

WABASH COUNTY PLAN COMMISSION

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WABASH COUNTY PLAN COMMISSION
BOARD MEETING MINUTES

JUNE 3, 2021

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

Board Members: Randy Curless, Jeff Dawes, Patty Godfroy, Sam Hann, Doug Rice, Christian Rosen, Geoff Schortgen, Cheri Slee, Susie Stephan, Joe Vogel
Attorney Larry Thrush, Plan Director Mike Howard, Secretary Libby Cook

Present: Joe Vogel, Doug Rice, Randy Curless, Christian Rosen, Jeff Dawes, Geoff Schortgen, Susie Stephen, Larry Thrush, Mike Howard, Libby Cook, , Marty Crossland, David Wamsley, Mitchell Oetken, Ashley Oetken

The Wabash County Plan Commission Board met on Thursday, June 3, 2021. Board Chairman, Randy Curless called the meeting to order at 7:00 pm. Mr. Curless asked if there were any corrections or additions to the minutes of the May 6th meeting, there were none. Joe Vogel made the motion to approve the minutes as written, this was seconded by Christian Rosen, the motion carried. The minutes will stand approved as written.

Mr. Curless: The first item on the agenda is Special Exception #8 Jerry Briner for construction of a pond in Chester Township. Mr. Howard said that the Briner's live in the Ft. Wayne area and we have been working with their son, Lee, who could not be here tonight. The Briner's have been working with Troy Eads Excavating. The property is located at 3240 E 700 N, N. Manchester. The Briner's are separating out 3 acres from the J & J Veal 74-acre parcel to construct their new home and pond. Board members reviewed aerial photos of the property. There are no variance requests, no flood plain or flowage easement involved, the water surface area will cover approximately 1/3 acre and have a 6-inch overflow to their property tile to the north/northwest, 15-foot maximum depth, no emergency overflow because there is no dam, watershed into the pond is approximately 1 acre, the closest distance to the nearest certified/non-certified drain is

Bear Grass Creek which is 850 feet to the north/northwest. Troy Eads is doing all of the excavation for the pond, new home and septic system. Mr. Howard asked Mr. Dawes if this was approved by the Drainage Board, Mr. Dawes said he believes so, there were no issues brought up. Mr. Vogel made the motion to give a favorable recommendation to the BZA, this was seconded by Mr. Rice, the motion carried.

Mr. Curless: The next item on the agenda is Special Exception #9, Nathan & Jamie Hauptert for construction of a pond in Lagro Township. Mr. Howard stated that the Hauptert's have selected a 5-acre parcel for a new home and pond. The property is located at 2002 E 300 N. Troy Eads Excavating will be the contractor, there is a request for a variance from the East property line, the adjoining property owner is Scott Dawes who sold them this parcel to build on. To the center and east of the pond there is a terrace that will be worked into the pond so that water will naturally flow into the pond. There will be a variance request to be 30 feet from the east property line, no variance from the road. There is no flood plain or flowage easement. The pond will have a water surface area of approximately $\frac{3}{4}$ acre, a 200-foot dam length, overflow will be 6" and will go into the field tile to the south east, watershed into the pond is approximately 4 acres, no geothermal feed, pond is approximately 2100 feet east of Enyeart Creek. Mr. Vogel asked if the dam will be to the east by farm ground owned by Scott Dawes. Mr. Rosen asked if Mr. Dawes is good with this, he sold them the property. Mr. Howard said that he will be notified before the BZA hearing. Mr. Rosen made a motion to give a favorable recommendation to the Board of zoning appeals. The motion was seconded by Mr. Dawes, the motion carried.

Mr. Curless: Next is an update from Mr. Dawes on the Imagine One 85 Comprehensive Plan. Mr. Dawes informed the Board that they have not met since the last report he gave but the public meeting that was set for July 14th is being rescheduled for a later date, Mr. Dawes said that he had received an e-mail but did not know the details as to why.

Mr. Howard informed the Board that county attorney, Mr. Downs continues to work on the draft of the County Ordinance. The first 5 chapters are done and from about chapter 9 on which is mostly orthos or pictures. Chapters 6, 7, 8 remain to be formatted, reviewed and approved.

Mr. Howard then gave the following updates on complaints around the county:

- The McNeeley property at Lagro, east of town. Mr. & Mrs. McNeeley are both deceased the property is now in the hands of their children. The family is working with Nick Sears, he has done quite a bit of clean-up on the property but he is to a point where he doesn't want to do anymore until everything is legally transferred to his name that is what he has worked out with the family. We had granted an extension on the clean-up, there are a lot of trees and shrubbery that need to be taken out and he is working on that and keeping things mowed. I told him as long as he was working on improving it, we would continue to work with him.

