

BZA MINUTES

SEPTEMBER 18, 2017

Members present: Jim Hufford, Bill Davis, Eli Jones, Dan Vinson, Jason Hawley and Myron Cougill

Absent: Christy Starbuck

Legal Representation: Jason Welch

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

Others present: Ivonne Goltstein, Maike Goltstein, Jordan Turner, Sanne Turner, Henry Turner, Glenn Bowman, Jake Donham, Emma Donham, Melynda Donham, Zane Donham, Brian Vasquez, Jessica Estes, Bob Heaton, Jason Newcom, Rob Goltstein, Shylar Bennett, Becca Bennett, Stetson & Shyan Bennett, Goldie, Mary Pflasterer, Ed & Claudia Thornburg, Jerry Warren, Aaron Chalfant, Brad Whitesel, Trent Kritsch, Andrew Wagner, Doug Leman, Rob Heaton, Eric Fogle, Joe Baldwin, Ron Chalfant, Adam Chalfant, Amanda Whitenack, Nicole Shandy, Bob McCoy, Greg Beymer, Katherine Petry.

Chairman Davis: It's 7:00, I will call this meeting of the Board of Zoning Appeals to order. Tonight is Monday, September 18, 2017. The first thing I would like to do tonight is to approve the minutes from last month, August 21, 2017. Do I hear a motion? We have a motion and a second, all in favor, opposed? Minutes are approved. I would like to start off the meeting with our new member, Dan Vinson. We'll just go down the line here and introduce yourself. Jason Hawley, Eli Jones, Myron Cougill.

D. Vinson: I think I know everyone else. And I will meet you guys here in a minute.

Chairman Davis: For those in the audience, we do have a signup sheet, it's in the hall. Please make sure you sign in. And we do have chairs up front for anyone who is standing and would like a chair. Before we get started I would just like to read the following. I just want to go on record to say that we, as members of the BZA Board are ordinary citizens, most of us do not have all the answers. Some do, some don't. I believe that we as members of this board try to process the information provided to see if the petitioners request should be granted. I am a meat and potato guy, just give me the facts that's all I ask. No "he said", no "she said". Just facts. There appear to be several members of the audience out here tonight, to be fair to everyone, I believe we should allow the petitioner no more than ten minutes to summarize your request. Then any member of the audience who would like to share his or her concerns shall be given two minutes to provide new additional information that we have not heard tonight that is relevant to this hearing. After comments are made the BZA members will have an opportunity to ask questions, and make comments. The petitioner will then be allowed two minutes to answer questions or comments. Once the petitioner speaks the board may have additional questions, not only the group but individual members of the board. Once again I ask that all of us respect the time limits allowed, to speak in tonight's meeting. At this time I would like state that this meeting is being recorded. All members of the audience are being encouraged to sign your name on the attendance sheet, and any party who has questions, comments or concerns and wishes to be heard tonight you will

need to state your name and address for the record. Tonight's first petitioner is BZA2017-23-V, Union Go Dairy, Tony Goltstein.

T. Goltstein: My name is Tony Goltstein, owner and operator of Union Go Dairy, 3518 S 300 W, Winchester, Indiana.

Chairman Davis: Ok, you're on the clock.

