

Floyd County Board of Zoning Appeals

Minutes

The regular meeting of the Floyd County Board of Zoning Appeals was held on **August 12, 2024 at 5pm** at the following address:

**Pineview Government Center Assembly Room 104
2524 Corydon Pike
New Albany, IN 47150**

Mr. White- announced the meeting procedure and two applicants are old business and may require extra time and the Board may extend their time.

ROLL CALL

Present: Larry Bibelhauser, Victor Unruh, Guy Heitkemper, Scott Whalen, Bill White

Absent: none

Other: Kristi Fox, Nick Creevy, Gabbrielle Adams

MINUTES

Minutes from July, 2024 regular BZA meeting

Motion: Approve

Moved by: Guy Heitkemper

Seconded by: Larry Bibelhauser

Motion passed.

Mr. Unruh and Mr. Whalen both abstained from voting since both were absent at the July meeting.

OLD BUSINESS

Agenda Item 1 – FC-04-24-16: Special Exception – Applicant is requesting a modification requests for docket FC-04-19-13 to include: 1. Amend lead abatement, 2. Add gun sales, 3. Add camping, 4. Adjust hours of operation, 5. Adjust boundary restrictions, 6. Add pistol/rifle matches, 7. Add motorcross events, 8. Add alcohol sales. Sporting Club at the Farm / Joe Crea. 4939 Highway 111 South, New Albany, IN 47150 (Parcel 22-01-02-900-001.000-001, 22-01-02-900-006.000-001, 22-01-02-800-020.000-001, 22-01-02-900-007.000-001, 22-01-02-900-011.000-001, 22-01-03-200-004.000-001, 22-01-03-100-015.000-001, 22-01-03-200-008.000-001, 22-01-03-100-003.000-001, 22-01-03-200-001.000-001). Section 04, Township 2 South, Range 5 East.

Mr. White- explained the normal time restraints and the extended times allowed. The Petitioner will have ten (10) minutes but the public comments (for and against) and the rebuttal will be given an additional five (5) minutes to each. We do have a time limit because there is a 7:00 meeting tonight.

Mr. Heitkemper- recused himself from agenda item 1 since he also sits on the Edwardsville Water Authority Board.

John Kraft- Young, Lind, Endris & Kraft. Questioned the time allotments per the FCZO and asked the Board to suspend the time restraints. He believes the FCZO allows for 15 minutes for the Petitioner, 15 minutes for public comments and 5 minutes for rebuttal.

Ms. Fox- Our last set of rules were set in place in 2022. Asked Mr. Kraft if he was referring to the 2022 rules.

Mr. Kraft- section 5.8 of 2022

Ms. Fox- section 5.8 is 'Tabling or Continuance of Public Hearings'. Thinks he is looking at an older version. She does not remember the timeframes being modified.

Mr. Kraft- initially in August 2006 they were set at 15 minutes. Did not see they were reduced to 10 minutes in 2022. For the record he will be asking to suspend the rules in relation to the time limitations.

Mr. White- the Board has followed the rules as long as he has been on the Board. Instead of wasting time over five minutes lets go ahead and move ahead and grant you 15 minutes.

Ms. Fox- 5.8 is definitely not the section. Continued to look for the correct section.

Mr. Creevy- Read Staff Report: The proposed Special Exception application was initiated in response to a request for documentation of compliance with Conditions of the previous approvals for the property to allow a Shooting Clays Club to operate in an Agricultural Residential Zone. The Conditions noted in a violation letter dated February 13, 2024 were the requirement to reclaim shooting associated materials and lead at a minimum every two years and to follow the EPA's Best Management Practices for Lead at Outdoor Shooting Ranges and the associated Environmental Stewardship Plan (ESP). In response to the Notice the applicant provided a document from Richard Peddicord, Ph.D., (contributor to EPA guidelines for outdoor shooting ranges and preparer of the ESP for the site). The document summarized the EPA guidelines regarding reclamation and provided a summary of interviews from three (3) qualified reclamation companies but did not include site specific considerations. The letter noted that the representatives agreed that reclamation more frequent than the EPA guidelines would not be justified. Dr. Peddicord did not offer a recommendation regarding lead reclamation. The applicant was notified that they would need to modify the condition imposed by the BZA through a Special Exception Modification application in order to adjust the lead reclamation interval. The applicant submitted a preliminary Special Exception application on April 5, 2024 and a final application by April 24, 2024. In addition to a modification of the lead abatement condition, the applicant included the following additional requests: - To Allow Gun Sales - To add approximately (30) thirty spaces for primitive and RV camping - To modify the shooting boundary area - To modify the hours of operation for special events to allow three (3) to five (5) after dark shooting events during the winter season - To allow a pistol and rifle training/education shooting range by appointment and a pistol/rifle annual event - To allow a motocross event - To modify the alcohol sales condition to allow the Sporting Club to sell alcohol onsite for events and to serve alcohol at the Club after 1:00pm to close. At the May 13th, 2024 BZA meeting staff requested the item be tabled to allow additional information to be provided by the applicant and to allow Edwardsville Water Corporation to provide a response due to the proximity of the operation to their water wells. The BZA tabled the application to July 8, 2024. The applicant submitted responses to BZA questions and a response from Edwardsville Water and adjacent land owners Paul and Julie Reilly was provided by June 28, 2024. The item was tabled again to August 12, 2024 due to a lack of quorum for the item at the July 8 meeting. A site visit with Sherriff Steve Bush, Bobby Brooks, and staff was

conducted on July 11, 2024 to discuss the alcohol request and the pistol and rifle request. A site inspection was also conducted of the shooting stations and decibel readings were taken. Notes and results are attached. At the time of this report, the property is in violation of several conditions already noted (Following the ESP and lead reclamation). Additionally, it is in violation of the requirements to post rules at each shooting station, shooting outside of shooting stations, and not shooting inwards and away from property boundaries. Staff was unable to verify additional complaints listed in the Reilly and Edwardsville Water Company response: shooting outside of boundary, alcohol on the range, decibel readings above the 75 dB threshold at property boundary or road, and hours of operation outside permitted times. Staff Findings: 1. The special exception WILL be injurious to the public health, safety, morals, and general welfare of the community. Site specific consideration such as the presence of wetlands, soil acidity, and the proximity to the Edwardsville Water Wells justify extreme caution in the consideration of lead and other contaminants to the environment. The ESP provided at the initial approval proposed a number of Best Management Practices to follow including regular lead reclamation, regular pH testing and treatment (as needed), site interventions to prevent lead in water bodies, among others to mitigate the risks to the environment. The conditional approval for the use as a shooting club required following the EPA's Best Management Practices and the ESP. Currently, the applicant is not compliant with this condition. Therefore, extending the lead reclamation interval at this time would pose a threat to the environment and public health. Further, the expansion of uses that support further shooting activity while the site is non-compliant with the conditions would pose a greater environmental risk and a potential hazard to Floyd County residents. Any reduction in the intervals of lead reclamation should be based on site specific data including number/weight of lead expended, soil testing, and ground water testing. The EPA Best Practices Guidance note some sites collect between 250,000 – 1,000,000 shot intervals. The SWPPP and the approved ESP suggest the site would be a "moderate" use site which suggests lead reclamation at 3-5 year intervals. Once the site is in compliance with appropriate soil treatment, station locations, and monitoring, interval adjustment may be justified. 2. The use and value of the area adjacent to the property subject to the special exception WILL be affected in a substantially adverse manner. The property is in non-compliance with conditions placed on previous approvals of the use to protect the safety, use, and value of adjacent properties. Expansion of the uses while in noncompliance will further adversely affect adjacent properties. Additionally, modification of boundary and hours of operation will result in additional noise production and intensity at neighboring residential properties and create a greater safety risk of shot leaving the property. 3. The need for the special exception DOES arise from some condition peculiar to the property involved. The property has been approved for a special exception for the existing use. The process for amending an approved special exception is through a separate special exception application. The property is large at over 100 acres with a significant portion in floodplain and a significant portion in steep slope and ridge lines. It also has several large lakes and a number of historic structures. These contribute to both a limiting of potential uses of the property allowed in an AR zone but also present unique opportunities for outdoor recreationally oriented activities. 4. The strict application of the terms of the Floyd County Zoning Ordinance WILL NOT result in an unnecessary hardship in the use of the property. The property has been approved for use as a Shooting Clays club and event host with reasonable conditions. The applicant is not in compliance with those conditions. The applicant has not provided site specific evidence to justify a modification of lead reclamation intervals aside from a summary of interviews with three (3) lead reclamation companies that were not aware of ranges collecting at two (2) year intervals for small to moderate ranges like the farm. 5. The approval of the special exception WILL NOT contradict the goals and objectives of the Floyd County Comprehensive Plan. The Sporting Club at the Farm proposed uses are characteristic of supporting the outdoor recreational use of the property in a rural setting and therefore is consistent with the Comprehensive Plan primary goal of preserving the rural character of the community. Additionally it will support the

