

The Madison County Board of Zoning Appeals met on the above date at 9:00 A.M. with, Mary Jane Baker, Chairman, presiding.

Members Present: Bill Maxwell, John Randall, Jr., Mary Jane Baker, Shirley Aubrey and Bill Hobbs.

Members Absent: None.

Also Present: Michael Hershman, Executive Director, Judy King, Plan Reviewer, and Beverly Guignet, Secretary.

CURRENT BUSINESS

1. Roll call was taken and all members were present.
2. The minutes of the preceding meetings Special Hearing, November 14, 2006, November 28, 2006 and January 23, 2007 were distributed to each member prior to the meeting.
3. Mr. Maxwell made a motion to approve the minutes for Special Hearing, November 14, 2006 with corrections as stated. Mr. Hobbs seconded the motion. The vote was unanimous in favor of the motion.

Mr. Maxwell made a motion to approve the minutes for November 28, 2006 with corrections as stated. Mr. Hobbs seconded the motion. The vote was unanimous in favor of the motion.

December 27, 2007 meeting was cancelled.

Mr. Maxwell made a motion to approve the minutes for January 23, 2007 with corrections as stated. Mr. Hobbs seconded the motion. The vote was unanimous in favor of the motion.

3. Petition #505 of Aaron and Sharon Goen, landowners and petitioners, for special use to have taxidermy shop at residence. This property is zoned “CR” and is located on the North side of 400S and approximately 1/8 mile East of 400W in Fall Creek Township, with the physical address being 4424 W. 400 South. **Tabled - 1/23/07 until Feb. meeting.**

Mr. Hershman informed the board he had spoken to Mr. Goen and had gotten a verbal request to withdraw their petition and that a written request will follow.

Mr. Maxwell made a motion, seconded by Mr. Hobbs to accept the withdrawal request from Mr. Goen for Petition #505. The vote was unanimous in favor of the motion. **Petition #505 of Aaron and Sharon Goen, landowners and petitioners, for special use to have taxidermy shop at residence was withdrawn.**

New Business

It was the consensus of the board to hear the following four items together as they are interrelated and that separate votes are taken on each item.

Mr. Hershman said, Petition #513 is for the fencing requirement.

Mr. Hershman informed the board houses and subdivisions characterize the surrounding area. The site is a house and several outbuildings.

Staff has received proof of proper notification.

The applicant's representative stated that the variance is not needed for the following reasons. The equipment will be located high enough on the tower so that a fence is not needed to protect it.

There is nothing to protect, the tower amounts to a utility pole.

The applicant is concerned about drawing attention to the pole.

Petition #514 is for setback requirements.

The applicant is also applying for 2 other variances and a special use. The variances include fencing and landscaping. Hancock Telecom is requesting the variance in order to place a 97-foot tower for broadband. The Ordinance requires that the tower be setback 100% of the tower height from the property lines. The applicant wants to place the tower 7 feet from the west property line and 6 feet from the rear property line. There is a residence in Jefferson Place located behind the proposed tower site.

According to the applicant's representative, there is nothing to catch the wind which would result the tower be toppled.

Petition #515 is the landscaping.

The applicant is also applying for 2 other variances and a special use. The variances include setback and fencing. Hancock Telecom is requesting the variance in order to place a 97-foot tower for broadband. The Ordinance requires that evergreen buffer plantings shall be required around the outmost perimeter of the security fence. The applicant does plan on installing landscaping.

Petition #516 is for wireless broadband service.

Ms. Baker said, I think Petition #516 should go first. I think its common sense that we need to approve the pole before we can worry about the fencing and anything else.

Mr. Hershman said, Zoning Ordinance Section 6.18B-Determination of Tower Need-requires that before a tower can be approved, the applicant must proof the antennas planned for the proposed tower cannot be accommodated on any existing or approved towers or structures with a 3-mile radius for one or more of the following reasons:

The antennas would exceed the structural capacity of the existing or approved tower or structure as documented by a qualified and licensed professional engineer, and the existing or approved tower, building or structure cannot be reinforced, modified, or replaced to accommodate the antennas at a reasonable cost.

