



TANEY COUNTY PLANNING COMMISSION

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MINUTES TANEY COUNTY BOARD OF ADJUSTMENT WEDNESDAY, NOVEMBER 19, 2008, 7:00 P.M. COUNTY COMMISSION HEARING ROOM TANEY COUNTY COURTHOUSE

Call to Order:

Chairman Dave Clemenson called the meeting to order at 7:00 p.m. A quorum was established with five members present. They were: Dave Clemenson, Alan Lawson, Bob Hanzelon, Tom Gideon, and Jack Johnston. Staff present: Eddie Coxie, Bonita Kisse, Dan Nosalek, Marla Pierce, Keith Crawford, and Bob Paulson.

A statement explaining the meeting procedures was read and the Taney County Development Guidance Code was placed into evidence as Exhibit A, the Staff Report as Exhibit B, and the staff files, including all pertinent information as Exhibit C, and the Taney County Board of Adjustment bylaws as Exhibit D. The State Statutes that empower and govern the Board of Adjustment were read.

Public Hearings:

Token Properties: a request by Eric Token for three variances, for parking, roadway width, and road gradient on property located at 1660 Hill Haven Road. Mr. Coxie read the staff report and presented pictures and a video of the site. Mr. Gideon discussed if the road would ever be made a county road, Mr. Coxie stated that it would not and that the dock would not become bigger in the future. He discussed what the Corps will allow for parking spaces, and boat slips. Mr. Clemenson swore in Mr. Token to speak. Mr. Token plans to live on the property. He stated that he wanted to create a minimal area for traffic, and explained the road easement was taken out of the original plat. He presented a letter received from the property owners for the file. A homeowners association is planned. Mr. Token explained how this was set up. The property will be gated. Mr. Clemenson asked if there was a provision to keep someone from falling off the cliff where the cut for the parking lot is. Also a concern was a turnaround for emergency vehicles. Mr. Token stated that he could address both these issues.

Mr. Token stated that if he could not get the variance for the parking lot the project could not proceed. The second request of the gradient, allows the lots to stay the same. The third request for the width, could be allowed if he would place guardrails along the road. Discussion followed. Mr. Token reported on a discussion with the road department and that they did not have a problem with the roads. After discussion a motion was made by Tom Gideon to approve the variance on the parking lot based upon the decision of record, seconded by Bob Hanzelon. The vote to approve was unanimous. The second request on the width of the road way; motion was made by Alan Lawson to approve based upon the decision of record and seconded by Tom Gideon. The vote to approve was unanimous. Tom Gideon made a motion to approve the third request for road gradient based upon the decision of record. Seconded by Bob Hanzelon. The vote to approve was unanimous.

Holly Perryman: a continuance of an appeal of the Highway 65 Multi-Use Project at Emory Creek. This request was heard first by order of the Chairman. Mr. Coxie read the staff report. Mr. Clemenson swore in all the speakers and asked Debra Doyle representing Ms. Perryman to state her case again. Jim Hotz who lives off Airport Road stated that the race track would not be compatible with the surrounding area. He wanted to know what the hours of operation would be, and who set the decibel ratings, because in his opinion 83 decibels is too high. Tom Goldsworthy who lives on Victor Church Road was also concerned with sound levels, runoff, compatibility, and density. Beverly Gray who owns Emery Creek Bed and Breakfast which is within 600' of this project voiced concerns about noise, compatibility, monitoring, hours of operation, and property values. Laura Curbow who lives on Beaumont Lane voiced concerns about noise, air pollution, traffic, abandonment of the project, public drunkenness and drug use, and compatibility. Brian Wade representing the permit holder, reminded the Board that the approval is for more than just a race track. He also mentioned that the Code book specifies that an appellant must specifically state what issues are contested. In Mr. Wades opinion the continuance gave the appellant an opportunity to name other concerns. He brought to the Boards attention some similar cases and discussed them. In Mr. Wades opinion the Development Code does not state that an applicant cannot submit another similar application. He brought to the Board's attention that the Code does not address noise, and that the Planning Commission made the best decision with the rules they have to work with. Mr. Wade feels that because the project was scored after approval was given, that the checklist should not be considered. Mr. Clemenson pointed out the portion of the Code that addresses noise. Steve Redford the project property owner pointed out that the same concerns that the surrounding property owners have voiced at this meeting were the same ones brought forth at the Planning Commission meeting and felt he had satisfied the Planning Commission on those issues. He also discussed the noise problem and stated that he has studied the issue and made provisions, in his opinion, to mitigate the

noise. Mr. Redford reported that the traffic on 65 hwy. reaches up to 72 decibels. Sarah Klinefelter the Chairman of the Planning Commission made a statement regarding the issue if the correct process was followed by them. She presented all the minutes of the meetings in which this project was heard, and read the portion of them showing how the Commission saw the change in the project. Mark Blackwell Planning Commission member representing Jasper Township, discussed the scoring and that the Commission started using the checklist again about a month ago and reminded that the checklist is merely a guide and because a project receives a negative score does not mean that the Commission must not approve it. At this point Mr. Clemenson declared the public input be over and allowed the Board to discuss the issue. He addressed the two points Ms. Doyle made and stated that since the noise levels are not addressed in the Code, should not come into play. Mr. Lawson stated that if an applicant self imposes a rule and the Board agrees to it, questioned if it was something that could be levied. Mr. Paulson addressed this and discussed both arguments. Mr. Hanzelon asked where the fines would go. Mr. Lawson read the agreement and it does not state where the funds would go. Mr. Paulson stated that only the County Commission could impose a law. Mr. Gideon stated that there is not an ordinance backing a self imposed rule in the Code. Mr. Paulson stated that there is a state law which would make a self imposed rule part of the decision of record. Mr. Lawson did not feel there was an error of law, and asked Mr. Paulson if the checklist could be entered as evidence to this case. His concern was that if this were to go to court, would the court request this document. Mr. Paulson advised that if the checklist is not raised in this hearing would not be reviewed in court. Mr. Lawson wanted the policy checklist be entered in this meeting as evidence. The Board then reviewed the checklist. Mr. Lawson stated that if this project denies the request because of decibel reading, this would mean the study is not clear and should not be relevant. Mr. Paulson pointed out the powers of the Board. Mr. Coxie stated that the Planning Commission was concerned with noise and that the decibel level was made part of the decision to keep the project from exceeding the limits. Mr. Paulson gave an example of mitigation to Mr. Hanzelon. Mr. Lawson feels, in his words, "this all boils down to noise". Mr. Gideon agreed. Mr. Lawson discussed the fact that the county does not have the funds to enforce a noise ordinance just for this project. The discussion followed regarding if the noise issue had been mitigated enough. Mr. Clemenson asked for a motion. Tom Gideon made a motion to deny the appeal based upon the Planning Commission did not make an error in judgement. Mr. Clemenson seconded. The vote was four in favor and to deny the appeal, and one vote not in favor to deny the appeal. Mr. Clemenson explained that the applicant may now appeal to circuit court.

Old and New Business:

Mr. Coxie reported that the new Code Book is now on line, and staff will provide them with hard copies and/or Cd's.

Mr. Clemenson thanked Alan Lawson for his service to Taney County on this Board, this being his last meeting.

Mr. Pennel introduced the new member David Nelson.

Review and Action:

Minutes, October 2008: with no additions or corrections a motion was made by Alan Lawson to approve the minutes as written. Seconded by Tom Gideon. The vote to approve the minutes was unanimous.

Adjournment:

With no other business on the agenda for November 19, 2008 Mr. Clemenson adjourned the meeting at 9:00 p.m.