

Shelby County Plan Commission

May 28, 2019 at 7:00 PM

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MEETING AGENDA

Shelby County Plan Commission
May 28, 2019, 7:00 P.M.

CALL TO ORDER

ROLL CALL

APPROVAL OF MINUTES

Minutes from the April 23, 2019 meeting.

OLD BUSINESS

None.

NEW BUSINESS

RZ 19-07 – HILL FARM REZONING: Rezoning from the A1 (Conservation Agricultural) District to the A2 (Agricultural) District to allow for a Simple Subdivision. The property is located in Moral Township at approximately 5550 W 900 N, Fountaintown.

SD 19-07 – HILL FARM SIMPLE SUBDIVISION: Primary Plat of a 2-lot Simple Subdivision and a waiver request to allow for simple subdivision of property in the A2 (Agricultural) District. The property is located in Moral Township at approximately 5550 W 900 N, Fountaintown.

DISCUSSION

Rules of Procedure

ADJOURNMENT

The next regular meeting of the Shelby County Plan Commission is scheduled for Tuesday, June 25, 2019 at 7:00 PM.

Staff Report

CASE NUMBER: RZ 19-07
CASE NAME: HILL FARM REZONING – AI (CONSERVATION AGRICULTURAL) TO AI (AGRICULTURAL).

CASE SUMMARY

REQUEST: Rezoning of 17.080 acres from the AI (Conservation Agricultural) District to the A2 (Agricultural District) to allow for a 2-lot Simple Subdivision.

STAFF RECOMMENDATION: Approval, due primarily to the following circumstances:

- The request is consistent with the future land use of Agricultural Residential identified in the Comprehensive Plan.
- The proposed subdivision would complement existing rural residential development in the surrounding area.
- Due to the large size of the lots, the future owners would likely continue to use a portion of the property for crop production rather than convert the entire lot into lawn.

PROPERTY DESCRIPTION

Location: Van Buren Township at approximately 5600 W 900 N, Fountaintown.

Property Size: 17.08 acres.

Property Improvements: Cropland.

Surrounding Development: Cropland and single-family residences on building sites between one and five acres.

Current Zoning District: AI (Conservation Agricultural) – Per the UDO, the district is established for the protection of agricultural areas and buildings associated with agricultural production.

Proposed Zoning District: A2 (Agricultural) – Per the UDO, the district is established for general agricultural areas and buildings associated with agricultural production.

- The district should be applied to existing agricultural land.
- The Plan Commission should use this zoning district for existing agricultural land and to protect the land and operations from residential, commercial, and industrial encroachment through the use of appropriate buffers and setbacks.

Comprehensive Plan Future Land Use: Agricultural Residential

- Agricultural residential areas are intended to include only single-family homes. Accessory structures may also occur in these areas.
- Agricultural residential areas can include both large lot developments and conservation subdivisions.
- Residences, especially non-farm residences, should be adequately buffered from any agricultural uses to ensure the comfort of the residents and continued viability of the farm operations.
- New non-farm residences should be directed to rural town centers and cities.

- Generally, these areas are served by individual wells and septic systems except in the case of agricultural residential located adjacent to some rural town centers where the extension of utilities is more feasible.
- Agricultural residential developments should be designed to be compatible with their natural and agricultural surroundings.

CASE DESCRIPTION

- Approval of the rezoning request and subsequent simple subdivision would allow for the development of two single-family residential lots (10.08 acres & 7 acres).
- The property abuts the Amos Legal Drain Open Ditch. The County Surveyor would regulate any development within 75-feet of the top-of-bank of the ditch.
- Per the UDO, only property with the A3 (Intense Agricultural), A4 (Commercial Agricultural), or RE (Residential Estate) Districts would qualify for a Simple Subdivision. However, the petitioner plans to request a waiver to allow for a Simple Subdivision in the A2 District. The petitioner's surveyor stated that the petitioner would like to continue using the property for purposes not permitted in the RE District, such as agricultural crop production. The A2 District does allow for new single-family residences.
- The USDA Soil Survey identifies the entire property as Prime Farmland if Drained.

