

BZA MINUTES

AUGUST 21, 2017

Members present: Jim Hufford, Bill Davis, Eli Jones, Christy Starbuck, Jason Hawley and Myron Cougill

Vacant: Phil DeHaven resigned

Legal Representation: Jason Welch

Staff present: Randy Abel, Executive Director, Debra Johnting, Recording Secretary

Others present: Jake Donham, Emma Donham, Melynda Donham, Zane Donham, Eric Fogle, Dan Winningham, Ed Thornburg, Tony Goltstein, Brody Tarter, Bob McCoy, Yetta Dungan, Katherine Petry, and several others who did not sign in on the sheet.

Chairman Davis: Welcome everyone to the BZA Meeting. Tonight is Monday, August 21, 2017. The first thing I would like to do tonight is to approve the minutes from July 17, 2017. Do I hear a motion? We have a motion and a second, all in favor, opposed? Minutes are approved. The first item on the agenda tonight is SMD Winchester, LLC, Roger Muselman, BZA2017-18-V. For the record, please state your name and address because this is a recorded meeting.

Brody Tarter: My name is Brody Tarter on behalf of Roger, 103 N Meridian, Winchester, Indiana.

Chairman Davis: Did you receive Article V, Conduct of Hearings?

B. Tarter: Yes.

Chairman Davis: And everything was mailed and published on time?

D. Johnting: Yes.

Chairman Davis: Then state what you would like to do please.

B. Tarter: He is requesting a variance for paving and to allow a stone foundation on the lot he wants to buy for a mini-storage.

Chairman Davis: Does the board have any questions or comments?

J. Hufford: Wasn't he just here getting that rezoned?

B. Tarter: Yes, my brother was here for that rezoning hearing and that was rezoned.

J. Hufford: So you have one year, are you asking for more than that?

B. Tarter: Yes, we are asking not to pave at all.

R. Abel: Actually if you look at all the lock and stores in the county I don't believe there are any that are paved. There is minimal amount of dust created, and they don't have to have marked parking spaces. So you are looking for a permanent variance not to pave.

J. Hufford: Well, it wasn't stated that way that's why I wondered.

R. Abel: That's pretty much been the standard across the county.

Chairman Davis: Any further discussion? Is there anyone in the audience who would like to speak for or against this petition at this time? Let that be a no. With that being said I would entertain a motion for a roll call vote. It has been moved and seconded for a roll call vote. Deb.

D. Johnting: Bill Davis, yes, Jim Hufford, yes, Jason Hawley, yes, Elijah Jones, yes, Christy Starbuck, yes, and Myron Cougill, yes. Motion approved.

Chairman Davis: You're good to go.

B. Tarter: Thank you.

Chairman Davis: The next item on the agenda tonight is for Hoosier Storage, Stan Winningham, BZA2017-19-V. For the record, please state your name and address because this is a recorded meeting.

S. Winningham: My name is Stan Winningham, I live in Ridgeville, 307 E Main.

Chairman Davis: And you did receive Article V, Conduct of Hearings?

S. Winningham: Yes I did.

Chairman Davis: And it was published in a timely manner? Ok, please tell us what you would like to do.

S. Winningham: Pretty much the same as the previous one, is to allow stone as the base versus the asphalt or concrete and we use washed stones in lieu of dusty 53's or 73's, we prefer the washed stones because you are truly buying stone you are not buying dust.

Chairman Davis: Questions by the board? Anyone in the audience that would like to speak to this? Let the record show that no one would like to speak. I will entertain a motion to go forward. Motion has been made and seconded to go forward with a roll call vote.

D. Johnting: Bill Davis, yes, Jim Hufford, yes, Jason Hawley, yes, Elijah Jones, yes, Christie Starbuck, yes, and Myron Cougill, yes. Motion approved.

S. Winningham: Thank you.

Chairman Davis: Ok, the final one tonight, represented by BZA2017-21-V, Union Go Dairy, Tony Goltstein. For the record, please state your name and address because this is a recorded meeting.

T. Goltstein: Good evening, thank you for having us, my name is Tony Goltstein, I am the owner and operator of Union Go Dairy. 3518 S 300 W, Winchester.

