

COMMISSIONERS' MEETING
May 23, 2016

The Bartholomew County Commissioners met in regular session on May 23, 2016 in the Governmental Office Building, 440 Third Street, Columbus, Indiana. Commissioners Rick Flohr, Larry Kleinhenz and Carl Lienhoop were present. County Attorney J. Grant Tucker and County Auditor Barbara Hackman were also in attendance.

Chairman Flohr called the meeting to order. County Assessor Lew Wilson gave the invocation and led the Pledge of Allegiance.

The first item on the agenda was the approval of the May 16, 2016, Commissioners' Meeting Minutes. Commissioner Lienhoop made a motion to approve the minutes. Commissioner Kleinhenz seconded the motion that passed unanimously.

Next was the approval of payroll. Commissioner Kleinhenz motioned to approve the payroll. Commissioner Lienhoop seconded the motion which passed unanimously.

The next item was weekly reports. Chairman Flohr read the New Permit Report dated 5/16/16 to 5/20/16. Twenty-four (24) permits had been issued with fees collected of \$1,889 and estimated construction costs of \$699,418.

County Engineer Danny Hollander gave the Highway Weekly Crew Report which included the following work: patched roads; mowed ahead of berming crew; bermed roads for overlay; replaced pipes on 600E, 500N, 200S and Bellsville Pike; ditched and put in driveway pipes on 650S and 275W; hauled mulch to the fairgrounds; hauled dirt to Old Nashville Road; and stoned on 1100S west of SR 58.

He also submitted the April, 2016, Monthly Crew Report, including crew work, status of bridge and road projects and upcoming crew priorities for May.

Planning Department Director Jeff Bergman presented a subdivision improvement agreement for **South Hill Farms Section 2, Phase 4** creating five new lots. The developer is Robert Donica and this phase development falls under the original approval. Commissioner Lienhoop motioned to approve the subdivision improvement agreement

for South Hill Farms Section 2, Phase 4. Commissioner Kleinhenz seconded the motion that passed unanimously.

Next, Commissioner Kleinhenz acknowledged the receipt of the **Treasurer's Monthly Report** for the month of April, 2016 and motioned to accept the report. Commissioner Lienhoop seconded the motion which passed unanimously.

Brenda Mijares of the Prosecutor's Office submitted the Grant Agreement EDS #A345-7-03-17-PV-1013 for the Adult Protective Services for consideration. This is an annually recurring grant from Indiana Family and Social Services Administration. This year the grant will provide \$205,088 for the salaries and administrative costs of the APS Program whose services include the intervention, investigation and resolution of cases involving abuse, neglect or exploitation of an endangered adult. The funding runs from 7/1/16 through 6/30/17. Commissioner Kleinhenz motioned to sign the grant agreement for the Adult Protective Services Program. Commissioner Lienhoop seconded the motion which passed unanimously.

The next agenda item was the consideration of two (2) independent contractor agreements for Information Technology consulting services for Jim Hartsook and Craig Pekar. The services will be provided at a rate of \$150/hr. Commissioner Lienhoop made a motion to enter into the consulting agreements with Hartsook and Pekar. Commissioner Kleinhenz seconded the motion that passed unanimously.

Commissioner Lienhoop announced that the county offices would be closed on **Monday, May 30th**, in observance of Memorial Day. Consequently, the next Commissioners' Meeting will be held on **Tuesday, May 31, 2016**, at 10:00 a.m. in the Commissioners' Chambers.

The last item of business was the second reading of an **ordinance amending the confined feeding operation (CFO) and concentrated animal feeding operation (CAFO) standards of the Bartholomew County zoning ordinance**. [The future use of "CAFO" will refer to CFOs and CAFOs alike.] Jeff Bergman from the Planning Department said that the deadline for the Commissioners to act on the revised ordinance is June 7th (90 days from Plan Commission's March 9th meeting). If no action is taken,

then the proposed revisions become effective by default. If the Commissioners choose to make changes, those changes will go back to the Plan Commission for consideration. Passage of the ordinance ends the process and changes would become effective upon signing.