- The Hackworth property in Disko, Mr. Howard shared photos of the property. They have done some clean-up on it. If you recall there was a Ms. Blankenship living in a camper on the property, I would like to enforce that she has to be out of there. I am not completely satisfied with the clean-up yet; they have improved but still have work to do.
- The Swafford property in Disko. It is the three parcels to the east of the Hackworth property. They have done quite a bit of clean-up on it but there is so much there that there is still a lot to be done. The Board motioned and gave me permission last month to issue an unsafe premise order, I will get that sent to them. The unsafe premise order will encompass the clean-up of the lots and the removal of the one house that needs to be razed.
- A lot in the Sandy Beach area, the gentleman who owns it lives in the Bluffton area and the tenants in the mobile home have just trashed it. They have refused to clean it up and keep it cleaned up. The Board gave me approval to have Mr. Thrush send them a letter and I will get that done.
- A couple of things that I want the Board to be aware of. If you will recall we have had some discussions with a gentleman by the name of Mike Cummins with Fountain Vue Mobile Home Estates. They were trying to reach a settlement with the town of LaFontaine regarding water usage for Fountain Vue and there were some differences of opinion but they have worked through their attorneys and gotten that resolved. Mr. Cummins called this week and was asking about the property again. His original intent was to put several modular units on the lots. I told him he would need to submit a new subdivision plan of what he wants to do. Fountain Vue on the Beacon website is one parcel of 41.63 acres, it was never recorded as a subdivision or platted area, there is no recording of any part of that. What's there is there, it basically figures out to be 134 lots I could identify, Mr. Cummins said it is 136. My personal opinion is that if and when they submit their subdivision plan, we will look at it but I don't think we want 134 modular homes on that property, I think we need to require the lot size to be bigger per unit. Another thing, it is outside of Lafontaine Corp., it did have its own sewage system but now feed into the Town of LaFontaine system. We would want to work with the Town of LaFontaine on what they would recommend or want. There is the potential that Mr. Cummins will be coming to the Board for that.

Mr. Curless asked Mr. Wamsley or Dr. Oetken if they would like to speak to the Board. Mr. Wamsley replied that he would like to listen first. Mike and I spoke yesterday but I would ask you all for any update from IDEM, DNR, Army Corp, or any other governmental entity that has to do with CAFO/CFO in our neck of the woods, anything at all that anybody has. Mr. Howard said that what he gave Mr. Wamsley yesterday, nothing came in since then. Mr. Wamsley asked if he was ok to speak about what the Army had to say, Mr. Howard said the Board was not aware because at the last meeting we talked about just the fact that the information had been submitted to IDEM. Mr. Howard said he received an e-mail through the DNR through the Army Corp, they did go back to Mr. Treska's and visited the site and it doesn't really say that they had any violations it stated that they had re-opened the situation for a review. That being the case the pre-applications for the Fulford and the Hegel farm that we had completed have been rescinded, so there are no preapplications on the register for them at this time and until such time that the Army Corp and DNR both give us approval that they are satisfied with the current standing that is the way it would be. Mr. Wamsley said that he would carry that just a little bit farther, the letter that Mike gave me yesterday, Scott Matthews with the Army Corp of Engineers visited the site where Mr. Treska

