

MINUTES
WARRICK COUNTY AREA BOARD OF ZONING APPEALS
Regular meeting held in Commissioners Meeting Room,
Third Floor, Historic Court House,
Boonville, IN
Monday, February 27, 2012, 6:00 PM

PLEDGE OF ALLEGIANCE: A moment of silence was held followed by the Pledge of Allegiance

ROLL CALL:

MEMBERS PRESENT: Larry Willis, Chairman; Don Mottley, Vice Chairman; Tina Baxter, Terry Dayvolt, Mike Winge, and Jeff Valiant.

Also present were Morrie Doll, Attorney; Sherri Rector, Executive Director; and Christy Powell, Staff.

MEMBERS ABSENT: Judith Writsel

Roll call was taken and a quorum was declared present.

The Chairman explained the rules of procedure.

ADOPTION OF RULES AND REGULATIONS:

Mrs. Rector stated they remain the same as last year.

Chairman Willis entertained a motion to accept the rules and regulations without any changes.

Don Mottley made a motion to adopt the rules and regulations with no changes.

Mike Winge seconded and the motion carried.

MINUTES: To approve the minutes of the meeting held November 28, 2011, the ‘no business’ minutes of December 19, 2011, and the last regular meeting held January 23, 2012.

Mike Winge made a motion to accept all the minutes as circulated.

Terry Dayvolt seconded and the motion carried.

BZA-SU-12-04

APPLICANT AND OWNERS: American Legion Tennyson Post 463 by Mike Broshears, Fin. Officer.

SPECIAL USES CONT...

PREMISES: Property located on the E side of SR 161 approximately 500 feet S of the intersection formed by 3rd Street and SR 161 in the Town of Tennyson. 3222 SR 161

NATURE OF CASE: Applicant requests a Special Use (SU 6) from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow a gun club with spot, board and beef shoots in a proposed "A" Agriculture Zoning District. *Complete legal on file. Advertised in the Boonville Standard February 9, 2012*

Michael Broshears approached the podium.

Rocky Baize approached the podium and stated he is the Post Commander.

The Chairman asked the Executive Director for a staff report.

The Executive Director stated they have all the return receipts from certified mail to the adjacent property owners. She stated it is a request for a Special Use SU-6 in a proposed Agricultural zoning district which lists a social club with spot, board and beef shoots. She stated the applicant states on their application "We request a Special Use in order to have spot, board and beef shoots at our club in order to bring in money to help further our mission of helping / assisting military members and families, as well as multiple community projects. We anticipate having 25-30 shoots per year." She stated the applicant has answered the questions on the proposed use statement. She stated the Subject property is in a proposed 'A' Agriculture zoning district. The surrounding property is zoned "R-1A" with residences and a town storage building across the street. She continued the Stahl's property to the east is zoned "A" Agriculture with vacant land. She stated the property is in a Zone A Flood Plain. She stated the property has access to SR 161 and was originally zoned "A" Agriculture however when it was annexed into the Town of Tennyson recently, it was lumped into an 'R-1A' One Family Dwelling zoning district. She stated when the Legion came into obtain a permit for a 9' x 20' handicap accessible bathroom addition, they had to come into compliance with the zoning ordinance by filing a Special Use for the social club and the spot, board, and beef shoots. She continued the SU-6 was not allowed in an R-1A zoning so they had to rezone the property back to "A" Agriculture. She stated the Planning Commission recommended an approval of the rezoning at their February 13th meeting. She stated the Town Board will review the rezoning application at their March 6th meeting. She stated the town has written a letter in support of their efforts and it is included in the Board's packets. She read the letter into the record. She stated if approved, the Special Use should be conditioned upon the rezoning approval. She stated their application is in order.

The Chairman asked if the petitioners had anything to add to the Executive Director's report.

Mr. Broshears stated no.

The Chairman asked for questions by Board Members.

Mr. Mottley asked if there is a berm running across their property shown in the aerial.

Mr. Broshears stated that is where they have tractor pulls.

SPECIAL USES CONT...

Chairman Willis stated it is a flat area, not a berm.

Mr. Baize stated the shot does not leave the property.

Mr. Winge asked if they are shooting double ought or bird shot.

Mr. Baize stated just 12 gauge bird shot.

Mr. Winge stated okay then they are covered on distance.

Mr. Baize stated they are going to have a berm put in right behind where they shoot for easy cleanup of the lead so it is not an environmental issue.

Mr. Winge asked if they will have officers there to watch and regulate firing from left to right.

Mr. Baize stated yes sir.

Mr. Willis asked how tall a berm they are proposing to put in at a future date.

Mr. Baize stated 6 foot tall.