G. Bowman: My name is Glenn Bowman, I will move quickly here as we brought some people with us and we'd like to get to them. My name is Glenn Bowman, I am an attorney with Stoll, Keen and Ogden, their Indianapolis office. It's a firm out of Kentucky that does a lot of agricultural work. And since I graduated from Indiana University I have also done a lot of agricultural work. I was not here before but I want you to know I am not new to Union Go, and I am not new to Randolph County. My grandfather Vernon Oberman moved a meeting house to the north side of Lynn. I grew up around that area with them as my grandparents. When the dairy was originally permitted I had some involvement with that along with some issues with neighbors. As I have gotten involved with this, you say you're meat and potatoes guys, we have facts for you today. We have facts to establish issue of values, on property and we brought Mr. Wagner. What you didn't know, which has been shared with you, a concern over health and human environment, there have been ground water sampling, there's been air sampling. We submitted some of that, I know it's voluminous. Mr. Gerdeman is here so you'll be able to hear some of that. The other thing you need to know, and Dave will get into this, this dairy is permitted for the number of cows they want to add. This is a good thing for the cows, you'll hear from Tony on that, to add this space, but they could do this within the existing facilities and I want you to know that, but this is better for the cows. So, we'll have that additional evidence. We'll have Mr. Wagner, then Dave to talk about what it is, then Tony. We're short on time so if it's ok I will turn it over to Mr. Wagner. You might want to hear from him over what the value issues are.

A. Wagner: Andy Wagner, 10246 W Windsor Road, Farmland, Indiana. I have been a licensed real estate agent in this community for fourteen years. I've been involved in the agricultural and rural property community as well. That's my primary focus, is in the rural property area. I was contacted, and looked into the rural properties, and from my experience, I have been doing this a long time, and I see where sometimes on the initial introduction of something different. A lot of people don't like change, I get that. When you introduce something different, whether it's a windmill, a gun range, or a confined animal operation, you can see an initial dip in the values of the property surrounding it. As I have shown and sold properties over the years, as that is there for an extended amount of time, people become used to it, and honestly at this point, we sell properties surrounding confined animal operations whether it's dairy, hog, chicken on a regular basis. And we really see no significant effect on that at this point. It does have some effect on it in the initial introduction of it. That being said, we are looking at adding 250 cows to a 1400 head operation, so we're not looking at introducing an entire new operation. I am familiar with the operation, I have been back there multiple times, and I just don't see where putting it—we're looking at 2850 square feet from the closest residence, and as we're looking at that, we're not looking at putting it right on top of somebody. If you do that right on top of somebody, on somebody's back door, I think we'd be having a different discussion here. But at this point, just looking at it from my experience as an agent in the area, this is not going to bring down the values of the neighboring properties.

G. Bowman: And you may have questions, but I left out a very important point. We figured out the three people who were under the 3,000 feet, and we have wavers from two of them. I just got them and I can send those to you electronically Jason at some point, but Egbert and Nordloh have actually signed wavers at this time.

A. Wagner: Any questions?

D. Girdeman: Hi, my name is Dave Girdeman, I am the principal engineer at Northpoint Engineering, and I have been a practicing engineer for 38 years and a registered professional engineer for over 33. I have been working with Union Go Dairy since 2004, and designed the manure management features at the dairy and assisted them with their IDEM permits. I won't go into as much detail as I did at the last hearing, but I would like to make sure we're clear on the key aspects. These are both exhibits handed out previously and submitted. This the overall picture of the dairy, it's been operational since 2005 and currently consists of three free stall barns, a milking center and holding parlor, a feed area, an existing manure pond, an existing concrete settling basin. So these are the existing features at the facility. The proposed barn is located right here, south of the manure pond and north of the existing free stall barn. In essence right in the center of the existing operation. The next drawing shows the actual setbacks from this structure to the adjacent residences, and as mentioned we have the three 2,600, and then two of them approximately 2,900 feet. Those would be to the north. So these are the residences relating to the structure in question. I was asked to talk about three things, manure volume, ground water issues, as well as the odor work that was previously done at the facility. And, relating to the manure generation relating to the additional barn being proposed. What I have submitted to you is a summary of the volumes and I'll just briefly talk about them here. Without the dry cow, and with the dry cow basically the manure volume increases from 19.3 to 20.8 million gallons, that's annual generation number, so with the proposed barn it's approximately a 7.8% increase in the amount of manure generated at the facility and it results in 29 days less storage for the pond. Because the pond does not change in the existing plan. So the additional cows will take up some of the storage. That represents 78% of the total, and 29 days less storage that is well exceeded in IDEMS minimum requirements of 180 days. Under this proposal we're at 365 which is obviously one year. So, and this additional volume equates to approximately eight inches of depth in the existing storage pond just to put that in relative terms. In my opinion the additional manure from the proposed cows still keeps the site above the 180 day minimum operating requirements and should not affect the operations. Also, since the maximum operating level of the pond will not change the surface area and any associated odor from the ponds will not change with the addition of the proposed barn. Ground water monitoring. It's been conducted around the existing manure pond since 2005 before the dairy was in operation before manure was put into the pond. These consist of monitoring wells around the existing pond. It monitors a shallow discontinuous sand unit below the pond. It does not monitor the aquafir. This is a higher level and would be in essence would pick up any first release. The wells are tested twice per year. After each sampling event we review the results and submit a report to IDEM along with all the sampling and testing information. The latest sampling was conducted on March, 2017. A copy of this latest report was submitted to the board along with the IDEM August 31 letter. They sent a letter concurring with our results, the findings of it. And basically the findings of the ground water monitoring show that the existing manure pond has not adversely affected the ground water beneath the pond and this condition will not change with the additional cows in the barn that has been proposed. One last area that I was asked to talk on was relating to odor. In 2010 and 2011 Northpoint conducted an extensive assessment

