

Minutes
WARRICK COUNTY AREA BOARD OF ZONING APPEALS

Regular meeting to be held in the Commissioners Meeting Room,
Third Floor, Historic Courthouse,
Boonville, Indiana
March 25, 2019 at 6:00 P.M.

PLEDGE OF ALLEGIANCE

MEMBERS PRESENT: Jeff Valiant, Chairman; Terry Dayvolt, Doris Horn, Paul Keller, Jeff Willis, and Mike Winge.

Also present were Morrie Doll, Attorney, Sherri Rector, Executive Director, and Molly Barnhill, Assistant Director.

MEMBERS ABSENT: Mike Moesner

MINUTES: The Chairman asked if they are going to address the minutes since they came out late and aren't on the agenda.

Mrs. Rector replied yes, we didn't get them out until 3:30 this afternoon and Molly is still working on the Special Meeting minutes. She said the foot pedal for the recorder broke and just got it going today. She stated they can go ahead and vote on them if they read them this afternoon or you can wait until next month.

Chairman Valiant stated he would be honest he hasn't read them so do we just want to hold them until next month to approve them.

Mrs. Rector said there is like 30 pages.

Terry Dayvolt made a motion that they continue the minutes until next month.

Mike Winge seconded the motion and it was unanimously approved.

SPECIAL USES:

BZA-SU-19-05

APPLICANT: Warrick County Economic Development Department by Steve Roelle, Director of Economic Development

OWNER: Warrick County Department of Parks and Recreation by Daniel Roach, Park Department Board President

PREMISES AFFECTED: Property located on the north side of Park Blvd approximately 1,400 feet northeast of the intersection formed by Park Blvd and Oak Grove Rd, Boon Twp. 18-6-8 2700 Park Blvd. (*Complete legal on file*)

NATURE OF CASE: Applicant requests a Special Use, SU-11-Amendment, from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow an Improvement Location Permit to be issued for a 16,000 square foot community center, which would amend BZA-SU-15-21 in an “A” Agricultural Zoned District. (*Advertised in The Standard on March 14, 2019*)

Jim Morley Jr. with Morley, Project Engineer was present

Chairman Valiant called for a staff report.

Mrs. Rector stated we have 25 return receipts, 4 letters that have been returned, and 7 white pay receipts, which were mailed correctly. She said we just haven’t received the green cards back from PONO Golf Club, Victoria Land Holdings, SIGECO d/b/a Vectren, Country Gal, Victoria Lakes Property Owners Association, Kevin and Della Pass, David and Barbara Hazelrigg, and Andrei and Tatiana Sharygin. She said just bring in the green cards or letters whenever you receive them. She stated the existing land use is a public park. She said the property to the north is zoned “R-1D” Residential Single Family Dwelling in Victoria Manor Subdivision and “C-2/PUD” Community Commercial and Planned Unit Development in Victoria National Golf Club and the Cottages at Victoria. She stated to the east is zoned “C-2/PUD” Community Commercial and Planned Unit Development in Victoria National Golf Club. She said to the south is zoned “R-1” Residential Single Family Dwellings in Berkshire. She added to the west is zoned “A” Agricultural with Single Family Dwellings and a cellular tower in Tower Minor Sub and Blue Lake Estates. She stated there is no Flood Plain on the property. She said they do have an existing entrance off Park Blvd. She stated the applicant’s statement on the application states *“This application is an amendment to BZA-SU-15-21 for the construction of the Friedman Park community center on the affected premises. The community center will be approximately 16,000 SF or less and have sufficient paved parking areas as well as non-paved parking areas for occasional events. The community center will be publicly owned and operated by the Warrick County Department of Parks and Recreation. The Exhibits attached hereto are incorporated as a compilation of images designed to capture the intended quality and appearance of structures that may be constructed in the Park. Although the Exhibits do not necessarily reflect the final design they do hereby establish the intended quality and appearance, which comply with the originally approve special use.”* She said the application is in order. She asked Attorney Doll if he wanted to make any...

Attorney Doll replied no, let’s go ahead and let him make his presentation.

Jim Morley Jr. stated with him tonight he has Daniel Roach, Jonathon Young, Joe Schitter, and Herb Davis. He said when they did the Special Use for Friedman Park, it was a couple of years ago, at the time they didn’t have a need for an event center/community center but shortly thereafter, Joe Schitter, who runs the park, started getting a lot of requests for do you have an enclosed space that they could rent out. He said they quickly found that there is a demand for an event center. He stated in addition to that, as they did more research there are no event centers or community centers like this in the county. He said nothing that would be this large, to be able to hold a large wedding reception, large office event, or something like that. He stated this event center will be something different that anything in Warrick County and hopefully that allows

