

Minutes of the April 25, 2006
Special Meeting of the
Marshall County Board of Zoning Appeals
Second Floor Commissioner's Meeting Room, #203
Marshall County Building
112 West Jefferson Street
Plymouth, IN 46563

MINUTES

Chairman Foster Davenport called to order the April 25, 2006 special meeting of the Marshall County Board of Zoning Appeals at 7:00 p.m. Present were Board Members: Foster Davenport, Gary Davis, Don Ecker, Robert Flora, Harold Van Vactor, Zoning Administrator, Ralph Booker, Secretary, Lori Lowry and interested parties.

Mr. Davenport reported that this special meeting was called due to insufficient time at the April 11th Board of Zoning Appeals meeting. It is important that all parties have a fair and equal hearing. The item listed on the agenda for April 11th read as follows: 06-BZA-09 Rettinger and Laidig Administrative Appeal of a decision to issue a building permit for a confined animal feeding operation on the Laidig property, permit number 8544 and 8545.

Mr. Davenport presented the original Petition to Appeal that was sent to the Board of Zoning Appeals and read the same for all to hear. The petition states Mr. Jon Rettinger appeals the decision of the Marshall County Plan Director who issued an improvement location permit, which says:

- Mr. Rettinger resides at 6322 East 14th Road, Bourbon, Indiana
- Mr. Laidig owns real estate located at the corners of Gumwood Road and 14th Road in Marshall County
- The Laidig Property is adjacent to and directly across the road from the Rettinger Property
- Laidig has applied for an improvement location permit by the Marshall County Plan Director for the construction of buildings and improvements for the purpose of operating a confined animal feeding operation on the Laidig Property

- The confined animal feeding operation proposed by Laidig will result in the emission of odor, fumes, pollution, and other undesirable nuisances which will extend beyond the property lines of the Laidig Property. Additionally, the operation of the Laidig Property will result in the disposal of waste material which will enter the waters of the State of Indiana through discharge into Deer Creek
- The Laidig Property does not provide adequate protections to avoid the emissions, discharges, and nuisances described
- The improvement location permit issued was in violation of the Marshall County Zoning Ordinance. In particular: 7.1,7.2,7.3,7.4, and 7.5 (sic)
- As a result of the issuance of an improvement location permit in violation of the Zoning Ordinance, petitioner will suffer specific injury and harm separate and apart from the general harm suffered by the public. Petitioner's property is located directly across the road from the proposed use. Petitioner will be directly injured and irreparably harmed by construction and operation of the Respondent's proposed confined animal feeding operation.

The Petitioner requests that the Board review the issuance of the improvement location permit for Laidig Farms on the subjects property and determine that the improvement location permit should be revoked based upon failure to comply with the Marshall County Zoning Ordinance, along with all other just and property relief in the premises.

At this time Mr. Davenport stated he would entertain two motions: The first would be to open the hearing to the public and the second would be to open the public hearing to only interested parties. Mr. Davis moved and Mr. VanVactor seconded a motion to open the public hearing. The motion passed 4-0 Mr. Davis, Mr. Ecker, Mr. VanVactor, and Mr. Davenport in favor with Mr. Flora absent. Mr. Ecker moved and Mr. Davis seconded a motion to open the public hearing to only interested parties. The motion passed 4-0 Mr. Davis, Mr. Ecker, Mr. VanVactor and Mr. Davenport in favor with Mr. Flora absent.

Mr. Davenport introduced the rules and procedures of this meeting. They are as follows:

- 30 minutes for Petitioner and the same for the Plan Director
- 10-15 minutes for each witness
- 10 minutes of questioning by the board
- 10 minutes of rebuttal by the Petitioner

Mr. Davenport moved and Mr. VanVactor seconded a motion to approve the rules and procedures listed above. The motion passed 4-0 Mr. Davis, Mr. Flora, Mr. VanVactor and Mr. Davenport in favor with Mr. Ecker absent.

Marshall County Plan Director, Ralph Booker, presented to the Board his staff report, listed as Defendant Exhibit #1.

