

SPECIAL MEETING FOR PREMALEAN CAFO ADMINISTRATIVE APPEAL

BOARD OF ZONING APPEALS

APRIL 27TH, 2022

ROLL CALL: Kenny Aulbach, Virgil Bremmer, Denny Corn, Vice President, Dohn Green, Sandra Jackson, President. Also present was Attorney, Geoff Wesling, and Linda Ashwill, Staff Secretary.

President Sandra Jackson calls this special public hearing for the Administrative Appeal of the interruption and for the Administration of the Ordinance and questions for Premalean Pork LLC New Salem Grow-Finish to order 6:00 P.M.

Sandra makes a motion to open the public hearing. Virgil makes the motion for this public hearing. Seconded by Dohn. All in favor. Public hearing has been opened.

Mr. Geoff Wesling stated he had talked with both councils, and states we are going to limit this to thirty (30) minutes each side. We are going to allow anyone else that wants to speak two (2) minutes. Please try to keep it on time. We will give a little latitude, but this is specifically about Mr. Duke's scoring for this CAFO facility

Geoff called Mr. Curt Johnson, Attorney for the Appellants, to the podium. Mr. Johnson said before he starts here, he stated he's sure there are a lot of folks here in opposition and have a lot of addition of emotions that you would like to get out. The thing he wanted to point out is that Mr. Wesling is absolutely correct that the purpose of this hearing is solely limited to the scoring systems and how it is administered, and how it is interrupted. He knows a lot of you folks want to come up here and say your personal feelings and emotions. Please have the courtesy to limit your conversation to those specific points, please. Mr. Johnson asked if he was correct that all the Board members received a letter sent on April 11th detailing the essence of their position. Mr. Johnson sees that the visual is up and running.

Mr. Curt Johnson intrudes himself as an attorney with Brown, Deprez & Johnson out of Shelbyville, IN. He's here on behalf of his clients Brian McMinn & Steve Comer. They are appeal the Premalean CAFO scoring position made by the Executive Director. Mr. Duke.

Mr. Johnson has the Summary of Issues that the Board should consider as far as why the Premalean application should be denied are as follows:

1. Failure to Comply with Mandatory CAFO Requirements.
2. Lack of Factual Basis for Points Awarded –on this point system there are several facets of where points were awarded, we will argue erroneously, without any basis of fact or value.
3. Constitutionality Issues (lastly because his law professors would like) a couple of constitute issues that merit consideration of how this system is set up.

Beginning with the first one: Failure to comply with Mandatory CAFO Requirements: The Ordinance requires that a site plan has to be submitted. He is confident at this point he has every document that Mr. Duke has or seen, and this is the closest thing he has come up with as far as a site plan. He point out the image on the screen. He is assuming that is the basis lay out that they would attempt. The Ordinance requires a two hundred (200) setback from the property line. This is for all CAFO'S. This is set forth in

Section 7.10.2(d) in your Ordinance. What he believes this image is, this is something Mr. Duke had given him. He did this in good faith with approximation where those buildings were supposed to be and the different measurements there, ones that he thinks are noteworthy especially the one 97.97, he takes this to be 97 feet from the property line. He doesn't think either on the East side or the South side it has the 200 foot setback. Again these are rules that are applicable to all CAFO'S. Confined Animal Feeding Operations (CAFO).

The next issue was the notice of Agricultural Activity Requirements-again this is just quoting from the Ordinance –All applicants shall sign the “Notice of Agricultural Activity” located in Appendix D and the Deed of Dedication Agricultural Zone Covenants as set forth in the Rush County Subdivision Control Ordinance and submit that. Mr. Johnson stated he has gone through Mr. Duke's file. This is not there.

These are two fundamental issues are required of all CAFO'S. They have to do it. They haven't done it.

Moving onward to the Point System-you guys know there is this point system. You get so many points you don't have to have a hearing or go before the Board. You have to have a minimal amount of points to even advance and have the opportunity to have a hearing. To a very large degree there are fifteen (15) categories. On nine (9) of them he thinks that we agree with Mr. Duke's analysis, but there are six of them where our position is that there is no factual basis for these. 1. Utilities 2. Odor Abatement 3. Separation from House/Public Use Facility/Church 4. Water Conservation 5. Truck Turnaround 6. Manure application.

1. **UTILITIES** As given in the Ordinance –if you use municipal sewage system you get fewer points than if you use private septic system. Mr. Duke awarded them 50 points for private septic. The issue is in none of the plans, not the site map you looked at earlier, or none of the other drawings in any way show the septic. They are being granted fifty (50) points for something that there is no evidence of or no basis. Obviously council can make their own arguments, when I first raised this issue, the desire for a complete copy of the file to make sure I had everything. It wasn't there. Council said it didn't have to be in writing. This is communicated anyway. He would pause it to you that this can't be sufficient. There has to be documentation on this stuff or you could just throw it out and make it up as you go. That's what our system is going on. He thinks any argument that is worldly connived does hold water as being sufficient.