Warrick County to start capturing those gatherings or events and keeping the revenues from those here in Warrick County. He said once they realized there was a demand they put in a request for Regional Cities Project, you guys have all heard OF Regional Cities Project he's assuming, and they requested a \$2,000,000 funding from Regional Cities. He said they were awarded the full \$2,000,000 for this project. He stated he didn't know that anything was ever free, but from a lack of term, they get a free \$2,000,000 for the project. He said the demand that they learned of plus the \$2,000,000 from Regional Cities is why they come before the Board tonight to request an amendment to the original Special Use that was done for the Park. He stated they want to add to it the ability to build an event center because an event center was not discussed in the original Special Use. He stated before everyone sat down he passed out some exhibits for the Board. He said exhibit one, which looks a little something like this (holding up the exhibit). He stated it shows how Friedman Park, you have Newburgh at the bottom, Chandler here, and Boonville here (pointing to the locations on the exhibit). He said you could see that Friedman Park is uniquely located really in the center of these three populated areas and it is all on ground that the Parks Department already owns, so no ground would have to be purchased or anything. He stated if you look at exhibit 2, which is an exhibit, showing the purple area is all of the ground that is Friedman Park and the orange square represents where in the Park the community center would sit. He said it is there kind of at the end of the lake, if you will. He stated "Exhibit 3" is another blow up and you could see on here the different features of the existing park, (pointing to the exhibit) you can see here the Gathering Center or Amphitheater, or whatever you want to call that, the playground, and the maintenance building over here. He said the orange square represents where the event center will be. He stated "Exhibit 4" is a copy of the letter they received from the State of Indiana showing the \$2,000,000 award that was presented, which is always great to get a couple of million dollars for your project. He said "Exhibit 5" is a two-page exhibit and items one through eight are the original conditions that were put on the Park. He said if you look at it, the very last page has three that have been highlighted yellow; those are the conditions that they are adding to help bring this event center to be. He said this is also something they have had conversations with the neighbors and they are in agreement with these three items here and he will go through them very quick. He stated there is a dock that was put out in the lake that the neighbors would like not to be there and they are going to remove the dock, so number nine says that the dock is going to come out. He said number ten says that they are going to put in some landscaping to try to help block or hide the event center from the residential area in Victoria, so they are going to do some landscaping there. He stated number eleven talks about the ending time for events, the Park itself more or less shuts down at dusk. He said there is an ability to have part of it open until 10:30 pm with special permission. He stated most of the Board has been to a wedding reception in the evening and most of those don't end by 10:30 pm, so they are changing the ending hour for the event center so the music would stop at midnight and everybody has to be out by 1:00 a.m. He stated for some reason if that is not possible they would have to get that pre-approved by the Parks Board in advance. He said that way they don't have things going all night but allows people to be there past 10:30 also. He stated in addition to that he has a couple of pictures for the Board. He said this is a kind of rendering of what the building would look like and there should be something similar to that in your packet this is just a shiny one. He said that building is in the same theme or in keeping with the same styles that have been used out there in the past, so to be of similar type. He stated this is a drawn picture of the Park and their event center goes right where his finger is (pointing at the drawing). He stated there is a large green area on the

north part of the Park where they have a bridge there that goes into Victoria National Golf Club, which Run Victoria does their run that goes through there. He said as they are looking at bringing golf tournaments and stuff in and there is talks of doing some staging work where they will be coming through the Park and this building could be used for those types of purposes. He stated they think it is a great project, they feel that it is a great location, they feel like it is a great use, and they feel like it is a great project for Warrick County so it is a true win, win, win and they ask for the Board's support.

Chairman Valiant asked if there were any questions from the Board.

Paul Keller asked if they are putting additional parking in too.

Jim Morley Jr. stated in your packet you would see the gray area is the proposed parking. He said part of it is in a grass area that is currently used for parking and they are proposing to convert some of that to paved parking, also some parking near the building.

Mike Winge asked if it would be local contractors for most of this.

Jim Morley Jr. replied it would have to be a public bid project but he would assume that it would be local people.

Chairman Valiant asked what kind of seating capacity, are they looking at and what size of a venue are they looking at for the County.

Jim Morley Jr. stated he wants to believe they are around 500 with round tables. He said seating capacity is a squirrely thing to tie down but he was going to say in that range.

Mrs. Rector asked if the way she understands it isn't just for large groups you could have a small meeting in one of the rooms or small kitchen or food area.

Jim Morley Jr. replied in your packet there is a floor plan and it was important that this facility could be used for five to seven days a week. He said there is a Sheriff's annex in the building, which would allow if the Sherriff needed to go somewhere to fill out paperwork, he could stop there and fill out paperwork. He stated there is a Boardroom for smaller groups, there is a classroom, and there is a midsize room. He said there is three meeting rooms and the large banquet hall can be divided into two rooms with a moveable partition. He stated in there you could actually rent out the lobby. He said the lobby itself will have a fireplace and it will be like a grand entrance into the building. He stated the building has a porch on the north and west sides. He said the west side of the building overlooks the lake the north side overlooks the wooded area between this facility and Victoria National Golf Club. He said internally in the building there are two fireplaces, which can act as focal points for picture taking or whatever. He said the goal for this building is for something not to be used only on the weekends but if you have a corporate meeting, a bridal shower, or something like that you could rent out one of the smaller rooms also, which is another way for this facility to raise funds. He stated it is anticipated that this building will be able to support itself and might even make a little money.

Terry Dayvolt asked how close it is to the lake.

Jim Morley Jr. replied it is about 100 feet. He said that edge of the lake has a bunch of plants, which are called phragmites on the end. He said those phragmites are about 20-30 feet deep coming off the water. He stated but in the ballpark, it is about 100 feet. He said they want it to set back far enough so you didn't feel like you are sitting right on top of the water but close enough that you have a nice view of the lake. He stated he didn't know if any of them had been there recently, but there is a ladder set up out there, it is Joe's personal ladder so nobody take it. He said if you climb up the ladder three feet that is the floor height of the building, which allows you to see out over the vegetation onto the lake. He said it is really nice.

Paul Keller asked if there would be protection in case someone wandered off down through there at midnight.

Jim Morley Jr. stated they hadn't planned on doing any type of a fence or anything like that where they felt like they were set back far enough. He said they are most concerned about children and they felt like they had it set back far enough that you would have to not watch your kids for a while before they got down to the lake. He stated there are actually existing parts of the Park that are actually even closer than this building. He said they feel like they are at a safe distance. He added that safety is a concern of the design team for the Park all the way around.

Mrs. Rector said an operation like Scales Lake; their event center sits on the water. She stated they have security all of the time at Scales Lake. She asked if the Park would have someone there while these events are going on until one o'clock in the morning. She said she was sure Joe would be there (inaudible).