Chairman Flohr opened the meeting for public comment.

Ann Jones felt that in spite of a concerted effort to provide unbiased facts, there has been an undue influence of the majority report over the grassroots public testimony. She disagreed with the minimization of public health issues during the [CAFO Regulation Study Committee (“Study”)] Study’s considerations. She cited extensive studies (e.g., The Pew Charitable Trusts and the Johns Hopkins Bloomberg School of Public Health) regarding the effects of manure production and disposal, air quality degradation, respiratory ailments, risks to water, MERSA, and antibiotic resistance. She supported using the Heber Model (developed by Dr. Albert J. Heber with Purdue University) when establishing setbacks.

Cheryl Mullis disagreed with statements made during the Study’s deliberations that if setbacks were increased to a quarter of a mile, then there would be no room available for CAFOs. She used the Gelfius CAFO as proof. She also supported using the Heber Model.

David Baker provided information from the National Agricultural Safety Database about the release of highly toxic hydrogen sulfide during manure pit agitation and pumping. He believed the Commissioners had a responsibility to investigate and warn farmers/workers about the dangers of hydrogen sulfide in manure.

Kristen Whittington agreed that working around manure pits can be dangerous as is the operation of any equipment and is an OSHA-related issue. Hydrogen sulfide is present in brewery operations and other manufacturing processes, as well.

Mike Percy showed a Purdue study, commissioned by the Indiana General Assembly, which charted a comparison of the setbacks for roughly 45 Indiana counties. The chart omitted roughly 45 counties that have *no* requirements other than those set by IDEM. He went on to say that the Planning Department’s model using 2,000 feet

setbacks grossly exaggerates the limited land opportunities for CAFOs. It overstates the impact of setbacks proposed by the minority [opinion heard during the regulation study deliberations]. He advised using the Heber Model because of its capacity to formulate data based on the various and unique features of individual properties. He first addressed the Commissioners on May 9th and reiterated some of those points, as well.

John O'Halloran began by stating that a responsibility of zoning laws is to conserve property values. For the county, a loss of property value precedes a loss of property tax revenue. A homeowner, who recently sold her home, lost between \$25 to \$50 thousand dollars due to its location a mile from an approved CAFO which validated the value reductions his research had shown. Like Mike Percy, he also referred to the chart comparing the setbacks for Indiana counties that had adopted ordinances and which showed Bartholomew County at near the bottom of the list with its minimum setbacks. He supported using the Heber Model, establishing setbacks from the property line to property line, giving public notice to landowners within a mile of a CAFO's property line, and that CAFO owners be required to carry insurance to cover any damages.

Rob Eickenberry said that spending a couple years trying to come up with an ordinance is not a reason to pass an ordinance that isn't right. He didn't understand the hesitancy to use the Heber Model, especially in applications of conditional use. Lastly, he didn't agree with using neighboring property for setback compliance without compensation.

Kristin Whittington appreciated the time spent by the Commissioners, the Plan Commission and Staff and the due diligence exercised. She indicated the low attendance of the ag community was due to being four weeks behind planting season. Based on requirements set by IDEM and the State Chemist Office for land application of the manure site, Ms. Whittington, individually, and on behalf of the ag community gave her support to the proposed ordinance.

Dennis Tibbetts was part of a gathering of statistical data compiled from randomly speaking directly to farmers/residents. Of the 21 giving an opinion the average preferred setback distance was 2,000 feet, the smallest distance was 1,320 feet (1/4 mile),

and the greatest was one was one mile (5,280 feet). He suggested that a very small, quick, low cost professional survey would find that just about everybody is opposed to this measure – like the results produced from the online survey (CAFO Committee) and colored-dot study (Planning Commission). He recommended copying another county’s ordinance, forwarding it to the Planning Department, and coming to a prompt resolution.

