

**MINUTES OF THE SPECIAL MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

DECEMBER 7, 2015 –6:00 P.M.

A meeting of the Louisville Metro Board of Zoning Adjustment was held at 6:00 P.M. on Monday, December 7, 2015, 514 West Liberty Street, Old Jail Building, Old Jail Court Room, Louisville, Kentucky.

Members present:

David Proffitt, Chairperson
Mike Allendorf, Vice Chairperson
Rosalind Fishman, Secretary
Betty Jarboe
Lester Turner
Dean Tharp
Paul Bergmann

Members absent:

No one

Staff members present:

Emily Liu, Director, Planning & Design Services
Jonathan Baker, Legal Counsel
Joe Reverman, Assistant Director
Joseph Haberman, Planning Manager
Brian Mabry, Planning & Design Coordinator
Jessica Wethington, Public Information Specialist
Will Ford, Public Information Specialist
Steve Hendrix, Planning Supervisor
Brian Davis, Planning Supervisor
Chris Brown, Planner II
Beth Stevenson, Management Assistant

Others present:

David Marchal, Assistant Director, Louisville Forward
Theresa Zawacki, Senior Policy Advisor, Louisville Forward
Chris Poynter, Communications Director, Mayor's Office

The following case was heard:

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NEW BUSINESS:

CASE NO. 15CUP1023

Request: Conditional Use Permit from Chapter 4.2.37 of the Land Development Code for a non-accessory alternative energy system (anaerobic digester facility); with a waiver from Chapter 5.5.1.A.3.a of the Land Development Code to allow parking to be located in front of the building.

Project Name: Jefferson Anaerobic Digester II

Location: 821 South 17th Street

Owner: Heumann, LLC
William Huemann, Manager
4750 New Middle Road
New Albany, IN 47130

Applicant: Jefferson AD II, LLC
Steven G. Estes & Mark Stoermann
7806 W. Jefferson Blvd., Suite D
Fort Wayne, IN 46804

Attorney: Bingham Greenebaum Doll, LLP
Brian Zoeller, Esq.
3500 National City Tower, 101 S. 5th St.
Louisville, KY 40202

Representative: QK4, Inc.
Bryce Fuller
1046 E. Chestnut Street
Louisville, KY 40202

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 6—David James

Staff Case Manager: Christopher Brown, Planner II

Notice of this public hearing was posted on the property, and notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicant.

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The staff report prepared for this case was incorporated into the record. The Board members received this report in advance of the hearing, and was available to any interested party prior to the public hearing. (The staff report is part of the case file maintained at the Planning and Design Services offices located at 444 S. 5th Street).

DISCUSSION:

Chair Proffitt allowed Steve Porter, Attorney, for the Coalition for Sustainable West End, to speak first. Mr. Porter asked that the Board continue this case so the applicant can hold another neighborhood meeting since the plan has changed. He said they originally proposed 3 anaerobic digesters and now there are 4; the buildings size is now 44% larger amongst other issues.

Brian Zoeller, the applicant's attorney, said these issues have been discussed, and that the changes are only due to increased organic liquid flow. He said it will not change the amount of energy production; and are just normal adjustments.

The Board stated that they want the public to feel safe moving forward, but will take testimony and then decide if Mr. Porter's request is warranted.

Agency Testimony:

Staff case manager, Chris Brown discussed the case summary, standard of review and staff analysis from the staff report. He said he has received numerous letters of opposition to this request because of the close proximity to residential properties. He said a variance request has been withdrawn. He said the California Neighborhood Plan was not adopted by Cornerstone 2020, so it was not reviewed as part of the standard of review and staff analysis for this request. He said the proposal is compatible with the existing industrial businesses in the area; and that the Board should include a condition of approval for additional landscaping around all sides of the building.

Theresa Zawacki said she is the Senior Policy Advisor for Develop Louisville, and wanted to provide additional information with regard to how the project fulfills sustainable and ecological energy goals for the city.

Mr. Porter said Ms. Zawacki is a proponent of this request and should speak then. Ms. Zawacki said her presentation can wait if the Board chooses.

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Member Jarboe asked how many residential properties this affects. Mr. Brown said he doesn't have an exact number. The Board had more questions about the California Neighborhood Plan's contents and boundaries; modifications of the specific standards with regard to setbacks and discussion about including more conditions of approval for mitigation (additional landscaping etc.).

The following spoke in favor of this request:

Brian Zoeller, Esq.

Mark Stoermann, 11510 Laurie Drive, Wheatfield, IN 46392.