So just again as he goes through these six categories he putting up the quotes or the section of the Ordinance then he will provide you with his analyzes.

2. **ODOR ABATEMENT** Again Tier 1 Methods Sprinkling-biomass filters-composing-surface of lagoon is aerated etc. Tier 2 Methods Installation of Shelterbelt-windbreak-diet-manure additives, etc. So this is Mr. Duke's scoring So he gives them a reward for mortality rendering, manure storage is covered, manure storage has impermeable cover, and driveway sprinkling. As far as Tier 2 points awarded they have documents in there and he has no dispute. They have documents are in the report. The problem is Tier 1 One method is with how they are rendering-where's mortality rendering under Tier 1? It's not there. He doesn't that you can give points for mortality rendering when it really meant composing. Right there we are giving points for something that is simply not there. If you look through every one of the documents, again he tried to produce them for you guys, so you could say this one, but he has gone through every page again until he was crossed eyed, there is no reference for these. So where is this coming from? There are points awarded there that there are no basis there. No documents for such.

You also get awards for being away from people. Which is good. We want these things to be away from people for various reasons. That's the section as given: 3. **SEPARATION FROM HOUSE/Public Use Facility/Church.** These drawings that up on the screen in that April 11th letter in more detailed argument for you folks, are larger in the back. Here's the bottom line. Again I think Mr. Duke was acting in good faith trying to approximate where structures would be based upon the site plan he was provided, but you can't even tell where that line is until it gets 1,793 feet. You can't really tell where that line really starts. Why does that matter? Mr. Johnson said he got out the Goggle Earth GIS and you can see where that red line stopped and that's 1, 740. His point is that at some level Premalean is the applicant. They're the ones with the duty to convince you folks, Mr. Duke, and everybody else that they are entitled to these points. They are the ones that should be providing this drawing with some level of precision. Again he's not faulting Mr. Duke. I think he tried to do his job. But when fifty (50) feet means forty (40) points, he thinks it's encumbered upon them to show you how far that is. Because this switches their point total on this category from one hundred twenty (120) points to eighty (80)

4. **WATER CONSERVATION** Points are awarded who utilizes wet/dry feeders or other feeding and water systems that significantly reduce the amount of water used. Mr. Duke's point scoring of 25. His observation which is nothing –not a think in those documents that reference wet/dry seeders. The only way water monitoring is mention in any of these documents is through the IDEM application. Theirs is water quality not quantity. This has to do with quantity. It's basically draining the aqua filter. So again, there are points that have been awarded without any basis in document and fact.

5. **TRUCK TURN AROUND** They award points if you can get a semi in there on the property so they don't have to back out onto the road and cause a traffic hazard. Nowhere on the drawing is there a truck turnaround. There's just not. He's not just making this up. He doesn't know how you award points the T & Circle award of 30 points. He doesn't see a T and he doesn't see a circle. He doesn't know how you award points for something that is not there.

6. **MANURE APPLICATION** Manure may be applied by injection or land applied depending upon the type of manure as well as topography and soil conditions of the application site. Injection is the preferred method, and more points are awarded to applicants who are able to utilize this method. He apologizes if he sounds competitive but there is not a single document that was received on this matter said ditty about injection. Manure application is simply not there. He doesn't know or how there could be points awarded for something that has no document or factual basis for doing so

7. **CONSTITUTIONAL CONCERNS** In the Ordinance a CAFO is defined as set forth in 327 IAC 5-4-3. What's a Confined Feeding Operation, or CFO, is defined in 327 IAC 16.-2-5 and IC 13-11-2-40. The problem of this is these sections of the IAC have been repealed. So effectively we have two undefined terms, which are two pretty important terms. This is what the crops of all these rules are about. How can we reasonable the Ordinance when it pertains to confined feeding operations when the very definitions set forth in the Ordinance is something that have been repealed.

SUMMARY: SITE SCORING

Criteria	Executive Director	Proposed
Water Conservation	25	0
Utilities	50	0

Odor Abatement: Tier 1	30	20
Truck Turn Around	30	0
Manure Application	30	20
Separation from House	120	80
Total	285	120
Total Points Awarded	450	285

Premalean needs at least 445 points to qualify without Special Exception hearing before the BZA

Premalean must have at least 345 points to qualify for hearing before the BZA

There was nothing about water conservation. There was nothing about a septic. No odor abatement, truck turn around.

