

**MINUTES OF THE
LEE COUNTY ZONING BOARD OF APPEALS**

**Regular Meeting
Thursday, June 9, 2022, at 7:00 p.m.**

**County Board Room
Old Lee County Courthouse, Dixon, Illinois**

**Zoom Video- & Tele-conferencing
Meeting ID: 91539239154
Password: 209840**

**YouTube
<https://www.youtube.com/watch?v=Yt6sTLyidPY>**

Board Members
Bruce Forster, Chair
Craig Buhrow, Vice Chair
Mike Pratt, Member
Glen Hughes, Member
Rex Meyer, Member
Garrett Schoenholz, Alternate Member

Staff
Dee Duffy, Zoning Administrator
Charles Boonstra, Lee County State's Attorney
Alice Henkel, Clerk

At 7:00 p.m., Chair Bruce Forster called the meeting to order, and roll was called.

Members present: Forster, Buhrow, Pratt, Hughes, Meyer

Members absent: Alternate Member Schoenholz

Staff present: Duffy, Henkel, Boonstra

Staff absent: None

The next order of business was approval of the for the May 5, 2022 meeting. Glen Hughes made a motion that the minutes be approved as written. A second was discerned and there was no debate. A vote was taken, and the ayes prevailed. Motion passed, 5-0.

The next order of business was petitions to be adjourned pursuant to the County Board's vote. Rex Meyer made a motion to adjourn Petition No. 22-P-1590 (Jerad M. Zellhofer) and Petition No. 22-P-1592 (Michael and Mary Anderson) pursuant to the Lee County Board's vote. A second was discerned, and there was no debate. A vote was taken, and the ayes prevailed. Motion passed, 5-0.

The first order of old business was Petition No. 22-P-1589 by Petitioner Dustin Burmeister. The parcel identification number is 07-08-06-377-018. The parcel is commonly known as 306 Cropsey Ave., Dixon, IL 61021 and is located in Dixon Township. The parcel is approximately 2.24 acres in size and is zoned R-2, Single Family Residential District. Petitioner is requesting to appeal the

Zoning Administrator's final decision and determination of a zoning violation dated January 22, 2022.

Chair Forster read Mr. Burmeister's amended appeal of Zoning Administrator's final decision and determination of a zoning violation dated January 22, 2022. He announced that Mr. Burmeister and the Lee County Zoning Office will each have 20 minutes to present evidence.

Petitioner, Dustin Burmeister, was sworn in.

Mr. Burmeister provided each board member with a jar containing mulch. He said mulch is used around the country and is a valuable product. He also noted that one of the violations he was cited for was that the mulch existing on his property is a waste product.

He said he was not trying to get around proper disposal measures for his landscaping business's waste. He is not dumping waste on his property as he has numerous locations where he can properly dispose of the landscaping waste.

Mr. Burmeister alleged that this dispute between the zoning office and himself has been going on for approximately 3 years. He explained he started constructing a landscape berm in multiple locations around his property. He said Mrs. Duffy told him in an email there is nothing in the County Code related to berms or the construction of berms in Lee County. A copy of that communication with Mrs. Duffy was provided to the board.

Mr. Burmeister provided a picture of what a completed berm has the potential to look like. He says his berm will have fruits and vegetables, provide food and habitat for wildlife, and have perennials. He plans to plant native prairie grasses and flowers.

Mr. Burmeister provided literature from the Horticultural Research Institute on mulch that claims improved soil moisture, reduced soil erosion and compaction, maintenance of optimal soil temperature, increased soil nutrition, reduction of salt and pesticide contamination, improve plant establishment and growth, improved seed germination and seedling survival, enhanced root establishment and transplant survival, increased overall plant growth performance, reduction of disease, reduction of weeds, reduced pesticide use, aesthetic improvement, and economic value. He also noted that the Institute states there are very few cases of disease transfer in mulch on paper and that contrary to popular belief, mulch is not attractive to pest or insects but are insect repellent.

