

Decatur County Board of Zoning Appeals Minutes
Decatur County Courthouse
150 Courthouse Square
Meeting Room

The regular scheduled meeting of the Decatur County Board of Zoning Appeals was convened at 6:30 p.m. on Wednesday, April 5, 2023 at the Decatur County Courthouse. The meeting was called to order by Brad Schutte. There were 4 board members present with Joyce Brindley being absent. Also attending the meeting (via zoom) was Melissa Scholl – BZA Attorney, Krista Duvall – Decatur County Area Plan Director and Debbie Martin – Administrative Assistant.

Brad Schutte opened the meeting and read the following; *To comply with Title VI of the Civil Rights Act of 1964, Decatur County requests that participants in this meeting complete a voluntary, anonymous survey that is available on the table in the back of the room.*

***Approval of Minutes: January 4, 2023:** Janey Livingston made a motion to accept the minutes as mailed, Gary Fischer seconded the motion with all members present signifying aye.

*** BZA Petition 2023-3 – Shannon Myers** is requesting a “**Special Exception**” in an A-1 zoning classification to operate a dog grooming business on this property. This request falls under Decatur County **Ordinance #1920** and a “**Variance**” from the required setback of 150’ to 115’ from the adjoining property line. The property is currently owned by the petitioner and is located 302 S Iron Mine Rd, Westport in Sand Creek Township.

Shannon Myers: I want to do my dog grooming business from home, I was six months shy of 10 years of having my own business in Jennings County. They came in to do some repairs on my building and I have rented the building, the building cannot be salvaged so they are tearing it down. I have lost my business. At this point I am unemployed, that all happened February 20, 2023. Want to get my business up and running at home, it will be grooming only, it won’t be any kind of boarding or nothing like that. I do anywhere from 4-6 dogs a day. **Larry Myers;** it will be during the work hours, 8-4, something like that, it won’t be through the evenings or real early. **Brad;** you are typically running maybe 20 people a week through? **Shannon;** yes, probably somewhere right in there. **Rick;** are you going to do this out of an existing structure that you have? Is there a proposal for a new structure? **Shannon;** I have a building permit to put a building. **Brad;** what type of building? **Shannon;** a 16” x 20”. **Rick;** post frame? **Larry;** this will be stick built. **Gary;** where will the building go on the property? **Shannon;** it will be on the back side of the driveway. **Larry;** I have existing sewer lines at this spot (referencing overhead map), between the house and the cedar tree to the north. **Gary;** with the acreage that we have there, why the decision to move within 115’ from the **Larry;** I have an existing sewage on that property, people came out to check it, that is why I chose that, because I have water and sewage right there at that spot already. There used to be a trailer sit there when I first moved in, they made me tear it down. **Gary;** so the 150 feet, will that be on the north side, or the east side? **Larry;** the closest would be is to the north, (referencing overhead map) about right in there is where it would be. Just right off the side of the driveway. **Brad;** will the existing driveway be sufficient? **Larry;** yes. I can park 6-8 cars. There will only be 1 person there at a time. **Shannon;** I only do one dog at a time, they will drop off and leave and then come back. **Janey;** it seems straight forward and she is definitely not in a highly

populated area. Will you have signage out front: **Shannon**; no. I just plan on doing my existing customers.

Audience: **Harold Callahan**; it doesn't interfere with me, I have an easement that runs along that fence row back to another field of mine. No problem there. **Rick**; are you the adjoining owner to the north? **Harold**; yes, it would be on the northeast. It just comes off Iron Mine Road and runs along that fence line. **Rick**; again, this approval is just for a pet grooming business, no boarding no (inaudible) at any time.

Rich Hoeing made a motion to vote on BZA 2023-3 for the dog grooming business and for the variance from the required setback of 150' to 115' from the adjoining property line; from the required setback of 150' to 115' from the adjoining property line. Janey Livingston seconded the motion with all 4 members present voting yes. **Brad**; your petition passes, good luck. Stay in touch with the office as you build your new structure.

