

WABASH COUNTY PLAN COMMISSION

Wabash County Court House

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BZA MEETING MINUTES

JULY 24, 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, Jerry Younce, Larry Thrush, Mike Howard, Libby Cook, Jeff Rager, Corbin Rager, Natalie Rager, Nathan Baer, Shelby Baer, Cody Bucher, Kendra Bucher, Roger Metzger, Christine Metzger, Michael Veenhuizen, Everardo Rico

Chairman Joe Vogel opened the meeting of the Wabash County Board of Zoning Appeals at 7:00 pm on Tuesday, July 24th, 2018. Mr. Vogel asked if there were any additions or corrections to the minutes of the June 26th BZA meeting, he then asked if there was a motion to approve the minutes as written. Jerry Younce made a motion to approve the minutes as written; this was seconded by Mark Milam.

Mr. Vogel: the first item on the agenda is a Variance request from JAKE LLC; Mr. Vogel informed the board that the request has been withdrawn. The second item on the agenda is Variance #7, a variance request by Roger Metzger and Cody Bucher to rescind the applied conditions for no further splits of the 6.74 acres in Pleasant Township.

Mr. Howard reviewed the plat map and the 6.74 acre area that is in consideration with the board. Page 2 shows Roger Metzger's 32.69 acres and the 6.74 acre parcel, the 6.74 acre parcel is what we are looking at tonight. In 1999 the Vanderpool's asked to have this split up into subdivision parcels, a total of 5 parcels being split out of that. The board approved that with stipulations on some of the parcels, one of the stipulations was that there would be no further splits of the parcels. The Metzger's and Bucher's are asking to rescind this condition tonight on the 6.74 parcel to create a 2 ½ acre parcel for Cody for a residential property. The May 25th 1999 meeting minutes of the Board of Zoning Appeals shows the variance request from the subdivision ordinance to make more than one sale of less than 20 acres, they want to sell four parcels and retain the rest of the property.

The deed restrictions will go with each sale, parcel 1 which is the 6.74 acres no further splits of the property, no single wide mobile homes, and no double wide mobile homes. That was approved by the Board at that time. A copy of the Warranty Deed showing the restrictions was shared with the Board members. It states that this conveyance is subject to these restrictions and it lists those restrictions on there also.

Mr. Vogel asked if there were any questions.

Mr. Howard: Mr. Thrush can verify this if I am incorrect, the only condition they are asking for is to rescind the split, so therefore I would think the remaining conditions would still apply to the property. No mobile homes or double wide.

Mr. Metzger: Which would mean no mobile home or double wide? That is fine.

Mr. Vogel: What is your intention with the remaining property?

Mr. Metzger: I can go either way, I thought about just deeding it back with the rest of mine, or we can title it where it can only go with those two pieces at a later date. I don't have a problem with doing the title work and putting it back with the rest of the farm ground.

Mr. Vogel: Okay. Are there any other questions? If not we will proceed to vote.

Mr. Howard: Before you vote you might want to stipulate how you want it to be, either put the remainder back with the rest of the property, or it could remain as a separate 4 acre parcel.

Mr. Vogel: It would be ineligible to build a house on at a later time, are you thinking that?

Mr. Metzger: I have no intentions of ever building on that, my daughter and son-in-law were just looking for ground to build a home on. There is not enough ground to build on, easement wise, to build on what is left.

Mr. Vogel: I think if you want to put it back with the rest of your ground that would be the cleanest and simplest way, but you just have to get it done. Is that what you are thinking Mike?

Mr. Howard: I would think that would be fine because the remainder of the ground was never a part of the subdivision splits to begin with, so that would be fine.

Mr. Thrush: Mike, is this the one you asked me about if a court would need to set it aside?

Mr. Howard: Yes, because I thought a variance ran with the land or with a split and that was the only way to rescind it. That is what I was asking about; when you do a variance like this, it has to go back since the Board had stipulated that originally.

