

Decatur County Board of Zoning Appeals Minutes
Decatur County Courthouse
150 Courthouse Square
Meeting Room

The regular scheduled meeting of the Decatur County Board of Zoning Appeals was convened at 6:30 p.m. on Wednesday, June 6, 2018, at the Decatur County Courthouse. The meeting was called to order by Paul Stone. There were 4 board members present, Janey Livingston and Melissa Scholl were absent. Also attending the meeting was Krista Duvall – Decatur County Area Plan Director and Debbie Martin – Administrative Assistant.

The minutes of the May 2, 2018 regularly scheduled BZA monthly meeting were approved as mailed.

* **BZA Petition 2018-9 – Roy Saylor** is requesting a **“RENEWAL” of the “Conditional Use”** as provided in the Decatur County Zoning Ordinance # 1135(7) to continue to sell and repair motorcycles on their property. The property is owned by the petitioner and is located at 308 N State Road 3, Westport in **Sand Creek Township**.

Roy stated that Paul Dunagan runs a motorcycle shop in the building and that he would continue to do so.

Jay; has the Westport Town Board had any complaints or issues? **Roy**; no. **Krista**; I have not had any complaints in our office. **Jay**; is this a 5 year conditional use? **Paul**; yes.

Roger Krzyzanowski made a motion to vote on BZA 2018-9, Joyce Brindley seconded with all 4 members present voting yes.

* **BZA Petition 2018-10 – Vacuum Services of Indiana/William Corya** is requesting a **“Special Exception”** as provided in the Decatur County Zoning Ordinance Section # **1206** for fuel storage and agricultural chemical storage on this property. The property is owned by Robbins Homestead LLC (Beth Tucker) and is located at County Road 350 W & W State Road 46, Greensburg in **Washington Township**.

Bill Corya (Corya for future reference) stated that he will be requesting a rezoning at the APC meeting following this meeting tonight. This is to acknowledge that we intend to have fuel storage on that 14 acres to be rezoned. **Jay**; if it is not rezoned at the APC meeting immediately following this meeting, then the vote on this petition will not be granted.

Paul; the variance request would put you into a position for what type of storage? **Corya**; whatever is feasible from a tank storage cost. Fuel (11,000-15,000 gallons), I don't want to be limited by what I say here, I don't intend to have a distribution terminal. **Roger**; so you could potentially store 30,000 gallons of fuel? **Corya**; we are in a business to clean, remove and haul away tanks, but if I purchased a tank and get a job to remove a 30,000 gallon tank it would be that amount. **Roger**; so it references fuel and chemicals, **Corya**; I don't know exactly a number,

