

WABASH COUNTY PLAN COMMISSION

Wabash County Court House

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BZA MEETING MINUTES **SEPTEMBER 26, 2017**

Wabash County Board of Zoning Appeals
Wabash County Court House
Wabash IN 46992

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

PRESENT: Dan Dale, Mark Milam, Joe Vogel, Jerry Younce, Attorney Larry Thrush, Plan Director Mike Howard, Secretary Libby Cook, Patrick Hess, Michael & Donna Wendt, Jaron & Erica Jones, Mary & Tom Finicle, Andy Oswalt & Family, Lori & Steve Heath, Sam & Deanna Unger, Sandra L. Wolfinger, Brad Carpenter, Jane Parrett, Sean Unger, David Milliner, Jeremy Milliner, Chris & Sarah Lochner, Mr. & Mrs. David Brinson

The September 26, 2017 meeting of the Wabash County Board of Zoning Appeals was called to order by Chairman, Joe Vogel, at 7:00 pm. Mr. Vogel asked if there was a motion from the Board to approve the minutes of the August 22, 2017 meeting. Jerry Younce made the motion to approve the minutes as written, this was seconded by Mark Milam. The minutes were approved.

Mr. Vogel then presented the first item on the agenda: Special Exception # 7, Andy Oswalt, requesting to put two ponds on his property at 6848 W 200 S, Noble Township.

Mike Howard: Board members should have information for this Special Exception in front of you. His request did receive a favorable recommendation from the Plan Commission Board. Andy lives at 6848 W 200 S, Wabash, in Noble Township. He started out wanting to put in one small pond then decided he would like to put in a second pond back to the north of his house. The first pond will be approximately .3 to .5 acres and needs no variances, it will be located in a wetland area, he has been working with the Army Corp of Engineers and has met all of their requirements, they have gone to the property and staked out the area of the wetland where he can and cannot work with his equipment in the excavating period of constructing of the pond.

Andy Oswalt: What they needed to do was issue a "No Permit Required" so that way it didn't require a permit to put the pond in that area. I have a "no permit required" letter from the Army Corp of Engineers. With that letter it also meant that IDEM did not need a permit as well, so I bypassed those two organizations, as long as I use the one step method they are happy with that.

Mike Howard: The pond will have approximately 5 acres of watershed, there will be geothermal feed into the pond. It will be over 1/3 of a mile away from any county drain or certified drain, the drainage board has looked at it and approved it. It will just be natural flow into the pond, there will be no dam or overflows that would be an issue. Board members were provided maps showing the area. The depth and width of the pond cannot be determined until Mr. Oswalt begins construction following guidelines provided by the DNR. The depth and area will depend on how far he can reach with the excavating equipment without getting into the wetland area. The second pond will be located to the north of the house behind the buildings and will be approximately ¼ acre of water surface area. This pond will have roughly five acres of watershed, no geothermal feed, again 1/3 of a mile or more from any county or certified drains, the drainage board has reviewed that and has no problem with it. There will not be a dam or emergency overflow. Board members reviewed a map of the area.

Mr. Vogel asked if there were any questions, there being no response Mr. Vogel called for a vote by the Board members. Mr. Howard informed the Board that they will be voting on each pond separately. Attorney, Larry Thrush tallied the votes, Mr. Vogel announced the request for the first pond was approved. Mr. Vogel then called for a vote on the second pond. Mr. Thrush tallied the votes, Mr. Vogel announced that the request for the second pond was approved.

Mr. Vogel: The second item on the agenda is Special Exception #8, Unger Mountain Outdoor Commercial Recreation Enterprise in Noble Township.

Sean Unger and Deanna Unger spoke to the Board and audience: At the September 7th Plan Commission Board meeting we had a proposal to get Unger Mountain, the land that I bought from Brad & Tammy Farlow, out of the covenants that they have at Legacy Ridge. The re-plot request was denied so we had a counter proposal for the operation of Unger Mountain on roughly 20 acres of ground that my parents, Sam and Deanna Unger own to open it up for recreation so that I can move or run Unger Mountain at that site. With that proposal there was anything that it could possibly grow into include so there was everything from the climbing tower that I had built, to a tubing hill that would be operated with a tow rope, gator rides, zip lines, high ropes course, and a pumpkin patch. I would like to thank Mike Howard for all the work he has done in the last couple of weeks, through this process over the months I didn't understand how much he does, he has a lot that he is responsible for, especially to get my mom prepared for this meeting. My parents have been very helpful here, there was a lot to get done in two weeks to prepare for this meeting. With all that being said, I have talked with my parents, and I am exhausted on this issue. I have had a very good life, this is the hardest thing that I have had to deal with in my life. I never intended to build this to be invasive on my neighbors. At this time I am withdrawing along with my parents any zoning for that area, I am done. I have talked with Greg Metz (MRF Realty) and Barrie Bunnell (Bunnell Surveying), because I am a bit upset that it has been said that I don't own the land, that was not said by the Board. That floored me at the last meeting. I don't know how I can have a legal deed and someone say that I do not own it. I talked to both of them and was reassured that there is no question there. The way the covenants read, it is not like out at the Gardens, I am taking this all second hand, I know that their covenants are different in that you can't have a separation within the lot. That is not the case with this, there is no precedence that it has to go before the Plan Commission to have a legal deed in the way that I do. I am confident in the fact that I have a legal deed for this property. I feel that is not in question. Anyone who has a question on that I would refer them to talk to Greg Metz or Barry Bunnell. Because Brad Farlow who was good enough as a neighbor to even think about the possibility of selling to me, he didn't have to. It was just something in passing in the upper yard. I knew that I