Allan Latts, 1701 W. Breckinridge Street, Louisville, KY 40210.

Rev. Elliott, King Solomon Baptist Church.

Minister Wayne Shemwell, 535 S. Western, Louisville, KY 40211.

Denny Potter, 1701 W. Breckinridge Street, Louisville, KY 40210.

Ray Barker, Sr., P.O. Box 11871, Louisville, KY 40211.

Theresa Zawacki, Senior Policy Advisor, Louisville Forward, 444 S. 5th Street, Louisville, KY 40202.

Summary of testimony of those in favor:

Brian Zoeller, attorney for the applicant, said this has been a very open public process and have held 35 meetings. He said this technology is not new going back 100 years; and explained how the biodigesters transform corn, barley and other natural substances into renewable natural gas. Mr. Zoeller presented a PowerPoint presentation to the Board explaining the changes to the plan.

Mark Stoermann, explained the process further, and said he's been involved with the development of three other biodigesters. He said the plan changes are not significant and will only affect the volume of stillage. He said the applicant will be providing a 3 ½ million dollar donation for the community/neighborhood.

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Allan Latts said he is the Chief Operating Officer for Heaven Hill Distilleries which was founded in 1835. He said this is a 10 million dollar investment for revitalization and job creation.

Rev. Elliott, King Solomon Baptist Church, said he is comfortable with this proposal since the EPA explained the process to him. He said he supports the proposal which will create jobs and benefit the community.

Wayne Shemwell said he works as a safety engineer; and said this is a safe mature technology. He said third world countries use this technology for energy and that no toxic elements are used. He said there was one explosion in a rural area, but said procedures weren't followed correctly. Mr. Shemwell said odor comes from the refuge, but said this facility is enclosed and will cause no adverse effects on the community.

Denny Potter said he is a master distiller and manager at the Bernheim site. He said the bourbon industry is becoming bigger in this community where the production will increase from 1,000 barrels per day to 1,300. He asked the Board to approve this request based on facts, not fear.

Ray Barker said he's a retired police officer, and researched this technology which is safe. He asked if the people that are opposed did their due diligence and also researched this technology.

Theresa Zawacki, Senior Policy Advisor, Louisville Forward, said that Cornerstone 2020 Goal D.1 encourages recycling and using raw waste for the production of energy. She said she revised condition of approval #4 in the staff report on pages 13 and 14 regarding reducing odor and effective operation. Ms. Zawacki said this proposal will reduce waste in the landfills and improve air quality.

Discussion:

The Board had questions regarding the number of meetings the applicant held and the detail; the processing of organic waste, odor, the reduction of 20-30 trucks accessing this site; safety policies etc.

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Cross-examination:

Mr. Porter asked Mr. Zoeller if GE and the other companies are operating these plants now. Mr. Zoeller said no, but that Mr. Stoermann testified that they have in the past. Mr. Porter asked if any methane could escape. Mr. Zoeller said they will be installing methane detection equipment and continually test for leaks. Mr. Porter asked Mr. Stoermann if he was familiar with “foaming” where liquid leaks can occur. Mr. Stoermann said this can be prevented if the right pH levels are correct. Mr. Porter asked if biodigesters can explode. Mr. Zoeller said yes, but is strictly regulated unlike gas leaks that can cause houses to catch fire or cars to explode. Mr. Porter asked Mr. Zoeller if he spoke with anyone on Maple Street. Mr. Zoeller said he is not aware if there were owners or tenants that showed up at the neighborhood meeting; but overall he didn’t get a lot of opposition.

The following spoke neither for nor against the request:

Martin Smith, 1016 Edgewood Way, Lawrenceburg, KY 40342.

James W. Stokes, Jr., JWH Financial Services, 113 Cherokee Drive, Jeffersonville, IN 47130.

Howard Bedford, 903 32nd Street, Louisville, KY 40211.

Summary of testimony of those who spoke neither for nor against:

Martin Smith said the bio-products coming off his farm are beneficial for sustainable green agriculture and energy for the urban setting. He said his friend, Mr. Stokes, has been working with minority groups on his farm, a cooperative model, in Anderson County.

James W. Stokes, Jr. Operation Pride, said he works with disadvantaged youth to teach trades and finish school in addition to assisting minority business owners. He said this business will create jobs which is good for the community. He said: “If you can’t teach a man to work, he will feed off the community.”