Mr. Willis asked if this is approved tonight, how long the shoots will go.

Mr. Baize stated the longest shoot they've had is 5 hours.

Mr. Winge asked what time do they stop and start.

Mr. Baize stated they usually start around 11:00am and usually end around 3:00pm.

Mr. Broshears stated they are proposing going to a Friday night shoot for the 2013 season which starts May of this year. He stated they won't start shooting before 7:00 pm and they do have proper lights and safety gear in place.

Mr. Winge asked how late they will go.

Mr. Broshears stated normally about the same amount of time. He stated the one they had in the past was over at no later than 11:00 pm

Mr. Willis stated under the old zoning they've had shoots there.

Mr. Baize stated they've been shooting there since 1953.

Mr. Winge asked if that was a Friday or a Saturday.

Mr. Broshears stated they currently have them on Saturdays but at the end of their season in April they are discussing going to a Friday night shoot. He stated they have had shoots on Friday nights in the past and they seem to be quite a success and there seems to be more interest in them than the day shoots.

SPECIAL USES CONT...

Mr. Winge asked if they got any complaints from the residents when they had them on Friday nights shooting late.

Mr. Baize stated they actually had a comment from the neighbor that supported the Friday night shoot over the Saturday shoot because some of the neighbors are hunters and some of their dates coincide with hunting season. He stated the Legion needs to find out when hunting and youth seasons are so they don't schedule a shoot on these days. He stated they know this now and they are trying to be in compliance with the neighbors at all times.

Chairman Willis stated the reason they had to come back in and rezone the property is because they wanted to put a handicap ramp in and then found out they were out of compliance with the County regulations.

Mr. Broshears stated yes sir that is what originally started it.

Chairman Willis asked if they had the shoots in the past prior to the town annexing the property.

Mr. Broshears stated yes sir.

Mr. Winge asked if they will be shooting double ought.

Mr. Broshears stated they always shoot State Shells and they are a trap and bird load.

Mr. Winge asked if they are seven and halves.

Mr. Broshears stated yes.

Mr. Mottley asked if the 9x20 bathroom will be more than one stall.

Mr. Broshears states yes sir they are projecting two stalls and a hallway to get to it and it will be accessible from the outside of the building as well as the inside.

Mr. Broshears stated they had a bathroom donated by a company and they are trying to come up to the standards of the Americans with Disabilities Act and that is what started this process. He stated they are trying to revitalize the post and this is just another step in the process.

Mrs. Rector stated they were pre-existing non-conforming until they wanted to enlarge the area or the building or the use so when they came into build the restroom the office found that the town had done the annexation with that zoning change so they are just trying to come into compliance. She stated until they wanted to build on they were fine, they were pre-existing and they could have continued as they were.

Mr. Broshears stated they have intentions of coming in next and applying for permits to change the exterior doors so they are more handicap accessible.

Chairman Willis asked for any other questions by Board Members. There being none he asked for remonstrators for or against the petition.

SPECIAL USES CONT...

William Bruner, Attorney, approached the podium and stated he is representing Eric and Deborah Stahl. He stated they have property to the north, south and east of where the proposed shooting area is. He submitted a packet to the Board Members and wanted it made a part of the record. He stated he also gave a copy to the Legion. He stated to let him begin by saying that his clients and him feel that there are some problems out there and if those problems are remedied than they don't have any objection to the Special Use being granted but as he's listed in his packet they believe they are positive there are nuisances and serious hazard issues to coincide with the criteria the Board is to follow when they make these decisions whether it is an appropriate location for the use or whether it will adversely affect the surrounding areas. He stated they believe that it will unless there are certain restrictions. He stated it was discussed earlier but they have a list of proposed restrictions in the packet as well that he would like to see before or if the Special Use is granted. He continued there have been problems with stray shot. He stated his clients have a son and a daughter and he knows the son likes to hunt and they certainly aren't opposed to firearms or people using them but they do want it to be done in a safe manner. He stated for example there was one case where Vectren workers were supposed to come into the premises to do some trimming around the power lines and the shooting had already started before the 11am shooting time. He stated his client Deborah was on her four wheeler trying to locate those individuals. He stated it happened they didn't come but she did hear the shooting at that time. He stated he thinks there is some question about controlling shooting out there at other times when there are not spot shoots and sometimes even during the periods when it is being done organizationally. He stated as he said they do hunt and he believes one of the gentlemen alluded to the time issue earlier. He stated his clients are requesting that there not be spot shoots when there is youth hunting. He stated he attached the copy of the hunting schedule to this document and that is available online. He stated if they could readily avoid those dates. He stated he thinks there are only 2 of them in a year as far as youth hunting is concerned. He stated there are others that go on the property there and their basic concern is for the safety of those. He stated he listed those in the packet. He stated there was discussion about a berm. He stated they would like to see a berm that is at least 10' high on the north, south and east sides of where they are going to shoot. He stated they would like the area fenced with a locked gate so that it is controlled. He stated they can't expect a Legion member to be out there 24 hours a day checking to see if somebody has decided if they want to go out there with their shotgun and practice. He stated he thinks a fence and a gate would solve that situation. He stated also posting the shooting dates and times and stick to those. He stated if they start at 11:00 am and stick to that as well as the finishing time so his clients know that at this time this will be occurring and to be careful and maybe avoid the area at that time. He stated they would ask that it would be restricted to 24 shoots a year, a little bit less than one shoot every two weeks. He continued they would like to request they carry liability insurance in case somebody does get hurt. He stated he put a \$500,000 per person and a \$1,000,000 per each occurrence. He stated he believes that is appropriate but is subject to potential change. He stated they are requesting for them to meet all local State and Federal laws and regulations although he has researched and didn't find any but in any event if there are they would ask that those be followed and that these things be implemented before the end of this year. He stated he just thinks that this is a means of seeing that everyone is safe and the Legion still gets to go ahead and do its spot shoots and help the community. He stated he certainly nor his clients have nothing against the Legion, they are