The antennas would cause interference impacting the usability of other existing or planned equipment at the tower site. Supportive documentation by a qualified and licensed professional engineer indicating that the interference cannot be prevented at a reasonable cost must be provided.

The existing or approved towers or structures within the search radius cannot accommodate the planned equipment at a height necessary to function reasonably as documented by a qualified and licensed professional engineer.

Other unforeseen reasons that make it unfeasible or impossible to locate the planned telecommunications equipment upon an existing or approved tower or structure as certified and documented by a qualified and licensed professional engineer.

Unable to enter a commonly reasonable lease term with the existing tower owner or land owner. Additional land area is not available.

According to the applicant's representative, who is an attorney, the proposed telecommunication facility is not the type of tower typically proposed. Due to evolving technology, Hancock Telecom can bring wireless broadband service to specific areas which are either not served or are underserved. Through the construction of a single utility pole in a targeted area, the residents, businesses, and schools in an approximate 3-mile radius can receive this service. This new technology makes the use of existing towers unfeasible, uneconomical and impractical.

Ron Pritzke, Attorney for the petitioners was present.

Mr. Pritzke said, I live and work in Greenfield and I am here with Dick Donnelly who is also representing my client, Hancock Telecom and also with us is Rex Pascal who has been with Hancock Telecom since 1976. Jeff is a residence of Pendleton, Indiana.

My client started out serving the rural areas of Hancock County with telephone service and it continues to serve rural areas of Hancock County and Madison County this time with telecommunications services.

Our hope in filing these petitions was to bring high speed broadband service to a part of Madison County which is either not served or can only be served with extreme difficulty.

Hancock Telecom has developed a new technology for economic delivering this service by constructing a single 97-foot tall utility pole in a targeted area. There will only be two antennas on this pole. The antennas are either on the top poles or five feet from the top.

Please do not confuse our proposal with the proposals of a cell tower or cell phone use. That is not what we are here for. We are just speaking about this one utility pole. This pole is actually 110 feet tall but 13 feet of it is buried below grade. So 97 feet, that's where I get the 97 feet that is above grade. We don't need guide wires for this. We don't need concrete slabs which you see on cell phone towers. We don't need anything on the ground. Any on ground facilities or on ground structures other than the pole itself. All of the electronics on the pole are about ten feet above grade so you've got to have a ladder or a cherry picker to get to it. So, we believe this is going to prevent vandalism and create no safety issues.

Farmers can farm right up to the pole. You can mow right up to the pole. The poles are exactly the same poles that are put up by utility companies. There are no lights on the poles to disturb the neighbors. It's only 24 inches at the base. In other words, when the part of the pole that comes out of the ground it's only 24 inches wide and it tapers as it goes to the top and it's six inches at the top.

This new technology is going to bring high-speed wireless internet service, not cell phone but internet service for computers to businesses, residences and school children. And when I said targeted a minute ago, we will serve people in approximately a three-mile radius of the pole.

It will help schools, it will help businesses and it will help the residences in the area. We also think it is an economic development tool.

This is a unique service in that we are able to provide due to what we consider an evolving cutting edge technology. We are attempting to provide the service by visually calling as little attention to the pole. If the BZA believes that some landscaping is in order we are prepared to address that.

With regards to the setback variance, we suggest that variance should also be granted. Because this is a pole that is well anchored, that is galvanized steel pole that is anchored 13 feet in to the ground and has nothing to catch the wind, we believe there is no reasonable chance that this pole can fall over from blowing down.

We have received information after we read Mike's report and read his concerns and this pole is what's known as a class one pole in the industry. It will handle a 4500-pound horizontal load. This pole will be safer than utility poles along our streets because it's going to be better anchored and because there is not going to be any cars to run in to them and break them off. Additionally there are no structures within a 100 feet of our proposed pole location so if it did fall it would not hit anything but the ground.

Because this new method of delivering the service was not contemplated when Telecommunications facility ordinance was passed we suggest that the setbacks or fall down requirements of the ordinance don't or shouldn't apply.

In essence what we are proposing is a utility pole. Utility poles historically do not need fall down zones. There are no fall down or setback zones required on city streets.

I have passed around some pictures to you as to what the pole will look like.