we do operate in agriculture so we may or may not have chemicals. I don't farm but I do trucking. **Roger**; we are implementing this as an understanding under A-1 zoning with the intention of it being an I-1. **Krista**; as an I-1. **Roger**; so we are putting the cart ahead of the horse here. So then as an I-1 you will have the regulations of the IDEM and State Chemist regulations. The intention is to have diking systems? **Corya**; yes, it would be designed and approved by the engineer of the state. **Roger**; load out pass, storage pass? **Corya**; yes. **Roger**; so you won't have 14 acres of chemical storage? **Corya**; no, we don't intend to replicate what a KOVA would have. **Roger**; I just need to know what we are talking about. **Krista**; they are only planning on developing 3-4 acres at this particular time. **Corya**; I don't have a pure development plan yet but **Roger**; are you going to put this fuel and chemical storage on a certain allotted acres? **Corya**; no. **Roger**; can we make a restriction on that, otherwise we are going to open it up to the whole 14 acres. If it's zoned I-1, you have the potential to have 100% of that for chemical and fuel storage. **Krista**; we could restrict the fuel and chemical storage to a specific number of acres. **Roger**; not that I want to but 14 acres is a large number of acres to store. **Corya**; I respect what you are saying. We have a purchase agreement on the 14 acres, there are challenges on how to design the usage, and realistically we are talking off road fuel storage, on-road fuel storage and possibly gasoline storage. It's going to be 3 tanks, but where on the 14 acres it will be is not known. **Roger**; once it's rezoned I-1 and then a conditional use for chemical and fuel storage then it is that forever, so the limitations then are only on what your imagination is or who you may sell it to in the future. I just want to ask the question, if you don't limit what goes into an I-1 and you state that you are just going to do this one, does that mean all 14 acres will be able to be used for this purpose or do you have to individually state what the 14 acres will be set up as? **Paul**; there are no restrictions as far as I know of, is your concern that there would be several silos of chemical storage out there? **Roger**; I just want to know what it states. **Jay**; I don't know, I feel (Roger) that you are asking is that we don't want this to be a tank farm, but it starts out one thing and ends up another thing. That is a reasonable concern, maybe you could say a total of so many tanks. **Roger**; or the amount of acres that you are going to designate for the storage area. That doesn't mean that you cannot come back and request to use the rest as a storage area. **Corya**; I'm fairly new to this so it's hard for me to know how to react, I am buying the property but I do not have a site plan. We are in the business of trucking liquids, all non-hazardous, we need to fuel those trucks. May need to store 28% nitrogen to support the family farm, we may have some other use. I'm specifically asking for a Conditional Use for fuel storage. **Paul**; would it mitigate the concern if it were put in there that there would not be more than one acre of surface covered by tanks? **Roger**; I'm just asking a question, I don't know if we have ever covered this particularly in an I-1 zoning, even though this is in the area in the comprehensive plan to zone as I-1, but if you don't limit at least to understand what will be going into this 14 acres, such as I need 4 acres to do storage. **Corya**; it is going to be my business that we are going to put there. We operate at my father's business, farming operation, employ about 25 people and are constrained on space. Their feed business is growing and our business is growing, our business is probably isn't even really agriculture, we do agricultural business but we do other things. So we are currently operating in an A-1 and we are wanting to relocate for a more appropriate place for our business to what was designated in the comp plan as an expansion area for businesses. So we are going to build a shop there and it will look a lot like a farm or truck shop. We will have fuel storage, semis there and we may have the feed mill there 20 years from now, we don't know that at this time. As of right now this is our process and we know we will need tank storage. **Jay**; I will say that so many times, and I think what Roger is still eluding to is so many times, but not that you or everyone does it intentionally, but they request one thing and then 5 years down the road it develops into something else. I think you are

starting on a fresh piece of slate out there and everyone will be looking to see what this develops into. I think we are trying to be supportive of business growth and that is ultimately what we are all after in our community is to have controlled growth. We are also asking for a little bit of definition on number right now, not that you couldn't come back and request something later but I think Roger is trying to make sure that it is not all open ended so it looks like you ask for one thing and then it turns into another. We have gotten caught in situations before and it makes it look like we are asking hard questions, not to pinpoint you but we have just been taken advantage of. **Corya**; I can appreciate that, I can imagine 3 / 15,000 gallon tanks. Also have 4 / 30,000 gallon feed storage tanks, we truck a lot of liquid feed to farmers and there are reasons why we need to store that, we don't have the storage capacity right now. Some tanks are typically vertical but it's a function of what we can buy. **Joyce**; would it be safe to say that you might use 7 acres of the 14 acres for that? **Corya**; in my mind ½ acres would be a lot, that would be a lot of concrete to dike. I just don't know where it will be on the land. **Jay**; with this size zoning what is the policy, is that IDEM or would it be the EPA who would regulate this? **Corya**; I'm assuming IDEM because you would have the same storage requirements that a fuel station would have at that point.