Mr. Burmeister provided a packet on how to construct a berm board, along with a copy of the legal survey for this property. He said he has not been approached by anyone that he has crossed any property lines. He has corrected an encroachment of Cropsey Avenue. He does not believe he is in violation of encroachment of any property.

The following exhibits presented by Mr. Burmeister were admitted without objection by the Zoning Office:

Petitioner's Exhibit 1:	Mulch Sample
Petitioner's Exhibit 2:	Emails between Mr. Burmeister and Mrs. Duffy
Petitioner's Exhibit 3:	Packet including pictures of berms and information on berms
Petitioner's Exhibit 4:	Horticulture Research Institute information packet
Petitioner's Exhibit 5:	Legal survey of 306 Cropsey Avenue, Dixon, IL.

Glen Hughes made a motion to accept Mr. Burmeister's legal survey without the proper 8 copies, and a second was discerned. There was no debate. A vote was taken, and the ayes prevailed.

Mr. Burmeister was cross examined.

Mr. Burmeister said the mulch on the west side of the property will be leveled. The mulch on the east side of the property, where the delivery of the mulch occurred, the mulch will temporarily be six feet deep. There is no mulch at the corner of Cropsey Avenue and West Third Street. Mr. Burmeister asked if deeper mulch is a problem, and Mr. Hughes told him it would be because it is not consistent with what he has testified to and provided as exhibits.

Mr. Burmeister claims that all the materials on the property are there to be used onsite. He said the only thing that leaves the property is firewood to heat his home, shop and garage. He said the mulch is there to be used in conjunction with the landscape berms. He claims he needs a lot of mulch for the property due to its size and mulch will need to be reapplied seasonally.

Rex Meyer asked about the concrete chunks and dirt at the corner of Cropsey Avenue and West Third Street. Mr. Burmeister said it came from his property and he does not feel it has changed the drainage of the property.

Mr. Meyer wanted to know how close the biggest pile of mulch is to the neighbor's property line. Mr. Burmeister responded that there is mulch along half of the east property line.

Mr. Burmeister said he does not yet reside at that property. He said he could have a section of it done relatively quickly but it takes a long time for a landscape berm to look like the pictures he presented. He said there is also cost involved that may impact how quickly he can complete the landscaping. He did mention the possibility of one year. He would prefer to be given time to complete things one section at a time.

Mike Pratt asked Mr. Burmeister what triggered the Zoning Office's contact with him. He said there was a pile of mulch along the eastern property line. Mr. Pratt asked where the mulch came from and was told, "multiple locations". Mr. Burmeister said he does operate Meister Tree Care in Dixon and that the mulch came from his business and other locations.

Mr. Pratt said that Mr. Burmeister testified the berm is to control weeds, but Mr. Burmeister disagreed and said the berm is for fruit trees, shrubs, bushes and flowers.

Mr. Burmeister said there is a grade difference on the north side of the property, and he is using the concrete and rocks as fill. He plans to level the property by backfilling the hill and trees will be planted where the concrete and rocks are located.

Mrs. Duffy asked Mr. Burmeister where he dumps his landscape waste. He said at a business located at the intersection of West Seventh Street and Depot Avenue.

Mr. Burmeister said wood chips are recycled and the wood products are ground into mulch and sold. He said he does not do landscaping; he does tree work. Wood chips and logs are disposed of at multiple authorized locations around the service area.

It was asked when Mr. Burmeister purchased the property. Mr. Burmeister wasn't sure but agreed that October 9, 2019 would be close.

There were no other questions for Mr. Burmeister.

Mrs. Duffy was sworn in and began her presentation of evidence.

She showed an aerial photo of 306 Cropsey Avenue that was taken in 2019. She explained the property has two front property lines given its location at an intersection. One of the front property lines is located along Cropsey Avenue and the other on West Third Street. She said the eastern and southern property lines would be considered side or rear property lines. She testified the property is fairly level; however, the northern portion of the property dramatically slopes down towards West Third Street.