SPECIAL USES CONT...

not here trying to prevent them from making money, they do good work. He stated he is a veteran himself and he appreciates everything that they do and the help they give other veterans but he believes also in the same context that they have to have the safety issue dealt with. He stated they are asking because of the legitimate reasons that they have set forth in the document they ask that they look at their proposed restrictions and request the Board seriously considers them and implement them. He stated they also had concerns about the shot which was discussed prior to them coming up and they are certainly in agreement with that. He stated they are all available for questions.

Chairman Willis asked if there were any questions by Board members.

Mr. Winge asked where the Stahl's property was. He asked from the actual spot boards, how far it is before it hits his property.

The staff measured from the shooting range to the back of the property on the aerial photo to be approximately 360 feet.

Mr. Winge stated his concern for the adjoining property would be if any of the shot is actually making it to his property because it is a contaminant.

Mr. Stahl stated he is not saying a lot of it does but some of it does.

Mr. Winge stated that would depend on hot loads, light loads whatever. He stated they are border line as far as distance because they could potentially hit this property with bird shot. He stated that is the best they can tell from here. He stated they are putting contaminants on their property.

Mrs. Rector asked how tall of a berm they would need.

Mr. Winge stated probably 20 feet high but if they are right behind the spot boards and they don't go back out they could get by with 10 or 12 feet.

Mr. Stahl stated if they put it right behind where they are shooting they wouldn't have to build the berm as tall.

Mr. Winge stated if they are willing to do that that should eliminate any kind of a problem there as far as the contaminants or stray shot going that direction.

Mr. Mottley asked about having it on all three sides.

Mr. Winge asked what the distance would be to the closest house.

The aerial photo was used to measure from the shooting range to their house and was approximately 670 feet.

Mr. Winge stated there shouldn't be any problem with that unless they've got someone shooting double ought or some hot loads but normal trap won't go that far.

SPECIAL USES CONT...

Mrs. Rector asked if the easement that Mr. Stahl is talking about is the treeless area to the east.

Mr. Stahl stated yes that is it.

Mrs. Rector stated the shot shouldn't travel that far.

Mrs. Stahl stated no but they come in sometimes on their farmer's lane which runs beside the American Legion. She stated their farmers use that as well.

Mr. Winge stated that could definitely be contaminated by rounds going that way if that is the case.

Mrs. Rector asked the Attorney if they should get into contamination of the ground.

Attorney Doll stated the Board's duty is to determine under the criteria set out on page 32 of the ordinance, the six criteria that are there. He stated they can only evaluate the application based on those, one of which is whether it will be a nuisance or serious hazard to vehicles, pedestrians or residents. He stated if some of the Board Members believe contaminants constitute a serious hazard then yes they can consider that.

Mr. Winge stated if they are raising crops then lead is a contaminant.

Mrs. Rector stated she just wanted to ask the questions she thought people might be wondering.

Mrs. Stahl stated that is one of her concerns and the ground is flat so it can run that way and get into the crops and is something that needs to be addressed.

Attorney Bruner submitted a map of the area and discussed where the farmers' lane is.

The farmer's lane was shown on the aerial photo.

Mr. Mottley stated he doesn't know where they are going to get their dirt to build it and then to build on the sides too. He asked the remonstrators if the Legion agreed to build the berm, if they have an area they want a pond that they could give them the dirt to make sure it is a sufficient area.

