

STATE OF INDIANA) IN THE HAMILTON SUPERIOR COURT I
) SS:
COUNTY OF HAMILTON) CAUSE NO. _____

DAVID BIDGOOD, SHEILA M. GRAVES,)
SALVATORE PAPPALARDO, DAVID J.)
REEVES and ANGELO R. STANCO,)
Petitioners,)
)
vs.)
)
CARMEL BOARD OF ZONING APPEALS,)
Respondent.)

**VERIFIED PETITION FOR WRIT OF CERTIORARI,
JUDICIAL REVIEW AND DECLARATORY JUDGMENT**

Come now the Petitioners, in person and by counsel, and after verifying under the penalties of perjury, do submit their Verified Petition for Writ of Certiorari, Judicial Review, and Declaratory Judgment from a decision of the Carmel Board of Zoning Appeals (hereinafter “Respondent”) in regards to Docket No. 17120001 SU, a Petition for Special Use, a place of worship on 5.045 acres, and would show the Court the following:

JURISDICTION AND STANDING

1. On the 26th day of February, 2018, the Carmel Board of Zoning Appeals (“Board”) approved a Special Use Petition, place of worship, filed by Al-Salam Foundation, Inc. (“Foundation”) by a 3-2 majority vote.
2. A copy of vote sheets, Decision and Proposed Findings of Fact are attached as Exhibit “A”.
3. Petitioners and their addresses are: David Bidgood, 14350 Shelborne Road, Carmel, IN 46074; Sheila M. Graves, 14601 Overbrook Drive, Carmel, IN 46074; Salvatore

Pappalardo, 3650 W. 141st St., Carmel, IN 46074; David J. Reeves, 3738 Dunellen Circle, Carmel, IN 46074; and Angelo R. Stanco, 3725 Dunellen Circle, Carmel, IN 46074.

4. Petitioners Bidgood, Pappalardo, Reeves and Stanco are adjoiners and required by statute, and Board of Zoning Appeals Rules of Procedure, to receive certified letters notifying them of the Public Hearings held by the Board to consider Docket No. 17120001 SU.
5. Shelia M. Graves lives in the Overbrook Subdivision and, as such, is also an aggrieved party.
6. That Petitioners have standing and are all aggrieved persons, per Indiana Code 36-7-4-1603, as all Petitioners appeared in remonstrance to the Petition in front of the Board in person and/or in writing and, excepting David Bidgood, by Counsel, Michael J. Andreoli.
7. The venue and jurisdiction lie with the Hamilton Circuit or Superior Courts.

GENERAL FACTS

8. The property subject to the Special Use, place of worship approval is located at 141st Street and Shelborne Road, Carmel, Indiana.
9. The Board conducted what was purported to be a Public Hearing on the Foundation's Special Use Petition on the 22nd day of January, 2018. The meeting was held at the Monon Community Center East building, Meeting Room B, 1235 Central Park Drive East, Carmel, Indiana.
10. At the time and place of the meeting, the record will reflect that roughly 100 people could not and were not allowed into the Meeting Room B where the meeting was

conducted due to insufficient space. Further, a number of people were not even allowed to access the building itself. No TV or other monitors were placed for those who were allowed in the building but not in Meeting Room B. Hence, they had no opportunity to observe the meeting, sign up to speak or otherwise participate in the Public Hearing. In fact, a number of the adjainers who received Notice of the Public Hearing as required by statute and the Rules of Procedure of the Board of Zoning Appeals, either were not allowing in Meeting Room B or were otherwise not allowed in the building.

11. At the time of the meeting, prior to presentation and receipt of information, both pro and con, the Board was advised by its counsel John Molitor, on the record, to continue the meeting to a time and place that would accommodate the size of the assembled group. The Board declined counsel's admonition and allowed the meeting to proceed. Other than the Petitioner's counsel, those in attendance, including remonstrator's counsel, were only allocated one minute each to speak.
12. The Board took no action on January 22, 2018, other than continuing the meeting and advising those assembled that the next meeting would be on the 26th of February at the same place and time. The Board advised those in attendance that those who spoke at the first meeting would not be allowed to speak at the February 26, 2018, meeting.
13. The Board requested Applicant to re-notice the February 26, 2018, meeting as it was not to be held at the Monon center but rather re-located at the Palladium at the same time of 6 p.m. At the February 26 meeting, those wishing to speak were allocated one minute and the President of the Board, on the record, at the commencement of the meeting, advised those wishing to speak that they could sign up any time during the

meeting and all those present would be allowed to speak. Subsequently during the meeting, these instructions were changed on the record with the Board prohibiting further sign ups to speak. The record will reflect that the President expressed concerns regarding the length of the meeting. The Petitioners herein at no time had any input on when, where and what time the public hearing would be conducted as this was solely within the purview of the Board. In fact, counsel for remonstrators, Michael Andreoli, requested the Board at the January 22, 2018, meeting to conduct a special meeting or to continue the meeting to a date other than February 26, 2018, as he was leaving for a planned vacation out of the country prior to the meeting. The Board declined.

