

STATE OF INDIANA )  
 ) SS:  
COUNTY OF JACKSON )

IN THE JACKSON CIRCUIT COURT  
2014 TERM  
CAUSE NO. 36C01-1411-PL-51

GARY R. McDONALD, KAREN McDONALD, )  
CARTWRIGHT REVOCABLE LIVING TRUST, )  
PAT KNIOLA, TRUSTEE, PAT KNIOLA, )  
INDIVIDUALLY, STEVE MURPHY, )  
CHARLOTTE MURPHY, BILLY McLAIN, )  
TRINA McLAIN, HAROLD HOEVENER, )  
MELBA HOEVENER, KAREN WALKER, )  
HUBERT BRUMETT, EDDIE BRUMETT, )  
and BRENDA BRUMETT, )

Petitioners, )

AND )

JOHN F. ROTHRING, ANITA ROTHRING, )  
THOMAS ROTHRING, GEEGA'S )  
PROPERTIES, L.L.C., and DUSTIN MIDKIFF, )

Intervenors-Petitioners, )

vs. )

JACKSON COUNTY BOARD OF ZONING )  
APPEALS and GENE SPEAKER, )  
MIKE REYNOLDS, BILL BURNSIDE, )  
RALPH COLLINS, and SHERRY BRIDGES, )  
In their capacity as members of the Jackson )  
County Board of Zoning Appeals, ROBERT )  
K. BROSHEARS, LEAH A. BROSHEARS, )  
BROSHEARS FAMILY FARM, LLC, )  
MAX L. KLOSTERMAN, BRENDA )  
KLOSTERMAN, POLLERT FAMILY TRUST, )  
ROGER L. POLLERT, TRUSTEE, ROGER )  
L. POLLERT and LINDA POLLERT, )

Respondents. )

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**FINDINGS OF FACT, CONCLUSIONS OF LAW,**

**AND ORDER CONCERNING STANDING**

This matter is before the Court on a Verified Petition for Judicial Review filed by the Petitioners, and joined in by the Intervenors<sup>1</sup>, challenging the approval by Respondent, Jackson County Board of Zoning Appeals (the “BZA”) of a special exception (the “BZA Decision”) for development of a confined animal feeding operation (the “Broshears CAFO”) in Jackson County, Indiana (“Jackson County”), which will be operated by Respondents, Robert K. Broshears, Leah A. Broshears, and Broshears Family Farm LLC (collectively, the “Broshears”). The Broshears, along with Respondents, Max L. Klosterman, Brenda Klosterman, Pollert Family Trust, Roger L. Pollert, Trustee, Roger L. Pollert, and Linda Pollert (collectively, the “Broshears Respondents”), filed a Motion Challenging Standing and Request for Evidentiary Hearing (the “Standing Motion”), which argued that each of the Petitioners lacked standing to challenge the BZA Decision. An evidentiary hearing on the Standing Motion was conducted by the Court on October 5-8, 2015 and concluded on November 16, 2015 (the “Standing Hearing”). Evidence was presented by the parties, and the Court granted a request for Findings of Fact and Conclusions of Law pursuant to Indiana Trial Rule 52(A).

After the evidentiary record closed the court, with all parties represented by counsel, conducted a site view of the CAFO site and property of Petitioners.

If a Finding of Fact (“Finding”) is misidentified as a Conclusion of Law or a Conclusion of Law (“Conclusion”) is misidentified as a Finding of Fact that the item shall be deemed to be whichever it should be.

The Court has had the opportunity to hear the testimony of each witness, to observe the demeanor of each witness, to assess the credibility of each witness, and to determine the weight to be given to the testimony of each witness and exhibit presented.

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<sup>1</sup> The Petitioners and Intervenors are collectively referred to as, the “Petitioners”.

After considering the evidence, the Court measures the proof presented as to each individual Petitioner and Intervenor and Finds the facts as follows:

### **FINDINGS OF FACT**

#### **The Broshears CAFO**

1. The Broshears CAFO plan to operate in a barn that will be approximately 417 feet long and 82 feet wide (the “Barn”), which will house approximately 4,000 finishing swine.