bulldozed about 14 acres of trees, a large part of that was a wooded wetland which is an environmental no-no, it is not a good thing to do without permission, didn't get a permit from IDEM, DNR, Army, just up and did it. He was cited by the Army in the fall of 2018 with a cease-and-desist order of \$53,000 a day, to me that is enough to get my attention. I have a copy of it here. To make a long story short what the Army said to Mr. Treska is you've got your choice either restore the land back to how it was, they refer to it as mitigation or choose another site, restore that and create a wetland there. From reading a Freedom of Information from the Army Corp of Engineers I've got the details. Bottom line is, Mr. Treska chose to restore the land that he tore up and the Army says that this is not resolved until you have planted the trees and monitored the trees and sent us photographs year by year of the trees for 3 years, that is what the original cease and desist order says. The order, the continuation that Mike gave me yesterday basically says that the cease-and-desist order is back in place again, I am paraphrasing things trying to save your time. The thing that I would ask, you all granted Mr. Treska a permit down on America Road because I am sure you all, and I say you all, it was probably the Board of Zoning Appeals that granted that, correct me if I am wrong Mike. Is it the Plan Commission that granted it, is it Mike that granted it? Mr. Howard said that he granted it based on the e-mails provided to us by the Army Corp and DNR. Mr. Wamsley said based on what you knew and you relied on some words that dealt with files being closed to say that it was resolved and therefore you could grant it. If you actually read the original cease and desist that was signed by somebody that was higher in command than Scott Matthews, Mr. Ricketts out of Louisville District office for the Corp it says that it won't be resolved until the trees are put back and monitored for growth for 3 years, that's when it's resolved not when the file is closed. You asked some questions and you got some answers and you went with those answers, I get it Mike, I am not finding fault, I'm just saying going forward from here considering that Mr. Treska did not. Just recently Mr. Matthews from the Army came and looked at the field where the trees were bulldozed and no trees have been planted, the Army guy says no trees have been planted, he's fired off another certified, registered letter to Treska saying what's up why didn't you do what you said you were going to do. Basically, the Army, I am paraphrasing, was led to believe that the trees have been planted but no photos had ever been sent in which was part of the original deal. So, the Army has re-opened the whole thing and Mr. Treska is I believe going to have to plant the trees. Dr. Oetken said the DNR is now aware of the Army's investigation. The DNR was flat out told, and I've got a copy, by the Treska family that the trees had been planted which is factually not true as proven by the Army. So, the County, Mike Howard has been, you pick the word, not told the whole truth, help me with the word's guys, I am trying to choose my words carefully to not besmirch someone's reputation. Mr. Howard said that he appreciates what Mr. Wamsley is saying, trying to avoid saying, I understand. My personal feeling is I had never requested a comment from Mr. Treska about it, I just strictly dealt with the DNR or Army Corp. Mr. Wamsley said I am not finding fault with you Mike, all I am asking is that going forward, considering it appears the County was misled, the Army was misled, the DNR was misled, maybe even lied to, that this go round that we go through the whole cycle, the way the cease and desist order read that the trees are going to get planted and they are going to get monitored for 3 years and photographs taken and when the Army is finally satisfied that the stuff is put back right at that point in time, assuming that he hasn't gotten into some other mischief that he gets a building permit at that point, that's what I am asking for. Mr. Howard said that if I may ask that if the documents you have from the gentleman higher up, if those are recent documents, may I have copies of those. I may I would like to have copies of those. Mr. Wamsley said yes. What I am telling you is factual, it says put it back, monitor it, send us photographs, that is the nut

of what this says plus the accompanying documents of what the Army and Mr. Treska agreed to, I believe you have copies of those and either the Army will give those to you or I will. Mr. Howard said that he would not argue that point with Mr. Wamsley because he knows when he requested the permit for out on America Road that I went to those two individuals and requested, and they said he was a go. Mr. Wamsley said I know, it didn't affect us but it does affect Libby, she lives down there, I imagine she is not terribly happy about what's gone on, I am not going to put words in your mouth Libby. Libby said that we really don't get much from it. Mr. Wamsley said that when somebody is really bending the rules around and particularly not paying attention, when somebody gets a \$53,000 cease and desist order, I am all about it if I got one, I would pay attention to it, if I was required to plant 2,000 trees, I would plant 2,000 trees instead of not doing it. Dr. Oetken said that with the future applications involving IDEM, with these two applications each time he places have you ever been in any trouble with any State or Federal entity, he continues to say no even though we have a cease-and-desist order and complete violations of what laws he has violated of environmental law. Mr. Wamsley said this is a whole other thing but I will boil it down very short and sweet, on the CAFO applications for IDEM the applicant is required to sign under penalties of perjury, which in Indiana is a felony offense if you lie on a document like this, signed in front of a Notary, not only for one farm but for two farms, the one in the valley and the one for the add on for the Division Rd. property. He signed stating clearly that he has no environmental violations with any Federal or State entity ever, not now presently or in the past but ever, and he signed that under penalty of perjury. I would prevail upon your judgement to look at a pattern that may be here, that maybe he doesn't pay attention to detail or the powers that be, what have you. All I am asking for is that this go round let's go according to the fact that he has to put this stuff back, let's not give him a building permit until he has put it back and monitored it for 3 years as he has agreed to, does that seem reasonable? Mr. Howard said that he agrees 100%. Mr. Dawes asked, isn't that what our Ordinance says that in order to obtain a permit you can't have any outstanding violations with IDEM or Federal or State Government, till they sign off on saying that he has met whatever they want him to do, I don't see how we can issue any permit. Mr. Howard said he agrees 100%. Mr. Wamsley said that even if IDEM says that we are going to look the other way, people were confused and signed these documents because they didn't realize what they were signing, he still has absolutely with the Army Corp and the DNR snided them and to the DNR and Mike correct me if I am wrong on this, he flat out told the DNR that he planted the trees, you got an e-mail chain that way. The Army, did he really say it, I think he led them to believe it but I can't find the e-mail chain on that. In any event he was required to do it, he didn't and has now been discovered. Mr. Vogel asked if in Mr. Wamsley's papers does it say what size trees they are requiring him to put in. Mr. Wamsley said they didn't specify, but he did give them, I believe it was Valonia State Nursery, the place down in southern Indiana that a lot of farmers buy nursery stock from, gave them an order sheet for 2,000 trees to be planted and I believe it said that they would be planted within the next 2 months from the date of that document and that was what was submitted to the Army and agreed upon with the Army. Now the Army has been here and seen that there are no trees planted. Dr. Oetken said in the e-mail afterward it says for the America Road expansion, to which entity was it the DNR, said we planted the trees, can we get this closed so that we can continue to expand? Mr. Wamsley said that was I believe the Treska family corresponding with the DNR saying we've got our trees planted would you please clear this matter up so that we can get our building permit, he asked Mr. Howard if he recalled that, Mr. Howard said that he would have to look back and see. Mr. Howard said that the two that were significant to him was the response from John Egan and Mr. Matthews saying that they both agreed that the

