

ROLL CALL

Rose Ann Barrick
Harry Baumgartner, Jr.
Keith Masterson
Jerry Petzel, President
James Schwarzkopf

Michael Lautzenheiser, Jr., Secretary

President, Jerry Petzel called the June 25, 2013 meeting for the Board of Zoning Appeals to order at 7:00 p.m. Five members answered roll call.

James Schwarzkopf made a motion to approve the minutes from the May 28, 2013 meeting. Keith Masterson seconded the motion and the minutes were approved by a 5-0 vote.

NEW ITEMS:

B13-06-11 HARRISON TWP., SW/4 31-26N-12E Poneto United Methodist Church request a variance to reduce the 35ft front yard setback. The existing sign is 26ft from the center of the road. The property is located at 36 E. Walnut, Poneto, IN 46781. Property is zoned R-2.

Roy Nevil, pastor of the church, stated that after the 10ft setback was approved by the board, he mistakenly had the sign constructed 10ft away from the edge of the road and not the road right of way.

Michael Lautzenheiser, Jr. stated that the sign is 1ft off of the road right of way and that the right of way is 50ft. He explained that the sign does not impede on the sight triangle.

Conditions:

Motion to Approve: James Schwarzkopf

Second: Rose Ann Barrick

Vote: 5-0

B13-06-12 LANCASTER TWP., SE/4 33-27N-12E Almco Steel Products, Inc requests a variance to reduce the front yard setback from 40ft to 20ft. The property is located at 173 N. Oak St, Bluffton, IN 46714. Property is zoned I-2.

Phillip Knickrehm, with Grand Industrial, stated that the original building was around 20,000sqft and they want to increase it by over 10,000sqft. He explained that they are requesting to reduce the front yard setback to 20ft, which was previously granted with the original petition.

Michael Lautzenheiser, Jr. stated that 20ft is a common setback for the front yards in that area.

Conditions:

Motion to Approve: Rose Ann Barrick

Second: Keith Masterson

Vote: 5-0

OLD ITEMS:**B13-01-03 CHESTER TWP., NW/4 31-25N-11E Ronald Mang and Bruce Leas appeal of violation V2012-019 in regards to a satellite manure lagoon.**

Todd Janzen, attorney for the Leas family, stated that violation was on the manure storage lagoon, which was issued back in December of 2012. He explained the reason for the continuances was due to them trying to work with IDEM. He stated that the discussion was not about whether the lagoon should be there or not because it was permitted under the old ordinance. It was constructed with a permit for a farm pond and the surrounding area is zoning A-1. He commented that the ordinance has since changed for satellite manure storage lagoons and how they should be properly permitted. He stated that the letter, which was issued by the APC director, listed three points that were violations due to changes with the pond, which were (1) violation of 16-18 for a modification, (2) violation of 8-07 for a change to a legal non-conforming structure, and (3) work done without an IDEM permit. The allegations were that the corners were squared and the slop changed, which would cause an increase in capacity. Mr. Jazen stated the reasons for the appeal were:

1. The dirt work that was done was not a modification to a CAFO because at the time of permit satellite manure lagoons were not part of the CAFO ordinance. The work that was done was to correct erosion and did not increase the pond's size. He explained that the dirt work was done under the existing improvement location permit.
2. The need for BZA approval of a change or expansion of non-conforming structure (8-07) is not necessary because the pond is not a non-conforming structure and the dirt work did not move closer to the property line.
3. IDEM did not have rules for satellite storage at the time, therefore, no IDEM approval needed. However, IC 13-11-2-196.2 gives the definition of a satellite manure storage structure, which would hold at least one million gallons.

Mr. Janzen then explained that the site is not currently being used for storage until they get a determination from IDEM on if the structure would hold over one million gallons, which would need a permit before any storage was done. He stated that what they would like is a ruling of no violation of the zoning ordinance and that the petitioner be allowed to use the facility, subject to IDEM's determination.

