

III. Identification of the decision at issue, together with a copy, summary, or brief description of the decision

The BZA held two public hearings on Milco's Petition No. BZA2016-8 for a Special Exception as required under Section 7.10.4 of the Rush County Zoning Ordinance. The first hearing was held on March 16, 2016 at 7:00 p.m. and the second was held on April 13, 2016, at 7:00 p.m. Following the second hearing on April 13th, the BZA granted the Special Exception allowing Milco to construct and operate a concentrated animal feeding operation ("CAFO") with 1,400 dairy cows along with three, massive outdoor waste lagoons on real estate located at 2625 E. 1200 N., Lewisville, Indiana that is within a half mile and upwind of Harvest Christian Camp.

The CAFO authorized by the Special Exception will interfere with Harvest Christian Camp's thirty-year mission and ability to provide a safe, healthy, and Christian rural setting for thousands of children and teens to be educated, enriched spiritually and enhanced by the outdoors, will adversely affect the public interest and surrounding properties, and will substantially burden the Camp's religious exercise.

As of the date of this filing, the BZA has not issued its written findings as required by Ind. Code § 36-7-4-915.

IV. Identification of persons who participated in any hearing, as described in Ind. Code § 36-7-4-1603(a)(2) that led to the decision

1. Todd Janzen and Brianna Schroeder
Attorneys for Milco Dairy, LLC
Janzen Agricultural Law, LLC
8425 Keystone Crossing, Suite 261
Indianapolis, Indiana 46240
2. David Gerdeman
Engineering Consultant for Milco Dairy, LLC
North Point Engineering Corp.
6657 Frank Avenue Nw # 200
North Canton, OH 44720

3. Nico, Milly and Nik Niessen
9305 S County Road 275 E
Lewisville, Indiana 47352
4. Kim Ferraro
Attorney for Harvest Christian Camp and persons who reside on Camp property including Matthew and Hannah Elson, David and Christine Rich, David and Dianne Todd, Phil and Gretchen Harris, Donna and Clarence McElhany and Errol and Wanda Snavelly
Hoosier Environmental Council
407 E. Lincolnway, Suite A
Valparaiso, Indiana 46383
5. Dr. Indra Frank, MD, MPH
Physician and public health expert for Harvest Christian Camp and persons who reside on Camp property
Adjunct Faculty, Professor of Environmental Toxicology
Indiana University Richard M. Fairbanks School of Public Health
Hoosier Environmental Council, Environmental Health Project Director
6. David Todd, Pastor
Harvest Christian Camp
9630 S County Road 25 W
Lewisville, Indiana 47352
7. Grant Reeves
Attorney for Rush County BZA
Barada Law Offices, LLC
201 N. Main Street
Rushville, Indiana 46173
8. Bryant Niehoff
Executive Director, Rush County Joint Planning and Zoning Office
Rush County Courthouse
101 East Second Street, Room 211
Rushville, Indiana 46173
9. The list of persons identified by Milco as entitled to receive Notice of the public hearing on Milco's Petition for a Special Exception is attached hereto as Exhibit A.
10. Several individuals spoke at the March 16, 2016 public hearing including Victoria Foley, Deryl Hunt, Don Biehl, Doug Briar, Jim Wenning, David Hiner, Kermit Paris and Ann Reddick.
11. According to the BZA's attorney in response to an inquiry by counsel for Harvest Christian Camp, no person has subsequently requested to receive notice of any petition for review as described in Ind. Code § 36-7-4-1606(e).

V. **Specific facts to demonstrate that the Harvest Christian Camp is entitled to obtain judicial review under Ind. Code § 36-7-4-1602**

1. Harvest Christian Camp owns and operates a youth church camp on real estate that will be adversely affected by the CAFO permitted by the Special Exception granted by the BZA.

2. Harvest Christian Camp by its attorney, Kim Ferraro, participated in the hearing that led to the BZA's decision and presented substantial and relevant evidence demonstrating that the Special Exception is contrary to law, violates Harvest Christian Camp's constitutionally protected rights and should not be granted.

