

ROLL CALL

Dan Baumgardner	Jerome Markley
Harry Baumgartner, Jr	Keith Masterson
Jarrold Hahn	Mike Morrissey
Bill Horan	Tim Rohr
Richard Kolkman	John Schuhmacher
Finley Lane	

Michael Lautzenheiser, Jr., Director

The October 2, 2014 meeting of the Area Plan Commission was called to order at 7:00 p.m. by President Jerome Markley. Eleven members were present for roll call.

APPROVAL OF MINUTES:

Jarrold Hahn made a motion to approve the minutes from the September 4, 2014 meeting. Keith Masterson seconded the motion; the motion carried 11-0.

OLD ITEMS:

A 14-07-16 ROCKCREEK TWP. SW/4 15-27N-11E Helena Chemical Company requests approval for a development plan for a 32' x 52' office and a 66' x 100' warehouse. The property is located at 2875 W 300 N, Bluffton, IN 46714 and is zoned A-1.

Aaron Webster, area branch manager at the Liberty Center facility for Helena Chemical, addressed some concerns that were from the last meeting. He explained that they completed and turned in a revised finding of facts for this site. He also discussed some of the traffic concerns of the area with the sheriff's department, and was told that there were no reports of any accidents at the site since Helena has occupied the property. He stated that they also checked with the county highway department about concerns on the road access to the property and the possibility of a separate entrance and exit, which the highway department recommended that Helena leave the access to the site as it currently is. Mr. Webster advised the board that the Uniondale fire department visited the site and feels adequate to fight a fire at the facility. He stated that they have installed a plug on the drain at the end of the dock, but he explained that they are still unsure where the tile for the drain goes. He addressed the final concern from last meeting, which was in regards to dust from the drive and parking lot. He explained that they have obtained calcium chloride quotes for application, which would be applied annually as needed.

Joel Hoehn, Stoodly & Associates, stated that the site plan was revised and now shows the location of a filter bed, which was approved by the state as shown on the drawing. He explained the location of the detention basin in the northeast corner of the property, which will drain in to a four (4) inch field tile on the property and will have a spill valve on the outlet. He explained that they believe that the whole field was tiled sometime after 1975 and before the first building was constructed on the site according to Landis Drainage. He advised that the east two-thirds (2/3) of the site will drain into the basin and then out to the existing field tile. Mr. Hoehn stated that there is a proposed six (6) foot high privacy fence to be installed on the west property line in order to block any truck head lights. He advised that the loading dock has been rotated 45 degrees so that trucks backing into it will remain completely on site and not block the road. He went on to further explain the cap on the dock drain, which he believes the tile runs east and west, and why the other end was not found to cap. He stated that the new loading dock will have a sump pump to drain any water that may accumulate there.

Jim Federoff, attorney representing the neighbors of the site, prepared a legal memorandum on the legal use of the property. He commented on the revised plans and stated that all ordinance requirements for a

development plan must be satisfied or the plan would have to be denied. He advised that the findings, the site plans, and the oral presentations define the use of the site for warehouse purposes. He stated that with the truck deliveries, this would turn it in to a combination warehouse distribution center. Mr. Federoff advised that with the change to the loading dock and the concrete pad design for truck delivery, this could be used for multi-dock deliveries. He questioned how the products will get to the new building with it not having a loading dock and how spills would be contained if they occur while chemicals are being moved from the existing structure to the new building. He quoted the ordinance definition of the term warehouse and then defined truck and railroad terminals, which means distribution facility. He stated that these two uses are only permitted in I-1 and I-2 zoning districts and not in A-1. He discussed the scope of the term loading dock, and the fact that it's not defined in the ordinance but is limited to I-1 and I-2. He advised the board that the use of the property that Helena is relying upon is the farm sales of fertilizer, farm seeds, and farm chemicals, which he stated the business is not just a sales facility. He does not believe all of the uses are permitted. Then Mr. Federoff went over some other issues that they have with the development plan, one of those being the fact that there is no proposed entrance improvement. He stated that the entrance is an undefined opening and this shows no concern for traffic safety. The next issue that he addressed was the drainage changes from the initial plan to the current modification. He stated that the connection from pond to the four (4) inch pipe and then to a ten (10) inch tile would run across the Gilbert's property and the Robert's before getting to the legal drain. He advised that Helena cannot connect into the ten (10) inch tile on Gilbert's property without an easement from Mr. Gilbert, which he believes Mr. Gilbert has not given. He also commented on the age of the tile and the increased volume that would be going through the tile. Mr. Federoff advised the board that the county health department has not reviewed any septic system plans and therefore they have not issued a septic permit. He stated that the parking lot requirements are also not met, and that the petition does not have any condition for buffering along the south property line, even though it has a privacy fence proposed on the west property line. His final comments were about spill protection and prevention. He stated that there needs to be a detailed explanation of how spills will be contained both inside and out of the structure.

