

MINUTES OF THE REGULAR MEETING OF THE
MICHIGAN CITY BOARD OF ZONING APPEALS
TUESDAY, FEBRUARY 10, 2015

The Michigan City Board of Zoning Appeals met in a regular meeting in the Common Council Chambers, City Hall Building, 100 East Michigan Boulevard, Michigan City, Indiana, on **Tuesday, February 10, 2015** at the time (now 6:30 p.m.), date and location for holding of said meeting.

Chairman Whitlow called the meeting to order, and upon roll call, the following answered present:

Wallace Hook, Karen Janus, Lester Norvell, Ricky Jackson and Al Whitlow.

Also present: Counsel Hale, Skyler York, Planning Department.

The first item of business on the agenda was the election of officers for 2015. It was moved and seconded that the slate of officers remain the same; that is, Al Whitlow, Chairman, Ricky Jackson, Vice Chairman, and Karen Janus, Secretary.

With a voice vote of all ayes and no nays, slate of officers installed for 2015 as follows: Chairman, Al Whitlow; Vice Chairman, Ricky Jackson; Secretary, Karen Janus.

The next item of business was approval of the minutes from the December 9, 2014 meeting.

It was moved and seconded that the minutes be approved as submitted.

With a voice vote of all ayes, motion **carried**, and the minutes were **approved**.

The only petition on the agenda was called, Petition B-100-15 of Ben and Betty Ross requesting a Development Standard Variance to allow replacement of an observation tower which exceeds the building height restriction to the residence located at 909 Colfax Avenue.

Counsel Todd A. Leeth gave a presentation to the board, which included a handout. Counsel Leeth explained the petitioner's desire to build the observation tower, citing the petitioner's astronomy interests and the light beacon being valuable to watercraft on Lake Michigan, among other issues. Counsel Leeth addressed the height restrictions, visual impact statement, precedence; a packet of materials was presented to the board. Discussion of the 35-foot height limitation versus the 55-foot requested variance; the small dune in front of the property, noting that the tower once existed and the petitioner is asking to replace it with a minor modification.

Board members questioned Counsel Leeth regarding the visual impact study and Global Engineering report. Counsel Leeth noted that 80 percent of the homeowners have no impact.

There being no further questions or comments from the Board, public portion of the meeting was opened.

Mrs. Pendo, 611 Colfax, approached the lectern and remonstrated against the petition.

Council Member Rich Murphy, approached the lectern and remonstrated against the petition, and read a list of remonstrators' names into the record.

Council Member Patricia Boy approached the lectern and added information regarding the petition by pointing out Section 15.04 of the Zoning Ordinance, that Section 12.03 contains additional height restrictions, also Sections (e), (b) which addresses chimneys.

Chairman Whitlow asked for any other remonstrances from the floor; there being none, Chairman Whitlow called upon Skyler York, Planning Department, to read into the record written remonstrances, as follows: Broitman, Dunn, Facciponit, Frasioli, Jorgenson, Mandel, Marren, Mason, McGinnity, McSteen, Pendo, Sheridan Beach Home Owners Association, Visotsky, among others, which were either read entirely into the record or were made reference to in a batch of like remonstrances (all written remonstrances are being maintained in the Planning Department offices and are not attached hereto).

Chairman Whitlow asks Counsel Leeth to summarize his position, wherein Counsel Leeth voiced his objection to some of the references of some of the written remonstrances and others where they are referencing evidence and findings in a previous case; noting he does not believe it is appropriate. Counsel Leeth went on to state that much of the remonstrances, written and oral, tonight were nothing more than a rehash and not evidence, but merely frustration. Counsel Leeth asked the board to consider his findings of fact in this matter; practical difficulties in his use and enjoyment of his property; the fact that he has spent thousands of dollars in reliance upon what he perceived to be a validly issued building permit from the City of Michigan City; built and erected the tower; suit was filed; Mr. Ross lost the suit and had to remove the tower; that there is not a substantial adverse effect on the use and enjoyment of the neighboring community in close proximity.

Chairman Whitlow asked for questions from the Board. Member Jackson quizzed Counsel Leeth about the letters he brought in from 2011, 2012 in support of the tower. Discussion ensued regarding the letters.

Chairman Whitlow called for departmental reports.

Skyler York, Planning Department, read all reports into the record (H.I.).

Counsel Hale, Attorney for the BZA, read his report into the record (H.I.).

Chairman Whitlow called for a motion on Petition B-100-15. Board Member Hook moved to deny the petition.

Discussion ensued amongst the Board and Counsel Hale regarding a motion in the negative and whether two motions would be needed to accept the departmental reports and findings.

Counsel Hale corrected the address made in the motion, also noting that what is critical in the motion is the proposed findings of the department, so if he moves to adopt the proposed findings and deny the petition on the front, then it would work okay as a motion.

Chairman Whitlow asked Member Hook if he was withdrawing his previous motion; Member Hook answered in the affirmative.

Board Member Hook moved that the board accept the Planning Department Report and Findings of Fact, and that the Board deny Petition B-100-15 of Ben and Betty Ross requesting a Development Standard Variance to allow replacement of an observation tower, which exceeds the building height restriction to the residence located at 909 Colfax Avenue.

Motion seconded and voice vote was as follows:

AYE

NAY

**Mr. Hook
Mr. Jackson
Mrs. Janus
Mr. Norvell
Mr. Whitlow**

With a voice vote of all ayes and no nays, the motion to accept the departmental report and findings of facts and DENY the petition carried, Petition B-100-15 denied.

Chairman Whitlow called for old business.

The next item of business was approval of Findings and Orders for Petition B-117-14, Joshua D. Hutchinson, Decision and Findings of Fact were read into the record by Counsel Hale. (H.I.)

It was moved and seconded that the findings and orders as read into the record by Counsel Hale be approved for B-117-14. It was noted that Mr. Norvell's name was omitted at the bottom of the page, and Mr. Hale acknowledged that it was his mistake and that Mr. Norvell's name should appear at the bottom for signature.

With a voice vote of all ayes, motion carried, and the findings and order are approved.

There being no further old business, the next item on the agenda was "New Business".

Mr. York advised that he will get together with Mr. Hale to select a date for the Rules and Procedures meeting, and that he will try to get it done within next week and let everyone know of the date for the meeting.

Chairman Whitlow called for public comment. There was no public comment.

There being no further business to come before the board, the meeting was adjourned.



BOARD SECRETARY