Mr. Booker reiterated that this appeal was for the issuance of building permits 8544 and 8545 of Laidig Farms LLC for (2) 410'x81 frame buildings for a Concentrated Animal Feeding Operation (CAFO) located at 14341 Gumwood Road, Argos, IN. Mr. Booker also presented a chronological order of events surrounding the issuance of the permits. They are as follows:

- August 2005 - Laidig Farms LLC made an inquiry as to the rules and regulations of a CAFO and they were given a copy of Sec. 434 Intensive Livestock Operation Regulations
- September 2005 - Mr. Rodibaugh, representing Laidig Farms, LLC called and asked for clarification on requirements of Sec. 434
- The property in question is located at 14341 Gumwood Road, Argos, IN
- The property in question lies within the zoning jurisdiction of Marshall County and is zoned A-1, Agricultural District
- During October-November of 2005 many letters and a petition against the CAFO were received by the Plan Commission
- December 19, 2005 a group of concerned citizens appeared before the Marshall County Commissioners requesting a public hearing on the Laidig proposed operation. The County Commissioners voted to send a letter to IDEM requesting that they hold a public hearing on the IDEM permit as the Marshall County's Zoning Ordinance does not require a public hearing for a CAFO in an A-1 zoning district
- January 19, 2006 - IDEM held a public informational meeting on the issuance of the IDEM permit to Laidig Farms LLC. Information was given by Mike Veenhuizen, Livestock Engineering Solutions, representing Laidig Farms, LLC, on the proposed operation, Dennis Lasiter and others from IDEM explaining IDEM rules and regulations, and the Marshall County Plan Director explaining Marshall County's rules and regulations concerning a large livestock operation.
- January 23, 2006 - The Plan Commission Office received a letter from Mr. Snyder's office requesting they be notified when Laidig Farms applied for an Improvement Location Permit.
- February 9, 2006, IDEM permit NPDES CAFO Identification Number ING806391 was issued to Laidig Farmland, LLC
- February 10, 2006 - Laidig Farmland, LLC applied for and received two building permits 8544 and 8545 to build two frame building for a CAFO. They supplied a copy of their IDEM permit application, which contained all the documents required under Section 434. GIS was used to measure the required 1,320 feet from residences. Notified Mr. Snyder by e-mail that the permits had been issued.

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- February 22, 2006 - Mr. Snyder sent an e-mail stating they were going to appeal the issuance of the previously stated building permits and requested a copy of the rules and procedures to appeal. He was faxed a copy of our zoning ordinance rules on the appeal process.
- March 3, 2006 - Mr. Snyder appeared in the Marshall County Plan Commission Office representing Mr. Jon Rettinger with a Petition to Appeal the building permits
- The appeal was placed on the April 11, 2006 agenda for the Board of Zoning and Appeals
- The appeal was tabled until April 25, 2006 by the Board. The Board accepted rules and procedures for the April 25, 2006 meeting.

Mr. Davenport asked Mr. Booker if the materials in the power point presentation would be turned in as an exhibit. Mr. Booker stated that all of his materials would be turned in at the end of his final presentation.

At this time Mr. Rettinger by his counsel, Stephen Snyder was invited to make his presentation. Mr. Snyder thanked the board for the extension of time allowed to present due to the complicated area of CAFO permits.

Mr. Snyder stated that the building permits that were issued was for an 8,000 hog confined animal feeding operation which had received its IDEM Permit issued to Laidig Farmland LLC. The Petitioner, Mr. Rettinger, believes that the conditions required to be met by the Marshall County Zoning Ordinance are not met and the permit should not have been issued. The appeal does nothing more than ask you to review the details of the issuance and to look at the facts, then make a decision as to whether those permits should have been issued. Mr. Snyder stated, "It is our opinion that the requirements for the issuance of the permits in the ordinance have not been met."

- The first issue involves odors and fumes beyond the Laidig property line, which is prohibited by Marshall County's Ordinance.
- The second involves disposal of waste materials into the waters of the state, those waters being surface waters.
- Thirdly, inadequate protection to prevent emissions, discharges and nuisances as each is defined in the ordinance.

Firstly, Section 422 of the Marshall County Zoning Ordinance deals with the discharge into the outdoor atmosphere of air contaminants in which causes air pollution. Mr. Snyder stated, "Those are found by your ordinance and by your County Commissioners to create a public nuisance and to be contrary to the public policy of the County and the provisions of this ordinance." The first thing that needs to be determined is whether or not there will be air contaminants into the outdoor

atmosphere to such an extent that they will cause interference with adjacent property owner's use.

