

Minutes
WARRICK COUNTY AREA BOARD OF ZONING APPEALS
Regular meeting to be held in the Commissioners Meeting Room,
Third Floor, Historic Courthouse,
Boonville, Indiana
January 23, 2023 at 6:00 P.M.

PLEDGE OF ALLEGIANCE:

MEMBERS PRESENT: Terry Dayvolt, Chairman; Jeff Valiant, Jeff Willis, Mike Winge, Doris Horn, Paul Keller, & Mike Moesner.

Mrs. Barnhill stated we do have a quorum.

Also present was Morrie Doll, Attorney, Molly Barnhill, Executive Director, Kim Eden, staff.

MEMBERS ABSENT:

ELECTION OF OFFICERS:

Mrs. Barnhill stated the first order of business is to elect a Chairman of the Warrick County Board of Zoning Appeals to serve during 2023. She asked do we have any nominations.

Mike Winge stated I would like to nominate Mike Moesner.

Doris Horn stated I second that.

Mike Moesner stated I would decline, I would rather nominate Terry Dayvolt.

Mrs. Barnhill stated so you are declining and you nominate Terry Dayvolt.

Mike Moesner replied yes, I do.

Mrs. Barnhill asked do we have a second for that.

Mike Winge seconded the motion.

Mrs. Barnhill asked Terry Dayvolt, do you accept.

Terry Dayvolt stated I will do it for one more year.

Mrs. Barnhill asked do we have any other nominations.

Jeff Valiant stated move to close nominations.

Mrs. Barnhill stated Terry is nominated all in favor.

All Board members responded aye.

Mrs. Barnhill stated nominated by acclamation. She said it is all yours.

Chairman Dayvolt stated we need to elect a Vice Chairman.

Jeff Valiant stated I nominate Doris Horn.

Jeff Willis stated second that.

Chairman Dayvolt stated we have a nomination and a second. He asked do you accept.

Doris Horn replied yes, I do.

Chairman Dayvolt asked all in favor. The motion carried unanimously.

Chairman Dayvolt asked if everyone received a copy of the minutes for last month's meeting.

Jeff Valiant stated we still have to set the meeting dates.

SET MEETING DATES, TIME, AND PLACE:

Mrs. Barnhill stated meeting dates, time and place.

Chairman Dayvolt replied alright.

Mrs. Barnhill stated they are to be held on the fourth Monday at 6:00 p.m.

Attorney Doll asked do you need that.

Mrs. Barnhill stated there is a copy of it in your folder with the dates, filing deadlines, and the 21 day mailing deadline. She said the fourth Monday at 6:00 each month in the Commissioner's meeting room; same place same time. She stated the only exception is in December. The fourth week of that month is a holiday week so we will actually be closed, well the 25th is Monday.

Attorney Doll stated being Christmas.

Mrs. Barnhill replied yes. She said then we are closed the 26th, so we could either make it the 27th the first day back after two holidays or we could push it to the 18th of December, which is the Monday prior.

Mike Moesner stated I move that we make it the 18th.

Doris Horn seconded the motion and it carried unanimously.

Mrs. Barnhill said okay.

Attorney Doll asked do we need to adopt those dates.

Mrs. Barnhill asked the adoption of Rules and Regulations.

Attorney Doll replied and also of the meeting dates and times.

Jeff Valiant stated I make a motion to accept the meeting dates and times as it was presented.

Jeff Willis stated I seconded it.

Chairman Dayvolt asked all in favor.

Attorney Doll asked without a second.

Chairman Dayvolt stated Mr. Willis seconded it. The motion carried unanimously.

ADOPTION OF RULES AND REGULATIONS:

Mrs. Barnhill stated now the adoption of the....

Chairman Dayvolt stated the Rules and Regulations.

Mrs. Barnhill stated nothing has changed from last year.

Jeff Valiant stated motion to approve.

Mike Moesner seconded the motion.

Chairman Dayvolt stated motion by Mr. Winge and second by Mr. Moesner all in favor. The motion carried unanimously.

Attorney Doll asked Molly are we keeping the same filing fees. He asked those haven't changed either.

Mrs. Barnhill replied no, the fees are all the same.

Attorney Doll said okay.

Attorney Doll said now the minutes

SPECIAL USES:

Chairman Dayvolt stated first up is

BZA-SU-22-31

APPLICANT: Rustic Hills Solar, LLC by Jason Ellsworth CEO of Clenera Holdings LLC, Managing Mbr.

OWNER: Cornell Excavating, LLC by Guy Cornell III, President; Guy & Shirley Cornell by Guy Cornell III, Personal Representative; Guy III & Karen Cornell, Owners; Volkman Family Farm LLC by Brian F. Volkman, Mbr. And Joe F. Volkman, Mbr.; Ruth Norine Keller, Owner; Leonard Keller Trust, by Leonard Keller, Trustee; Theodore & Joyce Keller Trust by Joyce Keller, Trustee; William Wendell Kroeger, Owner

PREMISES AFFECTED: Property located on the East side of SR 61. Lying South of Addington Road, North of Kaiser Road, and West of Yankeetown Road. Sections 27-6S-8W & 28-6S-8W Boon Twp. *Complete legal on file*

NATURE OF THE CASE: Applicant requests a special use from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow: approximately 709 acre to be used for Commercial Solar Energy System (CSES) all in an “A” Agricultural Zoning District. *Advertised in The Standard on November 17, 2022 (Continued from December 27, 2022)*

Attorney Doll stated I recommend Mr. Chairman that you take BZA-SU-22-32 in conjunction.