3. Harvest Christian Camp has exhausted all available administrative remedies afforded by the BZA in accordance with Section 11 of the Rush County Ordinance and Ind. Code § 36-7-4-1016.

4. Under Ind. Code § 36-7-4-1605, a petition for review must be filed "not later than thirty (30) days after the date of the zoning decision that is the subject of the petition for judicial review." The BZA's decision to grant the Special Exception was made on the evening of April 13, 2016. Thirty days following that date is May 14, 2016, which is a Saturday. Therefore, pursuant to Indiana Trial Rule 6 the deadline for filing a petition for judicial review of the BZA's decision is Monday, May 16, 2016, the date this Verified Petition for Judicial Review and Declaratory Judgment is filed.

5. Harvest Christian Camp will transmit to the Court the original or certified copy of the BZA's record for judicial review within thirty (30) days, or within further time allowed by the Court for good cause shown, as required by Ind. Code § 36-7-4-1613.

6. The real estate that is the subject of the Special Exception granted by the BZA is in Rush County making Rush County an appropriate venue under Ind. Code Ann. § 36-7-4-1606(a). However, Harvest Christian Camp which is located in Henry County will seek a Change of Venue

in accordance with Ind. Trial Rule 76(A) because Rush County, through its BZA, is a party to this action.

VI. Specific facts to demonstrate that the Harvest Christian Camp has been prejudiced by one (1) or more of the grounds described Ind. Code § 36-7-4-1614

1. House of Prayer Ministries, Inc. (“House of Prayer”) is an Indiana non-profit, religious organization founded in 1974 that operates the church ministry and youth camp known as Harvest Christian Camp on its 36-acre property at 9630 South 25 West, in Lewisville, Henry County, Indiana. House of Prayer established Harvest Christian Camp in 1984 to minister to children, teens, and families.

2. The Special Exception granted by the BZA will enable Milco to construct and operate a CAFO within a half-mile of Harvest Christian Camp property.

3. The proposed CAFO will include, among other things, a free stall barn to house 1,400 cows along with three earthen, outdoor waste lagoons for the collection of approximately 20 million gallons of feces, urine, silage leachate, contaminated storm water, and process wastewater. The collected waste will be emptied from the lagoons and spread on various land parcels in Rush and Henry counties that surround the CAFO and Harvest Christian Camp.

4. Shankatank Creek, which runs through Harvest Christian Camp’s property, receives storm water drainage from several fields where the waste generated at the proposed CAFO will be spread.

5. Harvest Christian Camp is regulated by the Indiana State Department of Health pursuant to 410 IAC 6-7.2, *et. seq.*, and has the capacity to accommodate 128 children overnight, and a maximum capacity to host 768 over the course of the summer.

6. The Camp facilities include 13 open-air cabins, collectively with 106 beds, three classrooms/dorms and two multi-purpose buildings with offices, a sanctuary, kitchen and shop.

7. Harvest Christian Camp offers a day camp program for young children 4-7 years of age and several multi-day and week-long overnight programs for children and teens over 8 years old. These programs engage children in numerous outdoor and educational activities such as archery, swimming, games, sports, go-carts, a giant slip and slide, paint ball, campfires, night services, bible classes and creative workshops in music, drama, dance, arts and crafts, sign language, cooking and photography.

8. On average, 500 children – ages 4 to 17 – attend Harvest Christian Camp during the summer months along with 14 senior staff members, 50-80 regular volunteers, and a variety of speakers, bands, workshop and classroom teachers that are present depending on the activities and time of day.

9. In addition to its summer programs, Harvest Christian Camp conducts regular religious services throughout the year at its sanctuary and outdoor chapel, including weekly, evening and Sunday services and bible classes that are open to the public, and several community-wide events and camp programs in the winter and spring.

10. Thousands of parents, including many from out-of-state, have sent their children to Harvest Christian Camp because it offers a safe and healthy rural setting for their children to be educated, to grow in faith and enrich their relationship with God, and to be enhanced by the outdoors. In 2015 alone, Harvest Christian Camp attracted children from Ohio, Kentucky, Illinois, Missouri, and Arizona.

