

WABASH COUNTY PLAN COMMISSION

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WABASH COUNTY PLAN COMMISSION **BOARD MEETING MINUTES**

NOVEMBER 7, 2019

**Wabash County Plan Commission Board
Wabash County Court House
Wabash IN 46992**

Board Members: Curt Campbell, Randy Curless, Jeff Dawes, Patty Godfroy, Doug Rice, Christian Rosen, David Schuler, Cheri Slee, Joe Vogel, Attorney Larry Thrush, Plan Director Mike Howard, Secretary Libby Cook

Present: Joe Vogel, Doug Rice, Christian Rosen, Jeff Dawes, Patty Godfroy, Cheri Slee, Larry Thrush, Mike Howard, Libby Cook, Kenneth Norman, Cole Wyatt

The November 7, 2019 meeting of the Wabash County Plan Commission Board was opened by Assistant Board Chairman, Christian Rosen at 7:00 pm. Mr. Rosen asked if there were any corrections or additions to the minutes of the October 3rd meeting, there being none he asked for a motion to approve the minutes. Jeff Dawes made the motion to approve the minutes as written; this was seconded by Joe Vogel. The minutes will stand approved as written.

Mr. Rosen: The first item on the agenda is SE #11, Kenneth Norman for a pond in Lagro Township.

Mike Howard: Mr. Norman resides at 1950 E US 24, in Lagro Twp. He has a 10 acre parcel that has a pond on it which will be removed. Eads and Son will be the contractor; the new pond will have approximately $\frac{3}{4}$ of an acre water surface. Mr. Norman is seeking a variance from the property line setbacks; he is asking to be 30 feet from the current shared driveway for the adjoining property owners which occurred when the property was split among family members. There is no floodplain or flowage easement, the pond will have a dam. The pond will have an overflow with a 6 inch outlet drain; maximum pond depth will be approximately 12 feet. There is no planned emergency overflow, watershed into the pond is about 3 acres and it will have a geothermal feed. The distance to the nearest noncertified drain is about 3600 feet. Enyeart Creek is approx. 600 feet to the west. Mr. Dawes stated that the Drainage Board has given a favorable recommendation for the construction. Mr. Rice asked if the existing pond will be filled in, Mr. Norman replied that

it would be. Mr. Norman stated that he tried to clean out the existing pond but it is not in good condition. Mr. Rosen asked if there were any questions or comments, there being none he asked for a motion. Mr. Vogel made the motion to give a favorable recommendation to the Board of Zoning Appeals; this was seconded by Mr. Campbell, the motion carried.

Mr. Rosen: The second item on the agenda is SE #12, Cole Wyatt for a pond in Liberty Twp.

Mr. Howard: Mr. Wyatt is seeking approval for a pond on his property located at 6686 S 300 E, in Liberty Twp. He has a 3.02 acre parcel and a 1 acre parcel; the pond will be on the 3.02 acres. Mr. Howard reviewed the pond specifications. Mr. Wyatt is also seeking a variance from the property line setbacks; we have received a letter from the neighboring property owner, Steve Pilgrim, stating that he has no objections to the pond being closer than the 100 foot setback to his property. Mr. Dawes stated that the Drainage Board did not see any issues with drainage, so they gave a favorable recommendation. Mr. Howard said that the pond is already on the property. The pond is actually in a flood plain; our county regulations state that if any materials are brought in an equal amount of material have to be taken out so that it doesn't increase the surface area. I would assume that you didn't bring any material into the area. Mr. Wyatt said that he did bring in a little bit of stone for the water line but I also removed more material than I brought in. When I spoke with Cheri or maybe the ASC office, if it is, it is, I was under the understanding from them that it is not in the floodplain. Mr. Howard explained that by using the DNR best available flood mapping system it does not show that the pond area is in a flood plain, but on the DNR current mapping and the GIS mapping system, it does show it as floodplain. Mr. Rosen asked if there were any further questions or comments, there being none he then asked for a motion on the variance request. Mr. Dawes made the motion to give a favorable recommendation to the Board of Zoning Appeals; this was seconded by Ms. Slee. The request was approved.