The panel is 2' x 2' and is thin. It is less than 50 pounds. If it would fall down which is not likely, we have allowed for 100-foot radius. If it would fall to the west it would fall in a farm field. If it fell to the north there are no structures within 100 feet of the property line.

The location of the pole is in the northwest corner of the property. We have proposed an easement for bringing electrical service to the pole along the property line. It will not take much servicing but if we need to we can cross the Manges property to get to the pole. This will be Mr. Manges west property line. We would access off of St. Rd. 38 where the farmers goes in and out.

Jerry Manges, 6526 W St. Rd. 38, Pendleton.

Mr. Manges said, we wanted it placed at this location because we did want to maintain the agricultural property. Therefore we would like to have it along the property line. As was stated earlier it is a utility pole. I assume it will be very well anchored. There are no guide wires like on a cell tower. We will maintain the weeds around the pole.

Bill Maxwell asked if what they put on top of this could not be placed on a cell tower, which is about half mile away.

Mr. Pritzke said, there are two issues with that. The first one is, their different frequencies, which would interfere with our transmission, and the second one is, because of the area. Telecom has gone out and researched what areas need the service. Because this pole has limited range is why we can use a simple monopole or utility pole as opposed to the large very tall cell towers. We need to be very close to this particular location in order to serve the people that need the service.

Rex Pasco, Hancock Telecom was present and said he lives at 433 State Street, Pendleton.

Mr. Pasco said, this is not necessarily for the schools use but for the people who live in the area where the pole is.

The purpose of this pole is to serve the residence, and the children. The children are the future and they need some time to have access to the internet or broadband to help with their schoolwork. That is why we say school. We don't necessarily mean the school itself. They can have access to information for their schoolwork. Right now they don't have that benefit by living out in the rural area.

The rural area is really Telecom's forte. It really helps the kids and also the people who work at home or want to.

Mr. Pritzke said, the school corporation wants their students to have access to internet for research, contact material, online programs, classroom blogs, etc. They also use it for online newsletters, e-mail, and daily access for parents to grades, delays, closings and so forth.

Mr. Randall said, I have no doubt this is a coming thing and will be very use full for many people. But for someone to tell me in a wind storm and a tornado could not take down a tower like that, I've got questions all over the place.

I have towers on my properties and am able to farm around them. There should be no problem getting around a single pole like that. Why not come out in the middle of that field where if anything did happen it could not fall ever directly on anything. It would be simple matter to drive around one single pole.

Mrs. Aubrey said, also when you think of the residential area behind there's a lot of money in each one of those homes. I think if it was stuck in the corner where don't want it I would be very offended if I had placed a two or three hundred thousand dollar homes and here's this pole sticking up. Where if it's in the center of your field a way from the property line I would still be offended but I could live that much easier.

Dick Donnelly said, we hear what you are saying and I think what we would propose to do is, hear from the remonstrators. Then depending on how that all comes about maybe if we could get a continuance until the end of the agenda maybe we could figure out something that might be more suitable for everybody.

Jean Link, 6481 W Congress Drive, Jefferson Place.

Mrs. Link said, that pole would be in our back yard and we just moved in last summer. That pole wasn't there and that's not what we bargained for. We just don't want it in our back yard. It seems like there is a lot of farm ground there that it could be placed somewhere else.

Jay Nance, 6555 W Congress Drive, Jefferson Place.

Mr. Nance said, I do have the internet now and I don't see the need to put a tower in where I can see it from my back yard. There are other farms in the area where it could be placed. It will decrease my property value. I have the service from this same company right now. There is a tower close to Pendleton that I get it from.

Mr. Pasco said, what happens is, wireless communications is not a wire line communications. It doesn't have the reliability that wire line communications has. When you provide a wireless source like this you have to do what they call provocation subs. They say we are going to put these antenna's up here, now I want to see where all this will serve. They gentleman that was just here is served a signal from a tower two miles east of the Town of Pendleton. That makes it almost a four-mile spread. That's not to say it would be totally dependable. Jefferson Place is just on the edge of where the tower on the east side of town serves. That tower is on 850S. Do to the geographical hills and trees, Mother Nature gets in the way of serving that.