Mr. Snyder asked that all papers sent to the Plan Commission Office be presented into evidence as Petitioner's Exhibits, listed as follows:

- Exhibit #1 A National Look at Nitrate Contamination of Ground Water
- Exhibit #2 Purdue University - Protection Distances for Sufficient Dispersion and Dilution of Odor from Swine Buildings
- Exhibit #3 Environmental Health Perspectives on Airborne Multi-drug Resistant Bacterial Isolated from a Concentrated Swine Feeding Operation
- Exhibit #4 Kentucky Resources Council
- Exhibit #5 Controlling Odors from Swine Buildings (See page 2)
- Exhibit #6 Swine CAFO Odors (See page 5-2 on 2 mile setback)
- Exhibit #7 IDEM permit for Laidig Farmland LLC

Mr. Snyder presented Exhibit #2 from Purdue University on Protection Distances for Sufficient Dispersion and Dilution of Odor from Swine Buildings and was published by Purdue University on August 28, 1997. Mr. Snyder believes that this publication is significant as what Purdue found a minimal distance to avoid odor. Mr. Snyder stated, "First of all they concluded that odor was a significant problem with swine operations and that it would be present in every operation. They recommended that the minimum distance between any residential use and that operation be one half mile. There were specific findings in that study that the odor would transfer that far where it would be a nuisance within that one half mile radius."

Mr. Snyder read out of the ordinance, "injury, detriment, nuisance, or annoyance to any considerable number of persons and cannot endanger comfort, repose, health or safety of any person or have a material natural tendency to cause injury or damage to business or property." The questioned posed, "what is annoyance, what is comfort, what is repose, what is enjoyment and what a nuisance is?"

Mr. Snyder presented Exhibit #3 on Airborne Multi-drug Resistant Bacterial Isolated from a Concentrated Swine Feeding Operation. This exhibit not only portrays that the odor go significant distances from the operation, bacteria produced by the waste material maintained on site also travels a significant distance from wherever the operation is located. Mr. Snyder quoted from this exhibit, "the tunnel ventilated design of swine CAFO's which moves air outside the facilities at a high flow rate could create a situation where neighbors living down wind of the ventilation fans also could be directly exposed to airborne multi-drug resistant bacteria. An epidemiologic study by Wing and Wolff in 2000 indicated that people who live in the vicinity of swine CAFO,'s experience elevated rates of headaches, runny noses, sore throats, excessive coughing, and diarrhea compared to people that are living in communities that are not situated

near livestock operations. One may question whether airborne exposures to multi-drug resistant bacteria could be occurring and contributing to health problems around other environmental sources of animal or human waste; including land application areas for animal waste, human sludge, and human wastewater treatment facilities. Endo-toxins, exo-toxins, and other chemical components are associated with animal waste and human sludge has been linked to hypersensitivity reactions among individuals living near land application areas as reported by Lewis and Gaddy in 2002." These are factors that must be considered when determining whether this particular operation will be an annoyance, nuisance, or will interfere with the comfort, repose, health or safety of persons in the immediate area.

In Sec. 423 of the Marshall County Ordinance it talks about waste disposal. It indicates that any person proposing waste treatment or disposal facilities or planning a discharge of waste material into the waters of the State of Indiana shall have such facility or discharge approved by the Stream Pollution Control Board which is IDEM. The IDEM permit has been issued in this action, but the Petitioner questions whether there is any waste treatment or disposal facility established for Laidig Farms. Mr. Snyder stated, "The ordinance talks about treatment and there is no provision for treatment."

In Sec. 426 of the Marshall County Ordinance refers to health and safety. It states, "No use shall be permitted which is injurious to health or safety of humans, animals, vegetation, or which is noxious by reason of the omission of odor, visual pollution, or other undesirable nuisances which effects extend beyond the lot line of the lot where the use exists." The Petitioner believes that there are no questions as to whether this CAFO will create odors that will go beyond the lot lines.

As referred to in the Kentucky Resources Document, the Petitioner believes that there is no way to stop the odor from going significant distances. Their recommendation for a setback for a large operation is between 4,963 and 5,085 before you get to the point where there is no hazard from the emissions.

Also, the Purdue document entitled Controlling Odors from Swine Buildings states there is a general relationship between the perception of odor nuisance, separation, distance, and size of a swine production facility. For a facility of 1,000 or fewer the incidents of odor complaints are reduced beyond ¼ mile. For large units separation distances of approximately ½ mile are necessary for adequate protection.

The Environmental Protection Agency suggests on page 5-2 for site selection management distances from residences for large CAFO's should be at least 2 miles and preferably 4 miles for larger facilities.

The Petitioner believes that there are also some issues with contamination of ground water. The USGS has made a survey of the entire country to determine the

areas of surface water contamination from nitrate filtration into shallow ground water wells is most significant. The material from the USGS, A National Look at Nitrate Contamination of Ground Water, shows that Marshall County is at high risk for nitrate contamination of ground water. IDEM also has a list of wells with their depth and static level in feet below the surface. The material shows that for some of the wells in the area the static level is as low as ten feet. That means that that water is clearly available for contamination by nitrates that would filter down through the surface.

