

# *WABASH COUNTY PLAN COMMISSION*

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**Wabash County Board of Zoning Appeals**

**Wabash County Court House**

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## **BZA MEETING MINUTES**

**AUGUST 24, 2021**

BZA MEMBERS: Dan Dale, Patty Godfroy, Mark Milam, Joe Vogel, Jerry Younce, and Attorney Larry Thrush

PRESENT: Joe Vogel, Dan Dale, Patty Godfroy, Mark Milam, Jerry Younce, Larry Thrush, Mike Howard, Libby Cook, Denver Cupps, Doyle Silvers, Rick Timothy Eviston, Diana Dice, Victor Treska, Marty Crossland, David Wamsley, Mitch Oetken

The Wabash County Board of Zoning Appeals met on Tuesday, August 24<sup>th</sup>, 2021. Board Chairman, Joe Vogel called the meeting to order at 7:00 pm. Mr. Vogel asked if there were any additions or corrections to the minutes of the July 27<sup>th</sup> meeting, there being none he asked for a motion to approve the minutes. Mr. Milam made the motion to approve the minutes as written, this was seconded by Mr. Younce, the motion carried.

Mr. Vogel: The first item on the agenda is Special Exception #10, Clayton Ellet for construction of a pond in Chester Twp. Mr. Howard informed the Board that Victor Treska, the contractor for the pond, is here tonight representing Mr. Ellet. The property is located at 5422 E St. Rd. 16, Urbana. The plans have been approved by the Drainage Board and received a favorable recommendation from the Plan Commission Board. Mr. Howard noted that he talked with Mr. Treska about the wetland area on the property and that no part of the pond can be in that area. No setback variances are required, there is no floodplain, no flowage easement, approximate water surface area would be .6 acres, dam length approximately 200 feet, base width would be 60 feet top width would be 40, overflow will be a 6" pipe going to an existing ravine which is to the south into what is the start of what is Bear Grass Creek (this was corrected by Surveyor Cheri Slee at the September 2<sup>nd</sup> meeting of the PCB to be Silver Creek not Bear Grass), maximum pond depth would be 16 feet and the natural overflow would be to the west side of the dam, watershed into the pond is 3 acres, there is no geothermal feed. Mr. Bill Ruppel property owner to the north of the parcel has visited the site and has no objections with the plan. Mr. Milam asked about the building on the property, Mr. Treska said that it is a pole building that the previous owner had and it will remain on the property. Mr. Milam asked where the drive will enter the property. Mr. Treska said to the east side of the wetland, just one drive. Mr. Vogel asked if there is a residence on the property, Mr. Treska said not yet. There being no further discussion the Board proceeded to vote, Mr. Thrush tallied the votes, the request was approved unanimously.

Mr. Vogel: the 2<sup>nd</sup> item on the agenda is Variance #8, Eviston Farms, LLC for a variance from the subdivision ordinance in Lagro Twp. Mr. Howard stated that the parcel is located at 5025 E 400 S, the variance request is to make more than one split of less than 20 acres within a 5 year period from the 160 acre parcel. Board members reviewed copies of a survey of the property. Mr. Howard said that there will be an easement to tract 2, the 5.4 acre parcel, located in the south west corner at the back corner of the property. Mr. Eviston stated that they do not ever plan to build on this parcel, they just want the wooded area. The second parcel is the 4.21 acres along the road. Mr. Eviston said that they may eventually put a home on that parcel. Mr. Vogel asked if the easement is included in the total acreage, Mr. Howard said no, that it will just be an easement agreement. Mr. Milam said that he would recommend a maintenance contract on the easement to cover things such as maintenance of the lane. Mr. Howard asked the Board members if there are any conditions they would like to place on the two parcels. Board members agree on the following for both parcels: only 1 single family dwelling, minimum 1,400 square feet of above ground living space, no unlicensed vehicles parked outside, on the 4.12 tract, there are to be no further splits of that parcel. Mr. Eviston agreed to the requirements. Mr. Dale noted that he would still be able to build a pole building or other structure as long as there is only one residence. Mr. Vogel asked for questions or comments from the audience. Ms. Diana Dice said that she just wanted to know what was happening and if it was anything that would affect her property value, she stated that she has no problem with the plans. There being no further discussion the Board proceeded to vote, Mr. Thrush tallied the votes, the request was approved.

