

SUBMITTED: June 1, 2018

JURISDICTION: Delaware County

DELAWARE-MUNCIE METROPOLITAN BOARD OF ZONING APPEALS

IN RE: APPEAL OF DECISION TO ISSUE BUILDING)
PERMIT B2018-045 FOR CONSTRUCTION OF)
CONFINED FEEDING OPERATION AT 2601 WEST)
1270 NORTH, MUNCIE, INDIANA)
) Case No. _____
KEVIN AND KATHY CHAMBERS, STEPHEN AND)
ELIZABETH DRISCOLL, PERRY AND TONYA)
EVANS,)
Applicants.)

APPLICATION FOR APPEAL¹

TO: The Delaware-Muncie Metropolitan Board of Zoning Appeals
100 West Main Street
Muncie, Indiana 47305

Applicants, Kevin and Kathy Chambers, Stephen and Elizabeth Driscoll, Perry and Tonya Evans (“Applicants”), by counsel, and pursuant to Delaware County Zoning Ordinance Article XXXII, Section 5-B-1 and Indiana Code § 36-7-4-918.1, hereby bring this Application for Appeal seeking a public hearing, review and revocation of Building Permit No. B2018-045 attached hereto as Exhibit A issued on May 17, 2018 to Rhett Light (“the Building Permit”). The Building Permit allows construction of a concentrated animal feeding operation (“CAFO”) on property owned by Gailon Light at 2601 West County Road 1270 North, Muncie, Indiana. As detailed below and in the attached supporting Memorandum attached hereto as Exhibit B, the Building Permit is the

¹ Article XXXII, Section 5-C states that “an appeal shall be filed with the Board in forms supplied by it and in full compliance with established schedules and procedures.” Accordingly, this Application for Appeal generally follows the format set forth in the “Application for Appeal Form” available on the Delaware County website at <http://www.co.delaware.in.us/egov/documents/12714335098802.pdf>. However, because that Form applies to requests for variances, special exceptions and appeals of decisions denying (not approving) building permits—issues which are not present here—some of the questions contained in the Form are not relevant to this Appeal and are not included or responded to herein.

product of arbitrary and capricious considerations and abuse of power by the County Commissioners, in violation of the Delaware County Zoning Ordinance, and should be revoked.

(1) Applicants' Names and Addresses:

- Kevin and Kathy Chambers ("the Chambers") reside at 3601 West County Road 1270 North, Muncie, Indiana.
- Stephen and Elizabeth Driscoll ("the Driscolls") reside at 20200 North County Road 100 West, Muncie, Indiana.
- Perry and Tonya Evans ("the Evans") reside at 2250 West County Road 1270 North, Muncie, Indiana.

(2)(c) Applicants' Status and Standing to Bring this Appeal:

Kevin and Kathy Chambers:

The Chambers' home is less than a half mile from the CAFO approved by the Building Permit and, as such, will be directly impacted by the CAFO and its operations. The Chambers' home is within the Mississinewa River Watershed, which includes an aquifer on which the Chambers rely for their drinking water. The CAFO, its massive waste pits, and waste disposal sites are within the aquifer boundary thereby exposing the Chambers' drinking water well to contamination. Also, the CAFO and its waste disposal sites are near tributaries of the Mississinewa River and other natural areas which the Chambers frequently enjoy for outdoor recreation as well as gardening, family gatherings, walking in the woods, and fishing and swimming in the 3-acre pond on their own property. During warm weather, the Chambers open their windows to cool their home because it does not have central air conditioning or the duct work needed for such a system. The CAFO's noxious and toxic air emissions which are uncontrolled by federal or state regulation will degrade air quality, threaten their health and quality of life, limit the Chambers' ability to enjoy the outdoors and open their windows to cool their home, and reduce their property value. For these reasons and others, the Chambers' property rights and legal interests are adversely affected by issuance of the Building Permit approving the CAFO.

Stephen and Elizabeth Driscoll:

The Driscolls' home is less than a mile from the CAFO, adjacent to land on which the CAFO's waste will be spread, and will be directly impacted by the CAFO approved by the Building Permit. The Driscolls' home is within the Mississinewa River Watershed which includes an aquifer on which the Driscolls rely for their drinking water. The CAFO, its massive waste pits, and waste disposal sites are within the aquifer boundary thereby exposing the Driscolls' drinking water well to contamination. Also, the CAFO and its waste disposal sites are near tributaries of the Mississinewa River and other natural areas which the Driscolls and their two children enjoy for outdoor recreation as well as

gardening, riding ATVs, and swimming in the pool on their own property. The CAFO's noxious and toxic air emissions which are uncontrolled by federal or state regulation will degrade air quality, threaten their health and quality of life, limit the Driscolls' ability to enjoy the outdoors, and reduce their property value. For these reasons and others, the Driscolls' property rights and legal interests are adversely affected by issuance of the Building Permit approving the CAFO.