Jim Morley Jr. stated Joe is the heavy.

Joe Schitter, manager of Friedman Park, stated they would most definitely have someone from the Parks Department there. He said generally now when they rent for a large group even for the amphitheater, if it is over 200 people they have to provide their own security. He stated they have to hire security to come in. He stated they would keep that with this event center and look at what kind of numbers they need. He said the Sheriff's annex station was a great addition because most of the people hired for security are of duty deputies that are hired locally. He stated as a matter-of-fact they like for individuals to hire armed deputies because they can make arrests and everything else right away. He said they have a good relationship with the Sheriff's Department now, and they come through quite often. He stated they have a few cameras and they are talking about the potential for security, cameras and things like that so they could be viewed from the annex now. He said the new plans they have shown that the Sheriff's annex goes into the building to supply better security. He stated he thinks they will be secure. He said chances are that he will probably be there too.

Mrs. Rector asked if he knew if this would create jobs.

Jim Morley Jr. stated they have talked about there could be one person that could be a full time event center person and whether or not they hire the cleaning out but they are still working out the details on the staff.

After ascertaining there are, no more questions from the Board Chairman Valiant asked if there are any remonstrators for or against.

Krista Lockyear, Attorney for Victoria Manor Subdivision Property Owner's Association, stated they are there in support of this proposal with the understanding that the conditions on the Special Use as Jim pointed out to the Board are a part of the application and conditions that are made on this Special Use Agreement. She said her clients, the Neighborhood Association, had several instances of communication with Steve Roelle and feel like the spirit of the communications have gone very well and are happy to see this move forward. She stated they just want to make sure these conditions are part of the Board's approval.

Attorney Doll said the conditions that are being discussed is the ones that appears....

Terry Dayvolt asked if they are the ones in yellow.

Mrs. Rector stated it is the entire thing, what is not in yellow was part of what was in the package of the original application in 2015. She said the yellow is what has been added.

Bob Lacer stated he lives at 5400 Abbey Wood Dr., which is in the Berkshire Subdivision south of the Park. He said his backyard is the Park. He stated it is an amazing Park and a beautiful place to be and it gets a lot of use and he is thankful that we have it in Warrick County. He said he came in support of the event center because he knows for a long time Warrick County has been in need of one of those. He stated he came with caution because he wants to maintain the integrity of the Park as much as possible, the rustic, natural integrity of that Park. He said his concern is he knows there will be traffic and that is fine but one of the lures of the whole subdivisions around it is the beauty of that Park and he hopes that their commitment to keeping it that way is first and foremost. He said he does have some questions, first is the music that will be played will it be inside music and nothing outside. He stated he has seen the spot where Joe's ladder is and he has climbed up on the ladder and it is a beautiful view. He said he would like to see the lodge nestled back in the woods but he understands there are plans to plant indigenous trees, natural trees there, but would hope that just as they are protecting their neighbors to the west that you will also protect your neighbors to the south. He stated he did want to, this is probably not the people he needs to talk to, but he knows Joe and his staff are overworked right now. He said whatever this event center is going to do is going to be on top of all of that, so he would hope there are plans to make sure that they don't wear Joe out because he is a valuable resource for our park. He said he is a great steward of the Park. He stated he does think that is all he has and he is pleased to see that there is going to be an annex for the Sheriff's Department because as the community grows there are going to be issues. He said from his place at the Park he sees people coming and going into the Park at all times of the night. He stated sometimes he has called Joe, sometimes he has called the Sheriff's Department, and sometimes he has just went out there to see what is going on. He stated that is only going to get more of a concern for them. He said he commends all of them for hopefully you will do that because the event center is a great part of the Park.

Jim Morley Jr. stated just a couple of comments. He said they are definitely committed to maintaining the integrity of the Park. He stated that is first and foremost for them also. He said he feels like setting limitations and by being the ones that actually operate this facility and building the facility that gives them the control and ability to maintain that integrity. He stated that is a paramount issue for them also. He said he would also like to touch base on the noise issue. He stated the noise is restricted under item number eight of the conditions and that is a holdover from the last time, so you will see that the noise is covered there.

Chairman Valiant stated he was asking if it was going to be strictly inside or there would be outside music as well.

Jim Morley Jr. replied the reason he refers him back there is if someone has a radio playing outside on the deck, while people are outside that is not a problem. He stated he doesn't want to say there will never be music outside because if you are out there with a small group of people and you have a little radio or something going that is not a big deal. He said that is why he referred back to that. He stated throughout the entire park they could not have any unreasonable noise or frequency and the ones closest to this are the ones in the Victoria neighborhood. He said the closest one of those houses is about 450' from this facility. He stated Mr. Lacer's house is on the south side and is actually farther than that.

Terry Dayvolt asked Mr. Schitter if they have had any complaints so far from the amphitheater.

Joe Schitter replied no, they haven't had any complaints. He said the amphitheater was designed quite well and most of the sound carries back into the amphitheater or to the sides a lot more than to the back. He said they also have a berm of trees that were planted along that side of the lake, which covers a lot of sound.

Terry Dayvolt stated he knows a band has played there and different events.

Joe Schitter stated he hadn't received any complaints.

Mrs. Rector stated she very seldom hears them at her house. She said usually it is church music that she hears.

Joe Schitter stated they have had a couple of church services out there. He said one other thing they anticipate is people might want to have an outdoor wedding or something like that.

Chairman Valiant stated that was what he was getting ready to ask.

Joe Schitter said they will have a here comes the bride because you have to play that at a wedding.

Chairman Valiant replied absolutely. He asked if there would be an outdoor deck or ...

