

Decatur County Area Plan Commission Minutes
April 6, 2016 at 7:00 P.M.
1st Floor Meeting Room of Decatur County Courthouse

The regular scheduled meeting for the Decatur County Area Plan Commission was called to order by Albert Armand at 7:06 P.M. on Wednesday, April 6, 2016. Absent from this meeting was Blake O'Mara and Jay Schoettmer giving us 7 members present. Also present at the meeting were Krista Duvall--Decatur County Area Plan Director, Kenny Buening--Decatur County Building Commissioner, Debbie Martin, Administrative Assistant and Melissa Scholl--Attorney for the Area Plan Commission and Board of Zoning Appeals of Decatur County.

A copy of the meeting agenda and the attendance registrar is attached to these minutes and incorporated by reference. By consensus, the APC Board approved the minutes for the meeting on March 2, 2016 as written and presented.

***APC Petition 2016-4 – Doug Crane and Rose Roberts** are requesting to “**subdivide**” 5.102 acres out of 55 acres and to “**rezone**” 2.99 acres from an A-1 zoning classification to an A-2 zoning classification for a single family detached dwelling. This petition request falls under the Decatur County Ordinance, Section #920 (7). The property is owned by Kevin Green and is located at 6001 S CR 480 E, Greensburg, IN 47240 in Marion Township. This petition was table at the March 2, and the April 6, 2016 meetings.

***APC Petition 2016-6 – Wendell & Margaret Tinsley** are requesting to “**rezone**” 1.54 acres out of 13.163 acres from an A-1 zoning classification to an A-2 zoning classification for construction of a detached pole barn style Kennel. This petition request falls under the Decatur County Ordinance, Section #920 (9). The property is owned by Wendell & Margaret Tinsley located at 915 W Kentucky Avenue, Westport, IN in Sand Creek Township.

Represented by Attorney Joyce Sword and Wendell Tinsley. Ms. Sword stated that the Tinsley's currently live in Texas and purchased a home in Westport. They found out after they purchased the home that they could not build a facility for their English Bulldogs, which they show. It is not a business, no sales are conducted. They simply show the dogs and when they have litters they keep what they want to show and find homes for the others. They don't have dog shows at their place.

Board questions and comments;

- How many dogs do you have? On average probably 10, some litters are 15. How often do you normally breed? We've been doing this about 19 years and in that time we have had 16 litters, so basically 1 per year.
- Krista, did you tell us that this barn will have a separate septic system? Yes a commercial style septic. All the paperwork should be included. I think the washroom deems that they have the state approved septic.
- Is there currently a home on the property? Yes, and the home has a separate septic system, so there will be two septic systems on the property.
- If in the future the 1.54 acres gets sold off, there would not be a road access to that parcel and I know that they are joint owners now but how would that be handled in the future, I know that this

parcel meets the requirements to build a single dwelling home and I wanted to be sure of whether or not they could.

- Does there have to be a separate easement for access to this building? Krista stated that they are not subdividing. Missy asked Andy Scholle if they can be put in the description that this would not be an independent building site. Andy stated that they would never be able to sell that off because he would not have an easement. This is just for rezoning. A note can be put onto the survey stating that this rezone will not be used for a single family residential structure.

Joey Roberts made a motion to vote on APC Petition 2016-6, Jay Hatton seconded the motion. A vote was taken with all 7 members present voting yes.

***APC Petition 2016-7 – William & Jane Badgley** are requesting to “**rezone**” 2.99 acres out of 9.0 acres from an A-1 zoning classification to an A-2 zoning classification for construction of a single family detached dwelling. This petition request falls under the Decatur County Ordinance, Section #920 (7). The property is owned by William & Jane Badgley and located at ½ mile W of 80 W on CR 750 S, Greensburg IN in Marion Township.

Michael Badgley presented the petition on behalf of his parents. He stated that they are planning to build their retirement home.

Board comments or questions:

- This parcel of ground is pretty much wooded piece of ground, scores high.
- Is there road frontage approval? Krista stated that there is an existing driveway.

Joey Roberts made a motion to vote on APC Petition 2016-7, Jeff Hermes seconded the motion. A vote was taken with all 7 members present voting yes.

OTHER BUSINEES

Jay Hatton brought up an ongoing situation in the northwest corner of our county involving Jerry Bell, and I know Jeff Whitaker is in the audience tonight. There is enough going on that we need to have a board discussion on what Krista has found. I know there are some gray areas in the ordinances in what is permitted out there and I think part of the board is aware of it and part is not aware. Mr. Bell has a BZA “Conditional Use” for a 25 yard pistol range and I hear that’s not what all is being shot out there.