to identify the typical levels of odor and gases on and around the Union Go Dairy under different operating scenarios. Normal operations, and then when they're agitating and removing manure from the pond. This work was summarized in a January 2012 report which has been submitted to the board. The work involved taking approximately 670 actual field gas readings and odor samples at different times of the year. And, different locations on the dairy property as well as adjacent properties and roadways. In addition odor monitoring was used to look at the potential odor levels for the entire year. Basically the findings of this study, the major source of odors at the dairy is the manure storage pond. Barns do not contribute as much odors as obviously the pond does. Gas is a potential health concern, ammonia and hydrogen sulfide tested way below any level of health concern. Levels of odors and gas concentrations are highest immediately adjacent to the source, the manure storage pond, and rapidly decline as you get distance away from that structure. You could smell the odors at the top of the manure pond but not as much at the property boundary is basically what it boils down to. I would expect this situation to continue at distance, meaning the further you get from the pond, the significant of reduction in odors that would be experienced. And by the time it reached the residences in question I feel the odors would be insignificant. Since the characteristics of the existing pond do not change I don't feel that the existing dry cow barn will have any impact on the odors at the facility. So in summary it is my opinion that the requested additional dry cow barn will not have a negative environmental impact to the adjacent residences or injure the general public health or the environment.

Chairman Davis: I would like to make a comment at this time. It looks like you can back those up, your facts, right here. (Holding the studies)

D. Gerdeman: Yes sir, yes.

G. Bowman: And I know we're a little over, but can we have Tony just for about 5 seconds.

T. Goltstein: What we are trying to do with this one barn is just to get to the 1650 number we got approved for in 2004. Ok, we're shipping the milk to Dannon, Dannon is a great milk buyer, and I hope you all like their yogurt. But they want me to be Validus Certified. Validus Certified is an animal welfare certification so when these people came in and we were farm number 23 in the United States who got Validus Certified we are not allowed to overcrowd. We see a sign in this room maximum 60 persons, you know, that's the way Validus tells you to do. You have 1400 stalls, maximum 1400 cows. Period. So all we are trying to do with this barn is add these 250 cows like I was permitted for in 2004.

Chairman Davis: So to summarize this you are just asking for another barn to make the cows a little more comfortable. To make more room for them and to be certified by Validus.

G. Bowman: Validus, it's a significant certification that Dannon and many others really want. And so it's really set Union Go apart, and it's an important certification. So, thank you very much.

Chairman Davis: Any questions by the board at this moment, any comments?