In Sec. 434.1 of the Marshall County Ordinance refers to the site plan. The Petitioner states, "One of the things about a site plan as I indicated earlier, there are no provisions for a waste treatment or control this is just discharge. Secondly, this site plan is a part of the permit as the larger drawings were attached by IDEM shows that this operation is not just two buildings this operation is five hundred acres on which the effluent from this operation will be spread. The operation cannot exist without that being a part of it." With that being said the board needs to decide what in fact this operation is, it is not just the buildings it is a total use.

In Sec. 202.17 of the Marshall County Ordinance states, "Shall mean (a) any intensive livestock operation with two hundred (200) or more cattle, four hundred (400) or more swine or sheep and over twenty thousand (20,000) or more poultry... (c) Any animal feeding operation where the operator elects to acquire a state IDEM confined feeding approval or is required to obtain a state IDEM confined feeding approval..." The Petitioner states that is how Marshall County defines confined animal feeding operations. It doesn't state that it has to be in a building or on a lot. It just says that it has more than 400 swine. This operation will have 8,000.

In summation, the board needs to look at the Marshall County Ordinance on the entire facility that is being proposed by Laidig Farmland LLC. Does it meet the setback requirements of 1,320 feet? Without land application being a part of the operation the operation cannot exist. Land application is essential and will be within a few hundred feet of adjacent property owners and that may be a stretch. The county ordinance does not allow that within $\frac{1}{4}$ of a mile.

The evidence presented shows that it might be a $\frac{1}{2}$ mile minimum for an 8,000 hog operation and up to 4 miles as recommended by the EPA to eliminate odor problems. Odors will cross lines. If you want to eliminate that as a problem, the Commissioners would have to amend the ordinance saying that odors going beyond the property line on CAFO's are acceptable. Right now as of this date those permits issued are not acceptable. Therefore, the requirements of the Ordinance and the odor requirement applies to everything in the County which cannot be met. On that basis alone, along with the other things mentioned the Petitioner suggests that the Board reverse the issuance of the Building Permits as it does not comply with the Ordinance.

The Boards questions to Mr. Snyder:

- Mr. Davis - How do you determine odor?
- Mr. Snyder - The various reports state that those who reacted most significantly to odor reacted mostly to CAFO's. Swine odor was the most significant and numerous people interviewed said that they just close the windows and stay inside when the odor gets to that extent. Those distances were well in excess over ¼ mile as you require, these distances were a mile to a mile and a half where the odor was to intense to be outside.
- Mr. Davenport - In a A-1 agricultural area, these issues you are bringing to us are not normally brought here because there is already odors out there from agriculture. Many times we use these in our Ordinance because we have a special exception. If somebody comes into an A-1 agricultural area and wants to put a paint shop where they are dealing with fiberglass, this is an odor that is not normal in an A-1 agricultural area. Many times we use these to place restrictions on these special exceptions.
- Mr. Snyder - That is not the way your Ordinance is written. The Ordinance prohibits any odor from passing outside the property lines. The CAFO's are listed in your Ordinance as a specials definition. It is technically not what we as traditionalists have thought of as an agricultural operation. It is industrial and is a factory that will raise hogs.
- Mr. Davenport - states that by the Petitioners definition, this operation does not meet the 1,320' setback requirement because of manure application. Even if we don't permit this facility to be built on in this location as long as he owns that land he can bring manure back and spread it on that land and we don't have any control over that.
- Mr. Snyder - "I don't argue with that, that is a typical agricultural use." Our contention is that in the Marshall County Ordinance the CAFO is defined without reference to buildings and that is an integral part. Typical farming operations spread a few times a year, whereas a CAFO not only has the odor from the operation itself plus several hundred thousand gallons of effluent to discharge in a much localized area.
- Mr. Flora - On the market now there are different methods of extruders that are available to eliminate a huge percentage of odors as well as the liquid from the manure that is discharged. This equipment pumps out the slurry from the pit and runs through an extruder and by virtue of heat and fans it comes out as a very rich powder. This eliminates problems with ground water. There is hope on the horizon for people that are terribly disturbed about the emission of odor and pollution of ground water. It is very difficult for anyone to contain an odor at a certain distance or lot line, because it's like trying to say that we are going to change the direction of the wind.