Krista brought the board up to day that the Bell property houses a hunting preserve. I have talked to the State Board of Animal Health, they have record of hunts approved going on since the late 1990’s, which was before our ordinance was adopted. Our ordinance does not specify that the preserves have to be any amount of distance from adjoining property owners. Says it has to be 160 acres, but the Bell property was in existence prior to this being written so no violation. They have a firing range, and it is probably too close to one neighbor but most of the neighbors won’t complain. Mr. Whitaker stated that they maybe wouldn’t complain to you. They are mostly Amish and we know they won’t come in here and complain, so I’m going to complain on their behalf. Albert asked if the shooting range was a variance, Krista stated that it was a “**conditional use**” for a 5 year period and it expires at the end of this year. That is his permission to build these rifles and high powered automatic weapons and test shoot them on the property.

I know there is a lot of shooting going on and they allow people to come out and shoot. I know they shoot a lot farther, at least 1600 feet.

Mr. Whitaker stated that the guns will shoot 6 miles, all the way across a 114 acre field. You can see it from CR 650. The shooting goes on anytime the sun shines or moon is out, all hours of the night. Everyone around there including Doug Adamson, Leroy Stutzman, Marvin Detweiler, Jim Shafer, Jim Driver, and the rest of the neighbors. There is an Amish school, and all of this is taking place. The fence they put up is approximately 250' from my house. Now the governor signs a law that they can go deer hunting with high powered rifles, not just set out there and blast away all night long. So now we have to deal with that and them bringing people from all over the country because they are advertising three day guided hunts on what he doesn't even have 160 acres to start with and which there has never been that going on out there. Not sure where this information from the state is going on, I've lived there near all my life. Not been hunts going on in any fashion, yes the Amish before him raised deer as he did until he decided to start a hunting preserve and put up an 8' fence, I don't know if he took in the whole 114 acre corn field and the 30 or 40 acres of woods along Flatrock. These people literally were in fear of their life and a couple of neighbors had bullets flying over their heads on Adamson's property, not on Bell's property, this was on their own property. On opening day of hunting when Adamson and Leroy went hunting on his property and Bell has this range war going on out there and bullets flying over their heads on his property, this is ridiculous. I'm fed up with it. All hours of the night it goes on constantly. If we don't have any more laws than that then everybody in here should think long and hard about what's coming.

Jay: That was my purpose for bringing this up; I saw there was a real public safety issue going on. I'm not sure Krista has all the tools, I think we all need to get really serious about this before we are on channel 8 news. **Albert:** I agree but the question is; What legal grounds do we have, if any, to do anything about it, at this board because I would love to make your neighborhood better. Missy, do you have anything for us? Missy stated that this is what we are trying to locate, everything we have so far has been a dead end. Obviously when the conditional use expires, you don't have to renew that. But I don't know that that is going to stop what's going on out there with the hunt. If it's still a game preserve then obviously that can still happen. **Albert:** The problem with the game preserve is that the state is telling us that it has existed. **Mr. Whitaker:** That's not true, the fence just went up. Albert stated that there are new regulations so they were required to put the fence. Krista stated that all game preserves after this year, there was a rule made that if you have a game preserve you have to have an 8' fence surrounding the preserve. And I've talked to the state and the State Board of Animal Health's attorney and there was absolutely no stipulation put in their law that said it had to be any distance from any adjoining property owner and they could put the fence on the property line. There's no restrictions. **Mr. Whitaker:** I don't know who you got your information from but I'm not buying that. You have in your own ordinance. Krista stated that the hunts were allowed before our ordinance was adopted. **Albert:** The state shows that they have a record of the hunts going on before Bell owned it. **Jay:** But the reserve was for raising the deer, not hunting the deer, does it specify? Krista stated that the State Board of Animal Health said that they had hunts and raised deer. **Mr. Whitaker:** How do you have hunts on free range property with no fences and no borders that would stop any grain fed deer from fleeing the property and go across the neighbor property, does not make any sense. **Missy:** The regulations for the fencing didn't come into play until this year. Unfortunately it obviously does not have the legislation restricted to the level it needs to be. We haven't given up but we are hitting dead ends with what we have discovered so far.

Jay: So that's what we are going to say when someone gets shot out there, that's going to be our statement to the paper and radio, that we've talked about it but that's the best we can do. Missy stated that we can't write the rules, we are trying to follow the rules that exist and analyze the situation.

Mr. Whitaker: So I can go buy 160 acres and put in a high powered game hunt? Albert stated that you would need to approach the board per our ordinance. Mr. Whitaker asked if Bell had come before the board and what authority did he gain to do this? Missy stated that it was already in existence before the ordinance, had the grandfathered status. To buy a new property and create a game preserve you would fall under our current ordinance rules. You cannot apply a current ordinance to a transaction that had occurred before the ordinance was written. Albert said the state is telling us that this already existed prior to our ordinance and so we cannot go in and shut this business down regardless.