growth of local business. Staff Recommendations: Deny the Special Exception Request. 1. Provide documentation of an executed contract with a Lead Reclamation Company within 30 days. 2. Provide an Updated ESP with documentation of progress of each Best Management Practice. 3. Locate shooting station structures at each shooting location, rules to be posted at each location, and oriented to shoot inward and away from property boundary. Re-locate shooting station over wetland area and do not shoot over wetland or any water body. Provide evidence within 30 days.

Ms. Fox- read the rules and procedures from section 5.9H, last amended in May 2022 by this Board. It is 10 minute time period for applicant, 10 minutes in favor, 10 minutes in opposition and 5 minutes for rebuttal.

Mr. White- we are still going to give you your 15 minutes, Mr. Kraft.

John Kraft- Young, Lind, Endris & Kraft at 126 West Spring Street, New Albany. Representing the applicant. Gave the Board members a petition sign by 112 individuals in support of the request [Petition was later determined to not be acceptable because it did not meet the required information standards for petitions to be considered. Also included duplicate names and minors.] Presumes the Board received the answers to their questions and made part of the record.

Mr. White- yes, they are part of the record.

Mr. Kraft- this request is to modify the original approval. Joe Crea (owner) will speak and comments from Jason Likens and Charlie Hill Tunin. Requesting to suspend the Rules in order to allow the presentation of the appropriate evidence. The most important area deals with the ESP and Best Management Practices. When this was originally approved it was placed on a two year plan. Two years was an arbitrary number with respect to the information that was provided in the original application based upon the number of shots. Gave the Board copies of Assessor's valuation records for the neighboring properties from 2019 to current. Each reflect an increase in value in his client's property and all surrounding properties since the business has been in operation. As noted by Mr. Creevy, this is a 100 acre tract and many portions are in floodplain and steep slopes. There is also large lakes and historical structures. Those conditions contribute to the fact that is a situation peculiar to the property. The Staff specifically states the approval will not contradict the goals and objectives of the Comprehensive Plan. Specially "The Sporting Club at the Farm proposed uses are characteristic of supporting the outdoor recreational use of the property in a rural setting and therefore is consistent with the Comprehensive Plan primary goal of preserving the rural character of the community. Additionally it will support the growth of local business". On the violation issues, there was a Tornado [May 8, 2023] that ran through there and some signs were removed. There were only 2-3 locations max that did not have the signage. Those have since been replaced. It was solely because of the weather. Joe Crea will speak and again requesting to suspend the rules to allow Mr. Likens and Mr. Tunin to speak.

Joe Crea- Applicant, 7209 Leafland Place, Prospect, KY. He has been a fan of The Farm since he first went there. He wants to preserve the property and make sure it taken care of. A great spot for everyone in the community and wants to protect it. As part of their commitment to environmental responsibility, they adhere to the EPA's Best Management Practices for lead and outdoor shooting ranges. That was written with consultation from Dr. Richard Peddicord, he a contributor and peer review for that document and he was the one who developed our Environmental Stewardship Plan (ESP). They determined that physical lead reclamation is not necessary at this time. Conducting lead reclamation prematurely will cause more harm than good; leading to soil erosion, damaging native vegetation and disrupt the local eco system.

Instead of focusing on thoughts or impressions, they stick to the EPA Best Management Practices, Indiana Department of Environmental Management's technical guide and to our ESP. The number one concern is to limit the mobility of lead in the soil; want to make sure where the shot falls, it remains. To do so, they make sure to maintain a pH level that is within the EPA recommendations and they do pH testing on the schedule in accordance with that. The ideal value is between 6.5-8.5 pH levels. They monitor the pH and do lime applications as necessary. They work with Premier Ag in Corydon to do the soil testing and a copy of that test was submitted. We'll work with them in September, they prefer the drier times in early fall, for their next lime application. When the pH is in that range, it's very stable and does not leach more than 2-3 inches into the soil and stays where it is. Continued testing is a key part of their ESP. They have focused on preventative measures, submitted soil samples to Premier Ag and continue to monitor levels to ensure the health of the soil. Q3 last year was their last application and applied lime at the recommended rate. The formation of lead phosphates from the lime application are very stable and insoluble, therefore minimizing environmental impact. They follow many of the best practices in the Best Practices guide, check dams that help control the flow and where sediment sets, the duck hole that the video shows is actually a detention pond that is also listed in the EPA's Best Practices to be a catch all for anything flowing. That water feature is not a wetland and instead part of the EPA best practices. Important to note that two year reclamation schedule is neither part of the EPA's best practices or in their ESP. That requirement was imposed unexpectedly at the original hearings and not line with the industry standards or guidance from environmental experts. EPA Best Management Practices emphasized that lead removal should occur at a frequency appropriate to the specific site conditions. With lead deposits far below the threshold where reclamation is necessary, believes adhering to a rigid periodic schedule would be premature and not in the best interest of environmental stewardship. As noted in the Staff Report, the 250,000 – 1,000,000 target listing is somewhat missing the complete sentence from the EPA report. That sentence said "one source indicated that when a range has thrown at least 250,000 to 1,000,000 targets depending on the shooting area, reclamation of the lead shot is encouraged" it goes on to say "another planner indicated that at least two pounds per square foot have accumulated on the range, lead reclamation would be recommended". It's like a trap or skeet field where the shot is condensed to a small spot, less than an acre, and a million targets in that space would warrant reclamation. Our shotfall area is over 30 acres so it's a much wider space. Not looking to be at the two pounds per square foot; that would put them at around 41 million targets before lead reclamation and they have no interest in that. They just want to follow the ESP and EPA's Best Management Practices, working with licensed lead reclamation companies to make sure they are doing what's right for the environment. Their goal is to balance the needs of the community with responsibility to protect the local environment, the health of the local eco system is a top priority.

Mr. White- asked for Board for recommendation on suspending the rules. Asked Mr. Kraft how much time they need to present.

Mr. Bibelhauser- asked how much more time Mr. Kraft will need.

Mr. Kraft- asking for a total of 30 minutes and likewise for opposition. As Ms. Fox would indicate that when we go into court, we are not limited on time, it's a matter of presentation or appropriate and proper evidence. We believe it's appropriate to be allowed a total of 30 minutes in order to move forward.

Mr. Unruh- has no problem with 30 minutes.

Mr. Bibelhauser- he is good with 30 minutes total

Mr. White- 30 minutes total for the Petitioner?

Mr. Unruh & Mr. Bibelhauser- Yes

The Board granted 30 minutes for the petitioner.