Mr. Johnson said there was such a lack of documentary evidence and he didn't want to hammer on this too much. This is why he did the public record request and he couldn't believe there was no proof whatsoever. You have 445 points awarded yet the Special Exception is not here. Mr. Duke has as 450. You have to have at least 345 points to qualify go before the BZA Board. If you have less than 345 points you can't come in here and do your song and dance. He stated he has gone through and basically the same thinks we just discussed. Mr. Duke had rewarded them 450 points. He thinks reasonably with the evidence that we have reviewed here it's only 285 points. He's not making this up. So given that level that score they don't even qualify to be here. They have to redo. This is on the basis of anonymous that should have been submitted in first order. In summary, here's what we have the partition should fail. The application should be denied. 1. Because they fail to comply with the mandatory requirements, the setback, and the notice of Agricultural Activity. 2. The partition should fail because there is insufficient points. We have gone through this. 3. The Ordinance wording has to be precise enough where it can't be interrupted two different ways when one is presented with the same or similar facts. The current site scoring system lacks such precision. What's a CAFO? What's a CFO. That is a real issue. So what do you do now? Has the Premalean application report met requirements with regard site plan and setbacks of those with agricultural activity? That is one decision you guys have to make. Second decision – has Premalean application met the point thresholds to apply for a Special Exception. Their position is, "it is not there". Mr. Johnson said if you folks had any questions for him, he would be glad to try to answer otherwise he thanked the Board for their time and attention.

Paul David Corya spoke. He said he would speak for five minutes then turn this over to their attorney and site manager. He goes by David. He stated his Dad was Paul Corya. David is a fifth generation farmer. He lives near Greensburg Indiana. They farm at Decatur, Rush, and Shelby counties. This farm is on the Northside of Decatur County. We farm in all three counties for that reason. We grow corn, soy beans, wheat, accessioning we have cattle, and hogs. We have been raising hogs on two sites. This will be the third site. We put a lot of thought into this site. It's not like we just went out and wanted to do something with this site. It's a great site, truly excellent site for hogs and farming. It's exactly what the Ordinance calls for as far as an excellent hog site. David grew up on the family farm. He was a farm hand when he was ten or twelve. He was a farm hand into his twenties. He saved up his money and did have a chance to go to college. He had a part time farm job and farmed with his Dad also part time. He worked

on projects for his Dad. About six years ago his Dad got really sick. He got a call back as primary operator. He has been primary operator for seven years now total. His father passed away in 2020. He said he thought that there was a misconception that Premalean was some big company or something. He can assure it's not. It's owned by him and his Mom. Coyra Maddy which is an adjacent land owner, also owned by him and his Mom is the same farm. The rural tenant which you will hear more about, the house you say, is a tenant house where the farm hand lives. He works on the farm. They own that too. David said he has nothing against his neighbors that has brought this forward. We have a reputation as being good operators, good neighbors, hard workers, and good farmers. We have created a lot of opportunity for workers. That won't change. He loves farming. He thinks this will be a good thing and we will do a great job as an operator. We are not a big operator. We are very much a family farm. David said he was proud of how they handled this from the start. He's thinking very positive on this direct path. We did everything right. We applied to IDEM. We got the IDEM approval. There was hardly any comment during that time. We did all the required notices which included his phone number and name to the applicants. We didn't hear from anyone. After the IDEM permit was granted, we are talking months here, we go for the county approval. Again we didn't hear anything. Then we get to the point where we have final approval from the county. We are approved. We have IDEM approval. We have the county approval. We met the score. At that point certain people didn't like the outcome so here we are. David said he felt like they had done everything correctly. He knows they haven't done this incorrectly. We were very careful. He feels like their approval should stand. He appreciates the Board's time and he goes ahead and turns this over to his attorney and his environmental consultant for any questions you might have. He thanks the Board.

Brianna Schroeder introduces herself as the attorney from Janzen and Schroeder Ag Law, here to represent Premalean working with them on this project. She stated Mr. Johnson and herself actually agree on somethings. It's hard to get two attorneys on opposite side to agree on something. This is a limited hearing. It is very limited in fact. It is limited to an appeal of the points scoring system given to Premalean. That's it. She wants the Board to remember that as she goes over the points. The other issue that needs to be raised at the very beginning is one of process. That immediately puts everybody to sleep and she gets that. The reason she needs to bring that up here is because the failure of the appellant to follow a process means the whole thing is null and void. They don't have the right to be here and make this appeal. That is very important. So under Indiana Code and your local zoning Ordinance people can appeal the Executive Directors zoning decisions to the BZA. We all agree on that. Now, Indiana Code 36-74-9919 so any appeal filed with the BZA must specify the grounds of the appeal and must be filed within the time set by the BZA. The BZA, you guys or you processors, in zoning Ordinance section 9.2, the County has given notice that the notice of appeal must be filed within days and must specify the grounds thereof. The decision was made on January 14th, 2022. But they had thirty (30) days to file an appeal and importantly satisfy the grounds thereof. This is the only document that was timely filed. She reads as follows: We would like to contest the score and speak to the BZA. That's it. This doesn't specify the grounds of the appeal. That is a requirement by the County and by the State of Indiana. So for that reason the appeal fails from the start. In fact scheduling this meeting and leading up to night, council and appellants agreed with me it was really informally done. That's a problem. In Indiana we require more than that. In fact, the appellants did not specify the ground of their appeal until the evening of April 11th. That is 87 days after the January 14th decision. Not great at math, but this is like 57 days too late. For that reason the appeal fail for the get go. There is a second problem, before we get into the one of substance, and that is one of standing. The appellants do not have standing to bring

