

Area Plan Commission & Board of Zoning Appeals
Joint Session
October 12th, 2023

The October 12th, 2023 regular session of the Area Plan Commission was called to order to at 6:01 p.m. by President Scott Nogle. Those members who answered roll call for the APC were Scott Nogle, John Moore, Brian Stevens, Joe Ellis, Phil Cox, Ron Mack, Lary Langley and Barbara Phillips. Those who answered roll call for the BZA were Travis Newman, Scott Nogle, Barbara Phillips, Judi Paloney and John Graves. Also present: Attorney Ron Severt, Executive Director/Recording Secretary Penney Carpenter, Scott Carpenter, Susan Strole, Janet Strole, Doug Hess from VCEDC, Rick Weir from Vermillion County Council, Cindy Pyle, Wanda Bruce, Jennie Smith, Cathy Brock, Rachel Peyton, Cheryl Bridge, Connie Warner, Britton Luther County Commissioner and Tim Yocum County Commissioner.

The September 21st, 2023 minutes were examined. Mr. Mack made the motion to approve the minutes as presented. Mrs. Phillips seconded. MC

Old Business:

Update on ongoing violations: Mrs. Carpenter stated she will have a full report for the November meeting.

Other Old Business:

Mrs. Carpenter presented the letter of opposition written by Kerwin Olsen. Mrs. Phillips read the entire letter that will be sent out on behalf of the Area Plan Commission. Said letter will be mailed certified mail to; Spencer Deery, Alan Morrison, Larry Buschon, Todd Young, Mike Braun, regular mail to the County Commissioners Tim Yocum, RJ Dunavan, Britton Luther, along with the County Council Martin Brown, Tammie Brown, Jeff Bose, Neil Costello, Ashley James, Rick Weir, and Kelly Summerville. The letter will also be sent to the EPA, DNR and IDEM. The letter can be found at the end of these minutes.

New Business:

Rachel Peyton has filed with the Vermillion County Board of Zoning Appeals, Petition 23-02 requesting a Variance on the 1 acre requirement on real estate in an Agriculture Zoning District, located in Highland Township, Vermillion County, Indiana. Mrs. Carpenter stated that all adjacent property owners had been notified by certified mail and the legal notice was run in the Clintonian. Mrs. Peyton was

present to answer any questions or concerns. Following a brief explanation of the situation Mr. Nogle opened the public hearing. With seeing none and hearing none, Mr. Mack made the motion to close the public hearing, seconded by Mr. Moore. MC. Mr. Mack made the motion to pass Petition 23.02 for the 1 acre requirement on real estate in an Agriculture Zoning District on to the BZA with a favorable recommendation. Mr. Langley seconded. MC

Brad Johnson from Ground Rules Inc was present for the Kickoff of the new Unified Development Ordinance (UDO) project. Ground Rules will also provide information about ordinance projects and how to make the process go smoothly. It was agreed that the kickoff open houses would be held on the same day in Clinton 9-12 and in Newport 1-4 the first full week in November if possible.

Other New Business;

Mr. Nogle presented the Area Plan Commission Resolution 23-01. After reviewing the document and making corrections as suggested by the commission, it was read aloud by Mrs. Phillips so everyone in attendance would understand what the resolution was stating. Mr. Mack made the motion to approve said resolution 23-01 with corrections. Mr. Stevens seconded. MC Mrs. Carpenter stated this will be on the agenda for the Vermillion County Commissioners meeting on October 24th at 9:30am.

Mrs. Carpenter presented the claims paid since the last meeting; she also handed out a list of the fees collected so far for 2023.

Claims paid September 21st- October 12th 2023:

10/11/23	Ron Severt	4 th Quarter Consult	\$1,000.00
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Mrs. Phillips made the motion to approve the claims. Mr. Ellis seconded. MC

With no further business before the board Mr. Mack made the motion to adjourn the meeting at 8:40p.m. Mr. Moore seconded. MC

Penney Carpenter
Penney Carpenter,
Recording Secretary

Board of Zoning Appeals

October 12th, 2023

The October 21st, 2023 joint session of the Board of Zoning Appeals was called to order at 6:01 p.m. by Chair Barbara Phillips. Those members who answered roll call were Scott Nogle, Barbara Phillips, Travis Newman and John Graves. Also present: Attorney Ron Severt, Recording Secretary/Executive Director Penney Carpenter, and petitioner Rachel Peyton.