Howard Bedford asked the Board if they consider financial gain when they make a decision. Chair Proffitt said no. Mr. Bedford asked if their decision to approve would be based on receiving carbon credits. Chair Proffitt said the Board doesn’t have any direct control, but if they were to approve the request, might aid in receiving these credits.

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The following spoke in opposition to this request:

Steve Porter, Attorney, for The Coalition for a Sustainable West Louisville, 2406 Tucker Station Road, Louisville, KY 40299.

Councilmember Mary Woolridge, 601 W. Jefferson Street, Louisville, KY 40202; submitted a binder with various pictures and exhibits.

Councilmember David James, 601 W. Jefferson Street, Louisville, KY 40202.

State Representative Tom Riner, 1143 E. Broadway, Louisville, KY 40204.

Tom Fitzgerald, 1600 Dundee Way, Louisville, KY 40205.

Clifton English, 4431 River Park Drive, Louisville, KY.

Eboni Cochran, 4304 Winnrose Way, Louisville, KY 40211.

Clarence Hixson, 1336 Hepburn Avenue, Louisville, KY 40204.

Dr. Wilbur Browning Sr., 1541 W. Oak Street, Louisville, KY 40210.

Yolanda Walker, no address given.

James Marshall, 101 N. 7th Street, Louisville, KY 40202.

Martina Kunnecke, 313 Northwestern Parkway, Louisville, KY 40211.

Michael Brooks, 4402 Sunset Circle, Louisville, KY 40216.

John Owen, 620 N. 28th Street, Louisville, KY.

Douglas Lattimore, 2616 Hale Avenue, Louisville, KY 40211.

Ruth A. Lowe, 1628 W. Breckinridge Street, Louisville, KY 40211.

Virgil Dorsey, Jr., 40210.

David Lott, 1720 Rosewood Avenue, Louisville, KY 40207.

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Banii H. Hudson, P.O. Box 37222, Louisville, KY 40233.

Bryan Burns, 604 Camp Street, Louisville, KY 40203.

Sylvia Wright, 116 Fountaine Landing Court, Louisville, KY 40212.

Michael Avrahan, 1812 Date Street, Louisville, KY 40210.

Melissa Frampton, 1351 Dixie Highway, Louisville, KY.

Summary of testimony of those in opposition:

Steve Porter said he is the attorney for the Coalition for Sustainable West Louisville; and said there are several people here to speak in opposition.

Councilmember Mary Woolridge submitted a binder of letters and exhibits into the record. She said she is not opposed to new technology, but is adamantly opposed to the location. She asked the Board to deny the CUP under any and all numerous business names related to the application. She said it is hard to determine who the owner is or who will be responsible for its operations if something should go wrong. She questioned if the builder and operator are experienced enough in this field and doesn't think they have enough information for a sound decision to be made. Councilmember Woolridge said the mayor is in favor of this project, but it won't promote economic growth for the residents or be a positive development in West Louisville. She said this request should have been reviewed under possible hazardous or nuisance uses in the Land Development Code, considering they can explode; catch fire; negatively impact the air quality due to the emission of smoke and toxic gases; noise and other harmful environmental impacts. Councilmember Woolridge said it will only benefit a few select large corporations; and that money should be spent on redeveloping abandoned homes and generating more desirable businesses for the residents in the area.

Councilmember David James presented a PowerPoint presentation to the Board. He said he understands there is pressure from the Mayor's office for the Board to approve the CUP, but his constituents don't want it, no matter how many conditions of approval or other mitigation efforts are imposed. He has talked to the people that live in the area and all have stated that they don't want biodigesters in their front yard or 125 feet from them. He said he visited a

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methane plant in Havilland, Ohio and he could smell a foul odor ¼ of a mile away. The smell intensified as he got closer. He asked the tour guide if people complain about the odor. He said yes that they'll complain about anything but he doesn't listen to it. Councilmember James said he's concerned about this, since the same company will be running this plant. He said he also noticed various chemical vats inside the plant and asked what they are used for in the process. He was told they are used to clean up the gas. He looked up Ferrous Chloride, which he said is a corrosive substance and can cause inflammation of the skin including blistering; inhalation can cause lung damage, choking, unconsciousness and even death. He said no one would want to live next to it. He said Heaven Hill Distillery produces black fungus which falls on houses, cars etc. as shown in his PowerPoint picture. Councilmember James said he spoke with some people living in the area who said they could not attend tonight, not because they don't care, but because they are working 2-3 jobs. He asked the Board to protect these people and vote accordingly.