Quinn Ricker, 6075 W Foster Branch Drive.

Mr. Ricker said, I am a residence in Foster Branch Subdivision. There are 12 other homes in my subdivision and we have talked and we all have school age kids. The only option that we have right now is dial up or hooking up to a satellite that's a 500 dollar one time fee that's over a hundred dollars a month. There are a lot of young professionals who live in this subdivision that would do work from their home if they had high speed internet. High speed internet in that area is very important. I definitely think it is a service that is very much needed.

Doug Valentine, 8122 W St. Rd. 38.

Mr. Valentine said, I live approximately a mile and a half from this property. I cannot get any service. So, less than a mile and a half from where this guy has this service it will not reach my house. I have checked with numerous providers and nothing is available in that area. I am very much in favor of this coming in.

The petitioner asked if the board would mind going to another petition and then come back to theirs, as they wanted to discuss something among their selves.

It was the consensus of the board to go to items 5 and 6, Petition #517 and #518 and then come back to it later in the meeting.

5. Petition #517 of John Eicks, landowner and David Eicks, petitioner, is for Special Use to construct a garage for personal use. The property is located on the East side of Rangeline Rd. (200E) just North of 100S (Mounds Rd.) in Union Township, with the physical address being 2308 S. Rangeline Rd.

Mr. Hershman said, the surrounding area is a mix of woods and residences. The site is an auto salvage yard with a residence on it.

Staff has received proof of proper notification.

The garage is for personal storage and not related to the auto salvage yard on the property. The Ordinance requires a special use for residential uses in the GI zoning district.

The structure does appear to be an undefined "A" flood zone, as per panel 6 for Madison County. I have notified the applicant of this and advised him to talk to the Division of Water.

David Eicks, 1711 Oakwood Drive.

Mr. Eicks said, John Eicks is my father. This has been an auto business since I was six years old. My father lives in the house on this property. He is 72 years old and is getting married. His wife to be lives in Indianapolis and when she moves here she needs a place to store her things when they get married. That is the reason for wanting the garage. It is for personal use only.

The garage will be a 20' x 30' with red metal siding and a shingle roof to match the other buildings that are there.

I just learned from Mr. Hershman last Thursday that I would need to go to the DNR and I currently have the paper work filled out for that. In 1990 I constructed another building we went through this process at that time so I would like to ask if I could go a head and possibly get approval for this based on the DNR report.

Mr. Hershman said, my concern on this one is not the special use, my concern is I would not want to be put in the situation of approving something that might be in the floodplain and that is why I feel this should be tabled.

There were no remonstrators present.

Mr. Hobbs said, I make a motion that we table this until the March meeting as per staff recommendations until the DNR has reviewed it and either denied or approved the site for building.

Mrs. Aubrey seconded the motion.

The vote was unanimous in favor of the motion. **Petition #517 of John Eicks, landowner and David Eicks, petitioner, is for Special Use to construct a garage for personal use has been tabled until the March meeting.**

7. Petition #518 of David & Cathy Grollimund, landowners and petitioners, Variance from setback requirements on 650S for the purpose of expanding grain handling/storage system. The property is located on the south side of 650S, east of 50W in Fall Creek Township, with the physical address being 335 West 650S, Pendleton.

Mr. Hershman said, fields characterize the immediate area. Residences characterize 50W/650S intersection. The site is a farm.

Staff has received proof of proper notification.

The applicant wants to place the structures 28 feet from 650 South. The Ordinance requires 30 feet to the right-of-way. The applicant wants to build additional grain storage bins. There is no room to place the bins behind the existing ones. Further, the bins need to be near the leg of the elevator. The applicant plans on building one of the bins in a year to year and a half.

I have talked to others in County Government. There is a concern expressed about how close the proposed bins are to the road. Having visited the site, I agree with the concern.

David Grollimund, 103 Ladino Lane, Pendleton.

Mr. Grollimund said, I do own the farm operation there. There is no residence on this property. But there are existing grain bins on the property. It would be a hardship to the bins in another location except right there next to the existing bins. The new bins would be 48 feet in diameter and 19 reams high. There is not intent to load out of the new bins.

Mr. and Mrs. Gibbins were present and told the board they live next to the property and were here because they wanted to know what was going in.

