



**LAPORTE COUNTY  
BOARD OF ZONING APPEALS**

Government Complex 5th Level  
809 State Street, Suite 503 A  
LaPorte, Indiana 46350-3391  
(219) 326-6808 Ext. 2591, 2563 & 2221  
Fax: (219) 362-5561

**ANNEMARIE POLAN  
Building Commissioner**

July 18<sup>th</sup>, 2017

Dear Members:

The regular meeting of the La Porte County Board of Zoning Appeals was held Tuesday, **July 18<sup>th</sup>, 2017, at 6:00 p.m.** in the Assembly Room of the County Complex.

MEMBERS PRESENT:      Dwayne Hogan                      Johnny Stimley  
   Glen Minich                              Earl Cunningham  
   Melissa Mullins Mischke

PRESENT:                      Annemarie Polan, Recording Secretary, Attorney Doug Biege; Dar Forker, Secretary

The Pledge of Allegiance.

**APPROVAL OF MINUTES:**

Dwayne Hogan asked for approval of the meeting minutes of June 20<sup>th</sup>, 2017.

Glen Minich made a Motion to approve the minutes as presented.

Earl Cunningham seconded that motion with his normal comment about what an outstanding job Dar does on the minutes.

Dar Forker thanked the board.

Dwayne Hogan asked if there are any questions, comments, or concerns.

All approved. Motion carried 5-0.

- 1. The Petition for Variance of Developmental Standards for Jason & Ann Brown** for second accessory structure on their property with a three (3) foot side setback. This property is located at 106 E. Short Street, Rolling Prairie, Kankakee Twp., zoned R1B.

Attorney Biege said notice is adequate.

7-18-2017

Dwayne Hogan asked for name and address for the record.

Jason Brown, 106 E. Short Street.

Ann Brown, 106 E. Short Street.

Dwayne Hogan asked Mr. Brown what he would like to do this evening.

Mr. Brown said that they're going to add a garage.

Dwayne Hogan asked the size of the garage.

Mr. Brown stated thirty-two by twenty-two (32'x 22').

Dwayne Hogan asked what he's requesting.

Mr. Brown stated a three (3') foot variance setback.

Dwayne Hogan asked if they're moving the tree along with other stuff that he sees.

Mr. Brown stated yes.

Melissa Mullins Mischke asked Mr. Brown if he's going to have water and electric.

Mr. Brown said electric only.

Dwayne Hogan asked if there are any remonstrators here this evening for Petition No. 1.

Dwayne Hogan asked if there are further questions, or concerns of the board.

Glen Minich asked if we know what the lot coverage is going to be with that size building on that small lot.

Annemarie Polan, Building Commissioner, said that they would have checked that when they took the variance in, but she doesn't have those figures here.

Glen Minich said that they didn't even have the size of the building in any of their information.

Mr. Brown said that he believes when they did the calculations upstairs there was seven-hundred (700') feet left to build after this garage.

Dwayne Hogan asked if the remainder was seven-hundred (700') feet.

Mr. Brown stated yes. Mr. Brown said that there was a seven-hundred (700') square foot cushion.

Glen Minich asked if the fence is going to stay. Glen said that the neighbor's barn is pretty close also. Glen said that it looks like he does mechanic work. Glen said that's going to be kind of tight.

Mr. Brown said it shouldn't be that hard.

Melissa Mullins Mischke asked Mr. Brown how he's going to get to the fence to maintain it.

Mr. & Mrs. Brown said that is his fence.

Melissa Mullins Mischke asked how the neighbor is going to get to his fence to maintain it.

Mr. Brown said that he has a five (5') foot easement in between him and the building.

Earl Cunningham asked Mr. Biege how many neighbors were notified for potential remonstrators.

Attorney Biege stated four.

Mr. Brown said that two of them are owned by the same person.

Earl Cunningham asked if any of those neighbors have expressed any concern.

Mr. Brown stated no.

Earl Cunningham asked Mr. Brown how long he has resided there.

Mr. Brown said since 2000.

Dwayne Hogan asked if there are any further questions.

Dwayne Hogan asked the pleasure of the board.

Earl Cunningham made a motion to approve the petition for Jason & Ann Brown for a second accessory structure on their property with a three (3') foot setback located at 106 E. Short Street, Rolling Prairie, Kankakee Twp., zoned R1B and his motion is based on the fact that there are no remonstrators here this evening.

Johnny Stimley seconded.

Dwayne Hogan asked if there are any questions, comments, or concerns.

Melissa Mullins Mischke said that she's not really comfortable with that three (3') feet next to the neighbor's property and having to build and maintain the building.

Glen Minich asked Mr. Brown if there is any space to move the building behind the house.

Mr. Brown said ten (10') feet back.

Glen Minich asked Mr. Brown what keeps him from -----

Mr. Brown stated the septic tank.

Glen Minich asked Mr. Brown if the septic tank is that close?

Mr. Brown stated yes.

Mr. Brown said hopefully pretty soon they're going to have sewer.

Glen Minich asked Mr. Brown how close he is to the septic tank.

Mr. Brown said that he's ten (10') feet off the septic tank and that's why it's located where it's at. Mr. Brown said that is part of the variance to get the extra building. Mr. Brown said he if had sewer he would go the other way.

Dwayne Hogan asked if there are any other questions, or concerns.

Voting Aye: Dwayne Hogan, Glen Minich, Johnny Stimley and Earl Cunningham.

Voting Nay: Melissa Mullins Mischke.

Motion carried 4-1.

**2. The Petition for Variance of Developmental Standards for Richard & Lynn Jackson** to split off a three (3) acre parcel with one-hundred fifty (150') feet of road frontage. This property is located at 4849 N. Highway 35, La Porte, Center Twp., zoned R1B on twenty-five and one fourth (25 ¼) acres.

Attorney Biege said notice is adequate.

Dwayne Hogan asked for name and address for the record.

Richard Jackson, 4849 N. Highway 35, La Porte.

Dwayne Hogan told Mr. Jackson in case he was wondering, he was out there walking around and its one busy place right there trying to get off the road and get back there.

Dwayne Hogan asked Mr. Jackson what he would like to do this evening.

Mr. Jackson said that they're looking for a variance for a one-hundred fifty (150') feet road frontage for a three (3) acre slot for his son so he can build a house.

Dwayne Hogan asked if they're going to have the same common driveway.

Mr. Jackson stated no. Mr. Jackson said that it will only be one-hundred fifty (150') feet.

Dwayne Hogan asked Mr. Jackson how much that would leave him.

Mr. Jackson said that if you've been out there, he has all the way down –

Dwayne Hogan asked if that is looking at the right all the way down to the fence line.

Mr. Jackson stated yes.

Melissa Mullins asked Mr. Jackson if he happens to have a drawing or sketch that is going to show this.

Mr. Jackson is up at the bench going over the site plan.

Board members speaking amongst themselves.

Dwayne Hogan asked if there are any remonstrators here this evening for Petition No. 2.

Dwayne Hogan asked if there are any further questions, or concerns of the board.

Melissa Mullins Mischke asked Mr. Jackson if he has already applied to the State for a driveway permit.

Mr. Jackson said not yet; they're just waiting to get through this.

Melissa Mullins Mischke said that her only concern is hopefully when you talk to the State that they can give you a little bit more egress and ingress lane along there, even for your driveway.