11. Harvest Christian Camp has a legal duty to protect the health and safety of children entrusted to its care and must comply with numerous regulatory requirements for provision of adult supervision, trained first-aid and emergency personnel, an infirmary, emergency equipment and

planning, fire safety and prevention, clean water, cooking and eating facilities, safe buildings, classrooms and sleeping shelters, among other safeguards. *See* 410 IAC 6-7.2-15 through 32.

12. Harvest Christian Camp informed the BZA that little distinguishes Harvest Christian Camp from a school, that it is similarly situated and has the same inherent characteristics as a school, and demanded that the Camp receive the same one-mile protection from the proposed CAFO that the BZA is required to give similarly situated schools under Section 7.10.2(e) of the Rush County Zoning Ordinance.

13. The BZA ignored these similarities and failed to give Harvest Christian Camp the same one-mile set back protection afforded to schools in violation of Harvest Christian Camp's right to equal privileges and immunities afforded by Article I, Section 23 of the Indiana Constitution and its right to equal protection of the laws as secured by the Fourteenth Amendment of the U.S. Constitution.

14. Dr. Indra Frank, a physician who earned her M.D. from John Hopkins University and a Masters in Public Health from Indiana University's Fairbanks School of Public Health where she now teaches environmental health and environmental toxicology provided evidence and expert testimony to the BZA that:

- a. The proposed CAFO's 1,400 dairy cows will produce approximately 19,178 gallons of feces and urine per day which is as much bodily waste as produced by 46,776 people – an amount that is 7 times the amount of urine and feces produced every day by the entire human population of Rushville. The difference is that Rushville is not allowed to store human waste in unlined, open-air lagoons where people live and children play.

- b. The prevailing winds in the area come from the southwest, which puts Harvest Christian Camp directly down wind of the proposed CAFO and its massive manure lagoons.
- c. Children, staff and volunteers at the Camp are outdoors most of the day and sleep in open-air cabins and will, therefore, be heavily exposed to the CAFO's air pollutants which include endotoxin, hydrogen sulfide, ammonia, particulate matter, and volatile organic compounds – pollutants which have been studied and are well known to pose serious health threats, especially to children, the elderly and those with respiratory illness or weakened immune systems.
- d. In Indiana, 13% of children have had a diagnosis of asthma at some time in their lives so there is a high likelihood that there will be children with asthma attending Harvest Christian Camp. All of the pollutants that will be emitted by the CAFO are known to aggravate asthma symptoms – a particular concern given that an asthma attack can restrict a child's breathing enough to be life threatening and send them to the hospital.
- e. The massive amount of feces and urine that will be generated by the CAFO could also expose children at Harvest Christian Camp to disease causing bacteria and other microscopic organisms known to be present in cow manure such as *Listeria*, *E.coli*, *Salmonella*, *Cryptosporidium*, and *Giardia* which can run off with manure into Shankatank Creek after manure spreading on nearby fields, exposing children to infectious diseases if they have contact with the creek.

15. All of Dr. Frank's findings and opinions are supported by numerous, peer-reviewed scientific studies, which are cited in her report that was submitted to the BZA. In addition, Dr.

Frank's findings and opinions are supported by a report prepared by the National Association of Local Boards of Health in partnership with the Centers for Disease Control to help local health departments understand the public health, environmental and community impacts of CAFOs – a report also submitted to the BZA.

16. The BZA was required under Section 10.2(d) to ensure that granting the Special Exception would not adversely affect the public interest. Protecting the health, safety and well-being of our children is certainly paramount to the public interest. Nevertheless, the BZA disregarded or failed to give appropriate weight to the substantial and credible scientific evidence and expert testimony presented by Dr. Frank demonstrating that the proposed CAFO will impose serious health risks to the hundreds of children who attend Harvest Christian Camp.