Mrs. Gibbins said, they would have no objections to the new bins.

There were no remonstrators present.

After some discussion by the board members they informed Mr. Grollimund they felt a more detailed site plan was needed. They told Mr. Grollimund they wanted to see on the site plan, show exactly where and how many feet back the new bins will be placed, check with the County Highway to see what their stipulations are on the egress and ingress, showing exactly the distance from the edge of the bin you are wanting to install to the right of way. Show the whole package.

Mr. Randall said, I would move that we continue this until next month and have a scaled detailed drawing of the total layout so we can look at it, size it up and know exactly what's going on, how it fits and how much encroachment it really is on the right of way to do what you want to do.

Mr. Maxwell seconded the motion.

The vote was unanimous in favor of the motion. Petition #518 of David & Cathy Grollimund, landowners and petitioners, Variance from setback requirements on 650S for the purpose of expanding grain handling/storage system has been tabled until the March meeting.

It was the consensus of the board to take a five-minute recess, 10:35:46 A.M.

The board was called back to order, 10:45:24 A.M.

The board then went back to items, 1,2,3 and 4.

Mr. Pritzke said, we do appreciate you giving us an opportunity to review the situation and consider the issues and concerns raised by members of the board.

We want to be good neighbors in Jefferson Place and we also want to be good neighbors to Mr. and Mrs. Manges because without their agreement on anything that we propose to you folks we cannot proceed.

Mr. Manges has agreed to allow us, if you see fit, to move the pole 100 feet directly south along his west property line. We think this deals with many of the concerns that have been raised. First of all it would be another 100 feet away from Jefferson Place, which would mean probably a football field, or so away from another house. It also deals with the concern that if we had a tornado or some severe event that if this did cause damage to the pole, if it fell in an easterly, northerly, or southerly direction it would land on Mr. and Mrs. Manges's property.

I spoke to Mr. Lee who owns the property to the west and he told me he had no problem with the pole.

I think as you can see by the pictured that we just handed out that this is a very narrow pole, 24 inches at the widest part and six inches at the top.

We hope that this is a compromise that Mr. Manages has allowed us to make and propose to you folks. We hope that you will agree with us that this makes some sense for the neighbors and allows us to bring this service to the folks that definitely want it.

I think this is going to bring a nice state of the art technology to an area that will appreciate it.

Mr. Randall said, we all grew up with utility poles all up and down all the roads everywhere and some people think they are unsightly. But, communication is communication and we are going to end up --- now you're talking a three mile radius that this will cover which means there will be a whole bunch of them all over the country to really do this job if they go that way. You might as well accept it and get to use to it because it's not as bad as all the telephone poles we have up and down the roads.

And if they want to move it down and Fred Lee did not object to it anywhere it was originally located here I would not be opposed to moving it down south like you are talking.

Mrs. Aubrey said, I will say one thing John that you mentioned. I know things have to move forward in order to progress but this board knows I hate cell towers. And I think if cell towers would start working with the internet so you could work together and have less towers.

I was driving by and I was looking and there way two towers over here and two towers over here and I had to say why. Everywhere you look you're going to have towers and that's my statement. Lady Bird got rid of all the signs going down the highway and that's wonderful and now we're going to have pole after pole after pole.

Mr. Maxwell asked if another company could put another antenna on these towers.

Mr. Pritzke replied, yes. We would be willing to co-locate on another antenna on this tower if it did not interfere with our service to our customers.

Ms Baker said, we will start with Petition #516 because that is for the construction of the tower itself. Then if it passes we can go on to the other petitions. If not the other petitions are mute.

The board then went to item 4, Petition #516.

4. Petition #516 of Jerry A. & Linda K. Manges, landowners and Hancock Telecom, petitioners, special use to construct a Telecommunication Facility for wireless broadband service. This property is zoned "AG" and is located on the North side of SR 38 between 600W and 700W in Green Township, with the physical address being 6526 W. SR 38, Pendleton.

Mrs. Aubrey said, I make a motion to deny Petition #516 because I feel it would be a deterrent to the properties of the surrounding area. And I feel another area would be better suited for this project that would reach in to Pendleton and Foster Branch.