Todd Graft, resides east of the site, commented on the signatures obtained for the petition against the rezoning and business plan. He stated that four (4) of the 20 Uniondale firefighters felt confident in fighting a fire at the proposed site. He questioned if the current building has had any electrical inspection done to bring it up to current standards. He expressed his concerns on the proposed drainage across their property and drive. He also commented on the flooding in the area and the damages that it causes to their property. Mr. Graft stated that on the walk through of the site on August 21, 2014 the drain at the end of the loading dock was not capped. He questioned when that occurred. He wondered about the containment and drainage at the other Helena facilities in Wells County. He also questioned why the dock is allowed to be used, even though it is out of compliance. He commented on the truck traffic in the area and the routes that the trucks would take. Then he questioned how Helena would enforce the trucks to take the specified route. He discussed what he saw in the existing barn during his visit in August. He stated that the floor is flat and the one drain in the building was capped, but he stated that he was not allowed to look at that drain. He questioned if the APC director, members and county commissioners walk through the facility and did they inspect the drain to insure that it was capped. He commented that during the tour the roof was leaking and there were cracks in the floor, which he is concerned about the safety of the structure and chemicals being contained enough so that they don't leak out. Mr. Graft stated that Helena advised them that the facility was in compliance with all regulations, but they were going to add a perimeter containment around the facility and fix the cracks. He requested a written guarantee from Helena protecting the neighbors from human/mechanical error or natural disaster that their livelihood would not be impacted. He advised the board that a Helena manager stated, during the walk through, that they could not contain the products if a tornado occurred. Mr. Graft stated that as of the meeting, the neighboring property owners have not been provided with the 500 MSDS sheets to know what Helena plans to store in the warehouse. He questioned if the board has reviewed the MSDS sheets to know what Helena will be storing at the site. He expressed his concerns with the board for not using the same definitions of terms in the ordinance. He stated that there should be a visual buffer to the east and one to

the south that doesn't lose its leaves in the winter. He questioned what type of security locks and system will be utilized at the facility. Mr. Graft gave the board an example of a mix ratio of chemicals, stored there, to water and expressed the damage that could be caused if a spill occurred. He requested that the plans be denied.

Melissa Graft commented on the fact that the septic has not been approved, therefore the board shouldn't be able to approve the plans. Another issue that she talked about was the drainage from the site through the Gilbert's property, which Helena doesn't have written permission to do so. She advised the board that the plan should be denied without any further discussion. She questioned why there was only a cap at the one end of the drain at the loading dock. She expressed concerns about a possible chemical spill and it getting into the tile and going on the Roberts' property. She also questioned the number of bays in the loading dock and the number of trucks that will be at the site daily. Mrs. Graft advised the board, that after speaking with an owner of a trucking company, there would need to be 120ft to 170ft for a truck driver to safely pull into the site and back into the loading dock. She opposes the proposed plans.

