

RUSH COUNTY  
BOARD OF ZONING APPEALS MEETING MINUTES  
WEDNESDAY JANUARY 4<sup>TH</sup>, 2023

5:00 P.M.

President Sandra Jackson calls the meeting to order 5:00 P.M.

**ROLL CALL:** Virgil Bremer, Denny Corn, Dohn Green, Kenny Aulbach, Sandra Jackson. Also present were Geoff Wesling, Attorney, Mike Holzback, Director, and Linda Ashwill, Assistant.

**APPROVAL OF MINUTES:** November 2<sup>nd</sup>, 2022 Sandra asked if there were any additions or corrections. Hearing none she asked for a motion. Motion was made by Dohn for the approval of these minutes as written. Seconded by Virgil. All were in favor. Minutes were approved.

**NEW BUSINESS:**

**Election of Officers:** Denny made the motion to have Sandra remain as the President. This was seconded by Virgil. All were in favor. Sandra accepted the nomination for the term.

Denny nominated Virgil for Vice President. This was seconded by Dohn. All were in favor. Virgil accepted the nomination.

Denny nominated Kenny as Secretary. This was seconded by Virgil. All were in favor. Kenny accepted this nomination.

**BZA-2023-1 Jay Haney** is requesting a Special Exception to have a Home Business / Private Yard to construct a barn to be used for automobile chop shop. Location of this property is 11828 900 West Carthage, IN Parcel #70-01-02-103-008.000-008

Grant Reeves was the Attorney representing Mr. Haney. He requested this agenda to be tabled until the next meeting. He has talked with Mr. Wesling quite a bit and he believe there is quite a bit more going on other than Mr. Haney buying the property. Board Attorney, Geoff, stated he really didn't have a preference if he wants to proceed or not, but he thought there should be open discussion on some of the issues on this property, since there were several neighbors in attendance and there was an attorney for representation for one of them. Grant said there needs to be discussion of the violation Mr. Haney has received. He has photographs showing where Mr. Haney has been cleaning up the property. Geoff said also, he wanted to clear the location of the property. There are two parcels that Mr. Haney owns. One is his residence. He believes it is across the road or a block away from the property he has purchased. They are not adjacent to each other. The property that we are talking about this evening is the one adjacent to the Hodnut's that they are purchasing from the Lahey's. Mr. Reeves stated that is correct and went on to state how Mr. Haney had cleaned up both of the properties. He has torn down the old delapidated house on this parcel where the mobile home is and has cleaned up another parcel where his residence is. Geoff said so it's the property, that is not his residence, that he wants to build on. Grant said yes, it's not his residence. It is zoned residential, but he doesn't live on this parcel. It just

has a mobile home on it and some out buildings on it. He has been cleaning this up in steps, which he believes has led to some of the confusion here. Geoff said there isn't a problem with continuing this until the next meeting but he thought the Board needed to hear some of this, so they would know how to continue. Grant asked Mr. Haney to speak as to what his long-term goal was for the use of the property, his family issues there and what is actually going on with the property. He believes it's stated quite differently that what is actually going on.

Mr. Haney stated what his goal was when he bought the place was to demolished the old house. Which he did and burnt it on the property. He was wanting to fix the mobile home up for his autistic son to live in, since has been there five years prior to him buying the property, or have a tiny home put on the property, since he has or needs to live close by. His son is eighteen years old but has the mindset of a sixteen-year-old. He has to stay close. He likes working on cars with him. He had a neighbor file a complaint with the Board of Health stating he was dumping raw sewage from the mobile home into the house on the property, which wasn't the case. This has been going on five years prior to his buying it. Previous owners had put in a septic system, which they had been using five years before he bought this property. He wants to put up a building and fence in the property, where he can remove the parts of cars that he buys at auction weekly. He takes the wheels off of them and cuts the convertors off then takes them to the scrap yard. They are salvaging what plastic and metal they can. That is exactly what he does. He stated he didn't pull the motors or other parts to sell. He doesn't drain gas, anti-freeze or any other liquids out of the vehicles.