2. The Barn will be located as shown on a site plan presented by the Broshears at the public hearing conducted by the BZA (the “Site Plan”). A copy of the Site Plan also was admitted into evidence at the Standing Hearing.

3. The Barn was sited by the Broshears in consultation with their agricultural consultant, Kari Keller-Steele (“Steele”), after considering several factors including adjacent or nearby waterways, wetlands and other environmentally-sensitive areas, existing vegetative screening, topography, locations of public roads, and the applicable setbacks distances from other properties, existing residences, and private wells, required under the Jackson County Zoning Ordinance (the “Zoning Ordinance”), or regulations of the Indiana Department of Environmental Management (“IDEM”).

4. Within the Barn, there will be a concrete pit 8 feet deep, 4 feet of which will be below grade (the “Pit”). The Pit will store manure generated from operation of the Broshears CAFO, and there will be no outside storage of manure on the site of the Broshears CAFO (the “CAFO Site”).

5. There will be an earthen dike constructed around the westerly side of the Barn, which together with the Barn’s peaked roof, will direct rainwater to flow easterly, and away from

environmentally-sensitive areas. Construction of the Barn will be supervised and inspected by a professional engineer.

6. Manure from the Broshears CAFO will be removed from the Pit periodically, and applied as fertilizer on fields at local farms. The application will be performed by injecting the manure into the ground, instead of spraying it on the ground. The injection procedure was described as generating significantly less odor.

7. The Broshears CAFO is an agricultural use, which will be situated in an agricultural zoning district. There are approximately 11 other swine CAFO operations presently located in Jackson County.

#### Petitioners' Properties

8. The Petitioners each own real property in Jackson County, which they contend will be harmed by the Broshears CAFO. The approximate distances between the nearest property lines of the Petitioners' respective tracts and the property lines of the CAFO Site, and between the Barn and the Petitioners' respective residences, are set forth in the property distance chart attached as Exhibit "A" (the "Distance Chart"). All distances between the Petitioners' residences and tracts and the CAFO Site and Barn, from this Exhibit, are incorporated into these Findings.

9. Aerial drawings showing the approximate locations of the CAFO Site and the Barn, and the relative locations of the Petitioners' respective properties, are attached as Exhibit "B-1" and Exhibit "B-2". The said locations and Exhibits are incorporated into these Findings;

10. The home owned by Respondents, John F. and Anita Rothring (the "Rothrings") is located approximately 5,554 feet away from the Barn, and will be separated from the

Broshears CAFO by trees, tracts owned by others and by Respondent, Geega's Properties, L.L.C. (which is an Indiana limited liability company owned by the Rothrings).

11. The home owned by Respondent, Thomas Rothring is located approximately 5960 feet away from the Barn, and will be shielded from the Broshears CAFO by trees, and the home of the Rothrings.

12. Respondents, Gary R. and Karen McDonald (the "McDonalds") reside in a home that is approximately 9,504 feet from the Barn.

13. The property on which the residence of Harold and Melba Hoevenner (collectively, the "Hoeveners") is located, is used by them for raising their own livestock and for crop farming. The Hoeveners' residence is located approximately 2,850 feet from the Barn.

14. The property owned by Respondents, Pat Kniola, individually, and Pat Kniola, as Trustee of the Cartwright Revocable Living Trust (collectively, "Kniola"), consists of a large tract that is actively crop-farmed, and on which recently was installed an irrigation system. The only residence on the Kniola tract is mobile home that is rented to others, but it is located approximately 3,300 feet from the Barn, and is directly across from a field where the Hoeveners' livestock graze. Kniola resides in Indianapolis, IN, not on the tract that is in question.

15. The home of Respondents, Billy and Trina McClain (the "McClains") is surrounded by farm fields that are actively crop-farmed, which is impacted by dust generated from planting and harvesting activities, and odors from fertilizing of the fields.

