

**MINUTES
WHITLEY COUNTY BOARD OF ZONING APPEALS
REGULAR MEETING
AUGUST 22, 2017 7:30 P.M.**

MEMBERS PRESENT

Tim Denihan
Will Klein
Danny Wilkinson
Doug Wright
Elizabeth Deckard (arrived 7:35)

STAFF

Nathan Bilger
Jennifer Shinabery

ATTORNEY

Dawn Boyd

VISITORS

There were 118 visitors who registered their attendance at the August 22, 2017, regular meeting of the Whitley County Board of Zoning Appeals. A list is included with these minutes.

CALL TO ORDER

Mr. Wilkinson called the meeting to order at 7:32 p.m.

ROLL CALL

Ms. Shinabery read the roll with all members present being listed above.

CONSIDERATION AND ADOPTION OF THE JULY 25, 2017 REGULAR MEETING MINUTES

Mr. Wilkinson asked if there were any corrections or additions to the minutes as amended. There being none, Mr. Klein made a motion, seconded by Mr. Wright, to approve the minutes as submitted. The motion carried by a unanimous 4-0 vote, with Ms. Deckard absent for the vote.

OATH TO WITNESSES

Mrs. Boyd administered the oath to those present who wished to speak during the meeting. Mr. Wilkinson then briefly explained the procedure for conducting the meeting.

OLD BUSINESS

There was no old business to discuss.

NEW BUSINESS

17-W-VAR-16 Teresa Sordelet, 2765 E. Crescent Avenue, Columbia City, requested a development standards variance for the encroachment into the required front yard setback to allow for the construction of a deck. The property is located on the north side of Crescent Avenue, 170' east of Fish Hatchery Road in Section 12 of Thorncreek Township and is zoned

LR, Lake Residential District.

Mr. Bilger reviewed the staff report and explained that technically, the property is not waterfront property as there is a significant strip of land between the petitioner's property and the lake front that is owned by the Department of Natural Resources. He explained that because of this, the encroachment would actually be into the rear yard setback, rather than the front yard; however, still requiring a variance petition. He explained that the minimum rear yard setback in this case is 15', necessitating a 10' variance request. He referenced the aerial view of the property, mentioning that the petitioner added on to the house last year and the proposed deck would be built up to 5' from the rear property line, which is consistent with some neighboring properties. He concluded that the staff did not have any recommendations regarding whether or not the strict application of the Ordinance would result in practical difficulties.

Teresa Sordelet, 2765 E. Crescent Avenue, Columbia City, reviewed her request, explaining that it is only the middle part of the deck, which will have steps down to the lake channel, that requires the variance.

Mr. Wilkinson asked the Board if they had any questions regarding the request. There were none. He then asked if there was anyone present who wished to speak against the petition. No one spoke.

There being no further discussion, Mr. Wilkinson called for a vote on the variance request as submitted and per the review criteria. The petition was approved by a unanimous 5-0 vote.

17-W-SE-12 Joe & Sarah Lopez, 5300 N. 250 West, Columbia City, requested an amendment to 16-W-SE-10, which was approved for a confined feeding operation exceeding 3,001 animal units contingent on rezoning to AGP, Agricultural Production District. The proposed amendment changes the location and orientation of the barns. The property is located on the east side of CR 250 West, approximately 700' north of Etna Road in Section 7 of Thorncreek Township and is zoned AG, Agricultural District.

Mr. Bilger reviewed the staff report, clarifying that this petition is for proposed changes to a previously approved Special Exception and not an entirely new Special Exception. He explained that the original petition was approved in June of 2016 for up to four barns, each one containing up to 40,000 broiler chickens. He explained that one change is for a reduction from 180,000 chickens to 160,000 chickens. He explained that another change is a new proposed location of the manure barn. He explained that the approved location was at the edge of the chicken barns and the proposed location places it in between the barns. He explained that the changes were a result of the petitioner working with the Tippecanoe Watershed Foundation and mutually agreeing upon new terms. He referred to a slide that compared and contrasted the previous agreed upon terms and the new terms. He reviewed the four conditions the Board had approved last year for the Special Exception approval. He also explained that the condition to have the property zoned to AGP, Agricultural Production District, was still pending and is scheduled to be before the County Commissioners on September 5, 2017. He referred to an aerial view, explaining that the rezoning heard last week was for all five parcels, which is nearly 95 acres; whereas this Special Exception concerns only one of those parcels. He explained that the parcels will need to be combined, as there is an AGP zoning requirement of a minimum of 80 acres. He summarized the review criteria, stating that most of the staff comments were the same as in 2016. He stated

that an added issue to discuss would be landscaping for aesthetic purposes, as the berm that was originally proposed is no longer in the agreed upon terms.

