

ROLL CALL

Rose Ann Barrick  
Jerry Petzel, President  
Harry Baumgartner, Jr.  
James Schwarzkopf  
Keith Masterson

Michael Lautzenheiser, Jr., Secretary

President, Jerry Petzel called the October 16, 2012 meeting for the Board of Zoning Appeals to order at 7:00 p.m. Five members answered roll call.

The minutes from the September 25, 2012 meeting were not available at this time.

**OLD ITEMS:**

- B12-06-16** UNION TWP., NE/4 09-28N-11E AWS Foundation Inc is appealing the administrative decision for violation V2012-017 for an A-1 Zoning District violation of a group home. The property is located at 3224 W 1100 N, Markle, IN 46770. The property is zoned A-1.
  
- B12-06-17** UNION TWP., SW/4 17-28N-11E AWS Foundation Inc is appealing the administrative decision for violation V2012-017 for an A-1 Zoning District violation of a group home. The property is located at 4759 W 900 N, Markle, IN 46770. The property is zoned A-1.
  
- B12-06-18** JEFFERSON TWP., NE/4 06-28N-13E AWS Foundation Inc is appealing the administrative decision for violation V2012-017 for an A-1 Zoning District violation of a group home. The property is located at 6556 E 1200 N, Ossian, IN 46777. The property is zoned A-1.

Tim Pape, attorney with Carson Boxberger of Fort Wayne, stated that they provide legal representation for AWS and AWS Holdings. He commented that the re-hearing was due to information being brought up about Indiana law. He provided the board with a copy of an affidavit of William (Bill) Swiss, the president of AWS. Mr. Pape stated the specific Indiana Codes that caused the re-hearing are IC 12-28-4-8 and IC12-11-1.1-1. He then advised the board that the state laws control what local governing bodies can and cannot do. He stated that zoning ordinances and building codes cannot have language in them that would hinder the residential location of developmentally disabled individuals. He went on to read IC 12-28-4-8. Then to determine if AWS is compliant with this Indiana Code, one must look at IC 12-11-1.1-1(e)(1), which Mr. Pape then read. The state laws say that these services must simulate as normal of a day to day life for the individual rather than them being institutionalized. If the services are met under state law, then a local ordinance cannot prohibit residences for group living programs.

William (Bill) Swiss, the president of AWS, explained that two of the homes are supervised group living programs and are licensed by the state as such. They are regularly reviewed and monitored by various state government entities. Two of the homes, on 1100 N and 1200 N, do service four individuals each and they are funded by Medicaid.

Andy Antrim, Wells County Area Plan Commission attorney, advised that he notified the office of the Indiana Codes and how the ordinance did not reflect these state statutes. He also notified the AWS attorneys of this and he felt that it was necessary to rehear the appeals.

Tim Pape stated that the property at 900 N only has one individual living there and is not a group home under the statute. With only one individual living at the house, it clearly qualifies as a single family dwelling under the county zoning ordinance. He explained that the violation stated that it was a group home and the fact is that there is only one person living there, with multiple workers coming and going. Therefore, there is no violation to the county zoning ordinance.

Mr. Antrim added that there were certificate of existence of the corporations that were sent to him earlier. However, the information was sent to an incorrect post office box. He finally received the information a day after the first hearing. He advised that the certificates were provided with the affidavit and the board could see that they are legal entities as part of the supervised home definition.

Mr. Pape stated that the certificates were Exhibits A and B. AWS Foundation owns the properties and A. W. Holdings operates the program for the individuals with development disabilities.

William (Bill) Swiss explained that the individuals are placed by the state and that they have staff with them 24 hours a day, 365 days a year. The staff is hired, trained and paid to take care of these individuals. He explained that there are contracts with the state and that the State Board of Health surveys the organization. They maintain daily logs that are reviewed and regular reporting is done to the state. The organization is subject to regularly scheduled and surprise inspections by various state authorities.

David McBride, 11117 N 300 W, explained a situation on September 12, 2012 when one of the residents was walking down the middle of 300 W. He stated that the supervisors were trying to get him into the van. He said that he was uncomfortable with the situation; therefore he went to the house on 1100 N later that day. He explained that there were at least four people in the residence when he got there. One of the employees answered the door and Mr. McBride asked to speak with a supervisor. He was told that there wasn't a supervisor there. He doesn't believe that there is proper supervision. He also addressed his concerns with the fact that the residents could be criminals.

Greg McBride, 9200 N Meridian Rd, questioned the two group homes with four to eight people and the state statute of resembling normal activity of the neighborhood. He also questioned if the goal is not met is the statute met? He commented on outrageous behavior at the homes.

Mr. Pape advised that the state statute says that the goal of the programs is to simulate a normal life. He explained that the statute is about use and not about behavior issues.