STAFF ANALYSIS & RECOMMENDATION

In accordance with IC 36-7-4-603 and the UDO, when considering a rezoning, the Plan Commission shall pay reasonable regard to:

1. The Comprehensive Plan
 2. Current Conditions and the Character of Current Structures and Uses in Each District
 3. The Most Desirable Use for Which the Land in Each District Is Adapted
 4. The Conservation of Property Values throughout the Jurisdiction
 5. Responsible Development and Growth
1. The Comprehensive Plan
 - The proposed rezoning is consistent with the provisions of the Agricultural Residential future land use because:
 - i. Approval would allow for development of single-family residences and accessory structures.
 - ii. Approval would allow for a large-lot rural residential development.
 - iii. The size of the proposed lots allows for large setbacks from adjoining agricultural uses.
 - iv. The property is in close proximity to the Pleasant View rural town center.
 - v. The proposed lots can accommodate wells and septic systems.
 - vi. The proposed development is consistent with the existing development of the surrounding area.
 2. Current Conditions and the Character of Current Structures and Uses in Each District
 - The density of the subdivision would not exceed the existing residential density of the area.

3. The Most Desirable Use for Which the Land in Each District Is Adapted
 - Development of the property with two single-family residences would provide additional building lots in the County without negatively impacting surrounding properties.
4. The Conservation of Property Values throughout the Jurisdiction
 - Residential development of the property would have no apparent negative effect on property values.
5. Responsible Development and Growth
 - The density of the subdivision would not exceed the existing residential density of the area. Well and septic systems would adequately serve a two-lot, rural development.

Staff recommends approval.

APPLICANT/OWNER INFORMATION

Applicant: Todd Spegal (owner of TAAK, LLC)
3915 W 700 N
Fairland, IN 46126

Owner: Same

Surveyor: Powell Land Surveying
4634 N 575 E
Shelbyville, IN 46176

Staff Report

CASE NUMBER: SD 19-07
CASE NAME: HILL FARM SIMPLE SUBDIVISION – PRIMARY APPROVAL

CASE SUMMARY

PRIMARY APPROVAL OF A SIMPLE SUBDIVISION to allow for subdivision of 17.08 acres into a 7-acre tract and a 10.08 acre-tract.

WAIVERS to allow for:

1. Simple Subdivision of property in the A2 District (Simple Subdivisions only permitted in the A3 (Intense Agricultural), A4 (Commercial Agricultural), or RE (Residential Estate) Districts).
2. Side lot lines not within fifteen degrees (15°) of a right angle to the street and right-of-way (not permitted).

STAFF RECOMMENDATION: Approval of the simple subdivision and waivers.

PROPERTY DESCRIPTION

Location: Van Buren Township at approximately 5600 W 900 N, Fountaintown.

Property Size: 17.08 acres.

Property Improvements: Cropland.

Proposed Zoning District: A2 (Agricultural).

Comprehensive Plan Future Land Use: Agricultural Residential.

CASE DESCRIPTION

- The Simple Subdivision would allow for development of two single-family residences and residential accessory structures.
- The UDO requires a ‘no-disturb’ area 25% larger than the minimum lot size required by the zoning district along all abutting watercourses, drainage ways, channels, and streams. The plat includes a 30-foot no-disturb easement along the open ditch on Tract 1 to comply with this requirement.
- The petitioner previously split out Tract 1 by survey. However, the tract would remain unbuildable without approval of the simple subdivision.
- The UDO does not permit subdivision of land in the A2 District because the district is intended for agricultural land rather than new residential development. The UDO regulates the angle of lots lines to encourage orderly development.

STAFF RECOMMENDATION

Staff has reviewed the proposed plat and has determined:

1. The subdivision of land is consistent with the Shelby County Comprehensive Plan.
2. The subdivision of land satisfies the development requirements of *Article 06: Subdivision Types*.
3. The subdivision of land satisfies the standards of *Article 07: Design Standards*.
4. The subdivision of land satisfies any other applicable provisions of the Unified Development Ordinance, pending approval of a waiver.
5. The subdivision of land satisfies the construction requirements of the Shelby County's Construction Standards.

Staff Recommends **Approval** of the Simple Subdivision and waivers.