Dan Weinstock, resident to the south, wanted to make the board aware that there has not been a verbal or written agreement with the Gilberts about drainage from the site through the Gilbert's tile. He stated that on August 30, 2014, he saw a back hoe digging on the Helena site and on the Gilbert property. He believes that they connected to the tile without permission. He provided the board with a picture of the area that was dug into, which was taken facing south. He questioned where the additional watershed would go if they could not connect to a tile for drainage. He commented on the finding of fact that Helena submitted and that the answers to 7-03(1-5) on the storm drainage and water run-off, which without the tile there would not be appropriate release of the water. Mr. Weinstock questioned the use of the term warehouse and the confusion that warehouses are not a permitted use on an A-1 property. Then he went on to discuss the off street parking, which needs to be durable and dustless, and he does not feel that an annual application of calcium is a remedy for a dustless surface. Next he talked about the retention pond and that it does not meet the 50ft setback from the waterline to the property line. He commented on the noise of the business, which he stated would fall into I-1 zoning due to the loud nature of it. He restated that loading docks and truck terminals are not permitted in A-1 zoning. He stated that the APC is to maintain the ordinance and minimize conflict of interest. He explained that he contacted the director to get an explanation on why Helena could continue business at the proposed location; he was told that Helena was operating under the use of farm seed and chemical sales. Mr. Weinstock advised the board that Helena's scope of business does not maintain the farm seed and chemical sales use, which he then gave his reasoning that they are using the facility as warehouse and wholesale site for not just farming activities. He also commented on the fire protection and the fact that less than a quarter of the Uniondale fire department feels comfortable fighting a fire there. He then stated that the proposed development plan was not compatible with the surrounding land and said that the business needs to operate in an industrial zoned area because it is not harmonious with the neighborhood. He advised the board that he is against it and requested the board denies the project.

Jen Weinstock stated that flooding does occur in their back yard also due to the creek. She commented on the fact that the Liberty Center location is zoned I-1 and questioned why the proposed site wouldn't have to be I-1 for the same business scope. She also questioned the number of loading dock bays that would be at the site and if Helena could change that number after the development plan would be approved.

Dick Arnold, lives about a half mile north of the site, stated that he sees the conflict due to the number of signatures against the proposal. He explained that he uses Helena's products for farming, but he thinks it is dangerous to warehouse the chemicals in that neighborhood and be so close to the creek. He commented on the tile that Helena wants to connect into and stated that when the creek rises it blows the tile out. He then stated that the ten (10) inch tile is not sufficient to hold that amount of water. He explained that Helena coming into the area will devalue the neighboring properties.

Mr. Webster addressed some of the questions that were asked. He stated that only eight (8) members of the Uniondale fire department were at the site walk thru. Then he addressed the fact that they do not have an approved septic system permit because the site plan has not been approved yet.

Jon Bomberger, with Faegre Baker Daniels, stated that Helena offered to sit down with the neighbors and discuss what would occur at the site, but were turned down. He talked about the permitted use in an A-1 zoning of farm fertilizer and seed sales, which is what Helena does. He addressed the warehouse issue by stating that in order to have sales at the site, there needs to be a place to hold the product. He stated that a dock is a permitted accessory use to the primary use. Then he advised the board that Helena was working under the assumption that there was not a need to rezoning the property due to their use, which was permitted. He explained that Helena has done what they were supposed to do and made adjustments to the plan to satisfy the requirements for the development plan ordinance. Mr. Bomberger stated that they are trying to work with the neighbors and comply with the ordinance. He advised that the handling of chemicals are regulated by the state chemist, IDEM, and the EPA. He discussed the detention pond and stated that there is a tile available on the property to release the water at an appropriate rate. He explained that the pond is beneficial to the area. Lastly he explained that Helena has done everything to respond to public concerns and comply with the ordinance.

Mr. Webster explained that the plans are to deconstruct the existing dock and turn it 45 degrees and add an additional overhead door. There would be a total of two (2) docks, which is the same amount as the Liberty Center location. He advised that they are trying to be harmonious with the neighbors and stated that they have not had any issue with the public at their Liberty Center location. He explained that they have an MSDS products sheet at that site and would give copies to the neighbors upon request. Mr. Webster advised the board that product would be moved between the docks to the proposed building on a curved concrete ramp that would be constructed to OSHA standards. He stated that if a spill would occur on the ramp it would be contained within the ramp and contained within the new structure. He explained that the concrete pad, on the site plan in front of the new structure, is for Helena's trucks to be on while loading diesel fuel.

Jarrold Hahn commented about the flooding that occurs south of 300 N. He stated that he brought up the flooding at a Drainage Board meeting, and after investigation it was determined that the existing culvert is about half the size of what should be there. He explained that the County Commissioners have not given any indication that the culvert would be replaced any time soon due to its condition.

