

December 14, 2007

The Ellettsville, Indiana, Board of Zoning Appeals met in session on Friday, December 14, 2007, at the Fire Department Training and Conference Room. David Drake called the meeting to order at 7:00 P.M., leading the Pledge of Allegiance.

Roll Call: Members present were David Drake, President; Geraldine McIntyre, Terry Baker, Phill Rogers, Ray Freetage, and Frank Nierzwicki. All members present.

APPROVAL OF MINUTES

There were no minutes to approve.

OLD BUSINESS

None

NEW BUSINESS

2007-EUV-002 Petition Eagles Landing, Jay Brinegar (Appeal of Administrative Decision)

David Drake-States that the new business is to appeal an Administrative Decision in regards to a goat at Eagles Landing. Frank asked to speak first.

Frank Nierzwicki- Director of Planning Services. I observed last fall that Mr. Brinegar had a goat next to his business at Eagles Landing. I went ahead and notified the manager at Eagles Landing, Beth Blancheck Robinson that having a goat was in violation of Town Code 152.001 Agricultural use within a Commercial zone. Since that time, Mr. Brinegar and Stacy did appeal the director's decision stating that 152.003, director has not shown that a pet goat changes the intensity of use, effect on and demand on transportation and other infrastructure and the affect on surrounding property uses and values as compared to use listed in this chapter. The director shall permit the requested use. And that is how we got to the BZA meeting.

David Drake- Before we get to the petitioner does anyone on the Commission have any questions at this moment for Frank.

No questions or comments at this time.

Jay Brinegar- I was born in this town, I went to Edgewood High School. I started a business two years ago in Ellettsville. I have an auction company at Eagles Landing. Jay cited Town Codes description of livestock under agricultural use: The use of land for: The production, keeping, pasturing, confined feeding or breeding of livestock. Then he cited Town Code defining domesticated farm animals. Domesticated farm animals, by Town Code is defined as, including but not limited to buffalo, oxen, horses, donkeys, mules, cattle, ostrich, mink, swine, sheep, turkeys and poultry and any animals bred in part from an animal listed herein. Goat is not on that list.

Frank gave me complaint forms that the complaint he received and that is what he acted on, which were two anonymous phone calls, I have copies of those that Frank provided for me, after sometime. The first complaint, no name left, upset about the goat at Eagles Landing. The first call came in at 9:30 A.M. time of response 10:00 A.M. The next one said no name left on answering machine, the nature of the complaint was, goat behind Eagles Landing, signed Frank.

So, after that I tried to reconcile what the problem actually was, if the goat causing problems or what was going on. So, I went through the neighborhood and knocked on some doors and I did find out all of the land owners and I did a due diligence to see if indeed they had complaints about my goat. I went to every house. I couldn't find one

person in my neighborhood that had a complaint about the goat, and I have signatures from adjacent land owners and or tenants of the adjacent properties. I have their signatures here.

Jay read the petition: The undersigned names of the neighborhood adjacent Eagles Landing by signing the petition I support Jay Brinegar's rights to have a pet goat located behind Eagles Landing.

He produced a petition of supporters for his goat, and offered the BZA Board the opportunity to look at the names if they liked.

So, I went to Frank Nierzwicki to see what we could do about the goat and he told me at that time that I had two options at that time. I could file for a variance or I could file for a special use variance. I researched those and came up with what I figured was the best option at that time was a petition for special use. I did in good faith, and filled and paid my \$150.00 for special exemption filing fee. I did fill out the paperwork. Frank later said that I couldn't do that and that I needed to file a different kind of petition, I needed to file an appeal of Administrative Action. I did that. He told me to do one thing and I did it then he said well that's not the way it goes. So, that's why we are here. Because the special use goes to the Plan Commission and he didn't want it to go to the Commission so, it came to the BZA, which is fine. So, that is why I'm here.

I did meet with Frank and we talked about notifying the land owners by certified mail and he told me in that meeting that I did not have to do that, because the ordinances do not support that. Then he said I had to file notice of this meeting in the JOURNAL, and I did that, here is the journal, here is the receipt. Now the point in question.

He says I'm using a commercial zone for agricultural use. The animal in question is a Nubian Pigmy Goat, cross, it is big as it is going to be and it doesn't have horns. It isn't a good milk or meat producer because of its size. It is a short haired, genetically engineered animal, engineered specifically to be a pet. This goat isn't bred for agricultural use. It was sold to be a pet and that is why I bought it.