Audience Questions and Comments

Jeff Whitaker; The gasoline, diesel fuel and so on, I would think that they would need to be separated in case of an explosion. Roger; just from my personal experience right now, you can have them separated and stay so far away from existing buildings and property. **Jeff**; if he has 15,000-30,000 gallon tanks, he may eat up the 14 acres to separate the stuff. What I am saying is without that information how can you contain it within so many acres. **Roger**; he's not going to be able to scatter them amongst 14 acres because it will be physically too much to contain and most times when you do have those load out stations it will require a loading pad, and other things will have to be taken into consideration. Agricultural facilities that you have that are actual commercial businesses right now are contained on less than 5 acres. **Larry Muckerheide**; I'm thinking like Roger is, this whole thing is vague, once he gets it rezoned this way do you rezone it as written or what is hearsay tonight? **Jay**; that will fall into next meeting, as far as the rezoning part, this is the BZA which is to decide the Conditional Use for the fuel tanks and storage. **Larry**; then why didn't you do that first? **Jay**; because sometimes we try to accommodate the public in allowing them to come to the BZA first, if not it would be another month, if there is not a lot on the agenda like tonight, if we can get through it, however this board reacts to this tonight it will be contingent of the favorable vote on the APC meeting following this one tonight, so really what happens here tonight is subject to rezoning. **Larry**; so if it's not rezoned, none of this will happen. **Jay**; that is correct. **Roger**; I'll give you my personal opinion, if I was to have to put this in an A-1 classification right now, I would have to say no with the information that I have, but because it's going to the APC board next they will decide whether it will go to an I-1 zoning. **Larry**; now then, he is trying to put this within 300' of my residence, his related family owns 2000 acres within a mile, so why are they trying to put it here. The other thing, if something does go wrong and has a spill, my water wells are only 27 feet deep, our water supply could be contaminated. **Roger**; it will not be open in any way shape or form. **Larry**; you assume not but things happen and then the way the land drains, if there is any spill that happens or vandalism, it will drain down the road ditches and onto my property. Then I can ask the rest for the next meeting. **Paul**; yes, this petition is for the storage tanks contingent of the application to be brought before the APC meeting. **Larry**; this gives it wide open as far as what he wants to do, he's not sure himself of what he wants to do. If things don't work out,

Loves truck stop sets on less than 14 acres so it could potentially be a truck stop here once you rezone it. He could decide to sell it and then we could possibly have a truck stop. That is my concerns and I'm just here voicing my opinion. **Paul**; that's what it's all about and you are not out of line by any means. **Larry**; I just don't know why they don't keep it where it is and build it on their own land. **Mary Kay Dinn**; if he will build right there, what is to say that Fall Fork is not going to be impacted if he has a spill? That runs through my mother's property, down by Larry's and then by my house. Our ground floods really bad and there is a well out close to that creek. What assurance does he give us that that is not going to happen and that the creek will not get polluted and impact all of us down the creek. **Paul**; what I can assure you is that because this is going to an industrial and not an agricultural zoning there is a whole other level of standards that will have to be met from a diking standpoint, anti-leak types of things. This is not the policing agency for the design of it so I cannot speak about how that assurance will lie, but what I can tell you is that IDEM standards will be utilized. That agency is not an easy one to get past. This is to ask for the storage of these chemicals, if it is approved in the next meeting, then IDEM would manage those types of issues. **Mary**; I would also like to have someone to excuse themselves from voting due to their relationship to Mr. Corya. **Jeff**; does that fall within the corridor of the comprehensive plan? **Paul**; it does. **Jay**; to follow-up with Mary, Crop Production Services which sits to the North and they would have a similar operation and the same scrutiny as Mr. Corya would be. **Mary**; they have not been doing that good of a job either. **Jay**; as far as the diking and the load out pads, it is up to everyone to do their best efforts to keep things in tact and if you see something that is wrong it is your job to report it. **Mary**; we don't like the ideal of them being across the road, industrial wise. **Paul**; I will repeat what Jeff was asking, similar to what you are saying, no matter where something like this would fall, there is probably someone who would have the same feelings. I understand and the other thing about this is that months of planning went into the comprehensive plan for the county and that area is shown as industrial expansion. There will be questions asked about what the business is, there are currently some businesses along that road already so it's not like we are going out in the middle of somewhere and dropping it where it doesn't fit either. **Mary**; we think it doesn't fit because we are farmers. **Larry**; but as a board you are adamant about preserving farm ground and farmland doesn't get any better than that there. Also, north of town there is land already zoned industrial, you wouldn't have to rezone that. **Paul**; the decision for this board is not if they are doing it in the right location, they are asking if for this location if we will approve that. **Larry**; we are trying to tell you it's not the right location, I hope you are hearing us. **Paul**; State Statute says that 3 members must vote yes, there will be 3 voting members tonight as one is abstaining. **Corya**; what are you asking me? **Paul**; because there is one absent, you have the choice to ask us to table this until the board is full. **Roger**; I really want to know what exactly I am voting on at this time, it says a special exemption in an A-1 classification. When I approach it as an A-1 classification with the intention of it being an I-1, putting the cart before the horse, I don't want to burden anyone but I also want to make sure that when I vote on something that I'm not voting on a contingency ahead of me. So, if it is something that can be done I would appreciate that it be brought to us after it was rezoned to an I-1. **Corya**; I think that is a very valid point, I think it's fair. I'm new to this process and we are trying to navigate, in light of the absence of the board member, I think we will just table it. **Paul**; we will table this until Mr. Corya requests that it be put back on the agenda.