Chairman Dayvolt replied yes, sir. He asked do we need a motion on that.

Attorney Doll replied no, you just need to read it in...

Chairman Dayvolt responded okay.

BZA-SU-22-32

APPLICANT: Rustic Hills Solar II, LLC by Jason Ellsworth CEO of Clenera Holdings LLC, Managing Mbr.

OWNER: Cornell Excavating, LLC by Guy Cornell III, President; Volkman Family Farm LLC by Brian F. Volkman, Mbr. And Joe F. Volkman, Mbr.; Ruth Norine Keller, Owner; Leonard Keller Trust, by Leonard Keller, Trustee; Theodore & Joyce Keller Trust by Joyce Keller, Trustee

PREMISES AFFECTED: Property located along SR 61 lying south of Roeder Road and west of Yankeetown Road. Sections 20,21,22,27,28,29-6S-8W Boon & Ohio Twp. *Complete legal on file.*

NATURE OF THE CASE: Applicant requests a special use from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow: approximately 750 acre to be used for Commercial Solar Energy System (CSES) all in an “A” Agricultural Zoning District. *Advertised in The Standard on November 17, 2022 (Continued from December 27, 2022)*

Chairman Dayvolt called for a staff report.

Mrs. Barnhill stated I did not prepare a staff report.

Attorney Doll stated this was taken under advisement from the prior hearing and held over. He said the record was deemed closed at the last hearing so this is a discussion by the Board and a motion if the Board feels so inclined to approve or deny these applications. He stated that is why we are gathered tonight.

Chairman Dayvolt asked so a motion comes first.

Mike Moesner and Paul Keller both started making a motion at the same time.

Attorney Doll said whoa, whoa, whoa.

Jeff Valiant stated we have two going at once.

Attorney Doll stated it needs to be recognized by the Chairman to make a motion.

Chairman Dayvolt responded okay.

Attorney Doll said call for a motion.

Chairman Dayvolt stated the Chair calls for a motion.

Mike Moesner stated I, Mike Moesner.

Chairman Dayvolt stated the Chair recognizes Mike Moesner.

I, Mike Moesner, in my capacity as a member of the Warrick County Board of Zoning Appeals in consideration of BZA-SU 22-31 and BZA-SU-22-32, based upon the minutes and records derived from the public hearing upon the Rustic Hills Solar and Rustic Hills Solar II applications now make the following motion:

1. Pursuant to the enabling ordinance establishing the standards for Commercial Solar Energy Systems in Warrick County, (Article V, Section 5(M) of the Warrick County Comprehensive Zoning Article) “it is the public policy of this County to prefer not to use our County’s “Prime Farmland” for such purposes, which type of land is a designation assigned by U.S. Department of Agriculture defining land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber and oilseed crops.”
2. The proposed site for the Rustic Hills Solar and Rustic Hills II Solar projects has historically been used for farm crop production. It has adequate and dependable water supply from precipitation and a favorable temperature in growing season, an acceptable level of acidity or alkalinity, an acceptable content of salt or sodium, and few or not rocks. We might not define these sites as “prime farmland” but it is productive farm land.
3. These sites jointly constitute 1.4% of the total agricultural production land in Warrick County and it will be removed from agricultural use for the next 35 years.
4. Even though the combined solar projects will power about 38,000 Indiana homes the energy to be produced by these projects can be used anywhere around the world. The

size of these projects is extremely large and 50% of the power being produced will be serving multiple REMCs outside our area.

5. The problem is the approval of these projects will set a dangerous precedent to do the same thing on other Warrick County farm land.
6. We need to respect the farm land and what we have done to create and feed our people in this county and the world and that is a valid, major concern.
7. Warrick County has 25% of its land area as reclaimed non-productive land. So we have thousands of acres to attempt to locate such projects upon which will both enhance the value of the county and maintain the productive farm land we already have.
8. Even the applicant testified they recognized these issues as valid concerns.
9. This project will receive tax abatement for a number of years which diminishes the economic benefit to Warrick County.
10. The project does not create appreciable ongoing employment opportunities for Warrick County residents.
11. The property taxes paid to Warrick County will be retained by the TIF district and not be available for use upon General Fund expenditures for the betterment of all county citizens.
12. Planning and Zoning has a place in the social contract of society and sometimes it must supersede private property interests such as in this case.

For these factual reasons, I Mike Moesner, move the Warrick County Board of Zoning Appeals DENY Special Use Applications BZA-SU-22-31 and BZA-SU-22-32.

Chairman Dayvolt stated we have a motion by Mr. Moesner. He asked do we have a second.

Chairman Dayvolt stated I will second the motion.

Attorney Doll stated now, there is a second motion in your packets. He asked Mr. Chairman do you want to announce the second motion like Mike's so that the Board has both of the sets of motions in front of them for consideration or do you wish to place Mike's motion for a vote before that. He stated it is up to you. He said I have read the minutes you have the right to control the meeting so you call them in whatever order you wish.

Chairman Dayvolt said let's hear the motion...

Attorney Doll asked second motion.

Chairman Dayvolt stated second motion.

Philip Springstun stated Court of Order Morrie, if I may, Robert's Rule says you can't have two motions on the floor at one time.

Attorney Doll stated the Chairman by our rules has the ability to proceed with the order if he deems appropriate. He said so, he can do that if he wishes.

Philip Springstun replied okay.

