

The Madison County Plan Commission on the above date at 1:00 P.M. with Bill Maxwell, President, presiding.

Members Present: Bill Maxwell, Paul Wilson, John Randall, Jr., Mark Gary, John Orick, and Wesley Likens.

Members Absent: Alan Esche, Scott Tischler and Brad Newman.

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

#### Current Business

1. Roll call was taken and three members, Alan Esche, Scott Tischler and Brad Newman were absent.

#### New Business

Mr. Hershman informed the board we do have proof of publication.

Mr. Hershman said, you have before you two changes for the Zoning Ordinance and the Land Use development code.

The first one regards changes in the Confined Feeding Operations. The first section is, 1.5. You're adding approximately six definitions regarding Confined Feeding Operation.

The second section is modifications to 6.19, FA02, regarding Confined Feeding Operations.

1. Proposed changes to Land Use & Development Code, Zoning Ordinance Sections 1.5, 6.19.

Mr. Hershman said, the first section, Basic Provisions, 1.5, definition -- add -- the first definition is, Confined Feeding.

Mr. Shine told the board the first six definitions are alluding to Indiana Administrative Code.

Mr. Wilson said, I have a question on staging. It says, staging means the temporary placement of manure and file at the site where manure will be land applied. What is the definition of temporary?

Mr. Shine said, that is 327 Indiana Administrative Code, Section 16-2-22. Temporary means not permanent.

Unknown in audience replied, it would be to apply as soon as you could. Would need to spread it and not let it pile up.

Mr. Hershman said, the next is, additions to Confined Feeding Operations. We are making additions to those.

Mr. Wilson said, I have a question on E. It says structures used for confined feeding operations including waste disposal shall be a setback of 100 feet from all property lines.

Mr. Hershman replied, that's in our current regulations.

Mr. Wilson said, then G says, confined feeding operations shall not be located closer than 500 feet from the nearest corner of a structure used in the CFO to the nearest corner of any existing residential structure unless written consent is obtained. The question I have is, if you set a 500-foot minimum in G and you were putting a lagoon in why wouldn't the same of at least the same minimum setback be the same in E ----

Unknown: What about structure instead of property lines?

John Simmerman, 9538 W St. Rd. 32, Lapel.

Mr. Simmerman said, I would like for this to be retro active. If we get doubled to 1360 feet of a residential area I don't want a residential area to be able to build in the 1360 feet from one of my structures. I think that's more than fair. I think you should have it going both ways. You're protecting them but your not protecting us. We would define that as a permitted CAFO. The rules should go both ways.

Mr. Wilson said, I see in defense of them it might save some legal fees later on when the person got tired of smelling it then would take them to court and try and beat them over the head with it.

Mr. Orick said, the other thing we had talked about was an agreement that people would sign that they know that they are building a home in an agricultural, industrial area. I really think we should make people sign an agreement that they know that they are building within so many feet of confined feeding operation.

Mr. Shine said, we talked about written consent in G. But that is written consent of an existing residential structure. So, now it would be within written consent of an existing or CAFO structure.

Unknown: If that is attached to their deed then it is a legally binding deal.

Mr. Shine said, unless there is written consent of the property owners one cannot construct a residential structure on a residentially zoned property within 1360 feet of a CAFO structure. I will take a look at this.

Mike Shooter, 7400 N 400W, Frankton.

Mr. Shooter said, part of what's going on here and what John brought up is, the timing of things that you've gotten in here now is that you have to have your IDEM permit before you can get a building permit or your IDEM permit is a notification of neighbors to surrounding property owners and that's what John's getting too. You notify surrounding property owners that your going through your IDEM permit process and then he decides he wants to come in an get a building permit before we get a building permit for the confined feeding operation.

Mr. Shine said, that's why I wanted to start us talking about paragraph F. Because paragraph F says, the permit shall be submitted with the other materials. The permit from IDEM. The permit should be --- we need to consider if we want to have a permit submitted prior to construction.

