

Yostie's Lens

THROUGH
THE LENS
As I See It
By John J. Yost



Kentland, Indiana,

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Kentland vs. Benton BZA

'Irregularity, impropriety, illegality'

The Town of Kentland and neighbors living near the site of a proposed factory farm won a major victory this week in fight to prevent the location of a 51 million gallon manure producing dairy at the town's virtual doorstep. White County Circuit Judge Robert W. Thacker, sitting as Special Judge of the Benton Circuit Court issued the ruling which threw out the special exception granted to Herr Gerritt Dekker and his Global Agri Horizon, LLC which would have allowed the development of a 5,200-head dairy just south of the Newton-Benton county line.

In his ruling Judge Thacker stated, "Based upon the evidence presented in the case and the applicable law the Court finds and orders that the decision of the Benton County, Indiana Board of Zoning Appeals (BZA) reviewed by the Court herein is incorrect and illegal as a matter of law. The Court finds that the BZA failed to issue sufficient written findings in support of the decision to grant the special exception to the applicant (Dekker). Further, the Court finds irregularity, impropriety and illegality in the arbitrary and capricious replacement of BZA member Hasser by Mr. Kretzmeier during the meeting and the decision making process at the February 3, 2004 BZA hearing. Further the Court finds irregularity, impropriety and illegality in the BZA proceedings conducted on February 3, 2004, as disclosed by the production of the transcript and record of the proceedings as prepared and filed with the Court, which transcript and record are found by the Court to have been incomplete and inaccurate, and therefore unreliable. Therefore on review the facts and the law are with the Petitioners and against the Benton County, Indiana, Board of Zoning Appeals. The decision of the Benton County, Indiana, Board of Zoning Appeals granting such special exception to Global Agri Horizons on February 3, 2004, is hereby reversed and set aside."

The lawsuit filed by Kentland Town Attorney R. Steven Ryan on behalf of the plaintiffs, Kentland Town Council members Charles Lehman, David Smart and Leland Mayhew and William Hasser, Tom and Pam Hasser, Mary Beth Carton Whaley, Andrew and Ashley Higgins, Dr. Kay Boyd, Frank Terrell, Sue Datzman, William Rodgers, Jr. and the Town of Kentland charged that the Benton BZA held an illegal executive session in the middle of the hearing on Herr Dekker's request for the special exception. As reported exclusively in the Lens last October, the BZA may have altered the records of the meeting in order to cover up the illegal executive session. As attorney Ryan pointed out at that time the original typewritten minutes of the of the Feb. 3, 2004 meeting signed by Secretary and BZA member Linda Nally indicate that "the Board then went into a short executive meeting" prior to voting on the special excep-

tion. Another version of the record contained a sentence that had been altered by pen to read "The Board then had a short discussion." As Ryan told the Lens, "Interestingly enough the version submitted to the Judge by the BZA has been retyped to read 'The Board then had a short discussion.' I think this fact is significant as one of the violations we allege." Clearly the Court agreed with Ryan's position. What happens next is not clear at this point. Herr Dekker could reapply for the special exception but any BZA hearing on such an application would take place under much greater public scrutiny than before.

Fate of SB 141 in doubt

Lens readers who receive their editions by mail may wonder what "Vol. 2, No.1a" means. Last weekend I learned that a bill introduced in the State Senate by Sen. Timothy Lanane, SB 141, which would tighten the enforcement of penalties for Concentrated Animal Feeding Operation (CAFO) regulations, was to be heard by the Senate Committee on Energy and Environmental Affairs on Wednesday and was in need of support. I put together an abbreviated edition of the Lens that, due to Monday's mail holiday, could only reach email readers in time to act. From the feedback I received I am pleased to say that many readers did take time to email committee members in support of the bill. I have since learned that the committee's all-powerful Chairperson Sen. Beverly Gard prevented the bill from being heard by the committee. The bill as described in the legislature's digest as "Confined feeding operations. Requires the department of environmental management to revoke the approval for a confined feeding operation if at least three violations of confined feeding or water pollution control laws occur at the confined feeding operation in any two year period. Prohibits the department from waiving certain civil penalties for violations of confined feeding laws."

In a letter to the Lenscrafter Sen. Lanane said "I have received numerous letters and phone calls on this issue providing me with information and insight on the language I had drafted into SB 141. And as author of this piece of legislation, you are reconfirming my understanding of the extent to which CAFOs affect people and environment in close proximity to their operations. At present SB 141 has been referred to the Energy and Environmental Affairs Committee and has yet to receive a hearing. Sen. Bev Gard is the chairman of Energy and Environmental Affairs and I will work diligently with her and other committee members to get a hearing on this legislation. The potential human and environmental impacts of CAFOs can be challenging and damaging so I sincerely hope to get this issue to the Senate floor for debate, discussion and final vote."

The fact that we won a Court battle in the Benton BZA case does not mean that we can rest. If you have not contacted Sen. Gard in support of SB you may reach her at 1-800-382-9467 or by email at S28@in.gov. In a CAFO-related matter the Newton County BZA will take up the Fair Oaks Dairy request for an additional 3,000 head of cattle on January 24 at the Government Center in Morocco at 6:30-7:00 p.m.

And That's Through the Lens as I See It...jy