Attorney Doll asked is there a second motion.

Paul Keller replied there is.

I, Paul Keller, in my capacity as a member of the Warrick County Board of Zoning Appeals in consideration of BZA-SU-22-31 and BZA-SU-22-32, based upon the minutes and records derived from the public hearing upon the Rustic Hills Solar and Rustic Hills Solar II applications now make the following motion:

1. Pursuant to the enabling ordinance establishing the standards for Commercial Solar Energy Systems in Warrick County, "it is in the public interest to encourage the use and development of renewable commercial energy systems, such as photovoltaic cells, that enhance energy generation efforts without negatively impacting the environment.
2. It is the public policy of this County to encourage the use of commercial solar energy collection systems for the generation of commercial energy without unduly limiting such systems.
3. The good attributes of the proposed CSES outweighs the negative aspects of this project such as the lack of battery storage facilities at this site. In the future if the applicants desire to install battery storage capabilities they will have to file a new application.
4. This project has a 35 year useful life expectancy after which the land may be returned to agricultural uses.
5. The project is good for the environment and the panels being used do not contain hazardous materials.
6. The site for the project is acceptable for financing the project.
7. There is no floodplain on the site, except for some A floodplain on the west property boundary. All development is outside the floodplain area.
8. The commercial driveways will be required to post a surety bond before obtaining any Improvement Location permits. The one drive on to Indiana SR 61 will need to be permitted through INDOT.
9. The applicant will be posting decommission bonds of \$1,394,727.50 and \$1,493,340.

10. The applications will have to provide liability insurance in the amount of at least \$2,000,000 per occurrence and \$5,000,000 in aggregate.
11. The approval needs to be conditioned on providing the missing engineer's seal on the latest site plans.
12. The joint project will generate 200 megawatts AC with 100 megawatts going to Hoosier Electric Co-operative and the second 100 megawatts going to CenterPoint starting in 2026. Both have long term power purchase contracts.
13. The power generated will be immediately injected onto the power grid.
14. The applicant pledged not to do any augmentation of the project once it is installed, rather it will only be replacing the modules in the event that they were damaged or broken.
15. A primary driver for this site selection was based upon the transmission grid access immediately adjacent to the site. The injection capacity on that transmission line was found to be able to accept this additional 200 Megawatts of capacity without costly upgrades.
16. The project will not be using concrete foundations for the 75,000 piers for the panels.
17. The project site plan includes all of the required minimum setbacks.
18. The vegetation buffers designs were determined after consultation with Purdue Extension and include additional vegetation screening and buffers along the key travel corridors.
19. The applicant has submitted a robust operating and maintenance plan that employs up to 35 inspection and maintenance routines.
20. The applicant has experience with 19 other projects since 2015 that are operating across the United States where they maintain a greater than 95% uptime during generation.
21. The trees and shrubs to be planted will be roughly 6-8 feet tall at the time of planting.
22. The chain link fence will be up to 8 feet high with barbwire on the top.
23. The buffer zone has been planned by a licensed landscape architect who has designed a soft buffer and not a wall of vegetation.
24. The project will be off-site monitored 24/7. A 2 person maintenance team will staff the site 40 hours per week.

25. The proximity to the Castle/Cully transmission line is an economic advantage. The site was selected because of the number of acres of contiguous suitable land that was privately owned, and knowing the SR 61 corridor was already designated for industrial and commercial development in the Comprehensive Plan and the TIF district indicated to the applicant this area was primed for development.
26. The applicant did on-site due diligence that allowed it to avoid any sensitive areas such as flood plains, or wetlands.
27. Other Warrick County areas were unsuitable because of uninterested land owners, large flood plains, seismically unstable reclaimed land, wetlands, or proximity to large subdivisions.
28. This project will power 38,000 typical homes at a capital investment cost of \$250,000,000.
29. The decreased CO2 emissions over coal will be equivalent to roughly 500,000,000 pounds per year, or approximately 25,000,000 gallons of gasoline burned annually.
30. Property tax payments of between 20 and 25 million dollars will be paid over the life of the project to the TIF district which will fund facilities within the District and youth recreation expenses.
31. Presently the applicant does not have enough evidence that the reclaimed lands are seismically stable enough to be able to finance such a project on reclaimed ground. Also the State of Indiana presently is warning against constructing improvements on previously mined sites due to subsidence, mine spoils, mine impoundments and landslides. Thus funding sources for these solar projects will not finance projects on reclaimed lands.
32. All the prerequisites have been met by the applicant for the construction of a CSES.
33. The establishment, maintenance and operation of the special use will not be injurious to the public health, safety, morals and general welfare of Warrick County. In fact Warrick County public policy encourages the development and use of energy generation that does not negatively impact the environment. A CSES does not produce pollution or noise. It is a safe, clean and reliable source of energy. It will reduce local air pollution, increase water quality and raise additional tax dollars.
34. This project has not been shown to be injurious or adverse to adjacent land values.
35. The applicant has submitted detailed landscape and vegetation screening plans to lower the impact on surrounding neighborhoods.
36. The project is consistent with the character of the district and the land use permitted therein and is consistent with the policy to protect prime farmland because the affected

land can be returned to its current use at the end of the CSES's useful life; and the land will be planted with pollinator friendly groundcover that will benefit surrounding agricultural uses.

37. The project will not adversely affect vehicular or pedestrian traffic flow, nor the adequate availability of water, sewage or storm drainage facilities, or police or fire services because it will not require significant vehicle traffic or utility service once operational.