* **Jeff Whitaker**

Jeff Whitaker stated that he has two questions, first he asked for an update on where things got left off last year with the properties with the gun range and hunting preserve and second he asked what the Board's definition is of a common nuisance.

Roger; you are referring to the Bell's? **Jeff;** yes. **Paul;** I have reviewed the minutes and it is my understanding that the board never did approve any kind of special exception to allow anything. At this point it is still a private residence with no shooting range, whether private or public approved. **Roger;** technically he had a 5 year conditional use, when that expired he came back and was not approved. Then it becomes a situation which is more of a legal matter if there is an issue. **Jeff;** a legal matter for..... **Roger;** if there is a complaint or a violation or someone who is becoming unlawful. As far as the board, we did not approve it to have a business. **Jeff;** as far as the public nuisance, an activity that is deemed public nuisance..... **Roger;** we don't handle legal matters here, we only handle approval of what is in our ordinances. **Jeff;** is there an ordinance that states that? **Joyce;** you would have to talk to the Sheriff's department. **Jeff;** the Sheriff doesn't write the ordinances. **Krista;** a public nuisance would be under the commissioners. **Joyce;** if you have a complaint you need to start at the Sheriff's office, have you done that? **Jeff;** yes, multiple times. So as of now there are no hunting preserves in Decatur County? No legalized hunting of caged deer in Decatur County, is that right? **Jay;** I don't believe that there is. **Roger;** that was not what we were dealing with, we dealt with his business as a gun smith and shooting range that had nothing to do with any deer management of any kind. **Krista;** we never discussed the hunting. **Paul;** the request at that time..... **Jeff;** he never made a request for it..... **Roger;** as far as a hunting preserve, that was never a part of his last request. **Jeff;** so a request has never been made for that? **Roger;** there are two different farms out there that is in a different category, I don't know what he was doing there. **Krista;** my understanding was that there was a hunting preserve there by Coblenz and when he bought it he carried it over. **Jeff;** you mean you can start one of those on your own, you don't have to get permission from anybody? **Roger;** that was from quite a while ago. **Jeff;** but we have an ordinance that says 160 acres. **Roger;** I don't think that hunting preserve was ever that large. **Jeff;** it says that you have to have that much ground to have one. **Roger;** as far as I know I don't ever remember a hunting preserve in the last 20 years brought before the board, that was there before. **Jeff;** no, it wasn't there. He didn't have enough property for it. **Roger;** it was prior to me having any knowledge of it. **Jeff;** so that petition was brought in by the previous owners? Is there any record? Do you keep records, we have records that go back into the 1800's on property transfers and board decisions and so on. **Roger;** you are questioning now about a hunting preserve and about the activity of the business. As far as I'm concerned we have answered your question on the activity of the business, we ceased that. As far as the hunting preserve, that was never on our docket. **Jeff;** you ceased it, it did not cease so that is what I am asking. I'm just trying to see what was followed up on because when Drew Young retired, nothing happened, it just all came to a stop. **Roger;** are they still continuing to shoot at long range and do everything the same? **Jeff;** yes. It was going on last night until past 8 o'clock. It happens frequently, it's not like it was, I don't hear the automatic guns that they.....**Roger;** I would like to say that the board has some teeth but I don't have a lawful way of entering his property at this point and time so in order for you to do that you are going to have to get law enforcement....**Jeff;** I do? **Roger;** yes. **Jay;** my conversation with Greg Allen this week was exactly that, the place to start for the public, if you are being..... **Jeff;** when are we saying that this is the place to start? Four years ago when we started? **Jay;** this is how he answered my question when I presented it to him. I wanted his opinion so that I could come back to you with something from them. He simply said the public needs to call, it has to be documented, if there are enough calls and complaints about it, that will