16. It was argued by Broshears' Respondents that homes in closer proximity to the CAFO Site have natural barriers that will shield them from the Broshears CAFO, to wit:

a. Respondents, Steve and Charlotte Murphy (the "Murphys") reside in a home on property that is located south of the Barn, shielded from the Broshears CAFO by both a

hill that is higher in grade than the home, and by a substantial area of trees and other existing vegetation.

b. The home located on the property of Respondent, Donna Vail (“Vail”) is approximately 1,430 feet from the Barn, in an area that is shielded by a dense area of trees and other plant material.

c. It is also argued by the Broshears’ Respondents that there also are dense areas of existing trees and other plant material that will provide visual and odor screens of the residences of Respondents, Hubert Brumett, Eddie and Brenda Brumett, and Karen Walker (“Walker”) from the Broshears CAFO.

17. The court has considered the arguments, pro and con, that are cited above and has given weight to same accordingly.

Alleged Grievance – Water Contamination

18. The Petitioners argue they will suffer harm because of their perception of potential water contamination that will be caused by the Broshears CAFO.

19. There was no probative evidence introduced by the Petitioners to establish that water contamination of their potable water supplies *would result* from operation of the Broshears CAFO; and the only evidence of such contamination was speculative at best.

20. The Petitioners did not present probative evidence to support a Finding that manure generated by the Broshears CAFO would be discharged as the result of failure of the Pit, or would otherwise cause contamination of the Petitioners’ potable water supplies, either public or private. No evidence was presented by the Petitioners to prove that other CAFOs in Jackson County caused contamination of potable water supplies, or that their manure pits failed and resulted in seeping of manure into aquifers that serve properties in Jackson County.

21. Some of the Petitioners testified that application of manure from the Broshears CAFO as fertilizer to neighboring farmlands could *possibly* enter their potable water supplies (for those served by private wells, not city water). Such testimony was speculative in nature.

22. Manure is routinely applied as fertilizer<sup>2</sup> throughout Jackson County, and the Petitioners did not present evidence to suggest that practice has resulted in any contamination.

23. Respondents, Max L. and Brenda Klosterman (the “Klostermans”) own a tract adjacent to the south of the CAFO Site, which is actively crop-farmed. The Murphys’ property is located immediately south of the Klostermans’ tract. The Klostermans fertilize this farmland. At the standing hearing, Mr. Murphy testified that he had water from his well tested, and the test confirmed there were no contaminants or fertilizer present in their water supply, from manure or otherwise.

24. The Petitioners’ concerns of potential contamination of their potable water supplies resulting from operation of the Broshears CAFO are not supported by substantial probative evidence, distinguished from speculative possibilities.

25. The Petitioners, all of them, failed to present probative evidence regarding the occurrence or reasonable likelihood of contamination of their potable water supplies from land application of manure, the quantity of manure necessary for contamination, the distance the effluent from manure applied to the land would or could travel through the ground in order to cause water contamination, or any other evidence of the likelihood of water contamination beyond a speculative concern.

26. Neighboring farmers are entitled to apply manure to their fields, to use as fertilizer, whether or not the Broshears CAFO is developed.

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<sup>2</sup> Even Mr. Hoevener testified he spreads cow manure on the property he farms.

Alleged Grievance – Health Concerns

27. The Petitioners contended they will suffer adverse health effects, or that existing health problems could be exacerbated, by the Broshears CAFO.

28. The testimony regarding health concerns included:

a. Vail testified she had health concerns based on the potential to breathe gases that would be discharged from the Broshears CAFO; however, she was unaware how much gas is necessary for such a health problem to occur, or how much gas would be emitted in connection with the Broshears CAFO. She opined that air emissions *could* only be a problem if applicable governmental regulations are disregarded in operation of the Broshears CAFO;

b. Mr. McLain testified he was concerned about breathing ammonia and hydrogen sulfide in the air as a result of operation of the Broshears CAFO. He lacks actual knowledge regarding the volume of gases that will be emitted at his property, the quantity of such gases that would result in an actual health problem, or how far such gases would travel from the Broshears CAFO;

c. Similar testimony was offered by other Petitioners. A number of the Petitioners stated they read articles suggesting CAFOs can be harmful, and they testified they were *concerned* as the result of that information. The Petitioners did not offer probative evidence that the Broshears CAFO will, or would even be likely to, cause them physical harm. Speculation of possible potential harms to their health offered by the Petitioners cannot be treated as legal proof;

29. Dr. Chad Smith, M.D. (“Dr. Smith”), who is an orthopedic surgeon, testified on behalf of the Petitioners, and broadly suggested there are health issues with CAFOs, generally associated with increased air pollution and decreased lung function. He also testified that



CAFOs are associated with an increased risk of MRSA. The basis of his testimony was certain reports he read. Dr. Smith could not establish whether the authors were credible or could be properly relied upon in a case of this nature.