this appeal. You notice you didn't hear anything about some specific damage that they would incur if this farm was built. Something that was special to them. Some kind of monetary damage to them. You didn't hear that. But in Indiana in order to have a standing filed to a legal appeal for a decision, you have to show some kind of standing. The houses that we are talking about of the appellants, one is about a mile away and one maybe three quarters of a mile away. They don't have standing. They have to admit standing as here is why we are the right people to bring this appeal. They didn't do that. This the second reason from the get go, why this appeal fails.

The Third problem is one of substance. Here we will get into the nitty gritty a bit more. So even if we get passed these threshold issues, the substance of the merit overturning Mr. Duke's decision. Note, Appellants have the burden, not Premalean, the appellants has the burden on them to prove their case. That's under as 1998 a Court of Appeals decision called New Haven versus Chemical Waste. The burden is not on them to disapprove their appeal. The burden is on them to prove their appeal. So let's get to the specific contention. First of all, The Notice of Agricultural Activity, Which is Appendix D. Brianna passed out copies of this Appendix D to the Board members. Stating if you look at Appendix D, you will see why it has not been filed. TO: All applicants for improvement locations permits for homes in agricultural zones areas of Rush County, Indiana. This notice is given to you because of your application for a Improvement Location Permit to build or move a home into an area of Rush County that is zoned for Agriculture. This is for houses that want to be built in A-3. Not for Confined Feeding Operations that want to be in A-3. A-3 where all of these properties are located is called Regulated Livestock. This was (Quote) created to encourage the continuation of agricultural uses of land while discouraging the addition of single family housing by property owner who are not engaged in those agricultural activities. Larger livestock operations, including CFO/CAFOS may be permitted in this district as well crop production and other traditional agricultural operations in this district. So if you want to move into an A-3 district and build your retirement house or something, you have to sign this Appendix. So this isn't relevant here. That's also important because (Quote) the notice of Ag activity and the development standards argument that Mr. Johnson talked about the two hundred (200) feet, there are not relevant to the scoring system. We didn't talk about those with Mr. Johnson in terms of how many points should be given or not given, because they are not part of the point scoring system. Those development standards are something that you need to establish prior to being granted an improvement location permit. There are a number of ways Premalean could satisfy that when the time comes. They own, David and his family, all the surrounding properties. All of it. So they could dissolve property lines. They could ask for a variance. There are a number of different ways to go about this. The problem is, tonight is not about an ILP or a variance. Tonight is about the scoring system. You did not hear anything about setbacks when it comes to the scoring system. In the email that you have, it did not say they wanted to appeal a building permit that has not yet been issued. They said they wanted to appeal the scoring system. That is not the site property line setback. Furthermore on page 3 of Mr. Johnson's letter, the appellant actually admit they didn't (quote) express and measure this distance. So they are kind of eyeballing it. She tells us that only because the criticisms of Mr. Duke's scoring later on is that it was a bit too back of the envelope for them. In ridicule they didn't express the distance that they are complaining about. The point is development standards are not on the point system. That is what 7.10.3 C where it ILP, the improvement location permit, that goes with the building permit, when that comes, the development standards have to be met in order to get that permit. That's a separate thing.