didn't want to put this on my own property and have it up on the hill over Legacy Ridge Estates. I didn't have land and I didn't want to ask my parents because I wanted to do this without them. I am retracting this zoning request. I am glad that we are, I have been hesitant to have my parents do this as it has been in farm for all these years. I am learning a lot with my mom, after talking with the State Fire Marshall we found that it would be too restrictive to use as recreation. To outfit the barns on that property with the proper water and fire alarms we would have to do would be too restrictive. That is something I have no interest in doing, or asking my parents to do. I have a big relief today. As far as the current tower, I know what it can do for the community, I've seen, I have run it for almost 10 months now. I had a year of insurance on it, I had a training session on it last November, I still have six weeks of insurance coverage on it, I haven't given up on finding it the proper home in this community. When I say proper home, it will always have the name Unger Mountain on it. I will donate it 100 %, I haven't made a dime on this, I don't want to make a dime on it. With donating it to, I have a group that I am talking to, it may not happen, I don't want to get too excited, it would be the first of its kind in that way. I don't want to say too much more about it, we are in the beginning stages, it probably won't work out. I don't want to get ahead of myself, I have done that before. I am not willing to do that anymore. I do have a back-up plan if it doesn't work out with them that is pretty much more for sure. This group that I am talking to, I am very excited, and I would almost be happier if it works in this way as to what it can do for the community. I have had many people come to me and tell me that I should put it here or there, that's great for you to tell me where I could put it. There are some places that it is not right for I will say that straight out. I have seen how this community has been divided by the River Trail, and I feel for everybody on both sides. I hope that will come to a conclusion soon. I do not want to put it on the Wabash River Trail. I have had people tell me that they have the perfect spot for it. No, that is not what Unger Mountain is about. It may have a black eye because of the problems that I have had with a couple of my adjoining neighbors. For the most part I think it has been a positive thing for the community, I haven't been able to get as many people on it as I would like. We had a quick training session so that I could get myself on it. So it is either by myself, my wife or my mom being there to make sure it is run correctly. When that insurance is up in roughly six weeks I will take the auto belays off and when my job allows for it, I will take the flat side off, the side the Lochner's would see now that the leaves are coming off, and store it for the winter there is no reason for weathering it any more. It will look more like a natural wood structure then, it will be one sided with the one side facing the road that I think somebody will look at anyway. As these talks go over the next six weeks I hope to get people on from this organization to see how much interest and if it can really happen, there are a lot of things we have to find out. If that doesn't work out then I will see about going to plan B or C. I have no reason to believe that parts of or all of this won't be erected somewhere in this community. I will be very careful where it is located. It is very important because it needs to be run correctly. In talking to Mr. Metz, who has talked to Mr. Howard a couple of times in the last week, it has been pointed out that there is not so much a problem with the transfer of the land, if I am saying this correct, that is okay. I had 4.9 acres that I purchased from my grandfather about 9 1/2 years ago that is where I built my house. I purchased the 1.55 acres off of Brad & Tammy Farlow. Where that 1.55 acres is I was going to put that in LLC, my tree business is an LLC. I married into a family of lawyers, I would not set it up any other way. I needed another little bit I felt. So .17 acres of my original 4.98 acres that I purchased from my grandfather and I took that .17 acres included it into the 1.55 acres that I bought off of Brad and Tammy Farlow and made that Unger Mountain. There is something where it should have 2 different descriptions on it, is that right?

Mike Howard: To me, the problem area became when you put the small part in with the other rest of Legacy Ridge, that altered or changed the plat of Legacy Ridge.

Sean Unger: I am going to rectify that and change that. I have been talking with Metz and Bunnell, I am going to take that .17 acres and return it to make it 4.98 again. They said that wouldn't be a problem. What is currently Unger Mountain, what I paid taxes on last year as Unger Mountain, the 1.55 acres of mine that we purchased, we will change on the books and that will go to Sean and Natalie Unger, it will just be another plot. Does that all sound correct?

Larry Thrush: I am not sure at this point.

Sean Unger: I am just trying to clear all my bases, tie all my loose ends and move on with my life. I know it will be a positive thing in the community. If one of these entities bites that I am shopping it out to that I will attempt to take it all down if I can, because it is going to be me, it won't be anybody else. It will be me I am done spending money on this. I think I've got the skills if I have to. I know there is money in the poles. Whether everything can match up I don't know, the flat side can.

Mike Howard: I want to just be sure that for myself and the Board and the people here that you are withdrawing your request for the Special Exception #8.

