

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, September 7, 2022 at the Decatur County Courthouse. The meeting was called to order by Brad Schutte. All 5 board members were present. Also attending the meeting was Melissa Scholl – BZA Attorney, Krista Duvall – Decatur County Area Plan Director and Debbie Martin – Administrative Assistant.

Approval of Minutes: July 6, 2022 – Joyce Brindley made a motion to approve the minutes as mailed; Janey Livingston seconded the motion with all members present voting yes.

* **Approval of Minutes: July 26, 2022** – Gary Fischer made a motion to approve the minutes as mailed; Joyce Brindley seconded the motion with all members present voting yes.

* **BZA Petition 2022-10 – Walter Johnson** is requesting a “Variance” as provided in Decatur County Ordinance #330 to build a pond across property lines. Property is located at 13667 S State Rd 3, Westport in **Jackson Township**.

Walter Johnson: Due to the ordinance on ponds not being able to cross property lines, I own both properties and Krista said that doesn't matter. This property is landlocked and the only way to get to it is through my property where my house is. The other reason it is landlocked, even though it is on State Road 3, the property has Poplar Root Creek that borders the highway, the road frontage, so it has no road frontage either. My experience with INDOT has been, I have done work for INDOT and there is no way that they will ever give a permit to build a bridge on their right of way. With that being said, I kind of felt like it was worth coming here and talking to you guys, this isn't extraordinary circumstance, I would like to go ahead and extend my pond and I want to do it right so I don't have to worry about down the road there being an issue. **Brad;** basically what we would be doing is granting Walt a variance to allow him to basically go against our ordinance, just so you guys understand what we would be doing here. **Joyce;** what exactly are you changing other than the size? **Walter;** we wouldn't change any drainage. **Joyce;** and does that pond after you change that, is it going to have different ways of getting water out of it? **Walter;** it would still be that same way it is now. **Joyce;** do you have contacted the property owners close to you? **Walter;** they have been contacted through the public and they have received letters and they have contacted me and actually most of them called me and said if I needed their support, they would come in. I think it is a simpler issue, we are not breaking any laws necessarily with IDEM. **Joyce;** can you give me a reason why you want to make it bigger? **Walter;** just for my preference, it is my property and I want to make it nicer. **Brad;** is this all cut Walt? **Walter;** yes. **Brad;** you are not changing any drains? **Walter;** no, Scott Sanders came out and looked at it, I don't know what the problem would be here. From the field that drains into it is, can't remember his name now, he called me and we talked about it and he has no problem with it. **Rick;** there are no known subsurface drains that goes through that goes through that? **Walter;** no, there is not. There are no tiles or anything.

Joyce Brindley made a motion to vote on BZA 2022-10; Janey Livingston seconded the motion with all members present voting yes. **Brad;** thanks for going through the process.

*** BZA Petition 2022-7 – Open Road Renewable LLC / Ice Miller LLP – is requesting a “Special Exception”** in an A-1 zoning classification for construction of a Battery Energy Storage System facility. The property is currently owned by Robert & Elaine Vollmer and is located West of 2080 W CR 400 N, Greensburg in **Adams Township**.

Cyrus Tashakkori: I am happy to be here before the board for the third time. I will keep this relatively brief but am happy to go over any previous information that we have discussed. We are Open Road Renewables is proposing to locate a battery energy storage system (“BESS”) called Fletcher Power next to the Hoosier Energy Decatur County substation. Fletcher Power would store electricity in banks of batteries (same batteries as laptops, cell phones & electric cars) to facilitate the operation of the electric grid. BESS are safe: battery systems have advanced safety monitoring features and provide robust training to local first responders and operators, and pose no risks to groundwater. Thanks to this board and a lot of folks from the public who participated in conversations, we have improved the project and made it a lot safer and we will talk about that. Under proposed tax abatement terms, Fletcher would pay ~\$9.5 million in local tax revenue in its first 20 years of operations. I wanted to share two new slides, this really talks about an issue that we have talked extensively with staff and with Hoosier Energy and members of the public, which is to clarify what this project is and isn’t. Fletcher is not a renewable or alternative energy project, nor is it affiliated with such project. Like the adjacent substation, Fletcher would not generate power, but would manage electricity generated elsewhere on the grid. By utilizing scarce room on the existing transmission system, Fletcher would actually make a new solar/wind project more difficult to develop. We understand that county officials have now independently confirmed these points with Hoosier Energy representatives. Just a few updates, at the request of the board we went to the zoning ordinance, it doesn’t apply to this project but we used those specifications to put together a robust landscape buffering around project perimeter of the project. We have continued to engage in dozens of hours of discussion and Q&A from members of the public and county staff over the last 2 months.