17. Substantial and credible evidence was also presented to the BZA that the proposed CAFO will adversely affect the value of properties within close proximity to the proposed CAFO including Harvest Christian Camp property and homes of the six families who reside on the Harvest Christian Camp property. Of particular significance, a report by Purdue University was submitted which concludes that “market prices for homes are expected to decline the closer the home is to the CAFO” with a “downwind home realizing a significantly larger decline in value relative to a home upwind that is the same distance from the CAFO” such that “communities and operators must choose to site CAFOs in a manner that either minimizes the differential impacts on home values or compensates those individuals disproportionately impacted.”¹

18. Similarly, a report by John A. Kilpatrick, Ph.D, MRICS, an Indiana Certified Real Estate Appraiser and nationally certified instructor of the Uniform Standards of Professional Appraisal Practice was submitted. In his report, Dr. Kilpatrick reviewed numerous empirical and

¹ Roman Keeney, *Community Impacts of CAFOs: Property Values*, ID-363-W, Purdue Extension, Purdue University (2008).

case studies conducted over several decades demonstrating that, “diminished marketability, loss of use and enjoyment, and loss of exclusivity results in a diminishment which can range from 50% to nearly 90% of otherwise unimpaired value for homes which are adjacent to [a CAFO] with negative impacts noted at distances exceeding 3 miles.²”

19. Although the BZA was required to consider the adverse effects on surrounding properties under Section 10.2(e) of the Rush County Zoning Ordinance, it disregarded or failed to give appropriate weight to this substantial and credible evidence.

20. The BZA’s decision does not meet the specific conditions and terms for a special exception under the Rush County Zoning Ordinance in violation of Ind. Code § 36-7-4-918.2.

21. On information and belief Rush County Commissioner Mark Bacon had improper ex-parte communications with members of the BZA with the intent of influencing the BZA members’ action on the Special Exception in violation of Ind. Code § 36-7-4-920(g) and Harvest Christian Camp’s due process rights.

22. House of Prayer’s mission is to “compassionately reach and disciple all generations, to welcome others into our lives by building godly relationships, to equip the church to minister and to develop a lifestyle of worship and love of God.” House of Prayer established Harvest Christian Camp to further its mission by “help[ing] children and teens to develop a strong life-long relationship with the Lord [through] praise and worship, Bible classes, devotions and night services to strengthen their spiritual lives [and have] a lot of fun and fellowship.”

23. Harvest Christian Camp’s outdoor religious activities and services provide campers with the chance to explore their faith in a unique setting away from their regular lives and are an

² John A. Kilpatrick, *Impacts of a Concentrated Animal Feeding Operation on Surrounding Properties in and Near Union Mills, Indiana*, Report to Alan M. Landing (Oct. 25, 2006).

essential element of the spiritual experience at Harvest Christian Camp and, thus, central to House of Prayer's religious mission and purpose.

24. Harvest Christian Camp opposed the Special Exception due to the concern that the noxious odors and harmful air emissions caused by 1,400 dairy cows and millions of gallons of urine and feces so close to its property will destroy the outdoor experiences for children that are central to Harvest Christian Camp's mission, purpose and exercise of religion.

25. The BZA failed to give adequate consideration to Harvest Christian Camp's religious activities, services, mission and purpose and the substantial burden the CAFO will impose on those religious activities, services, mission and purpose.

26. The BZA's decision to grant the Special Exception deprives Harvest Christian Camp of its right to the free exercise of religion as secured by the Religious Land Use and Institutionalized Persons Act of 2000, by making an individualized assessment of a property's use that places a substantial burden on Harvest Christian Camp's religious exercise and treating Harvest Christian Camp on less than equal terms with nonreligious institutions.

27. The BZA's approval of the Special Exception fails to further a compelling governmental interest in the least restrictive means.

28. Harvest Christian Camp exercises religion within the meaning of the Free Exercise Clause of the First Amendment to the U.S. Constitution made applicable to the States by the Fourteenth Amendment.

29. Harvest Christian Camp's religious activities and services are central to the Camp's sincerely-held religious beliefs and do not harm the safety or health of others.

30. The BZA's decision to approve the Special Exception threatens Harvest Christian Camp's ability to continue its religious activities and services, in violation of the Camp's First Amendment right to free exercise of religion.

31. Harvest Christian Camp is a person within the definition of Ind. Code § 34-13-9-7 and exercises religion within the meaning of Ind. Code § 34-13-9-5.