Kari Keller-Steele, Ag Environmental Systems, showed a drawing of the lagoon and also commented on pictures that were provided to the board members in their packets. She stated that if there was a change in the manure storage structure that it would be less than two percent. She explained that the slopes were steep and not graded out on the road sides. Erosion occurred on the interior sides and dirt fell into the water at the bottom. She stated that there was no change to the lip of the lagoon. She explained that the excavator too the dirt from the bottom and put it on the exterior to correct the steep slope. She stated that finished grade work is not a change to the structure.

Michael Lautzenheiser, Jr. explained the history of the petition. He stated what occurred at the Plat Committee's review of the pond on June 17, 2012. The permit was issued on June 12, 2012 for a water pond. Then the office was contacted about the pond being a possible manure lagoon. On June 27, 2012, the Plat Committee met about the pond, which both Mr. Mang and Mr. Leas were asked to attend to talk about the use of the pond. The APC office did a review of the site on July 27, 2012. Then the office was notified, on December 4, 2012, that additional work was being done at the site. The director then went to the site for an initial review, which is where the photos that Ms. Keller-Steel commented on came from. The APC office did find the violation, on December 5, 2012, which was V2012-019. He stated that the appeal was filed within the 30 day time frame of the violation letter. Between the time that the pond was permitted and the time of the violation, the County Commissioners approved the CAFO ordinance revision on September 6, 2012.

Mr. Lautzenheiser then stated that the Leas' own plan stated that the pond was over 3 million gallons. He passed an exhibit to the board which shows the expansion of the pond. He stated that the office used GPS equipment and

the high water mark in July was at an elevation of 876.6. In December, the changes caused the high water mark to be closer to the road on both sides because it made the pond's corners to be more at a 90 degree angle. He advised that pond approval was granted because the toe of slope would be at a setback of 20ft and now the toe of the slope goes all the way to the edge of the road right of way. If it is looked solely as a water pond, not meeting the 20ft setback is a violation. If it is looked at as a satellite manure lagoon, all that needs to occur is that the petitioners go through the proper approval process because of the expansion and change, not just to the lagoon but also the ways that the drives have been installed. Mr. Lautzenheiser also explained that the overflow was not put back in, which also increase the capacity of the lagoon because there is no emergency overflow. IDEM measures capacity as two feet below the high water mark, therefore without the overflow to measure from, it will now be measured from the lip of lagoon.

The board questioned if the initial permit would have been issued for a manure lagoon how would have it been handled. Mr. Lautzenheiser explained that at the time there were no regulations in the ordinance and that the Plat Committee may have asked for the CAFO setbacks. However, the permit would have only been issued subject to IDEM's approval for anything over one million gallons of storage. He stated that the engineering design done by Tom Green states that it's 3.9 million gallons of capacity.

Ms. Keller-Steele stated that Tom Green Engineering's design was done prior to December 2012. She stated that the original elevation was at 876 with 19ft walls and now the walls are only 13ft. She explained that it is still at 3.9 million even though the corners of the lagoon were squared.

Brian Heck, with Beckman Lawson and representing CJ & Catherine Mounsey, stated that the Mounsey's own approximately 1,900 acres in Wells County and 80 of those acres, which has their home on it and is kitty-corner from the Mang property that has the lagoon on it. He presented documents to be entered into the record for this matter, which were:

- A map of the Mounsey property is located and the location of the Mang property.
- The property record card for the Mounsey property.
- Minutes from the June 7, 2012 and June 21, 2012 Plat Committee meetings.
- The director's June 18, 2012 letter to Mr. Mang.
- Complete copy of the appeal filed by the Leas with letters from Mr. Janzen
- A copy of the violation letter for V2012-019.
- Copies of both Wells County ordinances (November 23, 2011 & September 6, 2012)
- And a memo in opposition to the appeal