For these factual reasons, I move the Warrick County Board of Zoning Appeals APPROVE Special Use Applications BZA-SU-22-31 and BZA-SU-22-32.

Doris Horn seconded the motion.

Chairman Dayvolt said there is a motion and a second, it is now open for discussion.

Mike Winge asked is there anything in here saying that they have to provide us with the inspections that they are supposed to have done, it needs to come to the county.

Attorney Doll said Mike that was part of the testimony at the public hearing at the application and there wasn't any governmental inspection discussed, it was just discussed in their application and in their testimony, it indicated those facts as they were reflected.

Mike Winge said well I want to be sure they are held to some kind of accountability or oversight somehow.

Attorney Doll said well you have the right to try to impose a condition on that, I don't know who would have sufficient knowledge, technical knowledge or expertise here in Warrick County to be able to oversee those.

Mike Winge said so they will provide a copy of the inspection reports to the County.

Attorney Doll said no, that wasn't what was said. He continued, they said such inspections would be occurring and that was part of their application, it was discussed I think in the oral testimony provided in support that they would be monitored 24 hours 7 days a week remotely and that 40 hours a week there would be some people on site to review, but the inspections were mainly discussed in here (holding up the binder) and in here being the applications. He said if you want the inspections to be reported to Warrick County, you could move to amend that motion and add that... that they would deliver such inspection reports. He said I don't know who you would deliver them to, or what they would do with them if they received them, but that is a detail you could include or not in your motion.

Mike Winge said I just think it would be to the County's advantage to be able to see what is being inspected, how, and what processes are being done to make sure.... We are just saying they are going to take care of it solely by their selves... I don't know where it would go either but...

Mrs. Barnhill said the things they are talking about inspecting... do you remember everything they talked about they had to inspect... Visual inspection of tracking and racking, visual inspection of general site conditions, integrity of modules, mounting sites, electrical equipment, wiring, security cameras.... There is quite a big list. She continued, do you still have your book or do you want to see it.

Mike Winge said no, my point is that they are saying that is what they are going to do but how do we know that they are really doing it without seeing something.

Mrs. Barnhill asked isn't that the point of having them submit a maintenance plan?

Mike Winge said in all my years I have seen things just go downhill because they aren't properly taken care of...

Mrs. Barnhill said right.

Mike Winge said that is a significant project is what I am saying and it is self-monitored...

Attorney Doll said if you could suggest in the form of an amendment and that the author of the motion would accept such an amendment to whom such information would be conveyed, and what would be done with it when it is conveyed. He continued I don't think anybody merely wants those reports to come to Warrick County and for nothing to happen, I mean somebody has to be able to look at them and the question gets to be do we have anybody with knowledge, with skill, to determine whether the proper maintenance is occurring on the equipment or not and I don't know who that would be.

Mike Winge said during construction of this, we have a building inspector okay and he is familiar with the electrical side, but we also could maybe get something on record that would be with the Commissioner's office or whatever that if we decided we wanted to do a safety check ourselves that we could go over and check the records, that is all I am saying. He said if we do not have them it's just their word.

Attorney Doll asked do you want those records... I'm trying to understand what you are asking for...

Mike Winge said a copy of them on file.

Attorney Doll asked do you want them to be delivered to Warrick County and if so to whom...

Mike Winge said the Commissioners.

Attorney Doll said or do you want Warrick County merely to have access to them if it decides it wants them.

Mike Winge said I would be ok with that system.

Attorney Doll said oh, Mr. Keller would have to agree to the amendment...

Paul Keller said I am fine with that, just to have access to them.

Attorney Doll said so Mike your motion is to amend Mike's motion, or Paul's motion, and you want to have language in the approval motion on the floor not to be confused with Mike's motion on the floor, you want Warrick County to have access to the maintenance records if requested.

Mike Winge said I would be happy with that.

Attorney Doll said alright so that is your motion to amend.

Paul Keller seconded the motion.

Chairman Dayvolt said so should we vote.

Attorney Doll said I don't know is there other discussion.

Jeff Valiant said hey Mike, I would say that is probably already going to be in there because it sounds like they were already working with the volunteer fire department up there so they are probably going to have, I would assume, manual safety inspections so we would be able to get that anyway I would think.

Mike Winge said I just want the ability to be able to make sure they are fulfilling it.

Jeff Valiant said I gotcha, it makes sense.

Jeff Willis said they had mentioned during the oral presentation that if some of the neighbors complained that were in the red circled areas that they would add site screening, add trees as buffers or whatever if that became an issue, I just wanted to make sure that was...

Attorney Doll said alright, so you are saying should there be...is it one neighbor Jeff or is it a group of neighbors...

Jeff Willis said I drove down one of the roads that abut to it when it snowed that one day and you can see right through there, and with the reflection off the snow, I could only imagine what it will be like in August. He said I think there might be an issue with at least some of the neighbors.

Attorney Doll said ok and so what you are saying that if neighbors plural, that is my question, is it one neighbor or neighbors, plural. He said you can have a person, one person hypothetically that no matter how many trees you plant says that it is not good enough, I want more.

Jeff Willis said right and I don't want them to be bothered with that kind of stuff so I guess neighbors, 2.

Attorney Doll said ok should neighbors complain about a lack of landscaping, would you define it that way...

Jeff Willis said or site screening...

Attorney Doll said lack of site screening.... That.

Jeff Willis said I would worry about the glare coming through hitting the...