30. Dr. Smith treated Karen McDonald for knee pain and Brenda Brumett for a car accident. He did not treat any of the Petitioners for any other condition, and had no first-hand knowledge of any condition a Petitioner might have that could be exacerbated by the Broshears CAFO. Dr. Smith admitted as to no knowledge on the rate or likelihood of any respiratory problems for any of the Petitioners. He has no knowledge as to the level of emissions that may emanate from the Broshears CAFO.

31. Although there are many CAFOs in Jackson County, Dr. Smith was unaware of anyone who contracted MRSA, staph, strep, or any fungal infection from a CAFO. Further, Dr. Smith did not know which strains of MRSA, if any, could potentially be acquired from a CAFO. He did not know if any of the Petitioners were MRSA carriers.

32. Dr. Smith also did not know how a person could become infected from a CAFO, and admitted it is possible that some CAFO operations do not infect anyone. Dr. Smith did not provide a viable linkage for the conditions he mentioned to the proposed Broshears CAFO. His testimony was often vague and generalized a MRSA study he relied upon did not correlate to the Broshears CAFO.

33. The court heard about COPD conditions in Jackson County from Dr. Smith and others. This medical condition was not proven to be the direct (or “proximate”) result of any specific hog or CAFO operation in Jackson County. Dr. Smith, holding a medical degree and license, did not establish this casual connection as to any individual Petitioner or Intervenor so

as to invoke the *standing* statute (IC 36-7-4-1603) on behalf of particularized Petitioners/Intervenors.

34. The court has considered all of Dr. Smith's testimony, and weighed it appropriately, in this Entry. The Petitioners' *health concerns* claims were not proven with specificity as to individual Petitioners. Dr. Davis did not provide reasonable credible medical evidence, with the level of certainty necessary in a *standing* analysis.

#### Alleged Grievance – Odor

35. All of the Petitioners' residences are located in an agricultural zoning district, and are surrounded by agricultural uses. Farms in the area often have manure spread on the ground as fertilizer, which generates odor. There are 11 other hog CAFO operations in Jackson County, some of which have substantially more numbers of head than the Broshears CAFO will. Additionally, the Hoeveners raise livestock of their own on their property.

36. During the hearing conducted by the Court in this matter, on certain court days, the odor of manure could be smelled outside of the courthouse. Some witnesses also testified that the odor of manure can commonly be detected in many areas of Jackson County. No reliable scientific consistent and credible proof was provided that this smell came from a *specific*, particularized source or a particular CAFO on any specific day.

37. Dr. Albert J. Heber, of Purdue University, developed a Livestock Odor Setback Model (the "Odor Model") to determine appropriate odor setback distances from livestock facilities such as the Broshears CAFO. The Odor Model is science-based, site specific, and was updated in mid-June 2015 with the most current odor dispersion data available. The Odor Model allows the user to enter site specific information, such as facility size, orientation, and shape,

wind frequency, land use, topography, building design and management, manure handling characteristics, and odor abatement.

38. In addition to the site odor setback distances, the wooded areas surrounding some of the residences of the Petitioners were described as a Vegetative Environmental Buffer (“VEB”), providing supplementary odor reduction. VEB’s act as living bio-filters, and can reduce odor an estimated 40% to 85%.

39. Ms. Steele has been in the agricultural industry for 17 years, and previously worked for IDEM in its CAFO permitting section. Ms. Steele qualifies as an expert witness with respect to the Odor Study and her testimony.