Jason Likens- 4206 Miners Way, Sellersburg, IN, Clark County. With his background, he is probably the only subject matter expert in this room when it comes to building ranges. For 25 years in the USAF, he traveled around testing and certifying or shutting down ranges. He has certified Norse Tactical, American Shooters and Knob Creek Gun Ranges. Safety is the number one area. The SDZ or Surface Danger Zones of possible ammunition into the berms. Per a couple of guidelines, from Unified Facilities Criteria and the NRA's Best Practices for Range Management; those are his two primary go-to's to ensure they are in compliance. This range will be for educational purposes, not an open range, it will be by strict guidelines and setting up an appointment and having a true professional as an instructor. He is a certified firearms instructor through multiple facets like the USCCA, NRA and other agencies. This portion of the range will be pistol and rifle. Pistol up to a .9mm and .308 rifle round. People get upset at the .308 round because they think it will travel so far. Per the guidelines of the NRA and the Unified Facilities Criteria, if only have to have a berm of 14 feet above the target in order to make sure you are capturing the bullet. The hills are 300 vertical feet, we only need 14 feet. That means the risk mitigation is less and get it to be the safest place to shoot. Noise pollution is a big thing, .308 round runs about 156 decibels but you have to talk about atmospheric pressure, temperature and wind direction which all have adverse effects on propagation of sound. Is there any way that we can state that someone's property is $\frac{3}{4}$ mile away, which is the closest home in the area, is that person going to hear that round. No one in this room can tell you yes or no. Inside this valley, the noise goes up and then out and the 300 foot vertical elevation will mitigate the noise pollution and all atmospheric pressure they can come up with.

Charlie Hill Tunin- 5686 Washington Blvd., Indianapolis. Board member of the National Rifle Association of America and also President of the State Rifle Pistol Association. This is usually a function of their Government Affairs Team but leadership wanted a Board member at the meeting because of the importance of this area to their association. This area happens to be the highest concentrations of their members and thinks it's important to have these resources available to their membership. Shotgun sports in particular are hard to find, there are only two in this area. The next closest is Mitchell, Crown Point and French Link. Here we have very robust youth programs, training programs and ability for members to come and shoot. They have reviewed the practices and found them to be very safe. The requirements were a little confusing, the standard of having lead remediation at a sporting clay range every two years is unheard of. This is a different facility, those rules apply to another range where there is a high level of targets that collect in one position. Usually, you look at those high concentration levels and you don't have that in sporting clays so we rely on the conditions of the area and testing. Soil testing and water testing is critical and it's really based on that. Lead mitigation is very expensive and very intrusive to land in structures. Applying a two year standard to this would be completely unnecessary and would place a hardship but also believes the cost of mitigation would create a hardship to keep the business going. They have seen it over and over again across the County. They think it needs to be based on sporting clay facility and the rule was not intended for a sporting clay facility. The NRA is number one concerned about safety first, concerned about the environment and the area. They believe that you should leave an area better than what you left it and when you look at what they've done with conservation and development of the wetlands, he thinks it's very positive. Had some other experts that were not able to attend today. This is precious resource for them and for their members. The BZA staff findings are based on hazardous findings, if you look at the current pH values of soil and water testing, there is no indication of any hazard and

thinks it really takes the wind out of the sails of all the other arguments. The NRA is invested in their members and safety and invested in this particular operation too. This is very important to our organization and members and appreciate your consideration but our upmost concern is to make sure they can continue operations, expand their role here and their role in youths.

Mr. Unruh- asked what the process is for lead abatement.

Mr. Tunin- they had a remediation project in Fortville, Indiana. They basically have scrapers that will scrape the dirt and separate the lead out. If the pH is right, it will be about 2-3 inches of soil. In his experience, when you get lead at a level where you have to remediate, it's still not at a level where its and environmental concern but it's where you want to clean it. Usually you get enough lead that's going to more than pay for the remediation itself. So under these particular rules, if every two years, you are not going to get enough lead to do anything, not going to cover the cost.

Mr. Whalen- any study on the reclaimed amount versus the projected amount to be reclaimed?

Mr. Tunin- based on number of shots?

Mr. Whalen- Yes

Mr. Tunin- yes but most is done by testing. There are studies but there are ranges where you are shooting in one area versus a sporting clay where it's spread out. Not going to get the same concentrations or hitting those critical masses at a range. There are different guidelines but it's based on the testing of the soil and things.

Mr. Whalen- so they would test the soil and concentrate on those areas?

Mr. Tunin- yes, they will test different areas, test the water, test the soil in different areas and see where we are on concentration.

Mr. Kraft- the reason for gun sales is much of what is done is education. Gun sales would be an opportunity to recommend the proper gun used. Alcohol sales, certain events take place at the Farm and those events are catered and they use the permit of the catering company. This would allow the opportunity again with specific rules and regulations pertaining to hours of use. Mr. Brooks and his staff closely monitor, there is no one that will appear on the range that appears to have alcohol in their system. The additional hours are not really expanding the hours, he is looking for a "hall pass" for special events, hosting 3-5 special events and one may be glow clays during the winter season. In doing so, based upon the hall pass situation, it would be for those annual special events only. The annual events would be pistol/rifle events and motorcross events.

Mr. Bibelhauser- asked Mr. Crea about how much pH testing was done. The document that the Board has only shows two samples. Do you have more than two test samples of pH?

Mr. Crea- that is what was requested. We can provide more, we work with Premier Ag.

Mr. Bibelhauser- but you've only taken two at this point? In five years, you've only taken two pH samples?

Mr. Crea- this was the most recent report.

Mr. Bibelhauser- have you taken more than two samples?

Mr. Crea- yes sir

Mr. Bibelhauser- how many samples have you taken in the five years?

Mr. Crea- three

Mr. Bibelhauser- three samples in five years?

Mr. Crea- yes sir

Mr. Bibelhauser- three samples in five years. Not 220 that you should have taken by this time.

Mr. Crea- where do you see 220?

Mr. Bibelhauser- in your appendix C, you are supposed to take 20 samples every six months so you should've taken 220 samples by now but you are only reporting three.

Mr. White- asked if anyone would like to speak in favor. Granting 15 minutes of time and in the interest of time 15 minutes is all we have.

Jason Sharp- Floyd County Commissioner, 3790 Kepley Road, Georgetown, Indiana. Would like to acknowledge the difficulties of this Board. He has served over 24 years as firefighter and many years as a fire investigator and many times fire investigators are required to serve as subject matter experts. They are bound to the rules as other subject matter experts are held to which ensures the science used to base their conclusions are accepted by peers and can clearly demonstrate their knowledge and expertise. Subject matter experts can be required to demonstrate their knowledge on the subject to ensure junk science is not being applied in our courts. Read all the reports from Dr. Peddicord and his knowledge and experience is more than adequate as even the EPA has used his work to develop standards at more than 100 ranges in 32 states. According to the Staff Report, the Conditional Approval required the use of the EPA and ESP best practices. Assumes the terms 'best practices' was used as those types of documents are subject to change as the science evolves. The Staff Report also states the club should be classified as moderate use which requires 3-5 reclamation cycles but once the site was in compliance with appropriate soil treatment, station locations and monitoring intervals, it could be justified. The vast majority of Mr. Brooks requests seem to very reasonable, he thinks Mr. Brooks is honest, transparent and accountable. Hopes the Board weighs the positive impact The Farm has on our local economy but also the work and instruction given back to families our community. We must all strive to protect our community but let's do so using real science not the junk science that you see criticized over the last few years.

Chris Welch- 3806 Dogwood Road, Floyds Knobs, Indiana. Knows Nick has a tough job and the Board members have been in tough situations before too, if you didn't get leniency you wouldn't go any further. Thinks we're telling the public that we don't want business in Floyd County. Yes, there are violations like the pH soil, thinks they need to do what's reasonable but it sounds unreasonable to him, asked how many times the Board has checked their pH at their homes. Asked the Board to give them leniency and approve the modification so they can continue their business and provide income to their employees.

Bobby Brooks- 840 Pfrimmers Chapel Road, Corydon, Indiana. He understands what it says and it seems like a ridiculous gap in testing but if the pH is not changing and if it was going up and down in any rate, we would continue testing that but it's not.

Mr. Bibelhauser- but we don't know that it's not because you don't have a pH from day one. Did you take pH's before you started?

Mr. Books- when we planted all those warm season native grasses, Premier Ag did their spraying, lime applications and the pH testing's.

Mr. Bibelhauser- when was that?

Mr. Books- 2019 or 2020, will have to look back, a lots happened. But we monitor that and if the pH is going up and down, I mean it doesn't change.