Attorney Doll said that the applicants would be responsible for addressing those complaints that would be your motion.

Jeff Willis said yes.

Attorney Doll said Mr. Keller is that motion...

Paul Keller said that is acceptable.

Attorney Doll said ok Mr. Chairman that would be a question about second.

Chairman Dayvolt said ok so we have 2 motions and second or what do we have here.

Mrs. Barnhill said 2 amendments right.

Attorney Doll said well 2 amendments to the motion, yea that is the whole purpose.

Chairman Dayvolt said we have a motion for amendment by Mr. Winge and Mr. Willis with a second by Mr. Keller on both.

Attorney Doll asked is there any other amendments to Mr. Keller's motion that would be my question to you Mr. Chairman. He said now we haven't debated, we haven't discussed Mike's motion so that needs to be considered yes.

Mike Moesner said ok my concern is if we pass this we are going to be opening the door to more and more of these coming into the county, taking prime farm land. He said I have several articles here this is Hamilton County Indiana Planning Commission, they just passed their unified development ordinance and it says use of prime farmland for solar or ray placements at CES is not permitted and shall be the basis for the denial of a requested rezoning and or development plan approval. He said this is Hamilton County, Indiana and they just passed it this past July or August, whatever. He continued I have here an article that says Virginia residents reject massive Solar Farm Plant for the third time over environmental concerns. He said they are rejecting a clean energy developers plan to construct a massive 149 megawatts solar facility on a sprawling plot of farmland for the third time in three years. He said in their article it's here, because it is taking out farmland and they have come back with it three times and that is the third time they have rejected it and they are talking about 1500 acres again like we have here and they are rejecting it because of environmental concerns taking farmland out of production. He said Knox County, Indiana had

just a solar energy systems, they have just adopted this and again they are not supporting utilizing prime farmland for solar systems, and my concern is that if we pass this we are going to be opening the door for more and more farmland being turned into this because farmland is easy to fix, it's easy to put these things on. He continued I am not opposed to solar whatsoever but there are places that I think solar is more adaptable particularly since 25% of our county is reclaimed mine land, its sitting out there being used for pasture and things like that but not being used for productive farmland. He said if the county is going to pay for a drainage system for a development, for a sewer system for a development, why can't they plan a little bit with these solar companies and enhance some power lines in order to open up some area and that is my concern. He said well they say they are taking it out of production for 35 years and then we will put it back, I guarantee if you put it for 35 years once, even if it doesn't last 35 years, they are going to be replacing it with something else in solar for energy, you are not putting solar out there and not follow up with it. He continued so that land is going to be taken out of production forever and if you take a graph of human population it is going up like this, and farm ground is going down like this, at some point we are going to be in trouble. He said it is not just in Indiana, I'm talking about Virginia... it's all over the place and that is my concern.

Mike Winge said I want to say something about that... I have spent hours researching this... I have looked up other countries and what they do with solar...when we first heard this I was 100% against this, period... for the number one reason being that the banks require that you use farm ground. He continued, if you look and go back and study and as I was sharing earlier, they are buying up all the farm ground... China is buying up farm ground, you have the banks that are using farm ground for everything like this and they will not use the spoiled ground. He said you can build multimillion dollar homes out there on spoil ground, but you cannot stick a pole in the ground and put a solar panel on it... I understand all of that but I have to look at everything in the complete circle. He said they talk about getting rid of natural gas in some of the states and that is about as whack as you are going to get because you have to have it. He continued, you can't use solar, I have solar... I use geothermal, I very well understand all of this stuff but the bottom line is you are going to have to have fossil fuels but that still doesn't alleviate the problem we are going to have in the future... my major decision is why I am going to decide if what I am doing tonight is because businesses like Alcoa and others... they aren't going to have that guaranteed power all the time and it is going to get tougher. He said I have wrestled with this and I have been on the fence for a while but I'm just simply saying this... my decision tonight is not based on just a few little things... I have done a lot of research on this and I am trying to make a decision that I think is best for the county. He said I don't approve that when they say the banks will only loan them money on virgin soil, I don't like that at all and I think it is a corrupt situation setting up for that, and I don't approve of it but you are still only limited to what you have to work with and that is what we have to work with... I agree with Mike we are going to run out of farmland...

Jeff Willis said I understand Mike's position on the farm ground, but it is in a TIF district and in a comprehensive plan so that is going to be heavy industrial... if we do run out of farmland, it will be easy to pull the poles out of the ground and fill the holes in... if we put a big factory there, it is going to be concrete, a building, and really hard to fix...

Mike Moesner said well it wouldn't be 1500 acres though, you are talking about a lot of land there...

Mike Moesner said you could get a lot of smoke stacks in there though.

Jeff Willis said I'm worried about the farmland, but then it is already comprehensively zoned to be heavy industrial or industrial so... it's agricultural right now but it's going to be the TIF.

Terry Dayvount asked if this was industrial.

Jeff Willis said it's agricultural right now but the Comprehensive Plan says it's going to be Industrial.

Paul Keller said the TIF district already exists so if you don't have this you could have anything.

Attorney Doll said yea, anything can go in a TIF district that meets the criteria.

Jeff Willis said so the fact that if we did approve this, it wouldn't necessarily set a precedent that any farmland that comes in here... the farmland would have to be in a TIF District, have to be in an area that is zoned to be commercial or industrial... he said someone could say you set the precedents by approving this farmland but if they came in with farmland that wasn't then we could say no.

Doris Horn said something is going to be built there.