Mr. Rosen: The next item on the agenda is the unsafe premise order for NORAG, Lagro Township. Mr. Howard stated that Mr. Adam Kendall from NORAG headquarters in Kansas was planning to attend tonight to address the issues, however he has been ill and in the hospital and could not make the trip at this time. He would like to meet with us at a later date. Mr. Howard then reviewed the list of items sited on the unsafe premise order: There are two parcels listed under this 123 E 200 N on the south side of the road at Speicherville, and 106 E 200 N which is on the north side of the road. I want Board members to be aware that we started working on this early in 2019; we have several photos of the property

- IDEM contacted, they did come to check the site after the fire and all the corn piled around the facilities.
- Urbana Fire Dept. report of runs to the property, other units involved included Lagro VFD, Noble Twp. VFD, IN State Police, Sheriff's Dept., EMA, and Heartland REMC.
- IDEM came and did an inspection and said that they don't regulate piles of spoiled corn as a solid waste. They did do a report when they visited the site and a person working at the elevator that day told the IDEM employee that they would have the piles cleaned up in a couple weeks.
- Mr. Keller mentioned OSHA in a phone conversation, we are not sure if IOSHA did an inspection or not. We have not received any verification from IOSHA that an inspection was done.

- A lot of the things listed on the unsafe premise order list have been taken care of and they are willing to work with us. There are some issues stated in the unsafe premise order that we would like to require, but they want to negotiate on some.
- Going forward they can't be storing spoiled grain out there anymore, they have got to get rid of the messes they have out there, The bunker to the north is still full of old soy beans from the fire of 2017. The structure to the south, I have some photos of the inside of the structure, it is certainly not grain of any quality, it is old spoilage and until they clean it up I feel we should stand our ground that they are not going to be storing corn or things in those buildings. If they want to put it in their bins I would not have a problem with that, it could be stored in the bins. Mr. Rosen asked if the bins are in safe condition. Mr. Howard said he thinks the bins would be safe.
- Shared photos from Oct. 2019 from NORAG, showing what they have done.
- The Urbana Volunteer Fire Dept. has been to the property 6 times, on the initial fire they were fighting the fire from above and their oxygen tanks froze up, they had to attack the fire from the ground. From the Urbana Fire Dept. report at the initial fire there was a 20 foot diameter black cone from the floor to the ceiling that was involved in the fire.
- Photos of the property were shared. We don't enforce IOSHA's policies, but we certainly need to take a look at some of these things.

Mr. Dawes asked if NORAG has said what their intentions are on the stuff in the building on the south side of the road. I would think that would need to be gotten out of there. Mr. Howard said that he agrees that the buildings could not be used for storage of grain; I would retract that statement if they would clean it up and use it correctly. The buildings are supposed to be baited at all times, and once they had everything cleaned up everything was to be sprayed with a larvacide. The windows in the basement of the old elevator were all out and at one point it was full of water. Mr. Kendall has stated that they want to be a good neighbor and be welcome in the community; it is unfortunate that we have to go to this point. Mr. Campbell asked if they also own the elevator at Treaty, Mr. Howard replied yes, it was GarMar Grain then sold to NORAG. It appears that Gar Mar is still involved as far as the mortgager for Speicherville.

Mr. Howard: Within these two unsafe premise orders are the Findings of Fact. My recommendation to the Board would be to sign the two Findings of Fact; there are separate addresses for the buildings on the north and south side of the road. I will get a letter to attach to it stating what has been done up to this time. I agree with what Mr. Dawes said that everything must be cleaned out and removed from the property before they can store anything else in there.

Board members discussed the storing of spoiled grain, where it comes from and what the intent is with this grain. Mr. Rice asked if we know what their bonding status is, what the licensing with the state is and if there is a time frame on storing grain, especially outside storage. Mr. Rosen agreed, especially in a little town. Mr. Campbell stated that grain inspectors do go into the facilities. Mr. Howard said that he would check into this. Mr. Howard brought up that the fire runs could have been a considerable cost to Lagro Township and to the county.

Mr. Howard: I would like a motion on the two Findings of Fact and for a continuation until the January 2nd, 2020 meet with the owner representative to discuss the unsafe premises. The continuation is at the request of NORAG. Mr. Rice made the motion to sign the Findings of Fact

and to continue the matter until the January 2nd meeting; this was seconded by Mr. Vogel, the motion carried.