14. It is believed that on or around the 22nd day of February, 2018, Board member Earlene Plavchak, mysteriously resigned from the Board after having participated in the Public Hearing on January 22, 2018. Petitioner was provided no basis, explanation or information for the resignation of Board member Plavchak, nor were Petitioners notified that her resignation was submitted per Indiana Code 36-7-4-909.
15. It was subsequently learned that Mayor James Brainard appointed Brad Grabow, a Plan Commission member, to fill the vacancy of Earlene Plavchak some two (2) business days before the scheduled February 26, 2018, Public Hearing.
16. The Board voted, by a 3-2 vote, to approve the Special Use, place of worship, with conditions. Mr. Grabow, Mayor Brainard's new appointment to fill the resignation of Earlene Plavchak, voted in favor of the Petition and for all practical basis determined the outcome of the vote.

17. Mr. Grabow, on the record, indicated that he had sufficient time to review the record, including the tape of the January 22, 2018, Public Hearing, despite the fact that substantial information had been submitted to the Board, by way of letters and correspondence both prior to and subsequent to the January 22, 2018, meeting.
18. Although the Foundation attempted to limit its Special Use approval to the 5.045 acre tract, they were in fact purchasing from the same landowner, and listed on their Zoning Consent submission filed with the Board, an adjacent Parcel I consisting of 9.73 acres, more or less.
19. The Board failed to require the Foundation to submit a site plan for both parcels, I and II, consistent with the Foundation's Zoning Consent, although the Board did approve commitments which referenced and will affect Parcel I (9.730 acres). In short, the Petitioner's Application and presentation was insufficient, referenced property not otherwise submitted as part of their defined Application and Proposal and insufficient to provide the basis for Findings necessary and required under Section 9.08(d) of the City of Carmel Planning and Zoning Ordinances.

CHALLENGE TO DECISION

20. The decision by the Board of Zoning Appeals is in violation of Indiana Code 36-7-4-1614(d)(1) generally as the decision to approve the Special Use for the 5.045 parcel arbitrary, capricious and an abuse of discretion and otherwise not in accordance with law. Specifically, and factually, the decision by the Board was in violation of Section 9.08(D) of the Carmel Zoning Ordinance as follows:
 - i. The mosque location, parking and entrance road off of 141st Street along the backs of the high-end low density residential lots in the Overbrook

Subdivision, establishes that the site is not suitable for the Special Use.

Further, the cost benefit to the community weighs heavily in favor of the adjoining subdivision as the location of cars, traffic, size of the mosque and other factors establish a diminution of property value for those surrounding this Special Use; and

- ii. This proposed Special Use, place of worship, is not otherwise compatible with the current low density zoning in the vicinity of the site. Further, the vehicular traffic that will be created by the number of parking spots and the fact that an entrance located off of 141st Street along the backs of the Overbrook Subdivision residences, absolutely creates a prejudiced effect that will diminish the quality of life and the property values of their respective residences.
21. The last minute resignation of Member Earline Plavchak, in light of the illegal appointment of Brad Grabow, may have been the result of administrative pressure in the Town of Carmel Administration to vote for approval of the Special Use when her conscience and the facts suggested otherwise.
 22. That the Public Hearing conducted by the Board was in violation of Indiana Code 36-7-4-920 and further a violation of Indiana Code 5-3-1-2 and 5-3-1-4 as the Public Hearing conducted by the Board on January 22, 2018, was wholly insufficient as interested parties were not allowed to participate in the Public Hearing as required by law. The Public Hearing caused confusion, limited participation, changed participant rules in the middle of the Public Hearing and

for the most part did little to comply with State statute, open door law requirements and the Board Rules of Procedure.

