CAP

STATE OF INDIANA	)	IN THE FAYETTE CIRCUIT COURT
	) SS:	
COUNTY OF FAYETTE	)	CAUSE NO. 21C01-1610-MI-000607

IN RE: Petition for Special Exception No. BZA 2016-8 Milco Dairy Farm, LLC)

House of Prayer Ministries, Inc., d/b/a Harvest Christian Camp,)

Petitioner,)

vs.)

Rush County Board of Zoning Appeals, Respondent,)

Milco Dairy Farm, LLC Intervenor)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER AFFIRMING BZA'S DECISION

FINDINGS OF FACT

1. On or about November 20, 2015, Milco Dairy Farm, LLC ("Milco") filed an application for a special exception under the Rush County Zoning Ordinance. (Rec. A-001.)

2. Milco revised the application on or about February 10, 2016. (Rec. C-001.)

3. The Rush County Board of Zoning Appeals ("BZA") held two public hearings to hear evidence and testimony regarding the special exception.

4. The first meeting was on March 16, 2016. (Rec. H-001 *et seq.*)

5. The BZA continued the hearing to a second meeting, held on April 13, 2016. (Rec. I-001 *et seq.*)

6. At the hearings, Milco and various members of the public presented evidence in favor of the special exception. This evidence included relevant spoken and written testimony from an engineer and a Ph.D. in their respective fields. (*see, e.g.*, Rec. H-014 to H-022, H-024 to H-040; I-020 to I-033.; I-030; G-001.)

7. At the hearings, Petitioner House of Prayer Ministries, Inc. d/b/a/ Harvest Christian Camp ("Petitioner") also submitted both oral testimony and written evidence opposing the approval of the special exception. This evidence included testimony by a physician specializing in environmental health. (*see, e.g.*, Rec. H-057 to H-064.)

8. During the second hearing, there was a roughly 20-minute recess. (Rec. I-001.)

9. During such recess, a member of the audience, Mark Bacon ("Bacon"), approached a member of the BZA, Joseph Craig Trent ("Trent"), in the hallway. Bacon stated he tried to tell Trent that according to the ordinance, there was no reason not to pass the special exception. (Bacon Dep. 56:3-13.)

10. Trent stated he told Bacon not to speak to him, that Bacon did not influence him, and that he did not even hear what Bacon said to him. (Trent Dep. 22:21-25; 22:1-8; 22:11-13; 24:7-21; 27:13-16.)

11. The other members of the BZA testified that: (1) they had no contact with Bacon; (2) they had no personal knowledge about any discussion between Bacon and Trent; and (3) they had heard nothing more than vague rumors about any communication between the two. (Phil Shanahan Dep., passim; Sandra Jackson Dep., passim; Steve Cain Dep., passim; Dohn Green Dep., passim.)

12. David Todd ("Todd"), the Petitioner's pastor, accused Bacon of improper contact with Trent (by verifying the Petition and Amended Petitions where the allegation began), but admitted that he could not identify Trent and that he had no personal knowledge of what was spoken between Trent and Bacon. (Todd Dep. 15:25-16:3; 25:18-19; 14:2-5; 15:17-20; 20:18-21.)

13. At the end of the second meeting, the BZA unanimously voted to approve the special exception subject to five restrictive conditions. (Rec. I-002.)

14. On or about July 13, 2016, the BZA issued findings of fact as required under Indiana law. (Rec. Sec. J, *passim*.)

15. Such findings addressed each of the specific factors required under the zoning ordinance and included a list of the five restrictive conditions agreed upon by both the BZA and Milco. *Id.*

16. The BZA found that the additional conditions imposed were necessary to meet the criterion set forth in the Rush County Zoning Ordinance. *Id.* at J-002.

17. On or about May 19, 2016, Petitioner filed its Petition for Judicial Review and Declaratory Judgment seeking judicial review of this matter.