Joe Schitter stated there is an outdoor covered patio and concrete like twelve feet past that.

Chairman Valiant asked we aren't talking about something that will seat 200 people though are we.

Joe Schitter replied no, the patio total depth from the building is like 24 feet.

Chairman Valiant said okay he was picturing somebody saying they wanted to set their DJ up outside and then you are in the battle of music outside.

Joe Schitter replied that is definitely not the intent. He stated he guessed they would have some outdoor weddings there.

Chairman Valiant said you would hope.

Joe Schitter replied that is a good thing.

Chairman Valiant said it is a beautiful setting.

Mrs. Rector asked if Attorney Doll would like to make any comments on these conditions that have been submitted and the enforcements by the Board.

Attorney Doll stated there was originally a debate and in your packet, there are two sets of conditions. He said one of them has been withdrawn or is no longer being requested. He stated the one that says Use and Development commitment is not being used. He said the parties have reached an agreement. He stated to go forward with the one Terry said contains the yellow paragraphs, so if you will take a look at the yellow paragraphs that is what is being added. He said it would deal with just those three topics. He asked do we have no enforcement language now at all.

Krista Lockyear stated she would throw in her two cents because that is what she loves to do. She said Morrie she thinks if the conditions, she thinks they would like to see on behalf of the neighbors and she doesn't think it is a problem with the petitioner, they want all of those conditions as a part of this amendment not just the new ones. She said if you go back and review the minutes she's not sure that those other conditions were really made part....

Attorney Doll said we could reaffirm the original conditions and add the three conditions ones. He stated his question is...

Mrs. Rector stated Morrie we never adopted those in the approval from the original one from 2015.

Krista Lockyear said right.

Attorney Doll stated he thought it said something like it should be operated at and in compliance.

Jeff Willis stated we didn't want to open ourselves up to be the

Mrs. Rector stated all the minutes say was that Mr. Kipple presented them; it was an agreement that was agreed upon and that was in the minutes it was never a part of the conditions at all.

Krista Lockyear said right.

Mrs. Rector stated this whole thing would have to be ...

Krista Lockyear said make a condition and if it is made a condition by the Board, Morrie it is 36-7-4-1015, then the enforcement lies with the Board.

Attorney Doll stated so if Joe starts getting objections about late night noise and the neighbors remedy is to come to us then we have the only remedy to enforce the condition. He said he would tell you that is not something that the Board appreciates. He stated he realizes they can re-coup your fees and expenses in violation and enforcement action pursuant to the State Statute, it is just if we adopt these as conditions for approval of the Special Use we become obligated to enforce it if we get complaints.

Terry Dayvolt asked is that not the Parks Board.

Attorney Doll stated that is whom we would be enforcing them against. He said it would be one level or unit of County Government at odds with another level or unit of County Government, which is an uncomfortable position at best. He said he is not sitting there telling them that is ever going to happen, he knows Joe and he doesn't ever think that is going to happen but on the other hand, 10-20 years from now down the road we don't know. He said he just wants the Board to be aware by State Statute if we adopt these as conditions for the approval of the Special Use we become the enforcing authority through courts or otherwise of these conditions.

Mrs. Rector asked why this couldn't be written up to where the Parks Department enforces these.

Attorney Doll stated because the Parks Department is one of the participants in the agreement. He said either it would be the Parks Department who would be in violation or their customers or users under contract with them would be in violation. He stated he didn't think that was the independent enforcement that the homeowners would probably want. He said who is going to bring complaints it is going to probably be property owners, so he doesn't see where you can make the Parks Department... unofficially he is sure the homeowners could probably go to the Parks Department and file a complaint and say hey guys what is going on. He stated the Parks Department would attempt he is sure to address that problem and it may never get to us. He stated if it ever gets to an official complaint level, it comes to this Board.

Terry Dayvolt asked if that would not set a precedent if we do.

Attorney Doll replied it is State Statute. He said it is not just a precedent.

Terry Dayvolt said he means just from this Board.

Attorney Doll replied we are required tonight by State Statute to be the enforcing agent, unless we contract otherwise and that is not what happened here. He said sometimes, as you may remember, we have in the past preferred joint enforcement of authority where we have the authority to enforce it but so does the property owners that are affected by the Use. He said negatively affected or positively. He stated that is not what the parties have agreed upon and so if we make this a condition of the approval for the Special Use permit, which the parties have all agreed upon we become the enforcement agency by State Statute. He said if we get a complaint, we become the enforcement agency.

Doris Horn said okay.

Mike Winge asked if we leave these out the Parks would become....

Attorney Doll stated then you don't have an agreement and they have apparently all worked very hard to get this agreement.

Mike Winge stated if we leave it out then it would be their responsibility at the Parks Department. He said they are heading it up anyway.

Attorney Doll stated if you leave it out he thinks you will probably have a dispute among the parties as to whether this can be approved or not.

Mrs. Rector asked if there was a way that you could add in here that any party that has a complaint would first go to the Parks Department Board and then if that cannot be taken care of or settled then it comes to us. She asked could you add something like that in.

Attorney Doll stated it depends on the wording and such language if it is an abdication of the responsibility of the State Statute then he thinks it is void.

Mrs. Rector asked you think it is what.

Attorney Doll said if it is an abdication of the State Statute that says the condition shall be enforced by the Board of Zoning Appeals he thinks it is superfluous it would have no effect. He stated we could all be precatory and all say it would really be great if you do have, a complaint go see the Park Board first. He said we have condition complaints in other capacities; it cannot be a spite complaint, cannot be for bad faith, and ex-spouses cannot file complaints on the other ex-spouse. He stated you could see where some bad feeling might arise someday down the road between somebody in the neighborhood and the Park and it would be a repetitive power of complaints forth coming. He said there is no way to stop that because we are a public agency and the State Statute says we shall enforce conditions of approval unless the General Assembly takes that off of our shoulders he doesn't think we can if we adopt this as conditioned for the approval for the Special Use.