J. Hufford: The only comment I have is that I see no problem doing the 250 cows, you were approved for that before we even had the ordinance in effect. So I see no problem with that. But anything going forward that you wanted to increase then you're going to fall into the ordinances set forth in the 3000 foot setback.

T. Goltstein: I will be honest with you, I have been battling that for fourteen years, and the next generation has to take care of that. We have two kids who are willing to do what I have been doing, living the life I live, I told them. They are 26 and 24.

Chairman Davis: It might be just as easy, should one of you stay up here? Tony why don't you stay put. At this time if there is anyone in the audience who would like to speak in favor of this please raise your hand, let's start in the front row right here by Myron. Anybody on that side over there who would like to speak for it.

A. Chalfant: Good evening board members, Aaron Chalfant, 6616 North County Road 500 West, Winchester, Indiana. So, I'm not a close neighbor here to Tony but I am a livestock producer. And I think it's important that we have the ability to expand our livestock operations, which in turns expands the tax base and throws more money into our local community and schools. When you look here at the maps, all this setback and everything why we have the zoning is for the benefit of the neighbors. When you look at these barns, especially where Tony is, he's making himself the number one impact. His barn is going to set west of his house 200 feet. And your impact zone, which they did the air studies with the windmills coming in, and most of the time that wind is headed northeast. So you go northeast into that impact zone and you reach his son's house. And you go on northeast into that impact zone and you reach his daughter's house. So, straight north you've got a couple of neighbors that are within the 3000 foot setbacks, two of them have signed off on the variance, the one that hasn't is north and just back west a little bit, you probably come out that it shows that so you know. You don't see this type of support getting drummed up for a local producer unless he's using best management practices. And so that's what I think we really need to focus on, you know you've got a good producer, a successful businessman in the community and he's using best management practices to come out here and expand the business in hopes to bring that next generation back. So, like he said, he's done with the headache, and the kids can handle it from there. I kindly ask you to vote in favor of Tony and his variance. So, any questions?

Chairman Davis: Any questions from the board? Thank you sir.

A. Chalfant: Thank you.

J. Baldwin: Good evening, my name is Joe Baldwin, 438 N 625 E Union City, Indiana, Tony spoke briefly about Validus and their requirements for space and producing milk for human consumption. I didn't want that to get past the committee, the board, because this is a challenge that all of us as livestock producers are continuing to face, and it's actually a good challenge. We are audited not just by IDEM, not just by FDA or USDA, but also there are third party audits that the entities who buy our products whether it's milk or in my case pigs, listen to what the consumers have to say and what we are trying to do in the agriculture industries are trying to do is improve sustainability of our farms, and provide a higher level of animal welfare in these farms. And as we are challenged as an industry to raise those standards among ourselves and do these audits within our own industry whether it be in dairy or pork you know what we are attempting to do is make a product that is better for the consumer, safer for the consumer, healthier for the animals and that's exactly what he is trying to do with this expansion creating additional square footage. The egg industry started years ago by increasing the amount of space in cages. The swine industry has gone from six square foot to seven and a half square foot per pig. The dairy industry is following suit because that is what the consumer wants. The

consumer wants a product they can trust, they want it to be safe, and that's what Validus can provide for Tony and Union Go Dairy.

Chairman Davis: Thank you Joe.

E. Fogle: Hi, I'm Eric Fogle, 3173 West 200 South, Winchester. I work for Pence milk transport. I haul Tony's milk. I have done that for 2 years. Just to touch on Mr. Baldwin. Tony I don't believe that in 12 years, no bad load of milk. We test for antibiotics, every load, he's good to go.