The board discussed the concerns about the zoning of the property and whether the business is retail or not. They reviewed the permitted use table in the ordinance specifically the terms Farm Fertilizer, Seeds, & Chemical Sales, Warehouse, and Wholesale.

Mr. Bomberger stated that Helena asked the APC Director about the use of the site and the determination was made based on the business plan. He explained that large agriculture areas need facilities like this in order to sell directly to the customer. He quoted the definition of farm fertilizer, seeds, and chemical sales from the ordinance. Mr. Webster explained that there are three (3) facets of the business, which is whole sales, internal transfers, and retail. He stated that they are not 100% whole sale and that they are not 100% retail. Then he commented that as the scope of their business is defined, it is acceptable in A-1 zoning.

Michael Lautzenheiser Jr. explained that at the first public hearing the discussion of retail vs. whole sale was talked about along with Helena's business models for the site. He stated that the APC legal counsel, Andy Antrim, reviewed the definitions and their plans. Then Mr. Antrim determined that the project fell under the farm fertilizer, seeds, and chemical sales.

Mr. Hahn clarified that the outlet for the pond would be down stream of the culvert under the road and would not affect the flooding that occurs by the culvert. He stated that the detention pond would be irrelevant to everything south of the property. He explained that the site currently slopes to the northeast which is how the drainage flows. He advised that there wouldn't be more water flowing to the creek, but that the rate at which it flows will be less.

Mr. Hoehn restated that the property currently has no storm water control and that the basin would create that control. He advised that the runoff would flow into the four (4) inch tile and then stated the outlet capacity for that tile. He explained that the outlet connection would be on the Helena site, which is an existing tile that was put in the property in the late 1970s. Mr. Hoehn stated that the four (4) inch tile does connect into the ten (10) inch tile on the Gilbert property, and that he was unsure on if there was permission granted at the time the tile was installed. He addressed the reason for L.A. Brown digging on the site, which was to search for the tile and not to install or connect into anything. He explained that the detention basin was sized for the east portion of the property that the water naturally flows east. He advised that the basin will be a dry detention area. He stated that it will only hold the water for enough time so that it can be released in to the creek at the appropriate rate.

Mr. Federoff stated that Helena was isolating the definition of the farm sales which is inconsistent with the activities that are conducted at the facility and the ordinance. He commented on the nature of the business that is conducted at the site by saying that it is not just a sales facility, but a warehouse and distribution center. He addressed the possible issues that could occur with changes to the site and not having an approved septic permit. He questioned where the west portion of the property drains and why it's not included in the detention area. Then he addressed age of the existing tile and that it was installed just for farming and not an industrial facility. He advised the board that the petitioner has not satisfied all of the necessary ordinance requirements.

Mr. Lautzenheiser stated that it would be fair for the board to assume that the warehouse use was answered by Mr. Antrim per the petition and business plan that was submitted. He explained that if there was something that was brought up during the hearing that changes that, then the board should take the new evidence into consideration with their vote.

The board discussed Helena maintaining the tree line to on the south side or at least having some type of buffer along the south property line. They also talked about the detention pond requirements such as setbacks. Mr. Lautzenheiser stated that there was not a separate requirement for detention ponds vs recreation ponds. He advised that it would need to be 20 feet from the toe of the slope to the property line, which he stated was not specifically shown on the plans. The board then questioned the difference between detention and retention ponds.

Mr. Hoehn then explained that the 100 year storage rate is 815.12. He stated that the raised berm on the north and east side is to stop any water flow from the farm to the north, which this basin is not responsible to detain. He advised the board on where the contours of the elevation are at on the map.

Dan Baumgardner made a motion to deny the petition due to the use of the property as a whole sale and warehouse site, which is not a permitted use in an A-1 zoning district. Richard Kolkman seconded the motion. The vote was 5-6 with Harry Baumgartner Jr, Jarrod Hahn, Bill Horan, Finley Lane, Jerome Markley, and Keith Masterson opposing. The motion failed.

Conditions: Written commitments for the property to only have two (2) docks, for the property to maintain existing tree buffer or a buffer equal to the trees on the south property line, and for the application of calcium or another approved dust control on the gravel parking lot. Also the condition of a septic permit must be approved through the county health department.