Mike Winge said in the future what they need to do is work with the power plants and Mike had a good idea, get located and get stuff moved out or run lines out to some of these areas... think ahead or turn them down when they come in.

Doris Horn said and there has been a lot of your coal mines that have went to farmers and have dug up before... the Government came in and made them reclaim it, so this is basically about the same thing. She said they are going to build something there, I am hoping that... and we don't know... we have to think of the future, we have to think of the kids...our grandkids... hopefully they can say this Board saved 700 acres of land for farm ground... we don't know that. She said this was a hard decision for me... we drove around the county, drove out of state and there is nothing more beautiful than farmland you know going out West the farm ground is beautiful, but then you get to the subdivisions and you see home after home after home or you see buildings that were commercial and 35 years later they are gone.. at least we would have the 700 acres 35 years later... that's my opinion.

Mike Winge said and they need to think ahead, in my opinion...

Doris Horn said we need to stop being greedy and think about the future kids.

Chairman Dayvount said ok and I have a different take on all of this, have any of you read SU-29, do you know what is it... it is an ordinance in our Warrick County zoning ordinance... nobody here has read it. I am going to read paragraph 13 subsection D. "*Boundaries of the track with an accurate dimensions and bearings as determined by an accurate survey in the field (which that means being out there in the field staking it) that has been balanced and closed, as well as*

physically located by monumentation. Such plot plan must delineate any wetland areas and their boundaries. He continued, do you see a survey on any of these... did you see meets and boundaries on any of these... so to me they have not fulfilled the prerequisites of the ordinance, and they were apprised of them. He said Mr. Fitzgerald was apprised of a survey of the metes and boundaries and either by neglect or pure just disregard for our Planning Commission they did not meet it... that is what I have a problem with.

Attorney Doll said well you can use that for justification to vote to deny the application or as in Paul's motion there is a missing Surveyors seal on one of the drawings I think... Engineers seal on one of the drawings and he conditioned his motion to approve on that being corrected... you can do that with a survey as well. He said there are 2 ways to treat that Terry, you could say it is serious enough that you may vote against the application or you can say as the other gentleman have tonight, I would move that we amend Paul's application, you could say this, and require them to submit a metes and bounds survey to fulfill the County Ordinance requirement.

Chairman Dayvolt said it must be important because our Commissioners wrote it into this ordinance, correct...

Attorney Doll said the committee that drafted the ordinance included it and the Commissioner's accepted the committees work.

Chairman Dayvolt said if you guys want to move it, I am on the side of not allowing it because if they can't do what is required of them... just like 32 on the motion to approve... all prerequisites have been met by the applicant for construction of the CSES, and they haven't.

Mike Winge asked if they just need to make that another motion, he'd make that motion.

Jeff Valiant seconded it.

Chairman Dayvolt said how are you going to make the motion, how is it going to read.

Mike Winge said exactly what he said.

Attorney Doll said that compliance with paragraph 13 of the county ordinance would be a precondition prior to receiving an Improvement Location Permit, I mean we do that from time to time on other applications.

Mrs. Barnhill said yes.

Chairman Dayvolt said yes but if this company is professional then they would have already had it.

Jeff Valiant said I am sure a lot of things have come through that are missing documents and missing stuff here and there that we have preapproved on those conditions.

Paul Keller said so you could add it to number 11 in the motion, the approval needs to be conditional on providing the missing engineers seal on the latest site plan.

Chairman Dayvolt said we need to strike 31-32 on the motion to approve.

Attorney Doll said that is up to Paul.

Chairman Dayvolt said that needs to be struck out of the motion Paul.

Paul Keller said well it doesn't seem consistent with us needing the engineers seal yet but that is fine.

Chairman Dayvolt said no 32 says all prerequisite....

Paul Keller said I know but it runs counter-productive with number 11 so once they get the seal it would omit everything.

Attorney Doll said so Mike you made a motion to amend paragraph 11 of Paul's motion which now reads the approval needs to be conditioned upon providing the missing engineers seal on the latest site plan and the metes and bounds survey...

Chairman Dayvolt said and feet on the ground survey.

Attorney Doll said and well that is specified in paragraph 13 of the ordinance, that is your motion and Jeff your second still stands.

Jeff Valiant said second still stands.

Attorney Doll said and Molly, do you got it.

Mrs. Barnhill said yes, I got it.

Chairman Dayvolt asked are you running out of ink yet,

Mrs. Barnhill said not yet...

Attorney Doll asked is there any other amendments to... I want to call Paul's motion, or are there any amendments to Mike's motion that the Board wants to debate or discuss or move...ok, Mr. Chairman you now have 2 motions now to debate, you will call one motion at a time... I don't care which one that is up to you. He said Mike's motion was made first...

Chairman Dayvolt said I will do Mike's motion first.

Attorney Doll said alright well we are going to do this with a roll call. He said that way it is clear when we type this record we want this to be accurate in case someone wants to contest it, so Molly will call the roll. He said this motion is Mike's motion to deny the application... both applications

by Rustic Hills, Rustic Hills 1 and Rustic Hills 2 for the reasons stated in his motion, so everybody is clear about what is being voted on... right.

Jeff Willis said do we have to say a reason that we are voting that way or...

Chairman Dayvolt said yes.

Mrs. Barnhill said ok so I will read the names off, we are doing Mikes right now... ok.

Mrs. Barnhill called Terry Dayvolt.

Chairman Dayvolt said mine is...

Attorney Doll said voting yes supports Mike's vote.