Mr. Jackson said that the house to the north is even worse.

Earl Cunningham asked Mr. Biege how many neighbors were notified.

Attorney Biege stated nine.

Dwayne Hogan asked if there is anything else from the board.

Glen Minich made a motion that the petition for Variance of Developmental Standards for Richard & Lynn Jackson to split off a three (3) acre parcel with one-hundred fifty (150') foot of road frontage be granted. This property is located at 4849 N. Highway 35, La Porte, Center Twp., zone R1B on twenty-five and four for fourth (25 ¼ ) acres.

Earl Cunningham seconded.

Dwayne Hogan asked if there are any questions, comments, or concerns.

All approved. Motion carried 5-0.

**3. The Petition for Variance of Patrick O'Brien, by counsel Andrew D. Voeltz** to keep an accessory structure in the form of a fence surrounding the retention pond on his property to provide safety and protection against possible trespassers. There is no home on this property. Property is located on the corner of 200 N. and N. Cider Mill Road, Lot 10, Michigan City, Coolspring Twp., zoned R1A on 1.392 acres.

Attorney Biege said notice is adequate.

Good evening members of the board. My name is Andrew Voeltz, attorney with Howes & Howes here in La Porte representing Patrick O'Brien in his petition this evening for a variance in the form of granting the permission to have the accessory structure, which is a fence.

Attorney Voeltz said if he could approach, he has some photographs with him for insight into this matter.

Attorney Voeltz is up at the bench passing out pictures to the board members.

Attorney Voeltz said members of the board, pursuant to his petition, Patrick O'Brien is the deeded owner of the property in question and is located at approximately on W. 200 N., Michigan City, Indiana. Attorney Voeltz said that he has owned that property since 2006. You will note as evidenced by the pictures that he presented, that there is a retention pond on this property. The retention pond was established – further requirements by the Plan Commission when the subdivision was laid out. His client has owned this property since 2006.

Attorney Voeltz said that it was originally part of a greater area that was called Lot 10 and he split it off, so we still have that corner spot with the retention pond, and you're correct that he does own another property that is kind of kitty corner to the property in question. We're here tonight because his client is seeking a variance to permit the construction of a fence. You will note that the fence is already constructed and he guesses he needs to shed a little bit of light on that.

Attorney Voeltz said that his client had approached the drainage board in the fall of 2016 requesting information to the drainage board as to permission to construct a fence here on the property. The reason for that was to restrain some trespassers and restrain some issues with people playing in or around the pond, both including in regular weather and inclement weather,

including winter time where there are kids walking on the ice. If you'll note in the one packet that he brought to your attention, it started with this photograph right here; three photographs in there is a shot out of the window of the shed that is on the property that is a little bit blurry. You will see the golf cart in the right picture and then in the following pictures if you look further, two pictures later there were two kids on the ice.

Attorney Voeltz said obviously this caused some distress to his client. He approached the drainage board in 2016 to seek permission to construct a fence. The drainage board signed off on it with a hold harmless agreement and part of the agreement that was entered into between his client and the drainage board was that No. 1, there would be access to the property and he believes that Annemarie can testify to all of this, that there will be a gate and No. 2, he entered into an agreement with the drainage board that if there was any issue with access to the retention pond, they could literally run over this fence.

Attorney Voeltz said that he believes that he heard Mr. Biege mention that the fence is pretty expensive and that's correct; it's over twelve-hundred (1200') feet and its treated cedar and he spent approximately Ten-Thousand (\$10,000.00) Dollars in construction of this fence. Again, the reason why he wanted this fence to be constructed and why in fact he did construct the fence, is because it was a safety issue.

Attorney Voeltz said drawing your attention to the requirements, or the elements that need to be established for a variance to be granted:

1. The granting of the variance will not be injurious to the public health, safety, or morals or general welfare of the community.

This fence around the pond prevents access into the pond.

Attorney Voeltz said that as you will see from the photographs that he presented, the area is maintained; the grass is cut and he's taken great strides to construct a fence that accurately reflects the nature and the character of this area and of the subdivision. He's ultimately concerned the fact that there has been trespassers on the property. As evidenced by the gallery tonight, he would see that there are quite a few remonstrators here. This is not something that is new; there have been property disputes out there that date back at least three (3) years, if not longer.

Attorney Voeltz said that he believes that there was a remonstrator that presented a letter to the BZA in regards to his opposition to this by the name of Mr. Darin Ray. He makes reference to the fact that Mr. O'Brien has had differences with some of the residents in the subdivision. Attorney Voeltz said that he would characterize that the other way around, he thinks that some of the residents in the subdivision have had issues with his client, Mr. O'Brien. He states that the fence provides no functional purpose. Attorney Voeltz said that he fails to see how a fence surrounding a retention pond that is approximately two-hundred (200') feet by one-hundred fifty (150') feet with a twelve (12') foot depth at its deepest point how that provides no functional

purpose. He's seeking to keep people out of his pond and he owns the property. With the Joint Zoning Ordinance the way that it is, the fence is considered an accessory structure and he does recognize the need to apply for a variance, but he was operating under the belief that the Drainage Board giving him permission to construct a fence was in effect trumping the JZO requirement of a variance use. Attorney Voeltz said that he knows that's not the case and he's been in correspondence and communication with the Building Commissioner dating back to the fall of 2016.

Attorney Voeltz said that you can see that the need for this variance arises from the condition peculiar to this property and this is the only property in this area that has a retention pond, it's not due to the general condition of the neighborhood. Attorney Voeltz said that there have been some concerns addressed as far as debris, or concrete, or whatnot, that his client is alleged to have stock piled on the property. This pond was in existence when the subdivision was put in and they were used by all the folks that laid the foundations for the washout spot for all the trucks. They have been removing concrete since 2006/2007. There are four (4) pipes existing currently in the pond that run into it. Mr. O'Brien installed two (2) of those pipes himself; there were two (2) other pipes that were already in there.

Attorney Voeltz said that the other material that's accumulating that he's removing has been the fact that there was a barn on the property that was torn down and he's in the process of taking it out and if you'll notice with the pictures that he provided, while remonstrators may attempt to introduce evidence that his client's property is in worse condition than anybody else's in the area, you'll note that's not the case. There is debris piled up against his fence; there are yards that aren't trimmed; this seems to be a witch hunt against his client.

Attorney Voeltz said that they're requesting that this board would grant Patrick O'Brien a variance to allow him to keep the fence that he constructed for safety purposes around the pond and the fact that it's not a detriment to the community, and in fact, provides safety and security to the community and it's going to keep trespassers off of his property.

Dwayne Hogan asked for a show of hands on how many remonstrators are out this evening for Petition No. 3.

Dwayne Hogan asked if we have a spokesman.

### **REMONSTRATORS:**

Attorney Willoughby said that he won't represent that he represents everybody and he generally represents residents of Arndt Apple Acre Subdivision, and specifically, Michael & Jackie Schwanke, who reside at 1916 N. Cider Mill, Michigan City Indiana.

Attorney Willoughby said that he's Christopher Willoughby with Braje, Nelson & Janes of Michigan City, here to remonstrate against the petition.



Attorney Willoughby said at the outset he wants to make a couple observations for the record and to establish their record. Attorney Willoughby said that he would imagine the overwhelming majority will be against the petition.