Mrs. Duffy said the Lee County tax files show Mr. Burmeister purchased this property in the fall of 2019. In June of 2020, Mrs. Duffy observed a six-foot long and three to four feet high pile of wood chips along the eastern property line. Mr. Burmeister told her he was going to place the mulch around the existing trees and create trails throughout the wooded areas of the property. Mrs. Duffy said she did not have a problem with his proposed use of the wood chips at that time.

There was an approximately 10-minute-long recess while screen-sharing issues with the ZOOM app were resolved.

Mrs. Duffy resumed her presentation. She explained that on October 2, 2020, she was again called out to the property and found that the pile of wood chips was now approximately 200 feet long, approximately 5 feet wide, and 4 to 7 feet in height. It was also encroaching the east and south property lines. Another 60 foot long, 5 foot wide and 3-foot-high pile of wood chips and broken concrete had been added along the northwest corner of the property. She also learned at that time that Mr. Burmeister is the owner and operator of Meister Tree Care.

Mrs. Duffy called Mr. Burmeister to ask about the quantity of wood chips that had been brought on to his property and to instruct him to remove the wood chips off of the property lines. Getting no response, Mrs. Duffy sent out her first violation letter that instructed Mr. Burmeister to cease all commercial activity and gave him 30 days to remedy the following violations: improper storage of landscape waste for commercial use in a residential area/zoned property; improper zoning under accessory uses for inventory or material storage outdoors; and improper setback distances under bulk regulations for encroachment of property lines.

At that time, Mr. Burmeister was represented by an attorney. His attorney contacted Mrs. Duffy to discuss the potential rezoning of Mr. Burmeister's property, stating that Mr. Burmeister lives there but also uses it to store some materials for his business and has a shop at that property.

Mr. Burmeister objected. SA Boonstra said the Chair can rule on the objection and asked Mr. Burmeister for the basis for his objection. He did not have a formal reason to object.

In December 2020, the attorney again contacted Mrs. Duffy to inform her that his client intended to move the mulch back from the property lines and put up a privacy fence. The attorney also mentioned Mr. Burmeister was interested in winterizing boats or boat wrapping. He also thought

Mr. Burmeister might submit a petition in March (of 2021) for his commercial business on the property.

On March 1, 2021, Mr. Burmeister called Mrs. Duffy, stating he wanted to work something out because the County was holding up his business. He said he would like to expand his business, build a shop and add more employees.

On March 5, 2021, Mr. Burmeister's then-attorney contacted Mrs. Duffy to say his client wanted to proceed with petitioning for his tree-trimming business and would like to include a boat wrapping business in the petition as well.

On December 29, 2021, Mrs. Duffy visually witnessed that Mr. Burmeister had resumed hauling truckloads of wood chips and tree logs onto the property. The video was taken from the backyard of the parcel located east of Mr. Burmeister's property. The wall of wood chips extended across the east property line, wrapped around along the south property line, and along the northwest corner of the property.

Mrs. Duffy showed a picture of the woodchips encroaching the east property line.

On January 11, 2022, Mrs. Duffy sent a second notice of zoning violation to Mr. Burmeister calling for immediate corrective action related to the storage of landscape waste at the Property and giving him 30 days to begin removing the waste, including but limited to all wood chips and tree logs. She was willing to give Mr. Burmeister additional time to correct the violation so long as substantial efforts were being made within the initial 30 days.

Mrs. Duffy showed two photos that were taken two weeks prior to the appeal hearing that show the setback encroachment to the front property lines. The setback to front property lines in an R-2, Single Family Residential District is 25 feet from the front property line.

On January 13, 2022, Mrs. Duffy received an email from Mr. Burmeister in which he calls the piles of wood chips a, "landscape berm," that would be used for planting trees, shrubs, and flowers, as well as seasonal gardening fruits and mushrooms. In the same email, he also stated he had planted approximately 40 white pine trees and 10 hard maple trees and plans to add chickens and ducks to the property to further its growth. This was the first time Mr. Burmeister referred to the wood chips as a "landscape berm."