Chairman Dayvolt said I am voting yes to Mike's motion because the survey was not done and the ordinance was not fulfilled... the application was not fulfilled, and because it is farm ground.

Mrs. Barnhill said ok and farm ground, ok. She called Jeff Willis.

Jeff Willis said I am voting against Mike's motion because there is already a comprehensive plan in the TIF district that it is designed to be industrial or commercial and this will eventually be that way so it is not going.... It actually protects the farm ground instead of harming it and the fact it is in a TIF district isn't their fault... the county made that area a TIF District, they didn't...

Mrs. Barnhill called Doris Horn.

Doris Horn said no, I am voting against it because I truly believe in the future for our generation that their 700 acres will go back after 35 years and there is nothing hazardous that is being put on there and that the buffers have been put in place or are going to be put in place, it is going to be good for the county.

Mrs. Barnhill called Paul Keller.

Paul Keller said I vote against it and the reason is, I think the good outweighs the negative for this project and I think it is good for the environment and I think that we have overlooked something; that the rights of the land owners to do with their property as they want.

Attorney Doll said Mike Moesner you have stated your reasons that you are voting yes.

Mrs. Barnhill called Jeff Valiant.

Jeff Valiant said I am voting against the denial and Paul kind of stole my thunder a little bit, I think the positives outweigh the negatives of not doing it and that is where I will leave it for this.

Mrs. Barnhill said ok. She called Mike Winge.

Mike Winge said why do I have to be last.

Mrs. Barnhill said w... (Inaudible conversation and laughter by the Board)

Mike Winge said I was heavy on the other side to start with but I am going back to the good outweighs the bad, so I am going to vote no.

Mrs. Barnhill said that is 2 in favor of the negative motion and 5 opposed.

Attorney Doll said so the negative motion fails and it is defeated, alright now Paul's notion... Mr. Chairman it has to be voted on.

Mrs. Barnhill said ok for Paul's positive motion.

Chairman Dayvolt said we will now vote on the motion to approve by Mr. Keller.

Mrs. Barnhill said Terry Dayvolt, you are up first.

Chairman Dayvolt said same reasons, I vote no against it.

Mrs. Barnhill said ok, she called Jeff Willis.

Jeff Willis said I vote yes, once they meet the requirements in section 11 that we have added and meet the requirements there is no reason to vote against it.

Mrs. Barnhill called Doris Horn.

Doris Horn said I vote yes, and the reason is it is good for county with the TIF, it is good for the environment, it's a good project and it thinks about the future for our younger generation.

Mrs. Barnhill called Paul Keller.

Paul Keller said I will just stand by the motion.

Mrs. Barnhill said ok got it, Mike Moesner.

Mike Moesner said again I will vote no for the reason we are setting a precedent here that it is going to open up farmland to be turned into solar.

Mrs. Barnhill called Jeff Valiant.

Jeff Valiant said I vote for this one and I will say a little more this time, this county in my opinion... you get out and look around in other states and in other areas a lot of people have solar power and I feel that our county is behind the 8-ball on that Everybody says it is a way of the future but it's already here and now and I think that this county is behind on that. He said farm ground, as

much as I hate to lose the 1.4%, I think we are all going to appreciate the electricity more for the immediate future so I am for this project.

Mrs. Barnhill called Mike Winge.

Mike Winge said I am going to vote for it, a lot of reasons being it is a lot less stable than a whole power plant because the rain and storms... everything else that comes along with it but I still think the good outweighs the bad so for that reason I am voting yes.

Mrs. Barnhill said alright, so we have 2 opposed and 5 in favor of the motion to approve it, so this motion would carry.

Phil Springstun called out from the audience, can I ask a couple questions.

Attorney Doll said no, not really.

Phil Springstun said it would be a clarification questions.

Attorney Doll said no, I am sorry.

Chairman Dayvolt said ok, it's time to move on.

VARIANCES:

BZA-V-23-01

APPLICANT & OWNER: Hashim & Minahil Hussain

PREMISES AFFECTED: Property located on the north side of Pebble Creek Dr. approximately 0 feet NW of the intersection formed by Pebble Creek Dr and Montgomery Ct. Ohio Twp. 22-6-9 3547 Montgomery Ct

NATURE OF THE CASE: Applicant requests a variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow a six (6) foot tall privacy fence in a required street side yard thus requesting a two (2) feet relaxation from the regular height requirements of four (4) feet, all in an "R-2B" Multiple Family Apartments Zoning District
Advertised in The Standard January 12, 2023

Jim Morley Jr. said Jim Morley Jr. project engineer.

Chairman Dayvolt said are the owners here please, if so come up and sign in.

Minahil Hussain came and signed in.

Mrs. Barnhill asked do you want a staff report.

Chairman Dayvolt said yes mam.

Mrs. Barnhill said their notices, we have all of the green cards to the adjacent property owners, existing land use is a single-family dwelling. She continued surrounding zoning and land use is as follows, to the northeast and west R-2B multiple family apartment-zoning district and some are vacant in Pebble Creek Subdivision that is being developed, to the south is R-2B PUD with vacant or single-family dwellings in Pebble Creek Subdivision number 2. She said there is no flood plain and they have an existing driveway on Pebble Creek Drive. She said we do have an email from the Warrick County Engineer Bobby Howard, saying that he is fine with the fence, he reviewed the site distance at the intersections there because this lot is 3 sided with the road. She continued the applicant statement says the applicant is requesting the variance to preserve the privacy of his backyard patio, the applicant believes the code errors on the side of caution by only allowing a 4 foot fence in the side yard of a corner lot to try to preserve adequate stopping site distance in all situations. She continued however, this particular use stopping site distance has been checked by a licensed engineer and is shown to be adequate so the application would be in order.