Attorney Willoughby said that he would point out the deficiency of the record in that your requirements for the petition as submitted require a plat or a site plan to be submitted, and one wasn't submitted, therefore he would make the argument that this property isn't before you to be considered because the remonstrators – he's not sure what they're asking for --- of course, they said this fence, but the layouts and dimensions, what is, or isn't required, and what other variances might be granted, they hardly had a chance without trespassing of course, and not represented that he has done that, or his clients, and can't properly prepare and know what they're asking for.

Attorney Willoughby said that they have tailored their petition and in the petition for a variance, he can only surmise that Mr. Voeltz, who knows is very accomplished and capable in this area is asking for a Use variance because the elements that he's cited, yet he will point out that he doesn't think that they quite met that burden of proving those elements, however this fence is at least a six (6') foot fence and he would argue that there is a Development Standard Variance that would be required as well, because these are residential areas and nothing in excess of three and a half (3 ½) feet from the front portion. The issue that we have here is that it isn't a buildable lot.

Attorney Willoughby said at the outset he doesn't know if the board is inclined to make the decision at this point, but he doesn't feel that this petition and what's being asked is properly before you tonight.

Attorney Willoughby said moving on from there and making some of the points, this is an unbuildable lot and Mr. O'Brien doesn't even live in this subdivision. Attorney Willoughby said and he knows and he will concede that the law doesn't allow you to enforce restrictive covenants in a subdivision, however he does have that if he could approach.

Attorney Willoughby said that the reason that he's giving you this, is not to ask to enforce them, but to recognize that violations of these affect the value because these were set out and everybody who purchased this property, or lives in this subdivision has expectations with regard to the appearance of the neighborhood and consistency of the lots and ultimately those things go to and affect the value. Attorney Willoughby said on the fourth page paragraph 17, it talks about fences and walls; the size of it, which pretty much match what the county's requirements would be in a residential area.

Attorney Willoughby said that this fence as constructed and proposed is already in excess and violates not only these restrictive covenants, which again he only asks you to consider in terms of how it affects the values and the nature of the neighborhood and how it affects the other property owners.

Attorney Willoughby said another issue, and he thinks that this board has been pretty tough and pretty thoughtful in his experiences in the past, this is a blatant case of asking for forgiveness versus permission. Attorney Willoughby said that this fence is up and he's not sure at what point Mr. Voeltz was informed, or became on board, but the representations he can only assume are misinformed in that Mr. O'Brien thought this was okay, because he's had direct conversations with Ms. Polan. Attorney Willoughby said that he has correspondence that indicated in February that he was told that he needed a variance and the fence was not up in February and he went ahead and put the fence up; he did start installing posts before that, but he incurred the costs and he did that after he was told that he needed this variance and he would think that this board has not at least in the past, showed a propensity to reward, or grant somebody permission to do something, when essentially what he's done, whether he says it directly, or not, has thumbed his nose and the process and perhaps assumed he was going to get approval here.

Attorney Willoughby said that there is correspondence and certainly Ms. Polan is here and she can certainly attest to the fact of her conversations with his office and Mr. O'Brien. Attorney Willoughby said again, he has other correspondence with others that are attached to this, but the main one he's concerned about is in the first when as she indicates to him he needed a variance. Once again, whatever discussions, whatever agreements with the drainage board in his mind are moot because he was aware and the drainage board doesn't have the authority to trump what this board can, and can't grant.

Attorney Willoughby said furthermore available tonight is Steve Thate, who he thinks you all are familiar with as a surveyor and he's prepared to answer questions with regard to layout of the subdivision and the recorded easements, and this drainage area is recorded and required with a retention area.

Attorney Willoughby said because he's not sure of what's exactly being asked for, other than the petition before you, he thinks that one of the elements and one of the things they have to ask for is a developmental standards variance; one of the developmental standards threshold is that there is some practical difficulty that arises because of property.

Attorney Willoughby said that case law dictates and he will cite and give this case to Mr. Biege, Caddyshack Looper, LLC vs. Long Beach Advisory Bd. of Zoning Appeals. It's an Indiana Court of Appeals case from December of 2014. In this case it dealt with a retention wall in Long Beach, and whether the developer built it without getting the proper variances, etc. and what he thinks they would like the tone of this to be, "hey we were going down this path and the game and rules changed and now we have a practical difficulty". Attorney Willoughby said that's not the case here. In this case it will show many factors that should be considered of the practical difficulty and what it is and how it's determined. One of them is whether the landowner created that difficulty. Attorney Willoughby said that you even heard Mr. Voeltz represent tonight that part of lot 10 was sold and that piece of property was sold.

Attorney Willoughby said that if you turn to the second page you'll see lot 10 highlighted in yellow. Part of this other angled lot was lot 10 and sold to a neighbor, the Dobbens, who are right next door. By virtue of selling that piece of property it became unbuildable, and the

argument here and his point, consistent with this case, Mr. O'Brien created this difficulty that it's now not buildable and now he can't do anything and is stuck with this retention pond.

Attorney Willoughby said once again, he doesn't live there and he would surmise and he'd certainly have a great guess on he would assume why this fence is here, which gets to his next point. Attorney Willoughby said that he thinks that Mr. Voeltz would like all of you to believe that Mr. O'Brien has been a good neighbor, good citizen, and just concerned about he's never had any issues and this is just a witch hunt. Attorney Willoughby said that he has a copy of a protective order that was recently issued for five (5) years against Mr. O'Brien and in favor of Mrs. Dobbens for stalking and harassment. Attorney Willoughby said that putting dead animals on property lines, etc. etc.; you can check the public record and the transcript from that hearing. Attorney Willoughby said that the fact that the representation before you tonight is that Mr. O'Brien has been a good citizen and good neighbor, just isn't true by virtue of this document alone. There isn't evidence anywhere else that the neighbors are picking on him, or affecting him. This fence went up and he doesn't live there. These retention ponds exists everywhere throughout this county and he has one on his property.

Attorney Willoughby said that the safety and issues, there is nothing presented to you that would indicate that the safety would trump anything else. What your code also provides for us is that with the accessory structures in addition with regards to fences in Article 16, they should not be constructed in such a way to obstruct the vision of motorists exiting driveways or at intersections. As you can see from the pictures that they presented, it's already in violation of the overall provisions notwithstanding the provisions with regards to residential areas. Once again, they can't meet their burdens.

Attorney Willoughby said he also wants to reiterate and he thinks that they're required to ask for variances for use, as well as developmental standards and they haven't met any of those burdens. Perhaps there was a mention, or there was a mention of safety, that's it. We haven't discussed property values; they haven't been presented with anything from a professional, and under the case law and under the applicable law, ultimately your decision is subject to the law and we can't guess and they can't speculate, they have to have facts and they don't have the verdict. We get to give you our position; we get to give you the support for their position and they have the burden and they haven't even come close to meeting that burden tonight.