18. On or about October 6, 2016, Petitioner amended such petition.

19. All parties briefed the issues raised by Petitioner and oral argument was held on June 1, 2017.

CONCLUSIONS OF LAW

I. Standard of Review

When a court reviews a BZA's decision, it presumes the board decision is correct. *Midwest Minerals Inc. v. Bd. of Zoning Appeals*, 880 N.E.2d 1264, 1268 (Ind. Ct. App. 2008). The Court will reverse only if the board's decision is arbitrary, capricious, or an abuse of discretion. *Id.* The Court will not reweigh the evidence or substitute its discretion for that of the board. *Id.* Thus, Petitioner bears a heavy burden. *Id.* Unless the BZA's decision was illegal, it must be upheld. *McBride v. Bd. of Zoning Appeals of Evansville-Vanderburgh Area Plan Comm'n*, 579 N.E.2d 1312, 1315 (Ind. Ct. App. 1991). After reviewing the record and holding oral argument, this Court finds no evidence that suggests the BZA's decision was arbitrary, capricious, or an abuse of discretion.

II. Equal Privileges and Immunities Claim

1. Petitioner alleges a Rush County Zoning Ordinance requiring confined feeding operations to be set back at least one mile from schools violates its rights under the equal privileges and immunities clause of the Indiana Constitution Article I Section 23 ("Section 23"). Rush Co. Ord. 7.10.2(e). Petitioner argues that although it is not a school, it should be treated like one under the ordinance. The BZA and Milco argue Petitioner is not a school and should not be treated as such.

2. When analyzing a claim under Section 23, courts apply a two-prong test:

> First, the disparate treatment accorded by the legislation must be reasonably related to inherent characteristics which distinguish the unequally treated classes. Second, the preferential treatment must be uniformly applicable and equally available to all persons similarly situated. Finally, in determining whether a statute complies with or violates Section 23, courts must exercise substantial deference to legislative discretion.

Collins v. Day, 644 N.E.2d 72, 80 (Ind. 1994).

3. The Zoning Ordinance requires a greater setback from schools than other buildings. Rush Co. Ord. 7.10.2(e). Thus, the first question this Court must answer is whether the disparate treatment is reasonably related to inherent characteristics which distinguish the unequally treated classes. *Collins*, 644 N.E.2d at 80.

4. Indiana schools are highly regulated. *See* Ind. Code § 20-30 (establishing curriculum requirements); § 20-30-2-3 (requiring schools to complete 180 days of instruction annually); § 20-34-3-20 (requiring annual safety reports to be submitted to the State); § 20-33-2-27 (parents can be prosecuted if a child does not attend a school). Petitioner's camp is voluntary, lasts a few days each summer for each camper, is much less regulated than schools, and involves activities like slip & slides and bonfires. Schools and summer camps are treated disparately because they are inherently different.

5. Petitioner argues it should be treated like a school under the ordinance because children are central to its business purpose. But there are many other businesses that could make this claim, from mini-golf to movie theaters. Petitioner's claim fails to satisfy the first *Collins'* "inherent characteristics" prong and fails to negate "every conceivable basis which might have supported the classification," which it is required to do under *Collins*. 644 N.E.2d at 81.

6. There are many reasons a county might decide to treat a school differently than other uses, and Petitioner failed to negate "every conceivable basis" for that classification. *Collins*, 644 N.E.2d at 81. State law requires mandatory student attendance at school 180 days per year—and all that comes with it, including bus traffic, daily parent drop-off and pick-up traffic, after-school activities, and children entering and leaving school property every morning and afternoon. State law also requires schools to report on their emergency preparedness, medical testing, and curricula. All this information allows the county to consider the daily activities at a school in making its zoning decisions, making it reasonably related to the setback rules. Inherent distinguishing characteristics and how they are reasonably related to disparate treatment do not have to be specifically stated in an ordinance. *Whistle Stop*, 51 N.E.3d at 202. The Court gives considerable deference to the way the county has balanced the competing interests when deciding to require a one-mile setback from schools but not summer camps. Petitioner did not meet its burden regarding this first prong of *Collins* under Section 23.

7. Finally, under the *Collins* test, this Court must exercise substantial deference to the County's legislative discretion. *Id.* Petitioner failed to meet this heavy burden. In conclusion, the Ordinance does not violate Section 23.

III. Undue Influence/ Due Process Claim

8. Petitioner also alleges the BZA's decision was the result of undue influence by Mark Bacon ("Bacon"), a non-party. Petitioner argues its due process rights were violated because of Bacon's influence.

9. Indiana law provides "[a] person may not communicate with any member of the board before the hearing with intent to influence the member's action on a matter pending before the board." Ind. Code § 36-7-4-920(g).