- Mr. Snyder – states that there are probably all types of scientific advances available; however, if you look at the IDEM Permit they are neither required or indicated by Mr. Laidig that they were going to be installed for the benefit of adjacent property owners.
- Mr. Davenport – Our Ordinance is probably outdated, but we are in the process of a new Comprehensive Plan. Even though it may be outdated it is our bible. “I as a board member kind of view some of these situations a little differently. True it may not be written in the Ordinance, but there are certain things that go on in an A-1 agricultural area that is normal and as our farms have gotten bigger. Everyone here has to farm a lot more ground than they did ten years ago. The same thing with livestock facilities we no longer see a 60 sow finish operation; it is a large operation that is dealing from furrowing, to weaning pigs, to finishing hogs.”
- Mr. Snyder – Regardless whether your ordinance is outdated or updated it says what the law is. It is not just a suggestion it is the law in Marshall County.
- Mr. Flora – In reading the Petition it seems that the Petitioner is rushing to judgment, because these people haven’t even broken ground. Your contentions allege that many things are going to happen. These people have other facilities that are up in operation and I don’t feel they are new at this game. I believe that you may be rushing to judgment.
- Mr. Snyder – If the Petitioner were rushing to judgment we wouldn’t have found all the material we did on the problems with CAFO’s. If you are asking us to wait until the damn bursts before we protect it, which is not the way your Ordinance works. Your Ordinance says the people of Marshall County are entitled to the protection of the Ordinance right now.

The Petitioners witness:

- Mr. John Rettinger – When planning a site for such operations they have best management recommendations and a lot of them say that you should do your best job of putting this building away from being upwind of potential neighbors.

There are four houses that barely miss the 1,320’ setback. No matter which way the wind is blowing it will be affecting someone.

In regards to property values in the appraisal journal, it states specific items to look at when appraising a property near a CAFO. They are: type of subject property, distance to CAFO, the physical manifestation – the air quality, engineering, impact on property use – the rental income and vacancy, marketability evidence, and the impact of the highest and best use. The property in question is where Mr. Rettinger lives. Their family

spends a lot of time outside with the kids. The value of the outdoors to them is very high.

- Mr. Davenport – asked Mr. Rettinger if there were other locations on that five hundred acres that would be more suitable and be further away from residences? Mr. Rettinger stated that there could be alternative sites that would be more feasible.

At this time Mr. Booker was invited to make his presentation to the Board.

Mr. Booker presented to the board a file with all materials pertaining to this case and asks that each document be entered into as evidence; Mr. Booker's Exhibits are listed as follows:

- Exhibit #1 Staff Report
- Exhibit #2 E-mail from Mr. Laidig 4/24/2006
- Exhibit #3 Certification of Documents Transmitted on Appeal
- Exhibit #4 Petition to Appeal from Mr. Snyder
- Exhibit #5 Building Permit #8545 2/10/2006
- Exhibit #6 Building Permit #8544 2/10/2006
- Exhibit #7 CAFO site with the apprx. 1,320' boundary
- Exhibit #8 IDEM's letter of approval
- Exhibit #9 IDEM's Permit
- Exhibit #10 Hearing Notification 4/14/2006
- Exhibit #11 Copy of notice sent with a list of adjacent owners
- Exhibit #12 Laidig Farmland LLC Drainage Plan
- Exhibit #13 Adjacent owner Spohn letter of disapproval
- Exhibit #14 Mr. Snyder's request to be contacted at issuance of permit
- Exhibit #15 Misc e-mails from and to Mr. Snyder
- Exhibit #16 A copy of page 75 of our Ordinance & letter sent to Mr. Snyder
- Exhibit #17 Proposed Findings of Fact

Mr. Booker stated that his presentation would follow all of the areas that were cited in the Appeal filed with the Marshall County Plan Commission.

Sec. 422.1 of the Marshall County Ordinance refers to the storage of materials. Specifically, "The storage or manufacture of materials or products which decompose by detonation are permitted only when specifically approved by the Board...." Mr. Booker stated that looking at this particular portion on the permit, it doesn't show that there would be any materials on this property. Therefore, as Plan Director, Sec. 422.1 of the Ordinance doesn't apply to the issuance of said building permit.

Sec. 422.2 of the Marshall County Ordinance refers to the Performance Standards of an Industrial District. Specifically, "The use, hereafter established in an Industrial District requiring conformance with performance standards and shall be operated in such a manner as to conform to the regulations set forth in 422.1 above..." In as much as Mr. Snyder alluded to, in an Industrial District when a building permit is issued we are supposed to look at noise, vibration, air contaminants, smoke and discharge of the outdoor atmosphere in an Industrial District.

