

STATE OF INDIANA)
)SS:
COUNTY OF STEUBEN)

IN THE STEUBEN CIRCUIT COURT

CAUSE NO. 76C01-2112-PL-553

MARGARET ROCKWOOD)
 Plaintiff,)
)
vs.)
)
CROWN POINT HOLDINGS, LLC,)
PATRICK CASEY, HELEN CASEY)
and THE STEUBEN COUNTY)
BOARD OF ZONING APPEALS,)
 Defendants.)

ORDER

Plaintiff appeared by counsel, Jason M. Kuchmay. Defendant Crown Point Holdings, LLC appeared by counsel, Brian C. Heck. BZA appeared by Donald J. Stuckey. Hearing held and concluded on February 24, 2022. Recordation of hearing waived. Parties by counsel file Briefs as scheduled. The Court at this time being duly advised in the premises, now FINDS AND ORDERS AS FOLLOWS:

A. FINDINGS OF FACT

1. On August 23, 2021, Crown Point Holdings, LLC (“Crown Point”) filed its Application for Special Exception with the Steuben County Board of Zoning Appeals (“BZA”).
2. Crown Point sought approval from the BZA to develop a ten (10) unit condominium project on Crooked Lake, Steuben County, Indiana.
3. When the project was completed there would exist five (5) first story residential units, and above these residential units there would exist five (5) second story residential units.

4. The real estate upon which the special exception was being sought by Crown Point had previously been used for the operation of a marina business.
5. Public Hearings were conducted on the Application for Special Exception on October 12, 2021, and on November 8, 2021.
6. On November 8, 2021, the BZA voted four-one to approve Crown Point's Application for Special Exception.
7. On December 7, 2021, Margaret Rockwood ("Rockwood") filed a Petition For Judicial Review.
8. Section 17.05 of the Steuben County Zoning Ordinance provides as follows:

"The Board may grant a special exception use approval for any use listed as "special exception" in the applicable zoning district of this Ordinance if, after a public hearing, it makes findings of fact in writing that each of the following is true:

 - (a) **General Welfare:** The proposal will not be injurious to the public health, safety, and general welfare of the community. The development will be served adequately by essential public facilities and services such as: highways, streets, police and fire protection, drainage structures, water and sewage facilities, refuse disposal and schools.
 - (b) **Development Requirements:** The development of the property will be consistent with the intent of the development requirements established by this Ordinance for similar uses. The development will be designed, constructed, operated and maintained to be compatible with, and not significantly alter, the existing or intended character of the general vicinity.
 - (c) **Ordinance Intent:** Granting the special exception use will not be contrary to the general purposes served by this Ordinance, and will not permanently injure other property or uses in the same zoning district and vicinity.
 - (d) **Comprehensive Plan:** The proposed use will be consistent with the character of the zoning district in which it is located and the recommendations of the Comprehensive Plan."
9. Section 17.06 of the Steuben County Zoning Ordinance provides as follows:

"When considering a special exception use request the Board of Zoning Appeals may examine the following items as they relate to the proposed use:

 - (a) The Special Exception will not endanger the public health, safety, and welfare.

- (b) The Special Exception will not be injurious to the use and enjoyment of other property in the vicinity nor diminish and impair property values within the neighborhood.
- (c) The Special Exception will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the districts.
- (d) Adequate utilities, access roads, drainage and other necessary facilities have been or are being provided.
- (e) Ingress and egress points are so designated as to minimize traffic congestion in the public streets.
- (f) The Special Exception Use is authorized as a use in that district.
- (g) The requirements for Special Exception prescribed by this Ordinance will be met.

10. Additional facts will be set forth hereinafter as deemed necessary by the Court.

B. CONCLUSIONS OF LAW

1. Once an Application for Special Exception has satisfied all necessary statutory criteria set forth in the zoning ordinance granting the application is mandatory. See, Ash v. Rush County Bd. of Zoning Appeals, 464 N.E. 2d 347, 350 (Ind.Ct.App.1984).
2. The Court concludes that the evidence of record supports the finding of the BZA that granting Crown Point's requested Special Exception will not be injurious to the public health, safety and general welfare of the community.
3. With the marina no longer in operation, motor vehicle and boat traffic will decline. Further, the danger of gas and oil spills into Crooked Lake will be reduced.
4. The Court concludes that the evidence of record supports the finding of the BZA that granting Crown Point's requested Special Exception will not significantly alter the existing or intended character of the general vicinity.
5. It is true that there are no condominiums presently located on Crooked Lake.

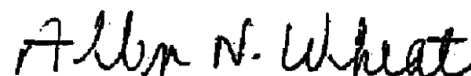
There do, however, exist two (2) story single family residences. The proposed condominium project is two (2) stories in height.

6. The existing single family residences on Crooked Lake vary greatly in structural design and square footage.
7. The existing residences on Crooked Lake serve one (1) primary purpose.
8. That purpose is to provide a full-time or part-time home for an individual or family unit to reside within and to enjoy the lake.
9. Crown Point's proposed residential condominium project is designed to serve exactly that same purpose.
10. The Court concludes that the evidence of record supports the finding of the BZA that granting Crown Point's requested Special Exception will not be contrary to the general purposes served by the zoning ordinance, and will not permanently injure other property in the vicinity.
11. The Court concludes that the evidence of record supports the finding of the BZA that granting Crown Point's requested Special Exception will be consistent with the character of the zoning district and recommendations of the Comprehensive Plan.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. The decision of the BZA to grant Crown Point's Application For Special Exception is affirmed.

Dated this 4th day of May, 2022.



Allen N. Wheat, Judge
Steuben Circuit Court

Distribution to:

RJO

Kuckmay

Hess

Stuckey