We have come to agreement to address adjoining landowner concerns:

- 1) New permitting conditions that limit development of wind/solar (or a wind/solar transmission line) on adjoining land to either side of Fletcher Power
- 2) Fletcher Power will no longer own the land on either side of the project after construction
- 3) Updated landscape plans and additional permitting conditions were shared with county staff >2 weeks prior to tonight’s hearing

Referencing the overhead projection he discussed the landscape plan as pictured. Everything to the east, west and a strip to the north will not be owned or controlled by Fletcher once the construction starts. I have some backup slides but no need to go into them unless the board has questions.

Gary; Cyrus, (referencing overhead map) this is the vegetative screening here, and this is what?

Cyrus; that is the internal roadway, it is built to one of the specifications, one of the commitments, a condition I guess you call them, is to design that roadway to a specification of the EMS folks. They asked for specific material and dimensions. **Gary;** so they are having turn radiuses and all those kinds of things. **Cyrus;** exactly. **Rick;** Cyrus, I will first say that I applaud you and your company for your diligence and professionalism and willing to work with the county on the project. Just one question that came up last time and a question that maybe got altered but not in the intent I was hoping. Item C on your final commitment where it talks about the decommissioning period of 24 months, I expressed that maybe that was too excessive, can you explain why we stuck with that 24 month, I understand that sometimes things happen and to no fault of your own. **Cyrus;** honestly it was an oversight, we were asked for 12 months and we can just make that change. **Brad;** the Technical Review Committees (TRC) met and they had several questions basically legality wise, how this worked with our comp

plan. Those questions were answered to their satisfaction, as far as to whether this was considered to be a renewable energy project.

The Technical Review Committee Letter:

The consensus is: the **buffers** are too dense and take up farm ground unnecessarily – a “screen” is necessary, but a planned, maintained, visually appealing screen is a better option. **Comp Plan:** The technical review committee consulted legal counsel regarding the classification of the BESS as a “renewable energy” development. It was determined that the BESS is not a renewable energy resource, therefore it does not go against the Comp plan in this regard. The only conflict with the comp plan is the removal of tillable agricultural land. **Safety:** there are still concerns about safety but the benefits may offset those. Bryan Robbins will highlight the benefits. **EMA:** Add 5-year review of plan, this was requested by the EMA director to ensure the county is maintaining current standards in regards to BESS safety protocol. So, the Technical Review Committee is making a favorable recommendation to the BZA.

Audience:

Albert Armand; I noticed that he mentioned that there were some restrictions on running lines for renewables to this, would you elaborate on that some please? **Cyrus;** I think it is the last 2 conditions, 11 and 12 if I recall. One of them says basically that no wind or solar on any acreage outside of this project area, a 65 acres parcel, there would be a condition imposed on the remaining acreage, that would limit wind or solar. The second condition, let’s say there is a solar project somewhere else and they want to try to connect to the substation through this parcel, that transmission line similarly would not be permitted as a condition of this project on any of the adjacent acreage. If this is a solar project unrelated to this parcel, it trying to come through this particular ground, it would not be permitted. In addition to that we won’t own the land to the east and the west and a strip to the north, so it’s kind of double coverage on that concern. **Albert;** if they put in a solar farm, they could still utilize, in theory, your battery storage, is that correct? **Tim Ochs;** let me be clear, this is a stand-alone facility, it is built without a solar project anywhere near it. If there is never a solar project built anywhere near it, that is fine, we don’t care. There is not a project associated with it. This is directly adjacent to the sub-station which is right to the east of the project. Because of its proximity, whenever you have a true renewal energy project, like a solar project, you just can’t dump the electricity onto the grid. That electricity has to go to a sub-station and then the sub-station uploads it onto the grid, and so if there was going to be, if someone at some point in the future, tried to propose a solar project in the area, they have to take the electricity that their solar project is generating and they have to get that electricity to the sub-station. So, what we have done is, we’ve done two things to try to make that impossible to the extent that we can, what is in our control, to make it impossible for a solar farm developer to get to the sub-station. If they can’t get to the sub-station, they can’t build their solar project. The two things we have done, which is what Cyrus was discussing is first of all, we said on the larger acreage of which this facility is, it specifically prohibits us from granting a right for anyone to cross the property with a line that would get to the solar station, so it is like a blocking maneuver. Second, we are going to end up selling strips of property on the east, west and north side to some of the surrounding property owners and they have the ability, as the owner of that property to say we are not going to grant anything to any easements or rights of a solar project to cross that property. If there is a solar project that wants to go in Decatur County and its going to be to the west or north or really south southwest of this project, they will not be able to do it because they won’t be able to get to the sub-station. This is physically blocking that from happening. **Melissa;** are you making that restriction covenants that run with the parcels that are being sold? **Tim;** absolutely, so the way these commitments are drafted is it applies to the entirety of the 64 acres. It will be placed of record in the chain of title, regardless of who

owns it, now or in the future, it could change hands 10 times, because we put it in the chain of title it will bind all future owners. The only way it can get changed is if someone comes before this board at a public hearing and asks for it to be changed. You would have the discretion to say no. This will be placed in the chain of title to the property and will act as a blocking mechanism for portions of the county that just won't be able to get to the electric substation. I hope that answers your question.

Rick; one more question, clarification. Is that for the life of the property or the BESS system? If the BESS system was decommissioned do those commitments (inaudible) as well? **Tim;** they're a commitment in the chain of title to the property, even if someone takes the position that they go away because it is not being used, that's one of the reasons we call it belting suspenders, even if someone takes that position, because we are selling the strips to surrounding property owners, they also have the ability to block. We wanted to make sure that that wasn't an issue, we think it lasts forever until this board changes it but even if someone is clever enough to figure out a way to say that isn't true, there is still the backup which is the selling of the strips. **Brad;** and also know that Rick, this is a special exception so when that facility does go away, the special exception would leave with it and it will go back to ag. **Bill Wietlisbach;** just curious (inaudible) I'm not familiar with this property, you mentioned north and south and west, what about the east? I don't know what is there. **Brad;** that is the sub-station. **Bill;** what about when we are talking about getting power to the sub-station, what's east of the sub-station? **Brad;** a cemetery. **Audience;** to be honest with you, flat hay fields. **Bill;** what I am getting at is there is still a way to get to the solar farm, wind farm energy, it has to sub-station first. **Brad;** right but that has nothing to do with this parcel. **Bill;** correct, I'm just curious what is on the other side of the structure. **Brent Muckerheide;** I know I have said a lot during this whole process but just want to recap, quite honestly, Mark and I don't know if we can trust any neighbors, because to be honest with you because that is why we are in this situation. As far as working with us, Open Road the last couple of months has worked with us more than any other neighbor has in the past. And I have said that, even with my opposition before, I've said that about Cyrus and his professionalism. We had three main concerns, 1) safety, we have exhausted him with this, safety seems to be, just for us, it seems to be not a threat, it's more of a catastrophe type of issue which can exist in anything that you do, so we vetted it, we drilled him and we have done our own research and we feel that the safety issue is something that can fit within the community. 2) landscaping, we appreciate what you guys did in pushing the very diligent landscaping request, and for Cyrus to meet that in the fashion that he did, was I think a professional deed to the neighborhood. That is a 40-foot thick, that is like more woods than people live around. I do think that they met that obligation. 3) expansion, we already had the sub-station in there. I have property sitting in front of me that I'm still working on and didn't get any help with. Cyrus has actually the first one, nobody in this community reached out to me, he is the first one that tried to help me with Hoosier. That says a little something about his company. But expansion, he has mentioned that the land to the east and west, yes, it is a negotiation, we will both say it is fair. I think that is what a negotiation should be. There is still land to the north, he mentioned the limitations that he put on it and then he also came off a strip at the very north boundary that puts us in play if anybody tries to, I'm not a legal expert, nothing of that sort, but it does put us in play if anybody tries to do anything. So from an expansion standpoint, I feel, we are still, there is 17-18 acres to the north of their station that we have been negotiating back and forth. I think what they have done with that limitation and the (inaudible) is effective, I am a little scared that if you guys aren't on the board and somebody down the road comes, if you guys can do anything extra in your minutes or notes, I don't know how that works, to help any of that out it would be appreciated as well. But, from an expansion standpoint of this facility, I think Cyrus has worked with us better than any neighbor that we have has so far, living where we do. As a matter of fact, he is the only neighbor that talked to us about any of the sub-station or the batteries coming in. No other neighbor talked to us and I think, I hope that something in Decatur County starts to change on that. Other than that, I think everything they said, from what we have talked about has been reciprocated, they have done everything they could on that side. On the east side is my strip of land, Hoosier sits in front of me, which I am still trying to work out and would appreciate anyone's help that can help me. To the