Mr. Vogel: The next item on the agenda is the Doyle Silvers permit extension which expires on Aug. 24, 2021. Mr. Howard reviewed the permit extension requirements and shared photos of the property taken on 8/24/2021. Mr. Silvers stated that the front porch was finished last night (8/23/2021) and that he was going to get the trim for the top of the house out of Chicago, the cost went from 80 cents per square foot to \$7.50 a square foot, I am not paying that to trim out the top of the house. I got some metal and have bent it myself; I have the 2 x 2's to attach it to. I am still waiting on some trim for the windows, it is out of stock at this time. He went on to explain some problems that he is having with a neighbor, Mr. Vogel told him that those would be a civil matter and not something that this Board could help him with. Mr. Vogel asked Mr. Silvers if the home will be livable soon, he replied hopefully by winter. Mr. Vogel asked if the Board would agree that Mr. Silvers has met his requirements and does not need a permit at this time, the Board members agreed waiting for the materials should not require another permit and fee.

Mr. Vogel: The next item on the agenda is a junk complaint on property owned by Rick Hollingshead in Paw Paw Township. Mr. Hollingshead is not present tonight. Mr. Howard stated that the property is located at 3001 N St. Rd. 15, he then shared photos of the property taken on 8/24/2021. We filed in the past on this property against the previous owner, Ron Denton, at that time Mr. Hollingshead was storing junk cars and parts there. We had a court order at that time that stated they had to clean up the property and keep it cleaned up, we had to take Mr. Denton back to court for violation of the order. Mr. Denton, would have to file against Hollingshead if he wished to pursue. Mr. Denton sold the property to Mr. Hollingshead in December of 2019. Mr. Howard informed the Board that after the deed transfer Sonia Poe came to the Plan Commission office to ask exactly what is permitted on the property, at that time he reviewed the county ordinance and Commissioner's ordinance with her and told her anything beyond those requirements would be a violation. Basically it could not be a junk yard and that the Commissioner's ordinance allows a maximum of 3 junk vehicles as long as they are behind an enclosed, solid fence.

Mr. Howard said that his recommendation at this time would be to require everything must go except what is stored inside the building. They know what the requirements are and yet they continue to violate the ordinances. Mr. Dale asked what the penalties would be if he doesn't comply, Mr. Thrush answered that it would be contempt of court, worse case scenario is he could

be put in jail. Mr. Howard noted that they, Mr. Hollingshead and Ms. Poe, signed a recorded document for a business name for that property, her name is part of the business but not on the property deed. He asked if she would be involved or just Mr. Hollingshead as the deeded owner of the property. Mr. Thrush replied we could sue her also; we normally go after the property owner. Mr. Howard told the Board that the property is zoned AG, he doesn't have a license to be a junk yard operator and the property doesn't meet the required minimum of 10 acres, and there are residential structures within the required setbacks. Mr. Thrush asked if Hollingshead is the owner or is it a corporation or LLC, Mr. Howard said the deed lists Ricky E. Hollingshead as the deeded owner and the certificate of assumed business name is The Boss Auto Service, nature of the business is a mechanic, address of the business is 3001 N St. Rd. 15, Wabash, printed names of business owners are Rick Hollingshead and Sonia Poe. Mrs. Godfroy asked how long will they have to clean it up? Mr. Howard said that the letter was issued 8-5-21 and they have 27 days from the date on the letter to bring the property into compliance. Mr. Thrush said that we will file suit and get a judgement and the judge will tell them 30 days. Mr. Vogel asked if there was a motion to file suit, Mr. Dale made the motion to file suit, if not in compliance by the deadline. This was seconded by Mr. Younce, the motion carried.