The July 13th 2023 minutes were examined. Mr. Graves made the motion to approve the minutes as presented. Mrs. Paloncy seconded. MC

New Business:

Rachel Peyton has filed with the Vermillion County Board of Zoning Appeals, Petition 23-02 requesting a Variance on the 1 acre requirement on real estate in an Agriculture Zoning District, located in Highland Township, Vermillion County, Indiana. Mrs. Carpenter stated that all adjacent property owners had been notified by certified mail and the legal notice was run in the Clintonian. Mrs. Peyton was present to answer any questions or concerns. Mrs. Phillips opened the public hearing. With seeing none and hearing none Mrs. Paloncy made the motion to close the public hearing, seconded by Mr. Nogle. MC

Mrs. Phillips read the findings of fact for Petition 23-01:

Findings of fact #1 Mr. Newman made the motion to accept Findings of Fact #1. Mr. Nogle seconded. MC

Findings of fact #2 Mr. Nogle made the motion to accept Findings of Fact #2. Mr. Graves seconded. MC

Findings of fact #3 Mr. Nogle made the motion to accept Findings of Fact #3. Mr. Newman seconded. MC

Findings of fact #4 Mr. Graves made the motion to accept Findings of Fact #4. Mr. Newman seconded. MC

It is therefore, the decision of the Vermillion County Board of Zoning Appeals that Petition 23-02 a Variance on the 1 acre requirement on real estate in an Agriculture Zoning District, located in Highland Township, Vermillion County, Indiana Vermillion County, Indiana is hereby GRANTED subject to any conditions stated in the minutes of this Board (which conditions are incorporated herein by reference and made a part of this decision).

With no further business before either board Mr. Mack made the motion to adjourn the joint session at 8:40p.m. Mr. Moore seconded. MC

Penney Carpenter

Penney Carpenter, Recording Secretary

Vermillion County Area Plan Commission

**255 South Main Street
P O Box 314
Newport, Indiana 47966
765-492-5343**

We are writing to express our opposition to the proposed Wabash Valley Resources (“WVR”) project, specifically the hazardous CO₂ pipeline and CO₂ injection well proposed to be constructed in Vermillion County. We ask that you use all the powers that your office provides you to assist our community in stopping these projects which threatens the health and safety of our communities and infringes on both the Constitutional rights of Vermillion County property owners and the rights of Vermillion County and our local communities to self-governance and home rule.

There is little to no real-world experience with the permanent underground sequestration of CO₂. Indeed, the Class VI permit necessary for an operator to conduct such an operation was only created and established in 2010, a mere 13 years ago. Since that time, only six final Class VI permits have been issued by the EPA, with four of those projects never beginning operations, effectively voiding those permits. Only one active Class VI permit remains in effect today. There has simply not been enough real-world data collected to analyze and review which adequately address the very real risks associated with underground CO₂ sequestration, which include,

- Increased seismic activity, which is of notable concern in our community as it sits in the Wabash Valley Seismic Zone and near the New Madrid fault.
- The contamination of underground aquifers and underground sources of drinking water.
- The migration of CO₂ to the surface, causing harm to the health of humans and animals, including asphyxiation considering CO₂ displaces oxygen.

In addition, it is our understanding that WVR has not fully evaluated the suitability of the geologic formations in Vermillion County where they propose to inject millions of tons of CO₂. We’ve been told that both the Environmental Protection Agency (“EPA”) and the Indiana Department of Natural Resources (“DNR”) have informed concerned members of the public that the final site characterization will be done upon issuance of the Class VI permit authorizing the construction of the wells, but further permission would be required before WVR receives approval to inject. That is putting the cart before the horse. WVR should be required to fully assess the suitability of the geologic formations prior to being granted permission to conduct deep-drilling and construction

operations on our precious and valuable land and use the property-owners and citizens of Vermillion County as guinea pigs.

With respect to the construction of pipelines for the transportation of hazardous CO₂, it should be noted that no State rules yet exist governing the construction and operations of CO₂ pipelines in Indiana. The DNR was granted rule-making authority pursuant to the passage of HEA1626 during the 2023 legislative session, but that rulemaking has not yet commenced. It is a safe assumption that those rules won't be finalized until late 2024, at the earliest. Additionally at the Federal level, the Pipeline and Hazardous Materials Safety Administration ("PHMSA") is planning to propose revised regulations in the fall of 2024. This process by PHMSA was commenced in response to a CO₂ pipeline rupture in Satartia, Mississippi in 2020 which led to hundreds of people being evacuated and dozens sent to hospitals.

There are many issues that both DNR and PHMSA need to address before finalizing any rules related to CO₂ pipelines including but not limited to the definition of CO₂; adequate setbacks and safety zones; emergency response planning and resources; requirements around allowable contaminants and their role in potential ruptures; and requirements around odorants considering clouds of CO₂ are odorless and invisible.

