

WABASH COUNTY PLAN COMMISSION

Wabash County Court House

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BZA MEETING MINUTES **SEPTEMBER 25, 2018**

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

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

PRESENT: Dan Dale, Mark Milam, David Schuler, Joe Vogel, Larry Thrush
Mike Howard, Libby Cook, Denny & Bev Elshire, Doug & Alice Campbell, Joshua Thomas, Gary Rhodes (Franger Gas Co.), Guy Holmes, Deborah Long, Rex & Betty Temple, Todd & Heather Custer, Ryan & Melissa Long, Mike & Judy Welcher, Don & Sue Meyer, Bill Plummer, Ron Fearnow, Linda Stevens, Phyllis Guerin

The Wabash County Board of Zoning Appeals met on Tuesday, September 25 at 7:00 pm. Board Chairman, Joe Vogel opened the meeting and asked if there were any additions or corrections to the minutes of the August 28th meeting. There being none, Mr. Vogel asked for a motion to approve the minutes as written. Mark Milam made the motion to approve the minutes; this was seconded by David Schuler. The motion passed, the minutes were approved as written.

Mr. Vogel: The first item on the agenda is Chad Vigar, S.E. #4 for a pond in Lagro Township. Mr. Howard informed the Board that Mr. Vigar had to be out of town this evening and could not attend the meeting. The pond was constructed without the required permits being issued. He then reviewed the information on the pond with the Board. The adjoining land owner was present at the Plan Commission Board meeting to discuss the pond and the overflow running out on to the farm ground. He was not so concerned in the respect that he is not sure this pond will get that full or stay that full to be an issue. The Plan Commission Board would recommend to the BZA that if this overflow creates an issue with the farm ground that the owner of the pond, Mr. Vigar, would be required to run a tile from the overflow through the filed down to the certified drain. If they do that in order to tap into the certified drain it would have to be approved and overseen by the Drainage Board. Some of the residual dirt on the dam side spilled into the farm field. We talked with Mr. Ringel about that, he had no problem with that once the crop was harvested they would go back in and clean that up.

As far as Mr. Vigar not being here tonight, are there any questions you have that I can answer or do you feel comfortable voting on this without him being present.

Mr. Milam: Was he told to install a rip rap catch basin or something to slow down the speed of the water if it were to go out the overflow tubes?

Mr. Howard: No because, the pond is in the very corner of the property so anything he would do would be on the neighboring property. The overrun dirt at the foot of the dam is currently out on the neighboring properties farm field.

Mr. Vogel: It should be noted in the minutes that we are using the Plan Commission recommendation for our vote. If there is a drainage problem created by the overflow for the farm field the owner, Mr. Vigar will take care of it. Are there any questions from the Board members or the audience regarding the Vigar pond?

Mr. Milam: I think we can go ahead and proceed as long as it is recorded that if a problem occurs with the property owner that has that farm ground or whatever it becomes in the future that Mr. Vigar will take care of it.

Mr. Howard: In our restrictions checklist I have written "If the pond overflow creates farm field wet areas then the overflow must be tiled to county certified tile drainage line under the approval and supervision of the Wabash County Drainage Board. Mr. Vigar will remove the over-run soil from the adjoining property after the field crops have been harvested so as not to be encroaching on said adjoining property.

Mr. Vogel asked if there were any other questions or comments on Mr. Vigar's pond.

Mr. Howard informed the Board that first they would be voting on a variance from the property line setback for the pond.

Mr. Dale: So the setback is supposed to be 15 feet or is 15 feet now?

Mr. Howard: The required setback in our ordinance states 100 feet from the adjoining property line, the base of the dam for this pond is at the property line.

Mr. Thrush tallied the votes on the variance, it was approved. The Board then proceeded to vote on the Special Exception for the pond, Mr. Thrush tallied the votes, and the Special Exception request was also approved.

Mr. Vogel: The next item on the agenda is Todd and Heather Custer, S.E. #6 for a campground in Chester Twp.