23. The actions and vote by Member Brad Grabow were in violation of the Carmel Board of Zoning Appeals Rules and Procedures and in violation further of Indiana Code 36-7-4-909 (a)(1) as by his actions prior to his appointment show that he was biased and/or prejudiced in favor of the Foundation. Mr. Grabow's unabated propensity in favor of the Foundation will be shown and established by his linked post on Facebook and Twitter account accessing radio show coverage. In essence, these posts establish that Mr. Grabow should not have participated at all in the Public Hearing, let alone vote for the Special Use. Further, it establishes that, prior to his appointment, he was following the posts made by various members of the community, "liking" those posts, and following information being disseminated about the Foundation and the Special Use on Twitter. In addition to his bias and prejudice that disqualify him to participate, Mr. Grabow sought out information in social media that was extraneous to and outside the record of the proceedings. In short, he should have disclosed this bias and prejudice to the public so that they might be able to make a proper objection or this information should have been disclosed to Mayor Brainard who made the appointment. Whether disclosed or not to Mayor Brainard, the appointment by Mayor Brainard was in violation of law and should not have been made. Further, to the extent the Respondent claims that Brad Grabow was in fact an alternate to the Board, he should not have been participating in social media contacts prior to his appointment in the event that he was needed. Given the timing of his

appointment, this information could not have reasonably been expected to be uncovered and in fact, was uncovered after the vote. This will give rise to discovery as will be requested by the Petitioner pursuant to Indiana Code 36-7-4-612(a)(1)(2).

24. The appointment and participation by Brad Grabow as a member of the Board was in violation of Indiana Code 36-7-4-902(1) as he was a member of the Plan Commission, together with Chairman Alan Potasnik, at his appointment and participation in the Public Hearing on February 26, 2018. This appointment was also in violation of the Carmel Board of Zoning Appeals Rules and Procedures. Hence, the Board was not properly constituted at the time of the Public Hearing and vote on February 26, 2018.

REMEDIES

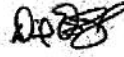
The Petitioners request that the Court invoke any and all remedies allowed the Court pursuant to Indiana Code 36-7-4-1615 and further declare the vote of the Carmel Board of Zoning Appeals to be null and void.

WHEREFORE, the Defendants pray that the Court find that the vote by the Carmel Board of Zoning Appeals on February 28, 2018, be deemed null and void, and for all other proper relief in the premises.

Respectfully submitted,

Michael J. Andreoli,
Attorney for Petitioners

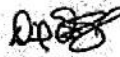
Michael J. Andreoli, #2412-06
Attorney At Law
1393 West Oak Street
Zionsville, Indiana 46077
(317) 873-6266
mandreoli@datlaw.com



David Bidgood

VERIFICATION

I affirm under the penalties for perjury that the foregoing information contained in the above Petition for Writ of Certiorari are true and correct to the best of my knowledge.



David Bidgood

Sheila M. Graves
Sheila M. Graves

VERIFICATION

I affirm under the penalties for perjury that the foregoing information contained in the above Petition for Writ of Certiorari are true and correct to the best of my knowledge.

Sheila M. Graves
Sheila M. Graves

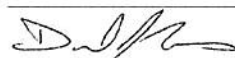


Digitally signed by David J Reeves
Date: 2018.03.26 18:38:19 -04'00'

David J. Reeves

VERIFICATION

I affirm under the penalties for perjury that the foregoing information contained in the
above Petition for Writ of Certiorari are true and correct to the best of my knowledge.



Digitally signed by David J Reeves
Date: 2018.03.26 18:38:51 -04'00'

David J. Reeves



Salvatore Pappalardo

VERIFICATION

I affirm under the penalties for perjury that the foregoing information contained in the above Petition for Writ of Certiorari are true and correct to the best of my knowledge.



Salvatore Pappalardo

Angelo R. Stanco

Angelo R. Stanco

VERIFICATION

I affirm under the penalties for perjury that the foregoing information contained in the above Petition for Writ of Certiorari are true and correct to the best of my knowledge.

Angelo R. Stanco

Angelo R. Stanco

DECISION

IT IS THEREFORE the decision of the Carmel/Clay Board of Zoning Appeals that Special Use Docket No. 17120001 SU is granted, subject to any conditions stated in the minutes of this Board, which are incorporated herein by reference and made a part hereof.

Adopted this Feb day of 26, 2018.

CHAIRPERSON, Carmel Board of Zoning Appeals

Joe Shott

[Signature]

SECRETARY, Carmel Board of Zoning Appeals

Conditions of the Board are listed on the back. (Petitioner or his representative to sign).

Dennis Howard
Bradford S. Karabon
BRADFORD S. KARABON

EXHIBIT
17

CARMEL/CLAY BOARD OF ZONING APPEALS

Carmel, Indiana

Docket No.: 17120001 SU


Petitioner: Al Salam Foundation Inc.