Mr. Thrush: Yes, I think that much is true, but I didn't realize there was a deed restriction in here with a covenant running with the land. That may give you a problem. Apart from what they

do, I think that was put in there because of what the Board of Zoning Appeals said, but now that it is in the public record. I don't know, I was just thinking it was something in our minutes.

Mr. Howard: It was actually on the deed.

Mr. Thrush: I think that may be a problem. I don't think that will stop this Board from doing whatever it wants to do. Is Mrs. Kiser still living? (No)

Mr. Vogel: I don't think she was really pushing for that, I think we imposed that.

Mr. Thrush: I know.

Mr. Metzger: What I never quite understood was I bought this piece a year and it had been deeded before this was ever put on. It was supposed to have been on the corner piece and this piece got rolled in to it. They pulled it out and put it on it. I didn't ever realize this until I went to do something with it and I guess Maxine (Kiser) called me and told me that it had been put on there. It was already deeded; I had already purchased this piece when those restrictions were added to it.

Mr. Thrush: You already had a deed for it?

Mr. Metzger: Yes.

Mr. Thrush: Then why was this deed prepared?

Mr. Metzger: The problem I've got is that I can't find my original title work. I haven't found it yet, that I got from the Courthouse. When I came down to get it, it is already on the one that is down here.

Mr. Thrush: Well if it was recorded, if the first deed wasn't recorded.

Mr. Metzger: The first deed was recorded, but I can't find my copy.

Mr. Thrush: You don't need your copy; you can go to the Recorder's officer and get another copy.

Mr. Metzger: Yes, but my first copy didn't have these restrictions but the one down here does have.

Mr. Thrush: The first one that was recorded did it have that restriction on it?

Mr. Metzger: I don't know but the copy they showed me had these restrictions on it. I don't know.

Mr. Thrush: But there is a deed earlier than this that was recorded.

Mr. Metzger: The paperwork that I got for a Warranty Deed did not have any restrictions on it. That I got in the mail, but we haven't been able to locate it.

Mr. Thrush: My question is, were the two deeds recorded? It seems unlikely, because they probably wouldn't have accepted a second one.

Mr. Metzger: I don't know all I know is when I came down to check on it, it was on it.

Mr. Thrush: This one was recorded and my guess is the other one was not recorded. If that one was not recorded then it is not a public record. This one was recorded and is public record and it contains a covenant that runs with the land, it may be a problem for you especially since Ms. Kiser can't undo it. She could have put that covenant on there because she wanted to.

Mr. Vogel: Roger when you bought it, the 4.3 did someone else own it at that time. You bought the 6.7, then this tract beside it to the west you bought it?

Mr. Metzger: I already owned that.

Mr. Vogel: You own that now. Then what about the 5 acres over here to the west of yours, when they sold this did they sell it off in individual tracts had one already been sold off?

Mr. Metzger: When I bought mine, Rex (Holloway) had already bought his. The one to the west had not been sold yet, but he had offered it to a guy. I had decided what I was going to take; the problem is Walter would not sell these 7 acres because he wanted to hang on to it. Then when he passed away Maxine came to me and wanted to know if I would be interested in buying it.

Mr. Vogel: And you bought this earlier, then you bought that (6.7).

Mr. Metzger: Yes

Mr. Howard: The Kiser property is actually owned by Brovont's now. Brovont's swine building is back there. We checked that earlier, parcel #5 didn't have any conditions applied to it so he was free to make a split back there, to cut into it and to put his swine building on it. My understanding as far as what Larry (Thrush) said is for this Board it has no effect on us as far voting. We can go ahead and vote to approve it if that is what the Board so chooses to do, and just see what happens down the road.

Mr. Dale: What could be the problem, unforeseen that could be an issue?

Mr. Howard: If I understand Mr. Thrush correct, my understanding is that this deed states that these covenants stay with the land, they run with the land. It stays with the land no matter who owns it. If I understand correctly, my interpretation is that if it runs with the land that it would have to be overturned by a judge.

Mr. Thrush: There would be a procedure for doing that. What are you doing with it now, are you conveying it to someone else now?