Geoff asked if he could talk about the structure that he wants to build. Mr. Haney stated he is hoping to put up a 30 x 96 hoop building which he has bought out of Ohio, which he thought would be ok. He went to apply for a building permit and he was told he would have to get a Special Exception to put this on this lot. Geoff said so this building would be big enough so vehicles would be inside. Mr. Haney stated correct. This would hold 15 to 20 vehicles where they would not have to be left outside. He stated he keeps no car or vehicle sets more than seven days. He buys them on Thursday from the police impound. They usually come in on Fridays or Saturdays. He takes the wheels off and cut the convertors off on Sunday. He buys no more than 10 at a time. Grant said so he wouldn't have any customers coming in and out correct. Mr. Haney said it's just him and his son only. He also stated he wants to put up a six-foot privacy fence. That way the neighbors won't have to see him working on vehicles or look at a trailer setting there. This trailer has plates and will be inside of the fence. He said he has done a lot so far to improve the property, demolishing the old house, leveling the ground out, got rid of the old septic system. He did dig the septic system out because it was so outdated. He has talked with several contractors about doing a septic but it doesn't want to pay out \$20,000.00 out at this time. This has been put on the back burner. There has been no one living in the trailer. He's basically using it for storage.

Grant stated he didn't know if a Special Exception was actually required. To him an accessory building, which we talked through a little bit, temporality he would be putting up a structure with a membrane, such as plastic, until he could put metal on it as he continues fixing up his property. Geoff asked Grant if he was questioning if this was a home business and questioning if he needed a Special Exception since there is a structure already there? Grant said to him if he had a house like adding a pole barn, would just be an accessory structure. Particularly if you get the character of this neighborhood. It's all zoned residential, but there's a Coop with an LP gas depot in it. There's a grain elevator. There's a field behind it that part of it is zoned residential and part is zoned A-3, agricultural. There are a lot of mechanic shops

down this stretch. This corner was stuck up in the corner of the map as residential and no one in Rush County questioned the zoning. This is not out of the character for the mechanic type zone. There is an operating grain elevator to the property to the north of this. The LP Gas has a store operating in it and things like that. They are trying to figure out if this can't be worked within this neighborhood. Maybe this could be rezoned to match a little with the character of what is going on in the neighborhood. He stated they were trying to work out a middle ground to be able to work this out.

Kenny asked Mr. Haney what kind of fence he wanted to put up. Mr. Haney stated he wanted to put up a wooden privacy one at least six foot. Mr. Haney then stated he wanted to put up two buildings 30 x 60, salvaging from the hoop building that was 30 x 96 what he could. Kenny said that was pretty large to be put right in town. Mr. Haney said he would probably cut it down to 30 x 60 and have two side by side.

Geoff asked him what the difference this was from a junk yard. Is this a different business? Mr. Haney stated he doesn't store the junk cars after it gets the parts off he wants off of them. Paine's or Carthage Junk Yard were junk yards that are down the road.

Geoff stated he would like to hear the complaints from the neighbors. Grant said this might be a good idea, since this is zoned residential. He would like to hear what the neighbors think about it.

Geoff called upon Mr. Johnson, attorney for a neighbor, to hear what the neighbors had to say. Mr. Johnson stated he wanted to make clear of where they were at. The Board wanting to hear essentially what the neighbors have about this property. Geoff said for clarification right now, they have an application for a Special Exception. It sounds like right now the application maybe takes less not representing no evidence for this Special Exception. We are having a general discussion or a authorize need to issue litigation against them. Maybe to table this until next meeting after this discussion.

Mr. Johnson said probably this best way, since he doesn't live there, the neighbors here have more first-hand knowledge, and obviously he has a client on Zoom and would appreciate allowing them to speak. It would please the Court to actually allow to speak on these issues and Mr. Hodnut as well and at the end he could address some issues also.

Paula and Shawn Lahey, neighbors that lives just north of Mr. Haney's property came to the podium. She stated they were the deeded owners of the property directly to the north of Mr. Haney, the Shue's, are both well keep properties. They are both zoned residential. Hers is on 1.3 acres and she is concerned for the property value if a junk yard business was to come in on a residential zoned property. This doesn't seem feasible to have a junk yard property next door. She is worried about property value. She doesn't think a fence would be adequate to eliminate the sound and to hold all the vehicles. Mr. Lahey asked how he was going to get these cars in and out. Their parcel has a swimming pool next to the driveway, so if you set on the deck, you are going to be looking at a salvage operation. The size of their property, he doesn't see how this operation can work effectually on that small of a parcel. In the past there have been a lot of cars on this property. He has cleaned the area up, but where the cars are right now he didn't know. When they were there that was a violation in its self. A lot of things have been put into play without any proper permits or organization. His concern is if this goes forward how do they know if things are going to be taken care of properly? Where are they going to go to the bathroom? It's a financial concern as being home owners. The Hodnut's are buying this on contract from us.