Mr. Stahl stated that is something they would have to look at. He stated they would be willing to address that, he can't guarantee it but it would be a possibility.

Chairman Willis asked if they would move their end date out a bit. He stated he would think that the Legion does not have a lot of funds to work with and some of this could be expensive. He stated as a veteran he knows the good work they do and he knows expenses are tight especially the Tennyson unit which is trying to raise funds to improve the post and he knows the safety issue is paramount there with his children and the lead contamination but the restriction of getting it all done seems difficult and the year is 20% over.

Mr. Stahl stated they've discussed that and if they can't make it that quick they can always come back and get an extension.

SPECIAL USES CONT...

Chairman Willis stated if they put a timeline on them they are constrained by that to get it accomplished.

Attorney Doll stated he doesn't know if they can require #7 on their list, the insurance requirement. He stated their ordinance does not allow them to require any property owner to maintain specified amounts of liability coverage insurance. He stated it is a good idea, he would hope that the Legion, because they do sell alcoholic beverages, would have liability insurance in about those amounts but he can't put it in a motion for them to approve the application for their property use they have to maintain a million dollars of property liability coverage. Attorney Doll stated by law they are not required to carry it.

Mrs. Rector asked about the 3 sided berm, 10' high, and asked how long it needs to be. She stated she would hate to think that people shoot to the side.

Mr. Winge stated for example at Red Brush Shooting Range, they have 3 sided berms behind the targets and on both sides for every range because it happens more than they realize. He stated people actually think a gun is not loaded and it accidentally discharges. He stated Red Brush's berms are actually higher than that. He stated the safety factor should really be the issue. He stated discharging a weapon contained in an area is much safer. He stated it is fairly expensive to build, that range uses donated help but the dirt is usually the hardest thing to come up with.

Mrs. Rector asked how many feet long and where it needs to be.

Mr. Winge stated it would have to cover the entire shooting range, an entire 'u' shape.

Mr. Stahl stated they are not asking for that much, just maybe half way back but if the Board feels like it needs to come all the way back then that is up to them.

Mr. Winge stated if they could live with half way that would be acceptable because it generally covers the issues on the firing line.

Mr. Valiant asked how long those folks have lived there.

Mr. Stahl stated since 1992.

Mr. Valiant stated these shoots have been going on since 1953. He asked if they have had issues in the past.

Mrs. Stahl stated when they moved there they had a ball diamond and a volleyball court. She stated they didn't have the spot shoots.

Mr. Stahl stated they may have had the spot shoots since 1953 but this Legion has been sitting idle for several years. He called his son up to the podium to talk about past incidents.

Nicholas VanHooser approached the podium and stated he is the Stahls' son. He stated he was hunting directly to the east of the Legion. He stated the spot shoots to him are not the real issue of safety here. He stated right before hunting season there will be people coming out there to

SPECIAL USES CONT...

sight in their shot gun or their muzzle loader and he was hunting in the woods directly to the east and all of a sudden bullets start hitting the trees around him. He stated that is the biggest issue with safety is that people are out there whenever they want to be shooting with high powered rifles, shotguns, muzzle loaders, and whatever else.

Chairman Willis stated so it is also an issue with policing out there that other people that the Legion may not have control over are using their facility.

Mr. Stahl stated he had the same issue when he was out cutting firewood and they called the sheriff's department that time. He stated what they are trying to do is great. He stated he and his family attends the spot shoots, participate in them and enjoy them but they've got to control when and how it's being used.

Mr. Winge stated Red Brush Firing Range is fenced in and they have combination locks on it.

Mr. Dayvolt asked if the property directly to the south is wooded.

Mr. Stahl stated yes.

Mr. Dayvolt asked what kind of hunting control he has over that.

Mr. Stahl stated it is usually him and his children.

Mr. Dayvolt asked how close he hunts to the Legion.

Mr. Stahl stated they don't usually hunt that area unless its rabbits and he runs his beagles in there. He stated most of their hunting is further back because it is so close to the highway there is too much noise and they catch kids playing in there sometimes.

Mr. Dayvolt stated but he still hunts it.

Mr. VanHooser stated yes sir.

Chairman Willis asked for any other remonstrators for or against this petition. There being none he asked if the petitioners wanted to address any of their concerns.

