

WABASH COUNTY PLAN COMMISSION

Wabash County Court House

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Wabash County Board of Zoning Appeals

Wabash County Court House

Wabash IN 46992

BZA MEETING MINUTES

JUNE 22, 2021

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

PRESENT: Joe Vogel, Dan Dale, Jerry Younce, Larry Thrush, Mike Howard, Libby Cook, Jeanne List, Jamie Hauptert, Mark Guenin, Oren Guenin, Marty Crossland, David Wamsley, Donna Wendt

The Wabash County Board of Zoning Appeals met on Tuesday, June 22, 2021 at 7:00 pm. The meeting was called to order by Board Chairman, Joe Vogel. Mr. Vogel asked if there were any additions or corrections to the minutes of the May 25th meeting, there being none he asked for a motion to approve the minutes. Jerry Younce made the motion to approve the minutes as written, this was seconded by Dan Dale. The minutes will stand as approved.

Mr. Vogel: The 1st item on the agenda is Special Exception #8, Jerry & Joyce Briner for construction of a pond in Chester Township. Lee Briner introduced himself and stated that he is representing his parents, Jerry and Joyce Briner for the construction of a pond. Mr. Howard gave the following information on the pond: the Briners have a new 3 acre parcel for a homesite located at 3240 E 700 N, N. Manchester; Troy Eads will be the contractor for the pond and other work related to the construction of the new home; no variances are required, they meet all of the required setbacks; there is no floodplain or flowage easement; approximately 1/3-acre water surface area; it is a pretty level spot with a terrace to the east which will help to put water into the pond; no dam; 6" overflow to their own field tile; approximate depth will be 15 feet; no emergency overflow required because there is no dam; watershed into the pond will be approximately 1 acre; the pond will be used for geothermal feed. Mr. Howard noted that the request has received a favorable recommendation from the Plan Commission Board and was approved by the Drainage Board. Mr. Vogel asked if there were any questions or comments, there being none he called for a vote. Mr. Thrush tallied the votes, SE #8 was approved.

Mr. Vogel: The 2nd item on the agenda is Special Exception #9, Nathan and Jamie Hauptert for a pond in Lagro Township. Jamie Hauptert is present tonight. Mr. Howard presented the following information for the pond: The Hauptert's have purchased a 5 acre parcel located at 2002 E 300 N,

Urbana; Troy Eads will be the contractor; the pond will require a variance from the property line to the east, they will be approximately 30 feet from the property line the neighboring property is owned by Scott Dawes, Mr. Dawes sold the 5 acre parcel to the Hauptert's and we have not heard any objections from him; there is no variance for the road setback as they meet the requirements; there is no floodplain or flowage easement involved; the pond will have an approximate .75 acre water surface area; the dam will be approximately 200 feet in length, base width would be 50 feet and the top would be 15 feet; 6" overflow to the east to an 8" field tile; maximum pond depth would be 15 feet; watershed into the pond is approximately 4 acres; no geothermal feed; the nearest certified or non-certified drain is Enyeart Creek which would be 2,100 feet to the east; the request did receive a favorable recommendation from the Plan Commission Board and was approved by the Drainage Board. Mr. Vogel asked if there were any questions or comments on the request, there being none he called for a vote on the variance. Mr. Thrush tallied the votes, the variance was approved. Mr. Vogel then called for a vote for the SE request, Mr. Thrush tallied the votes, SE #9 was approved.

Mr. Vogel: The 3rd item on the agenda is Variance #5, Charles Weikel, for a variance from the subdivision ordinance to make one than 1 sell split of less than 20 acres within a 5 year period. The proposed buyer for the parcel has withdrawn their offer therefore Mr. Weikel has withdrawn his request for the Variance. The Plan commission honored the request but it was noted that because the legal ad was already published and the required mailers were mailed that Mr. Weikel was required to pay those fees. Mr. Weikel agreed and has submitted payment for said amount.