Sean Unger: It will remain in agriculture, I have no interest in running an outdoor recreational facility at this time. I have a good job and will continue with that.

Deanna Unger: I have been the silent partner in all this. This has been a very stressful time for our family, Sean had so many good intentions with this thing. Mrs. Unger then gave an overview of the Unger Family property in the area. At the Sept. 7th meeting of the Plan Commission when Sean asked to build another climbing wall on his father and mother's property we were told that it would have to be granted a Special Exception for recreation. In doing the process we had a representative from Homeland Security come out and we gave them a tour of the buildings and the woods on our property. He told us what we could and what we couldn't do. He told us that the barns could not be used without putting in expensive sprinkler systems, in fact anything with wood would have to meet stringent requirements before being opened to the public. He thought our trails were great, would be a great place to use for a haunted forest, hiking, there are no restrictions on these areas. We decided that without being able to use the barns it would not be worth putting the expense into something that would be hard to recoup the cost of. We found that being farmers there are other ways that we can share our land with others without having it rezoned for recreation. We did receive a disturbing call from Homeland Security the other day to notify us that he had a call from someone inquiring about Unger Mountain and what we were doing with the property, They told the caller that because of privacy laws he could not discuss our conversation with caller nor could he tell us who the caller was, he just wanted us to be aware. We are planning to build a fence on the south side of Legacy Ridge Estates. We want them to know where our property is and to have more privacy. It looks like Mr. Wendt already had another survey done after we told his lawn care provider not to mow on us anymore, we want the property to grow back up in trees like the rest of our property. We will soon build our half of the fence and Mr. Wendt can either do his half of the fence or not. We will talk with Mr. Wendt if he has any concerns. We will continue to be good neighbors and hope that they will reciprocate.

Mike Howard: Thanked Mrs. Unger

Deanna Unger: Thanked Mr. Howard, it has been difficult for the Plan Commission to be put in the middle of this, like you say "it's part of the job". All we wanted to do was to do something neat for the community.

Sean Unger: We have had a great year. I have a lot of great memories, I have a 5 year old boy who is one of the best climbers on that wall, pretty proud of that. We are good here.

Mr. Vogel: Thanked the Unger's

Mike Howard: Thanked the Unger's.

Mr. Vogel: The third item on our agenda is Chris Lochner.

Chris Lochner: Introduced himself, and his wife Sarah. Mr. Lochner told that he lives at Lot 1 of Legacy Ridge Estates. I was actually going to tell the Unger's that I was supportive of their new endeavor that they withdrew. We have recently moved to lot 1 and I have been doing a lot of listening and learning in the policies, our only concern has been our covenants and the Wabash County ordinance, laws that pertain to our subdivision. Hearing what Sean just said, I am a little confused on the timeline on the intention of the re-plat. I am just asking the Board for a timeline, they are still not in compliance with several county ordinances such as height requirements and setback. I am all for Sean dealing with the three structures that he does have on his land right now that is owned by um. We are just trying to get our covenants back into place. To our understanding that land should go back to the Farlow's to keep all three lots intact. My legal counsel has told me that that until then we really can't enforce the covenants because we need to go after the rightful owner if they choose to. I am just looking for some clarification, and possibly enforcement, a timeline - it doesn't need to be irrational by any means. There is a wall that is noncompliant with county code. There are also three structures that have not been permitted by the county. It is my understanding that there are some state permits that have not been required either for those. I understand that it is not a business but it is still deeded as a business and until that changes hands, I am just looking for some clarification from the Board.

Deanna Unger: May I say something in regards to the Fire Marshall, Homeland Security? I was working at getting things registered for the wall that is there. Everything is up in the air because Sean has a deed, but who owns it now and whatever. The last thing I was told was to wait because he was getting some information from his higher-ups before I get on and register the structure. That is the last thing that I know about that, he has not gotten back to me.

Joe Vogel: Mike, Can you address anything,

Mike Howard: I am going to turn it over to Mr. Thrush. My question is if this is something for the Board of Zoning Appeals deals with or decides, it would be more the Plan Commission wouldn't it?

Larry Thrush: Yes, there is really nothing pending before this Board at this time.

Chris Lochner: So enforcement is by the Plan Commission not the BZA? Okay, just clarification I wanted.