Perry and Tonya Evans:

The Evans' home is on property that is adjacent to and will be directly impacted by the CAFO and its operations. The Evans' home is within the Mississinewa River watershed which includes an aquifer on which the Evans rely for their drinking water. The CAFO, its massive waste pits, and waste disposal sites are within the aquifer boundary, thereby exposing the Evans' drinking water well to contamination. The Evans' property has a private pond that they use for swimming, fishing and ice skating which will be directly impacted by contaminated runoff leaving the CAFO site. Their property also has several acres of woods that they use for hiking, hunting, and foraging mushrooms, ginseng and pawpaw. The CAFO's noxious and toxic air emissions which are uncontrolled by federal and state regulation will degrade air quality, threaten their health and quality of life, interfere with outdoor activities, family and social gatherings, and ability to recreate on their own property, and reduce their property value. For these reasons and others, the Evans' property rights and legal interests are adversely affected by issuance of the Building Permit.

(3) Owner of the property involved:

Gailon Light owns the property involved and resides at 1060 South Angling Pike, Hartford City, Indiana. However, the Building Permit was issued to Rhett Light who does not own the property involved and resides at 1155 South Angling Pike, Hartford City, Indiana.

(4) and (5) Record of Ownership and Common Address of the Property Involved:

See the Building Permit attached hereto as Exhibit A.

(6)(a) Type of Appeal:

This is an Appeal from the Decision of the Administrative Zoning Officer according to Article XXII, Section 5-B-1. In addition, this Appeal is brought pursuant to Indiana Code § 36-7-4-918.1(1) which provides that: "A board of zoning appeals shall hear and determine appeals from and review . . . [a]ny order, requirement, decision, or determination made by an administrative official, hearing officer, or staff member under the zoning ordinance." Ind. Code § 36-7-4-918.1.

(7), (8), (14) Factual and Legal Basis Supporting the Appeal:

See Memorandum in Support of Applicants' Appeal attached hereto as Exhibit B.

(9) Present Zoning of the Property:

The property at issue is within the “F-Farming Zone” which as explained in the attached Memorandum does not recognize industrial agricultural uses, such as the Rhett Light CAFO that will generate as much urine and feces as a small town, as permitted uses.

(10) Present Use of the Property:

To the best of Applicants’ knowledge and belief, the property at issue has been historically used for traditional farming purposes, primarily to grow row crops.

(11) Describe the Use of the Property as Approved by the Building Permit

The Building Permit approves construction of a CAFO with 10,560 "wean to finish" hogs in four production buildings each with underground waste pits to collect an estimated 4.2 million gallons of animal waste and process wastewater that will be generated annually and spread, untreated, on surrounding properties.

(12) Property Occupation

To the best of Applicants’ knowledge and belief, the property at issue is not occupied.

(13) Notice of Appeal

The IDEM CFO Approval issued to Rhett Light contains the list of persons identified by Rhett Light as owning property within ½ mile of the CAFO site and who were given notice of Rhett Light’s application for CFO Approval.² Given the nature of this Appeal and Applicants’ status as impacted landowners who are included on this list, Applicants do not believe it is necessary to provide stamped, addressed envelopes for sending notice of this Appeal to property owners within 300 feet of the CAFO. However, Applicants will do so if deemed necessary by the BZA.

(15), (17) Construction Activities as Approved by the Building Permit Have Started

Upon information and belief, construction activities have begun at the CAFO Site and will be completed within the year if the Appeal is not granted.

(18) Operation and Use of the CAFO as Approved by the Building Permit

According to IDEM permitting documents, Rhett Light is the designated operator of the CAFO. However, his business and contractual relationships with other involved entities who may have financial and/or ownership interests in the CAFO—including but not limited to entities that own the livestock and/or distribute and market milk produced at the CAFO—are not known to Applicants.

² IDEM CFO Approval with supporting application documents at 240-245.

For all the reasons stated herein and in the attached Memorandum, Applicants respectfully request that the BZA revoke Building Permit No. B2018-045 issued to Rhett Light following a public hearing.

DATE: June 1, 2018

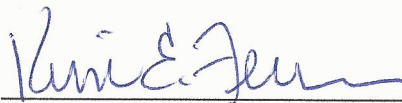
Respectfully submitted,



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VERIFICATION

I affirm under penalties of perjury that the foregoing representations are true and correct to the best of my knowledge and belief.



Kim E. Ferraro, Attorney for Applicants