Mr. Vogel: the 4th item on the agenda is Variance #6, Marguerite Guenin for a variance from the subdivision ordinance in Liberty Township. Mr. Howard introduced Mark and Oren Guenin who are representing their mother tonight. Mr. Howard reviewed the maps of the property, it is a 117.712 acre parcel, at the northeast part of the property there is approximately a 17.26 acre area of woodland, that is what they would like to split out and sell. They did have a previous sale within the last 5 years of the 2.26 acres up at the front along the road. This is their 2nd sale of less than 20 acres in a 5 year period so that is why they are applying for the variance. Board members were provided a copy of the survey showing the 17.26 acres. Mr. Howard shared a letter from Julie Hilger who will be purchasing the 17.26 acre parcel from Mrs. Guenin. Currently the Hilger's live in New Hampshire due to work but will be moving back to Wabash County. Ms. Hilger owns a home on an adjacent parcel located at 8501 S 200 E, this parcel was originally part of the farm. The letter states that the Hilger's intend make this piece of land part of our home, we have no intention of developing any part of their land or removing any of the trees, we just want to leave it as it is for our enjoyment and that of our children for many years to come. Mark Guenin stated that his mother has turned 100 years of age, the woods, Clover Blossom has used it for honey otherwise it is not productive, it butts right up against her property so I am sure they will be joined together. The property is not productive for us, we had discussed harvesting some of the timber off of it but then so many things got shut down because of Covid, now the timber is worth a lot more but that ship has sailed. Mr. Vogel asked if the Guenin family will still own the remainder of the parcel and if they would have access without going through Ms. Hilger's property. Mr. Guenin said they will and they have an easement through the parcel now owned by Casey and Jessi Huston, this allows the farmer to access the field, and Clover Blossom Honey access to the hives they have on the property, I think the Huston's would like for the easement to go away but it was there when they bought it, there is plenty of road frontage but we are not ready to cut a new drive

into the property to get into the field. Mr. Vogel asked if there were any questions or comments, there being none he called for a vote. Mr. Thrush tallied the votes, Variance #6 was approved.

Mr. Howard said , regarding other business we have Mr. Denver Cupps with us tonight. He then introduced Mr. Cupps and reminded the Board that we worked with Mr. Cupps last summer on a pond that he constructed without permitting, the pond was constructed right up against the road. Mr. Howard shared photos of the pond with the Board members. Mr. Cupps does have the materials to get the guard rail put in, so I thought I would ask him to come in to discuss with the Board where we want to go from here. The requirements included: install a pond liner at the roadside edge of the pond and around the corners, this was to be done by someone certified or an engineer present that is certified in the installation of liners in ponds; the guardrail, they could install the guardrail themselves but would have to have a certified engineer on site to make sure it is done correctly and meets the requirements. Mr. Vogel asked Mr. Howard if Mr. Cupps had received a copy of the requirements, Mr. Howard said that it was in the minutes from the meeting last summer and those were provided to him, the requirements were also provided to him in a letter that was sent to him in October 2020. Mr. Vogel asked what action the Board needs to be taking, Mr. Howard said based on the information that is provided I think the Board anticipated this to be done last fall, he has some materials there but nothing has been done this spring or summer and it needs to be done. In the photos you will notice that some of the rocks that had been built up along the road have been removed and you are starting to see some wash of the asphalt into the pond area. Mr. Cupps said the one person he had been working with his excavator broke down, but he has located another person to work on it and he will work every day when it is not raining. I am trying to locate the INDOT coordinator to oversee it, I keep calling everybody and they tell me it is up to Wabash County, Mr. Wyatt says it is not his responsibility. Mr. Cupps said he has everything ready and has the money and the worker. Mr. Vogel said what he needs is an engineer, someone to oversee it and make sure it is done to the standards. Mr. Howard noted that Mr. Cupps mentioned Cole Wyatt (Co. Highway Superintendent), Cole is not a certified engineer, he can't take the responsibility for it, in order to protect the county, we want a certified engineer to make sure that it meets the requirements both with the liner and the guardrail that is being put in. Mr. Howard reminded Mr. Cupps that the guardrail has to be installed behind the fencepost that they had identified earlier, Mr. Cupps said that he understood that. Mr. Cupps said that he has a guy who specializes in ponds he is a local guy close by me, he has erosion mat, I will get 250 feet of that, I can get rip-rap from the quarry across the river I am waiting for someone from INDOT to oversee it. The contractor told Mr. Cupps that instead of putting cement around the 12 inch square posts, he thinks it would be better to put river rock around the posts since it is so close to the water. Mr. Cupps stated that he has measured it and Mr. Vogel asked, you don't have an engineer to come out to oversee the job, Mr. Cupps said that he is waiting on INDOT. Mr. Vogel asked if we could offer any help in finding someone. Mr. Howard said that he would want to check with Mr. Wyatt to see if there is anyone from the state that he could recommend, however INDOT is a state agency and this is on a county road, I don't think INDOT would be involved. Mr. Cupps said that when he has called, he was told that it would be up to the county, not the state. Mr. Vogel said that our department doesn't have an engineer, does the county hire somebody to do that? Mr. Howard said that the Drainage Board hires somebody whenever an engineer is needed to do work like that. Mr. Dale asked Mr. Cupps if he has the pond liner, Mr. Cupps replied that the contractor has the erosion liner and explained how it will be laid out. Mr. Vogel told Mr. Cupps that he should talk to Cole Wyatt at the County Highway Dept., he can't be the one to certify the work but