Brianna moves on to second big chunk of substance. She stated she had one over our chain of argument then a little one. The big argument are complaining about missing documents which are not required. This is the BZA. This is not the group that would change the County Ordinance. This would go through the APC. It would go the Commissioners. Not the BZA. The BZA has to take the laws as it is given to them. So you will note during the appellant presentation about points that were awarded that shouldn't have been, they never once directed to you anything in the Ordinance that said you must amend this document. A sewage plant or septic plant is required. Or manure application, we need the documentation for that. You didn't hear that because it doesn't exist. It's not in the Ordinance. Brianna said she was going to go away from her outline for a second, we all have been through this a couple of times now, she was kind of refreshing everything in her head, and thought she would look up some of the cases cited in the appellant letter of April 11th, and she is glad she did. They help us. She encourages if you or your lawyer wants to look at the cases cited in Mr. Johnson's letter of April 11th, please do so. They help Premalean, not the appellee. Most of these cases which in the letter are cited to, the ideal that the Rush County Zoning Ordinance isn't as specific as they would like it to be. If you read the cases as they actually say is an Ordinance has to be kind of taken as it is written. You can't after the fact add in new requirements. One of the cases, the one called on suburban homes, back in the day a developer wanted to build a subdivision. They met all the requirements that were listed in the Ordinance. It all looked good. They go before the APC for their approval and the APC goes "Well you did meet all of that but know we actually think we want sidewalks". You have to build sidewalks. The Court of Appeals eventually says, no you don't need to do that. You don't get to, after the fact, create new requirements that don't exist in the Ordinance. You have to take it as it's written. Take a look at the cases. They help us. So, the specific items as septic. There is no requirement to write any of that documentation into the Ordinance. They don't explain that requires septic information or some kind of information that requires preapproval. That it. We commended to put in septic. So, if we don't do that, this is something that would go to enforcement. Just like any other area of zoning where commitments are made. When in fact, we have already started that conversation with the State Department of Health. That is a long drawn out process. But we are not required to get preapproval from the State Department of Health prior to scoring the site. This is all finalized with the ILP process. The point scoring system is not a vehicle to critique the farms engineering standards and designs. The ILP stage you got to have that information. But for the site scoring there is no requirement to have that. If you look through the whole Ordinance you will not find or see any mention that says you have to have preapproval for septic.

The separation distance between one property where the barns will be built and the tenant house is not as much as they it will be. They may not have done google earth and may be a difference from where they put their start point and where they put their end point. We didn't hear anything. We don't have anything in the appeal of how they figured that out. Other than maybe eyeballing on google earth. So the distance that they have has inanity. There is no evidence if this was done by a qualified consultant or a surveyor. There is no evidence that there was a cad program was used. Instead council, who would aviate a certain position, calculated just short of what Mr. Duke did. So luckily for them that would mean they lose a bunch of points. That is not how the system works.

Water conservation talking about wet/dry feeders, that sort of thing. There is nothing in the Ordinance that requires some sort of documentation on wet/dry feeders to get points. In a way, Brianna stated she didn't know how you would do that, because the pigs are out there eating right now. We know they don't exist. We don't have wet/dry feeders right now, because there is nothing there. So again, that is a

future commitment. This entire scoring system depends on future commitments. We made a commitment that we would do stuff. If we don't, we are subject to a Court orders, subject to fines, and to law suits.

Truck turn around – same thing. No requirement ahead of time to document of where that would be. This is something that we would work with IDEM to finalize as well as the County prior to obtaining the ILP.

Odor Abatement – Sprinkling so we all understand, and this is defined in the Ordinance, can be as simple as sprinkling water. They will do that. You have her word and if we don't enforcement. We have documentation that states we will sprinkle with water in the application as a request on the points scoring system.

Mortality Rendering That is the number one forms of mortality management under Bowl Animal Board of Health website. It's approved under 3, 4, 5, IAC-7-7-3. They call it a clean and easy way to handle mortality. The other options are for burying them on site and composting and eventually land apply. Instead we are taking them off site and having them rendered. The BZA had the authority specifically listed in the Ordinance to approve any other industry approved method of odor abatement. Rendering is actually approved by the Board of Animal Health which is the entity that regulates in this area.

Manure Application They say there is no requirement and we have that in writing. This is kind of funny is that the Appellant in order to make an argument about mortality deaths, rendering versus composting, they refer back to certain things, IDEM documents, because that's where that information is found, but under manure application, he had no idea how this was going to be applied. But this is in that very same IDEM document that they review for the mortality management argument, and it ignores the fact that Premalean directly sent Mr. Mahan notice and a link in order for him to access the IDEM application of July 20th, 2021, where he says he would inject the manure. So they do have that information. It's not required to be documented for the County anyway because it's IDEM regulations.

These were the catalogs where they said there was not enough information. There are no requirements to include documents. If it were to change the Zoning Ordinance, and I assume what they want, there is a process to do that, but it's not changing it after the fact through the BZA. That, my friends, is a Constitutional problem. That is what all the cases in the letter forbid you to do. Speaking of the Constitution, this is a fun one, so constitutionally this is the stuff she had in law school, she is not a Constitution lawyer so I never use this stuff, so this is good. They claim that CFO's and CAFO's are not complaint, because the IAP was repealed. Yes it was. CFO & CAFO's the definition were repealed. Absolutely, this happened in 2012, after a federal bench circuit changed the definition of CAFO to limit the EPA jurisdiction. That's the case called National Pork Producers Council. The reason she tells the Board that is because we don't have Federal CAFO'S in IN. A Federal CAFO is allowed to discharge manure into water. Not in Indiana. That's not going to happen here. It's not allowed. We only have CFO's. What Mr. Johnson failed to mention to you, is that Indiana Code situation that defines CAFO's is still the law. 13.11.240 has not been repealed. So we are dealing with at CFO, not a CAFO, which is defined by Indiana Code that Rush County sites to in their Ordinance. Besides if those terms were undefined, then this project being a CFO or a CAFO or both, we just go with it. It is also not this body to insert new requirements into the Ordinance now after the fact. If in the future, someone want to make a requirement to include certain documents, there is a method to do that. Go before the APC and Commissioners and go through the process. That's fine. Brianna wanted to point out, anytime in