case, this matter was closed. Mr. Wamsley said that if you will look in the file you will see that e-mail, if you don't, I can give it to you, I didn't imagine it I have read it over and over, unfortunately. Dr. Oetken said so with that e-mail the DNR took their word at it, self-reporting, and now under another investigation the Army has already with the May 14th meeting, inspections and I am guessing that the DNR will follow. Mr. Wamsley said the DNR it appears will be along shortly to do their own inspection, just to document their files. Normally they share all documents back and forth and take each other's word that is what I have read. Mr. Schortgen said that when you say inspection with mitigation I hope means that at the beginning of the process is one thing but in a year and a half you should have them planted and in 3 years you have a wetland or something that looks like a wetland, when you say inspection are they confirming that they will send someone to lay eyes on it, I say that from someone who understands mitigation and the importance of wetlands to make sure that they are not going to just make it look like one verses but that it is one. Dr. Oetken said the Army's latest correspondence is that it is not only supposed to be cleared of the debris that was on the 14 acres but it was supposed to be planted and they found literally nothing. Mr. Wamsley said they had not cleared the debris nor had they had not planted any of the nursery stock, nor had they photographed, it was supposed to be photographed once the trees were in the ground and then once a year in the spring for the next 3 years, photos taken and submitted to the Army for the Army's inspection subject to any time that the Army or DNR ever wanted to come and look at the property to see if the photos really matched up with what was going on, that's how it was supposed to be. They have not complied with that to date, to the best of my knowledge. Dr. Oetken said that we are just asking that despite whatever the board looks at, this not only needs to be looked at but it needs the 3-year waiting period monitored and completed and then given the blessings of both entities of the Army and the DNR saying that this case is officially resolved, not closed but actually resolved as incurred in the cease-and-desist order. Mr. Wamsley said that they actually put the trees back and the trees survived. That is all we are asking for, and we think that is fair considering what has gone down so far. Mr. Wamsley asked for a show of hands, no Board members raised their hands. Dr. Oetken asked if there were any questions and said that they have the documentation, Mr. Wamsley added that it is not embellished.

In regards to confined feeding operations is we have received an application notice from IDEM for Greg Michel, they have turned in an application to IDEM to re-permit 3 existing barns at a previously approved site, there is no new construction proposed with this application they are just seeking to have 500 head of nursery pigs in each of the 3 existing barns at the site. The manure will be used on the producers ground as fertilizer following all of IDEM and IOSHA setbacks and guidelines. It lists that the nearest crossroads are 800 N and 800 E. Mr. Rosen said they are wanting to convert it. Mrs. Stephan said he is going to have high enough numbers to require an IDEM Permit. Mr. Dawes asked if he has to re-apply for an IDEM permit. Mr. Rice said at that location he should be good as far as setbacks, the only homes close are family. Mr. Howard said the halos showing the setbacks do cross county road 700 N. Mrs. Stephan said he farms that ground, there is a house to the southeast corner. Mr. Rice said that he didn't feel it would be an issue since it is the same people that have been living there for several years. Mr. Vogel said that it is an existing building that he is remodeling, he will increase his number of hogs, but since they will be smaller the manure would be less, don't they factor the units rather than what he had with his finishing hogs. Mr. Vogel said that he doesn't see it as a problem. Mr. Vogel asked, he would have to get a permit, but it won't be from the Plan Commission, since the buildings are already there, Mr.