APPLICANT/OWNER INFORMATION

Applicant: Todd Spegal (owner of TAAK, LLC)
3915 W 700 N
Fairland, IN 46126

Owner: Same

Surveyor: Powell Land Surveying
4634 N 575 E
Shelbyville, IN 46176

APPLICATION FOR REZONING
FINDINGS OF FACT BY THE SHELBY COUNTY PLAN COMMISSION

Applicant: Todd Spegal & Alan F. Hill

Case #: _____

Location: North side CR 900 North ~1/3 mile East of CR 600 West, Fountaintown, IN 46176

The Shelby County Plan Commission, having heard the application for rezoning described above and all opposition from parties claiming to be adversely affected thereby, has considered the request based on the provisions of Indiana law and forwards the following findings and recommendation to the Shelby County Commissioners:

1. The request **is** consistent with the Shelby County Comprehensive Plan because: It allows the land to be rezoned to a "A2" for residential and Farming land use greater than 5 acres.

2. The request **is** consistent with the current conditions and the character of structures and uses in each zoning district because: It is an allowed use per the Shelby County Comprehensive Plan.

3. The request **is** consistent with the most desirable use for which the land in each district is adapted because: It is an allowed use per the Shelby County Comprehensive Plan.

4. The request **is** consistent with the conservation of property values throughout the jurisdiction because: It will not lower, but will increase the value of the land that is being rezoned.

5. The request **is** consistent with responsible growth and development because: It will have no effect on the existing land use.

Based on the findings described above, the Plan Commission hereby forwards a **favorable/unfavorable** (circle one) recommendation to the City Council this ____ day of _____, _____.

Shelby County Plan Commission

By: _____

President

Attest: _____

Secretary

Zoning & Area Map



| | |
|---|-------------------------------|
| <ul style="list-style-type: none"> OP Open Space and Parks A1 Conservation Agricultural A2 Agricultural A3 Intense Agricultural A4 Agricultural Commercial RE Residential Estate R1 Single-Family Residential R2 Single-Family Residential VR Village Residential M1 Multiple-Family Residential M2 Multiple-Family Residential MP Manufactured Home Park VM Village Mixed Use IS Institutional C1 Neighborhood Commercial C2 Highway Commercial I1 Low Intensity Industrial I2 High Intensity Industrial HI High Impact | <p>Printed 05/22/2019</p> |
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BY-LAWS AND RULES OF PROCEDURE
ADVISORY BOARD OF ZONING APPEALS

ARTICLE ONE
NAME AND RULES

- 101 NAME: The legal name of the Board shall be the “_____ Board of Zoning Appeals”.
- 102 RULES OF PROCEDURE: Procedures provided by statute, city ordinance, or these by-laws, shall govern the conduct of the Board meetings.

ARTICLE TWO
MEMBERSHIP, OFFICERS, AND STAFF

- 201 QUALIFICATION OF MEMBERS: No members of a board of zoning appeals may hold an elected office (as defined in IC 3-5-2-17); or any other appointed office, except as permitted by section IC 36-7-4-902, in municipal, county, or state government. Members must be a resident of the jurisdictional area of the board or the member must be a resident of the county and also an owner of real property located in whole or in part in the jurisdictional area of the board. Three citizen members appointed by the executive of the municipality or county, of whom one must be a member of the plan commission and two must not be members of the plan commission. One citizen member appointed by the fiscal body of the municipality or county, who must not be a member of the plan commission. One member appointed by the plan commission from the plan commission's membership, who must be a county agricultural agent or a citizen member of the plan commission other than the member appointed under subdivision.
- 202 TERM OF MEMBERSHIP: Each appointment is for a four-year term of membership. A member is eligible for reappointment. If the term of an appointed member of the Board expires and the appointing authority does not make an appointment to fill the vacancy, the member may continue to serve for only sixty days. If a vacancy occurs among the members of the Board, the appointing authority shall appoint a member for the unexpired term of the vacating member.
- 203 REMOVAL OF MEMBERS: The appointing authority may remove a member from the Board of Zoning Appeals for cause. The appointing authority must mail notice of the removal, along with written reasons, to the member at his/her residence address. A member who is removed may appeal within thirty days of receiving notice. A member may be removed for excessive unexcused absences of not less than three scheduled meetings within a calendar year.
- 204 ELECTION OF OFFICERS: At its first regular meeting in each year, the Board shall elect from its members a Chairman, Vice-Chairman and Secretary.
- 205 DUTIES OF THE CHAIRMAN AND VICE CHAIRMAN: The Chairman shall preside over all Board meetings, determine points of order and procedure, and sign all official documents. The Vice-Chairman shall have authority to act as Chairman of the Board during the absence or disability of the Chairman and shall automatically succeed to the office of Chairman upon the resignation or death of the Chairman.
- 206 SECRETARY OF THE BOARD: The Secretary shall read the cases and call the roll for the vote on each motion. The Secretary shall be responsible for recording accurate and complete minutes of all Board proceedings including the vote on each motion presented.