deem more action from him and Andy Haggerty to go out there and investigate, if it is found that they are in violation of ordinances or laws, then it has to start there. Krista would be the next contact, to see if anything is permitted out there, if her answer is no then they would have the right to cease that operation. If there are bullets in buildings or on other property that can be located, as far as shooting a weapon on their property, everyone has that right. **Jeff**; I get that but you still have to have permission for public or private range according to the ordinance. **Roger**; he does not have it. **Joyce**; does he have a range? **Jeff**; yes, you can see it. **Krista**; I try to go by there at least a couple times a week, the last time I was out there I heard shooting and I went back to the range. Joe was back there by himself with a 9 mm, I went through the barn again, his business is gone. There was no one else out there, now that was one time and one time only. **Jeff**; one time that you were there. **Krista**; right. **Jeff**; ok, well I live there every day. **Krista**; when we get to the definition of public and private ranges, public is public, anyone can walk in off the street. Private would be Conservation Club, members only, something like that. The rest of us have a right to have our own shooting area. **Jeff**; so the ordinance doesn't (inaudible) so anybody can put in their own private range and won't have to come and ask? **Krista**; for you only. **Jeff**; so it doesn't matter where I put that mound facing your house, because it's mine, it's just going to be me wanting to shoot towards your house. **Krista**; and the first time you hit my house I call the police. **Jeff**; maybe, maybe. This is BS. **Paul**; what would you like for us to do Jeff, I'm curious what this board.... **Jeff**; well here's the thing, I don't even care if Joe shoots there for his own, just because he likes to go shoot his guns, but I would like for them to do is follow the rules. The rules said public or private, everybody that was at that board, the police, the state police, the sheriff, the attorney and everyone else that went through this said yes, you can't do that unless you come to this board because I can't go out there, to think that I could go out there and pile up my own dirt or pop cans and not have any permission from anybody with no regard to who is on the other end of the line of fire. That doesn't make any sense, if that is how it is you all need to rewrite it. **Roger**; no, it's pretty clear Jeff. I think that you are just trying to say that it's not. He has the right..... **Jeff**; I think it's clear too, he's never come for permission for any of that stuff and it's never been approved, that's what I'm saying. **Paul**; let me clarify the public vs. private thing, I think what you are envisioning as private is a person can't go out and shoot their gun and that is not what our ordinance is defining as private. **Jeff**; that's not what I said, it says public or private shooting range has to be permitted and it has to be..... **Paul**; he doesn't have a public or private one, it is his own personal thing. It's not a conservation club. **Jeff**; it doesn't say conservation club, it says private, there again this goes back to what you are saying is that I can go out there and mound up the dirt wherever and if there is a house on the other side of the dirt pile it's their tough luck because I have a right just to shoot in that direction. **Roger**; you do have that right. **Joyce**; you have that right, if you would start having complaints and they call the law on you.... **Jeff**; what would be the point in calling the police, they would do what? **Roger**; as long as the bullets are contained and all the ammunition is contained and you are shooting at a 40 yard range, he has the right to do that, unfortunately. **Paul**; I think that there is a reason that there is not something that you are asking for is how would you define something like this. **Jeff**; you would ask where it would be placed, one brings in a map of where he would put it, and you determine that he cannot put it there because he is shooting right at that house. Then you approve where he can put it in a direction that is not dangerous or fatal to a neighbor. **Roger**; we are talking about laws that are going way out of the bounds of the County, we have hunting rights, the right to bear arms. **Jeff**; then you will need to reword the ordinance. **Roger**; you will have to go higher than this because everyone has the right to shoot a gun when hunting and the unfortunate thing is is that some bullets do stray and some, even the best shooter. If it does go off and injures someone, then they