Geoff asked if he knew how many times vehicles were coming in and out of the property. Mr. Lahey said he couldn't tell. Since the Hodnut's are out of the country he has mowed the grass and seen that the yard was maintained. He has seen cars coming in and out. He didn't know how long they had been sitting there. In September when he mowed there were approximately six or eight cars. There was a box truck and some other things in the yard. The other thing that is a concern is the septic system that he has inherited this problem when he bought the property. However, if it's ever going to be occupied, it's going to need repaired or replaced. Geoff said he has been told the septic system has been closed off. If they were to build a tiny house they would have to go to the Board of Health and either get that septic system approved where it would be appropriate. In regards to the bathroom question, he didn't know if they would necessarily have to have a facility there.

Geoff said to him the properties are being unkempt. Both of the properties. There're cars, debris, campers on both parcels. Mr. Lahey said this goes back on concern for the property's value. If they did have some type of structure that would look nice to put this in, and everything kept inside of it, would that resolve the issues? Mrs. Lahey said a structure is fully separate from a business or operational venture. Geoff said he thought there was a legal debate on if this was a business or not. As far as an eyesore hurting property values, could a building be put there that would alleviate those concerns. Mr. Lahey said it was possible.

Mr. Johnson asked if there were any other questions. Mr. Dillion Hendrix's, living at the property at 11892 North 900 West Carthage, came to the podium and spoke stating he has lived at this property for over twenty (20) years. There was an old Agriculture (grain) facility next to the railroad, a church that has been there for years, that have been nonresidential, but the properties surrounding are residential. This has all been a nice little quite spot. Mr. Hendrix states what Mr. Haney has brought is not residential. It's commercial. He understands he had cleaned the area up now. There has been junk cars, rubbish and debris, down the street from him. It has been an eye sore quite some time. Mr. Hendricks gave pictures to the Board to look at and for the file. You can see how the campers are ripped apart and drugged all over the yard. The pictures are next to his back yard where his children play and they set out in the yard. Building a pole barn, not even a pole barn but plastic hoop building that he is going to patch up with metal and fix up over the years, isn't going to do anybody any help. They are all on a well out there. Something that gets the water form the ground. These wells will be destroyed with all the stuff leaking out of these vehicles. Rubbish, tires holding water, attacking mosquitoes, etc. Mr. Haney had a complaint filed on him in November and the County told him in November, that this needed to be cleaned up. He almost slapped it in the mouth by bringing stuff in and out like it was some sort of joke. He stated he had a stack of other complaints of people that couldn't make it to the meeting. Some of these vehicles are not only being stored on the property but driven pass all our homes and down the streets. These cars that are torn apart are probably leaking fluids. This is something we do not want coming in and out. This is not stuff we want being stored. Mr. Hendrix thank the Board for their time.

Jennifer and Andrew Hodnut are represented by Attorney, Curt Johnson from DePrez, Johnson, Brant & Eads in Shelbyville, IN. Mr. Johnson stated the Hodnut's, his clients, that are buying the property from the Lahey's, are currently in medical school in the Caribbean, so they are attending the meeting via zoom. Their address is 11858 North 900 West, Carthage. Mr. Hodnut spoke and asked if Mr. Haney was wanting to build two buildings that were 30 x 96. Mr. Haney spoke and stated one building 30 x 60. Mr. Hodnut said it was going to be a pole barn but he didn't hear what type of floor it was going to be. He didn't know what type of floor but he would think with the hazardous material or chemicals that are

going to coming in and out there would have to be some kind of containment as a cement floor. If he was correct or not he would have to have some kind of file for hazardous type of plan. Geoff said that was not a question for this Board. Mr. Hodnut said his concerns was that there would be hazard materials on site. You are going to have CFV's, PBC's, lead and other type of waste. You are going to have an issue with containment. As stated by Mr. Hendrix we are all on the same well or aquafer. If it's not days or months it's years. It just when this well will be contaminated. As far as he knows this has been going on since the property was bought. Before they left in late August or early September he noticed the box truck is setting where it was exactly where it is setting now. Hasn't been moved and trash all around it. He can see by his cameras, pretty much on a daily basis, the ground that is growing over there and the only reason that property was cleaned up, in his opinion was because this meeting was coming. As far as he can tell the cars and junk vehicles that were on the property are just being restaged down the street ready to come back.