32. The BZA is a governmental entity as defined by Ind. Code § 34-13-9-6.

33. The BZA's decision to grant the Special Exception substantially burdens or will substantially burden Harvest Christian Camp's exercise of religion, and does not further a compelling governmental interest in the least restrictive means in violation of Ind. Code § 34-13-9-8 and gives rise to a claim for relief under Ind. Code § 34-13-9-9.

34. For all the foregoing reasons, the BZA's decision to grant the Special Exception is prejudicial to Harvest Christian Camp and is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, contrary to constitutional right, power, privilege, or immunity, in excess of statutory jurisdiction, authority, or limitations, or short of statutory right, without observance of procedure required by law, and unsupported by substantial evidence in violation of Ind. Code § 36-7-4-1614.

VII. A request for relief, specifying the type and extent of relief requested:

Petitioner, House of Prayer Ministries, Inc., d/b/a Harvest Christian Camp respectfully requests the following relief:

- a) Set aside the BZA's decision to grant the Special Exception and remand Milco's Petition No. BZA2016-8 with instructions to the BZA to reject the Petition in accordance with Ind. Code § 36-7-4-1615;

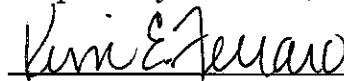
- b) Grant declaratory relief pursuant to Ind. Code § 34-14-1, *et. seq.*, in the form of a judicial declaration that the BZA's decision to grant the Special Exception: (i) violates Harvest Christian Camp's rights to equal privileges and immunities under Article 1, § 23 of the Constitution of Indiana; (ii) substantially limits Harvest Christian Camp's religious activities in violation of the Camp's rights under the Religious Land Use and Institutionalized Persons Act of 2000; (iii) violates Harvest Christian Camp's rights to free exercise of religion under the First Amendment to the U.S. Constitution; (iv) violates Harvest Christian Camp's rights to equal protection of the laws under the Fourteenth Amendment to the U.S. Constitution; (v) violates Harvest Christian Camp's rights to due process under the Fourteenth Amendment to the U.S. Constitution; and (vi) places a substantial burden on Harvest Christian Camp's exercise of religion in violation of Ind. Code § 34-13-9;
- c) Annul the BZA's decision to grant the Special Exception;
- d) Grant injunctive relief enjoining the BZA from making a zoning decision affecting property adjacent or near Harvest Christian Camp in a manner that would (i) violate Harvest Christian Camp's rights to equal privileges and immunities under Article 1, § 23 of the Constitution of Indiana; (ii) substantially limit Harvest Christian Camp's religious activities in violation of the Camp's rights under the Religious Land Use and Institutionalized Persons Act of 2000; (iii) violate Harvest Christian Camp's rights to free exercise of religion under the First Amendment to the U.S. Constitution; (iv) violate Harvest Christian Camp's rights to equal protection of the laws under the Fourteenth Amendment to the U.S. Constitution; (v) violate Harvest Christian Camp's rights to due process under the Fourteenth Amendment to the

U.S. Constitution; or (vi) place a substantial burden on Harvest Christian Camp's exercise of religion in violation of Ind. Code § 34-13-9;

- e) Grant an award of Harvest Christian Camp's reasonable attorneys' fees and costs to the extent permitted by 42 U.S.C. §1988(b) and Ind. Code § 34-13-10(c) or as otherwise allowed by law arising out of the BZA's decision to grant the Special Exception and out of this litigation;
- f) Such other, further and different relief as this Court deems just, proper and equitable.

DATE: May 16, 2016

Respectfully submitted,

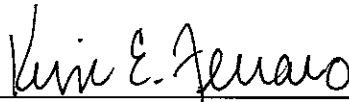


Kim E. Ferraro, Attorney No. 27102-64
Hoosier Environmental Council
407 E. Lincolnway, Suite A
Valparaiso, IN 46383
219/46-0104

*Counsel for House of Prayer Ministries, Inc. d/b/a
Harvest Christian Camp*

VERIFICATION

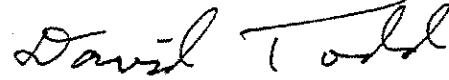
I affirm under penalties of perjury that the foregoing representations are true and correct to the best of my knowledge and belief.