Mr. Bibelhauser- Bobby, you just told the guy that you took three samples and your Best Practices Guide says you are supposed to take 20 samples around the site every six months so that would've been 220 samples and you've told me you've only taken three so I'm struggling to believe that you can tell me that it's going up or down. That's all I'm saying, understand where I'm at?

Mr. Brooks- I understand that but pH has stayed where it is.

Mr. Bibelhauser- I don't think three samples can confirm that.

Gary Banet- 959 Baumann Drive South, Floyds Knobs, Indiana. Has no idea about pH water levels or anything like that. He is the President of the Board of the Charity 501c3 that operations the Sporting Club at The Farm shooting team. They have 22-23 shooters on that team that rely on Bobby and The Sporting Club at The Farm for their passion. This past year, one shooter came in second out of 700 shooters in the National Championship, some rookie shooters that are going into 6th grade that just came in second in the National Championship. Just wants everyone to understand how important it is for The Farm to continue, agrees they should do what they have to do but there are a lot of young kids that rely on The Farm to have an avenue that they wouldn't have otherwise, most of the kids are not the star baseball or football players but they have found a passion and have really succeeded. His son is one of them, not good at baseball or football but he's a dang good shooter and The Sporting Club at The Farm has provided him the opportunity in life, get scholarships, travel around the country which he wouldn't have if it's not available to him. There is a very strong youth community that relies on this program.

Brooke Hollis- 2696 Georgetown Greenville Road, Georgetown, Indiana. Works at the Farm and wants to speak on the liquor license and the staff. They are very professional, never had an accident, she is very strict and scary. All of the professionalism that will be given, that we've already been giving, will be given to the same affect if we get a liquor license passed. So, any questions, scared, no?

Jonathon Hughes- Attorney with Law Firm Bose, McKinney & Evans at 111 Monument Circle, Suite 2700, Indianapolis, Indiana, here on behalf of Paul & Julie Reilly who reside at 3934 Five Mile Lane who are here this evening. He knows the Petitioner has requested 30 minutes, he has prepared his remarks to try to keep them with the rules but they may request a similar request if other folks want to speak. Couple of things, Mr. Janak, who is with him as well from his law firm, submitted a letter dated June 20, 2024 and wants to make sure it's part of the record [Mr. Bibelhauser held up the binder submitted], wants to include

the entirety of the Floyd County Zoning Ordinance in the records and submitted a petition with 111 signatures in opposition of this request [gave copy to the board]. Some words he heard tonight really ring true for what he is here to stand in support of which is respect and responsibility and that we have folks relying on the operation of The Farm. Respect and responsibility includes following rules and those rules were established by this Board in 2019. Your Staff Report has noted a number of violations and the materials that he is going to go through now include a number of other violations and that all matters because your Zoning Ordinance says in Section 15.14 that "this Board has a duty to revoke any Conditional Use or Special Exception if such evidence is presented to the Board at a public meeting that the conditions placed on the approval of the docket have not been met". You've not only heard from Staff that they have not been met, you've heard from the Petitioner that they have not been met and you're about to hear from us that there are additional conditions that have not been met. Rather the lead reclamation of two years was unreasonable or not, was a decision in 2019 by this Board which could have been appealed. Very recently, the Indiana Court of Appeals in a case known as Chapo vs. Jefferson County Plan Commission, 224 N.E. 3d 971 (2023), they said at page 978 that "the opportunity to appeal comes immediately on the heels of the decision and if you don't appeal it, you've waived your right to challenge it". So if the condition of two years for reclamation was unreasonable, it should have been addressed in 2019 not now in 2024. He understands the evidence they've heard tonight is an attempt to say there are experts that think that's unreasonable but that time was in 2019, not tonight. There is no doubt they have failed to reclaim the lead in the time period set by this Board, they have also failed to take the number of test in the manner they said they would do and was approved by this Board. In addition, we have included in our materials the affidavit of Mr. Reilly, he is here and can testify to all these things but we want to keep matters moving so we submitted his affidavit which is submitted under the penalties of perjuries as if he were sworn in oath before the court. The affidavit establishes a number of violations, #1. Condition #5 requires the hours of operation includes no operation on Monday. Mr. Reilly has witnessed operations at this place on Monday and submitted a text message between him and Mr. Bobby Brooks on February 21, 2022 at 12:01pm, Mr. Reilly texted "Bobby, I thought your sporting clay range was supposed to be closed on Monday". Mr. Brooks said, "It's just me giving a kid a lesson. We're going to be closed the rest of the week with the weather so I'm trying to get a couple of lessons in today". Submitted a copy for the record and gave copy to the Board. Not only does Mr. Reilly's affidavit show that but this text message shows they've operated outside the hours of operation set by this Board and amended previously by applications but we cannot let them violate and then come back to amend. Additionally, there is a 300 yard buffer zone that is between Mr. Reilly's property line and the closest area of shooting. Mr. Reilly, who submitted an affidavit as well as Mr. Jordan Kaelin who also submitted an affidavit that are in the materials provided, for the record, Mr. Reilly's affidavit is at tab D and Mr. Kaelin's is tab E. Both have indicated they've watched them shoot in the buffer zone. Mr. Reilly and Mr. Kaelin both witnessed it themselves, Mr. Kaelin also indicates they would watch at The Club for Mr. Reilly to leave and then go about shooting. They've shot birds in that area but your rules clearly say no shooting in that buffer yard. Next, the failure to reclaim lead, that's condition #12. Again, the time to appeal it is passed and now we just have to say 'did you do it' and the evidence is clear they did not, they violated your condition. Alcohol sales and use, Mr. Reilly's affidavit indicates that in fact, there has been alcoholic beverages out there when they are not catered events. That would be another violation, your rule, condition #14 says 'only at catered events', you can't bring your own alcohol, you can't supply alcohol in the fridge, they have to have a catered event. Noticed when Mr. Kraft talked about alcohol he said it would be subject to the rules and regulations but again that's the problem, you set rules and regulations and they didn't follow them. They have no one to blame for that but themselves. Next is excessive decimal levels, attached to Mr. Reilly's affidavit which is tab D and then tab 1 behind that; on May 10th of this year, Mr. Reilly took a number of readings. He purchased a decimal reading that is certified for one year and this was the first time he used it. He included how much the wind was gusting, which direction it was going and the conditions that were

out there. You will see on Condition #12 it says 'maximum decimal reading at 75 decimal levels at a property line'. You will see all the times he captured at 75 or higher and there were a number of violations so they are not doing what they can to limit the sound coming to Mr. Reilly's property. That's a violation of your conditions. Next is lead shot in the waterways but will defer to Mr. Janak to talk a little more about the impact that has on Edwardsville Water and the potential water supply but Mr. Reilly and Mr. Kaelin both indicate they use lead shots in water areas. The shotfall area for example is in an area that floods and that water moves into the other basins and out. The duck hole shooting is behind exhibit K and there's a video there of them shooting directly into the duck hole which is water. Again, the idea was to not use lead. According to your Zoning Ordinance, we've got to revoke this permit and that is what we asking you to do. If you don't do that and choose to proceed to just look at the exceptions or expansions they've asked for, we would ask for you to deny those as well. We've been through the rules under the statue, what those rules are and you've seen Staff's report. We agree with Staff's report for the most part but would note they do not agree that it is a condition peculiar to the property for example to allow motorcross, to allow camping; either we need it for gun range or we need it for other uses. There is no reason we need motorcross, there's no reason why we need additional alcohol sales, there's no reason we need gun sales. That's not peculiar to the property, it's peculiar to the business and Indiana law has been clear that you have to separate the business from the property. Under Indiana law, something is peculiar to the property if it's the physical characteristics of the property. We also don't believe a clay shooting itself would be permitted under that but we are bound to the same rules, we should've appealed that decision in 2019 so I'm not saying we were not appealing the shooting anymore, we are asking you to revoke that on #1 but if this would to come back, we would say there's no reason that shooting needs to happen here either, not attacking that tonight because that was approved in 2019 and our appeal time has passed.