40. Ms. Steele performed a study of the Broshears CAFO and the potential impact of manure odor on the Petitioners’ properties, utilizing the Odor Model (the “Odor Study”). Using appropriate inputs for the characteristics of the Broshears CAFO and the Petitioners’ properties, the Odor Study shows a yellow circle surrounding the Broshears CAFO (the “Odor Estimate Line”).

41. According to Ms. Steele residences near, but outside, the Odor Estimate Line can expect to be 94% odor free from the Broshears CAFO, based upon the topography and information used to create the Odor Model.

42. Residences owned by the following Petitioners are located outside of the Odor Estimate Line: (i) the McDonalds; (ii) Vail; (iii) the McLains; (iv) Walker; (v) the Rothrings; (vi) Geegas, LLC; (vii) the Hoeveners; and (viii) Kniola. This fact, coupled with the testimony from the Petitioners themselves, weighs against claims of these particular Petitioners that they will be aggrieved by odor generated by the Broshears CAFO in the standing analysis at bar.

43. Residences owned by the following Petitioners are located inside of the Odor Estimate Line: (i) Hubert Brumett; (ii) Eddie Brumett; (iii) Brenda Brumett and (iv) the Murphys. While the Broshears CAFO complies with all setback requirements imposed by the Zoning Ordinance, as amended, the proposed CAFO is close to, and visible from, their properties.

44. The Steele evidence concerning odor emanating from the Broshears CAFO is not 100% conclusive and certain for all times and conditions. It clearly is scientific in nature and the court finds Ms. Steele to be credible. The court can plainly see (from the site visit and from aerial views) that the parties named in par 9 below can reasonably be found to be close, by distance, to the Broshears CAFO site so as to readily experience CAFO odor in open air.

Alleged grievance - Miscellaneous Concerns

45. Other miscellaneous concerns were raised by some of the Petitioners, such as a concern there will be an increase in pests, and their enjoyment of their properties may be impacted, among other things.

Alleged Grievance - Potential Negative Impact on Property Values

46. Joel Buzzard (“Buzzard”) testified for the Broshears Respondents regarding a study he performed following an examination of sales of homes near CAFOs in Jackson County (the “Buzzard Study”). The Buzzard Study focused on five hog operations most similar to the Broshears CAFO, and gave the most weight to properties located within 1 mile of the CAFOs.

47. The Buzzard Study determined that a property in rural Jackson County sells for 94-96% of the list price within around 90 days on the market. Comparing the sales of homes near the five CAFOs referenced in the Buzzard Study reveals no statistical evidence of a diminished value, compared to homes in rural Jackson County, generally. The Court finds the

Buzzard Study to be credible, reliable, and an accurate presentation of the effect the Broshears CAFO will likely have on property values in Jackson County.

48. Market data from Jackson County is readily available to appraisers, such as Brandi Wallace (“Wallace”), James Myers, and John Dickerson (“Dickerson”) (collectively, the “Petitioners’ Appraisers”), all of whom testified and performed appraisals on behalf of certain of the Petitioners.

49. Despite the availability of such information, the Petitioners’ Appraisers inexplicably failed to examine the local market data in performing their respective appraisals. Wallace testified she would have liked to have sales data for sales of homes located near CAFOs in Jackson County, or neighboring counties, and acknowledged that is the most reliable information. Wallace, however, did not search for this information, and testified she had no idea if it even existed. Dickerson acknowledged that people in Jackson County *may not mind* buying property near a CAFO, and that he did not know their attitudes about such topic.

50. The Petitioners’ Appraisers relied largely on reports or studies they read, many of which are from other states, are many years old, involve other types of livestock operations or operations that do not use the same technology that will be employed by the Broshears, and do not purport to relate to property values in Jackson County.

51. The Petitioners’ Appraisers lack knowledge of the CAFOs in the reports they relied upon (or how they might compare to the Broshears CAFO) and did not sufficiently testify to support the underlying information relied upon in the reports.

52. The testimony and appraisals from the Petitioners’ Appraisers failed to reliably and credibly demonstrate the effect, if any, the Broshears CAFO would have on the Petitioners’ respective property values, let alone a negative effect. In contrast, the court finds the Buzzard

reports and testimony to be more comprehensive and credible, supported by reliable back-up data and credible.