Mike Winge stated if the Parks Department doesn't follow up and follow the rules that they have to abide then they would be in violation of what the Board passed right.

Attorney Doll stated he is not finding fault he is just simply saying you will be in the position of hearing complaints and having to decide if you are going to take action or not.

Mike Winge asked if they could be stopped or shut down until they get it organized couldn't they, if they are in violation of the agreement.

Attorney Doll stated you can file an adjunctive relieve, you can file lawsuits but hopefully none of that is necessary. He stated hopefully a warning to cease and desist something in violation would suffice and that is where you would start is with a cease and desist letter, which Sherri and I have written before. He said all other 91 counties in the State have the same duty it is just we have in the past made it a joint opportunity to enforce. He said he has kind of let this cut pass kind of an approach so we can say to the complaining party you know you have an independent Enforcements Board for it if you wish file your action. He stated but that isn't in this, it has been discussed could not be agreed to and it is not in this set of conditions to his understanding.

Jim Morley Jr stated correct.

Mrs. Rector stated we've done conditions before on a few, like the racetrack they can only race on certain days and certain times, it went on forever.

Mike Winge stated this looks like this spells all of that out without this enforcement.

Mrs. Rector stated if you put this in here as a condition and they stay open until 2:00 a.m. then they would call our office and file a complaint and we would handle it.

Terry Dayvolt stated and six days later, we would hear it and it would be done and over with before it was...

Attorney Doll stated it isn't the one time it is probably a pattern of events and maybe there is animosity by the complaining party. He said Terry it is not that you have to add enforcement language. He said the enforcement language is in the State Statute, which we have no authority to ignore or to change.

Terry Dayvolt said it is going to be like Mr. Lacer said about the cars being there after hours. He asked does he call Sherri and tell her that there are people in the Park after hours and what is she going to do about it.

Attorney Doll asked where the cars are. He asked are the cars at the Community Center, are the cars at the Amphitheater, or are the cars...

Terry Dayvolt said he means that could be a situation.

Attorney Doll stated no, he is not being funny he is simply saying ...

Jeff Willis asked did they give us a contract agreement the first time this came in front of the Board.

Mrs. Rector stated that was what she thought it was.

Jeff Willis stated he thought they had a contract agreement because some of these originally he thinks are kind of silly.

Attorney Doll stated a contract would involve two parties.

Jeff Willis stated since we have already agreed to it ...

Attorney Doll stated it wasn't a contract.

Mrs. Rector stated it was between the Parks Department and Economic Development.

Attorney Doll stated but there wasn't one with the homeowners. He said this is a different group of people. He stated this is the homeowners.

Jim Morley Jr. stated he apologizes for any confusion the intent was to add the three statements on to what we have currently and not to create confusion perhaps in our desire to eliminate confusion we have created it. He said he apologizes for that. He stated the reality of it is if people have complaints at the Park they are going to call the Parks Department first. He said then the Parks Department is going to do what they can to deal with those issues whether that is enforced through a homeowner filing suit against the Park or someone coming to the BZA and asking for corrective action. He said it doesn't have to be someone was yelling to loud and would have stopped yelling by then anyway so from a timing standpoint it really doesn't make a difference. He stated they were just trying to keep in line with what was accepted in the past and add just the pieces to allow the Event Center to happen.

Mike Winge stated he has never seen a park that didn't have problems. He said if you have a park, you're going to have people that will do things that is just one of those things you deal with.

Mrs. Rector stated she thinks Janice, one of the adjacent property owners, wants to say something if you don't mind.

Janice Miller stated she lives right across the street, not across the street but across the lake, from the Park. She said their backdoor looks at the dock that is there presently. She stated she is all for this building, she knows the community needs it but we also need restrictions. She stated the dock was never supposed to be put there. She said if you look at the first eight conditions, it doesn't mention a dock, either way there is only fishing from the bank, she believes that is correct. She stated at night the dock was put in not during the daytime it was at night. She said as a homeowner they just want the Park to follow the rules. She stated they love the Park and they want to be good neighbors but they don't want to wake up and something else new be there the next day. She said this is why they have to have rules that everyone can go by.

Attorney Doll stated the last time the rules were not a conditional approval of the Special Use. He said they were just submitted as an amendment to the application for the Special Use.

Janice Miller stated she thinks that is how they put in the dock because they found out there were really no rules that were enforceable, that is what they were told.

Attorney Doll stated when we approve a Special Use we approve it subject to the application and documentation submitted as part of the application. He said theoretically one could, well not theoretically actually one could say even though we didn't condition the approval upon those provisions we approved it with the understanding that the Economic Development Department and the Parks Board were committed to following those provisions.

Janice Miller stated when the dock went in we did contact the Park. She said the dock does not have any railings on the side. She stated every day she watches, kids go on the dock without parents and her fear is somebody is going to fall in and she cannot save them because she cannot get to them quick enough. She stated she is thrilled they are going to take the dock out. She said as far as when she sees something happen over there, and she would think Bob does the same thing; she doesn't call you guys she first calls the police if it is a police issue. She stated they have seen people build campfires and we call Joe or we call the police. She said she doesn't think they will be coming to the Board but if there is a problem between the Park and them in what they are doing that is when it would come to the Board. She asked if there were any questions.

Mrs. Rector stated she did know whenever she talked to Larry Taylor, who was then the Economic Development Director, after she found out about the dock being put in that it wasn't part of their agreement that they had submitted. She said Mr. Schitter wasn't aware of the agreement when the dock went in and as soon as she made them aware of it, they immediately put signs up to where you could not fish off it and were going to remove it. She said so they did get right to it and close it down. She asked can we do the same thing we did last time.

