

The Madison County Board of Zoning Appeals met on the above date at 9:00 A.M. with, Mary Jane Baker, Chairman, presiding.

Members Present: Bill Maxwell, Mary Jane Baker, Shirley Aubrey and Bill Hobbs.

Members Absent: John Randall, Jr.

Also Present: Michael Hershman, Executive Director, Gerald Shine, Jr., Attorney, and Beverly Guignet, Secretary.

### **CURRENT BUSINESS**

1. Roll call was taken and one member, John Randall, Jr. was absent.
2. The minutes of the preceding meetings were distributed to each member prior to the meeting. Mr. Hobbs made a motion to approve the minutes with the corrections as stated. Mrs. Aubrey seconded the motion. The vote was unanimous in favor of the motion.
3. **Petition #467 of Kenneth Jarrett, landowner, and Rick Jarrett, petitioner, for a special use for a confined feeding operation.** This property is zoned AG and is located on the northeast corner of Co. Rd. 1300N and Co. Rd. 700W in Duck Creek Twp. and containing 152 acres, more or less. This petition was tabled at the May 23 and June 27, 2006 Board of Zoning Appeals meetings.

Mr. Hershman said, part of the reason we continued this was because of the appeal by the remonstrators (ECC) of the IDEM permit.

We have subsequently received paper work from the office of Environmental Adjudication stating the remonstrators (Elwood Concerned Citizens Group) shall have up to and including July 31 to supplement their petition for review.

Mr. Shine said, based upon this information a motion for continuance by the remonstrators has been filed. I have provided a copy of that to each of you (board members) this morning. They are represented here this morning by Ms. Marsh.

Donna Marsh, Columbus, Indiana.

Ms. Marsh said, we would like to secure on behalf of the Elwood Concerned Citizens and again we are asking the BZA to continue a vote on Mr. Jarrett's petition for Special Exception until IDEM appeal has been fully adjudicated. We feel it would be putting the cart before the horse to grant the Special Exception at County level without knowing whether or not the State is going to maintain the permit. Your area plan commission staff had recommended the Board of Zoning Appeals grant the Special Exception so long as the petitioner had received this County, State and Federal approval. And the State level approval is under appeal.

**(Not approved by BZA)**

Dan McInernie, Attorney, 2700 1<sup>st</sup> Street, Indianapolis, IN

Mr. McInerny told the board he was here today with Kenneth Jarrett, his client.

Mr. McInerny said, we just received this motion to continue this. We strongly object to the continuance. This matter has been tabled for the last two consecutive meetings. There is no reason that the Board of Zoning Appeals could not take action on the request for Special Exception at this time.

As Ms. Marsh noted, Mr. Jarrett is required to receive his State and Federal approvals. No Federal approval is required it is only the State approval. He has received it and it is affective. So, his permit is affective and valid at this time.

This is a long process.

The remonstrators have not yet even submitted a valid petition at this time. Their petition will be dismissed and they cannot submit that submittal information, it is in sufficient. The pre conference has not even been scheduled. This can take any where from a year and a half to two years to be completed. This is not something that is going to be done in the next 30 days.

There is no harm to the Elwood citizens or anyone else if the board goes a head and acts on the Special Exception and hopefully approves it. If for some reason Mr. Jarrett's State permit is overturned he will have no ability to construct.

We would ask that the board does go ahead and move forward and take action on the Special Exception today.

Mr. Shine said, I have had discussions with the council at IDEM and they are to provide copies to me on your behalf on any and all petitions that are filed. You at the last meeting asked each of the parties to do the same.

Ms. Marsh was asked why the scheduled appearance before IDEM on the 20<sup>th</sup> was cancelled.

Ms. Marsh replied, that two of the parties were not present. It will be rescheduled.

Mr. Maxwell said, I make a motion to accept the motion for continuance.

The motion died for a lack of a second.

Mrs. Aubrey asked the attorney for Mr. Jarrett, you said the State has approved the IDEM permit completely. Then their motion is put on hold until their group appeals.

Mr. McInerny replied, what they did is, they filed a petition for administrative review, which initiates the administrative review process. They did not request that the effectiveness of the permit be stayed or in other words Mr. Jarrett would have no ability to act under the permit. So, the permit is affective. He could begin construction pending his local approval.

**(Not approved by BZA)**

Ms. Marsh said, the reason they had not asked for a stay of effectiveness is, initially when the original petition was filed it was not filed by an attorney. So, the individual who filed that didn't realize that should be done. We are allowed to amend the petition until a response is filed. So, we will be asking for a stay of effectiveness. We have until Monday to file our response.

Mr. McInerny said, my understanding is, the remonstrators notified the board there was a pre hearing conference scheduled for July 20. The remonstrators did not appear for the pre hearing conference. We had no notice of it.

Mr. Hobbs said, I make a motion that we reject the motion for continuance that's been presented to us today.

Mrs. Aubrey seconded the motion.

The vote was three yes; Aubrey, Hobbs and Baker. One no; Maxwell. The motion carried.

Ms. Baker said, we have in the past two months discussed this petition. The first month that it was discussed we did at the end of the meeting state that we would not accept any more comments about this. Last month we continued this petition and we have for the past two months deliberated over it. We have rejected the motion for continuance and I would ask if there is a motion to approve or disapprove petition #467 of Kenneth Jarrett.