Sean Unger: The 4.1 that he is speaking of Mr. Lochner, I was told that the height is not an issue, because of setbacks and everything so I don't think that is an issue of it. As far as the three structures, what was intended for a bathroom, there isn't a bathroom in it. It is a 6 x 6 building there I don't even know if that is on what I purchased from Farlow's, when I site it in it doesn't look like it. If that's a problem, I don't know. If Mr. Lochner is looking for a timeline, I am looking to find a new home for this too. With the new build if the company is able to do this I for the winter so it is like I will have poles in the air. When Mr. Sposeep is the original person that filed a complaint on this, that was Dec. 23rd when he talked to me. I received a letter from his lawyer, Rick Fisher, a week later, he gave me a date of May 1st to have the tower down. The Lochner's don't even have an issue with the tower, as they said and like they told my parents after the July meeting. Their stance is the covenants and that it should be deeded back. I believe that they should talk to Mr. Metz and Mr. Bunnell before they go further, they are the ones that make the distinction whether or not that this could happen. They are the ones that are most educated in this issue, maybe they have talked to them, but I doubt it. I wrote them a two page letter when I heard that they were getting possession of the house, that they had bought it. I thought it was a very good letter, I put my number on it and I asked if they had any concerns. That is why we are at these meetings, talking about things that may not pertain, because this is the only way we can discuss things. I am looking for answers too. I've got better things to do and I know that you have better things to do than to keep showing up at these meetings monthly. I have no question that the land is mine, I will fight that, I have no problem if they want to do that. Because that is my land, I paid for it, it was in Greg Metz's office and if that is what their issue is we can figure that out, but I am looking for a home for this. But I have six weeks to get people on this and sell them on it.

Chris Lochner: I apologize to the Board, I thought you were the enforcement of the codes. I do apologize and I appreciate your time.

Joe Vogel: Thanked Mr. Lochner.

Patrick Hess: Mr. Hess introduced himself as the attorney representing Michael and Donna Wendt. Some of you have seen me at the Plan Commission meetings. I think Mr. Metz is the head of the title company, is that right? And what he is saying is he insured that the deed would be recorded and it got recorded. But what everybody is overlooking is that that lot 2 is in a plat called Legacy Ridge, and it was divided. If you do that under your County Ordinance you have to get a re-plat and they tried that and it was denied. I don't deny that he owns it, he got a deed for it and he paid money for it. What I am saying is that transfer was done in violation of the Subdivision Control Ordinance and that is something that the Plan Commission is going to have to sort out. The Wendt's too were here tonight to support the proposal for Special Exception #8, but they did want to see the wall come down on what they bought off of lot 2. When they bought their lot it wasn't just dirt, they also bought into a contract of restrictive covenants that protects their property values and gives them some assurance of the neighborhood they live in is going to stay that way for as long as those covenants are in effect, and they are perpetual. That was taken away from them when Metz let that deed get recorded and when that wall went up without permits. We have no ill will whatsoever toward the Unger's and can't imagine the time and the money and the anguish that they have gone through. But honestly, a lot of that could have been avoided if the first stop would have been at Mike Howard's office. That mistake has continued to kind of haunt them and has gotten them in a situation where they don't know which way to turn. I am not sure I could advise them if I was their lawyer to be honest with you. But somehow this

has got to get corrected, there are ordinances, maybe old ordinances, but they are good ordinances, that where there are current violations that somehow are going to have to be corrected. Somehow, the Wendt's, their property rights that they had when they bought their lot with those covenants are going to have to be corrected. I appreciate your time, this stuff isn't fun, you don't get paid to sit up here, I know how that works. We are not trying to increase the anguish for anybody, but we would kind of like to kind of turn back time if we could and put things back to the way they were.

Sean Unger: If I could say one more thing in response, talk about the division, there has already been a precedent for division in the Legacy Ridge Estates in the past. That has already been discussed at the Plan Commission.

Pat Hess: But that wasn't a buildable lot, and that is the key. They adjusted a property line.

Mike Wendt: It wasn't a division.

Sean Unger: We agree to disagree. You want a timeline, I will use the same timeline that Mr. Sposeep had, because he was an individual that knew about this 15 months before I had it built. I talked to him in September, 2015, he didn't have any problem with it then. He didn't realize I suppose, that he would see it when the leaves came off the trees because that is when I had a problem. . He gave me a May 1st deadline, I will take it down, it will be gone, I assure you of that and you do whatever you need to, to come back on me if it's not down by May 1. I will have the cabin moved, it is a Built Rite cabin that is on skids, it is not a big deal, it will be moved. I will find it a new home by May 1st. If the 6 x 6 storage building is not on my ground I will have it moved.

Mike Howard: Looking back at the survey that was originally submitted by Mr. Bunnell it showed that approximately 1/2 or 1/3 of the Built Rite building is on your property, it looks like it is on both properties. Without going out there and walking the survey line, it appeared like the the 6 x 6 unit was on your property, and the light pole was on your property. One thing I would like to say, and going back to what Mr. Hess talked about, it is unfortunate that this got to where it did. Through the changeover of personnel that is required in County Government offices due to term limits, some of the staff aren't always aware of the details, for example when it went to the Auditors office and was approved and passed without coming to the Plan Commission. We have been working, since probably late 2016, to develop what we call a Parcel Review Committee. What will happen when that is established is that every deed that comes in here will be held long enough to be reviewed by that committee to make sure it meets the requirements or meets the laws of the county and state so that we don't have issues like this. It is unfortunate that we don't have that in place now, but we are working on developing that. It will be different offices that work with this information every day, they are aware of what their policies are so that when we look at a deed we know ahead of time what we are looking for and if this deed can be established. Had that been in place, most likely this situation that you have come up against would never have happened it would have been caught early on. Unfortunately that is not the case.