Mr. Howard asked Mr. Custer to explain to the Board what their plans are.

Mr. Custer: Our plans are to open a 40 – 50 primitive campsite on our property just on the outskirts of Liberty Mills, along the Eel River. In conjunction with that we would like to run a

canoe rental business. It is in a flood zone so we are seeking a permit to operate the campground in a flood zone area. We are currently working on the permits from the DNR, the IN Dept. of Environmental Management and the Army Corp of Engineers. We have had early coordination with all of them and they have pretty much given us the green light to move forward and write up the permits.

Mr. Dale asked if the ground was being farmed now. Mr. Custer replied that it is completely wooded.

Mr. Vogel: As you come into it from State Rd 13 going into Liberty Mills as soon as you cross the bridge it is on the left side. Todd told us at the PCB meeting that he would have a driveway that runs the length of the property in the area, and then have campsites. Then all the parking would be off the road in the campsite area.

Mr. Custer: The parking for the campsites will be off the driveway by each campsite. There is a pond just off the road as you come into the area, we are hoping to drain it and fill it in. and have it as a parking lot for the canoe rental area. Maybe 10 – 15 vehicles in there.

Mr. Dale: This will be primitive camping, that means there won't be power and plumbing to the campsites, what are you planning on for infrastructure? Mr. Custer replied that it will be tent only camping, and that they hope to build a pavilion shelter in the center of it eventually. We plan to use port-a-pots possibly up on a trailer that is anchored down to prevent from flooding and washing away, and any contaminants.

Mr. Vogel: We discussed that area of the Eel River can come up really quick when Ft. Wayne and Whitley Co. getting a 2 – 3 inch rain.

Mr. Custer: We haven't looked into anything yet. We watch the river levels pretty regularly. The DNR has an active site where they monitor it and we can watch that. I would say that we could possibly put in an early warning signal at Colomer or between Colomer and Liberty Mills to let us know when the water is reaching flood levels but I haven't looked into what that would cost. Mr. Vogel asked, "Where you are at, is not as prone to flooding as other areas?" It floods at the public access site which is about a mile south of our property before it floods at ours. The fields south of us flood before we do. I think flood level is at 11 feet, at 13 feet our property starts getting inundated. This year was pretty bad; our entire property was under water. We hope to put in a boat launch but that will be in a year or two.

Mr. Vogel: I think the location by the river is nice but it is in a floodplain. Are there any questions for Mr. Custer?

Mr. Milam asked Mr. Custer if they have state approval from the DNR, Division of Fish and Wildlife, and the Army Corp of Engineers. Mr. Custer replied, on the property side it would be the DNR, on the boat ramp it would be the Fish and Wildlife side and the Army Corp of Engineers and IDEM. Mr. Milam asked if they have that approval here with you. Mr. Custer replied no, they are not approved yet, they are being written up. We did have early coordination with these three agencies to go over the plans and to discuss what mitigations would need to be

done and they were just letting us know what it would entail. They all thought it was a good idea and a good place to do it, so we just have to meet their guidelines in writing up of the permits.

Mr. Dale: I am a little concerned about the flooding situation, what would be your plan if you had campers in there and we had some heavy rain coming, how would they be warned? Whose responsibility is it; would it be camp at your own risk?

Mr. Custer: The property is pretty unique; there are levees that run down both sides of the property. The west side gets inundated first and when that starts to get inundated we would have the campers leave at that time. Mr. Dale asked if Mr. Custer would monitor that. Mr. Custer stated that it is an at risk, people would know to watch the weather and the river levels and assume the risk of camping in an active flood zone. Yes we would try to watch to keep everybody safe for liability purposes.