Mr. Hobbs said, I would like to make a motion to approve Petition #467 based on the Findings of Fact:

1. Would the approval be injurious to the public health, safety, morals, and general welfare of the community?

No, IDEM has reviewed the petitioners notice of intent and issued a permit by rule number, NPDES, CAFO ID #ING806416, which included water quality issues, pit construction standards, set back requirements, continued IDEM inspections and land application procedures. Roadways are available. Confined feeding operations are permitted by Special Use under Madison County Zoning regulations.

2. Will regulations and developmental standards set forth in the district for such exception be met? The facility is located on 150 acres more or less, which exceeds current Madison County requirements for agricultural zoned. Conditions are placed to insure adequate set backs from residentially zoned parcels (1329 feet), roadways and legal drains.

3. Will the proposed use subvert and permanently injury other property or uses in the same district and in the vicinity? Confined feeding operations are authorized a Special Use under Madison County Zoning Ordinance. Residential homes are scattered in the agricultural area and continual IDEM inspections procedures as to water quality, well inspection, set backs will protect agricultural values. Manure application will be subjected to various conditions as set out herein.

4. Will the purposed use be consistent with the character of the zoning district and Comprehensive Pan? Yes, agricultural preservation is the highest priority pursuant to the Madison County Comprehensive Plan (3A, A-4-14) and Development policy is set forth in B-1-4.

Based up on the above findings the Madison County Board of Zoning Appeals approves the Petition No. 467 of Kenneth Jarrett property for a confined feeding operation for swine located in Duck Creek Township, Madison County, Indiana as set forth in this petition upon the following terms and conditions:

1. Continued approval of requirements established by IDEM and other regulating federal, state and local agencies. Petitioner to report any notice of violation received within 48 hours to Madison County Planning Department.
2. One (1) 4000 head swine barn on the 152 acres, more or less, to be located on the northernmost building site as set forth on the proposed site plan.
3. Confined area feeding operation (CAFO) may not be expanded or enlarged on the subject real estate, unless reauthorized by the Board of Zoning Appeals.
4. On site manure storage of 365 days. Locations for staging manure shall be designated in writing and subject to accepted agronomic standards and manure management summary presented.
5. Manure application shall be by injection only, unless approve the Madison County Board of Zoning appeals, be a minimum of 500 feet from any existing residence or business, unless written consent of the owner is obtained and filed with the Madison County Planning Department and 750 feet from a residentially zoned property. Manure application by injection shall further be a minimum of 300 feet from a wetlands area, public water supply, or surface water and 25 feet from any public roadway, unless written approval is granted by the Madison County Board of Zoning Appeals.
6. Upon termination of operation (voluntary or involuntary), petitioner or his successor will remove swine finishing barn, concrete pit and other related structures from the subject real estate within 90 days and return the same to agriculture use. Failure to remove shall authorize County removal of the structures at the expense of the landowner/operator.
7. There shall be a designated green space/filter strip of 25 feet in width used for the collection of sediment and cleaning runoff along any surface water, or regulated drain or water source.
8. Pine trees shall be planted on the side of the property facing 700East and along any property facing a residential home.
9. Two monitoring wells shall be installed, one at each end of the building. Each well will be installed at a distance not to exceed 50f feet from the building. The completed depth of these wells shall be placed in the unconsolidated sand and gravel formation located closest to the bedrock. Upon completion of these two wells, the wells will be tested for nitrates prior to the start up of the CAFO in order to establish a baseline. Annual testing will be required and maintained for review purposes. In the event two consecutive tests show elevated levels of nitrate, CAFO will notify the Board of Zoning appeals and se d copies of those tests. The Zoning Board of Appeals will the notify IDEM and submit these reports for their review.

10. A geosynthetic clay liner must be installed around and under any part of the CAFO pit or building that will have storage, and/or hold manure. Geosynthetic clay liners are high performance environmental liners comprised of geosynthetic carrier components bonded to a layer of low permeability Volclay Sodium Bentonite. This liner shall be placed under the bottom and along the side of the pit to a level higher than the manure will be stored. A minimum of 5% overlap is required and care must be taken not to puncture the liner.

Mrs. Aubrey seconded the motion.

The vote was unanimous in favor of the motion. **Petition #467 of Kenneth Jarrett, landowner, and Rick Jarrett, petitioner, for a special use for a confined feeding operation was approved.**

### **New Business**

#### 1. Miscellaneous:

Pam and Gary Glass, 12516 N 300E, Alexandria, IN.

Mrs. Glass said, we recently purchased 12 acres and just within the last two weeks we have sold our other home and are on a very tight time issue. We want to build a barn just to store our belongings that we have in our garage that we have sold. We didn't realize we would need a variance to build the barn.

We would like to build the barn up closer to the road in front of the home. We did not get our papers in to the board before the June 26 filing date for the July meeting.

Mr. Hershman said, they have submitted their petition for the hearing, which won't be until August.

The board inform the Glass's if they built it would be at their own risk as the board could take no legal action until their petition has been advertised and their certified notification to the adjoining landowners are sent out.

Upon motion to adjourn, the meeting adjourned.

Adjournment: 9:41:50 A.M.

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Mary Jane Baker, Chairman

Beverly Guignet, Secretary