Mr. Booker stated, "The above performance standards are applicable to the Industrial District (as mentioned in Section 422.2) and are not performance standards applicable to the Agricultural District. There is no mention of any other zoning district in Sec. 422.2." Therefore, Section 422.2 of the ordinance was not applicable for the issuance of the building permits for Laidig Farmland LLC.

Sec. 422.3 of the Marshall County Ordinance refers to the use of mines, etc. Mr. Booker believes that there is no relationship with a CAFO and mining and does not feel this portion is applicable in the issuance of the improvement and building permits.

Sec. 426 of the Marshall County Ordinance refers to health and safety. Specifically, "No use shall be permitted which is injurious to health or safety of humans, animals, or vegetation, or which is noxious by reason of the emission odor, visual pollution, or other undesirable nuisances which effects extends beyond the lot line of the lot where the use exists." Mr. Booker believes that this section is not applicable for the following reasons...

- There is no proven fact at this time this use will violate this section of the ordinance. It is assumed by the appellant that it will. If one was going to use this logic, then one must deny all building permits, because each one has the potential of violating this section of the ordinance. For example, if someone owned a Corvette and can go a hundred miles per hour, do we deny registering it with the State Of Indiana just because it has the potential to speed? This is the logic presented here, that we must not issue a building permit, because of the potential of violating this section. This has never been done in the past and would open up a new paradigm in issuance of building permits.
- If the appellant is asking the enforcement of this section, then we should issue everyone a violation notice, including the appellant. Everyone, on a daily basis, conducts an activity which goes beyond the property lines. Farmers would have a very difficult time to keep 100% of all sprays, noise, smells, and other activities limited to their property lines. If this is the new standard, then we will need an extensive expansion Plan Commission personnel to enforce this section.

- This area is zoned agriculture for a reason. Agriculture is separated into its own zoning district in the same manner as an industrial district, because it has activities which conflict with residential activities. We have developed developmental standards, such as Section 434 to protect the health and safety in an A-1 District. If we wish to apply health and safety standards for a residential district, then the land owner has the opportunity to rezone the property. Agriculture standards accept the fact there will be agriculture smells, noise, visual pollution, and other uses which would not be acceptable in a residential zone. If we wish to change these developmental standards to stop every agricultural activity at the lot lines, we need to have the Plan Commission change the developmental standards. Thus the applicant was issued a building permit for an agricultural use, which is allowed in this zoning district.
- This section was for very egregious violations of the health and safety of the community. It would be applied if a landowner participated in a use which harmed others. It would be applied normally after a building permit had been issued.

Sec. 423 of the Marshall County Ordinance refers to waste disposal. Specifically, "Any person proposing waste treatment or disposal facilities or planning a discharge of waste material into waters of the State of Indiana shall have such facility or discharge approved by the Stream and Pollution Control Board." Mr. Booker stated that the permits issued were not for a waste treatment plant or for discharge into the waters of Indiana. Also the IDEM permit controls the discharge into the waters of Indiana. The Stream Pollution and Control Board duties have been transferred to the Water Pollution Control Board as of April 1, 1986. The Indiana Water Pollution Control Board is an agency of the Indiana Department of Environmental Management. Laidig Farms has a valid IDEM permit.

Sec. 434 of the Marshall County Ordinance refers to the Intensive Livestock Operation Regulation. Specifically, "All new intensive livestock operations shall be set back at least 100 feet from a right of way line, 1320 feet from a residential district boundary line, and 1320 feet from a residential use other than that of the applicant. The outer perimeter of each new structure or feeding facility of an intensive livestock operation, including new open pits, lagoons, or manure holding tanks, pens or lots shall not be any closer than those separation distances established in this Section." Mr. Booker finds that these regulations were given to the applicant in August 2005, when they made their first inquiry of the rules and regulations concerning intensive livestock operations. When the office received the site plan of the location of the facilities, we used our Geographical Information System (GIS) to develop the following map to verify

the 1,320 distances. The distance was measured to the adjacent residences. This ordinance was modeled after the Clinton County ordinance, which measures in the same manner. Also there are no residential districts within 1,320 feet of this operation.

Sec. 434.2 of the Marshall County Ordinance refers to the expansion of an existing facility. Specifically, "An existing livestock operation which, as to the effective date of this Ordinance, has state (Indiana) IDEM confined feeding approval, may be expanded at the same immediate location providing all new intensive livestock operations shall be set back at least 100 feet from a right-of way line, 750 feet from a residential district boundary line, and 750 feet from a residential use other than the applicant. The outer perimeter of each new structure or feeding facility of an existing livestock operation, including new open pits, lagoons or manure holding tanks, pens, or lots shall not be any closer than those separation distances established in this Section." Mr. Booker stated that this was a new facility and this section did not apply.