T. Chalfant: Tom Chalfant, 12028 West 700 North, Parker City, Indiana, and I guess I would like to speak as the County Commissioner and Economic Development what Union Go Dairy means to the county from my standpoint. Tony met quite a few struggles when he first started. I think he was even treated deplorably by our federal government. When his mother in law died he was not allowed to leave the country because he couldn't get a visa even to go back to the funeral. He's gone through a lot and he doesn't complain about it. Some of you remember the CAFO wars as we called them back when we first started. And I think he's been commendable in the way he runs his operation. When you go out there you'll seldom see a sick cow. And for fourteen hundred cows you seldom see animals that have any kind of sickness in his sick pen. He runs an excellent operation. I would like to speak to the Economic Development part, his payroll is over \$700,000 a year that he pays people who live in this community. He pays over \$40,000 worth of property taxes. One thing that most people don't know is the county, when our roads blow out. The highway department has to go out and dip out the corn stalks that plug the culverts or the gravel and the mud that goes out in the field, or concrete. And we drive it over to Tony's place and dump it on his farm. He allows us to dump all that refuse on his farm just as an act of being a good neighbor. I mean most people don't realize that but he helps this county in many, many ways, besides just being a good neighbor and to the people around him. So I want to speak in favor of the Union Go Dairy. Thank you.

Chairman Davis: Anyone else out there who'd like to speak.

J. Warren: My name is Jerry Warren, I live at 6873 East County Road 625 North, Union City. And again I'm not one of Tony's neighbor's either, but I was on the committee that originally developed this livestock ordinance. There were two studies going simultaneously at Purdue, one was the Air Consent study. And Al Heber was basically heading up both studies. The Air Consent study was being done in conjunction with the EPA. And this study was taking place during the time that we were doing our ordinance. Our ordinance was actually developed before the Air Consent study was finished. The Air Consent study monitored the emissions from hog and poultry CAFO'S and it was to take place for eighteen months. At one year they nearly discontinued the study because the air emissions were so far below what were considered safe standards for humans that they thought there wasn't any reason to go on with the full eighteen months of the study but they did finish the study and it came out as they had expected from the first year. The other study that Al Heiber was working on, so at this point the health problems had been pretty well addressed. The other part of the study that Al Heiber was working on was a setback for livability. And this is what we based our ordinance on. And we looked at the factors that were in his ordinance and developed our setback standards. Now his setbacks were very complex. Because it took into account wind direction and direction from the farm and how often it blew from what direction and it became very, very complex. And we were afraid that we would end up with people coming in and arguing that they really weren't northwest, they were north, northwest, or

whatever. And so what we tried to do was to develop a standard that was kind of a general number that would allow this setback to be fair to most people. And so if you were on the east side maybe the setback should have been a little higher if you fed it through the formula. If you were on the west side maybe the setback could have been shaved down a little bit. But it was kind of a general number. And we wanted it this way so there was a gold standard. If you could come in and you could meet all of these standards you were through without having to come before this board, because believe it or not, most people who come before this board are not looking forward to the experience. So, that was why we developed this standard, so that people wouldn't have to go before this if they met the gold standard. If they didn't meet the gold standard then we thought that they should come before the board to be looked at. And so the questions, we were hoping that you guys would ask questions that pertained to how Tony would be a good neighbor, or maybe his past experiences would show that he was a good neighbor for his expansion, these were the kinds of things we were looking at. Maybe if you had a young guy that was coming in if you'll notice if you read the ordinance carefully there's an exception to allow you to vary down to ten acres, and that is because it is hard for a young guy to get together money to build the operation let alone buy forty acres as well. So the variance was put in there if you had a dad and the kid coming back from college maybe a little financially strapped he could come before the board and get that variance, because you guys could look at that and say, hey, you know dad's been a pretty good guy in the county, likely that the son who is coming back from Purdue and he'll probably be a good guy in the county. You know, these were the reasons that we wanted people to come before the board to be looked at. So, if I understand correctly, Tony's closest neighbor is about 2850 feet to the west. Now the setbacks for a covered manure storage pit were less than an open lagoon. Since Tony is an open lagoon, his setback was one and a half times what the regular setback would be. So, if you look at the idea that Tony's closest neighbor was 2850 feet to the west, and this is kind of an average setback, you know, he may, that neighbor to the west might be pretty safe, you know from what we consider a livable standard. So, this is kind of how we developed this ordinance and I kind of was hoping I could shed a little light on that. I think the idea of adding, he's already permitted for this number of cattle, and I think just adding the space to make the cattle more comfortable is probably not a real big deal. I think the ground water issue has been answered when you look at all the number of CAFO's that we've had in the county for all these years. And we're not really having well problems that I am aware of. So I think the ground water problem has answered itself. I guess, is there any questions?