Chairman Davis: And you did receive Article V, Conduct of hearings?

T. Goltstein: Yes we did.

Chairman Davis: And everything was published in a timely manner? Ok, please state what you would like to do.

T. Goltstein: I would like to hand this over to my engineer to explain what's going on.

D. Girdeman: David Girdeman, with North Pointe Engineering. And we are here tonight to request a variance to allow additional development of the dairy closer to the neighboring residences than the required 3,000 foot setback. This variance that is requested is for two proposed cow barns and two manure storage ponds. And, if you like I can explain where those are located on the property. I have some smaller ones, more site specific that might be easier to see. The parcel in question is located at the northwest corner of west 400 South and south 300 West. And the dairy has been in operation since 2005. And if you would refer to this larger blowup that may better explain what we are talking about. Again, the dairy operation began in 2005 and it currently consists of the milking center, one half barn for a dry cow barn, two existing free stall barns where the milking cows are located. It includes an existing sand settling basin, feed storage area, and one manure storage pond. Also on site, this is the dairy owners residence, immediately east of the facility. These features have been unchanged since 2005. In 2009 Indiana Department of Environmental Management approved an expansion of the dairy which includes these two storage ponds and one additional barn here. Those were never constructed. Under this proposal the dairy is coming to the county asking for a variance to add additional operational features including a sand recycling lane where the sand used as bedding for the cows is recycled instead of just going into the settling basin. They're asking for this new additional free stall barn for the cows here, this is a full barn and a half barn right here, next to the sand lane in the existing settling basin. Then they are asking for two additional manure storage ponds, one is referred to as a slurry pond, which has a concrete floor in it, and then this one here is just an earthen manure storage pond. The additional cow barns and the proposed structures will allow the dairy to operate more efficiently and more fully utilize the existing milking parlor. The construction of all these features, the design has been approved by IDEM, and these were approved in 2009 and then very recently this additional barn was approved by IDEM so all those facilities have been demonstrated to meet the IDEM construction and design requirements. In addition the dairy operates under IDEM's regulations, they have been since 2005 and obviously they will continue to. So, it is these four structures specifically that the variance is requested. Then the other drawing that was provided to you, my understanding that it shows the radius circles of the different structures. The drawing I handed to you shows the actual distances from the four structures to the closest residences. Any questions on that? I can go into more detail.

Chairman Davis: Debra, was there some question on the proper distance, I thought in one of the emails you were going to check on that.

D. Johnting: Oh, in the very beginning we did not have the exact setbacks to each home because we did not have the additions in the exact position. But the circle one from Ed, and the handout from tonight is exact.

Chairman Davis: Any questions at this time by the board.

C. Starbuck: I do, do you intend to leave that wooded tree area there?

T. Goltstein: On the west side of the facility, the certified woods? That will stay there.

C. Starbuck: Thank you.

R. Abel: I also asked just for information, do you plan to remove the old lagoon if you build the new one?

T. Goltstein: Yes, to build these new structures that is not something that is going to happen overnight. Everybody knows that we had some problems with the synthetic liner. In that existing lagoon. So, hopefully the next stage, we are building on the north side of the building, trying to build that this year and have cows in there before the end of the year. We need to see what we are going to do with the existing lagoon because that plastic liner needs to come out.

C. Starbuck: Is it leaking at this time?

T. Goltstein: No it's not leaking. The plastic has no purpose at all. But the two foot or three foot compacted clay liner is not leaking. We can prove that by monitoring our ground water wells on the facility. So, in order to get that cleaned out within the next couple of years there's a chance we would have to build another structure so we can do that. Because we always produce manure. Cows always.....poop.

D. Girdeman: I would like to clarify on the existing pond, Tony did state that the synthetic liner really provides no environmental protection. That was permitted and constructed with the original dairy in 2005, that plastic liner was added at the very end of the permitting process. IDEM felt that that was necessary based upon an erroneous geologic assumption on their part which was later proven to be true in an appeal. So we designed, underneath that plastic is recompacted clay that meets IDEM's requirements. So the plastic was literally just an extra measure. The pond has always met IDEM requirements and that's the reason that these proposed ponds aren't proposed with a plastic liner because it is not needed to protect the environment. So it's just an operational inconvenience.