Mr. Johnson so the Board is clear, you have exterior cameras on your home and you use those to check on your property since you are in the Caribbean. You have been using those to observe what is going on with Mr. Haney's property. Is this true? Hodnut's answered yes. Andrew stated they have it put in place more to observe their property but it just happens it shows Mr. Haney's property also. Andrew stated why he was concern about hazardous and toxic chemicals, was also the old house that was torn down. He didn't know if he got a permit or not or needed one, but he buried it on site. He realizes the State of Indiana allows this. He can't imagine with the house from 1901 being torn down the ground is going to be blanketed with lead. If there was any type of asbestos put in the house in the maintenance in the past 120 years ago, it's buried in the ground also. If you go out and take a soil sample where he buried it, that the lead is not leaching already down into his well. He can't imagine with his doing that the containment of toxic chemicals and waste is going to get any better. As far as just putting up a building to house these vehicles, that's not going to be enough. As far a building just be putting up so he can house these, to him that is just not enough. There is going to be noises when he's working tearing the cars up on this side business. Lights on all hours at night. It's going to disturb the peace of all the neighbors around there. A bunch of cars setting around is also a fire hazard. He needs some kind of containment, ingress and egress. These are just some of the issues he has. This is a residential area. It's is not a Commercial area. It was bought has a residence. The permanent residence was torn down. Now there is no residence on it just an unpermitted mobile home on it which can't be used, since the septic has been capped.

Mr. Johnson asked Andrew to explain to the Board the circumstances when law enforcement was called and your relation with Mr. Haney.

Mrs. Hodnut, Jennifer, spoke stating when they bought the property there were tow trucks coming in to take away scrap, old cars, garbage, etc. The tow truck was going through their yard to get the cars. She told the driver that he needed to quit coming into their driveway and making big ruts. The driver called, and in the mean time Mr. Haney came down and threatens her. Screaming and cussing her out. Stating he was the property owner and he would do what he wanted. She didn't even know Mr. Haney. She called law enforcement. The tow truck driver left. The deputy at the time said Mr. Haney had bought the property next door. A no trespassing sign was issued and there was an argument over the property line. What they think is the line and what he thinks is the line are two different things. Since then he has been driving through the yard on the side by their property. She stated he is still going through their property to get around to the back side. Mr. Johnson said so even after the no trespass warning he continues to

go through your property. Mrs. Hodnut stated that was correct. Mr. Hodnut said based upon pictures just taken last week there are ruts on that side. Andrew said that's another concern he had, if this property is going to be rezoned as commercial there has to be some sort of a setback from the property line does a survey need to be done? In order to do this. Mr. Johnson said they won't going to answer his questions at this meeting. He asked if they could talk about the instant where the car fell off the flatbed. Mrs. Hodnut said there was a car on a flatbed. There were like three on this flatbed. One of cars going down the road from their property, went through the neighbor's yard at 11911 and went directly across to the other neighbors on the tow truck fell off and hit a neighbor's car. Totaling it.

Mr Johnson is there other concerns or comments they would like to make to the Board? Mr. Hodnut said he didn't have anything further, other than if it were up to him it would not be rezoned and an exception would not be given, unless there are some drastic changes that could be occurred. Some kind of containment. Mrs. Hodnut stated one last thing she wanted to state was that she was always open for anyone to improve themselves and make their property better. She completely agrees that someone that goes by the rules and regulations of the County, but unfortunately, she doesn't think that is what we are dealing with here. She is concerned about Mr. Haney's property being turned into a business in a residential zone. She feels as if the building of two buildings, as Mr. Haney wants to do, would devalue their property considerably and is worried about hazardous waste. The Health Department has closed off the septic system to this property. She was wondering what kind of floors were going to be put in these buildings. If not cement all the liquid waste would be draining into the surrounding wells. Evidently the existing property line is different than what he thought.