Motion to Approve: Jarrod Hahn

Second: Bill Horan

Vote: 6-5 (Dan Baumgardner, Richard Kolkman, Mike Morrissey, Tim Rohr, & John Schuhmacher)

A 14-09-20 UNION TWP. NE/4 04-28N-11E Zanesville Lions Club requests approval for a 185' communication tower with lightening rod. The property is located at 3088 W. Van Horn St., Zanesville, IN 46799 and is zoned R-2.

Jerome Markley stated that the petition would be continued to the next meeting.

Motion to Continue to the November meeting: Mike Morrissey

Second: John Schuhmacher

Vote: 11-0

A 14-09-21 NOTTINGHAM TWP. SE/4 21-25N-12E Sunshine Dairy, LLC requests approval for a new 6,855,614 gal. manure lagoon on an existing CAFO. The property is located at 9075 S 250 E, Keystone, IN 46759 and is zoned A-1.

No Representative.

Conditions:

Motion to Continue to the November meeting: Jarrod Hahn

Second: Mike Morrissey

Vote: 11-0

NEW ITEMS:

A 14-10-23 LIBERTY TWP. SE/4 15-26N-11E Liberty Center United Methodist Church requests approval for a development plan for a 36' x 48' open sided pavilion. The property is located at 2905 S. Main St., Liberty Center, IN 46766 and is zoned S-1.

Mr. Hoehn stated that the petitioners would like to build another pavilion for the Liberty Center park, which would be 36' x 48' and be located east of the existing structure. He advised that there is a naturally low lying area on the west side and water collects there, which the water from the new pavilion will be routed to. He calculated that there is 848 cubic feet of storage require for the new and existing pavilions. He explained that the roof would be peaked and run north and south. He stated that there would not be any down spouts. He advised that there would be a swale on the east side to route the water to the north and then west to the low lying area.

Conditions:

Motion to Approve: John Schuhmacher

Second: Jarrod Hahn

Vote: 11-0

OTHER BUSINESS:

Close violation: V2012-001 Mack and Karol Stewart

Mr. Lautzenheiser stated that this violation was turned over to the board's attorney, Mr. Antrim, for court action. Mr. Antrim needs a motion from the board to close the legal suit.

Conditions:
Motion to Close: Jarrod Hahn
Second: Mike Morrissey
Vote: 11-0

Erick Kahn & Jessica Sizemore V2013-014

Mr. Lautzenheiser advised the board that the violation had been resolved.

Rex Bates V2013-023

Mr. Lautzenheiser explained that contact was attempted after the last month's meeting and a letter was left at the site, but nothing has come of that. He re-explained the violation and advised the board on the property owner's health.

Conditions: Continue for two (2) months to try and contact Mr. Bates or his family
Motion to Continue: Jarrod Hahn
Second: Mike Morrissey
Vote: 11-0

William D. Farabee V2014-004

Mr. Lautzenheiser stated that at the last meeting Mr. Farabee was to have the property line marked and contact the office to have the setback review, which did not happen. Mr. Lautzenheiser advised the board that he collected data from the road, but he does not have the specific distance at the time of the meeting.

Conditions: Continue for 30 days
Motion to Continue: Bill Horan
Second: John Schuhmacher
Vote: 11-0

Hiring office administrative assistant

Mr. Lautzenheiser provided the board with Yvonne Reckard's application and resume to review and discussed the hiring process.

Conditions:
Motion to Approve: Finley Lane
Second: Keith Masterson
Vote: 11-0

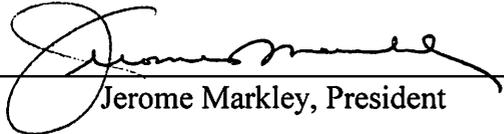
DISCUSSION:

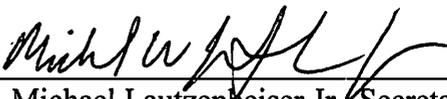
The board talked about the agenda for the November board meeting, and the possible misunderstanding of having a rezoning and development plan of the same project at one meeting.

ADVISORY:

ADJOURN:

Finley Lane made a motion to adjourn the meeting. Bill Horan seconded the motion. The October 2, 2014 Area Plan Commission meeting adjourned at 9:27 p.m.


Jerome Markley, President

ATTEST: 
Michael Lautzenheiser Jr., Secretary