State Representative Tom Riner said his constituents are insulted that someone would even think about putting this in their neighborhood with all the other injustices they've had to endure. He said some people who live in the area told him that they never smoked but have chronic lung disease. Mr. Riner said the fungus that comes from Heaven Hill is not just in the California neighborhood but also in the Russell neighborhood; and that there's an elementary school in the area. He said since he has been a state representative has seen corporate interests prevail because of the money they have with no regard for the public health, safety or welfare. He said if approved, will set a bad precedent for the entire country and world. Mr. Riner submitted pictures of plants that blew up; and said there are no actual "safe" biodigesters. He respectfully asked the Board to deny this request.

Tom Fitzgerald, said he is the Director of Kentucky Resources Council, and has been before the Board numerous times. He said he is confident the Board will make the right decision based on the merits of the law and deny this request. He said this request has been reviewed against the wrong Chapter in the Land Development Code, Chapter 4.2.37, for a non-accessory alternative energy system; and should have been reviewed under Chapter 4.2.43, as a potentially hazardous or nuisance use. He said the facility is not creating energy with the use of wind or solar powers, but converting organic waste to methane for sale to LG&E, in addition to saving money creating on site power and MSD managing

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their waste. He said he also teaches at the Brandeis School of Law at U of L. Due to the intensity, height, bulk; scale etc. is in the wrong location and is “a disaster waiting to happen”. He said it should only be built in an M-3 zoning district; and that planting a few trees and other landscaping won’t make it more compatible or safe for the neighborhood.

Clifton English said no one is hearing the word “no” and that this development will never be welcome in West Louisville. He said the amount of jobs it will create is not acceptable, nor are they wanted. He said if his tone sounds angry and frustrated, it’s because it is. Mr. English asked the Board to deny this request.

Eboni Cochran said this will not only negatively affect the neighborhood, but the west end as a whole; and could set a disastrous precedent. She said she heard this would be controlled by the compost ordinance for APCD. She asked if there would be spillage from the trucks; and what buildings would be compromised if there were an explosion. She said industry shouldn’t win all the time; and that people living here deserve better.

Clarence Hixson said this application has been submitted and reviewed under the wrong regulation in the Land Development Code, considering this is a hazardous or nuisance use. He said the bourbon industry is growing in the city, in addition to the fungus in their neighborhood.

Dr. Wilbur Browning Sr. said his church has been in this neighborhood for 45 years; and this proposal is causing more uncertainty and mistrust. He said Heaven Hill has not been a good neighbor.

Yolanda Walker said the west end has gone through enough environmental injustice over the years; and said if people were listening to them, they wouldn’t be here today. She said a select few should not be able to affect their quality of life for personal gain. She asked the Board to deny the Conditional Use Permit.

James Marshall submitted an exhibit book into the record; and said this plant will be producing a lot of methane gas. He said he fears this site could be a target for terrorists.

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Martina Kunnecke said the Coalition for Sustainable West Louisville includes the California, Portland and Chickasaw Park neighborhoods; and made up of a well-rounded group of citizens. She said she feels this proposal is being forced on them which is unacceptable. She said it won't create any jobs for people who live in the area; and that they need to find a safe location for this use.

Michael Brooks said he has lived in the neighborhood for 65 years, and is a member of the California Neighborhood Leadership Council and the California Neighborhood Association. He said the California Neighborhood Plan was completed in 1983, and although it wasn't included in Cornerstone 2020, should still be taken into consideration. Mr. Brooks submitted this neighborhood plan into the record. He said this and other neighborhood plans don't suggest or encourage building methane plants in residential areas.

John Owen presented a PowerPoint presentation to the Board, and discussed other plants that have exploded and people killed, even though they were highly maintained and monitored. He said there is not enough diversity on the Board; and asked them to do a little research on methane plants. He said their neighborhood has been through enough, and asked the Board to deny this request.

Douglas Lattimore said his family owns a house in the area and doesn't appreciate them putting a bomb in their neighborhood. He said they need more time to review all the information submitted and allow their experts to explain it to them. He said if the Board doesn't deny this tonight, that the applicant should have another neighborhood meeting and continue this hearing. He said the Board does not have enough African American members for representation; and said "there are too many white people behind the desk."

Ruth A. Lowe said their neighborhood was nice until Heaven Hill built the distillery. She said it produces black mold and dirt; and that she has health problems now because of it.

Virgil Dorsey, Jr. said he's lived in the area for 50 years; and said anything can go wrong when it's manmade. He said this is bad for the neighborhood and community; and that their voices need to be heard.

