

Larry Droege	<input checked="" type="checkbox"/> YES () NO*	Keith Spurgeon	() YES () NO*	<u>YES</u>	<u>NO</u>
Ron Fallowfield	() YES () NO*	Larry Williams	<input checked="" type="checkbox"/> YES () NO*	3	0
Mark Seib	<input checked="" type="checkbox"/> YES () NO*				

5. The proposed Special Use will constitute an environment of sustained desirability and stability.

Larry Droege	<input checked="" type="checkbox"/> YES () NO*	Keith Spurgeon	() YES () NO*	<u>YES</u>	<u>NO</u>
Ron Fallowfield	() YES () NO*	Larry Williams	<input checked="" type="checkbox"/> YES () NO*	3	0
Mark Seib	<input checked="" type="checkbox"/> YES () NO*				

6. The proposed Special Use is in conformity and in harmony with the goals and objectives of the Comprehensive Plan.

Larry Droege	<input checked="" type="checkbox"/> YES () NO*	Keith Spurgeon	() YES () NO*	<u>YES</u>	<u>NO</u>
Ron Fallowfield	() YES () NO*	Larry Williams	<input checked="" type="checkbox"/> YES () NO*	3	0
Mark Seib	<input checked="" type="checkbox"/> YES () NO*				

7. Under the circumstances of the particular case, the proposed Special Use is detrimental to the health, safety, morals, or general welfare of persons residing or working in the vicinity, or injurious to property values or improvements in the vicinity.

Larry Droege	() YES* (<input checked="" type="checkbox"/>) NO	Keith Spurgeon	() YES* () NO	<u>YES</u>	<u>NO</u>
Ron Fallowfield	() YES* () NO	Larry Williams	() YES* (<input checked="" type="checkbox"/>) NO	0	3
Mark Seib	() YES* (<input checked="" type="checkbox"/>) NO				

8. If the request is for a "Home Occupation" it meets the definitional requirements found in the applicable Zoning Ordinance.

Larry Droege	() YES () NO*	Keith Spurgeon	() YES () NO*	<u>YES</u>	<u>NO</u>
Ron Fallowfield	() YES () NO*	Larry Williams	() YES () NO*	N/A	N/A
Mark Seib	() YES () NO*				

9. The proposed Special Use will comply with regulations and the conditions specified in The Zoning Ordinance of the City of Mt. Vernon, Town of Cynthiana, Town of Poseyville and Unincorporated Posey County for such use and with stipulations and conditions made a part of the authorization granted by the Board.

Larry Droege	<input checked="" type="checkbox"/> YES () NO*	Keith Spurgeon	() YES () NO*	<u>YES</u>	<u>NO</u>
Ron Fallowfield	() YES () NO*	Larry Williams	(<input checked="" type="checkbox"/>) YES () NO*	3	0
Mark Seib	(<input checked="" type="checkbox"/>) YES () NO*				

10. Conditions, limitations or temporary uses deemed necessary for the protection of the surrounding area in order to carry out the intent and purpose of the Zoning Ordinance of Posey County:

None

*IF ANY ONE OF YOUR ANSWERS ABOVE IS FOLLOWED BY AN ASTERICK, UNDER THE STATUE YOU SHOULD DENY THE APPLICATION.

DECISION: It is therefore the decision of the Board that the Special Use:

is hereby granted _____ ()

is hereby denied _____ ()

subject to any conditions stated in the minutes of the Board, and incorporated herein and made a part of the decision. Adopted this 13th day of July, 2023.