Attorney Doll stated he didn't think that was what they would like for them to do, he thinks they would like for us to put teeth in this with enforceability through the BZA. He said the Board would rather not accept the responsibility to enforce this to become if you will the hearing board for complaints about how this facility is managed. He stated he has also heard you don't need to re-authorize the original conditions, which really aren't a condition of approval of the Special Use. He said it was just part of the application one through eight. He stated he has also heard some say now wait a minute, we are asking you to make one through eleven all of the conditions for the Special Use. He said we really should have a meeting of the mind on several things.

Krista Lockyear stated from her clients perspective as long as this paper that has the conditions in it are enforceable by someone be it the Area Plan Commission/Board of Zoning Appeals or the neighbors, which was in the Use Commitment they presented.

Attorney Doll stated negotiation position.

Krista Lockyear said right. She stated the Park Board does not want that to happen they are leery of a bunch of neighbors randomly making complaints. She said they respect that and withdraw the neighbors right to enforce it, which as Morrie indicated and Sherri you know you guys have the ability if a neighbor complains it is a hassle to Sherri but if it is a realistic complaint she can write a letter that says you are in violation. She said she didn't think it was a huge burden and she would hope everybody would act responsibly in that regard and Sherri can evaluate whether it is a valid complaint. She stated the bottom line is we do want whether one through eight are a part of the original petition and we are just adding nine through eleven through this one. She said whether you reiterate all of them in this amendment, they don't really care. She stated they just want acknowledgment on the record that somebody does have an enforcement agreement. She said if nobody wants enforcement she thinks the neighbors would say we have worked long and hard at working out this arrangement and maybe we all need to take a step back if Planning Commission is leery of enforcement then we have to get some kind of mutual contract between the two parties that would allow private enforcement. She stated they haven't considered that it has always been considered as a condition of this application.

Attorney Doll stated once again to say where everything is in his perspective. He said we did not make the original one through eight a condition of approval of the original Special Use. He stated frankly we weren't asked to by anybody and it was attached to the application at the request of applicant. He said we approved the application based on the application and the documents submitted. He stated so one through eight as we sit here today, he thinks we would agree Sherri, are not conditions to the prior approval, which we would have statutory enforcement authority over.

Mrs. Rector replied right.

Attorney Doll stated then you get to the current language. He said one side says one through eight shouldn't have to be re-enacted, reauthorized with this amendment to the application. He stated that could change the character from just part of the application to part of the conditions of enforcement that we now have statutory authority for. He said nine through eleven are requested to be conditions to the approval of the Special Use permit. He stated theoretically if you don't re-enact the first ones, if you have those not being conditions that we have jurisdiction over and enforcement of and nine through eleven we do have enforcement responsibilities by State Statute that we have no control over; not an envious set of facts. He said that is said in context of a Board who really doesn't want to get in the middle of a fight between surrounding neighbor/neighbors and a public park, which is a fellow division of Warrick County Government, which we are a part of as well. He said he would hate to think we were at war with another department. He stated he didn't think the Commissioners or Council would be very happy with us in that regard. He said that is not our decision that is the State Statute we don't have any decision about that though.

Bob Lacer stated if he may play devil's advocate also down the road probably when he is long and gone, he can see issues between the Berkshire Homeowners Association and Victoria Homeowners Association over some aspect of the Park, which he would assume would come to your desk also but he doesn't know that. He said the thing he would like to say is that in number eleven if we are going to put those requirements in and give it some teeth as to enforcement what

consequences are you putting in there. He stated if somebody does violate that if we are doing it after the fact we need to let them know ahead of time whoever is using this that if they do violate this what the results are.

Attorney Doll stated the result would be to petition to the court to get a court order for, a compelling order, that they have to abide by whatever this paragraph eleven means.

Bob Lacer stated this is after the fact.

Attorney Doll stated it is after the fact, you cannot anticipate a violation.

Bob Lacer asked could you put a fine...

Attorney Doll stated you couldn't put a fine on it.

Bob Lacer responded no fine.

Chairman Valiant stated that would be if it came to the Board.

Mrs. Rector stated the only way we can fine is to go to court.

Chairman Valiant stated right but if we get that far.

Attorney Doll stated our Ordinance has a \$300 per day continuous fine for violation. He said that is up to a Judge to say what will be enforced and how much the fine is, up to \$300 per day. He stated he has had Warrick County Judges say \$300 and he has had them say less than \$300. He said it depends on their perception of justice and the violation of what needs to be done.

Mrs. Rector stated normally if there is a complaint filed, she writes a letter telling them that if it isn't corrected by a certain date they must appear before the Board.

Bob Lacer asked how do you correct something that has already happened, Sherri.

Mrs. Rector stated in a case like this the only thing she can see that she can possibly do is if you call or Janice would call and say you are going to file a complaint they are playing music until 12:30 a.m. every night. She said the only thing she could do is to have you write a letter to the Park Board and say come on back. She stated there is nothing she could do.

Bob Lacer stated these things are one shot deals, one wedding one weekend and another the next. He asked how do you...

Joe Schitter asked how do you determine.

Doris Horn stated she thinks it would be up to the Park Board because they are managing it out there every day so they would be the one that would have to go out there and say this is what has to happen. She said if you call them at 1:00 a.m., they need to go out there.

Attorney Doll stated the one that he thinks is probably going to be most likely culprit to drive a complaint isn't necessarily the hour of the day, he thinks it is probably the volume, which is actually paragraph number eight from the prior one. He said you have a wedding and they want to have a rock-n-roll band or country western band, he actually has a little experience in this business trust him it can get loud. He said they actually owned a wedding banquet center for a number of years.