It would be irresponsible to allow construction of any CO₂ pipelines unless and until the issues and risks related to CO₂ pipelines are fully vetted by the Federal and State agencies charged with overseeing those facilities, presumably to protect the health and safety of the public. It is also patently unfair to expect local communities to host these pipelines absent any guidance or updated rules and regulations designed to inform local communities and units of government with respect to emergency preparedness and response.

In conclusion, we fail to understand the benefits that will be realized by our community for being forced to host these hazardous facilities which are shrouded with uncertainty and numerous risks. We strongly believe that our community and its citizens should not assume all the risk, against their free will, while out-of-State investors stand to gain enormous wealth on the backs of taxpayers and our communities and residents.

We implore you to stand with Vermillion County and urge you to do all that you can to protect our rights as citizens and protect the health, safety, and well-being of our people and our land.

Scott Nogle
Area Plan Commission
President Scott Nogle
765-505-0140

ATTEST: Penney Carpenter
Executive Director of Area Plan Commission
Penney Carpenter
812-208-0163

AREA PLAN COMMISSION RESOLUTION NUMBER 23-01
A Resolution finding that Indiana's statutes on carbon sequestration may be
in violation of the state constitution.

Vermillion County,

Indiana A

RESOLUTION

WHEREAS, It has come to the attention of the Area Plan Commission of Vermillion County that a statute created by our state legislature may be in violation of the rights of the citizens of Vermillion County as those rights are defined under the Constitution of the State of Indiana.

NOW BE IT RESOLVED AND ORDAINED by the Vermillion County Area Plan Commission that:

In relevant part, The Constitution of the State of Indiana says that:

Article 1 Section 23

"The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms, shall not equally belong to all citizens." 23 (Indiana Constitution (2022 Edition))

and

Article 7 Section, 7 and 8 of the Constitution of the State of Indiana say that:

"Judicial Circuits. The State shall, from time to time, be divided into judicial circuits; and a Judge for each circuit shall be elected by the voters thereof. He shall reside within the circuit and shall have been duly admitted to practice law by the Supreme Court of Indiana; he shall hold his office for the term of six years, if he so long behaves well."

7 (Indiana Constitution (2022

Edition))and

"Circuit Courts. The Circuit Courts shall have such civil and criminal jurisdiction as may be prescribed by law." 8 (Indiana Constitution (2022 Edition))"

That our General Assembly has enacted Title 13, Article 39 "Carbon Dioxide" which, among other things:

14-39-1-3.5 grants authority to a single business in Vigo County, Indiana to engage in carbon sequestration and to conduct business in Vermillion County, Indiana

14-39-1-7 grants that same Vigo County Business the authority to use eminent domain against the citizens of Vermillion County

14-39-1-18 requires a citizen of Vermillion County, Indiana who refuses to sell the pore space under their land in Vermillion County, Indiana to that Vigo County, Indiana private business to

file their suit in the Vigo County Circuit Court and submit their case to a mediator selected by the Vigo County Circuit Court.

THEREFORE, THE VERMILLIONCOUNTY AREA PLAN COMMISSION, NOW
RESOLVES AS FOLLOWS:

1. No Vermillion County citizen or business has been granted the privilege to engage in the construction of a geological Class VI UIC (Under-ground Injection Control) injection wells (carbon sequestration wells) and/or a high pressure transfer carbon dioxide pipeline.
2. Citizens of Vermillion County are being made subject to a private business in Vigo County and forced to sell their property to that business.
3. Vermillion County, Indiana has its own Circuit Court and citizens of Vermillion County, Indiana are being forced to file claims regarding people and land in Vermillion County in the Vigo County Circuit Court.
4. These actions by the General Assembly, in granting privileges to a private business that are not available to the general public and in requiring the citizens of Vermillion County to address disputes regarding their own land in the Circuit Court of Vigo County appear to have violated the rights of the citizens of Vermillion County under the Constitution of the State of Indiana.
5. Each elected official and law enforcement officer in Vermillion County Indiana swore an oath to uphold not only the Constitution of the United States but also the Constitution of the State of Indiana.
6. That no county resources controlled by the Vermillion County Area Plan Commission shall be used to violate the rights of the citizens of Vermillion County.
7. That all other elected officials and law enforcement officers in Vermillion County, Indiana are encouraged not to allow the use of the resources of their various offices to violate the rights of the citizens of Vermillion County, Indiana.

Adopted and passed by the Vermillion County Area Plan Commission this 12th day of October, 2023.

Scott Nogle
Area Plan President
Scott Nogle 765-505-0140

ATTEST: Penney Carpenter
Executive Director of Vermillion County Area Plan Commission
812-208-0163