Mr. White- just want to make a point for the rest of the Board and those in the audience, you've mentioned a couple of times that your request would be that we revoke the prior approval and we understand that but for purposes of tonight's meeting, we are here to consider only the requests. What you're asking with regard to revoking would be something that would be addressed in a subsequence process to tonight. Just want to make sure we're clear.

Mr. Hughes- appreciates that but just a note for the record, your Zoning Ordinance says if there is a Notice of Violation, which they received, and there is an opportunity to be heard, and there is, and at such hearing evidence is presented, then it's the Boards duty and that's why I'm requesting that. Understands if the Board chooses not to follow this but all of that amounts to the biggest reason to not grant any additional expansion and that's because they haven't followed your conditions. You put conditions on it and they have not been good neighbors. They have not been responsible and they have not been respectful of the rules that were set to protect the folks that are out here. Last thing, this is all in the materials, we agree with Staff's report that this should be denied if you move to that phase, again we ask for revocation but understand it's up to the Boards discretion and we don't believe it is the Boards discretion, the rules say you have to do it but understands what the Board is saying. Asked for anyone in the audience that is in opposition to please stand. Would like the record to reflect that roughly half the room is standing.

Chris Janak- Attorney with Law Firm Bose, McKinney & Evans at 111 Monument Circle, Suite 2700, Indianapolis, Indiana. He has represented Edwardsville Water for about 25 years and during that time Edwardsville has gone from a few thousand customers to over 5,000 customers and serve a population of 10,000 individuals. They also provide wholesale water service to several utilities in the area. So they not only serve retail basis but providing portable water to other utilities, they are a regional provider in your area. The issue is water supply contamination, we were worried about it in 2019 and even more worried

about it today after what's happened over the last five years, you were worried about it in 2019 because you put these conditions that were clearly designed to protect the water supply and they have not been following it. Your ordinance says you should revoke it. At a minimum, if there's grounds for revocation, in no way shape or form should they be granted expanded use. Over the last 5-10 years, lead has been a hot button issue and thinks the Board was right to do it in 2019, we're coming not too far off the Flint Michigan lead contamination issue and it's wide spread that lead contamination is a bad thing. We certainly do not want to have a Flint Michigan situation here in Southern Indiana. Lead makes people sick, it's hard to get out of the water and you have thousands of people who are relying on the water and if for some reason it gets into the water, it could jeopardize Edwardsville's ability to provide service. What do we do then? That's major harm and very expensive to fix and most likely is more than what Edwardsville Water has. If Edwardsville doesn't have that kind of money to fix it, it's going to come the County, come to the State and if the County or State does not have the money to fix it, the rate payer will have to cover it. They are non-profit so rates will have to go up. A couple of facts, there is map in front of you that shows Edwardsville has wells that are a few thousand feet away and new wells that are hundreds of feet away. You can stand on the new well property and see the gun club, it's very close and that is your future water supply in this area of the County. The shotfall area is in a floodplain, no doubt about that, you all know this better than me, it floods. There was some indication from an NRA Board member that somehow the NRA was supportive of different time periods for lead reclamation and that somehow the EPA's and NRA's guidelines support that. We've given you a copy of the EPA guidelines, the Best Management Practices and in Chapter III - page III-16 it says this and this is the EPA's Best Management Practices, 'the NRA recommends a frequency of 1-5 years for lead cleanup even on ranges with minimal use'. That's the NRA and the EPA incorporating what they say but yet the NRA is here telling you something different. There was some indications made that shotguns are different and should have a different standard. Two paragraphs above what I just quoted in this document, says it's referring to shotgun ranges. So within two paragraphs, a couple of sentences, they are saying lead reclamation every five years. You set forth rules and they are not being followed and thinks they should revoke it until such time they can come up with new plans, site specific plans, maybe zoning for this area but at a minimum, please do not expand. It's inappropriate under the circumstances. The direction of law across the Country is to get rid of potential lead contamination, let's not have a Flint Michigan and yet here we are allowing a gun range flaunting the rules to risk lead contamination. That is inconsistent with direction of law across the Country and Indiana and for that reason we ask that you deny the request.

Mr. Bibelhauser- he contacted, thinks her name was Ms. Young with Curry & Associates and she was not aware of any actual testing you all have done of those wells to know if there is lead there now or if lead was there five years ago. Do you periodically do lead testing?

Mr. Janak- we do periodically lead testing and there has been some lead in the wells, I don't know what the status is and what I don't want to do is tell you exactly what they told you, which is we did all these pH tests. I don't know what the lead shows right now, it's periodic and part of the testing you have to submit to the State.

Mr. Bibelhauser- was just trying to see if there was a baseline established by your water company or if it has changed.

Mr. Janak- I don't know the answer to that.

Mr. Bibelhauser- I get my water from Floyds Knobs Water Company and they come to me once a year and ask me to take a sample and I get results of those and lead is one of the things that they read so I would

assume that the company has some lead readings somewhere, Just curious if you knew if it had increased or decreased, had anything changed.

Mr. Janak- I cannot not definitively tell you one way or the other.

Mr. Whelan- when was the future well site identified and selected?

Mr. Janak- it's in the report, we started doing well testing in 2018 and we talked about coming here when this was going through in 2019 and 2020 and then we found out the rules you were implementing and thought that would protect the water company. You did what we would've asked you to do anyway. It started before they did this and we're in the process, when we use these wells it depends; it could be 8 years, 10 years or 20 years but we started in 2018. We were comfortable with the restrictions you put on in 2019 and thought that protected us but we just don't have any confidence right now. We do not want this expansion to occur in light of everything that has gone on over the last five years.

Mr. Unruh- the utility operator is here, can we ask him to come forward?

Christopher Becht- 13110 Sunnybrook Drive, Memphis, Indiana. He is with Edwardsville Water Company. We do lead testing once every three years like every water company in the State of Indiana. It's not every year, it's once every three years. We do all around our system, it's not just in our wells so we know what it is. Right now, there's no lead in there but that doesn't mean it won't be in there in ten years. We test pH everyday too so we know what the ground water is too and the pH is around 7.4.

Mr. Unruh- thank you, that is helpful.

Mr. White- Asked if the Board has any other questions for the opposition. Closed public comment. Reminded the Applicant the have ten minutes for rebuttal instead of five and we are substantially over time and we still have two other agenda items to get through so we are going to stick to the ten minute limit.

Mr. Kraft- Apologized to the other applicants. Thinks it's important to look at some of the information provided in the form of affidavits because when we deal with affidavits under the penalty of perjury and a standard that is used by the courts, it's based upon personal knowledge. Both affidavits from Mr. Reilly and Mr. Kaelin in several instances they indicate "it is my understanding", not that they have personal knowledge. Specifically on the alcohol, Mr. Reilly states "it is my understanding that they have served alcohol within 200 yards of the range". So again not based on personal knowledge, he has not seen that. Same thing would hold true with other portions of his affidavit. Same thing with Mr. Kaelin, he specifically addresses that he was a former employee and indicates "during that time I became personally aware of several issues that gave me concern for the operation Sporting Club at The Farm". That is the end of the sentence and he just merely indicates that he has concerns as to lead shot in the water and likewise with regards to two million shots without reclamation, saying "I was told by managers that there were over two million rounds fired". Mr. Janak addressed the fact of the Best Practices, thinks you need to read that full area in context with regards to that page. That page can be found in the Best Practices in regards to shotgun ranges and the amount of shot that would be used. If you look at two pounds per square foot, that would require 41 million rounds in order for that to occur. As indicated, his clients desire to extend this and specifically addressing the fact and you just heard the representative of Edwardsville Water. Mr. Kraft is also a customer of Edwardsville Water so he will not jeopardize his own health but you heard him

indicate there is no lead. The NRA representative, Mr. Tunin, specifically addressing the fact of how it's done and how much into the soil it goes and what ultimately needs to be done.