Attorney Willoughby said lastly, that shed that they pointed out. The shed was built and he thinks that Ms. Polan --- he doesn't mean to put her on the stand here tonight, but your inclined if you don't make a decision tonight and you need more information, just speak to her. Attorney Willoughby said that he thinks one thing she will tell you is she's glad that it's before you because he's been privy to conversations and while he hasn't always agreed with her positions on this, he respects the fact that she's stuck in the middle and her position is to make a decision, but she's the one who ultimately -- she doesn't get to say if it goes or not, and she tells them if they need a variance and then they can come before you. Attorney Willoughby said that ultimately this shed has become an issue and objections have been made with regard to the equipment, and the shed, and he knows at some point if he's being accurate in their discussions,

she made a determination that the shed didn't need to come through her office because of the dimensions – the size, etc., so it wasn't one that required a permit. However, we feel because it's an unbuildable lot, it's just an example of how they thumb nose and shirk their responsibility with regard to (unintelligible) titled to build on this lot and if you wanted to build, it should have been before you once again – he knows that's a harsh result and this board tries to help and tries to find solutions and this is one that's pretty tough, because once again, this is someone that hasn't worked with his neighbors and he can assure you this isn't a threat, but the neighbors are intent on making sure that the character of the neighborhood and decent tranquility continue and things like this aren't allowed to stand and thumb their nose at the neighbors.

Earl Cunningham asked attorney Willoughby what year the triangle got sold to the Dobbens.

(Unintelligible) someone speaking from the back of the room.

Attorney Willoughby said that's Dr. Dobben and Suzanne Dobben in the back. Attorney Willoughby said around 2006. There was a statement earlier –

Earl Cunningham asked attorney Willoughby if he bought the property.

Dwayne Hogan asked for name and address for the record.

Richard Dobben, 1947 Cider Mill Road. Mr. Dobben said that the property in question is his. Mr. Dobben said what basically happened he must have received some sort of variance – he's not sure, or not. The property was carved off; the house was about eighty (80%) percent completed by the time they purchased it.

Dwayne Hogan asked Mr. Dobben if it was his house.

Mr. Dobben 1947 Cider Mill Road. Mr. Dobben said it was eighty (80%) percent done. Mr. Dobben said that they had a lot of problems with Mr. O'Brien. Mr. Dobben said that they had leakage through the foundation; they had rocks going into the well. These matters were eventually solved in a court case in which they received a judgment against him. He then proceeded to payload and redirect water to try to flood them out; it went in front of the drainage board, but he's not sure what year, but he's sure the record will show that.

Mr. Dobben said that he was instructed by the county attorney to go ahead correct that problem, and he failed to do so. Mr. Dobben said that he was forced to regrade his property so that the water would disappear. Mr. Dobben said that he has had a series of problems with Mr. O'Brien related to all kinds of other activities. Mr. Dobben said what was brought to Ms. Polan's attention was number one the shed went up on a non-buildable lot. Number two, he has reconfigured the drainage pond to fit his own configuration, but now actually 200 floods and there is water coming over the top. Mr. Dobben said it is now in front of the drainage board; it's not under this board's jurisdiction.

Mr. Dobben said that the fence has gone up; you heard about the protection order. Mr. Dobben said that there was some question in front of the Magistrate's Court as to whether he was killing

of animals, or whether those animals were dead on his property and how he's disposing them on his property.

Earl Cunningham said that he thought he understand Mr. Voeltz to say that Mr. O'Brien bought the property in 2006 and then he turned around and sold this triangle the same year to make his property unbuildable.

Mr. Dobben said approximately 2006, so there must be a time line thing because he had to carve off a portion of lot 10 in order to start building a house. Mr. Dobben said that he would imagine in order to get a building permit he would have already had to have a variance on the property. Mr. Dobben said that the time line might be off a little bit. Mr. Dobben said that he bought the house when it was eighty (80%) percent done.

Earl Cunningham asked Mr. Dobben when he bought the house he got the little triangle parcel off of lot 10 at the same time.

Mr. Dobben said that the house sits on that triangle piece of property. If you look at the original plot ---

Earl Cunningham told Mr. Dobben that he already started to build on the triangle that made lot 10 the remaining lot 10. Earl said now he understands.

Mr. Dobben said that if you look at Beacon for Mr. O'Brien's property, it shows that there were various transfers between he Shelly, whoever that is, but between 2004 and 2011 there are various deeds that transfer. Mr. Dobben said that sliver of lot 10 was created by Mr. O'Brien and then left himself with the retention pond.

Mr. Dobben said this is just one complete set to show issues with the fence, issues with equipment, junk, flooding, etc. for the board's benefit. Mr. Dobben asked if the board has any more questions for him, otherwise he will sit down.

Earl Cunningham thanked Mr. Dobben.

Dwayne Hogan asked for name and address for the record.

Steve Thate said that his office at 3301 Franklin Street, Michigan City, Indiana, Indiana Professional Land Surveyor.

Melissa Mullins Mischke told Steve that she knows he didn't prepare this plat. Melissa asked Mr. Thate is it normal, customary for retention ponds in a subdivision to be owned by an individual owner. Mr. Thate said not split off like this by itself. Mr. Thate said usually they're within like the original plat that shows a lot and part of the lot as a retention area. That's what is normally done.

Melissa Mullins Mischke said in generally speaking with your experience, are those retention ponds governed over the drainage board for the county.

Mr. Thate stated yes.

Melissa Mullins Mischke asked if they are maintained by the Home Owner's Association.

Mr. Thate said that he thinks that the drainage board collects money on those to keep them clean, or dredge, or whatever has to be done on them.

Melissa Mullins Mischke said that she can't tell if this is the original plat from Territorial Engineering.

Mr. Thate said that Territorial did do the engineering.

Melissa Mullins Mischke said that she can't tell if there is a retention area further down on lot 44, so she was trying to determine if those retention areas on lot 44 were also owned by an individual home owner, or if all of these utility easements and drainage areas are in fact owned by the Home Owner's Association. Melissa said that it does not make sense to her that an individual owner has ownership over a retention area and can make changes to that without going to the drainage board. Melissa said one of things that she has also written down, she's inclined to take a look at if either of you attorneys have any minutes from the drainage board where they talked about he was able to make changes to the topography, or if he was inclined to put up a fence or not. Melissa said that she would like to see those.

Mr. Thate said that most of them are owned by a bigger parcel lot like this. Mr. Thate said that normally in a subdivision like this, when it's designed, the design of the actual pond has to be a certain size and have a certain capacity for the number of feet that drains into that. Mr. Thate said that all these drainage calculations have to be done and the physical size of the pond has to be calculated according to that. Mr. Thate said that he doesn't have the as built, or the plan when this was done to show the actual depth of the pond and the capacity.

Attorney Biege said that he wants to chime in a little bit, as she said, a lot of times this drainage pond will be part of a larger lot, but that would be taken subject to an easement for drainage and the pond.

Mr. Thate said that's correct.

Attorney Biege said that way you can get around the ownership issue especially if you don't have a subdivision that's is large enough to maintain this lot separately, because the Home Owner's Association is going to attach with maintaining that lot. Attorney Biege said that he's assuming we have drainage easement over this parcel now.

Mr. Thate said he believes that it's on the plat.

Melissa Mullins Mischke said she just wanted to get Steve's professional opinion on what is normal and customary. Melissa said that she knows when she heard whether or not it's true, but if she heard there were two pipes going in and there were more pipes coming out, that concerns her with drainage issues, and certainly that can affect all of the adjoining property owners. Melissa said she just wanted to make sure that those issues were being taken up through the drainage board like they should be.

Earl Cunningham told Mr. Thate that he's been in La Porte County for a long time. Earl asked how many of the drainage ponds would you estimate are scattered throughout the county that don't have any fence around them.