Mr. Broshears stated since they have talked to the Stahl's in the past they have ordered some signs that say 'No Unauthorized Shooting' and 'Members only'. He stated in the past people have stopped down there and sighted in guns. He stated they have tried to totally stop it and they have told all of their members that it is a 'members only' deal; the only shooting that is allowed is on the day of the shoots. He stated they will be getting more enforcement on that. He stated they don't want people just stopping there and shooting anytime. He stated they don't want that either. He stated they don't want rifles or pistols there; the only things they allow are 12 gauge shot. He stated they post that in their ads in the paper. He stated the Legion furnishes the shells, they furnish the guns; that is the only type that they can accommodate are the 12 gauge.

SPECIAL USES CONT...

Mr. Winge asked if they state they are not allowed to shoot double ought while shooting. He asked if they specifically tell the members no double ought, that the only thing they are allowed to shoot on that range is bird shot.

Mr. Broshears stated that is the only shells that they furnish, they don't want people stopping there and just sighting their guns in. He stated on the days of the shoot they usually allow them to shoot a half hour, hour prior. He stated in the past it was whenever they were good and ready to shoot and after the Stahls' showed their concern with that they will put a stop to it. He stated they won't let anyone fire a round before 10:30am. He stated that will be allowed to warm up their guns. He stated he had a question as far as the fence, he understands the safety issue and he realizes there needs to be more however the fence raises a lot of issues, what type, chain link, privacy, how tall it has to be. He continued also where the gun range is they have a tractor pulling area right through the middle of it and the Town of Tennyson uses that once a year for a tractor pull and he is just wondering what kind of issues that would cause. He stated the fence would be something they would have to take down or else they would have to find another place to have that event. He stated that would be a concern of his. He stated the berm construction is new to him. He stated they have discussed it as a club a time or two. He stated all he does is the research and write the checks. He stated for safety sake they do need one. He stated he doesn't know how tall, they had discussed 6' but if it needs to be bigger, they have to do what they have to do. He stated they try to stay in good with the community. He stated Mr. Stahl and his father and his son are valuable assets to their club as well, they have talked to them a couple of times and they are trying but unfortunately they are not open on a regular basis at this time until all of their licenses and stuff are in order. He stated he feels there will be somewhat more control over the place once they are totally up and operating 3 or 4 days a week. He stated however at this time they do have an issue every once in a while someone will come down there and ride their four wheeler, tear up the parking lot, kids will come down, and all they can do is post the signs but he doesn't think that a fence is necessarily going to keep someone from shooting if they want to shoot. He stated only because they can go right over it. He stated they don't want anyone shooting there except for the days they have the shoot. He stated they don't want non-members there unless they are with a member as a guest. He stated they do understand those issues but they would like to work through it and do what they have to do and proceed. He stated he does understand the safety concerns whole heartedly and he agrees with them.

Mr. Winge stated it seemed to him if the club had a policy of absolutely no shooting or sighting guns then the citizens could get license plate numbers and if they caught a few of these people and dealt with it that way.

Mr. Broshears stated in the past they have gone up to the Stahls' and let them know if they are going to be shooting etc. He stated maybe not everybody but they are supposed to. He stated they have agreed as a post to make it a rule absolutely no shooting except on the days they hold the shoots and they are willing to do what they have to do to enforce that. He stated they don't want that to be an issue and they want that to stop.

Mr. Baize stated as far as the contamination he has a gentleman coming who is just waiting on the weather to clear up and he is going to clean the whole lot of all lead and in the process start

SPECIAL USES CONT...

the building of a berm. He stated they spoke to Larry Barr about the County when they dig out ditches to bring dirt to their property and he has spoken to a couple of other community members of Tennyson for the use of their backhoe and/or tractors to help them build this berm so they are trying to do this; they can't afford to buy the dirt so they are asking and are receiving help. He stated this is something they are doing and want to be in compliance and be safe for the neighbors because they understand what is going on. He stated he too is against the fence idea because of several reasons. He stated it could cost \$10-20,000 for a fence to keep people out. He stated they are going to put gates across the parking lot to keep people out but people still come in. He stated they are going to be open that will stop a lot of people coming back in there and they will be able to regulate it more. He stated they are willing to do a lot of everything that is on that list but he asks for a little more time to come into compliance and to be realistic financially about some of these things for the club.

Mr. Willis asked what the hours of operation are for the club now.

Mr. Baize stated currently they are open every other Saturday and Wednesday nights. He stated as soon as they get their permits and licenses they are going to try and be open four days a week and see how that goes and hopefully get up to where they are open 6 days a week.

Mr. Mottley asked on the parking, in the front they have two entrances, could they put up a heavy chain across the front of the property and unlock and lower the chain to let vehicles in the drive and the rest of the time the chain would be up and keep people from coming in and it would probably keep people from parking on SR161.