to see if he can help you locate a certified engineer. Mr. Dale asked Mr. Howard if the engineer wants to change things, do they have the right to do that. Mr. Howard said that he feels the key thing is how close it is to the road, he has to be behind the steel post at the driveway, which is at least 10 feet from the edge of the road and if they say it has to be farther back that certainly benefits the county, that would be fine. Mr. Vogel said our best advice would be to contact Cole and see who they use or would recommend and then to let Mr. Howard know that you have found somebody. Mr. Howard: I think we need to establish a timeline to get this done. Mr. Cupps said that he would like to have it done in a month. Mr. Vogel suggested and it was agreed upon that Mr. Cupps report back to Mr. Howard by September 1, 2021, hopefully it will be done by then. Mr. Cupps said that he could have it done by then and report back to Mr. Howard with some pictures. Mr. Howard stated the county road right-of-way is 20 feet from the center of the road, he will still be in the right-of-way. Mr. Vogel told Mr. Cupps that he will need to be careful putting any rip rap within 10 feet from the road, he will need to work closely with the County Highway Superintendent and keep Mr. Howard posted on the progress. Mr. Cupps explained the landscaping he would like to do at the pond, Mr. Vogel reminded Mr. Cupps that he can put in landscaping, just nothing towards the road, he thanked Mr. Cupps for coming to meet with the Board.

Under other business, Mr. Howard said that he called Board Attorney Larry Thrush this afternoon to inquire if he had received the information that had been required from Mr. Rob Kowalczyk in regards to an extension of his permit for a new home in the town of Lagro. Mr. Thrush was to have received the requested information by noon today. A copy of the letter was shared with the Board members. Mr. Kowalczyk was sent a letter by Attorney Thrush requesting proof of financial responsibility either by means of verification from a bank that he had secured a loan to complete the house, or a bank statement showing proof of funds to complete the work, this information was to be provided to Mr. Thrush by noon today (June 22nd) and it was not. The letter stated that if this information was not provided the extension of the permit would not be issued and an unsafe premise order would be issued. Mr. Dale asked what that would entail, are we required to clean up the property and make it safe., Mr. Howard said that is what we have to determine, the way the letter was orchestrated we didn't impact him financially yet it enables us to see if the funds are secured to complete the house. In his conversation with the Board, he stated that he didn't have the materials or the funding. We have to make a decision of what we are going to require him to do, are we going to require him to fill it in? Mr. Vogel asked if Mr. Kowalczyk had contacted either Mr. Thrush or Mr. Howard, both replied that he has not been in contact with them. Mr. Vogel asked about the expiration date of the permit, Mr. Howard said it would be June 24, 2021. Mr. Vogel said that after the 24th he doesn't have a building permit, he needs to renew it, but without proof of financial responsibility he can't renew the permit, Mr. Howard said that is correct. Board members reviewed photos of the property, noting that he does have block laid for the foundation. Mr. Howard said that he did clean-up the property at the front as we requested, but he moved it to the back of the property. Mr. Dale said I assume that the neighbors are still upset, Mr. Howard said that he believes that they have sold their home. Mr. Howard said that he will work with Mr. Thrush and file an unsafe premise order, his current permit expires on June 24, 2021. Mr. Younce said that if financially he can't finish it, the first thing that needs to be done is fill in the hole, use the remaining dirt he was supposed to have hauled away and fill in the hole. Mr. Dale asked if he is current on the property taxes, would it be up for the tax sale, Mr. Howard said the taxes on the property are paid current. Mr. Vogel said everybody should have the right to put

up a home on their property, but if you are building it yourself, we need to have a bond or some assurance that they have the ability to complete it, somehow. Not just issue them a permit and turn them loose. If you have a contractor hired, I don't think we would need any bond but if you are doing it yourself you have to have some way of assuring us that you are going to be able to complete it. We have had two that we have had some trouble with.