Mr. Howard: He would like to convey 2 ½ acres of it to his daughter and son-in-law for their house.

Mr. Thrush: Have you tried to get title insurance on this yet?

Mr. Metzger: I wanted to get this all cleared up and then move forward.

Mr. Thrush: I think you will run into a problem with that, that is now a public record.

Mr. Metzger: What stage in this process would we run into that? When we get it surveyed, or when I go to record it? If you vote yes, I guess I don't understand.

Mr. Thrush: Not the survey, if you try to get title insurance you may have a problem.

Mr. Metzger: So instead of a Warranty Deed, if we do a gift deed because a gift deed doesn't have to have title insurance.

Mr. Thrush: That might not get recorded, I don't know. You might have to ask a court to set aside that, there is a procedure for that.

Mr. Vogel: What your advice is, if this is approved, he should see a lawyer and see if he can do that?

Mr. Thrush: What are you going to do with that, are you going to build a house on it?

Mr. Bucher: I am going to build a house.

Mr. Thrush: I would get that cleared up

Mr. Vogel: We will go ahead and vote on this.

Mr. Thrush tallied the votes; the variance #7 request was approved.

Mr. Vogel: You are approved; I would suggest that you see a lawyer before you begin to build on the property.

Mr. Metzger and Mr. Bucher thanked the Board.

Mr. Vogel: Our next item is from Corbin Rager, Variance #8 requesting a variance from the property line and road setbacks for a confined feeding operation in Pleasant Township.

Mr. Howard shared plat maps showing the property and the intended location of the buildings. Mr. Rager is requesting a variance from the property line set back and the road setback from 300 feet to 200 feet. Our county requirement for confined feeding operations is 1,320 feet from an existing residence. IDEM would permit a structure to be within 400 feet of a residential

structure. There are no residential structures within the 1320 feet mark on this. If you look at the first drawing that is 300 feet back from the road and the south property line of the 2 acre parcel. That would leave roughly 75% of the 2 acre parcel to be developed if they so choose and would sign a waiver to be closer than 1,320 feet, but they can't be closer than that 400 foot setback. Mr. Howard shared maps showing various locations for the buildings and the properties that will be affected. The Board has stayed very consistent on what we have allowed and not allowed. Our requirement is 300 feet from the road and the property line that is what they are requesting a variance for. With the 300 feet setback from the road and property line there are no homes involved except for the Rager property. Mr. Howard shared information from previous request for variances from CFO setbacks to give examples of what the Board had approved or denied in the past, I feel we have stayed very consistent with that.

Mr. Veenhuizen: Corbin Rager, the applicant, would like to build a confined feeding operation which will consist of 2 production buildings. 121 feet by 289 ft. long by going with the wider building we can go shorter. The capacity of the site will be about 4,800 pigs per building, so 9,600 on site. The plans are to locate the two buildings in the northern part of the Rager property. We are asking for a variance from the 300 feet road and the 300 feet property line setback to the property directly to the north. The principle reason is essentially to work more closely with the restrictions for more sensitive areas. One of the things in evaluating this site are the wetland, swamp, marshland areas. Our goal is IDEM has a setback requirement of 300 feet from surface water features. By being able to position the buildings on the level ground outside of that area we could meet those setbacks and increase our setback to those sensitive areas. In addition to that, the topography on this site changes dramatically from the area that the buildings are proposed to the west and to the south. You can see from the topographic map where the buildings are set and this is located 200 feet from the property line and 200 feet from the road that the land forms, the contours are more stable more uniform. As we move further off the road we get closer to the sensitive areas, the marshy wetland areas. We also start to get into some pretty significant topography relief because of the wooded area. We have the same influence as we go south; this in comparison is the 200 feet and the 300 feet that Mike H. showed you. As we push back from the road you can see if we get closer to the sensitive areas to the back of the buildings would be the marshy sensitive area and also to those lower marshy wet areas to the south. Our primary request is to take into consideration the surface water features, the landforms and the sensitive areas and be able to make better use of this property rather than push it back into those sensitive areas. As we look at the overall site layout, this is a rural area, agriculture production ground. We have identified the homestead area that is within the 1,320 feet and there is another farmstead or home to the southeast that is also out of that 1,320 area, there are no other residences that come within that 1,320 feet so we are within compliance with the residential setback areas as it relates to existing residences. We do appreciate the fact there is a 2 acre parcel to the north that we are asking for a variance from. It is correct that IDEM rule has a CFO or animal feeding operation site criteria that we can't build within 400 feet of a residence. I do not interpret that rule to be reciprocal in the sense that if an individual chose to build within that 400 feet that IDEM rules do not restrict them from that. It is appreciated that that 400 feet is a real setback identified in the CFO rule but as we are siting our facility, the Wabash county ordinance setback would basically trump that. If it was not in place then we could not build closer than 400 feet. But there is nothing in place that restricts another individual from using their property if they so choose to do that. That basic information, I would like to