Mr. Howard shared the survey drawings that he has received from Randal Miller and Assoc. for the proposed Treska (Fulford) Farm CFO. According to the drawings the building will fit and meet the setback requirements. Board members were also provided copies of e-mails from Scott Dean and Scott Matthews (Army Corp of Engineers and DNR) regarding where they are at with Mr. Treska as far as meeting their violation requirements. Mr. Howard told the Board that the e-mails were also provided to the PCB and I believe Mr. Wamsley received a copy that night, Mr. Wamsley said that he did. Mr. David Wamsley asked for a copy of the survey which was provided to him. Mr. Vogel asked if the Board will be voting on anything tonight, Mr. Howard said no, that he is just providing the board with the most recent information. Mr. Vogel said that basically the survey shows that he does have a small window that a structure will fit and meet requirements, noted on the survey that the 1,320 feet setback was identified on the survey. Mr. Howard said that Miller's added 6 feet to the side of the building for a measuring point to allow for the fans and the pump pits to make sure they were not within the 1320 foot setback. Mr. Dale asked if all we should be concerned with is the building, not a staging area for loading or a compost area, Mr. Howard said that he would have to look at the ordinance, to verify but at this point he would agree. Mr. Dale said the driveway is not included, Mr. Howard said that driveways are not listed as far as a part of the ordinance. Mr. Wamsley stated that this is a single building as opposed to the 2 buildings in the original request, he asked how many animals Mr. Howard said 4,000. Mr. Wamsley said this is a larger building encompassing the same number of animals, it was originally 4,000 via 2 buildings this is now 4,000 in one building. Mr. Howard said that he would have to look at the previous pre application but he was thinking it was 4,000 per building for 8,000 total. Mr. Wamsley said no that was the original, original, then it was revised down to half that. Mr. Wamsley said Mike you are offering your opinion as to whether the drive should be included or not included that is your opinion, perhaps everyone in the room would like to voice their opinion as to whether the driveway is included or should be included in the footprint, it is a necessary part of the process. Mr. Howard said if you include the driveway Mr. Wamsley you are taking it clear down to the county road. Mr. Wamsley said no I am talking about the truck turnarounds, to get a semi turned around in that area and you are going to have pigs parked outside and everything else going on outside parked outside of the boundaries of what it allowed, semis don't turn around on a dime. Mr. Howard said I don't disagree with what you are saying but we have never counted turn arounds before anyplace, ever. Ms. Marty Crossland said if it wasn't sitting in close proximity to a town of 400 residents, with a town that is trying to make a come-back where a lot of people are investing money. Mr. Wamsley said this town is well on its way to coming back right now, in the early morning when the air is stagnant even the animals that are on the river, that Mr. Treska