Jay: We don't have any teeth for this 5 year "conditional use" for this shooting range, to close it down if they are acting unsafe and putting public safety at risk when we granted their 5 year "conditional use"? Missy stated that we could call them back on the shooting range but I'm not sure that's what Mr. Whitaker is addressing. Mr. Whitaker said I'm talking about the whole shooting match, I'm talking about high powered rifles all night long, all weekend long. An 8' fence 200' from my front door, my grandchildren playing in my yard, I made the investment for my home and now we are all subjected to this that just happened. It has not been going on since 1990 something. Have I ever been in here before, I have lived there nearly my entire life

Jay: I believe all of that and know all that to be true because I used to live in the area too and didn't know about it either. I'm saying the 5 year "conditional use" that this board granted them, if they are acting in an unsafe manner inside of this 5 year clause that we can't just let it expire, can we not go out and say game over because public safety is an issue? Missy stated that we could address it but it would not stop it. Jay stated that it may not stop the hunting but possibly the rapid gun firing. You don't typically hunt deer in the summer.

Andy: Can you tell us what was the 5 year "conditional use" was granted for? I'm unaware of this. From Missy's recollection he was building guns for a contract he had with the military or something. It was a range to test the firearms and I think to allow other people to come and test. Without having the papers in front of him Albert remembers that it was to test guns, not to have outsiders come in and shoot guns. Only for him to manufacture guns and test those guns. I don't remember him mentioning a contract, I thought he was going to sell these guns mail order, he would build, test and then ship them out. A member of the audience spoke up and said that he believed that Albert was right, that there would be no outside people come in to shoot.

Jay: This is my point, I think when he went out of the bounds of the "conditional use", the firing range, the game preserve has a lot of complexity there because he's doing a lot of things. For what we granted I feel he's out of bounds. My point to Krista is why we can't restrict, if we granted it why we can't take it back if we feel like public safety is our objective here. **Albert;** he has to have a federal firearms license and this conditional use would be tied to that, is that correct? Should be. Krista doesn't think that they will renew his license. **Albert;** if we pull his "conditional use" then he would also most likely lose his federal firearms permit but when we do that he's going to come in with an attorney and he's going to file against us because he's going to say that he doesn't have other people out there shooting and hunting deer. We can go down that road. **Missy;** I don't know if it will have its effect on the federal firearms license.

Albert; reality is Missy, correct me if I'm wrong but if we move to pull his conditional use that it would probably be over 6 months. **Missy;** if there is any opposition we wouldn't be in court before it expired. **Albert;** we can travel that road. **Missy;** I think you contacted him to make an effort to come in, he called and stated that they were not doing anything wrong, they spoke with the state and the state was backing

them up and their paperwork is in line. **Mr. Whitaker;** that's what they said last time they were in here, they perjured themselves and lied to your face. **Jay;** we requested they come back and they never showed back up in this whole time? Doesn't seem like a good precedent that we are setting for our county and public safety and I will go on record saying that.

Albert: So if we feel like he is in violation his "conditional use" then we need to proceed to pull his "conditional use" and see what the next step is. Missy, you being our attorney we will have to see what his reaction and what comes back to us, is that correct? Missy stated that we need to look at the actual terminology of what was approved. Then we need someone to provide us with actual documentation of the violation, I've not personally seen it, but you know it will come down to an evidentiary hearing of presentation of this is what was going on and that is not what was approved. **Albert;** So we have to be able to prove it? Missy stated it would be through documentation and testimony of witnesses. If they don't voluntarily comply or cease, then that would be the avenue that we could pursue.