Unknown replied, that would help us a lot.

Mr. Shine said, that would help everybody.

Unknown: Somebody is going to have to be filing a building permit to stop a CAFO. Some where at the county level they need to be able to file their intent to apply for a building permit. So, it's recorded who got here first. The county permit will supersede the IDEM permit because it takes so long to get it. There needs to be some way to be said that you are wanting to apply for a CAFO permit at the county level before so somebody can't come in and stop the process before you get a chance to start it.

Mr. Shine said he would look at that.

Unknown: You could reserve your CAFO location pending the approval of the permit. As a lender it could go either way.

So, basically it's just come in and apply for the special use permit when they first file for IDEM and they can still provide that information.

Mr. Orick said, I think BZA should get that information but it doesn't have to be in the form of an approved permit. They still need that information but they just won't have the actual permit. Building permits should be conditional up on IDEM's approval.

Mr. Wilson said, and they would have release in the fact that if they agreed that they signed off on the fact that that was there. They wouldn't have to wait. They would just have to sign a document that would give these guys relief in the future.

Unknown: That way whether the person had filed a home building permit that would protect the bank and the homeowner from somebody filing later that day.

Mr. Shine said, on F we will take out the word "permit" and put in "application" and then if we add a sentence to that the special use would not be approved until such a time that IDEM approves the permit.

This should also be crossed referenced in the ordinance in the areas that deal with residential zoning.

Mr. Wilson said, my question on J really has to do more with, the structure must be closed within three years, and failure to do so shall authorize the county to close the structure at the expense of the landowner/operator. If it's an operation that is staying there what is the value of allowing that to sit there for three years before the county can take any action on it?

Mr. Shine said, we have 180 days that there are allowed to remove the manure then. Then the state statute give them three years to go through their closer procedure. If they don't do it in that time the state statute, what we've done is we've added here, and then at least at the end of three years we as a county can go in and close it. The manure has to be out of the structure in 180 days.

Unknown: I have a question on I. There can be written violations just on paper work with IDEM that could cause you problems here that are not, I mean it's just a record keeping issue that they could write you up for --

Mr. Simmerman said, I don't mind this because it says, must be resolved and so as soon as you get it resolved you can start building those up.

On this manure application, manure can come from somebody that doesn't even have livestock. We have had multiple complaints on poultry manure.

Mr. Wilson said, what I wonder is, if the operation is permitted in Hancock County but they are moving the manure and applying it in Madison County how do we extract out of this document a way to enforce any of what we have here as far as what we are telling our own people to do if they bring it across the county line and drop it. Say they drop it within ten feet of our county road how do we bang them for that?

Unknown replied, that's against IDEM regulations. You're trying to go a little further than IDEM regulations.

Mr. Wilson said, that's right because in essence if this is passed the local board through home rule has determined that there are a few areas that we think are important enough to take that extra step. IDEM regulations would require them to keep it 60 feet, that's the minimum. If there are other things that we require beyond the minimum then the question is, how do we regulate it if they are coming from out of county?

Mr. Shine said, well then lets just put a paragraph in there that says, manure application has to be approved by the Madison County Board of Zoning Appeals. It would make the drop in this county a permitted process with a permit. You have to have IDEM, that's under paragraph, B. We can approve other applications.

Mr. Orick said, what if they just submitted a manure management plan to the county that they are applying in to. What if they just had to have a requirement based on our county ordinance that if they are doing that they have to submit their manure management plan to Madison County so that we know how they are going to do it, where they are going to do it, and that they have IDEM approval. They have to draw up their plan any way. Why don't we just get a copy of their memorandum plan? That tells us they are trying to be a good producer, they are doing everything they should and if there is a problem in there then we can use the Plan Commission to address that problem in some way.

Mr. Hershman asked the board if they wanted him to drop A.