Mr. Howard shared 4 letters from persons expressing their concerns about this site location. In our floodway program for the state and the county we have what they call a floodway, anything that is in a floodway is controlled by the state of IN. Once you go out beyond the border of the floodway you get into a floodplain and that is controlled by the county. We have a county ordinance that stipulates our regulations for the floodplain areas. This entire area is in the floodway so it is controlled by the State of IN as far as the floodway part of it. The BZA certainly has the right to put conditions or stipulations in regards to the campsite or campground part of it if this is approved. Board members reviewed the letters.

Mr. Dale: So campers will park their cars by their site, so then the vehicles would also be at risk to be in a flood if one comes up? Mr. Custer replied yes.

Mr. Howard: In my discussions with the State Board of Health, talking with them about septic or how that would work and things like that. I explained to them that he was talking about a primitive campground. I don't know that the word primitive is so important at this time. We instead should designate what would or would not be permitted on the campground. According to the state primitive means there would be no vehicles at the sites – they would have to hike in. I have marked primitive off the application for now until we get clarification from the state. I am not so concerned about the word primitive as I am that we are all on the same page of knowing what will be there and what won't be allowed there.

Mr. Vogel then asked for comments from the audience. There being none the Board had discussion on whether to vote on this request or to wait until Mr. Custer has the permits needed from the State.

Mr. Howard: In my discussions with the State, as Todd Custer has said, he has been very diligent up to this point. The only thing is he actually has not submitted his applications to the State. My recommendation would be that we wait until he gets his permits back from the State. From the DNR for the floodplain part. The people I work with from the state are from the insurance and the DNR regulations side. She is not so sure that some of the things that I asked about would be permitted. For example using port-a-pots they can be anchored, but if it floods deep enough you have a problem. She seemed to think that the State wouldn't allow this and

that certainly is not our jurisdiction, it is the State's jurisdiction. My recommendation to the Board would be to wait and have Todd get his permitting from the State and make sure he has everything completed and approved before we go any farther. Some valid points that were brought up in the letters that we would need to consider are:

- ❖ Would pets be allowed?
- ❖ Would ATV's be allowed on the property?
- ❖ Property Boundaries and setbacks?
- ❖ The launch site for canoes, legally I think we would have to have state approval on that before we approve it.

Mr. Vogel suggested a continuation of the meeting until the proper State permits are in place.

Mr. Howard stated that with a continuation no legal advertising would need to be done for that meeting.

Mr. Thrush stated that since this is a public hearing if anyone wants to speak to this matter at this time they may do so.

Mr. Dale: One concern in those letters is property lines and keeping people on your property and off theirs. Mr. Custer stated that he has a lot of problems with people trespassing on his property from other properties. The county requires us to put a hedge along one property line so that should be a border; on the north side there are big, tall train tracks that are in the .5 parcel they are probably 10 feet high and there is an old railroad trestle that runs through that; to the north we would put a fence there because it does drop off into the old mill race; the west side of the property line is the river; the property line to the west is the .5 acres, you will see two large concrete embankments which used to hold the bridge the tracks aren't there but the concrete is, we aren't going to use those.

Mr. Howard: There have been questions about the property lines. Before it sold this was the railroad right-of-way are designated out in parcel lines so when it sold the first time that would have been the .54 acres. We all agree and understand that no one owns the river but that is the way it is shown in the drawing because that is the way it was originally drawn had it not been sold those lines would go straight across the river for the railroad right-of-way. There has been a question about the setbacks, Mr. Custer is also seeking a variance from the road setback the only variance he is asking about is from the road in to the first structure that is supposed to be 100 feet and he is asking if it can be closer to the road entrance, as far as down the side to the east the 30 feet will remain. Those other setbacks will remain. The only variance we would allow would be the setback from the road to be less than 100 feet. Mr. Custer questioned a structure. Mr. Howard told him that a structure would include a tent or anything like that that they are going to set up.

Mr. Vogel asked if there were any further questions from the Board or audience. We will continue this and let Mike and Todd get a lot of these questions answered, along with what the DNR will allow then we will have another meeting to hear this again.

Don Meyer asked, on a continuation do we have to redo everything or is everything still on the table?