Jim Morley Jr. said so on the front page is kind of where in the world is this, this is kind of 500 feet north of Walmart in Newburgh just along Bell Rd. He said so when this subdivision was done, because of the irregular shape of the property there are some unique lots in there that have roads on 3 sides of them which is relatively uncommon in a residential subdivision but because of the unique shape of the property, that is the way it played out. He said so they have built their house and they want to put a privacy fence in their backyard and it seems like half the houses in the world wants a privacy fence in their backyard, but it is understandable considering they have roads on 3 sides of them. He continued so they are seeking to put, where the pink line is, a 6-foot privacy fence. He said the Ordinance says you can't have a 6 foot fence in a side yard because of some safety issues, there was a question that we worked through with the County Engineers office, we went out and did a site distance check to make sure that when this fence is put in, it doesn't block the intersection site distance and in fact it does not, and Bobby agreed with that... so we are seeking a Variance to allow for the fence to be installed so they can have some privacy in their backyard versus watching cars on 3 sides.

Attorney Doll said how high.

Jim Morley Jr said 6 foot, just a standard privacy fence.

Chairman Dayvolt said any questions, questions by the Board... seeing none is there anybody here for or against this project... anybody here for or against this project. He asked again are there any questions by the Board. He said seeing none I will entertain a motion.

I, Jeff Valiant , make a motion to approve the Variance Application based upon and including the following findings of fact:

1. The grant of the Variance will not be injurious to the public health, safety, morals, and general welfare of the Community. As such, it is further found that the granting of the Variance shall not be materially detrimental to the public welfare.
2. The use or value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. As such, it is further found that the granting of

the Variance shall not result in substantial detriment to adjacent property or the surrounding neighborhood.

3. The need for the Variance arises from some condition peculiar to the property involved. The peculiar condition constituting a hardship is unique to the property involved or so limited to such a small number of properties that it constitutes a marked exception to the property in the neighborhood. Such condition is the size and shape of the lot and 3 sides of road.
4. The strict application of the terms of the Warrick County Comprehensive Zoning Ordinance will constitute a practical difficulty, unusual and unnecessary hardship if applied to the property for which the Variance is sought.
5. The approval does not interfere substantially with the Warrick County Comprehensive Zoning Ordinance adopted pursuant to IC 36-7-4-500 et seq.
6. The granting of the Variance is necessary in order to preserve a substantial property right of the petitioner to use the property in a reasonable manner, and not merely to allow the petitioner some opportunity to use his property in a more profitable way or to sell it at a greater profit.
7. That the hardship to the applicant's use of the property was not self-created by any person having an interest in the property nor is the result of mere disregard for or ignorance of the provisions of the Warrick County Comprehensive Zoning Ordinance.
8. The approval of the requested Variance is the least modification of applicable regulations possible so that the substantial intent and purpose of those regulations contained in the Warrick County Comprehensive Zoning Ordinance shall be preserved.
9. This Variance shall expire six (6) months after this date, UNLESS a Permit based upon and incorporating this Variance is obtained within the aforesaid six (6) month period or unless the provision of the Variance are adhered to within the aforesaid six (6) month period. Upon advance written application for good cause, a renewal for an additional six (6) month period may be granted by the Secretary of the Area Plan Commission.
10. The Variance Application is subject to the terms contained therein and the plans on file subject to the following additional conditions:

- a. Subject to the plot plan on file.
- b. Subject to the property being in compliance at all times.
- c. Subject to all public utility easements and facilities in place.

Motion was seconded by Doris Horn.

Jeff Willis asked is somebody going to mark where the fence is supposed to go before the fence company goes out there or whoever is installing it.

Jim Morley Jr said yes they are going to set it inside a foot inside the property, if they don't know where the pins are we can mark our pins up.

Jeff Willis said well my concern was, in the drawing and on the engineer said it was ok, but I am also looking here and you are in a 25' utility easement along that side...

Jim Morley Jr said yea we don't want it in the wrong spot so if they don't know where the pins are then we will go out and mark them.

Jeff Willis said ok I just want to make sure the fence doesn't go out further and block traffic.

Jim Morley Jr said I understand, originally Bill Bivins had done the subdivision and Bill has passed I believe so we have been helping them out so we can mark the pins up if they need them marked up.

Jeff Willis said I just want to make sure they don't go outside it and block site... alright I am looking at it and thinking that is a lot of utility easement there on that side yard where the fence is going.

Chairman Dayvolt said ok if there is no more discussion.

Jim Morley Jr said thanks everybody, you guys have a great night.

ATTORNEY BUSINESS:

Chairman Dayvolt asked any Attorney Business.

Attorney Doll replied none.

EXECUTIVE DIRECTOR BUSINESS:

Chairman Dayvolt asked any Executive Director business

Mrs. Barnhill replied nothing.

Mike Winge made a motion to adjourn at 7:05. Doris Horn seconded the motion and it carried unanimously.

Terry Dayvolt, Chairman

ATTEST:

The undersigned Secretary of the Warrick County Board of Zoning Appeals does hereby certify the above and foregoing is a full and complete record of the Minutes of the said Board at their monthly meeting held January 23, 2023.

Molly Barnhill, Executive Director