Mr. Crea- the wells that we are looking at are a mile away from their closest station, not even to the shot fall area and lead mobility is estimated at 2-3 inches, so very low risk from that. They appreciate the Board and the Community, they don't want to create an adversarial type thing, want to work together with the neighbors. They have reached out to the neighbors, sat and talked with them, offered to have them come out and speak. We want to avoid any misinformation or perceived ill will. His heart is in having a place for the community, it's not a big money maker, it's for the employees, the kids' team or just for the people who enjoy doing it. So having a place for people who can spend time outdoors. He personally lives in a cul-de-sac, grew up in Floyds Knobs and when he moved home, the compromise was to live halfway between their parents so this area is home to him. So taking care of it, making sure they are doing the best by it and treating it with respect and having places like this available is something that is really important. In doing so, adding some of these items they are requesting to help make sure they can continue business, able to keep the lights on, profit where they can, bring in new practices and new activities for folks in the area, is something they think is best for all in the long term.

Mr. Kraft- as indicated, this is a request for modifications to the original approval. Asking they be granted those request. Keep in mind the numbers given to each item and specifically each particular request, if you would give proper consideration to each of those separately as you go through the findings, it would be appreciated, especially in light of the Staff Report on the positives that come out of that, and likewise from the evidence and information provided from Mr. Likens, Mr. Tunin and Mr. Crea, we ask that you approve the request.

Mr. Whalen- asked how many soil treatments they have actually done to the area.

Mr. Crea- our last treatment was Q3 of last year, they will have another one in September of this year. Prior to that... so that was part of our ESP as far as prepping the land so it was one of the first steps so we had to lime application at that point, monitor and then application was necessary last year and then we'll do seven pounds per 100 feet in September with Premier Ag. We have already had consultations with them.

Mr. Whalen- what is the largest event they have held so far.

Mr. Crea- weddings which are up to 400-450 is probably the largest event, parking was on site.

Mr. Bibelhauser- read the ballot. Docket FC-04-24-16, after careful review the Board finds that: 1. The special exception WILL be injurious to the public health, safety, morals, and general welfare of the community because: site specific consideration such as the presence of wetlands, soil acidity, and the proximity to the Edwardsville Water Wells justify extreme caution in the consideration of lead and other contaminate to the environment. The Environmental Stewardship Plan (ESP) provided at the initial approval proposed a number of Best Management Practices to follow including regular lead reclamation, regular pH testing and treatment (as needed), site interventions to prevent lead in water bodies, thus mitigating the risks to the environment. The conditional approval for the use as a shooting club required following the EPA's Best Management Practices and the ESP. Currently, the applicant is not compliant with these conditions. Therefore, extending the lead reclamation interval at this time would pose a threat to the environment and public health. Further, the expansion of uses that support further shooting activity while the site is non-compliant with the conditions would pose a greater environmental risk and potential

hazard to Floyd County residents. Any reduction in the intervals of lead reclamation should be based on site specific data including number/weight of lead expended, soil testing, and ground water testing. The Storm Water Pollution Prevention Plan (SWPPP) and the approved ESP suggest the site would be a "moderate" use site which suggests lead reclamation at 3-5 years intervals. 2. The use and value of the area adjacent to the property subject to the special exception WILL be affected in a substantially adverse manner because: The property is in non-compliance with conditions placed on previous approvals of the use to protect the safety, use, and value of adjacent properties. Expansion of the uses while in non-compliance may adversely affect adjacent properties. Additionally, modification of boundary and hours of operation will result in additional noise production and intensity at neighboring residential properties and create a greater safety risk of shot leaving the property. 3. The need for the special exception DOES arise from some condition peculiar to the property involved because: The property has been approved for a special exception for the current use. The process for amending an approved special exception is through a separate special exception application. The property is large at over 100 acres with a significant portion in floodplain and a significant portion in steep slope and ridge lines. It also has several large lakes and a number of historic structures. These contribute to both a limitation for potential other uses of the property allowed in an AR zone but also present unique opportunities for outdoor recreationally oriented activities. The strict application of the terms of the Floyd County Zoning Ordinance WILL NOT result in an unnecessary hardship in the use of the property because: The property has been approved for use as a Shooting Clays club and event host with reasonable conditions. The applicant is not in compliance with those conditions. The applicant has not provided site specific evidence to justify a modification of lead reclamation intervals. 5. The approval of the special exception WILL NOT contradict the goals and objectives of the Floyd County Comprehensive Plan because: The Sporting Club at the Farm proposed uses are characteristic of supporting the outdoor recreational use of the property in a rural setting and therefore is consistent with the Comprehensive Plan primary goal of preserving the rural character of the community. Additionally, it will support the growth of local business. The Board of Zoning Appeals hereby DENIES the Petitioner's Special Exception at the meeting held on the 12th day of August, 2024. Approval by the Board is subject to the completion of the following conditions: 1. Provide documentation of an executed contract with a well-qualified Lead Reclamation Company to reclaim and recycle shot consistent with EPA guidance within 30 days. Provide documentation from the contractor that the lead has been reclaimed and removed from the site and properly disposed of within 90 days. See BMP 2 for further details. 2. Provide an updated ESP with documentation of progress of each Best Management Practice within 60 days. See BMP 13 for further details. 3. Locate shooting station structures at each shooting location, rules to be posted at each location, and oriented to shoot inward and away from property boundary. Re-locate shooting station over wetland area and do not shoot over wetland or any water body. Provide evidence that this has been completed within 30 days. 4. Per BMP 5 measure the soil pH on the cumulative shot fall area. If necessary, take steps toward maintaining the soil pH between 6.5 and 8.5, per EPA for shooting ranges. Per Appendix C at each monitoring period, surficial soil pH measurements should be made at 20 or more locations within the loop of shooting positions. Immediately take 20 pH measurements at locations described in Appendix C and every three months thereafter for one year. Then return to the requirements of the BMP. Provide test results from the testing firm to Building & Development Services. If the soil pH is not within the range recommended by EPA follow the BMP 5 to bring the soil back into the recommended range. Provide proof that the amended soil meets the EPA range within 90 days of the treatment. 5. Failure to meet the conditions will initiate a \$50 per day fine and the discontinuation of lead shot at the facility until all the conditions are met.

Motion: Deny

Moved by: Larry Bibelhauser

Seconded by: Victor Unruh

Ms. Fox- you are denying so you wouldn't have conditions but you could direct Nick to send a Notice of Violation in line with the prior conditions and getting those in compliance.

Mr. Unruh- wants to second it but

Ms. Fox- they wouldn't be conditions. You would be doing the denial on the ballot but asking Nick to follow up with written violation outlining those

Mr. Unruh- some of those conditions may be unattainable, something in 30 days. He thinks it should be something agreeable by Nick. Maybe they can't get something in 30 days or accomplished in 90 days.

Mr. Creevy- that is something you can request of me, to request from them to demonstrate compliance with the existing conditions.

Mr. Unruh- yes.

Ms. Fox- and Nick has the authority under the rules to work with them on the time period and come back to the table.

Mr. Unruh- Larry did a good job but is putting lines we don't know realistic. So I seconded it.

Ms. Fox- second it without conditions though as it is a denial.

Mr. Bibelhauser- I struck out the conditions but what do I do with the five other things? Do I leave them on here?

Ms. Fox- as far as what you are wanting them to do?

Mr. Unruh- just put in there to let Nick

Ms. Fox- you are denying the application and directing Nick to send out official Notice of Violation.

Mr. Bibelhauser- hereby direct Nick to follow up on the following.

Ms. Fox- do them as two separate things. The issue of the application itself, denying that is what your ballot is. And secondly, asking the Board to vote and make a motion to allow Nick to move forward with additional violation notices, in line with your perimeters you set out in trying to accomplish those within the prior conditions.

Mr. White- in lieu of those, asked for the ballot to be restated.

Mr. Bibelhauser- the ballot is just going to end with 'The Board hereby DENIES the Petitioner's Special Exception at the meeting held on the 12th day of August, 2024'. I've dropped the five conditions at this time and then we can move forward with those five.

Mr. White- so we have a ballot.

Mr. Bibelhauser- yes

Mr. White- now do we have a second.