Indiana, we are cons crewing or interrupting zoning ordinances. This is important. We con crew them to favor the free use of land. So if you have a question in your mind, we can con crew it to be the free use of land. Not to limit or restrict land use. A case that came out of this very county a couple of years back, the Flat Rock Wind Case, and she doesn't know if any of you were on the Board then, if so God bless you, if not, you dodged one there, but that case with a long line of Indiana court appeal cases, if you are faced with two reasonable interpretations of the Ordinance, one of them is to supply by the entity being in charge enforcing that Ordinance. You refer to that entity. So here, the Executive Director, is charged with administrating and enforcement of the Ordinance. This is under Section 8.1 of your Zoning Ordinance. Under Indiana Code the Executive has to have Planning and Zoning, training, and education. That's Section 36 743 11. That job requires him to exercise expertise to interrupt and apply the Ordinance. Because that was the entity, the Executive Director, the entity in charge of enforcing the Ordinances. We give that interpretation quote "great weight". That's all from the Flat Rock Wind case. We remember, that you want to interpret the Ordinance one way or another, we are in the A-3 Zone. Which is specifically designed to discourage single family homes into a current agricultural including CFO's. So, there is no merit to the appellant's case. The appellant should not be allowed to bring their appeal, because they did not meet the required, not optional, required time lines to specify the grounds of their appeal. They don't have standing. They reply on requirements that don't exist anywhere in the text and want you to create them a new tonight. She states she will add, if we wanted to go about challenging Mr. Duke's zoning on the scoring nature, he would have reason to increase that score. She thinks they could be entitled to the homestead award. That's another one hundred points. Because Rural Tenant LLC the nearest house is owned by the same entity that owns Premalean. He and his Mom and his brothers trust. In the Zoning Ordinance on page 124 even provides for situations we maybe you have common ownership in like a LLC. A lot of farms have LLC's now. So she thinks he would be entitled to that one hundred points. The same people have one hundred percent equity interest in the same entities that own those properties. That would also change the site separation scoring for the same reason. That would give us another thirty points. You heard David mention that he and his family had been farming and raising hogs for eighty years. David has been doing this since the 1980's, and he would also be entitled to the Clean Record Award with another ten points. If applicant has gone without any known IDEM violations during the last five years. That is a requirement, so if the appellant wants to open this floor, she would state they were entitled to another one hundred forty (140) points. Even without those points, this is a world case site. It is as far away as possible. It is in the A-3 District. It is surrounded by property owned by the same family. So she would ask you tonight to deny any appeal and confirm Mr. Duke's scoring. Brianna thanked the Board.

Appellant's attorney, Mr. Johnson, want to add a quick rebuttal, stating he was under thirty (30) minutes and he would try to be brief. He brought up the Email notice on the screen. Mr. McMinn states they understand that the BZA does not have authority to change the zoning rules and states he would like to contest the score and speak to the BZA. Then Mr. Duke, again this is six days after his determinations, said that he would put them on the agenda as an administrative appeal. You need to pay twenty dollars. Part of the difficulty that we have, frankly, was my suspicion, which is wrong in hind sight, that we didn't have all the documents. You have to put flesh on the bones. Right. He doesn't want to waste your time. He doesn't want her time. He wants to be fair with all parties. You kind of got to know what you are getting. What the facts that you make the decision on before you can tell your appeal. This was timely. It was within six days. As far as standing what the Ordinance says, as anybody would be aggrieved he bets a lot of people in here would feel like they are aggrieved. Mr. Johnson said he doesn't necessary

disagree that Mr. Duke's thought process should be given great weight. You can't take it without some factual determination. Something to base that on other than what he says. You say we have made these commitments. We are going to put in this septic. Where did they make a commitment? He has not seen one single document where they made a commitment. Put in the septic. Put in the T in the circle. Any of those things we had talked about. There is no documental evidence on which any reasonable person, and that kind of what you guys have to do, to make a determination. We are looking what Mr. Duke did. Is it reasonable? Is the way he scored this reasonable? That's a fundamental issue. Without some documental proof, I don't know how it could be. When you go to court you have to have some sort of evidence. What we did here was, oh that house is more than two hundred feet from the property line. We didn't hear that. Did we? As far as the Appendix D, notice of agricultural activity, read your Ordinance. It is required in there everybody that is required that is seeking the required Improvement Location Permit submit it. That is your rule. It's not his. Reasonable people can disagree on certain things. He doesn't know how a reasonable person could say that we are going to accept these things, a governmental proceeding, without any documental evidence. He doesn't know how that is reasonable. He guess the only thing he would say is, if you look at the information that has been provided to you, we can't rewrite history. We can't say, oh yaw we're going to put that in there. Either you have documental proof or you don't. On the basis that what has been provided to you as far as the documentation, it's simply not there.