I went to the Town Council meeting and the Plan Commission meetings. Diane Bastin was a board member that gave me some direct response. She said she couldn't find anywhere that a goat is a pet. He stated many references from the Internet about people that had goats as pets. He stated that pets improve health and for therapeutic purposes, pets according to the pet society, goats are highly recommended on the list from the Delta Society. He discussed a study from Seattle, Washington, giving them pet status, licensing them like a dog or cat and having them de-horned, his goat is a female, and one of the main things they did in Seattle, discussing goats as a pet and the reduction of fossil fuel emissions will be reduced by allowing the goats to mow the lawn. Barnes VS the City of Anderson, Anderson has an ordinance like Ellettsville about farm animals, they said they couldn't have a pot belly pig, the BZA upheld a ruling not to have a pot belly pig. He discussed a Pot Belly Pig named Sassy and how Barnes went to the state to appeal, he read from that document.

David Drake- Normally we only give people 10 minutes for their initial presentation, we don't have a whole bunch of people here tonight so, we can give you a little more time, how much more do you have, you've about reached your 10 minutes.

Jay Brinegar- Actually I was going to discuss the ordinance itself. I'm not producing anything agriculturally. He read the Code about agricultural use. I don't think that having one pet goat changes land values, changes traffic, changes anything. Jay thanked us for our time.

David Drake- I have a couple of questions. I expected to see the goat in a fenced in enclosure when I went by there, I noticed that the goat is chained up.

Jay responded that the goat is on a tether, an airplane cable. The owner, Kenton Robinson, said I could put it loose in the fenced in area, but since it was close to the road and that people could see that goat and I thought maybe it would be part of the

transportation issues. The way I have it now, is that no one car really see the goat unless they come into Eagles Landing or my auction house. We thought about making a fence for it, but that hill is such that I don't think the goat would keep inside the fence, because it is on a hill and it could jump. I think if we were to build an enclosure it wouldn't be as aesthetically appealing so that is why we keep it on a tether. The goat has never been loose or wanted to get off the tether.

David Drake- Will it be ok there all winter long? Jay responded-I have him a structure built, the size of a large dog house, she has straw, and a roof. She has her winter coat coming on; she is grain feed and receives supplements. She goes into the shelter when it rains.

I noticed she is making a bit of noise, Jay said she is nervous because she is in the back of the truck. She makes a little bit of noise, but I've asked the neighbors if the goat bothers them, the ones closest to the goat didn't even know she was there.

Does the petition represent all of the adjacent land owners? Were there any that did not want to sign? Jay responded- One person did not want to sign, he actually owns two properties. He said he didn't have a problem with the goat, he came over and petted the goat, and liked the goat, but, he thought for political reasons that he wasn't going to sign the petition, and his house is on Paul Street. He is further away, he didn't complain. A person that lives behind the goat actually laughed at the whole thing he said he has a bread route and that he takes bread off his truck and feeds about six goats on his route. He said he did not complain, and would not complain, and pretty much told me that your business is your business and my business is my business you leave me alone and I'll leave you alone.

Of Course you understand that when you go and ask your neighbors they don't want to make you mad or whatever, and they may very well say, yeah I don't have a problem, generally they won't go to the problem of signing a petition.

Geraldine McIntyre- Are you planning on having another goat there to go with this goat? Jay responded- I have a Black Lab, this is a herding animal that it gets along with the Black Lab and that is his herd. I don't plan on breeding goats.

David Drake- How did you end up with this one?

Jay responded- We discussed and investigated and looked at the Town policy and goat is not on that list. It is an intelligent animal, we discussed getting a horse and a lama and we thought that looking at the ordinances that a goat would be a fine choice. I find out later that it wasn't a fine choice. I still say it isn't a farm animal.

David Drake- In my opinion the ordinance was written to include animals like that, because it says including but not limited to. The real question for us, as Town officials are supposed to enforce the laws fairly and uniformly for everybody, it is up to us to decide whether there are reasons here for us to vary from those regulations. So, the question we have before us tonight is whether in your exact, particular circumstance it's reasonable to make an exception. The way I read that statute is if I reading that I would have said if I'm going to get a goat I had better check with the Town, because it sure looks like they intend to mean anything that is to be considered livestock. We can't have anyone show up with a Hippopotamus as a pet.

Jay responded- a Hippopotamus is an exotic animal.