Mr. Broshears stated it is a wonderful idea but unfortunately part of the drive is on the State Right of Way. He stated he believes he would have to do more research to see if that is acceptable with them.

Mr. Baize stated the State mows the ditch and the front up there.

Mr. Broshears stated there is some kind of a pump station that they need access to that is on the far side of the property. He stated where the gate would be, they wouldn't be able to get to it.

They referred to the aerial to see the State Right of Way.

Chairman Willis stated the insurance may not allow them to put up a cable or a chain because if someone is riding a motorcycle and hit that chain it could decapitate them.

Mr. Broshears stated if they found out that was acceptable by the State, County and all the other government agencies that would be the cheapest way to go but he is just afraid that would interfere with the right of way.

Mr. Winge asked if they would look at constructing a 6' berm on both sides because that would cover them to the left and right of the shooting range and on the end behind the shoot board 20' past, 10' high.

Mr. Broshears stated yes sir.

SPECIAL USES CONT...

Mr. Winge stated also to heavily post signage letting people know and let the neighbors know they can help watch this thing. He stated the other issue is he thinks they need a reasonable time to accomplish all this.

Chairman Willis asked how much they generate off a spot shoot fund raiser.

Mr. Baize stated they average about \$1000 of income per match.

Chairman Willis stated if they had 24 of them they would have a substantial amount of money to help the club run its business for the year.

Mr. Baize stated they pay for everything that the club does.

Mr. Winge stated they just recently updated berms at Red Brush and one 60' berm that was 30' high cost \$65,000. He stated they have to understand it is a substantial cost and they need some assistance to do it.

Chairman Willis asked if the Town of Tennyson had a constable or do they just rely on the Sheriff's Department.

Mr. Baize stated as far as he knows they rely on the Sheriff Department but he thinks Deputy Marvin Bruce is pretty much who they call when something goes on up there.

Mrs. Rector stated they used to have a Marshall but they don't anymore.

Chairman Willis stated if someone is using that for other uses then law enforcement ought to be called to help them police that. He asked if the petitioners had anything to add.

Mr. Broshears stated not at this time.

Mrs. Rector stated she wanted to make a comment on the aerial where the State Right of Way is shown. She stated they couldn't put two posts up; they would have to be way back behind the Right of Way and it wouldn't work.

There was some discussion on how they enforce the time constraint and decided the language be added to the motion.

Chairman Willis asked for any other questions by Board Members. There being none he entertained a motion.

Mike Winge made a motion finding of fact be made as follows from the testimony and proposed use statement:

1. The USE is deemed essential or desirable to the public convenience or welfare.
2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.

SPECIAL USES CONT...

3. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
4. The USE as developed will not adversely affect the surrounding area.
5. Adequate and appropriate facilities will be provided for proper operation of the USE.
6. The specific site is appropriate for the USE.

And the Application be approved in accordance to the application and plans on file, subject to the following conditions:

1. Subject to the rezoning being approved by the Town of Tennyson.
2. Subject to an Improvement Location Permit being obtained.
3. Subject to any required Building permits being obtained.
4. Subject to the Special Use not being altered to become any other use nor expanded than that which was approved by the Board of Zoning Appeals.
5. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
6. Subject to all public utility easements and facilities in place.
7. Subject to the construction of a berm 20' long on the left and right sides of the shooting area both ten foot before and ten foot past shooters 6' high; and behind the spot boards a berm 20' past on both ends to catch any stray from the final targets to be 10' high.
8. Subject to the area being heavily posted with signage detailing the no shooting requirements.

Terry Dayvolt seconded

Mike Winge amended his motion to add the following condition to his approval

9. Subject to the conditions being satisfied by February 27, 2013 or come back before The Board of Zoning Appeals for their March meeting to request an extension or be issued a cease and desist order.

SPECIAL USES CONT...

Terry Dayvolt seconded the amendment and the motion carried.

Mr. Broshears asked for clarification on the fence.

Mr. Winge stated he did not include the fence in his motion. He stated he doesn't think that will solve the problem. He stated the issue is what the Chairman stated earlier. He stated he thinks if neighbors get a plate number and turn someone in and if the Legion prosecutes those people, that would work better than a fence.

BZA-SU-12-05 an Amendment to BZA-SU-09-31

APPLICANT: Peabody Midwest Mining, LLC by Bryce G West, Auth. Rep. **OWNERS:** American Land Holdings of Indiana, LLC by Marc Hathhorn, VP; C.A.'s Memorial by Cheryl Wasson, Rep; Jann Allen; Karen Harris; Wilbur Wasson Estate by Rita Roth, Rep.; Richard Wasson et al; Joann Wasson Catron; and Michael Hoyt.