allow this into your record or review. In summary, the reason we are asking for this is to make the best use of the property, take into consideration the sensitive areas, the marshland, the wetlands, and maintain the setbacks that we need for that. I will identify that even with the variance we may need to put in a simple site control to establish that 300 foot, but clearly if we could go back another 100 feet and to the south 100 feet we are going to be sitting very close to those wetland areas and making it a difficult siting decision for Corbin and being able to place that in a very effective place on his property. As we look at that site we do not see that that would create an injury or hardship to that area around there, injurious to the public health, safety, morals or general welfare of the community, it is consistent with the land use in the area. The use and value of the area adjacent to the property based on this variance request will not be substantially impacted an adverse manner, because it is ag ground we will be able to take advantage of the natural buffers and then we would propose that if we do need to move back that extra 100 feet it will limit or complicate the use of the property because of the sensitive areas and the wetlands and marshes that do exist on this property. With that we are open for questions.

Mr. Vogel: You had said Mike that it doesn't matter to you where the property owner builds closer, but it would with our ordinance wouldn't it?

Mr. Howard: In our ordinance, regardless whether these building are 300 feet or 200 feet away that whole parcel is within the 1,320 feet radius and they would have to sign a waiver to build there.

Mr. Vogel: In this green area he could still build a house?

Mr. Howard: He would still have to sign a waiver with the Plan Commission to build there.

Mr. Howard: We have been restrictive on road setbacks, but this is a dead end road.

Mr. Vogel: Asked if there were any questions from the audience

Mr. Everardo Rico: Identified himself as the owner of the 2 acre parcel. Mr. Rico asked for clarification of how this will affect his property. Mr. Veenhuizen shared with Mr. Rico the maps and plans that were being discussed.

Mr. Rico: So you are proposing that they allow you to build within 200 feet of my property line?

Mr. Veenhuizen: That is our request, within 200 feet of your property line and 200 feet of the road. Instead of 300 which would push the buildings back to this wooded area and down this slope closer to the sensitive areas. The site falls away much faster. Those are the two key reasons why we are asking for this variance.

Mr. Rico: Is this the only spot I would be able to put a building or is that up to them?

Mr. Howard: As Mr. Veenhuizen said they can't build within 400 feet of an existing house; there is not a house there right now. Mr. Veenhuizen is saying that it is not reciprocal that you could build closer than 400 feet from those buildings. However, our county ordinance says that if you do want to do that you have to sign a waiver. That waiver basically states that you would

not remonstrate against them as long as they are compliant with the laws and regulations and rules for confinement feeding operations.

Mr. Rico: That would only be if I decide to build a house.

Mr. Howard: That is correct. If you would decide to build there yes.

Mr. Veenhuizen: I think with that interpretation there are no restrictions of where or what part of your property you could use. But one restriction would be that once these buildings are built Wabash County has a 1,320 foot setback that they would ask you to sign a waiver stating that I know that I am within that 1,320 feet setback and that unless they are doing something you will not remonstrate against them. I think it is a restriction that is put on this property and whether it is 200 feet or 300 feet those 1,320 feet unfortunately catches your 2 acres.

