



LAPORTE COUNTY PLAN COMMISSION

Government Complex 5th Level
809 State Street, Suite 503 A
LaPorte, Indiana 46350-3391
(219) 326-6808 Ext. 2591, 2563, & 2221
Fax: (219) 362-5561

ANNEMARIE POLAN
Building Commissioner

December 19, 2017

Dear Members:

The regular meeting of the La Porte County Board of Zoning Appeals was held Tuesday, **December 19, 2017, at 6:00 p.m.** in the Assembly Room of the County Complex.

MEMBERS PRESENT: Dwayne Hogan Earl Cunningham
 Glen Minich Johnny Stimley

PRESENT: Annemarie Polan, Recording Secretary, Attorney Doug Biege; Cynthia Kreske, Secretary

The Pledge of Allegiance.

Dwayne Hogan asked if he had a motion for approval of the meeting minutes of November 21st, 2017.

Glen Minich made a motion to approve the meeting minutes of November 21st, 2017 as presented. Johnny Stimley seconded.

Dwayne Hogan asked if there are any questions, comments, or concerns.

All approved. Motion carried 4-0.

1. **Petition for Variance of Developmental Standards for Ann Thompson** to keep a six and a half (6 ½) foot wire mesh (deer screen) fence around the entire property. This fence is already erected. This property is located at 4065 Michiana Drive, Michigan City, Springfield Twp., zoned R1B. **(Continued from November 21st, 2017 to December 19th, 2017 at 6:00 p.m.)**

Earl Cunningham made a motion to remove the petition from the table.

Glen Minich seconded.

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All approved. Motion carried 4-0.

Attorney Biege said notice is adequate.

Dwayne Hogan asked for name and address for the record.

Ann Thompson, 4065 Michiana Drive, Michigan City.

Dwayne Hogan asked Ann Thompson what she would like to do this evening.

Ms. Thompson said that she would like to ask for a variance for a deer screen that she put up around the property and she didn't realize at the time, was not in compliance with the zoning ordinances.

Dwayne Hogan asked if there were any remonstrators here this evening for Petition No.1.

Dwayne Hogan asked if there are any questions or concerns of the Board.

Glen Minich asked Annemarie Polan if she had anything to add.

Annemarie Polan said she originally received a telephone complaint. The person thought that it was a danger to the animals, but Annemarie Polan has not heard back from that person and there's nobody present. Annemarie Polan googled (danger of fencing), but she could not find anything on it.

Dwayne Hogan said that he was out on two or three different occasions and on the first occasion he was out there, he drove right past it.

Annemarie Polan said it blends in very nicely.

Attorney Biege said that notwithstanding the animals and their safety, the property owner does have a right to protect their property and damage from them.

Earl Cunningham made a motion to approve the petition for a variance of Developmental Standards for Ann Thompson to keep a six and a half (6 ½) foot wire mesh (deer screen) fence around the entire property. The property is located at 4065 Michiana Drive, Michigan City, Indiana, Springfield Twp, zoned R1B. To equal your thoughts, I appreciate the fact that to the manner which is very pleasing to the eye.

Glen Minich seconded.

Dwayne Hogan asked if there are any questions or concerns.

All approved. Motion carried 4-0.

2. **Petition for Variance of Developmental Standards for Larry D. Nixon** to construct a pole barn forty-five (45) feet by fifty-six (56) feet using three (3) shipping containers (box cars) together. Property is located North of 5977 E. Division Road on 600 East, which is located behind the residence, La Porte, Wills Twp., zoned Agricultural on ten (10) acres.

Attorney Biege said notice is adequate.

Dwayne Hogan asked for name and address for the record.

Larry D. Nixon, 5977 E. Division Road, La Porte.

Dwayne Hogan asked Mr. Nixon what he would like to do this evening.

Mr. Nixon said would like to construct a building on the north end of this property and he has twenty (20) acres of woods. Mr. Nixon and the Board Members talked back and forth (unintelligible). Mr. Nixon stated that he would weld three (3) shipping containers together in a U shape design. They will be completely enclosed. He will put a regular roof with trusses on it and paint the outside so it would look like a pole barn. It will be all metal.

Attorney Biege asked Annemarie Polan's reasoning for the variance. Annemarie said it is because these are shipping containers (trailers) and they are not allowed in the county.

Attorney Biege said the Board is not qualified to give waivers on construction standards. The manner of construction, I don't think it's in the Boards jurisdiction. That would be up to your building inspector and the Indiana Building Code. If the pole barn is up, and I think it is, authorized under the code as it is you would not need a variance. If the appearance is the same and complies with the standards of the code, I don't think there is any variance to be done. I think it is an issue with the building inspectors and the Indiana codes because they don't have the authority to vary from the Indiana code building requirements.

