

BOARD OF ZONING APPEALS
OF THE CITY OF DECATUR / MINUTES

November 19, 2018

A meeting of the Board of Zoning Appeals of the City of Decatur, Indiana was called to order by Chairman Kitson on Monday, November 19, 2018 at 4:30 pm at City Hall, 172 N 2nd St, Decatur IN 46733.

Present at the meeting were: Dave Haggard, Steve Hakes, Greg Kitson, John Schultz, and Bill Stuckey. Also in attendance were Tim Baker, City Attorney; Curt Witte, Superintendent Building/Zoning; and Sharon Braun, Assistant. Robert Eherenman, with Haller & Colvin of Fort Wayne, legal counsel for the City of Decatur, joined the meeting via telephone.

Upon motion by Schultz, seconded by Haggard, the minutes of the previous meeting were approved as presented. Motion carried, 4-0.

Upon motion by Stuckey, seconded by Hakes, the notices for the business meeting were approved as being posted 48 hours prior to the meeting at City Hall, the Adams County Court House, Decatur Public Library, and distributed to the local media. Motion carried, 4-0.

Baker stated the purpose for the special business meeting was to approve or reject the agreement reached between the City of Decatur and Mark Gambill regarding the restrictions on record for the Special Exception to allow a Home Occupation for Mr Gambill at 839 N 10th St, Decatur IN 46733.

Eherenman explained the circumstances leading to the agreed judgement. In February 2018, the BZA approved Eherenman to proceed with litigation concerning Gambill's failure to comply with the restrictions as agreed, that being an expanded use of the boundaries per the BZA's previous approval.

Gambill retained Brian Heck and Patrick Hess (with Beckman Lawson LLP) as legal counsel.

Negotiations were held and subsequent agreed judgement was reached. Eherenman stated the agreement contained all points the city was attempting to gain as follows –

- no more than four customer vehicles on the Special Exception real estate during business hours; after hours, customer vehicles must be stored off-site on properly zoned real estate
- no customer vehicles shall be parked on 10th St or any other public street
- defendant's personal vehicles shall be parked at owner's house or on a public street
- no exterior storage
- all vehicle repairs conducted inside building
- no parking or storage of customer vehicles on defendant's personal property

Defendant asked for –

- 30 days to comply with terms of agreed judgement
- 15-day written notice of any violations
- failure to comply may result in revocation hearing or file for contempt

Chairman Kitson asked for comments from the audience, either in favor or opposed.

Mayor Ken Meyer spoke in favor of accepting the agreed judgement.

Kitson asked for discussion from the board, as follows –

- Gambill is aware of his obligations
- no second notice; if repeated violations, will go to court
- Baker recommended the Board sign the agreement

At this time, Eherenman finished the phone conference with the BZA.

Chairman Kitson asked for old business.

Baker stated he will verify state law regarding John Schultz's eligibility to remain on the BZA subsequent to his recent election to serve on the Adams County Council effective 1/1/2019.

Kitson asked for new business. Braun stated the BZA organization meeting will be scheduled for January 15, 2019.

Kitson asked about the possibility of the city recovering attorney fees for zoning violations. Baker explained there are currently no such provisions in the city code of ordinances, but upon recommendation by the BZA, he will prepare an ordinance to submit to city council.

Upon motion by Hakes, seconded by Stuckey, the BZA made recommendation to City Council to direct Baker to create an ordinance which allows the City of Decatur to be reimbursed for legal fees involving zoning violations. Motion carried, 4-0.

Baker announced there will be an opening for voting member of the Plan Commission as of 1/1/2019, as Kitson declined re-appointment to serve on the board.

There being no further business to come before the board, upon motion by Stuckey, seconded by Haggard, the meeting was adjourned at 5:10 pm. Motion carried, 4-0.

Respectfully submitted,

Sharon Braun
Recording Secretary