Mr. Howard then shared a Notice of Cost Document. Mr. Thrush has devised a form which gives an average of the costs incurred in preparing for and for the court hearing necessary for an unsafe premise order. The form gives a breakdown of costs and basic fees. Mr. Thrush's fees would be adjusted according to the amount of time he puts into the individual case. I would ask for a motion to approve this document. Mr. Rice made the motion to approve the Notice of Costs document; this was seconded by Mr. Dawes, the motion carried. Mr. Howard will have the document recorded.

Mr. Rosen: Next on the agenda is the Silvers property in Lafontaine.

Mr. Howard: This will be more of a BZA decision but I want the Plan Commission Board to be aware of this situation. Ilene Silvers is the deeded owner of the property located at 3 E. Parker St., Lafontaine. Her son Doyle Silvers has a permit to construct a house on the property. There was an old garage there that was within the setback requirements; he was told that he could not use the garage unless he received a variance. Mr. Silvers did apply for a variance; the BZA did not approve the request. He wanted to use the garage for part of the new house when he built it. In the process they had their permit for a year before they started to do anything; we did an extension of their permit for an additional year. Within that year and through the process before the BZA for their variance request we did place some requirements, we said that with the continuation of the additional year, which expires Nov 26, 2019 at which time the BZA was requiring the structure to be completely enclosed and everything on the outside to be done within that year, if not they would incur a penalty. Per IN Code there could be a fine of up to \$250 per day to be assessed until the violation is terminated. This was made very clear to the Silvers at the meeting and they received a letter in Nov. of 2018 going over the details of this and a letter after the PCB meeting of Dec. 2018 that the Board agreed and the minutes state "the new structure must be completely finished on the exterior including roofing, siding, stucco, windows, doors, trim and porches, as a reminder failure to comply with this will be considered a violation of the policy and could result in a fine of up to \$250.00 per day until the violation is terminated." Mr. Howard asked the Board members for their input on this matter and what they would recommend as a fine. Mr. Rice asked if Mr. Silvers is building the house himself, Mr. Howard replied yes. At this time there has only been work done on the foundation. Mr. Rice asked if the mother is still the deeded owner of the property, would any fines go against her. Mr. Howard asked what the Board would feel is a reasonable fine amount. Ms. Godfroy asked when the last time was that we have contacted Mr. Silvers. Mr. Howard replied that the last time from the office would be Dec. 2018. Mr. Rice asked so he has to have it done by the end of this month, he suggested sending a follow-up letter. Ms. Godfroy asked if he could get another permit, Mr. Howard stated that he had never issued any extensions beyond the 2nd year. Mr. Howard stated that when Mr. Silvers applied for the extension that he suggested waiting to apply for the permit until the spring and that would give him more time to work on the house, Mr. Silvers wanted to go ahead with the extension in November 2018. Mr. Thrush suggested possibly revoking the permit. Mr. Rice stated we don't want this to become blight on the community. Mr. Howard suggested that since the property is within the incorporated town of Lafontaine we should talk with the representatives from the town of Lafontaine. Mr. Thrush said that it could be considered maintaining a common nuisance. Mr. Howard asked Board members to think about

what a reasonable fine might be. Mr. Dawes stated that he feels it would be beneficial to talk with the Town of Lafontaine to see what they want. Mr. Howard noted the Board representatives of the Town of Lafontaine were present at the BZA meeting when this was being discussed. Mr. Dawes stated that if we revoke the permit then the property will probably be left as it is, we should ask what the town recommends doing. Mr. Thrush said the town board is not without a remedy, they could ask to have the nuisance evaded, they could file a suit and have that cleaned up. Mr. Dawes suggested that might be more of a remedy than fining him.

Mr. Rosen: Next on the agenda is complaint reviews.