The motion died for lack of a second.

Mr. Randall said, I would move that this petition be approved. It would not be injurious to public health, safety, morals and general welfare of the community. In fact it would help in the development maybe in the future of more of the community. And really does not -- I think the requirements of the development standards for the district are being met. It will be in line with the development standards for the district. It will not by moving it to the south like it was proposed and is to be done will not interfere with the subdivisions that are there in case there is any kind of accidents. I think it is consistent with the zoning district and the Comprehensive Plan in as much as it will back up and encourage the use of people who live in this kind of a district and area. I do not see any need for any kind of landscaping at the base of it because that would take up additional space rather than sitting it next to a fencerow where it would just call more attention to it.

Mr. Pritzke said, if this died for a lack of a second, I think we would be coming back in next month because there would not be a decision one way or another. If I have suggestions, I thought I had addressed all the stated concerns and if we haven't we would be happy to do that.

Mr. Hobbs said, I am just going to state my opinion. I think the cell tower its self or the broadband tower is a good idea. I just firmly believe that it belongs in the petitioner's property far enough that it will never impact any one else. I think we probably have adhered to that on every single tower that has been presented in this county is, that we have not allowed anybody to build a tower where if in the event that it fell or --- even though it's on Mr. Lee's farm ground now but eventually at some point in time that will not be farm ground.

Mr. Pritzke asked if the board take a recess so he could have a word with his client.

It was the consensus of the board to take a five-minute recess (11:10:45 A.M.).

The board was called back to order (11:20:45 A.M.).

Mr. Pritzke said, we not only need your approval but also Mr. and Mrs. Manges's approval because it is their property. Mr. and Mrs. Manges's are not at this moment in a position to agree to allow Hancock Telecommunication to go east 100 feet of their west property line and 100 feet south of their north property line. They haven't said they won't but Mr. Manges has said he would like to speak to his wife first before making any kind of decision.

What I suggest, if you see fit to do so, if you would be willing, I will right now ask for a continuance of the variance regarding the setback. So, we are not asking for you to vote on that today. We would ask you to consider the other petitions and if you see fit to pass those petitions or particular the Special Use petition, and we are able to come to an arrangement with Mr. and

Mrs. Manges that we will withdraw whatever your procedure dictates. We will not longer need the variance for setback, as we will have moved the pole farther in to the field.

Motion died for lack of a second.

Mr. Maxwell said, we could actually table every one of these until the next meeting and not have any more in put except yours Mr. Manges as far as location. If we don't have in put on these others, landscaping, fencing and so forth, it is just the matter of voting on it if we close the discussion on these.

Mr. Pritzke said, at this time I would request a continuance until the March meeting for all four petitions.

Mr. Randall made a motion, seconded by Mrs. Aubrey to accept the request for continuance. The vote was unanimous in favor of the motion.

1. Petition #513 of Jerry A. & Linda K. Manges, landowners and Hancock Telecom, petitioners, variance from the Telecommunication Facility Standards relating to fencing. This property is zoned "AG" and is located on the North side of SR 38 between 600W and 700W in Green Township, with the physical address being 6526 W. SR 38, Pendleton. Tabled until the March meeting.

2. Petition #514 of Jerry A. & Linda K. Manges, landowners and Hancock Telecom, petitioners, variance from the Telecommunication Facility Standards relating to site & setback. This property is zoned "AG" and is located on the North side of SR 38 between 600W and 700W in Green Township, with the physical address being 6526 W. SR 38, Pendleton. Tabled until the March meeting.

3. Petition #515 of Jerry A. & Linda K. Manges, landowners and Hancock Telecom, petitioners, variance from the Telecommunication Facility Standards relating to landscaping. This property is zoned "AG" and is located on the North side of SR 38 between 600W and 700W in Green Township, with the physical address being 6526 W. SR 38, Pendleton. Tabled until the March meeting.

7. Miscellaneous: Nothing was presented.

Mr. Randall made a motion, seconded by Mrs. Aubrey to adjourn. The vote was unanimous in favor of the motion.

Adjournment: 11:30:42 A.M.

Mary Jane Baker, Chairman

Beverly Guignet, Secretary