Chairman Valiant stated having been in the DJ business for a number of years, if they are playing loud enough inside the structure that people across the lake thinks it is too loud you are not going to have any people left at the reception because they are all going to be leaving.

Attorney Doll replied yes, he is thinking about the patio.

Mike Winge asked if the Park had any kind of fines they could do.

Attorney Doll responded that is up to them. He said that is not in our bailiwick.

Chairman Valiant stated correct him if he is wrong but the Park is going to have agreements with whoever rents it out, there is going to be a whole list of

Joe Schitter stated that is what he wanted to mention. He stated they currently have agreements that they have to meet, there is no way to stop something from happening on a lark but what it is they can enforce it once it is happening. He said if someone is playing at a quarter after, he has gone down to the Amphitheater, said it is ten o'clock, and time to shut down the music. He stated it is one of those situations where they do enforcement on that. He said they do have in their criteria for rentals that these are the things that they need to meet. He stated he also thinks they have cut back on anybody being out there later because he put a cellular camera up on top that sends a motion alarm to him. He said generally he can go out and gently tell teenagers, most of the time, that they need to vacate the Park and luckily, he knows most of their parents so they are quick to go. He stated the situation is that they do have those in effect, where if someone is renting they are very well aware of the situation and someone will be there to make sure that it is taken care of at that time.

Bob Lacer stated he agreed with that except Joe won't always be there.

Joe Schitter replied someone would be.

Chairman Valiant responded that he would have staff, employees, or someone he would assume.

Doris Horn stated there are places she knows that if they violate music, loudness, disturbance, or whatever; so if they had to lay a down payment of \$500 to \$1,000 to rent that place and they could lose that the person that signed their name on the contract is going to make sure that doesn't happen.

Bob Lacer responded that is what he is looking for.

Doris Horn stated that is up to the Park Board in their contract.

Krista Lockyear stated she thinks that is the reason to have these as conditions because the Park Board doesn't have anything to rely upon unless there are conditions associated with this.

Doris Horn replied that has to be in a contract. She said when people are going to lose money they are really going to watch what happens with their people.

Bob Lacer stated so you are saying the Park Board has the ability when they enter into an agreement

Mike Winge stated that isn't our Park that is the Park Board's.

Krista Lockyear stated she just wants to make sure that again these conditions were really a product of a lot of discussion with the Park Board and the neighbors. She said otherwise the neighbors would have been here in force against this and we are absolutely and adamantly for it but without the conditions at all there really aren't rules and guidelines. She stated the conditions give the Park Board here is what they need to enforce.

Joe Schitter stated they were in agreement with that. He said like you gave us for the Economic Development Department. He stated they always assumed that the Board would condition their approval on these eleven conditions. He said they are in agreement with them.

Paul Keller asked if we have already done the eight or they were a part of their application why can't we just do nine, ten, and eleven.

Attorney Doll stated they could do it the same way but that doesn't address the issues that the homeowners are asking for. He said they want an enforcement mechanism for all eleven conditions.

Paul Keller stated he understands but we already gave them a Variance (Special Use) on these first eight conditions.

Attorney Doll stated we haven't given them our enforcement responsibility on the prior eight. He said we sort of did a wink and a nod with the prior eight, which we allowed Tom Kipple to attach the first eight. He stated the Park Board, to his recollection, did not want these to be conditions of the approval of the prior Special Use.

Mrs. Rector stated they never asked them to be, no.

Attorney Doll stated this was an agreement necessary to satisfy the homeowners so Tom brought this forward and submitted it as an addendum to the application. He said we approved the application as submitted along with all of the accompanying documents just as we always say. He stated we never specifically approved the prior application conditioned upon one through eight. He said you can say that was really smart or that's really nice, but it doesn't work and if a

homeowner came in and said they are violating number three and you have State Statutory responsibility to enforce that we might have.

Mike Winge stated might have.

Attorney Doll stated might have but if you condition the approval to a Special Use you definitely have by State Statute the responsibility to enforce those conditions.

Mike Winge asked if we don't approve.

Attorney Doll stated then they can't build the building.

Paul Keller stated he understands that but then where do the homeowners stand; they are back at square one they don't have anything,

Attorney Doll stated they have a Park without a building.

Jim Morley Jr. stated he was here at the first hearing.

Attorney Doll stated in 2015.

Jim Morley Jr. stated the bright side is we have an agreement before we came to the meeting instead of at the meeting. He said he could tell us that all of the parties, he believes this to be true statement; he knows they on their side thought those were conditions. He stated whether it was re-stated in the motion or how it came across; they all thought they were conditions. He said there is a part in there where it talks about they had to put trees on a mound behind the amphitheater, and that was specifically noted in their design because it was their understanding they were a condition. He stated if perhaps it were not clear that they were conditioned the first time, it would make sense to them to make it a condition this time. He said that gets the adjoining homeowners everything they want and it is what we thought we always had and are happy to take on.

Attorney Doll stated and it makes us the enforcement agency.

Mike Winge stated if they are all okay with it ...

Attorney Doll stated it makes us the enforcement agency.

Discussion inaudible.

Mrs. Rector asked if you want to adopt these, if they want to approve this with these as conditions, do they have to add these to their findings or can they just say and number three per their conditions of the Special Use permit as submitted for Friedman Park.

Attorney Doll stated the best position would be to read them into the record.

Doris Horn asked read them all.

Mrs. Rector stated she didn't ask for the best she just asked can we.

Chairman Valiant asked "Exhibit 5" as submitted by ...

Attorney Doll stated well we have had two or three but wait...

Krista Lockyear stated we have to stipulate to those so...