Mr. Shine said, no, I just added this paragraph C, notification is required to be provided to the Madison County Planning Department of all manure management plan applications for disposal in Madison County and the landowners written approval of plan. If you want I can move up to A rather than in C.

Mr. Simmerman said, 25 feet under paragraph E in not enough for the filter strip.

Mr. Randall said, it would not hurt to put from any county regulated drain.

Mr. Orick said, I think what G is saying is, that they have to come up with a list of three agronomist that have to be approved by the BZA and the board will hire the selected agronomist for the purpose of conducting water and soil tap capability test and make recommendations. An agronomist shall also review the IDEM application.

Mr. Simmerman said, the permit that I just got he wasn't even in there. I have a guy, he looks at my permits, he looks at my application and we decide where to put the manure. I just don't think we need it.

Mr. Wilson said, this is where I am a little confused in the wording in essence to the business, figuring out the appropriate dollar amount is on this because the agronomist shall also conduct monitoring well test. Does that just mean the initial test to get what the standard is at the time that it's put in? And if that means more than that how do you fund it for on going test, either on an annual bases or semi-bases or whatever is appropriate. The question have is, this needs to be nailed down more that what it is.

Mr. Simmerman said, IDEM does not allow you to have a well with in 100 feet of the pit. Lets say your drilling down, puncture a hole, that if we have a spill why we are pumping, now we have two openings to the ground. I would recommend that you are better to do ground core samples rather than dig these test wells. I think a perimeter drain would solve that issue but to say to me, don't put a well with in 100 foot of the pit for that very reason I would also contain that 100 feet is enough to say there is nitrates. I have more concerns about drilling two more holes next to the pit.

Mr. Wilson said, if you don't test bores, core drilling for the lagoon operation how do you know that the aggregate underneath is such that ----

Mr. Simmerman said, that has to be done. It's all done through IDEM. If your building is not leaking you'll get more nitrates out of the field. If you have a well on every property you can require testing on that well. You have to punch a hole some where but not next to the building.

Mr. Orick said, if we require a monitoring well 100 feet a way that would be better. Then you would have your water source for the building.

Mr. Simmerman said, why can't we monitor the perimeter drain? I think and IDEM are convinced that is our best source.

Mr. Wilson said, if we don't want to put the burden of the monitoring of the agronomist business on the back of the county it's got to come from some place. The way this document is written it put the burden on the applicant as far as that. What is an appropriate amount of money for the set up? Do you have semi annual permit fees or do you have --- how do you elongate the thing over a period of time and pay for it.

Mr. Hershman said, the purpose of G is, to have a neutral third party so we have somebody that both parties can say, all right they are not one way or the other. We want somebody to go through the IDEM permit and say, alright here is some of my concerns in reference to what submitted as far as the IDEM permit.

Mr. Simmnerman said, what I am concerned with is, it's so close to the field because the field and the building and the well are all pretty close together.

Mr. Maxwell said, the last sentence of G says, conduct a well test prior to filling the pit. That was to make sure the ground was safe before anything was done as far as putting manure in the pit.

Mr. Simmerman said, IDEM wants to get all the water pressure away from the pit. The testing would just be a bonus to them. The monitoring wells a built so the surface water can't go in but there is nothing say as you are backfilling all this clay that before it gets a good time to settle there is going to be cracks and stuff, whether it be from the field or wherever.

I understand where you are coming from. The public wants some kind of reassurance that we are not polluting the wells. We are just trying to find a fair way of doing that without making the situation worse.

IDEM says put your well at least 100 feet from the building. I am saying, do your perimeter drain testing, well testing on the water the animals are consuming and have an outside third party person do it so that they know it's independent. But punching a hole next to the building is pretty risky.

Mr. Wilson said, we got the original agronomist that comes in on a set up and then in the long haul you've got a guy that comes in and does the testing. If we did a system where you pay x number of dollars up front and then at the time that you re-up with IDEM you would renew your testing permit or whatever with the county so we could estimate the cost to the county over that period of time for the test, we could work it out so it was a fair number for you and we would know we had money in the till to administrate it.