Special Use: Place of worship

FINDINGS OF FACT - SPECIAL USE (Ballot Sheet)

1. approved with comments
2. _____
3. _____
4. _____
5. _____

DATED THIS 24 DAY OF 2, 2018



Board Member

CARMEL/CLAY BOARD OF ZONING APPEALS

Carmel, Indiana

Docket No.: 17120001 00

Petitioner: Al Salam Foundation Inc.

Special Use: Place of worship

FINDINGS OF FACT – SPECIAL USE (Ballot Sheet)

1. Petition complies with development standards w/o need
for variances and special use is to be granted.
2. _____

3. _____

4. _____

5. _____

DATED THIS 26 DAY OF Feb, 2018.

Bullard SG
Board Member

CARMEL/CLAY BOARD OF ZONING APPEALS

Carmel, Indiana

Docket No.: 17120001 SU

Petitioner: Al Salam Foundation Inc.

Special Use: Place of worship

FINDINGS OF FACT – SPECIAL USE (Ballot Sheet)

1. _____

2. _____

3. No I support ILL in Carmel and hope we can establish a place of worship for our residents and the diversity it brings to the community. However, the size and scope of this project is not suitable for the site and current infrastructure.

4. _____

5. _____

DATED THIS 26th DAY OF Feb, 2018.

[Signature]
Board Member

CARMEL/CLAY BOARD OF ZONING APPEALS

Carmel, Indiana

Docket No.: 17120001 SU

Petitioner: Al Salam Foundation Inc.

Special Use: Place of worship

FINDINGS OF FACT – SPECIAL USE (Ballot Sheet)

1. APPROVED WITH ALL COMMITMENTS
HAVING MET THE REQUIREMENTS AS STIPULATED
IN THE UDO.
2. _____

3. _____

4. _____

5. _____

DATED THIS 26th DAY OF FEB, 2018.



Board Member

CARMEL/CLAY BOARD OF ZONING APPEALS

Carmel, Indiana

Docket No.: 17120001 SV

Petitioner: Al Salam Foundation Inc.

Special Use: Place of worship

FINDINGS OF FACT - SPECIAL USE (Ballot Sheet)

1. DENIED
FINAL AUTHORITY WILL REST
2. WITH BOARD ATTY
3. _____
4. _____
5. _____

DATED THIS 26 DAY OF FEB, 2018.



Board Member

**CARMEL/CLAY BOARD OF ZONING APPEALS
CARMEL, INDIANA**

Docket No.: 17120001 SU

Petitioner: Al Salam Foundation Inc.

Special Use: Place of worship

FINDINGS OF FACT – SPECIAL USE

1. The premises in question is particularly physically suitable for the proposed Special Use because:

The premises is relatively level and of regular configuration, located adjacent to two thoroughfares capable of accommodating anticipated traffic generation, already served by utility and public safety services and comprised of a large enough area to comfortably accommodate the planned site development.

2. The Special Use will not injuriously or adversely affect economic factors, such as cost/benefit to the community and its anticipated effect on surrounding property values because:

As a zoning principle, Special Uses are generally considered to be compatible with Permitted uses in the S-1 District, there are numerous examples across the City and the country where places of worship peacefully coexist with adjacent residential and other uses, and utility and public safety services already exist in this area of the City.

3. The Special Use will be consistent with social/neighborhood factors, such as compatibility with existing uses and those permitted under current zoning in the vicinity of the premises under consideration and how the proposed Special Use will affect neighborhood integrity because:

As a zoning principle, Special Uses are generally considered to be compatible with Permitted uses in the S-1 District, there are numerous examples across the City and the country where places of worship peacefully coexist with adjacent residential and other uses, and utility and public safety services already exist in this area of the City.

4. The Special Use will not injuriously or adversely affect the adequacy and availability of water, sewage and storm drainage facilities and police and fire protection because:

Water, sanitary sewer, gas and electric utilities are available at the site, storm water facilities will be designed to meet the standards of the existing system and police and fire coverage already exist in this area of the City, in all directions from the site.

5. The Special Use will not adversely affect vehicular and pedestrian traffic in and around the premises upon which the Special Use is proposed because:

A place of worship is a relatively low impact use, the proposed place of worship experiences off-peak hours traffic generation typical for other places of worship and for other neighborhood uses, and pedestrian facilities will be constructed during site development and connected to existing adjacent pedestrian network segments.