Kim E. Ferraro, Attorney for House of Prayer
Ministries, Inc., d/b/a Harvest Christian Camp

VERIFICATION

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

A handwritten signature in cursive script that reads "David Todd". The signature is written in black ink and is positioned above a horizontal line.

Pastor David Todd on behalf of House of Prayer
Ministries, Inc. d/b/a Harvest Christian Camp

EXHIBIT A

Legal
AC 3/1/16

NOTIFICATION LIST ATTACHMENT- 1/2 Mile List & Adjoining Properties for County Line Dairy

2/18/16 Verified	Adjoining	Owner	Mailing Address	
Yes		BIEHL, MICHAEL DON SR & SHIRLEY A	2658 E 1100 N ✓	Lewisville, IN 47352 ✓
Yes		BRIAR DOUGLAS DEBORAH K	9900 S County Road 25 W ✓	Lewisville, IN 47352 ✓
Yes		BURKMAN DIANNE R	400 E County Line Rd ✓	Lewisville, IN 47352 ✓
Yes		CJ GILLESPIE FARMS LLC	9507 S County Road 125 E ✓	Lewisville, IN 47352 ✓
Yes	Yes	DELAY FARMS LLC	10983 N 150 E ✓	Lewisville, IN 47352 ✓
Yes		DELAY, ROSS L	2213 E 1200 N ✓	Lewisville, IN 47352 ✓
Yes	Z	GILLESPIE, C & J FARMS LLC	9507 S COUNTY ROAD 125 E ✓	Lewisville, IN 47352 ✓
Yes	Yes	HALEY, JAMES A TESTAMENTARY TRUST	11507 N 300 E ✓	Lewisville, IN 47352 ✓
Yes		HOUSE OF PRAYER MIINISTRIES INC	9630 S County Road 25 W ✓	Lewisville, IN 47352 ✓
Yes	Yes	KITCHEN DANCE LLC C/O Beverly Ann Norwood	300 Duncan St ✓	Raleigh, NC 27608 ✓
Yes		KNECHT, GARY R & BEVERLY A	3361 E COUNTY ROAD 500 N ✓	Greensburg, IN 47240 ✓
DELETE		MCFARLAND DAVID REV TR	8848 S County Road 125 W ✓	Lewisville, IN 47352 ✓
NEW		WELSH, NANETTE LOU	1881 W US HWY 40 ✓	Spiceland, IN 47385 ✓
Yes		MCFARLAND, DAVID RALPH REV TR	8848 S COUNTY ROAD 125 W ✓	Lewisville, IN 47352 ✓
Yes	Dairy	MILCO DAIRY FARM, LLC	9305 S CR 275 E ✓	Lewisville, IN 47352 ✓
Yes		NIESSEN NICO MILLY	9305 S County Road 275 E ✓	Lewisville, IN 47352 ✓
Yes		SURFACE-RUSSELL, DOROTHY ELAINE	11428 N 100 E ✓	Lewisville, IN 47352 ✓
Yes		WHITE, MARY E	2482 E 900 N ✓	Rushville, IN 46173 ✓
Yes		WILKINS DANIEL	9680 S County Road 25 W ✓	Lewisville, IN 47352 ✓

Rush & Henry County Beacon GIS 6-10-15, Updated 2-18-16

ADDED 7/22/15

Residents on the House of Prayer's Ministries Property	The Snadly Family (Or Current Resident)	9616 S County Road 25 W ✓	Lewisville, IN 47352 ✓
	The McElhany Family (Or Current Resident)	9618 S County Road 25 W ✓	Lewisville, IN 47352 ✓
	The Elson Family (Or Current Resident)	9620 S County Road 25 W ✓	Lewisville, IN 47352 ✓
	The Todd Family (Or Current Resident)	9624 S County Road 25 W ✓	Lewisville, IN 47352 ✓
	The Rich Family (Or Current Resident)	9628 S County Road 25 W ✓	Lewisville, IN 47352 ✓
	The Harris Family (Or Current Resident)	9632 S County Road 25 W ✓	Lewisville, IN 47352 ✓