Greg McBride commented on the fact that for regular residences there are no statutes to live up to for community standard. If normal activity is not taking place at the group homes, then they would be in violation of the state statute. He said that there are ample witnesses that state there is irregular activity taking place at the homes. Therefore, it is not normal. Mr. McBride questioned the house on 900 N, and if there is ample evidence that there is more than one person is living there would that violate state statute? He explained that the individuals that have been observed at 900N are not developmentally disabled.

Mr. Pape advised the board that there is only one developmentally disabled individual living at 900N with three supervisors that work there 24 hours a day, 7 days a week.

William (Bill) Swiss restated that there was only one individual residing at the 900 N house and that there were three staff members with him for 24 hours a day and 7 days a week. He explained that the other homes have four individuals living in them.

Tim Pape explained that there is staff at the houses 24 hours a day, 7 days a week. However, there might not be someone there with the title of supervisor. There is always paid trained staff there to care for the individuals with developmental disabilities.

Linda Ratcliffe, 11130 N 300 W, explained that over two months, on four different occasions people from the homes have been out walking the roads at least  $\frac{3}{4}$  of a mile away from the residence. She expressed concerns for the safety of her daughter and grandchildren with the locations of the facilities and the fact that there is not 24/7 police protection. She also addressed the issue of the behavior of the individuals that can be seen and heard. Ms. Ratcliffe informed the board that she had heard that the individual living at 900N was not disabled, but a person from prison that is trying to be rehabilitated. There were also rumors that he's a sexual predator and if he is, then he should be listed.

Mr. Swiss stated that the person at 900N does not have a criminal history and he does have an intellectual disability. He explained that when the individual would have been in school, he would have been placed in special ed. Were he required by the state to be registered, then he would be registered.

Mr. Pape restated that the individual at 900N has no criminal history and if he or any of the residents needed to be registered, then they would be. He stated that his client should not have answered about that specific individual due to privacy. However, what Mr. Swiss was trying to do was ease fears and provide comfort to those in the community. He explained that the organization gets information from the state on the individuals that they are taking care of.

Greg McBride questioned the background checks done on the residents and the uncertainty that was caused by the previous meeting. He also stated that with tax dollars paying for these facilities that there should be some type of checking done.

Brenda Bailey, 5017 W 900 N, commented on the fact that this is a small town area where people know their neighbors and the fact that they don't know what goes on at these houses makes them question things. She also addressed other activities at the house on 900N which makes it seem like there are more than one individual living there and that they don't have any disabilities. She questioned the supervision of the individuals. Ms. Bailey expressed her concern for her children's safety. She also questioned who the staff was and where they were hired out of.

Mr. Swiss advised that they hire qualified US citizens. He informed Ms. Bailey that he would look into one of the incidences that she addressed.

Michael Lautzenheiser, Jr. explained that if a single family dwelling is allowed in a zoning district, then the Indiana Code clearly states that a group or supervised home for individuals with developmental disabilities has to be allowed. He addressed the concern about private covenants that was brought up at the previous meeting. He stated that the Indiana Code cannot restrict the living situation of developmentally disabled individuals through private covenants no matter when the covenant was created. Mr. Lautzenheiser expressed the fact that he feels there is a lack of communication and advised that if the public feels that someone is doing something criminal in nature then the proper authorities should be called. He stated that the individuals residing in these homes have the same rights to use their property, just as any other person that has property.

Andy Antrim advised that if there is a trespassing issue, there needs to be first a warning of no trespassing and usually a law enforcement officer would do that. If there is no type of trespass warning, it's not typical for any charges to be filed against the individual for the first time.

Linda Ratcliffe explained a dangerous situation about the individual that lives on 900 N and him walking down the middle of the road. She stated that the care takers looked scared of him. She expressed her concerns that if the employees are scared of him, would he be dangerous to the community if he escaped. She advised that there was a noise issue with one of the employees when they were leaving and that she had called AWS about the situation. It has been resolved.

David McBride requested that criminal background checks be done on the residents by AWS. He again expressed his concerns with his family's safety if one of the residents escaped.

Jule Godsey, 3546 W 1100 N, stated that she believes that the residents need to be registered because they are sexual perpetrators. She said that the neighbors have a right to know that there are criminals living in the area. She advised that her information about the residents being sexual perpetrators came from an employee.

**Conditions:**

Motion to Remove the Violation: James Schwarzkopf

Second: Rose Ann Barrick

Vote: 5-0

**Discussion:**

**ADVISORY:**

Rose Ann Barrick made a motion to adjourn the meeting. Keith Masterson seconded the motion and the motion passed with a vote of 5-0. The October 16, 2012, meeting of the Board of Zoning Appeals adjourned at 7:57pm.

ATTEST: Michael W. Lautzenheiser, Jr.  
Michael Lautzenheiser, Jr., Secretary

Jerry Petzel  
Jerry Petzel, President