10. There are two key questions to consider when analyzing an undue influence allegation: (1) whether new information was presented to the board outside of a hearing; and (2) whether the complaining party had a chance to respond to that information. *See City of Hobart v. Behavioral Inst. of Ind., LLC*, 785 N.E.2d 238, 251-52 (Ind. Ct. App. 2003); *McBride*, 579 N.E.2d at 1317 (holding information submitted to the BZA before the hearing was not improper because it was not relied on, petitioners had access to it, and could have responded to it); *Metro Bd. of Zoning Appeals v. Standard Life Ins. Co.*, 251 N.E.2d 60, 62-63 (Ind. Ct. App. 1969) (holding improper statements were admissible because petitioner had prior access to the statements and had an opportunity to respond). The standard also requires evidence that the BZA relied on any alleged improper information for the violation to be material. *City of Hobart*, 785 N.E.2d at 251-52.

11. There is no dispute Bacon attempted to speak to BZA member Craig Trent during a break at the second BZA meeting. In his deposition, Bacon testified that he had stated that he saw no reason not to pass the special exception. However, Trent testified he did not hear Bacon. Trent said he put his hand out, informed Bacon that he should talk to the county attorney, and Trent continued walking. Bacon testified he did not doubt Trent's testimony that he did not hear what Bacon said.

12. Petitioner cites to *City of Hobart* to argue Bacon's contact with Trent violated the statute, and therefore, Petitioner's due process rights. However, *City of Hobart* is distinguishable from the case at hand in at least two ways. First, in *City of Hobart*, an

engineer provided a secret memorandum to the Council prior to the hearing; this memorandum was not provided to the affected party. *Id.* at 245. The party had no notice of or opportunity to rebut the memo. *Id.* The Council relied on the memo when making its decision, consequently violating the due process rights of the party who was not privy to the memo. *Id.* at 252-53.

13. In contrast, Bacon provided no new information to Trent. The opinion Bacon expressed was repetitive of other opinions given numerous times throughout two three-hour hearings. There were no new facts for Petitioner to rebut. There was no "undue influence."

14. Second, Petitioner argues the contact between Bacon and Trent constituted undisclosed partiality. Petitioner relies on *City of Hobart*. However, in *City of Hobart*, a councilwoman who worked for the public-school system was pressured multiple times by her principal and superintendent to vote against the variance. *Id.* at 253-54. Her superiors reminded her numerous times of the importance of her opposition to the variance. *Id.* Her position at the school was non-tenured and at-will; her husband also worked for the school. *Id.* at 253. The Court held her employment with the public-school system and her superiors' contacts with her pressuring her to vote "no" on the variance created an impression of partiality for which she should have recused herself. *Id.* In the present case, there is no employment relationship between Bacon and Trent. Bacon is not Trent's boss.[1] There is no reason to assume undisclosed partiality.

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[1] Bacon does not work for Milco and is not an agent for Milco. It would be unfair to Milco to revoke its special exception based on an unheard hallway comment of a third party.

15. Board members are not required to be ignorant of the facts surrounding a petition. *Id.* at 253-54 n.14. Few small towns or close-knit communities would be able to function if the courts required board members to be ignorant of local sentiment. *Id.* Instead, board members are required to make an "honest and fair determination based upon th[e] facts." *Id.*

16. Petitioner has failed to meet its burden of showing any undue influence or violation of its due process rights.

IV. Religious Liberty Claims

17. Petitioner next argues the BZA's decision to grant a special exception to Milco to operate a dairy in the Rush County Agriculture A3 Regulated Livestock district violates Petitioner's religious rights under the Indiana Constitution, the Indiana Religious Freedom Restoration Act ("RFRA"), and the federal Religious Land Use and Institutionalized Persons Act ("RLUIPA"). The BZA and Milco disagree because Petitioner failed to introduce any evidence of any burden on religion and did not cite to any case law supporting its position. The Court agrees with the BZA and Milco.

a. Indiana Constitution Claim

18. First, Petitioner argues the special exception violates Petitioner's religious rights under the Indiana Constitution. Petitioner relies on one case: *City Chapel Evangelical Free Inc. v. City of South Bend*, 744 N.E.2d 443 (Ind. 2001). This reliance is misplaced.

19. In *City Chapel*, South Bend used its eminent domain powers to evict a church. *Id.* at 444-45. Our Supreme Court explained the condemnation would be a material burden on the church's freedom of religion only if "the right, as impaired, would no longer serve the purpose for which it was designed." *Id.* at 447. The Court decided the church should at

least be allowed to present evidence to the trial court regarding its religious argument. *Id.* at 444, 451. The Court noted "[t]he effect of the taking must constitute a material burden, not merely a permissible qualification." *Id.* at 451. The Court did not rule the City imposed a material burden on the church.