Joe Vogel: Thanked both gentlemen, I am sure you are going to have some legal issues to look at on both sides and see if you can get it sorted out.

Sean Unger: Should I plan on attending the October Plan Commission Board meeting?

Larry Thrush: It would be alright. My best guess is Sean that a court is going to set that deed aside, because it wasn't done lawfully.

Sean Unger: Mr. Metz said that we will bring a file that will show that it has been done for years like that. If we have to go about it that way. I am going to fight for this land.

Sam Unger: Are you wanting that ground, is that what you are fighting for Mr. Lochner? Is that what you are continuing to fight for?

Chris & Sarah Lochner: I believe we legally can't, it legally belongs to Mr. Farlow. It is a part of lot 2. We are not fighting for the land, just for our covenants.

Sam Unger: There were 4 lots and they said the one wasn't buildable. The lot that Sean bought and built wasn't buildable, but they made it. That is what someone is technically saying that the back lot wasn't buildable, anything can be made buildable.

Sean Unger: I will be at the October meeting. If I need to talk about anything I will.

Joe Vogel: Next on the agenda is Milliner Farms, seeking a variance from setbacks for CFO buildings in Liberty Township.

Mike Howard: Milliner's Hog Farm, I have been talking mostly with David and Jeremy Milliner. The farm is located at 8199 S. America Road has submitted a pre-application for 4 buildings to house a total of 10,000 head of hogs. This would be located on the current home place. They have 157.5 acres. The confined feeding portion of it would be cut and would meet the 10 acre requirement. They have applied for a variance from the setbacks. Rough estimates using drawings from Mr. Veenhuizen, the engineer working with them, the variance they are seeking involves 3 structures, the first residence would be approximately 940 feet from the new buildings, the second structure would be 1,025 feet, and the third would be back to the south and would be approximately 1,175 feet. In our County Ordinance the residential setback requirement for a CFO building is 1,320 feet. The home residential structure is where Melba lives, and she has no issues with the facility being there since it is the family farm. Mr. Howard reviewed maps and engineer drawings of the facility with the Board members.

Jeremy Milliner: We are asking for this variance for two reasons. First, we have gone over this with Mike Veenhuizen Engineering. We have gone over different studies and research, including the wind patterns and trying to find the location that will affect the least amount of people the least. Second, this is a business plan. From a business standpoint it just makes sense. Our family has had an established working farm there for 65+ years. There are buildings established, the grain bins, my grandmother lives there we are just trying to make it where everything we have stays there. There along with utilities there. We would look at upgrading the power along the road to three phase, which I am told could benefit everybody from us on back if they choose to use it. Those are the two main reasons why we are looking to build on this site. We would welcome any questions you might have.

Joe Vogel called on David Brinson. Mr. Brinson introduced himself and stated that he lives at 8439 S 390 E, 1 mile straight west of the location. David and Jeremy are fine people, I am looking out for some other things. David and Jeremy I have checked on county tax records, they are not the property owners, it will be on property owned by their mother/grandmother, they own

750 acres they could use. They could walk away, they don't have to smell it, they don't even have to continue it once they start it. Some concerns I have are:

- If you take 1 mile each direction from them there are 62 houses around owned by private people. I asked David why he didn't put it close to where he lives, David said he couldn't put it within ½ mile of government ground. If the federal government doesn't want it where there isn't anybody living, why do we have to put up with it? There has to be a better location for it.
- Rules are set up for these things, I hope for the protection of taxpayers, the environment, the drainage from water runoff, and just the land in general. I don't even see why we are here, the rules are set up they shouldn't be able to change them. We follow the rules.
- They talk about these hogs, 2,650 hogs per barn that is a total of 10,560 hogs. It takes about 5 months to take a hog from a pig to market, that is 2 times that you've got to haul these hogs in and haul them out. Average of 404 hogs a week, I know they don't sell them by the week, but that is an average.
- Who will be working there? They can't take care of 21,000 hogs. They might want to take care of it by themselves but they can't.
- I will ask you to put yourself in my position. My property does border their property, my house is on the next road. Would you want to live by this? There has to be a better place to put this.

Mary Finicle: Introduced herself, lives at 7838 S. America Road. I hope each of you have a copy of a letter that I have provided.

Mike H.: Yes I have a copy for each of them.

Steve Heath: Introduced himself, lives at 8441 S. America Road. We were presented with a letter that if we signed it would allow them to build closer to our home than they could otherwise, we are not going to sign any letter and they are aware of that.

Erica Jones: Introduced herself, lives at 8399 S America Rd., We have some of the same concerns expressed as well, along with run-off, and roads. We have experienced this where we lived before. We will not sign anything to support this. Why does this need to be closer to my home than it is legally allowed.

Tom Finicle: I know these guys and have nothing against them. Except for the fact that I have asthma, and I don't know what this will do to my quality of life. Everything that I have read says nothing positive. I don't know what this does to property values we have had people look at our property and they have told us how much it would decrease, it would be a decrease of around \$100,000.00 in value if the CFO building is allowed to go in, will they compensate us \$100,000.00 for the loss, I am going to guess no. If they legally can't put it there then what is the discussion, there is not really any reason to talk. Why are we all here?