Mr. Howard: Each Board member was given a copy of the proposed solar ordinance. The proposed Solar Ordinance is being edited by county attorney, Steve Downs. We determined where we thought the county would want to stand based on our comprehensive plan as far as a solar ordinance. I have reviewed and looked and looked and found an ordinance that we felt would fit with what with what we desire to do for the county. In discussion with the PCB members, we felt like this was getting to be a hot situation, we do have a solar section in our draft which is being reviewed but the draft is not done so we do not have a solar ordinance in place and the Board thought we needed to get one in place as soon as we could. The ordinance was originally from Randolph County, IN, we used that and made some minor changes to it. The PCB looked at it and said to send it on to Mr. Downs for his review. In working on this I tried to make the new ordinance so that it could be put right into place when the County Ordinance approved. it seemed to fit well for Wabash County too. People in the county are being approached about solar farms, they are talking about a 200 mega-watt facility in Wabash County, obviously that wouldn't all be on one acreage or one site but it would be in a generalized area. Mr. Younce said that will take a lot of acreage. We need to get an ordinance in place. Mr. Howard encouraged board members to read the ordinance and forward any questions or comments to him and he will forward these to Mr. Downs. Mr./ Howard also stated that in the binders are copies of the chapters of the new zoning ordinance that Mr. Downs has completed reviewing, he is still working on chapters 6, 7, & 8. One family in the county has been offered a 30-year contract on some of their land with 2 ten-year options after that, at \$950 per acre per year plus a 2% increase on that for the first 30 years, making it look very lucrative to the land owners. The biggest thing to look at is bonding, where we would require bonding to protect the county in all the areas that we need. Mr. Dale asked if Mr. Howard knew if the company was a utility or wanted to tap into a utility company grid. Mr. Dale reminded the Board that he was approached a few years and that is what stopped our involvement was that they couldn't get Duke go along with it. Mr. Howard said that the company, Next Era Resources, in their communications state that they are "the largest company that you have never heard of, larger than Fed-Ex and UPS combined, we are larger than Royal Dutch petroleum company, Net Era is the largest utility company in the world, we are the parent company for Florida Power and Light" and is the world's leading producer of renewable energy.

Mr. Vogel asked if any members of the audience had any questions or comments to present to the Board. Mr. David Wamsley asked if anyone, Mr. Howard, or anyone had any information from IDEM Land Quality, IDEM Water Quality, DNR, Army Corp of Engineers. Mr. Howard said that the only thing he has received information from IDEM is on other community businesses IDEM permits, but nothing on CFO sites. Mr. Vogel asked Mr. Wamsley if he had received any information. Mr. Howard said that he has not sent anything to him or received anything from him. Mr. Wamsley asked, nothing about his investigator getting up here or anything like that? Mr. Howard said no. Mr. Vogel asked Mr. Wamsley if in any of his research if he had heard any more about the order to plant the trees and rejuvenate that area where the trees were destroyed. Mr. Wamsley offered that he could send everyone a copy of what he has, it is informative, I can

summarize it for you, Mr. Vogel asked him to summarize it. Mr. Wamsley said that the net of it is that he is by the Army, he has been cited again or they have re-opened the original citing from before because he never complied. He told them he would do it, but he never planted any trees or removed any of the debris so that the trees could be planted. The Army has come up here and done a site review and seen with their own eyes that no action was ever taken even though he led them to believe that he had taken action. He flat out told the DNR that he had planted the trees. The Army has given him 30 days, and I think that time is just about up already to respond as to why he never got around to doing anything. Mike hasn't seen anything, I haven't seen anything come back to the Army yet, I think that would be a fair assessment. Mr. Vogel asked Mr. Wamsley if he had seen any action at the property, Mr. Wamsley said he has not seen any action or heard any noise. Mr. Wamsley said it appears that he might have trouble with IDEM Land Quality, they regulate livestock, they have put up on the virtual file cabinet a notice that he failed to fill out the good character clause, is anybody familiar with what the good character clause is on an application? I will summarize it briefly, when you go to either add additional stock or build a new barn that is going to be a CAFO you are required to sign under oath, you must not lie on this form, and he has attested to the fact that he had no environmental violations, ever. That is a big no-no, it was called the Good Character Clause back in the day, and back in the day they would deny applications if you failed to disclose anything that you have not done right environmentally. Now they have sent him notice of deficiency stating that he must fill out and tell us what you did wrong, it has been alleged by the Army and by the DNR and by IDEM Water Quality that you have environmental violations and you have 30 days to tell us what they are and we are going to tell you what we think about it, he could be denied altogether, that is possible.

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

Libby Cook
Secretary, Wabash County Board of Zoning Appeals
MTH