20. *City Chapel* is not like the case here. First, in *City Chapel*, the city took the church's property; here, the government action left the Petitioner's property untouched. *Id.* at 444-45. Milco, not Petitioner, was the object of the county's decision. Second, in *City Chapel*, the City condemned and evicted the church, obviously preventing it from continuing its ministry at that location. *Id.* In contrast, Petitioner presented no evidence that any church members, leaders, or students would discontinue worshipping at Petitioner's location if the dairy was built. There was no evidence before the BZA that the special exception will cause Petitioner to stop its services or summer camp. There was no evidence the special exception will prevent Petitioner from continuing its ministry. There is no evidence the special exception materially burdens the Petitioner's religious rights.

21. In sum, Petitioner has failed to meet its heavy burden of showing that the special exception will materially burden its freedom of religion.

b. Federal Religious Land Use and Institutionalized Persons Act (RLUIPA) and Indiana Religious Freedom Restoration Act (RFRA) Claims

22. Petitioner next contends the special exception violates the federal Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc ("RLUIPA"), and the Indiana Religious Freedom Restoration Act, Ind. Code § 34-13-9-8 ("RFRA"). Petitioner bears the burden of proof.

23. RLUIPA forbids a government to:

> impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly or institution—(A) is in furtherance of a compelling governmental interest; and (B) is the least restrictive means of furthering that compelling governmental interest.

42 U.S.C. § 2000cc(a)(1). The Court applies a similar analysis to RFRA claims, but RLUIPA adds a requirement that the ordinance be a "land use regulation."

24. RLUIPA only applies to a "land use regulation." 42 U.S.C. §§ 2000cc-1(b)(1)-(2); 2000cc(a)(2)(A)-(C). "Land use regulation" is defined by RLUIPA as follows:

> [A] zoning or landmarking law, or the application of such a law, that limits or restricts a claimant's use or development of land . . . if the claimant has...a property interest in the regulated land . . . .

42 U.S.C. § 2000cc-5(5).

25. RLUIPA does not apply here because no "land use regulation" was imposed against Petitioner. Petitioner is a Henry County entity; the Rush County BZA has not imposed zoning regulations on its land. Petitioner has no interest in the regulated land. *See Taylor v. City of Gary*, 233 F. App'x 561, 562 (7th Cir. 2007) (dismissing a plaintiff's RLUIPA claim because he did not have a property interest in the subject property). Thus, Petitioner is not subject to a "land use regulation" and RLUIPA does not apply.

26. Here, Petitioner presented no evidence to the BZA establishing Petititioner's freedom of religion will be substantially burdened because Milco will be allowed to build a dairy one-half mile away. Petitioner claims Milco's dairy will "directly coerce" Petitioner to terminate its summer camp ministry, but provided no evidence to support that statement. There was no evidence the camp's religious activities will be burdened by the special exception. Petitioner did not introduce evidence its members would leave, children would

avoid the camp, or that the camp could not exist with a dairy farm nearby. This failure is dispositive of Petitioner's religious liberty claims.

27. Petitioner also argues that the special exception does not use the least restrictive means and does not serve a compelling government interest. BZA and Milco presented evidence the County has a compelling government interest in ordered land development, tax revenues, increased job creation, and the general welfare of the County, and that the least restrictive means were used since no restrictions were imposed on the Petitioner's land, but five limiting conditions were imposed on Milco's special exception.

28. Petitioner relies on a dissenting opinion and asserts that economic factors are irrelevant. *River of Life Kingdom Ministries v. Vill. of Hazel Crest*, 611 F.3d 367, 391 (7th Cir. 2010) (Sykes, J., dissenting). However, the majority opinion made clear a county's interest in economic factors is an important consideration. *Id.* at 373.

29. Petitioner claims the special exception does not invoke the least restrictive means (but provides no example of what more restrictive means could have been used). The special exception does not impose any limitations on Petitioner and does not refer to religion.