PREMISES: Amended to include 891.6 acres inside the original permitted 7,969.3 acre boundary located on the S side of I-64 approximately 1 mile E and SE of the intersection formed by I-64 and SR 61 in Hart, Lane and Owen Twp.

NATURE OF CASE: Applicant requests a Special Use (SU 13) from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow mineral extraction, storage and processing in an "A" Agriculture, "CON" Recreation and Conservancy and proposed "M-2" General Industrial Zoning District. *Complete legal on file. Advertised in the Boonville Standard February 9, 2012*

Don Ashley approached the podium and stated he is the attorney for Peabody Group which includes the applicant Peabody Midwest Mining, LLC also Midwest Coal Reserves of Indiana, LLC and American Land Holdings of Indiana, LLC the owners of the real estate involved.

The Chairman called for a staff report from the Executive Director.

Mrs. Rector stated they have all the return receipts from certified mail to the adjacent property owners and surface owners except for adjoiners Hallie Loomis and John Wasson, who is deceased. She stated they have the white pay receipt for both and they were given the proper 21 days' notice. She stated the envelope was returned in today's mail to John Wasson. She stated Turpin Hill Cemetery, another adjoiner, had their envelope returned, address of record was confirmed and they were given the proper 21 days' notice. She stated the surface owners return receipt had one envelope returned which was Michael Hoyt c/o Wilbur Wasson with the address of record confirmed and the 2nd attempt which was pending was made with the forwarding address provided by the post office. She stated those are in order. She stated to Attorney Ashley that when they receive those pending ones back to send them into the office. She stated the request is for a SU-13 to allow mineral extraction and storage on mining areas previously excluded in the original Special Use. She stated the applicant has answered the questions on the proposed use statement which details the operation and is in the Board's packets. She stated the

SPECIAL USES CONT...

subject property and all surrounding property is zoned "A" Agriculture and "CON" Recreation and Conservancy being a mix of vacant land and residences with a proposed "M-2" General Industrial zoning district to the south that will be used for accessory structures to the mining operation. She stated they are doing the rezoning due to the height requirement of structures needed to work on the heavy equipment. She stated there is Some Zone A Flood Plain which won't affect any of this. She stated the property has access to SR 61 and SR 68, Eby Rd., Dickeyville Rd., and Tecumseh Rd. She continued United Minerals constructed a bridge overpass on Tecumseh Rd. over SR 61 to carry the coal to their wash plant. She stated they do have road use agreements in place with the Commissioners from the original Special Use. She stated any approval would need to be subject to any additional road use agreements required by the County Commissioners. She stated when the original Special Use was approved in 2009, the ordinance required that all property owners must sign the application and be present at the meeting. She stated the ordinance was amended to allow Special Use SU-13 applications with two or more property owners to be heard with only the owners notified via a SU-13 notice and not have to sign the application or be present at the meeting. She stated this application fills in those gaps left out by the original Special Use approved October 26, 2009. She stated it is all within the original outside boundaries. She stated these are just little places the Board should be able to see in green on the map submitted in their packets. She stated the application is in order. She stated she does have a copy of the original Special Use conditions which this approval would be subject to if they need to be read into the record.

Chairman Willis asked if the petitioners had anything to add.

Attorney Ashley stated he has with him tonight Bryce West who is with Peabody Environmental and Melissa Hawk also with the Environmental Department. He stated Bernie Rockman, Compliance Manager; Ken Hagan with the Land Department and Tom Peck, Operations are all here and are available to answer any questions they might have. He stated he can explain further what Mrs. Rector has indicated if they care to hear additional information.

Mr. Mottley asked how far Turpin Hill Cemetery is located.

Attorney Ashley stated Turpin Hill Cemetery is located on SR 61 at the intersection of Turpin Hill Rd. and SR 61.

Turpin Hill Cemetery was located on the aerial and the map submitted with the application.

Mr. Mottley asked if they will be mining within the cemetery.

Mr. West stated it is outside of their mining boundary. He stated they will be at least a couple of thousand feet away.

Mrs. Rector asked if there were state regulations on how far they have to stay away from cemeteries.

Mr. Mottley stated 100'.

SPECIAL USES CONT...

Chairman Willis asked if there were any other questions by Board Members. There being none he asked for any remonstrators for or against the petition.

Leah Taylor approached the podium and stated she lives at 7077 N SR 61. She stated she is neither for nor against. She stated she has lived there for 3 years and she didn't know this was going on when she bought the property because Vigo had mined it first right by her house and she dealt with them. She stated they are talking about Turpin Hill Cemetery and that is less than 2000 feet from her house so she would just like to know a time frame and some details about what is going on. She stated her son has severe allergies that they dealt with when they were mining before and she just wants to know what is going to happen. She stated she has been in the process of remodeling that house and has spent close to \$40,000 on it in the last 3 years and she has other things she would like to do in small increments and it's all come to a standstill again. She stated she just wants to know something about what is going to happen.