Larry Thrush: They legally can't do this without a variance and they are asking for a variance from the Ordinance. This Board has to find on 4 items before they can grant a variance.

Tom Finicle: I have concerns about semi traffic on America Road the road is deteriorating greatly. Hauling manure out there every day is not going to enhance those roads a lick.

Brad Carpenter, Introduced himself, lives at 5219 E 800 S, probably a mile east of the Milliner property. My main concern is water quality. I am unaware of how deep my well actually is. If we have a good rain water stands on my property, I am investigating options to make modifications to my property to optimize that condition. With potential e-coli, I am concerned where the runoff would go if rains are heavy? There are waterways within the property. I did not receive any type of signature letter because I am outside of the variance distance and also downwind.

Joe Vogel: Thank you, is there anyone else?

Jeremy Milliner: There seems to be a common thread of concern, odor, quality of life, and the water table question. Just to give some neighbors some peace of mind and let you know what we are doing and how we are proceeding. We are not just putting up a standardized building, we are taking into consideration the quality of life for our neighbors, we are looking to implement new technologies that we are essentially going to become the first of its kind.

- There will be 7'6" deep holding tanks under the slats, However unless there is a major issue with the design that we are putting in there should never be more than 12 inches of water in the building. I think 60 – 70 percent emission is to be removed from these buildings. We will take the manure and process it, and get it out of there on a drier base. We are looking at around conservatively around 30 – 35 percent solids. What that does not only for the neighbors but for the industry, this reduces risk for the farmer, it would not be a saturation in case of a spill. With what we are doing, if you drop something over, you scoop it up and put it in your wagon, you still call IDEM, you scoop it up, and take it to where it belongs.
- Water table: IDEM requires a perimeter tile around each individual building, I want to say that bi-annually I believe these are to be tested to see if those pits have are any breaks, cracks or are leaking that is going into the watershed. If anything is found we are required by law to fix that building as quickly as possible. The difference with our buildings, all I have to do is flip a switch, drain it, which will take about 1 ½ minutes to drain it, not put anything back in it and fix the issue.
- We have taken a lot of consideration how it will affect our neighbors. You have in front of you a diagram showing what the options are. Mr. Brinson said that there has to be a better place to put those buildings. We have studied this with Mr. Howard and Mr. Veenhuizen. The studies that Mike Veenhuizen has given me showing the percentages of wind directions. Essentially what this tells me that if we build our buildings where we are allowed to we are going to be affecting 8 neighbors directly to the east of us 18% of the time or there are going to be to the southeast 8% of the time so essentially 26% of the time those neighbors will be affected. By putting them where we are at, it does put the buildings closer to the residents to the south, however directly to the south is 8% of the time, neighbors will be affected 29 days of the year.

Jerry Younce: How will this be applied to the field?

Jeremy Milliner: Using a Big A with airflow, I will take it to the fields in a big dump trailer, it will be dry enough that it will feed just like lime. Going back to the way we are processing the manure that is coming out of our facility, we are not just drying it down. After it has been separated solids from liquids, we are putting different carbons, what that carbon does is it absorbs the smell and won't release it. That is one of the steps that is in our process. Part of the

filtration system we have for the water has carbon in it, as that goes through the filtration system some of that carbon will be released back into the building, you have carbon in the pits and that will decrease the smell.

Joe Vogel: How do you handle the liquid that you get out of the manure?

Jeremy Milliner: Removing the solids from liquids. Liquids through filtration system into a bulk tank. From that point it will be pumped back into the building and used to clean the base of floor of the building. You are flooding floor and pushing any residual solids to a trench in the building, raises the water level which submerges any solids, will be gray water, non-potable water.

David Milliner: That water will help hold down the smell for that day or two that that manure is sitting in there. After a day or two that water and solids will be flushed out processed and we will do that again.

Joe Vogel: If you move that building back on your farm, wouldn't it fit back there and you wouldn't need a variance.

Jeremy Milliner: Correct, we can put it there. We have the footprint further back.

Joe Vogel: You would need no variance, why don't you want to do that?

Jeremy Milliner: Part of it is the lay of the land. It puts the building essentially in the swale.

David Milliner: It comes back to our original reason it puts it at the farmstead closer to our buildings, that is significant. Second we went with the prevailing winds, our concern for the most part was the neighbors to the east. Yes we can move these building 800 -1000 feet away from our farmstead to the east, that is going to be 800 to 1000 feet closer to our neighbors to the east.

Joe Vogel: That would give you the 1320 feet from the other properties. We have spent a lot of time on coming up with the ¼ mile setback. We have been pretty steadfast in protecting other properties. In return they can build a house the same distance to you on their land. We have a lot of CFO's but they put a lane in and the buildings are back in the middle of the section kind of out of sight out of mind.

David Milliner: We don't have anything to block the view so it's never going to be out of sight, out of mind.

Joe Vogel: You will have some sort of screening around it won't you?