Mr. Howard:

- The Barbara Nelson property at Lagro, she has provided us with a quote for herself from Eads for removal of the mobile home and garage, however no work has been done yet. Mr. Thrush asked what we are doing about the Nelson property. Mr. Dawes suggested contacting Eads and asking where they are at on the demolition of the buildings.
- Ron Denton property at State Road 15 and Anglin Road, unsafe premise order, pallets and vehicles. Original hearing had to be postponed due to Judge Pro-Tem who has done some work for Mr. Denton so he could not hear the case. New hearing will be Friday, Nov.8 at 1:00 pm.
- Jason Peterson, property on US 24 east, we had cited him for the semi-trailer with advertising on it. The advertising has been painted over on the semi-trailer, so the advertising is taken care of but the trailer is still there.
- Lester Cleaver property 400 N and 200 W, the property was sold in the tax sale. We worked with IN Landmarks on that as the structure was once the Paw Paw Township Trustee office and a one room school house, it is a landmark. They found an investor who is to clean it up and take care of it.
- Zoomers, no permits for anything. I talked with John Stephens, they did go ahead and cut the driveway in and he is not sure if they got State approval or not. The septic system has not been approved, it was supposed to be approved by the state they passed it back to the county health department saying that she was certified that she could go ahead and inspect it. Jennifer Scott said that it was commercial and should be done by the state. For our purposes we would not issue a permit until the septic system was approved or the drainage plan. Ms. Scott stated that she was seeking guidance from the county attorney, Mr. Downs. Mr. Rice stated that if we don't do anything this could set a precedent for other businesses if it is ignored; why would any company get the permitting if this one doesn't have to. He asked who would be liable if anything happens. Ms. Snee stated that John Stephens did submit a new revised drainage plan to the Drainage Board that they approved, but it is only for that specific area of their property, we need to make sure that they don't do anything outside of that area. Mr. Dawes said that he will check with Mr. Downs about the permits for Zoomers. Mr. Howard noted that the sewer system for the town of Lagro is connected to the previous buildings on the property; our initial thought was that they would tie into the sewer system and not put in a septic system. The septic system was put in without any permits, approval, or inspection.

Mr. Rosen: asked for any other business to be brought before the board.

Mr. Howard: I want to make the Board aware of, in going through the minutes of the Drainage Board for the Freshour pond, Chairman, Barry Eppley questioned if there was a breach of protocol on the Freshour pond permit, for the Plan Commission Board to rule on a pond before it is approved before it has been reviewed by the Drainage Board. I did some checking and I don't think it is a breach of protocol for the Plan Commission Board to rule on the parts that the Plan Commission Board rules on before the Drainage Board looks at a pond application. The PC Board is just giving a favorable recommendation to proceed on with the process; we are not issuing any type of permit approval at that time. The permit is not issued until it is approved by the BZA and if for some reason a review by the Drainage Board had not been completed prior to the BZA hearing, the BZA would continue the hearing until the review was completed by the Drainage Board. If any of the Board members feel differently I would certainly entertain your thoughts. Mr. Vogel stated that we are just looking basically at the safety aspects of the pond and the surrounding area, if it has a dam and the location in relation to neighboring properties, and the setbacks as far as neighboring properties and roadways. Mr. Howard stated that there are no restrictions in the zoning ordinance as far as minimum lot size or acreage required for a pond. We can certainly look at that but it is not a requirement for the Special Exception, with regard to setbacks, most of the time lately there is a variance request, there are no restrictions on a pond regarding how far it has to be from a residential use or residential development, no requirements for buffering or walls, screen planting we may require when it is close to a road. The only things we are really looking at are the setbacks, as far as looking at the dam construction, I don't feel that legally we can say, since we don't have an engineer review plans. When an applicant comes in we try to process the application in a timely manner. There is the potential of delaying an application as much as 60 plus days if we have to wait for drainage board approval before presenting the application to the PC Board. That is not good service. Mr. Dawes stated that the Drainage Board is trying to be careful that they are just addressing the drainage concerns not the pond, so unless it affects a regulated drain. Mr. Howard noted the USDA/NRCS offices used to help with the ponds; we really don't have anybody as far as engineering to verify specs for a pond to say the job is being done right, other than the contractor. The minutes from the Drainage Board meeting did not state if the rest of the board agreed with Mr. Eppley's point regarding a breach of protocol.