Chairman Willis asked if she has had any contact with Peabody.

Ms. Taylor stated no sir; this letter was the only thing she's heard from Peabody. She stated she had a neighbor call and ask her back in September and she said nobody's said anything to her.

Mr. Mottley asked how she found out about this meeting.

Ms. Taylor stated she got a notice.

Mrs. Rector stated she may not have owned the property in 2009.

Ms. Taylor stated that is when she bought it.

Mrs. Rector stated so she probably wasn't at that meeting and now she is being noticed for this meeting.

Chairman Willis stated maybe Attorney Ashley can answer some of her questions.

Ms. Taylor stated on the letter it says 1 mile south of I 64 and Turpin Hill is 3.9 miles.

Chairman Willis stated they have almost 8000 acres of property that they have mining rights to and these are little pockets inside that encompassing area that they are trying to clear up.

Mr. Mottley stated when they got their permit; they would have had to notice people that lived within a half a mile about their rights on blasting. He stated if they live within .5 mile to a mile, she would have to ask them for a pre-blast survey. He stated his suggestion is that she talk with Mr. West about where she lives and he can tell her if she is within that range. He stated the people she bought the house from may have been noticed and they didn't tell her when she bought the property.

Ms. Taylor stated the house was in foreclosure.

Chairman Willis stated he believes Attorney Ashley will try to answer some questions and he may be able to set up a time where she can talk to the people from Peabody to get some answers.

SPECIAL USES CONT...

Ms. Taylor stated she will appreciate that.

Attorney Ashley stated they have people here that will talk with Ms. Taylor and answer any questions she may have. He stated he thinks they are all aware of the fact that Peabody is in the permit area right now mining and these are just isolated windows within the original permit area that they are trying to close.

Chairman Willis asked if there were any other questions by Board members. There being none he entertained a motion.

Don Mottley made a motion finding of fact be made as follows from the testimony and proposed use statement:

1. The USE is deemed essential or desirable to the public convenience or welfare.
2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
3. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
4. The USE as developed will not adversely affect the surrounding area.
5. Adequate and appropriate facilities will be provided for proper operation of the USE.
6. The specific site is appropriate for the USE.

Application approved in accordance with the application and plans on file with the Warrick County Area Board of Zoning Appeals per Special Use Docket Number BZA-SU-12-05 with the following conditions:

1. Applicant must be in compliance with all present State and Federal applicable statutes and administrative regulations. Should such statutes or regulations be repealed or weakened in their stringency during the operation of the mining activities, the applicant shall remain bound by the provisions as they exist as of this date.
2. Subject to the applicant filing a combination of road use agreements and/ or Petitions for Temporary Road Closure if necessary with the Board of Commissioners and have those approved by said Board.
3. Subject to all required INDOT approvals deemed necessary.
4. Subject to meeting all local regulations and permitting.

SPECIAL USES CONT...

5. Subject to the Special Use not being altered to become any other use nor expanded than that which was approved by the Board of Zoning Appeals.
6. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
7. Subject to all public utility easements and facilities in place.
8. Subject to all conditions placed on the original Special Use approval BZA-SU-09-31

Attorney Doll stated he believes the conditions from the original application in 2009 need to be read into the record.

Mrs. Rector stated the additional conditions are:

Subject to the applicant filing a combination of road use agreements and / or petitions for temporary road closure with the Board of Commissioners and have those approved by said Board and all required INDOT approvals.

Subject to meeting all local regulations and permitting.

Subject to approval for this application only.

Subject to the applicant keeping good drainage.

Subject to no lighting shining on any County or State roadways.

Subject to the applicant installing a 300' paved road before entering County Right of Way.

Subject to an affidavit submitted by Cheryl Wasson which is no longer applicable.

Mike Winge seconded and the motion carried.

OTHER BUSINESS:

None.

ATTORNEY BUSINESS:

None.

EXECUTIVE DIRECTOR BUSINESS:

None.

Don Mottley made a motion to adjourn.

Terry Dayvolt seconded and the meeting adjourned at 7:20 p.m.

Larry Willis, Chairman

ATTEST:

The undersigned Secretary of the Warrick County Board of Zoning Appeals does hereby certify the above and foregoing is a full and complete record of the Minutes of said Board at their monthly meeting held February 27, 2012.

Sherri Rector, Executive Director