Mr. Thate said that he would say probably at least ninety (90%) percent of them, if not more. Mr. Thate said that there are a lot of them that are really deep; Vineyard Hills, the Woods of Vineyards has numerous retentions that don't have fences up.

Dwayne Hogan thanked Mr. Thate.

Dwayne Hogan asked for remonstrators.

Dwayne Hogan asked for name and address for the record.

Frank Burgess, III and he lives at 7494 W. Cider Mill Road. Mr. Burgess said that he is a resident of the Arndt Apple Subdivision. Mr. Burgess said that he thinks that one thing that hasn't been touched on this evening – everyone is talking about how the fence is an eyesore to the community, which he agrees it is, but before the fence went up, he thinks that there is an environmental issue here that should come to the surface. Mr. Burgess said that this retention pond was a gathering place for all the animals in the outlying area; deer, squirrels -- everything congregated there before. It was a drinking source – a drinking fountain. Mr. Burgess said in the fall, spring and summer, you would have the migration of the birds and everything – they would all land there. Mr. Burgess said that the fence is up and nothing can land there. Mr. Burgess said that it just took this drinking source away from them with this fountain going. Mr. Burgess said that he thinks that is one aspect.

Earl Cunningham asked Mr. Burgess what lot he lives on.

Mr. Burgess said 7494 W. Cider Mill Road. Mr. Burgess said that he's right at the corner of Peach Tree and Cider Mill. Mr. Burgess said that he's up around the corner from the entrance.

Mr. Burgess said that he just wanted to bring this to the board's attention and the impact on the people. Mr. Burgess said it was real nice, clean and beautiful before the fence went up. Mr. Burges said now you have the fence up and Mr. O'Brien has his pay loader back there.

Dwayne Hogan asks who maintains that to keep it clean and beautiful.

Mr. Burgess said before the fence went up and everything, it was himself and Mark Zemrowski's dad. They did a lot of the cutting on that lot through the entrance of the subdivision, and maybe a few other people, but the majority of the time was himself and Mark's dad. They kept the entrance looking very nice and trimmed.

Dwayne Hogan asked for another remonstrator.

Dwayne Hogan asked for name and address for the record.

Keith Huff, 1971 Cider Mill Road. Mr. Huff said in 2003 they started building their home and moved in in 2004. Mr. Huff said that they built what they think is an attractive home, neat and well-manicured lawn. At that time, the retention pond was pretty much in the natural setting. Like Frank said, we see the animals come in – deer, ducks and geese. Mr. Huff said that he can't say it was untidy or anything, just trees, cattails in the pond were actually kind of nice to look at. Thirteen years later, he was looking out his windows and all he sees is this unsightly, unattractive stockade fence six (6') feet high. Mr. Huff said at no doubt this fence will, and it has caused property values to fall. You might ask how I know that, at the present time he has his home for sale and we've had opportunities of people to make offers on their home, but they tell the realtor that there is one thing wrong with the house and that's the fence across the street. Mr. Huff asked you to deny this variance and have the fence removed as soon as possible.

Dwayne Hogan asked for name and address.

Mark Zemrowski, 1937 Cider Mill Road. Mr. Zemrowski said he's not sure actually what lot, but it's kitty-corner to (unintelligible).

Earl Cunningham told Mr. Zemrowski that he's on lot 46.

Mr. Zemrowski said he'll buy that. Mr. Zemrowski said he's not going to repeat all of the things that have been said already, although he'll say that he agrees with them. Aside from being an eyesore, this is a nice subdivision and people maintain the houses. Mr. Zemrowski said that they have their life savings invested in their homes. Mr. Zemrowski said that it degrades the values of their home. Mr. Zemrowski said that he would ask that you deny this variance, it's just bad for their homes.

Dwayne Hogan asked if there are any other remonstrators that has anything different to add.

Dwayne Hogan asked for name and address for the record.

Joe Greco, 7641 Peach Tree Lane. Mr. Greco said that he doesn't know the lot number. Mr. Greco said that he concurs with everyone else that's been speaking in regards to the fence. Mr. Greco said that one thing he wants to talk about is the safety of the fence. Mr. Greco said that when they came out of their subdivision to 200 you could see all the way down to Wozniak. He wouldn't have to go all the way out to 200 to see it, but now he does. He thinks that it's going to be more of a concern now that winter is going to be setting in in another few months and it's going to cause a problem. Mr. Greco said another thing, when he excavated and put that fence up



on Wozniak, he changed the (unintelligible) of the berm of the road. The water on 200 would flow into the pond; the water doesn't flow into that water anymore, the water lays on 200; it's a pretty deep puddle. When we get the torrential rains, he's seen the water ripple over to the north side of 200 and down into the ravine; Radtkes had the property. In the meantime, you have this substantial puddle of water consuming the eastbound lane of 200 to where when you're approaching it, if there is oncoming traffic and you don't want to go through it, you have to wait to go around it. Mr. Greco said that it's a safety hazard.

Mr. Greco said when talking about the equipment, Annemarie has mentioned that Pat can't keep his heavy equipment on the property, but he claims he's excavating; he's working. Mr. Greco said last Thursday when he was coming home and he happened to meet him on 200 getting ready to cross Wozniak and go to the subdivision, he's coming up Wozniak and turns on 200 and brings his backhoe front end loader, whatever you want to call it into the area; it's still there. Mr. Greco said how much excavation you can do on a lot if you're not even living out there, but you have a fence around it. Mr. Greco said he's keeping dump trucks stored there in different places. Mr. Greco said it is a farce and we're at your mercy to correct the problem, because when he bought into that property in 2001 on Labor Day weekend when he moved in, he was sold on the basis it was an executive neighborhood; above average professional people; it was manicured, it was groomed. When you look at that place now, the entrance way is the first thing people see is a stockade fence. When he cuts the grass the grass cuts are thrown out on the street; he doesn't even try to keep it on his property.

Mr. Greco said when we talk about the (unintelligible) and we talk about the problems, who created them.

Earl Cunningham asked Annemarie if she has access to the drainage board records.

Annemarie Polan said that she has the minutes upstairs. Annemarie said that they're very short.

Earl Cunningham said that this issue of changing the topography so that the water is sitting out on 200, is a drainage board issue, correct?

Annemarie Polan, Building Commissioner stated correct.

Annemarie Polan, Building Commissioner said that she hasn't had that complaint before.

Earl Cunningham told Mr. Greco that she's saying that you need to make that complaint.

Someone in the audience said that they did.

Earl Cunningham asked to who?

Attorney Biege said that if that's not a regulated drain, he thinks that it's a county highway issue. Attorney Biege said that drainage is associated with the county roads, is subject to the jurisdiction of the county highway. Attorney Biege said he thinks that is where it needs to go.

Attorney Voeltz said that reference was made to the effect that "unbuildable lot", he believes is incorrect, in that the smallest lot in the subdivision is .78 acres. Attorney Voeltz said the parcel in which they're referred to is 1.39 acres with the two-hundred by one-hundred fifty foot pond and there is the possibility and something that his client discussed with me is that he would seek to construct a residence on the property. Attorney Voeltz said that you would need to be at least .78 acres for residence, so he could do it. Any reference that this property is unbuildable is not correct.