Attorney Biege said I'm not sure La Porte County is necessary to authorize this, it may need to go down State. I don't think what you are requesting is a Zoning Board issue, it is a building standards issue and the Zoning Board doesn't have the jurisdiction to give waivers on building standards.

Mr. Nixon was asking why he was directed to come up here and spent \$235.00 and there are no answers here.

Attorney Biege said that Mr. Nixon was doing something that's rather unique, so we're trying to figure out how to help you here.

Annemarie Polan stated because trailers are not allowed and it's still like a trailer, but you are using it in a different sense. It's not going to be living quarters and it's going to be a pole barn.

Earl Cunningham said that he appreciates that Mr. Nixon is trying to do the right thing. Earl Cunningham also said that he appreciates the fact that this is an ingenious design and no wasted space.

Attorney Biege said what we do procedurally, I think if the Board were so inclined, you can chose to dismiss without prejudice. If there is an issue and he needs to come back within a year, I don't think he needs a variance at all.

Dwayne Hogan agreed with Attorney Biege to have a motion to dismiss without prejudice.

Attorney Biege told Mr. Nixon to work with Annemarie Polan and see if it's in the building code, and if it's not, than the inspector will probably have to go down State and get some kind of authority.

Glen Minich made a motion for the Petition of Variance of Developmental Standards for Larry D. Nixon be dismissed without prejudice at this time.

Johnny Stimley seconded.

Dwayne Hogan asked if there are any questions or concerns.

All approved. Motion carried 4-0.

3. Petition for Variance of Use for R & D Holdings, LLC (fee owner) and Bradley G. Engle to repair and refurbish semi-trailers on the property. Property is located at 1733 E. Division Road, La Porte, IN., Kankakee Twp., zoned Agricultural on twenty-five point seven two four (25.724) acres.

Dwayne Hogan asked if there are any remonstrators for this petition.

Reply was yes.

Dwayne Hogan asked if they are remonstrating for petition number 3 or petition number 4.

Reply was for both of them.

Attorney Biege suggested that they do both at the same time. Attorney Biege said he thought it would be clearer to do both of them at the same time

Dwayne Hogan said that he would read Petition number 3 and 4 together.

Attorney Biege asked Attorney Ambers if he had any objections.

Attorney Ambers did not object.

Dwayne Hogan said also with number 3 couple number 4 which is going to be **Petition for Variance of Use for R & D Holdings, LLC (fee owner) and Daily Properties, LLC** to repair and refurbish commercial recycling balers and conveyors on the property. Same address, same location.

Attorney Biege said notice is adequate.

Good evening members of the Board, I am Dave Ambers, Attorney; my office is at 609 Michigan Avenue, La Porte, IN. I am here on behalf of both petitioners Mr. Engel and Daily Properties as well as the property owner, R & D Holdings. We have a representative of all of the entities here if you have any specific questions. I have given you the materials. The first set that I gave you was the Beacon and general pictures of the entire property. There are three (3) buildings, we are asking for a variance tonight on two (2) of them. The remaining building is vacant. I gave you sets of pictures.

The second one I gave you was the Daily Properties variance and the third one I gave you with the red portion on the building is for petition number three (3), the Engle variance. Basically what we have here is the old Milburn Peat property. Based upon Beacon, these buildings – two (2) of them were built in 1970 and one (1) of them was built in 1974. R & D Holdings purchased that property and the company. Sold off Milburn Peat, now we have these buildings that have been out there almost as long as all of us in this room and not being used. On Petition number three (3) we have Mr. Engle. He intends to repair and sell semi-trailers out there. The buildings he is going to use with the red front and the pictures of the nice offices as a three (3) bay shop, which was previously used by Milburn Peat for this very reason, for the repair of their trucks and trailers. So there is no change in the previous use on that building. The primary type of trailer will be tankers. They will be clean, they won't be contaminated or anything.

Dwayne Hogan asked if there will be milk trucks or gas trucks.