Brianna asked for ten seconds to speak. She wanted to draw the Board's attention to page 106 which is Section 7.10.2 f3 that is the requirement for the notice of agricultural activity and that's for anything in A-3. It's not specific for CAFO's or CFO's. It's for houses. It's not for CFO's.

Mr. Geoff Wesling, Attorney for the Board, asked if there were any more questions from the applicant or appellat at this time.

Geoff asked if there were any individuals that wanted to speak for or against, specifically the two houses.

Mr. Brian McMinn said he would like to make a comment on this. The documents that Mr. Duke gave him, straight out of the Rush County Ordinance, Appendix A, defines each one of the fifteen (15) categories that Mr. Duke scored. When those points are assigned it seems to be pretty arbitrary as far as not having any documents of proof regarding as to how these points are going to be assigned. So, Mr. McMinn, said his question was, just ambiguity of the point system. How can you assign points when you don't have the proper documents? This is according to Appendix A. How do you come up with the points in Appendix B?

Geoff asked if anyone else wanted to speak. Several people spoke up. Geoff said he sets on Boards like this, he gets very heavy into they are not really (referring to the Board) answering questions. State your opinion and they be permit to, but this isn't the kind of situation that they get attacked by somebody and give questions. Geoff said that certainly wasn't aimed at him. This was a broad protection that he likes to give.

Mike Behr comes to the podium and asks when these points were awarded. Brianna stated January 14th, 2022. Geoff asked Mr. Duke if he agreed with this. He stated yes. That's when the letter went out.

Geoff asked if there was anyone else.

Mr. Albert Gordon said he would like to say something and comes to the podium. He stated several years ago he set on this Board. Several years before that on the APC Board also. He stated he help develop this scoring system and when they did that we have over forty (40) members of the community. They were elected officials, Board members, and planning members. Several members had gone through college for planning. One of the reasons we came up with the scoring card, was prior to that, this Board would have a meeting and maybe someone would come in and get a permit. There would be no body here. You looked at this in hind sight and questioned was that a good location for site. There was nothing to judge this on. This was just wither the Board suggested it. Then you have another meeting where it was a fantastic location and there would be so much animosity against it, again how could the Board make a judgement on that. This is how we came up with the point system. The idea of the point system was to help educate not only the people involved in agriculture, but people that weren't setting on this Board trying to make that decision. This is the reason we have the Appendix A with its definitions, etc. Also, this was to give you something to make a judgement on. The idea that maybe not getting a permit as not as Mr. Duke has judged, but this would get a hearing as we see you haven't done water conservation . That's what this item is in there for, to see whatever else is available. Before this it was just a hip shot on wither not to like somebody or how loud someone was yelling in the crowd. He stated they tried to bring common sense to the approach on this. One of the things with the intent the Director talked about the septic system or municipal systems, our intent when they talked about this as Board members, would look at this and say if they are on a septic system means they are further out away from services. This was another indication they were building away from public services. We never looked at it if they were going to put the system in, this was just another clue of where it was going to be located. Albert said one of the things he found out from the audit page, was visiting every site was impossible. You had to depend on the information that was given to you. Whether they have permission from the state and how they scored it. Albert said he did remember some permits that were passed out prior to this, for one of the things that was put on the permit was you had to knife in the manure. We had some people that decided they weren't going to do that. Some citizens complained to the Executive Director, they were brought in and they were fined. At the time, he believed they were fined Five thousand dollars (\$5,000.00) and he thought one of the Board members took it down to One thousand (\$1,000.00) that was before the scoring system. So there is a way to inforce things they say you have to do. Albert said he thought this helped the Health Board out because at lest they had something to look at. He said he would like to see the point system stay, because if you don't have it, how are you going to make the judgement. Is it going to be just whose here at the time. He would like to see a judgement made when there was nobody here. He feels as if the system is working and pretty reasonable for the last several years.

Mr. Wesling, Attorney, asked if there was anyone else that wanted to speak.

Brian McMinn came to podium and pointed out Mr. Gordon had pointed out good thing on this scoring system, but he isn't so sure this should be in the hands of one person, as the APC Director. He thinks the scoring system should be looked at more by the Board rather than one particular individual rendering his or her opinion on what documents were submitted or not submitted and awarding those points. This should be one thing the BZA should consider.