On January 20, 2022, Mr. Burmeister filed Petition 22-P-1589, requesting to appeal the decision of the Lee County Zoning Office.

Mrs. Duffy showed the board an aerial photo of the property that was taken earlier this year.

She said her decision to send the violation letters were based on the quantity of wood chips and logs being stored at the Property, as well as the evidence retrieved from comparable pictures taken of the development, that this type of accessory use would only be allowed in Lee County as a special use in commercial, industrial district, and/or agricultural districts.

Mrs. Duffy said she also determined that the development of wood chips and logs along the east and south property lines are encroaching on the 7-foot setback requirement for side and rear

property lines, and the wood chips and logs along the west and north property lines are encroaching on the 25-foot setback requirement for front property lines.

Mrs. Duffy's recommendation to the Lee County Zoning Board of Appeals was that Mr. Burmeister remove all woodchips and logs from the Property's rear, side and both frontal property lines to the appropriate setback distances and all remaining woodchips and logs on the Property must be used as landscape materials or removed from Property within thirty (30) days. Further, she recommended that he shall not operate a commercial business from the property without gaining proper zoning.

Mrs. Duffy was cross-examined.

Mr. Pratt wanted to know what the setbacks are for the property. Mrs. Duffy said the setbacks for a residentially zoned property are 25 feet from the front property lines and 7 feet from the side and rear property lines. Mr. Pratt confirmed that Mr. Burmeister will have to move the wood chips 7 feet away from the east and south property lines and 25 feet from the north and west property lines. It was noted that the setback measure would be taken from the property line to the foundation of the wood chip piles.

Mr. Pratt confirmed with Mrs. Duffy that Mr. Burmeister initially had plans to rezone this property for commercial use. Mrs. Duffy explained that Mr. Burmeister's business would only be permitted as a special use in the commercial, industrial, and agricultural zoning districts.

Mr. Buhrow asked how close this property is to Dixon City Limits, and Mrs. Duffy showed him that the city limits are one block away.

Mr. Meyer said he could see logs too close to the east property line but wanted to know if there were other materials north of the logs that are too close to the property. Mrs. Duffy said there is.

Mr. Burmeister asked Mrs. Duffy to define the "dramatic slope" she testified to and asked if the elevation had been taken. She explained the statement is based on her observation.

Mr. Burmeister asked Mrs. Duffy if he ever filed a petition to rezone the property, and she said he had not.

Mr. Burmeister asked Mrs. Duffy if there was anything in the County's code that specified how much firewood a person can have on their property to be used to heat a residence. She said she was not aware of anything in the code.

Mr. Burmeister requested to see the photo Mrs. Duffy presented that shows the encroachment of the east property line. He asked if he had been sent a copy of this photo, and she said she had not.

Mr. Burmeister requested to see the photo Mrs. Duffy presented that shows the encroachment of the north property line. He asked her if she could identify in the picture where the City of Dixon's or the Township's property/right of way starts. She could not.

Mr. Burmeister asked Mrs. Duffy if the Lee County Zoning Office has been involved with the Dixon Township at all regarding this matter. She said it has not. She confirmed they have not contacted her, and she has not contacted them.

Mr. Burmeister asked her if there is a definition of “landscape berm” in the Lee County code. She confirmed, as did her previous email to Mr. Burmeister, that there is nothing in the code regarding “landscape berm.”

Mr. Burmeister asked Mrs. Duffy to confirm that the setbacks for the property lines along Cropsey Avenue and West Third Street is 25 feet. He then asked her to identify what structure is causing the violation of the 25-foot setback. She said she is considering the wall of wood chips and logs as a structure.

Mr. Burmeister asked Mrs. Duffy to identify changes to the property that have been made since Mr. Burmeister purchased the property. Mrs. Duffy showed an aerial photo of the property that was taken in 2019 and an aerial photo of the property taken in 2022, which illustrate the physical changes that have occurred to the property in the last 3 years. On the 2022 photo of the property, Mr. Burmeister had Mrs. Duffy point out where 3 trailers, a garage, and a van had been removed, and where he had planted some evergreen trees.