Tom May had attended all the meetings regarding the issue and said that he had never witnessed any discussion about what *the people* actually wanted - it was always about what could be done for the CAFO industry. It appears there is no concern for the people of the county.

Tom Heller gave a presentation indicating that the GIS map of the county using 2,000 foot setbacks skewed the results and presented huge exclusionary zones which obliterated land opportunities for CAFOs: whereas, using the Heber Model would provide many opportunities for CAFO placements in the county. The GIS map was based on averages and did not allow for unique features of individual properties. Mr. Heller claims it was this erroneous information that led to the recommendations before the Commissioners. His two slide presentations, But It Never Reached The Ground and Illustration Flaw in GIS Mapping are available upon request in the Auditor’s Office.

Rebecca Lorenz was concerned mostly about the health issues. Health issues were not considered during the CAFO Regulation Study Committee meetings, due to the lack of definitive studies offering scientific proof. Ongoing health studies should be considered.

Kate O’Halloran supported the data presented by Tom Heller and agreed that the GIS map was a misrepresentation. She is a supporter of using the Heber Model.

An audio recording of the entire one hour and fifty minute discussion can be accessed via the county’s website at www.bartholomew.in.gov.

Chairman Flohr closed the meeting.

Commissioner Lienhoop began by saying the ordinance was meant to improve upon CAFO zoning regulations and shore up any weaknesses. However, the process has not made people happy. He asked Jeff Bergman what would happen if the ordinance was

voted down at this point. Mr. Bergman responded that if the Commissioners reject or amend the proposal from the Plan Commission (“PC”), it would return to the PC with a written statement for the reasons of the rejection or amendment. The PC would have a set period of time for consideration and then agree to deny or reaffirm their original recommendation in which case it would return to the Commissioners for consideration. A second denial from the Commissioners would end the process. Additional research was needed to determine protocol for the PC to amend their recommendations for reconsideration.

Commissioner Kleinhenz stated that the ordinance was designed for setting *minimum protections*. Overall, the minimum protections have been increased and rejecting the ordinance would result in retaining the less restrictive original standards.

After the some discussion, Commissioner Lienhoop stated that in the end the conditional use will still be evaluated by the BZA for each case and he motioned to approve the ordinance amending the confined feeding operation and concentrated animal feeding operation standards of the Bartholomew County zoning ordinance on second reading. Commissioner Kleinhenz said that the recommendations are more protective than what the county currently has, so with that said, he seconded the motion that passed unanimously.

There being no other business, the meeting was adjourned at 12:05 p.m.

BARTHOLOMEW COUNTY COMMISSIONERS

RICHARD A. FLOHR, CHAIRMAN

ATTEST:

LARRY S. KLEINHENZ, MEMBER

BARBARA J. HACKMAN

CARL H. LIENHOOP, MEMBER

ORDINANCE NO.: 05, 2016

AN ORDINANCE AMENDING THE CONFINED FEEDING OPERATION (CFO)
AND CONCENTRATED ANIMAL FEEDING OPERATION (CAFO)
STANDARDS OF THE BARTHOLOMEW COUNTY ZONING ORDINANCE

Favorably Recommended by
Bartholomew County Plan Commission General Resolution 2016-01

WHEREAS, on February 4, 2008 the Board of Commissioners of Bartholomew County, Indiana passed Ordinance No. 3, 2008 adopting a replacement zoning ordinance, including zoning maps, for the jurisdiction of Bartholomew County; and

WHEREAS, the zoning ordinance includes requirements for Confined Feeding Operations (CFOs) and Concentrated Animal Feeding Operations (CAFOs); and

WHEREAS, the zoning ordinance is subject to periodic review and revision to ensure that it remains effective, legally defensible, clear, and consistent with community goals; and

WHEREAS, the Board of Commissioners of Bartholomew County established a CFO/CAFO Study Committee, which has recommended amendments to the Zoning Ordinance provisions for such facilities; and