207

OFFICE OF THE ZONING ADMINISTRATOR: The Office of the Zoning Administrator shall process applications for zoning appeals. The Office of the Zoning Administrator shall be responsible for the custody and preservation of the official file for each zoning petition. This file shall include, but not be limited to, the following: the application of the petition, any correspondence by the petitioner or interested parties, all documents presented as evidence at the hearing, the proof of legal notification to adjacent property owners and the legal notification as published in the newspaper, the official minutes of the hearing, the findings of fact of each voting member, and the record of vote.

208

OFFICE OF THE EXECUTIVE DIRECTOR: The Office of the Executive Director of the Board of Zoning Appeals shall prepare a staff report for each petition to be brought before the Board and an agenda of each meeting. The staff report shall contain, but not be limited to, the facts of the case, the appropriate findings of fact questions to be considered, and any recommended conditions of approval. The agenda and staff report for each petition shall be filed with the Board and made available to the public not less than five days prior to the hearing.

ARTICLE THREE MEETINGS

301

REGULAR MEETINGS: The Board of Zoning Appeals shall meet at 5:00 p.m. on the third Monday of each month to hear and determine petitions. If the regular meeting falls on a legal holiday, the regular meeting shall be held on the following Tuesday unless the Chairman designates some other date acceptable to the Board. Whenever there is a lack of business for Board consideration, or whenever it is ascertained that a quorum will not be available, the Chairman may dispense with a regular meeting by giving written notice to any petitioner and written or oral notice to all members.

302

SPECIAL MEETINGS: Special meetings of the Board may be called by the Chairman by giving written notice to the members provided that in all cases where notice by publication or notice to interested parties is required, such notice shall be in accordance with IC 5-3-1-2 and IC 5-3-1-4.

303

PLACE OF MEETINGS: Unless provided otherwise, meetings of the Board shall be held in the City Council Chambers, Third Floor, City Building, 6th and Broadway, City, Indiana. All meetings of the Board shall be open to the public.

304

QUORUM: The presence of three members of the Board shall constitute a quorum. If a quorum of the Board is not present, re-notification must be made for the next regularly scheduled meeting if quorum was for a hearing. The appointed alternative member shall serve in order to form a quorum.

305

OFFICIAL ACTION: No action of the Board shall be official unless it is authorized at a regular or special meeting by a majority of the entire membership of the Board.

ARTICLE FOUR PROCEDURE FOR PETITION TO THE BOARD

401

APPEAL OF AN ADMINISTRATIVE DECISION: Any interested party desiring to appeal a decision of the Administration of the Board of Zoning Appeals shall do so no later than five days from the date of the determination by the Administration.