has, the odor is pervasive throughout the valley and this is going to be closer yet to the town of Lagro on days when the wind is from the east, on still days, on stagnant days, air inversion days, it's not going to be good for the town of Lagro. Ms. Crossland said it's not just the smell it the whole, Mr. Wamsley said it is the poisonous gasses that come from these barns. The gentleman that is most closely affected is Kraig Barker who is immediately to the north of this barn, 1,320 feet away. He is a Viet Nam vet, he had damage from Agent Orange from when he served there, he has COPD, he has had a heart attack, he was in the hospital in Ft. Wayne from late January to late April with Covid, he has respiratory impairment, that is the net of what I just said. The reason I am spending more time on this as I am, certainly for my benefit, but more so for him, he served our country. Lagro town does terminate before it gets out to Mr. Barker's but there is a row of houses that have a density that is close to a residential subdivision that starts at the east end of Lagro and extends out to the rail crossing at 600, there are houses on both sides of what was original 24 so you have an extension of Lagro even though it is not part of Lagro town corporate limits you have residential density occurring all along both sides of that road. It would be, I think, worthy of consideration to look at the fact that this barely fits because of the extension from Lagro, and three very close neighbors, this is really a crowding point to fit something like this in. Mike Howard is on record as stating that the ground is too thin and too susceptible to spread manure on for fear of aquifer contamination and damage, Mike said it, he agreed with me 100 percent in his own words it is on the record. Mr. Howard said that he would argue that, he agreed that he would be concerned about the ground but I have also told you multiple times that just because there is not a building that would not prevent a land owner from spreading manure there. Mr. Wamsley said I would go on to say that in the period of time that he hasn't had 600 pigs in the barn that he has at 600 by the railroad crossing he hasn't had any manure to spread and he hasn't spread any manure so do we want to make it easy for him? If he wants to be a good resident and citizen of this county he should think through perhaps what you are thinking about and not potentially contaminate an aquifer, if he does it is going to have far reaching consequences and if this group of people in this room would vote, I know that is not going to come up tonight probably, if they would vote to allow this to go forward and there is ground water contamination it is going to be on the record that you people voted for it and that is not going to go well and you can't clean up ground water contamination quickly it goes on for years. Bob Patterson, a perfect example, down on America Road he is dealing with potential ground water contamination, possibly from the manure spreading event and has been going through, he had his well tested before the hog barns were put in so he has a base line and his neighbors do too so there are two neighbors that are affected down there on America Road with ground water contamination. The State Board of Health is due up here in September to test again, he has had an earlier test this spring or late winter, Mike correct me if I am wrong that showed that he had coliform and e-coli both a neighbor now has it, he has tested one more time since then and it is less now after having his well bleached but it is still there so the State Board of Health is going to come up here in early September to test it themselves. In the state of Iowa 40% of the private wells are contaminated largely from animal agriculture, it is documented, the state of Iowa is looking at a moratorium on CAFO expansions, they have brought up legislation in the last two sessions because of the really terrible surface water and now becoming a very large ground water problem. Iowa and Wabash County have very similar animal density verses the area to spread manure. We, as a county, I have done the work and it has been verified, we are very close to Iowa, actually ahead of Iowa in animal density verses spreadable acres. Our surface water there isn't a stream or creek with very few exceptions that you can reliably take your grandchild to get in it and certainly not your dog because of surface water contamination, when the surface water gets contaminated it is only a matter of time before the ground water goes that way. So, another way to look at is anybody that has a CAFO operation today, if we start limiting those CAFO expansions those CAFO's become more valuable to those people that possess them already and for one person to earn a larger living by having more animals, this gentleman already has 6,000 animals and potentially maybe more if he gets his permit on the

river. This is not a good spot to spread manure and for us as a county to make it easier for him to have manure spread there rather than having the expense of hauling manure on site I think it would be huge mistake for everyone in this room to make. I will stop at that right now, thank you for listening, I wasn't ready to have this discussion tonight but it looks like this is going forward and I think you as a Board deserve the opportunity to start thinking about some of the ramifications and I have a longer list, but I did not bring it with me tonight.