* **Harold Callahan – Pond Issues**: The deal when Nicholas Kohlman had a pond built 2 years ago right above my property, which would be (referencing overhead map) here, he built the pond and now this pond is leaking down on me, down into my field. A constant flow of water running through this area. As more water gets in the pond, the more water that comes out. Now the whole backside of that field is got water standing. I realize there is a ditch right here where the water does run down through there but it does dry up before planting season. Now it doesn't dry up at all, a constant flow of water. The pond doesn't even have the spillway put in it yet. I have talked to everyone, Dave Osborn out of Ripley County, he is a pond specialist. He came and looked at it, Nicholas wants it fixed, Ed Johannigman is the one that built it and he said it is not leaking. **Brad**; did Johannigman come out and do any digging? **Harold**; they dug it right up on the dam, probably 20 feet long, that is all they did. I talked to Nicholas 2-3 times and he wants it fixed for my benefit but Ed says it's not leaking, but Dave Osborn says it is. You can see where it comes right out underneath it. **Brad**; is it coming out on his side and running on to you? **Harold**; yes, and it is getting worse since you looked at it. **Brad**; we don't have a way to enforce, it's a hearsay problem and if Nick wants it fixed, he needs to pursue it. We don't really have any legal binding way, it would have to be proven beyond a doubt that that is where the water is coming from, even then, we don't have anything in our ordinance that would force him to tear it completely out. **Harold**; I don't want that, I have an estimate here on what it cost to fix it the way it should be fixed. **Brad**; which would be? **Harold**; in my field put a dam in. **Brad**; tile? **Harold**; the thing of it is it has to run the length of that field to the creek. **Brad**; is there not a tile in that field now? **Harold**; no, well there is now because the county put one in there but on the other end. **Brad**; but nothing out through the middle? **Harold**; no. **Rick**; the natural water flow is east to west, is that what you said? **Harold**; yes. **Rick**; where would the overflow be when he puts it in the pond? **Harold**; (referencing overhead map) supposedly it will be over here, I don't know. **Brad**; down towards the highway. **Harold**; it's supposed to go underneath the highway, yes. **Brad**; it is supposed to hit the culvert down there on the highway to completely divert around (inaudible). **Harold**; I have picture on my phone and here. **Rick**; what is the distance from the pond to the property line? **Brad**; about 110'. So this (presuming the estimate) is for all the draws. **Harold**; that is just for one, there are two places that are leaking. **Brad**; they have 2500 feet of tile, 780' across that field. In other words, they are putting a lot more tile in than just that run. **Harold**; he just come up and looked at it and gave me an estimate on what it would cost to get it fixed. **Rick**; where's the natural flow of this property pre-pond? **Brad**; right here, that is what the draw is from, it all ran right through here...

Rick; so nothing went south before, its not an issue that the water is not diverting around the pond from another direction. **Brad;** no, that is the original draw that was damned up. **Rick;** I'd be questioning is there any water flow coming this way that is not diverted here instead of ... **Brad;** no, it was all, that is just the lay of the world there, my only thought on that would be, if you are saying the Nicholas wants it fit, measuring across that field, if you have say roughly 800 feet there to get that tile across there, that's.... **Harold;** but the thing of it is is that I have to divert water from this ditch line here up on the hill that is leaking to and running down on the hill there. **Brad;** yea, I don't think that would be too hard to do really, in other words just a little tile up to that. You could dry that up pretty easily with a tile through there but it wouldn't have to be that full amount.

Harold; what Dave Osborne is saying is probably the pond is setting on rock, because my creek.... **Brad;** yea, panther is rock bottom. **Rick;** it's peculating up and maybe not going through the dam? **Brad;** well, either that or it is hitting a spring. Where it is running out probably was a spring at one time but it would always dry up. I would go to Nicholas with the proposition of putting a tile across that field and capturing the water. In other words, if he is willing to fix it.... **Harold;** he is wanting someone to fix it, he doesn't want, he is not going to pay it out of his pocket and I don't want to pay it out of my pocket for sure because it is not on me. It wasn't there before and it is now. The water being there constantly. It is all summer long. **Gary;** tell me more about this spring you mentioned? **Harold;** it is not a spring, there never was a spring there. **Gary;** I thought you mentioned that.