WHEREAS, the zoning ordinance revisions are for the purposes described by IC 36-7-4-601(c); including (1) the securing of adequate light, air, convenience of access, and safety from fire, flood, and other danger; (2) lessening or avoiding congestion in public ways; and (3) promoting the public health, safety, comfort, morals, convenience, and general welfare; and

WHEREAS, the Bartholomew County Plan Commission did, on February 10 and March 9, 2016, hold a legally advertised public hearing on the zoning ordinance amendments and has certified a favorable recommendation for their adoption to the Board of Commissioners; and

WHEREAS, the Board of Commissioners has considered the criteria provided by IC 36-7-4-603; including (1) the Comprehensive Plan, (2) the current conditions in each district, (3) the most desirable use for land in each district, (4) the conservation of property values, and (5) responsible growth and development.

NOW THEREFORE BE IT ORDAINED, by the Board of Commissioners of Bartholomew County, Indiana, as follows:

SECTION 1: Zoning Ordinance Amended

The Bartholomew County Zoning Ordinance is amended as follows:

a) Zoning Ordinance Section 6.3(B) is retitled as "CFO Requirements" and amended to read as follows:

Confined feeding operations (CFOs) shall be located consistent with Article 3 of this (the Zoning) Ordinance. All such operations shall meet any and all applicable requirements of the federal, state, and local government in addition to the standards listed below.

1. Required Property Size: No CFO shall be located on any-property of less than 10 acres.
2. Required Property Setbacks: All structures used in association with a CFO facility, including waste storage facilities, shall be setback a minimum of 100 feet from all property lines, including all street or road rights-of-way.

3. Minimum Separation Distances: All CFOs shall be separated from other properties and/or land uses as specified below:
- a. *Residential Zoning Districts:* No CFO facility shall be located closer than ½ mile to any Single-family Residential or Multi-family Residential zoning district. The separation shall be measured from the nearest structure associated with the CFO facility to the boundary line of the zoning district.
 - b. *Incorporated Cities and Towns Without Zoning:* No CFO facility shall be located closer than ½ mile to any incorporated city or town (Clifford, Elizabethtown, and Jonesville, for example) that has not adopted a zoning ordinance. The separation shall be measured from the nearest structure associated with the CFO facility to the corporate limits.
 - c. *Residential Properties in Agricultural Zoning Districts:* No CFO facility shall be located closer than 500 feet to any residential property (any property of 5 acres or less, regardless of whether or not it currently contains a residence) located in an Agricultural zoning district. The separation shall be measured from the nearest structure associated with the CFO facility to the residential property line.
 - d. *Farm Dwellings in Agricultural Zoning Districts:* No CFO facility shall be located closer than 500 feet to any farm dwelling (a residence located on a property of greater than 5 acres) located in an Agricultural zoning district. The separation shall be measured from the nearest structure associated with the CFO facility to the farm dwelling.
 - e. *Certain Community Facilities:* No CFO facility shall be located closer than ¼ mile to any (1) school (including a trade or business school, college or university, and day-care center); (2) health care facility (including a hospital, clinic, retirement facility, and nursing home / assisted living facility); (3) worship facility; or (4) recreational facility (including all park uses and all outdoor recreational uses). In the case of nature preserves (which are considered a park use) the specified separation shall only be required if the nature preserve is dedicated by the State of Indiana. The separation shall be measured from the nearest structure associated with the CFO facility to the property line of the other use.
 - f. *Private Wells for Household Use:* No CFO facility shall be located closer than 500 feet to any private well providing water for bathing, cooking, drinking and other household purposes. The separation shall be measured from the nearest structure associated with the CFO facility to the well water withdrawal location. In no instance shall this provision be interpreted as requiring separation between a CFO facility and wells used for irrigation or other non-household purposes.
 - g. *Exemptions:* The following exemptions shall apply to the minimum separation distances described above:
 - i. No minimum separation distance shall be required from a CFO facility to any residence, farm dwelling, or well located on the same property with that facility.
 - ii. No minimum separation distance shall be required from a CFO facility to any nearby residential property or off-site farm dwellings associated with the CFO. A residential property and/or farm dwelling shall be considered as being associated with the CFO if they are in the same ownership as the CFO. Ownership shall not be required to be identical and may be considered the same if, for example, individuals who own the residential property and/or farm dwelling also own all or part of a corporation that owns the CFO. Further, residential properties and/or farm dwellings may be considered as associated with the CFO if they are owned by others in the same family as those who own the CFO or by employees of the CFO. The existence of any association shall be determined by the Planning Director. The Planning Director may require written waivers of the required separation from any of those who may be considered as associated with the CFO.
 - iii. No minimum separation distance shall be required from a CFO facility to any residential properties, farm dwellings, specified community facilities or wells that are established after the CFO facility (and shall therefore not apply to the future expansion of that CFO