Howard said that is correct. Mr. Rosen added that if you don't have the manure capacity, they won't issue the permit.

Mr. Curless: next on the agenda is the Solar Ordinance. Mr. Howard asked the Board to take home the copies he has provided and review those. Mr. Schortgen said that he had been through the e-mail copy and thought it was really good, especially the application information it brought up a lot of good things, my big concern is do you know how involved how those who are wanting to do solar panels, just letting people you can't just build it because you want to, I am saying this as someone who, this is my personal opinion solar panels are sometimes kind of like a fad and I don't want them to be a 5 year plan I want them to be a 50 year plan. If someone was to present a plan for solar panels, we need to ask what is your 5-year budget, what is your 7-year budget, you need to give us more than just what is on this sheet. If they think that they are going to set it up and be good in 3 years then no, give us 50 years and then we are going to be more apt to permit it. But it can't be the sort of thing that hey everyone else is doing it, let's do it. Mr. Schortgen said he thought the application was very nice. Mr. Vogel said at the BZA meeting the previous week, Mr. Wamsley and Dr. Oetken were there, Mr. Wamsley said that there is money just rolling into these projects from investors, government, and they are coming, it may be a pie in the sky, but they are coming in. To me what you see at Oak Hill School is a solar farm, but he said that those are 5 – 6 feet tall, my idea would be to put some screening around it, set them back away from the road, Dr. Oetken said that in California there are huge panels, maybe 25 feet tall, that would not be my idea of one in Indiana. They don't make any noise, they put electricity on the grid, and if you screen them so it is not like a black eye. Mr. Schortgen said the screening was very well written, the noxious weed control, taking care of it and that is another thing is the maintenance because clearly the initial cost is gong to be a big thing, and if the initial cost is covered that is great but will that money be available for maintenance because those things don't last. Mr. Schortgen said that he is not against solar, I would actually prefer them. Mr. Vogel said the solar doesn't use much cement they just drive a post in the ground and it can be removed, but there was some discussion that the solar panels have hazardous materials. Mr. Schortgen said that as far as recycling, the cradle to grave thing I am not sure about. Mr. Vogel said his understanding is the actual glass panel is the problem to get rid of, we wouldn't want them to put one in and say in 10, 15, 20 years they walk away from it then we have figure out what we are going to do with that. Mr. Vogel also questioned tiles, if you have a tile on one side of the solar farm and you need to replace tile that runs through that ground are they running lines underground, can you work on the tile? Mr. Rice commented on a friend of his in another county who has been approached about an 80-acre farm for a solar farm, it would be a 57-year commitment because they took a 7-year option to do it, he turned it down. There is a border all the way around it, it is fenced all the way around it, and it is solid panels, then once the panels go in the only way the farmer can access the property is with permission, all of the panel posts are cemented in, his big concern was after 50 years who is going to be around to monitor this? Mr. Vogel said that he feels there should be a required performance bond for the life of the solar farm, that way if the company walks off and leaves it, we have a way to pay for the clean-up. Mr. Schortgen said with a well-organized plan they are a lot easier to accept, everybody that he has talked about their use of solar power and everyone that I would say does it correctly has a goal, before they ask permission from anybody, they have a plan of what they are doing. So, if they do it properly, everything in here (the ordinance) is great. My position on it all is I don't think people should jump into it but do it with

thought and foresight and let's be sustainable because again who knows what is going to happen in a 50-year agreement, so let's make them worth our while. Mr. Vogel noted that the land owner probably not be managing it or anything, they would just be getting the rent for the ground, it is the actual company that we have to have the rules and make them adhere to that and we need those upfront before they start building. Mr. Howard noted that the ordinance is mostly centered on commercial usage. Board members discussed the taxation and decommissioning of solar projects. Mr. Howard asked for thoughts on the idea of proportional setbacks. Mr. Rice said that he liked the idea of proportional setbacks. Mr. Howard will make the changes discussed and get an updated copy out to members to review for discussion during the 7/1/2021 meeting.

There being no further business Mr. Curlless asked for a motion to adjourn. Mr. Rosen made the motion to adjourn, this was seconded by Mr. Vogel. The meeting adjourned at 8:30 pm.

Libby Cook
Secretary, Wabash County Plan Commission
MTH