J. Hufford: I am probably the only person on this board who was around when the CAFO Ordinance was written. If the 3,000 foot is not appropriate today then there should be an amendment brought before the APC Board to actually change it.

J. Warren: We're not saying that it's not appropriate because it fits within Al Heber's formula. It's just that we kind of rounded that number so that it was the same number regardless of direction around. So, it probably favors the guy to the west a little bit, and it probably doesn't favor the guy to the east, but it's not as crazy out of line as you think, because the wind comes from more directions than you really think. It surprises you, I mean we all think the wind always blows from the west, but when you actually look at a chart of what direction the wind's blowing the percentage of the times there's more change in the winds than you really think and that's one thing that I learned when working with that formula and I think we figured up that like a thousand foot setback, if you were to the west maybe a nine hundred foot setback would have worked, and if you were to the east, maybe eleven hundred

would have worked, but we took an average because we wanted a standard that we could apply to everyone, so that we didn't have that argument of whether you were north, northwest or north, north, northwest, or whatever, you know. And so we took an average trying to be a safe zone that was fair in general to everybody. And Al had this idea of how often you would smell the operation and at what level and they used blind smell tests to develop this model. And so they would capture these odors, at certain distances, in a special bag that would not add to or subtract from the odor. And then they would put these grad students in this booth and they would smell these bags of air to determine how offensive it was because they didn't want them to look at the operation because that would taint the way they felt about what they smelled. And so this went on for a long time to develop this model. But that was how the model was developed.

Chairman Davis: Thank you.

J. Hufford: I have a question for Tony. How many feet of variance are you asking for this time? I know last time it was 1500 feet, that was half of the setback.

T. Goltstein: Our closest house will be 2588 feet.

J. Hufford: So around 500 and some, 400 and some feet.

G. Bowman: The one who is 2588 feet has signed a waiver. The one who is 2914 we don't have that waiver yet, so less than 100 feet.

Chairman Davis: Anyone else who would like to speak in the audience? Ok, last call for anyone who would like to speak in favor of it? Ok, anybody who'd like to speak against it? Front row.

K. Petry: Katherine Petry, 7766 South Boundary Pike, Lynn, Indiana. And I was at your last meeting and you all voted against this, why is he back in thirty days asking for another hearing?

R. Abel: Technically this is a different proposal, the last one was a 1500 foot setback, and this just involves one structure as opposed to the additional lagoon, and other structures. So this is just one barn, and being the person who draws the setbacks on the GIS Map, this is within the boundary, so when I draw the setbacks, I take all the buildings and I go from corner to corner around every structure. Because the setbacks are from structure to residence. And this building is within, it doesn't change my boundary whatsoever from what the farm as it exists now. So, technically it is within the existing footprint that I would draw on the GIS Map, where the other one was not. It actually had a lagoon out to the side, and some other buildings. So that actually changed that perimeter of his operation where this one does not.

Chairman Davis: Anybody else like to make a comment? Last call for anyone who are not in favor of this. Let the record show that no one is coming forward. Comments or discussion by the board? I will entertain a motion for a roll call vote. It has been moved and seconded to vote on this variance by way of a roll call vote. Debra.

D. Johnting: Bill Davis, yes, Jim Hufford, yes, Dan Vinson, yes, Eli Jones, yes, Jason Hawley, yes, and Myron Cougill, yes, and Christy is absent. Motion approved.

T. Goltstein: Thank you.

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