30. RLUIPA does not apply because there is no "land use regulation" being imposed on Petitioner's property. Petitioner's RLUIPA and RFRA claims fail because there is no evidence Petitioner's religious rights will be substantially burdened by Milco's special exception. Petitioner cites no case law in which a zoning decision was reversed based on a RLUIPA or RFRA claim by a party which had no interest in the property being regulated. Petitioner's RLUIPA and RFRA claims fail.

c. "Equal Terms" under RLUIPA Claim

31. Petitioner argues that under RLUIPA it should have been granted the same one-mile setback given to schools. BZA and Milco contend the Ordinance and special exception treat the camp on equal terms with similar nonreligious entities.

32. Under RLUIPA, no government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution. 42 U.S.C. § 2000cc(b)(1); *Digrugilliers v. Consol. City of Indianapolis*, 506 F.3d 612, 614 (7th Cir. 2007). There are three ways an "equal terms" RLUIPA claim can arise:

a. The statute facially differentiates between religious and nonreligious entities;
b. The statute is facially neutral but is gerrymandered to burden religious entities; or
c. The statute is neutral but selectively enforced against religious entities.

Vision Church v. Vill. of Long Grove, 468 F.3d 975, 1003 (7th Cir. 2006).

33. Here, neither the Ordinance nor the special exception mention religion, so they are facially neutral. There is no evidence they are gerrymandered to burden religious entities, nor is there evidence they are selectively enforced against religious entities.

34. A regulation which treats religious and secular land uses the same will successfully rebut an equal terms claim. *See River of Life*, 611 F.3d at 373 (holding "if religious and secular land uses that are treated the same from the standpoint of accepted zoning criterion, such as 'commercial district,' or 'residential district,' or 'industrial district,' that is enough to rebut an equal terms claim."); *see Eagle Cove Camp & Conf. Ctr., Inc. v. Town of Woodboro*, 734 F.3d 673, 683 (7th Cir. 2013) (upholding an ordinance which treated Bible and non-Bible camps similarly). The Rush County regulations treat religious and secular schools similarly, and treat religious and secular summer camps similarly.

35. Because Petitioner's religious summer camp is treated the same as other religious and secular summer camps, Petitioner's "equal terms" claim under RLUIPA fails.

V. Public Interest/ Sufficient Findings Claims

36. Petitioner alleges the BZA ignored the "public interest" and Milco's impact on surrounding properties when it granted the special exception. The BZA and Milco argue the BZA made specific findings on the public interest and other topics, including the effect on surrounding properties, as required by the Rush County Zoning Ordinance and Indiana law.

37. The standard of review for a zoning decision is set forth in Ind. Code § 36-7-4-1614, which states "[t]he burden of demonstrating the invalidity of a zoning decision is on the party . . . asserting invalidity." Ind. Code § 36-7-4-1614(a). Furthermore, "[a] proceeding before a trial court or an appellate court is not a trial *de novo*; neither court may substitute its own judgment for or reweigh the evidentiary findings of an administrative agency." *Wastewater One, LLC v. Floyd Cty. Bd. of Zoning Appeals*, 974 N.E.2d 1040, 1050 (Ind. Ct. App. 2011). "There is a presumption that the determinations of a zoning board are correct and should not be overturned unless they are arbitrary, capricious, or patently unreasonable so as to constitute an abuse of discretion." *Ash v. Rush Cty. Bd. of Zoning Appeals*, 464 N.E.2d 347, 352 (Ind. Ct. App. 1984).

38. The Rush County Zoning Ordinance requires the BZA to consider certain factors in granting a special exception: (1) ingress and egress to property; (2) off-street parking and loading area; (3) refuse and service areas; (4) utilities; (5) screening and buffering of objectionable views, odors, noises, or vibrations; (6) signs and lighting; (7) yards and open spaces; (8) general compatibility with adjacent properties and other property in the district. Rush Co. Ord. 10.2(e). (Rec. K-158.) The BZA also must make a

finding the special exception will not adversely affect the public interest. *Id.* at 10.2(d). The BZA is entitled to "grant special exceptions with such conditions and safeguards as are appropriate under this ordinance, or to deny special exceptions when not in harmony with the purpose and intent of this ordinance." *Id.*

39. The ultimate purpose of zoning ordinances is to confine certain classes of uses and structures to designated areas. *Deiss v. Bd. of Zoning Appeals*, 926 N.E.2d 63, 67 (Ind. Ct. App. 2010). In passing the Zoning Ordinance, the County gave "reasonable consideration . . . to the character of the districts and their particular suitability for particular uses, with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the County." Rush Co. Ord. Preamble. (Rec. K-005.)