53. The court does not find the Buzzard reports to be 100% perfect in all respects. However, the credibility of that witness and these reports outweigh such evidence from other appraisers who testified.

54. Testimony from the Petitioners themselves, that they generally believe the Broshears CAFO will harm their property values, is considered in this Entry. Petitioner Gary McDonald testified that he owns multiple rental properties in Crothersville, Indiana that are near a CAFO containing about 4,000 hogs. He testified that he has *no difficulty getting renters*, has a waiting list, and is constantly getting calls from prospective renters, for those rental properties.

55. There is market acceptance of CAFOs in Jackson County. The Petitioners, except as identified below, did not meet their burden of proof to establish a pecuniary injury as a result of a substantial grievance.

### **CONCLUSIONS OF LAW**

1. Indiana Code §36-7-4-1602(b)(1) provides, in pertinent part, that a person qualifying under Section 1603 concerning standing is entitled to judicial review of a zoning decision. Pursuant to I.C. §36-7-4-1603(a), the Petitioners, each of them, must be aggrieved by the BZA Decision in order to have standing to challenge the BZA Decision in this judicial review. Other subsections of 1603 must also be proven.

2. In order to establish they are aggrieved parties, each of the Petitioners must prove *by a preponderance of the evidence* that: (i) they have a legal interest; (ii) the legal interest will be harmed [a substantial grievance] by the BZA Decision, and the injury must be pecuniary in nature; and (iii) the harm suffered by the Petitioners must be a special injury, different that the

harm sustained by the general public. *see Bagnall v. Town of Beverly Shores*, 726 N.E.2d 782, 786 (Ind. 2000). Under prior case decisions our courts have held, in a standing analysis, that all three prongs of the *Bagnall* test must be established in order for a Petitioner to have standing.

3. The *Beverly Shores* decision also held that a “substantial grievance” or “special injury” confers standing in some cases. Any standing analysis, under case law under the newer statute (IC 36-7-4-1603) focuses on a measure of each person claiming *standing*, not groups together or the community as a whole. see “person directly affected” discussion from *Metropolitan Dev. Comm. Of Marion Co. v. Collision* (1972) 151 Ind. App 48, 277 N.E. 2d 907.

4. It was each Petitioner’s burden to prove they are each, individually, aggrieved. see *Thomas v. Blackford County Area Board of Zoning Appeals*, 907 N.E.2d 988, 991 (Ind. 2009.) Not all Petitioners/Intervenors met this burden.

5. Topography, design, odor mitigation efforts, attitudes, and perceptions within a community, all vary and can change over time. Evidence to support a finding of a substantial grievance must relate specifically to the Broshears CAFO (and its designs and operations), as well as to specific features of neighboring properties at issue (as to their location, visibility, use for enjoyment, topography, barriers, and other applicable characteristics).

6. The below designated Petitioners (par 8 below) also failed to meet their burden of credible proof that any claimed injury would be pecuniary in nature. The appraisals offered by the Petitioners failed to consider local sales of homes near CAFOs, which is the most relevant information. The Buzzard Study, by contrast, was more reliable and premised upon appropriate, local, sales information. The court gives the greater weight to the Buzzard study;

7. The Petitioners identified below (par 8) did not meet their burden to prove the harm they will allegedly suffer (i.e., substantial grievance), which will be a special injury,

different that the harm sustained by the general public. A court may not find or confer legal *standing* in a collective or group approach. Regardless, even if all alleged injuries existed and were substantial and pecuniary, they are the same for all in the community. see *Robertson v. Bd. of Zoning Appeals, Town of Chesterton*, 699 N.E.2d 310 (Ind. Ct. App. 1998),

8. Petitioners/Intervenors Gary R. McDonald, Karen McDonald, Cartwright Revocable Living Trust, Pat Kniola, Trustee, Pat Kniola Individually, John F. Rothring, Anita Rothring, Thomas Rothring, Harold Hoevener, Melba Hoevener and Geega's Properties, L.L.C. have not met their individual *preponderance* burden to establish *standing* under statute I.C. 346-7-4-1603 so as to pursue judicial review of the BZA decision. The court already has dismissed the Petitioner Dustin Midkiff from the *standing* phase of this case. That Order is confirmed herein.