Jeremy Milliner: We are kind of building a showpiece. This won't be a typical building.

Mary Finicle: I can't imagine this flushing system. I just don't understand why we are having this conversation.

Joe Vogel: Let's look at the big picture here.

David Brinson: A “one of a kind building”, they don’t know what it is going to do. What happens if this new building doesn’t work? As long as this thing is brand new it might work fine, but it is going to break down and it’s going to be just exactly like a sewage plant of a town. If they breakdown they just dump it into the river and call IDEM and get a permit and that is what they are going to do.

Erica Jones: What happens if this building doesn’t work? If your new thing that nobody has ever done before doesn’t work.’

Then it is just like every other barn that is being built, it has a 7 ½ ‘ pit that is holding that manure for 12 – 18 months

Milliner’s: that won’t happen.

Brad Carpenter: Questions about injection and incorporation, I don’t know what that means necessarily

David Milliner: Most buildings are liquid manure, most hog farms are injecting it into the ground. That is required by IDEM to inject

Brad Carpenter: Is there a provision for how close to a home for application?

Mike Howard: The livestock manure is controlled by the Indiana State Chemist, they could give you the setbacks for application. We have our county CFO ordinance, but manure requirements are regulated by the and we go there for setbacks.

Jeremy Milliner: We were an active hog farm up until 2000 and were for many years before that. We have always tried to be respectful and courteous to our neighbors.

Steve Heath: Is most of it solids? What would be the volume that we are talking about? Some of it is getting trucked out and some will be getting injected into the ground?

Jeremy Milliner: the manure that we will have we are taking off site.

David Milliner: Eventually there will be a market for the waste to be processed off site. That market has not been developed. Someone has contacted people, they will need hundreds of thousands of tons. We did a little math. We are talking with other counties.

Mark Milam: How much area is needed for storage processing and the storage of the gray water and the storage of the dry substance?

Jeremy Milliner: There is a building southwest corner, that is the processing building, inside that building is the separator. That is where the separating the solids form the liquids will happen. As far as storing water everything is in the pit. When we pull it out we are pulling out the solids and everything goes through the filtration system. There is no storage for the water it will go back into the building. It will go back into the pit. Secondary building on the north.

Mark Milam: You mentioned that the building could be emptied in 1 ½ minutes....

Jeremy and David Milliner: explained the flushing system and processing.

Jeremy Milliner: Part of our plan is an estate plan, trying to get the boys back to the farm.

Joe Vogel: We understand that.

Dan Dale: Where are you at in the process with IDEM?

Jeremy Milliner: Everything has been submitted to IDEM within the last month. With any luck we are looking to hear back from IDEM within the next two weeks. You don't usually get your permit the first time out, they usually have several questions.

David Milliner: Mr. Carpenter talked about runoff, part of our ground that surrounds his house, there are waterways on that ground that is at least ½ mile away from his house. Pretty much anywhere we put a building will not affect his area. I believe Wabash has a conservation board that we will also have to notify.

Joe Vogel called on Mr. Brinson.

David Brinson: If we get a big rain, any of the dry material will be washed off into the creeks and rivers.

Brad Carpenter: What is the start to finish time frame?

Jeremy Milliner: Four to five months possible up to 6, depending on the weather.

Tom Finicle: If the variance is not granted they can still put barns on that property, is that correct?

Joe Vogel: My understanding is yes they can as long as they are 1,320 feet from any residence.

Larry Thrush: Yes, they can.

Joe Vogel:

Mike Howard: You are only voting on the variance, based on the current ordinance there certainly

Dan Dale: You are asking for this variance, is it because you have a building that should be allowed?

Jeremy Milliner: I am trying to affect the least amount of people by the building of this facility. I am just trying to make a living for my family. I know that my way of providing for my family can affect people. This site is the best site for us to not disrupt as many people as we absolutely have to. I am just trying to be a good neighbor.

David Milliner: In the area that we can build you are coming in to more homes.

Mary Finicle: I understand that this is an estate plan. Could this possibly end up being more buildings, you own 157 acres? My other concern is if this passes the variance, as the family grows would there be more buildings? It is available and you all want to provide.

Jeremy Milliner: There has to be a limit. If you put another barn there on that property, you take the risk of issues with those, with the health of the hogs. You don't want those buildings that close together.

Mary Finicle: Four or eight, does it make a difference?

David Milliner: There are rules. You can't build more than that.

Mary Finicle: Then why are we here?

David Milliner: The Plan Commission has setbacks from the roads, property lines, and residences. Did the county establish the setbacks? I don't think that the federal government asked for that, did they?

Mike Howard: Yes, the county set that standard.

David Milliner: At the farm where I live, basically of those 750 acres, the strip that you are looking at is the only place that we have on that land to put hog buildings. We might have one other spot. We have worked with Mike Howard and checked that there might be one other spot, it is that tight.

Mary Finicle: So back to my original question, 4 is the limit?

Jeremy Milliner: I am not going to say that four is the limit, not for our family. Four is the limit, for that general area. You don't want more than 4.

Tom Finicle: Are you going to move there Jeremy?