Attorney Voeltz said that there was evidence that was introduced on the record according to some form of a protective order. Attorney Voeltz said that he doesn't believe that has any bearing on this matter that is before the board tonight. If we want to get into mudslinging we could certainly do that, but he's going to take the high road and not bring this up.

Attorney Voeltz said that Mr. Willoughby indicated that he has no knowledge of trespassing, or anything else like that, but you've seen the pictures, so it goes back to the fact that his client owns this property and he's attempting to perfect the safety remedy on this property. What's going to happen when one of those kids is out on the pond and not his workers, falls through the ice and drowns. What's going to happen when one of these kids is out there as you see in the golf cart, tearing around the corner? If his client's required to take down his fence, the golf cart winds up in the pond. Attorney Voeltz said that it's his property.

Attorney Voeltz said with the fence there's a safety issue. The fence as constructed – they called it a stockade fence, he doesn't know of a stockade fence that costs \$10,000.00. It's treated cedar and it's a beautiful fence.

Attorney Voeltz asked if there are any other questions.

Earl Cunningham told Mr. Voeltz that in fairness, you opened the can of worms when you first came up and said this is an ongoing problem with the neighbors, and it sounds like your client hadn't caused any of the problems. In rebuttal they --- you kind of opened that can of worms when you first started.

Attorney Voeltz told Mr. Cunningham that he's prepared to proceed down that road if need be, but he doesn't think that addresses the issue that is before the board. Attorney Voeltz said that it's a neighborhood issue.

Earl Cunningham said that there are enough attorneys in the room, we ought to be able to come up with an answer tonight. It would seem to me if this august body says take the fence down, and someone gets hurt or drowns in the pond, now your client is certainly coming back and saying he had a fence up and the county made him take it down. Earl said that he thinks that he has less liability if he takes the fence down now than he ever had. Earl asked Mr. Voeltz if he agrees with that?

Attorney Voeltz said that he would not agree to that in that the ultimate rule of thumb when it comes to tort laws, you are the property owner.

Earl Cunningham said he understands that, but if the county body doesn't take the fence down, certainly that's going to be his defense in court.

Attorney Voeltz asked if the remedy would be to sue the county.

Earl Cunningham said he would think that the county would probably assume a whole lot of that liability. Earl asked Mr. Biege if he's correct on that?

Attorney Biege said of course he doesn't want anybody to sue the county. Attorney Biege said that he thinks that we're treading on dangerous ground with hypotheticals with regard to liability, because it strays from the elements that we're restricted to review the zoning code, although he understands that these things are in consideration. Frankly, he'd like to see this thing resolved. Attorney Biege asked Annemarie how long we have been sending emails in this matter.

Annemarie Polan, Building Commissioner said a long time; the file is like this -- it's huge.

Attorney Biege said whether the fence is up, or down, he questions whether that's going to remedy any neighborhood strife frankly.

Melissa Mullins Mischke asked if there is a reason why Mr. O'Brien wouldn't be agreeable taking down from this six (6') foot height, to the three and a half (3 ½') feet, that's required in the zoning ordinance. Also, it says forty-nine (49%) percent solid opaque not to be in excess of. Melissa said she would certainly think that fence is in excess of forty-nine (49%) percent solid opaque and certainly exceeds the three and a half foot (3 ½') foot height. Is there anything that we could do that would bring us closer to the ordinance?

Attorney Voeltz said that he believes his client would be amenable to that.

Melissa Mullins Mischke said because the ordinance reads fences located within the front yard shall not exceed three and a half (3 ½') feet in height and shall not be in excess of forty-nine (49%) percent solid or opaque; that's on page 16-4 of the ordinance. Melissa said since there is no residence on this, would we

be agreeable to two sides of the fence coming down to the three and a half (3 ½) foot, meaning the section along ----

Attorney Voeltz is up at the bench going over the map.

Attorney Voeltz said what you would refer to the "front" yard would be the portion of the property that abuts Cider Mill Road coming up to 200?

Melissa Mullins Mischke said that she wants to see the section along 200 N., which is where that entrance sign is at, correct?

Attorney Voeltz said that is correct.

Melissa Mullins Mischke said the section on the Northside of Cider Mill.

Glen Minich said that he agrees with that and he thinks you would have to do both in north and the eastside of that property. Glen said we're working from the backside here. He never came to us. If he would have come to us to build a fence for security, the board likely would have asked him to build a small four (4') foot fence around the pond.

Board members speaking amongst themselves.

Melissa Mullins Mischke said again, her question is along 200 N. and Cider Mill Road if we could bring the height down to that three and a half (3 ½') feet and then do something to get us closer to that forty-nine (49%) percent capacity.

Attorney Willoughby said that while they're considering it, he thinks that there is another element that Article 16 points out that you can't block driveways either and the Dobbens presented pictures six (6') feet along the driveway.

Everyone is talking at the same time, board members, as well as the audience.

Attorney Willoughby said again, he thinks that the bigger concern just to reiterate is regardless of what the decisions are, he would think this record once the minutes are presented to you, they haven't met any of their burdens that would allow that variance.

Glen Minich said he thinks what she is pursuing is good, but he thinks we should talk about if this is a buildable lot. Glen said as far as he can tell, one house has been built on lot 10.

Melissa Mullins Mischke asked Steve Thate if he would mind coming up and answering that.

Steve Thate said he can show you the recorded plat.

Steve is up at the bench going over the plat with the board members.

Steve Thate said this would be the Dobbens and the rest of this is all designated as a retention area, so even if the pond isn't here, it is a retention area and you can't build a home there.

Steve Thate and board members going over the recorded plat.

Attorney Biege asked Steve if this fence was constructed in the retention area as designated in the plat.

Steve Thate said he has not checked that. He doesn't know if it's in the right of way --- This is all designated a retention area and if this subdivision grew and needed a bigger retention area, this could be dredged out and made bigger – maybe not so deep.

Attorney Voeltz said another thing he wants to bring to the board's attention, according to Beacon, this is a residential lot. There is some conflicting information as to what it's zoned as, in that the surveyor's office indicated at first it was R1B and then there was another designation that was placed on it. Attorney Voeltz said that he doesn't have full confirmation as to what this lot is zoned. Attorney Voeltz said that he's the deeded owner of this property. Perhaps if there was a Home Owner's Association, or something like that, the Home Owners Association could get together and buy him out. Maybe that could be an option, but at this point this is what they're stuck.

Annemarie Polan, Building Commissioner, said she just looked it up and it's R1A, or R1B, he would need twenty-four thousand (24,000.00) square feet to build upon and so many feet away from that pond.

Attorney Biege said let him get this straight. Your client bought a lot and then he split it and sold off the one lot and then kept this parcel, correct?

Attorney Voeltz said that is his understanding, correct.

Attorney Biege asked how he did that if they already had the subdivision. Attorney Biege said his question is whether the lot should have been spit to begin with.

Melissa Mullins Mischke said she agrees.

Attorney Biege said how was it subdivided without permission from the Plan Commission to resub-divide, that split should not have occurred.

Dwayne Hogan asked for name and address for the record.

Pat O'Brien, 802 E Street. Mr. O'Brien said that Steve Thate is the one that said that pond could be separated. He's the one who surveyed it and wrote it up as such the way it's right now.

Attorney Biege asked Mr. O'Brien if he had a legal description.

Pat O'Brien said Steve Thate is the one.

Attorney Biege asked Steve if he could help him out. Attorney Biege said that if the subdivision was platted, the lot can't be split again.