40. Milco's subject property is in a rural zoning district A3 in Rush County, called "Regulated Livestock." Rush Co. Ord. 7.10. (Rec. K-105, J-001, C-019, I-105.) This district was created "to encourage the continuation of agricultural uses of land . . . . Larger livestock operations, including [confined feeding] . . . may be permitted in this district." Rush Co. Ord. 7.10. (Rec. K-105.)

41. Petitioner cites to *Flat Rock Wind, LLC v. Rush Cty. Area Bd. of Zoning Appeals*, 70 N.E.3d 848 (Ind. Ct. App. 2017) as support for its focus on the public interest, but *Flat Rock* supports the BZA's grant of Milco's special exception.

42. In *Flat Rock*, a company applied for a special exception to construct wind turbines in Rush County. *Id.* at 851. The BZA approved the special exception subject to an additional condition requiring greater setbacks than the minimums provided in the zoning ordinance. *Id.* at 854. During two hearings, the BZA "received evidence in favor of the project and in opposition of constructing the windfarm." *Id.* at 861. The BZA granted the

special exception subject to an additional measure designed to safeguard the health and welfare of surrounding properties. *Id.* Because the BZA's interpretation was reasonable and consistent with the zoning ordinance, the appellate court deferred to and upheld its decision. *Id.*

43. As in *Flat Rock*, here the Rush County BZA heard extensive evidence in favor of and in opposition to the dairy farm (two hearings). The BZA decided to grant the special exception, subject to five additional conditions to further enhance the environmental, health, and safety protocols already planned by the dairy. (Rec. J-002.) The additional conditions related to knifing manure into soil, expanding the truck entrance and turn-around to prevent congestion, planting trees around the dairy in a shelterbelt, submitting manure application agreements to the county, and limiting the number of cattle at the dairy. (*Id.*) As in *Flat Rock*, after hearing hours of evidence in favor of and in opposition to the project, the BZA granted the special exception subject to additional restrictive conditions specifically tailored to address the public interest. (*Id.*)

44. Contrary to Petitioner's assertion that the Rush County BZA did not consider the "public interest" of surrounding properties, there was significant "public interest" evidence presented in support of the dairy's special exception, including environmental protections, economic benefits, health and safety, and orderly land development in accordance with the County's stated intentions. Although Petitioner encourages this Court to reweigh the evidence presented at the BZA hearings by claiming the BZA ignored the testimony of its expert, this is not the appropriate standard of review. *Wastewater One, LLC*, 974 N.E.2d at 1050. Thus, Petitioner's claim that the BZA did not consider the "public interest" fails.

45. Petitioner also argues the Rush County BZA did not make findings sufficient to support intelligent appellate review because it did not address every contention advanced by Petitioner. Petitioner cited no law to support this position.

46. A BZA's findings must be sufficiently detailed to support intelligent appellate review, and must be supported by the record. *Burcham v. Metro Bd. of Zoning Appeals Div. I of Marion Cty.*, 883 N.E.2d 204, 214 (Ind. Ct. App. 2008). However, a BZA decision need not address "every single assertion of remonstrators," but "must be tailored to address the specific facts presented to the Board." *Wastewater One, LLC*, 947 N.E.2d at 1050; *see also Network Towers, LLC v. Bd. of Zoning Appeals*, 770 N.E.2d 837, 844 (Ind. Ct. App. 2002) (explaining that a BZA should enter both specific and conclusory findings and the "[s]pecific findings [should] necessarily incorporate the *basic* facts upon which the determination is based." (emphasis added)).

47. The BZA's decision properly addressed every aspect required by the Rush County Ordinance 10.2(e) and is sufficient to support intelligent appellate review. (Rec. K-158.) The specific findings properly detail the eight aspects considered by the Board when contemplating a special exception. The Court rejects Petitioner's invitation to reweigh the evidence presented to the BZA. Petitioner's claim that the findings are not sufficient to support intelligent appellate review fails.

VI. Conclusion

For all of these reasons above, Petitioner's Petition for Judicial Review and Declaratory Judgment is denied. The BZA's granting of the special exception is upheld.

So ORDERED on this day: 7-11-17.

Hubert Branstetter Jr

Hon. Hubert Branstetter, Judge
Fayette County Circuit Court

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