Mr. Vogel said that we were thinking that there wasn't a spot on his farm to put it, and that was your thoughts too, but it looks like he found a spot that does fit in. Mr. Wamsley added, I know that this survey company did visit the property but to the best of my knowledge they did not visit Mr. Barker so their ability to measure from his home to this spot on the property is questionable, it might make a difference it might not, I am just saying that to the best of my knowledge they haven't been there on site and I will contend that truck turnarounds that if you put that on here it doesn't fit. Mr. Vogel said, driveways, they are going to come out somewhere, they could be a mile back, it is a point but maybe a kind of poor point so I don't think driveways were really our thought. Mr. Wamsley said the other point that I think is worth raising tonight is there is additional information that I think will probably come your way from IDEM as to whether he has disclosed his environmental violations, I think you will find that perhaps he has not and that is a very large piece of environmental regulation when you do not disclose your environmental violations when you apply for the new pig barn you are required to do that and if you don't do that it is grounds that IDEM can deny your permit and I would contend that the county needs to think strongly that a person who for some reason didn't disclose it when it says in big bold print your must disclose or it is grounds for not getting your permit and it also is perjury under Indiana statute, Larry what is perjury under Indiana statute, is that a level 6 felony? Mr. Thrush replied that it is a felony. Mr. Wamsley said it is a felony of some kind, so this individual has chosen for some reason not to disclose that, it is important that people who handle hazardous material be trustworthy and I think I don't need to say a whole lot more than what I am saying right now for you all to get the point perhaps we as a county need to find a way to not have manure easily accessible for this individual who has chosen for some reason not to disclose some things he should disclose, maybe he would do some other things, I don't know what they would be but maybe they wouldn't be good for the health of other people. Maybe we could look at this, extend another 1/8 of a mile from the distance from Lagro and this wouldn't fit, we could say a truck turn around doesn't fit, we could say that the land is too thin, we could say that we have a special exception for a disabled individual, we have an ordinance on the books that deal with disabled individuals and special exceptions, we could look at a lot of things, I left my list at home so I won't beleaguer the point and I don't think you are ready to vote on this. Mr. Vogel said that we are not going to vote on this, we just received some information presented and presented to you, I am not arguing with anything you are saying but I think the big thing we have learned from this is that he has got a site that he could put one on, that is about all we have learned tonight.

Mr. Vogel: next on the agenda is Denver Cupps. Mr. Howard shared photos of the guard rail that has been installed at the front of the pond. The first photo is the photo Mr. Cupps sent. The rest of the photos were taken 8/24/21 by Mr. Howard. Mr. Cupps explained the recent work completed and provided the contractor information. Board members considered the project completed.

Mr. Vogel: next on the agenda is the review of the Solar Ordinance. Mr. Howard provided the Board with a news copy of the solar issues for Boone County, IN and a copy of a solar easement agreement from another county for their review. The question was asked, does our County Comprehensive Plan restrict commercial solar use. BZA members were invited to attend the Sept. 2<sup>nd</sup> meeting of the Plan Commission Board, Connie Neiningger will be addressing the Board on economic development plans and how the funds from commercial solar facilities could work for

the county. He reminded the Board that the county's moratorium on commercial solar facilities expires at the end of September. Some things noted for the Board to consider:

- In the ordinance we had thought about including that the materials used in the project would have to be American made products, the question was brought up as to how to police this and we don't do that with anything else.
- In the copy of the easement agreement, the landowner doesn't get payment for the total ground area for the facility, only the square footage that would be covered by the solar panels. Mr. Downs thinks this should be an agreement between the landowner and the company. Mr. Dale asked if the facility takes 10 acres and the solar panels only take up 5 acres can the landowner use the 5 acres not covered by the panels.

Mr. Vogel: next is the County Ordinance draft review. Mr. Howard said that Mr. Downs is continuing his review, he has sent me his recommendations for chapters 7, 8, and 9. I am reviewing those at this time.

Mr. Howard, complaint updates:

- A complaint of noise from Cyclone Manufacturing in Urbana. I visited Cyclone with County Commissioner, Jeff Dawes and we spoke with Sam and Dan Speicher. They were provided a copy of the noise test results completed by Ms. Sellers. The gentlemen said that they are willing to work on different ventilation and keeping the overhead dock door closed to help reduce the noise level. After discussion with Mr. Thrush, a visit to the site, an discussion with the board, a summary letter was prepared and sent to Ms. Sellers and Cyclone Mfg.

There being no further business Mr. Vogel asked for a motion to adjourn. Mrs. Godfroy made the motion to adjourn, this was seconded by Mr. Dale. The meeting adjourned at 8:35 pm.

*Libby Cook*

*Secretary, Wabash County Board of Zoning Appeals*

*MTH*