Mr. Vogel: Everything would still be on the table. He then asked Mr. Howard how the people would be notified of another meeting.

Mr. Howard: Anyone that wishes to be notified put your name and address on the sign in sheet for tonight's meeting and we will send a courtesy notification.

Mr. Vogel: That could be 2 – 6 months from now for Mr. Custer to get his DNR permits.

Mr. Custer: Yes, that is a 90 day waiting period minimum for the DNR.

Mr. Milam made a motion for a continuance for the Custer application. This was seconded by Mr. Dale, the motion passed.

Mr. Vogel: The next item on the agenda is SE # Denny Elshire. Mr. Howard informed the Board that the Elshire's are requesting to construct a pond on their property located at 1856 W 925 S in Waltz Township.

Mr. Elshire stated that they will not need any variances and that they have received approval from the Army Corp of Engineers and the Wetlands Commission for pond construction where part of the pond is in the flowage easement. It is in the center of the property. The Elshire's are not sure of the exact size of the dam as the land has not been cleared yet.

Mr. Vogel: It will be approximately 2 acres?

Mr. Elshire: Approximately 2 acres or less.

Mr. Vogel: Overflow from the pond?

Mr. Elshire said that it will eventually overflow to the Oden County Ditch that is about 1200 yards away. There are approximately 2 – 3 acres of watershed that will feed the pond. The biggest flow of water comes through from the south and crosses the county road and crosses the highway, it will be below the dam. We didn't want to clear the property until we have all permitting in place.

Mr. Howard reviewed the plans for the construction of the pond.

Mr. Vogel asked if there were any questions from the Board or audience, there being none the Board proceeded to vote. Mr. Thrush tallied the votes, the request was approved.

Mr. Vogel: Next on the agenda is SE # 9, Franger Gas (Gary Rhodes representing). Franger Gas is requesting to place LP tanks at a satellite location for their company in Noble Twp.

Mr. Rhodes: Franger Gas is proposing to place two 35,000 gallon LP tanks at 1117 N. St. Rd. 15. This will be a satellite location for storage tanks only, no retail sales at this location. It will be located by the truck wash. We have submitted plans to State Division of Fire and Building Safety Plan Review a department of Homeland Security.

Mr. Howard: As for the county requirements, in the 1965 ordinances we don't have anything specific for this; however there is a bottle gas plant section in our ordinance and that is the guidelines that were followed for other similar S.E. applications. The designated distance from the property line is 300 feet; Franger is also requesting a variance to be less than the required 300 feet from those lines. This will be on a parcel that they have purchased from Hauptert Family Farms. The ground to the east is Hauptert Family Farms; to south is Mauri Long, and Triple LLL Trucking or Ryan Long properties. Mr. Rhodes, could you please explain what requirements there are for State permitting?

Mr. Rhodes explained the fencing and crash posts that will be placed around the tanks and property.

Mr. Vogel: This would just be for Franger trucks to fill and deliver? No individual refills, or retail at this location?

Mr. Rhodes: We have no intention of ever doing that. The main plant is in Akron.

Mr. Milam asked if they would be using the existing driveway.

Mr. Rhodes: We have an easement with Haupterts to use the main drive. We will put in a drive area to get to the tanks.

Dan Dale: Would trucks be coming and going 24 hours a day?

Mr. Rhodes: Transports might, but the bobtails wouldn't, we try never to run those after dark, it is just safer not to.

Mr. Milam: On a busy day how many big trucks would be in there?

Mr. Rhodes: I am guessing that we would get two or three tankers a week and about 8 - 10 of bobtails in there to load. Our bobtails hold about 2800 – 3200 gallons.

Mr. Vogel will trucks be parked on the property?

Mr. Rhodes: This will be just to fill the bobtails; we have a lot of farm business in this area. The trucks will come from Akron.

Mr. Vogel asked for questions or comments from the Board or audience.