Attorney Ambers said just any kind of semi tankers. Mr. Engle anticipates having five to ten (5-10) trailers in and out of there a month. Previously when Millburn Peat was operating, they

averaged about eighty (80) semis a day coming in and out of there, between bulk material coming in and hazardous material going out. So the intensity of the truck traffic will be much less. Mr. Engle also rents trailers to farmers in the busy season to haul fertilizer. Eventually, Mr. Engle would have three to four (3-4) employees. Mr. Engle is going to enter into a three (3) year lease with a three (3) year option, so he is hoping to be there six (6) years, providing revenue for the County and more tax base. In regards to the Daily Properties, their business will be repairing and refurbishing commercial recycling balers and conveyors for the recycling industry. Their work will be performed inside the building. They are going to use the building where the peat moss was previously packaged. So you have less intensive and much cleaner business going to be operating out of there then when Milburn Peat had it. They will have one (1) or two (2) trucks in and out per week again as compared to the eighty (80) or so when Milburn was operating. Most of the materials or supplies will be purchased from local businesses here in La Porte County and by the end of the first year, they anticipate having ten to sixteen (10-16) employees and their wages to be in the top ten percent (10%) of what factory people are making in La Porte County. They are entering into a five (5) year lease, with two (2) five (5) year options.

With regards to both of them, with regards to the findings, the grant of this variance will not be injurious to the public health safety morals or general welfare of the community. It will be a less intensive use, particularly with regard to truck traffic, than previous years with Milburn Peat. The use or value of the area will not be affected; this work is going to be performed inside both of these buildings, so they will be cleaner and less intensive than the previous bagging of the peat moss. It arises from the condition peculiar to the property, not due to the neighborhood because I don't know how fifty (50) years ago; such large buildings were built in an agricultural area.

I went back through as far as I have on old zoning books and that property as far as I can determine has always been agriculture. Why this got stuck up there, I don't know. It's really not that far, you drive towards the city limit, you have Pavey Excavating, the Comcast building, self-storage, you've got the bread company right there on Boyd Boulevard, you've got commercial operations over on Fail Road. It's not like there isn't something within a mile or so. It's just peculiar that whatever your predecessors choose, that they allowed these buildings be built out there, better they be used than to sit idle and become an eye sore. The grant of the variance will not interfere with the Master Plan because this property has been used for a much more intensive use in the past and their actually taking that use down between the traffic, dirt and overall impact upon the neighborhood. Attorney Ambers said with that, I'll answer any questions you have, or if you have questions.

Dwayne Hogan said we would take it up with the remonstrators first and see what we have and then we will answer questions.

Dwayne Hogan asked the remonstrators to please come forward.

Dwayne Hogan asked for name and address for the record.

Dana Peterson, 67820 Lemon Road, New Carlisle and Pam Keller, 1102 N 250 E, and we also own the property at 1617 E Division Road. We're right next door.

Dwayne Hogan asked if there were any other remonstrators besides these two (2) this evening.

Pam Keller said this is their first time coming to something like this. Pam Keller opposes this because she's lived there most of their lives and we've been through all the semis coming down the road and nothing but noise all hours of the day and night and she doesn't know what kind of shifts these people are planning, and she's afraid the property will be devalued. Their mother still lives there in the house. While they were there, my parents, the Milburn hired ex-convicts there, their house has been broke in to. They were always throwing junk in the back and on their parent's property. My dad would go over and get on them. They would never clean anything up, it was always a mess. The semis were always up and down all hours of the night. It started out because Allen's had a greenhouse there. They always lived in the front and it became something more.

Dwayne Hogan asked if there were any other major concerns or complaints.

Pam Keller said she would think it would devalue the property. No one wanted to live there in the past.

Attorney Biege said this use developed somehow over the years, even before a formal zoning code. It's in an Ag zoned area, but that use began and continued. Dave called me on this. Now, if Annemarie will call me on these and will get my opinion as to whether if a continued use is grandfathered in. This is not, but if this operation would have been an ongoing operation, they would not have to come here at all because it would be grandfathered in, and that use would continue on, so the only reason they are here asking for a variance is because of the break in the use. But the use is still consistent with the parties, even though it was zoned in a different manner. I think even though it was zoned Ag to begin with, that use evolved over time before formation zoning code amassed, so if that use was grandfathered in years ago before the zoning code came more formalized. I just want to make sure the board is clear on that.

Glen Minich thinks we need to include some hours of operations.

Attorney Biege suggested we have hours of operation or restriction on deliveries, would be another way to do it.

Dwayne Hogan asked as far as their employment and reference to hiring ex-convicts or whatever, I'm not going to tell you who you can or can't hire.

Attorney Ambers said (unintelligible) has been in business for many years and I've known him for many years that I have never had to bail any of his people out.

Ron Bjustrom said I've owned it for ten (10) years, so I bought the stock from Milburn Peat from the investors that owned it. From the time I took over, I've known of no ex-convicts that worked for us.

Dwayne Hogan asked for name and address for the record.

Ron Bjustrom, 6814 106th Avenue, Milan, IL, I bought the company in 2008, the stock of Milburn Peat. We had a good plant manager. I don't know what happened before, but when we took over, we tried to let them know that if they ever wanted to sell that property that we'd be willing to buy it. So we always were trying to go out of our way to work with them, because we wanted to buy it. So we tried to be good neighbors and anything. It's been there a long, long time and I don't doubt what they said is true, but it hasn't been in the last ten (10) years.