Attorney Doll stated the problem is not everybody that might be affected by the conditions are here tonight. He said we are fighting in court on a frequent basis the sufficiency of our resolutions approving Special Uses. He stated he is going to air on the side of caution every single time so he doesn't have a judge one day say wait a minute you didn't do that right.

Mike Winge stated job security.

Doris Horn stated if we find this then read it and then read all of the conditions to approve this correct.

Mrs. Rector replied yes.

Attorney Doll replied yes.

Jeff Willis asked if they had to approve one through eight or can we just approve nine, ten, and eleven.

Multiple people replied do them all.

Mrs. Rector stated just do them all because we don't want to be questioned for what happened before.

Jeff Willis stated he didn't want to enforce on someone jogging down the trail at 6:00 pm in December.

Chairman Valiant stated these are already conditions that they were under the assumption were already there.

Mike Winge stated they think...

Attorney Doll stated then you can vote no.

Joe Schitter stated they are happy to have all of them done.

Jeff Willis stated he would just like to use the trail after he gets off work.

I, Doris Horn, make a motion finding of fact be made as follows from the testimony and proposed use statement:

1. The USE is deemed essential or desirable to the public convenience or welfare.
2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
3. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
4. The USE as developed will not adversely affect the surrounding area.
5. Adequate and appropriate facilities will be provided for proper operation of the USE.
6. The specific site is appropriate for the USE.

Application approved in accordance with the application and plans on file with the Warrick County Area Board of Zoning Appeals per Special Use Docket Number BZA-SU-19-05 with the following conditions:

1. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
2. Subject to all public utility easements and facilities in place.
3. The Warrick County Parks Board ("Board") pursuant to I.C. 36-10-3-10 shall establish rules governing the operation, maintenance, and use of Friedman Park ("Park"), including the use of the Park facilities by the public, which rules shall be in compliance with these Conditions.
4. The Exhibits attached hereto are incorporated as a compilation of images designed to capture the intended quality and appearance of structures that may be constructed in the Park. Although the Exhibits do not necessarily reflect the final design they do hereby establish the intended quality and appearance of structures to be constructed at the Park.
5. The Park shall be opened to the public from dawn to dark except when facilities or areas of the Park are rented pursuant to written agreement between the Warrick County Department of Parks and Recreation ("Department") and the User in which instance the User may occupy and use such facility or area no later than 10:30 p.m. unless the Board grants a limited exception approved at a public meeting of the

Board. A written agreement between the Department and User of facilities shall include conditions set forth herein regarding the use of Park's lake, hours, noise mitigation and trash.

6. The location of an amphitheater/gathering space shall be oriented southward so that any stage is directed away from the Park's lake that abuts surrounding residential developments to the north. Further, in the area between the back of the amphitheater/gathering space and the Park's lake there shall be two (2) rows of evergreen trees with each row being at least fifty (50) feet in length and centered with the amphitheater/gathering space stage. Such evergreen trees shall be at least fifteen (15) feet in height at the time of planting and shall be installed with the development of an amphitheater/gathering space and completed prior to such amphitheater/gathering space opening to the public. Any evergreen tree described herein that dies shall be removed and replaced by the Department within a reasonable time. Finally, an earthen mound at least fifty (50) feet in length centered with the amphitheater/gathering space stage and varying in heights between three (3) feet and five (5) feet shall be constructed and completed prior to the opening of the amphitheater/gathering space to the public.
7. No boating, swimming, or fishing shall be permitted on the lake in the Park, except fishing shall be permitted only from the shoreline on the south side of the lake in the Park. The Department shall install appropriate signage to inform the public and users of the Park.
8. Any lighting installed in the Park shall be shielded so as to direct lighting downward.
9. The Board shall maintain the Park such that trash, garbage, or other debris are kept in sanitary containers, dumpsters, or other equipment for storage and disposal of such material and shall be kept in a clean and sanitary condition so as to avoid unsightly appearance.
10. No User of the Park or its facilities shall be permitted to cause the emission of unreasonable noise which is of a volume, frequency, or pattern that prohibits, disrupts, injures, or endangers the health, safety, welfare, prosperity, comfort, or repose of reasonable persons of ordinary sensibility in the Park or at the Park boundaries.
11. The dock that was installed by the Department in the lake in the Park shall be removed as soon as weather conditions permit. No dock shall be installed in such lake in the future.

12. The Board shall place landscaping behind the Friedman Park Event Center and the gazebo in an effort to partially block the view of such structures by the adjacent homes located in the Victoria Manor subdivision.
13. Events that will be held in the Friedman Park Event Center shall end no later than 1 a.m. local time. Any music being played in the Friedman Park Event Center shall end no later than midnight local time. Notwithstanding the foregoing language, if a User of the Friedman Park Event Center requests a modification of the end times for an event, the Board, at a public meeting, shall have the right and option to consider such request, and the Board may grant such User an exception to the end times.

Attorney Doll stated there is a clerical correction.

Mrs. Rector said it should state in number ten Victoria Manor subdivision and not Victoria Lakes subdivision.

The motion was seconded by Mike Winge. The motion passed with five for with one abstention by Jeff Willis.

Mrs. Rector stated they would have the approval ready by Wednesday.

ATTORNEY BUSINESS

None

EXECUTIVE BUSINESS

None

Mike Winge made a motion to adjourn the meeting. The motion was seconded by Jeff Willis and unanimously carried. The meeting adjourned at 7:14 pm.

Jeff Valiant

ATTEST:

The undersigned Secretary of the Warrick County Board of Zoning Appeals does hereby certify the above and foregoing is a full and complete record of the Minutes of the said Board at their monthly meeting held March 25, 2019.

Sherri Rector, Executive Director