Also in reading the minutes, in the Storm Water Drainage Ordinance from the minutes of Sept. 16th it states that regarding As Built plans, Mrs. Slee suggested that the requirement be attached to the Area Plan Commission Certificate of Occupancy since submittal of the information has been mostly noncompliant in the past. Howard then asked Mrs. Slee for an explanation of that. Mrs. Slee stated, I think what we are saying is that in our Drainage Ordinance he had stated that was our way of if somebody didn't comply with the Drainage Ordinance they didn't get a certificate of occupancy. We don't really give a certificate of occupancy when they ask you, it has been a while back, so we were just trying to figure out what we could do other than give a certificate of occupancy, she asked Mr. Dawes if that was correct, that is what they talked about that day. Mr. Howard stated that in the October 7th minutes it states that Mrs. Slee concluded her report by stating she had stressed to Board Attorney Steve Downs the importance of making the Certificate of Occupancy in the County Ordinance contingent upon compliancy with the Storm Drain Ordinance. I think I understand what you are after, but what I question is I don't think a Plan Commission Certificate of Occupancy can cover a Drainage Board policy. Mrs. Slee replied that they are changing all of that, it is still in review so I quit because of things like this that might get interpreted, these are basically just discussions right now they have not been voted on so they

probably shouldn't be in the minutes anyway because we are trying to work out our Storm Water Ordinance at this point. Right now it is with Steve and then it will come back to the Board.

Mr. Dawes stated that we have not had this in the past so this is something new, they drafted this, the Board reviewed it and now Steve is looking at it. Mrs. Slee said that right now we have nothing that if somebody doesn't comply with it they can still go ahead and get a permit or whatever as far as the way it sounded so we were just trying to figure out what we can do to make sure that they did comply with the Drainage Ordinance. Mr. Howard said go back and look at the PC Zoning Ordinance Draft, and how the Certificate of Occupancy is addressed in the ordinance, these are copies of Certificate of Occupancy or Certificate of Completion of Work from the County Plan Commission and the reason I say that is I don't believe we can cover policies of the Drainage Board because we don't regulate any of the Drainage Board policies and also because we don't have an engineer or licensed inspector on staff. So when I issue a certificate to anybody it is only because they request one. I never issue one unless they ask for it. The current Certificate of Occupancy states "This certifies that the action or work for which the above listed Improvement Location Permit was issued for the premise identified has been completed. In the issuance of this certificate of occupancy or certificate of work representing the work, no representation is made concerning the fitness, habitability or conditions resulting from the work completed. Wabash County does not employ the services of an engineer or building inspector, any such inspection that is desired shall be at your own request and expense." So basically, I could issue a certificate to someone after verifying there is a building there, the wording on it doesn't really mean anything regarding fitness, habitability condition, etc. Without an inspector or engineer making an inspection the certificate as the minutes state you want it to cover would mean nothing, and a PC Certificate should not cover the Storm Water Drainage Ordinance. Mrs. Slee said that is what I think needs to come out of our ordinance because we didn't comply and that is what our engineer put in when he was helping us write it, so we were just trying to decide what we need to do.

Mr. Vogel: We could deny it if it doesn't meet the setbacks or it is too close to the road and we don't think a variance would be in order for some specific reason, correct? Mr. Howard replied yes. Now if you have a county drain right under the pond, the drainage board can stop it? Mrs. Slee replied yes, we can stop it.

Mr. Howard: This Certificate of Occupancy doesn't just cover ponds it would cover anything being reviewed by the Drainage Board. I don't feel that we can issue a Certificate of Occupancy or withhold a Certificate of Occupancy based on their ordinance. It has to be something from their own ordinance. If someone pushed on this I would question whether such a policy would hold up based on this. Mrs. Slee said that this is what they are addressing.

Mr. Rosen: next on the agenda is David Schuler

Mr. Howard: Board member, Mr. Schuler is absent tonight and due to health issues has not been able to attend meetings this year. Mr. Vogel stated that Mr. Schuler is planning to retire from the PCB and BZA at the end of this year. Mr. Schuler will be recognized for his many years of service to both boards. Board members determined that the stipend pay for Mr. Schuler was not necessary for this year. Mr. Howard asked Board members to be considering names of people from the

northwestern part of the county to fill the position that will be open when Mr. Schuler retires. Also if any current PC board member feels led to also serve on the BZA, please let me know.

There being no further business Mr. Rosen asked for a motion to adjourn. Mr. Vogel made the motion; this was seconded by Mr. Rice. The meeting adjourned at 8:20 pm.

Libby Cook
Secretary, Wabash Co. Plan Commission Board
MTH