Jay: Again he is multi folding all these things on there. The website for the gun preserve is out there but I don't know about advertisement for long range shooting. **Mr. Whitaker:** When Neuman was here he printed it all off before they got it shut down, then they came in and lied and told you they weren't doing it. They were shooting across my driveway with 9 mm pistols, running around shooting hub caps in the woods like some sort of tactical training. Bell told me they were professionals. Said it would cost Bell money if they didn't get to carry out what the guys paid for. Then he came here a lied to you saying he wasn't doing it. I had just got home and there were about 400 shots within a matter of minutes, gunfire like crazy. When you brought him in the meeting they quieted down. He knew he was lying to you knowing that he just left me a message saying that we need to just let them get through the weekend. It hasn't slowed down, but they have not done it across my driveway since then that I know of. The long range rifles that they are shooting up through the valley from behind Troyer's house, he's tired of it but he won't come in here and tell you guys that. The Amish feel they don't want to be the ones to be blamed for anything one way or the other. Well that's not what Doug's, Jimmy's, Jims or my opinion is. I don't understand how this just happens to show up. I've lived out there for 40 years, and now this just comes about and all this gunfire and this guy we supposedly has a 160 acres hunting range and best I can tell is he doesn't own 160 acres. Missy stated that we can't go back and apply the rules now to a transaction that happened before our ordinance. **Mr. Whitaker** stated he didn't know which grandfathered clause. **Jay;** she's just saying that before the ordinance came about. **Mr. Whitaker:** Where is the governing authority that gave them that to begin with? **Albert;** the state has some sort of record. **Mr. Whitaker;** Was there a governing body that ordered a hunting preserve? I wouldn't think he could just start that. **Albert;** it would have been at the state level. We did not have an ordinance in Decatur County at the time that the state is telling us it started. **Mr. Whitaker;** well you have the ability to demand the records right? **Albert;** the state has shown us that. I don't know what we can demand the state hand over a record if they tell us it's there. **Missy** said anything that documents its existence it's been monitored and recorded and managed by them. Then that was all per our ordinance. So we can't go back and rule back 50 years and change things. **Albert;** we can ask the state to give us what their records show as happening out on that property. Over the phone they are telling Krista that this has been going on for quite some time, before our ordinance took effect. Which has just been in effect for about 7-8 years. We did not have anything in the ordinance before that. If the state says it's been going on for longer than 8 years there is nothing that our ordinance can do to stop the hunting preserve.

Jay; I disagree with that, I disagree. I think a matter of public safety, the state of Indiana doesn't live on 640 N, if they showed up and saw all those homes and the Amish school and the slow moving buggy's along there, they would not want a hunting preserve on that road with those people being hundreds, not thirteen hundred, but 10-20-50 feet away from that fence. I think that's our fight. I think you got to go

and protest that and say yes it may have been accepted, but guess what you don't live there, the board doesn't live there or it would be a bigger issue, our commissioners don't live there, or it would be a bigger issue. We have the public coming in here saying it's an issue and I think we need to take it serious and tell the state. Krista agreed, she talked to several neighbors and they are very concerned. Even the Amish said they went on open day of hunting season, we went to the field, got a deer, went back to get my wife to find the deer and literally had to crawl out of the field because there were so many machine guns firing. That is the terminology that they all used. **Mr. Whitaker**; it's not just a high powered rifle anymore, it's full on machine guns. 50 caliber stuff that sounds like a cannon going off.

Missy; Jay it's not that we don't want to address it, I hope they do something, so far they have not. **Jay**; I'm just saying when channel 8 shows up, I'm going to be right there saying that I have been telling you this all along. **Missy**; sometimes there are times when you do have to go to the media source to create enough attention so that someone with authority to do something will look at it. **Albert**; I'm of the opinion that this board should look into it and do whatever we can to correct this problem. I don't live out there but am convinced that it is a problem. Jay says it's a safety hazard and I believe that so if there is anything that this board can do, any chains we can rattle that we need to do that to try to get something done. I also realize that we have to operate inside the legal system. **Missy**; does anyone know have there ever been any police reports, have the police come out to investigate? **Mr. Whitaker**; they sure have and they say oh that's Preacher Bell Jeff, and I don't care who they are, they are shooting those pistols and acting like warlords down there. One of the officers attends Bells church and Steve came back, said if you have any more problems give me a call. I asked what would happen at that point if you tell me you are not going to do anything. I don't know if they wrote any reports, they got a call and showed up at my house and I told them the same thing I just told you. They went to Bells house and talked to him.

Jay; I just thought it was important enough that we should discuss it at our meeting. **Missy**; any information that anyone can provide us, document the activity either through photographs or videos that could specifically define it as Bells property. If there are any game cameras that were out that picked up any photos, any police reports. That can then be turned over to the state to substantiate the concern. **Albert**; we need to do whatever we can. **Joey**; Jeff I have some contact information at the state board of health. Dr. Marshall would be happy to know what is going on and can put pressure on the back side. Krista stated that when she called they just referred her to their attorney.

Mr. Whitaker; Again just so everyone understands, I'm not against it if you have the property and location to do that. But with the community around there, it's not appropriate. I'm not going to stop till it's over one way or another.

Albert; Thanks for coming in. We need to hear what's going on so we can work harder to get something done.

P.O.P. (People over Pigs)--They have nothing for this meeting.

With no other business, the meeting was adjourned at 7:45 P.M.

Respectfully submitted by Debbie Martin, Administrative Assistant.

ATTEST

Secretary Andy Scholle
Decatur County Area Plan Commission

President, Albert Armand
Decatur County Area Plan Commission