facility). The CFO facility, as well as farm dwellings and community facilities, shall be considered established upon the start of their construction. Residential properties shall be considered established upon the recording of the approved subdivision plat for any new lots. Wells shall be considered established upon being placed in operation.

4. Permit Requirements: No CFO facility shall be constructed, enlarged, or otherwise physically expanded without the prior issuance of an Improvement Location Permit consistent with Chapter 12.9 of this (the Zoning) Ordinance.

- b) The Zoning Ordinance Section 6.3(B) margin notes are amended to read as follows:

Note: Consistent with Article 11 (Nonconformities) of this Ordinance, existing confined feeding operations (CFOs) are not required to re-locate or alter their operations if nearby zoning or uses change.

Note: The term confined feeding operation (CFO) is intended to include concentrated animal feeding operations (CAFOs) and any other similar facilities that meet the confined feeding operation (CFO) definition included in this ordinance but are otherwise also specifically identified by state and/or federal law based on the number of animals included, etc. A CAFO, for example, is a CFO which is characterized by a specific, large number of animals.

- c) Zoning Ordinance Chapter 14.2 is amended to delete the definitions of "Concentrated Animal Feeding Operation (CAFO)", "Confined Feeding Operation (CFO)", "Farm (CFO/CAFO type I)", "Farm (CFO/CAFO type II)", and "Farm (general)" and add the following replacement and new definitions:

Confined Feeding: The raising of animals for food, fur or recreation in lots pens, ponds, sheds or buildings, where they are confined, fed and maintained for at least 45 days during any 12-month period, and where ground cover or vegetation is not sustained over at least half of the animals' confinement area. Confined feeding does not include a livestock auction or sales facility. This definition is intended to be consistent with that provided by IC 13-11-2-39 and 327 IAC 19-2-6, as amended periodically. It is deemed to include any revisions to the indicated state regulations or their successors even if the text of those regulations differs from the specifics provided in this definition.

Confined Feeding Operation (CFO): The confined feeding of at least 300 cattle, 600 swine or sheep, 30,000 fowl, or 500 horses, either in association with or separately from a farm. This definition is intended to be consistent with that provided by IC 13-11-2-40 and 327 IAC 19-2-7, as amended periodically. This definition is further intended to distinguish confined feeding that is subject to Indiana Department of Environmental Management (IDEM) review and approval from that which is not, and to also establish local regulations through this Zoning Ordinance which apply to those confined feeding operations of a scale such that IDEM regulation is considered prudent. It is deemed to include any revisions to the indicated state regulations or their successors even if the text of those regulations differs from the specifics provided in this definition. However, in no instance shall a CFO defined here for the purposes of this ordinance be deemed to include those regulated by IDEM for reasons other than the number of animals (such as specific impacts to the waters of the state, etc.) See Also *Farm*.

Confined Feeding Operation (CFO) Facility: The structures which together function as a CFO, including those that house CFO animals and those that are involved in the storage of CFO animal waste (including lagoons and other containments). A CFO facility shall not include any structures used to house CFO animal feed.