Mr. Unruh- you have a second, yes.

Motion: Deny

Moved by: Larry Bibelhauser

Seconded by: Victor Unruh

Motion passed.

Mr. Bibelhauser- makes motion that his previously read five conditions are followed up on by Nick based on the previous approvals.

Ms. Fox- just for clarification, you are asking Nick to look into the additional violations and getting those into compliance and coming back to this Board if they are not in compliance.

Mr. Bibelhauser- Yes ma'am.

Ms. Fox- asked Nick if he is okay with that.

Mr. Creevy- didn't catch all the timeline details but did hear the \$50 fine which does not believe we will be able to if they are either moving towards compliance or not. If they are not, we can bring it back for revocation.

Mr. Bibelhauser- lets drop the thing that says \$50 fine and I'll drop the part about lead until we get a report back from Nick.

Mr. Unruh- are we voting on something?

Ms. Fox- thinks Mr. Bibelhauser is bringing a motion and he can reframe if would like, but to have Nick send out additional violation notice for all the items currently in violation and working with the property owner to get the property into compliance.

Mr. Bibelhauser- yes, that's what I would like Nick to do.

Mr. Kraft- (from the audience) would like to make an inquiry as far as the timing and the elements. Some of these items may be as far as six months out.

Mr. Bibelhauser- and I'm willing to let Nick negotiate with your people some reasonable timeframe.

Mr. Kraft- (from the audience) just wanted to make sure because you placed those time limitations in there that are not going to be realistic.

Mr. Unruh- he erased those.

Mr. Bibelhauser- I'm willing to let those be negotiated.

Ms. Fox- and our rules allow for Mr. Creevy to do that.

Mr. Bibelhauser- but I want something done in a reasonable amount of time, I don't want this going on for two more years.

Motion: Allow Nick Creevy to follow up with Notice of Violations

Moved by: Larry Bibelhauser

Seconded by: Victor Unruh

Motion passed.

Mr. White- asked Nick to let Mr. Heitkemper know he can return.

Agenda Item 2 – FC-06-24-29: Special Exception – Applicant is requesting a Special Exception to allow a small custom cabinet making business in a Residential Rural zoned district. James Sprigler. 5159 Scottsville Road, Floyds Knobs, IN 47119 (Parcel 22-04-00-800-055.000-006). Section 08, Township 2 South, Range 6 East.

Mr. Creevy- Read Staff Report: and gave copies of the EPA report. The applicant is requesting a Special Exception to operate a custom cabinetry business at the above referenced property in a rural residential zone. The property has been used for the business for twelve years without approval. A complaint form was received of business operations at the property emitting fumes. A notice of violation was sent to the property owner after a site inspection confirming operation of a furniture and related product manufacturing business without zoning approval. The owner was directed to submit an application for Special Exception. In addition to the cabinetry operation, the property is has a legal non-conforming use as a concrete business. The concrete business run by Bob Sprigler has operated there for over 50 years. The cabinetry business operates out of an existing garage currently but has plans to move to a new 50x80 foot detached garage/pole barn to be located at the rear of the property. There is a porta potty on site that is serviced weekly. Besides the owner there is one other employee. The use of custom cabinetry manufacturer is not described in the zoning ordinance but is similar to a specialty trade workshop which is a conditional use allowed in the Zoning Ordinance in Rural Residential Zones. It may also be categorized as a very small scale Wood Product Manufacturer which is a conditional use in Agricultural Residential Zones. Adjacent Property: the property is encompassed to the north and west by the subdivision Sprigler Estates containing eight adjoining single family residence. To the south is a large farm. To the east across the street on Scottsville Road is a single family residence. Zoning for the entire area is rural residential with a mix of small lots and larger farms more similar to agricultural residential districts. There were inspections by IDEM for solid waste and air and received results from the inspection. Gave copies to the Board. The results of both were no violations observed. The air did not warrant additional IDEM permit at this time. The inspector estimated the highest potential emissions were below the limits for which an air permit would be required. The solid waste had no violations at the time, the property was in compliance. Staff Findings: 1. The special exception WILL NOT be injurious to the public health, safety, morals, and general welfare of the community. The business does not generate excessive traffic and is not used as a retail establishment. The manufacturing of cabinets does not create physical hazards that will leave the property. Equipment will be used and stored indoors. Chemical used are to be water soluble and must comply with IDEM standards. 2. The use and value of the area adjacent to the property subject to the special exception WILL NOT be affected in a substantially adverse manner. A small concrete business has operated at the site for decades with no significant impact to neighboring properties, and this business has likewise operated for over a decade with no significant impacts to the use or value of adjacent properties. The use does not generate unusual or excessive traffic, noise, or lights. The proposed structure is similar to other pole barns in the area. The property will still have the primary use as a residence. 3. The need for the special exception

DOES arise from some condition peculiar to the property involved. The property is a roughly 3 acre rural residential site with a residence and a grandfathered nonconforming use as concrete company that has operated there for over 50 years. The property is not in a subdivision and has direct access to a major collector classified roadway. The use at this scale is similar to a specialty trade workshop which is an allowable conditional use for rural residential properties. 4. The strict application of the terms of the Floyd County Zoning Ordinance WILL result in an unnecessary hardship in the use of the property. The proposed use is a relatively low impact and is similar to allowed Conditional Uses in the district. The property will remain primarily residential with a home on site. 5. The approval of the special exception WILL NOT contradict the goals and objectives of the Floyd County Comprehensive Plan. The approval will support local small business but will not significantly alter the rural character of the area. Staff Recommendations: 1. Permanent bathroom facility required for employees to be approved by the Health Department. 2. Any outside storage of materials must be fully screened by fence or wall. 3. Drive and parking spaces must be paved. 4. No signage permitted. 5. Screen workshop from adjoining residential properties following at minimum FCZO 5.09 A. Buffer Yard 1 standards (additional 5 feet setback, 1 deciduous canopy tree every 15 feet or 1 evergreen tree every 12 feet and a minimum of 6' in height). Recommended to use evergreens. 6. Hours of Operation limited to Monday through Saturday 8am – 8pm.

Mr. Heitkemper- asked who requested the EPA inspection.

Mr. Creevy- a neighbor filed a complaint.

Mr. Unruh- asked if the business was in operation on the day of the inspection.

Mr. Creevy- the reports indicate the owner was on site and showed the inspectors around.

Mr. Whalen- asked if the new building has been permitted yet.

Mr. Creevy- the building permit is on hold with us. They have received a site approval from the health department.

James Sprigler- Applicant, 5002 Lakeview Drive, Floyds Knobs. He grew up there and just wants to pursue making a living.

Mr. Unruh- asked if this was his primary income.

Mr. Sprigler- yes

Mr. Heitkemper- asked how many employees he has and if he plans on increasing

Mr. Sprigler- he has one employee and has some family members that help him, He plans on staying small. He just needs more space for operations.

Mr. Unruh- asked if he has some type of exhaust or recovering system.

Mr. Sprigler- yes, he has one now.

Mr. White- closed that section of the meeting. Asked if anyone would like to speak in favor.

Brenda Sprigler- 3835 Dogwood Road, Floyds Knobs. She owns the adjacent farm and for the required they do not have a problem with it. He does excellent work and no one knew he was there until one of the neighbors complained.

Evan Marks- 12002 Rustburg Court, Louisville, KY. He has known Mr. Sprigler for four years now. He is a carpenter by trade and owns a woodworking business. He sometimes moonlights in the shop, he met James on a jobsite and he taught him cabinet building in general, finishing and just a better practice of what he does. He has been nothing but an upstanding member of the community and an upstanding man period. He gives back to the community any way he can, they just made some church benches for a local church and we fit those in even though they didn't have the time but he could not tell them no because it was for the community. In the twelve years that he's been there, no one even knew. No reason anyone should take his means of supporting his family.

Lee Peterson- 4011 Kendall Court, Floyds Knobs. Known Mr. Sprigler over 25 years, he taught him what he's doing today but now he works for Mr. Sprigler. He's honest, doesn't lie, fights to keep his word and is the nicest guy he knows.