Ryan and Melissa Long, neighbors of the property shared concerns they have ranging from: property values; safety of their family, safety for employees and neighbors; no deceleration lane

on an already busy highway; fumes and vapors getting into surrounding homes and their business; discussion of leaks and possible evacuations ; school bus turnaround in their drive way. Look at the other LP tank placements in the county, they are not placed by homes, there are seven homes close to where they are planning to put their tanks; the danger of overhead power lines within extremely close proximity to where these tanks will be placed; what is the area of evacuation if there would ever be an explosion of these tanks; will they want to expand the business at some time; how many times a day will the trucks be coming and going and the hours for unloading transports. Fencing; power lines are extremely hazardous within the proximity to where the tanks will be. There is a lot of truck traffic and congestion on the property already.

Mrs. Long listed the additional concerns of.

- ❖ “Would anyone want two 35,000 gallon propane tanks near your homes or business?” We oppose and protest this tank placement around our home, our neighbor’s homes, the renter, and four businesses. This belongs in an industrial park or somewhere further away from the homes.
- ❖ State Road 15 is dangerous, there is no deceleration or passing lanes. There are a lot of wrecks on 15.
- ❖ Trucks from the truck wash spread water on the road, in the winter it freezes.
- ❖ At the end of the day all it takes is one inexperienced person doing the wrong thing at the wrong time to risk the lives of so many. Why would Franger Gas choose this location to risk our safety? There has to be a better and more suitable location for the placement of this LP tank plant. We ask that each one of you on this Board to take the time and put yourselves in our shoes when it comes to making this decision when it comes to our family’s safety and our children, the children on the bus, and our neighbors.

The Long’s thanked the Board and their neighbors who came to support them.

Mr. Vogel: called on Mr. Rex Temple.

Rex Temple: Betty and I live across the road. The odor from the truck wash is so bad we have to keep our windows closed and there is a lot of semi traffic already. There are so many semis in there already. I just feel it is already dangerous. This should be in an industrial park. I was interested in putting in a used car lot on my property across the road and was advised that most likely it wouldn’t be approved. We didn’t pursue it any further. The proximity of the homes this close to these tanks is dangerous.

Linda Stevens: My mother’s home is just north of Triple LLL. I am concerned about putting the large tanks so close to the surrounding homes.

Mike Welcher (Father of Melissa Long): I worked as a deputy marshall in Howard County during an explosion that they said would never happen and it did. People were injured. I have seen and heard it happen. I see why my family is concerned.

Guy Holmes: I live south of Triple LLL, I am not in favor of it. We had a fruit market at our property and were told that we would have to put in a deceleration lane for it to be on State Road 15, we would have to put up \$5,000 to meet the State approval. We closed the business. Mr. Holmes discussed the truck traffic on 15.

Bill Plummer: I live to the southeast. I am close enough that if those tanks blow my house will be destroyed. If they blow it is bad. I am totally against the tanks. I have nothing against Franger Gas Co, just the location.

Mr. Vogel asked if there were any further questions or comments.

Mr. Rhodes: Since 2011 there have been new regulations on tanks, Mr. Rhodes explained the added safety features that are required. Bill Plummer asked Mr. Rhodes if a newer tank has ever exploded? Mr. Rhodes replied that if there were any it would have been from fire.

Mr. Plummer: I am not worried about your trucks, but I am worried about the other trucks that are coming and going from the area.

Mr. Rhodes: There will be a fence around it.

Mr. Plummer: A fence won't stop a semi.

Mr. Rhodes: The crash posts won't stop it either; they are just there to warn you of something. We certainly don't want to put anyone at risk. Things happen; I can't imagine that it ever would. Flammability limits on propane are very high.

Mr. Vogel: If wind conditions are right during normal fillings, would fumes go into their shop?

Mr. Rhodes: Possibly. But it wouldn't be flammable. There would be too much air in the propane, it wouldn't be in that flammability range.

Mr. Milam: Mr. Long mentioned the power lines, are there any federal or state limits on the proximity to power lines?