Ron Bjustrom's goal is with the revenue of the leases, the one building up close in the corner to the house, there is siding that looks bad and needs to be replaced and now that I'll have some revenue coming in. My goal, because they are just paying me minimal amount of rent, it is just a covered roof and my goal is to side it and make it look better. Right now it has been sitting there idle for over two and a half (2 ½) years. The revenue will help basically make it look better and maintain and keep the weeds down. Everything has been cleaned up in the last two (2) years. Our goal would be to enclose that building so we can lease it out to get more revenue. Right now it is open on two (2) sides. So, my goal is, once we get enough revenue, is to close that up and make it look better.

Attorney Ambers showed that those buildings were constructed in 1970 and 1974. One was even built by Larson-Danielson.

Dwayne Hogan asked if there are any questions or concerns of the Board.

Glen Minich said that he would like to nail down that there are no deliveries between; we should make sure that the clients have the window of their hours.

Dwayne Hogan asked for name and address for the record.

Dan Hill, 3852 N. 700 E., Rolling Prairie. Typically, the scenario is we buy used recycling equipment and we bring it in. Our crew pulls it inside the shop and we completely dismantle it. At that point, we buy local products and put it back together and put it back to work. Our hours are seven to three thirty (7:00-3:30). We do not take trucks after that, they have to wait until the following morning, but there are times when we might be in a crunch and we might have to work inside the building to finish the project. But trucks would not be an issue and we certainly respect our neighbors and keep it down. It's really not a loud process anyway.

Attorney Ambers said that maybe we need to limit the deliveries rather than hours of operation.

Attorney Biege asked if it would be workable to simply limit deliveries, restrict deliveries from ten (10) p.m. to five (5) a.m.

Glen Minich was thinking more about six (6) p.m. to six (6) a.m.

Attorney Biege said generally speaking in the summer time noise restrictions are around nine to ten (9-10) p.m.

Earl Cunningham asked if ten to six (10 to 6) seems pretty reasonable to you.

Glen Minich suggested 9 p.m. to 6 a.m.

Dwayne Hogan asked if there were any questions or concerns of the Board.

Dwayne Hogan asked if they are going to put a sign up front.

There is currently a four by eight (4x8) lighted sign. Each petitioner would like to have a four by eight (4x8) lighted sign. Attorney Ambers told his clients to ask for this so they would not have to come back for another variance.

Earl Cunningham stated that the signs would be good for the trucks to find the businesses for deliveries and for emergency.

Attorney Ambers said one of the folks that they had to give notice to, Mr. Steven Mann, had contacted him asking a few questions and authorized him to advise you that he consented to the petitions.

Dwayne Hogan said we need to entertain a motion.

Earl Cunningham said Mr. President assuming that we combined petitions 3 and 4 together. I move that we approve the Petition for Variance of Use for R & D Holdings and Bradley Engle to repair and refurbish semi-trailers on the property at 1733 E. Division Road, La Porte, IN., Kankakee Twp., zoned Agricultural on twenty-five point seven two four (25.724) acres, and the Petition for Variance of Use for R & D Holdings and Daily Properties to repair and refurbish commercial recycling balers and conveyors on that property located at the same address with the restrictions that no deliveries from 9:00 p.m. to 6 a.m. and that there will be only one sign for each business limited to a four by eight (4x8) lighted.

Glen Minich seconded.

Dwayne Hogan asked if there are any questions, concerns or any need for clarification here.

All approved. Motion carried. 4-0.

MERRY CHRISTMAS!

Dwayne Hogan asked if there is any other business this evening for the BZA for this year.

Dwayne Hogan thanked the board and Attorney Biege because it has been a hard and busy year. Each month has been busy.

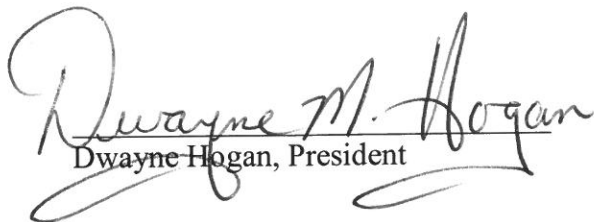
Dwayne Hogan asked for motion to adjourn.


Glen Minich made the motion to adjourn.

Earl Cunningham seconded.

All approved. Motion carried. 4-0.

There being no further business, meeting adjourned at 6:45 p.m.


Dwayne Hogan, President


Annemarie Polan, Building Commissioner