9. Petitioners Steve Murphy, Charlotte Murphy, Bill McLain, Trina McLain, Karen Walker, Hubert Brummett, Eddie Brummett and Brenda Brummett have brought themselves, based on the totality of evidence applicable to them, respectively, within I.C. 36-7-4-1602 and their burden of proof under Section 1603 sufficient to have legal standing to challenge the BZA decision by judicial review. This Finding is made in consideration of several factors including in-court testimony, demeanor and/or other considerations, distance from the proposed CAFO, clear visibility of the proposed CAFO from their property, likelihood of impact by CAFO odor and reasonableness of their concerns that their distance from the proposed CAFO would affect enjoyment of their property environment and sale possibilities.

10. Any Conclusion more properly characterized as a Finding and any Finding properly characterized as a Conclusion, shall be adopted as such.




**ORDER AS TO STANDING:**

It is therefore ORDERED and DECREED:

- A. Petitioners/Intervenors identified in par 8 (above) do not have standing to challenge the BZA Decision by judicial review hereafter.
- B. Petitioners identified in par 9 (above) have legal standing, under legal authorities cited to challenge the BZA Decision by judicial review.
- C. A telephone conference with counsel Federoff, Kuchmay, Finnerty and Bevers (to include the court reporter designated by Judge Poynter for this case) shall occur on the 15th day of March, 2016 at 10:00 a.m. for scheduling and case management purposes.
- D. Ms. Bevers is requested to meet with the local Court Reporter to learn of *courtroom* availability dates (counsel to attempt to agree on 3-day consecutive “court days” prior to the conference call.) An auxiliary courtroom with a recording system is acceptable, unless parties object.
- E. Mr. Federoff’s office is requested to coordinate all attorneys for the conference call before calling the Senior Judge on the above date.
- F. This is not a final and appealable Order. It is interlocutory.

SO ORDERED this 12th day of February, 2016.

  
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Hon. Daniel Moore, Senior Judge,  
Jackson Circuit Court

Distribution to:

Hon. Gary Smith, Special Judge, Jackson Circuit Court  
James A. Federoff, Esq./Jason M. Kuchmay, Esq.  
John F. Rothring, Esq.  
Corinne R. Finnerty, Esq.  
Susan Denise Bevers, Esq.

## DISTANCE CHART

PROPERTY OWNER(S)	DISTANCE
Approximate distance from nearest property line of CAFO tract to nearest property line of each Petitioner/Intervenor:	
Brummett, Eddie & Brenda	419 feet
Brummett, Hubert	619 feet
Hoevener, Harold & Melba	740 feet - south parcel 0 feet - north parcel
Kniola, Pat, Individually, and as Trustee of Cartwright Revocable Living Trust	820 feet
McDonald, Gary & Karen	9,100 feet
McLain, Billy & Trina	1,080 feet
Murphy, Steve & Charlotte	375 feet
Rothring, John & Anita	4,796 feet
Rothring, Thomas	5,416 feet
Vail, Donna	540 feet
Walker, Karen	420 feet
Wehmiller/Midkiff	595 feet

Exhibit "A"

PROPERTY OWNER(S)	DISTANCE
Approximate distance from CAFO barn to residence of each Petitioner/Intervenor:	
Brummett, Eddie & Brenda	631 feet
Brummett, Hubert	986 feet
Hoevener, Harold & Melba	2,850 feet to residence on south parcel
Kniola, Pat, Individually, and as Trustee of Cartwright Revocable Living Trust	3,300 feet
McDonald, Gary & Karen	9,504 feet
McLain, Billy & Trina	1,664 feet
Murphy, Steve & Charlotte	525 feet
Rothring, John & Anita	5,554 feet
Rothring, Thomas	5,960 feet
Vail, Donna	1,430 feet
Walker, Karen	995 feet
Wehmiller/Midkiff	625 feet