Brianna Schroeder, attorney for Janzen Agricultural Law LLC, representing the petitioners, reviewed the petition and explained that the reason behind the petition was that the Lopezes met with the Tippecanoe Watershed Foundation and decided upon some terms that would also address public concerns. She reviewed the four amendments and listed them as follows: 1) Reduction in the number of birds from 180,000 to 160,000; 2) The covered manure structure has an amended location further away from County Road 250 West; 3) The covered manure structure would store double the amount than what IDEM requires, providing storage for 1 year versus 180 days; 4) The barns would be spread out a little more. She explained that in addition to these four stated amendments, the conditions agreed upon between the Lopezes and the Tippecanoe Watershed Foundation were also amended. She reviewed the five requirements for the granting of a special exception, as listed in 10.9 of the Whitley County Zoning Ordinance and stated that the amendment meets all of these criteria. She stated that the amendment does not change any of the performance standards, also listed in 10.9, that were originally reviewed prior to the approval of the Special Exception. She emphasized that the proposed amendments will create more favorable conditions and improve upon an already approved special exception.

Mr. Wilkinson opened the meeting for public questions.

Seth Slater, 2470 W. 500 North, Columbia City, stated that he lives about 800' from the proposed barn number 4 and asked how much the truck traffic would increase. Attorney Schroeder responded that the proposed amendments would not increase truck traffic over what was already approved, which was estimated at fifteen trucks every six weeks. Mr. Slater also suggested the placement of tall trees to block the view of the barns.

Paul Mills, 1679 E. Bair Road, Columbia City, asked if it was correct that the manure would be transferred and spread by Cormany Farms in Columbia City, which reportedly received a notice of violation for improper manure spreading earlier this year. Attorney Schroeder responded that IDEM regulates manure application and the information Mr. Mills has does not provide the resolution of the matter. She also explained that the granting of the proposed special exception does not affect where manure can be applied.

Linda Zimmerman, 5747 N. 350 East, Columbia City, asked whether there will be ventilating fans on the sides of the barns. She stated that after reading on the Centers for Disease Control and Prevention (CDC) website, she was concerned about manure being spread to the neighboring countryside via the fans and then the wind. Melissa Lehman, Environmental Consultant with Agronomic Solutions, LLC, explained that there are fans providing a constant air flow at the rear of the buildings.

Jim Pliett, 2119 W. 500 North, Columbia City, stated that he is 75 years old, he and his wife recently moved to the country to enjoy the fresh air, and he has a breathing problem. He stated that his understanding is that the fans will be sucking in the fresh air that he paid a lot of money for and blowing out air with chicken feces smell in it and asked why he needs to put up with something that will nearly kill him. Attorney Schroeder responded that the barns will be constructed in line with best management practices and the operation will be highly regulated. She explained that the conditions proposed should help mitigate some of his concerns.

Max Zimmerman, 5747 N. 350 East, Columbia City, stated that according to the CDC, a CFO should not be within 3 miles of a high school because the school's HVAC would concentrate the dust and disease and distribute it to kids. He stated that he is concerned about the health of those residents that live in the 24-30 homes within a ½ mile of the operation being discussed.

Mr. Wilkinson opened the meeting for opposing comments.

Bob Eherenman, attorney, Haller & Colvin, 444 East Main Street, Fort Wayne, explained that he represented Whitley Waters Matter LLC. He made six points arguing that the original 2016 Special Exception is invalid and therefore the BZA does not have the authority or power to amend the Special Exception. Attorney Eherenman also submitted to the Board a list of suggested conditions should they decide to approve the petition.

Mr. Wilkinson asked whether the Board needed to address the point brought up by Attorney Eherenman that the 2016 Special Exception was applied for and granted to Joe & Sarah Lopez; whereas now the owners of the parcel the proposed barns will be built upon is owned by Adlock Broilers LLC. Attorney Boyd pointed out that the address for Joe & Sarah and the address for Adlock Broilers LLC were the same, as well as the fact that Joe & Sarah are the Officers and Directors of the LLC.

David Heckman, 3455 W. Shoreline Drive, Columbia City, stated that the Association of Goose Lake opposes the placement of any CAFO directly in the watershed of Goose Lake. He stated that the Tippecanoe Watershed Foundation never contacted or notified anyone at Goose Lake regarding this operation.

Randall Keller, 2905 E. Crescent Avenue, Columbia City, stated that CAFOs reduce property values in the same way mobile homes do. He stated that Whitley County has recognized that mobile homes decrease property values and have implemented regulations as a result. He stated that much like what has occurred in Bartholomew County, there could be significant tax cuts for property owners surrounding CAFOs which would affect the entire county.

John O'Connell, 1705 E. Bair Road, Columbia City, submitted the remonstrance document of Whitley Waters Matter, LLC to the Board. He commented that he did not believe that the Special Exception could be granted prior to the rezoning of the property.

Rita Harness, 2319 E. Esterline Road, Columbia City, stated that she opposed the CAFO because of the proximity to the lake. She brought samples of water from Crooked Lake, Shriner Lake, Goose Lake, and Grand Lake St. Mary's in Ohio and explained that her concern was that Whitley County is doing poor planning and the water in the lakes of this county will end up like Grand Lake St. Mary's.