Jay Brinegar- then discussed domesticated animals and the history of dogs, and how they were domesticated to herd sheep, as domesticated farm animals. You have to include dogs as a domesticated farm animal. Goats are a pretty familiar animal; I just think that your list includes exotic animals and the people that drafted the code why they include these and leave off one that is so familiar. Jay brought up the Anderson case and that the Anderson case does discuss at length what those people were thinking.

David Drake said that it, Anderson, wasn't really relevant to us. I believe it was the intent of those that drafted the ordinance when they said including, but not limited to.

Jay Brinegar- Are rabbits not allowed in the city?

David Drake-Well, I don't know if they fall under the definition of livestock or not.

Ray Freetage- We have a lot of squirrels in our back yard.

David Drake- What concerns me, is that it seems that you have spent an awful amount of time researching this before you decided to get a goat, but you never spoke with anyone in the Town to get the clarification or an opinion before you got the goat.

Jay Brinegar- I wanted to start an auction house in the home I grew up in, and I talked with Frank, and he said well you need to do this, this and this. And I would spend my money and do everything he said and he said Frank would say, well, you need to do this, this and this, so I did that twice. And he was unresponsive to phone calls, and he'll tell you one thing and think about it and tell you to do another thing, and this isn't just me, this is a complaint of other citizens of the town. I feel Frank is unresponsive to me, and he has shown that. I felt he was out to get me.

He discussed the two options that Frank had initially given him. And I researched it and he said I needed to do the appeal. Like I said, this is not the first time that Frank has changed his other mind to fit whatever is going on. I didn't really think I had to by reading that and it is open to interpretation, and that is why we are here today. Like I said the goat was here for 8 months. I think it had a lot to do with political reasons. We had our own festival during the fall festival. When you think about what the fall festival is about, it is to promote Ellettsville businesses. We had a building inspection three days after we announced that we would be doing things at our business during the festival.

David Drake- I'm not saying that I'm opposed to you having a goat, I'm just saying the issue is not whether the goat is covered under this or not, the issue is whether the BZA is going to grant you a variance to allow you to have the goat. That's all I'm saying.

Jay Brinegar- I don't think we are really here seeking a variance, are we?

Frank Nierzwicki- The request, as I see it is we are here about the interpretation of the codes and how they read. Jay did a pretty good job on his explaining his thoughts on his interpretation of the ruling.

David Drake- If we are being asked to just decide whether a goat, asked to consider an appeal to your ruling that a goat is covered under this then that is a completely different question on whether we are going to allow the goat stay.

Frank Nierzwicki- That is correct. And my interpretation on the variance, is the land owner, which Jay isn't the land owner, the land owner would have to get the variance.

Jay Brinegar- I did explain to you that he would do that. But you told me that that was not an option.

Geraldine McIntyre- I'm a farm girl from Greene County, and a goat is a goat and it is an agriculture animal, and it does not belong in town, and that is my opinion. I don't know how the other board members feel.

David Drake- I wouldn't want to see everybody to have a goat in their back yard, I think the one thing that makes a difference in this case, is the fact that it is in a C3 commercial zone away from the road and the houses and nobody can see it. These are things that I would consider if we were discussing a variance to allow one goat for one particular piece of property for one particular reason. That is a completely different view point that I would have if all we are considering is whether a goat is intended to be covered under this code. If that is all we are determining then, it is my opinion that when they wrote that they intended for it to cover goats.

Terry Baker- I was on the Planning and Zoning board when this code was drafted, and the intentions, at that time, included any type of a farm animal, regardless of what it was, would be excluded and not allowed.

Jay Brinegar-discussed genetic engineering, and farm animals and agriculture use, and he questioned how am I promoting agriculture by a having one, single, solitary goat?

David Drake- A few months ago, we denied a woman that had a miniature pony from keeping the pony, and the pony was her pet, and it had no agricultural use.

Jay Brinegar- but as I understand it, the surrounding owners had a problem with it. She didn't keep the pet clean and the different issues.

David Drake- If this were a request for a variance, that I would possibly have a completely different view point if this goat was ok in this particular location, but if we are talking about a definition then

Jay Brinegar- approached the board; this is what I did to file a variance.

David Drake- We all have a copy of this, discussed the property owner filing the variance.

Frank Nierzwicki- A special use variance would be for the time that the use would be in effect was in old code, when the new code was updated, that was not in that new code.

David Drake- So, we no longer have a special use variance.