Geoff asked if there was anyone else to speak.

Steve Comer spoke said he has a comment on the applicants attorney on her own admission stated there were some things that probably weren't real clear, and they promised that they would do these things. They promised because they would be subjected to fines or enforcements whatever that may be. He doesn't understand why we would award points on empty promises. You can't award points on empty promises.

Geoff asked if there was anyone else that wanted to speak.

Hearing none, Sandra asked for a motion to close the Public Hearing.

Virgil made the motion to close the public hearing. Seconded by Dohn. All were in favor. Public Hearing was closed at 7:10 P.M.

Geoff told the Board they could discuss this internally. You can certainly ask any questions from anyone you want to. You can't refer back to the previous questions asked.

Virgil asked Gregg if there was anything else. Gregg said there were a couple of things that are not really big points. You know when you look at the graph that shows the dimensions and shows how far, what he normally does is zoom out on GIS. He measures based upon zoomed out measurements. So he gets as close as he can possibly. If he's within five, ten feet it is possible. When you zoom back in, it looks like who knows where the line starts. It's covered, but there is a reason for that. He couldn't have said most of this any better than Brianna did when it comes to points awarded are based upon nothing than the applicant is howled by him. They are literary howled by him at times, just because he wants to know exactly what they are doing. It has to be known. The safe guard is, he will get every plan that they put in this document when it comes time to issue an ILP. There will be a document that outlines all of this, when it comes time. He doesn't feel like we have to change the methods of what we do. The last thing he would say is, we talked about granting points without having anything in here. Those of you that were on the Board, the last time Mr. Johnson was here, if you will remember, he won the case because they took points away based on septic system and didn't have a site plan either. But he won that time. But now he doesn't like it. So he's not saying he's wrong or right. He's just saying you can't have it both ways. That's all he has to say. Virgil asked Gregg on **the Odor Abatement**, you have on there the impermeable cover is not allowed. Gregg said that was correct. Virgil said up there in the previous line there in Tier 1 Methods it has Permeable cover or impermeable cover for manure storage and lagoon and liquid manure storage structure is covered. Why does it not meet the requirements? Gregg said we are talking about odor abatement. That's a gas. Permeable covers refers to liquid. Virgil asked the Gregg about the driveway if he know how long it was. We are talking about a truck turn around. He didn't know of anyone that would back a truck up this far. Gregg said he can't imagine anyone backing this. They could probably do it, but who would want to. This again is going to be one of these things that will be insisted upon when they come through with the ILP. Dohn said if his recollection was correct, we had dictated ingress and egress with the cattle CFO, the one in northern Rush County. We actually dictated the turnaround or T amongst the actually functioning qualities where they would be loading and unloading for public safety. He understood that and his recollection maybe incorrect, when it comes time we could dictate to the developer of the barns what type of turn around it would have, where the driveway is wide enough. Gregg said he was absolutely right. His recollection was correct. Gregg said he thought what the applicant said was T and circle. He thinks they are offering to do both and it's not required. Dohn said as sitting Board members if we don't necessary like what we are seeing, we can actually request before granting the ILP the driveway to be to specifications, odor abatement, trees

(shelterbelt), etc. Gregg said what he thought, and Geoff you may have to back him up on this, he thinks you are kind of limited. When it comes before the Board for a variance, then you would have the right. Geoff said what Gregg is saying, if this wasn't up to keel and he is issuing an ILP, he is saying this has to happen, but this Board would likely not have anything to say about.

Virgil asked Gregg if this was consistent with the one just north of town that went in. You reviewed and scored according. Gregg said again it was consistent with up north. Consistent with the one down south. Actually a couple of them down south. Gregg stated it was consistent. Virgil said that was what he was looking for.

At this time Sandra asked if there were any more questions from the Board or anyone. Kenny had a question. They are saying they have all the zeros over here, but Gregg has the final say if they met those requirements, when he issues that building permit. Doesn't he? The Director is the one that says hay if they are not met then we are not going to issue. Gregg said that was exactly right. They have to give the plan. He'll just leave it at that. Then of course, like it was said before, the active plan, they put everything in and miss something it's open for enforcement.

Sandra asked if there were any other questions. Hearing none she asked for a motion for or against the appeal on Premalean in regard to the scoring system. Virgil made the motion for denial of the appeal on the scoring of the site. Sandra stated she had a motion to denial the appeal on Gregg's scoring. Seconded by Denny. All were in favor. Motion for the denial of the appeal was carried or passed.

Sandra asked for a motion to adjourn. Denny made the motion for adjournment. Seconded by Virgil. All were in agreement. Meeting adjourned. 7:20 P.M.

Sandra Jackson
President

Kenny Aulbach
Secretary
Ika