are responsible for that but unfortunately there are no laws that govern (inaudible) **Jeff**; so there is no law, but where you put your range at and which direction you shoot. **Roger**; on your property, as long as it is and is contained. **Jay**; what is really sensitive is when none of us live there and Jeff lives there, it's touchier and a more sensitive subject when you have grandchildren and a birthday party..... **Jeff**; I'm here mostly, and their other neighbor who is still dealing with this, I'm not up here for me, it's still going on right behind the neighbor. It isn't right to just let it go. **Krista**; Jeff, your recourse will be with the Commissioners because Drew Young was the attorney at that time and he took that case when he left. He wanted to stay on the case, I'm not sure where it went from there. **Roger**; I don't know what you want this board to do. **Jeff**; I come to ask the question if anything has happened out of what was going on last year. **Roger**; no, he has no right to open up a private, and when I say private we are not talking about individual, a private is one that has members who come to shoot. **Joyce**; personal is just for your use and no one else. **Roger**; what he was doing prior was for hire, it was out of our ordinances and we ceased that. **Joyce**; does he still have people come in and stay? **Jeff**; I honestly cannot answer that question because I don't police him. There is a line of woods between him and I, I cannot see from my house, I can hear the 50 caliber guns going off constantly. **Joyce**; does the neighbor see anything? **Jeff**; I cannot answer that, the creek and the foliage is between them. It is somewhat secluded. **Roger**; the unfortunate thing is is that when he first brought it before this board, it quickly decelerated to something else. The first request was just on the 12 acre parcel, I don't remember exactly. None of what we approved at that point in time is what he did. We stopped that. The unfortunate thing is is that he still thinks that he can irritate, cause problems in the neighborhood and I'm assuming the loud noises are what you are hearing. If you see bullets whizzing by your place, you definitely better be calling someone who can be getting on it. **Jeff**; if bullets come past my place I'll take care of it myself. I won't be calling someone and waiting 45 minutes for them to show up. But that is another story. It's just that it is no different than what it was, there is an elderly guy who is a veteran and is having trouble and shouldn't be subjected to that. They say they will move it all out of town but then it still just goes on. But you are telling me that private doesn't mean that he needs any permission. That the ordinance that says public or private that it doesn't mean on private property. **Roger**; public or private organized firing ranges, and if we need to change that, it's fine but it will not change the personal use of that gun. **Jeff**; I understand that Roger. I'm not against guns. **Jay**; Jeff, I brought this up with Greg Allen and I explained the situation with the elderly neighbor and I told him that he is not being sensitive, he is way too close to a lot of homes, he is well within 1320', we have already proved that so by right he shouldn't be doing that there. The other thing is that he just needs to be a better neighbor. **Jeff**; there is no ordinance for that. **Roger**; I don't know what we can do to help alleviate the problem. **Jeff**; I just wanted to know if anything had changed. **Roger**; he has no legal right to operate the business that he had prior to and that business did not even consist of what he did. **Jay**; the Sheriff is looking at the logs, and if there is nothing logged then that means no activity out there. **Jeff**; that doesn't mean there is no activity, nobody will do anything. As far as that, with all due respect to the Sheriff, his guys were out there doing it too and everybody knows that also and thought it was ok. The State Police went out there and thought it was great. It doesn't matter, that is not what the law was. The only thing I asked them to do was to enforce the law. Thanks for your time.

With no other business to be brought before the board the meeting was adjourned at 7:23 p.m.

Decatur County Board of Zoning Appeal

Secretary, Joyce Brindley

Decatur County Area Plan Commission

ATTEST:

Paul Stone

Decatur County Board of Zoning Appeals