Attorney, Kurt Johnson, spoke at this time, asking the Board to consider these facts:

He stated he appreciated Mr. Wesling trying to find some middle ground. Nobody wants to do this. When someone has money to buy real estate, they need to know what they are buying and how it is zoned. This property is zoned residential. He doesn't know how property values can't be negatively assessed when you are living next to Sanford and Sons. This is a chop/shop, junk yard. How does this not only damage property values, but the quality of life? The history of the neighbors looking at this. There are somethings. Unfortunately, there is no middle ground or working situation. He thinks this is one. Here are a couple of problems here. The Health Department contacted him.

Mr. Haney bought this property on August 23<sup>rd</sup>, 2022 approximately 4.5 months ago.

Applicant effectively has turned the Real Estate into a junk yard.

There has been nine (9) complaints to the Planning Commission from neighbors \*Some of the complaints are regarding the Applicant's home just south of this Real Estate. It appears the Applicant has moved vehicles from this location to his home or residence.

Plan Commission issued Notice of Zoning Violation 11/16/22, which violations remain uncured- Mr. Johnson gave handouts with pictures of junk vehicles, mobile home only allowed if existing home on premises and Septic issues.

There was an unsecured vehicle that flies off the back of the towing trailer. There's traffic congestion. Mr. Johnson shows the pictures to the Board. These were taken New Year's Eve, 12:30 PM. And shortly thereafter. These show tracks in Mr. Haney's neighbor's yard where vehicles have been moved. Last pictures show him blocking traffic. This was made during the

day and if you look on the other side of the tow truck there is a school bus. He's blocking traffic on this road, when kids are present. Next picture show Mr. Haney's house. They believe he has been taking these vehicles from this area and putting them in front of his house.

Complaints to the Health Department concerning raw sewage being emitted from trailer on parcel.

Applicant demolished/buried house.

At least one (1) call to law enforcement due to trespass due to driving through the yard of the Hodnett's.

Improperly secured junk vehicle fell off flatbed into yard at 11911 N 900 West and hit a parked vehicle at 11851 N 900 West.

Caused traffic congestion, including with what appears to be a school bus.

Applicant has requested both a Special Exception and a Rezone of Real Estate.

Mr. Johnson states the Board should deny the application due to the following deficiencies:

The use of the Real Estate by the Applicant meets the definition in the Ordinance of a Junk Yard.

He goes on to define the definition of a Junk Yard and stated a Junk Yard is not permitted for a Special Exception under 7.1.12 for a residential district. Junk Yards are only as special exception in Manufacturing, Business, and Commercial districts. This is exactly a Junk Yard. This is impermissible in this zone. The only way Mr. Haney could have this would be if this property was rezoned.

Mr. Johnson goes on with eight different criteria of the Ordinance why this Special Exception should be denied. He also states if this property is rezoned this would be spot zoning.

Attorney, Grant Reeves, comes to the podium, for the applicant, stating a lot of personal issues have come into play, since Mr. Haney has bought this property. A lot of personal attacks on different levels. He goes over the different pictures presented. The trailer where the car fell off was three years ago. That's when the strap broke off. He stated the pool and cement blocks in the pictures were on the neighbor's property. The box truck is operable. The tires pictured were on rims. He stated this has gone beyond the zoning issue. They are stating Mr. Haney doesn't have, ingress and egress. He has his own driveway. This has escalated so far from the zoning issue. This is part of what he is trying to figure out how to deal with it.

Mr. Haney stated when he bought the property the grass was a foot tall. He sent his son over to weed eat. He had called Bobby Fields to tow the old car that was on the property. The old car fell off onto his property. His son called him and said he might want to come down there. Prior he had gone down there, with the previous owner of the property, with a metal detector and used it and found the pins in the county road. They didn't think Rush County put pins in the road. They didn't say anything about them calling him names. That same day they reported him to the health department about dumping raw sewage into the house. He stated he burnt the old house and buried it. The only thing left is ash. He asked if he had to have a permit and he was told he didn't have to have one. There is no septic tank. Ever since he bought this property he has had neighbors coming at him. He stated the reason being is

that Dillon Hendrix wanted to buy this property and he has been mad at him, since he bought it. He stated the cars he buys have been setting forty-five (45) days and all the fluids have been drained out of them. He has these cars no longer than seven (7) days at a time after he buys them.

