

Scott County Board of Adjustment

October 27, 2010

1st Floor Board Room Administrative Center

Members Present: Dittmer, Hittle, Jenkins, Scheibe, Vollbeer

Members Absent: None

Staff Present: Huey, Kelly

Others Present: 6 others

1. **Call to order.** Chairman Scheibe called the meeting to order at 4:00 p.m.
2. **Minutes** – Hittle made a motion to approve the August 25, 2010 minutes. Vollbeer seconded the motion. All Ayes (5-0)
3. **Public Hearing-Variance-** Casey's General Store, Blue Grass Township, Section 36

Scheibe read the public notice and asked for staff's review. Huey showed air photos of the property from both 2005 and 2010 pointing out the current location of the new store and the distance from the road right of way. Huey showed the proposed site plan, explaining that the existing building meets the minimum front yard setback of 25-feet and the addition would be a 16-foot front yard setback. Huey said staff received a letter, which the Board was given a copy of, from the adjoining neighbor with their problems and concerns with this request. Neither the Health Department nor the County Engineer had any comments or concerns with this request.

Scheibe asked if the applicant would like to speak. No one was present.

Scheibe asked if anyone from the public would like to speak. Mike Brendel, neighboring business owner, said his property is continually damaged from Casey's customers overflow parking. Brendel said he would like to see a traffic study done on 112th Avenue. Kevin Howell, 14020 113th Avenue, addressed the Board with his concerns of truck parking on 140th Street Place and the placement of dust control on the road.

Scheibe asked for staff's recommendation. Huey said staff recommends that the variance to allow a proposed addition to encroach nine (9) feet into a required twenty-five (25) foot setback from the road easement be denied based on lack of hardship and the approval would appear to be merely for the convenience of the applicant.

Board discussion took place. Dittmer made a motion to deny the variance request due to the lack of hardship. Vollbeer seconded the motion.

Vote: All Ayes (5-0)

DRAFT

4. Public Hearing-Appeal of Interpretation – Quentin Benthin, Section 18, Butler Township

Scheibe read the public notice and asked for staff's review. Huey explained the criteria for an agricultural exemption is a three part test, those being, the land and buildings must be primarily adapted for farming; the buildings must be located on a farm; and the land and buildings must be used by an individual or family that meets the definition of farmer. Under Scott County Zoning regulations said Huey a farmer is defined as a person or persons actively engaged in farming and deriving taxable income from such activity amounting to at least 50% or greater of the median household income for Scott County as established from the current decennial census, which for Scott County is \$42,401. 50% would be \$21,350. The income information submitted by the applicant said Huey clearly does not meet the income criteria. The applicants land is also assessed as residential by the Scott County Assessor's office and also does not meet the minimum acreage requirement of 40 acres. The appeal process said Huey was established to allow applicants that substantially met most of the requirements for an agricultural exemption, but not the minimum acreage requirement, for example they may own 35 acres not the 40 acres required. Huey said neither the Health Department nor the County Engineer had any comments on this request and staff received one call from a Riverstone representative with some questions regarding this request.

Scheibe asked if the applicant would like to speak. Quentin Benthin addressed the Board and presented a court case in which the county's definition of a farmer was challenged. Benthin said he has lived in this property since he was 2 years old and some type of ag operation has always taken place on the property. Benthin said he replaced the porch as it was caving in and says he called the Planning office and asked if he needed a permit to replace 3 squares of roofing and was told no. Benthin said he is a young farmer starting out and said he cannot afford to obtain permits and build a green house to code, which is what his plans for the future are, to be able to grow more vegetables and expand his business. Scheibe asked if anyone from the public would like to speak. Dean Marten addressed the Board, reading a portion of the court case and asking if staff is held to the same standard as the residents of the county. Scheibe said we are here to address the current request. Marten said Benthin should be given the agricultural exemption regardless of the amount of land he owns or how much money he makes from his operation. Ed Noll addressed the Board and said he is a farmer and in 1987 and 1988 he had a monetary loss with his operation and money made should not count toward an exemption.

Board discussion took place. Questions were asked about why the exemption was needed. Benthin replied that to build a green house to county code would be too costly. Discussion took place on the definition of farming, both past and present and that agricultural uses are allowed in all county zoning districts.

Scheibe closed the public portion of the hearing. Board discussion took place. Scheibe made a motion to uphold the Zoning Administrator's determination that Benthin does not meet the farm income criteria and the land the house is located on is not assessed as agricultural and therefore cannot be considered to be primarily adapted for agricultural purposes. Jenkins seconded the motion.

Vote: 4 Ayes 1 Nay (Dittmer)

With no new business to come before the Board the meeting was adjourned at 5:25 P.M.