Mr. Shine said, so you are wanting somebody to review the application that they have submitted to IDEM and then we want somebody to do our annual inspections for the five years of whatever you all decide if you want the monitoring well and the perimeter drain.

Mr. Simmerman said, when we did our pit before you could even apply for your permit, with all your paper work that you give to IDEM is these borings. I had to submit all those borings with permit. They have the borings plus they have the map. Those all go in there too. Those engineers, when they put all this together they look at all that stuff. It takes a month to get these permits in.

One thing in here you should say is, if your going to have agronomist for the propose of conducting nitrites test, that's really what you want. If you center this around nitrites and found the nitrites were to high you could come back and order another test and expand the qualifiers on it.

Mr. Hershman said, we said this should be tested for nitrites on a yearly bases. Basically your first, determine your base level, then yearly test after that. That is the perimeter drain and the well. You hire that person to do that.

Mr. Wilson said, I think that is right. Write the check for the amount and deposit it in the county. I think what we need to do is establish a fee level for the initial set up and then we need to establish a fee level that would be paid to the county on the renewal period of the IDEM permit that would be large enough to handle the four years in between the two or whatever. Then it would go in to an appropriation fund in the county and money would be taken out of that.

Mr. Shine said, we would have a fee that we would determine and the annual fee is determined by the board not to exceed the cost. This would be an annual fee.

Mr. Wilson said, if you come in the first shot and you pay this for the set up number and you pay this until the next permit then we would have the money till until the next time that it rolled around and when you had to go IDEM and at that time then we would renew it.

Mr. Hershman said, do we want to breach the topic of I?

Mr. Orick replied that he didn't think we needed the I.

Mr. Likens said, IDEM has a liner stipulation in their regulations. I think that we just need to use a line with their regulations.

Mr. Orick said, the concrete pit thing is, they have scientifically reviewed recommendations for the engineering on those pits. If we say well if we put this liner thing it goes against scientifically reviewed data and engineering specs.

Unknown: you have to remember manure is 60 pounds per cubic foot. So, you've got 420 pounds. Your cars weighs that much per cubic foot.

Mr. Shine said, what they are saying is, the state is not going to approve it if its on gravel or bedrock within the first 30 feet.

Mr. Orick said, I went an asked a specialist at Purdue and they said that the standards that I asked, what are the scientific proof of the NRCS standards that are exactly what IDEM uses and are exactly what Purdue and other universities have reviewed and use as the standards for the specs for a concrete pit. I asked the question of the person with IDEM, have you ever used a liner on concrete pit and they said no. What we would do is up the specs of the concrete for that situation depending the soil type.

In some situations they have used liners because your talking about an earthen lagoon versus a concrete pit with concrete that is like 8000-PSI pressure. They have all the standards written out.

Mr. Shine said, if you remember back and I am only going to say what the committee and Planning Commission thought. By putting in this sort of liner it gave you one more step that is security and the cost is not that substantial.

Mr. Simmerman said, that is \$60,000 and the operation of a barn with 4,000 hogs and the buildings and all the other things would be out of range.

Mr. Orick said, we as a board needs to do what the public has asked us and base our decisions on scientifically reviewed data. By adding a pit liner we are going against that. If it would help I can get somebody to explain this to you.

Mr. Wilson said, so to be fair about the joint opinion out there you want "I" done away with altogether?

Mr. Simmerman said, what I think you should do is, say that in terms of the liners that they should be regulated by IDEM's requirements. Whatever IDEM's requirements are on liners then that's what the county should do. That would be for pits and lagoons. If they call for it I thinks that's fine. You should put that in there so that when anybody questions you can say, we considered the liners right here and we're going by the recommendations and scientific data provided. I think this should be locked to the IDEM standards.