- 402 APPLICATION: Any appeal of an administrative decision, request for variance or special exception or any other petition to the Board of Zoning Appeals shall be in writing on forms supplied by the Board of Zoning Appeals. These forms shall be executed and filed in the Office of the Zoning Administrator. The application shall include, but not be limited to, the completed application form signed by the legal owner of the property or his/her agent; a legal description of the property. Property shall be the entire parcel or parcels, as shown in the plat book in the Office of the County Auditor, for which the petition is being sought. A site plan as required for an Improvement Location Permit; the application fee; any exhibits the petitioner wishes to submit in support of his/her petition; and any other pertinent information requested by the Administrator.
- 403 DOCKET: A docket shall be maintained by the Board of Zoning Appeals in which shall be noted the name and address of the petitioner, the date of each hearing or continued hearing, and the final action of the Board. The petitions shall be numbered consecutively in the order in which they are received and said numbers shall be preceded by the code prefix BZA-.
- 404 DATE OF HEARING: A petition, when filed, shall come up for hearing at the next regularly scheduled meeting of the Board of Zoning Appeals. If for good cause a case needs to be heard sooner than the next regularly scheduled meeting, the Chairman of the Board may call a special meeting providing all other rules and statutes are met.
- 405 NOTIFICATION BY PUBLICATION: In all cases where notice by publication is required, such notice shall be in accordance with Indiana Code 5-3-1. The notice of public hearing shall contain at least the following information: 1) the substance of the petition; 2) the address of the subject property; 3) the name of the petitioner; 4) the time and place set for the hearing; 5) a legal description of the property. Property shall be the entire parcel or parcels, as shown in the plat book in the Office of the County Auditor, for which the petition is being sought; 6) a statement that any interested party may voice an opinion upon said hearing date and/or file written comments concerning the petition; 7) that the meeting may be continued from time to time. Proof of proper notification by publication shall be presented to the Zoning Administrator prior the hearing of the petition. All costs of notification by publication shall be borne by the petitioner.
- 406 NOTIFICATION TO INTERESTED PARTIES: The petitioner shall cause notification of said hearing to all interested parties. Interested parties are defined as all property owners of record, as shown in the County Auditor's Office, of all land within one hundred feet of any property line of the petition site, for which the petition is being sought, including at least all adjacent property and all property across or diagonally across any road, alley, right-of-way, or easement. The petition site shall be the entire parcel or parcels, as shown in the plat book in the Office of the County Auditor, for which the petition is being sought. The Zoning Administrator may also require that additional property owners or parties, other than those above, be notified if, in his judgment, such notification is in the public interest. The Zoning Administrator shall prepare the list of interested parties. Notification to interested parties shall be a copy of the notice of public hearing as prepared by the Zoning Administrator. This notification shall be sent to the interested parties by the Certificate of Mailing and post marked at least twelve days prior to the hearing. Proof of notification shall be presented to the Zoning Administrator prior to the call for hearing of the petition. All costs of notification shall be borne by the petitioner.
- 407 REPRESENTATION: Another party may represent the owner if a notarized consent form has been provided to the Zoning Administrator prior to the hearing. No Board member may represent the petitioner at any meeting or hearing.

ARTICLE FIVE
CONDUCT OF MEETINGS

501 ORDER OF BUSINESS: The order of business of regular meetings shall be as follows:

1. Roll Call
2. Approval of Minutes
3. Public Hearings- to be heard in ascending order of the case number
4. Reports
5. Old Business
6. New Business
7. Floor is Open to the Public in Attendance
8. Adjournment

The order of business may be changed by the Chairman upon the consenting vote of a majority of those members present.

502 PUBLIC HEARINGS: The Chairman shall call up for public hearing and make a determination that the petitioner is present and desires to proceed, or in the alternative, that action to continue, withdraw, dismiss, or amend may be in order. Testimony before the Board of Zoning Appeals shall be required to be given under oath, which shall be administered by the Chairman or some other person qualified to administer oaths.

503 APPEARANCES: The petitioner must appear in person, by agent or by attorney and shall present first his supporting witnesses, evidence, statements, and arguments in favor of the matter being heard. Remonstrant and persons in opposition to the matter being considered may appear in person, by agent, or by attorney and next present opposing witnesses, evidence, statements, and arguments. Any person interested in any petition shall have the right to enter written comments concerning the petition.

504 TESTIMONY AND ARGUMENT: The Board of Zoning Appeals shall be provided adequate opportunity to examine witnesses and question any evidence, statements, and arguments in the interest of a fair hearing. Petitioners and remonstrant shall be permitted time for rebuttal, examination, and summation; provided such commentary shall at all times be addressed to the Board through the Chairman, and shall not be permitted between opposing parties without consent of the Chairman. The Chairman shall have the authority to terminate repetitious and irrelevant testimony, and shall have the authority to extend such time to interested parties as is appropriate in his sole judgment in the interest of affording a fair hearing to all. In all appeals and hearings the burden of proof is upon the petitioner.

505 OPEN MEETING: Since the deliberations, opinions, and findings of this Board in all matters which may come before it for actions are similar to that of a court and the minds of its several members should be unbiased and free to act upon the evidence and arguments submitted to the Board, no member of the Board shall communicate with any petitioner, advocate, or opponent concerning the merits of any matter pending before the Board at any time before final action thereon, except in open meeting of said Board.

506 CONFLICTS OF INTEREST: RECUSALS: A member of the Board of Zoning Appeals must recuse them self by leaving the room if one of the following applies:

1. The member is biased or prejudiced or otherwise unable to be impartial; or
2. The member has a direct or indirect financial interest in the outcome of the zoning decision.