Mr. Rhodes: 50 feet. Mr. Milam asked if that was horizontal or vertical. Away from it, I don't know about up and down, none of our trucks go up or down. We don't have dump trailers. We would be at least 75 or 100 feet from it, that is the minimum for state requirements.

Bill Plummer: That federal regulation of 50 feet is a national guideline

Mr. Long: Multiple times through the year you will have semi-trucks loading and unloading and there are going to be vapors. If a dump trailer hits a power line and there is a spark, we won't have any issues?

Mr. Rhodes: No. Normal static operations of that plant you would not smell propane at all. I understand your concerns, we don't want anybody hurt and we don't want the industry hurt either.

Mr. Long: Can I ask you something personally; do you have two 35,000 gallon tanks close to your house?

Mr. Rhodes: No sir, but I would.

Mr. Long: Why don't you?

Mr. Rhodes: There isn't a need in that area; I wouldn't have any objection at all.

Mr. Vogel asked Mr. Long, do your trucks use the north drive, and you don't own that driveway?

Mr. Long: Hauptert Brothers own that, I do have customers that use it; my customers should use the south driveway. We tell them not to but they use it anyway, some will still go to the other drive.

Mr. Vogel: The school bus uses this driveway?

Mr. Long: They pull in our driveway and pick our children up then go around the building and out the north drive. There is a lot of action there.

Mike Welcher: There are a lot of things I wish I could say, underlying things. There are issues, this property is a cluster. I want to go on record as saying, think about this before you make a decision on this because this is important. This is my grandchildren. I am sure this guy is right on his statistics. These are my grandchildren and you take a chance on my grandchildren and I'm with this man right here (Mr. Plummer). I will use everything I've got, my money, my home, everything.

Mr. Vogel: Are there any more questions?

Bill Plummer: Since you have opened up a can of worms, I will open it up further. I have called IDEM 4 times, and my neighbors have called them 2 times, and that is on what is already there. I won't go into all the blood and guts of it. I would have to consult my attorney, but he told me one time I would win in court and just make him rich. But what is there is even lucky to be there. This gentleman doesn't know what he is walking into. I would have to talk to my attorney first but I think he would tell me I could share with you what all those other concerns were. So my concern is not him, after hearing about the valve I am not concerned about that, but it is what all goes on on that property and then we are going to throw the tankers that are very heavy in the middle of all that fueling and refueling and it just scares the living hell out of me. There are underlying currents there.

Mr. Rhodes: There are no environmental concerns with propane.

Mr. Vogel: I think he is referring to the truck wash.

Mr. Plummer: I really don't want to be in court, and I am not threatening, but you will all get to know me really well if this thing passes. My concern is not Franger, but what goes on with the property. There are underlying concerns there.

Mr. Vogel thanked everyone for their comments and input. There being no further discussion the Board proceeded to vote on S.E. #9. Mr. Thrush tallied the votes, with a 5-0 vote the application did not pass. With the S. E. Application not passing, a vote on the Variance from the property line setbacks was not required.

Mr. Vogel told Mr. Rhodes the county would welcome the Franger Gas Co. to the county if they could find a suitable location.

The Long's and their neighbors thanked the Board for their attention to this matter.

Mr. Howard gave the Board members updates on the following items:

- ❖ The Shirley Marshall property in Lagro Corp. has transferred to the Wabash River Trail; they will be putting a parking lot and a small building on the parcel.
- ❖ Residential development, mini homes. Mr. Milam said that he has been researching mini homes online and has concerns about some being placed in the county that don't meet the ordinance guidelines.
- ❖ The Urbana properties we have worked on in the past, several things were supposed to be done. Nothing has done and the properties are now in worse shape.

Mr. Vogel asked if there was a motion to adjourn. Mr. Dale made the motion to adjourn; this was seconded by Mr. Schuler. The meeting adjourned at 8:40 pm.

Libby Cook
Secretary, Wabash County Plan Commission
mtb