Mr. Burmeister asked Mrs. Duffy when her last communication was with his former attorney. She said he is no longer with the firm he had been with, and her last communication may have been the fall of 2021.

There were no other questions for Mrs. Duffy.

The following exhibits presented by Mrs. Duffy were admitted with objection by Mr. Burmeister to the 2nd and 5th photos found in Administrator Exhibit 1:

- Administrator Exhibit 1: Packet of photos of the violations at 306 Cropsey Ave., Dixon, IL 61021
- Administrator Exhibit 2: Packet of emails

Photos No. 2 and No. 5 were removed and not allowed to be admitted as part of Administrator Exhibit 1.

Glen Hughes made a motion to uphold the decision of the Lee County Zoning Administrator, in whole. A second was discerned, and there was debate. Mr. Hughes said based on the notice of the violations and the communication with Mr. Burmeister’s former attorney, it appears to him that Mr. Burmeister was using the property for commercial purposes and does not find the current explanation of the use to be plausible. Mr. Pratt added that the setback violations are a deep concern in this petition. Mr. Meyer agreed. Mr. Pratt called for the vote. A vote was taken, and the ayes prevailed. The motion passed, 5-0, and the decision of the Zoning Administrator was affirmed.

Mr. Burmeister was told he would need to contact the zoning office to exhaust any administrative abilities that he has to resolve the matter and try to comply with the decision. The other alternative is an appeal for a judicial review. He was told he will need to clean up the materials being stored at the property. He would be allowed to use the materials to do his landscaping, but it can no longer be stockpiled there.

Mr. Burmeister wanted to know if he could proceed with his landscape berm because nothing in the County's code says he cannot. He was told that would be for him and the zoning administrator to work out.

Mr. Burmeister asked to speak to someone outside of Mrs. Duffy's office about what happens after this hearing because he feels like what he's doing is perfectly legal yet he's being found in violation of the zoning administrator causing him to have to appeal. It was stated that the board's position is that the materials stockpiled at the property is from Mr. Burmeister's commercial business, that the landscape berm idea was created to explain the amount of materials located at that property and that the materials need to be removed. Additionally, he was told that whatever materials do remain at the property for berming purposes need to be set the proper distance from all property lines.

The board proceeded with new business which was an update on the pipeline, solar, wind and battery energy storage systems ordinances.

Renewable Energy Coordinator Alice Henkel explained that the Renewable Energy Committee is working to create a pipeline ordinance and a battery energy storage systems ordinance, as well as revising both the wind ordinance and solar ordinance.

She explained the draft pipeline ordinance is nearing its completion, and the review of the wind and solar ordinances have begun. Ms. Henkel will be meeting regularly with Chastain and Associates, an engineering firm that has been hired by the County to assist in the ordinance writing process, on a regular basis in an effort to have the pipeline ordinance completed and draft revised wind and solar ordinances in the near future.

Ms. Henkel noted that the zoning office would be meeting with Sauk Valley Hydrogen, LLC the following day to discuss building permit requirements.

Mr. Hughes asked if the County has anything on the books for hydrogen because the governor is placing an emphasis on hydrogen as energy. The County currently does not have any ordinance in place that is specific to hydrogen. At this time, it would be considered power generation which requires a special use permit in an I-3, Heavy Industrial District.

Mr. Pratt has concerns that the County's ordinances may interfere with the goals of the State.

Mr. Meyer requested a copy of the draft ordinances when they are available.

Ms. Henkel also noted that the Chair of the Renewable Energy Committee would like to have drafts ready to go to the Properties Committee in the month of July.

At 9:14 pm, Glen Hughes made a motion to recess. A second was discerned and there was no debate. A vote was taken, and all were in favor. Motion passed, 5-0.

Respectfully submitted,

/s/ _____
Alice Henkel