Mr. Heck stated that the initial improvement location permit was for a pond, which in the ordinance is listed as a recreational pond and is permitted in areas zoned A-1, A-R, and S-1. He stated that in Mr. Janzen's letter with the appeal that the lagoon was not meant to be an accessory structure, but a stand-alone manure lagoon. Mr. Heck then quoted from the ordinance the definition of a recreational pond. He explained that the petitioners only confessed that it would be a manure lagoon after the surrounding neighbors went to Mr. Lautzenheiser to bring it to his attention and complain. Mr. Heck explained that the Leas' attorney stated that the ordinance at the time did not restrict manure lagoons and that the Leas could use their pond for manure storage as long as IDEM approved it. Mr. Janzen was stating that his clients have vested rights and that the pond was constructed before the change in the ordinance it was grandfathered in. Then Mr. Heck went on to discuss Indiana case law and brought up the case of TW Thom Construction, Inc. v. City of Jeffersonville. He explained the procedure that Mr. Mang and the Leas could have done in the beginning under the November 23, 2011 ordinance to use the property in a way that is not listed in table 9-14 of permitted uses. He stated that even if the pond/manure lagoon was a non-conforming use, there still should be a violation because the petitioners still aren't allowed to make any changes they want to the pond. Finally, Mr. Heck stated that the permit was obtained with false pretense is not vested rights. He then listed the options that the petitioners could have to taken to not be in violation and to have worked within the system. He explained that he and his client believe the modification was from a recreational pond to a satellite

manure lagoon. He stated that they are asking that the Leas appeal be denied and that the BZA give a direction to the director that if the violation is not corrected that he has the authority to bring enforcement action, legal if necessary.

Ryan Carroll, 5300 W 1100 S, stated that he lives about half a mile east of the pond/lagoon. He explains that the way the driveway was put in floods the road, which now the county is dealing with. He commented on the fact that existing water ponds could change to manure lagoons. He then went on to discuss some irresponsible manure application on the site where the lagoon was constructed, which has caused run off.

Jack Pace stated that the issue is destroying the community. He commented that Mr. Leas talked with him and said that he should have built it in the corner of the wood so that no one would know. Mr. Pace also commented on the historic value of the Mounsey home and the Five Point School. He then addressed the driveway location and the concern for safety.

Todd Janzen objected to the comments of deceit and lies about how this all came about. He asked that the board rely on the minutes of meetings and the records to form the opinion. He addressed the issue of whether or not the location that the lagoon is as a good one or not is not the issue because it is already constructed there. Mr. Janzen stated that when the concerns were initially brought up there was a letter written on August 8, 2012 and another on October 4, 2012, which were not responded to. He restated why the appeal was filed. He stated that the change wasn't an expansion or change in use; it was just some dirt work to correct erosion. He also restated that his client is still waiting for IDEM approval and they want to do the right thing.

The board then discussed how the initial Plat Committee review of the pond went. They also asked Andy Antrim, the board's attorney, his opinion on the violation letter that was sent out. He did state that he thought it was fair that the violation letter was sent out.

Rose Ann Barrick made the motion to deny the appeal and uphold the violation due to the substantial changes to the structure from the size that was originally permitted. She stated that it has nothing to do with the issue of the use.

Conditions:

Motion to deny the appeal: Rose Ann Barrick

Second: Jim Schwarzkopf

Vote: 5-0

DISCUSSION:

Michael Lautzenheiser, Jr gave the board an update on the Comprehensive Plan. He stated that the Steering Committee will be meeting on Thursday to review the first portion a rough draft. Mr. Lautzenheiser advised the board that the 2014 budget was approved by the Area Plan Commission to be sent in.

ADVISORY:

James Schwarzkopf made a motion to adjourn the meeting. Keith Masterson seconded the motion and the motion passed with a vote of 5-0. The June 25, 2013, meeting of the Board of Zoning Appeals adjourned at 8:21 pm.

ATTEST: Michael W. Lautzenheiser Jr.
Michael Lautzenheiser, Jr., Secretary

Rose Ann Barrick
Vice - President
Jerry Petzel, President
Rose Ann Barrick