east is another farm and another neighbor. I think until the neighbors around this area start acting like maybe neighbors that don't live around this area, we are constantly going to be worried about it. That is why we have a BZA board, to protect the integrity of the community. **Audience;** east of your driveway is locked up until they tell me different. **Brent;** so that is where we are at and I wanted to give a professional nod to Open Road, it has been a long road but Mark and I have felt that is has been fair.

Janey; I just think that both sides have done an outstanding job at presenting information, it is a lot to digest but it is appreciated. It is huge, so that you very much to both sides. **Gary;** I think as we look forward in our energy life here, as it is changing before our eyes, there is going to be more discussion of this type for this board in this county. I think this prepares this for some of those eventualities that we will be looking at. **Joyce;** I really appreciate the (inaudible) that everyone has shown.

Joyce Brindley made a motion to vote on BZA 2022-7; Janey Livingston seconded the motion. **Brad;** this will basically, we will stipulate all of the commitments with the change on the decommission period from 24-month to 12-months and then with the 40-foot buffer we will use Krista's discretion on that as far as working with you guys, as we do on most of those types of projects, because the density is a concern, I deal with those and that isn't going to grow well but the density can be corrected there and proper vegetation picked out. Melissa, is there any other commitments that you can recall that we need to add? **Melissa;** I think that is everything, I didn't see that last stuff that went out because I know it just came in this afternoon and I didn't receive like was on your slide shows. Were there any other changes that were negotiated with the property owners that weren't conveyed to us in the commitments? **Tim;** there was nothing else, everything was in the commitments that we had submitted a week or two ago.

The vote was taken with all 5 members present voting yes. **Brad;** Cyrus, your petition passes. **Tim;** I just want to say, you did have a lot of information thrown at you and we genuinely appreciate that, thank you very much. **Brad;** I will say the process worked. **Tim;** I agree. **Brad;** and it gave everybody the opportunity that they needed and as Brent mentioned, that is what this board is here for, is to protect (inaudible) it worked. **Tim;** I have appeared at over 50 jurisdictions across the state of Indiana and you guys should go on a tour and give a lecture, you did it right. **Joyce;** I think that when you send out so many things to us is that it puts our minds a little bit easier at trying to figure out what is going on. **Tim;** thank you.

Rick Hoeing made a motion to adjourn with a second from Joyce Brindley, meeting was adjourned at 7:05 p.m.

Decatur County Board of Zoning Appeal

Secretary, Janey Livingston

Decatur County Area Plan Commission

ATTEST:

Brad Schutte, President Decatur County Board of Zoning Appeals