Steve Thate said he doesn't think at that time the county had that you had to do a minor subdivision. We're going back twelve (12) years.

Steve Thate told attorney Biege that Mr. O'Brien asked him that he wanted to build this and he wanted to split this part off and sell it to somebody else.

Attorney Biege said that makes sense.

Steve Thate said that he has the survey if you want to look at it.

Attorney Biege said that in today's world, you couldn't do that.

Steve Thate said you'd have to do either as an administrative subdivision, or minor subdivision.

Earl Cunningham told Mr. Voeltz that there is an email here that says I spoke with Patrick on the phone – this is to Mr. Willoughby he believes, Chris from Annemarie. I spoke with Patrick on the phone yesterday and today and he has expressed the desire to file a petition with the La Porte County Board of Zoning Appeals upon his return to Indiana, and he was out of state at that time and that was February 1st and he wasn't going to return to the state until April, or May, is that correct?

Attorney Voeltz said that is correct. Attorney Voeltz said he does have a copy of that email, and it was actually dated January 31<sup>st</sup>, 2017. He was out of town and spends quite a bit of time in Florida.

Earl Cunningham said then it says that he understands per our joint zoning ordinance that he cannot construct a fence without a home on the property. He again expressed concern about liability regarding children in the neighborhood playing near the pond and the possibility of the children drowning and that's the reason he's filing for a variance. Earl said he never filed for variance; that's the basic issue. If this email is accurate, he was in Florida and talking with Annemarie on the phone regarding getting on the BZA agenda upon his return April, or May to get permission to build a fence.

Earl Cunningham said when he returned in April, or May, he just built a fence, correct?

Attorney Voeltz said correct.

Earl Cunningham said when he first came up he was under the impression that the drainage board told him to build a fence. Earl said that the drainage board didn't tell him to build a fence, the drainage board gave him permission to build a fence, is that accurate?

Attorney Voeltz stated yes, that would be accurate.

Annemarie Polan, Building Commissioner, said that is accurate.

Earl Cunningham said that the drainage board isn't responsible for him getting a variance from the BZA and that's the step you skipped.

Melissa Mullins Mischke said that she would like to read a letter of remonstrance from Darin Ray, dated Friday, July 14<sup>th</sup>, 2017.

Hello,

I will not be able to attend the Board of Zoning Appeals meeting for discussion of the Patrick O'Brien Variance to build a fence around the retention pond at the Arndt Apple Acres Subdivision. Please read this email at the July 18<sup>th</sup>, 2017 meeting.

My name is Darin Ray and I reside at 7444 Peach Tree Lane in the Arndt Apple Acres Subdivision. I request that the BZA deny Mr. O'Brien's request to build a fence around the retention pond and order Mr. O'Brien to tear down the fence currently constructed.

Since Mr. O'Brien has constructed the fence around the pond, the maintenance of the lawn outside of the fence has been substandard as grass has frequently overgrown and become unsightly. This has a negative impact on the residences of the subdivision to promote their properties. Additionally, being able to see the pond does provide a positive impact when residents want to promote their property.

On another issue, since the lot does contain the retention pond for the subdivision, the construction of the fence prevents large machinery from entering the property for periodic dredging. If the residents of the subdivision cannot see the retention pond, the adjacent properties could suffer damage due to improper maintenance of the pond.

Over the years, Mr. O'Brien has collected concrete, automobiles, brush and other items near the retention pond. The residents need to be able to see the pond to ensure that it is being maintained. A fence would prohibit that ability.

Additionally, over the years, Mr. O'Brien has had differences with some residents of the subdivision. I view this fence as a retaliation against the residents of the subdivision, as the proposed fence itself provides no functional purpose.

It is with these reasons, that I request the Board of Zoning Appeals to deny Mr. O'Brien's request to construct the fence and also request the BZA to order Mr. O'Brien to tear down the fence currently constructed.

Thank you for your time.

Darin Ray

Dwayne Hogan asked if you have anything different to say.

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7-18-2017

I'm not a remonstrator, I just want to clarify some of these points.

Dwayne Hogan asked for name and address for the record.

Deborah Christian, 1831 N. Wozniak Road. Ms. Christian said that she purchased her home from Patrick O'Brien. Ms. Christian said that she also purchased an acre north of her and an acre south of her, that were in the subdivision, so she owns three (3) acres.

Ms. Christian said that she wants to clarify a few things and she knows it's a little bit off of the topic, but everyone seems to be running wild with comments here. Ms. Christian said that she thinks that we need to hear both sides of this.

Ms. Christian said first of all, she's been there almost ten (10) years, so she's been there a long time Pavolka Fruit Farm is directly across from here. They have a huge pond and the geese land there every night; the deer cross the street to eat the apples. The wild life issue is null and void with this pond as far as she's concerned, because she saw the pond years ago when it had the heavy grasses growing in it and you could not see that pond from the road. There was no visible sign of water.

Ms. Christian said as far as the drain being blocked, she had pictures of Mr. Greco dumping his brush into Radke's property and clogging that drain and he's done it multiple times. This past weekend the island that is in the subdivision --- you go into an entrance and there is a sign and an island and that has not been maintained all summer, it looks like crap. All of sudden in a mad rush this weekend, everyone is cutting the grass, trimming the island, vacuuming their lawns, burning --- she has pictures of the burning of the brush behind her property and they just groomed their property to the tee because of this. Ms. Christian said that island is absolutely not maintained like everyone in the subdivision.

Ms. Christian said with the pond issue, it's dangerous because of the location of it. We have across the street, kitty-corner, young children. There are swing sets everywhere. This pond is not like a lake where there is a gradual decline. This thing goes down and it's slippery; she would fall in it. Ms. Christian said that Pat O'Brien is the one that maintains it for free; he's the one that dredges it with his equipment; he's the one that has to go and dig out over at Radtke, but on his own property to clear it because it's overflowing from the stuff that was put across 200. Mr. O'Brien dredges it every single year; she's seen him do it.

Ms. Christian as far as what he does on his own property, he has brought her dirt to fill on her property; she has had to have fill brought in. Mr. O'Brien does that when he's leveling out one of his lots, and he actually was clearing one of his lots and cleaning it up and he would bring the dirt down the road. Ms. Christian said that is the reason for the backhoe partially, and he does the work for free on the pond.

Ms. Christian said that she thinks that there is a lot going on and it's a very complicated situation. As far as his home building, when Dobbens moved in shortly before she did, their house was ready; he had a water problem. The electrician dug a trench and put the pipe in and



didn't close that trench and it rained that year like crazy. The water went straight in. I didn't know Pat O'Brien very well, but he came over with a dry vac on his own time and mopped it up, because we're reasonable people; not only that, he said to me, Debbie, if you do what I tell you, you'll be okay; this is fresh graded dirt, you just need to get the landscaping in and get your grade up, and this water problem will resolve. Ms. Christian said that he was right, she hasn't had water in her basement since they put the gutters out. Ms. Christian said that there are two sides to this and she does feel that it's very dangerous, she's seen kids around the pond, and the type of pond it is ----

Dwayne Hogan told Ms. Christian that they appreciate the comments, he thinks they get a pretty good picture of what's going on here.

Ms. Christian said that she thinks the high fence personally needs to stay because either the kids will climb over it --- she has a neighbor who put a chair to their fence and lean over it. They literally stand on the chair and go over the fence.