In the event that a member disqualifies himself, he shall do so as soon as the conflict becomes apparent, and such fact shall be entered in the minutes of the Board of Zoning Appeals. In such an instant the alternate member for that appointing authority may participate.

- 507 ABSTENTIONS: Except for disqualification for conflict of interests, all Board of Zoning Appeals members shall vote upon each matter presented. An abstention shall be recorded as a vote with the majority vote on the matter or proposition being considered. If there is no majority vote, the abstention will not count in favor or in opposition of the matter of proposition being considered.
- 508 OFFICIAL ACTION: No action of the Board of Zoning Appeals shall be official, unless it is authorized at a regular or special meeting by a majority of the entire membership of the Board. No member of the Board shall vote on a petition if he /she is not present during the presentation of evidence during the hearing. Voting shall be conducted by roll call. No secret ballots shall be permitted. If no official action is taken the hearing will automatically be continued to the next regularly scheduled meeting.
- 509 FINDINGS OF FACT: All decisions of the Board with respect to appeals, special exceptions, and variances shall be supported by written findings of fact which shall be made a matter of public record within five days of the decision in the official file in the Office of the Zoning Administrator.

ARTICLE SIX DISPOSITION OF MATTERS

- 601 IN GENERAL: The final disposition of any petition duly filed and brought before the Board of Zoning Appeals shall be in the form of a motion; duly adopted, approving or disapproving, approving with conditions, or specifically setting forth such disposition.
- 602 WITHDRAWAL BY PETITIONER: A petitioner may withdraw their petitioner at any time during the hearing. Withdrawals may be given orally or in writing. Absence of the petitioner from the meeting shall be deemed a withdrawal. No petition which has been withdrawn by the petitioner shall again be placed before the Board of Zoning Appeals for a hearing within a period of three months from the date of said withdrawal, except upon motion to permit re-docketing, adopted by a vote of the majority of the Board's members.
- 603 CONTINUANCES: Any petitioner or interested party may request a continuance of a hearing orally or in writing. The party requesting a continuance shall have the burden of showing good and sufficient cause. It shall be within the discretion of the Board of Zoning Appeals to grant or deny requests for continuance. The Board may on its own motion at any time continue the hearing of any petition. No re-notification is required. A continuance shall be automatically re-docketed to be heard at the next regularly scheduled meeting of the Board of Zoning Appeals. Failure by the petitioner or agent to appear to present the petition shall be deemed a withdrawal.
- 604 AMENDMENTS: Requests to amend any petition or supporting documents may be filed in writing or made orally prior to the hearing. Any remonstrators present shall have the right to be heard on any objections they may have to such proposed amendment. It shall be within the discretion of the Board to grant or deny requests for amendment during the hearing. Board may require re-advertising and re-notification of interested parties in some cases.
- 605 COMMITMENTS: As allowed by IC 36-7-4-1000, the Board may require written commitments concerning the use or development of a petition site. Commitments must be as specified by the Board, must be signed and notarized by the petitioner and must be recorded with the County Recorder prior to any permit issuance. Commitments after being recorded in the County Recorder's Office are binding on a subsequent owner or any other person who acquires an interest in the parcel.

606 REDOCKETING AFTER DISAPPROVAL: No petition may be re-docketed after an adverse decision within two years of the initial petition date, unless it is substantially different in facts and circumstance. A petitioner may also re-docket if there was only a quorum present at their hearing, if such instance occurs the petitioner must re-docket their petition by the next regularly scheduled meeting. An adverse decision may be appealed with the Courts within thirty days of the decision.

ARTICLE SEVEN
AMENDMENTS AND SUSPENSIONS

701 AMENDMENTS: Amendments to these by-laws and rules of procedure may be made by the Board of Zoning Appeals at any regular or special meeting upon a vote of the majority of the members of the Board; provided, however, that the proposed amendment shall have been presented in writing at a previous regular meeting of the Board.

702 SUSPENSIONS: The suspensions of these bylaws and rules of procedure may be authorized by a unanimous vote of the full membership of the Board present at any regular or special meeting.

703 CONFLICT OF RULES AND REGULATIONS: To the extent these bylaws and rules of procedure impose a greater restriction than is imposed or required by existing provision of law, the greater restriction must be met.