Farm: Any property or area exceeding 5 acres in size that is generally used for agriculture (such as the production and storage of vegetables, fruit trees, or grain, and/or the raising of farm animals, such as poultry or cattle). A farm may include a single farm dwelling, all other related structures, and the storage and servicing of equipment and materials used on-site for the farm operation. A farm shall also include, as an accessory use, the seasonal sales of products grown on-site. Also, as an accessory use, a farm may function as a location where orders are placed for farm-related services (such as crop insurance) and/or bulk farm-related supplies (such as seeds). The term farm shall

include all properties in residential use in an agriculture zoning district that exceed 5 acres in size. In no instance shall the term farm be interpreted as including a Confined Feeding Operation (CFO). See also *Dwelling, Farm and Confined Feeding Operation (CFO)*.

- d) Zoning Ordinance Section 12.9(B) is amended to replace existing subsections (1) and (1)(a) with the following and add subsection (k) as follows:
1. Zoning Compliance Certificate Required: A Zoning Compliance Certificate (ZCC), issued by the Planning Director, shall be obtained prior to the issuance of any required building permit for the following actions:
 - a. *New Construction*: construction, removal, additions to, or placement of any structure that exceeds 120 square feet in area and/or has a permanent foundation; including structures other than buildings such as towers and antennas, but excluding agricultural structures (other than those associated with a CFO facility) and single and two-family residential structures;
 - k. *Confined Feeding Operation (CFO) Facilities*: the construction, additional to, placement or installation of any CFO Facility structure(s) (including any animal waste storage).
- e) Zoning Ordinance Table 3.1 is amended to (1) delete the term "farm (CFO/CAFO type I)" and all content associated with it, (2) replace the term "farm (CFO/CAFO type II)" with the term "Confined Feeding Operation (CFO)", and (3) replace the term "farm (general)" with the term "farm". Further, a Confined Feeding Operation (CFO) shall be indicated as a conditional use in the AV, AP, and AG zoning districts and prohibited in all other zoning districts. Corresponding changes to the listings of permitted and conditional uses shall be made to Chapters 3.4, 3.5, 3.6, 3.23, 3.24, and 3.25.
- f) The terminology used throughout the Zoning Ordinance shall be revised as follows:
1. The term "farm (general)" shall be replaced with "farm",
 2. The term "CFO/CAFO type II" shall be replaced with "CFO", and
 3. The term "CFO/CAFO type I" shall either be replaced with "farm" or be omitted, based on the context of its use.

SECTION 2: Repealer

All ordinances or parts thereof in conflict with this ordinance shall be repealed to the extent of such conflict.

SECTION 3: Severability

If any provision, or the application of any provision, of this ordinance is held unconstitutional or invalid the remainder of the ordinance, or the application of such provision to other circumstances, shall be unaffected.

SECTION 4: Effective Date

This ordinance shall be effective upon and after the date and time of its adoption, as provided in Indiana law.

PASSED AND ADOPTED BY THE BOARD OF COMMISSIONERS OF BARTHOLOMEW COUNTY, INDIANA ON FIRST READING THIS 9th DAY OF May, 2016.


Carl H. Lienhoop


Larry S. Kleinhenz

Richard A Flohr NAY
Richard A. Flohr

ATTEST:

Barbara J. Hackman
Barbara J. Hackman, Auditor
Bartholomew County, Indiana

PASSED AND ADOPTED BY THE BOARD OF COMMISSIONERS OF BARTHOLOMEW COUNTY, INDIANA ON SECOND READING THIS 23rd DAY OF May, 2016.

Carl H. Lienhoop
Carl H. Lienhoop

Larry S. Kleinhenz
Larry S. Kleinhenz

Richard A Flohr
Richard A. Flohr

ATTEST:

Barbara J. Hackman
Barbara J. Hackman, Auditor
Bartholomew County, Indiana