Harold; that I know of, it was a natural drain. **Brad;** it ran, that is going to be your best option. Denny is going to be pretty expensive to move from Elizabeth town, I have worked with him before. **Gary;** is that Denny Moore? **Brad;** yes. You can get somebody local like Bob Hardebeck that would be more cost effective but, you will have to get Nicholas on board with it. Would you be opposed if Nicholas hired someone to do it? **Harold;** as long as it gets done and gets paid for, I wouldn't care. He told me to get an estimate and I did. This is the only guy I knew and he is doing tile around Westport now. **Brad;** this is a little small for him but he could do it, no doubt about it.

Rick; this doesn't fix the problem of a leaking pond, it takes the water that is leaking and diverts it. **Brad;** the pond is filling, there is no water that runs into it and it is filling. It's not leaking a lot, but it is enough to be a nuisance on Harold. That is where I am more apt to kick it back to Nicholas and say if you are willing to have somebody put a tile through there. **Harold;** he told me he talked to Ed Johannigman 2-3 times and Ed won't even talk to him. Ed should be responsible for fixing it, right? **Brad;** it depends on how it leaked, you can't really tell. I talked to Ed about it and he cut a good key way in it and he had glacial till on all of it, which is what you want to see when you are building a key way on a pond dam. But I don't know what is underneath of the pond. **Harold;** I'm just here to get the problem solved, I have been fighting it for two years and I'm tired of fighting it, we need to get something done. **Melissa Scholl;** listening to everything and having reviewed the photographs, this is not an item for our board. I have not heard anything that would make it an item for our board to have the involvement in, so I think your recommendation is accurate, just send it back. It will be an issue with the property owners and maybe the installer. That is more of a civil situation that they will handle privately. Everything I have heard, I do not believe that there is nothing to address with this matter. **Brad;** ok, that is kind of what we were talking about but I am trying to find a solution here. **Harold;** why is that, the zoning board approved it, why don't they expect things when something like this happens. **Melissa;** there is no zoning violation. **Brad;** there was nothing done wrong, we don't have nor could we staff an engineer to do a construction inspection on a pond, that is what it would take, or it would cost us more tax dollars to fund that individual. **Harold;** well, I pay my taxes every year. **Brad;** regardless of that, this board themselves can't do anything but let me talk to Nicholas again and approach him with this because I don't think anybody has gone to Nicholas and explained to him that a single tile, this estimate

would be hard to swallow. You can do it a lot cheaper than that and solve the problem. **Harold;** I haven't tried anyone else. **Brad;** let me reach out to Nicholas, I am going to try to help and see what he says because if he says he is wanting to get it fixed, then that at least tells me that he is willing to talk about it. **Brad;** he didn't really, without going through \$25000 worth of engineering he would never know what was under there. And, technically the dam was built correctly. **Harold;** the thing of it is the more water that gets in the pond the more leaks down on me. **Rick;** because of the percolation issue that is coming up from the bedrock. Ed may not have known about it when he built the pond. **Brad;** let me talk to Nick and see what he thinks, that is all we can do, that is more than you have gotten done so far. **Harold;** I have talked to everybody in the county and they all tell me the same thing, it's a civil matter. Why should it come out of my pocket, I didn't cause it, I don't like having to pay the expenses, its not right. **Brad;** another thought, which Rick and I have both done this, as renters of ground we have tiled ground that we rent, a lot of it. Just for the benefit of the ground. It's not going to hurt that field to have tile in it. **Harold;** I agree but... **Brad;** let me talk to Nicholas. **Harold;** alright. If he doesn't agree to it, what do I do? I'm up a creek without a paddle? **Brad;** yes, because there is nothing that we can do, you will have to deal with him and Ed. **Melissa;** my recommendation would be that you would hire an attorney and they will file a lawsuit for you. **Harold;** who pays the bill on that? **Melissa;** that would be something that would be part of the litigation, you would ask for legal fees. That would be through the consultation with your private attorney. **Brad;** in other words if you won, they would. **Harold;** Nick is a good guy, a good friend, I don't want **Rick;** that is why its better to get in the same room and work it out.

Gary Fisher made a motion to adjourn the meeting at 6:56 p.m.; all members present signified by saying aye.

Decatur County Board of Zoning Appeal

Secretary, Rick Hoeing

Decatur County Area Plan Commission

ATTEST:

Brad Schutte, President Decatur County Board of Zoning Appeals