Mr. Howard reviewed the property layout with Mr. Rico.

Mr. Rico: Ok. I don't have any plans of building there. Let's say later that I do decide that I want to build something there how do I go about getting that waiver?

Mr. Howard: When you come in to the office, I would go over that waiver with you and you would sign it and we would have the waiver recorded and it would be attached to your deed.

Mr. Rico: So you are saying that now, is that going to change later?

Mr. Howard: We have a new countywide ordinance that we have been working on for quite some time, but I don't think that would change anything, it would be the same thing. If this is approved tonight you would be grandfathered in, you owned that parcel before you would have that right and still be allowed to sign that waiver.

Mr. Rico: Cool.

Mr. Vogel: Does anyone else have any questions?

Mr. Dale: So basically what you are saying, if you keep our variance like it is that is going to put it in a more harmful area to the environment. Force you to put it back closer to a wetland and make it more difficult, and clear more trees.

Mr. Veenhuizen: Correct.

Jeff Rager: That is why we put it there, if we get prevailing winds from the south and there are woods on the back of the building and to the north of the building. The woods will absorb the smell, what smell there will be, and protect the building plus absorb the odor.

Mr. Dale: I assume that they are deep pit buildings?

Mr. Veenhuizen: They will be 8 feet deep; this is a totally ventilated building. The air inlets are going to be on the east side. There will be loadouts, feed tanks and curtain openings. The air will move from east to west and the fans will be located on that west wall towards the trees. That will provide a natural buffer filter which will be beneficial for the neighbors to the north and northwest and create a better siting situation. As you stated one of our requests here is trying to protect those sensitive areas. By allowing us to move that building 100 feet to the east and providing a better separation distance to those sensitive areas.

Mr. Dale: There is no problem with the open field to the south, no residences, no pasture, nothing that is going to affect any people there?

Corbin Rager: No my grandma lives there.

Mr. Vogel: Mr. Veenhuizen, where did you say the feed bins would go?

Mr. Veenhuizen: to the east end.

Mr. Vogel: So they will be within the 200 feet from the road?

Mr. Veenhuizen: They will actually, sharing a map showing locations for the feed bins on the east end, the load outs come straight out from the building, the fans exhausting to the west. There are pit fans and pit pump outs we do have low volume ventilation fans that will exhaust on the sides during the cold winter time ventilation.

Mr. Vogel: What would be your approximate distance to the nearest structure?

Mr. Veenhuizen: The feed tanks are going to set about 175 feet from the road, to the front end of the feed tanks.

Mr. Younce: To the west does the ground drop off pretty fast here?

Mr. J. Rager: the farther you go to the south it drops off to the road. It also drops off to the west.

Mr. Vogel: Do Hudson's still own that house.

Mr. Dale: Are you waiting on our answer to submit a plan to IDEM?

Mr. Veenhuizen: As it turns out we were hoping to submit the application this month actually prior to this meeting we are right at the submission date. I picked up signature pages from Corbin this evening and plan to submit to IDEM. The decision tonight will influence if I have some more work to do before technically submitting. We are at this point but I had plans to submit, hopefully this plan but pending on this decision will work with IDEM to modify that.

Mr. Younce: Would there be enough room on the west end to make storage for the feed bins, could you move the feed bins? They stick out about 25 feet? Could this be made to be 200 feet from the road to the feed bins?

Mr. Veenhuizen: I think that would be a doable aspect to move 25 feet versus 100. If I could clarify what your intent is pending on your decision, the feed tanks are oriented the way that they are here, but if we rotate them 90 degrees and reduce that number. If I could interpret your question and what your intent is, as long as we keep those structures 200 feet off the road if that is your decision tonight then we are in compliance with intent. So we could change that 25 feet to basically 11 feet if that 10 or 15 feet makes the difference in your decision tonight. If we keep the structures 200 feet from the road

Mr. Younce: I personally would like to see it as close to the 200 feet as possible.