J. Hufford: So this new one is being built just so you can do away with the other one? Or are you putting this in because you want to expand the herd?

T. Goltstein: We need to investigate what we can do with the existing one. If that's fixable without having additional storage, I am not going to spend the money to build the extra lagoon. If it is necessary to fix it, we're better off building a complete new one and get away from the existing one on the north side. We will use it as a water pond.

D. Girdeman: And as part of the permit that we submitted to IDEM, they look at the days of storage that's provided when you add additional cows, and even with the additional cows we still have almost a year's worth of storage which is twice what the IDEM minimum requirements is of 180 days. So, even without the additional ponds we far exceed what IDEM requires.

R. Abel: So your intent is just to have one lagoon.

T. Goltstein: It would be nice, Randy.

D. Girdeman: There's also operational considerations that may come in to play, the operation of the sand lane requires a certain amount of water quality, so whether that pond could be modified to maybe

include two separate cells, and by water quality you need thin water to be able to allow the sand to settle out and to recycle and reuse it in the barns so the new ponds in conjunction with potentially something with the existing ponds could very well be needed to be able to efficiently operate the recycling system. It gives the operator the flexibility to be able to implement that, construct that pond, those ponds, if that's needed.

J. Hufford: Have you had any trouble in the past with the pond that you've got now. The manure storage. Have you had any problems with it?

T. Goltstein: No.

D. Girdeman: We do ground water monitoring, it's been around since 2005. It's been sample tested. The tests continue to show that the liner's effective and there's been no seepage or leakage into the ground water.

Chairman Davis: Any further questions by the board at this time. Anyone in the audience like to speak at this time on this matter. Let the record show....

B. McCoy: Bill, I have a question. Bob McCoy, 196 South Tamarac, Winchester. Can you clarify what the actual setback is to the 3,000 feet.

R. Abel: The closest house is approximately 1500 feet. And that's pretty common setback among the hog operations in the county.

B. McCoy: My biggest issue is that we established the setbacks and I feel they should stay. Being on the Area Planning Commission, a lot of time was put into that, and there's reasons for them. That's just my statement. Thank you.

Chairman Davis: Does anyone else have anything to say?

D. Girdeman: Yes, in looking at the actual setback map there, you are correct the closest residence is immediately west of the proposed pond and that is the 1590 feet. The next closest is to the southwest at 1880, and then outside of that they all look to be in excess of 2500 feet.

Chairman Davis: Thank you. Would you like to comment?

K. Petry: I'm Katherine Petry, 7766 South Boundary Pike, Lynn. And Union Go, their plastic liner that ruptured several years ago they have never done anything about it, the air quality down in that area is terrible, and they haven't complied with variances against them. I think this is a mistake, and that is all I have to say.

D. Girdeman: I am not sure what variance you are referring to?

K. Petry: The liner along time ago, and you're saying there's clay under there and that's no big deal. But you've been told to do something about it and you haven't done anything about it.