Linda Zimmerman, 5747 N. 350 East, Columbia City, stated that if her property was located on Grand Lake St. Mary's, she would not be able to sell and the same could happen to the several properties that surround all of the lakes in Whitley County. She submitted a copy printed from the website *lakeimprovement.com* regarding pollution issues and solutions for Grand Lake St. Mary's and encouraged the Board to visit this area in Ohio prior to making a decision.

There being no further opposing comments, Mr. Wilkinson offered an opportunity to Attorney Schroeder to rebut. She stated that the time to appeal the 2016 Special Exception has expired and emphasized that the current petition is for an amendment to that Special Exception. She stated that under Chapter Ten of the Whitley County Zoning Ordinance, the BZA has the legal authority to approve a Special Exception subject to reasonable conditions that do not require a time limit. She stated that many of the conditions recommended by WWM were conditions regulated by IDEM and not within the County's power to regulate. She stated that the Lopezes have heard the concerns about their operation and have taken steps to mitigate those concerns. She concluded that the BZA is well within its power to decide on the proposed amendments.

There being no further questions or comments, Mr. Wilkinson opened the meeting for Board discussion.

Attorney Boyd clarified that the time limit to appeal a decision by the BZA is 30 days. She stated she understands that WWM is making the argument that the original Special Exception is invalid; however, that is not for the Board to determine at this time. She explained that the decision before the Board at this time is limited to the proposed amendments. She explained that the Board cannot reverse or undo its decision from 2016.

Mr. Wilkinson clarified that the newly submitted Exhibit A would replace the previously approved Exhibit A. Mr. Bilger confirmed this to be true. Mr. Bilger explained that in addition to Exhibit A, the previously approved conditions would apply as well.

Mr. Wilkinson reviewed the additional conditions suggested throughout the meeting. There was some discussion amongst the Board and staff regarding landscaping and the specifics of what would be appropriate.

Mr. Denihan made the motion to approve the petition to amend the previously approved Special Exception with the following conditions:

1. As per the revised site plan.
2. Subject to the rezoning of the property to the AGP, Agricultural Production District.
3. The conditions listed as Exhibit A shall be recorded as commitments by the petitioner.
4. Compliance with IDEM recommendations.
5. Combining of parcels, resulting in one parcel of a minimum of 80 acres.
6. Screening to consist of 1½" (at time of planting) caliper deciduous trees on 30' centers and/or 6' (at time of planting) evergreen trees on 25' centers on a 6' mound located on the south and west sides of the CFO.
7. This Special Exception is granted specifically for Joe & Sarah Lopez and family, agents of Adlock Broilers, LLC, and is non-transferable without further Board approval.

The motion was seconded by Mr. Wright and approved by a unanimous 5-0 vote.

17-W-SE-13 S & K Stuff, LLC, 2305 E. Cardinal Drive, Columbia City, requested a special exception for a recycling facility with outdoor storage. The property is located on the northeast corner of Williams Drive and Cardinal Drive, ¼ mile north of Business 30 in Section 18 of

Union Township and is zoned IPM, Industrial Park/Manufacturing District.

Mr. Bilger summarized the staff report, explaining that the current use is a recycling business and the petition is for the expansion of the business to include outdoor storage of scrap that would be processed later in the building. He referred to the aerial view of the property as well as the site plan, explaining that the petitioner is also proposing another driveway for adequate access. He stated that staff are suggesting a condition that scrap being stored outside be processed within one week of being received.

Dwayne Knott, representing the petition, explained that his petition was required in order for the recyclables to be dropped off and stored outdoors. He stated that the business is currently processing metal and this request is to expand the business to meet the demand in this county.

The Board asked a few questions of Mr. Knott and he explained that a very small amount of processed material is stored onsite due to fire safety. He briefly explained how they will process scrap cars from their towing business as well as other materials. He also referred to the site plan, explaining the flow of traffic for drop-off. He stated that no material will be stored on the ground outside for more than a couple of days.

There being no opposition or further discussion, Mr. Wright made the motion to approve the petition as presented and per the site plan with the condition that scrap being stored outside will be processed within one week of being received. The motion was seconded by Mr. Klein and was approved by a unanimous 5-0 vote.

OTHER BUSINESS

Mr. Bilger stated that he is seeking the Board's direction on a formal complaint regarding a Special Exception approved in 2013 for a Corporate Retreat. The complaint was related to the expansion of the business beyond the conditions of the Special Exception, resulting in increased traffic and noise.

Mr. Klein and Mr. Denihan both concurred that the petitioners of the mentioned Special Exception need to either comply with the approved conditions or apply for an amendment. There were no opposing opinions from the other Board members.

ADJOURNMENT

There being no further business to discuss, Mr. Wilkinson declared the meeting adjourned at 9:15 p.m.

GUEST LIST

A complete Guest List accompanies these minutes.