Mr. Veenhuizen: We certainly appreciate that. As I look at that one of the things we could do is if that is a limitation is to rotate the tanks 90 degrees and save probably 15 feet of that. Parallel with the end of the building instead of perpendicular. Understanding that the intent is to have those structures 200 feet from the road. I think that would be a very workable solution.

Mr. Milam: Would that obstruct the fan placement?

Mr. Veenhuizen: The fans are on the west end of the building, what we have on the east end of the building is the drop curtains and the air intake for high volume summer ventilation. The loading chutes would stay the same and they would fit off to the sides of the loading chutes. Between where the loading chutes are we should be able to get 4 bins in rotated and then 2 on each side. We could make that fairly conveniently, more consistently.

Mr. Dale: Is that going to force you to revise your variance request?

Mr. Howard: His request is basically 200 feet off of the property line or the road. We would stipulate that the 200 feet setback would include all bins.

Mr. Dale: If we ever had a reason to change our ordinance this would be a good one, to improve the environmental aspects of this confined feeding operation. To me the location looks good.

Mr. Veenhuizen: I see one other fine point, the site plan I have 200 feet from the edge of the building we have those pump outs in the fans. It would be our intent and reasonable to say that similar to the feed tanks, that the closest point of the pump out would be no closer than the 200 feet to the property line. If I was using the 100 feet IDEM setback I would have clearly put it from the edge of the pump out. That is something I would clarify on this drawing.

Mr. Vogel: If there are no other questions are we ready to vote?

Mr. Howard reminded Board members that they will be voting twice, once for the property line setback and once for the road setback. The first vote will be the property line.

Mr. Milam: Did we clarify was it 200 feet to the pump outs and 200 feet to parallel roads and tanks instead of perpendicular? Mr. Howard stated that any part of the structure the feed bins, the pump outs or anything would be 200 feet from the property line for the pump outs and bins

no closer than 200 from the road. Mr. Milam asked any structure that goes with the facility, bins, chutes, whatever will be 200 feet from the road and property line? Mr. Howard replied that is correct.

Mr. Veenhuizen: If pushing it back 25 or 30 feet creates a problem perpendicular if we find we fall off the edge of the property there, one option to reduce that then we may only have to move 10 or 12 feet back. That is why I offered that. We agree to be no closer than 200 feet from the road and 200 feet from the property line.

Board members proceeded to vote.

Mr. Thrush tallied the votes; the setback variance request from the property line was approved. Mr. Thrush tallied the votes on the setback variance request from the road, this was approved.

Mr. Veenhuizen and Mr. Rager thanked the Board.

Mr. Rico: If I decide to anything with my property I need to come to the courthouse?

Mr. Milam: Yes you will need to come to the Plan Commission office.

In other business:

Mr. Howard shared with the Board a copy of the Weed and Rank Vegetation ordinance. Mr. Thrush has reviewed this and approved it. This ordinance would apply to platted areas within the county; it doesn't apply to rural areas in the county. If we receive complaints about rural areas we may send a letter to the deeded owner of the property.

Regarding permitting residential structures in Ag 1 and Ag 2 zones, in the ordinance (draft) it is written as every residential permit would go through the point process for determining if a permit would be issued. Were Board members thinking that the process would apply to both Ag 1 and Ag 2 zones or were they thinking just Ag 1? Mr. Howard stated that his intent was for it to just apply to Ag 1; Mr. Milam stated that he too was thinking just Ag 1.

With economics and trending the Board may need to be thinking about "mini" homes. Items such as minimum square footage, foundations, crawl spaces, types of structures, placement in mobile home parks only, were some topics mentioned.

A memorial donation was made in remembrance of Chad Dilling, former Wabash Co. Plan Director.

There being no further business Mr. Vogel asked if there was a motion to adjourn. Mr. Dale made the motion to adjourn; this was seconded by Mr. Milam. The meeting adjourned at 8:15 pm.

Libby Cook
Secretary, Wabash County Board of Zoning Appeals
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