T. Goltstein: Who told us that we have to do something about it?

K. Petry: IDEM.

T. Goltstein: That's not true.

K. Petry: You know and you took a boat out there and was trying to do something about it, what have you done about it?

T. Goltstein: On April 1, 2010 we deflated the bubbles.

K. Petry: So you don't know whether it's leaking or not, do you?

T. Goltstein: We are 99.9 percent sure because we have test wells on our site. We sample them every six months.

K. Petry: I still say it's a mistake to give them a variance. Thank you.

D. Girdeman: And when we, as Tony mentioned, the liner remediation, bubbles had formed because gas had gotten underneath the plastic and it basically raised up in the pond and it was creating an operational issue. We went in and, I was in the boat at the time, and we sampled the gas prior to it being released. We had no reason to think that it was anything other than just the normal gasses that are generated in a pond like that as a result of animal waste. But we went in and we sampled the gas underneath the bubbles and we monitored the air quality around the pond very, very carefully to make sure that when that gas was released that it did not create a health hazard. That was monitored very closely and the purpose of that was to establish a program in which the dairy operator would be able to go in and remediate and take out sections of that plastic down the road as operational conditions allowed them to do. That was all done by IDEM, they have been watching the plastic to the extent that it is no longer a concern to them because again we demonstrated that the liner system provides the containment and it meets the regulations. It's an operational issue and Tony's demonstrated over these last many years that he's been able to maintain the manure and operate it even with those bubbles in there and I believe he has a plan at some point in time to get rid of them. He sees them outside of his window every day. Nobody knows more than he of the inconvenience that those have caused. So, they haven't created an odor nuisance, in fact you could argue that the bubbles help collect in some of the gasses. So, it's really an operational issue and IDEM is very well aware of it, and they are allowing the dairy to continue and give them the development plans to be allowed to go in to remediate those bubbles as operational conditions allow.

C. Starbuck: I just need some clarification on something. The new proposed lagoon. Is that definite, or is that in the event that you decide to do it. I just want to make sure I understand if the lagoon is going in or if it may go in.

T. Goltstein: It may go in.

C. Starbuck: And what would decide if you were going to put in the new lagoon or not?

D. Girdeman: As I mentioned the water quality for recovering the sand, you need additional storage in order to be able to keep the water quality thin enough to recycle that. If he determines that he needs that from an operational standpoint for that then he would have the ability, he has the permits in place, IDEM is not requiring him to build that pond, it's an operational, and as demonstrated with his days of storage twice of what's required even without those new ponds.

J. Hufford: Ed, Is there any creeks or anything within that setback area, that they are wanting to get in to?

E. Thornburg: Not if it wasn't there before.

J. Hufford: I'm just saying...

E. Thornburg: Part of there being an issue of water getting away, the Sparrow Creek is to the nearest thing to it and it is not near the expansion.

J. Hufford: Ok, that's what I was wondering.

E. Thornburg: Also, I wanted to add that when I drew the radius circles on the map I went to the farthest distance points. I went to the very southwest corner of the proposed additional lagoon, I went to the northeast and northwest corners of the existing lagoons, those do represent the farthest points from the center.

D. Girdeman: And the proposed structures are immediately adjacent to the existing operations. Those structures have been in place and operating since 2005, so the additional structures being so close, you know, I would propose it's not an unreasonable request it's just between the original time the dairy was built and now the increased setbacks within the county ordinance came into effect. They had the ability to build those ponds in 2009 when IDEM approved it.

T. Goltstein: But I didn't have the money.

Chairman Davis: Any further questions by the board? Anyone else in the audience who would like to say anything?

J. Donham: My name is Jake Donham, I am here tonight with my wife and family, our address is 4221 South 300 West, Winchester. We are actually within the 3,000 feet of the dairy, and the proposed project. We have been at our residence for over eighteen plus years. Since they've been in operation, as far as odors we have no problems or issues living that close. We are there on a daily basis. To my knowledge, our well's just fine, we still get water every day. We have never had any issues with that. They are great people, great neighbors, they care about their animals as well as they do their family. We couldn't ask for better neighbors. Thank you.

Chairman Davis: Anyone else? Going once, twice, alright, I will entertain a motion to move forward with a roll call vote. It has been moved and seconded for a roll call vote. Debra.

D. Johnting: Bill Davis, no, Jim Hufford, no, Jason Hawley, no, Elijah Jones, no, Christy Starbuck, no, and Myron Cougill, no. Motion denied.

Chairman Davis: Ok, motion denied, what are their options?

D. Johnting: They may reapply in six months.

Chairman Davis: You may reapply in six months. Thank you. Ok, any new business that the board needs to discuss. How are we coming on replacing Phil DeHaven?

D. Johnting: There are two appointments to the BZA from the APC, Jim Hufford is one of them, Phil was the other, they meet tomorrow night, so we will know then who will come over and serve as the other appointment to the BZA. They should be here next month.

Chairman Davis: Thank you. Any other business tonight? If not does someone have a motion to adjourn? It has been moved and seconded to adjourn this meeting.

Bill Davis, Chairman

Christy Starbuck, Vice-Chairman

Debra Johnting, Recording Secretary