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David Lott said this is a social and environmental injustice; and that the west end is being used as a dumping ground. He said discount stores are popping up everywhere and that positive development in their neighborhood is not moving forward. He asked the Board to deny this request.

Banii H. Hudson said people that live in the area are knowledgeable about this technology and President Obama's Clean Power Plan to reduce carbon emissions, but said this is in the wrong location. She said there are citizen uprisings in Europe and Germany opposing these plants. Ms. Hudson said if this is approved it will be the first methane plant to be built right across the street from residential properties. She asked if this is the "legacy" the mayor wants to create.

Bryan Burns said he is a member of a large community activist group and they are opposed. He said people shouldn't be overlooked for the sake of development.

Sylvia Wright read the definition of "bribery" into the record. She said the developer wanted to build biodigesters at the recently approved Foodport site, but it wasn't wanted there either. Ms. Wright asked why they can't put family friendly businesses in the area (bookstores, ice cream shops, public pool etc.).

Michael Avrahan said Councilmember Barbara Shanklin signed off on this preemptively, thinking it was going to be located at the landfill. He said the applicant was supposed to provide information from the EPA at one of the neighborhood meetings; and said he wasn't invited to the second meeting. He said no plans or specs were provided either. Mr. Avrahan said he's concerned about the safety of the people who live in the area including his grandson and 14 other kids who live in the neighborhood.

Melissa Frampton said she lives near this plant; and used to share plant clippings and vegetables with her neighbors. She said she cannot grow vegetables now safely. Ms. Frampton said she does not want this in her neighborhood.

Mr. Porter said the people that live in the west end are intelligent, caring people and want the best for their community. He said the Board needs to consider that this company doesn't have a track record of running biodigesters; and there is no

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economic benefit to creating only 10 jobs. Mr. Porter said he withdraws his motion to continue this case, and asked the Board to vote no.

Rebuttal:

Mr. Zoeller said they have listened to the community and offered beneficial solutions secured by numerous conditions of approval to mitigate some of the problems relating to safety and odor. Mr. Zoeller said they will honor the conditions of approval while they operate the facility. He said they have not been involved in any bribes or corruption. He said the biodigesters will not create any emissions; and asked the Board for their approval.

Discussion:

The Board had questions about the request being applied for under the wrong Chapter of the Land Development Code. Mr. Fitzgerald explained this again and said it should have been reviewed under Chapter 4.2.43 (Potentially Hazardous or Nuisance Uses). Mr. Zoeller said he relied on staff's expertise. Member Fishman asked Mr. Zoeller how the carbon tax credit would work. Mr. Zoeller explained this. Member Jarboe said she's concerned about all the various companies and name changes, and if they are competent to build and run this facility. Mr. Zoeller said they are relying on the expertise of other contractors; and that GE has operated 275 plants safely. He added that STAR BioEnergy will hold the permit.

Deliberation:

The Board said there was very passionate testimony tonight; and that they need more time to absorb all the information before they vote. The Board said the applicant needs to hold another neighborhood meeting to answer questions regarding the changes to the plan and other issues the neighbors' brought up tonight. The Board discussed holding another evening hearing to answer various questions they had.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the December 7, 2015 at 6:00 p.m. public hearing proceedings.

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On a motion by Member Jarboe, seconded by Member Tharp the following resolution was adopted:

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **CONTINUE** Case No. 15CUP1023 to **JANUARY 21, 2016 at 6:00 P.M.** to allow more time for the following to occur:

1. The applicant shall conduct another neighborhood meeting for area residents and any other interested parties to discuss the changes to the plan and any other concerns that have been raised at tonight's hearing. The applicant shall submit these minutes to Planning & Design staff for inclusion in the next staff report.
2. Staff will provide an explanation of how it was determined to review this request under Chapter 4.2.37 of the Land Development Code (Non-Accessory Alternative Energy System) instead of Chapter 4.2.42 (Potentially Hazardous and Nuisance Use); also explain the differences in the review process for a CUP within the EZ-1 and M-3 zoning districts.
3. The Board shall receive a copy of the California Neighborhood Plan for review prior to the next public hearing.
4. The applicant shall submit an organizational chart of all entities involved in the proposed methane plant including but not limited to the applicant(s); owner(s); builders; management/supervision for safety purposes and what their qualifications or credentials are.

YES: Members Allendorf, Bergmann, Jarboe, Tharp, Turner, Fishman and Proffitt.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: No one.

ABSTAINING: No one.

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The meeting adjourned at 2:09 a.m.

CHAIRPERSON

SECRETARY