- 1 - Hoevner
- 2 - Murphy
- 3 - Wehmiller/Mldkiff
- 4 - Kniola
- 5 - E. Brummet
- 6 - H. Brummet
- 7 - Walker
- 8 - Vail
- 9 - McLain

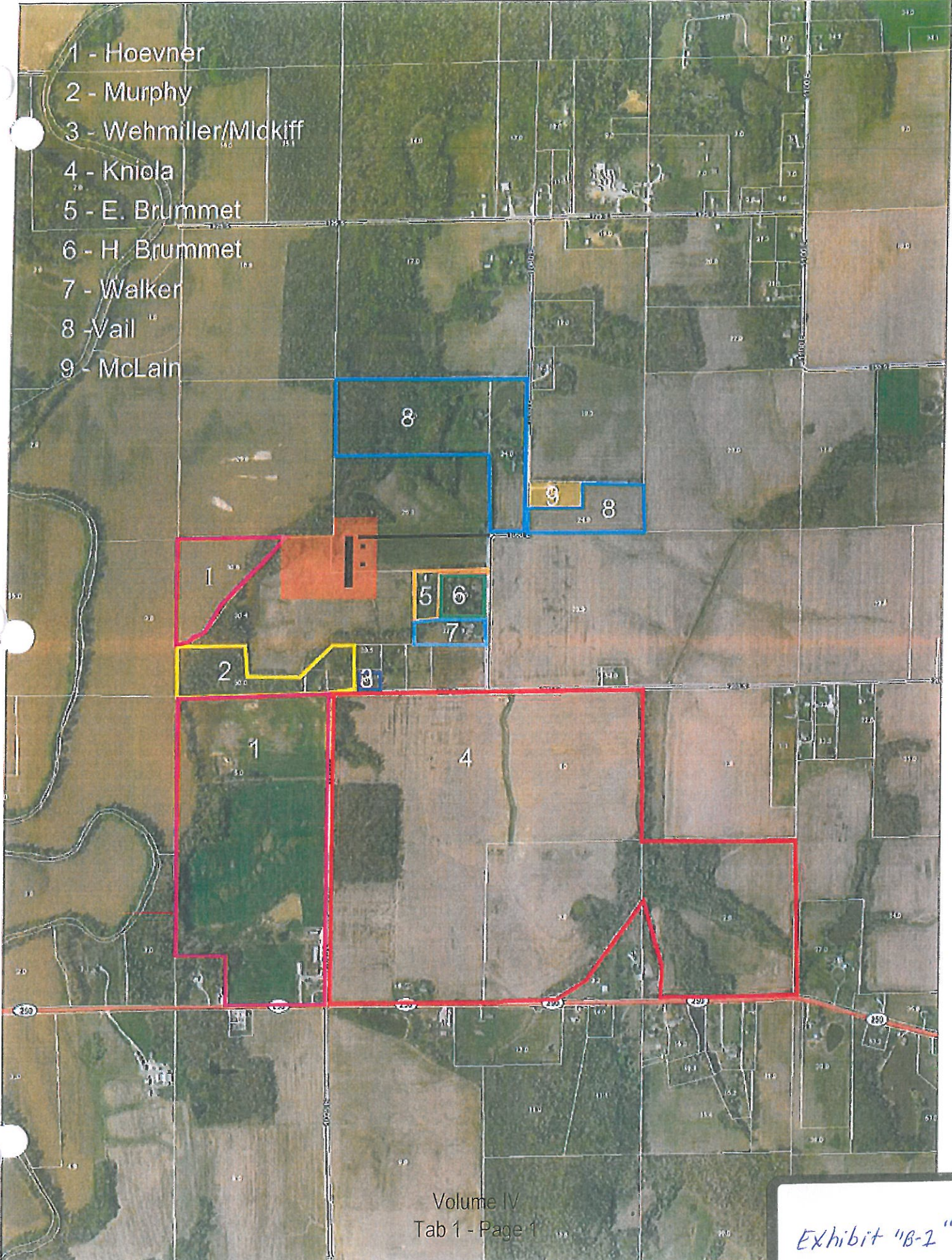


Exhibit "B-1"



Exhibit "B-2"