Geoff asked Mr. Haney how is this not a Junk Yard? Per the Ordinance a Junk Yard is described as quote "A lot, land, or structure, or part thereof, used for the collection, storage or sale of waste paper, rags, scrap metal, or discarded material, or for the collection, dismantling, storage, or salvage of machinery or vehicles on in running condition, or for the sale of parts thereof. Mr. Haney asked how a body shop or repair shop was explained. Geoff said he could see a body shop where vehicles wouldn't be in running condition. Mr. Haney said he buys vehicles that run and are drivable. These have been wrecked, yes. But they either run and drive or have been smacked in the front. Even if they have been wrecked they can't be put up for auction for forty-five days. They have to set in the impound lot for forty-five days. Any fluid that is leaking has already leaked out when he gets them.

Grant said we can argue that this is a Junk Yard, but look at what he has done. He has cleaned up the front. He's got rid of the old delapidated house. He's not storing vehicles for long. He's not dumping fluids. He would have to have IDEM involved if he was or container disposal. He thinks there is a lot of common sense for a small chop/shop owner. He's sure a lot of guys would be caught with that definition that the County has never enforced on here. Grant asked again for this to be tabled until the next meeting, February 1<sup>st</sup> @ 5:00 P.M.

Geoff asked if the neighbors had talked at all? Mr. Haney said he had talked with all neighbors but Andrew and Jennifer, and he didn't know the Lahey's that are selling their house on contact. He did talk with Andrew right after he bought the property and he apologized saying he didn't know the property had been sold. He's talked to people across the street. He has talked to the neighbors to the south. He has actually talked with others and explained what he does. The vehicles are not setting there longer than seven days. Geoff said you can see why people would object when they see vehicles every day setting there. Mr. Haney said they were fine with that as long as the vehicles were not staying there more than seven days. He brings them in and gets them out.

Geoff said since both parties have an attorney, he thought there could be some meaningful discussion which they weren't going to get resolved tonight. Mr. Haney said he was willing to work with the neighbors.

Mr. Johnson if he may, this has been an ongoing issue. We were set tonight. The fact that Mr. Reeves was hired late. This was Mr. Haney's decision. We made special arrangements and accommodations for the Hodnut's to be with us tonight. Mr. Johnson requested the Board to go forward to the extent with the ongoing violations and make their decision as far as the application, this evening set on these spiraling arrangements.

Mr. Reeves asked that this be continued at this time. Maybe after further discussion maybe he could finalize this.

Sandra asked if there was any discussion or questions from the Board. Clients attorney is asking that the Board tables this for this evening for the Special Exception request. Dohn spoke and said the definition of a Junk Yard is pretty clear by 7.1.12 A #5. This states no unsafe, uncomfortable, or offensive vibrations, noises, visual effects, odors or air pollutants shall be allowed to radiate across lot lines. He



didn't see any reason to continue or table this. Denny asked Kenny what his thoughts were on this. Kenny stated he thought they should give them every opportunity to table this until next month. They can come back to us and we can go from there. Kenny said right now we have people on both sides of this. This is the first we have seen it ourselves. Kenny said he moved to accept tabling their motion for them to come back next month. Sandra said she had a motion to table this until the next meeting, February 1<sup>st</sup>. at 5 PM. This was seconded by Virgil. All were in favor except Dohn who voted nay. This application will be presented at the February meeting.

**Approval of 2023 Calendar:**

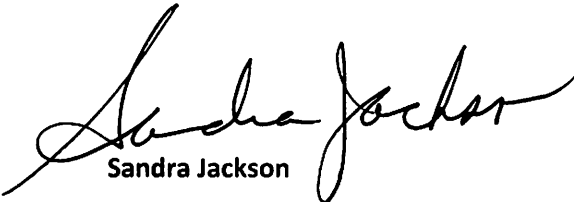
Dohn made the motion to approve the calendar dates as written. This was seconded by Denny. All were in agreement to approve the meeting dates as given for this ensuing year.

**REPORTS:**

**Attorney: Geoff Wesling** Had nothing further at this time.

**Director: Mike Holzback** Stated he had nothing further at this time

**ADJORNMENT:** Virgil made the motion to adjourn. Seconded by Dohn. All were in favor. Meeting adjourned 6:08 P.M.



Sandra Jackson

President



Kenny Aufbach

Secretary Ika