Dwayne Hogan thanked Ms. Christian.

Dwayne Hogan asked if there is anything different that we haven't heard.

Dave Christian and he resides at 1831 N. Wozniak and one of the comments was that I couldn't see out on 200 because of this fence. Mr. Christian said that is inaccurate. If you're pulling out on 200 there is a direct line of sight, which any highway organization, county, or state will approve because of the direct line of sight and that's a key word out of any manual.

Mr. Christian said that he can be there at that stop sign and he can look to his left and he can see across Wozniak and down 200.

Dwayne Hogan said okay and he appreciates that.

Everyone is yelling in the audience at once. **Gavel is banging!!! (Totally unintelligible!!!)**

Melissa Mullins Mischke said that all the comments need to be directed to the board, not the others.

Dave Christian said that he doesn't live directly in the subdivision, but he lives on Wozniak and if he goes into the subdivision and goes to the exit of that subdivision, that's what he's talking about.

Dave Christian said that Mr. O'Brien has cleaned that pond up and put in drainage so it benefits the entire subdivision. Mr. Christian said as a member of that subdivision, he wouldn't want that liability, whether he had liability or not, he would not want to see anyone injured, especially children. Mr. Christian said that he has been on that property and looked across on the pond and watched children playing there.

Angela Demrowski, 1937 Cider Mill, lot 46. Ms. Demrowski said with that being said, the only thing that people have not brought up as far as the safety of this fence, there is a huge gap constructed --- if he's so concerned about the safety of our children, and she has young children, my husband, a grown man can fit easily underneath that fence. The intention of a fence is to keep people out. Ms. Demrowski said that it is coincidence that everything has gaps around it except for the one area that he has built on 200 to keep the road flooded. Don't tell me that he's not doing this in retaliation and he's there for the safety of her children when she had to call the Sheriff today because he was shooting a gun at her child for the second time ---

People were saying that's not true out of the audience.

Ms. Demrowski said that it's on record that she called the Sheriff and he came to her house.

All people in the audience are talking at the same time.

Melissa Mullins Mischke said that we're finished with public comment.

Melissa Mullins Mischke asked Andrew if she could get him to come back up because she wants to revisit again her suggestion about altering the height of the fence.

Attorney Biege said that it's not a matter of altering that, they're already in violation -- he didn't mention it because he's not sure it was necessary because they didn't ask for a variance on the height of the fence and he should in his opinion.

Attorney Biege said he hasn't mentioned it because he's not sure if it was necessary, but he wanted to make sure we're clean on the record.

Earl Cunningham said they didn't ask to build the fence until after they built the fence.

Johnny Stimley said that the way that he's looking at this what would he have done if you came up here to ask permission to build this fence. Johnny said that he would have voted down and that's the reason why he's going to vote to take it out of there tonight.

Dwayne Hogan asked if there are any other questions, comments, or concerns.

Melissa Mullins Mischke made a motion that the Petition for variance for Patrick O'Brien, by counsel, to keep an accessory structure in the form a fence surrounding the entire property and provide safety and protection against possible trespassers, located on property at 200 N. and N. Cider Mill Road, Lot 10 be denied and that the fence should be removed.

Johnny Stimley seconded.

Dwayne Hogan asked are there any other questions, concerns, or clarifications.

Earl Cunningham said a reasonable period of time to remove. Earl said that it took about ninety (90) days since he got back from Florida.

Remonstrators from the audience are talking to the board members.

Attorney Biege said that ninety (90) days is the typical time that we give someone to remove a structure.

Melissa Mullins Mischke said that she is hearing a lot of comments out of the crowd. Do you want the fence to stay up, or are you wanting it to come down.

Remonstrators from audience said down.

Melissa Mullins Mischke said that we're trying to make a vote to remove the fence in a reasonable time, so let us finish our motion and continue.

Dwayne Hogan said he has a motion and a second. Are there any questions, or clarifications.

Glen Minich said that his only concern is that --- he can see why he put the fence up because he's concerned about his liability. Glen said with that being said, he thinks that we could have corrected it by shortening it, but Doug says we need a variance to do that.

Attorney Biege said we do.

Glen Minich said that he's kind of stuck in the middle. Glen said that he sees both sides of this.

Dwayne Hogan stated he agreed.

Glen Minich said that there is a third issue – we just had this in front of us at the Planning Commission on 400 N. in a subdivision where somebody tried to build a house in a retention area and they changed what was being done. Glen said just like Steve said, this is not a buildable site. This is to be retained for future growth; Melissa pointed that out; there are future growth areas for four retention ponds that are going to have to be put; a house can't be built there. Glen said he doesn't know what his intentions for the lot are. It's best served to have an association formed and get ownership of that.

Glen Minich said for that reason, he's going to side at this point that the fence needs to come down.

Dwayne Hogan said he has a motion and a second.

Dwayne Hogan asked all those in favor of removing the fence.

Earl Cunningham said that the question is how much time.

Melissa Mullins Mischke said that she made the motion to include ninety (90) days.

Earl Cunningham said that he's going to ask Mr. Voeltz to ask his client how long it took him to build the fence. I'm assuming that he came back in May and started building the fence.

Attorney Willoughby said that fence went up on April 22<sup>nd</sup> when he returned, and the reason that date sticks out is one of his client's was the day of her father's funeral. Attorney Willoughby said that they're exact on that date. Attorney Willoughby said that it went up within a weekend. Attorney Willoughby said it certainly won't take ninety (90) days to take that fence down.

Attorney Voeltz said lets clarify here. He had already put in posts and that is the hardest part. To state that it went up in a weekend is a misstatement of the facts.

Earl Cunningham said you can take the fence down in a week and take the posts out in the next ninety (90) days.

Attorney Biege told Mr. Cunningham that the standard is this board has historically given the petitioner ninety (90) days. Attorney Biege told Mr. Cunningham just so he knows because he knows you haven't been on this board in a while.

Glen Minich said he needs that kind of time to be able to salvage what he has there; it's not going to go down as fast as it went up.

Dwayne Hogan said he has a motion and a second.

All approved. Motion carried 5-0.

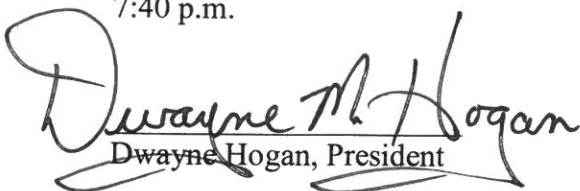
Dwayne Hogan asked if there is any other new business before the BZA this evening.

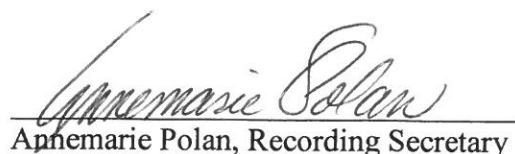
Attorney Biege said no sir.

Dwayne Hogan asked if there are any other comments.

Earl Cunningham said after dealing with three cases this evening, he's happy, as he's sure most of us are, that we live in a neighborhood where most of us get along. Earl said in our first two (2) cases we had no remonstrators.

There being no further business before the Board of Zoning this evening, meeting adjourned at 7:40 p.m.

  
Dwayne Hogan, President

  
Annemarie Polan, Recording Secretary