Mr. Shine said, somebody was talking about and brought up some sort of a fault line. Does that have anything to do with this?

Mr. Simmerman said, IDEM is going to review all that. They are going to look at those kind of things.

Most of the complaints are manure application and lack of enforcement of those rules that are already in the book.

Mr. Simmerman said, they have set some new rules on inspections of new buildings, new construction areas like a brand new permit and they come out even after the building is done to help you go through the paper work and make sure its done correctly and its turned in correctly.

Mr. Wilson said, so you are in agreement that you want it referred to it in here, liners referred to and then referenced to IDEM. You are confident that in IDEM's current standards that they have a liner section that is applicable to concrete pits in additions to lagoons.

Mr. Simmerman said, one more comment that I have. Back on E the board approved a drawing list. How are you going to come up with that?

Mr. Wilson said, it would more than likely will be an agronomist that was located out of county so they wouldn't have any vested interest in the county.

It certainly would appear to me the feasibility or the need for a liner in a lagoon is much greater than what it would be then around the concrete pit.

Mark Gary, board member left the meeting 3:20 P.M.

Unknown: I think there is more risk with lagoons than there are with pits.

Mr. Simmerman said, one word of caution to you is, as you review that application, you are going to have to come up with some kind of scientific decision to say yea or nay to a lagoon. If it's a liner lagoon, if its above the IDEM regulations. You need more evidence than what I have seen so far.

2. Proposed changes to Land Use & Development Code, Subdivision Control Ordinance Section 3.

No one was present that wanted any input on this proposed change.

Concerning item 2, Mr. Wilson made a motion seconded by Mr. Likens to table Proposed changes to Land Use & Development Code, Subdivision Control Ordinance Section 3 be tabled as most of it concerns the County Surveyor and as he is absent today they would like for him to be present to help explain before any decision is made. The vote was unanimous in favor of the motion.

Mr. Shine said, if you would like to then have come back on the 9<sup>th</sup> and we will come back with what we believe is the consensus may have been today. And if Michael and I get these to you for your review could we have your input prior to that meeting?

Mr. Wilson said, on H it says if two consecutive test show elevated levels nitrite the agronomist shall notify the Madison County Planning Department and forward copies of those test. The Planning Department will notify IDEM and submit these tests for their review. The question I have is annual testing. The line before that says

annual testing. We surely don't want to wait for two years to come up with a notification to IDEM if there is a problem with the site.

Mr. Orick said, your kind of double testing because they have to submit things for the permit.

Mr. Wilson said, for clarification proposes if we as a county go and test and the nitrite level is too high then we have the authority in 30 days to go test again and get the second test. We do not have to wait until the annual test.

Unknown: If you give that results to IDEM because it will be separate from their testing, they are going to want to follow that up.

Mr. Shine said, if the committee has a concern to additional things because they were not pleased with what IDEM has said what they could do, what they would do, what they have the ability to do, we want to make sure there is still some local rules and control.

Mr. Simmerman asked about the moratorium.

Mr. Shine said, that would be at the February meeting. August 8 was the date it was set from for the six months. It was not to exceed 180 days.

Mr. Wilson said, I make a motion that we table the information as presented to us today for review for rewrite from suggestions made for the January 9, 2007 meeting and hopefully it will be taken under consideration by the entire Planning Commission.

Mr. Likens seconded the motion.

The vote was unanimous in favor of the motion. **Proposed changes to Land Use & Development Code, Zoning Ordinance Sections 1.5, 6.19 and Proposed changes to Land Use & Development Code, Subdivision Control Ordinance Section 3 have been tabled until the January 9, 2007.**

Mr. Wilson made a motion, seconded by Mr. Likens to adjourn. The vote was unanimous in favor of the motion.

Adjournment: 3:36:21 P.M.

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Bill Maxwell, President

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*Beverly Guignet, Secretary*