Sec. 434.3 of the Marshall County Ordinances refers to any new dwelling. Specifically, "Any new dwelling, other than quarters provided for hired help connected with the new intensive livestock operation, or any new church, business, school, recreational area (public or private), or public building shall have a separation distance of not less than 1,320 feet (1/4 mile) from any intensive livestock operation that has a state (Indiana) IDEM confined feeding approval, or is registered as an approved intensive livestock operation in Marshall County. An exception to this Section may be sought by requesting a Variance of Developmental Standard. If, or when, such a variance is granted by the Board of Zoning Appeals, the party obtaining the variance shall be required to either attach to recorded deed of conveyance a covenant protecting the intensive livestock operation's right to operate, or if no contemporaneous conveyance is contemplated, incorporate a similar recorded covenant by a cross-referenced affidavit in aid of title. Said covenants shall read as follows:

For deed of conveyance: "In accepting this deed, grantees do hereby acknowledge that surrounding land is agricultural in usage; and grantees, and their successors in interest, are precluded from complaining and/or attempting to enjoin any farm operation within 1320 feet because of nuisances which might result from said operation."

Then for cross-reference: "The undersigned owners of the following described real estate: (H1) do hereby acknowledge that surrounding land is agricultural in usage: and affiants, and their successors in interest, are precluded from complaining and/or attempting to enjoin any farm operation with 1320 feet because of nuisances which might result from said operation."

Mr. Booker stated that this section does not apply in this case. Our zoning ordinance was designed to try and protect agricultural from residential uses; not to protect residential uses from agriculture in the agricultural zoning district.

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Sec. 434.4 refers to all intensive livestock operations shall meet all applicable regulations of IDEM. Specifically, "All intensive livestock operations shall meet all applicable regulations of the Indiana Department of Environmental Management (IDEM). If state approval is required, no construction can occur prior to receiving state approval; no can a County Building Permit be issued until State approval is obtained." Mr. Booker stated that an IDEM permit NPDES CAFO Identification Number ING806391 and Animal Waste Number AW-5548 was issued by IDEM on February 9, 2006 to Matt Laidig, Operator. The office issued our local building permits on February 10, 2006, which was after the IDEM permit as per our zoning ordinance. We have a copy of the entire IDEM permit and supporting documentation on file in the office.

Sec. 434.5 refers to an intensive livestock operation that has been abandoned. Specifically, "If, for any reason, a lawful intensive livestock operation as defined by this Ordinance was abandoned or ceased operation for a period of not more than three (3) years, it shall be afforded the distance separation protection from encroaching urban development as described in Section 434.3. It shall be considered a lawful use and may continue operation anytime within the aforementioned three (3) year period." Mr. Booker stated that this section also does not apply in this case since this is not an operation which has been abandoned.

Sec. 435.6 refers to the requirement of a site plan for an intensive livestock operation. Specifically, "A site plan shall be required to obtain a County Building Permit for an intensive livestock operation. The map must be prepared to show the following information:

1. The boundaries of the intensive livestock operation and the manure application areas.
2. The general topography of the area.
3. The location of the waste treatment/control facilities.
4. The location of the streams, drainage ditches, highways, lakes, recreational areas.
5. The location of all residential dwellings, businesses, public buildings and recreational areas within $\frac{1}{4}$ mile radius of the intensive livestock operation.

Mr. Booker stated that all these documents were provided and/or contained in the copy of the IDEM permit application.

Lastly, Sec. 435 refers to storm water and sediment control. Specifically, "In any district, these regulations will apply to any new commercial, industrial, or institutional construction project that has a combined impervious or semi-impervious surface area of 4000 square feet of surface area or greater. For example, this would include the construction of a building(s) with 4000 square feet of surface area, a 4000 square foot parking area, or any combination of new development that together has a combined aggregate impervious or semi-impervious surface area of 4000 square feet or greater.

Furthermore, this Section also regulates any major or minor subdivision, as regulated by the Subdivision Control Ordinance 1001, Marshall County, Indiana, effective July 1, 1974, as amended. The requirements of this section are listed in a separate document that will be commonly referred to as the **“STORM WATER AND SEDIMENT CONTROL ORDINANCE.”**

Mr. Booker stated that normally this section does not apply to agriculture operation, since only commercial, industrial, or institutional uses are mentioned. We have asked the applicant to voluntarily submit a Storm Water Plan just to protect the surrounding area from excess storm water. We do not think the absence of such a plan prevents the issuance of a building permit. This will be the first CFO, CAFO or agricultural operation to submit such a plan in Marshall County.