Jane Parrett: I am part of the family, I am going to have to deal with it just like I did when I was a kid. You all moved out in the country. That is why there is this setback, whether is is 8 or 2 there is still people affected.

Mike Howard: A couple of things, I don't want to upset people but this is what I feel.

- We worked hard in 2007 creating this CFO Ordinance, how many of you were here then? I am guessing none of you cared until it affects you.
- When you move out into the County remember you are moving into agland. 2 issues we look at, who is the farmer that sold you the ground because once you sell 1 or 2 acres you are giving up the rights to 80 acres of land, that may not be a fact, but that is what ends up happening. We are trying to protect our ag land, We have tried to make it work for people in the community to have confinement buildings. We are reciprocating by not letting a residence be built close to a structure and vice versa. It is a tough situation and I understand that. If we don't continue protecting our ag land we are going to be looking for food before long. In our new ordinances in our draft that we have been working on, we are really trying to conserve agriculture land. I don't mean to be disheartful to anyone wanting to live in the country, I understand that. If you are going to live out in the country understand that you are moving into ag land and we need to accept what ag land is doing, if you can't do that then don't move out there

Mary Finicle: The Industrial Park used to be all ag land.

Mike Howard: I don't agree with what happened out there, but we don't have jurisdiction there, that is Wabash City.

Mark Milam: It was rezoned.

Tom Finicle: Yes we did choose to move to the country, there are lots of reasons to live in the country. Now the game has changed and we are still living in the country. You are going to change the game on us. I understand what you are saying and I don't disagree that we have to protect what we eat. We don't have a horse in this race. Except they are looking for a variance to take this closer to whatever for their benefit. We didn't ask for the game to change, there were no hog operations there when we bought our property.

Mike Howard: I understand, when we look at purchasing property as an individual it is unfortunate we don't see the scope of what could happen.

Steve Heath: When you look at 1320 feet setback, take a football field 120 yards long, the required setback distance is 3 ½ football fields, knocking 100 yards off the setback for us, that is getting too close. I respect that we are in ag country. I am not thrilled that you guys are doing this, but I know that we talk a lot about trying to get kids to come back to the county to work. This is a way for you guys to try to make a living. It will impact me. I am speaking against this variance, because I want it as far away from us and the Jones's as possible. Mr. Heath then read a paragraph from the waiver letter he received. Bottom line is I would never sign away my rights.

Mike Howard: Does that not say "as long as they are not committing a violation"? If they are committing a violation you have every right.

Steve Heath: I am not going to leave myself where I can't do anything about it.

Lori Heath: This is a prototype operation, they have been very upfront about it, there are a lot of "we think, we hope". It does not seem responsible to sign away our rights.

Joe Vogel: Thanked everyone for their comments, then called for a vote on the variance request.

Larry Thrush tallied the votes.

Joe Vogel: The request for the variance has been denied.
The next item on our agenda is discussion of the new County Ordinance Book

Mike Howard: Larry, in our discussion you have talked about the required agenda and the Memorandum of Meeting. We have the book with the date, the meeting time, handwritten minutes, the public sign in sheet, the attendance of members of the governing body present, record of everybody who was here, and a record of the votes taken which we do.

Joe Vogel: Do you agree Larry?

Larry Thrush: I think so.

Mike Howard:

- The next item is solar farms. I did make some changes to that draft ordinance, Board members were given a copy of the ordinance to review for discussion at the next meeting. There is a solar farm located in Peru off of old 24, I would like to contact them and make arrangements for the Plan Commission Board and the Board of Zoning Appeals to go look at it.
- Mowing Ordinance, I have created a document for this that I would like to have as a supplement to the Ordinance. Board members were given a copy of a proposed ordinance. Contracted rates could change annually. The section of actions and penalties for violations, those are left blank for now, these would depend on how we work do the contract and how it works out to get quotes from local vendors. I have looked at the ordinance for Claypool, it is within the town of Claypool. Some questions for the contracted mowers would be when does their time start, when they leave their facility, when they arrive at the property and start unloading? Not sure exactly how contractors do their quotes at this time.

Joe Vogel: I would think it would start when they arrive at the property and start unloading equipment their time would start and run until they load back up.

Mike Howard: I would like to get several contractors in here together and talk with multiple contractors. Maybe have some from the Manchester area also.

Dan Dale: Just for my own information, who comes up with the ordinances?

Mike Howard: We developed the solar ordinance because of increasing interest in this area.

Dan Dale: Do the County Commissioners do this?

Joe Vogel: Mike Howard would look at other counties and research the matter, create a draft, then we discuss it and once approved, the Commissioners approve it.

Mike Howard: I study quite a bit of what is going on around us.

Joe Vogel: Our toughest area on the draft has been R1 and R2 zoning for ag, do you want houses built on that, preserving farm ground.

Joe Vogel asked for a motion to adjourn the meeting. Mark Milam made the motion, this was seconded by Dan Dale. The meeting adjourned at 9:00 pm.

Libby Cook
Secretary, Wabash County Board of Zoning Appeals