Bob Sprigler- 5159 Scottsville Road, Floyds Knobs. Property owner and father of the applicant. He bought the property in 1965, it was his grandma's property. He has 3.17 acres and James has the garage. If James gets this building, he gets his garage back and has a place to park in the garage.

Don Dailey- 4122 Andrea Drive, Floyds Knobs. He supports the other comments that James is probably the nicest person he has ever met. Does excellent work. He is a value to the community the way that he supports and will help anybody. He's always there, always kind and follows through with what he says.

Mr. White- Asked if anyone else would like to speak in favor. No one came forward. Asked if anyone would like to speak in opposition.

Mr. Creevy- read a letter from Jason Hollis Sprigler that is in opposition to the request. His concerns were chemical sprays being used, the exhaust fan pointed towards his property, said his fiancé and son suffered from unexplained nose bleeds for the last 8 years which he believes is a result of toxic fumes, portable toilet from A1 Porta Potty and a dumpster from Rumpke. He believes there are 2-3 employees and believes the business should be located in a commercial or industrial areas.

Kurt Shaffer- 3817 Dogwood Road, Floyds Knobs. He does not know James and has never met him. This is a residential neighborhood and James does not live at that property. Understands a person trying to better themselves but this is what industrial parks are for. Many residences of Dogwood have come to voice their concerns. Has a petition and signed affidavit that has 41 signatures from 27 households. There are two more that oppose it but they did not sign. Gave the Board a copy of the petition. At this time, the stains are non-toxic and water based. To his knowledge, there is no running water to the existing or proposed building. How will cleanups be performed? What happens to the polluted water after cleanup? Is there any effect on the ground water in the area? Wood and wood products are stored on the location. What type of suppression system is required when storing this type of flammable material? Are fire suppression systems required for buildings this size, 4000 square feet in the State of Indiana?

Mr. Unruh- it's 12,000 square feet.

Mr. Shaffer- the noise level for a typical table saw is around 100 decibels. Some neighbors can hear the saws and that's inside a concrete building which is a fairly good insulator. Concerned about the steel building absorbing sound. The intended location is 15'-30' off the property of 3-4 houses, so when they look out the kitchen window there will be a big 50'x80' building staring you in the face. The initial design there was no restrooms so they should have a sewer system and water, a building that size cannot run into the septic tank. He thinks they are already doing that. Several trucks and trailers on the property and no way to know who owns what. Although the business has been there for 12 years, they were not aware the business was not in compliance with the zoning requirements. Being in violation should not factor in granting this variance. Concerned about the additional foot traffic. No indication of hours. A commercial business will have detrimental effects on property values. How many commercial variances have been granted in the Floyds Knobs area?

Mark Greenwood- 3803 Dogwood Road, Floyds Knobs. They have had concerns for years but tried to be good neighbors and not complain. The porta potty has been visible from their yard for years. There are some old steel drums and one of them has a label that says "Clean Strip Ultra J3", it's something for the concrete business and requires a solvent degreaser to clean up. They are concerned there are chemicals being stored there. James does not live in the area so he can go home to his quiet subdivision but we will have a view of a 4,000 square foot manufacturing facility 15 behind our property.

Tonya Greenwood- 3803 Dogwood Road, Floyds Knobs. Lives directly behind the facility. They have supported James but she is concerned about safety, noise and having a 4,000 square foot building 15 feet from them. 80% of the people are opposed.

Mr. White- closed public comment.

Mr. Sprigler- nothing further to add.

Mr. Unruh- asked if the building could be moved to the opposite side of the property.

Mr. Sprigler- does not think that would be possible, there is a bit of a ravine.

Mr. Unruh- would like for him to consider it. It not possible, arborvitae, if big enough, will do a good job at screening. Would you be willing to put something like 8'-10' arborvitae to block for screening? First look at other location if it's feasible. The EPA report says it's proper and adequate, it's approved. What do you do with leftover varnish or paint?

Mr. Sprigler- its water based so it's nontoxic. No oil based.

Mr. White- asked if anyone has any questions, seeing none, asked for a ballot.

Mr. Bibelhauser- Read the ballot. Docket FC-06-24-29, after careful review the Board finds that: 1. The special exception WILL NOT be injurious to the public health, safety, morals, and general welfare of the community because: The business does not generate excessive traffic and is not used as a retail establishment. The manufacturing of cabinets does not create physical hazards that will leave the property. Equipment will be used and stored indoors. Chemical used are to be water soluble and must comply with IDEM standards. 2. The use and value of the area adjacent to the property subject to the special exception WILL NOT be affected in a substantially adverse manner because: A small concrete business has operated at the site for decades with no significant impact to neighboring properties, and

this business has likewise operated for over a decade with no significant impacts to the use or value of adjacent properties. The use does not generate unusual or excessive traffic, noise or light. The proposed structure is similar to other pole barns in the area. The property will still have the primary use as a residence. 3. The need for the special exception DOES arise from some condition peculiar to the property involved because: The property is a roughly 3 acre rural residential site with a residence and a grandfathered non-conforming use as concrete company that has operated there for over 50 years. The property is not in a subdivision and has direct access to a major collector classified roadway. The use is most similar to a specialty trade workshop which is an allowable conditional use for rural residential properties. 4. The strict application of the terms of the Floyd County Zoning Ordinance WILL result in an unnecessary hardship in the use of the property because: The proposed use is a relatively low impact and is similar to allowed Conditional Uses in the district. 5. The approval of the special exception WILL NOT contradict the goals and objectives of the Floyd County Comprehensive Plan because: The approval will support local small business but will not significantly alter the character of the area. The Board of Zoning Appeals hereby GRANTS the Petitioner's Special Exception at the meeting held on the 12th day of August, 2024. Approval by the Board is subject to the completion of the following conditions: 1. A permanent bathroom facility is required for employees and requires Health Department approval. 2. Any outside storage of materials must be fully screened by fence or wall. 3. Drive and parking must be paved. 4. No signage is permitted. 5. Screen the workshop from adjoining residential properties following FCZO 5.09 A. Buffer Yard 1 standards (additional 5 feet setback, 1 deciduous canopy tree every 15 feet or 1 evergreen tree every 12 feet and a minimum of 6' in height). 6. Hours of Operation limited to Monday through Friday 8am-6pm. [Ballot states Monday-Saturday but Monday-Friday was read aloud during the hearing] 7. Serious consideration shall be given to moving the new building to the southeast property line and behind the septic system. If built on N.E. property line doors to face away from Dogwood Road. 8. This special exception is limited to the applicant only. 9. A limit of 4 employees. 10. No exhaust toward Dogwood Road.

Motion: Approve with Conditions

Moved by: Larry Bibelhauser

Seconded by: Victor Unruh

Mr. Heitkemper- this should be for the applicant only and limit the number of employees.

Mr. Unruh- so if he grows and wants to add more employees, he'll have to come back here?

Mr. Heitkemper- yes.

Mr. Whalen- would like to add the orientation of the exhaust fans and overhead doors to face away from Dogwood Road.

Motion: Approve with Amended Conditions

Moved by: Larry Bibelhauser

Seconded by: Victor Unruh

Motion passed unanimously.

NEW BUSINESS

Agenda Item 3 – FC-07-24-34: Development Standards Variance – Applicant is requesting a reduction of the front setback requirement of 60 feet to 45 feet for a detached garage. Brad Cassetto. 3335 Gap

Hollow Road, New Albany, IN 47150 (22-05-02-000-005.000-007). Section 20, Township 3 South, Range 6 East.

Mr. Creevy- Requested to table this item until the September 9, 2024 at 5:00pm due to the time being after 7:00pm and the Plan Commission needing to start. He has spoken to the Applicant and he is fine with that.

Motion: Table

Moved by: Victor Unruh

Seconded by: Guy Heitkemper

Motion passed unanimously.

Motion: Adjourn

Moved by: Victor Unruh

Seconded by: Scott Whalen

Motion passed unanimously.

Adopted this 9th day of September, 2024.



Chairperson



Attest