In conclusion, Mr. Booker believes as Plan Director that he has followed the Marshall County Ordinance on the issuance of the Improvement Location Permits 8544 and 8545. He and Mr. Snyder differ on the interpretation of the Ordinance. Marshall County has developmental standards that were established for this particular operation and the applicant has followed all of the requirements. Mr. Booker was convinced that he had no other obligation other than to legally issue these building permits with the documents that were presented. If these permits were not issued we would still be sitting here with Mr. Laidig appealing as the applicant; as he was told the requirements and complied with them.

The Board's questions to Mr. Booker:

- Mr. Ecker - Have you actually talked with Matt and why hasn't he come to any of these meetings?
- Mr. Booker - Mr. Booker couldn't answer the question as to why Mr. Laidig has not been to these meetings. Mr. Laidig did hire an attorney and has met him. As far as tonight he and his attorney felt that tonight's hearing was between Mr. Rettinger and the Board. Mr. Laidig did e-mail a letter to the Plan Commission Office regarding his application process and current status. Mr. Laidig hasn't ignored this process he has kept in contact with the office at least a couple of times a week.
- Mr. Davenport - asked Mr. Booker if he felt that our Ordinance needs updating.
- Mr. Booker - stated that there is no question in areas, for instance it sites legal Stream Pollution and Control Board which doesn't exist now. The 1,320 feet part is being addressed by a committee that has been meeting for approximately 6-7 weeks, which includes one of the residents that live near that area. Thursday night they will be presenting these CAFO rules to the Marshall County Plan Commission for their consideration.

Minutes of the April 25, 2006

Special Meeting of the Marshall County Board of Zoning Appeals

- Mr. Davenport stated that this is an A-1 agricultural area, and unless someone was applying for a special exception in an A-1 area we have never seen these sections challenged like they are being challenged here.

The Plan Director has no witnesses to call.

Mr. Snyder's rebuttal:

The Petition filed referred to several sections of the Marshall County Zoning Ordinance. The first section covered was Section 422. The preface of all of subsection 422 says, "the performance standards and general requirements for **all** districts are as follows.." One of the general statements that follows states that the discharging of the outdoor air contaminants so as to cause air pollution and create public nuisance is contrary to the public policy of the County and the provisions of the Ordinance. This is not believed to be isolated to industrial use only. Section 422 provides performance standards for all districts.

Mr. Booker would have you apply that to the extreme by saying if there is any potential for violation we should never issue a permit. The reason for this hearing was to present evidence that if you have a confined animal feeding operation you will have odors and to a great extent other contaminants in the form of bacteria will move beyond the property line. You don't put operations into affect if they are in violation of the Marshall County Ordinance. All of the material presented show CAFO's produce odors that go for miles and they produce bacteria which cross property lines.

Comments from Interested Parties:

Steve Martin - 13711 Hickory Road - Ralph, what is the center point of the circle?

- Mr. Booker stated that he used the GIS software - he connected both buildings and measured from the outside edge.

Herman Rettinger - 10500 Elm Road - stated that on the Laidig property there is a further setback of 1,320. Also, stated many new options available for the Zoning Ordinance.

Mr. Davis moved and Mr. Ecker seconded a motion to close the public hearing for interested parties only. The motion passed 5-0 Mr. Davis, Mr. Ecker, Mr. Flora, Mr. VanVactor, and Mr. Davenport all voting in favor.

Mr. Davenport asked the Board if they had enough findings of fact to make a ruling on the above case or should they take this case under advisement and make a ruling at a later date.

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Mr. Ecker stated that he was disappointed that Mr. Laidig has chosen not attend any of the meetings as he wanted to talk with him. Mr. Davenport read the letter Mr. Laidig provided to the Board.

Mr. Davenport stated he now gives more credit to IDEM after a lengthy conversation with a gentleman that was indirectly involved in a large dairy facility in Newton County.

Mr. Davis moved and Mr. Flora seconded a motion to approve the Plan Director's Findings of Fact for the issuance of the Improvement Location Permits 8544 and 8545. The motion passed 4-1 with Mr. Davis, Mr. Flora, Mr. VanVactor, and Mr. Davenport voting in favor and Mr. Ecker voting nay.

Mr. Davenport moved and Mr. Davis seconded the motion to adjourn. The motion passed unanimously, and the meeting adjourned.

Respectfully submitted,

Gary Davis