Frank Nierzwicki- No.

Jay Brinegar- 152.023 user permitted by special exceptions, in the document it uses special use and exceptions interchangeably, this is the new code.

David Drake- But a special use goes to the Plan Commission.

Frank Nierzwicki- It is very precise, in my interpretation, for the things that they would allow.

Geraldine McIntyre- I have another problem, if we allow this, who is to say that other people might go out and have pet goats, and we would have a town full of them.

Jay Brinegar- Maybe that is not such a bad thing. Discussed Seattle again, licensing and neutering, it becomes a pet, and that is what I am asking for you guys to look at. Draft legislation and add to it, I noticed the only two things that are involved with this town ordinance is two separate inclusions on pets, one is for fowl running at large, and says that the Town Marshall has to enforce this and you have to buy them back, or they will be sold at town auction, and that is still on the books, and the other is for swine.

Frank Nierzwicki- Some of those go back to the 1940's or earlier.

David Drake- Animal ordinances were taken care of by the county animal control.

Jay Brinegar- And we pay a lot of money to the people that do the animal control said they would not remove the goat.

David Drake- Unless the goat was being mistreated or was in violation of one of their

Jay Brinegar- They said when they read the ordinance, there is room for interpretation, and that is what Anderson says, it all comes down to money, I would assume.

David Drake- Does anyone else have any questions or comments?

Ray Freetag- I didn't know the goat was there.

Jay Brinegar- Where do you live Ray?

Ray Freetag- On Ritter Street, right behind

Jay Brinegar- Less than 100 yards from the goat. Didn't even know it was there did you?

Ray Freetag- No.

Jay Brinegar- It doesn't make a lot of noise, and it isn't intrusive to anybody.

David Drake- That is not the issue. We are discussing the intent of code. If we were discussing if the goat is all right, that would be an entirely different question. If we say that goats aren't covered under this, then we have made a blanket statement that all goats are ok, everywhere.

Jay Brinegar- Again, that is why I asked for a single goat, I asked for a genetically engineered pygmy goat, female, discussed Seattle again. The world changes all of the time, and that is what America was based upon, was dealing with changes, what was written 20 years ago, and genetically engineered and green America, is acceptable to house and keep, as the world goes on the laws have to accommodate. To make the world a better place.

David Drake- The only other option would be to clarify our interpretation of the ordinance to mean that it is, strictly, that it doesn't apply to goats that meet those specifications. Procedurally, Frank, do we have the authority to do that, we can't change an ordinance.

Frank Nierzwicki-You are a court, to hear an appeal on this issue, if code wants to be changed that could be brought up to the Plan Commission.

Jay Brinegar-I did do that Frank, and this is what you told me to do.

David Drake-Anytime you want to change laws, it takes a while, to track thru the necessary steps, or to make a major change. Ultimately, it is up to the Town Council.

Frank Nierzwicki- We can come back in February to discuss a variance with the property owner.

Geraldine McIntyre- I don't know why we have to specify each and every animal, when it says an agriculture. I feel that way, and I'm sorry if he doesn't realize I feel this way, I lived on a farm and I had goats, pigs and cows.

Frank Nierzwicki-You have a request in front of you that you could react on.

David Drake- We need a motion to uphold the administrative decision or to overturn the administrative decision.

Terry Baker- I make a motion that we stand behind Frank and up hold his administrative decision.

Phil Smith- Seconded the motion to uphold Frank's administrative decision.

David Drake- We have a motion to uphold the administrative decision that goats are considered livestock for the purposes for the definition in Town Code 152.001. Roll Call, voting yes, means you are upholding the administrative decision, voting no, means you are overturning the decision.

Roll Call:

Terry Baker, yes, Ray Freetage, no, Geraldine McIntyre, yes, Phill Rogers, yes, David Drake, yes.

David Drake: the vote is 4 to 1 upholding the administrative decision, your option at this point is to file a variance, requesting that your goat be granted an exception from that regulation to be located where it is.

Jay Brinegar- I'm sorry for wasting all of your time, because this is what I wanted to do right from the beginning and Frank has changed that for me, there wasn't a misunderstanding.

Adjournment

David Drake- I entertain a motion to adjourn. Terry Baker made a motion to adjourn, seconded by Phill Rogers. All in favor, motion carried. Meeting adjourned 8:25 P.M.

David Drake, President

Geraldine McIntyre

Terry Baker

Phill Rogers

Ray Freetage